

Circuit Court of Maryland

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Case Information

Court System: **Circuit Court for Baltimore County - Civil System**
Case Number: **03C98009629**
Title: **Doctors Health Inc vs N Y L Care Health Plans Of The Mid Atlantic Inc**
Case Type: **Contract** Filing Date: **09/21/1998**
Case Status: **Closed/Inactive**
Case Disposition: **Decree or Order** Disposition Date: **12/20/2000**

Plaintiff/Petitioner Information

(Each Plaintiff/Petitioner is displayed below)

Party Type: **Plaintiff** Party No.: **1**
Business or Organization Name: **Doctors Health Inc**
Attorney(s) for the Plaintiff/Petitioner

Name: **Corse, Esq, John D**
Practice Name: **Exelon Business Services Company LLC**
Address: **100 Constellation Way**
Suite 1700 P
City: **Baltimore** State: **MD** Zip Code: **21202**

Defendant/Respondent Information

(Each Defendant/Respondent is displayed below)

Party Type: **Defendant** Party No.: **1**
Business or Organization Name: **N Y L Care Health Plans Of The Mid Atlantic Inc**
Address: **7601 Ora Glen Dr**
City: **Greenbelt** State: **MD** Zip Code: **20770**
Attorney(s) for the Defendant/Respondent

Name: **Hansen, Esq, Mark C.**
Practice Name: **Kellogg, Huber, Hansen, Todd & Evans, PLLC**
Address: **1301 K Street, NW**
Suite 1000 West
City: **Washington** State: **DC** Zip Code: **20005-3317**

Document Tracking

(Each Document listed. Documents are listed in Document No./Sequence No. order)

Doc No./Seq No.: **1/0**
File Date: **09/21/1998** Entered Date: **09/21/1998** Decision:
Party Type: **Plaintiff** Party No.: **1**
Document Name: **Complaint with exhibits**

Doc No./Seq No.: **2/0**
File Date: **09/21/1998** Entered Date: **09/21/1998** Decision:
Party Type: **Defendant** Party No.: **1**
Document Name: **Writ of Summons - Civil**

Doc No./Seq No.: **3/0**

File Date:	09/21/1998	Entered Date:	09/21/1998	Decision:	Denied
Party Type:	Plaintiff	Party No.:	1		
Document Name:	Motion for Temporary Restraining Order				
<hr/>					
Doc No./Seq No.:	3/1				
File Date:	09/21/1998	Entered Date:	09/23/1998	Decision:	
Party Type:	Defendant	Party No.:	1		
Document Name:	* Opposition to Motion				
<hr/>					
Doc No./Seq No.:	4/0				
File Date:	09/21/1998	Entered Date:	09/21/1998	Decision:	
Party Type:	Plaintiff	Party No.:	1		
Document Name:	Motion for Preliminary Injunction with memorandum and exhibits.				
<hr/>					
Doc No./Seq No.:	5/0				
File Date:	11/16/2000	Entered Date:	11/16/2000	Decision:	
Document Name:	Notice of Cont. Dismissal Lack of Pros.				
<hr/>					
Doc No./Seq No.:	6/0				
File Date:	12/20/2000	Entered Date:	12/20/2000	Decision:	
Document Name:	Dismissed - Lack of Pros. w/o Prejudice				
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Case Information

Court System: Circuit Court for Prince George's County - Civil System
Case Number: CAL98-20126
Case Description: NYLCARE HEALTH VS DOCTORS HEAL
Case Type: Contract
Filing Date: 09/29/1998
Case Status: Active Status

Plaintiff/Petitioner Information

Party Type: Plaintiff Party No.: 1
Name: Nylcare Health Plans Of The Mid Atlantic Inc
Address: 7601 Ora Glen Drive
City: Greenbelt State: MD Zip Code: 20770

Defendant/Respondent Information

Party Type: Defendant Party No.: 2
Name: Doctors Health Inc
Address: 10451 Mill Run Circle
City: Owings Mills State: MD Zip Code: 21117

Dockets

(Each Document listed. Documents are listed in Document No./Sequence No. order)

Date: 09/29/1998
Document Name: CaseType: Injuc Relief/LA
Docket Text:

Date: 09/29/1998
Document Name: Docket Record (Conversion)
Docket Text: 001 Staff Code/Initials: BAM COMPLAINT FOR INJUNCTIVE RELIEF, FILED.;

Date: 09/29/1998
Document Name: Plaintiff's Information Sheet
Docket Text: 002 Staff Code/Initials: BAM PLAINTIFF'S INFORMATION SHEET, FILED.;

Date: 09/29/1998
Document Name: Docket Record (Conversion)
Docket Text: 003 Staff Code/Initials: BAM MOTION FOR TEMPORARY RESTRAINING ORDER, MEMORANDUM; IN SUPPORT, EXHIBITS, FILED.;

Date: 10/02/1998
Document Name: Docket Record (Conversion)
Docket Text: 004 Staff Code/Initials: SMS D/S 9-29-98. HEARING ON PLAINTIFF'S MOTION FOR; TEMPORARY RESTRAINING ORDER. JUDGE LOMBARDI;; MS.LYNCH,REPORTER. DEFENDANT'S EXHIBIT 1 ADMITTED; AND PLAINTIFF'S EXHIBIT 2 ADMITTED AND MOTION; GRANTED IN PART. IT IS REQUIRED THAT STATUS QUO;REMAIN IN EFFECT FOR 3 DAYS. IN THOSE 3 DAYS; DOCTORS HEALTH TO USE ALL OF THE STAFF REQUIRED;TO SATISFY ALL OF THE TERMS OF PARAGRAPH 7 OF; TERMINATION TO BE NOTIFIED OF TERMINATION.;ORDER TO BE SUBMITTED. RESET 10-5-98 AT 1:30PM FOR; FOLLOW-UP HEARING BEFORE JUDGE LOMBARDI,FD.;

Date: 10/02/1998
Document

Name: Docket Record (Conversion)

Docket Text: 005 Staff Code/Initials: SMS ORDER OF COURT, DATED 9-29-98, JUDGE LOMBARDI; ORDERED THAT THE PLA MOTION FOR TEMPORARY; RESTRAINING ORDER IS GRANTED PURSUANT TO RULE; 15-504(C)(2) AS SET FORTH IN THE TRANSCRIBED ORDER; ATTACHED HERETO AND INCORPORATED HEREIN. THAT THIS;MATTER BE SET FOR FURTHER HEARING AT 1:30 ON; 10-5-98 UNLESS BOTH PARTIES AGREE THERE IS NO NEED;FOR FURTHER HEARING,FD. CC SENT TO J.CORSE;; M.HANSEN.;

Date: 10/06/1998

Document Name: Docket Record (Conversion)

Docket Text: 006 Staff Code/Initials: SMS D/S 10-5-98. NO FURTHER HEARING NEEDED.; JUDGE LOMBARDI;NO REPORTER,FD.;

Date: 10/06/1998

Document Name: DNU Case Closed Statistically

Docket Text: Action: TERM Judge: LOMBARDJ

This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland Rules, or because of the practical difficulties inherent in reducing a case record into an electronic format.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH
v. CHASE MANHATTAN BANK, and NYLCARE HEALTH PLANS
OF THE MID-ATLANTIC, INC.
Index No. 98/604436

PLEADINGS

VOLUME I

1.	09/11/98	Plaintiff	Summons, Complaint; Affidavit of Urgency in Support of a Temporary Restraining Order; Plaintiff's Memorandum of Law in Support of Application for an Order to Show Cause and Temporary Restraining Order
2.	09/11/98	Court	Order to Show Cause (Containing Temporary Restraining Order)
3.	09/14/98	Defendant	Affidavit of Anthony A. Capasso
4.	09/16/98	Plaintiff	Affidavit of John D. Corse; Affirmation of Peter M. Corrigan in Support of Motion for Admission <i>Pro Hac Vice</i> of John D. Corse
5.	09/16/98	Defendant	Response of NYLCare Health Plans of the Mid-Atlantic, Inc. to Order to Show Cause Why Preliminary Injunction Should Not Be Granted; Exhibits to Response of NYLCare Health Plans of the Mid-Atlantic, Inc. to Order to Show Cause Why Preliminary Injunction Should Not Be Granted

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTOR'S HEALTH
v. CHASE MANHATTAN BANK, and NYLCARE HEALTH PLANS
OF THE MID-ATLANTIC, INC.
Index No. 98/604436

PLEADINGS

VOLUME II

6.	09/17/98	Plaintiff	Notice of Appeal; Pre-Argument Statement; Plaintiff's Reply Memorandum of Law in Support of Its Application for a Preliminary Injunction; Affidavit of Stewart Gold
7.	09/17/98	Court	Transcript of Order regarding Preliminary Injunction Hearing
8.	09/23/98	Defendant	Brief of Defendant-Respondent NYLCare Health Plans of the Mid-Atlantic, Inc.; Respondents' Appendix
9.	09/25/98	Plaintiff	Doctors Health, Inc.'s Reply Memorandum of Law in Support of its Application for a Stay
10.	09/28/98	Defendant	Motion for Leave to File Reply of NYLCare Health Plans of the Mid-Atlantic, Inc.; Reply Brief of Defendant-Respondent NYLCare Health Plans of the Mid-Atlantic, Inc.
11.	09/30/98	Court	Notice of Entry of Order; Order #101 (plaintiff's motion for a preliminary injunction is DENIED and TRO is VACATED; plaintiff's application for a stay of this Order is DENIED)
12.	10/01/98	Court	STIPULATION (extension of time for NYLCare to answer/respond to the Complaint)
13.	10/06/98	Court	ORDER (motion for a preliminary injunction is DENIED)
14.	11/4/98	Defendant	Notice of Entry

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

Index No. 98/604436 (BAC)

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC.,
Defendants.

-----X

**PLAINTIFF'S REPLY MEMORANDUM OF LAW IN SUPPORT OF
ITS APPLICATION FOR A PRELIMINARY INJUNCTION**

PIPER & MARBURY L.L.P.
1251 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10020-1104
(212) 835-6000

ALL COMMUNICATIONS SHOULD BE REFERRED TO
MONICA PETRAGLIA MCCABE
PETER M. CORRIGAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
DOCTORS HEALTH, INC., :

Plaintiff, :

: 98 Civ. 604436 (BAC)

- against - :

CHASE MANHATTAN BANK, and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC., :

Defendants. :

----- X

PRELIMINARY STATEMENT

In this memorandum of law, Doctors Health, Inc. ("**Doctors Health**") responds to the opposition papers of NYLCare Health Plans of the Mid-Atlantic, Inc. ("**NYLCare**"), which were served on plaintiff's counsel after 6:00 p.m. on the day before the return date of this motion.

Contrary to the suggestion of NYLCare, this action was not commenced to resolve "a commercial dispute over monies owed between Maryland residents." (Opposition Memorandum of Law at p. 2). This action was commenced to stop NYLCare from fraudulently drawing down on a letter of credit here in New York.

NYLCare should be enjoined from drawing down on the letter of credit because NYLCare presented fraudulent documents to Chase Manhattan Bank ("**Chase**") in New York in an attempt to draw down on the letter of credit. Under the applicable law, either fraud in the presentment of letter of credit documents *or* fraud in the underlying transaction between the parties is sufficient for a court to enjoin the payment of a letter of credit. Because the undisputed evidence shows that NYLCare made fraudulent misrepresentations in the presentment of letter of

credit documents to Chase, this Court can enjoin NYLCare from drawing down on the letter of credit without addressing the issue of fraud in the underlying transaction.¹

SUMMARY OF FACTS

The facts supporting Doctors Health's application are set out in detail in the affidavit of John R. Dwyer, Jr. sworn to on September 10, 1998 (the "**Dwyer Affidavit**") and the affidavit of Stewart Gold, sworn to on September 16, 1998 (the "**Gold Affidavit**"). A brief summary of the facts is provided here.

Under the contract between Doctors Health and NYLCare dated October 1, 1997 (the "**Contract**"), Doctors Health was obligated to open a letter of credit (the "**Letter of Credit**") to secure the payment of claims by health providers, which Doctors Health did at Chase. The Letter of Credit expressly provided that NYLCare could draw down on the Letter of Credit only if it fulfilled certain conditions, including presenting a document to Chase stating that NYLCare is not aware of any defenses or offsets to payment raised by Doctors Health.

On or about September 8, 1998, NYLCare did in fact submit a statement to Chase that it was not aware of any defenses or offsets to payment raised by Doctors Health. But that statement was and still is false. NYLCare had been aware, as far back as July 1998, that Doctors Health had raised various defenses and offsets to payment. *See* Affidavit of John R. Dwyer, Jr. at ¶¶ 21, 22 and exhibits 3 and 4 thereto. In fact, NYLCare had acknowledged that Doctors Health had raised defenses and offsets on numerous occasions.

¹ While Doctors Health previously highlighted both NYLCare's fraud in the presentment and fraud in the underlying transaction, the Court need not consider the latter since the fraud in the presentment is so clear in the record before this Court and provides ample basis to sustain the injunction.

ARGUMENT

I.

NOT ONLY DOES THE ARBITRATION CLAUSE BETWEEN THE PARTIES NOT PRECLUDE DOCTORS HEALTH FROM SEEKING INJUNCTIVE RELIEF, BUT THIS COURT HAS JURISDICTION OVER NYLCARE

NYLCare's argument that the instant application for injunction is subject to the arbitration clause between the parties is refuted by the contract, which contains, in addition to the arbitration clause NYLCare correctly cited, a clause expressly providing for injunctive relief, a provision NYLCare did not even refer to. The clause entitled "Injunctive Relief" provides:

Notwithstanding this agreement to arbitrate, NYLCare Midatlantic and Doctors Health may seek interim and/or permanent injunctive relief pursuant to this Agreement in any court of competent jurisdiction.

See Benz Aff., Exhibit 1 at 6.6 and Exhibit 2 at 8.7. Thus, Doctors Health can pursue injunctive relief as it did here.

NYLCare's claim of lack of personal jurisdiction is likewise belied by the letter of credit agreement and the applicable law. NYLCare sent a letter to Chase here in New York in which it fraudulently misrepresented that it was not aware of "defenses or offsets to payments which have been raised by Doctors Health" (Exhibits B and C to the Capasso Affidavit). As such, NYLCare committed a fraud inside New York and is subject to jurisdiction under CPLR 302(a)(2).

Not only did NYLCare commit a fraudulent act in New York, but the letter of credit agreement with Chase also has a New York jurisdiction choice of law and clause providing for jurisdiction in this Court. *See Exhibit O to the Gold Affidavit*. In addition, NYLCare had the opportunity to oppose the opening of a letter of credit with a New York bank as provided in § 3.21 of the Agreement. *See Benz Affidavit at Exhibit 1*. Thus, this Court has jurisdiction to stop NYLCare from fraudulently drawing down on a letter of credit here in New York.

II.

THIS COURT SHOULD ENJOIN CHASE FROM PAYING OUT ON THE LETTER OF CREDIT BECAUSE NYLCARE'S PRESENTMENT OF LETTER OF CREDIT DOCUMENTS WAS FRAUDULENT

NYLCare's recitation of the law concerning enjoining letter of credit payments, which not properly delineate the fraud exception, is misleading. Under UCC § 5-114(2) and the controlling case law, Doctors Health needs to show that "a required document . . . is forged *or* fraudulent *or* there is fraud in the transaction" to enjoin Chase from paying NYLCare.² See, e.g., *Takeo Co. Ltd. v. Mead Paper, Inc.*, 204 A.D.2d 123, 611 N.Y.S.2d 543, 545 (1st Dep't 1994); *410 Sixth Ave. Foods v. 410 Sixth Ave.*, 197 A.D.2d 435, 602 N.Y.S.2d 835 (1st Dep't 1993); *Mount*

² Although the Letter of Credit incorporates the Uniform Customs and Practice for Commercial Documentary Credits, UCC § 5-114(2) and case law interpreting the UCC provision control the result here. See, e.g., *Mennen v. J. P. Morgan & Co., Inc.*, 91 N.Y.2d 13, 666 N.Y.S.2d 975, 980-81 (1997), *United Bank Ltd. v. Cambridge Sporting Goods Corp.*, 41 N.Y.2d 254, 258 n.2, 392 N.Y.S.2d 265 (1976). Section 5-114(2) of the UCC provides that:

Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but *a required document . . . is forged or fraudulent or there is fraud in the transaction:*

(a) the issuer must honor the draft or demand for payment if honor is demanded by * * * holder of the draft * * * which has taken the draft * * * under the credit and under circumstances which would make it a holder in due course (Section 3-302) * * *; and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other or other defect not apparent on the face of the documents *but a court of appropriate jurisdiction may enjoin such honor.*

N.Y.U.C.C. § 5-114(2)(b) (McKinney 1998 pocket part) (emphasis added).

Carmel Energy Corp. v. Marine Midland Bank, 82 A.D.2d 729, 439 N.Y.S.2d 387, 388 (1st Dep't 1981).³

NYLCare's actions are similar to the actions of the seller in *Sztejn v. J. Henry Schroder Banking Corp.*, 177 Misc. 719, 31 N.Y.S.2d 631 (S. Ct. N.Y. County 1941). There the Court enjoined payment on a letter of credit where the seller, who attempted to draw down on the letter of credit, had intentionally procured fraudulent bills of lading and invoices falsely describing the goods called for by the letter of credit, which the seller submitted to the issuing bank.⁴

Doctors Health asks the Court to sustain the injunction restraining Chase from drawing down on the Letter of Credit in favor of NYLCare. In doing so, Doctors Health directs the Court to the long-recognized principle in letter of credit jurisprudence, namely, "[w]hen the issuer of a letter of credit knows that a document, although correct in form, is, in point of fact, false or

³ The Court of Appeals in *First Commercial Bank v. Gotham Originals, Inc.*, 64 N.Y.2d 287, 486 N.Y.S.2d. 715, 719 (1985) succinctly stated the law in this area as follows:

Under the general rule the issuer must honor the draft when the documents presented comply with the terms of the letter of credit (Uniform Commercial Code § 5-114[1]). But when a required document does not conform to the necessary warranties or is forged or fraudulent **or** there is fraud in the transaction, an issuer acting in good faith may, but is not required to, refuse to honor a draft under a letter of credit when the documents presented appear on their face to comply with the terms of the letter of credit. ***Further than that, a customer may also enjoin an issuer from honoring such a draft if the issuer fails to do so on its own*** (Uniform Commercial Code § 5-114 [2][b]. (emphasis added) (citations omitted).

⁴ In fact, NYLCare's fraudulent submission to Chase goes to the heart of the entire transaction. *See, e.g., Voest-Alpine Intern. Corp. v. Chase Manhattan Bank*, 707 F.2d 680 (2d Cir. 1983). NYLCare's intentional misrepresentation shows that NYLCare's goal is to rob Doctors Health without any regard for the underlying bargain. The underlying transaction would be a complete sham if NYLCare can take the money and run in complete disregard of everything it promised in the underlying transaction. Exactly what NYLCare may be entitled to will be shown by, among other things, the on-going audit, but without protection from improper pay-outs on the letter of credit, the underlying transaction is as worthless as those cases where "virtually worthless" goods were shipped. *See Takeo Co., supra* at 4.

illegal, he cannot be called upon to recognize such a document as complying with the terms of the letter of credit." *Old Colony Trust Co. v. Lawyers' Title & Trust Co.*, 297 F. 152, 158 (2d Cir.), *cert. den.*, 265 U.S. 585 (1924). As the Second Circuit noted in *Voest-Alpine Int'l Corp. v. Chase Manhattan Bank*,

Presentation of the fraudulent documents to a bank by a beneficiary subverts not only the purposes which letters of credit are designed to serve in general, but also the entire transaction at hand in particular. Falsified documents are the same as no documents at all.

707 F.2d 680, 685 (2d Cir. 1983) (citation omitted).

Here, NYLCare has submitted fraudulent documents to Chase claiming that Doctors Health had not raised any defenses or offsets to payments under the contract of which NYLCare was aware. In fact, NYLCare is well aware of the defenses and offsets raised by Doctors Health to the amounts owed. NYLCare's fraudulent misrepresentation is particularly egregious in light of the ongoing audit of NYLCare's fraudulent payment of past claims by Doctors Health's auditor.

Cases cited by NYLCare, if applicable, in fact support Doctors Health's position. For example, in *KMW Int'l v. Chase Manhattan Bank, N.A.*, 606 F.2d 10 (2d Cir. 1979), the Court recognized the black letter law upon which Doctors Health relies: namely, that a payment on letter of credit may be enjoined "when the documentation presented is fraudulent *or* there is fraud in the transaction." *Id.* at 16 (emphasis added). Finding that "Chase had received no demand for payment whatsoever," the Court reasoned that the injunction could not be "upheld on the grounds . . . that a required document . . . is forged or fraudulent." *Id.* The Court then turned to the issue of whether there was fraud in the transaction and found none. *Id.* Here, because there is clear

evidence of fraud in the presentment, the Court need not address the issue of fraud in the transaction.⁵

Thus, this Court should enjoin Chase from payment on the letter of credit.

III.

THE LETTER OF CREDIT IS PLAIN ON ITS FACE AND PROHIBITS NYLCARE FROM DRAWING DOWN ON THE LETTER OF CREDIT WHEN IT IS AWARE OF DEFENSES OR OFFSETS RAISED BY DOCTORS HEALTH

In order for NYLCare to draw down on the letter of credit, it must first produce a statement, in accordance with the terms of the letter of credit, that "[t]here are no defenses or offsets to payment which have been raised by Doctors health and of which NYLCare is aware." This language contained in the Letter of Credit is clear on its face and should not be subject to any other interpretation.⁶

⁵ NYLCare's reliance on *Banque Worms v. Banque Commerciale Privee*, 679 F. Supp. 1173 (S.D.N.Y. 1988), *aff'd*, 849 F.2d 787 (2d Cir. 1988), is also misplaced. In *Banque Worms*, the Court analyzed whether an alleged wrongdoing would amount to fraud in the transaction and found that it did not. *Id.* at 1180-1183. The Court did not address the issue of fraud in the presentment. NYLCare's reliance on *Ross Bicycles, Inc. v. Citibank, N.A.*, 613 N.Y.S.2d 538, 540-541 (Sup. Ct. N.Y. County 1994) is baseless. In *Ross Bicycles*, Citibank tried to escape its liability by raising several defenses, all of which were ultimately stricken in an earlier case, which NYLCare failed to cite. *See Ross Bicycles v. Citibank* 178 A.D.2d 388, 577 N.Y.S.2d 826 (1st Dep't 1991). In the earlier decision, the Appellate Division rejected Citibank's attempt to argue fraud in the transaction finding that it did not meet the threshold for fraud in the transaction. *Id.* The Court did not address the argument of fraud in the presentment. *Id.*

⁶ *See International Marine Investors & Mgmt. Corp. v. Wirth*, 666 N.Y.S.2d 503, 503 (2d Dep't 1997) (held that "[i]t is the primary rule of construction of contracts that when the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving a practical interpretation to the language employed and the parties' reasonable expectations" and any ambiguity in contract provision should be construed against its drafter); *Davis v. Chessari*, 239 A.D.2d 457, 457-58, 658 N.Y.S.2d 965, 966 (2d Dep't 1997) ("The interpretation of a written contract is within the province of the court and, if the language of the contract is free from ambiguity, its meaning may be determined as a matter of law on the basis of the writing along without resort to extrinsic evidence."); *Charlebois v. J.M. Weller Assocs., Inc.*, 136 A.D.2d 214, 526 N.Y.S.2d

(Footnote continued to next page)

NYLCare's statements that it was unaware of any defenses or offsets raised by Doctors Health were fraudulent because NYLCare had knowledge of various defenses or offsets. In fact, the record now shows that NYLCare sent its revised draw down letters on September 8, 1998 (Exhibit C to the Capasso Affidavit) well after receiving Doctors Health's letter of September 4, 1998 (Exhibit 7 to the Dwyer Affidavit) in which Doctors Health notified NYLCare that NYLCare's incorrect calculation should be corrected to show a "cash balance in favor of Doctors Health in the amount of approximately \$1,443,047.

IV.

DOCTORS HEALTH WILL BE IRREPARABLY HARMED IF CHASE IS NOT ENJOINED FROM PAYMENT ON THE LETTER OF CREDIT

The facts, as initially set forth in the Dwyer Affidavit and further amplified by the Gold Affidavit, show that Doctors Health will be irreparably harmed if this Court does not enjoin Chase from payment on the letter of credit. The injunction is critical to Doctors Health's continuing operation as a medical services provider. Without the injunction, Doctors Health will not be able to attract the financial injections it desperately needs from investors to enable it to continue its operations and may be forced to seek bankruptcy protection.

In addition to the risk of bankruptcy, many if not all of Doctors Health's 480 employees will lose their jobs. These 480 employees provide services critical to approximately 7000 high risk patients and at least 14,000 Medicare patients. It would also be unfair for NYLCare, a party that perpetrated the fraud, to benefit from its fraud.

In the face of such irreparable harm, this Court should enjoin NYLCare from drawing down on the letter of credit. *Ansonia Assocs. v. Ansonia Residents' Assoc.*, 78 A.D.2d 211, 434

(Footnote continued from previous page)

648, 649 (3d Dep't 1988) (interpreting contract as a whole to give meaning to clear and unambiguous contract provisions).

N.Y.S.2d 370 (1st Dep't 1980); *Grant v. Civil Service Employees Assoc., Inc.*, 169 Misc. 2d 896, 646 N.Y.S.2d 1018 (S. Ct. 1996) (injunction appropriate remedy where interruption of salary payments to laid off or discharged employees would undoubtedly affect local economy and cause families to fail even temporarily to meet payment obligations).

CONCLUSION

For the reasons stated above, Doctors Health respectfully requests that the Court continue to enjoin NYLCare from drawing down on the Letter of Credit.

Dated: New York, New York
September 17, 1998

PIPER & MARBURY L.L.P.

By: _____
Monica Petraglia McCabe (MM 5853)
Peter M. Corrigan (PC 0541)
1251 Avenue of the Americas
New York, New York 10020-1104
(212) 835-6000
Attorneys for Plaintiff Doctors Health, Inc.

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH INC.,

Plaintiff,

v.

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

AFFIDAVIT OF STEWART GOLD

PIPER & MARBURY L.L.P.

ATTORNEYS FOR PLAINTIFF

OFFICE AND POST OFFICE, TELEPHONE

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NEW YORK, NEW YORK 10020-1104
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FAX: 212-835-6001

ALL COMMUNICATIONS
SHOULD BE REFERRED TO

MS. MONICA PETRAGLIA MCCABE
MR. PETER M. CORRIGAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----	X
DOCTORS HEALTH, INC.,	:
	:
Plaintiff,	:
	:
- against -	:
	:
CHASE MANHATTAN BANK, and NYLCARE	:
HEALTH PLANS OF THE MID-ATLANTIC, INC.,	:
	:
Defendants.	:
-----	X

98 Civ. 604436 (BAC)

**AFFIDAVIT OF
STEWART GOLD**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

STEWART GOLD, being duly sworn, deposes and says:

1. I am the President and Chief Executive Officer of plaintiff Doctors Health, Inc. ("Doctors Health" or "Plaintiff"). I am over the age of eighteen years, have personal knowledge of the facts alleged herein, and, if called as a witness, could competently testify thereto.
2. On or about July 8, 1998, I received the monthly capitation report for July 1998 indicating that Doctors Health owed NYLCare Health Plans of the Mid-Atlantic, Inc. ("NYLCare") \$2,615,208. See Exhibit A.
3. I promptly met with NYLCare on July 14, 1998 to explain that Doctors Health believed it had substantial offsets to the July bill of at least \$900,000 as result of an ongoing claims audit being conducted by Arthur Anderson.
4. NYLCare indicated to me at the July 14, 1998 meeting that it would work with Doctors Health to promptly resolve any offsets to the July bill.

5. On July 15, 1998, I sent NYLCare a letter reiterating the substantial claims offsets discussed in the July 14 meeting. See Exhibit B.

6. On August 4, 1998, I received the monthly NYLCare capitation report for August, 1998 indicating that Doctors Health earned \$506,068 for the period covered by such report and that such amount would be offset from the prior July bill of \$2,615,208. See Exhibit C.

7. On August 10, 1998, I sent a letter to NYLCare reiterating the \$506,068 offset to the July bill of \$2,615,248 and also raising again the additional claims credits which Doctors Health believed would also act as offsets to the July bill. See Exhibit D.

8. On August 13, 1998, I received a letter from NYLCare confirming that the \$506,068 payment owed to Doctors Health pursuant to the August capitation report had been offset from the July bill of \$2,615,208. The demand letter, however, indicated that the balance of the July bill (e.g. \$2,109,140) needed to be paid by Doctors Health or it would be in default within 60 days. See Exhibit E.

9. On August 17, 1998, I wrote NYLCare expressing some dismay at the default letter. I reiterated in the letter that Doctors Health believed it would be imprudent to pay the balance of the July bill because Doctors Health believed it was most likely still be entitled to substantial offsets to the \$2,109,140 balance of the July bill and that these offsets needed to be resolved. See Exhibit F.

10. On August 19, I again met with NYLCare to try and resolve the open offsets and to address potential proposals for modifying the parties contract. On August 21, 1998, NYLCare wrote me thanking me for the meeting and my patience in trying to resolve the open issues. See Exhibit G. At this point, I believed that NYLCare was still interested in trying to resolve the legitimate offsets to the balance of the July bill.

11. Sometime in August 1998, I also learned that NYLCare acknowledged that \$283,126 of the claims offsets previously asserted by Doctors Health were now agreed to by

NYLCare and the parties were still trying to resolve, with the assistance of Arthur Anderson, the additional approximately \$700,000 in claims credits which Doctors Health believed it was also owed. See Exhibit H.

12. On September 1, 1998, I received a copy of the September capitation report. See Exhibit I. I was absolutely shocked to see that the September report for the first time included \$10,691,965 in deductions for "claims incurred but not paid." The agreement between the parties only allows NYLCare to deduct paid claims and not amounts for unpaid claims. See ¶ 3.4.4 of Exhibit J. NYLCare had never previously included amounts of unpaid claims in any of the prior monthly capitation reports. See Exhibit K. After deleting the improper offset for "claims incurred but not paid", the September report actually showed that Doctors Health had earned \$1,443,047. The inclusion for the first time of an unpaid claims deduction was in my view solely for the purpose of NYLCare trying to avoid paying or crediting Doctors Health the \$1,443,047 it was owed for the period covered by the September report.

13. On September 4, 1998, I notified NYLCare that the inclusion of unpaid claims in the September capitation report was improper and that Doctors health was entitled to an offset of \$1,443,047. See Exhibit L.

14. Subsequently, NYLCare provided a revised September capitation report showing Doctors Health was actually due \$1,787,689 in September instead of \$1,443,047. The amount owed to Doctors Health, however, was not shown on the bottom line of the report because NYLCare again included the improper \$10,691,965 amount for unpaid claims. See Exhibit M. Subsequently, Doctors Health notified NYLCare that the corrected September amount of \$1,787,689 should be an offset to the July bill of \$2,615,208 rather than the previously claimed offset of \$1,443,047. See Exhibit N.

15. The total offsets raised by Doctors Health to the July bill of \$2,615,208 are as follows: 1) The \$283,126 agreed upon claims offsets; 2) the remaining approximately \$700,000

of unresolved claims offsets; 3) the \$506,068 monthly amount earned by Doctors Health as reflected in the August capitation report; and 4) the \$1,787,689 monthly amount earned by Doctors Health as reflected in the revised September capitation report. As a result, the absolute most that Doctors health owes NYLCare on the July bill is \$38,325, even assuming that Doctors Health is not entitled to any of the \$700,00 in unresolved claims offsets. .

16. The Letter of Credit provides that it cannot be drawn upon if there are defenses or offsets raised by Doctors Health of which NYLCare is aware. See Exhibit O.

17. Doctors Health has raised all of the foregoing offsets to NYLCare and it was a blatant misrepresentation for NYLCare to represent to Chase on September 4, 1998 and September 8, 1998 that no offsets or defenses have been raised by Doctors Health to the \$2,615,208 invoiced amount of which NYLCare is aware.

18. Doctors Health's available working capital as of July 14, 1998 is slightly less than \$1 million.

19. Doctors Health's monthly salaries and benefits total approximately \$800,000 and its average trade payables are approximately \$200,000.

20. Doctors Health's line of credit has to be fully secured by cash, and thus Doctors Health has inadequate excess cash, after factoring in monthly salaries and payables, to fund any additional borrowings on its line of credit.

21. As a result of the above, Doctors Health has inadequate working capital to replenish the letter of credit if NYLCare's fraudulent draw request is not enjoined.

22. Doctors Health has been in active discussions with its largest investor about investing additional capital in the company. Such additional capital is absolutely critical to the continued viability of Doctors Health. The investor has indicated that it would be willing to invest substantial additional capital in Doctors Health provided Doctors Health can convince it

that NYLCare will not be allowed to circumvent making monthly payments to Doctors Health by deducting amounts for unpaid claims in violation of the parties contract.

23. In addition, Doctors Health would need to convince the investor that Doctors Health's letter of credit could not be drawn down by NYLCare falsely asserting that it was not aware of any offsets or defenses to payment raised by Doctors Health. Otherwise, the investor would have little assurances that the deal represented in the underlying documents is actually how the deal will work, and little assurances that NYLCare will not amount a raid on the letter of credit in the future by "accounting gimmicks" and fraudently overlooking any offsets or defenses raised by Doctors Health.

24. In short, if NYLCare is allowed to consummate their \$2.6 million draw request, Doctors Health's investors will not invest substantial additional dollars in the company, and the financial collapse of Doctors Health will be catastrophic and swift.

25. For the reasons stated above, the majority if not all of the 480 employees of Doctors Health will lose their jobs if the \$2.6 million draw request is not enjoined.

26. While Doctors Health does not practice medicine, its employees are essential to the proper provision of medical services. Doctors Health owns ~~approximately 100~~ ^{approximately 100} physicians practices and provides ~~much of the~~ ^{70%} staff to operate these practices. Over 325 of Doctors Health's employees work directly in these ~~100~~ ¹⁰⁰ physician practice groups and are critical to the continued operations of these physicians' practices. The majority if not all of these employees will be laid off if NYLCare's draw request is not enjoined. The loss of such employees to the ~~100~~ ¹⁰⁰ physician practice groups will cause enormous disruptions to the physicians and their patients.

27. Doctors Health also has a Case Management department staffed by 56 employees. These employees are community-based nurses and social workers who coordinate care plans for approximately 7000 high risk patients in their homes or in rehabilitation centers. They provide the infrastructure to keep such patients focused on preventative care and out of the hospital. In

addition, the Case Management department provides services, education and equipment to patients with ongoing diseases such as diabetes, congestive heart failure and asthma. Finally, the Case Management Department reviews and approves in-patient admissions, coordinates the provision of home health care, and coordinates such other functions as arranging ambulance services.

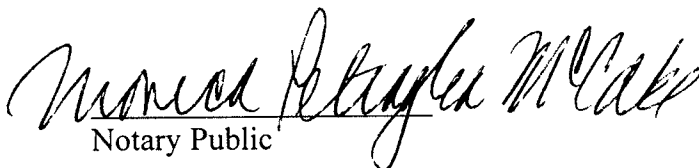
28. All of the foregoing valuable services which are critical to the provision of quality medical services will be seriously disrupted with significant confusion, frustration, and negative impacts to thousands of high risk patients if the NYLCare draw request is not enjoined. Finally, the failure of Doctors Health will adversely affect and significantly disrupt the remainder of the other 14,000 Medicare patients which Doctors Health assists who would be forced with little or no notice to look elsewhere for the assistance they have grown accustomed to receiving from Doctors Health.

29. In contrast to the unbelievable irreparable harm which would be inflicted if the injunction is not granted, NYLCare is not likely to suffer any irreparable harm if it is not allowed to immediately collect \$2.6 million. NYLCare has annual gross revenues of approximately \$700,000 million and it is a wholly owned subsidiary of a company (i.e. Aetna/US Healthcare) with annual gross revenues in excess of \$18 billion. NYLCare has not mentioned any irreparable harm if the injunction is granted which is even close to the type Doctors Health is likely to suffer if the injunction is not granted.

I swear that the foregoing is true and correct.


STEWART GOLD

Sworn to before me this
17th day of Sept, 1998


Notary Public

My commission expires:

MONICA PETRACCHIA McCABE
NOTARY PUBLIC, State of New York
No. 4990020
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires March 16, 1999

NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
For The Month of July 1998

	DATE	MEMBERS	AMOUNT	DATE	MEMBERS	AMOUNT	DATE	MEMBERS	AMOUNT
PCP CAP (Paid to Physicians)	\$ 42.15	9,472	\$ 399,230.86	\$ 40.42	184	\$ 7,437.39	\$ 42.12	9,656	\$ 406,668.25
Clinic Cap (Paid to Physician Groups)	\$ 41.26	4,069	\$ 167,895.36	\$ -	-	\$ -	\$ 41.26	4,069	\$ 167,895.36
PCP total	\$ 41.88	13,541	\$ 567,126.22	\$ 40.42	184	\$ 7,437.39	\$ 41.86	13,725	\$ 574,563.61
Undesignated PCP Cap			\$ 13,606.38						\$ 13,606.38
HOSP Cap	\$ 331.52	13,541	\$ 4,489,137.98	\$ 308.93	184	\$ 56,843.99	\$ 331.22	13,725	\$ 4,545,981.97
Membership Premium	\$ 39.83	3,334	\$ 132,793.22						\$ 132,793.22
Pharmacy Rider Premium	0	-	\$ -	\$ 30.38	2,805	\$ 85,216.65	\$ 30.38	2,805	\$ 85,216.65
Cap % adjusted to 83%	0	-	\$ -	\$ -	-	\$ -	\$ -	-	\$ (331,774.63)
Claims paid			\$ 4,635,537.58			\$ 142,060.64			\$ 4,445,823.59
Inpatient	\$ 303.69	13,541	\$ 4,112,230.62	\$ -	184	\$ -	\$ 299.62	13,725	\$ 4,112,230.62
Outpatient	\$ 34.56	13,541	\$ 468,032.89	\$ -	184	\$ -	\$ 34.10	13,725	\$ 468,032.89
E/R	\$ 8.42	13,541	\$ 114,020.73	\$ -	184	\$ -	\$ 8.31	13,725	\$ 114,020.73
Physicians FFS	\$ 160.35	13,541	\$ 2,171,329.54	\$ -	184	\$ -	\$ 158.20	13,725	\$ 2,171,329.54
Pharmacy	\$ -	13,541	\$ -	\$ -	184	\$ -	\$ -	13,725	\$ -
Total Claims Paid	\$ 507.02	13,541	\$ 6,865,613.78	\$ -	184	\$ -	\$ 500.23	13,725	\$ 6,865,613.78
Carve Out of Network Capitated Services									
Lab							\$ 1.20	13,725	\$ 16,470.00
Ophthalmology							\$ 6.63	13,725	\$ 90,996.75
Mental Health							\$ 2.21	13,725	\$ 30,332.25
Radiology (MINS)							\$ 5.50	4,045	\$ 22,247.50
Radiology (MINS - Frederick)							\$ 5.50	633	\$ 3,481.50
Radiology (AMT)							\$ 6.50	2,501	\$ 16,256.50
Radiology (Calvert)							\$ 5.50	599	\$ 3,294.50
Radiology (Northern VA. Imaging)							\$ 4.00	460	\$ 1,840.00
Radiology (DIAG Radiology Imaging)							\$ 5.50	523	\$ 2,876.50
Radiology (Dimensions Imaging)							\$ 5.50	1,386	\$ 7,623.00
Total Capitated Services									\$ 195,418.50
Total Deductions									\$ 7,061,032.28
Net Cap									\$ (2,615,208.69)
Cash Wire Calculations									\$ (2,615,208.69)
Net Cap this month									\$ (2,615,208.69)
Cash adjustments									\$ -
Deficit Carry Forward									\$ (2,615,208.69)
Net Wire Amount									\$ (2,615,208.69)

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MEMORANDUM

DATE: July 15, 1998
TO: Jeff Emerson, CEO, NYLCare Health Plans of the Mid-Atlantic, Inc.
FROM: Stewart B. Gold
RE: July 14, 1998 Meeting
CC: Eric Wilkinson, The Beacon Group

Thanks for the frank discussion of the concerns we have regarding our Network Management Agreement. As a result of the meeting, it is our understanding that NYLCare will run a "CMU" report on the claims that you have paid. This will help determine any trends in utilization and cost that could explain the wide discrepancy between the NYLCare claims experience with its Medicare members and DH's experience with essentially the same population. We also appreciate your offer to provide a "retro-view" of claims paid to assist us in our audit of the claims payment process. Arthur Andersen is designing the audit protocol in cooperation with NYLCare staff to ensure a timely audit report. We will work with your responsible management personnel to move the audit along. Please ensure that they are aware of our offer to provide the "retro-view" if necessary.

We, of course, appreciate your understanding in suspending payments for claims paid on our behalf by NYLCare in excess of the July capitation payment. For your information, the amount of the Letter of Credit is now at \$5,250,000.

I was glad to hear that you were concerned about the time it has taken to reconcile the actual amount due at June 30. As you know, we have advanced the full amount that you requested (\$3,176,173) pending a prompt resolution of the actual amount. To date, we believe that paid claims have included errors totaling in excess of \$900,000.

Doctors Health, Arthur Andersen and your staff will be working in the next months to determine what further adjustments are required.

I have attached copies of the Days/1,000 reports that we provide every month for your information. Additionally, the status of claims preview from our standpoint is that we have been told we will get the first preview in the agreed upon format today.

The lag in claims payment is a continuing problem. The information that we have is very recent and is already under review by both of our organizations. I believe that we need the results of the current review and the Andersen audit to better understand and define the situation.

I have looked into issues surrounding the timely receipt of enrollment information, along with the capitation payment, authorization transmittal, and other information exchange issues. I have been assured that we will promptly address and remedy problems on our part. If not, have someone contact

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me directly so that I am aware of the open issues and can compare what you are hearing to the reports I get from our joint operations meetings.

Please let me know when you will have some results from your review of the information we provided yesterday and the CMU Report.

Our Agreement with NYLCare is very important to us, as demonstrated by the investment we have each made in providing uninterrupted medical services to Medicare managed care members. While the cost of claims resolution can have the most serious consequences, we remain dedicated to the success of the relationship with NYLCare and the agreement. Despite our dedication we are very concerned about the Network Management Agreement, and based on the information we categorically and unconditionally dispute that Doctors Health is responsible for at least \$6,000,000 of the claims paid to date. Therefore, please be on notice that we have not waived any of our rights and privileges under the Agreement. We expect both sides to keep our conversations about these matters confidential. Thanks for your help.

7/15/98

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NYLCare Health Plans of the Mid Atlantic

Doctors Health

Monthly Capitation Calculation

For The Month of August 1998

	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
PCP CAP (Paid to Physicians)	\$ 42.67	9,327	\$ 397,986.77	\$ 40.12	205	\$ 8,224.73	\$ 42.62	9,532	\$ 406,211.50
Clinic Cap (Paid to Physician Groups)	\$ 41.54	4,000	\$ 166,166.63	\$ -	-	\$ -	\$ 41.54	4,000	\$ 166,166.63
PCP total	\$ 42.33	13,327	\$ 564,153.40	\$ 40.12	205	\$ 8,224.73	\$ 42.30	13,532	\$ 572,378.13
Undesignated PCP Cap			\$ 6,021.25						\$ 6,021.25
HOSP Cap	\$ 322.22	13,331	\$ 4,295,473.89	\$ 296.99	205	\$ 60,882.08	\$ 321.83	13,536	\$ 4,356,355.97
Membership Premium	\$ 37.35	3,226	\$ 120,491.10						\$ 120,491.10
Pharmacy Rider Premium			\$ -	\$ 28.49	2,878	\$ 81,982.42	\$ 28.49	2,878	\$ 81,982.42
Claims paid			\$ 4,421,986.24			\$ 142,864.50			\$ 4,564,850.74
Inpatient	\$ 148.47	13,331	\$ 1,979,226.89	\$ -	205	\$ -	\$ 146.22	13,536	\$ 1,979,226.89
Outpatient	\$ 20.59	13,331	\$ 274,458.34	\$ -	205	\$ -	\$ 20.28	13,536	\$ 274,458.34
E/R	\$ 4.59	13,331	\$ 61,254.58	\$ -	205	\$ -	\$ 4.53	13,536	\$ 61,254.58
Physicians FFS	\$ 116.29	13,331	\$ 1,550,289.46	\$ -	205	\$ -	\$ 114.53	13,536	\$ 1,550,289.46
Pharmacy	\$ -	13,331	\$ -	\$ -	205	\$ -	\$ -	13,536	\$ -
Total Claims Paid	\$ 289.94	13,331	\$ 3,865,229.27	\$ -	205	\$ -	\$ 285.55	13,536	\$ 3,865,229.27
Carve Out of Network Capitated Services									
Lab							\$ 1.20	13,536	\$ 16,243.20
Ophthalmology							\$ 6.63	13,536	\$ 89,743.68
Mental Health							\$ 2.21	13,536	\$ 29,914.56
Radiology (MINS)							\$ 5.50	4,044	\$ 22,242.00
Radiology (MINS - Frederick)							\$ 5.50	643	\$ 3,536.50
Radiology (AMI)							\$ 6.50	2,523	\$ 16,399.50
Radiology (Calvert)							\$ 5.50	604	\$ 3,322.00
Radiology (Northern VA. Imaging)							\$ 4.00	446	\$ 1,784.00
Radiology (DIAG Radiology Imaging)							\$ 5.50	527	\$ 2,898.50
Radiology (Dimensions Imaging)							\$ 5.50	1,358	\$ 7,469.00
Total Capitated Services									\$ 193,552.94
Total Deductions									\$ 4,058,782.21
Net Cap									\$ 506,068.53
Cash Wre Calculations									\$ 506,068.53
Net Cap this month									\$ -
Cash adjustments									\$ (2,615,208.69)
Initial Carry Forward									\$ (2,109,140.16)
Net Wre Amount									

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August 10, 1998

Susan Lefkowitz
Executive Vice President
NYLCare Health Plans of the Mid-Atlantic, Inc.
7601 Ora Glen
Greenbelt, Maryland 20770

RE: Contract Modifications & Agreement

Dear Susan:

The current situation requires that several concerns be addressed simultaneously. Based on our telephone conversation, the issues seem to be:

1. Percent of premium from July through December 1998.
2. Percent of premium after January 1, 1999.
3. Pharmacy benefit.
4. Aetna members.
5. Payment of the \$2.6 million in the July report.
6. The amount in the claims inventory.
7. Inpatient Medical Management.
8. Contract issues.

We need to deal with the contract modifications, the immediate payment for claims paid, and your concerns regarding the LOC together, since NYLCare and potentially the Aetna book of business would represent over 60% of our Medicare operation. Each of these issues is important enough to affect the viability of the contract. To resolve one without the others will not allow us to proceed.

I'd like to address the individual issues:

1. Percent of premium from July through December 1998.

At 92% of total premium and with the cost of pharmacy carved out, we are still projecting a loss of approximately \$8.00 PMPM before Doctors Health's administrative expense. Our medical management assumes the risk for making up the required difference. The Medical Expense used for this projection does not include any amounts

DOCTORS HEALTH, INCORPORATED

10454 Mill Run Circle - 10th Floor - Owings Mills, Maryland 21117 - 410 . 654 . 5800 - 888 . 634 . 3238

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above our IBNR of approximately \$10.4 million to be paid for claims with dates of service from October 1, 1997 through June 30, 1998. We have reserved this amount of cash anticipating the payments. If this amount is inadequate, our projected medical expense will be higher, causing us to reassess the anticipated cost of the contract.

2. Percent of premium after January 1, 1999.

After January, at 93.5% of total premium and with the cost of pharmacy carved out, we are projecting that our net premium will only cover the Medical Expense for NYLCare members including the adjustments discussed on July 28, 1998. This amount does not include Doctors Health's administrative expense (estimated at \$35.00 PMPM).

3. Pharmacy benefit.

We cannot include the pharmacy risk at the proposed level of premium. It pushes the anticipated Medical Expense of the NYLCare benefit package to a level that moves the end of the tunnel further than we can see the light.

4. Aetna Members.

To assume the risk for approximately 11,400 Aetna members, we need a floor on the premium to Doctors close to the NYLCare level of reimbursement beginning January 1, 1999.

5. Payment of the \$2.6 million in the July report.

I have reviewed the July report (attached) indicating a \$2,615,209 amount due for paid claims and our recent agreement. At the time I agreed to 5 day reconciliations I did not know that the claims inventory was as large as it has proven to be. We were told that it was at 14 days on June 23. I had also thought that the claims audit would have been completed. The idea was to re-start with claims up to date.

You are correct that the agreement does not require the amount requested to be undisputed. I think that agreeing to pay amounts from the reports at this point was a mistake on my part. My reason is closely linked to one of the basic principles of Doctors Health, i.e., that incentives need to be aligned for success. With NYLCare "holding the money" on disputed amounts as the new agreement envisions, the alignment of incentives is a concern. Our experience to date is that obtaining a credit for any reason is difficult and time consuming. We rely therefore on the diligence of NYLCare management to ensure speedy resolution of differences.

Please consider the following resolution. Assuming that we can agree on the contract modifications as proposed by Doctors Health, can we also agree on the amount due as shown below? If so, I believe that we are well within the LOC.

Amount Due		\$2,615,209
Less:	August Capitation Credit (Est.)	\$500,000
	Claims paid w/o Authorization	135,000
	122 Letters	170,154
	Claims paid on INOVA	76,433
	Inpatient Claims Paid Incorrectly	<u>22,000</u>
		\$903,587

Adjusted Amount Due Before Contract Mods. \$1,711,622*

*This amount allows the adjustments we have identified to date that are pending your verification. We will provide detailed support for each amount.

The contract modifications amount estimated at \$900,000 can be paid to Doctors Health and then paid to NYLCare immediately or credited directly by NYLCare to the amount due.

Less: July and August Adjusted Capitation Payments (Est.)	<u>900,000</u>
Adjusted Amount Due	\$ 811,622

6. The amount in the claims inventory.

The amount indicated in the report (attached) is \$11,309,690.87, which is probably about \$5.7 million net. This would indicate that a normal claims inventory of 14 working days is about \$6-8 million at gross or \$3-4 million net. Capitation payments currently paid to Doctors Health are approximately \$4.4 million before any contract. Therefore we should be well within the LOC. If there are any additional near term charges that would push the amount of paid claims over \$4.4 million, please give us your estimate.

7. Inpatient Medical Management.

As discussed with Jeff, I have included a proposal to include your commercial members in our Inpatient Medical Management program at a guaranteed savings to NYLCare. We have been talking about this for a while and Jeff assured me of a quick decision to join the program if the savings were real.

We had previously submitted individual proposals to Aetna and NYLCare; the newest proposal, which is attached for your review, addresses both the Aetna and NYLCare commercial populations.

8. Contract Issues.

There are several issues covered in our Network Management Agreement that we need to reaffirm in this amendment to ensure uninterrupted operations. Among the issues that we have verbally agreed to:

Prompt resolution of claims payment differences, which should be far fewer with claims preview in place. We need to know what we should expect when a claim does not pass preview.

Subrogation credits will be communicated to us promptly.

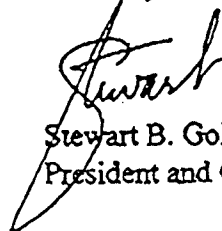
Interest paid on late claims is not Doctors Health's responsibility, unless we are responsible for the delay.

We will be responsible for retroactive enrollment adjustments only for 90 days.

Claims paid in error for any of several reasons will be promptly credited to our account regardless of the age of the claim.

You have made it clear that it is important that we reconcile the amount due as soon as possible. If we can agree to a binding Letter of Intent prior to the actual contract amendment, payment will follow upon acceptance of the LOI by the DH Executive Committee. I think you understand that if we don't have an overall agreement, we have an entirely different situation. I will commit whatever resources are required to get the documentation completed. I realize that the hardest part will be getting Aetna on board with the premium percentages, the pharmacy benefit, and the extension option. As you have said, we don't want to go back to the well. I appreciate the effort and time you are investing in the relationship. It is what encourages me to recommend that Doctors continue to enthusiastically work with NYLCare/Aetna as our business partner. Thanks for your help.

Sincerely,



Stewart B. Gold
President and Chief Executive Officer

NYLCARE

An Astra U.S. Healthcare Company

7601 Ora Glen Drive
Greenbelt, MD 20770
301.441.1600
800.635.3121

VIA FACSIMILE AND REGULAR MAIL

Writer's DID
301.489.5660

August 13, 1998

Stewart B. Gold
Chief Executive Officer and President
Doctors Health, Inc.
10451 Mill Run Circle, 10th Floor
Owings Mills, Maryland 21117

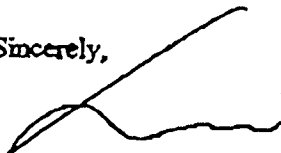
Dear Stewart:

We are in receipt of your letter of August 10, 1998 restating the issues raised by Doctors Health, Inc. (DH) to be resolved with NYLCare Health Plans of the Mid-Atlantic (NYLCare Mid-Atlantic). This letter is official notification of breach of Section 11 of the Letter of Agreement between NYLCare Mid-Atlantic and DH dated June 29, 1998. According to the language of that Letter of Agreement, DH is required to pay all deficits reflected in the Monthly Capitation Calculation Report (Report) within five (5) business days of receipt of that report. At this time, NYLCare Mid-Atlantic has not received payment of the deficit shown in the ~~July Report~~ and due on July 15, 1998.

Because the payment period has now exceeded the five (5) days allowed, and because the total amount outstanding (deficits plus the claims inventory) exceeds the Letter of Credit (LOC) which DH holds, we are forced to request that you comply with the Letter of Agreement and submit, via wire transfer, all amounts owed. The full amount owed at this time is \$2,615,208.69, less the \$506,068.53 surplus from the August Report, or \$2,109,140.16 in total. Payment is due immediately as stated in our August 5, 1998 letter. We cannot respond to your August 10, 1998 letter until we are in receipt of these monies.

It is incumbent upon you to comply with the terms of the Letter and the Agreement.

Sincerely,



Susan S. Lefkowitz
Executive Vice President, Health Care Delivery Services

SSL:aa

cc: Jeff D. Emerson, President and Chief Executive Officer, NYLCare Mid-Atlantic

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August 17, 1998

Susan Lefkowitz
Executive Vice President
NYLCare Health Plans of the Mid-Atlantic, Inc.
7601 Ora Glen
Greenbelt, Maryland 20770

Re: Alleged Breach

Dear Susan:

We acknowledge your notification of the alleged breach by Doctors Health, Inc. (Doctors). We were a bit surprised that it was necessary to target this during the negotiations and audit. This neither encourages us in continuing to look toward a positive resolution of the contract issues nor engenders the spirit of partnership I thought we were working to achieve.

Despite Jeff's hope in late June that claims payment information could be resolved in two weeks and my goal of five weeks, we have now been at work for seven weeks with the end not yet defined. The change in the payment provision from sixty days to five days is predicated on our ability to quickly resolve disputed amounts. As noted above and in my August 10, 1998 letter to you, the information supplied to us regarding claims payments for the month of June 1998 before we agreed to the change in payment, has proven to be inaccurate.

What makes the current situation so difficult to understand is that both of us have been working diligently to resolve the open issues. However, there remain several potentially significant issues, e.g., Medicare 26 modifier payments and payments of FFS charges to capitated providers, that could have a material impact on the amount now due NYLCare. The completion of our work is further complicated by the fact that basic information such as the number of service units was not included in the paid claims file provided to us prior to August 10, 1998. While these amounts may be insignificant within the context of NYLCare's \$700 million business in this region, the amounts involved are devastating to Doctors.

It would be imprudent for Doctors to pay an amount that could be subject to credits that could exceed the amount due. We are trying to avoid at this time engaging in any further unpleasant exchanges regarding the inaccuracy and unreliability of the data supplied by NYLCare prior to entering the contract and immediately thereafter. At the appropriate time, if necessary, we will provide a list of the concerns regarding this agreement, both prior to its execution and amendment and during operations. These issues have put Doctors in a position

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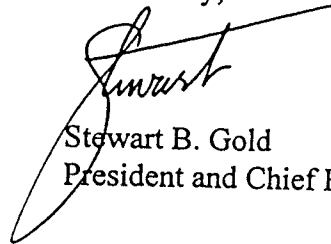
DOCTORS HEALTH, INCORPORATED

10451 Mill Run Circle • 10th Floor • Owings Mills, Maryland 21117 • 410 654 5000 • 16dv-000040

that makes it impossible for the Company to continue operations in its present form, without a rapid conclusion to the negotiation of a reformation of the agreement.

We have both acknowledged several times that what we are trying to accomplish is difficult for both our organizations. If you intend the notification of an alleged breach to terminate negotiation of the contract amendment, please let me know. Your letter seems to suggest that that is your intent. If it is intended to put Doctors in a position where we are forced to pay an amount which we believe, with good support, is materially inaccurate, without addressing our contract issues, it is a stretch that we cannot make. I sincerely hope that we can get the situation on the fast track to success for both of us at our meeting next week.

Yours truly,

A handwritten signature in black ink, appearing to read "Stewart B. Gold", is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stewart B. Gold
President and Chief Executive Officer

NYLCARE

An Aetna U.S. Healthcare Company

7601 Ora Glen Drive
Greenbelt, MD 20770
301.441.1600
800.635.3121

Writer's DID
301.220.3307

August 21, 1998

By Telecopy (410.654.5806) and Mail

Stewart Gold
Chief Executive Officer and President
Doctors Health
10451 Mill Run Circle
10th Floor
Owings Mills, MD 21117

Dear Stewart:

Thank you for your (and Eric's) cooperation and patience as we work through together the issues facing Doctors Health (DH) and NYLCare Health Plans of the Mid-Atlantic, Inc. (NYLCare Mid-Atlantic). Your proposal, when we met on August 19 in the NYLCare Mid-Atlantic offices, was a helpful one. However, as we discussed at the meeting (and in several subsequent telephone conversations), NYLCare Mid-Atlantic cannot move quickly enough in its internal review of your proposal (specifically including the Aetna US Healthcare review) to accommodate your schedule.

Therefore, we propose the following arrangement to "buy us the time" (literally and figuratively) to complete our analyses.

- **Capitation.** NYLCare Mid-Atlantic agrees to increase the DH global risk capitation to 92 percent of the combined AAPCC and member premium effective September 1, 1998 and for that month. That capitation will cover all risk for all covered services under the NYLCare 65 Medicare Risk benefit schedule including, but not limited to, prescription drugs. However, DH's risk for prescription drug expenses will be limited to \$21.00 per member per month. All covered prescription drug expenses above that amount will be the responsibility of NYLCare Mid-Atlantic.
- **Quiet Period.** NYLCare Mid-Atlantic agrees that, commencing at close of business on Monday, August 24, 1998, and for thirty (30) days thereafter, it will not have any communication (either written or oral) with any other party regarding assumption by that party of the duties and responsibilities of DH including, but not limited to, the global risk capitation and network and medical management of NYLCare Mid-Atlantic NYLCare 65 members.



Stewart Gold
August 21, 1998
Page 2

Please understand that NYLCare Mid-Atlantic's agreement to revise the DH capitation will cost NYLCare Mid-Atlantic \$230,000 for the month of September. We agree to this revision to our current financial arrangement as a *quid pro quo* for DH's willingness to be patient while NYLCare Mid-Atlantic completes its analysis of the DH proposal. Nothing in this letter, or in our several conversations, should be taken to prejudice the position of either DH or NYLCare Mid-Atlantic in further discussion of a revision to the financial arrangements after September.

Sincerely,



Jeff D. Emerson
President and Chief Executive Officer

cc: Nannette G. Henderson, Executive Vice President and Chief Financial Officer
Susan S. Lefkowitz, Executive Vice President, Health Care Delivery Services

JDE:aa

Document 8

16dv-000044

Memorandum

DATE: September 14, 1998
TO: John Dwyer
FROM: Kyle R. Miller
RE: Amounts Due from Nylcare as of September 14, 1998 based on the audit results
CC:

The following items have been substantially agreed to by Nylcare as of September 14, 1998:

Claims Paid without authorizations	\$ 36,540
Inappropriate payments/duplicates(122 letters)	\$170,153
Claims paid for ineligible members	\$ 2,989
Claims paid on INOVA members	<u>\$ 73,444</u>
Total	\$283,126

In addition to the above items that were agreed to by Nylcare, the following items are open as of today's date:

Cutoff issues at October 31, 1997	\$ 90,000
Physician payment issues (26 modifier/type 8)	\$ Not yet determined
Payment for services covered under capitated fees	\$687,000

I believe with the announcement of the loss of the Medicare business that the three open projects listed above have received little or no attention since August 28.

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Member ID	Member Name	Provider	DOS	Service	Amount Paid	Diagnosis	Finding	Rec. Rev.	Financial Liability
23094084310	Nicholas, Karen	Chippenharn	12/19-12/24	Inpatient	\$ 4,419.08	534.9, GJ ulcer/bleep	Medically Appropriate		DHS \$ 4,419.08
57922800510	Oliver, Carrie	GSECH	10/16-10/21	Inpatient	\$ 1,792.00	428.0, CHF/250, diabetes	Medically Appropriate M-190		\$ 1,792.00
57762091610	Przytylas, Jos.	Loudoun	1/8/98	ER V	\$ 2,044.28	436.9, TIA/250, diab./427.3 a/fib	Medically Appropriate		\$ 2,044.28
12120149510	Ross, Maricella	Fairfax	10/23-10/27	Inpatient	\$ 2,100.00	823.80, tx. tibia (repaired)	Medically Appropriate		\$ 2,100.00
24250040810	Sandere, Maria	GWJ	01/30-02/01	Inpatient	\$ 1,800.00	428.0, CHF/COPD/HTN	Medically Appropriate		\$ 1,800.00
41346137400	Smith, J.	GSECH	11/24-11/28	Inpatient	\$ 896.00	427.88 cardiac dysrhythm./ch. pain	Medically Appropriate		\$ 896.00
28412931900	Sutton, Irwin	MYH	10/20-10/22	Inpatient	\$ 2,393.24	786.60, chest pain	Medically Approp. M-40		\$ 2,393.24
22826332410	Tyler, Martha	Shelt. Arms	10/03-10/16	Inpatient	\$ 1,250.00	436, CVA	Will need file review	\$ 1,250.00	
1930266710	Whynot, V.	MGH	12/11-12/12	Inpatient	\$ 1,588.01	427.31, a-fib, admit from ER	Medically Appropriate		\$ 1,588.01
					\$ 134,137.43			\$ 28,808.62	\$ 6,732.83

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ADDITIONAL DATA: AMOUNT PAID BY NYLCare										
Date: 01/01/98										
Member ID	Member Name	Provider	DOS	Service	Amount Paid	Diagnosis	Finding	Financial Liability		
								Rec. Rev.	DHS	NYLCare
57854493600	Bacallao, M.	Arlington	12/13-12/17	Inpatient	\$ 4,100.00	438, CVA	Medically Appropriate			
23626040700	Bedwell, Alfred	Fairfax	10/1-10/3	Inpatient	\$ 2,100.00	996.61, react. to cardiac graft	Medically Appropriate		\$ 4,100.00	
23626040700	Bedwell, Alfred	Fairfax	10/14-10/24	Inpatient	\$ 10,500.00	038.9, septicemia/CHF,CAD	Will need record review		\$ 2,100.00	
21922423510	Betz, Edna	NWH	10/23-10/26	Inpatient	\$ 2,420.35	786.50, chest pain	Medically Appropriate	\$ 10,500.00		
57988568810	Bravo, Christy	Fl. Wash.	11/10-11/13	Inpatient	\$ 6,318.33	786.09, respiratory abnormality	Medically Appropriate		\$ 2,420.35	
11526202810	Corrales, Fel.	MWH	10/10-10/28	Inpatient	\$ 10,637.03	428.0, CHF/CAD/DM/RF	Medically Appropriate		\$ 6,318.33	
22578878600	Danfora, Wadle	Alexandria	03/21-03/22	Inpatient	\$ 1,350.00	480.9, viral pneumonia	Medically Appropriate		\$ 10,637.03	
6822074200	Dartley, Charles	Loudoun	03/02-03/04	Inpatient	\$ 4,600.00	acute appendicitis	Medically Appropriate		\$ 1,350.00	
18701525510	Demaiteis, E.	HCGH	11/11-11/14	Inpatient	\$ 4,579.21	410, acute myocardial infarct.	Denied by DHS-see 07.01			\$ 4,600.00
28124178210	Dennis, June	SMHC	12/24-01/03	Inpatient	\$ 5,638.52	486, pneumonia, asthma	Medically Appropriate		\$ 4,579.21	
57826334510	Evans, Sallie	WHC	12/08-12/12	Inpatient	\$ 4,140.00	427.0, parox. atrial tachy.	Will need record review	\$ 6,638.52		
57960430810	Fowler, Roxie	WHC	01/11-01/14	Inpatient	\$ 3,105.00	493.9, asthma	Medically Appropriate		\$ 4,140.00	
8922003910	Garcia, Delores	GWU	10/28-10/30	Inpatient	\$ 900.00	722.10, lumbar disc displ.	Reviewed by MD, Med. Approp.		\$ 3,105.00	
23102627210	Harris, Marion	Col. HC	10/3/97	sk. nursg.	\$ 170.00	488, pneumonia	Medically Appropriate		\$ 900.00	
57748849310	Hawkins, Mable	Calvert	02/12-02/24	Inpatient	\$ 1,950.00	hemiplegia	Medically Appropriate		\$ 170.00	
42344692510	Hinson, Pinkie	WHC	10/30-11/04	Inpatient	\$ 8,500.00	428.0, CHF/278.5, hypovolem.	NYLCare will assume liability			\$ 1,950.00
22432428000	Janney, Edward	Ft. Wash.	10/04-10/07	Inpatient	\$ 2,516.66	682.4, cellulitis of hand/COPD	Medically Appropriate		\$ 8,500.00	
21628889100	Jones, Louis	St. Agnes	10/09-10/11	Inpatient	\$ 706.18	182.8, malign. neop. lung	Medically Appropriate		\$ 2,516.66	
57910944400	Kline, Wm	Fairfax	12/26-12/31	Inpatient	\$ 8,750.00	780.3, convulsions	Medically Appropriate		\$ 706.18	
16722202310	Koehnlein, Jane	Holy Cross	1/11/98	Inpatient	\$ 182.83	162.9, malign. neop. lung	Medically Appropriate		\$ 8,750.00	
23554955400	Lamarr, Otchell	Laurel	01/15-01/17	Inpatient	\$ 1,410.00	250.13, DKA, ICU stay	Paid in error by claims, no auth		\$ 182.83	
23554955400	Lamarr, Otchell	Laurel	01/15-01/17	Inpatient	\$ 2,021.05	250.13, DKA, ICU stay	Medically Appropriate		\$ 1,410.00	
1316900410	Levy, E.	MGH	12/18-12/22	Inpatient	\$ 1,363.94	410, acute myocardial infarct.	Medically Appropriate		\$ 2,021.05	
1316900410	Levy, Elhel	MGH	12/18-12/22	Inpatient	\$ 3,525.47	410, acute myocardial infarct.	Medically Appropriate		\$ 1,363.94	
13014117410	Luftin, Elizabeth	MWH	10/02-10/03	Inpatient	\$ 1,597.93	278.5, hypovolemia	Medically Appropriate		\$ 3,525.47	
42226435810	MacKall	WHC	12/22-01/04	Inpatient	\$ 3,030.00	414.9, CHD, CABG	Medically Appropriate		\$ 1,597.93	
21734980510	Mann, Helen	JHU-Bayview	10/09-10/13	Inpatient	\$ 5,022.34	239.2, bone neoplasmy/removal	Medically App., 6 denied days		\$ 3,030.00	
57734731410	Meeks, Virgie	WHC	12/13-12/25	Inpatient	\$ 12,420.00	493.9, asthma, resp. failure	Medically Appropriate		\$ 5,022.34	
52738828700	Michael, Lloyd	Fairfax	11/08-11/12	Inpatient	\$ 4,300.00	411.1, ICSynd., ICU stay	Will need file review	\$ 12,420.00		
							Medically Appropriate		\$ 4,300.00	

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DOCTOR'S HEALTH
122 LETTERS

John	Bill ID	Billig Name	Begin Date	Paid Date	Letter Date	Elapsed Days	Paid Amount	Recoup Amount	CURRENT DATE
MC987285530003	21303	BOHANNON M.D., JO S.	10/02/97	11/07/97	01/07/98	210	80.33	0.00	08/07/98
1 173505980010	3500	HEALTHSOUTH HOLDINGS, INC.	11/25/97	12/31/97	01/08/98	209	30.00	0.00	
1 735059800010	3500	HEALTHSOUTH HOLDINGS, INC.	11/10/97	12/31/97	01/08/98	209	30.00	0.00	
MC9873355800084	33808	PILLAI M.D., MADHAVAN V.	12/04/97	01/07/98	01/10/98	207	1,304.08	0.00	
MC9873355800084	14071	CENTRAL MD SURGERY CTR (ALLCA)	12/05/97	12/31/97	01/15/98	202	530.00	0.00	
ICR9873515790048	1910	SILVER SPRING AMBULANCE	11/03/97	12/31/97	02/10/98	177	120.50	0.00	
ICR9873515790048	42912	STEIN M.D., CHARLES A.	10/30/97	01/23/98	02/13/98	174	15.03	0.00	
ICR9873515790048	10424	BON SECOURS - STUART CIR HOSP	10/13/97	11/19/97	03/03/98	154	9,456.95	0.00	
ICR9873515790048	48288	CENTER, THE FOR AMB SURGERY	11/28/97	02/11/98	03/11/98	146	807.00	0.00	
ICR986523180085	9413	MANORCARE HEALTH SVCS-ARLINGTON	01/23/98	03/11/98	03/12/98	145	2,213.35	0.00	
CR986523180085	37331	ANDREW M.D., JOHN A.	10/21/97	03/13/98	03/19/98	138	57.29	0.00	
CR986523180085	1593	WASHINGTON HOSP CENTER	11/18/97	02/27/98	03/19/98	138	528.91	0.00	
CR986523180085	53887	MEDEXCELERIN, LLC	12/13/97	02/08/98	03/23/98	134	700.00	0.00	
CR986523180085	18185	MEDICAL IMAGING NETWORK	10/31/97	12/10/97	03/26/98	131	1,418.84	0.00	
CR986523180085	50478	PULMONARY AND CRITICAL CARE	11/01/97	07/22/98	03/28/98	128	335.00	0.00	
CR986523180085	19845	COMPREHENSIVE PAIN ANESTH SVCS	11/22/97	01/28/98	04/01/98	126	700.00	0.00	
CR986523180085	13079	WILLIS EYE SURGICTR, INC.	12/17/97	01/14/98	04/06/98	119	2,200.00	0.00	
CR986523180085	16185	MEDICAL IMAGING NETWORK	02/17/98	04/03/98	04/14/98	113	60.21	0.00	
CR986523180085	47834	HEMATOLOGY & ONCOLOGY ASSOC VA	11/11/97	03/31/98	04/16/98	111	200.75	0.00	
CR986523180085	8055	FLAGSHIP HEALTH, P.A.	11/12/97	03/13/98	04/18/98	109	781.90	0.00	
CR986523180085	7790	GTU DEPT OF NEPHROLOGY	01/27/98	02/13/98	04/24/98	103	35.35	0.00	
CR986523180085	6640	GTU DEPT OF NEUROSURGERY	12/22/97	03/11/98	04/24/98	103	132.43	0.00	
CR986523180085	3418	EXPRESS SCRIPTS	02/10/98	02/25/98	04/28/98	99	208.16	0.00	
CR986523180085	27745	SAKOWSKI JR., M.D., ANTHONY D.	12/18/97	03/04/98	05/02/98	95	320.00	0.00	
CR986523180085	4551	GEORGETOWN UNIV RADIOLOGY(GTU)	01/19/98	04/30/98	05/04/98	83	316.50	0.00	
CR986523180085	21844	"NORTHWEST HOSP CNT SURGICAL	01/30/98	04/28/98	05/08/98	88	66.37	0.00	
CR986523180085	1424	ORTHO & SPORTS MEDICINE CTR	02/17/98	03/25/98	05/11/98	86	1,114.20	0.00	
CR986523180085	34090	POTOMAC FAMILY PRACTICE	02/17/98	04/28/98	05/13/98	84	12.39	0.00	
CR986523180085	34090	POTOMAC FAMILY PRACTICE	02/12/98	03/13/98	05/13/98	84	65.04	0.00	
CR986523180085	26041	"PIEDMONT ANESTHESIA SPECIALIS	04/02/98	05/20/98	05/14/98	83	297.00	0.00	
CR986523180085	105	DRS. WERNER, MURDOCK & FRANCIS	03/18/98	05/13/98	05/16/98	82	503.89	0.00	
CR986523180085	1985	M. SULKIN MD M. DIAZ MD PA	03/18/98	04/17/98	05/20/98	77	81.00	0.00	
CR986523180085	3313	BAUGHER M.D., W. HUGH	01/07/98	07/22/98	05/21/98	76	78.13	0.00	
CR986523180085	401	LAUREL REGIONAL HOSPITAL	11/04/97	01/14/98	05/21/98	76	62.88	0.00	
CR986523180085	15789	HEYER M.D., DAVID M. (MED)	05/05/98	05/22/98	05/28/98	69	48.64	0.00	
CR986523180085	21529	BROOKS M.D., JAMES W., JR.	11/28/97	01/28/98	06/01/98	85	121.02	0.00	
CR986523180085	18447	THE VIRGINIA UROLOGY CENTER	01/08/98	02/06/98	06/02/98	65	30.03	0.00	
CR986523180085	4827	BRADY M.D., DOUGLAS B.	02/27/98	03/31/98	06/04/98	63	92.82	0.00	
CR986523180085	21652	NUNLEY M.D., JULIA R.	01/05/98	02/20/98	06/08/98	58	20.00	0.00	
CR986523180085	10058	DECKELBAUM M.D., JOSEPH	02/13/98	05/23/98	06/10/98	57	145.77	0.00	
CR986523180085	10058	DECKELBAUM M.D., JOSEPH	02/18/98	05/23/98	06/10/98	57	54.06	0.00	
CR986523180085	9300	ZEEVI M.D., GARY R.	02/10/98	03/18/98	06/10/98	57	101.18	0.00	
CR986523180085	31504	BUSH M.D., DAVID E.	11/20/97	01/28/98	06/10/98	57	543.12	0.00	
CR986523180085	51499	KAMINSKY MD, BUZE 2833T	02/18/98	03/20/98	06/11/98	56	2,844.82	0.00	
CR986523180085	48651	"MID ATLANTIC HEALTH ALLIANCE	02/13/98	03/18/98	06/15/98	52	23.00	0.00	
CR986523180085	11243	VIRGINIA CARDIOLOGY ASSOC	05/12/98	08/05/98	06/18/98	49	15.58	0.00	
CR986523180085	10424	BON SECOURS - STUART CIR HOSP	10/12/97	12/24/97	08/18/98	49	5,435.75	0.00	
CR986523180085	19330	MCV HOSPITALS	11/12/97	01/10/98	08/18/98	49	18,914.34	0.00	
CR986523180085	4977	RICHMOND MEMORIAL HOSP	11/07/97	01/16/98	08/18/98	49	12,171.57	0.00	
CR986523180085	2017	PRINCE WILLIAM HOSPITAL	11/07/97	01/07/98	08/18/98	49	5,242.85	0.00	
CR986523180085	4138	ST MARY'S HOSPITAL (VIRGINIA)	11/01/97	12/31/97	08/18/98	49	8,149.71	0.00	
CR986523180085	4138	ST MARY'S HOSPITAL (VIRGINIA)	10/30/97	12/19/97	08/18/98	49	4,969.81	0.00	
CR986523180085	10424	BON SECOURS - STUART CIR HOSP	10/23/97	01/18/98	08/18/98	49	5,774.77	0.00	
CR986523180085	2017	PRINCE WILLIAM HOSPITAL	10/27/97	12/31/97	08/18/98	49	13,756.67	0.00	
CR986523180085	8792	HENRICO DOCTOR'S HOSPITAL	10/14/97	12/03/97	08/18/98	49	4,458.25	0.00	
CR986523180085	4138	ST MARY'S HOSPITAL (VIRGINIA)	10/01/97	11/07/97	08/18/98	49	3,692.12	0.00	
CR986523180085	1489	GOLDBERG M.D., HOWARD J.	01/28/98	03/13/98	08/20/98	47	474.84	0.00	
CR986523180085	1893	"DOCTORS EMERGENCY SERVICE, PA	10/27/97	03/27/98	08/24/98	43	118.87	0.00	
CR986523180085	1065	COLUMBIA ARLINGTON HOSPITAL	02/20/98	03/31/98	08/25/98	42	1,310.84	0.00	
CR986523180085	16185	MEDICAL IMAGING NETWORK	11/29/97	02/04/98	08/25/98	42	21.63	0.00	
CR986523180085	16185	MEDICAL IMAGING NETWORK	10/31/97	01/14/98	08/25/98	42	65.25	0.00	
CR986523180085	2410	POTOMAC HOSPITAL	10/10/97	05/20/98	08/25/98	42	21,458.94	0.00	
CR986523180085	12639	SILVER M.D., BRUCE	03/02/98	03/27/98	08/26/98	41	47.37	0.00	
CR986523180085	12639	SILVER M.D., BRUCE	02/19/98	04/08/98	08/28/98	41	635.95	0.00	
CR986523180085	12639	SILVER M.D., BRUCE	02/18/98	04/08/98	08/28/98	41	623.79	0.00	
CR986523180085	12639	SILVER M.D., BRUCE	02/17/98	04/08/98	08/28/98	41	285.30	0.00	
CR986523180085	12639	SILVER M.D., BRUCE	02/16/98	03/18/98	08/28/98	41	9.00	0.00	
CR986523180085	12639	SILVER M.D., BRUCE	02/18/98	03/18/98	08/28/98	41	279.01	0.00	
CR986523180085	12639	SILVER M.D., BRUCE	02/02/98	03/04/98	08/28/98	41	47.37	0.00	

DOCTOR'S HEALTH
122 LETTERS

Item	Bill ID	Billing Name	Begin Date	Paid Date	Letter Date	Elapsed Days	Paid Amount	Recomp Amount	CURR/DEBT DATE
MCR98141S810066	23922	LIN M.D., HSING-WU	04/11/98	05/29/98	05/29/98	38	254.62	0.00	08/07/98
MCR98141S810058	23922	LIN M.D., HSING-WU	04/08/98	05/29/98	05/29/98	38	68.22	0.00	
8071U110039	11243	VIRGINIA CARDIOLOGY ASSOC	01/13/98	05/08/98	07/07/98	30	856.49	0.00	
8136S430034	1081	FAIRFAX HOSPITAL	04/13/98	08/12/98	07/08/98	30	702.80	0.00	
MCR98103S820027	19645	COMPREHENSIVE PAIN ANESTH SRVCS	11/22/97	05/13/98	07/08/98	29	1,147.50	0.00	
ACR98084S220041	2197	VIENER M.D., ROBERT S.	03/03/98	04/30/98	07/08/98	29	347.50	0.00	
ICR98077S260010	27172	INNOVATIVE CRITICAL CARE SVCS	01/08/98	05/08/98	07/08/98	28	934.38	0.00	
ICR98027U530007	28370	AMBULATORY ENDOSCOPY CTR OF MD	01/15/98	02/11/98	07/08/98	29	750.00	0.00	
ICR98100S480074	39669	MARYLAND EMERGENCY PHYS	03/21/98	04/28/98	07/08/98	28	286.36	0.00	
ICR98086S740040	2047	GEORGETOWN RADIATION MEDICINE	03/30/98	04/28/98	07/08/98	28	965.89	0.00	
CR98096U030002	7476	GTU DEPARTMENT OF CARDIOLOGY	02/24/98	05/06/98	07/09/98	28	3,013.84	0.00	
CR98089S180008	7368	VA MED ASSOC-SPRINGFIELD	01/06/98	04/30/98	07/09/98	28	1,405.52	0.00	
CR98080S090016	42770	*ANTHONY M.D., THOMAS J.	12/31/97	04/03/98	07/09/98	28	894.88	0.00	
CR98064S420087	2276	PETERSON M.D., ROBERT T.	11/12/97	03/25/98	07/09/98	28	1,006.88	0.00	
CR98041S490047	7043	APRIA HEALTHCARE	12/10/97	02/20/98	07/09/98	28	280.00	0.00	
CR98036S770011	4977	RICHMOND MEMORIAL HOSP	11/05/97	03/18/98	07/09/98	28	2,792.80	0.00	
CR98033U160031	10187	MILLER M.D., KENNETH D.	12/10/97	02/11/98	07/09/98	28	369.40	0.00	
CR98070000005	17712	IVTX	12/10/97	03/11/98	07/09/98	28	1,437.52	0.00	
CR98036S630027	21741	*HADLEY MEMORIAL HOSPITAL	01/24/98	02/20/98	07/10/98	27	750.62	0.00	
CR98101U290018	1593	WASHINGTON HOSP CENTER	03/18/98	05/20/98	07/13/98	24	358.00	0.00	
CR98072S810023	1129	MARY WASHINGTON HOSPITAL	02/02/98	03/31/98	07/13/98	24	978.65	0.00	
CR98142S170022	932	ARTHRITIS & RHEUMATISM ASSOC	04/28/98	06/10/98	07/14/98	23	215.00	0.00	
CR98133S810019	75	LAPIN M.D., ALFRED L	03/19/98	05/22/98	07/14/98	23	430.80	0.00	
CR98129S200013	14764	WHC PHYSICIANS	04/23/98	08/17/98	07/14/98	23	12.33	0.00	
CR98128S440025	3479	FAIRFAX-PW HEMATOLOGY ONCOLOGY	04/22/98	05/29/98	07/14/98	23	1,717.82	0.00	
CR98117S210052	14764	WHC PHYSICIANS	04/14/98	08/17/98	07/14/98	23	12.33	0.00	
CR98066ADJ0011	9694	BROWN M.D., KENNETH B.	01/09/98	05/20/98	07/14/98	23	939.18	0.00	
CR98029S130003	2410	POTOMAC HOSPITAL	01/14/98	02/13/98	07/14/98	23	109.75	0.00	
CR98101U170011	61895	DALTON M.D., JOSEPH M.	03/18/98	05/13/98	07/15/98	22	256.13	0.00	
CR98055U530028	62104	*AMERICAN PHYSICAL THERAPY	01/07/98	03/13/98	07/16/98	21	107.90	0.00	
CR98028S540030	62104	*AMERICAN PHYSICAL THERAPY	12/09/97	02/04/98	07/16/98	21	183.62	0.00	
CR98028S540005	62110	*AMERICAN PHYSICAL THERAPY NT	12/15/97	02/04/98	07/16/98	21	151.23	0.00	
CR98134S080013	363	SUGAR D.P.M., MARK	12/18/97	02/04/98	07/16/98	21	90.85	0.00	
CR98086S890002	1469	GOLDBERG M.D., HOWARD J.	04/09/98	06/17/98	07/17/98	20	1,062.08	0.00	
CR980042	16185	MEDICAL IMAGING NETWORK	01/28/98	05/13/98	07/17/98	20	474.94	0.00	
CR980060	16185	MEDICAL IMAGING NETWORK	10/27/97	12/05/97	07/17/98	20	28.58	0.00	
7300S400097	6144	LEVIN M.D., SHEILA	10/30/97	12/05/97	07/17/98	20	196.48	0.00	
8132U280011	1719	*POTOMAC EMERGENCY PHYSICIANS	10/17/97	11/07/97	07/17/98	20	237.47	0.00	
8111U020077	890	JHU DEPT OF RADIOLOGY	01/10/98	08/03/98	07/20/98	17	167.06	0.00	
8111U020075	890	JHU DEPT OF RADIOLOGY	03/24/98	04/30/98	07/20/98	17	28.25	0.00	
1135S640007	49281	*HEMATOLOGY-ONC ASSOC OF FRED	03/22/98	04/30/98	07/20/98	17	38.00	0.00	
CR98043U450020	32638	RICHARD M.D., ROBERT	04/28/98	06/12/98	07/21/98	16	109.91	0.00	
CR98041U480073	16185	MEDICAL IMAGING NETWORK	01/29/98	02/25/98	07/21/98	16	30.67	0.00	
CR98040S420029	16185	MEDICAL IMAGING NETWORK	01/09/98	03/11/98	07/21/98	16	28.58	0.00	
CR98039S80058	16185	MEDICAL IMAGING NETWORK	01/01/98	03/11/98	07/21/98	16	28.38	0.00	
CR98038S060057	16185	MEDICAL IMAGING NETWORK	12/03/97	03/04/98	07/21/98	16	21.83	0.00	
CR98036S050080	16185	MEDICAL IMAGING NETWORK	12/01/97	03/04/98	07/21/98	16	21.63	0.00	
CR98035S050078	16185	MEDICAL IMAGING NETWORK	11/30/97	03/04/98	07/21/98	16	21.63	0.00	
CR98034S110054	16185	MEDICAL IMAGING NETWORK	10/30/97	03/04/98	07/21/98	16	10.20	0.00	
CR98033S280098	16185	MEDICAL IMAGING NETWORK	10/20/97	12/19/97	07/21/98	16	1,259.74	0.00	
CR98032S280083	16185	MEDICAL IMAGING NETWORK	01/17/98	03/06/98	07/22/98	15	47.05	0.00	
CR98031S280082	16185	MEDICAL IMAGING NETWORK	01/17/98	03/06/98	07/22/98	15	30.94	0.00	
CR98030S280077	16185	MEDICAL IMAGING NETWORK	01/23/98	03/06/98	07/22/98	15	21.83	0.00	
CR98029S880009	16185	MEDICAL IMAGING NETWORK	01/03/98	03/06/98	07/22/98	15	28.38	0.00	
CR98028U490033	16185	MEDICAL IMAGING NETWORK	01/11/98	03/06/98	07/22/98	15	21.63	0.00	
CR98027S370008	16185	MEDICAL IMAGING NETWORK	01/20/98	03/06/98	07/22/98	15	28.58	0.00	
CR98026U020056	16185	MEDICAL IMAGING NETWORK	12/28/97	03/08/98	07/22/98	15	28.38	0.00	
CR98025S060094	16185	MEDICAL IMAGING NETWORK	10/05/97	03/18/98	07/22/98	15	28.58	0.00	
CR98024S060093	16185	MEDICAL IMAGING NETWORK	12/01/97	03/04/98	07/22/98	15	1,113.48	0.00	
CR98023S060092	16185	MEDICAL IMAGING NETWORK	10/25/97	03/04/98	07/22/98	15	25.00	0.00	
CR98022S060079	16185	MEDICAL IMAGING NETWORK	10/25/97	03/04/98	07/22/98	15	39.84	0.00	
CR98021S060075	16185	MEDICAL IMAGING NETWORK	11/21/97	03/04/98	07/22/98	15	80.87	0.00	
CR98020S060073	16185	MEDICAL IMAGING NETWORK	12/01/97	03/04/98	07/22/98	15	28.38	0.00	
CR98019S060071	16185	MEDICAL IMAGING NETWORK	10/16/97	03/04/98	07/22/98	15	50.00	0.00	
CR98018S060069	2908	*TRAN M.D., THUY	10/31/97	03/18/98	07/22/98	15	94.57	0.00	
CR98017S060067	2908	*TRAN M.D., THUY	11/28/97	05/22/98	07/23/98	14	30.00	0.00	
CR98016S060065	12333	KHAN M.D., SAADULLAH	11/28/97	01/14/98	07/23/98	14	558.13	0.00	
CR98015S060063	12333	KHAN M.D., SAADULLAH	04/14/98	05/08/98	07/24/98	13	536.41	0.00	
CR98014S060061	358	MEDICAL IMAGING NETWORK	01/17/98	03/11/98	07/24/98	13	28.58	0.00	

DOCTOR'S HEALTH
12Z LETTERS

idn	DOB ID	Billing Name	Begin Date	Paid Date	Letter Date	Elapsed Days	Paid Amount	Receiv Amount	CURRENT DATE
ICR98042U210062	16185	MEDICAL IMAGING NETWORK	01/07/98	03/11/98	07/24/98	73	28.58	0.00	08/07/98
ICR973633880074	16185	MEDICAL IMAGING NETWORK	12/04/97	03/04/98	07/24/98	13	330.08	0.00	
CR973628230082	16185	MEDICAL IMAGING NETWORK	11/08/97	03/18/98	07/24/98	13	21.63	0.00	
11175200057	7043	APRIA HEALTHCARE	02/24/98	05/05/98	07/28/98	9	18.00	0.00	
1585870048	1719	*POTOMAC EMERGENCY PHYSICIANS	05/24/98	08/26/98	07/31/98	7	147.84	0.00	
21081365740005	1719	*POTOMAC EMERGENCY PHYSICIANS	05/08/98	05/03/98	07/31/98	7	147.84	0.00	
CR980085630019	3914	LISS D.P.M. ANDREW L.	12/22/97	08/22/98	07/31/98	7	44.69	0.00	
CR97337U340005	4138	ST MARY'S HOSPITAL (VIRGINIA)	11/09/97	04/15/98	07/31/98	7	1,892.78	0.00	
TOTAL							170,163.60	0.00	
NO CLAMES									
CR973400PL0005	1583	WASHINGTON HOSP CENTER	11/28/97	07/22/98	02/02/98	185	50.00	50.00	
CR97301U310036	4578	JHU DEPT OF PATHOLOGY	10/03/97	11/12/97	02/11/98	178	65.87	65.87	
CR973255700029	28088	VA FOOT & ANKLE SPECIALISTS	10/24/97	05/20/98	02/17/98	170	81.00	81.00	
CR973635740004	11022	GMU DEPT OF RADIOLOGY	11/17/97	01/14/98	03/08/98	148	151.20	151.20	
CR97070L460002	80509	CONCEPTS, HEALTH CARE	01/08/98	04/08/98	04/14/98	113	198.00	198.00	
CR980526000028	28890	DULANEY EYE INSTITUTE	01/07/98	03/13/98	04/18/98	111	2,400.00	2,400.00	
CR980885180019	28890	DULANEY EYE INSTITUTE	02/18/98	03/18/98	04/18/98	111	1,247.48	1,247.48	
CR98043U330072	21329	BROOKS M.D. JAMES W. JR.	12/23/97	07/10/98	08/01/98	66	622.05	622.05	
CR973265820075	16185	MEDICAL IMAGING NETWORK	10/07/97	12/05/97	07/17/98	20	0.00	0.00	
TOTAL							4,816.60	4,816.60	

Findings
DH Eligibility/Claims Audit

Claims paid from October 1997 through May 1998 were examined.

Members Ineligible at Date of Service

\$2,989 in claims were found in this category. 84% of this amount was for claims with dates of service between October and December 1997.

INOVA PCPs

Some INOVA PCPs were incorrectly categorized as DH only during October 1997. They were all corrected effective November 1, 1997.

\$73,444 in claims were found in this category. All claims except for 3 had dates of service in October 1997. The remaining 3 were for services incurred in April.

DC and PG County

No claims were found to be charged against DH for members whose PCP was categorized as DC/PG. A further search was performed to identify any PCPs who were incorrectly categorized as DH when they should have been categorized as DC/PG. There were no claims found in this regard either.

Termed PCPs at Date of Service

In the process of performing the audit, \$18,249 in claims were found to be charged against DH where the PCP was termed at the date of service. NYLCare Mid-Atlantic's position on this issue is that DH should still be responsible for these claims, as it is responsible for all Medicare members unless the member's PCP was INOVA or DC/PG.

Six PCP groups were associated with these claims. They are: 3994, Associates in Medicine or Columbia Primary Care Associates; 9423, Primary Care Mid-Atlantic; 15023, Carroll Primary Care; 27255 Primary Health Group; 41631, GTU Physician Practices or GUMC Primary Care; and 42295, Meadowbridge Family Practice.

The total amount for which NYLCare Mid-Atlantic should be responsible is \$76,433, which is the sum of the amounts found to be charged against DH for members who were ineligible and for members who had INOVA PCPs.

NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
For The Month of September 1998

For The Month of September 1998									
	MEM	MEM MONTHS	AMOUNT	MEM	MEM MONTHS	AMOUNT	MEM	MEM MONTHS	AMOUNT
PCP CAP (Paid to Physicians)	\$ 41.05	11,029	\$ 452,695.71	\$ 40.82	218	\$ 8,899.26	\$ 41.04	11,247	\$ 461,594.97
Clinic Cap (Paid to Physician Groups)	\$ 39.89	4,668	\$ 186,220.83	\$ -	-	\$ -	\$ 39.89	4,668	\$ 186,220.83
PCP total	\$ 40.70	15,697	\$ 638,916.54	\$ 40.82	218	\$ 8,899.26	\$ 40.70	15,915	\$ 647,815.80

Undesignated PCP Cap			\$ 10,416.39						\$ 10,416.39
HOSP Cap	\$ 343.90	15,701	\$ 5,399,526.80	\$ 338.08	218	\$ 73,701.45	\$ 343.82	15,919	\$ 5,473,228.25
Membership Premium	\$ 41.40	3,356	\$ 138,938.40						\$ 138,938.40
Pharmacy Rider Premium	0	-	\$ -	\$ 31.82	3,112	\$ 99,025.12	\$ 31.82	3,112	\$ 99,025.12
			\$ 5,548,881.59			\$ 172,726.57			\$ 5,721,608.16
Claims paid									
Inpatient	\$ 114.50	15,701	\$ 1,797,701.30	\$ -	218	\$ -	\$ 112.93	15,919	\$ 1,797,701.30
Outpatient	\$ 14.27	15,701	\$ 223,978.45	\$ -	218	\$ -	\$ 14.07	15,919	\$ 223,978.45
E/R	\$ 3.99	15,701	\$ 62,697.82	\$ -	218	\$ -	\$ 3.94	15,919	\$ 62,697.82
Physicians FFS	\$ 56.39	15,701	\$ 885,363.86	\$ -	218	\$ -	\$ 55.62	15,919	\$ 885,363.86
Pharmacy Claims runoff	\$ 67.44	15,701	\$ 1,058,851.49	\$ -	218	\$ -	\$ 66.51	15,919	\$ 1,058,851.49
Total Claims Paid	\$ 256.58	15,701	\$ 4,028,592.92	\$ -	218	\$ -	\$ 253.07	15,919	\$ 4,028,592.92
Carve Out of Network Capitated Services									
Lab							\$ 1.20	15,919	\$ 19,102.80
Ophthalmology							\$ 0.03	15,919	\$ 103,342.57
Mental Health							\$ 2.21	15,919	\$ 35,180.99
Radiology (MINS)							\$ 5.50	5,752	\$ 31,636.00
Radiology (MINS - Frederick)							\$ 5.50	707	\$ 3,888.50
Radiology (AMT)							\$ 6.50	5,881	\$ 38,226.50
Radiology (Calvert)							\$ 5.50	619	\$ 3,404.50
Radiology (Northern VA. Imaging)							\$ 4.00	556	\$ 2,224.00
Radiology (DIAG Radiology Imaging)							\$ 5.50	545	\$ 2,997.50
Radiology (Dimensions Imaging)							\$ 5.50	1,412	\$ 7,766.00
Total Capitated Services									\$ 249,969.76
Claims incurred through 8/31/98 (not included)			\$10,691,965.56						\$ 10,691,965.56
Total Deductions									\$ 14,970,528.25
Net Cap									\$ (9,248,920.08)
Cash Wire Calculations									
Net Cap this month									\$ (9,248,920.08)
Cash adjustments									\$
Deficit Carry Forward									\$ (2,109,140.16)
Net Wire Amount									\$ (11,358,060.24)

500.00

1,443,047

- (a) NYLCare Mid-Atlantic and Doctors Health shall both follow the time requirements set forth in Section 3.4.2(3) above.
- (b) NYLCare Mid-Atlantic and Doctors Health shall ^{if} meet from time to time and confer in good faith to develop policies and procedures to implement the provisions of this Section 3.4.2.

3.4.3 Reimbursement for Doctors Health Repricing Group. Doctors Health shall submit a monthly invoice to NYLCare Mid-Atlantic for its costs associated with the functions of the Doctors Health Repricing Group but such out-of-pocket costs shall conform to commercially reasonable guidelines. NYLCare Mid-Atlantic shall pay Doctors Health the full amount of the monthly invoice within ten (10) calendar days of receipt.

3.4.4 Payment of Approved Claims. NYLCare Mid-Atlantic shall make timely payment for all claims approved for payment by Doctors Health in accordance with provisions of Section 3.4.2(4)(a) above, and in accordance with applicable law and regulation. The claim payments will be reviewed by the parties and reconciled on a monthly basis using mutually agreeable procedures. The total payments on such claims made to Participating Providers by NYLCare Mid-Atlantic in any calendar month shall be deducted from the compensation due to be paid to Doctors Health under Section 6.1 on the tenth (10th) day of the following month. In the event that the total amount for claims paid by NYLCare Mid-Atlantic exceeds the total compensation due to be paid to Doctors Health for that month, then NYLCare Mid-Atlantic shall invoice Doctors Health for the balance due and Doctors Health shall pay NYLCare Mid-Atlantic within sixty (60) days of the date of receipt of the invoice.

3.4.5 Special Representations of NYLCare Mid-Atlantic. NYLCare Mid-Atlantic represents that it will perform all of its obligations related to claims administration in a commercially reasonable manner, strictly in accordance with the terms and conditions of this Section 3.4, and strictly in accordance with the applicable standards in the health care industry for the timely adjudication and payment of claims. Any penalties, including interest payments required by applicable law, associated with the failure to pay claims in a timely fashion and within the periods required by applicable law, shall, unless caused by the action or inaction of Doctors Health, be borne by NYLCare Mid-Atlantic and not Doctors Health. At any time following the first six (6) months of the Initial Term of this Agreement, when conditions warrant, Doctors Health may make one or more of the

Exhibit K

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**NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of October 1997**

	Area B			Area C			TOTAL		
	MEMBERS	MONTHS	AMOUNT	MEMBERS	MONTHS	AMOUNT	MEMBERS	MONTHS	AMOUNT
Pharmacy Rider Premium				30.09	1,803	\$ 54,252.27	30.09	1,803	\$ 54,252.27
PCP CAP (Paid Directly to Physicians) ^{is} NO CLAIM _{1P}	\$ 36.88	5,755	\$ 212,239.76	\$ 50.11			\$ 36.88	5,755	\$ 212,289.87
Clinic Cap (C & A)	\$ 37.46	3,886	\$ 143,566.15	ADIV/01	1	\$ 50.11	\$ 37.46	3,886	\$ 143,566.15
PCP total	\$ 37.11	9,641	\$ 357,805.91	\$ 50.11	1	\$ 50.11	\$ 37.11	9,642	\$ 357,856.02
.....
HOSP Cap (H & A)	\$ 305.49	9,641	\$ 2,945,217.18	\$ 373.94	1	\$ 373.94	\$ 305.50	9,642	\$ 2,945,591.12
Claims paid					1				
Inpatient	\$ -	9,641	\$ -	\$ -	1	\$ -	\$ -	9,642	\$ -
Outpatient	\$ -	9,641	\$ -	\$ -	1	\$ -	\$ -	9,642	\$ -
E/R	\$ -	9,641	\$ -	\$ -	1	\$ -	\$ -	9,642	\$ -
Physicians FFS	\$ -	9,641	\$ -	\$ -	1	\$ -	\$ -	9,642	\$ -
Pharmacy	\$ -	9,641	\$ -	\$ -	1	\$ -	\$ -	9,642	\$ -
Total Claims Paid	\$ -	9,641	\$ -	\$ -	1	\$ -	\$ -	9,642	\$ -
Carve Out of Network Capitated Services (Area EE)					1				
Lab									
Ophthalmology							\$ 0.50	9,642	\$ 4,821.00
Mental Health							\$ 6.24	9,642	\$ 60,166.08
Radiology (MINS) Area							\$ 2.21	9,642	\$ 21,308.82
Radiology (ATM) (Ami)							\$ 5.50	2,587	\$ 14,228.50
Radiology (Calvert)							\$ 6.50	2,000	\$ 13,000.00
Radiology (Northern VA. Imaging)							\$ 5.50	466	\$ 2,568.00
Radiology (DIAG Radiology Imaging)							\$ 4.00	433	\$ 1,732.00
Radiology (PG Medical Imaging)							\$ 5.50	345	\$ 1,897.50
Total Capitated Services							\$ 1.96	168	\$ 329.28
Total Deductions			\$ -			\$ -			\$ 120,046.18
Net Cap			\$ 2,945,217.18			\$ 373.94			\$ 2,825,544.94
Cash Wire Calculations									
Net Cap this month			\$ 2,945,217.18			\$ 373.94			\$ 2,825,544.94
Cash adjustments			\$ -			\$ -			\$ -
Deficit Carry Forward			\$ -			\$ -			\$ -
Net Wire Amount			\$ 2,945,217.18			\$ 373.94			\$ 2,825,544.94

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Page 1

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NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of November 1997

PCP CAP (Paid to Physicians)
Clinic Cap (Paid to Physician Groups)
PCP total

HOSP Cap
Pharmacy Rider Premium

Claims paid

Inpatient

Outpatient

E/R

Physicians FFS

Pharmacy

Total Claims Paid

Carve Out of Network Capitated Services
Lab

Ophthalmology

Mental Health

Radiology (MINS)

Radiology (AMI)

Radiology (Calvert)

Radiology (Northern VA. Imaging)

Radiology (DIAG Radiology Imaging)

Radiology (PG Medical Imaging)

Total Capitated Services

Total Deductions

Net Cap

Cash Wire Calculations

Net Cap this month

Cash adjustments

Deficit Carry Forward

Net Wire Amount

Area B			Area C			TOTAL		
PMPM	MEM MTHS	AMOUNT	PMPM	MEM MTHS	AMOUNT	PMPM	MEM MTHS	AMOUNT
\$ 39.33	6,165	\$ 242,489.92	\$ 30.33	5	\$ 151.67	\$ 39.33	6,170	\$ 242,641.59
\$ 40.58	3,920	\$ 159,067.80	#DIV/0!	-	-	\$ 40.58	3,920	\$ 159,067.80
\$ 39.82	10,085	\$ 401,557.72	\$ 30.33	5	\$ 151.67	\$ 39.81	10,090	\$ 401,709.39
\$ 314.40	10,085	\$ 3,170,693.71	\$ 278.20	5	\$ 1,390.98	\$ 314.38	10,090	\$ 3,172,084.69
0	-	\$ -	30.09	1,809	\$ 54,432.81	\$ 30.09	1,809	\$ 54,432.81
		\$ 3,170,693.71			\$ 55,823.79			\$ 3,226,517.50
\$ 0.01	10,085	\$ 96.06	\$ -	5	\$ -	\$ 0.01	10,090	\$ 96.06
\$ 1.63	10,085	\$ 16,414.01	\$ -	5	\$ -	\$ 1.63	10,090	\$ 16,414.01
\$ 0.33	10,085	\$ 3,309.48	\$ -	5	\$ -	\$ 0.33	10,090	\$ 3,309.48
\$ 5.87	10,085	\$ 59,199.84	\$ -	5	\$ -	\$ 5.87	10,090	\$ 59,199.84
\$ 0.07	10,085	\$ 741.15	\$ -	5	\$ -	\$ 0.07	10,090	\$ 741.15
\$ 7.91	10,085	\$ 79,760.54	\$ -	5	\$ -	\$ 7.90	10,090	\$ 79,760.54
						\$ 0.50	10,090	\$ 5,045.00
						\$ 6.24	10,090	\$ 62,961.60
						\$ 2.21	10,090	\$ 22,298.90
						\$ 5.50	2,421	\$ 13,315.50
						\$ 6.50	2,117	\$ 13,760.50
						\$ 5.50	477	\$ 2,623.50
						\$ 4.00	424	\$ 1,696.00
						\$ 5.50	354	\$ 1,947.00
						\$ 1.96	175	\$ 343.00
								\$ 123,991.00
		\$ 79,760.54			\$ -			\$ 203,751.54
		\$ 3,090,933.17			\$ 1,390.98			\$ 3,022,765.96
		\$ 3,090,933.17			\$ 1,390.98			\$ 3,022,765.96
		\$ -			\$ -			\$ -
		\$ -			\$ -			\$ -
		\$ 3,090,933.17			\$ 1,390.98			\$ 3,022,765.96

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NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of December 1997

	Area B			Area C			TOTAL		
	MEM	MEM MONTHS	AMOUNT	MEM	MEM MONTHS	AMOUNT	MEM	MEM MONTHS	AMOUNT
PCP CAP (Paid to Physicians)	\$ 39.41	6,128	\$ 241,512.46	\$ 42.32	18	\$ 761.84	\$ 39.42	6,146	\$ 242,274.30
Clinic Cap (Paid to Physician Groups)	\$ 40.36	4,081	\$ 164,714.90				\$ 40.36	4,081	\$ 164,714.90
PCP total	\$ 39.79	10,209	\$ 406,227.36	\$ 42.32	18	\$ 761.84	\$ 39.80	10,227	\$ 406,989.20
Undesignated PCP Cap									\$ 4,309.07
Undesignated Hospital Cap									\$ 7,971.78
HOSP Cap	\$ 314.65	10,214	\$ 3,213,861.86	\$ 338.36	18	\$ 6,090.46	\$ 314.69	10,232	\$ 3,219,952.32
"380.00" Guarantee Advance									\$ 350,000.00
Pharmacy Rider Premium	Q		\$	30.02	1,828	\$ 55,004.52	\$ 30.02	1,828	\$ 55,004.52
Claims paid			\$ 3,213,861.86			\$ 61,094.98			\$ 3,637,237.69
Inpatient	\$ 12.15	10,214	\$ 124,111.82	\$ -	18	\$ -	\$ 12.13	10,232	\$ 124,111.82
Outpatient	\$ 9.57	10,214	\$ 97,751.50	\$ -	18	\$ -	\$ 9.55	10,232	\$ 97,751.50
E/R	\$ 2.33	10,214	\$ 23,778.65	\$ -	18	\$ -	\$ 2.32	10,232	\$ 23,778.65
Physicians FFS	\$ 45.57	10,214	\$ 465,432.45	\$ -	18	\$ -	\$ 45.49	10,232	\$ 465,432.45
Pharmacy	\$ 0.62	10,214	\$ 6,326.67	\$ -	18	\$ -	\$ 0.62	10,232	\$ 6,326.67
Total Claims Paid	\$ 70.24	10,214	\$ 717,401.09	\$ -	18	\$ -	\$ 70.11	10,232	\$ 717,401.09
Carve Out of Network Capitated Services									
Lab							\$ 0.50	10,238	\$ 5,116.00
Ophthalmology							\$ 6.24	10,232	\$ 63,847.68
Mental Health							\$ 2.21	10,232	\$ 22,612.72
Radiology (MINS)							\$ 5.50	2,431	\$ 13,370.50
Radiology (AMI)							\$ 6.50	2,214	\$ 14,391.00
Radiology (Calvert)							\$ 5.50	463	\$ 2,546.50
Radiology (Northern VA. Imaging)							\$ 4.00	438	\$ 1,752.00
Radiology (DIAG Radiology Imaging)							\$ 5.50	363	\$ 1,996.50
Radiology (PG Medical Imaging)							\$ 1.96	183	\$ 358.68
Total Capitated Services									\$ 125,991.58
Total Deductions									\$ 843,392.67
Net Cap									\$ 2,793,845.02
Cash Wire Calculations									
Net Cap this month									\$ 2,793,845.02
Cash adjustments									\$
Deficit Carry Forward									\$
Net Wire Amount									\$ 2,793,845.02

NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of January 1998

PCP CAP (Paid to Physicians)
Clinic Cap (Paid to Physician Groups)
PCP total

Undesignated PCP Cap
Undesignated Hospital Cap
HOSP Cap
"380.00" Guarantee Advance
Membership Premium
Pharmacy Rider Premium

Claims paid
Inpatient
Outpatient
E/R
Physicians FFS
Pharmacy
Total Claims Paid

Carve Out of Network Capitated Services
Lab
Ophthalmology
Mental Health
Radiology (MINS)
Radiology (AMI)
Radiology (Calvert)
Radiology (Northern VA. Imaging)
Radiology (DIAG Radiology Imaging)
Radiology (PG Medical Imaging)
Total Capitated Services

Total Deductions

Net Cap

Cash Wire Calculations
Net Cap this month
Cash adjustments
Deficit Carry Forward
Net Wire Amount

	Area B			Area C			TOTAL		
	PAID TO PHYSICIANS THIS MONTH	PAID TO PHYSICIAN GROUPS THIS MONTH	AMOUNT	PAID TO PHYSICIANS THIS MONTH	PAID TO PHYSICIAN GROUPS THIS MONTH	AMOUNT	PAID TO PHYSICIANS THIS MONTH	PAID TO PHYSICIAN GROUPS THIS MONTH	AMOUNT
PCP CAP (Paid to Physicians)	\$ 39.45	6,642	\$ 262,019.39	\$ 43.93	26	\$ 1,142.12	\$ 39.47	6,668	\$ 263,161.51
Clinic Cap (Paid to Physician Groups)	\$ 40.44	4,721	\$ 190,902.42	\$ -	-	\$ -	\$ 40.44	4,721	\$ 190,902.42
PCP total	\$ 39.86	11,363	\$ 452,921.81	\$ 43.93	26	\$ 1,142.12	\$ 39.87	11,389	\$ 454,063.93
Undesignated PCP Cap			\$ 7,390.28						\$ 7,390.28
Undesignated Hospital Cap			\$ 55,350.69						\$ 55,350.69
HOSP Cap	\$ 313.29	11,363	\$ 3,559,903.96	\$ 342.71	26	\$ 8,910.41	\$ 313.36	11,389	\$ 3,568,814.37
"380.00" Guarantee Advance			\$ 350,000.00						\$ 350,000.00
Membership Premium	\$ 39.83	3,966	\$ 157,965.78						\$ 157,965.78
Pharmacy Rider Premium	0		\$ -	\$ 29.55	2,188	\$ 64,661.64	\$ 29.55	2,188	\$ 64,661.64
Claims paid			\$ 4,067,869.74			\$ 73,572.05			\$ 4,204,182.76
Inpatient	\$ 51.90	11,363	\$ 589,747.32	\$ -	26	\$ -	\$ 51.78	11,389	\$ 589,747.32
Outpatient	\$ 23.57	11,363	\$ 267,829.22	\$ -	26	\$ -	\$ 23.52	11,389	\$ 267,829.22
E/R	\$ 4.96	11,363	\$ 56,335.21	\$ -	26	\$ -	\$ 4.95	11,389	\$ 56,335.21
Physicians FFS	\$ 80.71	11,363	\$ 917,100.94	\$ -	26	\$ -	\$ 80.53	11,389	\$ 917,100.94
Pharmacy	\$ 92.48	11,363	\$ 1,050,796.40	\$ -	26	\$ -	\$ 92.26	11,389	\$ 1,050,796.40
Total Claims Paid	\$ 253.61	11,363	\$ 2,881,809.09	\$ -	26	\$ -	\$ 253.03	11,389	\$ 2,881,809.09
Carve Out of Network Capitated Services									
Lab							\$ 1.20	11,389	\$ 13,666.80
Ophthalmology							\$ 6.63	11,389	\$ 75,509.07
Mental Health							\$ 2.21	11,389	\$ 25,169.69
Radiology (MINS)							\$ 5.50	3,172	\$ 17,446.00
Radiology (AMI)							\$ 6.50	2,349	\$ 15,268.50
Radiology (Calvert)							\$ 5.50	450	\$ 2,475.00
Radiology (Northern VA. Imaging)							\$ 4.00	451	\$ 1,804.00
Radiology (DIAG Radiology Imaging)							\$ 5.50	369	\$ 2,029.50
Radiology (PG Medical Imaging)							\$ 1.96	213	\$ 417.48
Total Capitated Services									\$ 153,786.04
Total Deductions									\$ 3,035,595.13
Net Cap									\$ 1,168,587.63
Cash Wire Calculations									
Net Cap this month									\$ 1,168,587.63
Cash adjustments									\$ -
Deficit Carry Forward									\$ -
Net Wire Amount									\$ 1,168,587.63

NET CAP:

NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of February 1998

SPA

	Area B			Area C			TOTAL		
	MEMBERS	MONTHS	AMOUNT	MEMBERS	MONTHS	AMOUNT	MEMBERS	MONTHS	AMOUNT
PCP CAP (Paid to Physicians)	\$ 41.66	9,444	\$ 393,473.85	\$ 40.57	26	\$ 1,054.83	\$ 41.66	9,470	\$ 394,528.68
Clinic Cap (Paid to Physician Groups)	\$ 40.93	4,486	\$ 183,626.50	\$ -	-	\$ -	\$ 40.93	4,486	\$ 183,626.50
PCP total	\$ 41.43	13,930	\$ 577,100.35	\$ 40.57	26	\$ 1,054.83	\$ 41.43	13,956	\$ 578,155.18
Undesignated PCP Cap			\$ 27,543.84						\$ 27,543.84
Undesignated Hospital Cap(Jan 98)			\$ (55,350.69)						\$ (55,350.69)
HIOSP Cap	\$ 328.47	13,930	\$ 4,575,597.93	\$ 320.97	26	\$ 8,345.15	\$ 328.46	13,956	\$ 4,583,943.08
"380.00" Guarantee Advance Jan overpaid			\$ (172,587.38)						\$ (172,587.38)
"380.00" Guarantee Advance			\$ 187,203.75						\$ 187,203.75
Membership Premium	\$ 39.83	4,081	\$ 162,546.23	\$ 30.12	2,561	\$ 77,260.50	\$ 30.12	2,561	\$ 77,260.50
Pharmacy Rider Premium	0		\$ -			\$ 85,605.65			\$ 85,605.65
Claims paid			\$ 4,752,760.53						\$ 4,810,559.33
Inpatient	\$ 39.15	13,930	\$ 545,365.83	\$ -	26	\$ -	\$ 39.08	13,956	\$ 545,365.83
Outpatient	\$ 11.91	13,930	\$ 165,855.82	\$ -	26	\$ -	\$ 11.88	13,956	\$ 165,855.82
E/R	\$ 3.79	13,930	\$ 52,743.34	\$ -	26	\$ -	\$ 3.78	13,956	\$ 52,743.34
Physicians FFS	\$ 62.90	13,930	\$ 876,172.69	\$ -	26	\$ -	\$ 62.78	13,956	\$ 876,172.69
Pharmacy	\$ 36.03	13,930	\$ 501,848.49	\$ -	26	\$ -	\$ 35.96	13,956	\$ 501,848.49
Total Claims Paid	\$ 153.77	13,930	\$ 2,141,986.17	\$ -	26	\$ -	\$ 153.48	13,956	\$ 2,141,986.17
Carve Out of Network Capitated Services									
Lab									
Ophthalmology							\$ 1.20	13,956	\$ 16,747.20
Mental Health							\$ 6.63	13,956	\$ 92,528.28
Radiology (MINS)							\$ 2.21	13,956	\$ 30,842.76
Radiology (MINS - Frederick)							\$ 5.50	3,906	\$ 21,483.00
Radiology (AMI)							\$ 5.50	578	\$ 3,179.00
Radiology (Calvert)							\$ 6.50	2,498	\$ 16,237.00
Radiology (Northern VA. Imaging)							\$ 5.50	484	\$ 2,662.00
Radiology (DIAO Radinlogy Imaging)							\$ 4.00	453	\$ 1,812.00
Radiology (PG Medical Imaging)							\$ 5.50	503	\$ 2,766.50
Total Capitated Services							\$ 5.50	1,355	\$ 7,452.50
Total Deductions									\$ 195,710.24
Net Cap									\$ 2,337,696.41
Cash Wire Calculations									\$ 2,472,862.92
Net Cap this month									\$ 2,472,862.92
Cash adjustments									\$ -
Deficit Carry Forward									\$ -
Net Wire Amount									\$ 2,472,862.92

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NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of March 1998

	Area D				Area C				TOTAL			
	PPM	MEM	MTIS	AMOUNT	PPM	MEM	MTIS	AMOUNT	PPM	MEM	MTIS	AMOUNT
PCP Cap (Paid to Physicians)	\$ 41.68	9,178		\$ 382,555.41	\$ 37.43	124		\$ 4,641.83	\$ 41.63	9,302		\$ 387,197.24
Clinic Cap (Paid to Physician Groups)	\$ 40.65	4,461		\$ 181,355.21	\$ -	-		\$ -	\$ 40.65	4,461		\$ 181,355.21
PCP anal	\$ 41.35	13,639		\$ 563,910.62	\$ 37.43	124		\$ 4,641.83	\$ 41.31	13,763		\$ 568,552.45
Undesignated PCP Cap												
HOSP Cap	\$ 327.73	13,639		\$ 4,469,936.75	\$ 298.94	124		\$ 37,068.76	\$ 327.47	13,763		\$ 4,507,005.51
\$80.00 Guarantee Estimate				\$ 170,000.00								\$ 170,000.00
Membership Premium	\$ 39.83	4,028		\$ 160,435.24								\$ 160,435.24
Pharmacy Rider Premium	0			\$ -	\$ 30.02	2,627		\$ 79,035.81	\$ 30.02	2,627		\$ 79,035.81
Claims paid				\$ 4,800,371.99				\$ 116,104.57				\$ 4,916,476.56
Inpatient	\$ 62.20	13,639		\$ 848,306.84	\$ -	124		\$ -	\$ 61.64	13,763		\$ 848,306.84
Outpatient	\$ 12.35	13,639		\$ 168,465.47	\$ -	124		\$ -	\$ 12.24	13,763		\$ 168,465.47
ER	\$ 2.87	13,639		\$ 39,095.52	\$ -	124		\$ -	\$ 2.84	13,763		\$ 39,095.52
Physicians FFS	\$ 62.41	13,639		\$ 851,193.06	\$ -	124		\$ -	\$ 61.85	13,763		\$ 851,193.06
Pharmacy	\$ 32.30	13,639		\$ 440,485.41	\$ -	124		\$ -	\$ 32.01	13,763		\$ 440,485.41
Total Claims Paid	\$ 172.12	13,639		\$ 2,347,546.30	\$ -	124		\$ -	\$ 170.57	13,763		\$ 2,347,546.30
Carve Out of Network Capitated Services												
Lab									\$ 1.20	13,763		\$ 16,515.60
Ophthalmology									\$ 6.63	13,763		\$ 91,248.69
Mental Health									\$ 2.21	13,763		\$ 30,416.23
Radiology (MINS)									\$ 5.50	3,873		\$ 21,301.50
Radiology (MINS - Frederick)									\$ 5.50	549		\$ 3,019.50
Radiology (All)									\$ 6.50	2,398		\$ 15,587.00
Radiology (Calvert)									\$ 5.50	533		\$ 2,931.50
Radiology (Northern VA. Imaging)									\$ 4.00	456		\$ 1,824.00
Radiology (DIAG Radiology Imaging)									\$ 5.50	505		\$ 2,777.50
Radiology (PG Medical Imaging)									\$ 5.50	1,307		\$ 7,188.50
Total Capitated Services												\$ 192,810.02
Total Deductions												\$ 2,540,356.32
Net Cap												\$ 2,376,120.24
Cash Wire Calculations												\$ 2,376,120.24
Net Cap this month												\$ -
Cash adjustments												\$ -
Deficit Carry Forward												\$ -
Net Wire Amount												\$ 2,376,120.24

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Page 1

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... Health Plans of the Mid Atlantic

Doctors Health

Monthly Capitation Calculation *April*
for the month of ~~March~~ 1998

	Area B			Area C			TOTAL		
	MEM	MEM/MTH	AMOUNT	MEM	MEM/MTH	AMOUNT	MEM	MEM/MTH	AMOUNT
PCP CAP (Paid to Physicians)	\$ 42.91	8,796	\$ 377,436.24	\$ 38.22	147	\$ 5,617.89	\$ 42.83	8,943	\$ 383,054.13
Clinic Cap (Paid to Physician Groups)	\$ 41.64	3,925	\$ 163,432.69	\$ -	-	\$ -	\$ 41.64	3,925	\$ 163,432.69
PCP Total	\$ 42.52	12,721	\$ 540,868.93	\$ 38.22	147	\$ 5,617.89	\$ 42.47	12,868	\$ 546,486.82
Undesignated PCP Cap									
IIOSP Cap	\$ 333.73	12,721	\$ 4,245,406.79	\$ 295.28	147	\$ 43,405.92	\$ 333.29	12,868	\$ 4,288,812.71
380.00 Guarantee Estimate			\$ 170,000.00						\$ 170,000.00
Membership Premium	\$ 39.83	3,037	\$ 120,963.71						\$ 120,963.71
Pharmacy Rider Premium	0	-	\$ -	\$ 29.98	2,548	\$ 76,396.74	\$ 29.98	2,548	\$ 76,396.74
Claims paid			\$ 4,546,048.81			\$ 119,802.66			\$ 4,665,851.47
Inpatient	\$ 130.84	12,721	\$ 1,664,441.31	\$ -	147	\$ -	\$ 129.35	12,868	\$ 1,664,441.31
Outpatient	\$ 42.62	12,721	\$ 542,144.12	\$ -	147	\$ -	\$ 42.13	12,868	\$ 542,144.12
E/R	\$ 6.35	12,721	\$ 80,792.22	\$ -	147	\$ -	\$ 6.28	12,868	\$ 80,792.22
Physicians FFS	\$ 127.43	12,721	\$ 1,621,097.73	\$ -	147	\$ -	\$ 125.98	12,868	\$ 1,621,097.73
Pharmacy	\$ 37.44	12,721	\$ 476,333.18	\$ -	147	\$ -	\$ 37.02	12,868	\$ 476,333.18
Total Claims Paid	\$ 344.69	12,721	\$ 4,384,808.56	\$ -	147	\$ -	\$ 340.75	12,868	\$ 4,384,808.56
Carve Out of Network Capitated Services									
Lab							\$ 1.20	12,868	\$ 15,441.60
Ophthalmology							\$ 6.63	12,868	\$ 85,314.84
Mental Health							\$ 2.21	12,868	\$ 28,438.28
Radiology (MINS)							\$ 5.50	3,871	\$ 21,290.50
Radiology (MINS - Frederick)							\$ 5.50	569	\$ 3,129.50
Radiology (AMI)							\$ 6.50	2,408	\$ 15,632.00
Radiology (Calvert)							\$ 5.50	584	\$ 3,212.00
Radiology (Northern VA. Imaging)							\$ 4.00	447	\$ 1,788.00
Radiology (DIAO Radiology Imaging)							\$ 5.50	489	\$ 2,689.50
Radiology (PG Medical Imaging)							\$ 5.50	1,290	\$ 7,095.00
Total Capitated Services									\$ 184,051.22
Total Deductions									\$ 4,568,859.78
Net Cap									\$ 96,991.69
Cash Wire Calculations									\$ 96,991.69
Net Cap this month									\$ -
Cash adjustments									\$ -
Deficit Carry Forward									\$ -
Net Wire Amount									\$ 96,991.69

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Curie Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of May 1998

for the month of May 1998									
	Area B			Area C			TOTAL		
PCP CAP (Paid to Physicians)	\$ 41.95	9,470	\$ 397,244.10	\$ 39.08	177	\$ 6,916.79	\$ 41.89	9,647	\$ 404,160.89
Clinic Cap (Paid to Physician Groups)	\$ 41.46	4,351	\$ 180,395.03	\$ -	-	\$ -	\$ 41.46	4,351	\$ 180,395.03
PCP total	\$ 41.79	13,821	\$ 577,639.13	\$ 39.08	177	\$ 6,916.79	\$ 41.76	13,998	\$ 584,555.92
Undesignated PCP Cap									
HOSP Cap	\$ 328.12	13,821	\$ 4,534,982.97	\$ 312.30	177	\$ 55,276.67	\$ 327.92	13,998	\$ 4,590,259.64
"380.00" Guarantee for March			\$ 14,785.74						\$ 14,785.74
"20.00" Guarantee for March APRIL			\$ 15,128.00						\$ 15,128.00
Membership Premium			\$ (132,645.15)						\$ (132,645.15)
Pharmacy Rider Premium	\$ 39.83	3,668	\$ 146,096.44						\$ 146,096.44
	0		\$ -	\$ 30.31	2,702	\$ 81,918.61	\$ 30.31	2,702	\$ 81,918.61
Claims paid			\$ 4,578,348.00			\$ 137,215.28			\$ 4,715,563.28
Inpatient	\$ 203.85	13,821	\$ 2,817,466.31	\$ -	177	\$ -	\$ 201.28	13,998	\$ 2,817,466.31
Outpatient	\$ 18.87	13,821	\$ 260,830.13	\$ -	177	\$ -	\$ 18.63	13,998	\$ 260,830.13
E/R	\$ 4.11	13,821	\$ 56,863.77	\$ -	177	\$ -	\$ 4.06	13,998	\$ 56,863.77
Physicians FFS	\$ 137.12	13,821	\$ 1,895,196.35	\$ -	177	\$ -	\$ 135.39	13,998	\$ 1,895,196.35
Pharmacy	\$ 33.12	13,821	\$ 457,724.87	\$ -	177	\$ -	\$ 32.70	13,998	\$ 457,724.87
Total Claims Paid	\$ 397.08	13,821	\$ 5,488,081.43	\$ -	177	\$ -	\$ 392.06	13,998	\$ 5,488,081.43
Carve Out of Network Capitated Services									
Lab									
Ophthalmology						\$ 1.20	13,998	\$ 16,797.60	
Mental Health						\$ 6.63	13,998	\$ 92,806.74	
Radiology (MINS)						\$ 2.21	13,998	\$ 30,935.38	
Radiology (MINS - Frederick)						\$ 5.50	4,034	\$ 22,187.00	
Radiology (AMH)						\$ 5.50	625	\$ 3,437.50	
Radiology (Calvert)						\$ 6.50	2,548	\$ 16,562.00	
Radiology (Northern VA. Imaging)						\$ 5.50	592	\$ 3,256.00	
Radiology (DIAG Radiology Imaging)						\$ 4.00	467	\$ 1,868.00	
Radiology (Dimensions Imaging)						\$ 5.50	526	\$ 2,893.00	
Total Capitated Services						\$ 5.50	1,580	\$ 8,690.00	
Total Deductions									\$ 199,433.42
Net Cap									\$ 5,687,514.85
Cash Wire Calculations									\$ (971,951.57)
Net Cap this month									
Cash adjustments									\$ (971,951.57)
Deficit Carry Forward									\$ -
Net Wire Amount									\$ (971,951.57)

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NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of June 1998

	Area B			Area C			TOTAL		
PCP CAP (Paid to Physicians)	\$ 41.97	8,818	\$ 370,116.00	\$ 37.91	173	\$ 6,558.76	\$ 41.89	8,991	\$ 376,674.76
Clinic Cap (Paid to Physicians Groups)	\$ 41.79	3,978	\$ 166,229.80	\$ -	-	\$ -	\$ 41.79	3,978	\$ 166,229.80
PCP total	\$ 41.92	12,796	\$ 536,345.80	\$ 37.91	173	\$ 6,558.76	\$ 41.86	12,969	\$ 542,904.56
Undesignated PCP Cap			\$ 7,304.58						\$ 7,304.58
HOSP Cap	\$ 331.87	12,796	\$ 4,246,547.85	\$ 297.15	173	\$ 51,407.17	\$ 331.40	12,969	\$ 4,297,955.02
Membership Premium	\$ 39.83	3,086	\$ 122,915.38						\$ 122,915.38
Pharmacy Rider Premium	\$ -		\$ -	\$ 30.55	2,634	\$ 80,465.97	\$ 30.55	2,634	\$ 80,465.97
Claims paid			\$ 4,376,767.81			\$ 131,873.14			\$ 4,508,640.95
Inpatient	\$ 284.06	12,796	\$ 3,634,792.29	\$ -	173	\$ -	\$ 280.27	12,969	\$ 3,634,792.29
Outpatient	\$ 34.46	12,796	\$ 440,891.74	\$ -	173	\$ -	\$ 34.00	12,969	\$ 440,891.74
E/R	\$ 7.58	12,796	\$ 96,945.28	\$ -	173	\$ -	\$ 7.48	12,969	\$ 96,945.28
Physicians FFS	\$ 136.93	12,796	\$ 1,752,145.51	\$ -	173	\$ -	\$ 135.10	12,969	\$ 1,752,145.51
Pharmacy	\$ 82.80	12,796	\$ 1,059,527.70	\$ -	173	\$ -	\$ 81.70	12,969	\$ 1,059,527.70
Total Claims Paid	\$ 545.82	12,796	\$ 6,984,302.52	\$ -	173	\$ -	\$ 538.54	12,969	\$ 6,984,302.52
Curve Out of Network Capitated Services									
Lab							\$ 1.20	12,969	\$ 15,562.80
Ophthalmology							\$ 6.63	12,969	\$ 85,984.47
Mental Health							\$ 2.21	12,969	\$ 28,661.49
Radiology (MINS)							\$ 5.50	3,855	\$ 21,202.50
Radiology (MINS - Frederick)							\$ 5.50	596	\$ 3,278.00
Radiology (AMI)							\$ 6.50	2,415	\$ 15,697.50
Radiology (Calvert)							\$ 5.50	587	\$ 3,228.50
Radiology (Northern VA. Imaging)							\$ 4.00	455	\$ 1,820.00
Radiology (DIAO Radiology Imaging)							\$ 5.50	510	\$ 2,805.00
Radiology (Dimensions Imaging)							\$ 5.50	1,331	\$ 7,320.50
Total Capitated Services									\$ 185,560.76
Total Deductions									\$ 7,169,863.28
Net Cap									\$(2,661,222.33)
Cash Wire Calculations									
Net Cap this month									\$(2,661,222.33)
Cash adjustments									\$
Deficit Carry Forward									\$ (971,951.57)
Net Wire Amount									\$ (3,633,173.90)

1290

6/14/98 8:27 AM

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16dv-000066

TO 30#2#12128356001 P.28/36

SEP.10.98 19:46 FR PIPER MARBURY LLP

NYLCare Health Plans of the Mid Atlantic

Doctors Health

Monthly Capitation Calculation

For The Month of July 1998

	EXTD	MEM MONTH	AMOUNT	EXTD	MEM MONTH	AMOUNT	EXTD	MEM MONTH	AMOUNT
PCP CAP (Paid to Physicians)	\$ 42.15	9,472	\$ 399,230.86	\$ 40.42	184	\$ 7,437.39	\$ 42.12	9,636	\$ 406,668.25
Clinic Cap (Paid to Physician Groups)	\$ 41.26	4,069	\$ 167,895.36	\$ -	-	\$ -	\$ 41.26	4,069	\$ 167,895.36
PCP total	\$ 41.88	13,541	\$ 567,126.22	\$ 40.42	184	\$ 7,437.39	\$ 41.86	13,725	\$ 574,563.61
Undesignated PCP Cap			\$ 13,606.38						\$ 13,606.38
HOSP Cap	\$ 331.52	13,541	\$ 4,489,137.98	\$ 308.93	184	\$ 56,843.99	\$ 331.22	13,725	\$ 4,545,981.97
Membership Premium	\$ 39.83	3,334	\$ 132,793.22						\$ 132,793.22
Pharmacy Rider Premium	0	-	\$ -	\$ 30.38	2,805	\$ 85,216.65	\$ 30.38	2,805	\$ 85,216.65
Cap % adjusted to 83%	0	-	\$ -	\$ -	-	\$ -	\$ -	-	\$ (331,774.63)
Claims paid			\$ 4,635,537.58			\$ 142,060.64			\$ 4,445,823.59
Inpatient	\$ 303.69	13,541	\$ 4,112,230.62	\$ -	184	\$ -	\$ 299.62	13,725	\$ 4,112,230.62
Outpatient	\$ 34.56	13,541	\$ 468,032.89	\$ -	184	\$ -	\$ 34.10	13,725	\$ 468,032.89
E/R	\$ 8.42	13,541	\$ 114,020.73	\$ -	184	\$ -	\$ 8.31	13,725	\$ 114,020.73
Physicians FFS	\$ 160.35	13,541	\$ 2,171,329.54	\$ -	184	\$ -	\$ 158.20	13,725	\$ 2,171,329.54
Pharmacy	\$ -	13,541	\$ -	\$ -	184	\$ -	\$ -	13,725	\$ -
Total Claims Paid	\$ 507.02	13,541	\$ 6,865,613.78	\$ -	184	\$ -	\$ 500.23	13,725	\$ 6,865,613.78
Carve Out of Network Capitated Services									
Lab									
Ophthalmology							\$ 1.20	13,725	\$ 16,470.00
Mental Health							\$ 6.63	13,725	\$ 90,996.75
Radiology (MINS)							\$ 2.21	13,725	\$ 30,332.25
Radiology (MINS - Frederick)							\$ 3.50	4,045	\$ 22,247.50
Radiology (AMT)							\$ 5.50	633	\$ 3,481.50
Radiology (Calvert)							\$ 6.50	2,501	\$ 16,256.50
Radiology (Northern VA. Imaging)							\$ 5.50	599	\$ 3,294.50
Radiology (DIAG Radiology Imaging)							\$ 4.00	460	\$ 1,840.00
Radiology (Dimensions Imaging)							\$ 5.50	523	\$ 2,876.50
Total Capitated Services							\$ 5.50	1,386	\$ 7,623.00
Total Deductions									\$ 195,418.50
Net Cap									\$ 7,061,032.28
Cash Wire Calculations									\$ (2,615,208.69)
Net Cap this month									\$ (2,615,208.69)
Cash adjustments									\$
Deficit Carry Forward									\$
Net Wire Amount									\$ (2,615,208.69)

1290

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Page 1

16dv-000067

For The Month of August 1998

Dhs Aug 98 16dv-000068



September 4, 1998

Jeff D. Emerson
President and Chief Executive Officer
NYLCare Health Plans of the Mid-Atlantic, Inc.
7601 Ora Glen Drive
Greenbelt, Maryland 20770

RE: September 1998 Monthly
Capitation Calculation

Dear Jeff:

I recently received a copy of the Monthly Capitation Calculation for the month of September, 1998. I was surprised to see that NYLCare has unilaterally decided to change the method of calculation for September. The calculation, if done consistent with the method of calculation for every month of the contract period prior to September, 1998, would have revealed a net positive cash balance in favor of Doctors Health in the amount of approximately \$1,443,047.

Without explanation, NYLCare has now charged us for "claims incurred but not paid through August 31, 1998". Please review the enclosed copy of the September, 1998 calculation and compare it to the enclosed copies of the October, 1997 through August 1998 calculations. I would appreciate your prompt assistance in having the September, 1998 Capitation Calculation redone consistent with prior periods to show the above mentioned positive cash balance in our favor.

As you know, we still have a lot of issues to resolve. This is no way to begin that process.

Sincerely,


Stewart B. Gold
Chief Executive Officer

cc: Susan Lefkowitz

DOCTORS HEALTH, INCORPORATED

10451 Midway Circle • 10th Floor • Owings Mills, MD 21117 • 410.654.5000 • 800.654.3250
h Emerson.doc
Owings Mills Community Center B • 11500 Greenidge Drive • Suite 120 • Owings Mills, MD 21117 • 410.654.5000 • 800.678.9960

NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
For The Month of September 1998

PCP CAP (Paid to Physicians)	\$ 41.05	11,029	\$ 452,695.71	\$ 40.82	218	\$ 8,899.26	\$ 41.04	11,247	\$ 461,594.97
Clinic Cap (Paid to Physician Groups)	\$ 39.89	4,668	\$ 186,220.83	\$.	.	\$.	\$ 39.89	4,668	\$ 186,220.83
PCP total	\$ 40.70	15,697	\$ 638,916.54	\$ 40.82	218	\$ 8,899.26	\$ 40.70	15,915	\$ 647,815.80
.....									
Retro Hosp Cap Calculation Correction			\$ 344,644.00						\$ 344,644.00
Undesignated PCP Cap			\$ 10,416.39						\$ 10,416.39
HOSP Cap (Attachment B)	\$ 343.90	15,701	\$ 5,399,526.80	\$ 338.08	218	\$ 73,701.45	\$ 343.82	15,919	\$ 5,473,228.25
Membership Premium (Attachment B)	\$ 41.40	3,356	\$ 138,938.40						\$ 138,938.40
Pharmacy Rider Premium (Attachment B)	\$.		\$.	\$ 31.82	3,112	\$ 99,025.12	\$ 31.82	3,112	\$ 99,025.12
			\$ 5,548,881.59			\$ 172,726.57			\$ 6,066,252.16
Claims paid									
Inpatient	\$ 114.50	15,701	\$ 1,797,701.30	\$.	218	\$.	\$ 112.93	15,919	\$ 1,797,701.30
Outpatient	\$ 14.27	15,701	\$ 223,978.45	\$.	218	\$.	\$ 14.07	15,919	\$ 223,978.45
E/R	\$ 3.99	15,701	\$ 62,697.82	\$.	218	\$.	\$ 3.94	15,919	\$ 62,697.82
Physician FFS	\$ 56.39	15,701	\$ 885,363.86	\$.	218	\$.	\$ 55.62	15,919	\$ 885,363.86
Pharmacy Claims runoff (Attachment C)	\$ 67.44	15,701	\$ 1,058,851.49	\$.	218	\$.	\$ 66.51	15,919	\$ 1,058,851.49
Total Claims Paid	\$ 256.58	15,701	\$ 4,028,592.92	\$.	218	\$.	\$ 253.07	15,919	\$ 4,028,592.92
Carve Out of Network Capitated Services									
Lab							\$ 1.20	15,919	\$ 19,102.80
Ophthalmology							\$ 6.63	15,919	\$ 105,542.97
Mental Health							\$ 2.21	15,919	\$ 35,180.99
Radiology (MINS)							\$ 3.50	5,752	\$ 31,634.00
Radiology (MINS - Frederick)							\$ 3.50	707	\$ 2,488.50
Radiology (AMI)							\$ 6.50	5,881	\$ 38,226.50
Radiology (Calvert)							\$ 3.50	619	\$ 2,140.50
Radiology (Northern VA. Imaging)							\$ 4.00	556	\$ 2,224.00
Radiology (DIAO Radiology Imaging)							\$ 5.50	545	\$ 2,997.50
Radiology (Dimensions Imaging)							\$ 3.50	1,412	\$ 4,962.00
Total Capitated Services									\$ 249,969.76
Claims Incurred but not paid through 8/31/98 Est.			\$ 10,691,965.56						\$ 10,691,965.56
Total Deductions									\$ 14,970,528.24
Net Cap									\$ (8,904,276.08)
Cash Wire Calculations									\$ (8,904,276.08)
Net Cap this month									\$.
Cash adjustments									\$ (2,109,140.16)
DeAck Carry Forward									\$ (11,013,416.24)
Net Wire Amount									\$ (11,013,416.24)

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SEP 15 '98 9:53

PAGE.004



DOCTORS HEALTH

It's the Sure Sign of Caring

VIA FAX AND OVERNIGHT MAIL

Mr. Don Liu
Legal Counsel
Aetna US Healthcare
980 Jolly Road
Blue Bell, PA 19422

September 15, 1998

Dear Don:

I have previously provided you my views in my September 11, 1998 letter as to why Doctors Health does not owe NYLCare \$2.6 million and why Doctors Health is entitled to substantial offsets. You indicated to me in a voicemail on late Friday, September 11, 1998 that you were confused by the amounts due between the parties and that you had no knowledge that NYLCare was attempting to draw down the letter of credit. In order to simplify matters for you I am providing you with only those offsets documented by NYLCare's Monthly Capitation report (after excluding the improper unpaid claims amount) for September (dated September 4, 1998 and attached), and audit amounts agreed to by NYLCare that are legitimate offsets which must be credited to Doctors Health. Supporting documentation of these offsets is attached. The accounting below uses the amount due in Susan Lefkowitz's August 13, Demand Letter as a starting point.

August 13, 1998	\$2,109,140.16
Amount	
Less: Sept. 4, 1998 Report	\$1,787,689.48
Surplus	
Audit Adjustment	<u>281,000.00</u>
Credits	
Total Deductions	\$2,068,689.48
Maximum Amount Due NYLCare	\$ 40,450.68
before unresolved offsets	

I trust you will realize that it would be smart to back off on the improper LOC demand and we are ready to pay promptly the \$40,450.68 amount. The relevant documentation is attached. In support of the Audit Adjustment Credits we have attached NYLCare correspondence to us on the matter. We believe that there may be at least an additional \$700,000 - \$900,000 in credits to be acknowledged by NYLCare in the near future. I have attempted to reach you and David Simon by phone yesterday and today, but you have not responded to any of my calls. I hope that you will call me back so as to try and reconcile the offsets which have been set forth in this letter. NYLCare's actions are unconscionable and your failure to promptly remedy this matter is only exacerbating the damages caused by the improper attempt to draw upon the letter of credit. Your failure to even return phone calls is further evidence of the callous disregard with which NYLCare has treated Doctors Health.

Your immediate attention is requested.

Sincerely,

James A. Gast
Sr. Vice President
Administration and Legal Affairs

cc: David F. Simon, Esq. DOCTORS HEALTH, INCORPORATED

10451 Mill Run Circle • 10th Floor • Owings Mills, Maryland 21117 • 410-654-3200 • 800-634-3238

SEP 16 '98 15:04

16dv-00007402

SEP-10-98 14:56 FROM DOCTORS HEALTH
JCC. 10 70 (INV) V0.31 CHASE MANHATTAN F.D.

ID:4106545806
ILL 401-833-8691

PAGE 6/11
P.002

FROM CHASE L/C 212 638 8201

(WED) 10.29.97 14:10/ST. 14:10/NO. 3560901678 P 2

Trade Services Group
244, Orchard Street Station
New York, NY 10008-0044

ISSUE DATE: OCTOBER 27, 1997
L/C NO.: P-343547

***** DIRECT *****

APPLICANT:
DOCTOR'S HEALTH, INC.
10451 MILL RUN CIRCLE, 10TH FLOOR
OWINGS MILLS, MD. 21117

NYLCARE HEALTH PLANS OF THE
MID-ATLANTIC, INC. 7601 ORA GLEN
DRIVE, GREENBELT, MARYLAND 20770
ATT:JEFF EMERSON, PRESIDENT & CEO

AMOUNT: USD 4,400,000.00
(FOUR MILLION FOUR HUNDRED
THOUSAND AND 00/100 UNITED
STATES DOLLARS)

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.
P-343547 IN YOUR FAVOR FOR AN AGGREGATE AMOUNT NOT TO EXCEED THE
AMOUNT INDICATED ABOVE, EXPIRING AT OUR COUNTERS IN NEW YORK WITH OUR
CLOSE OF BUSINESS ON OCTOBER 31, 1998.

THIS LETTER OF CREDIT IS AVAILABLE WITH THE CHASE MANHATTAN BANK, NEW
YORK AGAINST PRESENTATION OF YOUR DRAFT AT SIGHT DRAWN ON THE CHASE
MANHATTAN BANK, NEW YORK WHEN ACCOMPANIED BY THE DOCUMENTS INDICATED
HEREIN.

BENEFICIARY'S DATED STATEMENT PURPORTEDLY SIGNED BY ONE OF ITS
OFFICERS READING: "THE AMOUNT OF THIS DRAWING UNDER THE CHASE
MANHATTAN BANK LETTER OF CREDIT NUMBER P-343547 REPRESENTS FUNDS DUE
US AS (1) DOCTORS HEALTH, INC., OWES NYLCARE THE SUM OF... AGREEMENT
PURSUANT TO SECTION 3.4.4. OF MEDICARE NETWORK MANAGEMENT...
DATED AS OF OCTOBER 1, 1997, (2) SUCH AMOUNT HAS BEEN INVOICED TO
DOCTORS HEALTH, (3) DOCTORS HEALTH IS IN RECEIPT OF SUCH INVOICE FOR
AT LEAST 60 DAYS, AND (4) THERE ARE NO DEFENSES OR OFFSETS TO PAYMENT
WHICH HAVE BEEN RAISED BY DOCTORS HEALTH AND OF WHICH NYLCARE IS
AWARE."

ALL DRAFTS MUST INDICATE: "DRAWN UNDER THE CHASE MANHATTAN BANK, NEW
YORK LETTER OF CREDIT NO. P-343547."

ALL CORRESPONDENCE AND ANY DRAWINGS PRESENTED IN CONNECTION WITH THIS
LETTER OF CREDIT MUST ONLY BE PRESENTED TO US AT THE CHASE MANHATTAN
BANK, 55 WATER ST., 17TH FL. ROOM 1710, NEW YORK, NEW YORK 10041, ATT.
STANDBY LETTER OF CREDIT DEPARTMENT. CUSTOMER INQUIRY NUMBERS ARE
(212) 638-3473 AND (212) 638-1587.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS CREDIT IS SUBJECT
TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1993
REVISION, ICC PUBLICATION NO. 500.

P-343547- -001-L1-01-

SEP 10 '98 15:53

PAGE.006

16dv-000076



Chase Manhattan Private Bank, N.A.
305 Royal Palm Way
Palm Beach, FL 33480

Richard M. Ditzio
Vice President

October 17, 1997

Mr. Stewart B. Gold, CEO
Doctors Health, Inc.
10451 Mill Run Circle
10th Floor
Owings Mills, MD 21117

Dear Mr. Gold:

I am pleased to advise you that our affiliate, The Chase Manhattan Bank (the "Bank") is prepared to make available to you a line of credit (the "Line") up to a maximum amount of \$11,000,000, subject to the following terms and conditions:

Loan Amount: up to \$11,000,000

Borrower: Doctors Health, Inc.

Purpose: Refinance existing indebtedness, support the issuance of Letters of Credit, and provide for working capital

Pricing: LIBOR + .50% or Prime Rate

The "Prime Rate" is the rate announced from time to time at the Bank's head office as its prime commercial lending rate.

"LIBOR" shall mean the rate per annum (rounded upwards, if necessary, to the nearest 1/16%) quoted by the Bank at approximately 11:00 a.m. London time three business days prior to the first day of such loan for the offering by the bank to leading banks in the London Inter-bank market of U.S. dollar deposits having a term of one, two, three or six months and an amount comparable to the principal amount of such loan. Accrued interest on LIBOR loans shall be payable at the end of each calendar month and at the maturity of each loan. LIBOR loans are subject to usual protective provisions and prepayment premiums

Letters of Credit: Letters of Credit issued under this line of credit shall reduce availability under the line by the amount of each SBLC issued

Facility Fee Waived

Letter of Credit Fee Upon issuance and any subsequent renewal of any Standby Letter Of Credit, a fee equal to 1% of the face amount of the letter of credit shall be due and payable to the bank

TERMS AND CONDITIONS

PAYMENT TERMS:

1. The Applicant agrees to pay to you on demand in same day funds at your main office in United States currency:

(a) as to drafts or claims payable in United States currency drawn or made under the Credit, the amount paid thereon with interest from the date of such payment at a fluctuating rate per annum equal to 2% above the rate publicly announced by you from time to time in New York as your prime rate, which rate is not intended to be the lowest rate of interest charged by you to your borrowers, calculated on the basis of a 360 day year for the actual number of days elapsed;

(b) the equivalent of drafts or claims payable in currency other than United States currency drawn or made under the Credit consisting of (i) the amount paid on each draft or claim at your then applicable selling rate for cable transfers to the place where and in the currency in which such draft or claim is payable (if you have no such selling rate at such time, the Applicant shall pay you the actual cost to you of settlement of your obligation with respect to the draft or claim); and (ii) interest from the date of such payment at the rate and on the terms set forth in subsection 1 (a) hereof; and (iii) any and all other expenses or charges incurred by you in issuing or effecting payment under the Credit in such foreign currency; and

(c) such commission for the issuance of the Credit and such fees at such rate as you determine and any and all expenses, obligations, charges, and liabilities paid or incurred by you or any of your correspondents, or for which you or they may become liable, together with interest, from the date paid or incurred, at the rate and on the terms set forth in subsection 1 (a) above.

Such payments shall be made free and clear of and without deduction for any present or future foreign taxes, levies, imposts, deductions, charges, withholdings, and all liabilities with respect thereto.

2. You are hereby authorized to charge the Applicant's account(s) maintained with you for any and all amounts due to you hereunder.

EXTENSIONS, INCREASES, OR MODIFICATIONS OF THE CREDIT:

3. In the event of any increase, extension, or other modification of the terms of the Credit at the request or with the consent of any Applicant, the request shall be binding upon all Applicants and guarantors with regard to: (a) the Credit so increased, extended, or otherwise modified; (b) drafts or claims, required statements, and documents covered thereby; and (c) any action taken by you in accordance with such increase, extension, or other modification.

RESPONSIBILITIES AND LIABILITIES:

4. (a) Neither you nor any of your correspondents shall be responsible for, and the Applicant's obligation to

reimburse you shall not be affected by: (i) the form, validity, accuracy, sufficiency, legal effect, or genuineness of drafts, claims, documents, or required statements, even if such drafts, claims, documents, or statements should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; (ii) failure of any draft or claim to bear any reference or adequate reference to the Credit; (iii) omissions, interruptions, or delays in transmission or delivery of any message by mail or teletransmission; (iv) any act, error, default, omission, or failure in business of any correspondent or for any consequences arising from causes beyond your control; or (v) any payment against presentation of drafts, claims, documents, or required statements which do not strictly comply with the terms of the Credit provided such drafts, claims, documents, or required statements substantially comply with the terms of the Credit. You shall have sole discretion to decide whether to pay against drafts, claims, documents, or required statements which substantially comply with the terms of the Credit.

(b) You are authorized to accept an authenticated teletransmission claim from the beneficiary containing any required statement(s) in lieu of any required draft and any required signed statement(s). Unless the Credit expressly provides to the contrary, the Applicant agrees that you may pay or pay against, as complying with the terms of the Credit, any draft, claim, required statement, or other document otherwise in order or which substantially complies with the terms of the Credit, even if any draft, claim, required statement, or other document may be purportedly signed or issued by an administrator, trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, liquidator, receiver, successor, legal representative, or any other party succeeding *de facto* or *de jure* to the powers, rights, or privileges of the party who is authorized under the Credit to draw or issue any drafts, claims, required statements, or other documents.

(c) In case of any variation between the Applicant's instructions and the requirements of the Credit or between documents or required statements accepted by you or your correspondents and the requirements of the Credit for which you are otherwise responsible hereunder, the Applicant shall be conclusively deemed to have waived any right to object to such variation unless immediately upon any Applicant's receipt of a copy of the Credit or of such documents or required statements or notice of such variation the Applicant files written objection with you specifying each variation to which objection is made. No legal proceeding or action shall be brought by Applicant against you arising from any such variation unless (i) the Applicant shall have given the written notice as required in this subsection (c) and (ii) such legal proceeding or action shall be commenced in a court of competent jurisdiction sitting in the State of New York within one year after the date when such copy of the Credit or documents or required statements were delivered or mailed to the Applicant.

(d) Any action, inaction, or omission taken or suffered by you or by any of your correspondents under or



Chase Manhattan Private Bank, N.A.
105 Royal Palm Way
Palm Beach, FL 33480

Richard M. Ditzio
Vice President

October 17, 1997

Mr. Stewart B. Gold, CEO
Doctors Health, Inc.
10451 Mill Run Circle
10th Floor
Owings Mills, MD 21117

Dear Mr. Gold:

I am pleased to advise you that our affiliate, The Chase Manhattan Bank (the "Bank") is prepared to make available to you a line of credit (the "Line") up to a maximum amount of \$11,000,000, subject to the following terms and conditions.

Loan Amount: up to \$11,000,000

Borrower: Doctors Health, Inc.

Purpose: Refinance existing indebtedness, support the issuance of Letters of Credit, and provide for working capital

Pricing: LIBOR + .50% or Prime Rate

The "Prime Rate" is the rate announced from time to time at the Bank's head office as its prime commercial lending rate.

"LIBOR" shall mean the rate per annum (rounded upwards, if necessary, to the nearest 1/16%) quoted by the Bank at approximately 11:00 a.m. London time three business days prior to the first day of such loan for the offering by the bank to leading banks in the London inter-bank market of U.S. dollar deposits having a term of one, two, three or six months and an amount comparable to the principal amount of such loan. Accrued interest on LIBOR loans shall be payable at the end of each calendar month and at the maturity of each loan. LIBOR loans are subject to usual protective provisions and prepayment premiums.

Letters of Credit: Letters of Credit issued under this line of credit shall reduce availability under the line by the amount of each SBLC issued

Facility Fee Waived

Letter of Credit Fee Upon issuance and any subsequent renewal of any Standby Letter Of Credit, a fee equal to 1% of the face amount of the letter of credit shall be due and payable to the bank

Mr. Stewart S. Gold
Doctors Health, Inc.
October 17, 1997
Page Two

Collateral:

Cash, marketable securities and other collateral held in an Account ("the Account") with the Bank or its affiliates in an amount sufficient to cover the Loan Amount based upon the following maximum advance rates:

- 100% - Cash in the Account and certificates of deposit, market index investments, money market mutual funds managed by the Bank and other cash equivalents in the Account;
- 90% - Maximum against U.S. Government Securities and U.S. Municipal Bonds rated AAA by Standard and Poors or Aaa by Moody's.

The Bank shall have the right to modify the types of collateral and margin requirements at any time.

In the event that the value of the Eligible Collateral shall decline with the effect that the Loan Value defined below shall be less than the amount of the loan balance outstanding, the Bank, at its option: 1) will require the Borrower to provide additional Collateral acceptable to the Bank in its sole discretion, or to make a principal payment to the extent necessary to ensure that the outstandings are in compliance with the Maximum Advance Rate(s); or 2) may sell the collateral and apply the proceeds to the outstanding loans in an amount sufficient to ensure compliance with the Maximum Advance Rate(s). "Loan Value" shall mean the advance rate, as determined by the Bank from time to time. Collateral may be sold by the Bank without regard to the Borrower's basis or holding period.

Loan Term:

One Year

Principal Amortization:

None, this loan shall be interest only.

Conditions:

This loan will have no prepayment penalties (excepting LIBOR provisions, if any)

Events of Default shall include:

- Non-payment of Chase principal and/or interest when due.
- Material adverse change in Borrower's financial condition.
- Failure to deliver audited financial statements with footnotes and schedules and corporate tax returns with schedules on an annual basis.
- Bankruptcy or insolvency of Borrower
- Failure to deliver any other financial information that the Bank may reasonably request.

Mr. Stewart B. Gold
Doctors Health, Inc
October 17, 1997
Page Three

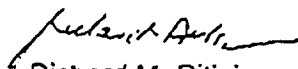
The foregoing is for your information only and does not constitute a commitment by the Bank. The line is extended at the Bank's sole discretion and is subject to the Borrowers' maintenance of a satisfactory relationship with, and a financial condition acceptable to, the Bank. This letter will be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws.

You hereby agree to reimburse Chase for the reasonable fees and expenses of its legal counsel arising in connection with Chase's preparation and delivery of this letter and the Facility Documents, preparation and recordation of any UCC filings, and any other expenses necessary for Chase to close this loan regardless of whether or not Facility Documents are executed.

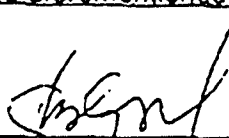
These facilities will be evidenced by documentation in form and substance satisfactory to the Bank.

Please indicate your acceptance of these terms and conditions by signing in the space provided below.

Very truly yours,


Richard M. Ditzio
Vice President

The aforementioned terms and conditions are acceptable:


Doctors Health System, Inc.

By Stewart B. Gold
Its CEO

10/31/97
Date

**GRID TIME PROMISSORY NOTE
(EURODOLLAR/PRIME RATE)**

\$11,000,000

October __, 1997

For value received, Doctors Health, Inc. (the "Borrower") hereby promises to pay to the order of The Chase Manhattan Bank (the "Bank") at its office at 1211 Avenue of the Americas, New York, New York 10036 for the account of the lending office of the Bank set forth on the signature page hereof (the "Lending Office"), the principal amount of Eleven Million Dollars (\$11,000,000.00) or, if less, the principal amount of each loan made by the Bank to the Borrower, on the maturity date of such Loan which shall be (i) one calendar month after the date of such Loan, in the case of a Eurodollar Loan, or (ii) the date recorded by the Bank on its books, in the case of a Prime Loan; each, a "Maturity Date". In no event shall any loan hereunder have a maturity date later than October 31, ~~1997~~, such date being the Final Maturity Date of this note. Excepting receipt by the Bank of notice from the Borrower indicating an alternate selection, the one month Eurodollar rate shall be utilized.

The Borrower promises to pay interest on the unpaid balance of the principal amount of each such Loan from and including the date of such Loan to such Maturity Date at either (i) a floating rate per annum equal to the Prime Rate (such Loan a "Prime Loan"); or (ii) a fixed rate per annum equal to the Adjusted Eurodollar Rate applicable to such Loan plus .50% (such Loan a "Eurodollar Loan"). Any principal not paid when due shall bear interest from and including the date due until paid in full at a rate per annum equal to the Default Rate. Interest shall be payable on the relevant Interest Payment Date. Interest shall be calculated on the basis of a year of 365 or 366 days (in the case of Prime Loans) and 360 days (in the case of Eurodollar Loans) for the actual number of days elapsed.

All payments hereunder shall be made in lawful money of the United States and in immediately available funds. Any extension of time for the payment of the principal of this Note resulting from the due date falling on a non-Banking Day shall be included in the computation of interest. The date, amount, type and Maturity Date of, and the interest rate with respect to, each Loan evidenced hereby and all payments of principal thereof shall be recorded by the Bank on its books and, prior to any transfer of this Note (or, at the discretion of the Bank, at any other time), endorsed by the Bank on Schedule A attached to this Note. The Bank may (but shall not be obligated to) debit the amount of any payment under this Note that is not made when due to any deposit account of the Borrower with the Bank.

The Borrower waives presentment, notice of dishonor, protest and any other notice or formality with respect to this Note.

1. **Definitions.** The terms listed below shall be defined as follows:

"Adjusted Eurodollar Rate" shall mean the Eurodollar Rate for such Loan divided by one minus the Reserve Requirement.

"Banking Day" shall mean any day on which commercial banks are not authorized or required to close in New York City and whenever such day relates to a Eurodollar Loan or notice with respect to any Eurodollar Loan, a day on which dealings in U.S. dollar deposits are also carried out in the London interbank market.

"Collateral Agreement" shall mean the Collateral Agreement (Direct) dated October __, 1997, executed by the Borrower in favor of the Bank.

"Default Rate" means, in respect of any amount not paid when due, a rate per annum during the period commencing on the due date until such amount is paid in full equal to: (a) if a Prime Loan, a floating rate of 2% above the rate of interest thereon (including any margin); (b) if such Loan is a Eurodollar Loan, a fixed rate of 2% above the rate of interest in effect thereon (including any margin) at the time of default until the Maturity Date thereof and, thereafter, a floating rate of 2% above the rate of interest for a Prime Loan (including any margin).

"Eurodollar Rate" shall mean the rate per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) quoted by the Bank at approximately 11:00 a.m. London time (or as soon thereafter as practicable) two Banking Days prior to the first day of such Loan for the offering by the Bank to leading banks in the London interbank market of U.S. dollar deposits having a term comparable to such Loan and in an amount comparable to the principal amount of such Loan.

"Facility Documents" shall mean this Note, the Collateral Agreement, the line of credit offer letter dated October 17, 1997 and any updates or renewals thereof, and any other documents, instruments, or agreements delivered in connection with this Note or the Collateral Agreement whether by the Borrower or a Third Party.

"Head Office" shall mean the head office of the Bank, currently located at 270 Park Avenue, New York, NY 10017

"Interest Payment Date" shall mean (i) for any Prime Loan hereunder, the last Banking Day of each calendar month; and (ii) for any Eurodollar Loan, the Maturity Date of such loan; and (iii) for any Prime Loan or Eurodollar Loan, on any payment of principal.

"Loan Value" shall mean the advance rate, as determined by the Bank from time to time, assigned to each type of collateral that the Bank accepts as eligible collateral.

"Prime Rate" shall mean that rate of interest from time to time announced by the Bank at the Head Office as its prime commercial lending rate.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System.

"Regulatory Change" shall mean any change after the date of this Note in United States federal, state or municipal laws or any foreign laws or regulations (including Regulation D) or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks, including the Bank, of or under any United States federal, state or municipal laws or any foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

"Reserve Requirement" shall mean, for any Eurodollar Loan, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during the term of such Loan under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding one billion U.S. dollars against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (x) any category of liabilities which includes deposits by reference to which the Eurodollar Rate is to be determined or (y) any category of extensions of credit or other assets which include Eurodollar Loans.

"Third Party" shall mean any party liable with respect to, or otherwise granting support for, this Note, whether by guaranty, subordination, grant of security or otherwise.

2. **Borrowings; and Prepayments.** The Borrower shall give the Bank notice of each borrowing by 12:00 noon New York City time three (3) days prior to each requested borrowing of a Eurodollar Loan and by 12:00 noon New York City time on the date of such borrowing of a Prime Loan; provided that no Eurodollar Loan shall be in a minimum amount equal to less than \$250,000.00. The Borrower shall have the right to make prepayments of principal at any time or from time to time; provided that: (a) the Borrower shall give the Bank notice of each prepayment by 12:00 noon New York City time two (2) days prior to prepayment of a Eurodollar Loan and by 12:00 noon New York City time on the date of prepayment of a Prime Loan; (b) Eurodollar Loans may be prepaid prior to their Maturity Date only if accompanied by payment of the additional compensation calculated in accordance with paragraph 5 below; (c) prepayments shall be applied to the installments of principal in the inverse order of their maturities; and (d) prepayments for Eurodollar Loans shall be in a minimum amount equal to the lesser of \$250,000 or the unpaid principal amount of such Loan.

3. **Additional Costs.** (a) If as a result of any Regulatory Change which (i) changes the basis of taxation of any amounts payable to the Bank under the Note (other than taxes imposed on the overall net income of the Bank or the Lending Office by the jurisdictions in which the Head Office of the Bank or the Lending Office are located) or (ii) imposes or modifies any reserve, special deposit, deposit insurance or assessments, minimum capital, capital ratios or similar requirements relating to any extension of credit or other assets of, or any deposits with or other liabilities of the Bank, or (iii) imposes any other condition affecting this Note, the Bank determines (which determination shall be conclusive) that the cost to it of making or maintaining a Eurodollar Loan is increased or any amount received or receivable by the Bank under this Note is reduced, then the Borrower will pay to the Bank on demand an additional amount that the Bank determines will compensate it for the increased cost or reduction in amount.

(b) Without limiting the effect of the foregoing provisions of this Section 3 (but without duplication), the Borrower shall pay to the Bank from time to time on request such amounts as the Bank may determine to be necessary to compensate the Bank for any costs which it determines are attributable to the maintenance by it or any of its affiliates pursuant to any law or regulation of any jurisdiction or any interpretation, directive or request (whether or not having the force of law and whether in effect on the date of this Note or thereafter) of any court or governmental or monetary authority of capital in respect of the Loans hereunder (such compensation to include, without limitation, an amount equal to any reduction in return on assets or equity of the Bank to a level below that which it could have achieved but for such law, regulation, interpretation, directive or request).

4. **Unavailability, Inadequacy or Illegality of Eurodollar Rate.** Anything herein to the contrary notwithstanding, if the Bank determines (which determination shall be conclusive) that:

(a) quotations of interest rates for the relevant deposits referred to in the definition of Eurodollar Rate are not being provided in the relevant amounts or for the relevant maturities for purposes of determining the rate of interest for the Loan; or

(b) the definition of Eurodollar Rate does not adequately cover the cost to the Bank of making or maintaining the Eurodollar Loan; or

(c) as a result of any Regulatory Change (or any change in the interpretation thereof) adopted after the date hereof, the Head Office of the Bank or the Lending Office is subject to any taxes, reserves, limitations, or other charges, requirements or restrictions on any claims of such office on non-United States residents (including, without limitation, claims on non-United States offices or affiliates of the Bank) or in respect of the excess above a specified level of such claims; or

(d) it is unlawful for the Bank or the Lending Office to maintain the Eurodollar Loan at the Eurodollar Rate;

THEN, the Bank shall give the Borrower prompt notice thereof, and so long as such condition remains in effect, the existing Eurodollar Loan shall bear interest as a Prime Loan until the Maturity Date of such Loan and the Bank shall make no Eurodollar Loans

5. **Certain Compensation.** If for any reason there is a principal payment of a Eurodollar Loan on a date other than its Maturity Date (whether by prepayment, acceleration or otherwise), the Borrower will pay to the Bank such amount or amounts as shall be sufficient (in the reasonable opinion of the Bank) to compensate the Bank for any loss, cost or expense which the Bank determines is attributable to such payment.

Without limiting the generality of the preceding paragraph, such compensation shall include an amount equal to the excess, if any of (i) the amount of interest which otherwise would have accrued on the principal amount so paid for the period from the date of such payment to the Maturity Date at a rate per annum equal to the sum of the then applicable Eurodollar Rate (plus any margin) over (ii) the interest component of the amount the Bank would have bid in the Eurodollar interbank market for deposits in U.S. dollars of leading banks in amounts comparable to such principal amount and with maturities comparable to such period (as reasonably determined by the Bank).

6. **Representations.** The Borrower represents and warrants that:

(a) none of the proceeds of the Loans shall be used to "purchase" or "carry" "margin stock" as defined by Regulation U of the Federal Reserve Board;

(b) it is duly organized, validly existing and good standing under the laws of the jurisdiction of its incorporation or organization, and has all requisite power and authority to execute, deliver and perform its obligations under the Facility Documents;

(c) the Facility Documents have been duly executed and delivered by the Borrower and constitute the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, except as enforcement hereof and thereof may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and subject to the applicability of general principles of equity;

(d) the execution, delivery and performance by the Borrower of the Facility Documents and all other documents contemplated hereby or thereby, do not and will not (i) conflict with or constitute a breach of, or default under, the articles of incorporation or bylaws, or other organizational documents, of the Borrower; or (ii) conflict with or constitute a breach of, or default under, or require any consent under, or result in the creation of any lien, charge or encumbrance upon the property or assets of the Borrower pursuant to any other agreement or instrument (other than the pledge of and security interest granted in the collateral) to which the Borrower is a party or is bound or by which its properties may be bound or affected; or (iii) violate any provision of any law, rule, regulation (including, without limitation, Regulation U of the Federal Reserve Board), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Borrower;

(e) no consent, approval or authorization of, or registration, declaration or filing with any governmental authority or other person or entity is required as a condition to or in connection with the due and valid execution, delivery and performance by Borrower of any Facility Document; and

(l) there are no actions, suits, investigations or proceedings pending or threatened at law, in equity, in arbitration or by or before any other authority involving or affecting: (i) the Borrower that, if adversely determined, are likely to have a material adverse effect on the prospects or condition of Borrower; (ii) any part of the collateral or any material part of the other assets or properties of Borrower; or (iii) any of the transactions contemplated in the Facility Documents. Borrower is not in default with respect to any judgment, writ, injunction, order, decree or consent of any court or other judicial authority, which default is likely to have or has had a material adverse effect on the prospects or condition of Borrower.

Each borrowing request by the Borrower under this Note shall constitute a representation and warranty that the statements above are true and correct both on the date of such request and on the date of the borrowing. Each borrowing request shall also constitute a representation that no event of default under this Note has occurred and is continuing or would result from such borrowing.

7. **Events of Default.** If any of the following events of default shall occur and be continuing:

(a) the Borrower shall fail to pay the principal of, or interest on, this Note, or any other amount payable under this Note, as and when due and payable;

(b) any representation or warranty made or deemed made by the Borrower in this Note or by the Borrower in any Facility Document to which it is a party, or in any certificate, document, opinion or financial or other statement furnished under or in connection with a Facility Document, shall prove to have been incorrect in any material respect on or after the date hereof;

(c) the Borrower shall fail to perform or observe any term, covenant or agreement contained in any Facility Document on its part to be performed or observed;

(d) the Borrower shall fail to pay when due any of its indebtedness (including, but not limited to, indebtedness for borrowed money) or any interest or premium thereon when due (whether by scheduled maturity, acceleration, demand or otherwise);

(e) the Borrower : (i) shall generally not, or be unable to, or shall admit in writing its inability to pay its debts as its debts become due; (ii) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for its or a substantial part of its assets; (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation; (iv) shall have had any such petition filed, or any such proceeding shall have been commenced against it, in which an adjudication is made or order for relief is entered or which remains undismissed for a period of 30 days; (v) shall have had a receiver, custodian or trustee appointed for all or a substantial part of its property; or (vi) takes any action effectuating, approving or consenting to any of the events described in clauses (i) through (v);

(f) the Borrower shall become insolvent, dissolve or for any reason cease to be in existence, or shall merge or consolidate;

(g) the Borrower is involved in a proceeding relating to, or which may result in, a forfeiture of part or all of the Borrower's or any general or limited partner's assets;

(h) there is, in the opinion of the Bank, a material adverse change in the business, prospects or financial condition of the Borrower;

(i) the sum of the Loans outstanding hereunder is at any time greater than the aggregate Loan Value of the collateral pledged to secure the Loans;

(j) while this Note is in effect, the Borrower fails to furnish audited annual financial statements of the Borrower including balance sheet, income statement and statement of cash flow to the Bank within 60 days after the end of the each fiscal year of the Borrower

(k) while this Note is in effect, the Borrower fails to furnish interim statements of the Borrower including balance sheet, income statement, and statement of cash flow, covering the previous fiscal quarter and year-to-date results to be furnished to the Bank within 30 days of each fiscal quarter any Facility Document granting a security interest at any time and for any reason shall cease to create a valid and perfected first priority security interest in and to the property purported to be subject to the Facility Document or ceases to be in full force and effect or is declared null and void, or the validity or enforceability of any Facility Document is contested by any party to the Facility Document, or such signatory to the Facility Document denies it has any further liability or obligation under the Facility Document;

(l) any Facility Document granting a security interest at any time and for any reason shall cease to create a valid and perfected first priority security interest in and to the property purported to be subject to the Facility Document or ceases to be in full force and effect or is declared null and void, or the validity or enforceability of any Facility Document is contested by any party to the Facility Document, or such signatory to the Facility Document denies it has any further liability or obligation under the Facility Document;

THEN, the Bank may, by notice to the Borrower, declare the unpaid principal amount of this Note, accrued interest thereon and all other amounts payable under this Note due and payable whereupon the same shall become and be forthwith due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower, provided that in the case of an event of default described in clause (e) above, the unpaid principal amount of this Note, accrued interest and other amounts payable under this Note shall be immediately due and payable.

8. **Expenses.** The Borrower agrees to reimburse the Bank on demand for all costs, expenses and charges (including, without limitation, fees and charges of external counsel and costs allocated by internal legal counsel) in connection with the preparation or modification of the Facility Documents, performance or enforcement of the Facility Documents, filing and recordation fees, or the defense or prosecution of any rights of the Bank pursuant to any Facility Documents.

9. **Jurisdiction.** The Borrower hereby irrevocably submits to the jurisdiction of any New York state or United States federal court sitting in New York City over any action or proceeding arising out of this Note, and the Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding may be held and determined in such New York state or federal court. The Borrower hereby further irrevocably consents to the service of process in any such action or proceeding in either of said courts by mailing thereof by the Bank by registered or certified mail, postage prepaid, to the Borrower at its address specified on the signature page hereof, or at the Borrower's most recent mailing address as set forth in the records of the Bank.

The Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit or proceeding in such state on the basis of an inconvenient forum. Nothing herein shall affect the right of the Bank to serve legal process in any other manner permitted by law or affect the right of the Bank to bring any action or proceeding against the Borrower or its property in the courts of any other jurisdiction.

10. Waiver of Jury Trial.

THE BORROWER AND THE BANK WAIVE ANY RIGHT TO JURY TRIAL.

11. Assignments; Participation. The Bank may at any time and from time to time sell, assign, transfer or otherwise dispose of all of any portion of this Note or of the Bank's interest herein. The Bank may furnish any information concerning the Borrower in the possession of the Bank from time to time to assignees (including prospective assignees). The Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Bank. Notwithstanding any other language in this Note, the Bank may at any time assign all or any portion of its rights under this Note to a Federal Reserve Bank as collateral in accordance with Regulation A of the Board of Governors of the Federal Reserve System and the applicable operating circular of such Federal Reserve Bank.

12. Miscellaneous. (a) The provisions of this Note are intended to be severable. If for any reason any provisions of this Note shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

(b) No amendment, modification, supplement or waiver of any provision of this Note nor consent to departure by the Borrower therefrom shall be effective unless the same shall be in writing and signed by the Borrower and the Bank, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

(d) As used herein, the term Borrower shall include all signatories hereto, if more than one. In such event, the obligations, representations and warranties of the Borrower hereunder shall be joint and several. This Note shall be binding on the Borrower and its successors and assigns and shall inure to the benefit of the Bank and its successors and assigns, except that the Borrower may not delegate any of its obligations hereunder without the prior written consent of the Bank.

(e) Anything herein to the contrary notwithstanding, the obligations of the Borrower under this Note shall be subject to the limitation that payments of interest shall not be required to the extent that receipt thereof would be contrary to provisions of law applicable to the Bank limiting rates of interest which may be charged or collected by the Bank.

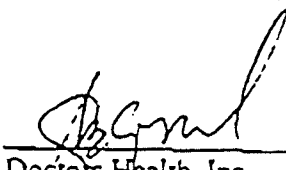
(f) Unless otherwise agreed in writing, notices shall be given to the Bank and the Borrower at their respective addresses set forth in the signature page of this Note, or such other address communicated in writing by either such party to the other. Notices to the Bank shall be effective upon receipt.

(g) The obligations of the Borrower under Sections 3, 5, 8, 9 and 10 hereof shall survive the repayment of the Loans.

13. **Governing Law.** This Note shall be governed by and construed in accordance with the laws of the State of New York, provided that such choice of law is not intended to limit the maximum rate of interest which may be charged or collected by the Bank hereunder if the Bank may, under the laws applicable to it, charge or collect interest at a higher rate than is permissible under the laws of said state.

Lending Office for the Loans:
The Chase Manhattan Bank
One Chase Manhattan Plaza
New York, New York 10081

Address for notices to the Bank:
The Chase Manhattan Bank
1211 Avenue of the Americas
New York, New York 10036
Attn: John Ferrante


Doctors Health, Inc.

By:

Stewart B. Gold

Its

CEO

Address for notices:
10451 Mill Run Circle
10th Floor
Owings Mills, Maryland 21117

COLLATERAL AGREEMENT

In consideration of one or more loans, letters of credit or other financial accommodations extended by THE CHASE MANHATTAN BANK or any of its subsidiaries or affiliates (the "Bank"), the undersigned and the Bank agree as follows:

1. Definitions.

"Collateral" means each of the following as identified in Exhibit A, and includes all additions, proceeds, renewals, investments and reinvestments, substitutions and any sums of money standing to the credit of any account opened or maintained by any clearing system for the undersigned and under the direction or control of the Bank, whether or not listed on Exhibit A: (a) the deposits of the undersigned with the Bank (whether or not held in trust, or in any custody, subcustody, safekeeping, investment management accounts, or other accounts of the undersigned with the Bank) (the "Deposits"); (b) the stocks, bonds and other instruments and securities (whether or not held in trust or in any custody, subcustody, safekeeping, investment management accounts or other accounts of the undersigned with the Bank or any other custodian or trustee or clearing system) (the "Securities"); (c) all Deposits, Securities and any other assets held in trust, or in any custody, subcustody, safekeeping, investment management accounts, or other accounts of the undersigned with the Bank or any other custodian or trustee or clearing system (the "Account Assets"); and as to all of the foregoing, all certificates, receipts and other instruments evidencing the Deposits, Securities and Account Assets. "Clearing system" includes Cedel Bank, societe anoyne, the Euroclear System, the Depository Trust Company ("DTC") and such other clearing or safekeeping system that may from time to time be used in connection with transactions relating to or the custody of any Securities, and any depository for any of the foregoing.

"Liabilities" means indebtedness, obligations and liabilities of any kind of the undersigned to the Bank, now or in the future, absolute or contingent, direct or indirect, joint or several, due or not due, arising by operation of law or otherwise, and costs and expenses incurred by the Bank in connection with the Collateral, this Agreement or any Liability Document.

"Liability Document" means any instrument, agreement or document evidencing or delivered in connection with the Liabilities.

2. Grant of Security Interest.

As security for the payment of all the Liabilities, the undersigned pledges, transfers and assigns to the Bank and grants to the Bank a security interest in and right of setoff against, the Collateral.

3. Agreements of the Undersigned and Rights of the Bank.

The undersigned agrees as follows and irrevocably authorizes the Bank to exercise the rights listed below, at its option, for its own benefit, either in its own name or in the name of the undersigned, and appoints the Bank as its attorney-in-fact to take all action permitted under this Agreement.

(a) **Deposits:** The Bank may: (i) renew the Deposits on terms and for periods the Bank deems appropriate; (ii) demand, collect, and receive payment of any monies or proceeds due or to become due under the Deposits; (iii) execute any instruments required for the withdrawal or repayment of the Deposits; (iv) in all respects deal with the Deposits as the owner, provided that, as to (ii) through (iv), until the occurrence of a Default, the Bank will only take that action if, in its judgment, failure to take that action would impair its rights under this Agreement.

(b) **Securities:** The Bank may: (i) transfer to the account of the Bank any Securities whether in the possession of, or registered in the name of, the DTC or other clearing system or held otherwise; (ii) transfer to the account of the Bank with any Federal Reserve Bank any Securities held in book entry form with any such Federal Reserve Bank; and (iii) transfer to the name of the Bank or its nominee any Securities registered in the name of the undersigned and held by the Bank and complete and deliver any necessary stock powers or other transfer instruments; provided that until the occurrence of a Default, the Bank will only take that action if, in its judgment, failure to take that action would impair its rights under this Agreement.

The undersigned grants to the Bank an irrevocable proxy to vote any and all Securities and give consents, waivers and ratifications in connection with those Securities, provided that until the occurrence of a Default the Bank will only take that action if, in its judgment, failure to take that action would impair its rights under this Agreement.

All payments, distributions and dividends in securities, property or cash shall be paid directly to and, at the discretion of the Bank, retained by the Bank and held by it, until applied as provided in this Agreement, as additional Collateral; provided that until the occurrence of a Default, interest on Deposits and cash dividends on Securities paid in the ordinary course will be paid to the undersigned.

(c) **General:** The Bank may, in its name, or in the name of the undersigned: (i) execute and file financing statements under the Uniform Commercial Code (the "UCC"), or any other filings necessary or desirable to create, perfect or preserve its security interest, all without notice (except as required by applicable law and not waivable) and without liability except to account for property actually received by it; (ii) demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable with respect to, any item of the Collateral (but shall be under no obligation to do so); (iii) in its sole discretion, modify the terms of any Liability or release any item of the Collateral, without incurring responsibility to, or affecting any liability of, the undersigned; and (iv) make any notification (to the issuer of any certificate or Security, or otherwise) or take any other action in connection with the perfection or preservation of its security interest or any enforcement of remedies, and retain any documents evidencing the title of the undersigned to any item of the Collateral.

The undersigned agrees that it will not sell, assign, or otherwise dispose of, grant any option with respect to, or pledge, or otherwise encumber the Collateral, or file or permit to be filed any financing or like statement with respect to the Collateral in which the Bank is not named as the sole secured party. At the request of the Bank the undersigned agrees to do all other things which the Bank may deem necessary or advisable in order to perfect and preserve the security interest and to give effect to the rights granted to the Bank under this Agreement or enable the Bank to comply with any applicable laws or regulations. Notwithstanding the foregoing, the Bank does not assume any duty with respect to the Collateral and is not be required to take any action to collect, preserve or protect its or the undersigned's rights in any item of the Collateral. The undersigned releases the Bank and agrees to hold the Bank harmless from any claims, causes of action and demands at any time arising with respect to this Agreement, the use or disposition of any item of the Collateral or any action taken or omitted to be taken by the Bank with respect thereto.

The rights granted to the Bank pursuant to this Agreement are in addition to the rights granted to the Bank in any custody, investment management, trust or similar agreement. In case of conflict between the provisions of this Agreement and of any other such agreement, the provisions of this Agreement will prevail.

Unless the context otherwise requires, all terms used in this Agreement which are defined in the UCC will have the meanings stated in the UCC.

1. **Loan Value of the Collateral.**

The undersigned agrees that at all times the amount of the Liabilities may not exceed the aggregate Loan Value of the Collateral. The undersigned will, at the Bank's option, either supplement the Collateral or make any payment under the Liabilities to the extent necessary to ensure compliance with this provision or the Bank may liquidate Collateral to the extent necessary to ensure compliance with this provision. "Loan Value" means the value assigned by the Bank from time to time, in its sole reasonable discretion, to each item of the Collateral.

5. **Currency Conversion.**

For calculation purposes, any currency in which the Collateral is denominated (the "Collateral Currency") will be converted into the currency of the Liabilities (the "Liability Currency") at the spot rate of exchange for the purchase of the Liability Currency with the Collateral Currency quoted by the Bank at such place as the Bank deems appropriate (or, if no such rate is quoted on any relevant date, estimated by the Bank on the basis of the Bank's last quoted spot rate) or another prevailing rate that the Bank deems more appropriate.

6. **Representations and Warranties.**

The undersigned represents and warrants: (a) the undersigned is the sole owner of the Collateral; (b) the Collateral is free of all encumbrances except for the security interest in favor of the Bank created by this Agreement; (c) no authorizations, consents or approvals and no notice to or filing with any governmental authority or regulatory body is required for the execution and delivery of this Agreement or the exercise by the Bank of its rights and remedies; (d) the execution, delivery and performance of this Agreement will not violate any provisions of applicable law, regulation or order and will not result in the breach of, or constitute a default, or require any consent, under any agreement, instrument or document to which the undersigned is a party or by which it or any of its property may be bound or affected; (e) as to Deposits and Account Assets, the undersigned has not withdrawn, canceled, been repaid or redeemed all or any part of any Deposits or Account Assets and there is no such pending application; (f) as to Securities, the Securities have been duly authorized and are fully paid and non-assessable and none of the Securities constitutes "restricted securities" and the undersigned is not an "affiliate" in connection with any of the Securities, as such terms are defined in Rule 144 of the Securities Act of 1933 as amended; and the undersigned understands that Securities held in or by any clearing system may be held on a fungible basis and acknowledges the fungibility regimes pertaining to the Cedel system and the Euroclear system; (g) if the undersigned is a corporation, partnership or limited liability company, it is duly organized and validly existing under the laws of the jurisdiction of its organization, it has full power and authority to execute, deliver and perform this Agreement, the execution, delivery and performance have been duly authorized, will not conflict with any provisions of its governing instruments and the Agreement is a legal, valid and binding obligation of the undersigned, enforceable against it in accordance with its terms.

7. **Default.** Each of the following is a default ("Default"):

(i) the undersigned or other person liable on or for any of the Liabilities ("Liability Party") fails to perform or observe any term, covenant, or condition under this Agreement or under any Liability Document; (ii) any sum payable on any of the Liabilities is not paid when due; (iii) any indebtedness of the undersigned or of any Liability Party becomes due and payable by acceleration of its maturity; (iv) any representation and warranty of the undersigned or any Liability Party in this Agreement or in any Liability Document is false or misleading at any time; (v) the undersigned or any Liability Party (if a natural person) dies; (vi) the undersigned or any Liability Party: (a) is generally not, or is unable to, or admits in writing its inability to, pay its debts as its debts become due; (b) makes an assignment for the benefit of creditors, or petitions or applies to any tribunal for the appointment of a custodian, receiver or trustee for its or a substantial part of its assets; (c) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation; (d) has any such petition filed, or any such proceeding has been commenced against it, in which an adjudication is made or order for relief is entered or which remains undismissed for a period of 30 days; (e) has a receiver, custodian or trustee appointed for all or a substantial part of its property; or (f) takes any action effectuating, approving or consenting to any of the events described in this section (vi); (vii) the undersigned or any Liability Party is involved in a proceeding relating to, or which may result in, a forfeiture of part or all of the undersigned's or any Liability Party's assets; (viii) the undersigned or any Liability Party (if a corporation, partnership or limited liability company) shall dissolve, or for any reason cease to be in existence or merge or consolidate; or if the undersigned or any Liability Party is a partnership, any general partner shall die, dissolve or for any reason cease to be in existence or cease to be a partner then, unless and to the extent that the Bank otherwise elects, the Bank will be entitled to exercise any of the rights and remedies under this Agreement

8 Remedies.

On a Default, the Bank will have the rights and remedies under the UCC and the other rights granted to the Bank under this Agreement and may exercise its rights without regard to any premium or penalty from liquidation of any Collateral and without regard to the undersigned's basis or holding period for any Collateral.

The Bank may sell in the Borough of Manhattan, New York City, or elsewhere, in one or more sales or parcels, at the price as the Bank deems best, for cash or on credit or for other property, for immediate or future delivery, any item of the Collateral, at any broker's board or at public or private sale, in any reasonable manner permissible under the UCC (except that, to the extent permissible under the UCC, the undersigned waives any requirements of the UCC) and the Bank or anyone else may be the purchaser of the Collateral and hold it free from any claim or right including, without limitation, any equity of redemption of the undersigned, which right the undersigned expressly waives.

The Bank may also, in its sole discretion: (i) convert any part of the Collateral Currency into the Liability Currency; (ii) hold any monies or proceeds representing the Collateral in a cash collateral account in the Liability Currency or other currency that the Bank reasonably selects; (iii) invest such monies or proceeds on behalf of the undersigned; and (iv) apply any portion of the Collateral, first, to all costs and expenses of the Bank, second, to the payment of interest on the Liabilities and any fees or commissions to which the Bank may be entitled, third, to the payment of principal of the Liabilities, whether or not then due, and fourth, to the undersigned.

The undersigned will pay to the Bank all expenses (including reasonable attorneys' fees and legal expenses incurred by the Bank and the allocated costs of its in-house counsel) in connection with the exercise of any of the Bank's rights or obligations under this Agreement or the Liability Documents. The undersigned will take any action requested by the Bank to allow it to sell or dispose of the Collateral. Notwithstanding that the Bank may continue to hold Collateral and regardless of the value of the Collateral, the undersigned will remain liable for the payment in full of any unpaid balance of the Liabilities.

9. Jurisdiction.

The undersigned consents to the non-exclusive jurisdiction of the State and Federal courts sitting in the City of New York and agrees that suit may be brought against the undersigned in those courts or in any other jurisdiction where the undersigned or any of its assets may be found, and the undersigned irrevocably submits to the jurisdiction of those courts. The undersigned consents to the service of process by mailing copies of process to the undersigned at its most recent mailing address in the records of the Bank. The undersigned further agrees that any action or proceeding brought against the Bank may be brought only in a New York State or United States Federal court sitting in New York County.

10. Notices.

Unless otherwise agreed in writing, notices may be given to the Bank and the undersigned by ordinary mail addressed to the Bank or the undersigned at their addresses on the signature page of this Agreement, or any other address communicated in writing by either party to the other. Notices to the Bank are effective on receipt.

11. Miscellaneous.

(a) The Bank may assign any of the Liabilities or Collateral and will be fully discharged from all responsibility as to the assigned Collateral. That assignee will have all the powers and rights of the Bank hereunder, but only as to the assigned Collateral.

(b) No amendment or waiver of any provision of this Agreement nor consent to any departure by the undersigned will be effective unless it is in writing and signed by the undersigned and the Bank and will be effective only in that specific instance and for that specific purpose. No failure on the part of the Bank to exercise, and no delay in exercising, any right will operate as a waiver or preclude any other or further exercise or the exercise of any other right.

(c) The rights and remedies in this Agreement are cumulative and not exclusive of any rights and remedies which the Bank may have under law or under other agreements or arrangements with the undersigned or any Liability Party.

(d) The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement is not valid or enforceable in whole or in part in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability without in any manner affecting the validity or enforceability in any other jurisdiction or the remaining provisions of this Agreement.

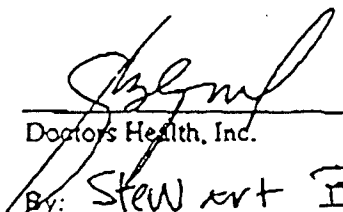
(e) The term "undersigned" will include all signatories, if more than one, and the terms, covenants and conditions and the representations and warranties will be joint and several. The term "undersigned" will also include the heirs, executors, administrators, assigns and successors of the undersigned.

(f) The undersigned hereby waives presentment, notice of dishonor and protest of all instruments included in or evidencing the Liabilities or the Collateral and any other notices and demands, whether or not relating to those instruments.

(g) Unless otherwise agreed, Liabilities will be repayable at the principal office of the Bank at One Chase Manhattan Plaza, New York, New York 10081, on demand and will bear interest at the rate announced by the Bank from time to time at its principal office as its prime commercial lending rate.

(h) This Agreement is governed by and construed according to the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned has signed this Agreement this ____ day of _____, ____.


Doctors Health, Inc.

By: STEWART B GOLD

Its CEO

Address for notices:

10451 Mill Run Circle
10th Floor
Owings Mills, Maryland 21117

ACCEPTED:

The Chase Manhattan Bank

Address for notices to the Bank:

The Chase Manhattan Bank
1211 Avenue of the Americas
New York, New York 10036

By: _____

Title: _____

EXHIBIT A

DESCRIPTION OF THE COLLATERAL

1. Deposits

<u>Type of Deposit</u> (CD, TD, etc.)	<u>Location</u> (NY, IBF-NY, etc.)	<u>Contract or Certificate No.</u>	<u>Issue or Opening Date</u>	<u>Maturity Date</u>	<u>Principal Amount</u>
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2. Stocks, Bonds and Other Instruments and Securities

<u>Nature of Security or Obligation</u>	<u>Name of Issuer</u>	<u>Number of Units</u>	<u>Face Amount (if Applicable)</u>	<u>Certificate Number</u>
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3. All Assets Held or To Be Held in the Following Custody or Subcustody Accounts, Safekeeping Accounts and/or Investment Management Accounts:

<u>Type of Account</u>	<u>Account Number</u>	<u>Location</u>
Cash Management	5981870	Chase Manhattan (NY)

in connection with the Credit or any relative drafts, claims, documents, or property, if in good faith and in conformity with foreign or U.S. laws, regulations, or customs applicable thereto, shall be binding upon the Applicant, shall not affect the Applicant's obligation hereunder to reimburse you, and shall not place you or any of your correspondents under any resulting liability to the Applicant.

(e) You and your correspondents may act in reliance upon any oral, written, or teletransmitted request or notice believed by you in good faith to have been authorized by the Applicant, whether or not given or signed by an authorized person.

(f) In no event shall you be liable for any indirect, special or consequential damages, even if you are advised of the possibility thereof in advance.

INCREASED COSTS:

5. If any change in any law or regulation or in the interpretation or application thereof by any court or administrative or governmental authority charged with the administration thereof shall either (a) impose, modify, or make applicable any reserve, special deposit, assessment, insurance premium, or similar requirement in connection with letters of credit issued by you or (b) impose on you any other condition regarding the Application or the Credit, and the result of any event referred to in subsection (a) or (b) above shall be to increase the cost to you of issuing or maintaining the Credit (which increase in cost shall be the result of your reasonable allocation of the aggregate of such cost increases resulting from such events), then, upon demand by you, the Applicant shall immediately pay to you, from time to time as specified by you, additional amounts which shall be sufficient to compensate you for such increased cost, together with interest on each such amount from the date demanded until payment in full thereof at the rate and on the terms set forth in subsection 1(a) above. A certificate as to such increased cost incurred by you as a result of any event mentioned in subsection (a) or (b) above, submitted by you to the Applicant, shall be conclusive, absent manifest error, as to the amount thereof.

COLLATERAL:

6. As collateral security for the payment of any obligation or liability of the Applicant to you arising under or in connection with the Credit or this Application ("Obligations"), the Applicant hereby grants you a security interest in and you are hereby given a continuing lien for the amount of the Obligations upon any property of the Applicant in your actual or constructive possession or control.

EFFECT OF RELEASES, EXTENSIONS, MODIFICATIONS, OR RENEWALS:

7. The Applicant consents that, without notice to or further assent by the Applicant, the liability of any Applicant for or upon any Obligation may from time to time, in whole or in part, be renewed, extended, modified, released, or settled by you without affecting or releasing in any way the liability of any other Applicant.

EVENTS OF DEFAULT OR FAILURE OF PERFORMANCE:

8. If any Applicant defaults in the punctual payment of any sum payable upon Obligations or fails to perform any agreement entered into with you or another, or upon the happening with respect to any Applicant or guarantor of the Obligations of any of the following: the commencement of any voluntary or involuntary proceedings for reorganization, dissolution, or liquidation; suspension or liquidation of its/ their usual business; insolvency; application for, or appointment of, a conservator, rehabilitator, or receiver of any of them or their property in any jurisdiction; death, termination of existence; offering a composition or extension to creditors; assignment for the benefit of creditors; the making or sending notice of an intended bulk transfer; the making of any misrepresentation to you for the purpose of obtaining credit; or, in your opinion, impairment of financial responsibility of any of them; then, in any of those events, all the Obligations, although contingent and not mature, shall, without notice or demand, be immediately due and payable.

CHANGE IN OWNERSHIP/CONTROL OR FUNDAMENTAL CHANGE:

9. If either (a) a person or entity or combination of persons or entities acting in unison purchases a majority of the voting shares of the Applicant (or of any guarantor or other provider of credit support for the Obligations) or any direct or indirect parent of Applicant (or any such guarantor or other provider of credit support) or otherwise acquires direct or indirect control of the Applicant (or any such guarantor or other provider of credit support) or the ability to direct the operation of the Applicant (or any such guarantor or other provider of credit support) or (b) a Fundamental Change (as hereinafter defined) occurs, the Applicant shall on demand deposit with you, and pledge to you and grant to you a security interest in, an amount deemed sufficient by you, in your discretion, to secure the Obligations. The Applicant (i) shall execute all such documentation which you request to evidence, perfect, and maintain such deposit, pledge, and security interest and (ii) irrevocably authorizes you to act as the Applicant's agent and attorney-in-fact to execute such documentation in the Applicant's name, with or without designation of your authority, and acknowledges that the Applicant shall be obligated in respect of such documentation as if executed by one of its authorized signatories. "Fundamental Change" means the sale or transfer of, or the creation or incurrence of a lien over all or substantially all of the business assets of the Applicant or its subsidiaries (or of any guarantor or other provider of credit support for the Obligations), in one transaction or series of transactions, or the occurrence of any transaction or event (in the nature of a special dividend, share repurchase program or recapitalization or an exchange of equity for debt or other similar transaction or event), as a result of which there is a reduction in the consolidated shareholder's equity (or partnership capital, net worth or similar equivalent term) of the Applicant (or any such guarantor or other provider of credit support), in the manner determined on the date hereof of 5% or more.

NOTICES AND WAIVERS:

10. (a) Any notice to you shall be deemed effective only if in writing sent to and received at your branch, division, or department conducting the transaction or transactions hereunder. If this Application or any amendments or notices with respect thereto or with respect to the Credit is received by you by means of a facsimile transmission, the Applicant hereby authorizes you to accept and to act in reliance upon such Application, amendment or notice and the Applicant shall be bound by the terms of such Application, amendment or notice as if it were the original executed version thereof. The transmission of the Application, any amendments, thereto and any notice with respect to the Credit by facsimile transmission will be entirely at the risk of the Applicant and you shall not be liable for any mistake or omission in such transmission nor for the fact that such transmission was unauthorized or fraudulent. Any notice to or demand on any Applicant shall be binding on all Applicants and shall be deemed effective when made to the person whose name appears first above by mail, teletransmission, telephone or otherwise to the last address or telephone number of such person appearing on your records. No waiver hereunder shall be valid unless in writing, signed by you, and then only to the extent set forth therein. None of the terms or conditions set forth in this Application may be changed orally and no executory agreement unless in writing and signed by you, and no course of dealing between the Applicant and you, shall be effective to change, modify, or discharge in whole or in part this Application.

(b) You and the Applicant in any litigation in which you and any Applicant shall be adverse parties hereby waive trial by jury and the Applicant, in addition, waives the right to interpose any claim, setoff, or counterclaim, of any nature or description, however denominated, and any defense based upon any Statute of Limitations, laches, waiver, estoppel, or setoff, however denominated.

ENFORCEMENT OF RIGHTS AND CLAIMS:

11. (a) The Applicant will bear and pay all expenses of every kind for the enforcement, protection, or defense of any of your rights mentioned herein or of any claim or demand by you against any Applicant, including reasonable attorney's fees.

(b) In the event any Applicant or any guarantor of Obligations acts in any way, including but not limited to seeking an injunction or temporary restraining order, to prevent or delay payment by you of a draft or claim, the Applicant (i) shall on demand deposit with you, and pledge to you and grant to you a security interest in, an amount deemed sufficient by you, in your discretion, to secure the Obligations, shall execute all such documentation which you request to evidence, perfect, and maintain such deposit, pledge, and security interest, irrevocably authorizes you to act as the Applicant's agent and attorney-in-fact to execute such documentation in the Applicant's name, with or without designation of your authority, and acknowledges that the Applicant shall be obligated in respect of such documentation as if executed by one of its authorized signatories; (ii) agrees to bear and pay all expenses on every kind incurred by you, including reasonable attorney's fees, in connection with said action to prevent or delay payment by you of a draft or claim, (iii) consents to your exclusive determination to pay or

compromise any claim or obligations of any nature or description relating to the Credit including, without limitation, for costs, attorney's fees, fines, interest, damages, or any other charge, expense, or liability; and (iv) agrees to indemnify you and to reimburse you on demand for the amount of such payments or compromises together with interest at the rate and on the terms set forth in subsection 1 (a) above.

(c) The Applicant submits, in any legal proceeding related to this agreement, the Application, or the Credit, to the non-exclusive in personam jurisdiction of any court of competent jurisdiction sitting in the State of New York and agrees to suit being brought in any such court, waives any objection that it may now or hereafter have to the venue of such proceeding in any such court or that such proceeding was brought in an inconvenient court; agrees that service of process in any such legal proceeding may be made, and shall be conclusively deemed sufficient and adequate, by mailing of copies thereof (by registered or certified mail, if practicable) postage prepaid, or by teletransmission, to the Applicant at its address set forth herein or such other address of which you shall have been notified in writing, in which event, service shall be deemed complete, upon the filing with the court of a copy of the process mailed or sent and an affidavit attesting to the mailing or sending; agrees that nothing herein shall affect your right to effect service of process in any other manner permitted by law; and agrees to commence and maintain any such proceeding in any such court.

CONSTRUCTION:

12. If the Application is signed by more than one Applicant, the term "Applicant" shall be read throughout as "Applicants" as the case may be. If signed by more than one Applicant, this Application shall be the joint and several agreement of all such Applicants. This Application shall, in addition, be binding upon the Applicant and its respective representatives, successors, and assigns. The term "you", as used throughout this Application, shall be deemed to include THE CHASE MANHATTAN BANK and its branches and departments, any individual, partnership, or corporation acting as nominee or agent for THE CHASE MANHATTAN BANK, any subsidiary of THE CHASE MANHATTAN BANK and any company which is owned or controlled directly or indirectly by THE CHASE MANHATTAN CORPORATION. The term "Application" shall be deemed to include the first page hereof and all terms and conditions set forth herein.

GOVERNING LAW:

13. This Application shall be governed by and construed in accordance with laws of the State of New York.

14. Any provision hereof which may prove unenforceable under any law shall not affect the validity of any other provision hereof.

15. THE CREDIT SHALL BE SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500 AND ANY AMENDMENTS OR REVISIONS THEREOF, provided, however, that notwithstanding Article 41 thereof, if drawings within given periods are stipulated in the Credit and any installment is not drawn within the period allowed for that installment, the Credit will not cease to be available for any subsequent installment.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

----- X

DOCTORS HEALTH, INC.

Plaintiff,

- against -

**CHASE MANHATTAN BANK, AND NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.**

Defendants.

Index No. 98\604436

**AFFIDAVIT OF
ANTHONY A. CAPASSO**

----- X

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ANTHONY A. CAPASSO, being first duly sworn, deposes and says:

1. I am a Vice President of defendant The Chase Manhattan Bank ("Chase"), and I make this affidavit in response to plaintiff's motion for a preliminary injunction. I have worked in the Letter of Credit Department of Chase for approximately 25 years. I am familiar with Chase's policies regarding letters of credit and the specific letter of credit at issue, P-343547 (the "Letter of Credit" or "Credit"). Unless otherwise indicated, this affidavit is based upon my personal knowledge and my examination of documents maintained by Chase in the ordinary course of its business.

2. This action was commenced by plaintiff Doctors Health, Inc. ("DHI") by service of a summons and complaint and an order to show cause dated September 11, 1998. The order to show cause contains a temporary restraining order preventing Chase from making any payments

under the Letter of Credit to defendant NYLCARE Health Plans of the Mid-Atlantic, Inc. ("NYLCARE"). Chase has and will abide by the Court's order concerning the disposition of the Credit.

3. The Letter of Credit was issued by Chase on October 29, 1997 on behalf of DHI and in favor of NYLCARE in the amount of \$4,000,000 and later increased by amendment to \$5,250,000. A copy of the Letter of Credit and its subsequent amendment are attached as Exhibit A.

4. According to the Complaint, DHI opened the Credit with Chase to serve as security for the payment of claims of health providers. Complaint, ¶ 12. The Credit permits NYLCARE to draw if, among other things, it submits the following statement purportedly signed by one of its officers:

"The amount of this drawing under the Chase Manhattan Bank letter of credit number P-343547, represents funds due us as (1) Doctors Health, Inc. owes NYLCARE the sum of pursuant to section 3.4.4 of Medicare Network Management Agreement dated as of October 1, 1997, (2) such amount has been invoiced to Doctors Health, (3) Doctors Health is in receipt of such invoice for at least 60 days and (4) there are no defenses or offsets to payment which have been raised by Doctors Health and of which NYLCARE is aware."

5. On September 8, 1998, Chase's Standby Letter of Credit Department received a letter dated September 4, 1998 from Nannette G. Henderson, the Executive Vice President and Chief Financial Officer of NYLCARE, seeking to draw on the Letter of Credit in the amount of \$2,615,208.69. A copy of the letter is attached as Exhibit B.

6. That same day, Chase informed NYLCARE of discrepancies in its presentation. The following day, September 9, 1998, Chase received NYLCARE's revised presentation.

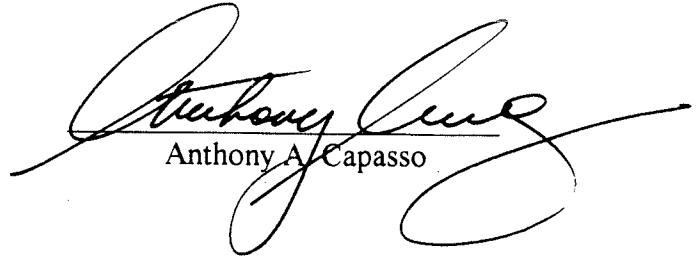
Copies of the documents presented by NYLCARE and received by Chase on September 9, 1998 are attached as Exhibit C.

7. Upon information and belief, later that day, DHI was advised by its relationship manager at Chase, Richard Ditizio ("Ditizio"), of the fact that a drawing had been received under the Letter of Credit. DHI's immediate response was that the drawing constituted a fraud and that any statement submitted by NYLCARE to the effect that "there are no defenses or offsets to payment which have been raised by Doctors Health and of which NYLCARE is aware" would be a knowingly false statement by NYLCARE.

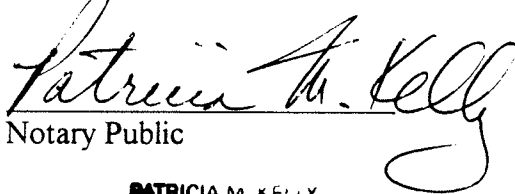
8. On September 10, 1998, John R. Dywer, Jr., the Chief Financial Officer of DHI, faxed a letter to Ditizio outlining the basis for DHI's claim of fraud along with other documents and correspondence which he claim evidenced that "NYLCARE has acknowledged that we have disputed over \$6,000,000 in claims, and we have informed NYLCARE that over and above the disputed amounts, offsets exist of at least \$2,300,000." A copy of the Dywer letter and its enclosures is attached as Exhibit D.

9. The following day, September 11, 1998, I was informed by the Bank's counsel, Andrew N. Keen, that he had received notification from counsel for DHI that this Court signed an order restraining Chase from making any payments to NYLCARE under the Credit.

10. Chase will, of course, abide by any further order of this Court with respect to the disposition of NYLCARE's drawing under the Credit.


Anthony A. Capasso

Sworn to before me
September 14, 1998


Notary Public

PATRICIA M. KELLY
Notary Public State of New York
No. 02KE5064182
Qualified in Nassau County
Commission Filed in New York County
Commission Expires August 12, 2000

L C NO: L C TEXT AND AMENDMENTS INQUIRY
P-343547

09/10/98 12:05

***** DIRECT *****

NYLCARE HEALTH PLANS OF THE
MID-ATLANTIC, INC. 7601 ORA GLEN
DRIVE, GREENBELT, MARYLAND 20770
ATT:JEFF EMERSON, PRESIDENT & CEO

APPLICANT:
DOCTOR'S HEALTH, INC.
10451 MILL RUN CIRCLE, 10TH FLOOR
OWINGS MILLS, MD. 21117

AMOUNT: USD 4,400,000.00
(FOUR MILLION FOUR HUNDRED
THOUSAND AND 00/100 UNITED
STATES DOLLARS)

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.
P-343547 IN YOUR FAVOR FOR AN AGGREGATE AMOUNT NOT TO EXCEED THE
AMOUNT INDICATED ABOVE, EXPIRING AT OUR COUNTERS IN NEW YORK WITH OUR
CLOSE OF BUSINESS ON OCTOBER 31, 1998.

THIS LETTER OF CREDIT IS AVAILABLE WITH THE CHASE MANHATTAN BANK, NEW
YORK AGAINST PRESENTATION OF YOUR DRAFT AT SIGHT DRAWN ON THE CHASE
MANHATTAN BANK, NEW YORK WHEN ACCOMPANIED BY THE DOCUMENTS INDICATED
HEREIN.

MORE Y

FCN LCTEXT

ID _____

L C NO: L C TEXT AND AMENDMENTS INQUIRY
P-343547

09/10/98 12:05

BENEFICIARY'S DATED STATEMENT PURPORTEDLY SIGNED BY ONE OF ITS OFFICERS READING: "THE AMOUNT OF THIS DRAWING UNDER THE CHASE MANHATTAN BANK LETTER OF CREDIT NUMBER P-343547 REPRESENTS FUNDS DUE US AS (1) DOCTORS HEALTH, INC., OWES NYLCARE THE SUM OF..... PURSUANT TO SECTION 3.4.4. OF MEDICARE NETWORK MANAGEMENT AGREEMENT DATED AS OF OCTOBER 1,1997; (2) SUCH AMOUNT HAS BEEN INVOICED TO DOCTORS HEALTH, (3) DOCTORS HEALTH IS IN RECEIPT OF SUCH INVOICE FOR AT LEAST 60 DAYS, AND (4) THERE ARE NO DEFENSES OR OFFSETS TO PAYMENT WHICH HAVE BEEN RAISED BY DOCTORS HEALTH AND OF WHICH NYLCARE IS AWARE."

ALL DRAFTS MUST INDICATE: "DRAWN UNDER THE CHASE MANHATTAN BANK, NEW YORK LETTER OF CREDIT NO.P-343547."

ALL CORRESPONDENCE AND ANY DRAWINGS PRESENTED IN CONNECTION WITH THIS LETTER OF CREDIT MUST ONLY BE PRESENTED TO US AT THE CHASE MANHATTAN BANK, 55 WATER ST., 17TH FL,ROOM 1710, NEW YORK, NEW YORK 10041, ATT: STANDBY LETTER OF CREDIT DEPARTMENT. CUSTOMER INQUIRY NUMBERS ARE (212) 638-3473 AND (212) 638-1587.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1993 REVISION, ICC PUBLICATION NO. 500.

MORE Y

FCN LCTEXT

ID _____

L C NO: L C TEXT AND AMENDMENTS INQUIRY
P-343547

09/10/98 12:05

P-343547- -001-L1-01-

- 1 -

APRIL 17, 1998
L/C NO.: P-343547
AMENDMENT NO: 1

***** DIRECT *****

APPLICANT:
DOCTOR'S HEALTH, INC.
10451 MILL RUN CIRCLE, 10TH FLOOR
OWINGS MILLS, MD. 21117

NYLCARE HEALTH PLANS OF THE
MID-ATLANTIC, INC. 7601 ORA GLEN
DRIVE, GREENBELT, MARYLAND 20770
ATT:JEFF EMERSON, PRESIDENT & CEO

IN ACCORDANCE WITH INSTRUCTIONS RECEIVED, THE ABOVE-REFERENCED
LETTER OF CREDIT HAS BEEN AMENDED AS FOLLOWS:

MORE Y

FCN LCTEXT

ID _____

L C NO: L C TEXT AND AMENDMENTS INQUIRY
P-343547

09/10/98 12:05

- 1 - LETTER OF CREDIT AMOUNT IS INCREASED BY USD 850,000.00
(EIGHT HUNDRED FIFTY THOUSAND AND 00/100 UNITED STATES
DOLLARS).

THE AGGREGATE AMOUNT AVAILABLE UNDER THIS LETTER OF
CREDIT SHALL NOT EXCEED USD5,250,000.00.

ALL OTHER TERMS AND CONDITIONS OF THE CREDIT REMAIN UNCHANGED.

P-343547- -003-A1-01-

- 1 -

MORE N

FCN LCTEXT

ID _____

via overnight delivery

September 4, 1998

Chase Manhattan Bank
Attn: Standby Letter of Credit Department
55 Water Street
17th Floor, Room 1710
New York, NY 10041

Dear Sir or Madam:

This letter is to inform you NYLCare Health Plans of the Mid-Atlantic, Inc. (NYLCare Mid-Atlantic) is now requesting funds to be drawn under the Chase Manhattan Bank, New York letter of credit no. P-343547.

The amount of this drawing under the Chase Manhattan Bank letter of credit number P-343547 represents funds due us as (1) Doctors Health, Inc., owes NYLCare Mid-Atlantic the sum of \$2,615,208.69 pursuant to Section 3.4.4. of Medicare Network Management Agreement dated as of October 1, 1997; (2) such amount has been invoiced to Doctors Health; (3) Doctors Health is in receipt of such invoice for at least 60 days; and (4) there are no defenses or offsets to payment which have been raised by Doctors Health and of which NYLCare Mid-Atlantic is aware.

Please contact Edward Lartey at 301-507-6655 for appropriate wire transfer instructions.

Sincerely,



Nannette G. Henderson
Executive Vice President and
Chief Financial Officer

Writer's DID
301-220-3306

via overnight delivery

September 4, 1998
(revised September 8, 1998)

Chase Manhattan Bank
Attn: Standby Letter of Credit Department
55 Water Street
17th Floor, Room 1710
New York, NY 10041

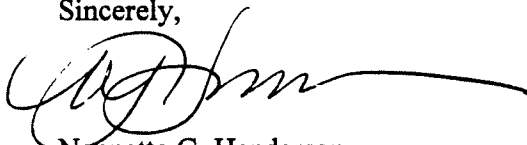
Dear Sir or Madam:

This letter is to inform you NYLCare Health Plans of the Mid-Atlantic, Inc. is now requesting funds to be drawn under the Chase Manhattan Bank, New York letter of credit no. P-343547.

The amount of this drawing under the Chase Manhattan Bank letter of credit number P-343547 represents funds due us as (1) Doctors Health, Inc., owes NYLCare Health Plans of the Mid-Atlantic, Inc. the sum of \$2,615,208.69 pursuant to Section 3.4.4. of Medicare Network Management Agreement dated as of October 1, 1997; (2) such amount has been invoiced to Doctors Health; (3) Doctors Health is in receipt of such invoice for at least 60 days; and (4) there are no defenses or offsets to payment which have been raised by Doctors Health and of which NYLCare Health Plans of the Mid-Atlantic, Inc. is aware.

Please contact Edward Lartey at 301-507-6655 for appropriate wire transfer instructions.

Sincerely,



Nannette G. Henderson
Executive Vice President and
Chief Financial Officer

Encl.



~~CREDIT~~
SIGHT DRAFT

PLACE AND DATE:
September 8, 1998

AT SIGHT

PAY TO THE ORDER OF NYLCare Health Plans of the Mid-Atlantic, Inc

AMOUNT U.S. Two million six hundred fifteen thousand two hundred
eight dollars and sixty-nine cents (\$2,615,208.69)

*DRAWN UNDER THE CHASE MANHATTAN BANK IRREVOCABLE LETTER OF CREDIT NO. P _____

343547

TO: CHASE MANHATTAN BANK
LETTER OF CREDIT DEPT
55 WATER STREET
NEW YORK, N.Y. 10041

BENEFICIARY:

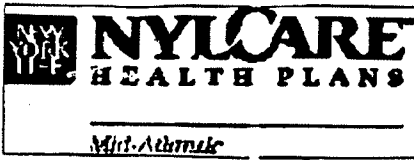
NYLCare Health Plans of the Mid-Atlantic, Inc.

BY: Nannette G. Henderson

(NAME AND TITLE)

Executive Vice President and
Chief Financial Officer

[Signature]



7601 Ora Glen Drive
Greenbelt, MD 2077
301.441.1600
800.635.3121

via facsimile (212) 638-8200/8201

September 9, 1998

Carmen Mendoza
The Chase Manhattan Bank
Standby Letter of Credit, Room 1710
55 Water St., 17th Floor
New York, NY 10041

/C No. P-343547

This is the banking information of NYLCare Health Plans of the Mid-Atlantic:

Bank: NATIONSBANK, N.A.

Account No.: 000000606002

A.B.A. No.: 052001633

Please take the necessary actions to wire transfer the funds due NYLCare Health Plans of the Mid-Atlantic in the amount of \$2,615,208.69.

Sincerely,

Edward D. Larney
Senior Accountant



HEALTH
It's the New Way of Thinking

10451 MILL RUN CIRCLE
OWINGS MILLS, MARYLAND 21117
MAIN PHONE 410-654-5800

DEPARTMENT FAX NUMBERS:
INFORMATION SYSTEMS: 410-654-3599
MARKETING/RECRUITING: 410-654-6807
ADMINISTRATION: 410-654-5806
EXECUTIVE/LEGAL: 410-654-5806
HUMAN RESOURCES: 410-654-3598
FINANCE PHYSICIAN SUPPORT: 410-654-3715
FINANCE CORPORATE: 410-654-3565

TRANSMIT TO: Rich Ditzio
COMPANY: Chase
FAX NUMBER: 561-838-8747
SENT FROM: John Dayer
DEPARTMENT: FINANCE
DATE: September 10, 1998
NUMBER OF PAGES (including cover): 6

COMMENTS:

Rich, you will note we dispute and they acknowledge we have disputed \$6,000,000 in paid claims obligations. They further owe us an office of \$1,400,000. — [Signature]

CONFIRMATION RECEIPT REQUESTED (PLACE 'X' FOR CHOICE) YES ☐ NO ☐

Confidentiality Notice
Documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally protected. The information is intended only for the use of the recipient. You are hereby notified that any disclosure, copying, distribution or use of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for the return of the original documents to us.



September 10, 1998

Via Telecopy and U.S. Mail

Standby Letter of Credit Department
Chase Manhattan Bank
55 Water Street
17th Floor, Room 1710
New York, New York 10041

Mr. Rich Ditizio
Vice President
Chase Manhattan
205 Royal Palm Way
Palm Beach FL 33480

Re: Letter of Credit No. P-343547

Gentlemen:

Pursuant to my conversation with Mr. Ditizio this morning, Doctors Health has notified NYLCare Health Plans of the Mid-Atlantic, Inc. ("NYLCare") that over \$6,000,000 of claims obligations they have identified for our account are in dispute. The documentation supporting this dispute, our communication of this dispute to NYLCare, and other relevant correspondence is attached.

In light of the foregoing, Doctors Health hereby formally gives Chase Manhattan Bank notice that pursuant to Paragraph 4 of the Standby Letter of Credit, NYLCare has failed to satisfy the conditions necessary for effectuating a draw. Specifically, Doctors Health has disputed and NYLCare has acknowledged that we have disputed over \$6,000,000 in claims, and we have informed NYLCare that over and above the disputed amount, offsets exist of at least \$2,300,000. Moreover, we have recently sent NYLCare, Aetna (the recent acquirer of NYLCare) and NYLCare's former parent, notice that they have completely breached the agreement that underpins the Letter of Credit in question here which puts in dispute amounts in excess of \$20,000,000.

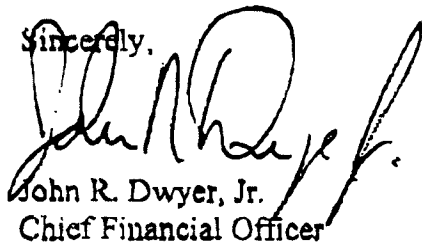
DOCTORS HEALTH, INCORPORATED

10451 Mill Run Circle • 10th Floor • Owings Mills, Maryland 21117 • 410.654.5800 • 888.16dv-000116

Chase Manhattan Bank
September 10, 1998
Page 2

For all the foregoing reasons, Doctors Health requires that Chase Manhattan Bank not comply with the draw request made by NYLCare, and refrain from complying with any future requests until you receive notice from both NYLCare and Doctors Health that the disputes between the parties are resolved. Please call me if you or your colleges have any questions.

Sincerely,



John R. Dwyer, Jr.
Chief Financial Officer

cc: Stewart B. Gold
Jeff D. Emerson, NYLCare Health Plans of the Mid-Atlantic, Inc.



August 31, 1998

VIA FACSIMILE AND US MAIL

301/489-5282

Jeff D. Emerson
 President and Chief Executive Officer
 NYLCare Health Plans of the Mid-Atlantic, Inc.
 7601 Ora Glen Drive
 Greenbelt, Maryland 20770

Dear Jeff:

Just a few short weeks ago, you wrote me that you "remain dedicated to trying to make the relationship work." Yet today it pains me to see that we are worlds apart. Aetna's announcement today that it will abandon the MediCare business covered by our contract is like a death blow for us. As I have repeatedly told you, the future of Doctors Health depends upon you. If NYLCare-Aetna abandons us now, we will have no choice but to pursue legal action. We take no comfort in that, but neither should you. The costs to NYLCare-Aetna from such litigation could be enormous.

We need a business meeting with you and an Aetna representative this week to try to reach an immediate resolution of this matter. We have always been able to find business solutions when we met in the past, but the urgency of this situation requires immediate action.

Let me remind you of some of the history between us, dating back to before Doctors Health and NYLCare actually entered into the MediCare Network Management Agreement (the "agreement") in late September 1997. After consistently being unwilling to downstream risk, NYLCare suddenly changed its position in the summer of 1997 -- but only as to its MediCare business. Doctors Health was interested in pursuing such business but required historical cost data from NYLCare to evaluate the economic feasibility of such an arrangement. Indeed, we were so concerned about receiving NYLCare's historical cost data -- and obviously relying upon that data's accuracy in entering into this agreement -- that we insisted upon including the following language in the agreement's "Representations and Warranties" section:

"NYLCare Mid-Atlantic represents and warrants that to the best of its knowledge, the historical pharmacy, institutional, ancillary and capitated carveout costs previously provided to Doctors Health are accurate in all material respects. The parties agree that as soon as practicable after closing they will meet and develop

DOCTORS HEALTH, INCORPORATED

10551 Mill Run Circle • 10th Floor • Owings Mills, MD 21117 • +1(410)654-5800 • 800.654.5278
 Owings Mills Commerce Center B • 11500 Greenidge Drive • Suite 120 • Owings Mills, MD 21117 • +1(410)902-5500 • 800.478.0900

16dv-000118

Jeff D. Emerson
 August 31, 1998
 Page Two

an appropriate schedule to this Agreement to embody any such previously provided cost information."

After consummation of the agreement, however, it became apparent that NYLCare had not provided Doctors Health with accurate cost data -- particularly as to pharmacy costs. It took us months of painstaking work and repeated demands for information from you to learn the truth about this operation's actual costs. In fact, in its historical cost data NYLCare claimed total claims costs PMPM of approximately \$350 per month on average over the year prior to the agreement. Yet Doctors Health's estimated total claims costs PMPM were more than \$400 the very first month of operation and have remained at that high level ever since. It is no wonder then, that today our contract costs have proven to be much higher than what we expected from our review and reasonable reliance upon NYLCare's historical data, which purported to show much lower costs. Indeed, our total losses under this agreement now exceed \$15 million. In short, there was something terribly wrong with the historical data that NYLCare proffered to us to induce Doctors Health to enter into this agreement.

We have encountered and worked to resolve other problems with NYLCare throughout this relationship, and will not attempt to repeat all of them here. I must mention, however, NYLCare's persistent inability to provide information necessary to reconcile capitation payments and the amounts that have been paid for medical benefits. Indeed, your colleague, Susan Lefkowitz, acknowledged in a June 29, 1998 letter to me that "[w]e are aware of the issues that you have had in reconciling eligibility and monthly capitation reports." Yet those problems have persisted, and our calls for one business wee turnabout of the parties' review obligations have largely gone unheeded. We even incurred the cost of a preview process before claims payment to try to avoid the kinds of payment disputes that have arisen in recent months.

Of course, as we proceeded in good faith throughout our relationship with NYLCare to resolve these issues, we were unaware that just months after entering into this agreement, Aetna would be acquiring NYLCare from New York Life. And we were also certainly unaware that within weeks of that takeover, Aetna would be announcing its intention to get out of the MediCare business throughout the country. That sequence of events unknown to us at that time of our agreement may now explain many things: for example, why you changed your position and agreed to contract out the MediCare business just months before the Aetna deal with New York Life, why you withheld information and delayed claims processing so that our full cost ramifications would not become so known until after the Aetna takeover, why there was a huge spike in claims payments after the Aetna takeover, and why our business now hangs in the balance because of Aetna's announcement today. Indeed, I now understand that our agreement saved NYLCare more than \$12 million at a most propitious time for New York Life -- just months before the Aetna deal, thereby potentially inflating the price that Aetna paid in that deal.


Jeff D. Emerson
August 31, 1998
Page Three

Of course, Aetna's public pronouncement -- while terribly damaging to our business -- cannot change the fact that Doctors Health continues to have a binding agreement with NYLCare. There is no legal basis for terminating that agreement simply because Aetna wants to get out of that business in selected areas including ours. And any other attempt to terminate our agreement now would clearly be pretextual and in bad faith. So let this letter serve as notice that we can not tolerate for any further damage to our business or business reputation. NYLCare-Aetna's actions have already damaged Doctors Health. It is time to repair the damage -- and to do so immediately before it becomes irreparable.

It is now clear to us that we were fraudulently induced to enter into this agreement with NYLCare and have been on a "slippery slope" of financial losses ever since. To date, based upon our purported good faith negotiations we have refrained from filing litigation, despite the desire of some shareholders to do so. Therefore, we will have to pursue litigation absent prompt resolution of this situation. Our lawyers tell us that we can seek both actual and punitive damages in such a fraudulent inducement action. Indeed, I would welcome the opportunity to explain these facts to Aetna, which only recently acquired NYLCare from New York Life and therefore may be unaware of this history. Moreover, in any future legal proceedings, we would also seek recovery for other tortious and contractual breaches which have cost us so dearly.

As you know, I have worked hard to avoid that road. It is not too late still to find common ground, but time is of the essence. I have employees, physician shareholders and other shareholders to protect, and you have placed all of us in serious jeopardy. We stand ready to be creative in fashioning resolutions that work for all parties. We would even be willing to consider Doctors Health eventually taking over this entire operation and dealing directly with HCFA. We remain ready to talk, although given the enormous ongoing damage that we are now experiencing under this agreement, we need a prompt resolution of our outstanding disputes. Otherwise, we will have to take appropriate legal action in the immediate future.

Sincerely,



Stewart B. Gold
President and Chief Executive Officer

cc: Michael J. Cardillo
President
Aetna US Healthcare
980 Jolly Road (US1A)
Blue Bell, PA 19422
215/775-6501 (fax)

Scott Murphy
South East Regional Manager
Aetna US Healthcare
11675 Great Oaks Way
Alpharetta, GA 30022
770/346-1085 (fax)



MEMORANDUM

DATE: July 15, 1998
TO: Jeff Emerson, CEO, NYLCare Health Plans of the Mid-Atlantic, Inc.
FROM: Stewart B. Gold
RE: July 14, 1998 Meeting
CC: Eric Wilkinson, The Beacon Group

Thanks for the frank discussion of the concerns we have regarding our Network Management Agreement. As a result of the meeting, it is our understanding that NYLCare will run a "CMU" report on the claims that you have paid. This will help determine any trends in utilization and cost that could explain the wide discrepancy between the NYLCare claims experience with its Medicare members and DH's experience with essentially the same population. We also appreciate your offer to provide a "retro-view" of claims paid to assist us in our audit of the claims payment process. Arthur Andersen is designing the audit protocol in cooperation with NYLCare staff to ensure a timely audit report. We will work with your responsible management personnel to move the audit along. Please ensure that they are aware of our offer to provide the "retro-view" if necessary.

We, of course, appreciate your understanding in suspending payments for claims paid on our behalf by NYLCare in excess of the July capitation payment. For your information, the amount of the Letter of Credit is now at \$5,250,000.

I was glad to hear that you were concerned about the time it has taken to reconcile the actual amount due at June 30. As you know, we have advanced the full amount that you requested (\$3,176,173) pending a prompt resolution of the actual amount. To date, we believe that paid claims have included errors totaling in excess of \$900,000.

Doctors Health, Arthur Andersen and your staff will be working in the next months to determine what further adjustments are required.

I have attached copies of the Days/1,000 reports that we provide every month for your information. Additionally, the status of claims preview from our standpoint is that we have been told we will get the first preview in the agreed upon format today.

The lag in claims payment is a continuing problem. The information that we have is very recent and is already under review by both of our organizations. I believe that we need the results of the current review and the Andersen audit to better understand and define the situation.

I have looked into issues surrounding the timely receipt of enrollment information, along with the capitation payment, authorization transmittal, and other information exchange issues. I have been assured that we will promptly address and remedy problems on our part. If not, have someone contact

me directly so that I am aware of the open issues and can compare what you are hearing to the reports I get from our joint operations meetings.

Please let me know when you will have some results from your review of the information we provided yesterday and the CMU Report.

Our Agreement with NYLCare is very important to us, as demonstrated by the investment we have each made in providing uninterrupted medical services to Medicare managed care members. While the cost of claims resolution can have the most serious consequences, we remain dedicated to the success of the relationship with NYLCare and the agreement. Despite our dedication we are very concerned about the Network Management Agreement, and based on the information we categorically and unconditionally dispute that Doctors Health is responsible for at least \$6,000,000 of the claims paid to date. Therefore, please be on notice that we have not waived any of our rights and privileges under the Agreement. We expect both sides to keep our conversations about these matters confidential. Thanks for your help.



Mid-Atlantic

By Telecopy and Mail

NYLCare Health Plans
of the Mid-Atlantic, Inc.
7601 Ora Glen Drive
Greenbelt, Maryland 20770
(301) 441-1600
1-800-635-3121

July 17, 1998

Stewart B. Gold
Chief Executive Officer
Doctors Health
10451 Mill Run Circle, 10th Floor
Owings Mills, MD 21117

Re: July 14, 1998 Meeting

Dear Stewart:

Apparently you and I attended different meetings on July 14, 1998.

Among other assertions in your July 15, 1998 memo with which I do not concur, one assertion clearly stands out: I did not agree to permit Doctors Health (DH) to suspend its payment of its liability to NYLCare Health Plans of the Mid-Atlantic, Inc. (NYLCare Mid-Atlantic) for that amount by which the NYLCare 65 claims paid by NYLCare Mid-Atlantic exceeds the amount of the capitation paid to DH to cover those claims. What I said was that I will be flexible in permitting DH to repay those monies over a period of time longer than the contractually obligated five (5) days provided that the cumulative amount owed by DH to NYLCare Mid-Atlantic does not exceed the amount of the Irrevocable Letter of Credit.

In addition to other assertions in your memo with which I disagree, the final paragraph contains an assertion which is both a surprise and an absurdity: "we categorically and unconditionally dispute that Doctors Health is responsible for at least \$6,000,000 of the claims paid [by NYLCare Mid-Atlantic] to date." Please note that there is no antecedent for this assertion, other than the allegedly erroneously paid claims sample report which you gave to Susan S. Lefkowitz and me on June 12, 1998 from which sample you extrapolated approximately \$4,000,000 in allegedly erroneously paid claims. Our analysis of your sample report is almost completed. It will not support even one-tenth of the alleged overpayment amount after one excludes the amount for pharmacy claims which we long since stipulated to DH had been erroneously posted to your account.

In sum, your memo (and our July 14 meeting) was self-serving. About the only thing on which we seem to agree is that both organizations remain dedicated to trying to make the relationship work.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff D. Emerson", with a long horizontal line extending to the right.

Jeff D. Emerson
President and Chief Executive Officer

cc: Susan S. Lefkowitz
Beth Winters



September 4, 1998

Jeff D. Emerson
 President and Chief Executive Officer
 NYLCare Health Plans of the Mid-Atlantic, Inc.
 7601 Ora Glen Drive
 Greenbelt, Maryland 20770

RE: September 1998 Monthly
 Capitation Calculation

Dear Jeff:

I recently received a copy of the Monthly Capitation Calculation for the month of September, 1998. I was surprised to see that NYLCare has unilaterally decided to change the method of calculation for September. The calculation, if done consistent with the method of calculation for every month of the contract period prior to September, 1998, would have revealed a net positive cash balance in favor of Doctors Health in the amount of approximately \$1,443,047.

Without explanation, NYLCare has now charged us for "claims incurred but not paid through August 31, 1998". Please review the enclosed copy of the September, 1998 calculation and compare it to the enclosed copies of the October, 1997 through August 1998 calculations. I would appreciate your prompt assistance in having the September, 1998 Capitation Calculation redone consistent with prior periods to show the above mentioned positive cash balance in our favor.

As you know, we still have a lot of issues to resolve. This is no way to begin that process.

Sincerely,

Stewart B. Gold
 Chief Executive Officer

cc: Susan Lefkowitz

DOCTORS HEALTH, INCORPORATED

10471 Mill Run Circle • 10th Floor • Owings Mills, MD 21117 • 410.664.5000 • 800.634.3250
 hawurster@emerson.hbc
 Owings Mills Community Center B • 11500 Courthouse Drive • Suite 120 • Owings Mills, MD 21117 • 410.992.3000 • 800.370.9960

16dv-000124

----- X
DOCTORS HEALTH INC.,

Plaintiff,

- against -

CHASE MANHATTAN BANK, AND NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.
----- X

Index No. 98/604436

AFFIDAVIT OF
ANTHONY A. CAPASSO

CHASE MANHATTAN LEGAL DEPARTMENT
By: Andrew N. Keen
One Chase Manhattan Plaza, 26th Floor
New York, New York 10081
(212) 552-0921

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

Index No.: 98 Civ. 604436 (BAC)

**AFFIRMATION OF PETER M.
CORRIGAN IN SUPPORT OF
MOTION FOR ADMISSION *PRO*
HAC VICE OF JOHN D. CORSE**

Peter M. Corrigan, Esq., an attorney duly admitted to practice law before the Courts of this State hereby affirms as follows:

1. I am associated with the law firm of Piper & Marbury L.L.P., counsel for plaintiff, Doctors Health, Inc. ("Doctors Health"), and am fully familiar with the facts and circumstances of this action. I respectfully submit this affirmation in support of Doctors Health's motion for an Order pursuant to Rule 602.2(a) of the rules of practice of the Supreme Court, Appellate Division, First Department, admitting John D. Corse, Esq. to practice before this Court *pro hac vice* as counsel on behalf of Doctors Health in the above-captioned case. I will assist Mr. Corse in all matters relating to this case. I have been a member in good standing of the Bar of the State of New York since 1991.

2. Mr. Corse is a member in good standing of the Bars of the State of Maryland and of the Federal District Courts in Maryland. Annexed hereto as Exhibit "A" are copies of certificates of good standing from the bars to which Mr. Corse is a member. Pursuant to CPLR 2105, I affirm that these copies are true and complete copies of the original certificates of good standing of the above-listed bars. Mr. Corse has never been disciplined, suspended, or disbarred from practice before any Court.

3. Mr. Corse is a partner with Piper & Marbury L.L.P. In addition to its New York City office, in which I am located, Piper & Marbury L.L.P. has offices in Baltimore, Maryland, Easton, Maryland, Washington, D.C., and Philadelphia, Pennsylvania. Mr. Corse is a partner resident in the Baltimore, Maryland office.

4. Plaintiff Doctors Health wishes that Mr. Corse participate personally in this matter on its behalf because Mr. Corse has overseen this case on behalf of Doctors Health since its inception and has extensive knowledge of the facts which give rise to this action.

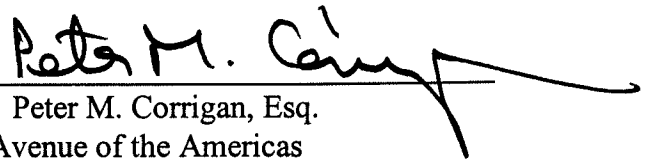
5. Accordingly, in light of the rules of practice of the Supreme Court, Appellate Division, First Department, Section 602.2(a), Doctors Health respectfully requests that this Court admit John D. Corse, Esq. *pro hac vice* to participate in all further proceedings in this case, including any trial if one is necessary.

6. No prior application has been made for the relief requested herein.

WHEREFORE, plaintiff Doctors Health, Inc. respectfully requests that this Court issue an Order, in the form attached hereto as Exhibit "B" admitting John D. Corse, Esq. to practice before this Court *pro hac vice* as counsel on behalf of plaintiff, Doctors Health, Inc. in the above-captioned case.

Dated: New York, New York
September 16, 1998

PIPER & MARBURY L.L.P.

By: 
Peter M. Corrigan, Esq.
1251 Avenue of the Americas
New York, New York 10020-1104
(212) 835-6000

Attorneys for Plaintiff
Doctors Health, Inc.

Court of Appeals of Maryland

Annapolis, Md.



CERTIFICATION

STATE OF MARYLAND, ss:

I, Alexander L. Cummings, Clerk of the Court of Appeals
of Maryland, do hereby certify that on the twenty-second day
of December, 19 87,

JOHN DOGGETT CORSE, JR.

*having first taken and subscribed the oath prescribed by the Constitution
and Laws of this State, was admitted as an attorney of said Court, is now
in good standing, and as such is entitled to practice law in any of the
Courts of said State, subject to the Rules of Court.*

**In Testimony Whereof, I have hereunto set my
hand as Clerk, and affixed the Seal of the Court of
Appeals of Maryland, this 16th day of
September, 1998**

A handwritten signature in cursive script, reading "Alexander L. Cummings".
Clerk of the Court of Appeals of Maryland

CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA

DISTRICT OF MARYLAND

I, Frank L. Monge, Clerk of the United States District Court for the
District of Maryland,

DO HEREBY CERTIFY that JOHN D. CORSE, ESQUIRE,

BAR NUMBER 05049, was duly admitted to practice in said court on

June 3, 1988, and is in good standing as a member of the bar of said Court.

The indices of this Court have been searched and do not reveal any
disciplinary actions, either present or past, as to the above named attorney.

Dated at Baltimore, Maryland

FRANK L. MONGE

Clerk

Date: SEPTEMBER 16, 1998

Michael L. Weaver

Deputy Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

Index No.: 98 Civ. 604436 (BAC)

**ORDER ADMITTING JOHN D. CORSE PRO HAC VICE
ON BEHALF OF PLAINTIFF DOCTORS HEALTH, INC.**

THIS MATTER having been opened to the Court by Piper & Marbury L.L.P., attorneys for plaintiff Doctors Health Inc. ("Doctors Health"), for an Order granting John D. Corse *pro hac vice* admission before this Court in the above-captioned matter, and the Court having considered the papers submitted by counsel and for good cause shown;

IT IS on this ____ day of September, 1998

ORDERED that John D. Corse be admitted *pro hac vice* before this Court in the above-captioned matter.

Hon. Barry A. Cozier

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH INC.,

Plaintiff,

v.

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

AFFIRMATION OF PETER M. CORRIGAN IN
SUPPORT OF MOTION FOR ADMISSION *PRO HAC*
VICE OF JOHN D. CORSE

PIPER & MARBURY L.L.P.

ATTORNEYS FOR PLAINTIFF

OFFICE AND POST OFFICE, TELEPHONE

1251 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10020-1104
212-835-6000
FAX: 212-835-6001

ALL COMMUNICATIONS
SHOULD BE REFERRED TO

MS. MONICA PETRAGLIA MCCABE
MR. PETER M. CORRIGAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

Index No.: 98 Civ. 604436 (BAC)

AFFIDAVIT OF JOHN D. CORSE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN D. CORSE, ESQ., having been duly sworn, submits this Affidavit in support of the foregoing Motion for Admission *Pro Hac Vice* on behalf of plaintiff Doctors Health, Inc. ("Doctors Health") as follows:

1. I respectfully request to be specially admitted *pro hac vice* to the Bar of the State of New York pursuant to Rule 602.2(a) of the rules of practice of the Supreme Court, Appellate Division, First Department, as counsel for plaintiff Doctors Health in this matter.

2. I am a partner with the law firm of Piper & Marbury L.L.P., Baltimore, Maryland. I was duly admitted to the Bar of the State of Maryland in 1987 and to the Federal District Courts in Maryland in 1988. Since these admissions, I have at all times remained a member in good standing of the above-listed bars.

3. Upon my admission and pursuant to Rule 602.2(a) of the rules of practice of the Supreme Court, Appellate Division, First Department, I will assist and be associated in this

matter with New York counsel of record, Monica Petraglia McCabe and Peter M. Corrigan, of Piper & Marbury L.L.P., New York, New York.

4. The plaintiff Doctors Health wishes to have me represent it in the preparation of this matter along with Monica Petraglia McCabe, Esq. and Peter M. Corrigan, Esq.

5. There is good cause for my admission in that plaintiff Doctors Health wishes for me to represent them in the proceedings of this case.

6. If specially admitted to the Bar of this State, I would be admitted solely for the purpose of participating in this particular action in which Doctors Health is a plaintiff.

7. I am willing and able to comply with all rules of this Court relating to admission, professional conduct, and civil procedure.

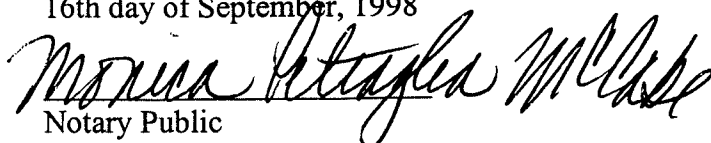
8. Defendant will not be prejudiced in any way if I am specially admitted to the Bar of the State of New York as co-counsel for plaintiff Doctors Health.

9. No good cause exists to deny my special admission as co-counsel in this matter.

10. No prior application has been made for the relief requested herein.


JOHN D. CORSE

Sworn to before me this
16th day of September, 1998


Notary Public

MONICA PETRAGLIA McCABE
NOTARY PUBLIC, State of New York
No. 4993320
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires March 16, 1998

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH INC.,

Plaintiff,

v.

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

AFFIDAVIT OF JOHN D. CORSE

PIPER & MARBURY L.L.P.

ATTORNEYS FOR PLAINTIFF

OFFICE AND POST OFFICE, TELEPHONE

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ALL COMMUNICATIONS
SHOULD BE REFERRED TO

MS. MONICA PETRAGLIA MCCABE
MR. PETER M. CORRIGAN

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 3

- - - - -X
DOCTORS HEALTH, INC., INDEX NO.
604436/98

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC,
INC.,

Defendants.

- - - - -X

60 Centre Street
New York, New York
September 17, 1998

BEFORE: HONORABLE BARRY A. COZIER, J.S.C.

Appearances:

PIPER & MARBURY, LLP
Attorneys for Doctor Health
251 Avenue of the Americas
New York, New York 10020-1104
BY: MONICA PETRAGLIA McCABE, ESQ.
PETER CORRIGAN, ESQ.
-and-
JOHN D. CORSE, ESQ.

KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
Attorneys for Nylcare
1301 K Street. N.W. Suite 1000 West
Washington, D.C. 20005
BY: MARK C. HANSEN, ESQ.
-and-
NEIL M. GORSUCH, ESQ.

FREDERIC C. CANTOR
OFFICIAL COURT REPORTER

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(Appearances continued.)

EPSTEIN, BECKER & GREEN, P.C.
Attorneys for Nylcare
250 Park Avenue
New York, New York 10177
BY: JULIE K. GERSHMAN, ESQ.

ALSO PRESENT:

HERIBERTO BARBOT, JR.
Assistant General Counsel
Legal
NYLCare Health Plans, Inc.
One Liberty Plaza, Suite 8-4
New York, New York 10006-1404

ANDREW N. KEEN
Vice President &
Assistant General Counsel
Legal Department
For Defendant Chase Manhattan Bank
One Chase Manhattan Plaza, 25th Fl.
New York, New York 10081

ED NEUGEBAUER
Aetna US Healthcare
980 Jolly Road (U19A)
Blue Bell, PA. 19422

1 Court's Decision

2 THE COURT: Okay, thank you.

3 I think I have heard enough to
4 digest the issues.

5 In the first instance, it seems to
6 me that the underlying dispute between
7 the parties concerns money matters
8 arising out of their contractual
9 agreement.

10 Now, what we have are two
11 corporate entities both doing business
12 in Maryland concerning services, HMO
13 services which are being provided and
14 health management services generally,
15 which are being provided in Maryland.

16 The nexus to New York is obviously
17 Chase Manhattan Bank really the nominal
18 stakeholder in this particular case
19 because of the Letter of Credit that
20 was issued from the plaintiffs in favor
21 of Nylcare.

22 Now, this is certainly a basic
23 commercial transaction.

24 The parties have a contractual
25 relationship. It involves the making

Court's Decision

of the ongoing claims being made based upon patients' services being furnished by the plaintiff for which the defendant, Nylcare, receives payment from the federal government and is a pass-through for purposes of the Medicare payments.

The relationship here is ongoing clearly commercial.

The nuance of this particular case concerns the establishment in the contract or the agreement of the Letter of Credit in favor of Nylcare.

Now, this is not the traditional commercial Letter of Credit involving goods and furnishing of goods, et cetera, the normal transaction.

This is in the nature of a standby Letter of Credit.

The standby Letter of Credit functions more like a guarantee than the standard commercial Letter of Credit.

They are obtained to enable the

Court's Decision

beneficiary to make demand for payment under the Letter of Credit upon the happening of a certain contingency, such as the default of the other party in the underlying transaction.

The terms for drawing upon the Letter of Credit is set forth in the agreement.

There are certain requirements; obviously, a presentment to Chase is required in a particular form and the contents must meet at least a requirement of the agreement.

Plaintiff primarily predicates this application for injunctive relief on the fourth requirement, the statement drawing upon the Letter of Credit by Nylcare that they know of no valid offsets to the claims.

The problem here is that to the extent that the documents are properly presented to Chase Bank, the Court must strictly construe the Letter of Credit requirements in accordance with UCC.

Court's Decision

The purpose of it is to have definiteness with respect to commercial transactions here.

Now, it seems to me that the entire arguments, using the CPLR criteria here, with respect to irreparable harm, substantial likelihood of success on the merits and the balance of the equities is predicated upon, of course, what is, in fact, a money dispute between the parties as to what the proper amount due and owing to the defendant is here.

Clearly, the threshold issue in the underlying issue for the plenary action is really based upon a claim for money damages, either in the form of the claim by the plaintiff or what will be a counterclaim on the part of defendant, Nylcare, based upon this dispute.

So there is no question here that there are disputed facts with respect

Court's Decision

to what sum is due and owing and to whom it is due and owing, pursuant to the term of the Agreement.

And I have perused the documentation here, and as I said, there is an ongoing course of conduct between the parties.

Now, the only basis under which the Court can grant an injunction in these circumstances, particularly where there are factual disputes, there must be a clear showing of irreparable harm, a clear showing of irreparable harm.

In this particular instance, the allegation that is being made in the Order to Show Cause, by the plaintiff, is that fraud threatening this irreparable harm involves false statements by defendant, Nylcare Health Plans to defendant, Chase Manhattan Bank.

Now, the distinction here, I believe, is whether or not what we have, does a false statement, even

Court's Decision

assuming arguendo, we have a false statement, rise to the level of a fraudulent statement to meet the UCC standard and commercial standard in New York to fit within the fraud exception to payment under a Letter of Credit. And I think that's really the critical issue.

"In New York, the sole exception to the independence principle and the issuer's obligation to pay on conforming documents --"

I don't think there is any dispute here we have conforming documents, " -- is an exception for fraud.

"The only authorized means of stopping payment, under a Letter of Credit, is that permitted under the fraud exception.

"If applicable, it can permit an injunction against honor, or it can be relied upon by the issuer as a ground to dishonor, where a document is forged or fraudulent or where there is fraud

1 Court's Decision
2 in the transaction."

3 This case clearly does not involve
4 fraud in the inducement.

5 Fraud in the inducement, would
6 have concerned the terms giving rise to
7 the Letter of Credit, and there is
8 certainly no allegations in that
9 regard.

10 And, therefore, the plaintiff must
11 rely upon the fact that there is fraud
12 in the transaction.

13 And plaintiff's argument has been
14 couched in terms of fraud in the
15 presentment, I assume, that means in
16 the presentment of the documents, to
17 the extent the statement is made that,
18 in fact, there are no known offsets.

19 The problem here, is based upon
20 the factual disputes between the
21 parties, that statement cannot be
22 considered to be a fraudulent
23 statement.

24 In fact, there is no evidence,
25 based upon the submissions by the

Court's Decision

parties here, that that statement has not been made in good faith.

The point being that the position of the defendant, Nylcare here is, of course, there are clearly sums due and owing to Nylcare and, in point of fact, that it's only a question of the actual amount here.

But the amount is an amount clearly due and owing to Nylcare.

It's not a situation that it was presented because there is a possibility that there is deficit on Nylcare's side and the sums may be due and owing to the plaintiff here.

It all surrounds the factual dispute. That factual dispute, by itself, is not sufficient to constitute fraud within the meaning of UCC or the case law in New York. There has to be a showing of actual fraud.

And even the fact that there may be a mere misrepresentation here, a mere misrepresentation, if, unless

Court's Decision

there is a showing that it has been made in bad faith in order to fraudulently induce, in order to fraudulently induce the demand for payment here, there is really no bases under which you can really show that there is irreparable harm in this circumstances.

It seems to me there is a legitimate factual dispute between the parties.

Now, let me say something with respect to this issue of irreparable harm and the arguments made with respect to irreparable harm.

Irreparable harm cannot constitute simple economic harm.

Basically, once again, the threshold arguments offered by plaintiff is that they may be put out of business. May even possibly be forced into insolvency or bankruptcy.

But that does not constitute a basis for irreparable harm.

1 Court's Decision

2 In fact, if anything, it supports
3 the decision that the underlying
4 dispute is based upon money and based
5 upon something that is compensable at
6 law seeking money damages.

7 The additional factor in this case
8 is that since none of these
9 transactions arise other than the
10 issuance of the Letter of Credit,
11 within the State of New York, and the
12 agreement executed in Maryland governs
13 here.

14 That agreement expressly provides
15 for arbitrability of disputes of the
16 parties and disputes surrounding, of
17 course, the particular claims that are
18 really the subject matter here.

19 So that the Court would never
20 reach the merit in this particular
21 case.

22 So the Court cannot conclude, for
23 the plaintiff, that there is a
24 likelihood of success on the merit at
25 this particular time, sufficient to

Court's Decision

issue an injunction.

So it seems to me that in the overall assessment, without a showing of irreparable harm, and an issue of money, does not equal irreparable harm because it's compensable at law.

I understand the argument that is being made with respect to patient care, but the fact of the matter is that the plaintiff is not the actual patient provider here. They do not have that primary responsibility with respect to patient care.

They are the conduit to make arrangements for the patient care.

And certainly it's plausible that alternative arrangements can be made. And we know that in the world of HMO's, changes are made every day with respect to the election of their HMO.

So there is no basis of irreparable harm shown there.

So I think that based upon all of the submissions before the Court, the

Court's Decision

Court is constrained, based upon the reasons cited, to deny the application for a preliminary injunction and to vacate the TRO in this matter.

The record will constitute my Decision and Order.

Settle an order on notice here, please. Thank you.

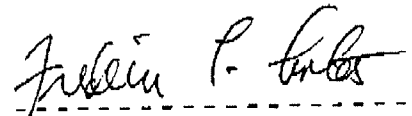
MS McCABE: Your Honor, may we have a stay of the order so that we may file an appeal?

THE COURT: The application for a stay is denied.

(Whereupon, court was adjourned.)

* * * * *

I hereby certify the above as a true and accurate transcript of these proceedings.



FREDERIC C. CANTOR
OFFICIAL COURT REPORTER



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DIRECT: (212) 351-4807

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NEIL GORSUCH, ESQ.	(202) 326-7999	
MARK HANSEN, ESQ.		
COURTNEY ELWOOD, ESQ.		

FROM: Julie K. Gershman, Esq.	DATE: September 18, 1998
NUMBER OF PAGES (including this cover sheet): 15	

Comments:

Doctors v. NYLCare

Attached is the judge's decision.

NOTICE OF PRIVILEGE AND CONFIDENTIALITY

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CLIENT NUMBER: 09025/100

ATTORNEY NO.: 692

16dv-000151

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

Index No.: 98 Civ. 604436 (BAC)

**AFFIRMATION OF PETER M.
CORRIGAN IN SUPPORT OF
MOTION FOR ADMISSION *PRO*
HAC VICE OF JOHN D. CORSE**

Peter M. Corrigan, Esq., an attorney duly admitted to practice law before the Courts of this State hereby affirms as follows:

1. I am associated with the law firm of Piper & Marbury L.L.P., counsel for plaintiff, Doctors Health, Inc. ("Doctors Health"), and am fully familiar with the facts and circumstances of this action. I respectfully submit this affirmation in support of Doctors Health's motion for an Order pursuant to Rule 602.2(a) of the rules of practice of the Supreme Court, Appellate Division, First Department, admitting John D. Corse, Esq. to practice before this Court *pro hac vice* as counsel on behalf of Doctors Health in the above-captioned case. I will assist Mr. Corse in all matters relating to this case. I have been a member in good standing of the Bar of the State of New York since 1991.

2. Mr. Corse is a member in good standing of the Bars of the State of Maryland and of the Federal District Courts in Maryland. Annexed hereto as Exhibit "A" are copies of certificates of good standing from the bars to which Mr. Corse is a member. Pursuant to CPLR 2105, I affirm that these copies are true and complete copies of the original certificates of good standing of the above-listed bars. Mr. Corse has never been disciplined, suspended, or disbarred from practice before any Court.

3. Mr. Corse is a partner with Piper & Marbury L.L.P. In addition to its New York City office, in which I am located, Piper & Marbury L.L.P. has offices in Baltimore, Maryland, Easton, Maryland, Washington, D.C., and Philadelphia, Pennsylvania. Mr. Corse is a partner resident in the Baltimore, Maryland office.

4. Plaintiff Doctors Health wishes that Mr. Corse participate personally in this matter on its behalf because Mr. Corse has overseen this case on behalf of Doctors Health since its inception and has extensive knowledge of the facts which give rise to this action.

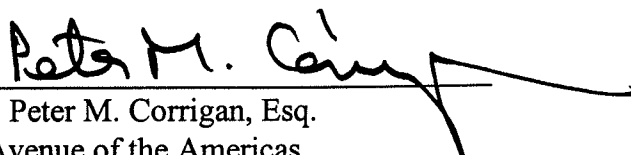
5. Accordingly, in light of the rules of practice of the Supreme Court, Appellate Division, First Department, Section 602.2(a), Doctors Health respectfully requests that this Court admit John D. Corse, Esq. *pro hac vice* to participate in all further proceedings in this case, including any trial if one is necessary.

6. No prior application has been made for the relief requested herein.

WHEREFORE, plaintiff Doctors Health, Inc. respectfully requests that this Court issue an Order, in the form attached hereto as Exhibit "B" admitting John D. Corse, Esq. to practice before this Court *pro hac vice* as counsel on behalf of plaintiff, Doctors Health, Inc. in the above-captioned case.

Dated: New York, New York
September 16, 1998

PIPER & MARBURY L.L.P.

By: 
Peter M. Corrigan, Esq.
1251 Avenue of the Americas
New York, New York 10020-1104
(212) 835-6000

Attorneys for Plaintiff
Doctors Health, Inc.

**Court of Appeals
of Maryland**

Annapolis. Md.



CERTIFICATION

STATE OF MARYLAND, ss:

*I, Alexander L. Cummings, Clerk of the Court of Appeals
of Maryland, do hereby certify that on the twenty-second day
of December, 1987,*

JOHN DOGGETT CORSE, JR.

*having first taken and subscribed the oath prescribed by the Constitution
and Laws of this State, was admitted as an attorney of said Court, is now
in good standing, and as such is entitled to practice law in any of the
Courts of said State, subject to the Rules of Court.*

**In Testimony Whereof, I have hereunto set my
hand as Clerk, and affixed the Seal of the Court of
Appeals of Maryland, this 16th day of
September, 1998**

Alexander L. Cummings
Clerk of the Court of Appeals of Maryland

CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA

DISTRICT OF MARYLAND

I, Frank L. Monge, Clerk of the United States District Court for the
District of Maryland,

DO HEREBY CERTIFY that JOHN D. CORSE, ESQUIRE,

BAR NUMBER 05049, was duly admitted to practice in said court on

June 3, 1988, and is in good standing as a member of the bar of said Court.

The Indices of this Court have been searched and do not reveal any
disciplinary actions, either present or past, as to the above named attorney.

Dated at Baltimore, Maryland

FRANK L. MONGE

Clerk

Date: SEPTEMBER 16, 1998

Marion D. Weaver
Deputy Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

Index No.: 98 Civ. 604436 (BAC)

**ORDER ADMITTING JOHN D. CORSE PRO HAC VICE
ON BEHALF OF PLAINTIFF DOCTORS HEALTH, INC.**

THIS MATTER having been opened to the Court by Piper & Marbury L.L.P., attorneys for plaintiff Doctors Health Inc. ("Doctors Health"), for an Order granting John D. Corse *pro hac vice* admission before this Court in the above-captioned matter, and the Court having considered the papers submitted by counsel and for good cause shown;

IT IS on this _____ day of September, 1998

ORDERED that John D. Corse be admitted *pro hac vice* before this Court in the above-captioned matter.

Hon. Barry A. Cozier

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH INC.,

Plaintiff,

v.

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

AFFIRMATION OF PETER M. CORRIGAN IN
SUPPORT OF MOTION FOR ADMISSION *PRO HAC*
VICE OF JOHN D. CORSE

PIPER & MARBURY L.L.P.

ATTORNEYS FOR PLAINTIFF

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MS. MONICA PETRAGLIA MCCABE
MR. PETER M. CORRIGAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

Index No.: 98 Civ. 604436 (BAC)

AFFIDAVIT OF JOHN D. CORSE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN D. CORSE, ESQ., having been duly sworn, submits this Affidavit in support of the foregoing Motion for Admission *Pro Hac Vice* on behalf of plaintiff Doctors Health, Inc. ("Doctors Health") as follows:

1. I respectfully request to be specially admitted *pro hac vice* to the Bar of the State of New York pursuant to Rule 602.2(a) of the rules of practice of the Supreme Court, Appellate Division, First Department, as counsel for plaintiff Doctors Health in this matter.

2. I am a partner with the law firm of Piper & Marbury L.L.P., Baltimore, Maryland. I was duly admitted to the Bar of the State of Maryland in 1987 and to the Federal District Courts in Maryland in 1988. Since these admissions, I have at all times remained a member in good standing of the above-listed bars.

3. Upon my admission and pursuant to Rule 602.2(a) of the rules of practice of the Supreme Court, Appellate Division, First Department, I will assist and be associated in this

matter with New York counsel of record, Monica Petraglia McCabe and Peter M. Corrigan, of Piper & Marbury L.L.P., New York, New York.

4. The plaintiff Doctors Health wishes to have me represent it in the preparation of this matter along with Monica Petraglia McCabe, Esq. and Peter M. Corrigan, Esq.

5. There is good cause for my admission in that plaintiff Doctors Health wishes for me to represent them in the proceedings of this case.

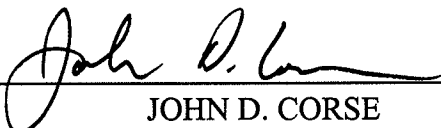
6. If specially admitted to the Bar of this State, I would be admitted solely for the purpose of participating in this particular action in which Doctors Health is a plaintiff.

7. I am willing and able to comply with all rules of this Court relating to admission, professional conduct, and civil procedure.

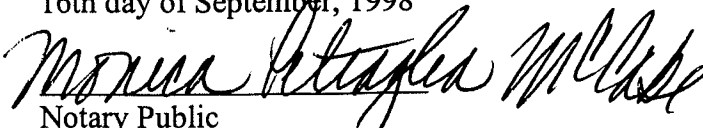
8. Defendant will not be prejudiced in any way if I am specially admitted to the Bar of the State of New York as co-counsel for plaintiff Doctors Health.

9. No good cause exists to deny my special admission as co-counsel in this matter.

10. No prior application has been made for the relief requested herein.


JOHN D. CORSE

Sworn to before me this
16th day of September, 1998


Notary Public

MONICA PETRAGLIA McCABE
NOTARY PUBLIC, State of New York
No. 4993320
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires March 16, 1998

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH INC.,

Plaintiff,

v.

CHASE MANHATTAN BANK and NYLCARE HEALTH
PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

AFFIDAVIT OF JOHN D. CORSE

PIPER & MARBURY L.L.P.

ATTORNEYS FOR PLAINTIFF

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MS. MONICA PETRAGLIA MCCABE
MR. PETER M. CORRIGAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DOCTORS HEALTH, INC.,

Plaintiff,

-against-

Index No. 98/604436 (BAC)

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC.,
Defendants.
-----X

**PLAINTIFF'S REPLY MEMORANDUM OF LAW IN SUPPORT OF
ITS APPLICATION FOR A PRELIMINARY INJUNCTION**

PIPER & MARBURY L.L.P.
1251 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10020-1104
(212) 835-6000

ALL COMMUNICATIONS SHOULD BE REFERRED TO
MONICA PETRAGLIA MCCABE
PETER M. CORRIGAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
DOCTORS HEALTH, INC., :

Plaintiff, :

: 98 Civ. 604436 (BAC)

- against - :

CHASE MANHATTAN BANK, and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC., :

Defendants. :

----- X

PRELIMINARY STATEMENT

In this memorandum of law, Doctors Health, Inc. ("**Doctors Health**") responds to the opposition papers of NYLCare Health Plans of the Mid-Atlantic, Inc. ("**NYLCare**"), which were served on plaintiff's counsel after 6:00 p.m. on the day before the return date of this motion.

Contrary to the suggestion of NYLCare, this action was not commenced to resolve "a commercial dispute over monies owed between Maryland residents." (Opposition Memorandum of Law at p. 2). This action was commenced to stop NYLCare from fraudulently drawing down on a letter of credit here in New York.

NYLCare should be enjoined from drawing down on the letter of credit because NYLCare presented fraudulent documents to Chase Manhattan Bank ("**Chase**") in New York in an attempt to draw down on the letter of credit. Under the applicable law, either fraud in the presentment of letter of credit documents *or* fraud in the underlying transaction between the parties is sufficient for a court to enjoin the payment of a letter of credit. Because the undisputed evidence shows that NYLCare made fraudulent misrepresentations in the presentment of letter of

credit documents to Chase, this Court can enjoin NYLCare from drawing down on the letter of credit without addressing the issue of fraud in the underlying transaction.¹

SUMMARY OF FACTS

The facts supporting Doctors Health's application are set out in detail in the affidavit of John R. Dwyer, Jr. sworn to on September 10, 1998 (the "**Dwyer Affidavit**") and the affidavit of Stewart Gold, sworn to on September 16, 1998 (the "**Gold Affidavit**"). A brief summary of the facts is provided here.

Under the contract between Doctors Health and NYLCare dated October 1, 1997 (the "**Contract**"), Doctors Health was obligated to open a letter of credit (the "**Letter of Credit**") to secure the payment of claims by health providers, which Doctors Health did at Chase. The Letter of Credit expressly provided that NYLCare could draw down on the Letter of Credit only if it fulfilled certain conditions, including presenting a document to Chase stating that NYLCare is not aware of any defenses or offsets to payment raised by Doctors Health.

On or about September 8, 1998, NYLCare did in fact submit a statement to Chase that it was not aware of any defenses or offsets to payment raised by Doctors Health. But that statement was and still is false. NYLCare had been aware, as far back as July 1998, that Doctors Health had raised various defenses and offsets to payment. *See* Affidavit of John R. Dwyer, Jr. at ¶¶ 21, 22 and exhibits 3 and 4 thereto. In fact, NYLCare had acknowledged that Doctors Health had raised defenses and offsets on numerous occasions.

¹ While Doctors Health previously highlighted both NYLCare's fraud in the presentment and fraud in the underlying transaction, the Court need not consider the latter since the fraud in the presentment is so clear in the record before this Court and provides ample basis to sustain the injunction.

ARGUMENT

I.

NOT ONLY DOES THE ARBITRATION CLAUSE BETWEEN THE PARTIES NOT PRECLUDE DOCTORS HEALTH FROM SEEKING INJUNCTIVE RELIEF, BUT THIS COURT HAS JURISDICTION OVER NYLCARE

NYLCare's argument that the instant application for injunction is subject to the arbitration clause between the parties is refuted by the contract, which contains, in addition to the arbitration clause NYLCare correctly cited, a clause expressly providing for injunctive relief, a provision NYLCare did not even refer to. The clause entitled "Injunctive Relief" provides:

Notwithstanding this agreement to arbitrate, NYLCare Midatlantic and Doctors Health may seek interim and/or permanent injunctive relief pursuant to this Agreement in any court of competent jurisdiction.

See Benz Aff., Exhibit 1 at 6.6 and Exhibit 2 at 8.7. Thus, Doctors Health can pursue injunctive relief as it did here.

NYLCare's claim of lack of personal jurisdiction is likewise belied by the letter of credit agreement and the applicable law. NYLCare sent a letter to Chase here in New York in which it fraudulently misrepresented that it was not aware of "defenses or offsets to payments which have been raised by Doctors Health" (Exhibits B and C to the Capasso Affidavit). As such, NYLCare committed a fraud inside New York and is subject to jurisdiction under CPLR 302(a)(2).

Not only did NYLCare commit a fraudulent act in New York, but the letter of credit agreement with Chase also has a New York jurisdiction choice of law and clause providing for jurisdiction in this Court. *See Exhibit O to the Gold Affidavit*. In addition, NYLCare had the opportunity to oppose the opening of a letter of credit with a New York bank as provided in § 3.21 of the Agreement. *See Benz Affidavit at Exhibit 1*. Thus, this Court has jurisdiction to stop NYLCare from fraudulently drawing down on a letter of credit here in New York.

II.

THIS COURT SHOULD ENJOIN CHASE FROM PAYING OUT ON THE LETTER OF CREDIT BECAUSE NYLCARE'S PRESENTMENT OF LETTER OF CREDIT DOCUMENTS WAS FRAUDULENT

NYLCare's recitation of the law concerning enjoining letter of credit payments, which not properly delineate the fraud exception, is misleading. Under UCC § 5-114(2) and the controlling case law, Doctors Health needs to show that "a required document . . . is forged *or* fraudulent *or* there is fraud in the transaction" to enjoin Chase from paying NYLCare.² See, e.g., *Takeo Co. Ltd. v. Mead Paper, Inc.*, 204 A.D.2d 123, 611 N.Y.S.2d 543, 545 (1st Dep't 1994); *410 Sixth Ave. Foods v. 410 Sixth Ave.*, 197 A.D.2d 435, 602 N.Y.S.2d 835 (1st Dep't 1993); *Mount*

² Although the Letter of Credit incorporates the Uniform Customs and Practice for Commercial Documentary Credits, UCC § 5-114(2) and case law interpreting the UCC provision control the result here. See, e.g., *Mennen v. J. P. Morgan & Co., Inc.*, 91 N.Y.2d 13, 666 N.Y.S.2d 975, 980-81 (1997), *United Bank Ltd. v. Cambridge Sporting Goods Corp.*, 41 N.Y.2d 254, 258 n.2, 392 N.Y.S.2d 265 (1976). Section 5-114(2) of the UCC provides that:

Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but *a required document . . . is forged or fraudulent or there is fraud in the transaction:*

(a) the issuer must honor the draft or demand for payment if honor is demanded by * * * holder of the draft * * * which has taken the draft * * * under the credit and under circumstances which would make it a holder in due course (Section 3-302) * * *; and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other or other defect not apparent on the face of the documents *but a court of appropriate jurisdiction may enjoin such honor.*

N.Y.U.C.C. § 5-114(2)(b) (McKinney 1998 pocket part) (emphasis added).

Carmel Energy Corp. v. Marine Midland Bank, 82 A.D.2d 729, 439 N.Y.S.2d 387, 388 (1st Dep't 1981).³

NYLCare's actions are similar to the actions of the seller in *Sztejn v. J. Henry Schroder Banking Corp.*, 177 Misc. 719, 31 N.Y.S.2d 631 (S. Ct. N.Y. County 1941). There the Court enjoined payment on a letter of credit where the seller, who attempted to draw down on the letter of credit, had intentionally procured fraudulent bills of lading and invoices falsely describing the goods called for by the letter of credit, which the seller submitted to the issuing bank.⁴

Doctors Health asks the Court to sustain the injunction restraining Chase from drawing down on the Letter of Credit in favor of NYLCare. In doing so, Doctors Health directs the Court to the long-recognized principle in letter of credit jurisprudence, namely, "[w]hen the issuer of a letter of credit knows that a document, although correct in form, is, in point of fact, false or

³ The Court of Appeals in *First Commercial Bank v. Gotham Originals, Inc.*, 64 N.Y.2d 287, 486 N.Y.S.2d 715, 719 (1985) succinctly stated the law in this area as follows:

Under the general rule the issuer must honor the draft when the documents presented comply with the terms of the letter of credit (Uniform Commercial Code § 5-114[1]). But when a required document does not conform to the necessary warranties or is forged or fraudulent *or* there is fraud in the transaction, an issuer acting in good faith may, but is not required to, refuse to honor a draft under a letter of credit when the documents presented appear on their face to comply with the terms of the letter of credit. *Further than that, a customer may also enjoin an issuer from honoring such a draft if the issuer fails to do so on its own* (Uniform Commercial Code § 5-114 [2][b]. (emphasis added) (citations omitted).

⁴ In fact, NYLCare's fraudulent submission to Chase goes to the heart of the entire transaction. See, e.g., *Voest-Alpine Intern. Corp. v. Chase Manhattan Bank*, 707 F.2d 680 (2d Cir. 1983). NYLCare's intentional misrepresentation shows that NYLCare's goal is to rob Doctors Health without any regard for the underlying bargain. The underlying transaction would be a complete sham if NYLCare can take the money and run in complete disregard of everything it promised in the underlying transaction. Exactly what NYLCare may be entitled to will be shown by, among other things, the on-going audit, but without protection from improper pay-outs on the letter of credit, the underlying transaction is as worthless as those cases where "virtually worthless" goods were shipped. See *Takeo Co.*, *supra* at 4.

illegal, he cannot be called upon to recognize such a document as complying with the terms of the letter of credit." *Old Colony Trust Co. v. Lawyers' Title & Trust Co.*, 297 F. 152, 158 (2d Cir.), *cert. den.*, 265 U.S. 585 (1924). As the Second Circuit noted in *Voest-Alpine Int'l Corp. v. Chase Manhattan Bank*,

Presentation of the fraudulent documents to a bank by a beneficiary subverts not only the purposes which letters of credit are designed to serve in general, but also the entire transaction at hand in particular. Falsified documents are the same as no documents at all.

707 F.2d 680, 685 (2d Cir. 1983) (citation omitted).

Here, NYLCare has submitted fraudulent documents to Chase claiming that Doctors Health had not raised any defenses or offsets to payments under the contract of which NYLCare was aware. In fact, NYLCare is well aware of the defenses and offsets raised by Doctors Health to the amounts owed. NYLCare's fraudulent misrepresentation is particularly egregious in light of the ongoing audit of NYLCare's fraudulent payment of past claims by Doctors Health's auditor.

Cases cited by NYLCare, if applicable, in fact support Doctors Health's position. For example, in *KMW Int'l v. Chase Manhattan Bank, N.A.*, 606 F.2d 10 (2d Cir. 1979), the Court recognized the black letter law upon which Doctors Health relies: namely, that a payment on letter of credit may be enjoined "when the documentation presented is fraudulent *or* there is fraud in the transaction." *Id.* at 16 (emphasis added). Finding that "Chase had received no demand for payment whatsoever," the Court reasoned that the injunction could not be "upheld on the grounds . . . that a required document . . . is forged or fraudulent." *Id.* The Court then turned to the issue of whether there was fraud in the transaction and found none. *Id.* Here, because there is clear

evidence of fraud in the presentment, the Court need not address the issue of fraud in the transaction.⁵

Thus, this Court should enjoin Chase from payment on the letter of credit.

III.

THE LETTER OF CREDIT IS PLAIN ON ITS FACE AND PROHIBITS NYLCARE FROM DRAWING DOWN ON THE LETTER OF CREDIT WHEN IT IS AWARE OF DEFENSES OR OFFSETS RAISED BY DOCTORS HEALTH

In order for NYLCare to draw down on the letter of credit, it must first produce a statement, in accordance with the terms of the letter of credit, that "[t]here are no defenses or offsets to payment which have been raised by Doctors health and of which NYLCare is aware." This language contained in the Letter of Credit is clear on its face and should not be subject to any other interpretation.⁶

⁵ NYLCare's reliance on *Banque Worms v. Banque Commerciale Privée*, 679 F. Supp. 1173 (S.D.N.Y. 1988), *aff'd*, 849 F.2d 787 (2d Cir. 1988), is also misplaced. In *Banque Worms*, the Court analyzed whether an alleged wrongdoing would amount to fraud in the transaction and found that it did not. *Id.* at 1180-1183. The Court did not address the issue of fraud in the presentment. NYLCare's reliance on *Ross Bicycles, Inc. v. Citibank, N.A.*, 613 N.Y.S.2d 538, 540-541 (Sup. Ct. N.Y. County 1994) is baseless. In *Ross Bicycles*, Citibank tried to escape its liability by raising several defenses, all of which were ultimately stricken in an earlier case, which NYLCare failed to cite. *See Ross Bicycles v. Citibank* 178 A.D.2d 388, 577 N.Y.S.2d 826 (1st Dep't 1991). In the earlier decision, the Appellate Division rejected Citibank's attempt to argue fraud in the transaction finding that it did not meet the threshold for fraud in the transaction. *Id.* The Court did not address the argument of fraud in the presentment. *Id.*

⁶ *See International Marine Investors & Mgmt. Corp. v. Wirth*, 666 N.Y.S.2d 503, 503 (2d Dep't 1997) (held that "[i]t is the primary rule of construction of contracts that when the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving a practical interpretation to the language employed and the parties' reasonable expectations" and any ambiguity in contract provision should be construed against its drafter); *Davis v. Chessari*, 239 A.D.2d 457, 457-58, 658 N.Y.S.2d 965, 966 (2d Dep't 1997) ("The interpretation of a written contract is within the province of the court and, if the language of the contract is free from ambiguity, its meaning may be determined as a matter of law on the basis of the writing along without resort to extrinsic evidence."); *Charlebois v. J.M. Weller Assocs., Inc.*, 136 A.D.2d 214, 526 N.Y.S.2d

(Footnote continued to next page)

NYLCare's statements that it was unaware of any defenses or offsets raised by Doctors Health were fraudulent because NYLCare had knowledge of various defenses or offsets. In fact, the record now shows that NYLCare sent its revised draw down letters on September 8, 1998 (Exhibit C to the Capasso Affidavit) well after receiving Doctors Health's letter of September 4, 1998 (Exhibit 7 to the Dwyer Affidavit) in which Doctors Health notified NYLCare that NYLCare's incorrect calculation should be corrected to show a "cash balance in favor of Doctors Health in the amount of approximately \$1,443,047.

IV.

DOCTORS HEALTH WILL BE IRREPARABLY HARMED IF CHASE IS NOT ENJOINED FROM PAYMENT ON THE LETTER OF CREDIT

The facts, as initially set forth in the Dwyer Affidavit and further amplified by the Gold Affidavit, show that Doctors Health will be irreparably harmed if this Court does not enjoin Chase from payment on the letter of credit. The injunction is critical to Doctors Health's continuing operation as a medical services provider. Without the injunction, Doctors Health will not be able to attract the financial injections it desperately needs from investors to enable it to continue its operations and may be forced to seek bankruptcy protection.

In addition to the risk of bankruptcy, many if not all of Doctors Health's 480 employees will lose their jobs. These 480 employees provide services critical to approximately 7000 high risk patients and at least 14,000 Medicare patients. It would also be unfair for NYLCare, a party that perpetrated the fraud, to benefit from its fraud.

In the face of such irreparable harm, this Court should enjoin NYLCare from drawing down on the letter of credit. *Ansonia Assocs. v. Ansonia Residents' Assoc.*, 78 A.D.2d 211, 434

(Footnote continued from previous page)

648, 649 (3d Dep't 1988) (interpreting contract as a whole to give meaning to clear and unambiguous contract provisions).

N.Y.S.2d 370 (1st Dep't 1980); *Grant v. Civil Service Employees Assoc., Inc.*, 169 Misc. 2d 896, 646 N.Y.S.2d 1018 (S. Ct. 1996) (injunction appropriate remedy where interruption of salary payments to laid off or discharged employees would undoubtedly affect local economy and cause families to fail even temporarily to meet payment obligations).

CONCLUSION

For the reasons stated above, Doctors Health respectfully requests that the Court continue to enjoin NYLCare from drawing down on the Letter of Credit.

Dated: New York, New York
September 17, 1998

PIPER & MARBURY L.L.P.

By: _____
Monica Petraglia McCabe (MM 5853)
Peter M. Corrigan (PC 0541)
1251 Avenue of the Americas
New York, New York 10020-1104
(212) 835-6000
Attorneys for Plaintiff Doctors Health, Inc.

HON. BARRY A. COZIER

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC,
INC.,

Defendants.

At the IAS Part 3 of the Supreme Court
of the State of New York, at the
Courthouse, 80 Centre Street, New York,
New York on the 11th day of September,
1998

Order to Show Cause (Containing Tem-
porary Restraining Order) Why
Preliminary Injunction Should Not Be
Granted

NEW YORK
COUNTY CLERK'S OFFICE

98/604436 SEP 11 1998

NOT COMPARED
WITH COPY FILED

Upon the summons and complaint herein, and the annexed Affidavit of Urgency of
Monica Petraglia McCabe, sworn to September 11, 1998, and the Affidavit of John R. Dwyer,
Jr., sworn to September 10, 1998,

LET the defendants herein show cause before this Court at a Term, Part 3 (room 2/8)
thereof, to be held at the Courthouse, located at 80 Centre Street, New York, NY, on the 11th day
of September 1998, at 9:30 AM o'clock in the forenoon of that day, or as soon thereafter as counsel can
be heard, why a Preliminary Injunction should not be issued:

(1) prohibiting Chase Manhattan Bank ("Chase") from
making any payments to NYLCare Health Plans of the Mid-
Atlantic, Inc. ("NYLCare") under that certain letter of credit No. P-
343547 issued by Chase in favor of NYLCare for the sum of
\$4,400,000 or any part of such sum in connection with NYLCare's
request dated September 9, 1998; and

(2) for such other and further relief as the Court may
deem just and proper; and it is further

ORDERED, that pending the hearing and ~~determination~~ of this motion, Chase shall not
make any payments to NYLCare under letter of credit No. P-343547; and it is further

ORDERED that on or before September 17, 1998, plaintiff shall post an undertaking in the amount of \$ 260,000. conditioned that the plaintiff shall pay to the defendants an amount not exceeding \$ _____ for ^{all} legal costs and damages which may be sustained by

reason of the temporary restraining order if the defendants recover judgment or it is later decided ^{plaintiff was not entitled this restraining order, finally determined} that the issuance of a temporary restraining order in plaintiff's favor was unlawful.

JSC
JAL
JSC Oral argument shall be required on the return date of this motion.

Bern Allegro
Sufficient cause ~~appearing therefor~~ ^{let} service of a copy of this order to show cause, together with the papers upon which it is granted, by hand on defendant Chase at its New York branch and place of business, 1211 Avenue of the Americas, New York, New York, 10036, and on defendant NYLCare by fax and overnight delivery to its place of business at 7601 Ora Glen Drive, Greenbelt, Maryland, on or before September 14, 1998, be deemed good and sufficient service thereof.

JAL
JSC
Entered

[Signature]
J.S.C.

HON. BARRY A. COZIER

Dated: New York, New York
September 11, 1998

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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September 18, 1998

Via Facsimile (410) 545-7336

Honorable David Mitchell
Circuit Court for Baltimore City
111 North Calvert Street
Baltimore, MD 21202

Re: Doctors Health, Inc. v. NYLCare Health Plans of the
Mid-Atlantic, Inc.

Dear Judge Mitchell:

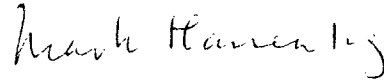
Enclosed please find the following materials enclosed for
your consideration:

1. Temporary restraining order of New York Justice
Barry A. Cozier (September 11, 1998);
2. Response of NYLCare Health Plans of the Mid-
Atlantic, Inc. to Order to Show Cause Why
Preliminary Injunction Should Not Be Granted
(September 16, 1998);
3. Exhibits to Response of NYLCare Health Plans of
the Mid-Atlantic, Inc. to Order to Show Cause Why
Preliminary Injunction Should Not Be Granted
(September 16, 1998) (Attachments to affidavits
are not being faxed because of their volume, but
will be presented to the Court on Monday);
4. Order of New York Justice Barry A. Cozier denying
preliminary injunction (September 17, 1998);

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

5. Summary Statement on Application for Expedited Service and/or Interim Relief, New York Appellate Division (September 17, 1998);
6. New York CPLR Sections 5518 and 5519.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark C. Hansen".

Mark C. Hansen

Enclosures

HON. BARRY A. COZIER

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC,
INC.,

Defendants.

At the IAS Part 3 of the Supreme Court
of the State of New York, at the
Courthouse, 80 Centre Street, New York,
New York on the 11th day of September,
1998

Order to Show Cause (Containing Tem-
porary Restraining Order) Why
Preliminary Injunction Should Not Be
Granted

NEW YORK
COUNTY CLERK'S OFFICE

98/604436 SEP 11 1998

NOT COMPARED
WITH COPY FILED

Upon the summons and complaint herein, and the annexed Affidavit of Urgency of
Monica Petraglia McCabe, sworn to September 11, 1998, and the Affidavit of John R. Dwyer,
Jr., sworn to September 10, 1998,

LET the defendants herein show cause before this Court at a Term, Part 3 (room 2/8)
thereof, to be held at the Courthouse, located at 80 Centre Street, New York, NY, on the 11th day
of September 1998, at 9:30 AM o'clock in the forenoon of that day, or as soon thereafter as counsel can
be heard, why a Preliminary Injunction should not be issued:

(1) prohibiting Chase Manhattan Bank ("Chase") from
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\$4,400,000 or any part of such sum in connection with NYLCare's
request dated September 9, 1998; and

(2) for such other and further relief as the Court may
deem just and proper; and it is further

ORDERED, that pending the hearing and ~~determination~~ of this motion, Chase shall not
make any payments to NYLCare under letter of credit No. P-343547; and it is further

[Handwritten signature]
JSL

ORDERED that on or before September 17, 1998, plaintiff shall post an undertaking in the amount of \$ 260,000, conditioned that the plaintiff shall pay to the defendants an amount not exceeding \$ _____ for ^{all} legal costs and damages which may be sustained by reason of the temporary restraining order if the defendants recover judgment or it is ~~later decided~~ ^{finally determined} that the ~~issuance of a temporary restraining order in plaintiff's favor was unlawful.~~ ^{plaintiff was not entitled to a restraining order.}

JSC

JSC

Oral argument shall be required on the return date of this motion.

Sufficient cause ^{being alleged} ~~appearing therefor~~ let service of a copy of this order to show cause, together with the papers upon which it is granted, by hand on defendant Chase at its New York branch and place of business, 1211 Avenue of the Americas, New York, New York, 10036, and on defendant NYLCare by fax and overnight delivery to its place of business at 7601 Ora Glen Drive, Greenbelt, Maryland, on or before September 14, 1998, be deemed good and sufficient service thereof.

JSC

Entered

J.S.C.

HON. BARRY A. COZIER

Dated: New York, New York
September 11, 1998

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
:
DOCTORS HEALTH, INC. :
:
Plaintiff, :
:
-against- : Index No. 98/604436
:
CHASE MANHATTAN BANK, and NYLCARE :
HEALTH PLANS OF THE MID-ATLANTIC, INC. :
:
Defendants. :
:
----- X

**RESPONSE OF NYLCARE HEALTH PLANS
OF THE MID-ATLANTIC, INC. TO ORDER TO SHOW CAUSE
WHY PRELIMINARY INJUNCTION SHOULD NOT BE GRANTED**

NYLCare Health Plans of the Mid-Atlantic, Inc. ("NYLCare"), a corporation indirectly owned by Aetna U.S. Healthcare,¹ by counsel, respectfully submits this response to the Order to Show Cause (Containing Temporary Restraining Order) Why Preliminary Injunction Should Not Be Granted, entered by the Court ex parte on application by plaintiff Doctors Health, Inc. ("Doctors") last Friday, September 11, 1998.²

¹NYLCare is making a special appearance for the sole purpose of responding to the Order to Show Cause (Containing Temporary Restraining Order) Why Preliminary Injunction Should Not Be Granted (September 11, 1998). NYLCare is not waiving its defense of lack of personal jurisdiction and hereby preserves lack of jurisdiction as an affirmative defense. CPLR 3211(e); CPLR 320(b); Crook v. E.I. du Pont de Nemours Co., 181 A.D.2d 1039, 1039, 582 N.Y.S.2d 581 (4th Dep't 1992) (defendants properly preserved their affirmative defense of lack of jurisdiction by asserting it in their answer), aff'd, 81 N.Y.2d 807 (1993).

²Although representatives of Doctors met with representatives of NYLCare's parent company, Aetna US Healthcare, on September 9, 1998 — ostensibly to attempt to resolve contested issues, see Affidavit of Don Liu ("Liu Aff.") at ¶ 2 — Doctors provided no notice to NYLCare before seeking ex parte relief from the Court. It did not provide copies of its

This is a commercial dispute over monies owed between Maryland residents with respect to the administration of medical benefits for Medicare HMO members in Maryland and Virginia. In return for payments from NYLCare, Doctors agreed to assume the liability for the medical claims of certain of NYLCare's Medicare members. While NYLCare continued to pay the claims directly to the health care providers, Doctors agreed to reimburse NYLCare for these claims, to the extent the aggregate claims were equal to or greater than the fixed amount that NYLCare agreed to pay Doctors. That business deal has turned out to be unfavorable for Doctors, and it now wants to avoid it. Ignoring the parties' agreement to arbitrate all their disagreements over payment amounts, the Court's lack of jurisdiction over NYLCare, and decades of precedent in this Court forbidding the issuance of injunctions in these circumstances, Doctors asks the Court to enjoin NYLCare's draw of \$2.6 million on a letter of credit issued by co-defendant Chase Manhattan Bank to secure Doctors' overdue payment obligations. Doctors argues that it will be irreparably injured because this draw will place it under financial stress, and thus threatens to halt health care for thousands of Medicare beneficiaries.³ Doctors argues that it is likely to succeed on its claim, because NYLCare "defrauded" Chase

pleadings, and counsel did not receive these pleadings until Monday, September 14, 1998.

³Contrary to the false impression in Doctors' papers, Doctors does not provide any treatment to NYLCare HMO members and any financial threat to Doctors would not affect the medical care of such members. Point I.A, infra.

in requesting payment of the overdue amount under the letter of credit, and because NYLCare supposedly induced it to enter into agreements based on false information about the costs it could expect to incur.

The Court should summarily reject Doctors' effort to leverage a Maryland commercial dispute over money -- which must be arbitrated in Maryland, under Maryland law -- into an emergency requiring equitable relief. Doctors has established no irreparable injury; its conclusory claims of potential pecuniary harm are deficient as a matter of law. (Point I.) The balance of equities also compels denial: Doctors claims only, and without support, that it may be pressed to make payments to Chase Manhattan Bank ("Chase") if the \$2.6 million draw is honored. NYLCare, however, will lose any chance of payment if Doctors is successful in preventing the draw, since the letter of credit expires by its terms on October 31, 1998. Doctors concedes that it lacks the resources itself to make the required payments to NYLCare. Once the letter of credit expires, there will be no other resources from which NYLCare can collect what the contract requires. That represents irreparable injury to NYLCare. (Point II.)

Moreover, Doctors has no case on the merits. The letter of credit requires payment upon demand made in proper form. That demand was made. Doctors' desperate effort to call this "fraud" falls of its own weight. While it claims that it has defenses and offsets to the demanded \$2.6 million, it has provided no

factual support for this claim. It has not even come close to meeting its burden of a "clear showing" that NYLCare committed fraud in asking for payment of monies it has a right to collect, or that NYLCare fraudulently induced it to enter into agreements underlying the letter of credit. At the very least, all of the supposed facts underlying Doctors' claims are disputed by NYLCare, and this dispute alone requires denial of the requested relief. (Point III.)

Factual Background

NYLCare is a federally-qualified health maintenance organization ("HMO") with its principal place of business in Greenbelt, Maryland. NYLCare includes among its members approximately 14,000 Medicare beneficiaries in the Maryland/Virginia area. In early 1997, NYLCare entered into negotiations with a number of entities that sought to, in substance, assume the risk of paying the health benefits claims of NYLCare's Medicare members in return for a substantial share of the payments NYLCare received, per member, from the federal government. Affidavit of Jeff D. Emerson ("Emerson Aff.") at ¶ 5.

Doctors is a "physician practice management company" ("PPMC"), specializing in Medicare services. It holds itself out as expert in reducing the costs of providing covered medical benefits to Medicare members, and seeks to contract with HMOs for covering the risks of their Medicare members. Doctors was one of several health services companies that sought to assume from

NYLCare both the cost burdens and the substantial revenues (in excess of \$200 million over three years according to Doctors' own press release) of NYLCare's Medicare members. Id.

NYLCare entered into negotiations with Doctors beginning in the late summer of 1997. NYLCare and Doctors reached a tentative agreement in late August or early September of 1997. At this point, Doctors asked NYLCare to provide certain information regarding the costs that NYLCare had incurred in providing covered medical benefits to its Medicare members. NYLCare complied, fully, accurately, and with information that NYLCare itself used and relied upon. Affidavit of Greg Pastor ("Pastor Aff.") at ¶ 4. NYLCare told Doctors that its cost of providing a Medicare member with services was \$420 per member per month ("PMPM"). Pastor Aff. Exh. A (e-mail from Chandra Mileham of Doctors to Greg Pastor, Dec. 11, 1997) ("The information we received from your finance department on the whole population averaged \$420 PMPM (including pharmacy of about \$40 PMPM)").⁴

After receiving this information, and all other information it had requested, Doctors executed the Administrative Service Provider Contract for Medicare Global Risk Services (Affidavit of Steven Benz ("Benz Aff."), Exh. 1) and Medicare Network Management Agreement (id., Exh. 2) ("Agreements") on September 30, 1997 and October 3, 1997. The essence of the agreement was this:

⁴The information was based on NYLCare's historical experience with its entire Medicare population, and turned out to be remarkably close to the actual cost later experienced by Doctors. Pastor Aff. at ¶ 13.

NYLCare agreed to pay Doctors a fixed percentage of the monthly payments that it received from the federal Health Care Financing Administration ("HCFA"), which administers the Medicare program, less the costs that NYLCare paid on claims for covered medical benefits provided to its Medicare members. If the claims paid by NYLCare exceeded the fixed monthly percentage advanced to Doctors, Doctors was required to pay NYLCare the amount by which the claims exceeded the payments. See Benz Aff., Exh. 2 at ¶ 3.4.4.⁵ If the medical claims paid by NYLCare were less than the fixed monthly percentage, Doctors would retain the difference as profit.

Critically, NYLCare ensured that there would be resources to provide for any payments in the event that Doctors was unable or unwilling to pay the claims. The Agreements provided that, if Doctors failed to pay the excess claims within 60 days after NYLCare submitted them, NYLCare was entitled to draw on a letter of credit Doctors was required to establish.⁶

⁵The Agreements also contain mandatory arbitration provisions, of which paragraph 8.1 requires "[a]ny controversy, dispute or claim arising out of or relating to this Agreement or the breach thereof" to be arbitrated in Maryland. Benz. Aff., Exh. 2 at ¶ 8.1-8.7; id., Exh. 1 at ¶¶ 6.1-6.7. The Agreements require the parties to "meet and confer in good faith" within 30 days of notice of a dispute in an effort to reach an amicable solution. Benz Aff., Exh. 1 at ¶ 6.2; id., Exh. 2 at ¶ 8.3.

⁶The letter of credit was ultimately established at Chase Manhattan Bank. On November 3, 1997, the Chase Manhattan Bank issued letter of credit No. P-343547 with an available amount of \$4.4 million. This amount was subsequently increased to \$5.25 million. Benz Aff., Exh. 3 at 2.

Doctors announced to the public that it proposed to make money from the Agreements (where NYLCare had lost money on its Medicare subscribers) by reducing the costs of providing covered medical benefits for NYLCare's Medicare members. In a December 1997 interview with the Washington Post, Doctors' Chief Executive Officer Steward Gold explained that NYLCare contracted with Doctors because NYLCare's "costs were out of control." Benz Aff., Exh. 4. Put simply, Doctors thought it could do a better job managing the Medicare subscribers. Scott Rifkin, then Chairman of Doctors, explained "[t]he difference is, doctors are inherently better than any other group at managing patient care." Id. That same Washington Post article noted that Doctors was "still working to establish its financial footing, [and had] lost \$14.8 million on revenue of \$12 million in the fiscal year that ended June 30." Id.

For the first few months of the Agreements, Doctors received large monthly payments from NYLCare. Emerson Aff. at ¶ 5. Because the medical claims paid for covered medical benefits were not large during this period, there was little (if any) reduction in the payments based on claims paid by NYLCare. Id.

When the claims began to accumulate at NYLCare, and NYLCare began to pay them, the situation changed dramatically. Despite its public boasts, Doctors had been unsuccessful in reducing the cost of providing covered health benefits to NYLCare's Medicare members. It soon became apparent that Doctors owed NYLCare

substantial sums, and would receive no profits on the Medicare business. Id.

Doctors then began to complain. In a July 1998 meeting with Jeff D. Emerson, NYLCare's Chief Executive Officer, Stewart Gold first raised the accusation that NYLCare had misled Doctors by providing Doctors with cost information that understated costs for the Medicare membership. Gold alleged that NYLCare had estimated its costs at \$350 PMPM, and stated that Doctors' costs were almost \$150 more than that. Gold presented Emerson with a chart reflecting his allegations. Dwyer Aff., Exh. 8. Approximately one week later, however, Chandra Mileham of Doctors faxed NYLCare a "corrected" chart. Pastor Aff., Exh. B. This revised chart alleged that NYLCare's costs were only about \$50 less than those Doctors had actually experienced. Id. Neither of these sets of allegations compared Doctors' costs with NYLCare's historical cost that Pastor had provided to Doctors before it entered into the Agreements. Pastor Aff. at ¶¶ 12-14.

On August 31, Doctors' Stewart Gold sent a letter to NYLCare's Jeff Emerson, disputing the accuracy of the cost information that had been provided by NYLCare. Dwyer Aff., Exh. 9. But Gold offered no evidence to support any claim that NYLCare was not entitled to recoup on the claims it had paid for Medicare members.

On September 4, 1998, NYLCare sent a letter to Chase Manhattan Bank, requesting that the sum of \$2,615,208.69 be drawn on the letter of credit pursuant to paragraph 3.4.4. of the

Medical Network Management Agreement. Affidavit of Susan Lefkowitz ("Lefkowitz Aff.") at ¶ 4. In accordance with paragraph 3.4.4., NYLCare had sent Doctors an invoice sixty days previously in the amount of \$2,615,208.69 — the amount of claims that exceeded Doctors' total compensation due under the July Monthly Capitation Calculation Report. Lefkowitz Aff. at ¶ 4.

On September 9, at his request, Gold, accompanied by his investors, met and conferred with David Simon, Missy Shaffer, and Don Liu of Aetna U.S. Healthcare's Law Department. They discussed the issues that had arisen between the parties and requested that Doctors be permitted to continue the Agreements after their December 31, 1998 expiration date. They portrayed Doctors as financially stable, stating expressly that Doctors Health was viable and that its financial backers had sufficient capital to fund Doctors for any additional amounts it may need. They said nothing about any imminent bankruptcy to Doctors, or any need for emergency relief. Liu Aff. at ¶ 4.

The morning of September 11, 1998, Mr. Gold sent a backdated letter to David Simon, thanking Mr. Simon for "setting up the meeting to discuss the situation so promptly." Liu Aff., Exh. A.⁷ At the same time, with no notice or attempted notice to

⁷It is apparent from the face of this letter that it was backdated to September 10. The word-processing code displayed at the bottom left hand corner clearly indicates that the documents was printed from the system on September 11, notwithstanding Gold's claim that he had written it on September 10 and had been trying to fax it to Simon, unsuccessfully, since that afternoon. See Liu Aff., Exh. A.

NYLCare, Doctors' attorneys requested that this Court enter an ex parte TRO based on supposed imminent irreparable injury and their likelihood of proving that NYLCare had defrauded Doctors.

Argument

"It is well established that preliminary injunctive relief is a drastic remedy which will not be granted without a clear showing by the movant that (1) he is likely to succeed on the merits; (2) he will be irreparably harmed without the issuance of the injunction; and (3) the balance of equities favors him." Mr. Dees Stores, Inc. v. A.J. Parker, Inc., 553 N.Y.S.2d 16, 17 (N.Y. App. Div. 1990) (internal citation omitted); Aetna Ins. Co. v. Capasso, 75 N.Y.2d 860, 862 (N.Y. 1990); W. T. Grant Co. v. Srogi, 52 N.Y.2d 496, 517 (N.Y. 1981); NY C.P.L.R. § 6301. A preliminary injunction will not be granted "'unless a clear right thereto is established under the law and the undisputed facts upon the moving papers, and the burden of . . . showing an undisputed right rests on the movant.'" J.S. Anand Corp. v. Aviel Enter., Inc., 148 A.D.2d 496, 496 (N.Y. App. Div. 1989) (quoting First Nat'l Bank v. Highland Hardwoods, 98 A.D.2d 924, 926 (1983); Nalitt v. City of New York, 138 A.D.2d 580, 581 (1988)) (emphasis added); Peldman v. Podolsky, 148 A.D.2d 686, 687 (N.Y. App. Div. 1989) ("A moving party is not entitled to a temporary injunction unless the right is plain from the undisputed facts." (internal quotation marks omitted)). Doctors has not established, and cannot establish any one of the three

requisite factors. Numerous issues of disputed fact also preclude injunctive relief.

I. DOCTORS HEALTH CANNOT SHOW IRREPARABLE INJURY

Doctors alleges two kinds of injury if the Court denies injunctive relief: the harm that would supposedly befall 34,000 patients whose medical care would be "disrupted" or who "would not have access to medical services" (Dwyer Aff. at ¶ 19); and the financial losses and "risk" of bankruptcy that Doctors would face if required to replenish the drawn-down letter of credit, as prescribed by the terms of the Agreements (*id.* at ¶¶ 15-18).

Doctors' arguments are both irresponsible — for suggesting that Medicare beneficiaries will not receive the health care to which they are entitled if Doctors is required to meet its contract obligations — and deficient as a matter of law, to the extent it argues that conclusory threats of financial exigency can support the extraordinary relief it seeks. NYLCare's 14,000 Medicare members who are managed (not medically treated) by Doctors will, as they always have, continue to receive all appropriate medical benefits from their NYLCare participating doctors; and NYLCare will, as it always has, continue to pay those doctors' claims, as it must under law, regardless of Doctors' financial viability. Access to care for Medicare beneficiaries does not and will not depend at all on the financial condition of Doctors. As to plaintiff's claims of financial loss and possible bankruptcy, these allegations are unsupported and disputed; in addition, the claims are pecuniary

and can be addressed through an adequate remedy at law. Accordingly plaintiff has failed to meet its burden of showing irreparable harm.

**A. There Will Be No Disruption in Care to the
Managed by Doctors Health**

The claim by Doctors that NYLCare's drawing on the letter of credit would harm the medical care provided to 14,000 Medicare patients and 20,000 non-Medicare patients is false. Emerson Aff. at ¶¶ 2-4. Doctors is a "physician practice management company" that assumes responsibility for some of the administrative burdens of an HMO, like NYLCare, in exchange for receiving a fixed percentage of the funds that the HMO receives from the government. Under the Agreements between Doctors and NYLCare, the Medicare members remain free to choose any NYLCare-participating doctor, the doctors submit their claims to NYLCare, and NYLCare pays the doctors directly. Id.⁸ Even if Doctors were to declare bankruptcy, these patients and their doctors will see no disruption in medical care whatsoever. Emerson Aff. at ¶ 4. Doctors' irresponsible attempt to cloak its attempt to avoid its payment obligation in the mantle of patient welfare is characteristic of its tactics in this matter.⁹

⁸While it is true that Doctors owns some medical practices, those practices represent a tiny percentage of NYLCare-approved health care providers. Moreover, there has been no showing that any of these practices will stop providing care to patients. Even if they did, patients are free to choose from hundreds of other NYLCare participating physicians. Emerson Aff. at ¶ 4.

⁹Consequently, Mr. Dwyer's claim (Dwyer Aff. at ¶ 18) that 14,000 Medicare patients would suffer a "disruption in their

**B. Plaintiff's Claim of Financial Injury Is
Conclusory, Disputed, and Cannot Support a Finding
of Irreparable Injury**

Plaintiff's unsupported claims (McCabe Aff. at ¶ 10; Dwyer Aff. at ¶ 18) that, absent an injunction, it will have to "cut[] its overhead," "lay off . . . employees," and possibly "file bankruptcy" cannot demonstrate irreparable injury for three independent reasons: (1) conclusory statements of financial loss or bankruptcy, unsupported by financial records or other evidence, are not sufficient to demonstrate irreparable harm as a matter of law; (2) Doctors has recently represented that the company will not fail even if required to replenish the letter of credit; and (3) these alleged injuries, even if properly supported and true, are pecuniary and thus cannot support the drastic remedy of injunctive relief.

First, conclusory statements of irreparable injury, such as those found in the McCabe and Dwyer affidavits, are legally insufficient to support an injunction. Niagra Falls Power Co. v. White, 292 N.Y. 472, 481 (N.Y. 1944) ("conclusory statements of imminent and irreparable injury" are insufficient to support an injunction). New York courts require financial records or other evidence to demonstrate the imminent harm required for injunctive relief. In Benjamin Kurzban & Son, Inc. v. Board of Educ., 129

medical care" and 20,000 non-Medicare patients "would not have access to medical services" is simply untrue. At the very least, there is a serious factual dispute which means that Doctors has failed to demonstrate, as it must, "a clear right" to a preliminary injunction based on the undisputed facts in the moving papers. J.S. Anand Corp., 148 A.D.2d at 496.

A.2d 756 (N.Y. Sup. Ct. 1987), for example, the court held that the plaintiff failed to demonstrate irreparable injury where, as here, the plaintiff submitted nothing more than affidavits from plaintiffs' employee and plaintiff's attorney stating that plaintiff may lose 90% of its work and "would be forced to go out of business" if the defendant were not enjoined. Id. at 757. "No financial statements or other evidence were submitted to substantiate these claims." Id. Accordingly, such "bare, conclusory allegations were insufficient to satisfy the plaintiff's burden of demonstrating irreparable injury." Id.

Likewise in Wurttembergische Fire Ins. Co. v. Pan Atlantic Underwriters, Ltd., 133 A.D.2d 268 (N.Y. App. Div. 1987), the court, presented with facts similar to the instant case, refused either to enjoin a party from drawing against a letter of credit or enjoin the bank from paying on the letter of credit, despite plaintiff's claims of fraud, where "the plaintiff's bare conclusory allegations of [the party's] potential insolvency are insufficient to satisfy the plaintiff's burden of demonstrating irreparable injury." Id. at 269.

Doctors' allegations of "catastroph[y]" are similarly "bare" and "conclusory." While both McCabe and Dwyer allege "drastic[] cut[s]" in overhead, "lay off[s]," and the "risk" of bankruptcy, see McCabe Aff. at ¶ 10; Dwyer Aff. at ¶ 18, neither provides any financial records or other evidence to support these claims -- evidence that is required under New York law. See, e.g., Rockland Development Associates v. Village of Hillburn, 568

N.Y.S.2d 490, 491 (N.Y. App. 1991) (plaintiffs' contention that, without the injunction, they will suffer "financial losses" and be "driv[en] . . . into bankruptcy" was "unavailing," because "[p]laintiffs submitted no financial statement or other evidence to substantiate these claims and the conclusory allegations contained in their supporting affidavits are insufficient to demonstrate irreparable injury"); L & J Roost, Ltd. v. Department of Consumer Affairs, 128 A.D.2d 677, 679 (N.Y. App. Div. 1987) (moving party "fail[ed] to submit sufficient proof" -- in the form of "financial records or other evidence" -- "to show that the plaintiffs would suffer 'irreparable injury' absent granting of this preliminary injunction"; "bare conclusory allegations made by the plaintiffs [in affidavits] were insufficient to satisfy their burden"); Yan's Video, Inc. v. Hong Kong TV Video Programs, Inc., 133 A.D.2d 575, 578 (N.Y. App. Div. 1987) (plaintiffs' "conclusory allegation that they will be out of business within a week" absent injunctive relief failed to show irreparable injury); J. S. Anand, 148 A.D.2d at 496 (court refused to enjoin defendant's enforcement of a security agreement where plaintiff's "bare conclusory allegations" of injury "were insufficient to satisfy its burden"); Gandolfo v. White, 224 A.D.2d 526, 528 (N.Y. App. Div. 1996) ("petitioner's conclusory assertions . . . which were not supported by financial records, did not establish irreparable injury"); Board of Educ. of Tuxedo Union Free School District No. 3 v. State Div. of Human Rights, 68 Misc. 2d 1035, 1039 (N.Y. Sup. Ct. 1972) (conclusory statements regarding

plaintiffs' "fears and uncertainties" regarding their continued performance of their duties cannot demonstrate irreparable injury).

Second, Doctors failed to present the necessary financial records or other evidence because that evidence apparently does not exist. On September 9, 1998, representatives of Doctors met with NYLCare's acquiring company (Aetna US Healthcare Inc.) and expressly represented that Doctors' financial backers were willing and able to keep it viable. Liu Aff. at ¶ 4. Consequently, at the very least it is an issue of disputed fact whether Doctors faces the financial straits that it claims. This issue of disputed fact, on its own, precludes the granting of injunctive relief. See Peldman, 148 A.D.2d at 687 ("A moving party is not entitled to a temporary injunction, unless the right is plain from the undisputed facts." (internal quotation marks omitted)); J. S. Anand, 148 A.D.2d at 496 (preliminary injunction will not be granted "unless a clear right thereto is established under the law and the undisputed facts upon the moving papers") (internal quotation marks omitted).

Finally, even if Doctors had presented financial records to support its claim of drastic cuts and lay offs (which it did not), and even if that evidence was undisputed (which it is not), it still would not have demonstrated irreparable injury because its alleged injuries are pecuniary in nature, and plaintiff has an adequate remedy at law. "[M]onetary damages," such as those alleged by plaintiff, "are not irreparable and are an

insufficient harm to support the issuing of an injunction."

Winkler v. Kingston Housing Authority, 238 A.D.2d 711, 712 (N.Y. App. Div. 1997). See also Price Paper & Twine Co. v. Miller, 182 A.D.2d 748, 749 (N.Y. App. Div. 1992) ("Where, as here, a litigant can fully be recompensed by a monetary award, a preliminary injunction will not issue."); New York Off-Betting Corp. v. New York Racing Association, 673 N.Y.S.2d 387, 1998 N.Y. App. Div. LEXIS 8376, at *11 (N.Y. App. Div. May 14, 1998) ("[T]here has been no showing that [the moving party] will be irreparably injured absent an injunction, since the injury alleged is pecuniary in nature, and may be adequately compensated by money damages."); SportsChannel America Associates v. National Hockey League, 186 A.D.2d 417, 418 (N.Y. App. Div. 1992) ("Damages compensable in money and capable of calculation, albeit with some difficulty, are not irreparable.").

II. THE BALANCE OF EQUITIES DOES NOT FAVOR PLAINTIFF

Doctors has also failed to show that the balance of equities tips in its favor. Plaintiff alleges that, absent an injunction, it will suffer financial harm because it will be forced to replenish the letter of credit and then recover any award to which it is entitled in an arbitration proceeding against NYLCare. But, if an injunction issues, NLYCare will suffer (and is already suffering) precisely the same degree of harm because it has already paid, or must pay, the claims made by doctors on plaintiff's subscribers, and has not been reimbursed by plaintiff for the amount of such claims as prescribed by the plain terms of

the Agreements. Accordingly, the balance of financial injury is, from the very beginning, in equilibrium. See Klein, Wagner & Morris v. Lawrence A. Klein, P.C., 186 A.D.2d 631, 633 (N.Y. App. 1992) (in assessing the balance of equities, plaintiff must "show[] that the irreparable injury to be sustained is more burdensome to the plaintiff than the harm caused to the defendant through the imposition of the injunction").

NYLCare will suffer an added injury if the Court issues an injunction. It is undisputed that the letter of credit will expire on October 31, 1998. Lefkowitz Aff. at ¶ 7. After this date, NYLCare simply cannot draw on the letter of credit: it will be gone. If this Court enjoins NYLCare, it is a certainty that the letter of credit will expire before NYLCare can obtain a judgment in arbitration, have the injunction lifted, and draw on the letter of credit. NYLCare would then have to try to proceed directly against Doctors; but Doctors has alleged that it is on the brink of financial collapse and, without NYLCare's continued business, may become insolvent. Under such a scenario, an injunction will mean that NYLCare is never able to recover the millions of dollars it has already paid for plaintiff, and, in turn, that the very notion of a letter of credit as a guarantee would be defeated. The equitable doctrine of injunctions does not permit such an inequitable result. Where, as here, an injunction would make it "much less certain that [the] defendant will be able to recoup [its] payments" from plaintiff if the defendant ultimately prevails on the merits, the balance of

equities does not tip in favor of the plaintiff and the injunction should not issue. Winkler, 238 A.D.2d at 713. See also J. S. Anand, 148 A.D.2d at 496 ("the defendant had a legitimate interest in enforcing [its] security agreement"). Therefore, since "the defendant[] would be likely to suffer more damage than the plaintiff[], a preliminary injunction should not be issued." Price Paper, 182 A.D.2d at 749.

III. PLAINTIFF CANNOT SHOW UNDISPUTED FACTS THAT PROVE LIKELIHOOD OF SUCCESS ON THE MERITS

The "likelihood of success on the merits" test requires the moving party to prove its entitlement to relief is plain from undisputed facts. Peldman, 148 A.D.2d at 687 (moving party "is not entitled to a temporary injunction, unless the right is plain from the undisputed facts") (internal quotation marks omitted). Indeed, appellate courts have repeatedly overturned improvidently granted injunctions on the grounds that "conflicting evidence [exists] in the present record." Id. See also Family Affair Haircutters, Inc. v. Detling, 110 A.D.2d 745 (N.Y. App. Div. 1985) (overturning injunction because disputed issues of fact existed); Shannon Stables Holding Company, Ltd. v. Bacon, 135 A.D.2d 804 (N.Y. App. Div. 1987) (affirming denial of injunction with costs because where "facts . . . are in sharp dispute, a temporary injunction will not be granted"); Jaymar's Inc. v. Schwartz, 37 Misc 2d 314 (Sup. Ct, Queens Div. 1962) (citing additional authority).

Plaintiff does not -- and cannot -- suggest that it is entitled to relief on undisputed facts. Under settled law, the "doctrine of independent contracts" provides that Chase is required to honor NYLCare's letter of credit demands separate and independent from any dispute between NYLCare and Doctors. Ross Bicycles, Inc. v. Citibank, N.A., 613 N.Y.S.2d 538, 540-541 (Sup. Ct., NY Co. 1994). Accordingly, "[i]f the documents called for by the letter of credit" are produced, neither Chase nor plaintiff "have [the] right to inquire" further. Id. at 541. Indeed, "[i]f the customer feels that the beneficiary was not entitled" to an amount claimed on a letter of credit, the proper remedy is not to interfere with the operation of the letter of credit but to "litigate under their contract." Id. Court after court has made clear that this is so because "one of the main purposes of the letter of credit is to place the seller in this stronger position of having the funds while the parties litigate their underlying contract disputes." Id.¹⁰

New York law permits interference with the independent operation of letters of credit only in the "narrow circumstances"

¹⁰See also id. ("[a]ny other interpretation . . . would defeat the basic purpose of such a letter of credit of providing a means of assuring payment cheaply by eliminating the need for, or the power of, the issuer to police the underlying transaction"); Banque Worms v. Banque Commerciale Privee, 679 F. Supp. 1173, 1181 (S.D.N.Y. 1998) ("one of the expected advantages and essential purposes of a letter of credit is that the beneficiary will be able to rely on assured, prompt payment from a solvent party; necessarily, a part of this expectation of ready payment is that there will be a minimum of litigation and judicial interference and this is one of the reasons for the value of the letter of credit device in financial transactions") (citation omitted), aff'd, 849 F.2d 787 (2d Cir. 1988).

where the beneficiary has committed "fraud in the transaction." Banque Worms, 679 F. Supp. at 1182. This doctrine, however, is expressly "limited to situations in which the wrongdoing of the beneficiary has permeated the entire transaction." Id. See also KMW International v. Chase Manhattan Bank, 606 F.2d 10, 16 (2d Cir. 1979) (vacating injunction because plaintiff could not make "a clear showing of the active intentional fraud") (citation omitted). If the doctrine were not so narrowly confined, courts would risk the financial usefulness and integrity of the letter of credit mechanism (and only encourage parties to conduct transactions requiring letters of credit outside New York). See supra n.10; supra. Accordingly, New York courts have held that mere business disputes between the parties over the meaning and application of their contracts do not constitute fraud in the transaction. E.g., United Technologies Corp. v. Citibank, N.A., 469 F. Supp. 473, 478 (S.D.N.Y. 1979) (rejecting motion for injunction because it alleges only contractual "dispute as to performance").

Plaintiff alleges only two supposed acts of "fraud" by NYLCare: (1) presenting a demand to Chase on September 9, 1998 for \$2,615,208.69, and (2) misrepresenting its monthly patient costs to Doctors during initial due diligence. Pl. Mem. at 4. In fact, even cursory scrutiny reveals that these supposed acts are precisely the sorts of garden-variety disputes that New York courts will not allow to interfere with letters of credit. And in neither event has plaintiff offered any evidence — let alone

the requisite convincing and uncontested evidence — to support its bare allegations.

1. The September 9, 1998 Demand. Plaintiff contends that NYLCare committed fraud when it wrote Chase on September 4, 1998 seeking to draw down the letter of credit by \$2,615,208.69 and asserting that no defenses or offsets existed of which it was aware. Pl. Mem. at 4.¹¹ The only "evidence" plaintiff offers in support of this claim, however, is the fact that on August 13, 1998 NYLCare Executive Vice President Susan Lefkowitz wrote Doctors Health "indicat[ing] that a \$506,069.53 credit to Doctors Health" should be deducted from the \$2,615,208.69 bill for the month of July, 1998. Dwyer Aff. ¶ 27; id., Exh. 10. Thus, Doctors itself does not dispute that the remaining amount -- fully \$2,109,140.16 -- was due and properly drawable from the line of credit.

Nor is there any basis for suggesting NYLCare's representation to Chase concerning the remaining \$506,069.53 was fraudulent. To establish fraud, plaintiff must present evidence of an intent to deceive. Benderson Development Company, Inc. v. Hallaway Properties, Inc., 67 N.Y.2d 963 (1986) (dismissing fraud

¹¹The Dwyer affidavit also obliquely complains about other bills and estimates sent by NYLCare to Doctors Health for which NYLCare has not yet sought any payment through the letter of credit. See Dwyer Aff. at ¶¶ 22, 26 (complaining about \$6 million dispute and \$10 million bill). However, New York law makes clear that injunctions can be issued only concerning actual requests made under letters of credit, not hypothetical future requests. KMW International, 606 F.2d at 16 (rejecting as "conjectural" motion seeking injunction to prevent future draw downs not yet made).

claim for lack of evidence of a "present intent to deceive").
See also CPLR 3016(b) (allegations of fraud must be made with particularity). To win a preliminary injunction, plaintiff must provide undisputed facts conclusively establishing this element. See cases cited p. 19, supra. Ms. Lefkowitz explains, however, that the \$506,069.53 "credit" is no defense or offset to the July 1998 bill at all, but merely the amount the parties estimated NYLCare would be required to pay Doctors for the month of August 1998 under the Agreements. Lefkowitz Aff. at ¶ 5. In fact, after Ms. Lefkowitz wrote her August 13, 1998 letter, NYLCare determined that no amount would be due to Doctors for the month of August and that, in fact, Doctors would owe NYLCare more than \$10 million. Id. There is, thus, no dispute that Doctors owes NYLCare \$2,615,208.69 for the month of July, 1998, and that Doctors has no defense or offset to this past-due bill.

Plaintiff's claim of fraud is further doomed by lack of any evidence (let alone conclusive evidence) of reliance. Megarix Furs, Inc. v. Gimbel Brothers, Inc., 172 A.D.2d 209 (N.Y. App. Div. 1991) (reliance on deception necessary element of fraud). Doctors does not (and cannot) suggest it relied on NYLCare's supposed September 4, 1998 "misrepresentation." Nor can Doctors suggest reliance by Chase. Under axiomatic letter of credit principles, Chase relies only on the existence of NYLCare's demand for payment, not on its accuracy. Indeed, it is the very purpose of letters of credit to enable banking institutions like Chase to pay upon any properly drawn demand, regardless of its

accuracy, and recover all such sums from the initiator of the letter of credit. See supra n.1; New York Uniform Commercial Code § 5-114(2); Uniform Customs and Practice for Documentary Credits § 3.

2. The Monthly Patient Cost Representation. The only other act of fraud plaintiff claims is NYLCare's supposed effort to "induce Doctors Health to enter into the underlying contract by making material misrepresentations about its historical costs." Pl. Mem. at 4. The only "evidence" plaintiff offers, however, is an unsupported allegation that NYLCare presented it with data showing total costs to be \$350 per patient per month (Dwyer Aff. at ¶ 33; id., Exhs. 8 & 9). Plaintiff nowhere produces the supposedly fraudulent NYLCare materials for the Court's review. It does not because Doctors is well aware that NYLCare disclosed that its historical costs were \$420 per patient per month -- well in excess of plaintiff's claimed current monthly costs of \$400 per patient. Pastor Aff. at ¶ 6; id., Exh. A. Far from incontestably proving plaintiff's claim of fraudulent inducement, the evidence disproves it.

Even if plaintiff were correct that NYLCare had represented its historical costs to be \$350 per month (and NYLCare did not), plaintiff would still be required to demonstrate that this representation was false, and intentionally so. Megarix Furs, Inc., 172 A.D.2d at 209. Plaintiff, however, supplies no such evidence. The closest it comes is to complain generally about the fact that its costs are \$50 higher. Dwyer Aff. at ¶ 34. But

the fact that Doctors' current costs are apparently 14.28% higher than NYLCare's were a year earlier could be due to myriad factors having nothing to do with NYLCare (e.g., poor administration and utilization review by plaintiff; normal inflationary pressures in the medical care field).¹² Plaintiff has not offered a shred of evidence (let alone provided the requisite uncontested proof) suggesting that the cost increases it has experienced are the result of a deliberate ploy by NYLCare to hide costs rather than its own ability to manage them.

IV. IF AN INJUNCTION IS GRANTED, THE COURTS SHOULD ORDER PAYMENT OF THE LETTER OF CREDIT INTO THE REGISTRY OF THE COURT

The requested injunction is unsupported in every respect, and under settled teachings of this Court and the appellate courts of this state, cannot be granted. Were the Court to grant such an injunction, however, it is similarly settled that it must order appropriate security to protect NYLCare. CPLR §§ 6312(b), 6313(c); Burmax Co. v B & S Industries, Inc., 135 A.D.2d 599 (N.Y. App Div. 1987) ("the Supreme Court's issuance of a preliminary injunction without mandating compliance with 'New York's long-standing policy of requiring the plaintiff to furnish security as a prerequisite' was improper") (citing 7A Weinstein-

¹²Plaintiff also complains that NYLCare "has refused to provide any explanation" why Doctors Health costs have been higher. Dwyer Aff. at ¶ 34. But Doctors Health had ample opportunity when conducting its due diligence to ask NYLCare anything it wished, Pastor Aff. at ¶ 5; NYLCare is under no affirmative duty now to "explain" year-old data to plaintiff about a business NYLCare spun-off. Cf. Couch v. Schmidt, 204 A.D.2d 951 (N.Y. App. Div. 1994) (silence not fraud when no duty to speak).

Korn-Miller, NY Civ. Prac. para. 6312.08); Sutton, DeLeeuw, Clark & Darcy v. Beck, 155 A.D.2d 962 (N.Y. App. Div. 1989) (holding that trial court erred in granting preliminary injunction without requiring plaintiffs to post undertaking).

Here, it is undisputed that a \$5.25 million letter of credit exists to provide security for NYLCare, and to guarantee the availability of funds to pay Doctors' debts under the Agreements. It is similarly undisputed that, after October 31, 1998, the letter of credit will expire. NYLCare will not be able to draw on it, and the entire \$5.25 million in security will irretrievably be lost to NYLCare.

According to Doctors (at least in what they say to the Court) that corporation cannot be counted upon to pay \$2.6 million, much less the remaining balance of the letter of credit. The only adequate security, therefore, is either a bond posted by Doctors in the full amount of \$5.25 million or payment by Chase of the proceeds of the letter of credit into the registry of the Court. If these funds are not delivered to the Court, they will disappear and be lost forever to NYLCare. A preliminary injunction is only to preserve the status quo; that can only be accomplished here by taking the disputed sum into custody of the Court. The funds can be disbursed as directed following completion of the binding arbitration that the parties are required to undertake. To do otherwise is to unfairly release both Doctors and Chase from their obligations, and to deprive NYLCare of a crucial benefit of its bargain.

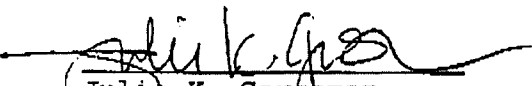
Conclusion

For the foregoing reasons, NYLCare respectfully requests that the Court deny the motion for preliminary injunction, dissolve the temporary restraining order, grant NYLCare its attorney fees in making this motion, and award such other and further relief as the Court deems just and proper.

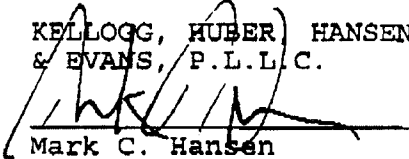
Dated: September 16, 1998.

Respectfully submitted,

EPSTEIN BECKER & GREEN, P.C.


Julie K. Gershman
250 Park Avenue
New York, NY 10177
(212) 351-4500

KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.


Mark C. Hansen
Steven F. Benz
Neil M. Gorsuch
Courtney S. Elwood
1301 K Street, N.W.
Suite 1000 West
Washington, D.C. 20005
(202) 326-7900

Counsel to Defendant NYLCare Health
Plans of the Mid-Atlantic, Inc.

Conclusion

For the foregoing reasons, NYLCare respectfully requests that the Court deny the motion for preliminary injunction, dissolve the temporary restraining order, grant NYLCare its attorney fees in making this motion, and award such other and further relief as the Court deems just and proper.

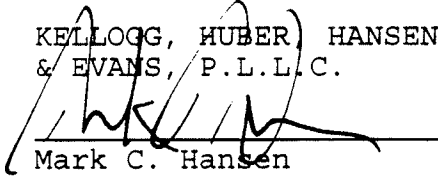
Dated: September 16, 1998.

Respectfully submitted,

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Julie K. Gershman
250 Park Avenue
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1301 K Street, N.W.
Suite 1000 West
Washington, D.C. 20005
(202) 326-7900

*Counsel to Defendant NYLCare Health
Plans of the Mid-Atlantic, Inc.*

At the IAS Part 3 of the
Supreme Court of the
State of New York, at
the Courthouse, 60
Center Street, New York,
New York on the 17th day
of September, 1998

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----	X
DOCTORS HEALTH, INC.	:Order Dissolving
	:Temporary Restraining
	:Order
Plaintiff,	:
	:
-against-	:Index No. 98/604436
	:
CHASE MANHATTAN BANK, and NYLCARE	:
HEALTH PLANS OF THE MID-ATLANTIC, INC.	:
	:
Defendants.	:
	:
-----	X

Upon consideration of Plaintiff's summons and the complaint herein, Plaintiff's motion for preliminary injunction, the annexed Affidavit of Urgency of Monica Petraglia McCabe, and the Affidavit of John R. Dwyer, and upon consideration of the Response of NYLCare Health Plans of the Mid-Atlantic, Inc. to Order to Show Cause Why Preliminary Injunction Should Not Be Granted, and the Affidavits of Jeff D. Emerson, Susan S. Lefkowitz, Don Liu and Greg Pastor, and for the reasons stated on the record, and the Court finding that the Temporary Restraining Order entered by this Court on September 11, 1998 should be dissolved, it is therefore, ORDERED that:

Plaintiffs Doctors Health, Inc.'s motion for preliminary injunction is denied, and the Temporary Restraining Order entered by this Court on September 11, 1998 is hereby dissolved.

Entered,

J.S.C.

Dated: New York, New York
September __, 1998

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
DOCTORS HEALTH, INC.,

Plaintiff,

- against -

CHASE MANHATTAN BNK, and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC.,

Defendants.
----- x

Index No.: 98/604436

(Justice Cozier - Part 3)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Nicholas A. Ficorelli, being duly sworn, deposes and says:

1. I am not a party to the action, am over the age of 18, and am employed by Epstein, Becker & Green, P.C., 250 Park Avenue, New York, New York 10177.

2. On Wednesday, September 16, 1998, I served the accompanying RESPONSE OF NYLCARE HEALTHCARE PLANS OF THE MID-ATLANTIC, INC. TO ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT BE GRANTED and AFFIDAVIT(s) in support thereof, upon the following:

Piper & Marbury, LLP
1251 Avenue of the Americas
New York, New York 10020

Chase Manhattan Bank
~~1211 Avenue of the Americas~~ *One Chase Manhattan Plaza*
New York, New York ~~10020~~ *10005*

3. I made such service by personally delivering true copies of the aforementioned documents to the offices listed above.



Nicholas A. Ficorelli

Sworn to before me this
16th day of September, 1998



Notary Public

ROBERT JOHN CANDELLA JR.
Notary Public, State of New York
No. 24-4998017
Qualified in Kings County
Commission Expires June 22, 1999 *28*

xxx

** TOTAL PAGE. 03 **

16dv-000209

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
:
DOCTORS HEALTH, INC. :
:
Plaintiff, :
:
-against- : Index No. 98/604436
:
CHASE MANHATTAN BANK, and NYLCARE :
HEALTH PLANS OF THE MID-ATLANTIC, INC. :
:
Defendants. :
:
----- X

**EXHIBITS TO RESPONSE OF NYLCARE HEALTH PLANS
OF THE MID-ATLANTIC, INC. TO ORDER TO SHOW CAUSE
WHY PRELIMINARY INJUNCTION SHOULD NOT BE GRANTED**

EPSTEIN BECKER & GREEN, P.C.
Julie K. Gershman
250 Park Avenue
New York, NY 10177
(212) 351-4500

KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
Mark C. Hansen
Steven F. Benz
Neil M. Gorsuch
Courtney S. Elwood
1301 K Street, N.W.
Suite 1000 West
Washington, D.C. 20005
(202) 326-7900

*Counsel to Defendant NYLCare Health
Plans of the Mid-Atlantic, Inc.*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----	X
	:
DOCTORS HEALTH, INC.	:
	:
Plaintiff,	:
	:
-against-	: Index No. 98/604436
	:
CHASE MANHATTAN BANK, and NYLCARE	:
HEALTH PLANS OF THE MID-ATLANTIC, INC.	:
	:
Defendants.	:
	:
-----	X

AFFIDAVIT OF STEVEN F. BENZ

1. I am over 18 years of age and have personal knowledge of the matters contained herein.

2. I am an attorney at the law firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. Kellogg, Huber, Hansen, Todd & Evans is counsel to NYLCare Health Plans of the Mid-Atlantic, Inc.

3. Attached hereto as Exhibits 1 through 4, are true and correct copies of the following documents:

Exhibit 1 — Administrative Service Provider Contract for Medicare Global Risk Services;

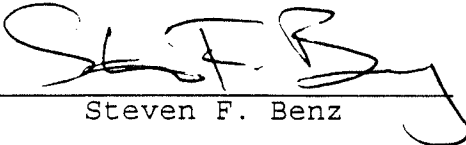
Exhibit 2 — Medicare Network Management Agreement;

Exhibit 3 — Chase Manhattan Letter of Credit No. P-343547;
and

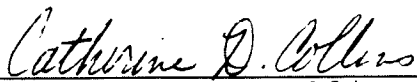
Exhibit 4 — David S. Hilzenrath, Managed Care's New
Managers: The Doctors, Wash. Post, Dec. 7, 1997, at H1.

I swear that the foregoing is true and accurate to the best
of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.


Steven F. Benz

Sworn to and signed before me
this 16th day of September 1998.


Notary Public

My commission expires: *April 30, 2001*

CATHERINE D. COLLINS
My Commission Expires April 30, 2001

4. As required by Section 3.4.4., NYLCare sent Doctors Health an invoice sixty days previously for the amount of \$2,615,208.69, which was the amount of claims that exceeded Doctors Health's total compensation due from the July Monthly Capitation Calculation Report.

5. On August 13, 1998, I sent a letter to Stewart Gold, Chief Executive Officer and President of Doctors Health, notifying him that the full amount owed "at this time" was \$2,109,140.16. Exh. B. The "\$506,068.53 surplus" I referred to was what we then believed to be a surplus from the August Monthly Capitation Calculation Report. In any event, NYLCare was entitled to draw on the \$2,615,208.69 amount, because the \$506,068.53 surplus had not ripened for purposes of the Section 3.4.4. sixty day invoice requirement. In fact, NYLCare subsequently learned that NYLCare expected claims to exceed \$10 million. In the later part of August, NYLCare sent Doctors Health an estimated bill for \$11,013,416.24.

6. In accordance with Section 3.4.4., even if there had been an August surplus, it could not have been offset against the requested draw amount of \$2,615,208.69. The \$2,615,208.69 amount was the only amount for which Doctors Health had received an invoice sixty days previously, and under the Agreement the invoiced amount shall be drawn if unpaid after 60 days.


7. As it turns out, based on our records, Doctors Health owes NYLCare far more than NYLCare can ever hope to draw under the letter of credit, which expires on October 31, 1998.

I swear that the foregoing is true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.


Susan S. Lefkowitz

Sworn to and signed before me
this 16th day of September 1998.


Notary Public

My commission expires: July 1, 2001



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
:
DOCTORS HEALTH, INC. :
:
Plaintiff, :
:
-against- : Index No. 98/604436
:
CHASE MANHATTAN BANK, and NYLCARE :
HEALTH PLANS OF THE MID-ATLANTIC, INC. :
:
Defendants. :
:
----- X

AFFIDAVIT OF DON LIU

Don H. Liu, being first duly sworn, deposes and says:

1. I am Vice President and Deputy Chief Legal Officer at Aetna U.S. Healthcare. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. On September 9, 1998, David F. Simon, Aetna U.S. Healthcare's Chief Legal Officer, Missy Shaffer, Regional General Counsel, and I met with Stewart Gold and Jim Gast, Chief Executive Officer and Senior Vice President of Administration and Legal Affairs of Doctors Health, respectively, and Harold Pote and Eric Wilkinson, partners at The Beacon Group (which is the largest investor in Doctor Health). The purpose of this meeting was to give opportunity for Doctors Health to raise any concerns

it has regarding the current arrangement between NYLCare and Doctors Health and to discuss any possible relationships that could be developed between Aetna U.S. Healthcare or NYLCare and Doctors Health other than the arrangement currently in place.

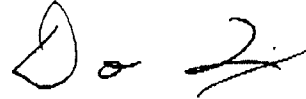
3. During this meeting, Mr. Gold asked Aetna U.S. Healthcare if there was a possibility to continue its business relationship with Doctors Health beyond December 31, 1998, the date on which the current arrangement is scheduled to end. When Mr. Simon inquired about how Doctors Health could succeed in a competitive industry within a geographic area in which other entities have not been able to succeed, Mr. Gold claimed that "we can do it better than others."

4. Indeed, Mr. Gold represented that Doctors Health was viable and that its financial backers had sufficient capital to fund Doctors Health for any additional capital it may need and that should Aetna U.S. Healthcare desire to continue its business relationship with Doctors Health, Doctors Health was more than capable of delivering financial security and collateral that Aetna U.S. Healthcare would seek to address its financial concerns about Doctors Health.

5. Attached hereto as Exhibit A is a true and correct copy of a letter from Mr. Gold memorializing this meeting. While the letter is dated September 10, 1998, it appears to have been prepared on September 11, 1998 and was faxed to us on September 11, 1998.

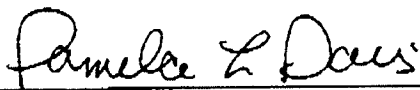
I swear that the foregoing is true and accurate to the best
of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

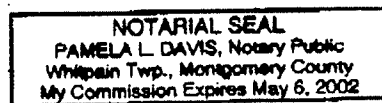


Don H. Liu

Sworn to and signed before me
this 16th day of September 1998.



Notary Public



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----	X
	:
DOCTORS HEALTH, INC.	:
	:
Plaintiff,	:
	:
-against-	: Index No. 98/604436
	:
CHASE MANHATTAN BANK, and NYLCARE	:
HEALTH PLANS OF THE MID-ATLANTIC, INC.	:
	:
Defendants.	:
	:
-----	X

AFFIDAVIT OF GREG PASTOR

Greg Pastor, being first duly sworn, deposes and says:

1. I am a Health Care Analyst in NYLCare's Cost Management Decision Support Group ("CMDS"). I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. I am the analyst primarily responsible for any assessment of NYLCare's Medicare population. To the extent that Doctors Health requested information from NYLCare concerning the Medicare population prior (and subsequent) to entry into contracts with NYLCare, I was one of the persons primarily responsible for obtaining and providing that information to Doctors Health.

3. I have been involved with plaintiff Doctors Health, Inc. ("Doctors Health") since last August, when NYLCare and Doctors Health began negotiating the Medicare Network Management Agreement. While I have worked closely with a number of individuals at Doctors Health since October of 1997, I spoke with

John R. Dwyer only once, at a May 1998 luncheon for employees of NYLCare and Doctors Health.

4. In any event, Doctors Health's claim that NYLCare "recklessly provided unreliable data to Doctors Health and recklessly asserted that it was accurate," Dwyer Aff. at ¶ 34, is false. The information NYLCare provided to Doctors Health was truthful and accurate in all respects, and was the information we used, and relied upon, ourselves within NYLCare. Moreover, I explained data limitations to Chandra Mileham, Sandie Weisfeld and Cindy Gates on different dates.

5. NYLCare began negotiating with Doctors Health in the late summer of 1997. The companies had reached a tentative agreement in late August or early September of 1997. At this point, NYLCare began providing Doctors Health with cost information as part of its "due diligence" evaluation of the deal. NYLCare gave Doctors Health every piece of information that it requested. Moreover, this information was, to the best of my belief, entirely truthful and accurate.

6. The due diligence information that NYLCare sent to Doctors Health prior to entering into the contract indicated that the cost of providing a Medicare member with services was \$420 per month, or \$420 per member per month ("PMPM"). See Email from Chandra Mileham to Greg Pastor, December 11, 1997 ("The information we received from your finance department on the whole population averaged \$420 PMPM (including pharmacy of about \$40

PMPM) (Exh. A). The data were based on NYLCare's historical experience with its entire Medicare population.

7. I have reviewed the Affidavit of John R. Dwyer, Jr., which alleges at ¶ 33 that "NYLCare's represented data shows total cost claims per person enrolled in the HMO to be \$350 per month on average while the actual cost per month is \$400 per person." This representation is not correct, for the reasons described in paragraph 12 of my affidavit, because the cost information I gave them was provided to calculate lag (delay in claims processing) factors and generate relative medical cost information.

8. I have also reviewed Stewart Gold's letter of August 31, Exhibit 9 to the Dwyer affidavit, in which the first full paragraph on the second page of this letter reads:

After consummation of the agreement, however, it became apparent that NYLCare had not provided Doctors Health with accurate cost data — particularly as to pharmacy costs. It took us months of painstaking work and repeated demands for information from you to learn the truth about this operation's actual costs. In fact, in its historical cost data NYLCare claimed total claims costs PMPM of approximately \$350 per month on average over the year prior to the agreement. Yet Doctors Health's estimated total claims costs were more than \$400 the very first month of operation and have remained at that high level ever since.

Mr. Gold's representation about information provided after the parties entered into the agreements is also false.

9. I believe the "pharmacy cost" information to which Mr. Gold refers relates to information that was provided to Doctors Health during the due diligence investigation. This information came from three sources: (1) CMDS; (2) the NYLCare financial

department; and (3) the NYLCare Pharmacy Director, Richard Reitz. There were discrepancies between the figures provided by these departments — estimated costs ranged from \$36 to \$50 pmpm. But these discrepancies were resolved to Doctors Health's satisfaction, and the numbers were reconciled. The numbers had varied because the different departments were looking at slightly different member categories and different time periods.

10. The sentence that begins "In fact . . ." in Stewart Gold's letter of August 31, Exhibit 9 to the Dwyer affidavit, simply does not follow from the pharmacy cost issue — there is no logical connection between pharmacy costs and the \$350 figure. The \$350 apparently refers to a calculation that Doctors Health made based on information I provided to Doctors Health for an entirely different purpose after the contracts were executed. This data was given to Doctors Health after the contract was signed. The data that NYLCare provided to Doctors Health in the course of the due diligence investigation estimated costs at around \$420 per member per month. Since Doctors Health made its "\$350" calculation after it signed the contract, this figure certainly could not have "induced" Doctors Health to enter into the deal.

11. I am also familiar with Exhibit 8 to the Dwyer Affidavit. Stewart Gold used this graph at a July 14, 1998 meeting to accuse Jeff Emerson of misleading Doctors Health regarding costs. The graph purports to compare the costs that NYLCare had predicted with Doctors Health's actual experience,

and shows a discrepancy between the two figures of around \$150 pmpm. I believe that Chandra Mileham of Doctors Health prepared this graph based on a misunderstanding of the data that I had given her after the contracts were executed. I supplied her with this data only to estimate lag factors (the time from when a claim is submitted until it is processed) and assess the costs associated with various medical categories. The data were not provided for the purpose of estimating pmpm — that was the information I supplied to Doctors Health during its due diligence investigation.


12. Mr. Dwyer's Exhibit 8 suffers from a number of fundamental errors. The portion of the graph that purports to show NYLCare's estimated costs (1) is not corrected for the "members of record" problem (i.e., members who have died whose costs are higher); (2) is not adjusted for lag factors; (3) does not include prescription drug costs; and (4) is not adjusted to account for the February 1998 addition of the D.C. and Prince George's County members to Doctors Health's population (these members are more costly than members in other areas).

13. On July 21, 1997, Chandra Mileham faxed NYLCare a corrected graph. The graph still shows a discrepancy between the costs that NYLCare had allegedly predicted and Doctors Health's actual experience, but the discrepancy is far smaller — only about \$50 pmpm. See Exh. B. In this graph, NYLCare's purported figures have been adjusted to include prescription drug costs. In addition, Doctors Health had used a different lag factor to

compute its own costs. Even the second graph suffers from problems. It is not corrected for the members of record problem; the lag factor calculations may be inaccurate; and the data have not been corrected to account for the addition of the D.C. and Prince George's County members to Doctors Health's population. In addition, and most fundamentally, it does not use the information I gave to Doctors Health before they decided to enter into the contracts, and from which they derived a \$420 pmpm.

I swear that the foregoing is true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.


Greg Pastor

Sworn to and signed before me
this 16th day of September 1998.


Notary Public

My commission expires: July 1, 2001



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 3

DOCTORS HEALTH, INC., INDEX NO.
604436/98

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC,
INC.,

Defendants.

60 Centre Street
New York, New York
September 17, 1998

BEFORE: HONORABLE BARRY A. COZIER, J.S.C.

Appearances:

PIPER & MARBURY, LLP
Attorneys for Doctor Health
251 Avenue of the Americas
New York, New York 10020-1104
BY: MONICA PETRAGLIA McCABE, ESQ.
PETER CORRIGAN, ESQ.
-and-
JOHN D. CORSE, ESQ.

KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
Attorneys for Nylcare
1301 K Street, N.W. Suite 1000 West
Washington, D.C. 20005
BY: MARK C. HANSEN, ESQ.
-and-
NEIL M. GORSUCH, ESQ.

FREDERIC C. CANTOR
OFFICIAL COURT REPORTER

(Appearances continued.)

EPSTEIN, BECKER & GREEN, P.C.
Attorneys for Nylcare
250 Park Avenue
New York, New York 10177
BY: JULIE K. GERSHMAN, ESQ.

ALSO PRESENT:

HERIBERTO BARBOT, JR.
Assistant General Counsel
Legal
NYLCare Health Plans, Inc.
One Liberty Plaza, Suite 8-4
New York, New York 10006-1404

ANDREW N. KEEN
Vice President &
Assistant General Counsel
Legal Department
For Defendant Chase Manhattan Bank
One Chase Manhattan Plaza, 25th Fl.
New York, New York 10081

ED NEUGEBAUER
Aetna US Healthcare
980 Jolly Road (U19A)
Blue Bell, PA. 19422

Court's Decision

THE COURT: Okay, thank you.

I think I have heard enough to digest the issues.

In the first instance, it seems to me that the underlying dispute between the parties concerns money matters arising out of their contractual agreement.

Now, what we have are two corporate entities both doing business in Maryland concerning services, HMO services which are being provided and health management services generally, which are being provided in Maryland.

The nexus to New York is obviously Chase Manhattan Bank really the nominal stakeholder in this particular case because of the Letter of Credit that was issued from the plaintiffs in favor of Nylcare.

Now, this is certainly a basic commercial transaction.

The parties have a contractual relationship. It involves the making

Court's Decision

of the ongoing claims being made based upon patients' services being furnished by the plaintiff for which the defendant, Nylcare, receives payment from the federal government and is a pass-through for purposes of the Medicare payments.

The relationship here is ongoing clearly commercial.

The nuance of this particular case concerns the establishment in the contract or the agreement of the Letter of Credit in favor of Nylcare.

Now, this is not the traditional commercial Letter of Credit involving goods and furnishing of goods, et cetera, the normal transaction.

This is in the nature of a standby Letter of Credit.

The standby Letter of Credit functions more like a guarantee than the standard commercial Letter of Credit.

They are obtained to enable the

Court's Decision

beneficiary to make demand for payment under the Letter of Credit upon the happening of a certain contingency, such as the default of the other party in the underlying transaction.

The terms for drawing upon the Letter of Credit is set forth in the agreement.

There are certain requirements; obviously, a presentment to Chase is required in a particular form and the contents must meet at least a requirement of the agreement.

Plaintiff primarily predicates this application for injunctive relief on the fourth requirement, the statement drawing upon the Letter of Credit by Nylcare that they know of no valid offsets to the claims.

The problem here is that to the extent that the documents are properly presented to Chase Bank, the Court must strictly construe the Letter of Credit requirements in accordance with UCC.

Court's Decision

The purpose of it is to have definiteness with respect to commercial transactions here.

Now, it seems to me that the entire arguments, using the CPLR criteria here, with respect to irreparable harm, substantial likelihood of success on the merits and the balance of the equities is predicated upon, of course, what is, in fact, a money dispute between the parties as to what the proper amount due and owing to the defendant is here.

Clearly, the threshold issue in the underlying issue for the plenary action is really based upon a claim for money damages, either in the form of the claim by the plaintiff or what will be a counterclaim on the part of defendant, Nylcare, based upon this dispute.

So there is no question here that there are disputed facts with respect

Court's Decision

to what sum is due and owing and to whom it is due and owing, pursuant to the term of the Agreement.

And I have perused the documentation here, and as I said, there is an ongoing course of conduct between the parties.

Now, the only basis under which the Court can grant an injunction in these circumstances, particularly where there are factual disputes, there must be a clear showing of irreparable harm, a clear showing of irreparable harm.

In this particular instance, the allegation that is being made in the Order to Show Cause, by the plaintiff, is that fraud threatening this irreparable harm involves false statements by defendant, Nylcare Health Plans to defendant, Chase Manhattan Bank.

Now, the distinction here, I believe, is whether or not what we have, does a false statement, even

Court's Decision

1 assuming arguendo, we have a false
2 statement, rise to the level of a
3 fraudulent statement to meet the UCC
4 standard and commercial standard in New
5 York to fit within the fraud exception
6 to payment under a Letter of Credit.
7 And I think that's really the critical
8 issue.
9

10 "In New York, the sole exception
11 to the independence principle and the
12 issuer's obligation to pay on
13 conforming documents --"

14 I don't think there is any dispute
15 here we have conforming documents, " --
16 is an exception for fraud.

17 "The only authorized means of
18 stopping payment, under a Letter of
19 Credit, is that permitted under the
20 fraud exception.

21 "If applicable, it can permit an
22 injunction against honor, or it can be
23 relied upon by the issuer as a ground
24 to dishonor, where a document is forged
25 or fraudulent or where there is fraud

1 Court's Decision
2 in the transaction."

3 This case clearly does not involve
4 fraud in the inducement.

5 Fraud in the inducement, would
6 have concerned the terms giving rise to
7 the Letter of Credit, and there is
8 certainly no allegations in that
9 regard.

10 And, therefore, the plaintiff must
11 rely upon the fact that there is fraud
12 in the transaction.

13 And plaintiff's argument has been
14 couched in terms of fraud in the
15 presentment, I assume, that means in
16 the presentment of the documents, to
17 the extent the statement is made that,
18 in fact, there are no known offsets.

19 The problem here, is based upon
20 the factual disputes between the
21 parties, that statement cannot be
22 considered to be a fraudulent
23 statement.

24 In fact, there is no evidence,
25 based upon the submissions by the

Court's Decision

parties here, that that statement has not been made in good faith.

The point being that the position of the defendant, Nylcare here is, of course, there are clearly sums due and owing to Nylcare and, in point of fact, that it's only a question of the actual amount here.

But the amount is an amount clearly due and owing to Nylcare.

It's not a situation that it was presented because there is a possibility that there is deficit on Nylcare's side and the sums may be due and owing to the plaintiff here.

It all surrounds the factual dispute. That factual dispute, by itself, is not sufficient to constitute fraud within the meaning of UCC or the case law in New York. There has to be a showing of actual fraud.

And even the fact that there may be a mere misrepresentation here, a mere misrepresentation, if, unless

Court's Decision

there is a showing that it has been made in bad faith in order to fraudulently induce, in order to fraudulently induce the demand for payment here, there is really no bases under which you can really show that there is irreparable harm in this circumstances.

It seems to me there is a legitimate factual dispute between the parties.

Now, let me say something with respect to this issue of irreparable harm and the arguments made with respect to irreparable harm.

Irreparable harm cannot constitute simple economic harm.

Basically, once again, the threshold arguments offered by plaintiff is that they may be put out of business. May even possibly be forced into insolvency or bankruptcy.

But that does not constitute a basis for irreparable harm.

1 Court's Decision

2 In fact, if anything, it supports
3 the decision that the underlying
4 dispute is based upon money and based
5 upon something that is compensable at
6 law seeking money damages.

7 The additional factor in this case
8 is that since none of these
9 transactions arise other than the
10 issuance of the Letter of Credit,
11 within the State of New York, and the
12 agreement executed in Maryland governs
13 here.

14 That agreement expressly provides
15 for arbitrability of disputes of the
16 parties and disputes surrounding, of
17 course, the particular claims that are
18 really the subject matter here.

19 So that the Court would never
20 reach the merit in this particular
21 case.

22 So the Court cannot conclude, for
23 the plaintiff, that there is a
24 likelihood of success on the merit at
25 this particular time, sufficient to

Court's Decision

issue an injunction.

So it seems to me that in the overall assessment, without a showing of irreparable harm, and an issue of money, does not equal irreparable harm because it's compensable at law.

I understand the argument that is being made with respect to patient care, but the fact of the matter is that the plaintiff is not the actual patient provider here. They do not have that primary responsibility with respect to patient care.

They are the conduit to make arrangements for the patient care.

And certainly it's plausible that alternative arrangements can be made. And we know that in the world of HMO's, changes are made every day with respect to the election of their HMO.

So there is no basis of irreparable harm shown there.

So I think that based upon all of the submissions before the Court, the

Court's Decision

Court is constrained, based upon the reasons cited, to deny the application for a preliminary injunction and to vacate the TRO in this matter.

The record will constitute my Decision and Order.

Settle an order on notice here, please. Thank you.

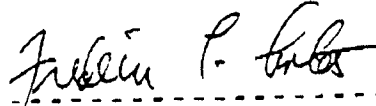
MS McCABE: Your Honor, may we have a stay of the order so that we may file an appeal?

THE COURT: The application for a stay is denied.

(Whereupon, court was adjourned.)

* * * * *

I hereby certify the above as a true and accurate transcript of these proceedings.



FREDERIC C. CANTOR
OFFICIAL COURT REPORTER

SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF

(SUBMITTED BY MOVING PARTY)

Date 9/17/98Title
of
MatterDoctors Health, Inc. v.Index/Indict# 98 Civ. 604436 LBRChase Manhattan Bank and NYL Care Health PlansAppeal
byDoctors Health, Inc. from order
decree

of

Supreme
Surrogate's
FamilyCounty NYCourt entered on 9/17, 19 98Name of
JudgeBarry A. CoxierNotice of Appeal
filed on9/17, 19 98

If from administrative determination, state agency _____

Nature of
action
or proceedingApplication for stay of Judge Coxier's order
pending appeal in this matter

Provisions of

order
judgment
decreeappealed from entire order

This application by

appellantrespondent

is for

a stay of Judge Coxier's order
of vacating TRO and denying plaintiff's motion for
preliminary injunction pending payment on a letter of credit.

If applying for a stay, state reason why requested

Plaintiff believes that it will
be successful on appeal but needs a stay because any
appeal will be rendered meaningless if immediate stay is
not granted.

Has any undertaking been posted

No

If "Yes", state amount and type

A Bond in the amount of \$269,000 was
placed in the underlying action for the TRO.Has application been made to
court below for this reliefYesIf yes, state
dispositionTrial court denied application.Has there been any prior application
herein in this CourtNoIf "Yes", state dates
and natureHas adversary been advised
of this applicationYesDoes he/she
consentNo

Attorney for Movant

Name Piper & Mackay LLP
 Address 1251 Avenue of the Americas
 Tel. No. (212) 835-6000 10626-1104
 Appearing by Peter M. Carrigan
Monica Petrosia McCabe

Attorney for Opposition

Epstein Becker & Green, P.C.
250 Park Avenue 10177-0007
(212) 351-4500
Julie K. Goshman
Andrew Keane, Esq.
Chase Manhattan Bank
611 Avenue of the Americas
(212) 552-6921 10036

(Do not write below this line)

DISPOSITION

Interim stay granted (not on the merits)
Movant shall supply ^{copy of} relevant papers below (OSC exhibits + responsive
papers) to AD + respondents

P. J. 9/17/98
 Justice Date
 Motion Date 9/25 Opposition 9/23 Reply 9/25
 EXPEDITE ☒ PHONE ATTORNEYS ☒ DECISION BY 10/2/98
ALL PAPERS TO BE SERVED PERSONALLY. Ed
 Law Assistant

or the appeal is dismissed, the appellant or moving party shall pay any installments or part of installments then due or the part of them as to which the judgment or order is affirmed; or

4. the judgment or order directs the assignment or delivery of personal property, and the property is placed in the custody of an officer designated by the court of original instance to abide the direction of the court to which the appeal is taken, or an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will obey the direction of the court to which the appeal is taken; or

5. the judgment or order directs the execution of any instrument, and the instrument is executed and deposited in the office where the original judgment or order is entered to abide the direction of the court to which the appeal is taken; or

6. the appellant or moving party is in possession or control of real property which the judgment or order directs be conveyed or delivered, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will not commit or suffer to be committed any waste and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the value of the use and occupancy of such property, or the part of it as to which the judgment or order is affirmed, from the taking of the appeal until the delivery of possession of the property; if the judgment or order directs the sale of mortgaged property and the payment of any deficiency, the undertaking shall also provide that the appellant or moving party shall pay any such deficiency; or

7. the judgment or order directs the performance of two or more of the acts specified in subparagraphs two through six and the appellant or moving party complies with each applicable subparagraph.

(b) Stay in action defended by insurer. If an appeal is taken from a judgment or order entered against an insured in an action which is defended by an insurance corporation, or other insurer, on behalf of the insured under a policy of insurance the limit of liability of which is less than the amount of said judgment or order, all proceedings to enforce the judgment or order to the extent of the policy coverage shall be stayed pending the appeal, and no action shall be commenced or maintained against the insurer for payment under the policy pending the appeal, where the insurer:

1. files with the clerk of the court in which the judgment or order was entered a sworn statement of one of its officers, describing the nature of the policy and the amount of coverage together with a written undertaking that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the insurer shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed, to the extent of the limit of liability in the policy, plus interest and costs;

2. serves a copy of such sworn statement and undertaking upon the judgment creditor or his attorney; and

3. delivers or mails to the insured at the latest address of the insured appearing upon the records of the insurer, written notice that the enforcement of such judgment or order, to the extent that the amount it directs to be paid exceeds the limit of liability in the policy, is not stayed in respect to the insured. A stay of enforcement of the balance of the amount of the judgment or order may be imposed by giving an undertaking, as provided in paragraph two of subdivision (a), in an amount equal to that balance.

(c) Stay and limitation of stay by court order. The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission

intent of the draftsmen (see 7 Weinstein, Korn & Miller, New York Civil Practice -CPLR ¶ 5516.01(Matthew Bender))."

1968 AMENDMENTS

Proposal No. 3, eff. Sept. 1, 1968, made by the Judicial Conference Feb. 1, 1968, Report to the Legislature, inserted word "seven" in place of word "four."

§ 5517. Subsequent orders.

(a) Appeal not affected by certain subsequent order. An appeal shall not be affected by:

1. the granting of a motion for reargument or the granting of an order upon reargument making the same or substantially the same determination as is made in the order appealed from; or
2. the granting of a motion for resettlement of the order appealed from; or
3. the denial of a motion, based on new or additional facts, for the same or substantially the same relief applied for in the motion on which the order appealed from was made.

(b) Review of subsequent orders. A court reviewing an order may also review any subsequent order made upon a motion specified in subdivision (a), if the subsequent order is appealable as of right.

§ 5518. Preliminary injunction or temporary restraining order by appellate division.

The appellate division may grant, modify or limit a preliminary injunction or temporary restraining order pending an appeal or determination of a motion for permission to appeal in any case specified in section 6301.

§ 5519. Stay of enforcement.

(a) Stay without court order. Service upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal where:

1. the appellant or moving party is the state or any political subdivision of the state or any officer or agency of the state or of any political subdivision of the state; provided that where a court, after considering an issue specified in question four of section seventy-eight hundred three of this chapter, issues a judgment or order directing reinstatement of a license held by a corporation with no more than five stockholders and which employs no more than ten employees, a partnership with no more than five partners and which employs no more than ten employees, a proprietorship or a natural person, the stay provided for by this paragraph shall be for a period of fifteen days; or
2. the judgment or order directs the payment of a sum of money, and an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed; or
3. the judgment or order directs the payment of a sum of money, to be paid in fixed installments, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party shall pay each installment which becomes due pending the appeal and that if the judgment or order appealed from, or any part of it, is affirmed,

to appeal in a case not provided for in subdivision (a) or subdivision (b), or may grant a limited stay or may vacate, limit or modify any stay imposed by subdivision (a), subdivision (b) or this subdivision, except that only the court to which an appeal is taken may vacate, limit or modify a stay imposed by paragraph one of subdivision (a).

(d) Undertaking. On an appeal from an order affirming a judgment or order, the undertaking shall secure both the order and the judgment or order which is affirmed.

(e) Continuation of stay. If the judgment or order appealed from is affirmed or modified, the stay shall continue for five days after service upon the appellant of the order of affirmance or modification with notice of its entry in the court to which the appeal was taken. If an appeal is taken or a motion is made for permission to appeal from such an order, before the expiration of the five days, the stay shall continue until five days after service of notice of the entry of the order determining such appeal or motion. When a motion for permission to appeal is involved, the stay, or any other stay granted pending determination of the motion for permission to appeal, shall:

(i) if the motion is granted, continue until five days after the appeal is determined; or

(ii) if the motion is denied, continue until five days after the movant is served with the order of denial with notice of its entry.

(f) Proceedings after stay. A stay of enforcement shall not prevent the court of original instance from proceeding in any matter not affected by the judgment or order appealed from or from directing the sale of perishable property.

(g) Appeals in medical, dental or podiatric malpractice judgments. In an action for medical, dental or podiatric malpractice, if an appeal is taken from a judgment in excess of one million dollars and an undertaking in the amount of one million dollars or the limit of insurance coverage available to the appellant for the occurrence, whichever is greater, is given together with a joint undertaking by the appellant and any insurer of the appellant's professional liability that, during the period of such stay, the appellant will make no fraudulent conveyance without fair consideration as described in section two hundred seventy-three-a of the debtor and creditor law, the court to which such an appeal is taken shall stay all proceedings to enforce the judgment pending such appeal if it finds that there is a reasonable probability that the judgment may be reversed or determined excessive. In making a determination under this subdivision, the court shall not consider the availability of a stay pursuant to subdivision (a) or (b) of this section. Liability under such joint undertaking shall be limited to fraudulent conveyances made by the appellant subsequent to the execution of such undertaking and during the period of such stay, but nothing herein shall limit the liability of the appellant for fraudulent conveyances pursuant to article ten of the debtor and creditor law or any other law. An insurer that pays money to a beneficiary of such a joint undertaking shall thereupon be subrogated, to the extent of the amount to be paid, to the rights and interests of such beneficiary, as a judgment creditor, against the appellant on whose behalf the joint undertaking was executed.

1988 AMENDMENTS

L. 1988, ch. 184, eff. July 1, 1988, added new subdivision (g) governing stays in large-verdict (i.e., one million dollars and above) medical, dental, and podiatric malpractice actions. L. 1988, ch. 493, eff. Sept. 1, 1988, amended 5519(a) paragraph 1 to set at 15 days an automatic stay pending appeal by the state or a political subdivision or agency of the state, of an adverse decision in specified Article 78 proceedings.

CPLR

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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DOCTORS HEALTH, INC. :
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Plaintiff-Petitioner, :
:
-against- : New York County Clerk's
: Index No. 98/604436 (BAC)
:
CHASE MANHATTAN BANK, and NYLCARE :
HEALTH PLANS OF THE MID-ATLANTIC, INC. :
:
Defendants-Respondents. :
:
----- X

**MOTION FOR LEAVE TO FILE REPLY OF
NYLCARE HEALTH PLANS OF THE MID-ATLANTIC, INC.**

Defendant-Respondent NYLCare Health Plans of the Mid-Atlantic, Inc. ("NYLCare"), respectfully moves for leave to file the attached reply brief to Doctors Health Inc.'s Reply Memorandum of Law in Support of its Application for a Stay ("Doctors Opp."). NYLCare submits that a reply is warranted for three reasons.

First, there is confusion between the parties over whether the full appeal is now before the Appellate Division, or only the question of interim relief pending disposition of the appeal. Compare Brief of Defendant-Respondent NYLCare Health Plans of the Mid-Atlantic, Inc. at 1 (appeal at issue) with Doctors Opp. at 1 (interim relief at issue). NYLCare's attached reply clarifies that, regardless of which matter is formally at issue, because the letter of credit expires on October 31, 1998, the Court's decision will effectively decide the parties' entire appeal. See

Reply of Defendant-Respondent NYLCare Health Plans of the Mid-Atlantic, Inc. ("NYLCare Reply"), Point I.

Second, there is confusion over the correct legal standard the Appellate Division should employ. Doctors represents that the Court should apply CPLR § 5519 to stay a judgment or order below. As NYLCare's attached reply explains, there is no judgment or order below to stay; what Doctors really seeks is a new temporary injunction which it can pursue only under CPLR § 5518 with a clear showing of irreparable injury, likely of success on the merits, and the balance of hardships tipping in its favor. NYLCare Reply, Point II.

Third, under normal motion procedures, the respondent is entitled to respond to a movant's filing papers. See 22 N.Y.C.R.R. § 600.2. Here, an unusual scheduling order required NYLCare, though respondent, to file first. Unless the Court grants leave to file the attached reply, NYLCare will be denied the opportunity customarily afforded respondents. The Court will also be denied the benefit of the sharpening of issues that the traditional adversarial briefing system was designed to ensure. Cf. Herbert v. National Academy of Sciences, 974 F.2d 192, 196 (D.C. Cir. 1992) (permitting appellant to raise arguments without opportunity for appellee to respond "would be manifestly unfair to the appellee [and] would risk the possibility of an improvident or ill-advised opinion, given our dependence . . . on the adversarial process for sharpening the issues for decision")

(internal quotation marks omitted); 16 C. Wright, A. Miller, et. al., Federal Practice and Procedure § 3974, 462 & n.4 (1996) (same).

Conclusion

The Court should permit NYLCare to file the attached reply brief.

Dated: September 28, 1998.

Respectfully submitted,

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NEW YORK SUPREME COURT
Appellate Division - First Department

New York County Clerk's
Index No. 98/604436 (BAC)

DOCTORS HEALTH, INC.

Plaintiff-Petitioner,

-against-

CHASE MANHATTAN BANK, and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC.

Defendants-Respondents.

**REPLY OF DEFENDANT-RESPONDENT NYLCARE HEALTH PLANS
OF THE MID-ATLANTIC, INC.**

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September 28, 1998

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
ARGUMENT	2
I. WHAT DOCTORS SEEKS IS EFFECTIVELY PERMANENT--NOT "INTERIM"--RELIEF	2
II. DOCTORS MISREPRESENTS THE APPLICABLE LEGAL STANDARD FOR ITS "INTERIM RELIEF"	4
III. DOCTORS CANNOT MAKE THE REQUISITE SHOWING UNDER CPLR § 5518	5
A. Doctors Has Not, and Cannot, Show Irreparable Harm	6
B. Doctors Has Not, and Cannot, Show Likelihood of Success on the Merits	9
C. Doctors Has Not, and Cannot, Show That the Balance of Hardships Tips in Its Favor	12
CONCLUSION	14

TABLE OF AUTHORITIES

<u>Cases</u>	<u>PAGE</u>
<u>Banque Worms v. Banque Comercial Privee,</u> 679 F. Supp. 1173 (S.D.N.Y.) <u>aff'd</u> , 849 F.2d 787 (2d Cir. 1988)	9
<u>Benderson Development Co. v.</u> <u>Hallaway Properties, Inc.,</u> 67 N.Y.2d 963, 494 N.E.2d 106, 502 N.Y.S.2d 1001 (1986)	10
<u>Harris Bay Yacht Club, Inc. v. Harris,</u> 230 A.D.2d 931, 647 N.Y.S.2d 293 (3d Dep't 1996)	11
<u>Herbert v. National Academy of Sciences,</u> 974 F.2d 192 (D.C. Cir. 1992)	2
<u>The Humane Society v. City of Monroe,</u> 192 A.D.2d 1139, 596 N.Y.S.2d 222 (4th Dep't 1993)	4
<u>J. S. Anand Corp. v. Aviel Enters., Inc.,</u> 148 A.D.2d 496, 538 N.Y.S.2d 840 (2d Dep't 1989)	13
<u>Matter of Schwartz v. Rockefeller,</u> 38 A.D.2d 995, 329 N.Y.S.2d 482 (3d Dep't 1972)	4
<u>Mr. Dees Stores, Inc. v. A.J. Parker, Inc.,</u> 159 A.D.2d 389, 553 N.Y.S.2d 16 (1st Dep't 1990)	6, 12
<u>Office of Personnel Management v. American</u> <u>Federation of Government Employees,</u> 415 U.S. 61 (1974)	7
<u>Price Paper & Twine Co. v. Miller,</u> 182 A.D.2d 748, 582 N.Y.S.2d 746 (2d Dep't 1992)	13
<u>Romano v. Sullivan County Harness</u> <u>Racing Ass'n, Inc.,</u> 106 A.D.2d 819, 484 N.Y.S.2d 209 (3d Dep't 1984)	4, 5

<u>Winkler v. Kingston Housing Auth.,</u>	
238 A.D.2d 711, 656 N.Y.S.2d 421 (3d Dep't 1997)	. . . . 13

<u>Wurttembergische Fire Insurance Co. v.</u>	
<u>Pan Atlantic Underwriters, Ltd.,</u>	
133 A.D.2d 268, 519 N.Y.S.2d 57 (2d Dep't 1987)	. . . . . 8

Rules

N.Y. C.P.L.R. § 5518	. . . . . 4, 5
§ 5519	. . . . . 5

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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CHASE MANHATTAN BANK, and NYLCARE :
HEALTH PLANS OF THE MID-ATLANTIC, INC. :
:
Defendants-Respondents. :
:
----- X

REPLY OF NYLCARE HEALTH PLANS
OF THE MID-ATLANTIC, INC.

Preliminary Statement

Doctors Health Inc. ("Doctors") claims that the only issue before the Court is whether to grant "interim relief" pending resolution of its appeal. Doctors Health Inc.'s Reply Memorandum of Law in Support of its Application for a Stay ("Doctors Opp.") at 1. In fact, Doctors' letter of credit -- the subject of the instant appeal -- expires on October 31, 1998. Accordingly, any "interim relief" afforded by the Court would be tantamount to a grant of the injunction Justice Cozier refused to supply. By preventing NYLCare from drawing on the letter of credit, the Court would permanently preclude NYLCare from collecting millions of dollars worth of unpaid, overdue bills.¹ See Point I, infra.

Doctors also misstates the applicable legal standard. Doctors seeks not a stay of an order or judgment under CPLR § 5519, but a preliminary injunction pending appeal under CPLR

¹Doctors has represented that it cannot pay those bills and the letter of credit is the only source of funds to pay NYLCare.

§ 5518. Indeed, there is no order or judgment below which could be stayed. To obtain a preliminary injunction under CPLR § 5518, Doctors must make a clear showing that without such relief it will be irreparably injured, that it is likely to succeed on the merits of its appeal, and that the balance of hardships tips in its favor. See Point II, infra. Doctors still has not made, and cannot make, any of these showings. See Point III, infra.

Argument

I. WHAT DOCTORS SEEKS IS EFFECTIVELY PERMANENT -- NOT "INTERIM" -- RELIEF

Doctors represents that the only matter before the Appellate Division is whether to grant "interim relief" pending resolution of this appeal in the normal course. Doctors Opp. at 1. According to Doctors, the scheduling order entered by the Appellate Division on September 17, 1998 (Exhibit A at 2) contemplates a decision by October 2, 1998 only as to "interim relief." Counsel representing NYLCare at the September 17, 1998 conference, however, understood the Court's scheduling order to contemplate resolution of the full appeal on an emergency basis by October 2, 1998. Any confusion on this subject is itself the result of Doctors' inappropriate failure to provide proper notice to opposing counsel.²

²After its motion for preliminary injunction motion was denied by Justice Cozier, Doctors asked for an interim injunction pending appeal; Justice Cozier denied that motion as well. Respondent's App. at 14. The hearing before Justice Cozier was concluded before noon. At approximately 4 p.m. the same day, NYLCare's local counsel received a telephone call from Doctors' counsel representing that they were in the Appellate Division.

Even if, formally, the only matter before the Court is whether to grant interim relief pending the appeal, the entire dispute between the parties actually hangs in the balance. It is undisputed that the letter of credit expires on October 31, 1998. Affidavit of Susan S. Lefkowitz ("Lefkowitz Aff.") ¶ 7 (Respondent's App. at 170). After that date, NYLCare cannot draw on the letter of credit: it will be gone. Thus, if the Court enjoins NYLCare from accessing the letter of credit on an "interim" basis pending an appeal in the normal course, it is a certainty that the letter of credit will expire before the appeal is resolved. Granting Doctors "interim relief" is, thus, effectively the same as overruling Justice Cozier's decision finally and entirely. NYLCare will be left only to proceed directly against Doctors in arbitration. But, because Doctor has alleged that it is on the brink of financial collapse and that it does not have \$2.6 million to repay the bank if the letter of credit is drawn upon (see Doctors Opp. at 10; Affidavit of Stewart Gold ("Gold Aff.")), the letter of credit appears to be the only source of funds from which NYLCare can collect the sums Doctors owes. Accordingly, an "interim" injunction would permanently jeopardize NYLCare's ability to recover millions of dollars it is indisputably owed and, in turn, would defeat the

Doctors counsel stated that they were waiting to be heard on a motion for interim relief pending resolution of Doctors' appeal, and that if NYLCare wished to be heard, it should appear forthwith. Because of Doctors' inappropriate notice, NYLCare's lead counsel was unable to participate, having left New York to return to Washington, D.C.

very notion of a letter of credit as a commercial guarantee.

**II. DOCTORS MISREPRESENTS THE APPLICABLE LEGAL STANDARD FOR ITS
"INTERIM RELIEF"**

Even assuming the only formal issue before the Court is interim relief, Doctors has misrepresented the appropriate legal standard. What Doctors seeks is an injunction preventing NYLCare from accessing the letter of credit pending the disposition of its full appeal. Doctors must therefore proceed under CPLR § 5518, which expressly provides that "[t]he appellate division may grant . . . a preliminary injunction pending an appeal." Pursuant to that provision, Doctors must make a showing that (i) it will be irreparably injured without such relief, (ii) it will likely succeed on the appeal, and (iii) the balance of hardships tips in its favor. Romano v. Sullivan County Harness Racing Ass'n, Inc., 106 A.D.2d 819, 484 N.Y.S.2d 209 (3d Dep't 1984) (Appellate Division reviews "plaintiffs' motions de novo using the same standard as did the Special Term, i.e. was there a reasonable probability of success on the appeal and the existence of irreparable injury"); The Humane Society v. City of Monroe, 192 A.D.2d 1139, 596 N.Y.S.2d 222 (4th Dep't 1993) (same); Matter of Schwartz v Rockefeller, 38 A.D.2d 995, 329 N.Y.S.2d 482 (3d Dep't 1972) (same).

Doctors has not sought a preliminary injunction pending appeal under § 5518; it has not because it cannot make the necessary showings. Indeed, Justice Cozier expressly denied Doctors' request for an injunction at least pending appeal.

Respondent's App. at 14. Doctors instead incorrectly represents that CPLR § 5519 applies to this case. Doctors Opp. at 1, 7-9. Section 5519, however, authorizes the Appellate Division only to "stay all proceedings to enforce the judgment or order appealed from pending the appeal." Here, there are no ongoing trial court proceedings to enforce any judgment or order: the trial court denied the motion for preliminary injunction, and the ex parte TRO entered on September 11, 1998 terminated by its express terms upon the hearing of Doctors' motion for preliminary injunction on September 17, 1998. Exhibit B at 1 (TRO stating that it lasts only "pending the hearing" of the preliminary injunction motion). Doctors, thus, does not and cannot seek to stay enforcement of an order; it seeks to obtain a new injunctive order. For such relief, the only provision under which Doctors can legitimately proceed is CPLR § 5518.³

III. DOCTORS CANNOT MAKE THE REQUISITE SHOWING UNDER CPLR § 5518

In analyzing a request for an interim injunction pending appeal, this Court must apply the "same standard as did the Special Term." Romano, 106 A.D.2d at 820, 484 N.Y.S.2d at 210.

³By avoiding CPLR § 5518, Doctors seeks to achieve through the backdoor that which it could not achieve through the front -- obtaining a preliminary injunction against NYLCare without any showing concerning irreparable harm, likely success, or the balance of hardships. See Doctors Opp. at 7-9 (arguing Court has "broad discretion" whether to grant stay; traditional injunction factors only "relevant" to analysis). This is inconsistent with the plain language of the CPLR. It is also dangerous: permitted to stand, it would enable litigants unable to meet the long-settled standards for preliminary injunctive relief in the trial courts to obtain just such relief from the Appellate Division without making any prescribed showing.

Accordingly, the relief Doctors seeks is "a drastic remedy which will not be granted without a clear showing by the movant that (1) he is likely to succeed on the merits; (2) he will be irreparably harmed without the issuance of the injunction; and (3) the balance of the equities favors him." Mr. Dees Stores, Inc. v. A.J. Parker, Inc., 553 N.Y.S.2d 16, 17, 159 A.D.2d 389, 389 (1st Dep't 1990) (internal citation omitted). See also NYLCare Brief at 13-14 (citing additional authorities).

The new arguments in Doctors' opposition memorandum fail to satisfy any portion of this test. Doctors does not show irreparable injury, likelihood of success, or that the balance of hardships tips in its favor -- let alone make the clear showing required by law.

**A. Doctors Has Not Shown, and Cannot Show,
Irreparable Injury**

Doctors has abandoned its claim made before the trial court that an injunction is necessary to safeguard the medical care to thousands of patients.⁴ It now rests its entire irreparable injury claim on the assertion that, absent an injunction, it will face "dire consequences" -- namely, it will "fail to get additional investments from investors," will be "forced to lay off its employees," and may "seek bankruptcy protection." Doctors Opp. at 10.

⁴Doctors was forced to abandon the argument -- and hence to concede implicitly its lack of merit -- because Doctors has now attempted to rescind unilaterally the contract that it formally claimed was essential to the preservation of patient well being. See Doctors Opp. at 10 n.9.

Additional investments. Doctors has cited no support for the argument -- not even made below to Justice Cozier -- that its failure to attract additional financing constitutes irreparable harm. Injunctions are not tools to enhance the business prospects of financially strapped companies. Moreover, the claim is wholly speculative: Doctors has produced no evidence that an injunction would result in additional investors. There is no affidavit of any investor to that effect. And the affidavit of Mr. Gold simply avers that an unnamed investor "has indicated" that it would be willing to invest provided Doctors "can convince it that NYLCare will not be allowed" to deduct unpaid claims costs and NYLCare will not be allowed to draw down the letter of credit based on false assertions. Gold Aff. ¶¶ 22-23. The temporary injunction sought by Doctors would not even provide those assurances.

Employee lay-offs. Doctors cites no case, and NYLCare knows of none, in which a New York court has issued an injunction to prevent a company from having to lay-off some unidentified portion of its staff. See Gold Aff. ¶ 25. No such case apparently exists because, though unfortunate, lay-offs do not constitute irreparable harm to the corporation itself. Indeed, the United States Supreme Court has repeatedly held that, even with respect to employees, the injury caused by dismissal -- in the form of loss of income and damage to reputation -- "falls far short of the type of irreparable injury which is a necessary predicate to the issuance of a temporary injunction." Office of

Personnel Management v. American Federation of Government Employees, 415 U.S. 61, 91-92 (1974). Doctors makes no attempt to explain how possible lay-offs would irreparably harm the corporation, when as a matter of law they do not irreparably harm its employees.

The "risk" of bankruptcy. Doctors' speculative "risk of bankruptcy," Preargument Statement ¶ 9(c) (emphasis added) (see also Affidavit of Monica P. McCabe ¶ 10; Affidavit of John R. Dwyer ¶ 18) is unsupported by financial records or other evidence sufficient to demonstrate irreparable harm. Indeed, the numerous cases cited in NYLCare's opening brief make clear that "bare conclusory allegations of [the party's] potential insolvency are insufficient to satisfy the plaintiff's burden of demonstrating irreparable injury." Wurttembergische Fire Insurance Co. v. Pan Atlantic Underwriters, Ltd., 133 A.D.2d 268, 269, 519 N.Y.S.2d 57, 58 (2d Dep't 1987). See also NYLCare Brief at 18-19 (citing additional authority). Doctors relies almost entirely on Mr. Gold's affidavit. But that states only the amount of working capital Doctors had in July and estimates monthly expenses, providing no supporting records, no indication of Doctors' monthly revenues or expenses, no idea of the income generated from the 16,000 non-NYLCare patients Doctors supposedly manages. Doctors Opp. at 10. Nor does Doctors even guess when its "possible" bankruptcy may arise.

While Doctors criticizes the trial court for not asking for testimony on the company's spectral insolvency, see Doctors Opp.

at 10-11 & n.11, it was Doctors' burden, not the court's, to establish the necessary elements of its claims.⁵ It has not done so, and cannot do so, under settled law.

B. Doctors Has Not Shown, and Cannot Show, Likelihood of Success on the Merits

Doctors does not dispute that the doctrine of independent contracts required Chase Manhattan Bank ("Chase") to honor NYLCare's properly-drafted letter of credit demand separate and apart from any billing dispute between NYLCare and Doctors. NYLCare Brief at 23-24 & n.9. Doctors does not dispute that this doctrine is subject to a "narrow exception" only upon a showing that fraud has "permeated the entire transaction." Banque Worms v. Banque Comercial Privee, 679 F. Supp. 1173, 1182 (S.D.N.Y.), aff'd, 849 F.2d 787 (2d Cir. 1988); NYLCare Brief at 24 & n.9. Nor does Doctors dispute the trial court's disposition of its "fraud in the inducement" claim.⁶

Instead, Doctors resorts to mangling the trial court's holding concerning its "fraud in the presentment" claim. Doctors

⁵At the hearing, Doctors never even asked to present testimony on this score, nor did it make a proffer as to what potential witnesses might say. Rather, Doctors only "mention[ed]" that Messrs. Gold and Dwyer were outside the courtroom in case the judge "ha[d] any specific questions that he would like answered." Respondent's App. at 7.

⁶See Doctors Opp. 24 n.19; NYLCare Brief at 23 n.8. Doctors does, however, gratuitously misrepresent that "NYLCare told Doctors Health that its historical costs were \$420 per member long after Doctors Health entered into its contract with NYLCare." Doctors Opp. 24 n.19. The uncontested record evidence is patently to the contrary. Affidavit of Greg Pastor ¶ 5 (Respondent's App. at 177) (NYLCare informed Doctors of \$420 per member cost before contract).

accuses Justice Cozier of having "misunderstood" its argument or of having improperly chosen to "depart from existing law." Doctors Opp. at 16. Specifically, Doctors asserts that it can show "fraud in the presentment" by demonstrating that NYLCare was "aware" that Doctors had "offsets and defenses" to the July 1998 bill and yet represented to Chase that it was aware of none. Id. at 16-17. Justice Cozier supposedly "misunderstood" this claim because he required Doctors to prove that its offsets or defenses were "valid." Id.

Justice Cozier misunderstood nothing. He never required Doctors to show that its offsets or defenses were "valid."⁷ Justice Cozier found that NYLCare's representation to Chase that it was aware of no offsets or defenses to the July 1998 bill was made in good faith. Respondent's App. at 10 ("there is no evidence, based upon the submissions by the parties here, that [NYLCare's] statement [to Chase] has not been made in good faith"). Without a showing of bad faith, there can be no fraud. Benderson Development Co v. Hallaway Properties, Inc., 67 N.Y.2d 963, 494 N.E.2d 106, 502 N.Y.S.2d 1001 (N.Y. 1986) (dismissing fraud claim for lack of evidence of a "present intent to deceive").

Justice Cozier's holding is unassailably correct. The record below reveals that Doctors indisputably owes NYLCare at least \$7 million -- well in excess of NYLCare's \$2.6 million

⁷Indeed, contrary to the suggestion implied by Doctors' use of quotation marks around the word "valid" in its brief (id. at 17), the word appears nowhere in Justice Cozier's opinion.

draw-down request for the July 1998 bill. See NYLCare Brief at 26-27 (establishing over \$13 million in unpaid bills due from Doctors and disputes totaling no more than \$6 million). Thus, as Justice Cozier noted, "there are clearly sums due and owing to [NYLCare]" for which no defenses or offsets exist. Respondent's App. at 10.

Besides, as to the July 1998 bill specifically in dispute, Doctors still fails to identify a single supposed offset or defense anywhere in the text of its brief. Instead, it offers only three transparent arguments tellingly buried in a footnote. Doctors Opp. at 18 n.22. First, Doctors claims that there was "no requirement in the letter of credit that the offsets or defenses must relate to any particular bill." Id. This, however, is a novel argument never raised below before Justice Cozier. Accordingly, it is waived. Harris Bay Yacht Club, Inc. v. Harris, 230 A.D.2d 931, 647 N.Y.S.2d 293 (3d Dep't 1996).

Even if the Court could consider it, it is an unsupported assertion belied by the parties' own contract. The parties' agreement expressly required bills to be prepared and paid on a monthly basis and permitted NYLCare to access the letter of credit only for such bills 60-days overdue. NYLCare Brief at 26; Affidavit of Steven Benz, Exh. 2, ¶ 3.4.4; id., Exh. 2, ¶ 6.4. Thus, NYLCare's letter to Chase sought payment for, and made representations concerning, only the 60-day overdue \$2.6 million bill for the month of July 1998. And for that month, Doctors had no claimed offset or defense whatsoever.

Second, Doctors touts the fact that NYLCare wrote on August 13, 1998 indicating that it anticipated Doctors would be owed \$506,068.53 for August. Doctors Opp. at 18 n.22. But Doctors does not contest that this anticipated credit related only to August, not July. Doctors likewise does not (and cannot) contest that NYLCare subsequently determined that no amount would be due to Doctors for August and, in fact, Doctors would owe NYLCare approximately \$10 million. NYLCare Brief at 26; Lefkowitz Aff. ¶ 5 (Respondent's App. at 169).

Third, Doctors claims that "a portion of the defenses and setoffs did in fact relate to the July bill (Gold Aff. ¶¶ 3, 5-10)." Doctors Opp. at 18 n.22. But as fully discussed elsewhere, Doctors has never even attempted to show that the various disputes discussed in the Gold Affidavit relate specifically to the July 1998 bill, nor that it made these supposed defenses and offsets known before NYLCare sent the draw request to Chase. NYLCare Brief at 26-27 & n.10.

Far from "clear[ly] showing" that Doctors "is likely to succeed on the merits," Mr. Dees Stores, 159 A.D.2d at 389, 553 N.Y.S.2d at 17, the record demonstrates that Doctors lacks even a remote chance of establishing fraud on appeal.

C. Doctors Has Not Shown, and Cannot Show, That the Balance of Hardships Tips in Its Favor

Doctors has not even tried to argue before this Court that the balance of hardships tips in its favor. This failure alone disposes of its motion for an interim injunction. See Mr. Dees

Stores, 159 A.D.2d at 389, 553 N.Y.S.2d at 17 (requiring clear showing on three elements, including balance of hardships); NYLCare Brief at 14 (citing further cases to same effect).

Doctors has not sought to make such a showing because it cannot do so. If an "interim" injunction issues NYLCare will be permanently precluded from accessing the sole security it has under the parties' contract for collecting millions of dollars in undisputed, unpaid bills. See Point I, supra (letter of credit expires October 31, 1998). The equitable doctrine of injunctions does not permit such an inequitable result. Indeed, it is settled that where an injunction would make it "much less certain that [the] defendant will be able to recoup [its] payments" from plaintiff, the balance of equities does not tip in favor of the plaintiff and the injunction should not issue. Winkler v. Kingston Housing Auth., 238 A.D.2d 711, 713, 656 N.Y.S.2d 421, 423 (3d Dep't 1997). See also J. S. Anand Corp. v. Aviel Enters., Inc., 148 A.D.2d 496, 538 N.Y.S.2d 840 (2d Dep't 1989) ("the defendant had a legitimate interest in enforcing [its] security agreement"); Price Paper & Twine Co. v. Miller, 182 A.D.2d 748, 749, 582 N.Y.S.2d 746, 748 (2d Dep't 1992) (since "the defendant[] would be likely to suffer more damage than the plaintiff[], a preliminary injunction should not be issued").

Conclusion

The Court should deny Doctors' request for a preliminary injunction pending appeal, affirm in its entirety the trial court's decision denying Doctors' motion for a preliminary injunction, award NYLCare its costs and expenses, and provide such other relief the Court deems appropriate.

Dated: September 28, 1998.

Respectfully submitted,

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*Counsel to Defendant-Respondent
NYLCare Health Plans of the Mid-
Atlantic, Inc.*

HON. BARRY A. COZIER

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC,
INC.,

Defendants.

At the IAS Part 3 of the Supreme Court
of the State of New York, at the
Courthouse, 80 Centre Street, New York,
New York on the 11th day of September,
1998

Order to Show Cause (Containing Tem-
porary Restraining Order) Why
Preliminary Injunction Should Not Be
Granted

NEW YORK
COUNTY CLERK'S OFFICE

98/604436 SEP 11 1998

NOT COMPARED
WITH COPY FILED

Upon the summons and complaint herein, and the annexed Affidavit of Urgency of
Monica Petraglia McCabe, sworn to September 11, 1998, and the Affidavit of John R. Dwyer,
Jr., sworn to September 10, 1998,

LET the defendants herein show cause before this Court at a Term, Part 3 (room 2/8)
thereof, to be held at the Courthouse, located at 80 Centre Street, New York, NY, on the 11th
day of September 1998, at 9:30 AM o'clock in the forenoon of that day, or as soon thereafter as counsel can
be heard, why a Preliminary Injunction should not be issued:

(1) prohibiting Chase Manhattan Bank ("Chase") from
making any payments to NYLCare Health Plans of the Mid-
Atlantic, Inc. ("NYLCare") under that certain letter of credit No. P-
343547 issued by Chase in favor of NYLCare for the sum of
\$4,400,000 or any part of such sum in connection with NYLCare's
request dated September 9, 1998; and

(2) for such other and further relief as the Court may
deem just and proper; and it is further

ORDERED, that pending the hearing and ~~determination~~ of this motion, Chase shall not
make any payments to NYLCare under letter of credit No. P-343547; and it is further

ORDERED that on or before September 17, 1998, plaintiff shall post an undertaking in the amount of \$ 260,000, conditioned that the plaintiff shall pay to the defendants an amount not exceeding \$ _____ for ^{all} legal costs and damages which may be sustained by reason of the temporary restraining order if the defendants recover judgment or it is later decided ^{plaintiff was not entitled this restraining order, finally determined} that the issuance of a temporary restraining order in plaintiff's favor was unlawful.

JSC
SAL
JSC Oral argument shall be required on the return date of this motion.

SAL
JSC Sufficient cause ^{Bona Alleged} ~~appearing therefor~~ / Let service of a copy of this order to show cause, together with the papers upon which it is granted, by hand on defendant Chase at its New York branch and place of business, 1211 Avenue of the Americas, New York, New York, 10036, and on defendant NYLCare by fax and overnight delivery to its place of business at 7601 Ora Glen Drive, Greenbelt, Maryland, on or before September 14, 1998, be deemed good and sufficient service thereof.

Entered

J.S.C.

HON. BARRY A. COZIER

Dated: New York, New York
September 11, 1998

SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF

(SUBMITTED BY MOVING PARTY)

Date 9/17/98

Title of Matter Doctors Health, Inc. v. Chase Manhattan Bank and NYL Care Health Plans Index/Indict# 98 Civ. 60436 (BAC)

Appeal by Doctors Health, Inc. order judgment of Supreme County NY
Family Court entered on 9/17 1998
 Name of Judge Barry A. Coxier Notice of Appeal filed on 9/17 1998

If from administrative determination, state agency _____

Nature of action or proceeding Application for stay of Judge Coxier's order
pending appeal in this matter

Provisions of order judgment appealed from entire order
 decree

This application by appellant respondent is for a stay of Judge Coxier's order
of vacating TRC and denying Plaintiff's notice for
preliminary injunction pending payment on a letter of credit.

If applying for a stay, state reason why requested Plaintiff believes that it will
be successful on appeal but needs a stay because any
appeals will be rendered meaningless if immediate stay is
not granted.

Has any underlying been posted No If "Yes", state amount and type
\$4 Bond in the amount of \$269,000 was
placed in the underlying action for the TRC.

Has application been made to court below for this relief Yes If yes, state disposition Trial court denied application.
 Has there been any prior application herein in this Court No If "Yes", state date and nature _____

Has adversary been advised of this application Yes Does he/she consent No 16dv-000267

Attorney for Movant

Name Piper & Marbury LLP
 Address 1251 Avenue of the Americas
 Tel. No. (212) 835-6000 10620-1104
 Appearing by Peter M. Carrigan
Monica Petropoulos McCabe

Attorney for Opposition

Epstein Becker & Green, P.C.
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(212) 351-4500
Julie K. Gershman
Andrew Leone, Esq.
Chase Manhattan Bank
121 Avenue of the Americas
(212) 552-6921 10036

(Do not write below this line)

DISPOSITION

Interim stay granted (not on the merits)
Movant shall supply ^{copy of} relevant papers below (OSC exhibits + responsive
papers) to AD + respondents

Motion Date

9/25

Opposition

9/23

Reply

9/25

EXPEDITE

PHONE

ATTORNEYS

DECISION

BY

10/2/98ALL PAPERS TO BE SERVED PERSONALLY.

Eut
 Law Assistant

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 3

DOCTORS HEALTH, INC., INDEX NO.
604436/98

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC,
INC.,

Defendants.

60 Centre Street
New York, New York
September 17, 1998

BEFORE: HONORABLE BARRY A. COZIER, J.S.C.

Appearances:

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-and-
NEIL M. GORSUCH, ESQ.

FREDERIC C. CANTOR
OFFICIAL COURT REPORTER

(Appearances continued.)

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ALSO PRESENT:

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Court's Decision

THE COURT: Okay, thank you.

I think I have heard enough to digest the issues.

In the first instance, it seems to me that the underlying dispute between the parties concerns money matters arising out of their contractual agreement.

Now, what we have are two corporate entities both doing business in Maryland concerning services, HMO services which are being provided and health management services generally, which are being provided in Maryland.

The nexus to New York is obviously Chase Manhattan Bank really the nominal stakeholder in this particular case because of the Letter of Credit that was issued from the plaintiffs in favor of Nylcare.

Now, this is certainly a basic commercial transaction.

The parties have a contractual relationship. It involves the making

Court's Decision

of the ongoing claims being made based upon patients' services being furnished by the plaintiff for which the defendant, Nylcare, receives payment from the federal government and is a pass-through for purposes of the Medicare payments.

The relationship here is ongoing clearly commercial.

The nuance of this particular case concerns the establishment in the contract or the agreement of the Letter of Credit in favor of Nylcare.

Now, this is not the traditional commercial Letter of Credit involving goods and furnishing of goods, et cetera, the normal transaction.

This is in the nature of a standby Letter of Credit.

The standby Letter of Credit functions more like a guarantee than the standard commercial Letter of Credit.

They are obtained to enable the

Court's Decision

beneficiary to make demand for payment under the Letter of Credit upon the happening of a certain contingency, such as the default of the other party in the underlying transaction.

The terms for drawing upon the Letter of Credit is set forth in the agreement.

There are certain requirements; obviously, a presentment to Chase is required in a particular form and the contents must meet at least a requirement of the agreement.

Plaintiff primarily predicates this application for injunctive relief on the fourth requirement, the statement drawing upon the Letter of Credit by Nylcare that they know of no valid offsets to the claims.

The problem here is that to the extent that the documents are properly presented to Chase Bank, the Court must strictly construe the Letter of Credit requirements in accordance with UCC.

Court's Decision

The purpose of it is to have definiteness with respect to commercial transactions here.

Now, it seems to me that the entire arguments, using the CPLR criteria here, with respect to irreparable harm, substantial likelihood of success on the merits and the balance of the equities is predicated upon, of course, what is, in fact, a money dispute between the parties as to what the proper amount due and owing to the defendant is here.

Clearly, the threshold issue in the underlying issue for the plenary action is really based upon a claim for money damages, either in the form of the claim by the plaintiff or what will be a counterclaim on the part of defendant, Nylcare, based upon this dispute.

So there is no question here that there are disputed facts with respect

Court's Decision

to what sum is due and owing and to whom it is due and owing, pursuant to the term of the Agreement.

And I have perused the documentation here, and as I said, there is an ongoing course of conduct between the parties.

Now, the only basis under which the Court can grant an injunction in these circumstances, particularly where there are factual disputes, there must be a clear showing of irreparable harm, a clear showing of irreparable harm.

In this particular instance, the allegation that is being made in the Order to Show Cause, by the plaintiff, is that fraud threatening this irreparable harm involves false statements by defendant, Nylcare Health Plans to defendant, Chase Manhattan Bank.

Now, the distinction here, I believe, is whether or not what we have, does a false statement, even

Court's Decision

assuming arguendo, we have a false statement, rise to the level of a fraudulent statement to meet the UCC standard and commercial standard in New York to fit within the fraud exception to payment under a Letter of Credit. And I think that's really the critical issue.

"In New York, the sole exception to the independence principle and the issuer's obligation to pay on conforming documents --"

I don't think there is any dispute here we have conforming documents, " -- is an exception for fraud.

"The only authorized means of stopping payment, under a Letter of Credit, is that permitted under the fraud exception.

"If applicable, it can permit an injunction against honor, or it can be relied upon by the issuer as a ground to dishonor, where a document is forged or fraudulent or where there is fraud

1 Court's Decision
2 in the transaction."

3 This case clearly does not involve
4 fraud in the inducement.

5 Fraud in the inducement, would
6 have concerned the terms giving rise to
7 the Letter of Credit, and there is
8 certainly no allegations in that
9 regard.

10 And, therefore, the plaintiff must
11 rely upon the fact that there is fraud
12 in the transaction.

13 And plaintiff's argument has been
14 couched in terms of fraud in the
15 presentment, I assume, that means in
16 the presentment of the documents, to
17 the extent the statement is made that,
18 in fact, there are no known offsets.

19 The problem here, is based upon
20 the factual disputes between the
21 parties, that statement cannot be
22 considered to be a fraudulent
23 statement.

24 In fact, there is no evidence,
25 based upon the submissions by the

Court's Decision

parties here, that that statement has not been made in good faith.

The point being that the position of the defendant, Nylcare here is, of course, there are clearly sums due and owing to Nylcare and, in point of fact, that it's only a question of the actual amount here.

But the amount is an amount clearly due and owing to Nylcare.

It's not a situation that it was presented because there is a possibility that there is deficit on Nylcare's side and the sums may be due and owing to the plaintiff here.

It all surrounds the factual dispute. That factual dispute, by itself, is not sufficient to constitute fraud within the meaning of UCC or the case law in New York. There has to be a showing of actual fraud.

And even the fact that there may be a mere misrepresentation here, a mere misrepresentation, if, unless

Court's Decision

there is a showing that it has been made in bad faith in order to fraudulently induce, in order to fraudulently induce the demand for payment here, there is really no bases under which you can really show that there is irreparable harm in this circumstances.

It seems to me there is a legitimate factual dispute between the parties.

Now, let me say something with respect to this issue of irreparable harm and the arguments made with respect to irreparable harm.

Irreparable harm cannot constitute simple economic harm.

Basically, once again, the threshold arguments offered by plaintiff is that they may be put out of business. May even possibly be forced into insolvency or bankruptcy.

But that does not constitute a basis for irreparable harm.

Court's Decision

In fact, if anything, it supports the decision that the underlying dispute is based upon money and based upon something that is compensable at law seeking money damages.

The additional factor in this case is that since none of these transactions arise other than the issuance of the Letter of Credit, within the State of New York, and the agreement executed in Maryland governs here.

That agreement expressly provides for arbitrability of disputes of the parties and disputes surrounding, of course, the particular claims that are really the subject matter here.

So that the Court would never reach the merit in this particular case.

So the Court cannot conclude, for the plaintiff, that there is a likelihood of success on the merit at this particular time, sufficient to

Court's Decision

issue an injunction.

So it seems to me that in the overall assessment, without a showing of irreparable harm, and an issue of money, does not equal irreparable harm because it's compensable at law.

I understand the argument that is being made with respect to patient care, but the fact of the matter is that the plaintiff is not the actual patient provider here. They do not have that primary responsibility with respect to patient care.

They are the conduit to make arrangements for the patient care.

And certainly it's plausible that alternative arrangements can be made. And we know that in the world of HMO's, changes are made every day with respect to the election of their HMO.

So there is no basis of irreparable harm shown there.

So I think that based upon all of the submissions before the Court, the

Court's Decision

Court is constrained, based upon the reasons cited, to deny the application for a preliminary injunction and to vacate the TRO in this matter.

The record will constitute my Decision and Order.

Settle an order on notice here, please. Thank you.

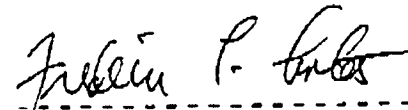
MS McCABE: Your Honor, may we have a stay of the order so that we may file an appeal?

THE COURT: The application for a stay is denied.

(Whereupon, court was adjourned.)

* * * * *

I hereby certify the above as a true and accurate transcript of these proceedings.



FREDERIC C. CANTOR
OFFICIAL COURT REPORTER



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FROM: **Kenneth J. Kelly, Esq.** DATE: **September 23, 1998**

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Comments:

Doctors v. NYLCare

I attach the transcription of the court hearing (without the decision).

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ATTORNEY No.: 692

16dv-000283

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 3

DOCTORS HEALTH, INC.,

-X
INDEX NO.
604436/98

Plaintiff,

-against-

CHASE MANHATTAN BANK and Nylcare
HEALTH PLANS OF THE MID-ATLANTIC,
INC.,

Defendants.

-X
60 Centre Street
New York, New York
September 17, 1998

BEFORE: HONORABLE BARRY A. COZIER, J.S.C.

Appearances:

PIPER & MARBURY, LLP
Attorneys for Doctor Health
251 Avenue of the Americas
New York, New York 10020-1104
BY: MONICA PETRAGLIA MCCABE, ESQ.
PETER CORRIGAN, ESQ.
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FREDERIC C. CANTOR
OFFICIAL COURT REPORTER

(Appearances continued.)

EPSTEIN, BECKER & GREEN, P.C.
Attorneys for Nylcare
250 Park Avenue
New York, New York 10177
BY: JULIE K. GERSHMAN, ESQ.

ALSO PRESENT:

HERIBERTO BARBOT, JR.
Assistant General Counsel
Legal
Nylcare Health Plans, Inc.
One Liberty Plaza, Suite 8-4
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ANDREW N. KEEN
Vice President &
Assistant General Counsel
Legal Department
For Defendant Chase Manhattan Bank
One Chase Manhattan Plaza, 25th Fl.
New York, New York 10081

ED NEUGEBAUER
Aetna US Healthcare
980 Jolly Road (U19A)
Blue Bell, PA. 19422

Proceedings

THE COURT: We are on the record.
Doctors Health Care, Inc., versus Chase
Manhattan Bank, Nylcare Health Plans
Mid-Atlantic, Inc. representing Doctors
Health Care.

MS. McCABE: Monica McCabe.

THE COURT: Do you have an
initial application?

MS. McCABE: Yes. We have an
affirmation for pro hac vice admission
from John Corse from Piper & Marbury.
We also have the bond that your honor
required be in place. We also have
reply papers. We received papers from
Nylcare last evening, and we have a
reply memorandum of law as well as the
affidavit of Stewart Gold with exhibits
attached.

THE COURT: Those have been served
on both defendants?

MS. McCABE: They were this
morning.

THE COURT: Mr. Corrigan.

MR. CORRIGAN: Yes. I'm Peter

Proceedings

Corrigan, sir.

THE COURT: On the application of the plaintiff and based upon the submission that Mr. Corse is a member in good standing of the bars of the State of Maryland and the federal district courts in Maryland, evidenced by the Certificate of Good Standing from the Maryland bar, the application for admission pro hac vice is granted with respect to Mr. Corse.

MS. McCABE: Thank you, your honor.

THE COURT: Now, who is representing Chase?

MR. KEEN: I am, your Honor. My name is Andrew Keen. Your Honor, can I have papers as well.

THE COURT: You don't have any preliminary applications, Mr. Keen?

MR. KEEN: No, your Honor.

THE COURT: And representing Nylcare Health.

MS. GERSHMAN: Good morning, your

Proceedings

Honor. Julie Gershman from Epstein, Becker & Greene. I also have papers for your honor which were served last evening upon the other papers to this action. And we have an initial application to move Mr. Mark Hansen from DC in pro hac vice on this matter.

Unfortunately, we did not have the requisite time to obtain the Requisites of Good Standing.

THE COURT: Mr. Hansen.

MR. HANSEN: Yes, Your Honor.

THE COURT: You're a member of which bar?

MR. HANSEN: I'm a member of Massachusetts bar, the District of Columbia bar, the Maryland bar. I served as federal prosecutor in the federal court here for four years between 1986 and 1990.

THE COURT: Where are you currently residing and practicing?

MR. HANSEN: In Washington, D.C.,

Proceedings

your Honor.

THE COURT: How long have you been a member of the Washington, D.C. bar?

MR. HANSEN: Since 1996, your Honor.

THE COURT: You are currently in good standing in the D.C. and Maryland bars?

MR. HANSEN: Yes, as well as Massachusetts, your Honor.

THE COURT: The Court will grant the oral application by Nylcare Health Plans for the pro hac vice admission of Mr. Hansen.

MS. GERSHMAN: Your Honor, this is a limited and special appearance solely for the purposes of opposing the Order to Show Cause containing the temporary restraining order. I notice that your judge's personal rules do not permit a movant, by Order to Show Cause to submit reply papers. I just want to point that out at this time.

THE COURT: Normally that is

Proceedings

correct. It's done by -- I mean, permission of the Court by authorization of the Court. And under normal course, in a matter such as this, I think it's appropriate that replies be filed based on the extensive filing.

Okay, we are ready to proceed.

Ms. McCabe, would you briefly summarize your application.

MS. McCABE: Yes, your Honor.

Would you like some background or should I go into the argument?

THE COURT: The argument.

MS. McCABE: I would also like to mention to you honor outside we have Steward Gold, the president and CEO of Doctors Health, as well as the CFO John Dwyer, so if your Honor has any specific questions that he would like answered they are happy to answer any questions or be put on the stand.

Your Honor, Doctors Health is a physician-driven care management

Proceedings

company which oversees the delivery of health care to about thirty thousand enrollees in HMOs.

Nylcare is an HMO with which Doctors Health entered into a contract to manage services for elderly Medicare patients. Under the agreement, Nylcare collects money from the Federal Government who pays for Medicare patients. Then what happens is Nylcare deducts its premiums in the amounts that it has to pay for medical expenses.

And during that proceeding month -- and the balance is paid to Doctors Health.

Under the agreement, Doctors Health was required to open a Letter of Credit which it did at Chase Manhattan Bank. The Letter of Credit, in order to be drawn down requires a statement from Nylcare representing four items, the most important of which -- here, I'll read that, "There are no defenses

Proceedings

or offsets to payments which have been raised by Doctors Health and of which Nylcare is aware."

I believe that fourth requirement is clear and a very important requirement of the Letter of Credit.

Nylcare chose to submit to Chase last week a statement that there were no defenses or offsets, and this is simply false. And I will explain why. It is clear here there is fraud in presentment of documents to the bank. Under New York law and UCC section 5-114, which would apply here, and there several cases cited in both of our briefs, you can either show fraud in the presentment of the document or fraud in the underlying transaction.

Here we believe that fraud in the presentment of the documents are so clear that we don't even need to reach the issue of fraud in the underlying transaction. So unless your Honor I would like I would just go straight to

Proceedings

the fraud and presentment of the documents.

Now Nylcare here has attempted to change the terms of the letters of credit to include only those offsets to which Nylcare agree, but that's not what the letter credit requires. It requires only that they be aware of the offset and that we have raised it.

Let me go through briefly, they are documented in the affidavits, the offsets which are my client's claim. Those offsets which now Nylcare admits are equal to two five seven six zero zero zero million dollars.

There are basically three categories of offsets provided that are -- you can find in Nylcare's documents. I should mention that Nylcare provides monthly statements to Doctors Health that indicate either surplus to be paid to Doctors Health or deficits to be paid to Nylcare. Those reports have been sent to Doctors

Proceedings

Health since October 1997.

In July Nylcare claimed that Doctors Health owed \$2.6 million, approximately. We met with them, discussed with them, told them we had an ongoing audit by Arthur Anderson that there were offsets, that we believe it was estimated by Arthur Anderson that there were \$900,000 in offsets. And that was a preliminary report and the audits were continuing.

We sent a confirming letter on July 15, which you will find in the documents. In the August, 1998 report then Nylcare itself indicated an offset of five million zero six zero six eight point five three.

Stewart Gold raised this in a letter to Nylcare on August 10, and several other claims that were being investigated. Susan Lefkowitz, the executive VP of Nylcare confirmed that credit in a letter of Stewart Gold on August 13.

Proceedings

Then on September 1 there was another report issued which imitated an offset of over \$1.4 million, one four four three zero four seven. Except what happened is Nylecare, all of a sudden, decides to change its method of accounting and a little bit of creative accounting here. It had been using the same accounting for 11 prior months on the statements submitted to Doctors Health. What they did was instead of deducting amounts for those claims actually paid as required under section 3.44 of the contract, it now deducted more than \$10 million for unpaid claims, claims that they said were -- on the face of the documents you can see where it is handwritten in they changed their own documents to say "Claims incurred but not paid." It plainly violates the agreement. It is a fraudulent deduction on the statement and it violates the agreement, because they deducted that amount. They said

Proceedings

that Doctors Health owed Nylcare money, which was untrue.

On September 4, Stewart Gold had sent a letter to Nylcare's president informing them of that offset, the over \$1.4 million offset and questioned the sudden unilateral change in the accounting methods.

Then on September 4 Nylcare sent yet another calculation to Doctors Health showing a \$1.8 million offset. Again, Nylcare tried to falsely deduct the \$10 million in unpaid claims that it had never done before.

Let me go to the third offset. Those are improperly paid claims which include claims that were paid to health providers without authorization, that were either duplicate payments, payments to ineligible members or members not covered under the HMO. Those offsets amounted to \$283,000 --

THE COURT: (Interrupted) let me stop you for a moment. I get the gist

Proceedings

1
2 of the argument with respect to the
3 offsets. Obviously, there is a dispute
4 here as to the amounts of the claims
5 and the resulting offsets. My question
6 for you is you are moving for
7 preliminary injunctive relief here, and
8 there is a standard under the CPLR that
9 has to be met. And then of course
10 there is another hurdle because there
11 is a Letter of Credit. And the UCC
12 governs Letters of Credit. So I think
13 you will really have to address those
14 two prongs why you're entitled to
15 injunctive relief, and of course it is
16 a pretty drastic remedy for the Court
17 to enjoin the bank from making payments
18 on the Letter of Credit where you know
19 it's been properly presented. So go
20 ahead and address those issues.

21 MS. McCABE: I would like to go to
22 the irreparable harm issued, your
23 Honor. Doctors Health is responsible
24 for the managing the care of 30,000
25 patients. It owns the assets of the

Proceedings

practices of more than a 100 primary care physicians. In that connection it employs all of the support staff for those physicians. That includes nurses, medical assistants, technicians, lab personnel, receptionists for those practices. So 325 of Doctors Health employees work in those physicians' offices.

If Doctors Health is required to replenish the Letter of Credit here, it is going to have to lay off those employees. There will be no one simply to run those doctors' offices.

It also employs social workers, physicians' assistants that coordinate health care plans for 7,000 high risk patients in their homes and nursing homes and rehabilitation centers.

Let me give you an example. Employees of Doctors Health call to remind diabetics to take their medication. They have them manage their diet. They teach them how to

Proceedings

measure their blood sugar. They do home surveys to make sure the patient is taking the proper medication, that they are compliant with the medical treatment they have been prescribed.

For chronic obstructive pulmonary disease, they do home checks to make sure there are no, -- is nothing in the environment that will aggravate the condition.

THE COURT: The question is this, is your position that there is irreparable harm because these patients would not be otherwise serviced if the Court doesn't grant injunctive relief here?

MS. McCABE: Your Honor, if I can use an analogy. Doctors Health employees are like the air traffic controllers. They don't fly the plane but they coordinate the plans and the operation. They are vital to the safe operation of health care of these patients. These patients have a phone

Proceedings

number. When they get in trouble they need an ambulance they call the phone number on their little magnet on the refrigerator. If that phone number is disconnected, those patients are left hanging. Even if only a couple of days go by, critical patients like diabetics, congestive heart failure patients are going to be in trouble. This is their first line. Before they can be admitted to the hospital, Doctors Health has to approve it. When they get released from the hospital --

THE COURT: That's not my question. My question is is it your position that these patients cannot be serviced in the event that injunctive relief is not granted here?

MS. McCABE: Yes.

THE COURT: So there are no alternative means of servicing these patients?

MS. McCABE: They would have to switch to another HMO eventually, but

Proceedings

there is going to be a fallout in between the time that the phone gets disconnected and they try and find another physician to manage their care.

THE COURT: Okay. What about it?

MS. McCABE: May I make one other statement with respect to irreparable harm?

We cited a New York case which says literally we can go over the financial information. I won't do that right now. But Doctors Health has very little working capital at this point. It has to pay its salaries. If the Letter of Credit is drawn down it will have to lay off all of its employees. That, in and of itself, is irreparable harm under New York Law. We have 425 or 480 employees that will be out of work and the business will go into bankruptcy. And that in addition to the harm to the patients there will also be harm to Nylcare and its Doctors Health and its employees, and 108

Proceedings

physicians' practicing groups will have no receptionists, nurses, physicians' assistants to work with them.

I would like to go back to the UCC section 114 which says that a bank can be ordered to stop payment on a Letter of Credit if there is fraud or forged documents presented to the bank or if there is fraud in the underlying transaction.

Could I read your Honor the language, if you'd like.

"Unless otherwise agreed, when documents appear on their face to comply with the terms of a credit but a required document is forged or fraudulent or there is fraud in the transaction, the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank."

Section 5-114(b) states, "In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite

1 Proceedings

2 notification from the customer of
3 fraud, forgery or other defect not
4 apparent on the face of the documents,
5 but a court of appropriate jurisdiction
6 may enjoin such honor."

7 Your Honor, I believe, as I said
8 earlier, there is fraud in the
9 presentment of the documents. There
10 are offsets of which Doctors Health
11 raised. There can be no question about
12 them in terms of the documents that
13 have been submitted, the
14 correspondence, the meetings, et
15 cetera.

16 Nylcare admitted, and also the
17 credits we are talking about in
18 accordance and meetings. Yet, their
19 officer, their executive VP said to the
20 bank there are no offsets. She didn't
21 say there are no offsets to which we
22 agree. She said there are no offsets
23 period. It's a clear violation of what
24 is required by the Letter of Credit by
25 the main terms of the Letter of Credit.

Proceedings

THE COURT: Okay, anything further?

MS. McCABE: That's it, your Honor.

THE COURT: I'll hear from Nylcare.

MR. HANSEN: Mark Hansen for Nylcare. This is just a preliminary matter. I don't think we introduced Ed Neugebauer of Aetna U.S. Healthcare and Mr. Heriberto Barbot of U.S. Healthcare and Nylcare. Also I want to just flag for the record there's been an issue raised regarding Piper and Marbury with regard to U.S. Healthcare and Nylcare. I didn't want to address that now, but I don't want that to be waived.

I also want to note we've got whatever they filed, a reply, at 10:15, so I'm not aware of any of it. I'm afraid I'll do my best with what's been put on the table.

Your Honor, may I get to your

Proceedings

question? Will patients somehow be hurt if this Court doesn't intervene in a commercial dispute between two Maryland residents over who owes who what? It's a dispute about whether we owe them money or they owe us money. The answer unequivocally is absolutely not. Doctors Health, despite the doctor and the title, is not practicing medicine, and I can show you where they specifically represent they are not practicing medicine. They can't. Corporations can't practice medicine. They are an administrative services company. They don't go near patients, your Honor, other than to monitor their claims. I can't be more emphatic about this, your Honor. If Doctors Health goes out of business tomorrow, the patients will go to the same doctors they went to before. The doctors will send the claim to Nylcare, as they always have, and we have to pay it. And if we can't go to Doctors Health to

Proceedings

recoup, that's our problem. It sure isn't the patient's problem.

Ms. McCabe made an argument about the people who turn the lights on or who monitor the phones. Your Honor, let's get a sense of the dimension of the problem. And I understand it is unrebutted in Mr. Emerson's affidavit, the CEO of Nylcare. We've identified 170 Medicare beneficiaries who go to these practicing groups for which Doctors Health serves not as the doctor but as the people who pay the bills.

First, your Honor, if tomorrow Doctors Health stops paying the bills for those doctors, there are still doctors who can service our members. They are not going to go fishing after the people who run their back office who aren't there anymore. They'll practice medicine Tuesday after Doctors Health goes out of business Monday, and there is no showing they won't.

Secondly, those 170 people who go

Proceedings

1
2 to doctors, people in our network,
3 change doctors all the time. It's
4 their right. If for some reason nobody
5 answers the phone when they wanted to
6 make a call on Monday, there are
7 hundreds of other doctors who
8 participate in our program who are
9 available to those people. So, your
10 Honor, they haven't made any showing of
11 patients' disruption. There wouldn't
12 be any, their problem being about
13 irreparable injury if they couldn't get
14 a phone call through for an hour.

15 Your Honor, we submit this
16 business entity, although we made a bad
17 business deal, is really disingenuous.
18 It's our responsibility to make sure
19 our members are well cared for.
20 Doctors Health cannot do anything to
21 interfere with that. And, your Honor,
22 Mr. Emerson's affidavit is unrebutted.

23 Your Honor, there are three
24 standards for injunction in this court;
25 irreparable injury, balance of the

Proceedings

hardship finding in favor of the party asking for it and likelihood of success on the merits.

A couple of other standards they didn't address were the facts that are in dispute, we are disagreeing about the facts, and it's not clear on the face of the papers, that the movant is entitled to win. The movant has to lose.

Another important principle of jurisprudence is when people are fighting about money, that's not a proper case for injunctive relief. That's a proper case to let people go out and try to collect their damages which, indeed, will happen.

This case ultimately will be arbitrated in Maryland between these Maryland residents. There is a mandatory arbitration clause. We will fight about money. We think they owe us more than \$12 million. They may think they don't owe it. That's all

Proceedings

going to get resolved.

Why is it they can't win in preliminary injunction? Because the patient issue is a non-issue because their vague and conclusory claim that someday they might have to cut off heat if they don't comply with the contract.

We've cited dozens of cases in our pleadings that they say people can't come into court to avoid a bad business deal by saying it's going to hurt us to have to make the payment. There is not any substantiation for a claim of imminent bankruptcy.

Ms. McCabe says it, they say it in the papers. But it's not enough. And you know what, your Honor, even if they had come in with charts and spreadsheets and cash flow analyses and all the things New York courts have said, you have to -- even to have that argument considered, that wouldn't be enough, either because it's a money damages case, and what we owe them or

Proceedings

1
2 what they owe us can adequately be
3 addressed in an arbitration that is
4 going to happen in this case.

5 Let's go to the second fact, your
6 Honor. I think it is a real important
7 factor, where is the balance here?
8 They say we are going to have to pay
9 them money and the bank will come after
10 us and that will be hard for us
11 financially.

12 Look at the flip side, your Honor.

13 At the same time they are telling you
14 they are not good for their financial
15 obligations here where Nylcare sits,
16 Chase which is financially responsible,
17 has a \$5.2 million Letter of Credit
18 that we can draw on. That expires like
19 Cinderella at a ball on October 31, six
20 weeks from now. If their ploy works,
21 our security is gone. They say they
22 don't have \$2.6 million to pay or draw
23 if Chase asks them. They say they are
24 teetering on the verge. What happens
25 if you grant the injunction and we

Proceedings

1
2 can't get access to the Letter of
3 Credit which was put for the purpose of
4 making sure this didn't happen? We are
5 left holding the bag, and that's
6 irreparable. Because if Doctors Health
7 is as manage care as a claims
8 management operation essentially goes
9 under, we could have \$20 million in
10 claims they owe us based on this
11 business deal, and we wouldn't get a
12 penny of it because they are gone, and
13 that \$5.2 million Letter of Credit it's
14 supposed to be re-upped, they're
15 supposed to put more back into it.
16 That's the only way we can be sure of
17 getting paid.

18 We cited the case, the New York
19 courts have said. But what it says
20 couldn't be clearer, the language,
21 whereas here an injunction would make
22 it much less certain defendants will be
23 able to recoup the payments, the
24 balancing of hardships does not trip in
25 favor of the plaintiff, and the

Proceedings

injunction shouldn't issue. Those two reasons alone make it virtually impossible for the court to grant, with all due respect, an injunction in these kinds of commercial disputes. And of course never do in these kinds of commercial disputes.

But let me address the explosive argument that we somehow lied to Chase Manhattan Bank. They keep repeating it. It's not true, your Honor, it's not true. The Letter of Credit was presented in proper form when she had to pay it. Ms. McCabe says we said there were no defenses or offsets. That's a lie. It's not, your Honor. It's true. Here's why it's true, I didn't quite frankly understand Ms. McCabe's understanding about offsets, but I can take your Honor through the document. 3.44 of the contract says that a payment that -- we go on a month by month basis.

If I could step back, and I'm sure

. Proceedings

the Court picked up on this, we do business on a monthly basis. Every month there is a payment we get from the Federal Government, and we kick out 88.5 percent during the relevant period to these guys, Doctors Health. Same month we have to pay to our Medicare beneficiaries. If it's less than what we are paying on the 88.5 percent they get the difference, they get the money.

If it's more we go to them with our hands out. That's the way the contract works.

In this case, your Honor, it's undisputed for July of 1998 we sent them a bill for \$2.6 million. That was the difference between what we should pay them for what they pay us. That bill was outstanding 60 days. During the time it was outstanding, there was never raised by them a defense or offset to that bill. All of these other arguments there are about prior claims paid or future claims to be

Proceedings

1
2 paid, there was never a specific claim
3 by Doctors Health that the \$2.65
4 million was they had valid offsets to
5 that July amount and those July claims.

6 I'm sure Ms. McCabe will say it as
7 July stands as its own month. They
8 didn't come back and show us an offset
9 due for July. They didn't show us a
10 defense to July. We fought about lots
11 of things, but not July.

12 We get to September we're entitled
13 to draw on the Letter of Credit, and
14 there are no defenses of offsets.

15 I submit, your Honor, that's
16 enough to put the stake in the heart of
17 that vampire. But even if they say no,
18 you should have construed some of what
19 we were telling you as a claim for an
20 offset as to July, we disagree, and
21 that's precisely the kind of
22 disagreement that the courts of this
23 state said is the sort of that thing
24 that presents preliminary injunctions.
25 We will fight about those disagreements

Proceedings

1
2 in arbitration and if we did wrong,
3 your Honor, we can be called to account
4 for it. We'll be good for the money.
5 It will be sitting in our bank account.

6 If they get an injunction and we are
7 entitled to \$12 million from them on
8 the claims we forgot to pay, this is
9 money out of pocket for Nylcare and
10 they are in the wind. We are out of
11 luck.

12 So, your Honor, at the very least,
13 it's completely disputed and factually
14 disputed as to whether they raised a
15 claim or offset. The only thing is
16 when they wrote us a letter on July 15
17 saying we think \$6 million in claims
18 have been improperly paid. They don't
19 specifically refer to September claims.

20 We can't even represent when we try
21 to draw on a Letter of Credit --
22 moreover, by the time we draw on the
23 Letter of Credit, your Honor, we
24 believe based on our records they owe
25 us more than \$12 million. Any amount

Proceedings

1
2 they contested to that date, and again
3 we are talking about September 4, when
4 we write the letter, as of that date we
5 think they owe us \$12 million. They
6 may have whined about \$6 million total
7 over the whole course of the
8 relationship, but they haven't whined
9 about it enough. So we would be \$2.6
10 million we were drawing, even if you
11 vitiate the contract and say they don't
12 have to go month by month, but the
13 contract says you have got to go month
14 by month.

15 One other thing that Ms. McCabe
16 raised in the papers, I think, with
17 more focus, they say we recognize these
18 offsets. That's not true. We
19 presented the demand for \$2.6 million
20 in August. Ms. McCabe alluded to
21 this. There was correspondence back
22 and forth and one of our executives
23 wrote to Doctors saying we think we're
24 going to owe you \$500,000 for September
25 so pay us \$2 million.

Proceedings

Here's the problem with that.

What we think we're going to owe them for September is not under the contract an offset to what they owe us for July. That's point one. And point two is that was on August 13, your Honor. But by the time we get to the end of the month hear what we know. We're not going to owe them a penny for September because increasing claims, and again every claim that comes to us we have to pay, that's on them, that's not on us. We know by the end of August we're going to have to pay a fortune in claims and they will owe us \$12 million, and at the end of the day we are not going to have to pay them anything for September. There is no offset. By the time we go to Chase and tell them there is no offset, we won't owe them anything. We think they will owe us \$12 million. We've invoiced not only for the \$2.6 million, but for the \$10 million. We have to give them a

1 Proceedings

2 period of time before we can draw on
3 the \$10 million bill. But the \$2.6
4 million has ripened and it's ready to
5 be drawn. And we told the truth to
6 Chase when we said there is no defense
7 or offset.

8 Your Honor, you alluded to the
9 Letter of Credit Law. This is the
10 home of commercial transactions in New
11 York. Letter of Credit are provided to
12 give parties certainty in financial
13 transactions. If demands are properly
14 presented on their face they have to be
15 paid. There is one little tiny
16 exception to the rule, that's called a
17 pervasive fraud exception. This
18 document wasn't forged. We signed it.
19 It's valid.

20 They cite one case, the Sztejn
21 case from 1941. That tells you why
22 this case is so far afield. In that
23 case, your Honor, 1941, the court said
24 okay, I will carve an exception to the
25 rule, but Letter of Credit is designed

Proceedings

1
2 to secure a transaction in which
3 somebody is supposed to submit bristles
4 (sic) and instead they send refuse and
5 water up newspapers, and the court said
6 where are transaction is so evasively
7 fraudulent, we are not going to close
8 our eyes to that. But this kind of
9 stuff where people disagree who owes
10 who what in the underlying transaction,
11 that's not pervasive fraud. Those are
12 commercial disagreements and we have a
13 forum to resolve those commercial
14 disagreements. And unless this Court
15 permits us to do so in Maryland under
16 the arbitration and allows us to draw
17 on the Letter of Credit to get our
18 security, they can evade their
19 obligations entirely. Thank you, your
20 Honor.

21 THE COURT: Mr. Keen, do you wish
22 to be heard on behalf of Chase?

23 MR. KEEN: Your Honor, we
24 submitted an affidavit outlining for
25 the Court the chronology of events

Proceedings

1
2 effecting the bank. Unless the Court
3 feels that the bank's actions or the
4 timing is significant, I'm not sure
5 that I can add anything to the merit of
6 the allegations of the fraud. The
7 bank's concern is or was and remains
8 that a document presented was a
9 fraudulent document because of the
10 protestations received from one
11 customer, and we certainly were not in
12 a position to make a determination as
13 to whether in fact that the statement
14 made was false when made, but that
15 certainly was a concern of ours and
16 remains a concern of ours. Other than
17 that, I don't think there is anything
18 else that I can add.

19 MS. McCABE: Your Honor, I might
20 note for your Honor the contract says,
21 8.7 talks about Nylcare and Doctors
22 Health having the ability to seek
23 interim or permanent injunctive relief
24 in addition to the arbitration
25 clause. So I believe we are properly

Proceedings

here because the Letter of Credit calls for New York jurisdiction. The contract provides for injunctive relief in the courts. That's why we are here before your honor today.

But let me address a few of my adversary's points. I'd like again to read once more the fourth requirement in the Letter of Credit. There are no differences or offsets to payment which have been raised by Doctors Health and of which Nylcare is aware. It doesn't say that they had to be aware of it or have been raised at the same time a monthly statement had been submitted. The offsets or payments could have been raised at any time. There is no qualification in the Letter of Credit as to when an offset or defense could have been raised. So for Nylcare to argue that because some of the offsets were raised after they submitted the July bill simply falls on its face, because that's not what the Letter of

1 Proceedings

2 Credit requires.

3 Also what Nylcare chooses to
4 ignore is the fact that under the
5 contract if Aetna doesn't breach the
6 contract which it says it will do
7 because it's getting out of the
8 Medicare business, the Letter of Credit
9 must be renewed as of October 31, 1998.

10 So there is not going to be
11 irreparable harm to Nylcare as they
12 claim, like to claim. And even if
13 there was some sort of financial harm
14 to them, it's not irreparable harm. It
15 is just what Nylcare's attorneys said.
16 It's a financial issue for them. So
17 Doctors Health has every intention of
18 renewing the Letter of Credit on
19 October 31. I believe Nylcare's
20 argument on that point falls on its
21 face that it's going to be harmed.

22 In any event, Aetna is a company
23 with \$18 billion in annual revenues as
24 compared to Doctors Health, which has
25 about \$1 million in annual revenues.

Proceedings

The balance of the equities in this situation of who is going to be harmed clearly falls on the side of Doctors Health.

Let me talk about the remarks that Doctors Health, it doesn't really matter if the people put the lights on and off get fired.

THE COURT: Briefly, please.

MS. McCABE: Yes. Doctors Health employees nurses, lab assistants, technicians, physicians' assistants, all of those employees are going to be gone. The doctors are going to be sitting there with hundreds of patients and no one to back them up.

Now they claim only 170 beneficiaries could be affected by this. Well, your Honor, those 170 beneficiaries are elderly patients that need care. I don't care if it's just one patient. I take Nylcare's attitude to be very cavalier. If they are correct there are 170 beneficiaries

Proceedings

that are cared for in this manner, they are going to be harmed, and that is enough for irreparable harm. He says they can just switch the next day. These are elderly patients.

Take a 75 year old man who is a diabetic living alone. It's hard enough for educated people to get through HMO books and find a doctor. What if he needs critical care immediately. There could be substantial drastic harm to that patient and to several other numbers of patients if they don't have immediate access to Medicare.

(Continued on next page.)

PIPER & MARBURY

L.L.P.

1251 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10020-1104

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FAX: 212-835-6001

BALTIMORE
WASHINGTON
PHILADELPHIA
EASTON

September 11, 1998

VIA FEDERAL EXPRESS

Don Liu, Esq.
Legal Department
Aetna U.S. Healthcare
980 Jolly Road
Blue Bell, Pennsylvania 19422

Re: Doctors Health, Inc. v. Chase Manhattan Bank and
NYLCare Health Plans of the Mid-Atlantic, Inc.

Dear Mr. Liu:

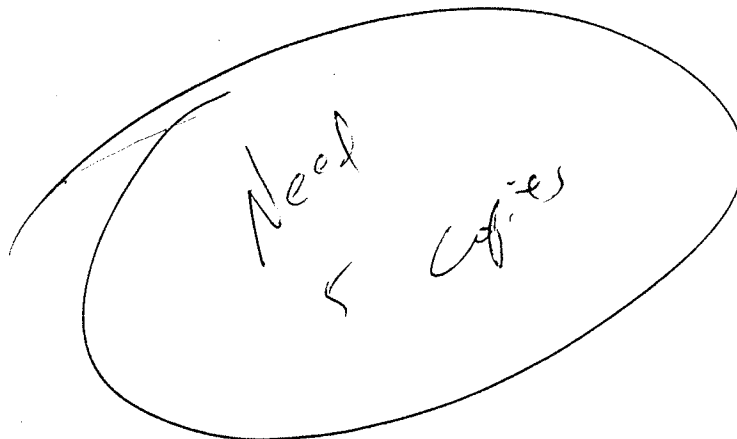
Please see the enclosed Order to Show Cause with Temporary Restraining Order, the Summons and Complaint, the Affidavit of Urgency and the Affidavit of John R. Dwyer. If you have any questions, please feel free to call.

Very truly yours,



Monica Petraglia McCabe

MPM/gr
Enclosures



16dv-000325

HON. BARRY A. COZIER

DOCTORS HEALTH, INC.,

Plaintiff,

-against-

CHASE MANHATTAN BANK and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC,
INC.,

Defendants.

At the IAS Part 3 of the Supreme Court
of the State of New York, at the
Courthouse, 80 Centre Street, New York,
New York on the 11th day of September,
1998

Order to Show Cause (Containing Tem-
porary Restraining Order) Why
Preliminary Injunction Should Not Be
Granted

NEW YORK
COUNTY CLERK'S OFFICE

98/604436 SEP 11 1998
NOT COMPARED
WITH COPY FILED

Upon the summons and complaint herein, and the annexed Affidavit of Urgency of
Monica Petraglia McCabe, sworn to September 11, 1998, and the Affidavit of John R. Dwyer,
Jr., sworn to September 10, 1998,

LET the defendants herein show cause before this Court at a Term, Part 3 (room 2/8)
thereof, to be held at the Courthouse, located at 80 Centre Street, New York, NY, on the 11th day
of September 1998, at 9:30 AM o'clock in the forenoon of that day, or as soon thereafter as counsel can
be heard, why a Preliminary Injunction should not be issued:

(1) prohibiting Chase Manhattan Bank ("Chase") from
making any payments to NYLCare Health Plans of the Mid-
Atlantic, Inc. ("NYLCare") under that certain letter of credit No. P-
343547 issued by Chase in favor of NYLCare for the sum of
\$4,400,000 or any part of such sum in connection with NYLCare's
request dated September 9, 1998; and

(2) for such other and further relief as the Court may
deem just and proper; and it is further

ORDERED, that pending the hearing and ~~determination~~ of this motion, Chase shall not
make any payments to NYLCare under letter of credit No. P-343547; and it is further

ORDERED that on or before September 17, 1998, plaintiff shall post an undertaking in the amount of \$ 260,000. conditioned that the plaintiff shall pay to the defendants an amount not exceeding \$ _____ for ^{all} legal costs and damages which may be sustained by

reason of the temporary restraining order if the defendants recover judgment or it is later decided ^{finally determined} that the issuance of a temporary restraining order in plaintiff's favor was unlawful. ^{plaintiff was not entitled this restraining order.}

Oral argument shall be required on the return date of this motion.

Sufficient cause ^{Bery Alleged} appearing therefor [/] let service of a copy of this order to show cause, together with the papers upon which it is granted, by hand on defendant Chase at its New York branch and place of business, 1211 Avenue of the Americas, New York, New York, 10036, and on defendant NYLCare by fax and overnight delivery to its place of business at 7601 Ora Glen Drive, Greenbelt, Maryland, on or before September 14, 1998, be deemed good and sufficient service thereof.

Entered,

J.S.C.

HON. BARRY A. COZIER

Dated: New York, New York
September 17, 1998

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH, INC.,

Plaintiff,

- against -

CHASE MANHATTAN BANK, and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

X

:

:

:

:

:

X

INDEX NO. 604436/98

AFFIDAVIT OF URGENCY IN
SUPPORT OF A TEMPORARY
RESTRAINING ORDER

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Monica Petraglia McCabe, duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before the courts of this state and Of Counsel to the law firm of Piper & Marbury L.L.P., attorneys for the plaintiff Doctors Health, Inc. ("Doctors Health") I submit this affidavit of urgency in support of plaintiff's *ex parte* application, pursuant to CPLR § 6313, for an order temporarily restraining defendant Chase Manhattan Bank ("Chase") from making any payment or taking any further action under a letter of credit issued in favor of NYLCare Health Plans of Mid Atlantic, Inc. ("NYLCare") pending a hearing on plaintiff's application for a preliminary injunction. I base this affidavit on documents I have reviewed and discussions that my colleagues and I have had with principals of the plaintiff.

Summary

2. Plaintiff seeks this relief on an urgent basis because the letter of credit sought to be restrained is expected to be drawn down upon today. If the Court does not grant the requested

relief and the said letter of credit is drawn down upon, then plaintiff will have been victimized by NYLCare's fraud. Without the requested TRO, Doctors Health will be forced to the edge of bankruptcy, will have to lay off a large number of employees, and will be unable to provide services critical to medical care for HMO patients.

3. Because of the pressing circumstances, the irreparable harm that plaintiff will suffer if the temporary restraining order is not granted, and the likelihood that plaintiff will succeed on the merits, the Court should forthwith grant plaintiff's application for a temporary restraining order.

4. The fraud threatening this irreparable harm involves false statements made by defendant NYLCare Health Plans of the Mid-Atlantic, Inc. ("NYLCare") to defendant Chase Manhattan Bank ("Chase") in an attempt to obtain payment on a letter of credit opened at Chase by Doctors Health, and NYLCare's fraudulent submission of health cost data and accounting information to Doctors Health. Under the UCC and Court of Appeals case law, this kind of fraud in the underlying transaction justifies a TRO and preliminary injunction stopping the issuing bank - defendant Chase - from paying on a letter of credit. *See, e.g., United Bank Ltd. v. Cambridge Sporting Goods Corp.*, 41 N.Y.2d 254, 392 N.Y.S.2d 265, 360 N.E.2d 943 (1976); *Takeo Co. Ltd. v. Mead Paper, Inc.*, 204 A.D.2d 123, 611 N.Y.S.2d 543 (1st Dept't 1994).

Fraudulent Presentation of Letter-of-Credit Documents

5. The facts are set forth in greater detail in the Affidavit of John R. Dwyer, Jr., sworn to September 10, 1998, and in the annexed Complaint.

6. Plaintiff is therefore entitled to a temporary restraining order prohibiting Chase Manhattan Bank from drawing down on this letter of credit by making any payment to NYLCare under the letter of credit pending a further hearing of the Court.

Likelihood of Success on the Merits

7. As shown in the Dwyer Affidavit, the conditions have not been met for NYLCare to draw down on the letter of credit and, in fact, NYLCare has presented fraudulent documents to Chase Manhattan Bank in its attempt to unlawfully draw down upon the letter of credit.

Irreparable Harm

8. Doctors Health, Inc. will be irreparably harmed if Chase Manhattan Bank is not restrained from honoring NYLCare's demand because if the letter of credit is drawn down upon NYLCare will profit from its admitted fraud.

9. If NYLCare is allowed to draw down upon the Letter of Credit, Doctors Health will suffer irreparable harm in multiple ways and so will the 14,000 Medicare patients which Doctors Health is entrusted with providing medical care.

10. If the letter of credit were allowed to be drawn down by \$2.6 million, Doctors Health would be forced to replenish the letter of credit in order to avoid being terminated by NYLCare. As noted in the Dwyer Affidavit, under such circumstances, Doctors Health would be required to try and replenish the letter of credit by drastically cutting its overhead since its working capital is not adequate to cover \$2.6 million. As a result, Doctors Health would be required to lay off many of its employees in a desperate effort to raise cash. Such layoffs would include doctors, nurses, nurses assistants and many others who are critical to the quality and timeliness of medical services provided to over 14,000 Medicare patients. Even with such drastic measures, there is a very real risk that Doctors Health would be required to file bankruptcy in order to deal with the grave financial situation it would immediately face. Moreover, the disruption that would occur in the forms of layoffs of many of Doctors Health's employees, the resulting impact that would have on the over 14,000 Medicare patients is frightening.

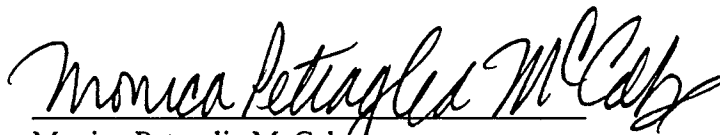
Balancing of Equities

11. All equities weigh in plaintiff's favor. The fraud committed by NYLCare should stop.

12. No previous application has been made to this court for the relief requested herein.

WHEREFORE, plaintiff respectfully requests, pursuant to CPLR § 6313, that the Court issue a temporary restraining order, as prayed for herein.

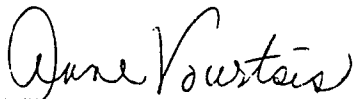
Dated: New York, New York
September 11, 1998



Monica Petraglia McCabe
PIPER & MARBURY L.L.P.
1251 Avenue of the Americas
New York, New York 10020-1104
212-835-6000

Attorneys for Plaintiff
Doctors Health, Inc.

Sworn to before me this
11th day of September, 1998



Notary Public

ANNE VOURTSIS
Notary Public, State of New York
No. 31-4657885
Qualified in New York County
Term Expires March 30, 1999

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOCTORS HEALTH, INC.,

Plaintiff,

- against -

CHASE MANHATTAN BANK, and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

X

:
Index No.: 98/604436
:

: **AFFIDAVIT OF**
: **JOHN R. DWYER, JR.**
:

:

X

CITY OF BALTIMORE)
) ss:
STATE OF MARYLAND)

JOHN R. DWYER, JR., being duly sworn, deposes and says:

1. I am the Executive Vice President and Chief Financial Officer of plaintiff Doctors Health, Inc. ("Doctors Health" or "Plaintiff"). I am an attorney admitted to practice law in the District of Columbia.

2. I submit this affidavit in support of Doctors Health's application for a temporary restraining order prohibiting Chase Manhattan Bank ("Chase"), located in New York, New York, from making any payments to NYLCare Health Plans of The Mid-Atlantic Inc. ("NYLCare") under Letter of Credit No. P-343547 issued by Chase (the "Chase Letter of Credit") in favor of NYLCare for the sum of \$5,250,000, or any part of such sum, in connection with NYLCare's request dated September 9, 1998. I have personal knowledge of the facts asserted in this affidavit.

3. Doctors Health is a physician-driven care management company, which oversees the delivery of quality health care to enrollees of health maintenance organizations ("HMOs").

Doctors Health's most significant contract is with NYLCare for the provision of medical services to its HMO known as NYLCare 65 (the NYLCare 65 HMO").

4. The NYLCare 65 HMO has approximately 14,000 Medicare patients throughout Maryland, Virginia and the District of Columbia. As the care manager for the NYLCare 65 HMO enrollees, Doctors Health is responsible for ensuring that timely and quality medical care is provided to a segment of the population that is often most in need of medical services.

5. NYLCare's fraudulent effort to draw down \$2,615,208.69 under the Chase Letter of Credit threatens Doctors Health with imminent insolvency and jeopardizes the medical care of approximately 14,000 senior citizens. While it is acknowledged that there are disputes between Doctors Health and NYLCare, it is beyond cavil to engage in the gross fraudulent representations perpetrated by NYLCare with perilous consequences to the health of thousands of Medicare patients and the welfare of over 480 employees of Doctors Health.

Background

6. On or about October 1, 1998, NYLCare, an HMO based in Maryland, entered into an agreement with Doctors Health, a Maryland Corporation, whereby NYLCare retained Doctors Health to manage services for elderly Medicare patients (the "Agreement").

7. Under the Agreement, Doctors Health provides health and related services to approximately 14,000 patients. In total, Doctors Health serves approximately 30,000 patients. Among the most vital services provided by Doctors Health are the services and facilities by the Care Management Department, which is staffed by approximately 56 employees. These employees are physicians, care management nurses, community-based care management nurses, and social workers, who coordinate care plans for approximately 7,000 high risk patients in their homes or in skilled nursing facilities or rehabilitation centers. These employees manage the care of enrollees for the purpose of maintaining the enrollees' health and keeping out of the hospital. In addition, other employees in the Care Management Department provide services, education

and equipment to patients with ongoing diseases such as diabetes, congestive heart failure and asthma. Finally, other Care Management Department employees review and approve in-patient and out-patient services.

8. Under the Agreement, NYLCare is entitled to collect monthly premiums from the Health Care Financing Administration for Medicare patients enrolled in the NYLCare 65 HMO. NYLCare initially deducts a specified amount of premium for itself (to cover its administrative expenses and desired profit), leaving a reduced amount of premium (the "Reduced Premium").

9. The Reduced Premium is first to be used to offset medical expenses during the preceding month and the balance of premiums is to be remitted to Doctors Health as its compensation. In the event the paid medical claims exceeded the amount of the reduced premium, NYLCare would send Doctors Health a report of a deficit for the month instead of a surplus. (A true copy of relevant portions of the Agreement and amendment to the Agreement, dated June 29, 1998, is appended as Exhibit 1).

10. Pursuant to Paragraph 6.4 of the Agreement, Doctors Health was required to open an irrevocable standby Letter of Credit at a financial institution. The Agreement states:

The Letter of Credit is intended by the parties to serve solely as security for the payment of claims of [health providers.] NYLCare Mid-Atlantic shall not be permitted to draw on the Letter of Credit for any other purpose and may do so only to pay the balance due under Section 3.44 ["Payment of Approved Claims"] following the expiration of the sixty (60) day waiting period.

11. Section 3.4.4 of the Agreement requires NYLCare to make timely payment for all claims approved for payment by Doctors Health. The claim payments are to be reviewed by the parties and reconciled on a monthly basis. In the event that total amounts for claims paid by NYLCare exceeds the total compensation due to be paid to Doctors Health for those months, NYLCare was to invoice Doctors Health for the balance.

12. Pursuant to Paragraph 4.4 of the Agreement, NYLCare represented and warranted that the "historical pharmacy, institutional, ancillary and capitated carve-out costs previously provided to Doctors Health are accurate in all material respects."

Letter of Credit

13. On or about October 29, 1997, Doctors Health opened a Letter of Credit in favor of NYLCare in the amount of \$4,400,000. (A true copy of the Letter of Credit is attached at Exhibit 2.) The amount of the Letter of Credit was later increased to \$5,250,000 and is at that amount currently.

14. The parties agreed that the Letter of Credit can be drawn upon only if NYLCare submits a statement representing (1) that Doctors Health owes NYLCare a specific sum of money under Section 3.4.4 of the Agreement; (2) that the amount has been invoiced to Doctors Health; (3) that Doctors Health is in receipt of such invoice for at least 60 days; and (4) that there are no defenses or offsets to payment raised by Doctors Health of which NYLCare is aware.

Doctors Health and the Thousands of Patients It Services Will Suffer Irreparable Harm

15. The fourth condition of the Letter of Credit is critical to Doctors Health because, as a small company, it cannot afford to have its Letter of Credit dissipated if there were any disputes as to whether the money was really owed or any disputes as to the proper amount of any amount owed. A reduction of the Letter of Credit would be catastrophic because it would require a company with virtually little excess working capital to try and replenish the Letter of Credit to avoid termination of the NYLCare management contract.

16. NYLCare has attempted to perpetrate a fraud upon Chase and Doctors by submitting documents to Chase, which assert that: 1) there are no defenses to payment, which have been raised by Doctors Health, of which NYLCare is aware; and 2) there are no offsets to payment, which have been raised by Doctors Health, of which NYLCare is aware. If NYLCare

is allowed to draw down upon the Letter of Credit, Doctors Health will suffer enormously and so will the many Medicare patients whose health hinges on the medical care provided by Doctors Health.

17. If the Letter of Credit were allowed to be drawn down by \$2.6 million, Doctors Health would be forced to replenish the letter of credit in order to avoid being terminated by NYLCare.

18. If such a situation occurred, Doctors Health could only replenish the Letter of Credit by drastically cutting its overhead because its working capital is not adequate to cover \$2.6 million. As a result, Doctors Health would be required to lay off many of its employees in a desperate effort to raise cash. Such layoffs would include doctors, nurses, nurses' assistants and many others whose contributions are critical to the quality and timeliness of medical services provided to over 14,000 Medicare patients. Even with such drastic measures, there is a very real risk that Doctors Health would not be successful in its efforts and would be forced to file bankruptcy to cope with the grave financial situation replenishing the Letter of Credit would create.

19. The consequence is painfully grim: many of Doctors Health's employees would be laid off, over 14,000 Medicare patients would suffer as a result of the disruption in their medical care, and approximately 20,000 non-Medicare patients who would ordinarily be taken care of by Doctors Health employees would not have access to medical services.

20. It is precisely because both Doctors Health and NYLCare were aware of the magnitude of the consequences that the parties agreed that the Letter of Credit would not be drawn down unless Doctors Health had raised no defenses or offsets to amounts claimed to be due by NYLCare. In the event that there were defenses and offsets raised, the parties agreed to speedy alternative dispute resolution procedures.

21. NYLCare is well aware of the defenses and offsets raised by Doctors Health to the amounts owed, but has elected to try and defraud Chase into paying it \$2.6 million, rather than proceed with the agreed upon alternative dispute resolution procedures. If NYLCare is allowed to succeed with such a brazen fraud, the consequences to Doctors Health, the tens of thousands of Medicare and non-Medicare patients managed by Doctors Health, and the over 480 employees of Doctors Health will be immediate, catastrophic and irreparable.

NYLCare's Fraudulent Attempt to Draw Down Upon The Letter of Credit

22. The General Counsel's Office at Chase has informed us that on September 9, 1998 NYLCare made a request to draw down \$2,615,208.69 from the Letter of Credit. (Chase informed us that for confidentiality reasons it could not provide us with a copy.) In the statement required for a draw down, NYLCare has fraudulently represented that there are no defenses or offsets to payment. NYLCare's misrepresentation is particularly egregious in light of an ongoing audit of NYLCare's payment of past claims by Arthur Anderson on behalf of Doctors Health. Doctors Health has disputed and NYLCare has acknowledged that Doctors Health has disputed over \$6,000,000 in past claims paid by NYLCare. (Attached as Exhibits 3 and 4 are correspondence dated July 15, 1998 and July 17, 1998 between Doctors Health and NYLCare demonstrating Doctors Health's defenses and offsets to payment and NYLCare's awareness of such defenses and offsets).

23. Due to NYLCare's failure to timely pay claims in a manner required by contract, Doctors Health has been unable to obtain timely cost data under this Agreement further obfuscating the issue.

24. Doctors Health notified Chase of the defenses and offsets to payment and informed Chase that, pursuant to Paragraph 4 of the Letter of Credit, NYLCare had failed to satisfy the conditions necessary for effectuating a draw down. (Attached as Exhibit 5 is a letter dated September 10, 1998 to Chase from Doctors Health.)

NYLCare's Fraudulent Claim In The Amount It Is Owed

25. Further, NYLCare's own documents belie the amount its claims it is owed by Doctors Health.

26. Pursuant to the Agreement, NYLCare is obliged to sent Doctors Health monthly capitation calculations (the "Calculations"), which indicate whether NYLCare or Doctors Health is owed money. (True copies of the Calculations are attached as Exhibit 6.) Paragraph 3.4.4 of the Agreement requires that claim payments actually may be deducted in a monthly basis from the compensation due to Doctors Health. Up until the September 1998 Calculation, NYLCare had been deducting those amounts for claims actually paid as required under the Agreement. As can be seen from the attached September 1998 Calculation, NYLCare fraudulently deducted \$10,691,965.56 for claim amounts that were mere estimates and not yet paid. NYLCare added a partially handwritten line for "Claims incurred but not yet paid through 8/31/98 (estimated)." But for NYLCare's fraudulent deduction of more than 10 1/2 million dollars, Doctors Health would be owed at least \$1,443,047. On September 4, 1998, Doctors Health notified NYLCare of its improper change in the method of calculation of amounts owed to Doctors Health. (Attached as Exhibit 7 is a letter dated September 4, 1998 from Doctors Health to NYLCare discussing the issue.)

27. It should also be noted that NYLCare's August 1998 Calculation shows a credit to NYLCare in the amount of \$506,068.53. NYLCare has also misrepresented that Doctors Health owes it \$2,615,208.69 when its own documents indicate a \$506,068.53 credit to Doctors Health. (Attached as Exhibit 10 is a true copy of a letter from NYLCare dated August 13, 1998 in which NYLCare admitted this credit.)

28. On September 9, 1998, representatives of Doctors Health met with NYLCare's lawyers to specifically inform them of the aforementioned offsets and credits.

29. It is unconscionable to me that any NYLCare officer could allege, after the above-referenced correspondence and meetings, that Doctors Health has not asserted defenses and offsets to the far in excess amounts claimed to be owed. Any such representations would be a blatant misrepresentation of the truth designed to defraud Chase into releasing money under the Letter of Credit even though NYLCare is well aware that the conditions precedent for a draw down under the Letter of Credit cannot be satisfied.

**NYLCare Fraudulently Induced
Doctors Health To Enter Into The Agreement**

30. Before entering into the Agreement with NYLCare, Doctors Health required historical case data such as pharmacy, institutional, ancillary and capitated carve-out costs from NYLCare. Doctors Health relied on the data provided by NYLCare in entering into the Agreement and indeed considered it so important that it insisted that NYLCare represent and warrant that such historical data was accurate in all material respects.

31. Doctors Health confirmed its reliance upon the NYLCare data in a letter dated October 1, 1997 to Ms. Lane McAllister and Ms. Beth Winter of NYLCare.

32. Doctors Health has recently learned, after months of work and repeated demands for information, that there is a vast discrepancy between the historical data represented and warranted by NYLCare and the actual cost incurred by Doctors Health.

33. Under my supervision, Doctors Health's Director of Managed Care Financial Analysis calculated and graphed the vast differences between actual per person enrolled monthly cost and the data represented by NYLCare. (A true copy of a chart and graph depicting the differences in actual and represented costs is attached as Exhibit 8.) NYLCare's represented data shows total cost claims per person enrolled in the HMO to be \$350 per month on average while the actual cost per month is \$400 per person.

34. NYLCare has refused to provide any explanation of the drastic cost variances and instead stated that it will not explain the drastic differences despite repeated requests for explanations. NYLCare's refusal to supply any support for such drastic differences and the immediate and continuous jump in expenses upon Doctors Health signing the contract indicates to Doctors Health that NYLCare recklessly provided unreliable data to Doctors Health and recklessly asserted that it was accurate. Such reckless conduct was designed to induce Doctors Health into signing the contract and amounts to fraudulent inducement.

35. As a result, Doctors Health's contract costs have proven to be much higher than expected based upon Doctors Health's reliance on NYLCare represented data. In fact, Doctors Health's losses under the Agreement presently exceed \$15 million. (Attached as Exhibit 9 is a true copy of a letter dated August 31, 1998 from Doctors Health to NYLCare documenting NYLCare's fraud in the inducement.)

Conclusion

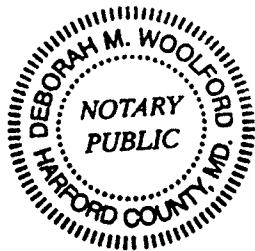
36. If NYLCare is not enjoined from drawing down on the Letter of Credit, not only will Doctors Health suffer irreparable injury but the elderly Medicare patients it services will suffer far worse injury because of a disruption in crucial health services.

37. Doctors Health has not made any prior application for similar relief.

John R. Dwyer
John Dwyer

Sworn to and subscribed before me this
10th day of September 1998.

Deborah M. Woolford
Notary Public



My Commission Expires
5/1/99

1



NYLCare
HEALTH PLANS

Mid-Atlantic

June 29, 1998

NYLCare Health Plans
of the Mid-Atlantic, Inc.
7601 Ors Glen Drive
Greenbelt, Maryland 20770
(301) 441-1600
1-800-635-3121

Stewart B. Gold
Chief Executive Officer and President
Doctors Health, Inc.
10451 Mill Run Circle
Owings Mill, Maryland 21117

Dear Stewart:

The following letter of agreement (Agreement) serves as confirmation of our recent discussions in clarifying the terms of the Medicare Network Management Agreement (Original Agreement) dated October 1, 1997 between Doctors Health, Inc. (Doctors Health) and NYLCare Health Plans of the Mid-Atlantic, Inc. (NYLCare Mid-Atlantic). This Agreement will become effective as of the date last signed by a party. Except as expressly set forth in this Agreement, the Original Agreement between the parties, including any prior amendments thereto, shall remain in full force and effect. Terms used in this Agreement that are defined in the Original Agreement shall have the definitions contained in the Original Agreement, unless they are otherwise defined in this Agreement. This Agreement shall terminate at the same time and under the same terms and conditions as the Original Agreement. In the event of a conflict between the Original Agreement and this Agreement, the terms of this Agreement shall govern.

1. NYLCare Mid-Atlantic and Doctors Health agree to limit the network of providers available to the NYLCare 65 members in so far as those providers available in that network are directly contracted with NYLCare Mid-Atlantic and that network meets HCFA adequacy guidelines and NYLCare Mid-Atlantic access and marketing standards.
2. NYLCare Mid-Atlantic agrees to permit Doctors Health to change the authorization guidelines for the network. Doctors Health will prepare and provide, in a timely fashion, to NYLCare Mid-Atlantic a list of their required changes. NYLCare Mid-Atlantic agrees to review the list and to work, in a timely fashion, with Doctors Health representatives to finalize changes to these authorization guidelines.
3. As agreed previously in writing, Doctors Health may change physician compensation. Any changes must be agreed to by NYLCare Mid-Atlantic, and must be made in accordance with current laws and regulations and with NYLCare Mid-Atlantic's usual timing and process for such changes.

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PAGE 6/1

**NYLCARE**
HEALTH PLANS*Mid-Atlantic*Letter of Agreement
June 29, 1998
Page 2

4. In accordance with the Original Agreement, NYLCare Mid-Atlantic understands that Doctors Health may assume full responsibility to perform Health Risk Assessment screening. If, in performing this screening, Doctors Health intends to use member written communication materials, they must be provided to NYLCare Mid-Atlantic for submission to and approval by, HCFA.
5. NYLCare Mid-Atlantic agrees to implement a process to enable Doctors Health to preview claims prior to payment. This process will be implemented on July 1, 1998, provided that a mutually agreed upon process, with a maximum turn-around-time of five (5) calendar days for previewing and three (3) calendar days for resolving disputed claims, can be developed.
6. In accordance with the Original Agreement, both parties agree to provide to the other, in a timely fashion, those reports necessary for the successful functioning of the respective organizations to comply with the Original Agreement and this Agreement.
7. NYLCare Mid-Atlantic agrees to continue to submit to HCFA, in a timely fashion, Utilization Management and other materials required for review. Doctors Health agrees to cooperate with this requirement.
8. NYLCare Mid-Atlantic agrees to assign a staff member to ensure the implementation of a computer terminal port on the grounds of Doctors Health for the purposes of viewing claims. By July 1, 1998, NYLCare Mid-Atlantic will communicate to Doctors Health the requirements for implementation.
9. In accordance with the Original Agreement and the accompanying Delegation of Utilization Management Agreement, Doctors Health agrees to comply with the requirements for reporting, notification of significant changes of staff, and adequate access for oversight of utilization management and related activities.
10. Upon execution of this Agreement, Doctors Health will remit, by June 30, 1998, to NYLCare Mid-Atlantic via wire transfer the amount of \$3,165,742.84, which constitutes the total deficit indicated in the Monthly Capitation Calculation Report (Report) for the months of May and June 1998. NYLCare Mid-Atlantic agrees to cooperate with an audit of the claims paid that are the basis of this amount and will, if any adjustments are mutually agreed to, reflect corrected amounts on the subsequent month's Report.
11. Every month throughout the term of the Original Agreement, Doctors Health shall pay to NYLCare Mid-Atlantic any deficits reflected in the Report generated by NYLCare Mid-Atlantic. Any such funds shall be payable via wire transfer within five (5) business days of Doctors Health's receipt of the Report.

**NYLCARE**
HEALTH PLANS

Mid-Atlantic

Letter of Agreement
June 29, 1998
Page 3

12. NYLCare Mid-Atlantic and Doctors Health will work together on an ongoing basis to reconcile the Reports. Each company will exercise their best efforts to resolve differences between them. Any resulting adjustments will be reflected in the subsequent month's Report.

13. For the period of July 1, 1998 through December 31, 1998, NYLCare Mid-Atlantic agrees to pay Doctors Health an amount equal to 83% (eighty-three percent) of premium. In accordance with the Original Agreement, Doctors Health shall provide or arrange for all covered services to enrollees and shall assume the responsibility for the cost of such services, with the exception of Pharmacy Costs. For the period of July 1, 1998 through December 31, 1998, NYLCare Mid-Atlantic will not deduct Pharmacy Costs from amounts owed to Doctors Health. Reimbursement terms and responsibility for Pharmacy Costs will be in accordance with the Original Agreement from January 1, 1999 through the term of the Original Agreement.

If you are in agreement with these terms, please sign below and return the executed copy to me.

Sincerely,


Susan S. Laskowitz

Executive Vice President, Health Care Delivery Services

Doctors Health, Inc.

By: 

Title: President and Chief Executive Officer

Date: June 30, 1998

MEDICARE NETWORK MANAGEMENT AGREEMENT

THIS AGREEMENT is entered into by and between Doctors Health, Inc., a Maryland corporation ("Doctors Health"), and NYLCare Health Plans of the Mid-Atlantic, Inc., a Maryland corporation licensed to operate as a health maintenance organization ("NYLCare Mid-Atlantic") on October 1, 1997 (the "Signing Date"), to be effective as of the Effective Date.

WHEREAS, NYLCare Mid-Atlantic is a licensed HMO authorized to market the NYLCare Mid-Atlantic medicare risk product known as NYLCare 65 in the State of Maryland, the Commonwealth of Virginia, and in the District of Columbia;

WHEREAS, NYLCare Mid-Atlantic arranges for the provision of certain health services to persons enrolled in NYLCare 65 by contracting directly, or through intermediaries, with physicians, hospitals, and other health care practitioners and entities (the "NYLCare Mid-Atlantic Network");

WHEREAS, NYLCare Mid-Atlantic has concluded that it is necessary, desirable, and convenient in the operation and administration of NYLCare 65 to enter into an agreement for Medicare Network Management to provide certain management services to the NYLCare Mid-Atlantic Network;

WHEREAS, NYLCare Mid-Atlantic has, prior to the Effective Date, entered into an "Administrative Service Provider Contract for Medicare Global Services" (the "Doctors Health Risk Contract") with Doctors Health under which Doctors Health arranges to provide medical services to Enrollees who choose or are assigned to Doctors Health primary care physicians;

WHEREAS, Doctors Health has the medical management and demonstrated business expertise to perform the role of Medicare Network Manager as set forth herein.

NOW THEREFORE, in consideration of the mutual promises herein, NYLCare Mid-Atlantic and Doctors Health agree as follows:

1.0 DEFINITIONS

As used in this Agreement, each of the following terms shall have the meaning set forth below:

- 1.1 Adjusted Average Per Capita Cost (AAPCC) means the methodology used to develop the premium rate paid to health maintenance organizations by the Federal government for Medicare recipients in a given geographic region.
- 1.2 Affiliate means a corporation or other legal entity related by common ownership, management, or control.

3.4 Claims Administration.

3.4.1 Claims Payments. NYLCare Mid-Atlantic is solely responsible for making payments for any and all claims for non-capitated Covered Services in cooperation with Doctors Health and otherwise in accordance with the procedures in this Section 3.4. Claims payments to Participating Providers for non-capitated Covered Services, processed and approved strictly in accordance with this Section 3.4, shall be made by NYLCare Mid-Atlantic and then deducted from the compensation due Doctors Health under Section 6.1 of this Agreement subject to all of the conditions set forth in subparagraph 3.4.4 below.

3.4.2 Claims Submission, Review and Disposition.

- (1) Participating Providers shall submit claims to NYLCare Mid-Atlantic for non-capitated Covered Services rendered to Members. Each Participating Provider shall submit such claims in accordance with the Policies and Procedures.
- (2) NYLCare Mid-Atlantic shall review all claims for non-capitated Covered Services to Enrollees by Participating Providers and make an initial determination:
 - (a) whether the Enrollee is eligible under the Health Plan;
 - (b) whether the Participating Provider provided the Enrollee with a Covered Service;
 - (c) whether the Covered Service was authorized by Doctors Health in accordance with Doctors Health policies and procedures in effect, and provided to NYLCare Mid-Atlantic, and as amended from time to time in the sole discretion of Doctors Health (the "Doctors Health Policies and Procedures"); and
 - (d) whether the claims submitted by hospitals or other institutional providers are accurately coded under the NYLCare Mid-Atlantic and HCFA Billing and Coding Guidelines and, if not, to determine the correct manner to recode the claim so that it satisfies all such billing and coding guidelines or deny the claim.

- (c) what the reimbursement rate is for each claim based on the lesser of the NYLCare Mid-Atlantic rate, or the Medicare rate, to the extent permitted under existing contracts.
- (3) NYLCare Mid-Atlantic shall give preliminary approval or denial to a claim processed under Section 3.4.2(2) above as soon as practicable but in no event more than ten (10) calendar days following receipt of the claim. NYLCare Mid-Atlantic shall then transfer all claims which receive their preliminary approval directly to the Doctors Health Repricing Group for pricing validation. Upon receipt of a transferred claim, the Doctors Health Repricing Group shall then make the following determination as soon as practicable but in no event more than ten (10) calendar days following receipt of the transferred claims:
 - (a) setting the price for the Covered Service as the reimbursement rate set by NYLCare Mid-Atlantic in 3.4.2(c) above, or the Doctors Health rate, to the extent permitted under existing contracts.
- (4) Doctors Health shall, once it has made the determination set forth in Section 3.4.2(3)(a) above, transfer the claim back to NYLCare Mid-Atlantic with one of the following designated actions which shall be followed by NYLCare Mid-Atlantic:
 - (a) The claim is approved for payment at the price set in Section 3.4.2(3)(a) above for a Participating Provider, or
 - (b) The claim is denied.
- (5) Notwithstanding anything to the contrary in this Agreement, and to the extent permitted under existing contracts, for the period October 1, 1997 through January 1, 1998, NYLCare Mid-Atlantic shall establish the lowest available contract rate for each Participating Provider except for those Participating Providers for whom Doctors Health has given notification to NYLCare Mid-Atlantic that its rates are the lowest available contract rates, in which case: (i) NYLCare Mid-Atlantic shall forward all such Participating Provider claims to the Doctors Health Repricing Group who shall establish the lowest price; (ii) Doctors Health shall return the repriced claims to NYLCare Mid-Atlantic; and (iii) NYLCare Mid-Atlantic shall approve the claim but only at the price set by Doctors Health.

- (a) NYLCare Mid-Atlantic and Doctors Health shall both follow the time requirements set forth in Section 3.4.2(3) above.
- (b) NYLCare Mid-Atlantic and Doctors Health shall ^{if} meet from time to time and confer in good faith to develop policies and procedures to implement the provisions of this Section 3.4.2.

3.4.3 Reimbursement for Doctors Health Repricing Group. Doctors Health shall submit a monthly invoice to NYLCare Mid-Atlantic for its costs associated with the functions of the Doctors Health Repricing Group but such out-of-pocket costs shall conform to commercially reasonable guidelines. NYLCare Mid-Atlantic shall pay Doctors Health the full amount of the monthly invoice within ten (10) calendar days of receipt.

3.4.4 Payment of Approved Claims. NYLCare Mid-Atlantic shall make timely payment for all claims approved for payment by Doctors Health in accordance with provisions of Section 3.4.2(4)(a) above, and in accordance with applicable law and regulation. The claim payments will be reviewed by the parties and reconciled on a monthly basis using mutually agreeable procedures. The total payments on such claims made to Participating Providers by NYLCare Mid-Atlantic in any calendar month shall be deducted from the compensation due to be paid to Doctors Health under Section 6.1 on the tenth (10th) day of the following month. In the event that the total amount for claims paid by NYLCare Mid-Atlantic exceeds the total compensation due to be paid to Doctors Health for that month, then NYLCare Mid-Atlantic shall invoice Doctors Health for the balance due and Doctors Health shall pay NYLCare Mid-Atlantic within sixty (60) days of the date of receipt of the invoice.

3.4.5 Special Representations of NYLCare Mid-Atlantic. NYLCare Mid-Atlantic represents that it will perform all of its obligations related to claims administration in a commercially reasonable manner, strictly in accordance with the terms and conditions of this Section 3.4, and strictly in accordance with the applicable standards in the health care industry for the timely adjudication and payment of claims. Any penalties, including interest payments required by applicable law, associated with the failure to pay claims in a timely fashion and within the periods required by applicable law, shall, unless caused by the action or inaction of Doctors Health, be borne by NYLCare Mid-Atlantic and not Doctors Health. At any time following the first six (6) months of the Initial Term of this Agreement, when conditions warrant, Doctors Health may make one or more of the

3.13 Professional Liability and Other Insurance. NYLCare Mid-Atlantic, at its cost and expense, shall procure and maintain such policies of general liability and professional liability insurance and other insurance as shall be necessary to insure NYLCare Mid-Atlantic and its employees against any claim or claims for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of any service by NYLCare Mid-Atlantic, the use of any property and facilities or equipment provided by NYLCare Mid-Atlantic, and the activities performed by NYLCare Mid-Atlantic in connection with this Agreement.

3.14 Miscellaneous Responsibilities.

- (a) NYLCare Mid-Atlantic shall not act in any manner that would prevent Doctors Health from efficiently performing its responsibilities under this Agreement in a business-like manner.
- (b) NYLCare Mid-Atlantic shall coordinate with Doctors Health all press releases, public statements and other distributed literature, letters, notices or marketing materials pertaining to the relationship and this Agreement.

4.0 REPRESENTATIONS AND WARRANTIES

4.1 Authority. Each of the parties represents and warrants that it has the corporate authority to enter into this Agreement, and that to the best of its knowledge, no consents or approvals, other than Board of Director approvals is necessary to enter into this Agreement.

4.2 Violation of Preexisting Agreements. Each of the parties represents and warrants that by entering this Agreement they are not violating any preexisting agreement with a third party.

4.3 Compliance with Applicable Laws. NYLCare Mid-Atlantic and Doctors Health shall each comply in all material respects with all applicable federal, state and local laws, regulations and restrictions in the conduct of its obligations under this Agreement and shall carry out its duties under this Agreement exercising normal and customary business judgment.

4.4 Historical Costs. NYLCare Mid-Atlantic represents and warrants that to the best of its knowledge, the historical pharmacy, institutional, ancillary and capitated, carveout costs previously provided to Doctors Health are accurate in all material respects. The parties agree that as soon as practicable after closing they will meet

and develop an appropriate schedule to this Agreement to embody any such previously provided cost information.

- 4.5 Network Access. NYLCare Mid-Atlantic represents and warrants that Doctors Health will have access to the NYLCare Mid-Atlantic Network, including but not limited to Inova, on the same terms and at the same prices under the agreements between NYLCare Mid-Atlantic and the NYLCare Mid-Atlantic Network.
- 4.6 Provider Information. Doctors Health represents and warrants that it will make all reasonable efforts to cause all Doctors Health Participating Providers to submit timely and accurate tax identification information required for claims administration.
- 4.7 Covered Services. NYLCare Mid-Atlantic represents and warrants that, as of the Effective Date, the only Covered Services provided outside of the Doctors Health Service Area are Emergency Services and Out-of-Area Urgent Services.
- 4.8 Performance of Doctors Health. Doctors Health represents and warrants that in conducting its utilization review and referral authorization activities as defined in §2.4 and elsewhere hereunder, Doctors Health will at all times act in a commercially reasonable manner that (1) is designed to deliver quality healthcare in the most appropriate setting and at the best price; (2) will not adversely affect clinical quality or the health of any employee; (3) is consistent with HCFA rules and NYLCare Mid-Atlantic's responsibilities to Enrollees; and (4) does not effectively deny any Enrollee access to the entire network of Participating Providers.

5.0 PHYSICIAN RECRUITMENT

- 5.1 Doctors Health Physicians. All physicians who are or, at any time during the term of this Agreement, become affiliated with Doctors Health or any Doctors Health Affiliate shall be deemed Doctors Health Physicians, including Primary Care Physicians whose practices are or become owned by or affiliated with the Avanti Group, through NYLCare Mid-Atlantic or directly with Doctors Health, at the Avanti Group's election. Such physicians shall be deemed to be Doctors Health Physicians regardless of whether the Avanti Group is controlled by or under common control with Georgetown University Hospital or the Georgetown Faculty Practice and regardless of whether the physician is located in the District of Columbia or Prince Georges County, Maryland. Once a physician is deemed to be a Doctors Health Physician, then Doctors Health shall only receive compensation for Doctors Health Enrollees who choose or are assigned to such

physicians under the Risk Contract attached as Exhibit I and not under Section 6.1 of this Agreement.

- 5.2 Participation in Health Plan. All Doctors Health Primary Care Physicians will participate in the Health Plan by December 31, 1997.
- 5.3 Doctors Health Recruitment. Doctors Health is free to recruit any physician in the Doctors Health Service Area to become a Doctors Health Physician on terms and conditions it deems appropriate in its sole and absolute discretion. NYLCare Mid-Atlantic will transfer a NYLCare Mid-Atlantic Physician who becomes a Doctors Health Physician effective within thirty (30) days of notification from Doctors Health.

6.0 PAYMENT

- 6.1 General. On or before the tenth day of each month during the Term, beginning October 10, 1997, NYLCare Mid-Atlantic will pay Doctors Health the amount set forth in Attachment B. The parties acknowledge that Doctors Health receives all of its compensation for providing Covered Services to Doctors Health Enrollees who have chosen or have been assigned to a Doctors Health Physician under the Doctors Health Risk Contract.
- 6.2 Capitation Payments. The parties recognize that NYLCare Mid-Atlantic may, at the direction of Doctors Health, make certain capitation payments to Participating Providers. To the extent NYLCare Mid-Atlantic actually makes such capitation payments, such capitation payments will be deducted from the capitation payments otherwise due Doctors Health pursuant to Attachment B.
- 6.3 Other Administrative Records. Doctors Health shall, and shall cause each Participating Provider to, maintain accurate accounting and administrative books and records consistent with the Policies and Procedures for all Covered Services rendered to Members for a minimum of six (6) years. Doctors Health shall provide to NYLCare Mid-Atlantic, on a monthly basis, a written report that identifies all payments made and to be made by Doctors Health to Participating Providers, if any. Annual financial statements shall be prepared by Doctors Health in accordance with generally accepted accounting principles, and shall be provided to NYLCare Mid-Atlantic on an annual basis. NYLCare Mid-Atlantic, Payors, and their agents and representatives, as well as representatives of the federal Department of Health and Human Services and state agencies having jurisdiction over the subject matter of this Agreement or the Parties, shall have the right upon reasonable prior notice to inspect, audit, and copy at mutually agreed upon times

all such accounting and administrative books and records of Doctors Health and each Participating Provider.

6.4 Letter of Credit. Doctors Health will, within thirty (30) days of the Effective Date, provide NYLCare with an irrevocable standby Letter of Credit at a financial institution reasonably acceptable to NYLCare Mid-Atlantic. This Letter of Credit is intended by the parties to satisfy Doctors Health's obligations to Participating Providers for Covered Services rendered to Members. Such letter of credit shall comply with applicable state law and the Policies and Procedures. NYLCare Mid-Atlantic acknowledges that the letter of credit required under this Section is sufficient to satisfy Doctors Health's obligations to Participating Providers for Covered Services rendered to Doctors Health Enrollees.

- (a) The initial notional amount of the Letter of Credit will be \$2.2 million dollars. The notional amount of the Letter of Credit will be increased to \$4.4 million dollars on the sixtieth (60th) day following the Effective Date. Thereafter, on each anniversary of the Effective Date, the notional amount of the Letter of Credit will be adjusted to be an amount equal to sixty (60) days of average claims for the immediately preceding twelve (12) month period, based on the beginning of the contract year in question.
- (b) The Letter of Credit is intended by the parties to serve solely as security for the payment of claims to Participating Providers. NYLCare Mid-Atlantic shall not be permitted to draw on the Letter of Credit for any other purpose, and may do so only to pay the balance due under Section 3.4.4 following the expiration of the sixty (60) day waiting period.
- (c) The parties acknowledge and agree that the letter of credit referred to in this Agreement satisfies in all respects the obligation of Doctors Health to provide a letter of credit under Section 3.21 of the Doctors Health Risk Contract.
- (d) Doctors Health must maintain the Letter of Credit at all times during the Term of this Agreement. In the event of any termination of this Agreement by NYLCare Mid-Atlantic for cause, or a termination of this Agreement by the expiration of the initial term or any renewal term, the Letter of Credit will remain in effect for one hundred eighty (180) days following the termination date.

6.5 Recompment for Overpayment. If at any time during the term of this Agreement NYLCare Mid-Atlantic determines and demonstrates to Doctors Health that it has made an incorrect overpayment to Doctors Health within one year of such payment, NYLCare Mid-Atlantic shall have the right, after giving Doctors Health

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PAGE 2/9

thirty (30) days prior written notice, to recover from Doctors Health the full amount incorrectly overpaid. Such recovery may be in the form of set off, withhold of future payments, or demand for repayment.

- 6.6 Recoupment for Underpayment. If at any time during the term of this Agreement Doctors Health determines and demonstrates to NYLCare Mid-Atlantic that it has made an incorrect underpayment to Doctors Health within one year of such underpayment, then NYLCare Mid-Atlantic shall remit to Doctors Health said underpayment within thirty (30) days.
- 6.7 Recoveries from Third Parties. Recoveries of payments from any third party by subrogation shall be retained by Doctors Health, to the extent permitted by regulation.

7.0 TERM AND TERMINATION

- 7.1 Term of Agreement. This Agreement shall begin on the Effective Date and, unless otherwise terminated in accordance with the provisions hereof, shall have an initial term ending on the third (3rd) anniversary of the Effective Date; provided, however, that after the initial term ends as provided in this Section, this Agreement shall continue from year to year thereafter, unless terminated by a party upon 90 days' prior written notice delivered to the other party or otherwise in accordance with the provisions hereof.
- 7.2 Termination for Cause. The parties agree that they will promptly notify the other in the event of any of the following, and that upon the occurrence of any such event, either party may, but shall not be required to, terminate this Agreement upon ninety (90) days written notice to the other:
- (a) Failure to maintain any insurance required under this Agreement;
 - (b) Dissolution, termination of existence, insolvency or business failure of either party, commission of any act of bankruptcy by, or appointment of a receiver or other legal representative for any party of the property of either party;
 - (c) Assignment for the benefit of creditors or commencement of any proceeding under and bankruptcy or insolvency law by or against any party, entry for an order for relief against either party;
 - (d) In the event of a liquidating distribution to the either party's shareholders (or similar event);

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PAGE 3/9

- (e) Any purported combination, consolidation or merger of the a party into another entity, in a transaction where such party is not the surviving entity under applicable law; provided, however, that an initial public offering shall not be considered grounds for termination of this Agreement;
- (f) Any sale or issuance of a party's securities that places a majority of the voting power of such shares in the control of persons or entities not having such control on September 30, 1997;
- (g) Any sale, exchange, or other disposition of all or substantially all of the other party's assets;
- (h) Any change in a party's upper management personnel, if such management personnel was key to the continuation of this Agreement and the absence of such management personnel would frustrate the continued provision of the products and services contemplated by this Agreement;
- (i) If a party proposes to act or conducts itself in such a manner as to directly compete with the primary business purpose of non-breaching party;
- (j) The failure of a party to maintain licenses or certifications required to operate in conformity with this Agreement;
- (k) A party engages in such gross misconduct as to reflect negatively on the reputation of the non-breaching party;
- (l) If a party, or any of their respective officers, directors or management employees, is found guilty of a felony, or engages in gross misconduct which directly results in prohibiting the other party from participating in the Medicare program; and
- (m) The commission or omission of any act or any conduct or allegation of conduct for which the a party's license, certification or accreditation, or right to participate in the Medicare program, may be subject to revocation or suspension, whether or not actually revoked or suspended, or if the party is otherwise disciplined by any licensing, regulatory, professional entity, or any professional organization with appropriate jurisdiction.

7.3 **Cure Period.** If either party to this Agreement substantially fails to perform any material duty or obligation imposed upon it by this Agreement or otherwise is in material breach of this Agreement, other than an event of default set forth in Section 7.2, and such default shall continue for a period of ninety (90) days after written notice thereof specifying the nature of the default has been given to it by

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PAGE 1/9

the other party, (or such longer time if the failure can not be cured within such 90 days as long as the party in breach has initiated and is diligently pursuing a cure within the 90 day time period which is reasonably likely to cure the breach in a commercially reasonable time frame), the other party may terminate this Agreement upon ninety (90) days prior written notice and seek such relief or pecuniary loss or damages caused by such breaching party, including, without limitation, actual damages. Failure by NYLCare Mid-Atlantic to make the capitation payments due Doctors Health in accordance with this Agreement is grounds for immediate termination after NYLCare Mid-Atlantic has had ninety (90) days to cure such default.

- 7.4 Termination by Agreement. In the event NYLCare Mid-Atlantic and Doctors Health shall mutually agree in writing, this Agreement may be terminated effective on the date specified in such written agreement.
- 7.5 Termination Based on Prospective Regulatory Changes. Notwithstanding the parties' agreement to modify this Agreement when necessary because of prospective legal events as set forth in Section 9.4, if an amendment to this Agreement is required based on regulatory mandate, including a mandate from a State Insurance Commissioner, and such amendment involves a modification which is substantially burdensome on either party and which was not contemplated by the burdened party as of the date of execution of this Agreement, such burdened party may terminate this Agreement upon ninety (90) days written notice to the other party without penalty.
- 7.6 Cross Default. The Doctors Health Risk Contract is hereby incorporated by reference. In the event of a conflict between this Agreement and the Doctors Health Risk Contract, except for Attachment B, this Agreement shall control. In the event that the Doctors Health Risk Contract expires, is not renewed, or is terminated by either party for any reason, the parties agree that this Agreement may be terminated either by Doctors Health or by NYLCare Mid-Atlantic.
- 7.7 Procedure Upon Termination. In the event of the termination of this Agreement by either party for any reason, the Participating Providers' obligations to follow the policies and procedures adopted by Doctors Health shall remain in full force and effect until the end of the term of such contract, and for a period of ninety (90) days following the date of termination. During this period, Doctors Health shall assist NYLCare Mid-Atlantic in effecting an orderly transition of the Medicare Network Manager functions undertaken by Doctors Health as follows:
- (a) Beginning on the date of receipt of notice of termination for any reason by either party, Doctors Health shall, upon written request of NYLCare Mid-Atlantic, immediately cooperate with NYLCare Mid-Atlantic in transferring

ATTACHMENT BCAPITATION/FINANCIAL ARRANGEMENTS

1. NYLCare Mid-Atlantic shall make Capitation payments to Doctors Health on the tenth (10th) day of each month for all Members enrolled in the Health Plan on the first (1st) day of such month and who have selected or been assigned to a NYLCare Mid-Atlantic Physician as their primary care physician in the Doctors Health Service Area. A summary listing showing Enrollees (and their Primary Care Physicians) will be provided (by electronic transfer where possible) with payment from NYLCare Mid-Atlantic. Also on the listing will be a calculation of any retroactive adjustments either adding or deleting Enrollees, provided, however, that such retroactive adjustments must be made within ninety (90) days of payment. Claims payments for non-capitated Covered Services will be deducted from the capitation payments due Doctors Health as provided in Section 3.4 of the Agreement. Doctors Health shall be liable for the cost of all Covered Services provided to any Member who selects or is assigned to a NYLCare Mid-Atlantic primary care physician, provided, however, that Doctors Health shall not receive a capitation payment, and shall not be liable for the cost of Covered Services provided to any Member who, as of the Effective Date, has been assigned a case manager for a procedure and/or is in an institutional setting, including but not limited to a hospital, until such Member has been discharged from care and from the institutional setting or until such time as the parties make a determination that the best interest of the Enrollee would be served by transferring medical management of the Enrollee from NYLCare Mid-Atlantic to Doctors Health. For purposes of this Attachment B, Covered Services shall include Emergency Services and Out-Of-Area Urgent Services (but no other Covered Services) provided outside of the Doctors Health Service Area. For Covered Services to Members which were initiated prior to the Effective Date, NYLCare Mid-Atlantic shall be solely liable for the cost of all such Covered Services for the period after October 1, 1997.
2. In consideration of the above capitation amounts, and except as set forth above, Doctors Health shall provide or arrange for all those Covered Services to Enrollees set forth in Attachment C, and shall assume the responsibility for the cost of said services. Regardless of the number of NYLCare Mid-Atlantic Physicians rendering services, if any, to Enrollee during any month, only one capitation payment will be made to Doctors Health each month for each Member. The capitation payment shall be made regardless of the type or amount of service rendered to the Member during a given month.

3. Capitation Schedule (Per Member Per Month)

Except as provided below, the capitation schedule (per member per month) shall be 88.5% of the Premium.

4. Capitation Schedule (Per Member Per Month) For Eligible Enrollees
In Certain Counties and Cities in the Commonwealth of Virginia

For the period October 1, 1997 through June 30, 1998, NYLCare Mid-Atlantic will pay Doctors Health at least \$380 PMPM for NYLCare 65 Enrollees residing in the following counties and cities in Virginia regardless of AAPCC and/or Premium then in effect.

Caroline
Chesterfield
Goochland
Hanover
Henrico
King George
King William
Louisa
New Kent
Powhatan
Prince George
Spotsylvania
Stafford
Westmoreland
Colonial Heights
Fredericksburg
Hopewell
Petersburg
Richmond

With respect to enrollees residing in Virginia counties not listed in this Attachment B, NYLCare Mid-Atlantic will, through December 31, 1997, pay Doctors Health at least \$380 PMPM, regardless of the AAPCC and/or Premium then in effect.

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9.18 Exchange of Information. If under the terms of this Agreement or applicable law or regulation the parties are required to share or exchange data or information, such sharing or exchanging shall be accomplished by electronic means whenever possible.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 22nd day of October, 1997.

Witness:



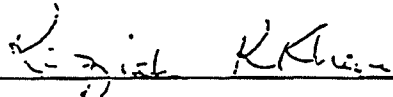
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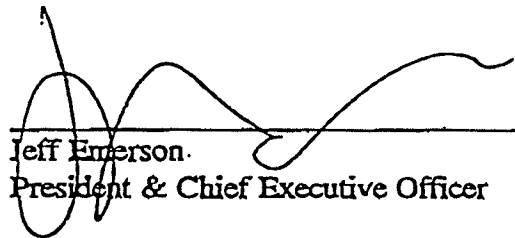
Stewart B. Gold
Chief Executive Officer & President

Witness:



NYLCARE HEALTH PLANS
OF THE MID-ATLANTIC, INC.

By:



Jeff Emerson
President & Chief Executive Officer

F:\WPFILES\DOCTORS\NYLCARE\Management Agreement 10-3-97

2

FROM CHASE L/C 212 638 8201

(WED) 10.29.97 14:10/ST. 14:10/NO. 3560901678 P 2

Trade Services Group
Box 44, Church Street Station
New York, NY 10008-0044

ISSUE DATE: OCTOBER 27, 1997
L/C NO.: P-343547

***** DIRECT *****

APPLICANT:
DOCTOR'S HEALTH, INC.
10451 MILL RUN CIRCLE, 10TH FLOOR
OWINGS MILLS, MD. 21117

NYLCARE HEALTH PLANS OF THE
MID-ATLANTIC, INC. 7601 ORA GLEN
DRIVE, GREENBELT, MARYLAND 20770
ATT: JEFF EMERSON, PRESIDENT & CEO

AMOUNT: USD 4,400,000.00
(FOUR MILLION FOUR HUNDRED
THOUSAND AND 00/100 UNITED
STATES DOLLARS)

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.
P-343547 IN YOUR FAVOR FOR AN AGGREGATE AMOUNT NOT TO EXCEED THE
AMOUNT INDICATED ABOVE, EXPIRING AT OUR COUNTERS IN NEW YORK WITH OUR
CLOSE OF BUSINESS ON OCTOBER 31, 1998.

THIS LETTER OF CREDIT IS AVAILABLE WITH THE CHASE MANHATTAN BANK, NEW
YORK AGAINST PRESENTATION OF YOUR DRAFT AT SIGHT DRAWN ON THE CHASE
MANHATTAN BANK, NEW YORK WHEN ACCOMPANIED BY THE DOCUMENTS INDICATED
HEREIN.

BENEFICIARY'S DATED STATEMENT PURPORTEDLY SIGNED BY ONE OF ITS
OFFICERS READING: "THE AMOUNT OF THIS DRAWING UNDER THE CHASE
MANHATTAN BANK LETTER OF CREDIT NUMBER P-343547 REPRESENTS FUNDS DUE
US AS (1) DOCTORS HEALTH, INC., OWES NYLCARE THE SUM OF...
PURSUANT TO SECTION 3.4.4. OF MEDICARE NETWORK MANAGEMENT AGREEMENT
DATED AS OF OCTOBER 1, 1997, (2) SUCH AMOUNT HAS BEEN INVOICED TO
DOCTORS HEALTH, (3) DOCTORS HEALTH IS IN RECEIPT OF SUCH INVOICE FOR
AT LEAST 60 DAYS, AND (4) THERE ARE NO DEFENSES OR OFFSETS TO PAYMENT
WHICH HAVE BEEN RAISED BY DOCTORS HEALTH AND OF WHICH NYLCARE IS
AWARE."

ALL DRAFTS MUST INDICATE: "DRAWN UNDER THE CHASE MANHATTAN BANK, NEW
YORK LETTER OF CREDIT NO. P-343547."

ALL CORRESPONDENCE AND ANY DRAWINGS PRESENTED IN CONNECTION WITH THIS
LETTER OF CREDIT MUST ONLY BE PRESENTED TO US AT THE CHASE MANHATTAN
BANK, 55 WATER ST., 17TH FL. ROOM 1710, NEW YORK, NEW YORK 10041, ATT.
STANDBY LETTER OF CREDIT DEPARTMENT. CUSTOMER INQUIRY NUMBERS ARE
(212) 638-3473 AND (212) 638-1587.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS CREDIT IS SUBJECT
TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1993
REVISION, ICC PUBLICATION NO. 500.

P-343547- -001-11-01-

3



MEMORANDUM

DATE: July 15, 1998
TO: Jeff Emerson, CEO, NYLCare Health Plans of the Mid-Atlantic, Inc.
FROM: Stewart B. Gold
RE: July 14, 1998 Meeting
CC: Eric Wilkinson, The Beacon Group

Thanks for the frank discussion of the concerns we have regarding our Network Management Agreement. As a result of the meeting, it is our understanding that NYLCare will run a "CMU" report on the claims that you have paid. This will help determine any trends in utilization and cost that could explain the wide discrepancy between the NYLCare claims experience with its Medicare members and DH's experience with essentially the same population. We also appreciate your offer to provide a "retro-view" of claims paid to assist us in our audit of the claims payment process. Arthur Andersen is designing the audit protocol in cooperation with NYLCare staff to ensure a timely audit report. We will work with your responsible management personnel to move the audit along. Please ensure that they are aware of our offer to provide the "retro-view" if necessary.

We, of course, appreciate your understanding in suspending payments for claims paid on our behalf by NYLCare in excess of the July capitation payment. For your information, the amount of the Letter of Credit is now at \$5,250,000.

I was glad to hear that you were concerned about the time it has taken to reconcile the actual amount due at June 30. As you know, we have advanced the full amount that you requested (\$3,176,173) pending a prompt resolution of the actual amount. To date, we believe that paid claims have included errors totaling in excess of \$900,000.

Doctors Health, Arthur Andersen and your staff will be working in the next months to determine what further adjustments are required.

I have attached copies of the Days/1,000 reports that we provide every month for your information. Additionally, the status of claims preview from our standpoint is that we have been told we will get the first preview in the agreed upon format today.

The lag in claims payment is a continuing problem. The information that we have is very recent and is already under review by both of our organizations. I believe that we need the results of the current review and the Andersen audit to better understand and define the situation.

I have looked into issues surrounding the timely receipt of enrollment information, along with the capitation payment, authorization transmittal, and other information exchange issues. I have been assured that we will promptly address and remedy problems on our part. If not, have someone contact

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me directly so that I am aware of the open issues and can compare what you are hearing to the reports I get from our joint operations meetings.

Please let me know when you will have some results from your review of the information we provided yesterday and the CMU Report.

Our Agreement with NYLCare is very important to us, as demonstrated by the investment we have each made in providing uninterrupted medical services to Medicare managed care members. While the cost of claims resolution can have the most serious consequences, we remain dedicated to the success of the relationship with NYLCare and the agreement. Despite our dedication we are very concerned about the Network Management Agreement, and based on the information we categorically and unconditionally dispute that Doctors Health is responsible for at least \$6,000,000 of the claims paid to date. Therefore, please be on notice that we have not waived any of our rights and privileges under the Agreement. We expect both sides to keep our conversations about these matters confidential. Thanks for your help.

4



Mid-Atlantic

By Telecopy and Mail

NYLCare Health Plans
of the Mid-Atlantic, Inc.
7601 Ors Glen Drive
Greenbelt, Maryland 20770
(301) 441-1400
1-800-635-3121

July 17, 1998

Stewart B. Gold
Chief Executive Officer
Doctors Health
10451 Mill Run Circle, 10th Floor
Owings Mills, MD 21117

Re: July 14, 1998 Meeting

Dear Stewart:

Apparently you and I attended different meetings on July 14, 1998.

Among other assertions in your July 15, 1998 memo with which I do not concur, one assertion clearly stands out: I did not agree to permit Doctors Health (DH) to suspend its payment of its liability to NYLCare Health Plans of the Mid-Atlantic, Inc. (NYLCare Mid-Atlantic) for that amount by which the NYLCare 65 claims paid by NYLCare Mid-Atlantic exceeds the amount of the capitation paid to DH to cover those claims. What I said was that I will be flexible in permitting DH to repay those monies over a period of time longer than the contractually obligated five (5) days provided that the cumulative amount owed by DH to NYLCare Mid-Atlantic does not exceed the amount of the Irrevocable Letter of Credit.

In addition to other assertions in your memo with which I disagree, the final paragraph contains an assertion which is both a surprise and an absurdity: "we categorically and unconditionally dispute that Doctors Health is responsible for at least \$6,000,000 of the claims paid [by NYLCare Mid-Atlantic] to date." Please note that there is no antecedent for this assertion, other than the allegedly erroneously paid claims sample report which you gave to Susan S. Lefkowitz and me on June 12, 1998 from which sample you extrapolated approximately \$4,000,000 in allegedly erroneously paid claims. Our analysis of your sample report is almost completed. It will not support even one-tenth of the alleged overpayment amount after one excludes the amount for pharmacy claims which we long since stipulated to DH had been erroneously posted to your account.

In sum, your memo (and our July 14 meeting) was self-serving. About the only thing on which we seem to agree is that both organizations remain dedicated to trying to make the relationship work.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff D. Emerson".

Jeff D. Emerson
President and Chief Executive Officer

cc: Susan S. Lefkowitz
Beth Winters

Intensely coverage under insured NYLCare health plans is provided by New York Life Insurance Company or one of its affiliated insurance companies. Coverage under insured HMO plans is provided by NYLCare Health Plans of the Mid-Atlantic, Inc.

5



September 10, 1998

Via Telecopy and U.S. Mail

Standby Letter of Credit Department
Chase Manhattan Bank
55 Water Street
17th Floor, Room 1710
New York, New York 10041

Mr. Rich Ditizio
Vice President
Chase Manhattan
205 Royal Palm Way
Palm Beach FL 33480

Re: Letter of Credit No. P-343547

Gentlemen:

Pursuant to my conversation with Mr. Ditizio this morning, Doctors Health has notified NYLCare Health Plans of the Mid-Atlantic, Inc. ("NYLCare") that over \$6,000,000 of claims obligations they have identified for our account are in dispute. The documentation supporting this dispute, our communication of this dispute to NYLCare, and other relevant correspondence is attached.

In light of the foregoing, Doctors Health hereby formally gives Chase Manhattan Bank notice that pursuant to Paragraph 4 of the Standby Letter of Credit, NYLCare has failed to satisfy the conditions necessary for effectuating a draw. Specifically, Doctors Health has disputed and NYLCare has acknowledged that we have disputed over \$6,000,000 in claims, and we have informed NYLCare that over and above the disputed amount, offsets exist of at least \$2,300,000. Moreover, we have recently sent NYLCare, Aetna (the recent acquirer of NYLCare) and NYLCare's former parent, notice that they have completely breached the agreement that underpins the Letter of Credit in question here which puts in dispute amounts in excess of \$20,000,000.

DOCTORS HEALTH, INCORPORATED

10451 Mill Run Circle - 10th Floor - Owings Mills, Maryland 21117 - 410 . 654 . 5300 - 888 . 684 . 8268

SEP 10 '98 15:53

PAGE 007

16dv-000368

SEP-10-98 14:56 FROM DOCTORS HEALTH

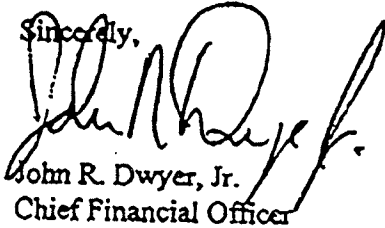
ID:4106545006

PAGE 8/11

Chase Manhattan Bank
September 10, 1998
Page 2

For all the foregoing reasons, Doctors Health requires that Chase Manhattan Bank not comply with the draw request made by NYLCare, and refrain from complying with any future requests until you receive notice from both NYLCare and Doctors Health that the disputes between the parties are resolved. Please call me if you or your colleges have any questions.

Sincerely,



John R. Dwyer, Jr.
Chief Financial Officer

cc: Stewart B. Gold
Jeff D. Emerson, NYLCare Health Plans of the Mid-Atlantic, Inc.

6

NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of October 1997

Area B		Area C	
PCP CAP (Paid Directly to Physicians) ID		PCP CAP (Paid Directly to Physicians) ID	
Pharmacy Rider Premium		Pharmacy Rider Premium	
Clinic Cap (14%)		Clinic Cap (14%)	
PCP total		PCP total	
HOSP Cap (H2M)		HOSP Cap (H2M)	
Claims paid		Claims paid	
Impatient		Impatient	
Outpatient		Outpatient	
E/R		E/R	
Physicians FFS		Physicians FFS	
Pharmacy		Pharmacy	
Total Claims Paid		Total Claims Paid	
Carve Out of Network Capitated Services (Ave: EG)		Carve Out of Network Capitated Services (Ave: EG)	
Lab		Lab	
Ophthalmology		Ophthalmology	
Mental Health		Mental Health	
Radiology (MINS) (Ave)		Radiology (MINS) (Ave)	
Radiology (Atty (Am I)		Radiology (Atty (Am I)	
Radiology (Calvert)		Radiology (Calvert)	
Radiology (Northern VA. Imaging)		Radiology (Northern VA. Imaging)	
Radiology (DLA) Radiology Imaging)		Radiology (DLA) Radiology Imaging)	
Radiology (PG Medical Imaging)		Radiology (PG Medical Imaging)	
Total Capitated Services		Total Capitated Services	
Total Deductions		Total Deductions	
Net Cap		Net Cap	
Cash Wire Calculations		Cash Wire Calculations	
Net Cap this month		Net Cap this month	
Cash adjustments		Cash adjustments	
Deficit Carry Forward		Deficit Carry Forward	
Net Wire Amount		Net Wire Amount	
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Doctors Health

Page 1

**NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of December 1997**

	Area B			Area C			TOTAL		
	MEM	MEM MONTHS	AMOUNT	MEM	MEM MONTHS	AMOUNT	MEM	MEM MONTHS	AMOUNT
PCP CAP (Paid to Physicians)	\$ 39.41	6,128	\$ 241,512.46	\$ 42.32	18	\$ 761.84	\$ 39.42	6,146	\$ 242,274.30
Clinic Cap (Paid to Physician Groups)	\$ 40.36	4,081	\$ 164,714.90	#DIV/0!		\$ -	\$ 40.36	4,081	\$ 164,714.90
PCP total	\$ 39.79	10,209	\$ 406,227.36	\$ 42.32	18	\$ 761.84	\$ 39.80	10,227	\$ 406,989.20
Undesignated PCP Cap									\$ 4,309.07
Undesignated Hospital Cap									\$ 7,971.78
HOSP Cap									\$ 3,219,952.32
"380.00" Guarantee Advance	\$ 314.65	10,214	\$ 3,213,861.86	\$ 338.36	18	\$ 6,090.46	\$ 314.69	10,232	\$ 3,219,952.32
Pharmacy Rider Premium	0		\$ -	30.09	1,828	\$ 55,004.52	\$ 30.09	1,828	\$ 55,004.52
Claims paid			\$ 3,213,861.86			\$ 61,094.98			\$ 3,637,237.69
Inpatient	\$ 12.15	10,214	\$ 124,111.82	\$ -	18	\$ -	\$ 12.13	10,232	\$ 124,111.82
Outpatient	\$ 9.57	10,214	\$ 97,751.50	\$ -	18	\$ -	\$ 9.55	10,232	\$ 97,751.50
E/R	\$ 2.33	10,214	\$ 23,778.65	\$ -	18	\$ -	\$ 2.32	10,232	\$ 23,778.65
Physicians FFS	\$ 45.57	10,214	\$ 465,432.45	\$ -	18	\$ -	\$ 45.49	10,232	\$ 465,432.45
Pharmacy	\$ 0.62	10,214	\$ 6,326.67	\$ -	18	\$ -	\$ 0.62	10,232	\$ 6,326.67
Total Claims Paid	\$ 70.24	10,214	\$ 717,401.09	\$ -	18	\$ -	\$ 70.11	10,232	\$ 717,401.09
Carve Out of Network Capitated Services									
Lab							\$ 0.50	10,238	\$ 5,116.00
Ophthalmology							\$ 6.24	10,232	\$ 63,847.68
Mental Health							\$ 2.21	10,232	\$ 22,612.72
Radiology (MINS)							\$ 5.50	2,431	\$ 13,370.50
Radiology (AMI)							\$ 6.50	2,214	\$ 14,391.00
Radiology (Calvert)							\$ 5.50	463	\$ 2,546.50
Radiology (Northern VA. Imaging)							\$ 4.00	438	\$ 1,752.00
Radiology (DIAG Radiology Imaging)							\$ 5.50	363	\$ 1,996.50
Radiology (PG Medical Imaging)							\$ 1.96	183	\$ 358.68
Total Capitated Services									\$ 125,991.58
Total Deductions									\$ 843,392.67
Net Cap									\$ 2,793,845.02
Cash Wire Calculations									\$ 2,793,845.02
Net Cap this month									\$ -
Cash adjustments									\$ -
Deficit Carry Forward									\$ -
Net Wire Amount									\$ -

NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of January 1998

	Area B			Area C			TOTAL		
	PAID PER MEMBER MONTHLY	MEMBERS	AMOUNT	PAID PER MEMBER MONTHLY	MEMBERS	AMOUNT	PAID PER MEMBER MONTHLY	MEMBERS	AMOUNT
PCP CAP (Paid to Physicians)	\$ 39.45	6,642	\$ 262,019.39	\$ 43.93	26	\$ 1,142.12	\$ 39.47	6,668	\$ 263,161.51
Clinic Cap (Paid to Physician Groups)	\$ 40.44	4,721	\$ 190,902.42	\$ -	-	\$ -	\$ 40.44	4,721	\$ 190,902.42
PCP total	\$ 39.86	11,363	\$ 452,921.81	\$ 43.93	26	\$ 1,142.12	\$ 39.87	11,389	\$ 454,063.93
Undesignated PCP Cap			\$ 7,390.28						\$ 7,390.28
Undesignated Hospital Cap			\$ 55,350.69						\$ 55,350.69
HOSP Cap			\$ 3,559,903.96	\$ 342.71	26	\$ 8,910.41	\$ 313.36	11,389	\$ 3,568,814.37
"380.00" Guarantee Advance	\$ 313.29	11,363	\$ 3,559,903.96						\$ 350,000.00
Membership Premium	\$ 39.83	3,966	\$ 157,965.78						\$ 157,965.78
Pharmacy Rider Premium	0		\$ -	\$ 29.55	2,188	\$ 64,661.64	\$ 29.55	2,188	\$ 64,661.64
Claims paid			\$ 4,067,869.74			\$ 73,572.05			\$ 4,204,182.76
Inpatient	\$ 51.90	11,363	\$ 589,747.32	\$ -	26	\$ -	\$ 51.78	11,389	\$ 589,747.32
Outpatient	\$ 23.57	11,363	\$ 267,829.22	\$ -	26	\$ -	\$ 23.52	11,389	\$ 267,829.22
E/R	\$ 4.96	11,363	\$ 56,335.21	\$ -	26	\$ -	\$ 4.95	11,389	\$ 56,335.21
Physicians FFS	\$ 80.71	11,363	\$ 917,100.94	\$ -	26	\$ -	\$ 80.53	11,389	\$ 917,100.94
Pharmacy	\$ 92.48	11,363	\$ 1,050,796.40	\$ -	26	\$ -	\$ 92.26	11,389	\$ 1,050,796.40
Total Claims Paid	\$ 253.61	11,363	\$ 2,881,809.09	\$ -	26	\$ -	\$ 253.03	11,389	\$ 2,881,809.09
Carve Out of Network Capitated Services									
Lab							\$ 1.20	11,389	\$ 13,666.80
Ophthalmology							\$ 6.63	11,389	\$ 75,509.07
Mental Health							\$ 2.21	11,389	\$ 25,169.69
Radiology (MINS)							\$ 5.50	3,172	\$ 17,446.00
Radiology (AMI)							\$ 6.50	2,349	\$ 15,268.50
Radiology (Calvert)							\$ 5.50	450	\$ 2,475.00
Radiology (Northern VA. Imaging)							\$ 4.00	451	\$ 1,804.00
Radiology (DIAG Radiology Imaging)							\$ 5.50	369	\$ 2,029.50
Radiology (PG Medical Imaging)							\$ 1.96	213	\$ 417.48
Total Capitated Services									\$ 153,786.04
Total Deductions									\$ 3,035,595.13
Net Cap									\$ 1,168,587.63
Cash Wire Calculations									\$ 1,168,587.63
Net Cap this month									\$ -
Cash adjustments									\$ -
Deficit Carry Forward									\$ -
Net Wire Amount									\$ 1,168,587.63

NET CAP:

NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of February 1998

JPA

	Area B			Area C			TOTAL		
	EMPM	MEM	AMOUNT	EMPM	MEM	AMOUNT	EMPM	MEM	AMOUNT
PCP CAP (Paid to Physicians)	\$ 41.66	9,444	\$ 393,473.85	\$ 40.57	26	\$ 1,054.83	\$ 41.66	9,470	\$ 394,528.68
Clinic Cap (Paid to Physician Groups)	\$ 40.93	4,486	\$ 183,626.50	\$ -	-	\$ -	\$ 40.93	4,486	\$ 183,626.50
PCP total	\$ 41.43	13,930	\$ 577,100.35	\$ 40.57	26	\$ 1,054.83	\$ 41.43	13,956	\$ 578,153.18
Undesignated PCP Cap			\$ 27,543.84						\$ 27,543.84
Undesignated Hospital Cap (Jan 98)			\$ (53,350.69)						\$ (53,350.69)
HOSP Cap			\$ 4,575,597.93						\$ 4,575,597.93
380.00 Guarantee Advance Jan overpaid	\$ 328.47	13,930	\$ 4,575,597.93	\$ 320.97	26	\$ 8,345.15	\$ 328.46	13,956	\$ 4,583,943.08
380.00 Guarantee Advance			\$ (172,587.38)						\$ (172,587.38)
Membership Premium	\$ 39.83	4,081	\$ 162,546.23						\$ 162,546.23
Pharmacy Rider Premium	\$ -		\$ -	\$ 30.12	2,561	\$ 77,260.50	\$ 30.12	2,561	\$ 77,260.50
Claims paid			\$ 4,752,760.53			\$ 85,605.65			\$ 4,838,366.18
Inpatient	\$ 39.15	13,930	\$ 545,365.83	\$ -	26	\$ -	\$ 39.08	13,956	\$ 545,365.83
Outpatient	\$ 11.91	13,930	\$ 165,855.82	\$ -	26	\$ -	\$ 11.88	13,956	\$ 165,855.82
E/R	\$ 3.79	13,930	\$ 52,743.34	\$ -	26	\$ -	\$ 3.78	13,956	\$ 52,743.34
Physicians FFS	\$ 62.90	13,930	\$ 876,172.69	\$ -	26	\$ -	\$ 62.78	13,956	\$ 876,172.69
Pharmacy	\$ 36.03	13,930	\$ 501,848.49	\$ -	26	\$ -	\$ 35.96	13,956	\$ 501,848.49
Total Claims Paid	\$ 153.77	13,930	\$ 2,141,986.17	\$ -	26	\$ -	\$ 153.48	13,956	\$ 2,141,986.17
Carve Out of Network Capitated Services									
Lab							\$ 1.20	13,956	\$ 16,747.20
Ophthalmology							\$ 6.63	13,956	\$ 92,528.28
Mental Health							\$ 2.21	13,956	\$ 30,842.76
Radiology (MINS)							\$ 5.50	3,906	\$ 21,483.00
Radiology (MINS - Frederick)							\$ 5.50	578	\$ 3,179.00
Radiology (AMI)							\$ 6.50	2,498	\$ 16,237.00
Radiology (Calvert)							\$ 5.50	484	\$ 2,662.00
Radiology (Northern VA. Imaging)							\$ 4.00	453	\$ 1,812.00
Radiology (DIAO Radinlogy Imaging)							\$ 5.50	503	\$ 2,766.50
Radiology (PG Medical Imaging)							\$ 5.50	1,355	\$ 7,452.50
Total Capitated Services									\$ 195,710.24
Total Deductions									\$ 2,337,696.41
Net Cap									\$ 2,472,862.92
Cash Wike Calculations									\$ 2,472,862.92
Net Cap this month									\$ -
Cash adjustments									\$ -
Deficit Carry Forward									\$ -
Net Wike Amount									\$ 2,472,862.92

2/5/98 4:52 PM

NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of March 1998

	Area D			Area C			TOTAL		
	PMPM	MEM	TOTAL AMOUNT	PMPM	MEM	TOTAL AMOUNT	PMPM	MEM	TOTAL AMOUNT
PCP CAP (Paid to Physicians)	\$ 41.68	9,178	\$ 382,555.41	\$ 37.43	124	\$ 4,641.83	\$ 41.63	9,302	\$ 387,197.24
Clinic Cap (Paid to Physician Groups)	\$ 40.65	4,461	\$ 181,355.21	\$.		\$.	\$ 40.65	4,461	\$ 181,355.21
PCP mal	\$ 41.35	13,639	\$ 563,910.62	\$ 37.43	124	\$ 4,641.83	\$ 41.31	13,763	\$ 568,552.45
Undesignated PCP Cap									
HOSP Cap									
"380.00" Guarantee Estimate	\$ 327.73	13,639	\$ 4,469,936.75	\$ 298.94	124	\$ 37,068.76	\$ 327.47	13,763	\$ 4,507,005.51
Membership Premium			\$ 170,000.00						\$ 170,000.00
Pharmacy Rider Premium	\$ 39.83	4,028	\$ 160,435.24						\$ 160,435.24
Claims paid			\$ 4,800,371.99	\$ 30.02	2,627	\$ 79,035.81	\$ 30.02	2,627	\$ 79,035.81
Inpatient						\$ 116,104.57			\$ 116,104.57
Outpatient	\$ 62.20	13,639	\$ 848,306.84				\$ 61.64	13,763	\$ 848,306.84
B/R	\$ 12.35	13,639	\$ 168,465.47		124	\$.	\$ 12.24	13,763	\$ 168,465.47
Physicians FFS	\$ 2.87	13,639	\$ 39,095.52		124	\$.	\$ 2.84	13,763	\$ 39,095.52
Pharmacy	\$ 62.41	13,639	\$ 851,193.06		124	\$.	\$ 61.85	13,763	\$ 851,193.06
Total Claims Paid	\$ 32.30	13,639	\$ 440,485.41		124	\$.	\$ 32.01	13,763	\$ 440,485.41
	\$ 172.12	13,639	\$ 2,347,546.30		124	\$.	\$ 170.57	13,763	\$ 2,347,546.30
Carve Out of Network Capitated Services									
Lab							\$ 1.20	13,763	\$ 16,515.60
Ophthalmology							\$ 6.63	13,763	\$ 91,248.69
Mental Health							\$ 2.21	13,763	\$ 30,416.23
Radiology (MINS)							\$ 5.50	3,873	\$ 21,301.50
Radiology (MINS - Frederick)							\$ 5.50	549	\$ 3,019.50
Radiology (AMI)							\$ 6.50	2,398	\$ 15,587.00
Radiology (Calvert)							\$ 5.50	533	\$ 2,931.50
Radiology (Northern VA. Imaging)							\$ 4.00	456	\$ 1,824.00
Radiology (DIAG Radiology Imaging)							\$ 5.50	505	\$ 2,777.50
Radiology (PG Medical Imaging)							\$ 5.50	1,307	\$ 7,188.50
Total Capitated Services									\$ 192,810.02
Total Deductions									\$ 2,540,356.32
Net Cap									\$ 2,376,120.24
Cash Wire Calculations									\$ 2,376,120.24
Net Cap this month									\$.
Cash adjustments									\$.
Deficit Carry Forward									\$ 2,376,120.24
Net Wire Amount									\$.
									\$ 2,376,120.24

4:27 PM

Doctors Health
Monthly Capitation Calculation
for the month of ~~March~~ April 1998

	Area B			Area C			TOTAL		
	PATM.	MEMBERS	AMOUNT	PATM.	MEMBERS	AMOUNT	PATM.	MEMBERS	AMOUNT
PCP CAP (Paid to Physicians)	\$ 42.91	8,796	\$ 377,436.24	\$ 38.22	147	\$ 5,617.89	\$ 42.83	8,943	\$ 383,054.13
Clinic Cap (Paid to Physician Groups)	\$ 41.64	3,925	\$ 163,432.69	\$ -	-	\$ -	\$ 41.64	3,925	\$ 163,432.69
PCP total	\$ 42.52	12,721	\$ 540,868.93	\$ 38.22	147	\$ 5,617.89	\$ 42.47	12,868	\$ 546,486.82
Undesignated PCP Cap									
HOSP Cap	\$ 333.73	12,721	\$ 9,678.31	\$ 295.28	147	\$ 43,405.92	\$ 333.29	12,868	\$ 9,678.31
380.00 Guarantee Estimate			\$ 4,245,406.79						\$ 4,245,406.79
Membership Premium	\$ 39.83	3,037	\$ 120,963.71	\$ 29.98	2,548	\$ 76,396.74	\$ 39.83	3,037	\$ 120,963.71
Pharmacy Rider Premium	0		\$ -	\$ -		\$ -	\$ 29.98	2,548	\$ 76,396.74
Claims paid			\$ 4,546,048.81			\$ 119,802.66			\$ 4,665,851.47
Inpatient	\$ 130.84	12,721	\$ 1,664,441.31	\$ -	147	\$ -	\$ 129.35	12,868	\$ 1,664,441.31
Outpatient	\$ 42.62	12,721	\$ 542,144.12	\$ -	147	\$ -	\$ 42.13	12,868	\$ 542,144.12
E/R	\$ 6.35	12,721	\$ 80,792.22	\$ -	147	\$ -	\$ 6.28	12,868	\$ 80,792.22
Physicians FFS	\$ 127.43	12,721	\$ 1,621,097.73	\$ -	147	\$ -	\$ 125.98	12,868	\$ 1,621,097.73
Pharmacy	\$ 37.44	12,721	\$ 476,333.18	\$ -	147	\$ -	\$ 37.02	12,868	\$ 476,333.18
Total Claims Paid	\$ 344.69	12,721	\$ 4,384,808.56	\$ -	147	\$ -	\$ 340.75	12,868	\$ 4,384,808.56
Carve Out of Network Capitated Services									
Lab							\$ 1.20	12,868	\$ 15,441.60
Ophthalmology							\$ 6.63	12,868	\$ 85,314.84
Mental Health							\$ 2.21	12,868	\$ 28,438.28
Radiology (MINS)							\$ 3.50	3,871	\$ 13,548.50
Radiology (MINS - Frederick)							\$ 5.50	569	\$ 3,129.50
Radiology (AMI)							\$ 6.50	2,408	\$ 15,652.00
Radiology (Calvert)							\$ 5.50	384	\$ 2,112.00
Radiology (Northern VA. Imaging)							\$ 4.00	447	\$ 1,788.00
Radiology (DIAO Radiology Imaging)							\$ 5.50	489	\$ 2,689.50
Radiology (PG Medical Imaging)							\$ 5.50	1,290	\$ 7,095.00
Total Capitated Services									\$ 184,051.22
Total Deductions									\$ 4,568,859.78
Net Cap									\$ 96,991.69
Cash Wire Calculations									\$ 96,991.69
Net Cap this month									\$ -
Cash adjustments									\$ -
Deficit Carry Forward									\$ -
Net Wire Amount									\$ 96,991.69

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Health Plans of Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of May 1998

	Area B			Area C			TOTAL		
PCP CAP (Paid to Physicians)	\$ 41.95	9,470	\$ 397,244.10	\$ 39.08	177	\$ 6,916.79	\$ 41.89	9,647	\$ 404,160.89
Clinic Cap (Paid to Physician Groups)	\$ 41.46	4,351	\$ 180,395.03	\$ 39.08	177	\$ 6,916.79	\$ 41.46	4,351	\$ 180,395.03
PCP total	\$ 41.79	13,821	\$ 577,639.13				\$ 41.76	13,998	\$ 584,555.92
Undesignated PCP Cap									
HOSP Cap	\$ 328.12	13,821	\$ 4,534,982.97	\$ 312.30	177	\$ 55,276.67	\$ 327.92	13,998	\$ 4,590,259.64
"80.00" Guarantee for March			\$ 14,785.74						\$ 14,785.74
"20.00" Guarantee for March APRIL			\$ 15,128.00						\$ 15,128.00
Membership Premium			\$ (132,645.15)						\$ (132,645.15)
Pharmacy Rider Premium	\$ 39.83	3,668	\$ 146,096.44	\$ 30.33	2,702	\$ 81,938.61	\$ 30.33	2,702	\$ 81,938.61
Claims paid			\$ 4,578,348.00			\$ 137,215.28			\$ 4,715,563.28
Inpatient									
Outpatient	\$ 203.85	13,821	\$ 2,817,466.31						
E/R	\$ 18.87	13,821	\$ 260,830.13		177	\$ -	\$ 201.28	13,998	\$ 2,817,466.31
Physicians FFS	\$ 4.11	13,821	\$ 56,863.77		177	\$ -	\$ 18.63	13,998	\$ 260,830.13
Pharmacy	\$ 137.12	13,821	\$ 1,895,196.35		177	\$ -	\$ 4.06	13,998	\$ 56,863.77
Total Claims Paid	\$ 33.12	13,821	\$ 457,724.87		177	\$ -	\$ 135.39	13,998	\$ 1,895,196.35
	\$ 397.08	13,821	\$ 5,488,081.43		177	\$ -	\$ 32.70	13,998	\$ 457,724.87
Carve Out of Network Capitated Services							\$ 392.06	13,998	\$ 5,488,081.43
Lab									
Ophthalmology							\$ 1.20	13,998	\$ 16,797.60
Mental Health							\$ 6.63	13,998	\$ 92,806.74
Radiology (MINS)							\$ 2.21	13,998	\$ 30,935.58
Radiology (MINS - Frederick)							\$ 5.50	4,034	\$ 22,187.00
Radiology (AMI)							\$ 5.50	625	\$ 3,437.50
Radiology (Calvert)							\$ 5.50	2,548	\$ 16,562.00
Radiology (Northern VA. Imaging)							\$ 5.50	592	\$ 3,256.00
Radiology (DIAG Radiology Imaging)							\$ 4.00	467	\$ 1,868.00
Radiology (Dimensions Imaging)							\$ 5.50	526	\$ 2,893.00
Total Capitated Services							\$ 5.50	1,580	\$ 8,690.00
Total Deductions									\$ 199,433.42
Net Cap									\$ 5,687,514.85
Cash Wire Calculations									\$ (971,951.57)
Net Cap this month									\$ (971,951.57)
Cash adjustments									\$
Deficit Carry Forward									\$ (971,951.57)
Net Wire Amount									\$

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**NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
for the month of June 1998**

	Area B			Area C			TOTAL		
PCP CAP (Paid to Physicians)	\$ 41.97	8,818	\$ 370,116.00	\$ 37.91	173	\$ 6,558.76	\$ 41.89	8,991	\$ 376,674.76
Clinic Cap (Paid to Physicians/Groups)	\$ 41.79	3,978	\$ 166,229.80	\$ -	-	\$ -	\$ 41.79	3,978	\$ 166,229.80
PCP total	\$ 41.92	12,796	\$ 536,345.80	\$ 37.91	173	\$ 6,558.76	\$ 41.86	12,969	\$ 542,904.56
Undesignated PCP Cap									
HOSP Cap			\$ 7,304.58						\$ 7,304.58
Membership Premium	\$ 331.87	12,796	\$ 4,246,547.85	\$ 297.15	173	\$ 51,407.17	\$ 331.40	12,969	\$ 4,297,955.02
Pharmacy Rider Premium	\$ 39.83	3,086	\$ 122,915.38						\$ 122,915.38
				\$ 30.55	2,634	\$ 80,465.97	\$ 30.55	2,634	\$ 80,465.97
Claims paid			\$ 4,376,767.81			\$ 131,873.14			\$ 4,508,640.95
Inpatient									
Outpatient	\$ 284.06	12,796	\$ 3,634,792.29						
E/R	\$ 34.46	12,796	\$ 440,891.74	\$ -	173	\$ -	\$ 280.27	12,969	\$ 3,634,792.29
Physicians FFS	\$ 7.58	12,796	\$ 96,945.28	\$ -	173	\$ -	\$ 34.00	12,969	\$ 440,891.74
Pharmacy	\$ 136.93	12,796	\$ 1,752,145.51	\$ -	173	\$ -	\$ 7.48	12,969	\$ 96,945.28
Total Claims Paid	\$ 82.80	12,796	\$ 1,059,527.70	\$ -	173	\$ -	\$ 135.10	12,969	\$ 1,752,145.51
	\$ 545.82	12,796	\$ 6,984,302.52	\$ -	173	\$ -	\$ 81.70	12,969	\$ 1,059,527.70
Carve Out of Network Capitated Services							\$ 538.54	12,969	\$ 6,984,302.52
Lab									
Ophthalmology							\$ 1.20	12,969	\$ 15,562.80
Mental Health							\$ 6.63	12,969	\$ 85,984.47
Radiology (MINS)							\$ 2.21	12,969	\$ 28,661.49
Radiology (MINS - Frederick)							\$ 5.50	3,855	\$ 21,202.50
Radiology (AMI)							\$ 5.50	596	\$ 3,278.00
Radiology (Calvert)							\$ 6.50	2,415	\$ 15,697.50
Radiology (Northern VA. Imaging)							\$ 5.50	587	\$ 3,228.50
Radiology (DIAO Radiology Imaging)							\$ 4.00	455	\$ 1,820.00
Radiology (Dimensions Imaging)							\$ 5.50	510	\$ 2,805.00
Total Capitated Services							\$ 5.50	1,331	\$ 7,320.50
Total Deductions									\$ 185,560.76
Net Cap									\$ 7,169,863.28
Cash Wire Calculations									\$ (2,661,222.33)
Net Cap this month									\$ (2,661,222.33)
Cash adjustments									\$ -
Deficit Carry Forward									\$ (971,951.57)
Net Wire Amount									\$ (3,633,173.90)

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NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
For The Month of July 1998

PCP CAP (Paid to Physicians)	\$ 42.15	\$ 9,472	\$ 399,230.86	\$ 40.42	\$ 184	\$ 7,437.39	\$ 42.12	\$ 9,656	\$ 406,668.25
PCP local	\$ 41.88	\$ 13,541	\$ 567,126.22	\$ 40.42	\$ 184	\$ 7,437.39	\$ 41.86	\$ 13,725	\$ 574,563.61
Undersigned PCP Cap	.....	.....	.....	.....	.....	.....	.....	.....	.....
HOSP Cap	\$ 331.52	\$ 13,541	\$ 4,489,137.98	\$ 308.93	\$ 184	\$ 56,843.99	\$ 331.22	\$ 13,725	\$ 4,545,981.97
Membership Premium	\$ 39.83	\$ 3,334	\$ 132,793.22	\$ 30.38	\$ 2,805	\$ 85,216.65	\$ 30.38	\$ 2,805	\$ 85,216.65
Pharmacy Rider Premium	0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Cap % adjusted to 83%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Claims paid	\$ 303.69	\$ 13,541	\$ 4,112,230.62	\$ 299.62	\$ 184	\$ 5,299.62	\$ 303.59	\$ 4,445,823.59	\$ 4,445,823.59
Outpatient	\$ 34.56	\$ 13,541	\$ 468,032.89	\$ 34.10	\$ 184	\$ 5,299.62	\$ 34.10	\$ 13,725	\$ 4,112,230.62
E/R	\$ 8.42	\$ 13,541	\$ 114,020.73	\$ 8.31	\$ 184	\$ 1,538.20	\$ 8.31	\$ 13,725	\$ 114,020.73
Physicians FFS	\$ 160.35	\$ 13,541	\$ 2,171,329.54	\$ 158.20	\$ 184	\$ 1,538.20	\$ 160.35	\$ 13,725	\$ 2,171,329.54
Pharmacy	\$ -	\$ 13,541	\$ -	\$ -	\$ 184	\$ -	\$ -	\$ 13,725	\$ -
Total Claims Paid	\$ 507.02	\$ 13,541	\$ 6,865,613.78	\$ 500.23	\$ 184	\$ 5,299.62	\$ 507.02	\$ 13,725	\$ 6,865,613.78
Carve Out of Network Capitated Services	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lab	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ophthalmology	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mental Health	.....	.....	.....	.....	.....	.....	.....	.....	.....
Radio (MINS)	.....	.....	.....	.....	.....	.....	.....	.....	.....
Radio (MINS - Predictive)	.....	.....	.....	.....	.....	.....	.....	.....	.....
Radio (AMT)	.....	.....	.....	.....	.....	.....	.....	.....	.....
Radio (Calvert)	.....	.....	.....	.....	.....	.....	.....	.....	.....
Radio (Northern VA. Imaging)	.....	.....	.....	.....	.....	.....	.....	.....	.....
Radio (DIA) Radio (Imaging)	.....	.....	.....	.....	.....	.....	.....	.....	.....
Radio (Dimensions Imaging)	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total Capitated Services	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total Deductions	.....	.....	.....	.....	.....	.....	.....	.....	.....
Net Cap	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cash Wire Calculations	.....	.....	.....	.....	.....	.....	.....	.....	.....
Net Cap with month	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cash adjustments	.....	.....	.....	.....	.....	.....	.....	.....	.....
Deficit Carry Forward	.....	.....	.....	.....	.....	.....	.....	.....	.....
Net Wire Amount	.....	.....	.....	.....	.....	.....	.....	.....	.....

For The Month of August 1998

26 Aug 98

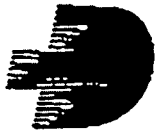
NYLCare Health Plans of the Mid Atlantic
Doctors Health
Monthly Capitation Calculation
For The Month of September 1998

For The Month of September 1998									
	MEMBERS	MEM MONTHS	AMOUNT	MEMBERS	MEM MONTHS	AMOUNT	MEMBERS	MEM MONTHS	AMOUNT
PCP CAP (Paid to Physicians)	\$ 41.05	11,029	\$ 452,695.71	\$ 40.82	218	\$ 8,899.26	\$ 41.04	11,247	\$ 461,594.97
Clinic Cap (Paid to Physician Groups)	\$ 39.89	4,668	\$ 186,220.83	\$ -	-	\$ -	\$ 39.89	4,668	\$ 186,220.83
PCP total	\$ 40.70	15,697	\$ 638,916.54	\$ 40.82	218	\$ 8,899.26	\$ 40.70	15,915	\$ 647,815.80
Undesignated PCP Cap			\$ 10,416.39						\$ 10,416.39
HOSP Cap	\$ 343.90	15,701	\$ 5,399,526.80	\$ 338.08	218	\$ 73,701.45	\$ 343.82	15,919	\$ 5,473,228.25
Membership Premium	\$ 41.40	3,356	\$ 138,938.40						\$ 138,938.40
Pharmacy Rider Premium	0	-	\$ -	\$ 31.82	3,112	\$ 99,025.12	\$ 31.82	3,112	\$ 99,025.12
Claims paid			\$ 5,548,881.59			\$ 172,726.57			\$ 5,721,608.16
Inpatient	\$ 114.50	15,701	\$ 1,797,701.50	\$ -	218	\$ -	\$ 112.93	15,919	\$ 1,797,701.30
Outpatient	\$ 14.27	15,701	\$ 223,978.45	\$ -	218	\$ -	\$ 14.07	15,919	\$ 223,978.45
E/R	\$ 3.99	15,701	\$ 62,697.82	\$ -	218	\$ -	\$ 3.94	15,919	\$ 62,697.82
Physicians FFS	\$ 56.39	15,701	\$ 885,163.86	\$ -	218	\$ -	\$ 55.62	15,919	\$ 885,363.86
Pharmacy Claims runoff	\$ 67.44	15,701	\$ 1,058,851.49	\$ -	218	\$ -	\$ 66.51	15,919	\$ 1,058,851.49
Total Claims Paid	\$ 256.58	15,701	\$ 4,028,592.92	\$ -	218	\$ -	\$ 253.07	15,919	\$ 4,028,592.92
Carve Out of Network Capitated Services									
Ophthalmology						\$ 1.20	15,919	\$ 19,102.80	
Mental Health						\$ 0.03	15,919	\$ 103,542.57	
Radiology (MINS)						\$ 2.21	15,919	\$ 35,180.99	
Radiology (MINS - Frederick)						\$ 5.50	5,752	\$ 31,636.00	
Radiology (AMT)						\$ 5.50	707	\$ 3,888.50	
Radiology (Calvert)						\$ 6.50	5,881	\$ 38,226.50	
Radiology (Northern VA. Imaging)						\$ 5.50	619	\$ 3,404.50	
Radiology (DIAG Radiology Imaging)						\$ 4.00	556	\$ 2,224.00	
Radiology (Dimensions Imaging)						\$ 5.50	545	\$ 2,997.50	
Total Capitated Services						\$ 5.50	1,412	\$ 7,766.00	
Claims incurred through 8/31/98 (Continued)			\$ 10,691,965.56					\$ 249,969.76	
Total Deductions								\$ 10,691,965.56	
Net Cap								\$ 14,970,528.24	
Cash Wire Calculations								\$ (9,248,920.08)	
Net Cap this month								\$	
Cash adjustments								\$ (9,248,920.08)	
Deficit Carry Forward								\$	
Net Wire Amount								\$ (2,109,140.16)	
								\$ (11,358,060.24)	

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7



DOCTORS
HEALTH
It's the Sure Sign of Caring

September 4, 1998

Jeff D. Emerson
President and Chief Executive Officer
NYLCare Health Plans of the Mid-Atlantic, Inc.
7601 Ora Glen Drive
Greenbelt, Maryland 20770

RE: September 1998 Monthly
Capitation Calculation

Dear Jeff:

I recently received a copy of the Monthly Capitation Calculation for the month of September, 1998. I was surprised to see that NYLCare has unilaterally decided to change the method of calculation for September. The calculation, if done consistent with the method of calculation for every month of the contract period prior to September, 1998, would have revealed a net positive cash balance in favor of Doctors Health in the amount of approximately \$1,443,047.

Without explanation, NYLCare has now charged us for "claims incurred but not paid through August 31, 1998". Please review the enclosed copy of the September, 1998 calculation and compare it to the enclosed copies of the October, 1997 through August 1998 calculations. I would appreciate your prompt assistance in having the September, 1998 Capitation Calculation redone consistent with prior periods to show the above mentioned positive cash balance in our favor.

As you know, we still have a lot of issues to resolve. This is no way to begin that process.

Sincerely,


Stewart B. Gold
Chief Executive Officer

cc: Susan Lefkowitz

DOCTORS HEALTH, INCORPORATED
10451 Mill Run Circle • 10th Floor • Odings Mills, MD 21117 • 410.654.5800 • 800.634.3253
NewwesterEmerson.doc
Odings Mills Corporate Center B • 11500 Greenidge Drive • Suite 120 • Odings Mills, MD 21117 • 410.922.5000 • 800.678.9900

8

(Note: Claims Expense Only--Does NOT Include Capitation or Stop Loss Premiums)

what area
does this
cover.

Month of Service	Claims Paid Through June 30, 1998			Completion Factors (non pharm claims)	Estimated Claims Expense			Member Months	Weighted Average PMPM (Oct-Jun)
	Pharmacy PMPM (1)	Non-Pharmacy PMPM	Total PMPM		Pharmacy PMPM (1)	Non-Pharmacy PMPM	Total PMPM		
	A	B	C = A + B		E = A	F = B / D	G = E + F		
This information was provided by Greg Pastor of NYLCare on or around November 25, 1997. He suggested I use completion factors for May through June because of a claims payment backlog. These factors approximate his recommendations.	Aug-96	\$ 34.97	\$ 235.90	\$ 270.87					
	Sep-96	\$ 34.97	\$ 295.19	\$ 330.16					
	Oct-96	\$ 38.57	\$ 286.56	\$ 325.13					
	Nov-96	\$ 38.57	\$ 258.58	\$ 297.15					
	Dec-96	\$ 38.57	\$ 286.71	\$ 325.28					
	Jan-97	\$ 50.19	\$ 287.96	\$ 338.15					
	Feb-97	\$ 41.50	\$ 336.17	\$ 377.67					
	Mar-97	\$ 38.96	\$ 310.66	\$ 349.62					
	Apr-97	\$ 54.65	\$ 333.28	\$ 387.93					
	May-97	\$ 44.17	\$ 288.82	\$ 332.99	90.9%				
	Jun-97	\$ 39.90	\$ 269.88	\$ 309.78	83.3%				
	Jul-97	\$ 37.49	\$ 232.81	\$ 270.30	76.9%				
	Oct-97	\$ 65.74	\$ 355.22	\$ 420.97	99.2%				
This information is based on the paid claims data provided monthly by NYLCare. The completion factors used are our best estimate based on payment lags since October and reflect the expenses recorded in the June 30 financials.	Nov-97	\$ 48.54	\$ 328.43	\$ 376.97	98.5%				
	Dec-97	\$ 51.56	\$ 335.45	\$ 387.01	96.4%				
	Jan-98	\$ 38.97	\$ 333.03	\$ 372.00	92.9%				
	Feb-98	\$ 32.60	\$ 323.24	\$ 355.84	92.0%				
	Mar-98	\$ 32.81	\$ 360.48	\$ 393.29	86.8%				
	Apr-98	\$ 44.28	\$ 280.92	\$ 325.20	73.4%				
	May-98	\$ 32.19	\$ 115.38	\$ 147.56	34.0%				
	Jun-98	\$ 0.19	\$ 3.01	\$ 3.20	0.9%				

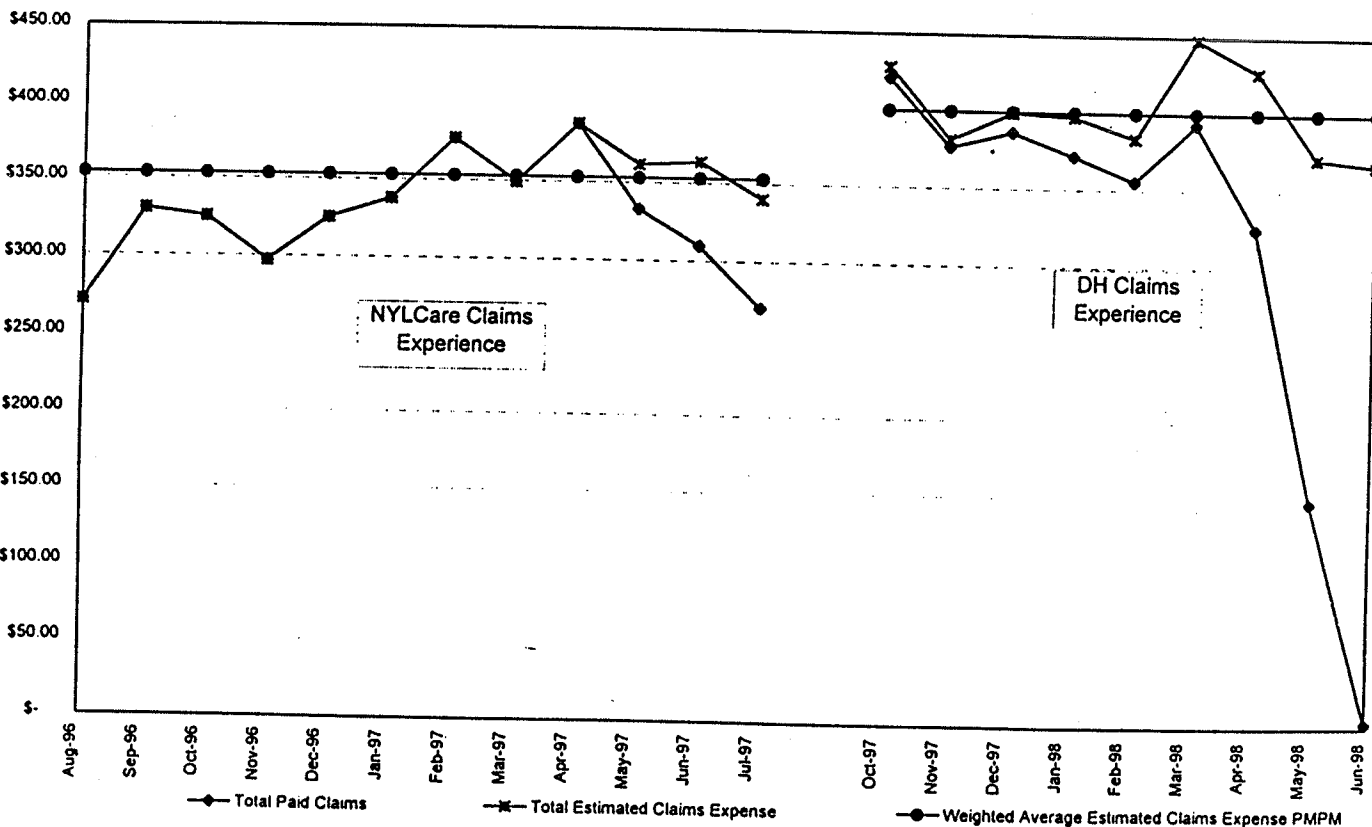


Table 1: The source for the above pharmacy costs PMPM between August, 1996 and December, 1996 are quarterly averages provided by NYLCare. The source for the pharmacy costs PMPM between January, 1997 and July, 1997 is a month utilization summary report from NYLCare. The source for the costs between October, 1997 and May, 1998 is the claims data provided by NYLCare each month. A completion factor of 0.575% has been used for the June pharmacy costs only due to the nature of the arrangement with Express Scripts.

9



August 31, 1998

VIA FACSIMILE AND US MAIL
301/489-5282

Jeff D. Emerson
President and Chief Executive Officer
NYLCare Health Plans of the Mid-Atlantic, Inc.
7601 Ora Glen Drive
Greenbelt, Maryland 20770

Dear Jeff:

Just a few short weeks ago, you wrote me that you "remain dedicated to trying to make the relationship work." Yet today it pains me to see that we are worlds apart. Aetna's announcement today that it will abandon the MediCare business covered by our contract is like a death blow for us. As I have repeatedly told you, the future of Doctors Health depends upon you. If NYLCare-Aetna abandons us now, we will have no choice but to pursue legal action. We take no comfort in that, but neither should you. The costs to NYLCare-Aetna from such litigation could be enormous.

We need a business meeting with you and an Aetna representative this week to try to reach an immediate resolution of this matter. We have always been able to find business solutions when we met in the past, but the urgency of this situation requires immediate action.

Let me remind you of some of the history between us, dating back to before Doctors Health and NYLCare actually entered into the MediCare Network Management Agreement (the "agreement") in late September 1997. After consistently being unwilling to downstream risk, NYLCare suddenly changed its position in the summer of 1997 – but only as to its MediCare business. Doctors Health was interested in pursuing such business but required historical cost data from NYLCare to evaluate the economic feasibility of such an arrangement. Indeed, we were so concerned about receiving NYLCare's historical cost data – and obviously relying upon that data's accuracy in entering into this agreement – that we insisted upon including the following language in the agreement's "Representations and Warranties" section:

"NYLCare Mid-Atlantic represents and warrants that to the best of its knowledge, the historical pharmacy, institutional, ancillary and capitated carveout costs previously provided to Doctors Health are accurate in all material respects. The parties agree that as soon as practicable after closing they will meet and develop

DOCTORS HEALTH, INCORPORATED

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Orange Mills Commerce Center II • 11500 Greenridge Drive • Suite 120 • Owings Mills, MD 21117 • +1(410)544-3000 • (410)544-3250

Jeff D. Emerson
August 31, 1998
Page Two

an appropriate schedule to this Agreement to embody any such previously provided cost information."

After consummation of the agreement, however, it became apparent that NYLCare had not provided Doctors Health with accurate cost data -- particularly as to pharmacy costs. It took us months of painstaking work and repeated demands for information from you to learn the truth about this operation's actual costs. In fact, in its historical cost data NYLCare claimed total claims costs PMPM of approximately \$350 per month on average over the year prior to the agreement. Yet Doctors Health's estimated total claims costs PMPM were more than \$400 the very first month of operation and have remained at that high level ever since. It is no wonder then, that today our contract costs have proven to be much higher than what we expected from our review and reasonable reliance upon NYLCare's historical data, which purported to show much lower costs. Indeed, our total losses under this agreement now exceed \$15 million. In short, there was something terribly wrong with the historical data that NYLCare proffered to us to induce Doctors Health to enter into this agreement.

We have encountered and worked to resolve other problems with NYLCare throughout this relationship, and will not attempt to repeat all of them here. I must mention, however, NYLCare's persistent inability to provide information necessary to reconcile capitation payments and the amounts that have been paid for medical benefits. Indeed, your colleague, Susan Lefkowitz, acknowledged in a June 29, 1998 letter to me that "[w]e are aware of the issues that you have had in reconciling eligibility and monthly capitation reports." Yet those problems have persisted, and our calls for one business week turnabout of the parties' review obligations have largely gone unheeded. We even incurred the cost of a preview process before claims payment to try to avoid the kinds of payment disputes that have arisen in recent months.

Of course, as we proceeded in good faith throughout our relationship with NYLCare to resolve these issues, we were unaware that just months after entering into this agreement, Aetna would be acquiring NYLCare from New York Life. And we were also certainly unaware that within weeks of that takeover, Aetna would be announcing its intention to get out of the MediCare business throughout the country. That sequence of events unknown to us at that time of our agreement may now explain many things: for example, why you changed your position and agreed to contract out the MediCare business just months before the Aetna deal with New York Life, why you withheld information and delayed claims processing so that our full cost ramifications would not become so known until after the Aetna takeover, why there was a huge spike in claims payments after the Aetna takeover, and why our business now hangs in the balance because of Aetna's announcement today. Indeed, I now understand that our agreement saved NYLCare more than \$12 million at a most propitious time for New York Life -- just months before the Aetna deal, thereby potentially inflating the price that Aetna paid in that deal.

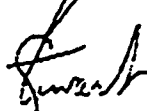
Jeff D. Emerson
August 31, 1998
Page Three

Of course, Aetna's public pronouncement -- while terribly damaging to our business -- cannot change the fact that Doctors Health continues to have a binding agreement with NYLCare. There is no legal basis for terminating that agreement simply because Aetna wants to get out of that business in selected areas including ours. And any other attempt to terminate our agreement now would clearly be pretextual and in bad faith. So let this letter serve as notice that we can not tolerate for any further damage to our business or business reputation. NYLCare-Aetna's actions have already damaged Doctors Health. It is time to repair the damage -- and to do so immediately before it becomes irreparable.

It is now clear to us that we were fraudulently induced to enter into this agreement with NYLCare and have been on a "slippery slope" of financial losses ever since. To date, based upon our purported good faith negotiations we have refrained from filing litigation, despite the desire of some shareholders to do so. Therefore, we will have to pursue litigation absent prompt resolution of this situation. Our lawyers tell us that we can seek both actual and punitive damages in such a fraudulent inducement action. Indeed, I would welcome the opportunity to explain these facts to Aetna, which only recently acquired NYLCare from New York Life and therefore may be unaware of this history. Moreover, in any future legal proceedings, we would also seek recovery for other tortious and contractual breaches which have cost us so dearly.

As you know, I have worked hard to avoid that road. It is not too late still to find common ground, but time is of the essence. I have employees, physician shareholders and other shareholders to protect, and you have placed all of us in serious jeopardy. We stand ready to be creative in fashioning resolutions that work for all parties. We would even be willing to consider Doctors Health eventually taking over this entire operation and dealing directly with HCFA. We remain ready to talk, although given the enormous ongoing damage that we are now experiencing under this agreement, we need a prompt resolution of our outstanding disputes. Otherwise, we will have to take appropriate legal action in the immediate future.

Sincerely,



Stewart B. Gold
President and Chief Executive Officer

cc: Michael J. Cardillo	Scott Murphy
President	South East Regional Manager
Aetna US Healthcare	Aetna US Healthcare
980 Jolly Road (US1A)	11675 Great Oaks Way
Blue Bell, PA 19422	Alpharetta, GA 30022
215/775-6501 (fax)	770/346-1085 (fax)

10

NYLCare
An Aetna U.S. Healthcare Company

7601 Ora Glen Drive
Greenbelt, MD 20770
301.441.1600
800.635.3121

Writer's DID
301.489.5650

VIA FACSIMILE AND REGULAR MAIL

August 13, 1998

Stewart B. Gold
Chief Executive Officer and President
Doctors Health, Inc.
10451 Mill Run Circle, 10th Floor
Owings Mills, Maryland 21117

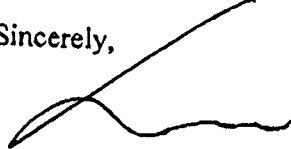
Dear Stewart:

We are in receipt of your letter of August 10, 1998 restating the issues raised by Doctors Health, Inc. (DH) to be resolved with NYLCare Health Plans of the Mid-Atlantic (NYLCare Mid-Atlantic). This letter is official notification of breach of Section 11 of the Letter of Agreement between NYLCare Mid-Atlantic and DH dated June 29, 1998. According to the language of that Letter of Agreement, DH is required to pay all deficits reflected in the Monthly Capitation Calculation Report (Report) within five (5) business days of receipt of that report. At this time, NYLCare Mid-Atlantic has not received payment of the deficit shown in the July Report and due on July 15, 1998.

Because the payment period has now exceeded the five (5) days allowed, and because the total amount outstanding (deficits plus the claims inventory) exceeds the Letter of Credit (LOC) which DH holds, we are forced to request that you comply with the Letter of Agreement and submit, via wire transfer, all amounts owed. The full amount owed at this time is \$2,615,208.69, less the \$506,068.53 surplus from the August Report, or \$2,109,140.16 in total. Payment is due immediately as stated in our August 5, 1998 letter. We cannot respond to your August 10, 1998 letter until we are in receipt of these monies.

It is incumbent upon you to comply with the terms of the Letter and the Agreement.

Sincerely,



Susan S. Lefkowitz
Executive Vice President, Health Care Delivery Services

SSL:aa

cc: Jeff D. Emerson, President and Chief Executive Officer, NYLCare Mid-Atlantic

\\GBLTV0021VOL1\HOMER\AAVEK\YAWORD\SUSAN\LETTERS\S Gold Ltr 8_13.doc

**SUMMARY STATEMENT ON APPLICATION FOR
EXPEDITED SERVICE AND/OR INTERIM RELIEF**

(SUBMITTED BY MOVING PARTY)

Date 9/17/98

Title
of
Matter

Doctors Health, Inc. v. Chase Manhattan Bank and NYL Care Health Plans
Index/Indict# 98 Civ. 60436 (BAC)

Appeal
by

Doctors Health, Inc.
from order
judgment decree

of

Supreme
Surrogate's
Family

County NY

Court entered on 9/17, 1998

Name of
Judge

Barry A. Coxier

Notice of Appeal
filed on

9/17, 1998

If from administrative determination, state agency

Nature of
action
or proceeding

Application for stay of Judge Coxier's order
pending appeal in this matter

Provisions of

order
judgment
decree

appealed from entire order

This application by

appellant
respondent

is for a stay of Judge Coxier's order

of vacating TRO and denying plaintiff's motion for
preliminary injunction prohibiting payment on a letter of credit.

If applying for a stay, state reason why requested

Plaintiff believes her case will
be successful on appeal but needs a stay because any
appeal will be rendered meaningless if immediate stay is
not granted.

Has any undertaking been posted

No

If "Yes", state amount and type

A Bond in the amount of \$269,000 was
placed in the underlying action for the TRO.

Has application been made to
court below for this relief

Yes

If yes, state
disposition

Trial court denied application.

Has there been any prior application
herein in this Court

No

If "Yes", state dates
and nature

Has adversary been advised
of this application

Yes

Does he/she
consent

No

Attorney for Movant

Attorney for Opposition

Name Piper & Marbury LLP
A 1251 Avenue of the Americas
Tel. No. (212) 835-6000 10620-1104

Appearing by Peter M. Carrigan
Monica Petraglia McCabe

Eppstein Becker & Green, P.C.
250 Park Avenue 10177-0007
(212) 351-4500

Julie K. Gershman

* Andrew Keene, Esq.

Chase Manhattan Bank
121 Avenue of the Americas
(212) 552-6921 10036

(Do not write below this line)

DISPOSITION

Interim stay granted (not on the merits)

Movant shall supply ^{copy of} moving papers below (OSC, exhibits + responsive
papers) to AD + respondents.

Motion Date 9/25 P.T. 9/17/98
Justice Date
Opposition 9/23 Reply 9/25
EXPEDITE ✓ PHONE ATTORNEYS ✓ DECISION BY 10/2/98

ALL PAPERS TO BE SERVED PERSONALLY.

Evd
Law Assistant

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: FIRST DEPARTMENT

DOCTORS HEALTH, INC.,

Plaintiff,

- against -

CHASE MANHATTAN BANK, and NYLCARE
HEALTH PLANS OF THE MID-ATLANTIC, INC.,

Defendants.

X

98 Civ. 604436 (PAC)

: PREARGUMENT STATEMENT

X

Appeal from Supreme Court, New York County, Justice Barry A. Cozier
Date of Entry of the Order: September 17, 1998
Notice of Appeal Filed: September 17, 1998

1. Title of the action

The title of the action appears in the above caption.

2. Full names of the original parties and changes in parties

The full names of the parties are as they appear in the caption. There have been no changes in the parties.

3. Names, address and telephone number of counsel for plaintiff-appellant ("Doctors Health")

Monica Petraglia McCabe, Esq.
Peter M. Corrigan, Esq.
Susan C. Chu, Esq.
Piper & Marbury, L.L.P.
1251 Avenue of the Americas
New York, New York 10020
(212) 835-6053

4a. Name, address and telephone number of counsel for defendant-respondent
("NYLCare")

Julie K. Gershman, Esq.
Epstein Becker & Green, P.C.
250 Park Avenue
New York, New York 10177-0007
(212) 351-4500

Mark C. Hansen, Esq.
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1301 K Street, NW
Suite 1000 West
Washington, D.C. 20005
(202) 326-7900

4b. Name, address and telephone number of contact person for defendant-respondent
("Chase")

Andrew Keene, Esq.
The Chase Manhattan Bank
1211 Avenue of the Americas
New York, New York 10036
(212) 552-0921

5. Method of disposition in Trial Court

The trial court vacated a temporary restraining order and preliminary injunction prohibiting Chase from payment on a letter of credit.

6. Court and county from which appeal is taken

Supreme Court, New York County, IAS Part 3 (Barry A. Cozier, J.S.C.).

7. Description of cause of action

To enjoin Chase from making any payments to NYLCare under a letter of credit issued by Chase in favor of NYLCare for the sum of \$4,400,000.

8. Description of order below

The trial court vacated a temporary restraining order and denied plaintiff's motion for a preliminary injunction prohibiting Chase from making any payments to NYLCare under a

letter of credit issued by Chase in favor of NYLCare and denied plaintiff's application for a stay of the trial court's order.

9. Grounds seeking reversal

a) The trial court made an error of law and facts in holding that misrepresentation in presentment of documents does not constitute fraud to prevent Chase from paying out on a letter of credit to NYLCare under the fraud exception of UCC § 5-114(2).

b) The trial court made an error of law and facts in holding that the arbitration clause in the contract precludes it from making any determination of the likelihood of success on the merits.

c) The trial court made an error of law and facts in holding that the risk of bankruptcy, loss of up to 480 jobs by plaintiff's employees and the potential disruption of critical medical services by plaintiff's employees to 14,000 Medicare employees does not constitute irreparable harm.

10. Filing of appeal bond

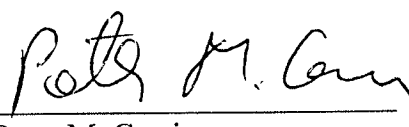
Not applicable.

The undersigned, who is associated with the firm acting as attorneys for plaintiff-appellant, hereby certifies that a transcript of the hearing on the motion, which resulted in the order appealed from, has been ordered.

Dated: New York, New York
September 17, 1998

PIPER & MARBURY L.L.P.

By: _____


Peter M. Corrigan

1251 Avenue of the Americas
New York, New York 10020
(212) 835-6000
Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. BARRY A COZIER
Justice

PART 3

DOCTOR'S HEALTH, INC.

INDEX NO. 604436/98

- v -

MOTION DATE _____

CHASE MANHATTAN BANK and
NYLCARE HEALTH PLANS OF NY

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

FILED

Cross-Motion: ☐ Yes ☒ No

SEP 17 1998

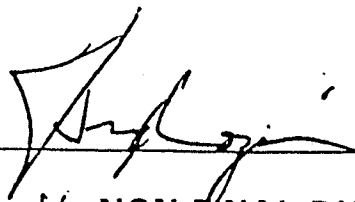
Upon the foregoing papers, it is ordered that this motion

COUNTY CLERK'S OFFICE
NEW YORK

J.S.C.
Plaintiff's motion for a preliminary injunction is denied, in accordance with the Court's decision and Order on the Record of September 17, 1998. The TRO is vacated and ~~Plaintiff's~~ Plaintiff's application for a Stay of Court's order is denied.

Settle order in Room 148 with copy of transcript.

Dated: Sept. 17, 1998



J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

16dv-000398

MOTION/CASE IS RESPECTFULLY REFERRED TO

STICE

DATED:

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO.: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

_____/

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

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.

Defendants.

_____/

**EXHIBITS EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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

VOLUME I of III

Jerold S. Solovy
Ronald L. Marmer
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

John Scarola
SEARCY DENNY SCAROLA BARNHART
& SHIPLEY P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33402-3626
(561) 686-6300

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

TABLE OF CONTENTS

	<u>TAB</u>
William Strong Deposition, 12/4/2003	1
Morgan Stanley 85403-85419.....	2
Morgan Stanley 85420-85435.....	3
Morgan Stanley 85436-85452	4
Morgan Stanley 85453-85471.....	5
Morgan Stanley 85472-85493.....	6
Bram Smith Deposition, 2/24/2004	7
Joshua Webber Deposition, 5/18/2004	8
CPH Ex. 84	9
CPH Ex. 9	10
Eugene Yoo Deposition, 6/16/2004.....	11
CPH Ex. 229	12
Lawrence Bornstein Deposition, 1/15/2004	13
CPH Ex. 123	14
First Amended Complaint, <i>Morgan Stanley & Co., Inc. et al. v. Arthur Andersen LLP, et al.</i>	15
CPH Ex. 17	16
John Tyree Deposition, 11/14/2003	17
CPH Ex. 16	18
CPH 1395046-1395047	19
Alan Dean Deposition, 6/3/2004.....	20
Heather Stack Deposition, 5/25/2004	21

TAB

Dennis Pastrana Deposition, 1/12/2004.....	22
William Pruitt Deposition, 1/13/2004.....	23
CPH Ex. 75	24
Donald Drapkin Deposition, 6/24/2004.....	25
CPH 1241513.....	26
CPH 1039208.....	27
CPH 1059641.....	28
CPH Ex. 121	29
CPH Ex. 118	30
CPH Ex. 119	31
CPH Ex. 114	32
Mark Brockelman Deposition, 1/14/2004.....	33
CPH Ex. 33	34
CPH Ex. 34	35
CPH Ex. 35	36
Michael Hart Deposition, 5/19/2004.....	37
CPH Ex. 76	38
CPH Ex. 112	39
CPH 1393269.....	40
CPH Ex. 36	41
CPH Ex. 187	42
William Wright Deposition, 7/1/2004	43
CPH Ex. 110	44

TAB

CPH Ex. 24	45
James Lurie Deposition, 6/18/2004	46
Phillip Harlow Deposition, 6/9/1999	47
John Tyree Deposition, 9/15/2003	48

1

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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OF PROTECTABILITY BY COURT**

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OF PROTECTABILITY BY COURT**

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**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

6

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

7

1
2 IN THE CIRCUIT COURT OF THE FIFTEENTH
3 JUDICIAL CIRCUIT
4 IN AND FOR PALM BEACH COUNTY, FLORIDA
5

COLEMAN (PARENT) HOLDINGS,)
6 INC.,)

7 Plaintiff,)

8 vs.)

9 MORGAN STANLEY & CO., INC.,)

10 Defendant.)
-----)

11
12
13
14 DEPOSITION OF R. BRAM SMITH
15 New York, New York
16 Tuesday, February 24, 2004
17
18
19
20
21

22
23 Reported by:
PAMELA J. MAZZELLA, RPR
24 JOB NO. 157119
25

<p style="text-align: right;">Page 2</p> <p>1 2 3 February 24, 2004 4 9:23 a.m. 5 6 Deposition of R. BRAM SMITH, held 7 at the offices of Esquire Deposition 8 Services, 216 East 45th Street, New 9 York, New York, pursuant to Notice, 10 before Pamela J. Mazzella, RPR, a 11 Notary Public of the State of New York. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 THE VIDEOGRAPHER: This is tape 3 number 1 of the videotaped deposition of Mr. 4 Bram Smith in the matter Coleman versus 5 Morgan Stanley. 6 This deposition is being held at 7 Esquire Deposition Services located at 216 8 East 45th Street, Manhattan, New York, 9 February 24, 2004 at approximately 9:23 a.m. 10 My name is Ruben Martinez from the 11 firm of Esquire Video Services. The court 12 reporter is Miss Pam Mazzella in association 13 with Esquire Deposition Services. 14 Will counsel please introduce 15 themselves. 16 MR. MARKOWSKI: Bob Markowski from 17 Jenner & Block on behalf of Coleman (Parent) 18 Holdings. 19 MR. O'CONNOR: Christopher 20 O'Connor from Jenner & Block on behalf of 21 Coleman (Parent) Holdings. 22 MR. CLARE: Thomas Clare, Kirkland 23 & Ellis, LLP on behalf of the defendant 24 Morgan Stanley and the witness. 25 THE WITNESS: Witness Bram --</p>
<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: 3 4 JENNER & BLOCK, LLC 5 Attorneys for Plaintiff 6 One IBM Plaza 7 Chicago, Illinois 60611-7603 8 BY: ROBERT T. MARKOWSKI, ESQ. 9 AND: CHRISTOPHER M. O'CONNOR, ESQ. 10 11 KIRKLAND & ELLIS, LLP 12 Attorneys for Defendant 13 655 Fifteenth Street, N.W. 14 Washington, D.C. 20005 15 BY: THOMAS A. CLARE, ESQ. 16 17 18 19 ALSO PRESENT: 20 RUBEN MARTINEZ - Videographer 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 Smith 2 okay. 3 THE VIDEOGRAHER: Will the court 4 reporter please swear the witness. 5 R. B R A M S M I T H, called as a 6 witness, having been duly sworn by a 7 Notary Public, was examined and 8 testified as follows: 9 EXAMINATION BY 10 MR. MARKOWSKI: 11 Q. Mr. Smith, would you please state 12 your full name for the record? 13 A. Richard Bram Smith. 14 Q. And where is your current home 15 address, Mr. Smith? 16 A. 44 Drake Road, Scarsdale, New York, 17 10583. 18 Q. Who is your current employer? 19 A. Bear Stearns. 20 Q. And what is your position with Bear 21 Stearns today? 22 A. I'm a senior managing director in 23 capital markets. 24 Q. Do you have a particular assignment 25 at Bear Stearns?</p>

2 (Pages 2 to 5)

Page 6

1 Smith

2 A. Leveraged financing.

3 Q. And what are your general

4 responsibilities in the leveraged finance

5 group at Bear Stearns?

6 A. Loan capital markets, loan sales

7 and distribution.

8 Q. Where is your office location at?

9 A. 383 Madison.

10 Q. To whom do you report?

11 A. I report to two people, Larry

12 Alletto and Keith Barnish.

13 Q. How long have you been employed at

14 Bear Stearns?

15 A. Coming up on a year.

16 Q. Do you have any supervisory

17 responsibilities?

18 A. Yes.

19 Q. What are those?

20 A. Supervise people in loan capital

21 markets, sales and trade.

22 Q. How many individuals do you

23 supervise?

24 A. About eight.

25 Q. You previously were employed by

Page 7

1 Smith

2 Morgan Stanley?

3 A. I was.

4 Q. When did that employment end?

5 A. About a year ago.

6 Q. Was there any hiatus between the

7 end of your employment at Morgan Stanley and

8 the start of your employment at Bear Stearns?

9 A. A couple of months.

10 Q. You did not have a position at Bear

11 Stearns when you left Morgan Stanley?

12 A. No.

13 Q. Do you have any continuing

14 relationship of any sort with Morgan Stanley?

15 A. What do you mean?

16 Q. Do you receive any money from

17 Morgan Stanley?

18 A. No.

19 Q. Are you potentially entitled to

20 receive any money from Morgan Stanley in the

21 future?

22 A. I think so.

23 Q. What type of arrangement does that

24 involve?

25 A. Some equity investments made in

Page 8

1 Smith

2 some transactions I worked on.

3 Q. When will you know whether you will

4 be receiving any additional funds from Morgan

5 Stanley?

6 A. I have no idea.

7 Q. Do you know over what period of

8 time those investments may yield returns to

9 you?

10 A. No.

11 Q. Is it possible that some of those

12 investments will yield returns to you in the

13 next year?

14 A. Don't know.

15 Q. You don't know whether it's

16 possible then?

17 You have to answer audibly.

18 A. I don't know if it is possible.

19 Q. You are represented today by Morgan

20 Stanley -- is there any other financial

21 arrangement, relationship of any sort today

22 that you have with Morgan Stanley?

23 A. Nope.

24 Q. You are represented today by a

25 Morgan Stanley attorney; is that correct?

Page 9

1 Smith

2 A. Yes.

3 Q. How did that come about?

4 A. How did that come about? Morgan

5 Stanley contacted me when they said I might

6 be asked to testify, and volunteered to be my

7 counsel.

8 Q. Is Morgan Stanley paying for Mr.

9 Clare's time today?

10 MR. CLARE: Objection, foundation.

11 A. I have no idea.

12 Q. Are you paying for it?

13 A. I'm not paying for it.

14 Q. Who called you from Morgan Stanley

15 to advise you that you would be deposed in

16 this case?

17 A. I don't remember the exact name.

18 Q. Was it somebody in the law

19 department at Morgan Stanley?

20 A. Somebody in the law department.

21 Q. What's your education, Mr. Smith?

22 A. In terms of degrees? BS from

23 the -- undergraduate Air Force Academy, MA

24 from Fletcher School at Tufts, and MBA from

25 Harvard.

3 (Pages 6 to 9)

Page 10

1 Smith

2 Q. Can you summarize for me your

3 employment history prior to your first

4 employment with Morgan Stanley?

5 A. Employment history prior to Morgan

6 Stanley was in the air force for six years.

7 I was going to business school, joined

8 Bankers Trust, I was there I think 17 or 18

9 years, and then Morgan Stanley.

10 Q. When did you leave the air force?

11 A. Oh, 1976.

12 Q. And from there you went to business

13 school?

14 A. Uhm-hmm.

15 Q. And from business school you went

16 to Bankers Trust?

17 A. Right.

18 Q. When would that have been?

19 A. 1978.

20 Q. And you were at Bankers Trust until

21 1996, approximately?

22 A. Yup, 1996.

23 Q. What were your responsibilities at

24 Bankers Trust?

25 A. I was in charge of loan capital

Page 11

1 Smith

2 markets and distribution.

3 Q. Was that your final assignment?

4 A. Uhm-hmm.

5 Q. What do you mean by "loan capital

6 markets," what does that activity involve?

7 A. That activity involves structuring,

8 pricing transactions, and then I distributed

9 them.

10 Q. What kind of transactions are you

11 referring to?

12 A. Mostly leveraged loans.

13 Q. What is a leveraged loan?

14 A. It would be a loan to a

15 noninvestment grade company.

16 Q. And what's a noninvestment grade

17 company?

18 A. It would be a company that was

19 rated less than double -- BBB minus or BAA 3

20 by the two rating agencies, Moody's and S&P.

21 Q. You indicate that your activity

22 also involved distributing the investment if

23 you want, correct?

24 A. Uhm-hmm.

25 Q. What is distributing?

Page 12

1 Smith

2 A. Selling.

3 Q. What does selling mean in this

4 context?

5 A. Selling loans to potential

6 investors.

7 Q. Selling participations in the loan

8 that you've --

9 A. Selling either the participations

10 or the loans themselves.

11 Q. Is that sometimes referred to as

12 syndicating a loan?

13 A. Sometimes referred to as

14 syndicating a loan.

15 Q. Syndicating meaning something

16 distinct in this context, or is that a

17 generic term used to describe the process of

18 selling participations in a loan transaction?

19 A. I think it would probably be

20 generic.

21 Q. At Bankers Trust how large would

22 you say the largest leveraged loan

23 transactions were that you were involved in

24 structuring and syndicating?

25 A. Billions. Billions.

Page 13

1 Smith

2 Q. How many billion dollar plus loan

3 syndications were you involved in while you

4 were at Bankers Trust?

5 A. I don't remember.

6 Q. Would it have been more than five

7 would you say?

8 A. Yup.

9 Q. Why did you leave Bankers Trust?

10 A. Better opportunity at Morgan

11 Stanley.

12 Q. Were you recruited at Morgan

13 Stanley, or did you make an overture to

14 Morgan Stanley?

15 A. Recruited.

16 Q. Who recruited you?

17 A. Steve Newhouse.

18 Q. You had known Mr. Newhouse before

19 that?

20 A. No.

21 Q. Do you know how he came to know of

22 you?

23 A. No.

24 Q. How did he contact you?

25 A. Through an executive recruiter.

4 (Pages 10 to 13)

Page 14

1 Smith

2 Q. How long before you joined Morgan

3 Stanley do you recall being first contacted

4 by the executive recruiting firm?

5 A. Gee, months.

6 Q. Were you being recruited to fill a

7 particular position at Morgan Stanley?

8 A. Yes.

9 Q. What was that?

10 A. To get them into the loan business.

11 Q. What do you mean by getting them in

12 the loan business?

13 A. They wanted to have a lending

14 capability and they hired me to develop that

15 capability for them.

16 Q. Is it your understanding that

17 before you joined Morgan Stanley, Morgan

18 Stanley did not engage in originating loans?

19 MR CLARE: Objection, calls for

20 speculation.

21 Q. I'm asking your understanding.

22 A. I don't know.

23 Q. Did you have an understanding one

24 way or the other when you joined Morgan

25 Stanley, whether Morgan Stanley at the time

Page 15

1 Smith

2 you were being recruited had not engaged at

3 all in origination of loans?

4 A. Again I don't know.

5 Q. What were you told concerning

6 Morgan Stanley's business objectives with

7 respect to creating a capability of being in

8 the loan business?

9 A. I was told they, that they felt it

10 was important strategically to have a loan

11 origination distribution capability.

12 Q. In what way was it important

13 strategically to Morgan Stanley to have the

14 ability to originate and distribute loans?

15 A. They felt it was necessary to, they

16 felt that was necessary to compete against

17 the commercial banks.

18 Q. It was necessary to have this

19 capability to compete against the commercial

20 banks in what areas?

21 A. In leveraged finance, particularly

22 high yield.

23 Q. Did you -- was it your

24 understanding that Morgan Stanley believed it

25 was important to have the ability to

Page 16

1 Smith

2 originate and distribute loans in order to

3 compete with commercial banks for investment

4 banking assignments?

5 A. I don't know.

6 Q. Did Bankers Trust provide

7 investment banking services to its clients in

8 addition to the loan services?

9 A. They provided high yield.

10 Q. High yield investment banking

11 services?

12 A. High yield debt raising

13 capabilities.

14 Q. But did they engage in providing

15 investment banking services of the same sort

16 that firms such as Morgan Stanley provide to

17 clients?

18 A. They had investment banking

19 services.

20 Q. Was it your understanding that

21 Bankers Trust used its ability to also assist

22 clients in raising funds for purposes of

23 financing investment banking transactions to

24 compete for the investment banking side?

25 A. Is it my understanding, is that the

Page 17

1 Smith

2 question?

3 Q. Correct. Let me take a step back,

4 sir.

5 While you were at Bankers Trust you

6 were involved in assisting Bankers Trust

7 clients that didn't have investment grade

8 ratings in raising funds, correct?

9 A. Uhm-hmm.

10 Q. Did those activities involve

11 raising funds in connection with business

12 acquisitions?

13 A. Normally.

14 Q. In those transactions was it

15 sometimes the case that Bankers Trust was

16 also providing investment banking services?

17 A. Sometimes.

18 Q. Was it your experience that Bankers

19 Trust used your ability to assist clients in

20 raising funds for purposes of financing

21 acquisitions to also obtain the investment

22 banking side?

23 A. No.

24 Q. You were never involved in making

25 presentations with other Bankers Trust

Page 18

1 Smith
2 representatives who were seeking the
3 investment banking assignment, in which your
4 services were described as an additional
5 benefit that clients could realize by
6 retaining Bankers Trust for the investment
7 banking?
8 A. No.
9 Q. When you went to Morgan Stanley,
10 was it your experience that Morgan Stanley
11 used your ability to assist in raising funds
12 as a way in which to increase its
13 opportunities to be retained to provide
14 investment banking services?
15 A. No.
16 Q. When you first joined Morgan
17 Stanley, what efforts did you engage in to
18 assist Morgan Stanley in developing the
19 capability of originating and distributing
20 loans?
21 A. I set up the group to do that, so
22 recruited and hired people.
23 Q. How large a group did you assemble?
24 A. Probably about 20 at the peak.
25 Q. What would the peak point of time

Page 19

1 Smith
2 have been in terms of the staffing?
3 A. I would say about, probably around
4 2000-ish or so, plus or minus a year.
5 Q. When you joined Morgan Stanley what
6 was your title?
7 A. Managing director.
8 Q. Did you have any other titles?
9 A. I think I was president of Morgan
10 Stanley Senior Fund.
11 Q. Do you know during what time period
12 you had that title?
13 A. Pretty much the whole time I was
14 there.
15 Q. Did you hold any other titles?
16 A. No.
17 Q. Was Morgan Stanley Senior Funding
18 an entity that existed when you first joined
19 Morgan Stanley?
20 A. No.
21 Q. By what Morgan Stanley entity were
22 you employed?
23 A. The dealer-broker.
24 Q. Do you know the name of that
25 entity?

Page 20

1 Smith
2 A. No.
3 Q. Do you know if it is Morgan Stanley
4 & Company, Inc.?
5 A. I don't know.
6 Q. Do you know if you were an employee
7 of Morgan Stanley Senior Funding?
8 A. No.
9 Q. Let me ask a better question.
10 Were you an employee of Morgan
11 Stanley Senior Funding?
12 A. I don't know.
13 Q. Did you receive any compensation
14 for Morgan Stanley Senior Funding?
15 A. No.
16 Q. What were your responsibilities and
17 duties during the period you were employed by
18 Morgan Stanley?
19 A. To manage the loan origination and
20 distribution of it.
21 Q. Did you have any other duties?
22 A. I don't think so.
23 Q. Do you know if you were considered
24 to be assigned to the Morgan Stanley
25 Investment Banking Division?

Page 21

1 Smith
2 A. We were in a joint venture between
3 banking and fixed income.
4 Q. What was the nature of the joint
5 venture?
6 A. It was -- what do you mean?
7 Q. Well, you indicated that you were
8 involved in a joint venture between
9 investment banking and fixed income, correct?
10 A. Uhm-hmm.
11 Q. What was that joint venture?
12 A. Joint venture was, was capital
13 markets.
14 Q. Capital markets function was
15 considered to be a joint venture between
16 investment banking and fixed income?
17 A. Uhm-hmm.
18 Q. And capital markets included what,
19 sir?
20 A. Included the loan origination
21 business.
22 Q. Did it include anything else?
23 A. High yield origination, or high
24 yield capital markets is a better word to
25 think about it.

6 (Pages 18 to 21)

Page 22

1 Smith

2 Q. Anything else?

3 A. No.

4 Q. Loan origination would have been

5 your function, sir?

6 A. Yes.

7 Q. High yield capital markets, would

8 that have been part of your responsibilities

9 also?

10 A. No.

11 Q. Who was responsible for that

12 activity while you were at Morgan Stanley?

13 A. A couple of people. Steve Newhouse

14 and Bill Kourakos.

15 Q. Do you know how Mr. Kourakos spells

16 his name?

17 A. No. K-O-U-R-A-K-A-S.

18 Q. What does high yield capital

19 markets involve?

20 A. They are the liaisons between the

21 traders in high yield, the bankers that cover

22 the clients as well as the clients.

23 Q. High yield --

24 A. Is not investment grade securities.

25 Q. How is it different from the

Page 23

1 Smith

2 leveraged loans that you described?

3 A. They are securities, they weren't

4 loans.

5 Q. Can you give me an example of a

6 high yield security?

7 A. A bond.

8 Q. You indicated you were president of

9 Morgan Stanley Senior Funding?

10 A. Uhm-hmm.

11 Q. And if I understood your testimony,

12 Morgan Stanley Senior Funding did not exist

13 when you first joined Morgan Stanley?

14 A. Right.

15 Q. When was it formed?

16 A. It was formed pretty shortly after

17 I got there.

18 Q. Do you know why it was formed?

19 A. They -- it was felt -- we wanted,

20 the firm wanted a separate entity through

21 which to conduct its lending business.

22 Q. Whose idea was that?

23 A. Don't know.

24 Q. I take it it wasn't yours?

25 A. Unh-unh.

Page 24

1 Smith

2 Q. Do you know what entity within

3 Morgan Stanley owned Morgan Stanley Senior

4 Funding?

5 A. Nope.

6 Q. Do you know if Morgan Stanley

7 Senior Funding had any employees?

8 A. I don't know.

9 Q. What were your responsibilities as

10 the president of Morgan Stanley Senior

11 Funding?

12 A. My responsibilities was to, to

13 manage the loan origination business, and so

14 really nothing different than what I did.

15 Q. Do you know what businesses Morgan

16 Stanley Senior Funding engaged in?

17 A. It was a funding vehicle for loans.

18 Q. Did Morgan Stanley Senior Funding

19 engage in any business activities other than

20 the origination and distributing,

21 distribution of the leveraged loans that you

22 were responsible for?

23 A. Not that I know of.

24 Q. So as far as you're aware, the

25 entire business activity of Morgan Stanley

Page 25

1 Smith

2 Senior Funding was the business activity for

3 which you were responsible at Morgan Stanley?

4 A. Yes.

5 Q. Do you know where Morgan Stanley

6 Senior Funding is incorporated, what state?

7 A. No.

8 Q. Do you know if it's considered to

9 have a headquarters?

10 A. Do not.

11 Q. Do you know if it's considered to

12 have a principal place of business in a

13 particular location?

14 A. Do not.

15 Q. Were you ever a director of Morgan

16 Stanley Senior Funding?

17 A. I don't remember.

18 Q. Did Morgan Stanley Senior Funding

19 hold meetings of its board of directors?

20 A. Don't know.

21 Q. Other than yourself, do you know of

22 any individuals who held officer positions

23 with Morgan Stanley Senior Funding?

24 A. Yes, Steve Newhouse, Bill Kourakos.

25 Q. Anyone else?

7 (Pages 22 to 25)

Page 26

1 Smith

2 A. I'm sure there were other names. I

3 don't know if I remember.

4 Q. You know there were other officers,

5 you just don't know who they are at this

6 point?

7 A. No.

8 Q. Were you responsible as president

9 of Morgan Stanley Senior Funding, for

10 designating individuals as officers of that

11 entity?

12 A. No.

13 Q. Do you know who was?

14 A. No.

15 Q. Were the officers of Morgan Stanley

16 Senior Funding all employees of other Morgan

17 Stanley entities?

18 A. I -- to the best of my knowledge

19 they were all employees of Morgan Stanley. I

20 don't know anything more about it.

21 Q. Did any of your business

22 responsibilities, sir, at Morgan Stanley

23 involve activities other than the activities

24 of Morgan Stanley Senior Funding?

25 A. No.

Page 27

1 Smith

2 Q. How did your employment at Morgan

3 Stanley end?

4 A. What do you mean?

5 Q. You indicated your employment at

6 Morgan Stanley ended a couple of months

7 before you started at Bear Stearns, correct?

8 A. Uhm-hmm.

9 Q. And you indicated you didn't have a

10 position at Bear Stearns at the time you left

11 Morgan Stanley, correct?

12 A. Right.

13 Q. Were you asked to leave Morgan

14 Stanley?

15 A. Yup.

16 Q. When were you first asked to leave

17 Morgan Stanley?

18 A. Prior to Christmas of '02.

19 Q. Tell me the circumstances.

20 A. I was told that they were reducing

21 staff and I was going to be let go.

22 Q. With whom did you have that

23 conversation?

24 Was it a face-to-face conversation

25 with someone?

Page 28

1 Smith

2 A. No.

3 Q. Did you receive a written

4 communication?

5 A. Nope.

6 Q. Telephone call?

7 A. Telephone call.

8 Q. From whom did you receive the

9 telephone call?

10 A. Steve Newhouse.

11 Q. How long did your conversation with

12 Mr. Newhouse last?

13 A. 15 minutes.

14 Q. Tell me everything you can recall

15 Mr. Newhouse telling you during that

16 15-minute telephone call.

17 A. Described the situation facing the

18 company and it was a hard decision, but they

19 were reducing staff and that I was part of

20 that.

21 Q. Did Mr. Newhouse tell you anything

22 about how you were identified as one of the

23 people who would be let go?

24 A. No.

25 Q. Did he tell you anything about

Page 29

1 Smith

2 other people within your business group who

3 were being let go?

4 A. No.

5 Q. Were other people within your

6 business group at that time being let go at

7 the same time?

8 A. Not at that time.

9 Q. Now, at this point in time, Mr.

10 Smith, were you still president of Morgan

11 Stanley Senior Funding?

12 A. I was.

13 Q. Were you still the person primarily

14 responsible and in charge of the leveraged

15 loan business at Morgan Stanley?

16 A. No.

17 Q. Who was in charge of the business

18 at that point?

19 A. The fella in charge was, ultimately

20 was a fellow named Mitch Petrick.

21 Q. Can you recall anything else that

22 Mr. Newhouse told you during your 15-minute

23 conversation with him?

24 A. No.

25 Q. Did he offer you a severance

8 (Pages 26 to 29)

Page 30

1 Smith
2 package of any sort?
3 A. The firm did.
4 Q. What was that severance package?
5 A. The severance package was some
6 weeks of salary and some cash.
7 Q. Have you received all of those
8 payments?
9 A. I have received all of those
10 payments.
11 Q. Were they made as a lump sum at
12 some point?
13 A. They were.
14 Q. Do you recall the amount of the
15 payment?
16 A. I -- let's see. Yes, partially.
17 Q. What do you recall the lump sum
18 severance payment being?
19 A. It was about -- the gross was
20 about, I don't know, \$875,000.
21 Q. Other than the lump sum severance
22 payment, did you receive anything else by way
23 of a severance package?
24 A. No.
25 Q. Did Mr. Newhouse tell you that Mr.

Page 31

1 Smith
2 Petrick agreed with his decision?
3 A. No.
4 Q. Did Mr. Petrick's name come up
5 during the conversation?
6 A. No.
7 Q. Before this conversation with Mr.
8 Newhouse, had you at any point been asked to
9 consider looking elsewhere for
10 opportunities --
11 A. No.
12 Q. -- by anyone within Morgan Stanley?
13 A. No.
14 Q. Did this come, did Mr. Newhouse's
15 call to you come as a surprise?
16 A. Yup.
17 Q. Had your performance at Morgan
18 Stanley Senior Funding been criticized in any
19 way prior to your conversation with Mr.
20 Newhouse?
21 A. No.
22 Q. Did Mr. Newhouse explain why you
23 were the person chosen to be let go at that
24 point?
25 A. No.

Page 32

1 Smith
2 Q. Do you have any understanding
3 yourself today why you were the person chosen
4 to be let go in December of 2002?
5 A. No.
6 Q. Do you know if Mr. Petrick agreed
7 with Mr. Newhouse's decision to let you go?
8 A. No.
9 Q. Did you have any conversations with
10 Mr. Petrick concerning your conversation with
11 Mr. Newhouse?
12 A. Yes.
13 Q. When were those?
14 A. Right after the phone call with Mr.
15 Newhouse.
16 Q. Did you call Mr. Petrick?
17 A. Went to see him, yes.
18 Q. You had a face-to-face meeting with
19 Mr. Petrick?
20 A. Yes.
21 Q. Where was that?
22 A. In his office.
23 Q. And where is that?
24 A. At -- what is the address over
25 there? At Morgan Stanley.

Page 33

1 Smith
2 Q. It is here in Manhattan?
3 A. Yes.
4 Q. When did that meeting take place?
5 A. Right after the -- within a couple
6 of days of the phone call with Mr. Newhouse.
7 Q. So we are still before Christmas of
8 2002?
9 A. Before Christmas of 2002.
10 Q. Was anyone else present for your
11 meeting with Mr. Petrick?
12 A. No.
13 Q. Was the meeting in his personal
14 office?
15 A. Yes.
16 Q. How long did that meeting last?
17 A. Probably about five minutes.
18 Q. How was the meeting arranged?
19 Was there a prior arrangement? Let
20 me ask that question first.
21 A. I don't remember.
22 Q. You don't remember calling and
23 making an appointment to see Mr. Petrick or
24 telling him you wanted to be seen?
25 A. It might have been that, but pretty

9 (Pages 30 to 33)

Page 34

1 Smith

2 informal.

3 Q. Tell me everything you can recall

4 about your meeting with Mr. Petrick.

5 A. He asked if I had spoken to Mr.

6 Newhouse and then we talked about the

7 mechanics of the departure.

8 Q. Did you ask for an explanation for

9 the decision?

10 A. No.

11 Q. Did he offer one?

12 A. No.

13 Q. What was the purpose for your

14 wanting to meet with Mr. Petrick?

15 A. To go over the mechanics of the

16 departure.

17 Q. What were the mechanics that you

18 discussed with him?

19 A. When, and hand off of transactions

20 that I was working on to other members of the

21 team.

22 Q. What was agreed upon with respect

23 to the timing?

24 A. The first of February departure.

25 Q. And who took your responsibilities

Page 35

1 Smith

2 for the matters that you were handling?

3 A. It varied depending on who I was

4 working with on what transaction.

5 Q. At that point did you have any

6 administrative responsibilities for managing

7 the business?

8 A. No.

9 Q. When did Mr. Petrick become

10 president of Morgan Stanley Senior Funding?

11 A. I don't know. Don't know.

12 Q. Do you recall when he assumed your

13 responsibilities for managing the business

14 group?

15 A. It was in the middle, I think

16 middle of '02.

17 Q. The middle of October 2002?

18 A. No, middle of '02.

19 Q. Oh, middle of '02, I'm sorry.

20 Who made that decision?

21 A. Don't know.

22 Q. Was it your choice?

23 A. No.

24 Q. Had Mr. Petrick been working within

25 the Morgan Stanley Senior Funding business

Page 36

1 Smith

2 group?

3 A. No, he had been in high yield.

4 Q. How were you advised that he would

5 be assuming your responsibilities?

6 A. By one of his bosses.

7 Q. Do you recall who that was?

8 A. Zoe Cruz.

9 Q. Could you move your hand down from

10 there?

11 A. Sure.

12 Q. Sorry.

13 Zoe Cruz you said?

14 A. Uhm-hmm.

15 Q. Is Zoe Cruz a woman?

16 A. Yes.

17 Q. What did Miss Cruz tell you?

18 A. That they had -- she had decided,

19 the firm had decided to let Mr. Petrick run

20 the loan business.

21 Q. Did you have a face-to-face

22 conversation with Miss Cruz?

23 A. Yes.

24 Q. Was anyone else present for that?

25 A. No.

Page 37

1 Smith

2 Q. How long before Mr. Petrick took

3 over your responsibilities did this

4 conversation occur?

5 A. Oh, days I guess.

6 Q. But very shortly?

7 A. Very shortly.

8 Q. What did Miss Cruz tell you for the

9 reason for this change of assignment?

10 A. That he was very capable, that they

11 wanted to expand the effort and that she

12 wanted him to do it.

13 Q. What did she mean by "expand the

14 effort," the firm wanted to expand the

15 effort?

16 MR CLARE: Objection, calls for

17 speculation.

18 Q. What was your understanding?

19 A. They wanted to get into the

20 investment grade lending business.

21 Q. Did she say that to you during this

22 meeting?

23 A. No.

24 Q. That was your understanding though?

25 A. Uhm-hmm.

10 (Pages 34 to 37)

Page 38

1 Smith

2 Q. Were you pleased with this change

3 of circumstances?

4 A. Not entirely.

5 Q. Did you express any disappointment

6 to Miss Cruz?

7 A. Nope.

8 Q. Why were you not entirely pleased?

9 A. Because it would be a change in my

10 situation.

11 Q. Did you consider this to be a

12 demotion?

13 A. Yes.

14 Q. Did you discuss this change of

15 assignment with anyone else in senior

16 management Morgan Stanley, other than Miss

17 Cruz?

18 A. No.

19 Q. Prior to the assignment, your

20 reassignment and Mr. Petrick's appointment to

21 the position of president of Morgan Stanley

22 Senior Funding, had you been asked to attempt

23 to expand the business activities of Morgan

24 Stanley Senior Funding in ways that you had

25 been unable to accomplish?

Page 39

1 Smith

2 A. No.

3 Q. Who evaluated your performance at

4 Morgan Stanley? Excuse me, during the time

5 you were employed at Morgan Stanley, 1996

6 through February of 2003, who was responsible

7 for evaluating your performance?

8 A. Various people.

9 Q. Can you identify them for me?

10 A. Steve Newhouse, Bill Kourakos.

11 Take a step back. Normally I would have two

12 evaluators, so it would be Newhouse and

13 somebody from fixed income and Kourakos and

14 somebody from fixed income. Towards the end

15 it was Alan Jones and Mitch Petrick.

16 Q. Was Mr. Petrick the fixed income

17 representative?

18 A. He was the fixed income

19 representative.

20 Q. And the other person responsible

21 for your evaluation was from what part of the

22 business?

23 A. That would be from the high yield

24 capital markets area.

25 Q. Were you evaluated on an annual

Page 40

1 Smith

2 basis?

3 A. Yes.

4 Q. More often than annual?

5 A. I don't think so.

6 Q. What was the form this evaluation

7 took?

8 A. It was written and it was a

9 meeting.

10 Q. Prior to February '03 do you

11 remember receiving any criticism relating to

12 any aspect of your work during your annual

13 evaluations?

14 A. No.

15 Q. Do you consider yourself to be --

16 let me focus on the time period that we're

17 talking about here, Mr. Smith.

18 In 1998 did you consider yourself

19 to be highly sophisticated with respect to

20 underwriting leveraged loans?

21 MR. CLARE: Object to the form of

22 the question.

23 A. I don't know what you mean.

24 Q. Had your career up until 1998, Mr.

25 Smith, involved underwriting leveraged loans?

Page 41

1 Smith

2 A. Yes.

3 Q. How experienced did you consider

4 yourself to be in the first part of 1998 with

5 respect to that business activity?

6 A. Pretty experienced.

7 Q. Would you consider yourself to be

8 highly knowledgeable with respect to the

9 process of underwriting large leveraged loans

10 first quarter of 1998?

11 A. Yes.

12 Q. That had been your entire career,

13 had it not?

14 A. Well, I used to fly helicopters.

15 Q. Subsequent to leaving the air force

16 that had been your entire business career,

17 correct?

18 A. The last half of the Morgan

19 Stanley -- I mean the last half of Bankers

20 Trust, yes.

21 Q. So approximately?

22 A. Ten years.

23 Q. Ten years at Bankers Trust?

24 A. Trust.

25 Q. Plus three years of Morgan Stanley?

Page 42

1 Smith

2 A. Uhm-hmm.

3 Q. Have you ever been deposed before,

4 Mr. Smith?

5 A. I have.

6 Q. On how many occasions?

7 A. I guess a couple.

8 Q. What did those occasions involve?

9 A. One was a personnel matter and the

10 other was about this.

11 Q. What did the personnel matter

12 involve?

13 A. Oh, lawsuit.

14 Q. By a Morgan Stanley employee?

15 A. Nothing to do with Morgan Stanley.

16 Q. Was it at Bankers Trust?

17 A. Bankers Trust.

18 Q. What kind of personnel lawsuit was

19 it?

20 A. I don't really know. I was just

21 called in as a witness.

22 Q. What was your involvement, why were

23 you called as a witness?

24 A. I worked with the individual.

25 Q. Were any of the claims being made

Page 43

1 Smith

2 in that employment dispute by the Bankers

3 Trust employee related to your treatment of

4 the individual?

5 A. No.

6 Q. You indicated you have been deposed

7 previously relating to Sunbeam?

8 A. Uhm-hmm.

9 Q. When was that?

10 MR. CLARE: A point of

11 clarification, I'm not sure the witness is

12 using deposed in the same way that you are,

13 so you may want to ask a clarifying question

14 or give a clarifying answer to make sure

15 we're clear about the terms we are using.

16 MR. MARKOWSKI: I'll try to do

17 that.

18 Q. Have you testified previously

19 relating to Sunbeam?

20 A. I have.

21 Q. What were the circumstances?

22 A. With the U.S. Attorney.

23 Q. Have you testified in a Grand Jury

24 proceeding?

25 A. No.

Page 44

1 Smith

2 Q. What was the nature of the U.S.

3 Attorney's, what was the nature of the

4 testimony you gave relating to activities of

5 the U.S. Attorney's Office?

6 MR. CLARE: I'll object. Maybe I

7 can shortcut some of this. And you're free

8 to follow up with him. Mr. Smith gave an

9 interview to the U.S. Attorney's Office. It

10 was not testimony in any formal sense, it was

11 an interview that was granted.

12 THE WITNESS: Thank you.

13 Q. Was a court reporter present?

14 A. No.

15 Q. Do you remember when this occurred?

16 A. Three or four years ago.

17 Q. How -- the Sunbeam transactions, to

18 put this in context, closed in the first

19 quarter of 1998?

20 A. Uhm-hmm.

21 Q. Do you recall how soon in

22 relationship to first quarter of 1998 you

23 were interviewed by the U.S. Attorney's

24 Office?

25 A. I assume it would be three or four

Page 45

1 Smith

2 years ago. It would be around '01 or '00, so

3 it would be two or three years afterwards,

4 but that is a very hazy recollection.

5 Q. So that was years after the close

6 of the transactions that you were interviewed

7 by the U.S. Attorney's Office?

8 A. Uhm-hmm.

9 Q. Do you know why U.S. Attorney's

10 Office wanted to interview you?

11 MR. CLARE: Objection, calls for

12 speculation.

13 A. No.

14 Q. How much time did you spend in this

15 interview?

16 A. About a day and a half.

17 Q. Were you represented by counsel?

18 A. I was.

19 Q. Was it an in-house attorney by

20 Morgan Stanley?

21 A. No.

22 Q. Who represented you?

23 A. Wachtel, I think.

24 Q. Were any in-house Morgan Stanley

25 lawyers present for the interview?

12 (Pages 42 to 45)

Page 46

1 Smith

2 A. I don't think so.

3 Q. What subjects were you interviewed

4 about?

5 A. Different facets of the

6 transaction.

7 Q. "The transaction" in this case

8 being what?

9 A. Being the Sunbeam acquisition and

10 financing.

11 Q. The Sunbeam acquisition you're

12 referring to is what?

13 A. Of Coleman and the other two

14 properties.

15 Q. And the financing in this context?

16 A. Would be the loan.

17 Q. The senior loan?

18 A. The senior loan.

19 Q. When you refer to "senior loan,"

20 the senior loan is the loan that Morgan

21 Stanley Senior Funding made to Sunbeam in

22 connection with the acquisition?

23 A. Along with two other existing

24 lenders, Bank of America and Wachovia, yeah.

25 Or First Union at the time.

Page 47

1 Smith

2 Q. Were there any other matters that

3 you were interviewed about other than those

4 two general topics?

5 A. Nope.

6 Q. Do you know how you were chosen for

7 this interview?

8 A. I have no idea.

9 Q. Do you know if you were volunteered

10 by Morgan Stanley or --

11 A. I have no idea.

12 Q. Excuse me, or someone at the U.S.

13 Attorney's Office specifically requested you?

14 A. Don't know.

15 Q. Do you know what the U.S.

16 Attorney's Office was attempting to

17 investigate?

18 MR. CLARE: Objection, calls for

19 speculation.

20 A. No.

21 Q. What was your understanding?

22 A. Didn't have any.

23 Q. Were you told whether Morgan

24 Stanley's conduct was in question?

25 MR. CLARE: Object. You can

Page 48

1 Smith

2 answer the question, but I would instruct you

3 to limit your answer to exclude any

4 conversations or any other information that

5 you learned from in-house Morgan Stanley

6 counsel or outside counsel representing

7 Morgan Stanley at the time. Those

8 conversations are privileged, you're not

9 required to disclose them. I'm instructing

10 you not to disclose them.

11 To the extent you have an

12 understanding outside of any of those

13 privileged communications you are free to

14 answer Mr. Markowski's question.

15 A. What is your question again?

16 Q. Did you have any understanding

17 whether Morgan Stanley's conduct was in

18 question?

19 A. No comment.

20 Q. Sorry?

21 A. No comment.

22 Q. No comment? I'm not sure I know

23 what no comment means.

24 A. I guess I would be following his

25 advice.

Page 49

1 Smith

2 Q. Is your testimony that other than

3 things you were told by Morgan Stanley's

4 attorneys, you don't have any independent

5 understanding whether Morgan Stanley's

6 conduct was under investigation?

7 A. That would be right.

8 Q. Sir, I think it would be useful for

9 the court reporter if you let me finish my

10 questions before you start to answer them. I

11 know it is very natural for you to anticipate

12 where I'm going and provide the answer.

13 A. You're right, I'm sorry.

14 Q. But it is easier for the court

15 reporter if we speak one at a time.

16 THE WITNESS: Do you think we can

17 take a break now?

18 MR. CLARE: Sure.

19 THE VIDEOGRAPHER: The time is

20 10:21, we're going off the record.

21 (Recess taken.)

22 THE VIDEOGRAPHER: The time is

23 10:26, we're back on the record.

24 BY MR. MARKOWSKI:

25 Q. Mr. Smith, other than this day and

<p style="text-align: right;">Page 50</p> <p>1 Smith</p> <p>2 a half interview with the U.S. Attorney's</p> <p>3 Office, have you been interviewed by anybody</p> <p>4 else relating to the Sunbeam transactions?</p> <p>5 A. No.</p> <p>6 Q. The U.S. Attorney's Office involved</p> <p>7 in your interview, was that U.S. Attorney's</p> <p>8 Office here in Manhattan?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know if any representatives</p> <p>11 of the Securities and Exchange Commission</p> <p>12 were present for that interview?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you remember with whom at U.S.</p> <p>15 Attorney's Office you met?</p> <p>16 A. No.</p> <p>17 Q. Did you take any notes of the</p> <p>18 discussion that you had with U.S. Attorney's</p> <p>19 Office?</p> <p>20 A. No.</p> <p>21 Q. Can you tell me generally what the</p> <p>22 U.S. Attorney's Office was interested in</p> <p>23 learning from you?</p> <p>24 A. They were interested in issues</p> <p>25 surrounding the financing of the loan that</p>	<p style="text-align: right;">Page 52</p> <p>1 Smith</p> <p>2 Q. During the course of this day and a</p> <p>3 half interview at the U.S. Attorney's Office</p> <p>4 did you express the view that Morgan Stanley</p> <p>5 Senior Funding had been the victim of fraud</p> <p>6 with respect to the loan it made to Sunbeam?</p> <p>7 A. I don't really remember.</p> <p>8 Q. As you sit here today, you don't</p> <p>9 remember whether during the day and a half</p> <p>10 interview with the U.S. Attorney's Office you</p> <p>11 indicated that you believe Morgan Stanley</p> <p>12 Senior Funding had been the victim of a loan,</p> <p>13 the victim of a fraud with respect to its</p> <p>14 loan to Sunbeam; is that correct?</p> <p>15 A. Well, what, I think a better way to</p> <p>16 put it was that the three banks were -- I</p> <p>17 don't know if I ever used the word "fraud" --</p> <p>18 were misled by what we were told with the</p> <p>19 financial condition of the company.</p> <p>20 Q. Financial condition of the company</p> <p>21 in this context is Sunbeam?</p> <p>22 A. Sunbeam.</p> <p>23 Q. Do you recall that you did indicate</p> <p>24 that you believe Morgan Stanley Senior</p> <p>25 Funding had been misled by Sunbeam related to</p>
<p style="text-align: right;">Page 51</p> <p>1 Smith</p> <p>2 we, Bank of America and First Union, made.</p> <p>3 Q. Do you know if this inquiry being</p> <p>4 conducted by the U.S. Attorney's Office was</p> <p>5 being initiated at the request of Morgan</p> <p>6 Stanley or Morgan Stanley Senior Funding?</p> <p>7 MR CLARE: Objection, calls for</p> <p>8 speculation.</p> <p>9 A. I do not know.</p> <p>10 MR CLARE: Make sure you just</p> <p>11 give me a chance to give my objection.</p> <p>12 THE WITNESS: I'm sorry.</p> <p>13 Q. Do you know if it was initiated at</p> <p>14 the request of First Union or Bank of</p> <p>15 America?</p> <p>16 MR CLARE: Same objection.</p> <p>17 A. Don't know.</p> <p>18 Q. During the course of the day and a</p> <p>19 half that you spent with the U.S. Attorney's</p> <p>20 Office with this interview, Mr. Smith, did</p> <p>21 you express the view that Morgan Stanley</p> <p>22 Senior Funding had been the victim of fraud</p> <p>23 in connection with the loan that it made to</p> <p>24 Sunbeam?</p> <p>25 A. I'm sorry, say that again, please.</p>	<p style="text-align: right;">Page 53</p> <p>1 Smith</p> <p>2 its financial condition?</p> <p>3 A. I think I said that Morgan Stanley</p> <p>4 and the other lenders were misled.</p> <p>5 Q. Did you explain what, in what way</p> <p>6 you thought Morgan Stanley Senior Funding had</p> <p>7 been misled?</p> <p>8 A. I remember that I said that I felt</p> <p>9 that the three banks were misled by the</p> <p>10 financial statements as well as</p> <p>11 representations made by the company.</p> <p>12 Q. The financial statements you are</p> <p>13 referring to are the audited financial</p> <p>14 statements of Sunbeam?</p> <p>15 A. Yes.</p> <p>16 Q. What representations by management</p> <p>17 did you tell the U.S. Attorney's Office you</p> <p>18 believe were misleading?</p> <p>19 A. I don't remember the specifics.</p> <p>20 Q. Do you remember if you offered</p> <p>21 specifics to the U.S. Attorney's Office with</p> <p>22 respect to statements made to Morgan Stanley</p> <p>23 Senior Funding by Sunbeam management that you</p> <p>24 considered to be misleading?</p> <p>25 A. No, I cannot remember.</p>

14 (Pages 50 to 53)

Page 54

1 Smith

2 Q. Did you indicate to the U.S.

3 Attorney's Office whether any of the

4 information that Morgan Stanley had received

5 from or relating to Coleman company was

6 misleading?

7 A. I don't recall.

8 Q. So as you sit here today you don't

9 recall telling the U.S. Attorney's Office

10 that you remember receiving misleading

11 information from Coleman?

12 A. I don't recall ever telling them

13 that.

14 Q. Is the only misleading information

15 you advised the U.S. Attorney's Office you

16 believe Morgan Stanley Senior Funding had

17 received had come from Sunbeam and related to

18 Sunbeam; is that correct?

19 MR. CLARE: Objection, misstates

20 his testimony.

21 A. It what?

22 MR. CLARE: I objected that it

23 misstates your prior testimony. You can

24 answer.

25 THE WITNESS: What was my prior

Page 55

1 Smith

2 testimony?

3 MR. MARKOWSKI: Can you read the

4 pending question, please.

5 (Record read.)

6 A. Well, no, because they also had the

7 financial statements.

8 Q. Let me break it down.

9 You told the U.S. Attorney's Office

10 that you believe Morgan Stanley Senior

11 Funding had received misleading information

12 from Sunbeam management, correct?

13 A. Yeah, the three banks had received

14 misleading information.

15 Q. And that misleading information

16 related to Sunbeam itself, correct?

17 A. Yes.

18 Q. And you also told the U.S.

19 Attorney's Office that you believe Sunbeam's

20 own financial statements were misleading,

21 correct?

22 A. Yes.

23 Q. And those financial statements

24 relate to Sunbeam itself, correct?

25 A. Yes.

Page 56

1 Smith

2 Q. Is there any other misleading

3 information that you recall advising the U.S.

4 Attorney's Office of that related to the

5 loans that Morgan Stanley Senior Funding

6 received?

7 A. I don't recall anything.

8 Q. Are you familiar with the lawsuit

9 that my client Coleman (Parent) Holdings has

10 filed against Morgan Stanley, sir?

11 A. You mean the one we are here for

12 now?

13 Q. Correct.

14 A. A little bit.

15 Q. What's your understanding of that

16 lawsuit?

17 A. That you're suing Morgan Stanley,

18 that is about it.

19 Q. Do you have any understanding of

20 what the nature of the claims are that my

21 client's asserting against Morgan Stanley?

22 A. Not directly.

23 Q. When you say "not directly," what

24 do you mean?

25 A. No, not -- no.

Page 57

1 Smith

2 Q. Do you understand that my client is

3 alleging that Morgan Stanley misled Coleman

4 (Parent) Holdings in connection with the sale

5 of its interest in Coleman company to

6 Sunbeam?

7 A. Yes, I guess I have heard that.

8 Q. Have you had any discussions with

9 Morgan Stanley personnel relating to Coleman

10 (Parent's) lawsuit?

11 A. No. Well, I guess we had that

12 lawyer from Morgan Stanley, the guy who

13 contacted me, the people who contacted me

14 about showing up here. That would be it.

15 Q. Okay. Other than being advised

16 that we wanted to take your deposition, you

17 have not?

18 A. Nope.

19 Q. Sir, if you let me finish my

20 questions, --

21 A. I'm sorry.

22 Q. -- we'll try and get through this.

23 Other than the telephone call you

24 received from an in-house lawyer at Morgan

25 Stanley advising you we wanted to take your

Page 58

1 Smith
2 deposition, you have not had any discussions
3 with any Morgan Stanley personnel relating to
4 my client's claims against Morgan Stanley?
5 A. Had a face-to-face meeting with a
6 lawyer from Morgan Stanley.
7 Q. When was that?
8 A. It was yesterday.
9 Q. That was to prepare for your
10 testimony today?
11 A. That was to prepare for the
12 testimony today.
13 Q. Other than that conversation, have
14 you had any discussions with anyone at Morgan
15 Stanley relating to my client's claims?
16 A. No.
17 Q. What did you do to prepare for your
18 testimony today, sir?
19 A. Sat down with counsel and reviewed
20 documents.
21 Q. And on what occasions did you meet
22 with counsel to prepare for today?
23 A. I'm sorry, on what occasion?
24 Q. Right.
25 A. You mean like when?

Page 59

1 Smith
2 Q. Yes.
3 A. Yesterday.
4 Q. Any other occasions?
5 A. No.
6 Q. With whom did you meet yesterday?
7 A. With this attorney from Morgan
8 Stanley and counsel.
9 Q. With Mr. Clare?
10 A. Mr. Clare.
11 Q. Do you remember the name of the
12 in-house person at Morgan Stanley?
13 A. Jim Doyle?
14 MR. CLARE: If you remember.
15 A. That's all I remember.
16 Q. Anyone else present at the
17 meetings?
18 A. No.
19 Q. Where did it take place?
20 A. It took place at Bear Stearns.
21 Q. How long did you meet with him?
22 A. About several hours.
23 Q. Can you tell me approximately how
24 many?
25 A. Three-plus.

Page 60

1 Smith
2 Q. Did they show you some documents?
3 A. Yes.
4 Q. Did any of those documents refresh
5 your recollection on matters?
6 A. In a limited way I guess.
7 Q. What documents did they show you
8 that refreshed your recollection?
9 A. There was a variety of documents.
10 It included the offering memorandum on the
11 bank transaction, some press releases, that
12 type of thing.
13 Q. Did they review any testimony of
14 others with you?
15 A. No.
16 Q. Did they review notes of the
17 meeting that had taken place at the U.S.
18 Attorney's Office?
19 A. No.
20 Q. Do you know if either Mr. Doyle or
21 Mr. Clare had notes relating to the interview
22 you had given to the U.S. Attorney's office?
23 A. No idea.
24 Q. Other than the documents that you
25 were shown during the course of this session

Page 61

1 Smith
2 yesterday with Mr. Doyle and Mr. Clare, did
3 you spend any other time reviewing documents?
4 A. No.
5 Q. Did you use E-mail to communicate
6 back in 1998, sir, while you were at Morgan
7 Stanley?
8 A. No, I don't remember doing it.
9 Q. Did you ever use E-mail while you
10 were at Morgan Stanley?
11 A. Limitly, in a limited manner.
12 Q. During what time period?
13 A. Mostly towards the last two or
14 three years.
15 Q. When you left Morgan Stanley in
16 2003 did you have a personal computer at the
17 office?
18 A. Yes.
19 Q. Do you know whether there were any
20 E-mails or electronic documents on that
21 computer that related in any way to the
22 Sunbeam transactions?
23 A. I do not.
24 Q. So it is possible that your
25 personal computer could have had E-mails or

16 (Pages 58 to 61)

Page 62

1 Smith

2 electronic documents relating to the Sunbeam

3 transaction?

4 A. I'm not a computer genius, but the

5 computer I had was, I only had for a couple

6 of years, so I guess it is not.

7 Q. But you don't know?

8 A. Don't know for sure, no.

9 Q. When you left do you know what

10 happened to your personal computer?

11 A. I do not.

12 Q. You didn't take it with you?

13 A. No, it wasn't mine.

14 Q. Do you know if anyone took any

15 steps to preserve the contents of that

16 computer when you left?

17 A. I do not.

18 Q. Do you know if that computer was

19 reviewed at any time after my client filed

20 its lawsuit against Morgan Stanley in 2003,

21 to determine whether it had on it any

22 documents relating to Sunbeam?

23 MR. CLARE: Objection, no

24 foundation, calls for speculation.

25 A. No idea.

Page 63

1 Smith

2 Q. You don't know one way or the

3 other?

4 A. No.

5 Q. You have no knowledge of it being

6 reviewed at least; is that correct?

7 A. No.

8 Q. Mr. Smith, when did you first

9 become aware that a team of Morgan Stanley

10 investment bankers was working with Sunbeam?

11 A. Tough to say, long time ago. My

12 recollection would be that it would be early

13 '98.

14 Q. Is there a particular event that

15 you relate your first knowledge of Morgan

16 Stanley investment bankers working with

17 somebody?

18 A. The event would be a phone call

19 from Bill Strong inquiring whether our

20 interest in arranging a potential financing

21 for Sunbeam in connection with some

22 acquisitions.

23 Q. Did he identify the potential

24 acquisitions?

25 A. I don't recall.

Page 64

1 Smith

2 Q. Do you recall if those acquisitions

3 turned out to be the acquisition of Coleman

4 company, First Alert, Signature Brand?

5 A. Could have been. It is very

6 general and the conversation like this I had

7 all the time about potential acquisitions, so

8 I think in this case it is still a formative

9 stage.

10 Q. You don't recall as you sit here

11 today whether this call from Mr. Strong

12 related to whether you were interested in

13 potentially structuring financing for

14 Sunbeam's acquisition for some company other

15 than the three companies it ended up

16 acquiring?

17 A. Maybe I'll put it a different way.

18 I think those companies were mentioned. It

19 was unclear whether it was going to be all

20 three, two of them or one.

21 Q. But it ended up being, the

22 financing that Mr. Strong was inquiring about

23 ended up being the financing that was in fact

24 put in place by your group, right?

25 A. For those three properties.

Page 65

1 Smith

2 Q. Did you have any knowledge that Mr.

3 Strong and others were working with Sunbeam

4 earlier with respect to other potential

5 target companies?

6 A. Not then.

7 Q. Were you involved in any Sunbeam

8 activities in 1997 that you can recall?

9 A. 1997, no. I do not recall being

10 involved.

11 Q. Do you believe that you were not?

12 A. I believe I was not.

13 Q. Were you aware that Morgan

14 Stanley's ability to arrange large amounts of

15 financing was being promoted to Sunbeam by

16 Morgan Stanley investment bankers as a reason

17 for retaining Morgan Stanley to provide

18 investment banking services?

19 A. I was not.

20 Q. Were you aware that in August of

21 1997 you were identified as a member of the

22 Morgan Stanley Sunbeam team?

23 A. No.

24 Q. Would it surprise you that without

25 your knowledge you have been identified by

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 Smith</p> <p>2 Morgan Stanley investment bankers as being a</p> <p>3 member of the Sunbeam team?</p> <p>4 MR. CLARE: Objection to form and</p> <p>5 foundation. You can answer.</p> <p>6 A. I don't know how to answer. Does</p> <p>7 it surprise me? A little bit I guess.</p> <p>8 Q. Mr. Smith, I'm going to show you</p> <p>9 what we're going to mark as Coleman (Parent)</p> <p>10 Holdings Exhibit 151, it's a document that</p> <p>11 bears Bates number Morgan Stanley</p> <p>12 confidential 65651 through 6574.</p> <p>13 (Coleman (Parent) Holdings Exhibit</p> <p>14 151, document that bears Bates number</p> <p>15 Morgan Stanley confidential 65651</p> <p>16 through 6574, marked for</p> <p>17 identification, as of this date.)</p> <p>18 Q. I would like you to look at it</p> <p>19 briefly just to tell me, first of all,</p> <p>20 whether you recall ever seeing that document</p> <p>21 before.</p> <p>22 A. Is this all one document or is this</p> <p>23 several put together?</p> <p>24 Q. As far as I'm aware it is one</p> <p>25 document, but I could be mistaken about that.</p>	<p style="text-align: right;">Page 68</p> <p>1 Smith</p> <p>2 A. Yes.</p> <p>3 Q. Along with Michael Hart's and</p> <p>4 Michael McLaughlin, right?</p> <p>5 A. Yes.</p> <p>6 Q. Can you tell me who Michael Hart</p> <p>7 and Michael McLaughlin are?</p> <p>8 A. Michael Hart and Michael McLaughlin</p> <p>9 were vice presidents who worked as loan</p> <p>10 originators in the loan capital, for me in</p> <p>11 the loan group.</p> <p>12 Q. They were two Morgan Stanley</p> <p>13 employees who worked for you?</p> <p>14 A. Right.</p> <p>15 Q. Does this refresh your recollection</p> <p>16 that you're identified Sunbeam in the summer</p> <p>17 of 1997, as part of the Morgan Stanley team</p> <p>18 for Project Laser?</p> <p>19 A. I guess I would put it another way</p> <p>20 since I have never seen this before, so this</p> <p>21 is my first observation of this and I see my</p> <p>22 name as well as 15 other people here.</p> <p>23 This looks very similar to a lot of</p> <p>24 the pitches Morgan Stanley put together just</p> <p>25 listing people in different areas.</p>
<p style="text-align: right;">Page 67</p> <p>1 Smith</p> <p>2 It is the way we received it.</p> <p>3 A. I don't recollect seeing this.</p> <p>4 Q. You see it's labelled in the first</p> <p>5 page "Project Laser Discussion Material</p> <p>6 August 8, 1997"?</p> <p>7 A. Uhm-hmm.</p> <p>8 Q. Do you recall Morgan Stanley's work</p> <p>9 for Sunbeam was referred to as Project Laser?</p> <p>10 A. Yes.</p> <p>11 Q. Let me direct your attention to the</p> <p>12 page where it has Bates number 65772, it is</p> <p>13 towards the end of the document.</p> <p>14 A. Towards the end of it?</p> <p>15 Q. 772, correct.</p> <p>16 A. Uhm-hmm.</p> <p>17 Q. Do you see that page is entitled</p> <p>18 "Project Laser, the Morgan Stanley team"?</p> <p>19 A. Yes.</p> <p>20 Q. You see in the bottom left-hand</p> <p>21 corner there is a box for debt capital</p> <p>22 markets banks?</p> <p>23 A. Yes.</p> <p>24 Q. And your name appears there,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 69</p> <p>1 Smith</p> <p>2 You will also notice here they had</p> <p>3 people from the credit function and people</p> <p>4 from Princess Gate on this, so I would view</p> <p>5 this as a very generic pitch page.</p> <p>6 Q. Do you know what the purpose would</p> <p>7 be of listing your group?</p> <p>8 A. No, I would not.</p> <p>9 Q. Let me direct your attention to the</p> <p>10 next page of this document, it bears Bates</p> <p>11 65773. It is entitled "Project Laser Global</p> <p>12 Leveraged Lending Capabilities." It states</p> <p>13 "Morgan Stanley has the ability to provide</p> <p>14 below investment grade clients with financing</p> <p>15 at every level of the capital structure."</p> <p>16 Do you understand that?</p> <p>17 A. Yes.</p> <p>18 Q. Was it your understanding that</p> <p>19 Sunbeam was a below investment grade company?</p> <p>20 MR. CLARE: During what time</p> <p>21 period?</p> <p>22 MR. MARKOWSKI: 1997, 1998.</p> <p>23 A. Again I didn't know that this was</p> <p>24 done. I don't know what Sunbeam's credit</p> <p>25 ratings were at that time, investment grade,</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 Smith</p> <p>2 noninvestment grade.</p> <p>3 Q. Do you see the entry that reads</p> <p>4 "seasoned leverage lending professionals"?</p> <p>5 A. Yes.</p> <p>6 Q. I would like you to read that, the</p> <p>7 description next to that to yourself. It has</p> <p>8 the words "Groups of 12 dedicated</p> <p>9 professionals"?</p> <p>10 A. Uhm-hmm.</p> <p>11 Q. Does that accurately describe your</p> <p>12 group at the time?</p> <p>13 A. Yes.</p> <p>14 Q. Below that there is another heading</p> <p>15 that reads "Armed With One-Stop Shopping."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Would you read that to yourself</p> <p>19 also. Let me read it into the record, so it</p> <p>20 is clear what we're talking about.</p> <p>21 It reads "Seamless execution</p> <p>22 coordinated among MSSF, Morgan Stanley's</p> <p>23 bridge and private equity funds and top rank</p> <p>24 high yield public equity M&A groups."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 72</p> <p>1 Smith</p> <p>2 A. I think the investment banking</p> <p>3 function is broader, but I don't know.</p> <p>4 Is there investment banking listed</p> <p>5 here?</p> <p>6 Q. Was it common for Morgan Stanley</p> <p>7 investment bankers to represent to potential</p> <p>8 clients that Morgan Stanley both could</p> <p>9 provide investment banking advisory services</p> <p>10 and then assist the company directly or</p> <p>11 indirectly in raising the funds necessary to</p> <p>12 complete the acquisitions that were arranged</p> <p>13 through the investment banking group?</p> <p>14 MR. CLARE: Objection, calls for</p> <p>15 speculation.</p> <p>16 A. Yes, I mean I obviously wasn't on</p> <p>17 every page so I have no idea how common or</p> <p>18 uncommon it was.</p> <p>19 Q. You were part of the financing</p> <p>20 activity. Was it something that you</p> <p>21 understood to be taking place?</p> <p>22 A. When you say "taking place," do you</p> <p>23 mean taking place 1 percent of the time, 2</p> <p>24 percent of the time.</p> <p>25 Q. Common?</p>
<p style="text-align: right;">Page 71</p> <p>1 Smith</p> <p>2 A. Yes.</p> <p>3 Q. Do you have any understanding what</p> <p>4 the reference to one-stop shopping means in</p> <p>5 the context of this statement?</p> <p>6 A. The, again this was a standard</p> <p>7 pitch page that was included in a lot of</p> <p>8 presentations to companies.</p> <p>9 The idea here was that a variety of</p> <p>10 services could be provided by Morgan Stanley,</p> <p>11 very similar to what our competitors were</p> <p>12 also tallying at the time.</p> <p>13 Q. And those activities would range</p> <p>14 from what, sir, to what in this context?</p> <p>15 A. In this context where you just read</p> <p>16 it would include Morgan Stanley Senior</p> <p>17 Funding, Morgan Stanley bridge, private</p> <p>18 equity, high yield, public equity, and M&A.</p> <p>19 Q. The reference to M&A is to what</p> <p>20 function, sir, do you know?</p> <p>21 Do you have any understanding?</p> <p>22 A. I guess it would be mergers and</p> <p>23 acquisitions.</p> <p>24 Q. Is that sometimes referred to as</p> <p>25 the investment banking function?</p>	<p style="text-align: right;">Page 73</p> <p>1 Smith</p> <p>2 A. I don't know what common means.</p> <p>3 Q. Was it your understanding that</p> <p>4 Morgan Stanley -- let me take a step back,</p> <p>5 sir.</p> <p>6 Was it your understanding that one</p> <p>7 of the reasons why Morgan Stanley wanted you</p> <p>8 to come to Morgan Stanley to establish the</p> <p>9 ability to fund leveraged loans and to</p> <p>10 syndicate them, was to assist Morgan Stanley</p> <p>11 in obtaining investment banking related</p> <p>12 engagements?</p> <p>13 A. My understanding was that they want</p> <p>14 to have the leverage loan capability to help</p> <p>15 them garner more high yield business per se.</p> <p>16 Q. Did you understand another</p> <p>17 objective was to obtain more investment</p> <p>18 banking engagements as a result of the</p> <p>19 ability to provide that kind of funding?</p> <p>20 A. No.</p> <p>21 Q. That was never expressed to you as</p> <p>22 an objective?</p> <p>23 A. No, it was not.</p> <p>24 Q. Were you aware that --</p> <p>25 A. Excuse me, are we finished with</p>

19 (Pages 70 to 73)

Page 74

1 Smith

2 this?

3 Q. Yes.

4 Q. You were aware that the Morgan

5 Stanley investment banking team was concerned

6 that it might lose the financing assignments

7 relating to any acquisitions Sunbeam obtained

8 to Chase Securities?

9 A. I don't know if I would have worded

10 it that way. I think they felt that Chase

11 was a competitor that could get the financing

12 business because of their existing

13 relationship with Sunbeam.

14 Q. You understood that Chase

15 Securities had an existing relationship with

16 Sunbeam?

17 A. Yes, I did, as did First Union and

18 Bank of America.

19 Q. What was the nature of Chase

20 Securities' relationship with Sunbeam?

21 MR. CLARE: Objection. Objection,

22 no foundation. You can answer if you know.

23 A. The only thing that I know that

24 they had were they were the lead on their

25 bank loan. And by "the lead" I mean their

Page 75

1 Smith

2 agent or the administrative agent.

3 Q. The bank loan is what, sir?

4 A. They had a, I think a small

5 revolving credit, multi-year. Chase was the

6 admin agent. First Union, Bank America were

7 two large lenders, participants in that, two

8 syndicate members.

9 Q. Do you know who Mark Davis is?

10 A. From where?

11 Q. Chase Securities.

12 A. No, I don't think so.

13 Q. You were never told that Mark Davis

14 of Chase Securities had a relationship with

15 Mr. Dunlap as a result of work that Mr. Davis

16 had done for Mr. Dunlap at other companies?

17 A. No.

18 Q. Have you ever seen the engagement

19 letter between Morgan Stanley and Sunbeam,

20 sir?

21 A. Yes.

22 Q. When did you see that?

23 A. I think at various times.

24 Q. What would have been your reason

25 for seeing that engagement letter?

Page 76

1 Smith

2 A. One, getting ready for this, and

3 then when the letter was issued to, as

4 normally as, or I think in this case so it

5 kind of after the fact or right before they

6 signed the final one.

7 Q. I show you what we marked

8 previously as CPH Exhibit 70, it is a letter

9 dated September 5, 1997 Morgan Stanley

10 stationery from Bill Strong to Albert Dunlap.

11 A. Okay.

12 Q. Take a moment to look at this for

13 me, sir.

14 A. Okay.

15 Q. Do you recall seeing the Morgan

16 Stanley engagement letter prior to September

17 5, 1997, sir?

18 A. I do not recall seeing it prior to

19 September 5, 1997.

20 Q. So is it your recollection you did

21 not see the engagement letter prior to it

22 being entered into?

23 A. Yes, that's my recollection.

24 Q. Do you recall now having looked at

25 it, how soon after September 1997 you first

Page 77

1 Smith

2 saw the engagement letter?

3 A. No.

4 Q. Do you recall that in fact you did

5 see it prior to the closing of the

6 transactions in the first quarter of 1998?

7 A. I'm not sure.

8 Q. Were you aware that as part of the

9 Sunbeam engagement letter, Sunbeam had agreed

10 to retain Morgan Stanley on mutually

11 agreeable terms to assist in connection with

12 any necessary financing?

13 MR. CLARE: Objection to the

14 extent it mischaracterizes the document.

15 A. That's not what this says.

16 Q. Let me direct your attention to the

17 second -- the first full paragraph on the

18 third page of the letter.

19 A. Uhm-hmm.

20 Q. It reads "If in connection with

21 this assignment Sunbeam effects a repurchase

22 of or public sale or private placement of any

23 equity referred or debt securities, or

24 Sunbeam effects real estate financings, asset

25 or property sales and some reasonable portion

Page 78

1 Smith

2 of investment banking services, in connection

3 with Sunbeam agrees to offer Morgan Stanley

4 on mutually agreeable terms to assist it with

5 such transaction."

6 Is it your understanding that that

7 did not encompass --

8 A. This is boilerplate. Mutually

9 acceptable terms means you have to come with

10 the transaction so both sides have to agree,

11 so there is nothing that ties them, Sunbeam

12 to Morgan Stanley, to do this.

13 Q. Is it your understanding this

14 didn't create a binding obligation on

15 Sunbeam's part?

16 A. Not at all. This is boilerplate.

17 Q. Is it your understanding that this

18 does relate to the financing activities that

19 Sunbeam may need in the event that it engages

20 in an acquisition covered by the terms of

21 this engagement letter?

22 A. Why don't you say that again.

23 Q. Is it your understanding that the

24 language that I just read to you from this

25 engagement letter pertains to financing

Page 79

1 Smith

2 activities related to any acquisition that

3 Sunbeam executes, that is covered by this

4 engagement letter?

5 A. Well, again I guess I don't know

6 what you're driving at or mean. One, this is

7 boilerplate. Two, what this states is that

8 if there is some financing by the way we, we

9 might be able to strike a mutually acceptable

10 deal with them to help provide the financing.

11 Q. Is it typical that Morgan Stanley

12 seeks to involve itself in financing aspects

13 of the investment banking transactions?

14 A. I'm sorry, do you say is it usual?

15 Q. Yes.

16 A. Don't know.

17 Q. Is the opportunity to provide

18 financing another way that Morgan Stanley

19 realizes fee income?

20 A. Yes, as do other institutions.

21 Q. You're aware, sir, that in first

22 quarter of 1998 Sunbeam signed an agreement

23 to acquire my client's interests in Coleman

24 company?

25 A. Yes.

Page 80

1 Smith

2 Q. And in connection with that

3 transaction Morgan Stanley was in fact

4 retained by Sunbeam to provide financing for

5 it, correct?

6 A. I don't know about the chronology,

7 but -- well, you know what, I don't know if

8 that is right. I don't know when we were

9 retained by them to do the financing.

10 Q. Do you recall that Sunbeam retained

11 Morgan Stanley to arrange financing for its

12 acquisition of Coleman company prior to the

13 closing of the acquisition of my client's

14 interest in Coleman?

15 A. Yes.

16 Q. Who within Morgan Stanley, sir, was

17 involved in the financing arrangements

18 relating to the acquisition of my client's

19 interests in Coleman company?

20 A. The financing arrangements? Do you

21 mean specifically the loan?

22 Q. Any aspect of the financing.

23 A. Would that include the convertibles

24 as well?

25 Q. Yes.

Page 81

1 Smith

2 A. Then my list would be limited

3 because I don't know all of the people that

4 were involved.

5 Conceptually there were people from

6 our group which would be the Morgan Stanley

7 senior loan, there would be people from

8 credit, there would be people from high yield

9 research, there would be people from the

10 convertible desk, there would be people from

11 equity capital market, and I don't even know

12 if that is exhaustive, as well as the

13 execution group. So to summarize, many, many

14 people involved.

15 Q. Who from the leveraged finance

16 group is involved?

17 A. There were probably three or four

18 of us, myself, Michael Hart -- Michael Hart,

19 Tom Burchill, and towards the end Simon

20 Rankin.

21 Q. Do you recall who was involved in

22 the equity capital markets group?

23 A. I do not.

24 Q. Did you have any interaction with

25 them in connection with the underwriting of

Page 82

1 Smith
2 the senior loan?
3 A. No.
4 Q. So you didn't exchange
5 information -- let me take a step back.
6 Do you recall if Ruth Porat was
7 involved in convertible debt?
8 A. I do, yes.
9 Q. Did you have any communication with
10 her at any point prior to the closing on the
11 senior loan relating to Sunbeam?
12 A. Did I have any communications prior
13 to the closing of the loan, yes.
14 Q. What do you recall about those
15 communications?
16 A. Well, a couple of things. The --
17 because this was a large financing and many
18 individuals at Morgan Stanley from many
19 groups were involved. There was a sharing of
20 information.
21 Number two, when, just before we
22 closed the loan there was some issues
23 regarding sales in the first quarter, some
24 press releases and so worked with the firm I
25 guess, and she was one of the members of the

Page 83

1 Smith
2 group in terms of investigating this.
3 Q. Do you recall any other
4 communications that you had with anyone else
5 in equity capital markets relating to
6 Sunbeam?
7 A. I do not.
8 Q. So the only point of contact you
9 had was with Ruth Porat?
10 A. To the best of my recollection.
11 Q. Do you know if other people within
12 leveraged finance had communications with
13 Miss Porat?
14 A. I do not know.
15 Q. Do you know whether other people
16 within the leveraged finance group had
17 communications with anyone else in equity
18 capital markets relating to this?
19 A. I do not.
20 Q. You indicated that there was
21 sharing of information relating to the
22 financings between leveraged finance and
23 equity capital markets.
24 Did I understand that correctly?
25 A. Yes.

Page 84

1 Smith
2 Q. What was the nature of the
3 information being shared?
4 A. Let me be more specific. At Morgan
5 Stanley there was a group, I don't know what
6 they call it now, the execution group. I
7 think they called it CSG then. And once the
8 transaction was one, then they were the
9 people that chaperoned the process, knew all
10 of the transactions. They were the
11 executioners as we called them.
12 John Tyree was the representative
13 from CSG who was the quarterback of putting
14 together a lot of this. And in this capacity
15 he was the point person and we were able to,
16 we being the loan group as well as equity
17 capital markets, use a lot of the work that
18 he did. And a lot of this we did together,
19 some of it we relied on him, sometimes he
20 relied on us.
21 Again it was a massive effort on
22 the part of the firm. At any one time 10 to
23 20 people working on this thing.
24 Q. We're going to go through that in
25 more detail.

Page 85

1 Smith
2 In the first quarter of 1998 what
3 was the nature of your personal activity
4 relating to the underwriting of the Sunbeam
5 loan?
6 A. Well, as the manager of the group,
7 the ultimate responsibility was, and decision
8 I guess was at least -- decision is the wrong
9 word. The ultimate responsibility was mine.
10 We had a very strenuous credit approval
11 process with many of the individuals that I
12 had mentioned before as part of the credit
13 committee at the time that got involved with
14 the final yes or no.
15 It was our group that was
16 responsible, the people that work for me that
17 were responsible for doing a lot of the due
18 diligence and the structuring and then the
19 rest on the loan. So in that way it was in a
20 supervisory capacity.
21 Q. Do you recall what activities you
22 personally engaged in?
23 A. Partly I guess. Worked with the,
24 specifically on the loan side, what was the
25 right structure, i.e., how much A loan, how

Page 86

1 Smith
2 much B loan, what should be the prices, what
3 should be the fees. More generically asking
4 questions about the credit, the combined
5 entity.
6 And once when one of the team
7 members was unable to attend I went down for
8 a, one of the due diligence meetings down in
9 Florida.
10 Q. There are two principal aspects of
11 the Sunbeam financing which was ultimately
12 put in place, correct, sir, the senior loan
13 and the convertible debenture offering?
14 A. Uhm-hmm.
15 Q. You have to answer audibly.
16 A. I'm sorry, yes.
17 Q. Who was involved in the
18 decision-making with respect to how much
19 money would be raised through the convertible
20 debenture offering and how much money would
21 be provided through the senior loan?
22 A. I'm sorry, you say who made that
23 decision?
24 Q. Yes.
25 A. It was kind of a group, a group

Page 87

1 Smith
2 decision. Obviously people at Morgan Stanley
3 had, were involved as well as the company.
4 Q. Were you involved in that process?
5 A. Tangentially.
6 Q. Did you provide a recommendation
7 concerning how much of the debt should be
8 raised through the senior loan and how much
9 of it should be raised through the
10 convertible debenture?
11 A. Initially we did, which was the
12 original structure, and then when the
13 convertible increased in size, then had input
14 into terms of how much to take of the, or how
15 much they should use and then how to reduce
16 the loan to take advantage of the extra money
17 they were able to raise in the convertible
18 market.
19 Q. What you are referring to is the
20 fact that originally it was contemplated that
21 500 million would be raised through the
22 convertible debenture offering?
23 A. Yes.
24 Q. And subsequently that was changed
25 to be something more like 750 million?

Page 88

1 Smith
2 A. Yes.
3 Q. Were you involved in any
4 decision-making or involved in making
5 recommendations with respect to that change?
6 A. No.
7 Q. Do you know who made that decision?
8 A. I think the company eventually made
9 that decision. It is only speculation on my
10 part.
11 Q. Do you know if anyone at Morgan
12 Stanley had a view on that issue?
13 A. No.
14 Q. Did you have a view?
15 A. Not really.
16 Q. Did you consider it to be a good
17 development with respect to the senior loan
18 or a negative development with respect to the
19 senior loan, that the company had raised an
20 additional \$250 million through the
21 convertible debenture?
22 A. I thought it was a positive
23 development.
24 Q. Why is that?
25 A. Because it was more junior capital

Page 89

1 Smith
2 in the, in the capital structure so the loans
3 were, were more, were better off.
4 Q. Is that sometimes referred to as
5 there being more cushion?
6 A. I have heard people use that
7 expression.
8 Q. Is that an expression you've used?
9 A. I don't recall.
10 Q. In any event, you consider it to be
11 the fact that the company raised an
12 additional \$250 million through the
13 convertible debenture offering to be a
14 positive development with respect to Morgan
15 Stanley's exposure on the senior loan?
16 A. I viewed it as a positive
17 development in terms of a senior lender to
18 the company, which would be ourselves and
19 Morgan Stanley Senior Funding, Bank of
20 America and First Union. I thought it also
21 enhanced our ability to distribute it.
22 Q. You thought in general senior
23 lenders would view that as a positive?
24 A. As a positive outcome.
25 Q. What due diligence activity did you

1 Smith
 2 personally engage in prior to the closing of
 3 the senior loan, sir?
 4 A. It was rather limited. We had
 5 other people tasked with the job and in my
 6 cart, but I did go on that one trip down to
 7 Florida.
 8 Q. Do you recall if that one trip took
 9 place in early March?
 10 A. I don't remember. That's probably
 11 about right.
 12 Q. Let me see if we can pin this down
 13 in time a little bit.
 14 Let me show you, sir, what was
 15 previously marked as CPH Exhibit Number 74.
 16 It is a letter dated March 5, 1998 on Morgan
 17 Stanley stationery, signed by you, directed
 18 to Russell Kersh at Sunbeam.
 19 Can you tell me what this letter
 20 is, sir?
 21 A. Give me a second, please.
 22 Q. Sure.
 23 A. This looks like a highly confident
 24 letter.
 25 Q. Do you recall whether you provided

1 Smith
 2 this letter to Sunbeam before or after your
 3 trip to Florida?
 4 A. I don't recall.
 5 Q. Let me show you what we marked
 6 previously as CPH Number 37. It is a
 7 two-page document bearing Bates Morgan
 8 Stanley confidential 45317 through 45318. It
 9 is an itinerary for Mr. Tyree's travel to
 10 Florida on March 4 and March 5, 1998, sir?
 11 A. Uhm-hmm.
 12 Q. You see that in the third line
 13 there is a reference to you, Seth Shaan, Tom
 14 Burchill and Michael Hart as part of the
 15 team?
 16 A. I do.
 17 Q. Do you believe this is a reference
 18 to the trip to Florida that you took?
 19 A. Yes.
 20 Q. Do you recall that Mr. Tyree was
 21 part of the team at the Florida meeting?
 22 A. I do.
 23 Q. Do you recall whether Mr. Hart was
 24 there?
 25 A. I believe he was not.

1 Smith
 2 Q. Do you recall if Seth Shaan, Tom
 3 Burchill were there?
 4 A. I don't recall.
 5 Q. Is the reason why you went on this
 6 trip that Michael Hart could not?
 7 A. That is my recollection.
 8 Q. Prior to the trip to Florida in
 9 early March where you visited Sunbeam, had
 10 Morgan Stanley Senior Funding itself done
 11 any, do any due diligence relating to the
 12 possibility of structuring a senior loan to
 13 Sunbeam?
 14 A. I don't recall the exact sequencing
 15 of it, but we did have -- we -- so I don't
 16 remember when we started getting involved in
 17 terms of looking at the, looking at the
 18 projections and thinking about loan
 19 structures.
 20 Q. Would it be fair to say that by the
 21 time you sent your March 5, 1998 highly
 22 confident letter to Mr. Kersh, that Morgan
 23 Stanley Senior Funding had substantially
 24 completed its due diligence related to the
 25 financing?

1 Smith
 2 A. Oh, quite the contrary. We had
 3 looked at a lot of the available information
 4 and accepted it at face.
 5 As you see here in the letter, we
 6 said there is a lot more work to do. We said
 7 this is our preliminary understanding, that
 8 we had lots of work to do to include getting,
 9 completing due diligence. That no way this
 10 was -- and that's I guess that first full
 11 paragraph on the second page where we talk
 12 about material address change in conditions
 13 and business results and the prospects of the
 14 company.
 15 I think we also had in here
 16 someplace about the, we have to complete the
 17 due diligence. And that no way could this be
 18 construed to be a commitment by Morgan
 19 Stanley to lend the money or to underwrite
 20 the deal.
 21 And I think the operative paragraph
 22 here is that we were highly confident that
 23 this could be syndicated in the general known
 24 market.
 25 Q. Have you finished your answer?

Page 94

1 Smith

2 A. Yes.

3 Q. Sir, is it your testimony, sir,

4 that Morgan Stanley Senior Funding had not

5 substantially completed its due diligence as

6 of the time it provided Sunbeam with a highly

7 confident letter?

8 A. It is my testimony that it had not

9 completed its due diligence prior to issuing

10 this letter.

11 Q. Right.

12 A. With the caveats that I just

13 mentioned.

14 Q. My question is whether it was

15 substantially complete by this point in time?

16 A. I don't know what that might mean,

17 but there was a lot more to do and I think

18 this letter reflected that.

19 Q. Let me put it this way: Did you

20 think that most of Morgan Stanley Senior

21 Funding's due diligence relating to the

22 underwriting of the senior loan was completed

23 by the time you provided the highly confident

24 letter to Mr. Kersh on March 5, 1998?

25 A. I don't think that most had been

Page 95

1 Smith

2 done by then, but that is a very vague term.

3 Q. Was it the policy of Morgan Stanley

4 that highly confident letters relating to

5 financings should not be issued until

6 substantially all necessary due diligence was

7 completed?

8 A. It -- why don't we say that again.

9 What did you say?

10 Q. Was it the policy of Morgan Stanley

11 that highly confident letters relating to

12 financings should not be issued by the firm

13 until substantially all necessary due

14 diligence had been completed?

15 A. There -- I don't follow you.

16 Q. Was it the policy of Morgan

17 Stanley -- I think it is a fairly simple

18 statement, sir.

19 A. Why don't you go slow.

20 Q. I will. Was it the policy of

21 Morgan Stanley that highly confident

22 letters --

23 A. Like this.

24 Q. -- relating to financing should not

25 be issued until such time as substantially

Page 96

1 Smith

2 all necessary due diligence was completed?

3 A. Well, I'm having a brain aneurysm,

4 I don't know what you're trying to get to.

5 Q. You don't know one way or the other

6 as you sit here today whether Morgan

7 Stanley's policy was --

8 A. I'm not commenting on Morgan

9 Stanley's policy.

10 Q. I'm asking you --

11 A. No comment, no idea.

12 Q. My question is this and I want your

13 knowledge, I'm entitled to your knowledge.

14 A. As best as I can remember.

15 Q. Yes. Is it your testimony that you

16 have no knowledge as you sit here today,

17 whether it was the policy of Morgan Stanley

18 in March of 1998 that the firm should not

19 issue highly confident letters relating to

20 potential financing until such time as

21 substantially all necessary due diligence was

22 completed?

23 A. My understanding was that there

24 would be letters like this issued after it

25 was vetted internally, and the amount of due

Page 97

1 Smith

2 diligence completed before the issuance of

3 this letter would vary.

4 Q. You have no knowledge that there

5 was a requirement that substantially all of

6 necessary due diligence be complete?

7 A. Those are your terms and I'm not

8 aware of any of those, that concept.

9 Q. Who made the decision to issue the

10 highly confident letter on March 5?

11 A. This was a group decision that was

12 vetted by many of the senior people at the

13 firm.

14 Q. You didn't have the authority

15 yourself to issue the March 5 letter?

16 A. No.

17 Q. Who needed to provide approval?

18 A. This would --

19 Q. Let me ask you a different

20 question. Who did provide approval?

21 A. I don't recall exactly, but it

22 would be the people on the Credit Committee,

23 I don't even remember who was the head then

24 of the Credit Committee, and then other

25 senior members of the Credit Committee.

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 Smith</p> <p>2 MR. MARKOWSKI: Why don't we take</p> <p>3 a break and change the tape.</p> <p>4 THE VIDEOGRAPHER: The time is</p> <p>5 11:26, this completes tape number 1.</p> <p>6 (Pause in the proceedings.)</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 11:31, this begins tape number 2.</p> <p>9 BY MR. MARKOWSKI:</p> <p>10 Q. Mr. Smith, back to the March 5</p> <p>11 highly confident letter.</p> <p>12 Describe to me the process that was</p> <p>13 used at Morgan Stanley in reaching a decision</p> <p>14 to issue this letter.</p> <p>15 A. The decision would be a, would be</p> <p>16 similar to the credit approval process,</p> <p>17 realizing that we had less than the complete</p> <p>18 information that we would need to make a</p> <p>19 credit decision.</p> <p>20 And by that I mean that a lot of</p> <p>21 the due diligence would be ongoing, not yet</p> <p>22 complete, that our views expressed in these</p> <p>23 highly confident letters such as this, are</p> <p>24 dated March 5, would, would relate to taking</p> <p>25 a lot of the information given to us at face</p>	<p style="text-align: right;">Page 100</p> <p>1 Smith</p> <p>2 Q. Do you know who was in 1998?</p> <p>3 A. I think it had been Mr. Steve</p> <p>4 Newhouse.</p> <p>5 Q. How did that process work, did the</p> <p>6 committee take a vote with respect to whether</p> <p>7 a letter -- let me ask you a specific</p> <p>8 question.</p> <p>9 Do you recall that a committee vote</p> <p>10 was taken with respect to the authorization</p> <p>11 issued on March 5 had the confident letter</p> <p>12 disseminated?</p> <p>13 A. I don't remember specifically</p> <p>14 whether there was a vote. I don't remember.</p> <p>15 Q. Is that typically the way the</p> <p>16 process works, the committee takes a vote</p> <p>17 with respect to whether to approve the</p> <p>18 issuance of a highly confident letter or a</p> <p>19 credit, or is it something other than that?</p> <p>20 A. That is typically how it would</p> <p>21 work.</p> <p>22 Q. Who initiated the process with</p> <p>23 respect to review of the question whether to</p> <p>24 issue a highly confident letter to Sunbeam;</p> <p>25 did you?</p>
<p style="text-align: right;">Page 99</p> <p>1 Smith</p> <p>2 value, i.e., the audited financials, i.e.,</p> <p>3 the projections, and the rest.</p> <p>4 And then based on that was our, we</p> <p>5 would then come up with a decision on the</p> <p>6 part of the firm, voiced to the Credit</p> <p>7 Committee, whether we would be authorized to</p> <p>8 send out a highly confident letter such as</p> <p>9 the one here.</p> <p>10 Q. Was there any sign-off process in</p> <p>11 place that required that formal written</p> <p>12 approval be given for letters such as this?</p> <p>13 A. It was not a sign-off procedure.</p> <p>14 It was a meeting that was, that we had a</p> <p>15 chairman and that approved credits as well as</p> <p>16 sending out these highly confident letters.</p> <p>17 Q. That committee was the Leveraged</p> <p>18 Finance Committee?</p> <p>19 A. It sounds right, but don't hold me</p> <p>20 a hundred percent for the name. It changed a</p> <p>21 lot.</p> <p>22 Q. Were you on that committee?</p> <p>23 A. I was on the committee.</p> <p>24 Q. Were you the chairman?</p> <p>25 A. I was not the chairman.</p>	<p style="text-align: right;">Page 101</p> <p>1 Smith</p> <p>2 A. Initiate's a funny word. Probably</p> <p>3 Mr. Strong and myself were the, would take</p> <p>4 the lead on this.</p> <p>5 Q. Why Mr. Strong?</p> <p>6 A. The procedure at Morgan Stanley was</p> <p>7 that the banker, i.e., the person who was</p> <p>8 responsible for the client would be actively</p> <p>9 involved in all, in proposing extensions of</p> <p>10 credit or underwritings for their client.</p> <p>11 Q. So Mr. Strong had to endorse this</p> <p>12 as part of the internal procedure Morgan</p> <p>13 Stanley?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall that Mr. Strong asked</p> <p>16 you to consider to issue a highly confident</p> <p>17 letter to Sunbeam?</p> <p>18 A. I recall that he wanted a highly</p> <p>19 confident letter from Morgan Stanley to</p> <p>20 Sunbeam.</p> <p>21 Q. How did you know that Mr. Strong</p> <p>22 wanted a highly confident letter?</p> <p>23 A. I think he -- we talked about it</p> <p>24 and we thought that was helpful in helping us</p> <p>25 secure the financing.</p>

26 (Pages 98 to 101)

Page 102

1 Smith

2 Q. So you and Mr. Strong discussed

3 whether Morgan Stanley should issue a highly

4 confident letter?

5 A. No, Mr. Strong and I discussed

6 whether we should go seek approval from

7 Morgan Stanley to issue a highly confident

8 letter.

9 Q. And Mr. Strong wanted Morgan

10 Stanley to issue a highly confident letter

11 because he thought it would be helpful to

12 Morgan Stanley in obtaining the assignment to

13 arrange for the financing, correct?

14 MR. CLARE: Objection, calls for

15 speculation.

16 A. I can't comment for sure what he

17 was thinking.

18 Q. Did Mr. Strong say to you in words

19 or substance I would like us to be able to

20 issue a highly confident letter to Sunbeam in

21 connection with the financing for the Coleman

22 acquisition because that will be helpful to

23 us in our efforts to obtain that engagement?

24 A. I think he said to the committee

25 that form and substance about what you said,

Page 103

1 Smith

2 that this would be useful in positioning

3 ourselves to seek the financing if that's

4 what we wanted to do.

5 Q. Now, was it clear to the committee

6 in connection with the issuance of -- let me

7 ask a foundational question.

8 Was there an actual meeting of the

9 committee in connection with the decision to

10 issue the March 5 highly confident letter?

11 A. Don't recall for sure, but I

12 believe so.

13 Q. Do you recall being present at such

14 a meeting?

15 A. I do recall, yes. If there was a

16 meeting I was there. And I think there was a

17 meeting.

18 Q. To discuss the issuance of the

19 March 5 --

20 A. To discuss the issuance of this

21 highly confident letter.

22 Q. Do you recall whether the committee

23 at that meeting was advised that a

24 substantial amount of due diligence remained

25 to be done before Morgan Stanley could

Page 104

1 Smith

2 actually commit to make the loan?

3 A. I don't know if I would use the

4 word "substantial." They were certainly

5 aware that there was ongoing work and work to

6 be done.

7 And also what happened here is that

8 once that work was complete it was understood

9 because this was the policy, is to come back

10 to the Credit Committee for approval of what

11 exactly was being asked for.

12 Q. How would issuing a highly

13 confident letter be helpful in Morgan

14 Stanley's efforts to obtain the financing

15 engagement?

16 MR. CLARE: Objection, calls for

17 speculation.

18 A. I don't know what Bill was thinking

19 with the company. I don't know.

20 Q. Did Mr. Strong explain his thinking

21 to you?

22 A. No

23 Q. Do you have any views of your own,

24 based on your many years of experience in

25 this business that would provide you with a

Page 105

1 Smith

2 basis for understanding how the issuance of a

3 highly confident letter might assist Mr.

4 Strong in obtaining the financing engagement

5 from Sunbeam?

6 A. Not really. It's also situational,

7 so personal, and I had no knowledge of Kersh

8 or Dunlap before that.

9 Q. Before this March 5 letter was

10 issued did you have any direct communications

11 with Mr. Kersh or Mr. Dunlap personally?

12 A. I'm hesitating because the -- I'm

13 trying to remember the first time I met him

14 and that might have been at the board

15 meeting, and I don't remember when that day

16 was.

17 Q. The itinerary for the trip to

18 Florida indicates --

19 A. They might have even been there.

20 Does it say that? I'm sorry.

21 Q. We'll get there. Here is my

22 question: The itinerary for the trip to

23 Florida indicates that the meetings were

24 scheduled for March 4 and March 5. The date

25 of your highly confident letter is March 5.

1 Smith

2 Do you recall bringing the highly
3 confident letter with you and delivering it
4 personally to Mr. Kersh or Mr. Dunlap during
5 your visit to Florida?

6 A. I don't think so. I think the
7 itinerary is wrong. I think I was only there
8 for a day in and out, I didn't spend the
9 night, and so I don't believe I had this with
10 me to give them when I was down there.

11 Q. Was there something about your trip
12 to Florida that, on March 4 that bears on the
13 timing of the issuance of the letter on March
14 5?

15 A. I don't recall.

16 Q. Do you recall you were holding onto
17 the highly confident letter until your trip
18 to Florida?

19 A. No.

20 Q. Do you recall how far in advance of
21 the issuance of a highly confident letter on
22 March 5 that Mr. Strong first approached you
23 about his desire to have Morgan Stanley
24 provide Sunbeam with such a letter?

25 A. I do not.

1 Smith

2 Q. Do you remember if it was more than
3 a week?

4 A. I do not.

5 Q. Is it possible that it was less
6 than a week?

7 A. I can't remember.

8 Q. Was there any disagreement on the
9 part of any members of the committee
10 responsible for making the decision to issue
11 this letter, concerning whether it should be
12 sent?

13 A. Not that I recall.

14 Q. Did you have any reservations
15 personally about it?

16 A. No.

17 Q. I believe you testified earlier
18 that it was your recollection, it is your
19 recollection today that your activity
20 relating to Sunbeam started in the first
21 quarter of 1998?

22 A. That's the best of my recollection.

23 Q. Was it your understanding at the
24 outset of your involvement in first quarter
25 of 1998 relating to Sunbeam, that Mr. Dunlap

1 Smith

2 had claimed to have accomplished a
3 significant improvement in Sunbeam's
4 performance and prospects?

5 A. I'm sorry, did you say prior to my
6 involvement?

7 Q. I'll ask a new question.

8 Was it your understanding at the
9 time you became involved in your work
10 relating to Sunbeam in the first quarter of
11 1998, that Mr. Dunlap had been claiming to
12 have accomplished a significant improvement
13 in Sunbeam's performance and prospects in
14 1997?

15 A. After I got involved, yes.

16 Q. Were you aware that Morgan
17 Stanley's presentation to other companies
18 concerning Sunbeam emphasized the success of
19 Mr. Dunlap's turn-around efforts at Sunbeam?

20 A. I didn't have any knowledge of
21 that.

22 Q. Did you ever become familiar, sir,
23 with statements made by Morgan Stanley to my
24 client concerning the success of Mr. Dunlap's
25 turn-around activities of the Sunbeam?

1 Smith

2 A. No knowledge at all.

3 Q. Mr. Smith, I'm going to show you
4 what we previously marked as CPH Deposition
5 Exhibit Number 71. It's a October 22, 1997
6 interoffice memorandum from the Sunbeam
7 corporation team to Morgan Stanley Worldwide
8 IBD professionals. It bears Bates stamps
9 Morgan Stanley confidential 5984 through
10 5995.

11 I would like you to take a look at
12 this, sir, and tell me whether you have ever
13 seen this document before.

14 A. I, I don't recall.

15 Q. If in fact this Morgan Stanley
16 interoffice memorandum was sent to all
17 Worldwide IBD professionals, would that have
18 included you?

19 A. I think it might have.

20 Q. IBD is a reference to Investment
21 Banking Division?

22 A. Uhm-hmm.

23 Q. You have to answer audibly.

24 A. I'm sorry, yes.

25 Q. In the ordinary course a memorandum

<p style="text-align: right;">Page 110</p> <p>1 Smith</p> <p>2 directed to all IBD professionals would have</p> <p>3 gone on to you as well?</p> <p>4 A. That is true, as well as thousands</p> <p>5 of other things, so, so I don't remember</p> <p>6 seeing it.</p> <p>7 Q. Let me direct your attention to the</p> <p>8 third page of the document.</p> <p>9 A. This one?</p> <p>10 Q. The Sunbeam corporation investment</p> <p>11 rationale.</p> <p>12 A. Uhm-hmm.</p> <p>13 Q. Read for me the four main bullet</p> <p>14 points on this page. "Sunbeam represents an</p> <p>15 attractive growth story in investment</p> <p>16 opportunity. Sunbeam has undergone a</p> <p>17 profound transformation since the arrival of</p> <p>18 new management in July 1996. Tremendous</p> <p>19 intrinsic value in the company. And,</p> <p>20 finally, valuable opportunity to penetrate</p> <p>21 and become a global market leader of branded</p> <p>22 consumer devices."</p> <p>23 Do you see those four bullet</p> <p>24 points?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 112</p> <p>1 Smith</p> <p>2 sit here today, whether statements of this</p> <p>3 sort were made by Morgan Stanley to my</p> <p>4 client?</p> <p>5 A. No idea.</p> <p>6 Q. Were any statements of this sort,</p> <p>7 sir, relating to Sunbeam's financial</p> <p>8 condition and prospects made to you by any</p> <p>9 members of the Sunbeam investment banking --</p> <p>10 excuse me, let me start over.</p> <p>11 Were any statements of the sort</p> <p>12 contained in CPH Exhibit 71 which I just read</p> <p>13 to you, made to you by any Morgan Stanley</p> <p>14 personnel?</p> <p>15 MR. CLARE: You're asking</p> <p>16 specifically with regard to the third page of</p> <p>17 the exhibit?</p> <p>18 MR. MARKOWSKI: Yes, the third</p> <p>19 page.</p> <p>20 A. I think that elements of the third</p> <p>21 page were, were talked about by members of</p> <p>22 the team during the process.</p> <p>23 Q. So there were members of Morgan</p> <p>24 Stanley personnel who were involved in the</p> <p>25 investment banking activities for Sunbeam,</p>
<p style="text-align: right;">Page 111</p> <p>1 Smith</p> <p>2 Q. Was that consistent with your</p> <p>3 understanding with the claims Sunbeam was</p> <p>4 making in the first quarter of 1998</p> <p>5 concerning the success of its turnaround?</p> <p>6 A. Consistent with what Sunbeam was</p> <p>7 representing? I think, yes. Probably</p> <p>8 consistent.</p> <p>9 Q. Do you know if these statements are</p> <p>10 consistent with the statements that Morgan</p> <p>11 Stanley was making to third parties on behalf</p> <p>12 of Sunbeam?</p> <p>13 MR. CLARE: Objection.</p> <p>14 A. I have no idea.</p> <p>15 MR. CLARE: No foundation. You</p> <p>16 can answer.</p> <p>17 Q. Do you know if the purpose of this</p> <p>18 memorandum to all investment banking</p> <p>19 professionals was to communicate to them</p> <p>20 selling points that they should make to third</p> <p>21 parties relating to Sunbeam?</p> <p>22 MR. CLARE: Same objection,</p> <p>23 foundation, calls for speculation.</p> <p>24 A. Don't know.</p> <p>25 Q. Do you have any knowledge as you</p>	<p style="text-align: right;">Page 113</p> <p>1 Smith</p> <p>2 who made statements similar to those we see</p> <p>3 on the third page of this document to you?</p> <p>4 A. Yes, and -- but don't forget, if</p> <p>5 you look at page 3 a lot of these are</p> <p>6 factual.</p> <p>7 Number one market share in gas</p> <p>8 grills. So if somebody tells me they're</p> <p>9 number one in market share in gas grills, I</p> <p>10 see it in two or three other places so that's</p> <p>11 kind of a fact.</p> <p>12 You can see what they have done in</p> <p>13 terms of improving profitability and selling</p> <p>14 some unprofitabilizations. Those are all</p> <p>15 facts so, yes, a lot of this information was</p> <p>16 shared by the team with people that weren't</p> <p>17 as close to the company.</p> <p>18 Q. Did the members of the Morgan</p> <p>19 Stanley investment banking team say to you</p> <p>20 that Sunbeam had accomplished a successful</p> <p>21 turnaround during Mr. Dunlap's tenure?</p> <p>22 A. I don't remember anybody saying</p> <p>23 that specifically to me in words of that. I</p> <p>24 do remember, however, conversations where we</p> <p>25 look at the financials and see that margins</p>

Page 114

1 Smith

2 had improved, profits had gone up and the

3 rest.

4 Q. Did anybody on the Morgan Stanley

5 investment banking team say to you in

6 connection with your underwriting review that

7 Mr. Dunlap had accomplished some, Mr. Dunlap

8 had accomplished a substantial improvement in

9 Sunbeam's performance?

10 A. I don't know if anybody said it

11 like that, but again any comments would have

12 come up as we looked at the numbers. Again

13 those were pretty black and white in terms of

14 what you had been able, what the numbers

15 represented that the company had done under

16 his stewardship.

17 Q. Do you recall anybody on the Morgan

18 Stanley investment banking team saying to you

19 that Mr. Dunlap had accomplished great

20 success during his tenure as the CEO of

21 Sunbeam?

22 A. Never anything like that.

23 Q. That Sunbeam represented an

24 attractive growth story?

25 A. No.

Page 115

1 Smith

2 Q. That Sunbeam represented an

3 attractive investment opportunity?

4 A. Never exactly I guess those words.

5 Q. In substance?

6 A. It was more again looking at the

7 numbers, seeing what the, what that looked

8 like and then commenting, and then commenting

9 on the, what the numbers look like over the

10 last couple of years that he had been there.

11 Q. Had anyone on the investment

12 banking team suggested to you that Mr. Dunlap

13 had successfully transformed Sunbeam?

14 A. No, I don't remember those words.

15 Q. That there was tremendous intrinsic

16 value at Sunbeam?

17 A. I don't remember those words.

18 Q. Were you aware of Mr. Dunlap's

19 prior history before becoming the CEO of

20 Sunbeam?

21 A. Just very peripheral.

22 Q. Did you have any knowledge of his

23 tenure at Scott Paper?

24 A. No, other than what I read in the

25 newspapers.

Page 116

1 Smith

2 Q. Did you have any -- what was your

3 understanding generally of Mr. Dunlap's

4 reputation in the first quarter of 1998?

5 A. Generally was that he was a, he was

6 a -- I don't know how to put it. I think his

7 public image was, it was my understanding his

8 public image was he was pretty bottoms line

9 oriented and was focused on cost-cutting and

10 paring out unprofitable ventures in the

11 company.

12 Q. Was it your understanding that Mr.

13 Dunlap's reputation was as a turn-around

14 specialist?

15 A. I guess you could use that concept,

16 that word. I think that was his general

17 persona. It is certainly now his general

18 persona.

19 Q. That is the way he presents

20 himself, correct?

21 A. Yes, in all of the public stuff.

22 Q. Did you prior to the close on the

23 acquisition of my client's interest in

24 Coleman company at the end of March 1998,

25 have any reason to question Mr. Dunlap's

Page 117

1 Smith

2 turn-around accomplishments at either Sunbeam

3 or any of the other companies he had been

4 previously employed at?

5 A. No.

6 Q. Did you make any inquiry concerning

7 Mr. Dunlap's tenure at Scott Paper?

8 A. I did not personally.

9 Q. Did you have anyone do that for

10 you?

11 A. I did not specifically ask anybody

12 to do that for me.

13 Q. Did you receive any reports

14 regarding Mr. Dunlap's tenure at Scott Paper?

15 A. Not that I recall.

16 Q. Did anyone at Morgan Stanley ever

17 suggest to you that Mr. Dunlap's

18 accomplishments at Scott Paper were phony or

19 exaggerated?

20 A. Not that I recall.

21 Q. Let me show you, Mr. Smith, what we

22 previously marked as CPH Exhibit Number 68.

23 It is out of a Business Week article entitled

24 "Did CEO Dunlap Save Scott Paper Or Just

25 Pretty It Up."

30 (Pages 114 to 117)

Page 118

1 Smith

2 A. Is this July of '97, is that what

3 this says at the bottom?

4 Q. I think there are two dates on this

5 document, sir. The upper left-hand corner is

6 a January 15, 1996 date.

7 A. Okay.

8 Q. And then in the bottom right-hand

9 corner there is a July 16, 1997 date.

10 A. Uhm-hmm.

11 MR. CLARE: Bram, don't mark on

12 the document.

13 Q. It bears Bates number Morgan

14 Stanley 3995 through 4001. Take a moment to

15 look at this.

16 A. Okay.

17 Q. Have you ever seen this before?

18 A. I don't recall directly. Maybe.

19 Q. Do you recall seeing this in

20 connection with your review of Sunbeam prior

21 to the close of Sunbeam's acquisition of my

22 client, client's interests in Coleman

23 company?

24 A. One, I don't remember if I saw it

25 so you can't ask me to speculate when I might

Page 119

1 Smith

2 have seen it.

3 Q. Did you ask, does this refresh your

4 recollection whether you asked any members of

5 the Morgan Stanley due diligence team to

6 investigate reports relating to Mr. Dunlap's

7 tenure at Scott Paper?

8 A. I did not ask anybody to do that.

9 Q. Do you recall being aware that

10 there were questions being raised publicly

11 relating to Mr. Dunlap's claimed

12 accomplishments at Scott Paper?

13 A. I guess tangentially. I knew he

14 was a controversial figure.

15 Q. At the time the transactions closed

16 at the end of March 1998 did you have any

17 personal reason to question on the

18 turn-around claims that Mr. Dunlap had made

19 at Sunbeam?

20 A. Did I personally have any, no.

21 Q. Do you have any reason to question

22 his reputation as a turn-around specialist?

23 A. No.

24 Q. I'm sorry if I asked this

25 previously, but did you have any personal

Page 120

1 Smith

2 contact with Mr. Dunlap in connection with

3 your Sunbeam activities?

4 A. I think you asked that before. I'm

5 trying to remember the first time I met him,

6 it might have been at a board meeting in New

7 York.

8 Q. Was that the board meeting at which

9 the Sunbeam board voted to approve the

10 acquisition of my client's interests in

11 Coleman company?

12 A. Yes, I believe it was.

13 Q. Other than at that meeting, did you

14 have any personal involvement with Mr.

15 Dunlap?

16 A. Did you say prior?

17 Q. Other than at that meeting, prior

18 to or after.

19 A. Other than, yes. Probably on the

20 phone and maybe some face to face, certainly

21 in getting, putting together the presentation

22 for the bank investors' meeting.

23 Q. Prior to March 30 when the

24 acquisition of my client's interests in

25 Coleman company closed, had you had any

Page 121

1 Smith

2 personal contact with Mr. Dunlap other than

3 the board meeting in February?

4 A. I don't recall.

5 Q. Is it the case that most of your

6 contact with Mr. Dunlap postdated the

7 acquisition of my client's interests in the

8 Coleman company?

9 A. Yes, I think that is true.

10 Q. And that would have meant that it

11 also postdated the closing on the senior loan

12 facility, correct?

13 A. Yes.

14 Q. Did you speak at the February 1998

15 Sunbeam board meeting?

16 A. I did not. To the best of my

17 knowledge, to the best of my memory I don't

18 think I made a presentation. I might have

19 responded to questions at the board meeting.

20 Q. What was the purpose for your

21 attending the meeting?

22 A. I think to be there for questions

23 regarding the doability of the financing.

24 Q. Who asked you to attend?

25 A. Mr. Strong.

Page 122

1 Smith

2 Q. Do you recall whether you were

3 asked any questions relating to the doability

4 of the financing?

5 A. I think I was, but I can't remember

6 whether it was before or after the meeting.

7 Probably both.

8 Q. When you say before, after the

9 meeting, you mean before --

10 A. I misspoke. During the meeting and

11 then after the meeting.

12 Q. Are you referring to further

13 discussions that occurred that day?

14 A. That day, immediately after the

15 meeting when the meeting broke.

16 Q. Who do you recall asking questions

17 relating to the doability of the financing,

18 whether at the meeting itself or shortly

19 after?

20 A. The doability I think was maybe

21 from one of the board members or from Al

22 himself, and was a very short response to

23 that which was an affirmative.

24 And then after the meeting it

25 wasn't so much about the doability, it was

Page 123

1 Smith

2 more tactical with Kersh.

3 Q. So do you recall having a more

4 in-depth conversation with Mr. Kersh the same

5 day as the Sunbeam board meeting relating to

6 financing strategy?

7 A. Yes, and it was primarily related

8 to financing the syndication of this loan.

9 Q. Who else was present for that

10 discussion?

11 A. Might have been, I think it was

12 just Bill, Bill and myself and Kersh.

13 Q. Bill Strong?

14 A. Bill Strong.

15 Q. Where did that discussion take

16 place?

17 A. I think it happened right there in

18 the boardroom after it broke.

19 Q. Was that board meeting at Morgan

20 Stanley's office?

21 A. I believe it was right here in New

22 York.

23 Q. Did Mr. Kersh initiate the

24 conversation?

25 A. Mr. Strong and I might have

Page 124

1 Smith

2 initiated the conversation as I remember.

3 Q. And what was the purpose for

4 talking to Mr. Kersh on that subject?

5 A. The purpose was to outline or

6 briefly outline our thoughts in terms of who

7 would be suitable partners in the

8 underwriting of this, of this loan. And we

9 specifically mentioned Bank of America and

10 First Union.

11 Q. What was Mr. Kersh's reaction?

12 A. I guess noncommittal but

13 appreciative of the input, and I don't think

14 he really cared or thought too much about it.

15 Q. Now, what would -- at that point in

16 time, in February of 1998, what was Morgan

17 Stanley's contemplation with respect to the

18 potential role of Bank of America and First

19 Union concerning the senior loan?

20 A. As partners.

21 Q. What do you mean?

22 A. Co-underwriters.

23 Q. What would that involve?

24 A. That would involve the three of us

25 who would commit to lend the company the

Page 125

1 Smith

2 required amount of bank debt it needed to

3 accomplish these acquisitions. It meant that

4 they would participate alongside us on all of

5 the due diligence, that we could lever all of

6 them because they had been existing more --

7 not more, but existing lenders and I think

8 long-term relations.

9 So there was some institutional

10 knowledge that those institutions had about a

11 company that we could lever off of in terms

12 of in our own due diligence as well as the

13 marketing of the transaction.

14 Q. Was it contemplated that at least

15 initially those three institutions, Morgan

16 Stanley, Bank of America and First Union,

17 would provide the entire senior financing?

18 A. When you say "was it contemplated,"

19 it was certainly our hope, our thought to

20 have both of them there. And the idea was

21 that we would approach both and if one said

22 no, that was still okay.

23 Q. And the financing would then be

24 provided entirely?

25 A. By ourselves and one of the others.

Page 126

1 Smith

2 Q. Is it typical that in a loan that

3 is intended to be syndicated to a larger

4 group of banks -- to a large group of banks,

5 that in the first instance the financing will

6 be entirely provided by a smaller number, in

7 this case one or two, possibly three banks,

8 or is the syndication usually in place before

9 the funding occurs?

10 A. Well, you have asked a few

11 questions. What would normally happen is

12 that you would have a group of two, maybe

13 three banks underwrite or commit to the

14 entire loan facility. It is easier for the

15 company because they don't have to negotiate

16 with so many people.

17 And then those institutions, the

18 underwriters would then normally syndicate

19 for maybe a year prior to the close of the

20 loan and then a close of the transaction.

21 Q. Is it more typically the place that

22 the syndication occurs before the close?

23 A. Yes, it is.

24 Q. Is it fair to say that the

25 situation that you were contemplating with

Page 127

1 Smith

2 respect to Sunbeam, where Morgan Stanley

3 either by itself or perhaps with one or two

4 other banks would provide all of the

5 financing, was unusual?

6 A. I don't know about unusual, but it

7 is not the majority of the cases in the

8 United States.

9 Q. Why is it more typical that the

10 syndication takes place before the funding?

11 A. Because normally you have more time

12 and it's just really driven by the time that

13 was agreed to in the -- or the details or the

14 requirements of the deal.

15 Q. Was it the case here that there

16 wasn't sufficient time to put a syndication

17 in place before the funding was needed?

18 A. Yes.

19 Q. Did you suggest to Mr. Strong or to

20 anyone else that it would be preferable for

21 the syndication to be put in place before the

22 funding was required?

23 A. I don't know if I suggested. We

24 certainly talked about it because it was a

25 certain risk profile to close and then

Page 128

1 Smith

2 syndicate than the flip, than the reverse.

3 But the terms of the mergers

4 required that they needed the money by that

5 certain date, not allowing us to syndicate.

6 Q. Do you know why the transactions

7 themselves were scheduled, were structured

8 that way?

9 A. I do not.

10 Q. Did you ask anyone why the need to

11 rush to close the acquisitions before the

12 funding could be obtained through the

13 syndication?

14 MR. CLARE: I object to the form

15 of the question.

16 A. I don't recall. I recall talking

17 about it, but I don't remember who or I can't

18 remember what the, you know, the final answer

19 was other than that was the terms of the

20 deal.

21 Q. Do you remember talking to -- Mr.

22 Strong in this case was the relationship

23 person at Morgan Stanley and Sunbeam,

24 correct?

25 A. I believe so.

Page 129

1 Smith

2 Q. And you indicated earlier that in

3 terms of Morgan Stanley's internal processes,

4 he was viewed as the responsible person with

5 respect to significant aspects of the

6 financing activity, correct?

7 MR. CLARE: Object to the form of

8 the question. I think that misstates his

9 prior testimony. You can answer:

10 A. Help me out, repeat that thing for

11 me.

12 Q. Let me rephrase it.

13 Mr. Strong was viewed -- let me ask

14 a more general question.

15 From your perspective what was Mr.

16 Strong's responsibility for the various

17 aspects of Morgan Stanley's work for Sunbeam?

18 A. He was the person responsible at

19 the firm for the, for the Sunbeam

20 relationship and -- full stop. So that

21 included M&A or other products, then he was

22 responsible to show those to the company.

23 Q. With respect to Morgan Stanley's

24 internal work, what were Mr. Strong's

25 responsibilities relating to Sunbeam?

Page 130

1 Smith

2 A. His internal work, as I think we

3 talked before, is that the banker, the

4 relationship manager in this case, Mr. Strong

5 has to be an advocate internally and endorse

6 a transaction for his client, and in that

7 role he did that on the senior loan.

8 Q. And he endorsed in this case this

9 plan to have Morgan Stanley loan, if

10 necessary, the entire amount of the senior

11 financing necessary to complete the

12 acquisition of my client, Coleman?

13 A. I don't know if that is exactly

14 right. I think he advocated Morgan Stanley

15 taking a leadership role, maybe even a

16 majority role. I don't remember him ever

17 suggesting that we do the whole, do the whole

18 thing.

19 Q. Did you approach Mr. Strong and

20 inquire whether it would be possible to

21 adjust the schedule for the closing of the

22 acquisitions to permit you the time necessary

23 to complete a syndication of the senior

24 financing before funding was required?

25 A. I remember having conversations

Page 131

1 Smith

2 with the team to include Mr. Strong about the

3 term, of why the need for the fast close.

4 I frankly don't remember what was

5 driving it, whether it was a tax or

6 regulatory or something else. But it was

7 deemed by the group, that's the team, that it

8 was not possible to extend, delay the close

9 to allow for the syndication of the loan.

10 Q. Was it your understanding that

11 Sunbeam wanted the transaction to close as

12 quickly as scheduled?

13 A. I wasn't that close to it, do not

14 know.

15 Q. But your understanding was someone

16 wanted these transactions to close very

17 quickly, correct?

18 MR. CLARE: Objection to the form.

19 A. Don't know.

20 Q. In your conversations with Mr.

21 Dunlap, did you ever learn from Mr. Dunlap

22 that it was Mr. Dunlap who wanted the

23 acquisition of Coleman company to close

24 before the first quarter of 1998 was

25 completed?

Page 132

1 Smith

2 A. No.

3 Q. Did you ever learn from your

4 conversations with Mr. Kersh, that it was Mr.

5 Kersh and Mr. Dunlap who wanted the

6 transaction involving the acquisition of my

7 client's interests in Coleman to close before

8 the first quarter of 1998?

9 A. No.

10 Q. In the period leading up to the

11 closing of the acquisition of my client's

12 interests in Coleman company, Mr. Smith, did

13 you have any communications on any subject

14 with Coleman company management?

15 A. I don't believe so.

16 Q. Did you have any communications

17 with my client, Coleman (Parent), or its

18 representatives?

19 A. I don't believe so.

20 Q. Credit Suisse First Boston was the

21 investment banking firm for my client.

22 Did you have any communications

23 with CS First Boston?

24 A. I do not remember any

25 conversations.

Page 133

1 Smith

2 Q. My client is owned by McAndrews &

3 Forbes, are you aware of that?

4 A. Yes.

5 Q. Did you have any communications

6 with any representatives of McAndrews &

7 Forbes prior to the close of Sunbeam's

8 acquisition of my client's interests in

9 Coleman company?

10 A. I don't believe so.

11 Q. Did you have any conversations with

12 Ronald Perelman?

13 A. No.

14 Q. With Howard Gittis?

15 A. No.

16 Q. Jim Maher?

17 A. No.

18 Q. William Nesbitt?

19 A. No.

20 Q. Do you know Jim Maher?

21 A. I don't think so.

22 Q. Have you ever spoken directly with

23 Mr. Perelman on any subject?

24 A. Yes.

25 Q. What was the nature of that?

Page 134

1 Smith

2 A. Gee, I can't remember all of them

3 for various transactions or various meetings.

4 Q. Have you ever been involved in

5 providing financing to any McAndrews & Forbes

6 related entities?

7 A. No.

8 Q. Have you ever sought the business

9 of McAndrews & Forbes?

10 A. Yes.

11 Q. Unsuccessfully I take it?

12 A. Unsuccessfully.

13 Q. For whom were you working on those

14 occasions?

15 A. Morgan Stanley and Bear Stearns.

16 Q. On what occasions while you were at

17 Morgan Stanley did you seek to obtain

18 business from McAndrews & Forbes?

19 A. I don't recall them now, but -- I

20 don't remember the specifics.

21 Q. Were you working with Morgan

22 Stanley investment bankers in connection with

23 that activity?

24 A. Yes.

25 Q. Do you remember who that was?

Page 135

1 Smith

2 A. The one, the name was -- what was

3 his name? I'm sorry, Bill Reid.

4 Q. Do you remember if that was before

5 the Sunbeam-related one?

6 A. I think it was.

7 Q. Since going to work at Bear Stearns

8 you have tried to get business from McAndrews

9 & Forbes?

10 A. Yes, I have.

11 Q. What did that relate to?

12 A. The most recent one was a

13 refinancing for PanaVision, a company that

14 McAndrews & Forbes owns.

15 Q. When was that?

16 A. That was last summer and last fall.

17 Q. Any other occasions?

18 A. We're currently working on one now,

19 trying to secure the business.

20 Q. Are you working with Bear Stearns

21 investment bankers in connection with that?

22 A. Yes.

23 Q. Who is that?

24 A. I'm sorry?

25 Q. Who is that person?

Page 136

1 Smith

2 A. Larry Alletto.

3 Q. How does he spell his last name?

4 A. A-L-L-E-T-T-O.

5 Q. Are there any other occasions that

6 you can recall speaking to Mr. Perelman

7 directly?

8 A. Just to be clear, did not speak to

9 Mr. Perelman regarding the PanaVision and not

10 the current transaction. But no, don't

11 remember speaking to him.

12 Q. Now, you remained -- we'll get into

13 this in some more detail, but I want to cover

14 this point here.

15 After the senior loan closed in

16 March of 1998, you had continuing involvement

17 with respect to Morgan Stanley Senior

18 Funding's loan to Sunbeam, correct?

19 A. Yes.

20 Q. Did you have any communications

21 with anyone from Coleman (Parent) or

22 McAndrews & Forbes in connection with that

23 activity?

24 A. Yes.

25 Q. Who was that?

Page 137

1 Smith

2 A. Who at McAndrews & Forbes, Howard

3 Gittis. Who is the other guy? Irwin

4 somebody or other. I guess those would be

5 the major ones.

6 Q. I'm sorry, who was the third

7 person?

8 A. His first name was Irwin. I can't

9 remember his last name.

10 Q. We'll get into that in more detail.

11 Were you aware that in late 1997

12 Mr. Dunlap had had a meeting with Mr.

13 Perelman in Florida to discuss Sunbeam's

14 acquisition of Coleman, the possibility of

15 that?

16 A. No.

17 Q. No one has ever reported to you on

18 that meeting?

19 A. Oh, I'm sorry, I misunderstood your

20 question. I didn't know that they had met

21 during a, when we were doing the financing,

22 but reviewing for this case for today found

23 that out.

24 Q. Other than what you learned in

25 preparing for your deposition, do you have

Page 138

1 Smith

2 any knowledge concerning Mr. Perelman's

3 meeting with Mr. Dunlap?

4 A. No.

5 Q. Who at Morgan Stanley, sir, was

6 responsible for making sure that all

7 necessary due diligence was performed?

8 A. I think if you're going to look at

9 it organizationally, it was probably John

10 Tyree. And then in addition to his efforts

11 we basically had a, a person from our group,

12 from Morgan Stanley Senior Funding, in this

13 case Mike Hart, assisted by Burchill and

14 Simon to assist in that effort and do the due

15 diligence from our vantage point, from the

16 financing point.

17 Q. What individuals performed the due

18 diligence in connection with this MSSF?

19 A. Those are the three I just

20 mentioned, Mike Hart, Tom Burchill and Simon

21 Rankin.

22 And I also want to add that the

23 process also included a representative from

24 the credit department.

25 Q. What was the function of the credit

Page 139

1 Smith

2 department with respect to the senior loan?

3 A. They were a, viewing it in a more

4 traditional credit role since our policy

5 stated internally and externally was that we

6 would hold a piece, sometimes a substantial

7 piece of every loan that we made.

8 And it was the credit department's

9 function, role, not only to pass on the

10 underwriting, I need to okay that, but also

11 the long-term view of being a long-term

12 lender to these opportunities such as

13 Sunbeam.

14 So it would not be unusual, I can't

15 remember the name, not be unusual to have

16 them on phone calls, show up at meetings, et

17 cetera, to participate in the due diligence.

18 Q. What portion of the senior loan did

19 Morgan Stanley Senior Funding intend to keep?

20 A. That's -- I'll have to think about

21 that for a second. We committed to 40

22 percent of the transaction and I think we

23 thought that it would probably end up being

24 about 50 to \$60 million.

25 Q. So at the end of the day after the

Page 140

1 Smith

2 loan was fully syndicated, you anticipated

3 that Morgan Stanley Senior Funding would hold

4 about 50 or \$60 million?

5 A. That is my recollection, at least

6 when the syndication stopped it was

7 completed.

8 Q. And how quickly was it contemplated

9 that would occur?

10 A. Normally from the time you start

11 until you are able to syndicate takes about

12 six to eight weeks.

13 Q. The transactions here closed at the

14 end of March. In terms of the schedule that

15 you envisioned at the time the loan was

16 closed, when did you expect the senior, that

17 the syndication of the senior loan to be

18 completed?

19 A. By the end of May.

20 Q. And at that point Morgan Stanley

21 would be holding about 50 or \$60 million of

22 the debt?

23 A. If things went as anticipated.

24 Could be luckier, could be a little less

25 lucky.

Page 141

1 Smith

2 Q. Luckier in this context means what,

3 having less?

4 A. Yeah.

5 Q. Did Morgan Stanley have any

6 obligation to Sunbeam or anybody else to hold

7 any particular amount of the financing?

8 A. No, other than our stated practice

9 which we communicated to Sunbeam and

10 communicated to other lenders, as well as

11 Bank of America and First Union, that we

12 would end up holding some.

13 Q. But there was no commitment as to

14 the amount?

15 A. No.

16 Q. In terms of the due diligence that

17 Morgan, was done from Morgan Stanley Senior

18 Funding, I don't understand how this worked.

19 The individuals involved were Mr.

20 Hart and Mr. Burchill and Mr. Simon, correct?

21 A. Simon Rankin.

22 Q. Simon Rankin?

23 A. Assisted by a representative of the

24 credit department.

25 Q. There were other people at Morgan

Page 142

1 Smith

2 Stanley involved in doing due diligence,

3 correct?

4 A. Yes.

5 Q. Miss Porat's group, for example?

6 A. Right.

7 Q. Mr. Tyree?

8 A. Uhm-hmm.

9 Q. Was it the responsibility of Mr.

10 Hart, Mr. Burchill and Mr. Rankin to

11 independently review all of the due diligence

12 that was being done on all aspects of Morgan

13 Stanley's due diligence, or did it work in a

14 different way?

15 A. Well, since I wasn't them it's

16 tough to say what exactly they did. They

17 would -- but what would normally happen is

18 they do some of their own and then work with

19 and look at the information that other parts

20 of the firm had gotten.

21 Q. Was it their responsibility to

22 familiarize themselves with all of the due

23 diligence that was being done by other parts

24 of the firm?

25 A. It was I guess to familiarize and

Page 143

1 Smith

2 take advantage of the other due diligence

3 done on other parts of the firm.

4 Q. That is what you expected of them?

5 A. Yes.

6 Q. To whom did Mr. Hart, Mr. Burchill

7 and Mr. Rankin report relating to their due

8 diligence work?

9 A. Well, they worked for me. They,

10 however, were, in cases like this they

11 basically report and stand behind their work

12 to the Credit Committee, which is the final

13 grantor, if you will, of credit authority.

14 Q. Were you giving them direction with

15 respect to the due diligence activity that

16 they were engaged in?

17 A. I don't know about direction. Mike

18 was a very experienced transactor so we would

19 consult, respond to questions from him. We

20 would talk about specific issues that might

21 come up.

22 Q. Did you give him any specific

23 direction to investigate any particular

24 aspect of Sunbeam?

25 A. Not that I recall.

Page 144

1 Smith

2 Q. Did you give any specific direction

3 to any Morgan Stanley personnel to

4 investigate any particular aspect of Sunbeam?

5 A. Not that I recall.

6 Q. The transactions were scheduled to

7 close before the end of the first quarter of

8 1998, correct, sir?

9 A. I believe so.

10 Q. Did you believe it was an important

11 part of the financing due diligence to obtain

12 information regarding Sunbeam's performance

13 in the first quarter of 1998?

14 A. I think that was one element of the

15 overall due diligence.

16 Q. To find out how Sunbeam was doing

17 so far in the first quarter of '98, correct?

18 A. Sure, to get an update on their

19 performance.

20 Q. Did you direct anybody to obtain

21 information concerning Sunbeam's first

22 quarter 1998 performance?

23 A. Not that I recall.

24 Q. Do you recall what information you

25 received relating to Sunbeam's first quarter

Page 145

1 Smith

2 1998 performance, if anything?

3 A. I think we had some phone calls,

4 maybe even some documents regarding how they

5 were doing versus the, versus plan and versus

6 last year.

7 Q. When you went to Florida for the

8 meeting at the beginning of March in 1998,

9 did you personally receive any information

10 from Sunbeam at that point relating to how

11 they had done so far in the first quarter?

12 A. I don't believe so.

13 Q. Did you ask any questions on that

14 subject while you were in Florida?

15 A. In Florida it was a different type

16 of due diligence. It was more specific on

17 the appliance business. So we were looking

18 at more granular, different product lines and

19 in the groups they had it then versus how

20 they were doing versus the first two months

21 in the year.

22 Q. So you don't recall asking while

23 you were present in Florida how have you guys

24 done so far in January or February?

25 A. No.

37 (Pages 142 to 145)

Page 146

1 Smith

2 Q. You don't recall anybody from

3 Sunbeam offering any information on that?

4 A. No

5 Q. When do you recall first receiving

6 information relating to how Sunbeam was doing

7 in the first quarter of 1998?

8 A. I think it was the last half of,

9 the last half of March.

10 Q. When you wrote the highly confident

11 letter to Sunbeam on March 5 did you have any

12 information at all about how Sunbeam had been

13 doing in the first two months of 1998?

14 A. To the best of my recollection, no.

15 Q. Did that concern you?

16 A. I'm sorry, what?

17 Q. Were you concerned when you issued

18 the highly confident letter on March 5, that

19 you personally didn't have any information on

20 how Sunbeam had done in January or February

21 of 1998?

22 A. No, because again you go back to

23 that letter, there was still a lot of due

24 diligence to do.

25 We would have been -- we would

Page 147

1 Smith

2 have -- that would have come up in the

3 general course on how they were, on how they

4 were doing.

5 Q. How high on your list of pieces of

6 information to get would have been obtaining

7 a report from Sunbeam on how they were doing

8 in the first two months of 1998?

9 MR. CLARE: Object to the form of

10 the question.

11 A. I don't know how you would say

12 high. It is just one of the bits of

13 information that go into coming up with the

14 ultimate credit decision, so it's important.

15 Is it more important than something else,

16 less important than something else, it just

17 goes into the mix.

18 Q. Well, did you think in light of

19 Sunbeam's claims that it had substantially

20 improved its performance in 1997, that it was

21 especially important for you in connection

22 with your review of the senior loan to obtain

23 good information about how Sunbeam was doing

24 in the first months of 1998?

25 MR. CLARE: Object to the form.

Page 148

1 Smith

2 A. Again I think it was part of the

3 overall view, the overall information we

4 needed to come up with a credit decision on

5 how the company was performing, whether it

6 was a good credit.

7 So to isolate something like that

8 in and of itself as being the talisman of

9 something, that is the go or no-go decision,

10 it is kind of tough to do that out of

11 context.

12 Q. You wouldn't say it was an

13 especially important piece of information to

14 know?

15 A. I didn't say that. I said it was

16 many bits of information that go into making

17 the ultimate credit decision on whether

18 you're comfortable and willing to go ahead

19 with the underwriting.

20 Q. Was it an important bit or was it

21 an important piece of information?

22 A. I'm not a lawyer, so maybe I would

23 put it in between that. So I would say it is

24 important, I would leave it at that.

25 Q. Would you say that knowing how

Page 149

1 Smith

2 Sunbeam had done in the first weeks of 1998

3 was an essential thing for Morgan Stanley to

4 know before it closed on the senior loan?

5 MR. CLARE: Object to the form of

6 the question.

7 A. Like I think I said before, it was

8 an important, you know, consideration to, in

9 terms of making the overall judgment.

10 Q. Would you say you wouldn't agree to

11 close on a loan unless you had that

12 information?

13 A. I don't know if I would say that.

14 Q. Do you know that Morgan Stanley had

15 requested a comfort letter from Sunbeam's

16 auditors?

17 A. Yes, I did.

18 Q. When did you know that?

19 A. I think I knew it back then.

20 Q. What's the purpose for a comfort

21 letter?

22 A. Well, I didn't ask for it and I'm

23 not on the security side, so...

24 Q. What's your understanding?

25 A. I think it's part of the closing

Page 150

1 Smith
2 process for, involving securities.
3 Q. Do you know that one of the things
4 that the auditors do in connection with the
5 comfort letter is to report on the company's
6 most recent financial results for periods
7 that are not yet complete?
8 MR. CLARE: Objection, foundation.
9 A. No.
10 MR. CLARE: If we're getting to a
11 transition point, maybe we should break for
12 lunch.
13 MR. MARKOWSKI: We can do that if
14 you would like.
15 MR. CLARE: Okay.
16 THE VIDEOGRAPHER: The time is
17 12:35, we're going off the record.
18 (Lunch recess: 12:35 p.m.)
19
20
21
22
23
24
25

Page 151

1 Smith
2 AFTERNOON SESSION
3 (Time noted: 1:18 p.m.)
4 R. BRAM SMITH, resumed and
5 testified as follows:
6 THE VIDEOGRAHER: The time is
7 1:18, we're back on the record.
8 EXAMINATION BY (Cont'd.)
9 MR. MARKOWSKI:
10 Q. Mr. Smith, when we broke I had
11 asked you whether you were aware that Morgan
12 Stanley had requested a comfort letter from
13 Sunbeam's outside auditor, Arthur Andersen.
14 Let me show you a copy of what we
15 previously marked as CPH Exhibit Number 17.
16 It's a letter to Morgan Stanley from Arthur
17 Andersen dated March 19, 1998.
18 A. Uhm-hmm.
19 Q. Take a moment to look at this
20 letter, and my first question to you is going
21 to be whether you have ever seen it before.
22 A. Okay.
23 Q. Have you seen this letter before,
24 sir?
25 A. Yup.

Page 152

1 Smith
2 Q. When did you first see it?
3 A. I don't remember when. I do know I
4 saw it yesterday and I don't know whether I
5 saw all of this before or not.
6 Q. Could you take your hand down?
7 A. Oh, sorry.
8 Q. You're not certain as you sit here
9 today, whether you saw this letter back in
10 March of 1998?
11 A. I don't know if I saw the whole
12 thing in March of 1998, yup.
13 Q. Is it possible that you saw
14 portions of this or information drawn from it
15 in March of 1998?
16 A. It might have been.
17 Q. There has been testimony that Mr.
18 Tyree received the signed copy of this letter
19 from Arthur Andersen.
20 Did Mr. Tyree report to you on the
21 substance of the information contained in
22 this March 19 letter?
23 A. Not that I remember.
24 Q. Do you know if anyone working for
25 you received a copy of Arthur Andersen's

Page 153

1 Smith
2 March 19, 1998 comfort letter?
3 A. No.
4 Q. Do you believe it to be the case
5 that the individuals working for you did not
6 receive a copy of the March 19 comfort
7 letter?
8 A. Don't know.
9 Q. Do you know if the people working
10 for you, Mr. Hart and others received a
11 briefing from Mr. Tyree concerning the
12 substance of the March 19 comfort letter?
13 A. Don't know.
14 Q. Did you receive a report from Mr.
15 Hart or the other individuals conducting due
16 diligence for Morgan Stanley Senior Funding
17 concerning the substance of the March 19
18 comfort letter?
19 A. Did not receive a report.
20 Q. Let me draw your attention to
21 paragraph 6C.
22 A. 6E?
23 Q. 6C. It is at the page 5 of the
24 letter. Would you read that to yourself,
25 please.

1 Smith
2 Have you done it?
3 A. I'm just finishing up here. Okay.
4 Q. This portion of the March 19
5 comfort letter advises that Sunbeam's sales
6 for the first two months of 1998 are
7 substantially below Sunbeam's sales for the
8 first two months of 1997, correct?
9 MR. CLARE: Objection to form.
10 A. Well, they list the two numbers for
11 the two different periods, yes.
12 Q. Do you agree with me that the
13 substance of this paragraph advises that
14 Sunbeam sales for the first two months of '98
15 are substantially below Sunbeam sales for the
16 first two months of 1997, or is that
17 something about which you disagree?
18 A. It shows me the two numbers, 72
19 versus 143, so...
20 Q. It advises that the sales for the
21 first two months of 1998 are about \$72
22 million, correct?
23 A. Correct.
24 Q. And the sales for the first two
25 months of 1997 were about 143-1/2 million,

1 Smith
2 correct?
3 A. Uhm-hmm.
4 Q. That's about, the sales for the
5 first two months of 1998 are about half of
6 what they had been in the first two months of
7 1997, correct?
8 A. Yup.
9 Q. Would you agree with me that is a
10 substantial decline in sales for a two-month
11 period?
12 A. A substantial difference in sales,
13 yup.
14 Q. It's a substantial negative
15 variance, correct, substantial decline?
16 A. Decline, uhm-hmm.
17 Q. You agree with me that the decline
18 is substantial, or are you disagreeing?
19 A. I guess I agree.
20 Q. Were you aware that Wall Street was
21 expecting Sunbeam to accomplish sales in the
22 first quarter of 1998 that were substantially
23 greater than the sales that Sunbeam had
24 accomplished in the first quarter of 1997?
25 MR. CLARE: Objection to form.

1 Smith
2 Q. As of mid-March 1998?
3 A. No.
4 Q. Did anyone report to you, sir, the
5 information that we've just read in paragraph
6 6C of the Andersen comfort letter, that
7 Sunbeam sales for the first two months of
8 1998 were about half of what they had been in
9 the first two months of 1997?
10 A. Yes.
11 Q. When did you first receive that
12 report?
13 A. Don't remember.
14 Q. Was it before the close of the
15 transaction by which Sunbeam acquired my
16 client's interest in Coleman company?
17 A. Yes.
18 Q. From whom did you receive a report
19 that Sunbeam sales in the first two months of
20 1998 were about half of what they had been in
21 the first two months of 1997?
22 A. I don't know if I would use the
23 word "report," but through the process with
24 the team, both the leveraged finance team and
25 others, that this issue came up.

1 Smith
2 Q. Well, who told you?
3 A. It's a big group so it is unclear
4 to me, I can't remember who told me, but
5 talked about it to several people.
6 Q. Do you recall that you first
7 learned this information at a group meeting?
8 A. I can't recall how I or when I
9 first learned it.
10 Q. So you may have learned it at a
11 group meeting or it may have been given to
12 you individually in some way?
13 A. Yes.
14 Q. Do you recall if it was given, this
15 information was given to you in writing?
16 A. The -- no, I don't.
17 Q. But you do recall talking about it
18 with others within Morgan Stanley before the
19 closing of Sunbeam's acquisition of my
20 client's interests in Coleman?
21 A. Yes.
22 Q. With whom within Morgan Stanley do
23 you recall discussing the fact that Sunbeam
24 sales in the first two months of the quarter
25 were about half of what they had been in the

Page 158

1 Smith

2 first two months of '97?

3 A. Mike Hart for sure and maybe,

4 probably others, but I don't recollect who

5 those were.

6 Q. Do you recall discussing it with

7 Miss Porat?

8 A. No.

9 Q. Do you believe you did not discuss

10 this information with Miss Porat?

11 A. I believe I did not.

12 Q. Did you discuss it with Mr. Strong?

13 A. I believe I might have.

14 Q. Do you believe that Mr. Strong is

15 the person who first advised you of this

16 information?

17 A. No recollection.

18 Q. Do you believe it was Mr. Hart?

19 A. Don't recall.

20 Q. What do you recall discussing, what

21 do you recall about your discussions with Mr.

22 Hart concerning the decline in Sunbeam's

23 sales for the first two months of 1998?

24 A. What I recall is the discussing

25 what happened and the impact of this on their

Page 159

1 Smith

2 projections for 1998.

3 Q. When did these discussions take

4 place?

5 A. After we got notice that their

6 sales were \$72 million for the first two

7 months.

8 Q. And that is before the closing of

9 the transactions, correct?

10 A. Before the closing of the

11 transaction.

12 Q. Was it your belief you discussed

13 this with Mr. Hart privately, or was it with

14 a larger group?

15 A. Probably both.

16 Q. How many times do you recall

17 discussing it with Mr. Hart?

18 A. Gee, it's tough. I guess more than

19 several.

20 Q. Do you recall over what period of

21 time you had these conversations, what length

22 of period of time?

23 A. Probably days, but that's a hazy

24 guess.

25 Q. You indicated that you probably

Page 160

1 Smith

2 discussed this with Mr. Hart both privately

3 and with a larger group.

4 Who do you believe was involved in

5 larger group discussions on this topic where

6 both you and Mr. Hart participated?

7 A. Mr. Strong, maybe Mr.

8 Burchill/Rankin, whoever was there at the

9 time, probably somebody from credit, and then

10 a -- I'm sure I kept my bosses involved too.

11 Q. Your bosses would be who during

12 this time period?

13 A. Newhouse, Sipprelle and Rankowitz.

14 Q. I'm sorry, I missed the second

15 name.

16 A. Mr. Sipprelle.

17 Q. What is Mr. Sipprelle's first name?

18 A. Dwight.

19 Q. And the third person?

20 A. Michael Rankowitz.

21 Q. Those are individuals to whom you

22 reported during this time period?

23 A. Uhm-hmm. Yes.

24 Q. Tell me everything you can recall

25 about your conversations on the subject of

Page 161

1 Smith

2 the decline of Sunbeam sales in the first two

3 months of 1998?

4 A. I think the focus of the discussion

5 was really what had happened, what was going

6 to happen for the first quarter, and the

7 implications of that for the full year. When

8 I say that, achieving their projections for

9 the, for 1998.

10 Q. What do you recall being said on

11 each of those topics?

12 A. A lot of questions and then -- a

13 lot of questions and it was basically with

14 members of the team, that would be the big

15 Morgan Stanley team, focus on trying to find

16 these answers.

17 Q. You participated in meetings where

18 people raised questions, correct?

19 A. Yes.

20 Q. And the questions are what's

21 happened so far in the first quarter that

22 caused this, right?

23 A. Yup.

24 Q. What's the full quarter going to

25 look like?

41 (Pages 158 to 161)

Page 162

1 Smith

2 A. Uhm-hmm.

3 Q. And what are the implications of

4 this for 1998, correct?

5 A. Yes.

6 Q. Why were you interested in those

7 things?

8 A. Just as part of our continuing due

9 diligence to make sure we understood what

10 happened.

11 Q. Do you recall getting answers to

12 the questions?

13 A. I recall getting, yes, some answers

14 to the questions from the team.

15 Q. Who provided answers?

16 A. I think it was probably Mr. Hart,

17 who was the -- where I got most of my

18 information. And I don't know how, where did

19 he get it. And he didn't get his directly, I

20 think he was relating from the bigger Morgan

21 Stanley team.

22 Q. Do you recall getting information

23 from anybody other than Mr. Hart concerning

24 answers to these questions?

25 A. No.

Page 163

1 Smith

2 Q. What do you recall Mr. Hart

3 reporting to you?

4 A. Let me go back here. I think

5 probably talked to Strong as well, and in

6 terms of what, what had happened here is

7 that, is that the understanding was that they

8 had some anticipated revenues that were going

9 to come in in the third quarter -- excuse me,

10 the third month of the quarter, the third

11 month of the quarter, and that they would

12 make up a lot of this shortfall then.

13 Q. That's what Mr. Strong reported to

14 you?

15 A. I think that was a combination. We

16 were doing a lot of this in groups of people.

17 Change in composition. So it is very

18 difficult to recall for you exactly who was

19 at each and every one of these meetings.

20 Q. But your best recollection as you

21 sit here is that Mr. Strong said the

22 substance of this to you?

23 A. No. My recollection is that was

24 kind -- that was bits of information that

25 came out of the Morgan Stanley due diligence

Page 164

1 Smith

2 effort that would involve those two

3 individuals at different times and different

4 degrees of involvement as well as others.

5 Q. Did you attempt to speak directly

6 with Sunbeam yourself?

7 A. I did not.

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

9 A. I did not.

10 Q. Do you know if Mr. Hart had any

11 direct communications with Sunbeam?

12 A. I do not know.

13 Q. On this topic I'm focusing on?

14 A. I do not know.

15 Q. What do you recall Mr. Hart telling

16 you relating to what had happened in the

17 first two months of the quarter, what the

18 expectations were for the rest of the quarter

19 and what the implications were for '98?

20 A. It's tough for me to remember

21 specifically what his contribution was to

22 that. I think it's more generic, that the

23 Morgan Stanley due diligence team came up

24 with the answers that I described before,

25 that the company was highly confident that

Page 165

1 Smith

2 they were going to make their -- were going

3 to achieve results that were I guess ahead of

4 last year, and that they felt that the rest

5 of the year would come on pretty close to

6 where the projections that they had provided

7 us were going to be.

8 Q. Those are the conclusions that had

9 being provided to you, correct?

10 A. Those were the conclusions

11 provided, yes, by the company to the Morgan

12 Stanley team.

13 Q. Do you know what factual foundation

14 Morgan Stanley had for any of those

15 propositions?

16 A. I think we had gotten some

17 additional information from them, the

18 company, showing how the projected sales for

19 the rest of the quarter.

20 Q. Did you see that information

21 yourself?

22 A. I think so.

23 Q. I thought you had indicated

24 previously that you understood that Miss

25 Porat was assigned to conduct an inquiry

42 (Pages 162 to 165)

Page 166

1 Smith
 2 relating to some of those issues.
 3 Did I misunderstand you?
 4 A. Did I say that? I think that if
 5 she was, she would have been part of the
 6 overall Morgan Stanley team. Again I can't
 7 overemphasize that it's a -- it was a huge
 8 commitment of resources by the part of the
 9 firm. At any given time there were 10 or 20
 10 people working on it at different levels of
 11 seniority.
 12 Certainly Ruth was one of the more
 13 senior people involved and so at various
 14 times she might be in the lead, and sometimes
 15 it's Mr. Strong or others.
 16 Q. With respect to the question what
 17 had happened in the first two months of the
 18 quarter, were you told by anyone in the
 19 Morgan Stanley team that the primary reason
 20 for the shortfall in January and February in
 21 sales was that Sunbeam had accelerated first
 22 quarter revenue into the fourth quarter of
 23 1998?
 24 A. No. What we were told was that
 25 they were trying to sell more, more of these

Page 167

1 Smith
 2 grills, and accelerated the sales faster to
 3 get the jump on the competition.
 4 Q. I didn't ask about the reason for
 5 doing it, but I asked whether you were told
 6 that the reason why Sunbeam sales in January
 7 and February were so far below 1997 levels
 8 was that Sunbeam had accelerated the sale of
 9 products into the fourth quarter of 1997.
 10 A. No.
 11 Q. Let me direct your attention to the
 12 March 19 letter, CPH Exhibit 17 which you
 13 have in front of you.
 14 A. Uhm-hmm.
 15 Q. To page 4, paragraph 6B. Let me
 16 read the first sentence for you. "For the
 17 period from December 29, 1997 through March
 18 16, 1998 consolidated net sales decreased as
 19 compared to the corresponding period of the
 20 preceding year, primarily due to the
 21 company's new early buy program for outdoor
 22 grills which accelerated outdoor grill sales
 23 into the fourth quarter of fiscal 1997."
 24 Do you see that statement?
 25 A. Uhm-hmm.

Page 168

1 Smith
 2 Q. At any time prior to the close of
 3 Sunbeam's acquisition of my client's
 4 interests in Coleman company, were you
 5 advised of the facts contained in that
 6 sentence?
 7 A. Yes.
 8 Q. And who advised you of that?
 9 A. Somebody from the team.
 10 Q. What were you told?
 11 A. That the company had accelerated
 12 the sales of grills to capture market share.
 13 Q. Accelerated the sale of grills into
 14 the four quarter of 1997, correct?
 15 A. 1997, yeah.
 16 Q. And that the effect of that was to
 17 diminish the sales the company had realized
 18 in the first two months of 1998?
 19 A. Yes.
 20 Q. You don't know who told you that?
 21 A. No.
 22 Q. Do you know if it was part of a
 23 group meeting?
 24 A. No, I don't recall.
 25 Q. Do you know if it was Mr. Strong

Page 169

1 Smith
 2 who told you that?
 3 A. Don't recall.
 4 Q. Do you know if it was Mr. Tyree?
 5 A. Don't recall.
 6 Q. Miss Porat?
 7 A. Don't recall.
 8 Q. Mr. Hart?
 9 A. Don't recall.
 10 Q. Did the fact that Sunbeam's sales
 11 had declined so substantially in the first
 12 two months of 1998, sir, as a result of
 13 activities that resulted in accelerating the
 14 sale of grills in the fourth quarter of 1997,
 15 cause you to have any questions relating to
 16 the turn-around claims that Mr. Dunlap was
 17 making?
 18 A. No.
 19 Q. Why is that?
 20 A. That was because that's one bit of
 21 information, and to look at it in the overall
 22 context of what the company was doing, their
 23 performance, where they -- and what that
 24 looked like was going to happen in the rest
 25 of '98 is all part of the decision.

Page 170

1 Smith

2 Q. Did learning that Sunbeam had

3 engaged in activities to enhance its 1997

4 revenues cause you to believe that Morgan

5 Stanley needed to make further inquiry into

6 Sunbeam's turn-around claims?

7 MR. CLARE: I object to the form

8 of the question.

9 A. Focus of our inquiry was to test

10 the, or to find out more information about

11 the use of these early sales to enhance, you

12 know, market share and total revenues of the

13 grills. That was the emphasis of the

14 inquiry.

15 Q. Did you think this was potentially

16 good news?

17 A. Didn't know enough.

18 Q. You didn't necessarily conclude

19 that the decline in Sunbeam sales in the

20 first two months of 1998 was a negative

21 development?

22 A. I didn't know enough. And again

23 you want to look at this in the context of

24 all of the information we had.

25 Q. In what way would a 50 percent

Page 171

1 Smith

2 decline in sales of the first two months of

3 1998 be a potentially positive development

4 for Sunbeam?

5 A. I don't know about positive. You

6 asked me if it was potentially negative. It

7 could be a host of things that are going on.

8 Again, I think you have to look at

9 all of the facts you have available to you to

10 come up with any view. Very difficult I

11 think to pick out one item and then make that

12 be the linchpin of everything you are trying

13 to do.

14 Q. Is it your testimony, sir, that

15 when you were advised that Sunbeam's net

16 sales for the first two months of 1997 were

17 half of what they had been in the first two

18 months of 1997, and that the reason for that

19 was that Sunbeam had accelerated -- did I

20 misspeak?

21 MR. CLARE: I think you might have

22 said 1997 in both parts of your question.

23 Q. Let me start over.

24 Is it your testimony, sir, that

25 when you learned that Sunbeam's sales in the

Page 172

1 Smith

2 first two months of 1998 were about half of

3 what they had been in the first two months of

4 1997, and that the reason for that was that

5 Sunbeam had accelerated sales from the first

6 quarter of 1998 into the fourth quarter of

7 1997, you thought that was potentially a

8 positive piece of information relating to

9 Sunbeam's --

10 MR. CLARE: I object to the form,

11 and also to the extent it misstates his prior

12 testimony.

13 Q. -- performance and financial

14 condition?

15 A. Well, your first question before

16 was did I view that negatively. I don't

17 think I said I viewed it positively. Again

18 it is just another bit of information that

19 comes out in this due diligence process, and

20 you put that together with all of the other

21 information that we had. And again emphasize

22 the "we" because we had a big group working

23 on this, coming at it from many angles.

24 Q. Putting aside the prior testimony,

25 I'm asking a standalone question here.

Page 173

1 Smith

2 Is it your testimony, sir, that

3 when you learned that Sunbeam sales for the

4 first two months of 1997 were about half --

5 excuse me, for the first two months of 1998

6 were about half of what they had been in the

7 first two months of 1997, that the reason for

8 that was that Sunbeam had accelerated first

9 quarter sales back into the prior fiscal

10 period, that you thought that was potentially

11 a good thing for Sunbeam?

12 A. I wouldn't characterize it. Didn't

13 even approach it as a potentially good thing,

14 just a potential let's find out what goes on.

15 Q. Because it was a potential concern,

16 right?

17 A. No, because I wanted to find out

18 what was going on.

19 Q. Were you concerned?

20 A. It could have been good, it could

21 have been bad.

22 Q. Did you think it was potentially a

23 negative development?

24 A. As is many things, it could be

25 potentially good, potentially bad, just goes

Page 174

1 Smith

2 back into the mosaic of what we are trying to

3 find out here and ascertain what is happening

4 with the company.

5 Q. So you agree with me that when you

6 learned this information, you recognize that

7 it was potentially a bad piece of

8 information, correct?

9 A. I didn't know enough. It could

10 have been good, it could have been bad.

11 Q. That is my question.

12 Were you -- did you know?

13 A. Didn't know enough at the time.

14 Q. To know whether it was either

15 potentially good or potentially bad?

16 A. Not on the basis of this.

17 Q. So why did you want to make further

18 inquiry?

19 A. To find out.

20 Q. Because it might be potentially

21 bad, correct?

22 A. And it might be potentially good.

23 My job is to find out what is going on.

24 Q. You wanted to find out what was

25 going on with respect to this particular

Page 175

1 Smith

2 information because it was something

3 potentially negative with respect to

4 Sunbeam's --

5 A. Could have been potentially

6 negative.

7 Q. -- condition and performance,

8 correct?

9 MR. CLARE: Objection, asked and

10 answered.

11 A. Could have been potentially

12 negative.

13 Q. I'm sorry, could have been

14 potentially what?

15 A. Whatever you said, negative.

16 Q. Negative. While we're waiting for

17 a document, sir, did you wait for Mr. Hart to

18 obtain further information relating to this

19 so you could understand the potential

20 significance of this disclosure?

21 A. We talked about it and agreed, yes,

22 and asked him to find out as much as he

23 could. And he wanted to do that as well,

24 anyway.

25 Q. So you did ask Mr. Hart to find out

Page 176

1 Smith

2 more information relating to this for you,

3 correct?

4 A. Well, when you say for me, for the

5 firm and do what he could, yes.

6 Q. I'm trying to understand if you

7 spoke to Mr. Hart and said we need to get

8 more information about this, asking him to do

9 that?

10 A. You have to remember I met with Mr.

11 Hart like 50 times a day for weeks on this

12 thing, so I'm sure this would come up as part

13 of the conversation.

14 Q. Was the information, was this

15 information consistent with -- let me ask a

16 foundation question.

17 Had you received any information

18 prior to the time you learned that Sunbeam

19 sales for the first two months were about

20 half that they had been the prior fiscal

21 year, about how Sunbeam was doing in the

22 first quarter of 1998?

23 A. I don't recall. Don't think so.

24 Q. Do you think this was the first

25 information you received from Sunbeam

Page 177

1 Smith

2 relating to its performance in 1998?

3 A. I believe so.

4 Q. When you learned it, did you

5 believe that you had been in some way misled

6 by Sunbeam management concerning how things

7 were going in the first portion of 1998?

8 A. I did not.

9 Q. Did you think that Sunbeam

10 management should have advised you of these

11 facts earlier?

12 A. I had no opinion.

13 Q. Did anyone express the view that

14 Sunbeam, anyone within Morgan Stanley express

15 the view that Sunbeam management should have

16 advised Morgan Stanley of these facts earlier

17 in the process?

18 A. I don't recall.

19 Q. Do you recall that Sunbeam issued a

20 press release on March 19 relating to the

21 status of its first quarter sales?

22 A. Yes.

23 Q. And did you have any involvement in

24 the events relating to the issuance of that

25 press release?

45 (Pages 174 to 177)

Page 178

1 Smith

2 A. The only involvement I may have had

3 was, was either on the phone or walking in

4 and out when a phone call was going on to

5 discuss this.

6 Q. What phone call are you referring

7 to?

8 A. A internal phone call.

9 Q. Who was on that phone call?

10 A. Members of the team. I was not

11 directly on the call, I was walking in and

12 out, I had other stuff going on.

13 Q. This occurred before the issuance

14 of the March 19 press release?

15 A. It is all part and parcel of that.

16 Q. Do you know if anyone other than

17 Morgan Stanley personnel were on this phone

18 call you heard part of?

19 A. No, I think it was only Morgan

20 Stanley people.

21 Q. Do you have any recollection of

22 hearing Sunbeam -- let me ask a more general

23 question.

24 Did you have any communications

25 yourself directly with Sunbeam management

Page 179

1 Smith

2 relating to what had happened in the first

3 quarter of 1998 prior to the issuance of the

4 March 19 press release?

5 A. No.

6 Q. Can you identify any of the

7 individuals who are on the Morgan Stanley

8 team who were part of this phone call?

9 A. Not with a hundred percent

10 certainty.

11 Q. Who did you believe was involved?

12 A. I would have imagined that it would

13 have been Mike Hart, John Tyree, Bill Strong,

14 probably Tom Burchill/Rankin, maybe somebody

15 from the credit department.

16 Q. Did you make any statements during

17 the phone call?

18 A. I don't believe so.

19 Q. What do you remember hearing

20 discussed?

21 A. I remember hearing discussed, and

22 again in and out kind of what we were talking

23 about, what happened, what's the impact of

24 this for the year.

25 Q. Was there discussion about whether

Page 180

1 Smith

2 the company would issue a press release that

3 you heard?

4 A. Yes.

5 Q. What do you remember hearing?

6 A. That should the company issue a

7 press release and what would be the impact of

8 that.

9 Q. So you participated in at least a

10 portion of a conversation where there was

11 internal discussion at Morgan Stanley

12 concerning whether Sunbeam should be asked to

13 issue a press release?

14 MR. CLARE: Object to the form of

15 the question, misstates his testimony about

16 his participation.

17 A. Again I'm in and out. I do think

18 that the concept of a press release was

19 mentioned. I don't know if they were

20 responding to some thoughts that Sunbeam had,

21 some thoughts that they had or anything.

22 Again, I'm not a good witness on that phone

23 call.

24 Q. What do you remember being said by

25 the participants in that phone call

Page 181

1 Smith

2 concerning the pros and cons of a press

3 release and the potential impact?

4 A. I know that they discussed the,

5 discussed the press release, but it wasn't

6 there long enough or consistently enough to

7 pick up any of the pros or cons.

8 Q. What about the potential impact?

9 A. Not that I know of.

10 Q. Did you see a copy of --

11 Let me show you what has previously

12 been marked as CPH Exhibit 14. It's a copy

13 of the March 19 press release that I have

14 been referring to.

15 A. Uhm-hmm.

16 Q. Take a moment to read it.

17 Did you see this press release when

18 it was issued, sir?

19 A. I believe I did.

20 Q. Did you see it prior to its

21 issuance?

22 A. I may have seen a draft.

23 Q. What do you remember about the

24 possibility of seeing a draft of this press

25 release?

46 (Pages 178 to 181)

Page 182

1 Smith

2 A. Not much. The draft just before it

3 was finalized, it was circulated among the

4 team members.

5 Q. Did you offer comments to anyone

6 concerning the draft?

7 A. I don't think so. But again this

8 is from Sunbeam, right? This is a Sunbeam

9 press release?

10 Q. Yes.

11 A. I offered no comments to Sunbeam on

12 this.

13 Q. Do you recall from whom you

14 received the draft?

15 A. No.

16 Q. Do you recall any discussions

17 within Morgan Stanley relating to the draft

18 press release?

19 A. No.

20 Q. Did you offer comments to anyone

21 relating to press release of any sort of,

22 whether it was a suggestion for a change to

23 it or any other observation about it?

24 A. No. And again this is a Sunbeam

25 press release, not a Morgan Stanley press

Page 183

1 Smith

2 release.

3 Q. I'm asking not only for comments

4 you may have had concerning the language, but

5 observations you had about it.

6 A. No.

7 Q. Did you think the press release

8 adequately disclosed the information that

9 Morgan Stanley was aware of relating to

10 Sunbeam's first quarter 1998 performance when

11 you read it?

12 MR. CLARE: Objection to

13 foundation. Go ahead, you can answer.

14 A. That is up to Sunbeam, that is

15 their statement, have no opinion.

16 Q. My question to you, sir, is do you

17 think this press release adequately disclosed

18 the information, let me start with you, that

19 you were aware of relating to the status of

20 Sunbeam's first quarter 1998 performance?

21 A. Why don't you repeat your question

22 again.

23 Q. Do you think the Sunbeam March 19,

24 1998 press release --

25 A. This thing?

Page 184

1 Smith

2 Q. Correct -- fairly disclosed the

3 information that you, Bram Smith, were aware

4 of on March 19, 1998 concerning the status of

5 Sunbeam's first quarter 1998 performance?

6 A. I think I want to take a break.

7 I'll answer that later.

8 Q. No, you have to answer the question

9 before you take a break.

10 A. No comment then.

11 MR. MARKOWSKI: Keep the camera

12 rolling, we are still on the record.

13 MR. CLARE: The witness has asked

14 to take a break. We're going to go off the

15 record.

16 MR. MARKOWSKI: We're not going

17 off the record. It is my record and this

18 camera is going to roll until he comes back.

19 MR. CLARE: Okay, suit yourself.

20 (Witness and counsel leave the

21 conference room at this time.)

22 Q. Are you prepared to answer my

23 question, Mr. Smith?

24 THE WITNESS: Please repeat it.

25 (Record read.)

Page 185

1 Smith

2 THE WITNESS: And what did I say

3 before?

4 (Record read.)

5 A. So I said I had no opinion.

6 Q. Is it your testimony, sir, that you

7 have no opinion concerning whether the March

8 19, 1998 press release fairly disclosed the

9 information concerning Sunbeam's first

10 quarter 1998 performance that you personally

11 were aware of?

12 A. Yes.

13 Q. The press release contains no

14 statement whatsoever that Sunbeam sales in

15 January and February were below to any extent

16 the sales in January and February of 1997,

17 correct?

18 A. Yup.

19 Q. Contains no statement that Sunbeam

20 had accelerated revenue from the first

21 quarter of 1998 into the fourth quarter of

22 1997, does it?

23 MR. CLARE: I object. The

24 document speaks for itself. It is a waste of

25 time. You can answer.

Page 186

1 Smith

2 A. It does not relate to that.

3 Q. It doesn't disclose that, does it?

4 A. No.

5 Q. Those are facts you were aware of,

6 correct, on March 19, 1998?

7 A. Those are facts that I was aware

8 of.

9 Q. Those were facts that you were

10 aware might be potentially significant to

11 Morgan Stanley, correct?

12 MR. CLARE: Objection,

13 argumentative and lack of foundation. You

14 can answer.

15 A. Those were, as we discussed before,

16 things we wanted to find out more about.

17 Q. Let me show you, sir --

18 MR. MARKOWSKI: Do you want to

19 change the tape?

20 THE VIDEOGRAPHER: Yes. The time

21 is 2:06, this completes tape number 2. Thank

22 you.

23 (Pause in the proceedings.)

24 THE VIDEOGRAPHER: The time is

25 2:07, this begins tape number 3 of the

Page 187

1 Smith

2 videotaped deposition of Mr. Bram Smith.

3 BY MR. MARKOWSKI:

4 Q. Mr. Smith, I show you a one-page

5 document that we'll marked as CPH Deposition

6 Exhibit Number 152. It bears Bates numbers

7 LAB 43.

8 (Cedman (Parent) Holdings Exhibit

9 152, document bearing Bates number LAB

10 43, marked for identification, as of

11 this date.)

12 Q. You testified earlier, sir, that

13 you believe you received some information

14 from Sunbeam relating to sales for the

15 balance of the first quarter of 1998; is that

16 correct?

17 A. I think I said for the balance of

18 the quarter.

19 Q. If I didn't say that, that is what

20 I meant. I'm sorry.

21 A. Okay.

22 Q. Is this the document?

23 A. Yes.

24 Q. How did you receive this?

25 A. From the team.

Page 188

1 Smith

2 Q. Do you know when you received it in

3 relationship to Sunbeam's press release?

4 A. My guess is before.

5 Q. Did you participate in any

6 discussions within Morgan Stanley relating to

7 the information contained on CPH Exhibit 152?

8 A. I believe I did.

9 Q. With whom did you discuss it?

10 A. Again members of the greater due

11 diligence team.

12 Q. Can you identify any particular

13 people who you have a recollection of

14 discussing Exhibit 152 with?

15 A. Aside from Mike Hart, the people

16 come and go, so no.

17 Q. What do you recall concerning the

18 discussions that you had with Morgan Stanley

19 personnel relating to the information

20 contained on CPH Exhibit 152?

21 A. The discussion was seeing how they

22 had performed and where the sales were coming

23 from to get to their -- to exceed last year's

24 numbers.

25 Q. What conclusions did you personally

Page 189

1 Smith

2 come to after receiving CPH Exhibit 152?

3 A. I don't recall.

4 Q. Did you conclude, based on your

5 review of CPH Exhibit 152, that Sunbeam would

6 realize all of the sales listed on this page?

7 A. I don't recall.

8 Q. Did you understand that \$86 million

9 of sales listed on this page as of the date

10 of this document had not even been ordered

11 yet by Sunbeam customers?

12 A. I'm sorry, did you ask if I was

13 aware of that?

14 Q. Yes. Were you aware that \$86

15 million of sales listed on this page had not

16 even been ordered yet by Sunbeam customers?

17 A. I don't recall.

18 Q. Did you come to any conclusions

19 after reviewing this page, concerning how

20 probable it was that Sunbeam would exceed its

21 first quarter 1997 sales?

22 A. No.

23 Q. Were you able to come to any

24 conclusion after receiving CPH Exhibit 152,

25 concerning how likely it was that Sunbeam

Page 190

1 Smith

2 would exceed first quarter 1997 sales?

3 A. No.

4 Q. Did you ask for additional

5 information?

6 A. I don't believe I asked for any

7 additional information.

8 Q. If you couldn't come to any

9 conclusion after reviewing CPH Exhibit 152,

10 sir, why didn't you ask for additional

11 information?

12 A. You have got to remember that I'm

13 one of a large group and that there were

14 other people who were taking the lead on

15 investigating this, talking to the company

16 and then comment back to the group, and that

17 wasn't me.

18 Q. So is the reason why you didn't ask

19 for additional information, the fact that you

20 didn't consider it to be your responsibility

21 to pursue this?

22 A. No. The reason I didn't pursue it

23 was other people were taking the lead on

24 this, had more day-to-day contact with the

25 client.

Page 191

1 Smith

2 Q. Do you know if Morgan Stanley

3 sought additional information from Sunbeam,

4 beyond the information contained on CPH

5 Exhibit 152, concerning the likelihood that

6 Sunbeam would exceed first quarter 1997

7 sales?

8 A. I didn't have any firsthand

9 knowledge of that.

10 Q. You don't know one way or the other

11 whether Sunbeam pursued any additional

12 information on that subject?

13 MR. CLARE: Or whether Morgan

14 Stanley.

15 A. Or whether Morgan Stanley.

16 Q. Sorry, I misspoke.

17 You don't have any knowledge,

18 sitting here today, whether after receiving

19 CPH Exhibit 152 Morgan Stanley pursued any

20 additional information from Sunbeam in order

21 to allow Morgan Stanley to form an opinion

22 concerning the likelihood of Sunbeam

23 exceeding first quarter 1997 sales in the

24 first quarter of 1998?

25 A. I know that there were subsequent

Page 192

1 Smith

2 phone calls with the company. I was not part

3 of it.

4 Q. What do you know about those phone

5 calls?

6 A. That they were had to follow up on

7 this.

8 Q. Do you know whether those phone

9 calls took place before or after the press

10 release?

11 A. I think it was before the press

12 release.

13 Q. Do you know who from Morgan Stanley

14 was involved in those phone calls?

15 A. Again a subset of the team.

16 Q. You don't know any of the people?

17 A. Not directly, not specifically.

18 Q. Do you know with whom they spoke?

19 A. No.

20 Q. Do you know, other than telephone

21 calls with Sunbeam management before the

22 press release was issued concerning CPH

23 Exhibit 152, Morgan Stanley received any

24 other documentary evidence concerning

25 Sunbeam's sales prospects for the balance of

Page 193

1 Smith

2 the first quarter of 1998?

3 A. I am not aware.

4 Q. Did you ever see any?

5 A. No.

6 Q. Is CPH Exhibit Number 152 the sole

7 piece of documentary information you received

8 from Sunbeam relating to its sales prospects

9 for the first quarter of 1998?

10 A. To the best of my memory.

11 Q. Did anyone within Morgan Stanley,

12 sir, to your knowledge express doubts

13 concerning whether Sunbeam was likely to

14 exceed first quarter 1997 sales results in

15 the first quarter of 1998?

16 A. No.

17 Q. Did anyone express an opinion on

18 that subject one way or the other to you?

19 A. Not that I remember.

20 Q. Do you remember anyone saying they

21 had concluded that it was probable or likely

22 that Sunbeam would be able to exceed first

23 quarter 1997 sales results in the first

24 quarter of 1998?

25 A. I don't remember any individual

Page 194

1 Smith
2 saying that.
3 Q. Did you ask for assurances on that
4 subject from anyone within Morgan Stanley?
5 A. Well, again the team was coming up
6 with the answers and that was just part of,
7 that was part of the process to talk to the
8 company about their numbers and their -- and
9 what they were, how competent, how
10 comfortable they were in telling us this was
11 going to happen.
12 Q. My question to you, sir, is whether
13 you asked the team or any particular person
14 on the team whether Morgan Stanley had
15 reached a conclusion that it was probable or
16 likely that Sunbeam would exceed its first
17 quarter 1997 sales results in the first
18 quarter of 1998?
19 A. I don't remember asking any
20 specific member of the team.
21 Q. Do you remember asking the people
22 generally for their view on that?
23 A. Yes.
24 Q. When did you ask that question?
25 A. As part of this process.

Page 195

1 Smith
2 Q. Do you remember a specific occasion
3 where you asked that question?
4 A. No.
5 Q. Do you remember a particular
6 meeting where you asked that question?
7 A. No.
8 Q. Do you remember whether you asked
9 that question before or after the press
10 release was issued?
11 A. Prior to the press release.
12 Q. Do you remember someone responding
13 to your question?
14 A. Not specifically.
15 Q. Do you remember receiving a
16 response to your question?
17 A. I remember people talking about the
18 issue.
19 Q. Do you remember whether as a group,
20 the Morgan Stanley team reached a consensus
21 that it was probable or likely that Sunbeam
22 would exceed first quarter 1997 sales
23 results?
24 A. Yes.
25 Q. Do you remember that in fact was

Page 196

1 Smith
2 the conclusion reached?
3 A. I -- that's my recollection.
4 Q. But you don't remember any
5 particular person expressing that opinion to
6 you, correct?
7 A. I do not.
8 Q. Did you personally have enough
9 information that would permit you to form
10 that opinion?
11 A. No, again I was part of the bigger
12 group and not directly involved with pursuing
13 this avenue of inquiry.
14 Q. So you personally didn't know one
15 way or the other whether that was a
16 reasonable conclusion, correct?
17 A. Did not have any firsthand
18 knowledge of that and was relying on greater
19 due diligence effort of the firm.
20 Q. Did you offer anyone your views
21 concerning the likelihood of Sunbeam
22 exceeding first quarter 1997 sales results?
23 A. I did not because I was too far
24 removed from the direct contact with the
25 company to go over this particular, you know,

Page 197

1 Smith
2 area of inquiry.
3 Q. Do you recall that there was a
4 meeting of the Leveraged Finance Committee on
5 March 20, 1998 to discuss whether approval
6 would be given to underwrite the senior loan
7 of Sunbeam?
8 A. Do I remember the meeting then?
9 Q. Yes.
10 A. I remember we had a meeting, I
11 don't remember for sure when it was.
12 Q. I'm going to show you, Mr. Smith,
13 what we have previously marked as CPH Exhibit
14 Number 76. The cover page is a memorandum
15 dated March 19, 1998 from R.B. Smith to
16 Leveraged Finance Commitment Committee,
17 subject Sunbeam, and it is a document that
18 bears Bates number Morgan Stanley 25829
19 through 25886.
20 I'd like you to look at this
21 document sufficiently, Mr. Smith, to tell me
22 whether you have ever seen it before.
23 A. Yes, I have.
24 Q. Can you tell me what it is?
25 A. It is the Commitment Committee memo

50 (Pages 194 to 197)

<p style="text-align: right;">Page 198</p> <p>1 Smith</p> <p>2 that we, that the leveraged finance, the firm</p> <p>3 had put together in acquiring or requesting</p> <p>4 credit approval from the Leveraged Finance</p> <p>5 Committee.</p> <p>6 Q. And the credit approval that is the</p> <p>7 subject of this material is the senior loan</p> <p>8 of Sunbeam, correct?</p> <p>9 A. Is the senior loan, yes.</p> <p>10 Q. You're the author of the March 19</p> <p>11 cover memo, correct?</p> <p>12 A. I am the sender of this, yes.</p> <p>13 Q. And your memorandum advises that</p> <p>14 there will be a Leveraged Finance Commitment</p> <p>15 Committee meeting regarding Sunbeam on</p> <p>16 Friday, March 20 at 7:30 a.m., correct?</p> <p>17 A. Yes.</p> <p>18 Q. Did that meeting in fact take</p> <p>19 place?</p> <p>20 A. I believe it did. Let me say it</p> <p>21 again. It did take place. Can I say it took</p> <p>22 place on the 20th at 7:30, I don't remember.</p> <p>23 Q. Did you attend the meeting?</p> <p>24 A. I did.</p> <p>25 Q. Now, there are a list of people on</p>	<p style="text-align: right;">Page 200</p> <p>1 Smith</p> <p>2 might have had. And then there is Bill</p> <p>3 Strong.</p> <p>4 Q. Are the members of the Leveraged</p> <p>5 Finance Commitment Committee included among</p> <p>6 that list?</p> <p>7 A. Yes.</p> <p>8 Q. Who among this group was on the</p> <p>9 Leveraged Finance Committee?</p> <p>10 A. To the best of my recollection it</p> <p>11 was Sippelle, Rankowitz, Kourakos, Felix,</p> <p>12 Smith, Newhouse were the core members.</p> <p>13 In addition to that you would have</p> <p>14 maybe Munger and -- I'm sorry, not Munger.</p> <p>15 Meguid and maybe Ralph.</p> <p>16 Q. Why do you distinguish between</p> <p>17 those two people and the people you referred</p> <p>18 to as the core group?</p> <p>19 A. Because they would come</p> <p>20 periodically to larger transactions or harder</p> <p>21 transactions or something. They wouldn't</p> <p>22 come all the time. Whereas the first five or</p> <p>23 six that I mentioned there were there all the</p> <p>24 time.</p> <p>25 Q. Why were the other individuals</p>
<p style="text-align: right;">Page 199</p> <p>1 Smith</p> <p>2 the bottom of that memorandum under the</p> <p>3 heading Distribution.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Can you tell me who those</p> <p>7 individuals are?</p> <p>8 A. Starting at the top?</p> <p>9 Q. Yes.</p> <p>10 A. Dwight Sippelle and Mike Rankowitz</p> <p>11 were co-head of high yield sales and trading.</p> <p>12 Bill Kourakos was I think at the time the</p> <p>13 deputy head of high yield capital markets.</p> <p>14 Rick Felix was the head of the credit</p> <p>15 department. You have myself. Steve Newhouse</p> <p>16 was at the time the head of high yield</p> <p>17 capital markets. Leslie Bradford was the</p> <p>18 deputy head of the credit department. Joel</p> <p>19 Feldmann was a senior member of the high</p> <p>20 yield capital markets group. S. Brown, I</p> <p>21 don't remember that. Ralph Pellicchio was a</p> <p>22 senior lawyer. Steve Munger was one of the</p> <p>23 senior M&A professionals. Terry Mequid ran</p> <p>24 IBD. Bill Sanders was his deputy. Ann</p> <p>25 Short, I don't remember what function she</p>	<p style="text-align: right;">Page 201</p> <p>1 Smith</p> <p>2 included on the distribution list here?</p> <p>3 A. Because they were participating.</p> <p>4 Normally the way -- I don't know specifically</p> <p>5 why these fellows were, but normally other</p> <p>6 people would be, receive copies because they</p> <p>7 were going to participate in this particular,</p> <p>8 in a particular Leveraged Finance Commitment</p> <p>9 Committee meeting.</p> <p>10 For example, Bill Strong doesn't</p> <p>11 show up all the time, but he would show up if</p> <p>12 it was his client.</p> <p>13 Q. Mr. Strong is somebody who is on</p> <p>14 the Sunbeam team, correct?</p> <p>15 A. Yes.</p> <p>16 Q. There is no one else on this list</p> <p>17 that was part of the Sunbeam engagement team,</p> <p>18 is there?</p> <p>19 A. I don't think so.</p> <p>20 Q. Why then a larger group than the</p> <p>21 core group for purposes of this particular</p> <p>22 Leveraged Finance Committee meeting?</p> <p>23 A. This was not unusual to have other</p> <p>24 people there, so I can't comment other than</p> <p>25 as a matter of fact we'd have additional</p>

51 (Pages 198 to 201)

Page 202

1 Smith
2 faces there.
3 Leslie Bradford, for example, the
4 deputy head of credit, was there most of the
5 time anyway, whether Rick was there or not.
6 Q. Who made the decision whether to
7 add additional people in this particular
8 Leveraged Finance Commitment Committee
9 meeting?
10 A. I don't know. This was pretty much
11 boilerplate.
12 Q. Were you instructed to include
13 additional people?
14 A. I was not to the best of my
15 recollection.
16 Q. Did you make the choice?
17 A. No, I don't remember.
18 Q. Was there something about the size
19 or nature of this loan that made it one where
20 a group larger than the core group would be
21 involved in the decision-making process?
22 A. I would say that there were -- I
23 don't think it was size per se that got
24 everybody's attention. Just a very, very --
25 what's the word, kind of a -- it was a deal

Page 203

1 Smith
2 that had a lot of visibility outside and
3 inside.
4 Q. Were all of these people then going
5 to be responsible for voting yes or no with
6 respect to this proposed credit arrangement?
7 A. Not all the people on the
8 distribution.
9 Q. Who would have voting rights?
10 A. Sipprelle, Rankowitz, Kourakos,
11 Felix, Smith and Newhouse. And then if
12 Meguid showed up, he would have a vote too.
13 Q. Do you remember what the vote was
14 with respect to this particular loan, the
15 Sunbeam loan?
16 A. The vote here was unanimous to go
17 forward.
18 Q. Do you recognize the handwriting on
19 the first page of this document?
20 A. I do.
21 Q. Whose is it?
22 A. Mine.
23 Q. Do you recall when you put this
24 handwriting on this document?
25 A. I think I put it on the document

Page 204

1 Smith
2 during the meeting.
3 Q. These are notes that you took of
4 things that were said during the Leveraged
5 Finance Commitment Committee meeting?
6 A. Notes might be too strong a word.
7 Doodling.
8 Q. But these are writings you added to
9 this document --
10 A. Yes.
11 Q. -- during the course of the
12 Leveraged Finance Commitment Committee
13 meeting relating to the review of the Sunbeam
14 senior loan?
15 A. Yes.
16 Q. And you believe they reflect things
17 that were being said during the course of the
18 meeting?
19 A. No.
20 Q. These are things that you wrote for
21 what reason then?
22 A. I think it would be the
23 combination, things that I was thinking
24 about, things that might have been said,
25 things to follow up on, reminders to myself.

Page 205

1 Smith
2 Q. Do you recall that -- what, tell me
3 what these notes refer to.
4 A. I don't know. Don Uzzi I think is
5 somebody from the company. I don't know why
6 that came up.
7 Q. It says underneath his name "VP
8 sales"?
9 A. God, you have better eyes than I
10 do. Yup. Then these look like ranges of
11 numbers. So that might have been the street
12 estimates and then in terms of what their
13 first sales were going to be.
14 I don't know what the addition on
15 the other side, the 21, 15 and 10 is. That
16 could be some things that had to do with
17 these. And then the rest of it I don't know.
18 Q. The first entry at the top that is
19 circled is the number 112.5, correct?
20 A. Yes.
21 Q. And the word next to that is the
22 word "short"?
23 A. That is what it looks like.
24 Q. Do you recall that that entry
25 relates to the, to how short street

Page 206

1 Smith

2 expectations for sales Sunbeam was as of

3 March 20?

4 A. No, I don't recall.

5 Q. Do you recall that at the Leveraged

6 Finance Commitment Committee meeting on March

7 20 there was discussion relating to the fact

8 that Sunbeam sales for January and February

9 were substantially below the sales for

10 January and February of 1997?

11 A. I believe that was discussed.

12 Q. Who made that point?

13 A. Oh, I think it was -- I don't know

14 who specifically made it. Somebody from the

15 team would have brought that up.

16 Q. Do you recall if it was Mr. Strong

17 who made that statement?

18 A. I do not recall who brought it up.

19 Q. Do you recall if it was you?

20 A. I believe it was not me.

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

22 A. I don't recall.

23 Q. Is there anyone else on this list

24 that it could have been in your view other

25 than you, Mr. Hart or Mr. Strong?

Page 207

1 Smith

2 A. This list here on the front page

3 may not have been all the people that

4 attended. There may have been other folks

5 from other disciplines that were there, for

6 example, like John Tyree or the credit person

7 who did the work. So I don't remember

8 everybody who was there, so necessarily who

9 brought it up and/or what type of discussion

10 followed and how many people participated in

11 that discussion.

12 Q. But you do recall that the

13 Leveraged Finance Commitment Committee was

14 advised that Sunbeam sales in January and

15 February of '98 were substantially below --

16 A. Yes.

17 Q. -- Sunbeam sales for January of

18 '97?

19 A. Yes.

20 Q. Do you recall that they were

21 advised that the primary reason for that was

22 that Sunbeam had accelerated the sale of

23 first quarter product into the fourth quarter

24 of 1997?

25 A. I don't remember exactly how it was

Page 208

1 Smith

2 described to the committee.

3 Q. Do you remember whether any

4 statements were made to the committee to

5 explain the reason why Sunbeam sales in the

6 first two months of 1998 were so far below

7 1997 sales results?

8 A. I remember a lot of conversation

9 about it. I think that some of the causes

10 were discussed, one of them being the sale of

11 the grills earlier, as well as expecting

12 sales at the last half of the month here to

13 get them close -- to get them above, excuse

14 me, where they thought they, where they were

15 last year.

16 Q. Now, there is a list of names at

17 the top of the second page.

18 A. Uhm-hmm.

19 Q. That's a memorandum to Leveraged

20 Finance Committee meeting?

21 A. Yes.

22 Q. Leveraged Finance Committee dated

23 March 20, 1998, correct?

24 A. Yes.

25 Q. Do you recall if any of the

Page 209

1 Smith

2 individuals listed on the top portion of this

3 memorandum participated in the Leveraged

4 Finance Committee's meeting?

5 A. I don't -- I don't remember

6 specifically who's there from this group. As

7 I mentioned before, it was a bigger, a better

8 attended meeting than, than the norm because

9 of the visibility. So I think there were

10 members from other groups there. I'm pretty

11 sure there are members from other groups

12 there, but I couldn't specifically tell you

13 who was and who wasn't.

14 Q. Do you recall whether Mr. Strong

15 participated?

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

17 participating.

18 Q. Do you remember if he was there in

19 person?

20 A. I thought he was there in person,

21 but I'm not a hundred percent sure.

22 Q. He might have participated by

23 telephone?

24 A. He could have participated by

25 conference call.

53 (Pages 206 to 209)

Page 210

1 Smith

2 Q. Do you remember if Mr. Strong was

3 asked for his recommendation that the company

4 proceed with the senior loan?

5 A. Mr. Strong, whether he was asked or

6 not, advocated going forward with the senior

7 loan.

8 Q. Do you have any memory of Mr. Tyree

9 being present?

10 A. I thought he was also.

11 Q. Now, if this meeting took place on

12 March 20, it's the day after Sunbeam's March

13 19 press release, correct?

14 A. Yes.

15 Q. Do you recall if Mr. Tyree made any

16 statement -- let me ask a more general

17 question before we get to this particular

18 meeting.

19 Did Mr. Tyree or anyone else, sir,

20 ever advise you that Arthur Andersen had

21 taken the position that the statements

22 contained in Sunbeam's March 19 press release

23 were incomplete and misleading?

24 A. Your question is did Mr. Tyree

25 share that with me?

Page 211

1 Smith

2 MR. MARKOWSKI: Would you read

3 that question back, please.

4 (Record read.)

5 A. No.

6 Q. You have never heard that from

7 anyone?

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

9 hearing it.

10 Q. Do you think it was appropriate

11 that the Leveraged Finance Commitment

12 Committee was advised of the performance of

13 Sunbeam in January and February of 1998 in

14 connection with evaluating the proposed loan

15 to Sunbeam?

16 A. I think it was appropriate in the

17 context of a, the overall due diligence and

18 in this part of the underwriting.

19 Q. Do you recall whether there was any

20 discussion at the Leveraged Finance

21 Committee's meeting concerning how quickly

22 Morgan Stanley would be able to syndicate its

23 position in the Sunbeam loan?

24 A. Yes.

25 Q. Were you asked to address that?

Page 212

1 Smith

2 A. Yes.

3 Q. Do you recall who asked you to

4 address that?

5 A. No, but it would have -- not

6 specifically, but it would have been one of

7 the senior members of the committee.

8 Q. One of the core group members?

9 A. One of the core group.

10 Q. Do you recall what you said?

11 A. My best recollection is that we

12 thought it would take six to eight weeks,

13 which is pretty standard, to syndicate this

14 once we, once we got going.

15 Q. That is the same target date you

16 gave me earlier, correct, syndicating the

17 position by the first part of May?

18 A. I think we said the last part of

19 May. Yes.

20 Q. That was your view at that point in

21 time?

22 A. Yes, it was.

23 Q. And you expressed that view to the

24 members of the committee?

25 A. I did.

Page 213

1 Smith

2 Q. Did anyone during the course of the

3 Leveraged Finance Committee's meeting raise

4 the question of deferring or delaying the

5 decision?

6 A. The credit decision?

7 Q. Yes.

8 A. Not that I remember.

9 Q. Did anyone raise a question

10 concerning whether the timing of the

11 financing could be delayed so that the

12 closing would occur later?

13 A. I don't recall.

14 Q. Did anyone express any reservations

15 about proceeding with the loan?

16 A. The vote again was unanimous, so I

17 think the committee was on board to go

18 forward.

19 Q. Other than the final vote, did

20 anyone express any questions or concerns

21 about proceeding that reflected in your view

22 a reservation about the decision?

23 A. There were plenty of questions. I

24 wouldn't classify any of them as any

25 reservations.

54 (Pages 210 to 213)

Page 214

1 Smith

2 Q. Did anyone express any concerns

3 concerning the adequacy of the March 19 press

4 release as a disclosure to Sunbeam

5 shareholders?

6 A. I don't think that came up.

7 Q. After, sir, you became aware of the

8 substantial decline in Sunbeam sales in

9 January and February of 1998, did you raise a

10 question concerning the possibility of

11 deferring the financing to a later point?

12 A. I don't know.

13 Q. You didn't go back to Mr. Strong,

14 for example, and say perhaps we should

15 consider delaying the timing of the loan to

16 Sunbeam?

17 A. No.

18 Q. Did anyone else to your knowledge

19 make, raise such a question?

20 A. No.

21 Q. Did you have any reservation, sir,

22 about proceeding with the Sunbeam loan?

23 A. No.

24 Q. Did you give any thought yourself,

25 whether you expressed it to anyone or not,

Page 215

1 Smith

2 whether it might be advisable to delay the

3 financing until Sunbeam's first quarter 1998

4 results were known?

5 A. No.

6 Q. Why not?

7 A. Because we the firm, big team, had

8 done the due diligence and the firm with all

9 of those resources employed was comfortable

10 that this was the, this was a prudent

11 decision. As part of that, but not the front

12 line, I agreed with the decision.

13 Q. You would think it was a prudent

14 decision whether or not Sunbeam in fact was

15 able to exceed its first quarter 1997 sales

16 results in the first quarter of 1998?

17 MR. CLARE: I object to the form

18 of the question. I'm not sure I understand

19 what you're asking.

20 MR. MARKOWSKI: I want to make

21 sure I'm clear on this because it is an

22 important question.

23 Q. Did you think, sir, that the loan

24 to Sunbeam was a prudent decision even if it

25 turned out to be the case that Sunbeam failed

Page 216

1 Smith

2 to exceed its 1997 sales results in the first

3 quarter of 1998?

4 A. I think whether the net exceeded or

5 was off a little bit was just one of many

6 factors and wouldn't have changed anybody's

7 opinion about whether to go forward.

8 Q. Well, you knew based on the

9 information we see on CPH Exhibit 152, that

10 Sunbeam had a lot of work to do, right, in

11 order to exceed first quarter 1997 sales

12 results?

13 Is that a fair statement?

14 MR. CLARE: Objection.

15 A. Sales?

16 Q. Yes.

17 MR. CLARE: Object to the form of

18 the question.

19 Q. A lot of orders to get and a lot of

20 sales to make.

21 A. They had to make some sales to beat

22 last year's.

23 Q. And they had about 10 days to get

24 that done, right?

25 A. Uhm-hmm.

Page 217

1 Smith

2 Q. Did you know it was uncertain at

3 that point whether Sunbeam would have in fact

4 exceeded its first quarter 1997 sales results

5 in the first quarter of 1998?

6 A. First of all, I wasn't part of the

7 phone call of checking with the company; and,

8 number two, everything's uncertain so who

9 knows.

10 It was represented to us, it was

11 represented to members of the team that

12 weren't on the phone call, by people who were

13 on the phone call, that the company had every

14 anticipation of achieving the numbers that

15 they had on that piece of paper.

16 Q. Would you then have prepared to

17 endorse going forward with the Sunbeam loan

18 on March 20, sir, if you knew that Sunbeam

19 would fail to exceed its first quarter 1997

20 sales results?

21 MR. CLARE: Objection, incomplete

22 hypothetical and calls for speculation. You

23 can answer if you can.

24 A. Tough to -- you can't make that

25 call in a vacuum. You have to get more

Page 218

1 Smith

2 information.

3 Q. What more information?

4 A. Why, how far were they off, what's

5 going on, those types of issues.

6 Q. What if they would have been \$20

7 million short?

8 A. Again it's just a -- out of context

9 like that it's -- that doesn't mean much.

10 Q. What if they would have been \$20

11 million short and the primary reason that

12 they were \$20 million short was that they had

13 accelerated first quarter 1998 sales into the

14 fourth quarter of 1997, under those

15 circumstances would you have been comfortable

16 endorsing the senior loan to Sunbeam?

17 MR. CLARE: Same objections.

18 A. Hypothetical, it's -- I don't have

19 a view.

20 Q. You don't have any ability to offer

21 a view on that?

22 A. No.

23 Q. Did you consider that possibility

24 that Sunbeam might be \$20 million short?

25 A. Based on what the team had found

Page 219

1 Smith

2 out from the company, that while always a

3 possibility, didn't think it was anywhere

4 near a probability.

5 Q. But if Sunbeam -- your view was

6 even though it was uncertain whether Sunbeam

7 would exceed its first quarter 1997 sales in

8 the first quarter of 1998, you were still

9 comfortable recommending to the management of

10 Morgan Stanley making this loan, correct?

11 A. Yes.

12 Q. Let me direct your attention to

13 page 16.

14 A. Page 16 is it?

15 Q. Of the March 20 memo.

16 A. Yup.

17 Q. You see a listing at the top of

18 this page with a heading Coleman Synergy,

19 Synergies Rationale 118 million?

20 A. Yes, I do.

21 Q. Do you see several bullet points

22 below that heading?

23 A. I do.

24 Q. What is your understanding of what

25 those bullet points represent?

Page 220

1 Smith

2 A. Give me a second to refresh my

3 memory.

4 Q. Sure.

5 A. These look like -- the 118 looks

6 like it is the synergy number and then the

7 bullet points below that, for at least the

8 Coleman situation, are specific actions or

9 events that were going to happen, that the

10 company was going to take to realize the net.

11 Q. So these are the synergies that

12 this document reflects Sunbeam will realize

13 upon the acquisition of Coleman company.

14 Is that what this is intended to

15 describe to the members of the Leveraged

16 Finance Committee?

17 A. Yes.

18 Q. And this is the -- below that \$118

19 million total on page 16 is the detail

20 concerning the actions or restructuring

21 events that will generate the \$118 million in

22 synergies?

23 A. I wouldn't say the detail, but

24 bullet points where they think the

25 savings/synergies is going to come from.

Page 221

1 Smith

2 Q. And these were the synergies being

3 presented to the Leveraged Finance Committee

4 as those that would pertain to the Coleman

5 acquisition, correct?

6 A. Yes.

7 Q. Do you know if any of the items

8 that are identified, the bullet point items

9 identified there originated with Coleman

10 company management?

11 A. I wasn't part to any of that. I

12 have no idea.

13 Q. Do you know if any of the ideas

14 listed there originated with my client,

15 Coleman (Parent) Holdings?

16 A. No, no idea.

17 Q. Do you know if any of the items

18 listed on the top of page 116 concerning

19 potential Coleman synergies originated with

20 McAndrews & Forbes?

21 A. No idea.

22 Q. Or Mr. Perelman personally?

23 A. No idea.

24 Q. Mr. Gittes?

25 A. No idea.

56 (Pages 218 to 221)

Page 222

1 Smith

2 Q. Or Jerry Levin?

3 A. No idea.

4 Q. I think I mispronounced his name.

5 Jerry Levin.

6 Do you know who Jerry Levin is?

7 A. Yes, I do.

8 Q. And in March of 1998, the first

9 part of 1998 he was the chief executive

10 officer of Coleman company, correct?

11 A. I believe so.

12 Q. Did you ever have any discussions

13 with Jerry Levin concerning potential

14 synergies?

15 A. Not until after he was in charge of

16 the Sunbeam.

17 Q. After he became chief executive

18 officer of Sunbeam you had some discussions

19 with him about synergies?

20 A. A variety of discussions.

21 Q. But prior to the funding of the

22 senior loan to Sunbeam, you had no

23 discussions with Mr. Levin --

24 A. No discussions.

25 Q. -- concerning potential synergies?

Page 223

1 Smith

2 A. I never met the man.

3 Q. Did you have discussions with any

4 member from Coleman company regarding

5 potential synergies before the senior loan

6 closed?

7 A. I did not.

8 Q. Anybody with Coleman (Parent)?

9 A. I did not.

10 Q. Or McAndrews & Forbes?

11 A. I didn't.

12 Q. Do you remember anyone at the

13 Leveraged Finance Committee -- excuse me.

14 Do you remember anyone at the

15 Leveraged Finance Commitment Committee's

16 meeting saying that with respect to the

17 potential Coleman synergies, we're relying on

18 Coleman management for those concepts or the

19 values associated with them?

20 A. No.

21 Q. Do you recall there being

22 discussion at the Leveraged Finance

23 Commitment Committee's March 20 meeting

24 concerning the fact that the funds raised

25 through the convertible debenture offering

Page 224

1 Smith

2 had been increased from 500 million to \$750

3 million?

4 A. I think it came up during the

5 meeting.

6 Q. You have expressed the view that

7 that was a positive development with respect

8 to the security that the senior lenders had,

9 correct?

10 A. Yes.

11 Q. Was that, is that view also

12 expressed at the Leveraged Finance Commitment

13 Committee's meeting?

14 A. I don't know about directly, but if

15 there is less debt and more junior capital,

16 that's always, that's always a positive from

17 the lender's point of view.

18 Q. Let me direct your attention to

19 page 2 of this memo.

20 A. Page 2.

21 Q. It has Bates number MS 25831.

22 Do you see that?

23 A. Uhm-hmm, yes.

24 Q. There is a box at the bottom, it

25 says "Expected economics."

Page 225

1 Smith

2 Do you see that?

3 A. Uhm-hmm.

4 Q. Above that there is a statement in

5 typed text that reads "We're asking the

6 committee to approve underwriting 2 billion

7 in senior secured credit facilities"?

8 A. Yes.

9 Q. And underneath that there are two

10 boxes, one with the word "April" handwritten

11 in and then an arrow to another box that has

12 the word "mid-May," the words "mid-May"

13 written in it.

14 Do you see that?

15 A. Yes.

16 Q. Is that your handwriting?

17 A. Yes.

18 Q. What is that a reference to?

19 A. The syndication timetable.

20 Q. And does April mean?

21 A. Starting April.

22 Q. What does mid-May refer to?

23 A. Mid-May when it finishes up.

24 Q. And that would be the point by

25 which Morgan Stanley's participation in the

57 (Pages 222 to 225)

Page 226

1 Smith

2 Sunbeam loan would be reduced to the 50 to

3 \$60 million range that you referred to

4 previously?

5 A. Yes, that is when the syndication

6 should be completed.

7 Q. Now, there is several notes made in

8 or around the box that is labeled "Expected

9 Economics."

10 Do you see that?

11 A. I do.

12 Q. Are those your notes again?

13 A. Yes, they are.

14 Q. Can you interpret them for me?

15 A. The -- I think this was trying to

16 go ahead and come up with or play with how

17 much in terms of fees that Morgan Stanley

18 would make for the, for entering into this

19 underwriting.

20 Q. And what does this show?

21 A. Well, let's see. I think in the

22 memo it shows 5-1/2 to 6. My handwriting is

23 6 to 9. For whatever reason I had 5 -- 8-1/2

24 to 9-1/2, just doing, playing around with the

25 numbers in terms of the total compensation

Page 227

1 Smith

2 for us for taking 40 percent of this loan.

3 Q. Does that include, does Morgan

4 Stanley receive additional fees when the loan

5 is syndicated?

6 A. No, no.

7 Q. Mr. Smith, let me show you what

8 we're marking as CPH Deposition Exhibit

9 Number 153. It's another version, another

10 copy of your March 19 memorandum and another

11 copy of the March 20 memorandum to the

12 Leveraged Finance Committee. It bears Bates

13 number Morgan Stanley 18885 through 19 --

14 excuse me -- 18942.

15 (Coleman (Parent) Holdings Exhibit

16 153, document bearing Bates number

17 Morgan Stanley 18885 through 18942,

18 marked for identification, as of this

19 date.)

20 Q. My question, sir, is whether you

21 can identify the handwriting on the first

22 page of this exhibit?

23 A. I cannot.

24 Q. It is not your handwriting?

25 A. Not mine.

Page 228

1 Smith

2 Q. Not any portion of it?

3 A. I haven't looked through every

4 page, but certainly not the first page.

5 Q. I'm just talking about the first

6 page.

7 Did you attend any -- did you

8 understand Morgan Stanley assisted Sunbeam in

9 connection with the marketing of the

10 convertible debentures?

11 A. Yes.

12 Q. Morgan Stanley was the sole

13 underwriting with respect to the convertible

14 debentures, correct?

15 A. I believe so.

16 Q. And a road show was held to assist

17 Sunbeam in marketing those securities,

18 correct?

19 A. Yes.

20 Q. Did you attend any of the road show

21 presentations?

22 A. I don't believe so.

23 Q. Are you aware of any statements

24 made subsequent to the issuance of the March

25 19 press release, by either Morgan Stanley or

Page 229

1 Smith

2 by Sunbeam representatives, that attempted to

3 minimize the significance of the March 19

4 press release to potential investors and

5 convertible debentures?

6 A. No, I wasn't part of.

7 Q. No one ever reported such

8 statements were being made to you?

9 A. I didn't know.

10 Q. After the March 19 press release,

11 sir, did you think it was especially

12 important for Morgan Stanley to track Sunbeam

13 sales activity in the closing days of the

14 quarter?

15 A. I thought it was important to

16 continue and complete our due diligence

17 before we close the loan.

18 Q. Did you get any undated information

19 after the March 19 press release concerning

20 Sunbeam's efforts to achieve sales at least

21 as great as the first quarter of 1997; for

22 example, a report on how many sales had been

23 made since the March 19 press release?

24 A. I don't recall seeing anything like

25 that.

58 (Pages 226 to 229)

Page 230

1 Smith

2 Q. Did you request daily reports on

3 Sunbeam sales activities?

4 A. I did not. I don't know if the

5 team requested it.

6 Q. Did you receive any reports between

7 the March 19 press release and the closing of

8 my client, the sale of my client's interest

9 in Coleman company, concerning the status of

10 Sunbeam's first quarter sales efforts?

11 A. I don't remember what I got or what

12 the team got.

13 Q. So between -- let me focus your

14 attention to the time period I'm talking

15 about.

16 Between March 19, 1998 and March

17 30, 1998 do you recall receiving any

18 information concerning the status of

19 Sunbeam's sales activities subsequent to

20 March 19?

21 A. I don't -- I remember -- I don't

22 recall getting anything written, but I think

23 members of the teams who were spending time

24 with the company -- maybe I should have said

25 it before, it wasn't just us.

Page 231

1 Smith

2 We focused a hundred percent on the

3 Morgan Stanley efforts. We have two partners

4 here, First Union, Bank of America, going

5 through the same thing. So they, so

6 everybody I think is talking about this and

7 we're thinking about it.

8 And I don't remember any pieces of

9 paper or being part of any particular

10 conversations myself with anybody from the

11 company.

12 Q. Well, let me make sure we're clear

13 on this. Regardless of what the source was,

14 whether it was Sunbeam, Morgan Stanley, Bank

15 of America or First Union or someone else, do

16 you recall whether you received any

17 information subsequent to Sunbeam's March 19

18 press release, prior to the closing of the

19 acquisition of my client's interest in

20 Coleman company on March 30, relating to

21 Sunbeam's sales efforts between March 19 and

22 March 30?

23 A. I don't remember anything specific.

24 Q. Do you remember anything generally?

25 A. No

Page 232

1 Smith

2 Q. Did you instruct anyone to contact

3 any of the customers that were listed on CPH

4 Exhibit Number 152, sir, to find out what

5 their plans were for making purchases from

6 Sunbeam?

7 A. I would not, that would not have

8 been my function.

9 Q. Do you know whether anyone from

10 Morgan Stanley was asked to do that?

11 A. I do not know.

12 Q. Do you disagree, sir, that on

13 monitoring Sunbeam's end of the quarter sale

14 effort should have been Morgan Stanley's

15 highest priority at that point in time?

16 MR CLARE: I object to the form

17 of the question, argumentative.

18 A. I guess I do disagree.

19 Q. Why?

20 A. Because I think that is one part of

21 the continuing due diligence that we were

22 performing right up until the, right up until

23 the end.

24 Q. As you sit here you don't have any

25 recollection of getting any information from

Page 233

1 Smith

2 any source, including the Morgan Stanley due

3 diligence team, relating to Sunbeam's sale

4 efforts between March 19 and March 30,

5 correct?

6 A. No

7 Q. You don't have any recollection of

8 that?

9 A. No, I do not. But again the team,

10 the big team is there doing that work and I

11 have a lot of confidence in the team all the

12 way from the leveraged finance people to the

13 John Tyree and people from the credit

14 department, so that I think the firm was ably

15 served by those folks and its efforts to

16 parse through this.

17 Q. Are you aware, sir, that the agenda

18 prepared by the due diligence team for -- are

19 you familiar with the concept of bring-down

20 due diligence?

21 A. Yes, I am.

22 Q. And what does that term mean to

23 you?

24 A. Just before you close, to get on

25 the phone with the company, maybe sometimes

Page 234

1 Smith
2 their auditors, to make sure and have the
3 opportunity to ask them kind of the last
4 questions, if there has been any changes from
5 what we all thought had been going on in the
6 last -- since the last time we did it.
7 Q. Were you advised by anyone that
8 Sunbeam's -- that Morgan Stanley's bring-down
9 due diligence agenda was revised after March
10 19 to omit the subject of Sunbeam's views
11 concerning its prospects for the second
12 quarter of 1998?
13 MR. CLARE: Object to the form of
14 the question, lack of foundation. I think it
15 also assumes facts not in evidence. You can
16 answer.
17 A. No, no knowledge at all.
18 Q. No one told you that the due
19 diligence team had been told not to make
20 inquiry into Sunbeam's views of its prospects
21 for the first -- second quarter of 1998 after
22 the March 19 press release was issued?
23 MR. CLARE: Same objections.
24 A. Nobody told me that.
25 Q. Do you think that would be an

Page 235

1 Smith
2 appropriate subject to drop?
3 A. I would be flabbergasted if that
4 ever happened to Morgan Stanley.
5 Q. Do you think that would be an
6 important area to keep inquiring about right
7 up to the time the loan closed?
8 A. I would think that would be part of
9 the continuing due diligence process until
10 the loan closed.
11 Q. So you would be shocked if that
12 subject was specifically omitted from the
13 bring-down due diligence agenda?
14 A. Again I'm not part of the
15 bring-down due diligence agenda process, but
16 I would be shocked that that wasn't part of
17 the continuing due diligence.
18 And again I have no knowledge of
19 that document that you're referring to or
20 what was in or taken out.
21 Q. But you didn't participate in any
22 discussion where people discussed dropping
23 that subject?
24 A. No. No, I had no knowledge of it.
25 Q. Well, the senior loan closed on

Page 236

1 Smith
2 March 30, 1998, correct?
3 A. I believe that's right.
4 Q. Did Morgan Stanley make efforts to
5 move forward with the syndication process at
6 that point?
7 A. Yes.
8 Q. Had efforts been undertaken even
9 prior to the closing of the loan, to initiate
10 the syndication process?
11 A. No.
12 Q. And why is that?
13 A. We didn't have enough time. We
14 were too busy scrambling to complete the due
15 diligence, do all the documentation, complete
16 the loan agreement, which was essentially
17 before we could advance the money.
18 There was a time line, I mean a
19 deadline, so that was the primary focus.
20 Once that was completed, then we shaped our
21 resources to putting together, to put
22 together materials to start the syndication
23 of the loan.
24 Q. When did that start?
25 A. Probably the day after we closed

Page 237

1 Smith
2 the loan.
3 Q. Who was responsible for that
4 effort?
5 A. It was under my supervision, then
6 assisted by the team of Mr. Hart, I guess Mr.
7 Rankin by then, and then we also had our two
8 other banks that were taking pieces of the
9 underwriting.
10 Q. First Union and Bank of America?
11 A. First Union, Bank of America.
12 Q. Were the efforts to syndicate the
13 loan, the senior loan, disrupted?
14 A. I'm sorry, were they --
15 Q. Disrupted? Did something happen to
16 affect the plan for completing the
17 syndication of the loan by mid-May?
18 A. Yes.
19 Q. What was that?
20 A. Well, we had to -- we had to right
21 the book and continue to get information. We
22 were trying to remember what happened, it was
23 a long time ago, six years ago, is that bits
24 of information came out and then we started
25 getting more and more, had more and more

Page 238

1 Smith

2 questions for the company back and forth.

3 Q. Do you recall that, do you recall

4 if something happened that affected your

5 objective of completing the syndication by

6 mid-May?

7 A. I don't remember specifically, but

8 there were, as I remember there were a series

9 of events that precluded us from going right

10 when we wanted to, which in the normal course

11 would have been two to three weeks after we

12 closed the loan.

13 Q. Do you recall that Sunbeam issued a

14 press release on or about April 3, 1998 in

15 which it announced that it had failed to

16 exceed first quarter 1997 sales results?

17 A. I'm sure I saw it, but I don't

18 remember what it said.

19 Q. Did that have, did that

20 announcement have any effect on the timing

21 for the syndication?

22 A. I think that it was part of the,

23 part of the series of events. It could have

24 been the first series of events. Part of the

25 series is the 3rd is only four days after the

Page 239

1 Smith

2 fact. So we are in the midst of preparing

3 our offering memorandum and the rest.

4 Q. I just want to try and understand

5 what effect that announcement had, if any, on

6 the timing.

7 The objective was to complete the

8 syndication by mid-May, correct, that is what

9 is being told to the Leveraged Finance

10 Committee?

11 A. Yes.

12 Q. Sunbeam issues a press release on

13 April 3 announcing that it had failed to

14 exceed first quarter 1997 sales results?

15 A. Uhm-hmm.

16 Q. That announcement in and of itself,

17 did that have any effect on your views

18 concerning the achievability of the May 15

19 date for completing the syndication?

20 A. Not then.

21 Q. Do you recall that in the first

22 part of May Sunbeam and the three banks

23 agreed to amend the senior loan agreement to

24 reduce the amount of the financing being

25 provided?

Page 240

1 Smith

2 A. Yes.

3 Q. What precipitated that change in

4 the loan arrangement?

5 A. Let's see. I guess they were able

6 to raise more on the convertible so they

7 didn't need quite so much bank debt. We --

8 and I think they revised the amount of

9 revolving credit they think they needed, so

10 we were able to reduce the bank loan

11 accordingly. I think that's what happened

12 then. Plus --

13 Q. I'm sorry, did you have something

14 else you wanted to say?

15 A. No.

16 Q. Did Sunbeam's first quarter 1998

17 results have any bearing on the amendment to

18 the credit agreement to reduce the amount of

19 the financing?

20 A. It was part of the process.

21 Q. Did the fact that Sunbeam had

22 failed to exceed first quarter 1997 sales

23 cause the banks to request Sunbeam to reduce

24 the amount of the financing from 2 billion to

25 1,700,000,000?

Page 241

1 Smith

2 A. No, I think that is a simplistic

3 version of it. I think as more and more

4 information came out and more and more work

5 was done that the banks got, and then the

6 company agreed to reduce the amount of the

7 facilities.

8 Q. What I'm trying to understand, sir,

9 is whether -- Sunbeam, as we discussed,

10 raised an additional \$250 million through its

11 convertible debenture?

12 A. Right.

13 Q. What I'm trying to understand is

14 whether that was the reason why the senior

15 loan facility was reduced by \$300 million, or

16 whether there was something about the

17 Sunbeam's financial performance that caused

18 the banks to reduce the amount of the

19 financing?

20 A. I'm sorry, I misunderstood your

21 question. The, they only needed so much

22 money to make these acquisitions and the --

23 if they were able to raise more money in the

24 convertible market, then they needed less

25 bank debt, so as -- and the company made the

61 (Pages 238 to 241)

Page 242

1 Smith

2 decision to take more of the convertible, and

3 so consequently we reduced the bank debt.

4 Q. So the reason why the bank debt, at

5 least as far as you can recall, was reduced

6 from 2 billion to 1,700,000,000 was the fact

7 that Sunbeam had raised additional funds

8 through the convertible debenture offering

9 and didn't need the \$2 billion until the

10 financing?

11 A. Yes.

12 Q. Let me show you what we are marking

13 as CPH Deposition Exhibit Number 154, sir.

14 (Coleman (Parent) Holdings Exhibit

15 154, document bearing Bates number FUNB

16 188 through 189, marked for

17 identification, as of this date.)

18 Q. CPH Exhibit Number 154 is a

19 two-page document that is a memorandum from

20 Thomas L. Molitar and Andrew J. Gamble to

21 distribution, and bears Bates number FUNB 188

22 through 189.

23 I assume you have never seen this,

24 sir, but correct me if I'm wrong.

25 A. I have never seen this, this is not

Page 243

1 Smith

2 one of ours.

3 Q. Do you know who Tom Molitar and

4 Andrew Gamble are?

5 A. Yes.

6 Q. Who are they?

7 A. They worked at First Union. And

8 Tom was on the leveraged finance as corporate

9 side, corporate lending side, and Andrew,

10 Andy was on the syndication side.

11 Q. Did you work with them in

12 connection with the loan to Sunbeam?

13 A. I did.

14 Q. Do you see there are a series of

15 numbered paragraphs in this memorandum?

16 A. I do.

17 Q. I want to focus your attention on

18 the second one.

19 A. Uhm-hmm.

20 Q. It starts with the statement "The

21 parties have agreed to amend the credit

22 agreement that will reduce FUNB exposure from

23 600 million to 510 million."

24 Do you see that statement?

25 A. I do.

Page 244

1 Smith

2 Q. I would like you to explain to me

3 the different items, bullet point items that

4 appear below that with respect to the changes

5 to the Sunbeam senior loan arrangement.

6 A. Okay.

7 Q. The total credit line, you see that

8 bullet?

9 A. Uhm-hmm.

10 Q. From 2 billion to 1.7 billion, that

11 reflects the \$300 million reduction we are

12 talking about?

13 A. Yes.

14 Q. The second item, LIBOR spread, 150

15 EPS to 225 EPS?

16 A. Yup.

17 Q. Can you explain that to me?

18 A. This is the LIBOR, the spread over

19 LIBOR. So originally LIBOR plus 150 loan to

20 LIBOR plus 225 loan. I'm guessing here

21 because this isn't mine, I haven't seen this

22 before, but that's how I --

23 Q. That's how you interpret this?

24 A. Uhm-hmm.

25 Q. And the reference here is to the

Page 245

1 Smith

2 interest rate being charged?

3 A. Yes, to the company.

4 Q. And this reflects an interest rate

5 increase of about three-quarters of a

6 percent?

7 A. It does.

8 Q. Do you recall why that change was

9 made?

10 A. I think what happened here, I guess

11 this is refreshing my memory a little bit, is

12 they came out with some new numbers and new

13 projections and so the banks were, thought it

14 important to change the rate to enhance their

15 ability to sell this.

16 Q. What -- could you move your hand

17 down from your face, sir. I'm sorry.

18 What power did the banks have under

19 the credit agreement to increase the interest

20 rate being charged on the loan?

21 A. I can't remember whether we had --

22 I don't know what contractual right we had,

23 but... So the, our ability to get them to

24 agree to this, I don't remember all of the

25 bells and whistles that we did to make this

62 (Pages 242 to 245)

Page 246

1 Smith
2 happen.
3 Q. Do you remember if it was, if there
4 was, whether Sunbeam resisted the bank's
5 desire to increase the interest rate on the
6 senior loan?
7 A. I think they negotiated, but I
8 don't see resisted here.
9 Q. You believe it is possible the
10 banks had the right to impose an interest
11 rate increase?
12 A. No, I don't think so. I don't
13 think it was that easy.
14 Q. So you think there was a subsequent
15 negotiation with Sunbeam that resulted in an
16 increase in the interest rate?
17 A. Yes.
18 Q. What was the reason why the banks
19 wanted to increase the interest rate?
20 MR. CLARE: Object to the form of
21 the question, calls for speculation with
22 regard to the other banks.
23 MR. MARKOWSKI: Let me rephrase
24 the question.
25 Q. Did Morgan Stanley Senior Funding

Page 247.

1 Smith
2 support the increase in the interest rate on
3 the senior loan?
4 A. Yes, we did.
5 Q. And why?
6 A. To assist our ability to sell the
7 loan into the market.
8 Q. So it would help Morgan Stanley
9 Senior Funding and the others banks sell off
10 their, sell off portions of their loan to
11 Sunbeam to other banks?
12 A. Yes.
13 Q. The last statement in this section
14 says "Our up-front fees have been affected by
15 the facility reduction. Those are effective
16 up-front fees, now 132 basis points up from
17 112.5 basis points."
18 Do you see that?
19 A. Yes, I do.
20 Q. Would it have been typically the
21 case that if a facility was reduced so
22 quickly after the loan is made, that the
23 up-front fees would be adjusted accordingly?
24 MR. CLARE: Object to the form of
25 the question.

Page 248

1 Smith
2 A. Well, I guess I would argue that
3 the up-front fees were adjusted. All that
4 happened was they reduced the amount of the
5 facility from 2 to 1.7 and the lenders kept a
6 piece.
7 Q. Right. The up-front fees are
8 typically a percentage of the loan amount,
9 correct?
10 A. Right, the original commitment.
11 Q. And here the commitment is being
12 reduced?
13 A. Right.
14 Q. Shortly after the loan was made?
15 A. Uhm-hmm.
16 Q. Would it typically be the case that
17 the up-front fees would be adjusted under
18 those circumstances or not?
19 A. Well, this is an unusual situation,
20 so I don't know if there is anything
21 customary or normal.
22 The company in Canada, as you
23 probably know, reduced the amount of these
24 commitments at any time and they, as part of
25 this process they elected to do this and

Page 249

1 Smith
2 that's what happened.
3 Q. Did Sunbeam save any money by
4 reducing the amount of the loan commitment
5 from a billion 7 to -- excuse me, from 2
6 billion to 1,700,000,000?
7 MR. CLARE: Objection, no
8 foundation.
9 A. Well, what happened is they reduced
10 their revolving credit I guess and so they
11 didn't have to pay any unfunded on whatever
12 they reduced that to.
13 Q. Sunbeam didn't draw down the full
14 \$2 billion or the full \$1.7 billion
15 immediately, correct?
16 A. No.
17 Q. Were there fees being charged or
18 interest being charged on the unfunded
19 portion of the facility?
20 A. Yes.
21 Q. So by reducing the facility from 2
22 billion to 1.7 billion would Sunbeam realize
23 a savings on those fees?
24 A. They would realize a savings on
25 those fees, but the net total financing fees

63 (Pages 246 to 249)

<p style="text-align: right;">Page 250</p> <p>1 Smith</p> <p>2 on an annual basis would have gone up because</p> <p>3 of a change in the interest rates. It would</p> <p>4 far eclipse that savings.</p> <p>5 Q. There is a statement -- let me</p> <p>6 direct your attention to the second page,</p> <p>7 Exhibit 154.</p> <p>8 After the last numbered paragraph</p> <p>9 there is a paragraph that starts with the</p> <p>10 following sentence: "As a result of the</p> <p>11 amendments to the credit agreement, we</p> <p>12 believe that this facility will be syndicated</p> <p>13 as originally expected."</p> <p>14 Do you see that statement?</p> <p>15 A. I do.</p> <p>16 Q. Was that your view also as of May</p> <p>17 8, 1998?</p> <p>18 A. Oh, gee, I have no idea.</p> <p>19 Q. Mr. Smith, I'm going to show you</p> <p>20 what we're marking as Coleman (Parent)</p> <p>21 Holdings Deposition Exhibit Number 155. It's</p> <p>22 a document, it bears the cover page Sunbeam</p> <p>23 \$1.7 Billion Senior Secured Credit Facilities</p> <p>24 Confidential Information Memorandum, it is</p> <p>25 dated June 1998, and it bears Bates number</p>	<p style="text-align: right;">Page 252</p> <p>1 Smith</p> <p>2 A. Uhm-hmm.</p> <p>3 Q. A schedule, correct? Timetable?</p> <p>4 A. Yes.</p> <p>5 Q. And the timetable reflected here is</p> <p>6 the timetable for completing the syndication,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And it starts with a lender meeting</p> <p>10 on June 9 and it ends with the closing and</p> <p>11 funding on July 9, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Now, this schedule is somewhat</p> <p>14 different from the one that you were</p> <p>15 contemplating when the loan was approved by</p> <p>16 the Leveraged Finance Committee on March 20,</p> <p>17 correct?</p> <p>18 A. Yes, it is.</p> <p>19 Q. And what caused this change in</p> <p>20 schedule to a target of completing the</p> <p>21 syndication by July 9 instead of mid-May?</p> <p>22 A. The biggest change, as I remember,</p> <p>23 was that the company came up with a new set</p> <p>24 of projections.</p> <p>25 Q. And how did that affect the timing?</p>
<p style="text-align: right;">Page 251</p> <p>1 Smith</p> <p>2 FUNB 10440 through 10557.</p> <p>3 (Coleman (Parent) Holdings Exhibit</p> <p>4 155, document bearing Bates number FUNB</p> <p>5 10440 through 10557, marked for</p> <p>6 identification, as of this date.)</p> <p>7 Q. My first question, Mr. Smith, is</p> <p>8 whether you can identify this document for</p> <p>9 me.</p> <p>10 A. It appears to be the offering</p> <p>11 memorandum that was put together for the</p> <p>12 syndication of the \$1.7 billion Sunbeam loan.</p> <p>13 Q. And the purpose of this would have</p> <p>14 been what?</p> <p>15 A. The purpose of this would have been</p> <p>16 to provide this information to banks and</p> <p>17 institutional investors who are interested in</p> <p>18 buying, in being part of the syndicate of</p> <p>19 this loan.</p> <p>20 Q. Let me direct your attention to</p> <p>21 page number 8 of the document.</p> <p>22 A. I'm sorry.</p> <p>23 Q. Page number 8 of the document.</p> <p>24 A. Okay.</p> <p>25 Q. There is a calendar.</p>	<p style="text-align: right;">Page 253</p> <p>1 Smith</p> <p>2 A. Well, we wanted to make sure, this</p> <p>3 is now the three lenders, the three</p> <p>4 underwriters, that they understood completely</p> <p>5 what was going on, that they had a full</p> <p>6 knowledge of what was transpiring here, and</p> <p>7 that we felt very comfortable based on the</p> <p>8 due diligence and continued talks with the</p> <p>9 company that these projections were in fact</p> <p>10 achievable, and so we -- because we wanted</p> <p>11 that to stop moving around, so we had</p> <p>12 something we could incorporate into the</p> <p>13 offering memo to get that into the market.</p> <p>14 Q. As of the time this document was</p> <p>15 provided to potential participants in the</p> <p>16 syndication, was it your view personally that</p> <p>17 it was still going to be possible -- well,</p> <p>18 that it would be possible to complete the</p> <p>19 syndication by July 9?</p> <p>20 A. Yes.</p> <p>21 Q. Was it your expectation at that</p> <p>22 point in time also that Morgan Stanley would</p> <p>23 be able to reduce its participation in the</p> <p>24 Sunbeam loan to the 50 to \$60 million</p> <p>25 arrangement that you identified as your</p>

64 (Pages 250 to 253)

Page 254

1 Smith

2 objective previously?

3 A. Yes. And I believe it was also the

4 view of the other two underwriters.

5 Q. Let me direct your attention to

6 page 25.

7 A. 25? Okay.

8 Q. You see the second paragraph on

9 page 25 reads as follows, at least the

10 starting part of it. "On May 11, 1998

11 Sunbeam announced the integration with

12 expected annual cost savings of \$253 million

13 to be achieved by the middle of 1999.

14 "The company also announced that it

15 expects to achieve incremental revenue of

16 \$265 million as a result of revenue

17 opportunities."

18 Do you see those two statements?

19 A. I do.

20 Q. Do you know what the source was of

21 the statement here that the company expected

22 to achieve \$253 million in cost savings and

23 \$265 million in enhanced revenue through its

24 acquisitions?

25 A. The source I believe was Sunbeam

Page 255

1 Smith

2 because they are intimately, they, the

3 company, the issuer, intimately involved when

4 they put the offering memorandum together.

5 They provided a lot of the information. In

6 fact, most of the information, especially the

7 nonpublic information, this is a nonpublic

8 document. And they review all of this,

9 oftentimes have their lawyers review it. So

10 this to the best of my recollection came

11 right from there.

12 Q. Do you know that, are you aware

13 that Sunbeam was working with Coopers &

14 Lybrand in the spring of 1998 to develop a

15 restructuring plan for Sunbeam and the three

16 companies that it had acquired?

17 A. I, I was aware that they were

18 working on it. I'm not a hundred percent

19 sure when that happened in the March, April,

20 May context.

21 Q. Are you aware that it was Coopers &

22 Lybrand that estimated that the company could

23 expect to achieve \$253 million in cost

24 savings and \$265 million in enhanced revenues

25 as a result of its three acquisitions?

Page 256

1 Smith

2 A. I may have known that then, but

3 frankly I had forgotten it now.

4 Q. The 253 in cost savings and \$265

5 million in revenue opportunities, are those

6 synergies from the three acquisitions?

7 Is that what this is describing?

8 A. I can't remember.

9 Q. Do you recall that Sunbeam in the

10 spring of 1998 announced that it expected to

11 achieve synergies resulting from its

12 acquisitions of Coleman company, Signature

13 Brand, First Alert that substantially

14 exceeded the synergies that were estimated

15 when the acquisitions were first announced?

16 A. No.

17 Q. Mr. Smith, let me show you what

18 we're marking as CPH Deposition Number 156.

19 It's a document that bears the cover page

20 Sunbeam 1.7, 1,700,000,000 Senior Secured

21 Credit Facilities Lender Meeting June 9,

22 1998, it bears Bates number FUNB 10583

23 through 10650.

24 (Coleman (Parent) Holdings Exhibit

25 156, document bearing Bates number FUNB

Page 257

1 Smith

2 10583 through 10650, marked for

3 identification, as of this date.)

4 Q. Have you seen this document before,

5 sir?

6 A. I have.

7 Q. Can you tell me what it is?

8 A. This looks to me to be copies of

9 the slide show that we put on for the loan

10 syndication meeting.

11 Q. Was a loan syndication meeting in

12 fact held on June 9, 1998?

13 A. To the best of my knowledge, yes.

14 Q. Did you participate?

15 A. I was in attendance.

16 Q. Who prepared this document, sir?

17 A. That's an interesting concept. We,

18 the banks would be putting the pages together

19 and then sending them to the company, that

20 would add an awful lot of its comments to

21 check the veracity of the numbers because it

22 was basically their presentation to the

23 banking community, not something for -- it is

24 their document. We assisted.

25 Q. The document itself is actually

65 (Pages 254 to 257)

<p style="text-align: right;">Page 258</p> <p>1 Smith</p> <p>2 assembled by the bankers; is that correct?</p> <p>3 A. Assembled I would say in terms of</p> <p>4 printed, in terms of returns, but the</p> <p>5 information, the content, the tone and all</p> <p>6 the rest is really set by the company.</p> <p>7 Q. And the third page of the document,</p> <p>8 sir?</p> <p>9 A. The third page?</p> <p>10 Q. Has the agenda for the meeting?</p> <p>11 A. Yes, it does.</p> <p>12 Q. It indicates that Michael Hart at</p> <p>13 Morgan Stanley make the initial remarks and</p> <p>14 also make the concluding remarks, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall if that is in fact</p> <p>17 what took place that day?</p> <p>18 A. I believe so.</p> <p>19 Q. Did you speak at all at the</p> <p>20 lenders' meeting?</p> <p>21 A. I don't think so.</p> <p>22 Q. Do you recall how many banks</p> <p>23 attended?</p> <p>24 A. Not specifically, but it was a lot.</p> <p>25 Many institutions. My guess was there were</p>	<p style="text-align: right;">Page 260</p> <p>1 Smith</p> <p>2 A. That would have been communicated</p> <p>3 over the phone like you do for a bond.</p> <p>4 Q. Mr. Smith, I'm going to show you</p> <p>5 what we're marking as CPH Exhibit Number 157.</p> <p>6 It is a two-page document, it bears Morgan</p> <p>7 Stanley Bates number 18702 to 703, and it</p> <p>8 appears to be a printout of a Bloomberg press</p> <p>9 announcement relating to the loan</p> <p>10 syndication.</p> <p>11 (Coleman (Parent) Holdings Exhibit</p> <p>12 157, document bearing Morgan Stanley</p> <p>13 Bates number 18702 to 703, marked for</p> <p>14 identification, as of this date.)</p> <p>15 Q. Have you seen this document before,</p> <p>16 sir?</p> <p>17 A. I don't remember. Let me</p> <p>18 familiarize myself here. Okay, I have seen</p> <p>19 this before.</p> <p>20 Q. What is it?</p> <p>21 A. It is a -- I guess it is a</p> <p>22 Bloomberg, right? A Bloomberg article that</p> <p>23 came out on the 11th of June, was it,</p> <p>24 regarding the loan and the syndication</p> <p>25 thereof.</p>
<p style="text-align: right;">Page 259</p> <p>1 Smith</p> <p>2 50 to 75 between institutions both in person</p> <p>3 and on the phone.</p> <p>4 Q. Was it your expectation at the end</p> <p>5 of the bankers' meeting that day that Morgan</p> <p>6 Stanley would still be able to successfully</p> <p>7 complete the syndication of the Sunbeam loan</p> <p>8 by July 9?</p> <p>9 A. Yes, it was.</p> <p>10 Q. Did you think the bankers' meeting</p> <p>11 went well that day?</p> <p>12 A. I think the bankers' meeting went</p> <p>13 fine. We had \$500 million worth of</p> <p>14 commitments from some of the major</p> <p>15 institutional players, so that was a very</p> <p>16 nice start to the syndication.</p> <p>17 Q. Who had made initial commitments?</p> <p>18 A. The testimony I'm remembering now,</p> <p>19 my recollection might have been people like</p> <p>20 VKM, Merrill Lynch, Eaton Vance, that type of</p> <p>21 institution, but I don't remember</p> <p>22 specifically.</p> <p>23 Q. What would be the form of the</p> <p>24 commitment; how would that have been</p> <p>25 communicated to you?</p>	<p style="text-align: right;">Page 261</p> <p>1 Smith</p> <p>2 Q. You are quoted in this, correct?</p> <p>3 A. It looks like it.</p> <p>4 Q. Do you remember making the</p> <p>5 statements attributed to you in this article?</p> <p>6 A. Yes.</p> <p>7 Q. Does the article accurately</p> <p>8 reflect --</p> <p>9 A. Excuse me, can we turn this off?</p> <p>10 MR. MARKOWSKI: Sure, we can go</p> <p>11 off the record.</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 3:34 and this completes tape number 2.</p> <p>14 (Recess taken.)</p> <p>15 THE VIDEOGRAPHER: The time is</p> <p>16 3:39, this begins tape number 3 of the</p> <p>17 videotaped deposition of Mr. Bram Smith.</p> <p>18 BY MR. MARKOWSKI:</p> <p>19 Q. Mr. Smith, we were looking at the</p> <p>20 June 11 Blumberg article, you have it right</p> <p>21 there.</p> <p>22 Do you have it in front of you,</p> <p>23 sir?</p> <p>24 A. I do.</p> <p>25 Q. And I believe you indicated that</p>

66 (Pages 258 to 261)

Page 262

1 Smith
 2 the statements that are attributed to you in
 3 this article accurately reflect the
 4 statements that you made at the time?
 5 A. Yes.
 6 Q. The third paragraph contains a
 7 quote attributed to you that reads: "It is a
 8 very good fundamental story, said R. Bram
 9 Smith."
 10 Do you see that?
 11 A. Yes.
 12 Q. The very fundamental story that you
 13 are referring to there was a reference to the
 14 bank syndication?
 15 A. No, I was referring to the company,
 16 to the Sunbeam story with its financial
 17 strength, cash flow, good market condition in
 18 many brands.
 19 Q. It was still your view as of June
 20 11 that Morgan Stanley and the other two
 21 banks would be able to successfully complete
 22 the syndication by July 9?
 23 A. Yes.
 24 Q. Now, a couple of paragraphs further
 25 down there is a statement that the company is

Page 263

1 Smith
 2 being shared by shareholders.
 3 Do you see that?
 4 A. I do.
 5 Q. The fact that there was a
 6 shareholder lawsuit didn't affect your
 7 thinking with respect to the ability of
 8 Morgan Stanley and the other banks that
 9 syndicated the senior debt?
 10 A. Well, I thought that we would still
 11 be able to achieve our targets. I did
 12 mention in that paragraph that you cited
 13 before that it will be a challenge for some
 14 lenders to get approval, and that's part of
 15 the reason I thought that it might be a
 16 challenge to get some of the numbers,
 17 especially the banks to participate in this.
 18 But we had the flexibility of
 19 increasing the terminal in B, which went to
 20 the institutional market, and reducing the
 21 amount that went into the bank market, so I
 22 think all three of us, it would be ourselves,
 23 First Union and Bank of America, felt that we
 24 would be able to achieve our syndication
 25 targets by the time advertised to, whatever

Page 264

1 Smith
 2 you said, July 9.
 3 Q. Right. So the shareholder lawsuit
 4 didn't affect that in light of the
 5 flexibility you had to sell more of the loan
 6 to institutional investors?
 7 A. I think it made it more of a
 8 challenge, but it was still achievable in our
 9 view.
 10 Q. There is also a statement that
 11 Sunbeam stock price had fallen more than 50
 12 percent and Sunbeam shares were trading at
 13 18-1/2.
 14 Do you see that?
 15 A. Oh, yes, I do.
 16 Q. Do you recall that Sunbeam shares
 17 had been higher than even \$50 a share in
 18 March of 1998?
 19 A. I don't recall that, but I'll take
 20 your word for it.
 21 Q. The fact that Sunbeam share price
 22 had fallen so substantially did not mean that
 23 you would be unsuccessful in your efforts to
 24 syndicate the bank loan?
 25 A. That was not my opinion at the

Page 265

1 Smith
 2 time. Again we're looking at this from a
 3 senior creditor's point of view. We thought
 4 that the cash flow story, the market story --
 5 excuse me, the market position story, their
 6 balance sheet story and the rest were, made
 7 this a very syndicable loan.
 8 Q. Clearly Sunbeam's shares had been
 9 adversely affected by the news that had been
 10 coming out about the company since March of
 11 1998, correct?
 12 A. It looks like that.
 13 Q. But the fact that its share price
 14 was being adversely affected did not mean
 15 that the senior lending aspect of the March
 16 transactions would be adversely affected?
 17 A. It doesn't necessarily move in
 18 concert.
 19 Q. And why is that?
 20 A. Well, because banks are senior
 21 secured lenders, the leverage was relatively
 22 low on a bank basis. The equity is the, are
 23 the owners and they take all of the residual
 24 risk.
 25 So the impact of a high stock price

67 (Pages 262 to 265)

Page 266

1 Smith

2 or a low stock price on the creditworthiness

3 and the cash flow characteristics of the

4 company are sometimes not related, oftentimes

5 not related.

6 Q. So, for example, Sunbeam's ability

7 to maintain a \$50 share price or \$40 share

8 price wouldn't be something that was

9 necessarily significant to you in evaluating

10 the creditworthiness of Sunbeam for the

11 purposes of the senior loan?

12 MR. CLARE: Object to the form of

13 the question. You can answer.

14 A. When we evaluate the feasibility of

15 doing these loans, we look at the balance

16 sheet and the business position, cash flow

17 and all the rest, not necessarily.

18 What's going on in the stock

19 market, whether the stock goes up or down is

20 not going to affect the balance sheet of the

21 company.

22 Q. There is a statement right below

23 that under Loan Division, the heading Loan

24 Division.

25 Do you see that?

Page 267

1 Smith

2 A. Yes, I do.

3 Q. The loan is divided in a \$750

4 million portion typically sold to

5 institutional investors and a \$950 million

6 piece that is typically sold to banks.

7 That is something you just alluded

8 to, correct?

9 A. Yes.

10 Q. The portion from which you had

11 already received an indication of interest

12 that you referred to earlier in your

13 testimony was which piece of this?

14 A. The 750 million piece.

15 Q. And your recollection today is that

16 you had commitments for about 500 million of

17 that 750?

18 A. Yes.

19 Q. Had you received any commitments

20 for the bank piece?

21 A. Not to the best of my recollection.

22 Normally the banks move much, much slower.

23 Q. Now, two days after this, on June

24 13 Mr. Dunlap was terminated.

25 Do you recall that happening?

Page 268

1 Smith

2 A. Yes, I do.

3 Q. Did that have an effect on the

4 syndication?

5 A. Yup.

6 Q. In what way?

7 A. Well, that would be a -- having the

8 CEO be fired by the board makes it an

9 extremely challenging situation, a lot of

10 uncertainty.

11 Q. Do you know why Sunbeam's board

12 determined that it was appropriate to

13 terminate Mr. Dunlap?

14 MR. CLARE: Objection, no

15 foundation, calls for speculation.

16 A. No

17 Q. Let me show you a one-page

18 document, sir, that we are going to mark as

19 CPH Deposition Exhibit Number 158, it bears

20 Bates number CPH 1392612 and it is a June 15,

21 1998 article from the American Banker. It

22 bears the headline "Morgan Stanley Secures

23 500 Million Commitment for 1.7 Billion

24 Sunbeam Loan."

25 (Cdelema (Parent) Holdings Exhibit

Page 269

1 Smith

2 158, document bearing Bates number CPH

3 1392612, marked for identification, as

4 of this date.)

5 Q. Have you seen this document before,

6 this article before, sir?

7 A. Yup.

8 Q. There are several statements

9 attributable to you in this article.

10 Do they accurately report the

11 statements that you made to the reporter?

12 A. Give me a second and I'll look at

13 it. Okay.

14 Q. This article is dated June 15,

15 1998. Do you know if you made your

16 statements before or after -- the pending

17 question was does the article accurately

18 reflect the statements you made to the

19 reporter?

20 A. Yes.

21 Q. Do you know if you made those

22 statements before or after Mr. Dunlap was

23 terminated?

24 A. Don't remember.

25 Q. As of the time you made these

Page 270

1 Smith

2 statements to the American Banker reporter,

3 were you still optimistic that Morgan Stanley

4 would be able to complete the loan

5 syndication successfully?

6 A. When was he terminated?

7 Q. On June 13, which was a Saturday I

8 believe.

9 A. I think when you say confident we

10 would be able to do this, I think increasing,

11 some concern that that's going to be a

12 challenge.

13 Q. Do you know if this interview took

14 place before the news of Mr. Dunlap's

15 termination --

16 A. I can't remember.

17 Q. -- had been disclosed?

18 A. Can't remember.

19 Q. How did you learn that Mr. Dunlap

20 had been terminated?

21 A. I think I might have gotten a phone

22 call from Bill Strong over the weekend.

23 Q. What did Mr. Strong tell you?

24 A. That he had been, that Mr. Dunlap

25 had been terminated.

Page 271

1 Smith

2 Q. Did he say anything else?

3 A. Not that I, not that I recall. The

4 news was stunning and very new and I can't

5 remember whether they picked an interim CEO

6 or what they were going to do.

7 Q. Did Mr. Strong tell you how he had

8 learned this news?

9 A. I don't recall.

10 Q. Did Mr. Strong tell you why the

11 Sunbeam board had taken this action?

12 A. Not that I recall.

13 Q. Did he offer his thoughts

14 concerning why it may have happened?

15 A. Not that I recall.

16 Q. Did you and Mr. Strong have any

17 discussion about the effect this would have

18 on the syndication?

19 A. Not that I recall, but I'm sure we

20 did.

21 Q. Did Mr. Dunlap's termination have

22 an immediate effect on Morgan Stanley's plans

23 to syndicate the senior loan?

24 A. I'm going to confuse a little bit

25 of the timing here, but pretty shortly or

Page 272

1 Smith

2 during this period we decided, that would be

3 the three of us, the three underwriters

4 decided to cease the syndication of the loan.

5 So did that happen on the 15th or

6 16th or whenever I don't remember, but it was

7 all in that period of time.

8 Q. Let me show you what we're going to

9 mark as CPH Exhibit 159, it's a one-page

10 document, it bears Bates number CPH 1392969.

11 It appears to be an American Banker article

12 dated June 17, 1998, and it bears the

13 headline "Morgan Stanley Withdraws Loan To

14 Sunbeam After CEO's Firing."

15 (Coleman (Parent) Holdings Exhibit

16 159, document bearing Bates number CPH

17 1392969, marked for identification, as

18 of this date.)

19 Q. Have you finished reviewing it,

20 sir?

21 A. I did, uhm-hmm.

22 Q. Have you seen this before?

23 A. I must have. I don't really

24 remember.

25 Q. Are the statements attributed to

Page 273

1 Smith

2 you in this article accurate?

3 A. I don't think so because I'm

4 confused, I don't know what this one

5 statement attributed to me means.

6 "But I would say the flow of

7 information is typical of today's

8 lender-borrower relationship." A better word

9 might be disappointed, it doesn't even flow.

10 I'm quoted to sell down the loan

11 eventually, I think that is kind of probably

12 true. Am I quoted again?

13 I don't understand what the first

14 one means, I don't remember saying that.

15 Q. You don't remember saying "But I

16 would say the flow of information is typical

17 of today's lender-borrower relationship"?

18 A. No, and then certainly not jump the

19 position to the next sentence I'm imputed to

20 have made when a better word might have been

21 disappointed.

22 Q. What about the statement in the

23 next paragraph that "Morgan Stanley as well

24 as the co-syndicators, Bank of America Corp.

25 and First Union Corp., were not giving up on

69 (Pages 270 to 273)

Page 274

1 Smith
2 the deal?"
3 A. That is not my statement.
4 Q. It says "Mr. Smith stressed."
5 A. But again it is not a quote, that's
6 the writer.
7 Q. Do you recall saying to the author
8 of this article that Morgan Stanley and other
9 banks were not giving up on syndication?
10 A. I don't know what not giving up on
11 the deal means. It says here in my copy not
12 giving up on the deal versus not giving up on
13 the syndication, so this is -- the Sunbeam
14 had our money so it is kind of a meaningless
15 concept, that statement.
16 Q. Well, let me direct your attention
17 to the right-hand column.
18 A. Uhm-hmm.
19 Q. One, two, three, four, five, sixth
20 paragraph. It says "Mr. Smith said his team
21 will have to meet with Sunbeam's new
22 management to develop a strategy. Pending
23 that meeting a new run at the market is
24 likely later this year he said."
25 Do you recall making that

Page 275

1 Smith
2 statement?
3 A. I remember alluding to the fact
4 that they had 'o get to the bottom of what
5 was going on and then try to restart the
6 syndication some time, yeah.
7 Q. So your plan as of June 17, in any
8 event, Mr. Smith, was to attempt to go back
9 to the syndication market at some point in
10 the future?
11 A. Yes.
12 Q. Did you have any idea as of this
13 point in time how quickly you would be able
14 to do that?
15 A. No.
16 Q. Did you have any hope concerning
17 how quickly you would be able to do that?
18 A. Any what?
19 Q. Hope.
20 A. I always have hope. Remember what
21 happened here. Dunlap's fired, right, there
22 is nothing about any numbers, so the issue is
23 who is going to be the new CEO and what is
24 going to be the new strategy, so we have to
25 sort that out and see who that's going to be

Page 276

1 Smith
2 and then, and then get ready and take it to
3 market some time later. Can't do it too much
4 in the summer, so that's what I meant.
5 Q. Now, Mr. Levin had been announced
6 as Mr. Dunlap's replacement by this point; is
7 that correct?
8 A. I don't remember. Is that what it
9 says here? If not, it was pretty darn close.
10 Q. I'm looking for it, I think it is
11 in here somewhere.
12 Putting that aside, whether it is
13 in the article or not, do you recall that
14 fairly shortly, within a matter of days after
15 Mr. Dunlap was terminated, Mr. Levin was
16 identified as the new chief executive officer
17 of Sunbeam?
18 A. Yes, in the fourth paragraph. Yes,
19 I thought it was pretty close, within days if
20 not a week.
21 Q. Did you have any reaction to the
22 appointment of Mr. Levin as the replacement
23 for Mr. Dunlap?
24 A. Not really. I didn't know him.
25 Q. Do you recall anyone at Morgan

Page 277

1 Smith
2 Stanley expressing at this point in time
3 objections to Mr. Levin's appointment as the
4 new chief executive officer of Sunbeam?
5 A. Not that I'm aware of.
6 Q. Or any reservations about that?
7 A. Not that I'm aware of.
8 Q. What, sir -- move to a different
9 topic.
10 What did Morgan Stanley Senior
11 Funding do to attempt to assess the potential
12 synergies that Sunbeam could realize by
13 acquiring Coleman company?
14 A. Morgan Stanley Senior Funding --
15 let's see -- took advantage of what the
16 firm's effort had been on trying to
17 understand the synergies.
18 Also at the time we were exploring
19 the synergy of potential with the other two
20 underwriting banks, because again all of the
21 due diligence regarding the loan was done
22 with them as well.
23 Q. Do you agree that the evaluation of
24 potential synergies when combining two
25 companies, like combining Sunbeam and Coleman

70 (Pages 274 to 277)

<p style="text-align: right;">Page 278</p> <p>1 Smith</p> <p>2 company, is highly dependent on the plans of</p> <p>3 management?</p> <p>4 A. The synergy strategy and plans and</p> <p>5 the execution would rely on the management,</p> <p>6 yes.</p> <p>7 Q. So, for example, was Morgan Stanley</p> <p>8 Senior Funding in a position where it could</p> <p>9 independently assess the potential synergies</p> <p>10 that Sunbeam could achieve by combining</p> <p>11 itself with Coleman company?</p> <p>12 A. Morgan Stanley, the other two banks</p> <p>13 would probe the management and ask questions</p> <p>14 on their synergy plans, remember those are</p> <p>15 their plans, and therefore test, ask</p> <p>16 questions to them about their ability to</p> <p>17 execute it, those synergies on the timetable</p> <p>18 given.</p> <p>19 Q. So Sunbeam developed its plan for</p> <p>20 combining itself with Coleman, correct?</p> <p>21 A. That is normally how it works, and</p> <p>22 to the best of my recollection that is how it</p> <p>23 worked here.</p> <p>24 Q. And they told Morgan Stanley what</p> <p>25 their expectations were with respect to</p>	<p style="text-align: right;">Page 280</p> <p>1 Smith</p> <p>2 took with the Leveraged Finance Committee</p> <p>3 concerning approval of the senior loan to</p> <p>4 Sunbeam, did you place any weight at all on</p> <p>5 any information that Sunbeam or Morgan</p> <p>6 Stanley had received from Mr. Levin</p> <p>7 concerning potential synergies?</p> <p>8 MR. CLARE: Objection, foundation.</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Do you have any basis today, sir,</p> <p>11 for saying that Morgan Stanley Senior Funding</p> <p>12 was defrauded as a result of false statements</p> <p>13 made either to it or Morgan Stanley or to</p> <p>14 Sunbeam, by Jerry Levin concerning potential</p> <p>15 synergies?</p> <p>16 MR. CLARE: Foundation, calls for</p> <p>17 a legal conclusion.</p> <p>18 A. I missed that, could you read that</p> <p>19 back to me.</p> <p>20 Q. I'll state it again, sir.</p> <p>21 As you sit here today, do you have</p> <p>22 any factual basis for -- let me start over.</p> <p>23 As you sit here today, sir, do you</p> <p>24 believe that Morgan Stanley Senior Funding</p> <p>25 was defrauded as a result of statements made</p>
<p style="text-align: right;">Page 279</p> <p>1 Smith</p> <p>2 potential cost savings, correct?</p> <p>3 A. And First Union and Bank of</p> <p>4 America.</p> <p>5 Q. Do you know if any of Sunbeam's</p> <p>6 plans were estimates of potential cost</p> <p>7 savings dependent upon ideas or information</p> <p>8 that Sunbeam obtained from Coleman company?</p> <p>9 A. I have --</p> <p>10 MR. CLARE: Objection, foundation,</p> <p>11 call for speculation. You can answer.</p> <p>12 A. I have no idea.</p> <p>13 THE WITNESS: Sorry.</p> <p>14 Q. Did you have any discussions</p> <p>15 yourself with Sunbeam on the subject of</p> <p>16 potential synergies prior to the funding of</p> <p>17 the senior loan?</p> <p>18 A. I don't believe so.</p> <p>19 Q. Did, do you know if Mr. Hart did?</p> <p>20 A. I don't know.</p> <p>21 Q. Did Mr. Hart ever tell you that</p> <p>22 Sunbeam's plans for potential cost savings</p> <p>23 had originated with Mr. Levin?</p> <p>24 A. I don't recall that.</p> <p>25 Q. In connection with the position you</p>	<p style="text-align: right;">Page 281</p> <p>1 Smith</p> <p>2 by Jerry Levin to either Sunbeam, Morgan</p> <p>3 Stanley or Morgan Stanley Senior Funding</p> <p>4 concerning potential synergies that Sunbeam</p> <p>5 might realize by acquiring Coleman?</p> <p>6 MR. CLARE: Same objections.</p> <p>7 A. I have no idea.</p> <p>8 Q. As you sit here today, sir, do you</p> <p>9 believe that Morgan Stanley Senior Funding</p> <p>10 was misled by any statements made by Jerry</p> <p>11 Levin to Morgan Stanley, to Sunbeam, or to</p> <p>12 Morgan Stanley Senior Funding concerning</p> <p>13 potential synergies?</p> <p>14 MR. CLARE: Same objections.</p> <p>15 A. No idea.</p> <p>16 Q. Mr. Smith, let me show you what</p> <p>17 we're marking as CPH Deposition Exhibit</p> <p>18 Number 160, it is a one-page document that</p> <p>19 bears Bates number Morgan Stanley</p> <p>20 confidential 3143.</p> <p>21 (Coleman (Parent) Holdings Exhibit</p> <p>22 160, document bearing Bates number</p> <p>23 Morgan Stanley confidential 3143,</p> <p>24 marked for identification, as of this</p> <p>25 date.)</p>

71 (Pages 278 to 281)

Page 282

1 Smith

2 Q. Have you ever seen this document

3 before, sir?

4 A. I don't know. It doesn't look

5 familiar.

6 Q. Put aside the handwriting. Have

7 you ever seen the typed portion of this

8 document before?

9 A. Yes, I guess I did. I guess I

10 have.

11 Q. When was that?

12 A. I saw it yesterday. And I can't

13 remember if I saw it when, during the

14 transaction.

15 Q. As you sit here today, you have no

16 recollection of seeing this during your work

17 in February and March of 1998?

18 A. No, not really.

19 Q. Do you recognize the handwriting?

20 A. No.

21 Q. Looking at the, this list of 15

22 items, sir, --

23 A. Yes.

24 Q. -- do you know whether in

25 connection with Morgan Stanley Senior

Page 283

1 Smith

2 Funding's evaluation of potential synergies,

3 that any of the items on this list were taken

4 into account?

5 A. I really don't know.

6 Q. You have no knowledge that they

7 were, correct, sir?

8 A. I have no knowledge they were, I

9 have no knowledge they weren't.

10 Q. Do you have any information to

11 suggest that the items on this list in any

12 way affected the price that Sunbeam paid for

13 Coleman company?

14 MR. CLARE: Objection, no

15 foundation.

16 A. No, no idea.

17 Q. Do you have any basis for believing

18 that the items on this list were critical to

19 Sunbeam's assessment of Coleman's fair

20 acquisition value?

21 MR. CLARE: Same objection.

22 A. No idea.

23 Q. Did anyone from Morgan Stanley or

24 Morgan Stanley Senior Funding ever suggest to

25 you, sir, that information that Sunbeam or

Page 284

1 Smith

2 Morgan Stanley had received from Coleman

3 relating to potential synergies was grossly

4 overstated?

5 MR. CLARE: Objection to form and

6 foundation.

7 A. I have no idea.

8 Q. Now, you indicated that the

9 syndication was pulled from the market upon

10 Mr. Dunlap's termination, correct?

11 A. It was shortly thereafter, the

12 Monday or Tuesday after the weekend.

13 Q. And the reason for pulling the

14 syndication from the market was Mr. Dunlap's

15 termination, correct?

16 A. That was the, that was the

17 catalyst.

18 Q. It didn't have anything to do with

19 any information that Coleman company had

20 provided to Sunbeam or to Morgan Stanley

21 relating to potential synergies, did it?

22 A. No, not that I was aware of.

23 Q. Your decision to pull the

24 syndication from the market didn't have

25 anything to do with any information that you

Page 285

1 Smith

2 had, you or anyone else from Morgan Stanley

3 had received from the Coleman company related

4 to the synergies?

5 A. No, it did not.

6 Q. Did you ever express to anyone that

7 Jerry Levin should not continue to serve as

8 the chief executive officer of Sunbeam

9 because he had exaggerated the potential

10 synergies that Sunbeam might achieve by

11 acquiring Coleman company?

12 A. No.

13 Q. Do you have any knowledge

14 concerning what synergies Sunbeam in fact did

15 realize as a result of acquiring Coleman

16 company?

17 A. I do not.

18 Q. Do you have any reason to believe

19 that Mr. Perelman and others at McAndrews &

20 Forbes did not expect Sunbeam to achieve

21 substantial synergies from Coleman company?

22 A. Did you say did not?

23 Q. I'll ask the question over.

24 Do you have any reason to believe

25 that Mr. Perelman or others at McAndrews &

72 (Pages 282 to 285)

Page 286

1 Smith

2 Forbes or Coleman (Parent) Holdings did not

3 expect Sunbeam to achieve substantial

4 synergies as a result of its acquisition of

5 Coleman company?

6 MR CLARE: Objection, calls for

7 speculation.

8 A. I really have no idea.

9 Q. My question is whether you have any

10 reason to believe that today?

11 A. I have no reason to believe that

12 today.

13 Q. In your communications with the

14 bankers at Bank of America or First Union,

15 did you ever indicate that the synergy

16 figures that MSSF was relying upon in

17 connection with evaluating the senior loan to

18 Sunbeam had originated with Mr. Levin?

19 A. I don't believe so.

20 Q. Or the Coleman company?

21 A. I don't believe so.

22 Q. Or with McAndrews & Forbes?

23 A. I don't believe so.

24 Q. Or with Coleman (Parent) Holdings?

25 A. I don't believe so.

Page 287

1 Smith

2 Q. Mr. Smith, let me show you what

3 we're going to mark as Coleman (Parent)

4 Exhibit 161, a three-page document, it bears

5 Bates number CPH 1010442 to 444.

6 (Coleman (Parent) Holdings Exhibit

7 161, document bearing Bates number CPH

8 1010442 to 444, marked for

9 identification, as of this date.)

10 Q. Earlier today, sir, you were

11 attempting to recall the name of someone at

12 McAndrews & Forbes named Irwin.

13 Was that Mr. Engelman?

14 A. I believe so. Isn't he the CFO?

15 Q. The reason I'm trying to assert, is

16 this is a memo from Mr. Engelman to Mr. Levin

17 concerning plans for a bank meeting on June

18 19.

19 Do you see that?

20 A. Yes.

21 Q. And there is a list of attendees

22 that are anticipated to have attended that

23 meeting from Morgan Stanley, from Bank of

24 America and from First Union.

25 Do you see that?

Page 288

1 Smith

2 A. I do.

3 Q. And you're listed as an attendee,

4 do you see that?

5 A. I do.

6 Q. Do you recall attending a bank

7 meeting on June 19 with representatives of

8 McAndrews & Forbes, Mr. Levin?

9 A. Had a lot of meetings and my guess

10 is I was probably there.

11 Q. Do you recall attending a meeting

12 shortly after Mr. Dunlap's termination at

13 McAndrews & Forbes offices in Manhattan where

14 Mr. Hart, Mr. Smith, with you, Mr. Rankin and

15 Mr. Kitts were present from Morgan Stanley?

16 A. I remember going to McAndrews &

17 Forbes that week. I couldn't swear that

18 those were the fellows in attendance.

19 Q. Mr. Smith, let me show you what

20 we're going to mark for identification as CPH

21 Exhibit Number 162. It's a document that

22 bears Morgan Stanley Bates number 268988

23 through 891 and it's a Bank of America

24 letterhead, memorandum from Deirdre Doyle to

25 John H. Shannahan.

Page 289

1 Smith

2 (Coleman (Parent) Holdings Exhibit

3 162, document bearing Morgan Stanley

4 Bates number 268988 through 891, marked

5 for identification, as of this date.)

6 Q. I'm not going to ask you to read

7 the whole document, sir, but I'm going to

8 refer you to a couple of entries in this

9 document.

10 The first sentence indicates this

11 is a report on a meeting held by McAndrews &

12 Forbes offices on June 1998. Representatives

13 of Bank of America, First Union and Morgan

14 Stanley attended.

15 Do you see that statement?

16 A. Yes, I do.

17 Q. And there is a list of McAndrews &

18 Forbes participants.

19 Do you see that?

20 A. Yes, I do.

21 Q. Does this refresh your recollection

22 concerning your participation in a meeting at

23 McAndrews & Forbes offices on June 1998?

24 Mr. Gittis, Mr. Levin, Mr. Shapiro,

25 Mr. Engelman, Mr. Slotkin and Mr. Lipton of

Page 290

1 Smith
2 Wachtel Lipton were present?
3 A. Yes.
4 Q. Is it your recollection now that
5 you were in fact present at that meeting?
6 A. Yes. I thought you were referring
7 to a different meeting. I don't remember
8 Kitts, for example, being at this meeting.
9 Q. Do you recall -- put the document
10 down for a second, sir.
11 Do you recall at this meeting that
12 Mr. Levin addressed his views of analysis
13 that Coopers & Lybrand had done for Sunbeam
14 relating to potential synergies or cost
15 savings that Sunbeam might realize through
16 the combination of Sunbeam and Coleman
17 company?
18 A. Do I remember him commenting on it?
19 Q. Yes.
20 A. Yes.
21 Q. What do you remember Mr. Levin
22 saying?
23 A. I think -- it is a long time ago.
24 I think he had doubts about how realistic
25 those were.

Page 291

1 Smith
2 Q. Do you remember what words he used?
3 A. No.
4 Q. Do you remember how strongly he
5 expressed his doubts?
6 A. No.
7 Q. Let me direct your attention to the
8 bottom third of the first page of Exhibit
9 162. It starts out, there is a bullet point
10 that starts "In reviewing Dunlap's 1998 EPS
11 expectations for Sunbeam"?
12 A. Yes.
13 Q. I would like you to read beginning
14 there through the bottom of the page.
15 A. Okay.
16 Q. Does this refresh your recollection
17 at all on statements made by Mr. Levin
18 concerning his views of the Coopers & Lybrand
19 synergy analysis?
20 A. Not really. I just remembered at
21 the meeting he was pretty derogatory toward
22 the whole thing. I really can't say that it
23 does jog my memory.
24 Q. Do you recall being advised that
25 Coopers & Lybrand had been fired?

Page 292

1 Smith
2 A. I think I do.
3 Q. And that the company was going to
4 refuse to pay Coopers & Lybrand's fee?
5 A. I think I heard that too. I think
6 I heard that too, yes.
7 Q. And the company was considering an
8 action to recover the fees that Coopers &
9 Lybrand had been paid?
10 A. I don't know about that.
11 Q. And did you understand, sir, from
12 anything Mr. Levin had said concerning
13 Coopers & Lybrand's study, that Mr. Levin was
14 expressing the view that information or ideas
15 that he had provided to Sunbeam concerning
16 potential synergies before the acquisition
17 took place were in any way exaggerated or
18 unreasonable?
19 A. I don't remember him addressing
20 that issue.
21 Q. When you left the meeting did you
22 think that Mr. Levin had confessed to
23 misleading Morgan Stanley --
24 MR. CLARE: Objection to form.
25 Q. -- relating to potential synergies?

Page 293

1 Smith
2 A. I had no, no view on that. I
3 wasn't part of the original synergy
4 discussion way back when. He didn't comment
5 here to the best of my recollection.
6 Q. I'm asking what your take-away was
7 from the meeting.
8 When you walked out did you think
9 that Jerry Levin just told us that he misled
10 Morgan Stanley or Sunbeam concerning the
11 potential synergies that Sunbeam might
12 achieve by acquiring Coleman company?
13 A. That was not my impression.
14 Q. At any point, sir, after Mr.
15 Dunlap's termination were you advised that
16 Coleman (Parent) Holdings wanted to rescind
17 the sale of its interest in Coleman company,
18 get the stock back?
19 A. I think so.
20 Q. What do you recall about that?
21 A. Not much. Basically what you said,
22 that is what they wanted to do.
23 Q. What was Morgan Stanley's or Morgan
24 Stanley Senior Funding's position with
25 respect to whether that was an advisable

74 (Pages 290 to 293)

Page 294

1 Smith
2 thing to do for Sunbeam?
3 MR. CLARE: Object to the form.
4 A. I don't remember.
5 Q. Do you recall Morgan Stanley or
6 Morgan Stanley Senior Funding taking the
7 position that Sunbeam should refuse to
8 rescind the acquisition of Coleman company?
9 A. No.
10 Q. Do you recall coming to the
11 conclusion that it would adversely affect
12 Morgan Stanley Senior Funding's exposure on
13 the senior loan if Sunbeam agreed to rescind
14 the acquisition of my client's interest in
15 Coleman?
16 A. No, I don't remember.
17 Q. When, sir, did Morgan Stanley --
18 let me ask a foundational question.
19 The Sunbeam senior loan has never
20 been syndicated; is that correct?
21 A. True.
22 Q. When did you finally conclude that
23 it would not be possible to syndicate the
24 senior loan?
25 A. I don't know if I had posed it that

Page 295

1 Smith
2 way. I think probably came to the conclusion
3 you couldn't syndicate it in '98, sometime in
4 the fall, and I don't know when we, when I
5 decided that it would be very problematic to
6 syndicate it in its current form.
7 Q. Do you recall whether you still
8 thought throughout the course of 1999 that it
9 might be possible yet to complete the
10 syndication of the loan?
11 A. I didn't think it would be possible
12 to syndicate the loan in the format that we
13 had.
14 Q. And what do you mean by "the format
15 that we had"?
16 A. As an all senior bank deal.
17 Q. What alteration did you think would
18 be necessary?
19 A. I didn't know what would work, but
20 I knew that you couldn't sell that much bank
21 debt into the bank market, so that the bank
22 debt was reduced by a form of, by form of
23 capital markets, high yield or something.
24 Q. When did you come to that
25 conclusion?

Page 296

1 Smith
2 A. I don't remember.
3 Q. Do you think it was sometime in
4 1999?
5 A. It might have been.
6 Q. It might have been later than that?
7 A. I don't think so. Probably
8 mid-'99.
9 Q. Did you have any continuing
10 responsibility for monitoring the Morgan
11 Stanley Senior Funding loan to Sunbeam after
12 the loan closed in March of 1998?
13 A. The monitoring at Morgan Stanley
14 somebody covered for it.
15 Q. Did you have any continuing
16 responsibility of any sort after March of
17 1998 relating to the loan?
18 A. Yes.
19 Q. What was that?
20 A. That was to -- you said after
21 March, so of course go through the
22 syndication, restructuring, probably said
23 syndicate it, pull it, talk to the other
24 banks and to the -- to Levin about what might
25 be -- what might be done, series of

Page 297

1 Smith
2 amendments and waivers, then my involvement
3 lessens as the credit folks and Mitch Petrick
4 get more and more involved.
5 Q. Mitch Petrick's involvement was on
6 behalf of the credit department?
7 A. No, it was on the part of the fixed
8 income/high yield department. He had some,
9 good experience on workouts, so they wanted
10 to take advantage of that because it migrated
11 from a distribution exercise to a recovery
12 phase.
13 Q. Did you ever communicate in writing
14 after March of 1998 relating to the Sunbeam
15 loan?
16 A. I don't believe so.
17 Q. Did you ever communicate by E-mail?
18 A. I don't believe so.
19 Q. Did you ever receive E-mails after
20 March of 1998 relating to the Sunbeam loan?
21 A. I can't recall.
22 Q. Is it possible that you did?
23 A. I guess some possibility.
24 Q. Did Morgan Stanley Senior Funding
25 have any sort of system for rating the loans

75 (Pages 294 to 297)

Page 298

1 Smith
2 in its portfolio?
3 A. That was a credit department
4 function, so I don't recall. I mean if it
5 was, it was a credit department function and
6 I don't recall.
7 Q. You don't recall whether there was
8 a rating system of any sort?
9 A. Right.
10 Q. Do you know if the Sunbeam loan had
11 some initial sort of rating or evaluation
12 from the credit department when you first
13 met?
14 A. Not specifically, but as part and
15 parcel they would sign off and have to say
16 that they were okay. I don't -- I can't
17 recall what, if any, rating they put on it
18 because I don't remember when the rating
19 system started there.
20 Q. Before you left Morgan Stanley
21 Senior Funding was there a rating system in
22 place?
23 A. I believe so.
24 Q. How large a portfolio of loans does
25 Morgan Stanley Senior Funding maintain?

Page 299

1 Smith
2 MR. CLARE: Objection. What time
3 period?
4 A. I don't know.
5 Q. Let's say in 1998. Apart from the
6 Sunbeam loan, do you know how large a loan
7 portfolio Morgan Stanley Senior Funding had
8 at that point?
9 A. Not really, can't remember.
10 Q. Was it modest?
11 MR. CLARE: Object to the form.
12 A. I can't recall the numbers. I
13 guess you could ask them.
14 Q. You just don't have a recollection
15 one way or the other?
16 A. Yes, it's a long time ago.
17 Q. Was part of the business strategy
18 of Morgan Stanley Senior Funding to maintain
19 a substantial loan portfolio?
20 MR. CLARE: I object to the form.
21 A. The strategy of Morgan Stanley was
22 to make loans, distribute them, hold a piece,
23 that was the strategy.
24 Q. And the piece that you would hold
25 would be the smallest piece you could

Page 300

1 Smith
2 possibly hold?
3 MR. CLARE: Objection to form.
4 A. No, it would be a meaningful,
5 meaningful piece.
6 Q. The pieces that were held after the
7 initial syndication, were those sometimes
8 later marketed?
9 A. Depending on the price, depending
10 on the amounts, sometimes.
11 Q. You were the president of Morgan
12 Stanley Senior Funding, --
13 A. Uhm-hmm.
14 Q. -- correct, sir?
15 But you didn't have any
16 responsibility with respect to monitoring the
17 performance of the loans in the Morgan
18 Stanley Senior Funding portfolio?
19 A. That was a function that was the
20 responsibility of the credit department.
21 Q. Who in the credit department would
22 be responsible for evaluating the loans in,
23 that were being carried in the Morgan Stanley
24 Senior Funding portfolio?
25 A. I don't know the specific person

Page 301

1 Smith
2 who was tasked with that responsibility, but
3 the person who had the overall responsibility
4 for the credit department to include the loan
5 portfolio was Rick Felix.
6 Q. Were your views sought at any point
7 by the credit department relating to the
8 quality of any of the loans in the MSSF
9 portfolio?
10 A. Yes.
11 Q. Were your views sought concerning
12 the quality of the Sunbeam loan at any point?
13 A. I wouldn't say the quality. Views
14 on what to do, sure, all the time.
15 Q. Was there a point, if there was a
16 point, where Sunbeam -- excuse me, where
17 Morgan Stanley Senior Funding wrote off some
18 portion of the Sunbeam senior loan, took a
19 reserve against it?
20 A. I think there were several points
21 that they took off.
22 Q. Do you remember when that took
23 place?
24 A. No, can't remember.
25 Q. Was your input sought at that time

Page 302

1 Smith
2 when the company first took a --
3 A. Yes.
4 Q. What was done, was there a
5 write-off, was there a reserve?
6 A. It was a mark-to-market so we just
7 wrote it down.
8 Q. Do you recall the amount of the
9 first write-down?
10 A. I do not.
11 Q. Do you recall whether it took place
12 in 1999?
13 A. Do not.
14 Q. Do you recall whether it took place
15 later than that?
16 A. I don't remember.
17 Q. Let me go back to 1998. Do you
18 recall whether Morgan Stanley wrote off any
19 portion of the Sunbeam loan in 1998?
20 A. Don't know. I can't remember.
21 Just can't remember.
22 Q. Have you ever seen any reports
23 relating to how much, if any amounts Morgan
24 Stanley Senior Funding has lost on the senior
25 loan of Sunbeam?

Page 303

1 Smith
2 A. No.
3 Q. Morgan Stanley Senior Funding now
4 owns a substantial portion of Sunbeam's
5 successor, American Household, correct?
6 A. Yes, to the best of my
7 understanding.
8 Q. Do you know at what value Morgan
9 Stanley Senior Funding carries its equity
10 ownership in American Household?
11 MR. CLARE: Objection, no
12 foundation, calls for speculation.
13 A. I have no idea.
14 Q. At the time you left Morgan Stanley
15 do you know what Morgan Stanley Senior
16 Funding's plans were for its investment in
17 American Household?
18 A. No idea.
19 Q. You indicated that Mitch Petrick
20 became involved in aspects of the senior
21 loan, correct?
22 A. The senior loan of Sunbeam, yes.
23 Q. And do you know what the nature of
24 his activities has been?
25 MR. CLARE: Objection.

Page 304

1 Smith
2 A. Regarding the Sunbeam loan?
3 Q. Correct.
4 MR. CLARE: Objection on
5 foundation grounds, calls for speculation.
6 A. Not lately.
7 Q. What was it prior to the time you
8 left Morgan Stanley?
9 A. Don't, can't comment about that.
10 Can comment about that summer he started to
11 get involved with the credit people in terms
12 of the meetings with the other banks and then
13 McAndrew, basically Jerry and the company.
14 Q. That, you refer to "that summer,"
15 referring to the summer of 1998?
16 A. Summer of 1998.
17 Q. Did Mr. Petrick remain involved
18 with Morgan Stanley Senior Funding's loan to
19 Sunbeam through the entire time you were at
20 Morgan Stanley?
21 A. To varying degrees I believe that's
22 true.
23 Q. Do you know if he is still involved
24 today?
25 A. Under supervisory conditions would

Page 305

1 Smith
2 be my guess, but that is speculation on my
3 part.
4 Q. But that's your belief, correct?
5 MR. CLARE: Well, objection on
6 foundation grounds.
7 A. That is my speculation.
8 Q. That was the case when you left
9 Morgan Stanley, correct?
10 A. I believe so.
11 Q. Did Mitch Petrick ever express the
12 view to you that Jerry Levin had misled
13 Morgan Stanley or Sunbeam relating to the
14 potential synergies that Sunbeam could
15 achieve in acquiring Coleman company?
16 A. No, I do not believe so.
17 Q. Was there ever a time, sir, where
18 you were asked to preserve any documents or
19 electronic records you had that related to
20 the Sunbeam transactions?
21 A. I believe there were.
22 Q. Do you recall when that first
23 occurred?
24 A. No.
25 Q. Do you recall who made that, gave

77 (Pages 302 to 305)

Page 306

1 Smith
2 you that direction?
3 A. I think it would be somebody from
4 the legal department, so I don't have a name.
5 Q. Do you recall if it was shortly
6 after the transactions closed?
7 A. I, my best recollection is it was
8 late '98, but that's just an educated guess.
9 Q. Do you recall getting a written
10 direction?
11 A. I believe so, as well as
12 telephones, calls.
13 Q. What, if anything, did you do to
14 preserve the documents and electronic
15 records?
16 A. I gathered them up, gave them to
17 whomever wanted them.
18 Q. Do you have a recollection as to
19 who you gave them to?
20 A. Not any specific individual. I
21 think it was somebody in the credit
22 department. Excuse me, somebody in the legal
23 department.
24 Q. Did you gather the materials
25 personally?

Page 307

1 Smith
2 A. Part of them were personal, part of
3 them I had my assistant get.
4 Q. Who was your assistant back then?
5 A. I don't remember. The timing, I
6 don't remember who it was.
7 Q. Is it someone who worked solely for
8 you or did she work for other people also?
9 I'm assuming it is a woman, but I
10 may be incorrect.
11 Was it a woman?
12 A. It was a woman and she worked for
13 the group.
14 Q. Did she also work for Mr. Hart?
15 A. Yes, but more indirectly.
16 Q. Do you recall if there were other
17 occasions after that initial inquiry, where
18 you were asked to gather materials you had
19 relating to Sunbeam?
20 A. My memory is faulty, but I would
21 bet that I was asked at least two more times.
22 When I say "I," anybody involved with the
23 Sunbeam transaction.
24 Q. Why do you say that?
25 A. Why do I say everybody?

Page 308

1 Smith
2 Q. No, why do you say it happened at
3 least two more times?
4 A. Just my recollection that
5 periodically something would come up from the
6 legal department, or we get more phone calls
7 saying are you sure you have given us
8 everything, please double-check.
9 Q. Did you update your search, see if
10 you had any new materials that you didn't
11 have before?
12 A. We would research the files and the
13 desks and all.
14 Q. Do you recall whether you received
15 any such inquiry after my client filed this
16 lawsuit against Sunbeam -- against Morgan
17 Stanley -- I'm going to start over.
18 Do you recall whether you received
19 an inquiry from the legal department after my
20 client filed its lawsuit against Morgan
21 Stanley in 2003, concerning whether you had
22 any additional Sunbeam-related documents or
23 electronic records?
24 A. When in 2003 was the suit filed?
25 Q. The spring of 2003.

Page 309

1 Smith
2 A. So I was no longer there.
3 Q. You left Morgan Stanley?
4 A. First of February.
5 Q. February. How many communications
6 or meetings, sir, would you say that you had
7 with Sunbeam management in 1998 after Mr.
8 Dunlap was terminated?
9 A. Probably 12 to 15.
10 Q. So 12 to 15 what, meetings?
11 A. Meetings.
12 Q. How many telephone conversations
13 would you say you had?
14 A. Double that number probably. And
15 let me be clear. Many of those meetings and
16 almost all of those phone calls were
17 conference calls, so there would be myself,
18 two or three people from Morgan Stanley, the
19 folks from the other banks.
20 Q. Were you cautioned at all, sir, by
21 anyone not to maintain a written record of
22 any of your communications with post Dunlap
23 management at Sunbeam?
24 A. No.
25 Q. Did you make an effort to document

78 (Pages 306 to 309)

Page 310

1 Smith

2 in any way the substance of your

3 communications with Sunbeam management during

4 that time period?

5 A. I did not.

6 Q. Why was that?

7 A. There were other members of the

8 team that were there to take the notes and

9 write any memos that we wanted or needed.

10 Q. Who was doing that?

11 A. Again unclear at any particular

12 time, but it would be folks like Michael

13 Hart, Simon Rankin, or maybe a more junior

14 person assigned to our group.

15 Q. In 1998, sir, were you expecting

16 litigation to arise out of the loan that

17 Morgan Stanley Senior Funding made to

18 Sunbeam?

19 A. I personally was not.

20 Q. What about internal communications

21 within Morgan Stanley, Morgan Stanley Senior

22 Funding, sir, were you cautioned not to

23 memorialize in notes or in memos internal

24 communications relating to the Sunbeam

25 transactions?

Page 311

1 Smith

2 A. No

3 Q. Were you instructed to keep any

4 documents and notes or E-mails that you had,

5 that you were generating and receiving in

6 connection with your communications with

7 Sunbeam management, after Mr. Dunlap was

8 terminated?

9 A. I don't remember.

10 Q. It's possible that you were

11 receiving things or generating things

12 relating to your communications with Sunbeam

13 management, but not preserving them --

14 MR. CLARE: Objection.

15 Q. -- during the time period after Mr.

16 Dunlap was terminated?

17 MR. CLARE: Objection, foundation.

18 Calls for speculation.

19 A. I don't think so.

20 Q. Do you think whatever you had or

21 whatever you generated would still exist

22 today?

23 A. If some -- if somebody took it or

24 we turned it in, then they should have it.

25 Is that what you mean?

Page 312

1 Smith

2 Q. Well, I'm asking you whether if you

3 received any written communication of any

4 sort relating to communications with Sunbeam

5 management after Mr. Dunlap was terminated,

6 took any notes relating to any of those

7 communications, whether you believe that

8 those materials should still exist today, or

9 whether in the ordinary course you may have

10 discarded them from time to time?

11 A. I really don't know. Anything I

12 had when we got these requests were turned

13 in.

14 Q. But in between requests if you were

15 receiving things or generating things, were

16 you under instruction to preserve it, or did

17 you think if you had no need for it at that

18 point in time for your personal use you could

19 discard it?

20 A. Don't recall.

21 Q. Are you familiar with Morgan

22 Stanley's policy with respect to document

23 destruction?

24 A. Not really.

25 Q. Are you familiar with Morgan

Page 313

1 Smith

2 Stanley's policy that employees are to

3 discard drafts, notes, notebooks, diaries,

4 telephone logs, message slips and other

5 documents when they are no longer considered

6 useful?

7 A. Yes, I guess I'm aware of that.

8 Q. Is that the policy that you

9 personally followed while you were at Morgan

10 Stanley?

11 A. Got rid of a lot of stuff when you

12 no longer needed it.

13 Q. Do you recall doing that on any

14 occasion relating to the work you did

15 concerning Sunbeam?

16 A. No, I do not.

17 Q. Did you give instructions to the

18 people in your group to maintain any

19 documentation they had relating to any aspect

20 of the work that was being done relating to

21 Sunbeam?

22 A. No, I did not.

23 Q. You have indicated, sir, that you

24 took one trip to Florida, correct?

25 A. I took one trip to Florida in early

Page 314

1 Smith

2 March, yes.

3 Q. Any other occasions relating to

4 work that you did for Sunbeam where you

5 traveled to Florida?

6 A. I think on at least one more

7 occasion.

8 Q. When was that?

9 A. I think it was sometime in 1998.

10 It could have been more, but at least one.

11 Q. What was the occasion for that

12 trip?

13 A. The occasion was a bank meeting for

14 the three banks and the Sunbeam management.

15 Q. Do you recall whether that was

16 before or after Mr. Dunlap was fired?

17 A. It was after he was fired. This is

18 with Mr. Levin and the team.

19 Q. Do you recall whether there were

20 any other occasions where you visited in

21 Florida concerning work being done for

22 Sunbeam?

23 A. Like I say, at least once, could

24 have been twice, could have been three times,

25 but the years kind of blend.

Page 315

1 Smith

2 Q. Is it the case that before the

3 loans closed, the only occasion for you to

4 travel to Florida was your meeting in March?

5 A. That is the best of my

6 recollection.

7 Q. What about other forms of

8 communication in Florida prior to the closing

9 of the transaction at the end of March 1998?

10 MR. CLARE: The State of Florida?

11 MR. MARKOWSKI: With Sunbeam in

12 Florida.

13 A. I thought we went over that a

14 little bit before, but participate either

15 partly in some of these conversations,

16 conference calls with the company.

17 Q. So there were occasions where you

18 spoke by telephone with people at Sunbeam?

19 A. Yes.

20 Q. Prior to the loan closing?

21 A. Prior to the closing.

22 Q. And we have seen your March 5

23 letter to Mr. Kersh, the highly confident

24 letter you sent to Mr. Kersh in Florida?

25 A. Yes.

Page 316

1 Smith

2 Q. Were there any other occasions

3 where you corresponded with anyone in Florida

4 prior to the closing of the loans?

5 A. You mean Sunbeam in Florida?

6 Q. Yes.

7 A. Not to the best of my recollection.

8 Q. What about receiving materials from

9 Sunbeam prior to the closing of the loan

10 transaction?

11 A. Not to the best of my knowledge,

12 none.

13 Q. Sir, when you left the room earlier

14 while I had a question pending, did you

15 discuss with Mr. Clare how to respond to the

16 pending question?

17 MR. CLARE: I instruct the witness

18 not to answer the question.

19 A. So I won't.

20 MR. MARKOWSKI: I don't have

21 anything further.

22 MR. CLARE: Neither do I.

23 THE VIDEOGRAHER: The time is

24 4:49 and this completes the videotaped

25 deposition of Mr. Bram Smith.

Page 317

1 Smith

2 (Time noted: 4:49 p.m.)

3

4 R. BRAM SMITH

5

6 Subscribed and sworn to before me

7 this ____ day of _____, 2004.

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Page 318

1
2 **C E R T I F I C A T E**
3 **S T A T E O F N E W Y O R K)**
4 : ss.
5 **C O U N T Y O F N E W Y O R K)**
6
7 I, PAMELA J. MAZZELLA, RPR, a
8 Notary Public within and for the State
9 of New York, hereby certify:
10 That R. BRAM SMITH, the witness
11 whose deposition is hereinbefore set
12 forth, was duly sworn by me and that
13 such deposition is a true record of the
14 testimony given by the witness.
15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage, and that I
18 am in no way interested in the outcome
19 of this matter.
20 IN WITNESS WHEREOF, I have
21 hereunto set my hand this 1st day of
22 March, 2004.
23
24
25 **PAMELA J. MAZZELLA, RPR**

Page 319

1
2 **----- I N D E X -----**
3 **WITNESS EXAMINATION BY PAGE**
4 R. Bram Smith Mr. Markowski 5
5 **----- INFORMATION REQUESTS -----**
6 **DIRECTIONS: 316:13**
7 **----- EXHIBITS -----**
8 **COLEMAN (PARENT) HOLDINGS FOR ID.**
9 Coleman (Parent) Holdings Exhibit 151,
10 document that bears Bates number Morgan
11 Stanley confidential 65651 through 6574,
12 marked for identification..... 66:13
13 Coleman (Parent) Holdings Exhibit 152,
14 document bearing Bates number LAB 43, marked
15 for identification..... 187:8
16 Coleman (Parent) Holdings Exhibit 153,
17 document bearing Bates number Morgan Stanley
18 18885 through 18942, marked for
19 identification..... 227:15
20 Coleman (Parent) Holdings Exhibit 154,
21 document bearing Bates number FUNB 188
22 through 189, marked for identification.....
23 242:14
24 Coleman (Parent) Holdings Exhibit 155,
25 document bearing Bates number FUNB 10440

Page 320

1
2 through 10557, marked for identification....
3 251:3
4 Coleman (Parent) Holdings Exhibit 156,
5 document bearing Bates number FUNB 10583
6 through 10650, marked for identification....
7 256:24
8 Coleman (Parent) Holdings Exhibit 157,
9 document bearing Morgan Stanley Bates number
10 18702 to 703, marked for identification....
11 260:11
12 Coleman (Parent) Holdings Exhibit 158,
13 document bearing Bates number CPH 1392612,
14 marked for identification..... 268:25
15 Coleman (Parent) Holdings Exhibit 159,
16 document bearing Bates number CPH 1392969,
17 marked for identification..... 272:15
18 Coleman (Parent) Holdings Exhibit 160,
19 document bearing Bates number Morgan Stanley
20 confidential 3143, marked for identification
21 281:21
22 Coleman (Parent) Holdings Exhibit 161,
23 document bearing Bates number CPH 1010442 to
24 444, marked for identification..... 287:6
25 Coleman (Parent) Holdings Exhibit 162,

Page 321

1
2 document bearing Morgan Stanley Bates number
3 268988 through 891, marked for identification
4 289:2
5
6
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81 (Pages 318 to 321)

1
2 NAME OF CASE: Coleman (Parent)
3 Holdings, Inc. -v- Morgan Stanley & Co.,
4 Inc.

5 DATE OF DEPOSITION: February 24, 2004
6 WITNESS: R. Bram Smith

ERRATA SHEET

PAGE LINE

7 _____ CHANGE: _____
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22 Sworn to before me this _____ day of
23 _____, 2004.

24 _____
(Signature of Witness)

25 _____
(Notary Public)

My Commission Expires:

8

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

9

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

10

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

11

1 EUGENE YOO

2 Volume: I

3 Pages: 1 - 227

4 Exhibits: 217 - 229

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

7 -----x

8 COLEMAN (PARENT) HOLDINGS, INC.,

9 Plaintiff, Case No. CA 03-5045 AI

10 v.

11 MORGAN STANLEY & CO., INC.,

12 Defendant.

13 -----x

14 MORGAN STANLEY SENIOR FUNDING, INC.,

15 Plaintiff, Case No. CA 03-5165 AI

16 v.

17 MACANDREWS & FORBES HOLDINGS, INC.,

18 Defendants.

19 -----x

20 VIDEOTAPED DEPOSITION of EUGENE YOO, a
21 witness called for examination, taken pursuant
22 to the Applicable Provisions of the Florida
23 Rules of Civil Procedure, before Laurie K.
24 Langer, Registered Professional Reporter and
25 Notary Public in and for the Commonwealth of

<p style="text-align: right;">Page 2</p> <p>1 EUGENE YOO</p> <p>2 Massachusetts, at the offices of Esquire Boston,</p> <p>3 99 Summer Street, Boston, Massachusetts, on</p> <p>4 Wednesday, June 16, 2004, commencing at 9:30</p> <p>5 a.m.</p> <p>6 APPEARANCES</p> <p>7</p> <p>8 KIRKLAND & ELLIS LLP</p> <p>9 By Zhonette M. Brown, Esq.</p> <p>10 655 Fifteenth Street, N.W.</p> <p>11 Washington, D.C. 20005</p> <p>12 (202) 879-5108</p> <p>13 For Morgan Stanley & Co.,</p> <p>14 Morgan Stanley Senior Funding, Inc.,</p> <p>15 and Eugene Yoo</p> <p>16</p> <p>17 JENNER & BLOCK LLP</p> <p>18 By Christopher M. O'Connor, Esq.</p> <p>19 One IBM Plaza</p> <p>20 Chicago, IL 60611</p> <p>21 (312) 222-9350</p> <p>22 For Coleman (Parent) Holdings, Inc.,</p> <p>23 and MacAndrews & Forbes Holdings, Inc.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 EUGENE YOO</p> <p>2 (Index Continued)</p> <p>3 EXHIBITS PAGE</p> <p>4 227 Document from Skadden Arps 160</p> <p>5 228 1997 Firm wide Performance</p> <p>6 Evaluation 213</p> <p>7 229 Self-evaluation For the 1998</p> <p>8 Firm wide Performance Evaluation 213</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 EUGENE YOO</p> <p>2 ALSO PRESENT</p> <p>3 Shawn Budd, Videographer</p> <p>4</p> <p>5 INDEX</p> <p>6 ATTORNEY EXAMINATION CROSS REDIRECT</p> <p>7 Mr. Johnson 6 223</p> <p>8 Ms. Brown 222</p> <p>9 EXHIBIT PAGE</p> <p>10 217 1998 Fiscal Year Hours Report 35</p> <p>11 218 Document 73</p> <p>12 219 Bates Labeled Morgan Stanley 36347</p> <p>13 through 36349 74</p> <p>14 220 Bates Labeled CPH 467090 through</p> <p>15 467126 75</p> <p>16 221 Document 83</p> <p>17 222 Morgan Stanley Document, Bates</p> <p>18 Labeled 3431 through 3464 101</p> <p>19 223 Document 108</p> <p>20 224 Document 108</p> <p>21 225 Letter from Coopers and Lybrand to</p> <p>22 Mr. Yoo Dated October 3, 1997 135</p> <p>23 226 Fax Cover Sheet For Coopers and</p> <p>24 Lybrand to Gene Yoo Dated October 23, 1997</p> <p>25 and Attached 137</p>	<p style="text-align: right;">Page 5</p> <p>1 EUGENE YOO</p> <p>2 PROCEEDINGS</p> <p>3</p> <p>4 VIDEOGRAPHER: Okay, we are on the record.</p> <p>5 My name is Shawn Budd, your videographer of</p> <p>6 Esquire Deposition Services. Today's date is</p> <p>7 June 16, 2004 and the time is nine thirty-four.</p> <p>8 We are here at the offices of Esquire Deposition</p> <p>9 Services, located at 99 Summer Street, Boston,</p> <p>10 Massachusetts, to take the videotaped deposition</p> <p>11 of Gene Yoo in the matter of Coleman Holdings,</p> <p>12 Inc., versus Morgan Stanley and Company, Inc.</p> <p>13 and Morgan Stanley Senior Funding, Inc. versus</p> <p>14 MacAndrews and Forbes Holding, Inc.</p> <p>15 Will counsel please identify themselves and</p> <p>16 state whom you represent.</p> <p>17 MR. O'CONNOR: Christopher O'Connor of</p> <p>18 Jenner and Block on behalf of the plaintiff</p> <p>19 Coleman Parent Holdings.</p> <p>20 MS. BROWN: Zhonette Brown of Kirkland and</p> <p>21 Ellis on behalf of Morgan Stanley and Morgan</p> <p>22 Stanley Senior Funding and the witness.</p> <p>23 VIDEOGRAPHER: And would the court reporter</p> <p>24 please swear in the witness.</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 EUGENE YOO</p> <p>2 EUGENE YOO,</p> <p>3 called as a witness, being duly sworn, testified</p> <p>4 as follows:</p> <p>5</p> <p>6 EXAMINATION</p> <p>7</p> <p>8 BY MR. O'CONNOR:</p> <p>9 Q. Mr. Yoo, could you please state your full name</p> <p>10 and spell it for the record.</p> <p>11 A. Full name is Eugene Kim Yoo, E-u-g-e-n-e, middle</p> <p>12 name is K-i-m, the last name is spelled Y-o-o.</p> <p>13 Q. And what is your current address?</p> <p>14 A. 99 Waltham Street, Unit Number 1, Boston, Mass.,</p> <p>15 02118.</p> <p>16 Q. Mr. Yoo, have you ever been deposed before?</p> <p>17 A. No, I have not.</p> <p>18 Q. Let's go over some of the basic ground rules.</p> <p>19 First, if you don't understand any of the</p> <p>20 questions that I ask you just let me know and</p> <p>21 I'll try and rephrase or help you out. If you</p> <p>22 need to take a break, that's fine, I just ask</p> <p>23 that you don't take breaks while a question is</p> <p>24 pending. Are those acceptable?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 8</p> <p>1 EUGENE YOO</p> <p>2 Q. Okay. Did those attorneys ever ask you to</p> <p>3 search for documents in your possession that</p> <p>4 might --</p> <p>5 A. Yes.</p> <p>6 Q. I'm sorry. -- that might relate to Sunbeam or</p> <p>7 the Sunbeam and Coleman transaction?</p> <p>8 A. Yes, they did.</p> <p>9 Q. Did you have any documents in your possession?</p> <p>10 A. No, I did not.</p> <p>11 Q. Before we get started on some of the more</p> <p>12 interesting questions, I would like to go</p> <p>13 through some of your personal background. Not</p> <p>14 that that's not interesting. But I would like</p> <p>15 to ask you a few questions about your education</p> <p>16 after high school.</p> <p>17 A. Sure.</p> <p>18 Q. Where did you attend college?</p> <p>19 A. I went to Boston College for my undergrad</p> <p>20 degree.</p> <p>21 Q. And what was your degree in?</p> <p>22 A. Computer science and business.</p> <p>23 Q. What year did you graduate from Boston College?</p> <p>24 A. 1990.</p> <p>25 Q. Upon graduation what did you do?</p>
<p style="text-align: right;">Page 7</p> <p>1 EUGENE YOO</p> <p>2 Q. Okay. And also, if you could not answer</p> <p>3 questions until I've completed the question, it</p> <p>4 will just make the job easier for the court</p> <p>5 reporter --</p> <p>6 A. Sure.</p> <p>7 Q. -- so she can get our answers and our questions.</p> <p>8 Have you ever given testimony under oath</p> <p>9 before?</p> <p>10 A. No, I have not.</p> <p>11 Q. Okay. And do you realize that you're under oath</p> <p>12 today?</p> <p>13 A. Yes, I do.</p> <p>14 Q. You're represented today by the law firm of</p> <p>15 Kirkland and Ellis?</p> <p>16 A. Yes, I am.</p> <p>17 Q. Are you paying for that representation?</p> <p>18 A. No, I am not.</p> <p>19 Q. Are you aware of who is paying for that</p> <p>20 representation?</p> <p>21 A. I am not.</p> <p>22 Q. Do you understand that they, that Miss Brown</p> <p>23 represents Morgan Stanley and Morgan Stanley</p> <p>24 Senior Funding in this case?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 9</p> <p>1 EUGENE YOO</p> <p>2 A. I started at Goldman Sachs Co. in New York, I</p> <p>3 was in their operations group for four years.</p> <p>4 Q. So until 1994?</p> <p>5 A. Correct.</p> <p>6 Q. And where did you go after Goldman Sachs?</p> <p>7 A. I attended Columbia Business School.</p> <p>8 Q. Did you graduate from Columbia?</p> <p>9 A. Yes, I did.</p> <p>10 Q. And in what year?</p> <p>11 A. 1996.</p> <p>12 Q. With an M.B.A.?</p> <p>13 A. Yes, I did.</p> <p>14 Q. Any specialization in that program?</p> <p>15 A. I concentrated in finance.</p> <p>16 Q. Upon graduation what did you do?</p> <p>17 A. I started work full-time at Morgan Stanley in</p> <p>18 their investment banking division.</p> <p>19 Q. Was that directly after graduation?</p> <p>20 A. Yes.</p> <p>21 Q. You no longer are currently employed with Morgan</p> <p>22 Stanley?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. When did your employment with Morgan</p> <p>25 Stanley cease?</p>

<p style="text-align: right;">Page 10</p> <p>1 EUGENE YOO</p> <p>2 A. In February of 2000.</p> <p>3 Q. When you left Morgan Stanley what did you do?</p> <p>4 A. I went to work at Bank of America in their</p> <p>5 investment banking group.</p> <p>6 Q. Was that in New York?</p> <p>7 A. Yes, it was.</p> <p>8 Q. Are you still employed with Bank of America?</p> <p>9 A. No, I am not.</p> <p>10 Q. When did you leave Bank of America?</p> <p>11 A. In January of 2002.</p> <p>12 Q. And what did you do when you left Bank of</p> <p>13 America?</p> <p>14 A. I was an independent consultant for about three</p> <p>15 years. I should say two years.</p> <p>16 Q. Is that your current employment?</p> <p>17 A. No, I'm currently a small business owner.</p> <p>18 Q. And what type of business do you own?</p> <p>19 A. It's a retail shop.</p> <p>20 Q. Any other education other than what you've</p> <p>21 testified to this morning?</p> <p>22 A. No.</p> <p>23 Q. Okay. In 1996 when you first joined Morgan</p> <p>24 Stanley what was your position at that time?</p> <p>25 A. I actually started as an intern while I was at</p>	<p style="text-align: right;">Page 12</p> <p>1 EUGENE YOO</p> <p>2 liaison between the lower level team and the</p> <p>3 managing directors or the senior members of the</p> <p>4 team.</p> <p>5 Q. And the same responsibilities in 1997?</p> <p>6 A. Yes.</p> <p>7 Q. And in 1998 did your responsibilities change?</p> <p>8 A. Well, the description probably is the same, but</p> <p>9 the scope probably expanded a little bit.</p> <p>10 Q. And what would -- what did it expand to?</p> <p>11 A. Well, in 1996 my, during my first year I was</p> <p>12 rotating through different groups so I was</p> <p>13 essentially riding alongside with other</p> <p>14 associates and learning from them and as we</p> <p>15 moved into 1997 and 1998 I began to take more of</p> <p>16 that on my own.</p> <p>17 Q. Okay. I'm sorry, the analysts that you</p> <p>18 supervised, those typically were college</p> <p>19 graduates without an M.B.A.?</p> <p>20 A. Yes.</p> <p>21 Q. What -- who did you report to in 1997 when you</p> <p>22 were working as an associate?</p> <p>23 A. There were several people. The ones that I can</p> <p>24 remember specifically, Bob Kitts, Jim Stynes; I</p> <p>25 don't remember anybody else.</p>
<p style="text-align: right;">Page 11</p> <p>1 EUGENE YOO</p> <p>2 Columbia and I worked there during my second</p> <p>3 semester in their debt capital markets group.</p> <p>4 Then I started full-time in August in the</p> <p>5 investment banking division, I was an associate</p> <p>6 at that time.</p> <p>7 Q. That's August of 1996?</p> <p>8 A. Yes.</p> <p>9 Q. And I'm sorry, your first position was</p> <p>10 associate?</p> <p>11 A. First full-time position was associate.</p> <p>12 Q. Okay. Did you ever receive a promotion at</p> <p>13 Morgan Stanley?</p> <p>14 A. No. I left prior to being up for promotion.</p> <p>15 Q. Can you explain the duties and responsibilities</p> <p>16 of an associate in the investment banking</p> <p>17 division at Morgan Stanley back in 1996?</p> <p>18 A. Well, I guess it's hard to explain because there</p> <p>19 are a lot of different positions for associates</p> <p>20 within the investment banking division.</p> <p>21 Q. I'll make it easier. What were your</p> <p>22 responsibilities in 1996 as an associate?</p> <p>23 A. My responsibilities were to manage the deal</p> <p>24 team, at least manage the analyst at the lower</p> <p>25 level members of the team and to work as a</p>	<p style="text-align: right;">Page 13</p> <p>1 EUGENE YOO</p> <p>2 Q. Alex Fuchs?</p> <p>3 A. Alex Fuchs. David McCreary (ph.). that's it.</p> <p>4 Q. In 1997 do you recall the names of the analysts</p> <p>5 that you supervised?</p> <p>6 A. I remember some of them. Tyrone Chang, Lilly</p> <p>7 Rafii, Andreas Boquist. It's been awhile. I</p> <p>8 don't remember anybody else, actually.</p> <p>9 Q. Okay. Why did you leave Morgan Stanley in</p> <p>10 February of 2000?</p> <p>11 A. I decided to change my career direction a little</p> <p>12 bit. I was going down a generalist path at</p> <p>13 Morgan Stanley and I wanted to focus a little</p> <p>14 bit more on a particular industry. And an</p> <p>15 opportunity came up with a friend to go to Bank</p> <p>16 of America and work in the telecom group, which</p> <p>17 I was very interested in.</p> <p>18 Q. Your departure from Morgan Stanley was unrelated</p> <p>19 to the Sunbeam transaction?</p> <p>20 A. It was not related at all.</p> <p>21 Q. Okay. Mr. Yoo, when I refer to the Sunbeam</p> <p>22 transaction do you understand that to mean</p> <p>23 Morgan Stanley's engagement with Sunbeam</p> <p>24 Corporation in 1997 and 1998 and Sunbeam's</p> <p>25 efforts to sell the company or acquire other</p>

<p style="text-align: right;">Page 14</p> <p>1 EUGENE YOO</p> <p>2 businesses?</p> <p>3 A. Yes.</p> <p>4 Q. Sir, are you familiar with, with my client</p> <p>5 Coleman Parent Holdings, Inc. which prior to the</p> <p>6 sale to Sunbeam owned approximately 82 percent</p> <p>7 of the stock of Coleman Company, Inc.?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Are you familiar, sir, with my client's</p> <p>10 claims against Morgan Stanley and Company?</p> <p>11 A. I am somewhat familiar with them.</p> <p>12 Q. What is your understanding of that lawsuit?</p> <p>13 MS. BROWN: I'm going to object and</p> <p>14 instruct you not to answer to the extent that</p> <p>15 your answer would reveal any communications that</p> <p>16 you had with counsel.</p> <p>17 A. I guess I can't answer that.</p> <p>18 Q. Okay. Are you aware, sir, that Morgan</p> <p>19 Stanley -- let me ask you. Are you familiar</p> <p>20 with the entity Morgan Stanley Senior Funding?</p> <p>21 A. Somewhat familiar.</p> <p>22 Q. Okay. What is your understanding of that</p> <p>23 entity?</p> <p>24 A. From what I understand it is an organization set</p> <p>25 up within Morgan Stanley to provide senior</p>	<p style="text-align: right;">Page 16</p> <p>1 EUGENE YOO</p> <p>2 Q. What happened to your documents when you left</p> <p>3 the company?</p> <p>4 A. All of my deal-related documents were left in my</p> <p>5 office. They were in my files on my, in my</p> <p>6 bookshelf. I don't know what happened to them</p> <p>7 after that.</p> <p>8 Q. Were you told to leave your deal documents in</p> <p>9 your office?</p> <p>10 A. I was never really told anything specifically</p> <p>11 about them, but I just assume that they were</p> <p>12 documents that I shouldn't be taking with me.</p> <p>13 Q. Mr. Yoo, when was the first time that you were</p> <p>14 contacted by attorneys for Morgan Stanley or</p> <p>15 Morgan Stanley Senior Funding in connection with</p> <p>16 these lawsuits?</p> <p>17 A. I don't remember precisely. I believe it was</p> <p>18 sometime in early 2004.</p> <p>19 Q. Do you remember who you spoke with?</p> <p>20 A. Tom Clare.</p> <p>21 Q. Did you speak with any other attorneys for</p> <p>22 Morgan Stanley?</p> <p>23 A. No.</p> <p>24 Q. Did any in-house attorneys from Morgan Stanley</p> <p>25 contact you concerning this case?</p>
<p style="text-align: right;">Page 15</p> <p>1 EUGENE YOO</p> <p>2 lending to clients.</p> <p>3 Q. Were you ever employed, sir, by Morgan Stanley</p> <p>4 Senior Funding?</p> <p>5 A. No, I was not.</p> <p>6 Q. Are you aware that Morgan Stanley Senior Funding</p> <p>7 has filed a lawsuit against Coleman Parent</p> <p>8 Holdings and MacAndrews and Forbes Holdings?</p> <p>9 A. Yes, I was.</p> <p>10 Q. Are you familiar with that lawsuit?</p> <p>11 A. Not very familiar.</p> <p>12 Q. Okay. What is your understanding of that</p> <p>13 lawsuit?</p> <p>14 A. From what I understand Morgan Stanley Senior</p> <p>15 Funding is suing in an effort to recover some of</p> <p>16 the loan proceeds it had lent out.</p> <p>17 Q. Have you read that Complaint?</p> <p>18 A. No, I have not.</p> <p>19 Q. Did anyone consult you about that Complaint</p> <p>20 prior to its filing?</p> <p>21 A. No.</p> <p>22 Q. Mr. Yoo, when you left Morgan Stanley in</p> <p>23 February of 2000 did you take any documents with</p> <p>24 you?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 17</p> <p>1 EUGENE YOO</p> <p>2 A. No.</p> <p>3 Q. Mr. Yoo, do you have any continuing contact with</p> <p>4 your former colleagues at Morgan Stanley?</p> <p>5 A. I keep in touch with a few folks on a sporadic</p> <p>6 basis but I don't really talk to anyone on a</p> <p>7 regular basis. Just whoever I happen to run</p> <p>8 into.</p> <p>9 Q. Do you recall any of those people; the names of</p> <p>10 those people?</p> <p>11 A. Xavier Stationberg (ph.). Who else did I run</p> <p>12 into? Davis McCreary, Tyrone Chang. That's</p> <p>13 probably about it.</p> <p>14 Q. When is the last time that you spoke with</p> <p>15 Mr. Chang?</p> <p>16 A. Let's see, almost a year ago now. It was late</p> <p>17 spring of last year when I was in Los Angeles.</p> <p>18 Q. Have you spoken to any current or former Morgan</p> <p>19 Stanley employees concerning these lawsuits or</p> <p>20 your testimony here today?</p> <p>21 A. No.</p> <p>22 Q. Sir, do you have any business relationships,</p> <p>23 existing business relationships with Morgan</p> <p>24 Stanley as a result of any of your prior deals</p> <p>25 or current business relationships?</p>

<p style="text-align: right;">Page 18</p> <p>1 EUGENE YOO</p> <p>2 A. No, nothing.</p> <p>3 Q. What did you do to prepare for your deposition</p> <p>4 today?</p> <p>5 A. I met yesterday with Zhonette Brown and she</p> <p>6 filled me in on the details of the case and what</p> <p>7 was --</p> <p>8 MS. Brown: You don't need to reveal</p> <p>9 communications between counsel.</p> <p>10 A. Right.</p> <p>11 Q. Did you review any documents?</p> <p>12 A. Yes.</p> <p>13 Q. Did any of those documents refresh your</p> <p>14 recollection of any of the facts or events</p> <p>15 concerning the Sunbeam/Coleman transaction?</p> <p>16 A. Not really.</p> <p>17 Q. Did you review any deposition testimony?</p> <p>18 A. No, I did not.</p> <p>19 Q. Was any deposition testimony read to you or</p> <p>20 described to you?</p> <p>21 A. No.</p> <p>22 Q. How long did you meet with Miss Brown?</p> <p>23 A. Just a few hours.</p> <p>24 Q. Have you ever been contacted by any state or</p> <p>25 federal regulators in connection with your</p>	<p style="text-align: right;">Page 20</p> <p>1 EUGENE YOO</p> <p>2 A. There was a document retention policy which, at</p> <p>3 least for the MNA group; I don't recall what it</p> <p>4 was now.</p> <p>5 Q. Did you file those policies?</p> <p>6 A. I hope I did.</p> <p>7 Q. Did you receive any specific instructions on</p> <p>8 preserving e-mail?</p> <p>9 A. No, not really.</p> <p>10 Q. Mr. Yoo, I'm going to show you what's been</p> <p>11 previously marked as CPH Exhibit 6. Mr. Yoo,</p> <p>12 have you seen this document before?</p> <p>13 A. No, I haven't seen this one.</p> <p>14 MS. Brown: Just for the record, when you</p> <p>15 ask him whether he's seen documents before, he</p> <p>16 will exclude any documents that he saw during</p> <p>17 his preparation.</p> <p>18 MR. O'CONNOR: Correct. That's fine.</p> <p>19 Q. Sir, could I point your attention to the first</p> <p>20 paragraph under file maintenance or it reads,</p> <p>21 "file should be kept lean and unnecessary</p> <p>22 material should be discarded on a regular</p> <p>23 basis." Do you see that?</p> <p>24 A. Yes, I do.</p> <p>25 Q. Do you recall that being part of the document</p>
<p style="text-align: right;">Page 19</p> <p>1 EUGENE YOO</p> <p>2 employment at Morgan Stanley?</p> <p>3 A. No.</p> <p>4 Q. While you were employed at Morgan Stanley did</p> <p>5 you use e-mail?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Did you ever print out any of the e-mail</p> <p>8 messages that you sent or received?</p> <p>9 A. I'm sure I printed some at some point.</p> <p>10 Q. Did you personally create any documents in</p> <p>11 connection with the Sunbeam engagement?</p> <p>12 A. Yes, I did.</p> <p>13 Q. What did you do with those documents?</p> <p>14 A. It depends on what documents you're talking</p> <p>15 about specifically.</p> <p>16 Q. Well, the deal, the deal documents, --</p> <p>17 A. I mean.</p> <p>18 Q. -- other than keeping them in your office when</p> <p>19 you walked out?</p> <p>20 A. The original files I guess were at Morgan</p> <p>21 Stanley still in electronic format; I don't have</p> <p>22 any of the hard copies.</p> <p>23 Q. While you were employed at Morgan Stanley were</p> <p>24 you aware of any document retention or</p> <p>25 destruction policies?</p>	<p style="text-align: right;">Page 21</p> <p>1 EUGENE YOO</p> <p>2 retention policy at Morgan Stanley while you</p> <p>3 were employed at the company?</p> <p>4 A. I do recall that, yes.</p> <p>5 Q. Do you have an understanding of why files should</p> <p>6 be kept lean at Morgan Stanley?</p> <p>7 A. I don't know precisely why.</p> <p>8 Q. Did you keep your files lean in accordance with</p> <p>9 this policy, sir?</p> <p>10 A. Well, I mean, I would throw out things that I</p> <p>11 thought were unnecessary on an ongoing basis.</p> <p>12 You know, paper tends to pile up pretty quickly.</p> <p>13 Q. How would you make the decision whether to</p> <p>14 retain or keep documents in connection with the</p> <p>15 Sunbeam engagement?</p> <p>16 A. I don't know what my -- I don't know if there</p> <p>17 was a methodology. Anything that I considered</p> <p>18 to be a finished product I usually kept anything</p> <p>19 that was a work in progress or if there were</p> <p>20 final versions of it I usually throw out.</p> <p>21 Q. Were you instructed by anyone to discard</p> <p>22 documents that were not in their final form?</p> <p>23 A. No. I was never instructed in any way to</p> <p>24 discard anything, or not to discard anything.</p> <p>25 Q. You can set that aside.</p>

<p style="text-align: right;">Page 22</p> <p>1 EUGENE YOO</p> <p>2 Mr. Yoo, do you recall that Morgan Stanley</p> <p>3 began working with Sunbeam in the spring of 1997</p> <p>4 to identify opportunities for the sale of</p> <p>5 Sunbeam Corporation?</p> <p>6 A. Yes, I do.</p> <p>7 Q. When was your first involvement on the Sunbeam</p> <p>8 engagement?</p> <p>9 A. I was involved nearly from the beginning when we</p> <p>10 first began to pitch for the business with</p> <p>11 Sunbeam, when Al became, Al Dunlap became CEO.</p> <p>12 Q. Do you recall who asked you to join the team to</p> <p>13 prepare that pitch?</p> <p>14 A. At the time I was an associate in the associate</p> <p>15 pool and I was doing my MNA rotation and I was</p> <p>16 next up for the assignment when it came up.</p> <p>17 Q. What do you recall doing to assist Morgan</p> <p>18 Stanley in preparing the pitch to Sunbeam?</p> <p>19 A. Do you want me to go through all of it?</p> <p>20 Q. Sure.</p> <p>21 A. We, we, from what I can remember we went through</p> <p>22 the history of, you know, where Sunbeam was at</p> <p>23 that time and the difficulties that it was in.</p> <p>24 The reasons they had brought on Al Dunlap as</p> <p>25 CEO. We did some research on Al Dunlap's prior,</p>	<p style="text-align: right;">Page 24</p> <p>1 EUGENE YOO</p> <p>2 A. No.</p> <p>3 Q. Were you aware at that time, sir, that Morgan</p> <p>4 Stanley was in competition with other investment</p> <p>5 banks for the Sunbeam engagement?</p> <p>6 A. I didn't have any firsthand knowledge about who</p> <p>7 else was in competition for the business.</p> <p>8 Q. But part of this exercise -- part of this</p> <p>9 exercise, sir, was to show Sunbeam why Sunbeam</p> <p>10 should choose Morgan Stanley as its investment</p> <p>11 bankers as opposed to another company; is that</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall when Sunbeam formally engaged</p> <p>15 Morgan Stanley as its advisers?</p> <p>16 A. Again, I don't know the exact date; I believe it</p> <p>17 was somewhere around September or October of</p> <p>18 '97.</p> <p>19 Q. Do you recall, sir, how many hours you worked on</p> <p>20 the Sunbeam matter prior to that formal</p> <p>21 engagement?</p> <p>22 A. I don't know exactly how many.</p> <p>23 Q. Would it be in the hundreds of hours?</p> <p>24 A. That's most likely correct.</p> <p>25 Q. Okay. Did you ever keep track of your time</p>
<p style="text-align: right;">Page 23</p> <p>1 EUGENE YOO</p> <p>2 prior work at places like Kimberly-Clark or</p> <p>3 Scott Paper, I guess, to just kind of get a</p> <p>4 sense of who he was and what he had done. We</p> <p>5 did quite a bit of analysis on Sunbeam itself;</p> <p>6 financial analysis.</p> <p>7 Q. Anything else that you can recall?</p> <p>8 A. No, not really.</p> <p>9 Q. Okay. What was the purpose of this research</p> <p>10 into Sunbeam and Al Dunlap in connection with</p> <p>11 this pitch to Sunbeam?</p> <p>12 A. Well, it was really just to make sure that we</p> <p>13 knew all of the facts before we went into the</p> <p>14 meeting, to make sure that we knew the</p> <p>15 situation, knew everything about who it was that</p> <p>16 we were presenting to and making sure that the</p> <p>17 presentation was, you know, on top of</p> <p>18 everything.</p> <p>19 Q. Do you recall when this presentation occurred?</p> <p>20 A. I don't know specifically. It was sometime in</p> <p>21 the spring of 1997.</p> <p>22 Q. Who else worked with you on preparing this</p> <p>23 pitch?</p> <p>24 A. Alex Fuchs, Bob Kitts, Jim Stynes, Tyrone Chang.</p> <p>25 Q. Anyone else?</p>	<p style="text-align: right;">Page 25</p> <p>1 EUGENE YOO</p> <p>2 working on Sunbeam, the Sunbeam matter?</p> <p>3 A. We kept time sheets as a regular process in our</p> <p>4 time keeping process in the U.S. banking group.</p> <p>5 Q. What information did you record on those time</p> <p>6 sheets?</p> <p>7 A. Just the hours that we, we would bill our hours</p> <p>8 for different clients. That's about it.</p> <p>9 Q. You wouldn't provide descriptions, general or</p> <p>10 detailed descriptions of the work that you</p> <p>11 performed?</p> <p>12 A. No.</p> <p>13 Q. Okay. Was that time submitted on a regular</p> <p>14 basis? Like a weekly basis?</p> <p>15 A. I don't remember exactly. I think it was either</p> <p>16 weekly or biweekly.</p> <p>17 Q. Okay. I'm going to show you what's been</p> <p>18 previously marked as CPH Exhibit 163. My first</p> <p>19 question, sir, is have you ever seen this</p> <p>20 document before?</p> <p>21 A. No, I have not.</p> <p>22 Q. You'll notice on the first page of Exhibit 163</p> <p>23 is a listing of employees at Morgan Stanley and</p> <p>24 you'll see that the second to the last is your</p> <p>25 name, Gene Yoo?</p>

<p style="text-align: right;">Page 26</p> <p>1 EUGENE YOO</p> <p>2 A. Yes.</p> <p>3 Q. Okay. If you follow the line over to</p> <p>4 year-to-date hours there's an entry for 356?</p> <p>5 A. Okay.</p> <p>6 Q. And it appears that this document reflects as</p> <p>7 you'll see in the right hand, just below the</p> <p>8 upper right-hand corner for fiscal year 1997?</p> <p>9 A. Yes.</p> <p>10 Q. Does that number seem accurate for your work on</p> <p>11 the Sunbeam engagement in 1997?</p> <p>12 A. I couldn't tell. But it seems right.</p> <p>13 Q. Okay. If you would flip, sir, to the last page</p> <p>14 of this document. You'll see that there are</p> <p>15 entries across from your name for August,</p> <p>16 September and October of 147 in August, 115 in</p> <p>17 September and 94 in October. Do you see those,</p> <p>18 sir?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Okay. And if you flip to the page previous to</p> <p>21 that which is 80429. And across from your name</p> <p>22 for April, May, June and July there are no hours</p> <p>23 entered?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Do you know why there would be no hours entered</p>	<p style="text-align: right;">Page 28</p> <p>1 EUGENE YOO</p> <p>2 about five or six months between.</p> <p>3 Q. Between the time that you, that Morgan Stanley</p> <p>4 provided the pitch to Sunbeam and the formal</p> <p>5 engagement agreement, did you continue to work</p> <p>6 on the Sunbeam transaction identifying these</p> <p>7 ideas?</p> <p>8 A. I don't recall specifically. But, you know, I</p> <p>9 would think that, I think -- I'm pretty sure I</p> <p>10 did work on it somewhat. I don't know how much.</p> <p>11 Q. When you say you worked on ideas for Sunbeam,</p> <p>12 what do you mean by that?</p> <p>13 A. Well, in coming out of, coming out of the</p> <p>14 initial meeting, you know, the idea was that</p> <p>15 they were either looking to sell the company or</p> <p>16 to find targets, at least, you know, that was</p> <p>17 the thought. And so were trying to come up with</p> <p>18 ideas that might turn into something more</p> <p>19 tangible in terms of a transaction.</p> <p>20 Q. Did you attend that pitch to Sunbeam?</p> <p>21 A. No, I did not.</p> <p>22 Q. Okay. Do you know what Morgan Stanley's primary</p> <p>23 mission was coming out of that meeting with</p> <p>24 Sunbeam?</p> <p>25 MS. Brown: Object to form.</p>
<p style="text-align: right;">Page 27</p> <p>1 EUGENE YOO</p> <p>2 in for those months in 1997?</p> <p>3 A. I don't know.</p> <p>4 Q. Did you work on the Sunbeam engagement in April</p> <p>5 through July of 1997?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Okay. So then on the first page of CPH Exhibit</p> <p>8 163 the year-to-date hours of 356 probably is</p> <p>9 not an accurate representation of the hours that</p> <p>10 you worked on the Sunbeam engagement in 1997?</p> <p>11 A. I couldn't tell. I'm not sure how the, the time</p> <p>12 keeping department allocated the hours to the</p> <p>13 months.</p> <p>14 Q. Set that aside. I'm trying to get a sense of an</p> <p>15 overview of the scope of your involvement on the</p> <p>16 Sunbeam engagement. You testified that you were</p> <p>17 involved in preparing the pitch to Sunbeam;</p> <p>18 after that assignment what did you work on?</p> <p>19 A. For Sunbeam?</p> <p>20 Q. Yes.</p> <p>21 A. After the pitch I guess it was just continuing</p> <p>22 to try to come up with ideas for Sunbeam and</p> <p>23 seeing if there were any other situations that</p> <p>24 came up that might peak their interests. But we</p> <p>25 weren't really formally engaged for I think</p>	<p style="text-align: right;">Page 29</p> <p>1 EUGENE YOO</p> <p>2 A. I don't know exactly what came out of the</p> <p>3 meeting. I wasn't there. I didn't hear what</p> <p>4 they said.</p> <p>5 Q. Did anyone tell you that the primary focus in</p> <p>6 1997 was to find a buyer for Sunbeam to sell</p> <p>7 Sunbeam Corporation?</p> <p>8 A. They never said that that was the primary focus.</p> <p>9 Q. Other than identifying these other potential</p> <p>10 ideas for Sunbeam what else did you do on the</p> <p>11 engagement?</p> <p>12 A. From what I remember, before being formally</p> <p>13 engaged most of the work was really just keeping</p> <p>14 up with current events on the company or the</p> <p>15 industry, making sure that we were, you know, on</p> <p>16 top of getting all of the latest financial</p> <p>17 filings or earnings releases, any news that came</p> <p>18 out, any announcements that they made.</p> <p>19 Q. Did you ever attend any meetings with potential</p> <p>20 buyers or acquisition targets?</p> <p>21 A. I personally did not attend any of those</p> <p>22 meetings.</p> <p>23 Q. Did you prepare any documents for other members</p> <p>24 of the Morgan Stanley team in connection with</p> <p>25 exploring strategic alternatives for Sunbeam?</p>

<p style="text-align: right;">Page 30</p> <p>1 EUGENE YOO</p> <p>2 A. Yes, I did.</p> <p>3 Q. What are the types of documents that you recall</p> <p>4 drafting?</p> <p>5 A. Again, I don't recall specifically, but the</p> <p>6 documents mostly were descriptive materials</p> <p>7 about Sunbeam, describing the company,</p> <p>8 financials, that's about it.</p> <p>9 Q. Did you prepare any of the transaction documents</p> <p>10 related to the acquisition of the Coleman</p> <p>11 Company?</p> <p>12 MS. Brown: Object to the form.</p> <p>13 A. I'm not sure what you mean by --</p> <p>14 Q. Purchase agreement.</p> <p>15 A. No, I did not.</p> <p>16 Q. Were you involved in preparing any of the</p> <p>17 financing documents in connection with that</p> <p>18 deal?</p> <p>19 A. No, I was not.</p> <p>20 Q. Were you involved in preparing any documents</p> <p>21 analyzing potential synergies of a combination</p> <p>22 involving Sunbeam and another company?</p> <p>23 MS. Brown: Object to form.</p> <p>24 A. I'm not sure what documents you're referring to.</p> <p>25 Q. Are you aware of the concept of synergies?</p>	<p style="text-align: right;">Page 32</p> <p>1 EUGENE YOO</p> <p>2 growth plan going forward.</p> <p>3 Q. Any other aspects of due diligence that you</p> <p>4 recall that you performed?</p> <p>5 A. And then just the standard, you know, MNA type</p> <p>6 of due diligence, going through financial</p> <p>7 filings, public documents.</p> <p>8 Q. As part of that financial due diligence did you</p> <p>9 look at anything other than publicly filed</p> <p>10 documents?</p> <p>11 MS. Brown: Object to form.</p> <p>12 A. I'm not sure what you mean.</p> <p>13 Q. Well, what types of public documents would you</p> <p>14 look at in conducting the MNA due diligence that</p> <p>15 you spoke of?</p> <p>16 A. For -- again, for this transaction, from what I</p> <p>17 remember, the types of things we looked at were</p> <p>18 filings with the SEC, any press releases that</p> <p>19 the company put out or any other, any of the</p> <p>20 other companies in its industry, any new stories</p> <p>21 that came out on any of the relevant companies.</p> <p>22 Any, you know, any publicly available equity</p> <p>23 research.</p> <p>24 Q. In addition to those sources of information did</p> <p>25 you look at any non-public information in</p>
<p style="text-align: right;">Page 31</p> <p>1 EUGENE YOO</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you personally prepare any documents</p> <p>4 that sought to analyze potential synergies,</p> <p>5 assuming the transaction would occur between</p> <p>6 Sunbeam and another company?</p> <p>7 MS. Brown: Object to form.</p> <p>8 Q. Or perform a synergies analysis.</p> <p>9 A. I'm sure we did some that were part of the</p> <p>10 standard investment banking analysis. I don't</p> <p>11 recall specifically which documents we did.</p> <p>12 Q. Did you perform any due diligence of Sunbeam?</p> <p>13 A. The Morgan Stanley team did.</p> <p>14 Q. What did you do personally, if anything, to</p> <p>15 conduct due diligence on Sunbeam?</p> <p>16 A. From what I remember we had, we had done</p> <p>17 interviews of the management team, the senior</p> <p>18 management team, and we also visited their</p> <p>19 headquarters in Florida. We also met with the</p> <p>20 heads of all of the different divisions. We</p> <p>21 were given a presentation on their new business</p> <p>22 plan. We spent some time with Russ Kirsch the</p> <p>23 CFO and Don Oosi, I believe he was the COO, and</p> <p>24 they spent a good deal of time giving us a lot</p> <p>25 of the detail on the turn around plan and the</p>	<p style="text-align: right;">Page 33</p> <p>1 EUGENE YOO</p> <p>2 conducting this MNA financing due diligence?</p> <p>3 A. Again, I'm not sure what you mean by.</p> <p>4 Q. Documents that someone on the street wouldn't</p> <p>5 have access to. Not filed with the SEC or</p> <p>6 otherwise publicly available.</p> <p>7 A. I can't think of anything.</p> <p>8 Q. Were you involved on the roadshow for the</p> <p>9 debenture offering?</p> <p>10 A. No.</p> <p>11 Q. Do you recall that happening?</p> <p>12 A. I sort of recall, you know, the time it was</p> <p>13 happening. But I wasn't part of it at all. I</p> <p>14 wasn't part of the financing process.</p> <p>15 Q. Do you recall when the deal closed, the Coleman</p> <p>16 deal closed?</p> <p>17 A. I think it was spring of 2000. I'm sorry.</p> <p>18 Spring of 1998.</p> <p>19 Q. After that transaction closed did you continue</p> <p>20 to work on the Sunbeam engagement?</p> <p>21 MS. Brown: Object to the form.</p> <p>22 A. It depends on how you define Sunbeam engagement.</p> <p>23 Q. I'm just trying to get a sense of every aspect</p> <p>24 of the engagement that you worked on. After</p> <p>25 Sunbeam acquired the Coleman Company did you</p>

<p style="text-align: right;">Page 34</p> <p>1 EUGENE YOO</p> <p>2 continue to work for Sunbeam in developing</p> <p>3 strategic options for the company?</p> <p>4 A. No.</p> <p>5 Q. Did you work on any other deals other than</p> <p>6 Sunbeam when you were an associate in 1997 and</p> <p>7 1998?</p> <p>8 A. Yes.</p> <p>9 Q. What were those deals?</p> <p>10 A. I can't recall specifically what was happening</p> <p>11 at the time. We were -- I think the only two</p> <p>12 that I can remember specifically we were working</p> <p>13 on a sale of a division for General Motors and</p> <p>14 we were looking at strategic alternatives for a</p> <p>15 technology client on the west coast.</p> <p>16 Q. In 1997 what percentage of your time did you</p> <p>17 devote to the Sunbeam engagement?</p> <p>18 A. In 1997?</p> <p>19 Q. Yes.</p> <p>20 A. My best guess, somewhere between a third and a</p> <p>21 half.</p> <p>22 Q. In the first three months of 1998 do you recall</p> <p>23 what percentage of your time was devoted to the</p> <p>24 Sunbeam engagement?</p> <p>25 A. Again, my best guess is about the same.</p>	<p style="text-align: right;">Page 36</p> <p>1 EUGENE YOO</p> <p>2 sir, what you were working on in April, May and</p> <p>3 June of 1998 for Sunbeam?</p> <p>4 A. From what I can remember I believe what this is</p> <p>5 was we were looking at, or we were in the middle</p> <p>6 of selling one of the Coleman divisions.</p> <p>7 Q. And that was after Sunbeam acquired the Coleman</p> <p>8 Company?</p> <p>9 A. That was post closing, yes.</p> <p>10 Q. Do you recall why Sunbeam was, attempted to sell</p> <p>11 divisions of Coleman after the transaction was</p> <p>12 closed in March?</p> <p>13 A. I don't know the reasons behind it. They were</p> <p>14 very small, though.</p> <p>15 Q. Small divisions?</p> <p>16 A. Very small divisions, yes.</p> <p>17 Q. In the spring of 1997 while you were preparing</p> <p>18 the pitch to Sunbeam, did you know why Sunbeam</p> <p>19 intended to pursue these strategic alternatives?</p> <p>20 MS. Brown: Objection. Foundation.</p> <p>21 A. I have no idea.</p> <p>22 Q. No one ever expressed Sunbeam's intentions to</p> <p>23 you in the spring of 1997?</p> <p>24 MS. Brown: Objection. Form.</p> <p>25 A. I'm not sure what you mean by that.</p>
<p style="text-align: right;">Page 35</p> <p>1 EUGENE YOO</p> <p>2 Q. A third to a half of your time?</p> <p>3 A. (Witness nods in the affirmative.)</p> <p>4 MR. O'CONNOR: I'll ask the court reporter</p> <p>5 to mark the next exhibit as CPH 217.</p> <p>6 (Deposition Exhibit 217 marked for</p> <p>7 identification.)</p> <p>8 Q. Mr. Yoo, you've been handed what's been marked</p> <p>9 as CPH Exhibit 217. This is what appears to be</p> <p>10 a 1998 fiscal year hours report.</p> <p>11 A. Uh-huh.</p> <p>12 Q. You'll see again that your name is listed as an</p> <p>13 employee with year-to-date hours of 1,286. And</p> <p>14 if you turn, sir, to the second page of this</p> <p>15 document. For your hours report for December</p> <p>16 indicates 361; January, 289; February, 123; in</p> <p>17 March, 106. Do you believe, sir, that to be an</p> <p>18 accurate representation of the time that you</p> <p>19 worked on the Sunbeam engagement in those</p> <p>20 months?</p> <p>21 A. And I -- I couldn't tell you for sure.</p> <p>22 Q. And if you could turn then to page 80433 of</p> <p>23 Exhibit 217. You'll see across from your name</p> <p>24 for April it reflects 169 hours. The same for</p> <p>25 May and then 69 hours in June. Do you recall,</p>	<p style="text-align: right;">Page 37</p> <p>1 EUGENE YOO</p> <p>2 Q. Mr. Kitts or Mr. Stynes never advised the team</p> <p>3 at Morgan Stanley why they were preparing a</p> <p>4 pitch to Sunbeam other than to get the business</p> <p>5 from Sunbeam?</p> <p>6 A. For me at the time? I was a first year</p> <p>7 associate and it was my first MNA transaction.</p> <p>8 And I was more concerned with just getting the</p> <p>9 work done.</p> <p>10 Q. Did you have a lot of contact, sir, with</p> <p>11 Mr. Kitts or Mr. Stynes?</p> <p>12 A. Not in the spring of 1997.</p> <p>13 Q. When did you begin to have more contacts with</p> <p>14 those individuals?</p> <p>15 A. It sort of grew over the year. Probably came</p> <p>16 more regular by the end of 1997.</p> <p>17 Q. Who did you regularly report to in 1997?</p> <p>18 A. For the Sunbeam transaction?</p> <p>19 Q. Correct.</p> <p>20 MS. Brown: Asked and answered.</p> <p>21 A. For the most part it was Alex Fuchs.</p> <p>22 Q. So if you had a question typically would you go</p> <p>23 see Mr. Fuchs?</p> <p>24 A. Typically.</p> <p>25 Q. Okay. Sir, I'm handing you what's been</p>

<p style="text-align: right;">Page 38</p> <p>1 EUGENE YOO</p> <p>2 previously marked as CPH Exhibit 77. It's a</p> <p>3 one-page document that appears to be a news</p> <p>4 release dated April 4th of 1997. Have you seen</p> <p>5 this document before? Or this press release.</p> <p>6 Not necessarily in this form.</p> <p>7 A. I don't recall exactly.</p> <p>8 Q. In the first paragraph you'll see that it</p> <p>9 states, "that Sunbeam Corp. has begun</p> <p>10 interviewing investment bankers to consider</p> <p>11 options that include making hostile takeovers of</p> <p>12 as much as five billion or selling the company,</p> <p>13 chairman Al Dunlap said." Does that refresh</p> <p>14 your recollection of Sunbeam's intention in the</p> <p>15 spring of 1997 in pursuing strategic</p> <p>16 alternatives?</p> <p>17 MS. Brown: Object to form.</p> <p>18 A. Again, I don't really remember. I don't really</p> <p>19 remember much about, you know, the reasoning</p> <p>20 behind a lot of what we were doing at the time.</p> <p>21 Q. If you look at the last paragraph where it lists</p> <p>22 the names of some companies. Chase Manhattan,</p> <p>23 Goldman Sachs, JP Morgan and Company; does that</p> <p>24 refresh your recollection, sir, of the other</p> <p>25 banks that were competing with Morgan Stanley</p>	<p style="text-align: right;">Page 40</p> <p>1 EUGENE YOO</p> <p>2 Q. You testified earlier this morning that you</p> <p>3 researched Al Dunlap and his history with other</p> <p>4 companies; --</p> <p>5 A. (Witness nods in the affirmative.)</p> <p>6 Q. -- is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. What did you learn about Mr. Dunlap in</p> <p>9 conducting that research?</p> <p>10 A. It's a long time ago. I don't remember much</p> <p>11 about the specifics of what we learned.</p> <p>12 Generally speaking he had a reputation for</p> <p>13 turning around troubled companies.</p> <p>14 Q. Did you understand that his involvement at</p> <p>15 Sunbeam as the CEO was intended by the board of</p> <p>16 Sunbeam to utilize his turn around capabilities?</p> <p>17 A. I don't know anything about what the board</p> <p>18 intended.</p> <p>19 Q. In your review of Sunbeam's historical financial</p> <p>20 information did you learn that Sunbeam prior to</p> <p>21 Mr. Dunlap's arrival was in need of financial or</p> <p>22 business restructuring?</p> <p>23 MS. Brown: Object to form.</p> <p>24 A. I'm not sure -- can you be a little more</p> <p>25 specific with that?</p>
<p style="text-align: right;">Page 39</p> <p>1 EUGENE YOO</p> <p>2 for the Sunbeam engagement?</p> <p>3 A. At the time, like I said, I really didn't know</p> <p>4 who else was competing for the business.</p> <p>5 Q. Set that aside. I'm going to show you what's</p> <p>6 been previously marked as CPH Exhibit 78. CPH</p> <p>7 Exhibit 78 is a, it's a two part e-mail, the</p> <p>8 first is dated April 13th of 1997, authored by</p> <p>9 Tyrone Chang and the second is dated April 15th</p> <p>10 of 1997. Have you seen this e-mail before?</p> <p>11 A. No, I've never seen this.</p> <p>12 Q. You did not direct Mr. Chang to send out this</p> <p>13 e-mail?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did Mr. Chang report to anyone else besides</p> <p>16 yourself on the Sunbeam engagement?</p> <p>17 A. He also reported directly to Alex Fuchs on</p> <p>18 occasion. Alex and Tyrone were part of a</p> <p>19 subgroup called business development. And I was</p> <p>20 on loan on my rotation to business development.</p> <p>21 Q. Okay. Set that aside. In 1997 what was your</p> <p>22 understanding of Al Dunlap's business</p> <p>23 reputation?</p> <p>24 A. I didn't know much about him prior to being</p> <p>25 brought onto the assignment.</p>	<p style="text-align: right;">Page 41</p> <p>1 EUGENE YOO</p> <p>2 Q. Do you have any recollection, sir, of why</p> <p>3 Mr. Dunlap was hired by the Sunbeam board to be</p> <p>4 the CEO of Sunbeam in 1996?</p> <p>5 MS. Brown: Objection. Foundation.</p> <p>6 A. I don't recall.</p> <p>7 Q. I'm sorry?</p> <p>8 A. I don't recall -- I don't recall anything about</p> <p>9 that.</p> <p>10 Q. Did you review any documents or speak to anyone</p> <p>11 in order to determine whether Mr. Dunlap was</p> <p>12 performing a turn around of Sunbeam?</p> <p>13 MS. Brown: Objection. Form.</p> <p>14 A. I, as far as what Al was brought in to do at</p> <p>15 Sunbeam, again, we didn't, you know, until we</p> <p>16 had started working on the project I didn't</p> <p>17 really know much about it. I had just, I knew</p> <p>18 there was a headline about it, but that was</p> <p>19 about it.</p> <p>20 Q. And my question was once you started digging</p> <p>21 into the information about Sunbeam's historical</p> <p>22 and anticipated growth, did you come to learn</p> <p>23 that Al Dunlap was touting the turn around of</p> <p>24 the Sunbeam Corporation under his leadership?</p> <p>25 MS. Brown: Object to form.</p>

<p style="text-align: right;">Page 42</p> <p>1 EUGENE YOO</p> <p>2 A. I'm not sure what he was touting.</p> <p>3 Q. Let me show you, sir, what's been previously</p> <p>4 marked as CPH Exhibit 170. My first question,</p> <p>5 Mr. Yoo, is whether you've seen this document</p> <p>6 before?</p> <p>7 A. I don't believe I have.</p> <p>8 Q. Do you know if anyone at Morgan Stanley was</p> <p>9 involved in drafting this document?</p> <p>10 A. I don't know.</p> <p>11 Q. I'm going to show you what's previously been</p> <p>12 marked as CPH Exhibit 80. This is a document</p> <p>13 entitled Memorandum Regarding the Information</p> <p>14 Request. Subject: Allen Dunlap's track record.</p> <p>15 Have you seen this document before?</p> <p>16 A. I don't think so. It doesn't look familiar.</p> <p>17 Q. Did you read Mr. Dunlap's book Mean Business in</p> <p>18 connection with the Sunbeam engagement?</p> <p>19 A. Actually, I did not.</p> <p>20 Q. Did you read any portions of that book?</p> <p>21 A. I think I did read portions of it. But I didn't</p> <p>22 think there was much in there to gain so I</p> <p>23 didn't really read much, most of it.</p> <p>24 Q. Did you ask Mr. Chang to research Mr. Dunlap's</p> <p>25 track record?</p>	<p style="text-align: right;">Page 44</p> <p>1 EUGENE YOO</p> <p>2 conducted research on Mr. Dunlap, who he was and</p> <p>3 what he did, what did you do?</p> <p>4 A. Mostly from what I remember it was, again, going</p> <p>5 through prior financials from his past companies</p> <p>6 or pulling up news articles from, from his prior</p> <p>7 deals.</p> <p>8 Q. But you don't recall doing that for Cavenham?</p> <p>9 A. Again, I don't remember specifically what we did</p> <p>10 for Cavenham.</p> <p>11 Q. If you could turn back to CPH Exhibit 170. The</p> <p>12 second paragraph. There's a discussion of</p> <p>13 Mr. Dunlap's tenure at Scott Paper Company?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Take a second to read that, please.</p> <p>16 A. (Witness reviewing.) Okay.</p> <p>17 Q. Do you recall reviewing Scott Paper's financial</p> <p>18 condition or news reports about Scott Paper in</p> <p>19 connection with your work on the Sunbeam</p> <p>20 engagement?</p> <p>21 A. I do recall that we did do some, some work on</p> <p>22 looking at Scott. I think that was the, the</p> <p>23 biggest of the, or the most notable of his turn</p> <p>24 around.</p> <p>25 Q. Did you confirm, sir, that Mr. Dunlap indeed</p>
<p style="text-align: right;">Page 43</p> <p>1 EUGENE YOO</p> <p>2 A. I don't remember if it was me specifically who</p> <p>3 asked him or if it was something that Bob or</p> <p>4 Alex had asked.</p> <p>5 Q. In the second paragraph there's a reference to a</p> <p>6 Cavenham Forest Industries?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And, quote, the turn around orchestrated by</p> <p>9 Albert Dunlap and completed under his leadership</p> <p>10 culminating in the sale of the company in 1990.</p> <p>11 Do you see that, sir?</p> <p>12 A. Yes.</p> <p>13 Q. Did you investigate the -- did you investigate</p> <p>14 Dunlap's turn around of Cavenham Forest</p> <p>15 Industries in connection with the Sunbeam</p> <p>16 engagement?</p> <p>17 A. Could you be a little bit more specific when you</p> <p>18 say "investigate."</p> <p>19 Q. Did you do anything to review the financial or</p> <p>20 business condition of that company before and</p> <p>21 after Al Dunlap's arrival at that company to</p> <p>22 orchestrate a turn around?</p> <p>23 A. I don't remember specifically what analysis we</p> <p>24 had done on his prior tenures.</p> <p>25 Q. Mr. Yoo, when you testified earlier that you</p>	<p style="text-align: right;">Page 45</p> <p>1 EUGENE YOO</p> <p>2 conducted a successful turn around of Scott</p> <p>3 Paper Company?</p> <p>4 MS. Brown: Object to form.</p> <p>5 A. How do you define successful?</p> <p>6 Q. Well, what do you recall doing to review</p> <p>7 Dunlap's turn around of Scott Paper Company?</p> <p>8 A. The only thing I can remember for sure was sort</p> <p>9 of a before and after look at the financials of</p> <p>10 Scott before Dunlap had arrived. And Scott</p> <p>11 after it had arrived. And the return to the</p> <p>12 Scott shareholders.</p> <p>13 Q. What do you recall learning?</p> <p>14 A. I'm sorry.</p> <p>15 Q. What do you recall learning from that exercise?</p> <p>16 A. At the time it seemed like it was a good deal</p> <p>17 for the Scott shareholders. I don't know how it</p> <p>18 turned out now, but.</p> <p>19 Q. Do you recall why you believed that at the time?</p> <p>20 A. I don't know any specifics. I don't remember</p> <p>21 anything.</p> <p>22 Q. Have you come across any information subsequent</p> <p>23 to that investigation of Scott Paper that leads</p> <p>24 you to believe that Dunlap did not complete a</p> <p>25 successful turn around of the company?</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 46</p> <p>1 EUGENE YOO</p> <p>2 MS. Brown: Object to the form.</p> <p>3 A. I haven't really, you know, I haven't really</p> <p>4 looked at it since.</p> <p>5 Q. What was the purpose of Morgan Stanley's</p> <p>6 research into Mr. Dunlap's background and his</p> <p>7 performance in turning around companies prior to</p> <p>8 Sunbeam?</p> <p>9 MS. Brown: Asked and answered.</p> <p>10 A. I'm sorry, could you repeat that again.</p> <p>11 Q. Sure. Could you read back the question.</p> <p>12 (Prior testimony read back.)</p> <p>13 "What was the purpose of Morgan</p> <p>14 Stanley's research into</p> <p>15 Mr. Dunlap's background and his</p> <p>16 performance in turning around</p> <p>17 companies prior to Sunbeam?"</p> <p>18 A. I think as I said before we were trying to make</p> <p>19 sure that we understood, you know, we fully</p> <p>20 understood all of the aspects of the meeting, of</p> <p>21 the company and the situation and AI before</p> <p>22 going into the meeting.</p> <p>23 Q. Were you also trying to understand whether</p> <p>24 Dunlap's turn around of companies, where he was</p> <p>25 CEO prior to Sunbeam were in fact true turn</p>	<p style="text-align: right;">Page 48</p> <p>1 EUGENE YOO</p> <p>2 Strong had a relationship with Mr. Dunlap prior</p> <p>3 to Dunlap's arrival at Sunbeam?</p> <p>4 A. No, I didn't know that.</p> <p>5 Q. I'm handing you what's previously been marked as</p> <p>6 CPH Exhibit 68. Have you seen this document</p> <p>7 before, Mr. Yoo?</p> <p>8 A. Yes, I have.</p> <p>9 Q. When do you recall seeing this document?</p> <p>10 A. I don't know exactly, but it was maybe a few</p> <p>11 weeks after the article was published.</p> <p>12 Q. So that would be a few weeks after January 15th</p> <p>13 of 1996?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall why you saw this document?</p> <p>16 A. No, I don't.</p> <p>17 Q. Did you read this document in connection with</p> <p>18 the Sunbeam engagement or did you read it</p> <p>19 outside of your work at Morgan Stanley?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you read the entire article in 1996?</p> <p>22 A. In 1997?</p> <p>23 Q. In 1996.</p> <p>24 A. No.</p> <p>25 Q. Just so we're clear, sir, the, it appears the</p>
<p style="text-align: right;">Page 47</p> <p>1 EUGENE YOO</p> <p>2 arounds of those companies?</p> <p>3 MS. Brown: Object to form.</p> <p>4 A. I don't know.</p> <p>5 Q. No one ever mentioned to you that there might be</p> <p>6 some question as to whether his turnaround at</p> <p>7 Scott Paper was successful or real?</p> <p>8 A. No, not as far as I can remember, that never</p> <p>9 came up.</p> <p>10 Q. What did you do with the information that you</p> <p>11 learned about Mr. Dunlap beyond preparing the</p> <p>12 pitch to Sunbeam?</p> <p>13 A. All of the information pretty much went to Alex</p> <p>14 and Bob and Jim.</p> <p>15 Q. That's Mr. Fuchs, Mr. Kitts and Mr. Stynes?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know what they did with that information?</p> <p>18 A. I don't know.</p> <p>19 Q. Did you know, Mr. Yoo, that Morgan Stanley had a</p> <p>20 prior relationship with Mr. Dunlap before his</p> <p>21 arrival at Sunbeam?</p> <p>22 A. I didn't know.</p> <p>23 Q. Do you know Bill Strong at Morgan Stanley?</p> <p>24 A. I met him a few times.</p> <p>25 Q. So you were not aware at the time that Bill</p>	<p style="text-align: right;">Page 49</p> <p>1 EUGENE YOO</p> <p>2 article was written in January of 1996, in the</p> <p>3 upper left-hand corner.</p> <p>4 A. Oh, okay.</p> <p>5 Q. There's also a date on the bottom right-hand</p> <p>6 corner of July 16th of 1997. Just so we're</p> <p>7 clear, sir, do you recall reading this document</p> <p>8 a couple of weeks after January 15th of 1996 or</p> <p>9 a couple of weeks after July 16th of 1997?</p> <p>10 A. I don't know, I don't remember exactly when I</p> <p>11 read it. But probably sometime around the time</p> <p>12 that it was published.</p> <p>13 Q. Did you have any discussions with anyone at</p> <p>14 Morgan Stanley about the contents of this</p> <p>15 article?</p> <p>16 A. I don't remember anything specifically.</p> <p>17 Q. Anything generally?</p> <p>18 A. Not about this article itself.</p> <p>19 Q. What do you recall discussing with members at</p> <p>20 Morgan Stanley about Mr. Dunlap's performance at</p> <p>21 Scott Paper?</p> <p>22 MS. Brown: Object to form.</p> <p>23 A. Other than the analysis that we had done there</p> <p>24 wasn't really much other discussion on that.</p> <p>25 After the first meeting we didn't really spend a</p>

<p style="text-align: right;">Page 50</p> <p>1 EUGENE YOO</p> <p>2 lot of time looking back at Scott.</p> <p>3 Q. You don't recall any discussions about the</p> <p>4 accuracy of the information in this article?</p> <p>5 A. Not, there were no discussions about the</p> <p>6 accuracy of the article.</p> <p>7 Q. Do you recall what your reaction was after</p> <p>8 reading this article?</p> <p>9 A. I recall thinking that it was humorous at the</p> <p>10 time. And I don't know who I was talking to,</p> <p>11 but the only thing I can remember talking about</p> <p>12 the article was how people who went into turn</p> <p>13 around situations tended to get a bad</p> <p>14 reputation. But that was the only thing I could</p> <p>15 remember.</p> <p>16 Q. Why did you think that the article was humorous?</p> <p>17 A. The, some of the outrageous, I think if this is</p> <p>18 the one I'm thinking about, some of the</p> <p>19 outrageous numbers or some of the things that</p> <p>20 they were saying about AI seemed to be funny.</p> <p>21 Q. When you say "outrageous numbers" are you</p> <p>22 referring to the numbers relating to Scott Paper</p> <p>23 in the turn around?</p> <p>24 A. No, just the, you know, they're talking about,</p> <p>25 for instance, here, 225 percent stock gain and</p>	<p style="text-align: right;">Page 52</p> <p>1 EUGENE YOO</p> <p>2 Mr. Dunlap, you don't recall ever seeking out</p> <p>3 information to confirm or deny that information?</p> <p>4 A. I don't think there was any way we could prove</p> <p>5 either way.</p> <p>6 Q. Did you ask Mr. Dunlap?</p> <p>7 A. I didn't really talk to him about this.</p> <p>8 Q. Did you ever speak to Mr. Dunlap?</p> <p>9 A. I did speak to him probably once or twice.</p> <p>10 Q. Did you ever discuss his performance at Scott</p> <p>11 Paper?</p> <p>12 A. No.</p> <p>13 Q. What did you discuss with Mr. Dunlap?</p> <p>14 A. Nothing, really. It was just, he would walk</p> <p>15 into a meeting that I was attending and we would</p> <p>16 say hello. He would ask how things were going</p> <p>17 and that's it.</p> <p>18 Q. Did you discuss with anyone the information</p> <p>19 contained in the Shredder article?</p> <p>20 MS. Brown: Object to form.</p> <p>21 A. Again, I don't remember ever talking to anyone</p> <p>22 specifically about this article. You know, just</p> <p>23 talking about Sunbeam in general and that's part</p> <p>24 of the deal.</p> <p>25 Q. Did you ever tell anyone at Morgan Stanley that</p>
<p style="text-align: right;">Page 51</p> <p>1 EUGENE YOO</p> <p>2 adding 6.3 billion of company value; it was just</p> <p>3 kind of funny that, you know, it was all being</p> <p>4 linked to one event, so.</p> <p>5 Q. And why was that funny to you?</p> <p>6 A. I don't know. The -- there are a lot of things</p> <p>7 that can take place over a long period. I just</p> <p>8 thought it was funny they were putting it all on</p> <p>9 one thing.</p> <p>10 Q. What was that one thing?</p> <p>11 A. It seemed like they were attributing it all to</p> <p>12 AI.</p> <p>13 Q. Did you believe that Mr. Dunlap was not</p> <p>14 responsible for the stock price increase?</p> <p>15 A. I mean, I didn't know either way. It seemed</p> <p>16 like that was the assumption that they were</p> <p>17 making in the article.</p> <p>18 Q. Did you ever investigate whether Mr. Dunlap had</p> <p>19 indeed added 6.3 billion in value in stock, or</p> <p>20 to Scott Paper?</p> <p>21 MS. Brown: Object to form.</p> <p>22 A. I don't, I don't remember -- I didn't really</p> <p>23 know either way, you know.</p> <p>24 Q. So other than thinking that it was funny that</p> <p>25 they had attributed these increases to</p>	<p style="text-align: right;">Page 53</p> <p>1 EUGENE YOO</p> <p>2 you thought that this article was humorous?</p> <p>3 A. I don't remember. I don't remember who I was</p> <p>4 talking to.</p> <p>5 Q. Do you recall talking to anyone at Morgan</p> <p>6 Stanley about the outrageous numbers in this</p> <p>7 article?</p> <p>8 MS. Brown: Object to form.</p> <p>9 Mischaracterization.</p> <p>10 A. No, I don't really. I just remember, again, I</p> <p>11 think this was -- I don't recall where -- I</p> <p>12 don't recall when exactly I read this in</p> <p>13 relation to the time line. Yeah, I don't recall</p> <p>14 ever talking about this article specifically, or</p> <p>15 bringing this up or anything about this article</p> <p>16 before.</p> <p>17 Q. You also said that after reviewing this article</p> <p>18 you thought that people who did turn around work</p> <p>19 received bad reputations; why is that?</p> <p>20 MS. Brown: Objection. Vague sentence,</p> <p>21 mischaracterizes his testimony.</p> <p>22 A. I don't remember exactly who it was, but I just</p> <p>23 remember, I think there were a few articles that</p> <p>24 came out at that time about people who were</p> <p>25 involved in, you know, difficult situation at</p>

<p style="text-align: right;">Page 54</p> <p>1 EUGENE YOO</p> <p>2 companies. That's the only thing I can remember</p> <p>3 about that connection or that aspect of it. For</p> <p>4 some reason I just happened to read a few</p> <p>5 articles at the time that talked about different</p> <p>6 people doing, or working in similar situations.</p> <p>7 And they all seemed to be very negative about</p> <p>8 those people.</p> <p>9 Q. Did you believe that Mr. Dunlap was receiving a</p> <p>10 bad reputation as a result of his turn around</p> <p>11 work?</p> <p>12 MS. Brown: Object to form.</p> <p>13 A. I didn't really know. I mean, I didn't really</p> <p>14 know, at least at the time I was reading the</p> <p>15 article I wasn't really thinking about, I wasn't</p> <p>16 concentrating on the specifics of his work.</p> <p>17 Q. Was that information you sought to acquire in</p> <p>18 your review of his performance at companies</p> <p>19 prior to Sunbeam?</p> <p>20 MS. Brown: Object to form.</p> <p>21 A. I'm not sure what you mean.</p> <p>22 Q. Well, as part of your research into Mr. Dunlap's</p> <p>23 history did you feel that it was important for</p> <p>24 you to determine whether Mr. Dunlap received,</p> <p>25 unfairly received a bad reputation for his turn</p>	<p style="text-align: right;">Page 56</p> <p>1 EUGENE YOO</p> <p>2 Paper prior to its sale?</p> <p>3 MS. Brown: Object to form.</p> <p>4 A. That's his opinion.</p> <p>5 Q. Did you ever reach that opinion one way or the</p> <p>6 other?</p> <p>7 A. Did I personally reach that opinion?</p> <p>8 Q. Right.</p> <p>9 A. Like I said, at the time I thought he had done a</p> <p>10 good job. You know, the numbers seemed to work</p> <p>11 out.</p> <p>12 Q. Did anyone at Morgan Stanley disagree with that</p> <p>13 opinion to your knowledge?</p> <p>14 A. Not that I can remember.</p> <p>15 MS. Brown: Let's take a break.</p> <p>16 MR. O'CONNOR: Can I go for about two more</p> <p>17 minutes?</p> <p>18 MS. Brown: Okay.</p> <p>19 Q. Sir, I'm going to show you a copy of an exhibit</p> <p>20 previously marked CPH 148. Have you seen this</p> <p>21 document, sir?</p> <p>22 A. Yes, I have.</p> <p>23 Q. When did you first see this document?</p> <p>24 A. I believe I wrote it.</p> <p>25 Q. This is your handwriting?</p>
<p style="text-align: right;">Page 55</p> <p>1 EUGENE YOO</p> <p>2 around work?</p> <p>3 MS. Brown: Object to form.</p> <p>4 A. As part of our work at Morgan Stanley, you know,</p> <p>5 we weren't really looking at his reputation, you</p> <p>6 know, whether, we weren't looking really at that</p> <p>7 angle of it, we were just looking at his results</p> <p>8 and what had he actually done.</p> <p>9 Q. Was his reputation immaterial to your work in</p> <p>10 connection with Sunbeam, the Sunbeam engagement?</p> <p>11 MS. Brown: Object to form. Argumentative.</p> <p>12 A. I mean, I don't know what it related to in terms</p> <p>13 of the engagement with Morgan Stanley and</p> <p>14 Sunbeam. My part of it was just, you know, my</p> <p>15 focus at that time in that deal was just to</p> <p>16 perform the analysis on what we looked at at</p> <p>17 Scott.</p> <p>18 Q. What was your conclusion after performing that</p> <p>19 analysis?</p> <p>20 A. As I said before, I think at the time it looked</p> <p>21 like the numbers were pretty good.</p> <p>22 Q. And what do you mean by "pretty good"? That</p> <p>23 they were accurate?</p> <p>24 A. I don't know what you mean by "accurate."</p> <p>25 Q. Whether Mr. Dunlap truly turned around Scott</p>	<p style="text-align: right;">Page 57</p> <p>1 EUGENE YOO</p> <p>2 A. I think so.</p> <p>3 Q. Do you recall why you prepared this document?</p> <p>4 A. I don't know exactly. It looks like I'm taking</p> <p>5 notes on something.</p> <p>6 Q. It appears that you're taking notes on</p> <p>7 Mr. Dunlap's performance at Scott Paper; is that</p> <p>8 fair to say, --</p> <p>9 MS. Brown: Objection.</p> <p>10 Q. -- in the left hand column?</p> <p>11 MS. Brown: Object to form.</p> <p>12 Mischaracterization.</p> <p>13 A. I think I was actually taking notes on the</p> <p>14 article, from the news article.</p> <p>15 Q. If you flip back to CPH Exhibit 68. The next to</p> <p>16 the last paragraph which appears on Morgan</p> <p>17 Stanley 3996. There's information in that</p> <p>18 paragraph concerning 11,000 people that were</p> <p>19 eliminated, 11,000 jobs eliminated at Scott</p> <p>20 Paper, 71 percent headquarter staff, 50 percent</p> <p>21 of the managers and 20 percent of the hourly</p> <p>22 workers. That information is also contained in</p> <p>23 your handwriting notes on CPH Exhibit 148; is</p> <p>24 that correct?</p> <p>25 A. Which page are you on? I'm sorry.</p>

<p style="text-align: right;">Page 58</p> <p>1 EUGENE YOO</p> <p>2 Q. It's page 2 of the Shredder article, CPH Exhibit</p> <p>3 68.</p> <p>4 A. Okay.</p> <p>5 Q. It's the next to the last paragraph.</p> <p>6 A. Okay. Okay.</p> <p>7 Q. And my question, sir, was the information</p> <p>8 contained in this article in that paragraph</p> <p>9 that's also reflected in your handwritten notes</p> <p>10 in CPH 148 correct?</p> <p>11 A. It appears to be.</p> <p>12 Q. Do you recall, sir, why when thinking that this</p> <p>13 information was humorous you were taking notes</p> <p>14 of that information as reflected in CPH Exhibit</p> <p>15 148?</p> <p>16 MS. Brown: Object to form.</p> <p>17 Mischaracterization. Assumes facts not in</p> <p>18 evidence.</p> <p>19 A. I don't know, again, I don't recall when I read</p> <p>20 the article the first time. And I don't know</p> <p>21 when I wrote this.</p> <p>22 Q. Do you have any general recollection of when you</p> <p>23 wrote the information on CPH Exhibit 148?</p> <p>24 A. I don't know specifically. I would have to</p> <p>25 guess.</p>	<p style="text-align: right;">Page 60</p> <p>1 EUGENE YOO</p> <p>2 Q. Correct.</p> <p>3 A. Again, I think I was just taking notes from the</p> <p>4 article. I think that's what actually happened</p> <p>5 or what they were saying they had achieved.</p> <p>6 Q. Did you ever investigate whether there were 600</p> <p>7 million in synergies and cost reductions as a</p> <p>8 result of that transaction?</p> <p>9 A. Again, I don't remember the specifics of how we</p> <p>10 did the analysis on Scott Paper, I would think</p> <p>11 that we went back and looked at, you know, some</p> <p>12 of the financial performance of both. But I</p> <p>13 don't remember exactly what we did.</p> <p>14 Q. And you don't recall why you prepared this</p> <p>15 document which has been marked as CPH Exhibit</p> <p>16 148?</p> <p>17 A. No. I think that, you know, I don't remember</p> <p>18 why exactly.</p> <p>19 Q. Do you remember what was done with this</p> <p>20 document?</p> <p>21 A. No.</p> <p>22 Q. Did you provide it to anybody?</p> <p>23 A. No. I wouldn't have given something like this</p> <p>24 to anyone.</p> <p>25 Q. Was it used to create any documents in</p>
<p style="text-align: right;">Page 59</p> <p>1 EUGENE YOO</p> <p>2 Q. You also see on Exhibit CPH Exhibit 148 fourth</p> <p>3 from the bottom there is an asterisk which</p> <p>4 states "volume driven plan, arrow, prop up for</p> <p>5 sale."</p> <p>6 A. Uh-huh.</p> <p>7 Q. Do you know what that refers to?</p> <p>8 A. Again, I don't know. I think it was just</p> <p>9 something that I had written from the news</p> <p>10 article.</p> <p>11 Q. You don't recall whether you investigated,</p> <p>12 whether Dunlap pursued a volume driven plan at</p> <p>13 Scott Paper to prop it up for sale?</p> <p>14 A. There's nothing here. There was no discussion</p> <p>15 of that kind of, that I know of.</p> <p>16 Q. On CPH Exhibit 148 there is a column entitled</p> <p>17 Kimberly-Clark. Do you recall, sir, that Scott</p> <p>18 Paper was sold to Kimberly-Clark?</p> <p>19 A. Yes.</p> <p>20 Q. And you'll see there's a hand notation of 600</p> <p>21 million in synergies and cost reductions?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Synergies and cost reductions appear in quotes.</p> <p>24 Do you recall why you made that notation?</p> <p>25 A. Which -- why did I write that line?</p>	<p style="text-align: right;">Page 61</p> <p>1 EUGENE YOO</p> <p>2 connection with the Sunbeam engagement?</p> <p>3 A. Not that I know of. I'm sure some of the</p> <p>4 factual information went into some documents.</p> <p>5 But, you know.</p> <p>6 Q. Okay. This is a good time to take a break.</p> <p>7 VIDEOGRAPHER: The time is ten fifty-eight,</p> <p>8 we're off the record.</p> <p>9 (Short break taken.)</p> <p>10 VIDEOGRAPHER: We're back on the record,</p> <p>11 this is tape number two and the time is seven</p> <p>12 minutes after eleven.</p> <p>13 Q. Mr. Yoo, I'm going to show you what's previously</p> <p>14 been marked as CPH Exhibit 81. This is a</p> <p>15 document titled, Project Laser, Laser</p> <p>16 Corporation, Restructuring and Growth Plans. Do</p> <p>17 you recall, sir, that the code name for the</p> <p>18 Sunbeam engagement was Project Laser?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Okay. Have you seen this document before?</p> <p>21 A. I think I have.</p> <p>22 Q. When did you see this document?</p> <p>23 A. I think at the time that we, it was prepared.</p> <p>24 Q. Did you prepare it?</p> <p>25 A. I didn't personally prepare this, no.</p>

<p style="text-align: right;">Page 62</p> <p>1 EUGENE YOO</p> <p>2 Q. Do you know who did?</p> <p>3 A. I don't know.</p> <p>4 Q. What was the purpose of preparing this document?</p> <p>5 A. I don't remember.</p> <p>6 Q. If you look at the document page 36394, where it</p> <p>7 says "restructuring plan." Do you know where</p> <p>8 this information -- do you know where the person</p> <p>9 that drafted this document obtained this</p> <p>10 information?</p> <p>11 A. No, I don't.</p> <p>12 Q. And the same question for the growth targets; do</p> <p>13 you know the source of that information?</p> <p>14 A. No.</p> <p>15 Q. Under "growth targets" the first bullet point</p> <p>16 says "doubling of 1996 sales of about 984</p> <p>17 million to almost 2 billion by 1999 without</p> <p>18 acquisitions; do you see that, sir?</p> <p>19 A. Yes.</p> <p>20 Q. Did you ever investigate how Sunbeam was going</p> <p>21 to achieve that growth goal?</p> <p>22 MS. Brown: Object to form.</p> <p>23 A. I'm not sure what you mean.</p> <p>24 Q. Well, do you recall that Sunbeam had a growth</p> <p>25 target which included doubling its 1996 sales to</p>	<p style="text-align: right;">Page 64</p> <p>1 EUGENE YOO</p> <p>2 Q. Right.</p> <p>3 A. I'm not sure what you mean.</p> <p>4 Q. Did you take it on face value what they were</p> <p>5 saying; did you do something to investigate</p> <p>6 those statements to confirm you were comfortable</p> <p>7 with their growth plans?</p> <p>8 A. We did our investigation as far as we typically</p> <p>9 do. I mean, there's only so far that we go on</p> <p>10 an MNA transaction, at some point we're relying</p> <p>11 on the company and the information they give us</p> <p>12 to be accurate.</p> <p>13 Q. And in this respect what, what did you do to</p> <p>14 become comfortable with the information they</p> <p>15 were providing you? Do you recall any specific</p> <p>16 things that you did?</p> <p>17 MS. Brown: Object to form.</p> <p>18 A. I don't remember specifically what we did.</p> <p>19 Q. What typically does Morgan Stanley do in a deal</p> <p>20 like this to become comfortable with the growth</p> <p>21 plans provided to them by the company?</p> <p>22 A. It depends on the company and it depends on the</p> <p>23 transaction.</p> <p>24 Q. Okay. In a transaction of this magnitude what</p> <p>25 does Morgan Stanley typically do?</p>
<p style="text-align: right;">Page 63</p> <p>1 EUGENE YOO</p> <p>2 almost 2 billion by 1999 without acquisitions?</p> <p>3 A. I don't remember any of their growth targets or</p> <p>4 what their plans were. It was such a long time</p> <p>5 ago.</p> <p>6 Q. Do you remember conducting any investigation to</p> <p>7 determine whether Sunbeam's growth targets were</p> <p>8 attainable?</p> <p>9 A. We did talk to several people at Sunbeam about</p> <p>10 the numbers they had given us. We talked to</p> <p>11 Russ Kirsch and Rich Goudis. Again, I think we</p> <p>12 spent a day at their office talking to the</p> <p>13 different division heads about the, their budget</p> <p>14 plan for the year.</p> <p>15 Q. Did the information you received from these</p> <p>16 individuals comport with the growth plans that</p> <p>17 are indicated in CPH Exhibit 81?</p> <p>18 A. Again, I don't know if they matched up with</p> <p>19 this. But I do remember that we were very</p> <p>20 comfortable with the detailed information they</p> <p>21 had given us behind their growth plans.</p> <p>22 Q. Do you recall how you became comfortable with</p> <p>23 that information?</p> <p>24 MS. Brown: Object to form.</p> <p>25 A. How we became comfortable?</p>	<p style="text-align: right;">Page 65</p> <p>1 EUGENE YOO</p> <p>2 A. Again, my experience has only been with, and for</p> <p>3 me this was probably one of the larger</p> <p>4 transactions that I worked on. So, you know, I</p> <p>5 can only speak about what I had done.</p> <p>6 Q. What have you done in the past on deals similar</p> <p>7 to Sunbeam to determine whether Morgan Stanley</p> <p>8 is comfortable with the growth plans given to</p> <p>9 them by the company that's retained them to</p> <p>10 provide investment counseling or acquisition</p> <p>11 counseling for the sale of the company?</p> <p>12 MS. BROWN: Object to form and foundation.</p> <p>13 A. I guess, it's been a long time since I've done</p> <p>14 it. I can only really talk about what I've</p> <p>15 done. But from what I remember on this, as I</p> <p>16 said, we went through the growth plan, tried to</p> <p>17 get the detail behind the numbers they were</p> <p>18 giving us with Russ and with Rich Goudis and we</p> <p>19 met with the division heads and they walked</p> <p>20 through how they were going to achieve their</p> <p>21 numbers. And that's probably pretty typical for</p> <p>22 any investment bank on an MNA transaction.</p> <p>23 Q. Is there any independent analysis that Morgan</p> <p>24 Stanley conducts to confirm the information</p> <p>25 provided to them by the company?</p>

<p style="text-align: right;">Page 66</p> <p>1 EUGENE YOO</p> <p>2 MS. Brown: Object to form.</p> <p>3 A. I don't know what else they do.</p> <p>4 Q. You indicated that you spoke with division heads</p> <p>5 at Sunbeam, who were the individuals that you</p> <p>6 spoke with?</p> <p>7 A. I don't remember specifically.</p> <p>8 Q. Did you speak with Don Oosi?</p> <p>9 A. Yes.</p> <p>10 Q. And did Mr. Oosi provide you with any documents</p> <p>11 to back up the growth targets that are indicated</p> <p>12 in CPH Exhibit 81?</p> <p>13 A. I believe he did.</p> <p>14 Q. Do you recall the form of those documents?</p> <p>15 A. No. I don't remember what he gave us.</p> <p>16 Q. Other than Mr. Kirsch and Mr. Goudis did you</p> <p>17 meet with anyone else in senior management at</p> <p>18 Sunbeam to determine whether the growth targets</p> <p>19 were attainable?</p> <p>20 MS. Brown: Object to form.</p> <p>21 Mischaracterization testimony.</p> <p>22 A. Our primary contact was with Russ and Rich on</p> <p>23 almost anything that was deal related, on almost</p> <p>24 anything that was Sunbeam related, I should say.</p> <p>25 And, you know, the managing directors had</p>	<p style="text-align: right;">Page 68</p> <p>1 EUGENE YOO</p> <p>2 document; is that correct?</p> <p>3 A. I don't know for sure. I don't think I did.</p> <p>4 Q. Do you know what was done with this document,</p> <p>5 CPH Exhibit 81?</p> <p>6 A. I don't remember.</p> <p>7 Q. Do you recall if this document was provided to</p> <p>8 any potential buyers?</p> <p>9 A. I couldn't say for sure, I don't know.</p> <p>10 Q. Or its potential acquisition targets?</p> <p>11 A. Again, I don't know. I didn't attend any of</p> <p>12 those meetings.</p> <p>13 Q. Handing you what's been previously marked as CPH</p> <p>14 Exhibit 69, the cover page reads "Project Laser</p> <p>15 Discussion Materials, September 11, 1997,</p> <p>16 Conference Call." Setting aside the handwriting</p> <p>17 on this document, Mr. Yoo, do you recall seeing</p> <p>18 this document?</p> <p>19 A. I may have seen this. I couldn't say for sure,</p> <p>20 but it's possible.</p> <p>21 Q. Do you recall seeing the document with the</p> <p>22 handwriting?</p> <p>23 A. No.</p> <p>24 Q. You'll notice in the upper right-hand corner</p> <p>25 there's the notation MS and then a list of names</p>
<p style="text-align: right;">Page 67</p> <p>1 EUGENE YOO</p> <p>2 contact with AI, it was -- I don't recall if</p> <p>3 there was anyone else in senior management that</p> <p>4 we talked with, you know, above the division</p> <p>5 heads.</p> <p>6 Q. If you turn to page 2 of that document which is</p> <p>7 Morgan Stanley 36395. This is a slide entitled</p> <p>8 Scott Paper Restructuring and Growth Plans. If</p> <p>9 you take a look at the information under</p> <p>10 restructuring plan; do you recall the source of</p> <p>11 this information?</p> <p>12 A. (Witness shakes head in the negative.) I don't</p> <p>13 know specifically, no.</p> <p>14 Q. If you look at the fourth bullet point where it</p> <p>15 reads, "reduce work force by over 35 percent</p> <p>16 with approximately 11,000 layoffs, --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- 71 percent of headquarter staff, 50 percent</p> <p>19 managers, 20 percent hourly workers and 60</p> <p>20 percent R and D." Do you recall, sir, that that</p> <p>21 information is contained in CPH Exhibit 148 and</p> <p>22 CPH Exhibit 68 that we looked at a few moments</p> <p>23 ago?</p> <p>24 A. Yeah, they appear to be the same.</p> <p>25 Q. Your testimony is that you did not draft this</p>	<p style="text-align: right;">Page 69</p> <p>1 EUGENE YOO</p> <p>2 and the fifth name down appears to be Yoo,</p> <p>3 Y-o-o?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Do you recall attending a September 11, 1997</p> <p>6 conference call?</p> <p>7 A. I don't remember specifically, but it's</p> <p>8 possible.</p> <p>9 Q. Do you recall who -- I'm sorry. Withdrawn.</p> <p>10 Do you recognize the handwriting on this</p> <p>11 document?</p> <p>12 A. No, I'm not sure who it is.</p> <p>13 Q. On the first page in handwriting off to the</p> <p>14 left-hand side right above "Morgan," there's a</p> <p>15 handwritten notation "Coopers and Lybrand to</p> <p>16 calibrate synergies"?</p> <p>17 A. Oh, okay, yeah.</p> <p>18 Q. Do you see that. Do you recall, sir, that</p> <p>19 Coopers and Lybrand was providing synergy</p> <p>20 analysis to Sunbeam and Morgan Stanley in</p> <p>21 connection with the Sunbeam engagement in 1997?</p> <p>22 MS. BROWN: Object to form.</p> <p>23 A. I don't remember exactly what it was that they</p> <p>24 were providing us. I do know that they had</p> <p>25 worked with AI in the past and I don't remember</p>

<p style="text-align: right;">Page 70</p> <p>1 EUGENE YOO</p> <p>2 their exact role in this transaction. But from</p> <p>3 what I remember I think they were working with</p> <p>4 Al on the turn around plan. On developing a</p> <p>5 plan, I think, but I don't remember for sure.</p> <p>6 Q. That's the turnaround plan at Sunbeam?</p> <p>7 A. At Sunbeam, right.</p> <p>8 Q. If you could turn to page 3 of the document</p> <p>9 which is Morgan Stanley 3897. It's a slide</p> <p>10 entitled Overview of Proposed Selling Process?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Do you see on the left-hand side, sir,</p> <p>13 handwriting, it says "just get it done"? To the</p> <p>14 left of Overview of Proposed Selling Process.</p> <p>15 A. Okay. Yeah.</p> <p>16 Q. Does that refresh your recollection, sir, of</p> <p>17 participating in this conference call? Someone</p> <p>18 making the statement "just get it done"?</p> <p>19 A. No. I don't know.</p> <p>20 Q. You don't know what that means?</p> <p>21 A. No.</p> <p>22 Q. In about the middle of the page looking at the</p> <p>23 handwriting again there is two asterisks, the</p> <p>24 second asterisk says "Kimberly/Scott - won't see</p> <p>25 anything." Do you recall anyone making that</p>	<p style="text-align: right;">Page 72</p> <p>1 EUGENE YOO</p> <p>2 Stanley prepared a document entitled Strategic</p> <p>3 Plan or contained the words strategic plan in</p> <p>4 the title of the document?</p> <p>5 A. I don't know for sure. I mean, we produced a</p> <p>6 lot of documents.</p> <p>7 Q. I'm sorry. How about long range strategic plan;</p> <p>8 do you recall that document?</p> <p>9 A. No.</p> <p>10 Q. And then in the middle of page 3906 of CPH</p> <p>11 Exhibit 69 there's a box around some</p> <p>12 handwriting, and the handwriting states "beef up</p> <p>13 sex appeal." And there's an arrow to "future</p> <p>14 growth opportunities." Do you know what that</p> <p>15 refers to?</p> <p>16 A. I couldn't say for sure.</p> <p>17 Q. Do you recall anyone at Morgan Stanley</p> <p>18 discussing beefing up the sex appeal of Sunbeam</p> <p>19 by touting future growth opportunities?</p> <p>20 MS. BROWN: Object to form.</p> <p>21 A. No. I mean, there was really no discussion</p> <p>22 about that.</p> <p>23 Q. Did anyone at Morgan Stanley refer to Sunbeam</p> <p>24 management as amateurs?</p> <p>25 A. Not that I can remember, no.</p>
<p style="text-align: right;">Page 71</p> <p>1 EUGENE YOO</p> <p>2 statement at Morgan Stanley?</p> <p>3 A. No, I don't, I don't recall anything about that.</p> <p>4 Q. You don't know what that means?</p> <p>5 A. No. I, I don't know what that means.</p> <p>6 Q. If you can turn to page 12 of the document which</p> <p>7 is Morgan Stanley 3906. In much larger</p> <p>8 handwriting on the top left of that page it says</p> <p>9 "amateurs" and it's underlined; do you see that?</p> <p>10 A. Okay.</p> <p>11 Q. Does that refresh your recollection of this</p> <p>12 September 11th conference call?</p> <p>13 A. No.</p> <p>14 Q. Do you know what -- do you know what that refers</p> <p>15 to?</p> <p>16 MS. BROWN: Objection. Speculation.</p> <p>17 A. No. I'm not sure.</p> <p>18 Q. To the right-hand side in handwriting there's an</p> <p>19 asterisk with 20 to 25 pages, Strat Plan;</p> <p>20 possibly strategic plan. Does that --</p> <p>21 A. Okay.</p> <p>22 Q. Does that refresh your recollection of this call</p> <p>23 and discussion of a Sunbeam strategic plan?</p> <p>24 A. No.</p> <p>25 Q. Were you aware, sir, that Sunbeam and Morgan</p>	<p style="text-align: right;">Page 73</p> <p>1 EUGENE YOO</p> <p>2 Q. If you take a moment, sir, to flip through the</p> <p>3 rest of the document. My question for you is</p> <p>4 whether you recall preparing any portions of</p> <p>5 this document?</p> <p>6 A. (Witness reviewing.) I don't know specifically</p> <p>7 where, but I'm sure I had a hand in helping to</p> <p>8 prepare this somewhere.</p> <p>9 Q. You mean you don't recall any specific pages</p> <p>10 that you have a recollection of preparing?</p> <p>11 A. No.</p> <p>12 Q. Did anyone at Morgan Stanley or Sunbeam advise</p> <p>13 Morgan Stanley to not contact Kimberly-Clark in</p> <p>14 connection with Morgan Stanley's work in trying</p> <p>15 to find a buyer or an acquisition target for</p> <p>16 Sunbeam?</p> <p>17 MS. BROWN: Objection. Foundation.</p> <p>18 A. No, there was no discussion of that kind.</p> <p>19 Q. That you recall?</p> <p>20 A. That I recall.</p> <p>21 (Deposition Exhibit 218 marked for</p> <p>22 identification.)</p> <p>23 Q. Sir, you've been handed what's been marked as</p> <p>24 CPH Exhibit 218.</p> <p>25 A. Uh-huh.</p>

<p style="text-align: right;">Page 74</p> <p>1 EUGENE YOO</p> <p>2 Q. Do you recall this document?</p> <p>3 A. I think I do, yeah. It's sort of familiar.</p> <p>4 Q. Did you draft this document?</p> <p>5 A. I think I helped write it up.</p> <p>6 Q. Who assisted you in writing up this document?</p> <p>7 A. I think it was Alex Fuchs and Tyrone Chang.</p> <p>8 Q. What was the purpose of drafting this document?</p> <p>9 A. I don't know what the end goal or the end</p> <p>10 product was to be, but I think this was part of</p> <p>11 our due diligence on Sunbeam. Just</p> <p>12 understanding their growth plan.</p> <p>13 Q. Why was it important for Morgan Stanley</p> <p>14 personnel to understand Sunbeam's growth plan?</p> <p>15 MS. BROWN: Object to form.</p> <p>16 Characterization.</p> <p>17 A. I don't remember what the end product was to be</p> <p>18 or the end goal was here.</p> <p>19 MR. O'CONNOR: Mark this.</p> <p>20 (Deposition Exhibit 219 marked for</p> <p>21 identification.)</p> <p>22 Q. Do you know if CPH Exhibit 218 was ever sent to</p> <p>23 Mr. Fannin and Mr. Goudis?</p> <p>24 A. I don't know for sure.</p> <p>25 Q. Sir, I'm handing you what's been marked as CPH</p>	<p style="text-align: right;">Page 76</p> <p>1 EUGENE YOO</p> <p>2 of CPH Exhibit 220 were physically attached to</p> <p>3 the following document. But do you know, sir,</p> <p>4 whether that was the case? Whether these two</p> <p>5 documents were in fact attached?</p> <p>6 A. I don't know.</p> <p>7 Q. Does your handwriting appear on the first page,</p> <p>8 the fax cover sheet on CPH Exhibit 220?</p> <p>9 A. No, that's not my handwriting.</p> <p>10 Q. Is that Mr. Chang's handwriting?</p> <p>11 A. I don't know whose that is.</p> <p>12 Q. But you're listed as the author of the fax?</p> <p>13 A. Yes.</p> <p>14 Q. On page 2 of that document, CPH 220, under</p> <p>15 Financial Projections; do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. First bullet point reads "please provide backup</p> <p>18 numbers to all the new revenue stream graphical</p> <p>19 charts." Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. What was the purpose of attaining that</p> <p>22 information?</p> <p>23 A. Again, I don't know if there was any other</p> <p>24 reasoning behind it other than just typical due</p> <p>25 diligence and trying to make sure that we fully</p>
<p style="text-align: right;">Page 75</p> <p>1 EUGENE YOO</p> <p>2 Exhibit 219. It's a document bearing Bates</p> <p>3 label Morgan Stanley 36347 through 36349; do you</p> <p>4 recall this document?</p> <p>5 A. Uh-huh. Yes.</p> <p>6 Q. This appears to be a later version of CPH</p> <p>7 Exhibit 218, does that refresh your recollection</p> <p>8 that you may have changed Exhibit 218 in a</p> <p>9 matter reflected in CPH Exhibit 219?</p> <p>10 A. I, again, I don't remember exactly what the</p> <p>11 reasoning was. I think we were just</p> <p>12 reorganizing the questions into categories to</p> <p>13 make it easier for them to gather the</p> <p>14 information.</p> <p>15 (Deposition Exhibit 220 marked for</p> <p>16 identification.)</p> <p>17 Q. Do you recall drafting that document, CPH</p> <p>18 Exhibit 219 or revising the document that we</p> <p>19 marked as CPH Exhibit 218?</p> <p>20 A. I don't remember that specifically, no.</p> <p>21 Q. I'm handing you what's been marked as CPH</p> <p>22 Exhibit 220. CPH Exhibit 220 bears Bates labels</p> <p>23 CPH 467090 through 467126. I'll represent to</p> <p>24 you that this is the way the document appears in</p> <p>25 the files, I'm not sure if the first three pages</p>	<p style="text-align: right;">Page 77</p> <p>1 EUGENE YOO</p> <p>2 understand and are comfortable with their</p> <p>3 projections.</p> <p>4 Q. Do you recall whether you received materials</p> <p>5 that were responsive to the request under</p> <p>6 "financial projections"?</p> <p>7 A. I do know we received some documents from them,</p> <p>8 I don't know for sure we got all of them or not.</p> <p>9 Q. Did you ever make an effort to determine whether</p> <p>10 they provided you with all of the information</p> <p>11 requested in this September 19, 1997 memo?</p> <p>12 A. I believe we did follow up with them on some</p> <p>13 outstanding items, yeah. I don't recall if</p> <p>14 those were ever followed through or not.</p> <p>15 Q. Looking at the product development R and D</p> <p>16 pipeline section, the third bullet point. The</p> <p>17 second dash reads, "is 30 new products a year a</p> <p>18 reasonable number to achieve." Do you recall</p> <p>19 receiving any comfort or a response to that</p> <p>20 inquiry?</p> <p>21 A. I don't remember specifically.</p> <p>22 Q. Did you believe that 30 new products a year was</p> <p>23 an unreasonable number to achieve?</p> <p>24 A. I had no idea. I didn't really know the</p> <p>25 industry.</p>

<p style="text-align: right;">Page 78</p> <p>1 EUGENE YOO</p> <p>2 Q. On the third page of the document, CPH 467092,</p> <p>3 there's a category entitled, not category,</p> <p>4 /channel/pricing; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And the fourth bullet point it reads "definition</p> <p>7 of category management? Does it differ from</p> <p>8 channel management?" Do you recall inquiring</p> <p>9 into Sunbeam's channel management?</p> <p>10 MS. BROWN: Object to form.</p> <p>11 A. I'm not sure. I mean, I still don't fully know</p> <p>12 what channel management is. That's part of the</p> <p>13 question was trying to work through their</p> <p>14 terminology, understanding what it is they were</p> <p>15 talking about.</p> <p>16 Q. Did you ever come to an understanding of</p> <p>17 Sunbeam's channel management practices?</p> <p>18 MS. BROWN: Object to form.</p> <p>19 A. Again, I'm not really sure, you know, what</p> <p>20 channel management, you know, it's more of a</p> <p>21 marketing term, I believe. I'm not really sure</p> <p>22 what channel management is.</p> <p>23 Q. There's another category entitled Other at the</p> <p>24 bottom of that same page. And next to the</p> <p>25 fourth bullet point it reads "provide examples</p>	<p style="text-align: right;">Page 80</p> <p>1 EUGENE YOO</p> <p>2 A. As far as I remember there was, at least for the</p> <p>3 Morgan Stanley due diligence, I don't believe</p> <p>4 there was a formal data room set up. I don't</p> <p>5 recall if there was ever one set up during the</p> <p>6 transaction, during the actual consummation of</p> <p>7 the transaction.</p> <p>8 Q. Did you, did you ever have any contact with the</p> <p>9 law firm Skadden Arps in connection with the</p> <p>10 Sunbeam engagement?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. Do you recall that Skadden represented Sunbeam</p> <p>13 in the transaction?</p> <p>14 A. That sounds familiar, yeah.</p> <p>15 Q. Okay. Did you have any discussions with Skadden</p> <p>16 in connection with the due diligence that you</p> <p>17 performed?</p> <p>18 A. I don't think we talked about that, no.</p> <p>19 Q. Do you recall when you started your due</p> <p>20 diligence of Sunbeam?</p> <p>21 A. I mean, for a client -- I'm sorry.</p> <p>22 Q. No, go ahead.</p> <p>23 A. For a client I don't think it's a one time</p> <p>24 event. It's sort of an ongoing thing. As I</p> <p>25 said, we were learning about the company when we</p>
<p style="text-align: right;">Page 79</p> <p>1 EUGENE YOO</p> <p>2 of how the company has repositioned itself</p> <p>3 (manufacturing, shipping and billing, R and D</p> <p>4 and other systems and processes.) For growth as</p> <p>5 opposed to being viewed as a cost cutter." Do</p> <p>6 you recall obtaining information in response to</p> <p>7 this inquiry?</p> <p>8 A. I don't remember specifically what we got back</p> <p>9 on this one.</p> <p>10 Q. Do you recall whether you received any comfort</p> <p>11 on whether the company repositioned itself for</p> <p>12 growth as opposed to simply cost cutting?</p> <p>13 MS. BROWN: Object to form.</p> <p>14 A. I don't recall.</p> <p>15 Q. The following document is a list of documents in</p> <p>16 data room, CPH 467093?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And it appears that this document runs through</p> <p>19 the rest of this exhibit through CPH 467126. Do</p> <p>20 you recall seeing that document?</p> <p>21 A. No, I don't think I've seen this before.</p> <p>22 Q. Did you ever go into a data room in connection</p> <p>23 with your due diligence of Sunbeam?</p> <p>24 A. Not that I can remember.</p> <p>25 Q. Do you know if anyone did?</p>	<p style="text-align: right;">Page 81</p> <p>1 EUGENE YOO</p> <p>2 did our first pitch and then from then it was</p> <p>3 sort of an ongoing process of trying to stay on</p> <p>4 top of the progress of the company.</p> <p>5 Q. Is September 19, 1997 a significant date to you</p> <p>6 in connection with your due diligence work?</p> <p>7 When the memo that's attached to CPH Exhibit 220</p> <p>8 was faxed to Mr. Goudis and Mr. Fannin at</p> <p>9 Sunbeam?</p> <p>10 A. I don't recall anything specific or anything</p> <p>11 special about that day.</p> <p>12 Q. Did Sunbeam ever refuse to provide any</p> <p>13 information that you requested in connection</p> <p>14 with your due diligence work?</p> <p>15 A. No. Not as far as I can remember.</p> <p>16 Q. Did Sunbeam limit Morgan Stanley's access to any</p> <p>17 of Sunbeam's customers or employees?</p> <p>18 MS. BROWN: Objection. Foundation.</p> <p>19 A. There was no -- there was no attempt on</p> <p>20 Sunbeam's part to limit our access to any of the</p> <p>21 customers.</p> <p>22 Q. Did you interview any customers at Sunbeam?</p> <p>23 A. I did not personally, no.</p> <p>24 Q. Do you know if anyone did?</p> <p>25 A. I don't believe anyone did. But I don't think</p>

Page 82

1 EUGENE YOO
2 that's -- it's not really part of the normal due
3 diligence process for an MNA transaction.
4 Q. You've never contacted companies' customers as
5 part of due diligence?
6 A. I haven't personally and I don't know of anyone
7 that has. I can't think of anybody that has.
8 Q. Okay. How about lower level employees,
9 employees below the division heads, did you have
10 any contact with those employees in connection
11 with your due diligence?
12 A. Occasionally here and there. I don't remember
13 anyone directly.
14 Q. Do you recall any of those employees that you
15 spoke with?
16 A. No.
17 Q. Do you recall the subjects of your conversations
18 with those employees?
19 A. No. It was mainly in the context of when we
20 would request information or specific documents
21 most of our contact was with senior or mid level
22 management and they would have some of their
23 subordinates do the actual work to provide us
24 the information. That was really the main
25 context of our contact with them.

Page 83

1 EUGENE YOO
2 Q. So is it your testimony that you never spoke to
3 those employees, you just obtained information
4 from them through their superiors?
5 MS. BROWN: Objection. Mischaracterizes.
6 A. I don't recall the nature our conversations with
7 them. You know, there was some contact, I don't
8 really remember what it was.
9 MR. O'CONNOR: Mark the next exhibit.
10 (Deposition Exhibit 221 marked for
11 identification.)
12 Q. Mr. Yoo, you've been handed what's been marked
13 as CPH Exhibit 221; do you recall this document?
14 A. No, I don't think I've seen this one.
15 Q. Do you recall traveling to Sunbeam's
16 headquarters in Florida on September 22nd
17 through the 24th, 1997?
18 A. I don't know the dates that I was down there. I
19 made several trips down there.
20 Q. How many trips do you think you made to Florida
21 in connection with the Sunbeam engagement?
22 A. I have to guess. Maybe four or five.
23 Q. And each time you traveled to Florida did you,
24 did you go to Sunbeam's headquarters in Del Ray
25 Beach?

Page 84

1 EUGENE YOO
2 A. Yes, I believe so.
3 Q. What were the purposes of your trips to Florida?
4 A. They were all different. We were down there for
5 different reasons.
6 Q. Did you go to the beach?
7 A. No.
8 Q. Was this a part of your due diligence of
9 Sunbeam?
10 A. Some of it was for due diligence, yes.
11 Q. Besides due diligence why else did you go to
12 Sunbeam?
13 A. Some of it was, I believe there was one meeting
14 or one presentation we made to them and I think
15 one was a, I remember we went down there for a,
16 sort of a preparation session. I think they
17 were having a meeting with someone, I don't
18 recall who.
19 Q. Was this a potential buyer?
20 A. I don't remember who it was. It was really --
21 Jim Stynes was the one that went with me in that
22 meeting and they were asking for Jim's help in
23 just preparing for a meeting.
24 Q. In the presentation, of the trip for the
25 presentation was that for the pitch to Sunbeam?

Page 85

1 EUGENE YOO
2 A. No. What was that about? I think it was --
3 Q. That's my next question.
4 A. I think it was just an update of the progress to
5 that point. Where we were in our discussions.
6 Q. Do you recall when that trip occurred?
7 A. I think it was in the fall sometime that I
8 remember.
9 Q. Do you recall Mr. Dunlap being unhappy with
10 Morgan Stanley because Morgan Stanley could not
11 find a buyer for Sunbeam?
12 A. I never knew, I mean, I never, like I said, I
13 never talked to him.
14 Q. You never talked to him ever?
15 A. About the transaction. It was really just
16 formalities and greetings.
17 Q. Does CPH Exhibit 221 read in connection with CPH
18 Exhibit 220, refresh your recollection that your
19 trip to Florida from September 22nd to the 24th
20 of 1997 was in connection with the information
21 that you requested in the September 19, 1997
22 memo?
23 A. Okay. I believe we did go down there for that
24 trip for a due diligence session.
25 Q. What do you recall about that trip?

<p style="text-align: right;">Page 86</p> <p>1 EUGENE YOO</p> <p>2 A. It was pretty nondescript. I mean, it was just</p> <p>3 information gathering, going through</p> <p>4 documentation they had given us, a few</p> <p>5 presentations. Actually, this may have been the</p> <p>6 trip where we met with the various division</p> <p>7 heads and they were giving us their growth plan</p> <p>8 for the year.</p> <p>9 Q. Do you recall any of the information they</p> <p>10 provided you on those growth plans?</p> <p>11 A. No.</p> <p>12 Q. Do you recall looking at any documents during</p> <p>13 this trip that you requested in the September</p> <p>14 19, 1997 memo?</p> <p>15 A. We did go through quite a few documents during</p> <p>16 this time. I don't, again, I couldn't tell you</p> <p>17 specifically what.</p> <p>18 Q. Did you find any information in those documents</p> <p>19 that caused you any concern about Sunbeam's turn</p> <p>20 around or the future growth projections?</p> <p>21 MS. BROWN: Object to form.</p> <p>22 A. No. At the time there was nothing really that</p> <p>23 raised any red flags for us.</p> <p>24 Q. Was there anything that raised any yellow flags?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 88</p> <p>1 EUGENE YOO</p> <p>2 that, it was probably two days.</p> <p>3 Q. Do you recall whether this trip in late</p> <p>4 September of 1997 preceded this presentation</p> <p>5 that you spoke about earlier?</p> <p>6 A. Which presentation?</p> <p>7 Q. The trip to Florida where you were involved in a</p> <p>8 presentation to Sunbeam to update them on the</p> <p>9 progress?</p> <p>10 MS. BROWN: With Mr. Stynes.</p> <p>11 A. I don't remember the exact chronology.</p> <p>12 Q. How long were you in Florida for that</p> <p>13 presentation?</p> <p>14 A. I think it was just a day.</p> <p>15 Q. In that preparation session?</p> <p>16 A. I think it was just a day.</p> <p>17 Q. Other than the trip to Florida on September</p> <p>18 22nd, do you recall any other trips to Florida</p> <p>19 in 1997 during which time you performed due</p> <p>20 diligence of Sunbeam?</p> <p>21 A. I couldn't say for sure. I don't know.</p> <p>22 Q. I'm handing you what's been previously marked as</p> <p>23 CPH Exhibit 71.</p> <p>24 A. (Witness reviewing.)</p> <p>25 Q. Have you seen this document before?</p>
<p style="text-align: right;">Page 87</p> <p>1 EUGENE YOO</p> <p>2 Q. Did Mr. Chang accompany you on this trip to</p> <p>3 Florida in September?</p> <p>4 A. I believe he did.</p> <p>5 Q. Did anyone else go to Florida with you on this</p> <p>6 trip, or did you meet anyone from Morgan Stanley</p> <p>7 down in Florida on this trip?</p> <p>8 A. I don't remember. I don't think so, but I'm not</p> <p>9 sure.</p> <p>10 Q. CPH Exhibit 221 indicates that you spent</p> <p>11 Tuesday, September 23rd, at Sunbeam?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And you were to see Rich Goudis. And it shows</p> <p>14 your departure on Wednesday, September 24th, six</p> <p>15 fifteen flight.</p> <p>16 A. Uh-huh.</p> <p>17 Q. Does that refresh your recollection on how much</p> <p>18 time you spent at Sunbeam's headquarters</p> <p>19 reviewing documents and meeting with division</p> <p>20 heads?</p> <p>21 MS. BROWN: On this trip?</p> <p>22 Q. On this trip. Thanks.</p> <p>23 A. I thought we were there for a few days, maybe</p> <p>24 two days or three days. And -- I've got to look</p> <p>25 at the time line here. Yeah, it looks like</p>	<p style="text-align: right;">Page 89</p> <p>1 EUGENE YOO</p> <p>2 A. Yes, I have.</p> <p>3 Q. When did you see this document?</p> <p>4 A. I actually helped put this together.</p> <p>5 Q. Okay. The first two pages of CPH Exhibit 71 are</p> <p>6 contents of an e-mail authored by Tyrone Chang</p> <p>7 dated October 23, 1997, attaching an October 22,</p> <p>8 1997 memo to worldwide IBD Professionals; do you</p> <p>9 see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Do you recall the purpose of sending this e-mail</p> <p>12 and the attached documents at this time? At</p> <p>13 that time.</p> <p>14 A. This was a standard announcement that we would</p> <p>15 send out when we were engaged by a client.</p> <p>16 Q. What's the purpose of sending out that</p> <p>17 announcement?</p> <p>18 A. I think it was just informative for the rest of</p> <p>19 the investment banking division.</p> <p>20 Q. You said that you prepared the materials that</p> <p>21 are attached to that e-mail?</p> <p>22 A. Well, I helped put this together.</p> <p>23 Q. When you say you helped put it together, what</p> <p>24 does that mean?</p> <p>25 A. I think most of the actual documentation on the</p>

<p style="text-align: right;">Page 90</p> <p>1 EUGENE YOO</p> <p>2 project, the person who actually physically sat</p> <p>3 there and drafted these was Tyrone, and I was</p> <p>4 overseeing that and then Alex was overseeing us,</p> <p>5 Alex Fuchs.</p> <p>6 Q. Did you physically type the information that's</p> <p>7 contained on Morgan Stanley 5986?</p> <p>8 A. 86? No, I didn't type this.</p> <p>9 Q. Do you know who did?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you recall reading the investment rationale</p> <p>12 that appears on this page at this point in time?</p> <p>13 A. I believe I did read this.</p> <p>14 Q. The first bullet point reads, "Sunbeam</p> <p>15 represents an attractive growth story and</p> <p>16 investment opportunity"?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Do you know the basis for that statement?</p> <p>19 A. I don't know.</p> <p>20 Q. Did you do anything in connection with your due</p> <p>21 diligence of Sunbeam to confirm that Sunbeam in</p> <p>22 fact represented an attractive growth story and</p> <p>23 investment opportunity?</p> <p>24 MS. BROWN: Object to form.</p> <p>25 A. Well, all of these I think are just opinion</p>	<p style="text-align: right;">Page 92</p> <p>1 EUGENE YOO</p> <p>2 Q. You testified earlier as part of your due</p> <p>3 diligence you were keeping an eye on other</p> <p>4 companies in the industry?</p> <p>5 A. (Witness nods in the affirmative.)</p> <p>6 Q. Is that part of what you did to confirm that</p> <p>7 Sunbeam presented a tremendous intrinsic value?</p> <p>8 A. I can't say for sure, but that's a possibility.</p> <p>9 Q. If you turn, sir, to page 5991, a few pages back</p> <p>10 in CPH Exhibit 71. There's a summary of recent</p> <p>11 analyst commentary.</p> <p>12 A. Uh-huh.</p> <p>13 Q. And that spans for several pages. Did you draft</p> <p>14 those pages of this document?</p> <p>15 A. Actually, I don't think that I worked on this</p> <p>16 part of it.</p> <p>17 Q. Did you perform any research into analyst</p> <p>18 commentaries on Sunbeam or did someone else take</p> <p>19 care of that?</p> <p>20 A. Most of that was actually done by the, by our,</p> <p>21 our financial analysts, Tiruse (ph.), Tyrone and</p> <p>22 Louie.</p> <p>23 Q. You can set that aside. During your trip to</p> <p>24 Sunbeam in September, late September of 1997 did</p> <p>25 you ever meet with any of the company's internal</p>
<p style="text-align: right;">Page 91</p> <p>1 EUGENE YOO</p> <p>2 about the quality of the company. I think the</p> <p>3 growth aspect was coming out of the growth plan</p> <p>4 that Sunbeam had.</p> <p>5 Q. So the statements, the four bullet point</p> <p>6 statements that appear on Morgan Stanley 5986</p> <p>7 are Morgan Stanley's opinion of the condition of</p> <p>8 Sunbeam Corporation at this time?</p> <p>9 MS. BROWN: Object. Mischaracter --</p> <p>10 Q. I'm sorry. At the time that the document was</p> <p>11 circulated to the worldwide IBD Professionals?</p> <p>12 MS. BROWN: Objection.</p> <p>13 Mischaracterization. Foundation.</p> <p>14 A. At the time that this was drafted based on the</p> <p>15 information that we had from the company and</p> <p>16 what we knew about the company, you know, we</p> <p>17 felt that these were reasonably accurate.</p> <p>18 Q. Do you recall anything specifically that you did</p> <p>19 to confirm that Sunbeam had undergone a profound</p> <p>20 transformation since the arrival of new</p> <p>21 management in July of 1996?</p> <p>22 A. I don't remember specifically.</p> <p>23 Q. For the next bullet point "tremendous intrinsic</p> <p>24 value, outpacing nearest competitors"?</p> <p>25 A. Uh-huh.</p>	<p style="text-align: right;">Page 93</p> <p>1 EUGENE YOO</p> <p>2 auditors?</p> <p>3 A. No, I don't think we did.</p> <p>4 Q. You never spoke to Tom Hartshorn?</p> <p>5 A. Harshorn?</p> <p>6 Q. Thank you.</p> <p>7 A. I don't recall ever meeting him face to face. I</p> <p>8 think I may have spoken to him on the phone once</p> <p>9 or twice.</p> <p>10 Q. What did you discuss with him?</p> <p>11 A. I don't recall.</p> <p>12 Q. How about Deirdre Dadando, did you ever speak</p> <p>13 with her on the phone?</p> <p>14 A. I don't recall that name.</p> <p>15 Q. Did you ever review Sunbeam's internal audit</p> <p>16 papers?</p> <p>17 A. I don't believe we did.</p> <p>18 Q. Did you ever review the audit work papers</p> <p>19 prepared by Arthur Andersen, Sunbeam's</p> <p>20 accountant?</p> <p>21 A. I don't think we did. We typically don't review</p> <p>22 the audit papers.</p> <p>23 Q. Why is that?</p> <p>24 A. We rely on the auditors who provide us with a</p> <p>25 comfort on the financials. We couldn't do that</p>

<p style="text-align: right;">Page 94</p> <p>1 EUGENE YOO</p> <p>2 on every transaction to go in and review their</p> <p>3 work.</p> <p>4 Q. Did you ever speak to anyone at Arthur Andersen</p> <p>5 in connection with your due diligence?</p> <p>6 A. I don't think we did.</p> <p>7 Q. You don't recall speaking to Larry Bornstein?</p> <p>8 A. No. I may have on the phone once, but I don't</p> <p>9 really remember. I didn't really deal with</p> <p>10 Larry.</p> <p>11 Q. Do you know who Larry Bornstein is? Have you</p> <p>12 met him?</p> <p>13 A. I've never met him, no.</p> <p>14 Q. Phil Harlow?</p> <p>15 A. Phil I think I've spoken to. I think he was the</p> <p>16 person I talked to more.</p> <p>17 Q. You don't recall what you discussed with</p> <p>18 Mr. Bornstein?</p> <p>19 A. No.</p> <p>20 Q. Do you recall what you discussed with</p> <p>21 Mr. Harlow?</p> <p>22 A. I don't remember specifically. It was more in</p> <p>23 connection with the acquisitions that Sunbeam</p> <p>24 was making.</p> <p>25 Q. Was part of your due diligence of Sunbeam and</p>	<p style="text-align: right;">Page 96</p> <p>1 EUGENE YOO</p> <p>2 as part of your due diligence? I'm sorry. I</p> <p>3 withdraw that question.</p> <p>4 Is that the same -- does that refer to the</p> <p>5 trip that we discussed in CPH Exhibit 221?</p> <p>6 A. I believe that's the same trip, yes.</p> <p>7 Q. And then the next page lists October 29th?</p> <p>8 A. Uh-huh.</p> <p>9 Q. "MS due diligence regarding growth strategies</p> <p>10 and strategic plan at Sunbeam's headquarters in</p> <p>11 Florida" and your name, Mr. Chang's name and</p> <p>12 Miss Rafii's name are listed there. Do you</p> <p>13 recall traveling to Sunbeam in Florida on</p> <p>14 October 29th to conduct due diligence on</p> <p>15 Sunbeam's growth strategies and strategic plan?</p> <p>16 A. I vaguely remember making the trip.</p> <p>17 Q. Do you recall what you did on that trip?</p> <p>18 A. I just remember part of it being sitting with</p> <p>19 Rich Goudis and with Russ and some of the backup</p> <p>20 financials they had to the growth plan,</p> <p>21 understanding how they built up to their final,</p> <p>22 final numbers. I don't recall what else we did</p> <p>23 on that trip.</p> <p>24 Q. Did they provide you with documents reflecting</p> <p>25 that build up?</p>
<p style="text-align: right;">Page 95</p> <p>1 EUGENE YOO</p> <p>2 its financial condition you didn't have</p> <p>3 conversation with Mr. Harlow or Mr. Bornstein?</p> <p>4 MS. BROWN: Objection. Mischaracterizes.</p> <p>5 A. I don't believe we did.</p> <p>6 Q. Sir, I'm handing you what's previously been</p> <p>7 marked as CPH Exhibit 84. Have you seen this</p> <p>8 document?</p> <p>9 A. I don't believe I have.</p> <p>10 Q. This is a document that was produced by Morgan</p> <p>11 Stanley and it appears to be the chronology of</p> <p>12 the events, some of the events, Project Laser.</p> <p>13 On page 2 of the chronology next to the date of</p> <p>14 September 23rd and 24th, the event reads "MS due</p> <p>15 diligence at SOC"?</p> <p>16 A. Uh-huh.</p> <p>17 Q. First, SOC refers to Sunbeam's stock ticker</p> <p>18 symbol; correct?</p> <p>19 A. Correct.</p> <p>20 Q. And the participants of that due diligence</p> <p>21 session at Sunbeam are listed as yourself and</p> <p>22 Mr. Chang --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- at Sunbeam's headquarters? Do you recall</p> <p>25 traveling to Sunbeam on September 23rd and 24th</p>	<p style="text-align: right;">Page 97</p> <p>1 EUGENE YOO</p> <p>2 A. Yes, I believe they did.</p> <p>3 Q. Do you recall what those documents contained?</p> <p>4 A. I don't remember now, no.</p> <p>5 Q. Did you speak with anyone besides Mr. Goudis and</p> <p>6 Mr. Kirsch during that trip?</p> <p>7 A. I may have. I think there was somebody else</p> <p>8 that worked for Russ that we actually dealt with</p> <p>9 on a more regular basis for the financials. And</p> <p>10 we may have talked to, we may have talked to Don</p> <p>11 as well, Don Oosi.</p> <p>12 Q. Did you speak with anyone below senior</p> <p>13 management on that trip to discuss the back up</p> <p>14 for the strategic plan or the growth strategies?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you recall anything else about that trip or</p> <p>17 the information you learned?</p> <p>18 A. No. I don't recall anything else about that.</p> <p>19 Q. Did anyone else from Morgan Stanley go down to</p> <p>20 Florida for that trip other than yourself and</p> <p>21 Mr. Chang and Miss Rafii?</p> <p>22 A. I don't know. I don't remember.</p> <p>23 Q. Handing you what's been previously marked as</p> <p>24 Exhibit CPH 173. Do you recall traveling to</p> <p>25 Sunbeam's headquarters in Florida on January</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 EUGENE YOO</p> <p>2 5th?</p> <p>3 A. January 5th? I don't remember what the trip was</p> <p>4 for.</p> <p>5 Q. You don't recall going down to Florida shortly</p> <p>6 after New Year's, 1998?</p> <p>7 A. I may have. I mean....</p> <p>8 Q. If you turn to CPH Exhibit 84, --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- page 33259.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Next to January 5th there's an entry that states</p> <p>13 "meeting with SOC to prepare for potential sell</p> <p>14 side management presentation to Phillips." Does</p> <p>15 that refresh your recollection of your trip to</p> <p>16 Florida on January 5th?</p> <p>17 A. I'm sorry, I'm drawing a blank on that. I don't</p> <p>18 remember.</p> <p>19 Q. Mr. Yoo, did you create any documents to reflect</p> <p>20 the information that you learned during the due</p> <p>21 diligence trips to Sunbeam?</p> <p>22 MS. BROWN: Object to the form.</p> <p>23 A. The, I mean, on which trip? On --</p> <p>24 Q. Any of the trips.</p> <p>25 A. I may have taken notes. That's all I know.</p>	<p style="text-align: right;">Page 100</p> <p>1 EUGENE YOO</p> <p>2 A. I'm pretty sure we went through some of them</p> <p>3 again at some point.</p> <p>4 Q. You didn't create any summaries of your due</p> <p>5 diligence findings?</p> <p>6 A. No.</p> <p>7 Q. In 1997 and 1998 did Morgan Stanley have any</p> <p>8 policies documenting due diligence?</p> <p>9 A. Not that I knew of.</p> <p>10 Q. Did you receive any training at Morgan Stanley</p> <p>11 on conducting due diligence or documenting due</p> <p>12 diligence?</p> <p>13 A. There was no formal training class on due</p> <p>14 diligence. You know, just like almost anything</p> <p>15 else on the job it's sort of learning on the</p> <p>16 job, learning with somebody else who knows what</p> <p>17 they're doing. In this case, especially in this</p> <p>18 case because it was my first MNA transaction, I</p> <p>19 was working with Alex and also Tyrone who had</p> <p>20 actually more experience than I did in the MNA</p> <p>21 group.</p> <p>22 Q. Were you ever given a manual at Morgan Stanley</p> <p>23 which provided policies and recommendations on</p> <p>24 conducting due diligence?</p> <p>25 A. I don't think we ever received anything like</p>
<p style="text-align: right;">Page 99</p> <p>1 EUGENE YOO</p> <p>2 Q. Was it your practice to take handwritten notes</p> <p>3 while you were conducting due diligence while</p> <p>4 reviewing documents and speaking with people?</p> <p>5 A. Generally I took notes, yeah.</p> <p>6 Q. But you don't recall doing so in this case?</p> <p>7 A. Again, I'm speculating. I'm assuming I did but</p> <p>8 I don't have anything.</p> <p>9 Q. Nobody at Morgan Stanley was designated as the</p> <p>10 point person who was responsible for keeping</p> <p>11 notes of the due diligence activities?</p> <p>12 A. Typically the analysts were the ones that were</p> <p>13 responsible for making sure that any and all</p> <p>14 information that we gathered on a due diligence</p> <p>15 trip made it back with us to New York. Whether</p> <p>16 that was notes or physical documents that we</p> <p>17 received or discs or anything like that.</p> <p>18 Q. Did the analysts on the Sunbeam engagement do</p> <p>19 that?</p> <p>20 A. I believe they did.</p> <p>21 Q. Do you know where those notes or documents were</p> <p>22 stored once they were carried back to New York?</p> <p>23 A. No.</p> <p>24 Q. Did you ever look at those documents at a</p> <p>25 subsequent time after the due diligence trip?</p>	<p style="text-align: right;">Page 101</p> <p>1 EUGENE YOO</p> <p>2 that. I don't remember anything like that.</p> <p>3 Q. Other than the trips that we've looked at on</p> <p>4 your itineraries or in this chronology, do you</p> <p>5 recall any other trips to Sunbeam in 1997 where</p> <p>6 you performed due diligence?</p> <p>7 A. No. I don't recall any, anything specific.</p> <p>8 Q. Mr. Yoo, did you prepare presentation books for</p> <p>9 potential acquisition targets in the Sunbeam</p> <p>10 engagement?</p> <p>11 A. I believe we did.</p> <p>12 Q. Did you personally?</p> <p>13 A. I am pretty sure that I helped work on them.</p> <p>14 Q. Who else was involved in preparing presentation</p> <p>15 books?</p> <p>16 A. I guess it depends on the book.</p> <p>17 (Deposition Exhibit 222 marked for</p> <p>18 identification.)</p> <p>19 Q. You've been handed what's been marked as CPH</p> <p>20 Exhibit 222, which is a Morgan Stanley document</p> <p>21 Bates labeled 3431 through 3464. Have you seen</p> <p>22 this document before, sir?</p> <p>23 A. Yes, I believe I have.</p> <p>24 Q. Did you draft this document?</p> <p>25 A. I helped put it, I helped put it together.</p>

<p style="text-align: right;">Page 102</p> <p>1 EUGENE YOO</p> <p>2 Q. Do you recall when you did that?</p> <p>3 A. No, I don't remember.</p> <p>4 Q. If you look on the lower left-hand corner of the</p> <p>5 document there's a computer file stamp and a</p> <p>6 date; do you see that?</p> <p>7 A. Uh-huh. Yes.</p> <p>8 Q. It appears that the date is December 11, 1997.</p> <p>9 Does that refresh your recollection as to the</p> <p>10 time that you helped prepare this document?</p> <p>11 A. Yes, a little bit.</p> <p>12 Q. What's the purpose of this document?</p> <p>13 MS. BROWN: Objection. Foundation.</p> <p>14 A. Who were we presenting this to, or?</p> <p>15 Q. Why was that document created?</p> <p>16 A. I can't be certain but I think it might have</p> <p>17 been to inform or, I guess, educate Sunbeam on</p> <p>18 the Coleman Company.</p> <p>19 Q. Do you know if this document was given to</p> <p>20 Sunbeam?</p> <p>21 A. I don't know that for sure.</p> <p>22 Q. If you turn back, sir, to CPH Exhibit 84, the</p> <p>23 chronology.</p> <p>24 A. Okay.</p> <p>25 Q. There's an entry there for December 11th.</p>	<p style="text-align: right;">Page 104</p> <p>1 EUGENE YOO</p> <p>2 Coleman Company. There's a document entitled</p> <p>3 the Coleman Company, Inc. Transaction Rationale.</p> <p>4 Did you prepare this page?</p> <p>5 A. I don't think I did. It doesn't look familiar.</p> <p>6 Q. There's a column entitled Issues and there's a</p> <p>7 bullet point, second bullet point under that</p> <p>8 column indicates "research earnings, estimates</p> <p>9 already include 50 million of cost savings"?</p> <p>10 A. Okay.</p> <p>11 Q. Do you have any recollection of looking into</p> <p>12 that information?</p> <p>13 A. "Looking into" meaning what?</p> <p>14 Q. Determining whether that was in fact the case.</p> <p>15 A. I don't know. I don't remember looking into it.</p> <p>16 Q. If you flip ahead, sir, to Morgan Stanley 3452.</p> <p>17 That page is entitled Synergy and Price</p> <p>18 Analysis; did you prepare this page?</p> <p>19 A. No. This was part of the model that Tyrone was</p> <p>20 working on.</p> <p>21 Q. This page in the upper left-hand corner</p> <p>22 indicates that this is, this purports to be a</p> <p>23 chart relating to Sunbeam's acquisition of</p> <p>24 Coleman with synergies; do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 103</p> <p>1 EUGENE YOO</p> <p>2 "Meeting with Sunbeam management to discuss</p> <p>3 potential Coleman transaction. Sunbeam --</p> <p>4 A. Okay.</p> <p>5 Q. -- initiated talks with Coleman without MS</p> <p>6 knowledge background presentation on Coleman and</p> <p>7 preliminary financial analysis presented"?</p> <p>8 A. Okay.</p> <p>9 Q. Does that refresh your recollection, sir, on</p> <p>10 what was done with this document?</p> <p>11 A. Well, I wasn't actually at the meeting, I don't</p> <p>12 know what they used this for. It could have</p> <p>13 either been to inform Sunbeam or sometimes our</p> <p>14 own team use it to make sure we knew all of the</p> <p>15 answers if anybody had any questions on Coleman,</p> <p>16 if they asked us what the sales were last year</p> <p>17 or anything like that.</p> <p>18 Q. Do you recall when you first started researching</p> <p>19 the Coleman Company in connection with the</p> <p>20 Sunbeam engagement?</p> <p>21 A. No. I mean, there were so many things happening</p> <p>22 at the time, I don't remember.</p> <p>23 Q. If you could turn, sir, to the third page of CPH</p> <p>24 Exhibit 222. In the overview of the Coleman</p> <p>25 Company the section entitled Overview of the</p>	<p style="text-align: right;">Page 105</p> <p>1 EUGENE YOO</p> <p>2 Q. Is it your testimony that you were not involved</p> <p>3 in preparing model outputs that analyzed an</p> <p>4 acquisition of the Coleman Company and the</p> <p>5 synergies that are assumed in such an</p> <p>6 acquisition?</p> <p>7 MS. BROWN: Objection to form.</p> <p>8 Mischaracterizes.</p> <p>9 A. No, that's not what I am saying. I certainly</p> <p>10 helped work on a good portions of the model.</p> <p>11 This particular one, though, is one I didn't</p> <p>12 really work on.</p> <p>13 Q. When you say you worked on portions of the</p> <p>14 model, what do you mean by that?</p> <p>15 A. Well, I was overseeing Tyrone as he would run</p> <p>16 various analyses.</p> <p>17 Q. Did you tell Tyrone what data to input into the</p> <p>18 model?</p> <p>19 MS. BROWN: Object to the form.</p> <p>20 A. I didn't, I didn't give him the specific numbers</p> <p>21 to put in, but I would help him tell, you know,</p> <p>22 help him figure out where the sources were.</p> <p>23 Q. What were the sources of that data?</p> <p>24 MS. BROWN: Object to form.</p> <p>25 A. I mean, the data for the inputs?</p>

<p style="text-align: right;">Page 106</p> <p>1 EUGENE YOO</p> <p>2 Q. Correct. For the synergy analysis.</p> <p>3 A. I don't know what the data for the synergy</p> <p>4 analysis was. Generally for the model we used</p> <p>5 publicly available financials.</p> <p>6 Q. Did you ask Mr. Tyrone where he obtained the</p> <p>7 data to perform synergy and price analysis that</p> <p>8 appears on Morgan Stanley 3452?</p> <p>9 A. No. I think this was something that he was</p> <p>10 running with Alex. But I can't be certain. But</p> <p>11 I don't really recall anything about this page.</p> <p>12 Q. Flip ahead to Morgan Stanley 3454. This is a</p> <p>13 chart entitled Transaction Structure Analysis?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And the upper left-hand corner indicates "SOC</p> <p>16 acquires Coleman without synergies"?</p> <p>17 MS. BROWN: Coleman, SOC.</p> <p>18 Q. Thank you. Did you prepare this document?</p> <p>19 A. I don't know if I helped prepare this specific</p> <p>20 one. This is again a page from our standard</p> <p>21 model which we've run hundreds of times. I</p> <p>22 don't know if this specific version is one that</p> <p>23 I worked on.</p> <p>24 Q. Again, you don't know the source of the data --</p> <p>25 I'll withdraw that.</p>	<p style="text-align: right;">Page 108</p> <p>1 EUGENE YOO</p> <p>2 Q. What page is that?</p> <p>3 A. 3452.</p> <p>4 Q. And that page you don't recall where those, that</p> <p>5 synergy data came from?</p> <p>6 A. I don't know.</p> <p>7 MS. BROWN: Chris, are we going to take a</p> <p>8 lunch break?</p> <p>9 MR. O'CONNOR: Yeah, I'm close to moving on</p> <p>10 so let's finish this up. I would like that</p> <p>11 marked the next document.</p> <p>12 (Deposition Exhibit 223 marked for</p> <p>13 identification.)</p> <p>14 Q. Sir, you've been handed what's been marked as</p> <p>15 CPH Exhibit 223; do you recall this document?</p> <p>16 A. I think I do, yes.</p> <p>17 Q. Did you draft this document?</p> <p>18 A. I can't be certain. I don't know.</p> <p>19 (Deposition Exhibit 224 marked for</p> <p>20 identification.)</p> <p>21 Q. Sir, you've been handed what's been marked as</p> <p>22 CPH Exhibit 224.</p> <p>23 A. Uh-huh.</p> <p>24 Q. I'll represent to you, sir, that the first two</p> <p>25 pages of this document contain meta data from</p>
<p style="text-align: right;">Page 107</p> <p>1 EUGENE YOO</p> <p>2 If you turn to the next page, Morgan</p> <p>3 Stanley 3455. It's another transaction</p> <p>4 structure analysis. This time it says, "SOC</p> <p>5 acquires CLN with synergies." Do you see that?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And the synergies assumptions in the bottom</p> <p>8 left-hand corner states, "includes synergies of</p> <p>9 95.1 million." Do you know where that number</p> <p>10 came from?</p> <p>11 A. No, I don't know.</p> <p>12 Q. Turn to the next page. Morgan Stanley 3456.</p> <p>13 That analysis includes synergies of 126.8</p> <p>14 million. Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Do you know where that number came from?</p> <p>17 A. I can take a guess but it's just a guess. I</p> <p>18 don't know for certain.</p> <p>19 Q. Well, where do you believe it came from? What's</p> <p>20 your guess?</p> <p>21 MS. BROWN: Objection. Calls for</p> <p>22 speculation.</p> <p>23 A. And just, it looks like it comes off of this</p> <p>24 chart you first showed me, the synergy and price</p> <p>25 analysis.</p>	<p style="text-align: right;">Page 109</p> <p>1 EUGENE YOO</p> <p>2 file produced to us by Morgan Stanley. Are you</p> <p>3 familiar with the concept of meta data?</p> <p>4 A. Not very, no.</p> <p>5 Q. Okay. Information contained in the file that</p> <p>6 was provided to us indicates that you created</p> <p>7 this document on December 11, 1997, as indicated</p> <p>8 by your name after author, y-o-o-g?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And under Document Statistics, Creation Date.</p> <p>11 Does this refresh your recollection of your</p> <p>12 drafting of this document?</p> <p>13 A. Again, I can't be certain, but it's possible I</p> <p>14 drafted it.</p> <p>15 Q. Do you know why this document was drafted on</p> <p>16 December 11, 1997?</p> <p>17 A. On the 11th? I don't remember exactly why.</p> <p>18 Q. Did you attend a December 12, 1997 meeting</p> <p>19 between Sunbeam management and MacAndrews and</p> <p>20 Forbes Holdings Company to discuss a potential</p> <p>21 transaction involving those two companies?</p> <p>22 A. No. I never met with MacAndrews and Forbes.</p> <p>23 Q. At anytime?</p> <p>24 A. I met with somebody from MacAndrews and Forbes</p> <p>25 after the acquisition when we were selling the</p>

<p style="text-align: right;">Page 110</p> <p>1 EUGENE YOO</p> <p>2 spa business.</p> <p>3 Q. Were you aware of the meeting on December 12th?</p> <p>4 A. Sure. I'm pretty sure I was.</p> <p>5 Q. Do you know if Sunbeam used Exhibits 222, 223</p> <p>6 and 224 in connection with their meeting with</p> <p>7 MacAndrews and Forbes?</p> <p>8 A. I don't know.</p> <p>9 MS. BROWN: Hold on. 224?</p> <p>10 MR. O'CONNOR: I'm sorry, Exhibit 222 and</p> <p>11 Exhibit 223. Thank you.</p> <p>12 MS. BROWN: Objection. Foundation.</p> <p>13 A. I don't know.</p> <p>14 Q. Do these documents refresh your recollection,</p> <p>15 sir, that Morgan Stanley was analyzing potential</p> <p>16 synergies of a Sunbeam/Coleman transaction prior</p> <p>17 to the first meeting between Sunbeam and</p> <p>18 MacAndrews and Forbes on December 12, 1997?</p> <p>19 MS. BROWN: Object to form. Object to</p> <p>20 foundation. And also I believe mischaracterizes</p> <p>21 the facts in evidence.</p> <p>22 A. I mean, I don't know. I mean, which synergies,</p> <p>23 which?</p> <p>24 Q. We looked at two documents that indicated that</p> <p>25 someone at Morgan Stanley, perhaps Mr. Chang,</p>	<p style="text-align: right;">Page 112</p> <p>1 EUGENE YOO</p> <p>2 A. It appears that way.</p> <p>3 Q. A good time to take a lunch break?</p> <p>4 VIDEOGRAPHER: The time is twelve thirty,</p> <p>5 we're off the record.</p> <p>6 (Lunch break taken.)</p> <p>7 VIDEOGRAPHER: We're back on the record.</p> <p>8 This is tape number 3, the time is eleven</p> <p>9 minutes after one.</p> <p>10 Q. Mr. Yoo, before the lunch break you testified</p> <p>11 that you had no contacts with representatives of</p> <p>12 MacAndrews and Forbes Holdings until, except for</p> <p>13 after the transaction closed; is that correct?</p> <p>14 A. As far as I can remember that's correct.</p> <p>15 Q. If you can turn back to CPH Exhibit 84, the</p> <p>16 chronology.</p> <p>17 A. Okay.</p> <p>18 Q. And on page 33259 of that document there's an</p> <p>19 entry for January 23rd. And next to that entry</p> <p>20 there is a description, "meeting with Mavco,</p> <p>21 reinstate talks, Ray Coleman." The location it</p> <p>22 says Emco headquarters, I believe that to be</p> <p>23 Mavco headquarters in New York. Your name is</p> <p>24 listed as an attendee. Is that an error or do</p> <p>25 you recall meeting with Mavco on January 23rd?</p>
<p style="text-align: right;">Page 111</p> <p>1 EUGENE YOO</p> <p>2 perhaps yourself, were compiling information</p> <p>3 analyzing potential transaction between Sunbeam</p> <p>4 and Coleman; correct?</p> <p>5 A. It appears that way, yes.</p> <p>6 Q. And those documents are dated December 11, 1997;</p> <p>7 right?</p> <p>8 A. Okay, yeah.</p> <p>9 Q. Okay. My question for you is do you recall</p> <p>10 yourself or Mr. Chang or anyone else at Morgan</p> <p>11 Stanley analyzing the potential synergies of a</p> <p>12 transaction between Coleman and Sunbeam before</p> <p>13 December 12, 1997?</p> <p>14 MS. BROWN: Object to the form. Compound.</p> <p>15 And also foundation.</p> <p>16 A. Again, I don't remember specifically what we</p> <p>17 were looking at with Coleman prior to the</p> <p>18 meeting. I don't really remember the chronology</p> <p>19 of the meetings with Coleman.</p> <p>20 Q. But although you don't know the source of the</p> <p>21 synergy data that appears in CPH Exhibit 222</p> <p>22 that document reveals that someone at Morgan</p> <p>23 Stanley was inputting synergy assumptions into</p> <p>24 models to determine a potential transaction with</p> <p>25 the Coleman Company; correct?</p>	<p style="text-align: right;">Page 113</p> <p>1 EUGENE YOO</p> <p>2 A. I don't recall that meeting at all. I don't</p> <p>3 think I've ever been to their headquarters.</p> <p>4 Q. If you turn to the next page there's an entry</p> <p>5 for January 29th, there are a lot of names</p> <p>6 listed there, yours is not among them.</p> <p>7 A. Okay.</p> <p>8 Q. Reflecting another meeting with Coleman and</p> <p>9 Mavco. You were not present in that meeting as</p> <p>10 well, at Revlon's headquarters?</p> <p>11 A. I was not there.</p> <p>12 Q. And again, on February 6th there's an entry for</p> <p>13 a meeting with Mavco to negotiate the Coleman</p> <p>14 transaction at Mavco's headquarters. Mr.</p> <p>15 Chang's name is listed but yours is not, you did</p> <p>16 not attend that meeting?</p> <p>17 A. Again, I don't believe I ever went there. I</p> <p>18 don't think I've ever been to the Mavco</p> <p>19 headquarters.</p> <p>20 Q. If you can turn to the next page, Morgan Stanley</p> <p>21 33261. There's an entry dated February 23rd,</p> <p>22 "strategic due diligence meeting with Coleman,</p> <p>23 review strategic plan in 1998 projections,</p> <p>24 arrange for facility visits, due diligence on</p> <p>25 Sunbeam by Coleman and CSFB." Again, your name</p>

<p style="text-align: right;">Page 114</p> <p>1 EUGENE YOO</p> <p>2 is not listed there, do you have any</p> <p>3 recollection of any meetings on February 23rd</p> <p>4 involving those individuals?</p> <p>5 A. No, I don't.</p> <p>6 Q. You don't recall any discussions involving</p> <p>7 MacAndrews and Forbes or anyone from Coleman</p> <p>8 with members of Morgan Stanley or Sunbeam</p> <p>9 concerning any details of the transaction such</p> <p>10 as the price, the timing, the consideration that</p> <p>11 would be paid?</p> <p>12 A. No, I don't remember being part of any of those</p> <p>13 meetings.</p> <p>14 Q. I'm handing you what's been previously marked as</p> <p>15 CPH Exhibit 9. Do you recall this document,</p> <p>16 sir?</p> <p>17 A. Yes, I think I do.</p> <p>18 Q. What is this document?</p> <p>19 A. I think this was our, our company description of</p> <p>20 Sunbeam and its current situation.</p> <p>21 Q. Do you call this a presentation book?</p> <p>22 A. I guess -- what do you mean by presentation</p> <p>23 book? It appears to be in presentation format.</p> <p>24 Q. Do you know if this document was provided to</p> <p>25 Coleman Company representatives or MacAndrews</p>	<p style="text-align: right;">Page 116</p> <p>1 EUGENE YOO</p> <p>2 MS. BROWN: Document or page?</p> <p>3 MR. O'CONNOR: Page.</p> <p>4 A. This page, yes. I do recall that.</p> <p>5 Q. What's the purpose of preparing this document,</p> <p>6 the discussion materials marked as CPH Exhibit</p> <p>7 9?</p> <p>8 A. I don't know specifically what meeting this is</p> <p>9 for or who the audience was.</p> <p>10 Q. Was this document an effort by Morgan Stanley to</p> <p>11 in essence sell Sunbeam Corporation -- I</p> <p>12 withdraw.</p> <p>13 Is this document in essence materials</p> <p>14 prepared to provide prospective buyers or</p> <p>15 acquisition targets with information concerning</p> <p>16 Sunbeam's existing financial and business</p> <p>17 condition?</p> <p>18 A. I don't know if that was the purpose here.</p> <p>19 Q. Do you know of any other purpose --</p> <p>20 A. It could have been. I'm sorry.</p> <p>21 Q. Do you know of any other purpose this document</p> <p>22 would serve?</p> <p>23 A. February of '98. It could have been given,</p> <p>24 again, just speculating, it could have been</p> <p>25 given to anyone just to update them or inform</p>
<p style="text-align: right;">Page 115</p> <p>1 EUGENE YOO</p> <p>2 and Forbes representatives in February of 1998?</p> <p>3 A. I don't know what they were given.</p> <p>4 Q. If you could turn to page 26290, which is the</p> <p>5 fifth page in on Exhibit 9.</p> <p>6 A. Okay.</p> <p>7 Q. Do you recognize that document, sir, as the same</p> <p>8 document that was circulated to Worldwide IBD</p> <p>9 Professionals at Morgan Stanley back on October</p> <p>10 22nd of 1997?</p> <p>11 MS. BROWN: What's the Exhibit number?</p> <p>12 MR. O'CONNOR: CPH Exhibit 71.</p> <p>13 (Prior testimony read back.)</p> <p>14 "Do you recognize that document,</p> <p>15 sir, as the same document that was</p> <p>16 circulated to Worldwide IBD</p> <p>17 Professionals at Morgan Stanley</p> <p>18 back on October 22nd of 1997?"</p> <p>19 A. Okay, they look to be the same page?</p> <p>20 Q. And this particular page it was prepared by you?</p> <p>21 A. You know, again, I don't remember if I prepared</p> <p>22 this one specifically.</p> <p>23 Q. But you recall -- you recall that document being</p> <p>24 prepared in connection with attempting to find a</p> <p>25 buyer or acquisition targets for Sunbeam?</p>	<p style="text-align: right;">Page 117</p> <p>1 EUGENE YOO</p> <p>2 them about Sunbeam. Just their current</p> <p>3 situation.</p> <p>4 Q. For what purpose?</p> <p>5 A. Oh, I don't know.</p> <p>6 Q. As you flip through this document, Mr. Yoo, did</p> <p>7 you prepare, do you recognize any pages in this</p> <p>8 document that you prepared?</p> <p>9 A. I didn't put any of these pages together myself.</p> <p>10 But I worked with Tyrone and Lilly in putting</p> <p>11 them together.</p> <p>12 Q. Did Mr. Chang and Miss Rafii provide you with</p> <p>13 the materials that they were preparing for your</p> <p>14 review?</p> <p>15 MS. BROWN: Object to the form.</p> <p>16 A. They provided me with these pages, you mean?</p> <p>17 Q. Were you asked to review the work product of</p> <p>18 Mr. Chang and Miss Rafii?</p> <p>19 A. Yes, I did review their work.</p> <p>20 Q. And if there were any errors or inconsistencies</p> <p>21 would you correct those or send the document</p> <p>22 back to them to change?</p> <p>23 MS. BROWN: Are you referring specifically</p> <p>24 to this document?</p> <p>25 Q. Generally the documents that they were</p>

Page 118

1 EUGENE YOO
 2 preparing.
 3 A. I'm sorry, what was the question?
 4 Q. In general the documents that were prepared by
 5 Mr. Chang and Miss Rafii for your review, if you
 6 found any inconsistencies or errors in those
 7 documents did you change those documents or did
 8 you send them back down to those individuals for
 9 editing?
 10 A. I would give them the changes to make.
 11 Q. Showing you what has been previously marked as
 12 CPH Exhibit 187. Do you recognize that
 13 document?
 14 A. I think I do.
 15 Q. When do you recall seeing that document?
 16 A. I don't know the exact date. But I think I saw
 17 this or some version of this presentation in the
 18 fall of 1997.
 19 Q. Did you prepare any of the pages in this
 20 document?
 21 A. I don't think so.
 22 Q. Do you know who did?
 23 A. I don't know.
 24 Q. The same question for CPH Exhibit 9, do you know
 25 who compiled the materials to create this

Page 119

1 EUGENE YOO
 2 discussion material packet?
 3 A. CPH 9?
 4 Q. Correct.
 5 A. The raw data and information that was used to
 6 produce this was probably collected by Lilly and
 7 Tyrone.
 8 Q. What did you do to confirm that the information
 9 contained in CPH Exhibit 9 and CPH Exhibit 187
 10 was accurate?
 11 A. Accurate meaning?
 12 Q. True.
 13 A. Was it actually -- okay. Not that these and
 14 this were the same, or?
 15 Q. Correct. Let's take them one at a time.
 16 A. Okay.
 17 Q. CPH Exhibit 9. What did you do to confirm that
 18 the information contained in CPH Exhibit 9 was
 19 accurate?
 20 A. Okay. Again, I couldn't give you specific
 21 examples, but for the most part we would go back
 22 or I would go back and check the file output of
 23 the product, a page like this versus whatever
 24 source data I could get my hands on. Mostly
 25 looking for accuracy and figures and text.

Page 120

1 EUGENE YOO
 2 Q. Do you recall any instance where you found
 3 inaccuracies in their materials that you had to
 4 change?
 5 A. There were a few instances of typographical
 6 errors or just misinterpreting of some numbers,
 7 maybe. But not many.
 8 Q. And again, with CPH Exhibit 187, what did you do
 9 to confirm that the statements contained in this
 10 document were accurate?
 11 MS. BROWN: Objection. Assumes facts not
 12 in evidence.
 13 Q. I'm sorry, what was the --
 14 (Prior testimony read back.)
 15 "And again, with CPH Exhibit 187,
 16 what did you do to confirm that
 17 the statements contained in this
 18 document were accurate?"
 19 A. I don't remember the specific steps that we
 20 took. Many of the things in here are just
 21 statements that, I don't think anybody can
 22 verify one way or the other. The financials, to
 23 the extent they're in here, I don't believe we
 24 really even used because they're too general and
 25 too broad.

Page 121

1 EUGENE YOO
 2 Q. If someone -- I'm sorry.
 3 A. We may have used some of these but I don't
 4 really think we relied on these very much.
 5 Q. If somebody outside of Morgan Stanley or
 6 somebody wanted to confirm the accuracy of these
 7 statements, what would they do?
 8 MS. BROWN: Objection. Hypothetical.
 9 Calls for speculation.
 10 A. Well, I mean, in the few cases that I had where
 11 we had questions with a company's numbers we
 12 would ask for any kind of backup data that they
 13 had to support the final numbers that they were
 14 showing us and how did they arrive at that
 15 particular number, what was the methodology.
 16 Q. So if an individual investor wanted to confirm
 17 the accuracy of these statements they would have
 18 to ask somebody for the backup information; is
 19 that your testimony?
 20 MS. BROWN: Objection. Mischaracterizes.
 21 Also a hypothetical.
 22 A. I don't think an individual investor would ever
 23 see this presentation, but I don't know. I
 24 don't know who it's given to.
 25 Q. If you can turn to page CPH 254636 in Exhibit

<p style="text-align: right;">Page 122</p> <p>1 EUGENE YOO</p> <p>2 187.</p> <p>3 A. Okay.</p> <p>4 Q. That page is entitled Long Range Strategic</p> <p>5 Objectives Earnings From Continuing Operations.</p> <p>6 At the bottom of that table there's EPS,</p> <p>7 earnings per share, estimated at two dollars and</p> <p>8 twenty cents in 1998; do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What did you do to confirm that that estimate</p> <p>11 was accurate?</p> <p>12 A. I don't remember specifically what we did on</p> <p>13 that.</p> <p>14 Q. The same question for 1999 and 2000; do you</p> <p>15 recall what you did to confirm the accuracy of</p> <p>16 two seventy-five a share and three thirty a</p> <p>17 share?</p> <p>18 A. Again, on these financials and this presentation</p> <p>19 I'm not sure if we relied on these numbers as</p> <p>20 much. Generally speaking, going back to what I</p> <p>21 said before, if there were numbers in any of the</p> <p>22 financials we got back from a client that we had</p> <p>23 questions on or were unsure of we would go back</p> <p>24 and ask for the backup data and then we would</p> <p>25 try to rebuild that to try to see if we agreed</p>	<p style="text-align: right;">Page 124</p> <p>1 EUGENE YOO</p> <p>2 A. In 1998 we may have been using some financials</p> <p>3 from Sunbeam.</p> <p>4 Q. How about 1997?</p> <p>5 A. Definitely not before we were engaged.</p> <p>6 Q. But after -- well, do you mean formally engaged</p> <p>7 in the fall of 1997 or starting in April of 1997</p> <p>8 when Morgan Stanley began preparing materials in</p> <p>9 connection with the pitch and the engagement?</p> <p>10 A. Before the formal engagement.</p> <p>11 Q. If you could turn to page CPH 254639. It's</p> <p>12 entitled net sales growth analysis. At the</p> <p>13 bottom it indicates a net sales plan of 1.6</p> <p>14 billion in 1998, 2.0 billion in 1999, 2.4</p> <p>15 billion in 2000; do you see those numbers?</p> <p>16 A. Yes.</p> <p>17 Q. What did you do to confirm that Sunbeam --</p> <p>18 withdrawn.</p> <p>19 What did you do to confirm that these net</p> <p>20 sales were attainable?</p> <p>21 A. I don't remember about this page specifically.</p> <p>22 Or these specific numbers. But in confirming</p> <p>23 their growth plan in general, when we went</p> <p>24 through the backup financials that they had to</p> <p>25 build up to the sales, and we also met with the</p>
<p style="text-align: right;">Page 123</p> <p>1 EUGENE YOO</p> <p>2 with their conclusions on their numbers.</p> <p>3 Q. Do you recall if in 1998 you believe that</p> <p>4 Sunbeam's plan to achieve EPS of two twenty a</p> <p>5 share in 1998 was attainable?</p> <p>6 A. I can't remember any reason why we thought it</p> <p>7 was not attainable.</p> <p>8 Q. But you can't recall what you did to confirm</p> <p>9 that it was attainable?</p> <p>10 A. Not specifically, no. I mean, we had our own</p> <p>11 models that we ran.</p> <p>12 Q. Where did you obtain the data to run those</p> <p>13 models?</p> <p>14 MS. BROWN: Object to form.</p> <p>15 A. For the models that we ran here on Sunbeam, some</p> <p>16 of the information was again from public</p> <p>17 information, some of the information was from</p> <p>18 analysts reports, equity analyst reports.</p> <p>19 Q. Was the data also provided by Sunbeam itself?</p> <p>20 MS. BROWN: Objection.</p> <p>21 A. It depends on when.</p> <p>22 Q. I'm sorry?</p> <p>23 A. It depends on what time period you're talking</p> <p>24 about.</p> <p>25 Q. In the first quarter of 1998.</p>	<p style="text-align: right;">Page 125</p> <p>1 EUGENE YOO</p> <p>2 division heads to talk about the growth plans</p> <p>3 that they had for each individual, each</p> <p>4 individual division, how they were going to get</p> <p>5 that.</p> <p>6 Q. Were their plans for sales consistent with</p> <p>7 what's reflected on page CPH 254639?</p> <p>8 A. Were whose plans?</p> <p>9 Q. Sunbeam. Sunbeam management. The folks that</p> <p>10 you spoke to.</p> <p>11 A. These numbers came from them, so I don't</p> <p>12 remember exactly what the numbers were at the</p> <p>13 time.</p> <p>14 Q. If you turn to the next page, CPH 254640. What</p> <p>15 did you do, if anything, to confirm the</p> <p>16 attainability of first quarter 1998 earnings as</p> <p>17 indicated on this page?</p> <p>18 A. I think it was the same process. For our first</p> <p>19 quarter '98 we were probably also able to</p> <p>20 compare the numbers to analyst reports at the</p> <p>21 time and their projections for the 1998 first</p> <p>22 quarter.</p> <p>23 Q. Did you ever speak to any analysts about their</p> <p>24 reports?</p> <p>25 A. We never spoke to any research analysts. At</p>

<p style="text-align: right;">Page 126</p> <p>1 EUGENE YOO</p> <p>2 least I did not.</p> <p>3 Q. You don't know anyone else who did?</p> <p>4 A. I don't believe anyone did.</p> <p>5 Q. Did Morgan Stanley attempt to verify or</p> <p>6 challenge any of the statements made by the</p> <p>7 analysts?</p> <p>8 MS. BROWN: Object. Foundation.</p> <p>9 A. I don't know.</p> <p>10 Q. And, again, you don't recall if either of these</p> <p>11 documents were provided to Coleman or MacAndrews</p> <p>12 and Forbes?</p> <p>13 A. I don't know.</p> <p>14 Q. Mr. Yoo, I'm handing you what's previously been</p> <p>15 marked as CPH Exhibit 92. My first question for</p> <p>16 you, Mr. Yoo, actually is not related</p> <p>17 specifically to that document, but other than</p> <p>18 reviewing the work performed by Mr. Chang and</p> <p>19 Miss Rafii, were you involved in assessing or</p> <p>20 estimating the potential synergies of</p> <p>21 contemplated a transaction involving Sunbeam and</p> <p>22 Coleman?</p> <p>23 MS. BROWN: Object to form.</p> <p>24 A. I, you know, I was not involved in developing</p> <p>25 any kind of estimates or coming up with any kind</p>	<p style="text-align: right;">Page 128</p> <p>1 EUGENE YOO</p> <p>2 entering it into financial models?</p> <p>3 MS. BROWN: Object. Compound.</p> <p>4 A. The actual handling of the models was done by</p> <p>5 the analysts, mostly Tyrone. But all of his</p> <p>6 work was then ultimately reviewed by either</p> <p>7 myself or Alex.</p> <p>8 Q. Other than Mr. Chang do you know of anyone else</p> <p>9 that was involved with preparing synergy models?</p> <p>10 A. Preparing models using the synergy numbers?</p> <p>11 Q. Correct.</p> <p>12 A. Not that I can think of, no.</p> <p>13 Q. Turning to the document that I handed you, CPH</p> <p>14 Exhibit 92. Do you recall this document?</p> <p>15 A. I think I do, yes.</p> <p>16 Q. Do you recall reviewing this document in 1997 in</p> <p>17 connection with proposed transactions involving</p> <p>18 Black and Decker, any other companies listed in</p> <p>19 here?</p> <p>20 A. I do recall that.</p> <p>21 Q. In the second paragraph on the first page of</p> <p>22 Exhibit 92, it states, "enclosed please find our</p> <p>23 initial attempts at determining the likely</p> <p>24 synergies associated with the change of control.</p> <p>25 For each targeted company we have made estimates</p>
<p style="text-align: right;">Page 127</p> <p>1 EUGENE YOO</p> <p>2 of projections on synergies. Our role was</p> <p>3 simply using synergy numbers that others were</p> <p>4 providing to us.</p> <p>5 Q. Who provided you with those synergy numbers?</p> <p>6 A. I don't remember specifically who. But I think</p> <p>7 generally synergy numbers were provided by</p> <p>8 Sunbeam or Coopers and Lybrand.</p> <p>9 Q. And Coopers was retained by Sunbeam or Morgan</p> <p>10 Stanley to assist with preparing synergy</p> <p>11 analyses?</p> <p>12 MS. BROWN: Object? Facts not in evidence.</p> <p>13 A. I don't know -- I'm pretty sure they weren't</p> <p>14 retained by Morgan Stanley. I don't think they</p> <p>15 were working for us.</p> <p>16 Q. Other than Sunbeam and Coopers who else provided</p> <p>17 synergy numbers for Morgan Stanley's models?</p> <p>18 MS. BROWN: Object to form.</p> <p>19 Q. If any.</p> <p>20 A. Well, as far as I knew for the potential</p> <p>21 transactions we were contemplating there were, I</p> <p>22 don't think there were any other sources for the</p> <p>23 synergy numbers.</p> <p>24 Q. Who was involved at Morgan Stanley with taking</p> <p>25 that data and reviewing it or manipulating it or</p>	<p style="text-align: right;">Page 129</p> <p>1 EUGENE YOO</p> <p>2 as to the range of attainable synergies and</p> <p>3 their ensuing financial impact on the combined</p> <p>4 company." Is that consistent with what Morgan</p> <p>5 Stanley was doing in connection with the</p> <p>6 potential transaction with Coleman?</p> <p>7 A. I'm not sure what you mean by that.</p> <p>8 Q. Well, in analyzing a potential transaction</p> <p>9 involving Sunbeam and Coleman, did Morgan</p> <p>10 Stanley make estimates as to the range of</p> <p>11 attainable synergies in their financial impact</p> <p>12 as is indicated in CPH Exhibit 92?</p> <p>13 MS. BROWN: Object to form and foundation.</p> <p>14 A. The analysis here is a little different from</p> <p>15 what might have been done in the Coleman</p> <p>16 transaction. This is a preliminary look before</p> <p>17 we had any contact with any company before we</p> <p>18 have any potential transaction even showing any</p> <p>19 signs. These were just ideas. And these</p> <p>20 synergies were also flushed out. We made</p> <p>21 guesses here at this point and then talked with</p> <p>22 the Sunbeam management team to make sure that</p> <p>23 they were reasonable and they adjusted our</p> <p>24 estimates, our original estimates to what they</p> <p>25 thought were, you know, at least on a first</p>

<p style="text-align: right;">Page 130</p> <p>1 EUGENE YOO</p> <p>2 broad brush, reasonable assumptions. You know,</p> <p>3 at the point with, where we were with Coleman it</p> <p>4 was a much more, I don't want to use the word</p> <p>5 precise, but it was a different kind of synergy</p> <p>6 estimate. It wasn't something that we were</p> <p>7 coming up with. At that point we were relying</p> <p>8 on Sunbeam or Coopers to give us a more refined</p> <p>9 number. Where there was an actual tangible</p> <p>10 transaction. At this point there were just too</p> <p>11 many companies we were considering.</p> <p>12 Q. Okay. In the last sentence of that second</p> <p>13 paragraph it states, "we have also included the</p> <p>14 background on Scott Paper and Sunbeam which we</p> <p>15 used as templates for our analysis"?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Do you recall if Morgan Stanley used the</p> <p>18 background information it possessed on Scott</p> <p>19 Paper in analyzing potential synergies in a</p> <p>20 transaction involving Sunbeam and Coleman?</p> <p>21 A. I don't recall that happening.</p> <p>22 Q. Do you know why Morgan Stanley was using Scott</p> <p>23 Paper as a template for potential synergies?</p> <p>24 MS. BROWN: Objection.</p> <p>25 Q. Involving the companies that are listed in these</p>	<p style="text-align: right;">Page 132</p> <p>1 EUGENE YOO</p> <p>2 MS. BROWN: Object to form.</p> <p>3 A. I'm not sure I understand the question.</p> <p>4 Q. Well, if you turn to page Morgan Stanley 3414.</p> <p>5 Included in this package that was sent to</p> <p>6 Sunbeam was the Sunbeam restructuring and growth</p> <p>7 plans which we've seen before. Two pages prior</p> <p>8 to that are Scott paper restructuring plans and</p> <p>9 growth projects. Is that information important</p> <p>10 for Morgan Stanley to consider in attempting to</p> <p>11 estimate a range of attainable synergies in a</p> <p>12 potential transaction involving Sunbeam and</p> <p>13 another company?</p> <p>14 MS. BROWN: Object to form.</p> <p>15 Q. Such as the companies that are analyzed in CPH</p> <p>16 Exhibit 92?</p> <p>17 MS. BROWN: The same objection.</p> <p>18 A. For this analysis I don't know how relevant they</p> <p>19 are or not. I'm trying to remember what we were</p> <p>20 doing here. I can't read the numbers. Again, I</p> <p>21 don't know specifically what we were doing. I</p> <p>22 can't remember what we were doing on this</p> <p>23 analysis. I would think that's, the</p> <p>24 restructuring plan and the growth targets might</p> <p>25 have some impact on potential synergies, but I</p>
<p style="text-align: right;">Page 131</p> <p>1 EUGENE YOO</p> <p>2 materials?</p> <p>3 MS. BROWN: Object to form. "These</p> <p>4 materials" being CPH 92?</p> <p>5 MR. O'CONNOR: Yes. Thank you.</p> <p>6 MS. BROWN: I still object to form.</p> <p>7 A. From what I can recall I'm not sure if this is</p> <p>8 the only reason behind it, but. It was one of</p> <p>9 the more recent transactions that Al Dunlap had</p> <p>10 been involved with and one of the bigger ones,</p> <p>11 and it was a closer fit to the transactions that</p> <p>12 we were contemplating at the time. But other</p> <p>13 than that I can't, I don't recall any other</p> <p>14 reasons.</p> <p>15 Q. Is Sunbeam's restructuring and growth plans</p> <p>16 relevant to analyzing potential synergies in a</p> <p>17 transaction involving Sunbeam and another</p> <p>18 company?</p> <p>19 MS. BROWN: Can I hear that question back.</p> <p>20 (Prior testimony read back.)</p> <p>21 "Is Sunbeam's restructuring and</p> <p>22 growth plans relevant to analyzing</p> <p>23 potential synergies in a</p> <p>24 transaction involving Sunbeam and</p> <p>25 another company?"</p>	<p style="text-align: right;">Page 133</p> <p>1 EUGENE YOO</p> <p>2 wouldn't know how to incorporate that into an</p> <p>3 analysis.</p> <p>4 Q. I show you what's been previously marked as CPH</p> <p>5 Exhibit 93. The first two pages are meta data</p> <p>6 for the attached document which is entitled</p> <p>7 Sunbeam Corporation Executive Summary. The</p> <p>8 third page in which is entitled Sunbeam</p> <p>9 Corporation Synergies Analysis, do you recognize</p> <p>10 this document? This page of this document.</p> <p>11 A. Yes, I think I do.</p> <p>12 Q. Did you prepare this or review this page?</p> <p>13 A. I believe I did review this page.</p> <p>14 Q. And then the following page is entitled Sunbeam</p> <p>15 Corporation Sources of Synergies.</p> <p>16 A. Okay.</p> <p>17 Q. Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And the last bullet point on that page reads,</p> <p>20 "total potential synergies of over one hundred</p> <p>21 and 50 million from Sunbeam with 50 percent</p> <p>22 recognized in year one and the remainder by year</p> <p>23 two." Do you recall reviewing that statement</p> <p>24 back in 1997?</p> <p>25 A. Again, I think I do. I'm not sure exactly what</p>

<p style="text-align: right;">Page 134</p> <p>1 EUGENE YOO</p> <p>2 presentation this was in.</p> <p>3 Q. Looking at those two pages, the synergy analysis</p> <p>4 and sources of synergies, is that information,</p> <p>5 is the information contained on those pages</p> <p>6 relevant to Morgan Stanley's analysis of</p> <p>7 potential synergies involving Sunbeam and the</p> <p>8 transaction involving Sunbeam and another</p> <p>9 company?</p> <p>10 MS. BROWN: Object to form and foundation.</p> <p>11 A. Some of these are somewhat useful. But most of</p> <p>12 this is not something that we could use in a</p> <p>13 quantitative form for a model or any kind of</p> <p>14 quantitative analysis.</p> <p>15 Q. Do you recall how Morgan Stanley came up with</p> <p>16 the total potential synergies of 150 million</p> <p>17 dollars involving Sunbeam?</p> <p>18 MS. BROWN: Objection. Foundation. Form.</p> <p>19 A. No, I don't recall where the 150 million dollar</p> <p>20 figure came from.</p> <p>21 Q. Do you recall asking Mr. Chang? I'll represent</p> <p>22 to you that the meta data on the first page of</p> <p>23 CPH Exhibit 93 indicates that Mr. Chang drafted</p> <p>24 this document in October of 1997.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 136</p> <p>1 EUGENE YOO</p> <p>2 Mischaracterization.</p> <p>3 A. I don't know what the relationship with Coopers</p> <p>4 was. There was no formal relationship that I</p> <p>5 knew of between Coopers and Morgan Stanley and I</p> <p>6 wasn't aware of what the relationship was</p> <p>7 between Coopers and Sunbeam. I didn't know when</p> <p>8 they were brought on board or what the</p> <p>9 arrangement was with them.</p> <p>10 Q. But you knew why they were sending you this</p> <p>11 document on October 3rd; right?</p> <p>12 A. At the time I knew, yeah. I knew they were</p> <p>13 sending it to us, I knew that they were working</p> <p>14 on a project with us.</p> <p>15 Q. And that project was a potential transaction</p> <p>16 involving Sunbeam; right?</p> <p>17 A. Right.</p> <p>18 Q. And analyzing potential synergies that might</p> <p>19 arise from those transactions; correct?</p> <p>20 MS. BROWN: Object to form.</p> <p>21 Characterization.</p> <p>22 A. Well, for, we were trying to narrow down the</p> <p>23 field of potential companies that we would</p> <p>24 consider to begin looking at potential</p> <p>25 transactions. I think at this point it was a</p>
<p style="text-align: right;">Page 135</p> <p>1 EUGENE YOO</p> <p>2 Q. Do you ever recall -- do you recall ever</p> <p>3 speaking with Mr. Chang about where he obtained</p> <p>4 the information that's contained in this, on the</p> <p>5 pages entitled Synergies Analysis and Sources of</p> <p>6 Synergies?</p> <p>7 A. I don't recall ever having that conversation</p> <p>8 with him.</p> <p>9 (Deposition Exhibit 225 marked for</p> <p>10 identification.)</p> <p>11 Q. You've been handed what's been marked as CPH</p> <p>12 Exhibit 225, this is a letter from Coopers and</p> <p>13 Lybrand addressed to yourself dated October 3,</p> <p>14 1997. Do you recognize this document?</p> <p>15 A. I think I've seen the matrix before.</p> <p>16 Q. Do you recall the purpose of, the purpose behind</p> <p>17 Coopers sending you this information?</p> <p>18 A. I believe this was the initial response back</p> <p>19 from Coopers and Lybrand from our request for</p> <p>20 more detail and backup on synergies.</p> <p>21 Q. So as of October 3rd of 1997 Coopers was</p> <p>22 actively engaged in providing its expertise on</p> <p>23 analyzing synergies to Morgan Stanley or</p> <p>24 potential transaction involving Sunbeam?</p> <p>25 MS. BROWN: Object to form.</p>	<p style="text-align: right;">Page 137</p> <p>1 EUGENE YOO</p> <p>2 little too premature, we weren't looking at</p> <p>3 transactions with all of these companies.</p> <p>4 Q. Do you recall when Coopers first started</p> <p>5 providing information to Morgan Stanley</p> <p>6 concerning potential synergies?</p> <p>7 A. No. I didn't know when they were signed by, or</p> <p>8 when they were brought on board by Sunbeam. I</p> <p>9 didn't know what their role was.</p> <p>10 Q. All you knew is that they were providing you</p> <p>11 with information on potential synergies</p> <p>12 involving other companies?</p> <p>13 MS. BROWN: Object to form.</p> <p>14 A. I don't remember the first contact I had with</p> <p>15 them or knew about them. We just started</p> <p>16 receiving information from them one day.</p> <p>17 Q. You had no advanced notice that they were going</p> <p>18 to start working in --</p> <p>19 A. I don't remember.</p> <p>20 Q. Working on providing you with information on</p> <p>21 potential synergies involving a transaction with</p> <p>22 Sunbeam and another company?</p> <p>23 A. I don't remember what we knew about Coopers; we</p> <p>24 weren't really focusing on them.</p> <p>25 (Deposition Exhibit 226 marked for</p>

<p style="text-align: right;">Page 138</p> <p>1 EUGENE YOO</p> <p>2 identification.)</p> <p>3 Q. Mr. Yoo, you've been handed what's been marked</p> <p>4 as CPH Exhibit 226 which is a fax cover sheet</p> <p>5 for Coopers and Lybrand to Gene Yoo dated</p> <p>6 October 23, 1997 attaching several pages of</p> <p>7 documents. Do you recall receiving this fax?</p> <p>8 A. I think I do recall this.</p> <p>9 Q. Do you recall the purpose behind this</p> <p>10 information?</p> <p>11 A. I don't remember specifically what we requested</p> <p>12 this for.</p> <p>13 Q. Is this the type of information that Coopers was</p> <p>14 providing Morgan Stanley in 1997 on various</p> <p>15 potential strategic alternatives for Sunbeam?</p> <p>16 MS. BROWN: Object to form.</p> <p>17 A. I couldn't say if this was typical or not.</p> <p>18 Q. Do you recall if they prepared a similar</p> <p>19 document for a potential acquisition of the</p> <p>20 Coleman Company?</p> <p>21 A. I don't remember.</p> <p>22 Q. Do you recall Al Dunlap ever stating that he</p> <p>23 believed the transaction -- strike that.</p> <p>24 Do you recall Al Dunlap ever saying that</p> <p>25 Sunbeam could attain 2 hundred million dollars</p>	<p style="text-align: right;">Page 140</p> <p>1 EUGENE YOO</p> <p>2 Q. As compared to what?</p> <p>3 A. As compared to Sunbeam coming in and</p> <p>4 implementing their own restructuring plan and a</p> <p>5 target company.</p> <p>6 Q. Were those potential savings that were</p> <p>7 identified by Morgan Stanley?</p> <p>8 A. No. We didn't identify any savings that I can</p> <p>9 remember.</p> <p>10 Q. Were the savings that had already been</p> <p>11 implemented at Coleman part of the synergies</p> <p>12 estimates provided by Sunbeam?</p> <p>13 MS. BROWN: Object to foundation.</p> <p>14 A. From what I remember of the synergy estimates we</p> <p>15 actually segregated out, I thought, the cost</p> <p>16 savings that were already achieved or part of</p> <p>17 the restructuring plan that was already in</p> <p>18 place. I thought we had done that.</p> <p>19 Q. Do you recall ever receiving any synergy</p> <p>20 estimates or ideas from the Coleman Company?</p> <p>21 A. I don't recall what we got from Coleman.</p> <p>22 Q. You don't recall any particular number, an</p> <p>23 amount of synergies thought to be attainable,</p> <p>24 where that information came from Coleman or</p> <p>25 MacAndrews and Forbes?</p>
<p style="text-align: right;">Page 139</p> <p>1 EUGENE YOO</p> <p>2 in synergies as a result of an acquisition of</p> <p>3 the Coleman Company?</p> <p>4 A. I don't recall anything like that at all.</p> <p>5 Q. Do you recall any statements made by any Sunbeam</p> <p>6 personnel regarding their beliefs on the</p> <p>7 potential to obtain synergies in a transaction</p> <p>8 involving the acquisition of the Coleman</p> <p>9 Company?</p> <p>10 A. I can't remember specifically what anybody said.</p> <p>11 Q. Generally?</p> <p>12 A. I think the only thing that I can remember was</p> <p>13 that some of the potential cost savings were</p> <p>14 already implemented on the Coleman side. I</p> <p>15 don't remember the amount, but that's the only</p> <p>16 thing that I can remember about the Coleman</p> <p>17 situation.</p> <p>18 Q. How did you know that?</p> <p>19 A. I didn't know it; I remember somebody saying</p> <p>20 that.</p> <p>21 Q. You remember someone telling you that some cost</p> <p>22 savings had already been implemented at Coleman?</p> <p>23 A. I don't know if it was cost savings or if it was</p> <p>24 some of the restructuring plan in place at</p> <p>25 Coleman were already underway.</p>	<p style="text-align: right;">Page 141</p> <p>1 EUGENE YOO</p> <p>2 A. No. I don't remember any specific numbers.</p> <p>3 Q. I show you what's been previously marked as CPH</p> <p>4 Exhibit 95. Do you recall this document?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Did you prepare this document?</p> <p>7 A. I don't remember if I did this document or not.</p> <p>8 Q. Where do you recall seeing this document?</p> <p>9 A. I think this came up somewhere during the</p> <p>10 negotiations with Coleman, but I don't remember</p> <p>11 exactly at what point in time.</p> <p>12 Q. The first column is entitled Item and there are</p> <p>13 15 items listed under that column. Do you know</p> <p>14 where those items came from?</p> <p>15 A. I don't remember the source of the data, no.</p> <p>16 Q. And the same question with respect to the column</p> <p>17 entitled original and the numbers listed in that</p> <p>18 column, do you know the source of those numbers?</p> <p>19 A. No, I don't. I don't recall.</p> <p>20 Q. And then with the revision count, do you know</p> <p>21 the source of those revised numbers?</p> <p>22 A. Nope. I don't remember.</p> <p>23 Q. Do you know what was done with this document, if</p> <p>24 anything?</p> <p>25 A. I don't remember what we did this for.</p>

<p style="text-align: right;">Page 142</p> <p>1 EUGENE YOO</p> <p>2 Q. You can't recall if Morgan Stanley relied on</p> <p>3 this document in preparing any synergies</p> <p>4 analysis?</p> <p>5 MS. BROWN: Objection. Form and</p> <p>6 foundation.</p> <p>7 A. I don't remember what the ultimate use of this</p> <p>8 was for.</p> <p>9 Q. Do you recall any conversations that you had</p> <p>10 with people at Morgan Stanley or Sunbeam</p> <p>11 concerning the items or the dollar amounts on</p> <p>12 CPH Exhibit 95?</p> <p>13 A. No, we never really had any discussions that I</p> <p>14 can remember about this.</p> <p>15 Q. Okay. Showing you what's previously been marked</p> <p>16 as CPH Exhibit 97. Do you recall seeing this</p> <p>17 document?</p> <p>18 A. I'm not sure if I've seen this one.</p> <p>19 Q. In this document there's an additional column, a</p> <p>20 second revised column. You don't know where</p> <p>21 those numbers came from?</p> <p>22 A. No.</p> <p>23 Q. And on the far right-hand side there's a column</p> <p>24 entitled Comments. Did you draft any of those</p> <p>25 comments for this particular document?</p>	<p style="text-align: right;">Page 144</p> <p>1 EUGENE YOO</p> <p>2 CPH Exhibit 97 in connection with the Sunbeam</p> <p>3 and Coleman transaction?</p> <p>4 MS. BROWN: Objection. Foundation.</p> <p>5 A. I don't know.</p> <p>6 Q. I'm handing you what's been previously marked as</p> <p>7 CPH Exhibit 62. Do you recall seeing this</p> <p>8 document with this handwriting?</p> <p>9 A. No, I don't think I've seen this before.</p> <p>10 Q. Do you recognize the handwriting?</p> <p>11 A. No, I'm not sure who it is.</p> <p>12 Q. Okay. Set that aside. I'm handing you what's</p> <p>13 been previously marked as CPH Exhibit 139. Do</p> <p>14 you recognize this document?</p> <p>15 A. The first page is familiar, the second page is</p> <p>16 familiar. I'm not sure I've seen the last two</p> <p>17 pages.</p> <p>18 Q. You did not prepare the last two pages on CPH</p> <p>19 Exhibit 139?</p> <p>20 A. I don't think I did. They're not familiar.</p> <p>21 Q. If you look at the last page which is labeled</p> <p>22 Morgan Stanley 26544.</p> <p>23 A. Okay.</p> <p>24 Q. It's a page entitled Project Laser Overview of</p> <p>25 Synergy Analysis Camper. Do you recall the code</p>
<p style="text-align: right;">Page 143</p> <p>1 EUGENE YOO</p> <p>2 A. I don't believe I did.</p> <p>3 Q. Do you know who did?</p> <p>4 A. No.</p> <p>5 Q. Let me ask a better question. Do you know</p> <p>6 anyone involved in analyzing potential synergies</p> <p>7 involving these items that would provide these</p> <p>8 types of comments?</p> <p>9 MS. BROWN: Can you....</p> <p>10 (Prior testimony read back.)</p> <p>11 "Do you know anyone involved in</p> <p>12 analyzing potential synergies</p> <p>13 involving these items that would</p> <p>14 provide these types of comments?"</p> <p>15 MS. BROWN: Object to form.</p> <p>16 A. At this level of detail we most likely were</p> <p>17 relying on Sunbeam and/or Coopers for this</p> <p>18 information.</p> <p>19 Q. Do you recall having any conversations with</p> <p>20 anyone at Morgan Stanley or Sunbeam involving</p> <p>21 these types of comments or issues related to</p> <p>22 these potential synergy ideas?</p> <p>23 MS. BROWN: Object to form.</p> <p>24 A. I don't recall any conversations.</p> <p>25 Q. Do you recall if Morgan Stanley or Sunbeam used</p>	<p style="text-align: right;">Page 145</p> <p>1 EUGENE YOO</p> <p>2 name for Coleman Company was Camper?</p> <p>3 A. I believe that was the case, yes.</p> <p>4 Q. And on this chart there are three boxes, the</p> <p>5 first box on the left next to the words</p> <p>6 estimated annual synergies reflects 100 million</p> <p>7 dollars in the top of the box; do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And the middle box shows 150 million and the</p> <p>10 third box shows 200 million?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Do you recall the source of those synergy</p> <p>13 estimates?</p> <p>14 A. No. I don't, no.</p> <p>15 Q. You don't recall any conversations with Sunbeam</p> <p>16 or Morgan Stanley in which the synergy estimates</p> <p>17 were discussed? The 100, 150 and 200 million</p> <p>18 dollar estimates?</p> <p>19 A. Those numbers aren't familiar to me, I don't</p> <p>20 recall anything about them.</p> <p>21 Q. Do you recall anyone at Morgan Stanley reaching</p> <p>22 a decision on the amount of potential synergies</p> <p>23 that could be attained as a result of Sunbeam's</p> <p>24 acquisition of the Coleman Company?</p> <p>25 MS. BROWN: Object to form and foundation.</p>

<p style="text-align: right;">Page 146</p> <p>1 EUGENE YOO</p> <p>2 A. As far as I knew we really didn't make any</p> <p>3 conclusions or decisions on what the synergies</p> <p>4 were going to be.</p> <p>5 Q. Do you recall if anyone at Sunbeam came to any</p> <p>6 conclusion on the amount of potential synergies</p> <p>7 that could be attained in the acquisition of the</p> <p>8 Coleman Company by Sunbeam?</p> <p>9 MS. BROWN: Objection. Foundation.</p> <p>10 A. I don't recall who, I don't recall if Sunbeam</p> <p>11 came up with any definitive answers on the</p> <p>12 synergies.</p> <p>13 Q. Do you recall whether anyone at Sunbeam came to</p> <p>14 a decision as to a range of synergies?</p> <p>15 MS. BROWN: Objection. Foundation.</p> <p>16 A. For the most part as far as any synergy</p> <p>17 discussions we were relying on Russ and it was</p> <p>18 from the Sunbeam side. We were relying on Russ</p> <p>19 Kirsch.</p> <p>20 Q. Relying on him for what?</p> <p>21 A. For guidance on synergies or potential synergies</p> <p>22 in a transaction.</p> <p>23 Q. Why were you relying on Mr. Kirsch for that?</p> <p>24 A. He seemed to have the , from our position, he</p> <p>25 seemed to have the best knowledge of what</p>	<p style="text-align: right;">Page 148</p> <p>1 EUGENE YOO</p> <p>2 where it says "sent by C and L" and then across</p> <p>3 the top it reads "Coopers and Lybrand, dated</p> <p>4 2/27/98." Does that refresh your recollection</p> <p>5 with respect to who created this document?</p> <p>6 A. No. I don't remember this. I may have seen it</p> <p>7 but I don't remember.</p> <p>8 Q. I'm sorry. Were you aware that Coopers</p> <p>9 estimated potential synergies of 118 million</p> <p>10 with respect to an acquisition of the Coleman</p> <p>11 Company by Sunbeam?</p> <p>12 MS. BROWN: Objection. Form, foundation.</p> <p>13 Assumes facts not in evidence.</p> <p>14 A. I did know that Coopers was working in some form</p> <p>15 on developing the synergy estimates. I didn't</p> <p>16 know, or at least I don't remember now what the</p> <p>17 ultimate number was that they came up with.</p> <p>18 Q. Did you have any conversations with anyone at</p> <p>19 Coopers concerning potential synergies involving</p> <p>20 an acquisition of Coleman by Sunbeam?</p> <p>21 A. I don't remember.</p> <p>22 Q. Do you know if anyone at Morgan Stanley had</p> <p>23 communications with Coopers on that issue?</p> <p>24 A. I couldn't say for sure.</p> <p>25 Q. Do you know if anyone at Coleman or MacAndrews</p>
<p style="text-align: right;">Page 147</p> <p>1 EUGENE YOO</p> <p>2 potential synergies could be with these</p> <p>3 different target companies.</p> <p>4 Q. Why did you believe that to be true?</p> <p>5 A. He seemed to have a level of knowledge of the</p> <p>6 companies that was deeper than our view as an</p> <p>7 outside adviser.</p> <p>8 Q. Knowledge of Sunbeam?</p> <p>9 A. Of Sunbeam and of the industry in general.</p> <p>10 Q. Other than Mr. Kirsch anyone else that Morgan</p> <p>11 Stanley relied on in obtaining guidance on</p> <p>12 potential synergies?</p> <p>13 MS. BROWN: Objection. Form and</p> <p>14 foundation.</p> <p>15 A. From Sunbeam, you mean?</p> <p>16 Q. Correct.</p> <p>17 A. From the Sunbeam side?</p> <p>18 Q. Correct.</p> <p>19 A. Russ was our main point of contact. I don't</p> <p>20 know if there was anyone else at Sunbeam who was</p> <p>21 working on coming up with the numbers.</p> <p>22 Q. I'm handing you what's previously been marked as</p> <p>23 CPH Exhibit 205. Do you recall this document?</p> <p>24 A. I'm not sure if I've seen this before or not.</p> <p>25 Q. The top of CPH Exhibit 205 contains a fax line</p>	<p style="text-align: right;">Page 149</p> <p>1 EUGENE YOO</p> <p>2 and Forbes came to any conclusion on the</p> <p>3 synergies that could be attained in an</p> <p>4 acquisition of the Coleman Company by Sunbeam?</p> <p>5 MS. BROWN: Can I have that question back.</p> <p>6 (Prior testimony read back.)</p> <p>7 "Do you know if anyone at Coleman</p> <p>8 or MacAndrews and Forbes came to</p> <p>9 any conclusion on the synergies</p> <p>10 that could be attained in an</p> <p>11 acquisition of the Coleman Company</p> <p>12 by Sunbeam?"</p> <p>13 MS. BROWN: Objection. Foundation.</p> <p>14 A. I don't know any conclusions or anything about</p> <p>15 what they decided or concluded.</p> <p>16 Q. Did anyone at Morgan Stanley offer to you their</p> <p>17 opinion on the level of synergies that could be</p> <p>18 attained in an acquisition of Coleman by</p> <p>19 Sunbeam?</p> <p>20 A. Not that I can recall.</p> <p>21 Q. Mr. Chang didn't ever give you his opinion on</p> <p>22 the synergies that might be attained?</p> <p>23 A. I don't remember. No, I don't remember.</p> <p>24 Q. Mr. Yoo, did you attend the meeting of the</p> <p>25 Sunbeam board of directors on February 27, 1998</p>

<p style="text-align: right;">Page 150</p> <p>1 EUGENE YOO</p> <p>2 where the issue of acquisition of Coleman was</p> <p>3 discussed?</p> <p>4 A. I was present for a part of the meeting. I was</p> <p>5 not there for the first half of the meeting.</p> <p>6 Q. Why did you arrive after the start of the</p> <p>7 meeting?</p> <p>8 A. There were, I believe, five presentations that</p> <p>9 Morgan Stanley put together for that meeting and</p> <p>10 I was finishing the last two while the meeting</p> <p>11 began.</p> <p>12 Q. What do you recall being discussed at the board</p> <p>13 meeting while you were in attendance?</p> <p>14 A. At the point that I walked in I think Jim Stynes</p> <p>15 was talking about the details of either</p> <p>16 FirstAlert or Signature Brands in an</p> <p>17 acquisition. And then I think, I think after</p> <p>18 that Bill Strong was talking about financing</p> <p>19 alternatives. After that I think it was just a</p> <p>20 general Q and A, or open discussion with the</p> <p>21 board, I don't remember any of the details after</p> <p>22 that.</p> <p>23 Q. Do you recall any of the specifics, anything</p> <p>24 specific that Mr. Strong told the board in</p> <p>25 regard to financing alternatives?</p>	<p style="text-align: right;">Page 152</p> <p>1 EUGENE YOO</p> <p>2 preliminary draft, do you have any knowledge if</p> <p>3 there was drafts subsequent to this that would</p> <p>4 have been presented to the board or if this was</p> <p>5 in fact the final version?</p> <p>6 A. I couldn't say definitively if this was the</p> <p>7 final version or not. Yeah, I don't know.</p> <p>8 Q. If you could just take a moment to flip through</p> <p>9 it. My question would be do you have any reason</p> <p>10 to believe this was not the final version?</p> <p>11 A. No, there's no reason to believe it's not the</p> <p>12 final version.</p> <p>13 Q. If you could please turn to page 16 of the</p> <p>14 presentation, which is Morgan Stanley 83982.</p> <p>15 A. Okay.</p> <p>16 Q. This page is entitled Summary of Camper</p> <p>17 Evaluation Analyses. Section 4 on this page is</p> <p>18 entitled Estimated Value of Synergies, and below</p> <p>19 this there's 100 million pre tax, 150 million</p> <p>20 pre tax and 200 million pre tax. Do you see</p> <p>21 that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Do you recall any discussions about the</p> <p>24 potential for Sunbeam to realize between 100 and</p> <p>25 200 million in pre tax synergies at this board</p>
<p style="text-align: right;">Page 151</p> <p>1 EUGENE YOO</p> <p>2 A. I don't remember any specifics. Mostly it was</p> <p>3 just laying out alternatives and views from our</p> <p>4 capital market people.</p> <p>5 Q. Anything else you can remember being discussed</p> <p>6 at the meeting?</p> <p>7 A. No. I was pretty tired at that point.</p> <p>8 Q. Do you recall any discussion of Sunbeam's</p> <p>9 financial performance in January and February of</p> <p>10 1998?</p> <p>11 A. No.</p> <p>12 Q. Any discussions of Sunbeam's projected financial</p> <p>13 performance, for example, second quarter of</p> <p>14 1998?</p> <p>15 A. No, I don't remember anything like that.</p> <p>16 Q. Mr. Yoo, I'm handing you what's been previously</p> <p>17 marked as CPH Exhibit 89. Do you recall this</p> <p>18 document, sir?</p> <p>19 A. Yes, I do.</p> <p>20 Q. What is this document?</p> <p>21 A. This is the presentation that we put together</p> <p>22 for the Sunbeam board outlining the potential</p> <p>23 acquisition of Coleman.</p> <p>24 Q. On the first page of CPH Exhibit 89 up in the</p> <p>25 upper right-hand corner there's a designation of</p>	<p style="text-align: right;">Page 153</p> <p>1 EUGENE YOO</p> <p>2 meeting?</p> <p>3 A. No, I don't recall. I don't think I was even</p> <p>4 there for the presentation on Coleman.</p> <p>5 Q. Would you please turn to page Morgan Stanley</p> <p>6 84007. That page is entitled Review of</p> <p>7 Anticipated Combination Synergies. The next</p> <p>8 page appears to be the same document that I</p> <p>9 showed you earlier. Does that refresh your</p> <p>10 recollection with respect to who created that</p> <p>11 document or the use of that document?</p> <p>12 A. No, not really. I don't really remember this</p> <p>13 page.</p> <p>14 Q. And then the next page, Morgan Stanley 840009.</p> <p>15 It appears to be the same document we looked at</p> <p>16 earlier?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Does that refresh your recollection with respect</p> <p>19 to who prepared that document or what the</p> <p>20 document was to be used for?</p> <p>21 A. No. Again, I don't really remember this page.</p> <p>22 Q. If you turn to page 84011, entitled Scott Paper</p> <p>23 Restructuring Growth Plans. Does the inclusion</p> <p>24 of this page in the board book refresh your</p> <p>25 recollection with respect to Morgan Stanley's</p>

<p style="text-align: right;">Page 154</p> <p>1 EUGENE YOO</p> <p>2 use of Scott Paper restructuring in estimating</p> <p>3 potential synergies in a transaction involving</p> <p>4 Coleman?</p> <p>5 MS. BROWN: Object to form. Assumes facts</p> <p>6 not in evidence.</p> <p>7 A. As far as Scott Paper I think the only time we</p> <p>8 actually ever used it to develop any kind of</p> <p>9 synergy estimates was at the very beginning when</p> <p>10 we were first pitching for Al's business. From</p> <p>11 what I remember this was placed here only as a</p> <p>12 reference point just to show that he has done</p> <p>13 similar types of restructurings at other places,</p> <p>14 that it wasn't completely out of the ballpark</p> <p>15 that he could try to do something similar at</p> <p>16 Coleman.</p> <p>17 Q. So Dunlap's ability to restructure companies was</p> <p>18 important to determining the anticipated</p> <p>19 combination of synergies of this transaction?</p> <p>20 MS. BROWN: Object to the form.</p> <p>21 Mischaracterizes.</p> <p>22 A. I'm not sure if we used it to develop the</p> <p>23 numbers. But it was to show that the idea of Al</p> <p>24 Dunlap and his team going in and trying to</p> <p>25 restructure a company was not something that was</p>	<p style="text-align: right;">Page 156</p> <p>1 EUGENE YOO</p> <p>2 A. I, I didn't work with a, anyone from a public</p> <p>3 relations firm that I can remember. There may</p> <p>4 have been one that was retained at some point</p> <p>5 prior to the announcement, but I don't know for</p> <p>6 sure.</p> <p>7 Q. Does the name Hilden Knowlton (ph.) ring a bell?</p> <p>8 A. I know the company but I don't recall if they</p> <p>9 were specifically involved in this or not.</p> <p>10 Q. Okay. Were you involved in preparing any</p> <p>11 statements or responses to potential questions</p> <p>12 that may be asked at the public announcement of</p> <p>13 the transaction involving the Coleman Company?</p> <p>14 A. No. Not that I can recall.</p> <p>15 Q. I'm handing you what's been previously marked as</p> <p>16 CPH Exhibit 142. Do you recall seeing this</p> <p>17 document?</p> <p>18 A. I don't think I've seen this before.</p> <p>19 Q. If you turn to page 3 of the document which is</p> <p>20 CPH 253549.</p> <p>21 A. Okay.</p> <p>22 Q. Paragraph 13 reads, "what's your first quarter</p> <p>23 going to look like? Are you comfortable with</p> <p>24 analyst estimates?" Do you remember discussing</p> <p>25 the response that should be given to that</p>
<p style="text-align: right;">Page 155</p> <p>1 EUGENE YOO</p> <p>2 unfathomable. It was really more the use here.</p> <p>3 It's something that they've been through before</p> <p>4 and they may or may not be successful again, but</p> <p>5 it's something that they've done before. They</p> <p>6 had a track record.</p> <p>7 Q. Can you recall anything else from board of</p> <p>8 directors meeting on February 27th on the issue</p> <p>9 of synergies?</p> <p>10 A. No, not synergies.</p> <p>11 Q. Was there any discussion of the value of the</p> <p>12 Coleman Company and the price that Sunbeam was</p> <p>13 paying for the acquisition of the Coleman</p> <p>14 Company?</p> <p>15 A. No, I, as far as I can remember I wasn't present</p> <p>16 for that part of the discussion.</p> <p>17 Q. Did you participate at all in the discussion</p> <p>18 that day at the board meeting?</p> <p>19 A. No, I didn't.</p> <p>20 Q. What was your role at that board meeting?</p> <p>21 A. I was there simply to observe.</p> <p>22 Q. Do you recall working with a public relations</p> <p>23 firm in connection with announcing the</p> <p>24 transactions that the board approved on February</p> <p>25 27, 1998?</p>	<p style="text-align: right;">Page 157</p> <p>1 EUGENE YOO</p> <p>2 question upon the announcement of the</p> <p>3 transaction?</p> <p>4 A. No, I don't think I was ever part of any</p> <p>5 discussion on this.</p> <p>6 Q. Okay. Between the board meeting on February 27,</p> <p>7 1998 and the announcement, were you involved in</p> <p>8 any discussions or meetings concerning Sunbeam's</p> <p>9 first quarter 1998 sales?</p> <p>10 A. No, not that I can recall.</p> <p>11 Q. I show you one more previously marked as CPH</p> <p>12 143. Page 3 of 12. Paragraph 15. If you can</p> <p>13 just read that to yourself.</p> <p>14 A. (Witness reviewing.)</p> <p>15 Q. Do you have any knowledge of why the response</p> <p>16 changed from CPH Exhibit 142 to what's shown on</p> <p>17 CPH Exhibit 143?</p> <p>18 A. No, I don't know why it changed.</p> <p>19 Q. Okay. Set those aside. Mr. Yoo, did you ever</p> <p>20 speak to John Tyree in connection with your work</p> <p>21 on the Sunbeam engagement?</p> <p>22 A. Yes, I did.</p> <p>23 Q. What did you discuss with Mr. Tyree?</p> <p>24 A. John was taking over on the Sunbeam project once</p> <p>25 they moved into the financing phase and I was</p>

Page 158

1 EUGENE YOO
2 handing off to him.
3 Q. What were you handing off to Mr. Tyree?
4 A. Mostly, I think the only involvement I had with
5 him was with regard to gathering company
6 information and industry information. They were
7 putting some of the standard descriptions into,
8 I guess, the offering document and he was
9 looking to me to help him fill it in.
10 Q. And the reason for that was because you were the
11 one who had been working with Sunbeam --
12 A. Right
13 Q. -- all along, gathering the information about
14 the company?
15 A. Right. So I had some of that information
16 readily available and I could give it to him
17 rather than having him look it up himself.
18 Q. Were you involved in drafting any portion of the
19 debenture offering memorandum?
20 A. No.
21 Q. And you understand what the debenture offering
22 memorandum was in this deal?
23 A. The convertible notes?
24 Q. Correct.
25 A. Yes.

Page 159

1 EUGENE YOO
2 Q. Other than Mr. Tyree do you know who was
3 involved in drafting that memo?
4 A. No. I wasn't involved with that.
5 Q. Okay. Did you ever speak to Mr. Tyree in
6 connection with any due diligence that may have
7 been performed on Sunbeam's accounting?
8 MS. BROWN: Object to form.
9 A. I never really spoke to him about the financials
10 as far as I can remember.
11 Q. Let me show you what's been previously marked as
12 CPH Exhibit 31. This is a memo from John Tyree
13 to the Sunbeam financing team dated March 7,
14 1998 referencing an accounting due diligence
15 conference call on March 12th; you did not
16 participate in that call; correct?
17 A. I don't believe I did.
18 Q. And you had no conversations with Mr. Tyree or
19 Shani Boone concerning the accounting due
20 diligence call?
21 A. Not that I can remember, no.
22 Q. You don't recall seeing any documents
23 summarizing what was discussed on that call or
24 the information they learned on that call?
25 A. No.

Page 160

1 EUGENE YOO
2 Q. You don't remember that ever being discussed at
3 Morgan Stanley in any meetings, the results of
4 that conference call?
5 A. No. My involvement with Sunbeam after the
6 announcement was limited and then once the
7 transaction closed it was really only focused on
8 the sale of the spa business coming out of
9 Coleman.
10 Q. Okay.
11 VIDEOGRAPHER: Can we take a break for one
12 second? The time is two thirty-seven, we're off
13 the record.
14 (Short break taken.)
15 VIDEOGRAPHER: We're back on the record.
16 This is tape number four, the time is two
17 forty-two.
18 MR. O'CONNOR: I'll ask the court reporter
19 to please mark the next exhibit.
20 (Deposition Exhibit 227 marked for
21 identification.)
22 Q. Mr. Yoo, take a few minutes to look at what's
23 been marked as CPH Exhibit 227. Do you
24 recognize this document, sir?
25 A. Yes, I do.

Page 161

1 EUGENE YOO
2 Q. What was the purpose of Skadden Arps sending you
3 this document?
4 A. I believe this was part of the due diligence
5 process as we were trying to, I don't know if we
6 were just -- this was post announcement or pre
7 announcement? We were trying to get to a
8 closure on the deal.
9 Q. Were you responsible for conducting legal due
10 diligence of Sunbeam?
11 A. I personally was not responsible for legal due
12 diligence, but one of my roles was helping to
13 make sure that the due diligence process moved
14 forward smoothly.
15 Q. Do you know who was responsible for legal due
16 diligence?
17 MS. BROWN: Object to form.
18 A. I believe it was Skadden. I don't remember who
19 specifically at Skadden.
20 Q. Do you know why Skadden would be sending this
21 document to you if they were responsible for
22 conducting legal due diligence?
23 A. In this case I think they were asking for any
24 documents that we may have collected already in
25 our work so they didn't have to go gather it

<p style="text-align: right;">Page 162</p> <p>1 EUGENE YOO</p> <p>2 again.</p> <p>3 Q. Are they asking you to request documents from</p> <p>4 Sunbeam for the due diligence review?</p> <p>5 MS. BROWN: Object to form. And</p> <p>6 foundation.</p> <p>7 A. In this case, no, I don't believe so. As far as</p> <p>8 I can remember we were just assisting them, but</p> <p>9 they were the ones ultimately responsible for</p> <p>10 the due diligence, for the legal due diligence.</p> <p>11 Q. Okay. I guess I'm confused by the first</p> <p>12 sentence of her memo. Which states, "the</p> <p>13 following items should be included as part of</p> <p>14 your due diligence request for Project Laser."</p> <p>15 Do you have any understanding of what that</p> <p>16 means?</p> <p>17 A. Oh, I do, actually. We were compiling a master</p> <p>18 list for the due diligence and we were getting</p> <p>19 lists from the legal team, from, I believe it</p> <p>20 was Arthur Andersen and our own, we had included</p> <p>21 our own prior list that we had sent to Sunbeam</p> <p>22 so that we could, rather than sending four or</p> <p>23 five different lists from different sources we</p> <p>24 were going to send them one list for the due</p> <p>25 diligence.</p>	<p style="text-align: right;">Page 164</p> <p>1 EUGENE YOO</p> <p>2 diligence, legal due diligence list?</p> <p>3 A. I believe that was the case, if I remember</p> <p>4 correctly.</p> <p>5 Q. What else was included in the list?</p> <p>6 A. I think there was a section that came from</p> <p>7 Arthur Andersen, I don't recall whether or not</p> <p>8 there was a section that came from Coopers. We</p> <p>9 had a -- I believe we had a list that Morgan</p> <p>10 Stanley worked with Sunbeam to compile for their</p> <p>11 portion of the due diligence.</p> <p>12 Q. What materials did you obtain from Arthur</p> <p>13 Andersen?</p> <p>14 A. We -- I'm not sure what you mean by "materials."</p> <p>15 Q. When you said you believe they provided a</p> <p>16 section?</p> <p>17 A. Well, they provided a list for us to give to the</p> <p>18 other side.</p> <p>19 Q. Okay. My question is what was that list?</p> <p>20 A. I don't know now.</p> <p>21 Q. Is it one document?</p> <p>22 A. I think it was just a few pages they sent us of</p> <p>23 items that they were looking for from the other</p> <p>24 side.</p> <p>25 Q. Looking for from who?</p>
<p style="text-align: right;">Page 163</p> <p>1 EUGENE YOO</p> <p>2 Q. Okay. Who were you sending the list to, the</p> <p>3 master list?</p> <p>4 A. Let's see, I think this was going to, I think</p> <p>5 this was going to Coleman or somebody from the</p> <p>6 Coleman side.</p> <p>7 Q. Okay. And what exactly were you compiling for</p> <p>8 this master list, what would this master list</p> <p>9 include?</p> <p>10 A. I'm not sure what you mean.</p> <p>11 MS. BROWN: Object to form.</p> <p>12 Q. Well, maybe we're miscommunicating. You</p> <p>13 referred to a master list, what is the master</p> <p>14 list?</p> <p>15 A. A list of all of the items that we would be</p> <p>16 requesting as part of the due diligence for the</p> <p>17 MNA transaction. And rather than sending a list</p> <p>18 for the legal due diligence and a list for the</p> <p>19 accounting due diligence and a list for any</p> <p>20 other due diligence, financing, whatever, we</p> <p>21 were going to send them one list that they could</p> <p>22 use to compile their information. We were</p> <p>23 trying to make the process as easy for the other</p> <p>24 side as possible.</p> <p>25 Q. Okay. And part of this master list was this due</p>	<p style="text-align: right;">Page 165</p> <p>1 EUGENE YOO</p> <p>2 A. From the Coleman side.</p> <p>3 Q. Seeking information from Coleman?</p> <p>4 A. Right.</p> <p>5 Q. Okay. I'm handing you what's been previously</p> <p>6 marked as CPH Exhibit 28. Do you recognize this</p> <p>7 document?</p> <p>8 A. I think I do. I think I've seen this.</p> <p>9 Q. Where do you recall seeing this document?</p> <p>10 A. I don't remember the specific instance when I</p> <p>11 had seen this, but I think this was part of our</p> <p>12 update process with Sunbeam, just making sure</p> <p>13 that we were current on company events.</p> <p>14 Q. And why was that important to you?</p> <p>15 MS. BROWN: Object. Characterization.</p> <p>16 A. Again, I don't remember the specific impetus for</p> <p>17 this meeting, but generally, especially if we're</p> <p>18 going to go out and talk to other companies</p> <p>19 about Sunbeam, which I think this is when it was</p> <p>20 happening. I don't remember.</p> <p>21 Q. There's a reference there in paragraph 1 to</p> <p>22 "recent developments review." And in the third</p> <p>23 line down is "high dependence of recent sales</p> <p>24 growth on grilles." Do you recall why that was</p> <p>25 an issue to explore?</p>

<p style="text-align: right;">Page 166</p> <p>1 EUGENE YOO</p> <p>2 A. The only thing I can think of was that the sales</p> <p>3 mix had changed a little bit and we were just</p> <p>4 curious as to why.</p> <p>5 Q. Do you recall what response you received from</p> <p>6 Sunbeam on this issue?</p> <p>7 A. I don't remember the response.</p> <p>8 Q. Do you know who was responsible for obtaining</p> <p>9 the information that is listed in this agenda?</p> <p>10 MS. BROWN: Object to form.</p> <p>11 A. I'm not sure if there was anyone responsible, or</p> <p>12 any single person responsible for getting this</p> <p>13 information. I think this was just a guide for</p> <p>14 us to hold a discussion with them.</p> <p>15 Q. Do you know who created this document?</p> <p>16 A. No, I don't know.</p> <p>17 Q. Do you recall any discussions with anyone at</p> <p>18 Morgan Stanley about the contents of this</p> <p>19 document?</p> <p>20 A. No.</p> <p>21 Q. Paragraph 5, "financial forecast review" lists</p> <p>22 five items --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- for inquiry. Do you remember obtaining any</p> <p>25 information on those issues?</p>	<p style="text-align: right;">Page 168</p> <p>1 EUGENE YOO</p> <p>2 A. I don't know. I don't know if any of this</p> <p>3 information was presented to them.</p> <p>4 Q. Were you concerned about ensuring the accuracy</p> <p>5 of the presentation books that were being</p> <p>6 prepared by Morgan Stanley?</p> <p>7 MS. BROWN: Object to form.</p> <p>8 A. What do you mean by "concern"?</p> <p>9 Q. Was one reason why you were performing this due</p> <p>10 diligence -- withdrawn.</p> <p>11 Was it important to you that the</p> <p>12 information contained in presentation</p> <p>13 statements, or presentation materials provided</p> <p>14 to third parties was accurate?</p> <p>15 A. Generally speaking, I mean, that was, I guess,</p> <p>16 part of my job was to make sure that to the best</p> <p>17 of our knowledge what we were presenting was</p> <p>18 accurate.</p> <p>19 Q. And one way to do that is to conduct due</p> <p>20 diligence of the company; correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And does this agenda reflect the issues that</p> <p>23 Morgan Stanley needed to explore in order to</p> <p>24 ensure that the information it had about the</p> <p>25 company that it was providing to third parties</p>
<p style="text-align: right;">Page 167</p> <p>1 EUGENE YOO</p> <p>2 A. I think we did get most of this at some point.</p> <p>3 I don't know if it was directly as a result of</p> <p>4 this. Other than maybe the sensitivity</p> <p>5 analysis, I don't seem to remember anything</p> <p>6 about that.</p> <p>7 Q. Why is this information important to Morgan</p> <p>8 Stanley?</p> <p>9 A. In this case, or?</p> <p>10 Q. Correct.</p> <p>11 A. I'm not sure when it was. You know, I think it</p> <p>12 was really just part of our making sure that our</p> <p>13 financial models were accurate, that we were</p> <p>14 representing the company and our analyses in the</p> <p>15 right way.</p> <p>16 Q. And why is that important?</p> <p>17 MS. BROWN: Objection.</p> <p>18 A. We need to make sure we're presenting accurate</p> <p>19 data.</p> <p>20 Q. Who were you presenting the accurate data to?</p> <p>21 MS. BROWN: Objection to form.</p> <p>22 A. I'm not sure who it was in this case.</p> <p>23 Q. Is this the type of information that was being</p> <p>24 provided to potential acquisition targets?</p> <p>25 MS. BROWN: Object to form.</p>	<p style="text-align: right;">Page 169</p> <p>1 EUGENE YOO</p> <p>2 was accurate?</p> <p>3 MS. BROWN: Object to form. Can I hear</p> <p>4 that back, actually.</p> <p>5 (Prior testimony read back.)</p> <p>6 "And does this agenda reflect the</p> <p>7 issues that Morgan Stanley needed</p> <p>8 to explore in order to ensure that</p> <p>9 the information it had about the</p> <p>10 company that it was providing to</p> <p>11 third parties was accurate?"</p> <p>12 A. Again, I don't remember the specific instance</p> <p>13 when we were using this, but this seems like</p> <p>14 something we would use more, not to verify</p> <p>15 accuracy, but more just to stay updated on the</p> <p>16 company. It wasn't really -- this didn't seem</p> <p>17 to be a matter of going back and questioning</p> <p>18 anything that we thought was wrong. This is</p> <p>19 just trying to make sure that we were as current</p> <p>20 on the company as possible.</p> <p>21 Q. If in attempting to remain current on the</p> <p>22 company you discovered information that was</p> <p>23 inconsistent with what you were communicating to</p> <p>24 third parties, what would you do?</p> <p>25 MS. BROWN: Object to form. Improper</p>

<p style="text-align: right;">Page 170</p> <p>1 EUGENE YOO</p> <p>2 hypothetical.</p> <p>3 A. I don't know. I haven't been in that situation.</p> <p>4 I haven't had to deal with that yet.</p> <p>5 Q. In this transaction you never came across any</p> <p>6 information about Sunbeam's business or</p> <p>7 financial condition that was inconsistent with</p> <p>8 what was being presented to third parties by</p> <p>9 Morgan Stanley?</p> <p>10 MS. BROWN: Object to form.</p> <p>11 A. As far as I knew there were no inconsistencies</p> <p>12 between what we were presenting and information</p> <p>13 that we were getting from Sunbeam.</p> <p>14 Q. And had you come across that information what</p> <p>15 would you have done?</p> <p>16 MS. BROWN: Objection. Asked and answered.</p> <p>17 Improper hypothetical.</p> <p>18 A. Again, I don't know. I haven't been in that</p> <p>19 situation before, so I don't know.</p> <p>20 Q. You may have answered this question as well; you</p> <p>21 don't recall who was responsible for obtaining</p> <p>22 this information from Sunbeam?</p> <p>23 A. I don't think it was any single person. Again,</p> <p>24 I don't think this was really a list of items to</p> <p>25 gather, it was really more just talking points</p>	<p style="text-align: right;">Page 172</p> <p>1 EUGENE YOO</p> <p>2 gets completed as a matter of course. If we</p> <p>3 don't complete that we don't have the</p> <p>4 information we need to do our work and we're not</p> <p>5 able to provide our service to our clients.</p> <p>6 Q. Who is responsible for conducting the follow-up</p> <p>7 due diligence?</p> <p>8 A. I'm not sure what you mean by follow-up.</p> <p>9 Q. Well, you testified earlier that part of your</p> <p>10 due diligence function was to keep up with</p> <p>11 current events of the company, their latest</p> <p>12 filings, earnings and announcements. Who was</p> <p>13 responsible for ensuring that all of that was</p> <p>14 reviewed?</p> <p>15 A. It was really the whole deal team, really.</p> <p>16 Q. Who was responsible at Morgan Stanley for</p> <p>17 conducting the accounting due diligence?</p> <p>18 MS. BROWN: Object to form.</p> <p>19 A. The accounting due diligence -- well, to a</p> <p>20 certain extent we would do due diligence on the</p> <p>21 financials, but typically on an MNA transaction</p> <p>22 we didn't do any detailed accounting due</p> <p>23 diligence, we were relying on the auditors to do</p> <p>24 that for us and provide us comfort.</p> <p>25 Q. Were you involved in that process?</p>
<p style="text-align: right;">Page 171</p> <p>1 EUGENE YOO</p> <p>2 for a meeting or a discussion with them.</p> <p>3 Q. Who was responsible for ensuring that all the</p> <p>4 appropriate due diligence was completed by</p> <p>5 Morgan Stanley?</p> <p>6 MS. BROWN: Object to form.</p> <p>7 A. On the MNA side? Or --</p> <p>8 Q. We can start there.</p> <p>9 A. Okay. For this transaction or, I guess, MNA in</p> <p>10 general, I don't think there's any person</p> <p>11 assigned to oversee the completion of due</p> <p>12 diligence. It's part of our process just, you</p> <p>13 know, in order to be able to complete all of our</p> <p>14 work, to have all of the information that we</p> <p>15 need it's sort of fundamental that we have all</p> <p>16 of the due diligence completed, and also we have</p> <p>17 all the information we need.</p> <p>18 Q. If no one is responsible how does your</p> <p>19 department know that all of the due diligence</p> <p>20 has been conducted?</p> <p>21 MS. BROWN: Object to form.</p> <p>22 Mischaracterization.</p> <p>23 A. Like I said, in order for us to be able to</p> <p>24 complete our work and to be able to do our</p> <p>25 assignment properly that due diligence sort of</p>	<p style="text-align: right;">Page 173</p> <p>1 EUGENE YOO</p> <p>2 MS. BROWN: Object to form.</p> <p>3 A. In which process?</p> <p>4 Q. In the due diligence process in reviewing the</p> <p>5 financial information and reviewing the</p> <p>6 auditor's comfort that it was providing to</p> <p>7 Morgan Stanley?</p> <p>8 MS. BROWN: Object to form.</p> <p>9 A. Well, we didn't review the auditors, but we were</p> <p>10 reviewing financials that they had signed off</p> <p>11 on.</p> <p>12 Q. I guess my question is did you review those</p> <p>13 financials?</p> <p>14 A. Yes, we did.</p> <p>15 Q. You personally?</p> <p>16 A. I looked at some of them.</p> <p>17 Q. Okay. And those were publicly available</p> <p>18 documents?</p> <p>19 A. Yes.</p> <p>20 Q. Any other documents that weren't publicly</p> <p>21 available?</p> <p>22 MS. BROWN: Asked and answered.</p> <p>23 A. In terms of financials?</p> <p>24 Q. Correct.</p> <p>25 A. There were the growth plans and budget that they</p>

<p style="text-align: right;">Page 174</p> <p>1 EUGENE YOO</p> <p>2 had shown us.</p> <p>3 Q. Did you ever review a comfort letter provided by</p> <p>4 Arthur Andersen to Morgan Stanley in connection</p> <p>5 with this transaction?</p> <p>6 A. In connection with the MNA transaction?</p> <p>7 Q. With -- well, in connection with the acquisition</p> <p>8 of the Coleman Company in the subsequent</p> <p>9 financing of that transaction.</p> <p>10 A. I don't think I've seen that.</p> <p>11 Q. Let's find it. I'm handing you what's</p> <p>12 previously been marked as CPH Exhibit 17. Do</p> <p>13 you recall seeing this document?</p> <p>14 A. I don't think I've seen this.</p> <p>15 Q. While conducting your due diligence did you</p> <p>16 discover any information indicating that Sunbeam</p> <p>17 was employing bill and hold transactions?</p> <p>18 A. I'm sorry, what was the question again?</p> <p>19 Q. In conducting your due diligence of Sunbeam did</p> <p>20 you acquire any information indicating that</p> <p>21 Sunbeam was employing bill and hold practices?</p> <p>22 A. There was nothing in anything that we had seen</p> <p>23 that indicated that there was any kind of fraud</p> <p>24 or anything else going on that was out of the</p> <p>25 ordinary, just, you know, regular normal course</p>	<p style="text-align: right;">Page 176</p> <p>1 EUGENE YOO</p> <p>2 MS. BROWN: Objection. Compound.</p> <p>3 A. No. I never really talked to John that much</p> <p>4 about, you know, the Sunbeam transaction. I</p> <p>5 actually really didn't see him that much,</p> <p>6 period.</p> <p>7 Q. And your testimony is you have not seen the</p> <p>8 March 19, 1998 comfort letter before today?</p> <p>9 A. I don't think I have. It doesn't look familiar.</p> <p>10 Q. Do you recall reviewing any drafts of this</p> <p>11 letter?</p> <p>12 A. I don't think so, no.</p> <p>13 Q. Was the information about Sunbeam's existing</p> <p>14 financial condition, business and financial</p> <p>15 condition in January and February of 1998</p> <p>16 relevant to the due diligence that you were</p> <p>17 performing?</p> <p>18 MS. BROWN: Object to form.</p> <p>19 A. Are you talking about the due diligence for the</p> <p>20 MNA transaction?</p> <p>21 Q. Any due diligence that you performed on Sunbeam.</p> <p>22 A. The financial condition of the company was</p> <p>23 something that I guess is relevant, but in our</p> <p>24 case it was something that we were, for the</p> <p>25 transaction itself something that we were less</p>
<p style="text-align: right;">Page 175</p> <p>1 EUGENE YOO</p> <p>2 of business.</p> <p>3 Q. At that time were you familiar with the concept</p> <p>4 of a bill and hold transaction?</p> <p>5 A. At the time I was not.</p> <p>6 Q. Are you now aware of what a bill and hold</p> <p>7 transaction is?</p> <p>8 A. Vaguely.</p> <p>9 Q. Okay. How did you come to that information?</p> <p>10 A. I, in reading about what had happened with</p> <p>11 Sunbeam through the newspapers.</p> <p>12 Q. While conducting your due diligence did you</p> <p>13 acquire any information indicating that Sunbeam</p> <p>14 was engaging in other aggressive revenue</p> <p>15 recognition practices?</p> <p>16 MS. BROWN: Object to form.</p> <p>17 A. Again, as far as I could see there was really</p> <p>18 nothing that I saw that was out of the ordinary</p> <p>19 course of business.</p> <p>20 Q. Okay. How about with respect to restructuring</p> <p>21 reserves. Did you find anything that indicated</p> <p>22 that they were improperly reserving?</p> <p>23 A. No. Not that I can remember.</p> <p>24 Q. You never had any conversations with Mr. Tyree</p> <p>25 on those issues?</p>	<p style="text-align: right;">Page 177</p> <p>1 EUGENE YOO</p> <p>2 focused on. We had spent a lot of time with</p> <p>3 them and had grown comfortable with their</p> <p>4 numbers and when a transaction became tangible</p> <p>5 we were more focused on the financials of the</p> <p>6 target companies.</p> <p>7 Q. Did you ever ask to see the comfort letter</p> <p>8 Arthur Andersen was providing to Sunbeam?</p> <p>9 A. I did not personally, no.</p> <p>10 Q. Did you know in January or February -- strike</p> <p>11 that.</p> <p>12 Did you know at any point in the first</p> <p>13 quarter of 1998 that Sunbeam was experiencing a</p> <p>14 significant decline in sales?</p> <p>15 MS. BROWN: Object to form.</p> <p>16 A. I didn't know that there was any difficulty of</p> <p>17 the company in the first quarter.</p> <p>18 Q. Is that information that you should have known</p> <p>19 in conducting your due diligence?</p> <p>20 MS. BROWN: Object to form. And also to</p> <p>21 the extent it calls for a legal conclusion.</p> <p>22 A. Based on the numbers that we were getting from</p> <p>23 the company everything seemed to be in order.</p> <p>24 Whether those numbers were accurate or not it</p> <p>25 was difficult for us to tell from our vantage</p>

<p style="text-align: right;">Page 178</p> <p>1 EUGENE YOO</p> <p>2 point.</p> <p>3 Q. What numbers do you recall receiving from</p> <p>4 Sunbeam the first quarter of 1998 with respect</p> <p>5 to its first quarter sales?</p> <p>6 A. First quarter sales? I don't remember exactly</p> <p>7 what we got from them.</p> <p>8 Q. If you could turn, sir, to CPH Exhibit 17, page</p> <p>9 MS377. I'm sorry, the bottom of MS378 to the</p> <p>10 top of 379. Paragraph 6.</p> <p>11 A. Okay.</p> <p>12 Q. And 6B. I'm sorry, 6C, which runs over onto</p> <p>13 MS379. "Although the company has not provided</p> <p>14 us with any financial statements as of any date</p> <p>15 or for any period subsequent to February 1,</p> <p>16 1998, management has provided net sales from</p> <p>17 December 29, 1997 through March 1, 1998 which</p> <p>18 were 17,018,000 as compared to 143,499,000 for</p> <p>19 the corresponding period of the preceding year."</p> <p>20 Do you see that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Did you have that information in your possession</p> <p>23 in the first quarter of 1998 while you were</p> <p>24 conducting due diligence for Sunbeam?</p> <p>25 A. I don't believe we did.</p>	<p style="text-align: right;">Page 180</p> <p>1 EUGENE YOO</p> <p>2 Q. You have no idea what you would do?</p> <p>3 A. If I had been given this?</p> <p>4 Q. Uh-huh.</p> <p>5 A. I don't know. I guess it just depends on what</p> <p>6 was going on at the time and how I found out</p> <p>7 and, you know, what we were doing.</p> <p>8 Q. In the context of what you were doing and what</p> <p>9 information was being communicated to third</p> <p>10 parties in connection with your efforts to find</p> <p>11 a buyer or an acquisition target for Sunbeam, is</p> <p>12 this the kind of information that would be</p> <p>13 important to -- strike that.</p> <p>14 Would this information be relevant to those</p> <p>15 third parties?</p> <p>16 MS. BROWN: Object to form and calls for</p> <p>17 speculation.</p> <p>18 A. I think it might be important.</p> <p>19 Q. Why is that?</p> <p>20 A. Because the, I don't know why it would be</p> <p>21 important to them. If I were to see this, if</p> <p>22 the sales numbers were significantly different</p> <p>23 from what I thought they were going to be that</p> <p>24 might be something important to let people know.</p> <p>25 Q. Do you recall, sir, what Wall Street's</p>
<p style="text-align: right;">Page 179</p> <p>1 EUGENE YOO</p> <p>2 Q. Is that information that would have been</p> <p>3 relevant to the tasks you were performing in</p> <p>4 conducting due diligence?</p> <p>5 MS. BROWN: Object to form.</p> <p>6 A. If we had that information it probably would</p> <p>7 have been relevant.</p> <p>8 Q. If someone at Morgan Stanley had that</p> <p>9 information would you expect that person to</p> <p>10 advise you about a 50 percent decrease in net</p> <p>11 sales over that period of time?</p> <p>12 MS. BROWN: Object to form. Hypothetical.</p> <p>13 A. I don't know what they would do. I can't</p> <p>14 speculate what they would do with that.</p> <p>15 Q. But is that something you would have liked to</p> <p>16 have known?</p> <p>17 MS. BROWN: Object to form.</p> <p>18 A. As an adviser on the transaction, you mean?</p> <p>19 Q. Yes.</p> <p>20 A. Yeah, it would have been good to know if we had</p> <p>21 known that at the time.</p> <p>22 Q. What would you have done with that information?</p> <p>23 MS. BROWN: Object to form. Hypothetical.</p> <p>24 A. Again, I don't know. I haven't really been in</p> <p>25 that situation.</p>	<p style="text-align: right;">Page 181</p> <p>1 EUGENE YOO</p> <p>2 expectations were of Sunbeam with respect to</p> <p>3 first quarter of 1998 sales?</p> <p>4 A. No, I don't.</p> <p>5 Q. Does the range of 285 to 295 million refresh</p> <p>6 your recollection?</p> <p>7 A. It might be, I don't know for sure.</p> <p>8 Q. You don't recall anyone at Morgan Stanley</p> <p>9 discussing the contents of this comfort letter</p> <p>10 or the subject of Sunbeam's sales shortfall</p> <p>11 prior to the closing of the Coleman transaction?</p> <p>12 MS. BROWN: Object to form and foundation.</p> <p>13 A. I don't recall anything about that letter.</p> <p>14 Q. The contents of the letter?</p> <p>15 A. I think there was a public announcement by</p> <p>16 Sunbeam to that extent or something along those</p> <p>17 lines around that time. But again, at that</p> <p>18 point my involvement with Sunbeam was pretty</p> <p>19 limited.</p> <p>20 Q. You were not involved in preparing or reviewing</p> <p>21 a press release in March of 1998?</p> <p>22 A. No, I didn't have anything to do with that.</p> <p>23 Q. Let me show you what's previously been marked as</p> <p>24 CPH Exhibit 14.</p> <p>25 A. All right.</p>

<p style="text-align: right;">Page 182</p> <p>1 EUGENE YOO</p> <p>2 Q. Do you recall reading this press release at</p> <p>3 anytime?</p> <p>4 A. I do recall reading this maybe the day or the</p> <p>5 day after that it came out.</p> <p>6 Q. And again, you were not involved in any</p> <p>7 discussions concerning the issuance of this</p> <p>8 press release?</p> <p>9 A. No.</p> <p>10 Q. You were not involved in any conferences on</p> <p>11 March 18th, the day before the press release</p> <p>12 concerning Sunbeam's sales shortfall?</p> <p>13 A. Not that I remember.</p> <p>14 Q. What was your reaction to reading this press</p> <p>15 release?</p> <p>16 A. Surprise. That's probably about it, just very</p> <p>17 surprised.</p> <p>18 Q. Why were you surprised?</p> <p>19 A. From what I remember up until that point I</p> <p>20 thought things were going very well. I thought</p> <p>21 they were on track for a good first quarter.</p> <p>22 Q. Reading the first paragraph of that press</p> <p>23 release, what particular language in the press</p> <p>24 release surprised you?</p> <p>25 A. It says its possible that its net sales for the</p>	<p style="text-align: right;">Page 184</p> <p>1 EUGENE YOO</p> <p>2 talking about how we were surprised, because we</p> <p>3 were both very involved in the numbers in the</p> <p>4 model beforehand.</p> <p>5 Q. Do you recall what specifically Mr. Chang said?</p> <p>6 A. I don't remember specifically what he said.</p> <p>7 Q. Did you feel misled when you read this press</p> <p>8 release?</p> <p>9 A. I think at this point I wasn't quite sure what</p> <p>10 was happening, so I didn't know what to think.</p> <p>11 Q. Did you talk to anybody at Sunbeam about this</p> <p>12 press release?</p> <p>13 A. No. I hadn't really had any contact with</p> <p>14 anybody from Sunbeam since the board meeting.</p> <p>15 Q. Other than Mr. Chang did you talk to anyone</p> <p>16 about the press release; Mr. Fuchs, Mr. Stynes,</p> <p>17 Mr. Kitts?</p> <p>18 A. No, not Mr. Kitts. Not Mr. Stynes. I don't</p> <p>19 believe I talked to Alex about it.</p> <p>20 Q. Did you tell anyone at Morgan Stanley that the</p> <p>21 information contained in the press release was</p> <p>22 inconsistent with what you were being told by</p> <p>23 Sunbeam?</p> <p>24 A. I never really -- I'm not sure what you mean.</p> <p>25 Well.</p>
<p style="text-align: right;">Page 183</p> <p>1 EUGENE YOO</p> <p>2 first quarter of 1998 may be lower than the</p> <p>3 range of analyst estimates.</p> <p>4 Q. That came as a surprise to you?</p> <p>5 A. Yes.</p> <p>6 Q. With respect to the, the language, "the</p> <p>7 shortfall from analysts estimates, if any, would</p> <p>8 be due to changes in inventory management in</p> <p>9 order patterns at certain of the companies major</p> <p>10 retail customers." Did that statement surprise</p> <p>11 you?</p> <p>12 A. Actually, I didn't really understand that</p> <p>13 statement as much as part of the operations of</p> <p>14 the company that we weren't really involved in.</p> <p>15 That was the area where we started to rely more</p> <p>16 on the management team and team at Coopers to</p> <p>17 help us understand. But we weren't really</p> <p>18 involved at that level.</p> <p>19 Q. Did you have any conversations with anyone at</p> <p>20 Morgan Stanley about this press release?</p> <p>21 A. I think the only person I talked to about it was</p> <p>22 Tyrone Chang.</p> <p>23 Q. What did you and Mr. Chang discuss?</p> <p>24 A. Well, he was the one that brought it to my</p> <p>25 attention, I believe. And we were both just</p>	<p style="text-align: right;">Page 185</p> <p>1 EUGENE YOO</p> <p>2 Q. Well, you said you were surprised to learn of</p> <p>3 this press release.</p> <p>4 A. Right.</p> <p>5 Q. Did you convey that surprise to anyone besides</p> <p>6 Mr. Chang?</p> <p>7 A. Not that I can remember, no.</p> <p>8 Q. And you didn't do anything to follow up on the</p> <p>9 information contained in the press release?</p> <p>10 A. No, I didn't.</p> <p>11 Q. Now, CPH Exhibit 14 does not contain the</p> <p>12 information on the status of Sunbeam's sales in</p> <p>13 January and February of 1998 as reflected in the</p> <p>14 comfort letter; is that correct?</p> <p>15 A. Can you read that back.</p> <p>16 (Prior testimony read back.)</p> <p>17 "Now, CPH Exhibit 14 does not</p> <p>18 contain the information on the</p> <p>19 status of Sunbeam's sales in</p> <p>20 January and February of 1998 as</p> <p>21 reflected in the comfort letter;</p> <p>22 is that correct?"</p> <p>23 A. I believe that's correct.</p> <p>24 Q. There's no discussion in CPH 14 about the 50</p> <p>25 percent decline in sales in the first two months</p>

<p style="text-align: right;">Page 186</p> <p>1 EUGENE YOO</p> <p>2 of 1998; right?</p> <p>3 A. Not that I can see here, no.</p> <p>4 Q. Again, that's information that was not provided</p> <p>5 to you either by Sunbeam, Morgan Stanley or</p> <p>6 Arthur Andersen for the --</p> <p>7 A. Where do you get your information?</p> <p>8 Q. The 50 percent decline of sales in the first two</p> <p>9 months of 1998.</p> <p>10 A. That's correct. As far as I can remember that's</p> <p>11 not, that was not provided to us.</p> <p>12 Q. And you couldn't, you couldn't tell that sales</p> <p>13 had declined by 50 percent by reading the press</p> <p>14 release on CPH Exhibit 14; correct?</p> <p>15 MS. BROWN: Object to form.</p> <p>16 A. I don't know what anybody else could interpret.</p> <p>17 I couldn't interpret it from that.</p> <p>18 Q. In fact, the press release indicates that it was</p> <p>19 still possible that Sunbeam could reach Wall</p> <p>20 Street's estimates of 285 to 295 million; right?</p> <p>21 A. I don't know. I can't say what other people</p> <p>22 would interpret it.</p> <p>23 Q. Well, how do you interpret the first sentence?</p> <p>24 "Sunbeam Corporation said today that it is</p> <p>25 possible that its net sales for the first</p>	<p style="text-align: right;">Page 188</p> <p>1 EUGENE YOO</p> <p>2 before?</p> <p>3 A. No, I don't think so.</p> <p>4 Q. This is a March 25, 1998 letter from Arthur</p> <p>5 Andersen updating the March 19th comfort letter;</p> <p>6 correct?</p> <p>7 A. That appears to be the case.</p> <p>8 Q. This document was not provided to you at</p> <p>9 anytime?</p> <p>10 A. I don't believe so, no.</p> <p>11 Q. Handing you what's previously been marked as CPH</p> <p>12 Exhibit 16. Do you recognize this document?</p> <p>13 A. I'm not sure. I don't think I've seen this.</p> <p>14 Q. This isn't a document that you obtained from</p> <p>15 Sunbeam management during your review of their</p> <p>16 expectations for sales in 1998?</p> <p>17 A. I don't think I've ever seen this.</p> <p>18 Q. Do you recall seeing any build up of sales,</p> <p>19 whether it related to the first quarter of 1998</p> <p>20 or the entire year of 1998?</p> <p>21 MS. BROWN: Object to form.</p> <p>22 A. As far as I can remember for 1998 I don't</p> <p>23 believe we ever saw any build up like this for</p> <p>24 sales. We had seen some historical numbers that</p> <p>25 they gave us for 1997.</p>
<p style="text-align: right;">Page 187</p> <p>1 EUGENE YOO</p> <p>2 quarter of 1998 may be lower than the range of</p> <p>3 Wall Street analysts estimates of 285 million to</p> <p>4 295 million, but net sales are expected to</p> <p>5 exceed 1997 first quarter net sales of 253.4</p> <p>6 million. Do you read that to indicate that</p> <p>7 Sunbeam would not make Wall Street estimates of</p> <p>8 285 to 295?</p> <p>9 A. The way I read it myself personally, I thought</p> <p>10 there was a reasonably good chance that they</p> <p>11 were not going to be able to make sales in the</p> <p>12 range of 285 to 295.</p> <p>13 Q. But it's not out of the question as worded in</p> <p>14 the press release?</p> <p>15 A. It's a possibility it is, based on what the</p> <p>16 press release says.</p> <p>17 Q. Did you talk to Mr. Tyree about this press</p> <p>18 release?</p> <p>19 A. I don't believe I did.</p> <p>20 Q. At the time you read the press release were you</p> <p>21 aware that he had conducted accounting due</p> <p>22 diligence of Sunbeam?</p> <p>23 A. I was not aware of that.</p> <p>24 Q. I'm handing you what's previously been marked as</p> <p>25 CPH Exhibit 112. Have you seen this document</p>	<p style="text-align: right;">Page 189</p> <p>1 EUGENE YOO</p> <p>2 Q. They didn't show you any documents that showed</p> <p>3 how they were going to reach their sales</p> <p>4 expectations for 1998?</p> <p>5 MS. BROWN: Object to form.</p> <p>6 Mischaracterization.</p> <p>7 A. For 1998 I don't remember exactly what we saw,</p> <p>8 but I believe the breakdowns were based on</p> <p>9 product lines or divisions. But I don't</p> <p>10 remember exactly what it was we saw. And I</p> <p>11 don't think at the time, at least up until the</p> <p>12 point of the transaction they even had very much</p> <p>13 data available for first quarter.</p> <p>14 Q. Except what's contained in the Arthur Andersen</p> <p>15 comfort letters; right?</p> <p>16 MS. BROWN: Object to form.</p> <p>17 Mischaracterization. Do you want to put a date</p> <p>18 on what you're asking?</p> <p>19 Q. First quarter of 1998 sales.</p> <p>20 A. The -- well, my involvement tailed off after the</p> <p>21 board meeting which I think was early March. Up</p> <p>22 until that point I don't think we had much</p> <p>23 information on the first quarter. After the</p> <p>24 board meeting up until closing I had really had</p> <p>25 little to do with the transaction until after</p>

<p style="text-align: right;">Page 190</p> <p>1 EUGENE YOO</p> <p>2 the closing.</p> <p>3 Q. What did you do to ensure that others were</p> <p>4 looking at Sunbeam's first quarter sales after</p> <p>5 your involvement with the transaction tailed</p> <p>6 off?</p> <p>7 A. I'm not sure if there was anything I did</p> <p>8 specifically to point people towards first</p> <p>9 quarter sales.</p> <p>10 Q. Who assumed your responsibilities on the matter</p> <p>11 after the board meeting?</p> <p>12 MS. BROWN: Object to form.</p> <p>13 A. There was the financing team which basically</p> <p>14 took over from the point the transaction was</p> <p>15 approved by the board. And then I think the</p> <p>16 legal team took over in terms of getting the</p> <p>17 deal closed.</p> <p>18 Q. Who were the members of the finance team?</p> <p>19 A. I don't know the whole team. I only really</p> <p>20 interacted with John Tyree.</p> <p>21 Q. Ruth Porat?</p> <p>22 A. I do believe she was involved at some point, I</p> <p>23 don't know how much.</p> <p>24 Q. What were the other members of the MNA team</p> <p>25 doing after the board meeting on February 27th?</p>	<p style="text-align: right;">Page 192</p> <p>1 EUGENE YOO</p> <p>2 Q. Do you recall the law firm of the name Davis</p> <p>3 Polk?</p> <p>4 A. I know who they are, yes.</p> <p>5 Q. Do you recall they were representing Morgan</p> <p>6 Stanley in connection with the Sunbeam</p> <p>7 engagement?</p> <p>8 MS. BROWN: Object to form.</p> <p>9 A. I don't recall their involvement.</p> <p>10 Q. Skadden represented Sunbeam; right?</p> <p>11 A. Yes, I think that's the case.</p> <p>12 Q. Other than members of the finance team and the</p> <p>13 legal team, was there anyone else at Morgan</p> <p>14 Stanley who was responsible for monitoring</p> <p>15 Sunbeam's business and financial condition after</p> <p>16 the board approved the transaction on February</p> <p>17 27th?</p> <p>18 MS. BROWN: Object to the form and</p> <p>19 characterization with regard to the legal team</p> <p>20 and Morgan Stanley.</p> <p>21 A. I mean, anybody from the Morgan Stanley MNA</p> <p>22 team? Or everybody from Morgan Stanley in</p> <p>23 general, or?</p> <p>24 Q. Well, you testified that members of the finance</p> <p>25 team and the legal team continued to perform due</p>
<p style="text-align: right;">Page 191</p> <p>1 EUGENE YOO</p> <p>2 MS. BROWN: Object to form. Calls for</p> <p>3 speculation. Foundation.</p> <p>4 Q. I'll clarify. What were they doing with respect</p> <p>5 to following Sunbeam's performance in 1998?</p> <p>6 MS. BROWN: Object to foundation.</p> <p>7 A. I don't know. I don't know what they were doing</p> <p>8 specifically. I don't know if there was</p> <p>9 anything they were doing at all.</p> <p>10 Q. Is it typical that the MNA team stops working on</p> <p>11 the deal after the deal has been approved by the</p> <p>12 company's board?</p> <p>13 A. Once the deal is approved there isn't much for</p> <p>14 us to do, we hand it off to mostly the legal</p> <p>15 team to get the closing completed. But most of</p> <p>16 our advisory work is completed at that point and</p> <p>17 then the team usually moves on to the next</p> <p>18 transaction.</p> <p>19 Q. Who were the members of the legal team?</p> <p>20 A. Skadden Arps, I believe. And I don't know who</p> <p>21 else.</p> <p>22 Q. Is there anyone else in-house at Morgan Stanley</p> <p>23 that was working on the legal aspects of the</p> <p>24 deal?</p> <p>25 A. Not that I can remember.</p>	<p style="text-align: right;">Page 193</p> <p>1 EUGENE YOO</p> <p>2 diligence of Sunbeam after the board meeting on</p> <p>3 February 27th; is that correct?</p> <p>4 A. I'm not sure -- I'm not sure what, I'm assuming</p> <p>5 they were doing due diligence in preparing for</p> <p>6 the offering, but I wasn't involved with it at</p> <p>7 all.</p> <p>8 Q. Other than those two groups of people, do you</p> <p>9 know of anyone else that would have been working</p> <p>10 on the Sunbeam transaction after the board</p> <p>11 approved the acquisition of Coleman?</p> <p>12 A. As far as I know from the MNA side I don't think</p> <p>13 there was anyone really actively working on</p> <p>14 Sunbeam.</p> <p>15 Q. Were you involved in any bring down due</p> <p>16 diligence?</p> <p>17 A. I was not.</p> <p>18 Q. You did not participate in any bring down due</p> <p>19 diligence conference calls?</p> <p>20 A. No, I don't believe so.</p> <p>21 Q. I'm showing you what's been previously marked as</p> <p>22 CPH Exhibit 36. Have you seen this document</p> <p>23 before?</p> <p>24 A. I don't think I saw it in this format. But I</p> <p>25 think I did review the press release when it was</p>

Page 194

1 EUGENE YOO
2 released.
3 Q. What was your reaction to Sunbeam's April 3rd
4 press release?
5 A. Actually, at this point on the announcement of
6 the financials, the sales shortfall, I actually
7 really didn't think much of it at that point. I
8 guess based on the prior press release I knew
9 that there was a possibility that they were
10 going to disappoint. So it didn't surprise me
11 too much.
12 Q. It didn't surprise you that they were now
13 announcing that first quarter sales were
14 expected to be below 1997 levels based on what
15 you read in the March 19th press release?
16 A. From my perspective I wasn't really paying
17 attention to that portion of the press release.
18 I just knew that the sales were disappointing,
19 that's all I remember from reading the press
20 release at that time. I was more focused on
21 just Rich Goudis leaving, that was the part that
22 I was more focused on.
23 Q. Why did you have an interest in his departure?
24 A. Well, he was the person that I had the most
25 contact with from Sunbeam and I had gotten along

Page 195

1 EUGENE YOO
2 quite well with him. I thought he was a good
3 guy.
4 Q. You said Rich Goudis?
5 A. Yes.
6 Q. Where in this press release does it discuss
7 Goudis's departure?
8 A. I think it was -- maybe it wasn't in this one.
9 Don had left. Maybe it wasn't in this one.
10 Q. Were you surprised that Mr. Oosi was terminated?
11 A. I guess at the time I don't think I was that
12 surprised. It didn't seem like he had a great
13 relationship with Al. I didn't really know him
14 that well, but, and they seemed to only bring
15 him out in certain situations. He wasn't really
16 present at all of the meetings.
17 Q. Did you believe that their explanation for the
18 shortfall was accurate?
19 MS. BROWN: Object to form.
20 A. You know, again, that's kind of getting to a
21 level of business that we weren't all that
22 involved with. Their inventory management it
23 seems like.
24 Q. Did you discuss this press release with anyone
25 at Morgan Stanley after it was released?

Page 196

1 EUGENE YOO
2 A. Again, I think the only person I really spoke
3 about it with was Tyrone Chang, along the same
4 lines as the prior ones. And I think he was the
5 one that brought it to my attention.
6 Q. What did the two of you discuss?
7 A. I don't really recall what we said at that
8 point. I think for us Sunbeam was pretty far in
9 the rearview mirror at that point.
10 Q. Do you recall hearing that the March, the
11 contents of the March 19, 1998 press release
12 were included in the debenture offering memo?
13 A. I didn't know that they were.
14 Q. Did you hear that Arthur Andersen objected to
15 the inclusion of the press release language into
16 the offering memo?
17 A. I didn't know anything about that.
18 Q. No one ever told you about a confrontation
19 between Mr. Bornstein of Anderson and Mr. Tyree
20 on March 18th or 19th --
21 A. No.
22 Q. -- regarding the contents of the press release
23 or the offering memo?
24 A. No, I didn't know anything about that.
25 Q. Okay. Do you know anything about that now?

Page 197

1 EUGENE YOO
2 A. (Witness shakes head in the negative.) No, this
3 is the first time I'm hearing about it.
4 Q. Have you ever heard Mr. Tyree use profanity
5 around the office?
6 A. Not really. I didn't really work with him that
7 much. I probably talked to him three or four
8 times total in my four years there. I think he
9 was a former, he came out of the Navy or the
10 Army.
11 Q. One of the services?
12 A. Yeah. That's all I really knew about him. I
13 don't think combined I spent more than 30
14 minutes with him in four years.
15 Q. You testified earlier you did not participate on
16 the roadshow; is that correct?
17 A. That's correct.
18 Q. Do you recall hearing that Mr. Kirsch or
19 Mr. Dunlap were downplaying the significance of
20 the March 19th press release during the
21 roadshow?
22 A. I don't think I heard anything about that.
23 Q. Did you have any communications with Andrew
24 Conway at Morgan Stanley on the issue of
25 synergies?

<p style="text-align: right;">Page 198</p> <p>1 EUGENE YOO</p> <p>2 A. I never talked to Andrew about synergies.</p> <p>3 Actually, I never even spoke to Andrew.</p> <p>4 Q. You know who he is?</p> <p>5 A. I believe he's the equity research analyst.</p> <p>6 Q. Do you know if Mr. Chang ever spoke to</p> <p>7 Mr. Conway?</p> <p>8 A. I don't know.</p> <p>9 Q. Did you have any involvement preparing materials</p> <p>10 for the leverage finance commitment committee at</p> <p>11 Morgan Stanley; materials in connection with the</p> <p>12 debenture offering or the financing of the</p> <p>13 acquisition of Coleman?</p> <p>14 MS. BROWN: Objection. Compound.</p> <p>15 A. Not that I know of.</p> <p>16 Q. On either of those issues?</p> <p>17 A. No.</p> <p>18 Q. And let me show you what has previously been</p> <p>19 marked as CPH Exhibit 129. This is a fairly</p> <p>20 long document. I don't have many questions</p> <p>21 about it. But do you see that your name is</p> <p>22 listed, it's spelled incorrectly, under Mar?</p> <p>23 A. Yes.</p> <p>24 Q. And this is a March 10, 1998 equity commitment,</p> <p>25 a memo to the equity commitment committee?</p>	<p style="text-align: right;">Page 200</p> <p>1 EUGENE YOO</p> <p>2 Restructuring?</p> <p>3 A. Okay.</p> <p>4 Q. The second sentence, "the restructuring portion</p> <p>5 of the plan has been substantially completed</p> <p>6 with only the final, quote, refinement, unquote,</p> <p>7 stage remaining." Do you see that?</p> <p>8 A. Maybe I have the wrong page number.</p> <p>9 Q. I'm sorry. Page 4?</p> <p>10 A. Page 4.</p> <p>11 Q. Right. Restructuring?</p> <p>12 A. Second sentence, I'm sorry. Right.</p> <p>13 Q. Do you see that? Do you know what that refers</p> <p>14 to? The final refinement stage.</p> <p>15 MS. BROWN: Object. Speculation.</p> <p>16 A. I can't say for certain.</p> <p>17 Q. You didn't draft this paragraph, to your</p> <p>18 knowledge?</p> <p>19 A. No, not this page, not this paragraph.</p> <p>20 Q. If you turn to page 11 of the memo, which is</p> <p>21 Morgan Stanley 523.</p> <p>22 A. Okay.</p> <p>23 Q. Under "equity valuation," third bullet point,</p> <p>24 "the company's current trading levels are</p> <p>25 warranted given the level of expected synergies,</p>
<p style="text-align: right;">Page 199</p> <p>1 EUGENE YOO</p> <p>2 A. Right.</p> <p>3 Q. And it's listed -- the authors are listed as</p> <p>4 many individuals at Morgan Stanley including</p> <p>5 yourself?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Did you prepare any of the pages of this memo?</p> <p>8 A. I think I helped draft the background</p> <p>9 information. I don't recall who wrote the</p> <p>10 original version, but I think I helped edit it.</p> <p>11 Q. What pages?</p> <p>12 A. One and 2.</p> <p>13 Q. Were you involved in the preparation of the</p> <p>14 highly confidential letter with regard to the</p> <p>15 financing of the acquisitions?</p> <p>16 A. No, I don't believe so.</p> <p>17 Q. Did you attend any meetings of the equity</p> <p>18 commitment committee and the leverage finance</p> <p>19 commitment committee?</p> <p>20 A. No, I did not.</p> <p>21 Q. Are those two entities the same; are they</p> <p>22 referred to as the same?</p> <p>23 A. I think they're separate entities.</p> <p>24 Q. Okay. Would you turn to page 516, page 4 of the</p> <p>25 memo of Exhibit 129. There's a paragraph called</p>	<p style="text-align: right;">Page 201</p> <p>1 EUGENE YOO</p> <p>2 150 million pre tax." Do you know the basis --</p> <p>3 MS. BROWN: And it continues from there.</p> <p>4 Q. I'm sorry? And it continues from there.</p> <p>5 Do you recall the basis for that?</p> <p>6 MS. BROWN: Objection. Speculation.</p> <p>7 A. For the 150 million?</p> <p>8 Q. Right.</p> <p>9 A. I don't know.</p> <p>10 Q. If you turn to page 17 of the memo, page 529,</p> <p>11 paragraph 5. Take a moment to read that,</p> <p>12 please.</p> <p>13 A. (Witness reviewing.) Okay.</p> <p>14 Q. Do you recall the basis for that paragraph?</p> <p>15 MS. BROWN: Objection. Speculation.</p> <p>16 A. No, I couldn't say for certain where it came</p> <p>17 from.</p> <p>18 Q. Sorry. You didn't draft that?</p> <p>19 A. No, I didn't write this.</p> <p>20 Q. Okay. The last sentence refers to Sunbeam</p> <p>21 management informing -- well, let's see. It</p> <p>22 shouldn't say that. It refers to a "they," I'm</p> <p>23 not sure if it's referring to Sunbeam management</p> <p>24 or who, but "they informed Sunbeam board of</p> <p>25 directors that the synergies are likely to be in</p>

<p style="text-align: right;">Page 202</p> <p>1 EUGENE YOO</p> <p>2 the 225 to 275 million pre tax range." Do you</p> <p>3 have any knowledge of where those numbers came</p> <p>4 from?</p> <p>5 A. No, I don't.</p> <p>6 Q. Showing you what's previously been marked as CPH</p> <p>7 Exhibit 100. It's another lengthy document</p> <p>8 entitled The Selling Memorandum, dated March 12,</p> <p>9 1998. Have you seen this document before?</p> <p>10 A. I don't think I've seen this before. It doesn't</p> <p>11 look familiar.</p> <p>12 Q. You don't recall preparing any of the pages that</p> <p>13 are contained in this document?</p> <p>14 A. Let me see. I may have prepared some of these</p> <p>15 pages at some point, but not specifically for</p> <p>16 this document.</p> <p>17 Q. Okay.</p> <p>18 A. This looks like a collection of other pages.</p> <p>19 Q. Do you know what the purpose of -- strike that.</p> <p>20 Do you know if the selling memorandum was</p> <p>21 used in connection with the debenture offering?</p> <p>22 A. I have no idea.</p> <p>23 Q. Okay. If you can turn to page 22 of the memo</p> <p>24 which is Morgan Stanley 62882.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 204</p> <p>1 EUGENE YOO</p> <p>2 MS. BROWN: Objection. Foundation.</p> <p>3 A. I don't know what they discussed at the meeting,</p> <p>4 no.</p> <p>5 Q. No one ever talked to you about what was</p> <p>6 discussed at that meeting?</p> <p>7 A. No. As far as I remember I've never heard</p> <p>8 anything about it.</p> <p>9 Q. I'm handing you what's previously been marked</p> <p>10 CPH Exhibit 135. In connection with your work</p> <p>11 on potential divestiture of certain aspects of</p> <p>12 Coleman or the new Sunbeam, did you attend the</p> <p>13 analyst meeting on May 11, 1998?</p> <p>14 A. I don't think I did.</p> <p>15 Q. Have you seen this document before?</p> <p>16 A. No, I haven't.</p> <p>17 Q. Do you know if Morgan Stanley prepared any of</p> <p>18 the slides that are contained in this document?</p> <p>19 MS. BROWN: Objection. Foundation.</p> <p>20 A. I don't think we helped them with this. I</p> <p>21 couldn't tell you.</p> <p>22 Q. If you could turn to page, Morgan Stanley 63748,</p> <p>23 please.</p> <p>24 A. Okay.</p> <p>25 Q. This indicates an original cost savings and</p>
<p style="text-align: right;">Page 203</p> <p>1 EUGENE YOO</p> <p>2 Q. The paragraph "ability to attain synergies."</p> <p>3 The last sentence reads "in addition, while</p> <p>4 Andrew Conway has modeled 150 million in</p> <p>5 synergies in 1998 he feels that there could be</p> <p>6 an upside to this figure." Do you recall any</p> <p>7 conversations with anyone at Morgan Stanley</p> <p>8 concerning this modeling by Andrew Conway?</p> <p>9 A. No, I didn't know anything about this.</p> <p>10 Q. And again you never had any conversations with</p> <p>11 him about that?</p> <p>12 A. I never talked to Andrew, no.</p> <p>13 Q. Showing you what's previously been marked as CPH</p> <p>14 Exhibit 76. Have you ever seen this document?</p> <p>15 A. No, I don't think so.</p> <p>16 Q. The first page is a memorandum to the leverage</p> <p>17 finance commitment committee from RB Smith or</p> <p>18 Braum Smith?</p> <p>19 A. Right.</p> <p>20 Q. It references a meeting of that committee on</p> <p>21 March 20th. Did you attend that meeting?</p> <p>22 A. No, I didn't.</p> <p>23 Q. Do you know if during that meeting the</p> <p>24 commitment committee discussed Sunbeam's sales</p> <p>25 shortfall?</p>	<p style="text-align: right;">Page 205</p> <p>1 EUGENE YOO</p> <p>2 synergies of 150 million dollars and it purports</p> <p>3 to be an actual cost savings of synergies of 291</p> <p>4 million. Do you have any knowledge of this page</p> <p>5 or the, or the 291 million dollar figure that</p> <p>6 appears on that page?</p> <p>7 A. No. I don't know either one.</p> <p>8 Q. Please turn to page 63751. It's entitled</p> <p>9 Sources of Growth. "Potential 1999 impact of</p> <p>10 265 million." Do you have any knowledge of the</p> <p>11 basis for that synergy estimate?</p> <p>12 A. No, I don't know.</p> <p>13 MS. BROWN: Object to the characterization.</p> <p>14 Q. Would you please turn to Morgan Stanley 63755</p> <p>15 entitled Savings Summary. There's a list of</p> <p>16 savings on this page with total savings of</p> <p>17 acquired companies 201 million, Sunbeam sourcing</p> <p>18 strategy of 52 million with a grand total</p> <p>19 savings of 253 million. Do you have any</p> <p>20 knowledge of the basis for that calculation?</p> <p>21 A. No, I'm not sure where they came up with these</p> <p>22 numbers.</p> <p>23 Q. You don't know if Morgan Stanley was involved in</p> <p>24 providing any of that type of data to Sunbeam?</p> <p>25 MS. BROWN: Objection. Asked and answered.</p>

Page 206

1 EUGENE YOO
 2 A. I don't know, I don't know if Morgan Stanley was
 3 involved at all or not.
 4 Q. Set that aside. Mr. Yoo, were you involved in
 5 conducting any due diligence of the Coleman
 6 Company prior to the close of the transaction?
 7 A. I had some involvement with that, yes.
 8 Q. And what was your role?
 9 A. At that point it was more of a coordination
 10 role, I think, between Skadden and Arthur
 11 Andersen and Coopers. There were teams that
 12 were going through the various corporate
 13 documents or visiting various sites around the
 14 country and our job at that point was to make
 15 sure that people were going to the right places
 16 and all the right information was getting
 17 gathered.
 18 Q. Did you actually attend any of these site
 19 visits?
 20 A. I did not personally, no.
 21 Q. Did you review any documents provided by Coleman
 22 as part of the due diligence process?
 23 A. I don't recall what documents I went through.
 24 Q. But you did in fact go through some documents,
 25 or you just can't recall if you looked at any

Page 207

1 EUGENE YOO
 2 documents?
 3 A. I know we went through some of the financials
 4 and some of the projections, but we had already
 5 gone through some of that before. I don't
 6 recall if there was anything else that we went
 7 through or I went through personally.
 8 Q. Did you ever request any information from
 9 Coleman that you didn't receive?
 10 A. Not that I can remember.
 11 Q. Did you ever form an opinion on the value of the
 12 Coleman Company?
 13 MS. BROWN: Object to the form.
 14 A. Did I personally --
 15 Q. Correct.
 16 A. -- come up with an opinion? I probably came up
 17 with some, some opinion of what it was worth. I
 18 don't recall what it was.
 19 Q. Do you have any recollection, ballpark range?
 20 A. No. I don't remember anything about it being
 21 significantly different from the transaction.
 22 Q. You never formed an opinion that Sunbeam was
 23 overpaying for the Coleman Company?
 24 A. (No response.)
 25 Q. I sorry, I didn't hear your answer.

Page 208

1 EUGENE YOO
 2 MS. BROWN: He didn't yet.
 3 A. I didn't answer. No, I don't think I ever
 4 really had that opinion.
 5 Q. Did anyone express that opinion to you at
 6 anytime?
 7 A. Not, not during the transaction, no.
 8 Q. After the transaction closed?
 9 A. I think I remember hearing some people talking
 10 about the value that was ultimately paid, or I
 11 guess the price, the dollar price of the stock
 12 that was announced.
 13 Q. What do you recall hearing?
 14 A. I don't remember exactly what they said, but it
 15 was something along the lines of, it was a, it
 16 was a good price for Pearlman.
 17 Q. What did you take that to mean?
 18 A. I think at the time that I had heard it I was
 19 thinking that the, you know, one could argue
 20 that the price was maybe high based on
 21 traditional valuation techniques, but we thought
 22 that it was still a good deal for Sunbeam, you
 23 know.
 24 Q. But in your work prior to the close of the
 25 transaction in reviewing information about

Page 209

1 EUGENE YOO
 2 Coleman's business and Sunbeam's business, you
 3 never reached that conclusion; right?
 4 A. Which?
 5 Q. The conclusion that -- I'll withdraw it.
 6 During the time that you were reviewing
 7 Coleman's financial and business information and
 8 Sunbeam's business and financial information
 9 prior to the closing of the transaction, you
 10 never formed the conclusion that Sunbeam was
 11 overpaying for Coleman; correct?
 12 A. No, I never really thought that.
 13 Q. Did you hear what the basis was for these people
 14 that were saying that, saying that Pearlman,
 15 Mr. Pearlman had received whatever it was that
 16 they were saying?
 17 MS. BROWN: Object to form.
 18 Q. It was a bad question. Other than hearing that
 19 some people were saying that Mr. Pearlman --
 20 I'll withdraw that.
 21 Did the people that spoke to you about the
 22 Coleman purchase price, did they provide any
 23 basis for the statements that they were making
 24 about what Sunbeam paid for Coleman?
 25 A. I don't really remember the conversation. If I

<p style="text-align: right;">Page 210</p> <p>1 EUGENE YOO</p> <p>2 remember correctly it was a comment that really</p> <p>3 wasn't directed towards me. I just happened to</p> <p>4 overhear it.</p> <p>5 Q. Do you recall who made the statements?</p> <p>6 A. I don't know. Actually, I don't think it was</p> <p>7 somebody that I knew.</p> <p>8 Q. Where did you overhear this information?</p> <p>9 A. I think it was just in passing in the hallway or</p> <p>10 somewhere.</p> <p>11 Q. This was at Morgan Stanley's offices?</p> <p>12 A. No. Where was it? I believe it was either at</p> <p>13 the restaurant or the gym across the street,</p> <p>14 somewhere over there.</p> <p>15 Q. Can you recall when you heard these comments?</p> <p>16 A. No. Again, it was sometime after the</p> <p>17 announcement, and I think it was, I don't recall</p> <p>18 if it was before or after the closing.</p> <p>19 Q. But it was sometime in 1998?</p> <p>20 A. It was somewhere around that time, yeah.</p> <p>21 Q. Who was responsible for conducting the due</p> <p>22 diligence of Coleman?</p> <p>23 MS. BROWN: Objection. Asked and answered.</p> <p>24 A. Again, there's no real single person that's</p> <p>25 assigned that particular task, it's just sort of</p>	<p style="text-align: right;">Page 212</p> <p>1 EUGENE YOO</p> <p>2 exhibit, but if you flip through CPH Exhibit 29,</p> <p>3 do you recall receiving or seeing any of those</p> <p>4 materials, either in a larger document or</p> <p>5 separately?</p> <p>6 A. No. I haven't seen this. No, I don't think</p> <p>7 I've seen any of these pages.</p> <p>8 Q. At any point, sir, did anyone ever suggest that</p> <p>9 the transaction, the, Sunbeam's acquisition of</p> <p>10 the Coleman Company be delayed until the end of</p> <p>11 the first quarter of 1998 at Sunbeam?</p> <p>12 A. That the transaction be delayed?</p> <p>13 Q. Right. The close of the transaction be delayed</p> <p>14 into and pushed back into April until after the</p> <p>15 close of the first quarter of 1998?</p> <p>16 MS. BROWN: Objection. Foundation.</p> <p>17 A. As far as I know I wasn't aware of any</p> <p>18 discussions about timing of the closing of the</p> <p>19 transaction.</p> <p>20 Q. Okay. Were you aware or did you -- strike that.</p> <p>21 Were you aware that Sunbeam extended the</p> <p>22 first quarter of 1998 until after the close of</p> <p>23 the transaction in order to capture additional</p> <p>24 sales in the remaining days of the calendar</p> <p>25 year, the calendar of March of 1998?</p>
<p style="text-align: right;">Page 211</p> <p>1 EUGENE YOO</p> <p>2 the responsibility of the whole team.</p> <p>3 Q. Have you ever heard of the phrase "fast track</p> <p>4 due diligence"?</p> <p>5 A. I don't think I've heard that.</p> <p>6 Q. You've never used it before?</p> <p>7 A. I don't think I've used it.</p> <p>8 Q. If I can have just a couple of seconds to look</p> <p>9 over my notes. Take a short break.</p> <p>10 A. Okay.</p> <p>11 VIDEOGRAPHER: It's one minute after four.</p> <p>12 We're off the record.</p> <p>13 (Short break taken.)</p> <p>14 VIDEOGRAPHER: We're back on the record.</p> <p>15 The time is nine minutes after four.</p> <p>16 Q. Mr. Yoo, earlier this morning I asked you if you</p> <p>17 had ever been given any manuals, due diligence</p> <p>18 manuals or policies by Morgan Stanley and I</p> <p>19 believe you indicated that you didn't recall</p> <p>20 receiving any such thing; is that correct?</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. I'm going to show you what's been marked as CPH</p> <p>23 Exhibit 29. I'll represent to you, sir, that</p> <p>24 this is a compilation of various documents, the</p> <p>25 index is complete on the first few pages of this</p>	<p style="text-align: right;">Page 213</p> <p>1 EUGENE YOO</p> <p>2 MS. BROWN: Object to the characterization.</p> <p>3 A. I was not aware that that had happened.</p> <p>4 Q. I asked a slightly different question earlier</p> <p>5 today with respect to synergies, but do you know</p> <p>6 what synergy estimates, if any, the Sunbeam</p> <p>7 board relied on in approving the acquisition of</p> <p>8 the Coleman Company?</p> <p>9 A. I don't have any idea what numbers they were</p> <p>10 using.</p> <p>11 MR. O'CONNOR: Let's mark two more</p> <p>12 exhibits, please.</p> <p>13 (Deposition Exhibits 228 and 229 marked for</p> <p>14 identification.)</p> <p>15 Q. You've been handed two exhibits, one is marked</p> <p>16 CPH Exhibit 228 which is a 1997 firm wide</p> <p>17 performance evaluation, a self-evaluation from</p> <p>18 1997. Do you recall completing a</p> <p>19 self-evaluation in 1997 as part of your</p> <p>20 performance reviews at Morgan Stanley?</p> <p>21 A. Yes, I do.</p> <p>22 Q. I refer you to paragraph 3 of your</p> <p>23 self-evaluation, the last sentence in that</p> <p>24 paragraph where it reads, "I have shown</p> <p>25 repeatedly that am able to perform under</p>

<p style="text-align: right;">Page 214</p> <p>1 EUGENE YOO</p> <p>2 difficult and demanding situations. Two</p> <p>3 particular examples are Odyssey and Sunbeam</p> <p>4 where I helped produce high quality work within</p> <p>5 extremely short time periods and under less than</p> <p>6 optimal conditions." Do you see that sentence?</p> <p>7 MS. BROWN: Two sentences.</p> <p>8 Q. Two sentences thank you. What did you mean by</p> <p>9 "less than optimal conditions"?</p> <p>10 A. I think with regard to the Sunbeam transaction</p> <p>11 what I was referring to was actually two things,</p> <p>12 one, the fact that we were going down two</p> <p>13 parallel paths with Sunbeam for quite some time.</p> <p>14 And the fact that once we actually got to a</p> <p>15 tangible transaction it was actually three</p> <p>16 transactions in one, we sort of tripled the</p> <p>17 work.</p> <p>18 Q. Other than that aspect of the transaction, I'm</p> <p>19 sorry, of the engagement, was there anything</p> <p>20 else about the Sunbeam engagement that made it</p> <p>21 difficult or demanding?</p> <p>22 MS. BROWN: Object to form.</p> <p>23 A. For me personally I think what was difficult</p> <p>24 about it was that it was my first real live MNA</p> <p>25 transaction and so it was a learning experience</p>	<p style="text-align: right;">Page 216</p> <p>1 EUGENE YOO</p> <p>2 second quarter." First, I believe that you were</p> <p>3 mistaken, the transaction closed before the end</p> <p>4 of the first quarter. But that's --</p> <p>5 A. Right. I may have -- I think I misspoke on</p> <p>6 that.</p> <p>7 Q. Okay. My question actually is what about the</p> <p>8 volatile personalities of Mr. Dunlap and</p> <p>9 Mr. Pearlman complicated the deal?</p> <p>10 A. Well, I think it was just being able to perform</p> <p>11 on a normal professional level with two sort of</p> <p>12 larger than life people, and I don't know if</p> <p>13 you've ever met Al Dunlap, and I think I only</p> <p>14 met Ron Pearlman once. But they were sort of</p> <p>15 both very strong and very dominating</p> <p>16 personalities. And with one -- when you're</p> <p>17 dealing with only one, that's fine. But when</p> <p>18 you have two and two that are on opposite sides</p> <p>19 and going in opposite directions it's hard to be</p> <p>20 the person in the middle sometimes. And that's</p> <p>21 kind of what I was referring to there. I think</p> <p>22 at one point they were sort of slinging insults</p> <p>23 at each other through us.</p> <p>24 Q. Was there any aspect of Mr. Dunlap's personality</p> <p>25 which presented problems with Morgan Stanley</p>
<p style="text-align: right;">Page 215</p> <p>1 EUGENE YOO</p> <p>2 and the fact that it was somewhat higher profile</p> <p>3 than most just made it more important for me to</p> <p>4 not screw up in any way. And so I just felt a</p> <p>5 little bit more pressure to perform on that one.</p> <p>6 Q. Did Mr. Fuchs provide you with adequate guidance</p> <p>7 in the Sunbeam engagement?</p> <p>8 A. I believe he did. He was with me pretty much</p> <p>9 side by side on everything.</p> <p>10 Q. You can set that aside. And take a look at</p> <p>11 what's been marked as CPH Exhibit 229, which is</p> <p>12 your self-evaluation for the 1998 firm wide</p> <p>13 performance evaluation.</p> <p>14 A. Okay.</p> <p>15 Q. And in the first paragraph under section 2,</p> <p>16 let's see, I believe it's the second full</p> <p>17 sentence, "as we carried on concurrent</p> <p>18 negotiations with the sellers, numerous issues</p> <p>19 and alternatives arose which rippled through</p> <p>20 each aspect of the deal. Complicating matters</p> <p>21 were the complex ownership structure of Coleman,</p> <p>22 the volatile personalities involved, Al Dunlap,</p> <p>23 Ron Pearlman, and the extremely tight deadline,</p> <p>24 we had to announce before 1Q earnings</p> <p>25 announcement, had to close before the end of</p>	<p style="text-align: right;">Page 217</p> <p>1 EUGENE YOO</p> <p>2 with respect to closing the deal?</p> <p>3 MS. BROWN: Object to form.</p> <p>4 A. I'm not sure what you mean.</p> <p>5 Q. Was Morgan Stanley under any pressure from</p> <p>6 Mr. Dunlap to make a deal happen in the first</p> <p>7 quarter of 1998?</p> <p>8 MS. BROWN: Form and foundation.</p> <p>9 Objection.</p> <p>10 A. As far as I knew there was no direct order from</p> <p>11 Al or anything like that to get something done.</p> <p>12 Just me personally I got the sense that he was</p> <p>13 getting a little impatient, but I think that was</p> <p>14 just sort of his personality.</p> <p>15 Q. What gave you that impression?</p> <p>16 A. Well, he, I don't know he, but Bob and Jim would</p> <p>17 sort of step up their efforts a little bit to</p> <p>18 make sure that we were staying on top of</p> <p>19 everything with the deal and make sure that</p> <p>20 nothing was falling behind. They just wanted to</p> <p>21 make sure there was nothing we were doing that</p> <p>22 was holding up any potential transaction.</p> <p>23 Q. And when did you first start to feel that</p> <p>24 stepping up by Mr. Kitts and Mr. Stynes?</p> <p>25 A. Mr. Stynes. It was probably towards the end of</p>

<p style="text-align: right;">Page 218</p> <p>1 EUGENE YOO</p> <p>2 the year. No, the end of 2000. I'm sorry, the</p> <p>3 end of 1997.</p> <p>4 Q. Okay. And when you refer to the "extremely</p> <p>5 tight deadline, paren, we had to announce before</p> <p>6 1Q '98 earnings announcement;" what does that</p> <p>7 mean? And I'm sorry. "And had to close before</p> <p>8 end of second quarter." Actually, first</p> <p>9 quarter.</p> <p>10 A. Yeah.</p> <p>11 MS. BROWN: Close paren.</p> <p>12 Q. Close paren.</p> <p>13 A. I don't recall what I was referring to with the</p> <p>14 second half of that with the closing. As far as</p> <p>15 the first quarter announcement -- I think this</p> <p>16 was, again, I can't be entirely sure about it, I</p> <p>17 think this was a case where along with the</p> <p>18 earnings announcement Al Dunlap wanted to be</p> <p>19 able to announce something along with that that</p> <p>20 was above and beyond the typical earnings</p> <p>21 announcement. He wanted to say -- he wanted to</p> <p>22 show he was really making progress and he wanted</p> <p>23 to do something to show that it's not just a</p> <p>24 first quarter but, you know, we're making</p> <p>25 progress, we're actually doing something here at</p>	<p style="text-align: right;">Page 220</p> <p>1 EUGENE YOO</p> <p>2 A. I don't know the timing.</p> <p>3 Q. You don't know whether he wanted an announcement</p> <p>4 of the transactions and other announcements</p> <p>5 about its first quarter 1998 prospects to happen</p> <p>6 at the same time before the close of the</p> <p>7 quarter?</p> <p>8 MS. BROWN: Objection. Form and</p> <p>9 foundation.</p> <p>10 Q. I guess I'm just confused as to your reference</p> <p>11 to the first quarter '98 announcement.</p> <p>12 A. Yeah, I'm not sure about the timing. It doesn't</p> <p>13 seem, maybe I wrote this incorrectly, it doesn't</p> <p>14 seem to work.</p> <p>15 Q. The sentence following "a great deal of negative</p> <p>16 publicity had surrounded our client focused</p> <p>17 mainly on the operations and accounting of the</p> <p>18 company. Also, there is still the outstanding</p> <p>19 issue of the convertibles that were sold and the</p> <p>20 outstanding bank debt. Nevertheless, the</p> <p>21 acquisitions are still looked upon favorably and</p> <p>22 the MNA was certainly positive." Do you believe</p> <p>23 that to be true today?</p> <p>24 MS. BROWN: Objection. Compound and form.</p> <p>25 Q. Let me try and clarify it. Do you believe today</p>
<p style="text-align: right;">Page 219</p> <p>1 EUGENE YOO</p> <p>2 Sunbeam.</p> <p>3 Q. And when did he want that announcement to occur?</p> <p>4 A. Well, the first time he mentioned it was when he</p> <p>5 first engaged us and he wanted to have something</p> <p>6 announced day one. As he, you know, he was</p> <p>7 joking around with us on the first day. But,</p> <p>8 you know, for him the sooner the better.</p> <p>9 Q. But this reference to 1Q '98 earnings</p> <p>10 announcement, your testimony is that doesn't</p> <p>11 refer to Sunbeam sales in the first quarter?</p> <p>12 A. No, I don't think -- this here, this reference</p> <p>13 doesn't have anything to do with that sales</p> <p>14 reference. Again, from what I remember this was</p> <p>15 about -- he had already gone through two or</p> <p>16 three earnings announcements at Sunbeam with</p> <p>17 regard to the turn around of the company. And I</p> <p>18 think he was looking for something to add on to</p> <p>19 just the fact that he turned the company around.</p> <p>20 He was doing something company transforming.</p> <p>21 Q. So these earnings announcements were</p> <p>22 prospective, what he expected the company to</p> <p>23 earn in the first quarter of 1998, and that</p> <p>24 announcement was sometime before the close of</p> <p>25 the first quarter?</p>	<p style="text-align: right;">Page 221</p> <p>1 EUGENE YOO</p> <p>2 that the acquisitions are still looked upon</p> <p>3 favorably?</p> <p>4 MS. BROWN: Objection. Calls for</p> <p>5 speculation.</p> <p>6 A. I mean, it depends who you ask, I guess.</p> <p>7 Q. When did you write this self-evaluation?</p> <p>8 A. Let's see, this would be at the end of 1998.</p> <p>9 Q. That was after Mr. Dunlap was terminated by the</p> <p>10 Sunbeam board?</p> <p>11 A. I believe it was.</p> <p>12 Q. And after Jerry Levin took over at the new</p> <p>13 Sunbeam?</p> <p>14 A. I think that's the case, yes.</p> <p>15 Q. When you say that there was a great deal of</p> <p>16 negative publicity focused mainly in operations</p> <p>17 and accounting of the company, what did you mean</p> <p>18 by that?</p> <p>19 A. What I was referring to was all of the negative</p> <p>20 press that the company had received, I'm not</p> <p>21 sure exactly what point during the year, but</p> <p>22 some point during the year surrounding the sales</p> <p>23 shortfall with Al leaving the company, the drop</p> <p>24 in the stock price, the accounting issues. So</p> <p>25 it was just a lot of negativity surrounding</p>

<p style="text-align: right;">Page 222</p> <p>1 EUGENE YOO</p> <p>2 anything related to Sunbeam.</p> <p>3 Q. In light of what you learned throughout the rest</p> <p>4 of 1998 and before you wrote this, is there</p> <p>5 anything you would have done differently?</p> <p>6 A. Done differently where?</p> <p>7 Q. At any point in the Sunbeam engagement.</p> <p>8 A. I don't think there's really anything that I</p> <p>9 would have done differently. I don't think</p> <p>10 we -- we went through the entire deal process</p> <p>11 pretty thoroughly and thought.</p> <p>12 Q. I have no further questions at this time.</p> <p>13 MS. BROWN: Just a couple of quick</p> <p>14 questions.</p> <p>15 EXAMINATION</p> <p>16</p> <p>17 BY MS. BROWN:</p> <p>18 Q. I think you already told Mr. O'Connor that you</p> <p>19 do not -- do you know -- strike that.</p> <p>20 Do you know what information Sunbeam relied</p> <p>21 on when it determined to acquire Coleman?</p> <p>22 A. Do I know?</p> <p>23 Q. What information Sunbeam management or board</p> <p>24 relied on when it determined to acquire Coleman?</p> <p>25 A. I don't know firsthand what information they had</p>	<p style="text-align: right;">Page 224</p> <p>1 EUGENE YOO</p> <p>2 certainty." Are you aware of any, anything that</p> <p>3 Morgan Stanley Senior Funding relied on?</p> <p>4 A. I can assume that they were using most of the</p> <p>5 same information that we had, but I don't know.</p> <p>6 Q. So other than that assumption you don't know?</p> <p>7 A. No.</p> <p>8 Q. Okay. No further questions.</p> <p>9 VIDEOGRAPHER: The time is four</p> <p>10 twenty-eight. We're off the record.</p> <p>11 (Whereupon, the deposition concluded at</p> <p>12 approximately 4:28 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 223</p> <p>1 EUGENE YOO</p> <p>2 or what they were using.</p> <p>3 Q. Do you know what information Morgan Stanley</p> <p>4 Senior Funding relied upon when it provided a</p> <p>5 bank facility to Sunbeam?</p> <p>6 A. No, I can't say with certainty I know.</p> <p>7 Q. Were you involved in the team that was providing</p> <p>8 the underwriting service for the convertible</p> <p>9 note offering?</p> <p>10 A. No, I was not involved.</p> <p>11 Q. Are you familiar with the due diligence</p> <p>12 performed by that team?</p> <p>13 A. No, not really.</p> <p>14 Q. Are you familiar with any due diligence</p> <p>15 performed by Morgan Stanley Senior Funding</p> <p>16 before giving the bank facility to Sunbeam?</p> <p>17 A. No, I don't believe so.</p> <p>18 Q. No further questions.</p> <p>19 EXAMINATION</p> <p>20</p> <p>21 BY MR. O'CONNOR:</p> <p>22 Q. Mr. Yoo, in response to the question of whether</p> <p>23 you have knowledge of what Morgan Stanley Senior</p> <p>24 Funding relied on in providing financing for the</p> <p>25 acquisition, your response was "not with</p>	<p style="text-align: right;">Page 225</p> <p>1 EUGENE YOO</p> <p>2 COMMONWEALTH OF MASSACHUSETTS)</p> <p>3 SUFFOLK, ss.)</p> <p>4</p> <p>5</p> <p>6 I, Laurie Langer, Professional</p> <p>7 Reporter and Notary Public in and for the</p> <p>8 Commonwealth of Massachusetts do hereby certify</p> <p>9 that there came before me on the 16th day of</p> <p>10 June, 2004, at 9:30 o'clock a.m. the person</p> <p>11 hereinbefore named, who was by me duly sworn to</p> <p>12 testify to the truth and nothing but the truth</p> <p>13 of his knowledge touching and concerning the</p> <p>14 matters in controversy in this cause; that he</p> <p>15 was thereupon examined upon his oath, and his</p> <p>16 examination reduced to typewriting under my</p> <p>17 direction; and that the deposition is a true</p> <p>18 record of the testimony given by the witness.</p> <p>19</p> <p>20 I further certify that I am neither</p> <p>21 attorney or counsel for, nor related to or</p> <p>22 employed by, any of the parties to the action in</p> <p>23 which this deposition is taken, and further that</p> <p>24 I am not a relative or employee of any attorney</p> <p>25 or counsel employed by the parties hereto or</p> <p>financially interested in the action.</p> <p>In witness whereof, I have hereunto</p> <p>set my hand and seal this 20th day of June,</p> <p>2004.</p> <p>NOTARY PUBLIC</p> <p>Commission Expires</p> <p>9/20/07</p>

Page 226

EUGENE YOO
ERRATA SHEET DISTRIBUTION INFORMATION
DEPONENT'S ERRATA & SIGNATURE INSTRUCTIONS

ERRATA SHEET DISTRIBUTION INFORMATION

The original of the Errata Sheet has been delivered to Ms. Brown, Esquire.

When the Errata Sheet has been completed by the deponent and signed, a copy thereof should be delivered to each party of record and the ORIGINAL forwarded to Mr. O'Connor, Esquire.

INSTRUCTIONS TO DEPONENT

After reading this volume of your deposition, please indicate any corrections or changes to your testimony and the reasons therefor on the Errata Sheet supplied to you and sign it. DO NOT make marks or notations on the transcript volume itself. Add additional sheets if necessary. Please refer to the above instructions for errata sheet distribution information.

Page 227

EUGENE YOO
ATTACH TO THE DEPOSITION OF EUGENE YOO
CASE: Coleman v. Morgan DATE TAKEN: 6/16/04
ERRATA SHEET

Please refer to page 226 for errata sheet instructions and distribution instructions.

PAGE	LINE	CHANGE	REASON

I have read the foregoing transcript of my deposition and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

Executed this ____ day of _____, 2004

EUGENE YOO

58 (Pages 226 to 227)

12

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

13

<p style="text-align: right;">Page 1</p> <p>1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT 2 IN AND FOR PALM BEACH COUNTY, FLORIDA 3 CASE No. CA 03-5045 AI 4 COLEMAN (PARENT) HOLDINGS, INC., 5 Plaintiff, 6 -vs- 7 MORGAN STANLEY & CO., INC., 8 Defendant. 9 10 11 DEPOSITION OF LAWRENCE ALAN BORNSTEIN 12 (Videotaped) 13 VOLUME I 14 15 Thursday, January 15, 2004 16 9:05 - 1:42 p.m. 17 18 2139 Palm Beach Lakes Boulevard 19 West Palm Beach, Florida 33409 20 21 22 Reported By: 23 Rachel W. Bridge, RMR, CRR 24 Notary Public, State of Florida 25 Esquire Deposition Services 26 West Palm Beach Office 27 Phone: 800.330.6952 28 561.659.4155</p>	<p style="text-align: right;">Page 3</p> <p>1 --- 2 INDEX 3 --- 4 WITNESS: DIRECT CROSS REDIRECT RECROSS 5 Lawrence Bornstein 6 By Mr. Markowski 5 7 By Mr. Clare 117 8 9 --- 10 EXHIBITS 11 --- 12 EXHIBIT PAGE 13 CPH Exhibit 118 12 14 CPH Exhibit 119 17 15 CPH Exhibit 120 44 16 CPH Exhibit 121 84 17 CPH Exhibit 122 93 18 CPH Exhibit 123 100 19 CPH Exhibit 124 110 20 MS Exhibit 55 156 21 MS Exhibit 56 172 22 MS Exhibit 57 172 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 On behalf of the Plaintiff: 3 ROBERT T. MARKOWSKI, ESQUIRE 4 CHRISTOPHER M. O'CONNOR, ESQUIRE 5 JENNER & BLOCK, LLP 6 One IBM Plaza 7 Chicago, Illinois 60611-7603 8 Phone: 312.222.9350 9 10 On behalf of the Defendant: 11 THOMAS A. CLARE, ESQUIRE 12 KATHRYN REED DEBORD, ESQUIRE 13 KIRKLAND & ELLIS, LLP 14 655 Fifteenth Street, N.W. 15 Washington, D.C. 20005 16 Phone: 202.879.5078 17 18 On behalf of the Witness: 19 MICHAEL MOSCATO, ESQUIRE 20 CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP 21 101 Park Avenue 22 New York, New York 10178-0061 23 Phone: 212.696.8817 24 ALSO PRESENT: 25 EITAN ROSEN, VIDEOGRAPHER</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS 2 --- 3 Deposition taken before Rachel W. Bridge, 4 Registered Professional Reporter and Notary Public 5 in and for the State of Florida at Large, in the 6 above cause. 7 --- 8 THE VIDEOGRAPHER: We are now going on video 9 record. The time on the monitor is 9:05 a.m. 10 (Thereupon, the case was introduced by the 11 court reporter.) 12 MR. MARKOWSKI: Bob Markowski from Jenner & 13 Block on behalf of Coleman (Parent) Holdings. 14 MR. O'CONNOR: Chris O'Connor from Jenner & 15 Block on behalf of plaintiff, Coleman (Parent) 16 Holdings. 17 MR. CLARE: Tom Clare and Kathryn Debord from 18 Kirkland & Ellis, LLP on behalf of the defendant, 19 Morgan Stanley & Company. 20 MR. MOSCATO: Mark Moscato from Curtis Mallet 21 on behalf of the witness, Larry Bornstein. 22 Thereupon, 23 (LAWRENCE A. BORNSTEIN) 24 having been first duly sworn or affirmed, was 25 examined and testified as follows:</p>

<p style="text-align: right;">Page 5</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. MARKOWSKI:</p> <p>3 Q. Mr. Bornstein, as you know, my name is Bob</p> <p>4 Markowski. I'm one of the attorneys for Coleman</p> <p>5 (Parent) Holdings in its lawsuit here in Palm Beach</p> <p>6 County against Morgan Stanley.</p> <p>7 Mr. Bornstein, would you please state your</p> <p>8 full name?</p> <p>9 A. Lawrence Alan Bornstein.</p> <p>10 Q. Mr. Bornstein, where were you employed in</p> <p>11 1998?</p> <p>12 A. Arthur Andersen.</p> <p>13 Q. Where was your office location?</p> <p>14 A. West Palm Beach, Florida.</p> <p>15 Q. How long had you been employed by Arthur</p> <p>16 Andersen at that time?</p> <p>17 A. '98, approximately ten years.</p> <p>18 Q. What was your position?</p> <p>19 A. I believe at the time I was an experience</p> <p>20 manager, I think was the title.</p> <p>21 Q. And in general, what were the</p> <p>22 responsibilities in 1998 that you had as a senior</p> <p>23 manager at Arthur Andersen?</p> <p>24 MR. MOSCATO: Experience manager?</p> <p>25 MR. MARKOWSKI: Excuse me, experience</p>	<p style="text-align: right;">Page 7</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall as part of the Coleman</p> <p>3 acquisition that Sunbeam acquired all of the Coleman</p> <p>4 stock that my client, Coleman (Parent) Holdings, owned?</p> <p>5 MR. CLARE: Objection, foundation.</p> <p>6 THE WITNESS: I don't know, I don't know</p> <p>7 exactly who owned what and where and when, to be</p> <p>8 honest with you.</p> <p>9 BY MR. MARKOWSKI:</p> <p>10 Q. Do you recall that Sunbeam acquired the</p> <p>11 Coleman company stock that Coleman (Parent) Holdings</p> <p>12 had as part of the transaction?</p> <p>13 A. I don't remember the exact structure, but I</p> <p>14 do believe they acquired a good chunk of it during that</p> <p>15 time period.</p> <p>16 Q. From Coleman (Parent) Holdings?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. Did you perform any work relating to the</p> <p>19 transaction by which Sunbeam acquired the Coleman</p> <p>20 company stock?</p> <p>21 A. I did a limited amount of work, yes.</p> <p>22 Q. What were the nature of the projects that you</p> <p>23 were involved in concerning Sunbeam's acquisition of</p> <p>24 Coleman company?</p> <p>25 A. I accompanied various management of Sunbeam</p>
<p style="text-align: right;">Page 6</p> <p>1 manager.</p> <p>2 THE WITNESS: Supervising and performing</p> <p>3 tests, audit functions primarily.</p> <p>4 BY MR. MARKOWSKI:</p> <p>5 Q. How long had you been employed in the West</p> <p>6 Palm Beach office?</p> <p>7 A. I believe approximately, probably six years.</p> <p>8 Q. At that time did you hold any licenses?</p> <p>9 A. Yes, a CPA, licensed in Massachusetts.</p> <p>10 Q. When did you obtain your licenses as a</p> <p>11 certified public accountant?</p> <p>12 A. I believe in '91 or '92.</p> <p>13 Q. Mr. Bornstein, do you recall that in the</p> <p>14 first quarter of 1998 Sunbeam made three acquisitions?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall the names of the three</p> <p>17 companies that Sunbeam acquired in the first quarter of</p> <p>18 1998?</p> <p>19 A. Yes.</p> <p>20 Q. Can you tell me what they are?</p> <p>21 A. Coleman -- I don't know the exact name, but</p> <p>22 Coleman was one. First Alert was another. And I</p> <p>23 believe the third was Signature Brands.</p> <p>24 Q. Do you recall that Coleman was the largest of</p> <p>25 the three companies that Sunbeam acquired at that time?</p>	<p style="text-align: right;">Page 8</p> <p>1 at the time in a due diligence, limited due diligence</p> <p>2 process.</p> <p>3 Q. Were there other activities that related in</p> <p>4 any respect to Sunbeam's acquisition of Coleman that</p> <p>5 you were involved in?</p> <p>6 A. A limited amount of review of, I believe</p> <p>7 their pro forma financial statements or pro forma</p> <p>8 projections that was done by, I believe it was done by</p> <p>9 Morgan Stanley.</p> <p>10 Q. Do you recall being involved in activities</p> <p>11 related to Sunbeam's financing of the acquisition?</p> <p>12 A. Yes.</p> <p>13 Q. And what was your involvement in the</p> <p>14 financing aspect of the transaction?</p> <p>15 A. Assisting in the preparation of a 140</p> <p>16 section, I think it was Section 144 document, bond</p> <p>17 offering document.</p> <p>18 Q. That's the document by which Sunbeam sold</p> <p>19 convertible debentures to finance the acquisition?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall what your involvement was in</p> <p>22 that process?</p> <p>23 A. Assisting in the preparation of the pro forma</p> <p>24 financial statements that were within the document,</p> <p>25 drafting the document, the body of the document prior</p>

<p style="text-align: right;">Page 9</p> <p>1 to the pricing of the bonds, coordinating and assisting 2 the other accounting firms in getting the information 3 that's needed in the document. That's pretty much all 4 I can remember. 5 Q. That activity all took place in the first 6 quarter of 1998? 7 A. For the most part, yes. 8 Q. Do you recall when during the first part of 9 1998 that activity was occurring? 10 A. I think it was middle to end of February 11 through late March of I guess -- my year, I think it 12 might have been, I think '98. 13 Q. Mr. Bornstein, did Arthur Andersen -- let me 14 take a step back. 15 Arthur Andersen was involved in these 16 activities because it served as the outside auditor for 17 Sunbeam during that time period; is that correct? 18 A. Yes. 19 Q. Did Arthur Andersen, in connection with its 20 function as the outside auditor for Sunbeam, do 21 anything special at the end of the first quarter of 22 1998 to monitor Sunbeam's product shipments at the end 23 of the first quarter? 24 MR. CLARE: Objection to the form. 25 THE WITNESS: Can you --</p>	<p style="text-align: right;">Page 11</p> <p>1 responsible for the Sunbeam audits? 2 A. No, I was not. 3 Q. Who was? 4 A. The partner was Phil Harlow. 5 Q. Did you recommend to Mr. Harlow that these 6 procedures be used or did you make the decision on your 7 own? 8 A. I recommended to Mr. Harlow that the 9 procedures be done. 10 Q. And what was his reaction to your 11 recommendation? 12 A. I don't remember. 13 Q. But were the procedures in fact employed? 14 A. Yes. 15 Q. When did you decide that Arthur Andersen -- 16 excuse me, when did you decide that Arthur Andersen 17 should use these expanded cutoff procedures at the end 18 of the first quarter of 1998? 19 A. I don't know the exact date, but probably 20 March 17th or 18th. 21 Q. Mr. Bornstein, I'm going to show you what 22 we're going to mark as Coleman (Parent) Exhibit 23 Number 118. It's a March 21 e-mail from you to William 24 Biese, B-i-e-s-e. It bears Bates number AA120304. 25</p>
<p style="text-align: right;">Page 10</p> <p>1 BY MR. MARKOWSKI: 2 Q. I can restate it. 3 At the end of the first quarter of 1998, in 4 its capacity as the outside auditor for Sunbeam, did 5 Arthur Andersen do anything special to monitor the 6 shipments of Sunbeam's products at the end of the first 7 quarter? 8 MR. CLARE: Same objection. 9 THE WITNESS: Yes. 10 BY MR. MARKOWSKI: 11 Q. What do you recall that involving? 12 A. I would call them expanded cutoff procedures, 13 expanded I would say shipping and receiving type of 14 procedures at the end of the first quarter. 15 Q. Did you have any role in making the decision 16 to cause those procedures to be implemented? 17 A. Yes. 18 Q. And what was the role? 19 A. It was my decision to expand procedures 20 sufficient enough to conclude that shipments were made 21 in a timely fashion prior to the end of the quarter and 22 that they were in fact built, shipped and ordered by 23 customer. 24 Q. Now at that point in the first quarter of 25 1998, were you the senior Arthur Andersen person</p>	<p style="text-align: right;">Page 12</p> <p>1 (CPH Exhibit No. 118 was marked for 2 identification.) 3 MR. CLARE: Do you have a copy? Thanks. 4 BY MR. MARKOWSKI: 5 Q. Mr. Bornstein, I'd like you to take a moment 6 to look at Exhibit 118. 7 Can you tell me what this document is? 8 A. Correspondence with a, I believe, I believe, 9 I think he was the partner for Arthur Andersen that 10 worked, I think he -- let me think about this. He, I 11 think he resided in Mexico City. He was the partner in 12 charge of the work that was done in Mexico for Sunbeam. 13 And based on reading this, it's a memorandum 14 letting him know that we're going to be doing 15 additional work at the end of the quarter on cutoff 16 procedures. 17 Q. The memorandum is dated March 21, 1998; is 18 that correct? 19 A. Yes. 20 Q. Sunbeam had facilities in Mexico City, or in 21 Mexico? Excuse me. 22 A. Yeah, they had facilities in Mexico City and 23 I think I recall them having one or two in, I think it 24 was called Maquiladora and a couple of other locations 25 in surrounding Mexico City.</p>

<p style="text-align: right;">Page 13</p> <p>1 Q. What was the purpose of your sending this 2 memo to Mr. Biese?</p> <p>3 A. I believe -- I mean reading this right now, 4 it's to let him know what was going on, let him know 5 there was going to be additional work for him, and then 6 to advise him of, that additional cutoff procedures 7 were going to be needed. And in reading this at this 8 time, it talks about bill and hold transactions as well 9 as the emphasis on sales.</p> <p>10 Q. Does your memorandum to Mr. Biese explain why 11 Andersen would be conducting additional cutoff 12 procedures at the end of the first quarter of 1998?</p> <p>13 A. No, not specifically.</p> <p>14 Q. Does it provide the background concerning the 15 reasons why you wanted to implement additional 16 procedures to monitor cutoffs?</p> <p>17 A. Not specifically.</p> <p>18 Q. Does it do it in general terms?</p> <p>19 A. I believe it does, yes.</p> <p>20 Q. And what did you advise Mr. Biese as the 21 reason for your desire to do the additional cutoff 22 procedures at the end of the first quarter?</p> <p>23 A. I don't remember specifically telling him 24 anything, but looking at this memorandum, it's clear 25 that it talks about where they, where they were going,</p>	<p style="text-align: right;">Page 15</p> <p>1 you to come to that conclusion, that it was appropriate 2 to do additional work at the end of the first quarter?</p> <p>3 A. I believe that the spread was extremely 4 aggressive and that it warranted additional work to 5 make sure that they -- mentioned earlier that the 6 product was ordered, was built, and it was properly 7 shipped.</p> <p>8 Q. What was your concern?</p> <p>9 MR. MOSCATO: I object. I think he just said 10 so.</p> <p>11 Do you have anything to add?</p> <p>12 THE WITNESS: No, I don't believe I have 13 anything.</p> <p>14 BY MR. MARKOWSKI:</p> <p>15 Q. How did monitoring cutoff procedures have a 16 relationship to what you've just described?</p> <p>17 A. Monitoring cutoff procedures would in fact 18 give you a much greater assurance that a customer had 19 requested that the product be sold to them; i.e., to 20 clear purchase order, and that the product was in fact 21 built and shipped.</p> <p>22 Q. Were you concerned that in order to increase 23 the reported sales for the first quarter of 1998, that 24 Sunbeam might attempt to claim shipments had taken 25 place during the first quarter when in fact they had</p>
<p style="text-align: right;">Page 14</p> <p>1 where they were planning on going in sales and where 2 they were. And the notation, as you can see, there is 3 a big push on sales and we've been told that they 4 having bill and hold transactions.</p> <p>5 Q. When you say it says where the company 6 expected to go in sales for the quarter, what are you 7 referring to?</p> <p>8 A. The company just released an early warning to 9 the street that sales are not going to meet 10 expectations of 285 to 295 million for the quarter.</p> <p>11 That's specifically where it talks about 12 that.</p> <p>13 Q. And what does it say about where the company 14 in fact was at that point in time in terms of sales?</p> <p>15 A. 72 million as of March 1st.</p> <p>16 Q. And how does, how do those figures relate to 17 your desire to do additional end-of-the-quarter 18 shipping cutoff procedures?</p> <p>19 A. There is obviously a big spread between what 20 was, what was recorded through March 1st and what the 21 expectations of the company were.</p> <p>22 So that spread led me to believe that we 23 should be doing additional work at the end of the first 24 quarter.</p> <p>25 Q. And what is it about that spread that caused</p>	<p style="text-align: right;">Page 16</p> <p>1 not?</p> <p>2 A. Can you repeat that, please?</p> <p>3 Q. Were you concerned that because of the great 4 spread as of this point in time between Sunbeam's sales 5 for the first two months of the first quarter and 6 Sunbeam's original expectations for sales for the first 7 quarter, that in order to close the gap between those 8 two numbers, that Sunbeam might attempt to claim 9 shipments in the first quarter that had actually not 10 occurred?</p> <p>11 MR. CLARE: I object to the form.</p> <p>12 THE WITNESS: I don't believe that that was 13 my thought process at the time. I wanted to make 14 sure that they were actually going to ship the 15 product and the product was ordered.</p> <p>16 So I guess in thinking about that, then there 17 is a possibility the concern was that there, you 18 know, that it was a possibility that they would 19 ship product that wasn't ordered, as well as 20 logistically being able to ship that much product 21 in such a short period of time, based on my 22 experience with the company at that point in time.</p> <p>23 MR. MARKOWSKI: Mr. Bornstein, I'll show you 24 what we're marking as CPH Exhibit 119. It's a 25 memorandum from Dennis Pastrana to you dated</p>

<p style="text-align: right;">Page 17</p> <p>1 March 24, 1998. The subject is cutoff testing, 2 and it bears Bates number AA55758 through -- 3 actually it looks like it's made up of two 4 documents, first. First page is AA55758, and then 5 the pages behind it are AA36921 through 36925. 6 (CPH Exhibit No. 119 was marked for 7 identification.) 8 THE WITNESS: These are just extra copies? 9 BY MR. MARKOWSKI: 10 Q. Yes, right, thank you. If you would, I'd 11 like you to take a moment to take a look at CPH Exhibit 12 Number 119. 13 Mr. Bornstein, can you tell me what CPH 14 Exhibit Number 119 is? 15 A. I apologize. I'm getting a cold, so it's 16 kind of hard for me to hear. Can you repeat that? 17 Q. Can you tell me what CPH Exhibit Number 119 18 is? 19 A. Appears to be a draft of a memorandum 20 outlining the additional procedures on cutoff and 21 shipping that was performed at the end of the first 22 quarter of '98. 23 Q. These are instructions relating to what we've 24 been discussing, the implementation of additional 25 procedures to monitor Sunbeam's</p>	<p style="text-align: right;">Page 19</p> <p>1 only and is not to be shared with client personnel at 2 the facilities you visit. Sunbeam's first quarter 3 fiscal 1998 will end on March 29, 1998," in brackets, 4 "the Sunday closest to the end of the month," end of 5 brackets. "As of March 1, 1998, the company reported 6 sales of approximately 72 million versus 143 million 7 for the corresponding period of the preceding year. 8 Despite this decrease, management has announced to the 9 public that it expects first quarter sales for 1998 to 10 exceed first quarter 1997 sales of 253.5 million. That 11 means that the company expects to ship over 12 181 million," in brackets, "greater than 70 percent 13 expected sales for the quarter," end of brackets, "in 14 the month of March." 15 Q. Now the, did you believe the statement that 16 the company had sales of \$72 million through the first 17 two months of the year to be an accurate statement? 18 A. I believe at the time domestically the 19 \$72 million was the number. 20 Q. Do you know what that number was based on? 21 Let me ask a different question. I asked that poorly. 22 Do you know how Andersen determined that 23 Sunbeam sales for the first two months of 1998 totaled 24 approximately \$72 million? 25 A. I believe based on the company's financial</p>
<p style="text-align: right;">Page 18</p> <p>1 end-of-the-first-quarter shipping practices? 2 A. Yes. 3 Q. Who is Dennis Pastrana? 4 A. He was, he was the senior auditor who worked 5 for me during the Sunbeam audit, who, for lack of a 6 better term, did, supervised the field work on a 7 day-to-day basis. 8 Q. Did you ask Mr. Pastrana to prepare 9 instructions for the additional cutoff procedures? 10 A. Yes, based on this memorandum. I don't 11 recall specifics, but based on this, I would say the 12 answer is yes. 13 Q. Did you provide Mr. Pastrana with guidance 14 concerning what you wanted the procedures to involve? 15 A. Yes. 16 Q. The -- let me direct your attention to the 17 page that has Bates number 36293. The heading starts 18 General Information. 19 A. Yes. 20 Q. Do you have that page in front of you? 21 A. Yes. 22 Q. Would you read the first two paragraphs under 23 General Information out loud, please. 24 A. "Although the information that follows is 25 public information, it is summarized here for your use</p>	<p style="text-align: right;">Page 20</p> <p>1 information that was given to us. 2 Q. Now a statement is made at the beginning of 3 that two paragraphs that I had you read that the 4 information that follows is public information. 5 Do you know whether in fact Sunbeam had 6 announced to the public as of this point in time that 7 its sales for the first two months of 1998 were only 8 \$72 million? 9 A. I don't believe it was. I'm not 100 percent 10 sure, though. 11 Q. You don't have any recollection of the 12 company publicly making that statement, correct? 13 A. No. 14 Q. I'd like to direct your attention down to the 15 bottom third of the page. There is a heading that 16 reads Revenue Recognition Policy. Do you see that? 17 A. Yes. 18 Q. Would you read that first paragraph into the 19 record, please. 20 A. "Because of management pressures to meet 21 earnings expectations, we are taking additional steps 22 in connection with our quarterly review work to ensure 23 that the client achieves a proper sales cutoff." 24 Q. Does that statement accurately reflect the 25 reasons why you decided that Andersen should implement</p>

5 (Pages 17 to 20)

<p style="text-align: right;">Page 21</p> <p>1 additional cutoff testing procedures at the end of the 2 first quarter of 1998? 3 A. Yes. 4 Q. Now, Mr. Bornstein, I note that this document 5 indicates that Sunbeam's first quarter will end on 6 March 29, 1998. 7 Do you see that statement at the top of the 8 page? 9 A. Yes. 10 Q. Did Sunbeam's first quarter in fact end on 11 March 29, 1998? 12 A. I don't believe it did, no. 13 Q. Do you recall what happened? 14 A. Yes. 15 Q. Can you explain? 16 A. One second, I'm sorry. 17 Q. Sure. 18 A. As I recall, Sunbeam decided to extend the 19 quarter, I believe it was I think two days, in order 20 to -- because they were going to close the Coleman 21 acquisition I believe on March 31st, they wanted to 22 include the additional two days of revenue related to 23 Coleman in their first quarter. 24 Q. Would extending the quarter also permit 25 Sunbeam to count its first quarter sales, additional</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. Did the fact that Sunbeam advised you that it 2 wished to extend the first quarter of 1998 have any 3 effect on your thinking concerning the need to conduct 4 additional cutoff procedures for the quarter? 5 A. Yes. 6 Q. And what was your thought in that regard? 7 A. Honestly, at that point in time I believe 8 that they needed to come up with some additional ways 9 to make the quarter on the revenue side, and that was 10 one of them, one of a couple as opposed to -- I'm 11 sorry, but that was one of them. 12 Q. And how did that conclusion affect your 13 thinking with respect to the cutoff procedure project? 14 A. The cutoff procedure project was already 15 implemented, but it emphasized the need to do it. 16 Q. Were you concerned that Sunbeam might play 17 games with respect to its first quarter numbers? 18 MR. CLARE: Objection to form. 19 THE WITNESS: I don't consider it playing 20 games, but there was never a clear definition of 21 whether or not they intended to include Coleman 22 sales or not when they made their press releases. 23 BY MR. MARKOWSKI: 24 Q. Was the fact that Sunbeam had advised you 25 that it wished to extend the first quarter consistent</p>
<p style="text-align: right;">Page 22</p> <p>1 sales that Sunbeam itself made during those three days? 2 A. I believe that was their intention, yes. 3 Q. As of the time -- this memorandum appears to 4 have been written on or about March 29 -- well, excuse 5 me, March 24, I believe. 6 A. Yes. 7 Q. As of that point in time, had the first 8 quarter been extended? 9 A. No, I don't believe so. 10 Q. So the decision to extend the first quarter 11 that Sunbeam made was sometime between the time this 12 memorandum was prepared and the end of the quarter? 13 A. Yeah, I believe I testified, somewhere in the 14 records I'm sure there is a paper trail of the date, 15 because I specifically remember the phone call I had. 16 My daughter was in the hospital sick, and I remember 17 getting the phone call related to the request to extend 18 the quarter. 19 Q. Who did you get that call from? 20 A. I don't recall specifically. 21 Q. Do you recall that it was Bob Gluck that 22 called you? 23 A. It's possible that it was Bob Gluck, yes. 24 Q. Who is Bob Gluck? 25 A. He was the corporate controller of Sunbeam.</p>	<p style="text-align: right;">Page 24</p> <p>1 with your conclusion that management was being pressed 2 to do whatever it could to maximize first quarter sales 3 results? 4 MR. CLARE: Objection to form. 5 THE WITNESS: That they needed to be 6 aggressive, yes. That is the way I would 7 characterize it. 8 BY MR. MARKOWSKI: 9 Q. And they needed to be aggressive for what 10 reason, Mr. Bornstein? 11 MR. CLARE: Objection, foundation. 12 MR. MOSCATO: You're asking him what his view 13 is, not his trying to read their minds? 14 MR. MARKOWSKI: That's correct. 15 BY MR. MARKOWSKI: 16 Q. Why did you think Sunbeam needed to be 17 aggressive with respect to its first quarter sales 18 activities? 19 A. Because again, that was a big spread of sales 20 that were in fact recorded at March 1st, and what they 21 had told the public they planned on doing for the first 22 quarter. 23 Q. Mr. Bornstein, in general, what did -- let me 24 ask a foundational question. In fact, Andersen did 25 take additional steps to monitor Sunbeam's first</p>

<p style="text-align: right;">Page 25</p> <p>1 quarter sales shipments at the end of the quarter?</p> <p>2 A. Yes.</p> <p>3 Q. In general, what did Andersen do?</p> <p>4 A. We sent people out to a number of material</p> <p>5 locations, manufacturing locations, where Sunbeam in</p> <p>6 fact built and shipped product at the end of the first</p> <p>7 quarter.</p> <p>8 Q. What did those people, what were those people</p> <p>9 asked to do?</p> <p>10 A. It's pretty much detailed in the memorandum,</p> <p>11 but basically to monitor the shipment of product, to</p> <p>12 make sure the product was actually shipped at the end</p> <p>13 of a quarter, to obtain shipping and receiving</p> <p>14 documents, to physically observe the shipping</p> <p>15 locations, to do additional work on additional bill and</p> <p>16 hold transactions that the company had told us that</p> <p>17 they were entering into, and to basically make sure</p> <p>18 that the product was there and ready to be shipped or</p> <p>19 shipped and do all the cutoff work that we talked</p> <p>20 about.</p> <p>21 Q. We've been using the term cutoff. What does</p> <p>22 cutoff mean?</p> <p>23 A. It's just, cutoff means, it's just a period</p> <p>24 of time that you take a snapshot. You freeze the, kind</p> <p>25 of freeze that period in time and you, exactly what it</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Yes.</p> <p>2 Q. And the purpose for that was so that they</p> <p>3 could do what?</p> <p>4 A. To make sure that the process I just</p> <p>5 explained was adhered to.</p> <p>6 Q. Verify it with their own eyes, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Now is that something that Andersen did at</p> <p>9 the end of each Sunbeam quarter?</p> <p>10 A. No.</p> <p>11 Q. And the reason for the difference here was</p> <p>12 what you've already described, the gulf between where</p> <p>13 Sunbeam sales were at the end of March -- or excuse me,</p> <p>14 at the end of February, and where the company had told</p> <p>15 the public it would end up at the end of the first</p> <p>16 quarter, correct?</p> <p>17 A. Yes. It was, as I explained earlier, a</p> <p>18 decision I made sometime in March, March 18th, 19th,</p> <p>19 that that was something I was going to have done.</p> <p>20 Q. Mr. Bornstein, let me show you what we</p> <p>21 previously marked as CPH Exhibit Number 20. Bears</p> <p>22 Bates number CPH 0129292 through 192296.</p> <p>23 A. Okay.</p> <p>24 Q. Can you tell me what this document is?</p> <p>25 A. Just give me a couple of minutes to look at</p>
<p style="text-align: right;">Page 26</p> <p>1 sounds, cut off when a sale is made and when a sale is</p> <p>2 not made.</p> <p>3 Q. And the cutoff moment in this instance was</p> <p>4 what?</p> <p>5 A. I believe the policy, the revenue recognition</p> <p>6 policy was that it had to have been placed in a truck</p> <p>7 and the truck needed to either be filled or pushed off</p> <p>8 the dock and title passed to the customer.</p> <p>9 Q. By what moment in time?</p> <p>10 A. Technically, midnight of whatever the date</p> <p>11 was. I think it was March 31st that the quarter ended.</p> <p>12 Q. It ultimately was March 31st, correct?</p> <p>13 A. Yes.</p> <p>14 Q. At the time this memo was written, the end of</p> <p>15 the quarter would have been March 29?</p> <p>16 A. Yes.</p> <p>17 Q. And it was the extension of the quarter by</p> <p>18 three days from the 29th to the 31st that resulted in</p> <p>19 that change, correct?</p> <p>20 A. Yes, being the 31st as opposed to the 29th,</p> <p>21 yes.</p> <p>22 Q. All right. Now did Andersen staff or,</p> <p>23 Andersen staff ask to be physically present on the</p> <p>24 Sunbeam shipping docks at midnight on the last day of</p> <p>25 the quarter?</p>	<p style="text-align: right;">Page 28</p> <p>1 it.</p> <p>2 Q. Sure.</p> <p>3 A. It's a, looks like a memo from Vance Kistler,</p> <p>4 who was a, I don't know, a staff accountant or it might</p> <p>5 have been a higher level, maybe a senior accountant, on</p> <p>6 his inventory observation work at Hattisburg.</p> <p>7 Q. Who was Vance Kistler again? I'm sorry, he's</p> <p>8 an Andersen employee?</p> <p>9 A. Yes.</p> <p>10 Q. Does this report relate to the sales cutoff</p> <p>11 procedures that we've been talking about?</p> <p>12 A. Yes.</p> <p>13 Q. Does this reflect Mr. Kistler's work and the</p> <p>14 work of others at the Hattisburg facility?</p> <p>15 A. Yes.</p> <p>16 Q. Hattisburg was a Sunbeam facility?</p> <p>17 A. Yes.</p> <p>18 Q. And what did Sunbeam do at Hattiesburg, do</p> <p>19 you know?</p> <p>20 A. I don't remember specifically what they built</p> <p>21 there, but they manufactured equipment and had a</p> <p>22 distribution center where product was put on trucks and</p> <p>23 shipped to customers.</p> <p>24 Q. Do you recall that Hattiesburg is one of the</p> <p>25 more significant facilities that Sunbeam had for</p>

<p style="text-align: right;">Page 29</p> <p>1 shipping product?</p> <p>2 MR. CLARE: Objection to form.</p> <p>3 THE WITNESS: Yes, I believe their largest at</p> <p>4 the time.</p> <p>5 BY MR. MARKOWSKI:</p> <p>6 Q. Mr. Bornstein, let me show you what we've</p> <p>7 also previously marked as CPH Exhibit 113.</p> <p>8 A. Does anyone else who lives in Florida need</p> <p>9 air conditioning in this room? Is there any way we can</p> <p>10 do that? Us Floridians need air conditioning.</p> <p>11 Q. If at any point, Mr. Bornstein, you need to</p> <p>12 take a break or need something else like air</p> <p>13 conditioning, just let us know. We'll try to make sure</p> <p>14 you are comfortable.</p> <p>15 A. Thank you.</p> <p>16 Q. If you would take a moment to look at CPH</p> <p>17 Exhibit Number 113, my first question is going to be if</p> <p>18 you can identify it for me, tell me what it is.</p> <p>19 A. Okay.</p> <p>20 Q. The question was if you can identify the</p> <p>21 document for me.</p> <p>22 A. The document, after reading it, appears to be</p> <p>23 a documentation of work done by -- I'm not sure who</p> <p>24 this guy is, but another employee of Arthur Andersen on</p> <p>25 cutoff work done at a warehouse in DC, a warehouse in</p>	<p style="text-align: right;">Page 31</p> <p>1 Mr. Bornstein.</p> <p>2 A. Sure.</p> <p>3 Q. Was that huge effort in your mind justified?</p> <p>4 A. Yes.</p> <p>5 Q. And why did you think that huge effort was</p> <p>6 justified under the circumstances that you were</p> <p>7 confronted with?</p> <p>8 A. You know, based on the spread, the</p> <p>9 aggressiveness of management and the spread between</p> <p>10 what was recorded as sales, as well as what was, what</p> <p>11 was out on the street, we talked about them extending</p> <p>12 the quarter.</p> <p>13 Another thing that happened post the</p> <p>14 March 18th time frame was the announcement or the</p> <p>15 information to us that they were going to, Sunbeam was</p> <p>16 in the process of implementing an additional bill and</p> <p>17 hold series of transactions, I guess.</p> <p>18 So again, that was kind of the second thing</p> <p>19 that, that kind of emphasized that additional work</p> <p>20 needed to be done.</p> <p>21 Q. And the work needed to be done in order to do</p> <p>22 what you thought necessary to assure that Sunbeam</p> <p>23 properly reported its sales for the quarter?</p> <p>24 A. Yes.</p> <p>25 Q. And didn't report more sales than it was</p>
<p style="text-align: right;">Page 30</p> <p>1 Aurora. I think that might have been a, I believe that</p> <p>2 was a third-party warehouse.</p> <p>3 And again, work, additional work done on</p> <p>4 cutoff, shipping cutoff, as well as additional work</p> <p>5 done on bill and hold sales.</p> <p>6 Q. And this relates to the project we've been</p> <p>7 talking about, correct?</p> <p>8 A. Yes.</p> <p>9 Q. The monitoring of Sunbeam's end-of-quarter</p> <p>10 sales shipments, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Is it fair to say that it took a fair amount</p> <p>13 of effort, Mr. Bornstein, to arrange and implement the</p> <p>14 additional cutoff monitoring procedures?</p> <p>15 A. I would characterize it as a huge amount of</p> <p>16 effort. Probably more effort on a quarterly inventory</p> <p>17 cutoff than -- probably safe to say on probably any</p> <p>18 work that was done probably for the previous 15 years</p> <p>19 in auditing history.</p> <p>20 Q. And the huge effort was warranted because of</p> <p>21 what again, Mr. Bornstein?</p> <p>22 MR. MOSCATO: I object.</p> <p>23 You can answer again, Larry.</p> <p>24 BY MR. MARKOWSKI:</p> <p>25 Q. Let me ask a different question,</p>	<p style="text-align: right;">Page 32</p> <p>1 entitled to report, correct?</p> <p>2 A. Yes.</p> <p>3 Q. When did you first learn, Mr. Bornstein, that</p> <p>4 Sunbeam's sales for the first two months of 1998 were</p> <p>5 about half of what Sunbeam's sales had been for the</p> <p>6 first two months of 1997?</p> <p>7 MR. MOSCATO: The question is focused on the</p> <p>8 first two months? That's your question?</p> <p>9 MR. MARKOWSKI: That's correct.</p> <p>10 MR. MOSCATO: First two months.</p> <p>11 THE WITNESS: I believe sometime towards</p> <p>12 maybe the first, the end of the first week of</p> <p>13 March. Maybe the second, I'd say anywhere between</p> <p>14 March 7th and maybe March 10th to 13th, in that</p> <p>15 time frame.</p> <p>16 BY MR. MARKOWSKI:</p> <p>17 Q. And how did you learn that information?</p> <p>18 A. From Dennis Pastrana, the senior accountant</p> <p>19 working for me.</p> <p>20 Q. Do you recall whether you were present in a</p> <p>21 room with Mr. Pastrana?</p> <p>22 A. No, it was via telephone.</p> <p>23 Q. Where were you at?</p> <p>24 A. I was working on the 144 offering, I believe</p> <p>25 in New York.</p>

<p style="text-align: right;">Page 33</p> <p>1 Q. And where was Mr. Pastrana?</p> <p>2 A. In Delray Beach, Florida, at Sunbeam's</p> <p>3 location.</p> <p>4 Q. Do you recall whether he called you or</p> <p>5 whether you called him in connection with that phone</p> <p>6 call?</p> <p>7 A. No, I don't recall.</p> <p>8 Q. What do you recall Mr. Pastrana telling you?</p> <p>9 A. Just the fact of where they were, where they</p> <p>10 were from a revenue standpoint. And I don't recall</p> <p>11 anything else specifically.</p> <p>12 Generally he was doing work to support the</p> <p>13 work that we were doing up in New York. He was working</p> <p>14 on a comfort letter, which entailed reviewing the</p> <p>15 company's financial information for the most recent</p> <p>16 periods.</p> <p>17 Q. Did you consider the information he provided</p> <p>18 to you about Sunbeam's sales for the first two months</p> <p>19 of 1998 to be significant in any way?</p> <p>20 MR. CLARE: Objection to form.</p> <p>21 THE WITNESS: Did I think it was significant,</p> <p>22 the information that he gave me?</p> <p>23 BY MR. MARKOWSKI:</p> <p>24 Q. Correct, concerning Sunbeam's sales for the</p> <p>25 first two months of the first quarter of '98.</p>	<p style="text-align: right;">Page 35</p> <p>1 relating to the preparation of a comfort letter?</p> <p>2 A. Yes.</p> <p>3 Q. What's a comfort letter?</p> <p>4 A. A comfort letter is, for lack of a better</p> <p>5 word, it gives the underwriters and underwriter's</p> <p>6 counsel comfort that the numbers that are within the</p> <p>7 bond offering are derived from the company's books and</p> <p>8 records.</p> <p>9 Q. Now the letter is prepared by whom?</p> <p>10 A. By Arthur Andersen.</p> <p>11 Q. And it goes to whom in this case?</p> <p>12 A. I believe it goes to underwriter's counsel.</p> <p>13 So I'm not sure who exactly it's addressed to, to be</p> <p>14 honest with you, but I believe it was underwriter's</p> <p>15 counsel.</p> <p>16 Q. The underwriting you are referring to in this</p> <p>17 case was whom?</p> <p>18 A. Morgan Stanley.</p> <p>19 Q. And Morgan Stanley is underwriting what in</p> <p>20 this context, just so we're clear?</p> <p>21 A. The bond offering.</p> <p>22 Q. And by underwriting, what do you mean?</p> <p>23 A. They were the ones helping the company sell</p> <p>24 the bonds.</p> <p>25 Q. Why was Andersen preparing a comfort letter</p>
<p style="text-align: right;">Page 34</p> <p>1 A. Yes, I did.</p> <p>2 Q. In what way?</p> <p>3 A. That it was much lower than the previous</p> <p>4 year.</p> <p>5 Q. Do you know if the public was expecting</p> <p>6 Sunbeam's sales for the first quarter of 1998 to be</p> <p>7 lower than Sunbeam's sales for the first quarter of</p> <p>8 1997?</p> <p>9 MR. CLARE: Objection, no foundation.</p> <p>10 THE WITNESS: Did I know at that time?</p> <p>11 BY MR. MARKOWSKI:</p> <p>12 Q. Right. Did you know if the financial</p> <p>13 community was expecting Sunbeam's sales in the first</p> <p>14 quarter of 1998 to be lower or higher than Sunbeam's</p> <p>15 sales for the first quarter of 1997 had been?</p> <p>16 MR. CLARE: Same objection.</p> <p>17 THE WITNESS: I knew that they were expecting</p> <p>18 I believe to be higher than the previous year.</p> <p>19 BY MR. MARKOWSKI:</p> <p>20 Q. Your understanding was the financial</p> <p>21 community was expecting Sunbeam's sales to grow in the</p> <p>22 first quarter of 1998 over the first quarter of 1997</p> <p>23 results, correct?</p> <p>24 A. Yes.</p> <p>25 Q. You said that Mr. Pastrana was doing work</p>	<p style="text-align: right;">Page 36</p> <p>1 for Morgan Stanley relating to the bond offering?</p> <p>2 A. It was requested by Morgan Stanley to</p> <p>3 prepare.</p> <p>4 Q. Do you know why Sunbeam was issuing the</p> <p>5 bonds?</p> <p>6 A. In order to finance a portion of the three</p> <p>7 acquisitions you talked about earlier.</p> <p>8 Q. Including the acquisition of Coleman Company,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. What's the relevance of Sunbeam's sales</p> <p>12 results in January and February of 1998 to the work</p> <p>13 Mr. Pastrana was doing on the comfort letter?</p> <p>14 A. The comfort letter asked for -- the standard</p> <p>15 comfort letter, there are certain things that are</p> <p>16 required to be disclosed and certain things that aren't</p> <p>17 required to be disclosed, but, for example, you'd have</p> <p>18 to look at net worth of the company compared to the</p> <p>19 prior year. I forget the exact one. Net assets of the</p> <p>20 company compared to the prior year. Really any</p> <p>21 material variation from the same period of the prior</p> <p>22 year required to disclose to the, to put in the</p> <p>23 document, put in the comfort letter.</p> <p>24 Again, the standard things, I don't know what</p> <p>25 they are. And then if there is anything that's out of</p>

<p style="text-align: right;">Page 37</p> <p>1 the ordinary, typically that might go in there.</p> <p>2 Q. Mr. Bornstein, in connection with -- as I</p> <p>3 understand your prior testimony in connection with the</p> <p>4 Sunbeam audits, you were the second-most senior person</p> <p>5 assigned in the audit; is that correct, the audit team?</p> <p>6 A. There was a, there were, I think a concurring</p> <p>7 partner was also assigned to the team, but that partner</p> <p>8 didn't actually do the field work. He was more of an</p> <p>9 advisory partner. So I would consider myself probably</p> <p>10 the third senior person on the team.</p> <p>11 Q. All right. In connection with the work you</p> <p>12 did as the third most senior Andersen person on the</p> <p>13 Sunbeam audit, if we include Mr. -- the concurring</p> <p>14 partner was Mr. Pruitt; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. And the engagement partner was Mr. Harlow,</p> <p>17 the audit partner?</p> <p>18 A. Yes.</p> <p>19 Q. And Mr. Harlow would have been more actively</p> <p>20 involved in the actual audit process than Mr. Pruitt,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. In connection with the work that you did</p> <p>24 regarding Andersen's audits of Sunbeam, did you try to</p> <p>25 keep abreast of statements that Sunbeam made to the</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. When Mr. Pastrana advised you that Sunbeam's</p> <p>2 sales for the first two months of 1998 were about half</p> <p>3 of what they had been in the first two months of 1997,</p> <p>4 did you report that information to anyone else at</p> <p>5 Arthur Andersen?</p> <p>6 A. Yes.</p> <p>7 Q. To whom did you report it?</p> <p>8 A. I think you can see in the memorandums that</p> <p>9 we reported that to whoever was on the engagement team</p> <p>10 working on the cutoff procedures, Mr. Harlow,</p> <p>11 Mr. Pruitt. I don't specifically remember anyone else,</p> <p>12 but I'm sure I mentioned it to other people.</p> <p>13 Q. Did you make certain personally that</p> <p>14 Mr. Harlow knew that Sunbeam's sales in the first two</p> <p>15 months of '98 were about half of what they had been in</p> <p>16 the first two months of '97?</p> <p>17 A. Yes.</p> <p>18 Q. Did you personally make sure that Mr. Pruitt</p> <p>19 knew that as well?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall when you informed Mr. Harlow of</p> <p>22 that fact?</p> <p>23 A. As soon as I was aware of it.</p> <p>24 Q. Do you recall when you advised Mr. Pruitt of</p> <p>25 that?</p>
<p style="text-align: right;">Page 38</p> <p>1 financial community relating to its performance?</p> <p>2 A. Yes, I did.</p> <p>3 Q. And is it in that connection that you had an</p> <p>4 understanding that Sunbeam had led the financial</p> <p>5 community to expect that its first quarter 1998 sales</p> <p>6 would be higher than its first quarter 1997 sales?</p> <p>7 MR. CLARE: Objection to form.</p> <p>8 THE WITNESS: It was a combination of a lot</p> <p>9 of things, newspaper reports, the budgets,</p> <p>10 statements Mr. Dunlap had made to the financial</p> <p>11 community and the world on growth projections.</p> <p>12 So I mean it's a combination of things how you</p> <p>13 keep track of things like that.</p> <p>14 Andersen at the time had a system in place</p> <p>15 where you would get, you know, consensus, first</p> <p>16 call type of information that can be supplied</p> <p>17 also.</p> <p>18 So I mean we were kept pretty -- you know, it</p> <p>19 was part of our job to be in tune to that</p> <p>20 information.</p> <p>21 BY MR. MARKOWSKI:</p> <p>22 Q. And you considered yourself in the first</p> <p>23 quarter of 1998 well informed on those issues as they</p> <p>24 related to Sunbeam?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. I believe not until March 17th or 18th. The</p> <p>2 night before the, the date before the press release</p> <p>3 went out and prior to the bonds being priced.</p> <p>4 Q. Can you tell me what the context of that</p> <p>5 conversation was? Was it a conversation?</p> <p>6 A. Yes, just in -- Mr. Pruitt, as part of his</p> <p>7 responsibility, needed to read the comfort letter in</p> <p>8 its entirety. And I do recall pointing that out to him</p> <p>9 specifically, that sales were half of what they were,</p> <p>10 and --</p> <p>11 Q. Where were you both at?</p> <p>12 A. He was in Miami. I believe I was, I was in</p> <p>13 West Palm Beach.</p> <p>14 And I recall the conversation that, that the</p> <p>15 company was at 72 million versus 143 million, and</p> <p>16 explained to him where they were versus their estimates</p> <p>17 on the street. And I don't remember specifically the</p> <p>18 conversation, but I do recall letting him know that I</p> <p>19 wasn't 100 percent sure if all parties involved in the</p> <p>20 transaction were informed of that information.</p> <p>21 Q. What did Mr. Pruitt say to you?</p> <p>22 A. He told me that he was going to talk to</p> <p>23 Mr. Harlow and discuss the issue.</p> <p>24 Q. And did you tell Mr. Pruitt who you weren't</p> <p>25 certain -- let me rephrase that.</p>

<p style="text-align: right;">Page 41</p> <p>1 You indicated, if I understood you correctly, 2 Mr. Bornstein, that you raised with Mr. Pruitt an issue 3 concerning whether everyone involved in the debenture 4 offering was aware of the difference between Sunbeam's 5 sales in the first two months of '98 and the first two 6 months of '97, correct? 7 A. Yes. 8 Q. Was there somebody specific you had in mind? 9 A. I wasn't 100 percent sure if Morgan Stanley 10 and Morgan Stanley's counsel, as well as any of the 11 other people working on the transaction other than the 12 people at Sunbeam, knew where the company sales were at 13 that point in time. 14 Q. Did you want to make certain that Morgan 15 Stanley was advised of that information? 16 A. Yes. 17 Q. Is that what you told Mr. Pruitt? 18 A. I didn't tell him that specifically, no. 19 (Thereupon, a cellphone rang.) 20 MR. MARKOWSKI: Can we go off the record. 21 THE VIDEOGRAPHER: We are now going off the 22 video record. The time on the monitor, 10:05 a.m. 23 (Discussion held off the record.) 24 THE VIDEOGRAPHER: We are now back on video 25 record. The time on the monitor, 10:05 a.m.</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. Have you seen this letter before? 2 A. I don't remember the specific one, but I've 3 seen the form letter before. 4 Q. Were you aware that Morgan Stanley had 5 written to Arthur Andersen to formally request Arthur 6 Andersen provide it with a comfort letter? 7 A. Yes, I was. 8 Q. In connection with the Sunbeam debenture 9 offering? 10 A. Yes. I believe we requested that this form 11 letter be provided to Arthur Andersen. 12 Q. I see. So it was Andersen's request that 13 Morgan Stanley provide it with a written request for a 14 comfort letter? 15 A. Yes, because the issue was that this was a 16 144 offering and not in accordance with the, 17 specifically what -- similar to like an IPO or a 33 Act 18 filing, I believe a 144 offering was a 34 Act filing, 19 which is a requirement of Andersen to make sure that 20 the underwriter would sign off on a letter requesting 21 that they were doing the same amount of work that would 22 have been required in the 33 Act filing. 23 Q. That's what Morgan Stanley represented to 24 Andersen in connection with this bond offering? 25 A. Yes.</p>
<p style="text-align: right;">Page 42</p> <p>1 BY MR. MARKOWSKI: 2 Q. Mr. Bornstein, did you specifically tell 3 Mr. Pruitt you weren't certain if Morgan Stanley knew 4 these facts? 5 A. No, I didn't specifically say that. 6 Q. Okay. What did Mr. Pruitt say to you when 7 you raised an issue with respect to whether everyone 8 was on notice of this drop in Sunbeam's sales? 9 A. He told me that if everyone wasn't aware, 10 that we wouldn't issue a comfort letter. 11 Q. And did Mr. Pruitt give you any instruction? 12 A. No. 13 Q. Did Mr. Pruitt tell you he intended to take 14 some action? 15 A. He told me he was going to talk to 16 Mr. Harlow. 17 Q. Mr. Bornstein, I'm going to show you what we 18 previously marked as CPH Exhibit Number 12. It's a 19 two-page document on Morgan Stanley stationery bearing 20 Bates number AA31057 through 058, and it's a letter 21 dated March 11, 1998, from John D. Tyree of Morgan 22 Stanley to Arthur Andersen; attention, Phil Harlow. 23 Would you take a moment to take a look at CPH 24 Exhibit Number 12 for me, Mr. Bornstein. 25 A. Okay.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Did Andersen wait to receive this letter 2 before beginning work on the comfort letter? 3 A. No, I don't believe so. 4 MR. MARKOWSKI: Mr. Bornstein, I'm going to 5 show you what we're marking as CPH Exhibit 6 Number 120. It's a three-page document on Sunbeam 7 stationery dated March 16, 1998, bearing Bates 8 number AA31053 through 055. 9 (CPH Exhibit No. 120 was marked for 10 identification.) 11 BY MR. MARKOWSKI: 12 Q. If you would take a moment, sir, I'd like you 13 to review this document, and my first question is 14 whether you can identify it for me. 15 A. Yes. 16 Q. Can you tell me what it is? 17 A. It's a management representation letter from 18 Sunbeam to Arthur Andersen utilized to issue our 19 comfort letter. 20 Q. This is the comfort letter that you've been 21 referring to that Morgan Stanley requested? 22 A. Yes. 23 Q. In connection with the debenture offering, 24 correct? 25 What's the purpose of this letter?</p>

<p style="text-align: right;">Page 45</p> <p>1 A. When you, any time you're, basically you're 2 bringing -- let me back up. 3 The purpose of this letter again is to issue 4 a comfort letter. And basically what you're doing is 5 enough, the same amount of work sufficient that if you 6 were going to issue a consent to update your opinion on 7 the financial statements that were whatever the 8 previous period was. 9 So it's mainly analytical work and work done 10 sufficient to issue a comfort letter. 11 Q. Does this document contain information 12 relating to Sunbeam's sales for the first two months of 13 1998? 14 A. Yes, it does. 15 Q. Where do you see that? 16 A. On paragraph 9C. 17 Q. Would you read that into the record, please? 18 A. "Net sales from December 29, 1997, through 19 March 1, 1998, were 72 million, 72,018,000, as compared 20 to 143,499,000 for the corresponding period of the 21 preceding year." 22 Q. That's the information that we've been 23 talking about that showed that Sunbeam's sales for the 24 first two months of 1998 were approximately half of 25 what they had been in the prior year period, correct?</p>	<p style="text-align: right;">Page 47</p> <p>1 I believe it does. 2 3 BY MR. MARKOWSKI: 4 Q. What does it say? Would you read that into 5 the record, sir? 6 A. "For the period from December 29th, 1997, 7 through March 16, 1998, consolidated net sales 8 decreased as compared to the corresponding period of 9 the preceding year primarily to the company's Early Buy 10 program for outdoor grills which accelerated outdoor 11 grill sales into the fourth quarter of fiscal 1997. 12 Additionally, decreased consolidated net sales during 13 the period as compared to the corresponding period of 14 the preceding year results, in part, from a 15 nonrecurring sale in January of 1997 of discontinued 16 stock keeping units and excess and obsolete inventory 17 in connection with the company's November 1996 18 restructuring. Net income decreased primarily due to 19 the aforementioned sales decrease and a first quarter 20 compensation charge from restricted stock issued in 21 connection with new employment agreements for key 22 officers." 23 Q. And this is a statement being made to Arthur 24 Andersen by the senior management of Sunbeam, correct? 25 A. Yes.</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Yes. 2 Q. And this letter is signed by who, sir? 3 A. Signed by Albert Dunlap, Russell Kersh, David 4 Fanin and Bob Gluck, who were all senior executives of 5 Sunbeam. 6 Q. Mr. Dunlap's position at this time was what? 7 A. States here chairman and chief executive 8 officer. 9 Q. Of Sunbeam? 10 A. Of Sunbeam, yes. 11 Q. Mr. Kersh was what? 12 A. Executive vice-president of finance and 13 administration. 14 Mr. Fanin was executive vice-president, 15 general counsel. 16 Mr. Gluck was vice-president and chief 17 accounting officer. 18 Q. Four very senior Sunbeam executives, correct? 19 A. Yes. 20 Q. Does this letter offer an explanation for the 21 primary reason for the substantial decline in Sunbeam's 22 sales for the first two months of '98 compared to the 23 first two months of '97? 24 MR. CLARE: Objection to form. 25 THE WITNESS: In the preceding paragraph, 9B,</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. What does it mean to be accelerating outdoor 2 grill sales into the fourth quarter of 1997, sir? 3 A. It talks -- what it means is just what it 4 says, accelerating sales of grills to the fourth 5 quarter of the previous year. 6 Q. How does that affect first quarter sales? 7 MR. MOSCATO: Objection. 8 BY MR. MARKOWSKI: 9 Q. I'm just trying to understand what the 10 reference to accelerating sales means so that the jury 11 can understand. 12 A. Right. The Early Buy program and the bill 13 and hold program that they had in effect at the end of 14 1997, you know, based on the facts as of the end of 15 February, showed that it did have an impact on moving 16 some of the sales that might have previously been 17 recorded in the fourth quarter -- in the first quarter, 18 excuse me, of the corresponding year might have been 19 accelerated into the previous quarter. 20 Q. So sales that otherwise would have normally 21 taken place in the first quarter of 1998 had in fact 22 already occurred in the fourth quarter of 1997? 23 MR. CLARE: Object to the form. 24 THE WITNESS: Yes. 25</p>

<p style="text-align: right;">Page 49</p> <p>1 BY MR. MARKOWSKI:</p> <p>2 Q. That's identified here as the primary reason</p> <p>3 for the drop in Sunbeam's sales in the first two months</p> <p>4 of 1998, correct?</p> <p>5 A. That's what it states, yes.</p> <p>6 THE WITNESS: Could we take like a</p> <p>7 five-minute break for the restroom?</p> <p>8 MR. MARKOWSKI: Sure.</p> <p>9 THE VIDEOGRAPHER: We are now going off video</p> <p>10 record. The time on the monitor is 10:17 p.m.</p> <p>11 (Thereupon, a recess was taken.)</p> <p>12 THE VIDEOGRAPHER: We are now back on video</p> <p>13 record. The time on the monitor is 10:29 a.m.</p> <p>14 BY MR. MARKOWSKI:</p> <p>15 Q. Mr. Bornstein, as you just testified, Albert</p> <p>16 Dunlap was the chief executive officer of Sunbeam in</p> <p>17 the first quarter of 1998, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall that Mr. Dunlap at that point</p> <p>20 had been the chief executive of Sunbeam for something</p> <p>21 less than two years?</p> <p>22 A. Yes.</p> <p>23 Q. Are you aware of Mr. Dunlap's reputation at</p> <p>24 that time as a turnaround specialist?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 51</p> <p>1 A. Yes.</p> <p>2 Q. And what were those doubts based upon?</p> <p>3 A. The financial performance really through the</p> <p>4 first two months of the, of '98, and as well as me, as</p> <p>5 well as my observation and review of at least the</p> <p>6 operations that I had seen, which included several of</p> <p>7 the domestic facilities as well as the Mexico City</p> <p>8 facility.</p> <p>9 Q. First quarter of 1998, did you consider</p> <p>10 yourself to be familiar with Sunbeam's financial</p> <p>11 results and performance?</p> <p>12 A. For what period of time?</p> <p>13 Q. For the prior year.</p> <p>14 A. Yes.</p> <p>15 Q. And for the first two months of 1998?</p> <p>16 A. Yes.</p> <p>17 Q. And did you consider yourself generally</p> <p>18 familiar with Sunbeam's management?</p> <p>19 A. Some of management, yes, from a corporate</p> <p>20 standpoint.</p> <p>21 Q. And you considered yourself to be familiar</p> <p>22 with Sunbeam's facilities?</p> <p>23 A. As I mentioned, domestically and in Mexico,</p> <p>24 part of Mexico anyway.</p> <p>25 Q. Did you think Mr. Dunlap was overstating his</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. What do you know about that? Let me go back</p> <p>2 to 1998. Back in the first quarter of 1998, what was</p> <p>3 your understanding of Mr. Dunlap's reputation for</p> <p>4 turnarounds?</p> <p>5 A. That he had a reputation for cutting costs,</p> <p>6 turning around companies and selling them.</p> <p>7 Q. And doing that all in very short order?</p> <p>8 A. Yes.</p> <p>9 Q. And were you aware of any public statements</p> <p>10 that Mr. Dunlap had made about his success in turning</p> <p>11 Sunbeam around during his tenure as Sunbeam's chief</p> <p>12 executive officer? Focusing again on what your</p> <p>13 knowledge was in the first quarter of 1998.</p> <p>14 A. Yes.</p> <p>15 Q. What was your understanding of what</p> <p>16 Mr. Dunlap had said publicly on that subject?</p> <p>17 A. That it was turned around and headed for</p> <p>18 brighter and greater pastures.</p> <p>19 Q. Mr. Dunlap was projecting significant growth</p> <p>20 in sales and profits for 1998 for Sunbeam?</p> <p>21 A. Yes.</p> <p>22 Q. Compared to its 1997 performance?</p> <p>23 A. Yes.</p> <p>24 Q. Did you have any personal doubts about that</p> <p>25 in the first quarter of 1998?</p>	<p style="text-align: right;">Page 52</p> <p>1 accomplishments at Sunbeam?</p> <p>2 A. I thought there was a possibility that he</p> <p>3 was, yes.</p> <p>4 Q. And that was your belief in the first quarter</p> <p>5 of 1998, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Mr. Bornstein, let me show you what we've</p> <p>8 previously marked as CPH Exhibit Number 17. It's a</p> <p>9 document on Arthur Andersen stationery bearing Bates</p> <p>10 numbers MS375 through 381.</p> <p>11 If you could take a moment, my first question</p> <p>12 is going to be whether you can identify that document</p> <p>13 for me.</p> <p>14 A. Yeah, this is a copy of a, a copy of the</p> <p>15 comfort letter.</p> <p>16 Q. And it's a letter dated March 19, 1998,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And it's from Arthur Andersen to Morgan</p> <p>20 Stanley & Company, Inc.?</p> <p>21 A. Yes.</p> <p>22 Q. And it's signed Arthur Andersen LLP, correct?</p> <p>23 A. Yes. I believe it's my handwriting.</p> <p>24 Q. You believe you signed the name Arthur</p> <p>25 Andersen LLP to the letter?</p>

<p style="text-align: right;">Page 53</p> <p>1 A. This was signed about five o'clock in the 2 morning on the 19th, I believe, the night of the 3 pricing of the bonds, the following subsequent a.m. 4 Q. So that process I think from prior testimony 5 started on the 19th, if it was 5:00 a.m., it would have 6 been 5:00 a.m. on the 20th? 7 A. 20th, I believe. 8 Q. Even though the letter is dated the 19th, 9 correct? 10 A. Yes. 11 Q. Were you authorized to sign this letter on 12 behalf of Morgan Stanley -- excuse me, I misspoke. 13 Were you authorized to sign this letter on 14 behalf of Arthur Andersen? 15 A. Yes, I was. 16 Q. And who provided you with that authorization? 17 A. Phil Harlow. 18 Q. And Mr. Harlow was the engagement partner, as 19 you've previously testified, correct? 20 A. Yes. 21 Q. And the letter is addressed to Morgan 22 Stanley. 23 Do you know if the letter was delivered to 24 Morgan Stanley? 25 A. Yes, it was.</p>	<p style="text-align: right;">Page 55</p> <p>1 you've read into the record from the March 16 letter 2 from Sunbeam management to Arthur Andersen? 3 A. It's similar. It's not identical. 4 Q. CPH Exhibit Number 120. Are the figures 5 identical? 6 A. Yes. 7 Q. And the, just so the record is clear, 8 Mr. Bornstein, would you read paragraph 6C into the 9 record. 10 A. Says, "Although the company has not provided 11 us with any financial statements as of any date or for 12 any period subsequent to February 1, 1998, management 13 has provided net sales from the December 29, 1997, 14 through March 1st, 1998, which was 72,018,000 as 15 compared to 143,499,000 for the corresponding period of 16 the preceding year." 17 Q. And that again reflects a decline of about 18 50 percent in sales for the first two months of 1998 19 from the first two months of 1997, correct, sir? 20 A. Yes. 21 Q. And does this letter also repeat the 22 explanations management provided to Arthur Andersen for 23 that decline? 24 A. Yes, the previous paragraph, 6B. 25 Q. And what is the primary reason that</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. When did that occur? I'm talking about this 2 version of it signed by you. 3 A. Four or five o'clock in the morning on the 4 20th. 5 Q. And how do you know it was delivered to 6 Morgan Stanley at that time? 7 A. I handed it to them. 8 Q. Who did you hand it to? 9 A. Probably Bob Lurie. Bob Lurie was an 10 attorney from Davis Polk, I believe. 11 Q. I believe Mr. Lurie's name may be James. 12 A. Maybe. Robert, wasn't it? No? 13 Q. Maybe I'm mistaken, but Mr. Lurie from Davis 14 Polk? 15 A. It's been six years, so yeah. 16 Q. And he was acting at that time as counsel for 17 Morgan Stanley? 18 A. I believe so, yes. 19 Q. Does the March 19 comfort letter contain 20 information relating to Sunbeam's sales results for the 21 first two months of 1998? 22 A. Yes. 23 Q. And can you tell me where that appears? 24 A. Six, paragraph 6C. 25 Q. Does this contain the identical language that</p>	<p style="text-align: right;">Page 56</p> <p>1 management provided again? 2 A. I believe this is the exact wording. 3 "Primarily due to the company's new Early Buy program 4 for outdoor grills, which accelerated outdoor grills 5 sales into the fourth quarter of fiscal 1997." 6 Q. Sir, you indicated that you personally handed 7 this to Morgan Stanley's counsel -- 8 A. Yes. 9 Q. -- in the early morning hours of March 20th, 10 correct? 11 A. Yes, I believe so, yes. 12 Q. Do you know if this letter with these facts 13 and figures, the ones that you've just testified about, 14 had been provided to Morgan Stanley at any earlier 15 point, either that evening or otherwise? 16 MR. MOSCATO: You mean a prior draft? 17 MR. MARKOWSKI: Correct. 18 THE WITNESS: I believe that it was, but I 19 can't be certain. 20 BY MR. MARKOWSKI: 21 Q. Had you discussed these numbers with anyone 22 from Morgan Stanley earlier in the evening on 23 March 19th? 24 A. Yes, I had. 25 Q. Who did you discuss them with?</p>

<p style="text-align: right;">Page 57</p> <p>1 A. I think his name was John Tyree, specifically 2 from Morgan Stanley. I don't remember anyone else from 3 Morgan Stanley being there. 4 Q. I'm going to take you back in time a little 5 bit from that moment, Mr. Bornstein. 6 You indicated that you had had a conversation 7 two or three days earlier, as I understand it, with 8 Phil Pruitt relating to these facts, correct? 9 A. Bill Pruitt. 10 Q. I'm sorry, Bill Pruitt, the concurring 11 partner on the Sunbeam audit engagement. 12 A. I believe the 17th, two days earlier. 13 Q. And Mr. Pruitt advised you that he was going 14 to speak with Mr. Harlow concerning making sure that 15 everyone involved in the transactions that were 16 underway had notice of these facts, correct? 17 A. Yes. 18 Q. What's the next thing you recall happening 19 bearing on this subject? 20 MR. CLARE: Object to the form. 21 THE WITNESS: Personally, I remember that on 22 the, I think the 19th -- let me think about this, 23 17th, 18th, 19th. 24 I believe the 19th I recall was the next time 25 I got any information on the subject, when I was</p>	<p style="text-align: right;">Page 59</p> <p>1 A. Yes. So that's when I found out about it. I 2 was, saw it on TV. 3 Q. You were there with Mr. Brockelman, you 4 indicated? 5 A. Yes. 6 Q. Mr. Brockelman, what was -- he was employed 7 by Arthur Andersen? 8 A. Yes. 9 Q. And his reason for being there with you was 10 what? 11 A. To assist me in the process, to have an extra 12 set of eyes looking at numbers when they changed. 13 Q. And what happened while you were at the 14 hotel? 15 A. We were watching or I was watching CNBC and 16 saw the crawler on the bottom that Sunbeam had released 17 an early warning release that they weren't going to 18 make the number. I forget what the numbers were, but 19 they were still going to exceed, I think it was first 20 quarter of the prior year. I think that was the, I 21 think that's what it was. I'd have to look at the 22 press release again. 23 And then I, I think I saw a notation that the 24 stock went down significantly. 25 Q. So you recall that there was some notice on</p>
<p style="text-align: right;">Page 58</p> <p>1 in a hotel room in New York waiting to go to the 2 printer. 3 BY MR. MARKOWSKI: 4 Q. Do you recall what hotel you were in? 5 A. I think it was the Helmsley Palace Hotel. 6 Q. You said you were getting ready to go to the 7 printer. What printer? 8 A. I think it was Global Financial Press is 9 where we were doing the work. And I was with an 10 associate of mine, Mark Brockelman. 11 Q. What was going to be happening at the 12 printer? 13 A. We were going to be finalizing the bond 14 offering. I believe the bonds were being priced. The 15 quantity of the bonds was, what was being sold was 16 going to be finally determined, the interest rate. 17 And we were going to basically change 18 whatever numbers needed to be changed in the document 19 as a result of the pricing, as well as issue a final 20 comfort letter. 21 Q. The document that was being finalized was 22 what? 23 A. The 144 offering memorandum. 24 Q. That's the document that would be provided to 25 potential purchasers of the bonds?</p>	<p style="text-align: right;">Page 60</p> <p>1 the CNBC broadcast concerning an announcement by 2 Sunbeam concerning its first quarter performance? 3 A. Yes. 4 Q. And when you saw that, what was your 5 reaction? 6 A. My reaction was to learn more about what the 7 release was. 8 Q. What did you do? 9 A. I believe I called Mr. Harlow or I called 10 someone back, back at Arthur Andersen. Possibly could 11 have been Bob Gluck, I don't remember, but I wanted to 12 physically get a copy of the press release. 13 Q. Did you speak with someone? Did you succeed 14 in reaching someone to talk to them about the contents 15 of the press release? 16 A. Yes. 17 Q. You can't remember at the moment whether that 18 was Mr. Harlow or Mr. Gluck? 19 A. It might have been Dennis Pastrana. I don't 20 remember who, to be honest with you, I spoke with. 21 Q. But you spoke with someone who had the press 22 release itself? 23 A. Yes. 24 Q. Let me show you what's been previously marked 25 as CPH Exhibit Number 14, Mr. Bornstein. It's a</p>

<p style="text-align: right;">Page 61</p> <p>1 two-page document that bears Bates number Morgan</p> <p>2 Stanley confidential 16944 through 945. And it's</p> <p>3 headed "For Immediate Release, Sunbeam states that</p> <p>4 first quarter revenues may be lower than street</p> <p>5 estimates."</p> <p>6 I'd like you to take a moment to take a look</p> <p>7 at this document for me, sir.</p> <p>8 A. Okay.</p> <p>9 Q. Can you tell me what this is?</p> <p>10 A. This appears to be the press release that I</p> <p>11 was referring to earlier.</p> <p>12 Q. And do you recall while you were at the hotel</p> <p>13 you succeeded in reaching someone who read to you the</p> <p>14 contents of this document?</p> <p>15 A. Yes.</p> <p>16 Q. Would you read the first sentence of this</p> <p>17 press release into the record for me, sir.</p> <p>18 A. "Sunbeam Corporation said today that it's</p> <p>19 possible that its net sales for the first quarter of</p> <p>20 1998 may be lower than the range of Wall Street</p> <p>21 analysts' estimates of 285 million to 295 million, but</p> <p>22 net sales are expected to exceed 1997's first quarter</p> <p>23 net sales of 253.4 million."</p> <p>24 Do you want me to keep going?</p> <p>25 Q. Well, does this document explain the reason</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. Did you advise Sunbeam in any way what the</p> <p>2 March 19 press release should say?</p> <p>3 A. No.</p> <p>4 Q. Did you see it before it was issued?</p> <p>5 A. No.</p> <p>6 Q. Did anyone from Sunbeam or anyone from any</p> <p>7 other entity read to you or provide you any information</p> <p>8 concerning the contents of the March 19 press release</p> <p>9 before it was issued?</p> <p>10 A. No.</p> <p>11 Q. Mr. Bornstein, is this the kind of press</p> <p>12 release that you would have expected Sunbeam management</p> <p>13 to review with Andersen before it was released</p> <p>14 publicly?</p> <p>15 MR. MOSCATO: I object.</p> <p>16 MR. CLARE: I join in the objection.</p> <p>17 THE WITNESS: In my opinion, yes.</p> <p>18 BY MR. MARKOWSKI:</p> <p>19 Q. And what is that based on?</p> <p>20 A. Just previous, previous experience and kind</p> <p>21 of joint, joint coordination and understanding of the</p> <p>22 relationship between the auditor and the client.</p> <p>23 Q. On prior occasions had Sunbeam previously</p> <p>24 shown Andersen drafts of press releases relating to</p> <p>25 financial information before they were publicly</p>
<p style="text-align: right;">Page 62</p> <p>1 why Sunbeam thought that sales might be lower than Wall</p> <p>2 Street analysts' estimates of 285 to 295 million for</p> <p>3 the quarter?</p> <p>4 A. Yes.</p> <p>5 Q. What does it say on that subject?</p> <p>6 A. It says, "The shortfall from analysts'</p> <p>7 estimates, if any, would be due to changes in inventory</p> <p>8 management and order patterns at certain of the</p> <p>9 company's major retail customers. The company further</p> <p>10 stated"-- well, actually that's a different sentence,</p> <p>11 but that's the sentence they put in there.</p> <p>12 Q. It doesn't mention the Early Buy program,</p> <p>13 does it?</p> <p>14 A. No.</p> <p>15 Q. And it was the Early Buy program that</p> <p>16 management's letter to Sunbeam identified as the</p> <p>17 primary reason for sales shortfall in the first quarter</p> <p>18 of 1998, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Did Andersen, to your knowledge, sir, have</p> <p>21 any involvement in the preparation of the Sunbeam</p> <p>22 March 19 press release?</p> <p>23 A. Not that I'm aware of, no.</p> <p>24 Q. Did you personally have any involvement?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 64</p> <p>1 disclosed?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know why that was not done in this</p> <p>4 case?</p> <p>5 A. No, I do not.</p> <p>6 Q. Mr. Bornstein, does the press release, the</p> <p>7 March 19 press release, CPH Exhibit Number 14, set</p> <p>8 forth the January and February sales results numbers</p> <p>9 that are contained in management's representation</p> <p>10 letter to Andersen?</p> <p>11 A. No.</p> <p>12 Q. Does the press release state that Sunbeam's</p> <p>13 January and February sales were one half of 1997 sales</p> <p>14 for the same time period?</p> <p>15 A. No.</p> <p>16 Q. Does it state in any way that Sunbeam's sales</p> <p>17 for the first two months of 1998 were below to any</p> <p>18 extent Sunbeam's sales for the first two months of</p> <p>19 1997?</p> <p>20 A. No.</p> <p>21 Q. Does the press release state that Sunbeam had</p> <p>22 in fact determined that it could not accomplish Wall</p> <p>23 Street analysts' estimates of 285 million to</p> <p>24 295 million in sales for the quarter?</p> <p>25 A. They said it's possible.</p>

<p style="text-align: right;">Page 65</p> <p>1 Q. They don't say it's not going to happen, do 2 they?</p> <p>3 A. No.</p> <p>4 Q. Does the press release say anything about not 5 meeting Wall Street's expectations for earnings for the 6 first quarter of 1998?</p> <p>7 A. No, it does not.</p> <p>8 Q. Does the press release say anything about 9 Sunbeam's earnings for the first two months of 1998 10 being below earnings for the first two months of 1997?</p> <p>11 A. No.</p> <p>12 Q. Given what you knew at the time, sir, still 13 focusing on the hotel room, the time you were at the 14 hotel room, what was your reaction to what was read to 15 you concerning the contents of Sunbeam's March 19 press 16 release?</p> <p>17 A. Thought it was very poorly written and 18 described and thought that it was still very 19 aggressive.</p> <p>20 Q. When you say it was very aggressive, what in 21 particular are you focusing on, sir?</p> <p>22 A. Exceeding 1997 first quarter sales of 23 253.4 million.</p> <p>24 Q. When you say you think that's aggressive or 25 at the time you thought that was aggressive, what do</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. And your knowledge generally of Sunbeam's 2 operations?</p> <p>3 A. Yes.</p> <p>4 Q. If you were skeptical of Sunbeam's ability to 5 achieve \$253 million in sales, Mr. Dunlap -- excuse me, 6 Mr. Bornstein. Let me start over with that again.</p> <p>7 A. I wish I had his money.</p> <p>8 Q. No offense.</p> <p>9 MR. MOSCATO: Not his personality.</p> <p>10 BY MR. MARKOWSKI:</p> <p>11 Q. No offense intended, sir.</p> <p>12 A. No problem.</p> <p>13 Q. If you were skeptical, Mr. Bornstein, of 14 Sunbeam's ability to accomplish \$253 million in net 15 sales for the first quarter of 1998, what was your view 16 of the company's likelihood of accomplishing 285 to 17 \$295 million in net sales for the quarter?</p> <p>18 A. Never considered it. It was, I didn't think 19 the 253 was likely, so I never really even, never 20 really went to the higher number, to be honest with 21 you.</p> <p>22 Q. Did you think Sunbeam had any chance of 23 achieving 285 to 295 million in sales?</p> <p>24 MR. MOSCATO: Now I object. He just answered 25 the question.</p>
<p style="text-align: right;">Page 66</p> <p>1 you mean?</p> <p>2 A. Based on, again, the sales where they were 3 for the first two months at 72 million, they needed to 4 sell 100 and whatever it is, 180 million to meet that 5 number.</p> <p>6 Q. To meet the minimum \$253 million number?</p> <p>7 A. Yes.</p> <p>8 Q. And by aggressive, you mean that it would be 9 difficult to achieve?</p> <p>10 A. Less likely than not. How's that?</p> <p>11 Q. You thought it was not probable that Sunbeam 12 could achieve 253 million in sales for the first 13 quarter of 1998?</p> <p>14 MR. MOSCATO: Objection.</p> <p>15 MR. CLARE: Object to the form.</p> <p>16 THE WITNESS: I thought it was aggressive.</p> <p>17 BY MR. MARKOWSKI:</p> <p>18 Q. Were you skeptical?</p> <p>19 A. Yes.</p> <p>20 Q. And the reason why you were skeptical was 21 because Sunbeam had so far to go? Is that basically 22 it?</p> <p>23 A. That, and based on my review of the 24 facilities and the distribution capabilities of the 25 company.</p>	<p style="text-align: right;">Page 68</p> <p>1 THE WITNESS: Never gave it any thought.</p> <p>2 BY MR. MARKOWSKI:</p> <p>3 Q. I assume you thought it was less likely than 4 accomplishing 253, right?</p> <p>5 A. Logic would say that.</p> <p>6 Q. Even more difficult, even more aggressive?</p> <p>7 A. Yes.</p> <p>8 Q. After the contents of the press release was 9 read to you, Mr. Bornstein, what happened next?</p> <p>10 A. We went to the printer's. Mark Brockelman 11 and I took a taxi to the printer's.</p> <p>12 Q. Do you remember what time of the day that 13 was?</p> <p>14 A. I believe it was between five and 6:00 p.m.</p> <p>15 Q. And the printer is Global Financial Press?</p> <p>16 A. Yes.</p> <p>17 Q. Who else was there that evening?</p> <p>18 A. Myself and Mr. Brockelman, John Tyree from 19 Morgan Stanley, Mr. Lurie from Davis Polk. There were 20 two, I think two attorneys from Scadden Arps.</p> <p>21 Q. Do you remember their names?</p> <p>22 A. One guy was foreign, I think his name was 23 Adrien Dietz. I don't remember where he was from.</p> <p>24 Another guy, I think Todd Freed maybe, and I believe 25 Davis Polk had one or two other people there.</p>

<p style="text-align: right;">Page 69</p> <p>1 Q. Do you recall if there was more than one 2 person for Morgan Stanley? 3 A. No, I don't recall. 4 Q. The person you recall from Morgan Stanley 5 being there is John Tyree? 6 A. Yes. 7 Q. Was anyone there from Sunbeam? 8 A. No. 9 Q. What happened when you arrived at the 10 printer? 11 A. I think we, we met in a conference room. I 12 don't remember specifically the, what first happened. 13 I know we were told about the success of the offering 14 and that they, it was oversubscribed and that they 15 increased the size to -- I think we were informed about 16 that earlier, but that they, even the fact of the 17 warning release, that everything was still a go. 18 And again, it was oversubscribed and there 19 was no issues. 20 Q. Do you remember how much the offering was 21 originally expected to raise? 22 A. I think the net was about 500 million, I 23 think. 24 Q. And you were told on the 19th when you got to 25 the printer that the marketing activity had been very</p>	<p style="text-align: right;">Page 71</p> <p>1 Q. Do you recall who was expressing that to you? 2 A. It was Tyree and Bob Lurie. Bob? Robert? 3 James? Whatever, Mr. Lurie. 4 Q. Let's call him Mr. Lurie today. 5 A. I don't remember his first name. 6 Q. Did the subject at some point of the March 19 7 press release come up? 8 A. Yes. 9 Q. How did that happen? 10 A. I asked a couple of questions about, you 11 know, the reaction of the press release when marketing 12 the bonds and doing the final allocation and asked 13 about the press release. 14 And they went into the story of kind of how 15 the press release came to be and what time of the night 16 it was and how difficult it was between Scadden Arps 17 and Morgan Stanley and Sunbeam to actually disclose 18 this information and agree on the wording. 19 Q. Can you paint the picture for me a little bit 20 about the setting? You're in a conference room? 21 A. Yeah, it's a very very large, large 22 conference room, probably similar at the time one we're 23 in now at the printer there, multiple locations of 24 different size conference rooms, hallways. There was 25 also rooms for where there is pool and TV and things</p>
<p style="text-align: right;">Page 70</p> <p>1 successful; is that correct? 2 A. Yes. 3 Q. That's manage Morgan Stanley's effort to 4 market the debentures on behalf of Sunbeam? 5 A. Yes. 6 Q. So you were being told that Morgan Stanley 7 has had great success in marketing Sunbeam's debentures 8 to potential investors, correct? 9 A. Yes. 10 Q. So successful that the debenture offering is 11 being substantially increased in size, correct? 12 A. Yes. 13 Q. I'm sorry, did you say what the increased 14 amount was? 15 A. I think it was 750 million net. 16 Q. So people are feeling pretty good about the 17 success of the marketing activity, I take it, correct? 18 MR. CLARE: Object to the form and 19 foundation. 20 THE WITNESS: Yeah, they were very excited 21 and pleased with the marketing effort. 22 BY MR. MARKOWSKI: 23 Q. That was being expressed to you at the 24 meeting? 25 A. Yes.</p>	<p style="text-align: right;">Page 72</p> <p>1 like that, pool table. 2 So this would be kind of to the side, a side 3 conversation with myself and Mr. Lurie and Mr. Tyree. 4 And then everybody else would be sitting around the 5 conference room table. 6 Q. When you asked Mr. the March 19 press 7 release, with whom were you speaking? 8 A. Mr. Tyree and Mr. Lurie. 9 Q. And Mr. Lurie is Mr. Tyree's, Morgan 10 Stanley's attorney? 11 A. Yes. 12 Q. And what were you told? 13 A. That it was a very difficult night. It 14 lasted to the morning. And that Mr. Dunlap was 15 incensed and irate and crazed, I guess, for lack of 16 better terminology, and made the comment that he was 17 going to lose \$100 million because of this, I think was 18 what I recall. 19 Q. So they told you the background leading up to 20 the issuance of the press release, correct? 21 A. Yes. 22 Q. Did you ask any other questions concerning 23 the press release? 24 A. No. 25 Q. Was there any discussion about putting the</p>

<p style="text-align: right;">Page 73</p> <p>1 information from the press release in any way into the 2 offering memorandum that you were in the process of 3 finalizing? 4 A. Yes. 5 Q. How did that subject come up? 6 A. I asked the question of what they intended on 7 putting into the document to disclose where the company 8 was with their sales forecast and what their revised 9 estimates were going to be. 10 Q. So you asked a general question, what the 11 company intended to disclose relating to its 12 performance in the first part of 1998, correct? 13 A. It wasn't really what the company was going 14 to disclose. I mean I understand -- no one from the 15 company was present, but what the consensus of the 16 group was. 17 Q. What would be disclosed in the offering 18 memorandum? 19 A. Yes. 20 Q. So you asked a general question, what is the 21 offering memorandum going to say about Sunbeam's 22 performance so far in the first quarter of 1998? 23 A. Yes. 24 Q. And who did you ask that question of? 25 A. I think it was a general question to Tyree,</p>	<p style="text-align: right;">Page 75</p> <p>1 think it was appropriate to put in there. 2 Q. Who was present when you made that statement 3 to Mr. Lurie? 4 A. I made the statement to whoever was in the 5 room at the time. 6 Q. Was Mr. Tyree there? 7 A. Yes. 8 Q. What did you say, do you remember? 9 A. I said I don't think it's appropriate to put 10 this in the, in the 2 billion-dollar bond offering, 11 that it was an extremely forward-looking statement, it 12 was aggressive, and that I didn't think it was a good 13 idea. 14 Q. Do you remember anything else you said at 15 that point? 16 A. That I was going to discuss this with Sunbeam 17 as well as Mr. Harlow. 18 Q. What was the reaction from the others 19 present, Mr. Tyree, Mr. Lurie, the Scadden lawyers? 20 A. At that point I don't know. I left the room. 21 Q. Did anyone say to you at that point that your 22 views didn't change their thinking? 23 A. No. 24 Q. Okay. So the next thing that happened is you 25 left the room?</p>
<p style="text-align: right;">Page 74</p> <p>1 to the Scadden Arps folks, because I believe they -- I 2 don't even remember who the hell they were 3 representing. They were representing Sunbeam, right? 4 MR. MOSCATO: Scadden, yes. 5 THE WITNESS: And Mr. Tyree. 6 BY MR. MARKOWSKI: 7 Q. And what was the response? 8 A. That they were going to put the press release 9 in verbatim into the document. 10 Q. Who said those words to you? 11 A. I think it was Mr. Lurie. 12 Q. Did anyone disagree with that when Mr. Lurie 13 made that statement? 14 A. I did. 15 Q. Did anyone else other than you disagree? 16 A. No, I don't recall. 17 Q. How far into the evening is this conversation 18 taking place? 19 A. Early. 20 Q. What did you say to Mr. Lurie in response to 21 Mr. Lurie's statement to you that the intention was to 22 include the contents of the press release as the 23 disclosure relating to Sunbeam's performance to that 24 point in the first quarter of '98? 25 A. I didn't think it was -- I told him I didn't</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Yes. 2 Q. And you left the room for what purpose, sir? 3 A. To call Mr. Harlow to discuss the issue of 4 what was going to go into the offering memorandum and 5 to get in touch with Sunbeam, Mr. Gluck. 6 Q. When you said to discuss with him what was 7 going to go into the offering memorandum, were you 8 focusing on what was going to be said in the offering 9 memorandum relating to Sunbeam's first quarter '98 10 performance? 11 A. Yes, the sales numbers. 12 Q. Did you succeed in reaching Mr. Harlow? 13 A. Yes. 14 Q. Where was he located, do you know? 15 A. I believe he was at his house. 16 Q. In Florida? 17 A. In Florida. 18 Q. And what did you tell Mr. Harlow when you got 19 him on the phone? 20 A. Similarly, that they wanted to put the press 21 release into the document and that I didn't think it 22 was a good idea, given the aggressiveness and the 23 forward-looking statement that was being made. 24 Q. Do you recall what Mr. Harlow said to you? 25 A. He agreed with me, and we got Mr. Gluck on</p>

<p style="text-align: right;">Page 77</p> <p>1 the phone.</p> <p>2 Q. How did you get Mr. Gluck on the phone?</p> <p>3 A. I don't recall. I don't believe I -- I'm not</p> <p>4 sure if I had the capability or Phil dialed him in, but</p> <p>5 we had a three-way conversation.</p> <p>6 Q. So Mr. Gluck, Mr. Harlow and you are all on</p> <p>7 the telephone together at that point?</p> <p>8 A. Yes.</p> <p>9 Q. Was anyone else on the phone?</p> <p>10 A. No.</p> <p>11 Q. Was anyone else present in the room with you</p> <p>12 when you had this conversation that you can recall?</p> <p>13 A. No. I was in the pool room.</p> <p>14 Q. And as far as you can recall now, you were by</p> <p>15 yourself?</p> <p>16 A. Yes.</p> <p>17 Q. Tell me what you can recall of the</p> <p>18 conversation that you had with Mr. Gluck and Mr. Harlow</p> <p>19 at that point.</p> <p>20 A. Just went through the press release, it was</p> <p>21 aggressive and wasn't clear. And it was a very large</p> <p>22 forward-looking statement and that it wasn't</p> <p>23 appropriate in a bond offering.</p> <p>24 And the consensus was at the time that we all</p> <p>25 agreed; however, that because I don't think Mr. Gluck</p>	<p style="text-align: right;">Page 79</p> <p>1 A. Yes.</p> <p>2 Q. So did that conclude your conversation with</p> <p>3 Mr. Gluck at that point?</p> <p>4 A. Yes. Mr. Gluck and Mr. Harlow continued the</p> <p>5 conversation. I got off the phone to go back to the</p> <p>6 room to relay that, that my partner as well as</p> <p>7 Mr. Gluck agreed with me, and that they were going to</p> <p>8 continue the conversation and get in touch with</p> <p>9 Mr. Fanin.</p> <p>10 Q. Who did you make that statement to?</p> <p>11 A. When I walked back in the room, to the,</p> <p>12 again, to whoever was in the room.</p> <p>13 Q. Do you remember if Mr. Tyree was there?</p> <p>14 A. Yes, he was.</p> <p>15 Q. What happened at that point that you recall?</p> <p>16 A. My colleague, Mr. Brockelman, asked me to</p> <p>17 leave the room with him. And he informed me that the</p> <p>18 conversation around the table was, was very derogatory</p> <p>19 towards me and that a lot of bad language was being</p> <p>20 used about me, who the fuck do I think I am and why</p> <p>21 didn't he tell me about this prior? And basically that</p> <p>22 I was, you know, cocky, and so on and so forth.</p> <p>23 Q. You said it was bad language being used about</p> <p>24 you, derogatory language.</p> <p>25 Did Mr. Brockelman tell you what was being</p>
<p style="text-align: right;">Page 78</p> <p>1 was involved in the press release, he deferred to get</p> <p>2 in touch with Mr. Fanin, and I think her name was Janet</p> <p>3 Kelly.</p> <p>4 Q. So Mr. Gluck -- is it your testimony that</p> <p>5 Mr. Gluck agreed with you and Mr. Harlow that it would</p> <p>6 be inappropriate to include the contents of the press</p> <p>7 release as the statement concerning where Sunbeam was</p> <p>8 at so far in the first quarter of '98?</p> <p>9 A. Yes.</p> <p>10 Q. Did Mr. Gluck tell you whether he had been</p> <p>11 involved in preparing a press release?</p> <p>12 A. I recall he said he was not intimately</p> <p>13 involved. I don't know if he was at all. I think he</p> <p>14 knew about it, but he wasn't really involved.</p> <p>15 Q. Did Mr. Gluck say anything to you about his</p> <p>16 views of the press release by itself? Taking it out of</p> <p>17 the context of whether it's going to go into the</p> <p>18 offering memorandum, did he offer any views concerning</p> <p>19 the statements made in the press release?</p> <p>20 A. Generally I recall that he didn't like the</p> <p>21 way that it was written. I don't remember specifically</p> <p>22 on the numbers or anything like that.</p> <p>23 Q. You don't have a recollection of what he</p> <p>24 said, but you remember he didn't like the contents of</p> <p>25 the press release?</p>	<p style="text-align: right;">Page 80</p> <p>1 said? Did he use any of the words?</p> <p>2 A. Basically "Who the fuck does this guy think</p> <p>3 he is," basically is what I recall.</p> <p>4 Q. What happened after you had this side</p> <p>5 conversation with Mr. Brockelman?</p> <p>6 A. I remember walking back into the conference</p> <p>7 room and asking Mr. Lurie and Mr. Tyree to have a side</p> <p>8 conversation in the conference room but over to the</p> <p>9 side, and asking Mr. Tyree if he had anything to say to</p> <p>10 me.</p> <p>11 I said, you know, "My colleague says that you</p> <p>12 have some words to say about me, and if you have</p> <p>13 something to say, say it to my face."</p> <p>14 And he basically asked me, he says, "Are</p> <p>15 these guys fucking with me," was the exact quote. "Is</p> <p>16 Sunbeam fucking with us? Is Sunbeam fucking with me?</p> <p>17 And are these guys, you know, going to make their</p> <p>18 numbers?"</p> <p>19 And, you know, I was obviously very upset and</p> <p>20 pissed off about the comments and the tone. And, you</p> <p>21 know, obviously we were in disagreement with the press</p> <p>22 release.</p> <p>23 Q. I'm sorry, whose comments and tone are you</p> <p>24 referring to?</p> <p>25 A. Mr. Tyree specifically.</p>

<p style="text-align: right;">Page 81</p> <p>1 And I basically said to Mr. Tyree that, you 2 know, "I'm a conservative accountant, that, you know, I 3 can't specifically answer if they're fucking with you. 4 I haven't seen any of the sales projections that you've 5 seen or whatever it is that they have given you, that 6 I've done basic math, that they have done a million 7 dollars in sales a day for the first 72 days and now 8 they have to do" -- whatever it was, 12 to \$15 million 9 in sales for the next-- it was, I don't remember the 10 date, but it was, you know, let's say 17 days, whatever 11 the numbers were, and that I was very skeptical, that I 12 remember saying to him that I don't think this 13 company's turned around. 14 No one has ever seen an Al Dunlap company 15 ever turned around, and if it is turned around and he 16 has the numbers, he's going to make the numbers. And 17 I'm going to make sure that they make the numbers and 18 I'm going to send people to every shipping dock in the 19 country in the world that I have to, if I have to, to 20 make sure that they do make the numbers. 21 I said to him, "You better hope to God that 22 they do, because if not, you're all going to get sued." 23 And I left the room. 24 Q. Did anyone before you left the room say 25 anything in response to your comments to you?</p>	<p style="text-align: right;">Page 83</p> <p>1 specifically if I was faxed or handed this by the folks 2 from Morgan Stanley after our conversation that I just 3 discussed with you. 4 Q. Let me show you what's previously been marked 5 as CPH Exhibit Number 16, sir. It's a one-page 6 document, bears Bates number Morgan Stanley 7 confidential 28858. 8 Is that the document that was handed to you 9 that night? 10 MR. MOSCATO: Well, can I just clarify one 11 thing? Are you asking the basic form of the 12 document? Does your question include all of the 13 writing on the document? 14 MR. MARKOWSKI: For now I'm including 15 everything right now. 16 MR. MOSCATO: So the question is do you 17 recall whether this document containing all the 18 writing on the document was handed to you? 19 THE WITNESS: The handwriting, I'm not sure. 20 I mean I've seen several renditions of the same 21 document with different handwriting on it. 22 What I've seen, what I recall is the actual 23 typed numbers and words as well as the writing on 24 the bottom. 25 MR. MARKOWSKI: Let me show you what we're</p>
<p style="text-align: right;">Page 82</p> <p>1 A. No, not that I recall. 2 Q. Were your comments well received by 3 Mr. Tyree, as far as you could tell? 4 A. I left the room. He was, for lack of a 5 better word, stunned. 6 Q. Mr. Bornstein, did you tell Mr. Tyree that 7 night that you intended to have Andersen personnel 8 monitor Sunbeam's shipping docks at the end of the 9 first quarter of 1998? 10 A. Yes, I did. 11 Q. Did you explain to him why you intended to do 12 that? 13 A. To make sure that they had borders and the 14 product was built and shipped. 15 Q. Did anyone that night, Mr. Bornstein, provide 16 you with any documents concerning Sunbeam's sales plan 17 for the rest of the first quarter? 18 A. Yeah, I believe after that conversation, I 19 went back and made another phone call. And I believe, 20 as a result of Mr. Fanin, them calling Mr. Fanin and 21 discussing it, that a document or one-page spreadsheet 22 was provided to myself, Phil. I'm not sure who else 23 got it. I know that the folks from Morgan Stanley had 24 it. 25 And I believe I was faxed -- I don't recall</p>	<p style="text-align: right;">Page 84</p> <p>1 going to mark for identification as CPH Exhibit 2 Number 121. It also is a one-page document, bears 3 Bates number LAB43. 4 MR. MOSCATO: There is no question pending. 5 MR. MARKOWSKI: We're going to change the 6 videotape right now. 7 THE VIDEOGRAPHER: We are now going off video 8 record on tape number one. We'll be back on tape 9 number two. The time on the monitor is 11:15 a.m. 10 (Discussion held off the record.) 11 THE VIDEOGRAPHER: We are now back on video 12 record. It is tape number two. The time on the 13 monitor, 11:15 a.m. 14 (CPH Exhibit No. 121 was marked for 15 identification.) 16 BY MR. MARKOWSKI: 17 Q. Mr. Bornstein, I've handed you CPH Exhibit 18 Number 121. 19 Have you seen this document before? 20 A. 121, I don't specifically remember. Again, 21 I've seen the general, this general -- this is what I 22 got. I believe the actual copy I got, I attached to a 23 memorandum that I drafted sometime after the night at 24 the printer's. 25 Q. The typed portion of this, does this appear</p>

<p style="text-align: right;">Page 85</p> <p>1 to be the information that was provided to you at the 2 printer -- 3 A. Yes. 4 Q. -- on the night of March 19th? 5 A. Yes. 6 Q. When you saw this, did it give you comfort 7 with respect to Sunbeam's ability to accomplish Wall 8 Street's expectations for first quarter sales? 9 A. No, it did not. 10 Q. What conclusions did you reach after 11 reviewing this document that night? 12 A. That the numbers were even more aggressive 13 than I thought. 14 Q. And they were more aggressive than you had 15 thought for what reason, sir? 16 A. Because they had close to \$100 million of 17 sales that haven't been ordered yet. 18 Q. Built into their sales plan for the balance 19 of the quarter? 20 A. Yes. 21 Q. So Sunbeam was counting in its plan to get to 22 at least \$253 million, by your count, approximately 23 \$100 million in product sales that hadn't even been 24 ordered yet at that point, correct? 25 MR. MOSCATO: Well, you know, I object to the</p>	<p style="text-align: right;">Page 87</p> <p>1 trying to get you to back off of the statements that 2 you had made? 3 MR. CLARE: Same objection. 4 THE WITNESS: I believe he was, yes. 5 BY MR. MARKOWSKI: 6 Q. Did you? 7 A. No, I did not. 8 Q. What was the final decision that night, sir, 9 concerning what would be put in the offering memorandum 10 relating to Sunbeam's performance to that point in the 11 first quarter of 1998? 12 MR. MOSCATO: Number one, I object. I would 13 like some clarification when you answer as to 14 whose decision it was, who made the decision. 15 BY MR. MARKOWSKI: 16 Q. Let me ask a little different, maybe more 17 pointed question, sir. 18 What was ultimately put in the offering 19 memorandum concerning Sunbeam's performance to that 20 date for the first quarter of 1998? 21 A. I believe it was the press release, the 22 wording from the press release, but I'd have to look at 23 the document. 24 Q. I'm going to show you, Mr. Bornstein, what 25 previously has been marked as CPH Exhibit Number 10.</p>
<p style="text-align: right;">Page 86</p> <p>1 rounding, but you can answer. 2 THE WITNESS: I'm okay with the rounding, 3 sorry. 86 rounds up to 100 million to me. 4 Yeah, it was just numbers on the page to me. 5 BY MR. MARKOWSKI: 6 Q. So this document didn't cause you looking at 7 it to conclude that Sunbeam's statements in the press 8 release about its expectations for the first quarter 9 were reasonable, correct? 10 A. No. 11 Q. What was your reaction, sir, to the manner in 12 which Mr. Tyree had treated you that night? 13 A. Can you repeat the question? 14 Q. What was your reaction, sir, to the manner in 15 which Mr. Tyree had treated you on the night of 16 March 19th when these issues came up? 17 A. I was, felt like I was being treated 18 disrespectfully, not being listened to. 19 Q. Did you think that Mr. Tyree was trying to 20 steamroll you in any way? 21 MR. CLARE: Object to the form and object to 22 foundation, calls for speculation, what Mr. Tyree 23 was trying to do. 24 BY MR. MARKOWSKI: 25 Q. By that I mean, sir, do you think he was</p>	<p style="text-align: right;">Page 88</p> <p>1 It's a document entitled Offering Memorandum, 2 214 billion-dollar Sunbeam zero coupon convertible 3 senior subordinated debentures, due 2018, dated 4 March 19, 1998, bears Bates number CP33169 through 5 33240. 6 A. I just want to check the press release. 7 I believe the first paragraph of the press 8 release was put in verbatim into the document. 9 Q. And where do you see that, sir? 10 A. On Recent Announcements, page eight of the 11 offering memorandum, Exhibit CPH 10. 12 Q. So the contents of the press release 13 ultimately were placed into the offering memorandum, 14 correct? 15 A. Right. And I recall that the last paragraph 16 on page eight was something that I insisted on being 17 put in there. 18 Q. The last paragraph refers to what, sir? 19 A. It's a reference to the forward-looking 20 statement and risk factor sections, which basically it 21 reads, "Actual results could differ materially from the 22 statements in the press release due to various factors, 23 including those set forth in risk factors, management 24 discussion analysis and financial condition end results 25 of operation and business. See forward-looking</p>

<p style="text-align: right;">Page 89</p> <p>1 information."</p> <p>2 Q. Was it your decision, sir, to repeat the</p> <p>3 contents of the March 19 press release in the offering</p> <p>4 memorandum as in the manner we see here on page eight?</p> <p>5 A. No, it was Sunbeam, the company's decision to</p> <p>6 do that.</p> <p>7 Q. Did you recommend, by the end of the evening</p> <p>8 had you changed your mind with respect to that being</p> <p>9 appropriate?</p> <p>10 A. No.</p> <p>11 Q. Did at any point in the evening to your</p> <p>12 knowledge Arthur Andersen advise the company that that</p> <p>13 was the appropriate form of disclosure concerning</p> <p>14 Sunbeam's first quarter results?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Do you know, how was that decision</p> <p>17 communicated to you, the decision to put the contents</p> <p>18 of the press release in the offering memorandum over</p> <p>19 the objections that you had raised?</p> <p>20 A. I don't remember specifically. I think I got</p> <p>21 a phone call late in the evening, two, three o'clock in</p> <p>22 the morning from, either directly from Janet Kelly or</p> <p>23 from Phil Harlow saying that it was the company's</p> <p>24 decision to put the same wording in.</p> <p>25 Q. Were you personally at the end of the evening</p>	<p style="text-align: right;">Page 91</p> <p>1 answer the question based on those conversations,</p> <p>2 don't attempt to read his mind.</p> <p>3 THE WITNESS: Again, I alluded to a</p> <p>4 memorandum that I wrote about the night, and I</p> <p>5 believe that would refresh my memory, but I do</p> <p>6 believe Mr. Harlow was in agreement with myself.</p> <p>7 BY MR. MARKOWSKI:</p> <p>8 Q. Mr. Bornstein, I'm not going to ask you to</p> <p>9 read the entire offering memorandum while we sit here.</p> <p>10 It will speak for itself on this issue, but do you know</p> <p>11 from your recollection of having worked on it whether</p> <p>12 that document contains the specific information that's</p> <p>13 set forth in the management March 16 representation</p> <p>14 letter to Arthur Andersen and Andersen's March 19</p> <p>15 comfort letter relating to Sunbeam's actual sales</p> <p>16 results for the first two months of 1998?</p> <p>17 MR. CLARE: Object to the form.</p> <p>18 THE WITNESS: I don't believe that it does,</p> <p>19 no.</p> <p>20 BY MR. MARKOWSKI:</p> <p>21 Q. Do you know if it contains a statement that</p> <p>22 Sunbeam's sales for the first two months of 1998 are</p> <p>23 below Sunbeam's sales for the first two months of 1997?</p> <p>24 A. I don't believe that it does, no.</p> <p>25 Q. Do you know if it states that the reason why</p>
<p style="text-align: right;">Page 90</p> <p>1 satisfied with that conclusion?</p> <p>2 A. No, I was not; however, I have the caveat</p> <p>3 that again, I went along, I went along with the</p> <p>4 decision by the company. It was the company's</p> <p>5 decision, the company's document, and that I would</p> <p>6 strongly advise not putting it in, and also putting</p> <p>7 the, if it was going to be put in, that it would be</p> <p>8 cross referenced to the risk factors and have a</p> <p>9 statement that, you know, that the actual results could</p> <p>10 differ materially from the wording here.</p> <p>11 Q. So at the beginning of the evening on</p> <p>12 March 19 it was your personal view that it was a bad</p> <p>13 idea to repeat the contents of the press release in the</p> <p>14 offering memorandum, and it remained your view that</p> <p>15 that was a bad idea right through the finalization of</p> <p>16 the document; is that right?</p> <p>17 MR. CLARE: Object to the form.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. MARKOWSKI:</p> <p>20 Q. Do you know did if Mr. Harlow's views changed</p> <p>21 on that subject?</p> <p>22 MR. CLARE: Objection, calls for speculation.</p> <p>23 MR. MOSCATO: Don't speculate. Just answer</p> <p>24 the question if you can based on conversations you</p> <p>25 had with Mr. Harlow that evening. If you can't</p>	<p style="text-align: right;">Page 92</p> <p>1 Sunbeam's sales for the first quarter of 1998 may be</p> <p>2 lower than Sunbeam's sales for the first quarter of</p> <p>3 1997 at the end of that quarter, that the primary</p> <p>4 reason for that was Sunbeam's acceleration of grill</p> <p>5 sales into the fourth quarter of 1997?</p> <p>6 A. Specifically, no, but someone who actually</p> <p>7 reads the statement might come to that conclusion.</p> <p>8 Q. But that statement is not made; is that</p> <p>9 correct, sir?</p> <p>10 A. This statement is about the Early Buy</p> <p>11 program, but one would have to make a thesis that that</p> <p>12 could in fact be the reason.</p> <p>13 Q. But the specific statement in the management</p> <p>14 representation letter that that is the primary reason</p> <p>15 for the shortfall is not made, correct?</p> <p>16 A. I don't believe so, no.</p> <p>17 Q. Let me show you what's been marked as CPH</p> <p>18 Exhibit Number 122 sir, a two-page document, bears</p> <p>19 Bates AA105868 -- excuse me.</p> <p>20 Let me show you a document that we've put</p> <p>21 together. It's got two different Bates numbers that</p> <p>22 aren't consecutive, but I believe the document is, was</p> <p>23 originally part of a single two-page memo. It bears</p> <p>24 Bates number AA105868 and AA105248, and ask you if</p> <p>25 you've seen this document before, sir.</p>

<p style="text-align: right;">Page 93</p> <p>1 (CPH Exhibit No. 122 was marked for 2 identification.) 3 THE WITNESS: No, I don't recall ever seeing 4 this document. 5 BY MR. MARKOWSKI: 6 Q. I take it you don't recognize the 7 handwriting? 8 A. No. 9 Q. It's not yours? 10 A. No, it's not. 11 Q. Mr. Bornstein, let me show you what we 12 previously marked as CPH Exhibit Number 114. 13 A. I'm sorry, I just want to -- just figuring 14 out what this is, but that's okay. 15 Q. There is nothing you want to add to your 16 prior answer? 17 A. No, it appears this was probably something 18 that was used to draft the paragraph that went into 19 this document. 20 Q. That's why I asked you about it, if you 21 remembered seeing it before. 22 A. I don't remember seeing itself, no. 23 Q. Let me show you what we previously marked as 24 CPH Exhibit Number 114, sir. It's a two-page document, 25 the first page of which, the Bates numbers on the</p>	<p style="text-align: right;">Page 95</p> <p>1 Q. Can I refer you back, sir, to Exhibit 121? 2 A. Yes. 3 Q. The two documents are the same, are they not, 4 sir? 5 A. Yeah, one is a better copy than the other. 6 Q. All right. 7 MR. MOSCATO: Counsel, do you have a copy of 8 this that you could actually read all of the 9 handwritten notes? 10 MR. MARKOWSKI: I think that's the best we've 11 been able to do. 12 BY MR. MARKOWSKI: 13 Q. For what purpose did you prepare your 14 March 31 memorandum, Mr. Bornstein? 15 A. To document the material events that occurred 16 the night at the printer. 17 Q. Did you want to have a record of what you had 18 said to Mr. Tyree? 19 A. Yes, I did. 20 Q. And why was that? 21 A. I thought it was a prudent thing to do, given 22 the differences of opinion that transpired the night at 23 the printer. 24 Q. Mr. Bornstein, I want to move on to something 25 different for a moment.</p>
<p style="text-align: right;">Page 94</p> <p>1 document are AAR10538 through AAR15040. 2 A. Okay. 3 Q. The first page of the document is, bears 4 Arthur Andersen letterhead and is dated March 31, 1998, 5 and a memorandum from Lawrence A. Bornstein to the 6 files, West Palm Beach. 7 I ask you to look at this document, sir, and 8 tell me whether you can identify it for me. 9 Can you identify it for me, sir? 10 A. It's a memorandum that I drafted, looks like 11 several days after the March 19th night at the printer 12 to document, document the discussions that we've been 13 speaking about. 14 Q. Did you personally draft this document, sir? 15 A. Yes, I did. 16 Q. And in drafting it, did you attempt to be 17 accurate at the time? 18 A. Yes. 19 Q. The third page of the document, sir, can you 20 tell me what that is? 21 A. That is the fax that I received from Sunbeam 22 that we were talking about before that showed the 23 estimate of sales, the date and the potential orders to 24 meet the \$253 million expectation that they put in the 25 press release.</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Okay. 2 Q. Do you recall being involved in a conference 3 call earlier in 1998 with Morgan Stanley personnel 4 relating to Sunbeam's accounting practices? 5 A. Yes. 6 Q. Do you recall that call happening on or about 7 March 12? 8 A. I don't remember specifically when it was, 9 but it's possible that was the time frame. 10 Q. Was it approximately a week before the events 11 at the printer? 12 A. It was probably before the original, the 13 original 144 memorandum was released, before they went 14 out to, on the road show or priced the bonds. 15 MR. MOSCATO: Larry, what do you mean by the 16 original 144 memorandum? 17 THE WITNESS: There was a, I think there was 18 one that -- there is a different one than that one 19 that I think talks about the \$500 million offering 20 size. 21 Typically you have an original document 22 that's kind of based on the best estimate at the 23 time, and they use that to market the bonds. 24 Then they go out and do the road show and 25 market the bonds, and then they price and they</p>

<p style="text-align: right;">Page 97</p> <p>1 update the document. So I believe the due 2 diligence call that you're talking about was done 3 prior to the first document. 4 BY MR. MARKOWSKI: 5 Q. Before the road show started? 6 A. Yes. 7 MR. MOSCATO: Sorry, counsel. I just wanted 8 to -- 9 MR. MARKOWSKI: That's fine, appreciate it. 10 BY MR. MARKOWSKI: 11 Q. Let me show you what we previously marked, 12 sir, as CPH Exhibit 31. It's a one-page memorandum on 13 Morgan Stanley letterhead from John Tyree to Sunbeam 14 Financing Team; subject, accounting due diligence call, 15 dated March 7, 1998. Bears Bates number SASMF10709. 16 Have you seen this document before, sir? 17 A. I don't remember specifically, no. 18 Q. Does it appear to relate to the accounting 19 due diligence call you participated in? 20 A. Yes. 21 Q. Do you see that there is an entry -- there is 22 a schedule on this document, correct? 23 A. Yes. 24 Q. And there is an entry for a time for a 25 conference call with Arthur Andersen, correct?</p>	<p style="text-align: right;">Page 99</p> <p>1 Mr. Harlow and myself went through the list and made 2 notations or discussed what was going to be said on the 3 call. 4 Q. And then Mr. Harlow ultimately was the 5 spokesperson when the call took place? 6 A. Yeah, he did 98 percent of the speaking, and 7 I filled in when necessary. 8 Q. Were you two together when the call took 9 place? 10 A. No. 11 Q. Where was Mr. Harlow? 12 A. He was in Florida in his office. 13 Q. And where were you? 14 A. I was at Global Financial Press working on 15 the document. 16 Q. Just an earlier occasion when you were at the 17 printer working on the offering memorandum? 18 A. Yeah, there was probably several days that we 19 were working at the printer, that being one of them. 20 MR. MARKOWSKI: Let me show you, 21 Mr. Bornstein, what we'll mark as CPH Exhibit 22 Number 123. It's a four-page document, bears 23 Bates number AA55761 through 55764, first page of 24 which is on Arthur Andersen letterhead and is a 25 memorandum from Lawrence A. Bornstein, West Palm</p>
<p style="text-align: right;">Page 98</p> <p>1 A. Correct. 2 Q. And that time is 12:00 p.m. on March 12? 3 A. Yes. 4 Q. And the name identified there is yours, 5 correct? 6 A. Correct. 7 Q. Do you recall, do you see that the time for 8 the next call with KPMG is scheduled for 12:30? 9 A. Yes. 10 Q. Do you recall there was approximately 30 11 minutes allotted to this accounting due diligence call 12 with Morgan Stanley? 13 A. Yes. 14 Q. Were you in fact the spokesperson for Arthur 15 Andersen during that telephone call? 16 A. No, I was not. 17 Q. Who was? 18 A. Phil Harlow. 19 Q. What -- did you do anything, sir -- were you 20 involved in the call? Did you personally participate? 21 A. Yes, I was. 22 Q. What did you do to prepare for the call, if 23 anything? 24 A. I believe we were provided a list of 25 questions that were going to be asked, and that</p>	<p style="text-align: right;">Page 100</p> <p>1 Beach, to the files; subject, due diligence call 2 with Morgan Stanley. 3 (CPH Exhibit No. 123 was marked for 4 identification.) 5 6 BY MR. MARKOWSKI: 7 Q. Can you identify this document for me, sir? 8 A. Yeah, let me take a minute to read it. 9 Q. Sure. 10 A. Okay. 11 Q. Can you identify it for me, sir. 12 A. It was a memorandum that I put together to 13 document the due diligence call from, I guess it's 14 March 12th. Looks like -- I have noted here the 15 request is March 7th, so these dates coincide with the 16 previous exhibit. 17 Q. Right. The March 7th -- your memorandum 18 indicates, CPH Exhibit Number 123 indicates that 19 Andersen was requested on March 7 to participate in a 20 due diligence call with Morgan Stanley, correct? 21 A. Right. 22 Q. And we were just looking at CPH Exhibit 23 Number 31 that set up a date for that call to occur on 24 March 12, correct? 25 A. Correct.</p>

<p style="text-align: right;">Page 101</p> <p>1 Q. And the date of that memo is March 7?</p> <p>2 A. Yes. And then in addition is the list of</p> <p>3 questions that I mentioned earlier that we were</p> <p>4 provided with my notations of what was going to be said</p> <p>5 on the call.</p> <p>6 You can see a number of the items are crossed</p> <p>7 out, which means that they were discussed.</p> <p>8 Q. So the document has two, there is two pieces</p> <p>9 to the document, sir?</p> <p>10 A. Yes.</p> <p>11 Q. First two pages are a memo that you prepared</p> <p>12 in July of '98?</p> <p>13 A. Yes.</p> <p>14 Q. And the second two pages are the list of</p> <p>15 questions that Morgan Stanley provided to Andersen in</p> <p>16 advance of the call?</p> <p>17 A. Yes.</p> <p>18 Q. And the notations there relating to what</p> <p>19 would be said?</p> <p>20 A. Yeah, and again, I believe that everything on</p> <p>21 here was, was discussed.</p> <p>22 Q. And you and Mr. Harlow had agreed that in</p> <p>23 response to these questions, this is the information</p> <p>24 that Morgan Stanley would be provided, correct?</p> <p>25 A. For the most part, yes.</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. Someone from Bank of America was on the call,</p> <p>2 but you don't have that name, correct?</p> <p>3 A. Yes.</p> <p>4 Q. That's the same John Tyree that you had, you</p> <p>5 met with and spoke with on March 19 at Global</p> <p>6 Financial, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Did anyone, sir, from Morgan Stanley suggest</p> <p>9 to you either during this call or at some other point</p> <p>10 that it would be inappropriate for Mr. Gluck, as a</p> <p>11 representative of Sunbeam management, to listen in on</p> <p>12 Morgan Stanley's due diligence call with Sunbeam's</p> <p>13 outside auditors?</p> <p>14 MR. CLARE: Object to the form.</p> <p>15 THE WITNESS: No, I don't recall that.</p> <p>16 BY MR. MARKOWSKI:</p> <p>17 Q. That issue wasn't raised that you can recall?</p> <p>18 A. No. I believe we were required to have</p> <p>19 someone from the company present.</p> <p>20 Q. Morgan Stanley didn't object, to your</p> <p>21 knowledge?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Do you recall, sir, that Mr. Harlow was</p> <p>24 asked, among other things, to comment on how aggressive</p> <p>25 Sunbeam was in its accounting policies?</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. Now there is a gap between the time this call</p> <p>2 took place, sir, on March 12 and your preparation of</p> <p>3 this memo on July 2. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. Can you explain that?</p> <p>6 A. I believe it was just going back and making</p> <p>7 sure that all the documentation was in the file, and at</p> <p>8 the time I thought it was a good idea to note, to</p> <p>9 memorialize what happened at the meeting.</p> <p>10 Q. And you had had your notes from back at that</p> <p>11 time, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you prepared the memo later, but you</p> <p>14 dated it later, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And July 2 is the date on which this</p> <p>17 memorandum was in fact prepared?</p> <p>18 A. Yes.</p> <p>19 Q. Now the participants in the call, sir, in</p> <p>20 your memo are identified as whom?</p> <p>21 A. Mr. Harlow and myself, Bob Gluck from</p> <p>22 Sunbeam, John Tyree from Morgan Stanley, Bob Lurie from</p> <p>23 Davis Polk, Andy Savart from Morgan Stanley, George</p> <p>24 Scott, First Union, and then I have a name, I don't</p> <p>25 know the name, representative from Bank of America.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Yes.</p> <p>2 Q. You say that's item eight on the checklist,</p> <p>3 agenda?</p> <p>4 A. Yes.</p> <p>5 Q. So you and Mr. Harlow knew that question</p> <p>6 would be asked in advance of the telephone call,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall what Mr. Harlow said in</p> <p>10 response to that question during the conference call</p> <p>11 itself?</p> <p>12 A. I believe he said that the accounting, some</p> <p>13 of the accounting policies were aggressive.</p> <p>14 Q. Do you recall that he identified any</p> <p>15 particular examples of that?</p> <p>16 A. Bill and hold was one. And I have a note</p> <p>17 here of Encore, and I have 100 percent right of return,</p> <p>18 which I believe was one of the issues from the audit.</p> <p>19 There was an adjustment recorded, but I'm not</p> <p>20 100 percent certain.</p> <p>21 Then it keeps going on, a couple of other</p> <p>22 ones. EPI was another one where we had an adjustment.</p> <p>23 It was a transaction that occurred at the end of the</p> <p>24 year and was aggressive.</p> <p>25 Q. The end of 1997?</p>

<p style="text-align: right;">Page 105</p> <p>1 A. '97.</p> <p>2 Q. Can you read the fourth item on that, on your</p> <p>3 handwritten note, sir?</p> <p>4 A. Yeah, I think it's -- no, I would be</p> <p>5 speculating. The first three I can read. It says</p> <p>6 aggressive/bill and hold, Encore 100 percent right of</p> <p>7 return, EPI printer's.</p> <p>8 The fourth one I can't -- it's my</p> <p>9 handwriting. If you want to give me a few minutes, I</p> <p>10 can probably figure it out.</p> <p>11 Q. I'll come back. Let me focus on the first</p> <p>12 three for a moment.</p> <p>13 A. Right.</p> <p>14 Q. The first three entries, aggressive/bill and</p> <p>15 hold, Encore 100 percent right of return, and EPI</p> <p>16 printers were all things said by Mr. Harlow to Morgan</p> <p>17 Stanley during this March 12 conference call as</p> <p>18 examples of Andersen's view that Sunbeam at least on</p> <p>19 occasion was aggressive in its accounting positions?</p> <p>20 MR. CLARE: Object to the form.</p> <p>21 THE WITNESS: Yes, I believe so.</p> <p>22 BY MR. MARKOWSKI:</p> <p>23 Q. All of those items related to events that</p> <p>24 occurred in 1997; is that correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 107</p> <p>1 BY MR. MARKOWSKI:</p> <p>2 Q. I'm putting aside the accounting.</p> <p>3 Do you recall that Mr. Harlow or yourself</p> <p>4 told Sunbeam that it was a poor business practice to</p> <p>5 engage extensively in bill and hold sales?</p> <p>6 MR. MOSCATO: I object again.</p> <p>7 You can answer in your own words.</p> <p>8 MR. CLARE: I object to the form.</p> <p>9 THE WITNESS: I believe at one point that it</p> <p>10 was said, but probably later than this.</p> <p>11 BY MR. MARKOWSKI:</p> <p>12 Q. Okay. Do you recall -- with respect to</p> <p>13 Encore and EPI, do you recall that Andersen took the</p> <p>14 position that Sunbeam should reverse the accounting</p> <p>15 treatment on these two transactions and not recognize</p> <p>16 the sales revenue and profits in 1997?</p> <p>17 A. I believe that was the case, yes.</p> <p>18 Q. And do you recall that Sunbeam refused to do</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. In connection with finalizing the 1997 audit?</p> <p>22 A. Yes.</p> <p>23 Q. And you advised or Mr. Harlow advised Morgan</p> <p>24 Stanley of those three situations during the March 12</p> <p>25 conference call, correct?</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. All of them relate to revenue recognition; is</p> <p>2 that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall that on Encore and EPI -- well,</p> <p>5 let me pause for a moment on bill and hold.</p> <p>6 Do you recall that Andersen had raised its</p> <p>7 reservations with Sunbeam relating to Sunbeam's</p> <p>8 extensive use of bill and hold accounting for sales in</p> <p>9 1997?</p> <p>10 MR. CLARE: Object to the form.</p> <p>11 MR. MOSCATO: I object to that.</p> <p>12 THE WITNESS: Can you repeat the question?</p> <p>13 BY MR. MARKOWSKI:</p> <p>14 Q. Do you recall that Andersen had raised with</p> <p>15 Sunbeam its reservations about Sunbeam's business</p> <p>16 practice of using extensively bill and hold accounting</p> <p>17 and sales transactions for 1997 sales?</p> <p>18 MR. MOSCATO: I object.</p> <p>19 Larry, you don't have to adopt his language</p> <p>20 in answering the question. Answer it in your own</p> <p>21 words.</p> <p>22 THE WITNESS: I don't consider it</p> <p>23 reservation, but understanding of the accounting</p> <p>24 policy in making sure that it met the rules and</p> <p>25 that the appropriate testing was done.</p>	<p style="text-align: right;">Page 108</p> <p>1 MR. CLARE: I object to the form.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. MARKOWSKI:</p> <p>4 Q. Let me go to the fourth note that you've got</p> <p>5 there that you're having some trouble deciphering.</p> <p>6 A. Yes.</p> <p>7 Q. You said you could speculate, and I guess I</p> <p>8 invite that at this point, because maybe that will help</p> <p>9 us figure out what that might be a reference to.</p> <p>10 Do you have some thought with respect to what</p> <p>11 this entry is either from your recollection or what you</p> <p>12 can read here?</p> <p>13 A. Looks like something, discount accurate,</p> <p>14 either accuracy or accounting reports. I'm not -- I</p> <p>15 don't know.</p> <p>16 Q. Okay.</p> <p>17 A. Sorry.</p> <p>18 Q. During the March 12 conference call, sir, did</p> <p>19 Morgan Stanley request an opportunity to review</p> <p>20 Andersen's 1997 audit work papers?</p> <p>21 A. I don't remember that specifically, no.</p> <p>22 Q. Do you remember at any point Morgan Stanley</p> <p>23 requesting an opportunity to review Andersen's 1997</p> <p>24 audit work papers?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 109</p> <p>1 Q. Do you remember at any point Andersen asking 2 to review -- excuse me, do you remember at any point 3 Morgan Stanley asking to review Andersen's list of 4 proposed audit adjustments relating to the 1997 5 financial statements of Sunbeam? 6 A. No. 7 Q. Is it your recollection that Morgan Stanley 8 in fact did not request an opportunity to review your 9 work papers? 10 MR. CLARE: Object to the form. 11 THE WITNESS: I don't believe so. 12 BY MR. MARKOWSKI: 13 Q. When you say you don't believe so, you don't 14 believe that request was ever made? 15 A. No, I don't believe it was ever made. 16 MR. MOSCATO: Counsel, when you come to a 17 logical breaking point, can we take a two- or 18 three-minute break? 19 MR. MARKOWSKI: I can be finishing up I think 20 in the next ten minutes or so. 21 MR. MOSCATO: That's fine. 22 MR. MARKOWSKI: If you'd like to break 23 sooner, we can do that and finish up. 24 MR. MOSCATO: I'm indifferent. 25</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. This letter contains the same information 2 relating to Sunbeam sales for the first two months of 3 1998, correct? Net sales figures? If you look at 4 paragraph eight. 5 A. Yes. This is updated through, has the same 6 sales number, but it actually has net income or loss 7 through March 1st. 8 Q. Right. In addition, it also provides the net 9 income for Sunbeam's performance in January and 10 February 1998, correct? 11 A. Correct. 12 Q. The March 16 letter only had net income 13 information for January; is that right? 14 A. Yes. 15 MR. MOSCATO: March 19 letter. 16 MR. MARKOWSKI: March 19 letter, I'm sorry. 17 MR. MOSCATO: I'm sorry, it was the March -- 18 BY MR. MARKOWSKI: 19 Q. The March 16 representation letter and the 20 March 19 comfort letter both only had net income 21 information through January, correct? 22 A. Yes. 23 Q. And this letter provides net income 24 information for both January and February of 1998, 25 correct?</p>
<p style="text-align: right;">Page 110</p> <p>1 BY MR. MARKOWSKI: 2 Q. Mr. Bornstein, do you recall that Arthur 3 Andersen provided a second comfort letter to Morgan 4 Stanley in connection with the debenture offering? 5 A. No. Could be a bring-down letter, but I'm 6 not sure. Have to look at it. 7 MR. MARKOWSKI: Let me show you, sir, what 8 we'll mark as CPH Exhibit Number 124. It's a 9 three-page document bearing Bates number AA30995 10 through 997. And it's a letter on Sunbeam 11 stationery dated March 23, 1998, to Arthur 12 Andersen. 13 (CPH Exhibit No. 124 was marked for 14 identification.) 15 BY MR. MARKOWSKI: 16 Q. Can you identify this document for me, sir? 17 A. This appears to be an updated representation 18 letter from Sunbeam to Arthur Andersen in connection 19 with the comfort letter. 20 Q. And this letter is signed by Mr. Dunlap, 21 Mr. Kersh, Mr. Fanin and Mr. Gluck; is that correct? 22 A. Yes. 23 Q. The same four people that signed the March 16 24 representation letter, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Yes. 2 Q. And it compares Sunbeam's net income for 3 January and February of 1998 to Sunbeam's net income 4 for the first two months of 1997, correct? 5 A. Yes. 6 Q. And it does that in paragraph eight? 7 A. Yes. 8 Q. And what does that comparison show us? 9 A. Net income for the two months ended 10 March 2nd, 1997, of 9,765,000 and net loss of 11 41,190,000 for the two months ended in March of '98. 12 Q. So in the first two months of 1997 -- 13 A. I mean ended February, excuse me, first two 14 months of '98. 15 Q. So for the first two months of 1997, Sunbeam, 16 according to this document, had a profit of \$9,765,000, 17 correct? 18 A. Correct. 19 Q. And in the first two months of 1998, this 20 document shows that Sunbeam had a net loss of 21 \$41,190,000, correct? 22 A. Yes. 23 Q. Swaying of more than \$50 million; is that 24 correct? 25 A. Yes.</p>

Page 113

1 Q. In a negative direction, correct?

2 A. Yes.

3 Q. Mr. Bornstein, I'm going to show you what

4 was -- I'm sorry, it was already marked.

5 Mr. Bornstein, let me show you what has been

6 previously marked as CPH Exhibit Number 112. It's a

7 four-page document bearing Bates number CPH 129613

8 through CPH 129616.

9 A. Okay.

10 Q. We'll mark this and I'll ask you if you can

11 identify it for me.

12 MR. CLARE: I thought this was previously

13 marked.

14 MR. MARKOWSKI: I'm sorry, I got myself

15 confused again.

16 BY MR. MARKOWSKI:

17 Q. Sir, let me show you what we previously

18 marked as Exhibit Number 112. It bears Bates number

19 129613 through 129616, and ask you if you can identify

20 that document for me.

21 A. This appears to be the bring-down letter to

22 Morgan Stanley related to the bond offering.

23 Q. And this letter is dated March 25, 1998; is

24 that correct?

25 A. Yes.

Page 114

1 Q. And in paragraph E of the letter --

2 A. Yes.

3 Q. -- at the top of the second page of the

4 letter itself?

5 A. Yes.

6 Q. The net sales information and net income

7 information for the first two months of 1998 is

8 provided, correct?

9 A. Correct.

10 Q. And that's the same information that Sunbeam

11 provided to Morgan Stanley that we just reviewed in the

12 March 23 representation letter, correct?

13 MR. CLARE: Object to the form. I think you

14 misspoke, Bob.

15 THE WITNESS: Yeah, you provided to Arthur

16 Andersen, not Morgan Stanley.

17 BY MR. MARKOWSKI:

18 Q. I'm sorry. Let me ask a new question.

19 The net income and net sales information in

20 paragraph E of Exhibit CPH Exhibit 112 for the first

21 two months of 1998 is the same as the net sales and net

22 income information contained in the Sunbeam

23 representation letter to Arthur Andersen dated

24 March 23, 1998, correct?

25 A. Correct.

Page 115

1 Q. And it shows a \$50 million decline in profits

2 for that time period from the first two months of 1997,

3 correct?

4 A. Yes.

5 Q. And it shows the net sales for the first two

6 months of 1998 are about 50 percent of Sunbeam's net

7 sales for the first two months of 1997, correct?

8 A. Yes.

9 Q. Do you know who signed this letter on behalf

10 of Arthur Andersen?

11 A. Doesn't look like my handwriting. It might

12 have been Phil Harlow's.

13 Q. Do you know what the purpose of this letter

14 dated March 25 is, Mr. Bornstein?

15 A. I don't specifically know, to be honest with

16 you. It's typical that you issue a bring-down letter.

17 I don't recall specifically if this is when the money

18 is released to Sunbeam or not.

19 Q. Do you recall that the debenture offering

20 closed on March 25, 1998?

21 A. It might have. I don't recall.

22 Q. Do you recall that Sunbeam requested that

23 Arthur Andersen give Morgan Stanley a bring-down due

24 diligence letter prior to the actual closing of the

25 bond offering?

Page 116

1 A. I don't recall who requested it, if it was

2 Sunbeam or Morgan Stanley.

3 Q. But you do recall that a request was made

4 either by Morgan Stanley or by Sunbeam that Morgan

5 Stanley provide an updated comfort letter at the time

6 of the closing of the bond offering?

7 A. I believe that's the case, yes.

8 Q. Do you know whether this letter was delivered

9 to Morgan Stanley prior to the close of the bond

10 offering?

11 A. No.

12 Q. Do you know who would have been responsible

13 for delivering this letter to Morgan Stanley?

14 A. It could have been myself or Dennis Pastrana.

15 Q. And as you sit here, you can't recall

16 precisely when this letter was delivered to Morgan

17 Stanley?

18 A. No.

19 Q. Do you know that it was?

20 A. Specifically, no.

21 Q. Would it have been signed by Arthur Andersen

22 if it wasn't finalized for delivery to Morgan Stanley?

23 MR. CLARE: Objection to the form, calls for

24 speculation.

25 THE WITNESS: I don't know.

<p style="text-align: right;">Page 117</p> <p>1 MR. MARKOWSKI: Why don't we take our break 2 right now and I'll see if I'm finished. 3 THE VIDEOGRAPHER: We are now going off video 4 record. The time on the monitor is 12:03 p.m. 5 (Thereupon, a recess was taken.) 6 THE VIDEOGRAPHER: We are now back on video 7 record. The time on the monitor, 12:18 p.m. 8 MR. MARKOWSKI: Mr. Bornstein, that concludes 9 my examination for this morning. 10 THE WITNESS: Okay, thank you. 11 CROSS (LAWRENCE A. BORNSTEIN) 12 BY MR. CLARE: 13 Q. Good afternoon, Mr. Bornstein. Again, my 14 name is Tom Clare. I'm with the law firm of Kirkland & 15 Ellis in Washington, D.C., and I represent Morgan 16 Stanley in this matter, and I'm going to ask you some 17 questions this afternoon. 18 If you don't understand any of my questions 19 or want me to rephrase them, I'll be happy to do it. 20 I know you've been deposed numerous times before and 21 know the rules. 22 A. Okay. 23 Q. But make sure that you understand my question 24 before you answer it and I'll be happy to try to 25 rephrase and make things more clear.</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. Was this a telephone conversation or an 2 in-person meeting? 3 A. Telephone. 4 Q. Was it a single telephone conversation or 5 multiple? 6 A. I believe it was two phone conversations. 7 Q. Same person on both calls? 8 A. I believe so. 9 Q. And you don't recall the name of the person 10 on either call? 11 A. No. 12 Q. During these telephone conversations, both 13 conversations were with lawyers from Mr. Markowski's 14 firm, Jenner & Block? 15 A. Yes. 16 Q. Were there more than one lawyer on the phone? 17 A. I believe there were. 18 Q. And tell me what you remember about those 19 telephone calls, what was said, what they said to you 20 and what you said back. 21 A. The first one was that they were going to be 22 sending me some documentation and wanted me to take a 23 look at it if I didn't mind, and then give them a call 24 back once I had a chance to look at it, because they 25 wanted to ask me a few questions.</p>
<p style="text-align: right;">Page 118</p> <p>1 Mr. Bornstein, were you contacted earlier 2 this year by attorneys representing Coleman (Parent) 3 Holdings about this lawsuit? 4 A. Yes. 5 Q. And can you place in time for me when you 6 were contacted? 7 A. It was probably two or three months ago. 8 Q. And do you remember the name of the person 9 that called you? 10 A. Not specifically, no. 11 Q. Was it somebody from Mr. Markowski's firm, 12 Jenner & Block? 13 A. Yes. 14 Q. And you said you think this was a few months 15 ago? 16 A. Yes. 17 Q. Are you aware that Andersen had entered into 18 a settlement agreement with Coleman (Parent) Holdings 19 relating to these transactions? 20 Were you aware of that fact? 21 A. No, I was not. 22 Q. So you don't have an understanding one way or 23 the other of the timing of when that settlement 24 agreement would have taken place? 25 A. No.</p>	<p style="text-align: right;">Page 120</p> <p>1 They asked me if I was represented by counsel 2 at the time. At the time I told them no, I was not, 3 and that I would be willing to give them some time. 4 Q. Did they tell you that Coleman (Parent) 5 Holdings had filed a lawsuit against Morgan Stanley? 6 A. I believe they did, yes. 7 Q. And did they ask whether you would be willing 8 to be a witness against Morgan Stanley in that lawsuit? 9 A. No. 10 Q. So just to make sure I understand correctly, 11 the first telephone call was fairly short, they asked 12 you if you would be willing to spend some time looking 13 at some documents? 14 A. Yes. I believe they were going to tell me 15 they -- they were going to send me the, I think there 16 were two lawsuits, one I think Coleman suing Morgan 17 Stanley, and another one where I think it was Morgan 18 Stanley suing Coleman maybe. 19 I'm not sure. It was two separate lawsuits. 20 Q. Was there anything else discussed on that 21 first telephone call? 22 A. No. 23 Q. And did they in fact send you some documents 24 to look at? 25 A. Yes.</p>

<p style="text-align: right;">Page 121</p> <p>1 Q. Do you recall what the documents were?</p> <p>2 A. I believe it was the two lawsuits that we, I</p> <p>3 mentioned earlier.</p> <p>4 Q. So the complaint that was filed by Coleman</p> <p>5 against Morgan Stanley was one of the documents?</p> <p>6 A. Yes.</p> <p>7 Q. And then a complaint that was filed by Morgan</p> <p>8 Stanley against Coleman?</p> <p>9 A. I believe so.</p> <p>10 Q. Were those the only two documents that you</p> <p>11 were sent?</p> <p>12 A. I believe so.</p> <p>13 Q. Did you receive any of the documents that you</p> <p>14 were questioned about this morning that were sent to</p> <p>15 you?</p> <p>16 A. No.</p> <p>17 Q. During the second telephone call, did they</p> <p>18 ask you questions about the lawsuit or the documents</p> <p>19 that they had sent you?</p> <p>20 A. No, not specifically.</p> <p>21 Q. Tell me what you remember about the second</p> <p>22 telephone call.</p> <p>23 A. They asked me some general questions on the</p> <p>24 timing of the comfort letters, when those were released</p> <p>25 and delivered to Morgan Stanley.</p>	<p style="text-align: right;">Page 123</p> <p>1 BY MR. CLARE:</p> <p>2 Q. So your name was put in the complaint without</p> <p>3 your permission, without your knowledge?</p> <p>4 A. Yes.</p> <p>5 Q. Did, during either of these telephone calls,</p> <p>6 did anyone representing Coleman ask whether you agreed</p> <p>7 with the statements that were made in the complaint</p> <p>8 that was filed against Morgan Stanley?</p> <p>9 A. No.</p> <p>10 Q. Did they ask whether you had a belief that</p> <p>11 Morgan Stanley had conspired with Sunbeam to commit</p> <p>12 fraud?</p> <p>13 A. No.</p> <p>14 Q. Do you believe that Morgan Stanley conspired</p> <p>15 with Sunbeam to commit fraud as you sit here today?</p> <p>16 A. I have no knowledge of that, no.</p> <p>17 Q. So the answer is no, you don't believe that</p> <p>18 Morgan Stanley conspired with Sunbeam to commit fraud?</p> <p>19 MR. MARKOWSKI: Object to the form of the</p> <p>20 question, misstates his testimony.</p> <p>21 THE WITNESS: You're asking me if I have an</p> <p>22 opinion today in hindsight?</p> <p>23 BY MR. CLARE:</p> <p>24 Q. I'm asking based on everything that you know</p> <p>25 about the interactions that you had with Morgan Stanley</p>
<p style="text-align: right;">Page 122</p> <p>1 And then asked me some questions about my</p> <p>2 conversation with Mr. Tyree.</p> <p>3 Q. Is that all you remember?</p> <p>4 A. Yes.</p> <p>5 Q. Did you read the documents that they sent</p> <p>6 you?</p> <p>7 A. I believe I did, yes.</p> <p>8 Q. Did you notice that your name was included in</p> <p>9 the complaint that Coleman had filed against Morgan</p> <p>10 Stanley?</p> <p>11 A. Yes.</p> <p>12 Q. Did you have any discussion with the lawyers</p> <p>13 about that, the fact that your name had been included?</p> <p>14 A. No, not specifically, no.</p> <p>15 Q. Did anybody from Coleman, and I'm</p> <p>16 specifically referring to their lawyers, ask you if you</p> <p>17 would mind if your name and a description of your</p> <p>18 testimony was included in the complaint that they were</p> <p>19 going to file against Morgan Stanley before it was</p> <p>20 filed?</p> <p>21 A. No.</p> <p>22 MR. MARKOWSKI: Object to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: No, it wasn't.</p> <p>25</p>	<p style="text-align: right;">Page 124</p> <p>1 and the interactions that you had with Sunbeam, whether</p> <p>2 you think that Morgan Stanley conspired with Sunbeam to</p> <p>3 commit fraud.</p> <p>4 A. I have no idea. I have my opinions of the</p> <p>5 work that Morgan Stanley did, but I have no idea if</p> <p>6 they conspired to commit fraud.</p> <p>7 MR. MOSCATO: Just answer the specific</p> <p>8 question.</p> <p>9 THE WITNESS: No, I do not.</p> <p>10 BY MR. CLARE:</p> <p>11 Q. And no, you don't have an opinion, or no, you</p> <p>12 do not believe that Morgan Stanley conspired with</p> <p>13 Sunbeam to commit fraud?</p> <p>14 MR. MOSCATO: I think he said he didn't have</p> <p>15 an opinion.</p> <p>16 THE WITNESS: I don't have an opinion.</p> <p>17 BY MR. CLARE:</p> <p>18 Q. Okay. Do you have any evidence or</p> <p>19 information in your mind that Morgan Stanley conspired</p> <p>20 with Sunbeam to commit fraud?</p> <p>21 MR. MOSCATO: I'm sorry.</p> <p>22 MR. MARKOWSKI: Objection to the form of the</p> <p>23 question.</p> <p>24 MR. MOSCATO: I don't understand.</p> <p>25</p>

<p style="text-align: right;">Page 125</p> <p>1 BY MR. CLARE:</p> <p>2 Q. I asked if you had a belief or an opinion,</p> <p>3 and you stated that you did not have an opinion or</p> <p>4 belief.</p> <p>5 MR. MOSCATO: And you're not happy with that</p> <p>6 answer?</p> <p>7 MR. CLARE: No, I'm fine with that answer,</p> <p>8 but regardless of whether or not you have an</p> <p>9 opinion or a belief, is there any information in</p> <p>10 your mind, is there any evidence in your mind that</p> <p>11 there was such a conspiracy between Morgan Stanley</p> <p>12 and Sunbeam, or similarly, do you have no view on</p> <p>13 that?</p> <p>14 MR. MARKOWSKI: Object to the form of the</p> <p>15 question. Are you asking him whether any of the</p> <p>16 facts he knows are consistent with that? Is that</p> <p>17 what you're trying to ask?</p> <p>18 MR. CLARE: No, I'm asking -- he says he has</p> <p>19 no opinion one way on the other on that.</p> <p>20 THE WITNESS: I have no idea if they</p> <p>21 committed fraud. I believe that they were</p> <p>22 reckless and --</p> <p>23 MR. MOSCATO: Larry, answer the question,</p> <p>24 please.</p> <p>25 THE WITNESS: I have no idea if they</p>	<p style="text-align: right;">Page 127</p> <p>1 an affidavit of any kind?</p> <p>2 A. No.</p> <p>3 Q. Is there anything else about those telephone</p> <p>4 calls that you remember?</p> <p>5 A. I believe I made a comment about the lawsuit</p> <p>6 that was being filed by Morgan Stanley against Coleman</p> <p>7 with respect to representations about synergies. I</p> <p>8 think I made a comment about that.</p> <p>9 Q. What was your comment about that?</p> <p>10 A. That I thought it was a silly thing to make</p> <p>11 an accusation about, because I never, I never had seen</p> <p>12 a seller make representation of cost savings, so I just</p> <p>13 thought that was interesting and not on point, I guess.</p> <p>14 Q. Do you have any personal knowledge based on</p> <p>15 your experience in 1997 or 1998 what representations</p> <p>16 were made by Coleman to Sunbeam about synergies?</p> <p>17 A. No.</p> <p>18 Q. So you don't have any firsthand evidence or</p> <p>19 comment on that?</p> <p>20 A. No.</p> <p>21 Q. It was a comment on the legal theory?</p> <p>22 A. Yes.</p> <p>23 Q. I want to talk about March 1998, and</p> <p>24 specifically the very beginning of March 1998, the</p> <p>25 first week. There was some testimony about that this</p>
<p style="text-align: right;">Page 126</p> <p>1 committed fraud or not. I can't answer that.</p> <p>2 MR. MARKOWSKI: That's for the jury to</p> <p>3 decide. I don't know why we're asking</p> <p>4 Mr. Bornstein to rule on that.</p> <p>5 MR. MOSCATO: Larry, you have to be very</p> <p>6 disciplined on that. It's getting late in the</p> <p>7 morning, but answer the specific question that</p> <p>8 you're being asked, please, all right? Thank you.</p> <p>9 BY MR. CLARE:</p> <p>10 Q. Putting aside the question of fraud, let me</p> <p>11 ask a more simple question.</p> <p>12 Do you have any evidence that Morgan Stanley</p> <p>13 was, intended to deceive Coleman?</p> <p>14 MR. MARKOWSKI: Object to the form of the</p> <p>15 question. He's testified about the evidence that</p> <p>16 he has, and someone else will make a judgment</p> <p>17 about its legal significance.</p> <p>18 MR. CLARE: That's fine.</p> <p>19 THE WITNESS: Will you repeat the question?</p> <p>20 BY MR. CLARE:</p> <p>21 Q. Do you have any evidence that Morgan Stanley</p> <p>22 conspired with Sunbeam to deceive anybody?</p> <p>23 A. No.</p> <p>24 Q. Did the lawyers representing Coleman ask if</p> <p>25 you'd be willing to sign any documents, declaration or</p>	<p style="text-align: right;">Page 128</p> <p>1 morning.</p> <p>2 You were in New York working on the offering</p> <p>3 memorandum for the debenture offering?</p> <p>4 A. I believe I was, yes.</p> <p>5 Q. Mr. Pastrana was in Florida doing some post</p> <p>6 audit work?</p> <p>7 A. Yes.</p> <p>8 Q. Including working on the comfort letters?</p> <p>9 A. Yes.</p> <p>10 Q. And was Mr. Pastrana also working with your</p> <p>11 company to close the books for Sunbeam for January and</p> <p>12 February?</p> <p>13 A. No.</p> <p>14 Q. As part of Mr. Pastrana's work for the bond</p> <p>15 offering, was one of the things he was tasked to look</p> <p>16 at were sales figures for January and February 1998?</p> <p>17 A. Yes.</p> <p>18 Q. And Mr. Pastrana reported to you at some</p> <p>19 point that the January and February 1998 sales figures</p> <p>20 were lower than they were in the previous year,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And that was the first time you had heard</p> <p>24 that information from anyone at Sunbeam?</p> <p>25 A. Yes.</p>

32 (Pages 125 to 128)

<p style="text-align: right;">Page 129</p> <p>1 Q. Did you know from any source at the end of 2 January whether the January '98 sales were lower than 3 the January '97 sales? 4 A. No, I don't remember specifically. 5 Q. Did in that time period Sunbeam close its 6 books every month so that January sales would have been 7 available separate from February? 8 A. I believe they were, yes. 9 Q. So January 1998 figures would have been 10 available at some point in February? 11 A. Yes. 12 Q. And the February sales would have been 13 available at some point in early March? 14 A. Yes. 15 Q. And I think you said you believed this was in 16 the first week of March 1998 that you heard this about 17 January and February 1998? 18 A. Might have been the second one week. I'm not 19 100 percent sure. 20 Q. If we had a calendar from March 1998, would 21 that help you in placing the date? 22 A. Probably not. 23 Q. You discussed with Mr. Pastrana that 24 Sunbeam's lower year-over-year sales performance should 25 be disclosed to Morgan Stanley, correct?</p>	<p style="text-align: right;">Page 131</p> <p>1 A. Right. 2 Q. And Morgan Stanley personnel were there? 3 A. Right. 4 Q. Was there any consideration given to you 5 informing Morgan Stanley there and then during the 6 drafting session? 7 MR. MARKOWSKI: Consideration by whom? 8 BY MR. CLARE: 9 Q. By you, Mr. Bornstein. 10 A. No. The question was never asked of me. 11 Q. Was that discussed with Mr. Harlow or 12 Mr. Gluck whether that might be one way to communicate 13 this information to Morgan Stanley? 14 MR. MOSCATO: The question was whether you 15 discussed that with Mr. Harlow and Mr. Gluck. 16 THE WITNESS: No. 17 BY MR. CLARE: 18 Q. Was there any discussion about how this 19 information should be disclosed to Morgan Stanley? 20 MR. MOSCATO: Objection, I think he answered 21 that a couple of questions ago, but go ahead. 22 THE WITNESS: That the company should 23 disclose it to them. 24 BY MR. CLARE: 25 Q. When you say the company, you're referring to</p>
<p style="text-align: right;">Page 130</p> <p>1 A. Say that again. 2 Q. Did you discuss with Mr. Pastrana whether 3 Sunbeam's lower year-over-year sales performance needed 4 to be disclosed to Morgan Stanley? 5 A. I don't recall specifically talking to 6 Mr. Pastrana about that. 7 Q. But you do remember talking to Mr. Harlow 8 about it? 9 A. I remember talking to Mr. Harlow that the 10 company should be disclosing it to Morgan Stanley, yes. 11 Q. And you also had a conversation with 12 Mr. Gluck about that? 13 A. Yes. 14 Q. And those conversations took place within a 15 day or two of you first learning this information from 16 Mr. Pastrana? 17 A. Yes. 18 Q. Now you were in New York at the time working 19 on the bond offering? 20 A. Yes. 21 Q. And you were there working with 22 representatives from Morgan Stanley? 23 A. Yes. 24 Q. And you were at Global Financial Press 25 attending drafting sessions?</p>	<p style="text-align: right;">Page 132</p> <p>1 Sunbeam? 2 A. Sunbeam. 3 Q. So it was your view and Mr. Harlow's view 4 that Sunbeam needed to disclose this information to 5 Morgan Stanley? 6 A. Yeah, to be honest with you, I'm not 7 100 percent sure they were aware of it or not, but it 8 was the company's responsibility to disclose the 9 information. 10 Q. And you and Mr. Harlow communicated that view 11 to Mr. Gluck at Sunbeam? 12 A. Yes. 13 Q. And you communicated to Mr. Gluck that you 14 believed it was Sunbeam's responsibility to communicate 15 this information to Morgan Stanley? 16 A. Yes. 17 Q. Did Mr. -- did you tell Mr. Gluck that you, 18 Arthur Andersen, were not going to tell Morgan Stanley 19 and that you were waiting for Sunbeam to disclose that 20 information? 21 MR. MOSCATO: I object to that. 22 Did you say those words to Mr. Gluck? 23 THE WITNESS: No. 24 BY MR. CLARE: 25 Q. Did Mr. Gluck -- I'll withdraw that.</p>

<p style="text-align: right;">Page 133</p> <p>1 Was there any discussion with Mr. Harlow or</p> <p>2 Mr. Gluck when this disclosure would be made to Morgan</p> <p>3 Stanley?</p> <p>4 MR. MARKOWSKI: By whom?</p> <p>5 MR. CLARE: By the company.</p> <p>6 THE WITNESS: Again, I had no idea if Morgan</p> <p>7 Stanley knew or didn't know. I just know they</p> <p>8 never asked me the question.</p> <p>9 BY MR. CLARE:</p> <p>10 Q. But you and Mr. Harlow wanted to assure</p> <p>11 yourselves that Morgan Stanley had been informed?</p> <p>12 A. Yes.</p> <p>13 Q. And you and Mr. Harlow told Mr. Gluck that</p> <p>14 you thought it was the company's responsibility to tell</p> <p>15 Morgan Stanley?</p> <p>16 A. Yes.</p> <p>17 Q. And as part of those conversations, did you</p> <p>18 or Mr. Harlow express a view as to when the company</p> <p>19 ought to provide that information to Morgan Stanley?</p> <p>20 A. As soon as possible.</p> <p>21 Q. And did you communicate that to Mr. Gluck?</p> <p>22 A. Yes.</p> <p>23 Q. You and Mr. Harlow told Mr. Gluck that that</p> <p>24 information should be provided by Sunbeam to Morgan</p> <p>25 Stanley as soon as possible?</p>	<p style="text-align: right;">Page 135</p> <p>1 A. I believe a draft, I believe a draft of the</p> <p>2 comfort letter was delivered or it was communicated by</p> <p>3 either -- I don't remember specifically. I just, like</p> <p>4 I testified earlier, that when I found out about it, my</p> <p>5 last thing was having a conversation with Bill Pruitt.</p> <p>6 The next thing I knew, I was seeing it on TV.</p> <p>7 Q. You testified a moment ago and then also this</p> <p>8 morning about a belief that a draft comfort letter was</p> <p>9 provided to Morgan Stanley on March 17th or</p> <p>10 thereabouts.</p> <p>11 Did you personally fax or send a draft of the</p> <p>12 comfort letter to Morgan Stanley?</p> <p>13 A. I don't remember.</p> <p>14 Q. As you sit here today, do you have any</p> <p>15 recollection of having done that?</p> <p>16 A. Me personally, no.</p> <p>17 Q. Did anybody tell you at Andersen that they</p> <p>18 had faxed a copy of the comfort letter, a draft of the</p> <p>19 comfort letter to Morgan Stanley or its counsel?</p> <p>20 A. No, I'm not aware of that.</p> <p>21 Q. And so do you have any personal knowledge as</p> <p>22 you sit here today whether, that a draft comfort letter</p> <p>23 was actually sent to Morgan Stanley or its counsel?</p> <p>24 A. Prior to March 19th, no.</p> <p>25 Q. So as far as you are able to testify, the</p>
<p style="text-align: right;">Page 134</p> <p>1 A. I believe so.</p> <p>2 Q. Are you able to put a date, an approximate</p> <p>3 one, on that conversation with Mr. Gluck where you</p> <p>4 communicated that information?</p> <p>5 A. Maybe March 12th, March 13th.</p> <p>6 Q. Okay. And did you, did Mr. Gluck -- what did</p> <p>7 Mr. Gluck say about what the company was going to do</p> <p>8 with this information as far as providing it to Morgan</p> <p>9 Stanley?</p> <p>10 A. I don't remember.</p> <p>11 Q. Did he tell you in words or in substance that</p> <p>12 he agreed and that the company would provide this</p> <p>13 information to Morgan Stanley?</p> <p>14 A. Again, I don't recall.</p> <p>15 Q. Do you recall, now moving forward a couple of</p> <p>16 days, that there was a follow-up discussion with</p> <p>17 Mr. Gluck about whether this information had been</p> <p>18 communicated to Morgan Stanley?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you know when, if at all, Sunbeam told</p> <p>21 Morgan Stanley this information about January and</p> <p>22 February 1998 sales?</p> <p>23 A. I know they were aware of it March 17th or</p> <p>24 18th, prior to the press release going out.</p> <p>25 Q. How do you know that?</p>	<p style="text-align: right;">Page 136</p> <p>1 first time a comfort letter was physically provided to</p> <p>2 Morgan Stanley or faxed or sent was March 19th, 1998,</p> <p>3 at Global Financial Press?</p> <p>4 A. I do recall going through certain portions of</p> <p>5 the comfort letter with underwriter's counsel as to the</p> <p>6 form of pieces of it, but I don't recall specifically</p> <p>7 issuing them a draft comfort letter personally.</p> <p>8 Q. These recollections that you have, were these</p> <p>9 in-person meetings with underwriter's counsel?</p> <p>10 A. Yes.</p> <p>11 Q. During these in-person meetings, did you</p> <p>12 observe that underwriter's counsel had a draft of the</p> <p>13 comfort letter in front of them?</p> <p>14 A. I don't recall if they had a draft of other</p> <p>15 comfort letters that they used as a sample or if it was</p> <p>16 ours, but there was definitely wording, substantive</p> <p>17 wording, examples communicated back and forth.</p> <p>18 Q. But as you sit here today, can you testify</p> <p>19 from your own personal knowledge that Morgan Stanley or</p> <p>20 its lawyers were provided with a draft of the</p> <p>21 March 19th comfort letter before March 19th?</p> <p>22 A. Prior to the night at the printer, no.</p> <p>23 Q. And you testified about meetings that you had</p> <p>24 with underwriter's counsel to go through the language.</p> <p>25 A. Uh huh.</p>

<p style="text-align: right;">Page 137</p> <p>1 Q. And am I correct that you don't know whether 2 the documents that underwriter's counsel had in front 3 of them were in fact a draft of the March 19th letter 4 or perhaps sample comfort letters from other 5 transactions and other companies? 6 You just don't know one way or the other? 7 A. No. Again, the only thing I recollect is 8 finalizing the draft that night and them having a draft 9 early that night, if not, if not -- I don't recall 10 sooner than me physically being there that a draft was 11 delivered to them. 12 My point is it wasn't like at five o'clock in 13 the morning, said here it is. As soon as we got there, 14 they had it, you know, and they were making changes and 15 we made changes on realtime. 16 Q. So you were working on the comfort letter 17 with underwriter's counsel at Global Financial Press 18 the night of the 19th? 19 A. Yes. 20 Q. These meetings that you described with 21 underwriter's counsel were that evening, March 19th, at 22 the print shop? 23 A. As well as previously. 24 Q. Okay. And those are the meetings that you're 25 just not sure what documents underwriter's counsel had</p>	<p style="text-align: right;">Page 139</p> <p>1 A. I am aware that as I sit here today, that the 2 document with the earnings forecast was provided to 3 Morgan Stanley the night before the, the night of the 4 press release going out. 5 Q. When you say the document of an earnings 6 forecast, you're referring to a sales buildup sheet 7 that Mr. Markowski showed you this morning? 8 A. Yes. 9 Q. In the form of document that was marked as 10 CPH Exhibit 121? 11 A. Yes. 12 Q. That form of document? 13 A. Yes, I'm aware that that was provided to, or 14 at least represented to me that it was provided to 15 Morgan Stanley. 16 Q. And Mr. Tyree told you that? 17 A. No, Mr. Fanin told me that. 18 Q. So Mr. Fanin informed you that the sales 19 buildup, CPH 121, or a document in that form, was sent 20 to Morgan Stanley the day before the press release was 21 issued? 22 A. I don't know if the day before or the night 23 of. That was subsequent to that night. 24 Q. Is that the only information that you have 25 about disclosures that were made by Sunbeam to Morgan</p>
<p style="text-align: right;">Page 138</p> <p>1 with them? 2 A. Correct. 3 Q. But you know that that evening at the print 4 shop, you worked on the draft of the comfort letter and 5 it was shared and exchanged -- 6 A. Yes. 7 Q. -- between underwriter's counsel and you? 8 A. Correct. 9 Q. And I think I asked you this, but I can't 10 recall your answer. 11 Do you know when, if at all, anybody from 12 Sunbeam told Morgan Stanley about lower year-over-year 13 sales? 14 A. No, other than prior to the press release 15 going out, I'm not aware of any other time. 16 Q. Okay. What information do you have about 17 disclosures that were made by Sunbeam to Morgan Stanley 18 prior to the press release going out? 19 A. I don't. 20 Q. You don't have any information? 21 A. No. 22 Q. So from your own personal knowledge, you 23 don't have any information about when, if at all, 24 Sunbeam disclosed lower year-over-year sales to Morgan 25 Stanley?</p>	<p style="text-align: right;">Page 140</p> <p>1 Stanley about first quarter 1998 sales? 2 MR. MOSCATO: I'm sorry, can I have the 3 question back? 4 I'm concerned there is a little confusion as 5 the timing here. But I just need to hear the last 6 question. 7 (Thereupon, a portion of the record 8 was read by the reporter.) 9 THE WITNESS: I am, other than what I 10 testified earlier that I was told by Mr. Tyree at 11 the printer that they were informed the night 12 before about the sales forecast. 13 BY MR. CLARE: 14 Q. So what Mr. Tyree told you at the printer was 15 consistent with what Mr. Fanin had told you, that 16 Sunbeam had provided this information to Morgan Stanley 17 the night before the press release? 18 MR. MOSCATO: Objection, that's where the 19 confusion is. I'm not sure he said Fanin told him 20 prior to this happening or Fanin told him after. 21 THE WITNESS: It was after. It was during 22 the restatement work when things, things kind 23 of -- I don't remember. I do recall Mr. Fanin 24 specifically drafting a memo and handing me this 25 document and after the fact and wanted it to get</p>

<p style="text-align: right;">Page 141</p> <p>1 into the files.</p> <p>2 BY MR. CLARE:</p> <p>3 Q. And I appreciate that. I'm not trying to</p> <p>4 confuse you on the timing. I just want to make sure</p> <p>5 that I understand that what Mr. Fanin told you was</p> <p>6 consistent with what Mr. Tyree told you about when</p> <p>7 Morgan Stanley was provided this information by</p> <p>8 Sunbeam.</p> <p>9 MR. MARKOWSKI: Object to the form of the</p> <p>10 question. I think the reference to this</p> <p>11 information at this point is kind of detached from</p> <p>12 what you're referring to.</p> <p>13 MR. CLARE: Okay, let me address that,</p> <p>14 because I think that point is well taken.</p> <p>15 BY MR. CLARE:</p> <p>16 Q. Mr. Fanin told you that Sunbeam provided</p> <p>17 information about its January and February 1990 sales</p> <p>18 to Morgan Stanley the day or night before the press</p> <p>19 release was issued, correct?</p> <p>20 MR. MARKOWSKI: I think you misspoke there in</p> <p>21 terms of the date.</p> <p>22 THE WITNESS: Yes. You said 1990.</p> <p>23 MR. CLARE: Thanks.</p> <p>24 THE WITNESS: I believe so, yes.</p> <p>25</p>	<p style="text-align: right;">Page 143</p> <p>1 MR. MOSCATO: Can we have the question again</p> <p>2 then?</p> <p>3 MR. CLARE: Let me rephrase it.</p> <p>4 MR. MOSCATO: My client made a distinction</p> <p>5 between Tyree's knowledge and Morgan Stanley's</p> <p>6 knowledge. I'm afraid -- listen, we're a neutral</p> <p>7 party here. I just want there to be a clean</p> <p>8 record, and that's why I'm making these</p> <p>9 objections. I just want clarity. So if you can</p> <p>10 ask the question again, I'd appreciate it.</p> <p>11 MR. CLARE: Sure.</p> <p>12 BY MR. CLARE:</p> <p>13 Q. Let me ask it this way and hopefully we can</p> <p>14 cut through it.</p> <p>15 Do you have any information from any source</p> <p>16 that Morgan Stanley or Mr. Tyree or anybody</p> <p>17 representing Morgan Stanley was advised of Sunbeam's</p> <p>18 first quarter 1998 sales before the day or the night</p> <p>19 before the press release was issued?</p> <p>20 A. No, I'm not aware of anything else.</p> <p>21 Q. The only information that you have is what</p> <p>22 you previously testified to about, Mr. Fanin's</p> <p>23 conversation with you?</p> <p>24 A. Yes.</p> <p>25 Q. And what Mr. Tyree told you at the print</p>
<p style="text-align: right;">Page 142</p> <p>1 BY MR. CLARE:</p> <p>2 Q. Let me make sure I've got the right question</p> <p>3 so we're all on the same page and in the same decade.</p> <p>4 Mr. Fanin told you during the restatement</p> <p>5 investigation that Sunbeam had provided Morgan Stanley</p> <p>6 with information about January and February 1998 sales</p> <p>7 the day or night before the press release was issued;</p> <p>8 is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And Mr. Tyree told you at the print shop that</p> <p>11 Morgan Stanley had been informed of that same</p> <p>12 information the day or night before the press release</p> <p>13 was issued?</p> <p>14 A. I believe he was personally. I don't know</p> <p>15 about Morgan Stanley, but yes, he was.</p> <p>16 Q. So what Mr. Tyree was telling -- what</p> <p>17 Mr. Tyree told you about the timing of Morgan Stanley</p> <p>18 getting this information was the same as what Mr. Fanin</p> <p>19 told you?</p> <p>20 MR. MARKOWSKI: This information is that</p> <p>21 one-page sheet, the sales buildup that you are</p> <p>22 referring to?</p> <p>23 BY MR. CLARE:</p> <p>24 Q. How about any information about Sunbeam's</p> <p>25 January or February sales?</p>	<p style="text-align: right;">Page 144</p> <p>1 shop?</p> <p>2 A. Yes.</p> <p>3 Q. And in both instances, the timing of those</p> <p>4 disclosures were the day or night before the press</p> <p>5 release was issued?</p> <p>6 A. Yes.</p> <p>7 Q. The press release, and we can look at it, was</p> <p>8 dated March 19th, 1998? It is CPH Exhibit --</p> <p>9 A. I have it here, yes, March 19th.</p> <p>10 Q. Can you estimate for me the number of days</p> <p>11 prior to the issuance of the press release that you</p> <p>12 informed Mr. Gluck that you believed January and</p> <p>13 February 1998 sales needed to be disclosed to Morgan</p> <p>14 Stanley?</p> <p>15 A. Like I said, March 12th or March 13th.</p> <p>16 Q. So five or six days elapsed between this</p> <p>17 conversation with Mr. Gluck where you and Mr. Harlow</p> <p>18 spoke with him and the date that Sunbeam issued the</p> <p>19 press release, to the best of your recollection?</p> <p>20 A. Yes.</p> <p>21 Q. And during that time period, that five or</p> <p>22 six-day period, you were working with Morgan Stanley</p> <p>23 and its counsel on the bond offering documents?</p> <p>24 A. Yes.</p> <p>25 Q. And you were in New York together?</p>

36 (Pages 141 to 144)

<p style="text-align: right;">Page 145</p> <p>1 A. For the most part, yes.</p> <p>2 Q. And during that five or six-day time period,</p> <p>3 am I correct that you never discussed with Morgan</p> <p>4 Stanley or its counsel Sunbeam's January and</p> <p>5 February 1998 sales performance?</p> <p>6 A. Not that I recall, no.</p> <p>7 Q. And it was because you believed it was</p> <p>8 Sunbeam's responsibility to disclose that information</p> <p>9 to Morgan Stanley?</p> <p>10 A. Or if Morgan Stanley asked the question, I</p> <p>11 would answer it truthfully.</p> <p>12 Q. But Morgan Stanley didn't bring it up?</p> <p>13 A. Right.</p> <p>14 Q. And to your knowledge, Sunbeam did not tell</p> <p>15 Morgan Stanley at any point during that five or six-day</p> <p>16 period?</p> <p>17 MR. MOSCATO: Do you know one way or the</p> <p>18 other?</p> <p>19 THE WITNESS: I don't know one way or the</p> <p>20 other if they did or not.</p> <p>21 BY MR. CLARE:</p> <p>22 Q. But again, the only information you have</p> <p>23 about that topic is that Sunbeam informed Morgan</p> <p>24 Stanley and John Tyree the day before the press release</p> <p>25 was issued?</p>	<p style="text-align: right;">Page 147</p> <p>1 Global Financial Press.</p> <p>2 Q. Did you attend any meetings at the offices of</p> <p>3 Morgan Stanley?</p> <p>4 A. No.</p> <p>5 Q. Were representatives of Morgan Stanley</p> <p>6 present for those meetings, some of them?</p> <p>7 A. Yeah, I believe Tyree and there might have</p> <p>8 been someone else in the first couple, but after that,</p> <p>9 there wasn't anybody there.</p> <p>10 Q. So the only person that you remember being</p> <p>11 present at those sessions was John Tyree?</p> <p>12 A. Yes.</p> <p>13 Q. Do you remember anything about your</p> <p>14 conversations with John Tyree during those drafting</p> <p>15 sessions?</p> <p>16 Does anything stick out as having been</p> <p>17 discussed with Mr. Tyree?</p> <p>18 A. The form of the pro forma, financial</p> <p>19 statements and probably certain disclosures or certain,</p> <p>20 the way certain things were presented. Specifically I</p> <p>21 remember talking with Mr. Tyree.</p> <p>22 Q. Now the pro forma information that was put</p> <p>23 into the offering memorandum, was that pro forma</p> <p>24 information that was prepared by Andersen?</p> <p>25 A. No. It was the company's pro formas, but we,</p>
<p style="text-align: right;">Page 146</p> <p>1 MR. MOSCATO: Do you really want to keep</p> <p>2 asking the same question over and over?</p> <p>3 MR. CLARE: Yeah, I do. I just want to make</p> <p>4 sure that we're all on the same page.</p> <p>5 MR. MOSCATO: One last time. Answer the</p> <p>6 question one more time, Larry.</p> <p>7 THE WITNESS: Can you read that question</p> <p>8 again.</p> <p>9 (Thereupon, a portion of the record</p> <p>10 was read by the reporter.)</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. CLARE:</p> <p>13 Q. Mr. Bornstein, we talked about these drafting</p> <p>14 sessions that you attended in New York. How many days</p> <p>15 were you in New York in that first two- or three-week</p> <p>16 period in March 1998, approximately?</p> <p>17 A. I don't know, probably between four and six</p> <p>18 days.</p> <p>19 Q. And all of the time that you spent there in</p> <p>20 New York was working on the bond offering documents?</p> <p>21 A. For the most part, yes.</p> <p>22 Q. And where did those meetings take place?</p> <p>23 A. The preliminary ones took place I believe at</p> <p>24 Scadden Arps' office, and then there was a, as they</p> <p>25 further went down the line, I think they moved over to</p>	<p style="text-align: right;">Page 148</p> <p>1 we assisted in preparing them.</p> <p>2 Q. When you say the company's, it was Sunbeam's</p> <p>3 pro formas?</p> <p>4 A. Yes.</p> <p>5 Q. So this morning in response to a question</p> <p>6 from Mr. Markowski, and I may have misheard you, I</p> <p>7 think you said that the pro forma information was</p> <p>8 prepared by Morgan Stanley. And I wanted to ask you</p> <p>9 about that.</p> <p>10 Was any of the pro forma information that you</p> <p>11 were reviewing prepared by Morgan Stanley?</p> <p>12 A. I reviewed pro forma information that</p> <p>13 included cost savings and synergies that was supplied</p> <p>14 by a guy named Tyrone Chang from Morgan Stanley. Those</p> <p>15 were separate and different from pro formas that went</p> <p>16 into the bond offering, because the pro formas going</p> <p>17 into the bond offering were specific to the</p> <p>18 transaction, and the new debt, those types of things,</p> <p>19 but don't have anything to do with cost savings or</p> <p>20 synergies or any of those types of things.</p> <p>21 Q. The information that you indicated Mr. Chang</p> <p>22 provided, for what purpose were you reviewing that?</p> <p>23 A. I reviewed it for, if they needed help on the</p> <p>24 tax treatment to how to show the tax benefit. I don't</p> <p>25 remember anything else other than that from my review</p>

<p style="text-align: right;">Page 149</p> <p>1 of the pro formas.</p> <p>2 Q. But none of the pro forma information that</p> <p>3 was prepared or provided to you by Mr. Chang was put</p> <p>4 into the offering memo?</p> <p>5 A. Not that I'm aware of, no.</p> <p>6 Q. So the pro forma information that you</p> <p>7 discussed, reviewed and that was ultimately included in</p> <p>8 the offering memorandum was prepared by Sunbeam?</p> <p>9 A. Sunbeam, and as well as the other companies</p> <p>10 that were involved. There was Signature Brands, First</p> <p>11 Alert, Coleman. They were all involved in preparing</p> <p>12 the pro formas.</p> <p>13 Q. But as far as the information that went into</p> <p>14 the offering memorandum, you don't have any information</p> <p>15 to suggest that Morgan Stanley was involved in</p> <p>16 preparing those pro forma financial statements?</p> <p>17 A. As it relates to the numbers, no, but to the</p> <p>18 disclosures and the footnotes, yes.</p> <p>19 Q. And you remember discussing those with Morgan</p> <p>20 Stanley?</p> <p>21 A. Yes.</p> <p>22 Q. And there was give and take during those</p> <p>23 sessions where you discussed with John Tyree, the</p> <p>24 lawyers at Scadden, about the narrative of the offering</p> <p>25 memorandum?</p>	<p style="text-align: right;">Page 151</p> <p>1 wouldn't call it frustrated, but unsure if they</p> <p>2 did or not.</p> <p>3 BY MR. CLARE:</p> <p>4 Q. Okay. And you had recommended that to</p> <p>5 Mr. Gluck or told Mr. Gluck that you believed Sunbeam</p> <p>6 should disclose that information to Morgan Stanley?</p> <p>7 A. Yes.</p> <p>8 MR. MARKOWSKI: Isn't that where we started</p> <p>9 about half an hour ago?</p> <p>10 BY MR. CLARE:</p> <p>11 Q. Were you frustrated that Sunbeam hadn't</p> <p>12 followed through on that while you were at these</p> <p>13 drafting sessions working day and night with the people</p> <p>14 from Morgan Stanley and so far as you could tell, they</p> <p>15 didn't appear to know?</p> <p>16 MR. MOSCATO: I'm sorry, I have to object to</p> <p>17 that. That's, I think that's a real compound</p> <p>18 question.</p> <p>19 BY MR. CLARE:</p> <p>20 Q. Okay. Were you frustrated that you couldn't</p> <p>21 tell whether Morgan Stanley knew this information or</p> <p>22 not?</p> <p>23 A. I said I wasn't frustrated. I just at the</p> <p>24 time found it amazing that it wasn't a topic of</p> <p>25 conversation of theirs. No one asked the question. I</p>
<p style="text-align: right;">Page 150</p> <p>1 A. Yes.</p> <p>2 Q. And the disclosures that needed to be made?</p> <p>3 A. Yes.</p> <p>4 Q. And during that time everybody was making</p> <p>5 suggestions and edits to the document?</p> <p>6 A. Yes.</p> <p>7 Q. And that was the purpose of that six-day time</p> <p>8 period that you believe you were in New York was to do</p> <p>9 that work on the offering memorandum?</p> <p>10 A. Yes.</p> <p>11 Q. Now during that time you were in New York,</p> <p>12 you were aware that Sunbeam's January and February 1998</p> <p>13 sales were lower than for the prior time period in</p> <p>14 1997, correct?</p> <p>15 A. Honestly, I don't remember the timing of it.</p> <p>16 I believe so, but I'm not certain.</p> <p>17 Q. Is it fair to say that for at least a portion</p> <p>18 of those drafting sessions, you were aware of that</p> <p>19 information?</p> <p>20 A. Yes.</p> <p>21 Q. And were you in any way frustrated that you</p> <p>22 had this information, but Morgan Stanley did not?</p> <p>23 MR. MOSCATO: I object to that.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: I don't know if I was, I</p>	<p style="text-align: right;">Page 152</p> <p>1 wasn't aware if they knew or didn't know. I just know</p> <p>2 that it wasn't something that was discussed.</p> <p>3 Q. Okay. Did you have any follow-up</p> <p>4 conversations with Mr. Gluck during that time period</p> <p>5 about whether Sunbeam had provided that information to</p> <p>6 Morgan Stanley?</p> <p>7 A. I don't recall specifically, no.</p> <p>8 MR. MOSCATO: While you're doing that, is</p> <p>9 there any way we can get a little air in here?</p> <p>10 BY MR. CLARE:</p> <p>11 Q. And you testified that at some point during</p> <p>12 the same time period, you had a discussion with</p> <p>13 Mr. Pruitt about the same subject matter?</p> <p>14 A. Yes.</p> <p>15 Q. And during that discussion, Mr. Pruitt made a</p> <p>16 reference to withholding the comfort letter if Sunbeam</p> <p>17 did not disclose this information to Morgan Stanley?</p> <p>18 A. I believe I did say that, yes.</p> <p>19 Q. Is that consistent with your recollection?</p> <p>20 A. Yes.</p> <p>21 Q. And you were a part of that conversation?</p> <p>22 A. Yes.</p> <p>23 Q. Did you agree with Mr. Pruitt that that was</p> <p>24 an appropriate thing to do if Sunbeam did not disclose</p> <p>25 the information to Morgan Stanley about its January and</p>

38 (Pages 149 to 152)

<p style="text-align: right;">Page 153</p> <p>1 February 1998 sales?</p> <p>2 A. Did I have an opinion? Is that what you</p> <p>3 said?</p> <p>4 No, I left it up to him.</p> <p>5 Q. Okay. But you didn't think it was</p> <p>6 inappropriate for Mr. Pruitt to reach that conclusion?</p> <p>7 A. Honestly, I was unaware whether or not</p> <p>8 Sunbeam had advised Morgan Stanley at that time. I</p> <p>9 was, my understanding was that they did not.</p> <p>10 Q. Your understanding was that Sunbeam had not</p> <p>11 advised Morgan Stanley?</p> <p>12 A. Yes.</p> <p>13 Q. And your conversation with Mr. Pruitt was</p> <p>14 that if that situation wasn't remedied, that Andersen</p> <p>15 would withhold its comfort letter?</p> <p>16 A. That's what he told me, yes.</p> <p>17 Q. Some questions this morning about an</p> <p>18 accounting due diligence call that you had with Morgan</p> <p>19 Stanley during this time period.</p> <p>20 A. Yes.</p> <p>21 Q. You participated in that call?</p> <p>22 A. Yes.</p> <p>23 Q. And that was a due diligence call that was</p> <p>24 requested by Morgan Stanley?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 155</p> <p>1 A. That was my understanding, yes.</p> <p>2 Q. Was there any discussion with Morgan Stanley</p> <p>3 about this topic, about whether Mr. Gluck would be on</p> <p>4 the call or not?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Was there any discussion between you and</p> <p>7 Mr. Harlow about Mr. Gluck's presence on the call?</p> <p>8 A. No.</p> <p>9 Q. And you had been on other due diligence calls</p> <p>10 with underwriters where there had been representative</p> <p>11 from management on the phone with you?</p> <p>12 A. Yes.</p> <p>13 Q. In accordance with Andersen's policy?</p> <p>14 A. Yes.</p> <p>15 Q. Was it your hope at the time that if</p> <p>16 Mr. Gluck was on the line with you during this due</p> <p>17 diligence call, that he might take that as an</p> <p>18 opportunity to tell Morgan Stanley about the company's</p> <p>19 performance in the first two months of 1998?</p> <p>20 A. No. I'm not -- no. That wasn't my hope.</p> <p>21 Q. Okay. I'm going to show you some of your</p> <p>22 prior deposition testimony on this subject and see if</p> <p>23 that refreshes your recollection about that topic and</p> <p>24 I'll ask you some follow-up questions about it.</p> <p>25 MR. CLARE: Let's mark this as Morgan Stanley</p>
<p style="text-align: right;">Page 154</p> <p>1 Q. You and Mr. Harlow were the participants for</p> <p>2 Andersen?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall, as of the date of the</p> <p>5 accounting due diligence call, whether Mr. Pastrana had</p> <p>6 already advised you about the January and February 1998</p> <p>7 sales? Does that help you place in time --</p> <p>8 A. Yeah, I'm not sure. I'm not 100 percent sure</p> <p>9 that I knew about this on the 12th.</p> <p>10 Q. Mr. Gluck was on the call for Sunbeam?</p> <p>11 A. Yes.</p> <p>12 Q. Was there anybody else on the phone from</p> <p>13 Sunbeam?</p> <p>14 A. Not that I'm aware of, no.</p> <p>15 Q. Am I correct that you requested Mr. Gluck be</p> <p>16 on the call?</p> <p>17 A. Yes.</p> <p>18 Q. And why?</p> <p>19 A. I believe it was an Andersen policy to have</p> <p>20 someone present from the company on the call or at the</p> <p>21 meeting.</p> <p>22 Q. Was it, and this is a standard practice, at</p> <p>23 least at the time that you were at Andersen, to have</p> <p>24 somebody from the company on the call with underwriters</p> <p>25 in a due diligence situation like this?</p>	<p style="text-align: right;">Page 156</p> <p>1 Exhibit 55.</p> <p>2 (MS Exhibit No. 55 was marked for</p> <p>3 identification.)</p> <p>4 THE WITNESS: Okay, where would you like me</p> <p>5 to look?</p> <p>6 BY MR. CLARE:</p> <p>7 Q. I'm going to invite your attention to page</p> <p>8 780 of this transcript.</p> <p>9 A. Can you just, someone tell me when and where</p> <p>10 this took place? Which one was this?</p> <p>11 Q. Sure.</p> <p>12 MR. MARKOWSKI: We're celebrating the third</p> <p>13 anniversary of it.</p> <p>14 THE WITNESS: Is it really that long?</p> <p>15 BY MR. CLARE:</p> <p>16 Q. This is a deposition transcript taken on</p> <p>17 Monday, January 15, 2001. Appears to be day five of</p> <p>18 your deposition testimony.</p> <p>19 A. Okay. Where would you like me to turn?</p> <p>20 Q. And you can read as much it as you'd like to</p> <p>21 see if it refreshes your recollection, but specifically</p> <p>22 I want to invite your attention to page 780 at the top</p> <p>23 of the page. And it might be helpful if you back up to</p> <p>24 page 778 for context.</p> <p>25 A. Okay.</p>

<p style="text-align: right;">Page 157</p> <p>1 Q. Have you had an opportunity to review a few 2 pages of your deposition from January of 2001? 3 MR. MARKOWSKI: I think we should be specific 4 about what portion of this he's -- 5 MR. MOSCATO: Now Larry, you've reviewed it. 6 Now close the transcript. 7 BY MR. CLARE: 8 Q. I don't know exactly which pages you reviewed 9 but I invited your attention to pages 778 through 780. 10 A. Yes, that's what I read. 11 Q. Okay. And does having reviewed that 12 deposition testimony, does that refresh your 13 recollection in any way about the sequence of events 14 that we've been discussing; specifically, your 15 conversation with Mr. Gluck about the need to disclose 16 this information to Morgan Stanley and the March 12, 17 1998 accounting due diligence call? 18 A. Yes. 19 Q. Okay. And now testifying from your refreshed 20 recollection, is it correct that you had discussed this 21 issue with Mr. Gluck prior to March 12, 1998? 22 A. Yes. 23 Q. And prior to March 12, 1998, you and 24 Mr. Harlow had informed Mr. Gluck that Sunbeam's 25 January and February 1998 sales information needed to</p>	<p style="text-align: right;">Page 159</p> <p>1 A. No. 2 Q. And Mr. Gluck didn't raise it? 3 A. No. 4 Q. And you didn't raise it and Mr. Harlow didn't 5 raise it? 6 A. Correct. 7 Q. Were the answers that you provided -- strike 8 that. 9 Were you answers that you and Mr. Harlow 10 provided on the March 12, 1998, accounting due 11 diligence call any different because Mr. Gluck was on 12 the line? 13 A. No. 14 Q. If Mr. Gluck had not been on the line, would 15 you or Mr. Harlow have volunteered information about 16 Sunbeam's first quarter sales performance to date? 17 MR. MARKOWSKI: May I have the question back, 18 please. 19 (Thereupon, a portion of the record 20 was read by the reporter.) 21 MR. MARKOWSKI: Object, calls for -- 22 MR. MOSCATO: Answer as to yourself. 23 MR. MARKOWSKI: I would object that it calls 24 for speculation. 25 THE WITNESS: I can't answer for Harlow. If</p>
<p style="text-align: right;">Page 158</p> <p>1 be disclosed to Morgan Stanley? 2 A. Yes. 3 Q. And is it correct that at least one of the 4 reasons that you wanted Mr. Gluck on the line for the 5 accounting due diligence call was a hope that he would 6 disclose information about Sunbeam's first quarter 7 performance to Morgan Stanley? 8 A. If the question came up, yes. 9 Q. Okay. But it was your view, independent of 10 whether the question came up, that Sunbeam had a 11 responsibility to disclose it to Morgan Stanley? 12 A. Yes. 13 Q. And was it your hope that independent of 14 whether the question came up, that Mr. Gluck might take 15 this opportunity of talking with Morgan Stanley to 16 disclose that information? 17 A. I believe so, yes. 18 Q. Did Mr. Gluck tell Morgan Stanley about 19 Sunbeam's January and February 1998 sales on the 20 March 12, 1998, accounting due diligence call? 21 A. I don't believe so, no. 22 Q. Do you have any recollection of that topic 23 coming up? 24 A. No. 25 Q. Morgan Stanley didn't raise it?</p>	<p style="text-align: right;">Page 160</p> <p>1 asked the question, I would have answered it 2 truthfully. I wouldn't have volunteered anything. 3 BY MR. CLARE: 4 Q. Because you thought it was Sunbeam's 5 responsibility to tell that information? 6 A. Yes. 7 Q. But your willingness or unwillingness to 8 volunteer that information had nothing to do with 9 whether Mr. Gluck was on the line or not? 10 A. No. 11 Q. Were you any less truthful with Morgan 12 Stanley because Mr. Gluck was on the phone with you for 13 the March 12, 1998, due diligence call? 14 A. No. 15 Q. Were you any less candid with Morgan Stanley 16 because Mr. Gluck was on that call? 17 A. No. 18 Q. If Morgan Stanley had asked the question on 19 March 12, 1998, about Sunbeam's first quarter 20 performance, would you have deferred the response to 21 that question to Mr. Gluck, since he was on the line? 22 A. I have no idea what I would have done. 23 Q. But you believed it was Sunbeam's 24 responsibility to provide that information? 25 A. Yes.</p>

<p style="text-align: right;">Page 161</p> <p>1 Q. Was there any discussion before the March 12, 2 1998, accounting due diligence call how you or 3 Mr. Harlow would respond if Morgan Stanley asked that 4 question? 5 MR. MARKOWSKI: Any discussion between 6 Mr. Bornstein and Mr. Harlow? 7 MR. CLARE: That's correct. 8 THE WITNESS: Specifically on that point, I 9 don't recall. 10 BY MR. CLARE: 11 Q. Even generally? 12 A. No. 13 Q. How about between you and Mr. Harlow or with 14 Mr. Gluck? 15 A. No. 16 Q. Mr. Bornstein, I'm going to ask you to dig 17 out CPH Exhibit 123 that we marked and looked at this 18 morning. 19 MR. MOSCATO: I'm sorry, which one was 123? 20 MR. CLARE: CPH Exhibit 123 is the July 2nd, 21 1998. 22 THE WITNESS: This one right on the top. 23 MR. MOSCATO: This one? 24 BY MR. CLARE: 25 Q. And Mr. Markowski asked you some questions</p>	<p style="text-align: right;">Page 163</p> <p>1 out were placed on there during the call. 2 Q. Okay. 3 MR. MOSCATO: The items were placed there or 4 the crossing out? 5 THE WITNESS: The crossing out. 6 BY MR. CLARE: 7 Q. So the items, the handwriting of the specific 8 items were discussed with you and Mr. Harlow before the 9 call, and then during the call as issues came up, you 10 crossed them off as they were discussed? 11 A. Some of them. These I recall were important 12 issues that I wanted to make sure were discussed. 13 Q. If there is handwriting on pages three and 14 four that's not crossed off, does that mean that they 15 weren't discussed on the call or you just didn't cross 16 them off? 17 A. No, I know that a lot more of these were 18 discussed, but these were items that I wanted to make 19 sure that were discussed by Harlow. 20 Q. Now the date of CPH Exhibit 123 is July 2nd, 21 1998, correct? 22 A. Yes. 23 Q. And that's the date that you prepared the 24 memo documenting your March 12, 1998, accounting due 25 diligence call?</p>
<p style="text-align: right;">Page 162</p> <p>1 about the delay between the date of the call and the 2 date that you started to prepare the memo. Is that 3 correct? 4 A. Yes. 5 Q. And you can tell me again if I've got this in 6 any way wrong, but you said you felt it was important 7 to have a record of what was said during that call. 8 A. Yeah, I thought it was more important than, 9 you know, to have something other than the 10 contemporaneous documentation from the call. 11 Q. And that contemporaneous documentation were 12 the handwritten notes that appear on the third and 13 fourth page of CPH Exhibit 123? 14 A. Yes. 15 Q. And those notes that were placed on the third 16 and fourth page of CPH Exhibit 123, some of those notes 17 were prepared there in advance of the call as a result 18 of discussions between you and Mr. Harlow about how you 19 would respond to the questions? 20 A. Yeah, they were all prepared prior. It was 21 all prepared prior to. 22 Q. That's my next question. You anticipated it, 23 whether any of the handwriting on the third or fourth 24 page of Exhibit 123 was placed there during the call. 25 A. I think some of the items that are crossed</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Yes. 2 Q. Did you start working on this memo at any 3 point before July 2nd, 1998? 4 A. I don't think so, no. 5 Q. So you did not document your discussions with 6 Morgan Stanley for the accounting due diligence call in 7 this memo format at least until July 2nd, 1998? 8 A. Yes. 9 Q. And that was after Mr. Dunlap had been fired 10 from Sunbeam on June 15, 1998? 11 A. I believe so, yes. 12 Q. And after Sunbeam had announced that the SEC 13 was investigating its accounting practices on 14 June 22nd, 1998? 15 A. Yes. 16 Q. And that was after Sunbeam announced that it 17 was delaying an SEC filing relating to the debenture 18 offering? 19 A. Yes. 20 Q. And that was after Sunbeam had announced that 21 its 1997 financial statement should not be relied upon? 22 A. I believe so, yes. 23 Q. That was -- 24 A. I think that was June 30. 25 Q. That was June 30?</p>

41 (Pages 161 to 164)

<p style="text-align: right;">Page 165</p> <p>1 A. Yes.</p> <p>2 Q. So you did not begin to document that</p> <p>3 conversation with Morgan Stanley until after Sunbeam</p> <p>4 announced that its 1997 financial statement could not</p> <p>5 be relied upon?</p> <p>6 A. Yes.</p> <p>7 MR. MARKOWSKI: Can I have the question back,</p> <p>8 please.</p> <p>9 (Thereupon, a portion of the record</p> <p>10 was read by the reporter.)</p> <p>11 MR. MARKOWSKI: I object, mischaracterizes</p> <p>12 his prior testimony with respect to this.</p> <p>13 BY MR. CLARE:</p> <p>14 Q. So you did not begin to document your</p> <p>15 discussions with Morgan Stanley in memo form until</p> <p>16 after Sunbeam had announced that its 1997 financial</p> <p>17 statements should not be relied upon?</p> <p>18 A. Yes.</p> <p>19 Q. Same question, after Sunbeam announced that</p> <p>20 its 1997 financial statements may need to be restated,</p> <p>21 that was also on June 30, 1998.</p> <p>22 A. I believe so, yes.</p> <p>23 Q. In drafting your July 2nd, 1998 memo, did you</p> <p>24 consult with Mr. Harlow about his recollection of what</p> <p>25 was said on the call?</p>	<p style="text-align: right;">Page 167</p> <p>1 their entirety and the responses were as follows."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Item 4A --</p> <p>5 A. Yes.</p> <p>6 Q. Question four relates to the adequacy of</p> <p>7 internal controls. Do you see that on the agenda?</p> <p>8 A. Yes.</p> <p>9 Q. And the response that was indicated on your</p> <p>10 memo says in part, "No material weaknesses in internal</p> <p>11 controls were noted."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall Mr. Harlow telling Morgan</p> <p>15 Stanley that no material weaknesses in internal</p> <p>16 controls were noted by Andersen?</p> <p>17 A. Yes.</p> <p>18 Q. That's consistent with your recollection of</p> <p>19 the call?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. Do you remember Morgan Stanley asking that</p> <p>22 question and Mr. Harlow providing that answer?</p> <p>23 A. Yes.</p> <p>24 Q. Number eight asks, "How aggressive is the</p> <p>25 company in its accounting policies?"</p>
<p style="text-align: right;">Page 166</p> <p>1 A. He reviewed it. I don't specifically</p> <p>2 remember asking him.</p> <p>3 Q. So you prepared a draft and Mr. Harlow</p> <p>4 reviewed it?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember any discussions with</p> <p>7 Mr. Harlow about the draft that you had prepared or any</p> <p>8 changes that he asked to be made to your draft?</p> <p>9 A. I don't recall, no.</p> <p>10 Q. What about Mr. Gluck? Did you provide a</p> <p>11 draft of the July 2nd, 1998, memo to Mr. Gluck?</p> <p>12 A. No.</p> <p>13 Q. Why not?</p> <p>14 A. It was for Arthur Andersen's files.</p> <p>15 Q. The typewritten memo that's the first two</p> <p>16 pages of CPH Exhibit 123, this was your effort to</p> <p>17 distill from the notes the questions that were asked</p> <p>18 and the responses that were given on the call?</p> <p>19 A. For the most part, yes.</p> <p>20 Q. The third paragraph says, "Attached is the</p> <p>21 agenda as well as notes from that meeting. Mr. Savori</p> <p>22 and Mr. Lurie asked the questions and Mr. Harlow</p> <p>23 provided responses."</p> <p>24 A. Yes.</p> <p>25 Q. "The questions from the agenda were asked in</p>	<p style="text-align: right;">Page 168</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. There was some testimony this morning about</p> <p>4 bill and hold and Encore and EPI, and those items are</p> <p>5 crossed off on page three.</p> <p>6 A. Right.</p> <p>7 Q. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Looking at your typewritten memo, the</p> <p>10 response that appears after item eight, "On a scale of</p> <p>11 one to ten, around a five or six."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall Mr. Harlow ranking how</p> <p>15 aggressive Sunbeam's accounting policies are on a scale</p> <p>16 of one to ten?</p> <p>17 A. Yes. That's, I recall him addressing</p> <p>18 initially the issue that way.</p> <p>19 Q. Okay.</p> <p>20 A. And then going into some of the detail we</p> <p>21 talked about earlier.</p> <p>22 Q. But it's your recollection that on a scale of</p> <p>23 one to ten, Mr. Harlow told Morgan Stanley that Sunbeam</p> <p>24 was about a five or six in terms of the aggressiveness</p> <p>25 of its accounting policies?</p>

42 (Pages 165 to 168)

Page 169

1 A. Yes.

2 Q. And Mr. Harlow's ranking of the

3 aggressiveness of the accounting policies were part of

4 the same conversation when he was discussing bill and

5 hold, Encore, EPI?

6 A. Yes.

7 Q. Item ten on the agenda asks whether any major

8 adjustments were recommended.

9 A. Yes.

10 MR. MOSCATO: Material.

11 MR. CLARE: Thank you, material.

12 BY MR. CLARE:

13 Q. Item ten on the agenda -- my copy says major.

14 THE WITNESS: Material.

15 MR. MOSCATO: I'm sorry. You're right. My

16 abject apologies.

17 MR. CLARE: That's okay.

18 THE WITNESS: The Morgan Stanley letter

19 requesting the question is major and on my

20 typewritten it's material.

21 BY MR. CLARE:

22 Q. Okay. So just to make sure we're all clear,

23 on page three of CPH Exhibit 123, item ten, the

24 question that Morgan Stanley provided to you in writing

25 was whether any major adjustments were recommended.

Page 170

1 A. Correct.

2 Q. And in handwriting under that it says, "Not

3 material, Encore or EPI."

4 A. Yes.

5 Q. Do you remember discussing that issue with

6 Morgan Stanley; in other words, Andersen's view that

7 the Encore and EPI adjustments were not material?

8 A. Yes, I do remember that.

9 Q. And that recollection is in fact recorded on

10 point 10 of your typewritten memo, which says no

11 material adjustments were recorded?

12 A. Yes.

13 Q. Now page three of the Exhibit CPH 123 has a

14 header on it that says Project One Time accounting due

15 diligence. Do you see that?

16 A. Yes.

17 Q. What does Project One Time refer to?

18 A. I have no idea.

19 Q. Are you aware that the project name that

20 Sunbeam had given to these acquisitions was Project

21 Laser?

22 A. Yeah, I recollected that from something I

23 just looked at earlier, yes.

24 Q. But that's consistent with your recollection

25 from 1998?

Page 171

1 A. Yes.

2 Q. Do you have an understanding as to why the

3 sheet that you have here as part of your exhibit says

4 Project One Time, when the project name was Project

5 Laser?

6 A. You'd have to ask the person who put it

7 together and sent it to me. I have no idea.

8 Q. That was my question. You don't have any

9 understanding of that?

10 A. No, no idea.

11 Q. I will represent to you and I can show you

12 the documents that other people who were on the call --

13 A. Yes.

14 Q. -- got an agenda sheet that said the word

15 Project Laser --

16 A. Really? Interesting.

17 Q. -- on it, and I wanted to know if you had any

18 explanation for why the document that was attached to

19 CPH 123 from your files says Project One Time.

20 A. No.

21 MR. MARKOWSKI: When you represent, Tom, that

22 other people on the call got a different agenda,

23 what call are you referring to, the Arthur

24 Andersen call, or the call with the other

25 accounting firms?

Page 172

1 MR. CLARE: I'm representing the Arthur

2 Andersen call. In fact, why don't we just mark

3 those as exhibits and I'll ask you about it

4 specifically, the two documents.

5 THE WITNESS: Okay.

6 MR. CLARE: This is 56.

7 (MS Exhibit Nos. 56 and 57 were marked for

8 identification.)

9 THE WITNESS: Okay.

10 BY MR. CLARE:

11 Q. And I'm showing you what's been marked as

12 Morgan Stanley Exhibit 56 and Morgan Stanley 57. These

13 are a series of faxes, two faxes from Shani Boone at

14 Morgan Stanley to Mr. Freed at Scadden Arps in

15 Exhibit 56 and Mr. Molitor at First Union in 57.

16 Do you see that?

17 A. Yes.

18 Q. Just looking at Exhibit 56 for a moment, the

19 second page of it is the agenda that Mr. Markowski went

20 through with you this morning.

21 A. Yes.

22 Q. And it shows a series of accounting due

23 diligence calls beginning at 11:30 a.m. and going

24 through start time of 1:00.

25 A. Yes.

<p style="text-align: right;">Page 173</p> <p>1 Q. And then after that, there are documents, an 2 agenda for those calls -- 3 A. Yes. 4 Q. -- that are similar in form to the ones that 5 we were just looking at attached to your typewritten 6 memo? 7 A. Yes, similar. 8 Q. Similar in form, but not identical? 9 A. I don't believe identical, but I haven't 10 proofed them both. 11 Q. One of the ways in which they are not 12 identical is the header on the documents that were sent 13 to Mr. Freed and Mr. Moliter say Product Laser 14 accounting due diligence, and the agenda that is 15 attached to your July 2nd memo says Project One Time. 16 A. Yes. 17 Q. Do you see that? 18 A. Yes. 19 Q. And there are other differences in the agenda 20 are that are, speak for themselves. 21 A. Yes. 22 Q. And do you have any explanation for why your 23 agenda was different than other participants in the 24 call? 25 A. No. It would only be speculation.</p>	<p style="text-align: right;">Page 175</p> <p>1 connection with the telephone call. 2 MR. CLARE: Okay. Well, I'll show that 3 through different witnesses, and we'll take that 4 up not on Mr. Bornstein's time. 5 THE WITNESS: I have no idea. 6 BY MR. CLARE: 7 Q. Do you recall -- you don't have any 8 explanation for that discrepancy as you sit here today? 9 A. No. 10 Q. I want to go back to your July 2nd, 1998, 11 memo for a moment. 12 Question 16 on the agenda asks the question, 13 "Company is conservative and leans to full disclosure," 14 question mark. Do you see that? 15 A. Yes. 16 Q. And your handwritten note says yes, and it's 17 circled. Do you see that? 18 A. Yes. 19 Q. On July 2nd, 19 -- I'm sorry, new question. 20 On March 12, 1998, did you or Mr. Harlow tell 21 Morgan Stanley that Sunbeam was conservative and leans 22 toward full disclosure? 23 A. As it relates to their financial statements, 24 yes. 25 Q. Okay. Is there a distinction there? Did you</p>
<p style="text-align: right;">Page 174</p> <p>1 Q. But you don't have any explanation for the 2 discrepancy between the agenda that First Union and 3 Scadden Arps had and the agenda that's attached to your 4 July 2nd -- 5 A. No. 6 Q. -- '98 memo? 7 MR. MARKOWSKI: I think you've assumed 8 something that you haven't proved yet at this 9 point in time, which is the agenda used in 56 and 10 57 was in fact the agenda used by those other 11 parties in connection with the call as opposed to 12 a draft of what was ultimately sent to 13 Mr. Bornstein and to Mr. Harlow. 14 MR. CLARE: All I'm trying to do is 15 understand whether Mr. Bornstein has any 16 information about that, and he has told me -- and 17 correct me if I'm wrong -- that you don't have any 18 understanding or explanation for why others that 19 were on the call had a different agenda than the 20 one attached to your July 2nd. 21 MR. MARKOWSKI: Well, that's the fact I'm 22 saying, I'm objecting to on the ground it assumes 23 facts not in evidence. You haven't shown that the 24 documents attached to 56 and 57 were in fact the 25 agendas used by Scadden or by First Union in</p>	<p style="text-align: right;">Page 176</p> <p>1 make any discussion with Morgan Stanley about ways in 2 which Sunbeam was not conservative and leaned towards 3 full disclosure on the call? 4 A. No, not that I'm aware of. 5 Q. So the question was asked the company is 6 conservative and leans to full disclosure, and the 7 answer that you and Mr. Harlow gave was yes. 8 A. I believe as it relates to the financial 9 statements is what we were talking about. 10 Q. Okay. But did you say that, do you have a 11 recollection of saying that on the call? 12 A. No, I don't. 13 Q. And in fact, your typewritten memo 14 memorializing the answers that were given to Morgan 15 Stanley answers the question yes? 16 A. Yes. 17 Q. And that's consistent with your recollection 18 of what was said on the call? 19 A. Yes. 20 MR. CLARE: We need to take a short break to 21 change the videotape. 22 THE VIDEOGRAPHER: We are now going off 23 videotape number two. We'll be back on videotape 24 number three. The time on the monitor is 25 1:30 p.m.</p>

<p style="text-align: right;">Page 177</p> <p>1 (Discussion held off the record.)</p> <p>2 THE VIDEOGRAPHER: We are now back on video</p> <p>3 record. This is tape number three. The time on</p> <p>4 the monitor, 1:31 p.m.</p> <p>5 BY MR. CLARE:</p> <p>6 Q. Mr. Bornstein, just before the break, I was</p> <p>7 asking you about item 16 from your July 2nd, 1998 memo.</p> <p>8 And this relates to the question that Morgan</p> <p>9 Stanley asked about whether Sunbeam was conservative</p> <p>10 and leans to full disclosure.</p> <p>11 On the March 12, 1998 accounting due</p> <p>12 diligence call, did you tell Morgan Stanley that</p> <p>13 Sunbeam had resisted including disclosures of its bill</p> <p>14 and hold sales in its 1997 10K?</p> <p>15 A. Did we tell Morgan Stanley --</p> <p>16 MR. MOSCATO: I'm sorry, repeat that</p> <p>17 question.</p> <p>18 (Thereupon, a portion of the record</p> <p>19 was read by the reporter.)</p> <p>20 MR. MOSCATO: Answer the question yes or no.</p> <p>21 Did you?</p> <p>22 THE WITNESS: No.</p> <p>23 BY MR. CLARE:</p> <p>24 Q. Did you tell Morgan Stanley on the March 12,</p> <p>25 1998 call that Mr. Gluck was resistant about disclosing</p>	<p style="text-align: right;">Page 179</p> <p>1 Q. And one of them related to bill and hold</p> <p>2 sales?</p> <p>3 A. Yes.</p> <p>4 Q. And one of them related to the</p> <p>5 reclassification of restructuring reserves?</p> <p>6 A. Yes.</p> <p>7 Q. And there were other times that you</p> <p>8 approached Mr. Gluck about disclosure issues?</p> <p>9 A. Yes.</p> <p>10 Q. And during those approaches to Mr. Gluck, in</p> <p>11 several of those conversations Mr. Gluck told you to</p> <p>12 fuck off when you raised those issues with him?</p> <p>13 A. Yeah, that was pretty common.</p> <p>14 Q. And it happened on a number of occasions</p> <p>15 when you raised disclosure issues with Mr. Gluck?</p> <p>16 A. Yes.</p> <p>17 Q. On the March 12, 1998, accounting due</p> <p>18 diligence call with Morgan Stanley, did you tell Morgan</p> <p>19 Stanley in words or in substance that Mr. Gluck had</p> <p>20 told you to fuck off when you had raised disclosure</p> <p>21 issues with him?</p> <p>22 A. No.</p> <p>23 Q. Now the March 12, 1998, telephone</p> <p>24 conversation was not the only time that you had an</p> <p>25 opportunity to talk about Sunbeam with Morgan Stanley,</p>
<p style="text-align: right;">Page 178</p> <p>1 Sunbeam's bill and hold sales from the first day that</p> <p>2 you had raised the issue with them until the day that</p> <p>3 the 10K was filed?</p> <p>4 A. I don't know about the time period.</p> <p>5 Q. But you didn't say that to Morgan Stanley?</p> <p>6 MR. MOSCATO: Did you say those words to</p> <p>7 Morgan Stanley?</p> <p>8 THE WITNESS: No, I did not.</p> <p>9 BY MR. CLARE:</p> <p>10 Q. Did you say anything like that to Morgan</p> <p>11 Stanley about Sunbeam's bill and hold disclosures?</p> <p>12 A. No</p> <p>13 Q. Did you tell Morgan Stanley in words or in</p> <p>14 substance that Sunbeam had resisted disclosing its</p> <p>15 reclassification of restructuring reserves in</p> <p>16 connection with its 10K?</p> <p>17 A. No</p> <p>18 Q. And, Mr. Bornstein, I've read your prior</p> <p>19 deposition testimony, and there are a series of</p> <p>20 discussions that are reflected in that testimony that I</p> <p>21 want to ask you about.</p> <p>22 On several occasions during your interactions</p> <p>23 with Sunbeam you approached Mr. Gluck relating to</p> <p>24 disclosure issues; is that correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 180</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. You had participated in drafting sessions for</p> <p>4 the offering memo in New York?</p> <p>5 A. Yes.</p> <p>6 Q. And during that session or sessions, did</p> <p>7 Morgan Stanley ask additional questions of you about</p> <p>8 Sunbeam?</p> <p>9 A. No.</p> <p>10 Q. Is there any documentation of those</p> <p>11 conversations?</p> <p>12 A. No.</p> <p>13 Q. So in the course of preparing the offering</p> <p>14 memorandum and the back and forth that occurred, your</p> <p>15 testimony is that at no point during those discussions</p> <p>16 did Morgan Stanley ask you for information about</p> <p>17 Sunbeam or its financial statements?</p> <p>18 A. They asked questions, but nothing specific</p> <p>19 that I can recall.</p> <p>20 Q. Okay. But they asked you questions during</p> <p>21 those drafting sessions?</p> <p>22 A. Right.</p> <p>23 Q. And there was a give and take in preparing</p> <p>24 the offering memorandum?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 181</p> <p>1 Q. And that give and take related to the subject 2 of Sunbeam? 3 A. Yes. 4 Q. And that how Sunbeam would be described in 5 the offering memorandum that you were collectively 6 working on? 7 A. Yes. 8 Q. March 19, 1998, the meeting you had with 9 Mr. Tyree and others at Global Financial Press, that 10 was another opportunity that you had time to spend with 11 Morgan Stanley? 12 A. Yes. 13 Q. And how many hours would you say that you 14 spent with Morgan Stanley that evening? 15 A. Ten. 16 Q. And during that evening, did Morgan Stanley 17 and its representatives ask you questions about 18 Sunbeam? 19 A. Yes. 20 Q. Mr. Bornstein, this morning and in prior 21 depositions you've offered your opinion about Morgan 22 Stanley's due diligence, correct? 23 A. Yes. 24 Q. And your opinion is that Morgan Stanley's due 25 diligence in connection with the bond offering is poor?</p>	<p style="text-align: right;">Page 183</p> <p>1 amount of due diligence that the company had done on 2 the three target acquisition companies. 3 Q. Okay. Anything else that forms the basis for 4 your opinion that Morgan Stanley's due diligence was 5 poor? 6 A. No, not that I can think of. 7 Q. What were the simple questions that Morgan 8 Stanley should have asked in your opinion but didn't? 9 A. How is the company doing now? Simple as 10 that. 11 Q. Is that the only one? 12 A. They probably should ask more questions on 13 the financial statement. They should have probably 14 asked more detailed questions on bill and hold 15 transactions. They probably should have asked a lot 16 more questions on the estimates and the projections 17 that Mr. Dunlap had touted. I forget what they were, 18 but basic questions. 19 Q. Were all of the questions that you've just 20 identified suggested by the public statements that 21 Sunbeam had made? 22 A. I don't understand the question. 23 MR. MARKOWSKI: Object to the form. 24 BY MR. CLARE: 25 Q. You asked, you said that Morgan Stanley</p>
<p style="text-align: right;">Page 182</p> <p>1 A. Yes. 2 Q. Can you give me the basis for your belief 3 that Morgan Stanley's due diligence for the bond 4 offering was poor? 5 A. Basically that they never asked very simple 6 questions that should have been asked and that, at 7 least my understanding of the people that were 8 involved, which was basically Mr. Tyree, that he was 9 very distracted and had a lot of other things going on 10 and didn't really know what the hell was going on with 11 this deal basically. 12 Q. So you've identified two reasons why you 13 think Morgan Stanley's due diligence was poor. 14 Are there any others that you can think of? 15 A. You know, that they were aware that the due 16 diligence, financial due diligence that was performed 17 by Arthur Andersen & Company of First Alert, Signature 18 Brands and Coleman was limited at best, and probably, 19 you know, was in a four or five-day period of time. 20 Q. Now you're talking, in your answer to my last 21 question, you're answering specifically with regard to 22 the due diligence that was performed by Morgan Stanley 23 on the target companies, correct? 24 A. I'm not sure what Morgan Stanley did on the 25 target companies, but they were aware of the limited</p>	<p style="text-align: right;">Page 184</p> <p>1 should have asked additional questions about the 2 financial statements, correct? 3 A. Yes. 4 Q. And the assumptions that went into the 5 financial statements? 6 A. They should ask some questions on the 7 financial statements, yes. 8 Q. These were Sunbeam's audited financial 9 statements that you're referring to? 10 A. Yes. 11 Q. And those financial statements at least for 12 1997 were publicly available? 13 A. Yes. 14 Q. You said that Morgan Stanley should have 15 asked some additional questions about bill and hold. 16 A. Yes. 17 Q. Bill and hold transactions were also publicly 18 disclosed by Sunbeam in its 1997 10K, correct? 19 A. Yes. 20 Q. And were there any other questions that you 21 think Morgan Stanley should have asked that they didn't 22 beside the ones you've testified to? 23 A. Specifically, no. 24 Q. Do you have any knowledge or information 25 about the trip that Morgan Stanley made to Sunbeam</p>

<p style="text-align: right;">Page 185</p> <p>1 headquarters on March 4th and 5th to conduct due 2 diligence? 3 A. No. 4 Q. You weren't present for any of those 5 meetings? 6 A. No. 7 Q. Did anybody ever report to you what was 8 discussed during that due diligence meeting? 9 A. No. 10 Q. Do you have any knowledge or information 11 about Morgan Stanley's bring-down due diligence 12 telephone conference with Sunbeam's management? 13 A. I don't recall if I was part of that. I 14 don't believe so. 15 Q. I don't believe you were either, but do you 16 have any knowledge or information about that? 17 A. No. 18 Q. Did anybody report to you what was said or 19 discussed during those telephone calls? 20 A. No. 21 Q. Specifically, the bring-down telephone calls 22 that were done with Sunbeam management by Morgan 23 Stanley to conduct due diligence. 24 A. No. 25 Q. Do you have any knowledge or information</p>	<p style="text-align: right;">Page 187</p> <p>1 diligence process? 2 A. No. 3 Q. Do you have any knowledge or information 4 about other documents that Morgan Stanley reviewed as 5 part of the due diligence process? 6 A. No. 7 Q. And so your opinion about Morgan Stanley's 8 due diligence is based strictly on your personal 9 interaction with representatives from Morgan Stanley? 10 A. Yes. 11 Q. So do you have any basis one way or another 12 to evaluate the overall due diligence conducted by 13 Morgan Stanley in connection with the bond offering? 14 A. No. 15 MR. CLARE: Why don't we break for lunch. 16 THE VIDEOGRAPHER: We are now going off video 17 record. The time on the monitor, 1:42 p.m. 18 (Thereupon, a lunch recess was taken.) 19 20 (End of Volume I) 21 22 23 24 25</p>
<p style="text-align: right;">Page 186</p> <p>1 about trips that were taken by Morgan Stanley to 2 Sunbeam in September of 1997 to conduct due diligence 3 on Sunbeam? 4 A. No. 5 Q. Were you present for any of those meetings? 6 A. I don't believe so, no. 7 Q. And nobody has reported to you what was said 8 or discussed during those due diligence meetings? 9 A. No. 10 Q. Do you have any knowledge or information 11 about what documents Morgan Stanley requested and 12 received from Sunbeam management? 13 A. No. 14 Q. Were you involved in communicating either 15 requests from Morgan Stanley to Sunbeam management or 16 communicating those documents back from Sunbeam 17 management to Morgan Stanley? 18 A. No. 19 Q. So you don't know one way or the other what 20 documents were requested and received by Morgan 21 Stanley? 22 A. No. 23 Q. Are you, do you have any knowledge or 24 information about the documents that were provided to 25 Morgan Stanley by Scadden Arps as part of the due</p>	<p style="text-align: right;">Page 188</p> <p>1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT 2 IN AND FOR PALM BEACH COUNTY, FLORIDA 3 CASE No.CA 03-5045 AI 4 COLEMAN (PARENT) HOLDINGS, INC., 5 Plaintiff, 6 -vs- 7 MORGAN STANLEY & CO., INC., 8 Defendant. 9 10 11 DEPOSITION OF LAWRENCE ALAN BORNSTEIN 12 (Videotaped) 13 VOLUME II 14 15 Thursday, January 15, 2004 16 2:03 - 5:30 p.m. 17 18 2139 Palm Beach Lakes Boulevard 19 West Palm Beach, Florida 33409 20 21 22 Reported By: 23 Rachel W. Bridge, RMR, CRR 24 Notary Public, State of Florida 25 Esquire Deposition Services West Palm Beach Office Phone: 800.330.6952 561.659.4155</p>

<p style="text-align: right;">Page 189</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiff:</p> <p>3 ROBERT T. MARKOWSKI, ESQUIRE</p> <p>4 CHRISTOPHER M. O'CONNOR, ESQUIRE</p> <p>5 JENNER & BLOCK, LLP</p> <p>6 One IBM Plaza</p> <p>7 Chicago, Illinois 60611-7603</p> <p>8 Phone: 312.222.9350</p> <p>9</p> <p>10 On behalf of the Defendant:</p> <p>11 THOMAS A. CLARE, ESQUIRE</p> <p>12 KATHRYN REED DEBORD, ESQUIRE</p> <p>13 KIRKLAND & ELLIS, LLP</p> <p>14 655 Fifteenth Street, N.W.</p> <p>15 Washington, D.C. 20005</p> <p>16 Phone: 202.879.5078</p> <p>17</p> <p>18 On behalf of the Witness:</p> <p>19 MICHAEL MOSCATO, ESQUIRE</p> <p>20 CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP</p> <p>21 101 Park Avenue</p> <p>22 New York, New York 10178-0061</p> <p>23 Phone: 212.696.8817</p> <p>24 ALSO PRESENT:</p> <p>25 EITAN ROSEN, VIDEOGRAPHER</p>	<p style="text-align: right;">Page 191</p> <p>1 PROCEEDINGS</p> <p>2 ---</p> <p>3 Deposition taken before Rachel W. Bridge,</p> <p>4 Registered Professional Reporter and Notary Public</p> <p>5 in and for the State of Florida at Large, in the</p> <p>6 above cause.</p> <p>7 ---</p> <p>8 THE VIDEOGRAPHER: We are now back on video</p> <p>9 record. The time on the monitor, 2:03 p.m.</p> <p>10 CROSS EXAMINATION (Continued)</p> <p>11 BY MR. CLARE:</p> <p>12 Q. Mr. Bornstein, before the break we were</p> <p>13 talking about your opinions about Morgan Stanley's due</p> <p>14 diligence. You indicated in response to one of my</p> <p>15 questions that one of the bases for your opinion was</p> <p>16 your observation that Mr. Tyree was distracted.</p> <p>17 Do you have any basis for that other than</p> <p>18 your personal observation?</p> <p>19 A. During the time period trying to communicate</p> <p>20 with him and talk to him, he was working on another</p> <p>21 deal I think at the time, I believe, and it was</p> <p>22 difficult to get in touch with him if needed.</p> <p>23 Q. Other than the fact that it was difficult to</p> <p>24 get in touch with Mr. Tyree, do you have any basis for</p> <p>25 your opinion that he was distracted?</p>										
<p style="text-align: right;">Page 190</p> <p>1 ---</p> <p>2 INDEX</p> <p>3 ---</p> <p>4 WITNESS: DIRECT CROSS REDIRECT RECROSS</p> <p>5 Lawrence Bornstein</p> <p>6 By Mr. Markowski 330, 343</p> <p>7 By Mr. Clare 191 (cont'd) 341</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 ---</p> <table border="0"> <tr> <td>9 EXHIBIT</td> <td>PAGE</td> </tr> <tr> <td>10 MS Exhibit 58</td> <td>273</td> </tr> <tr> <td>11 MS Exhibit 59</td> <td>307</td> </tr> <tr> <td>12 MS Exhibit 60</td> <td>314</td> </tr> <tr> <td>13 MS Exhibit 61</td> <td>314</td> </tr> </table> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	9 EXHIBIT	PAGE	10 MS Exhibit 58	273	11 MS Exhibit 59	307	12 MS Exhibit 60	314	13 MS Exhibit 61	314	<p style="text-align: right;">Page 192</p> <p>1 A. The lack of knowledge of what I saw of what</p> <p>2 he knew about the company.</p> <p>3 Q. But again --</p> <p>4 A. That's --</p> <p>5 Q. Please.</p> <p>6 A. That's just my opinion.</p> <p>7 Q. But you don't know what steps Mr. Tyree took</p> <p>8 outside of your presence to obtain information or</p> <p>9 knowledge about the company?</p> <p>10 A. No.</p> <p>11 Q. And do you know whether Mr. Tyree was</p> <p>12 performing Sunbeam-related duties on some of the</p> <p>13 occasions when you could not get in touch with him or</p> <p>14 on another deal?</p> <p>15 A. No, I have no idea.</p> <p>16 Q. You don't know one way or the other?</p> <p>17 A. No.</p> <p>18 Q. I want to switch now to a different topic.</p> <p>19 Back in the first quarter of 1998, you knew</p> <p>20 that Sunbeam was acquiring the Coleman company,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And you knew that the acquisition was a stock</p> <p>24 and cash deal?</p> <p>25 A. Yes.</p>
9 EXHIBIT	PAGE										
10 MS Exhibit 58	273										
11 MS Exhibit 59	307										
12 MS Exhibit 60	314										
13 MS Exhibit 61	314										

<p style="text-align: right;">Page 193</p> <p>1 Q. And by that, I mean that Sunbeam would be 2 providing to the owners of Coleman cash as a portion of 3 the purchase price and stock as a portion of the 4 purchase price? 5 A. Yes. 6 Q. And that is Sunbeam stock? 7 A. Yes. 8 Q. And did you know that the acquisition 9 required for Coleman (Parent) Holdings Company which 10 owned a portion of Coleman to receive over 14 million 11 shares of Sunbeam stock as part of the purchase price? 12 A. Yes. 13 Q. You knew that back in the first quarter of 14 1998? 15 A. Yes. 16 Q. And did you also know that after the sale had 17 taken place that Coleman (Parent) Holdings Company 18 would be a significant shareholder of Sunbeam? 19 A. Yes. 20 Q. Were you informed in the first quarter of 21 1998 by anybody that Coleman and its corporate parents 22 would be conducting their own due diligence on Sunbeam? 23 A. I wasn't aware of anything, no. 24 Q. You were not told anything by the people at 25 Sunbeam that Coleman or its parent corporations would</p>	<p style="text-align: right;">Page 195</p> <p>1 representatives as part of the acquisition transaction? 2 A. No. 3 Q. You were not part of any in-person meetings 4 with Coleman (Parent) Holdings or any of its 5 representatives for that purpose? 6 A. No. 7 Q. Any telephone conferences? 8 A. No. 9 Q. Were you ever asked to participate in an 10 accounting due diligence call with Coleman (Parent) 11 Holdings like the one that Morgan Stanley had conducted 12 that you participated in? 13 A. Not that I recall. 14 Q. Were you aware that Coleman (Parent) Holdings 15 was, and Coleman were being represented in the 16 transaction by Credit Suisse First Boston as their 17 investment advisor? 18 A. No. 19 Q. Did you have any dealings with CSFB during 20 the first quarter of 1998? 21 A. No. 22 Q. Did you receive any inquiries from CSFB 23 during the first quarter of 1998 about Sunbeam or its 24 financial performance? 25 A. No.</p>
<p style="text-align: right;">Page 194</p> <p>1 be conducting due diligence? 2 A. Not that I'm aware of, no. 3 Q. Were you ever informed by any source that 4 Morgan Stanley had been tasked to perform due diligence 5 on behalf of Coleman and its corporate parent? 6 A. No. 7 Q. Did you receive any instructions from Sunbeam 8 about any inquiries that you might get from Coleman 9 (Parent) Holdings and its corporate parent? 10 A. No. 11 Q. Did anybody ever tell you in words or in 12 substance not to provide Coleman (Parent) Holdings and 13 its corporate parent with any information that they 14 requested? 15 A. No. 16 Q. Did anybody ever instruct you to channel all 17 information for Coleman (Parent) Holdings through 18 Morgan Stanley? 19 A. No. 20 Q. Do you have a recollection of any inquiry 21 that you received that you understood to be made on 22 behalf of Coleman (Parent) Holdings? 23 A. No. 24 Q. Are you aware of any due diligence that was 25 performed by Coleman (Parent) Holdings or its</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. Are you aware of any inquiries that Andersen 2 received, even if you were not personally involved, 3 from anybody representing Coleman (Parent) Holdings? 4 A. Not that I'm aware of. 5 Q. Are you aware of any inquiries from Coleman 6 (Parent) Holdings on the subject of Sunbeam's bill and 7 hold sales? 8 A. No. 9 Q. Are you aware of any inquiries from anyone 10 representing Coleman (Parent) Holdings about the bill 11 and hold disclosures that were in Sunbeam's 1997 10K? 12 A. No. 13 Q. Or whether Sunbeam was engaged in bill and 14 hold sales in the first quarter of 1998? 15 A. No. 16 Q. Or Sunbeam's Early Buy program? 17 A. No. 18 Q. Or the Early Buy program disclosures that 19 were in the 1997 10K? 20 A. No. 21 Q. Or the impact of Sunbeam's Early Buy program 22 on Sunbeam's first quarter 1998 sales? 23 A. No. 24 Q. Or Sunbeam's quarter-to-date sales in the 25 first quarter of 1998?</p>

<p style="text-align: right;">Page 197</p> <p>1 A. No.</p> <p>2 Q. At any point in time?</p> <p>3 A. No.</p> <p>4 Q. Are you aware of any inquiries from anyone</p> <p>5 representing Coleman (Parent) Holdings after the</p> <p>6 March 19, 1998, press release about Sunbeam's first</p> <p>7 quarter performance?</p> <p>8 A. Can you repeat the question?</p> <p>9 (Thereupon, a portion of the record</p> <p>10 was read by the reporter.)</p> <p>11 THE WITNESS: No, not until after Mr. Dunlap</p> <p>12 was terminated.</p> <p>13 BY MR. CLARE:</p> <p>14 Q. When you say not until after Mr. Dunlap was</p> <p>15 terminated, it was at that point that a new management</p> <p>16 team was installed?</p> <p>17 A. Yes.</p> <p>18 Q. And then inquiries were made by the new</p> <p>19 management team?</p> <p>20 A. Yes.</p> <p>21 Q. But limiting ourselves to the first quarter</p> <p>22 of 1998 and inquiries that may have been received from</p> <p>23 Coleman (Parent) Holdings during the first quarter of</p> <p>24 1998, are you aware from any source of any inquiries</p> <p>25 that were made by Coleman (Parent) Holdings or any of</p>	<p style="text-align: right;">Page 199</p> <p>1 Andersen. Are you broadening the question now?</p> <p>2 MR. CLARE: No. Any inquiries that</p> <p>3 Mr. Bornstein is aware of, made to anyone, but</p> <p>4 specifically within his knowledge.</p> <p>5 MR. MARKOWSKI: So an inquiry to anyone, not</p> <p>6 specifically to Arthur Andersen?</p> <p>7 MR. CLARE: Correct.</p> <p>8 THE WITNESS: I'm not aware of anything.</p> <p>9 BY MR. CLARE:</p> <p>10 Q. In 1998, the first quarter, as you prepared</p> <p>11 to assist Sunbeam with these acquisition transactions,</p> <p>12 did you have an expectation that Coleman or its</p> <p>13 corporate parent might want it ask questions of Arthur</p> <p>14 Andersen?</p> <p>15 MR. MARKOWSKI: Object to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I thought it was possible, yes.</p> <p>18 BY MR. CLARE:</p> <p>19 Q. So that thought did occur to you back in the</p> <p>20 first quarter of 1998?</p> <p>21 A. Yes.</p> <p>22 Q. And you testified that you're not aware of</p> <p>23 any inquiries that were made to Andersen and certainly</p> <p>24 not to you from Coleman (Parent) Holdings or its</p> <p>25 corporate parent?</p>
<p style="text-align: right;">Page 198</p> <p>1 its representatives after the March 19, '98 press</p> <p>2 release?</p> <p>3 A. No.</p> <p>4 Q. So no inquiries between March 19, 1998, and</p> <p>5 the end of the first quarter?</p> <p>6 MR. MARKOWSKI: Object to the form of the</p> <p>7 question.</p> <p>8 THE WITNESS: Not that I'm aware of, no.</p> <p>9 BY MR. CLARE:</p> <p>10 Q. Are you aware that on April 3rd, 1998,</p> <p>11 Sunbeam announced that its first quarter 1998 sales</p> <p>12 were, had fallen short of the first quarter 1997? Were</p> <p>13 you generally aware of that?</p> <p>14 A. I believe it was the second press release. I</p> <p>15 don't remember specifically what it said.</p> <p>16 Q. But you're aware that shortly after the first</p> <p>17 quarter, Sunbeam issued a press release like the one I</p> <p>18 just described?</p> <p>19 A. Yes.</p> <p>20 Q. Were you aware of any inquiries from Coleman</p> <p>21 (Parent) Holdings or anyone representing</p> <p>22 Coleman (Parent) Holdings after that April 3rd, 1998</p> <p>23 press release?</p> <p>24 MR. MARKOWSKI: I want to make sure we're</p> <p>25 clear here. You've been focusing on inquiries of</p>	<p style="text-align: right;">Page 200</p> <p>1 A. Yes.</p> <p>2 Q. In the first quarter of 1998, did you, were</p> <p>3 you surprised by the lack of inquiry from Coleman</p> <p>4 (Parent) Holdings or its corporate parent?</p> <p>5 A. I'd say yes.</p> <p>6 Q. And did you form an opinion about the quality</p> <p>7 of due diligence done by Coleman (Parent) Holdings on</p> <p>8 Sunbeam in the first quarter of 1998?</p> <p>9 MR. MARKOWSKI: Objection, lack of</p> <p>10 foundation.</p> <p>11 THE WITNESS: I wasn't aware of any that they</p> <p>12 did, so if you want to repeat the question, I</p> <p>13 don't know if I answered it.</p> <p>14 BY MR. CLARE:</p> <p>15 Q. Sure. You were surprised that they didn't do</p> <p>16 any due diligence, to your knowledge?</p> <p>17 MR. MARKOWSKI: Object to the form of the</p> <p>18 question. Mischaracterizes his answer.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. CLARE:</p> <p>21 Q. If there had been inquiries that were made by</p> <p>22 Coleman (Parent) Holdings or any of its representatives</p> <p>23 to Sunbeam -- strike that, withdrawn.</p> <p>24 If there had been any inquiries made by</p> <p>25 Coleman (Parent) Holdings or any of its representatives</p>

<p style="text-align: right;">Page 201</p> <p>1 to Andersen about Sunbeam, would you have expected to 2 be notified? 3 A. Yes. 4 Q. And because you were the number three person 5 on the Andersen team advising Sunbeam at the time? 6 A. Yes. 7 Q. And because you were the point person for 8 these acquisition transactions and working with Morgan 9 Stanley on its due diligence, you and Mr. Harlow? 10 A. We were working for Sunbeam on the due 11 diligence, not Morgan Stanley. 12 Q. Correct, but you were working with Morgan 13 Stanley in responding to their inquiries as part of 14 their due diligence? 15 A. Yes. 16 Q. And so you would expect that if there were 17 inquiries from Coleman (Parent) Holdings, that you and 18 Mr. Harlow would also be involved in those? 19 MR. MARKOWSKI: Object to the form of the 20 question. 21 THE WITNESS: I would think so, yes. 22 BY MR. CLARE: 23 Q. Okay. Based on the total lack of due 24 diligence that you observed from Coleman (Parent) 25 Holdings, would you agree with me that Morgan Stanley's</p>	<p style="text-align: right;">Page 203</p> <p>1 BY MR. CLARE: 2 Q. It was more comprehensive than the due 3 diligence performed by Coleman (Parent) Holdings? 4 MR. MARKOWSKI: Same objection. 5 THE WITNESS: I wasn't aware of any due 6 diligence done by Coleman that I was aware of. 7 BY MR. CLARE: 8 Q. So Morgan Stanley did due diligence and 9 Coleman (Parent) Holdings did not, from your 10 perspective? 11 MR. MARKOWSKI: Same objection. 12 THE WITNESS: From my perspective, yes. 13 BY MR. CLARE: 14 Q. And you were surprised by the fact that 15 Coleman (Parent) Holdings had not done any due 16 diligence that had been directed to you? 17 MR. MOSCATO: I'm not going to make a big 18 deal of it. I kind of have an objection of 19 repeating the same question numerous times. 20 You can answer, Larry. 21 THE WITNESS: I think I just stated I was 22 surprised. 23 BY MR. CLARE: 24 Q. And you were surprised back in the first 25 quarter of 1998?</p>
<p style="text-align: right;">Page 202</p> <p>1 due diligence of Sunbeam was more comprehensive than 2 Coleman (Parent) Holdings? 3 MR. MARKOWSKI: Object, lack of foundation. 4 BY MR. CLARE: 5 Q. From your observation. 6 A. From my observation, yes. 7 MR. MARKOWSKI: Same objection. 8 BY MR. CLARE: 9 Q. Sorry? 10 A. From where I stood, yes. 11 Q. So from your perspective, Morgan Stanley 12 spent more time conducting due diligence of Sunbeam 13 than Coleman (Parent) Holdings? 14 MR. MARKOWSKI: Same objection, lack of 15 foundation. 16 THE WITNESS: From my vantage point, yes. 17 BY MR. CLARE: 18 Q. And from your vantage point -- and again, 19 that's all I'm asking you about is what you have 20 personal knowledge of -- from your vantage point, 21 Morgan Stanley conducted more comprehensive due 22 diligence than Coleman (Parent) Holdings? 23 MR. MARKOWSKI: Same objection. 24 THE WITNESS: I would have to say more. I 25 don't know how comprehensive it was, but more.</p>	<p style="text-align: right;">Page 204</p> <p>1 A. Yes. 2 MR. MOSCATO: Part of my objection goes to 3 the fact that he's a busy man. I really would 4 appreciate it if you are making points, just not 5 to belabor them. 6 MR. CLARE: I understand. I just want to 7 make sure, as you pointed out earlier, that the 8 record is clear about Mr. Bornstein's testimony. 9 MR. MOSCATO: I think it's more than clear at 10 this point. Go ahead, I'm sorry to interrupt. 11 MR. CLARE: That's okay. 12 BY MR. CLARE: 13 Q. Have you had experience in other engagements 14 when you were at Andersen in which you were advising 15 the client that was involved in an acquisition? 16 MR. MOSCATO: I'm sorry. 17 BY MR. CLARE: 18 Q. In other words, besides Sunbeam, were you 19 involved in other acquisition transactions while you 20 were at Andersen? 21 MR. MOSCATO: Is that your question? 22 MR. CLARE: Yes. 23 MR. MOSCATO: My objection was to advising 24 the client about an acquisition, because I don't 25 think there is any testimony --</p>

51 (Pages 201 to 204)

<p style="text-align: right;">Page 205</p> <p>1 MR. CLARE: That's fine, I withdraw that.</p> <p>2 MR. MOSCATO: Okay.</p> <p>3 BY MR. CLARE:</p> <p>4 Q. Were you involved in any engagement at</p> <p>5 Andersen in which Andersen was involved in responding</p> <p>6 to due diligence inquiries in an acquisition setting</p> <p>7 besides the Sunbeam one?</p> <p>8 A. Yes.</p> <p>9 Q. And in those situations, were you involved in</p> <p>10 receiving or responding to requests that were made by</p> <p>11 the party that was investing in Andersen's client?</p> <p>12 A. Yes.</p> <p>13 Q. And were you involved in those other</p> <p>14 situations in responding to requests from the</p> <p>15 investor's financial advisors?</p> <p>16 A. Yes.</p> <p>17 Q. And their lawyers?</p> <p>18 A. Yes.</p> <p>19 Q. And in those situations, you had also met</p> <p>20 with the investing company's accountants?</p> <p>21 A. Yes.</p> <p>22 Q. But none of that happened in connection with</p> <p>23 the Sunbeam acquisition of Coleman; is that right?</p> <p>24 MR. MARKOWSKI: None of what?</p> <p>25 MR. CLARE: None of those items that I just</p>	<p style="text-align: right;">Page 207</p> <p>1 A. Yes.</p> <p>2 Q. Did you think you had done an adequate job of</p> <p>3 conducting due diligence on Coleman from an accounting</p> <p>4 perspective?</p> <p>5 MR. MOSCATO: I object.</p> <p>6 BY MR. CLARE:</p> <p>7 Q. Did you have a view at the time?</p> <p>8 A. I didn't think it was adequate, no.</p> <p>9 Q. And did you inform anybody of your view that</p> <p>10 it was inadequate?</p> <p>11 A. The people I was traveling with. Yes, the</p> <p>12 answer is yes.</p> <p>13 Q. Who?</p> <p>14 A. Bob Gluck.</p> <p>15 Q. So you told --</p> <p>16 A. Janet Kelly, there was another guy there, Bob</p> <p>17 Tottie, I believe his name was.</p> <p>18 Q. Was there anybody from Morgan Stanley present</p> <p>19 at that meeting?</p> <p>20 A. No.</p> <p>21 Q. Did you ever express that view to Morgan</p> <p>22 Stanley that you thought the due diligence that had</p> <p>23 been done on Coleman by Sunbeam was inadequate?</p> <p>24 A. I believe I probably did, yeah.</p> <p>25 Q. As you sit here today, do you have a</p>
<p style="text-align: right;">Page 206</p> <p>1 described.</p> <p>2 MR. MARKOWSKI: Object to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: That's all over the place, the</p> <p>5 question, I'm sorry.</p> <p>6 BY MR. CLARE:</p> <p>7 Q. Okay. Did you accompany -- let me withdraw</p> <p>8 that.</p> <p>9 Were you involved in conducting due diligence</p> <p>10 on Coleman?</p> <p>11 A. Yes.</p> <p>12 Q. And you met with Coleman's outside</p> <p>13 accountants as part of that due diligence?</p> <p>14 A. Yes.</p> <p>15 Q. And you asked questions of them about</p> <p>16 Coleman's financial condition?</p> <p>17 A. Yes.</p> <p>18 Q. And how many days did you spend doing that</p> <p>19 with Coleman specifically?</p> <p>20 A. One.</p> <p>21 Q. And then you spent one day each with the</p> <p>22 other acquisition targets?</p> <p>23 A. Yes.</p> <p>24 Q. And that was as part of Sunbeam's due</p> <p>25 diligence on Coleman, that one day of due diligence?</p>	<p style="text-align: right;">Page 208</p> <p>1 recollection of when and where and to whom that</p> <p>2 information was provided at Morgan Stanley?</p> <p>3 A. No, not specifically, no.</p> <p>4 Q. Generally?</p> <p>5 A. No.</p> <p>6 Q. So you can't testify about a particular</p> <p>7 conversation that you had or a particular document that</p> <p>8 was written to communicate that information to Morgan</p> <p>9 Stanley?</p> <p>10 A. No.</p> <p>11 Q. I want to switch topics to focus on the day</p> <p>12 at the print shop.</p> <p>13 A. Okay.</p> <p>14 Q. And I want to start where you started earlier</p> <p>15 this morning about when you were in the hotel room with</p> <p>16 Mr. Brockelman watching television.</p> <p>17 And again, just to be clear, this was</p> <p>18 March 19, 1998, the day that the press release was</p> <p>19 issued?</p> <p>20 A. Yes.</p> <p>21 Q. And you were watching television with</p> <p>22 Mr. Brockelman?</p> <p>23 A. Yes.</p> <p>24 Q. And it was a report on CNBC?</p> <p>25 A. I believe so, yeah.</p>

52 (Pages 205 to 208)

<p style="text-align: right;">Page 209</p> <p>1 Q. And your recollection is it was a text 2 crawler on the bottom of the screen? 3 A. Yes. 4 Q. It was not a news report with a live 5 interview or a news person that was communicating this 6 information, to the best of your recollection? 7 A. Yeah, I think I do remember alive 8 conversation on it, but I'm not 100 percent sure. 9 Q. And you recall that the news report indicated 10 that the first quarter 1998 sales might not meet 11 analysts' expectations? That was part of the news 12 report that you remember hearing? 13 A. Honestly, I just remember early morning 14 release Sunbeam's sales reports, sales are going to be 15 below expectations. I don't remember anything specific 16 about it. 17 Q. That was my question, was whether you 18 remember whether the statement in the press release 19 about first quarter 1997 sales was part of the report 20 that you saw. 21 A. I don't remember. 22 Q. You don't remember one way or the other? 23 A. No. 24 Q. Was there any mention of Morgan Stanley in 25 the press release, the press report that you saw on</p>	<p style="text-align: right;">Page 211</p> <p>1 A. Yes. 2 Q. So this news report on CNBC was not the first 3 time you were hearing that information? 4 MR. MARKOWSKI: I'm going to object. He said 5 he can't remember whether the information about 6 the first quarter of '97 was part of the 7 announcement. 8 MR. CLARE: And I didn't ask him about that. 9 MR. MARKOWSKI: Could you read the question 10 back, please. 11 MR. CLARE: Fair enough. Now I understand 12 your objection, Bob, I'm sorry. 13 BY MR. CLARE: 14 Q. Was Mr. Brockelman present when you called 15 Mr. Harlow to ask him about the, what had happened? 16 A. Yes. 17 Q. About the press release? 18 A. Yes. 19 Q. And you said you couldn't remember whether it 20 was Mr. Harlow or Mr. Gluck that you ultimately got in 21 touch with from your hotel room? 22 A. Yes. 23 Q. Did either Mr. Harlow or Mr. Gluck read you 24 the entire press release over the phone? 25 A. I don't remember if they did or if I got it</p>
<p style="text-align: right;">Page 210</p> <p>1 CNBC? 2 A. I don't remember. 3 Q. Do you remember if there were any mention of 4 the debenture offering? 5 A. No. 6 Q. Or the pending acquisitions? 7 A. I don't recall anything, no. 8 Q. Was CNBC reporting on the reaction of the 9 stock to this news? 10 A. I believe so, yeah. 11 Q. And what do you recall was the stock price 12 that day? 13 A. I thought it went down significantly. I 14 don't remember exactly what it was. 15 Q. Is that all you remember about the press 16 report that you saw? 17 A. On TV? 18 Q. Yes. 19 A. Yes. 20 Q. And at the time that you saw the press 21 release -- sorry, withdrawn. 22 At the time that you saw the press report on 23 CNBC, you knew from your prior conversation with 24 Mr. Pastrana that Sunbeam sales for the first two 25 months of 1998 were lower than the prior year, right?</p>	<p style="text-align: right;">Page 212</p> <p>1 faxed, I don't recall. 2 Q. Did you learn from any source during that 3 phone conversation who had drafted the press release? 4 A. I don't remember. 5 Q. During that telephone conversation, was there 6 any discussion about what role, if any, Morgan Stanley 7 had in the decision to issue the press release or its 8 content? 9 A. At the hotel room, no. 10 Q. The first time you had a discussion on that 11 topic was at the print shop with Mr. Tyree? 12 A. Yes. 13 Q. During that initial telephone call that you 14 had in your hotel room, was there any discussion with 15 Mr. Harlow or Mr. Gluck about Sunbeam's ability to 16 exceed first quarter 1997 sales? 17 MR. MARKOWSKI: Could you read that back? 18 (Thereupon, a portion of the record 19 was read by the reporter.) 20 MR. MARKOWSKI: You're talking about 21 discussion other than reading the text of the 22 press release? 23 MR. CLARE: That's correct. Any discussion 24 about the achievability. 25 THE WITNESS: Not that I'm aware.</p>

<p style="text-align: right;">Page 213</p> <p>1 BY MR. CLARE:</p> <p>2 Q. Was there any discussion between you and</p> <p>3 Mr. Harlow and Mr. Gluck about whether the press</p> <p>4 release that Sunbeam had issued should be retracted or</p> <p>5 withdrawn?</p> <p>6 A. No.</p> <p>7 Q. Did you think that the press release should</p> <p>8 be retracted or withdrawn?</p> <p>9 A. No.</p> <p>10 Q. Did you think the press release was false?</p> <p>11 A. No.</p> <p>12 Q. Did you think the press release was</p> <p>13 misleading?</p> <p>14 A. Yes.</p> <p>15 Q. Did you discuss your view that the press</p> <p>16 release was misleading with either Mr. Harlow or</p> <p>17 Mr. Gluck?</p> <p>18 A. Again, at the hotel room, talking about the</p> <p>19 hotel room?</p> <p>20 Q. Yes, I am.</p> <p>21 A. Not that I'm aware of.</p> <p>22 Q. Was there any discussion about withholding</p> <p>23 Andersen's comfort letter as a result of the issuance</p> <p>24 of the press release, again focusing on the</p> <p>25 conversation in the hotel room?</p>	<p style="text-align: right;">Page 215</p> <p>1 press release was misleading.</p> <p>2 A. Yes.</p> <p>3 Q. But you never asked Sunbeam to withdraw or</p> <p>4 retract the press release, did you?</p> <p>5 A. No.</p> <p>6 Q. And you did not express that suggestion to</p> <p>7 anybody internally at Sunbeam?</p> <p>8 A. No.</p> <p>9 Q. And/or anybody internally at Andersen?</p> <p>10 A. No.</p> <p>11 Q. Or anybody at Morgan Stanley?</p> <p>12 A. No.</p> <p>13 Q. And the reason that you thought it was</p> <p>14 misleading is because you thought it was aggressive?</p> <p>15 A. Yes.</p> <p>16 Q. Is there any other reason that you thought it</p> <p>17 was misleading?</p> <p>18 A. The language about the reasons for it were I</p> <p>19 thought misleading.</p> <p>20 Q. In what way?</p> <p>21 A. Just I'd have to look at it again, but --</p> <p>22 Q. Let's pull it out. It's Exhibit Number 14.</p> <p>23 A. Just the wording, changes in inventory</p> <p>24 management and order patterns. I'm not really sure</p> <p>25 exactly how that impacts sales.</p>
<p style="text-align: right;">Page 214</p> <p>1 A. Not that I'm aware of, no.</p> <p>2 Q. Was there any discussion about what</p> <p>3 disclosure needed to be made in the offering memorandum</p> <p>4 of the press release with Mr. Harlow or Mr. Gluck?</p> <p>5 A. No.</p> <p>6 Q. So the first time that topic was raised was</p> <p>7 later at the print shop?</p> <p>8 A. Yes.</p> <p>9 Q. Was there a discussion with you and</p> <p>10 Mr. Harlow and Mr. Gluck about approaching Morgan</p> <p>11 Stanley with that question?</p> <p>12 A. No.</p> <p>13 Q. You testified that you did ask Mr. Tyree and</p> <p>14 Mr. Lurie about what would be included in the offering</p> <p>15 memorandum, correct?</p> <p>16 A. Yeah, I did that myself.</p> <p>17 Q. That was on your own initiative?</p> <p>18 A. Yes.</p> <p>19 Q. In other words, prior to that, you had not</p> <p>20 had a discussion with anybody from Andersen about</p> <p>21 asking that question?</p> <p>22 A. No.</p> <p>23 Q. Or anybody from Sunbeam?</p> <p>24 A. No.</p> <p>25 Q. You stated that you held a view that the</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. Could that be a reference to Sunbeam's Early</p> <p>2 Buy program?</p> <p>3 MR. MARKOWSKI: Object to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: I have no idea exactly at this</p> <p>6 point.</p> <p>7 BY MR. CLARE:</p> <p>8 Q. But is that the way you understood it?</p> <p>9 A. Yes, and then the whole comment about new</p> <p>10 products, because I don't believe that at that time any</p> <p>11 of the new products had significant sales, the new</p> <p>12 products that they talked about here.</p> <p>13 Q. Now you testified earlier that you discussed</p> <p>14 with Morgan Stanley and the Davis Polk lawyers your</p> <p>15 belief that you had that the statement in the press</p> <p>16 release was aggressive, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Did you discuss with Morgan Stanley or Davis</p> <p>19 Polk these additional concerns that you had about the</p> <p>20 wording of the reasons for the softer sales?</p> <p>21 A. I don't remember specifically.</p> <p>22 Q. As you sit here today, can you recall any</p> <p>23 discussion that you had with Morgan Stanley or Davis</p> <p>24 Polk about the reasons stated in the press release for</p> <p>25 the softer sales?</p>

54 (Pages 213 to 216)

<p style="text-align: right;">Page 217</p> <p>1 A. No.</p> <p>2 Q. Did you discuss that issue with Mr. Gluck or</p> <p>3 Mr. Harlow in your hotel room?</p> <p>4 MR. MARKOWSKI: That issue being the</p> <p>5 statement made in the press release?</p> <p>6 MR. CLARE: About the reasons, yes.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MR. CLARE:</p> <p>9 Q. Did you raise that issue with anybody?</p> <p>10 A. The reasons in the press release? I don't</p> <p>11 remember. I just, I just remember focusing on the</p> <p>12 \$253 million number that I didn't think that was going</p> <p>13 to be met and that they should have just left it at</p> <p>14 lower, it's going to be lower basically.</p> <p>15 Q. They, Sunbeam should have just left it at</p> <p>16 that?</p> <p>17 A. Yeah.</p> <p>18 Q. Did anyone ever tell you that Morgan Stanley</p> <p>19 had been involved in drafting the press release?</p> <p>20 A. Drafting specifically, no, but Tyree</p> <p>21 mentioned that they were involved in the conversation</p> <p>22 that led up to the issuance of the release.</p> <p>23 Q. With regard to the particular wording of the</p> <p>24 press release --</p> <p>25 A. I have no idea.</p>	<p style="text-align: right;">Page 219</p> <p>1 A. No.</p> <p>2 Q. Mr. Tyree didn't tell you?</p> <p>3 A. No.</p> <p>4 Q. Or Mr. Gluck or anybody?</p> <p>5 A. No.</p> <p>6 Q. I want to go back to the discussion that you</p> <p>7 had with Mr. Tyree at the print shop. So we're leaving</p> <p>8 your hotel room now, and you and Mr. Brockelman go to</p> <p>9 Global Financial Press.</p> <p>10 You said that there was a meeting that you</p> <p>11 had with the individuals present where you discussed</p> <p>12 the subscription for the bond offering, the fact that</p> <p>13 it was oversubscribed? That was the first thing that</p> <p>14 you remember when you arrived at the print shop?</p> <p>15 A. Yeah, I was very surprised it was</p> <p>16 oversubscribed.</p> <p>17 Q. Why were you surprised?</p> <p>18 A. Because we just had pretty devastating news</p> <p>19 about the results of the company and the stock price</p> <p>20 was going down significantly and the bonds were</p> <p>21 oversubscribed and they were convertible bonds into</p> <p>22 stocks, so I just thought it was ironic at best that it</p> <p>23 was, the bonds were oversubscribed.</p> <p>24 Q. And did the discussion of the press release</p> <p>25 and what should be put in the offering memo about the</p>
<p style="text-align: right;">Page 218</p> <p>1 Q. You have no idea what role, if any, Morgan</p> <p>2 Stanley played in the drafting of the press release</p> <p>3 from any source?</p> <p>4 A. Yes.</p> <p>5 Q. Yes, you have --</p> <p>6 A. I have no idea.</p> <p>7 Q. You have no idea, thank you.</p> <p>8 When was the first time you saw a hard copy</p> <p>9 of the press release? Was it in your hotel room or at</p> <p>10 the printer?</p> <p>11 A. I think it was in my hotel room.</p> <p>12 Q. Were you informed by anyone who had decided</p> <p>13 to include the statement about expecting to exceed 1997</p> <p>14 first quarter sales in the press release?</p> <p>15 MR. MARKOWSKI: Could you read that back for</p> <p>16 me, please?</p> <p>17 (Thereupon, a portion of the record</p> <p>18 was read by the reporter.)</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. CLARE:</p> <p>21 Q. That was the portion of the press release</p> <p>22 that you objected to, correct?</p> <p>23 A. For the most part, yes.</p> <p>24 Q. And you don't have any understanding as to</p> <p>25 who put that clause in the press release?</p>	<p style="text-align: right;">Page 220</p> <p>1 press release come up during that conversation?</p> <p>2 A. No.</p> <p>3 Q. When did that issue come up? Did it come up</p> <p>4 in the course of working through the offering</p> <p>5 memorandum in the manner that you described?</p> <p>6 A. No, I'd say the first 15 minutes of the</p> <p>7 conversation were about the surprise of the size of the</p> <p>8 offering, and then the conversation about what happened</p> <p>9 the night before and Dunlap yelling and screaming.</p> <p>10 The next 15 minutes were based on what was</p> <p>11 going to be put in the offering related to the</p> <p>12 disclosure of the press release.</p> <p>13 Q. Tell me about the conversation with Mr. Tyree</p> <p>14 and others about the night before. Tell me everything</p> <p>15 you remember about that discussion.</p> <p>16 A. Just that there was a lot of yelling and</p> <p>17 screaming, and Dunlap would say, "Who the hell do these</p> <p>18 guys think they are making us disclose this? We're</p> <p>19 going to lose \$100 million. They don't know our</p> <p>20 business." Those types of things.</p> <p>21 Q. So it was your understanding that Mr. Dunlap</p> <p>22 was reluctant to issue the press release?</p> <p>23 A. Yes.</p> <p>24 Q. It was your understanding that Morgan Stanley</p> <p>25 had insisted that Sunbeam issue the press release, is</p>

55 (Pages 217 to 220)

<p style="text-align: right;">Page 221</p> <p>1 that what Mr. Tyree told you?</p> <p>2 A. No, nothing about insisting.</p> <p>3 Q. Or had suggested?</p> <p>4 A. I have no idea who suggested it.</p> <p>5 Q. Well, what I'm trying to get at is you</p> <p>6 referenced a statement by Mr. Dunlap, "Who do these</p> <p>7 guys think they are, making me lose \$100,000?"</p> <p>8 A. I think they were talking about Arthur</p> <p>9 Andersen.</p> <p>10 Q. So it was your understanding that Mr. Dunlap</p> <p>11 was upset with Andersen?</p> <p>12 A. Yes.</p> <p>13 Q. Now I'm a little confused, because I thought</p> <p>14 to your knowledge Andersen had not played any role in</p> <p>15 the decision to issue the press release or the drafting</p> <p>16 of it.</p> <p>17 A. No. The decision was that the information</p> <p>18 needed to be disclosed to Morgan Stanley and the</p> <p>19 public, or else they weren't getting that comfort</p> <p>20 letter.</p> <p>21 Q. Okay. And so you understood Mr. Dunlap to be</p> <p>22 upset with Andersen for insisting that it be disclosed</p> <p>23 to Morgan Stanley?</p> <p>24 A. And the public.</p> <p>25 Q. And the public?</p>	<p style="text-align: right;">Page 223</p> <p>1 caveat to the \$253 million in sales.</p> <p>2 BY MR. CLARE:</p> <p>3 Q. And that's the objection that you raised with</p> <p>4 Morgan Stanley?</p> <p>5 A. Yes.</p> <p>6 Q. You didn't raise any of your other objections</p> <p>7 about the wording with Morgan Stanley?</p> <p>8 A. I don't remember specifically.</p> <p>9 Q. You don't remember doing it?</p> <p>10 A. I don't think any of it should be in other</p> <p>11 than really the facts as they were.</p> <p>12 Q. Which was what?</p> <p>13 A. They weren't going to make the top number.</p> <p>14 Q. So you didn't have any objection to that</p> <p>15 information being disclosed?</p> <p>16 A. No.</p> <p>17 Q. You see here on the second page of CPH</p> <p>18 Exhibit 14 there is a cautionary statement.</p> <p>19 A. Yes.</p> <p>20 Q. You're familiar with those cautionary</p> <p>21 statements?</p> <p>22 A. Yes.</p> <p>23 Q. In the press release that you saw on</p> <p>24 March 19th, the hard copy that you saw included these</p> <p>25 cautionary statements?</p>
<p style="text-align: right;">Page 222</p> <p>1 A. Yes.</p> <p>2 Q. And it was your understanding that unless</p> <p>3 that information was disclosed to the public, that</p> <p>4 Andersen would withhold its comfort letter?</p> <p>5 A. Unless reasonable disclosure was made, yes.</p> <p>6 Q. And that if reasonable disclosure was made,</p> <p>7 that Andersen would issue its comfort letter?</p> <p>8 A. That's my understanding, yes.</p> <p>9 Q. In terms of the discussion about what portion</p> <p>10 of the press release ought to be included in the</p> <p>11 offering memorandum, you didn't have any objection to</p> <p>12 including the statement that Sunbeam might miss the</p> <p>13 expectation of Wall Street analysts, did you?</p> <p>14 Did you have any objection to including that</p> <p>15 portion of the press release in the offering</p> <p>16 memorandum?</p> <p>17 A. No.</p> <p>18 Q. Your only objection was the clause that</p> <p>19 follows that about net sales being expected to exceed</p> <p>20 1997 first quarter sale?</p> <p>21 MR. MARKOWSKI: Object to the form of the</p> <p>22 question, mischaracterizes what he has said about</p> <p>23 his views of various other statements in this.</p> <p>24 MR. MOSCATO: Well, answer the question.</p> <p>25 THE WITNESS: My main objection was the</p>	<p style="text-align: right;">Page 224</p> <p>1 A. Yes.</p> <p>2 Q. And these are akin to the cautionary</p> <p>3 statements that you wanted to be included in the</p> <p>4 offering memorandum --</p> <p>5 A. Yes.</p> <p>6 Q. -- to accompany the press release disclosure?</p> <p>7 A. Yes.</p> <p>8 Q. You didn't have any objection to including</p> <p>9 those cautionary statements in the offering memorandum?</p> <p>10 A. No.</p> <p>11 Q. Did anyone from Morgan Stanley or Davis Polk</p> <p>12 object to your suggestion that you include cautionary</p> <p>13 language in the offering memorandum about</p> <p>14 forward-looking statements or risk factors?</p> <p>15 A. Not that I'm aware of, no.</p> <p>16 Q. Do you remember anybody resisting that idea?</p> <p>17 A. No.</p> <p>18 Q. You testified that after this initial</p> <p>19 conversation with Mr. Tyree where you raised these</p> <p>20 objections, it was Mr. Lurie who said the press release</p> <p>21 would be going in verbatim?</p> <p>22 A. Yes.</p> <p>23 Q. Did Mr. Tyree say anything during that</p> <p>24 conversation that you remember?</p> <p>25 A. No, not specifically.</p>

<p style="text-align: right;">Page 225</p> <p>1 Q. Do you have any recollection of, even without 2 recalling his specific words, what his position on that 3 was? 4 A. No. 5 Q. Did he ever say he disagreed with you? 6 A. I don't remember. 7 Q. You don't remember him saying that? 8 A. No. 9 Q. Did you have that impression that he 10 disagreed with you? 11 A. Yes. 12 Q. But you can't recall what it was that he 13 said? 14 A. It was his counsel sitting right next to him 15 that disagreed with me and he didn't differ his 16 opinion, so -- 17 Q. Did Mr. Lurie explain the reasons for his 18 statement that the press release would go in verbatim? 19 A. That those were the company's 20 representations. 21 Q. So Mr. Lurie told you that these were 22 Sunbeam's representations and that they would be 23 included in Sunbeam's bond offering; is that a fair 24 summary? 25 A. Yes.</p>	<p style="text-align: right;">Page 227</p> <p>1 Q. Okay. Did, so you didn't think it was 2 Mr. Tyree's decision to make ultimately? 3 A. No. 4 Q. You testified that there were at least one 5 and maybe more lawyers from Scadden Arps present for 6 this discussion, correct? 7 A. Yes. 8 Q. And they were there as lawyers to Sunbeam? 9 A. Yes. 10 Q. Did they participate in this discussion? 11 A. I don't specifically remember. 12 Q. Do you remember any of the lawyers from 13 Scadden expressing a view as to what ought to be 14 included in the Recent Development section? 15 A. No. 16 Q. Do you remember them agreeing or disagreeing 17 with the objection that you made? 18 A. No. 19 Q. Did you solicit their view? 20 A. I'm pretty sure that I did. I don't remember 21 specifically, though. 22 Q. Do you have an impression about the position 23 that the Scadden lawyers had on this issue that you 24 were discussing with Mr. Lurie and Mr. Tyree? 25 A. I think I was the only one in the room that</p>
<p style="text-align: right;">Page 226</p> <p>1 Q. Did Mr. Lurie express an independent view of 2 whether it ought to be included or not? 3 A. He -- yes, he said he -- yes. 4 Q. But he was -- let me put it this way. Did 5 Mr. Lurie communicate to you whether the company 6 believed the press release ought to be included 7 verbatim? 8 A. No. 9 Q. Did you think Mr. Lurie was the final 10 decision maker as to what would go in the offering 11 memorandum? 12 A. No, I thought it was the company's decision. 13 Q. So you didn't think it was Mr. Lurie? 14 A. No. 15 Q. You didn't think it was anybody from Davis 16 Polk? 17 A. Anybody could have said the deal's not going 18 through if we put this in. I mean it's their decision. 19 Q. My question is different. My question is who 20 was the, who was the final decision maker about what 21 would be included in the Recent Development section of 22 the offering memorandum? 23 And I believe your testimony is you believe 24 that it was the company's decision ultimately. 25 A. Yeah, I believe so.</p>	<p style="text-align: right;">Page 228</p> <p>1 had a difference of opinion about what should be in 2 there. 3 Q. So it wasn't just Morgan Stanley and Davis 4 Polk. Your impression was that Sunbeam's lawyers, 5 Scadden Arps -- 6 A. Yes. 7 Q. -- had the same view? 8 A. Yes. 9 Q. Is there anything else about that discussion 10 that we haven't talked about today -- 11 A. No. 12 Q. -- that you can recall? 13 A. No. 14 Q. At that point you left the room and you went 15 into the pool room? 16 A. Uh huh. 17 Q. And you called Mr. Harlow? 18 A. (Witness nods head up and down.) 19 Q. Is that a yes? 20 A. Yes. 21 Q. I'm sorry, the court reporter has to take 22 down your verbal answers. 23 A. Sorry, I'm eating ice. 24 Q. And Mr. Harlow conferenced in Mr. Gluck? 25 A. Yes.</p>

<p style="text-align: right;">Page 229</p> <p>1 Q. How long did you talk to Mr. Harlow before he 2 conferenced in Mr. Gluck? 3 A. Ten minutes probably. 4 Q. Do you remember anything that you discussed 5 with Mr. Harlow specifically before you brought in 6 Mr. Gluck? 7 A. Other than the fact as we discussed earlier 8 about my opinion not to put that in. 9 Q. Mr. Harlow shared your view? 10 A. Yes. 11 Q. And why did you conference in Mr. Gluck? 12 A. To get an understanding of the company's, 13 what they believed what should be included, as well as 14 to get more information on the basis for making the 15 statement. 16 Q. Because it was the company's decision about 17 what would be included in the offering memorandum? 18 A. Yes. 19 Q. And that was the reason you went to the 20 company for that? 21 A. Yes. 22 Q. Did you and Mr. Harlow attempt to or discuss 23 conferencing in anybody else from Morgan Stanley? 24 A. No. They were in the next room. They knew 25 what I was doing, so they knew who I was speaking with.</p>	<p style="text-align: right;">Page 231</p> <p>1 Q. But you thought Mr. Fanin had -- 2 A. Yes. 3 Q. -- some additional information on that? 4 A. Yes. 5 Q. And was there a consideration or discussion 6 that the question about what should be included in the 7 offering memorandum might have legal implications, and 8 that's why it made sense to bring somebody from 9 Sunbeam's legal department into the conversation? 10 A. I don't know what the thought process was, to 11 be honest with you. 12 Q. Did that thought occur to you? 13 A. No, my understanding was he was part of the 14 discussion in the press release. 15 Q. But did that thought occur to you that the 16 question of what ought to be included in the offering 17 memorandum might have legal implications for Sunbeam 18 and therefore a Sunbeam lawyer needed to be involved in 19 the decision making? 20 A. Yes. 21 Q. That thought occurred to you that night? 22 A. As well as other counsel that were there, 23 yes. 24 Q. But again, it was the company's decision 25 about what would be included in the offering</p>
<p style="text-align: right;">Page 230</p> <p>1 Q. I understand that, but you or Mr. Harlow 2 didn't suggest to conference in somebody perhaps more 3 senior from Morgan Stanley to discuss this issue? 4 A. Never met anybody more senior from Morgan 5 Stanley so -- 6 Q. That was my next question. Did you know 7 anybody from Morgan Stanley who was working on the deal 8 other than Mr. Tyree? 9 A. And Tyrone Chang, no. 10 Q. Other than what you testified to this 11 morning, do you remember anything about the discussion 12 that you had with Mr. Gluck? 13 A. No. 14 Q. And Mr. Harlow? 15 A. No. 16 Q. Mr. Harlow told you he was going to follow up 17 with Mr. Fanin? 18 A. Yes. 19 Q. Did he say why he was going to follow up with 20 Mr. Fanin? 21 A. To discuss the issue and get support for the 22 sales estimates. 23 Q. And Mr. Gluck had not been involved in the 24 discussion of the sales estimates the night before? 25 A. I have no idea.</p>	<p style="text-align: right;">Page 232</p> <p>1 memorandum? 2 A. Yes. 3 Q. And so it would make sense that the company's 4 lawyers were involved in that decision? 5 A. Correct. 6 Q. And in fact, later in the evening it was the 7 company's lawyers that communicated to you the 8 company's decision to include the press release 9 verbatim, correct? 10 A. Yes. 11 Q. And that was either Mr. Fanin or Miss Kelly? 12 A. I believe it was Miss Kelly to Harlow, Harlow 13 to me. 14 Q. But it was your understanding that Miss Kelly 15 was the ultimate decision-maker on including the press 16 release verbatim? 17 MR. MARKOWSKI: Objection, lack of 18 foundation. 19 THE WITNESS: My belief, it was Fanin's 20 decision. It was legal counsel, Sunbeam's legal 21 counsel. 22 BY MR. CLARE: 23 Q. Sunbeam's legal counsel? 24 A. In-house legal counsel. 25 Q. Just to be clear action, it's your testimony</p>

<p style="text-align: right;">Page 233</p> <p>1 that the final decision to include the entire text of 2 the press release verbatim in the press release was 3 made by Sunbeam's in-house legal counsel? 4 A. Yes. 5 MR. MARKOWSKI: Objection to lack of 6 foundation. 7 BY MR. CLARE: 8 Q. But from your perspective, that was true? 9 A. Yes. 10 Q. You returned to the room with Mr. Brockelman 11 and Mr. Tyree and Mr. Lurie and the Scadden lawyers 12 were and you had a side bar conversation with 13 Mr. Brockelman? 14 A. Outside of the room, yes. 15 Q. And Mr. Brockelman told you that Mr. Tyree 16 was making derogatory comments to you? 17 A. Yes. 18 MR. MARKOWSKI: When you say to you -- 19 THE WITNESS: Toward me. 20 BY MR. CLARE: 21 Q. Directed towards you while you were outside 22 of the room? 23 A. Yes. 24 Q. Did Mr. Brockelman tell you what he thought 25 Mr. Tyree was upset about?</p>	<p style="text-align: right;">Page 235</p> <p>1 A. I don't recall specifically him saying that. 2 Q. Do you recall him saying that in substance? 3 A. Yes. 4 Q. After you came back into the room? 5 A. Yes. 6 Q. And did he elaborate on his reasons for that? 7 A. No. 8 Q. Did Mr. Tyree ever indicate to you that it 9 was his decision to make? 10 A. No. 11 Q. Did he ever say to you, "I don't care what 12 you think, Mr. Bornstein, we're putting it in," in 13 words or in substance? 14 A. For the most part, yeah, that was the gist of 15 what was being told to me. 16 Q. And did you tell Mr. Tyree that the issue had 17 been submitted to Sunbeam's legal counsel? 18 A. He was aware of that, yes. 19 Q. Because you told him? 20 A. Yes. 21 Q. You told him that you had spoken with 22 Mr. Fanin? 23 A. I never spoke to Fanin, but someone had, yes. 24 Q. You told Mr. Tyree that Andersen had raised 25 the issue with Mr. Fanin?</p>
<p style="text-align: right;">Page 234</p> <p>1 A. I think it was the fact that he wasn't aware 2 of the results of the sales for the first two months, 3 where the company was. 4 Q. And it was, was that your sense as well? Did 5 you share that sense that that's what Mr. Tyree was 6 upset about? 7 A. Yes. 8 Q. So Mr. Tyree, in using profanity that was 9 directed towards you outside of your presence and then 10 again to you in your presence, it was your sense that 11 he was upset about not knowing this information sooner? 12 A. Yes. 13 Q. He wasn't using this profanity in an argument 14 with you over your objection to including the text of 15 the press release? 16 A. No. 17 Q. That wasn't the context of Mr. Tyree's 18 profanity? 19 A. Not that I believe. 20 Q. How about raising his voice? 21 A. I don't think so. 22 Q. Did Mr. Tyree ever say to you during that 23 discussion after you had reentered the room that he 24 believed that the press release should be included 25 verbatim in the offering memorandum?</p>	<p style="text-align: right;">Page 236</p> <p>1 A. Yes. 2 Q. And at that point, what happened with regard 3 to this issue? Did everybody sit and wait for -- 4 A. People kept working and it was several hours 5 later that the decision finally came back. 6 Q. So people kept working on other issues 7 related to the offering memorandum? 8 A. Yes. 9 Q. At that point in time when Mr. Tyree had this 10 discussion with you, no decision had been made about 11 what would be included in the offering memorandum? 12 A. Correct. 13 Q. During that same discussion with Mr. Tyree, 14 you indicated that he said, "Are these guys fucking 15 with me? Are they going to make their numbers or not?" 16 Is that correct? 17 A. Yes. 18 Q. Best of your recollection of what he said? 19 A. Yes. 20 Q. Who did you understand Mr. Tyree to be 21 referring to when he said these guys? 22 A. Sunbeam. 23 Q. So he wasn't saying Andersen? He wasn't 24 referring to Andersen? 25 A. No.</p>

<p style="text-align: right;">Page 237</p> <p>1 Q. And he wasn't suggesting that you or 2 Mr. Brockelman might be fucking with him about the 3 numbers? 4 A. Correct. 5 Q. He seemed to be directing his anger towards 6 Sunbeam in raising this question? 7 A. Yeah. It was these guys, so it wasn't you. 8 Q. Okay. And you understood him to be referring 9 to Sunbeam? 10 A. Yes. 11 Q. Did you -- what did you understand him to be 12 asking, less colloquially, when he asked you that 13 question? 14 A. If I thought they were going to be able to 15 make these numbers. 16 Q. Did you think it was appropriate for him to 17 ask that question? 18 A. Yes. 19 Q. Did you think it was legitimate for Mr. Tyree 20 and Morgan Stanley to want to know that information? 21 A. Yes. 22 Q. Did he appear sincere to you in wanting to 23 know that information? 24 A. He seemed very upset and nervous about it. 25 Q. Did he appear to you to be concerned that</p>	<p style="text-align: right;">Page 239</p> <p>1 A. I thought it was aggressive. 2 Q. But did you think that Sunbeam's management 3 was lying to Morgan Stanley about its sales objectives? 4 A. No. 5 Q. Did you have any basis to suspect that that 6 was the case? 7 A. No. 8 Q. Did Mr. Tyree discuss with you in any detail 9 the schedule of sales that's been marked at least in 10 form as CPH Exhibit 121? 11 A. No. 12 Q. Did you have any discussions about these 13 numbers beyond you expressing the view that they were 14 aggressive? 15 A. I believe I mentioned that I think they were 16 numbers on a page and they were aggressive at this 17 point in time. 18 Q. Did Mr. Tyree tell you where this document 19 had come from? 20 A. No. 21 Q. Was there any discussion about the fact that 22 Morgan Stanley had spent several hours on the phone the 23 night before going through this document with Sunbeam's 24 management? 25 A. No.</p>
<p style="text-align: right;">Page 238</p> <p>1 Sunbeam's management was fucking with him about their 2 ability to meet the numbers? 3 A. He had a concern, yes. 4 Q. And did you think that, in asking that 5 question, Mr. Tyree was being diligent in wanting to 6 find out that information? 7 MR. MOSCATO: I object to that. 8 BY MR. CLARE: 9 Q. Did you have an impression about that? 10 A. No. I don't think he was being diligent 11 about it. 12 Q. But you thought it was appropriate for him to 13 ask that question? 14 A. Sure. 15 Q. And what did you tell him in response to that 16 question? 17 A. I told him what I said before. I didn't 18 think -- I thought it was a stretch. 19 Q. Did you tell him in words or in substance 20 that Sunbeam was lying to Morgan Stanley about its 21 sales objectives for the quarter? 22 A. No. 23 Q. Did you think that Sunbeam was lying to 24 Morgan Stanley about its sales objectives for the 25 quarter?</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. Was there any discussion about the fact that 2 Mr. Uzzi and several members of Sunbeam's sales team 3 had given a presentation to Morgan Stanley about this 4 document? 5 A. No. 6 Q. Was there any discussion about Sunbeam's 7 confidence in meeting these numbers that are reflected 8 on the buildup, CPH 121? 9 A. Not that I recall. 10 Q. Did Mr. Harlow ever tell you that Mr. Uzzi 11 was very confident about exceeding the first quarter 12 1997 numbers? 13 A. I believe he did toward later in the night. 14 Q. So later in the evening Mr. Harlow reported 15 back to you that as a result of his additional 16 inquiries, he had been informed that Mr. Uzzi was very 17 confident that Sunbeam would exceed its first quarter 18 1990 sales numbers? 19 MR. MARKOWSKI: You said 1990 again. 20 MR. CLARE: Okay. I apologize. 21 THE WITNESS: I believe that the board got 22 back to Phil. I don't know who he spoke to 23 specifically. I don't know, I don't think he 24 spoke to Uzzi directly. 25</p>

<p style="text-align: right;">Page 241</p> <p>1 BY MR. CLARE:</p> <p>2 Q. Okay. Did you provide any other response to</p> <p>3 Mr. Tyree about the sales buildup document except for</p> <p>4 what you just testified about to say that it was</p> <p>5 aggressive?</p> <p>6 MR. MARKOWSKI: Other than what he testified</p> <p>7 about this morning?</p> <p>8 MR. CLARE: Well, let me ask you that.</p> <p>9 BY MR. CLARE:</p> <p>10 Q. Did you tell Mr. Tyree that you believed,</p> <p>11 having seen this document, that it was even more</p> <p>12 aggressive for Sunbeam to be projecting these sales?</p> <p>13 A. I don't know about more aggressive, but I, as</p> <p>14 I testified to earlier, I said if they are going to</p> <p>15 make it, they are going to make it legitimately,</p> <p>16 because I'm going to do additional procedures to ensure</p> <p>17 that they do.</p> <p>18 Q. We're going to get to that part of the</p> <p>19 conversation in just a second. I just want to focus on</p> <p>20 CPH Exhibit 121 and the sales buildup sheet.</p> <p>21 A. Okay.</p> <p>22 Q. Let me know when you have that in front of</p> <p>23 you.</p> <p>24 A. Okay.</p> <p>25 Q. You testified a moment ago that you told</p>	<p style="text-align: right;">Page 243</p> <p>1 that's CPH 121?</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Do you recall at all discussing that issue</p> <p>4 with Mr. Tyree?</p> <p>5 A. That it was escalated above where it was</p> <p>6 before? No.</p> <p>7 Q. Did you provide Mr. Tyree or any of the Davis</p> <p>8 Polk lawyers with any information about any of the</p> <p>9 customers that are listed here on CPH Exhibit 121?</p> <p>10 A. No.</p> <p>11 Q. For example, did you tell Morgan Stanley</p> <p>12 anything that you or Arthur Andersen knew about</p> <p>13 potential orders at Wal-Mart?</p> <p>14 A. No.</p> <p>15 Q. Or past sales to that customer?</p> <p>16 A. No.</p> <p>17 Q. Or ordering patterns?</p> <p>18 A. No.</p> <p>19 Q. Or trends?</p> <p>20 A. No.</p> <p>21 Q. Did you have this information in your mind</p> <p>22 about any of the customers that are listed here on CPH</p> <p>23 Exhibit 121?</p> <p>24 A. No.</p> <p>25 Q. Did you have any specific information about</p>
<p style="text-align: right;">Page 242</p> <p>1 Mr. Tyree that you believed the numbers on CPH</p> <p>2 Exhibit 121 were just numbers on a page; is that right?</p> <p>3 A. For lack of a better definition, yeah,</p> <p>4 because I didn't see support for it.</p> <p>5 Q. Okay. But you didn't know, Mr. Tyree didn't</p> <p>6 tell you that he had additional support beyond this</p> <p>7 document --</p> <p>8 A. No.</p> <p>9 Q. -- from Sunbeam sales force?</p> <p>10 A. No.</p> <p>11 Q. I want to get as close as I can to the exact</p> <p>12 word that you told Mr. Tyree in response to this</p> <p>13 document. Can you tell me what your best recollection</p> <p>14 is?</p> <p>15 A. I think I've already testified to that.</p> <p>16 Q. Okay. Can you tell me again, please.</p> <p>17 A. That I thought it was aggressive and a bunch</p> <p>18 of numbers on a page.</p> <p>19 Q. Now this morning, in response to a question</p> <p>20 from Mr. Markowski, you testified to a belief that you</p> <p>21 had after seeing this document, that it was even more</p> <p>22 aggressive.</p> <p>23 And I want to know, did you communicate that</p> <p>24 belief to Mr. Tyree that your skepticism about the</p> <p>25 numbers escalated after having seen the sales buildup</p>	<p style="text-align: right;">Page 244</p> <p>1 the sales or ordering patterns for these customers that</p> <p>2 night on March 19, 1998?</p> <p>3 A. No.</p> <p>4 MR. MOSCATO: Is it possible to take 30</p> <p>5 seconds and hunt up a cup of coffee?</p> <p>6 MR. CLARE: Sure, let's go off the record.</p> <p>7 THE VIDEOGRAPHER: We are now going off video</p> <p>8 record. The time on the monitor, 3:01 p.m.</p> <p>9 (Thereupon, a recess was taken.)</p> <p>10 THE VIDEOGRAPHER: We are now back on video</p> <p>11 record. The time on the monitor is 3:11 p.m.</p> <p>12 BY MR. CLARE:</p> <p>13 Q. Mr. Bornstein, before the break we were</p> <p>14 talking about your discussions with Mr. Tyree at the</p> <p>15 print shop on the evening of March 19th.</p> <p>16 You testified that you told Mr. Tyree you</p> <p>17 were skeptical of Sunbeam's abilities to exceed first</p> <p>18 quarter 1997; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Other than the word skeptical, did you use</p> <p>21 any other word with Mr. Tyree to describe your views</p> <p>22 about the achievability of that sales objective?</p> <p>23 A. I might have used the word conservative.</p> <p>24 Q. In referring to yourself as a conservative</p> <p>25 accountant?</p>

<p style="text-align: right;">Page 245</p> <p>1 A. I believe so, yes.</p> <p>2 Q. And did you tell Mr. Tyree in words or in</p> <p>3 substance that it was impossible for Sunbeam to exceed</p> <p>4 its first quarter 1997 sales objective, of exceeding --</p> <p>5 let me rephrase.</p> <p>6 Did you tell Mr. Tyree in words or in</p> <p>7 substance that it would be impossible for Sunbeam in</p> <p>8 the first quarter of 1998 to exceed first quarter 1997</p> <p>9 sales?</p> <p>10 A. I don't believe I used the word impossible.</p> <p>11 I think I used the words logistically difficult.</p> <p>12 Q. Okay. So we have skeptical and logistically</p> <p>13 difficult.</p> <p>14 A. I think those are the words I used.</p> <p>15 Q. Are there any other words that you used in</p> <p>16 talking to Mr. Tyree to describe your view of the</p> <p>17 achievability of that sales objective?</p> <p>18 MR. MARKOWSKI: He already -- are you</p> <p>19 excluding what he already testified to this</p> <p>20 morning? Just to get him to repeat it as a memory</p> <p>21 test? Because he testified on this.</p> <p>22 BY MR. CLARE:</p> <p>23 Q. No, I'm asking you whether you remember using</p> <p>24 any other exact words. I'm asking you for exact words.</p> <p>25 A. I don't remember the exact words, to be</p>	<p style="text-align: right;">Page 247</p> <p>1 Q. Now when you said you did the math for them,</p> <p>2 that was basis for your skepticism; is that correct,</p> <p>3 the gap that existed at that point in time between</p> <p>4 sales to date and the number of days left in the</p> <p>5 quarter? Is that the math that you're referring to?</p> <p>6 A. Yes.</p> <p>7 Q. And you went through that with Mr. Tyree and</p> <p>8 Mr. Lurie?</p> <p>9 A. Yes.</p> <p>10 Q. Other than that calculation that you did, let</p> <p>11 me ask you this. Did you actually physically do it out</p> <p>12 on paper with Mr. Lurie and Mr. Tyree?</p> <p>13 A. No. I did it in my head.</p> <p>14 Q. And that's your testimony where you said they</p> <p>15 would have to ship between 10 and \$15 million a day for</p> <p>16 the rest of the quarter?</p> <p>17 A. Correct.</p> <p>18 Q. And that was the basis for your statements to</p> <p>19 Mr. Tyree and Mr. Lurie about your skepticism?</p> <p>20 A. That, and I've been to every location</p> <p>21 throughout the country and thought it would be</p> <p>22 difficult to ship that much product --</p> <p>23 Q. Okay.</p> <p>24 A. -- so quickly.</p> <p>25 Q. Was it based on anything else besides that?</p>
<p style="text-align: right;">Page 246</p> <p>1 honest with you, so many years.</p> <p>2 (Thereupon, a cellphone rang.)</p> <p>3 MR. CLARE: Let's go off the record.</p> <p>4 THE VIDEOGRAPHER: We are now going off the</p> <p>5 video record. The time on the monitor is</p> <p>6 3:12 p.m.</p> <p>7 (Discussion held off the record.)</p> <p>8 THE VIDEOGRAPHER: We are now back on video</p> <p>9 record. The time on the monitor, 3:18 p.m.</p> <p>10 BY MR. CLARE:</p> <p>11 Q. Mr. Bornstein, before the break I was asking</p> <p>12 you to the best of your ability to tell me the exact</p> <p>13 words that you used with Mr. Tyree and Mr. Lurie in</p> <p>14 describing your views on the achievability of Sunbeam's</p> <p>15 objective to exceed first quarter 1997 sales.</p> <p>16 And can you testify beyond what you've</p> <p>17 already told me that you used the word skeptical and</p> <p>18 logistically difficult to describe your exact words?</p> <p>19 A. Healthy skepticism. I did the math for them,</p> <p>20 and I think I testified to everything else I've said.</p> <p>21 Q. As you sit here today, other than just do the</p> <p>22 math, skepticism or healthy skepticism and logistically</p> <p>23 difficult, do you remember any of the exact words that</p> <p>24 you used with Mr. Tyree or with Mr. Lurie?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 248</p> <p>1 A. No.</p> <p>2 Q. Had you done any study or analysis of sales</p> <p>3 trends at Sunbeam?</p> <p>4 MR. MOSCATO: You mean like a formal study or</p> <p>5 analysis or any kind of understanding?</p> <p>6 MR. CLARE: Any kind of understanding.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. CLARE:</p> <p>9 Q. And what had you done?</p> <p>10 A. Just looked at quarterly results and looked</p> <p>11 at sales by month.</p> <p>12 Q. Did you have an understanding that there was</p> <p>13 a history at Sunbeam of sales being back-ended at the</p> <p>14 end of the quarter?</p> <p>15 MR. MARKOWSKI: Object to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: There was a recent history,</p> <p>18 yes.</p> <p>19 BY MR. CLARE:</p> <p>20 Q. An uptake of sales in the last few days or</p> <p>21 weeks of a quarter?</p> <p>22 A. Yes.</p> <p>23 Q. And you knew that on March 19th?</p> <p>24 A. Yes.</p> <p>25 Q. Was your skepticism based on anything you</p>

<p style="text-align: right;">Page 249</p> <p>1 knew about a particular customer of Sunbeam's?</p> <p>2 A. No.</p> <p>3 Q. You didn't have any additional information</p> <p>4 about a customer?</p> <p>5 A. No.</p> <p>6 Q. Did you know anything, did you have any</p> <p>7 additional information about the likelihood of the</p> <p>8 sales coming in based on a particular customer or</p> <p>9 conversation that you had had with a customer?</p> <p>10 A. No.</p> <p>11 Q. Or with a member of Sunbeam's sales staff?</p> <p>12 A. No.</p> <p>13 Q. You testified that you told Mr. Tyree and</p> <p>14 Mr. Lurie and, in the Scadden lawyer's presence, that</p> <p>15 you were going to be conducting some additional</p> <p>16 procedures at the end of the quarter, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And I believe you said that your statement</p> <p>19 was something to the effect that if they are going to</p> <p>20 make their revenue number, they are going to make it,</p> <p>21 because I'm going to be sending people out to every</p> <p>22 shipping dock all over the country at midnight at the</p> <p>23 end of the quarter, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Those were the additional procedures that you</p>	<p style="text-align: right;">Page 251</p> <p>1 Q. And you meant it when you said it, right?</p> <p>2 A. I meant it.</p> <p>3 Q. And you actually followed through on it?</p> <p>4 A. Yes.</p> <p>5 Q. And did anybody from Morgan Stanley or Davis</p> <p>6 Polk object to Andersen conducting those additional</p> <p>7 procedures?</p> <p>8 A. Not that I'm aware of, no.</p> <p>9 Q. Well, did they say anything to you in</p> <p>10 response to your statement that you intended to carry</p> <p>11 out those additional procedures?</p> <p>12 A. No, they didn't say a word.</p> <p>13 Q. But they didn't object?</p> <p>14 A. No.</p> <p>15 Q. Do you think it would be fair for the people</p> <p>16 in the room to believe that you were serious about</p> <p>17 wanting to carry through on that statement?</p> <p>18 A. I have no idea what they wanted to believe or</p> <p>19 not.</p> <p>20 Q. But you said it in a serious way, you weren't</p> <p>21 joking around?</p> <p>22 A. Right.</p> <p>23 Q. Did you, in doing the math with Mr. Tyree and</p> <p>24 Mr. Lurie, did you ever indicate a particular number</p> <p>25 that you believed could be shipped on a per-day basis</p>
<p style="text-align: right;">Page 250</p> <p>1 were describing?</p> <p>2 A. Yes.</p> <p>3 Q. And those are the procedures that you</p> <p>4 discussed with Mr. Markowski this morning?</p> <p>5 A. Yes.</p> <p>6 Q. What was your intent of telling that to</p> <p>7 Morgan Stanley? Why did you tell Morgan Stanley you</p> <p>8 were going to be doing that?</p> <p>9 A. Because I was skeptical that they were going</p> <p>10 to be able to make the numbers.</p> <p>11 Q. And you wanted to take additional steps to</p> <p>12 make sure that the first quarter 1998 sales numbers</p> <p>13 that Sunbeam reported were right; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And that was due in part to the pressure that</p> <p>16 you believed management was putting on the sales staff</p> <p>17 to get product out the door?</p> <p>18 A. Yes, for the most part, my decision to do</p> <p>19 that was made at that point in time because of the way</p> <p>20 I was being treated by the people in the room and my</p> <p>21 conservatism and wanting to make sure that it was</p> <p>22 actually going to be achieved.</p> <p>23 Q. Because you wanted the numbers that Sunbeam</p> <p>24 reported at the end of the quarter to be right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 252</p> <p>1 through the end of the quarter by Sunbeam?</p> <p>2 A. No.</p> <p>3 Q. And did you have a particular number in your</p> <p>4 mind about how much could be shipped by Sunbeam on a</p> <p>5 per-day basis through the end of the first quarter?</p> <p>6 A. No.</p> <p>7 Q. So you didn't say that for the Neosho</p> <p>8 facility?</p> <p>9 A. I don't remember specifically talking about</p> <p>10 any specific facility other than I visited, I think I</p> <p>11 specifically listed off the names of the locations I</p> <p>12 had visited.</p> <p>13 Q. Well, that's why I'm asking you the question,</p> <p>14 because you testified you told Morgan Stanley that you</p> <p>15 had been to Neosho.</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever tell Morgan Stanley that the</p> <p>18 Neosho facility can only ship x dollars' worth of</p> <p>19 product per day?</p> <p>20 A. No. Specifically, no.</p> <p>21 Q. Generally?</p> <p>22 A. No.</p> <p>23 Q. How about the Hattiesburg facility?</p> <p>24 A. No.</p> <p>25 Q. Did you ever tell anyone from Morgan Stanley</p>

<p style="text-align: right;">Page 253</p> <p>1 that you believed that only x dollars' worth of product 2 could be shipped from the Hattiesburg facility on a 3 per-day basis? 4 A. No. 5 Q. You testified that you said that night at the 6 printer that "I hope to God they do make their sales 7 numbers; otherwise, you're all going to get sued." 8 A. Yes. 9 Q. Do you recall that testimony? 10 A. Yes. 11 Q. That statement is not documented in your 12 March 31st, 1998, memo. 13 A. Correct. 14 Q. And you previously testified that this was an 15 off-the-cuff comment that you had made. 16 A. Yes. 17 Q. Do you think the people in the room 18 understood it that way in the context of the discussion 19 that you had? 20 A. I have no idea. 21 Q. Is that the way you intended it to be taken, 22 was as an off-the-cuff comment? 23 A. Yes. 24 Q. Did you really think that everybody was going 25 to get sued?</p>	<p style="text-align: right;">Page 255</p> <p>1 the slower sales performance through that point in the 2 quarter? 3 A. I was surprised that the bond offering was 4 going forward that night, and I made that perfectly 5 clear to people. 6 Q. How did you make that perfectly clear? 7 A. Just surprised how, that the bond offering 8 was continuing to go on and that the amount was much 9 higher given the recent developments. 10 Q. Okay. But I want to be clear. 11 You said you were surprised that the bond 12 offering was going forward because of the announcement 13 that had been made that day. 14 A. Yes. 15 Q. And it was bad news that was announced, 16 correct? 17 A. Yes. 18 Q. It was an early warning to the markets about 19 Sunbeam's financial performance? 20 A. Yes. 21 Q. And you were surprised that the pricing and 22 the subscription of the bonds had gone as well as it 23 did in light of that news? 24 A. Yes. 25 Q. Were you surprised that Sunbeam was</p>
<p style="text-align: right;">Page 254</p> <p>1 A. Possibility if the numbers didn't come in, 2 yeah. 3 Q. And did you tell anyone at Andersen of your 4 belief that everybody was going to get sued if the 5 numbers didn't come in? 6 Did you discuss that with anyone internally 7 at Andersen? 8 A. Not before making that comment, no. 9 Q. How about afterwards? 10 A. I don't recall specifically. 11 Q. You didn't tell Mr. Harlow that? 12 A. I'm sure at some point in time I did, that I 13 made the comment, but I don't remember specifically. 14 Q. At that point in time, March 19, 1998, did 15 you think it was necessary to delay the bond offering 16 as a result of Sunbeam's sales performance to date in 17 the first quarter of 1998? 18 A. In March? 19 Q. Uh huh. 20 A. What part of March? 21 Q. On March 19th, that night at the print shop. 22 A. No, I didn't know it was a decision that I 23 needed to make, to be honest with you. 24 Q. Did you, did that thought ever occur to you 25 that the bond offering should be delayed as a result of</p>	<p style="text-align: right;">Page 256</p> <p>1 continuing to go forward with the bond offering? 2 That's a separate question. 3 A. Not surprised that Sunbeam was, no. 4 Q. Were you surprised that Sunbeam decided to 5 continue, given the fact that it had a fully subscribed 6 bond offering? 7 A. No, I was surprised that Morgan Stanley was 8 continuing with it, not Sunbeam. 9 Q. Did you tell Morgan Stanley that you were 10 surprised they were continuing with it? 11 A. Yes. 12 Q. What did you say? 13 A. That I was surprised that things were 14 proceeding the way they were, given what was going on. 15 Q. Okay. Tell me exactly what you told Morgan 16 Stanley in that regard. 17 MR. MOSCATO: If you remember the exact 18 words, use the exact words. If you remember in 19 substance, just give the substance. 20 THE WITNESS: That was in the first 15 21 minutes of the conversation, we talked about the 22 oversubscriptions of the bonds and what happened 23 that night. I don't know the exact words. 24 BY MR. CLARE: 25 Q. But I want to be clear. Your testimony is</p>

<p style="text-align: right;">Page 257</p> <p>1 that you told Morgan Stanley that the bond offering 2 should be cancelled or delayed in light of the Sunbeam 3 sales situation? 4 A. No. 5 MR. MOSCATO: I object. 6 THE WITNESS: I said I was surprised that it 7 was continuing to go on. I never said it should 8 be cancelled or delayed. 9 BY MR. CLARE: 10 Q. Did you think it should be cancelled or 11 delayed? 12 MR. MOSCATO: I thought he answered that a 13 couple of minutes ago. I mean you keep getting 14 yourself in this because you ask the same question 15 five times. 16 Larry, answer the question again, please. 17 I would really ask you for your sake, if 18 nothing else, not to keep covering the same 19 territory again and again. It's not helpful. 20 BY MR. CLARE: 21 Q. Well, I'm entitled to understand the surprise 22 that you expressed. And I understand and I'm not, have 23 no intention to ask you more questions about your 24 surprise that the bond offering was oversubscribed, 25 okay? We've covered that.</p>	<p style="text-align: right;">Page 259</p> <p>1 have an opinion other than being surprised. 2 Q. And as you sit here today, you don't have an 3 opinion one way or the other about whether Morgan 4 Stanley should have delayed or cancelled the bond 5 offering? 6 A. As I sit here today, my opinion is they 7 should have, yes. 8 Q. With the benefit of hindsight. 9 A. Yes. 10 Q. As you sat there in the conference room on 11 March 19, 1998, did you have an opinion as to whether 12 Morgan Stanley should have cancelled or delayed the 13 bond offering? 14 A. No. 15 Q. That opinion was formed after Sunbeam 16 imploded? 17 A. Yes. That's a good way to put it. 18 Q. Do you need to attend to your -- 19 A. No, I'm okay. I'll do it on the next break. 20 Q. You testified that you received a telephone 21 call later that evening from somebody informing you 22 that a decision had been made to include the press 23 release verbatim in the offering memorandum? 24 A. Yes. 25 Q. Up until that point in time, the group was</p>
<p style="text-align: right;">Page 258</p> <p>1 A. Okay. 2 Q. And I understand that you were surprised that 3 the bonds had been priced the way they were, right? 4 A. Right. 5 Q. And you were surprised that the bond offering 6 had been oversubscribed. 7 A. Yes. 8 Q. Were you surprised that Morgan Stanley had 9 decided to go forward with the bond offering apart from 10 those two points? 11 A. Yes. 12 Q. Why were you surprised? 13 A. Just was, given that the stock price went 14 down and the recent announcement of the information of 15 the sales of not meeting their original forecast. 16 Q. So what did you think Morgan Stanley should 17 have done? 18 MR. MOSCATO: Objection. Did you have a 19 feeling as to what Morgan Stanley should do or 20 were you just surprised? 21 THE WITNESS: I was just surprised. 22 BY MR. CLARE: 23 Q. Did you have a feeling what Morgan Stanley 24 should have done? 25 A. No, I've never sold bonds myself, so I didn't</p>	<p style="text-align: right;">Page 260</p> <p>1 working on other aspects of the offering memo. 2 A. Yes. 3 Q. You received a telephone call? 4 A. Yes. 5 Q. And then you came back into the room? 6 A. I don't remember if I left the room or not. 7 Q. And did you inform those present that the 8 decision had been made? 9 A. Yes. 10 Q. And what did you say? 11 A. That the decision has been made to use the 12 press release verbatim. 13 Q. And did you inform those present who had made 14 that decision? 15 A. Yes. 16 Q. And what did you say? 17 A. That it was made by Janet Kelly. I have 18 no -- don't remember if they corroborated that or not 19 directly with them. 20 Q. Was there any other discussion beyond your 21 informing the room about Miss Kelly's decision? 22 A. Other than to make sure that the 23 forward-looking statement information was cross 24 referenced. 25 Q. And do you know who physically accomplished</p>

<p style="text-align: right;">Page 261</p> <p>1 that?</p> <p>2 In other words, who put in the</p> <p>3 forward-looking statement cross referencing that you</p> <p>4 had asked to be included?</p> <p>5 A. I think I pulled the information and gave it</p> <p>6 to, I think Todd Freed was the guy that was taking</p> <p>7 control of what was getting put into the printer and</p> <p>8 taken out.</p> <p>9 Q. Mr. Freed was an attorney at Scadden?</p> <p>10 A. Yes.</p> <p>11 Q. Later in the morning you signed and delivered</p> <p>12 a comfort letter to Morgan Stanley?</p> <p>13 A. Yes.</p> <p>14 Q. Did you disagree with the decision of</p> <p>15 Andersen to issue a comfort letter in connection with</p> <p>16 the bond offering?</p> <p>17 A. No.</p> <p>18 Q. Did you disagree with the decision that was</p> <p>19 made by Miss Kelly to include the press release</p> <p>20 verbatim in the offering memorandum?</p> <p>21 A. I think I've already said that I disagreed</p> <p>22 that it shouldn't have been in there.</p> <p>23 Q. Was it your understanding that your</p> <p>24 objections to that conclusion had been overruled by the</p> <p>25 company?</p>	<p style="text-align: right;">Page 263</p> <p>1 bond offering to go forward.</p> <p>2 MR. MOSCATO: I don't think there is anything</p> <p>3 in the record that the bond offering, that that</p> <p>4 somehow was a prerequisite to the bond offering</p> <p>5 going forward.</p> <p>6 BY MR. CLARE:</p> <p>7 Q. Did you understand that Morgan Stanley had</p> <p>8 requested a comfort letter from Andersen in connection</p> <p>9 with the bond offering?</p> <p>10 A. Yes.</p> <p>11 Q. Did you understand that the offering</p> <p>12 memorandum would include Sunbeam's audited financials?</p> <p>13 A. Yes.</p> <p>14 Q. Did you understand that that bond offering</p> <p>15 memorandum would be registered at some later point in</p> <p>16 time?</p> <p>17 A. Portions of it would have.</p> <p>18 Q. Including the portions that included the</p> <p>19 audited financials?</p> <p>20 A. The audited financials would definitely be</p> <p>21 included. I'm not sure about the rest of it.</p> <p>22 Q. And you knew that evening on, at the print</p> <p>23 shop that Andersen would have to issue its consent to</p> <p>24 allow those audited financials to be included in that</p> <p>25 registered memorandum, correct?</p>
<p style="text-align: right;">Page 262</p> <p>1 A. Yes.</p> <p>2 Q. And is that why you were comfortable in</p> <p>3 issuing the press release, that your objections had</p> <p>4 been considered and then rejected by the company?</p> <p>5 MR. MOSCATO: I'm sorry, in issuing the press</p> <p>6 release?</p> <p>7 MR. CLARE: In issuing the comfort letter.</p> <p>8 MR. MOSCATO: Why don't you start again?</p> <p>9 BY MR. CLARE:</p> <p>10 Q. Is that the reason why you were comfortable</p> <p>11 in issuing the comfort letter, because your objections</p> <p>12 had been considered by the company and overruled?</p> <p>13 MR. MOSCATO: I don't understand the</p> <p>14 question.</p> <p>15 BY MR. CLARE:</p> <p>16 Q. Here's what I'm getting at.</p> <p>17 You disagreed with the conclusion of the</p> <p>18 press release in the offering memorandum. We've</p> <p>19 covered that.</p> <p>20 A. Yeah.</p> <p>21 Q. But you signed and delivered a comfort letter</p> <p>22 to Morgan Stanley on behalf of Arthur Andersen that</p> <p>23 allowed the bond offering to go forward.</p> <p>24 MR. MOSCATO: I object to that.</p> <p>25 THE WITNESS: I don't know if it allowed the</p>	<p style="text-align: right;">Page 264</p> <p>1 A. Yes.</p> <p>2 Q. So did you believe that Andersen should have</p> <p>3 withheld its consent for the offering memorandum to be</p> <p>4 finalized with the audited financials that night at the</p> <p>5 print shop?</p> <p>6 MR. MOSCATO: Objection, he didn't give his</p> <p>7 consent to this offering memorandum. They just</p> <p>8 didn't. So I object. No foundation to your</p> <p>9 question.</p> <p>10 BY MR. CLARE:</p> <p>11 Q. You didn't have an objection to giving the</p> <p>12 comfort letter to Morgan Stanley that evening?</p> <p>13 A. No.</p> <p>14 Q. And you knew when you delivered the comfort</p> <p>15 letter to Morgan Stanley that Andersen audited</p> <p>16 financial statements would be included in that offering</p> <p>17 memo?</p> <p>18 A. Yes.</p> <p>19 Q. And you knew that Andersen's name was going</p> <p>20 to be used in the offering memorandum as Sunbeam's</p> <p>21 auditor?</p> <p>22 A. Yes.</p> <p>23 Q. And you had looked at those pages that night</p> <p>24 at the print shop?</p> <p>25 A. The audited financials?</p>

<p style="text-align: right;">Page 265</p> <p>1 Q. Yes.</p> <p>2 A. Yes.</p> <p>3 Q. And in fact, you read through the offering</p> <p>4 memorandum and made cross preferences, you had been</p> <p>5 working on that for the last couple of days leading up</p> <p>6 to that, correct?</p> <p>7 A. Correct, but you're not opining on the</p> <p>8 information on the front of the document.</p> <p>9 Q. But again, you knew that Andersen's name was</p> <p>10 in the offering memorandum?</p> <p>11 A. Yes.</p> <p>12 Q. And you knew that that document was going to</p> <p>13 be provided to the debenture investors?</p> <p>14 A. Yes.</p> <p>15 Q. And you knew that at some later point in time</p> <p>16 portions of that offering memorandum would be</p> <p>17 registered?</p> <p>18 A. Yes.</p> <p>19 Q. In fact, you worked on the registration</p> <p>20 process in June, didn't you?</p> <p>21 A. Yes.</p> <p>22 Q. And you knew that as part of the registration</p> <p>23 process, Andersen would have to issue a consent?</p> <p>24 A. Yes.</p> <p>25 THE WITNESS: I need to get this faxed.</p>	<p style="text-align: right;">Page 267</p> <p>1 A. No.</p> <p>2 Q. When you left the print shop that night, did</p> <p>3 you take with you a copy of the document CPH</p> <p>4 Exhibit 121 in that form, the buildup that was provided</p> <p>5 to you?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. And what, if anything, did you do with it</p> <p>8 after leaving the print shop?</p> <p>9 A. I don't remember specifically what I did with</p> <p>10 it.</p> <p>11 Q. Generally.</p> <p>12 A. Put it in a file.</p> <p>13 Q. Did you discuss it with anybody at Sunbeam?</p> <p>14 A. I don't remember.</p> <p>15 Q. Did you perform any additional procedures or</p> <p>16 testing on this document, CPH Exhibit 121?</p> <p>17 A. No, not that I'm aware of.</p> <p>18 Q. Putting aside the document, did you have any</p> <p>19 discussions with anybody from Sunbeam after you left</p> <p>20 the print shop about Sunbeam's first quarter 1998</p> <p>21 sales?</p> <p>22 MR. MARKOWSKI: Ever?</p> <p>23 MR. CLARE: Between March 19th or 20th, 1998,</p> <p>24 and the end of the quarter.</p> <p>25 THE WITNESS: Yeah.</p>
<p style="text-align: right;">Page 266</p> <p>1 MR. CLARE: Go off the video record.</p> <p>2 THE VIDEOGRAPHER: We are now going off the</p> <p>3 video record. The time on the monitor is</p> <p>4 3:39 p.m.</p> <p>5 (Discussion held off the record.)</p> <p>6 THE VIDEOGRAPHER: We are now back on video</p> <p>7 record. The time on the monitor, 3:42 p.m.</p> <p>8 BY MR. CLARE:</p> <p>9 Q. Mr. Bornstein, after the last conversation</p> <p>10 that we discussed, the one where you informed the</p> <p>11 participants in the room that night that a decision had</p> <p>12 been made about the Recent Development section, did you</p> <p>13 work amicably with Mr. Tyree for the rest of the</p> <p>14 evening?</p> <p>15 A. For the most part, yeah.</p> <p>16 Q. There were no other issues, no other issues</p> <p>17 that you can recall as you sit here today that came up</p> <p>18 that night?</p> <p>19 A. Three o'clock in the morning, they wanted to</p> <p>20 change the way that we put our debits and credits in</p> <p>21 the pro formas, and I said no. That was the only other</p> <p>22 issue I know that came up. It just never would have,</p> <p>23 you know, just never would have gotten done.</p> <p>24 Q. Other than that, is there anything else that</p> <p>25 you remember?</p>	<p style="text-align: right;">Page 268</p> <p>1 BY MR. CLARE:</p> <p>2 Q. Who did you talk to?</p> <p>3 A. Bob Gluck. I don't remember if it was before</p> <p>4 or after the end of the quarter, but before anything</p> <p>5 was released, Al LaFever, Lee Griffith, Russ Kersh. I</p> <p>6 believe counsel from Scadden Arps on the Coleman issue,</p> <p>7 extra two days of sales before the end of the quarter,</p> <p>8 a few people.</p> <p>9 Q. Specifically in any of those conversations</p> <p>10 did you discuss your skepticism that Sunbeam would</p> <p>11 exceed its first quarter 1997 sales in the first</p> <p>12 quarter of 1998?</p> <p>13 MR. MARKOWSKI: Can you read back the prior</p> <p>14 question and answer please for me? Sorry.</p> <p>15 (Thereupon, a portion of the record</p> <p>16 was read by the reporter.)</p> <p>17 MR. MARKOWSKI: Now your question was about</p> <p>18 Sunbeam. Mr. Bornstein gave you an answer that</p> <p>19 included people other than Sunbeam.</p> <p>20 Your follow-up question concerns what now,</p> <p>21 Tom? Sunbeam conversations?</p> <p>22 MR. CLARE: Yes. My follow-up question is</p> <p>23 any conversations between March 19th and the end</p> <p>24 of the first quarter with anyone from Sunbeam</p> <p>25 about Sunbeam's ability to exceed first quarter</p>

67 (Pages 265 to 268)

<p style="text-align: right;">Page 269</p> <p>1 1997 sales.</p> <p>2 THE WITNESS: Not specifically that I can</p> <p>3 recall between that period of time.</p> <p>4 The Coleman stuff we talked about. The sales</p> <p>5 were probably after March 31st.</p> <p>6 BY MR. CLARE:</p> <p>7 Q. You are aware that Andersen issued a</p> <p>8 bring-down letter to Morgan Stanley, and the date of</p> <p>9 that was March 25th, 1998, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And you looked at that. At any point between</p> <p>12 the March 19, 1998, comfort letter and the March 25th,</p> <p>13 1998 comfort letter, did you receive from any source</p> <p>14 information about Sunbeam's progress in making sales?</p> <p>15 A. I don't remember.</p> <p>16 Q. Do you remember receiving any?</p> <p>17 A. I don't remember.</p> <p>18 Q. And then I'll ask the same question between</p> <p>19 the time of the bring-down comfort letter and the end</p> <p>20 of the quarter, do you remember receiving any</p> <p>21 information about Sunbeam's progress and making sales</p> <p>22 in the first quarter?</p> <p>23 A. No, not specifically.</p> <p>24 Q. Generally?</p> <p>25 A. I don't remember.</p>	<p style="text-align: right;">Page 271</p> <p>1 any discussions with anyone from Sunbeam before the end</p> <p>2 of the quarter about the pace at which orders were</p> <p>3 coming in?</p> <p>4 A. Not that I'm aware of, no.</p> <p>5 Q. Or that shipments were being made?</p> <p>6 A. Not that I'm aware of, no.</p> <p>7 Q. So the next information that you had about</p> <p>8 that was not until after the end of the quarter and</p> <p>9 after the additional procedures were done by either of</p> <p>10 your colleagues to do the sales cutoff testing; is that</p> <p>11 right?</p> <p>12 A. Sorry, can you repeat that? Losing my train</p> <p>13 of thought here.</p> <p>14 (Thereupon, a portion of the record</p> <p>15 was read by the reporter.)</p> <p>16 MR. MOSCATO: What do you mean by that? What</p> <p>17 is that?</p> <p>18 MR. CLARE: About Sunbeam, about the amount</p> <p>19 of product that was being shipped by Sunbeam.</p> <p>20 MR. MARKOWSKI: Tom, why don't you ask at</p> <p>21 this point a cohesive question so it's clear in</p> <p>22 the record what you're asking.</p> <p>23 MR. CLARE: Sure.</p> <p>24 BY MR. CLARE:</p> <p>25 Q. At any point after -- let me put it this way.</p>
<p style="text-align: right;">Page 270</p> <p>1 Q. During that time period, again, before the</p> <p>2 end of the first quarter, in any of your conversations</p> <p>3 with Sunbeam, did you ever have them in words or in</p> <p>4 substance what was the basis for their expectation that</p> <p>5 was expressed in the press release about exceeding</p> <p>6 first quarter 1997 sales?</p> <p>7 A. This was basically it at the time.</p> <p>8 Q. That was your understanding as to what it</p> <p>9 was?</p> <p>10 A. Yes.</p> <p>11 Q. Did you ask anybody from Sunbeam about that</p> <p>12 document, the document you just indicated, CPH</p> <p>13 Exhibit 121?</p> <p>14 A. Specifically, no, but specifically about</p> <p>15 sales I know between -- you know, you asked</p> <p>16 specifically, but generally, you know, we were informed</p> <p>17 after this they were going to continue to do both bill</p> <p>18 and hold. So there was conversation about that and</p> <p>19 procedures that needed to be done to ensure that that</p> <p>20 was in accordance with the rules, and confirmations</p> <p>21 were going to be signed off, et cetera.</p> <p>22 Q. And that the bill and hold sales that Sunbeam</p> <p>23 did would be accounted for properly?</p> <p>24 A. Correct.</p> <p>25 Q. But putting aside that question for a moment,</p>	<p style="text-align: right;">Page 272</p> <p>1 At any point before the end of the first</p> <p>2 quarter, did you have any other information besides</p> <p>3 what is reflected here on CPH Exhibit 121 about actual</p> <p>4 or potential sales by Sunbeam in the first quarter?</p> <p>5 A. I think we got information on the bill and</p> <p>6 hold sales that were going to take place prior to the</p> <p>7 end of the quarter.</p> <p>8 Q. But other than the bill and hold sales, did</p> <p>9 you have any other information?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. And when did you first learn that Sunbeam had</p> <p>12 not in fact exceeded its first quarter 1997 sales in</p> <p>13 the first quarter of 1998?</p> <p>14 A. Wasn't there a second press release that was</p> <p>15 sent out? Does anyone have a copy of that?</p> <p>16 Q. Yes, I can show it to you, but was that the</p> <p>17 first time you were informed?</p> <p>18 A. I think it was and I believe that -- I don't</p> <p>19 believe that that press release was shown to Arthur</p> <p>20 Andersen either, to be honest with you, so I think that</p> <p>21 was the time that the company decided that they weren't</p> <p>22 going to -- I don't know what they said.</p> <p>23 MR. MOSCATO: So in answer to his question,</p> <p>24 the April 3rd press release is the first time you</p> <p>25 learned that Sunbeam in fact was not going to</p>

<p style="text-align: right;">Page 273</p> <p>1 exceed in first quarter 1998 its first quarter 2 1997 sales figures? 3 THE WITNESS: Yes. 4 MR. CLARE: Let's mark that press release. 5 (MS Exhibit No. 58 was marked for 6 identification.) 7 BY MR. CLARE: 8 Q. Mr. Bornstein, I'm showing you what's been 9 marked as Exhibit 58. It's a multi-page document. I 10 recognize the first page is a fax cover sheet that you 11 probably have never seen before. 12 A. No. Can I read it, though? 13 Q. Sure. 14 A. I don't want to really read this whole thing, 15 to be honest with you. 16 MR. MOSCATO: Just answer the question. 17 THE WITNESS: What was the question? 18 MR. MOSCATO: Quickly and succinctly, please. 19 MR. CLARE: Well, I do want a complete answer 20 to my questions. 21 MR. MOSCATO: Well, succinctly does imply 22 completeness. 23 BY MR. CLARE: 24 Q. Mr. Bornstein, I've handed you what's been 25 marked as Morgan Stanley Exhibit 58. It's a fax cover</p>	<p style="text-align: right;">Page 275</p> <p>1 below first quarter of '97. Do you see that? 2 A. Yes. 3 Q. Did you think, did you have a reaction to 4 that figure? 5 A. Yeah. I, I wasn't sure at that point in time 6 if that was accurate or not. 7 Q. The five percent figure? 8 A. Yes. 9 Q. Why not? 10 A. Because they hadn't closed their books for 11 March yet. 12 Q. Okay. Did you have a reaction as to whether 13 or not you thought that Sunbeam would even be able to 14 get that close to '97 numbers, given where they were on 15 March 19th when you had these discussions with 16 Mr. Tyree? 17 A. At what point in time? In April? 18 Q. Yes. 19 A. I didn't know, I didn't -- it was the same 20 rationale and thought process. I wasn't sure until -- 21 I wasn't sure whether or not they would or would not. 22 Work was still being done. 23 Q. Did you ever get any information as to how 24 close Sunbeam had come at the end of the first quarter 25 to achieving first quarter 1997 sales?</p>
<p style="text-align: right;">Page 274</p> <p>1 sheet. Attached to it is an April 3rd, 1997 press 2 release by Sunbeam. Have you seen that? 3 A. Yes. 4 Q. Have you ever seen this entire document 5 before; in other words, with the cover sheet on it? 6 A. No. 7 Q. But you have seen the press release that's 8 attached to it before? 9 A. I don't -- I remember -- I don't remember 10 seeing the press release. I remember hearing or 11 reading the first paragraph about it. 12 Q. What was your reaction to hearing that news? 13 A. That these guys were all a bunch of fucking 14 morons. How's that? 15 Q. Which guys are you referring to? 16 A. Mostly the people from Sunbeam and their 17 attorneys. 18 Q. Because they had issued the prior press 19 release? 20 A. Right, and they did, they had the same 21 moronic caveat again that we're not going to make this 22 number, but they are still going to make this number. 23 Q. Was it your understanding that -- withdrawn. 24 The April 3rd press release reports that 25 Sunbeam sales expected to be approximately 5 percent</p>	<p style="text-align: right;">Page 276</p> <p>1 A. At what point in time? 2 Q. In April of '97. 3 A. Eventually I did, yes. 4 Q. And do you recall in order of magnitude what 5 percentage they were close to reaching first quarter 6 '97 sales? 7 A. At that point in time, no. 8 Q. Mr. Bornstein, I'm handing you what we 9 previously marked yesterday as Morgan Stanley 10 Exhibit 42 and ask that you take a look at it. 11 Do you recognize this document? 12 A. No. 13 Q. Do you recognize this form of document? 14 A. No. 15 Q. Is the signature on the third page over 16 engagement partner or manager, is that your signature? 17 A. Yes. 18 Q. So you don't recognize this document at all 19 or this form of document, what it was used for at 20 Andersen? That's going to be my question. 21 A. No, I believe it's a document that you sign 22 after you had a document referenced. Any document 23 where it was issued by Andersen that was needed to be 24 referenced by an independent person to make sure that 25 the form of the letter is in accordance with the rules</p>

<p style="text-align: right;">Page 277</p> <p>1 and the numbers tie back, et cetera.</p> <p>2 Q. And does this document, Morgan Stanley 42,</p> <p>3 appear to be the form for the documentation of those</p> <p>4 procedures for the comfort letter dated March 19, 1998?</p> <p>5 A. Appears that way, yes.</p> <p>6 Q. Do you recall that comfort letter being</p> <p>7 referenced in the manner that you described?</p> <p>8 A. I don't remember specifically, no.</p> <p>9 Q. Do you know who the person is whose initials</p> <p>10 appear on pages two and apparently performed these</p> <p>11 procedures?</p> <p>12 A. Yes.</p> <p>13 Q. Who is that?</p> <p>14 A. Her name was Patricia Rich.</p> <p>15 Q. And did you work with Miss Rich on the</p> <p>16 March 19th, '98 comfort letter?</p> <p>17 A. She referenced it. I don't remember</p> <p>18 specifically working with her on it.</p> <p>19 Q. And when you say she referenced it, can you</p> <p>20 describe for those not familiar with that procedure</p> <p>21 what that means?</p> <p>22 A. You would read the document, make sure it's</p> <p>23 in accordance with the specific language that's</p> <p>24 required by -- I don't know what rules they are</p> <p>25 anymore, to be honest with you, and then to make sure</p>	<p style="text-align: right;">Page 279</p> <p>1 A. Those are the letters that we looked at</p> <p>2 earlier that were on Sunbeam letterhead issued to</p> <p>3 Arthur Andersen.</p> <p>4 Q. And as part of Andersen's work on comfort</p> <p>5 letters, Andersen requests a management representation</p> <p>6 letter for the items that are discussed in the comfort</p> <p>7 letter; is that correct, at least some of them?</p> <p>8 A. Some of them, yeah.</p> <p>9 Q. And would Andersen be able to issue a comfort</p> <p>10 letter unless it had a management representation</p> <p>11 letter?</p> <p>12 In other words, did Andersen procedures allow</p> <p>13 that, to your knowledge?</p> <p>14 A. I don't believe so, but I'm not certain.</p> <p>15 Q. Have you ever been involved in issuing a</p> <p>16 comfort letter where there wasn't a management</p> <p>17 representation letter that would back it up?</p> <p>18 A. Not that I recall.</p> <p>19 Q. What role does Andersen have in drafting</p> <p>20 management representation letters typically?</p> <p>21 A. They draft quite a bit of it.</p> <p>22 Q. So the initial draft of a management</p> <p>23 representation letter is done at Andersen, worked on,</p> <p>24 and then at some point provided to management for</p> <p>25 review, approval and signature?</p>
<p style="text-align: right;">Page 278</p> <p>1 that the numbers tie back to the supporting work papers</p> <p>2 at Andersen's work.</p> <p>3 Q. And it was Miss Rich that performed those</p> <p>4 procedures for the March 19th comfort letter, to the</p> <p>5 best of your recollection?</p> <p>6 A. Yes, what it says here.</p> <p>7 Q. You don't have a recollection of working with</p> <p>8 her on that?</p> <p>9 A. No.</p> <p>10 Q. Do you have a recollection of Miss Rich</p> <p>11 raising any issues with you in her work done</p> <p>12 referencing the March 19th comfort letter?</p> <p>13 A. I don't recall one way or the other.</p> <p>14 Q. On the second page, item number four,</p> <p>15 procedure states that "If applicable, trace information</p> <p>16 regarding contingencies, litigation or uncertainties to</p> <p>17 the financial statements and to legal or management</p> <p>18 representation letters or other source documents in the</p> <p>19 working papers."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is that one of the referencing procedures</p> <p>23 that you just described?</p> <p>24 A. That's what it says here.</p> <p>25 Q. What's a management representation letter?</p>	<p style="text-align: right;">Page 280</p> <p>1 A. I don't know the procedure, but if it's at</p> <p>2 Andersen or at the client, but yeah.</p> <p>3 Q. Do you recall that being done in connection</p> <p>4 with these comfort letters and these management</p> <p>5 representation letters that were in March of 1998 in</p> <p>6 connection with the bond offering?</p> <p>7 A. I don't recall specifically, but I'm sure</p> <p>8 that that is what happened.</p> <p>9 Q. I'm going to hand you the next document that</p> <p>10 was marked yesterday as Morgan Stanley Exhibit 43.</p> <p>11 A. This is a good one.</p> <p>12 MR. MOSCATO: I'll give you my copy.</p> <p>13 THE WITNESS: Keep that for my files. Okay.</p> <p>14 BY MR. CLARE:</p> <p>15 Q. I've handed you what's been marked as Morgan</p> <p>16 Stanley Exhibit 43, a document entitled Post Audit</p> <p>17 Review for Subsequent Material Transactions and Events</p> <p>18 After the Date of the Auditor's Report.</p> <p>19 Do you see that title on the page?</p> <p>20 A. Yes.</p> <p>21 Q. And do you recognize the handwriting on the</p> <p>22 bottom of the first page to be yours?</p> <p>23 A. For the most part, yeah. Phil Harlow, looks</p> <p>24 like he signed it also.</p> <p>25 Q. So there is some handwriting and then there</p>

<p style="text-align: right;">Page 281</p> <p>1 is a signature by you and a date?</p> <p>2 A. Yeah, the handwriting is mine.</p> <p>3 Q. And then there is a signature by Mr. Harlow?</p> <p>4 A. Correct.</p> <p>5 Q. And the writing there appears to be the date,</p> <p>6 is that a three, is that March '98?</p> <p>7 A. Yes.</p> <p>8 Q. What is this document and how is it used</p> <p>9 internally at Andersen?</p> <p>10 A. It's a checklist that's done to go through</p> <p>11 their requirements to do a post audit review and allow</p> <p>12 Andersen to issue a consent to update their opinion.</p> <p>13 Q. And a document like this and the procedures</p> <p>14 that are described in this document are used in</p> <p>15 connection with --</p> <p>16 A. The registration statement, I think a 133</p> <p>17 registration statement, or 33 Act registration</p> <p>18 statement.</p> <p>19 Q. It was your understanding in March of '98</p> <p>20 that the Sunbeam convertible debenture offering would</p> <p>21 be registered in that way?</p> <p>22 A. Eventually, yes.</p> <p>23 Q. And did you prepare or mark on this document</p> <p>24 in March of 1998 in anticipation of that work on the</p> <p>25 registration?</p>	<p style="text-align: right;">Page 283</p> <p>1 Q. Is that the date that you would have made</p> <p>2 that notation on the document?</p> <p>3 A. I don't know what I, if I reviewed it the</p> <p>4 same day or not.</p> <p>5 Q. Would this document have to be completed</p> <p>6 under Andersen's internal procedures before a comfort</p> <p>7 letter like the one on March 19th could be issued to</p> <p>8 Morgan Stanley?</p> <p>9 A. The form might not necessarily have to be</p> <p>10 filled out, but the work should have been done.</p> <p>11 Q. So that these procedures that are described</p> <p>12 here in Morgan Stanley Exhibit 43 would need to be</p> <p>13 completed in March of 1998 before the offering</p> <p>14 memorandum could be completed?</p> <p>15 MR. MOSCATO: The offering memorandum or the</p> <p>16 comfort letter?</p> <p>17 BY MR. CLARE:</p> <p>18 Q. Well, let's start with the comfort letter.</p> <p>19 Before the comfort letter could be issued?</p> <p>20 A. Yes.</p> <p>21 Q. And before the offering memorandum would be</p> <p>22 finalized?</p> <p>23 A. I don't recall specifically about that.</p> <p>24 Q. Your handwriting here indicates that the post</p> <p>25 audit work and AP187 work was done in its entirety as</p>
<p style="text-align: right;">Page 282</p> <p>1 A. No.</p> <p>2 Q. The handwriting at the bottom of the first</p> <p>3 page, can you read that as best you can for me?</p> <p>4 A. Says, "No consent required on section 144</p> <p>5 offering; however, PAR," which means post audit review,</p> <p>6 "work and AP 187 work done in its entirety as the</p> <p>7 firm's name appears in the financial statements</p> <p>8 included with this document. Work done herein</p> <p>9 sufficient as if we were to issue our consent."</p> <p>10 Q. What are you communicating here?</p> <p>11 MR. MOSCATO: I object. It's perfectly</p> <p>12 clear.</p> <p>13 Are you communicating anything other than</p> <p>14 what's written in the plain wording of this note?</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. CLARE:</p> <p>17 Q. And you wrote those words in March of 1998?</p> <p>18 A. Yes.</p> <p>19 Q. And you signed your name below those words in</p> <p>20 March of 1998?</p> <p>21 A. Yes.</p> <p>22 Q. And the date on the front of the document</p> <p>23 that discusses post audit review having been completed</p> <p>24 is March 16, 1998, do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 284</p> <p>1 the firm's name appears in the F1.</p> <p>2 Can you tell me what AP187 --</p> <p>3 A. That's financial statements.</p> <p>4 Q. Appears in the financial statements included</p> <p>5 with this document.</p> <p>6 A. Yeah.</p> <p>7 Q. Can you tell me what AP187 refers to?</p> <p>8 A. This document. If you look on the bottom</p> <p>9 left-hand corner, it says AA & Company, AP187.</p> <p>10 Q. I see. So you're stating here in the</p> <p>11 handwritten notation that the post audit work that was</p> <p>12 done by Andersen and the procedures that were performed</p> <p>13 that are described in Morgan Stanley Exhibit 43 were</p> <p>14 done as if Andersen would be issuing a formal consent</p> <p>15 for the inclusion of its audited financials in the</p> <p>16 financial offering memorandum; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. So the standard of care that Andersen used in</p> <p>19 going through its internal procedures was the same as</p> <p>20 if it were required to issue a formal consent?</p> <p>21 A. Yes.</p> <p>22 Q. That's what you're communicating here in</p> <p>23 March of 1998?</p> <p>24 A. Yes.</p> <p>25 THE VIDEOGRAPHER: We have to change the</p>

<p style="text-align: right;">Page 285</p> <p>1 tape.</p> <p>2 We are now going off video record on tape</p> <p>3 number three. We'll be back on tape number four.</p> <p>4 The time on the monitor, 4:09 p.m.</p> <p>5 (Discussion held off the record.)</p> <p>6 THE VIDEOGRAPHER: We are now back on video</p> <p>7 record, tape number four. The time on the monitor</p> <p>8 is 4:10 p.m.</p> <p>9 BY MR. CLARE:</p> <p>10 Q. Mr. Bornstein, I want to have you turn over</p> <p>11 to the second page of Exhibit 43. And the first</p> <p>12 procedure, I'd like to ask you to read that, please, to</p> <p>13 yourself.</p> <p>14 A. Okay.</p> <p>15 Q. And this procedure requires that somebody</p> <p>16 from Andersen read the entire registration statement</p> <p>17 including the prospectus and perform certain</p> <p>18 procedures, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And it requires Andersen to cross reference</p> <p>21 amounts in the narrative section to similar amounts in</p> <p>22 the audited financials, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And ascertain that there are no</p> <p>25 inconsistencies or conflict between the narrative</p>	<p style="text-align: right;">Page 287</p> <p>1 management representation letter that you looked at</p> <p>2 this morning with Mr. Markowski.</p> <p>3 A. Is it exactly the same or is it different?</p> <p>4 Q. It's another copy.</p> <p>5 A. Okay.</p> <p>6 Q. And you see it's signed on page three by the</p> <p>7 same group of individuals that you discussed this</p> <p>8 morning.</p> <p>9 A. Okay.</p> <p>10 Q. What role did you personally play in drafting</p> <p>11 the management representation letters for the comfort</p> <p>12 letters that were issued to Morgan Stanley in the first</p> <p>13 quarter of 1998?</p> <p>14 A. I don't remember specifically.</p> <p>15 Q. Do you remember having seen drafts?</p> <p>16 A. Yes.</p> <p>17 Q. Before they were issued and commenting on</p> <p>18 them?</p> <p>19 A. I believe so, yes.</p> <p>20 Q. Did you discuss as part of your work on the</p> <p>21 management representation letters with Sunbeam</p> <p>22 management the contents of the letter?</p> <p>23 A. I don't remember specifically myself doing</p> <p>24 that.</p> <p>25 Q. Who was working with you on the management</p>
<p style="text-align: right;">Page 286</p> <p>1 section and the audited financials, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And your initials are listed to the right?</p> <p>4 A. Yes.</p> <p>5 Q. And did you perform those procedures with</p> <p>6 regard to the offering memorandum?</p> <p>7 A. Yes.</p> <p>8 Q. And you performed those procedures in March</p> <p>9 of 1998?</p> <p>10 A. Yes.</p> <p>11 Q. On March 19th, 1998, or before? In other</p> <p>12 words, before the offering memorandum was finalized or</p> <p>13 printed at Global Financial Press?</p> <p>14 A. Before and during.</p> <p>15 Q. Those procedures were not carried out any</p> <p>16 time after that evening at the printer?</p> <p>17 A. They were performed after, but on different</p> <p>18 documents.</p> <p>19 Q. Correct, but with respect to the offering</p> <p>20 memorandum, those procedures were performed before you</p> <p>21 left the printer that morning?</p> <p>22 A. Yes.</p> <p>23 Q. I'm going to hand you the next exhibit.</p> <p>24 That's Morgan Stanley Exhibit 44.</p> <p>25 This is another copy of the March 16, 1998</p>	<p style="text-align: right;">Page 288</p> <p>1 representation letter?</p> <p>2 A. I believe Dennis Pastrana.</p> <p>3 Q. Did, as far as you know and can recall, did</p> <p>4 you have any discussions with Mr. Pastrana about what</p> <p>5 Sunbeam management would or would not be willing to</p> <p>6 represent in the management letter?</p> <p>7 A. No.</p> <p>8 Q. Did you have any conversations with anyone in</p> <p>9 Sunbeam management about what Sunbeam management would</p> <p>10 be willing or not willing to represent in a management</p> <p>11 letter?</p> <p>12 A. Not that I recall.</p> <p>13 Q. I hand you the next document, Morgan Stanley</p> <p>14 Exhibit 45. Just let me know when you're ready.</p> <p>15 A. Okay.</p> <p>16 Q. This is an undated draft, appears to be an</p> <p>17 undated draft of the management representation, of a</p> <p>18 management representation letter. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. If you look in format and style, it's similar</p> <p>21 to the representation letter that we just looked at.</p> <p>22 A. Okay.</p> <p>23 Q. If you turn over and look at the second page</p> <p>24 of the document on item eight, there is a table of</p> <p>25 information there. Do you see that?</p>

<p style="text-align: right;">Page 289</p> <p>1 A. Table of information?</p> <p>2 Q. Well, there is net sales and net income</p> <p>3 information for two different time periods.</p> <p>4 A. I'm sorry, what page?</p> <p>5 Q. On the second page.</p> <p>6 A. Right, okay.</p> <p>7 Q. Okay? And you discussed with Mr. Markowski</p> <p>8 this morning that net income and loss information was</p> <p>9 one item that would be included in the management</p> <p>10 representation letter; do you see that?</p> <p>11 A. Right.</p> <p>12 Q. Are you able to place this draft of the</p> <p>13 management representation letter in time in any way by</p> <p>14 looking at this?</p> <p>15 A. No.</p> <p>16 Q. And you recall that there were two different</p> <p>17 management representation issues issued? There was one</p> <p>18 in connection with the first comfort letter and then a</p> <p>19 second one that was issued in connection with the</p> <p>20 bring-down letter?</p> <p>21 Do you remember that from this morning?</p> <p>22 A. Yes.</p> <p>23 Q. Are you able to recognize this as a draft of</p> <p>24 the second management comfort letter?</p> <p>25 MR. MOSCATO: One way or the other? Yes or</p>	<p style="text-align: right;">Page 291</p> <p>1 described in the preceding paragraph, management</p> <p>2 believes that net sales for the first quarter of fiscal</p> <p>3 1998 will exceed net sales of the first quarter of</p> <p>4 fiscal 1997."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And that's a similar statement to the one</p> <p>8 that was included in the press release?</p> <p>9 A. Correct.</p> <p>10 Q. Do you recall in your work on the management</p> <p>11 representation letter discussing that provision?</p> <p>12 A. No, I don't. Sorry.</p> <p>13 Q. Do you recall any discussion about whether</p> <p>14 Andersen wanted a representation, an affirmative</p> <p>15 representation from Sunbeam's management that it had</p> <p>16 that expectation?</p> <p>17 A. It was already made in the press release. I</p> <p>18 don't believe so.</p> <p>19 MR. MOSCATO: The answer is yes or no. It's</p> <p>20 getting late in the day.</p> <p>21 THE WITNESS: I think the answer was no. Can</p> <p>22 you answer -- read the question again.</p> <p>23 (Thereupon, a portion of the record</p> <p>24 was read by the reporter.)</p> <p>25 THE WITNESS: I don't, I don't remember.</p>
<p style="text-align: right;">Page 290</p> <p>1 no.</p> <p>2 THE WITNESS: This is a draft of the second?</p> <p>3 BY MR. CLARE:</p> <p>4 Q. Yes.</p> <p>5 A. No, I can't.</p> <p>6 Q. You can't tell which version it's a draft of?</p> <p>7 MR. MARKOWSKI: I'm sorry, I missed the</p> <p>8 thread here. Are you asking whether this is a</p> <p>9 version of the March 25?</p> <p>10 MR. CLARE: I'm asking if he can place it in</p> <p>11 time as to whether it's a draft of the initial</p> <p>12 March 16th management representation letter or</p> <p>13 whether it's a draft of the March 25</p> <p>14 representation letter.</p> <p>15 MR. MARKOWSKI: Actually I guess it's</p> <p>16 March 23. I'm sorry to mislead you. I think it</p> <p>17 was March 23.</p> <p>18 THE WITNESS: I have no idea one way or the</p> <p>19 other.</p> <p>20 BY MR. CLARE:</p> <p>21 Q. Okay. If you turn to the last page of the</p> <p>22 document -- next-to-the-last page, page marked Bates</p> <p>23 number CPH 00441653, item ten.</p> <p>24 A. Right.</p> <p>25 Q. It states, "Despite the decrease in net sales</p>	<p style="text-align: right;">Page 292</p> <p>1 BY MR. CLARE:</p> <p>2 Q. I'm going to hand you the next exhibit that's</p> <p>3 Morgan Stanley Exhibit 46. It appears to be another</p> <p>4 draft of the management representation letter. Do you</p> <p>5 see that?</p> <p>6 A. Uh huh.</p> <p>7 Q. And this document, Exhibit 46, has a fax line</p> <p>8 across the top of the page indicating it was faxed on</p> <p>9 March 23rd, 1998. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recognize that fax number?</p> <p>12 A. Yeah, I, it looks vaguely familiar. I don't</p> <p>13 know exactly where it is.</p> <p>14 Q. It appears that this fax was sent by somebody</p> <p>15 on March 23rd, 1998.</p> <p>16 Is this your handwriting on Morgan Stanley</p> <p>17 Exhibit 46?</p> <p>18 A. On page one it is, but not on page four, I</p> <p>19 guess, on the top.</p> <p>20 Q. So the edit that's made on the first page is</p> <p>21 an edit that you made, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And the edit that was made to paragraph ten,</p> <p>24 somebody else's handwriting?</p> <p>25 A. Right.</p>

<p style="text-align: right;">Page 293</p> <p>1 Q. Do you know whose handwriting that is? Do</p> <p>2 you recognize it?</p> <p>3 A. No.</p> <p>4 Q. Again, on the last page. The edited</p> <p>5 paragraph ten.</p> <p>6 A. No.</p> <p>7 Q. I'd like you to keep that in front of you for</p> <p>8 just a minute while I hand you the next document,</p> <p>9 Morgan Stanley Exhibit 47, which is the March 23rd,</p> <p>10 1998 management representation letter.</p> <p>11 A. Okay.</p> <p>12 Q. Now we've looked at a couple of drafts of</p> <p>13 representation letter, Exhibits 45 and 46, that</p> <p>14 included a paragraph --</p> <p>15 A. Right.</p> <p>16 Q. -- stating that management believed it would</p> <p>17 exceed first quarter sales in 1997. Correct?</p> <p>18 A. I'm sorry, just give me one minute so I can</p> <p>19 get my bearing here. Say it again.</p> <p>20 Q. The drafts that we've been looking at,</p> <p>21 Exhibits 45 and 46, have a paragraph ten that states an</p> <p>22 expectation by management regarding net sales in the</p> <p>23 first quarter of 1998 exceeding net sales in the first</p> <p>24 quarter of 1997.</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 295</p> <p>1 MR. MOSCATO: You mean this was -- what you</p> <p>2 wanted someone to do was do a draft of the</p> <p>3 bring-down, and they pulled the comfort instead?</p> <p>4 THE WITNESS: No, no. What I'm saying is we</p> <p>5 did a rep letter, March 16th.</p> <p>6 MR. MOSCATO: I'm sorry.</p> <p>7 THE WITNESS: So I know we did a rep letter</p> <p>8 the 16th with the \$2 billion on there, or whatever</p> <p>9 the number was.</p> <p>10 And I remember reviewing this one and it</p> <p>11 showing 1.3 million, which was the original</p> <p>12 amount.</p> <p>13 So after reading the first paragraph, I just</p> <p>14 said this is the wrong one. You must be updating</p> <p>15 the wrong file. And I never reviewed the rest of</p> <p>16 it.</p> <p>17 BY MR. CLARE:</p> <p>18 Q. Okay. Well, the March 16th rep letter that</p> <p>19 you have in front of you, which is Morgan Stanley</p> <p>20 Exhibit 44, as the final version also does not contain</p> <p>21 that paragraph that we were looking at in drafts.</p> <p>22 A. Yeah, I never saw that paragraph before.</p> <p>23 Q. So you don't have any information about who</p> <p>24 put it in?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 294</p> <p>1 Q. But that paragraph does not appear in the</p> <p>2 March 23rd, 1998 representation letter as it was</p> <p>3 finally signed.</p> <p>4 Do you have any knowledge or information</p> <p>5 about how that paragraph got deleted?</p> <p>6 A. Actually I, it's actually coming back to me</p> <p>7 what happened here.</p> <p>8 I remember, I remember getting -- I do</p> <p>9 remember getting this fax and starting to review it.</p> <p>10 Q. Okay. Just to be clear --</p> <p>11 A. Fax, I remember getting the fax that's dated</p> <p>12 whatever it is, 3/23/98.</p> <p>13 Q. Morgan Stanley Exhibit 46?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. I remember reading the first page, I</p> <p>16 read the first paragraph, and then basically just</p> <p>17 stopping and calling and saying we've already done a</p> <p>18 rep letter dated March 16th. You guys are pulling from</p> <p>19 the wrong file. I remember I stopped reviewing this.</p> <p>20 Follow me?</p> <p>21 There is a rep letter dated the 16th.</p> <p>22 Q. Right.</p> <p>23 A. We had updated the 23rd. So whoever started</p> <p>24 working on this pulled a different file to start</p> <p>25 updating.</p>	<p style="text-align: right;">Page 296</p> <p>1 Q. Or why it was taken out?</p> <p>2 A. No.</p> <p>3 Q. Or why it does not appear in the March 16th</p> <p>4 version of the rep letter?</p> <p>5 A. None whatsoever.</p> <p>6 Q. Or the March 23rd version?</p> <p>7 A. No.</p> <p>8 Q. Now you worked on the 1997 audit?</p> <p>9 A. Yes.</p> <p>10 Q. Do you believe as you sit here today that</p> <p>11 Sunbeam withheld material information from you in</p> <p>12 connection with the 1997 audit?</p> <p>13 A. As I sit here today? Yes.</p> <p>14 Q. And now those subjects, the audit and the</p> <p>15 work that was done on the restatement were covered in</p> <p>16 detail in your prior depositions, and I'm not going to</p> <p>17 ask you to go through them in detail, but in general,</p> <p>18 do you believe that Sunbeam withheld material</p> <p>19 information from Andersen regarding its reserves?</p> <p>20 MR. MOSCATO: I'm going to make an objection.</p> <p>21 Years ago in front of the SEC he gave exhaustive</p> <p>22 testimony about what he thought Sunbeam had</p> <p>23 misrepresented and concealed from him and what</p> <p>24 they didn't.</p> <p>25 I really think it's unfair and really not</p>

<p style="text-align: right;">Page 297</p> <p>1 terribly productive to get into it again now. 2 There is a full, complete record of his testimony 3 on that subject when it was a lot closer to the 4 events. 5 And my concern is any testimony he gives now 6 will necessarily be incomplete. I don't believe 7 he has reviewed any of that testimony, and it's 8 been six years now. 9 MR. CLARE: Okay. 10 MR. MOSCATO: That's my objection. So, you 11 know, I guess I'll let him answer, but under the 12 caveat that I can't imagine he is capable of 13 giving anything close to a complete answer at this 14 time. 15 MR. CLARE: Okay, I will accept that, and as 16 I mentioned to you at the outset of this 17 questioning, I'm not going to belabor the point. 18 I've read that prior testimony and I believe that 19 it is a complete recount, recitation of your 20 testimony in this regard, and I'm not intending to 21 replay it and I'm not trying to play gotcha with 22 you and identify other areas. 23 I'm just trying to understand the general 24 subject areas, we talked about a number of them 25 today, in connection with what information Morgan</p>	<p style="text-align: right;">Page 299</p> <p>1 A. Yes. 2 Q. And you did a number of additional 3 procedures? 4 A. Yes. 5 Q. And those interviews and those additional 6 procedures resulted in you and Andersen having 7 information about Sunbeam that it didn't have in 8 connection with the 1997 audit; is that correct? 9 A. Yes. 10 Q. A lot more information? 11 A. Yes. 12 Q. Okay. And those interviews and those 13 additional procedures also resulted in Andersen and you 14 having information about Sunbeam that it didn't have in 15 the first quarter of 1998? 16 A. Yes. 17 Q. And it was at that point that you concluded 18 that Sunbeam had withheld material information from 19 Andersen? 20 MR. MOSCATO: That point being during the 21 restatement process? 22 MR. CLARE: During the restatement process. 23 THE WITNESS: For the most part, yes. 24 BY MR. CLARE: 25 Q. Is that a fair statement?</p>
<p style="text-align: right;">Page 298</p> <p>1 Stanley asked about and what information we had 2 when we, Morgan Stanley, were doing the due 3 diligence. 4 BY MR. CLARE: 5 Q. So I guess let me just ask you this general 6 question. 7 As you sit here today, do you have any reason 8 to know that Morgan Stanley had more information than 9 Andersen in the first quarter of 1998? 10 MR. MARKOWSKI: On what subject? 11 MR. CLARE: Well, on any subject. 12 THE WITNESS: I have no idea what they had or 13 didn't have. 14 BY MR. CLARE: 15 Q. You felt, though, that Sunbeam had withheld 16 material information from Andersen on a number of 17 different areas, correct? 18 MR. MOSCATO: Objection, can you please pin 19 down when he came to that frame of mind? 20 BY MR. CLARE: 21 Q. You worked on the restatement investigation, 22 correct? 23 A. Yes. 24 Q. And as part of the restatement investigation, 25 you conducted interviews of Sunbeam employees?</p>	<p style="text-align: right;">Page 300</p> <p>1 A. That made it pretty iron clad that that was 2 the case, yes. 3 Q. Did you consider the information that was 4 withheld by Sunbeam from Andersen to be material? 5 A. Yes. 6 Q. And as you sit here today, do you consider 7 the information that was withheld by Sunbeam from 8 Andersen to be important to an understanding of 9 Sunbeam's business? 10 A. Yes. 11 Q. And as you sit here today, do you have any 12 reason to believe as a result of your work on the 13 restatement investigation that Morgan Stanley had 14 information about Sunbeam that was withheld from 15 Andersen? 16 A. I have no idea. 17 Q. Do you have any information that occurs to 18 you today as a result of your work on the restatement 19 investigation where you said Morgan Stanley knew x 20 facts and we, Andersen, did not? 21 MR. MOSCATO: Larry, the question is do you 22 have any information? So the answer is either 23 yes, you do have information, or no, you don't 24 have information. 25 THE WITNESS: I think there is information --</p>

<p style="text-align: right;">Page 301</p> <p>1 I've come to understand that there was information 2 given to Morgan Stanley that wasn't given to 3 Arthur Andersen. Is that your question? 4 BY MR. CLARE: 5 Q. Sure. Now tell me what that information was. 6 A. Just reading the -- you know, I can't tell 7 you if it's true or not. Reading the complaints. 8 Q. Oh, the complaints that were filed in this 9 lawsuit? 10 A. Right. 11 Q. So putting aside the allegations that are 12 made in the complaints that were filed in this lawsuit, 13 and I want you to exclude them from your mind, because 14 those are legal allegations that were made and have not 15 been proven and there is no evidence has been submitted 16 yet to support them, but based than your own personal 17 knowledge and recollection of the events -- 18 A. I think -- 19 MR. MOSCATO: Let him finish. 20 BY MR. CLARE: 21 Q. Based on your own personal knowledge and 22 events, involved in these events, are you aware of any 23 information that Morgan Stanley had in 1997 or the 24 first quarter of 1998 that Andersen did not? 25 A. I believe there were, there is correspondence</p>	<p style="text-align: right;">Page 303</p> <p>1 restatement report that was issued by Andersen? 2 A. Yes. 3 Q. Are you generally familiar with the areas in 4 which a restatement of Sunbeam's financial statements 5 were done? 6 A. Generally, yes. 7 Q. Bill and hold transactions and reserves and 8 supplier rebates, those type of areas? 9 A. Correct. 10 Q. In any of the areas that were covered by the 11 restatement investigation and the subsequent 12 restatement report, did you learn any information that 13 Morgan Stanley had that was not available to Andersen? 14 A. I believe there were forecasts and detailed 15 information that was given to Morgan Stanley that we 16 didn't get copies of. 17 Q. Can you identify them? 18 A. Not specifically. I remember meetings with, 19 having meetings with Lisa Galbarth, I think her name 20 was, or I think the -- I forget the name of the other 21 one, a number of documents to go through the forecast 22 and as such to get ready for the bank syndicate. 23 So there were a lot of documents that we 24 never saw, but that we knew were supplied to Morgan 25 Stanley.</p>
<p style="text-align: right;">Page 302</p> <p>1 and documentation of previous meetings with Coleman and 2 Al Dunlap, and I recall specifically after going 3 through all of the documents that were furnished to the 4 SEC. 5 Q. I'm not sure I understand your answer. 6 A. Well, I believe that there were documents. I 7 reviewed all the documents that were given to the SEC 8 by everybody, all of Sunbeam, whatever, first, second, 9 third phase. 10 And there was documentation on various 11 meetings and conversations and initial meeting, 12 conversation with Dunlap and representatives of 13 Coleman. I don't remember specifically, but I believe 14 there were also people from Morgan Stanley at those 15 meetings. 16 Q. You're saying that these were documents that 17 related to negotiations between Sunbeam and Coleman for 18 the acquisition? 19 A. Before the contemplated acquisition in March, 20 there was I think another series of conversations 21 before the end of the year. That's all I can recall 22 specifically. 23 Q. Okay. So putting aside information that 24 related to the acquisition, and I want to focus on your 25 work on the restatement investigation, you reviewed the</p>	<p style="text-align: right;">Page 304</p> <p>1 Q. What about information that related to the 2 specific restatement items? Putting aside the fact 3 that Andersen -- that Sunbeam may have provided 4 documents that were different than the documents that 5 were provided to Andersen, was there any information 6 relevant to your restatement inquiry that Morgan 7 Stanley had that Andersen did not? 8 A. I have no idea. 9 Q. You don't recall any as you sit here today? 10 A. No. 11 Q. As part of the work that you did on the 12 restatement, did you discover any evidence or 13 information that Morgan Stanley was involved in any of 14 the accounting judgments that led to the restatement? 15 A. No. 16 Q. Or any of the individual transactions that 17 are described in the restatement report? 18 A. I don't believe so, no. 19 Q. We've talked about a couple of them today, 20 EPI and Encore and some of those. Did you uncover any 21 information that Morgan Stanley was involved in any of 22 those transactions? 23 A. No. 24 Q. As part of the work that you did on the 25 restatement, you interviewed Sunbeam employees,</p>

76 (Pages 301 to 304)

<p style="text-align: right;">Page 305</p> <p>1 correct?</p> <p>2 A. Some.</p> <p>3 Q. And you participated in a number of those</p> <p>4 interviews?</p> <p>5 A. Yes.</p> <p>6 Q. You've seen more than 30 interviews. Can you</p> <p>7 estimate how many of those you participated in?</p> <p>8 A. I don't know, six to twelve maybe.</p> <p>9 Q. And those interviews were conducted in</p> <p>10 connection, in conjunction with the attorneys at</p> <p>11 Scadden Arps?</p> <p>12 A. Among others, yes.</p> <p>13 Q. And they were conducted after Al Dunlap had</p> <p>14 been fired?</p> <p>15 A. Yes.</p> <p>16 Q. And after Kersh was gone?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. This was after Mr. Levin had been installed</p> <p>19 as the CEO?</p> <p>20 A. Yes.</p> <p>21 Q. After Mr. Levin had instituted what became</p> <p>22 known as the amnesty program?</p> <p>23 A. Yes.</p> <p>24 Q. Are you familiar with the amnesty program</p> <p>25 that Mr. Levin instituted generally?</p>	<p style="text-align: right;">Page 307</p> <p>1 A. I don't know.</p> <p>2 Q. We've seen reports in the production showing</p> <p>3 that you spent more than 1,000 hours on the restatement</p> <p>4 investigation. Does that sound about right?</p> <p>5 A. Probably.</p> <p>6 Q. And in addition to the interviews that we</p> <p>7 described, you did additional accounting procedures?</p> <p>8 A. Yes.</p> <p>9 Q. One of the interviews that you conducted was</p> <p>10 Deborah MacDonald?</p> <p>11 A. Yes.</p> <p>12 Q. Were you present for that interview?</p> <p>13 A. I believe so, yes.</p> <p>14 Q. Do you recall Miss MacDonald telling you that</p> <p>15 the only contact that people from Sunbeam had with</p> <p>16 investment bankers was through Mr. Kersh and</p> <p>17 Mr. Goudis?</p> <p>18 A. Sounds familiar, but I'm not 100 percent</p> <p>19 sure.</p> <p>20 MR. CLARE: Mark this as the next exhibit,</p> <p>21 please.</p> <p>22 (MS Exhibit No. 59 was marked for</p> <p>23 identification.)</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 306</p> <p>1 A. I think I might have been the first one to</p> <p>2 let an employee know about it.</p> <p>3 Q. But the --</p> <p>4 A. Speak now or forever hold your peace type</p> <p>5 thing.</p> <p>6 Q. The purpose was to encourage employees to be</p> <p>7 candid with Andersen and Scadden in conducting these</p> <p>8 interviews as part of the restatement?</p> <p>9 A. Yes.</p> <p>10 Q. Because Andersen wanted to get as much</p> <p>11 information as possible from Sunbeam about what was</p> <p>12 really going on?</p> <p>13 A. Yes.</p> <p>14 Q. Can you describe just generally what your</p> <p>15 role was in the restatement?</p> <p>16 A. To help coordinate the efforts, to interview</p> <p>17 the people you mentioned, to do some additional work</p> <p>18 myself, to deal with Deloitte & Touche, Scadden Arps,</p> <p>19 the management team, and basically review and look for</p> <p>20 items, things that were withheld from Arthur Andersen.</p> <p>21 Q. And you discovered items that were withheld</p> <p>22 from Arthur Andersen, correct?</p> <p>23 A. Yes.</p> <p>24 Q. How much time did you spend, roughly, on the</p> <p>25 restatement investigation?</p>	<p style="text-align: right;">Page 308</p> <p>1 BY MR. CLARE:</p> <p>2 Q. I've handed you what's been marked as Morgan</p> <p>3 Stanley Exhibit 60.</p> <p>4 A. Okay.</p> <p>5 Q. It's a July 24th, 1998, memo from Donald</p> <p>6 Denkhaus to the files, memorializing an interview</p> <p>7 conducted with Deborah MacDonald.</p> <p>8 Have you seen this document before?</p> <p>9 A. Yes.</p> <p>10 Q. The document states in the first paragraph</p> <p>11 that "On July 21st, 1998, Larry Bornstein and Chris</p> <p>12 Malloy, attorney with Scadden Arps, and Mr. Denkhaus</p> <p>13 conducted an interview."</p> <p>14 Do you recall being present in the interview</p> <p>15 with Miss MacDonald?</p> <p>16 A. Yes.</p> <p>17 Q. Flip to page five of the interview memo.</p> <p>18 Top of the page says, "MacDonald indicated that the</p> <p>19 only contact that the investment bankers, Morgan</p> <p>20 Stanley, had with the company was through Kersh and</p> <p>21 Goudis."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall Miss MacDonald telling you</p> <p>25 that?</p>

<p style="text-align: right;">Page 309</p> <p>1 A. Not specifically, no.</p> <p>2 Q. Do you recall generally her telling you that?</p> <p>3 A. No.</p> <p>4 Q. In the course of the work that you did on the</p> <p>5 restatement investigation, did you learn that Morgan</p> <p>6 Stanley had contact with Sunbeam employees other than</p> <p>7 Mr. Kersh and Mr. Goudis?</p> <p>8 A. No, not specifically, no.</p> <p>9 Q. Is what Miss MacDonald -- let me withdraw</p> <p>10 that.</p> <p>11 It's reported here in the interview memo,</p> <p>12 Miss MacDonald's statement, that all the information</p> <p>13 for Morgan Stanley had to go through Mr. Kersh and</p> <p>14 Mr. Goudis.</p> <p>15 Is that consistent -- well, I don't want</p> <p>16 to -- is that consistent with what you learned in the</p> <p>17 restatement investigation about how Sunbeam's</p> <p>18 management controlled information from outsiders?</p> <p>19 MR. MARKOWSKI: Object to the form of the</p> <p>20 question.</p> <p>21 MR. MOSCATO: I have to object.</p> <p>22 THE WITNESS: Are you going to object?</p> <p>23 MR. MOSCATO: I already did object.</p> <p>24 THE WITNESS: Sorry about that.</p> <p>25</p>	<p style="text-align: right;">Page 311</p> <p>1 so internally inconsistent, I'm not sure what</p> <p>2 generalizations you can make out of this document</p> <p>3 and I'm not sure how you can generalize the</p> <p>4 generalizations in this document to what happened</p> <p>5 with Andersen. I just think it's very confusing</p> <p>6 and I don't think it's a fair question as posed.</p> <p>7 MR. CLARE: Well, I'm not trying to confuse.</p> <p>8 All I'm trying to get at is if this were in fact</p> <p>9 the case.</p> <p>10 MR. MOSCATO: I'm sorry, what?</p> <p>11 THE WITNESS: If it was the case.</p> <p>12 BY MR. CLARE:</p> <p>13 Q. Were you surprised, are you surprised to</p> <p>14 learn that Sunbeam employees thought that information</p> <p>15 they had was withheld from Morgan Stanley?</p> <p>16 Does that surprise you based on what you</p> <p>17 heard in the restatement investigation?</p> <p>18 MR. MARKOWSKI: Object to the form of the</p> <p>19 question.</p> <p>20 MR. MOSCATO: You can answer that question.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. CLARE:</p> <p>23 Q. Why doesn't that surprise you?</p> <p>24 A. Based on where we sit today, what happened.</p> <p>25 Q. Okay. Is one of the reasons it doesn't</p>
<p style="text-align: right;">Page 310</p> <p>1 BY MR. CLARE:</p> <p>2 Q. Here's my question. You testified before</p> <p>3 that material information had been withheld from</p> <p>4 Andersen during 1997 and the first quarter of 1998,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And that information was withheld from</p> <p>8 Andersen by members of Sunbeam management, right?</p> <p>9 A. In some cases, yes.</p> <p>10 Q. Okay. And information that was known to</p> <p>11 other employees at Sunbeam was shielded from Andersen,</p> <p>12 correct?</p> <p>13 A. In some cases, yes.</p> <p>14 Q. So you, as part of the restatement</p> <p>15 investigation, you concluded that Sunbeam employees had</p> <p>16 information that was not provided to Andersen. And</p> <p>17 what I'm asking is what Miss MacDonald is reporting</p> <p>18 here, that information had to be channeled through</p> <p>19 senior management to go to Morgan Stanley, is that</p> <p>20 consistent with what, the conclusion you formed about</p> <p>21 how Sunbeam controlled information from outsiders?</p> <p>22 MR. MARKOWSKI: Object to the form of the</p> <p>23 question.</p> <p>24 MR. MOSCATO: I have to object to it. I even</p> <p>25 object to -- I don't know, the memo itself is just</p>	<p style="text-align: right;">Page 312</p> <p>1 surprise you is because information was also withheld</p> <p>2 from Andersen?</p> <p>3 A. Yes.</p> <p>4 Q. As part of the restatement investigation, did</p> <p>5 Andersen ultimately reach an opinion as to whether</p> <p>6 Sunbeam's internal controls were adequate in 1997 and</p> <p>7 the first quarter of 1998?</p> <p>8 A. As part of the restatement? I believe they</p> <p>9 did.</p> <p>10 Q. And do you recall what that opinion was?</p> <p>11 A. Not specifically, no.</p> <p>12 Q. And as part of the restatement investigation,</p> <p>13 did Andersen reach an opinion as to whether Sunbeam was</p> <p>14 able to produce accurate financial statements in 1997</p> <p>15 and the first quarter of 1998?</p> <p>16 A. I believe we did, yes.</p> <p>17 Q. And do you know what that opinion was?</p> <p>18 A. Which opinion is this?</p> <p>19 Q. Regarding Sunbeam's ability to produce</p> <p>20 accurate financial statements in 1997, in the first</p> <p>21 quarter of --</p> <p>22 A. I don't remember specifically what the</p> <p>23 opinion said.</p> <p>24 Q. Isn't it true that Sunbeam concluded --</p> <p>25 strike that.</p>

<p style="text-align: right;">Page 313</p> <p>1 Isn't it true that Andersen concluded at the 2 conclusion of the restatement investigation that 3 Sunbeam's internal controls were inadequate in 1997 and 4 the first quarter of 1998? 5 A. I believe so, yes. 6 Q. And isn't it true that Andersen concluded at 7 the end of the restatement investigation that Sunbeam 8 was unable to produce accurate financial statements in 9 1997 and the first quarter of 1998? 10 MR. MARKOWSKI: Object to the form. 11 THE WITNESS: I'm not sure exactly if that's 12 the way it -- I know there was a restatement, so I 13 don't remember what the opinion says. 14 MR. CLARE: I'm going to hand you the next 15 exhibit we'll mark as Morgan Stanley 61. 16 THE REPORTER: 60. 17 MR. MARKOWSKI: If that's right, you might 18 want to adjust the numbering, because he was 19 testifying about a document you were calling 60 20 already, so you might want to make this one 59 and 21 that one 60. 22 THE WITNESS: The Deborah MacDonald document 23 was 59. 24 MR. MARKOWSKI: But it was referred to in the 25 transcript as 60.</p>	<p style="text-align: right;">Page 315</p> <p>1 first page says Sunbeam Corporation Management Letter, 2 October 16, 1998. 3 Have you seen this document before? 4 A. Yes. 5 Q. And if you turn to the third page of the 6 exhibit, it's a letter dated October 16, 1998, from 7 Andersen addressed to the board of directors, 8 management of Sunbeam Corporation. 9 A. Yes. 10 Q. If you look at page two of the letter, which 11 is Bates number CPH 0084409, second full paragraph, I 12 ask you to read that to yourself. 13 A. Okay. 14 Q. The last sentence there expresses the opinion 15 that "The company's design and effectiveness of its 16 internal controls were inadequate to detect material 17 misstatements in the preparation of the company's 1997 18 annual and quarterly financial statements." 19 Do you see that? 20 A. Yes. 21 Q. That was a conclusion that Andersen reached 22 in October of 1998? 23 A. Yes, that's what it says here. 24 Q. Okay. This was at the conclusion of the 25 restatement investigation?</p>
<p style="text-align: right;">Page 314</p> <p>1 MR. MOSCATO: Why don't we just correct the 2 transcript then. 3 MR. MARKOWSKI: Either one, one way or the 4 other. 5 MR. CLARE: Let's mark this as 61. 6 (MS Exhibit No. 60 was marked for 7 identification.) 8 MR. MARKOWSKI: What are we doing about the 9 MacDonald exhibit? 10 MR. CLARE: We'll correct it in the 11 transcript. 12 THE WITNESS: She put 60 on here. 13 MR. CLARE: Let's re-mark the October 16, 14 1998 management letter as Morgan Stanley 15 Exhibit 61. 16 (Thereupon, the document was re-marked 61.) 17 THE REPORTER: So there is no 60? 18 MR. CLARE: Not yet. And let's re-mark the 19 Deborah MacDonald interview memo as Exhibit 60 to 20 conform with testimony. 21 (MS Exhibit No. 60 was marked for 22 identification.) 23 BY MR. CLARE: 24 Q. Mr. Bornstein, I'm handing you what has now 25 been marked as Morgan Stanley Exhibit 61, a document,</p>	<p style="text-align: right;">Page 316</p> <p>1 A. I believe so. 2 Q. And did you share that conclusion in 3 October 1998? 4 A. I don't specifically remember if I did or 5 didn't, but I was part of the engagement team, so -- 6 Q. In 1997 while you were working on the Sunbeam 7 audit, did you have any reason based on the work that 8 you performed to question the design or effectiveness 9 of Sunbeam's internal controls? 10 A. In some areas, yes. 11 Q. Can you tell me what they were? 12 A. There was a draft of a management letter that 13 was, I don't think it was ever issued, but given to 14 people from Sunbeam that probably had several of these 15 in there. 16 Q. This was provided to Sunbeam management in 17 19, in connection with the 1997 audit? 18 A. Yes. 19 Q. And did you believe that the conditions that 20 were described in the draft management letter were 21 material weaknesses as that term is defined in Morgan 22 Stanley Exhibit 61? 23 A. Not at that time, no. 24 Q. At that time those were suggestions by 25 Andersen on how internal control could be improved?</p>

<p style="text-align: right;">Page 317</p> <p>1 A. Yes.</p> <p>2 Q. But the conclusion that there was a material</p> <p>3 weakness was not reached by you or Andersen until</p> <p>4 October 1998; is that correct?</p> <p>5 A. I don't know the specific date, but that's</p> <p>6 when the report was given.</p> <p>7 Q. The report here identifies -- you can flip</p> <p>8 through it -- a number of areas that are identified as</p> <p>9 material weaknesses. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Okay. Were any of the material weaknesses</p> <p>12 that are identified as material weaknesses in this</p> <p>13 report known to you in 1997?</p> <p>14 A. Any of the material weaknesses known to me</p> <p>15 during when?</p> <p>16 MR. MOSCATO: Any material weaknesses?</p> <p>17 MR. CLARE: Correct.</p> <p>18 BY MR. CLARE:</p> <p>19 Q. I'm asking you while you were working on the</p> <p>20 1997 audit, were you aware of anything that rose to the</p> <p>21 level of a material weakness of Sunbeam's internal</p> <p>22 controls?</p> <p>23 MR. MOSCATO: I thought he answered that.</p> <p>24 MR. CLARE: The answer is no?</p> <p>25 THE WITNESS: That's what I answered a few</p>	<p style="text-align: right;">Page 319</p> <p>1 examination. I just think it's a little</p> <p>2 repetitive.</p> <p>3 MR. CLARE: This is my last question in this</p> <p>4 area and I plan to move on, so the objection took</p> <p>5 longer than the repetitive questioning.</p> <p>6 MR. MOSCATO: I think it needs to be said,</p> <p>7 though, but go on.</p> <p>8 MR. CLARE: Can you reread my question,</p> <p>9 please. We'll get an answer and move on to the</p> <p>10 next topic.</p> <p>11 (Thereupon, a portion of the record</p> <p>12 was read by the reporter.)</p> <p>13 THE WITNESS: No.</p> <p>14 BY MR. CLARE:</p> <p>15 Q. In August of 1998 were you aware of a</p> <p>16 settlement between Sunbeam and MacAndrews & Forbes?</p> <p>17 A. No.</p> <p>18 Q. Did you have any involvement in --</p> <p>19 A. Actually, say that again, in August of --</p> <p>20 Q. 1998, were you aware of a settlement that</p> <p>21 took place in that time period between Sunbeam and</p> <p>22 MacAndrews & Forbes?</p> <p>23 A. Generally I did, yeah.</p> <p>24 Q. And this was a settlement whereby MacAndrews</p> <p>25 and Forbes received warrants to purchase additional</p>
<p style="text-align: right;">Page 318</p> <p>1 minutes ago.</p> <p>2 BY MR. CLARE:</p> <p>3 Q. In the first quarter of 1998, were you aware</p> <p>4 of any material weaknesses in Sunbeam's internal</p> <p>5 controls?</p> <p>6 A. No.</p> <p>7 Q. In 1997, did you believe that Andersen -- I'm</p> <p>8 sorry, did you believe that Sunbeam was incapable of</p> <p>9 producing reliable financial statements?</p> <p>10 A. No.</p> <p>11 Q. Did you believe that in the first quarter of</p> <p>12 1998?</p> <p>13 A. No.</p> <p>14 Q. Did you have any reason in the first quarter</p> <p>15 of 1998 to believe that Sunbeam was incapable of</p> <p>16 producing reliable financial statements?</p> <p>17 MR. MOSCATO: I object. I just don't see the</p> <p>18 difference between that question and one he just</p> <p>19 answered two minutes ago. I'm really, I have to</p> <p>20 object in the strongest terms of repeating the</p> <p>21 same thing over and over.</p> <p>22 We're getting near the eight-hour limit, and</p> <p>23 I'd ask you to be just a little less repetitive in</p> <p>24 your questioning. And I do that in all respect.</p> <p>25 I think you're conducting a very professional</p>	<p style="text-align: right;">Page 320</p> <p>1 shares of Sunbeam stock?</p> <p>2 A. I believe so.</p> <p>3 Q. Did you have any involvement or do any work</p> <p>4 on behalf of Sunbeam in connection with that</p> <p>5 settlement?</p> <p>6 A. No.</p> <p>7 Q. Did you have any involvement in valuing those</p> <p>8 warrants?</p> <p>9 A. No.</p> <p>10 Q. Or disclosing that settlement in Sunbeam's</p> <p>11 financial statements?</p> <p>12 A. No.</p> <p>13 Q. Have you ever seen any documents or reports</p> <p>14 relating to the valuation of those warrants?</p> <p>15 A. No.</p> <p>16 Q. You were involved in drafting the disclosures</p> <p>17 that were in the 1997 10K, weren't you, some of them?</p> <p>18 A. Yes.</p> <p>19 Q. And specifically you were involved in the</p> <p>20 drafting of disclosures in the 10K about Sunbeam's bill</p> <p>21 and hold sales?</p> <p>22 A. I don't know about drafting, but recommending</p> <p>23 that something be put in there.</p> <p>24 Q. Okay. At one of your prior depositions you</p> <p>25 said that you were involved in at least reviewing and</p>

<p style="text-align: right;">Page 321</p> <p>1 commenting on the disclosures. Is that correct?</p> <p>2 A. Yeah, I think that's fair.</p> <p>3 Q. And the deposition you indicated that you</p> <p>4 thought those disclosures were very good disclosures.</p> <p>5 MR. MARKOWSKI: Object to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: I don't know if they were very</p> <p>8 good, I don't remember what I said, very good or</p> <p>9 good, but --</p> <p>10 BY MR. CLARE:</p> <p>11 Q. But you thought they were either very good or</p> <p>12 good?</p> <p>13 A. Well, they were reasonable.</p> <p>14 Q. Okay. And at the time were you aware of any</p> <p>15 bill and hold transactions beyond those that had been</p> <p>16 disclosed in the 1997 10K?</p> <p>17 A. No.</p> <p>18 Q. And do you think that the disclosures that</p> <p>19 you reviewed and that ultimately ended up in the 1997</p> <p>20 10K adequately informed investors that Sunbeam had</p> <p>21 engaged in hold sales?</p> <p>22 MR. MARKOWSKI: Object to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: Yes.</p> <p>25</p>	<p style="text-align: right;">Page 323</p> <p>1 BY MR. CLARE:</p> <p>2 Q. If you look at the document, the Bates number</p> <p>3 at the bottom, CPH 1409071.</p> <p>4 A. Okay.</p> <p>5 Q. The paragraph at the top of the page,</p> <p>6 carryover paragraph, if you just read that to yourself.</p> <p>7 My question is going to be whether you had any</p> <p>8 involvement in drafting this disclosure.</p> <p>9 THE WITNESS: I don't remember having any</p> <p>10 specific involvement in that specific paragraph.</p> <p>11 BY MR. CLARE:</p> <p>12 Q. Do you recognize that paragraph as in part a</p> <p>13 disclosure of the Sunbeam's Early Buy program and the</p> <p>14 risks associated with the Early Buy program?</p> <p>15 A. One of the risks.</p> <p>16 Q. And that risk is that it increases the</p> <p>17 company's risk of collecting accounts receivable?</p> <p>18 A. Correct.</p> <p>19 Q. And this is, this disclosure is contained in</p> <p>20 the section labeled Cautionary Statements of the 10K?</p> <p>21 A. Couldn't tell you. There is like eight</p> <p>22 different fonts here.</p> <p>23 Q. If you look at the page before, page seven?</p> <p>24 MR. MOSCATO: I object. You don't need</p> <p>25 Mr. Bornstein to say where in a publicly-filed</p>
<p style="text-align: right;">Page 322</p> <p>1 BY MR. CLARE:</p> <p>2 Q. Are you aware that the 1997 10K includes</p> <p>3 disclosures about Sunbeam's Early Buy program?</p> <p>4 A. Yes.</p> <p>5 Q. You were involved in drafting those</p> <p>6 disclosures, too?</p> <p>7 A. I don't remember specifically.</p> <p>8 Q. Did you play a similar role as you just</p> <p>9 described with regard to bill and hold?</p> <p>10 A. I don't remember.</p> <p>11 Q. This morning Mr. Markowski asked you some</p> <p>12 questions about the Early Buy program and the, what it</p> <p>13 means to accelerate sales from one quarter into an</p> <p>14 earlier quarter. Do you recall that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall that that subject, the</p> <p>17 possibility of sales being advanced into an earlier</p> <p>18 quarter, was among the information contained in the</p> <p>19 disclosures?</p> <p>20 MR. MARKOWSKI: Object to the form of the</p> <p>21 question, lack of foundation.</p> <p>22 THE WITNESS: I'd have to look at it.</p> <p>23 MR. CLARE: Let's look at what was previously</p> <p>24 marked as Morgan Stanley Exhibit 12.</p> <p>25</p>	<p style="text-align: right;">Page 324</p> <p>1 document with the SEC a particular paragraph</p> <p>2 exists. This is really becoming abusive now.</p> <p>3 Can you please ask him factual questions</p> <p>4 other than identifying that particular words exist</p> <p>5 in a particular document that's publicly filed.</p> <p>6 BY MR. CLARE:</p> <p>7 Q. Do you see on page seven it says the words</p> <p>8 Cautionary Statements?</p> <p>9 A. Yes.</p> <p>10 Q. So the disclosure that you just read appears</p> <p>11 in that section?</p> <p>12 A. Yes.</p> <p>13 Q. If you turn to the next page, two pages</p> <p>14 later, page nine of the 10K, the third bullet from the</p> <p>15 bottom, the bullet that begins "Sales of certain of the</p> <p>16 company's products," do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Read that bullet to yourself, and I'm going</p> <p>19 to ask you if you were involved in drafting that</p> <p>20 disclosure.</p> <p>21 A. I don't remember having any involvement in</p> <p>22 drafting that.</p> <p>23 Q. The discussion that you had with</p> <p>24 Mr. Markowski this morning about accelerating sales in</p> <p>25 one quarter or one financial period into an earlier</p>

81 (Pages 321 to 324)

<p style="text-align: right;">Page 325</p> <p>1 period --</p> <p>2 A. Yes.</p> <p>3 Q. Is the paragraph that you just read on page</p> <p>4 nine of the 10K, is that a disclosure that, of that</p> <p>5 phenomena that you were describing?</p> <p>6 A. I have no idea. I can read it 100 times.</p> <p>7 It's too late in the day to give you a conclusion on</p> <p>8 that.</p> <p>9 Q. Well, this morning, in response to questions</p> <p>10 from Mr. Markowski, you testified that in looking at</p> <p>11 various iterations of the comfort letter --</p> <p>12 A. The comfort letter?</p> <p>13 Q. Yes. There was a discussion there about</p> <p>14 reasons for the shortfall --</p> <p>15 A. Right, right.</p> <p>16 Q. -- in January and February of 1998. Do you</p> <p>17 recall that?</p> <p>18 A. Yes.</p> <p>19 Q. And you testified this morning about the</p> <p>20 impact of an Early Buy program and how one of the</p> <p>21 reasons identified in the comfort letter was the</p> <p>22 acceleration of sales into an earlier time period.</p> <p>23 Do you recall that?</p> <p>24 A. Right.</p> <p>25 Q. And my question is does this disclosure that</p>	<p style="text-align: right;">Page 327</p> <p>1 A. I'm not sure about him. Mr. Lurie was.</p> <p>2 Q. Mr. Lurie was also on the call?</p> <p>3 A. He was physically present.</p> <p>4 Q. And he was physically present with you in New</p> <p>5 York.</p> <p>6 And the only in-person meeting that you had</p> <p>7 with Morgan Stanley was the one at Global Financial</p> <p>8 Press in New York?</p> <p>9 A. Several meetings, yes.</p> <p>10 Q. A series of meetings?</p> <p>11 A. And Scadden Arps.</p> <p>12 MR. CLARE: Let's take a two-minute break and</p> <p>13 I think we may be done or close to done.</p> <p>14 THE VIDEOGRAPHER: We are now going off video</p> <p>15 record. The time on the monitor is 5:05 p.m.</p> <p>16 (Thereupon, a recess was taken.)</p> <p>17 THE VIDEOGRAPHER: We are now back on video</p> <p>18 record. The time on the monitor, 5:11 p.m.</p> <p>19 BY MR. CLARE:</p> <p>20 Q. Mr. Bornstein, I appreciate your patience. A</p> <p>21 few final items for now.</p> <p>22 You discussed earlier in your testimony the</p> <p>23 decision by Sunbeam to extend first quarter of 1998, do</p> <p>24 you recall that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 326</p> <p>1 we've just looked at in the middle of page nine, is</p> <p>2 that the same phenomena that you were discussing with</p> <p>3 Mr. Markowski this morning, to your knowledge?</p> <p>4 MR. MARKOWSKI: Objection, asked and</p> <p>5 answered, and object to the form of the question.</p> <p>6 THE WITNESS: It could be similar.</p> <p>7 BY MR. CLARE:</p> <p>8 Q. The statement specifically that such a</p> <p>9 program, meaning the Early Buy program, could have a</p> <p>10 negative impact on future financial performance.</p> <p>11 THE WITNESS: Yes, you can read that well.</p> <p>12 Same thing I read.</p> <p>13 BY MR. CLARE:</p> <p>14 Q. You don't have a view one way or the other as</p> <p>15 to whether that's the same phenomena that you were</p> <p>16 describing with Mr. Markowski?</p> <p>17 A. Similar.</p> <p>18 Q. Similar. Did you ever have an in-person</p> <p>19 meeting with Morgan Stanley in the state of Florida?</p> <p>20 A. No.</p> <p>21 Q. The accounting due diligence call that you</p> <p>22 participated in, you participated in from New York?</p> <p>23 A. Yes.</p> <p>24 Q. Was Mr. Tyree with you physically at the</p> <p>25 printer during that due diligence call?</p>	<p style="text-align: right;">Page 328</p> <p>1 Q. Did you have any discussions with Morgan</p> <p>2 Stanley on that subject?</p> <p>3 A. Bob Lurie and I did, but not Morgan Stanley.</p> <p>4 Q. And this conversation with Mr. Lurie, was</p> <p>5 that after Global Financial Press?</p> <p>6 A. Yes.</p> <p>7 Q. That issue didn't arise until closer to the</p> <p>8 end of the quarter?</p> <p>9 A. Yes.</p> <p>10 Q. And tell me about your conversation with</p> <p>11 Mr. Lurie.</p> <p>12 A. I don't remember specifics about it, to be</p> <p>13 honest with you.</p> <p>14 Q. Did you have an understanding one way or the</p> <p>15 other about whether Morgan Stanley had a position on</p> <p>16 extending the quarter?</p> <p>17 A. No.</p> <p>18 Q. You described this morning in response to</p> <p>19 questions from Mr. Markowski and again in response to</p> <p>20 questions by me this afternoon about the additional</p> <p>21 procedures, the sales cutoff testing that was done at</p> <p>22 your direction.</p> <p>23 A. Yes.</p> <p>24 Q. At the end of the first quarter. Do you</p> <p>25 recall that?</p>

<p style="text-align: right;">Page 329</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall either from the documents that</p> <p>3 we looked at today or from your recollection whether</p> <p>4 there were any inconsistencies or irregularities that</p> <p>5 were reported to you as a result of that cutoff</p> <p>6 testing?</p> <p>7 A. Not, no irregularities. There was nothing</p> <p>8 that wasn't resolved.</p> <p>9 Q. So the additional procedures that you asked</p> <p>10 to be performed were in fact performed?</p> <p>11 A. Yes.</p> <p>12 Q. To your satisfaction?</p> <p>13 A. Yes.</p> <p>14 Q. And Mr. Kistler or the other individuals that</p> <p>15 were informed in those procedures never advised you</p> <p>16 specifically of an issue with regard to the cutoff</p> <p>17 testing that led you to believe that Sunbeam's cutoff</p> <p>18 had been done improperly?</p> <p>19 A. No.</p> <p>20 MR. CLARE: Those are all the questions that</p> <p>21 I have for now.</p> <p>22 THE WITNESS: Okay.</p> <p>23 REDIRECT (Lawrence Bornstein)</p> <p>24 BY MR. MARKOWSKI:</p> <p>25 Q. Mr. Bornstein, hopefully just a few brief</p>	<p style="text-align: right;">Page 331</p> <p>1 in its first quarter 1998 net sales results was</p> <p>2 including Coleman Company sales?</p> <p>3 A. Yes.</p> <p>4 Q. For the three-day or two-day period at the</p> <p>5 end of the quarter after the closing of the Coleman</p> <p>6 transaction, correct?</p> <p>7 A. Yes.</p> <p>8 Q. So there was an amount of sales that didn't</p> <p>9 come from Sunbeam's business, but yet came from the</p> <p>10 business that Sunbeam had acquired Coleman Company,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Do you recall approximately how many millions</p> <p>14 of dollars that was?</p> <p>15 A. No.</p> <p>16 MR. CLARE: Objection, foundation.</p> <p>17 BY MR. MARKOWSKI:</p> <p>18 Q. But you recall that was part of what Sunbeam</p> <p>19 claimed at its first quarter sales results, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And that was as a result of extending the</p> <p>22 quarter?</p> <p>23 A. Yes.</p> <p>24 Q. And there were additional days of Sunbeam</p> <p>25 sales included first quarter results too, correct?</p>
<p style="text-align: right;">Page 330</p> <p>1 items.</p> <p>2 Do you have Morgan Stanley Exhibit 58 in</p> <p>3 front of you? It's the April 3 press release</p> <p>4 announcing the fact that Sunbeam had missed</p> <p>5 accomplishing first quarter 1997 sales levels.</p> <p>6 MR. CLARE: Take this one, Larry.</p> <p>7 THE WITNESS: Okay.</p> <p>8 BY MR. MARKOWSKI:</p> <p>9 Q. Do you see the first paragraph purports that</p> <p>10 Sunbeam expected to be approximately five percent below</p> <p>11 1997's first quarter net sales result?</p> <p>12 A. Yes.</p> <p>13 Q. And I think you testified that the books had</p> <p>14 been close at that point, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Do you recall that the actual shortfall was</p> <p>17 greater than five percent?</p> <p>18 A. At that point, at the end of the day, you</p> <p>19 mean?</p> <p>20 Q. At the end of the day do you recall that the</p> <p>21 actual shortfall was something greater than</p> <p>22 five percent?</p> <p>23 A. It depend how it was defined.</p> <p>24 Q. That's what I was going to get at next.</p> <p>25 Whatever the shortfall was, do you recall that Sunbeam</p>	<p style="text-align: right;">Page 332</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall as you sit here today what the</p> <p>3 shortfall from 1997 first quarter results was if</p> <p>4 Sunbeam had not extended the quarter, thereby including</p> <p>5 Coleman Company sales and additional days of Sunbeam</p> <p>6 sales?</p> <p>7 A. No.</p> <p>8 Q. But the shortfall would be even greater as a</p> <p>9 result of that adjustment, correct?</p> <p>10 A. I don't even know if it was a shortfall. I</p> <p>11 don't know what the numbers were.</p> <p>12 Q. Well, this press release announces that there</p> <p>13 is a shortfall.</p> <p>14 A. Five percent lower, yeah, right.</p> <p>15 Q. Without waiving my objection to the questions</p> <p>16 that Mr. Clare asked on these subjects, you recall that</p> <p>17 he asked you questions concerning whether you had</p> <p>18 information indicating that Morgan Stanley had been</p> <p>19 involved in committing a fraud on my client.</p> <p>20 Do you recall those questions?</p> <p>21 A. Yes.</p> <p>22 Q. With respect to that, do you have any</p> <p>23 knowledge, sir, concerning the statements that Morgan</p> <p>24 Stanley made to my client concerning the success of</p> <p>25 Sunbeam's turnaround?</p>

<p style="text-align: right;">Page 333</p> <p>1 A. That Morgan Stanley -- can you read that 2 back? 3 Q. Let me ask it again. 4 Do you have any knowledge, Mr. Bornstein, of 5 the statements that were made by Morgan Stanley to my 6 client concerning the success of Mr. Dunlap's 7 turnaround of Sunbeam? 8 A. No. 9 Q. You don't have any knowledge of what Morgan 10 Stanley said to my client on that subject, do you? 11 A. No. 12 Q. Do you have any knowledge of what Morgan 13 Stanley said to my client on Sunbeam's performance in 14 the first quarter of 1998? 15 A. No. 16 Q. Or that Sunbeam said to my client concerning 17 its performance in the first quarter of 1998 in Morgan 18 Stanley's presence? 19 A. No idea. 20 Q. Do you have any knowledge of the statements 21 that were made by Morgan Stanley to my client about 22 Sunbeam's prospects for 1998? 23 A. No. 24 Q. Do you have any knowledge of the statements 25 made in Morgan Stanley's presence by Sunbeam concerning</p>	<p style="text-align: right;">Page 335</p> <p>1 to be a real risk at that point in time? 2 A. No. 3 Q. And that's the way you meant it when you said 4 it to Mr. Tyree, correct? 5 A. Yes. 6 Q. You said, sir, that you found it amazing that 7 Morgan Stanley during the course of its communications 8 with you or contacts with you didn't inquire about the 9 status of Sunbeam's first quarter sales results. 10 Do you recall that testimony today? 11 A. Yes. 12 Q. Why did you find it amazing that Morgan 13 Stanley didn't make that inquiry during the various 14 times it was in contact with you or others from Arthur 15 Andersen? 16 A. Should have been the first question on the 17 list. 18 Q. And why did you think that, sir? 19 A. Why did I think that? 20 Q. Why did you think it was the first question 21 that Morgan Stanley should have been asking you? 22 A. Because they were selling bonds based on 23 current and future performance. 24 Q. Now we're getting a document that I want to 25 use for another question, sir.</p>
<p style="text-align: right;">Page 334</p> <p>1 Sunbeam's prospects for the full fiscal year 1998? 2 A. No. 3 Q. When you left -- Mr. Clare asked you some 4 questions about the statement that you made to 5 Mr. Tyree that you hoped to God that Sunbeam at least 6 accomplished sales equal to first quarter 1997 sales or 7 otherwise people should expect to be sued. 8 Do you recall the questions on that, relating 9 to this comment? 10 A. Yes. 11 Q. You did make a comment to that effect during 12 the session at Global Financial Press on March 19, 13 correct? 14 A. Yes. 15 Q. And you made that comment to Mr. Tyree, 16 correct? 17 A. Yes. 18 Q. When you made it, were you joking? 19 A. No. 20 Q. Was Mr. Tyree laughing? 21 A. No. 22 Q. Was it said in jest? 23 A. No. 24 Q. When you said it was an off-the-cuff 25 statement, was it something that you didn't understand</p>	<p style="text-align: right;">Page 336</p> <p>1 Mr. Clare asked you whether Morgan Stanley 2 objected during, to your statement, during the session 3 at the printer on March 19, to your statement that you 4 intended to implement special procedures to monitor 5 Sunbeam's end-of-the-quarter shipments. 6 Do you recall that? 7 A. That they objected? 8 MR. MOSCATO: I'm sorry, say that again? 9 BY MR. MARKOWSKI: 10 Q. Do you recall that Mr. Clare asked you 11 whether Morgan Stanley objected when you told Mr. Tyree 12 that you intended to implement special procedures to 13 monitor Sunbeam's shipments at the end of the first 14 quarter? Do you recall that question? 15 MR. CLARE: I object to the form. 16 THE WITNESS: I remember the question, yes. 17 BY MR. MARKOWSKI: 18 Q. Did Morgan Stanley say to you when you told 19 Mr. Tyree -- strike that. 20 Did Mr. Tyree say to you when you told him 21 that that was your intention that he thought that was a 22 good idea and that you should for sure go ahead and do 23 that? 24 A. No, they were silent. 25 Q. Did the lawyers from Davis Polk say that's a</p>

<p style="text-align: right;">Page 337</p> <p>1 great idea, go ahead and do that?</p> <p>2 A. No. Silent.</p> <p>3 Q. That list of, the sales buildup that you were</p> <p>4 shown for -- let me see if I can get it in front of</p> <p>5 me -- that you were provided at the printer on</p> <p>6 March 19th, the one-page list of potential sales, do</p> <p>7 you recall that?</p> <p>8 MR. MOSCATO: Does he need it in front of him</p> <p>9 for this question?</p> <p>10 THE WITNESS: I have it here.</p> <p>11 MR. MARKOWSKI: Let me see if I can find it.</p> <p>12 MR. MOSCATO: He's got it.</p> <p>13 BY MR. MARKOWSKI:</p> <p>14 Q. Have you got it?</p> <p>15 A. Yeah.</p> <p>16 Q. Did -- one of the things you said you told</p> <p>17 Mr. Tyree was he should just do the math with respect</p> <p>18 to trying to determine whether this was a reasonable</p> <p>19 forecast of Sunbeam's sales expectations for the first</p> <p>20 quarter, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Mr. Clare asked you this morning or this</p> <p>23 afternoon questions concerning the fiscal capability of</p> <p>24 Sunbeam's facilities to ship a certain level of product</p> <p>25 per day.</p>	<p style="text-align: right;">Page 339</p> <p>1 calculation in my head, yes.</p> <p>2 BY MR. MARKOWSKI:</p> <p>3 Q. Okay. Do you know whether that was in fact</p> <p>4 what Sunbeam would be able to do based on where it</p> <p>5 stood with respect to having booked orders for product?</p> <p>6 Did you know that one way or the other?</p> <p>7 MR. MOSCATO: Objection.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. MARKOWSKI:</p> <p>10 Q. I don't think we need to mark this as an</p> <p>11 exhibit, sir, but I want to show you your, a transcript</p> <p>12 of your testimony before the, your prior testimony on</p> <p>13 October 13, 1999, in connection with related</p> <p>14 proceedings.</p> <p>15 MR. MOSCATO: Counsel, for what purpose are</p> <p>16 you showing him the document?</p> <p>17 MR. MARKOWSKI: There is just one question I</p> <p>18 want to show him to see if I can refresh his</p> <p>19 recollection to a particular aspect of the</p> <p>20 testimony.</p> <p>21 MR. MOSCATO: If you can ask the question</p> <p>22 first.</p> <p>23 MR. MARKOWSKI: It was asked. I'll ask it</p> <p>24 again.</p> <p>25</p>
<p style="text-align: right;">Page 338</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall those questions?</p> <p>3 Did the fact that some substantial portion,</p> <p>4 approximately \$86 million, as I read this chart, of</p> <p>5 these potential sales had not been booked as orders by</p> <p>6 this point in time have an effect on your thinking with</p> <p>7 respect to the feasibility of Sunbeam being able to</p> <p>8 accomplish this level of sales in the remaining days of</p> <p>9 the quarter?</p> <p>10 MR. CLARE: Object to the form.</p> <p>11 MR. MOSCATO: I object to that too.</p> <p>12 THE WITNESS: I don't remember specifically</p> <p>13 if that was my thought process.</p> <p>14 BY MR. MARKOWSKI:</p> <p>15 Q. Well, if the sales had all been in and</p> <p>16 recorded at that point in time, would you have had a --</p> <p>17 strike that. Let me put it this way.</p> <p>18 When you read this chart, did you understand</p> <p>19 that Sunbeam was going to be able to divide into equal</p> <p>20 daily segments the amount of product that needed to be</p> <p>21 shipped out each day in order to accomplish at least</p> <p>22 \$254 million in sales?</p> <p>23 MR. CLARE: I object to the form.</p> <p>24 MR. MOSCATO: I object.</p> <p>25 THE WITNESS: I did a straight line division,</p>	<p style="text-align: right;">Page 340</p> <p>1 BY MR. MARKOWSKI:</p> <p>2 Q. Do you recall, sir, that Mr. Tyree, when you</p> <p>3 told him your views concerning whether the substance of</p> <p>4 the press release should be put in the offering</p> <p>5 memorandum, that Mr. Tyree said to you --</p> <p>6 MR. MOSCATO: Wait, Larry, don't look at</p> <p>7 anything yet.</p> <p>8 BY MR. MARKOWSKI:</p> <p>9 Q. "You know, this is going in. I don't care</p> <p>10 what you say. This is going in."</p> <p>11 A. As I sit here, I don't recall him saying</p> <p>12 that, but if I said that, if it's in the testimony from</p> <p>13 four or five years ago, it's a lot closer to the time.</p> <p>14 Q. Let me give you a chance to take a look at</p> <p>15 that specific question and answer. It's on page 492</p> <p>16 and 493, if you could just read.</p> <p>17 MR. MOSCATO: You're asking him to refresh</p> <p>18 his recollection?</p> <p>19 MR. MARKOWSKI: Right.</p> <p>20 MR. MOSCATO: Okay.</p> <p>21 MR. MARKOWSKI: Whether he recalls today</p> <p>22 Mr. Tyree in fact saying those words to him.</p> <p>23 MR. MOSCATO: Read it, Larry, then close it</p> <p>24 up, and then testify as to whether or not that</p> <p>25 actually refreshes your recollection.</p>

<p style="text-align: right;">Page 341</p> <p>1 MR. CLARE: I'm sorry, what page are you 2 asking him to read? 3 MR. MARKOWSKI: The questioning starts at 4 492, carries over onto 493 at the top. 5 THE WITNESS: Okay. 6 MR. MOSCATO: Wait for a question. 7 BY MR. MARKOWSKI: 8 Q. Sir, does that refresh your recollection that 9 in response to your objection to including the press 10 release in the offering memorandum, the March 19 press 11 release in the offering memorandum, that Mr. Tyree said 12 to you, "You know, this is going in. I don't care what 13 you say, this is going in." 14 A. It doesn't refresh my memory. 15 Q. Did I accurately read that statement from 16 your prior testimony? 17 A. Yes. 18 Q. And that testimony was given at a point in 19 time closer to the events than today, correct? 20 A. Yes. 21 Q. Do you have any reason to believe your 22 testimony at that time was inaccurate on that point? 23 A. No. 24 MR. MARKOWSKI: I don't have any further 25 questions.</p>	<p style="text-align: right;">Page 343</p> <p>1 Q. But my question is in terms of your surprise 2 at not receiving any inquiries, would that question, 3 how is the company doing, be among the inquiries that 4 you would have expected to receive in connection with 5 diligence that was done by Coleman (Parent) Holdings? 6 A. If any questions were asked, that would have 7 been one of them that I would have believed should have 8 been asked. 9 Q. It would have been on the list? 10 A. It would have been on the list. 11 Q. And it would have been an important question 12 on the list? 13 A. Yes. 14 MR. CLARE: That's all I have. 15 MR. MARKOWSKI: One more question. 16 REDIRECT (LAWRENCE BORNSTEIN) 17 BY MR. MARKOWSKI: 18 Q. Mr. Bornstein, do you know whether -- excuse 19 me, do you know what my client, Coleman (Parent) 20 Holdings, asked Sunbeam and asked Morgan Stanley on the 21 subject of how Sunbeam was doing in the first quarter 22 of 1998 and what my client was told by them? 23 A. No. 24 MR. MARKOWSKI: Thank you. 25 THE VIDEOGRAPHER: This is the conclusion of</p>
<p style="text-align: right;">Page 342</p> <p>1 RECROSS (LAWRENCE BORNSTEIN) 2 BY MR. CLARE: 3 Q. Mr. Bornstein, you responded to a question 4 from Mr. Markowski about Morgan Stanley's due 5 diligence. He asked you why you were amazed at Morgan 6 Stanley's due diligence. Do you recall that? 7 A. Yes. 8 Q. Let me ask you the same question that he 9 asked you with regard to inquiries from Nafco, 10 MacAndrews and Forbes and Coleman (Parent) Holdings. 11 And you told me earlier that you were surprised that 12 you didn't receive any inquiries from Coleman (Parent) 13 Holdings or its representatives in connection with the 14 acquisition, correct? 15 A. Yes. 16 Q. And was your statement that an inquiry about 17 how the company was doing should have been the first 18 question on the list, does that apply equally to 19 inquiries that you would have expected to receive from 20 Coleman (Parent) Holdings? 21 A. No. 22 Q. Would you have expected that to be 23 unimportant question that you would receive? 24 A. That me personally would receive? I wasn't 25 with them, so the answer is no.</p>	<p style="text-align: right;">Page 344</p> <p>1 the videotape deposition of Mr. Bornstein. We are 2 now going off video record. The time on the 3 monitor is 5:30 p.m. 4 (Witness excused.) 5 (Deposition was concluded.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 345</p> <p>1 THE STATE OF FLORIDA)</p> <p>2 COUNTY OF PALM BEACH)</p> <p>3</p> <p>4 I, the undersigned authority, certify that the</p> <p>5 witness personally appeared before me and was duly sworn.</p> <p>6</p> <p>7 WITNESS my hand and official seal this 19th day</p> <p>8 of January, 2004.</p> <p>9</p> <p>10</p> <p>11</p> <p>12 Rachel W. Bridge, RMR, CRR</p> <p>13 Notary Public - State of Florida</p> <p>14 My Commission Expires: 1/15/07</p> <p>15 My Commission No.: DD164752</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 347</p> <p style="text-align: center;">CERTIFICATE</p> <p>1</p> <p>2 - - -</p> <p>3</p> <p>4 THE STATE OF FLORIDA</p> <p>5 COUNTY OF PALM BEACH</p> <p>6</p> <p>7 I hereby certify that I have read the</p> <p>8 foregoing deposition by me given, and that the</p> <p>9 statements contained herein are true and correct to the</p> <p>10 best of my knowledge and belief, with the exception of</p> <p>11 any corrections or notations made on the errata sheet,</p> <p>12 if one was executed.</p> <p>13</p> <p>14 Dated this ____ day of _____,</p> <p>15 2004.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 Lawrence A. Bornstein</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 346</p> <p>1 CERTIFICATE</p> <p>2 THE STATE OF FLORIDA)</p> <p>3 COUNTY OF PALM BEACH)</p> <p>4 I, Rachel W. Bridge, Registered</p> <p>5 Professional Reporter and Notary Public in and for</p> <p>6 the State of Florida at Large, do hereby certify</p> <p>7 that the aforementioned witness was by me first duly</p> <p>8 sworn to testify the whole truth; that I was</p> <p>9 authorized to and did report said deposition in</p> <p>10 stenotype; and that the foregoing pages are a true</p> <p>11 and correct transcription of my shorthand notes of</p> <p>12 said deposition.</p> <p>13 I further certify that said deposition was</p> <p>14 taken at the time and place hereinabove set forth</p> <p>15 and that the taking of said deposition was commenced</p> <p>16 and completed as hereinabove set out.</p> <p>17 I further certify that I am not attorney or</p> <p>18 counsel of any of the parties, nor am I a relative or</p> <p>19 employee of any attorney or counsel of party connected</p> <p>20 with the action, nor am I financially interested in the</p> <p>21 action.</p> <p>22 The foregoing certification of this transcript</p> <p>23 does not apply to any reproduction of the same by any means</p> <p>24 unless under the direct control and/or direction of the</p> <p>25 certifying reporter.</p> <p>IN WITNESS WHEREOF, I have hereunto set my</p> <p>hand this 19th day of January, 2004.</p> <p>_____</p> <p>Rachel W. Bridge, RMR, CRR</p> <p>Notary Public State of Florida</p> <p>My Commission Expires: 1/15/07</p> <p>My Commission No.: DD164752</p>	<p style="text-align: right;">Page 348</p> <p>1 ERRATA SHEET</p> <p>2 IN RE: Coleman(Parent)Holdingsvs. Morgan Stanley</p> <p>3 DEPOSITION OF: Lawrence Bornstein TAKEN: 1-15-04</p> <p>4 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE</p> <p>5 PAGE # LINE # CHANGE REASON</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 Please forward the original signed errata sheet to this</p> <p>18 office so that copies may be distributed to all</p> <p>19 parties.</p> <p>20 Under penalty of perjury, I declare that I have read my</p> <p>21 deposition and that it is true and correct subject to</p> <p>22 any changes in form or substance entered here.</p> <p>23 DATE: _____</p> <p>24 SIGNATURE OF</p> <p>25 DEPONENT: _____</p>

87 (Pages 345 to 348)

14

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

15

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

MORGAN STANLEY & CO. INCORPORATED,
MORGAN STANLEY SENIOR FUNDING, INC.,
and MORGAN STANLEY,

Plaintiffs,

v.

ARTHUR ANDERSEN LLP (an Illinois limited
liability partnership), AWSC SOCIÉTÉ
COOPÉRATIVE, *en liquidation* (a Swiss
cooperative corporation), ARTHUR ANDERSEN
LLP (an Ontario limited liability partnership),
ARTHUR ANDERSEN & CO. (a Hong Kong
partnership), RUIZ, URQUIZA Y CIA, S.C. (a
Mexico partnership), PORTA CACHAFEIRO,
LARIA & ASOCIADOS (a Venezuela partnership),
PHILLIP E. HARLOW, WILLIAM PRUITT, and
DONALD DENKHAUS,

Defendants.

CASE NO. 502004CA002257XXXXMB
Division AA

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT JUDICIAL COURT
IN

AUG 06 2004

COPY / ORIGINAL
RECEIVED FOR FILING

FIRST AMENDED COMPLAINT

In March 1998, Morgan Stanley & Co. Incorporated ("MS & Co."), Morgan Stanley Senior Funding, Inc. ("MSSF"), and Morgan Stanley — in direct reliance on certified financial statements that were audited by Defendant Arthur Andersen LLP (an Illinois limited-liability partnership) ("Andersen") with the assistance of and in coordination with the other Defendants named in this Complaint¹ — underwrote a multi-million dollar offering of convertible notes and

¹ AWSC, Société Coopérative, *en liquidation*, a Swiss cooperative corporation ("Andersen-Worldwide") (formerly known as Andersen Worldwide, Société Coopérative), Arthur Andersen LLP (an Ontario limited liability partnership) ("Andersen-Canada"), Arthur Andersen & Co. (a

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

provided a \$680 million loan to Sunbeam Corporation, Inc., in connection with Sunbeam's acquisition of three companies. As Sunbeam's subsequent restatement of its financial results showed, these certified financial statements grossly misrepresented Sunbeam's true financial condition. Andersen and the other Defendants had full knowledge of these misstatements, and they intended that MS & Co. and MSSF would rely on these unqualified audit opinions. Plaintiffs — as a direct consequence of this deceit — have lost hundreds of millions of dollars. Accordingly, Plaintiffs bring this action and allege the following:

Nature of Action

1. In March 1998, Sunbeam announced the acquisition of The Coleman Company, Inc., Signature Brands USA, Inc., and First Alert, Inc. In order to finance these acquisitions, Sunbeam issued \$750 million of convertible notes, which MS & Co. underwrote, and borrowed \$1.2 billion in secured financing, including a loan of \$680 million from MSSF.
2. In serving as an underwriter (which required MS & Co. to act as the initial purchaser of the convertible notes) and in agreeing to extend the loan, MS & Co. and MSSF relied on the accuracy of Sunbeam's financial statements, including its 1996 and 1997 financial statements that had been audited and certified by Andersen, as well as other representations made to them by Andersen. The Andersen-certified Sunbeam financial statements portrayed Sunbeam as a financially sound company in the midst of an extraordinary financial turnaround.

Hong Kong partnership) ("Andersen-Hong Kong"), Ruiz, Urquiza y Cia, S.C. (a Mexico partnership) ("Andersen-Mexico"), Porta Cachafeiro, Laria & Asociados (a Venezuela partnership) ("Andersen-Venezuela"), Phillip E. Harlow, William Pruitt, and Donald Denkhaus.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

3. In reality, unbeknownst to Plaintiffs, Sunbeam's "turnaround" was an illusion facilitated by the Defendants. As became apparent in the summer of 1998 and as confirmed by Sunbeam's subsequent restatement of its financial results, the 1996 and 1997 statements that Andersen had certified — and upon which MS & Co. and MSSF had relied — did not, contrary to the representations that Andersen made to MS & Co. and MSSF, conform with generally accepted accounting principles ("GAAP"). Andersen, with full knowledge of the material misstatements contained in Sunbeam's financial reports, issued unqualified audit opinions for both 1996 and 1997. In so doing, it failed to perform its audit in accordance with generally accepted auditing standards ("GAAS").

4. In fact, the statements that Andersen audited and certified as in compliance with GAAP and as representing Sunbeam's true financial condition, were replete with accounting improprieties. As a consequence, and contrary to the representations that Andersen made to MS & Co. and MSSF, Sunbeam's true financial condition was misstated by millions of dollars.

5. Andersen's fraud was knowingly caused by Harlow, Pruitt, and Denkhaus. Harlow (the Sunbeam engagement partner) and Pruitt (the Sunbeam concurring partner) were senior partners of Andersen and members of Andersen-Worldwide and undertook direct responsibility for directing, managing, and approving the work that was done on the Sunbeam audits. Denkhaus, who also was a senior partner of Andersen and a member of Andersen-Worldwide, was the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region and in this role undertook responsibility for supervising and monitoring the work performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. Harlow, Pruitt, and Denkhaus also knew or recklessly disregarded that the

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

erroneous financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the convertible notes and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

6. This fraud was also knowingly perpetrated by the foreign Andersen branches named in this complaint, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, and Andersen-Venezuela (collectively, the "Foreign Andersen Branches"). Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew of or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

7. The fraud was also knowingly perpetrated by Andersen-Worldwide through the actions of its members, including Harlow, Pruitt, and Denkhau, and its member firms, including Andersen and the Foreign Andersen Branches.

8. This fraud ultimately forced Sunbeam and several of its subsidiaries to seek relief under Chapter 11 of the Bankruptcy Code, in February 2001. As part of the bankruptcy court-approved reorganization plan, MSSF's \$680 million loan to Sunbeam was discharged in full, and MSSF received Sunbeam stock valued at a fraction of the original loan. In addition, the convertible notes issued by Sunbeam and held by MS & Co. had been rendered substantially less valuable.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

9. By this complaint, Plaintiffs seek compensatory damages of several hundreds of millions of dollars.

THE PARTIES AND OTHER RELEVANT ENTITIES

10. MS & Co. is a financial services firm that engages in underwriting, investment banking, financial advisory services, securities sales and trading, and research. In late 1997 and early 1998, MS & Co. assisted Sunbeam in identifying potential acquisition targets and served as Sunbeam's financial advisor with respect to certain aspects of Sunbeam's acquisitions of Coleman, Signature Brands, and First Alert. MS & Co. also served as the underwriter of a \$750 million offering of convertible notes that Sunbeam used to finance these acquisitions. MS & Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

11. MSSF is a company that provides credit services to its clients. In 1998, MSSF entered into a credit agreement with Sunbeam under which MSSF agreed to provide a loan to Sunbeam in connection with Sunbeam's acquisition of Coleman, Signature Brands, and First Alert. Pursuant to the credit agreement, Sunbeam borrowed \$680 million from MSSF, with the borrowings used by Sunbeam to fund certain costs relating to the acquisitions. MSSF is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

12. Morgan Stanley is a financial services company. It owns 100 percent of the stock of both MS & Co. and MSSF. Morgan Stanley is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

13. Andersen was a member in or business unit of Andersen-Worldwide. Andersen is a partnership formed under the laws of the State of Illinois. Once one of the world's largest accounting firms, almost all of its partners have left the firm. Andersen participated in and coordinated the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits. In addition, Andersen's partners and employees provided consulting services to Sunbeam as part of due diligence work performed in conjunction with Sunbeam's acquisition of Coleman, as well as on other projects.

14. Andersen-Worldwide is a cooperative corporation organized under the laws of Switzerland. Its members included more than 2,000 individuals from 390 offices in 84 countries. Various individuals who were members of Andersen-Worldwide participated in the 1996 and 1997 audits of Sunbeam and the 1998 restatement of the reports of those audits. Andersen-Worldwide and Andersen dictated the policies and procedures to be used by Andersen members and affiliates throughout the world. Andersen and Andersen-Worldwide at all relevant times (a) held themselves out to the public as a single, integrated, full-service, professional business enterprise comprising "one firm" with "one voice" and "common values and vision," (b) completely dominated and controlled each other's assets, operations, policies, procedures, strategies, and tactics, (c) failed to observe corporate formalities, and (d) used and commingled the assets, facilities, employees, and business opportunities of each other, as if those assets, facilities, employees, and business opportunities were their own.

15. Andersen-Canada was a member in or part of Andersen-Worldwide. Andersen-Canada is a partnership organized under the laws of the province of Ontario, Canada. Andersen-Canada audited the 1996 and 1997 audits of Sunbeam's Canadian subsidiary for inclusion in

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

16. Andersen-Hong-Kong was a member in or part of Andersen-Worldwide.

Andersen-Hong Kong is a partnership organized under the laws of Hong Kong. Andersen-Hong Kong audited the 1996 and 1997 audits of Sunbeam's Hong Kong subsidiary for inclusion in Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

17. Andersen-Mexico was a member in or part of Andersen-Worldwide. Andersen-Mexico is a partnership organized under the laws of Mexico. Andersen-Mexico audited the 1996 and 1997 audits of Sunbeam's Mexican subsidiary for inclusion in Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

18. Andersen-Venezuela was a member in or part of Andersen-Worldwide. Andersen-Venezuela is a partnership organized under the laws of Venezuela. Andersen-Venezuela audited the 1996 and 1997 audits of Sunbeam's Venezuelan subsidiary for inclusion in Andersen's 1996 and 1997 audits of Sunbeam's consolidated financial statements. It also participated in the 1998 restatement of the reports of those audits.

19. Defendant Harlow is a resident of Florida and at all times material hereto was a partner in Andersen and a member in Andersen-Worldwide. He served as the engagement partner on the audits of Sunbeam's financial statements from 1993 to 1998. As engagement partner, Harlow undertook the primary responsibility for supervising the 1996 and 1997 audits of Sunbeam, including directing and overseeing the activities with respect to the Sunbeam work

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

performed by numerous persons at Andersen. Harlow also participated as a member of Sunbeam's due diligence team in connection with Sunbeam's acquisition of Coleman.

20. Defendant Pruitt is a resident of Florida and at all times material hereto was a partner in Andersen and a member of Andersen-Worldwide. He served as the concurring partner on the Sunbeam audits for at least 1996 and 1997. As such, he undertook responsibility for independently reviewing the Sunbeam audit work that had been conducted under Harlow's supervision and ensuring that it complied with GAAP and GAAS.

21. Defendant Denkhaus is a resident of Florida and at all times material hereto was a partner in Andersen and a member of Andersen-Worldwide. Denkhaus was Audit Division Head and manager of Andersen's audit practice for the entire South Florida region. As such, Denkhaus undertook responsibility for ensuring that the audit work performed by Andersen in the South Florida region was conducted in accordance with GAAP and GAAS. Denkhaus also served as the engagement partner on Sunbeam's ultimate restatement of its financial statements.

22. At all times material hereto, Sunbeam Corporation was headquartered in Palm Beach County, Florida. Sunbeam Corporation, through its operating subsidiaries and affiliates, manufactured, marketed, and distributed durable household and outdoor leisure consumer products through mass-market and other consumer channels. On February 6, 2001, Sunbeam and several of its affiliates filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. Sunbeam has since emerged from bankruptcy and now operates under the name American Household.

23. The Coleman Company, Inc. was a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Coleman was a Delaware corporation, with its principal place of business in Kansas. Prior to March 30, 1998, Coleman (Parent)

CASE NO. 502004CA002257XXXMB
First Amended Complaint

Holdings Inc. ("Coleman-Parent") owned 44,067,520 shares (or approximately 82 percent) of Coleman. Coleman-Parent is a Delaware corporation, with its principal place of business in New York and is a wholly-owned subsidiary of MacAndrews and Forbes Holdings, Inc. ("MAFCO"). MAFCO is a global investment firm owned and operated by financier Ronald O. Perelman. Through its various subsidiaries and affiliates, MAFCO owns and/or controls a number of multi-billion dollar global corporations, including Revlon, Inc., the international consumer cosmetics company. MAFCO is a Delaware corporation, with its principal place of business in New York.

JURISDICTION AND VENUE

24. This Court has jurisdiction over the subject matter of this action pursuant to section 26.012(2)(a), Florida Statutes, because Plaintiff seeks damages in excess of \$15,000 exclusive of interest, costs, and attorneys' fees.

25. This Court has personal jurisdiction over Andersen, Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, and Andersen-Venezuela pursuant to section 48.193(1)(a), (b), and (f), Florida Statutes, because each of them, directly or through its partners, members, agents, or employees, (1) operated, conducted, engaged in, or carried on a business or business venture in Florida from which the acts and injuries complained of in this action arose, (2) committed within Florida the tortious acts complained of in this action, or (3) by an act or omission outside of Florida, caused the complained-of injuries to Plaintiffs to occur within Florida at or about the time that it was engaged in service activities in Florida or that its services were used or consumed within Florida in the ordinary course of commerce, trade, or use.

26. This Court has personal jurisdiction over Defendants Harlow, Pruitt, and Denkhaus, because each of them is a resident of Florida.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

27. Venue is proper in this Court pursuant to section 47.011, Florida Statutes, because Andersen maintained an office with more than 30 employees and partners in Palm Beach County, and the cause of action accrued in Palm Beach County.

FACTUAL BACKGROUND

Andersen's and Sunbeam's Fraudulent Scheme

28. In July 1996, to address its growing financial difficulties, Sunbeam hired Albert Dunlap as Chairman and Chief Executive Officer. Dunlap was a well-known "turnaround" specialist who had a history of apparent success at other companies. He was nicknamed "Chainsaw Al" because of his practice of cutting staff and closing plants to achieve quick turnaround results.

29. Immediately after he was hired, Dunlap publicly predicted that, as a result of the Company's restructuring, Sunbeam would attain significant increases in its margins and sales. Dunlap replaced almost all of top management with his own selections, hiring Russell A. Kersh (Chief Financial Officer); Donald R. Uzzi (Vice President, Marketing and Product Development, and later Executive Vice President, Consumer Products Worldwide); Lee B. Griffith (Vice President, Sales); and Robert J. Gluck (Principal Accounting Officer).

30. Unbeknownst to the public and to Plaintiffs, Sunbeam's new senior management embarked upon a scheme designed to misrepresent Sunbeam's financial condition. Sunbeam's subsequent November 1998 restatement of its 1996 and 1997 financial statements revealed the plan that Sunbeam's management had adopted and Andersen facilitated. In 1996, Sunbeam's management, with Andersen's knowing assistance, caused Sunbeam to overstate its operating losses by at least \$40 million, thereby establishing an overly bleak financial backdrop against

CASE NO. 502004CA002257XXXMB
First Amended Complaint

which the company's performance in 1997 would be measured. In 1997, by contrast, management caused Sunbeam dramatically to overstate its earnings. When 1997 operating earnings were eventually corrected and restated, they were \$95 million less than the earnings originally reported — and approximately half of the figure that Andersen had previously certified.

31. In order to convince the public that Sunbeam's turnaround was real, Sunbeam needed an outside auditor to validate its financial reports. Andersen — desperate to retain a valuable client — stood ready to assist Sunbeam in its scheme.

32. After Dunlap assumed control of Sunbeam, Andersen had reason to fear that its relationship with Sunbeam was in jeopardy. Harlow, Pruitt, and Denkhaus knew that Dunlap had employed Coopers & Lybrand, one of Andersen's major competitors, as a financial consultant and independent auditor in past turnaround assignments. In fact, Dunlap had already engaged Coopers & Lybrand to assist in planning Sunbeam's massive restructuring.

33. Andersen had a significant stake in retaining Sunbeam, a long-time major client. Being dropped by a high-profile client such as Sunbeam would have been a severe blow to Andersen's reputation. The company generated substantial income for Andersen's Florida office, paying over \$1 million in fees for its 1995 audit alone and providing it with substantial income from lucrative consulting assignments. Indeed, Andersen was so eager to keep Sunbeam as its client that it agreed to a 30-percent reduction in its 1996 audit fees.

34. Andersen's fees were particularly important to Andersen's partners, whose incomes were dependent on the continued business from Sunbeam. Andersen tied part of its audit partners' compensation to the solicitation and marketing of non-audit consulting services, and created other revenue-sharing arrangements between audit and consulting partner groups.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

35. Andersen put tremendous pressure on partners to generate more fees. A "depth chart" was developed for each audit client based upon the level of services provided to that client. Partner compensation was determined based on the additional services sold, and the ability of an Andersen partner to increase his income depended directly upon the level of fees that the partner "controlled" or sold to his or her assigned clients. These pressures led directly to a conflict of interest for the auditors on the Sunbeam engagement and were a significant factor that caused Andersen, Harlow, Pruitt, and Denkhaus, as well as the Foreign Andersen Branches, to abandon their independence, objectivity, and integrity on the Sunbeam financial statement audits and reviews.

Andersen's Worldwide Operations

36. Andersen was formed in Illinois in 1913 as an accounting and consulting partnership under the name "Arthur Andersen & Co." In 1977, as Andersen increased its global presence, it created a new structure called the "Andersen Worldwide Organization." The Andersen Worldwide Organization was overseen by Andersen-Worldwide, which acted as an umbrella organization for the Andersen, the other Andersen Worldwide Organization member firms, the members and contract partners of Andersen-Worldwide, and the individual members and partners of the Andersen Worldwide Organization member firms. The model adopted by the Andersen Worldwide Organization was intended to preserve "The Heart of Partnership Culture," including income sharing among the member firms of the Andersen Worldwide Organization and a common governance model. Thus, partners (or equivalents) in the various branches of the Andersen Worldwide Organization were also members of Andersen-Worldwide, resulting in a global partnership of more than 2,000 individuals from 390 offices in 84 different countries. In

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

addition to overlapping partners and members, Andersen-Worldwide and Andersen shared officers in common. For example, the former CEO and Managing Partner of Andersen-Worldwide, Joseph Berardino, was also the CEO and Managing Partner of Andersen.

37. Andersen-Worldwide and Andersen also shared the same address. In its promotional literature, Andersen-Worldwide stated that its headquarters were located at 33 West Monroe Street, Chicago, Illinois 60603. That is the same address as the headquarters of Andersen.

38. Andersen-Worldwide set uniform professional standards for all its offices and required the members and partners in its international offices to agree to be bound by those professional standards and principles. Andersen-Worldwide coordinated the sharing of costs and allocation of revenues and profits among its members and partners and its offices around the world. Andersen-Worldwide operated under a worldwide tax structure. In addition, Andersen-Worldwide handled all borrowing on behalf of its international offices and maintained those offices' financial records, payroll, and employee health-benefits plans. All of Andersen's offices also shared global computer operations and training facilities.

39. The components of the Andersen Worldwide Organization ignored corporate formalities in referring to themselves and each other. For example, personnel affiliated with Andersen and Andersen-Worldwide regularly exchanged correspondence and e-mails that were labeled "Andersenwo" — short for "Andersen World Organization." Documents prepared by Andersen often bore the insignia and logos of Andersen-Worldwide, including "Andersen-Worldwide," "Andersen," and "Arthur Andersen." In its promotional literature, Andersen used the names "Andersen Worldwide," "Andersen," and "Arthur Andersen" interchangeably. In addition, Andersen sometimes used only the name "Andersen" when referring to all or part of the

CASE NO. 302004CA002257XXXMB
First Amended Complaint

Andersen Worldwide Organization and did not differentiate between Andersen-Worldwide and its offices around the globe.

40. In promotional literature, Andersen, Andersen-Worldwide, and the member firms of the Andersen Worldwide Organization marketed themselves as "one firm," "a single worldwide operating structure," that "think[s] and act[s] as one."

41. News releases issued by Andersen, Andersen-Worldwide, and other member firms confirmed that the Andersen Worldwide Organization and Andersen operated as a single worldwide organization:

- Andersen referred to the brand identity adopted by the member firms of the Andersen "global client service network."
- "With world-class skills in assurance, tax, consulting and corporate finance, Arthur Andersen has more than 77,000 people in 84 countries who are united by a single worldwide operating structure that fosters inventiveness, knowledge sharing, and a focus on client success."
- "Arthur Andersen is significantly different from the other firms in structure, governance and culture — differences which can be pivotal in terms of the quality of service a client company receives. Important distinctions mark our firm from the rest. We have evolved a unique organizational culture that today unites the people of Andersen Worldwide. We are the only true global firm, sharing knowledge and doing business across borders, sharing costs which fund methodologies, research and development, lines and industry groups."
- Andersen spokesman David Tabolt stated: "We conduct more than 30,000 audits around the world every year."
- "AA is already much more integrated globally than the rest of the Big Five. As Mr. Berardino [Andersen-Worldwide's former CEO, who resigned in March 2002] points out, 'there is one name over the door. We're not an alphabet soup.' The cohesiveness of AA's culture has been a source of humor to outsiders, who have labeled its bean counters 'Androids.' While some rivals are still struggling with a complicated array of national partnerships, and thus different systems for sharing pay, AA partners enjoy a single, and possibly unique, system of remuneration: they receive a list of what each of them has earned in the past year."

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

- “Arthur Andersen is a global professional services organization consisting of over 100 member firms and more than 61,000 people united by a single worldwide operating structure and a common culture of innovation and knowledge sharing. This unique ‘one-firm’ approach qualifies the people of Arthur Andersen to serve clients by bringing together any of more than 40 competencies in a way that transcends geographic borders and organizational lines. Arthur Andersen’s people provide effective business solutions to over 100,000 clients in 81 countries around the world. Since its beginning in 1913, Arthur Andersen has realized 85 years of uninterrupted growth. With revenues of more than US \$6 billion, it stands today as a world leader in professional services. Arthur Andersen is a business unit of Andersen Worldwide.”

The Andersen-Worldwide website (Andersen.com) confirmed that there was a single worldwide organization:

- “Our 390 offices may be scattered amid 84 different countries, but our voice is the same. No matter where you go, or who you talk to, we act with one vision. Without boundaries.”
- “One world. One organization.”

Andersen’s recruiting brochures reflected that it was a single worldwide organization:

- “We will, in Arthur Andersen’s own words, ‘act as one firm and speak with one voice. It is a united family that operates across hierarchies, geographical boundaries, client groupings, service lines and competencies and feels the kinship of understanding and shared responsibility.’”

42. Andersen-Worldwide managed its operations by practice groups, as well as by geographical region. Each practice group was headed by a global practice director who oversaw, directed, and controlled the operations of each practice group worldwide. Regional practice directors (e.g., Denkhuis was the director of Andersen-Worldwide’s audit practice in South Florida) reported to the global practice director and managed the practice group within their regions.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

43. As a result of the "one firm" approach, all actions taken by members of Andersen-Worldwide, as well as all actions taken by member firms of Andersen-Worldwide, may be attributed to Andersen-Worldwide.

44. Andersen applied the "one firm" approach in its work with Sunbeam. Top partners responsible for the Sunbeam audits and restatement were partners of Andersen and members of Andersen-Worldwide, including the engagement partner on the Sunbeam audits, Harlow, the concurring partner on those audits, Pruitt, and the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, Denkhaus.

45. In addition, various international offices of Andersen-Worldwide did substantial work for Sunbeam. Sunbeam was a multinational corporation with operations in Canada, Mexico, Venezuela, and Hong Kong. The Sunbeam engagement required the participation of auditors from each of those countries and numerous American cities. Harlow, on behalf of both Andersen and Andersen-Worldwide, developed work plans that he circulated to Andersen's branches in other countries, including the Foreign Andersen Branches. Those offices worked closely with Harlow and others within Andersen and Andersen-Worldwide to complete the tasks outlined in the plans. They sent their work product to Harlow for inclusion in an Andersen-Worldwide Management Letter, as well as for incorporation in Andersen's audit work.

The Fraudulent 1996 Financial Statements

46. In 1996, after Dunlap took control of Sunbeam, Andersen permitted Sunbeam management to employ numerous accounting practices that — as Sunbeam's November 1998 restatement of its 1996 financial statements and an SEC investigation later showed — did not

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

comply with GAAP. The objective of these accounting violations was to set an artificially bleak financial backdrop against which Sunbeam's 1997 performance would be judged.

47. Among other things, Sunbeam's 1996 financial statements, certified by Andersen, did not comply with the accounting principles of (1) reliability, Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Concepts No. 2, §§ 58-97; Accounting Principles Board ("APB") Statement No. 4, §§ 109, 138, 189; (2) completeness, FASB Statement of Financial Accounting Concepts No. 2, §§ 79, 80; APB Statement No. 4, § 94; (3) conservatism, FASB Statement of Financial Accounting Concepts No. 2, §§ 91-97; APB Statements No. 9, §§ 35, 71; (4) neutrality, FASB Statement of Financial Accounting Concepts No. 2, §§ 98-110; or (5) relevance, FASB Statement of Financial Accounting Concepts No. 2, §§ 47, 48.

48. Among the accounting frauds that Andersen knowingly allowed was the artificial inflation of Sunbeam's reserves. Because the reserves were charged as an expense against income, this accounting practice allowed Sunbeam to overstate the 1996 loss against which its 1997 financial results would be compared.

49. For example, Sunbeam created a \$338 million reserve for "restructuring" charges. As the November 1998 restatement made clear, included in these charges were costs of redesigning product packaging; costs of relocating employees and equipment; bonuses to be paid to employees who were told that they were being laid off but were asked to stay on temporarily; advertising expenses; and certain consulting fees. Because these items benefited future activities, GAAP did not permit them to be classified as restructuring charges. Andersen also permitted Sunbeam to violate GAAP by creating a \$12 million reserve for a lawsuit alleging that

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

Sunbeam was liable for cleanup costs associated with a hazardous waste site, even though Sunbeam's estimated liability was, at best, half that amount.

50. Andersen also permitted Sunbeam improperly to write down its household products inventory in 1996. In connection with the restructuring, Sunbeam had decided to eliminate half of Sunbeam's product lines and to liquidate its inventory of those product lines. Although only half of Sunbeam's product lines were eliminated, Andersen allowed Sunbeam to apply, at year-end 1996, the special accounting treatment that it had accorded the eliminated lines to its entire inventory of household products. As a result, as the November 1998 financial restatement later showed, Sunbeam understated the balance sheet value of its inventory at year-end 1996 by approximately \$2 million and overstated its 1996 loss by the same amount.

51. Andersen also allowed management improperly to recognize, as a 1996 expense, \$2.3 million in 1997 advertising expenses and related costs. In addition, Andersen permitted Sunbeam to manipulate its 1996 liabilities for "cooperative advertising." It was Sunbeam's practice to fund a portion of its retailers' costs of running local promotions. As required by GAAP, Sunbeam accrued its estimated liabilities for this expense. At year-end 1996, Sunbeam set its cooperative advertising accrual at an inflated value of \$21.8 million. According to the November 1998 restatement, this accrual was improper under GAAP because it was approximately 25 percent higher than the prior year's accrual amount, without a proportional increase in sales providing a basis for the increase. Ultimately, as the November 1998 restatement showed, \$5.8 million of that excessive accrual was used (without disclosure) to inflate Sunbeam's 1997 income.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

Andersen's 1996 Unqualified Audit Opinion

52. In the course of auditing Sunbeam's 1996 financial statements, Andersen became aware of these and other improper accounting practices. Indeed, an Andersen employee questioned a Sunbeam employee about the restructuring reserves and was told that the reserve included "everything but the kitchen sink." Harlow, the Andersen engagement partner, knew of this statement.

53. Harlow informed Kersh and Gluck, who were part of Sunbeam's senior management, that certain of the restructuring reserves that Sunbeam had established were not properly accounted for as restructuring costs under GAAP because they benefited Sunbeam's future operations. He proposed that Sunbeam reverse the accounting entries on its books and records reflecting the establishment of these reserves. However, when Kersh and Gluck refused to reverse these items, Harlow caused Andersen to acquiesce to Sunbeam's fraudulent accounting for the reserves.

54. In March 1997, Andersen issued an unqualified audit opinion regarding Sunbeam's 1996 financial statements and authorized the inclusion of its audit opinion in Sunbeam's 1996 Form 10-K filed with the SEC. A copy of the 1996 Audit Opinion is exhibit "A" attached hereto. Consistent with Andersen's internal procedures, the Audit Opinion was issued at the direction of Harlow and Pruitt. Denkhaus, as Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising the audit work performed in Andersen's South Florida region and thus also bore responsibility for the issuance of this opinion.

55. Despite its knowledge of the many improper accounting practices that Sunbeam's management had employed, Andersen's opinion stated:

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

We conducted our audits in accordance with generally accepted auditing standards.

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

In our opinion, the financial statements . . . present fairly, in all material respects, the financial position of Sunbeam Corporation and subsidiaries as of December 31, 1995 and December 29, 1996, and the results of their operations and their cash flows for each of the three fiscal years in the period ended December 29, 1996 in conformity with generally accepted accounting principles.

56. Andersen also knowingly provided false descriptions of certain of Sunbeam's specific accounting practices. For example, it characterized Sunbeam's treatment of its restructuring charges in Note 2 to the audited 1996 consolidated financial statements as follows:

In conjunction with the implementation of the restructuring and growth plan, the Company recorded a pre-tax special charge to earnings of approximately \$337.6 million in the fourth quarter of 1996. This amount is allocated as follows in the accompanying Consolidated Statement of Operations: \$154.9 million to Restructuring, Impairment and Other Costs as further described below; \$92.3 million to Cost of Goods Sold related principally to inventory write-downs from the reduction in SKUs and costs of inventory liquidation programs; \$42.5 million to Selling, General and Administrative expenses principally for increases in environmental and litigation reserves (see Notes 12 and 13) and other reserve categories; and the estimated pre-tax loss on the divestiture of the Company's furniture business of approximately \$47.9 million.

In fact, however, Andersen knew that Sunbeam had improperly inflated its restructuring costs by millions of dollars.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

57. Andersen's 1996 audit violated GAAS because, among other things, Andersen failed (1) to perform the audits with an attitude of professional skepticism as required by the Statement on Auditing Standards ("SAS") No. 53; (2) to conclude that there was a significant risk that Sunbeam management would intentionally distort the company's financial statements, in violation of American Institute of Certified Public Accountants Professional Standards, AU §§ 316.10 and 316.12; (3) to recognize that the accounting policies employed by Sunbeam were not acceptable in the circumstances, in violation of AU § 316.19; (4) to obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for its opinions regarding Sunbeam's financial statements, in violation of AU § 150.02; (5) to exercise due professional care in the performance of the audit, in violation of AU § 150.02; (6) to plan the work adequately to uncover the errors and irregularities in Sunbeam's accounting information, in violation of AU § 150.02; and (7) to obtain a sufficient understanding of Sunbeam's internal control structure to plan the audits and to determine the nature, timing, and extent of tests to be performed, in violation of AU § 150.02.

58. In addition, in conducting the 1996 audit, Andersen (1) improperly relied on management representations rather than applying the auditing procedures necessary to afford a reasonable basis for an opinion on Sunbeam's financial statements, in violation of SAS No. 19 (AU § 333.02); (2) failed to recognize that misstatements resulting from misapplication of GAAP, departures from fact, and omissions of necessary information, in aggregate, caused Sunbeam's financial statements to be materially misstated, in violation of SAS No. 47 (AU § 312.04); (3) failed to issue a qualified or adverse opinion, in violation of SAS No. 47 (AU § 312.31); and (4) improperly concluded that the accounting principles applied by Sunbeam were appropriate in the circumstances and that Sunbeam's financial statements were informative

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

of matters that could affect their use, understanding, and interpretation, in violation of SAS No. 69 (AU § 411.04(b) and (c)).

59. Harlow, Pruitt, and Denkhaus knew of or recklessly disregarded numerous red flags that should have caused them to prevent Andersen from certifying Sunbeam's 1996 financial statements. However, they did nothing to stop Andersen's unqualified 1996 audit opinion from being included in Sunbeam's Form 10-K filing with the SEC, despite the fact that they knew or were reckless in not knowing that the financial statements that Andersen had certified were materially misleading. Harlow, Pruitt, and Denkhaus also knew that the false financial statements that they had caused Andersen to issue would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

60. In all, the 1996 financial statements audited by Andersen were materially false and misleading and overstated Sunbeam's operating losses for 1996 by at least \$40 million. Moreover, Andersen's unqualified audit opinion was false in at least two material respects. First, the financial statements that Andersen audited did not "fairly" present Sunbeam's financial position in conformity with GAAP, as it represented. Second, Andersen had not, as it claimed, conducted its audit in accordance with GAAS.

The Fraudulent 1997 Financial Statements

61. The accounting frauds in which Andersen permitted Sunbeam to engage in 1997 were aimed at inflating the company's earnings. To accomplish this — as the November 1998 restatement and an SEC investigation subsequently showed — Andersen allowed Sunbeam to

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

record fraudulent sales, to account improperly for one-time events, and improperly to use "cookie-jar" reserves, all in violation of GAAP.

62. Among other things, Sunbeam's 1997 financial statements, certified by Andersen, did not comply with the accounting principles of (1) reliability, FASB Statement of Financial Accounting Concepts No. 2, §§ 58-97; APB Statement No. 4, §§ 109, 138, 189; (2) completeness, FASB Statement of Financial Accounting Concepts No. 2, §§ 79, 80; APB Statement No. 4, § 94; (3) conservatism, FASB Statement of Financial Accounting Concepts No. 2, §§ 91-97; APB Statements No. 9, §§ 35, 71; (4) neutrality, FASB Statement of Financial Accounting Concepts No. 2, §§ 98-110; or (5) relevance, FASB Statement of Financial Accounting Concepts No. 2, §§ 47, 48.

63. One of the revenue inflation tactics permitted by Andersen in 1997 was improper accounting for "bill-and-hold" sales. A bill-and-hold sale occurs when a seller bills a customer for a purchase while retaining the merchandise for later delivery. During 1997, Dunlap's management team offered financial incentives to various customers to purchase products. Under GAAP, revenue under bill-and-hold transactions may be recognized only if, among other things, the buyer — not the seller — requests a sale on that basis. As Andersen subsequently learned in the course of its 1997 audit, the purported bill-and-hold customers had not requested that treatment, and, in numerous cases, the risks of ownership and legal title were never passed to the customer. Sunbeam added more than \$29 million to its 1997 sales and \$4.5 million to income by improperly accounting for these transactions.

64. Another income-boosting tactic that Andersen sanctioned was Sunbeam's improper use of its inflated 1996 reserves, which artificially increased the company's 1997 income by almost \$5 million. Andersen also let Sunbeam improperly treat \$19 million that it received from

CASE NO. 502004CA002257XXXMB
First Amended Complaint

the sale of discounted and obsolete inventory as ordinary income. Although the recognition of that revenue was permitted under GAAP, Sunbeam was required to disclose that revenue as a non-recurring event. Sunbeam failed to do so, again with Andersen's blessing.

65. In addition, Andersen and Andersen-Hong Kong allowed Sunbeam's Hong Kong subsidiary to book sales that violated applicable accounting principles because they included an unlimited right to return unsold merchandise and because the amount of future returns on such sales could not reasonably be estimated. On Andersen's and Andersen-Hong Kong's watch, Sunbeam's Hong Kong subsidiary improperly recorded sales revenue of \$8.6 million from various sales made during the fourth quarter of 1997. Andersen and Andersen-Hong Kong also permitted Sunbeam's Hong Kong subsidiary to under-provide for warranty and product liability expenses; improperly to include in 1997 net sales of \$0.5 million of goods that were not shipped until 1998; and improperly to defer 1997 advertising costs to future periods.

66. Andersen and Andersen-Canada also permitted Sunbeam's Canadian subsidiary improperly to book sales that did not meet the applicable sales recognition criteria because they included an unlimited right to return unsold merchandise and because the amount of future returns on such sales could not reasonably be estimated.

67. Andersen and Andersen-Mexico also permitted Sunbeam to employ several improper accounting tricks with respect to its Mexican subsidiary. Sunbeam's Mexican subsidiary engaged in \$900,000 in bill-and-hold transactions in 1997 that should not have been recognized as income until 1998. In addition, the subsidiary's inventory was overvalued by \$2 million, and the financial statements for Sunbeam's Mexico operations failed to include a \$3 million expense for the profit-sharing obligations of that business.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

68. Andersen and Andersen-Venezuela also permitted Sunbeam's Venezuela subsidiary improperly to value its inventory of raw materials. Its books reflected purchases of raw materials that were held at various suppliers. Andersen failed to confirm that the booked amounts represented materials that were actually in the possession of suppliers. Had it done so, it would have discovered that the materials did not exist.

69. One of the most egregious accounting abuses that Andersen permitted in 1997 was to allow Sunbeam to record a profit on a sham sale of its warranty and spare parts business to its spare parts provider, EPI Printers, Inc. Prior to 1997, EPI satisfied spare parts and warranty requests of Sunbeam customers on a fee basis. To raise additional revenue at year-end 1997, however, Sunbeam entered into a sham "sale" of the warranty and spare parts inventories already in EPI's warehouse. As a result of the transaction, management fraudulently recognized millions of dollars of bogus sales and profits in 1997.

70. The problem with the EPI transaction was that the transaction was not a sale at all, for at least three reasons. First, there was never a final agreement between Sunbeam and EPI. The closest the parties ever came to a meeting of the minds was the execution of a mere "agreement to agree." Second, by its terms, the proposed sale was to terminate on January 23, 1998, with no payment obligation on the part of EPI, absent a subsequent agreement between Sunbeam and EPI on the value of the inventory. In other words, the sale could be completely unwound just after year-end without EPI ever having paid a cent. Third, Sunbeam had agreed as part of the proposed sale to pay certain fees to EPI and to guarantee a 5-percent profit to EPI on the eventual resale of the inventory. In essence, even after the proposed sale, EPI remained a contractor compensated by Sunbeam on a fee basis for its services. In sum, the relationship between EPI and Sunbeam was not materially altered by the purported "sale."

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

71. As a result of these and other violations of accounting standards, in 1997, Sunbeam reported \$186 million in income, much of which was, according to the November 1998 restatement, improper under GAAP. In all, the overstatements included over \$90 million of improper net income, including approximately \$10 million from a sham sale of inventory to a contractor, approximately \$4.5 million from non-GAAP bill-and-hold sales, approximately \$35 million in income derived from the use of non-GAAP reserves and accruals taken at year-end 1996, and approximately \$6 million from improper revenue recognition.

Sunbeam's Purchase of Coleman

72. Toward the end of 1997, Sunbeam engaged MS & Co. to advise it with respect to the possible sale of its core businesses and/or the initiation of one or more major acquisitions. Ultimately, Coleman, Signature Brands, and First Alert were identified as three companies interested in being acquired by Sunbeam.

73. On January 28, 1998, Sunbeam announced its financial results for 1997, reporting total revenues of \$1.168 billion, and total earnings from continuing operations of \$189 million (or \$1.41 per share).

74. On February 3, 1998, Harlow met with key officers of Sunbeam to discuss the acquisition of Coleman and its financial impact on Sunbeam. By that time, as a result of reviewing Sunbeam's 1997 financial statements in the course of its audit, Harlow and Andersen knew that Sunbeam's 1997 results were false.

75. On February 20, 1998, Andersen agreed to act as a Sunbeam financial advisor and perform financial due diligence in connection with Sunbeam's acquisition of Coleman, First Alert, and Signature Brands, further compromising Andersen's duty as an auditor to maintain its

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

independence from its client. In agreeing to undertake that assignment, Andersen became an active member of the team working to assist Sunbeam in its acquisitions. Harlow and other Andersen employees who worked on Sunbeam's audit also served as members of Sunbeam's due diligence team.

76. On February 27, 1998, Sunbeam's Board of Directors met in New York to discuss Sunbeam's possible purchase of Coleman. During the February 27, 1998 meeting, MS & Co. provided Sunbeam's Board of Directors with a written "fairness" opinion regarding the fair acquisition price of Coleman. The opinion made clear that, even in the context of issuing a fairness opinion on the Coleman acquisition price, MS & Co. had relied upon Andersen's representations regarding Sunbeam's financial health. The fairness opinion explicitly stated that MS & Co. had reviewed "certain publicly available financial statements and other information" of Sunbeam. The opinion advised that MS & Co. had "assumed and relied upon without independent verification the accuracy and completeness of the information reviewed by us for the purposes of this opinion."

77. The Sunbeam Board of Directors approved the Coleman acquisition. That same day, Coleman-Parent — the 82-percent shareholder of Coleman — agreed to sell Coleman to Sunbeam for a purchase price of \$2.2 billion. Sunbeam agreed to provide Coleman-Parent with \$160 million in cash, to assume \$584 million in Coleman-related debt, and to provide Coleman-Parent with 14,099,749 shares of Sunbeam stock. Sunbeam also agreed to purchase Signature Brands and First Alert for approximately \$300 million.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

Andersen's 1997 Unqualified Audit Opinion

78. In the first week of March 1998, shortly after the agreement for Sunbeam's purchase of Coleman was signed, but before the transaction closed, Andersen rendered an unqualified audit opinion for Sunbeam's 1997 financial statements. With Andersen's express consent, management included that opinion in Sunbeam's 1997 Form 10-K filed with the SEC on March 6, 1998.

79. Andersen was well aware of the potential for fraud in Sunbeam's 1997 books, including the risk that Sunbeam management would attempt to claim profits and revenue on transactions before the earnings process was completed. Harlow had specifically advised Andersen's foreign offices (including Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, and Andersen-Venezuela), for example, that Dunlap had made promises to the public regarding earnings-per-share to be attained in 1997, and that management had a vested interest in achieving the promised earnings levels because management's primary form of compensation was based on the company's stock price. Harlow had also noted the presence of the possibility of a third-party purchase of the company's stock or assets.

80. In the course of its audit of Sunbeam's 1997 financial records, Andersen learned that Harlow's concerns were well-founded. It discovered that Sunbeam had improperly accounted for certain bill-and-hold sales, had misused its reserves, and had overvalued its inventories. Harlow discussed these problems with Sunbeam's senior management and proposed that Sunbeam reverse these improper entries.

81. For example, as part of Andersen's 1997 year-end audit, Harlow raised with Sunbeam's management the improper accounting treatment accorded to the EPI transaction. He proposed that Sunbeam reverse the accounting entries reflecting the revenue recognition for that

CASE NO. S02004CA002257XXXXMB
First Amended Complaint

transaction, pointing out that the profit guarantee and the indeterminate value of the contract rendered revenue recognition inconsistent with GAAP. Kersh and Gluck refused to reverse the transaction. Harlow caused Andersen to acquiesce in management's actions. As a result, Sunbeam's 1997 audited financial statements reflect almost \$10 million of false profit on the sham EPI transaction.

82. Harlow also raised with Kersh and Gluck Sunbeam's inappropriate use of reserves and recorded the full \$4.9 million of costs that Sunbeam had improperly offset against reserves on the list of proposed audit adjustments. Kersh and Gluck, however, refused to make the proposed adjustments. Harlow again failed to insist on honest, accurate accounting. Instead, he caused Andersen to acquiesce in Sunbeam's refusal to reverse these improper reductions in current-period costs, although he knew or recklessly disregarded facts indicating that this improper accounting would materially distort Sunbeam's reported results of operations. In fact, this use of reserves increased 1997 fourth-quarter income by almost 8 percent.

83. Harlow also proposed adjustments to reverse \$2.9 million related to Sunbeam's inventory overvaluation by its Mexican subsidiary and \$563,000 related to various miscellaneous terms. Kersh and Gluck refused to make appropriate adjustments, and Harlow again caused Andersen to acquiesce in their refusal to reverse these errors — despite the fact that these items added over 5.4 percent to Sunbeam's reported earnings for the fourth quarter and contributed to the larger misstatement of Sunbeam's reported results of operations stemming from the fraudulent conduct of Sunbeam's management.

84. These improper accounting techniques raised clear red flags that should have — and must have — alerted Andersen to the need for greater scrutiny regarding all of Sunbeam's revenue recognition decisions. At a minimum, Andersen should have been on guard as to all of

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

the proposed audit adjustments that Harlow initially proposed but later rejected, and any previously recognized improper items that were ultimately dismissed as "immaterial."

85. Despite these clear red flags, Andersen once again gave Sunbeam a clean bill of financial health, issuing an unqualified audit opinion regarding Sunbeam's 1997 financial statements and authorized the inclusion of its audit opinion in Sunbeam's 1997 Form 10-K filed with the SEC. A copy of the 1997 Audit Opinion is exhibit "B" attached hereto. The Audit Opinion is signed by Andersen. Consistent with Andersen's internal procedures, the Audit Opinion was issued at the direction of Harlow and Pruitt. Denkhau, as Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising the audit work performed in Andersen's South Florida region and thus also bore responsibility for the issuance of this opinion.

86. In this opinion, Andersen stated:

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

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

87. In fact, Andersen's 1997 audit violated GAAS because, among other things, Andersen had failed (1) to perform the audits with an attitude of professional skepticism as

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

required by SAS No. 53; (2) to reach a conclusion that there existed a significant risk of intentional distortion of financial statements by Sunbeam management, in violation of AU §§ 316.10 and 316.12; (3) to recognize that the accounting policies employed by Sunbeam were not acceptable in the circumstances, in violation of AU § 316.19; (4) to obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for its opinions regarding Sunbeam's financial statements, in violation of AU § 150.02; (5) to exercise due professional care in the performance of the audit, in violation of AU § 150.02; (6) to plan the work adequately to uncover the errors and irregularities in Sunbeam's accounting information, in violation of AU § 150.02; and (7) to obtain a sufficient understanding of Sunbeam's internal control structure to plan the audits and to determine the nature, timing, and extent of tests to be performed, in violation of AU § 150.02.

88. In addition, in conducting the 1997 audit, Andersen (1) improperly relied on management representations rather than applying the auditing procedures necessary to afford a reasonable basis for an opinion on Sunbeam's financial statements, in violation of SAS No. 19 (AU § 333.02); (2) failed to recognize that misstatements resulting from misapplication of GAAP, departures from fact and omissions of necessary information, in aggregate, caused Sunbeam's financial statements to be materially misstated, in violation of SAS No. 47 (AU § 312.04); (3) failed to issue a qualified or adverse opinion, in violation of SAS No. 47 (AU § 312.31); (4) improperly concluded that the accounting principles applied by Sunbeam were appropriate in the circumstances and that Sunbeam's financial statements were informative of matters that could affect their use, understanding and interpretation, in violation of SAS No. 69 (AU § 411.04(b) and (c)); and (5) failed to report that a change in the application of accounting principles in Sunbeam's 1997 financial statements had materially affected their

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

comparability with the financial statements for prior periods, especially 1996, due to a different treatment of sales and reserves in those periods, in violation of SAS Nos. 1 and 43 (AU § 420.02).

89. Harlow, Pruitt, and Denkhaus knew of or recklessly disregarded numerous red flags that should have caused them to withhold Andersen's unqualified certification of Sunbeam's 1997 financial statements. However, Harlow, Pruitt, and Denkhaus did nothing to stop Andersen's unqualified 1997 audit opinion from being included in Sunbeam's Form 10-K filing with the SEC, despite the fact that they knew or were reckless in not knowing that the financial statements that Andersen had certified were materially misleading. Harlow, Pruitt, and Denkhaus also knew that the false financial statements that they had caused Andersen to issue would be incorporated into Sunbeam's consolidated financial statements and that MSSF, as a lender, and MS & Co., as an underwriter, would rely on these financial statements.

90. The Foreign Andersen Branches also knew of or recklessly disregarded the fact that the financial statements of Sunbeam's foreign subsidiaries, which they had reviewed and audited, were not prepared in accordance with GAAP or reviewed in accordance with GAAS. The Foreign Andersen Branches nevertheless certified that their audit work complied with GAAP and GAAS. Each of the Foreign Andersen Branches also knew that the false financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

91. In all, the 1997 financial statements audited by Andersen reported operating income of \$186 million — an overstatement of at least 50 percent. Like its 1996 unqualified audit opinion, Andersen's 1997 opinion was false in two material respects. First, the financial

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

statements Andersen audited did not "fairly" present Sunbeam's financial position in conformity with GAAP, as it represented. Second, Andersen had not, as it claimed, conducted its audit in accordance with GAAS.

**Reliance by Plaintiffs on Andersen's
Unqualified Audit Opinions**

92. After it agreed to acquire Coleman, First Alert, and Signature Brands, Sunbeam needed to raise approximately \$2.3 billion to refinance existing debt and to fund these acquisitions. To accomplish these financing objectives, Sunbeam's management elected to issue \$500 million in subordinated convertible notes (an amount later increased to \$750 million) (the "Convertible Note Offering") and to enter into a new \$2 billion senior credit agreement (later reduced to \$1.7 billion) with secured lenders (the "Bank Facility"). MS & Co. served as the lead underwriter for the Convertible Note Offering. MSSF served as the Syndication Agent for the Bank Facility and coordinated the Bank Facility with First Union and Bank of America, Sunbeam's other secured lenders.

93. Andersen, Harlow, Pruitt, and Denkhaus knew of these proposed financing arrangements. Specifically, they knew that the Coleman and other acquisitions would not close unless Sunbeam secured the financing necessary to cover the acquisition prices. They knew that MS & Co. would underwrite a notes offering that Sunbeam would use to finance the transaction. Moreover, they knew that MSSF was a principal participant in the Bank Facility, and that MSSF would be relying on the representations Andersen made regarding Sunbeam's financial condition.

94. In addition, Andersen, Harlow, Pruitt, and Denkhaus knew that documents issued in connection with the Convertible Note Offering clearly stated that "[Sunbeam] is currently

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

negotiating the terms of the New Credit Facility with a group of banks which [Sunbeam] expects will provide for borrowings by [Sunbeam] or one or more of its subsidiaries in the aggregate principal amount of \$2.0 billion. *The New Credit Facility is being arranged by an affiliate of [Morgan Stanley].*" Andersen, Harlow, Pruitt, and Denkhaus knew that the affiliate referred to in this document was MSSF.

95. In addition to their knowledge of MS & Co.'s and MSSF's roles in Sunbeam's acquisitions, Andersen, Harlow, Pruitt, and Denkhaus had many reasons to know that MS & Co. and MSSF would rely on Sunbeam's audited financial statements. To begin with, Andersen, Harlow, Pruitt, and Denkhaus, in their substantial experience working on multi-billion dollar mergers and acquisitions, understood that Sunbeam's lenders and underwriters would rely on an auditor's certification of Sunbeam's financial condition. As would any lender engaged in a deal of this scale, MSSF looked to the financial statements provided by Sunbeam and audited by Andersen to evaluate annual cash flow and to assess Sunbeam's ability, following the acquisition, to promptly and comfortably pay interest and, ultimately, pay back the loan. Indeed, reasonable and professional lenders such as MSSF, Bank of America, and First Union would not have loaned over \$1 billion dollars to any person or entity without strong assurance that their money would be returned. Andersen, Harlow, Pruitt, and Denkhaus knew that MS & Co., the underwriter of the Convertible Note Offering, would similarly refuse to underwrite a \$750 million offering without strong assurance that Sunbeam's financial condition was sound.

96. Not only were Andersen, Harlow, Pruitt, and Denkhaus aware that any prudent business in MS & Co.'s or MSSF's position *would* rely on Andersen's financial statements, but they also knew that MS & Co. and MSSF *were* specifically relying on Andersen's certifications. In a letter dated March 11, 1998, MS & Co. wrote a letter to Andersen — to the attention of

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

Harlow — notifying Andersen that MS & Co. would be “reviewing certain information relating to Sunbeam that will be included in the Offering Memorandum.” MS & Co. requested that Andersen deliver to it a “‘comfort’ letter concerning the financial statements” of Sunbeam.

97. In response to this request, Andersen expressly represented to MS & Co. that Sunbeam’s financial statements were truthful and that Andersen’s unqualified audit opinions were reliable. On March 19, 1998, Andersen sent MS & Co. a “comfort” letter stating that, in Andersen’s opinion, “the consolidated financial statements [for 1996 and 1997] audited by [Andersen] and included in the Offering Memorandum comply as to form in all material respects with the applicable accounting requirements of the [Securities Act of 1933] and the related published rules and regulations.” Andersen knew that MS & Co. would rely on the comfort letters in deciding to underwrite the Convertible Note Offering. Andersen also knew that Sunbeam’s acquisitions were contingent on Sunbeam’s obtaining the necessary financing for the transactions, including the underwriting of the convertible notes. Andersen knew that, absent its representations, MS & Co. would not have underwritten the notes, and therefore the financing, including MSSF’s loan to Sunbeam, would not have gone forward. A copy of the March 19, 1998 letter is exhibit “C” attached hereto.

98. Harlow and Pruitt authorized the issuance of the March 19, 1998 comfort letter, which was signed by Andersen. Upon information and belief, Denkhaus knew of this letter and did nothing to stop its issuance.

99. In a follow-up letter to MS & Co. dated March 25, 1998, Andersen reaffirmed its previous representation, stating that it “reaffirm[ed] as of the date hereof (and as though made on the date hereof) all statements made in that letter.” Again, Andersen knew that MS & Co. would rely on the comfort letters in deciding to underwrite the Convertible Note Offering and that,

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

absent its representations, the financing, including MSSF's loan to Sunbeam, would not have gone forward. A copy of the March 25, 1998 letter is exhibit "D" attached hereto.

100. Again, Harlow and Pruitt authorized the issuance of this letter, which was likewise signed by Andersen. Upon information and belief, Denkhaus also knew of this letter and did nothing to stop its issuance.

101. In addition to Andersen's written representations regarding Sunbeam's financial condition, Andersen partners and employees, including Harlow, participated in meetings and telephone calls in which they represented to MS & Co. and MSSF that Sunbeam's audited financial statements were accurate. For example, on March 12, 1998, representatives of MS & Co. participated in a conference call with Harlow and another Andersen employee to discuss Sunbeam's financial statements. In this call, Harlow assured MS & Co.'s representatives that there were no material inaccuracies in Sunbeam's financial statements. Upon information and belief, Harlow made these statements with the knowledge and approval of Pruitt and Denkhaus.

102. Andersen, Harlow, Pruitt, and Denkhaus also knew that MS & Co. had stated in a February 27, 1998 "fairness" opinion that MS & Co. had presented to Sunbeam's Board of Directors that MS & Co. had assumed and relied upon the accuracy and completeness of Sunbeam's audited financial statements that were available at that time.

103. In addition, Andersen, Harlow, Pruitt, and Denkhaus knew that Sunbeam had expressly represented, in loan negotiations with MSSF, that Andersen's audit opinions were accurate. Specifically, Andersen knew that, in the Sunbeam-MSSF credit agreement, Sunbeam had warranted that it had provided MSSF with accurate information regarding Sunbeam's consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. According to Sunbeam, its financial statements — certified by

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

Andersen — “present[ed] fairly, in all material respects, the financial position and results of operations and cash flows . . . in accordance with GAAP.”

104. Similarly, Andersen, Harlow, Pruitt, and Denkhaus knew that, in connection with the Convertible Note Offering, Sunbeam had included its 1996 and 1997 audited financial statements in its March 19, 1998, offering memorandum and had represented to MS & Co. that its audited financial statements were reliable.

105. Andersen, Harlow, Pruitt, and Denkhaus also knew that, as part of the Coleman merger agreement executed on February 27, 1998, Sunbeam had represented and warranted that all of its filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate and not misleading, and that they would continue to be accurate and not misleading as of the transaction’s closing date. Sunbeam further represented that its audited financial statements were prepared in accordance with GAAP, and that at the time of the closing of the transaction, that representation would continue to be true and correct.

106. Although it knew that MS & Co. and MSSF had based multi-million dollar financing decisions on its representations, Andersen did not tell Plaintiffs’ of the accounting concerns that it had raised with Sunbeam management in the course of its 1996 and 1997 audits or that Sunbeam’s financial statements had not been fairly stated in 1996 and 1997.

107. On March 25, 1998, the \$750 million Convertible Note Offering closed. In justifiable reliance on Andersen’s 1996 and 1997 unqualified audit opinions, on Andersen’s March 19, 1998, and March 25, 1998, “comfort” letters, and on the oral representations made by Harlow and other partners, members or employees of Andersen and Andersen-Worldwide, MS & Co. underwrote this offering to finance Sunbeam’s acquisitions of Coleman, Signature Brands, and First Alert.

CASE NO. S02004CA002257XXXMB
First Amended Complaint

108. Sunbeam closed its acquisition of Coleman on March 30, 1998. On that date, Sunbeam, through a wholly owned subsidiary, acquired approximately 81 percent of the then-outstanding shares of Coleman common stock. These shares were acquired by Sunbeam in exchange for 14,099,749 shares of Sunbeam's common stock and approximately \$160,000,000 in cash. In addition, Sunbeam assumed or repaid approximately \$1,016,000,000 in debt belonging to Coleman and Coleman-Parent. Included in the repaid debt portion of the transaction was an immediate cash payment by Sunbeam to Coleman-Parent of \$590 million.

109. MSSF and Sunbeam closed the Bank Facility on March 31, 1998. In accordance with the terms of the Bank Facility, MSSF — unaware of the falsity of Sunbeam's financial statements and Andersen's audit reports and in justifiable reliance on Andersen's representations — loaned Sunbeam \$680 million in immediately available funds to be used for the acquisitions. First Union, which served as the Administrative Agent for the Bank Facility, loaned Sunbeam an additional \$510 million. Bank of America, which served as the Documentation Agent for the Bank Facility, loaned Sunbeam an additional \$510 million.

110. As Andersen, Harlow, Pruitt, and Denkhaus knew, MS & Co. had relied on Sunbeam's 1996 and 1997 financial statements in deciding to underwrite the Convertible Note Offering. Andersen, Harlow, Pruitt, and Denkhaus further knew that MSSF had relied on Sunbeam's 1996 and 1997 financial statements in deciding to loan Sunbeam \$680 million. Moreover, they knew that the Sunbeam-MSSF credit agreement provided that a condition precedent to MSSF's obligations under the agreement was the absence of any event, change, or development that would have a material adverse effect on the business, results of operation, or financial condition of Sunbeam. Andersen knew that an additional condition precedent to

CASE NO. 502004CA002257XXXMB
First Amended Complaint

MSSF's obligations was the absence of any material misrepresentation or omissions in Sunbeam's SEC filings, including Andersen's 1996 and 1997 audit reports in the Form 10-Ks.

111. But for Andersen's fraud and its failure to issue qualified or adverse reports exposing the falsity of Sunbeam's financial statements, MS & Co. and MSSF would have had notice of an adverse material change affecting Sunbeam before funding, and of a material misstatement in Sunbeam's SEC filings. Not only would MS & Co. never have agreed to underwrite the Convertible Note Offering, but MSSF's obligation to loan Sunbeam \$680 million also would have been discharged by the failure of conditions precedent to its obligations under the credit agreement. Andersen's fraud directly caused the extensive losses that Plaintiffs suffered.

112. Andersen's fraud was knowingly caused by Harlow, Pruitt, and Denkhau. Harlow, as engagement partner, and Pruitt, as concurring partner, had direct responsibility for directing, managing, and approving of the work that was done on the Sunbeam audits. They caused Andersen to represent to MS & Co. and MSSF that Sunbeam's financial statements were reliable. Denkhau, who was a senior partner of Andersen and a member of Andersen-Worldwide, as well as the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising and monitoring the work that was performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhau each knew of or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

CASE NO. 502004CA002257XXXMB
First Amended Complaint

113. This fraud was also knowingly perpetrated by the Foreign Andersen Branches. Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew of or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified that their audit work complied with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

114. The fraud was also knowingly perpetrated by Andersen-Worldwide through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

Andersen's Improper Accounting and Misrepresentations Are Revealed

115. In an April 3, 1998 conference call with securities analysts, Sunbeam revealed that sales for the first quarter of 1998 were 5 percent below reported sales for the same period of the prior year.

116. On April 22, 1998, a class of Sunbeam shareholders sued Sunbeam and its senior officers in the United States District Court for the Southern District of Florida, alleging that the company had violated the securities laws by issuing materially false and misleading statements regarding Sunbeam's financial condition. Andersen was subsequently added as a defendant in that lawsuit.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

117. On June 8, 1998, an article was published in Barron's that raised serious questions regarding Sunbeam's apparent success under Dunlap, suggesting that it was the result of "accounting gimmickry." On June 15, 1998, Sunbeam's Board announced that it had removed Dunlap as Chairman and CEO. On June 17, 1998, Sunbeam received a letter from the SEC informing it that the SEC had initiated an investigation into the company.

118. Andersen continued to stand behind its fraudulent audit opinions. On June 15, 1998, Andersen allowed Sunbeam's Board of Directors to assert that Andersen had "assured the Board that Sunbeam's audited financial statements [were] accurate in all material respects." Andersen made this statement knowing that it was false. Harlow, Pruitt, and Denkhau likewise knew the statement was false, but caused Andersen to make this statement. It was not until June 25, 1998 — when Andersen withheld its consent for use of its 1997 audit opinion in a registration statement that was to have been filed with the SEC — that Andersen gave any hint that its unqualified audit opinions were unreliable.

119. On June 30, 1998, Sunbeam announced that the Audit Committee of its Board of Directors would conduct an inquiry into the accuracy of its 1997 financial statements. The Audit Committee subsequently retained Deloitte & Touche LLP to assist in the review, in addition to Andersen. Sunbeam stated that "pending the completion of the review, its 1997 financial statements and the report of Arthur Andersen LLP should not be relied upon." Sunbeam added that the review "could result in a restatement of the 1997 financial statements and the first quarter 1998 Form 10-Q."

120. On August 6, 1998, Sunbeam announced that its Audit Committee had determined that Sunbeam would be required to restate its audited financial statements for 1997 and possibly for 1996, as well as its unaudited financial statements for the first quarter of 1998. On

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

October 20, 1998, Sunbeam and Andersen announced a restatement of its 1996 and 1997 financial statements.

121. Holders of the convertible notes sued Sunbeam on October 30, 1998, and Andersen was later named as a defendant in that suit.

122. On November 12, 1998, Sunbeam released its restated 1996 and 1997 financial results, again audited by Andersen. The restated 1996 financial statements reported operating losses for 1996 that were approximately \$40 million less than originally reported, losses from continuing operations that were approximately \$26 million less than previously reported and net losses that were approximately \$20 million less than previously reported.

123. For 1997, the restated financial statements reported operating earnings that were approximately \$95 million less than originally reported, earnings from continuing operations that were approximately \$70 million less than previously reported and net earnings that were approximately \$70 million less than previously reported. The new operating income figure for 1997 was approximately half the amount that Andersen had previously certified.

Sunbeam Declares Bankruptcy

124. On February 6, 2001, as a direct result of the deceit that Andersen had committed, with the knowledge and assistance of the other Defendants named in this Complaint, Sunbeam and several of its subsidiaries were forced to seek relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. As part of the bankruptcy court-approved reorganization plan, MSSF's \$680 million loan to Sunbeam was discharged in full, and MSSF received Sunbeam stock valued at a fraction of the original loan. In addition, as a result of Andersen's actions, the convertible notes issued by Sunbeam and held

CASE NO. 502004CA002257XXXMB
First Amended Complaint

by MS & Co. had been rendered substantially less valuable. The shareholders of Sunbeam saw the value of their stock decline by over \$5 billion from its peak in early March 1998 to February 5, 2001.

Subsequent Censure of Andersen's Conduct

125. Both courts and regulators have scrutinized Andersen's facilitation of Sunbeam's fraud. In their judgments against the firm and Harlow, they have denounced Andersen's conduct.

126. In December 1999, for example, the United States District Court for the Southern District of Florida, which presided over the Sunbeam shareholders' class action securities fraud lawsuit, refused to dismiss any claims against Andersen. The court found that the plaintiff class had, by alleging the material misstatements made by Andersen in its unqualified audit opinions, describing the violations of GAAP and GAAS that had occurred, and setting forth why the statements in the audit opinions were false and misleading, pled fraud against Andersen with sufficient particularity to satisfy Federal Rule of Civil Procedure 9(b)'s pleading requirements. *See In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d 1326, 1344 n.11 (S.D. Fla. 1999).

127. The *In re Sunbeam* court also rejected Andersen's argument that the plaintiffs had merely alleged that Andersen violated GAAP and GAAS and had not set forth facts sufficient to show that it acted with knowing fraudulent intent or recklessness. The court ruled that Andersen's arguments "fail[ed] to appreciate the breadth" of the plaintiffs' allegations, which described much more than "innocent auditing and accounting slip-ups." *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d at 1344. The court concluded (*id.* at 1344-45) that the following facts established that Andersen had acted with requisite scienter:

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

- Andersen violated a GAAS requirement that it have a sufficient understanding of Sunbeam's internal control structure;
- Andersen failed to adhere to GAAS by not identifying numerous fraud risk factors suggesting that there was a significant risk that Sunbeam had fraudulently misstated its financials;
- Andersen was alerted by Sunbeam employees to material misstatements in Sunbeam's financial statements;
- Andersen failed to stop Sunbeam from recognizing, in violation of GAAP, revenues from guaranteed sales and consignment transactions, with the result that its sales were substantially overstated;
- Andersen ignored a June 8, 1998, Barron's article that accused Sunbeam of accounting improprieties, continued to stand behind its audit opinions, and did not give any hint that its unqualified audit opinions were unreliable until June 25, 1998, when it withheld consent to the use of its audit opinion in an SEC registration statement; and
- The sheer magnitude of the restatements of Sunbeam's financial statements indicated that Andersen was at least severely reckless not to know that its unqualified audit opinions were misleading.

128. The United States District Court for the Southern District of Florida concluded that these facts were sufficient to "demonstrate that Arthur Andersen acted with severe recklessness in issuing its misleading Unqualified Audit Opinion," and therefore supported a valid federal securities law fraud claim. *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d at 1344. Andersen subsequently settled this lawsuit in 2001 for \$110 million.

129. On May 15, 2001, the SEC filed a civil action in the United States District Court for the Southern District of Florida against five former Sunbeam officers and Harlow, Andersen's engagement partner. The SEC alleged that Harlow, by causing Andersen to issue materially incorrect audit opinions, had engaged in fraud in violation of the federal securities laws.

130. In January 2003, Harlow consented to an injunction and agreed not to contest the SEC's charges against him. In the SEC's consent order, it made numerous factual findings

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

regarding Harlow's improper conduct. It concluded that Harlow had proposed, on many occasions, adjustments to rectify Sunbeam's false financial statements. After management refused to make these adjustments, Harlow improperly acceded to that decision. *In re Phillip E. Harlow*, Rcl. No. 34-47261, 2003 WL 169818, at *1-*3 (SEC Rel. Jan. 27, 2003).

131. The SEC's assessment of Harlow's conduct was damning. Among many other things, it concluded that Harlow (1) "failed to exercise professional skepticism when performing audit procedures and gathering and analyzing audit evidence," (2) "accepted uncorroborated representations of Sunbeam's management in lieu of performing appropriate audit procedures," (3) "failed to exercise due professional care in performing the audit and preparing the audit report," (4) "failed to perform sufficient audit procedures to determine whether the financial statements were in conformity with GAAP," even after he had "identified a number of audit risks and accounting issues associated with the Sunbeam engagement," and (5) "failed to obtain sufficient competent evidential matters through inspection, observation, inquiries, and confirmation to afford a reasonable basis for an audit opinion." *Id.* at *4. Based on these factual findings, the Commission concluded that the 1996 and 1997 financial statements that Harlow had audited were not in conformity with GAAP, and the audit was not performed in accordance with GAAS. *Id.* (citing AU §§ 410, 411, 508.07).

132. Other participants in the Coleman acquisition have also sued Andersen for its fraudulent conduct. On June 8, 2001, Coleman-Parent sued Andersen and Harlow for fraudulent misrepresentation, fraudulent inducement to contract (conspiracy and concerted action), and negligent misrepresentation. *See Coleman (Parent) Holdings, Inc. v. Arthur Andersen LLP*, No. 502001CA006062XXOCAN (Fla. 15th Cir. Ct., filed June 8, 2001). That case was assigned to Judge Stephen A. Rapp. Andersen and Harlow moved to dismiss. However, after an

CASE NO. 502004CA002257XXXXMH
First Amended Complaint

October 29, 2001, hearing on their motion, Andersen and Harlow answered Coleman-Parent's complaint. On March 15, 2002, the complaint in this matter was amended to add Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, Andersen-Venezuela, and Andersen's United Kingdom branch as defendants. *See Amended Complaint, CPH v. Andersen* (filed Mar. 15, 2002). The Court denied Andersen-Worldwide's Motion To Dismiss on June 19, 2002, and the matter was voluntarily dismissed on January 28, 2003, after the parties had settled for an undisclosed amount.

Tolling Agreements

133. On March 8, 2001, Morgan Stanley, MSSF, and all of "their respective successors, predecessors, subsidiaries, affiliates, and assigns" executed the first of a series of tolling agreements with the Defendants. Additional tolling agreements were executed on April 4, 2001, April 19, 2001, April 24, 2001, April 23, 2002, October 16, 2002, April 10, 2003, and October 21, 2003. Copies of these Tolling Agreements are exhibits "E" through "L" attached hereto.

134. These agreements were signed by Andersen. The individuals that signed the agreements on behalf of Andersen represented that they had the "authority to bind and act on behalf of" Andersen and all of its "successors, predecessors, subsidiaries, affiliates, assigns, partners, employees, agents, officers, or directors."

135. Taken together, these agreements show that, in consideration for forbearance from commencing an action against the Defendants, Andersen agreed to toll from March 8, 2001, to March 1, 2004, the statute of limitations on all Morgan Stanley entities' claims against Andersen, its partners and agents (including Harlow, Pruitt, and Denkhau), and its affiliates (including

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

140. Andersen knew that Sunbeam's financial statements were replete with accounting irregularities and that the information in Sunbeam's 1996 and 1997 financial statements and in Andersen's 1996 and 1997 unqualified audit opinions was materially false and misleading.

141. Although Andersen knew that MS & Co. and MSSF would rely and had relied on its false statements, it did not inform MS & Co. or MSSF that the unqualified audit opinions it had provided were materially false or that Sunbeam's financial statements contained numerous misstatements of material facts.

142. Andersen made its materially false representations regarding its unqualified audit opinions and the accuracy of Sunbeam's financial statements with the intent to deceive Plaintiffs.

143. Andersen knew that the false information that had been provided to Plaintiffs would be critical to Plaintiffs' decisions to participate in the financing of Sunbeam's acquisitions. But for Andersen's fraudulent representations, MS & Co. would not have underwritten the Convertible Note Offering, nor would MSSF have loaned Sunbeam \$680 million.

144. Andersen's fraud was knowingly caused by Harlow, Pruitt, and Denkhaus. Harlow, as engagement partner, and Pruitt, as concurring partner had direct responsibility for directing, managing, and approving of the work that was done on the Sunbeam audits. Denkhaus, who was a senior partner of Andersen and a member of Andersen-Worldwide, as well as the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising and monitoring the work performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew of or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

senior Sunbeam executives to create the appearance that Sunbeam was performing at a high level. The purpose of this conspiracy was artificially to inflate the stock price of Sunbeam and thereby to induce MS & Co. to underwrite the Convertible Note Offering and MSSF into loaning Sunbeam \$680 million to finance Sunbeam's acquisition of Coleman, First Alert, and Signature Brands. Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus agreed to become part of the conspiracy to defraud Plaintiffs and committed overt acts in furtherance of this fraudulent scheme.

150. In furtherance of the conspiracy, Dunlap, Kersh, Gluck, and the other Sunbeam executives agreed to misstate Sunbeam's true financial condition by millions of dollars in order to create the illusion that Sunbeam had undergone a radical financial turnaround. Pursuant to this scheme, Dunlap, Kersh, Gluck, and other Sunbeam executives caused Sunbeam, in 1996, to overstate its operating losses by at least \$40 million, thereby establishing an overly bleak financial backdrop against which the company's performance in 1997 would be measured. In 1997, by contrast, Dunlap, Kersh, Gluck, and the other Sunbeam executives caused Sunbeam dramatically to overstate its earnings.

151. In late 1997 to early 1998, in furtherance of the conspiracy, Dunlap, Kersh, Gluck, and the other Sunbeam executives decided to acquire Coleman, First Alert, and Signature Brands. They communicated this decision to Andersen and Harlow. Thereafter, Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus agreed to become part of the conspiracy to defraud Plaintiffs.

152. In March 1998, in furtherance of the conspiracy, Andersen and Andersen-Worldwide, through their partners/members Harlow, Pruitt, and Denkhaus, committed overt acts in furtherance of the conspiracy, including, but not limited to, issuing Andersen's false and

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

provided MSSF with accurate information regarding its consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. They caused Sunbeam to include its 1996 and 1997 audited financial statements in its March 19, 1998, offering memorandum and to represent to MS & Co. that its audited financial statements were reliable. As part of the Coleman merger agreement executed on February 27, 1998, they caused Sunbeam to represent and warrant that all of Sunbeam's filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate, not misleading, and prepared in accordance with GAAP, and that they would continue to be accurate and not misleading as of the transaction's closing date. Andersen and the other Defendants named in this Complaint had full knowledge and approved of these false representations.

157. In reasonable and justifiable reliance on the co-conspirators' representations that Sunbeam's financial statements and Andersen's audit reports were accurate and truthful, MS & Co. agreed to underwrite the Convertible Note Offering, and MSSF agreed to loan Sunbeam \$680 million to finance Sunbeam's acquisition of Coleman. But for the co-conspirators' fraudulent representations, MS & Co. would not have underwritten the Convertible Note Offering, nor would MSSF have loaned Sunbeam \$680 million.

158. Harlow, Pruitt, and Denkhaus had full knowledge of and participated in this conspiracy. Harlow, as engagement partner, and Pruitt, as concurring partner, had direct responsibility for directing, managing, and approving of the work that was done on the Sunbeam audits. Denkhaus, who was a senior partner of Andersen and a member of Andersen-Worldwide, as well as the Audit Division Head and manager of Andersen's audit practice for the entire South Florida region, had undertaken responsibility for supervising and monitoring the work performed at Harlow's and Pruitt's direction. Harlow, Pruitt, and Denkhaus each knew of or recklessly

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

159. The Foreign Andersen Branches also knowingly participated in this scheme. Each of the Foreign Andersen Branches reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified their audit work as in compliance with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

160. Andersen-Worldwide also participated in this conspiracy through the actions of its members, including Harlow, Pruitt, and Denkhaus, and its member firms, including Andersen and the Foreign Andersen Branches.

161. As a direct result of this conspiracy of fraudulent inducement, Plaintiffs have collectively suffered hundreds of millions of dollars in damages.

COUNT III

Aiding and Abetting Fraud

162. Paragraphs 1 through 135 are repeated and alleged as if set forth herein.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

163. To induce MSSF into loaning Sunbeam \$680 million to finance its acquisition of Coleman, First Alert, and Signature Brands, Sunbeam represented to MSSF in loan negotiations that Sunbeam's audited financial statements were accurate and not misleading. In the Sunbeam-MSSF credit agreement, Sunbeam warranted that it had provided MSSF with accurate information regarding its consolidated statements of operations, stockholders' equity and cash flows, as well as its consolidated balance sheets. Sunbeam included its 1996 and 1997 audited financial statements in its March 19, 1998, offering memorandum and represented to MS & Co. and MSSF that its audited financial statements were reliable.

164. As part of the Coleman merger agreement executed on February 27, 1998, Sunbeam expressly represented and warranted that all of its filings with the SEC, which included the 1996 financial statements audited by Andersen, were accurate, not misleading, and prepared in accordance with GAAP, and that they would continue to be accurate and not misleading as of the transaction's closing date. Sunbeam knew that its many representations regarding its 1996 and 1997 financial statements were materially false when made and/or made those representations with reckless disregard as to their truth. It also knew that Andersen's 1996 and 1997 unqualified audit opinions were materially false and misleading.

165. Sunbeam knew that MS & Co. would rely on Sunbeam's representations in determining whether to act as Sunbeam's underwriter and that MSSF would rely on its representations in deciding to loan Sunbeam \$680 million to finance its acquisitions. Although Sunbeam knew that MS & Co. and MSSF would rely and had relied on its false statements, it did not inform them that the unqualified audit opinions it had provided were materially false or that Sunbeam's financial statements contained numerous misstatements of material facts.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

166. Sunbeam made its materially false representations regarding its financial statements and Andersen's unqualified audit opinions with the intent to deceive MS & Co. and MSSF and to induce them to participate in the financing of Sunbeam's acquisitions.

167. Sunbeam knew that the false information that it had provided to MS & Co. and MSSF, and its intentional failure to correct the misrepresentations contained in Sunbeam's financial statements, would be critical to their decision to participate in the financing of Sunbeam's acquisitions. But for Sunbeam's fraudulent representations, MS & Co. would not have underwritten the Convertible Note Offering, nor would MSSF have loaned Sunbeam \$680 million.

168. Andersen and Andersen-Worldwide, through their partners/members Harlow, Pruitt, and Denkhaus, knowingly and substantially assisted Sunbeam in its fraud. Andersen itself expressly represented to MS & Co., in letters dated March 19, 1998, and March 25, 1998, that Sunbeam's financial statements were truthful and that Andersen's unqualified audit opinions were reliable. In addition, employees, partners, and members of Andersen and Andersen-Worldwide, including Harlow, participated in meetings and telephone calls in which they represented to MS & Co. and MSSF that Sunbeam's audited financial statements were accurate.

169. Harlow, Pruitt, and Denkhaus substantially and knowingly assisted Sunbeam's fraud. They each knew of or recklessly disregarded the accounting violations contained in Sunbeam's 1996 and 1997 financial statements. They each also knew that the financial statements that they had caused Andersen to certify would be relied upon by MS & Co. in deciding to underwrite the Convertible Note Offering and by MSSF in deciding to loan Sunbeam hundreds of millions of dollars.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

170. The Foreign Andersen Branches substantially and knowingly assisted Sunbeam's fraud. They each reviewed and audited financial statements prepared for Sunbeam's foreign subsidiaries for 1997, all of which contained significant accounting violations. Each of the Foreign Andersen Branches knew of or recklessly disregarded the fact that the financial statements that they had reviewed and audited were not prepared in accordance with GAAP or reviewed in accordance with GAAS, but nevertheless certified their audit work as in compliance with these standards. Each of the Foreign Andersen Branches also knew that the financial statements that they had audited would be incorporated into Sunbeam's consolidated financial statements and that lenders, such as MSSF, and underwriters, such as MS & Co., would rely on these financial statements.

171. As a direct result of Sunbeam's fraud, aided and abetted by Andersen, Andersen-Worldwide, the Foreign Andersen Branches, Harlow, Pruitt, and Denkhaus, MS & Co., MSSF, and Morgan Stanley collectively have suffered hundreds of millions of dollars in damages.

WHEREFORE, Plaintiffs, MS & Co., MSSF, and Morgan Stanley, demand judgment against Andersen, Andersen-Worldwide, Andersen-Canada, Andersen-Hong Kong, Andersen-Mexico, Andersen-Venezuela, Harlow, Pruitt, and Denkhaus, jointly and severally, for:

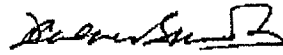
- (A) compensatory damages;
- (B) prejudgment interest;
- (C) attorneys' fees and costs; and
- (D) such other relief as may be just and appropriate.

Plaintiffs reserve the right to amend their complaint pursuant to section 768.72, Florida Statutes, to assert claims for punitive damages in excess of \$1.2 billion as allowed by law.

CASE NO. 502004CA002257XXXXMB
First Amended Complaint

DEMAND FOR JURY TRIAL

Plaintiffs request a trial by jury on any and all issues raised by this complaint that are triable of right by a jury.



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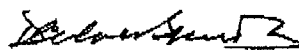
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy hereof was furnished by regular U.S. Mail to counsel on the attached list on August 6, 2004.



D. Culver Smith III

CASE NO. 502004CA002257XXXOMB
First Amended Complaint

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16

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

17

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

18

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

19

BUS 03/98 SUNBEAM STATES FIRST QUARTER REVENUES MAY BE LOWER THAN STREET

Estimates

Business Editors

DELRAY BEACH Fla.--(BUSINESS WIRE)--March 19, 1998--Sunbeam Corporation (NYSE:SOC) said today that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates for \$285 million to \$295 million, but net sales are expected to exceed 1997 first quarter net sales of \$253.4 million. The Company stressed that sales of its products at retail remains very strong. The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year.

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

Cautionary Statements - Statements contained in this press release, including statements relating to the Company's expectations regarding anticipated performance in the future, are "forward looking statements," as such term is defined in the Private Securities Litigation Reform Act of 1995.

Actual results could differ materially from the Company's statements in this release regarding its expectations, goals, or projected results, due to various factors, including those set forth in the Company's Cautionary Statements contained in its Annual Report on Form 10-K for its fiscal year ended December 31, 1997 filed with the Securities and Exchange Commission.

--30--kam/ny*

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KEYWORD: FLORIDA

INDUSTRY KEYWORD: RETAIL COMPUTERS/ELECTRONICS
BANKING EARNINGS

Today's News On The Net - Business Wire's full file on the Internet
with Hyperlinks to your home page.
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CONFIDENTIAL

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO.: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO.: CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.

Defendants.

**EXHIBITS EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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

VOLUME II of III

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TABLE OF CONTENTS

	<u>TAB</u>
William Strong Deposition, 12/4/2003	1
Morgan Stanley 85403-85419.....	2
Morgan Stanley 85420-85435.....	3
Morgan Stanley 85436-85452	4
Morgan Stanley 85453-85471.....	5
Morgan Stanley 85472-85493.....	6
Bram Smith Deposition, 2/24/2004	7
Joshua Webber Deposition, 5/18/2004	8
CPH Ex. 84	9
CPH Ex. 9	10
Eugene Yoo Deposition, 6/16/2004.....	11
CPH Ex. 229	12
Lawrence Bornstein Deposition, 1/15/2004	13
CPH Ex. 123	14
First Amended Complaint, <i>Morgan Stanley & Co., Inc. et al. v. Arthur Andersen LLP, et al.</i> ...	15
CPH Ex. 17	16
John Tyree Deposition, 11/14/2003.....	17
CPH Ex. 16	18
CPH 1395046-1395047	19
Alan Dean Deposition, 6/3/2004.....	20
Heather Stack Deposition, 5/25/2004	21

TAB

Dennis Pastrana Deposition, 1/12/2004.....	22
William Pruitt Deposition, 1/13/2004.....	23
CPH Ex. 75	24
Donald Drapkin Deposition, 6/24/2004.....	25
CPH 1241513.....	26
CPH 1039208.....	27
CPH 1059641.....	28
CPH Ex. 121	29
CPH Ex. 118	30
CPH Ex. 119	31
CPH Ex. 114	32
Mark Brockelman Deposition, 1/14/2004.....	33
CPH Ex. 33	34
CPH Ex. 34	35
CPH Ex. 35	36
Michael Hart Deposition, 5/19/2004.....	37
CPH Ex. 76	38
CPH Ex. 112	39
CPH 1393269.....	40
CPH Ex. 36	41
CPH Ex. 187	42
William Wright Deposition, 7/1/2004	43
CPH Ex. 110	44

TAB

CPH Ex. 24	45
James Lurie Deposition, 6/18/2004	46
Phillip Harlow Deposition, 6/9/1999	47
John Tyree Deposition, 9/15/2003	48

20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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21
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Dean

IN THE FIFTEENTH JUDICIAL COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
-----X

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No.
CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.
-----X

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. Case No.
CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.
-----X

ALAN DEAN

New York, New York

Thursday, June 3, 2004

Reported by: Steven Neil Cohen, RPR
Job No. 161001

<p style="text-align: right;">Page 2</p> <p>1 Dean 2 June 3, 2004 3 9:51 a.m. 4 5 Videotaped Deposition of ALAN 6 DEAN, taken by Plaintiff, pursuant to 7 notice at the offices of Davis Polk & 8 Wardwell, 450 Lexington Avenue, New York, 9 New York, before Steven Neil Cohen, a 10 Registered Professional Reporter and Notary 11 Public of the State of New York. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 Dean 2 3 IT IS HEREBY STIPULATED AND AGREED, by 4 and between counsel for the respective 5 parties hereto, that the sealing and filing 6 of the within deposition be waived; that 7 such deposition may be signed and sworn to 8 before any officer authorized to administer 9 an oath; that all objections, except as to 10 form are reserved to the time of trial. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 Dean 2 APPEARANCES 3 4 JENNER & BLOCK LLP 5 One IBM Plaza 6 Chicago, Illinois 60611-9350 7 8 Attorneys for Coleman (Parent) Holdings, 9 Inc. and MacAndrews & Forbes Holdings, 10 Inc. 11 BY: CLARK C. JOHNSON, ESQ. 12 KIRKLAND & ELLIS LLP 13 655 Fifteenth Street, N.W. 14 Washington, D.C. 20005 15 Attorneys for Morgan Stanley & Co., 16 Inc. 17 BY: THOMAS A. CLARE, ESQ. 18 DAVIS POLK & WARDWELL 19 450 Lexington Avenue 20 New York, New York 10017 21 Attorneys for Alan Dean 22 BY: ROBERT F. WISE, JR., ESQ. 23 ALSO PRESENT: Victor Disla, Videographer 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 Dean 2 THE VIDEOGRAPHER: This is tape 3 number one of the videotaped deposition 4 of Mr. Alan Dean in the matter Coleman 5 Holdings, Inc., plaintiff, versus 6 Morgan Stanley & Co., Inc., defendant, 7 in the 15th Judicial Court in and for 8 Palm Beach County, Florida. 9 This deposition is being held at 10 450 Lexington Avenue, New York, New 11 York on June 3, 2004 at approximately 12 9:51 a.m. 13 My name is Victor Disla. I am 14 from the firm of Esquire Video 15 Services. I am the legal video 16 specialist. 17 The court reporter is Mr. Steve 18 Cohen in association with Esquire 19 Deposition Services. 20 Will counsel please introduce 21 themselves for the record? 22 MR. JOHNSON: Clark Johnson, 23 Jenner & Block, Chicago, for Coleman 24 (Parent) Holdings and MacAndrews & 25 Forbes Holdings, Inc.</p>

<p style="text-align: right;">Page 6</p> <p>1 Dean</p> <p>2 MR. CLARE: Tom Clare from</p> <p>3 Kirkland & Ellis here for Morgan</p> <p>4 Stanley & Company.</p> <p>5 MR. WISE: Bob Wise of Davis Polk</p> <p>6 & Wardwell representing Mr. Dean.</p> <p>7 ALAN DEAN,</p> <p>8 called as a witness by the Plaintiff,</p> <p>9 having been duly sworn, testified as follows:</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. Good morning, Mr. Dean.</p> <p>12 Would you please state your full</p> <p>13 name for the record?</p> <p>14 A. My name is Alan Dean.</p> <p>15 Q. Could you give your address</p> <p>16 please?</p> <p>17 A. My address is 30 Hampton Road,</p> <p>18 Scarsdale, New York.</p> <p>19 Q. Mr. Dean, have you ever given a</p> <p>20 deposition before?</p> <p>21 A. Yes, I have.</p> <p>22 Q. On how many occasions?</p> <p>23 A. Twice.</p> <p>24 Q. When was the most recent of those</p> <p>25 occasions?</p>	<p style="text-align: right;">Page 8</p> <p>1 Dean</p> <p>2 connection with a Morgan Stanley matter</p> <p>3 concerning a Bank of New England debt</p> <p>4 offering; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. What was the other deposition?</p> <p>7 A. The depositions both arose out of</p> <p>8 the same transaction.</p> <p>9 Q. Was that civil litigation?</p> <p>10 A. Yes, it was civil litigation.</p> <p>11 Q. Was it litigation brought by</p> <p>12 purchasers of the debt?</p> <p>13 A. One of the lawsuits was brought</p> <p>14 by purchasers of the debt.</p> <p>15 Q. What was the nature of the</p> <p>16 allegations in that matter?</p> <p>17 MR. WISE: If you want to find</p> <p>18 that out you can go look at the court</p> <p>19 records. That is wasting his time.</p> <p>20 BY MR. JOHNSON:</p> <p>21 Q. Can you go ahead and answer?</p> <p>22 A. The case involved allegations</p> <p>23 that there had been material misstatements</p> <p>24 and omissions in a prospectus relating to a</p> <p>25 debt offering for the Bank of New England</p>
<p style="text-align: right;">Page 7</p> <p>1 Dean</p> <p>2 A. I can't remember. It was several</p> <p>3 years ago.</p> <p>4 Q. How about the first of the</p> <p>5 occasions?</p> <p>6 A. It was more than ten years ago.</p> <p>7 Q. Were both of those depositions</p> <p>8 given concerning your work as an attorney</p> <p>9 for Davis Polk?</p> <p>10 A. Yes, they were.</p> <p>11 Q. What matters were involved in</p> <p>12 those depositions?</p> <p>13 A. Well, the matters that -- the</p> <p>14 matter that the depositions emerged out of</p> <p>15 was a representation of Morgan Stanley in</p> <p>16 connection with a Bank of New England --</p> <p>17 Bank of New England debt offering.</p> <p>18 MR. WISE: Let's stop for a</p> <p>19 minute. The reporter has asked that we</p> <p>20 switch mics.</p> <p>21 (Pause)</p> <p>22 BY MR. JOHNSON:</p> <p>23 Q. Mr. Dean, before the brief</p> <p>24 interruption you indicated that your, was</p> <p>25 it the most recent deposition, was in</p>	<p style="text-align: right;">Page 9</p> <p>1 Dean</p> <p>2 Corporation.</p> <p>3 Q. Did those depositions occur in</p> <p>4 the 1990s?</p> <p>5 A. May have occurred in the 1980s</p> <p>6 and there was -- the depositions occurred</p> <p>7 in a different lawsuit arising out of the</p> <p>8 same facts sometime in the '90s, I think.</p> <p>9 I can't remember the precise dates. It was</p> <p>10 years and years ago.</p> <p>11 Q. One of the lawsuits was brought</p> <p>12 by investors?</p> <p>13 A. I am sure that one of the</p> <p>14 lawsuits was brought by investors. I have</p> <p>15 forgotten whether or not the other lawsuit</p> <p>16 was also brought by investors.</p> <p>17 There may have been a different</p> <p>18 party -- a different defendant involved in</p> <p>19 the second lawsuit.</p> <p>20 Q. You as a Davis Polk attorney were</p> <p>21 counsel to Morgan Stanley, the underwriter</p> <p>22 for the Bank of New England debt offering;</p> <p>23 is that correct?</p> <p>24 A. That is correct.</p> <p>25 Q. Who from Morgan Stanley was</p>

<p style="text-align: right;">Page 10</p> <p>1 Dean</p> <p>2 involved in that debt offering?</p> <p>3 MR. WISE: I am going to object</p> <p>4 to that and direct him not to answer.</p> <p>5 MR. JOHNSON: The basis for that</p> <p>6 instruction?</p> <p>7 MR. WISE: It is totally</p> <p>8 irrelevant. It is not what he is here</p> <p>9 to testify about today.</p> <p>10 We are not going to have a rehash</p> <p>11 of the Bank of New England matter.</p> <p>12 BY MR. JOHNSON:</p> <p>13 Q. Was Ruth Porat involved in the</p> <p>14 Bank of New England debt offering?</p> <p>15 A. No, she was not.</p> <p>16 Q. Was John Tyree?</p> <p>17 A. No, he was not.</p> <p>18 Q. Was Brooks Harris?</p> <p>19 A. No, he was not.</p> <p>20 Q. Is it fair to say, Mr. Dean, you</p> <p>21 are familiar with the deposition process?</p> <p>22 A. I haven't given very many</p> <p>23 depositions so I would say that I am not as</p> <p>24 familiar with the process as you are.</p> <p>25 Q. If you don't understand any of my</p>	<p style="text-align: right;">Page 12</p> <p>1 Dean</p> <p>2 Q. What did you do to prepare for</p> <p>3 the deposition today?</p> <p>4 A. There was a meeting that I had on</p> <p>5 Monday with Mr. Wise and a brief meeting</p> <p>6 that I had with Mr. Wise this morning.</p> <p>7 Q. How long did you meet with</p> <p>8 Mr. Wise on Monday?</p> <p>9 A. I believe it was for about</p> <p>10 two-and-a-half hours.</p> <p>11 Q. This morning?</p> <p>12 A. Less than half an hour.</p> <p>13 Q. When was the first time you met</p> <p>14 Mr. Clare?</p> <p>15 A. On Monday.</p> <p>16 Q. Did he attend the meeting with</p> <p>17 you and Mr. Wise?</p> <p>18 A. He attended the Monday meeting</p> <p>19 with Mr. Wise and myself.</p> <p>20 Q. Was he present at the meeting</p> <p>21 this morning?</p> <p>22 A. No, he was not.</p> <p>23 Q. Other than Mr. Wise have you</p> <p>24 spoken with any attorneys concerning this</p> <p>25 deposition?</p>
<p style="text-align: right;">Page 11</p> <p>1 Dean</p> <p>2 questions let me know and I will try to</p> <p>3 rephrase them.</p> <p>4 If you want to take a break at</p> <p>5 any time let me know that and we will try</p> <p>6 to accommodate your request.</p> <p>7 The court reporter is obviously</p> <p>8 taking down what everyone says. As a</p> <p>9 result, your responses to my questions need</p> <p>10 to be stated out loud rather than a nod of</p> <p>11 the head or shrug of the shoulders, that</p> <p>12 sort of thing.</p> <p>13 Are you represented by counsel</p> <p>14 today?</p> <p>15 A. Yes, I am represented by counsel</p> <p>16 today.</p> <p>17 Q. Who is your counsel?</p> <p>18 A. Robert Wise is my counsel.</p> <p>19 Q. Mr. Clare is not your counsel?</p> <p>20 A. No, Mr. Clare is not my counsel.</p> <p>21 Q. Have you testified in any</p> <p>22 judicial proceedings?</p> <p>23 A. No, I have not.</p> <p>24 Q. Any arbitrations?</p> <p>25 A. No, I have not.</p>	<p style="text-align: right;">Page 13</p> <p>1 Dean</p> <p>2 A. No, I have not.</p> <p>3 Q. No in-house lawyers for Morgan</p> <p>4 Stanley?</p> <p>5 A. No, I have not.</p> <p>6 Q. Did you sign a protective order</p> <p>7 in this litigation?</p> <p>8 A. I did sign a protective order. I</p> <p>9 don't know if it is the one that you are</p> <p>10 referring to but I was furnished a copy of</p> <p>11 an order by Mr. Clare on Monday which I</p> <p>12 signed.</p> <p>13 Q. Do you know what other Morgan</p> <p>14 Stanley lawyers -- strike that.</p> <p>15 What other Davis Polk lawyers</p> <p>16 have signed that protective order?</p> <p>17 A. I am unaware of which lawyers</p> <p>18 have signed it.</p> <p>19 Q. Do you know whether Mr. Wise has</p> <p>20 signed the protective order?</p> <p>21 A. I don't know.</p> <p>22 Q. Is Morgan Stanley compensating</p> <p>23 you or Mr. Wise for your time spent in</p> <p>24 connection with this deposition?</p> <p>25 A. I don't know whether or not they</p>

<p style="text-align: right;">Page 14</p> <p>1 Dean</p> <p>2 will be or not.</p> <p>3 MR. WISE: That is an excellent</p> <p>4 question. I would like to know the</p> <p>5 answer to that question.</p> <p>6 BY MR. JOHNSON:</p> <p>7 Q. So as far as you know there is no</p> <p>8 understanding with Morgan Stanley</p> <p>9 concerning Davis Polk's efforts in</p> <p>10 connection with this litigation?</p> <p>11 A. There is no -- there are no</p> <p>12 compensation arrangements that I am aware</p> <p>13 of in connection with this deposition.</p> <p>14 MR. WISE: We are not saying that</p> <p>15 we will not have discussions with the</p> <p>16 client about --</p> <p>17 MR. JOHNSON: I will not stop you</p> <p>18 from that. That is between you and</p> <p>19 Mr. Clare.</p> <p>20 BY MR. JOHNSON:</p> <p>21 Q. Did you review any materials that</p> <p>22 refreshed your memory concerning the</p> <p>23 Sunbeam transaction?</p> <p>24 A. I was furnished two documents I</p> <p>25 believe on Monday to try to refresh my</p>	<p style="text-align: right;">Page 16</p> <p>1 Dean</p> <p>2 in this litigation?</p> <p>3 A. I am not specifically aware of</p> <p>4 any Morgan Stanley person that has been</p> <p>5 deposed.</p> <p>6 Q. Do you have any general awareness</p> <p>7 of who has been deposed so far?</p> <p>8 A. I have been told that Heather</p> <p>9 Stack and James Lurie may have been noticed</p> <p>10 for depositions and I was told by Mr. Wise</p> <p>11 that Heather Stack had given her</p> <p>12 deposition.</p> <p>13 Q. Did he describe any of her</p> <p>14 testimony?</p> <p>15 A. No, he did not.</p> <p>16 Q. How about Arthur Andersen</p> <p>17 personnel; do you know of any Andersen</p> <p>18 personnel that have been deposed?</p> <p>19 A. I am unaware of any depositions</p> <p>20 that have been taken in this case except my</p> <p>21 own.</p> <p>22 Q. Among the Davis Polk attorneys</p> <p>23 who worked on the Sunbeam subordinated debt</p> <p>24 offering do you think you are the most</p> <p>25 knowledgeable person concerning Davis</p>
<p style="text-align: right;">Page 15</p> <p>1 Dean</p> <p>2 recollection about Sunbeam.</p> <p>3 I was also furnished a closing</p> <p>4 binder of the closing documents relating to</p> <p>5 Sunbeam but I didn't look at those very --</p> <p>6 in any depth at all.</p> <p>7 Q. You didn't look at any of those</p> <p>8 materials in any depth or the closing</p> <p>9 binder?</p> <p>10 A. The closing binder I did not look</p> <p>11 at in depth nor did I really study the</p> <p>12 other documents that had been furnished to</p> <p>13 me.</p> <p>14 Q. Did those documents refresh your</p> <p>15 memory in any way concerning the events of</p> <p>16 March of 1998?</p> <p>17 A. They -- I don't think that they</p> <p>18 did.</p> <p>19 Q. Do you have an understanding as</p> <p>20 to who has been deposed in the litigation</p> <p>21 that brings us here today?</p> <p>22 A. I don't know who has been deposed</p> <p>23 in this -- in this matter today.</p> <p>24 Q. You are not aware of any Morgan</p> <p>25 Stanley witness who has been deposed so far</p>	<p style="text-align: right;">Page 17</p> <p>1 Dean</p> <p>2 Polk's work?</p> <p>3 A. Well, I was the partner in charge</p> <p>4 of the matter. That does not necessarily</p> <p>5 mean that I was knowledgeable about all</p> <p>6 aspects of the transaction.</p> <p>7 There is delegation that goes on</p> <p>8 in any transaction.</p> <p>9 Q. Did you have a team of lawyers</p> <p>10 working on the subordinated debt offering?</p> <p>11 A. Yes. There was a Davis Polk team</p> <p>12 that was working on the subordinated debt</p> <p>13 offering.</p> <p>14 Q. Who was on the team?</p> <p>15 A. I was on the team. James Lurie</p> <p>16 was on the team. Heather Stack was on the</p> <p>17 team. There was another woman, an</p> <p>18 associate who has left the firm, whose name</p> <p>19 I have forgotten now.</p> <p>20 Q. Nicole Duncan?</p> <p>21 A. Yes, that is Nicole Duncan.</p> <p>22 Q. Anybody else?</p> <p>23 A. I can't recall anybody else. I</p> <p>24 mean, there may have been paralegals</p> <p>25 involved in it.</p>

<p style="text-align: right;">Page 18</p> <p>1 Dean</p> <p>2 It has been a long time since the</p> <p>3 transaction occurred. The names that we</p> <p>4 have just gone over are the ones that I</p> <p>5 recall at this time.</p> <p>6 MR. JOHNSON: Let's mark this as</p> <p>7 CPH Exhibit 213.</p> <p>8 (CPH Exhibit 213 marked for</p> <p>9 identification)</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. Mr. Dean, I have given you a</p> <p>12 document we have marked as CPH Exhibit 213</p> <p>13 which has the Bates stamp Morgan Stanley</p> <p>14 confidential 0029159 through 162.</p> <p>15 Have you ever seen this document</p> <p>16 before?</p> <p>17 A. I can't recall whether or not I</p> <p>18 have seen this document before.</p> <p>19 Q. Feel free to consult any portion</p> <p>20 of Exhibit 213 but I would like to call</p> <p>21 your attention particularly to the last</p> <p>22 paragraph on the first page carrying over</p> <p>23 to the top of page 2 and ask whether the</p> <p>24 information set forth there refreshes your</p> <p>25 recollection as to which Davis Polk lawyers</p>	<p style="text-align: right;">Page 20</p> <p>1 Dean</p> <p>2 Q. What was the division of</p> <p>3 responsibility among the team that is set</p> <p>4 forth here at the top of page 2 of Exhibit</p> <p>5 213?</p> <p>6 A. Well, I can't -- it has been a</p> <p>7 long time since the transaction happened so</p> <p>8 it is hard for me to precisely say who was</p> <p>9 responsible for what.</p> <p>10 In general terms Heather Stack</p> <p>11 and Nicole were responsible for the</p> <p>12 documentary due diligence in connection</p> <p>13 with the transaction.</p> <p>14 Mr. Lurie was involved in</p> <p>15 drafting the convertible -- the documents</p> <p>16 underlying the convertible security.</p> <p>17 All of us were involved in</p> <p>18 disclosure matters and reviewing the</p> <p>19 offering memorandum.</p> <p>20 Q. Did any other Davis Polk lawyers</p> <p>21 work on any Sunbeam related issues to your</p> <p>22 knowledge?</p> <p>23 A. What Sunbeam issues? I am not</p> <p>24 sure I understand the question.</p> <p>25 Q. Let me just ask it more</p>
<p style="text-align: right;">Page 19</p> <p>1 Dean</p> <p>2 were in fact working on the subordinated</p> <p>3 debt offering?</p> <p>4 A. The list of lawyers, I think, on</p> <p>5 the top of page 2 is consistent with what</p> <p>6 we were talking about.</p> <p>7 Mr. Megevick had been consulted.</p> <p>8 I can't recall whether Ms. Fassberg and</p> <p>9 Mr. Hall and Mr. Morrison and Mr. Small</p> <p>10 were consulted.</p> <p>11 Q. Mr. Morrison and Mr. Small were</p> <p>12 consulted in connection with the press</p> <p>13 release; is that correct?</p> <p>14 A. That may be an area of privilege.</p> <p>15 I am not sure whether or not --</p> <p>16 MR. WISE: Certainly what is in</p> <p>17 the letter I think we do not disagree</p> <p>18 with.</p> <p>19 BY MR. JOHNSON:</p> <p>20 Q. The question is whether that is a</p> <p>21 correct statement. Mr. Wise has already</p> <p>22 answered that but if you would answer it as</p> <p>23 well I would appreciate it.</p> <p>24 A. Yes, they were consulted in</p> <p>25 connection with the proposed press release.</p>	<p style="text-align: right;">Page 21</p> <p>1 Dean</p> <p>2 specifically.</p> <p>3 Are you aware of any Davis Polk</p> <p>4 attorneys representing any officers of</p> <p>5 Sunbeam Corporation at any time?</p> <p>6 A. I am not aware of any Davis Polk</p> <p>7 lawyers who would have represented any</p> <p>8 Sunbeam officers at the time they were</p> <p>9 Sunbeam officers.</p> <p>10 Q. Are you aware of anyone's</p> <p>11 representation of Janet Kelley?</p> <p>12 A. I think that Ms. Kelley may have</p> <p>13 been represented by Dennis Glazer of Davis</p> <p>14 Polk.</p> <p>15 Q. Did you have any conversations</p> <p>16 with Mr. Glazer concerning that</p> <p>17 representation?</p> <p>18 A. I don't recall whether or not I</p> <p>19 did or not. He may have consulted me. I</p> <p>20 don't remember at this time.</p> <p>21 Q. At the time that the subordinated</p> <p>22 debt offering was proceeding Sunbeam was</p> <p>23 also looking to syndicate a credit</p> <p>24 facility; is that correct?</p> <p>25 A. Yes, that is correct.</p>

<p style="text-align: right;">Page 22</p> <p>1 Dean</p> <p>2 Q. Was Davis Polk involved in that</p> <p>3 work as well?</p> <p>4 A. Yes. Davis Polk was involved in</p> <p>5 that work as well representing Morgan</p> <p>6 Stanley and the syndicate of banks.</p> <p>7 Q. Was there a partner in charge, so</p> <p>8 to speak, of that aspect of the work?</p> <p>9 A. I believe it was Peter Levin that</p> <p>10 was in charge of that work.</p> <p>11 Q. Was there any protocol in place</p> <p>12 to share information among Mr. Levin's team</p> <p>13 and your team?</p> <p>14 A. No, there was not.</p> <p>15 Q. Let's back up. We will come back</p> <p>16 to this. Let's back up to a little more</p> <p>17 background if we could.</p> <p>18 I would like you to describe your</p> <p>19 educational background for me.</p> <p>20 A. Starting from when?</p> <p>21 Q. Graduation from high school.</p> <p>22 A. I graduated from Stuyvesant High</p> <p>23 School in New York City.</p> <p>24 I then attended Harvard College</p> <p>25 and received an undergraduate degree there.</p>	<p style="text-align: right;">Page 24</p> <p>1 Dean</p> <p>2 work?</p> <p>3 A. Davis Polk has a world reputation</p> <p>4 for doing securities work.</p> <p>5 Q. I assume you are proud of that</p> <p>6 reputation?</p> <p>7 A. Yes, I am proud of that</p> <p>8 reputation.</p> <p>9 Q. Do you have any particular areas</p> <p>10 of expertise in corporate and securities</p> <p>11 law?</p> <p>12 A. Well, I give general corporate</p> <p>13 advice to corporations. I have a</p> <p>14 specialization in providing advice in doing</p> <p>15 securities offerings both for issuers and</p> <p>16 for underwriters.</p> <p>17 Q. Do you view most of your clients</p> <p>18 as highly sophisticated?</p> <p>19 A. Most of my clients are very</p> <p>20 sophisticated.</p> <p>21 Q. Morgan Stanley is a sophisticated</p> <p>22 client, isn't it?</p> <p>23 A. Yes, I believe Morgan Stanley is</p> <p>24 a sophisticated client.</p> <p>25 Q. How many securities offerings</p>
<p style="text-align: right;">Page 23</p> <p>1 Dean</p> <p>2 Then I went to the University of</p> <p>3 California at Berkeley where I received a</p> <p>4 Master's degree in mathematics, and then I</p> <p>5 received a law degree at Harvard Law</p> <p>6 School.</p> <p>7 Q. Would you kindly put years on</p> <p>8 each of these degrees for me?</p> <p>9 A. I graduated from high school in</p> <p>10 1969. I graduated from college in 1973. I</p> <p>11 received a Master's degree from Berkeley in</p> <p>12 1974 and I received my law degree from</p> <p>13 Harvard in 1978.</p> <p>14 Q. Have you been with Davis Polk</p> <p>15 your entire legal career?</p> <p>16 A. Yes, I have been, since</p> <p>17 graduating from Harvard Law School.</p> <p>18 Q. At some point you became a</p> <p>19 partner at Davis Polk?</p> <p>20 A. I did.</p> <p>21 Q. When was that?</p> <p>22 A. In 1986.</p> <p>23 Q. Is it your view that Davis Polk</p> <p>24 is one of the premier law firms in the</p> <p>25 world in the area of corporate securities</p>	<p style="text-align: right;">Page 25</p> <p>1 Dean</p> <p>2 have you been involved in either for the</p> <p>3 issuer or underwriter?</p> <p>4 A. I can't count. I mean, it is</p> <p>5 scores, probably 100 offerings.</p> <p>6 Q. Over the past 25 years?</p> <p>7 A. Yes, for the past 25 years.</p> <p>8 Q. Tell me about Davis Polk's</p> <p>9 relationship with Morgan Stanley.</p> <p>10 A. Davis Polk is one of the counsel</p> <p>11 that Morgan Stanley routinely uses in</p> <p>12 connection with public offering work and</p> <p>13 Davis Polk also counsels Morgan Stanley on</p> <p>14 other legal matters as well.</p> <p>15 Q. How long has Davis Polk been a</p> <p>16 counsel of choice for Morgan Stanley?</p> <p>17 A. I don't know. I think that our</p> <p>18 relationship with Morgan Stanley extends</p> <p>19 back to when Morgan Stanley was founded.</p> <p>20 Morgan Stanley has used many</p> <p>21 counsel over the years and I wouldn't</p> <p>22 necessarily characterize Davis Polk as</p> <p>23 being Morgan Stanley's exclusive counsel of</p> <p>24 choice.</p> <p>25 Q. When you joined Davis Polk in</p>

<p style="text-align: right;">Page 26</p> <p>1 Dean</p> <p>2 1978 Morgan Stanley was a client of the</p> <p>3 firm?</p> <p>4 A. Yes. Morgan Stanley was a client</p> <p>5 of the firm in 1978.</p> <p>6 Q. And has been a client</p> <p>7 continuously since then?</p> <p>8 A. Yes, it has been.</p> <p>9 Q. Have you worked on Morgan Stanley</p> <p>10 matters your entire tenure at Davis Polk?</p> <p>11 A. I don't remember which was the</p> <p>12 first Morgan Stanley transaction that I</p> <p>13 worked on but certainly -- I don't remember</p> <p>14 whether or not my first year as an</p> <p>15 associate, whether or not I worked on -- on</p> <p>16 a Morgan Stanley transaction but I</p> <p>17 certainly began working on Morgan Stanley</p> <p>18 transactions shortly after I joined the</p> <p>19 firm.</p> <p>20 Q. You personally have worked on</p> <p>21 Morgan Stanley matters for upwards of 20</p> <p>22 years?</p> <p>23 A. Yes.</p> <p>24 Q. Do you consider Morgan Stanley a</p> <p>25 major client of Davis Polk?</p>	<p style="text-align: right;">Page 28</p> <p>1 Dean</p> <p>2 partners at Davis Polk on an annual basis</p> <p>3 or not?</p> <p>4 A. Yes, there is an evaluation.</p> <p>5 Q. Tell me about that process.</p> <p>6 A. The evaluation process involves</p> <p>7 questionnaires today sent out to the</p> <p>8 partners of the firm where each partner is</p> <p>9 allowed to evaluate their own work at the</p> <p>10 firm and then to comment on other partners.</p> <p>11 Q. That is done on an annual basis?</p> <p>12 A. That is done on an annual basis.</p> <p>13 Q. Did your 1998 self-evaluation</p> <p>14 reference the Sunbeam transaction in any</p> <p>15 way?</p> <p>16 A. I don't believe that at the time</p> <p>17 we had a -- I don't remember that. I don't</p> <p>18 remember whether or not my evaluation in</p> <p>19 that year involved the Sunbeam transaction.</p> <p>20 Q. Have you ever mentioned Sunbeam</p> <p>21 in any of your evaluations?</p> <p>22 A. I don't remember doing so.</p> <p>23 Q. Do you know whether any of your</p> <p>24 partners discussed your work on the Sunbeam</p> <p>25 transaction in evaluating you?</p>
<p style="text-align: right;">Page 27</p> <p>1 Dean</p> <p>2 A. Morgan Stanley is a -- I don't</p> <p>3 know what you mean by "major client." It</p> <p>4 is -- we represent Morgan Stanley in many</p> <p>5 matters.</p> <p>6 Q. In terms of fees are they in the</p> <p>7 top ten percent of clients for Davis Polk?</p> <p>8 A. Yes. Morgan Stanley would be in</p> <p>9 the top ten percent.</p> <p>10 Q. As an approximate matter how much</p> <p>11 in fees does Davis Polk collect from Morgan</p> <p>12 Stanley on an annual basis?</p> <p>13 MR. WISE: I am going to object</p> <p>14 and direct him not to answer that.</p> <p>15 BY MR. JOHNSON:</p> <p>16 Q. I assume that it exceeds \$10</p> <p>17 million a year?</p> <p>18 A. I assume that it does. I am</p> <p>19 not -- I am frankly -- I don't know what</p> <p>20 the exact number is.</p> <p>21 Q. Within Davis Polk how is the fee</p> <p>22 credit for Morgan Stanley apportioned?</p> <p>23 A. There is no fee credit allocation</p> <p>24 among the partners.</p> <p>25 Q. Is there any evaluation of the</p>	<p style="text-align: right;">Page 29</p> <p>1 Dean</p> <p>2 A. I am not aware of it.</p> <p>3 Q. As you sit here today do you</p> <p>4 think there is anything noteworthy about</p> <p>5 the Sunbeam transaction you worked on?</p> <p>6 MR. CLARE: Object to the form of</p> <p>7 the question.</p> <p>8 THE WITNESS: I don't know what</p> <p>9 "noteworthy" means.</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. Was there anything particularly</p> <p>12 challenging about that transaction?</p> <p>13 A. All transactions are challenging</p> <p>14 in their own way.</p> <p>15 Q. That is why I said</p> <p>16 "particularly."</p> <p>17 Was there anything distinctive</p> <p>18 about the transaction?</p> <p>19 A. Well, I think the fact that</p> <p>20 lawsuits were brought in connection with</p> <p>21 the transaction is significant and</p> <p>22 noteworthy.</p> <p>23 Q. Were you ever interviewed by</p> <p>24 anyone in relation to those lawsuits?</p> <p>25 A. A reporter attempted to interview</p>

<p style="text-align: right;">Page 30</p> <p>1 Dean</p> <p>2 me but our standard firm policy is not to</p> <p>3 comment on matters that involve client</p> <p>4 representation.</p> <p>5 Q. Who was the reporter?</p> <p>6 A. I have forgotten his name. I</p> <p>7 believe it was -- I think it was a reporter</p> <p>8 for Business Week but I have forgotten.</p> <p>9 Q. Did you view the time frame for</p> <p>10 completing the offering to be unreasonably</p> <p>11 short?</p> <p>12 A. No, I did not.</p> <p>13 Q. Was it a fairly standard time</p> <p>14 frame?</p> <p>15 A. Yes, it was a fairly standard</p> <p>16 time frame.</p> <p>17 Q. Did the fact that the offering</p> <p>18 you were working on was made in connection</p> <p>19 with the acquisition of three companies by</p> <p>20 Sunbeam present any complexity?</p> <p>21 A. Since the transaction did involve</p> <p>22 the acquisition of three companies and the</p> <p>23 three companies were going to be part of</p> <p>24 the new combined Sunbeam entity there</p> <p>25 was -- there were due diligence efforts</p>	<p style="text-align: right;">Page 32</p> <p>1 Dean</p> <p>2 securities and the price at which they sold</p> <p>3 them but in the overall scheme of things --</p> <p>4 I mean, they could have lost money in</p> <p>5 connection with the transaction even though</p> <p>6 the securities were purchased at a price</p> <p>7 that was lower than the public offering</p> <p>8 price.</p> <p>9 It really depends on how the</p> <p>10 transaction went.</p> <p>11 Q. Do you have any basis to state</p> <p>12 that Morgan Stanley & Company lost money on</p> <p>13 the transaction?</p> <p>14 A. I have no basis to know how much</p> <p>15 money Morgan Stanley made on the</p> <p>16 transaction.</p> <p>17 I can state what -- if I looked</p> <p>18 at the cover page of the prospectus I can</p> <p>19 tell what the spread was on the</p> <p>20 underwriting transaction.</p> <p>21 Q. They made that spread to your</p> <p>22 knowledge?</p> <p>23 A. I have no basis to conclude one</p> <p>24 way or the other. I assume that they did.</p> <p>25 Q. Do you have any basis to conclude</p>
<p style="text-align: right;">Page 31</p> <p>1 Dean</p> <p>2 that needed to be done in connection with</p> <p>3 those three companies.</p> <p>4 Q. It was not simply the</p> <p>5 preacquisition issuer that needed</p> <p>6 diligence; it was the three targets as</p> <p>7 well?</p> <p>8 A. That is correct.</p> <p>9 Q. Did you view the offering as</p> <p>10 successful for Morgan Stanley?</p> <p>11 A. I don't know how Morgan Stanley</p> <p>12 views success in characterizing</p> <p>13 transactions.</p> <p>14 The transaction was successfully</p> <p>15 placed by Morgan Stanley.</p> <p>16 Q. Morgan Stanley made a lot of</p> <p>17 money on the transaction?</p> <p>18 MR. CLARE: I object to the form</p> <p>19 of the question.</p> <p>20 BY MR. JOHNSON:</p> <p>21 Q. Is that a fair statement?</p> <p>22 A. I don't know how much money</p> <p>23 Morgan Stanley made on the transaction.</p> <p>24 There was a difference between</p> <p>25 the price that Morgan Stanley paid for the</p>	<p style="text-align: right;">Page 33</p> <p>1 Dean</p> <p>2 that Morgan Stanley & Co. lost money on the</p> <p>3 transaction?</p> <p>4 A. No, I have no basis.</p> <p>5 Q. Morgan Stanley & Company was your</p> <p>6 client in this transaction, wasn't it?</p> <p>7 A. Yes, they were.</p> <p>8 Q. Is it fair to assume you would</p> <p>9 have heard about it if they lost money on</p> <p>10 this transaction?</p> <p>11 MR. CLARE: Object to the form;</p> <p>12 calls for speculation.</p> <p>13 THE WITNESS: I am not sure --</p> <p>14 that -- Morgan Stanley does not</p> <p>15 necessarily share information about how</p> <p>16 much money they make on transactions</p> <p>17 with me on a routine basis after a</p> <p>18 transaction.</p> <p>19 BY MR. JOHNSON:</p> <p>20 Q. Have you been involved in any</p> <p>21 Morgan Stanley matter where Morgan Stanley</p> <p>22 lost money on the transaction?</p> <p>23 A. I mean, I am not aware of any but</p> <p>24 I am not -- at the same time I am not aware</p> <p>25 of whether or not a transaction is</p>

<p style="text-align: right;">Page 34</p> <p>1 Dean</p> <p>2 profitable to Morgan Stanley.</p> <p>3 Q. Was the transaction successful</p> <p>4 from Davis Polk's perspective?</p> <p>5 A. I don't know what you mean by</p> <p>6 "successful."</p> <p>7 We were able to -- we gave advice</p> <p>8 to Morgan Stanley in connection with the</p> <p>9 transaction. We sent a fee for our</p> <p>10 services in connection with the</p> <p>11 transaction.</p> <p>12 That is what we did in connection</p> <p>13 with the transaction.</p> <p>14 Q. I assume you collected the fee?</p> <p>15 A. Yes, we did collect the fee.</p> <p>16 Q. What was the fee on this</p> <p>17 transaction?</p> <p>18 A. I don't recall.</p> <p>19 Q. Can you give me an estimate?</p> <p>20 A. I just don't have any idea. I am</p> <p>21 sure if we looked at our billing records we</p> <p>22 could figure out what the fee was.</p> <p>23 Q. Based on your experience in</p> <p>24 transactions of this sort do you have a</p> <p>25 sense of whether a million dollars would be</p>	<p style="text-align: right;">Page 36</p> <p>1 Dean</p> <p>2 don't remember which complaints I have read</p> <p>3 but I know that I have read the</p> <p>4 complaints -- a complaint.</p> <p>5 Q. Was it a complaint of the</p> <p>6 bondholders or was it an equity holder</p> <p>7 complaint?</p> <p>8 A. I don't remember.</p> <p>9 Q. How did you come to read a copy</p> <p>10 of one of those complaints?</p> <p>11 A. I don't know how I -- I don't</p> <p>12 know who furnished me a copy of the</p> <p>13 complaint. I just don't know. I don't</p> <p>14 remember right now.</p> <p>15 Q. Based on your work on the</p> <p>16 transaction did you have any opinion as to</p> <p>17 the accuracy of the allegations in the</p> <p>18 complaint?</p> <p>19 A. Well, I can't -- I don't remember</p> <p>20 what the allegations in the complaint were</p> <p>21 at this time so I would have to take a look</p> <p>22 at the complaint and then -- I am sure that</p> <p>23 my opinion would have been that the</p> <p>24 allegations were false at least insofar as</p> <p>25 Morgan Stanley was concerned.</p>
<p style="text-align: right;">Page 35</p> <p>1 Dean</p> <p>2 a fee typical in this sort of transaction?</p> <p>3 A. A fee charged by Davis Polk in</p> <p>4 this transaction?</p> <p>5 Q. Right.</p> <p>6 A. For the subordinated debt</p> <p>7 offering, that would be very high.</p> <p>8 Q. You mentioned that one</p> <p>9 potentially noteworthy thing about this</p> <p>10 transaction was the lawsuits that were</p> <p>11 brought concerning it.</p> <p>12 When did you first hear about</p> <p>13 those lawsuits?</p> <p>14 A. I don't remember when I heard</p> <p>15 about them. I assume that was shortly</p> <p>16 after the lawsuits were brought.</p> <p>17 Q. Do you know when the lawsuits</p> <p>18 were brought?</p> <p>19 A. I don't have any recollection of</p> <p>20 that now. I mean, I would have at the time</p> <p>21 but I don't now.</p> <p>22 Q. Did you ever read any of the</p> <p>23 lawsuits that -- complaints that were</p> <p>24 filed?</p> <p>25 A. Yes. I have read complaints. I</p>	<p style="text-align: right;">Page 37</p> <p>1 Dean</p> <p>2 Q. Can you explain that</p> <p>3 qualification for me?</p> <p>4 A. I don't know who the lawsuits</p> <p>5 were brought against and my only knowledge</p> <p>6 about the transaction relates to my</p> <p>7 representation of Morgan Stanley and no one</p> <p>8 else.</p> <p>9 Q. As you sit here today do you have</p> <p>10 an opinion as to whether the offering</p> <p>11 memorandum for this offering was materially</p> <p>12 false and misleading?</p> <p>13 A. I think that at the time that the</p> <p>14 offering memorandum was issued we believed</p> <p>15 that it -- that it did not contain any</p> <p>16 material misstatements or omissions.</p> <p>17 Q. Would you acknowledge as you sit</p> <p>18 here today and with the benefit of</p> <p>19 hindsight that it does contain materially</p> <p>20 false and misleading information?</p> <p>21 A. If the allegations against the</p> <p>22 company are correct, yes, it does</p> <p>23 contain -- one could allege that it</p> <p>24 contains material misstatements or</p> <p>25 omissions.</p>

<p style="text-align: right;">Page 38</p> <p>1 Dean</p> <p>2 Q. Are you saying you have no</p> <p>3 opinion as to whether there was a fraud at</p> <p>4 Sunbeam?</p> <p>5 A. From -- from what I have read in</p> <p>6 the newspapers and -- it does appear there</p> <p>7 was a fraud at Sunbeam.</p> <p>8 Q. That was a fraud that came to</p> <p>9 light within months of the debt offering;</p> <p>10 isn't that correct?</p> <p>11 A. The allegations -- the facts</p> <p>12 surrounding that fraud became -- began</p> <p>13 coming out after the offering.</p> <p>14 Q. Do you regret Davis Polk's</p> <p>15 involvement in the offering?</p> <p>16 A. No, I don't. I think that we did</p> <p>17 the job we were asked to do in the</p> <p>18 connection with the offering.</p> <p>19 Q. What was the job that you were</p> <p>20 asked to do?</p> <p>21 A. To assist Morgan Stanley in</p> <p>22 reviewing the offering memorandum and to</p> <p>23 render an opinion to Morgan Stanley</p> <p>24 about -- that the securities were validly</p> <p>25 issued and that the offering memorandum in</p>	<p style="text-align: right;">Page 40</p> <p>1 Dean</p> <p>2 A. Well, I think that the financial</p> <p>3 officers at Sunbeam did. I don't remember</p> <p>4 their names.</p> <p>5 Q. Russ Kersh, does that ring a</p> <p>6 bell?</p> <p>7 A. Yes.</p> <p>8 Q. He is the CFO; is that right?</p> <p>9 A. The CFO. There was a -- I don't</p> <p>10 remember. There was a treasurer or</p> <p>11 controller.</p> <p>12 Q. Bob Gluck; is that right?</p> <p>13 A. Bob Gluck, yes, that is right.</p> <p>14 Q. Anyone else?</p> <p>15 A. I have forgotten -- there was</p> <p>16 also a legal vice chairman or legal</p> <p>17 officer.</p> <p>18 Q. David Fannin?</p> <p>19 A. That name doesn't ring a bell.</p> <p>20 There were a number of Sunbeam</p> <p>21 personnel who were involved in</p> <p>22 conversations relating to the offering and</p> <p>23 I can't call up all of their names at this</p> <p>24 time.</p> <p>25 Q. We will get to that in a little</p>
<p style="text-align: right;">Page 39</p> <p>1 Dean</p> <p>2 our opinion did not contain any material</p> <p>3 misstatements or omissions.</p> <p>4 Q. Did anyone at Sunbeam provide</p> <p>5 false information to you, meaning Davis</p> <p>6 Polk, or Morgan Stanley?</p> <p>7 A. I think, viewed in hindsight, it</p> <p>8 appears that people at Sunbeam did not --</p> <p>9 were not, did not provide accurate</p> <p>10 information to us at the time.</p> <p>11 Q. Any particular Sunbeam personnel</p> <p>12 do you think provided you false</p> <p>13 information?</p> <p>14 A. I mean, I know I can't speak to</p> <p>15 the frame of mind of the Sunbeam personnel</p> <p>16 who provided the information and whether or</p> <p>17 not they in fact believed it to be true at</p> <p>18 the time.</p> <p>19 We were certainly -- we were</p> <p>20 given assurances by them and we believed</p> <p>21 them, that the statements that they gave us</p> <p>22 at the time of the preparation of the</p> <p>23 offering memorandum were accurate.</p> <p>24 Q. Who in particular gave you</p> <p>25 assurances?</p>	<p style="text-align: right;">Page 41</p> <p>1 Dean</p> <p>2 more detail shortly.</p> <p>3 Did Davis Polk have any</p> <p>4 responsibility for determining what</p> <p>5 diligence would be appropriate in</p> <p>6 connection with the offering?</p> <p>7 A. Due diligence is a team effort in</p> <p>8 connection with an offering and the advice</p> <p>9 that we would give about the scope of</p> <p>10 diligence is probably a privileged matter.</p> <p>11 I think.</p> <p>12 MR. WISE: He hasn't asked you</p> <p>13 for the advice.</p> <p>14 BY MR. JOHNSON:</p> <p>15 Q. Whether you gave advice on the</p> <p>16 scope is all I am asking. That is a yes or</p> <p>17 no question.</p> <p>18 A. Yes, we did.</p> <p>19 Q. Did Davis Polk perform diligence</p> <p>20 on the transaction as well as advising on</p> <p>21 the scope of diligence?</p> <p>22 A. Yes, we were assigned tasks to</p> <p>23 perform in connection with the diligence</p> <p>24 investigation.</p> <p>25 Q. Did Morgan Stanley provide you</p>

<p style="text-align: right;">Page 42</p> <p>1 Dean</p> <p>2 with a due diligence plan for your review?</p> <p>3 MR. WISE: Answer that yes or no.</p> <p>4 THE WITNESS: I don't remember</p> <p>5 whether or not they did or not.</p> <p>6 MR. JOHNSON: You have to answer</p> <p>7 yes or no.</p> <p>8 THE WITNESS: I don't remember.</p> <p>9 It would have been -- in many</p> <p>10 transactions it is customary for Morgan</p> <p>11 Stanley to prepare questions for due</p> <p>12 diligence that we might review.</p> <p>13 BY MR. JOHNSON:</p> <p>14 Q. You just don't recall whether</p> <p>15 that happened in this transaction or not?</p> <p>16 A. I just don't recall. There are</p> <p>17 so many transactions. Some transactions it</p> <p>18 happens and some transactions it doesn't.</p> <p>19 Q. Have you ever been involved in an</p> <p>20 offering by a consumer products company</p> <p>21 other than Sunbeam?</p> <p>22 A. I can't remember whether or not I</p> <p>23 had or not. I have done offerings in a</p> <p>24 very wide range of industries.</p> <p>25 Q. No consumer products companies</p>	<p style="text-align: right;">Page 44</p> <p>1 Dean</p> <p>2 purchase agreement between Morgan Stanley</p> <p>3 and Sunbeam.</p> <p>4 We also drafted the indenture</p> <p>5 that set forth the terms of the</p> <p>6 subordinated notes that were issued and</p> <p>7 there were -- we would have been -- we</p> <p>8 would have also drafted a closing</p> <p>9 memorandum for the transaction.</p> <p>10 Q. Lockup agreements to draft those?</p> <p>11 A. That would be part of the</p> <p>12 purchase agreement.</p> <p>13 Q. What is the purpose of due</p> <p>14 diligence?</p> <p>15 A. The purpose of due diligence is</p> <p>16 to provide a basis upon which the</p> <p>17 underwriter -- the underwriters in</p> <p>18 connection with the securities offering</p> <p>19 have liability in connection with the</p> <p>20 offering unless they are able to establish</p> <p>21 a due diligence defense.</p> <p>22 The purpose of diligence is to --</p> <p>23 both to provide a basis for establishing</p> <p>24 the due diligence defense but also as well</p> <p>25 to prevent misstatements from occurring.</p>
<p style="text-align: right;">Page 43</p> <p>1 Dean</p> <p>2 come immediately to mind?</p> <p>3 A. There may well have been but I</p> <p>4 just don't remember any right now.</p> <p>5 Q. Is it fair to say that the</p> <p>6 industry sector of the issuer is a</p> <p>7 consideration that informs what due</p> <p>8 diligence might be appropriate?</p> <p>9 A. Yes, it is.</p> <p>10 Q. You mentioned that Davis Polk's</p> <p>11 job in the transaction was to assist Morgan</p> <p>12 Stanley in reviewing the offering</p> <p>13 memorandum?</p> <p>14 A. Yes.</p> <p>15 Q. Did Davis Polk have any other</p> <p>16 responsibilities in connection with the</p> <p>17 transaction?</p> <p>18 A. We were assigned the</p> <p>19 responsibility of doing diligence on</p> <p>20 reviewing legal documents at Sunbeam and at</p> <p>21 the three acquired companies.</p> <p>22 Q. Did Davis Polk negotiate or draft</p> <p>23 any ancillary contracts in connection with</p> <p>24 the offering?</p> <p>25 A. We would have drafted the</p>	<p style="text-align: right;">Page 45</p> <p>1 Dean</p> <p>2 Q. So it is to, to a reasonable</p> <p>3 degree, confirm that the offering</p> <p>4 memorandum is fair and accurate?</p> <p>5 A. That is correct.</p> <p>6 Q. Would you say it is typical in</p> <p>7 due diligence to talk to an issuer's</p> <p>8 customers?</p> <p>9 A. It depends on the -- it depends</p> <p>10 on the issuer and the business they are in.</p> <p>11 Q. How about for a consumer products</p> <p>12 company? Don't you think that would be</p> <p>13 appropriate due diligence?</p> <p>14 A. Depends on the concentration</p> <p>15 of -- depends on whether or not there was a</p> <p>16 concentration of clients or not.</p> <p>17 Q. How would that circumstance</p> <p>18 inform whether talking to customers would</p> <p>19 be appropriate?</p> <p>20 A. The materiality of the customers</p> <p>21 to a company's revenues would be a factor</p> <p>22 in determining whether or not customer due</p> <p>23 diligence was appropriate.</p> <p>24 Q. If an issuer had sales</p> <p>25 concentrated in five or six major companies</p>

<p style="text-align: right;">Page 46</p> <p>1 Dean</p> <p>2 such as Wal-Mart, Home Depot, et cetera, it</p> <p>3 would make sense to talk to those</p> <p>4 customers?</p> <p>5 A. Yes, it might make sense in those</p> <p>6 particular companies.</p> <p>7 I think one of the other issues</p> <p>8 is that many of those companies have</p> <p>9 arrangements where they won't talk to third</p> <p>10 parties or -- and it is also widely known</p> <p>11 in the industry that they do not</p> <p>12 necessarily serve -- tell people what their</p> <p>13 purchase commitments are.</p> <p>14 Q. Are you, as you sit here today,</p> <p>15 aware of any policy within Home Depot that</p> <p>16 prevents Home Depot from advising an</p> <p>17 underwriter as to, say, the amount of</p> <p>18 inventory it has on hand?</p> <p>19 A. I am not aware of any policy that</p> <p>20 Home Depot has.</p> <p>21 I have certainly been told that</p> <p>22 Home Depot, in particular, may have</p> <p>23 policies against that.</p> <p>24 Q. But you are not aware of any?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 48</p> <p>1 Dean</p> <p>2 Q. Does that, putting aside what the</p> <p>3 case law says and whether this was a 144A</p> <p>4 offering or not, do you believe that the</p> <p>5 underwriter should obtain independent</p> <p>6 verification of senior management's</p> <p>7 statements concerning the company and its</p> <p>8 prospects?</p> <p>9 MR. CLARE: I object to the form;</p> <p>10 an incomplete hypothetical.</p> <p>11 THE WITNESS: Could you clarify</p> <p>12 that question for me?</p> <p>13 BY MR. JOHNSON:</p> <p>14 Q. Sure.</p> <p>15 Putting aside what -- whether it</p> <p>16 is a registered offering or not should an</p> <p>17 underwriter obtain independent verification</p> <p>18 of senior management's representations</p> <p>19 concerning the health of the issuer?</p> <p>20 A. It depends on the statements that</p> <p>21 are made and whether or not an</p> <p>22 investigation is one that would be</p> <p>23 reasonable under those circumstances so I</p> <p>24 don't think that there is a rigid answer to</p> <p>25 that question.</p>
<p style="text-align: right;">Page 47</p> <p>1 Dean</p> <p>2 Q. How about Wal-Mart?</p> <p>3 A. The same answer would -- as to</p> <p>4 Wal-Mart, I don't think that I have ever</p> <p>5 heard specific information about Wal-Mart</p> <p>6 but it wouldn't surprise me if they had</p> <p>7 some more policies.</p> <p>8 Q. You are not aware of a policy?</p> <p>9 A. No.</p> <p>10 Q. How about Target?</p> <p>11 A. The same answer as for Wal-Mart.</p> <p>12 Q. K-Mart?</p> <p>13 A. Same answer.</p> <p>14 Q. Is it correct that the</p> <p>15 underwriter should not take senior</p> <p>16 management of the issuer at its word?</p> <p>17 MR. CLARE: Object to the form of</p> <p>18 the question.</p> <p>19 THE WITNESS: The case law says</p> <p>20 that it is -- independent verification</p> <p>21 is the standard in Section 11 cases.</p> <p>22 I have forgotten whether or not</p> <p>23 this transaction involved a registered</p> <p>24 offering or whether or not it was done</p> <p>25 on a Rule 144A basis.</p>	<p style="text-align: right;">Page 49</p> <p>1 Dean</p> <p>2 Q. Would independent verification be</p> <p>3 particularly appropriate when the</p> <p>4 underwriter comes across negative or --</p> <p>5 negative information or information</p> <p>6 contrary to what management is contending?</p> <p>7 MR. CLARE: Same objections.</p> <p>8 THE WITNESS: I think it is</p> <p>9 impossible to generalize and give a yes</p> <p>10 or no answer to a question like that.</p> <p>11 It really depends on the</p> <p>12 particular facts and circumstances of</p> <p>13 the situation.</p> <p>14 MR. WISE: I would add that we</p> <p>15 have produced Mr. Dean here today as a</p> <p>16 fact witness in a case.</p> <p>17 If you are interested in hiring</p> <p>18 Davis Polk to be an expert witness in</p> <p>19 the case so that you may ask</p> <p>20 hypothetical questions we could discuss</p> <p>21 that but I think we would be unable to</p> <p>22 do that given our continuing</p> <p>23 representation of Morgan Stanley so I</p> <p>24 would appreciate it if we can move to</p> <p>25 the fact issues rather than</p>

<p style="text-align: right;">Page 50</p> <p>1 Dean</p> <p>2 hypotheticals.</p> <p>3 MR. JOHNSON: We are moving there</p> <p>4 shortly. I am trying to get a basis of</p> <p>5 this witness' understanding of the</p> <p>6 requirements which we will then put in</p> <p>7 the context of what happened in this</p> <p>8 transaction.</p> <p>9 MR. WISE: I think you can assume</p> <p>10 Mr. Dean, based upon the testimony you</p> <p>11 have already elicited, is an</p> <p>12 experienced practitioner in the area of</p> <p>13 securities transactions of this type so</p> <p>14 I think you probably can skip some of</p> <p>15 this and move to the facts.</p> <p>16 BY MR. JOHNSON:</p> <p>17 Q. I will take that advice.</p> <p>18 Did Morgan Stanley or Davis Polk</p> <p>19 ever talk to a Sunbeam customer?</p> <p>20 MR. CLARE: Objection; calls for</p> <p>21 speculation.</p> <p>22 THE WITNESS: I am not aware</p> <p>23 of -- I can't recall at this time</p> <p>24 whether or not we were involved in any</p> <p>25 conversations with -- whether or not</p>	<p style="text-align: right;">Page 52</p> <p>1 Dean</p> <p>2 Mr. Dunlap. Janet Kelley was involved.</p> <p>3 There was a sales manager at Sunbeam whose</p> <p>4 name I can't recall was involved.</p> <p>5 Q. Don Uzzi?</p> <p>6 A. Yes.</p> <p>7 I am sure there must have been</p> <p>8 others. It is six years ago and I have met</p> <p>9 a lot of people in transactions since then.</p> <p>10 Q. When you say you are sure there</p> <p>11 must be others, why do you say that?</p> <p>12 A. It -- just in the context of the</p> <p>13 offering process. You wind up consulting</p> <p>14 with many people during an offering.</p> <p>15 Q. You mentioned Mr. Dunlap. Did</p> <p>16 Davis Polk ever have any communications</p> <p>17 with Mr. Dunlap?</p> <p>18 A. I don't remember any direct</p> <p>19 communications that anybody at Davis Polk</p> <p>20 had with Mr. Dunlap.</p> <p>21 Q. Apparently you would remember</p> <p>22 them if you had them?</p> <p>23 A. I don't know.</p> <p>24 Q. In seriousness, had you heard</p> <p>25 anything about Mr. Dunlap's reputation?</p>
<p style="text-align: right;">Page 51</p> <p>1 Dean</p> <p>2 Davis Polk was involved in any</p> <p>3 conversations with the Sunbeam</p> <p>4 customer, and I don't recall at this</p> <p>5 time.</p> <p>6 I can't say for sure whether or</p> <p>7 not Morgan Stanley did or did not talk</p> <p>8 to a Sunbeam customer.</p> <p>9 BY MR. JOHNSON:</p> <p>10 Q. As you sit here today you can't</p> <p>11 identify any customers that either Davis</p> <p>12 Polk or Morgan Stanley spoke with?</p> <p>13 A. I can't identify any right now</p> <p>14 and I don't remember any.</p> <p>15 Q. Can you name for me all of the</p> <p>16 Sunbeam personnel that Morgan Stanley and</p> <p>17 Davis Polk spoke with in connection with</p> <p>18 diligence?</p> <p>19 A. No, I can't. I mean, there were</p> <p>20 a host of individuals.</p> <p>21 Q. Name as many as you can for me.</p> <p>22 A. I think that we talked about</p> <p>23 Russell Kersh, we talked about Bob Gluck.</p> <p>24 I think that -- I was told that there was a</p> <p>25 conversation with the CEO of Sunbeam,</p>	<p style="text-align: right;">Page 53</p> <p>1 Dean</p> <p>2 A. I don't know whether or not I</p> <p>3 knew it at the time of the transaction or</p> <p>4 whether or not it was after the transaction</p> <p>5 but he was regarded to be a very hard</p> <p>6 taskmaster.</p> <p>7 Q. Did Davis Polk or Morgan Stanley</p> <p>8 investigate his business background prior</p> <p>9 to Sunbeam?</p> <p>10 A. I think -- I don't recall whether</p> <p>11 or not Davis Polk did any investigation</p> <p>12 into his background.</p> <p>13 I think I was aware of the fact</p> <p>14 that he had been involved in a turnaround</p> <p>15 situation, I think it was Scott Paper. I</p> <p>16 have forgotten what the name of the company</p> <p>17 was.</p> <p>18 I don't know to what extent</p> <p>19 Morgan Stanley did an independent</p> <p>20 investigation.</p> <p>21 Q. Other than what we have already</p> <p>22 talked about can you tell me any other due</p> <p>23 diligence that Morgan Stanley or Davis Polk</p> <p>24 performed on Sunbeam?</p> <p>25 A. We would have read the minutes at</p>

<p style="text-align: right;">Page 54</p> <p>1 Dean</p> <p>2 Sunbeam and I believe that we would have</p> <p>3 read them at the acquired companies. I am</p> <p>4 not certain at this time.</p> <p>5 Other things -- I just don't</p> <p>6 remember right now but I would have</p> <p>7 remembered back at the time what we had</p> <p>8 looked at.</p> <p>9 Accountants management letters</p> <p>10 would have been an area that we would have</p> <p>11 looked at. I am sure we did it but, you</p> <p>12 know, I can't say that I positively sort of</p> <p>13 remember doing that right now.</p> <p>14 It would have been our routine</p> <p>15 practice to do it.</p> <p>16 Q. Anything else?</p> <p>17 A. We probably reviewed the</p> <p>18 acquisition agreements.</p> <p>19 Again, there are many documents</p> <p>20 that we would review in connection with an</p> <p>21 offering and I would remember exactly which</p> <p>22 documents we had looked at if we had been</p> <p>23 closer in time to the transaction but we</p> <p>24 would have done the -- we would have done</p> <p>25 the -- we would have reviewed the documents</p>	<p style="text-align: right;">Page 56</p> <p>1 Dean</p> <p>2 Q. Mr. Dean, how is it that you</p> <p>3 first got involved in the Sunbeam</p> <p>4 transaction that we are talking about</p> <p>5 today?</p> <p>6 A. I have forgotten who assigned the</p> <p>7 Sunbeam matter to me. Somebody came to my</p> <p>8 office and said that Davis Polk had been</p> <p>9 retained to represent Morgan Stanley in</p> <p>10 connection with a new offering.</p> <p>11 I don't remember who did that.</p> <p>12 Q. It was one of your law partners?</p> <p>13 A. Yes.</p> <p>14 Q. When did that occur?</p> <p>15 A. I don't know right now. I assume</p> <p>16 shortly -- I just don't have any</p> <p>17 recollection of that. I mean, it was just</p> <p>18 a long time ago.</p> <p>19 We could take a look at our time</p> <p>20 records and the time records might indicate</p> <p>21 that.</p> <p>22 Q. I have something that maybe is a</p> <p>23 little more concise than your time records</p> <p>24 that may refresh your memory.</p> <p>25 This is a document that has been</p>
<p style="text-align: right;">Page 55</p> <p>1 Dean</p> <p>2 that in our professional opinion would have</p> <p>3 been required to be reviewed in connection</p> <p>4 with an offering of this sort.</p> <p>5 Q. What work did you do concerning</p> <p>6 the company's business projections?</p> <p>7 A. That is primarily a financial</p> <p>8 sort of analysis and so that part of the</p> <p>9 due diligence would fall more on Morgan</p> <p>10 Stanley's shoulders and they would not</p> <p>11 really rely upon a law firm to do that.</p> <p>12 Q. Do you know what work Morgan</p> <p>13 Stanley did in that regard?</p> <p>14 A. No.</p> <p>15 Can we take a brief break to get</p> <p>16 some water?</p> <p>17 MR. JOHNSON: Sure.</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 10:41 a.m. We are going off the video</p> <p>20 record.</p> <p>21 (Recess)</p> <p>22 THE VIDEOGRAPHER: The time is</p> <p>23 10:58 a.m. We are back on the video</p> <p>24 record.</p> <p>25 BY MR. JOHNSON:</p>	<p style="text-align: right;">Page 57</p> <p>1 Dean</p> <p>2 previously marked as Exhibit 24. Have you</p> <p>3 ever seen Exhibit 24 previously?</p> <p>4 A. I have seen it before. I don't</p> <p>5 know if I have -- I have seen a version of</p> <p>6 this document before.</p> <p>7 I don't know whether or not I</p> <p>8 have seen this exact document.</p> <p>9 Q. When did you see a version of</p> <p>10 this document, Exhibit 24?</p> <p>11 A. I saw it on Monday, I think, in</p> <p>12 connection with the deposition preparation.</p> <p>13 I may have seen it before when it was</p> <p>14 prepared.</p> <p>15 Q. You weren't involved in preparing</p> <p>16 it in August of 2000?</p> <p>17 A. No, I was not.</p> <p>18 Q. This -- this is a chronology</p> <p>19 prepared by Davis Polk; is that correct?</p> <p>20 A. The document says that it was</p> <p>21 prepared by Davis Polk. I assume that it</p> <p>22 was.</p> <p>23 Q. The chronology prepared here has</p> <p>24 as its first date February 25, 1998.</p> <p>25 Is that when you first became</p>

<p style="text-align: right;">Page 58</p> <p>1 Dean</p> <p>2 involved in this matter?</p> <p>3 A. I still don't have any specific</p> <p>4 recollection as to whether or not that was</p> <p>5 the date.</p> <p>6 Q. Do any of the other dates listed</p> <p>7 in Exhibit 24 appear to be more likely your</p> <p>8 first involvement in the matter?</p> <p>9 A. No. There is no other date that</p> <p>10 is more likely than not.</p> <p>11 It could well be that my -- it</p> <p>12 really depends on what the time records</p> <p>13 show. It is just so long ago.</p> <p>14 Q. Did you have any role in</p> <p>15 connection with the public announcement of</p> <p>16 the acquisitions?</p> <p>17 A. No, I did not.</p> <p>18 Q. Did anyone at Davis Polk?</p> <p>19 A. I am not aware of anyone.</p> <p>20 Somebody at Davis Polk might have been but</p> <p>21 I am not aware of anyone.</p> <p>22 Q. Did you attend the press</p> <p>23 conference where the acquisitions were</p> <p>24 announced?</p> <p>25 A. No, I did not.</p>	<p style="text-align: right;">Page 60</p> <p>1 Dean</p> <p>2 diligence investigations, due diligence</p> <p>3 meeting in Florida, and I don't remember</p> <p>4 what date that meeting occurred on.</p> <p>5 That would have been a routine</p> <p>6 question that would have been asked in the</p> <p>7 context of doing an offering like this and</p> <p>8 so I assume that it was asked at that</p> <p>9 meeting.</p> <p>10 I don't have any specific</p> <p>11 recollection that the question was actually</p> <p>12 asked.</p> <p>13 Q. Were you at that meeting?</p> <p>14 A. Yes, I was.</p> <p>15 Q. That was your only trip to</p> <p>16 Florida in connection with this</p> <p>17 transaction?</p> <p>18 A. Yes, it was.</p> <p>19 Q. That was in the first half of</p> <p>20 March?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what date it was?</p> <p>23 A. No, I don't recall what date it</p> <p>24 was. Again, it is six years ago.</p> <p>25 Q. I certainly don't see a reference</p>
<p style="text-align: right;">Page 59</p> <p>1 Dean</p> <p>2 By "the acquisitions," I assume</p> <p>3 that you are talking about the three</p> <p>4 acquisitions.</p> <p>5 Q. That's correct.</p> <p>6 A. That were disclosed in the</p> <p>7 offering memorandum?</p> <p>8 Q. Correct.</p> <p>9 Did anyone from Davis Polk play</p> <p>10 any role in the question and answer script</p> <p>11 to be used at the press conference?</p> <p>12 A. Not that I am aware of.</p> <p>13 Q. You didn't personally?</p> <p>14 A. No, I did not.</p> <p>15 Q. I am going to focus on the first</p> <p>16 half of March, if I can, prior to March 15.</p> <p>17 At any time prior to March 15 did</p> <p>18 Morgan Stanley or Davis Polk inquire of</p> <p>19 Sunbeam concerning how its first quarter of</p> <p>20 1998 was looking?</p> <p>21 A. Yes.</p> <p>22 Q. Tell me about those inquiries.</p> <p>23 A. Well, my recollection would be</p> <p>24 that the first inquiry probably would have</p> <p>25 been made in connection with the due</p>	<p style="text-align: right;">Page 61</p> <p>1 Dean</p> <p>2 to a trip to Florida in Exhibit 24.</p> <p>3 Does one of those meetings refer</p> <p>4 to a meeting in Florida?</p> <p>5 A. No. There doesn't seem to be any</p> <p>6 reference to a Florida meeting.</p> <p>7 Q. You recall one?</p> <p>8 A. Yes.</p> <p>9 Q. Who attended the Florida meeting?</p> <p>10 A. From Davis Polk, I attended it,</p> <p>11 Mr. Lurie attended it. I don't remember</p> <p>12 whether or not Heather Stack or Nicole</p> <p>13 Duncan, whether or not they attended it,</p> <p>14 but those would be the two other people who</p> <p>15 might have attended it.</p> <p>16 Q. Who from Morgan Stanley was</p> <p>17 present?</p> <p>18 A. Well, I will try to remember.</p> <p>19 Some of the names based on the names that</p> <p>20 we have talked about earlier this morning.</p> <p>21 John Tyree was definitely there.</p> <p>22 I don't remember whether or not Andy</p> <p>23 Savarie was there.</p> <p>24 Bram Smith who was in charge of</p> <p>25 the lending effort at Morgan Stanley</p>

<p style="text-align: right;">Page 62</p> <p>1 Dean</p> <p>2 attended that meeting.</p> <p>3 I can't recall the other names.</p> <p>4 Q. Was Lily Rafii, does that name</p> <p>5 ring a bell?</p> <p>6 A. I don't remember.</p> <p>7 Q. Gene Yoo?</p> <p>8 A. Again, I don't remember.</p> <p>9 Q. Tyrone Chang?</p> <p>10 A. I don't remember.</p> <p>11 Q. Michael Hart?</p> <p>12 A. I don't remember.</p> <p>13 Q. This was a meeting at Sunbeam's</p> <p>14 headquarters in Del Ray Beach, Florida?</p> <p>15 A. Yes.</p> <p>16 Q. How long did the meeting last?</p> <p>17 A. I have forgotten. It was a day</p> <p>18 meeting in Florida.</p> <p>19 I can't -- well, I don't actually</p> <p>20 remember whether or not we flew down the</p> <p>21 night before or we flew down the day of.</p> <p>22 It was just a single-day meeting.</p> <p>23 Q. With whom did you meet, the Davis</p> <p>24 Polk -- the Morgan Stanley contingent?</p> <p>25 A. We met with representatives of</p>	<p style="text-align: right;">Page 64</p> <p>1 Dean</p> <p>2 was consistent with Wall Street's</p> <p>3 expectations about the first quarter</p> <p>4 performance.</p> <p>5 Q. You don't remember what Sunbeam</p> <p>6 said in response to that question?</p> <p>7 A. No. I assume what Sunbeam said</p> <p>8 in response to the question was that, yes,</p> <p>9 they were on track to meet expectations.</p> <p>10 Q. Do you assume that because you</p> <p>11 don't remember any alarming information</p> <p>12 coming out of the meeting?</p> <p>13 A. Well, I don't remember anything</p> <p>14 eventful coming out of the meeting. I</p> <p>15 don't know if "alarming" is -- I don't know</p> <p>16 what you mean by "alarming." It was a</p> <p>17 routine meeting.</p> <p>18 Q. Why is it customary to ask</p> <p>19 whether the current outlook is consistent</p> <p>20 with Wall Street estimates?</p> <p>21 A. It is customary because investors</p> <p>22 would find it -- might find it to be a</p> <p>23 material fact if in fact the company</p> <p>24 believed that its results were not going to</p> <p>25 be in line with expectations of research</p>
<p style="text-align: right;">Page 63</p> <p>1 Dean</p> <p>2 Sunbeam. I don't remember whether or not</p> <p>3 Arthur Andersen, the accountants to</p> <p>4 Sunbeam, were there or not. They may have</p> <p>5 been there for a portion of the meeting. I</p> <p>6 would have known back then but I don't now.</p> <p>7 There were also representatives</p> <p>8 of some of the other lending institutions.</p> <p>9 I just don't remember.</p> <p>10 It was a meeting that was</p> <p>11 attended by a very large number of people.</p> <p>12 Q. As best as you can recall who</p> <p>13 were the Sunbeam representatives?</p> <p>14 A. Bob Gluck was certainly there. I</p> <p>15 think Janet Kelley came in and out. I</p> <p>16 don't -- there were other representatives</p> <p>17 of Sunbeam that came into the session. I</p> <p>18 don't recall their names.</p> <p>19 Q. What was said about Sunbeam's</p> <p>20 first quarter 1998 results?</p> <p>21 A. I don't recall what exactly was</p> <p>22 said at the time.</p> <p>23 The standard questions that would</p> <p>24 have been asked at the time would have been</p> <p>25 whether or not Sunbeam's current outlook</p>	<p style="text-align: right;">Page 65</p> <p>1 Dean</p> <p>2 analysts.</p> <p>3 Q. So it would be information that</p> <p>4 would need to be disclosed?</p> <p>5 A. Yes. Normally that would be</p> <p>6 information that would be disclosed.</p> <p>7 Q. Other than the participants and</p> <p>8 the length of the meeting in Florida what</p> <p>9 else do you recall about that trip?</p> <p>10 A. I don't have any other specific</p> <p>11 recollections about the trip.</p> <p>12 Q. You left that meeting without any</p> <p>13 concerns about Sunbeam's performance?</p> <p>14 A. I don't remember having any</p> <p>15 concerns about Sunbeam's performance after</p> <p>16 leaving that meeting.</p> <p>17 Q. Did you have a primary contact at</p> <p>18 Morgan Stanley?</p> <p>19 A. There -- the primary transaction</p> <p>20 person would have been -- I guess it was</p> <p>21 John Tyree and maybe Andy Savarie were</p> <p>22 contacts on the transaction.</p> <p>23 In different parts of the</p> <p>24 transaction we would have contact with</p> <p>25 different people at Morgan Stanley</p>

<p style="text-align: right;">Page 66</p> <p>1 Dean</p> <p>2 depending what part of the transaction was</p> <p>3 involved.</p> <p>4 Q. Did you ever talk to Bill Strong</p> <p>5 in connection with this transaction?</p> <p>6 A. Yes, we did.</p> <p>7 Q. On how many occasions?</p> <p>8 A. I can't recall.</p> <p>9 Q. Numerous occasions?</p> <p>10 A. No, a handful occasions. I mean</p> <p>11 I don't remember how many times I talked to</p> <p>12 him. I don't remember whether or not I had</p> <p>13 any direct conversations with him or</p> <p>14 whether or not it was in the context of</p> <p>15 conference calls that he participated in.</p> <p>16 Q. Did you have any contact with Bob</p> <p>17 Kitts in connection with this transaction?</p> <p>18 A. No, not that I am aware of.</p> <p>19 Q. Alex Fuchs?</p> <p>20 A. No. I may have. I mean, in the</p> <p>21 course of a transaction you wind up talking</p> <p>22 to a lot of people.</p> <p>23 Q. How about Jim Stynes?</p> <p>24 A. I don't remember talking to</p> <p>25 Mr. Stynes. Again, it was a long time ago</p>	<p style="text-align: right;">Page 68</p> <p>1 Dean</p> <p>2 shortfall at Sunbeam?</p> <p>3 A. That's correct. I can only speak</p> <p>4 to Davis Polk.</p> <p>5 I mean, I assume that Morgan</p> <p>6 Stanley would have informed us, yes.</p> <p>7 Q. Why do you say that?</p> <p>8 A. Because it -- one would have had</p> <p>9 to evaluate whether or not it was a</p> <p>10 material fact that needed to be disclosed.</p> <p>11 Q. Prior to March 18 Morgan Stanley</p> <p>12 had on at least one occasion asked how</p> <p>13 Sunbeam's first quarter looked?</p> <p>14 A. Yes.</p> <p>15 Q. That was the meeting in Florida?</p> <p>16 A. I don't have a specific</p> <p>17 recollection as to whether or not the</p> <p>18 question was asked. That would be a</p> <p>19 standard forum in which that question would</p> <p>20 be aired and there might be other</p> <p>21 opportunities as well.</p> <p>22 Q. We are going to come back to</p> <p>23 March 18 but I want to back up again just</p> <p>24 for a few minutes.</p> <p>25 Were you aware that Morgan</p>
<p style="text-align: right;">Page 67</p> <p>1 Dean</p> <p>2 and I could well have spoken to any one of</p> <p>3 these individuals.</p> <p>4 Q. When did you first become aware</p> <p>5 of problems with Sunbeam's first quarter</p> <p>6 1998 results?</p> <p>7 MR. CLARE: I object to the form</p> <p>8 of the question.</p> <p>9 THE WITNESS: I first became</p> <p>10 aware of the fact that Sunbeam's</p> <p>11 revenues might not be -- first quarter</p> <p>12 revenues for 1998 might not be</p> <p>13 consistent with Street estimates</p> <p>14 sometime in March.</p> <p>15 I think it was the day before the</p> <p>16 offering memorandum was finalized.</p> <p>17 BY MR. JOHNSON:</p> <p>18 Q. Looking at Exhibit 24, the Davis</p> <p>19 Polk chronology, that would be March 18,</p> <p>20 1998?</p> <p>21 A. Yes, yes. Looking at the</p> <p>22 chronology the date appears to be March 18.</p> <p>23 Q. Prior to March 18 then to your</p> <p>24 knowledge neither Davis Polk nor Morgan</p> <p>25 Stanley had any inkling of any sales</p>	<p style="text-align: right;">Page 69</p> <p>1 Dean</p> <p>2 Stanley signed -- strike that.</p> <p>3 Are you familiar with the term "a</p> <p>4 highly confident letter?"</p> <p>5 A. Yes, I am familiar with the term</p> <p>6 "highly confident letter."</p> <p>7 Q. Are you aware that Morgan Stanley</p> <p>8 provided Sunbeam a highly confident letter</p> <p>9 in connection with financing the</p> <p>10 acquisitions?</p> <p>11 A. I would have known at the time.</p> <p>12 I don't recall now.</p> <p>13 It wouldn't surprise me if Morgan</p> <p>14 Stanley furnished a highly confident</p> <p>15 letter.</p> <p>16 Q. Were you involved in -- let me</p> <p>17 show it to you.</p> <p>18 Do you recall being involved in</p> <p>19 issuing this?</p> <p>20 Counsel, I apologize. I only</p> <p>21 have one copy of this which -- if you could</p> <p>22 look at what has been previously marked as</p> <p>23 Exhibit 74 and tell me whether you</p> <p>24 recognize that?</p> <p>25 A. I don't recognize it. I don't</p>

<p style="text-align: right;">Page 70</p> <p>1 Dean</p> <p>2 know what the question is.</p> <p>3 Do I recognize it in what</p> <p>4 context?</p> <p>5 Q. Let me ask it a little</p> <p>6 differently.</p> <p>7 Does that letter, Exhibit 74,</p> <p>8 refresh your recollection of your role, if</p> <p>9 any, in preparing the highly confident</p> <p>10 letter?</p> <p>11 A. The letter does not refresh my</p> <p>12 recollection and as far as I am aware I was</p> <p>13 not involved in preparing the highly</p> <p>14 confident letter.</p> <p>15 Q. In connection with this</p> <p>16 transaction did you have any communications</p> <p>17 with anyone from MacAndrews & Forbes</p> <p>18 Holding?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you know whether anyone from</p> <p>21 Davis Polk had any communications with</p> <p>22 anyone from MacAndrews & Forbes?</p> <p>23 A. As far as I know no one had had</p> <p>24 any contact with MacAndrews & Forbes.</p> <p>25 Q. At some point during the due</p>	<p style="text-align: right;">Page 72</p> <p>1 Dean</p> <p>2 A. I can't recall which of these</p> <p>3 conference calls I participated in. My</p> <p>4 recollection is that Mr. Lurie who also</p> <p>5 worked on the transaction with me and the</p> <p>6 rest of the Davis Polk team, that we split</p> <p>7 up these conference calls.</p> <p>8 Q. So as you sit here today you have</p> <p>9 no idea what was discussed on the March 12</p> <p>10 accounting due diligence call?</p> <p>11 A. I can't -- I don't have any</p> <p>12 specific recollection as to what was</p> <p>13 discussed.</p> <p>14 Q. Do you have a general idea?</p> <p>15 A. I don't even know -- I am not</p> <p>16 positive I actually participated in that</p> <p>17 due diligence phone call.</p> <p>18 Q. Would it be expected that</p> <p>19 Mr. Lurie or Ms. Stack would report to you</p> <p>20 the events of the call?</p> <p>21 A. Yes.</p> <p>22 Q. Based on your own participation</p> <p>23 and that of other Davis Polk lawyers do you</p> <p>24 know what happened during the March 12</p> <p>25 accounting due diligence conference call?</p>
<p style="text-align: right;">Page 71</p> <p>1 Dean</p> <p>2 diligence process did you speak with anyone</p> <p>3 from Arthur Andersen?</p> <p>4 A. Yes.</p> <p>5 Q. When was that?</p> <p>6 A. I don't recall exactly when. We</p> <p>7 talked to Arthur Andersen.</p> <p>8 Q. Was it on more than one occasion?</p> <p>9 A. I can't recall how many occasions</p> <p>10 I personally talked to Arthur Andersen.</p> <p>11 Q. Do you know how many Davis</p> <p>12 Polk -- how many conversations attorneys</p> <p>13 from Davis Polk had with auditors from</p> <p>14 Arthur Andersen?</p> <p>15 A. No. I am sure that we had</p> <p>16 several conversations with Arthur Andersen</p> <p>17 during the course of the transaction.</p> <p>18 Q. This has been marked as Exhibit</p> <p>19 31 previously.</p> <p>20 Mr. Dean, I have handed you</p> <p>21 Exhibit CPH31 which appears to be a memo</p> <p>22 from John Tyree to the Sunbeam financing</p> <p>23 team scheduling an accounting due diligence</p> <p>24 call for March 12, 1998.</p> <p>25 Did you participate in that call?</p>	<p style="text-align: right;">Page 73</p> <p>1 Dean</p> <p>2 A. Well, I don't remember anything</p> <p>3 out of the ordinary being raised in the</p> <p>4 accounting due diligence phone calls.</p> <p>5 Q. Do you remember ever speaking to</p> <p>6 Larry Bornstein, the Andersen auditor</p> <p>7 listed on the conference call schedule?</p> <p>8 A. The name is familiar but I don't</p> <p>9 personally remember whether or not I</p> <p>10 actually spoke to Mr. Bornstein or not. I</p> <p>11 could well have spoken to him during the</p> <p>12 course of the transaction.</p> <p>13 Q. Can you say with certainty that</p> <p>14 you spoke with any Andersen auditor?</p> <p>15 A. I don't recall now whether or not</p> <p>16 I did or not.</p> <p>17 Q. I thought you testified there</p> <p>18 were several conversations with Andersen.</p> <p>19 A. Yes.</p> <p>20 Q. What is your basis for that</p> <p>21 testimony?</p> <p>22 A. In the course of preparing the</p> <p>23 comfort letter for the transaction there</p> <p>24 would have been numerous phone calls with</p> <p>25 Andersen and the fact that there was --</p>

<p style="text-align: right;">Page 74</p> <p>1 Dean</p> <p>2 that there was a due diligence phone call</p> <p>3 with the accountants, and in the ordinary</p> <p>4 course of doing a transaction like this</p> <p>5 from time to time I would -- I could easily</p> <p>6 be involved in the phone call with one of</p> <p>7 the accountants.</p> <p>8 Q. You say in the course of</p> <p>9 preparing the comfort letter you would</p> <p>10 expect multiple conversations?</p> <p>11 A. Yes.</p> <p>12 Q. Why do you say that?</p> <p>13 A. There is just give and take in</p> <p>14 first scoping out what the comfort letter</p> <p>15 covers and then reviewing the letter as --</p> <p>16 through its drafts until it becomes</p> <p>17 finalized.</p> <p>18 Q. It is kind of an ongoing process</p> <p>19 between counsel and the auditor?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Do you have a sense of how many</p> <p>22 drafts are ordinarily provided during the</p> <p>23 process?</p> <p>24 MR. CLARE: Object to form; an</p> <p>25 incomplete hypothetical.</p>	<p style="text-align: right;">Page 76</p> <p>1 Dean</p> <p>2 Q. You may have, you just don't</p> <p>3 remember?</p> <p>4 A. I just don't remember.</p> <p>5 Q. You don't remember any reports</p> <p>6 from your Davis Polk colleagues about any</p> <p>7 conversations with Andersen?</p> <p>8 A. I don't recall any specific</p> <p>9 conversations. It would have been my</p> <p>10 ordinary course to sit down with other</p> <p>11 Davis Polk people who had the conversations</p> <p>12 to make -- to review what was discussed on</p> <p>13 the conference calls.</p> <p>14 Mr. Lurie was a very senior</p> <p>15 lawyer at the time and that was a task that</p> <p>16 could be delegated to Mr. Lurie.</p> <p>17 Q. Do you remember Mr. Lurie</p> <p>18 conveying to you any information that he</p> <p>19 learned from the auditors?</p> <p>20 A. I don't remember his -- I am sure</p> <p>21 that we sat down and reviewed what occurred</p> <p>22 during those conversations.</p> <p>23 I don't have any specific</p> <p>24 recollection of what was communicated in</p> <p>25 those conversations.</p>
<p style="text-align: right;">Page 75</p> <p>1 Dean</p> <p>2 THE WITNESS: It depends on the</p> <p>3 transaction. I don't think that there</p> <p>4 is a standard number of drafts.</p> <p>5 BY MR. JOHNSON:</p> <p>6 Q. This can occur over a several-day</p> <p>7 period?</p> <p>8 MR. CLARE: Same objections.</p> <p>9 THE WITNESS: It can occur over a</p> <p>10 several-day period or several-week</p> <p>11 period depending on the course of the</p> <p>12 transaction.</p> <p>13 BY MR. JOHNSON:</p> <p>14 Q. I apologize if I have already</p> <p>15 asked this.</p> <p>16 The conversations with Andersen</p> <p>17 in March of 1998, you can't recall</p> <p>18 specifically your own involvement in any of</p> <p>19 those telephone calls?</p> <p>20 A. I can't but I have been involved</p> <p>21 in scores of accounting due diligence phone</p> <p>22 calls since then.</p> <p>23 If we had asked this question in</p> <p>24 1998, I mean, I probably would remember</p> <p>25 whether or not I did or not.</p>	<p style="text-align: right;">Page 77</p> <p>1 Dean</p> <p>2 Q. Do you have any recollection of</p> <p>3 what occurred during any of those</p> <p>4 conference calls?</p> <p>5 A. I don't have a -- I don't have</p> <p>6 any specific recollection of what occurred</p> <p>7 during those conference calls.</p> <p>8 Q. Do you have any recollection</p> <p>9 whatsoever as to what occurred?</p> <p>10 A. I don't have. At the time, I</p> <p>11 mean, as I have said before, there have</p> <p>12 been probably hundreds of these due</p> <p>13 diligence phone calls that I have been on.</p> <p>14 Q. Is half an hour in your view a</p> <p>15 typical time for speaking with an issuer's</p> <p>16 auditors in an accounting due diligence</p> <p>17 call?</p> <p>18 MR. CLARE: Objection to form;</p> <p>19 incomplete hypothetical.</p> <p>20 THE WITNESS: I think that there</p> <p>21 is no set period of time that is --</p> <p>22 that one can say is a normal period of</p> <p>23 time that an accounting due diligence</p> <p>24 phone call would take.</p> <p>25 A half an hour would not be</p>

<p style="text-align: right;">Page 78</p> <p>1 Dean</p> <p>2 unusual. It depends on the</p> <p>3 circumstances of the transaction and it</p> <p>4 would not necessarily be the only</p> <p>5 opportunity that you would have a</p> <p>6 chance to talk to the accountants about</p> <p>7 issues in connection with the</p> <p>8 transaction.</p> <p>9 BY MR. JOHNSON:</p> <p>10 Q. So even time less than a half</p> <p>11 hour might be appropriate is what you are</p> <p>12 saying?</p> <p>13 MR. CLARE: Same objections.</p> <p>14 THE WITNESS: It depends on the</p> <p>15 transaction.</p> <p>16 Yes, it might be.</p> <p>17 BY MR. JOHNSON:</p> <p>18 Q. With respect to Sunbeam does half</p> <p>19 an hour strike you as appropriate with the</p> <p>20 benefit of hindsight?</p> <p>21 MR. CLARE: Same objection.</p> <p>22 THE WITNESS: I don't know. I</p> <p>23 can only speak as to what we did at</p> <p>24 that time and I think that we concluded</p> <p>25 that what we did at the time was a</p>	<p style="text-align: right;">Page 80</p> <p>1 Dean</p> <p>2 Q. Putting aside the accounting</p> <p>3 treatment and complexity of bill and hold,</p> <p>4 is there any business concern associated</p> <p>5 with bill and hold?</p> <p>6 A. Well, I think you would have to</p> <p>7 describe the nature of the bill and hold</p> <p>8 transaction.</p> <p>9 There can be situations where</p> <p>10 bill and hold may raise concerns.</p> <p>11 Q. Channel stuffing concerns?</p> <p>12 A. Yes. Channel stuffing would be a</p> <p>13 concern in bill and hold transactions.</p> <p>14 Q. Did Morgan Stanley or Davis Polk</p> <p>15 investigate whether Sunbeam engaged -- had</p> <p>16 engaged in any channel stuffing?</p> <p>17 A. I don't recall whether or not we</p> <p>18 specifically asked about channel stuffing.</p> <p>19 We would have -- Davis Polk and</p> <p>20 Morgan Stanley would have been involved in</p> <p>21 making sure -- well, in making a reasonable</p> <p>22 investigation into whether or not Sunbeam's</p> <p>23 revenue recognition practices were</p> <p>24 appropriate.</p> <p>25 Q. Putting aside revenue recognition</p>
<p style="text-align: right;">Page 79</p> <p>1 Dean</p> <p>2 reasonable amount of time.</p> <p>3 BY MR. JOHNSON:</p> <p>4 Q. At any point in your</p> <p>5 conversations with Arthur Andersen did you</p> <p>6 learn that Sunbeam engaged in bill and hold</p> <p>7 transactions?</p> <p>8 A. I don't remember now. I would</p> <p>9 have remembered when we did this</p> <p>10 transaction in 1998.</p> <p>11 Q. You would have remembered because</p> <p>12 that is something out of the ordinary?</p> <p>13 A. No. I mean, I think that I just</p> <p>14 would have been closer to the transaction</p> <p>15 and remembered things.</p> <p>16 Q. Bill and hold doesn't have any</p> <p>17 negative connotation with you?</p> <p>18 A. It depends on the nature of the</p> <p>19 bill and hold transaction.</p> <p>20 The bill and hold is used in</p> <p>21 reference to transactions that -- where</p> <p>22 revenue recognition is inappropriate but</p> <p>23 there may also be situations where a bill</p> <p>24 and hold situation is a situation where</p> <p>25 revenue can be recognized, I believe.</p>	<p style="text-align: right;">Page 81</p> <p>1 Dean</p> <p>2 practices and focusing specifically on</p> <p>3 channel stuffing, can you tell me anything</p> <p>4 that Morgan Stanley or Davis Polk did to</p> <p>5 determine whether Sunbeam had stuffed its</p> <p>6 channels?</p> <p>7 A. No. I don't remember at this</p> <p>8 time what specific inquiry if any we made</p> <p>9 at the time.</p> <p>10 I think, again, in 1998 I could</p> <p>11 have been much more specific about it. Six</p> <p>12 years has gone by and I don't remember.</p> <p>13 Q. You don't remember any specific</p> <p>14 inquiry. Do you remember any effort</p> <p>15 undertaken whatsoever on the issue of</p> <p>16 whether Sunbeam's channels were stuffed?</p> <p>17 A. Well, I don't remember one way or</p> <p>18 the other. That is six years that has</p> <p>19 elapsed.</p> <p>20 Q. Did Davis Polk or Morgan Stanley</p> <p>21 suggest to Sunbeam any revisions to the</p> <p>22 offering memorandum?</p> <p>23 A. Yes. We did suggest a revision</p> <p>24 to the preliminary offering memorandum.</p> <p>25 Q. What was the nature of that</p>

<p style="text-align: right;">Page 82</p> <p>1 Dean</p> <p>2 revision?</p> <p>3 A. We suggested many revisions to</p> <p>4 the document. I am sure the one that comes</p> <p>5 to mind that was of some controversy was to</p> <p>6 add disclosure in the offering memorandum</p> <p>7 with respect to Sunbeam's expected first</p> <p>8 quarter 1998 results.</p> <p>9 Q. We are going to get that one.</p> <p>10 Prior to that one, let's say</p> <p>11 prior to March 15, can you think of any</p> <p>12 particular changes that Morgan Stanley or</p> <p>13 Davis Polk proposed to Sunbeam?</p> <p>14 A. I am sure that we -- in the</p> <p>15 ordinary course of a transaction, reviewing</p> <p>16 the documents, we would -- Morgan Stanley</p> <p>17 and/or Davis Polk might make suggestions to</p> <p>18 an offering document.</p> <p>19 I don't have any specific</p> <p>20 recollection of what suggestions we might</p> <p>21 have made other than the one that we have</p> <p>22 just discussed.</p> <p>23 Q. Let's look at what has been</p> <p>24 marked previously as Exhibit 11.</p> <p>25 Mr. Dean, CPH Exhibit 11 appears</p>	<p style="text-align: right;">Page 84</p> <p>1 Dean</p> <p>2 spoke about the appropriateness of these</p> <p>3 revisions.</p> <p>4 Q. Did you -- again, a yes or no</p> <p>5 question.</p> <p>6 Did you speak with him as to the</p> <p>7 factual predicate of the revisions that he</p> <p>8 was proposing?</p> <p>9 A. I don't remember having</p> <p>10 conversations about these revisions. I may</p> <p>11 have. I may not have.</p> <p>12 I just don't have any specific</p> <p>13 recollection six years after these facts</p> <p>14 occurred.</p> <p>15 Q. With respect to rider 1 Mr. Tyree</p> <p>16 states that the addition is proposed in</p> <p>17 order to "communicate to the investor the</p> <p>18 recent restructuring success of the</p> <p>19 management team."</p> <p>20 Do you see that?</p> <p>21 A. Yes, I see that reference in the</p> <p>22 exhibit.</p> <p>23 Q. Did Davis Polk or Morgan Stanley</p> <p>24 satisfy itself that the restructuring of</p> <p>25 Sunbeam was authentic?</p>
<p style="text-align: right;">Page 83</p> <p>1 Dean</p> <p>2 to be a memo from John Tyree to Ms. Kelley,</p> <p>3 Mr. Gluck, you and Mr. Fernicola.</p> <p>4 Does that document Exhibit 11</p> <p>5 refresh your memory as to any changes that</p> <p>6 Morgan Stanley or Davis Polk proposed to</p> <p>7 the offering memorandum?</p> <p>8 A. Well, the memorandum on its face</p> <p>9 contains a number of riders, suggested</p> <p>10 riders to the offering memorandum.</p> <p>11 It does reflect -- refresh my</p> <p>12 recollection that a memorandum like this</p> <p>13 was presented in the course of the drafting</p> <p>14 process.</p> <p>15 Q. We have already spoken about</p> <p>16 Ms. Kelley and Mr. Gluck.</p> <p>17 Who is Mr. Fernicola?</p> <p>18 A. Mr. Fernicola is a partner at</p> <p>19 Skadden, Arps who represented Sunbeam.</p> <p>20 Q. Did -- this is a yes or no</p> <p>21 question.</p> <p>22 Did you have any conversations</p> <p>23 with Mr. Tyree as to the appropriateness of</p> <p>24 these revisions?</p> <p>25 A. I don't recall whether or not we</p>	<p style="text-align: right;">Page 85</p> <p>1 Dean</p> <p>2 A. I can't -- I don't know what the</p> <p>3 term "authentic" means in this context.</p> <p>4 I mean, Davis Polk and Morgan</p> <p>5 Stanley -- I can speak to Davis Polk.</p> <p>6 I mean, we did the normal</p> <p>7 investigation that we would do in</p> <p>8 connection with preparing -- assisting</p> <p>9 Morgan Stanley in preparing an offering</p> <p>10 memorandum and we concluded at the time</p> <p>11 that there were no material misstatements</p> <p>12 or omissions.</p> <p>13 Q. Were you aware in March of 1998</p> <p>14 of Morgan Stanley's investment banking work</p> <p>15 for Sunbeam in the months leading up to the</p> <p>16 announcement of Sunbeam's acquisitions?</p> <p>17 A. Well, I knew that Morgan Stanley</p> <p>18 was involved as a financial adviser to</p> <p>19 Sunbeam in connection with the acquisition</p> <p>20 transactions in the context of doing the</p> <p>21 subordinated debt offering and I also knew</p> <p>22 that Morgan Stanley was involved in</p> <p>23 providing bank lending to finance these</p> <p>24 transactions.</p> <p>25 Q. Do you know how long Morgan</p>

<p style="text-align: right;">Page 86</p> <p>1 Dean</p> <p>2 Stanley had been a financial adviser to</p> <p>3 Sunbeam?</p> <p>4 A. No, I do not.</p> <p>5 Q. Did you ever learn that Morgan</p> <p>6 Stanley was initially hired to sell Sunbeam</p> <p>7 to another party?</p> <p>8 A. I don't have any firm</p> <p>9 recollection of that.</p> <p>10 I mean, now that you mention it,</p> <p>11 I may have been aware that one of the</p> <p>12 assignments was to sell Sunbeam but I</p> <p>13 wouldn't have had any recollection of that</p> <p>14 without being refreshed by you.</p> <p>15 Q. Referring again to Exhibit 11,</p> <p>16 was there any hesitation on the part of</p> <p>17 Sunbeam or Skadden to include the riders</p> <p>18 that are set forth in Exhibit 11?</p> <p>19 A. There may have been. I just</p> <p>20 don't have any recollection again because</p> <p>21 it was six years ago.</p> <p>22 Q. Did anyone from Morgan Stanley</p> <p>23 propose to tone down the offering</p> <p>24 memorandum as far as the reports of</p> <p>25 Sunbeam's success?</p>	<p style="text-align: right;">Page 88</p> <p>1 Dean</p> <p>2 know that I did take a look at the comfort</p> <p>3 letter that was delivered in connection</p> <p>4 with the pricing of the transaction and I</p> <p>5 could well have looked at drafts of the</p> <p>6 comfort letters prepared before.</p> <p>7 I don't have any -- I just don't</p> <p>8 have any specific recollection.</p> <p>9 And the nature of the process is,</p> <p>10 a lot of times you get these things at the</p> <p>11 last minute.</p> <p>12 Q. I will provide what has been</p> <p>13 marked previously as CPH Exhibit 110.</p> <p>14 Mr. Dean, CPH Exhibit 110 has</p> <p>15 been marked previously and appears to be a</p> <p>16 draft of the comfort letter from Arthur</p> <p>17 Andersen to Morgan Stanley.</p> <p>18 The letter is dated March 19,</p> <p>19 1998. It bears a fax header of March 17,</p> <p>20 1998. Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Does this document refresh your</p> <p>23 recollection in any way as to whether or</p> <p>24 when you saw drafts of Andersen's comfort</p> <p>25 letter related to the Sunbeam offering?</p>
<p style="text-align: right;">Page 87</p> <p>1 Dean</p> <p>2 MR. CLARE: Object to the form.</p> <p>3 THE WITNESS: I don't know what</p> <p>4 "tone down" means but Morgan Stanley --</p> <p>5 Davis Polk did review the offering</p> <p>6 memorandum and we concluded that did it</p> <p>7 not contain any material misstatements</p> <p>8 or omissions.</p> <p>9 BY MR. JOHNSON:</p> <p>10 Q. It was fair and accurate in all</p> <p>11 material respects?</p> <p>12 A. Insofar as we knew at the time.</p> <p>13 Q. You said a few minutes ago that</p> <p>14 it is customary to receive drafts of the</p> <p>15 comfort letter and have a dialogue with the</p> <p>16 auditor in the course of finalizing an</p> <p>17 offering memorandum; is that correct?</p> <p>18 A. Yes, that is correct.</p> <p>19 Q. Do you recall receiving drafts of</p> <p>20 any of the comfort letters prepared by</p> <p>21 Arthur Andersen in connection with this</p> <p>22 offering?</p> <p>23 A. I don't have any specific</p> <p>24 recollection of drafts that I did review.</p> <p>25 I know that I did take a look at the -- I</p>	<p style="text-align: right;">Page 89</p> <p>1 Dean</p> <p>2 A. No, it doesn't.</p> <p>3 Q. The top of the first page bears a</p> <p>4 header. In fact each of the pages bears a</p> <p>5 header Preliminary and Tentative for</p> <p>6 Discussion Purposes Only.</p> <p>7 A. Yes, I see that.</p> <p>8 Q. That is discussion between</p> <p>9 Andersen and Morgan Stanley?</p> <p>10 MR. CLARE: Objection; calls for</p> <p>11 speculation.</p> <p>12 MR. WISE: There is no indication</p> <p>13 that this witness knows who wrote this</p> <p>14 or what the person who wrote it</p> <p>15 intended by that.</p> <p>16 THE WITNESS: I don't know who</p> <p>17 wrote it and I don't know what was</p> <p>18 intended by it.</p> <p>19 MR. JOHNSON: Nice coach.</p> <p>20 MR. WISE: You wouldn't have</p> <p>21 gotten the question anyway because it</p> <p>22 is an improper question.</p> <p>23 THE WITNESS: I can say that the</p> <p>24 language that appears at the legend,</p> <p>25 and I have not studied the legend, is a</p>

<p style="text-align: right;">Page 90</p> <p>1 Dean</p> <p>2 standard legend that accounting firms</p> <p>3 place on drafts of comfort letters.</p> <p>4 Whether or not this draft was</p> <p>5 delivered -- I mean, this could have</p> <p>6 been an internal draft prepared by</p> <p>7 Arthur Andersen prior to being</p> <p>8 submitted for -- to review by the</p> <p>9 underwriters.</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. If you would look at page 3 of</p> <p>12 the letter which has the Bates stamp</p> <p>13 CPH38672, there is handwriting at the</p> <p>14 bottom of that page that states, "We had</p> <p>15 fire sale of inventory."</p> <p>16 Do you know what that refers to?</p> <p>17 A. No. I don't have -- I don't know</p> <p>18 what that refers to.</p> <p>19 Q. During the course of your work on</p> <p>20 the Sunbeam transaction did you ever hear</p> <p>21 that Sunbeam had had a fire sale of</p> <p>22 inventory?</p> <p>23 A. No. I don't recall that.</p> <p>24 I know that he had engaged in</p> <p>25 some transactions where they, at the end of</p>	<p style="text-align: right;">Page 92</p> <p>1 Dean</p> <p>2 that the company had accelerated sales into</p> <p>3 the fourth quarter of 1997?</p> <p>4 A. I don't recall when I learned</p> <p>5 that.</p> <p>6 Q. You did learn it at some point?</p> <p>7 A. Yes.</p> <p>8 Q. Were you aware of that</p> <p>9 information prior to the March 19 press</p> <p>10 release?</p> <p>11 A. I can't recall. I assume that I</p> <p>12 was but I can't recall when exactly I</p> <p>13 learned about it.</p> <p>14 Q. You were aware of it by the time</p> <p>15 the offering memorandum was finalized?</p> <p>16 A. When the final offering</p> <p>17 memorandum was being prepared.</p> <p>18 Q. Did you have any reaction to that</p> <p>19 information?</p> <p>20 A. Reaction to what information?</p> <p>21 The fact that there was --</p> <p>22 Q. There was acceleration of sales</p> <p>23 into 1997.</p> <p>24 A. It is a timing issue about</p> <p>25 recognition of sales and it might impact</p>
<p style="text-align: right;">Page 91</p> <p>1 Dean</p> <p>2 a quarter, they would discount some of the</p> <p>3 merchandise to make sure that sales</p> <p>4 occurred by the end of the quarter; not an</p> <p>5 unusual practice for any manufacturer.</p> <p>6 Q. You mentioned that you first</p> <p>7 became aware of a potential sale shortfall</p> <p>8 at Sunbeam on March 18.</p> <p>9 Was that in connection with</p> <p>10 reviewing drafts of the comfort letter?</p> <p>11 A. No, it was not.</p> <p>12 Q. Was that information communicated</p> <p>13 to you by Morgan Stanley?</p> <p>14 A. Yes. I think I was alerted to it</p> <p>15 by Morgan Stanley.</p> <p>16 Q. Prior to that time you hadn't</p> <p>17 seen any numbers depicting the shortfall?</p> <p>18 A. No, we had not, none that I</p> <p>19 recall at this time.</p> <p>20 Q. If you would look at paragraph 6B</p> <p>21 for me, you have it already, 5B, I think,</p> <p>22 is a necessary predicate of 6B.</p> <p>23 If you would look at those two</p> <p>24 paragraphs for me?</p> <p>25 Prior to March 18 had you heard</p>	<p style="text-align: right;">Page 93</p> <p>1 Dean</p> <p>2 upon what the first quarter sales would be</p> <p>3 so it would be an area of interest.</p> <p>4 Q. Did Morgan Stanley or Davis Polk</p> <p>5 investigate the extent to which sales had</p> <p>6 been accelerated into the fourth quarter of</p> <p>7 1997?</p> <p>8 A. I don't recall now what</p> <p>9 investigations were done. We did the</p> <p>10 investigations that we thought were</p> <p>11 appropriate at the time.</p> <p>12 I don't have any specific</p> <p>13 recollection of what exactly we did then.</p> <p>14 Q. On what basis do you say that you</p> <p>15 did do some investigation?</p> <p>16 A. I am not -- I can't -- I think</p> <p>17 that in the context of doing an offering of</p> <p>18 this sort we did the level of investigation</p> <p>19 that was appropriate to ensure that there</p> <p>20 were no material misstatements or omissions</p> <p>21 and can I point to a specific investigation</p> <p>22 that we did? I can't now.</p> <p>23 Q. You are saying you did what you</p> <p>24 viewed to be appropriate but you can't tell</p> <p>25 me what you did?</p>

<p style="text-align: right;">Page 94</p> <p>1 Dean</p> <p>2 A. I am saying that I don't remember</p> <p>3 what was done because it was six years ago.</p> <p>4 Q. You do remember that it was</p> <p>5 appropriate?</p> <p>6 A. Yes.</p> <p>7 Q. How do you remember that?</p> <p>8 A. I think that to the extent that</p> <p>9 we were comfortable in delivering a legal</p> <p>10 opinion in connection with the offering</p> <p>11 memorandum I didn't contend any material</p> <p>12 misstatements or omission -- one of the</p> <p>13 predicates to that in our professional</p> <p>14 responsibility is to have concluded that a</p> <p>15 reasonable investigation was made.</p> <p>16 Q. Let's talk about March 18. You</p> <p>17 testified that you learned from Morgan</p> <p>18 Stanley that there was a potential</p> <p>19 shortfall in Sunbeam's first quarter 1998</p> <p>20 results; is that correct?</p> <p>21 A. In its revenues.</p> <p>22 Q. Revenue.</p> <p>23 Who from Morgan Stanley conveyed</p> <p>24 that information to you?</p> <p>25 A. I don't recall at this time who</p>	<p style="text-align: right;">Page 96</p> <p>1 Dean</p> <p>2 say?</p> <p>3 MR. WISE: That is your</p> <p>4 assumption.</p> <p>5 MR. JOHNSON: That is a question.</p> <p>6 THE WITNESS: I have no basis</p> <p>7 upon which to know where the</p> <p>8 information came from.</p> <p>9 BY MR. JOHNSON:</p> <p>10 Q. The second phone call that you</p> <p>11 mentioned on March 18, who was involved in</p> <p>12 that phone call?</p> <p>13 A. Representatives of Morgan</p> <p>14 Stanley, representatives of Sunbeam,</p> <p>15 representatives from Skadden, Arps, and</p> <p>16 those are the parties that I remember being</p> <p>17 on the phone call. And did I mention</p> <p>18 representatives of Davis Polk?</p> <p>19 Q. I assumed at least you were on.</p> <p>20 Was there anyone from Davis Polk</p> <p>21 other than you on that phone call?</p> <p>22 A. Yes.</p> <p>23 Q. Who was that?</p> <p>24 A. James Lurie was on the phone</p> <p>25 call. I believe Heather Stack was in the</p>
<p style="text-align: right;">Page 95</p> <p>1 Dean</p> <p>2 called me to alert me to that possibility.</p> <p>3 Q. What did you or Morgan Stanley do</p> <p>4 as a result of that possibility?</p> <p>5 A. Another telephone conference</p> <p>6 call, due diligence phone call was</p> <p>7 established to have Sunbeam review its</p> <p>8 first quarter results.</p> <p>9 Q. That call was also on March 18?</p> <p>10 A. Yes, it was.</p> <p>11 Q. The first call where you were</p> <p>12 alerted to the possibility of a shortfall,</p> <p>13 it is your testimony that you don't</p> <p>14 remember who conveyed that information to</p> <p>15 you?</p> <p>16 A. That's correct.</p> <p>17 Q. Do you know who else was on that</p> <p>18 call?</p> <p>19 A. The phone call where the</p> <p>20 information was communicated to me?</p> <p>21 Q. Correct.</p> <p>22 A. I don't have any -- I don't have</p> <p>23 any specific recollection.</p> <p>24 Q. Presumably that information came</p> <p>25 from Sunbeam originally; is that fair to</p>	<p style="text-align: right;">Page 97</p> <p>1 Dean</p> <p>2 room as well and at some point. I don't</p> <p>3 know whether or not it was this phone call</p> <p>4 or another phone call. Jeffrey Small and</p> <p>5 Frank Morrison were in the room.</p> <p>6 Q. Were there more than two phone</p> <p>7 calls concerning Sunbeam's first quarter</p> <p>8 results on March 18?</p> <p>9 A. Yes.</p> <p>10 Q. How many calls were there?</p> <p>11 A. I can't recall how many. I don't</p> <p>12 remember all of the participants. Some of</p> <p>13 them may have been -- I am certain there</p> <p>14 were many phone calls that just involved</p> <p>15 Davis Polk and Morgan Stanley.</p> <p>16 Q. He won't let me ask about those</p> <p>17 probably.</p> <p>18 We will see about that.</p> <p>19 Who were the Morgan Stanley</p> <p>20 representatives on the all-hands phone</p> <p>21 call, for lack of a better term?</p> <p>22 A. Ruth Porat, Brooks Harris. I</p> <p>23 don't remember specifically whether or not</p> <p>24 John Tyree and/or Andy Savarie were</p> <p>25 involved in that phone call but they could</p>

<p style="text-align: right;">Page 98</p> <p>1 Dean</p> <p>2 well have attended.</p> <p>3 I am certain -- my recollection</p> <p>4 right now is I am certain that Ruth Porat</p> <p>5 and Brooks Harris were on that phone call.</p> <p>6 Q. On March 18 did you have</p> <p>7 conversations with Mr. Tyree concerning</p> <p>8 Sunbeam's first quarter 1998 revenue</p> <p>9 situation?</p> <p>10 MR. WISE: You can answer that</p> <p>11 yes or no.</p> <p>12 THE WITNESS: I don't remember.</p> <p>13 I think I must have had phone calls</p> <p>14 with him about the subject.</p> <p>15 BY MR. JOHNSON:</p> <p>16 Q. How about Mr. Savarie?</p> <p>17 A. Again, I don't remember specific</p> <p>18 conversations but I could well have had</p> <p>19 conversations with Mr. Savarie directly.</p> <p>20 Q. How about Bill Strong?</p> <p>21 A. I think I did have -- I think I</p> <p>22 was involved in the conference call with</p> <p>23 Mr. Strong but I am not positive again.</p> <p>24 MR. JOHNSON: Why don't we change</p> <p>25 the tape?</p>	<p style="text-align: right;">Page 100</p> <p>1 Dean</p> <p>2 phone call as well.</p> <p>3 Q. How about Skadden, Arps?</p> <p>4 A. Skadden, Arps, I am aware that</p> <p>5 Finn Fogg and Greg Fernicola were on the</p> <p>6 phone call.</p> <p>7 I can't say whether or not they</p> <p>8 were on the phone call for the entire</p> <p>9 duration of it or not.</p> <p>10 Q. When you say you are aware they</p> <p>11 were on the phone call, do you remember</p> <p>12 that or was your memory refreshed?</p> <p>13 A. No. I remember that they were on</p> <p>14 that phone call.</p> <p>15 Q. This phone call strikes me as</p> <p>16 more memorable than some of the events from</p> <p>17 that time period. How long did that</p> <p>18 telephone call last?</p> <p>19 MR. CLARE: I move to strike the</p> <p>20 preamble to the question.</p> <p>21 THE WITNESS: I don't have a</p> <p>22 recollection of how long the phone call</p> <p>23 lasted.</p> <p>24 BY MR. JOHNSON:</p> <p>25 Q. Was it minutes, hours?</p>
<p style="text-align: right;">Page 99</p> <p>1 Dean</p> <p>2 THE VIDEOGRAPHER: The time is</p> <p>3 11:53 a.m. and this completes tape</p> <p>4 number one.</p> <p>5 (Pause)</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 11:55 a.m. and this begins tape number</p> <p>8 two.</p> <p>9 BY MR. JOHNSON:</p> <p>10 Q. Mr. Dean, referring again to the</p> <p>11 all-hands meeting on March 18, that was a</p> <p>12 meeting that took place by telephone?</p> <p>13 A. Yes, it was.</p> <p>14 Q. You have already identified, I</p> <p>15 believe, the Morgan Stanley participants</p> <p>16 and the Davis Polk participants.</p> <p>17 Could you tell me please the</p> <p>18 Sunbeam and Skadden participants?</p> <p>19 A. Well, that will tax my memory.</p> <p>20 I mean, I can't say for certain</p> <p>21 but I think Gluck must have been on the</p> <p>22 phone call.</p> <p>23 There was a salesperson who was</p> <p>24 on that phone call so I suspect that was</p> <p>25 Mr. Uzzi and I think Mr. Kersh was on the</p>	<p style="text-align: right;">Page 101</p> <p>1 Dean</p> <p>2 A. It was not minutes. It was also</p> <p>3 not two or three hours. Somewhere in</p> <p>4 between.</p> <p>5 I don't have a specific</p> <p>6 recollection as to exactly how long it</p> <p>7 lasted.</p> <p>8 Q. Tell me about what you can</p> <p>9 remember about the substance of the</p> <p>10 conversation.</p> <p>11 A. I remember that the purpose of</p> <p>12 the phone call was to review Sunbeam's</p> <p>13 first quarter results and to get an update</p> <p>14 from Sunbeam with respect to what their</p> <p>15 expectations were with respect to first</p> <p>16 quarter.</p> <p>17 I believe it was at that phone</p> <p>18 call where Sunbeam led the group through</p> <p>19 what their current expectations were for</p> <p>20 the first quarter of 1998 on the revenue</p> <p>21 side.</p> <p>22 Q. Was there any discussion during</p> <p>23 that call concerning the earnings side for</p> <p>24 the quarter?</p> <p>25 A. I don't have any specific</p>

<p style="text-align: right;">Page 102</p> <p>1 Dean</p> <p>2 recollection of whether or not we talked</p> <p>3 about earnings. I do remember that --</p> <p>4 being told --</p> <p>5 THE VIDEOGRAPHER: The time is</p> <p>6 11:58 and we are going off the video</p> <p>7 record.</p> <p>8 (Discussion off the record)</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 11:59 a.m. and we are back on the video</p> <p>11 record.</p> <p>12 BY MR. JOHNSON:</p> <p>13 Q. Mr. Dean, before the slight</p> <p>14 interruption I posed a question which I</p> <p>15 will ask the court reporter to read back</p> <p>16 for you.</p> <p>17 (Record read)</p> <p>18 THE WITNESS: Let's start over</p> <p>19 again.</p> <p>20 BY MR. JOHNSON:</p> <p>21 Q. Okay.</p> <p>22 A. I don't have any specific</p> <p>23 recollection of whether or not we discussed</p> <p>24 earnings in that telephone conference.</p> <p>25 I do remember being aware during</p>	<p style="text-align: right;">Page 104</p> <p>1 Dean</p> <p>2 information that Sunbeam's revenue appeared</p> <p>3 not to be growing in the first quarter of</p> <p>4 1998?</p> <p>5 A. It was significant information to</p> <p>6 know that Sunbeam's revenues were going to</p> <p>7 not grow at the pace that research analysts</p> <p>8 expected them to grow.</p> <p>9 Q. Or perhaps not grow at all?</p> <p>10 A. Or not grow at all.</p> <p>11 Q. That was a possibility that you</p> <p>12 learned during the all-hands call on March</p> <p>13 18?</p> <p>14 MR. CLARE: Object to the form.</p> <p>15 You asked him multiple questions</p> <p>16 and now you are asking what that was a</p> <p>17 possibility.</p> <p>18 It is unclear to me at least what</p> <p>19 you are referring to.</p> <p>20 BY MR. JOHNSON:</p> <p>21 Q. Did you know what I was referring</p> <p>22 to?</p> <p>23 A. No. Could you restate the</p> <p>24 question?</p> <p>25 Q. If you don't understand at any</p>
<p style="text-align: right;">Page 103</p> <p>1 Dean</p> <p>2 the phone conversation that Sunbeam was</p> <p>3 really valued in the marketplace on the</p> <p>4 basis of its revenues and that it was a</p> <p>5 so-called momentum play and that revenues</p> <p>6 were more significant than that income.</p> <p>7 Q. Can you explain to me why you --</p> <p>8 why Sunbeam was viewed as being -- strike</p> <p>9 that.</p> <p>10 Can you explain to me why Sunbeam</p> <p>11 revenue was viewed as more significant to</p> <p>12 the market than Sunbeam earnings?</p> <p>13 A. I don't know -- there are some</p> <p>14 companies in the marketplace who -- whose</p> <p>15 valuation really depends on a forecast of</p> <p>16 increasing revenues over time and that the</p> <p>17 marketplace is less sensitive to net income</p> <p>18 for those types of companies.</p> <p>19 Sunbeam was one of those</p> <p>20 companies that was measured more on</p> <p>21 revenues than on net income.</p> <p>22 Q. On revenue growth more</p> <p>23 specifically?</p> <p>24 A. Revenue growth.</p> <p>25 Q. So you viewed it was significant</p>	<p style="text-align: right;">Page 105</p> <p>1 Dean</p> <p>2 time let me know.</p> <p>3 The possibility that Sunbeam</p> <p>4 would have a decline in revenues as opposed</p> <p>5 to a growth in revenues was something that</p> <p>6 was recognized during the all-hands</p> <p>7 telephone call on March 18?</p> <p>8 A. I don't have a specific</p> <p>9 recollection. I would have to sort of</p> <p>10 refresh my recollection in taking a look at</p> <p>11 the press release and what the numbers</p> <p>12 actually showed, but my recollection is</p> <p>13 that it was news to the group that Sunbeam</p> <p>14 was not going -- that its revenues were not</p> <p>15 going to grow at the rate that the Wall</p> <p>16 Street research analysts expected it to</p> <p>17 grow.</p> <p>18 Q. Did you look at the press release</p> <p>19 this week to prepare for your deposition?</p> <p>20 A. I don't remember looking at the</p> <p>21 press release. I may have.</p> <p>22 Q. I am going to hand you what has</p> <p>23 been marked previously as Exhibit 16.</p> <p>24 Mr. Dean, can you identify</p> <p>25 Exhibit 16 for me?</p>

<p style="text-align: right;">Page 106</p> <p>1 Dean</p> <p>2 A. Exhibit 16 appears to be a</p> <p>3 document that was prepared by Sunbeam with</p> <p>4 net sales numbers for January, February and</p> <p>5 March.</p> <p>6 And it is -- I can't -- since it</p> <p>7 is six years from when these events</p> <p>8 occurred we discussed a similar sheet of</p> <p>9 information on the conference call, the</p> <p>10 all-hands conference call on March 18.</p> <p>11 Q. It could have been this sheet,</p> <p>12 Exhibit 16, or a document like it is what</p> <p>13 you are saying?</p> <p>14 A. That's correct.</p> <p>15 Q. Is that your fax number written</p> <p>16 in the -- written by hand in the upper</p> <p>17 right-hand corner?</p> <p>18 A. Yes, it is.</p> <p>19 Q. Do you see the handwriting in the</p> <p>20 center of the page, I guess, center right</p> <p>21 of the page? It says Porat sees this or</p> <p>22 Porat sees through.</p> <p>23 Do you know what that refers to?</p> <p>24 A. No, I do not.</p> <p>25 Q. Do you know whose handwriting</p>	<p style="text-align: right;">Page 108</p> <p>1 Dean</p> <p>2 "potential orders?"</p> <p>3 A. Yes, I see a column with</p> <p>4 potential orders.</p> <p>5 Q. That shows potential orders of</p> <p>6 \$86 million?</p> <p>7 A. It shows 86. I assume that it is</p> <p>8 86 million.</p> <p>9 Q. This document also shows</p> <p>10 international sales forecasts in the second</p> <p>11 half of March of 1998 of \$39.5 million, do</p> <p>12 you see that?</p> <p>13 A. Yes, I do see that.</p> <p>14 Q. Let's start with the</p> <p>15 international number.</p> <p>16 What was said during the</p> <p>17 conference call about the feasibility of</p> <p>18 selling \$39.5 million of product in the</p> <p>19 last two weeks of March?</p> <p>20 A. I don't have any specific</p> <p>21 recollection of a discussion about the</p> <p>22 international sales, the achievability of</p> <p>23 the international sales.</p> <p>24 At the time, immediately after</p> <p>25 this phone call, I would have had a</p>
<p style="text-align: right;">Page 107</p> <p>1 Dean</p> <p>2 this is?</p> <p>3 A. No, I do not.</p> <p>4 Q. It was a document, either Exhibit</p> <p>5 16 or a document like Exhibit 16, that was</p> <p>6 used during the course of the all-hands</p> <p>7 conference call?</p> <p>8 A. That's correct.</p> <p>9 Q. What was said about this</p> <p>10 document?</p> <p>11 A. Well, the subject of the</p> <p>12 conference call was to try to have an</p> <p>13 update on Sunbeam's first quarter 1998</p> <p>14 results on the revenue side.</p> <p>15 This sheet was a breakdown of</p> <p>16 what Sunbeam's forecasts were for its</p> <p>17 revenues at the time.</p> <p>18 Q. The primary listing here is of</p> <p>19 potential orders. Do you see that?</p> <p>20 MR. CLARE: Object to the form of</p> <p>21 the question.</p> <p>22 BY MR. JOHNSON:</p> <p>23 Q. Let me strike that. That is a</p> <p>24 fair objection.</p> <p>25 Do you see the column for</p>	<p style="text-align: right;">Page 109</p> <p>1 Dean</p> <p>2 recollection but I don't now.</p> <p>3 Q. Did Mr. -- strike that.</p> <p>4 Did anyone from Sunbeam during</p> <p>5 this conference call assure you that</p> <p>6 Sunbeam could achieve \$39.5 million in</p> <p>7 international sales in the last two weeks</p> <p>8 of March?</p> <p>9 A. I don't remember any specific</p> <p>10 assurances with respect to the</p> <p>11 international sales.</p> <p>12 There were assurances that the</p> <p>13 numbers -- the revenue numbers that we were</p> <p>14 shown during the course of the meeting were</p> <p>15 completely achievable.</p> <p>16 Q. There were assurances that they</p> <p>17 were achievable. Were there any assurances</p> <p>18 that they would be achieved?</p> <p>19 MR. CLARE: Object to the form of</p> <p>20 the question.</p> <p>21 THE WITNESS: There were</p> <p>22 assurances during the course of the</p> <p>23 conference -- during the course of the</p> <p>24 conference call that the revenue</p> <p>25 numbers would be achieved.</p>

<p style="text-align: right;">Page 110</p> <p>1 Dean</p> <p>2 BY MR. JOHNSON:</p> <p>3 Q. To the best of your recollection</p> <p>4 who provided those assurances that the</p> <p>5 numbers would be achieved?</p> <p>6 A. All of the representatives of</p> <p>7 Sunbeam who participated in that phone</p> <p>8 call.</p> <p>9 Q. Did Davis Polk or Morgan Stanley</p> <p>10 do anything to confirm those assurances?</p> <p>11 A. I don't have any specific</p> <p>12 recollection of anything that Davis Polk</p> <p>13 did at the time. I can't say what Morgan</p> <p>14 Stanley did.</p> <p>15 Q. You know as you sit here today</p> <p>16 that these numbers were not achieved, don't</p> <p>17 you?</p> <p>18 A. Yes, I do know that these numbers</p> <p>19 were not achieved.</p> <p>20 Q. So is it your view that Sunbeam</p> <p>21 lied to you during this conference call?</p> <p>22 A. I think that Sunbeam assured us</p> <p>23 that these numbers would be achieved.</p> <p>24 Whether or not they believed --</p> <p>25 whether or not they knew they couldn't be</p>	<p style="text-align: right;">Page 112</p> <p>1 Dean</p> <p>2 comfortable with to place in the final</p> <p>3 offering memorandum.</p> <p>4 Q. The -- in the right column</p> <p>5 towards the bottom there is a --</p> <p>6 A. Let me correct myself.</p> <p>7 We did not craft the disclosure</p> <p>8 that finally appeared in the disclosure</p> <p>9 document but we reviewed the disclosure</p> <p>10 that was prepared by Sunbeam.</p> <p>11 Q. Okay.</p> <p>12 Who -- so Sunbeam crafted the</p> <p>13 disclosure in the offering memorandum?</p> <p>14 A. Yes, they did.</p> <p>15 Q. Did --</p> <p>16 A. Sunbeam and their</p> <p>17 representatives. I don't know who.</p> <p>18 Q. That would be Skadden, Arps,</p> <p>19 wouldn't it?</p> <p>20 A. Yes.</p> <p>21 Q. That is the same -- the</p> <p>22 disclosure you are referring to is the same</p> <p>23 disclosure that appeared in the press</p> <p>24 release; is that correct?</p> <p>25 A. That is correct.</p>
<p style="text-align: right;">Page 111</p> <p>1 Dean</p> <p>2 achieved at the time, I guess that is a</p> <p>3 question that you have to ask people from</p> <p>4 Sunbeam.</p> <p>5 We certainly felt as if we had</p> <p>6 been misled.</p> <p>7 Q. Going back to the potential</p> <p>8 orders column for a minute, that shows \$86</p> <p>9 million in sales?</p> <p>10 A. Yes, I see a total for that</p> <p>11 column to 86.</p> <p>12 Q. That is of possible orders,</p> <p>13 potential orders, right?</p> <p>14 A. The column is labeled Potential</p> <p>15 Orders and we were probably given</p> <p>16 assurances that these potential orders had</p> <p>17 a very high probability of being</p> <p>18 consummated.</p> <p>19 Q. You say you were probably given</p> <p>20 assurances of a very high probability that</p> <p>21 the potential orders would be consummated.</p> <p>22 Why do you say that?</p> <p>23 A. We must have been given</p> <p>24 assurances to that effect because we</p> <p>25 crafted disclosure that we later became</p>	<p style="text-align: right;">Page 113</p> <p>1 Dean</p> <p>2 Q. Did Davis Polk have any role in</p> <p>3 preparing the press release?</p> <p>4 A. No. We may have been furnished</p> <p>5 copies of the press release and given an</p> <p>6 opportunity to review it. I don't know</p> <p>7 whether or not -- I can't recall at this</p> <p>8 time whether or not we were given the</p> <p>9 opportunity to propose revisions to it.</p> <p>10 Q. Did you have any revisions to it?</p> <p>11 A. I don't recall at the time, at</p> <p>12 this time.</p> <p>13 Q. We will get to the press release</p> <p>14 itself in a little more detail in a minute.</p> <p>15 Exhibit 16 shows at the bottom</p> <p>16 right, prior year Q1-97, \$253.5 million.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. That was Sunbeam's revenue for</p> <p>20 the first quarter of 1997?</p> <p>21 A. I haven't verified it but I</p> <p>22 assume that is true.</p> <p>23 Q. So the -- I assume -- strike</p> <p>24 that.</p> <p>25 Were there discussions on the</p>

<p style="text-align: right;">Page 114</p> <p>1 Dean</p> <p>2 March 18 all-hands call concerning whether</p> <p>3 the prior year first quarter results would</p> <p>4 be met or exceeded in the first quarter of</p> <p>5 1998?</p> <p>6 A. Yes. I think that what we</p> <p>7 discussed during the conference call was</p> <p>8 what the first quarter 1998 revenue results</p> <p>9 would be and then there is a question as to</p> <p>10 how that would compare with historical</p> <p>11 performance.</p> <p>12 Q. This shows that if all of the</p> <p>13 potential orders are made and recognized</p> <p>14 prior to the end of the quarter and the</p> <p>15 international sales forecast is accurate</p> <p>16 that Sunbeam would exceed the prior year's</p> <p>17 quarter by just over a million dollars?</p> <p>18 A. If these numbers are accurate,</p> <p>19 yes.</p> <p>20 The sheet may not reflect all of</p> <p>21 the sales possibilities that were possible</p> <p>22 at Sunbeam but simply the ones that had the</p> <p>23 highest probability of being achieved.</p> <p>24 Q. Did anyone from Sunbeam explain</p> <p>25 on an account-by-account basis why each of</p>	<p style="text-align: right;">Page 116</p> <p>1 Dean</p> <p>2 Q. Who discussed that possibility?</p> <p>3 A. Well, I certainly raised that</p> <p>4 possibility as a way of disseminating the</p> <p>5 information out in the marketplace.</p> <p>6 I think I was the one who</p> <p>7 actually raised the issue during the</p> <p>8 conference call.</p> <p>9 Q. Other than what is set forth in</p> <p>10 Exhibit 16 did you have any other</p> <p>11 information that caused you to raise the</p> <p>12 idea of a press release?</p> <p>13 A. No. I don't recall of any other</p> <p>14 information.</p> <p>15 Q. What was the reaction to the idea</p> <p>16 that you raised?</p> <p>17 A. Sunbeam was opposed to it as well</p> <p>18 as their counsel, Skadden, Arps, who flatly</p> <p>19 rejected it as being inappropriate.</p> <p>20 Q. That is Finn Fogg and Greg</p> <p>21 Fericola?</p> <p>22 A. That is correct.</p> <p>23 Q. When -- did anyone give any</p> <p>24 explanation as to why a press release would</p> <p>25 be unnecessary or inappropriate?</p>
<p style="text-align: right;">Page 115</p> <p>1 Dean</p> <p>2 these potential orders was highly probable</p> <p>3 to be consummated?</p> <p>4 A. I don't have any specific memory</p> <p>5 of that but Uzzi could well have done that</p> <p>6 during the phone call and it would be</p> <p>7 customary for a salesperson to do this in</p> <p>8 the context of reviewing a sheet like this.</p> <p>9 Q. But, again, you are not aware of</p> <p>10 anyone verifying what Home Depot, for</p> <p>11 example -- what Home Depot's order plans</p> <p>12 were for the last two weeks of March of</p> <p>13 1998?</p> <p>14 A. I am not aware of anyone at Davis</p> <p>15 Polk who verified that.</p> <p>16 Q. Are you aware of anyone verifying</p> <p>17 that?</p> <p>18 A. No, I am not aware.</p> <p>19 Q. During the all-hands call was the</p> <p>20 possibility of issuing a press release</p> <p>21 discussed?</p> <p>22 A. My memory is that, yes, the</p> <p>23 possibility of issuing a press release was</p> <p>24 discussed in the context of that conference</p> <p>25 call.</p>	<p style="text-align: right;">Page 117</p> <p>1 Dean</p> <p>2 A. The best recollection I have is</p> <p>3 that somebody from Skadden said it was very</p> <p>4 unusual within a quarter to announce</p> <p>5 intraquarter results and that there was</p> <p>6 no -- in light of the fact that the company</p> <p>7 felt that it was comfortable that it was</p> <p>8 going to make these numbers, that they</p> <p>9 didn't think it was appropriate to put a</p> <p>10 press release out at this time.</p> <p>11 Q. Obviously the company was</p> <p>12 dissuaded from that position. How did that</p> <p>13 happen?</p> <p>14 A. I don't know when that happened.</p> <p>15 I mean, after the end of this all-hands</p> <p>16 conference call -- I mean we were at a</p> <p>17 stalemate about the issue and then I was</p> <p>18 later informed that Bill Strong had had a</p> <p>19 conversation with Al Dunlap and Dunlap</p> <p>20 agreed -- acceded to having the disclosure</p> <p>21 appear.</p> <p>22 Q. How were you later informed of</p> <p>23 that conversation between Strong and</p> <p>24 Dunlap?</p> <p>25 A. I don't know who at Morgan</p>

<p style="text-align: right;">Page 118</p> <p>1 Dean</p> <p>2 Stanley called me to inform me of that.</p> <p>3 Q. Someone from Morgan Stanley</p> <p>4 called you?</p> <p>5 A. Someone from Morgan Stanley then</p> <p>6 called me up and told me.</p> <p>7 Q. If I understand your testimony</p> <p>8 Sunbeam had been telling you in the first</p> <p>9 two weeks of March of 1998 that they were</p> <p>10 on target with Street estimates for the</p> <p>11 first quarter results; is that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Then you received this sheet on</p> <p>14 March 18 which showed that they would need</p> <p>15 to strive to beat first quarter 1997</p> <p>16 results; is that correct?</p> <p>17 MR. CLARE: Object to the form of</p> <p>18 the question, the characterization of</p> <p>19 the document.</p> <p>20 You can answer.</p> <p>21 THE WITNESS: Can you repeat --</p> <p>22 now that I have been interrupted can I</p> <p>23 hear the question again?</p> <p>24 MR. JOHNSON: Sure.</p> <p>25 Could you read that for us?</p>	<p style="text-align: right;">Page 120</p> <p>1 Dean</p> <p>2 quarter or the last week of a quarter,</p> <p>3 frankly, and so it is quite possible that</p> <p>4 Sunbeam didn't have visibility about this.</p> <p>5 Q. Did you have any sense of whether</p> <p>6 as a physical matter Sunbeam could ship the</p> <p>7 amount of product necessary for it to meet</p> <p>8 first quarter 1997 results in the last two</p> <p>9 weeks of March of 1998?</p> <p>10 A. I was not aware of Sunbeam's</p> <p>11 physical capacity to ship product.</p> <p>12 Q. Did anyone ask that question</p> <p>13 during the all-hands conference call?</p> <p>14 A. I don't have any specific</p> <p>15 recollection, no, as to whether that</p> <p>16 question was asked.</p> <p>17 Again it was six years ago. It</p> <p>18 could have been asked. I just don't have</p> <p>19 any memory of it now.</p> <p>20 Q. What was Morgan Stanley's view as</p> <p>21 to whether a press release would be</p> <p>22 appropriate?</p> <p>23 A. Morgan Stanley's view was that it</p> <p>24 was appropriate to issue a press release if</p> <p>25 there was uncertainty with respect to</p>
<p style="text-align: right;">Page 119</p> <p>1 Dean</p> <p>2 (Record read)</p> <p>3 MR. CLARE: Same objection.</p> <p>4 THE WITNESS: I am not sure what</p> <p>5 the question is.</p> <p>6 The question -- did we receive a</p> <p>7 sheet that showed that their revenue</p> <p>8 outlook was now comparable to what they</p> <p>9 achieved in the first quarter of 1997.</p> <p>10 Yes, that is the document we</p> <p>11 received on March 18.</p> <p>12 BY MR. JOHNSON:</p> <p>13 Q. What I am getting at is: Isn't</p> <p>14 Exhibit 16 contrary to what the company had</p> <p>15 been telling you just a week or two weeks</p> <p>16 before concerning it being on target with</p> <p>17 Street estimates?</p> <p>18 A. Yes, it was.</p> <p>19 Q. Didn't that cause you concern</p> <p>20 about the veracity of Sunbeam management?</p> <p>21 A. Well, not necessarily.</p> <p>22 I mean, there is obviously</p> <p>23 skepticism about the numbers but it is not</p> <p>24 uncommon for manufacturers to make a lot of</p> <p>25 their sales in the last two weeks of a</p>	<p style="text-align: right;">Page 121</p> <p>1 Dean</p> <p>2 whether or not Sunbeam would achieve its</p> <p>3 revenue results.</p> <p>4 Q. Was there any concern about the</p> <p>5 press release and the effect it would have</p> <p>6 on pricing the debt offering?</p> <p>7 A. I wouldn't characterize it as</p> <p>8 concern. I think that Morgan Stanley felt</p> <p>9 that it was important to have this news out</p> <p>10 in the marketplace so that the marketplace</p> <p>11 could digest it before a pricing of the</p> <p>12 offering.</p> <p>13 Q. Was there any concern that</p> <p>14 Sunbeam's first quarter results could</p> <p>15 constitute a materially adverse change</p> <p>16 prior to the closing of the acquisitions?</p> <p>17 A. There was a concern, in the</p> <p>18 context of doing the subordinated debt</p> <p>19 offering, disclosing this information might</p> <p>20 have an impact on the stock price of</p> <p>21 Sunbeam and as a result of that Morgan</p> <p>22 Stanley and we felt that disclosure was</p> <p>23 appropriate.</p> <p>24 Q. The disclosure that was made in</p> <p>25 the press release in fact did have some</p>

<p style="text-align: right;">Page 122</p> <p>1 Dean</p> <p>2 impact on Sunbeam's equity trading price;</p> <p>3 is that correct?</p> <p>4 A. Yes, it did. I am not</p> <p>5 familiar -- I can't recall now what impact</p> <p>6 it did have but it did have a depressing</p> <p>7 impact on the price of Sunbeam's stock.</p> <p>8 Q. In relation to -- you are aware</p> <p>9 that Sunbeam also issued a press release</p> <p>10 after the first quarter detailing its first</p> <p>11 quarter 1998 results?</p> <p>12 A. Yes, I am.</p> <p>13 Q. Are you aware that that press</p> <p>14 release had a substantially more severe</p> <p>15 depressive impact on Sunbeam's trading</p> <p>16 price as compared to the March 19 press</p> <p>17 release?</p> <p>18 MR. CLARE: Object to the form.</p> <p>19 THE WITNESS: I am aware there</p> <p>20 was a subsequent press release that was</p> <p>21 put out after the first quarter results</p> <p>22 were recorded at Sunbeam and that</p> <p>23 Sunbeam actually recorded revenues that</p> <p>24 were lower than the 254.7 that was</p> <p>25 covered in the press release and as a</p>	<p style="text-align: right;">Page 124</p> <p>1 Dean</p> <p>2 disclosure and quite adamant that they felt</p> <p>3 as if -- that they were going to achieve</p> <p>4 these numbers and the fact that there was a</p> <p>5 discount from these numbers versus the</p> <p>6 Street estimates, they did not think that</p> <p>7 that was appropriate to put out in the</p> <p>8 marketplace.</p> <p>9 They probably made the argument</p> <p>10 but I don't recall whether or not they did</p> <p>11 or not that they -- that maybe they could</p> <p>12 still make their numbers.</p> <p>13 I am just not certain whether or</p> <p>14 not they made that argument or not but that</p> <p>15 would be the kind of argument that I would</p> <p>16 expect them to make.</p> <p>17 Q. You can't recall them actually</p> <p>18 saying that they would still possibly make</p> <p>19 the Street estimates?</p> <p>20 A. I don't have a specific</p> <p>21 recollection of that but that could well</p> <p>22 have been something that they said on that</p> <p>23 phone call.</p> <p>24 Q. Based on Exhibit 16 was there any</p> <p>25 information that would lead you to believe</p>
<p style="text-align: right;">Page 123</p> <p>1 Dean</p> <p>2 result the stock price of Sunbeam fell</p> <p>3 even more.</p> <p>4 BY MR. JOHNSON:</p> <p>5 Q. Sunbeam, in fact, showed a loss</p> <p>6 for the first quarter of 1998; isn't that</p> <p>7 correct?</p> <p>8 A. I don't remember. We could take</p> <p>9 a look at the press release. That could</p> <p>10 well have been the case.</p> <p>11 Q. The April press release, do you</p> <p>12 know how many days after the March 19 press</p> <p>13 release that one issued?</p> <p>14 A. No, I don't know.</p> <p>15 Q. After the all-hands telephone</p> <p>16 call -- by the way, can you remember</p> <p>17 anything else about that phone call that we</p> <p>18 haven't already talked about?</p> <p>19 A. I don't have any other specific</p> <p>20 recollections of that phone call.</p> <p>21 Q. Was it combative in any way? Was</p> <p>22 the discussion heated?</p> <p>23 A. It was heated on the disclosure</p> <p>24 question.</p> <p>25 Sunbeam was clearly resisting</p>	<p style="text-align: right;">Page 125</p> <p>1 Dean</p> <p>2 that Sunbeam could still make the Street</p> <p>3 estimates?</p> <p>4 A. What Exhibit -- again, this was</p> <p>5 six years ago but I think what Exhibit</p> <p>6 16 -- the case that it laid out was a --</p> <p>7 the confidence that Sunbeam had that they</p> <p>8 would actually make the 254.7 number at</p> <p>9 least.</p> <p>10 Q. So that they would beat first</p> <p>11 quarter 1997?</p> <p>12 A. I forget what the words were that</p> <p>13 were used in the press release that was</p> <p>14 issued after we reviewed this information</p> <p>15 but it was language along the lines that</p> <p>16 they expected revenues to be comparable, I</p> <p>17 think, to the first quarter of 1997</p> <p>18 revenues. I just don't remember the</p> <p>19 language.</p> <p>20 Q. Was there any basis to believe</p> <p>21 that Sunbeam could still make Street</p> <p>22 estimates for the first quarter of 1998?</p> <p>23 A. I don't recall whether or not</p> <p>24 they presented a case that Sunbeam could</p> <p>25 still make its numbers.</p>

<p style="text-align: right;">Page 126</p> <p>1 Dean</p> <p>2 Q. Was there -- during the all-hands</p> <p>3 phone call was there any discussion about</p> <p>4 possibly delaying the subordinated debt</p> <p>5 offering?</p> <p>6 A. I don't remember whether or not</p> <p>7 that subject came up. It may have. I</p> <p>8 don't have any specific recollection of it.</p> <p>9 Q. Was there any procedure installed</p> <p>10 to closely monitor Sunbeam's sales for the</p> <p>11 remainder of the quarter?</p> <p>12 A. Well, there were -- as part of</p> <p>13 the normal sort of closing process for the</p> <p>14 transaction we would have had another bring</p> <p>15 down -- we did have another bring-down</p> <p>16 conference to discuss the numbers again and</p> <p>17 make sure they were comfortable.</p> <p>18 That would have been six days</p> <p>19 after the pricing of the offering.</p> <p>20 Q. Again, that would be a call with</p> <p>21 Gluck, Kersh or Uzzi?</p> <p>22 A. Some combination of those people.</p> <p>23 Q. Other than a subsequent telephone</p> <p>24 call did Davis Polk or Morgan Stanley do</p> <p>25 anything else to monitor Sunbeam's sale</p>	<p style="text-align: right;">Page 128</p> <p>1 Dean</p> <p>2 being troubled by anything in the press</p> <p>3 release?</p> <p>4 A. No. I -- my recollection is that</p> <p>5 we reviewed the press release in light of</p> <p>6 the facts that were disclosed in the</p> <p>7 conference call and were comfortable that</p> <p>8 it was consistent with what we had learned.</p> <p>9 Q. Andersen, to your knowledge, was</p> <p>10 not consulted in any way in connection with</p> <p>11 the issuance of the press release?</p> <p>12 A. I don't know whether or not</p> <p>13 Andersen was consulted or not in connection</p> <p>14 with the press release.</p> <p>15 Q. You mentioned two of your</p> <p>16 partners who were involved in the press</p> <p>17 release.</p> <p>18 If you look at Exhibit 213, your</p> <p>19 attorney over here says, "Two other</p> <p>20 partners, Frank Morrison and Jeff Small,</p> <p>21 did not work on the offering generally but</p> <p>22 appeared to have been consulted briefly on</p> <p>23 March 18, 1998 in connection with the</p> <p>24 proposed March 19, 1998 press release by</p> <p>25 Sunbeam."</p>
<p style="text-align: right;">Page 127</p> <p>1 Dean</p> <p>2 situation after March 19?</p> <p>3 A. I am not aware of any efforts</p> <p>4 that were made. I think that during the</p> <p>5 course of an offering like this there are</p> <p>6 day-to-day contacts between Morgan Stanley</p> <p>7 and Sunbeam officials and so that could</p> <p>8 well have been something that they did on a</p> <p>9 day-to-day basis.</p> <p>10 Q. You are not aware of it actually?</p> <p>11 A. I am not aware of that actually</p> <p>12 occurring.</p> <p>13 Q. Did you look at a draft of the</p> <p>14 March 19 press release before it was</p> <p>15 issued?</p> <p>16 A. I don't remember whether or not</p> <p>17 we were furnished a draft of it before or</p> <p>18 whether or not we were told what the</p> <p>19 contents would be and whether or not it was</p> <p>20 read to us over the telephone and then it</p> <p>21 was issued.</p> <p>22 I don't have any specific</p> <p>23 recollection as to what protocol was</p> <p>24 followed there.</p> <p>25 Q. Do you have any recollection of</p>	<p style="text-align: right;">Page 129</p> <p>1 Dean</p> <p>2 Can you tell me again who Messrs.</p> <p>3 Morrison and Small are?</p> <p>4 A. Mr. Morrison and Small are two of</p> <p>5 my partners who also practice in the</p> <p>6 securities area.</p> <p>7 Q. Were they on any of the phone</p> <p>8 calls with anyone from Sunbeam or Skadden?</p> <p>9 A. They -- I don't know how --</p> <p>10 whether or not they participated in the</p> <p>11 phone calls from the very beginning of the</p> <p>12 phone call, whether or not they joined in</p> <p>13 late as the phone call was in process after</p> <p>14 having received an update as to what was</p> <p>15 being discussed.</p> <p>16 Q. At some point they were on some</p> <p>17 portion of calls with Skadden and/or</p> <p>18 Sunbeam?</p> <p>19 A. That's correct.</p> <p>20 Q. What were their positions on</p> <p>21 those calls?</p> <p>22 A. I remember -- I don't remember</p> <p>23 anything about Frank Morrison saying</p> <p>24 anything on the phone call.</p> <p>25 I do remember that Jeff Small was</p>

<p style="text-align: right;">Page 130</p> <p>1 Dean</p> <p>2 also -- had echoed my position that we felt</p> <p>3 that disclosure was appropriate here.</p> <p>4 Q. You testified a few minutes ago</p> <p>5 that Skadden and Sunbeam were very</p> <p>6 resistant to doing a press release.</p> <p>7 Did that fact in and of itself</p> <p>8 cause you any concern about what was going</p> <p>9 on at the company?</p> <p>10 A. No. I thought it was consistent</p> <p>11 with the aggressive style of representation</p> <p>12 that Skadden adopts with its clients and</p> <p>13 its client, Sunbeam, clearly did not want</p> <p>14 to have the disclosure made and Skadden</p> <p>15 presented the best possible case as to why</p> <p>16 disclosure was not appropriate.</p> <p>17 Q. Let's put Skadden aside then.</p> <p>18 How about Sunbeam? Sunbeam's</p> <p>19 strong reluctance to do a press release,</p> <p>20 did that in and of itself cause you any</p> <p>21 concern about your dealings with this</p> <p>22 company?</p> <p>23 A. No. I think at the time -- I</p> <p>24 mean, there was still a high degree of</p> <p>25 confidence in the management at Sunbeam,</p>	<p style="text-align: right;">Page 132</p> <p>1 Dean</p> <p>2 throughout the day, Bob.</p> <p>3 BY MR. JOHNSON:</p> <p>4 Q. Having now talked about the</p> <p>5 heated nature of this conference call and</p> <p>6 Sunbeam's reluctance, can you remember</p> <p>7 anything else at all about that conference</p> <p>8 call, and that two of your partners also</p> <p>9 participated in portions of it?</p> <p>10 A. No. I don't recall any specific</p> <p>11 details.</p> <p>12 We may well have gone into the</p> <p>13 reasons why some comparison of January and</p> <p>14 February of 1998 versus January and</p> <p>15 February of 1997, the reasons behind why</p> <p>16 there was a shortfall compared to the prior</p> <p>17 year.</p> <p>18 Q. Was there any discussion on the</p> <p>19 all-hands call as to what the press release</p> <p>20 should say?</p> <p>21 A. There was -- there was a</p> <p>22 discussion about the level of detail that</p> <p>23 should be in the press release.</p> <p>24 I think that there was -- I think</p> <p>25 I may have proposed that we disclose what</p>
<p style="text-align: right;">Page 131</p> <p>1 Dean</p> <p>2 that they would make statements that were</p> <p>3 truthful and that they would not make</p> <p>4 assurances if they didn't feel as if the</p> <p>5 statements had no basis.</p> <p>6 Q. During the all-hands phone call</p> <p>7 did anyone ask anyone from Sunbeam whether</p> <p>8 they would guarantee that the first quarter</p> <p>9 1998 results would exceed first quarter</p> <p>10 1997 results?</p> <p>11 A. I don't recall that question</p> <p>12 being asked but the level of certainty that</p> <p>13 one would want to have from management with</p> <p>14 respect to revenue numbers of this sort is</p> <p>15 at the level of a guarantee.</p> <p>16 Q. I think you said earlier that</p> <p>17 assurances were made that the numbers would</p> <p>18 be achieved; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. After this phone call -- let's</p> <p>21 back up.</p> <p>22 I will probably end up asking</p> <p>23 this question several times.</p> <p>24 MR. WISE: I hope not.</p> <p>25 MR. JOHNSON: At different points</p>	<p style="text-align: right;">Page 133</p> <p>1 Dean</p> <p>2 January and February sales actually were so</p> <p>3 that one would have a sense of how much --</p> <p>4 what sales would have to be achieved in</p> <p>5 March and that was soundly rejected by</p> <p>6 Skadden and by Sunbeam.</p> <p>7 Q. Tell me again why you thought it</p> <p>8 might be appropriate to give the actual</p> <p>9 numbers for January and February.</p> <p>10 A. To put the numbers in context.</p> <p>11 Q. Was there any discussion of the</p> <p>12 possibility of putting earnings information</p> <p>13 in the press release?</p> <p>14 A. I don't recall whether or not we</p> <p>15 discussed earnings as a possibility or not.</p> <p>16 Q. Why did Skadden and/or Sunbeam</p> <p>17 strongly reject your idea of putting in</p> <p>18 January and February sales numbers?</p> <p>19 A. Because it was not -- it was not</p> <p>20 standard practice for a public company to</p> <p>21 begin disclosing monthly performance</p> <p>22 results.</p> <p>23 Q. Didn't anyone have a concern that</p> <p>24 the numbers in and of themselves show a</p> <p>25 dramatic shortfall?</p>

<p style="text-align: right;">Page 134</p> <p>1 Dean</p> <p>2 MR. CLARE: Object to the form of</p> <p>3 the question.</p> <p>4 THE WITNESS: I don't recall</p> <p>5 whether or not anyone on the phone call</p> <p>6 raised the question as to whether or</p> <p>7 not it would be appropriate -- the</p> <p>8 appropriateness of disclosing the</p> <p>9 actual January and February results.</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. Didn't you just say that you</p> <p>12 raised the idea that it would be</p> <p>13 appropriate to disclose that?</p> <p>14 A. I raised the issue but I don't</p> <p>15 recall whether or not anybody else on the</p> <p>16 phone call other than Skadden who rejected</p> <p>17 the idea -- whether or not anyone else on</p> <p>18 the phone call supported disclosure of</p> <p>19 January and February.</p> <p>20 Q. Skadden's stated reason for</p> <p>21 opposing that is because it would put the</p> <p>22 company in the position of releasing</p> <p>23 monthly results?</p> <p>24 A. That is my recollection.</p> <p>25 Q. They weren't concerned that the</p>	<p style="text-align: right;">Page 136</p> <p>1 Dean</p> <p>2 Q. During the all-hands call was</p> <p>3 there any discussion as to the impact of</p> <p>4 the first quarter 1998 on the remainder of</p> <p>5 the year?</p> <p>6 A. I don't remember at this time</p> <p>7 whether or not there was a discussion of</p> <p>8 that.</p> <p>9 Q. That was -- it was after this</p> <p>10 call that the size of the subordinated debt</p> <p>11 offering rose from 500 million to 750</p> <p>12 million?</p> <p>13 A. My recollection was that there</p> <p>14 was an increase in the size of the offering</p> <p>15 and I don't know the specific amount and it</p> <p>16 would have happened between the time that</p> <p>17 the preliminary was prepared and the deal</p> <p>18 was actually priced.</p> <p>19 Q. Didn't it, in fact, happen after</p> <p>20 the conference call concerning Sunbeam's</p> <p>21 sales situation?</p> <p>22 A. I can't say for certain. That</p> <p>23 would not be unusual.</p> <p>24 It is frequently a tactic in</p> <p>25 doing securities offerings to go out with</p>
<p style="text-align: right;">Page 135</p> <p>1 Dean</p> <p>2 numbers themselves were too negative to put</p> <p>3 in the press release?</p> <p>4 A. No. That is -- I don't have any</p> <p>5 recollection as to that, to that effect.</p> <p>6 Q. How about a discussion of, during</p> <p>7 the all-hands call, as to whether the press</p> <p>8 release should identify reasons for the</p> <p>9 poor revenue performance?</p> <p>10 A. I don't have a specific</p> <p>11 recollection as to whether or not -- what</p> <p>12 reasons, if any, would be stated in the</p> <p>13 press release for the revenue shortfall.</p> <p>14 Q. You didn't, for example, propose</p> <p>15 that the press release state that this</p> <p>16 shortfall resulted in part from</p> <p>17 acceleration of sales into 1997?</p> <p>18 A. I don't have any recollection of</p> <p>19 that.</p> <p>20 Q. You don't remember anyone</p> <p>21 discussing whether the press release should</p> <p>22 identify a reason for the shortfall?</p> <p>23 A. I don't have any specific</p> <p>24 recollection now. I would have six years</p> <p>25 ago but I just don't now.</p>	<p style="text-align: right;">Page 137</p> <p>1 Dean</p> <p>2 an offering that is smaller than the one</p> <p>3 you would like to achieve rather than going</p> <p>4 out with the full size offering and then</p> <p>5 failing to achieve that.</p> <p>6 Q. The ability to increase the size</p> <p>7 of the offering is contingent upon the</p> <p>8 market's excitement about the offering?</p> <p>9 A. Excitement? I don't know if</p> <p>10 "excitement" is the right word.</p> <p>11 Q. Debt offerings are almost never</p> <p>12 exciting.</p> <p>13 A. This was a convertible debt</p> <p>14 offering.</p> <p>15 Q. You can take the top down?</p> <p>16 A. There is an equity component</p> <p>17 associated with it. You clearly cannot</p> <p>18 increase the size of an offering without</p> <p>19 having investor demand for the securities.</p> <p>20 Q. There was high demand for these?</p> <p>21 A. There was demand for the</p> <p>22 securities sufficient to allow Morgan</p> <p>23 Stanley to raise the size of the offering.</p> <p>24 Q. By 50 percent?</p> <p>25 A. I don't know if 50 percent is the</p>

<p style="text-align: right;">Page 138</p> <p>1 Dean</p> <p>2 right number or not but to raise the</p> <p>3 offering.</p> <p>4 Q. By the way, did the amount of</p> <p>5 money that Morgan Stanley would make on</p> <p>6 this transaction depend on the size of the</p> <p>7 debt offering?</p> <p>8 A. The gross spread that they would</p> <p>9 earn from doing an underwriting transaction</p> <p>10 on the convertible bond would vary directly</p> <p>11 with the size of the convertible debt</p> <p>12 offering.</p> <p>13 Q. The bigger the offering the more</p> <p>14 money Morgan Stanley makes?</p> <p>15 A. Yes. The percentage would be</p> <p>16 fixed but -- since the spread is calculated</p> <p>17 as a percentage of the offering size.</p> <p>18 Q. Morgan Stanley also was leading a</p> <p>19 bank facility in connection with financing</p> <p>20 the acquisitions; is that correct?</p> <p>21 A. Yes. There was a concurrent bank</p> <p>22 financing that was going on.</p> <p>23 Q. That was senior to the debt</p> <p>24 offering you were working on?</p> <p>25 A. I can't say for sure but I think</p>	<p style="text-align: right;">Page 140</p> <p>1 Dean</p> <p>2 To the extent that you increase</p> <p>3 the amount that was raised by the</p> <p>4 subordinated financing it reduces the</p> <p>5 funding need from other sources and if the</p> <p>6 other funding source was a bank loan, yes,</p> <p>7 that is the case.</p> <p>8 It is also the case that Sunbeam</p> <p>9 would find the convertible financing more</p> <p>10 attractive to itself because it was</p> <p>11 subordinated financing and not subject to</p> <p>12 the covenants that a senior facility would</p> <p>13 provide.</p> <p>14 Q. How did you learn that the size</p> <p>15 of the debt offering, convertible debt</p> <p>16 offering, would be increased?</p> <p>17 A. I don't recall at this time.</p> <p>18 Somebody at Morgan Stanley must have told</p> <p>19 us or told somebody at Davis Polk who later</p> <p>20 communicated it to me.</p> <p>21 Q. That is a decision that Morgan</p> <p>22 Stanley would make independent of your</p> <p>23 counsel?</p> <p>24 A. Yes. I don't think that we have</p> <p>25 great insight into market demand for</p>
<p style="text-align: right;">Page 139</p> <p>1 Dean</p> <p>2 that was the case.</p> <p>3 Q. So by increasing the size of the</p> <p>4 debt offering Morgan Stanley also reduces</p> <p>5 its exposure on its own loans to Sunbeam;</p> <p>6 is that correct?</p> <p>7 MR. CLARE: Object to the form of</p> <p>8 the question.</p> <p>9 THE WITNESS: I would say that</p> <p>10 there was a specific dollar amount that</p> <p>11 Sunbeam needed to raise in order to</p> <p>12 consummate the acquisition</p> <p>13 transactions.</p> <p>14 How that money was raised and</p> <p>15 divided up among the various pieces</p> <p>16 really was a function of which piece,</p> <p>17 the size of the individual pieces of</p> <p>18 the debt offering and the bank loan.</p> <p>19 BY MR. JOHNSON:</p> <p>20 Q. So if the subordinated debt</p> <p>21 offering were increased to \$750 million,</p> <p>22 doesn't that mean that the secured loan is</p> <p>23 reduced by \$250 million?</p> <p>24 A. I think it is just a mathematical</p> <p>25 calculation.</p>	<p style="text-align: right;">Page 141</p> <p>1 Dean</p> <p>2 securities.</p> <p>3 Q. I will give what you has been</p> <p>4 marked previously as Exhibit 14.</p> <p>5 You got page 2 this time.</p> <p>6 MR. CLARE: You know that is my</p> <p>7 issue. It is about time.</p> <p>8 MR. JOHNSON: That is all you</p> <p>9 got.</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. Mr. Dean, is Exhibit 14 the March</p> <p>12 19, 1998 Sunbeam press release we have been</p> <p>13 speaking about?</p> <p>14 A. Yes. It appears to be a copy of</p> <p>15 the press release that was issued.</p> <p>16 Q. This press release leaves open</p> <p>17 the possibility that Sunbeam would still</p> <p>18 meet the range of analyst estimates for the</p> <p>19 first quarter of 1998; is that correct?</p> <p>20 A. Let me read the release.</p> <p>21 Q. Sure.</p> <p>22 A. I think the release doesn't</p> <p>23 really answer the question. I think the</p> <p>24 release -- the words of the release say</p> <p>25 that it may be lower than the range of Wall</p>

<p style="text-align: right;">Page 142</p> <p>1 Dean</p> <p>2 Street analyst estimates.</p> <p>3 By its terms it leaves open the</p> <p>4 possibility that they still may achieve it.</p> <p>5 Q. It further says, "A shortfall</p> <p>6 from estimates, if any, would be due to</p> <p>7 changes in inventory management and order</p> <p>8 patterns at certain of the companies major</p> <p>9 retail customers."</p> <p>10 Do you see that?</p> <p>11 A. Yes, I do see those words.</p> <p>12 Q. Did you have any discussion with</p> <p>13 anyone from Sunbeam or Skadden concerning</p> <p>14 this stated reason for the potential</p> <p>15 shortfall from analyst estimates?</p> <p>16 A. I don't recall now. I mean, we</p> <p>17 must have had conversations at the time to</p> <p>18 make ourselves comfortable that the press</p> <p>19 release was consistent with what we had</p> <p>20 been told by Sunbeam and what we could</p> <p>21 confirm independently.</p> <p>22 Q. Didn't Andersen say that the</p> <p>23 sales decline was the result of</p> <p>24 acceleration of sales into 1997?</p> <p>25 A. Is that what was in -- I don't</p>	<p style="text-align: right;">Page 144</p> <p>1 Dean</p> <p>2 shortfall after the press release?</p> <p>3 A. Well, it is -- I am aware of the</p> <p>4 fact that there was information in the</p> <p>5 Andersen comfort letter about a shortfall.</p> <p>6 I am not aware of when during the</p> <p>7 process I became aware of that, whether or</p> <p>8 not that was in the context of the</p> <p>9 all-hands meeting or not. I just don't</p> <p>10 have a specific recollection.</p> <p>11 Q. But it is your testimony that</p> <p>12 even if you were aware of Andersen's stated</p> <p>13 reason for the shortfall prior to the press</p> <p>14 release you would still be comfortable with</p> <p>15 the press release?</p> <p>16 A. It depends on the Andersen</p> <p>17 statements and whether or not they were</p> <p>18 consistent with the -- with the substance</p> <p>19 of the press release.</p> <p>20 If they were consistent I would</p> <p>21 have felt comfortable with it.</p> <p>22 Q. I guess that is the question. Is</p> <p>23 it your view that the Andersen statement</p> <p>24 that we looked at is consistent with the</p> <p>25 press release?</p>
<p style="text-align: right;">Page 143</p> <p>1 Dean</p> <p>2 remember whether or not that was in the</p> <p>3 comfort letter, the final comfort letter</p> <p>4 that was delivered.</p> <p>5 If it was, I mean, that would be</p> <p>6 consistent with the press release.</p> <p>7 Q. It is your testimony that this</p> <p>8 press release fairly discloses that the</p> <p>9 reason for the shortfall in sales was</p> <p>10 because Sunbeam accelerated sales into the</p> <p>11 fourth quarter of 1997?</p> <p>12 A. My testimony is that based on</p> <p>13 what we knew at the time we felt</p> <p>14 comfortable with the substance of the press</p> <p>15 release.</p> <p>16 I can't recall right now all of</p> <p>17 the constellation of facts that we took</p> <p>18 into account when we made that</p> <p>19 determination but I would not have felt</p> <p>20 comfortable proceeding with the offering</p> <p>21 unless I felt that the disclosure in the</p> <p>22 press release was consistent with what we</p> <p>23 had learned.</p> <p>24 Q. It is possible you may have</p> <p>25 learned of Andersen's stated reason for the</p>	<p style="text-align: right;">Page 145</p> <p>1 Dean</p> <p>2 A. I don't know whether or not this</p> <p>3 Andersen statement was one that we saw</p> <p>4 prior to the issuance of the press release.</p> <p>5 Q. I understand that.</p> <p>6 A. So let me take a look at the</p> <p>7 Andersen draft.</p> <p>8 Q. Paragraph 6B, I believe; maybe</p> <p>9 6C?</p> <p>10 MR. WISE: 6B.</p> <p>11 THE WITNESS: If the language in</p> <p>12 paragraph 6B of Exhibit -- what exhibit</p> <p>13 number is this?</p> <p>14 BY MR. JOHNSON:</p> <p>15 Q. 110.</p> <p>16 A. 110, that statement appears to be</p> <p>17 consistent with the disclosure that is in</p> <p>18 the press release.</p> <p>19 Q. You think it fairly discloses the</p> <p>20 acceleration of sales into 1997?</p> <p>21 A. I think that the disclosure is</p> <p>22 consistent with the Andersen accounts.</p> <p>23 I mean, there frequently -- there</p> <p>24 can be variations between what is disclosed</p> <p>25 and more detail.</p>

<p style="text-align: right;">Page 146</p> <p>1 Dean</p> <p>2 Q. It is consistent with -- the</p> <p>3 statements are consistent with one another</p> <p>4 is your testimony?</p> <p>5 A. Yes.</p> <p>6 Q. You testified already that you</p> <p>7 favored putting January and February sales</p> <p>8 information in the press release?</p> <p>9 A. Well, I -- what I did was I</p> <p>10 suggested that as a course of action that</p> <p>11 the group might consider.</p> <p>12 I was not wedded to having the</p> <p>13 January and February numbers being</p> <p>14 disclosed.</p> <p>15 Q. That information though would be</p> <p>16 more specific and less subjective than the</p> <p>17 information that ultimately ended up in the</p> <p>18 press release concerning sales results?</p> <p>19 A. It would -- if we had reported</p> <p>20 January and February numbers, yes, that</p> <p>21 would have been more specific.</p> <p>22 Q. Would you agree that Andersen's</p> <p>23 statement for the reason for the shortfall</p> <p>24 is more specific than the statement that</p> <p>25 ended up in the press release concerning</p>	<p style="text-align: right;">Page 148</p> <p>1 Dean</p> <p>2 does state that some of the revenues could</p> <p>3 have been accelerated into 1997.</p> <p>4 Q. The press release doesn't refer</p> <p>5 in any way to 1997 results, correct?</p> <p>6 MR. CLARE: Objection. That</p> <p>7 misstates the document.</p> <p>8 THE WITNESS: Could you repeat</p> <p>9 the question?</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. Yes.</p> <p>12 The press release doesn't</p> <p>13 indicate in any way that sales were</p> <p>14 accelerated into 19 -- the fourth quarter</p> <p>15 of 1997, does it?</p> <p>16 A. I think that it is -- what the</p> <p>17 press release -- the language in the press</p> <p>18 release could be construed to capture that,</p> <p>19 the 1997 increases in sales under the words</p> <p>20 due to changes in the inventory management</p> <p>21 and order patterns.</p> <p>22 It is not -- it is not specific</p> <p>23 as to what happened in 1997.</p> <p>24 Q. You are not suggesting, are you,</p> <p>25 that that sentence would be sufficient to</p>
<p style="text-align: right;">Page 147</p> <p>1 Dean</p> <p>2 the reasons for the shortfall?</p> <p>3 A. Yes. I would say there is more</p> <p>4 detail in the Andersen sort of explanation</p> <p>5 than what appeared in the press release.</p> <p>6 Q. The press release obviously</p> <p>7 doesn't call into question the quality of</p> <p>8 Sunbeam's 1997 results, does it?</p> <p>9 MR. WISE: Are you going to argue</p> <p>10 with him about it? Is that a fact</p> <p>11 question?</p> <p>12 MR. JOHNSON: That was a</p> <p>13 question.</p> <p>14 MR. CLARE: I object to the</p> <p>15 question on form and foundation.</p> <p>16 MR. JOHNSON: Let me state it</p> <p>17 slightly differently.</p> <p>18 BY MR. JOHNSON:</p> <p>19 Q. The Andersen draft, Exhibit 110,</p> <p>20 has the potential to call into question the</p> <p>21 quality of Sunbeam's 1997 results, doesn't</p> <p>22 it?</p> <p>23 A. I don't know what you mean by</p> <p>24 "the quality of 1997 results."</p> <p>25 I mean, it -- the Andersen letter</p>	<p style="text-align: right;">Page 149</p> <p>1 Dean</p> <p>2 put investors on notice that sales had been</p> <p>3 accelerated into 1997?</p> <p>4 MR. CLARE: Objection to the form</p> <p>5 of the question.</p> <p>6 THE WITNESS: I think that the</p> <p>7 press release does not specifically</p> <p>8 state that there was an early buy</p> <p>9 program in effect for 1997 and it does</p> <p>10 talk about inventory management and</p> <p>11 ordering patterns at the major retail</p> <p>12 customers which could encompass that</p> <p>13 behavior.</p> <p>14 BY MR. JOHNSON:</p> <p>15 Q. You are not aware of any market</p> <p>16 reaction or analyst reaction to the press</p> <p>17 release that called into question the</p> <p>18 validity of 1997 results, are you?</p> <p>19 A. I am not aware of anything at</p> <p>20 this time.</p> <p>21 MR. JOHNSON: We will mark this</p> <p>22 as CPH Exhibit 214.</p> <p>23 (CPH Exhibit 214 marked for</p> <p>24 identification)</p> <p>25 BY MR. JOHNSON:</p>

<p style="text-align: right;">Page 150</p> <p>1 Dean</p> <p>2 Q. Mr. Dean, I have given you a</p> <p>3 document we have marked as CPH1257359.</p> <p>4 Can you identify that document</p> <p>5 for us?</p> <p>6 A. It appears to be a memorandum</p> <p>7 prepared by Morgan Stanley from John Tyree</p> <p>8 and Ben Derito to Bob Gluck, myself and Ben</p> <p>9 Fernicola.</p> <p>10 Q. Who is Ben Derito?</p> <p>11 A. I don't know. I assume he was a</p> <p>12 Morgan Stanley person, an employee of</p> <p>13 Morgan Stanley at the time.</p> <p>14 Q. How about the name at the bottom,</p> <p>15 Shani Boone; do you know who that is?</p> <p>16 A. She was also -- I forget what her</p> <p>17 position was, whether or not she was also</p> <p>18 an employee of Morgan Stanley at the time</p> <p>19 of the Sunbeam transaction.</p> <p>20 Q. This memo schedules a conference</p> <p>21 call, a bring-down due diligence conference</p> <p>22 call for March 19, 1998.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Did that call go forward?</p>	<p style="text-align: right;">Page 152</p> <p>1 Dean</p> <p>2 Q. Did anyone from Davis Polk?</p> <p>3 A. Not that I am aware of.</p> <p>4 Q. Do you have any knowledge as to</p> <p>5 what happened at the road show?</p> <p>6 A. No, I do not.</p> <p>7 Q. Did you or anyone from Davis Polk</p> <p>8 attend any road shows?</p> <p>9 A. I did not attend any road shows.</p> <p>10 I don't think anybody else from Davis Polk</p> <p>11 did either.</p> <p>12 Q. Did you ever hear what happened</p> <p>13 at any of the road shows?</p> <p>14 A. I don't remember hearing about</p> <p>15 what happened at the road shows.</p> <p>16 Q. Did you ever hear that Sunbeam</p> <p>17 talked about the March 19 press release at</p> <p>18 any of the road shows?</p> <p>19 A. I don't remember whether or not</p> <p>20 they -- I have no recollection as to</p> <p>21 whether or not they did or not.</p> <p>22 I assume they had to address it</p> <p>23 after the press release was issued.</p> <p>24 Q. Would it concern you if Sunbeam</p> <p>25 downplayed the press release in any way?</p>
<p style="text-align: right;">Page 151</p> <p>1 Dean</p> <p>2 A. I don't have any recollection as</p> <p>3 to whether or not it did or not.</p> <p>4 Q. I ask because the Davis Polk</p> <p>5 chronology, Exhibit 24, doesn't appear to</p> <p>6 list that conference call if you look at</p> <p>7 Exhibit 24.</p> <p>8 A. My time records would not</p> <p>9 necessarily have sufficient detail to</p> <p>10 identify whether or not my time related to</p> <p>11 a particular conference call or not.</p> <p>12 Q. It is your testimony as I</p> <p>13 understand it that as of the date of this</p> <p>14 memo, March 17, 1998, you had no inkling</p> <p>15 that there were any problems with Sunbeam's</p> <p>16 first quarter 1998 results?</p> <p>17 A. That's right. I mean, the first</p> <p>18 inkling that I had was on March 18.</p> <p>19 Q. That was the same day as the New</p> <p>20 York road show for the debt offering?</p> <p>21 A. I don't know when the New York</p> <p>22 road show was. If it was on March 18, yes.</p> <p>23 Q. Did you attend the New York road</p> <p>24 show?</p> <p>25 A. No, I did not.</p>	<p style="text-align: right;">Page 153</p> <p>1 Dean</p> <p>2 A. I think that the press release</p> <p>3 speaks for itself. How Sunbeam responded</p> <p>4 to it, I really can't sort of say what</p> <p>5 would be in Sunbeam's minds.</p> <p>6 Q. If you had heard that Sunbeam</p> <p>7 said that they issued the press release</p> <p>8 only because the lawyers made them do it,</p> <p>9 would that give you any concern?</p> <p>10 A. I think that the press release</p> <p>11 speaks for itself and that the marketplace</p> <p>12 would evaluate it on that basis and then</p> <p>13 the marketplace could evaluate what Sunbeam</p> <p>14 said at the same time.</p> <p>15 Q. I take that as a no.</p> <p>16 MR. WISE: No. You take that as</p> <p>17 the answer that he gave.</p> <p>18 You -- actually, you can take it</p> <p>19 any way you want. I don't care how you</p> <p>20 take it. His answer stands the way he</p> <p>21 gave it.</p> <p>22 BY MR. JOHNSON:</p> <p>23 Q. Let me try it again slightly</p> <p>24 differently and see if I can get a direct</p> <p>25 answer.</p>

<p style="text-align: right;">Page 154</p> <p>1 Dean</p> <p>2 MR. WISE: I object to that.</p> <p>3 You got a direct answer. You just</p> <p>4 didn't like it.</p> <p>5 MR. JOHNSON: He didn't like it.</p> <p>6 MR. WISE: I said you got a</p> <p>7 direct answer. You just didn't like</p> <p>8 it.</p> <p>9 BY MR. JOHNSON:</p> <p>10 Q. Would you be concerned in any way</p> <p>11 if you had learned that Sunbeam tried to</p> <p>12 downplay the significance of the press</p> <p>13 release after its issuance?</p> <p>14 A. I would be concerned if Sunbeam</p> <p>15 said something inconsistent with the press</p> <p>16 release.</p> <p>17 How Sunbeam decided how to</p> <p>18 characterize the press release would be --</p> <p>19 I didn't represent Sunbeam so I don't know</p> <p>20 how they were advised.</p> <p>21 I think that the press release</p> <p>22 that Sunbeam put out speaks for itself and</p> <p>23 any comments that Sunbeam made in</p> <p>24 connection with the press release would be</p> <p>25 absorbed by the marketplace in whatever</p>	<p style="text-align: right;">Page 156</p> <p>1 Dean</p> <p>2 AFTERNOON SESSION</p> <p>3 2:07 p.m.</p> <p>4 THE VIDEOGRAPHER: The time is</p> <p>5 2:07 p.m. and we are back on the video</p> <p>6 record.</p> <p>7 BY MR. JOHNSON:</p> <p>8 Q. Mr. Dean, before lunch we were</p> <p>9 talking about the press release and the</p> <p>10 telephone conferences leading up to the</p> <p>11 press release. Do you recall that</p> <p>12 testimony?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Did Davis Polk and Morgan</p> <p>15 Stanley's diligence work continue after the</p> <p>16 press release issued after March 19?</p> <p>17 A. Yes, it did.</p> <p>18 Q. I assume you had telephone</p> <p>19 conferences with somebody in management in</p> <p>20 connection with that due diligence?</p> <p>21 A. Yes.</p> <p>22 Q. Did you ask them how the first</p> <p>23 quarter was progressing?</p> <p>24 A. Yes, we did.</p> <p>25 Q. Did you ask them how the first</p>
<p style="text-align: right;">Page 155</p> <p>1 Dean</p> <p>2 fashion the marketplace -- whatever weight</p> <p>3 the marketplace wanted to put on it.</p> <p>4 Q. Don't you as counsel to the</p> <p>5 underwriter have concern with the candor of</p> <p>6 issuer management?</p> <p>7 A. Yes, we do.</p> <p>8 MR. JOHNSON: Do you want to take</p> <p>9 your lunch break?</p> <p>10 MR. WISE: Sure. Let's do that.</p> <p>11 THE WITNESS: If it is another</p> <p>12 15, 20 minutes --</p> <p>13 MR. JOHNSON: It is not. I don't</p> <p>14 think it is more than another 90</p> <p>15 minutes or so but -- so you guys do</p> <p>16 what you want to do. I do need to use</p> <p>17 the restroom.</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 1:02 p.m. We are going off the video</p> <p>20 record.</p> <p>21 (Luncheon recess: 1:02 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 157</p> <p>1 Dean</p> <p>2 half of 1998 was progressing?</p> <p>3 A. I don't remember. That would</p> <p>4 have been a natural question to ask.</p> <p>5 Q. How about 1998 as a whole, did</p> <p>6 you ask them how that was looking?</p> <p>7 A. I don't recall whether or not</p> <p>8 that was the subject of any of the</p> <p>9 conversations.</p> <p>10 Q. When you say that asking about</p> <p>11 the first half of 1998 would be a natural</p> <p>12 question what do you mean by that?</p> <p>13 A. I think that in the -- at Sunbeam</p> <p>14 generally there were Street estimates out</p> <p>15 with respect to the full year or the first</p> <p>16 half and that would have been a natural</p> <p>17 series of questions to ask as well.</p> <p>18 Q. Did you have any concern that</p> <p>19 Sunbeam was stretching to make first</p> <p>20 quarter numbers with the result that the</p> <p>21 second quarter would be severely impacted?</p> <p>22 A. I had -- I had no recollection as</p> <p>23 to any specific conversations we had about</p> <p>24 the second quarter and so I wouldn't have</p> <p>25 any comment about whether or not they were</p>

<p style="text-align: right;">Page 158</p> <p>1 Dean</p> <p>2 trying to stretch -- whether or not they</p> <p>3 would need to stretch to get the second</p> <p>4 quarter results.</p> <p>5 Q. I guess the question is a little</p> <p>6 different.</p> <p>7 Did you have any concern that the</p> <p>8 push to make numbers in the first quarter</p> <p>9 of 1998 would have a negative impact on</p> <p>10 Sunbeam's performance in the second quarter</p> <p>11 of 1998?</p> <p>12 A. I don't recall any concern about</p> <p>13 that.</p> <p>14 Q. Let me show you what was marked</p> <p>15 previously as Exhibit 35. Actually that is</p> <p>16 Exhibit 33, believe it or not. That is a</p> <p>17 poor copy. I will represent to you that is</p> <p>18 33.</p> <p>19 Exhibit 33 is a memo from John</p> <p>20 Tyree and Johannes Groeller to you among</p> <p>21 others; is that correct?</p> <p>22 A. That is correct.</p> <p>23 Q. I think Johannes Groeller will be</p> <p>24 a new name for us today.</p> <p>25 Who is Johannes Groeller?</p>	<p style="text-align: right;">Page 160</p> <p>1 Dean</p> <p>2 are -- these would be typical sort of areas</p> <p>3 of review in the due diligence phone call.</p> <p>4 Q. By "top and bottom line" that</p> <p>5 refers to revenue and earnings?</p> <p>6 A. Yes. Some sort of bottom line</p> <p>7 would refer to some sort of earnings</p> <p>8 measure.</p> <p>9 Q. The third bullet refers to any</p> <p>10 significant customer account, wins, losses.</p> <p>11 During any of the conference</p> <p>12 calls you had after the press release</p> <p>13 issued do you recall any customer account</p> <p>14 wins or losses identified by Sunbeam?</p> <p>15 A. I don't recall any at this time.</p> <p>16 Q. Do you recall that question being</p> <p>17 discussed?</p> <p>18 A. I don't recall it being discussed</p> <p>19 and based on this memorandum it looks like</p> <p>20 it was one of the issues that was discussed</p> <p>21 and I would have been able to comment on it</p> <p>22 closer to the 1998 time frame than now.</p> <p>23 Q. Now you just don't remember?</p> <p>24 A. I just don't remember now.</p> <p>25 Q. The sixth bullet point states,</p>
<p style="text-align: right;">Page 159</p> <p>1 Dean</p> <p>2 A. Since this is a Morgan Stanley</p> <p>3 memorandum I assume that Johannes Groeller</p> <p>4 is another employee of Morgan Stanley who</p> <p>5 worked on the financing team.</p> <p>6 Q. I take it from your answer though</p> <p>7 you don't recall ever dealing with him?</p> <p>8 A. I don't remember dealing with</p> <p>9 him.</p> <p>10 Q. This memo is dated March 19, the</p> <p>11 same day as the press release, do you see</p> <p>12 that?</p> <p>13 A. I do see that.</p> <p>14 Q. That is also the day of the</p> <p>15 pricing of the debt offering, isn't it?</p> <p>16 A. Yes, it is.</p> <p>17 Q. The first agenda item provides</p> <p>18 top and bottom line outlook for first</p> <p>19 quarter first half of the year, do you see</p> <p>20 that?</p> <p>21 A. I do see that.</p> <p>22 Q. Do you recall any conversation on</p> <p>23 that topic during this telephone call?</p> <p>24 A. I don't have any recollection now</p> <p>25 since the events were six years ago. These</p>	<p style="text-align: right;">Page 161</p> <p>1 Dean</p> <p>2 "Are the expected synergy estimates for the</p> <p>3 three acquisitions still up to date."</p> <p>4 What does that refer to?</p> <p>5 A. Well, I can't read into the minds</p> <p>6 of the person who wrote this memorandum but</p> <p>7 what I would interpret that question to</p> <p>8 revolve around is whether or not the --</p> <p>9 after the closing of the acquisitions</p> <p>10 whether or not there would be any</p> <p>11 efficiencies realized by eliminating some</p> <p>12 of the duplicative functions.</p> <p>13 Q. Did you or anyone at Davis Polk</p> <p>14 do any analysis of synergies to be achieved</p> <p>15 from the acquisitions?</p> <p>16 A. It would not have been our role</p> <p>17 to do a financial analysis into a</p> <p>18 synergy -- into a synergy analysis. In the</p> <p>19 course of the offering we might well have</p> <p>20 reviewed the pro forma financial</p> <p>21 statements.</p> <p>22 Q. Did you, in fact, review the pro</p> <p>23 forma financial statements?</p> <p>24 A. I can't -- I am sure that I did</p> <p>25 because it would be part of a normal sort</p>

<p style="text-align: right;">Page 162</p> <p>1 Dean</p> <p>2 of process of preparing the offering</p> <p>3 memorandum but I can't -- I can't say that</p> <p>4 I remember positively doing it.</p> <p>5 Q. Can you recall any revisions to</p> <p>6 the pro formas during the course of March</p> <p>7 of 1998?</p> <p>8 A. I don't recall any revisions.</p> <p>9 There might have been some.</p> <p>10 Q. The phrase "the expected synergy</p> <p>11 estimates," who had made synergy estimates</p> <p>12 on this transaction?</p> <p>13 A. I don't know who made the synergy</p> <p>14 estimates. Typically the acquirer,</p> <p>15 Sunbeam, would have synergy estimates</p> <p>16 prepared in order to evaluate the financial</p> <p>17 aspects of the acquisition transaction.</p> <p>18 Q. Let me give you what we marked</p> <p>19 previously as Exhibit 111.</p> <p>20 Mr. Dean, Exhibit CPH111 is</p> <p>21 another draft of the comfort letter. This</p> <p>22 draft has a fax header From Global</p> <p>23 Financial Press New York at about 11:48 in</p> <p>24 the evening of March 19. Do you see that?</p> <p>25 A. I do see that.</p>	<p style="text-align: right;">Page 164</p> <p>1 Dean</p> <p>2 second or you don't recall?</p> <p>3 A. I attended the first.</p> <p>4 Q. The first session, that was not</p> <p>5 the session on March 19; is that correct?</p> <p>6 A. That's correct. The first</p> <p>7 session would have been to prepare the</p> <p>8 preliminary prospectus.</p> <p>9 Q. Who was at the first session?</p> <p>10 A. From Davis Polk?</p> <p>11 Q. I want to know everyone who was</p> <p>12 at the first session.</p> <p>13 A. Again, since the events were six</p> <p>14 years ago I will try to remember as many as</p> <p>15 I can but I may not get them all.</p> <p>16 I attended that meeting from</p> <p>17 Davis Polk. Heather Stack also attended</p> <p>18 that meeting.</p> <p>19 I know that Jim Lurie from Davis</p> <p>20 Polk did not attend that meeting because we</p> <p>21 decided to split up attendance at the</p> <p>22 printing sessions.</p> <p>23 There was a representative of</p> <p>24 Skadden, Arps there. I can't recall who it</p> <p>25 was.</p>
<p style="text-align: right;">Page 163</p> <p>1 Dean</p> <p>2 Q. Did you receive this draft?</p> <p>3 A. I don't recall at this time</p> <p>4 whether or not I have seen -- whether or</p> <p>5 not I saw the draft.</p> <p>6 Q. What is Global Financial Press?</p> <p>7 A. Global Financial Press is a</p> <p>8 financial printing firm.</p> <p>9 Q. Located here in New York?</p> <p>10 A. Located in New York City.</p> <p>11 Q. Have you ever been to Global</p> <p>12 Financial Press?</p> <p>13 A. Yes, I have.</p> <p>14 Q. Did you go to Global Financial</p> <p>15 Press in connection with the Sunbeam</p> <p>16 transaction?</p> <p>17 A. I did go at least once to Global</p> <p>18 Financial Press in connection with Sunbeam.</p> <p>19 Q. Do you know on how many different</p> <p>20 occasions Davis Polk lawyers attended</p> <p>21 drafting sessions at Global Financial</p> <p>22 Press?</p> <p>23 A. I believe we attended drafting</p> <p>24 sessions twice at Global Financial Press.</p> <p>25 Q. Did you attend the first or the</p>	<p style="text-align: right;">Page 165</p> <p>1 Dean</p> <p>2 I don't remember whether or not</p> <p>3 any Sunbeam personnel came up for the</p> <p>4 meeting. There may have been an Arthur</p> <p>5 Andersen representative there but I can't</p> <p>6 recall for sure. That would have been</p> <p>7 Mr. Bornstein who we talked about earlier</p> <p>8 today.</p> <p>9 Q. Right.</p> <p>10 Other than Mr. Bornstein did you</p> <p>11 ever deal with anyone else from Andersen in</p> <p>12 connection with the Sunbeam transaction?</p> <p>13 A. I don't recall whether or not I</p> <p>14 did or not. There may have been conference</p> <p>15 calls I participated in but Mr. Bornstein</p> <p>16 is the only one that I have a definitive</p> <p>17 recollection of today.</p> <p>18 Q. Can you visualize Mr. Bornstein?</p> <p>19 A. No. I don't think so. There</p> <p>20 have been many accountants since</p> <p>21 Mr. Bornstein.</p> <p>22 Q. They all seem to run together.</p> <p>23 The CPH Exhibit 111 differs from</p> <p>24 the earlier comfort letter draft that we</p> <p>25 looked at in several respects. One is the</p>

<p style="text-align: right;">Page 166</p> <p>1 Dean</p> <p>2 addition of paragraph 6C on page 5.</p> <p>3 A. Yes, I see paragraph 6C.</p> <p>4 Q. This draft was circulated</p> <p>5 apparently after the press release issued?</p> <p>6 A. It appears to have -- it appears</p> <p>7 to have been faxed after the press release</p> <p>8 was issued.</p> <p>9 I don't know who it was faxed to.</p> <p>10 It appears to have been faxed from the</p> <p>11 printer.</p> <p>12 Q. Do you know whether Morgan</p> <p>13 Stanley saw this draft?</p> <p>14 A. I don't know whether or not</p> <p>15 Morgan Stanley saw it or not. It would be</p> <p>16 our normal practice at Davis Polk if we had</p> <p>17 received a copy of this to forward it on to</p> <p>18 Morgan Stanley.</p> <p>19 Q. Did Davis Polk or Morgan Stanley</p> <p>20 receive any information after the press</p> <p>21 release was issued that they thought needed</p> <p>22 to be enclosed in the offering memorandum?</p> <p>23 A. Not that I am aware of.</p> <p>24 Q. Did you have any discussions with</p> <p>25 any Davis Polk personnel the night of March</p>	<p style="text-align: right;">Page 168</p> <p>1 Dean</p> <p>2 what happened at the printer.</p> <p>3 He could have well reviewed what</p> <p>4 happened at the printer but I don't have</p> <p>5 any specific memory of that.</p> <p>6 Q. He didn't convey to you any</p> <p>7 disagreements or heated discussions that</p> <p>8 occurred at the printer?</p> <p>9 A. I don't recall. Nothing that I</p> <p>10 recall at this time.</p> <p>11 Q. You don't recall Mr. Lurie</p> <p>12 telling you that Mr. Bornstein said that</p> <p>13 everybody in the room would get sued if</p> <p>14 Sunbeam didn't beat the first quarter 1997</p> <p>15 number?</p> <p>16 A. No. I don't recall that having</p> <p>17 been said.</p> <p>18 Q. Did Mr. Lurie tell you that</p> <p>19 Mr. Bornstein advised skepticism as to</p> <p>20 Sunbeam's ability to beat the first quarter</p> <p>21 1997 number?</p> <p>22 A. I don't recall such a</p> <p>23 conversation. Having said that, this was</p> <p>24 six years ago.</p> <p>25 Q. Did you have any discussion with</p>
<p style="text-align: right;">Page 167</p> <p>1 Dean</p> <p>2 19?</p> <p>3 A. I don't recall. I probably did.</p> <p>4 Q. Who from Davis Polk was at the</p> <p>5 printer on March 19?</p> <p>6 A. Jim Lurie was at the printer and</p> <p>7 I don't know whether or not Heather Stack</p> <p>8 went to the printer that evening or not.</p> <p>9 Q. Do you recall any discussion with</p> <p>10 Mr. Lurie calling you either at the office</p> <p>11 or at home from the printer?</p> <p>12 A. I don't remember a phone call.</p> <p>13 He very well could have made a phone call</p> <p>14 to me in the course of the transaction.</p> <p>15 Q. Nothing stands out to you today</p> <p>16 as a phone call occurring from the printer?</p> <p>17 A. I don't recall a phone call at</p> <p>18 this time but again it was six years ago.</p> <p>19 Lots of phone calls from the printer since</p> <p>20 then.</p> <p>21 Q. Did you ever talk to Mr. Lurie or</p> <p>22 anyone else about what happened at the</p> <p>23 printer?</p> <p>24 A. I don't remember any specifics --</p> <p>25 specific conversation with Mr. Lurie about</p>	<p style="text-align: right;">Page 169</p> <p>1 Dean</p> <p>2 anyone from Skadden or Sunbeam as to</p> <p>3 whether the full text of the press release</p> <p>4 should be contained in the recent</p> <p>5 developments section of the offering</p> <p>6 memorandum?</p> <p>7 A. Yes, we did have discussions with</p> <p>8 Skadden about whether or not the substance</p> <p>9 of the press release should be in the</p> <p>10 offering memorandum.</p> <p>11 Q. What was Skadden's position on</p> <p>12 that?</p> <p>13 A. I don't remember what Skadden's</p> <p>14 position on it was.</p> <p>15 Our position was that it should</p> <p>16 be in the document.</p> <p>17 Q. Was there any discussion about</p> <p>18 changing the substance of the press</p> <p>19 release?</p> <p>20 A. I don't recall any discussion</p> <p>21 about that, that I was involved in.</p> <p>22 Q. This has been marked previously</p> <p>23 as Exhibit 17.</p> <p>24 Mr. Dean, Exhibit 17 is a letter</p> <p>25 from Arthur Andersen to Morgan Stanley</p>

<p style="text-align: right;">Page 174</p> <p>1 Dean</p> <p>2 transaction.</p> <p>3 Q. If you look back at Exhibit 33</p> <p>4 that we looked at which was also a bring</p> <p>5 down due diligence agenda, Exhibit 33</p> <p>6 refers to results for the first quarter,</p> <p>7 the first half and the year whereas Exhibit</p> <p>8 34 refers only to the first quarter</p> <p>9 revenues and earnings.</p> <p>10 Do you know why that is?</p> <p>11 A. No, I don't, but we could well</p> <p>12 have covered the first half of the year in</p> <p>13 the conference call.</p> <p>14 Q. Do you have any recollection of</p> <p>15 doing that?</p> <p>16 A. I don't have any recollection</p> <p>17 now. I would have back then. It strikes</p> <p>18 me as it is a standard thing that would</p> <p>19 have been done.</p> <p>20 Q. You have no idea why the agenda</p> <p>21 that is Exhibit 34 doesn't refer to the</p> <p>22 first half of 1998?</p> <p>23 A. No.</p> <p>24 Q. This has been marked previously</p> <p>25 as Exhibit 35.</p>	<p style="text-align: right;">Page 176</p> <p>1 Dean</p> <p>2 quarter?</p> <p>3 A. No, they did not. I can't --</p> <p>4 that is something that I would have</p> <p>5 remembered.</p> <p>6 Q. Why do you say that?</p> <p>7 A. Because Sunbeam had been</p> <p>8 projected to earn money during the first</p> <p>9 quarter.</p> <p>10 Q. You would have been surprised by</p> <p>11 a loss as of that point in the quarter?</p> <p>12 A. Yes, I would have been surprised.</p> <p>13 It would have been inconsistent with the</p> <p>14 information that we just received on the</p> <p>15 18th.</p> <p>16 Q. You think on the 23rd they were</p> <p>17 telling you that they were going to show a</p> <p>18 profit for the quarter?</p> <p>19 A. Well, I can't recall at this</p> <p>20 time, six years down the road but that must</p> <p>21 have been what they said, otherwise, we</p> <p>22 would not have felt comfortable closing the</p> <p>23 transaction given the disclosure that was</p> <p>24 in the marketplace.</p> <p>25 Q. I will show you what has been</p>
<p style="text-align: right;">Page 175</p> <p>1 Dean</p> <p>2 Exhibit 35 appears to be another</p> <p>3 due diligence agenda from a slightly</p> <p>4 different set of authors and slightly</p> <p>5 different set of recipients although you</p> <p>6 are a recipient on Exhibit 35 as well.</p> <p>7 A. Yes, I see that.</p> <p>8 Q. Exhibit 35 is a March 23, 1998</p> <p>9 memo. Do you see that?</p> <p>10 A. I do see that.</p> <p>11 Q. Like Exhibit 34, Exhibit 35</p> <p>12 refers to the first quarter revenues and</p> <p>13 earnings but not the first half of 1998</p> <p>14 results. Do you see that?</p> <p>15 A. Yes, I do see that.</p> <p>16 Q. What was -- on March 23, what was</p> <p>17 Sunbeam saying about its first quarter</p> <p>18 earnings and -- revenue and earnings?</p> <p>19 A. I don't have a specific</p> <p>20 recollection as to what they said. I am</p> <p>21 sure that they confirmed the matters that</p> <p>22 they had assured us would occur in the</p> <p>23 March 18 bring down phone call.</p> <p>24 Q. Did they tell you that as of</p> <p>25 March 23 Sunbeam was showing a loss for the</p>	<p style="text-align: right;">Page 177</p> <p>1 Dean</p> <p>2 marked previously as Exhibit 112.</p> <p>3 Can you identify Exhibit 112 for</p> <p>4 the record, Mr. Dean?</p> <p>5 A. Exhibit 112 appears to be a bring</p> <p>6 down comfort letter delivered at the</p> <p>7 closing of the subordinated debt offering</p> <p>8 reconfirming the matters in the comfort</p> <p>9 letter, earlier comfort letter delivered on</p> <p>10 the pricing date of the offering.</p> <p>11 Q. The bring down letter includes,</p> <p>12 doesn't it, a paragraph -- at paragraph E a</p> <p>13 revision to the sales and income statement</p> <p>14 set forth in the March 19 comfort letter?</p> <p>15 A. I would have to see where --</p> <p>16 which revision are you referring to?</p> <p>17 Q. The bring down comfort letter has</p> <p>18 sales and income figures through March 1</p> <p>19 whereas the comfort letter had sales and</p> <p>20 incomes through February 1 and sales</p> <p>21 through March 1?</p> <p>22 A. Could you repeat that? I will</p> <p>23 sort of double-check.</p> <p>24 Q. I am not trying to be tricky</p> <p>25 here.</p>

<p style="text-align: right;">Page 178</p> <p>1 Dean</p> <p>2 A. I understand.</p> <p>3 Q. I want to highlight a comparison.</p> <p>4 A. I haven't looked at these</p> <p>5 documents in a while. So --</p> <p>6 Q. Sure.</p> <p>7 Exhibit 17 which is the March 19</p> <p>8 comfort letter --</p> <p>9 A. Yes.</p> <p>10 Q. -- at paragraph 5B includes a</p> <p>11 table for sales and income through February</p> <p>12 1, 1998?</p> <p>13 A. Right.</p> <p>14 Q. The bring down letter includes at</p> <p>15 paragraph E an update on that table through</p> <p>16 March 1?</p> <p>17 A. Yes.</p> <p>18 Q. It shows through March 1 a loss</p> <p>19 of \$41 million for Sunbeam, do you see</p> <p>20 that?</p> <p>21 A. I do see that.</p> <p>22 Q. Did Davis Polk or Morgan Stanley</p> <p>23 do anything in reaction to that</p> <p>24 information?</p> <p>25 A. I don't remember doing anything</p>	<p style="text-align: right;">Page 180</p> <p>1 Dean</p> <p>2 quarter of 1998?</p> <p>3 A. That is my recollection. This</p> <p>4 comfort letter also -- this bring down</p> <p>5 comfort letter also tries to explain the</p> <p>6 magnitude of the \$41 million loss by saying</p> <p>7 there was a one time \$30.2 million item.</p> <p>8 Q. Excluding that, it is a little</p> <p>9 over a \$11 million shortfall?</p> <p>10 A. Right. Just taking a look at the</p> <p>11 sales, shortfalls, it would not be -- it</p> <p>12 wouldn't be -- it would not have been</p> <p>13 surprising to see a loss for the first two</p> <p>14 months.</p> <p>15 Q. Sales were running about half of</p> <p>16 the prior year period?</p> <p>17 A. Right.</p> <p>18 Q. The bring down comfort letter is</p> <p>19 delivered in connection with the closing of</p> <p>20 the debt offering; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. After the debt offering closed,</p> <p>23 what, if anything, did you do in connection</p> <p>24 with the Sunbeam transaction?</p> <p>25 A. Probably filed my documents away</p>
<p style="text-align: right;">Page 179</p> <p>1 Dean</p> <p>2 in reaction to that information.</p> <p>3 It would have been -- I just</p> <p>4 don't have any recollection at this time.</p> <p>5 It may have been consistent with the sales</p> <p>6 shortfall relative to the prior year</p> <p>7 period.</p> <p>8 Q. Did you ask what earnings looked</p> <p>9 like as of March 25 as opposed to as of</p> <p>10 March 1?</p> <p>11 A. I don't recall whether or not we</p> <p>12 would have. It would not be a question</p> <p>13 that we would address to Arthur Andersen if</p> <p>14 the cutoff of this letter was March 1.</p> <p>15 Q. Did you ask Sunbeam?</p> <p>16 A. We may -- we may well have asked</p> <p>17 Sunbeam that question. I assume we did ask</p> <p>18 Sunbeam that question.</p> <p>19 Q. But you can't recall who asked</p> <p>20 whom?</p> <p>21 A. No, I can't recall who asked</p> <p>22 whom.</p> <p>23 Q. Your testimony is that as of late</p> <p>24 March the Street was still expecting</p> <p>25 Sunbeam to show a profit for the first</p>	<p style="text-align: right;">Page 181</p> <p>1 Dean</p> <p>2 and I don't think that I paid -- I didn't</p> <p>3 do any substantive work on Sunbeam</p> <p>4 immediately after the closing.</p> <p>5 Q. Did you track the company in any</p> <p>6 way or keep an eye out for Sunbeam news?</p> <p>7 A. I don't remember doing that. I</p> <p>8 may have at the time. I don't recall at</p> <p>9 this time whether or not I did or not.</p> <p>10 Q. I believe you testified already</p> <p>11 today that you recall an early April press</p> <p>12 release with the actual first quarter 1998</p> <p>13 results?</p> <p>14 A. Yes.</p> <p>15 Q. Did you get that on or about the</p> <p>16 time that it was issued?</p> <p>17 A. Yes, I did.</p> <p>18 Q. If I can find my copy of it.</p> <p>19 This has been marked as Exhibit 36</p> <p>20 previously.</p> <p>21 How did you -- let me -- I will</p> <p>22 identify it for the record.</p> <p>23 Exhibit 36 is the April 3, it</p> <p>24 says, 1997 but it is in fact a 1998, press</p> <p>25 release.</p>

<p style="text-align: right;">Page 182</p> <p>1 Dean</p> <p>2 It also has a fax cover sheet</p> <p>3 from David Fannin to four Morgan Stanley</p> <p>4 personnel and two Skadden personnel.</p> <p>5 A. Yes, I see that.</p> <p>6 Q. How did you come to see the April</p> <p>7 3 press release?</p> <p>8 A. I can't recall how I got a copy</p> <p>9 of this press release, whether or not</p> <p>10 Morgan Stanley gave it to me or who</p> <p>11 notified me about it.</p> <p>12 Q. Did you talk to anyone with</p> <p>13 Morgan Stanley about the substance of the</p> <p>14 press release?</p> <p>15 A. After the press release was</p> <p>16 issued? I don't recall any specific</p> <p>17 conversations now.</p> <p>18 I must have had conversations</p> <p>19 with personnel from Morgan Stanley about</p> <p>20 it.</p> <p>21 Q. How about before the press</p> <p>22 release was issued did you know this press</p> <p>23 release was coming out?</p> <p>24 A. No, I did not.</p> <p>25 Q. Did you know that Sunbeam would</p>	<p style="text-align: right;">Page 184</p> <p>1 Dean</p> <p>2 about what happened to Sunbeam after this</p> <p>3 press release was issued.</p> <p>4 Q. Let's mark this as 215.</p> <p>5 (CPH Exhibit 215 marked for</p> <p>6 identification)</p> <p>7 BY MR. JOHNSON:</p> <p>8 Q. Mr. Dean, what is Exhibit 215?</p> <p>9 A. Exhibit 215 appears to be a fax</p> <p>10 cover sheet to Donald Uzzi from me</p> <p>11 attaching -- faxing a copy of a lockup</p> <p>12 agreement that Mr. Uzzi signed in</p> <p>13 connection with the offering.</p> <p>14 Q. The fax cover sheet is dated</p> <p>15 April 2, 1998, 7:00 p.m.</p> <p>16 A. Yes, it is.</p> <p>17 Q. The lockup agreement restricts</p> <p>18 Mr. Uzzi's ability to sell Sunbeam's</p> <p>19 securities?</p> <p>20 A. Yes, it does.</p> <p>21 Q. Did you have any concerns about</p> <p>22 Mr. Uzzi's request for a copy of his lockup</p> <p>23 agreement on April 2?</p> <p>24 A. I don't recall any concerns at</p> <p>25 the time. I don't even recall sending this</p>
<p style="text-align: right;">Page 183</p> <p>1 Dean</p> <p>2 issue a press release with its first</p> <p>3 quarter results in it?</p> <p>4 A. Sunbeam would be required to</p> <p>5 issue a release with its first quarter</p> <p>6 results in it.</p> <p>7 I wasn't aware of what the timing</p> <p>8 of that would be.</p> <p>9 Q. That is what I am getting at.</p> <p>10 Did you have any reaction to the</p> <p>11 press release?</p> <p>12 A. I was surprised when I saw the</p> <p>13 press release.</p> <p>14 Q. Did you -- I take it then you</p> <p>15 didn't have an opportunity to review or</p> <p>16 comment on the April 3 press release?</p> <p>17 A. No, I did not.</p> <p>18 Q. Did you call anyone at Skadden</p> <p>19 concerning this press release?</p> <p>20 A. I don't remember whether or not I</p> <p>21 did or not.</p> <p>22 Q. Did you continue to follow</p> <p>23 Sunbeam after the April 3 press release?</p> <p>24 A. I don't recall now whether or not</p> <p>25 I did. I know that I read press reports</p>	<p style="text-align: right;">Page 185</p> <p>1 Dean</p> <p>2 fax out.</p> <p>3 Q. Did you have any conversations</p> <p>4 with anyone in connection with sending this</p> <p>5 out?</p> <p>6 A. Well, the fax cover sheet</p> <p>7 suggests that I must have had conversations</p> <p>8 with John Tyree because it is at his</p> <p>9 request that I was faxing Mr. Uzzi a copy</p> <p>10 of the lockup agreement.</p> <p>11 Q. Other than what is on the face of</p> <p>12 the fax cover sheet you don't have any</p> <p>13 memory of talking to John Tyree?</p> <p>14 A. I don't have any specific</p> <p>15 recollection of it, no. Again, it was six</p> <p>16 years ago. Many phone calls since then.</p> <p>17 Q. This is the day before Mr. Uzzi</p> <p>18 is terminated as well; is that correct?</p> <p>19 A. I am not aware of the date that</p> <p>20 Mr. Uzzi was terminated.</p> <p>21 Q. I want to change gears just</p> <p>22 slightly and talk for a few moments about</p> <p>23 the purchase agreement between Morgan</p> <p>24 Stanley and Sunbeam.</p> <p>25 I believe you have already</p>

<p style="text-align: right;">Page 186</p> <p>1 Dean</p> <p>2 testified today that Davis Polk counseled</p> <p>3 Morgan Stanley in connection with the</p> <p>4 negotiation and drafting of that agreement?</p> <p>5 A. Yes, we did.</p> <p>6 Q. Do you remember as you sit here</p> <p>7 the negotiation points that were in dispute</p> <p>8 with Sunbeam or Skadden, Arps?</p> <p>9 A. Sitting here I don't remember,</p> <p>10 nor do I recall any specific negotiations</p> <p>11 that I may have participated in in</p> <p>12 connection with the purchase agreement.</p> <p>13 Q. Let me see if I can refresh your</p> <p>14 memory a little bit.</p> <p>15 This would be 216.</p> <p>16 (CPH Exhibit 216 marked for</p> <p>17 identification)</p> <p>18 BY MR. JOHNSON:</p> <p>19 Q. Mr. Dean, I recognize I have</p> <p>20 given you a fairly voluminous exhibit. I</p> <p>21 will call your attention just to one</p> <p>22 provision in particular but feel free to</p> <p>23 look at any of the document.</p> <p>24 As an initial matter, can you</p> <p>25 identify for the record what we have marked</p>	<p style="text-align: right;">Page 188</p> <p>1 Dean</p> <p>2 Skadden articulate why that change was</p> <p>3 desired?</p> <p>4 A. I don't remember negotiating this</p> <p>5 point. This is a standard comment that is</p> <p>6 received in negotiating purchase</p> <p>7 agreements.</p> <p>8 Q. Sorry. You say it is a standard</p> <p>9 comment?</p> <p>10 A. It is a standard comment that an</p> <p>11 issuer's counsel would raise in connection</p> <p>12 with negotiating a purchase agreement,</p> <p>13 crossing out the words or any development</p> <p>14 involving a prospective material adverse</p> <p>15 change.</p> <p>16 Q. Did that proposed revision give</p> <p>17 you any concerns?</p> <p>18 A. Well, I don't know if I -- I was</p> <p>19 copied on this memorandum. I don't know if</p> <p>20 I reviewed this specifically.</p> <p>21 I can't recall at the time</p> <p>22 whether or not it would have raised any</p> <p>23 concern today looking at it again in the</p> <p>24 context of standard practices and</p> <p>25 negotiating purchase agreements, an issuer</p>
<p style="text-align: right;">Page 187</p> <p>1 Dean</p> <p>2 as CPH Exhibit 216?</p> <p>3 A. Yes, it appears to be a</p> <p>4 memorandum from Skadden, Arps to Davis Polk</p> <p>5 and to John Tyree at Morgan Stanley</p> <p>6 attaching comments on a draft of the</p> <p>7 purchase agreement.</p> <p>8 Q. These would be Sunbeam's comments</p> <p>9 on the draft purchase agreement?</p> <p>10 A. Yes, Sunbeam's comments and</p> <p>11 Skadden's comments.</p> <p>12 Q. Looking at page 4 of the draft</p> <p>13 which has the Bates stamp CPH0632913 --</p> <p>14 A. It is the page that has page 4 on</p> <p>15 it?</p> <p>16 Q. Correct.</p> <p>17 A. 7729, the Skadden, Arps Bates</p> <p>18 stamping?</p> <p>19 Q. That is exactly right.</p> <p>20 Paragraph L has a proposed</p> <p>21 revision that I want to ask you about. If</p> <p>22 you would read that for me?</p> <p>23 A. Yes, I can see the proposed</p> <p>24 revision.</p> <p>25 Q. Did Sunbeam articulate or did</p>	<p style="text-align: right;">Page 189</p> <p>1 Dean</p> <p>2 requesting this change, this would not set</p> <p>3 off any concern on my part.</p> <p>4 Q. If this deal were to close --</p> <p>5 strike that.</p> <p>6 Were there any discussions with</p> <p>7 Skadden or Sunbeam concerning whether</p> <p>8 Sunbeam's deteriorating financial condition</p> <p>9 in the first quarter of 1998 constituted a</p> <p>10 material adverse change?</p> <p>11 A. The condition in the underwriting</p> <p>12 contract would have been a condition that</p> <p>13 applied after the underwriting agreement</p> <p>14 was signed and before the transaction</p> <p>15 closed and typically this kind of</p> <p>16 representation has an exception for</p> <p>17 disclosures made in the final offering</p> <p>18 memorandum.</p> <p>19 Q. The final offering memorandum</p> <p>20 does not disclose that Sunbeam would likely</p> <p>21 show a loss for the first quarter of 1998?</p> <p>22 A. The Sunbeam offering -- the final</p> <p>23 Sunbeam offering memorandum did not</p> <p>24 disclose that there might be a loss.</p> <p>25 MR. JOHNSON: Why don't we change</p>

<p style="text-align: right;">Page 190</p> <p>1 Dean</p> <p>2 the tape?</p> <p>3 THE VIDEOGRAPHER: The time is</p> <p>4 2:53 p.m. and this completes tape</p> <p>5 number two.</p> <p>6 (Pause)</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 2:55 p.m. and this begins tape number</p> <p>9 three.</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. Mr. Dean, I am going to show you</p> <p>12 another draft of the purchase agreement if</p> <p>13 I can. This was marked previously as CPH</p> <p>14 Exhibit 211.</p> <p>15 Exhibit 211 includes a fax cover</p> <p>16 sheet from Nicole Duncan to Lurie, Stack</p> <p>17 and Dietz at Global Financial Press.</p> <p>18 Then behind the fax cover sheet</p> <p>19 is a memorandum on which you are copied</p> <p>20 with an attachment which includes a draft</p> <p>21 of the purchase agreement.</p> <p>22 Do you see that?</p> <p>23 A. I do see that.</p> <p>24 Q. Do you recall reviewing this</p> <p>25 draft?</p>	<p style="text-align: right;">Page 192</p> <p>1 Dean</p> <p>2 release that was issued that contained</p> <p>3 additional information and Sunbeam wanted</p> <p>4 to make it clear that the material adverse</p> <p>5 change condition did not apply to the</p> <p>6 disclosures that had already been made and</p> <p>7 had been absorbed by the marketplace and</p> <p>8 there may have been an argument that could</p> <p>9 have been made that that disclosure could</p> <p>10 have constituted a material adverse change.</p> <p>11 Q. The phrase that is proposed says,</p> <p>12 "The press release shall not in and of</p> <p>13 itself constitute a material adverse change</p> <p>14 or prospective material adverse change."</p> <p>15 Do you know why that phrasing is</p> <p>16 used?</p> <p>17 A. No. I have no insight to add on</p> <p>18 that.</p> <p>19 Q. Did you ever hear from any source</p> <p>20 that Arthur Andersen sent personnel to</p> <p>21 monitor Sunbeam's shipping docks at the end</p> <p>22 of the first quarter of 1998?</p> <p>23 A. I am not aware of that.</p> <p>24 Q. Other than having to give a</p> <p>25 deposition in this matter do you have any</p>
<p style="text-align: right;">Page 191</p> <p>1 Dean</p> <p>2 A. I don't recall at this time</p> <p>3 whether or not I reviewed this draft or</p> <p>4 not.</p> <p>5 Q. I want to call your attention</p> <p>6 again to paragraph L. That would be 1L.</p> <p>7 A. Is that the page that is</p> <p>8 identified 019?</p> <p>9 Q. Correct. On the CPH Bates stamp</p> <p>10 it is 633019.</p> <p>11 A. Yes, I see that.</p> <p>12 Q. Do you see the proposed revisions</p> <p>13 there?</p> <p>14 A. I see a -- an L and addition at</p> <p>15 the end of the paragraph.</p> <p>16 Q. How did that proposed revision</p> <p>17 come to be?</p> <p>18 A. I can't say with accuracy why.</p> <p>19 It occurred back six years ago.</p> <p>20 Looking at it now it is clearly</p> <p>21 understandable why that was put in. It is</p> <p>22 because this material adverse change clause</p> <p>23 applied to the disclosures that were in the</p> <p>24 preliminary memorandum.</p> <p>25 There was a subsequent press</p>	<p style="text-align: right;">Page 193</p> <p>1 Dean</p> <p>2 regrets concerning the Sunbeam transaction?</p> <p>3 MR. CLARE: I object to the form</p> <p>4 of the question.</p> <p>5 THE WITNESS: I have no regrets</p> <p>6 about the Sunbeam transaction.</p> <p>7 BY MR. JOHNSON:</p> <p>8 Q. You do feel that Sunbeam lied to</p> <p>9 you?</p> <p>10 A. We -- Sunbeam -- the document,</p> <p>11 with the benefit of hindsight, I don't</p> <p>12 know -- I can't say what was in the minds</p> <p>13 of the Sunbeam people once -- when they</p> <p>14 disclosed what they disclosed to us on the</p> <p>15 eve of the offering.</p> <p>16 I don't know, I can't say whether</p> <p>17 or not they in good conscience really</p> <p>18 believed and we were convinced that they</p> <p>19 were going to make the numbers.</p> <p>20 Q. Do you wish that Morgan Stanley</p> <p>21 or Davis Polk had done more to verify the</p> <p>22 assurances that Sunbeam management gave</p> <p>23 you?</p> <p>24 A. No. I think we did what was</p> <p>25 reasonable at the time and that in our</p>

<p style="text-align: right;">Page 194</p> <p>1 Dean</p> <p>2 professional judgment that enabled us --</p> <p>3 enabled Davis Polk to render an opinion</p> <p>4 that there were no material misstatements</p> <p>5 or omissions based on our investigation at</p> <p>6 the time.</p> <p>7 Q. That investigation consisted of</p> <p>8 one or more telephone conferences with</p> <p>9 Sunbeam management?</p> <p>10 A. The investigations included those</p> <p>11 conference calls. I can't recall all of</p> <p>12 the other things that Davis Polk or Morgan</p> <p>13 Stanley may have done.</p> <p>14 Q. Again, focusing specifically on</p> <p>15 the representations made to you on March 18</p> <p>16 by Sunbeam management, what else did Morgan</p> <p>17 Stanley or Davis Polk do to confirm the</p> <p>18 accuracy of the assurances that Sunbeam</p> <p>19 management gave?</p> <p>20 A. We -- apart from the conference</p> <p>21 calls?</p> <p>22 Q. Correct.</p> <p>23 A. Davis Polk did not do anything</p> <p>24 more than those assurances.</p> <p>25 We also reviewed the Arthur</p>	<p style="text-align: right;">Page 196</p> <p>1 Dean</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4 : Ss</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, Steven Neil Cohen, a Registered</p> <p>7 Professional Reporter and Notary Public</p> <p>8 within and for the State of New York, do</p> <p>9 hereby certify: That ALAN DEAN, the</p> <p>10 witness whose deposition is herein before</p> <p>11 set forth, was duly sworn by me and that</p> <p>12 such deposition is a true record of the</p> <p>13 testimony given by such witness.</p> <p>14 I further certify that I am not related</p> <p>15 to any of the parties to this action by</p> <p>16 blood or marriage and that I am in no way</p> <p>17 interested in the outcome of this matter.</p> <p>18 I further certify that neither.</p> <p>19 the deponent nor a party requested a review</p> <p>20 of the transcript pursuant to Federal Rule</p> <p>21 of Civil Procedure 30(e) before the</p> <p>22 deposition was completed.</p> <p>23 In witness whereof, I have hereunto set</p> <p>24 my hand this 7th day of June, 2004.</p> <p>25 _____</p> <p style="text-align: right;">STEVEN NEIL COHEN, RPR</p>
<p style="text-align: right;">Page 195</p> <p>1 Dean</p> <p>2 Andersen comfort letters which were</p> <p>3 consistent with the disclosures and I can't</p> <p>4 say what else Morgan Stanley did apart from</p> <p>5 the conference calls that I participated</p> <p>6 in.</p> <p>7 Q. You can't say because you don't</p> <p>8 know?</p> <p>9 A. Because I don't know.</p> <p>10 MR. JOHNSON: That is all I have</p> <p>11 got.</p> <p>12 MR. CLARE: I don't have any</p> <p>13 questions.</p> <p>14 THE VIDEOGRAPHER: The time is</p> <p>15 3:03 p.m. This completes tape three</p> <p>16 and also the videotaped deposition of</p> <p>17 Mr. Alan Dean.</p> <p>18 (Time noted: 3:03 p.m.)</p> <p>19</p> <p>20 _____</p> <p style="text-align: center;">ALAN DEAN</p> <p>21</p> <p>22 Subscribed and sworn to</p> <p>23 before me this day</p> <p>24 of 2004.</p> <p>25 _____</p>	<p style="text-align: right;">Page 197</p> <p>1 Dean</p> <p>2 INDEX OF EXAMINATION</p> <p>3 Witness</p> <p>4 ALAN DEAN</p> <p>5 By Mr. Johnson.....6</p> <p>6</p> <p>7</p> <p>8 CPH EXHIBITS</p> <p>9 Exhibit No. Marked</p> <p>10 213 Letter.....18</p> <p>11 214 Memorandum.....149</p> <p>12 215 Fax.....184</p> <p>13 216 Memorandum.....186</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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CONFIDENTIAL

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

-----X
COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs. Case No.
CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

-----X
MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs. Case No.
CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

-----X

VIDEOTAPED DEPOSITION OF HEATHER M. STACK

New York, New York

Wednesday, May 25, 2004

Reported by:
WENDY D. BOSKIND, RPR
JOB NO. 160895

HEATHER M. STACK, MAY 25, 2004
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<p>Page 2</p> <p>1 2 3 4 May 25, 2004 5 9:50 a.m. 6 7 8 Videotaped Deposition of HEATHER 9 M. STACK, held at the offices of 10 Davis Polk & Wardwell, 450 Lexington 11 Avenue, New York, New York, pursuant 12 to Notice, before Wendy D. Boskind, 13 a Registered Professional Reporter 14 and Notary Public of the State of 15 New York. 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 4</p> <p>1 2 APPEARANCES: (Cont'd) 3 4 ALSO PRESENT: Mark Granderson, 5 The Legal Video Specialist 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 3</p> <p>1 2 APPEARANCES: 3 4 JENNER & BLOCK LLP 5 Attorneys for Coleman (Parent) 6 Holdings Inc., MacAndrews & Forbes, 7 and the witness 8 One IBM Plaza 9 Chicago, Illinois 60611-7603 10 BY: MICHAEL T. BRODY, ESQ. 11 12 KIRKLAND & ELLIS LLP 13 Attorneys for Morgan Stanley 14 and the Witness 15 655 Fifteenth Street, N.W. 16 Washington, D.C. 20005 17 BY: THOMAS A. CLARE, ESQ. 18 19 DAVIS POLK & WARDWELL 20 Attorneys for the Witness 21 in her individual capacity 22 450 Lexington Avenue 23 New York, N.Y. 10017 24 BY: ROBERT F. WISE, ESQ. 25</p>	<p>Page 5</p> <p>1 2 THE LEGAL VIDEO SPECIALIST: 3 This is tape number one of the 4 videotaped deposition of Heather 5 Stack, in the matter Coleman 6 Holdings, Inc. versus Morgan Stanley, 7 Index Number CA 03-5045 AI, Morgan 8 Stanley Senior Funding, Inc. versus 9 MacAndrews & Forbes Holdings, Inc., 10 Index Number CA 03-5165 AI. This 11 matter is being held In the Fifteenth 12 Judicial Court In and For Palm Beach 13 County, Florida. 14 This deposition is being held at 15 Davis Polk, at 450 Lexington Avenue, 16 New York, New York, on Tuesday, May 17 25th, 2004, and the time is 9:50 a.m. 18 My name is Mark Granderson, with 19 Esquire Deposition Services, and I am 20 the legal video specialist. The 21 court reporter is Wendy Boskind, also 22 in association with Esquire 23 Deposition Services. 24 Will counsel please introduce 25 themselves.</p>

2 (Pages 2 to 5)

HEATHER M. STACK, MAY 25, 2004
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<p style="text-align: right;">Page 6</p> <p>1</p> <p>2 MR. BRODY: Good morning.</p> <p>3 Michael Brody, for Coleman (Parent)</p> <p>4 Holdings and MacAndrews & Forbes</p> <p>5 Holdings, Inc.</p> <p>6 MR. CLARE: Good morning.</p> <p>7 Thomas Clare, Kirkland & Ellis LLP,</p> <p>8 here for Morgan Stanley & Company,</p> <p>9 Morgan Stanley Senior Funding, and</p> <p>10 also appearing on behalf of the</p> <p>11 witness, Heather Stack.</p> <p>12 MR. WISE: I am Bob Wise, of</p> <p>13 Davis Polk & Wardwell, representing</p> <p>14 Ms. Stack in her individual capacity.</p> <p>15 THE LEGAL VIDEO SPECIALIST:</p> <p>16 Will the court reporter please swear</p> <p>17 in the witness.</p> <p>18 HEATHER M. STACK ,</p> <p>19 business address at Goldman, Sachs</p> <p>20 & Co., 85 Broad Street, New York,</p> <p>21 New York 10004, having been first</p> <p>22 duly sworn by the Notary Public,</p> <p>23 (Wendy D. Boskind), was examined</p> <p>24 and testified as follows:</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 Stack</p> <p>2 of your ability. If at any time you don't</p> <p>3 understand my questions, let me know and I</p> <p>4 will try to clarify them. If you need to</p> <p>5 take a break, also let us know and we will</p> <p>6 find a convenient time to do that. And</p> <p>7 for the benefit of the court reporter,</p> <p>8 (indicating the court reporter), you and I</p> <p>9 have to try hard not to step on each</p> <p>10 other's questions and answers. So I will</p> <p>11 try not to interrupt you and you try not</p> <p>12 to interrupt me.</p> <p>13 Are those all acceptable?</p> <p>14 A. Yes.</p> <p>15 Q. Thank you. I take it you have</p> <p>16 never been deposed before?</p> <p>17 A. No, I haven't.</p> <p>18 Q. Have you ever provided any</p> <p>19 testimony under oath in any context?</p> <p>20 A. Actually, when I was 12 years</p> <p>21 old I did once, (smiling). It's been a</p> <p>22 long time.</p> <p>23 Q. I take it it did not involve</p> <p>24 Morgan Stanley, Davis Polk, or the</p> <p>25 practice of law.</p>
<p style="text-align: right;">Page 7</p> <p>1 Stack</p> <p>2 EXAMINATION BY</p> <p>3 MR. BRODY:</p> <p>4 Q. Good morning, Ms. Stack.</p> <p>5 Will you please state your name</p> <p>6 and spell your last name for the court</p> <p>7 reporter?</p> <p>8 A. Heather Stack, S-T-A-C-K.</p> <p>9 Q. Ms. Stack, have you gone by any</p> <p>10 other names?</p> <p>11 A. No.</p> <p>12 Q. I understand you are a</p> <p>13 practicing attorney?</p> <p>14 A. Yes.</p> <p>15 Q. Does your practice involve the</p> <p>16 litigation of cases?</p> <p>17 A. No.</p> <p>18 Q. Have you ever participated in a</p> <p>19 deposition, like we are doing today,</p> <p>20 before?</p> <p>21 A. No.</p> <p>22 Q. Well, I assume your counsel told</p> <p>23 you about it, but during this session I</p> <p>24 will be asking questions, and it's your</p> <p>25 responsibility to answer them to the best</p>	<p style="text-align: right;">Page 9</p> <p>1 Stack</p> <p>2 A. No.</p> <p>3 (Laughter.)</p> <p>4 Q. Well, then, I won't ask you</p> <p>5 about it. I once had a witness who was</p> <p>6 asked to explain that, and he explained</p> <p>7 how he found a dead body in the woods, and</p> <p>8 the deposition got off to a bad start.</p> <p>9 Okay, we won't go there.</p> <p>10 Ms. Stack, have you provided any</p> <p>11 documents to your attorneys in connection</p> <p>12 with this case?</p> <p>13 A. No, I haven't.</p> <p>14 Q. I take it you are no longer with</p> <p>15 Davis Polk?</p> <p>16 A. No.</p> <p>17 Q. At the time you left Davis Polk,</p> <p>18 did you take any or retain any documents</p> <p>19 relating to your employment there?</p> <p>20 A. I may have kept some closing</p> <p>21 sets from some transactions that I worked</p> <p>22 on, but....</p> <p>23 Q. Do you recall retaining any</p> <p>24 documents relating to Davis Polk's</p> <p>25 representation of Morgan Stanley in</p>

3 (Pages 6 to 9)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p>Page 10</p> <p>1 Stack</p> <p>2 connection with the Sunbeam transactions?</p> <p>3 A. No.</p> <p>4 Q. Do you remember retaining any</p> <p>5 documents relating to how to conduct due</p> <p>6 diligence or how to conduct -- how a</p> <p>7 lawyer is to conduct an offering?</p> <p>8 A. Um -- I may have kept some</p> <p>9 training materials like that.</p> <p>10 Q. Training materials from Davis</p> <p>11 Polk?</p> <p>12 A. Yes, yes.</p> <p>13 Q. So we don't get bogged down in</p> <p>14 abbreviations, I represent Coleman</p> <p>15 (Parent) Holdings.</p> <p>16 Are you familiar with that</p> <p>17 company?</p> <p>18 A. Sure, yeah.</p> <p>19 Q. If I were to refer to them as</p> <p>20 "CPH", would that be acceptable?</p> <p>21 A. That's fine.</p> <p>22 Q. I also represent MacAndrews &</p> <p>23 Forbes Holdings, Inc. If I refer to them</p> <p>24 as "MAFCO", would that be an</p> <p>25 understandable abbreviation?</p>	<p>Page 12</p> <p>1 Stack</p> <p>2 Q. Are you paying for his services?</p> <p>3 A. No, I am not.</p> <p>4 Q. When did you retain, to your</p> <p>5 knowledge, Mr. Wise in connection with</p> <p>6 this deposition?</p> <p>7 A. Um -- a few months ago, I was</p> <p>8 contacted by Mr. Wise to tell me that this</p> <p>9 may happen and, so, around that time.</p> <p>10 Q. And since that time you have</p> <p>11 been working with him.</p> <p>12 A. Yes.</p> <p>13 Q. Have you spoken with any other</p> <p>14 lawyers in Mr. Clare's firm, Kirkland &</p> <p>15 Ellis, about this case?</p> <p>16 A. I don't think so.</p> <p>17 We had a call, a few months ago,</p> <p>18 where there were -- where Mr. Clare was</p> <p>19 on, and Mr. Wise was on and I was on, and</p> <p>20 there may have been other lawyers on the</p> <p>21 phone, but I don't remember.</p> <p>22 Q. What was the subject matter of</p> <p>23 that call?</p> <p>24 A. We discussed what I remembered</p> <p>25 from this situation.</p>
<p>Page 11</p> <p>1 Stack</p> <p>2 A. Sure.</p> <p>3 Q. Ms. Stack, you are represented</p> <p>4 by both these counsel today?</p> <p>5 A. Yes.</p> <p>6 Q. When did you first retain</p> <p>7 Mr. Clare as one of your counsel?</p> <p>8 A. Yesterday.</p> <p>9 Q. Who is paying for Mr. Clare's</p> <p>10 services on your behalf today?</p> <p>11 MR. CLARE: Objection, calls for</p> <p>12 speculation.</p> <p>13 You can answer.</p> <p>14 THE WITNESS: Oh, okay, yeah.</p> <p>15 A. Actually, I assume Morgan</p> <p>16 Stanley is but I don't know the answer to</p> <p>17 that.</p> <p>18 Q. You are not?</p> <p>19 A. No, I am not, sorry, I am not.</p> <p>20 Q. And Mr. Wise is here also on</p> <p>21 your behalf?</p> <p>22 A. Yes.</p> <p>23 Q. And he is with your former law</p> <p>24 firm?</p> <p>25 A. Yes.</p>	<p>Page 13</p> <p>1 Stack</p> <p>2 Q. Do you remember what Mr. Clare</p> <p>3 or Mr. Wise asked you?</p> <p>4 MR. WISE: I am going to object</p> <p>5 to that. I think the substance of</p> <p>6 the conversation goes to a</p> <p>7 conversation that we would claim is</p> <p>8 privileged under a joint-interest</p> <p>9 privilege, since Davis Polk at the</p> <p>10 time represented Morgan Stanley, I</p> <p>11 understand Mr. Clare represents</p> <p>12 Morgan Stanley, so we would object to</p> <p>13 the substance of the conversation.</p> <p>14 MR. CLARE: Morgan Stanley joins</p> <p>15 in that objection.</p> <p>16 MR. BRODY: Is that an</p> <p>17 instruction?</p> <p>18 MR. WISE: Yes.</p> <p>19 MR. BRODY: Just so we can make</p> <p>20 this move along, I don't have to ask</p> <p>21 her if she's going to follow your</p> <p>22 instruction in each instance?</p> <p>23 MR. WISE: You can ask her, but</p> <p>24 I think --</p> <p>25 A. I am going to follow.</p>

4 (Pages 10 to 13)

HEATHER M. STACK, MAY 25, 2004
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<p style="text-align: right;">Page 14</p> <p>1 Stack</p> <p>2 MR. WISE: -- she's going to</p> <p>3 follow each instruction.</p> <p>4 MR. BRODY: And that dispenses</p> <p>5 with the need to keep asking that</p> <p>6 litany?</p> <p>7 MR. WISE: That's correct.</p> <p>8 Q. The call that you said was a few</p> <p>9 months ago, about how long did it take?</p> <p>10 A. Maybe 25 minutes, 30 minutes.</p> <p>11 Q. Before that call, did you review</p> <p>12 any materials, any documents, to refresh</p> <p>13 your recollection?</p> <p>14 A. No.</p> <p>15 Q. After that call, did you review</p> <p>16 any documents about this case that</p> <p>17 refreshed your recollection?</p> <p>18 A. Not until yesterday, when I saw</p> <p>19 a few documents.</p> <p>20 Q. We will get to that in a moment.</p> <p>21 Aside from that call with</p> <p>22 Mr. Clare and others, a few months ago,</p> <p>23 until yesterday, did you have any other</p> <p>24 communications with Mr. Clare or attorneys</p> <p>25 in his office?</p>	<p style="text-align: right;">Page 16</p> <p>1 Stack</p> <p>2 Mr. Clare and Mr. Wise, have you had any</p> <p>3 contacts with attorneys for Morgan Stanley</p> <p>4 who may work in-house for Morgan Stanley?</p> <p>5 A. Actually, I think that there was</p> <p>6 one guy on the call that we had a few</p> <p>7 months back, and I don't remember his</p> <p>8 name, Jim something.</p> <p>9 Q. Mr. Doyle?</p> <p>10 A. Yes, that's the right name.</p> <p>11 Q. Aside from that conversation</p> <p>12 with Mr. Doyle, have you had any other</p> <p>13 communications with in-house Morgan</p> <p>14 Stanley lawyers?</p> <p>15 A. No.</p> <p>16 Q. Ms. Stack, what did you do to</p> <p>17 prepare for today's deposition?</p> <p>18 A. I came here yesterday afternoon</p> <p>19 and (indicating) met with Mr. Clare and</p> <p>20 Mr. Wise, and we talked a little bit about</p> <p>21 what today would be like, and I looked at</p> <p>22 a few documents relating to the</p> <p>23 transaction.</p> <p>24 Q. The meeting was here at Davis</p> <p>25 Polk?</p>
<p style="text-align: right;">Page 15</p> <p>1 Stack</p> <p>2 A. No.</p> <p>3 Q. You may have answered this, but</p> <p>4 was it your conversation with Mr. Wise a</p> <p>5 few months ago that you learned that your</p> <p>6 deposition was being sought in this case?</p> <p>7 A. I think we thought that we might</p> <p>8 need to -- I might need to give a</p> <p>9 deposition, so it was sort of the first</p> <p>10 time I heard of it, and I guess then maybe</p> <p>11 a month ago I heard that it was -- that</p> <p>12 you-all were seeking to do the deposition.</p> <p>13 Q. Prior to the first conversation</p> <p>14 a few months ago with Mr. Wise, were you</p> <p>15 aware of this lawsuit between Coleman</p> <p>16 (Parent) and Morgan Stanley?</p> <p>17 A. I wasn't aware of this specific</p> <p>18 lawsuit. I knew there had been issues</p> <p>19 with Sunbeam and had read things in the</p> <p>20 newspaper about it.</p> <p>21 Q. In the prior Sunbeam litigation,</p> <p>22 were you ever interviewed or asked for</p> <p>23 information about your work on the matter?</p> <p>24 A. No, hmm-mm.</p> <p>25 Q. Aside from contacts with</p>	<p style="text-align: right;">Page 17</p> <p>1 Stack</p> <p>2 A. Yes.</p> <p>3 Q. How long did it take for the</p> <p>4 meeting to end?</p> <p>5 A. About three hours, I think.</p> <p>6 Q. Do you know of anyone who</p> <p>7 participated in person, besides Mr. Clare</p> <p>8 and Mr. Wise?</p> <p>9 A. Billy Frendrich, who is an</p> <p>10 associate here, was also there.</p> <p>11 Q. Is that Mr. or Ms. Frendrich?</p> <p>12 A. Mr.</p> <p>13 Q. Do you know if Mr. Frendrich had</p> <p>14 any involvement in the underlying</p> <p>15 transaction?</p> <p>16 A. No, he did not.</p> <p>17 Q. During that conversation</p> <p>18 yesterday, did others participate by</p> <p>19 telephone?</p> <p>20 A. No.</p> <p>21 Q. I believe you testified earlier</p> <p>22 that you reviewed some documents</p> <p>23 yesterday?</p> <p>24 A. Yes.</p> <p>25 Q. Did you review any documents</p>

5 (Pages 14 to 17)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 18</p> <p>1 Stack</p> <p>2 that refreshed your recollection about</p> <p>3 events in this matter?</p> <p>4 A. Yeah, a couple of them. A few</p> <p>5 of them I looked at and probably had</p> <p>6 looked at in the past, but didn't really</p> <p>7 remember them.</p> <p>8 Q. Which documents, if any,</p> <p>9 refreshed your recollection?</p> <p>10 A. There was one sheet of paper</p> <p>11 that had a list of sales numbers on it for</p> <p>12 Sunbeam for I think the first part of the</p> <p>13 first quarter of I guess 1998, and when I</p> <p>14 saw that I remembered that it had -- we</p> <p>15 had looked at that as a part of a series</p> <p>16 of conference calls to discuss Coleman --</p> <p>17 or, I'm sorry, Sunbeam's numbers for that</p> <p>18 quarter.</p> <p>19 Q. Any other documents that you</p> <p>20 remember that refreshed your recollection?</p> <p>21 A. You know, some of the others</p> <p>22 looked familiar but nothing specific came</p> <p>23 to mind.</p> <p>24 Q. Okay. Aside from the documents</p> <p>25 that you reviewed in the meeting</p>	<p style="text-align: right;">Page 20</p> <p>1 Stack</p> <p>2 argument at the printer surrounding</p> <p>3 something that they said.</p> <p>4 Q. Anything else that was related</p> <p>5 to you from prior testimony?</p> <p>6 A. Nothing really specific comes to</p> <p>7 mind.</p> <p>8 I think others have been asked</p> <p>9 about the same thing and heard bits and</p> <p>10 pieces of their responses.</p> <p>11 Q. Are you aware what any of the</p> <p>12 Morgan Stanley witnesses have testified</p> <p>13 about that evening at the printer?</p> <p>14 A. Actually, nothing specific.</p> <p>15 Q. When did you leave Davis Polk?</p> <p>16 A. August of 2000.</p> <p>17 Q. Since August of 2000, have you</p> <p>18 spoken with any people at Morgan Stanley</p> <p>19 about -- aside from Mr. Clare, as counsel,</p> <p>20 about the Sunbeam transaction?</p> <p>21 A. No.</p> <p>22 Q. And since August of 2000, have</p> <p>23 you spoken with anyone at Davis Polk,</p> <p>24 again, aside from Mr. Wise, about the</p> <p>25 Sunbeam transaction?</p>
<p style="text-align: right;">Page 19</p> <p>1 Stack</p> <p>2 yesterday, have you reviewed any other</p> <p>3 documents in preparation for this session?</p> <p>4 A. No.</p> <p>5 Q. And have you discussed the</p> <p>6 upcoming deposition with anyone else,</p> <p>7 other than Mr. Wise and Mr. Clare?</p> <p>8 A. No, other than the fact that I</p> <p>9 was going to be out of work today.</p> <p>10 Q. I understand.</p> <p>11 A. Yeah.</p> <p>12 Q. In connection with your</p> <p>13 preparation, did you review any</p> <p>14 transcripts of prior depositions?</p> <p>15 A. No.</p> <p>16 Q. Are you aware of any testimony</p> <p>17 given by other witnesses that has been</p> <p>18 described to you?</p> <p>19 A. Um -- yeah, a few bits and</p> <p>20 pieces here and there.</p> <p>21 Q. Any that come to mind?</p> <p>22 A. Um -- I know there is some</p> <p>23 dispute as to what took place at the</p> <p>24 printer one night and that one of the</p> <p>25 accountants has said that there was an</p>	<p style="text-align: right;">Page 21</p> <p>1 Stack</p> <p>2 A. No. I may have mentioned to</p> <p>3 Alan Dean that I had got a call on</p> <p>4 Sunbeam, because he was the partner on the</p> <p>5 transaction, and I work with him from time</p> <p>6 to time, but other than that no.</p> <p>7 Q. You continue to work with</p> <p>8 Mr. Dean?</p> <p>9 A. Yeah, once in a while he</p> <p>10 represents -- I currently work at Goldman</p> <p>11 Sachs, and he has served as underwriter's</p> <p>12 counsel on other transactions that I have</p> <p>13 worked on there.</p> <p>14 Q. In your current position at</p> <p>15 Goldman Sachs, do you have responsibility</p> <p>16 for retaining outside counsel?</p> <p>17 A. Sometimes I do sort of the task</p> <p>18 of making the call to outside counsel, and</p> <p>19 sometimes I give suggestions on who to</p> <p>20 hire for outside counsel, but I wouldn't</p> <p>21 say I have responsibility for it.</p> <p>22 Q. Have you ever suggested Mr. Dean</p> <p>23 or others at Davis Polk to assist Goldman</p> <p>24 Sachs in transactions?</p> <p>25 A. Actually, no.</p>

6 (Pages 18 to 21)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 22</p> <p>1 Stack 2 (Laughter.) 3 THE WITNESS: I'm sorry. 4 MR. WISE: You put her on the 5 spot. 6 Q. Okay. Aside from your 7 communications with Mr. Dean from time to 8 time on transactions, have you remained in 9 contact with other lawyers at Davis Polk 10 that worked on the Sunbeam deal? 11 A. No. I have actually -- also, 12 Jim Lurie, who was also on the Sunbeam 13 transaction, is at another firm now, and I 14 have been on the opposite side of 15 transactions from him, so I have had to 16 negotiate against him from time to time, 17 but otherwise no. 18 Q. And you have not discussed the 19 Sunbeam transaction with Mr. Lurie? 20 A. No. 21 Q. After yesterday's meeting, did 22 you take with you or retain any documents 23 that you were shown? 24 A. No. There may have been a copy 25 of a protective order.</p>	<p style="text-align: right;">Page 24</p> <p>1 Stack 2 concentrated? 3 A. No. I took a variety of 4 courses. 5 Q. I understand. 6 A. Mm-hmm. 7 Q. After you graduated from Duke 8 with your law degree, were you first 9 employed in the practice of law at Davis 10 Polk? 11 A. Yes. 12 Q. And you were at Davis Polk from 13 sometime in 1997? 14 A. Yeah, I think it was the end of 15 September of 1997 I started. 16 Q. Until August of 2000. 17 A. Yes. And I also was a summer 18 associate at Davis Polk, after my second 19 year. 20 Q. So that would be the summer of 21 '96? 22 A. Yes. 23 Q. Throughout that three-year 24 tenure at Davis Polk, you were an 25 associate?</p>
<p style="text-align: right;">Page 23</p> <p>1 Stack 2 Q. Did you sign that protective 3 order? 4 A. I did. 5 Q. Now, before we get into the 6 specifics of your work on the Sunbeam 7 transaction, I would like to address your 8 background a little. 9 Where did you go to college? 10 A. Duke University. 11 Q. And when did you receive a 12 degree from Duke? 13 A. 1994. 14 Q. In what area? 15 A. Political science and German. 16 Q. After you graduated from Duke, 17 did you go the next year to law school? 18 A. I did. 19 Q. And where did you attend law 20 school? 21 A. Duke. 22 Q. And when did you graduate? 23 A. 1997. 24 Q. At Duke in law school, did you 25 have any particular area of study that you</p>	<p style="text-align: right;">Page 25</p> <p>1 Stack 2 A. Yes. 3 Q. I am not sure how Davis Polk 4 organizes its practice, were you assigned 5 to a particular area? 6 MR. WISE: Sometimes we are not 7 sure how we organize our practice. 8 MR. BRODY: Badly, I think is 9 the answer. 10 A. At the time, I was in the 11 corporate department, and then I spent one 12 year in the capital markets and securities 13 group, one year in the mergers and 14 acquisitions group, and then the third 15 year I came back to the securities and 16 capital markets group. 17 Q. So are the capital market and 18 securities group and the M&A group parts 19 of the corporate department? 20 A. Yeah, they are all under the 21 corporate department. 22 They are two separate groups 23 within the corporate department, and there 24 is a third group, that's the credit 25 department I think.</p>

7 (Pages 22 to 25)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

Page 26	Page 28
<p>1 Stack</p> <p>2 Q. You didn't spend time in that</p> <p>3 group.</p> <p>4 A. No.</p> <p>5 Q. Using September '97 as your</p> <p>6 approximate start date, you started in the</p> <p>7 capital markets group?</p> <p>8 A. Yes.</p> <p>9 Q. Approximately how long did you</p> <p>10 remain in that until you rotated to the</p> <p>11 M&A group?</p> <p>12 A. About a year.</p> <p>13 Q. So roughly the fall of '97 to</p> <p>14 the fall of '98?</p> <p>15 A. Right.</p> <p>16 Q. And then how long were you in</p> <p>17 the M&A group?</p> <p>18 A. Again, about a year.</p> <p>19 Q. That would be approximately the</p> <p>20 fall of '99?</p> <p>21 A. Yeah.</p> <p>22 Q. And then back in the capital</p> <p>23 markets group?</p> <p>24 A. Yes.</p> <p>25 Q. Why did you make those changes?</p>	<p>1 Stack</p> <p>2 division and work on securities and</p> <p>3 capital markets transactions as well as</p> <p>4 limited involvement with M&A transactions,</p> <p>5 working on engagement letters and</p> <p>6 confidentiality agreements with clients.</p> <p>7 Q. Within the securities and</p> <p>8 capital markets work in the investment</p> <p>9 banking division, what are your duties and</p> <p>10 responsibilities at Goldman Sachs?</p> <p>11 A. I am sort of a -- the in-house</p> <p>12 lawyer, someone in my group is staff to</p> <p>13 each underwriting transaction that comes</p> <p>14 through the firm, and we serve as sort of</p> <p>15 supervisor liaison to outside counsel,</p> <p>16 consulting on certain issues of, you know,</p> <p>17 significance and reputational issues and</p> <p>18 policy issues relating to Goldman Sachs as</p> <p>19 well as reviewing certain documents in</p> <p>20 each transaction, like the underwriting</p> <p>21 agreement, the opinions, comfort letters,</p> <p>22 and any other documents that pertain</p> <p>23 specifically to our underwriting</p> <p>24 obligations.</p> <p>25 Q. In connection with the work that</p>
Page 27	Page 29
<p>1 Stack</p> <p>2 A. There was a rotation system, as</p> <p>3 a junior associate, so I chose two</p> <p>4 different groups in the corporate</p> <p>5 department to rotate through and then</p> <p>6 decided to permanently assign to the</p> <p>7 capital markets security group after the</p> <p>8 second year.</p> <p>9 Q. When you were in the M&A group,</p> <p>10 so beginning in the fall of '98 --</p> <p>11 A. Mm-hmm.</p> <p>12 Q. -- did you do any work for</p> <p>13 Morgan Stanley?</p> <p>14 A. I don't remember anything</p> <p>15 specifically.</p> <p>16 It's certainly possible, but I</p> <p>17 don't remember anything specific.</p> <p>18 Q. Okay. What is your current</p> <p>19 position?</p> <p>20 A. I am vice president and</p> <p>21 assistant general counsel at Goldman Sachs</p> <p>22 & Co.</p> <p>23 Q. Within Goldman Sachs, is there a</p> <p>24 particular area that you are assigned to?</p> <p>25 A. I cover the investment banking</p>	<p>1 Stack</p> <p>2 you do, are you always counsel to Goldman</p> <p>3 Sachs, as opposed to its clients?</p> <p>4 A. Yes, yes.</p> <p>5 Q. In connection with the position</p> <p>6 you are now in, do you consult on</p> <p>7 disclosure issues?</p> <p>8 A. Yes.</p> <p>9 Q. I assume some of that is in</p> <p>10 conjunction with outside counsel.</p> <p>11 A. It's almost always in</p> <p>12 conjunction with outside counsel.</p> <p>13 Q. Goldman Sachs is a competitor of</p> <p>14 Morgan Stanley's?</p> <p>15 A. Yes.</p> <p>16 Q. Do you currently have business</p> <p>17 dealings with Morgan Stanley?</p> <p>18 A. We are often co-underwriters on</p> <p>19 the same transaction and, so, once in a</p> <p>20 while I will have to talk to an in-house</p> <p>21 lawyer at Morgan Stanley and often on</p> <p>22 those transactions outside counsel is</p> <p>23 representing both of us as part of the</p> <p>24 underwriting syndicate.</p> <p>25 Q. Ms. Stack, I would like to focus</p>

8 (Pages 26 to 29)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 30</p> <p>1 Stack</p> <p>2 on the work you did at Davis Polk. I</p> <p>3 assume it's primarily the work in that</p> <p>4 first year you were in the capital markets</p> <p>5 securities area. In that '97 and '98 time</p> <p>6 frame, did you work on Morgan Stanley</p> <p>7 engagements other than the Sunbeam</p> <p>8 transaction?</p> <p>9 A. Yes.</p> <p>10 Q. Approximately how many?</p> <p>11 A. Maybe three or four.</p> <p>12 That's really a guess, it's hard</p> <p>13 to remember. There have been a lot of</p> <p>14 transactions.</p> <p>15 Q. Aside from the Sunbeam</p> <p>16 transaction, do any come to mind by name?</p> <p>17 A. There is one that I worked on,</p> <p>18 just prior to the Sunbeam transaction,</p> <p>19 which was an IPO for a company called</p> <p>20 Unicapital.</p> <p>21 Q. Unit Capital?</p> <p>22 A. Unicapital, U-N-I-C-A-P-I-T-A-L,</p> <p>23 all one word.</p> <p>24 Q. And Morgan Stanley was the</p> <p>25 underwriter?</p>	<p style="text-align: right;">Page 32</p> <p>1 Stack</p> <p>2 not close, but it wouldn't be unusual to</p> <p>3 have something not close.</p> <p>4 Q. I understand.</p> <p>5 During this time frame, the '97</p> <p>6 and '98 time frame, was Morgan Stanley a</p> <p>7 major client of Davis Polk?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have an understanding as</p> <p>10 to how much legal work Davis Polk provided</p> <p>11 for Morgan Stanley during that time frame?</p> <p>12 A. Certainly in the securities and</p> <p>13 capital markets area, we represented</p> <p>14 Morgan Stanley quite often as -- when they</p> <p>15 were underwriting transactions. I don't</p> <p>16 really have a sense as to how that relates</p> <p>17 to, you know, any other parts of the firm</p> <p>18 or to Morgan Stanley as business</p> <p>19 generally.</p> <p>20 Q. I understand.</p> <p>21 Do you have an understanding</p> <p>22 that Davis Polk was a counsel of choice</p> <p>23 for Morgan Stanley?</p> <p>24 A. Yeah, I thought that they were.</p> <p>25 Q. At the time, in '97 and '98, do</p>
<p style="text-align: right;">Page 31</p> <p>1 Stack</p> <p>2 A. They were.</p> <p>3 I don't --</p> <p>4 Q. Any others that you remember?</p> <p>5 A. I don't remember any others by</p> <p>6 name.</p> <p>7 Q. In any of the other transactions</p> <p>8 that you worked on, for Morgan Stanley,</p> <p>9 did you work with the same Morgan Stanley</p> <p>10 bankers that worked on the Sunbeam deal?</p> <p>11 A. I don't think so. The teams</p> <p>12 that come to mind on the other</p> <p>13 transactions are not the same as the folks</p> <p>14 from Sunbeam.</p> <p>15 Q. Now, the transactions that you</p> <p>16 worked on for Morgan Stanley during this</p> <p>17 time period, did they all close?</p> <p>18 A. The one I mentioned did.</p> <p>19 Q. That's Unicapital?</p> <p>20 A. Yeah, Unicapital did.</p> <p>21 I don't remember if they closed</p> <p>22 or not.</p> <p>23 Q. Do you remember any that did not</p> <p>24 close, any come to mind?</p> <p>25 A. No, none come to mind that did</p>	<p style="text-align: right;">Page 33</p> <p>1 Stack</p> <p>2 you have any understanding as to how much</p> <p>3 Davis Polk was billing Morgan Stanley?</p> <p>4 A. I have no idea how much they</p> <p>5 were billing.</p> <p>6 Q. Do you know what Davis Polk's</p> <p>7 fee was on this particular engagement?</p> <p>8 A. Actually, I don't.</p> <p>9 Q. Okay.</p> <p>10 A. I don't remember.</p> <p>11 Q. One more billing question. At</p> <p>12 the time, in the '97/'98 time frame, do</p> <p>13 you know if Davis Polk typically billed</p> <p>14 Morgan Stanley on an hourly basis or on a</p> <p>15 deal charge?</p> <p>16 A. I believe it was an hourly</p> <p>17 basis, although, you know, there may have</p> <p>18 been arrangements by partners and other</p> <p>19 staff that I didn't know about.</p> <p>20 Q. I understand.</p> <p>21 Now, focusing on the work on the</p> <p>22 Sunbeam transaction, do you remember when</p> <p>23 your work on Sunbeam started?</p> <p>24 A. Just from looking at documents</p> <p>25 yesterday, it seems like, you know,</p>

9 (Pages 30 to 33)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 34</p> <p>1 Stack</p> <p>2 February of I guess '98.</p> <p>3 Q. And do you know when it ended?</p> <p>4 A. I think the transaction closed</p> <p>5 the end of March.</p> <p>6 Q. Let me ask it a little</p> <p>7 differently.</p> <p>8 Did you personally work on any</p> <p>9 matters relating to Sunbeam, that is,</p> <p>10 Morgan Stanley's work for Sunbeam, after</p> <p>11 the deal closed?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay. Well, focusing on the --</p> <p>14 sometime in February to the end of March</p> <p>15 time period, can you estimate what</p> <p>16 percentage of your time was spent on the</p> <p>17 Sunbeam transaction?</p> <p>18 A. It was certainly a significant</p> <p>19 percentage of my time. And it was</p> <p>20 probably the transaction that I was most</p> <p>21 involved in at that time. I can't</p> <p>22 remember what else I was working on, but</p> <p>23 it would be unusual for me to only have</p> <p>24 been working on one thing, so there was</p> <p>25 probably something else, so, but it would</p>	<p style="text-align: right;">Page 36</p> <p>1 Stack</p> <p>2 there was a flat rate, did you,</p> <p>3 nonetheless, keep track of the time you</p> <p>4 spent?</p> <p>5 A. Yes, I did.</p> <p>6 Q. Did you keep track of it any</p> <p>7 differently than if it were a charge-by-</p> <p>8 the-hour matter?</p> <p>9 A. No.</p> <p>10 Q. I mean -- by that I mean, less</p> <p>11 specificity in what you wrote down, that</p> <p>12 sort of thing.</p> <p>13 A. No, I often didn't -- I guess</p> <p>14 when I first started doing those</p> <p>15 transactions that I am thinking of I</p> <p>16 didn't even know it was a flat rate, so</p> <p>17 no, exactly the same.</p> <p>18 Q. Okay. Now, during that first</p> <p>19 year of your tenure at the law firm, when</p> <p>20 you were in the securities group, can you</p> <p>21 estimate what percentage of your time was</p> <p>22 spent on Morgan Stanley matters?</p> <p>23 A. Um -- I did a significant amount</p> <p>24 of work for them.</p> <p>25 I mean, I could guess around 50</p>
<p style="text-align: right;">Page 35</p> <p>1 Stack</p> <p>2 be a majority, certainly, of my time.</p> <p>3 Q. So more than 50 percent of your</p> <p>4 time.</p> <p>5 A. Yes.</p> <p>6 Q. And I know this is going back</p> <p>7 into the past, but do you recall how many</p> <p>8 hours you spent on the deal?</p> <p>9 A. I don't.</p> <p>10 I know there were many and many</p> <p>11 into the night, but no, I don't, I don't</p> <p>12 remember.</p> <p>13 Q. Okay. All right. At Davis</p> <p>14 Polk, I take it there were some</p> <p>15 transactions where the firm charged a</p> <p>16 certain amount, flat rate, for the deal;</p> <p>17 is that correct?</p> <p>18 A. Yes, there were some repeat</p> <p>19 issuers that I did work for where there</p> <p>20 would be a flat rate for each</p> <p>21 transaction --</p> <p>22 Q. Okay.</p> <p>23 A. -- because they would happen</p> <p>24 often.</p> <p>25 Q. On those transactions in which</p>	<p style="text-align: right;">Page 37</p> <p>1 Stack</p> <p>2 percent, but it certainly could be more or</p> <p>3 less.</p> <p>4 Q. I understand.</p> <p>5 Was there an attorney at Davis</p> <p>6 Polk that had overall responsibility for</p> <p>7 the relationship with Morgan Stanley?</p> <p>8 A. I don't know. I don't know.</p> <p>9 Q. You don't know if there was a</p> <p>10 particular person that received the fee</p> <p>11 credit or was the main relationship person</p> <p>12 for Davis Polk with Morgan Stanley?</p> <p>13 A. I actually don't know. As a</p> <p>14 first-year, those were things I wasn't</p> <p>15 very focused on.</p> <p>16 Q. I understand. Okay.</p> <p>17 I am going to focus, primarily,</p> <p>18 on the February/March time period that you</p> <p>19 were working on this transaction.</p> <p>20 A. Mm-hmm.</p> <p>21 Q. And I believe you testified your</p> <p>22 work on the Sunbeam matter began in</p> <p>23 February of 1998?</p> <p>24 A. I think so, yes.</p> <p>25 Q. Do you remember what was the</p>

10 (Pages 34 to 37)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 38</p> <p>1 Stack</p> <p>2 beginning of your involvement, what you</p> <p>3 were asked to do at the beginning?</p> <p>4 A. You know, I don't have a lot of</p> <p>5 specific recollections.</p> <p>6 I know that I did a lot of</p> <p>7 documentary due diligence. So I read many</p> <p>8 documents. I think a lot of it was done</p> <p>9 at the offices of Skadden, Skadden, Arps,</p> <p>10 but I don't remember specifically, you</p> <p>11 know, from the first few days exactly what</p> <p>12 we did.</p> <p>13 Q. Okay. And the matter continued</p> <p>14 through the closing, your involvement</p> <p>15 continued --</p> <p>16 A. Yes.</p> <p>17 Q. -- through the closing.</p> <p>18 A. Yes.</p> <p>19 Q. You have described some of this</p> <p>20 but what were your job responsibilities on</p> <p>21 the deal?</p> <p>22 A. Well, certainly, the due</p> <p>23 diligence, and I, you know, remember going</p> <p>24 through documents -- I don't remember a</p> <p>25 lot of specifics as to exactly what I did.</p>	<p style="text-align: right;">Page 40</p> <p>1 Stack</p> <p>2 Now, you said you did</p> <p>3 documentary due diligence.</p> <p>4 A. Mm-hmm.</p> <p>5 Q. Explain to us what that means.</p> <p>6 A. Boxes of documents in a room</p> <p>7 and, you know, reading through material</p> <p>8 contracts to make sure that any of the --</p> <p>9 you know, that the transaction we were</p> <p>10 about to undertake wouldn't somehow affect</p> <p>11 the validity of the contract or call</p> <p>12 anything into question, reading board</p> <p>13 minutes of the company, you know, to make</p> <p>14 sure that we had all the material</p> <p>15 information we needed in order to disclose</p> <p>16 it in the offering memorandum, just</p> <p>17 reviewing any other sort of general -- you</p> <p>18 know, I think we asked -- we would ask for</p> <p>19 a list of documents relating to the</p> <p>20 business.</p> <p>21 Q. And, when you refer to "the</p> <p>22 business", are you referring to Sunbeam?</p> <p>23 A. Yes, yes. And I -- you know.</p> <p>24 Q. Did you do any due diligence of</p> <p>25 Coleman?</p>
<p style="text-align: right;">Page 39</p> <p>1 Stack</p> <p>2 I can say that generally, as a first-year</p> <p>3 associate, I would review documents for</p> <p>4 due diligence and participate in drafting</p> <p>5 sessions for the offering memorandum and</p> <p>6 handle sort of logistical items, like</p> <p>7 closing and going to the printer, and that</p> <p>8 sort of thing, but I don't remember a lot</p> <p>9 of specifics from this particular</p> <p>10 transaction.</p> <p>11 Q. Did you have any involvement in</p> <p>12 the road-show?</p> <p>13 A. Um -- I certainly didn't attend</p> <p>14 any road-show meetings, and I don't</p> <p>15 remember reviewing any road-show</p> <p>16 presentations.</p> <p>17 Q. Did you travel for this matter?</p> <p>18 Did you go to meetings or sessions outside</p> <p>19 of New York City?</p> <p>20 A. I don't remember leaving</p> <p>21 New York for this one.</p> <p>22 Q. For example, did you ever go to</p> <p>23 Sunbeam's offices in Florida?</p> <p>24 A. Not that I remember.</p> <p>25 Q. Fair enough.</p>	<p style="text-align: right;">Page 41</p> <p>1 Stack</p> <p>2 A. I think so, because I know they</p> <p>3 were being acquired and, so, there was</p> <p>4 information about them in the offering</p> <p>5 memorandum, so it was part of the overall</p> <p>6 documentary due diligence that I did,</p> <p>7 though I don't really remember anything</p> <p>8 specific about it.</p> <p>9 Q. Do you know where you did that</p> <p>10 document review?</p> <p>11 A. I don't, I don't remember where.</p> <p>12 Q. Do you remember doing any due</p> <p>13 diligence of the other acquisition</p> <p>14 companies, First Alert or Signature</p> <p>15 Brands?</p> <p>16 A. Those names definitely sound</p> <p>17 familiar. We would have asked to see all</p> <p>18 those. I don't remember anything</p> <p>19 specific.</p> <p>20 Q. Fair enough.</p> <p>21 Aside from the work you have</p> <p>22 described -- the documentary due</p> <p>23 diligence, participation in drafting</p> <p>24 sessions, the logistical work you did --</p> <p>25 do you remember anything else you did on</p>

11 (Pages 38 to 41)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 42</p> <p>1 Stack</p> <p>2 the transaction?</p> <p>3 A. I helped in drafting certain</p> <p>4 documents, I think the registration rights</p> <p>5 agreement, probably helped in turning</p> <p>6 drafts of the underwriting agreement. I</p> <p>7 don't remember anything specific. I can</p> <p>8 tell you what I think I probably would</p> <p>9 have done, but I don't specifically</p> <p>10 remember.</p> <p>11 Q. Okay. Well, I appreciate that.</p> <p>12 The work that you did on the</p> <p>13 transaction, was it limited to the</p> <p>14 financing of the transaction or did you</p> <p>15 also get involved in the negotiation of</p> <p>16 the -- or consummation of the mergers</p> <p>17 between Morgan Stanley -- excuse me,</p> <p>18 between Sunbeam and Coleman and the other</p> <p>19 companies?</p> <p>20 A. It was limited to the financing</p> <p>21 transaction.</p> <p>22 Q. Okay. At the time you worked on</p> <p>23 this deal, you were within your first year</p> <p>24 of beginning legal practice?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 44</p> <p>1 Stack</p> <p>2 Davis Polk, did you understand that there</p> <p>3 was a policy on keeping or not keeping</p> <p>4 documents relating to deals that you</p> <p>5 worked on?</p> <p>6 A. Um -- there was certainly</p> <p>7 guidance given by various partners, and we</p> <p>8 certainly kept all the final deal</p> <p>9 documents. I think, generally, drafts of</p> <p>10 things were not retained.</p> <p>11 Q. When you said there was</p> <p>12 "guidance given", what do you mean by</p> <p>13 that?</p> <p>14 A. I actually don't remember</p> <p>15 specifically if we were sort of given that</p> <p>16 guidance formally or not, but often, at</p> <p>17 the end of transactions, I would ask the</p> <p>18 partner involved, you know, which</p> <p>19 documents we should retain and which we</p> <p>20 should give back or, you know, destroy.</p> <p>21 Q. Do you remember having that</p> <p>22 conversation about this transaction?</p> <p>23 A. I don't specifically remember</p> <p>24 talking about that here.</p> <p>25 Q. Now, at the time of this</p>
<p style="text-align: right;">Page 43</p> <p>1 Stack</p> <p>2 Q. Did you report to people in the</p> <p>3 law firm who were more senior than you?</p> <p>4 A. Yes.</p> <p>5 Q. Who did you report to on this</p> <p>6 transaction?</p> <p>7 A. On this transaction, Jim Lurie</p> <p>8 and Alan Dean.</p> <p>9 Q. At the time, was Mr. Lurie an</p> <p>10 associate or a partner?</p> <p>11 A. He was an associate. He may</p> <p>12 have been a sort of senior counsel level</p> <p>13 associate.</p> <p>14 Q. And Mr. Dean was a partner?</p> <p>15 A. Yes.</p> <p>16 Q. Did you report to anyone else,</p> <p>17 besides those two individuals?</p> <p>18 A. Not that I remember, those were</p> <p>19 the only two.</p> <p>20 Q. Did anyone, to your knowledge,</p> <p>21 report to you?</p> <p>22 A. We may have had a paralegal, but</p> <p>23 I was generally the bottom of the chain of</p> <p>24 lawyers, (laughing).</p> <p>25 Q. Okay. Now, when you were at</p>	<p style="text-align: right;">Page 45</p> <p>1 Stack</p> <p>2 transaction, the spring of 1998, do you</p> <p>3 know if you used e-mail?</p> <p>4 A. Yes, yes.</p> <p>5 Q. Do you know if you used it to</p> <p>6 communicate with people outside of Davis</p> <p>7 Polk concerning the transaction?</p> <p>8 A. I would think that we did,</p> <p>9 although I think at that time we were</p> <p>10 still doing sort of hard copies of</p> <p>11 documents and hand-delivering them every</p> <p>12 where.</p> <p>13 It's hard to remember when that</p> <p>14 exact transition was, but there came a</p> <p>15 point when everything was done by e-mail,</p> <p>16 and I don't think it was yet on this</p> <p>17 transaction, but I can't say for sure.</p> <p>18 Q. Okay. Do you know what happened</p> <p>19 to e-mails relating to this case? Do you</p> <p>20 know -- this matter, do you know if they</p> <p>21 were saved or archived?</p> <p>22 A. I don't know.</p> <p>23 Q. Okay. Your involvement in the</p> <p>24 Sunbeam transaction was in connection with</p> <p>25 the financing; is that correct?</p>

12 (Pages 42 to 45)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 46</p> <p>1 Stack</p> <p>2 A. Yes.</p> <p>3 Q. Do you know if others at Davis</p> <p>4 Polk did work on behalf of Morgan Stanley</p> <p>5 on this transaction relating to the merger</p> <p>6 agreement?</p> <p>7 A. Not that I am aware of.</p> <p>8 Q. Do you know if others at Davis</p> <p>9 Polk did work for Morgan Stanley in this</p> <p>10 matter relating to anything else for</p> <p>11 Sunbeam?</p> <p>12 A. I think there was a bank loan at</p> <p>13 the same time that I did not work on, but</p> <p>14 I think there were others at Morgan</p> <p>15 Stanley -- I'm sorry, at Davis Polk who</p> <p>16 were working on that.</p> <p>17 Q. Do you know who worked on that?</p> <p>18 A. I think the associate was Bill</p> <p>19 Megevick.</p> <p>20 Q. Did Mr. Megevick also report to</p> <p>21 Mr. Lurie and Mr. Dean?</p> <p>22 A. No, I think there was another</p> <p>23 partner on it. And, actually, just from</p> <p>24 looking through a few things yesterday, I</p> <p>25 think Peter Levin was the partner.</p>	<p style="text-align: right;">Page 48</p> <p>1 Stack</p> <p>2 meeting anyone specifically in person. I</p> <p>3 remember talking to Janet Kelley, I guess,</p> <p>4 a few times, following up on due diligence</p> <p>5 items, and a few other names ring a bell,</p> <p>6 but I don't remember specifically who I</p> <p>7 met or....</p> <p>8 Q. Did you ever speak with</p> <p>9 Mr. Uzzi?</p> <p>10 A. Yeah, that name sounds familiar.</p> <p>11 I believe that he was on at least one</p> <p>12 conference call that I remember.</p> <p>13 Q. Did you speak with</p> <p>14 Ms. MacDonald, Deborah MacDonald?</p> <p>15 A. That name doesn't sound</p> <p>16 familiar.</p> <p>17 Q. Mr. Kersh, Russell Kersh?</p> <p>18 A. That name sounds familiar. He</p> <p>19 may have been on the conference calls I am</p> <p>20 thinking of, but....</p> <p>21 Q. Mr. Goudis, G-O-U-D-I-S?</p> <p>22 A. Also, sounds familiar.</p> <p>23 I don't have any specific</p> <p>24 recollection of sort of meeting these</p> <p>25 people but, you know, the names -- I</p>
<p style="text-align: right;">Page 47</p> <p>1 Stack</p> <p>2 Q. Did you do any work on the bank</p> <p>3 loan?</p> <p>4 A. No.</p> <p>5 Q. Were Mr. Megevick and Mr. Levin</p> <p>6 in the corporate and securities -- excuse</p> <p>7 me, the capital markets and securities</p> <p>8 area, as you were?</p> <p>9 A. No, I think they were both in</p> <p>10 sort of that credit department, both still</p> <p>11 in the corporate department.</p> <p>12 Q. I understand.</p> <p>13 Do you know if anyone from Davis</p> <p>14 Polk was involved in Morgan Stanley's</p> <p>15 efforts to try to find a buyer for</p> <p>16 Sunbeam?</p> <p>17 A. I don't know. I don't know.</p> <p>18 Q. Now, in the work that you did on</p> <p>19 the Sunbeam transaction, did you ever meet</p> <p>20 Al Dunlap?</p> <p>21 A. No.</p> <p>22 Q. Who from the client -- excuse</p> <p>23 me, who from Sunbeam did you meet, if</p> <p>24 anyone?</p> <p>25 A. You know, I don't remember</p>	<p style="text-align: right;">Page 49</p> <p>1 Stack</p> <p>2 recognize the names.</p> <p>3 Q. I understand.</p> <p>4 Now, when you refer to Mr. Uzzi</p> <p>5 and perhaps Mr. Kersh or Mr. Goudis being</p> <p>6 on conference calls, do you remember one</p> <p>7 conference call or more than one</p> <p>8 conference call?</p> <p>9 A. I am certain there were many</p> <p>10 conference calls that I was on for this,</p> <p>11 but the one that I specifically remember</p> <p>12 relates to their first quarter, I guess,</p> <p>13 sales numbers, and I remember a series of</p> <p>14 conference calls and I believe that at</p> <p>15 least Mr. Uzzi was on that call and</p> <p>16 probably the others.</p> <p>17 Q. You said "a series of calls".</p> <p>18 Were they all in one day?</p> <p>19 A. The ones that I remember, yes.</p> <p>20 Q. When you were working on this</p> <p>21 deal, did you have an understanding of</p> <p>22 Mr. Dunlap's reputation?</p> <p>23 A. A little bit, and mostly just</p> <p>24 from reading about him in the newspapers,</p> <p>25 and I think he had -- might have had a</p>

13 (Pages 46 to 49)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 50</p> <p>1 Stack</p> <p>2 book out.</p> <p>3 Q. Did you read Mr. Dunlap's book?</p> <p>4 A. I did not.</p> <p>5 Q. Were you given a copy?</p> <p>6 A. No. I think I saw it in the</p> <p>7 windows of bookstores, so....</p> <p>8 Q. Did you read any of the books</p> <p>9 about him?</p> <p>10 A. No.</p> <p>11 Q. Based on what you read or heard,</p> <p>12 what was your understanding of</p> <p>13 Mr. Dunlap's reputation?</p> <p>14 A. Well, I think he had sort of</p> <p>15 just turned around another company and was</p> <p>16 known for sort of cutting the bottom line</p> <p>17 and firing a lot of people. I think they</p> <p>18 called him "chain saw Al", from what I</p> <p>19 remember, and that pretty much sums up his</p> <p>20 reputation I think.</p> <p>21 Q. Did you have an understanding of</p> <p>22 what he was like to work for?</p> <p>23 A. I didn't have any personal</p> <p>24 understanding, but just from what I read</p> <p>25 in the newspaper I imagine he would be</p>	<p style="text-align: right;">Page 52</p> <p>1 Stack</p> <p>2 showing the work that you had done?</p> <p>3 A. Yes. I mean, I kept time sheets</p> <p>4 and certainly took notes from time to time</p> <p>5 in the due diligence investigation.</p> <p>6 Q. Did you retain any of those</p> <p>7 notes when the deal was over?</p> <p>8 A. I don't have them now, and I</p> <p>9 don't remember if I kept any of them.</p> <p>10 Q. Okay, and let me refine that</p> <p>11 question a little.</p> <p>12 I am not asking whether you --</p> <p>13 A. Mm-hmm.</p> <p>14 Q. -- have them in your possession,</p> <p>15 but at the time when the deal was over,</p> <p>16 did you keep in the file notes showing the</p> <p>17 due diligence work that you had done?</p> <p>18 MR. WISE: What do you mean "the</p> <p>19 file"?</p> <p>20 Q. Whatever documents were retained</p> <p>21 by the law firm?</p> <p>22 A. I don't remember, I don't</p> <p>23 remember.</p> <p>24 Q. Was it your practice to keep a</p> <p>25 due diligence file, a file reflecting the</p>
<p style="text-align: right;">Page 51</p> <p>1 Stack</p> <p>2 somewhat difficult.</p> <p>3 Q. Okay, but you never encountered</p> <p>4 that.</p> <p>5 A. No.</p> <p>6 Q. You referred to his prior</p> <p>7 experience. Are you familiar, that was at</p> <p>8 a company called Scott Paper?</p> <p>9 A. Yeah, I think I have heard about</p> <p>10 that, I don't remember much specifically</p> <p>11 about it.</p> <p>12 Q. Aside from what you have heard</p> <p>13 since, when you were working on the</p> <p>14 transaction, did you do any investigation</p> <p>15 or due diligence into what had happened at</p> <p>16 Scott Paper?</p> <p>17 A. Not that I recall, not that I</p> <p>18 recall.</p> <p>19 Q. Did you ever hear anyone, in</p> <p>20 connection with this transaction, question</p> <p>21 whether Mr. Dunlap's turnaround at Scott</p> <p>22 Paper was real?</p> <p>23 A. Not that I remember.</p> <p>24 Q. At the time you were working on</p> <p>25 this deal, did you keep notes or calendars</p>	<p style="text-align: right;">Page 53</p> <p>1 Stack</p> <p>2 due diligence work that you had done?</p> <p>3 A. I think often I would keep a</p> <p>4 list of all the documents reviewed. I</p> <p>5 don't think I generally kept handwritten</p> <p>6 notes after the transaction was completed,</p> <p>7 although I don't remember specifically on</p> <p>8 this one.</p> <p>9 Q. And the list of documents that</p> <p>10 you reviewed, do you know if that was</p> <p>11 retained by Davis Polk after the deal was</p> <p>12 over?</p> <p>13 A. I don't know.</p> <p>14 And I, frankly, don't remember</p> <p>15 preparing one specifically for this deal,</p> <p>16 either, so....</p> <p>17 Q. I understand.</p> <p>18 Now, have you, in connection</p> <p>19 with your tenure at Davis Polk, through</p> <p>20 August of 2000, ever been asked to</p> <p>21 contribute to a calendar or chronology of</p> <p>22 the events?</p> <p>23 A. No.</p> <p>24 Q. Have you seen a chronology</p> <p>25 prepared by Davis Polk of what transpired</p>

14 (Pages 50 to 53)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 54</p> <p>1 Stack</p> <p>2 on this deal?</p> <p>3 A. I did yesterday, I saw a short</p> <p>4 chronology.</p> <p>5 Q. Prior to yesterday, had you seen</p> <p>6 it before?</p> <p>7 A. No.</p> <p>8 Q. Prior to yesterday, were you</p> <p>9 aware that it even existed?</p> <p>10 A. No.</p> <p>11 Q. So you weren't, to your</p> <p>12 recollection, consulted in connection with</p> <p>13 putting it together?</p> <p>14 A. No, I don't think so.</p> <p>15 Q. When the transaction was</p> <p>16 concluded, was there a closing dinner?</p> <p>17 A. I don't -- I don't remember</p> <p>18 going to one. I don't remember going to</p> <p>19 one. I don't know if they had one or not.</p> <p>20 Q. Is it customary that there is</p> <p>21 one?</p> <p>22 A. Probably about 50/50 --</p> <p>23 Q. Okay.</p> <p>24 A. -- on the deals I have worked</p> <p>25 on.</p>	<p style="text-align: right;">Page 56</p> <p>1 Stack</p> <p>2 anything.</p> <p>3 Q. Do you recall any contact in</p> <p>4 connection with this transaction with</p> <p>5 investment bankers from Credit Suisse</p> <p>6 First Boston?</p> <p>7 A. No, no.</p> <p>8 Q. I believe you testified earlier</p> <p>9 that you had done some due diligence of</p> <p>10 Coleman, you believed you tracked down</p> <p>11 some information relating to the offering</p> <p>12 memorandum. Do you know where you did</p> <p>13 that work?</p> <p>14 A. I don't remember.</p> <p>15 Q. Was that work limited to the</p> <p>16 review of documents or did you talk to</p> <p>17 individuals?</p> <p>18 A. I don't remember.</p> <p>19 I wouldn't be surprised if we</p> <p>20 had due diligence meetings or calls with</p> <p>21 folks from Coleman and Sunbeam, but I</p> <p>22 don't remember anything specific.</p> <p>23 (Deposition Exhibit 24,</p> <p>24 chronology prepared by Davis Polk,</p> <p>25 previously marked for</p>
<p style="text-align: right;">Page 55</p> <p>1 Stack</p> <p>2 Q. You are aware that the financing</p> <p>3 that you worked on was, among other</p> <p>4 things, to help finance an acquisition by</p> <p>5 Sunbeam of certain interests in Coleman.</p> <p>6 A. Mm-hmm, yes.</p> <p>7 Q. And I believe, from your prior</p> <p>8 answers, you testified that you were not</p> <p>9 involved with negotiating or advising</p> <p>10 concerning that merger.</p> <p>11 A. Right.</p> <p>12 Q. In connection with the work that</p> <p>13 you did on this transaction, did you have</p> <p>14 any contact with anyone from Coleman?</p> <p>15 A. I don't remember anything</p> <p>16 specific.</p> <p>17 Q. Do you remember any contact with</p> <p>18 anyone from MacAndrews & Forbes or its</p> <p>19 companies?</p> <p>20 A. No, I don't remember anything.</p> <p>21 Q. Any contact with the lawyers for</p> <p>22 MacAndrews & Forbes?</p> <p>23 A. Who were the lawyers?</p> <p>24 Q. Wachtell.</p> <p>25 A. Wachtell -- no, I don't remember</p>	<p style="text-align: right;">Page 57</p> <p>1 Stack</p> <p>2 identification.)</p> <p>3 Q. Ms. Stack, I am going to give</p> <p>4 you what's previously been marked in a</p> <p>5 prior deposition as Exhibit 24.</p> <p>6 Do you recognize this as the</p> <p>7 chronology prepared by Davis Polk?</p> <p>8 A. Yes, I saw this yesterday, this</p> <p>9 one.</p> <p>10 Q. And it says at the beginning</p> <p>11 that it was prepared in response to a June</p> <p>12 30 subpoena, and the first line recites</p> <p>13 that it was prepared in August 2000.</p> <p>14 At that time, you were still</p> <p>15 employed at Davis Polk?</p> <p>16 A. Yes, I left in I think the</p> <p>17 middle of August, if I remember.</p> <p>18 Q. You don't remember being</p> <p>19 consulted about the preparation of this</p> <p>20 document?</p> <p>21 A. I don't remember.</p> <p>22 Q. And, likewise, prior to</p> <p>23 yesterday, you have not seen it before?</p> <p>24 A. Right.</p> <p>25 Q. Did this document, when you</p>

15 (Pages 54 to 57)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 58</p> <p>1 Stack</p> <p>2 reviewed it yesterday, refresh your</p> <p>3 recollection as to certain events or</p> <p>4 things that took place in this matter?</p> <p>5 A. It looked about right. There</p> <p>6 wasn't anything specific in here that sort</p> <p>7 of jogged any memories, it's sort of a</p> <p>8 relatively general --</p> <p>9 Q. Okay.</p> <p>10 A. -- chronology.</p> <p>11 Q. The first entry, at the bottom</p> <p>12 of the first page, refers to a February 25</p> <p>13 call and introductory telephone calls. I</p> <p>14 take it those were received by people</p> <p>15 other than you?</p> <p>16 A. I don't remember specifically,</p> <p>17 but I am sure that the first call wouldn't</p> <p>18 have gone to me.</p> <p>19 Q. I understand.</p> <p>20 A. So....</p> <p>21 Q. Now, using the February 25th</p> <p>22 entry and the ones that are after, does</p> <p>23 that help refresh your recollection as to</p> <p>24 when you became involved in this</p> <p>25 transaction?</p>	<p style="text-align: right;">Page 60</p> <p>1 Stack</p> <p>2 Q. Ms. Stack, the court reporter</p> <p>3 has given you what's been marked as</p> <p>4 Exhibit 207. Have you ever seen that</p> <p>5 before, to your recollection?</p> <p>6 A. I don't remember seeing it</p> <p>7 specifically, but it looks like something</p> <p>8 you would see at the beginning of most</p> <p>9 transactions.</p> <p>10 Q. Okay. Having now seen this</p> <p>11 document, does it refresh your</p> <p>12 recollection whether you actually did</p> <p>13 participate in an organizational call or</p> <p>14 not?</p> <p>15 A. Actually, it doesn't, I don't</p> <p>16 remember that specific call.</p> <p>17 Q. I'm sorry, you said it does not?</p> <p>18 A. It does not.</p> <p>19 Q. If you turn to the -- actually,</p> <p>20 the third page of the exhibit, in the</p> <p>21 bottom right it has a production number</p> <p>22 ending with 16.</p> <p>23 Are you there?</p> <p>24 MR. WISE: (Indicating), talking</p> <p>25 about this.</p>
<p style="text-align: right;">Page 59</p> <p>1 Stack</p> <p>2 A. Yeah, I don't really remember</p> <p>3 specific dates, but seems about right.</p> <p>4 Q. Okay. The next entry, the item</p> <p>5 at the top of the second page for March 2,</p> <p>6 refers to an organizational call with</p> <p>7 Skadden Arps.</p> <p>8 Do you remember that call?</p> <p>9 A. I don't remember that call,</p> <p>10 although it would have been normal for me</p> <p>11 to have been on it.</p> <p>12 Q. Okay. Well, let me show you a</p> <p>13 document, Ms. Stack, that may refresh your</p> <p>14 recollection about it.</p> <p>15 MR. BRODY: Oh, this has not</p> <p>16 been marked. Please mark this as</p> <p>17 Exhibit 207.</p> <p>18 (Deposition Exhibit CPH 207,</p> <p>19 document which looks like something</p> <p>20 you would see at the beginning of</p> <p>21 most transactions, the third page of</p> <p>22 the exhibit, in the bottom right, it</p> <p>23 has a production number ending with</p> <p>24 16, marked for identification, as of</p> <p>25 this date.)</p>	<p style="text-align: right;">Page 61</p> <p>1 Stack</p> <p>2 THE WITNESS: Am I on the wrong</p> <p>3 page?</p> <p>4 A. Yes, I was on the wrong page.</p> <p>5 Got it.</p> <p>6 Q. The document has two lists of</p> <p>7 tasks, one for the zero coupon convertible</p> <p>8 and the other for the senior credit</p> <p>9 facility.</p> <p>10 You worked on the zero coupon</p> <p>11 convertible?</p> <p>12 A. Yes.</p> <p>13 Q. And you did not work on the</p> <p>14 senior credit.</p> <p>15 A. No.</p> <p>16 Q. The second item is the size of</p> <p>17 the offering, 500 million net proceeds.</p> <p>18 Do you see that?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. Do you remember any discussions</p> <p>21 at any time in this transaction about the</p> <p>22 size of the offering?</p> <p>23 A. I don't remember anything about</p> <p>24 that.</p> <p>25 Q. Do you understand that at some</p>

16 (Pages 58 to 61)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 62</p> <p>1 Stack</p> <p>2 point the anticipated size of the offering</p> <p>3 changed?</p> <p>4 A. Yeah. I mean, I saw a copy I</p> <p>5 think of the final offering memorandum</p> <p>6 yesterday, and it was much larger, but I</p> <p>7 don't remember any discussions about it.</p> <p>8 Q. Okay, you have no understanding</p> <p>9 as to how the number increased from 500 to</p> <p>10 whatever it finished at?</p> <p>11 A. I don't.</p> <p>12 Q. In the structure of a deal such</p> <p>13 as this, who decides what the size of the</p> <p>14 offering is going to be? Is that a</p> <p>15 decision for the underwriter or a decision</p> <p>16 for the issuer, a decision for counsel?</p> <p>17 A. In a deal like this, it would</p> <p>18 generally be a decision made between the</p> <p>19 company and the underwriters and counsel</p> <p>20 would be consulted, but generally the</p> <p>21 underwriters and the company would</p> <p>22 probably make the decision.</p> <p>23 Q. And, as you sit here, you don't</p> <p>24 remember any of those conversations.</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 64</p> <p>1 Stack</p> <p>2 announcement about the first quarter but</p> <p>3 perhaps an announcement about the fourth</p> <p>4 quarter --</p> <p>5 A. Prior year.</p> <p>6 Q. -- of '97.</p> <p>7 A. I don't.</p> <p>8 Q. Fair enough.</p> <p>9 The next item refers to ratings</p> <p>10 agency -- rating agency presentations.</p> <p>11 Did you do any work on the rating</p> <p>12 agencies?</p> <p>13 A. Not that I remember, no.</p> <p>14 Q. The next item is sales force</p> <p>15 presentation. Do you remember doing any</p> <p>16 work in connection with the presentation</p> <p>17 of this deal to Morgan Stanley's sales</p> <p>18 force?</p> <p>19 A. No, and we typically wouldn't be</p> <p>20 involved in that.</p> <p>21 Q. Item G, it refers to</p> <p>22 institutional investor conference calls.</p> <p>23 Did you participate in or were you a</p> <p>24 witness to any such calls?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 63</p> <p>1 Stack</p> <p>2 Q. If you turn to the next page of</p> <p>3 the document, the tentative time schedule</p> <p>4 portion.</p> <p>5 Do you see that?</p> <p>6 A. Mm-hmm.</p> <p>7 Q. You participated in items A and</p> <p>8 B, due diligence and drafting sessions?</p> <p>9 A. Yes, I think so, yeah.</p> <p>10 Q. Did you participate in any of</p> <p>11 the meetings of the boards of directors?</p> <p>12 A. No.</p> <p>13 Q. Did you participate in any</p> <p>14 events concerning quarterly earnings</p> <p>15 announcements?</p> <p>16 A. No, no.</p> <p>17 Q. Are you aware of whether Sunbeam</p> <p>18 made a quarterly earnings announcement</p> <p>19 during this offering?</p> <p>20 A. I don't remember it.</p> <p>21 I would think that they wouldn't</p> <p>22 have, just because we were so far into the</p> <p>23 first quarter, but I don't remember</p> <p>24 specifically.</p> <p>25 Q. I don't necessarily mean an</p>	<p style="text-align: right;">Page 65</p> <p>1 Stack</p> <p>2 Q. Between counsel for Sunbeam and</p> <p>3 counsel for Morgan Stanley, how was</p> <p>4 division of responsibility made for the</p> <p>5 drafting of the documents in this</p> <p>6 transaction?</p> <p>7 A. I don't remember specific</p> <p>8 conversations about this, but typically,</p> <p>9 in a transaction like this, issuer's</p> <p>10 counsel, so Sunbeam's counsel, would take</p> <p>11 primary responsibility for drafting the</p> <p>12 offering memorandum, and then we would</p> <p>13 have drafting sessions where the</p> <p>14 underwriters and underwriters' counsel and</p> <p>15 the company all participated in it and</p> <p>16 talked about what it should say.</p> <p>17 Underwriter's counsel would typically have</p> <p>18 responsibility for drafting the</p> <p>19 underwriting agreement, the registration</p> <p>20 rights agreement, indenture, those sort</p> <p>21 of -- actually, indenture -- I think the</p> <p>22 indenture, too -- yeah, documents,</p> <p>23 governing the underwriting obligations.</p> <p>24 Q. Do you have a recollection in</p> <p>25 this transaction of whether that division</p>

17 (Pages 62 to 65)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p>Page 66</p> <p>1 Stack 2 of responsibility was followed? 3 A. Um -- I think it generally was. 4 I remember that we worked on the 5 underwriting agreement and the 6 registration rights agreement. I know 7 that we all participated in drafting 8 sessions. I think Skadden, primarily, did 9 the actual pen-to-paper drafting of 10 those -- of the offering memorandum. I am 11 sure there may have been sections -- there 12 is probably an underwriting section in 13 there that Morgan Stanley or Davis Polk, 14 on Morgan Stanley's behalf, may have 15 drafted or provided. 16 Q. You can put document 207 aside. 17 A. Okay. 18 Q. Ms. Stack, I am going to show 19 you some documents that I think we can 20 make quick work of. 21 (Deposition Exhibit 140, 22 document with handwriting, previously 23 marked for identification.) 24 Q. The first document I have given 25 you has previously been marked as Exhibit</p>	<p>Page 68</p> <p>1 Stack 2 done this. 3 Q. Okay. 4 A. I wouldn't -- it's probably 5 something more the company's counsel would 6 do, and I was usually on the underwriter's 7 side, so.... 8 Q. You can put that document aside. 9 A. Okay. 10 (Deposition Exhibit 141, draft 11 document with handwriting, previously 12 marked for identification.) 13 Q. I show you another draft of the 14 document, that same document, Ms. Stack. 15 A. Thanks. 16 Q. And my question for you is 17 similar. Have you ever seen this document 18 before? 19 A. I don't think so, no. 20 Q. And, again, do you recognize the 21 handwriting on the document? 22 A. No. 23 Q. Okay. Put that one aside, 24 please. 25 A. Okay.</p>
<p>Page 67</p> <p>1 Stack 2 140. Have you seen that document before? 3 And exclude -- I mean prior to yesterday, 4 if you had seen it yesterday. 5 A. Um -- I do not remember seeing 6 it. 7 Q. Do you recognize the handwriting 8 on the document as being the handwriting 9 of someone you know? 10 A. No. 11 Q. In your work at Davis Polk, were 12 you ever involved -- do you know if your 13 firm was ever involved in reviewing 14 proposed questions and answers for a 15 company to use in communication with the 16 press or with investors? 17 A. Um -- I don't remember on this 18 transaction. 19 I, frankly, don't ever really 20 remember looking at questions for the 21 press you said? 22 Q. The press or institutional 23 investors or analysts, people outside the 24 company. 25 A. I don't remember ever having</p>	<p>Page 69</p> <p>1 Stack 2 Q. I have two more. -- I'm sorry, 3 I may not have explained, for the record, 4 the document I have just given you. It's 5 previously marked as Exhibit 141. 6 (Deposition Exhibit 142, 7 document with handwriting, previously 8 marked for identification.) 9 Q. And now I have given you what's 10 been marked as 142. 11 Do you recognize this as 12 something you have seen before? 13 A. Not before today, no. 14 Q. And do you recognize the 15 handwriting? 16 A. No. 17 Q. Okay, put Exhibit 142 aside. 18 (Deposition Exhibit 143, 19 document which has no handwriting, it 20 appears to be a final or near-final 21 version of previous marked documents, 22 previously marked for 23 identification.) 24 And the last one in the series 25 is Exhibit 143, marked in prior</p>

18 (Pages 66 to 69)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 70</p> <p>1 Stack 2 depositions. The document has no 3 handwriting, it appears to be a final or 4 near-final version of the other ones I 5 have shown you. 6 A. Mm-hmm. 7 Q. Have you ever seen this before? 8 A. No. 9 Q. Okay. You can put that aside. 10 Now, we have -- in some of your 11 prior answers, you have talked about the 12 work that was done in drafting. And I 13 believe you said that Skadden Arps, as the 14 company counsel, was primarily responsible 15 for the offering memorandum? 16 A. Yes. 17 Q. And Davis Polk participated in 18 drafting sessions and made suggestions. 19 A. Yes. 20 Q. Who on behalf of Davis Polk 21 participated in those drafting sessions? 22 A. I think generally Alan, Jim, and 23 myself were probably all there. I think 24 Alan and Jim did most of the talking. 25 Q. Do you remember whether you ever</p>	<p style="text-align: right;">Page 72</p> <p>1 Stack 2 Q. Tyrone Chang? 3 A. That name sounds familiar. I 4 can't tell you if he was at any drafting 5 sessions, I don't know. 6 Q. Andrew Savarie, or Savarie? 7 A. I don't remember that one. 8 Q. Aside from Mr. Tyree, do you 9 remember meeting any other Morgan Stanley 10 individuals in connection with this deal? 11 A. Not that I -- there was -- there 12 was a junior person, I think Shawnee? 13 Q. Shawnee Boone? 14 A. Yeah, yeah, and I think she was 15 generally around. I wouldn't have 16 remembered her name but for the fact that 17 I saw it yesterday on a list, I think, but 18 otherwise I don't remember anyone 19 specifically. 20 Q. Okay. And I take it no one from 21 MacAndrews & Forbes or Coleman attended 22 these sessions. 23 A. I don't think so. 24 Q. Ms. Stack, if you look at the 25 chronology that's been marked as Exhibit</p>
<p style="text-align: right;">Page 71</p> <p>1 Stack 2 spoke up at any of those meetings? 3 A. I don't remember anything 4 specific. 5 Q. Do you know if employees of 6 Morgan Stanley ever attended any drafting 7 session? 8 A. Um -- yeah, I remember that John 9 Tyree was generally around at most 10 meetings that we had. He is the person 11 that I remember most from Morgan Stanley. 12 Q. Aside from Mr. Tyree, do you 13 remember any other Morgan Stanley 14 individuals attending a drafting session? 15 A. I don't. 16 I think there may have been a 17 junior person with him, but I don't 18 remember who, who that was. I don't 19 remember anybody else. 20 Q. Okay. Let me mention some 21 names, and see if you remember them 22 attending drafting sessions. 23 Do you remember Mr. Webber, 24 Joshua Webber? 25 A. I don't remember.</p>	<p style="text-align: right;">Page 73</p> <p>1 Stack 2 24, there are a number of entries that 3 reference drafting sessions. And I refer 4 you to -- there is a reference on March 5 12, I believe there are earlier 6 references, March 5th there is a reference 7 to a draft offering memorandum being 8 communicated. 9 Do you remember -- 10 MR. WISE: March 5th says that 11 Davis Polk transmitted an 12 underwriter-prepared portion of the 13 draft offering memorandum. 14 MR. BRODY: Thank you. 15 Q. Do you remember participating in 16 any drafting sessions on any particular 17 dates? 18 A. No, I don't. 19 Q. As your counsel pointed out, on 20 March 5, Davis Polk communicated -- 21 transmitted certain underwriter-prepared 22 portions of the draft offering memorandum. 23 Did you have any role in drafting those 24 portions? 25 A. I don't remember.</p>

19 (Pages 70 to 73)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 74</p> <p>1 Stack</p> <p>2 Q. Do you remember any discussions</p> <p>3 about them?</p> <p>4 A. No, I don't remember anything</p> <p>5 about that.</p> <p>6 (Deposition Exhibit CPH 11,</p> <p>7 March 9, communication from</p> <p>8 Mr. Tyree, previously marked for</p> <p>9 identification.)</p> <p>10 Q. Ms. Stack, I have given you what</p> <p>11 has been marked in a prior deposition as</p> <p>12 CPH Exhibit 11, which is a March 9,</p> <p>13 communication from Mr. Tyree.</p> <p>14 Have you ever seen this before?</p> <p>15 A. (Pause.)</p> <p>16 I don't remember it. I wouldn't</p> <p>17 be surprised to know that I had seen it,</p> <p>18 but I don't remember this.</p> <p>19 Q. Well, it's shown as being sent</p> <p>20 to Mr. Dean, who was the partner in your</p> <p>21 firm.</p> <p>22 A. Mm-hmm.</p> <p>23 Q. Do you remember receiving any</p> <p>24 draft riders from Mr. Tyree?</p> <p>25 A. Not specifically, but it</p>	<p style="text-align: right;">Page 76</p> <p>1 Stack</p> <p>2 identification, as of this date.)</p> <p>3 MR. BRODY: Sorry, counsel, I</p> <p>4 only have one extra copy of that, but</p> <p>5 I don't expect to spend a lot of</p> <p>6 time.</p> <p>7 Q. Ms. Stark, I have given you</p> <p>8 what's been marked as Exhibit 208. And I</p> <p>9 am just going to ask you some questions</p> <p>10 primarily about the beginning although, as</p> <p>11 you see, there is a lengthy attachment</p> <p>12 provided.</p> <p>13 A. Mm-hmm.</p> <p>14 Q. If you turn to the second page</p> <p>15 of the document, there is a distribution</p> <p>16 list, and you were one of the individuals</p> <p>17 on the distribution list from Davis Polk;</p> <p>18 is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you have previously</p> <p>21 described Mr. Dean, Mr. Levin, Mr. Lurie,</p> <p>22 Mr. Megevick. I would like to ask you</p> <p>23 about a couple of the other individuals.</p> <p>24 A. Okay.</p> <p>25 Q. Who is Po Sit, P-O S-I-T?</p>
<p style="text-align: right;">Page 75</p> <p>1 Stack</p> <p>2 wouldn't be unusual.</p> <p>3 Q. Do you know what involvement</p> <p>4 Mr. Tyree had in proposing language to the</p> <p>5 offering memorandum? Mr. Tyree or others</p> <p>6 at Morgan Stanley.</p> <p>7 A. Um -- I don't really remember</p> <p>8 anything specifically.</p> <p>9 I mean, typically, we would all</p> <p>10 sort of participate in drafting together</p> <p>11 and the bankers often put together certain</p> <p>12 pieces of disclosure for everyone's</p> <p>13 consideration.</p> <p>14 Q. Do you remember if Mr. Tyree or</p> <p>15 others at Morgan Stanley were concerned</p> <p>16 about particular points in the offering</p> <p>17 memorandum?</p> <p>18 A. I don't remember anything</p> <p>19 specific.</p> <p>20 MR. BRODY: Please mark this as</p> <p>21 208.</p> <p>22 (Deposition Exhibit CPH 208,</p> <p>23 document, on the second page there is</p> <p>24 a distribution list, with a lengthy</p> <p>25 attachment provided, marked for</p>	<p style="text-align: right;">Page 77</p> <p>1 Stack</p> <p>2 A. He is a tax partner at Davis</p> <p>3 Polk.</p> <p>4 Q. Do you know what Mr. Sit's</p> <p>5 responsibility was on this transaction?</p> <p>6 A. I don't remember specifically,</p> <p>7 but I think there are certain tax</p> <p>8 consequences to this sort of security that</p> <p>9 we had to consult with him on.</p> <p>10 Q. Do you remember if he attended</p> <p>11 any of the drafting sessions?</p> <p>12 A. I don't remember.</p> <p>13 Q. The next individual I would like</p> <p>14 to ask you about is Alexander Kwit,</p> <p>15 K-W-I-T.</p> <p>16 Is Mr. Kwit a Davis Polk person?</p> <p>17 A. Yeah, he was an associate, I</p> <p>18 think maybe a year or two senior to me,</p> <p>19 although I don't remember him being very</p> <p>20 involved in this transaction.</p> <p>21 Q. Do you know if he is still with</p> <p>22 Davis Polk?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you remember what involvement</p> <p>25 he had in the deal, if any?</p>

20 (Pages 74 to 77)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 78</p> <p>1 Stack</p> <p>2 A. I don't. I don't -- I don't</p> <p>3 remember him being involved in this one,</p> <p>4 actually.</p> <p>5 Q. Okay. The two individuals below</p> <p>6 you, Charles -- how is that pronounced,</p> <p>7 Si --</p> <p>8 A. Yeah, I don't know him, I don't</p> <p>9 remember who he is.</p> <p>10 Q. You don't remember his</p> <p>11 involvement in the deal?</p> <p>12 A. No.</p> <p>13 Q. And Gail Flesher?</p> <p>14 A. Gail, she is a partner at Davis</p> <p>15 Polk in the environmental group. I don't</p> <p>16 remember specifically consulting her, but</p> <p>17 it would be pretty typical to have an</p> <p>18 environmental person consulting on due</p> <p>19 diligence issues or disclosure issues, if</p> <p>20 that were appropriate.</p> <p>21 Q. Okay. Two groups above you,</p> <p>22 Sunbeam and Morgan Stanley, do you</p> <p>23 remember the Sunbeam people, either</p> <p>24 Mr. Gluck or Ms. Kelley or others,</p> <p>25 attending the drafting sessions?</p>	<p style="text-align: right;">Page 80</p> <p>1 Stack</p> <p>2 drafting sessions?</p> <p>3 A. I don't remember specifically if</p> <p>4 they were there. It would have been</p> <p>5 pretty common for them to have been there,</p> <p>6 but --</p> <p>7 Q. But you don't know, one way or</p> <p>8 the other?</p> <p>9 A. I don't remember.</p> <p>10 I remember that -- I remember</p> <p>11 they were at the printer, I remember Larry</p> <p>12 Bornstein.</p> <p>13 Q. Do you remember ever meeting</p> <p>14 Mr. Harlow?</p> <p>15 A. Not specifically.</p> <p>16 Q. Okay, fair enough.</p> <p>17 Turn to the beginning of this</p> <p>18 document, the first page, sent from the</p> <p>19 letters at Skadden Arps. It recites that</p> <p>20 it's a first draft, and then, in the</p> <p>21 second sentence, it states that: "The</p> <p>22 various sections of the offering</p> <p>23 memorandum prepared by Skadden Arps and</p> <p>24 Davis Polk have not been reviewed or</p> <p>25 discussed with their respective clients",</p>
<p style="text-align: right;">Page 79</p> <p>1 Stack</p> <p>2 A. You know, I don't remember</p> <p>3 specifically if they were at the sessions.</p> <p>4 I remember Janet Kelley's name came up</p> <p>5 quite a lot, so it's possible she was</p> <p>6 there, I just don't remember.</p> <p>7 Q. Do you remember her position at</p> <p>8 the time?</p> <p>9 A. I think she was a lawyer at</p> <p>10 Sunbeam in-house.</p> <p>11 Q. And then the next group is the</p> <p>12 Morgan Stanley individuals. Looking at</p> <p>13 those names, has that refreshed your</p> <p>14 recollection as to who attended the</p> <p>15 drafting sessions?</p> <p>16 A. John Tyree is really the only</p> <p>17 name on there that I remember as having a</p> <p>18 lot of involvement.</p> <p>19 Q. Okay. Then you go to the bottom</p> <p>20 of this list, Arthur Andersen is</p> <p>21 identified, the names Phil Harlow and</p> <p>22 Larry Bornstein.</p> <p>23 A. Mm-hmm.</p> <p>24 Q. Do you remember if individuals</p> <p>25 from Arthur Andersen actually attended the</p>	<p style="text-align: right;">Page 81</p> <p>1 Stack</p> <p>2 and so on.</p> <p>3 Is it your understanding that</p> <p>4 portions of the offering memorandum were</p> <p>5 drafted by Davis Polk?</p> <p>6 A. I don't remember specifically.</p> <p>7 Again, it would have been pretty common</p> <p>8 for at least the underwriting section to</p> <p>9 have come from Davis Polk, and maybe in</p> <p>10 the form of the cover (indicating) page,</p> <p>11 that sort of thing.</p> <p>12 Q. Did you personally draft them?</p> <p>13 A. I don't remember.</p> <p>14 Q. Do you remember any portion of</p> <p>15 the offering memorandum that you were</p> <p>16 initially charged with drafting?</p> <p>17 A. I don't remember.</p> <p>18 Q. Now, turning to the drafting</p> <p>19 sessions that you do remember, do you</p> <p>20 remember any particular issues being</p> <p>21 raised by Morgan Stanley as items that</p> <p>22 needed to be put in the draft or taken out</p> <p>23 of the draft?</p> <p>24 A. I really don't remember anything</p> <p>25 specific.</p>

21 (Pages 78 to 81)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 82</p> <p>1 Stack</p> <p>2 I have been to many many</p> <p>3 drafting sessions on many deals.</p> <p>4 Q. I understand.</p> <p>5 A. It's hard to remember</p> <p>6 specifically.</p> <p>7 Q. If you return to the chronology</p> <p>8 that we have marked, at March 12 there is</p> <p>9 a reference to a drafting session at</p> <p>10 Skadden and accounting due diligence</p> <p>11 calls.</p> <p>12 Did you participate in those</p> <p>13 accounting due diligence calls, to your</p> <p>14 recollection?</p> <p>15 A. I don't remember specifically,</p> <p>16 but it would have been pretty ordinary</p> <p>17 course for me, or at least others from</p> <p>18 Davis Polk, to have participated.</p> <p>19 Q. I will have some documents about</p> <p>20 that in a moment, but do you remember any</p> <p>21 issues raised by the accountants that</p> <p>22 found their way into the offering</p> <p>23 memorandum that were discussed, as</p> <p>24 insertions or deletions from the offering</p> <p>25 memorandum?</p>	<p style="text-align: right;">Page 84</p> <p>1 Stack</p> <p>2 next number is, 209?</p> <p>3 (Deposition Exhibit CPH 209,</p> <p>4 preliminary version of the</p> <p>5 prospectus, marked for</p> <p>6 identification, as of this date.)</p> <p>7 Q. Ms. Stack, I have given you what</p> <p>8 has been marked as Exhibit 209. Do you</p> <p>9 recognize this as the preliminary version</p> <p>10 of the prospectus?</p> <p>11 A. Yeah, it looks like the red</p> <p>12 herring, yes.</p> <p>13 Q. And the type on the left, which</p> <p>14 is a little chopped off by copying, that's</p> <p>15 the indication that it's a preliminary</p> <p>16 draft?</p> <p>17 A. Right, that and the (indicating)</p> <p>18 "subject to completion" line at the top in</p> <p>19 the center.</p> <p>20 Q. Okay. And you understand this</p> <p>21 to be the -- what's referred to as the</p> <p>22 "red herring"?</p> <p>23 A. Yes, it looks like it, yeah.</p> <p>24 They are usually -- it's usually a book</p> <p>25 taped down, so it's hard to tell, but I</p>
<p style="text-align: right;">Page 83</p> <p>1 Stack</p> <p>2 A. I don't remember anything</p> <p>3 specific.</p> <p>4 Q. The next item on your</p> <p>5 chronology -- on the Davis Polk</p> <p>6 chronology, says: "Offering</p> <p>7 memorandum" -- "Offering memo reds subject</p> <p>8 to completion distributed". Do you know</p> <p>9 what that means?</p> <p>10 A. Yes, it's the preliminary</p> <p>11 offering circular that you send to</p> <p>12 investors.</p> <p>13 Q. And, by "red", do you have an</p> <p>14 understanding what that means?</p> <p>15 A. Yes, the -- well, it's not on</p> <p>16 here.</p> <p>17 There is a -- there is usually a</p> <p>18 red type along the side that says it's</p> <p>19 subject to the completion, and that's why</p> <p>20 they are called "reds".</p> <p>21 MR. BRODY: I have to mark that</p> <p>22 one, too, I'm sorry. I thought</p> <p>23 everything had been previously</p> <p>24 marked.</p> <p>25 Can we mark that as whatever our</p>	<p style="text-align: right;">Page 85</p> <p>1 Stack</p> <p>2 assume this is it.</p> <p>3 Q. I understand.</p> <p>4 If you look at this document at</p> <p>5 the top, it indicates that the total</p> <p>6 amount is \$1.3 billion. Do you understand</p> <p>7 that to be the amount of the securities at</p> <p>8 maturity?</p> <p>9 A. Yes, I think that's what is</p> <p>10 offered.</p> <p>11 Q. And the proceeds to Sunbeam</p> <p>12 obviously from the offering would be less;</p> <p>13 is that correct?</p> <p>14 A. Yes. It depends on what they</p> <p>15 sell the prices to the public of those</p> <p>16 securities.</p> <p>17 Q. Well, these bonds were zero</p> <p>18 coupon bonds?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. So the amount at issuance would</p> <p>21 be substantially less than the total value</p> <p>22 of the bonds?</p> <p>23 A. Yeah, I believe that's right.</p> <p>24 Q. And if you turn to the page</p> <p>25 that's page 23 of the document, it's Bates</p>

22 (Pages 82 to 85)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 86</p> <p>1 Stack</p> <p>2 stamped CPH 1348426.</p> <p>3 A. Okay.</p> <p>4 Q. There is a table setting forth</p> <p>5 the use of proceeds, the sources and uses</p> <p>6 of proceeds, and the proceeds from this</p> <p>7 debenture offering as of the date of the</p> <p>8 red herring was \$500 million; is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. So between the time you guys</p> <p>12 first started working on the deal and the</p> <p>13 date the red herring was distributed, the</p> <p>14 amount of the offering had not changed, it</p> <p>15 was still 500 million.</p> <p>16 A. Well, I think -- I mean, they</p> <p>17 are offering \$1.3 billion of bonds; right?</p> <p>18 I think the proceeds --</p> <p>19 Q. I asked the question badly.</p> <p>20 A. Sorry.</p> <p>21 Q. From the beginning of the deal</p> <p>22 until the date of this red herring, the</p> <p>23 proceeds were anticipated to be 500</p> <p>24 million; is that correct?</p> <p>25 A. Gosh, I don't remember, but I</p>	<p style="text-align: right;">Page 88</p> <p>1 Stack</p> <p>2 then is rather vague. I am wondering</p> <p>3 whether she is the best witness to</p> <p>4 get this sort of information as to</p> <p>5 what people attended and what the</p> <p>6 amounts of the offering were. She</p> <p>7 was the junior associate at</p> <p>8 underwriter's counsel. I assume you</p> <p>9 are taking witnesses who actually</p> <p>10 know the answers to these questions.</p> <p>11 MR. BRODY: Well, we are taking</p> <p>12 witnesses who should know the answers</p> <p>13 to these questions.</p> <p>14 MR. WISE: Well, you have got</p> <p>15 someone here who was in her first</p> <p>16 year with the firm. Obviously, you</p> <p>17 are free to ask her her recollections</p> <p>18 of any events or meetings she</p> <p>19 attended, maybe she will remember</p> <p>20 something that somebody else hasn't,</p> <p>21 but questions going to the structure</p> <p>22 of the deal and so on, I -- again, if</p> <p>23 you want to, we are here, but I think</p> <p>24 it's a little bit of a waste of all</p> <p>25 of our time, because she is probably</p>
<p style="text-align: right;">Page 87</p> <p>1 Stack</p> <p>2 think I just saw something that said that.</p> <p>3 Q. Okay.</p> <p>4 A. One of the things -- sorry.</p> <p>5 Q. Let me ask the question a little</p> <p>6 less -- with less complexity.</p> <p>7 As of the date this offering</p> <p>8 memorandum was issued in its preliminary</p> <p>9 form, on March 16, 1998, the parties were</p> <p>10 still anticipating raising \$500 million</p> <p>11 for Sunbeam through this offering.</p> <p>12 A. Yes, about 500 million, that's</p> <p>13 what it looks like.</p> <p>14 MR. WISE: You are basing that</p> <p>15 on what you are reading?</p> <p>16 THE WITNESS: Yes, exactly.</p> <p>17 MR. WISE: You can -- obviously,</p> <p>18 this is your deposition, you can take</p> <p>19 it any way you want. Ms. Stack</p> <p>20 worked on this transaction some six</p> <p>21 years ago, and it should be apparent,</p> <p>22 from the last hour's worth of</p> <p>23 questioning, her recollection of this</p> <p>24 as opposed to the scores of other</p> <p>25 transactions she has worked on since</p>	<p style="text-align: right;">Page 89</p> <p>1 Stack</p> <p>2 one of the least able to answer those</p> <p>3 questions.</p> <p>4 MR. BRODY: I understand your</p> <p>5 statement. I will be coming back to</p> <p>6 this point when I show her other</p> <p>7 documents that were circulated to</p> <p>8 her, and we will see what she</p> <p>9 remembers about the changes.</p> <p>10 MR. WISE: Okay.</p> <p>11 Q. Ms. Stack, do you remember any</p> <p>12 conversations with individuals from Morgan</p> <p>13 Stanley about whether this offering was</p> <p>14 fully subscribed?</p> <p>15 A. No, I don't remember.</p> <p>16 Q. You can put that document aside</p> <p>17 for a moment.</p> <p>18 You referred to documentary due</p> <p>19 diligence that you performed in this</p> <p>20 transaction. What does it mean to you to</p> <p>21 perform due diligence?</p> <p>22 A. Again, just to, you know, read</p> <p>23 through documents, contracts, to make sure</p> <p>24 that the transaction we are about to</p> <p>25 perform doesn't have any impact on it, to</p>

23 (Pages 86 to 89)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 90</p> <p>1 Stack</p> <p>2 make sure that we have all the material</p> <p>3 information that we need to include in the</p> <p>4 offering memorandum.</p> <p>5 Q. And do you have an understanding</p> <p>6 as to what the purpose is for the due</p> <p>7 diligence that you performed in this</p> <p>8 transaction?</p> <p>9 A. Again, I think it's, you know,</p> <p>10 to make sure and confirm that everything</p> <p>11 we have got in the offering document is</p> <p>12 correct and make sure we have got</p> <p>13 everything for investors.</p> <p>14 Q. I'm sorry, I didn't hear the</p> <p>15 last part.</p> <p>16 A. Make sure that we have got</p> <p>17 everything that investors needs to know.</p> <p>18 Q. Okay.</p> <p>19 A. You know, there are obviously</p> <p>20 many conversations with the company, as</p> <p>21 well, the documentary due diligence is</p> <p>22 sort of in addition to that to confirm</p> <p>23 everything that's said.</p> <p>24 Q. Okay, and your involvement was</p> <p>25 limited to the documentary due diligence;</p>	<p style="text-align: right;">Page 92</p> <p>1 Stack</p> <p>2 due diligence that were the responsibility</p> <p>3 of the law firm and others that were the</p> <p>4 responsibility of the bank?</p> <p>5 A. We generally participated in</p> <p>6 things together. As far as reviewing</p> <p>7 documents, certainly the lawyers were</p> <p>8 involved in that. I don't remember if</p> <p>9 there may have been a person from Morgan</p> <p>10 Stanley participating in that or not.</p> <p>11 Sometimes you would have a junior person</p> <p>12 from the investment bank come to the -- do</p> <p>13 the document review as well. I don't</p> <p>14 remember if that happened here.</p> <p>15 Q. Before you began working on this</p> <p>16 deal, what training had you received in</p> <p>17 how to perform due diligence?</p> <p>18 A. We had a general training</p> <p>19 session when we first arrived at Davis</p> <p>20 Polk. They talked about, you know, the</p> <p>21 things to do and look for, one of those</p> <p>22 things that's hard to teach you how to do</p> <p>23 until you have actually done it once, but</p> <p>24 I had worked on a few transactions before</p> <p>25 the Sunbeam transaction, so....</p>
<p style="text-align: right;">Page 91</p> <p>1 Stack</p> <p>2 is that correct?</p> <p>3 A. I don't really remember. It</p> <p>4 wouldn't have been unusual for me to also</p> <p>5 have participated in the management</p> <p>6 discussions and meetings, but I don't</p> <p>7 remember anything specific.</p> <p>8 Q. I'm sorry, did you say would or</p> <p>9 would not have?</p> <p>10 A. It would have been pretty normal</p> <p>11 for me to have participated --</p> <p>12 Q. Okay.</p> <p>13 A. -- along with the more senior</p> <p>14 members of the Davis Polk team.</p> <p>15 Q. Now, at the time you were</p> <p>16 working on this transaction, you</p> <p>17 represented the investment banker.</p> <p>18 A. Yes, the bank, Morgan Stanley.</p> <p>19 Q. How did the responsibility for</p> <p>20 performing due diligence -- how was it</p> <p>21 divided between Morgan Stanley and Davis</p> <p>22 Polk?</p> <p>23 A. We all -- we all performed due</p> <p>24 diligence.</p> <p>25 Q. Were there particular areas of</p>	<p style="text-align: right;">Page 93</p> <p>1 Stack</p> <p>2 Q. Do you remember issues coming up</p> <p>3 in performing due diligence that you had</p> <p>4 to take to someone more senior than you at</p> <p>5 the law firm?</p> <p>6 A. In due diligence generally or</p> <p>7 due diligence on this transaction?</p> <p>8 Q. On this transaction.</p> <p>9 A. I don't remember anything</p> <p>10 specific, but it was often the case that I</p> <p>11 would see something and hadn't have heard</p> <p>12 a reference to it before, so I would raise</p> <p>13 it to the attention of someone more senior</p> <p>14 or I had to ask for additional</p> <p>15 documentation to clarify it, so that would</p> <p>16 have been pretty standard, but I don't</p> <p>17 remember it specifically on this one.</p> <p>18 Q. So you don't remember any issues</p> <p>19 that came up?</p> <p>20 A. No.</p> <p>21 Q. Did you ever review or were you</p> <p>22 made aware of whether Morgan Stanley had</p> <p>23 manuals or procedures for performing due</p> <p>24 diligence?</p> <p>25 A. I don't know.</p>

24 (Pages 90 to 93)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

Page 94	Page 96
<p>1 Stack</p> <p>2 MR. BRODY: We have been going</p> <p>3 for a while. Why don't we take a</p> <p>4 break now, if that's acceptable.</p> <p>5 MR. WISE: Sure.</p> <p>6 THE LEGAL VIDEO SPECIALIST:</p> <p>7 Okay. The time is now 11:13, and we</p> <p>8 are off the record.</p> <p>9 (Recess taken.)</p> <p>10 THE LEGAL VIDEO SPECIALIST: The</p> <p>11 time is 11:25, and we are back on the</p> <p>12 record.</p> <p>13 Q. Ms. Stack, before we broke, we</p> <p>14 were talking about due diligence --</p> <p>15 A. Yes.</p> <p>16 Q. -- and the division of</p> <p>17 responsibility on due diligence between</p> <p>18 Morgan Stanley and its counsel.</p> <p>19 Who at Morgan Stanley performed</p> <p>20 due diligence on this deal that you</p> <p>21 remember?</p> <p>22 A. I don't remember specifically.</p> <p>23 Again, I remember that John Tyree was</p> <p>24 around at most meetings and calls, so,</p> <p>25 presumably he was a part of it, but I</p>	<p>1 Stack</p> <p>2 specifics of it.</p> <p>3 Q. Do you remember the names of any</p> <p>4 management people you met with?</p> <p>5 A. No. Again, you know, I</p> <p>6 remember -- recognized some of the names</p> <p>7 you read earlier from the phone calls, but</p> <p>8 I don't remember who was present at any of</p> <p>9 the sessions.</p> <p>10 Q. I am going to ask you about some</p> <p>11 specific topics, and my question is going</p> <p>12 to be do you remember what due diligence</p> <p>13 was done in these areas.</p> <p>14 A. Okay.</p> <p>15 Q. What due diligence do you</p> <p>16 remember being done into Sunbeam's sales?</p> <p>17 A. The only thing that I</p> <p>18 specifically remember is a phone call on</p> <p>19 the night before pricing, talking about</p> <p>20 how their sales were going to go in the</p> <p>21 first quarter.</p> <p>22 Otherwise, I don't remember</p> <p>23 specifically all the meetings or anything</p> <p>24 leading up to that.</p> <p>25 Q. Okay, we will return to that</p>
Page 95	Page 97
<p>1 Stack</p> <p>2 don't remember anyone else.</p> <p>3 Q. Aside from Mr. Tyree, you don't</p> <p>4 remember anyone else involved in due</p> <p>5 diligence?</p> <p>6 A. I just don't remember, no.</p> <p>7 Q. Do you know what due diligence</p> <p>8 Morgan Stanley performed?</p> <p>9 A. Um -- again, there were</p> <p>10 definitely sort of meetings, management,</p> <p>11 due diligence meetings, where we asked</p> <p>12 questions. I think Morgan Stanley</p> <p>13 typically sent over a request list of</p> <p>14 financial items that they reviewed, that</p> <p>15 we had less of a role in reviewing, just</p> <p>16 by the nature of our jobs but, otherwise,</p> <p>17 I don't remember specifically anything</p> <p>18 else.</p> <p>19 Q. You referred to meetings of</p> <p>20 management. As you sit here, do you</p> <p>21 remember who from management Morgan</p> <p>22 Stanley and/or Davis Polk met with in</p> <p>23 connection with due diligence on this</p> <p>24 deal?</p> <p>25 A. I really don't remember the</p>	<p>1 Stack</p> <p>2 call in a moment. But, aside from that,</p> <p>3 do you remember anything else --</p> <p>4 A. No.</p> <p>5 Q. -- about sales?</p> <p>6 A. No, nothing specific, no.</p> <p>7 Q. Do you remember any due</p> <p>8 diligence into Sunbeam's earnings per</p> <p>9 share or earnings?</p> <p>10 A. I don't remember anything, no.</p> <p>11 Q. Do you remember any due</p> <p>12 diligence into Sunbeam's practices</p> <p>13 involving revenue-recognition or bill-and-</p> <p>14 hold transactions?</p> <p>15 A. I don't remember anything</p> <p>16 specific about it.</p> <p>17 Q. Do you remember anything in</p> <p>18 general on that topic?</p> <p>19 A. I think I remember it being</p> <p>20 mentioned but, beyond that, I just don't</p> <p>21 remember.</p> <p>22 Q. Do you remember any due</p> <p>23 diligence done into whether Sunbeam had</p> <p>24 accelerated sales from 1998 into prior</p> <p>25 periods?</p>

25 (Pages 94 to 97)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 98</p> <p>1 Stack</p> <p>2 A. You know, I think I looked -- I</p> <p>3 may have looked at something yesterday</p> <p>4 that talked about that but, beyond that, I</p> <p>5 didn't really remember anything from that</p> <p>6 time.</p> <p>7 Q. Do you remember what you looked</p> <p>8 at that referenced that?</p> <p>9 A. Actually, I don't.</p> <p>10 I just looked at that yesterday,</p> <p>11 if that tells you anything, but I think</p> <p>12 there was an issue if they had sold some</p> <p>13 things that were recognized in the fourth</p> <p>14 quarter that may have been accelerated</p> <p>15 sales, I don't remember exactly.</p> <p>16 Q. But, as you sit here, do you</p> <p>17 remember any work that was done -- due</p> <p>18 diligence work that was done, at the time</p> <p>19 of the deal on that topic?</p> <p>20 A. No, no.</p> <p>21 Q. Do you know if anyone from</p> <p>22 Morgan Stanley or Davis Polk did any</p> <p>23 investigation into the extent to which</p> <p>24 Sunbeam was managing its earnings?</p> <p>25 A. I don't know. But, again, as</p>	<p style="text-align: right;">Page 100</p> <p>1 Stack</p> <p>2 documents at Skadden". I believe you</p> <p>3 testified that you reviewed documents at</p> <p>4 Skadden?</p> <p>5 A. Yes, that was probably me,</p> <p>6 but --</p> <p>7 Q. Was there a document repository</p> <p>8 there?</p> <p>9 A. Um -- I think there was a room</p> <p>10 set up where they had a lot of documents,</p> <p>11 yes.</p> <p>12 Q. Having seen that document, does</p> <p>13 that refresh your recollection as to who</p> <p>14 else might have been involved in that due</p> <p>15 diligence effort, either for Morgan</p> <p>16 Stanley or Sunbeam or anyone else?</p> <p>17 A. I just don't remember who else</p> <p>18 was there.</p> <p>19 Q. The next item on March 9th:</p> <p>20 "Due diligence meeting at Skadden". Do</p> <p>21 you remember a due diligence meeting at</p> <p>22 Skadden?</p> <p>23 A. Um -- yeah, I vaguely remember a</p> <p>24 meeting there.</p> <p>25 I mean, you have a big due</p>
<p style="text-align: right;">Page 99</p> <p>1 Stack</p> <p>2 the junior person, I probably wouldn't</p> <p>3 have been involved in those discussions.</p> <p>4 Q. Okay. And you testified earlier</p> <p>5 about Mr. Dunlap's reputation with</p> <p>6 companies. Do you know if anyone did any</p> <p>7 work, either at Davis Polk or at Morgan</p> <p>8 Stanley, looking into how Mr. Dunlap and</p> <p>9 his management team had restructured</p> <p>10 Sunbeam in his time there?</p> <p>11 A. I don't know. I don't know.</p> <p>12 Q. Now, if you look at the document</p> <p>13 that's been marked as Exhibit 24, there</p> <p>14 are a number of entries that refer to due</p> <p>15 diligence meetings, and I am just going to</p> <p>16 ask you what you remember about them, if</p> <p>17 anything.</p> <p>18 March 6 references: "Due</p> <p>19 diligence conference calls with Sunbeam</p> <p>20 re: acquisitions and environmental</p> <p>21 issues". Do you remember anything that</p> <p>22 was discussed at that meeting?</p> <p>23 A. No.</p> <p>24 Q. The next entry is March 8. It</p> <p>25 refers to: "Due diligence review of</p>	<p style="text-align: right;">Page 101</p> <p>1 Stack</p> <p>2 diligence meeting on every deal that you</p> <p>3 work on, so it's hard to distinguish.</p> <p>4 Q. Focusing on this deal --</p> <p>5 A. Mm-hmm.</p> <p>6 Q. -- do you remember who was</p> <p>7 there?</p> <p>8 A. I don't remember specifically.</p> <p>9 I mean, I could speculate but I don't</p> <p>10 remember.</p> <p>11 Q. Do you remember anything that</p> <p>12 was discussed at that meeting?</p> <p>13 A. Again, I could tell you those</p> <p>14 are types of things that we would</p> <p>15 typically discuss, but I don't remember</p> <p>16 anything specific.</p> <p>17 Q. I am asking for your</p> <p>18 recollection, your recollection is what I</p> <p>19 am asking.</p> <p>20 A. No.</p> <p>21 Q. Are there any documents, notes</p> <p>22 or documents, that you are aware of that</p> <p>23 would refresh your recollection as to what</p> <p>24 was discussed at the due diligence</p> <p>25 meetings we have addressed?</p>

26 (Pages 98 to 101)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 102</p> <p>1 Stack</p> <p>2 A. Not that I am aware of, no.</p> <p>3 Q. The next item on March 10th</p> <p>4 refers to: "Due diligence conference</p> <p>5 calls with First Alert, Signature, and</p> <p>6 Sunbeam".</p> <p>7 Do you remember if you</p> <p>8 participated in those calls?</p> <p>9 A. I don't. I don't remember</p> <p>10 specifically.</p> <p>11 It sounds like something I</p> <p>12 probably would have done, but....</p> <p>13 Q. Focusing on the call with</p> <p>14 Sunbeam, do you remember anything that was</p> <p>15 discussed with Sunbeam?</p> <p>16 A. No.</p> <p>17 Q. And are there any documents that</p> <p>18 would refresh your recollection as to what</p> <p>19 happened in that call, that you are aware</p> <p>20 of?</p> <p>21 A. Not that I am aware of, no.</p> <p>22 Q. Okay. March 11, there is a</p> <p>23 reference to an additional due diligence</p> <p>24 call with Skadden. Do you remember if you</p> <p>25 were on that call?</p>	<p style="text-align: right;">Page 104</p> <p>1 Stack</p> <p>2 Q. Do you recall participating in</p> <p>3 an accounting due diligence call in this</p> <p>4 matter?</p> <p>5 A. I don't remember it, no.</p> <p>6 Q. Do you know if it was held?</p> <p>7 A. I don't remember it</p> <p>8 specifically.</p> <p>9 I would assume that it was, but</p> <p>10 it's pretty standard on deals.</p> <p>11 (Deposition Exhibit 123,</p> <p>12 document, the first two pages is a</p> <p>13 memorandum from Lawrence A.</p> <p>14 Bornstein, at Arthur Andersen,</p> <p>15 previously marked for</p> <p>16 identification.)</p> <p>17 Q. Ms. Stack, let me show you</p> <p>18 another Exhibit. It's previously marked</p> <p>19 as Exhibit 123.</p> <p>20 MR. BRODY: Counsel.</p> <p>21 Q. And before you spend a lot of</p> <p>22 time looking at it, let me just walk you</p> <p>23 through it.</p> <p>24 The first two pages of this</p> <p>25 exhibit is a memorandum from Larry</p>
<p style="text-align: right;">Page 103</p> <p>1 Stack</p> <p>2 A. I don't remember.</p> <p>3 Q. And, again, anything that might</p> <p>4 refresh your recollection about that?</p> <p>5 A. Not that I am aware of.</p> <p>6 Q. The March 12th entry refers to:</p> <p>7 "Coleman due diligence calls". Do you</p> <p>8 remember any Coleman due diligence calls?</p> <p>9 A. Again, not specifically.</p> <p>10 Q. Do you remember anything in</p> <p>11 general that was discussed with Coleman?</p> <p>12 A. No, no.</p> <p>13 Q. And then the last sub-entry of</p> <p>14 March 12th refers to "accounting due</p> <p>15 diligence calls". Based on your</p> <p>16 experience in doing transactions, what are</p> <p>17 "accounting due diligence calls"?</p> <p>18 A. Um -- generally, calls that the</p> <p>19 underwriters and their counsel have with</p> <p>20 the company's accountants, often outside</p> <p>21 the presence of the company, so that you</p> <p>22 can hopefully get a more robust answer to</p> <p>23 the questions and just ask about the</p> <p>24 company's accounting practices generally</p> <p>25 and any issues that the accountants see.</p>	<p style="text-align: right;">Page 105</p> <p>1 Stack</p> <p>2 Bornstein, Lawrence A. Bornstein, at</p> <p>3 Arthur Andersen, and then the third and</p> <p>4 fourth pages of the exhibit is something</p> <p>5 else, and I would like you to start there.</p> <p>6 A. On the third page?</p> <p>7 Q. Third and fourth.</p> <p>8 A. Okay.</p> <p>9 Q. It appears to be some sort of</p> <p>10 agenda or list.</p> <p>11 A. Correct.</p> <p>12 Q. Starting on the third and fourth</p> <p>13 page, have you ever seen that before?</p> <p>14 A. I don't remember this one</p> <p>15 specifically, but it looks like a lot of</p> <p>16 accounting due diligence-type questions</p> <p>17 that we would ask.</p> <p>18 Q. Having seen this document, does</p> <p>19 it refresh your recollection whether, in</p> <p>20 fact, you participated in an accounting</p> <p>21 due diligence call on this transaction or</p> <p>22 not?</p> <p>23 A. (Pause.)</p> <p>24 No, I am afraid not.</p> <p>25 Q. Do you recognize the</p>

27 (Pages 102 to 105)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 106</p> <p>1 Stack</p> <p>2 handwriting?</p> <p>3 A. No.</p> <p>4 Q. Now, if you turn to the first</p> <p>5 two pages of the document, and I would ask</p> <p>6 you to read to yourself the first three</p> <p>7 paragraphs. And then tell me when you</p> <p>8 have done that.</p> <p>9 A. (Pause.)</p> <p>10 Okay.</p> <p>11 Q. Okay. Now, having read that,</p> <p>12 does that refresh your recollection</p> <p>13 whether, in fact, you participated in the</p> <p>14 accounting due diligence calls?</p> <p>15 A. I don't remember participating.</p> <p>16 Q. Do you remember being advised by</p> <p>17 Mr. Lurie, Mr. Tyree, or others about what</p> <p>18 happened in that call, if indeed it took</p> <p>19 place?</p> <p>20 A. No, I don't remember.</p> <p>21 Q. I am going to ask you about a</p> <p>22 couple of items here, and let me just</p> <p>23 indicate what I understand to be the</p> <p>24 testimony of others, but the numbered</p> <p>25 items here, 1 through 17, appear to</p>	<p style="text-align: right;">Page 108</p> <p>1 Stack</p> <p>2 that task yourself?</p> <p>3 A. No.</p> <p>4 Q. Item 8 appears to relate to the</p> <p>5 question: "How aggressive is the company</p> <p>6 in its accounting policies?" To which the</p> <p>7 answer appears: "On a scale of 1 to 10,</p> <p>8 around a 5 or 6." Do you remember that</p> <p>9 type of discussion being held in</p> <p>10 connection with this deal?</p> <p>11 A. No, I don't.</p> <p>12 Q. Do you remember any follow-up by</p> <p>13 Davis Polk or Morgan Stanley into Arthur</p> <p>14 Andersen or the company's accounting</p> <p>15 policies or practices?</p> <p>16 A. No, I don't remember anything</p> <p>17 about this.</p> <p>18 Q. Now, the document I have given</p> <p>19 you, marked as Exhibit 123, recites that</p> <p>20 the accounting due diligence call was on</p> <p>21 March 12, which is the same date in the</p> <p>22 Davis Polk chronology, that we have marked</p> <p>23 as Exhibit 24.</p> <p>24 A. Mm-hmm.</p> <p>25 Q. You previously, in one of your</p>
<p style="text-align: right;">Page 107</p> <p>1 Stack</p> <p>2 correspond to the numbered items in the</p> <p>3 agenda. And, you know, since I was not on</p> <p>4 the call I can't represent to you that</p> <p>5 that, in fact, was the case, but I am</p> <p>6 going to ask you about item 3 and item 8.</p> <p>7 And item 3 appears to relate to the</p> <p>8 question: "Anything peculiar to the</p> <p>9 company that is not generally the way the</p> <p>10 industry accounts for: A, revenue</p> <p>11 recognition; B, capitalizing costs versus</p> <p>12 expensing deferring costs", and you see</p> <p>13 the answers on the first page of the</p> <p>14 exhibit.</p> <p>15 Does that refresh your</p> <p>16 recollection about any discussion in</p> <p>17 connection with this deal relating to</p> <p>18 Sunbeam's bill-and-hold practices?</p> <p>19 A. No.</p> <p>20 Q. Do you know if anyone at Morgan</p> <p>21 Stanley or Davis Polk was charged with</p> <p>22 doing further investigation into</p> <p>23 bill-and-hold?</p> <p>24 A. I don't know.</p> <p>25 Q. You don't remember being given</p>	<p style="text-align: right;">Page 109</p> <p>1 Stack</p> <p>2 answers, described a "comfort letter".</p> <p>3 What is a "comfort letter"?</p> <p>4 A. A "comfort letter" is a letter</p> <p>5 issued by the accountants stating that</p> <p>6 they audited the company's financials for</p> <p>7 the prior year and saying that they</p> <p>8 reviewed the company's interim financials</p> <p>9 since their audit and have performed</p> <p>10 certain procedures on them, and then they</p> <p>11 also go through the document, the offering</p> <p>12 document, and circle various numbers and</p> <p>13 tie those back to either the company's</p> <p>14 accounting policy -- or, accounting</p> <p>15 records or do some sort of calculation on</p> <p>16 them to make sure that they tie to the</p> <p>17 company's numbers.</p> <p>18 Q. In your experience at Davis</p> <p>19 Polk, were comfort letters typically</p> <p>20 provided in connection with offerings?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know if a comfort</p> <p>23 letter -- if Arthur Andersen provided</p> <p>24 comfort letters in connection with the</p> <p>25 zero coupon convertible senior</p>

28 (Pages 106 to 109)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 110</p> <p>1 Stack</p> <p>2 subordinated debentures?</p> <p>3 A. Yes, they did. I actually saw</p> <p>4 it yesterday.</p> <p>5 Q. Do you know when Morgan Stanley</p> <p>6 or Davis Polk received the comfort letter?</p> <p>7 A. I don't know when we received</p> <p>8 it.</p> <p>9 It's typically dated the same</p> <p>10 date as the final offering memorandum,</p> <p>11 which is the pricing date.</p> <p>12 Q. Is it typical that the</p> <p>13 accountants provide a draft prior to</p> <p>14 pricing?</p> <p>15 A. Generally, yes.</p> <p>16 Q. Do you know if, in this case,</p> <p>17 Arthur Andersen provided a draft of its</p> <p>18 comfort letter to Morgan Stanley or to</p> <p>19 Davis Polk?</p> <p>20 A. I don't remember.</p> <p>21 Q. Aside from any due diligence</p> <p>22 that was done in connection with this</p> <p>23 call, (indicating) -- well, let me</p> <p>24 withdraw that.</p> <p>25 We have now had a chance to look</p>	<p style="text-align: right;">Page 112</p> <p>1 Stack</p> <p>2 (Deposition Exhibit CPH 210, fax</p> <p>3 Ms. Stack sent to Mr. Freed at</p> <p>4 Skadden Arps, marked for</p> <p>5 identification, as of this date.)</p> <p>6 MR. BRODY: Counsel.</p> <p>7 Q. Ms. Stack, I have given you</p> <p>8 what's been marked as Exhibit 210. Do you</p> <p>9 recognize this as a document that you</p> <p>10 sent?</p> <p>11 A. It looks like a document I sent.</p> <p>12 I don't remember it, but yes.</p> <p>13 Q. Do you understand it to be a fax</p> <p>14 you sent to Mr. Freed at Skadden Arps?</p> <p>15 A. Yes.</p> <p>16 Q. The document recites what you</p> <p>17 are asking for. Do you have a</p> <p>18 recollection as to why you requested the</p> <p>19 information that you requested in Exhibit</p> <p>20 210?</p> <p>21 A. I don't remember it but, in</p> <p>22 reading it, it's just probably things that</p> <p>23 were missing from the due diligence room</p> <p>24 or items that were mentioned that I didn't</p> <p>25 get to read while I was there.</p>
<p style="text-align: right;">Page 111</p> <p>1 Stack</p> <p>2 at the Davis Polk chronology in Exhibit</p> <p>3 123. After having looked at those, does</p> <p>4 that refresh your recollection about any</p> <p>5 accounting due diligence done on this deal</p> <p>6 by you or others?</p> <p>7 A. No, it doesn't.</p> <p>8 Q. Aside from what may be recited</p> <p>9 in the documents I have shown you, do you</p> <p>10 have any understanding of any follow-up or</p> <p>11 accounting due diligence done in</p> <p>12 connection with this deal?</p> <p>13 A. No. As I said before, the only</p> <p>14 thing I remember is that call the night</p> <p>15 before pricing about the company's sales.</p> <p>16 I suppose you could classify that as</p> <p>17 "accounting due diligence".</p> <p>18 Q. Okay, we are going to get to</p> <p>19 that momentarily. We have one more</p> <p>20 document to show you before we finish up</p> <p>21 on this topic.</p> <p>22 MR. BRODY: 210?</p> <p>23 THE COURT REPORTER: Yes.</p> <p>24 MR. BRODY: Please mark that as</p> <p>25 Exhibit 210.</p>	<p style="text-align: right;">Page 113</p> <p>1 Stack</p> <p>2 Q. In your first sentence, you say</p> <p>3 that: These are certain things you would</p> <p>4 like to obtain today "in order to finish</p> <p>5 our due diligence review before pricing."</p> <p>6 What do you mean by that?</p> <p>7 A. We wanted to make sure before we</p> <p>8 priced the deal that we had all the</p> <p>9 information that we were requesting.</p> <p>10 Q. Do you recall whether you</p> <p>11 received them or not?</p> <p>12 A. I don't remember.</p> <p>13 Q. If you look at the top of the</p> <p>14 document, it appears to have been sent at</p> <p>15 2:11 in the afternoon; is that correct?</p> <p>16 A. Yes, that's what it says.</p> <p>17 Q. And is that the day, March 19th,</p> <p>18 the day the deal was priced?</p> <p>19 A. Uh -- I believe so, yes.</p> <p>20 Q. On the day of pricing, were you</p> <p>21 at the printer?</p> <p>22 A. Um -- yes, I was there that</p> <p>23 night, I think, yes.</p> <p>24 Q. Do you know when you went to the</p> <p>25 printer?</p>

29 (Pages 110 to 113)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 114</p> <p>1 Stack</p> <p>2 A. Um -- I don't remember</p> <p>3 specifically. It was sometime in the</p> <p>4 evening, after pricing.</p> <p>5 Q. I'm sorry, you said "after</p> <p>6 pricing"?</p> <p>7 A. Yeah, I think.</p> <p>8 Q. Pricing took place somewhere</p> <p>9 else?</p> <p>10 A. Yeah, generally there is a</p> <p>11 conference call between the bankers and</p> <p>12 the company to price the deal that I would</p> <p>13 not typically have participated in.</p> <p>14 Q. I'm sorry, can you repeat what</p> <p>15 you said?</p> <p>16 A. I'm sorry. Generally, where</p> <p>17 would be a conference call between the</p> <p>18 bankers and the company to decide on the</p> <p>19 price for the transaction and I would not</p> <p>20 typically have participated in that.</p> <p>21 Q. Okay, you don't recall</p> <p>22 participating in that?</p> <p>23 A. Yeah, I don't remember.</p> <p>24 Q. Fine. Do you know if between</p> <p>25 2:11 in the afternoon and whenever the</p>	<p style="text-align: right;">Page 116</p> <p>1 Stack</p> <p>2 Q. Do you remember any work you did</p> <p>3 to look into that, you or others?</p> <p>4 A. No.</p> <p>5 Q. Was this call that you</p> <p>6 referenced the first time you learned of</p> <p>7 how Sunbeam's sales were proceeding in the</p> <p>8 first quarter of 1998?</p> <p>9 A. I think I learned of it just</p> <p>10 prior to those calls on that day.</p> <p>11 Q. How?</p> <p>12 MR. WISE: I caution the witness</p> <p>13 to be careful not to reveal any</p> <p>14 material that is subject to the</p> <p>15 attorney/client privilege.</p> <p>16 Can you answer the question</p> <p>17 without revealing a communication</p> <p>18 that was had with Morgan Stanley or</p> <p>19 internally at Davis Polk for purposes</p> <p>20 of giving Morgan Stanley advice?</p> <p>21 THE WITNESS: No.</p> <p>22 MR. WISE: So I object to the</p> <p>23 question, and direct her not to</p> <p>24 answer.</p> <p>25 (DIRECTION NOT TO ANSWER.)</p>
<p style="text-align: right;">Page 115</p> <p>1 Stack</p> <p>2 deal was priced you got the materials you</p> <p>3 request here in Exhibit 210?</p> <p>4 A. I don't remember. I would</p> <p>5 assume that we did --</p> <p>6 Q. Okay.</p> <p>7 A. -- but....</p> <p>8 Q. You have testified that you were</p> <p>9 aware of some conference calls or calls in</p> <p>10 which Sunbeam sales in the first quarter</p> <p>11 were discussed.</p> <p>12 A. Mm-hmm.</p> <p>13 Q. Do you recall the day on which</p> <p>14 those calls took place?</p> <p>15 A. I believe it was the day before</p> <p>16 pricing.</p> <p>17 Q. So if we use the chronology</p> <p>18 Davis Polk prepared, indicating pricing</p> <p>19 was on the 19th, the calls were on the</p> <p>20 18th?</p> <p>21 A. Yes, I think so.</p> <p>22 Q. Prior to the 18th, did you have</p> <p>23 any knowledge of how Sunbeam's first</p> <p>24 quarter 1998 sales were performing?</p> <p>25 A. Not that I remember, no.</p>	<p style="text-align: right;">Page 117</p> <p>1 Stack</p> <p>2 Q. Well, without disclosing the</p> <p>3 substance of the conversation, with whom</p> <p>4 did you have communications about the</p> <p>5 first quarter sales on the 18th of March?</p> <p>6 THE WITNESS: Is it okay for me</p> <p>7 to answer that?</p> <p>8 MR. WISE: Yes, you can answer</p> <p>9 that question.</p> <p>10 A. Alan Dean, I think.</p> <p>11 Q. Was there anyone else in the</p> <p>12 conversation besides Mr. Dean?</p> <p>13 A. When I first heard it, I don't</p> <p>14 think so.</p> <p>15 Q. Okay, so it was just the two of</p> <p>16 you.</p> <p>17 A. Possibly Jim Lurie, but I just</p> <p>18 don't remember specifically.</p> <p>19 Q. In that communication or</p> <p>20 conversation with Mr. Dean and possibly</p> <p>21 Mr. Lurie, did Mr. Dean or Mr. Lurie</p> <p>22 advise you the source of his information</p> <p>23 about first-quarter sales?</p> <p>24 A. I don't remember, actually.</p> <p>25 Q. Did Mr. Lurie or Mr. Dean advise</p>

30 (Pages 114 to 117)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 118</p> <p>1 Stack</p> <p>2 you that this information had come from</p> <p>3 Morgan Stanley?</p> <p>4 MR. WISE: I am going to object,</p> <p>5 and direct her not to answer that, it</p> <p>6 calls for the substance of the</p> <p>7 conversation.</p> <p>8 (DIRECTION NOT TO ANSWER.)</p> <p>9 MR. BRODY: Okay. And, just so</p> <p>10 we are clear here, Tom, are these</p> <p>11 objections that Morgan Stanley is</p> <p>12 joining, as well?</p> <p>13 MR. CLARE: Yes.</p> <p>14 MR. WISE: As a matter of fact,</p> <p>15 my objections are based upon the</p> <p>16 privilege which belongs to Morgan</p> <p>17 Stanley.</p> <p>18 MR. BRODY: I understand.</p> <p>19 MR. WISE: It's not to Davis</p> <p>20 Polk.</p> <p>21 MR. BRODY: I understand that.</p> <p>22 Let me just put my cards on the</p> <p>23 table.</p> <p>24 If we have to litigate these</p> <p>25 instructions, I would rather litigate</p>	<p style="text-align: right;">Page 120</p> <p>1 Stack</p> <p>2 just so that my position is clear, I</p> <p>3 am asking Mr. Clare that in the event</p> <p>4 you believe, Mr. Clare, that counsel</p> <p>5 has overstated Morgan Stanley's</p> <p>6 privilege and objected to things that</p> <p>7 you don't believe are privileged, I</p> <p>8 would ask you to say so, so that we</p> <p>9 don't find out a month from now that:</p> <p>10 Oh, gee, Morgan Stanley doesn't</p> <p>11 believe that conversation was</p> <p>12 privileged.</p> <p>13 MR. CLARE: If you would like, I</p> <p>14 would be happy to join in each of the</p> <p>15 objections that Mr. Wise makes. I</p> <p>16 think, for economy, we can assume</p> <p>17 going forward, and with -- objections</p> <p>18 and instructions that Mr. Wise has</p> <p>19 made, that Morgan Stanley joins in</p> <p>20 the instructions and concurs in them,</p> <p>21 but if you would like me to state</p> <p>22 specifically Morgan Stanley's</p> <p>23 position with respect to each, we</p> <p>24 would be happy to do that.</p> <p>25 MR. BRODY: Oh, I don't think we</p>
<p style="text-align: right;">Page 119</p> <p>1 Stack</p> <p>2 them with Morgan Stanley, who I am</p> <p>3 suing, than you.</p> <p>4 MR. WISE: That's correct, you</p> <p>5 are welcome to do that and, as a</p> <p>6 matter of fact, I encourage you --</p> <p>7 MR. BRODY: I am sure you would.</p> <p>8 MR. WISE: -- to direct any</p> <p>9 dispute towards Mr. Clare and Morgan</p> <p>10 Stanley.</p> <p>11 MR. BRODY: Right. But I just</p> <p>12 want the --</p> <p>13 MR. WISE: As counsel for</p> <p>14 Ms. Stack here and, also, for the</p> <p>15 firm Davis Polk, given that the</p> <p>16 subject matter here relates to a</p> <p>17 representation that Davis Polk had of</p> <p>18 Morgan Stanley at the time, we are</p> <p>19 bound to respect the attorney/client</p> <p>20 privilege on behalf of our client,</p> <p>21 Morgan Stanley. We have been advised</p> <p>22 that Morgan Stanley is not waiving</p> <p>23 that privilege and, therefore, we</p> <p>24 must respect it.</p> <p>25 MR. BRODY: I understand but,</p>	<p style="text-align: right;">Page 121</p> <p>1 Stack</p> <p>2 need to burden the record, as long as</p> <p>3 I have your assurance that I've just</p> <p>4 received that you join in the</p> <p>5 objections and if for some reason you</p> <p>6 don't you tell me.</p> <p>7 MR. CLARE: I certainly will.</p> <p>8 Q. The conversation you indicated</p> <p>9 that you indicated you learned certain</p> <p>10 facts from Mr. Dean, was that on the</p> <p>11 telephone or in person?</p> <p>12 A. In person.</p> <p>13 Q. Do you know how long -- do you</p> <p>14 remember how long that conversation took?</p> <p>15 A. No. I mean, there were hours of</p> <p>16 calls that evening.</p> <p>17 Q. Do you know if any of the</p> <p>18 information that Mr. Dean gave you had</p> <p>19 been provided to him by Arthur Andersen?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you know if any of the</p> <p>22 information that Mr. Dean provided to you</p> <p>23 in that conversation had been provided to</p> <p>24 him by someone at Sunbeam, directly or</p> <p>25 indirectly?</p>

31 (Pages 118 to 121)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 122</p> <p>1 Stack</p> <p>2 A. Yeah, not that I recall.</p> <p>3 Q. How long after the communication</p> <p>4 with Mr. Dean and perhaps Mr. Lurie did</p> <p>5 you participate in the first call?</p> <p>6 A. I think we quickly got on the</p> <p>7 phone with our client, and then sometime</p> <p>8 after that there was a larger call</p> <p>9 involving the company and Sunbeam and</p> <p>10 Skadden and us and Morgan Stanley.</p> <p>11 Q. I'm sorry, you said --</p> <p>12 A. I'm sorry.</p> <p>13 Q. -- Sunbeam, Skadden, Davis Polk?</p> <p>14 A. Davis Polk, Morgan Stanley.</p> <p>15 Q. Thank you.</p> <p>16 A. I don't remember if anyone else</p> <p>17 was on it.</p> <p>18 Q. The communication, the larger</p> <p>19 call, with Sunbeam and Morgan Stanley and</p> <p>20 Skadden, and so on, was that one call or</p> <p>21 more than one call?</p> <p>22 A. I don't remember specifically.</p> <p>23 There were communications going</p> <p>24 on all evening.</p> <p>25 Q. What was the result of all these</p>	<p style="text-align: right;">Page 124</p> <p>1 Stack</p> <p>2 Does that entry refresh your</p> <p>3 recollection that, in fact, on or before</p> <p>4 the 18th, Davis Polk had a copy of the</p> <p>5 draft comfort letter?</p> <p>6 A. I don't have any reason to</p> <p>7 believe this isn't true, but I just don't</p> <p>8 remember it.</p> <p>9 Q. I understand.</p> <p>10 (Deposition Exhibit 110, draft</p> <p>11 comfort letter, and it bears a fax</p> <p>12 transmittal of 3-17-98 at what</p> <p>13 appears to be about 8:30 at night,</p> <p>14 previously marked for</p> <p>15 identification.)</p> <p>16 Q. Ms. Stack, I have handed you</p> <p>17 what's previously been marked as Exhibit</p> <p>18 110, CPH Exhibit 110, which is a draft</p> <p>19 comfort letter, and it bears a fax</p> <p>20 transmittal of 3-17-98 at what appears to</p> <p>21 be about 8:30 at night.</p> <p>22 My first question is, have you</p> <p>23 ever seen this before? Again, excluding</p> <p>24 communications with counsel yesterday.</p> <p>25 A. I just don't remember it. I</p>
<p style="text-align: right;">Page 123</p> <p>1 Stack</p> <p>2 calls?</p> <p>3 What was done as a result of all</p> <p>4 these calls?</p> <p>5 A. I think the group decided that</p> <p>6 the best course of action was for Sunbeam</p> <p>7 to issue a press release, telling the</p> <p>8 market that their -- I guess their numbers</p> <p>9 that the street expected were not going to</p> <p>10 be met, and to put that out prior to</p> <p>11 pricing so that the market had the</p> <p>12 information.</p> <p>13 Q. Are you aware whether, prior to</p> <p>14 your conversation with Mr. Dean, Arthur</p> <p>15 Andersen had provided a draft of its</p> <p>16 comfort letter?</p> <p>17 A. I just don't remember.</p> <p>18 Q. If we refer to the chronology</p> <p>19 that's been marked as Exhibit 24, the</p> <p>20 March 18 entry, among other things, says:</p> <p>21 "Review of draft comfort letters from</p> <p>22 Arthur Andersen and KPMG."</p> <p>23 I am not going to ask you about</p> <p>24 KPMG. Do you remember -- let me withdraw</p> <p>25 that.</p>	<p style="text-align: right;">Page 125</p> <p>1 Stack</p> <p>2 wouldn't -- I probably did see it, but I</p> <p>3 just don't remember it.</p> <p>4 Q. There is some handwriting on the</p> <p>5 document on the first page --</p> <p>6 MR. WISE: Are you representing,</p> <p>7 by the way, that the fax transmittal</p> <p>8 time at the top of the page was to</p> <p>9 anybody in particular? Because I see</p> <p>10 that the number is an area code, I</p> <p>11 believe that's 561?</p> <p>12 MR. BRODY: That's South</p> <p>13 Florida. I am not sure if that's the</p> <p>14 sending fax or the receiving fax, and</p> <p>15 I am not sure if it was faxed on to</p> <p>16 others. I am not making any</p> <p>17 representations about it.</p> <p>18 MR. WISE: I also notice that a</p> <p>19 little bit further to the right there</p> <p>20 is an abbreviation SBA, Inc. I</p> <p>21 assume, without knowing, that that's</p> <p>22 one of the Sunbeam entities?</p> <p>23 MR. BRODY: (Gesturing.) I</p> <p>24 can't speak to that.</p> <p>25 MR. WISE: All right.</p>

32 (Pages 122 to 125)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 126</p> <p>1 Stack</p> <p>2 MR. BRODY: Okay.</p> <p>3 Q. The first page of the document,</p> <p>4 there is some handwriting. Do you</p> <p>5 recognize it?</p> <p>6 A. No.</p> <p>7 Q. On the third page of the</p> <p>8 document, there is some additional</p> <p>9 handwriting. Do you recognize that?</p> <p>10 A. No.</p> <p>11 Q. Having flipped through this</p> <p>12 document, as you have, do you have any</p> <p>13 recollection of whether you saw this</p> <p>14 document at any time?</p> <p>15 A. Yeah, I just don't remember.</p> <p>16 Q. Would you please turn to the</p> <p>17 third page of the document. There is a</p> <p>18 paragraph 5, and I am referring in</p> <p>19 particular to 5 B. And it recites -- it</p> <p>20 compares Sunbeam's net sales and net</p> <p>21 income and loss from two periods,</p> <p>22 basically January of '97 to January of</p> <p>23 1998.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 128</p> <p>1 Stack</p> <p>2 tapes.</p> <p>3 THE LEGAL VIDEO SPECIALIST: The</p> <p>4 time is now 11:57, we have reached</p> <p>5 the end of tape number one, and we</p> <p>6 are off the record.</p> <p>7 (Pause in proceedings.)</p> <p>8 THE LEGAL VIDEO SPECIALIST:</p> <p>9 Okay. The time is now 11:59, this is</p> <p>10 tape number two, and we are back on</p> <p>11 the record.</p> <p>12 Q. We were looking at the draft of</p> <p>13 the comfort letter.</p> <p>14 In your experience on doing</p> <p>15 transactions, is it customary to receive</p> <p>16 the comfort letter prior to the day before</p> <p>17 pricing?</p> <p>18 A. It depends.</p> <p>19 It's customary to see it prior</p> <p>20 to the day of pricing, because that's the</p> <p>21 day it's delivered. It just depends on</p> <p>22 how the transaction is getting done as to</p> <p>23 when exactly that is prior to pricing.</p> <p>24 Q. Do you know if, in this</p> <p>25 transaction, if someone at Sunbeam or</p>
<p style="text-align: right;">Page 127</p> <p>1 Stack</p> <p>2 Q. Do you know if you had received</p> <p>3 that information prior to the conference</p> <p>4 calls on the 18th of March?</p> <p>5 A. I don't know. I don't know.</p> <p>6 Q. If you turn a couple of pages</p> <p>7 further -- I'm sorry, one page further,</p> <p>8 page 4 of the document, paragraph 6, and</p> <p>9 in particular paragraph 6 B, it describes,</p> <p>10 and I am paraphrasing, that consolidated</p> <p>11 net sales decreased as compared to the</p> <p>12 corresponding prior period due to the</p> <p>13 early buy program, and then it describes</p> <p>14 why net income decreased.</p> <p>15 A. (Nodding.)</p> <p>16 Q. Do you know if you received that</p> <p>17 information prior to the conference calls</p> <p>18 on the 18th?</p> <p>19 A. I don't know.</p> <p>20 MR. BRODY: Do we need to go off</p> <p>21 the record?</p> <p>22 THE LEGAL VIDEO SPECIALIST:</p> <p>23 Yes.</p> <p>24 MR. BRODY: We need to go off</p> <p>25 the record for a moment to change the</p>	<p style="text-align: right;">Page 129</p> <p>1 Stack</p> <p>2 Morgan Stanley or Davis Polk asked</p> <p>3 Andersen for the comfort letter or did</p> <p>4 Andersen just send it?</p> <p>5 A. I don't remember specifically,</p> <p>6 but you almost always have to ask the</p> <p>7 accountants for letters, so....</p> <p>8 Q. But, in this case, you don't</p> <p>9 remember any conversations in which it was</p> <p>10 requested.</p> <p>11 A. No.</p> <p>12 Q. You have testified that you</p> <p>13 learned of the events of -- let me</p> <p>14 withdraw that.</p> <p>15 You testified that you learned</p> <p>16 about Sunbeam's sales on the 18th and you</p> <p>17 have identified a conversation with</p> <p>18 Mr. Dean and some later calls. Aside from</p> <p>19 what you learned in that conversation with</p> <p>20 Mr. Dean and in the later calls, did you</p> <p>21 ever learn any other information from any</p> <p>22 other source about how Sunbeam's sales</p> <p>23 were going in the first quarter?</p> <p>24 A. Not that I remember.</p> <p>25 That general discussion is</p>

33 (Pages 126 to 129)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 130</p> <p>1 Stack</p> <p>2 really the source of my knowledge on the</p> <p>3 subject.</p> <p>4 Q. Do you remember any other source</p> <p>5 of information that you had for -- let's</p> <p>6 me withdraw that.</p> <p>7 Okay. Returning to the night of</p> <p>8 the 18th. I believe you indicated that</p> <p>9 you called -- excuse me, you had a</p> <p>10 conversation with Mr. Dean. We have</p> <p>11 talked about that. There was later a call</p> <p>12 with the client. That's Morgan Stanley?</p> <p>13 A. Yes.</p> <p>14 Q. Is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Who was on the call with Morgan</p> <p>17 Stanley?</p> <p>18 A. I think -- I believe John Tyree</p> <p>19 was on the call. I also looked at a piece</p> <p>20 of paper I looked at yesterday, and that</p> <p>21 caused me to remember that Ruth Porat was</p> <p>22 on some of the calls. And I don't know if</p> <p>23 it was the calls just between Davis Polk</p> <p>24 and Morgan Stanley, or on the later calls,</p> <p>25 but I remember she -- I remember that she</p>	<p style="text-align: right;">Page 132</p> <p>1 Stack</p> <p>2 participated in the call?</p> <p>3 A. That name sounds very</p> <p>4 familiar -- yeah, that name sounds</p> <p>5 familiar, although I can't tell you for</p> <p>6 sure.</p> <p>7 Q. Mr. Stynes, S-T-Y-N-E-S?</p> <p>8 A. I don't remember that one.</p> <p>9 Q. Mr. Kitts, K-I-T-T-S?</p> <p>10 A. I also don't remember that.</p> <p>11 Q. Fair enough.</p> <p>12 Or Mr. Fuchs, F-U-C-H-S.</p> <p>13 A. That name sounds familiar, but I</p> <p>14 don't remember for sure if he was on.</p> <p>15 Q. So, as you sit here, you recall</p> <p>16 Mr. Tyree and Ms. Porat and you are not</p> <p>17 certain about Mr. Strong, Mr. Fuchs, and</p> <p>18 perhaps others.</p> <p>19 A. Right, right.</p> <p>20 Q. Who participated in the call on</p> <p>21 behalf of Davis Polk?</p> <p>22 A. Alan Dean, Jim Lurie, and myself</p> <p>23 were on the call, although I am sure I</p> <p>24 didn't say anything, (smiling).</p> <p>25 Q. Did Mr. Dean and Mr. Lurie do</p>
<p style="text-align: right;">Page 131</p> <p>1 Stack</p> <p>2 participated.</p> <p>3 Q. Do you remember anyone else from</p> <p>4 Morgan Stanley on the call?</p> <p>5 A. There may have been others, but</p> <p>6 I don't remember specifically.</p> <p>7 Q. You said you saw a piece of</p> <p>8 paper that said Ms. Porat participated.</p> <p>9 Do you remember what that piece of paper</p> <p>10 was?</p> <p>11 A. It was actually a sheet of paper</p> <p>12 that listed the sales for Sunbeam, and I</p> <p>13 think her name might have been handwritten</p> <p>14 on it and then I saw that name and</p> <p>15 remembered.</p> <p>16 Q. Okay. Aside from Ms. Porat's</p> <p>17 participation in that conference call, did</p> <p>18 you have any other conversations with</p> <p>19 Ms. Porat about this deal?</p> <p>20 A. I didn't specifically that I</p> <p>21 remember, but I was the junior person, so</p> <p>22 I probably would not have had those</p> <p>23 conversations.</p> <p>24 Q. Do you know if Mr. Strong,</p> <p>25 William Strong or Bill Strong,</p>	<p style="text-align: right;">Page 133</p> <p>1 Stack</p> <p>2 the talking?</p> <p>3 A. Yes, yes.</p> <p>4 Q. Aside from individuals from</p> <p>5 Morgan Stanley and individuals from Davis</p> <p>6 Polk, were there any other individuals on</p> <p>7 the call?</p> <p>8 This is the initial call.</p> <p>9 A. Oh, the initial call?</p> <p>10 Q. Yes.</p> <p>11 A. No, I don't think so.</p> <p>12 I think there was one call</p> <p>13 between us and then there was a larger</p> <p>14 all-hands call.</p> <p>15 Q. Okay, I am referring to the call</p> <p>16 before the all-hands call.</p> <p>17 A. Yeah, I don't think so.</p> <p>18 Q. Do you recall, in words or</p> <p>19 substance, what was discussed in the call,</p> <p>20 the initial call?</p> <p>21 MR. WISE: You can answer that</p> <p>22 "Yes" or "No".</p> <p>23 MR. BRODY: That's my intention.</p> <p>24 A. Vaguely, yes.</p> <p>25 Q. Did you take any notes of that</p>

34 (Pages 130 to 133)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 134</p> <p>1 Stack</p> <p>2 call?</p> <p>3 A. I don't remember, I don't</p> <p>4 remember.</p> <p>5 Q. Do you know if anyone else took</p> <p>6 notes?</p> <p>7 A. I don't remember.</p> <p>8 Q. You have no reason to think that</p> <p>9 it was recorded or transcribed by anyone?</p> <p>10 A. No, no.</p> <p>11 Q. How long did the call take?</p> <p>12 This is the initial call.</p> <p>13 A. I don't remember. It's hard to</p> <p>14 divide it up.</p> <p>15 Q. Can you estimate? More than an</p> <p>16 hour? Less than an hour?</p> <p>17 A. I just don't remember --</p> <p>18 Q. Fair enough.</p> <p>19 A. -- the time.</p> <p>20 Q. What do you recall -- I believe</p> <p>21 you said your recollection was vague, but</p> <p>22 what do you recall about the substance of</p> <p>23 the call?</p> <p>24 MR. WISE: I am going to object,</p> <p>25 and direct her not to answer. It's a</p>	<p style="text-align: right;">Page 136</p> <p>1 Stack</p> <p>2 A. Yeah -- yes.</p> <p>3 Q. And this is a call on the 18th?</p> <p>4 A. Yes, the night before pricing,</p> <p>5 yes.</p> <p>6 Q. Do you know when it started,</p> <p>7 what hour?</p> <p>8 A. I would have to say sometime in</p> <p>9 the evening, but I don't know exactly</p> <p>10 when.</p> <p>11 Q. I assume close to printing</p> <p>12 people working on these deals were putting</p> <p>13 in pretty long hours?</p> <p>14 A. Yes.</p> <p>15 Q. And that's customary on a</p> <p>16 transaction such as this?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall if it was before</p> <p>19 or after dinner?</p> <p>20 A. I don't, I don't remember.</p> <p>21 Q. Who was on the call, the</p> <p>22 "all-hands call"?</p> <p>23 A. The people from Davis Polk that</p> <p>24 I mentioned, Alan and Jim Lurie, and then</p> <p>25 the Morgan Stanley team, and I think that</p>
<p style="text-align: right;">Page 135</p> <p>1 Stack</p> <p>2 privileged conversation.</p> <p>3 (DIRECTION NOT TO ANSWER.)</p> <p>4 Q. Do you have an understanding as</p> <p>5 to what the -- let me withdraw that.</p> <p>6 As a result of the call, was it</p> <p>7 decided between the two of you to take</p> <p>8 certain action?</p> <p>9 A. Uh --</p> <p>10 MR. WISE: Why don't you just</p> <p>11 ask her what happened next.</p> <p>12 MR. BRODY: Well, okay.</p> <p>13 Q. What happened next?</p> <p>14 A. We got on a call with the</p> <p>15 company and their lawyers.</p> <p>16 Q. Okay. Whose idea was it to have</p> <p>17 that call? Was it Davis Polk's idea or</p> <p>18 had it been set up by the company or</p> <p>19 someone else? If you remember.</p> <p>20 A. I don't remember.</p> <p>21 Q. Now, referring to the second</p> <p>22 call, I think you earlier called that the</p> <p>23 "all-hands call"?</p> <p>24 A. (Nodding.)</p> <p>25 Q. Is that a fair shorthand?</p>	<p style="text-align: right;">Page 137</p> <p>1 Stack</p> <p>2 John and Ruth were on, and then, as to</p> <p>3 others, I can't speak to who else was on,</p> <p>4 but I wouldn't be surprised but I would</p> <p>5 guess that there were others, and then</p> <p>6 there were some folks from Skadden, but I</p> <p>7 don't really remember names of those</p> <p>8 people. Then there were some people from</p> <p>9 Sunbeam.</p> <p>10 Q. Let me just mention some --</p> <p>11 A. Okay.</p> <p>12 Q. -- names from Skadden Arps.</p> <p>13 Todd Freed, was he on the call?</p> <p>14 A. You know, he was probably my</p> <p>15 counterpart junior associate, from the</p> <p>16 things I have seen, so he may have been,</p> <p>17 and he probably didn't say anything,</p> <p>18 either.</p> <p>19 Q. Adrian Dietz?</p> <p>20 A. Yeah, that name sounds familiar.</p> <p>21 Q. Gregory Fernicola,</p> <p>22 F-E-R-N-I-C-O-L-A?</p> <p>23 A. Yes, that name sounds familiar,</p> <p>24 too.</p> <p>25 Q. You believe Mr. Fernicola was on</p>

35 (Pages 134 to 137)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 138</p> <p>1 Stack</p> <p>2 the call?</p> <p>3 A. Yeah. There were a couple of --</p> <p>4 I wouldn't say -- there was at least one</p> <p>5 partner from Skadden and maybe two, and</p> <p>6 that name sounds like it may have been</p> <p>7 him, I can't be sure.</p> <p>8 Q. Peter Neckles, N-E-C-K-L-E-S?</p> <p>9 A. I don't remember that one.</p> <p>10 Q. Michele Gartland?</p> <p>11 A. I don't remember that name.</p> <p>12 Q. Leander Gray?</p> <p>13 A. Hmm -- that sounds familiar, but</p> <p>14 I don't -- I couldn't tell you whether he</p> <p>15 was on the call or not.</p> <p>16 Q. How about Bill Weiss?</p> <p>17 A. Bill Weiss -- also, I don't</p> <p>18 know.</p> <p>19 Q. Who from Sunbeam was on the</p> <p>20 call?</p> <p>21 A. Just from yesterday, I</p> <p>22 remembered that the name Uzzi was familiar</p> <p>23 to me. I remember him, I think, talking</p> <p>24 quite a lot. And there were a few other</p> <p>25 names that I heard yesterday that sounded</p>	<p style="text-align: right;">Page 140</p> <p>1 Stack</p> <p>2 A. I think it went on for a couple</p> <p>3 of hours.</p> <p>4 Q. And do you know when it</p> <p>5 finished?</p> <p>6 A. I don't know, I don't know the</p> <p>7 exact time.</p> <p>8 Q. During the call, did you review</p> <p>9 any papers or documents that had been sent</p> <p>10 to you?</p> <p>11 A. Yesterday, I saw that sheet of</p> <p>12 paper that has the list of sales on it,</p> <p>13 and I didn't remember until then, but that</p> <p>14 looked like -- I think I remembered seeing</p> <p>15 that during those series of calls.</p> <p>16 (Deposition Exhibit CPH 16,</p> <p>17 document, previously marked for</p> <p>18 identification.)</p> <p>19 (Deposition Exhibit CPH 63,</p> <p>20 document, previously marked for</p> <p>21 identification.)</p> <p>22 (Deposition Exhibit CPH 64,</p> <p>23 document, previously marked for</p> <p>24 identification.)</p> <p>25 (Deposition Exhibit CPH 65,</p>
<p style="text-align: right;">Page 139</p> <p>1 Stack</p> <p>2 familiar. Janet Kelley sounds familiar.</p> <p>3 I don't know whether she was on that call.</p> <p>4 And there were a couple of other names</p> <p>5 that now I am not remembering.</p> <p>6 Q. Okay. Mr. Kersh?</p> <p>7 A. Yes, that name sounds familiar.</p> <p>8 Q. You believe Kersh was on the</p> <p>9 call?</p> <p>10 A. I think so. I believe so.</p> <p>11 Q. Mr. Gluck, G-L-U-C-K?</p> <p>12 A. Yeah, that name sounds familiar,</p> <p>13 as well. I can't tell you for sure</p> <p>14 whether he was on it.</p> <p>15 Q. Do you know if Mr. Dunlap was on</p> <p>16 the call?</p> <p>17 A. I don't think so.</p> <p>18 Q. Mr. Goudis?</p> <p>19 A. Goudis sounds familiar, as well.</p> <p>20 Q. Ms. MacDonald, Deborah</p> <p>21 MacDonald?</p> <p>22 A. Yeah, that name just doesn't</p> <p>23 ring a bell with me.</p> <p>24 Q. How long did the call or series</p> <p>25 of calls last?</p>	<p style="text-align: right;">Page 141</p> <p>1 Stack</p> <p>2 document, previously marked for</p> <p>3 identification.)</p> <p>4 (Deposition Exhibit CPH 66,</p> <p>5 document, previously marked for</p> <p>6 identification.)</p> <p>7 Q. Okay. Ms. Stack, I am giving</p> <p>8 you a slug of documents that have been</p> <p>9 marked in prior depositions. And let me</p> <p>10 just recite, for the record, what I have</p> <p>11 done, and then I will ask you a question</p> <p>12 about it.</p> <p>13 Various versions of a document</p> <p>14 similar to what I think you described have</p> <p>15 been marked in other depositions, and I</p> <p>16 have given you copies of documents that</p> <p>17 have been previously marked as CPH Exhibit</p> <p>18 16, CPH Exhibit 63, CPH Exhibit 64,</p> <p>19 CPH Exhibit 65, and CPH Exhibit 66. From</p> <p>20 looking at those documents, can you tell</p> <p>21 me if any of them were, in fact, the</p> <p>22 document that you saw that evening.</p> <p>23 MR. CLARE: Are you asking</p> <p>24 exclusive of the handwriting or</p> <p>25 inclusive?</p>

36 (Pages 138 to 141)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 142</p> <p>1 Stack</p> <p>2 MR. BRODY: In the form in which</p> <p>3 I have given it to her or -- well,</p> <p>4 let me ask that question. Thank you,</p> <p>5 Tom.</p> <p>6 Q. The document that you saw that</p> <p>7 evening, did it have handwriting on it?</p> <p>8 A. Um -- I don't remember, when I</p> <p>9 saw it, if it did.</p> <p>10 Q. Okay. Well, then, looking at</p> <p>11 these documents, do any of them strike you</p> <p>12 as the document that you saw that evening?</p> <p>13 A. Um -- yeah, I mean, the first</p> <p>14 one looked familiar to me when I saw it</p> <p>15 yesterday. It's possible that the last</p> <p>16 one almost looks like my handwriting, not</p> <p>17 on the sort of the stuff that's very hard</p> <p>18 to read.</p> <p>19 Q. And the other ones, do you</p> <p>20 believe those were ones that you saw that</p> <p>21 evening?</p> <p>22 Obviously, there are great</p> <p>23 similarities between the documents.</p> <p>24 A. Yeah, they all look generally</p> <p>25 the same.</p>	<p style="text-align: right;">Page 144</p> <p>1 Stack</p> <p>2 Q. Can you read into the record</p> <p>3 what it says, to the best of your</p> <p>4 knowledge?</p> <p>5 A. That looks like over on the</p> <p>6 sides it says: "25 million on" something</p> <p>7 "grills", and then I see a number "60" and</p> <p>8 the word "more", but I can't really read</p> <p>9 the rest of it.</p> <p>10 Q. Does the word before it -- is</p> <p>11 the word before it "expect", as in "expect</p> <p>12 60 more"?</p> <p>13 A. Yeah, that could be "expect",</p> <p>14 "expect 60 more".</p> <p>15 Q. And is there a question mark</p> <p>16 after "60"?</p> <p>17 A. Yeah, it looks like there could</p> <p>18 be.</p> <p>19 Q. Having read through that, do you</p> <p>20 now believe that is your handwriting or</p> <p>21 you are still not certain?</p> <p>22 A. You know, it looks a lot like</p> <p>23 mine. I wish I could see it. It's just</p> <p>24 very hard to read.</p> <p>25 Q. I understand. I don't know who</p>
<p style="text-align: right;">Page 143</p> <p>1 Stack</p> <p>2 The first one sort of looks the</p> <p>3 most familiar to me. I am not sure about</p> <p>4 that next -- I guess it's 63 --</p> <p>5 Q. Yes.</p> <p>6 A. That looks like more detail of</p> <p>7 the same thing.</p> <p>8 I don't specifically remember</p> <p>9 that, but, you know, it could have been</p> <p>10 there.</p> <p>11 Q. Okay. Well, let's focus on the</p> <p>12 first one and the last one, on CPH</p> <p>13 Exhibit 16 and CPH Exhibit 66. If I could</p> <p>14 ask you, we will just talk about the last</p> <p>15 one first --</p> <p>16 A. Okay.</p> <p>17 Q. -- the CPH Exhibit 66.</p> <p>18 The handwriting at the top that</p> <p>19 appears to be some phone numbers, that's</p> <p>20 not your handwriting.</p> <p>21 A. No, no.</p> <p>22 Q. The other handwriting that is</p> <p>23 fainter, is that what you believe may be</p> <p>24 your handwriting?</p> <p>25 A. Yeah, that could be mine.</p>	<p style="text-align: right;">Page 145</p> <p>1 Stack</p> <p>2 has the original, but we do not.</p> <p>3 Okay. The writing at the</p> <p>4 bottom, can you read that?</p> <p>5 A. It looks like "plus 30 million",</p> <p>6 and then there is an arrow, and it says</p> <p>7 something that I just can't make out.</p> <p>8 Q. And the items below that?</p> <p>9 A. Yeah, and it's again "plus", I</p> <p>10 don't know if that's "35" or "15", and</p> <p>11 then, down below that, it looks like it</p> <p>12 says "5" I guess "million", maybe "Latin</p> <p>13 America", so it looks like just trying to</p> <p>14 come up with numbers and they must have</p> <p>15 been telling us on the call.</p> <p>16 Q. Do you believe those are notes</p> <p>17 that you took on the evening of the call?</p> <p>18 A. Yeah, I think it probably is.</p> <p>19 Q. And then looking at the document</p> <p>20 that's marked as Exhibit 16, the first</p> <p>21 one, I believe, that appears to be the</p> <p>22 same document --</p> <p>23 A. Right.</p> <p>24 Q. -- without the handwriting.</p> <p>25 A. Right.</p>

37 (Pages 142 to 145)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 146</p> <p>1 Stack</p> <p>2 Q. And then, is that the copy --</p> <p>3 the document, rather, you believe that you</p> <p>4 saw that evening?</p> <p>5 A. Sorry, it's -- it looks like</p> <p>6 it's the same as the document in the back,</p> <p>7 it's just that there is some additional</p> <p>8 handwriting on it.</p> <p>9 Q. Okay.</p> <p>10 A. That is -- I guess has come from</p> <p>11 someone else.</p> <p>12 Q. And by that, you are referring</p> <p>13 to the reference to "Porat" in the middle?</p> <p>14 A. Right, and then that circle of</p> <p>15 that number with the question mark and the</p> <p>16 reference at the top to "72".</p> <p>17 Q. That's not your handwriting.</p> <p>18 A. No.</p> <p>19 Q. Okay. One last thing on Exhibit</p> <p>20 66, the one that you thought may be your</p> <p>21 handwriting.</p> <p>22 A. Mm-hmm.</p> <p>23 Q. To the left of the list of</p> <p>24 names, there is some handwriting, it's</p> <p>25 difficult to read. Do you recognize that?</p>	<p style="text-align: right;">Page 148</p> <p>1 Stack</p> <p>2 about, you know, where they stood at their</p> <p>3 numbers at the time. And I think that's</p> <p>4 where this (indicating) piece of paper</p> <p>5 comes in, and how they expected to get to</p> <p>6 whatever number they expected to get to,</p> <p>7 which I believe was something in excess of</p> <p>8 the same quarter from the prior year.</p> <p>9 And, so, we -- I think we walked through a</p> <p>10 lot of that detail. And then, at the end</p> <p>11 of the day, all determined that the best</p> <p>12 way to go was to put out a press release</p> <p>13 to let the market know that they were not</p> <p>14 going to hit that first quarter target</p> <p>15 that was out there and let the market</p> <p>16 react to that before pricing the</p> <p>17 transaction.</p> <p>18 Q. During the call, did anyone from</p> <p>19 Morgan Stanley -- let me withdraw that.</p> <p>20 During the call, did you learn</p> <p>21 when this news had reached Morgan Stanley</p> <p>22 and/or Davis Polk?</p> <p>23 MR. WISE: I'm sorry, do you</p> <p>24 understand that question?</p> <p>25 THE WITNESS: I am not exactly</p>
<p style="text-align: right;">Page 147</p> <p>1 Stack</p> <p>2 A. No, I can't.</p> <p>3 Q. Okay.</p> <p>4 A. No, I don't know what that says.</p> <p>5 Q. Aside from the documents that we</p> <p>6 have just looked at -- Exhibit 16 and</p> <p>7 Exhibit 66 -- do you remember any other</p> <p>8 documents you looked at that evening</p> <p>9 during the call, during the all-hands</p> <p>10 call?</p> <p>11 A. No, not that -- I don't remember</p> <p>12 anything else.</p> <p>13 Q. Okay. What do you remember</p> <p>14 being discussed in the all-hands call?</p> <p>15 A. The night I generally remember,</p> <p>16 and I have to say I don't remember the</p> <p>17 specifics of the conversation, but I</p> <p>18 remember that we had learned that Sunbeam</p> <p>19 wouldn't be -- hit their sales numbers for</p> <p>20 the first quarter or were going to be</p> <p>21 lower, I guess, than the expectations on</p> <p>22 the street and, so, we discussed how we</p> <p>23 should -- you know, what we should do</p> <p>24 about that, given that we were supposed to</p> <p>25 price a deal the next day. And we talked</p>	<p style="text-align: right;">Page 149</p> <p>1 Stack</p> <p>2 sure --</p> <p>3 Q. Then let me ask it.</p> <p>4 A. Yeah.</p> <p>5 Q. Was it a surprise to people on</p> <p>6 the call that Sunbeam was not going to</p> <p>7 meet the street's expectations?</p> <p>8 MR. WISE: She can answer as to</p> <p>9 her own reaction to it. Obviously, I</p> <p>10 am not sure how she can react -- or,</p> <p>11 I am not sure how she can answer as</p> <p>12 to whether the other people were</p> <p>13 surprised.</p> <p>14 A. Yes, it was a surprise.</p> <p>15 Q. Was it a surprise to you?</p> <p>16 A. To me, yes.</p> <p>17 Q. Did others express in the</p> <p>18 meeting that this was news to them, that</p> <p>19 they didn't know this before?</p> <p>20 A. Um --</p> <p>21 THE WITNESS: I think that might</p> <p>22 go to some privileged conversations.</p> <p>23 MR. WISE: This is --</p> <p>24 Q. I am not asking --</p> <p>25 MR. WISE: No, no, only during</p>

38 (Pages 146 to 149)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 150</p> <p>1 Stack 2 the course of the call -- 3 THE WITNESS: Oh. 4 MR. WISE: -- did anybody say 5 anything in front of all the other 6 people -- 7 THE WITNESS: I see, surprise. 8 MR. WISE: -- expressing 9 surprise. 10 A. Gosh, I don't remember 11 specifically. 12 I think that was the general 13 tone of the discussions. 14 Q. Who in the call was answering 15 questions about Sunbeam's sales to date 16 and sales prospects? 17 Who provided that information? 18 A. You know, I can't say for 19 certain. 20 It was definitely a man from 21 Sunbeam and, upon hearing the names 22 yesterday, I guess Uzzi and Goudis and 23 Kersh, I believe it was some combination 24 of the three of them. 25 Q. Okay. What did the Sunbeam</p>	<p style="text-align: right;">Page 152</p> <p>1 Stack 2 to get to that number. And there was a 3 lot of discussion around that topic. 4 I don't remember a lot of 5 specifics. 6 Q. Turn to the document marked as 7 Exhibit 66. 8 The numbers at the top, January 9 consolidated net sales actual, February 10 consolidated net sales actual, and March 11 international net sales through 3-15. Do 12 you remember any discussion about those 13 numbers that appear to be actual numbers? 14 A. Yeah, again, I mean, I remember 15 general discussions of what they had sold 16 to date so, presumably, those are the 17 actual numbers listed here. 18 Q. The next item is March 19 international net sales forecast. And I 20 believe it's 3-16-98 through 3-28 or 29, 21 '98. 22 Do you remember any discussions 23 about that nearly \$40 million in sales? 24 A. Yeah, not specifically on 25 international sales. Presumably, it was</p>
<p style="text-align: right;">Page 151</p> <p>1 Stack 2 man -- either Mr. Uzzi, Goudis, or 3 Kersh -- represent or state about the 4 state of Sunbeam's first quarter sales? 5 A. Again, I can't tell you 6 specifically but, you know, generally, it 7 was that they were lower than expected and 8 that, you know, these were the 9 (indicating) numbers that they had gotten 10 to, and I think everybody was looking at 11 sort of this sheet of paper, and then 12 there was a general explanation of how 13 they expected to get to that -- I think 14 what they had told us was that they 15 weren't going to hit the numbers that the 16 street had out there currently, but they 17 would still be in excess of the sales from 18 the prior year during that period. And, 19 so, I believe that's what went out in the 20 press release and, so, there was an 21 explanation to how they were going to get 22 from the numbers here, (indicating), which 23 were the actual sales, I guess, as of -- 24 it looks like March 17th on here, to I 25 guess the end of March to get to those --</p>	<p style="text-align: right;">Page 153</p> <p>1 Stack 2 part of the discussion of how they were 3 going to get to that number, but I don't 4 remember specifically talking about that 5 one. 6 Q. You don't remember anyone asking 7 questions about that number or whether 8 that forecast was going to happen or not? 9 A. I am sure that those questions 10 were asked, I just don't remember the 11 detail of it. 12 Q. The next item refers to March 13 domestic net sales through 3-17-98. Do 14 you remember any discussion about that 15 number? 16 A. Again, I think it was the 17 general discussion of how they would get 18 to the number they were going to tell the 19 market and -- but I don't remember 20 specifically -- 21 Q. I understand. 22 A. -- conversations. 23 Q. And the next item is March 24 domestic open orders. Do you have an 25 understanding of what it meant to be an</p>

39 (Pages 150 to 153)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 154</p> <p>1 Stack</p> <p>2 "open order"?</p> <p>3 Do you remember what they said?</p> <p>4 A. I don't. I don't remember what</p> <p>5 the explanation was, no.</p> <p>6 Q. Do you understand that those</p> <p>7 items were orders that Sunbeam had already</p> <p>8 received or were they orders to be</p> <p>9 expected?</p> <p>10 A. Frankly, I just don't remember.</p> <p>11 Q. Okay. The next -- excuse me, I</p> <p>12 skipped over something.</p> <p>13 The international net sales item</p> <p>14 and the domestic net sales and open order</p> <p>15 items have little notes, "1" and "2",</p> <p>16 after them, which refer down to the bottom</p> <p>17 of a "waterfall". Do you recall what a</p> <p>18 "waterfall" is or means in this context?</p> <p>19 A. You know, I could guess, but I</p> <p>20 don't remember.</p> <p>21 Q. I am not asking you to guess.</p> <p>22 A. Yeah, I just don't remember what</p> <p>23 that means.</p> <p>24 Q. Do you remember any discussion</p> <p>25 in the meeting, the all-hands call, about</p>	<p style="text-align: right;">Page 156</p> <p>1 Stack</p> <p>2 potential orders?</p> <p>3 A. Again, I am sure they did, this</p> <p>4 was a source of great concern for</p> <p>5 everybody, but I don't remember it</p> <p>6 specifically.</p> <p>7 Q. Okay. Now, there is an</p> <p>8 identification of a variety of customers,</p> <p>9 starting at Home Depot and going through</p> <p>10 other. Do you remember any discussion</p> <p>11 about any of those particular customers?</p> <p>12 A. No.</p> <p>13 Q. Do you remember anyone raising</p> <p>14 at the meeting whether some or all of</p> <p>15 these customers had existing inventory of</p> <p>16 Sunbeam products or not?</p> <p>17 A. No, I don't remember that.</p> <p>18 Q. Do you remember any discussion</p> <p>19 in the meeting -- in the conference call,</p> <p>20 rather, about whether some of these</p> <p>21 individual customers would require</p> <p>22 discounts from Sunbeam in order to make</p> <p>23 additional purchases?</p> <p>24 A. I don't remember anything</p> <p>25 specific about that, no.</p>
<p style="text-align: right;">Page 155</p> <p>1 Stack</p> <p>2 what that "waterfall" meant and whether it</p> <p>3 would require deduction from those sales</p> <p>4 that are referenced?</p> <p>5 A. Not specifically, I don't.</p> <p>6 Q. Okay. Now, the items below,</p> <p>7 under Potential orders, list a variety of</p> <p>8 customers, and they appear to total 86.0.</p> <p>9 Do you see that?</p> <p>10 A. Mm-hmm.</p> <p>11 Q. Do you recall any discussion</p> <p>12 about what it meant to be a "potential</p> <p>13 order"?</p> <p>14 A. Again, I am sure it was</p> <p>15 discussed, but I just don't remember it</p> <p>16 specifically.</p> <p>17 Q. Do you have an understanding</p> <p>18 whether these were orders that Sunbeam had</p> <p>19 actually received or whether they were</p> <p>20 orders they hoped to receive, fill, and</p> <p>21 ship in the next 10 or 11 days?</p> <p>22 A. I actually don't remember.</p> <p>23 Q. Do you remember if anyone on the</p> <p>24 call asked questions about that, about</p> <p>25 whether those were real orders or</p>	<p style="text-align: right;">Page 157</p> <p>1 Stack</p> <p>2 Q. Do you recall any discussion in</p> <p>3 the conference call or questions being</p> <p>4 asked by anyone about whether, in order to</p> <p>5 make these sales, Sunbeam would have to</p> <p>6 offer price discounts?</p> <p>7 A. I just don't remember.</p> <p>8 Q. Do you remember any discussion</p> <p>9 in the conference call about Sunbeam's</p> <p>10 expected earnings for the first quarter?</p> <p>11 A. You know, we were very focused</p> <p>12 on these sales numbers. I wouldn't be</p> <p>13 surprised to hear the earnings was also --</p> <p>14 I mean, obviously, that's also an</p> <p>15 important metric, but I don't remember</p> <p>16 specific conversations about it.</p> <p>17 Q. Do you remember if anyone asked,</p> <p>18 you know: We have been talking about what</p> <p>19 the street expects on sales, will you meet</p> <p>20 what the street expects on earnings?</p> <p>21 A. I don't remember.</p> <p>22 Q. You have discussed in general</p> <p>23 terms -- or, rather, your general</p> <p>24 recollection of what you recall from this</p> <p>25 conversation. Do you remember anything</p>

40 (Pages 154 to 157)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 158</p> <p>1 Stack</p> <p>2 else that was said, in words or in</p> <p>3 substance, in the call?</p> <p>4 A. I think I have given you</p> <p>5 everything that I remember.</p> <p>6 Q. You indicate that, as a result</p> <p>7 of this conversation, it was resolved to</p> <p>8 send -- to issue a press release?</p> <p>9 A. Yes.</p> <p>10 Q. Who made that decision?</p> <p>11 A. I mean, it was a decision made</p> <p>12 by I think everyone on the call jointly</p> <p>13 thought it was the best -- the best action</p> <p>14 to take.</p> <p>15 I can't remember if somebody</p> <p>16 pushed it more than others, but at the end</p> <p>17 of the day it was decided by everyone to</p> <p>18 do that.</p> <p>19 Q. And do you recall who was</p> <p>20 charged with drafting the press release?</p> <p>21 A. I think it was probably Skadden,</p> <p>22 as the company's counsel.</p> <p>23 Q. Do you recall --</p> <p>24 A. Yeah, I am probably just</p> <p>25 speculating, I don't remember</p>	<p style="text-align: right;">Page 160</p> <p>1 Stack</p> <p>2 A. Again, I just don't remember a</p> <p>3 specific conversation about it.</p> <p>4 Q. Now, the document that we have</p> <p>5 been looking at, marked as Exhibit 66,</p> <p>6 reflects some numbers about actual sales</p> <p>7 to date and some numbers about expected</p> <p>8 sales, that is, sales between that point</p> <p>9 and the end of the quarter.</p> <p>10 From the point of this all-hands</p> <p>11 conference call on, do you know if anyone</p> <p>12 at Davis Polk or Morgan Stanley did</p> <p>13 anything to see if those sales actually</p> <p>14 materialized?</p> <p>15 A. I don't, no.</p> <p>16 Q. Did you?</p> <p>17 A. Not that I recall. I mean,</p> <p>18 there is typically a bringing-down due</p> <p>19 diligence call where I am sure this was</p> <p>20 asked about, but I don't remember</p> <p>21 specifically.</p> <p>22 Q. In the conference call, did</p> <p>23 Mr. Uzzi or Mr. Goudis or Mr. Kersh or any</p> <p>24 other participant refer to what</p> <p>25 information Sunbeam kept track of on a</p>
<p style="text-align: right;">Page 159</p> <p>1 Stack</p> <p>2 specifically.</p> <p>3 Q. Do you know if Morgan Stanley or</p> <p>4 its counsel, Davis Polk, reviewed drafts</p> <p>5 of the press release?</p> <p>6 A. I am sure that we did. I don't</p> <p>7 remember reviewing it myself. But, again,</p> <p>8 as the junior person, it probably would</p> <p>9 have gone to the more senior people.</p> <p>10 Q. In the conversation, the "all-</p> <p>11 hands" conference call, did anyone state</p> <p>12 what they expected Mr. Dunlap's reaction</p> <p>13 would be to this?</p> <p>14 A. I don't remember specifically</p> <p>15 anybody saying anything about it.</p> <p>16 Q. Do you remember anyone saying:</p> <p>17 Oh, gee, we are going to have to talk to</p> <p>18 Dunlap about this, or: I need to talk to</p> <p>19 Dunlap?</p> <p>20 A. It sounds like something that</p> <p>21 might have been said, but I just don't</p> <p>22 remember it specifically.</p> <p>23 Q. Do you remember anyone saying</p> <p>24 that Dunlap would be upset or disappointed</p> <p>25 if this press release were issued?</p>	<p style="text-align: right;">Page 161</p> <p>1 Stack</p> <p>2 daily basis to show how its sales were</p> <p>3 going?</p> <p>4 A. That was the sort of information</p> <p>5 I feel like we were discussing, but I</p> <p>6 don't remember specifics.</p> <p>7 Q. But did they report to you, for</p> <p>8 example, that, in fact, they kept track of</p> <p>9 sales on a daily basis, they had a daily</p> <p>10 scorecard?</p> <p>11 A. I just don't remember</p> <p>12 specifically.</p> <p>13 Q. Do you remember ever looking at</p> <p>14 any daily scorecards or daily sales</p> <p>15 reports for Sunbeam?</p> <p>16 A. I don't, no.</p> <p>17 Q. Now, aside -- do you remember</p> <p>18 anything else that took place in this all-</p> <p>19 hands conference call?</p> <p>20 A. No, I don't.</p> <p>21 Q. Aside from the conference call,</p> <p>22 do you remember any other discussions</p> <p>23 about Sunbeam's first-quarter sales</p> <p>24 between that point and the closing?</p> <p>25 A. Um -- I think there were</p>

41 (Pages 158 to 161)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 162</p> <p>1 Stack</p> <p>2 probably privileged discussions about</p> <p>3 it -- um -- I guess at the printer that</p> <p>4 evening, the evening of pricing, so it</p> <p>5 would be the day after the set of</p> <p>6 conference calls went on, there was a</p> <p>7 brief mention of it.</p> <p>8 Q. Okay, I will return to that in a</p> <p>9 moment.</p> <p>10 Aside from the conversations at</p> <p>11 the printer --</p> <p>12 A. Mm-hmm.</p> <p>13 Q. -- and other conversations with</p> <p>14 individuals within your law firm, do you</p> <p>15 remember any other conversations about the</p> <p>16 first quarter sales?</p> <p>17 A. No.</p> <p>18 Q. Now, the conversations within</p> <p>19 your law firm that you identified as</p> <p>20 "privileged communications", I want to</p> <p>21 establish some foundation on those, see</p> <p>22 the nature of the privilege.</p> <p>23 Can you identify a specific</p> <p>24 conversation that you recall?</p> <p>25 A. Not specifics.</p>	<p style="text-align: right;">Page 164</p> <p>1 Stack</p> <p>2 that you remembered, was that just</p> <p>3 yourself, Mr. Lurie, and Mr. Dean?</p> <p>4 A. Um -- yeah -- Morgan Stanley may</p> <p>5 have been a part of it, as well, I just</p> <p>6 don't remember.</p> <p>7 Q. Do you remember -- and this can</p> <p>8 be answered "Yes" or "No" -- do you</p> <p>9 remember, in words or substance, what was</p> <p>10 discussed in that call -- in that</p> <p>11 conversation?</p> <p>12 A. Yes, substance.</p> <p>13 Q. What is the substance of the</p> <p>14 call that -- let me ask one more question.</p> <p>15 Did that call --</p> <p>16 MR. WISE: (Laughing.) You can</p> <p>17 ask as many questions as you like,</p> <p>18 you are anticipating that I will have</p> <p>19 an objection I guess to the one you</p> <p>20 were going to ask.</p> <p>21 MR. BRODY: I saw you shake your</p> <p>22 head.</p> <p>23 Q. In that wrap-up call, did you</p> <p>24 discuss things that people had said in the</p> <p>25 all-hands call?</p>
<p style="text-align: right;">Page 163</p> <p>1 Stack</p> <p>2 You know, they are sort of the</p> <p>3 wrap-up that you have after a large</p> <p>4 conference call like that, that sort of</p> <p>5 thing.</p> <p>6 Q. Okay. So after you had the all-</p> <p>7 hands conference call, you recall that you</p> <p>8 had a wrap-up with Davis Polk lawyers?</p> <p>9 A. Mm-hmm.</p> <p>10 Q. Aside from that conversation, do</p> <p>11 you recall any other conversations within</p> <p>12 the firm about Q 1 sales?</p> <p>13 A. Um -- I mean, not specifically.</p> <p>14 Obviously, it was sort of a big</p> <p>15 issue that had come up and everyone was</p> <p>16 very focused on it, so it was mentioned</p> <p>17 from time to time, but nothing -- no sort</p> <p>18 of specific large conversations come to</p> <p>19 mind.</p> <p>20 Q. And do you remember anyone</p> <p>21 within Davis Polk or within Morgan Stanley</p> <p>22 being tasked to follow the first quarter</p> <p>23 sales after that conference call?</p> <p>24 A. I don't remember.</p> <p>25 Q. Now, the wrap-up conversation</p>	<p style="text-align: right;">Page 165</p> <p>1 Stack</p> <p>2 MR. WISE: I am going to object,</p> <p>3 and direct her to not answer as to</p> <p>4 what anybody discussed in the wrap-up</p> <p>5 call.</p> <p>6 (DIRECTION NOT TO ANSWER.)</p> <p>7 MR. BRODY: Okay, I think that</p> <p>8 calls for her to disclose</p> <p>9 non-privileged communications, so I</p> <p>10 guess I would ask you to withdraw</p> <p>11 that objection.</p> <p>12 MR. WISE: I think the</p> <p>13 communication itself was a</p> <p>14 communication, if I understood her</p> <p>15 testimony, that occurred after the</p> <p>16 persons outside the privilege were no</p> <p>17 longer participating in the</p> <p>18 conversation, so all of that</p> <p>19 communication is privileged.</p> <p>20 MR. BRODY: I don't know if I</p> <p>21 agree with that, but I understand --</p> <p>22 MR. WISE: That's okay, I don't</p> <p>23 need you to agree with it, I am just</p> <p>24 telling you she is not going to</p> <p>25 answer that question.</p>

42 (Pages 162 to 165)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 166</p> <p>1 Stack</p> <p>2 MR. BRODY: Fair enough.</p> <p>3 Q. Well, let me the more general</p> <p>4 question. What do you recall being</p> <p>5 discussed in substance in that wrap-up</p> <p>6 call?</p> <p>7 MR. WISE: Same direction, same</p> <p>8 instruction, same objection.</p> <p>9 (DIRECTION NOT TO ANSWER.)</p> <p>10 Q. Now, after the all-hands call,</p> <p>11 it was decided to issue a press release;</p> <p>12 is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Aside from the press release,</p> <p>15 were there any other action items or any</p> <p>16 other actions taken as a result of the</p> <p>17 conference call?</p> <p>18 A. That's the one that I remember.</p> <p>19 Q. In the conference call, the</p> <p>20 all-hands call, did the parties discuss</p> <p>21 the Arthur Andersen comfort letter?</p> <p>22 A. I don't remember.</p> <p>23 Q. In the all-hands call, did the</p> <p>24 parties discuss the size of the offering?</p> <p>25 A. I don't remember that, either.</p>	<p style="text-align: right;">Page 168</p> <p>1 Stack</p> <p>2 Q. Was there any discussion, in</p> <p>3 that conference call, about whether</p> <p>4 companies that had attended prior sessions</p> <p>5 of the road-show would have to get a call</p> <p>6 and receive information about this?</p> <p>7 A. I don't remember.</p> <p>8 It sounds like a reasonable</p> <p>9 thing to do, but I don't remember if we</p> <p>10 talked about it.</p> <p>11 Q. Okay. Now, aside from the</p> <p>12 all-hands call, and the pre-meeting and</p> <p>13 the post-meeting that you have testified</p> <p>14 about, do you recall discussing -- and the</p> <p>15 event at the printer that we will come to,</p> <p>16 do you recall discussing the first quarter</p> <p>17 sales issue with anyone else?</p> <p>18 A. No, nothing specific comes to</p> <p>19 mind.</p> <p>20 MR. BRODY: Why don't we go off</p> <p>21 the record, we will take a break,</p> <p>22 maybe a lunch break.</p> <p>23 THE LEGAL VIDEO SPECIALIST: The</p> <p>24 time is now 12:38, and we are off the</p> <p>25 record.</p>
<p style="text-align: right;">Page 167</p> <p>1 Stack</p> <p>2 Q. At the time this conference call</p> <p>3 was taking place, Sunbeam and Morgan</p> <p>4 Stanley were in the middle of the</p> <p>5 road-show; weren't they?</p> <p>6 A. Yes, I think so, just from the</p> <p>7 way deals work. I don't remember</p> <p>8 specifically that they were on the road,</p> <p>9 but....</p> <p>10 Q. Do you recall any</p> <p>11 discussions -- I'm sorry, I didn't mean --</p> <p>12 A. No, go ahead.</p> <p>13 Q. Do you recall any discussions</p> <p>14 during the all-hands conference call about</p> <p>15 the road-show, how it was going?</p> <p>16 A. I don't remember.</p> <p>17 Q. Do you recall any discussions</p> <p>18 within that all-hands conference call</p> <p>19 about how the press release or the</p> <p>20 information that gave rise to the press</p> <p>21 release would affect the road-show going</p> <p>22 forward?</p> <p>23 A. I really don't remember</p> <p>24 anything about the road-show or talking</p> <p>25 about it.</p>	<p style="text-align: right;">Page 169</p> <p>1 Stack</p> <p>2 (Luncheon recess: 12:38 p.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

43 (Pages 166 to 169)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 170</p> <p>1 Stack 2 AFTERNOON SESSION 3 (1:34 p.m.) 4 5 HEATHER M. STACK, 6 resumed, having been previously duly 7 sworn, was examined and testified as 8 follows: 9 10 CONTINUED EXAMINATION 11 BY MR. BRODY: 12 THE LEGAL VIDEO SPECIALIST: The 13 time is 1:34, and we are back on the 14 record. 15 Q. Ms. Stack, before we broke for 16 lunch, we were talking about the 17 conference calls on the 18th and some 18 related topics. I would just like to 19 return briefly to the all-hands call. 20 In that conversation, did 21 Mr. Uzzi or anyone else from Sunbeam 22 indicate why there had been a sale 23 shortfall in the first quarter? 24 A. I am sure that was something 25 that was discussed, I don't remember</p>	<p style="text-align: right;">Page 172</p> <p>1 Stack 2 with that, but I don't remember with 3 respect to these potential orders 4 specifically. 5 Q. What assurances do you remember 6 they gave about getting to last year's 7 numbers? 8 A. Again, I don't remember 9 specifically. 10 It was, you know, a general 11 topic of discussion, that I remember. 12 Q. Do you remember beyond the fact 13 that it was discussed what was discussed 14 in substance? 15 A. No. 16 Q. Looking at Exhibit 66 briefly, 17 if you look at the numbers at the top, 18 they appear to total around \$169 million? 19 A. Mm-hmm. 20 Q. And then the potential orders 21 appear to be 86 million or so? 22 A. Right. 23 Q. And then you see the numbers 24 below those, and the bottom one appears to 25 refer to Q1 '97, 253.-something, .5, I</p>
<p style="text-align: right;">Page 171</p> <p>1 Stack 2 specifically. 3 Q. And we looked at Exhibit -- a 4 variety of exhibits. 5 I think you have Exhibit 66 in 6 front of you? 7 A. Correct. 8 Q. We talked about the category of 9 "potential orders". Do you remember any 10 conversation in that conference call about 11 how likely it was that those potential 12 orders would become actual fulfilled 13 orders? 14 A. Again, I don't remember 15 specifically. It was probably discussed. 16 Q. Do you remember anyone giving 17 assurances in that call that all of those 18 sales would be accomplished? 19 A. Not specifically. 20 We certainly discussed how they 21 planned to get from the number they were 22 currently at, at that date, to the number 23 that was in line with the prior period's 24 numbers. So, you know, I am sure there 25 were some assurances given in connection</p>	<p style="text-align: right;">Page 173</p> <p>1 Stack 2 believe? 3 A. Right. 4 Q. Do you remember any discussion 5 about where in relation to 253.5 Sunbeam 6 expected to land? 7 A. As I recall, they expected that 8 they were going to at least meet the prior 9 quarter -- or the prior period's numbers. 10 So, if that 253.5 is the first quarter of 11 '97, I think we are now talking about the 12 first quarter of '98, I think they 13 expected to be in line or exceed that 14 number. 15 Q. Okay. And if you look at the 16 numbers here, the 168.7 at the top, plus 17 the 85, totals 254.7, which is a little 18 over a million dollars more than the prior 19 quarter; correct? 20 A. Right. 21 Q. So, in order to -- on these 22 numbers, in order to get to a number in 23 excess of the prior quarter, all of those 24 potential orders would have to come in and 25 all of the open orders at the top would</p>

44 (Pages 170 to 173)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 174</p> <p>1 Stack</p> <p>2 have to be filled; isn't that correct?</p> <p>3 A. Yeah, I guess that's right, if</p> <p>4 there was nothing else.</p> <p>5 Q. Do you remember any discussion</p> <p>6 about that or how likely that was?</p> <p>7 A. Again, I remember the general</p> <p>8 topic being discussed, but I just don't</p> <p>9 remember the substance.</p> <p>10 Q. Okay. We have spent a fair</p> <p>11 amount of time talking about that</p> <p>12 all-hands conference call. Do you</p> <p>13 remember anything else, as you sit here,</p> <p>14 that was discussed in that conference</p> <p>15 call?</p> <p>16 A. I think we have covered</p> <p>17 everything that I can remember.</p> <p>18 Q. Okay. Now, we also talked some,</p> <p>19 before the break, about the comfort</p> <p>20 letter, and I would like to return to that</p> <p>21 topic.</p> <p>22 Are you aware that, in the</p> <p>23 course of preparing comfort letters,</p> <p>24 accountants sometimes receive</p> <p>25 representation letters or some letter from</p>	<p style="text-align: right;">Page 176</p> <p>1 Stack</p> <p>2 marked for identification.)</p> <p>3 Q. Well, let me show you a</p> <p>4 previously-marked Exhibit, a document</p> <p>5 marked as Exhibit 120, which is a letter</p> <p>6 signed by Mr. Dunlap, Mr. Kersh,</p> <p>7 Mr. Fannin, and Mr. Gluck. And my</p> <p>8 question is, do you know if Morgan Stanley</p> <p>9 or its counsel received this document</p> <p>10 prior to closing.</p> <p>11 A. I don't know.</p> <p>12 Q. You can put that aside.</p> <p>13 Before the break, I showed you a</p> <p>14 draft of the comfort letter that had a fax</p> <p>15 transmittal of the 17th of March.</p> <p>16 A. Right.</p> <p>17 Q. I would like to show you one</p> <p>18 additional draft of the comfort letter to</p> <p>19 see if that refreshes your recollection</p> <p>20 any.</p> <p>21 (Deposition Exhibit Morgan</p> <p>22 Stanley 48, draft of the comfort</p> <p>23 letter, previously marked for</p> <p>24 identification.)</p> <p>25 MR. BRODY: Counsel.</p>
<p style="text-align: right;">Page 175</p> <p>1 Stack</p> <p>2 the management of the company as to what</p> <p>3 they expect their numbers to be?</p> <p>4 A. Yes.</p> <p>5 Q. Did you see any such -- does</p> <p>6 that type of letter have a name?</p> <p>7 A. I think they usually just call</p> <p>8 them "rep letters from management".</p> <p>9 Q. Okay. I have heard a similar</p> <p>10 name.</p> <p>11 Are you aware of any rep letter</p> <p>12 or management letter being issued in this</p> <p>13 case?</p> <p>14 A. Um --</p> <p>15 Q. In connection with the comfort</p> <p>16 letter.</p> <p>17 A. Yeah, I don't think we ever saw</p> <p>18 one.</p> <p>19 I think that the accountants</p> <p>20 have to get them to issue comfort letters,</p> <p>21 so they probably did but --</p> <p>22 Q. Okay.</p> <p>23 (Deposition Exhibit 120, letter</p> <p>24 signed by Mr. Dunlap, Mr. Kersh,</p> <p>25 Mr. Fannin, and Mr. Gluck, previously</p>	<p style="text-align: right;">Page 177</p> <p>1 Stack</p> <p>2 Q. I have shown you what's</p> <p>3 previously been marked as Morgan Stanley</p> <p>4 Exhibit 48, which also appears to be a</p> <p>5 draft.</p> <p>6 Do you know if you have ever</p> <p>7 seen this document before?</p> <p>8 A. Again, I don't remember</p> <p>9 specifically looking at the comfort letter</p> <p>10 in this case.</p> <p>11 Q. Okay. I believe you testified</p> <p>12 that -- let me withdraw that.</p> <p>13 Is the comfort letter typically</p> <p>14 delivered in final signed form at the</p> <p>15 printer?</p> <p>16 A. Yeah, it often is.</p> <p>17 Q. Do you know if the comfort</p> <p>18 letter in this case was delivered in final</p> <p>19 form at the printer?</p> <p>20 A. I don't remember.</p> <p>21 Q. Now, you previously testified</p> <p>22 that, as a result of the conference calls</p> <p>23 on the 18th of March, a press release was</p> <p>24 issued. Do you recall reviewing drafts of</p> <p>25 the press release personally?</p>

45 (Pages 174 to 177)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 178</p> <p>1 Stack</p> <p>2 A. I don't remember personally</p> <p>3 reviewing drafts.</p> <p>4 Q. Do you recall giving any</p> <p>5 comments on a draft of the press release?</p> <p>6 A. I don't.</p> <p>7 Probably the more senior people</p> <p>8 at Davis Polk did.</p> <p>9 Q. Well, that was going to be my</p> <p>10 next question. Who at Morgan Stanley or</p> <p>11 Davis Polk do you know was actually</p> <p>12 involved in the process of preparing the</p> <p>13 press release?</p> <p>14 MR. WISE: I don't know that</p> <p>15 anybody was in the process of</p> <p>16 preparing it. You mean reviewing it?</p> <p>17 Q. Let's start with preparing it,</p> <p>18 putting pen to paper, writing it.</p> <p>19 A. As I recall, I think Skadden</p> <p>20 prepared it and then I think others</p> <p>21 commented on it but I, frankly, don't have</p> <p>22 any specific knowledge of who those</p> <p>23 persons might have been.</p> <p>24 Q. Well, I think you answered my</p> <p>25 next question. You don't know who at</p>	<p style="text-align: right;">Page 180</p> <p>1 Stack</p> <p>2 for the record, the document was</p> <p>3 marked this way, although it's</p> <p>4 somewhat out of order, but the</p> <p>5 production number appears to be</p> <p>6 reversed. But, in any event, Exhibit</p> <p>7 13 appears to transmit to Mr. Tyree a</p> <p>8 draft press release.</p> <p>9 Q. Have you ever seen this before?</p> <p>10 A. I don't remember seeing it.</p> <p>11 Q. I'm sorry?</p> <p>12 A. I don't remember seeing it.</p> <p>13 Q. Do you remember any discussions</p> <p>14 with Mr. Freed at Skadden Arps about the</p> <p>15 press release or its content?</p> <p>16 A. I don't remember.</p> <p>17 Q. If you look at the fax</p> <p>18 transmittal message from Mr. Freed to</p> <p>19 Mr. Tyree, it refers to the fact that the</p> <p>20 press release should not be disseminated</p> <p>21 prior to its sign-off by Mr. Dunlap and/or</p> <p>22 Mr. Fannin. Do you remember any</p> <p>23 conversation about whether that was</p> <p>24 necessary for the press release?</p> <p>25 A. I don't remember any</p>
<p style="text-align: right;">Page 179</p> <p>1 Stack</p> <p>2 Morgan Stanley or Davis Polk reviewed the</p> <p>3 Skadden Arps draft of the press release?</p> <p>4 A. No, I don't know who it was. I</p> <p>5 could probably guess.</p> <p>6 Q. I am not asking you to guess</p> <p>7 here.</p> <p>8 A. Yeah.</p> <p>9 Q. Do you know if a draft was, in</p> <p>10 fact, circulated on the night of the 18th</p> <p>11 of March?</p> <p>12 A. I think it must have been,</p> <p>13 because I think it went out first thing</p> <p>14 the next morning, but I don't remember.</p> <p>15 I don't remember seeing it,</p> <p>16 so....</p> <p>17 (Deposition Exhibit CPH 13,</p> <p>18 document which appears to transmit to</p> <p>19 Mr. Tyree a draft press release,</p> <p>20 previously marked for</p> <p>21 identification.)</p> <p>22 Q. Ms. Stack, I am showing you</p> <p>23 what's previously been marked as Exhibit</p> <p>24 13, CPH Exhibit 13.</p> <p>25 MR. BRODY: And I will state,</p>	<p style="text-align: right;">Page 181</p> <p>1 Stack</p> <p>2 conversation.</p> <p>3 Q. Okay. And did you have any</p> <p>4 conversation with Mr. Fannin about the</p> <p>5 press release?</p> <p>6 A. I don't think so. I don't</p> <p>7 remember any.</p> <p>8 Q. Do you recall any discussions,</p> <p>9 either on the conference call or at a</p> <p>10 later time, about any wording or content</p> <p>11 in the press release?</p> <p>12 A. I think on the conference call</p> <p>13 generally the content of it was discussed,</p> <p>14 but I don't remember specific</p> <p>15 conversations about it.</p> <p>16 Q. When the conference call was</p> <p>17 over, had the parties drafted a press</p> <p>18 release or had they just discussed types</p> <p>19 of things to include in there?</p> <p>20 A. I think we had just discussed</p> <p>21 it. I think a draft was circulated. It</p> <p>22 must have been later, because I don't</p> <p>23 remember seeing it.</p> <p>24 Q. And I may have touched on this</p> <p>25 but, do you recall any conversations with</p>

46 (Pages 178 to 181)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 186</p> <p>1 Stack</p> <p>2 after pricing.</p> <p>3 Q. Who was there?</p> <p>4 A. Um -- I think that Jim Lurie was</p> <p>5 there with me. I think John Tyree was</p> <p>6 there. I think there was an associate</p> <p>7 from Skadden there, although I am not sure</p> <p>8 which one it was or if there were more</p> <p>9 than one. And I think there were two guys</p> <p>10 from Arthur Andersen there, and I think</p> <p>11 one of them was Larry. I remember a</p> <p>12 Larry, I guess Bornstein is his last name.</p> <p>13 Q. Do you remember the name of the</p> <p>14 other one?</p> <p>15 A. You know, after seeing it here a</p> <p>16 couple of times, Phil, or something, but I</p> <p>17 wouldn't have --</p> <p>18 Q. You think Mr. Harlow was there?</p> <p>19 A. Oh, gosh, I wouldn't know.</p> <p>20 I know there was a second person</p> <p>21 with Larry, and it could have been someone</p> <p>22 different.</p> <p>23 Q. Okay.</p> <p>24 A. I don't remember.</p> <p>25 I have just seen Phil Harlow's</p>	<p style="text-align: right;">Page 188</p> <p>1 Stack</p> <p>2 printer, there is definitely smaller</p> <p>3 break-out rooms all over the place, but I</p> <p>4 think there was one room that people were</p> <p>5 generally organized in here, as I recall.</p> <p>6 Q. Were you there the whole time</p> <p>7 that Mr. Lurie was there?</p> <p>8 Did you arrive together and</p> <p>9 leave together.</p> <p>10 A. Um -- I think I was probably</p> <p>11 there till the very end, and he may have</p> <p>12 left a little before that. I believe we</p> <p>13 arrived together or somewhere around the</p> <p>14 same time.</p> <p>15 Q. What conversations do you</p> <p>16 remember taking place at the printer?</p> <p>17 A. I guess I remember, you know,</p> <p>18 general conversations about just the</p> <p>19 pricing and how the evening was going to</p> <p>20 go.</p> <p>21 Specifically, I do remember one</p> <p>22 comment made by one of the guys from</p> <p>23 Arthur Andersen, I believe it was Larry,</p> <p>24 who was sort of a gregarious gentleman,</p> <p>25 and sort of made a joke about: Oh, yeah,</p>
<p style="text-align: right;">Page 187</p> <p>1 Stack</p> <p>2 name, I guess.</p> <p>3 Q. Are you familiar with an Arthur</p> <p>4 Andersen accountant named Mark Brockelman?</p> <p>5 A. That sounds familiar, as well.</p> <p>6 I suppose it could have been.</p> <p>7 Q. But you are not sure.</p> <p>8 A. No.</p> <p>9 Q. How long were you at the</p> <p>10 printer?</p> <p>11 A. Probably well into the late</p> <p>12 hour, probably early morning the next</p> <p>13 morning. I don't remember. Usually, we</p> <p>14 stay there until we sign off on the book</p> <p>15 completely.</p> <p>16 Q. Could it have been six hours or</p> <p>17 more?</p> <p>18 A. Sure.</p> <p>19 Q. What was the physical layout of</p> <p>20 the printer?</p> <p>21 Were you all in one room or did</p> <p>22 you have separate rooms?</p> <p>23 A. There was one large conference</p> <p>24 room where I think most things happened.</p> <p>25 There is definitely -- I mean, at a</p>	<p style="text-align: right;">Page 189</p> <p>1 Stack</p> <p>2 those guys, those guys aren't going to hit</p> <p>3 their numbers, or something like that, and</p> <p>4 made a comment like that, to which we all</p> <p>5 sort of responded: What are you talking</p> <p>6 about? Why would you say that? And then</p> <p>7 he said: Oh, no, I was just joking. And</p> <p>8 that was sort of the end of it. And we</p> <p>9 moved on from there. Everybody was</p> <p>10 obviously very focused on this press</p> <p>11 release and the contents of it and, so,</p> <p>12 when he made sort of a comment, an</p> <p>13 offhanded comment, people paid attention,</p> <p>14 and then he said he was joking, and that</p> <p>15 was sort of the end of it. And that was</p> <p>16 sort of in line with the interaction of</p> <p>17 the personality that went on there. And</p> <p>18 then I really don't have a lot of other</p> <p>19 specific recollections of what was said as</p> <p>20 of the printer, other than being there</p> <p>21 and....</p> <p>22 Q. Okay. You believe Mr. -- let me</p> <p>23 withdraw that.</p> <p>24 When Mr. Bornstein made his</p> <p>25 comment, who was he making it to?</p>

48 (Pages 186 to 189)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 190</p> <p>1 Stack</p> <p>2 A. I was definitely in the room, I</p> <p>3 think -- I think Jim was probably in the</p> <p>4 room.</p> <p>5 Q. Jim Lurie?</p> <p>6 A. Yeah, Jim Lurie. I can't say</p> <p>7 for sure who else was in the room at the</p> <p>8 time.</p> <p>9 Q. Were other representatives of</p> <p>10 Skadden Arps there?</p> <p>11 A. You know, they were there that</p> <p>12 evening, I don't know if they were in the</p> <p>13 room at the time.</p> <p>14 Q. What about Mr. Tyree?</p> <p>15 A. I also don't remember. He was</p> <p>16 probably in there, but I don't remember</p> <p>17 for sure.</p> <p>18 Q. Okay. And before Mr. Bornstein</p> <p>19 made his comment, were people talking</p> <p>20 about the press release?</p> <p>21 A. Um -- not that I recall.</p> <p>22 Q. So he was the one who initiated</p> <p>23 the topic of conversation?</p> <p>24 A. Yeah, as far as I remember.</p> <p>25 For some reason, that exchange</p>	<p style="text-align: right;">Page 192</p> <p>1 Stack</p> <p>2 Jim or -- I mean, we all sort of had the</p> <p>3 same reaction.</p> <p>4 Q. And what did he say?</p> <p>5 A. And he said: No, no, I am just</p> <p>6 kidding, don't worry about it, or</p> <p>7 something along those lines.</p> <p>8 Again, the specific words I</p> <p>9 don't remember, I just remember the</p> <p>10 general exchange.</p> <p>11 Q. Thereafter, did Mr. Bornstein</p> <p>12 make phone calls to other people at Arthur</p> <p>13 Andersen, to your knowledge?</p> <p>14 A. I don't know, I don't know.</p> <p>15 Q. Do you know if Mr. Bornstein</p> <p>16 said in that conversation that he didn't</p> <p>17 think the press release was accurate? Do</p> <p>18 you remember that?</p> <p>19 A. No. I mean, really, the only</p> <p>20 thing I remember is what he said and,</p> <p>21 really, it was very clear that he wasn't</p> <p>22 serious, so....</p> <p>23 Q. Okay. And why was it that it</p> <p>24 was clear to you that he wasn't serious?</p> <p>25 A. Well, if he had been serious, it</p>
<p style="text-align: right;">Page 191</p> <p>1 Stack</p> <p>2 just stuck out in my head but I, frankly,</p> <p>3 don't remember a lot of the surrounding</p> <p>4 discussions on it, of that, really, or</p> <p>5 anything else.</p> <p>6 Q. Do you remember the precise</p> <p>7 words that Mr. Bornstein used?</p> <p>8 A. No, but it was something along</p> <p>9 the effect of as I described earlier.</p> <p>10 Q. That Sunbeam would not hit its</p> <p>11 numbers?</p> <p>12 A. Yeah, something like that.</p> <p>13 Q. Did he say that if Sunbeam</p> <p>14 didn't hit its numbers everybody there</p> <p>15 would be in trouble?</p> <p>16 A. I don't remember those words.</p> <p>17 It really was sort of an</p> <p>18 offhanded -- uh -- as I remember, it was</p> <p>19 sort of an offhanded remark, like: Oh,</p> <p>20 come on, you guys, they are not going to</p> <p>21 hit their numbers. You know: What do you</p> <p>22 mean by that?</p> <p>23 Q. And then, after he made that</p> <p>24 comment, who asked for clarification?</p> <p>25 A. I am not sure if it was me or</p>	<p style="text-align: right;">Page 193</p> <p>1 Stack</p> <p>2 would have been a -- a huge issue for all</p> <p>3 of us, and we would have sort of dropped</p> <p>4 everything and focused on that, I think.</p> <p>5 And it was also -- I mean, I just remember</p> <p>6 that sort of character, tone of the</p> <p>7 conversation, and the way that it was sort</p> <p>8 of very consistent with the way he had</p> <p>9 behaved and how all of our interactions</p> <p>10 had gone throughout the transaction.</p> <p>11 Q. When had you worked with</p> <p>12 Mr. Bornstein prior to this?</p> <p>13 A. It was just in other</p> <p>14 conversations in the transaction.</p> <p>15 Q. Do you remember any of those?</p> <p>16 A. No, not specifically, no.</p> <p>17 Q. Had you ever met him personally,</p> <p>18 seen him?</p> <p>19 A. I think I had probably met him</p> <p>20 at the printer when we printed the reds,</p> <p>21 because I remember he was familiar when I</p> <p>22 saw him at the printer again.</p> <p>23 Q. So that would be around the 16th</p> <p>24 of March.</p> <p>25 A. Yeah, whatever date the --</p>

49 (Pages 190 to 193)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 194</p> <p>1 Stack</p> <p>2 probably the night before that or</p> <p>3 something, yeah.</p> <p>4 Q. Did anyone raise his or her</p> <p>5 voice in this conversation?</p> <p>6 A. Not that I recall, no.</p> <p>7 Q. Did anyone use profanity?</p> <p>8 A. Not that I remember, no.</p> <p>9 Q. Did Mr. Bornstein -- do you</p> <p>10 recall Mr. Bornstein stating to anyone in</p> <p>11 attendance at the meeting that he didn't</p> <p>12 think Sunbeam was going to meet its</p> <p>13 numbers?</p> <p>14 A. I mean, only in the manner that</p> <p>15 I have already described.</p> <p>16 Q. Did he repeat that in the</p> <p>17 meeting -- do you recall him stating in</p> <p>18 the meeting, to you or to others, that he</p> <p>19 was going to send auditors to all of</p> <p>20 Sunbeam's loading docks to make sure that</p> <p>21 it was correct? Do you remember that?</p> <p>22 A. No, no.</p> <p>23 Q. While at the printer, do you</p> <p>24 know if anyone from Davis Polk or Morgan</p> <p>25 Stanley had conversations with people from</p>	<p style="text-align: right;">Page 196</p> <p>1 Stack</p> <p>2 time?</p> <p>3 A. No, I don't.</p> <p>4 Q. Do you remember discussions with</p> <p>5 Mr. Bornstein or others at the printer to</p> <p>6 the effect that the amount of the offering</p> <p>7 had changed?</p> <p>8 A. No, no.</p> <p>9 Q. Ms. Stack you previously looked</p> <p>10 at a copy of the comfort letter, marked</p> <p>11 Morgan Stanley Exhibit 48.</p> <p>12 A. Mm-hmm.</p> <p>13 Q. And if you look at the text of</p> <p>14 the comfort letter, it recites that it's</p> <p>15 for a \$1.3 billion offering.</p> <p>16 Do you see that?</p> <p>17 A. Right.</p> <p>18 MR. CLARE: Mike, I just want to</p> <p>19 correct, you described this as "the</p> <p>20 comfort letter". I think you had</p> <p>21 previously described it as a "draft"</p> <p>22 of it, 48. Did you intend to</p> <p>23 describe this as the final comfort</p> <p>24 letter?</p> <p>25 MR. BRODY: No.</p>
<p style="text-align: right;">Page 195</p> <p>1 Stack</p> <p>2 Sunbeam who were not present?</p> <p>3 A. I don't remember.</p> <p>4 Q. Do you recall any calls being</p> <p>5 made by anyone to people who were not</p> <p>6 present, such as Mr. Harlow or Mr. Gluck</p> <p>7 or people at Sunbeam?</p> <p>8 A. I don't remember anything</p> <p>9 specifically.</p> <p>10 It wouldn't be unusual for that</p> <p>11 to happen, but....</p> <p>12 Q. And do you remember</p> <p>13 Mr. Bornstein reporting back what others</p> <p>14 not in the meeting had said about the</p> <p>15 press release or the deal?</p> <p>16 A. No, I don't.</p> <p>17 Q. At the meeting at the printer,</p> <p>18 do you remember Mr. Bornstein delivering</p> <p>19 the -- Mr. Bornstein or someone else</p> <p>20 delivering the final version of the</p> <p>21 comfort letter?</p> <p>22 A. I just don't remember if it was</p> <p>23 delivered that night or not.</p> <p>24 Q. Do you remember any changes</p> <p>25 being made to the comfort letter at that</p>	<p style="text-align: right;">Page 197</p> <p>1 Stack</p> <p>2 MR. CLARE: Okay.</p> <p>3 (Deposition Exhibit 111,</p> <p>4 document which appears to have been</p> <p>5 faxed from Global Financial Press on</p> <p>6 the night of the printing, previously</p> <p>7 marked for identification.)</p> <p>8 Q. I am going to show you now</p> <p>9 what's been previously marked as Exhibit</p> <p>10 111.</p> <p>11 Have you ever seen that document</p> <p>12 before?</p> <p>13 A. Not that I remember.</p> <p>14 Q. It appears to have been faxed</p> <p>15 from Global Financial Press on the night</p> <p>16 of the printing.</p> <p>17 Do you see that at the top?</p> <p>18 A. Yes.</p> <p>19 Q. And if you look on the first</p> <p>20 page, the amount of the offering is</p> <p>21 changed from 1.3 billion to 2.014 billion.</p> <p>22 A. Yes, I see that.</p> <p>23 Q. Does that refresh your</p> <p>24 recollection that there was conversation</p> <p>25 with the Anderson people on the night of</p>

50 (Pages 194 to 197)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 198</p> <p>1 Stack</p> <p>2 the visit to Global Financial Press that</p> <p>3 the amount of the offering had changed?</p> <p>4 A. I don't remember discussing</p> <p>5 that, no.</p> <p>6 (Deposition Exhibit CPH 17,</p> <p>7 document, which appears to be the</p> <p>8 final version of the comfort letter</p> <p>9 dated on the 19th of March 1998,</p> <p>10 previously marked for</p> <p>11 identification.)</p> <p>12 Q. A draft of a letter -- I have</p> <p>13 given you what's previously been marked as</p> <p>14 CPH Exhibit 17. Does that appear to be</p> <p>15 the final version of the comfort letter</p> <p>16 dated on the 19th of March 1998 -- excuse</p> <p>17 me, yes, 1998.</p> <p>18 A. Yes, that looks like it.</p> <p>19 Q. And that shows the change to the</p> <p>20 amount of the offering?</p> <p>21 A. Yes, it reflects the 2 billion</p> <p>22 number.</p> <p>23 Q. And it contains on the last two</p> <p>24 pages, handwriting and tick marks to</p> <p>25 reference the items in the offering</p>	<p style="text-align: right;">Page 200</p> <p>1 Stack</p> <p>2 what's previously been marked as</p> <p>3 CPH Exhibit 114. I think my questions are</p> <p>4 going to be brief about this.</p> <p>5 A. Okay.</p> <p>6 Q. Have you ever seen it before?</p> <p>7 A. Uh -- no.</p> <p>8 Q. I'm sorry?</p> <p>9 A. No -- well, I have seen -- I</p> <p>10 guess the back page I have seen.</p> <p>11 Q. I'm sorry, you are correct, that</p> <p>12 is one we have talked about already.</p> <p>13 Okay. You can put that document aside.</p> <p>14 Beginning with the events on the</p> <p>15 18th of March, and following up until</p> <p>16 closing, do you remember any discussion in</p> <p>17 which anyone suggested that perhaps the</p> <p>18 deal should not go forward?</p> <p>19 A. Um -- no. I mean, there was</p> <p>20 discussion that evening on those -- on</p> <p>21 that series of conference calls on the</p> <p>22 18th about what we ought to do, and I am</p> <p>23 sure the possibility of not going forward</p> <p>24 was brought up, but I think that because</p> <p>25 we were going to put the information out</p>
<p style="text-align: right;">Page 199</p> <p>1 Stack</p> <p>2 memorandum?</p> <p>3 A. Right.</p> <p>4 Q. So this is the final.</p> <p>5 A. It looks like, it's signed as</p> <p>6 well.</p> <p>7 Q. Do you know if this was, in</p> <p>8 fact, delivered at the printer?</p> <p>9 A. I don't remember.</p> <p>10 Q. Do you remember any discussions</p> <p>11 about the form of the comfort letter or</p> <p>12 its content at the printer?</p> <p>13 A. I don't.</p> <p>14 Q. Do you remember any other</p> <p>15 discussions at the printer on the night of</p> <p>16 the -- I guess it was the 19th.</p> <p>17 A. Other than what I have -- we</p> <p>18 have already discussed, I don't remember</p> <p>19 anything else specific.</p> <p>20 (Deposition Exhibit CPH 114,</p> <p>21 document, previously marked for</p> <p>22 identification.)</p> <p>23 Q. You can take that, please.</p> <p>24 MR. BRODY: Counsel.</p> <p>25 Q. I am showing you, Ms. Stack,</p>	<p style="text-align: right;">Page 201</p> <p>1 Stack</p> <p>2 and give it to investors, people felt</p> <p>3 comfortable moving forward.</p> <p>4 Q. Do you remember what anyone said</p> <p>5 with regard to whether the deal should or</p> <p>6 should not go forward?</p> <p>7 A. Nothing specific, no.</p> <p>8 Q. Do you remember any conversation</p> <p>9 beginning on the 18th and continuing until</p> <p>10 the closing of the deal about whether</p> <p>11 anyone ought to call up MacAndrews &</p> <p>12 Forbes and provide information such as the</p> <p>13 exhibits we have seen that showed the</p> <p>14 potential orders?</p> <p>15 A. No.</p> <p>16 Q. Do you recall any discussion,</p> <p>17 beginning on the 18th and continuing until</p> <p>18 the closing, about whether any additional</p> <p>19 disclosure should be made to the public</p> <p>20 about Sunbeam and its sales and earnings?</p> <p>21 A. No, other than those conference</p> <p>22 calls where we talked about with what the</p> <p>23 press release ought to say, no.</p> <p>24 Q. Okay. Now, we have looked at</p> <p>25 some earlier documents that showed the</p>

51 (Pages 198 to 201)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 202</p> <p>1 Stack</p> <p>2 amount of the offering was for 1.3 billion</p> <p>3 which would result in proceeds to Sunbeam</p> <p>4 of 500 million?</p> <p>5 A. Mm-hmm.</p> <p>6 Q. And you are aware that it was</p> <p>7 later raised to 2 billion. Do you recall</p> <p>8 what proceeds would result to Sunbeam from</p> <p>9 that amount?</p> <p>10 A. No, I don't.</p> <p>11 (Deposition Exhibit 10, final</p> <p>12 offering memorandum, previously</p> <p>13 marked for identification.)</p> <p>14 Q. Let me show you what has</p> <p>15 previously been marked as Exhibit 10. And</p> <p>16 I apologize for the size of the document,</p> <p>17 I am not going to ask you to look at much</p> <p>18 of it, but you recognize this as the final</p> <p>19 offering memorandum?</p> <p>20 A. (Nodding.)</p> <p>21 Q. Is that correct?</p> <p>22 A. Right.</p> <p>23 Q. And you see the amount at the</p> <p>24 top identifies 2.0 billion?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 204</p> <p>1 Stack</p> <p>2 decision was made to increase the amount</p> <p>3 of the offering?</p> <p>4 A. I don't. It must have been</p> <p>5 sometime after we printed the reds,</p> <p>6 because the reds said 1.3 but I don't</p> <p>7 remember when that was.</p> <p>8 Q. Do you remember who, if anyone,</p> <p>9 was involved in that decision?</p> <p>10 A. I don't know.</p> <p>11 MR. BRODY: Can we mark this,</p> <p>12 please, as our next exhibit.</p> <p>13 (Deposition Exhibit CPH 111,</p> <p>14 document which appears to be a fax to</p> <p>15 Ms. Stack, which was sent to</p> <p>16 Ms. Stack at about 10:23 p.m. on the</p> <p>17 night of the 19th at Global Financial</p> <p>18 Press, and it was sent to Mr. Lurie</p> <p>19 and Mr. Dietz, marked for</p> <p>20 identification, as of this date.)</p> <p>21 MR. BRODY: And for you two, I</p> <p>22 have two copies, one appears to be</p> <p>23 stapled and one does not. I think</p> <p>24 they are identical. If one has</p> <p>25 handwriting, let me know, but that</p>
<p style="text-align: right;">Page 203</p> <p>1 Stack</p> <p>2 Q. And you recognize this as the</p> <p>3 document that went to the printer on the</p> <p>4 night of the 19th; is that correct?</p> <p>5 A. Yeah, this looks like what it</p> <p>6 is, yeah.</p> <p>7 Q. And if you turn to what appears</p> <p>8 to be page 23 of the document, the</p> <p>9 production number in the corner ends with</p> <p>10 the numbers 191.</p> <p>11 A. Right.</p> <p>12 Q. You see the total debentures</p> <p>13 offered is 750 million?</p> <p>14 A. Correct.</p> <p>15 Q. So when the deal was increased</p> <p>16 from 1.3 to 2.0 billion, it resulted in an</p> <p>17 increase in proceeds to Sunbeam from 500</p> <p>18 to 750; is that correct?</p> <p>19 A. Yes, that's what it is, I guess.</p> <p>20 Q. Now, do you remember any</p> <p>21 discussions within the group working on</p> <p>22 the deal about increasing the amount by --</p> <p>23 that increase, by a 50 percent increase?</p> <p>24 A. I don't remember.</p> <p>25 Q. Do you remember when the</p>	<p style="text-align: right;">Page 205</p> <p>1 Stack</p> <p>2 was unintentional.</p> <p>3 I'm sorry, this is marked as</p> <p>4 Exhibit 2--</p> <p>5 THE COURT REPORTER: 211.</p> <p>6 MR. BRODY: Thank you.</p> <p>7 Q. Ms. Stark, I have given you what</p> <p>8 has been marked as Exhibit 211.</p> <p>9 A. Yes.</p> <p>10 Q. This appears to be a fax to you;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And it was sent to you at about</p> <p>14 10:23 p.m. on the night of the 19th at</p> <p>15 Global Financial Press.</p> <p>16 A. Yes.</p> <p>17 Q. And it was sent to Mr. Lurie and</p> <p>18 Mr. Dietz --</p> <p>19 A. Right.</p> <p>20 Q. -- as well?</p> <p>21 A. Right.</p> <p>22 Q. And I think you testified</p> <p>23 earlier that Mr. Lurie was present. Does</p> <p>24 this refresh your recollection that</p> <p>25 Mr. Dietz, in fact, was there?</p>

52 (Pages 202 to 205)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 206</p> <p>1 Stack</p> <p>2 A. I am sure he was.</p> <p>3 I just don't have a real memory</p> <p>4 of who he was or having interaction with</p> <p>5 him.</p> <p>6 Q. Fine. If you turn to the second</p> <p>7 page of the document, it's a memorandum</p> <p>8 from Nicole Duncan. Who is Nicole Duncan?</p> <p>9 What was her role?</p> <p>10 A. She was another associate at</p> <p>11 Davis Polk, and I think she helped out on</p> <p>12 drafting a couple of documents. Maybe --</p> <p>13 I sort of remember her drafting the</p> <p>14 indenture, maybe, and I worked on -- we</p> <p>15 sort of split up some documents at one</p> <p>16 point, and she helped out.</p> <p>17 Q. And the document that is</p> <p>18 attached it the Sunbeam Corporation</p> <p>19 purchase agreement. Can you describe,</p> <p>20 just briefly, what the purpose of the</p> <p>21 purchase agreement was?</p> <p>22 A. Yeah. This is the document</p> <p>23 where Morgan Stanley agrees to buy the</p> <p>24 securities from Sunbeam and then they will</p> <p>25 go and resell them to the market.</p>	<p style="text-align: right;">Page 208</p> <p>1 Stack</p> <p>2 Q. -- to \$2 billion. Does that</p> <p>3 refresh your recollection that, in fact,</p> <p>4 the amount was increased on the morning of</p> <p>5 the 19th?</p> <p>6 A. Um --</p> <p>7 MR. WISE: You are asking about</p> <p>8 her recollection or are you asking</p> <p>9 her to go through the deductive</p> <p>10 process which, obviously, you are</p> <p>11 going through to --</p> <p>12 MR. BRODY: I am asking --</p> <p>13 MR. WISE: -- to try to deduce</p> <p>14 whether or not that occurred.</p> <p>15 MR. BRODY: I am asking for her</p> <p>16 recollection.</p> <p>17 MR. WISE: I think she's already</p> <p>18 told you she doesn't remember.</p> <p>19 A. I just don't remember.</p> <p>20 Q. And this doesn't refresh your</p> <p>21 recollection?</p> <p>22 A. No.</p> <p>23 Q. Does this document lead you to</p> <p>24 the conclusion that the amount was changed</p> <p>25 the morning of the 19th or between the</p>
<p style="text-align: right;">Page 207</p> <p>1 Stack</p> <p>2 Q. Yes, and you are shown as having</p> <p>3 received a cc of this memo as, in fact,</p> <p>4 you did at Global Financial Press;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Now, Ms. Duncan's memorandum</p> <p>8 states that she has attached the purchase</p> <p>9 agreement, and that the document was</p> <p>10 marked to show changes from the draft from</p> <p>11 this morning.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And "this morning" would</p> <p>15 obviously be the morning of the 19th;</p> <p>16 correct?</p> <p>17 A. Right.</p> <p>18 Q. If you turn to the first page of</p> <p>19 text of the document, it appears to be a</p> <p>20 black-lined draft showing changes.</p> <p>21 A. Correct.</p> <p>22 Q. And the change at item 4 and at</p> <p>23 item -- item 4, the third line of the</p> <p>24 text, shows the change in the amount --</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 209</p> <p>1 Stack</p> <p>2 morning of the 19th and the evening of the</p> <p>3 19th?</p> <p>4 MR. WISE: What's the difference</p> <p>5 whether it does or it doesn't? She's</p> <p>6 sitting here today, six years after</p> <p>7 the fact. Presumably, what's</p> <p>8 important is whether it leads the</p> <p>9 trier of fact to that conclusion, not</p> <p>10 whether it leads Ms. Stack one way or</p> <p>11 another to that conclusion.</p> <p>12 MR. BRODY: I will take that as</p> <p>13 an objection to form.</p> <p>14 Q. You can answer the question.</p> <p>15 A. Yeah, it looks like that's</p> <p>16 exactly what happened.</p> <p>17 Q. Does it lead you to any other</p> <p>18 possible conclusion?</p> <p>19 A. Um -- I mean, it could have --</p> <p>20 the amount could have changed prior to</p> <p>21 this date. You don't always send around a</p> <p>22 revised document every day. Um -- and</p> <p>23 maybe -- in fact, it looks like it says</p> <p>24 what was deleted back here is all zeros.</p> <p>25 So, I don't know what was in here before.</p>

53 (Pages 206 to 209)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 210</p> <p>1 Stack</p> <p>2 Q. Okay. Turn to page 5 of the</p> <p>3 text. And the production number at the</p> <p>4 end ends 33019?</p> <p>5 A. Okay.</p> <p>6 Q. And you see the insertion to</p> <p>7 paragraph L.</p> <p>8 A. Yes.</p> <p>9 Q. Just read that to yourself,</p> <p>10 please, I am going to ask you some</p> <p>11 questions about it.</p> <p>12 A. (Pause.)</p> <p>13 Okay.</p> <p>14 Q. You understand that provision to</p> <p>15 state that the information set forth in</p> <p>16 the press release shall not in and of</p> <p>17 itself constitute a material adverse</p> <p>18 change?</p> <p>19 A. Yes, that's what it says.</p> <p>20 Q. Do you recall any discussion</p> <p>21 about that term or including that term in</p> <p>22 this document?</p> <p>23 A. I don't recall the discussion</p> <p>24 but, I mean, this is the material adverse</p> <p>25 change, it looks like we are all just</p>	<p style="text-align: right;">Page 212</p> <p>1 Stack</p> <p>2 were not involved in pricing?</p> <p>3 A. No.</p> <p>4 Q. Do you know who was?</p> <p>5 A. The company and the bankers, I</p> <p>6 think.</p> <p>7 Q. Do you know which bankers?</p> <p>8 A. I don't.</p> <p>9 Q. Was it reported to you what</p> <p>10 happened in the pricing conference call?</p> <p>11 A. Not that I remember.</p> <p>12 Q. Do you have any understanding or</p> <p>13 recollection of what was discussed -- what</p> <p>14 issues were raised in the pricing</p> <p>15 conference call?</p> <p>16 A. I mean, the pricing terms</p> <p>17 obviously came out of it, the amount at</p> <p>18 which the public paid for the notes and</p> <p>19 that sort of thing, but I don't remember</p> <p>20 anything specific, other than that.</p> <p>21 Q. That answered my question, thank</p> <p>22 you.</p> <p>23 Following the events at the</p> <p>24 printer, what additional work, if any, did</p> <p>25 you do on this transaction?</p>
<p style="text-align: right;">Page 211</p> <p>1 Stack</p> <p>2 being clear that the press release which</p> <p>3 we all knew about and participated in</p> <p>4 making the decision to release isn't going</p> <p>5 to be -- wouldn't contravene this</p> <p>6 representation.</p> <p>7 Q. Do you know who asked for or</p> <p>8 insisted upon that language?</p> <p>9 A. I don't know specifically.</p> <p>10 I assume it came from the</p> <p>11 company.</p> <p>12 Q. Pardon me?</p> <p>13 A. I assume it came from the</p> <p>14 company or its lawyers.</p> <p>15 Q. Do you remember anyone</p> <p>16 expressing the view that, absent this</p> <p>17 language, someone could interpret the</p> <p>18 press release as a material adverse</p> <p>19 change?</p> <p>20 A. I, again, don't remember</p> <p>21 specific discussions about this.</p> <p>22 Q. Okay, you can put that document</p> <p>23 aside.</p> <p>24 You have discussed, in general</p> <p>25 terms, the pricing of the offering. You</p>	<p style="text-align: right;">Page 213</p> <p>1 Stack</p> <p>2 A. I coordinated documents for the</p> <p>3 closing, so there were lots of</p> <p>4 deliverables that we needed to get from</p> <p>5 both sides for the closing, their opinions</p> <p>6 and, you know, copies of certificates and</p> <p>7 all that sort of thing, and I coordinated</p> <p>8 that and coordinated the transfer of the</p> <p>9 funds and the securities and that sort of</p> <p>10 thing.</p> <p>11 Q. Well, when you say you</p> <p>12 "coordinated" the documents, what does</p> <p>13 that mean?</p> <p>14 A. Basically, collected copies of</p> <p>15 them after they had been finalized from</p> <p>16 everyone, collected the actual signature</p> <p>17 pages, had them all laid out on a big</p> <p>18 conference table for people to review,</p> <p>19 really coordinated the closing efforts.</p> <p>20 Q. It doesn't mean that you drafted</p> <p>21 all of those documents.</p> <p>22 A. No, no.</p> <p>23 MR. WISE: (Laughing.)</p> <p>24 Q. You have described already the</p> <p>25 work you have done on drafting.</p>

54 (Pages 210 to 213)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 218</p> <p>1 Stack</p> <p>2 just look at it.</p> <p>3 Q. It is.</p> <p>4 A. Yeah.</p> <p>5 (Pause.)</p> <p>6 Q. Do you remember --</p> <p>7 A. Oh, I'm sorry.</p> <p>8 Q. Do you remember having seen it</p> <p>9 before?</p> <p>10 You may have answered, I just</p> <p>11 missed it.</p> <p>12 A. No, I don't remember.</p> <p>13 Q. And having seen this again, does</p> <p>14 it refresh your recollection as to whether</p> <p>15 you participated in any bring-down calls?</p> <p>16 A. You know, I probably</p> <p>17 participated, I just don't remember --</p> <p>18 Q. Okay.</p> <p>19 A. -- being on them.</p> <p>20 Q. The first item here asks for</p> <p>21 there to be an update on build-up of the</p> <p>22 first quarter revenues and earnings, and</p> <p>23 there is some items underneath that.</p> <p>24 Do you remember having any</p> <p>25 discussions within Davis Polk or with</p>	<p style="text-align: right;">Page 220</p> <p>1 Stack</p> <p>2 Exhibit 112.</p> <p>3 Do you recognize this as the</p> <p>4 bring-down letter?</p> <p>5 A. Yeah, it looks like the bring-</p> <p>6 down comfort letter. I don't remember</p> <p>7 seeing it.</p> <p>8 Q. Okay. I think you may have</p> <p>9 answered my next question. Having now</p> <p>10 seen this, does it refresh your</p> <p>11 recollection whether you saw it at the</p> <p>12 time?</p> <p>13 A. Yeah, I still don't remember.</p> <p>14 Q. Okay. Do you remember any</p> <p>15 conversations or work in tracking down the</p> <p>16 numbers in the bring-down letter?</p> <p>17 A. I don't remember.</p> <p>18 Q. Turn to page 2 of the bring-down</p> <p>19 letter. It refers to some sales numbers</p> <p>20 and some net income numbers through March</p> <p>21 of 1998.</p> <p>22 A. (Nodding.)</p> <p>23 Q. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall any discussion</p>
<p style="text-align: right;">Page 219</p> <p>1 Stack</p> <p>2 Morgan Stanley or with anyone else about</p> <p>3 first quarter revenues and earnings after</p> <p>4 the 19th of March?</p> <p>5 A. I don't remember.</p> <p>6 Q. Are you aware that, in</p> <p>7 connection with bring-down calls, there is</p> <p>8 frequently a bring-down letter from the</p> <p>9 accountants?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know if you saw the</p> <p>12 bring-down letter in this case?</p> <p>13 A. I don't remember seeing one,</p> <p>14 although I am sure that one was delivered.</p> <p>15 Q. Do you remember any discussions</p> <p>16 with the accountants or with Morgan</p> <p>17 Stanley or with Sunbeam about the</p> <p>18 representations contained in the bring-</p> <p>19 down letter?</p> <p>20 A. No, I don't.</p> <p>21 (Deposition Exhibit CPH 112,</p> <p>22 bring-down comfort letter, previously</p> <p>23 marked for identification.)</p> <p>24 Q. Let me show you one additional</p> <p>25 comfort letter, previously marked as CPH</p>	<p style="text-align: right;">Page 221</p> <p>1 Stack</p> <p>2 about whether those numbers ought to be</p> <p>3 disclosed to the public?</p> <p>4 A. I don't remember.</p> <p>5 Q. Do you remember if there ever</p> <p>6 was any public disclosure in any context</p> <p>7 about the fact that through the first two</p> <p>8 months of '98 Sunbeam was running at a</p> <p>9 pretty substantial loss?</p> <p>10 MR. CLARE: Object to the form</p> <p>11 of the question.</p> <p>12 You can answer.</p> <p>13 A. I guess other than all those</p> <p>14 calls that we had on the night of the</p> <p>15 18th, that we have already talked about, I</p> <p>16 don't remember anymore discussion about</p> <p>17 this.</p> <p>18 Q. Okay. Did you participate in</p> <p>19 any calls with analysts or calls with</p> <p>20 anyone else outside of the Morgan Stanley/</p> <p>21 Davis Polk group about the offering before</p> <p>22 it went -- before it closed?</p> <p>23 A. Uh -- no, other than, you know,</p> <p>24 the company and their counsel during those</p> <p>25 calls on the 18th.</p>

56 (Pages 218 to 221)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 222</p> <p>1 Stack</p> <p>2 Q. Okay. And after the closing,</p> <p>3 did you participate in any -- do any work</p> <p>4 on this deal or for Sunbeam -- withdraw</p> <p>5 that.</p> <p>6 After closing of the public</p> <p>7 offering we have been talking about, did</p> <p>8 you do any work for Davis Polk on behalf</p> <p>9 of Morgan Stanley in connection with</p> <p>10 Sunbeam?</p> <p>11 A. Not that I recall.</p> <p>12 I may have helped put together</p> <p>13 sort of the documents for the closing sets</p> <p>14 and that sort of stuff but -- mmm --</p> <p>15 nothing else, no.</p> <p>16 Q. Are you aware that, shortly</p> <p>17 after the deal closed, Sunbeam announced</p> <p>18 that, in fact, it had not made its</p> <p>19 numbers?</p> <p>20 A. Yeah, I am aware of that.</p> <p>21 Q. How did you become aware of</p> <p>22 that?</p> <p>23 A. I think I probably -- I remember</p> <p>24 it happening at the time the press release</p> <p>25 came out and we were -- I was surprised.</p>	<p style="text-align: right;">Page 224</p> <p>1 Stack</p> <p>2 Did anyone report back to you or</p> <p>3 did you hear it reported to you what had</p> <p>4 been discussed at the road-show or any of</p> <p>5 the road-shows?</p> <p>6 A. No, not that I remember, no.</p> <p>7 Q. Are you aware that there was a</p> <p>8 road-show after the press release came</p> <p>9 out?</p> <p>10 MR. WISE: Which press release?</p> <p>11 MR. BRODY: I'm sorry.</p> <p>12 Q. The March 19th press release.</p> <p>13 MR. BRODY: Thank you, counsel.</p> <p>14 A. Yeah, I guess, I mean, it was</p> <p>15 the last day of the road-show before</p> <p>16 pricing, so it's pretty typical there</p> <p>17 would be a meeting that day.</p> <p>18 Q. Did anyone report to you, or say</p> <p>19 in your presence, what had happened at</p> <p>20 that road-show or statements that were</p> <p>21 made?</p> <p>22 A. I don't remember any, no.</p> <p>23 Q. Did you ever hear it reported to</p> <p>24 you that Mr. Dunlap or others at Sunbeam</p> <p>25 said publicly that the only reason they</p>
<p style="text-align: right;">Page 223</p> <p>1 Stack</p> <p>2 Q. Were there any discussions that</p> <p>3 you are aware of about how Sunbeam got to</p> <p>4 that point, how it happened?</p> <p>5 A. I don't think I had any specific</p> <p>6 discussions about it, no.</p> <p>7 Q. Do you remember anyone asking or</p> <p>8 suggesting that Morgan Stanley or Davis</p> <p>9 Polk could have done something differently</p> <p>10 after that information came out?</p> <p>11 A. No, not that I remember.</p> <p>12 Q. You don't remember anyone</p> <p>13 questioning or saying: We should have</p> <p>14 done something differently, or held up on</p> <p>15 the deal?</p> <p>16 A. Yeah -- no, I mean, I remember</p> <p>17 that I was surprised by it, but no, I</p> <p>18 don't remember discussions about that.</p> <p>19 Q. Okay. Ms. Stack, I have asked</p> <p>20 you some questions about the road-show and</p> <p>21 I believe you said you had no involvement</p> <p>22 in the road-show.</p> <p>23 A. No.</p> <p>24 Q. This is going to be a slightly</p> <p>25 different question.</p>	<p style="text-align: right;">Page 225</p> <p>1 Stack</p> <p>2 issued the press release is the lawyers</p> <p>3 made them do it?</p> <p>4 A. No, actually, I don't remember</p> <p>5 that.</p> <p>6 Q. Okay. In connection with the</p> <p>7 work that you did on this transaction, did</p> <p>8 you review any documents reflecting -- let</p> <p>9 me withdraw that.</p> <p>10 In connection with the work you</p> <p>11 did on this transaction, did you ever look</p> <p>12 at any proformas or estimates of what a</p> <p>13 Coleman/Sunbeam combination would look</p> <p>14 like?</p> <p>15 A. I think there are probably some</p> <p>16 included in the offering memorandum, so I</p> <p>17 am sure that I saw them. Frankly, as a</p> <p>18 first-year associate, they would have been</p> <p>19 a little more complicated than I would</p> <p>20 have had expertise in, I think, at the</p> <p>21 time.</p> <p>22 Q. Do you remember any discussions</p> <p>23 within Morgan Stanley, with Morgan Stanley</p> <p>24 or within Davis Polk, about any synergies</p> <p>25 or advantages from this combination that</p>

57 (Pages 222 to 225)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

Page 226	Page 228
<p>1 Stack</p> <p>2 would flow to Sunbeam?</p> <p>3 A. I don't remember any specific</p> <p>4 conversations.</p> <p>5 Q. And I believe you said there was</p> <p>6 a different group at Morgan Stanley</p> <p>7 working on the bank loan. Do you remember</p> <p>8 any conversations with them about --</p> <p>9 A. At Davis Polk --</p> <p>10 Q. Thank you.</p> <p>11 A. Sorry.</p> <p>12 Q. I knew I had made that mistake.</p> <p>13 I probably made it more than you have</p> <p>14 caught.</p> <p>15 You said there was a different</p> <p>16 team at Davis Polk working on the bank</p> <p>17 loan.</p> <p>18 A. Yes.</p> <p>19 Q. Did you have any conversations</p> <p>20 with them about the bank loan or the work</p> <p>21 they were doing?</p> <p>22 A. No, nothing specific.</p> <p>23 I think we may have had to</p> <p>24 coordinate some things, but I don't really</p> <p>25 remember any specifics of it.</p>	<p>1 Stack</p> <p>2 printer, at the Global Financial Press,</p> <p>3 and you have testified about your</p> <p>4 recollection. Do you recall any other</p> <p>5 events or conversations that took place at</p> <p>6 the printer?</p> <p>7 A. Um -- nothing that we haven't</p> <p>8 already discussed.</p> <p>9 Q. Do you recall any notes or</p> <p>10 documents that you created or saw at the</p> <p>11 time that would refresh your recollection</p> <p>12 about what happened at the printer?</p> <p>13 A. I don't remember anything else</p> <p>14 now.</p> <p>15 Q. Do you recall any documents,</p> <p>16 whether you created them there or not,</p> <p>17 that would refresh your recollection about</p> <p>18 what happened?</p> <p>19 A. No, nothing specific, no.</p> <p>20 Q. Okay.</p> <p>21 MR. BRODY: I have no further</p> <p>22 questions. I thank you for your</p> <p>23 time.</p> <p>24 THE WITNESS: Thanks.</p> <p>25 MR. CLARE: I have no questions</p>
Page 227	Page 229
<p>1 Stack</p> <p>2 Q. Did any members of the bank loan</p> <p>3 team participate in the conference calls</p> <p>4 on the 18th?</p> <p>5 A. You know, I don't remember any</p> <p>6 of them being there, but....</p> <p>7 Q. Do you remember any</p> <p>8 conversations between members of your</p> <p>9 group and anyone else about the impact of</p> <p>10 the events of the 18th and 19th and the</p> <p>11 press release on the bank loan?</p> <p>12 A. I don't remember, no.</p> <p>13 MR. BRODY: Why don't we go off</p> <p>14 the record.</p> <p>15 MR. WISE: Sure.</p> <p>16 THE LEGAL VIDEO SPECIALIST: The</p> <p>17 time is 2:29, and we are off the</p> <p>18 record.</p> <p>19 (Pause in proceedings.)</p> <p>20 THE LEGAL VIDEO SPECIALIST: The</p> <p>21 time is 2:31, and we are back on the</p> <p>22 record.</p> <p>23 MR. BRODY: Thank you.</p> <p>24 Q. Ms. Stack, we have talked a fair</p> <p>25 amount today about the events at the</p>	<p>1 Stack</p> <p>2 at this time.</p> <p>3 MR. WISE: That's it.</p> <p>4 MR. BRODY: Okay.</p> <p>5 THE LEGAL VIDEO SPECIALIST:</p> <p>6 Okay. The time is now 2:32, we have</p> <p>7 reached the end of the deposition,</p> <p>8 and we are off the record.</p> <p>9 (Time noted: 2:32 p.m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 HEATHER M. STACK</p> <p>15</p> <p>16 Subscribed and sworn to</p> <p>17 before me this ____ day</p> <p>18 of _____, 2004.</p> <p>19</p> <p>20 _____</p> <p>21 Notary Public</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

58 (Pages 226 to 229)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

<p style="text-align: right;">Page 230</p> <p>1 2 C E R T I F I C A T E 3 S T A T E O F N E W Y O R K) 4 : S S. 5 C O U N T Y O F N E W Y O R K) 6 7 I, WENDY D. BOSKIND, an RPR 8 and Notary Public within and for 9 the State of New York, do hereby 10 certify: 11 That HEATHER M. STACK, 12 the witness whose deposition is 13 hereinbefore set forth, was duly 14 sworn by me, and that such 15 deposition is a true and accurate 16 record of the testimony given by 17 the witness. 18 I further certify that I am not 19 related to any of the parties to this 20 action by blood or marriage, and that 21 I am in no way interested in the 22 outcome of this matter. 23 IN WITNESS WHEREOF, I have 24 hereunto set my hand this 27th day 25 of May, 2004.</p> <p style="text-align: center;">_____ WENDY D. BOSKIND, RPR</p>	<p style="text-align: right;">Page 232</p> <p>1 2 143, document which has no handwriting, it 3 appears to be a final or near-final 4 version of previous marked documents, 5 previously marked for identification..... 6 69:18 7 CPH 11, March 9, communication from 8 Mr. Tyree, previously marked for 9 identification..... 74:6 10 CPH 208, document, on the second page 11 there is a distribution list, with a 12 lengthy attachment provided..... 75:22 13 CPH 209, preliminary version of the 14 prospectus..... 84:3 15 123, document, the first two pages is a 16 memorandum from Lawrence A. Bornstein, at 17 Arthur Andersen, previously marked for 18 identification..... 104:11 19 CPH 210,..... 112:2 20 110, draft comfort letter, and it bears a 21 fax transmittal of 3-17-98 at what appears 22 to be about 8:30 at night, previously 23 marked for identification..... 124:10 24 CPH 16, document, previously marked for 25 identification..... 140:16</p>
<p style="text-align: right;">Page 231</p> <p>1 2 May 25, 2004 3 I N D E X 4 WITNESS PAGE 5 Heather M. Stack 6 7 EXAMINATION BY 8 MR. BRODY:..... 7:2 9 10 -----EXHIBITS----- 11 24, chronology prepared by Davis Polk, 12 previously marked for identification..... 13 56:23 14 CPH 207, document which looks like 15 something you would see at the beginning 16 of most transactions, the third page of 17 the exhibit, in the bottom right, it has a 18 production number ending with 16... 59:18 19 140, document with handwriting, previously 20 marked for identification..... 66:21 21 141, draft document with handwriting, 22 previously marked for identification..... 23 68:10 24 142, document with handwriting, previously 25 marked for identification..... 69:6</p>	<p style="text-align: right;">Page 233</p> <p>1 2 CPH 63, document, previously marked for 3 identification..... 140:19 4 CPH 64, document, previously marked for 5 identification..... 140:22 6 CPH 65, document, previously marked for 7 identification..... 140:25 8 CPH 66, document, previously marked for 9 identification..... 141:4 10 120, letter signed by Mr. Dunlap, 11 Mr. Kersh, Mr. Fannin, and Mr. Gluck, 12 previously marked for identification..... 13 175:23 14 Morgan Stanley 48, draft of the comfort 15 letter, previously marked for 16 identification..... 176:21 17 CPH 13, document which appears to 18 transmit to Mr. Tyree a draft press 19 release, previously marked for 20 identification..... 179:17 21 CPH 14, final version of the press 22 release, previously marked for 23 identification..... 182:20 24 25</p>

59 (Pages 230 to 233)

HEATHER M. STACK, MAY 25, 2004
CONFIDENTIAL

Page 234	Page 236
<p>1 2 111, document which appears to have been 3 faxed from Global Financial Press on the 4 night of the printing, previously marked 5 for identification..... 197:3 6 CPH 17, document, which appears to be the 7 final version of the comfort letter dated 8 on the 19th of March 1998, previously 9 marked for identification..... 198:6 10 CPH 114, document, previously marked for 11 identification..... 199:20 12 10, final offering memorandum, previously 13 marked for identification..... 202:11 14 CPH 111, document which appears to be a 15 fax to Ms. Stack, which was sent to 16 Ms. Stack at about 10:23 p.m. on the night 17 of the 19th at Global Financial Press, and 18 it was sent to Mr. Lurie and Mr. Dietz... 19 204:13 20 CPH 212, document, which in the corner 21 states DPW 10..... 216:3 22 CPH 35, document, a little different draft 23 of CPH, 212, previously marked for 24 identification..... 217:15 25</p>	<p>1 2 ERRATA SHEET 3 4 STATE OF NEW YORK) Pg__of__Pgs 5 ss: 6 COUNTY OF NEW YORK) 7 8 I wish to make the following changes, 9 for the following reasons: 10 PAGE LINE 11 _____ CHANGE: _____ 12 _____ REASON: _____ 13 _____ CHANGE: _____ 14 _____ REASON: _____ 15 _____ CHANGE: _____ 16 _____ REASON: _____ 17 _____ CHANGE: _____ 18 _____ REASON: _____ 19 _____ CHANGE: _____ 20 _____ REASON: _____ 21 _____ CHANGE: _____ 22 _____ REASON: _____ 23 _____ CHANGE: _____ 24 _____ REASON: _____ 25</p>
Page 235	
<p>1 2 CPH 112, bring-down comfort letter, 3 previously marked for identification..... 4 219:21 5 6 (Exhibits retained by counsel.) 7 8 9 (DIRECTION NOT TO ANSWER.)..... 116:25 10 (DIRECTION NOT TO ANSWER.)..... 118:8 11 (DIRECTION NOT TO ANSWER.)..... 135:3 12 (DIRECTION NOT TO ANSWER.)..... 165:6 13 (DIRECTION NOT TO ANSWER.)..... 166:9 14 15 16 17 18 19 20 21 22 23 24 25</p>	

60 (Pages 234 to 236)

22

IN THE CIRCUIT COURT
OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO. 03 CA-00504 AL

COLEMAN (PARENT) HOLDINGS, INC.,)

Plaintiff,)

vs.)

MORGAN STANLEY & COMPANY, INC.,)

Defendant.) January 12, 2003

9:03 a.m.

DENNIS PASTRANA

VOLUME I

VIDEOTAPED DEPOSITION taken pursuant to Notice at the
office of Esquire Deposition Services, 44 West Flagler,
Ste. 1400, Miami, Florida, before Ana Reid, a Shorthand
Reporter and Notary Public within the State of Florida.

CPH EXHIBITS:

NUMBER: PAGE: DESCRIPTION:

101	16	Bates CPH 0062693 to CPH 0062697
		Scott Yales Interview
102	30	Bates CPH 0062688 to CPH 0062672
		Kyle Kaiser Interview
103	36	Bates CPH 0062672 to CPH 0062677
		Bill Bloomfield Interview
104	43	Bates CPH 0062685 to CPH 0062686
		Jim Job Interview
105	46	Bates CPH 62606 to CPH 0062610
		Kevin Jeffcoat Interview
106	48	Bates CPH 1192163 to CPH 1192164
		"Review of significant transactions near year end"
107	61	Bates CPH 00013023 to CPH 00013027
		Sunbeam's Comparative Income Statements Reporting Period: January 1998
108	66	Bates CPH 1056009 to CPH 1056010
		Sunbeam's Comparative Income Statements Reporting Period: February 1998
109	73	Bates CPH 0129926 to CPH 0129936
		Form AP-187 3-16-98 Post Audit Review
110	83	Bates CPH 0038670 to CPH 0038676
		3-19-98 Draft Comfort Letter
111	87	Bates CPH 0038700 to CPH 0038706
		3-19-98 Draft Comfort Letter Faxed from Global Financial Press
112	91	Bates CPH 0129614 to CPH 0129616
		3-25-98 Bring Down Letter
113	100	Bates CPH 0129271 to CPH 0129275
		4-19-98 Memo from Holman to Pastrana

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CURTIS, MALLET, PROVOST, COLT & MOSIE

BY: MICHAEL MOSCATO, ESQ.

101 Park Avenue

New York, New York 10178

THE VIDEOGRAPHER: Good morning. We are now
on the video record. This is Videotape No. 1. Today is
Monday January 4th, 2004. The time is 9:03 a.m. We are
here at 44 West Flagler Street, Miami, Florida for the
purpose of taking the videotape deposition of Dennis
Pastrana in the matter of Case No. 03 CA 00504 A1,
Coleman (Parent) Holding versus Morgan Stanley.

The court reporter is Ana Reid. The
videographer is Alejandro Montalvo, both of Esquire
Deposition Service.

Will counsel please introduce yourselves
after which the court reporter will swear the witness.

MR. JOHNSON: Clark Johnson, Jenner & Block
Chicago, for the plaintiff, Coleman (Parent) Holding.

MR. BAKER: Stephen Baker, also of Jenner &
Block in Chicago, also on behalf of Coleman (Parent).

MS. BROWN: Zhonette Brown of Kirkland & Ellis,
Washington D.C., on behalf of Morgan Stanley, Incorporated.

MR. MOSCATO: Michael Moscato from the firm of
Curtis Mallet representing Dennis Pastrana.

DENNIS PASTRANA
was called as a witness by the plaintiff, having been first
duly sworn, was examined and testified as follows:

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Page 5

1 EXAMINATION

2 BY MR. JOHNSON:

3 Q. Good morning, Mr. Pastrana.

4 A. Good morning.

5 Q. Will you please state your name for the record.

6 A. Dennis Pastrana.

7 Q. And where do you reside?

8 A. 3948 Southwest 60th Court, Miami, Florida, 33135.

9 Q. How long have been at that address?

10 A. Five years.

11 Q. Where are you currently employed?

12 A. Ernst & Young, LLP.

13 Q. How long have you been with Ernst & Young, LLP?

14 A. Since May of 2001.

15 Q. And prior to May 2001, where were you employed?

16 A. With Arthur Andersen, LLP.

17 Q. And are you a CPA in the State of Florida?

18 A. Yes.

19 Q. How long have you held a CPA license?

20 A. About 11 years.

21 Q. And do you have a Bachelor's Degree?

22 A. Yes, I do.

23 Q. When did you receive your Bachelor's Degree?

24 A. 1991.

25 Q. And did you go to work for Andersen after

Page 6

1 receiving a Bachelor's Degree?

2 A. I worked for about a year at a local firm and

3 then I went to Andersen in 1993.

4 Q. So you were at Andersen about eight years?

5 A. Correct.

6 Q. What are your current responsibilities at Ernst &

7 Young LLP?

8 A. I'm a senior manager in the firm's audit practice

9 where I work -- basically manage audits of various clients.

10 Q. Including public companies?

11 A. Yes.

12 Q. Can you sketch for us the titles that you've held

13 during your approximately eight years at Arthur Andersen?

14 A. Staff, senior, manager and experienced manager.

15 Q. During what time frame approximately were you a

16 senior?

17 A. Up until 1998 beginning at about 1995.

18 Q. And then you became a manager at some point

19 around 1998; is that correct?

20 A. Correct. I believe it was middle of 1998, July,

21 something like that, August.

22 Q. And when did you gain the title experienced

23 manager?

24 A. In 2000, about the same time, middle of the year,

25 2000.

Page 7

1 Q. Were you a resident in the Miami office for

2 Arthur Andersen during your entire employment with Arthur

3 Andersen?

4 A. Yes. Excuse me.

5 Q. And performed services for Sunbeam during your

6 work at Arthur Andersen?

7 A. Yes.

8 Q. When did you begin doing any work for Sunbeam?

9 A. In approximately October of 1997.

10 Q. And what was the nature of that work?

11 A. My first involvement was in preparing -- or

12 performing the SAS 71 review for the third quarter of 1997.

13 Q. And did you continue to perform services for

14 Sunbeam after completing that review?

15 A. Yes.

16 Q. You worked on the 1997 audit; is that correct?

17 A. Yes.

18 Q. Did you devote a substantial part of your work to

19 that audit?

20 A. Yes.

21 Q. What work did you perform for Sunbeam after the

22 1997 audit?

23 A. I participated or performed the SAS 71 review for

24 the first quarter of 1998. I participated in the

25 performance of post report review procedures and the

Page 8

1 preparation of a comfort letter in connection with the

2 issuance of some bonds or debt, and subsequent to that also

3 participated in the Andersen's restatement audit work, if

4 you will.

5 Q. And that was in the time frame of summer 1998 and

6 the fall of 1998?

7 A. Correct.

8 Q. How is it that you came to work on Sunbeam

9 matters? Was there a colleague that asked you to work out

10 on those matters?

11 A. Really just in the normal course. The engagement

12 senior who was on the job previously on the engagement left

13 the firm and I was assigned just by the normal practice of

14 identifying people and assigning people to engagements.

15 Q. And to whom did you report at Andersen concerning

16 your work for Sunbeam?

17 A. Directly to Larry Bornstein.

18 Q. Indirectly did you report to anyone?

19 A. Pardon me?

20 Q. Indirectly did you report to anyone?

21 A. Indirectly I was kind of accountable to the

22 partners as well which would have been Phil Harlow but most

23 of my day-to-day interaction was with Mr. Bornstein.

24 Q. Did you have any primary contacts with Sunbeam

25 that you dealt with on a regular basis?

<p style="text-align: right;">Page 9</p> <p>1 A. Primarily dealt with a man by the name of Don --</p> <p>2 I can't remember -- Don Jackson who was accounting manager</p> <p>3 at the time and also dealt quite a bit with John Gluck who</p> <p>4 was also in control.</p> <p>5 Q. In connection with today's deposition, did you</p> <p>6 review any prior testimony that you've given relating to</p> <p>7 Sunbeam?</p> <p>8 A. I did. I read some testimony and reviewed some</p> <p>9 documents.</p> <p>10 Q. And you gave testimony to the Securities and</p> <p>11 Exchange Commission; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you also gave a deposition -- or several days</p> <p>14 of deposition in various civil litigations; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did you give any other testimony relating to</p> <p>17 Sunbeam?</p> <p>18 A. No.</p> <p>19 Q. And other than any conversations you may have had</p> <p>20 with Mr. Moscato or family members, have you spoken to</p> <p>21 anyone about this deposition?</p> <p>22 A. No.</p> <p>23 Q. When was the last time you had any conversation</p> <p>24 with Mr. Bornstein?</p> <p>25 A. It's been more than two years.</p>	<p style="text-align: right;">Page 11</p> <p>1 was the senior on the account in 1997 and when the</p> <p>2 restatement procedures came up in the summer of 1998 and</p> <p>3 they were looking for people to work on that engagement, I</p> <p>4 was a logical choice to participate.</p> <p>5 Q. When you say "they were looking for people" --</p> <p>6 A. "They" meaning the firm.</p> <p>7 Q. Any particular person within the firm contact you</p> <p>8 to ask you to work on those procedures?</p> <p>9 A. No, I was assigned to the account as it was so my</p> <p>10 time was, you know, in large part already assigned to</p> <p>11 Sunbeam.</p> <p>12 Q. Was Sunbeam your most significant client in terms</p> <p>13 of your work in the 97/98 time frame?</p> <p>14 A. In terms of me personally, yes.</p> <p>15 Q. How did you go about performing the additional</p> <p>16 procedures? Strike that. What additional procedures did</p> <p>17 you perform in connection with the restatement?</p> <p>18 MR. MOSCATO: When you say "you," you mean him</p> <p>19 personally?</p> <p>20 MR. JOHNSON: Yes.</p> <p>21 MR. MOSCATO: That's kind of a broad question.</p> <p>22 MR. JOHNSON: Let's see if he can answer it.</p> <p>23 THE WITNESS: I mean, I probably have to go back</p> <p>24 to the restatement report to refresh my recollection. I</p> <p>25 know I worked on areas related to international sales that</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. How about Mr. Pruitt, have you had any</p> <p>2 conversations with him over the past two years?</p> <p>3 A. Not related to Sunbeam. I do -- Mr. Pruitt is</p> <p>4 currently working out of the same office that I work at and</p> <p>5 we do know each other so we do talk occasionally.</p> <p>6 Q. But you haven't talked about Sunbeam in any way?</p> <p>7 A. No, no.</p> <p>8 Q. Have you had any conversations with Mr. Denkhaus</p> <p>9 within the last few years?</p> <p>10 A. Yes.</p> <p>11 Q. Let me narrow it down. Did any of those</p> <p>12 conversations relate to Sunbeam in any way?</p> <p>13 A. No, not that I can recall.</p> <p>14 Q. How about Mr. Harlow, have you spoken to him</p> <p>15 about Sunbeam at any point in the past two years?</p> <p>16 A. Not that I can recall. I've spoken to him, I</p> <p>17 would say, infrequently over the past few years and not</p> <p>18 about Sunbeam that I can remember at all.</p> <p>19 Q. Now, I believe you indicated that you worked on</p> <p>20 the additional procedures that led to the restatement of</p> <p>21 Sunbeam's financial statement, is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. How did you first get involved in working on</p> <p>24 those additional procedures?</p> <p>25 A. I think it just happened naturally. I mean, I</p>	<p style="text-align: right;">Page 12</p> <p>1 we were looking at at the time.</p> <p>2 I did some work in certain areas of the</p> <p>3 inventory, going back and looking at the historical</p> <p>4 accounting for capitalized variances.</p> <p>5 A fairly meticulous part of the additional</p> <p>6 procedure was tracking numerous adjustments that had been</p> <p>7 identified over a period of time and kind of tracking those</p> <p>8 on a quarter-by-quarter basis so I was responsible for that</p> <p>9 part of the work. Offhand, I don't remember what other</p> <p>10 areas I worked on.</p> <p>11 BY MR. JOHNSON:</p> <p>12 Q. Did you have any responsibility for interviewing</p> <p>13 Sunbeam personnel?</p> <p>14 A. Yes, I did conduct interviews of some people,</p> <p>15 that's right.</p> <p>16 Q. Do you know who else from Andersen was</p> <p>17 responsible for conducting interviews?</p> <p>18 A. I know Mr. Harlow did some interviews,</p> <p>19 Mr. Bornstein did some and there was generally, as far as I</p> <p>20 remember, two of us present at each of the interviews,</p> <p>21 Mr. Denkhaus did some interviews. I don't know who</p> <p>22 else. Those are the three I can remember.</p> <p>23 Q. What was the purpose of having these interviews?</p> <p>24 A. I think just to try to get some information about</p> <p>25 people's roles, what they might have known about different</p>

Page 13

1 events that transpired. It's really information gathering.
 2 Q. Why is it that Andersen determined to conduct the
 3 additional procedures in the first place?
 4 MS. BROWN: Objection.
 5 THE WITNESS: I don't know. I didn't make that
 6 decision.
 7 BY MR. JOHNSON:
 8 Q. Had you heard anything concerning potential
 9 frauds at Andersen prior to the commencement of the
 10 additional procedures?
 11 MS. BROWN: Objection.
 12 MR. MOSCATO: I'm sorry, wait. You said -- I
 13 think the syntax was a little weird. You said, "Did you
 14 hear anything about potential frauds at Andersen." You
 15 don't mean Andersen committing fraud?
 16 MR. JOHNSON: Thank you. That's correct.
 17 Q. Have you heard in the media or otherwise any
 18 reports of potential fraud occurring at Sunbeam?
 19 A. I mean, I had heard general discussion about, you
 20 know, the term "fraud" being used in the context of Sunbeam,
 21 but in terms of any specific area or any specific instance
 22 where something fraudulent was done, I had no knowledge or
 23 had not heard anything.
 24 Q. Did you ever read an article in Barron's in
 25 approximately June of 1998 relating to Sunbeam's accounting?

Page 14

1 A. I did actually.
 2 Q. Did you read that at approximately the time it
 3 was published?
 4 A. Yes.
 5 Q. Did you have any discussions about that article
 6 with anyone at Andersen?
 7 A. Yes.
 8 Q. With whom did you have any of those discussions?
 9 A. I can remember having a discussion about that
 10 with Mr. Harlow and Mr. Bornstein and, in fact,
 11 Mr. Denkhous as well.
 12 Q. Was that in June of '98?
 13 A. Thereabouts, yes.
 14 Q. And was this a single conversation?
 15 A. It was probably one or two conversations.
 16 Q. And what did each of those individuals say about
 17 the article?
 18 A. I don't remember what the specifics were of what
 19 was said at this point. You know, we did go through for
 20 each of the areas that were identified, see what was in our
 21 audit work papers.
 22 Q. Was that article one of the reasons that Arthur
 23 Andersen decided to conduct additional procedures?
 24 MS. BROWN: Objection.
 25 THE WITNESS: I don't know the basis for the

Page 15

1 decision.
 2 BY MR. JOHNSON:
 3 Q. Do you recall any of the Sunbeam employees that
 4 you interviewed as part of the additional procedures?
 5 A. I do only because I reviewed some of the
 6 documents.
 7 Q. Did you review -- I'm sorry, did you finish your
 8 answer?
 9 A. Over the weekend I looked at a few of the notes
 10 that I had written so I recall some.
 11 Q. Did you review any of the interview memorandum
 12 that you prepared?
 13 A. Yes.
 14 Q. And was Scott Yales one of the persons that you
 15 interviewed?
 16 A. Yes.
 17 MR. JOHNSON: Let's mark the interview
 18 memorandum. This will be CPH 101. Instead of bringing the
 19 entire set down I brought the handful that I'm going to
 20 use.
 21 Q. Mr. Pastrana, if you will take a minute to look
 22 at that document. I'm going to ask you a handful of
 23 questions about it.
 24 A. Okay.
 25 Q. Is this a memorandum that you prepared to the

Page 16

1 files dated September 1, 1998?
 2 A. Yes.
 3 Q. And it concerns an interview with Scott Yales?
 4 A. Yes.
 5 Q. And, for the record, Exhibit 101 has the Bates
 6 stamp CPH 0062693 through 697. Mr. Pastrana, who is Scott
 7 Yales?
 8 A. He, as best I can remember, worked in Sunbeam's
 9 planning and financial analysis function.
 10 Q. And was he employed in the Delray Beach office of
 11 Sunbeam?
 12 A. Yes.
 13 Q. Why did you determine to interview Mr. Yales as
 14 part of the additional procedures?
 15 MR. MOSCATO: Objection.
 16 THE WITNESS: I didn't determine. I mean, he was
 17 just one of people I was assigned to interview.
 18 BY MR. JOHNSON:
 19 Q. Someone told you to interview Mr. Yales?
 20 A. Somebody put together a list of who was going to
 21 be interviewed and who was going to conduct what interview.
 22 Q. Did you have a role in preparing the list of
 23 people to interview?
 24 A. No.
 25 Q. Who prepared that list?

1 MS. BROWN: Objection.
 2 THE WITNESS: I don't know. At this point I
 3 don't remember. I might have been asked questions about who
 4 did what function or whatever. I just can't remember the
 5 specifics.
 6 BY MR. JOHNSON:
 7 Q. About halfway down the first page of this exhibit
 8 there's a sentence fragment that states, "Needed to make
 9 numbers." The line starting with --
 10 A. Uh-huh.
 11 Q. What does the "Needed to make numbers" phrase
 12 refer to?
 13 A. I think it's this interviewee's sense of the fact
 14 that it was very important at this organization that they
 15 achieve their financial targets for revenues and income.
 16 Q. Is that the same import of the bullet point under
 17 Q4 97, the bullet provides, "In Q4 1997 there was a big
 18 push" and "push" is underlined.
 19 A. Yes.
 20 Q. That also signifies a push to make numbers?
 21 A. Yes.
 22 Q. And "numbers" means financial targets?
 23 A. Yes.
 24 Q. Do you recall how long after the interview with
 25 Mr. Yales you prepared this memorandum?

1 A. I don't recall.
 2 Q. Do you know who else was present at that
 3 interview, if anyone?
 4 A. I believe Mr. Bornstein was present, and there
 5 was always an attorney that was present, too, usually one of
 6 the attorneys from Skadden Arms was also there as well.
 7 Q. If you turn to the second page, the first line of
 8 text provides "Profit Assurance Plan"?
 9 A. Yes. And incidentally where you are reading,
 10 "Profit Assurances," says, "LAB showed the schedule to
 11 Skadden." That means Mr. Bornstein.
 12 Q. That's what I was going to ask you. Thank you.
 13 The second bullet point under the heading provides, "This is
 14 common at all companies but not to the extent that Sunbeam
 15 does it."
 16 A. Uh-huh.
 17 Q. What are you referring to there?
 18 MS. BROWN: Objection.
 19 MR. MOSCATO: I object to that. You mean, what
 20 was the witness referring to? What was Yales referring to?
 21 MR. JOHNSON: That's exactly right.
 22 MR. MOSCATO: If you remember.
 23 MS. BROWN: I still object.
 24 THE WITNESS: My recollection of this was that
 25 the company had a schedule that said, you know, "These are

1 kind of the goals in a number of areas that we need to
 2 achieve in order to make our earnings goals for the year,"
 3 and Sunbeam had one of those that upper management used to
 4 manage the business as well, and I think he was saying, the
 5 way I read it now, was that this was common at most
 6 companies but, you know, that Sunbeam was fairly aggressive
 7 in applying these goals.
 8 BY MR. JOHNSON:
 9 Q. The next bullet point, "Everyone had their,"
 10 quote, "go gets." Do you know what Mr. Yales is referring
 11 to with "go gets"?
 12 A. Everybody had targets that they were responsible
 13 for achieving.
 14 Q. And why did you determine that that information
 15 from Mr. Yales was something that ought to be noted in the
 16 interview memorandum?
 17 A. You know, as the interview progressed, I pretty
 18 much noted everything he said so I don't think I weeded
 19 stuff out. I think this was everything that was discussed.
 20 Q. So it was Mr. Yales who determined who said that
 21 Sunbeam did it -- had profit sharing plans to a greater
 22 extent than other companies?
 23 A. Yes, that was his statement, yes, sir.
 24 MS. BROWN: Objection for the record.
 25 MR. MOSCATO: Was there confusion about that in

1 any of the prior things? My understanding is all of this is
 2 Yales.
 3 MR. JOHNSON: I agree. I don't think there was
 4 confusion.
 5 BY MR. JOHNSON:
 6 Q. Did you attribute any significance to Mr. Yales'
 7 remark about the extent to which Sunbeam has profit sharing
 8 plans?
 9 A. I don't recall if I did or I didn't. I just made
 10 a note of it.
 11 Q. On that same page, there's a sentence that says,
 12 "Certain schedules were not to be shown to anybody." What
 13 schedules is Mr. Yales referring to there?
 14 A. I mean, I really don't know. I know that
 15 Mr. Bornstein, as I summarized here, showed him some
 16 schedules. I don't know if he was referring specifically to
 17 those schedules or if there were other internal management
 18 reports that they had been instructed not to share with
 19 people outside the company.
 20 Q. And did Mr. Yales indicate who was instructing
 21 him not to share those schedules with people outside the
 22 company?
 23 MS. BROWN: Objection.
 24 THE WITNESS: I don't recall at this point. I
 25 didn't include it in the memo.

1 BY MR. JOHNSON:

2 Q. The bullet that provides, "Scott was not the
3 keeper of such schedules," do you have any idea who the
4 keeper was at that time?

5 A. I don't know. I know that Scott reported to a
6 couple of women at the company, Deb McDonald, and I don't
7 remember their title exactly. And Deb's predecessor was
8 this woman, Lisa Dalberth. I don't know if they were the
9 keeper but that's who he reported to.

10 Q. If you look at the next bullet point, it
11 provides, "Lisa was the keeper at that time"?

12 A. Oh, okay.

13 Q. That's Lisa Dalberth?

14 A. I stopped at the first.

15 Q. I asked -- focused you on one bit of --

16 A. Sorry about that. Yes, that refers to Lisa
17 Dalberth.

18 Q. And at that time is that in the first quarter or
19 is that as of September of 1998?

20 A. This would have been prior to September of 1998.
21 I never really knew who Lisa was. I don't remember ever
22 meeting her. I do remember her successor Deb, but this Lisa
23 Dalberth, I never met her. She left the company sometime
24 prior. I don't know if it was in 1997 or in 1998. But by
25 September of 1998, I don't think Ms. Dalberth was there.

1 Q. The third bullet point refers to a schedule that
2 Mr. Bornstein showed to Mr. Yales during this interview; do
3 you see that?

4 A. Uh-huh.

5 Q. Do you know where Mr. Bornstein received that
6 schedule?

7 A. I don't know. I mean, Mr. Bornstein spent, I
8 don't know, several days or longer going through a series of
9 documents that had been gathered from the company and I know
10 he found a number of schedules in that process of going
11 through those documents.

12 Q. So you don't know when Mr. Bornstein first
13 received a copy of that schedule?

14 A. I don't.

15 Q. The last bullet point under that heading
16 provides, "Bob was aware of all this push." Is that Bob
17 Gluck?

18 A. Yes.

19 Q. And the "push" again is a push to make numbers?

20 A. Right.

21 Q. Under the heading "Troublesome Items," there's a
22 bullet that provides, "Sales waterfall items," what does
23 that refer to?

24 A. Those are deductions from gross revenue to arrive
25 at the net revenue and those would have been -- I'd need to

1 look at a paper to tell you exactly but, for example,
2 cooperative advertising, discounts that are being paid to
3 the client or an allowance for returns or something. Items
4 that are deducted from the gross amount of revenues.

5 Q. You also provide under that section that "Lower
6 returns is a troublesome item." Why is that troubling?

7 MS. BROWN: Objection.

8 THE WITNESS: I think properly -- probably better
9 stated would have been "returns," so achieving a lower
10 returns is what they are trying to do.

11 BY MR. JOHNSON:

12 Q. Now, did Mr. Yales identify these items as
13 troubling or are these items that you determined to be
14 troubling?

15 A. No, all this came from Mr. Yales.

16 Q. So Mr. Yales indicated that lower returns were a
17 troubling item?

18 MS. BROWN: Objection.

19 THE WITNESS: I think Mr. Yales indicated that
20 these were some of the areas of this plan that we were
21 talking about that seemed to make it challenging to achieve
22 the plan or these were some of the more challenging
23 components of that plan.

24 BY MR. JOHNSON:

25 Q. If you flip over to Page 3 of that exhibit which

1 has the Bates stamp CPH 62695, under the heading "Gross
2 Sales," if you would read Number 3 for me.

3 A. "Sales were being pulled forward" --

4 MR. MOSCATO: Wait, wait. You want him to read
5 it out loud?

6 MR. JOHNSON: Either way.

7 THE WITNESS: I beg your pardon. I'm sorry.

8 MR. MOSCATO: Read it to yourself.

9 THE WITNESS: Yes, thanks. Okay.

10 BY MR. JOHNSON:

11 Q. Mr. Yales indicated to you that Sunbeam was
12 pulling forward sales. Is that what this sentence
13 indicates?

14 A. Correct.

15 Q. Mr. Yales stated that "The VPs and GMs were
16 uncomfortable with the sales targets"?

17 MS. BROWN: Object.

18 BY MR. JOHNSON:

19 Q. Is that correct?

20 A. Correct.

21 Q. Do you know how many VPs and GMs Mr. Yales was
22 referring to there?

23 A. No, I don't.

24 Q. In that same numbered paragraph there's a
25 reference to -- and it's italicized, "the untenability" of

1 that. What is the untenability referring to?
 2 A. Honestly, I don't know right now.
 3 Q. Was that a phrase or a word that Mr. Yales used?
 4 A. I believe so, yes.
 5 Q. The same numbered paragraph, "As an example,
 6 pulling Q1, Q2 '98 sales into Q4," is that Q4 of 1997?
 7 A. Yes.
 8 MS. BROWN: Just for the record, I object to
 9 this entire line of questioning as Mr. Yales has already
 10 been deposed himself.
 11 MR. MOSCATO: He has been deposed in this case?
 12 MS. BROWN: Yes.
 13 BY MR. JOHNSON:
 14 Q. Number 6 under that heading provides, "Everyone
 15 knew that in practice the no-returns policy was," quote,
 16 "total BS" and "total BS," that's Mr. Yales' phrase for the
 17 no-returns policy?
 18 A. I believe so.
 19 Q. Do you have an understanding of why Mr. Yales
 20 stated that the no-returns policy was total BS?
 21 MS. BROWN: Objection.
 22 THE WITNESS: Yes, I don't know what his frame of
 23 mind was.
 24 BY MR. JOHNSON:
 25 Q. Number 5 provides, "Scott was aware of a,"

1 underlined, "stated no-returns policy." Why did you
 2 underline "stated" in this memo?
 3 MR. MOSCATO: If you remember.
 4 THE WITNESS: I don't remember. I think what I'm
 5 saying in the memo or what Mr. Yales is saying that there
 6 was a no-return policy that was communicated within the
 7 organization. In other interviews that came out, someone
 8 had said that similar policies had been tried in the past
 9 without success so it seems like he doubted whether it would
 10 stick.
 11 BY MR. JOHNSON:
 12 Q. In other words, that Sunbeam was not following
 13 the stated policy?
 14 MS. BROWN: Objection.
 15 MR. MOSCATO: I object to that.
 16 THE WITNESS: I don't think that's what this
 17 means. I think what this means is that the policy was being
 18 followed. I think there was question as to how long it
 19 would continue to be followed for.
 20 BY MR. JOHNSON:
 21 Q. So the reference to the no-returns policy as
 22 being total BS was a matter of how long the policy could
 23 remain in force?
 24 MS. BROWN: Objection.
 25 THE WITNESS: I mean, I understood it to mean

1 that they didn't think that could apply permanently.
 2 BY MR. JOHNSON:
 3 Q. In the middle of this page there's a text box
 4 that provides in quotes, "It was known among planning group
 5 that restructuring reserves were being used to benefit our
 6 earnings." Who's the planning group that Mr. Yales referred
 7 to there?
 8 MS. BROWN: Objection.
 9 THE WITNESS: Yes. I mean, I think this is just
 10 a group that he was a part of. He worked for Deb McDonald
 11 and Lisa Dalberth and whoever else was in that department
 12 that they oversaw.
 13 BY MR. JOHNSON:
 14 Q. The last line on this page provides, "By early
 15 February, it was apparent that Sunbeam would not make Q1
 16 numbers." That's the Q1 '98 numbers?
 17 A. Correct.
 18 Q. And then on the next page of this memorandum, CPH
 19 62696, Number 6 on that page refers -- states, "The schedule
 20 was 'absolutely' a reach." Do you know what schedule
 21 Mr. Yales was referring to there?
 22 MR. MOSCATO: You're looking at Number 6?
 23 MR. JOHNSON: Yes.
 24 THE WITNESS: I don't recall Number 5 refers to a
 25 schedule for the first quarter forecast. I would imagine

1 it's that schedule that's being referred to.
 2 BY MR. JOHNSON:
 3 Q. Do you know approximately how many people worked
 4 in Scott Yales' department at Sunbeam?
 5 A. I don't remember.
 6 Q. And then the last numbered paragraph on this page
 7 under the heading "First and Second Quarter 1998," if you
 8 would just read that to yourself.
 9 A. (Reading)
 10 Q. The text J/E; is that journal entries?
 11 A. Yes.
 12 Q. Do you know what journal entries were made for
 13 profit protection?
 14 MS. BROWN: Objection.
 15 THE WITNESS: I don't know.
 16 BY MR. JOHNSON:
 17 Q. Do you know what this is referring to, this
 18 paragraph?
 19 A. I mean, it sounds like he's saying that some
 20 entries were recorded to improve the profits of the company,
 21 but it's just a summary of what he said. I don't know
 22 specifically why entries are being referred to.
 23 Q. Do you know the magnitude of the entries?
 24 A. I don't, no.
 25 Q. Do you know who determined to reverse those

Page 29

1 entries in March of 1998?

2 MS. BROWN: Objection.

3 THE WITNESS: No.

4 BY MR. JOHNSON:

5 Q. Do you know when in March of 1998 Sunbeam

6 determined that it would not make the numbers for Q1?

7 A. I don't know that either.

8 Q. You interviewed Mr. Kaiser as well; is that

9 correct?

10 A. Yes.

11 MR. JOHNSON: Let's mark this as CPH 102.

12 Q. Mr. Pastrana, could you identify Exhibit 102 for

13 the record?

14 A. This is a memorandum I prepared of a July 21st

15 interview with Kyle Kaiser.

16 Q. And Kyle Kaiser was a Sunbeam employee?

17 A. Yes, he was the director of customer services.

18 Q. Was he in Delray Beach?

19 A. No, he worked in Hattisburg, Mississippi.

20 Q. If you flip to the third page of this Bates

21 stamp, CPH 62690, there's a section called bill and hold.

22 Can you tell us what bill and hold refers to?

23 A. Bill and hold in an accounting transaction refers

24 to a revenue transaction where the seller records a sale and

25 bills the customer but the goods haven't been physically

Page 30

1 shipped to the customers -- directly to the customer's

2 location.

3 Q. They're shipped to a warehouse or third party?

4 A. Could be to a warehouse, third party. Could be

5 segregated within the seller's own warehouse for that

6 customer.

7 Q. There's a sentence under the section that states,

8 "Gluck was being forced. Was not a proponent of it." Did

9 Mr. Kaiser indicate who was forcing Gluck to presumably do

10 bill and hold sales?

11 MS. BROWN: Objection.

12 THE WITNESS: I don't recall if it's not here. I

13 don't remember.

14 BY MR. JOHNSON:

15 Q. And just above that it states, "Decision to do

16 bill and hold was executed abruptly at the end of fourth

17 quarter, 1997." Did you know that Sunbeam was engaging in

18 bill and hold sales at the end of the fourth quarter, 1997?

19 A. We did.

20 Q. There's a reference to "Lack of procedures

21 here." Do you know what that refers to?

22 A. Yes, I believe that prior to the fourth quarter

23 of 1997 the company had not done bill and hold sale

24 transactions before and did not have formal procedures in

25 place for how to handle that type of transaction.

Page 31

1 Q. Did you ever gain an understanding as to why the

2 company determined to begin engaging in bill and hold sales

3 at that time?

4 A. I did get an understanding or at least I thought

5 I understood what the reason for it was.

6 Q. And what were those reasons?

7 A. The way I understood it --

8 MR. MOSCATO: Go ahead. I'm just making myself

9 comfortable because it's probably going to be a long

10 explanation but go ahead.

11 THE WITNESS: Want me to keep it short?

12 MR. JOHNSON: Answer the question.

13 THE WITNESS: My understanding of it was that in

14 the 1997 season for selling grills, the company missed an

15 opportunity to fill more customer orders because there were

16 certain limitations in terms of the capacity of grills that

17 its plant could produce, so the idea for the 1998 selling

18 season was to start producing the grills earlier, start

19 selling the grills earlier, and hopefully that way have time

20 to produce ultimately a higher number -- larger number of

21 grills and sell more grills.

22 And then what happened was at the time

23 that the company was ready to start selling its grills, that

24 it produced enough grills that the customers didn't have

25 available space at that time for the grills, so the decision

Page 32

1 was made that the customers would take the inventory --

2 would go ahead and purchase the inventory but that it would

3 be placed in a warehouse until the customers were ready to

4 take delivery.

5 BY MR. JOHNSON:

6 Q. Is the early-buy program at Sunbeam the same as

7 bill and hold?

8 A. I understood the two to be related but not

9 necessarily the same thing.

10 Q. So early buy, a customer could, in fact, take

11 possession of the product?

12 A. Yes.

13 Q. And bill and hold was not limited to grills, was

14 it?

15 A. As far as I knew at that time, it was limited to

16 grills. As far as I knew at that time. I think I learned

17 subsequently, maybe when we were doing the restatement work,

18 that it might have been applied on a limited basis to other

19 types of goods.

20 Q. Let's flip to the next page of Exhibit 102 for

21 me. That's got the Bates stamp CPH 62691. There's a

22 heading, "Pressure to Make Sales Numbers at End of Q1 98";

23 do you see that?

24 A. Yes.

25 Q. One of the provisions of that heading states,

Page 33

1 "They (top management) were planning to close the company.
 2 Anyone hired after October of 1996 were told this is an
 3 18-month deal and when we sell, you will be fully vested."
 4 What is Mr. Kaiser referring to there?
 5 MS. BROWN: Objection.
 6 THE WITNESS: I think he's referring to a
 7 knowledge that he had, that the intention of senior
 8 management was to eventually sell the company.
 9 BY MR. JOHNSON:
 10 Q. "This is an 18-month deal," does that refer to
 11 how long the business model needed to be sustained?
 12 MS. BROWN: Objection.
 13 THE WITNESS: Yes, I understood it to mean that,
 14 you know, after kind of Dunlap and the people he brought in
 15 got involved that the goal was to restructure the company
 16 and sell it within 18 months.
 17 BY MR. JOHNSON:
 18 Q. When did you first hear that Sunbeam might be
 19 sold?
 20 A. I don't recall.
 21 Q. I think you indicated you began working in
 22 earnest around October of '97?
 23 A. Yes.
 24 Q. Was the information that Sunbeam might be sold
 25 known to you at that time?

Page 34

1 A. Not that I can remember.
 2 Q. The next provision under that heading states,
 3 "Kyle: 'Nobody would put up with his bull if not for the
 4 options.'" Do you have any idea what Mr. Kaiser was
 5 referring to there?
 6 A. I think he meant that he was under a lot of
 7 pressure to do whatever his role was.
 8 Q. And what are the options referred to there?
 9 A. Employee stock options.
 10 Q. If you would flip over to -- I'm sorry. That's
 11 all I have on this exhibit.
 12 And Mr. Bloomfield is also one of the
 13 employees that you interviewed at Sunbeam during the initial
 14 proceedings?
 15 A. Yes.
 16 MR. JOHNSON: Let's mark this Exhibit 103.
 17 Q. Mr. Pastrana, can you identify Exhibit 103 for
 18 the record?
 19 A. This is a memorandum I prepared of an interview
 20 with Bill Bloomfield.
 21 Q. And you interviewed Mr. Bloomfield the same day
 22 you interviewed Mr. Kaiser?
 23 A. Yes.
 24 Q. I take it, then, Mr. Bloomfield is in Mississippi
 25 as well?

Page 35

1 A. I think we interviewed Mr. Bloomfield in
 2 Mississippi. I'm not sure he was actually based in
 3 Mississippi but I don't recall.
 4 Q. Were all of your interviews for the additional
 5 procedures conducted in person?
 6 A. No, one or two of them might have been
 7 telephonic.
 8 Q. Do you remember which ones might have been
 9 telephonic?
 10 A. I know that the interview was an interview of
 11 Lisa Dalberth that was telephonic. I don't remember which
 12 other ones were.
 13 MR. MOSCATO: If it was telephonic, would you
 14 have said it was telephonic in the interview memo?
 15 THE WITNESS: You know, I think I did in the Lisa
 16 Dalberth memo. I can't say I necessarily would have done
 17 that. I should have but I don't know that I did.
 18 BY MR. JOHNSON:
 19 Q. Turn to the second page of this exhibit, CPH 103,
 20 the fourth line down, fourth text section down states, "Don
 21 Uzzi's philosophy - load the pipeline and we'll deal with
 22 the customers later." What is Mr. Bloomfield referring to
 23 there?
 24 MS. BROWN: Objection.
 25 THE WITNESS: Just in the context in reading it

Page 36

1 now, I mean, I understand it to mean that they were taking
 2 sales that -- orders that might have been first quarter
 3 sales and pulling them forward and perhaps shipping them to
 4 customers in advance of the customers' desired date for the
 5 merchandise. And I think what this statement is referring
 6 to is the fact that these employees were given instructions
 7 to just go ahead and ship that merchandise and then they
 8 will deal with the customer complaints on -- you know, when
 9 the merchandise comes back or when the customers complain.
 10 BY MR. JOHNSON:
 11 Q. So the pipeline is the shipping --
 12 A. The distribution channel, distribution of goods.
 13 Q. So is load the pipeline, is that the same thing
 14 as stuffing the channel?
 15 MS. BROWN: Objection.
 16 THE WITNESS: I think --
 17 MR. MOSCATO: I'm sorry, I'm a little confused.
 18 Are you asking him whether it's the same in his mind,
 19 whether it's the same in Mr. Bloomfield's mind? I'm not
 20 trying to be a pain. It's getting a little fuzzy as to what
 21 you're asking.
 22 MR. JOHNSON: That's a fair statement.
 23 Q. Did you understand Mr. Bloomfield to be
 24 indicating that Sunbeam was stuffing the channel?
 25 MS. BROWN: Objection.

1 THE WITNESS: I'm not sure that I necessarily
2 correlated this with stuffing the channel. I mean, I
3 think -- I suppose you could interpret those to mean similar
4 things. I really don't know.

5 BY MR. JOHNSON:

6 Q. But you did understand Mr. Bloomfield to be
7 indicating that Sunbeam was shipping product in the fourth
8 quarter despite the customers hadn't ordered the product?

9 A. Correct. Or at least if customers had ordered
10 the product in advance of the targeted delivery date, that
11 the customer had specified.

12 Q. About two thirds of the way down the page
13 there's a provision that provides, quote, "Each quarter it
14 went deeper. Everyone was telling our operating committee
15 this has to stop. Lee Griffith said this can't go on."
16 What was Mr. Bloomfield referring to there?

17 A. I believe this was just the pressure to increase
18 sales at the end of each quarter and in particular to --
19 you know, to make deliveries in advance of the dates that
20 customers requested. That's what I understood it to mean.
21 So they did some on the fourth quarter and then they had to
22 go a little bit more into the first quarter of '98 and, you
23 know, kind of progressed.

24 Q. And you understood Mr. Bloomfield to be
25 indicating that the purpose of shipping prior to a

1 Andersen's reaction to bill and hold?

2 MS. BROWN: Objection.

3 THE WITNESS: You know, I don't recall. I can
4 remember, when we first learned of the bill and hold, there
5 was concern about it because it's an unusual type of revenue
6 arrangement. I don't recall ever necessarily hearing we had
7 a problem with it provided they had the appropriate
8 documentation to support the transaction.

9 BY MR. JOHNSON:

10 Q. Did you ever hear from anyone whether the SEC
11 wasn't going to like Sunbeam's bill and hold practices?

12 MR. MOSCATO: You mean, this is back when they
13 first found out about it? Is this what you are talking
14 about?

15 MR. JOHNSON: Right.

16 MR. MOSCATO: So back in -- you know, when you
17 are doing the year-end audit, use that as the time frame for
18 his question, if that helps.

19 THE WITNESS: I don't remember anybody -- could
20 you repeat the question just to make sure?

21 BY MR. JOHNSON:

22 Q. And let me put a time frame just so we are all
23 clear as to when you heard this. When Andersen first
24 learned that Sunbeam was engaging in bill and hold sales,
25 did you have any conversations with anyone to the effect

1 customer's desire ship date was to recognize revenue earlier
2 than what Sunbeam otherwise would be able to do?

3 MS. BROWN: Objection.

4 THE WITNESS: It was to recognize revenue on
5 product that otherwise would have been revenue on the
6 subsequent quarter, would have been delivered in a
7 subsequent quarter.

8 BY MR. JOHNSON:

9 Q. So it's accelerating recognition of revenue?

10 A. Yes.

11 Q. And the last line on this page indicates, "Every
12 quarter there was a significant push to pull forward
13 sales." That's a reference to accelerating the recognition
14 of income?

15 A. That's right.

16 Q. If you would be good enough to flip to the second
17 to the last page of Exhibit 103, CPH 62676, under the
18 heading "The Neosha bill and hold"; do you see that?

19 A. Uh-huh.

20 Q. About two thirds of the way down that section
21 there's a sentence that provides, "Gluck said AA Partners
22 had a problem with B&H and the SEC wasn't going to like it";
23 do you see that sentence?

24 A. Yes.

25 Q. Was that consistent with your understanding of

1 that the SEC would be disappointed or troubled in any way
2 about those sales?

3 A. No, not at that time.

4 Q. Flip to the next page which is the last page
5 of that memo. At the top it provides, "As early as
6 September 1997 the sales org knew that the stores were
7 stuffed with product, e.g., Wal-Mart had 42 weeks of
8 product. Talked to Chuck Myers." To your knowledge, did
9 anyone at Andersen talk to Chuck Myers about this issue?

10 A. I didn't. I don't know if anyone did.

11 Q. Do you know why Mr. Bloomfield is conveying this
12 information to you?

13 A. I think just in response to our questions, he was
14 giving us his impressions of what he knew.

15 Q. Do you know how many people were in the sales org
16 that Mr. Bloomfield is referring to there?

17 A. I don't know.

18 Q. By the way, did Mr. Bloomfield ever indicate to
19 you that anyone from Morgan Stanley had ever attempted to
20 contact him?

21 A. No.

22 Q. How about Mr. Kaiser, did Mr. Kaiser ever tell
23 you that Morgan Stanley attempted to contact him at any
24 point?

25 A. No.

1 Q. Same question for Mr. Yales, did Mr. Yales ever
2 tell that you Morgan Stanley had attempted to contact him at
3 any point?
4 A. No.
5 Q. Did you interview Jim Job?
6 A. Yes.
7 Q. Is that Jim Job or Job?
8 A. Job.
9 Q. A difficult name, I'm sure.
10 MR. JOHNSON: Let's mark the Job interview as CPH
11 104.
12 Q. Mr. Pastrana, will you identify CPH 104 for the
13 record?
14 A. This is a memorandum I prepared summarizing an
15 interview with Jim Job on July 20 of 1998.
16 Q. And the interview -- the memo is dated August 30,
17 1998?
18 A. That's right.
19 Q. Did you keep your notes from any of these
20 interviews, by the way?
21 A. No, I did not.
22 Q. The last bit of text on this memo, which is the
23 second page, is in quotes and it states, "I guess they
24 didn't want to receive the goods because they wanted to make
25 the first quarter look as good as possible." What is

1 Mr. Job referring to there?
2 A. I think he's talking about the fact that they
3 were turning away -- his impressions about the company
4 turning away customer merchandise returns at the return
5 locations.
6 Q. So customer sent goods back on the first quarter
7 of 1998 but the company wouldn't accept them; is that
8 correct?
9 A. That's correct.
10 Q. Did you have any understanding as to why the
11 company wanted to make the first quarter look as good as
12 possible?
13 MS. BROWN: Objection.
14 MR. MOSCATO: I object to that.
15 THE WITNESS: Other than trying to achieve
16 guidance that they had given, the market, I didn't know.
17 BY MR. JOHNSON:
18 Q. Do I understand that when unauthorized returns
19 were delivered to Mississippi, they sat in trucks until some
20 point and time?
21 A. That was my understanding.
22 Q. And Sunbeam paid the charges associated with
23 having the trailers stored?
24 MS. BROWN: Objection.
25 THE WITNESS: That was my understanding obtained

1 as part of these interviews that I did.
2 BY MR. JOHNSON:
3 Q. Do you know what volume of returns Mr. Job was
4 talking about?
5 A. I don't know.
6 Q. Toward the bottom of the first page he refers to
7 75 to 100 trucks. Do you have any idea what volume of sales
8 would be contained within 75 to 100 trucks?
9 MS. BROWN: Objection.
10 THE WITNESS: I have no idea.
11 BY MR. JOHNSON:
12 Q. Would it be several million dollars?
13 MR. MOSCATO: I object. Doesn't it kind of
14 depend what's in the trucks?
15 MR. JOHNSON: Within reason, sure.
16 THE WITNESS: Without knowing how full the trucks
17 are, what the nature of the merchandise that's in there, and
18 even at this point I wouldn't know what the value of the
19 truck is of any kind of merchandise.
20 BY MR. JOHNSON:
21 Q. Did you find this information concerning returns
22 significant?
23 MS. BROWN: Objection.
24 THE WITNESS: I mean, the information gleaned in
25 this particular interview, I don't remember this being a

1 very helpful interview, but in general the information that
2 there were -- you know, learned subsequently that there were
3 trucks filled with merchandise that customers were
4 attempting to return, that the company was not accepting,
5 yes, I mean, that was certainly noteworthy from our
6 standpoint.
7 BY MR. JOHNSON:
8 Q. Did Mr. Job ever indicate in any way that Morgan
9 Stanley had attempted to contact him?
10 A. No.
11 Q. You interviewed Mr. Jeffcoat as well?
12 A. Yes.
13 MR. JOHNSON: Exhibit 105.
14 Q. Exhibit 105, Mr. Pastrana, appears to consist
15 of two memoranda.
16 A. Yes.
17 Q. One you authored and one Mr. Harlow authored?
18 A. Uh-huh.
19 Q. Why is it that there are two memoranda?
20 A. I don't know. I was not aware of the one
21 authored by Mr. Harlow or, if I was aware of it, I don't
22 remember being aware of it.
23 Q. Can you tell where these memoranda concern the
24 same interview?
25 A. Yes, I think it's the same interview.

Page 45

1 Q. Did Mr. Jeffcoat ever tell you that Morgan
2 Stanley had attempted to contact him?
3 A. No.
4 Q. Mr. Jeffcoat refers, according to this
5 memorandum, to the pulling forward of sales?
6 A. Where is that?
7 Q. For example, on Page 1 at 9/97?
8 A. Uh-huh.
9 Q. "Was aware that orders were pulled forward"?
10 A. Yes.
11 Q. What is the "pull forward of sales" referred to
12 there?
13 MS. BROWN: Objection.
14 THE WITNESS: This is again accelerating delivery
15 dates on orders that had been placed by customers. Instead
16 of delivering them in the fourth quarter of '97, deliver the
17 order in the third quarter of '97.
18 BY MR. JOHNSON:
19 Q. Now, I believe you told me already but I don't
20 have a good note on this, what particular aspects of
21 Sunbeam's finances were you focused on in connection with
22 the 1997 audit?
23 A. Say that again.
24 MR. MOSCATO: He didn't answer that.
25 ///

Page 46

1 BY MR. JOHNSON:
2 Q. Were there any particular aspects of Sunbeam's
3 financial statements that you focused on in connection with
4 the 1997 audit?
5 MR. MOSCATO: The original audit.
6 THE WITNESS: Yeah. You know, without going
7 back, it's hard to give you a complete list. I did work in
8 a number of different areas. I may not have done all the
9 work in a given area that I would name but, for example,
10 accounts receivable, I did some of the work related to
11 accounts receivable. I did some work related to inventory.
12 I can't remember doing too much related to inventory. Some
13 of the accrued liabilities like the accrual for returns and
14 warranty, cooperative advertising, credits due to customers,
15 the overall analytical review.
16 BY MR. JOHNSON:
17 Q. Now, you say accounts receivable, did that
18 include examination of bill and hold practices?
19 A. Examination of some of the documents related to
20 the bill and hold transactions, yes.
21 Q. And are you familiar with the EPI transaction?
22 A. I am. It's been a while since I've looked at
23 information, but I do recall the EPI transaction.
24 Q. And you looked at that in connection with the
25 1997 audit?

Page 47

1 A. I think so. I'd have to look at some documents.
2 Q. Let me give you one that might help you.
3 MR. JOHNSON: This will be CPH 106.
4 Q. Mr. Pastrana, could you identify Exhibit CPH 106
5 for us?
6 A. This is a memo I authored entitled "Review of
7 significant sales transactions near year end."
8 Q. And this is one of the documents that you
9 reviewed this past weekend?
10 A. No.
11 Q. Take a minute to review it, if you would please.
12 A. (Reading) Okay.
13 Q. The subject line of this memorandum states,
14 "Review of significant sales transactions near year end."
15 Why were you looking at transactions near year end?
16 A. I mean, it's a standard audit procedure that you
17 perform to look for any kind of unusual large transactions
18 that might take place near the end of a period to search for
19 cutoff issues, issues of sales occurring in one period that
20 maybe should have been sales of subsequent period.
21 Q. And there are three categories of transactions
22 listed in this memorandum; is that correct?
23 A. Correct.
24 Q. To whom was this memorandum circulated,
25 Exhibit 106?

Page 48

1 A. This memorandum was placed in the audit files,
2 the work papers that would have been review by Mr. Bornstein
3 and Mr. Harlow. Let me say, at minimum it would have been
4 reviewed by Mr. Bornstein. It's possible Mr. Harlow might
5 have reviewed it.
6 Q. The memorandum indicates that Andersen proposed
7 an adjustment with respect to the EPI transactions; is that
8 correct?
9 A. Yes.
10 Q. Did Sunbeam accept that adjustment?
11 A. I think the way I recall it, they decided not to
12 record the adjustment. They waived the adjustment.
13 Q. And the adjustment was for three million dollars;
14 is that correct?
15 A. Correct.
16 Q. And with respect to the Encore, Andersen proposed
17 an adjustment on that transaction as well?
18 A. Correct.
19 Q. And Sunbeam waived that proposed adjustment?
20 A. Correct.
21 Q. To your knowledge, did anyone from Morgan Stanley
22 ever ask anyone at Andersen about any waived or past
23 adjustments?
24 A. Not to my knowledge.
25 Q. Does Sunbeam have access to your work papers

1 during the normal course of an audit?

2 A. No.

3 Q. In the first section of this memorandum
4 concerning bill and hold sales, you distinguish, it appears,
5 between early buy sales and bill and hold sales?

6 A. Uh-huh.

7 Q. Can you tell us again what the distinction
8 between those two type of sales may be?

9 A. Well, early buy is a program -- you know, could
10 be different at different companies. I mean, at Sunbeam,
11 the way I understand it, was a program to encourage
12 customers to purchase their grills early in the season where
13 Sunbeam would offer the company perhaps an incentive in the
14 form of a discount and also allow them to have extended
15 credit terms, so instead of paying in 30 days, maybe pay in
16 90 days. Something like that.

17 The bill on hold was a different
18 arrangement although the two may have happened often in the
19 same transaction, but bill and hold was different where the
20 customer wanted to take advantage of the early-buy program
21 but perhaps didn't have the warehousing space, and then the
22 parties reached agreement to go ahead and sell/purchase the
23 goods on a bill and hold basis.

24 Q. The first paragraph under the bill and hold
25 states, "Pursuant to SEC regulations, said sales are

1 Q. Did you have any other duties with respect to
2 confirming the bill and hold sales?

3 A. Well, I mean, we mailed out the letters,
4 followed up pretty much on a daily basis to see if we had
5 gotten the letters back. I reconciled the responses that
6 came back in those letters to the company's accounting
7 records. I think I prepared a summary of the results of the
8 confirmation requests. And I might have also done some
9 research to determine exactly what conditions needed to be
10 satisfied and needed to be confirmed with the third parties
11 in order to have a valid bill and hold sale.

12 Q. I believe you stated earlier that bill and hold
13 sales were unusual in your experience?

14 A. Well, I had never had experience with them before
15 and I knew it wasn't a common sales practice.

16 Q. Did that, the fact that Sunbeam was engaging in
17 bill and hold sales, cause Andersen to bring a heightened
18 skepticism to its auto work?

19 A. Yes, I believe so.

20 Q. How about the EPI transaction, did that raise any
21 eyebrows, so to speak, at Andersen?

22 MR. MOSCATO: Objection. You don't have to adopt
23 his terminology, Dennis, to answer that question.

24 THE WITNESS: I mean, I think it certainly
25 prompted a response. I mean, The EPI arrangement was a

1 permissible only under a handful of criteria." The last of
2 those listed in the memorandum is that the buyer has a
3 business reason placing the order well in advance of his
4 needs. Would to obtain a price discount be a legitimate
5 business reason for placing --

6 A. I believe that was the research and the
7 conclusion we reached at the time. I think that's right.

8 Q. Were you involved in the confirmation process
9 with respect to the bill and hold sales?

10 A. Yes.

11 Q. Did you have any in-person or telephonic
12 conversations with any customers relating to the bill and
13 hold sales?

14 A. I did not.

15 Q. Do you know whether anyone at Andersen did have
16 those calls?

17 A. I am aware that Mr. Harlow had some discussions
18 with some of the customers.

19 Q. Your involvement consisted of mailing
20 confirmation requests?

21 A. Correct.

22 MR. MOSCATO: Was the question that his only
23 involvement was mailing or was that among his activities?

24 MR. JOHNSON: The question wasn't specific.
25 Thank you.

1 little bit, again, unusual, involved entering into a
2 contract with this company, EPI. We reviewed the contract
3 and then I know that Mr. Bornstein and Mr. Harlow had
4 specific discussions with members of senior management about
5 that transaction and the existence of any other transactions
6 that might have similar characteristics. That's what I know
7 about it.

8 BY MR. JOHNSON:

9 Q. With respect to these proposed adjustments, are
10 you aware of any conversations between Andersen personnel
11 and Sunbeam personnel with respect to whether these
12 adjustments should be made?

13 A. I didn't participate in any of those
14 discussions. I know that those discussions were had because
15 we summarized our adjustments on a list and then proposed
16 them to senior management.

17 Q. Do you know who was involved in those
18 discussions?

19 A. I don't know. It would be either Mr. Bornstein
20 or Mr. Harlow or both.

21 Q. How about on the Sunbeam side?

22 A. You know, again I don't know. I mean, at minimum
23 it may have been communicated to Mr. Kersh and I would think
24 Al Dunlap as well.

25 Q. Was there anything about the management style or

1 culture at Sunbeam that caused Andersen to bring a
2 heightened skepticism to the audit?

3 MS. BROWN: Objection.

4 THE WITNESS: You know, in the role that I was in
5 and what I was doing, my role at the job at the time, I
6 don't remember anything out of the ordinary in the conduct
7 of the 1997 audit.

8 You know, I knew that the company had
9 undertaken a fairly aggressive restructuring plan and just
10 by "aggressive," I mean involving a substantial amount of
11 change in terms of closing locations, selling of furniture
12 division, reducing employees and things of that sort that I
13 knew certainly impacted the way we designed our audit but to
14 say that it resulted in heightened skepticism or anything of
15 that sort, I think it impacted the way we designed our audit
16 plan.

17 MR. MOSCATO: Dennis, if there comes a time you
18 want a break, just say so.

19 MR. JOHNSON: The same goes for you, Mike.

20 MR. MOSCATO: I know that. I can speak for
21 myself. I'm comfortable. I just want to make sure Dennis
22 is comfortable.

23 MR. JOHNSON: Actually a few more minutes on this
24 topic and I will propose one myself.

25 Q. During the course of any of your audits -- excuse

1 the time frame that you were conducting the audit and answer
2 accordingly.

3 THE WITNESS: At the time I was conducting the
4 audit, I don't remember ever having a problem meeting with
5 someone I wanted to meet with. I wouldn't go knock on Al
6 Dunlap's door to ask him a question about something, but the
7 people were available.

8 BY MR. JOHNSON:

9 Q. Were you aware during the 1997 audit of the
10 company's financial forecast?

11 A. You know, in our audit and our work papers we
12 probably have a forecast or a budget for the following year
13 which we would typically look at. I don't recall being
14 aware, at the time that I was actually conducting the audit,
15 of what that budgeted forecast was.

16 Q. So you didn't have a sense of whether it was a
17 very aggressive forecast or not?

18 A. For the following year, no. I just didn't have
19 that sense.

20 Q. Auditors look retrospectively; is that correct?

21 A. Yes, we are kind of stuck in the past.

22 Q. In connection with the '97 audit, did you become
23 aware at any point during that audit that there was a
24 possibility of Sunbeam being sold to another company?

25 A. What was the time frame again?

1 me. During the course of the your 1997 audit, did you ever
2 receive any information from Sunbeam employees as to
3 Chainsaw Al's management tactics?

4 MS. BROWN: Objection.

5 THE WITNESS: No.

6 BY MR. JOHNSON:

7 Q. Did you hear during the 1997 audit that it was a
8 very high pressure environment?

9 A. There were certainly indications that there was
10 considerable amount of pressure but, you know, honestly, my
11 experience with other companies, there was also pressure to
12 meet earnings, to achieve goals every year and things of
13 this sort so probably at my level of experience, I wouldn't
14 have thought that was necessarily unusual or strange.

15 Q. Did you ever get the sense that anyone at Sunbeam
16 was uncomfortable speaking with you during the 1997 audit?

17 A. No.

18 Q. So, as far as you knew, during that audit
19 employees were available to speak with you and were candid
20 in giving you information?

21 MR. MOSCATO: I object. I mean, you're asking
22 him what he was thinking at the time of the audit, right?

23 MR. JOHNSON: Correct.

24 Q. As far as you knew --

25 MR. MOSCATO: You have to put yourself back to

1 Q. At any point during the 1997 audit.

2 A. You've actually asked me that question before and
3 I said no. I think there was some discussion late in the
4 year. Maybe in December I heard some employees saying
5 something to the effect that management was trying to sell
6 the company, but I can't really state what the timing was of
7 when I learned that idea.

8 Q. Would that cause you to bring any type of
9 heightened skepticism to the audit?

10 A. I don't think so. I mean, I think that our plan
11 was based on our understanding of the company and what had
12 transpired in 1997. I'm not sure that -- and I think it was
13 responsive to what we identified as being the audit risk
14 irrespective of what the plan was to sell the company or
15 not. I don't think so.

16 Q. One more question on this Exhibit 106. What is
17 the scope of the adjustment that was proposed on the Encore
18 transaction?

19 A. When you say what is the scope --

20 Q. I guess the accountant's way of putting it I
21 think is what would be the net effect of that adjustment?

22 A. It seems it would be \$500,000.

23 MR. JOHNSON: Do you want to take a short break
24 or do you want to keep going?

25 MR. MOSCATO: Sure.

1 THE WITNESS: Whatever you guys want.
 2 MR. MOSCATO: Let's take a break.
 3 THE VIDEOGRAPHER: We are going off the video
 4 record. The time is 10:37.
 5 (Recess noted: 10:37 a.m. to 10:49 a.m.)
 6 THE VIDEOGRAPHER: We're back on the record. The
 7 time is 10:49.
 8 BY MR. JOHNSON:
 9 Q. Mr. Pastrana, during the first quarter of 1998
 10 did you review any of Sunbeam's interim sale results for the
 11 first quarter of 1998?
 12 A. Yes.
 13 Q. How is it that you came to do that?
 14 A. Sometime in the first quarter of 1998 the company
 15 decided to purchase several companies of which I think
 16 Coleman was the most significant, and in order to finance
 17 that purchase they were going to be issuing some debt that
 18 was going to -- and the document to sell the debt was going
 19 to include the financial statements, that Arthur Andersen
 20 had authored it. So, as a matter of policy or practice, we
 21 performed what's called a post-audit review where we
 22 reviewed the results of the company subsequent to the date
 23 of the audited financial statements and it was in connection
 24 with that process.
 25 Q. Did anyone in particular at Arthur Andersen

1 direct you to begin those post audit procedures?
 2 A. Sure, it would have been Larry Bornstein.
 3 Q. Do you recall approximately when he asked you to
 4 start that work?
 5 A. I really don't remember what the time frame was.
 6 It would have been February, March, something like that.
 7 Q. How did you go about getting the financial
 8 information that you needed to conduct those post-audit
 9 procedures?
 10 A. We put together a list usually of the things we
 11 need and give it to someone at the company.
 12 Q. And who was your contact person at Sunbeam in
 13 connection with those procedures?
 14 A. It would have been either Bob Gluck or Don
 15 Jackson.
 16 Q. And one of the things you asked for is sales,
 17 current sales figures?
 18 A. Right.
 19 MS. BROWN: Object.
 20 THE WITNESS: Yes, revenue. One of the things we
 21 would have asked for, if I can back up, would have been the
 22 income statement for January and February which would have
 23 contained sales and we have may have requested more
 24 information with regard to sales.
 25 ///

1 BY MR. JOHNSON:
 2 Q. Did Sunbeam provide that information to you?
 3 A. Yes.
 4 MR. JOHNSON: Let's mark this as Exhibit 107, I
 5 guess it is.
 6 Q. Mr. Pastrana, giving you a document which has
 7 been marked as CPH 107, Bates stamp 0013023 through 027, can
 8 you identify that document for the record?
 9 A. This is the schedule which shows comparative
 10 income statements for Sunbeam comparing the period 1998 to
 11 the period 1997 and contains some notation of explanation of
 12 reasons for changes from one period to the other in certain
 13 amounts, certain line items.
 14 Q. And on the first page of the exhibit on the upper
 15 right corner there's a notation "DP 3/98." Does that refer
 16 to you, Dennis Pastrana?
 17 A. Yes.
 18 Q. Are those your handwritten notes on the second
 19 page of the exhibit?
 20 A. Yes.
 21 Q. Can you recall more specifically whether it was
 22 Mr. Jackson or Mr. Gluck who provided you this detailed
 23 income statement?
 24 A. I can't tell from here. I can't remember.
 25 Q. And can you tell from this document when it was

1 provided to you?
 2 A. It looks like I got it on or about March 5th of
 3 '98. I think it says '97 but it should say '98.
 4 Q. You are looking at the first page of the exhibit?
 5 A. I'm looking at the first page. I'm just guessing
 6 that that's -- it says R35. Should be '98 again so I assume
 7 that's approximately the date it was done.
 8 Q. R means received?
 9 A. R typically stands for review. This wasn't
 10 really a review but the post-report review that we were
 11 doing in early March.
 12 Q. And this detailed income statement provides
 13 that for January of '97 as compared for January of '98,
 14 sales were down 43 -- approximately \$44 million; am I
 15 reading this correctly?
 16 A. Yes.
 17 Q. And for the period January 1998, Sunbeam was
 18 showing an operating loss of over \$11 million; is that
 19 right?
 20 A. Correct. Well, at the operating profit line, I
 21 think is where you are looking.
 22 Q. Right.
 23 A. Correct.
 24 Q. And the net loss for the period January 1998 was
 25 nine and half million dollars approximately?

1 A. Correct.
 2 Q. Did you share this income statement with anyone
 3 at Andersen?
 4 A. Well, I placed it in the work papers and it was
 5 reviewed.
 6 Q. Did you have any discussions with anyone at
 7 Andersen about these figures?
 8 A. I may have. I don't remember right now the
 9 specifics of any discussions.
 10 Q. Your handwritten notes, Note A -- I think I can
 11 read your writing, but if you could read it for the record,
 12 that would be great.
 13 A. "Decrease mainly due to impact of fourth quarter
 14 early buy grill sales of approximately 50 million. In prior
 15 year, these sales occurred in the first quarter."
 16 Q. And Note A on the Income Statement appears on the
 17 gross trade sales line; is that correct?
 18 A. Right.
 19 Q. And so that's an explanation as to why gross
 20 sales were less than half in January of '98 than what they
 21 were in 1997?
 22 A. Right.
 23 Q. Who provided that explanation to you?
 24 A. Again, I don't know. I think it would have been
 25 Mr. Gluck. I'm not certain.

1 Q. Did he have any reaction to that sales
 2 information provided?
 3 A. No, I think it made sense.
 4 Q. The numbers made sense or the explanation made
 5 sense?
 6 A. The explanation made sense.
 7 Q. So but for the early-buy program, these sales --
 8 these \$50 million in sales would have been first quarter
 9 sales?
 10 MS. BROWN: Objection.
 11 MR. MOSCATO: Objection.
 12 BY MR. JOHNSON:
 13 Q. Is that your understanding?
 14 MR. MOSCATO: Your testimony is that's what was
 15 told to you by someone at Sunbeam, right?
 16 THE WITNESS: Correct.
 17 MR. MOSCATO: I don't think this witness has an
 18 understanding one way or the other as to what would have
 19 happened in that situation.
 20 BY MR. JOHNSON:
 21 Q. So someone at Sunbeam indicated to you that the
 22 sales decline was as a result of the early-buy program?
 23 A. Correct. I guess I would say it differently.
 24 Q. How would you say it?
 25 A. The way the early-buy program was done in 1990 --

1 say 1997/1998 period -- I mean, early buy I think existed in
 2 the previous year. Customers, say, the first quarter of '97
 3 purchased grills and had extended terms and had whatever. I
 4 mean, it's still early in the grill season. Not too many
 5 people buy grills in January, but I think it started a
 6 little bit earlier for the 97/98 year, and so that first
 7 wave of sales that took place in the first quarter of '97,
 8 the customers were not ready to replace that yet. That's
 9 the way I understood it.
 10 Q. And you understood it that 50 million in sales
 11 occurred in the fourth quarter of '97 that otherwise would
 12 have occurred in the first quarter of '98?
 13 MS. BROWN: Objection.
 14 THE WITNESS: Yes. I mean, my understanding was
 15 that those orders, correct, that were shipped in the fourth
 16 quarter of '97, had the program not been structured that
 17 way, I assume that that's right, they would have been 1998
 18 sales.
 19 BY MR. JOHNSON:
 20 Q. Your Note C provides -- maybe you ought to read
 21 it again. I think I can read it but I'm not sure.
 22 A. Do you want me to read it?
 23 Q. Yes.
 24 A. Oh, I'm sorry. "Decrease due to lower January
 25 grill margins. Standard grill margins are approximately 21

1 percent."
 2 Q. Do I read this income statement correctly that
 3 January '98, margins on all goods were 5.7 percent?
 4 A. Correct.
 5 Q. Did you get any updated sales information from
 6 Sunbeam for the first quarter of 1998 interim periods?
 7 A. Yes, I think we carried this forward at some
 8 point and actually got sales information through February.
 9 MR. JOHNSON: This will be Exhibit CPH 108.
 10 Q. Mr. Pastrana, I've given a document we marked
 11 CPH 108, Bates stamp CPH 1056006 through 6010. Could you
 12 identify that for us?
 13 A. This is similar to the last exhibit we looked at
 14 except this is a comparative income statement comparing the
 15 year-to-date period ending February of 1998 to the same
 16 year-to-date period of the prior year.
 17 Q. So this is the first two thirds of the first
 18 quarter of 1998?
 19 A. Right.
 20 Q. And this shows that sales for 1998 year-to-date
 21 were almost 71 million less than sales for the same period
 22 in 1997?
 23 A. Yes.
 24 Q. And that as of March 1, Sunbeam was showing a net
 25 loss of approximately \$15 million; is that correct?

1 A. That's correct.
 2 Q. And that compared with a profit for the
 3 comparable period of 1997 of almost \$10 million; is that
 4 correct?
 5 A. Correct.
 6 Q. Who provided this Profit and Loss Statement
 7 contained in Exhibit 108 to you?
 8 A. Again, somebody at the company. Most likely
 9 Mr. Gluck or Mr. Jackson.
 10 Q. Did you have any conversations with them
 11 concerning the information contained in the Profit and Loss
 12 Statement?
 13 A. I probably would have directed some questions at
 14 them concerning some of the changes.
 15 Q. And that would --
 16 A. At them as well as others.
 17 Q. And that would have been the basis of your notes
 18 that's contained in this exhibit?
 19 A. Yes.
 20 Q. We'll look at those in one second. Did you have
 21 any reaction to Sunbeam's results for this period?
 22 A. Well, it seem that they weren't doing as well as
 23 they had hoped to or anticipated in terms of revenues and
 24 profits.
 25 Q. Do you know what Sunbeam had forecast for its

1 first quarter 1998 as a result?
 2 A. I don't know right now.
 3 Q. Do you know whether they forecast to do --
 4 A. I'm sorry, for what period, did you say?
 5 Q. For the first quarter of 1998, were you aware of
 6 what Sunbeam's forecasted goals were?
 7 MS. BROWN: Objection.
 8 THE WITNESS: Let me say I'm aware right now from
 9 some of the documents I reviewed over the weekend. I don't
 10 remember at that time exactly if I was aware of what they
 11 were projecting for the first quarter.
 12 BY MR. JOHNSON:
 13 Q. Did you at least have a general sense that they
 14 anticipated doing at least as well as the prior year?
 15 MS. BROWN: Objection.
 16 THE WITNESS: I did following reading a press
 17 release which I can't remember if and when I read at that
 18 time, so I may have looked at the press release yesterday.
 19 I'm aware of it now.
 20 BY MR. JOHNSON:
 21 Q. Did you have any conversations with anyone at
 22 Arthur Andersen concerning the information contained in the
 23 Profit and Loss Statement contained in Exhibit 108?
 24 A. I don't recall any specific conversations.
 25 Mr. Bornstein and I worked pretty close on the accounts so

1 we probably had discussions about it.
 2 Q. And this would have been placed in the work
 3 papers as well?
 4 A. Yes, this was placed in the work papers and he
 5 reviewed it.
 6 Q. The first page, upper right again, bears your
 7 initials BP?
 8 A. Uh-huh.
 9 Q. Just above that the initials PBC, it appears to
 10 be. What does that refer to?
 11 A. "Prepared by client" so this is a schedule that
 12 was given to us by the company.
 13 Q. And again can you give me your best estimate of
 14 when this schedule was given to you by the company?
 15 A. Just by looking at these documents, I think it
 16 was about March 13th. It looks like that's when I set it up
 17 and the document actually has a little footer in it that has
 18 the same date.
 19 Q. You are looking at Bates CPH 1056009?
 20 A. Yes.
 21 Q. Can you tell from any of the information who at
 22 Sunbeam prepared the statement?
 23 A. No, I can't tell.
 24 Q. Did you have any conversations during the first
 25 quarter of 1998 with anyone at Sunbeam relating to whether

1 Sunbeam would be able to improve its financial performance
 2 during that quarter?
 3 A. I don't remember having any discussion with
 4 anyone at Sunbeam about that.
 5 Q. Let's look at the notes to the statements which
 6 are at the second page of the exhibit, 1056007. Did you
 7 type these notes up, Mr. Pastrana?
 8 A. Yes.
 9 Q. Note A here indicates that the decrease in first
 10 quarter sales is as a result of early buy and poor weather.
 11 How did you learn that poor weather was one of the reasons
 12 for the sales decrease?
 13 A. I don't remember. I refer in the same note to a
 14 discussion that I had with Lee Griffith and Al Lefevre about
 15 their expectation for their sales to recover. I don't
 16 remember if it came on the same conversation or if that was
 17 a separate conversation with somebody.
 18 Q. Mr. Griffith and Mr. Lefebvre, according to your
 19 notes, indicated that the sales were recovered in the second
 20 quarter; is that correct?
 21 A. Right, uh-huh.
 22 Q. Did anyone indicate to you that sales would
 23 recover in the first quarter?
 24 A. No, not that I can remember.
 25 Q. Your Note B indicates that Bob Gluck stated that

Page 69

1 the higher freight charges existed despite lower sales
 2 because the company was paying more freight as an incentive?
 3 A. Yes.
 4 Q. Did you have any reaction to that explanation?
 5 MR. MOSCATO: Objection.
 6 THE WITNESS: I don't remember. I don't remember
 7 any reaction necessarily.
 8 BY MR. JOHNSON:
 9 Q. Your Note J refers to increase in warehouse and
 10 distribution cost, do you see that note?
 11 A. Uh-huh.
 12 Q. Do you understand whether the increase in those
 13 costs was associated with bill and hold sales?
 14 MS. BROWN: Objection.
 15 THE WITNESS: I understood it to be due to the
 16 production of grill inventory, whether it was inventory that
 17 had been segregated for customers or the company's own
 18 inventory. I didn't know what portion of that related to
 19 which piece.
 20 Q. To your knowledge, did anyone from Morgan Stanley
 21 ask for either of the interim income statements or Profit
 22 and Loss Statements that are contained in Exhibit 107 and
 23 108?
 24 MS. BROWN: Objection.
 25 THE WITNESS: When you say "asked for," nobody

Page 70

1 asked me directly for them. There is certain information
 2 that's derived from there that's delivered to them in a
 3 comfort letter as part of preparation of offering document
 4 or at least our role in that.
 5 BY MR. JOHNSON:
 6 Q. Short of the comfort letter?
 7 A. No, nobody ever asked me.
 8 THE VIDEOGRAPHER: I'm going to change the tape.
 9 MR. JOHNSON: Go ahead.
 10 THE VIDEOGRAPHER: This is the end of Videotape
 11 No. 1. We are going off the record. The time is 11:14.
 12 (Tape change)
 13 THE VIDEOGRAPHER: We are back on the record.
 14 This is the beginning of the Videotape No. 2. The time is
 15 11:15.
 16 BY MR. JOHNSON:
 17 Q. Mr. Pastrana, are you familiar with a form
 18 AP-187?
 19 A. Yes.
 20 Q. And did you prepare such a form in connection
 21 with your work for Sunbeam?
 22 A. Yes.
 23 Q. I'd like to have you identify that for me, if you
 24 would.
 25 MR. JOHNSON: This will be Exhibit 109.

Page 71

1 Q. Mr. Pastrana, is CPH Exhibit 109 the form
 2 AP-187 that you prepared?
 3 A. Yes.
 4 Q. And what is the purpose of the form AP-187?
 5 A. This is used to document our post report review
 6 procedures.
 7 Q. This indicates that the date of the report is
 8 January 28, 1998 except for certain matters in Note 14. Do
 9 you see that listed on Page 1?
 10 A. Yes.
 11 Q. Is there any reason why the P&L that's contained
 12 in Exhibit 108 which goes through February was not used in
 13 connection with this form?
 14 MR. MOSCATO: Huh?
 15 BY MR. JOHNSON:
 16 Q. Let me put it more simply. Why does this report
 17 stop in the middle of January when it appears you may have
 18 had a Profit and Loss Statement going through the end of
 19 February?
 20 MR. MOSCATO: I think you are misreading the
 21 report.
 22 MR. JOHNSON: Let's let the witness explain.
 23 MR. MOSCATO: Why don't you explain what the date
 24 of order is, Dennis.
 25 THE WITNESS: This is the date on the audit

Page 72

1 opinion that's contained in the 10-K, so the purpose of this
 2 post report review form is to document review procedures
 3 that we performed subsequent to the date of that opinion or
 4 that report. So I mean this would indicate that the 10-K
 5 probably was completed, filed, sometime on or about March
 6 2nd.
 7 BY MR. JOHNSON:
 8 Q. If you flip to the third page of the exhibit
 9 which is Page 2 of the form, as I understand Paragraph 2
 10 indicates that the financial statements -- the interim
 11 financial statements are as of February 1, 1998; is that
 12 correct?
 13 A. Correct.
 14 Q. And I guess that brings me back to the original
 15 question of doesn't the Profit and Loss Statement contained
 16 in Exhibit 108 go through the end of February?
 17 A. It does.
 18 Q. And do you recall any reason why that statement
 19 was not used in connection with this form?
 20 A. Just a second. You know, there are a couple
 21 of -- let me, and without having all the documents I'm not
 22 going to be able to explain it to you accurately. There are
 23 a couple of post report review procedures that got performed
 24 and they probably were done on a couple of these forms. I
 25 mean, this performance review was completed through March

1 16th -- hold on a second. These financials are dated, what,
 2 March 13? I'm going to stop talking until I figure this
 3 out.
 4 Q. Let me point one thing out to you that might help
 5 you answer. If you look at Page 4 of your report.
 6 A. Okay.
 7 Q. Under Paragraph 4-A you refer through -- you
 8 refer to results through the second period of the first
 9 quarter, I believe, and so you appear to be using the later
 10 P&L although you don't refer to it in the preamble of the
 11 report.
 12 A. That was my guess. I was just trying to go to
 13 the documents and figure it out. We did a couple of these
 14 which is why you saw two P&L's, one through January, one
 15 through February. It's possible we used this preliminary
 16 using the January report. When they finished closing the
 17 month of February, we got the February report and this is
 18 updated based on that, and we just did not correct the dates
 19 on that box which I think is what happened.
 20 Q. So this report does include at least some
 21 information concerning results through the end of February?
 22 A. Correct.
 23 Q. If you look back again at Page 2 of the report,
 24 under Paragraph 2-A it's indicated that work was done by DP.
 25 Again that's you?

1 A. Yes.
 2 Q. You indicate there that there's a decline in
 3 sales trends due to, one, early-buy program for outdoor
 4 grills which accelerated sales into the fourth quarter.
 5 Again that's the end of the fourth quarter 1987?
 6 A. Correct.
 7 MR. MOSCATO: Again it continues.
 8 MR. JOHNSON: Sure.
 9 MR. MOSCATO: But that's neither here nor there.
 10 It is what it is but it does give a second reason.
 11 MR. JOHNSON: Thanks.
 12 MR. MOSCATO: You're welcome.
 13 BY MR. JOHNSON:
 14 Q. If you go to Page 4 of the report, Mr. Pastrana,
 15 and read Paragraph 4-A to yourself.
 16 A. (Reading) Okay.
 17 Q. Do you know who provided you with the budgeted
 18 Sunbeam net sales and net income for the first quarter of
 19 1998?
 20 A. I don't remember.
 21 Q. And do you know the basis for the statement here,
 22 quote, "such targets may be unattainable"?
 23 A. I believe it's just comparing the 309 million
 24 revenue target or net sales target for the first quarter to
 25 the 72 million which, as you said, they had achieved two

1 thirds of that quarter. You know, based on that we thought
 2 it may be that they're not going to achieve those targets.
 3 Q. I guess another way to put the question is the
 4 unattainability of those targets Andersen's conclusion or
 5 information that somebody provided to Andersen?
 6 MS. BROWN: Objection.
 7 THE WITNESS: That, to the best of my knowledge,
 8 is Andersen's conclusion or my conclusion written here and,
 9 you know, I don't know that it's a conclusion. It's just a
 10 statement of circumstances.
 11 BY MR. JOHNSON:
 12 Q. And the column heading for the column where that
 13 statement is made provides "Comments and Disposition of
 14 Items Requiring Consideration." Why did you determine that
 15 the unattainability of those sales and income targets were
 16 an item needing consideration?
 17 MS. BROWN: Objection.
 18 MR. MOSCATO: I object. I characterize it as
 19 possible unattainability. He does say "may be
 20 unattainable."
 21 MR. JOHNSON: Sure.
 22 MR. MOSCATO: Go ahead, Dennis.
 23 THE WITNESS: You know, I kind of have to put
 24 myself back to what role I played in that process. I mean,
 25 the role that I play as a senior would be to look at the

1 financial statements and look for anything that's unusual,
 2 what changed, big firm, the previous year, what might be an
 3 item worth noting, and then summarize it on this form which
 4 I did, and then really -- you know, probably the form should
 5 be better titled "Items Potentially Requiring
 6 Consideration," but then Mr. Bornstein or Mr. Harlow would
 7 review this and determine what action was necessary to take.
 8 BY MR. JOHNSON:
 9 Q. Did you have any conversations with anyone at
 10 Andersen about this form?
 11 A. I may have but I don't recall the specifics of
 12 any at this point.
 13 Q. Did anyone suggest any revisions to the form
 14 after you circulated it to them?
 15 A. It's quite possible. That would have been normal
 16 in the process of preparing this.
 17 Q. I take it from your answer you don't recall any
 18 specific revisions that were made?
 19 A. I don't recall anything specific. It's six years
 20 ago now? Five years?
 21 MR. MOSCATO: Five.
 22 BY MR. JOHNSON:
 23 Q. The first page of the report, there's some
 24 handwriting at the bottom. Can you read that writing?
 25 A. "N17, no consent required in section 144

1 offering. However, post audit review work and AP 187 work
2 done in its entirety with" -- "as the firm's name appears in
3 the" -- in the something "included in this document" --
4 "financial statements included in this document. Work done
5 herein sufficient as if we were to issue our consent."

6 Q. Do you know who's handwriting that is?

7 A. Larry Bornstein. I believe he signed it.

8 Q. And that's Mr. Harlow's signature below
9 Mr. Bornstein?

10 A. Yes.

11 Q. Although it appears you did all the work that
12 went into the report, if I look at the initials columns.

13 A. All the documentation. I didn't review all that
14 work.

15 Q. I believe you testified earlier that this was
16 prepared in connection with issuing a comfort letter; is
17 that correct?

18 A. Right.

19 Q. Do you know whose initials are on the front of
20 this document, KK in the upper right, Exhibit 109?

21 A. KK is a work paper reference number. It's our
22 initials contained in the KK section of the work papers.

23 Q. Now, did you draft the comfort letter to Morgan
24 Stanley in this case?

25 A. Yes.

1 Q. And how did you come to do that?

2 A. You know, my job, as I can remember it, was to
3 complete these post review procedures and to draft the form
4 of the comfort letter. And then the form is guided, as you
5 probably know, by a specific statement on auditing standards
6 that governs the form of comfort letters. So I drafted it,
7 probably took an initial pass of customizing any sections
8 that would have had to be customized for the situation, and
9 then I would have just passed it on to Mr. Bornstein and Mr.
10 Harlow to review. That was kind of my role.

11 Q. And were you the keeper of the documents, so to
12 speak, until it was finalized?

13 A. I did keep the draft and made revisions as the
14 drafting process took place, yes.

15 Q. Aside from Mr. Bornstein and Mr. Harlow, did
16 anyone else at Andersen provide comments directly to you?

17 A. No.

18 Q. Do you know whether -- one way or the other,
19 whether anyone in the firm -- in the Andersen firm provided
20 comments to Mr. Bornstein or Mr. Harlow?

21 A. I don't know whether or not, in fact, that
22 happened. I do know that as a matter of practice another
23 partner would also have reviewed the comfort letter.

24 Q. And that's a concurring partner?

25 A. That's correct.

1 Q. And that's Mr. Pruitt on this engagement?

2 A. Right.

3 Q. Do you know when you prepared the first draft of
4 the comfort letter?

5 A. Based on some of the documents I reviewed over
6 the weekend, the first one was done -- I believe dated March
7 13th, something like that, so it would have been probably
8 the week leading up to March 19th that it would have been
9 drafted.

10 Q. When you say the first one, you mean the first --
11 you mean the final comfort letter?

12 A. The main body of the comfort letter was
13 subsequently updated by a short term or bring down comfort
14 letter.

15 Q. Did you include the first quarter '98 sales
16 information that you had in your initial draft of the
17 comfort letter?

18 A. The first quarter sales, yes, through February, I
19 think it was.

20 Q. So you put that in the draft that you prepared
21 before you circulated it to Bornstein and Harlow?

22 A. Yes. In the draft I would have put whatever was
23 available. I assume when I started, February was available
24 but if it would have been January, it would have been
25 January.

1 Q. Was there ever any discussion with Mr. Bornstein

2 or Harlow about whether that was information that should or
3 should not be contained in the comfort letter?

4 A. It's required to be contained.

5 Q. But why do you say that?

6 A. In terms of the net sales? I guess you could say
7 required. The AICPA, statement on auditing standards that
8 govern comfort letters, in this case requires disclosure if
9 there has been decrease in sales during that period
10 following the last audited set of financials, so it's kind
11 of governed by the professional standards more so than firm
12 policy.

13 (CPH 110 was marked for identification.)

14 Q. Let me show you draft the comfort letter, if I
15 could. Mr. Pastrana, could you identify Exhibit 110 for the
16 record please?

17 A. This is a draft of the comfort letter dated March
18 19th.

19 Q. If you look at the fax header at the top of the
20 document for me, that reflects a date of March 17, 1998?

21 A. Uh-huh.

22 Q. Do you know what the SBA, Inc. reference is?

23 A. SBA, Inc. was another of the Andersen clients,
24 SBA Communications, which is also a client of
25 Mr. Bornstein. It could be that, you know, in the review

1 process we just faxed these back and forth to wherever he
2 was.

3 Q. Can you tell in any way whether this is a markup
4 of the first draft that you prepared or a later draft?

5 A. Yes, I can't tell which draft this was. This a
6 draft. I mean, this is kind of the draft. We just kind of
7 were updating it as we went along.

8 Q. If you look at Page 3 of the letter, and, for the
9 record, this exhibit has Bates stamp CPH 0038670 through
10 676. We're looking at 38672. If you look at the bottom of
11 that page, there's some handwriting. It seems to indicate,
12 "We had fire sale of inventory."

13 A. Uh-huh.

14 Q. Do you know who's handwriting that is?

15 A. I don't know. I mean, from the context, it looks
16 like it's Gluck, Bob Gluck, because this draft, for example,
17 doesn't disclose in '97 the company had sold some obsolete
18 inventory. We would have provided a draft of this to
19 Mr. Gluck and he might have made a comment that he wanted to
20 make some clarifying explanation as to the reasons why this
21 was happening which I think was included in the final.

22 Q. Why don't you look at the next page under 6-B.
23 6-B provides an explanation as to the decline in net sales
24 in the '98 time frame as compared with the '97 time frame?

25 A. Uh-huh.

1 Q. Was that information that was contained in the
2 draft comfort letter from its initial draft?

3 A. Again, I don't know if this is the initial
4 draft. I don't know at what point that information got into
5 the comfort letter.

6 Q. But your recollection is that the sales
7 information did go in the first draft?

8 A. Yes, yes. In the prior 5-B, yes, that would have
9 been there from the beginning with whatever sales
10 information was available at that time.

11 Q. And you just don't recall whether 6-B was in the
12 first draft or was added along the way?

13 A. That's correct. Well, 6-B was there, you know.
14 But whether the substance of what the statement says, you
15 know, was there, I don't know. In other words, the standard
16 comfort letter would have a standard 6-B. What it says is
17 guided by the circumstances.

18 Q. Again you noted that sales decreased primarily
19 due to the early-buy program which accelerated sales into
20 the fourth quarter of fiscal 1997?

21 A. Right.

22 Q. Could you look at Page 6 of this letter. I don't
23 know whether you can read. Next to one of the tick marks
24 there's a handwriting in the margin area. Can you read
25 that?

1 A. It looks like "were used."

2 Q. And that's a reference to limited use of
3 unaudited financials for the period indicated, as I
4 understand it; is that correct?

5 A. For a limited use?

6 Q. I guess the question is what does the "where
7 used" signify?

8 A. This is kind of a standard listing of procedures
9 that we would perform and some may not apply in all cases so
10 in the draft I may have listed out all the standard
11 procedures and maybe someone in review pointed out that
12 this one is not being used in the comfort letter, so I don't
13 know if that stayed in or we did use it or ultimately we may
14 have taken it out. It looks like just a reviewer's
15 question.

16 Q. Do you know how many days you spent working on
17 the draft that culminated in the March 19 comfort letter?

18 A. I mean, I really don't. You know, I know that
19 this letter here contains sales prior to February so I think
20 this has the January sales -- right? -- basically through
21 February 2nd. And I know that the February sales
22 information was available on March 13th so I must have
23 started this -- must have been working on this before March
24 13th, I would imagine.

25 Q. Let's look at another draft if we could.

1 Before we get to this next exhibit, one more on
2 110. Do you know whether this comfort letter was provided
3 in draft form to Morgan Stanley at any point?

4 A. I don't know.

5 Q. Could you look at what we've marked as
6 Exhibit CPH 111 and identify that for us?

7 A. This looks like another draft of the same comfort
8 letter.

9 Q. And, for the record, this has Bates stamp CPH
10 0038700 through 706. The top of this document,
11 Mr. Pastrana, indicates that it's from Global Financial
12 Press, New York. Do you know what that is?

13 A. I think that's the printer that they were using,
14 Morgan Stanley, whoever, to prepare the Offering Memorandum
15 and Larry was at the printer so we may have been faxing this
16 back and forth. This looks like his handwriting with
17 comments on it. I can't be sure of that.

18 Q. And this shows a fax date time stamp of March
19 19th at about a quarter to midnight; is that correct?

20 A. Right.

21 Q. Were you in the office at Andersen that night to
22 receive his edits?

23 A. I don't remember. I don't remember.

24 Q. And Mr. Bornstein notes the offering has
25 increased in size from 1.3 billion to \$2 billion; is that

1 right?

2 A. Right.

3 Q. He also adds or I should say notes that there's a
4 Paragraph 2 that is new. You see that on Paragraph 2 of the
5 letter?

6 A. Uh-huh.

7 Q. Do you know how that paragraph was added to the
8 letter or at whose suggestion it was added?

9 A. I don't know if he's asking or -- I think he's
10 just asking and what changed between the two drafts is one
11 letter assumes that the earlier draft that we looked at, CPH
12 110 assumes that this is a comfort letter related to an SEC
13 filing.

14 The second one that we're looking at
15 assumes that this is a non-SEC or -- I think it's Section
16 144, basically a private placement, and so the wording of
17 the first two paragraphs is a little bit different. And if
18 you look, the first paragraph changed, the second paragraph
19 changed a little bit in the wording, but I think he was just
20 asking about why did it change, but I think the second one
21 is correct in terms of the professional guidance.

22 Q. And your understanding as to the change is that
23 the updated version reflected that this would be a private
24 placement?

25 A. Correct or that this was -- I don't know if

1 private placement. This was a type of offering that would
2 not require the language that was in the prior letter so
3 this is the type of language that was required, but I think
4 it's referred to as a private placement.

5 Q. And this draft continues to include sales
6 information for January as well as an explanation for the
7 decline in sales; is that correct?

8 A. Right, right.

9 Q. Did you have any discussions with Mr. Bornstein
10 concerning what happened at Global Financial Press?

11 MS. BROWN: Objection.

12 THE WITNESS: No.

13 BY MR. JOHNSON:

14 Q. Do you recall -- I think you indicated that he
15 was at Global Financial Press?

16 A. Correct.

17 Q. How do you know that?

18 A. I mean, we communicated a couple of times. I
19 know that he had to travel there. I think he went with
20 someone else from our firm. That's it.

21 Q. Do you know who he went with?

22 A. I think he went with Mark Brockelman.

23 Q. And do you recall Mr. Bornstein calling you from
24 Global Financial Press?

25 A. No.

1 Q. Did Mr. Bornstein or Mr. Brockelman ever convey
2 to you anything that happened at Global Financial Press?

3 A. Not that I can recall.

4 Q. And you don't recall whether you were in the
5 office in the evening to receive these changes?

6 A. I'm not sure that this -- received from. Yes, I
7 don't recall whether I received them when they got there or
8 not.

9 Q. This is a document that was previously marked as
10 CPH 17. Could you identify that document for the record,
11 Mr. Pastrana?

12 A. This looks like the comfort letter that we issued
13 on March 19th from Morgan Stanley.

14 Q. So this is the culmination of the two drafts we
15 just looked at, Exhibit 110, Exhibit 111?

16 A. Correct.

17 Q. And do you know who signed on behalf of Arthur
18 Andersen?

19 A. No, I would imagine Mr. Bornstein and
20 Mr. Harlow. Normally it would be Mr. Harlow who would sign
21 it.

22 Q. Do you know, as between the two of them, who
23 signed it?

24 A. I don't know.

25 Q. Do you know when this letter was, in fact,

1 provided to Morgan Stanley?

2 A. It's usually delivered on the day it's dated. I
3 would imagine March 19th.

4 Q. Do you know how it was transmitted to Morgan
5 Stanley?

6 MS. BROWN: Objection.

7 THE WITNESS: I don't know. I can tell you
8 typically a copy is sent via facsimile and the originals are
9 mailed or next day.

10 BY MR. JOHNSON:

11 Q. Do you recall any discussions with anybody at
12 Arthur Andersen concerning the sales information contained
13 in CPH Exhibit 17?

14 A. No.

15 MR. JOHNSON: 112.

16 Q. Mr. Pastrana, could you identify CPH
17 Exhibit 112 for us?

18 A. It's a copy of the March 25th bring down letter
19 that we prepared.

20 Q. And did you draft this letter as well?

21 A. I believe so, yes.

22 Q. And on the front page of the exhibit, it appears
23 your initials DP3 98; do you see that?

24 A. Yes.

25 Q. Now, this comfort letter provide sales

1 information through March 1 -- strike that. This bring down
2 letter provides sales information through March 1, 1998; is
3 that correct?

4 A. Yes.

5 Q. So it updates the information provided in the
6 March 19 letter?

7 A. Correct.

8 Q. And it shows that Sunbeam's loss had, in fact,
9 widened between February 1 and March 1?

10 A. Yes.

11 Q. Did you have any conversation with anyone at
12 Arthur Andersen about the further deterioration of Sunbeam's
13 financial results as reflected in this letter?

14 A. I can't recall any specific conversations. I
15 certainly would have discussed it.

16 Q. Were you troubled by those results?

17 MS. BROWN: Objection.

18 MR. MOSCATO: Objection.

19 THE WITNESS: I mean, to say trouble, I don't
20 know -- I mean, when you look at the widening loss, a
21 significant portion of that widening is this \$30.2 million
22 compensation charge that they took related to some
23 restricted stock orders that they gave to the officers, you
24 know. The balance of it or at least a portion of it was due
25 to continue to -- that second or next wave of grill sales

1 seemed to be pushed out. I don't know that I was troubled
2 by it but it certainly heightened our awareness that it was
3 going to be difficult to make this the first quarter sales
4 numbers.

5 BY MR. JOHNSON:

6 Q. Did Arthur Andersen take any steps to guarantee
7 that Sunbeam had a proper close of its first quarter?

8 A. We performed an SAS 71 review in terms of making
9 sure that they had a proper close. We performed a standard
10 SAS 71 review but what we did do in addition to the
11 normal -- which we normally see in this type of review was
12 that we observed the shipping cutoff and we went to several
13 warehouse locations to observe bill and hold inventory that
14 had been segregated for customers. Now, this isn't our
15 first quarter review so now you are talking about the end of
16 March which is a different time period than the letters,
17 right?

18 Q. Well --

19 A. Did I miss the question?

20 Q. No, I think you got the question right but then
21 you added something at the end of it that confused me and
22 let me see if I can clear it up. Let's back up even
23 further. On the bring down letter, were there multiple
24 drafts of that letter?

25 A. There may have been. I don't remember.

1 Q. Do you recall any comments that Mr. Bornstein or
2 Mr. Harlow provided to you relating to the bring down
3 letter?

4 A. No.

5 Q. Did anyone besides Mr. Bornstein or Mr. Harlow
6 provide comments on their bring down letter?

7 A. Not that I can remember.

8 Q. Did you ever speak with anyone outside of
9 Andersen about the need to get either -- any comfort letter
10 or bring down letter finished?

11 A. Anyone outside of Andersen about the need to get
12 a comfort letter. I can't remember any discussions that I
13 had to that effect.

14 Q. So no lawyers from an outside firm ever called
15 you to find out where a copy of a bring down letter was?

16 A. No, not that I can recall specifically.

17 Q. Do you know -- well, that begs the question about
18 general recollection. Do you recall dealing with outside
19 law firms in connection with the work on the debt offer?

20 A. I don't and normally, I mean -- and I think maybe
21 it was because Larry was at the printers and maybe he was
22 dealing directly with them. Normally in this process, if
23 you go back to the original letter that was issued, there
24 are these little procedures that you perform that have these
25 little marks and normally I would have fairly involved

1 discussions with attorneys about what number gets what mark
2 and why didn't you put a mark on this number or that number,
3 whatever, and discussions about, well, what's the status?
4 When are we going to get the comfort letter? I never had
5 those discussions myself and I think it was probably that
6 Mr. Bornstein was having them directly with the people at
7 Sunbeam.

8 Q. Did you ever -- you're assuming Mr. Bornstein had
9 those conversation; is that correct?

10 A. Correct. I don't know that factually.

11 Q. Did you ever have any conversations with
12 Mr. Bornstein about his dealings with outside lawyers in
13 connection with the work on the debt offer?

14 A. No, not that I can remember.

15 Q. You referenced earlier in the testimony today a
16 press release that you saw and you looked at that press
17 release over the weekend?

18 A. Yes.

19 Q. Did you have any occasion to review that press
20 release before it went out?

21 A. Did I review it before it went out?

22 Q. That's correct.

23 A. I don't remember if I did.

24 Q. Did you have any conversations with Mr. Bornstein
25 about the press release either before or after it went out?

1 A. I had discussions with Mr. Bornstein about the
2 contents of the press release. I can't remember if it
3 was -- certainly it was not before it went out. I never saw
4 it before it went out. And I can't remember, you know, what
5 the substance of those discussions was but I became aware of
6 the press release from Mr. Bornstein.
7 Q. Do you recall anything he said about the press
8 release?
9 A. I remember him being concerned about the
10 language in the press release. You know, the press release
11 said something to the effect that they were not going to
12 meet their sales targets. They would still exceed the sales
13 of the previous year for the same period and, you know,
14 based on what they had sold in the quarter up to that point,
15 he had some concern about whether they were going to be able
16 to achieve those sales.
17 Q. Did you share that concern?
18 A. With who?
19 Q. With Mr. Bornstein?
20 A. No, he shared the concern with me.
21 Q. Did you agree with his concerns?
22 A. Yes, I thought it was a legitimate concern, sure.
23 Q. Now, you mentioned that Andersen undertook
24 additional procedures relating to the first quarter with
25 you, that's the dock watching?

1 A. Right.
2 Q. That was not a usual procedure to conduct in
3 connection with the quarterly review; is that correct?
4 A. Right.
5 MS. BROWN: Objection.
6 THE WITNESS: Yes. I mean, in my experience I
7 haven't done that before in a quarterly review. I would
8 characterize it as unusual.
9 BY MR. JOHNSON:
10 Q. Whose idea was it to conduct this additional
11 step?
12 A. I believe it was Mr. Bornstein. You know, the
13 instruction was given to me by him. Whether it was his idea
14 or somebody else's, I don't know.
15 Q. And what did Mr. Bornstein tell you to do?
16 A. He told me to have people standing on the
17 shipping docks at midnight to observe the sales cutoff.
18 Q. And the shipping docks were located in
19 Mississippi, Missouri and Oklahoma; is that correct?
20 A. Shipping docks were in Mississippi and Missouri.
21 Oklahoma I think they had some warehouses that they were
22 using. I don't think -- let me take that back. Maybe they
23 had a shipping facility in Oklahoma. I don't remember if it
24 was a shipping facility.
25 Q. Did you personally attend one of those

1 observations?
2 A. Yes.
3 Q. Which one?
4 A. The one in Neosha, Missouri.
5 Q. And who observed -- let me back that up. Did any
6 other Andersen personnel participate in the Neosha
7 observation with you?
8 A. There was another person that was present in
9 Missouri. I think he was at a different warehouse
10 location. He was counting Sunbeam inventory that existed at
11 another warehouse so he was not on the shipping dock at
12 midnight.
13 Q. What is that individual's name?
14 A. It was a staff person in the office.
15 Q. Does Bob Holman ring a bell, Ben?
16 A. Ben, yes.
17 Q. How about Mississippi? Who from Andersen was
18 responsible for watching the docks in Mississippi?
19 A. I don't remember the name of the person. There I
20 think we sent someone from our St. Louis office.
21 Q. I'm going to give you what was previously marked
22 as Exhibit 18 in this case. Mr. Pastrana, could you
23 identify Exhibit CPH 18 for the record?
24 A. Yes, these are some instructions that I prepared
25 to other Arthur Andersen personnel that were going to

1 observe the shipping cutoff or inventory in certain
2 locations.
3 Q. And do you know when you prepared the
4 instructions?
5 A. I don't know exactly.
6 Q. It was after the bringing down letter?
7 A. I would -- that would be my guess. I don't
8 remember factually.
9 Q. It was after the press release anyway, right?
10 A. Right.
11 Q. To whom was -- let me back up. Did you send a
12 draft of this instruction sheet to anyone at Andersen?
13 A. I think I would have given it to somebody to
14 review, probably Mr. Bornstein.
15 Q. Do you recall anyone having any comments on the
16 draft?
17 A. No.
18 Q. Who is the memo sent to?
19 A. The people that were assigned to help on these
20 observations, so the Ben Holman that you mentioned would
21 have been one.
22 Q. And those were assignments that were made by
23 someone else; is that right?
24 A. Correct, we would normally call another office
25 looking for a person of a certain level and experience and

1 they would assign the person.
 2 Q. And if you look at the last page of the document
 3 which is CPH 15113, you request a documentation of the
 4 observation to be sent to you.
 5 A. Uh-huh.
 6 Q. Did you, in fact, receive documentation of the
 7 observation from anyone?
 8 A. Yes, I believe so.
 9 Q. Let's look quickly at those if we could.
 10 Q. Mr. Pastrana, could you identify Exhibit 113
 11 for us?
 12 A. This is a memo prepared by the Andersen staff
 13 person who observed shipping cutoff at one of the company's
 14 warehouses and then counted some of the bill and hold
 15 inventory that had been segregated from the warehouse for
 16 the customers.
 17 Q. Mr. Holman's memo, Exhibit 113, refers to
 18 observation on the evening of March 31st. Your instruction
 19 memo called for observation on March 29. Do you know why
 20 there's that discrepancy?
 21 A. I think that I do recall why there is this
 22 discrepancy.
 23 Q. Why is that?
 24 A. I think that they changed their quarter end in
 25 March, if I recall correctly.

1 Q. They added two days to the quarter in 1998?
 2 A. That's correct.
 3 Q. And do you know when the decision to do that was
 4 made?
 5 A. I thought that was after the Coleman acquisition.
 6 Q. Did you find any of the information that
 7 Mr. Holman is sending to you in Exhibit 13 to be problematic
 8 in any way?
 9 A. Let me take a minute to read this document.
 10 Q. Sure.
 11 A. (Reading) What was your question?
 12 Q. The question is whether anything in Mr. Holman's
 13 letter struck you as problematic in any way.
 14 MS. BROWN: Objection.
 15 THE WITNESS: In terms of my thoughts at that
 16 time, I can't really remember. I mean, right now I think we
 17 would have done something to address the fact that they
 18 apparently had not done a very good job of identifying and
 19 segregating the quantities by customers, you know.
 20 BY MR. JOHNSON:
 21 Q. In other words, that the procedures relating to
 22 bill and holds weren't completed as of the cutoff?
 23 MS. BROWN: Objection.
 24 MR. MOSCATO: I'll object to that.
 25 THE WITNESS: I think that the inventory was

1 identified systemically. I think that inventory that needed
 2 to be moved was moved. What they hadn't done was completed
 3 the process of the physical segregation that I think
 4 happened within a couple of days later on. I mean, if I
 5 recall, I think we actually went through a process where we
 6 looked in detail at all their locations and how they
 7 reconciled all that.
 8 BY MR. JOHNSON:
 9 Q. One more document for you which was previously
 10 marked as Exhibit 20. Mr. Pastrana, is Exhibit 20 dated
 11 April 1, 1998?
 12 A. Uh-huh.
 13 Q. Did you receive this memo on or about April 1,
 14 1998?
 15 A. I'm not sure. I was probably still in Neosha but
 16 shortly thereafter.
 17 Q. Did you have any conversations with Mr. Kistler
 18 before, during or after his cutoff testing relating to the
 19 testing procedure or rationales?
 20 A. I don't recall.
 21 Q. Have you ever spoken to Mr. Kistler?
 22 A. Have I ever spoken to him in my life?
 23 Q. That's the question.
 24 A. Yes.
 25 Q. You just don't recall whether you spoke to him in

1 connection with these procedures?
 2 A. Right. Let me read through this.
 3 Q. Sure, absolutely.
 4 A. Make sure it doesn't answer the question.
 5 (Reading)
 6 Q. And I don't want to interrupt your reading,
 7 Mr. Pastrana, but I'm going to ask you the similar question
 8 I asked on the last memo which is is there anything in this
 9 memorandum that struck you as troubling at the time you
 10 received it?
 11 MS. BROWN: I'll object.
 12 BY MR. JOHNSON:
 13 Q. You can read the memo and let me know when you're
 14 finished.
 15 A. (Reading) Okay, and the question is what?
 16 Q. The question is did anything in Mr. Kistler's
 17 memo strike you as troubling when you received this memo?
 18 MS. BROWN: Objection.
 19 THE WITNESS: I don't know. Did I see anything
 20 troubling? You know, there seems to be --
 21 MR. MOSCATO: Dennis, the question was -- he's
 22 asking you to remember at the time you received this memo,
 23 is there anything that you recall being troubling to you,
 24 not now, but do you have a recollection of receiving this
 25 and being troubled by anything?

1 THE WITNESS: I wouldn't say troubled by
2 anything. I think there's some things in here that
3 indicates some sloppiness by the company but, I mean, at the
4 end of the day it looks like -- if you quantify everything,
5 it looks pretty small.

6 BY MR. JOHNSON:

7 Q. If you look at Page 2 of this memo, there's some
8 handwriting underneath the paragraph that begins "Overall
9 Inventory Quantities." Is that your handwriting?

10 A. Yes, I think so.

11 Q. Can you read that for me?

12 A. "Considered shipped when sealed and moved off the
13 dock. Ready for carrier to move away."

14 Q. And that's referring to 65 trailers in the yard?

15 A. Right.

16 Q. And those 65 trailers are quantified as just
17 under four million dollars worth of inventory; is that
18 correct?

19 A. Right. Of which, though, of the 65, 40 of them
20 related to this one transaction discussed in the preceding
21 paragraph.

22 Q. That's the Menards transaction?

23 A. Yes.

24 Q. Did you ever -- it indicates here that the bills
25 of lading on the Menards transaction were generated

1 manually. Did you ever learn why that was?

2 A. No, I don't know why but it's common that bills
3 of lading can be generated manually.

4 Q. You indicated that prior to the evening of March
5 31, 1998 you had never previously engaged in any cutoff
6 testing of this sort for a quarterly review?

7 A. That's correct.

8 Q. Have you in your accounting career since then
9 engaged in a similar type of operation for a quarterly
10 review?

11 A. No. I mean, you know, as a firm I know we do
12 quarterly inventory accounts for Intel which is a client of
13 the firm. I mean, we don't do it out of here but I know
14 that the other office uses our people every quarter to check
15 inventory so I know it's done. I haven't done it.

16 Q. But would you characterize it as a usual
17 procedure to look at shipping docks in the middle of the
18 night at the end of the quarter?

19 MS. BROWN: Objection.

20 THE WITNESS: I wouldn't.

21 MR. MOSCATO: Is the question "usual" or
22 "unusual"?

23 BY MR. JOHNSON:

24 Q. Would you characterize it as a usual procedure
25 and I think you said, "I would not" --

1 A. Correct.

2 Q. -- is that correct?

3 A. Right, I would not characterize it as usual or
4 typical.

5 Q. Now, did you learn at any time after this cutoff
6 testing at the end of the first quarter of 1998 that, in
7 fact, Sunbeam did not reach sales or income figures
8 exceeding the 1997 first quarter results?

9 A. Yes.

10 Q. How did you come to learn that?

11 A. I was in Neosha the morning of the first and one
12 of the people there that I was dealing with asked me if I
13 had heard the news and I said, "What news?" and he said,
14 "Oh, we didn't make the sales number and Don Uzzi has been
15 fired."

16 Q. Do you know who in Neosha you had that
17 conversation with?

18 A. No.

19 Q. And what was your reaction to that news?

20 A. I think my reaction was, "Wow, Don Uzzi got
21 fired" but that they didn't make sales was not surprising.

22 Q. *Did you have any conversations with anyone from
23 Arthur Andersen about Sunbeam's failure to make its numbers
24 the first quarter of 1998?

25 A. No, not -- I mean, I can't recall a specific

1 conversation. I'm sure we talked about it.

2 Q. When you say "we," who are you referring to?

3 A. Just the engagement team, Larry and myself and
4 whoever else was involved at the time.

5 Q. Can you recall any general substance of those
6 conversations?

7 A. No.

8 Q. Was anyone at Andersen upset with the company for
9 failing to make its numbers?

10 MS. BROWN: Objection.

11 THE WITNESS: Not that I have any knowledge of.

12 BY MR. JOHNSON:

13 Q. Mr. Bornstein never gave you any reaction to the
14 earnings announcement?

15 A. If he did, I don't remember.

16 Q. Have you ever spoken to anyone from Morgan
17 Stanley relating to Sunbeam?

18 A. Never.

19 Q. Do you know anyone from Morgan Stanley who worked
20 on the debt offering?

21 A. No.

22 Q. Do you believe that anyone at Sunbeam provided
23 you with false information at any time during the 1997 audit
24 or post audit procedures?

25 A. Ask the question again.

1 Q. Sure. Let's have the court reporter read it
2 back.
3 (The record was read.)
4 A. I certainly didn't believe that to be the case at
5 any time during the time I performed those procedures, you
6 know.
7 Q. Now, with hindsight have you concluded that
8 certain individuals at Sunbeam provided you with false
9 information?
10 A. With hindsight, I think we were given false
11 information.
12 Q. Let's focus on you, meaning Dennis Pastrana
13 first, and then we will go on the broader scope. Who
14 provided you individually with false information?
15 A. Well, just focusing on me, the one specific thing
16 that I can remember is in connection with the 1997 audit.
17 One of the things that as a matter of practice we request is
18 a listing of returns -- product returns after the end of the
19 period and I was involved in making that request.
20 I don't remember -- I think I asked Bob
21 Gluck and, you know, he told me that there were no returns.
22 And I said, "What do you mean there are no returns?" He
23 said, "Well, there's a no-return policy" and, you know, I
24 said, "Well, okay. Fine, you have this no-return policy.
25 Can you give me just a list of the return authorizations in

1 the system?" He said, "There are no return authorizations
2 in the system." That was the extent of my discussion.
3 I think Mr. Bornstein and Mr. Harlow
4 followed up further on that and there were no return
5 authorizations, and then after the fact we learned that
6 there was this list of return authorization. It was not a
7 systemic list. It was some kind of manual list but I think
8 it was probably not -- I think it was probably untrue what
9 they told us.
10 Q. So that would be Mr. Gluck relating to return
11 authorizations?
12 A. Correct.
13 Q. Any other specifics instances you can give me
14 where a Sunbeam employee gave you personally false
15 information?
16 A. No.
17 MR. MOSCATO: I just object and would like to say
18 it's a little unfair to ask him to categorize every
19 instance of that. I don't think he has reviewed the
20 restatement work papers, for example, for a number of years
21 and, you know, I just don't want there to be a statement on
22 the record that there were no other instances. Maybe he
23 can't remember any now, and I think the only fair thing
24 would be if he had the opportunity to spend a couple of
25 days looking at the restatement work papers which was not

1 the purpose of this.
2 MR. JOHNSON: I know we would all hate to come
3 back to Florida after having a chance to do that.
4 MR. MOSCATO: We won't all.
5 MR. JOHNSON: And that's a fair clarification,
6 Mike.
7 Q. I'm asking for your recollection as you sit here,
8 and I understand some years have gone by but to the extent
9 you can recall anything else right now that would constitute
10 a Sunbeam employee giving you false information, I'd like
11 to know about it.
12 A. In hindsight and, you know, without going back
13 and rereading everything, that was the only instance that I
14 can recall that I was involved in that I was given
15 misleading information. And Mr. Bornstein may have had
16 other conversations with sales guys about the existence of
17 right to return and things like where I know from
18 conversations that he or others may have had a sense that we
19 were given misleading information. I was not a part of
20 those conversations.
21 Q. So we will ask Mr. Bornstein about this?
22 A. I think so.
23 Q. But to the extent you can recall Mr. Bornstein
24 identifying specific Sunbeam personnel than provided false
25 information, I'd like to know that. Do you recall

1 Mr. Bornstein identifying specific Sunbeam employees who
2 provided false information?
3 A. I think he identified Al Lefebvre and Lee
4 Griffith in discussions he had about the existence of sales
5 transactions. Whether there were other things that might
6 have been considered improper, fraudulent, I can't remember
7 any. I just remember the returns and the sales with rights
8 of return or guaranteed sales.
9 Q. Did Mr. Harlow ever indicate to you that he
10 believes specific Sunbeam employees have given false
11 information?
12 A. Not that I can recall any specific conversation.
13 MR. JOHNSON: I think that's all I've got. Just
14 a second. Yes, that's all I've got.
15 MR. MOSCATO: Don't get excited because she's
16 going to ask you questions probably after lunch or do you
17 want to go forward now?
18 MS. BROWN: It makes sense to take a lunch break
19 and it will go faster that way.
20 THE VIDEOGRAPHER: Going off the record. The
21 time is 12:31.
22 (Noon recess: 12:31 p.m.)
23 (Transcript resumes at Page 109, Volume II;
24 nothing omitted.)
25

IN THE CIRCUIT COURT
OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO. 03 CA-00504 AL

COLEMAN (PARENT) HOLDINGS, INC.,)

Plaintiff,)

vs.)

MORGAN STANLEY & COMPANY, INC.,)

Defendant.) January 12, 2003

1:19 p.m.

DENNIS PASTRANA

VOLUME II

VIDEOTAPED DEPOSITION taken pursuant to Notice at the

office of Esquire Deposition Services, 44 West Flagler,

Ste. 1400, Miami, Florida, before Ana Reid, a Shorthand

Reporter and Notary Public within the State of Florida.

119 Bates CPH 1032125 to CPH 1032126
Sunbeam Schedule of Personnell
120 Bates CPH 0011408 to CPH 0011468
Work Program - Core Operations
122 Bates CPH 0011752 to CPH 0011754
Work Program - Consolidation and Financial
Reporting
123 Bates CPH 0011144 to CPH 0011152
1-30-98 Memo from Pastrana re:
Residual audit risk reduction approach
125 Bates CPH 0010964 to CPH 0010971
Preliminary Materiality Assessment
132 Bates CPH 0244904 to CPH 0244915
12-28-97 Blueback Clearance Form
139 Bates CPH 0130041 to CPH 0130050
Form AP-187 3-5-98 Post Audit Review
140 Bates CPH 0013023 to CPH 0013027
January 1998 Profit & Loss Statement
142 Bates CPH 0012963 to CPH 0012967
February 1998 Profit & Loss Statement
143 Bates CPH 0129926 to CPH 0129936
Form AP-187 3-16-98 Post Audit Review
143 Bates CPH 0129992 to CPH 0130013
Sunbeam 1998 Budget
147 Bates CPH 0129687 to CPH 0129689
3-16-98 Management Representation Letter
148 Bates CPH 0041641 to CPH 0041648
3-18-98 Comfort Letter
161 Bates CPH 0041650 to CPH 0041661
3-21-98 Comfort Letter

Page 110

APPEARANCES:

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FOR THE DEPONENT, DENNIS PASTRANA:

CURTIS, MALLET, PROVOST, COLT & MOSIE

BY: MICHAEL MOSCATO, ESQ.

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Page 112

MORGAN STANLEY EXHIBIT:

NUMBER: PAGE: DESCRIPTION:

33 164 Bates CPH 1032125 to CPH 1032126
Draft Letter of Exhibit 34

34 165 Bates CPH 0129642 to CPH 0129644
3-23-98 Sunbeam to Arthur Andersen Letter

WITNESS INSTRUCTED NOT TO ANSWER:

PAGE: 184 LINE: 24

Page 113

1 THE VIDEOGRAPHER: Good afternoon. We are back
 2 on the record. The time is 1:19 p.m.
 3 EXAMINATION
 4 BY MS. BROWN:
 5 Q. Good afternoon, Mr. Pastrana. Again I'm
 6 Zhonette Brown on behalf of Morgan Stanley.
 7 Can you tell me generally what the purpose
 8 of an audit is?
 9 A. The purpose of the audit is to -- for the auditor
 10 to issue a report basically stating that the financials are
 11 fairly stated in accordance with GAAP. So an audit is
 12 performed in accordance with generally accepted auditing
 13 standards, certain procedures that are defined by the
 14 professional standards in order to be able to attest that
 15 the financial statements are fairly presented in accordance
 16 with GAAP.
 17 Q. And following the 1997 audit that Arthur Andersen
 18 performed for Sunbeam, Arthur Andersen issued opinions to
 19 the effect that Sunbeam's financial statements presented
 20 fairly in all material respects the financial position of
 21 the company and the results of its operations and cash flow
 22 in conformity with GAAP, correct?
 23 A. Right.
 24 Q. I think you mentioned before but auditors, as you
 25 said, sort of live in the past. They look at past results

Page 114

1 rather than future projections, correct?
 2 MR. JOHNSON: Objection to form.
 3 THE WITNESS: Generally speaking we focus on
 4 historical transactions.
 5 BY MS. BROWN:
 6 Q. What incentives are there for an auditor such as
 7 Arthur Andersen in 1997 to perform the audit well?
 8 MR. JOHNSON: I'm going to object to the form.
 9 MR. MOSCATO: I don't understand at all. If you
 10 can answer it, Dennis, go ahead if you can.
 11 THE WITNESS: I mean, incentives. I think
 12 professional standards simply require that we conduct the
 13 audit in a particular manner.
 14 BY MS. BROWN:
 15 Q. So there are professional standards that govern
 16 how you conduct an audit require a certain amount of work,
 17 correct?
 18 A. Correct.
 19 Q. If an audit is not performed to those standards,
 20 there's a risk of, for example, liability, correct?
 21 A. There certainly is.
 22 Q. And there are --
 23 A. But, I mean, even when you do perform the audit
 24 in according with the standards, there's a substantial risk
 25 of liability.

Page 115

1 Q. But that's motivation to perform your job well,
 2 correct?
 3 A. GAAP standards are better.
 4 Q. And there's regulations, SEC regulations and
 5 whatnot, that motivate you to perform your job well,
 6 correct?
 7 MR. JOHNSON: Objection to form.
 8 THE WITNESS: Correct.
 9 BY MS. BROWN:
 10 Q. And your interest in your professional reputation
 11 motivates you to perform your job well, correct?
 12 A. Correct.
 13 Q. And those motivations existed for you and for
 14 Arthur Andersen in 1997 and 1998, correct?
 15 A. Sure.
 16 Q. And then or now you wouldn't knowingly take any
 17 risk or action that would expose your employer to liability
 18 or a loss of reputation, correct?
 19 A. Correct.
 20 Q. And you wouldn't knowingly allow anyone else that
 21 would take an action that would expose your employer to risk
 22 of liability or loss of reputation, correct?
 23 A. Correct.
 24 Q. When you're preparing to perform an audit, you
 25 prepare a work program, correct?

Page 116

1 A. Yes.
 2 Q. And one of the objectives in planning the work
 3 for the audit is to identify areas of risk; is that true?
 4 A. Yes.
 5 Q. And when you've identified areas of risk, then
 6 you plan steps to account for that risk so that you can
 7 satisfy yourself that the financial statements are fairly
 8 stated, correct?
 9 A. Yes.
 10 Q. And you did that in preparation for the 1997
 11 audit of Sunbeam, correct?
 12 MR. MOSCATO: Objection. When you say "you," do
 13 you mean him personally or Arthur Andersen?
 14 BY MS. BROWN:
 15 Q. Initially I mean Arthur Andersen.
 16 A. Yes.
 17 Q. And you yourself worked on the work program for
 18 the 1997 audit for Sunbeam, correct?
 19 A. Right.
 20 Q. And in that process you also identified risks and
 21 identified steps to satisfy yourselves that the financial
 22 statements were fairly stating the financial position of
 23 Sunbeam, correct?
 24 A. Right.
 25 Q. And as an auditor, it's your job, is it not, to

1 apply professional skepticism to the representations and the
 2 statements of your client, correct?
 3 A. That's right.
 4 Q. Indeed, you're trained to have such professional
 5 skepticism when you're performing an audit?
 6 A. Right.
 7 Q. And you applied that professional skepticism to
 8 the work that you performed for Sunbeam in 1997 and 1998,
 9 correct?
 10 A. Yes.
 11 Q. You also apply your independent judgment during
 12 audit procedures, correct?
 13 A. Yes.
 14 Q. And you apply that independent judgment to the
 15 work that you were performing on Sunbeam matters in 1997 and
 16 1998?
 17 A. Yes, I mean, to some degree. I mean, independent
 18 judgment with the consultation of others that are also
 19 responsible for the engagement.
 20 Q. But independent of your client?
 21 A. As a firm we apply judgment in what we do and how
 22 we do it.
 23 Q. And so when an auditor states that they're
 24 skeptical of statements made by their client, that's
 25 essentially their job, correct?

1 A. Yes.
 2 Q. You stated previously that you began working on
 3 Sunbeam matters in approximately October of 1997; is that
 4 correct?
 5 A. Right.
 6 Q. And Sunbeam was your principal engagement from
 7 that time through some period after the restatement; is that
 8 correct?
 9 A. Yes, I think that's exactly right.
 10 Q. And you were on site at Sunbeam the majority of
 11 time from at least October of '97 through late January of
 12 1998, correct?
 13 A. Right.
 14 Q. Were you also --
 15 A. Late January -- yes, yes, that's fair.
 16 Q. Were you also on site at Sunbeam in February and
 17 March of 1998?
 18 A. Yes.
 19 Q. Approximately what percentage or portion of time
 20 were you on site at Sunbeam during those two months?
 21 A. I couldn't say. It's still a substantial amount
 22 of my time. I had one or two other clients that I worked on
 23 during that time frame but the majority of the time was
 24 spent on Sunbeam.
 25 Q. And was it spent at Sunbeam locations?

1 A. I would say so, yes.
 2 Q. So the majority of your time from October '97
 3 through March of '98 was spent on site at Sunbeam?
 4 A. Yes.
 5 Q. And you yourself personally spent approximately
 6 942 hours on matters related to Sunbeam's 1997 financials;
 7 is that correct?
 8 A. I mean, I don't remember the number. If you want
 9 to show me a time detail or if you have a time detail, I'm
 10 sure that's right.
 11 MS. BROWN: We'll mark Morgan Stanley 19.
 12 Q. You've been handed what's been marked as Morgan
 13 Stanley Exhibit 19. And I believe this was shown to you, as
 14 indicated there, in a prior deposition. Does this refresh
 15 your recollection that you spent approximately 942 hours on
 16 issues related to Sunbeam's 1997 financials?
 17 A. Yes.
 18 Q. And, indeed, this shows the time for the
 19 engagement team for Arthur Andersen for 1997 financials, and
 20 I won't ask you to calculate it but it's more than 3,000
 21 hours; is that right?
 22 MR. MOSCATO: Can't he just take your word for
 23 it, that the document says what it says, rather than have
 24 him add up all the numbers?
 25 MS. BROWN: He can take my word for it that it's

1 more than 3,400 hours, yes.
 2 THE WITNESS: Okay.
 3 BY MS. BROWN:
 4 Q. Does that seem approximately correct to you?
 5 A. Approximately, yes.
 6 Q. Now, you mentioned that in preparation for an
 7 audit, you perform or you create a work program, correct?
 8 A. Right.
 9 MS. BROWN: Let's mark Morgan Stanley 20.
 10 Q. You've been handed what's been marked as Morgan
 11 Stanley Exhibit 20. Do you recognize this document?
 12 A. Yes, this is the work program from the 1997
 13 audit.
 14 Q. This program is essentially an outline, is it
 15 not, of the work to be performed during the 1997 outline --
 16 1997 audit?
 17 A. Yes.
 18 Q. And the steps that are listed in this document --
 19 which for the record is CPH 0011408 to 468. The steps that
 20 are listed here are not a complete listing of all the steps
 21 that were taken during the 1997 audit? The steps actually
 22 performed are greater than those in the outline, correct?
 23 A. Let me say this is a detailed list of the steps
 24 to be performed. There may be tests performed that are not
 25 on this listing, so in addition to what's in here, there may

1 be tests on this listing that in the content of the audit
2 are not necessary to perform and, therefore, may not be
3 performed but this is to guide the conduct of the audit,
4 correct.

5 Q. And I think you just sort of mentioned, let me
6 clarify, if you identify additional steps that need to be
7 taken in order for you to give your opinion on the
8 financials, you perform those steps during the audit,
9 correct?

10 A. Correct.

11 Q. And, indeed, in 1997 you did identify and perform
12 additional procedures in December of '97 or January of '98
13 in addition to those that are identified in the work
14 program, correct?

15 A. Yes, I think that's right.

16 Q. But just for my own knowledge, there are other
17 documents that are labeled work program that have steps
18 written out and then they list who performed the steps, and
19 those titles in those work programs don't always conform to
20 the work program that is MS 20. Does that indicate that
21 those are additional steps that are not identified here?

22 MR. JOHNSON: Objection.

23 MR. MOSCATO: Objection.

24 THE WITNESS: If I could take a look at the
25 papers again.

1 MS. BROWN: Let's mark this Morgan Stanley 21.

2 Q. You've been handed what has been marked as Morgan
3 Stanley Exhibit 21 and the title of that document is
4 "Sunbeam Corporation Work Program," and then it says
5 "Consolidation and Financial Reporting." And, for the
6 records, the Bates is CPH 0011752 to 54.

7 Now, in Morgan Stanley Exhibit 20 there is
8 subtitles to the work program but there is no subtitle
9 matching the consolidation and financial reporting. So my
10 question for you is whether this is additional steps --
11 additional to those identified in Morgan Stanley 20 that
12 were taken during the 1997 audit of Sunbeam?

13 A. I wouldn't characterize them as additional. I
14 would say that -- I mean, for some reason the steps in MS 21
15 should be in the document that you have at MS 20, and if for
16 one reason or another they weren't included in that
17 document, then I don't know why but -- hold on just a
18 second. I mean, these steps that are on MS 21 would be
19 standard steps that we would performed in any audit.

20 Q. And the fact that there are initials in the
21 right-hand column and a line drawn through the center column
22 indicates that this is work that was actually performed --

23 A. Right.

24 Q. -- along with the signatures on the final page?

25 A. Right, right. And there would be copies of these

1 steps as well with the appropriate signatures and the work
2 paper.

3 Q. "These steps" referring to Morgan Stanley
4 Exhibit 20?

5 A. Yes.

6 MS. BROWN: Mark this Morgan Stanley 22.

7 Q. You've been handed what has been marked Morgan
8 Stanley Exhibit 22. Morgan Stanley Exhibit 22 for the
9 record is a document that begins at Bates CPH 0011144 to
10 52. For the record, could you identify this document?

11 A. What's the last Bates stamp which you referred
12 to?

13 Q. I believe the last one is 52.

14 A. The first document is a memorandum that I
15 prepared summarizing by risk that we identified in planning
16 our audit, kind of the steps that we performed to address
17 those risks. And then the second piece of which you gave me
18 which starts on the Bates stamp CPH 11151 is a summary of
19 our certain reserves that were set up in the '96
20 restructuring charge were utilized during the year. Okay.

21 Q. This document is a document that you -- the
22 first document, the memo-to-file, the document that you
23 created in January of 1998, correct?

24 A. Correct.

25 Q. And if you turn to Bates Page 49 -- ends in 49,

1 it identifies additional steps that you took -- you, Arthur
2 Andersen, took with regard to bill and hold sales under the
3 early buy program, correct?

4 A. Right.

5 Q. So this document, at least in part, identifies
6 additional steps that you took in addition to the original
7 plan steps that are memorialized in Morgan Stanley
8 Exhibit 20, correct?

9 A. Yes.

10 Q. And during the audit there was no limitation
11 placed on who you could speak with at Sunbeam, correct?

12 A. I mean, as a firm, yes, we could speak to anybody
13 we wanted to.

14 Q. And there was no limitation -- there was no audit
15 step that you wanted to take that you were not permitted to
16 take; is that correct?

17 A. That's correct.

18 Q. When you're performing an audit, you identify, at
19 least initially, a materiality threshold, correct?

20 A. Correct.

21 Q. And for the 1997 audit of Sunbeam, as a
22 preliminary matter you had identified a materiality
23 threshold of 11 -- just over \$11 million, correct?

24 A. I'd have to see. I don't recall but I'm sure
25 it's probably accurate.

Page 125

1 MR. MOSCATO: Well, don't take anyone's word for
 2 it. Just look at the document.
 3 BY MS. BROWN:
 4 Q. You've been handed what's been marked as Morgan
 5 Stanley Exhibit 23. For the record, that begins on Bates
 6 CPH 0010963 through 971. Mr. Pastrana, could you identify
 7 this document?
 8 A. This is a form that Andersen used to document the
 9 calculation of materiality for its audits which I filled out
 10 for Sunbeam, for the Sunbeam engagement.
 11 Q. And the form starts at Bates Page 966, correct?
 12 A. That's right.
 13 Q. And Page 964 is the subsequent calculation that
 14 you performed, correct?
 15 MR. MOSCATO: 960?
 16 MS. BROWN: Four. Two pages in advance.
 17 THE WITNESS: Let me take a look at it. It's not
 18 really a subsequent calculation. It's just a summary of
 19 what results from the information in the form.
 20 BY MS. BROWN:
 21 Q. Do you recall that you performed or Arthur
 22 Andersen had performed a preliminary materiality assessment
 23 and then in January of 1988 a memo was circulated from
 24 Mr. Denkhaus clarifying the use of certain tools to
 25 calculate materiality and listing scopes?

Page 126

1 A. I have some recollection of that but I'd have to
 2 look at the documents again.
 3 Q. Do you generally recall that when the document
 4 was circulated by Denkhaus, it indicated that during the
 5 1997 audit you had actually tested to a scope of a finer
 6 detail than what was required by the Denkhaus clarification?
 7 A. I don't recall that.
 8 Q. Do you recall that you initially -- you, Arthur
 9 Andersen, initially tested to identify errors of \$6 million
 10 -- of \$1.5 million and subsequently the clarification
 11 indicated that you could have tested to a greater detail or
 12 a coarser scope of \$6 million?
 13 A. I don't recall. If you have the initial
 14 materiality calculation and the Denkhaus memo and this one,
 15 maybe I can just put it all together. I can certainly
 16 recall at the time the firm changing its guidance and there
 17 being some difficulty understanding exactly what that
 18 guidance meant and some interpretive guidance that came
 19 out. I don't remember specifically how it impacted the
 20 findings that we had on Sunbeam.
 21 Q. Do you recall that as a result of the
 22 clarification from Mr. Denkhaus you were not required to
 23 perform any additional audit procedures?
 24 A. I just don't remember at this point.
 25 MR. MOSCATO: Do you have the Denkhaus memo?

Page 127

1 MS. BROWN: I don't have the Denkhaus memo.
 2 MR. JOHNSON: What transcript are you looking at?
 3 MS. BROWN: I'm looking at the November 15, 2000
 4 transcript in the in re: Sunbeam securities case. I'm not
 5 going to mark it as an exhibit but I'm looking at that
 6 deposition.
 7 Q. I'll hand it to you. I'll refer you to Page 129
 8 of the deposition which is CPH Page 1031672. If you will
 9 look at deposition Page 129 and 130, it may refresh your
 10 recollection.
 11 MR. MOSCATO: So you don't have CUB 16 because
 12 that's what this -- this note says "Reconciliation of
 13 materiality in accordance with revised firm guidance as
 14 follows," and it says, "CUB 16."
 15 MS. BROWN: I don't.
 16 THE WITNESS: I remember this now.
 17 BY MS. BROWN:
 18 Q. So does this refresh your recollection that
 19 initially when you performed the preliminary materiality
 20 assessments you had designed a work program to test -- to
 21 detect error in excess of 1.5 million?
 22 A. That's right.
 23 Q. And subsequently you determined that Arthur
 24 Andersen procedures as clarified by Denkhaus would have
 25 allowed you to design procedures intended to detect an error

Page 128

1 of \$6 million?
 2 A. That's correct.
 3 Q. So the work program that you designed for the
 4 1997 audit of Sunbeam tested to a finer detail than what was
 5 actually required at the time of Arthur Andersen policy,
 6 correct?
 7 A. That's correct.
 8 Q. And at the conclusion of the 1997 audit after you
 9 had spent several months on site at Sunbeam and the
 10 engagement team had spent a few thousand hours on the 1997
 11 financials for Sunbeam, Arthur Andersen had satisfied itself
 12 that Sunbeam's financials were -- fairly represented the
 13 results of the company, correct?
 14 A. Right.
 15 Q. And at that time you did not believe that there
 16 were any material misstatements to the financials?
 17 A. Correct.
 18 Q. And at that time you had no reason to question
 19 the integrity of management, correct?
 20 A. Correct.
 21 Q. One of the risks that you had recognized in
 22 performing the work for the 1997 audit for Sunbeam in
 23 designing the work was the pressure to meet sales and
 24 revenue numbers, correct?
 25 A. Right.

1 Q. And you designed work procedures to address the
2 risk that you identified, correct?

3 A. Correct, I would think -- but without seeing some
4 documents, I just need to make sure.

5 Q. You don't recall identifying any risk that you
6 had not addressed, correct?

7 A. Correct.

8 Q. And at the end of the first quarter of 1998, you
9 also didn't have any reason to question the integrity of
10 management, correct?

11 A. Right.

12 Q. Even though you had spent an additional three
13 months at Sunbeam and working with Sunbeam personnel, right?

14 A. Right.

15 Q. And at the end of 1997 you had no reason to
16 believe that Sunbeam was stuffing the channel personally,
17 correct?

18 A. Yes.

19 Q. That's also true at the end of -- first quarter
20 of 1998, you had no reason to believe that Sunbeam was
21 stuffing the channel, correct?

22 A. Correct.

23 Q. And you also performed work for the closing of
24 Sunbeam's first quarter '98 for filing of the 10-Q?

25 A. Yes.

1 Q. And at that time you had no reason to question
2 the materiality or whether there were any material
3 misstatements to Sunbeam's financials, correct?

4 MR. MOSCATO: I need to hear that again.

5 MS. BROWN: I'll strike that.

6 Q. When you were working on the close of Sunbeam's
7 financials for the first quarter of 1998 and the 10-Q, at
8 that time you had no reason to question the integrity of
9 Sunbeam's management, correct?

10 A. I didn't, no. Not that I can think of.

11 Q. You've already testified, I think, that you
12 didn't have any contact with Morgan Stanley in the first
13 quarter of 1998, correct?

14 A. Correct.

15 Q. Did you have any contact with Morgan Stanley
16 prior to 1997 concerning Sunbeam?

17 A. Not that I can remember, no.

18 Q. And you didn't have any contact with Morgan
19 Stanley senior funding in 1997 or 1998 concerning Sunbeam?

20 A. No.

21 Q. You did not have any contact with Davis Polk in
22 1997 or 1998 concerning Sunbeam?

23 A. The name rings a bell, law firm, but I don't
24 remember any specific contact.

25 Q. Davis Polk was underwriter's counsel to Morgan

1 Stanley in 1998. Did you have --

2 A. I don't think I had any direct contact with them.

3 Q. Do you recall having any contact with Skadden
4 Arps, counsel for Sunbeam, in 1997 or '98 concerning Sunbeam
5 prior to the restatement effort?

6 A. No, not prior to the restatement effort.

7 Q. After the bill and hold transactions had been
8 identified at Sunbeam in 1997, those transactions were
9 disclosed in Sunbeam's 10-K that they filed for 1997,
10 correct?

11 A. Yes.

12 Q. And I think you testified earlier that 10-K was
13 filed with the SEC in early March of 1998; is that correct?

14 A. Right.

15 Q. And Arthur Andersen was satisfied with the
16 disclosure that Sunbeam had made of the bill and hold?

17 A. That's my understanding.

18 Q. You personally were satisfied with the bill and
19 hold disclosure in the 10-K, correct?

20 A. I read it. Yeah, I thought it was okay.

21 Q. The 10-K for Sunbeam for 1997 also disclosed the
22 early buy program, correct?

23 A. I believe so, yes.

24 Q. And do you recall having any reservation or
25 problems with the way that that was disclosed in Sunbeam's

1 10-K for 1997?

2 A. I don't recall having any.

3 Q. Do you recall Arthur Andersen ever recommending
4 to Sunbeam prior to the restatement that they discontinue
5 bill and hold sales?

6 A. I'm sorry, say that again.

7 Q. Do you recall Arthur Andersen ever recommending
8 to Sunbeam prior to the restatement that Sunbeam discontinue
9 bill and hold sales?

10 A. No, I don't.

11 Q. Do you ever remember Arthur Andersen recommending
12 to Sunbeam prior to June of 1998 that Sunbeam discouraged
13 customers from asking for bill and hold?

14 A. I don't recall anything like that.

15 Q. What are blueback clearance forms?

16 A. Blueback is a term that was used at Andersen to
17 refer to the management letter and those forms are just --
18 if you had a management letter comment, you would write it
19 down on the form. Just gave you something later on to
20 discuss with management and they were suppose to sign off on
21 it. It wasn't a required procedure but it was just a format
22 for communicating management letter comments.

23 Q. I'm handing you what has been marked as Morgan
24 Stanley Exhibit 24. For the record, the Bates is CPH
25 0244904 to 915. Can you identify this document?

1 A. This appears to be a listing of our management
 2 letter comments that I faxed to Bob Gluck on May 21 of '98 I
 3 guess to solicit his responses.
 4 Q. Had these, to your knowledge, blueback clearance
 5 forms been submitted to Sunbeam prior to this date?
 6 A. Not that I'm aware of. I don't know if they were
 7 or not.
 8 Q. You're not aware of these forms being transmitted
 9 to Morgan Stanley, correct?
 10 A. I am not.
 11 Q. Ask you to look at what is Page 2 of the memo,
 12 three of the document, Bates ending in 906.
 13 A. Uh-huh.
 14 Q. And there in the last sentence states, "We
 15 recommend that management take steps to discourage customers
 16 from placing bill and hold orders," and I encourage you to
 17 read the paragraph or the paragraphs before that and my
 18 question would be whether that recommendation related to the
 19 manual labor involved rather than to concerns about the
 20 legitimacy of bill and hold sales?
 21 A. (Reading) Yes, I don't remember exactly --
 22 could you ask the question again please?
 23 Q. Yes. My question was the recommendation that
 24 they discouraged bill and hold sales, what the basis for
 25 that recommendation was?

1 MR. MOSCATO: Objection. Did you make the
 2 recommendations? Did you write this?
 3 THE WITNESS: I played some role in drafting it.
 4 I don't know if I actually conceived the whole thing.
 5 MR. MOSCATO: Answer to the best you can, if you
 6 can recall.
 7 THE WITNESS: As I read this, I mean, the tone of
 8 what's here -- and it's been a long time -- is more that it
 9 requires a lot of effort, causes a lot of system problems,
 10 there's a lot movement and stuff back and forth.
 11 Logistically it's difficult, it's time consuming, it's
 12 resource consuming, it doesn't seem to make a whole lot of
 13 sense, the tone of this comment, but it also points out that
 14 from a kind of a GAAP or SEC compliance standpoint that
 15 these transactions are looked at very, how should I say,
 16 skeptically by the SEC.
 17 Q. But at the end of 1997 Arthur Andersen had
 18 satisfied itself that the bill and hold sales met SEC
 19 requirements?
 20 A. That's correct.
 21 Q. And in the end of Q1 98 when you observed the
 22 cutoff testing in the bill and hold segregation, Arthur
 23 Anderson also was satisfied that those bill and hold sales
 24 were legitimate sales according to SEC guidelines, correct?
 25 A. Correct.

1 Q. And, indeed, even after the restatements you
 2 personally thought that the bill and hold sales met the SEC
 3 guidelines, correct?
 4 A. That's correct.
 5 Q. And no one at Sunbeam during 1997 or the first
 6 quarter of 1998 expressed concern to you concerning about
 7 the legitimacy of the bill and hold sales?
 8 A. Correct.
 9 Q. You testified earlier about the comfort letters
 10 that Arthur Andersen provided to Morgan Stanley in March of
 11 1998; do you recall that?
 12 A. Yes.
 13 Q. What is the purpose of the comfort letter?
 14 MR. MOSCATO: From whose perspective?
 15 MS. BROWN: From the witness' perspective.
 16 MR. MOSCATO: You mean, why does an auditor send
 17 the comfort letter? Is that the question?
 18 MS. BROWN: My question is --
 19 MR. MOSCATO: I mean, it could have different
 20 purposes. The receiver could have a purpose for receiving
 21 it. The sender could have a purpose for sending it. I'm
 22 just unclear what you mean by "the purpose."
 23 MS. BROWN: Strike that.
 24 Q. What do you understand -- or what did you
 25 understand Morgan Stanley's purpose to be in requesting the

1 comfort letter?
 2 A. My understanding was that -- whatever role Morgan
 3 Stanley played in this deal as the banker, that it's
 4 apparent in this offering memorandum that they have
 5 responsibility for performing some level of due diligence
 6 which would include something to satisfy itself that
 7 financial numbers included in the document are accurate.
 8 And as part of that responsibility,
 9 usually the underwriters will request us as the auditors to
 10 perform certain procedures to ensure that the numbers
 11 contained in the offering memorandum are accurate and are
 12 derived from the financial statements of the company either
 13 that we've audited or reviewed in the past and that's what
 14 we document in the comfort letter and deliver to the
 15 underwriters or to the bankers.
 16 Q. And you identified in previous testimony certain
 17 steps that Arthur Andersen takes before issuing a comfort
 18 letter. What is the purpose of the steps that Arthur
 19 Andersen takes before issuing a comfort letter?
 20 A. It kind of depends on the situation but the
 21 purpose generally of post report review procedures is to
 22 gain information about events that have happened after the
 23 date of the auditor's report that might indicate that
 24 something either in the auditor's report as it was completed
 25 or in the current document -- the current offering

1 memorandum may be inaccurate or misleading, and, if so, that
2 normally the auditor would not consent -- although I'm not
3 sure that we issued a consent in this case, but if it were
4 misleading, then we would not consent to the inclusion of
5 our report in their document or we would refuse to deliver
6 the comfort letter.

7 Q. So you understood that those -- for example,
8 refusing to deliver a comfort letter was an option available
9 to Arthur Andersen?

10 A. Yes, stepping back, actually I didn't understand
11 that to be an option. I don't know. As far as I know, we
12 could have not delivered the comfort letter.

13 Q. And you mentioned a consent. Even though a
14 consent wasn't required in March of 1998, did you understand
15 that eventually, when there was a registration with the SEC,
16 that Arthur Andersen would have to give its consent to allow
17 its opinion to be used in that registration?

18 A. At that time I didn't understand how that was
19 going to happen so it wasn't my understanding that
20 eventually we would issue a consent, no.

21 Q. You understand, though, that in June of 1998
22 Arthur Andersen actually did withhold its consent from the
23 use of financial statements when Sunbeam was seeking to
24 register file registration with the SEC?

25 A. You refreshed my memory now. Yes, I'm aware of

1 offering memorandum, correct?

2 A. Yes.

3 Q. And you understood that the offering memorandum
4 would be distributed to investors?

5 A. Yes.

6 Q. And you reviewed at least portions of the
7 offering memorandum, correct?

8 A. Yes.

9 Q. And according to the post-audit review form,
10 others reviewed the offering memorandum at Arthur Andersen
11 as well, correct?

12 A. Yes.

13 Q. From your recollection, was there anything in the
14 offering memorandum that you recall being misleading or
15 false?

16 A. No.

17 Q. When you were performing the post audit reviews,
18 you were communicating your findings with Mr. Bornstein on a
19 near daily basis, correct?

20 A. Yes.

21 Q. You've been handed what's been marked as Morgan
22 Stanley Exhibit 25. I think it's probably the same as one
23 of the other exhibits you've looked at today. For the
24 record, it's CPH 01300341 to 50. And can you identify this
25 document for the record?

1 that.

2 THE VIDEOGRAPHER: Excuse me. I need to change
3 the tape.

4 MS. BROWN: We can go off the record.

5 THE VIDEOGRAPHER: This is the end of Videotape
6 No. 2. We are going off the record. The time is 2:04.

7 (Tape change)

8 THE VIDEOGRAPHER: We are back on the record.
9 This is the beginning of the Videotape No. 3. The time is
10 2:05.

11 BY MS. BROWN:

12 Q. So now that you've been refreshed about Arthur
13 Andersen withholding its consent, did you have an
14 understanding in March of 1998 that Arthur Andersen would
15 eventually need to consent to the use of its financial
16 statements in the registration of the notes associated with
17 the offering memorandum?

18 MR. JOHNSON: Objection to form.

19 THE WITNESS: I do not recall understanding that
20 at the time of March '98. I'm sure that others I worked
21 with understood how this process would work. At that time,
22 I don't think I understood that.

23 BY MS. BROWN:

24 Q. But you did understand that Arthur Andersen's
25 financials and opinions were going to be included in the

1 A. This is a checklist we filled out for one of our
2 post audit reviews in the first quarter of 1998 sometime,
3 similar to the one we spoke about earlier.

4 Q. And if you look at the SEC filing on the second
5 line of the first page of this document, states "10-K"; do
6 you see that?

7 A. Yes.

8 Q. It's Arthur Andersen's policy, correct, to
9 perform a post-audit review prior the filing of 10-K?

10 A. Correct.

11 Q. And if you look at the second page, Number 2 and
12 2-A, there's no notation there regarding declining sales,
13 correct?

14 A. Correct.

15 Q. And those initials in the first column "Work Done
16 By," those are your initials?

17 A. Correct.

18 Q. And all the handwriting after the first page, is
19 that your handwriting?

20 A. Yes.

21 Q. Except for the signature at the end.

22 I'm going to hand you what will be marked Morgan
23 Stanley Exhibit 26. Morgan Stanley Exhibit 26 is the P&L
24 that you looked at earlier today and I think you identified
25 the second two pages of that document or the last two

Page 141

1 pages -- I'm sorry, 26 to 27 were provided to you by
 2 Sunbeam; is that correct?
 3 A. Right.
 4 Q. And, for the record, this document is CPH 0013023
 5 to 27. But you do have a note on the second page of this
 6 document concerning decrease in sales?
 7 A. Uh-huh, okay.
 8 Q. So you were aware as of March 5, 1997 of the
 9 decrease in sales at Sunbeam for January '98 as compared to
 10 January of '97, correct?
 11 MR. MOSCATO: I object to that.
 12 THE WITNESS: Can you repeat the question again?
 13 BY MS. BROWN:
 14 Q. Sure. Let me strike it and I'll ask a different
 15 question.
 16 As of March 5, 1998 you were aware of the
 17 decrease in sales of approximately a little over \$43 million
 18 comparing January of '97 and January of '98, correct?
 19 A. Right.
 20 Q. And you provided this information to
 21 Mr. Bornstein?
 22 A. Right.
 23 Q. Did you provide this information to Morgan
 24 Stanley as of this date?
 25 A. As of March 5th. I mean, I didn't provide it to

Page 142

1 them as of this date. I mean, I would imagine the first
 2 draft of the comfort letter that went that had the January
 3 numbers, the information was provided to them. We reviewed
 4 a draft of a comfort letter earlier that had sales
 5 information in it, and the first draft that was circulated
 6 had January sales information.
 7 Q. Did you personally circulate that draft to Morgan
 8 Stanley?
 9 A. I did not.
 10 Q. Are you personally aware of anyone providing
 11 that draft to Morgan Stanley?
 12 A. No.
 13 Q. Now, the March 5th, post-audit review that you
 14 performed was for the filing of the 10-K of Sunbeam,
 15 correct?
 16 A. Correct.
 17 Q. And you performed subsequent post audit review
 18 forms after that for purposes of the comfort letter?
 19 A. Correct.
 20 Q. Again this is similar to a document that you
 21 were shown earlier today. For the record, Morgan Stanley
 22 Exhibit 27 is CPH 0012963 to 67. And you testified about
 23 this document previously. I'd just like you to look at the
 24 second page, Note A. You make reference there to a
 25 discussion with Lee Griffith and Al Lefebvre, correct?

Page 143

1 A. Yes.
 2 Q. Notes that "the company expects sales to recovery
 3 in the second quarter." Do you recall that discussion?
 4 A. No, I don't.
 5 Q. Also notes here that "The company has undertaken
 6 an aggressive marketing campaign, radio plus large ads in
 7 USA Today." Do you recall being informed by the company
 8 that they had taken steps such as this to address flagging
 9 sales?
 10 A. Other than recalling it by reading what I'm
 11 reading here, I don't recall the specific discussion where
 12 that information was told to me.
 13 Q. But you believe --
 14 A. I believe this is accurate, yes.
 15 Q. This P&L that's dated March 13, 1998, did you
 16 personally provide this document to Morgan Stanley?
 17 A. I did not, no.
 18 Q. Are you personally aware of anyone else from
 19 Arthur Andersen providing this document to Morgan Stanley?
 20 A. No.
 21 MS. BROWN: I'll mark two exhibits, 28 and 29.
 22 Q. You've been handed Morgan Stanley Exhibit 28 and
 23 29. For the record Morgan Stanley 28 is CPH 0129926 through
 24 936 and Morgan Stanley Exhibit 29 is CPH 0129992 through
 25 013. And you testified earlier about an exhibit similar to

Page 144

1 Morgan Stanley 28. This is a post audit review that you
 2 performed in approximately March 16th of 1998 for Sunbeam,
 3 related to Sunbeam, correct?
 4 A. Yes.
 5 Q. And Morgan Stanley Exhibit 29, can you identify
 6 what that document is?
 7 A. Appears to be the company's 1998 budget.
 8 Q. This is a document that was provided to you by
 9 Sunbeam; is that correct?
 10 A. Right.
 11 Q. Do you recall who provided you with this
 12 document?
 13 A. No.
 14 Q. Looking at the second page of this document under
 15 Q1, do you see the company's budget for Q1 of 1998 for net
 16 sales was 308.5 million?
 17 A. Correct.
 18 Q. Now, referring back to Morgan Stanley Exhibit 28,
 19 you testified earlier about the entry that you made on Page
 20 4 of the memo which is at Bates Page 930 of Morgan Stanley
 21 Exhibit 28.
 22 A. Uh-huh.
 23 Q. And the entries there on that last column in
 24 Morgan Stanley Exhibit 28, are those entries that you typed
 25 in?

Page 145

1 A. Yes.

2 Q. You typed in "Such targets may be unattainable."

3 When you were referring to "such targets" in terms of sales,

4 you were referring to the 309 million, correct?

5 A. Right.

6 Q. You were not referring to the Wall Street

7 analysts' projections for first quarter of 1998 for Sunbeam,

8 correct?

9 A. Correct.

10 Q. And you were not referring to the net sales that

11 Sunbeam had achieved in the first quarter of 1997, correct,

12 when you said that such targets may be unattainable?

13 A. Correct.

14 Q. These post-audit review forms that you've looked

15 at, Morgan Stanley Exhibit 28 and Morgan Stanley Exhibit 25,

16 those are not documents that you provided to Morgan Stanley,

17 correct?

18 A. Correct.

19 Q. And you're not personally aware of anybody else

20 providing it to Morgan Stanley, correct?

21 A. Correct.

22 Q. Indeed you would not have expected anybody to

23 have provided those documents to Morgan Stanley, would you?

24 A. No.

25 MR. MOSCATO: I'm sorry, which document are you

Page 146

1 referring to? Are they Andersen work papers?

2 MS. BROWN: The Anderson post-audit review forms

3 that are Morgan Stanley Exhibits 25 and 28.

4 MR. MOSCATO: Okay.

5 BY MS. BROWN:

6 Q. You also drafted the representation letter that

7 Sunbeam management would supply to Arthur Andersen before

8 Arthur Andersen issued its comfort letter, correct?

9 A. I probably did that, that's correct.

10 Q. Who else would have been involved in drafting

11 those letters?

12 A. Mr. Bornstein might have been involved,

13 Mr. Harlow might have reviewed them and provided some

14 comments, but generally I would have drafted the majority of

15 them.

16 Q. Did you yourself provide that draft to Sunbeam

17 for them to then execute of the representation letter from

18 Sunbeam management to Arthur Andersen?

19 A. I can't recall if I provided it to them or if

20 Larry did, Mr. Bornstein, excuse me.

21 Q. Do you recall any discussion letters with

22 Sunbeam -- anyone at Sunbeam concerning the representation

23 letter that they provided to Arthur Andersen in connection

24 with the work that Arthur Andersen is doing for the comfort

25 letters in March of 1998?

Page 147

1 MR. JOHNSON: Can I hear that one back?

2 (The record was read.)

3 THE WITNESS: Was there a question for me?

4 BY MS. BROWN:

5 Q. Let me simplify.

6 A. I don't remember any discussions with anybody

7 about the management letter that we presented them to sign.

8 I think that was the question, right, more or less the gist?

9 Q. You've been handed what has been marked as Morgan

10 Stanley Exhibit 30. For the record, this is CPH 0129687 to

11 89. Can you identify this document?

12 A. This is a copy of the management representation

13 letter that we received in connection with issuing the March

14 19th comfort letter.

15 Q. And one of your previous statements may have been

16 broad but I don't know if you covered this. Do you recall

17 receiving -- did you personally receive this letter from

18 Sunbeam?

19 A. I don't recall if I did or someone else did.

20 Q. Do you recall any discussions internally at

21 Arthur Andersen concerning the representation letter that

22 you received from Sunbeam management dated March 16, 1998?

23 A. No.

24 MS. BROWN: This exhibit will be two documents

25 together.

Page 148

1 Q. You've been handed what's been marked as Morgan

2 Stanley Exhibit 31, which for the record is CPH 0041641

3 through 48. Can you identify this document?

4 A. This is a draft comfort letter, draft of the

5 March 19th comfort letter.

6 Q. And this is a draft that you were e-mailing to

7 Mr. Harlow, Mr. Bornstein and Mr. Brockelman?

8 A. Right.

9 Q. On the second page of Morgan Stanley Exhibit 31

10 there's some text at the top beginning with "This draft is

11 furnished," etcetera; do you see that?

12 A. Uh-huh.

13 Q. And I believe it's the second sentence states,

14 "Based on our discussions with Morgan, it's our

15 understanding that the procedures outlined in this draft are

16 those they wish us to follow." Based on your prior

17 testimony, I take it those are not your discussions with

18 Morgan Stanley, correct?

19 A. Correct.

20 Q. And is this text at the top of the second page of

21 Morgan Stanley Exhibit 31 a standard text that goes on a

22 draft?

23 A. Yes.

24 Q. You don't know, for instance, that this reference

25 to discussions with Morgan Stanley refers to actual

1 discussions that occurred, correct?

2 A. It does refer to discussions. I mean, Morgan
3 Stanley takes a copy of the offering document and circles
4 all the numbers that they want us to comfort and what they
5 want us to do, and then there's a dialogue that takes place
6 about what the auditors can and can't do. So somewhere in
7 the process that discussion was had. I didn't have it but
8 there would have been a discussion. I personally did not
9 have it, right.

10 Q. Did anyone relate to you the contents of such
11 discussion?

12 A. No, other than handing me a copy of the document
13 with the numbers circled to provide comfort on.

14 Q. And when you refer to someone handing you a copy
15 of the document, you are referring to someone handing you a
16 copy of the draft offering memorandum?

17 A. Correct.

18 Q. I think you've already testified but you
19 personally did not provide a draft of the comfort memo to
20 anyone outside of -- comfort letter to anyone outside of
21 Arthur Andersen, correct?

22 A. That I can recall. I mean, somebody would have
23 provided a draft to Morgan Stanley in advance of issuing the
24 March 19th letter. That's normal practice, to give the
25 underwriter a draft that would include this language.

1 Whether I delivered it via fax or Larry did or
2 Mr. Brockelman did, or whoever did, you know, I don't know
3 who it was. I don't recall doing it myself but one would
4 have been delivered in advance.

5 Q. You're assuming that, correct? You don't have
6 personal knowledge that that happened?

7 A. I don't have personal knowledge that that
8 happened. I have knowledge that its suppose to happen in
9 the process. It's normal that it does happen. I don't know
10 that it actually did happen.

11 Q. Now, it was your understanding that the work that
12 you had done in the post audit reviews in identifying the
13 decline in sales prompted Arthur Andersen to say that it
14 wouldn't be willing to issue a consent for the note offering
15 if Sunbeam didn't add a recent development section to the
16 offering memorandum, correct?

17 MR. MOSCATO: I object to that. I thought he was
18 testifying before that the consent -- that he didn't have an
19 understanding that there was a consent necessary for this
20 part of the offer. That's why I'm objecting to the
21 question. Maybe I heard it wrong. If you want to read it
22 back.

23 (The record was read.)

24 THE WITNESS: Issue a consent to the offering
25 memorandum? What are we talking about now? The offering

1 memorandum was completed without a consent having been
2 issued, right? We agreed the consent didn't have to be
3 issued?

4 MR. MOSCATO: That's why I was objecting.

5 THE WITNESS: Are we in June now of '98?

6 BY MS. BROWN:

7 Q. No, we are talking in March of '98.

8 A. Okay.

9 MR. JOHNSON: What date do you have there?

10 MS. BROWN: April 29, 1999.

11 MR. MOSCATO: Are you going to ask him to -- are
12 you going to refresh his recollection with something in the
13 transcript that's demonstratively wrong because -- based on
14 what we have talked about today? I don't understand where
15 this is going. I mean, we've established that there wasn't
16 a consent necessary. Everyone agrees to that. Now, if he
17 said something erroneously in a prior transcript, I just
18 don't see the point of this.

19 BY MS. BROWN:

20 Q. There wasn't a consent necessary in March of '98,
21 but you do understand that Arthur Andersen withheld the
22 consent in June of 1998, correct?

23 A. Right.

24 Q. And if Arthur Andersen was going to withhold its
25 consent based on what was in the text of the offering

1 memorandum, it would have to inform Sunbeam of that prior to
2 the offering memorandum being published, correct?

3 MR. MOSCATO: I object to that.

4 BY MS. BROWN:

5 Q. If it knew in March of '98?

6 A. I mean, if it knew, Andersen should inform them
7 in March that its going to withhold its consent, but it
8 doesn't have to. I mean, Arthur Andersen can issue its
9 comfort letter and express its opinion and people can go
10 against that opinion. It's up to Arthur Andersen later on
11 whether or not they want to issue a consent, right?

12 Q. But if Arthur Andersen expected, based on what it
13 saw in the offering memorandum in March of 1998, that it
14 could not based on that text issue a consent when the notes
15 were eventually registered, then as a service or courtesy
16 Arthur Andersen would tell Sunbeam that before the offering
17 memorandum was published?

18 A. And maybe they did. Maybe they did and someone
19 decided, well, let's just publish any way and maybe it will
20 never get registered. I don't know. I just don't know
21 about that. If they knew --

22 MR. MOSCATO: You've answered the question.

23 THE WITNESS: I'm done?

24 MR. MOSCATO: Yes. Wait for another question to
25 be posed.

1 THE WITNESS: How about a coffee break?
 2 MS. BROWN: Okay. Let's go off the record.
 3 THE VIDEOGRAPHER: We are going off the record.
 4 The time is 2:32.
 5 (Time noted: 2:32 p.m. to 2:34 p.m.)
 6 THE VIDEOGRAPHER: We are back on the record.
 7 The time is 2:43.
 8 BY MS. BROWN:
 9 Q. Mr. Pastrana, do you recall a conversation with
 10 Mr. Bornstein where he told you that after reviewing the
 11 comfort letter -- draft comfort letter and the draft
 12 offering memorandum Arthur Andersen said that there was no
 13 way they would issue a consent unless Sunbeam added a recent
 14 events -- recent development section to the offering
 15 memorandum?
 16 A. I do remember a conversation, something to that
 17 effect.
 18 Q. And that conversation took place prior to the
 19 issuance of the press release by Sunbeam on March 19, 1998,
 20 correct?
 21 A. I don't recall the timing. I believe it was
 22 prior to the issuance of the press release.
 23 Q. Do you recall having any discussion after the
 24 issuance of the press release to the effect that Arthur
 25 Andersen still intended to withhold its consent from --

1 ultimately for the registration statement because it felt
 2 the offering memorandum was inaccurate?
 3 A. I never heard anything one way or the other,
 4 whether Andersen intended to issue a consent or not issue a
 5 consent.
 6 Q. Do you recall any follow-up conversation
 7 whatsoever to the conversation that you had with
 8 Mr. Bornstein where he initially indicated that unless
 9 Sunbeam added a recent development section to the offering
 10 memorandum, Arthur Andersen would withhold its consent?
 11 A. I remember no conversation. Could you repeat the
 12 question again? I don't understand how that differs from
 13 the prior question.
 14 Q. The prior question was you did recall a
 15 conversation with -- an initial conversation with
 16 Mr. Bornstein, correct?
 17 A. That's correct.
 18 Q. And my question --
 19 MR. MOSCATO: I don't think that was the prior
 20 question he was talking about but go ahead.
 21 BY MS. BROWN:
 22 Q. And my question was after that conversation with
 23 Mr. Bornstein where he initially said that Arthur Andersen
 24 would hold their consent, was there any subsequent
 25 conversation regarding that topic that you recall?

1 A. Subsequent to the press release, I don't recall
 2 any conversation.
 3 Q. And you recall that Sunbeam put the substance of
 4 the press release into the offering memorandum?
 5 MR. JOHNSON: Objection to form.
 6 THE WITNESS: I recall something was put in the
 7 offering memorandum very similar to the wording in the press
 8 release, yes.
 9 BY MS. BROWN:
 10 Q. I think you already said but let me clarify.
 11 There was nothing in the offering memorandum that you
 12 reviewed that you thought was false or misleading, correct?
 13 A. I don't recall anything that was false or
 14 misleading.
 15 Q. And you didn't make any comments on the offering
 16 memorandum other than verifying the numbers, correct?
 17 A. That's right.
 18 MR. MOSCATO: Well, I object to that. I think
 19 there needs to be some clarification. The thing where he
 20 verified numbers, I'm not sure was the final offering
 21 memorandum, was it?
 22 MS. BROWN: I was referring to a draft.
 23 MR. MOSCATO: To a draft, okay, that's fine. But
 24 for the record, I don't think that draft had the recent
 25 developments section but you guys can work that out.

1 BY MS. BROWN:
 2 Q. After the inclusion of the recent development
 3 section with substance or language similar to what was in
 4 the press release, you still had the opinion that there was
 5 nothing false or misleading about the offering memorandum,
 6 correct?
 7 MR. JOHNSON: Objection to form.
 8 THE WITNESS: In regard to -- like the historical
 9 financial numbers that were in there? I mean, I think it
 10 was all accurate.
 11 BY MS. BROWN:
 12 Q. Do you recall anything that you read with regard
 13 to the final offering memorandum that you thought was false
 14 or misleading?
 15 A. Yeah, I mean, management's statement to the
 16 effect that they thought they were going to exceed sales for
 17 what they had achieved in the previous year. I mean,
 18 whether it's false or misleading, I really didn't know
 19 enough to judge but I certainly thought it was fairly bold
 20 to make that kind of a statement given what the results were
 21 at that point of the month but that was their choice.
 22 Q. But you didn't think it was false or misleading?
 23 MR. MOSCATO: Objection to form.
 24 THE WITNESS: I thought they could have worded it
 25 differently. I thought they could have just said, "We're

1 not going to meet our earnings, our targets that we had said
2 or what we had communicated to Emerald" and just leave it at
3 that. I mean, why say --

4 BY MS. BROWN:

5 Q. Did you ever communicate with anyone your opinion
6 concerning --

7 A. I think we had conversations about it internally
8 at Andersen. I never communicated outside of, you know, the
9 people that I was directly responsible to or I reported to,
10 those feelings.

11 Q. Were you aware that Sunbeam provided to Morgan
12 Stanley and then to Arthur Andersen a buildup of sales it
13 expected to achieve at the end of March, 1998?

14 A. I was aware that Larry had gotten something,
15 Bornstein, while he was at the printers to corroborate what
16 management thought they were going to achieve from the sales
17 standpoint, whether it was existing orders or something,
18 some kind of form or something like that.

19 Q. Did you see that document?

20 A. I did not. I did not.

21 Q. Who would be in a better position to know the
22 outstanding orders that Sunbeam had on hand at the end of or
23 toward the end of 1998, Sunbeam or Arthur Andersen?

24 A. I would think Sunbeam.

25 Q. Who would be in a better position to project the

1 date on them. We looked at them a little earlier, and I
2 don't know right now why the February numbers aren't in here
3 unless we weren't given those numbers until after that date
4 at some point and time. There should be a representation
5 letter from management. Do you have that that goes with
6 this? It should be dated -- it should be dated actually
7 March 16th. It may actually be here.

8 MR. JOHNSON: MS 30, I think.

9 THE WITNESS: Actually those February statements
10 that we looked at earlier were not given to us until some
11 time after March 16, the date of our cutoff. I mean, here's
12 a letter signed by management dated March 16th that says,
13 "No consolidated financial statements are available as of
14 any date or for any period subsequent to February 1st,
15 1998."

16 So on March 16th management was still
17 saying that the February numbers were not available. They
18 had not completed their January close yet. So I think
19 that's what we were aware of. Am I wrong about that?

20 MR. MOSCATO: It's very confusing.

21 THE WITNESS: Actually the comfort letter does
22 disclose the sales figure through February which is in Note
23 6-C, so apparently we had some sales information. I don't
24 know if we had full income statements.

25 BY MR. BROWN:

1 sales that Sunbeam was going to make at the end of 1990 --
2 the first quarter of 1998, Sunbeam or Arthur Andersen?

3 A. Sunbeam.

4 Q. And you in this period in March of 1998 had no
5 reason for concern that the 1998 plans with respect to the
6 grill season in particular would not materialize, correct?

7 A. Correct, with regard to the grill season I had no
8 reason to not believe what they were saying.

9 Q. And you understood that Sunbeam still believed
10 that they were going to meet their sales goals for the 1998
11 season, correct?

12 A. Correct.

13 Q. I'll hand you what has been marked as Morgan
14 Stanley Exhibit 9. This is the comfort letter that Arthur
15 Andersen issued to Morgan Stanley on or around March 19,
16 1998, correct?

17 A. Right.

18 Q. But Arthur Andersen had the sales numbers for
19 February of 1998 prior to issuing this comfort letter,
20 correct?

21 A. I think that's correct. I'm not certain.

22 Q. Do you know -- did you have any discussions with
23 anyone at Arthur Andersen why those numbers were not
24 included in the March 19th, 1998 comfort letter?

25 A. I did not. You know, the February numbers have a

1 Q. I'm sorry, where were you referring to? Six
2 what?

3 A. 6-C on Page 5 of the March 19th comfort letter.

4 Q. So you think the distinction between Paragraph
5 5-B and 6-C is what? Why the numbers were not placed in
6 Paragraph 5-B?

7 A. Paragraph 5-B relates to the latest available
8 financial statements of the company, so in this particular
9 case it's March 16th and the company is telling us the
10 latest financial they have available are as of February
11 1st. However, even though we don't have financial
12 statements at the end of February, we will still make
13 inquiries or perform other procedures for the period
14 subsequent to February 1st, so one of the steps is to make
15 an inquiry of management and get some information regarding
16 sales and 6-C is what they informed us about sales during
17 that period.

18 Q. So the March 13th and March 16 PARs that we
19 looked at, those were not closed numbers essentially?

20 A. The PARs look at numbers that --

21 MR. JOHNSON: I object to the form of the
22 question but you may answer.

23 THE WITNESS: The PARs were performed on numbers
24 that were closed as of the date of those PARs, so either the
25 January or the February. Whatever closed numbers were

1 available at that time. Does that make sense?
 2 So, anyway, even though on March 16th,
 3 February -- complete February closing was not available,
 4 sales for the period were available, and management provided
 5 that information and we included it.

6 BY MR. BROWN:

7 Q. There were -- as you mentioned, there was a bring
 8 down comfort letter?

9 A. Yes.

10 Q. And for that bring down comfort letter there was
 11 also a bring down management representation letter; is that
 12 correct?

13 A. Correct.

14 Q. And you drafted both of those?

15 A. Yes.

16 Q. You've been handed what has been marked as
 17 Morgan Stanley Exhibit 32, and for the record it's CPH
 18 0041650 to 61. Can you identify these documents for the
 19 record?

20 A. This appears to be an early draft of the March
 21 19th comfort letter and then a later draft of the same
 22 letter.

23 Q. Referring to the document that begins on Bates --
 24 ending in 51, that's a draft of the representation letter
 25 from management, correct?

1 Q. Do you recall any of the circumstances
 2 surrounding how that was placed in the draft representation
 3 letter?

4 A. No, I don't.

5 Q. That paragraph is not something that was in the
 6 March 16th management representation letter, correct?

7 A. Correct.

8 Q. So it appears as though that was something that
 9 was added subsequently; is that correct?

10 A. It appears it was something that was deleted
 11 subsequently.

12 Q. Deleted?

13 A. Did I misspeak? It appears that it's not in the
 14 final copy of the letter.

15 MR. MOSCATO: It was added then deleted?

16 THE WITNESS: It was added and then it was not
 17 included in the final letter.

18 BY MR. BROWN:

19 Q. The document you are looking at which is Morgan
 20 Stanley Exhibit 32 is attached to an e-mail dated March
 21 21st, 1998, correct?

22 A. Correct.

23 Q. Which is after management had issued their first
 24 representation letter to Morgan Stanley -- to Arthur
 25 Andersen in association with the comfort letter dated March

1 A. I beg your pardon, you're right. You're right.

2 Q. And then the document that begins on Page 55 is a
 3 draft of a comfort letter, correct?

4 A. Right.

5 Q. And these documents are attached to an e-mail
 6 that you sent to Mr. Bornstein; is that correct?

7 A. Right.

8 Q. Dated March 21, 1998?

9 A. Right.

10 Q. Turn, if you would, please to the last page of
 11 the draft of the representation -- second to the last page
 12 of the draft of the representation letter which ends in
 13 Bates 53. I refer you there to Paragraph 10 in Morgan
 14 Stanley Exhibit 32. This draft representation letter from
 15 management states, "Despite the decrease in net sales
 16 described in the preceding paragraph, management believes
 17 that net sales for the first quarter of fiscal 1998 will
 18 exceed the net sales for the first quarter of fiscal 1997";
 19 do you see that?

20 A. Yes.

21 Q. Did you place that text in this draft letter?

22 A. It's quite possible.

23 Q. Do you recall anyone directing you to place that
 24 text in the draft management representation letter?

25 A. No, I don't recall.

1 19th, correct?

2 A. Correct.

3 MR. MOSCATO: I object to the last comfort
 4 letter.

5 BY MS. BROWN:

6 Q. Correct, it was after the March 19th, 1998
 7 comfort letter?

8 A. Added after -- are you sure these e-mails goes
 9 with these? I guess so, zero update -- go ahead.

10 Q. There was a subsequent management letter,
 11 correct?

12 A. Yes.

13 Q. I hand you what's been marked as -- what we will
 14 mark as Exhibit 33.

15 You have been handed what's marked as
 16 Morgan Stanley Exhibit 33 which, for the record, is Bates
 17 CPH 0038712 to 15 and this is a document bearing a fax
 18 header of March 23rd, 1998, "Arthur Andersen, Fort
 19 Lauderdale"; do you see that?

20 A. Yes.

21 Q. What does that fax header in terms of -- was that
 22 sent from Fort Lauderdale or received from Fort Lauderdale?

23 A. Frankly, I don't know.

24 Q. Is it Mr. Harlow that was based in Fort
 25 Lauderdale?

1 A. Yes.
 2 Q. Now, Morgan Stanley Exhibit 33, which has the fax
 3 date of March 23rd, 1998, also has Paragraph 10 which we
 4 referred to in Morgan Stanley Exhibit 32; do you see that?
 5 A. Yes.
 6 Q. And in Morgan Stanley Exhibit 33 there's a
 7 handwritten edit to the Paragraph 10?
 8 A. Uh-huh.
 9 Q. Do you recognize the handwriting?
 10 A. Yes, I think it's Mr. Bornstein but I'm not
 11 certain of that.
 12 Q. Do you recall any discussions concerning this
 13 edit?
 14 A. No. Is the cover not available?
 15 Q. I don't believe it is. I don't know. Do you
 16 recall any discussions about that paragraph at any point?
 17 A. I don't.
 18 Q. You've been handed what's been marked as Morgan
 19 Stanley Exhibit 34, and, for the record, it's CPH 0129642 to
 20 44. Mr. Pastrana, do you recognize this document?
 21 A. This is the March 23rd management representation
 22 letter.
 23 Q. This letter bears the same date as the fax header
 24 in Morgan Stanley Exhibit 33, correct?
 25 A. That's right.

1 Q. And if you turn to Bates ending in 44, the last
 2 page of Morgan Stanley Exhibit 34, what had previously been
 3 Paragraph 10 in the draft management representation letter
 4 has been deleted or is no longer in the document; do you see
 5 that?
 6 A. Uh-huh. Let me take a look at this just for a
 7 second, okay? (Reading) Okay, correct.
 8 Q. And do you have any understanding as to who it
 9 was that deleted or removed what in Morgan Stanley
 10 Exhibit 33 was Paragraph 10 from the final representation
 11 letter, Morgan Stanley Exhibit 34?
 12 A. No, I don't.
 13 Q. Do you recall any discussion whatsoever about the
 14 removal of that paragraph from the management representation
 15 letter?
 16 A. No.
 17 Q. So you don't recall there being any concern that
 18 that had been removed?
 19 A. I don't recall any concern or any discussion
 20 about it. I don't know who did it or what the circumstances
 21 were.
 22 Q. In the previous drafts of the management
 23 representation letter, for example, Morgan Stanley 33,
 24 those, to your knowledge, were not provided to Morgan
 25 Stanley, correct?

1 A. Correct. Nor the final one dated March 23rd.
 2 None of these were provided to Morgan Stanley. These are
 3 internal Arthur Andersen work papers.
 4 Q. Do you know whether anyone from Morgan Stanley
 5 told -- strike that.
 6 Do you know whether anyone from Arthur
 7 Andersen told Morgan Stanley that that paragraph had been
 8 deleted from the management representation letter?
 9 A. No, I would have no reason to expect anyone to
 10 tell Morgan Stanley that.
 11 Q. Between the post-audit review work that you did
 12 for the first comfort letter -- strike that.
 13 After Arthur Andersen provided to Morgan
 14 Stanley the bring down comfort letter dated March 25th 1998,
 15 did you between that period and the end of -- first quarter
 16 of 1998 have any further conversations with Sunbeam
 17 concerning their expected sales for the first quarter of
 18 1998?
 19 A. I don't recall any.
 20 Q. Now, you said with regard to the March 19th press
 21 release that Sunbeam issued, you did not see that press
 22 release before it was issued, correct?
 23 A. Correct.
 24 Q. And you did not discuss that press release with
 25 Morgan Stanley, correct?

1 A. Correct.
 2 Q. You were aware in March of 1998 that the company
 3 had adopted an aggressive marketing strategy?
 4 A. At what period I was aware of that?
 5 Q. March of 1998?
 6 A. What marketing strategy was that?
 7 Q. For instance, it's referred to in the Note A to
 8 one of your post-audit reviews -- to one of your P&L
 9 programs?
 10 A. To early buy program?
 11 MR. MOSCATO: No. Are you referring to the
 12 business about the radio?
 13 THE WITNESS: Oh, the advertising in the USA
 14 Today ads and stuff like that? Correct, I was informed that
 15 the company was undertaking those efforts to improve sales.
 16 BY MS. BROWN:
 17 Q. In March of 1998?
 18 A. Yes, whatever the time frame was on that note;
 19 that's right.
 20 Q. And when the press release was issued, there was
 21 nothing in there that you thought was untrue, correct?
 22 A. We're back to the March 19th press release
 23 again?
 24 Q. Correct.
 25 A. You know, untrue? No, I mean, as far as I knew

1 it was true. I mean, I guess management thought they would
 2 achieve the sales of the previous year.
 3 Q. And you didn't know one way or the other whether
 4 Sunbeam was going to make its 1998 budget, correct?
 5 A. That's correct.
 6 Q. And from working at Sunbeam, were you aware that
 7 their sales tended to increase at the end of the first
 8 quarter or at the end of the quarter?
 9 A. Yes.
 10 Q. Now, Sunbeam held inventory in third party
 11 warehouses, correct?
 12 A. Right.
 13 Q. And they held not only their own inventory but
 14 then the bill of hold inventory at third party warehouses?
 15 A. Right.
 16 Q. When Sunbeam made a bill and hold sale of
 17 inventory that it had in a third party warehouse, in order
 18 to recognize that revenue as Sunbeam had been for bill and
 19 hold, they simply had to segregate that inventory in their
 20 records and then they would physically segregate it,
 21 correct?
 22 A. Correct. Physically and in the accounting
 23 records.
 24 Q. So, for instance, in order to make their sales at
 25 the end of the first quarter of 1998 -- you were aware that

1 Sunbeam was engaging in bill and hold sales in the first
 2 quarter of 1998, correct?
 3 A. Correct.
 4 Q. And in making sales under bill and hold in the
 5 first quarter of 1998, Sunbeam didn't actually have to ship
 6 that product if the product was already at a third-party
 7 warehouse, correct?
 8 A. Correct.
 9 Q. So whatever volume Sunbeam needed to sell in
 10 order to make their first quarter 1998 projection, that was
 11 not inventory that they actually had to ship out of their
 12 own docks if they already existed at third party warehouses?
 13 A. That's correct, provided, of course, they did
 14 these other things. They physically segregated from their
 15 own inventory, couldn't be used to fill out their orders,
 16 blah, blah, blah. There were a number of other things they
 17 had to do, so to speak, but, yes.
 18 Q. Now, you were aware that the company felt at
 19 least -- the company felt in the first quarter 1998 that
 20 they were going to achieve their sales goals?
 21 A. Yes.
 22 Q. And you stated when we were talking earlier that
 23 Mr. Bornstein had some concern or skepticism as to whether
 24 Sunbeam would be able to make that sort of shipment in order
 25 to make their first quarter 1998 sales?

1 A. Yes.
 2 Q. But at the end -- at that time, it still did not
 3 call into question for Mr. Bornstein, to your knowledge, the
 4 integrity of Sunbeam's manage?
 5 MR. MOSCATO: Objection. How can he answer that
 6 question?
 7 BY MR. BROWN:
 8 Q. Mr. Bornstein did not communicate to you that he
 9 had any question about Sunbeam's management?
 10 A. Correct.
 11 Q. And Mr. Bornstein didn't communicate to you in
 12 the first quarter of 1998 that he had any concern about
 13 fraud at Sunbeam?
 14 A. Not that I can recall.
 15 Q. You had performed cutoff testing for Sunbeam at
 16 the end of 1997, correct, Arthur Andersen?
 17 A. Arthur Andersen, correct.
 18 Q. Did you personally have any communications with
 19 Morgan Stanley about the fact that you were going to perform
 20 first quarter of 1998 cutoff testing at Sunbeam?
 21 A. No.
 22 MR. MOSCATO: Is that a you, Dennis Pastrana,
 23 or --
 24 MS. BROWN: You, Dennis Pastrana.
 25 A. That's correct. Me personally, no.

1 Q. And once you received the memos concerning the
 2 cut off testing that had been observed at the end of first
 3 quarter 1998, there is nothing there that caused you concern
 4 about Sunbeam's cutoff for the end of the quarter, correct?
 5 A. No.
 6 Q. Now, you testified earlier that you're familiar
 7 with the Barron's article that came out in June of 1998?
 8 A. Uh-huh.
 9 Q. In fact, you put together a memo addressing the
 10 points in the Barron's article, correct?
 11 A. Uh-huh.
 12 Q. And you said that there were discussions
 13 concerning the Barron's article?
 14 A. Yes.
 15 Q. At the time that you put together the memo
 16 addressing the points in the Barron's article, did you
 17 personally at that point question the integrity of the
 18 management at Sunbeam?
 19 A. I'd have to go back and look at the memo.
 20 Q. The memo that you wrote?
 21 A. Yes, memo, schedule, whatever it was. I remember
 22 that some kind of document was compiled that went through
 23 item by item the items identified in the Barron's article
 24 but I don't remember exactly the results of that.
 25 Q. Do you remember having an impression of being

1 concerned about --
 2 A. Oh, yeah, I mean by that point I think we were
 3 concerned.
 4 Q. By June of 1998?
 5 A. Yes.
 6 Q. But prior to June of 1998, do you recall having
 7 any concerns about the accuracy of Sunbeam's financial
 8 statements or the integrity of Sunbeam management?
 9 A. No.
 10 Q. Now, in June of 1998 you were actually -- and I
 11 think you personally, but you were actually working toward
 12 the registration of the notes that had been issued in March,
 13 correct?
 14 A. That's probably correct.
 15 MR. MOSCATO: You just said "you," and I think
 16 you personally. I'm assuming and I'm not object. I'm
 17 assuming when you say "you," you mean Dennis Pastrana, and
 18 if you mean Arthur Andersen, you will say Arthur Andersen.
 19 MS. BROWN: Yes.
 20 MR. MOSCATO: We're clear on that.
 21 BY MS. BROWN:
 22 Q. You personally were not involved in the decision
 23 of Arthur Andersen to withhold its consent in June of 1998?
 24 A. No.
 25 Q. Did anyone have discussions with you as to

1 whether Arthur Andersen should withhold its consent in June
 2 of 1998?
 3 A. No.
 4 Q. In June of 1998, Arthur Andersen learned that
 5 return authorizations had been deleted from the Sunbeam
 6 system during the 1997 audit, correct?
 7 A. Correct. I mean, actually I don't know -- we
 8 learned the return authorizations had been deleted. I don't
 9 know the timing of it but, sure, yes.
 10 Q. And in June of 1998 Arthur Andersen also learned
 11 about additional guaranteed or right of return sales?
 12 A. Correct.
 13 Q. But that's information that was new to Arthur
 14 Andersen and that Arthur Andersen did not have available to
 15 it any time prior to the close of the first quarter of 1998,
 16 correct?
 17 A. Correct.
 18 Q. And that's true even though you had spent the
 19 majority of your time on-site at Sunbeam throughout that
 20 period, correct?
 21 A. Right.
 22 Q. Now, the restatement that took place of Sunbeam's
 23 financials, you were involved in that work, correct?
 24 A. Yes.
 25 Q. And were you aware that Arthur Andersen spent

1 over 10,000 hours on that work?
 2 A. I don't recall being aware of that. I might have
 3 been.
 4 Q. If that is in a report to the Sunbeam board,
 5 would you have any reason to disagree with that?
 6 A. No, no.
 7 MR. MOSCATO: Is the 10,000 hour figure Andersen
 8 or Andersen and Sunbeam combined?
 9 MS. BROWN: I think it's Andersen and Sunbeam
 10 combined.
 11 MR. MOSCATO: I thought you had said you would
 12 apply to Andersen 10,000 hours. It doesn't matter. I
 13 should stop interrupting probably.
 14 BY MS. BROWN:
 15 Q. The procedures that you performed during the
 16 restatement were much more expansive than anything that you
 17 had performed during the regular audit, correct?
 18 A. Correct.
 19 Q. And you had never seen anything like the level of
 20 detail work that was performed during the restatement,
 21 correct?
 22 A. Correct.
 23 Q. And restatement took place over a period of four
 24 to five months without regard to materiality, cost or the
 25 level of resources that were going to be required, correct?

1 A. Yes.
 2 Q. And as a result of those unlimited -- well,
 3 strike that. In addition, in June or July of 1998, the SEC
 4 also began an investigation of Sunbeam, correct?
 5 A. Correct. I don't know exactly the timing of when
 6 they started, but, yes.
 7 Q. You were aware that that investigation was
 8 ongoing at the time you were performing the restatement?
 9 A. Correct.
 10 Q. And as a result of your work -- Arthur Andersen's
 11 work during the restatement, Arthur Andersen learned
 12 information that had not been available to you during the
 13 1997 audit and through the first quarter of 1998, correct?
 14 MR. JOHNSON: Objection, form.
 15 THE WITNESS: I think that's true, yes.
 16 BY MS. BROWN:
 17 Q. As a result of the work that you did -- and I'll
 18 refer to you personally now -- during the restatement, are
 19 you aware of any information that was withheld from Arthur
 20 Andersen but that was provided to Morgan Stanley?
 21 MR. JOHNSON: Object to the form of that as well.
 22 THE WITNESS: I'm not aware of any information
 23 withheld from Andersen that was provided to Morgan Stanley.
 24 I'm not aware of what was provided to Morgan Stanley, if
 25 anything.

1 BY MS. BROWN:

2 Q. That wasn't something is that you were interested
3 in when you were performing the restatement procedures,
4 correct?

5 A. No. That's correct.

6 Q. And despite the hundreds of hours that you
7 performed on the 1997 audit and the work on the Q1 1998
8 financial for Sunbeam, you personally have no fraudulent
9 knowledge of any fraudulent conduct by Sunbeam, correct?

10 A. State that again. As a result of what work?

11 Q. In spite of the hundreds of hours that you had
12 spent at Sunbeam in 1997 and 1998 and the audit work that
13 you performed, you had no personal knowledge of any
14 fraudulent conduct by Sunbeam?

15 A. That includes the restatement work as well.

16 Q. Let's go up to June of 1998 first.

17 A. Correct, I had no knowledge of any fraud.

18 Q. Today do you have personal knowledge of fraud by
19 Sunbeam?

20 A. I don't have personal knowledge but, you know, I
21 have concerns.

22 Q. I'm just asking about your personal knowledge.

23 A. Sure.

24 Q. The restatement work that you performed and that
25 Arthur Andersen performed was conducted after Mr. Dunlap had

1 A. I was not aware of that.

2 Q. Did you have a sense --

3 A. I mean, encourage meaning giving them an
4 incentive for assistance. I mean, people were generally
5 cooperative. It was very difficult but they had somehow
6 been coaxed or incentivised or something to be extra helpful
7 or something like that. I was not aware of anything like
8 that.

9 Q. You weren't aware that they were discouraged in
10 any way from assisting in the restatement, correct?

11 A. Correct, and I was aware that they had absolutely
12 nothing to protect in restating or making adjustments to
13 prior year end financial statements. I mean, it didn't
14 matter to them either way.

15 Q. From your own personal observations from the
16 hundreds of hours that you spent on site at Sunbeam in '97
17 and the first quarter of '98 and then the however many hours
18 you spent to the restatement, did you observe a difference
19 in the corporate culture at Sunbeam between the two
20 managements?

21 A. I mean, there was clearly a change in culture, in
22 the environment and the attitude, but, you know, I was there
23 for such a short period of time after new management came in
24 that I don't know how much of it was just -- I don't know
25 what to attribute the change to necessarily.

1 been fired, correct?

2 A. Yes, that's probably true.

3 Q. After Mr. Kersh had also been fired?

4 A. When were they fired, do you remember?

5 Q. I can provide you documents.

6 MR. MOSCATO: June 25th.

7 BY MS. BROWN:

8 Q. No later than.

9 A. Hypothetically?

10 MR. MOSCATO: Hypothetically June 25th.

11 THE WITNESS: The restatement work was done after
12 that, correct.

13 BY MR. BROWN:

14 Q. And the restatement work was done after Mr. Uzzi
15 had been fired, correct?

16 A. Yes.

17 Q. So all the interviews that you conducted were
18 after there had been a change in management at Sunbeam?

19 A. Yes.

20 Q. Were you aware of or familiar with what was
21 referred to as an amnesty program that the new Sunbeam
22 management put into place?

23 A. No, I was not aware of that.

24 Q. Were you aware that the new Sunbeam management
25 encouraged its employees to assist in the restatement work?

1 Q. Did you have a sense when you were performing the
2 interviews during the restatement that the employees were
3 relieved by the change in management?

4 A. Yes, I did.

5 Q. Did you have a sense that when you were
6 performing the interviews that the employees felt they could
7 provide you with information that they were concerned about
8 providing earlier?

9 A. Yes.

10 Q. When you perform an audit, you assume that the
11 company is being operated properly and that the management
12 has integrity and there is not a conscience effort to
13 misstate or manage their earnings, correct?

14 A. Correct.

15 Q. And you believe that those assumptions were
16 correct while you were performing the 1997 audit for
17 Sunbeam?

18 A. Yes, I believed that at the time of the audit.

19 Q. At the time that you were performing the
20 procedures related to Q1 98 for Sunbeam, you still believed
21 that to be correct?

22 A. Yes.

23 Q. Now, when you're performing audit procedures, in
24 some instances you do rely upon the information provided to
25 you by management, correct?

1 A. Yes.
 2 Q. So, for instance, when management told you that
 3 there was a no-return policy, you did not go out and verify
 4 that information with Sunbeam's customers, correct?
 5 A. Correct.
 6 Q. Do you recall performing in first quarter of 1998
 7 some due diligence work on behalf of Sunbeam for an entity
 8 that they were considering acquiring?
 9 A. Yes, I don't remember exactly the time frame.
 10 What quarter did you say?
 11 Q. It was in the first quarter of 1998.
 12 A. Yes.
 13 Q. Do you remember it was related to a Black &
 14 Decker unit?
 15 A. Yes.
 16 Q. The purpose of due diligence is different than
 17 the purpose of an audit, correct?
 18 A. Correct.
 19 Q. When you perform due diligence, you don't design
 20 all of the tests and whatnot to test the representations or
 21 the financials, correct?
 22 A. Correct.
 23 MR. MOSCATO: Dennis, give her a second and let
 24 me object if I need to. Give me a second before you
 25 answer. It's getting late in the day and I'm not as quick

1 as I once was.
 2 THE WITNESS: Okay.
 3 BY MS. BROWN:
 4 Q. Do you understand the purpose of due diligence to
 5 be different than the purpose of an audit?
 6 A. Yes.
 7 Q. Have you -- other than the due diligence work
 8 that you performed for Sunbeam on the Black & Decker unit,
 9 have you performed due diligence in other context as well?
 10 A. I have not.
 11 Q. That was the only due diligence work that you
 12 performed?
 13 A. Yes.
 14 Q. When you performed the due diligence work, you
 15 also assumed that the management was forthright and had
 16 integrity?
 17 MR. MOSCATO: I'm sorry, what management are you
 18 talking about?
 19 BY MS. BROWN:
 20 Q. The management of the company that you are
 21 performing the due diligence on.
 22 MR. MOSCATO: I'll let this go for another
 23 question or two but you are not going to try to put him as
 24 an expert on due diligence I hope since he's only done it
 25 once in his life.

1 Answer that question and then I'm going to
 2 ask her to move on to another question.
 3 THE WITNESS: What was the question? I'm sorry.
 4 BY MS. BROWN:
 5 Q. When you were performing due diligence on an
 6 entity that was considering -- Sunbeam was considering
 7 purchasing, you also expect or anticipate, assume that
 8 management of the company you were performing the due
 9 diligence on is honest and has integrity, correct?
 10 MR. JOHNSON: I'm going to object to the form of
 11 that putting aside Mike's substantive objection.
 12 THE WITNESS: In that process we did not really
 13 presume anything. We showed up in a data room and there was
 14 information that Black & Decker management had prepared in a
 15 room and we reviewed the information, "we" being Phil Harlow
 16 and I, over the course of -- I don't remember if it was a
 17 day or two days, something of that sort, and we prepared a
 18 factual summary of what we observed and observations that we
 19 had.
 20 You know, we are not really saying that
 21 it's right or wrong or anything like that, so, you know, I
 22 suppose if Sunbeam were to use that information to make an
 23 acquisition, they would be relying on the accuracy of the
 24 information that we reviewed but not us. We're not issuing
 25 an opinion on it so the purpose is different.

1 BY MS. BROWN:
 2 Q. And the extent of the work in the due diligence
 3 you performed was less than the extent of the work that you
 4 would do if you were auditing those same financials,
 5 correct?
 6 A. Sure.
 7 Q. And ultimately when you were working on the
 8 restatement or at the end of the restatement you did reach
 9 the conclusion, you yourself, that there had been facts that
 10 were misrepresented to you during the audit, correct?
 11 A. Yes.
 12 Q. Do you have any reason to believe that Sunbeam,
 13 while they misrepresented facts to Arthur Andersen, was
 14 forthright or accurately represented those same facts to
 15 Morgan Stanley?
 16 MR. JOHNSON: Objection, form.
 17 THE WITNESS: I have no knowledge of the
 18 communications between Sunbeam and Morgan Stanley.
 19 BY MS. BROWN:
 20 Q. Do you have any reason to think that Sunbeam lied
 21 to Arthur Andersen but they were truthful with Morgan
 22 Stanley?
 23 MR. JOHNSON: Objection to form.
 24 MR. MOSCATO: Don't even answer that question.
 25 I'm instructing you not to answer that question.

1 BY MS. BROWN:
 2 Q. When you were performing your restatement work,
 3 did you learn of anything that Arthur Andersen had told
 4 Morgan Stanley that it had not told -- strike that.
 5 When you were performing your restatement
 6 work, did you learn of anything that Sunbeam had told Morgan
 7 Stanley that it had not told Arthur Andersen?
 8 A. As I said, I have no knowledge of the
 9 communications between Morgan Stanley and Sunbeam.
 10 Q. So --
 11 A. The answer is no.
 12 Q. During all the time that you were at Sunbeam from
 13 October of '97 through the end of first quarter of '98, did
 14 you have any contact with anyone from Coleman or Coleman
 15 (Parent) Holdings?
 16 A. No.
 17 Q. Did you have any contact during that time with
 18 anyone from Mathco?
 19 A. No.
 20 Q. Did you have any contact during that --
 21 A. What's the period of time again? I beg your
 22 pardon.
 23 Q. Any time in '97 through the first quarter of '98?
 24 A. No.
 25 Q. Have you subsequently had any conversations with

1 they happened?
 2 A. Correct.
 3 Q. Are you aware of any due diligence effort
 4 undertaken by Coleman up to the end of the first quarter of
 5 1998 concerning Sunbeam?
 6 A. I'm not aware of any.
 7 Q. Are you aware of any due diligence effort
 8 undertaken by Coleman (Parent) Holdings or Mathco up to the
 9 end of the first quarter of 1998 concerning Sunbeam?
 10 A. I'm not aware of any.
 11 Q. Are you aware of any due diligence effort by
 12 Credit Swiss First Boston or Wachtell up to the end of the
 13 first quarter of 1998 concerning Sunbeam?
 14 A. No.
 15 Q. Have you spoken with anyone representing Coleman
 16 (Parent) Holdings concerning your testimony here prior to
 17 your testimony today?
 18 A. No.
 19 Q. I'd like to refer you to the exhibits that were
 20 marked previously, in particular CPH Exhibits 101 through
 21 105.
 22 MR. MOSCATO: These are the interview memos?
 23 MS. BROWN: Correct.
 24 THE WITNESS: It's in my stack.
 25 ///

1 anyone from Coleman (Parent) concerning Sunbeam?
 2 A. No. I mean, during the restatement procedure --
 3 after Dunlap and Kersh were terminated, there were some
 4 former members of Coleman or Mathco Management that got
 5 involved with Sunbeam and I met them in that process and
 6 interacted with them occasionally but that was it.
 7 Q. So up to the end of the first quarter of 1998,
 8 you had no communications --
 9 A. Correct, none.
 10 Q. And you had no communications with CSFB, Credit
 11 Swiss First Boston concerning Sunbeam?
 12 A. No.
 13 Q. You had no communications up to the end of the
 14 first quarter of 1998 with Wachtell Lipton concerning
 15 Sunbeam?
 16 A. No.
 17 Q. You said you personally did not communicate with
 18 Morgan Stanley. Were you aware of anyone else from Arthur
 19 Andersen that communicated with Morgan Stanley other than
 20 the comfort letters concerning the due diligence that Morgan
 21 Stanley did in 1998?
 22 MR. JOHNSON: Object to form.
 23 THE WITNESS: I'm not aware of any conversations.
 24 BY MS. BROWN:
 25 Q. So you're not aware one way or the other whether

1 BY MS. BROWN:
 2 Q. They should be the first exhibits marked today.
 3 A. Here they are. Okay.
 4 Q. When you performed the interviews of Sunbeam
 5 personnel during the restatement work, did you tell the
 6 personnel that you were interviewing that you were only
 7 interested in their personal knowledge?
 8 A. No, I don't recall whether we did or didn't, let
 9 me say that.
 10 Q. During the interviews some of the people that you
 11 interviewed and some of what you recorded was conversations
 12 or things that they had overheard, correct?
 13 A. Correct.
 14 Q. For instance, with regard to Mr. Yales and CPH
 15 Exhibit 101, when you interviewed him, you suspected that he
 16 was just speculating about things that he had heard from
 17 others, correct?
 18 A. Like what, for example?
 19 Q. When you interviewed Mr. Yales, you felt that he
 20 didn't have in-depth understanding of the Sunbeam operations
 21 because he was new to the company, correct?
 22 A. I mean, it seemed he had a pretty good
 23 knowledge. I didn't assume that, no.
 24 Q. I'm handing you your testimony from November 21,
 25 of 2000 and if you would look at Page 876.

1 Referring to your testimony on November 21
 2 2000, 876 and going on to 877, and with regard to Mr. Yales
 3 you state there that he didn't have, in your view, an
 4 in-depth understanding of the operations of the company?
 5 A. Yes, I did testify to that before.
 6 Q. And that he really just performed very -- kind of
 7 clerical role in budgeting and planning process?
 8 A. I think clerical understates his role. I mean,
 9 he was a financial analyst.
 10 Q. And you stated in your prior testimony that to a
 11 certain extent you thought that he was just speculating
 12 about things that he may have heard from other people or
 13 whatever, that he had not been with the company very long.
 14 Do you see that?
 15 A. Uh-huh, yes, I see that in my prior testimony. I
 16 did testify that way before. I mean, reading the memo, and
 17 having read it over the weekend, I guess that's not the
 18 impression I got from it, but I did testify that way
 19 previously. It's been a while.
 20 Q. You don't recall --
 21 A. My recollection now is different than my
 22 recollection was then so.
 23 Q. And your recollection of Mr. Yales -- have you
 24 spoken to Mr. Yales since 2000?
 25 A. No.

1 MR. MOSCATO: Since 2000?
 2 MS. BROWN: Since 2000.
 3 Q. Since your testimony in the last case.
 4 A. I haven't spoken to Mr. Yales since this
 5 interview was conducted that I can remember.
 6 Q. And so your recollection of Mr. Yales was
 7 probably more fresh in 2000 than it is in 2004, correct?
 8 A. Probably was, yes.
 9 Q. Now, when you conducted these interviews, you
 10 didn't take them down verbatim as testimony is being taken
 11 today, correct?
 12 A. Correct.
 13 Q. And you took down handwritten notes of what was
 14 being said during the interview, correct?
 15 A. Correct.
 16 Q. And then your secretary typed those notes?
 17 A. Yes.
 18 Q. And you discarded the handwritten notes?
 19 A. Correct.
 20 Q. And so what's written here is not verbatim
 21 reports, correct?
 22 MR. JOHNSON: Objection to form.
 23 THE WITNESS: Correct.
 24 BY MS. BROWN:
 25 Q. And that's true with regard to CPH Exhibit 101,

1 102, 103, 104 and 105, none of those are verbatim
 2 accounts --
 3 A. Right, those are just summaries.
 4 Q. And the phraseology that's used is not
 5 necessarily the exact phraseology used by the Sunbeam
 6 employee, correct?
 7 A. Correct.
 8 Q. The information -- some of the information at
 9 least that was provided to you during these interviews is
 10 information that was not available to you during your audit
 11 work in 1997, correct?
 12 A. At least some, sure.
 13 Q. With regard to, for instance, CPH Exhibit 101
 14 where there's notes about "need to make numbers and a big
 15 push," it's common, is it not, that public companies want to
 16 make their public numbers?
 17 A. Yes.
 18 Q. These headings, for instance, on the second page
 19 of Exhibit 101 where you have troublesome items, that's also
 20 not a verbatim bullet provided by the employee that you
 21 interviewed, correct?
 22 A. Correct.
 23 Q. And when all the testimony that you've provided
 24 concerning these interviews the Sunbeam employees gave, do
 25 you, as you sit here today, actually remember those

1 interviews or was your testimony based on what's documented
 2 in these exhibits?
 3 A. I think the testimony is based largely on what's
 4 documented. That's what I think.
 5 Q. Do you have any specific recollection of the
 6 interview with Mr. Yales as you sit here today?
 7 A. I mean, I do, I can generally picture him. I can
 8 generally remember where we had it in the building.
 9 Q. Do you have any memory specifically of what was
 10 said?
 11 A. No. In terms of the conversation that was
 12 exchanged, no.
 13 Q. And you have no specific memory of what was said
 14 during the interview of Mr. Kaiser other than what's
 15 documented in CPH Exhibit 102?
 16 A. Correct.
 17 Q. You have no specific memory of what was said by
 18 Mr. Bloomfield other than what's documented in Exhibit 103?
 19 A. Correct.
 20 Q. No specific memory of Mr. Jim Job other than
 21 what's documented in 104?
 22 A. Correct.
 23 Q. No specific memory of exactly what was said by
 24 Mr. Jeffcoat who's interview notes are in CPH 105?
 25 A. Correct.

1 Q. And with regard to each of these, you were asked
 2 previously whether the interviewees told you that Morgan
 3 Stanley had spoken with them, did you ask any of these
 4 people whether Morgan Stanley had spoken with them?
 5 A. No, I did not ask that.
 6 Q. Did anyone that you're aware of ask that in the
 7 interview?
 8 A. Not that I'm aware of, no.
 9 Q. Was that something -- was that an objective of
 10 the restatement, to determine what Morgan Stanley knew?
 11 A. No.
 12 Q. And none of these people that you interviewed,
 13 Mr. Yales, Kaiser, Bloomfield, Job or Jeffcoat indicated
 14 that they had spoken with Coleman (Parent) Holdings during
 15 the '97 or the first quarter of '98, correct?
 16 A. Correct.
 17 Q. Some of what the employees told you were
 18 impressions that they had rather than direct factual
 19 experiences that they had, correct? For instance, I refer
 20 you to CPH Exhibit 104, the final sentence.
 21 MR. MOSCATO: Which one is that?
 22 MS. BROWN: Jim Job.
 23 Q. Where it states, "I guess they didn't want to
 24 receive the goods."
 25 A. Yes.

1 Q. You don't understand that he had personal
 2 knowledge of the decision-making process that went into
 3 whether Sunbeam would accept returns, correct?
 4 A. Correct.
 5 Q. With regard to -- strike that.
 6 Did anyone from Coleman (Parent) Holdings, to
 7 your knowledge, ask anyone from Arthur Andersen in 1998,
 8 first quarter, for Arthur Andersen's work papers from their
 9 work audit?
 10 A. Say the question again. I'm sorry.
 11 Q. Are you aware of anyone from Coleman (Parent)
 12 Holdings requesting Arthur Andersen work papers prior to the
 13 end of the first quarter of 1998?
 14 A. No.
 15 Q. With regard to others exhibits, for example, CPH
 16 Exhibit 108 which is the March 13th, 1998 P&L, you were
 17 asked previously whether Morgan Stanley had asked for this.
 18 Do you know one way or another whether Morgan Stanley
 19 requested that directly from the company?
 20 A. I don't know. I have no knowledge.
 21 MS. BROWN: If we can take a five-minute break,
 22 I'm probably done.
 23 THE VIDEOGRAPHER: Going off the record. The
 24 time is 3:47.
 25 (Time noted: 3:47 p.m. to 3:53 p.m.)

1 THE VIDEOGRAPHER: We are back on the record.
 2 The time is 3:53.
 3 BY MS. BROWN:
 4 Q. Mr. Pastrana, I have a couple of more questions.
 5 With regard to the March 19, 1998 comfort letter that Arthur
 6 Andersen provided to Morgan Stanley, did you have any
 7 discussions with Mr. Bornstein or anyone else at Arthur
 8 Andersen concerning the manner in which that letter would be
 9 transmitted to Morgan Stanley?
 10 A. No.
 11 Q. Did you have any conversation with Mr. Bornstein
 12 or anyone else at Arthur Andersen concerning whether the
 13 letter would be discussed with Morgan Stanley rather than
 14 provided to Morgan Stanley?
 15 A. No.
 16 Q. And your prior testimony about whether or when
 17 that letter was provided to Morgan Stanley, you don't have
 18 any personal knowledge yourself of when that letter was
 19 actually provided to Morgan Stanley, correct?
 20 A. Correct.
 21 MS. BROWN: No further questions at this time.
 22 MR. JOHNSON: No questions.
 23 THE VIDEOGRAPHER: This is the end of this
 24 deposition. We are going off the record. The time is 3:54.
 25 (Evening recess: 3:54 p.m.)

1 ACKNOWLEDGMENT
 2
 3 STATE OF FLORIDA)
 4) ss.
 5 MIAMI-DADE COUNTY)
 6
 7 I, Dennis Pastrana, hereby certify, I have read the
 8 transcript of my testimony taken under oath in my deposition
 9 of January 12, 2004; that the transcript is a true, complete
 10 and correct record of what was asked, answered and said
 11 during this deposition, and that the answers on the record
 12 as given by me are true and correct.
 13
 14 _____
 15 Dennis Pastrana
 16
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 18
 19
 20
 21 Subscribed and sworn to
 22 before me on this _____ day
 23 of _____, _____.
 24
 25 _____
 26 NOTARY PUBLIC

ERRATA SHEET

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CERTIFICATE

STATE OF FLORIDA)

) ss.

MIAMI-DADE COUNTY)

I, ANA REID, a Shorthand Reporter and Notary
Public within and for the State of Florida, do hereby
certify:

I reported the proceedings in the
within-entitled matter, and that the within transcript is a
true record of such proceedings.

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

IN WITNESS THEREOF, I have hereunto set my
hand this day of January 14, 2003.

ANA REID

Commission Number: DD232432

Commission Expires: July 15, 2007

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EXAMINATION

1 BY MR. JOHNSON:

2 Q. Mr. Pruitt, can I ask you to state your name
3 again for the record?

4 A. William D. Pruitt.

5 Q. And where do you reside?

6 A. 274 Valeros Court, Coral Gables, Florida, 33143.

7 Q. Are you employed today?

8 A. I'm self employed.

9 Q. Do you work as an accountant?

10 A. No, I'm a consultant.

11 Q. And are you affiliated with any consulting firm?

12 A. No, just my own.

13 Q. How long have you been self employed?

14 A. I retired from Arthur Andersen on August 31, 1999
15 so I've been basically self employed since that time.

16 Q. Do you consult on a full-time basis?

17 A. No, part time, although substantially full time
18 now.

19 Q. And how long did you work for Arthur Andersen?

20 A. 33 years.

21 Q. Could you just take me through the various titles
22 you held with Arthur Andersen?

23 A. I started in June of 1966 with Arthur Andersen.

24 I became a partner with Andersen in 1975. I became managing
25

1 partner for Arthur Andersen in South Florida in 1980, and
2 before I retired I was the managing partner for Florida, the
3 Caribbean and Venezuela.

4 Q. Are you a CPA today?

5 A. I'm an inactive CPA.

6 Q. When did you become inactive?

7 A. The year 2000.

8 Q. Were you an active CPA the entire time you were
9 at Andersen?

10 A. Yes.

11 Q. And were you resident in the Miami office of
12 Arthur Andersen during your entire career with Arthur
13 Andersen?

14 A. Yes.

15 Q. And you were the concurring partner on the
16 Sunbeam engagement for Andersen?

17 A. Yes.

18 Q. When did you assume that role?

19 A. Probably around 1995 to 1998 -- actually I'll
20 take that back. Until I retired in 1999.

21 Q. So about four years?

22 A. Yes.

23 Q. How did you come to be the concurring partner on
24 that engagement?

25 A. Sunbeam, of course, was a high profile company

1 and the audit division had assigned me to be the concurring
2 partner after another senior partner left the firm and went
3 with another company.

4 Q. And is the audit division head Mr. Denkhaus?

5 A. Yes.

6 Q. So he assigned you to be the concurring partner?

7 A. Yes.

8 Q. Who was the engagement partner?

9 A. Phil Harlow.

10 Q. Had you worked with Mr. Harlow before?

11 A. Yes.

12 Q. He was in the Miami office as well?

13 A. He was in the Fort Lauderdale office but he was
14 under my direction.

15 Q. And can you tell me as a general matter what the
16 role of the concurring partner is?

17 A. Well, basically you take a cold look at a job.

18 You have to be independent of a job to be the concurring
19 partner. In other words, you can't do the audit work and
20 also be the concurring partner. There are a number of steps
21 you take. You look at the planning for the job. You look
22 at the materiality. When you finish the job, you look at a
23 draft of the financial statements. You look at legal
24 letters on occasion. If you have material issues, they're
25 brought to you and then you either -- well, you concur with

1 the engagement team's decisions on those issues.

2 Q. When you say material issues brought to you, can
3 you tell me what you mean by that?

4 A. Well, if the engagement team believes there's
5 issues that are sensitive that could materially effect the
6 financial statements or even doing the audit, they bring the
7 issues to the concurring partner.

8 Q. And do you recall any of the material issues that
9 were brought to you during the time you served as concurring
10 partner at Sunbeam?

11 A. I'll give you a couple of large ones. There was
12 a restructuring reserve that was set up in 1996 which was a
13 material issue. In 1997 we had bill and hold sales which
14 was a material issue. Those are the two large ones that I
15 recall.

16 Q. Were you involved in the client intake process
17 for Sunbeam?

18 A. Well, since I was managing partner of the firm in
19 South Florida, I did get involved with retaining, firing
20 clients. We went through that once a year.

21 Q. And do you know what the smart form is at Arthur
22 Andersen?

23 A. Yes.

24 Q. What is that?

25 A. Basically that's a form that you fill out to get

1 Q. Did you have any conversations with anyone from
2 the law firm of Davis Polk & Wardwell?
3 A. Directly, no.
4 Q. Through whom would you have had any indirect
5 conversations with either Morgan Stanley or Davis Polk?
6 MS. BROWN: Objection.
7 THE WITNESS: Well, all of my conversations were
8 with Phil Harlow or Larry Bornstein.
9 BY MR. JOHNSON:
10 Q. Did you at any time see a press release that
11 someone issued on March 19, 1998?
12 A. Not the -- let me see what you have to make sure
13 it's what I'm thinking.
14 Q. This has been marked as CPH Exhibit 14
15 previously. Let me get you a copy for you.
16 A. No, I didn't see this press release before it
17 went out.
18 Q. Do you know whether anyone at Andersen approved
19 this press release before it was issued?
20 A. I'm almost certain we did not.
21 Q. Did you see the press release shortly after it
22 issued?
23 A. Probably not the press release but they printed
24 something like this in the offering memorandum.
25 Q. And did you see drafts of the offering memorandum

1 that included disclosure of that sort?
2 A. Not until after it was issued.
3 Q. Did you have any discussions with Mr. Bornstein
4 or Mr. Harlow about this press release within several days
5 after it issued?
6 A. Yes, we had discussions about it.
7 Q. And you had discussions with both Mr. Harlow and
8 Mr. Bornstein?
9 A. I don't know which one.
10 Q. And what was the substance of those discussions?
11 A. My thoughts were that this is a forward looking
12 statement and I felt like they probably shouldn't have
13 forward looking statements in the offering memorandum, that
14 they should just -- my thoughts were just put the facts in
15 there.
16 Q. So your perspective was the company should not be
17 saying that its net sales for the first quarter of 1998
18 would be expected -- would be expected to exceed the 1997
19 first quarter net sales?
20 MS. BROWN: I'm going to object as vague.
21 THE WITNESS: Well, if I was giving them advice,
22 I would tell them don't give that kind of a statement in the
23 offering memorandum. Just stick to what has happened so far.
24 BY MR. JOHNSON:
25 Q. Did you have any discussions with Mr. Bornstein

1 or Mr. Harlow about the company's ability to, in fact, make
2 sales for the first quarter of 1998 that would exceed sales
3 for the first quarter of 1997?
4 A. Well, before all of this happened and we were
5 talking about disclosure in the offering memorandum, if you
6 look at sales up through the end -- actually to, let's see,
7 it would be first day or two of March, they were having
8 sales of about a million dollars a day, and to exceed or
9 meet expectations, they would probably -- Anderson's
10 expectations they would have to sell probably 10 to 15
11 million a day for the rest of the quarter.
12 Q. So Andersen had serious concerns about its
13 ability to make those sales?
14 MS. BROWN: Objection.
15 MR. MOSCATO: About Sunbeam's ability?
16 MR. JOHNSON: Yes.
17 THE WITNESS: We were skeptical they would be
18 able to do it.
19 BY MR. JOHNSON:
20 Q. Did you have any conversations with anyone at
21 Sunbeam concerning this press release?
22 A. Me personally?
23 Q. Yes.
24 A. No.
25 Q. As concurring partner, did you as a general

1 matter not communicate directly with the client?
2 A. That's correct, concurring partners usually work
3 through the engagement manager.
4 Q. Did you have any conversations with Mr. Bornstein
5 while Mr. Bornstein was in New York to finalized the
6 offering memorandum?
7 A. Yes, I'm pretty sure I did.
8 Q. And what can you tell me about those
9 conversations?
10 A. Nothing. I think he was up there at the
11 printers, you know, looking at changes and trying to get the
12 offering memorandum completed and we had discussions back
13 and forth about disclosure --
14 Q. And that particular disclosure --
15 A. -- following the sales.
16 Q. Concerning first quarter sales?
17 A. No, up through at least March 1st there was a
18 shortfall compared to the prior year, the same timeline.
19 Q. Did you and Mr. Bornstein have any disagreement
20 about what the nature of the disclosure should be?
21 A. I don't recall any disagreements.
22 Q. Did Mr. Bornstein indicate that there was any
23 resistance to including information as to first quarter
24 sales?
25 MS. BROWN: Objection, vague.

1 THE WITNESS: You know, there was a number of
2 conversations so I don't know, you know, whether I was
3 talking to him when he was in New York or if I was talking
4 to Phil Harlow or who, but I know at first the company felt
5 like they didn't need any disclosure and they felt strongly
6 that they could make the quarter.

7 BY MR. JOHNSON:

8 Q. Do you know whether anyone from Andersen voiced
9 Andersen's view that there should not be any statement with
10 respect to the company's ability to meet or exceed 1997
11 results?

12 MS. BROWN: Objection.

13 THE WITNESS: I can't recall that. I think my
14 discussions were more along the line of what we knew at that
15 time. The first couple of months were short compared to the
16 first two months of the last year.

17 BY MR. JOHNSON:

18 Q. Did Mr. Bornstein indicate to you in any way that
19 he had asked anyone at the printer to limit the disclosure
20 to the historical information, as you put it?

21 A. I don't recall that. We were bringing the issue
22 to the company's...

23 Q. If you would look at Paragraph 6-B of Exhibit CPH
24 17 for me.

25 A. (Reading.)

1 strike that.

2 Q. Why did Andersen include the text contained in
3 6-B in the comfort letter?

4 A. This was information that was given to us by the
5 management of Sunbeam as to why the sales were lower in '98
6 as compared to '97 so we were putting that information into
7 this comfort letter for the use of the investment bankers.

8 Q. Did Mr. Bornstein ever have any discussions with
9 you after the offering memorandum was completed concerning
10 what happened during his time in New York?

11 A. I think he wrote a memorandum about it.

12 Q. And did you at any point review that memorandum?

13 A. Yes, I did. I can't recall exactly what it said
14 but I know he wrote one.

15 Q. Let me see if I got it here.

16 MR. JOHNSON: We'll mark this as CPH
17 Exhibit 114.

18 Q. If you would take a minute to read through that
19 memorandum, Mr. Pruitt.

20 A. (Reading) Okay.

21 Q. Did you have any discussions with Mr. Bornstein
22 as to why he prepared the document that's been marked as CPH
23 Exhibit 114?

24 A. I can't recall.

25 Q. Do you recall when you first saw this memorandum?

1 Q. The letter there indicates that "Sales decreased
2 primarily due to the early-buy program which accelerated
3 outdoor grill sales into the fourth quarter of 1997"; do you
4 see that?

5 A. Yes.

6 Q. Do you think that was information that should be
7 disclosed to persons receiving the offering memorandum?

8 MR. MOSCATO: Objection.

9 MS. BROWN: Objection.

10 THE WITNESS: Well, they had disclosed that in
11 the 10-Q.

12 MR. MOSCATO: You mean the 10-K.

13 THE WITNESS: I'm sorry, the 10-K.

14 BY MR. JOHNSON:

15 Q. They disclosed what in the 10-K?

16 A. That the early-buyer program could affect the
17 first quarter of 1998.

18 Q. So do you think that's information that should be
19 included in the offering memorandum to the debt offering?

20 MR. MOSCATO: I object. He's not an expert
21 witness. The offering memorandum was not an Andersen
22 document. There's no basis for asking him his opinion on
23 that question. He's not sitting here as an expert witness.
24 He's sitting here as a fact witness.

25 MR. JOHNSON: That's a fair objection. Let me

1 A. No, I don't recall.

2 MR. JOHNSON: For the record, this is a
3 three-page document dated March 31, 1998, a memorandum from
4 Lawrence Bornstein to the files, West Palm Beach, with Bates
5 stamp Morgan Stanley 002048 through 2050.

6 Q. Look at the last page -- I'm sorry 27048 through
7 27050. Look at the last page of this exhibit, Mr. Pruitt.
8 Have you ever seen that schedule before?

9 A. I believe I have.

10 Q. Do you recall when you first saw it?

11 A. No, I don't recall.

12 Q. Mr. Bornstein states in this memo at several
13 points that it was Arthur Andersen's recommendation to
14 eliminate the statement in the offering memorandum
15 concerning the company's ability to exceed the prior year
16 first quarter sales. Is that consistent with your
17 recollection of the events during the middle of March,
18 1998?

19 MS. BROWN: Objection, vague.

20 THE WITNESS: I just can't recall exact details
21 of our discussions.

22 BY MR. JOHNSON:

23 Q. Is there anything in Exhibit 114 that is
24 inconsistent with your recollection?

25 MS. BROWN: Objection.

1 THE WITNESS: The only thing that I don't believe
2 is correct is it mentions that I talked with him with
3 Mr. Gluck and I didn't. I think just Harlow and Bornstein
4 would have talked to Mr. Gluck. I don't recall talking to
5 Mr. Gluck directly.
6 BY MR. JOHNSON:
7 Q. So the first paragraph where Mr. Bornstein states
8 that Mr. Harlow, Mr. Pruitt and Mr. Bornstein talked to
9 Mr. Gluck on March 16th, you don't believe you were on that
10 conversation?
11 A. I wasn't on that conversation. Obviously I was
12 talking to Bornstein and Harlow and we agreed that's what we
13 were going to do but I don't think I talked to Gluck
14 directly.
15 Q. Anything else in this memorandum that seems
16 inconsistent or incorrect with your recollection?
17 A. No, I don't think so. I think that's basically
18 what happened.
19 Q. Are you familiar with the term "bring down
20 letter"?
21 A. Yes.
22 Q. Did you look at any drafts for the bring down
23 letter on the March debt offering that we've been talking
24 about?
25 A. I can't swear that I saw it but I'm sure I did

1 but I can't swear that I saw it. I should have.
2 Q. Let's look at that and see if that helps your
3 recollection in any way. Bear with me one minute here. If
4 you go through the stack there, Mr. Pruitt, you'll see a
5 document marked CPH Exhibit 112. If you'll take a minute
6 to look through Exhibit CPH 112 for me.
7 A. Okay.
8 Q. Does that refresh your memory in any way that you
9 saw a draft of this bringing down letter before it was
10 finalized?
11 A. I can't recall. I should have but I can't swear
12 to it.
13 Q. Did you have any discussions with Mr. Bornstein
14 or Mr. Harlow concerning the updated net sales and net
15 income information that's contained on Page 2 of Exhibit 114?
16 A. Well, it's all mixed together with what we've
17 been talking about. We knew that for the first two months
18 sales were short and they had been selling like a million a
19 day for the first two months, and they'd have to sell 15
20 million or 10 million in the last months to meet
21 expectations.
22 Q. Were there any discussions to the specific issue
23 that for the first two months of 1998 the company was
24 showing a loss of \$41 million?
25 A. Well, as this letter says, a lot of it was

1 because they had given options to Dunlap and Kersh I guess
2 and had expensed the items because they must have been below
3 market so that was part of it.
4 Q. And another part of the loss would be the decline
5 in sales?
6 MS. BROWN: Objection.
7 THE WITNESS: Let's see what they say here. They
8 give an explanation to some extent.
9 BY MR. JOHNSON:
10 Q. Let me start the question. Putting aside the \$30
11 million charge for compensation, the company was still
12 showing a loss of over \$10 million for the period; is that
13 correct?
14 A. Yes, roughly.
15 Q. As compared with a profit of almost \$10 million
16 for the comparable period 1997?
17 A. That's correct.
18 Q. Did you have any discussions with Mr. Bornstein
19 or Mr. Harlow concerning that fact?
20 A. I can't recall.
21 Q. Did the company, meaning Andersen, continue to
22 monitor Sunbeam's sales progress through the end of March?
23 A. I know sometime the first part of the April
24 obviously the company knew what the sales were and they put
25 out a press release at some point saying they had a

1 shortfall compared to the prior year.
2 Q. So that their results were less than the 1997
3 results?
4 A. Yes.
5 Q. And that's despite the press release on March 19
6 indicating that they expected to exceed 1997 results?
7 A. Yes.
8 Q. And did you have any reaction to that
9 announcement?
10 MR. MOSCATO: The April 3 announcement?
11 MR. JOHNSON: Correct.
12 THE WITNESS: No, we continued to do significant
13 work on Sunbeam looking at bill and hold and all of those
14 kind of issues because they were working on a registration
15 statement also so we continued to be involved in monitoring
16 Sunbeam.
17 BY MR. JOHNSON:
18 Q. Did you have any discussions with anyone at
19 Andersen concerning the March 3 announcement?
20 MR. MOSCATO: April 3.
21 MR. JOHNSON: I'm sorry. Thank you.
22 Q. April 3 announcement.
23 A. No, I don't recall. I probably did but I don't
24 recall what we said.
25 Q. Do you remember whether the price of Sunbeam's

1 stock fell as a result of that announcement?
 2 A. I don't recall.
 3 Q. Did you have any discussions with anyone at
 4 Andersen concerning whether the actual first quarter 1998
 5 results would result in litigation?
 6 MS. BROWN: Objection, vague.
 7 THE WITNESS: No, I don't recall talking about
 8 that.
 9 BY MR. JOHNSON:
 10 Q. Have you ever talked to anyone at Morgan Stanley
 11 about Sunbeam?
 12 A. Directly, no.
 13 Q. And have you ever talked to anybody at Davis Polk
 14 & Wardwell about Sunbeam?
 15 A. Directly, no.
 16 Q. Did you ever speak directly with any Sunbeam
 17 employees or officers during your time as concurring
 18 partner?
 19 A. You mean, period or --
 20 Q. Period.
 21 A. Yes.
 22 Q. Let's focus on the 1997/98 time frame. Can you
 23 identify any Sunbeam officers who you spoke to directly?
 24 A. Not before, say, June of 1998.
 25 Q. So prior to June of '98 you didn't have --

1 A. May or June of '98. Prior, no.
 2 Q. So May or June of '98 was the first time in the
 3 97/98 time frame that you had any direct contact with
 4 Sunbeam officers or employees?
 5 MS. BROWN: Objection.
 6 THE WITNESS: Except at a football game. I saw
 7 them at a football game and talked to them, nothing about
 8 Sunbeam's financial statement.
 9 BY MR. JOHNSON:
 10 Q. Dolphins?
 11 A. Yes. They lost that day I think.
 12 Q. And in the May, June 1998 time frame, which
 13 Sunbeam officers did you speak with?
 14 A. I don't recall but I went up there when -- let's
 15 see. There was an article that came out in Barron's
 16 alleging a number of things and I know that one of our
 17 consultants in Chicago called us and they were doing some
 18 work for Sunbeam and they indicated that they had discovered
 19 that there was a lot of inventory coming back and then, of
 20 course, it progressed to where Dunlap was fired and when
 21 that happened I went up to talk to some audit committee
 22 members and officers there at Sunbeam about what should be
 23 done.
 24 Q. At that point and time, did you believe that --
 25 strike that. Did you believe those audit committee members

1 were forthright with you during that meeting?
 2 A. I don't know. It was more to find out -- it was
 3 to do a review, an investigation and what we came up with
 4 was Don Denkhaus could do this work and they approved it and
 5 thought it was a good idea.
 6 Q. Is it fair to say that no Sunbeam employee or
 7 officer ever gave to you directly any false or misleading
 8 information?
 9 MS. BROWN: Objection.
 10 THE WITNESS: Person to person you mean?
 11 BY MR. JOHNSON:
 12 Q. Correct.
 13 A. Yes. I didn't talk to anyone directly.
 14 Q. Did you form the conclusion at any point that
 15 some members of Sunbeam's management has provided false and
 16 misleading information to Andersen?
 17 A. Well, when we did the investigation, we did a lot
 18 of interviews and some of the employees at Sunbeam started
 19 alleging that they did give false information initially.
 20 Q. And can you identify which Sunbeam employees
 21 provided false information to Andersen?
 22 MS. BROWN: Objection.
 23 THE WITNESS: I can't really recall. There are
 24 memos about the interviews and a lady, McDonald -- I think I
 25 remember McDonald and some others but I'd have to go back

1 and look at the work papers.
 2 MR. MOSCATO: And you're not offering to do
 3 that.
 4 BY MR. JOHNSON:
 5 Q. Did Mr. Harlow ever give you his own assessment
 6 of whether Sunbeam had given Andersen false and misleading
 7 information?
 8 A. Well, you know, he believed the people in their
 9 interviews. He felt like they were telling us the facts and
 10 so.
 11 Q. So you believed that --
 12 A. Yes, that they told us things that weren't true
 13 or hid things from us.
 14 Q. So the information that's contained in the
 15 restatement memoranda is accurate information?
 16 MS. BROWN: Objection.
 17 THE WITNESS: Well, I don't know that.
 18 BY MR. JOHNSON:
 19 Q. Let me put it this way --
 20 A. It's believable, I guess.
 21 Q. Did Mr. Harlow believe that the information
 22 obtained during the restatement interviews was accurate?
 23 MS. BROWN: Objection.
 24 MR. MOSCATO: Objection.
 25 THE WITNESS: He never said.

Page 37

1 BY MR. JOHNSON:
 2 Q. Did you have any reason to disbelief the accuracy
 3 of any information obtained during the restatement
 4 interviews?
 5 A. I couldn't tell you. So many people were
 6 interviewed and some of them are probably still covering
 7 themselves.
 8 MR. MOSCATO: And you did not participate in the
 9 process?
 10 THE WITNESS: No, I did not.
 11 BY MR. JOHNSON:
 12 Q. You just read --
 13 A. I just read.
 14 Q. You read the restatement interviews?
 15 A. Uh-huh.
 16 Q. When was the last time you spoke to
 17 Mr. Bornstein?
 18 A. Probably, maybe two months ago.
 19 Q. And how did you happen to speak to him two months
 20 ago?
 21 A. Well, we're still friendly with each other and he
 22 actually left his job. He was trying to figure out what he
 23 wanted to do next and he called me and we talked.
 24 Q. Did you talk about Sunbeam in any way?
 25 A. I don't think so. I don't recall it. Maybe we

Page 38

1 did but I don't recall it.
 2 Q. When was the last time you recall talking to
 3 Mr. Bornstein about Sunbeam in any way?
 4 A. I went up to see him when he was working with
 5 American Media and there were a few people in the room. He
 6 made a comment about if he hadn't done such a great job at
 7 Sunbeam and I hadn't supported him that it probably never
 8 would have been uncovered or something like that. That's
 9 about the last thing I remember talking to Mr. Bornstein
 10 about in connection with Sunbeam.
 11 Q. Other than the March 1998 discussions with
 12 Mr. Bornstein that we've already talked about, when is the
 13 last time you talked to Mr. Bornstein relating to the debt
 14 offering?
 15 A. The debt offer? I can't recall, you know. When
 16 we went through all of this investigation, I'm sure
 17 Bornstein and I talked a lot but I don't recall all the
 18 details.
 19 Q. But that would have been 1998?
 20 A. Probably.
 21 Q. And --
 22 A. June. Of course, these conversations were in '98
 23 also. It was in March of '98.
 24 Q. Right. Have you had any conversations since 1998
 25 with Mr. Bornstein concerning Morgan Stanley?

Page 39

1 A. Not that I can recall.
 2 Q. Other than Mr. Harlow and Mr. Bornstein, did you
 3 have direct contact with any other members of the Sunbeam
 4 audit team?
 5 A. I may have. I just don't recall.
 6 Q. You had contact with Mr. Denkhous during the
 7 restatement process?
 8 A. Yes, and others on the team. I just don't
 9 recall. It was a big team. Pastrana, I'm sure, others.
 10 Q. Have you spoken to Mr. Pastrana about Sunbeam
 11 since 1998?
 12 A. I'm doing a consulting job at Ernst & Young and
 13 he works for Ernst & Young so I see him all the time, but I
 14 don't recall us talking to any great extent about Sunbeam.
 15 Q. Did you have a conversation about giving a
 16 deposition today?
 17 A. I knew he was going to because we were switching
 18 dates and so forth to help me out.
 19 Q. Did you talk to him at all about what this
 20 lawsuit would be about?
 21 A. No, I didn't talk to him about it.
 22 Q. Did you talk to him about any of the work you did
 23 for Sunbeam in 1998 within the past --
 24 A. Not that I recall.
 25 MR. JOHNSON: Want to switch places?

Page 40

1 MS. BROWN: Want to take a break?
 2 THE WITNESS: Sure.
 3 THE VIDEOGRAPHER: Going off the record. The
 4 time is 10:10.
 5 (Time noted: 10:10 a.m. to 10:17 a.m.)
 6 THE VIDEOGRAPHER: We are back on the record.
 7 The time is 10:17.
 8 EXAMINATION
 9 BY MS. BROWN:
 10 Q. Good morning, Mr. Pruitt. My name is Zhonette
 11 Brown. I'm with Morgan Stanley, representing Morgan
 12 Stanley.
 13 A. Okay.
 14 Q. You talked earlier today about the smart form and
 15 the smart form that Arthur Andersen uses when looking at an
 16 engagement addresses certain risks associated with the
 17 engagement, correct?
 18 A. Correct.
 19 Q. And once Arthur Andersen decides to accept the
 20 engagement, Arthur Andersen then addresses those risks when
 21 it performance the audit?
 22 A. Yes.
 23 Q. And the objective of an audit is to be able to
 24 issue an opinion that the company's financials, in this case
 25 Sunbeam, fairly state the company's financial position and

1 its results of operations and cash flows in conformity with
 2 generally accepted accounting principles, correct?
 3 A. Yes.
 4 Q. Now, at the time that you were the concurring
 5 partner for the 1997 audit for Sunbeam, you had been with
 6 Arthur Andersen for over 30 years, correct?
 7 A. That's correct.
 8 Q. And you would not knowingly take any steps that
 9 would expose Arthur Andersen to liability, correct?
 10 A. Yes, at least knowingly.
 11 Q. And as concurring partner you would not allow
 12 anyone to take steps that would expose Arthur Andersen to
 13 liability?
 14 A. That's correct.
 15 Q. Nor would you allow anyone else to take steps
 16 that would expose Arthur Andersen to damage to its
 17 reputation?
 18 A. That's correct.
 19 Q. As an auditor, its Arthur Andersen's job and the
 20 people on the engagement, its their job to have a skepticism
 21 when approaching their examination of the company's
 22 financial statements?
 23 A. Healthy skepticism is correct.
 24 Q. Auditors are trained to have healthy skepticism,
 25 correct?

1 A. That's correct.
 2 Q. It's part of their job?
 3 A. That's correct.
 4 Q. With regard to the 1997 audit -- and Sunbeam did
 5 more than simply audit the year end -- excuse me, Arthur
 6 Andersen did more than simply audit the year end financials
 7 for Sunbeam in 1997, correct?
 8 A. Well, yeah, we were doing a number of things. We
 9 had three acquisitions going on right after year end and, of
 10 course, the stuff we talked about, the offering
 11 memorandums --
 12 MR. MOSCATO: I'm sorry, the question was '97,
 13 though, right?
 14 MS. BROWN: Right.
 15 THE WITNESS: Just the year 1997?
 16 BY MS. BROWN:
 17 Q. 1997.
 18 A. I mean, the timeline is '97 or the financials are
 19 '97? What are we talking about?
 20 MR. MOSCATO: Can you restate your question
 21 please?
 22 BY MS. BROWN:
 23 Q. In 1997, in addition to doing the audit work for
 24 the year-end financial, Arthur Andersen did quarterly
 25 examinations for Sunbeam, correct?

1 A. Yes, the fiscal year end '97, yes. We did
 2 quarterly reviews.
 3 Q. And Arthur Andersen had been engaged by Sunbeam
 4 for a number of years preceding 1997, correct?
 5 A. Yes.
 6 Q. The engagement team spent several hundred or a
 7 few thousand hours on the work that they did for Sunbeam in
 8 1997, correct?
 9 A. Yes.
 10 Q. And as concurring partner you examined planning
 11 documents. Did that include, for instance, the work
 12 program?
 13 A. Probably not the detail work programs but
 14 planning. Discussed what should be in the work program to
 15 mitigate risk.
 16 Q. And you were satisfied as a result of that that
 17 Arthur Andersen was adequately addressing all the risk that
 18 they had identified with regard to the Sunbeam financials?
 19 A. The known risk, yes.
 20 Q. And at the end of the 1997 audit, Arthur Andersen
 21 had satisfied themselves that they had met their objective
 22 and that they would be able to give the opinion that
 23 Sunbeam's financials were fairly stated, correct?
 24 A. Yes.
 25 Q. And they didn't have any reason -- did you

1 personally have any reason in that time frame, that is
 2 January of 1998 when they signed off on the financials, to
 3 question the integrity of management at Sunbeam?
 4 A. No, we talked about this morning. We knew Dunlap
 5 was domineering and those kind of things but we felt like we
 6 were aware of those risks so when we were ready to sign off,
 7 we felt comfortable signing off.
 8 Q. Dunlap was well known in the business community,
 9 correct?
 10 A. Yes, he was a big name.
 11 Q. At the time of the 1997 audit he was seen to have
 12 been successful in the -- as a successful businessman,
 13 correct?
 14 A. Yes.
 15 Q. He was -- I think you referred to him in prior
 16 testimony as a hero in the business community, correct?
 17 A. Yes, he was looked upon as -- yeah, as far as in
 18 the business community.
 19 Q. And when the question of bill and hold sales came
 20 up during the 1997 audit, ultimately Arthur Andersen
 21 satisfied itself that those were legitimate sales and the
 22 revenue could be recognized in 1997, correct?
 23 A. That's correct.
 24 Q. And up until June of 1998, are you -- Arthur
 25 Andersen had no reason that you're aware of to question the

1 1997 financial statements?

2 A. That's correct. Things started being uncovered
3 subsequent to the audit.

4 Q. Subsequent to the audit being in June of 1998,
5 correct?

6 A. Yes, around June.

7 Q. Arthur Andersen, as you mentioned, continued to
8 do work for Sunbeam in the first quarter of 1998, correct?

9 A. That's correct.

10 Q. And during that time period you're not aware of
11 any reason that Arthur Andersen had to question the
12 integrity of the management?

13 A. Not that I can recall. We were obviously --
14 because of bill and hold and other things, we were doing
15 additional work. We were monitoring the situation but we
16 didn't find anything until June that made us believe that
17 they were dishonest or the financials were a problem.

18 Q. And that includes the first quarter of 1998,
19 correct?

20 A. As best I recall, yes.

21 Q. Let's go ahead and look at the CPH Exhibit 23
22 that you looked at a bit earlier this morning. It was the
23 document that included the smart form. That's it right
24 there.

25 A. This one?

1 Q. Yes. And turning to the smart form itself, on
2 Page 2 where you discussed with my colleague earlier that
3 the text in the box that management had set aggressive
4 earnings expectations, "might be inclined to recognize
5 revenue for transaction and events where the earning process
6 is not complete. Also reserves can be expected to be
7 thin." You were satisfied that Arthur Andersen had
8 addressed that issue when it signed off on Sunbeam's 1997
9 financial statements, correct?

10 MR. JOHNSON: Objection to form.

11 THE WITNESS: Yes, the auditing team was
12 satisfied. Ultimately it's their responsibility, not mine.
13 A concurring partner can give advice and talk about the
14 issues, but ultimately the engaging partner has the
15 responsibility to decide to sign the opinion.

16 BY MS. BROWN:

17 Q. You didn't have any difficulties or reservations
18 about Arthur Andersen signing that opinion?

19 A. Not at that time.

20 Q. On the next page, Page 3, under "Risk
21 Classification" where it says, "Final risk classification
22 high," again the risk classification and each one of the
23 risks identified in this document had been addressed by
24 Arthur Andersen of their audit of the 1997 financials,
25 correct?

1 MR. JOHNSON: Objection, form.

2 THE WITNESS: Yes, that was the idea, to find the
3 risk and try to address the risk as part of the audit. When
4 the team completed their work, they felt comfortable signing
5 the opinion.

6 BY MS. BROWN:

7 Q. And as concurring partner did you concur or sign
8 off before they signed their opinion?

9 A. Yes, I have to concur on certain things like
10 major issues that they bring to my attention, a few things
11 like that, yes.

12 Q. And with the 30 years of experience that you had
13 at that time, you were comfortable signing off with the 1997
14 financial statements for Sunbeam, correct?

15 A. Well, as concurring partner. Again I didn't sign
16 the opinion. It's not my responsibility. But the issues
17 that they brought to me, which was basically bill and hold,
18 by the time we finished with that work I felt the revenues
19 should be in 1997, and I still feel that way probably.

20 MR. MOSCATO: Feel free to respond to questions
21 that aren't asked.

22 THE WITNESS: Yes, I thought I'd throw that in.
23 He was about to fall asleep. That's off the record.

24 BY MS. BROWN:

25 Q. You testified that you had not had any previous

1 discussions with Morgan Stanley during the 1997, 1998 time
2 frame concerning Sunbeam. Did you have any conversations
3 with anyone representing Morgan Stanley senior funding
4 during that period concerning Sunbeam?

5 A. No, not directly.

6 Q. Did you have any conversations prior to June of
7 1998 with anyone from Skadden Arps concerning Sunbeam?

8 A. As part of the investigation, I think they were
9 involved, I believe. I believe, that's the firm. Were they
10 involved in the investigation?

11 MR. MOSCATO: When you say "investigation," you
12 mean the restatement.

13 THE WITNESS: The restatement. I think they were
14 involved. Maybe I said hi to somebody but again I didn't do
15 the work.

16 BY MS. BROWN:

17 Q. And prior to the restatement or the
18 investigation, did you have contact with anyone from Skadden
19 Arps?

20 A. About Sunbeam?

21 Q. About Sunbeam.

22 A. Not that I recall.

23 Q. You were actually on vacation in June of 1998
24 when Arthur Andersen determined that it would withhold its
25 consent from the SEC registration for the notes, correct?

1 A. That's correct.
 2 Q. So you personally were not involved in that
 3 decision or were you?
 4 A. No, I was out of the country and they were
 5 working with a practice director.
 6 Q. Mr. Costello?
 7 A. Yes. You know, I found out about it. I've
 8 forgotten whether they left me a message. Somehow they got
 9 in touch with me. I was aware of it.
 10 Q. But you weren't involved in making the decision?
 11 A. Not directly.
 12 Q. And as concurring partner, any of the work -- any
 13 of the information that you have about the work that was
 14 done during the audit is secondhand that you got from
 15 Mr. Bornstein or Mr. Harlow, correct?
 16 A. Well, I could look at the work that was done, but
 17 again I didn't interact with the client directly.
 18 Q. And you also didn't interact with the client
 19 directly on the restatement procedures, correct?
 20 A. That's correct.
 21 Q. And any information you have about what anyone
 22 from Arthur Andersen may have said to anyone from Morgan
 23 Stanley also would be secondhand?
 24 A. Secondhand.
 25 Q. Prior to June of 1998, did anyone from Arthur

1 Andersen tell you that any representative of Sunbeam had
 2 expressed hesitation about the legitimacy of the bill and
 3 hold sale?
 4 MR. JOHNSON: Could I have that read back?
 5 (The record was read.)
 6 MR. JOHNSON: I'm going to object to the form of
 7 that.
 8 THE WITNESS: I believe it was in June that
 9 Griffith or someone came to us and told us -- or they said
 10 that there could be problems with some of the sales but I'm
 11 not even sure it was bill and hold sales any more. We had
 12 picked up some sales that were not legitimate sales when we
 13 did our investigation of the bill and hold at the audit time
 14 at year end and we had proposed adjustments to reverse the
 15 sale.
 16 MR. MOSCATO: What was your question again? Was
 17 your question prior to June?
 18 MS. BROWN: My question was prior to June of
 19 1998.
 20 MR. MOSCATO: Why don't you restate the
 21 question? I don't think it was responsive.
 22 THE WITNESS: It would be May or June. I don't
 23 know. I think it probably had to be in June but I'm not
 24 certain. Again I was out of the country. I don't know
 25 exactly what was going on.

1 BY MS. BROWN:
 2 Q. So prior to May of 1998, you're not aware of
 3 anyone from Sunbeam expressing to Arthur Andersen any
 4 concerns about the legitimacy of the bill and hold sales?
 5 A. Not that I can recall.
 6 Q. And the bill and hold sales, you mentioned
 7 earlier, were disclosed in Sunbeam's 10-K for 1997; is that
 8 correct?
 9 A. That's correct.
 10 Q. And, to your knowledge -- let me just ask you
 11 personally. Were you satisfied with that disclosure of the
 12 bill and hold sales in Sunbeam's 10-K?
 13 MR. JOHNSON: Objection to form, foundation.
 14 THE WITNESS: Yes, I think it disclosed they had
 15 bill and hold sales and they had an early-buy program and we
 16 had -- I had felt that it had to be disclosed if they were
 17 going to put bill and hold sales in their financials in 1997
 18 and they did.
 19 BY MS. BROWN:
 20 Q. So whatever connotations you may feel go with
 21 bill and hold sales, those were disclosed in the 10-K,
 22 correct?
 23 A. Yes.
 24 Q. You discussed earlier the comfort letters that
 25 Arthur Andersen provided to Morgan Stanley in March of 1998?

1 A. Yes.
 2 Q. And Arthur Andersen performs post audit reviews
 3 prior to providing comfort letters, correct?
 4 A. As part of it, yes. Actually the comfort letters
 5 are requested by the investment banker as part of their due
 6 diligence.
 7 Q. Right, but before Arthur Andersen will provide
 8 that comfort letter, Arthur Andersen itself does post-audit
 9 review procedures, correct?
 10 A. Normally. They can ask for anything. I guess an
 11 investment banker -- I've seen them just ask if we're
 12 independent, you know, so we don't have to do anything if
 13 you don't want to, I guess, given the comfort letter, but
 14 normally they ask for things that you need to do some work
 15 on.
 16 Q. So what Morgan Stanley asked for this time
 17 required you to do more than simply state you were
 18 independent?
 19 A. Yes.
 20 Q. Now, with regard to the debt offering and the
 21 comfort letters that went with that, eventually you were
 22 aware that Sunbeam would want to register with the SEC
 23 concerning the debt, correct?
 24 A. I knew at some point that, yes, they were working
 25 on an S4 registration.

Page 53

1 Q. And in order to file an S4 registration with the
2 SEC, Sunbeam has to get consent from Arthur Andersen to use
3 Arthur Andersen's opinion concerning Sunbeam's financials?
4 A. That's correct. You can ask for it but you don't
5 need it on an offering memorandum.
6 Q. Would Arthur Andersen provide its consent for the
7 S4 registration if it felt that the offering memorandum was
8 false and misleading?
9 A. Well, I know if we felt like the S4 was
10 misleading, we wouldn't give a consent.
11 MR. MOSCATO: Is the question if they thought it
12 was false and misleading when issued? It's a little
13 confusing. You could have a situation where the offering
14 memorandum says something that everyone believes is accurate
15 at the time that it turns out that it's not accurate, say a
16 forward looking statement.
17 THE WITNESS: If you fix it in the S4, I guess,
18 then, if you were satisfied, you could go ahead and give a
19 consent on the S4 if the S4 was correct.
20 BY MS. BROWN:
21 Q. My question is in March Sunbeam was working on
22 the offering memorandum. Arthur Andersen was aware that
23 eventually they would want to file an S4 with the SEC. If
24 Arthur Andersen knew in March that the offering memorandum
25 as of March was false and misleading and that Arthur

Page 54

1 Andersen would withhold -- therefore would withhold its
2 consent, would Arthur Andersen tell Sunbeam that as a matter
3 of courtesy?
4 MR. JOHNSON: Objection to form.
5 MR. MOSCATO: It's so hypothetical. I don't know
6 how he can answer that.
7 If you feel comfortable answering it,
8 answer it. If it's too hypothetical to answer --
9 THE WITNESS: The issue would be known in April
10 anyhow. I mean, you would know what the sales would be in
11 the first quarter. The S4 is not going to be completed
12 before April anyhow, April 1st, so we're going to know the
13 answer by the time the S4 comes around. Either they're
14 right and there's no problem or they're wrong and you know
15 it.
16 BY MS. BROWN:
17 Q. When you read the offering memorandum prior to --
18 you read drafts of the offering memorandum prior to it being
19 published correct?
20 A. Yes.
21 Q. As a courtesy or service to Arthur Andersen -- to
22 Sunbeam, if you noticed anything that you felt was false and
23 misleading you would bring that to the attention of Sunbeam,
24 correct?
25 MR. JOHNSON: Objection.

Page 55

1 THE WITNESS: If it was false and misleading, we
2 would bring it to their attention. It's hypothetical.
3 MR. MOSCATO: It was all hypothetical.
4 BY MS. BROWN:
5 Q. You have in front of you or you and your counsel
6 have in front of you a stack of documents that have
7 previously been marked and I'd like to refer you to what was
8 marked yesterday as Morgan Stanley Exhibit 25. Morgan
9 Stanley Exhibit 25 is a post-audit review form that Arthur
10 Andersen uses, correct?
11 A. Yes.
12 Q. And turn, if you would, to the last few pages of
13 Morgan Stanley Exhibit 25 and on the last two pages at the
14 end, is that your initials and then your signature?
15 A. Yes.
16 Q. And it appears as though -- even though this
17 post-audit review is dated March 5th of '98 that your
18 signature is May of '98. Do you know what the circumstance
19 was that you signed it a couple of months later?
20 A. I do remember. They didn't get it to me right at
21 the end of the audit to sign and we were going to get a work
22 paper review and they were going to get jigged for that so I
23 put the right date so they would get jigged.
24 Q. In the text --
25 A. The work was done timely. I guess they didn't

Page 56

1 give me this form in time, so I signed it when they got me
2 the form as opposed to when the work was done.
3 Q. So under "Procedure," for instance, where it says
4 "Read the report to be issued and the related financial
5 statements" and then it has "Done by" and your initials,
6 what's the indication of when that was done? Was that done
7 in March or was that done in May?
8 A. It was done before they filed the 10-K.
9 Q. So you reviewed this document contemporaneously
10 with it being created?
11 MR. MOSCATO: This document or 10-K?
12 THE WITNESS: The 10-K itself was filed March 5th
13 and I did the review and so forth before they filed it.
14 BY MS. BROWN:
15 Q. So you reviewed this document in early March of
16 1998?
17 MR. MOSCATO: You keep saying this document. He
18 thinks you're talking about the 10-K.
19 THE WITNESS: Yes, I'm talking about the 10-K.
20 No, they did not send me this form until March -- I'm sorry,
21 May 29th to review. I did the work but I did not fill out
22 this form until May 29th.
23 BY MS. BROWN:
24 Q. So you reviewed the 10-K in early March of 1998?
25 A. Before it was filed.

Page 57

1 Q. But you did not review this form itself until May
2 of 1998?

3 A. That's correct.

4 Q. You stated before that you did the work. What
5 does that mean?

6 A. When you say "this form," to be honest with
7 you --

8 MR. JOHNSON: For the record, it's not the form
9 10-K. It's --

10 MR. MOSCATO: It's ARQ, they call it. I may have
11 looked at the front part of this thing but I did not fill
12 this out until May 29th. My part of it I didn't fill in.

13 MR. MOSCATO: When you say you did the work, you
14 mean you read the 10-K?

15 THE WITNESS: The 10-K and did all the other
16 things. I obviously talked to the audit team about bill and
17 hold and all those kind of things. I did all those things
18 before we filed the 10-K. They didn't give me this form on
19 May 29th and I signed it May 29th rather than when I did the
20 work.

21 BY MS. BROWN:

22 Q. You've been handed what's been marked as Morgan
23 Stanley 35. For the record, it's CPH 0129979 through 988.
24 Morgan Stanley Exhibit 35 is another Arthur Andersen
25 post-audit review form, correct?

Page 58

1 A. Yes.

2 Q. And at the last couple of pages of Morgan Stanley
3 Exhibit 35 there are also your initials and your signature?

4 A. Yes.

5 Q. You also stated this document, May 29th of 1998?

6 A. That's correct.

7 Q. Now, under procedure number one on the second to
8 the last page of Morgan Stanley Exhibit 35 where it states,
9 "Read the report to be issued and related financial
10 statements," what does that refer to?

11 MR. MOSCATO: It says read the report to be
12 reissued.

13 THE WITNESS: To be reissued. Let me look and
14 see. What this is talking about is reissuing our order
15 on -- I think it's December 28th, 1997 opinion in the
16 financial statements and the registration statements.

17 BY MS. BROWN:

18 Q. And the registration statement?

19 A. I don't know what registration they are talking
20 about, to be honest with you. I'm trying to remember what
21 it was for.

22 Q. On Item 2 --

23 A. It may be an S8. I don't know. I don't recall
24 it.

25 Q. On Item 2 --

Page 59

1 A. It should say it. I can't find it. It's so
2 close after the 10-K was filed, it must be an S8 or
3 something. I don't think it's the S4.

4 MR. MOSCATO: Do you have a question, counsel?

5 MS. BROWN: Yes.

6 Q. When you look at Page 9, again the second to the
7 last page of Exhibit 35, under "Reviewed the results of the
8 post-audit review" which is Number 2, what does that refer
9 to?

10 A. Basically this form -- the work is done in this
11 form. There could be work papers that they're preparing in
12 doing the work, but it's basically this work on this form.

13 Q. And so when you initialed there, what does that
14 indicate?

15 A. Well, I read the reissue report and reviewed the
16 results of this post-audit review, and I discussed any
17 significant accounting and auditing issues with the
18 engagement team and I'm satisfied.

19 Q. And you did that work in March of 1998 rather
20 than in May of 1998?

21 A. Yes. This looks like it's some kind of -- it may
22 be an S8 which is like pension plans and stuff like that.
23 It's called -- it could be. I just don't know which
24 registration statement this was, but since it is so soon
25 after we filed the 10-K.

Page 60

1 Q. Look if you would at Morgan Stanley Exhibit 28
2 which was marked yesterday. And Morgan Stanley Exhibit 28
3 is a post-audit review form that Arthur Andersen uses,
4 correct?

5 A. Yes.

6 Q. And under SEC filing form Morgan Stanley
7 Exhibit 28 --

8 A. Zero coupon, okay.

9 Q. -- it states sale of 2.014 billion zero coupon
10 senior subordinated debentures due 2018.

11 A. Right.

12 Q. And now when you look at the last two pages of
13 Morgan Stanley 28, again are those your initials and your
14 signature?

15 A. Yes.

16 Q. Looking at this post audit report when it states
17 that you reviewed -- read the report to be reissued and
18 related financial statements, what does that refer to?

19 A. In this case it's zero coupon -- it's actually
20 the offering memorandum, is what they're talking about, I'm
21 pretty sure.

22 MR. MOSCATO: Just for your edification, read
23 that. See if you can make out the handwriting.

24 THE WITNESS: I can't read it worth a flip but I
25 think they're saying what I just said, that they're talking

Page 61

1 about the work they did on the offering memorandum and they
 2 did this work although this is not an offering.
 3 MR. MOSCATO: I just asked you to read it to
 4 yourself. You don't have to discuss it unless she wants to
 5 ask you about it.
 6 BY MS. BROWN:
 7 Q. Number 2 on the second to the last page of Morgan
 8 Stanley Exhibit 28, states "Principal Considerations.
 9 Whether that review has revealed any subsequent events or
 10 transactions that might affect our report and/or the
 11 financial statements being reissued"; do you see that?
 12 A. Give me the page.
 13 Q. It's Page 9 of the PAR, Number 2, "Principal
 14 Considerations"?
 15 A. Okay. Right.
 16 Q. And my question is what does that mean?
 17 A. We didn't find anything that would change the
 18 December 28th, 1997 financial statements.
 19 Q. So as of this date, which is March 16th 1998,
 20 Arthur Andersen was satisfied that the financial statements
 21 were still not materially misstated?
 22 MR. JOHNSON: Objection to form.
 23 THE WITNESS: Fairly presented, yes.
 24 BY MS. BROWN:
 25 Q. And this was after the additional work that

Page 62

1 Arthur Andersen had done up to March 13th -- March 16th of
 2 1998, correct?
 3 A. Right. And again this is me talking. As
 4 concurring partner, I didn't see anything that I felt would
 5 change the December 28, 1997 financial statement.
 6 Q. You stated earlier that you directed either
 7 Mr. Bornsten or Mr. Harlow to speak to Morgan Stanley about
 8 what they expected to put in the comfort letter; do you
 9 recall that testimony?
 10 MR. MOSCATO: I'm not sure that's accurate
 11 BY MS. BROWN:
 12 Q. Do you recall testifying this morning that you
 13 directed Mr. Bornstein or Mr. Harlow to tell Morgan Stanley
 14 in advance of getting the comfort letter --
 15 A. What would be in the comfort letter, yes.
 16 Q. Do you have any personal knowledge of that
 17 communication taking place? You didn't participate in such
 18 communication, correct?
 19 MR. JOHNSON: Objection to form.
 20 THE WITNESS: No, I did not directly talk to the
 21 investment bankers. I know it was done because Bornstein,
 22 you know, did it, told me he had talked to the investment
 23 bankers.
 24 BY MS. BROWN:
 25 Q. Did he tell you that before or after March 19,

Page 63

1 1998?
 2 A. I don't know what date it was.
 3 Q. Did he tell you that before or after he was in
 4 New York at the press?
 5 A. I don't recall but I think he did talk to the
 6 investment bankers when he was in New York.
 7 Q. Do you recall ever saying to anyone from Arthur
 8 Andersen that if Sunbeam did not make a disclosure of the
 9 decline in sales, Arthur Andersen would withhold the consent
 10 from registration for the notes?
 11 A. Well, again we were talking about this offering
 12 memorandum when this was all going on and you don't need a
 13 consent so they could tell us to shove it, put out the
 14 offering memorandum. They don't need our consent on
 15 offering memorandum.
 16 Q. But I'm not sure that answers my question. They
 17 would eventually need a consent for the S4 registration,
 18 correct.
 19 A. Yes.
 20 MR. MOSCATO: Let's not argue. She asked the
 21 specific question, did you say a particular thing, and you
 22 want an answer to that question.
 23 THE WITNESS: Give me the question again.
 24 BY MS. BROWN:
 25 Q. My question was do you recall saying to anyone in

Page 64

1 March of 1998 that if Sunbeam did not disclosure its decline
 2 in sales, Arthur Andersen would withhold its consent?
 3 MR. MOSCATO: And the answer is yes or no.
 4 THE WITNESS: On the S4 registration? In the
 5 registration statement?
 6 BY MS. BROWN:
 7 Q. Yes.
 8 A. Not the offering memorandum? No, I don't recall
 9 saying that.
 10 Q. Do you recall ever conveying that sentiment to
 11 anyone at any time prior to June of 1998?
 12 A. I don't recall tying the S4 to this time period
 13 when we were working on the offering memorandum. Again,
 14 before the S4 would be filed we would know one way or the
 15 other because the quarter would be over. I mean, it was
 16 only a few days left. We'd know one way or the other.
 17 Q. So the answer is no, you don't recall discussing
 18 that with anyone prior to June of 1998?
 19 A. I don't recall. Not June. Did you say June?
 20 Q. Prior to June.
 21 A. Prior to June? I thought we were talking about
 22 March.
 23 MR. MOSCATO: It's all very confusing.
 24 THE WITNESS: This was all going on in March, the
 25 first quarter in the shortfall, and we would know by the

1 first part of the April whether they made it or not.
 2 BY MS. BROWN:
 3 Q. But in June --
 4 A. It wouldn't be an issue one way or the other by
 5 the time April gets here because we'll know what the sales
 6 are for the first quarter at that point, so it won't be an
 7 issue any more.
 8 Q. In June of 1998, Arthur Andersen withheld its
 9 consent for the registration, right?
 10 A. Yes.
 11 Q. Do you remember discussing that as a possibility
 12 with anyone from Arthur Andersen prior to June of 1998?
 13 A. Withholding the consent?
 14 Q. Yes.
 15 A. No, not that I can recall.
 16 Q. When you talked with Mr. Harlow and Mr. Bornstein
 17 about wanting Sunbeam to make a disclosure about the
 18 decrease in net sales in March of 1998, do you recall them
 19 telling you that Sunbeam was resisting making that
 20 disclosure because they believed they'd make a their quarter
 21 numbers?
 22 A. Yes. Yes, they resisted the disclosure.
 23 Q. When you told Mr. Harlow or Bornstein to tell
 24 Morgan Stanley what was going to be in the comfort letter,
 25 do you know whether they told Sunbeam first that they were

1 going to convey that information to Morgan Stanley?
 2 A. I don't know who they told first or second.
 3 Q. As a courtesy, would you expect them to have told
 4 the client before they told the underwriter?
 5 MR. MOSCATO: I object.
 6 THE WITNESS: I don't think it would have come to
 7 my mind because everybody is working on the thing. They're
 8 all in the same room probably.
 9 BY MS. BROWN:
 10 Q. As part of the procedure for providing a comfort
 11 letter, Arthur Andersen gets a representation letter from
 12 management before they provide the comfort letter, correct?
 13 A. That's correct.
 14 Q. Do you recall discussing the representation
 15 letters -- management representation letters in March of
 16 1998?
 17 A. I don't recall.
 18 Q. I'd like you to take a look at what's been
 19 previously marked as Morgan Stanley Exhibit 30, and if you
 20 would just turn to the last page of Morgan Stanley
 21 Exhibit 30 there are signatures there that purport to be
 22 from Mr. Dunlap, Kersh, Fanin and Gluck, do you see that?
 23 A. Yes.
 24 Q. Is this the type of management representation
 25 letter that Arthur Andersen would receive prior to issuing a

1 comfort letter?
 2 A. Yes.
 3 Q. We might as well get what has been marked as
 4 Morgan Stanley Exhibits 32, 33 and 34. You testified that
 5 you recall that there was a bring down comfort letter,
 6 correct?
 7 A. Yes.
 8 Q. And prior to providing a bring down comfort
 9 letter, there would be a subsequent representation letter
 10 from management, correct?
 11 A. Yes.
 12 Q. On Morgan Stanley Exhibit 30, the date of the
 13 first management representation letter is March 16th, 1998
 14 and then you're aware that the Arthur Andersen comfort
 15 letter -- initial comfort letter is dated March 19, 1998; do
 16 you recall that?
 17 A. I don't recall.
 18 MR. MOSCATO: We'll stipulate.
 19 THE WITNESS: It may have been it's dated the
 20 19th. It goes through the 16th, probably.
 21 BY MS. BROWN:
 22 Q. Now, if you look at Morgan Stanley Exhibit 32,
 23 the first page is an e-mail dated March 21, 1998. And
 24 attached to that right after is a draft representation
 25 letter from management. I'd like you to turn, if you would,

1 to the Bates page and the Bates is the little number at the
 2 bottom that ends in 1653.
 3 A. Okay.
 4 Q. And on Morgan Stanley Exhibit 32 there's a
 5 Paragraph 10 there. I'll ask you just to review Paragraph
 6 10.
 7 A. Okay.
 8 Q. What do you understand Paragraph 10 to
 9 accomplish?
 10 MR. JOHNSON: Objection to form.
 11 THE WITNESS: Since I wasn't involved in, you
 12 know, preparing these comfort letters and letters and all
 13 that kind of stuff and the timeline and what they were
 14 talking about, I can't answer that, except what it says is
 15 that management believes that the sales in '98 will exceed
 16 the same time period in '97.
 17 BY MS. BROWN:
 18 Q. Do you recall discussing putting that paragraph
 19 in the management letter?
 20 MR. MOSCATO: Objection.
 21 THE WITNESS: Me asking for this or --
 22 BY MS. BROWN:
 23 Q. Do you recall having any discussions about it
 24 being put into the management letter with anyone at --
 25 A. I don't recall, no.

Page 69

1 Q. If you look at the next exhibit which is Morgan
 2 Stanley 33, there's a fax cover -- or fax line at the top
 3 that's dated March 23rd, 1998 and I'd ask you to look at
 4 that same paragraph, Paragraph 10 or Morgan Stanley
 5 Exhibit 33, and now someone has made some handwritten edits
 6 to that paragraph. Do you know whose handwriting that is?
 7 A. No, I don't.
 8 Q. Did you discuss this edit with anyone?
 9 A. I don't recall. I may have.
 10 Q. And I'd like you to please look at Morgan Stanley
 11 Exhibit 34. Morgan Stanley Exhibit 34 is dated March 23rd,
 12 1998 and if you will turn to the final page, bears the
 13 signatures of Mr. Dunlap, Kersh, Fanin and Gluck. And if
 14 you would observe by comparing this final management
 15 representation letter to the previous two drafts represented
 16 in Morgan Stanley Exhibits 32 and 33, you will notice that
 17 the paragraph we have been discussing has been removed. Do
 18 you see that?
 19 A. Yes. It's covered somewhere else. When did they
 20 put out that press release? What was the date of that?
 21 MR. MOSCATO: March 19. She just asked the
 22 question did you notice -- it's pretty self explanatory.
 23 She's asking you if you look at this document, if you
 24 noticed that this paragraph which was in here is not in
 25 here.

Page 70

1 THE WITNESS: That's correct.
 2 MR. MOSCATO: Next question please.
 3 BY MS. BROWN:
 4 Q. Did you discuss with anyone the fact that the
 5 Paragraph 10 which previously stated, "Despite the decrease
 6 in net sales described in the preceding paragraph,
 7 management believes that net sales for the first quarter of
 8 fiscal 1998 will exceed net sales for the first quarter of
 9 fiscal 1997." Did anyone discuss with you the fact that
 10 that paragraph had been -- was not in the final management
 11 representation letter?
 12 A. Not that I recall.
 13 Q. Did anyone bring that to you as a concern?
 14 A. They may have but I don't recall.
 15 Q. Now, you stated that from your point of view
 16 management was telling you in March of 1998 that they still
 17 expected to make their numbers for the first quarter of
 18 1998, correct, indirectly?
 19 MR. MOSCATO: I object to that. Can you restate
 20 the question?
 21 BY MS. BROWN:
 22 Q. The information that you had in the first quarter
 23 of 1998 was that the company still expected -- company
 24 Sunbeam still expected to make their numbers for the first
 25 quarter of 1998, correct?

Page 71

1 A. Yes, based on the first two months, the
 2 information that they had at that point, yes.
 3 Q. And did you personally have any reason -- did you
 4 have any sense that Sunbeam was not sincere when they were
 5 representing that they believed that they would make their
 6 numbers for the first quarter of 1998?
 7 MR. JOHNSON: Objection to form.
 8 THE WITNESS: I have no way of knowing.
 9 Personally, as I said, I was skeptical.
 10 BY MS. BROWN:
 11 Q. But did you have any sense that the company
 12 itself had reservations or did not believe it would make its
 13 numbers.
 14 MR. JOHNSON: Objection to form.
 15 THE WITNESS: Again I didn't deal directly with
 16 them so I can't answer the question.
 17 BY MS. BROWN:
 18 Q. Did anyone from Arthur Andersen tell you that
 19 they felt that Sunbeam would not -- they felt that Sunbeam
 20 itself believed that Sunbeam would not make its numbers for
 21 the first quarter of 1998?
 22 MR. JOHNSON: Objection to form.
 23 THE WITNESS: Not that I recall.
 24 THE VIDEOGRAPHER: This is the end of Videotape
 25 No. 1. We are going off the record. The time is 11:08.

Page 72

1 (Brief recess)
 2 THE VIDEOGRAPHER: We are back on the record.
 3 This is the beginning of the Videotape No. 2. The time is
 4 11:12.
 5 BY MS. BROWN:
 6 Q. Mr. Pruitt, you said that you had reviewed or
 7 seen the substance of the press release that Sunbeam issued
 8 in March 1998 indicating that they may not meet analysts'
 9 expectations but they still expected to beat first quarter
 10 1997?
 11 A. They had included it in the offering memorandum
 12 and I saw a draft of the offering memorandum but I don't
 13 know whether they put the forward thinking information in
 14 there and all that stuff.
 15 Q. So you don't recall -- okay.
 16 A. Whatever was in the memorandum is what I saw.
 17 Q. At the time you saw that, you could not say,
 18 based on your own knowledge, that that information was
 19 inaccurate, correct?
 20 A. No.
 21 Q. Let me hand you what we will mark as Morgan
 22 Stanley 36. Morgan Stanley Exhibit 36 for the record is
 23 Bates CPH 0021819. At the top it indicates "Clippings,"
 24 Arthur Andersen to Phil Harlow, yourself and Mr. Pastrana
 25 from Mr. Bornstein date, March 20, 1998. Do you recall

1 receiving this from Mr. Bornstein?
 2 A. I can't recall.
 3 Q. Do you recall any discussions about the fall of
 4 Sunbeam stock after the issuance of the press release in
 5 1998?
 6 A. No, I don't recall discussing it. We may have.
 7 I don't recall.
 8 Q. At the time you that reviewed the offering
 9 memorandum -- draft offering memorandum that included the
 10 substance of the press release, do you recall from your own
 11 review anything that you thought was inaccurate or
 12 misleading in the offering memorandum?
 13 A. I don't recall anything I could say was wrong.
 14 Again, as I testified, I was against forward looking
 15 statements.
 16 Q. Is that something you're just generally would be
 17 against, forward looking statements in an offering
 18 memorandum?
 19 A. In this situation.
 20 Q. What do you mean in this situation?
 21 A. In this situation I was against it. Maybe in
 22 another situation it would be fine. I don't know. It's
 23 hypothetical.
 24 Q. But there was nothing that you thought, based on
 25 your own knowledge at the time, was inaccurate, correct?

1 MR. MOSCATO: You've asked this question probably
 2 15 different ways in the last half hour. I'm going to start
 3 objecting and I'm going to start instructing him not to
 4 answer. He's made his position as crystal clear as a human
 5 being can possibly make that position.
 6 Answer the question one more time and
 7 that's it.
 8 MS. BROWN: Well, strike it. That's fine.
 9 Q. There was no way for you to know on March 19,
 10 1998 what was going to happen at Sunbeam by the close of the
 11 quarter, correct?
 12 A. That's correct.
 13 Q. And you were previously provided with
 14 Mr. Bornstein's memo, CPH Exhibit 114?
 15 A. Yes.
 16 Q. And you just look again at the last page of CPH
 17 Exhibit 114. It was your understanding that this is
 18 information that Sunbeam provided to indirectly someone from
 19 Arthur Andersen; is that correct?
 20 MR. JOHNSON: Objection to form. Lack of
 21 foundation.
 22 THE WITNESS: I'm not sure what this is. I know
 23 that at the time someone put together kind of a schedule of
 24 sales to certain clients but I don't know if that's it or
 25 not.

1 BY MS. BROWN:
 2 Q. And by someone, you mean someone from Sunbeam?
 3 A. Yes. Uzzi, I believe.
 4 Q. And who would be in a better position to know
 5 what sales Sunbeam had but had not recorded it at the end of
 6 February 1998, Sunbeam or Arthur Andersen?
 7 MR. JOHNSON: Objection to form.
 8 THE WITNESS: Well, I think Sunbeam.
 9 BY MS. BROWN:
 10 Q. Mr. Bornstein never told you that he was
 11 concerned about Sunbeam's ability to physically ship the
 12 amount of inventory that they said they were going to be
 13 able to ship, correct?
 14 A. I don't recall that conversation at all.
 15 Q. The restatement was much more detailed in scope
 16 than the initial audit; is that correct?
 17 A. That's correct.
 18 MS. BROWN: Let's mark Morgan Stanley
 19 Exhibit 37.
 20 MR. JOHNSON: Is this the same one you marked
 21 yesterday?
 22 MS. BROWN: No.
 23 Q. You have been handed Morgan Stanley Exhibit 37,
 24 which for the record is CPH 0083764 and 65. At the top of
 25 the document, Sunbeam Corporation, Arthur Andersen fees and

1 expenses, restatement and other accounting services from
 2 July 1, 1998 through December 15 1998. What services did
 3 Arthur Andersen provide to Sunbeam after the restatement
 4 work had been completed?
 5 A. I know they were trying to file the S4
 6 registration statement and I believe we worked on that after
 7 the restatement to get it filed.
 8 Q. Was there anything else?
 9 A. I can't recall. May have been.
 10 Q. But Arthur Andersen, you said, did not do the
 11 audit for Sunbeam's 1998 financials?
 12 A. I'm sure we did not. Again I retired in August
 13 of '99 and this was still going on after I retired. What
 14 they did afterwards, I don't know.
 15 Q. When you look at Morgan Stanley Exhibit 37, the
 16 total hours for July 1, 1998 to December 15, 1998 is
 17 16,324. Do you see that on the second page?
 18 A. Yes.
 19 Q. The vast majority of those hours would have been
 20 spent on the restatement work, correct?
 21 A. I believe so.
 22 Q. Indeed Arthur Andersen and Sunbeam at a minimum
 23 spent 10,000 hours working on the restatement, correct?
 24 A. I believe so.
 25 Q. During the restatement -- there had been a change

1 in management; I believe you testified to that previously?
 2 A. Yes, they fired Dunlap.
 3 Q. And not today but you've testified previously
 4 that during the restatement there was also an informal SEC
 5 investigation proceeding, correct?
 6 A. Yes, that's correct.
 7 Q. And, in fact, it was your understanding that when
 8 Mr. Bornstein interviewed some of the Sunbeam personnel --
 9 salespersonnel, he informed it was in their best interest to
 10 be truthful because of the SEC investigation, correct?
 11 A. That's correct.
 12 Q. That's a fact that did not exist during the 1997
 13 audit, correct?
 14 MR. JOHNSON: Objection to form.
 15 THE WITNESS: That's correct.
 16 BY MS. BROWN:
 17 Q. And as a result of the restatement and the
 18 thousands of hours and whatever other factors may have
 19 existed, Arthur Andersen learned things during the
 20 restatement that Arthur Andersen had not been aware of
 21 during June of 1998, correct?
 22 MR. JOHNSON: Objection to form.
 23 THE WITNESS: That's correct.
 24 BY MS. BROWN:
 25 Q. You were aware that in the first quarter of 1998

1 Morgan Stanley was conducting due diligence at Sunbeam?
 2 A. I believe I knew it was Morgan. I mean, maybe
 3 there was more than one investment banker doing due
 4 diligence. I don't recall.
 5 Q. Do you have any knowledge personally of anyone
 6 from Coleman (Parent) Holdings doing due diligence at
 7 Sunbeam prior to June of 1998?
 8 A. Personally?
 9 Q. Yes.
 10 A. No.
 11 Q. Do you have any knowledge personally of anyone
 12 from Mathco doing due diligence at Sunbeam prior to June
 13 1998?
 14 A. No.
 15 Q. Do you have any knowledge of anyone from Credit
 16 Swiss First Boston doing due diligence at Sunbeam prior to
 17 June of 1998?
 18 A. Again, I knew that investment bankers were
 19 probably doing due diligence but I didn't know who it was.
 20 Q. Do you have any information concerning anyone
 21 from Wachtell Lipton doing due diligence at Sunbeam in
 22 1998?
 23 A. Again, I knew law firms were working on the
 24 offering memorandum and the registration but I didn't know
 25 who it was. I can't recall who it was.

1 Q. Did you personally have any conversations with
 2 anyone from Coleman, Coleman (Parent) or Mathco prior to
 3 June of 1998 concerning Sunbeam?
 4 A. Directly, no.
 5 Q. Did you personally have any conversations with
 6 anyone from Credit Swiss First Boston or Wachtell prior to
 7 June 1998 concerning Sunbeam?
 8 A. Directly, no.
 9 Q. Indirectly were you aware of any conversations
 10 that anyone from Arthur Andersen had with any of those
 11 entities, Coleman, Coleman (Parent), Mathco, Credit Swiss
 12 First Boston or Wachtell?
 13 A. I don't recall. Again Bornstein and Harlow were
 14 having conversations but I don't know who they were talking
 15 to.
 16 Q. You weren't present at Global Financial Press in
 17 March 1998, correct?
 18 A. No.
 19 Q. And you weren't involved in any discussions
 20 directly with the company in March 1998?
 21 A. No.
 22 Q. Now, Sunbeam moved to Florida and became a client
 23 of the Metro Florida area in approximately 1993, correct?
 24 A. It must have been around 1993, yes.
 25 Q. And Sunbeam at the time was one of Arthur

1 Andersen's largest clients in Metro Florida?
 2 A. One of them. In the top 10.
 3 Q. In 1995 the South Florida Arthur Andersen
 4 practice had lost a number of big clients to merger,
 5 correct?
 6 A. I think we lost Blockbuster. Yes, we lost some.
 7 Q. And do you recall that in 1996 and seven the
 8 Metro Florida practice was behind the Arthur Andersen
 9 average for units per share earnings?
 10 A. I don't recall whether we were or not. We could
 11 have been because of the loss of Blockbuster and a couple of
 12 other things. It's possible.
 13 Q. Do you recall in one of your last evaluations
 14 that you received a reduction in units because of the
 15 difference in income for the South Florida office as oppose
 16 to the average Arthur Andersen?
 17 A. Yes, I don't know if that was South Florida or
 18 Florida, the Caribbean or all of them. I can't recall.
 19 Probably because I was -- most partners retire from Andersen
 20 at 56 and I didn't so they start reducing your units after
 21 56 if you don't retire. I couldn't retire until I was 59
 22 because the guy that was going to take over for me went with
 23 our biggest client.
 24 MR. MOSCATO: It's a tough business.
 25 THE WITNESS: But I made plenty of money so I

Page 81

1 can't complain.
2 BY MS. BROWN:
3 Q. You've been handed what's been marked as Morgan
4 Stanley 38 which is Bates CPH 2004703 to 722. Do you just
5 generally recognize this document?
6 A. Yes.
7 Q. Can you for the record identify what it is?
8 A. Looks like an annual review of me by Bob Grafton
9 who was by boss.
10 Q. I just want you to look at the second paragraph
11 on Page 3, states, "Bill understands need for the Metro
12 Florida practice to get its earnings up to the US average.
13 If the office meets its plan for 1997, there will still be
14 approximately \$100 per unit behind the US average for audit
15 and approximately \$150 per unit behind for tax. And while I
16 do not believe we can get to the US average in 1997, it
17 should be our goal to get there in 1998."
18 A. Okay.
19 Q. Does that refresh your recollection that the
20 Metro Florida practice was behind the Arthur Andersen US
21 average for earnings?
22 A. Yes. Actually the big problem was Tampa and not
23 South Florida. This is Metro Florida which is all of
24 Florida, but, yes, I remember now.
25 Q. And you were responsible for Metro Florida?

Page 82

1 A. Yes, Florida, the Caribbean and Venezuela.
2 Q. Do you recall that in 1997 Sunbeam cut the fees
3 that it was providing to Arthur Andersen?
4 A. Yes. I believe. I believe I recall that they
5 did.
6 Q. Do you recall the fees were cut almost in half?
7 A. I don't recall that. I know that they had big
8 restructuring, got rid of a lot of their businesses. They
9 brought everything to South Florida, consolidated everything
10 so it was a smaller job anyhow, but I don't recall the
11 fees. In fact, in 1996 most of the work was done in
12 Pittsburgh and Mississippi rather than South Florida. We
13 did very little of the work in South Florida in 1996. We
14 just consolidated everything. In 1997 when he got rid of
15 the lot of the businesses and consolidated everything, we
16 did more of the work so it's a different entity really.
17 Q. During the restatement Arthur Andersen had no
18 objective to determine what due diligence had been performed
19 by any of the investment bankers in 1998, correct?
20 A. I can't think of a reason why.
21 Q. Do you personally have any information that would
22 cause you to believe that Sunbeam had provided information
23 to Morgan Stanley that it had not provided to Arthur
24 Andersen?
25 A. No, not that I'm aware of.

Page 83

1 Q. Do you personally have any reason to believe
2 yourself that Morgan Stanley was involved in any way in the
3 accounting improprieties at Sunbeam in 1997 and 1998?
4 MR. JOHNSON: Objection to form.
5 THE WITNESS: Not that I know of.
6 BY MS. BROWN:
7 Q. Do you have any reason personally to believe that
8 Morgan Stanley was aware of those accounting improprieties
9 in June of 1998?
10 MR. MOSCATO: Objection.
11 MR. JOHNSON: I'll join.
12 THE WITNESS: Do I answer?
13 MR. MOSCATO: You can answer.
14 THE WITNESS: Not that I know of.
15 MS. BROWN: No further questions at this time.
16 MR. JOHNSON: Nothing.
17 THE VIDEOGRAPHER: This is the end of this
18 deposition. We are going off the record. The time is
19 11:34.
20 (Adjournment: 11:34 a.m.)
21
22
23
24
25

Page 84

ACKNOWLEDGMENT

1
2
3 STATE OF FLORIDA)
4) ss.
5 MIAMI-DADE COUNTY)
6
7 I, William D. Pruitt, hereby certify, I have read
8 the transcript of my testimony taken under oath in my
9 deposition of January 13, 2003; that the transcript is a
10 true, complete and correct record of what was asked,
11 answered and said during this deposition, and that the
12 answers on the record as given by me are true and correct.
13
14
15 William D. Pruitt
16
17
18
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21 Subscribed and sworn to
22 before me on this _____ day
23 of _____, _____.
24
25 NOTARY PUBLIC

ERRATA SHEET

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2 PAGE LINE SHOULD READ:
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CERTIFICATE

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4 STATE OF FLORIDA)
) ss.
5 MIAMI-DADE COUNTY)
6
7

8 I, ANA REID, a Shorthand Reporter and Notary
9 Public within and for the State of Florida, do hereby
10 certify:

11 I reported the proceedings in the
12 within-entitled matter, and that the within transcript is a
13 true record of such proceedings.

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

18 IN WITNESS THEREOF, I have hereunto set my
19 hand this day of January 15, 2003.
20
21
22
23

24 ANA REID
Commission Number: DD232432
25 Commission Expires: July 15, 2007

24

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

25

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

COLEMAN (PARENT) HOLDINGS, INC.,)
)
Plaintiff,) No. CA 03-5045 AI
)
vs.)
)
MORGAN STANLEY & CO., INC.,)
)
Defendant.)

-----)
MORGAN STANLEY SENIOR FUNDING,)
INC.,)
)
Plaintiff,) No. CA 03-5165 AI
)
vs.)
)
MACANDREWS & FORBES HOLDINGS,)
INC.,)
)
Defendant.)
-----)

VIDEOTAPED DEPOSITION OF
DONALD G. DRAPKIN
New York, New York
Thursday, June 24, 2004

Reported by:
Jane Watson
JOB NO. 161016

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 June 24, 2004 6 9:39 a.m. 7 8 Videotaped Deposition of 9 DONALD G. DRAPKIN, held at the offices of 10 Kirkland & Ellis, L.L.P., 153 East 53rd 11 Street, New York, New York, pursuant to 12 Notice, before Jane D. Watson, a Notary 13 Public of the State of New York. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 IT IS HEREBY STIPULATED AND AGREED, 3 by and between counsel for the respective 4 parties hereto, that the filing, sealing and 5 certification of the within deposition shall 6 be and the same are hereby waived; 7 IT IS FURTHER STIPULATED AND AGREED 8 that all objections, except as to the form 9 of the question, shall be reserved to the 10 time of the trial; 11 IT IS FURTHER STIPULATED AND AGREED 12 that the within deposition may be signed 13 before any Notary Public with the same force 14 and effect as if signed and sworn to before 15 the Court. 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: 3 4 JENNER & BLOCK, L.L.P. 5 Attorneys for: Coleman (Parent) Holdings, 6 Inc. and MacAndrews & Forbes Holdings, Inc. 7 One IBM Plaza 8 Chicago, Illinois 60611-7603 9 BY: RONALD MARMER, ESQ. 10 11 KIRKLAND & ELLIS, L.L.P. 12 Attorneys for: Morgan Stanley & Co., Inc., 13 and Morgan Stanley Senior Funding, Inc. 14 655 Fifteenth Street, N.W. 15 Washington, D.C. 20005 16 BY: LAWRENCE P. BEMIS, ESQ. 17 LARISSA PAULE-CARRES, ESQ. 18 19 ALSO PRESENT: 20 Steven L. Fasman, Esq. 21 Victor Disla, Videographer 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 2 THE VIDEOGRAPHER: Will counsel 3 please introduce themselves for the video 4 record. 5 MR. BEMIS: Good morning. On behalf 6 of Morgan Stanley, Lawrence P. Bemis. 7 MS. PAULE-CARRES: Also on behalf of 8 Morgan Stanley, Larissa Paule-Carres. 9 MR. MARMER: Representing CPH and the 10 witness, Ronald Marmer from Jenner & Block. 11 And with me is Steven Fasman from Mafco. 12 THE VIDEOGRAPHER: Will the Court 13 Reporter please swear in the witness. 14 DONALD G. DRAPKIN, having been 15 duly sworn by the Notary Public, was 16 examined and testified as follows: 17 EXAMINATION BY 18 MR. BEMIS: 19 Q. Good morning, Mr. Drapkin. As I 20 said, my name is Lawrence Bemis. 21 Would you state your full name for 22 the jury, please. 23 A. Donald G. Drapkin. 24 Q. What does the G stand for, sir? 25 A. Guy.</p>

<p style="text-align: right;">Page 6</p> <p>1 Drapkin</p> <p>2 Q. G-U-Y?</p> <p>3 A. (Indicating).</p> <p>4 Q. You have to answer yes or no.</p> <p>5 A. Yes.</p> <p>6 Q. Thank you very much. How old are</p> <p>7 you, sir?</p> <p>8 A. 56.</p> <p>9 Q. What is your date of birth?</p> <p>10 A. March 1, 1948.</p> <p>11 Q. Are you represented by Mr. Marmer</p> <p>12 here this morning?</p> <p>13 A. Yes, I am.</p> <p>14 Q. Can you tell the jury where you live</p> <p>15 today?</p> <p>16 A. 47 Rio Vista Drive, Alpine,</p> <p>17 New Jersey.</p> <p>18 Q. Do you have a listed telephone number</p> <p>19 there?</p> <p>20 A. Yes.</p> <p>21 Q. What is it?</p> <p>22 MR. MARMER: Excuse me. Can we</p> <p>23 supply that off record just in case.</p> <p>24 We have --</p> <p>25 MR. BEMIS: It's a listed phone</p>	<p style="text-align: right;">Page 8</p> <p>1 Drapkin</p> <p>2 the end I think.</p> <p>3 A. Since January 1, 1987.</p> <p>4 Q. What is your title at MacAndrews &</p> <p>5 Forbes Holdings, Inc. today?</p> <p>6 A. Vice chairman.</p> <p>7 Q. Do you hold any other titles?</p> <p>8 A. Not that I'm aware, no.</p> <p>9 Q. Are you a director of MacAndrews &</p> <p>10 Forbes Holdings?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. And what is the office address for</p> <p>13 MacAndrews & Forbes Holdings?</p> <p>14 A. 35 East 62nd Street, New York,</p> <p>15 New York 10021.</p> <p>16 Q. And do you have an office telephone</p> <p>17 number there, sir?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And what is it?</p> <p>20 A. (212) 572-8440.</p> <p>21 Q. You understand that you are being</p> <p>22 videotaped today?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And do you understand that the</p> <p>25 videotape can be played to the jury in the trial</p>
<p style="text-align: right;">Page 7</p> <p>1 Drapkin</p> <p>2 number. That's why I asked him.</p> <p>3 MR. MARMER: Is it listed as in the</p> <p>4 sense of listed, publicly accessible?</p> <p>5 THE WITNESS: It's publicly</p> <p>6 accessible.</p> <p>7 MR. MARMER: Okay.</p> <p>8 THE WITNESS: Yes.</p> <p>9 A. 201-767-5650.</p> <p>10 BY MR. BEMIS:</p> <p>11 Q. Are you married today?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Do you live at that address with your</p> <p>14 wife?</p> <p>15 A. Yes, sir.</p> <p>16 Q. How long have you been there?</p> <p>17 A. I think it's going on 20 years.</p> <p>18 Q. Any present intention to move?</p> <p>19 A. No.</p> <p>20 Q. Who do you work for today?</p> <p>21 A. MacAndrews & Forbes -- I think it's</p> <p>22 Holdings. The ultimate parent company of</p> <p>23 MacAndrews & Forbes.</p> <p>24 Q. And how long have you been employed</p> <p>25 by MacAndrews & Forbes Holdings? There's an S on</p>	<p style="text-align: right;">Page 9</p> <p>1 Drapkin</p> <p>2 of this action?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And did you have an opportunity to</p> <p>5 consult with Mr. Marmer before your deposition</p> <p>6 today?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Did you have an opportunity to review</p> <p>9 documents with him that he brought and showed to</p> <p>10 you?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Do you understand, sir, that even</p> <p>13 though we are not in a courtroom, that the</p> <p>14 testimony you are giving is under oath, and has</p> <p>15 the same force and effect as if you were</p> <p>16 testifying in front of a jury?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Is there any reason that you can tell</p> <p>19 us about today that you could not testify</p> <p>20 truthfully?</p> <p>21 A. No.</p> <p>22 Q. Have you ever been deposed before?</p> <p>23 A. Yes.</p> <p>24 Q. About many times?</p> <p>25 A. Less than half a dozen.</p>

<p style="text-align: right;">Page 10</p> <p>1 Drapkin</p> <p>2 Q. Is there -- withdrawn.</p> <p>3 Have you ever been deposed in any</p> <p>4 litigation that is in any way connected with the</p> <p>5 Sunbeam Coleman transaction that we'll be talking</p> <p>6 about today?</p> <p>7 A. No.</p> <p>8 Q. Do you have any residences -- let me</p> <p>9 withdraw that question.</p> <p>10 Do you have a residence in Florida?</p> <p>11 A. No.</p> <p>12 Q. Have you had since 1997?</p> <p>13 A. No.</p> <p>14 Q. You have a driver's license, right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And is it a New Jersey driver's</p> <p>17 license?</p> <p>18 A. Yes.</p> <p>19 Q. Are you registered to vote in</p> <p>20 New Jersey?</p> <p>21 A. Yes, sir.</p> <p>22 Q. I don't know if you pay state taxes</p> <p>23 there. I assume you do. Do you pay state income</p> <p>24 taxes in New Jersey?</p> <p>25 A. Unfortunately.</p>	<p style="text-align: right;">Page 12</p> <p>1 Drapkin</p> <p>2 checking on you just to speed things along. And</p> <p>3 I want to ask you a couple of questions about</p> <p>4 your background before we get to some more</p> <p>5 substantive matters.</p> <p>6 When you graduated from law school</p> <p>7 and passed the bar exam, did you go to work for a</p> <p>8 law firm?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Which one?</p> <p>11 A. Cravath, Swaine & Moore.</p> <p>12 Q. And how long were you with Cravath?</p> <p>13 A. Until January 1, 1977.</p> <p>14 Q. Then did you go to Skadden, Arps?</p> <p>15 A. Yes, I did.</p> <p>16 Q. How long -- what years were you</p> <p>17 there?</p> <p>18 A. Until January 1, 1987.</p> <p>19 Q. Did you have an area of practice that</p> <p>20 you specialized in as an associate at Cravath?</p> <p>21 A. Cravath has a rotation system. So as</p> <p>22 an associate, I worked in, as I recall, three</p> <p>23 different areas.</p> <p>24 Q. What were the areas that you worked</p> <p>25 in at Cravath?</p>
<p style="text-align: right;">Page 11</p> <p>1 Drapkin</p> <p>2 Q. I note from looking at your</p> <p>3 background that you did graduate from Columbia</p> <p>4 Law School; is that right?</p> <p>5 A. Yes, sir.</p> <p>6 Q. About 1971?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Are you admitted to practice as a</p> <p>9 lawyer today in any state?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Which states?</p> <p>12 A. The State of New York.</p> <p>13 Q. Any other states, sir?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. When did you begin --</p> <p>16 A. I might have been years ago. I don't</p> <p>17 recall whether I kept up.</p> <p>18 Q. When did you begin -- strike that.</p> <p>19 When were you first admitted to</p> <p>20 practice in New York?</p> <p>21 A. I believe it was 1971.</p> <p>22 Q. And have you been continuously</p> <p>23 licensed to practice in New York since 1971?</p> <p>24 A. Yes, sir.</p> <p>25 Q. I've done a little bit of background</p>	<p style="text-align: right;">Page 13</p> <p>1 Drapkin</p> <p>2 A. My first rotation was what I would</p> <p>3 call general corporate work, representing public</p> <p>4 companies mostly and doing underwritings.</p> <p>5 My second rotation was for another</p> <p>6 corporate partner who did mostly company work</p> <p>7 rather than -- and deals rather than public</p> <p>8 offerings.</p> <p>9 And my third rotation was for a</p> <p>10 gentleman named Dick Simmons who was a Chemical</p> <p>11 Bank partner. And I did mostly Chemical Bank</p> <p>12 work.</p> <p>13 (Discussion off the record.)</p> <p>14 BY MR. BEMIS:</p> <p>15 Q. Would you -- thank you for your</p> <p>16 patience. I'm sorry for the interruption.</p> <p>17 Would you characterize the work that</p> <p>18 you did at Cravath generally being in the</p> <p>19 corporate field?</p> <p>20 A. Yes.</p> <p>21 Q. You then spent a number of years, it</p> <p>22 looks like 10 years if I count it correctly, at</p> <p>23 Skadden, Arps?</p> <p>24 A. That's correct.</p> <p>25 Q. When you left there, were you a</p>

<p style="text-align: right;">Page 14</p> <p>1 Drapkin</p> <p>2 partner?</p> <p>3 A. Yes.</p> <p>4 Q. Did you have an area of</p> <p>5 specialization when you worked at Skadden?</p> <p>6 A. Yes.</p> <p>7 Q. What was that, sir?</p> <p>8 A. Corporate law.</p> <p>9 Q. Any particular area of corporate law</p> <p>10 that you concentrated in?</p> <p>11 A. I suppose one could say mergers and</p> <p>12 acquisitions.</p> <p>13 Q. Did you do public offerings?</p> <p>14 A. On occasion.</p> <p>15 Q. Were you involved in mergers and</p> <p>16 acquisitions that involved underwritings?</p> <p>17 A. On occasion.</p> <p>18 Q. Have you ever worked on -- withdrawn.</p> <p>19 When you left Skadden -- Skadden,</p> <p>20 Arps in I believe you said January 1st of -- was</p> <p>21 it 1987?</p> <p>22 A. Correct.</p> <p>23 Q. Is that when you went to work for</p> <p>24 MacAndrews & Forbes Holdings, Inc.?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 16</p> <p>1 Drapkin</p> <p>2 as of this date.)</p> <p>3 BY MR. BEMIS:</p> <p>4 Q. I've handed you a document that the</p> <p>5 Court Reporter has marked as Morgan Stanley 279.</p> <p>6 Do you have that in front of you?</p> <p>7 A. Yes.</p> <p>8 Q. I direct -- I'd like you to --</p> <p>9 withdrawn.</p> <p>10 Please look at page 69. I don't know</p> <p>11 if it's double sided or not, but 279 is the page</p> <p>12 that I -- 69 excuse me. Are you there?</p> <p>13 A. Yes, sir.</p> <p>14 Q. My understanding is that you worked</p> <p>15 for the entity that is shown on this page as</p> <p>16 MacAndrews & Forbes Holdings, Inc.; is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Are you familiar with a company</p> <p>20 called Mafco Holdings, Inc.?</p> <p>21 A. I know the name.</p> <p>22 Q. That's all you know is the name?</p> <p>23 A. I may be a director of it. We have</p> <p>24 lots -- as you can see from this, there are lots</p> <p>25 of holdings companies, and I have trouble keeping</p>
<p style="text-align: right;">Page 15</p> <p>1 Drapkin</p> <p>2 Q. And have you -- you've been there</p> <p>3 continuously ever since; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Do you hold -- MacAndrews & Forbes</p> <p>6 Holdings, Inc. is owned a hundred percent by</p> <p>7 another company called Mafco, Inc.; is it not?</p> <p>8 A. I actually am not exactly sure what</p> <p>9 the ultimate name -- as I said before, the</p> <p>10 ultimate name of the parent holding company.</p> <p>11 There may be. I would defer to my colleague,</p> <p>12 Mr. Fasman, who knows the corporate structure a</p> <p>13 little better than I do.</p> <p>14 Q. Setting that issue aside, it is your</p> <p>15 understanding there is one holding company above</p> <p>16 MacAndrews & Forbes Holdings, Inc.; is that</p> <p>17 correct?</p> <p>18 A. No.</p> <p>19 Q. Then I want to see if we can get this</p> <p>20 sorted out and get it behind us. Let me see.</p> <p>21 MR. BEMIS: Can you mark this as</p> <p>22 Exhibit 279, please.</p> <p>23 (Discussion off the record.)</p> <p>24 (MS Exhibit 279, Notice of Merger and</p> <p>25 Appraisal Rights, marked for identification,</p>	<p style="text-align: right;">Page 17</p> <p>1 Drapkin</p> <p>2 the names straight.</p> <p>3 Q. Well, for the record, this document</p> <p>4 is dated -- and it's on page ii if you want --</p> <p>5 December 6, 1999. And you can set that aside for</p> <p>6 the moment and I may come back to it later.</p> <p>7 Now, in addition to your position</p> <p>8 with MacAndrews and Forbes Holdings, Inc., do you</p> <p>9 hold any position in a company called MacAndrews</p> <p>10 & Forbes Group, Inc.?</p> <p>11 A. I may be -- I may be a director of</p> <p>12 MacAndrews & Forbes Group, Inc. My employment is</p> <p>13 with MacAndrews & Forbes Holdings, Inc. I'm</p> <p>14 probably a director of all of the intermediates</p> <p>15 and subsidiaries.</p> <p>16 Q. When you say you are an employee of</p> <p>17 that company, is that the company that issues you</p> <p>18 a paycheck?</p> <p>19 A. I have no idea. We have direct</p> <p>20 deposit.</p> <p>21 Q. Well, even if you have direct</p> <p>22 deposit, you usually get something from the</p> <p>23 company at the end of the year for federal tax</p> <p>24 purposes that tells you who paid you. Do you</p> <p>25 know what that is?</p>

<p style="text-align: right;">Page 18</p> <p>1 Drapkin</p> <p>2 A. It goes to my accountant. I'll add,</p> <p>3 we only have one shareholder so.</p> <p>4 Q. And the one shareholder you have is</p> <p>5 Mr. Ronald O. Perelman?</p> <p>6 A. That's correct.</p> <p>7 Q. And he owns all of the companies,</p> <p>8 either 100 percent or whatever stock is owned of</p> <p>9 companies owned by these subsidiary companies,</p> <p>10 correct?</p> <p>11 A. That is correct.</p> <p>12 Q. Have you ever held any position in</p> <p>13 the company that is a Plaintiff in this case,</p> <p>14 Coleman (Parent) Holdings Inc.?</p> <p>15 A. I believe I was a director.</p> <p>16 Q. Do you remember when you were a</p> <p>17 director?</p> <p>18 A. I don't remember the exact dates, no.</p> <p>19 Q. Another company involved in this</p> <p>20 litigation is the Coleman Company, Inc. You were</p> <p>21 a director of that company, correct?</p> <p>22 A. That is correct.</p> <p>23 Q. And did you also serve on the</p> <p>24 executive committee of that company?</p> <p>25 A. I believe so.</p>	<p style="text-align: right;">Page 20</p> <p>1 Drapkin</p> <p>2 A. Yes, sir.</p> <p>3 Q. Reading this paragraph, this is a</p> <p>4 document that's previously been identified as</p> <p>5 being filed by Coleman Company, Inc.. It</p> <p>6 identifies you as a director of Coleman</p> <p>7 Worldwide, which is short for Coleman Worldwide</p> <p>8 Corporation. Does that refresh your recollection</p> <p>9 if you were a director of that company?</p> <p>10 A. Yes, sir.</p> <p>11 Q. You can set that aside.</p> <p>12 Were you -- withdrawn. Did you hold</p> <p>13 any positions in a company called CLN Holdings</p> <p>14 Inc.?</p> <p>15 A. I don't recall.</p> <p>16 Q. In addition to the companies we've</p> <p>17 been talking about, and kind of the chain of</p> <p>18 ownership of the Coleman Company, are you a</p> <p>19 director in other companies owned or controlled</p> <p>20 by Mr. Perelman?</p> <p>21 A. Yes.</p> <p>22 Q. Revlon?</p> <p>23 A. Yes.</p> <p>24 Q. You are a director of that company?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 19</p> <p>1 Drapkin</p> <p>2 Q. How long were you a director?</p> <p>3 A. I believe I was a director from when</p> <p>4 the date we bought the company until we were no</p> <p>5 longer involved.</p> <p>6 Q. And when you say no "longer</p> <p>7 involved," would that be the date that you</p> <p>8 resigned pursuant to the merger agreement that</p> <p>9 CLN Holdings was a party to with Sunbeam?</p> <p>10 A. That is correct.</p> <p>11 Q. And did you submit -- you submitted a</p> <p>12 written resignation? Excuse me.</p> <p>13 A. I don't recall.</p> <p>14 Q. After you resigned from the Coleman</p> <p>15 Company, did you ever have any further position</p> <p>16 with the company?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Did you ever hold a position with</p> <p>19 Coleman Worldwide Corporation?</p> <p>20 A. I don't recall.</p> <p>21 Q. Let me hand you a document we</p> <p>22 previously marked as Morgan Stanley Deposition</p> <p>23 Exhibit 130. Please look at page 3 and you'll</p> <p>24 see your name about four paragraphs down,</p> <p>25 directly below Mr. Perelman's name.</p>	<p style="text-align: right;">Page 21</p> <p>1 Drapkin</p> <p>2 Q. How long have you been a director of</p> <p>3 Revlon?</p> <p>4 A. Since we've owned it.</p> <p>5 Q. And when would that be?</p> <p>6 A. I don't recall.</p> <p>7 Q. Do you remember the decade since</p> <p>8 you've owned it?</p> <p>9 A. I believe it was sometime in --</p> <p>10 actually, let me amend my answer. I was still a</p> <p>11 lawyer when we acquired Revlon in 1985 and '6. I</p> <p>12 didn't join the company until '87. So I probably</p> <p>13 became director sometime in '87.</p> <p>14 Q. And are Revlon -- is Revlon, Inc. a</p> <p>15 publicly-traded company?</p> <p>16 A. Yes.</p> <p>17 Q. Are you also a director of a number</p> <p>18 of its subsidiary companies? And I'll start with</p> <p>19 Revlon Group, Inc. Are you a subsidiary of that?</p> <p>20 A. I believe those are not subsidiary</p> <p>21 companies.</p> <p>22 Q. What are they?</p> <p>23 A. I think they are holding companies.</p> <p>24 Q. Holding companies. Are you a</p> <p>25 director of Revlon Group, Inc.?</p>

<p style="text-align: right;">Page 22</p> <p>1 Drapkin</p> <p>2 A. I believe so.</p> <p>3 Q. There's a company called Revlon</p> <p>4 Consumer Products Corporation. Are you a</p> <p>5 director of that company?</p> <p>6 A. I believe so.</p> <p>7 Q. Is that a holding company as well?</p> <p>8 A. I'm not sure.</p> <p>9 Q. There's another company Revlon</p> <p>10 Worldwide Corporation. Are you a director of</p> <p>11 that company?</p> <p>12 A. I believe so.</p> <p>13 Q. Is that a holding company?</p> <p>14 A. I'm not sure where in the chain what</p> <p>15 we call RGI Worldwide and Consumer Products are.</p> <p>16 But there's an organizational chart I'm sure you</p> <p>17 can get a hold of.</p> <p>18 Q. Do you hold --</p> <p>19 A. Excuse me one second.</p> <p>20 (Discussion off the record.)</p> <p>21 BY MR. BEMIS:</p> <p>22 Q. Turning back to the companies that</p> <p>23 are most closely involved with, I think, this</p> <p>24 case, you've told us about MacAndrews & Forbes</p> <p>25 Holding, Inc. What is the business of that</p>	<p style="text-align: right;">Page 24</p> <p>1 Drapkin</p> <p>2 the question.</p> <p>3 Q. Well, do you understand that -- you</p> <p>4 understand the difference between an operating</p> <p>5 company and a holding company?</p> <p>6 A. Yes, I think I do.</p> <p>7 Q. Okay. The Coleman Company, which you</p> <p>8 heard me talking about, that's an operating</p> <p>9 company, correct? It was an operating company</p> <p>10 when you owned it?</p> <p>11 A. Yes.</p> <p>12 Q. It made things?</p> <p>13 A. Right.</p> <p>14 Q. It had factories?</p> <p>15 A. Correct.</p> <p>16 Q. Does MacAndrews & Forbes Holdings,</p> <p>17 Inc. as a corporation, does it have factories?</p> <p>18 A. No.</p> <p>19 Q. Does it make any products?</p> <p>20 A. No.</p> <p>21 Q. And I think you told me the address</p> <p>22 there was 35 East 62nd Street; is that right?</p> <p>23 A. That's correct.</p> <p>24 Q. And you -- does it have any other</p> <p>25 offices at all other than just that one office?</p>
<p style="text-align: right;">Page 23</p> <p>1 Drapkin</p> <p>2 company?</p> <p>3 A. We own a number of companies, and we</p> <p>4 buy and sell companies.</p> <p>5 Q. It's a holding company, isn't it?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And when you say you buy and sell</p> <p>8 companies, would this be in the nature of doing</p> <p>9 merger and acquisition transactions as you</p> <p>10 described in your legal practice?</p> <p>11 A. In some sense.</p> <p>12 Q. And has that been the business, as</p> <p>13 you've just described it for us, of MacAndrews &</p> <p>14 Forbes Holding since you went to work there in</p> <p>15 1987?</p> <p>16 A. Yes.</p> <p>17 Q. Does it have any business that it</p> <p>18 operates today?</p> <p>19 A. Lots. As I said, our business is</p> <p>20 owning and running companies, as well as buying</p> <p>21 and selling.</p> <p>22 Q. What business does MacAndrews and</p> <p>23 Forbes Holding, Inc. actually operate itself as</p> <p>24 opposed through another entity?</p> <p>25 A. None. But I'm not sure I understand</p>	<p style="text-align: right;">Page 25</p> <p>1 Drapkin</p> <p>2 A. Yes.</p> <p>3 Q. Where is its other office -- offices</p> <p>4 if there's more than one?</p> <p>5 A. We have spaces in various different</p> <p>6 locations in New York: 63rd Street -- I'm not</p> <p>7 exactly sure, but we do have some space at other</p> <p>8 places in New York. But the main offices are at</p> <p>9 35 East 62nd.</p> <p>10 Q. Coleman (Parent) Holdings Inc., which</p> <p>11 is one of the parties to this case, I think you</p> <p>12 said you were a director of that company?</p> <p>13 A. I believe so.</p> <p>14 Q. Where are its offices?</p> <p>15 A. Where are they today?</p> <p>16 Q. Yes. Where are they today?</p> <p>17 A. I have no idea.</p> <p>18 Q. Are you still a director of the</p> <p>19 company today?</p> <p>20 A. I have no idea.</p> <p>21 Q. What was the -- what did you -- was</p> <p>22 the -- withdrawn.</p> <p>23 What was the business of Coleman</p> <p>24 (Parent) Holdings company the last time you knew?</p> <p>25 A. To take action with respect to the</p>

<p style="text-align: right;">Page 26</p> <p>1 Drapkin</p> <p>2 interests of the Coleman Corporation, the</p> <p>3 operating company.</p> <p>4 Q. Did it have any business in and of</p> <p>5 itself or was it just a holding company?</p> <p>6 A. I believe it was just a holding</p> <p>7 company.</p> <p>8 Q. And was Coleman (Parent) Holdings</p> <p>9 then owned 100 percent by MacAndrews & Forbes</p> <p>10 Holdings, the company that you worked for?</p> <p>11 A. I don't know.</p> <p>12 Q. Did it have any --</p> <p>13 A. Are you asking about today or then or</p> <p>14 ever? The answer is going to be the same --</p> <p>15 Q. Fair question. Let's say January 1st</p> <p>16 of 1988.</p> <p>17 A. Directly or indirectly it would have</p> <p>18 been owned by MacAndrews & Forbes. Excuse me --</p> <p>19 Q. I'm sorry, I didn't mean to interrupt</p> <p>20 you.</p> <p>21 MR. MARMER: Could I have the year in</p> <p>22 that question.</p> <p>23 Q. January 1, 19 -- I said '88 and I</p> <p>24 misspoke. Let me try again.</p> <p>25 As of January 1, 1998, did Coleman</p>	<p style="text-align: right;">Page 28</p> <p>1 Drapkin</p> <p>2 A. I don't recall.</p> <p>3 Q. Did it have any material assets?</p> <p>4 A. I don't recall.</p> <p>5 Q. Did it have any offices in Florida?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did it have an office in New York?</p> <p>8 A. I don't recall.</p> <p>9 Q. Did it have any employees?</p> <p>10 A. I don't recall.</p> <p>11 Q. Any officers?</p> <p>12 A. I don't recall.</p> <p>13 Q. Did it have any directors?</p> <p>14 A. I assume it had directors, and I</p> <p>15 assume that I was one of those directors.</p> <p>16 Q. You told me you were a director of</p> <p>17 Coleman Worldwide Corporation, and I think we</p> <p>18 confirmed that in one of the filings, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And again focusing, we'll take the</p> <p>21 time period January 1, 1998. Was Coleman</p> <p>22 Worldwide Corporation owned by CLN Holdings Inc.?</p> <p>23 A. I don't know where in the chain CLN</p> <p>24 Holdings was, whether it was a subsidiary, a</p> <p>25 holding company. I just don't recall.</p>
<p style="text-align: right;">Page 27</p> <p>1 Drapkin</p> <p>2 (Parent) Holdings have any operating businesses?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. And was its business essentially a</p> <p>5 holding company directly or indirectly of a</p> <p>6 common stock of the Coleman Company,</p> <p>7 Incorporated?</p> <p>8 A. I believe so.</p> <p>9 Q. Did it ever have an office in Florida</p> <p>10 to your knowledge? Again, lets focus on 1998.</p> <p>11 A. I don't recall.</p> <p>12 Q. Did it have any employees other than</p> <p>13 directors?</p> <p>14 A. I don't know.</p> <p>15 Q. Did it maintain -- did CPH, Coleman</p> <p>16 (Parent) Holdings, maintain an office in New York</p> <p>17 City at the 35 East 62nd Street address?</p> <p>18 A. I don't know.</p> <p>19 Q. There's another company, CLN Holdings</p> <p>20 Inc., that we've been talking about. Going back</p> <p>21 now to say January 1st of 1998, did it have any</p> <p>22 operating businesses that you know of?</p> <p>23 A. I don't recall.</p> <p>24 Q. Do you know what its business was at</p> <p>25 all?</p>	<p style="text-align: right;">Page 29</p> <p>1 Drapkin</p> <p>2 Q. Is this something that you would need</p> <p>3 an organization chart to answer these questions?</p> <p>4 A. Yes, sir.</p> <p>5 Q. As of, say, January 1, 1998, did</p> <p>6 Coleman Worldwide Corporation, of which you were</p> <p>7 a director, have a business?</p> <p>8 A. I assume it did.</p> <p>9 Q. Do you know what it was, sir, as the</p> <p>10 director?</p> <p>11 A. I assume its business was owning</p> <p>12 shares of Coleman Inc.</p> <p>13 Q. Have you heard of an instrument which</p> <p>14 is abbreviated LYONs or liquid yield option</p> <p>15 notes?</p> <p>16 A. Yes.</p> <p>17 Q. Are those sometimes called LYONs,</p> <p>18 although spelled differently?</p> <p>19 A. Yes, sir.</p> <p>20 Q. What are those in the case of -- that</p> <p>21 you are familiar with?</p> <p>22 A. It's a -- it was a popular device</p> <p>23 back in the '90s to issue a form of quasi debt</p> <p>24 security that could be converted into equity or</p> <p>25 the holder could demand back cash payment at</p>

<p style="text-align: right;">Page 30</p> <p>1 Drapkin</p> <p>2 somewhat reduced interest rate because he had the</p> <p>3 option to get stock if he wanted.</p> <p>4 Q. Were they also sold at a discount</p> <p>5 from face value like zero -- like the zero coupon</p> <p>6 debentures?</p> <p>7 A. I think that would depend on the</p> <p>8 LYONs.</p> <p>9 Q. On the LYONs, right?</p> <p>10 MR. BEMIS: And again, Ms. Reporter,</p> <p>11 that's L-Y-O-N-S, not L-I-O-N.</p> <p>12 BY MR. BEMIS:</p> <p>13 Q. Did Coleman Worldwide Corporation</p> <p>14 ever issue LYONs?</p> <p>15 A. I believe we did do a LYON issue. I</p> <p>16 don't recall the details.</p> <p>17 Q. I'm going to show you what's already</p> <p>18 been marked as Morgan Stanley 241. And you are</p> <p>19 not going to need to read the whole thing. I</p> <p>20 just want you to look at the second paragraph of</p> <p>21 the first page of MS 241. Tell me when you're</p> <p>22 looking at that and I'll direct you to the</p> <p>23 sentence I want you to look at. Are you with me?</p> <p>24 A. I'm looking at the first page.</p> <p>25 Q. First page, second paragraph.</p>	<p style="text-align: right;">Page 32</p> <p>1 Drapkin</p> <p>2 A. Yes, sir.</p> <p>3 Q. You can set that aside.</p> <p>4 At any time that you were a director</p> <p>5 of the Coleman Worldwide Corporation, did it ever</p> <p>6 have any operating businesses at all?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Was it to your knowledge an operating</p> <p>9 -- excuse me, a holding company at all times?</p> <p>10 A. To my knowledge.</p> <p>11 Q. Did it hold any material assets other</p> <p>12 than stocks or securities of some kind?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Do you know what its principal</p> <p>15 address was at any time?</p> <p>16 A. No, sir.</p> <p>17 Q. Did it have an office at 35 East 62nd</p> <p>18 Street?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you know any of the directors</p> <p>21 other than yourself?</p> <p>22 A. I would be guessing.</p> <p>23 Q. I won't hold you to it, but what's</p> <p>24 your best, if you want to call it guess or</p> <p>25 assumption, as to who the other directors would</p>
<p style="text-align: right;">Page 31</p> <p>1 Drapkin</p> <p>2 A. Okay.</p> <p>3 Q. If you read halfway down that</p> <p>4 paragraph, it refers to notes due 2013, LYONs of</p> <p>5 Coleman Worldwide Corporation, a wholly-owned</p> <p>6 subsidiary of Coleman Holdings. Do you see that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. You have to answer yes or no.</p> <p>9 A. Yes, sir.</p> <p>10 Q. Thank you. Does that refresh your</p> <p>11 recollection whether Coleman Worldwide</p> <p>12 Corporation issued LYONs which were due 2013?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And the amount of the LYONs that were</p> <p>15 issued according to this Coleman escrow offering</p> <p>16 memorandum, if I read it correctly, is \$561,553;</p> <p>17 is that correct?</p> <p>18 A. I have no idea.</p> <p>19 Q. You have no idea of?</p> <p>20 A. That's your math. I see lots of</p> <p>21 different numbers here. I'd have to sit down and</p> <p>22 read it carefully to see what the exact number</p> <p>23 was.</p> <p>24 Q. But you do recall that Coleman</p> <p>25 Worldwide did issue the LYONs securities, right?</p>	<p style="text-align: right;">Page 33</p> <p>1 Drapkin</p> <p>2 have been.</p> <p>3 MR. MARMER: Objection to the form.</p> <p>4 A. I don't want to guess. I just don't</p> <p>5 recall.</p> <p>6 BY MR. BEMIS:</p> <p>7 Q. Did it have any officers?</p> <p>8 A. Same answer.</p> <p>9 Q. That you don't know?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did it have any employees of any</p> <p>12 kind?</p> <p>13 A. I don't recall.</p> <p>14 Q. You have to keep your voice up --</p> <p>15 A. I'm sorry. I don't recall.</p> <p>16 Q. You told me earlier when I asked you</p> <p>17 what the business was of MacAndrews & Forbes</p> <p>18 Holdings, Inc., you buy and sell businesses,</p> <p>19 right?</p> <p>20 A. And operate them.</p> <p>21 Q. And operate businesses you said. And</p> <p>22 you operate these businesses through other</p> <p>23 companies that you own?</p> <p>24 A. Using your definition, yes, that's</p> <p>25 correct.</p>

<p style="text-align: right;">Page 34</p> <p>1 Drapkin</p> <p>2 Q. Since 19 -- since 1987, how many</p> <p>3 businesses have -- has MacAndrews & Forbes</p> <p>4 Holdings, your employer, bought and sold?</p> <p>5 A. I don't know.</p> <p>6 Q. You have no idea at all?</p> <p>7 A. I'd have to sit down and go through</p> <p>8 all my recollections to see what we owned, what</p> <p>9 we didn't own, what we sold. What we kept.</p> <p>10 Q. I understand that --</p> <p>11 A. You're asking me right here, do I</p> <p>12 know how many businesses that we owned or</p> <p>13 operated or sold. I don't know.</p> <p>14 Q. Is it more than one?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Is it more than 10?</p> <p>17 A. Maybe.</p> <p>18 Q. Seriously, are you telling me that</p> <p>19 you don't know whether it's more than 10</p> <p>20 businesses that you've bought and sold since</p> <p>21 1987?</p> <p>22 A. I don't know the exact number.</p> <p>23 Q. I'm not going to hold you to an exact</p> <p>24 number. It's your best approximation under oath</p> <p>25 in front of the jury what it is.</p>	<p style="text-align: right;">Page 36</p> <p>1 Drapkin</p> <p>2 A. Yes, sir.</p> <p>3 Q. And some of them private companies?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And is this true on both the buy and</p> <p>6 the sell side, that is you've bought public</p> <p>7 companies?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And you've sold public companies?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And MacAndrews & Forbes has bought</p> <p>12 private companies?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And MacAndrews & Forbes, while you</p> <p>15 were there, has sold private companies?</p> <p>16 A. Yes, sir.</p> <p>17 Q. While you were at MacAndrews &</p> <p>18 Forbes, has that company or any of its</p> <p>19 subsidiaries issued debt securities, that is</p> <p>20 instruments that would qualify as securities</p> <p>21 under the 1933 Act?</p> <p>22 A. Yes, sir.</p> <p>23 Q. How many times?</p> <p>24 A. I don't know.</p> <p>25 Q. One of them you recalled was the</p>
<p style="text-align: right;">Page 35</p> <p>1 Drapkin</p> <p>2 A. Since I'm under oath and in front of</p> <p>3 the jury, I don't want to mislead anybody. I</p> <p>4 don't remember the exact number. If you want me</p> <p>5 to go back and check, I can go back and check.</p> <p>6 And we can figure out exactly the right number.</p> <p>7 Q. Tell me what's your best --</p> <p>8 A. I don't remember the dates we owned</p> <p>9 and sold Technicolor, is it before or after</p> <p>10 1987. We had lots of smaller companies, bigger</p> <p>11 companies. I just don't remember.</p> <p>12 Q. I appreciate you don't remember an</p> <p>13 exact number. And qualify the number in any way</p> <p>14 that you want. Give the jury your best estimate</p> <p>15 since 1987 of how many companies MacAndrews &</p> <p>16 Forbes Holdings, Inc. has bought and sold.</p> <p>17 MR. MARMER: Objection; asked and</p> <p>18 answered.</p> <p>19 Subject to my objection, the witness</p> <p>20 may answer again.</p> <p>21 A. I don't have a good number. It's</p> <p>22 more than one and less than 50.</p> <p>23 BY MR. BEMIS:</p> <p>24 Q. Have some of these been public</p> <p>25 companies?</p>	<p style="text-align: right;">Page 37</p> <p>1 Drapkin</p> <p>2 LYONS, right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Do you recall any others?</p> <p>5 A. Yes, sir.</p> <p>6 Q. What others?</p> <p>7 A. I mean, we do debt financing all the</p> <p>8 time. So almost every company we have either has</p> <p>9 a bank loan, which is a debt security as defined</p> <p>10 by the 1933 Act, or public debt or 144 debt. I</p> <p>11 mean, virtually every company in America has some</p> <p>12 form of debt, and our companies would be no --</p> <p>13 excuse me. Would be no exception to those rules.</p> <p>14 Q. When you say "144 debt," you're</p> <p>15 referring to Rule 144, correct?</p> <p>16 A. Yes, I am.</p> <p>17 Q. Since 1987, in an aggregate amount,</p> <p>18 how much debt financing has MacAndrews & Forbes</p> <p>19 Holdings, Inc. done?</p> <p>20 A. I don't know.</p> <p>21 Q. Is it in the hundreds of millions of</p> <p>22 dollars?</p> <p>23 A. I don't know.</p> <p>24 Q. Is it in the billions of dollars?</p> <p>25 A. You're asking me to guess how much</p>

<p style="text-align: right;">Page 38</p> <p>1 Drapkin</p> <p>2 debt we've issued since 1987--</p> <p>3 Q. I'm not asking you to guess.</p> <p>4 A. But it would be a guess, so I can't</p> <p>5 answer the question.</p> <p>6 Q. You have no idea at all as a director</p> <p>7 of the company? And you're the second ranking</p> <p>8 officer in the company, aren't you?</p> <p>9 MR. MARMER: Objection.</p> <p>10 Q. Let me rephrase the question.</p> <p>11 MR. MARMER: Are you abandoning the</p> <p>12 question?</p> <p>13 MR. BEMIS: I said I would rephrase</p> <p>14 it, so I guess that means I'm abandoning it.</p> <p>15 BY MR. BEMIS:</p> <p>16 Q. You are the second ranking officer in</p> <p>17 MacAndrews & Forbes, are you not?</p> <p>18 A. We don't rank our officers.</p> <p>19 Q. Who do you report to?</p> <p>20 A. Mr. Perelman.</p> <p>21 Q. Is he the top?</p> <p>22 A. That's correct.</p> <p>23 Q. Is it your testimony, as a man who</p> <p>24 reports to Mr. Perelman, that you do not know</p> <p>25 even an estimate of the amount of fine debt</p>	<p style="text-align: right;">Page 40</p> <p>1 Drapkin</p> <p>2 Q. Salomon?</p> <p>3 A. Salomon Brothers was an independent</p> <p>4 entity for many years, and then merged three or</p> <p>5 four times. Somewhere in that change, we've used</p> <p>6 an entity that either owned or was Salomon</p> <p>7 Brothers. But today it's part of Citigroup. And</p> <p>8 if you question is did we ever used Citigroup,</p> <p>9 the answer is yes.</p> <p>10 Q. Well, I don't remember the date of</p> <p>11 the merger so.</p> <p>12 A. I did the merger, so I actually</p> <p>13 remember it.</p> <p>14 Q. When was it?</p> <p>15 A. '82.</p> <p>16 Q. Let me turn to the -- ask you a</p> <p>17 couple of questions about -- well, withdrawn.</p> <p>18 MR. BEMIS: Could you mark this as</p> <p>19 288 please, Miss Reporter.</p> <p>20 (MS Exhibit 288, Cigar Afficionado</p> <p>21 article on Ron Perelman, marked for</p> <p>22 identification, as of this date.)</p> <p>23 BY MR. BEMIS:</p> <p>24 Q. Do you have Exhibit MS 288 in front</p> <p>25 of you?</p>
<p style="text-align: right;">Page 39</p> <p>1 Drapkin</p> <p>2 financing that MacAndrews & Forbes Holdings, Inc.</p> <p>3 or its subsidiaries have done since 1987?</p> <p>4 MR. MARMER: Object to the form.</p> <p>5 A. It is my testimony that every single</p> <p>6 one of our companies has done some form of debt</p> <p>7 financing. And you're asking me to total that</p> <p>8 amount for a sixteen year period for up to 50</p> <p>9 companies and to guess that number. I am not in</p> <p>10 the business of speculating on that number.</p> <p>11 Q. When you do debt financings for all</p> <p>12 of these companies, as you have described them to</p> <p>13 us, do you -- have you used underwriters?</p> <p>14 A. In some cases.</p> <p>15 Q. Who are some of the underwriters that</p> <p>16 you've used?</p> <p>17 A. Almost every major name on Wall</p> <p>18 Street.</p> <p>19 Q. So, for example, you have used Credit</p> <p>20 Suisse First Boston?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Have you used Morgan Stanley?</p> <p>23 A. I do not know whether we have ever</p> <p>24 used Morgan Stanley for a debt financing. I</p> <p>25 actually think not.</p>	<p style="text-align: right;">Page 41</p> <p>1 Drapkin</p> <p>2 A. Yes, sir.</p> <p>3 Q. If you turn to Page 18 of 19, there's</p> <p>4 a second paragraph. And I'd like to direct your</p> <p>5 attention there, please. You'll see it begins</p> <p>6 "Perelman."</p> <p>7 Are you there?</p> <p>8 A. Yes, sir.</p> <p>9 Q. You can read the whole paragraph if</p> <p>10 you like, but I'd like you to direct your</p> <p>11 attention to the remarks attributed to</p> <p>12 Mr. Perelman in this article. It states "and</p> <p>13 then Donald Drapkin, who's been our partner -- I</p> <p>14 mispronounced your name. I'm sorry. "Who had</p> <p>15 been our partner at Skadden, Arps, likewise</p> <p>16 reached a point where he was thinking about a</p> <p>17 change of career. And I made the same speech to</p> <p>18 him that I made to Gittis, and he joined us at</p> <p>19 that time. He's basically our in-house strategic</p> <p>20 thinker. He's our in-house investment banker.".</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Is than an accurate statement of your</p> <p>24 position at MacAndrews & Forbes Holdings, Inc.?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 42</p> <p>1 Drapkin</p> <p>2 Q. You can set that aside.</p> <p>3 Have you ever been referred to as</p> <p>4 Mr. Perelman's alter ego?</p> <p>5 A. I don't know.</p> <p>6 Q. Let me show you a document previously</p> <p>7 marked as MS 240 (handing).</p> <p>8 MR. BEMIS: It's been previously</p> <p>9 marked, Miss Reporter.</p> <p>10 BY MR. BEMIS:</p> <p>11 Q. Do you have MS 240 in front of you?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Have you seen this article before</p> <p>14 entitled "The Richest Guy in Town"?</p> <p>15 A. I don't recall.</p> <p>16 Q. Well, did you give a -- did you give</p> <p>17 an interview at some point to Mr. Craig,</p> <p>18 C-R-A-I-G, Horowitz?</p> <p>19 A. The copy of this article you're</p> <p>20 giving me does not tell me the date, the</p> <p>21 publication it's in or where it might have come</p> <p>22 from.</p> <p>23 Q. It does on the second page, sir, if</p> <p>24 you look at the footer on the second page. I'm</p> <p>25 sorry, I should have given you that page. That's</p>	<p style="text-align: right;">Page 44</p> <p>1 Drapkin</p> <p>2 done ten deals or 20 deals or 30 deals that have</p> <p>3 been spectacular," says Donald Drapkin,</p> <p>4 Perelman's alter ego and MacAndrews & Forbes,</p> <p>5 "doesn't mean he should slow down or stop. If it</p> <p>6 was only about having enough money to live, he</p> <p>7 would have stopped a long time ago. But this is</p> <p>8 what we do. We do deals, big deals, little</p> <p>9 deals, deals."</p> <p>10 Did you say that, sir?</p> <p>11 A. I have no reason to doubt it, but I</p> <p>12 don't recall.</p> <p>13 Q. Is it an accurate statement about</p> <p>14 what you do at MacAndrews & Forbes Holdings,</p> <p>15 Inc.?</p> <p>16 MR. MARMER: Object to the form.</p> <p>17 Q. As of this time in 1993 when this</p> <p>18 article was attributed to you?</p> <p>19 MR. MARMER: Same objection.</p> <p>20 A. It was certainly part of what we did.</p> <p>21 Q. You can set that aside.</p> <p>22 Now you attended the -- withdrawn. I</p> <p>23 would like to now move forward to 1998, and to</p> <p>24 the February board meetings of the Coleman</p> <p>25 Company Inc. at which time the merger transaction</p>
<p style="text-align: right;">Page 43</p> <p>1 Drapkin</p> <p>2 November -- September 6, 1993.</p> <p>3 A. And this is supposed to be -- it says</p> <p>4 "New York." Does that mean New York Magazine?</p> <p>5 Q. That I can't tell you off the top of</p> <p>6 my head, sir.</p> <p>7 A. Well, I reiterate, do I remember</p> <p>8 whether I gave an interview to some magazine</p> <p>9 eleven years ago about Ronald? I don't recall.</p> <p>10 Q. Well, turn to page -- to page 50 of</p> <p>11 the article.</p> <p>12 A. Page 50. Okay.</p> <p>13 Q. Page 50. And below the heading which</p> <p>14 reads "We will spend one billion dollars to put</p> <p>15 together a real Entertainment," and it continues</p> <p>16 over onto the next page.</p> <p>17 A. Uh-huh.</p> <p>18 Q. And the paragraph that begins "but</p> <p>19 Perelman," directly below there. Would you look</p> <p>20 at that, please --</p> <p>21 A. Yes. Yes, sir.</p> <p>22 Q. And tell me when you are done reading</p> <p>23 the paragraph.</p> <p>24 Did you make those statements that</p> <p>25 are attributable to you, sir: "Just because he's</p>	<p style="text-align: right;">Page 45</p> <p>1 Drapkin</p> <p>2 that's the subject matter of this litigation was</p> <p>3 considered by the Coleman Company, Inc. board of</p> <p>4 directors. Are you with me timewise now?</p> <p>5 A. Uh-huh.</p> <p>6 Q. You have to answer yes or no?</p> <p>7 A. Okay.</p> <p>8 Q. Now, there were at least two meetings</p> <p>9 of the board of directors in February of '98 of</p> <p>10 Coleman Company Inc. Do you recall that?</p> <p>11 A. Yes.</p> <p>12 Q. Perhaps to put this in context and</p> <p>13 move it a little quicker, the dates that we've</p> <p>14 identified are February 25th and February 27,</p> <p>15 1998. Does that square with your recollection?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Now, you attended both of those</p> <p>18 meetings, did you not?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Did you attend in your capacity as a</p> <p>21 director?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And you were also at that time</p> <p>24 employed by MacAndrews & Forbes Holdings Inc.,</p> <p>25 correct?</p>

<p style="text-align: right;">Page 46</p> <p>1 Drapkin</p> <p>2 A. Yes, sir.</p> <p>3 Q. And you reported at that time</p> <p>4 directly to Mr. Ronald O. Perelman, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. At this same time of these board</p> <p>7 meetings of the Coleman Company Inc. you were</p> <p>8 also a director of Coleman Worldwide Corporation,</p> <p>9 right?</p> <p>10 A. You've shown me documents that</p> <p>11 indicate that. I don't have a recollection.</p> <p>12 Q. Now, the board of directors meeting,</p> <p>13 and I'm going to show you the minutes that we've</p> <p>14 previously marked Morgan Stanley Exhibit 88, and</p> <p>15 feel free to refer to those if they help you at</p> <p>16 any point in the questioning.</p> <p>17 And I hand you now what's been marked</p> <p>18 as Morgan Stanley 88, which was previously</p> <p>19 marked.</p> <p>20 MR. BEMIS: And here's an extra copy</p> <p>21 for you today, Ron.</p> <p>22 BY MR. BEMIS:</p> <p>23 Q. Do you have Morgan Stanley 88 in</p> <p>24 front of you, sir?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 48</p> <p>1 Drapkin</p> <p>2 advised of a transaction with Sunbeam</p> <p>3 Corporation?</p> <p>4 A. Do you mean the entire board sitting</p> <p>5 en masse?</p> <p>6 Q. Yes, the board of directors.</p> <p>7 A. Then I would have to say that was</p> <p>8 probably this meeting.</p> <p>9 Q. Did you know about it before this</p> <p>10 meeting?</p> <p>11 A. Yes.</p> <p>12 Q. When did you first learn of a</p> <p>13 potential transaction whereby the Coleman company</p> <p>14 would be merged with Sunbeam?</p> <p>15 A. It has been discussed on and off for</p> <p>16 a number of months. I can't give you the exact</p> <p>17 dates.</p> <p>18 Q. Did you learn in your capacity as an</p> <p>19 officer and director of MacAndrews and Forbes</p> <p>20 Holdings, Inc.?</p> <p>21 A. I learned because we discuss</p> <p>22 everything that goes on in our company. So if</p> <p>23 you want to characterize that as my capacity as</p> <p>24 an officer of MacAndrews, I suppose the answer is</p> <p>25 yes.</p>
<p style="text-align: right;">Page 47</p> <p>1 Drapkin</p> <p>2 Q. If you need it, if you'd like to stop</p> <p>3 and read the minutes, I'm more than happy to let</p> <p>4 you do that. But most of my questions are not</p> <p>5 going to be very detailed on the minutes at this</p> <p>6 point. So, if you need to stop, just tell me and</p> <p>7 I'll be more than happy to let you review the</p> <p>8 document. Is that all right?</p> <p>9 A. Certainly.</p> <p>10 Q. You have the minutes for the February</p> <p>11 25th meeting, which is shown as beginning at 4</p> <p>12 p.m. eastern time. Was this to your knowledge</p> <p>13 the first time that the Coleman company's board</p> <p>14 of directors was advised of a proposed</p> <p>15 transaction whereby the Coleman company would be</p> <p>16 merged with Sunbeam corporation?</p> <p>17 A. I don't recall.</p> <p>18 Q. You don't recall whether it was the</p> <p>19 first time?</p> <p>20 A. (Indicating.)</p> <p>21 Q. You have to answer yes or no.</p> <p>22 A. I do not recall whether it was the</p> <p>23 first time.</p> <p>24 Q. When do you recall the first time the</p> <p>25 board of directors of the Coleman Company was</p>	<p style="text-align: right;">Page 49</p> <p>1 Drapkin</p> <p>2 Q. When you say "we discuss," who are</p> <p>3 the "we" that you're talking about?</p> <p>4 A. Mr. Perelman, Mr. Gittis, at the time</p> <p>5 Mr. Slovin. Maybe Mr. Levin.</p> <p>6 Q. Anyone else?</p> <p>7 A. Mr. Maher might have been there. In</p> <p>8 that period of time, I'm quite sure Jimmy would</p> <p>9 have been around.</p> <p>10 Q. Did this group that you've</p> <p>11 identified, Mr. Perelman, Mr. Geddes [sic], Bruce</p> <p>12 Slovin?</p> <p>13 A. Gittis.</p> <p>14 Q. Gittis. I'm sorry. Mr. Levin,</p> <p>15 Mr. Maher. Did this group usually meet in</p> <p>16 Mr. Perelman's townhouse for breakfast?</p> <p>17 A. Every morning.</p> <p>18 Q. And you would meet about 7:30 every</p> <p>19 morning for breakfast and go over what was going</p> <p>20 on in the companies wouldn't you?</p> <p>21 A. No.</p> <p>22 Q. How often did you meet?</p> <p>23 A. Every morning.</p> <p>24 Q. Did I have the time wrong?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 50</p> <p>1 Drapkin</p> <p>2 Q. What was the time?</p> <p>3 A. 8:30.</p> <p>4 Q. Sorry.</p> <p>5 How long would these meetings usually</p> <p>6 last for breakfast?</p> <p>7 A. It varied from day to day.</p> <p>8 Q. This was a set schedule though, was</p> <p>9 it not?</p> <p>10 A. There was breakfast available every</p> <p>11 morning five days a week for the last 25 years or</p> <p>12 whatever number of years it is. I guess it's 17</p> <p>13 years for me.</p> <p>14 Q. Was it at one of these breakfast</p> <p>15 meetings at Mr. Perelman's townhouse -- in</p> <p>16 New York, correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. At his townhouse in New York that you</p> <p>19 first learned of the potential transaction</p> <p>20 involving Sunbeam Corporation and the Coleman</p> <p>21 Company, Inc.?</p> <p>22 A. I have no idea.</p> <p>23 Q. If I asked you this, I'm apologizing</p> <p>24 for asking you again, but do you remember how you</p> <p>25 first learned as opposed to when you first</p>	<p style="text-align: right;">Page 52</p> <p>1 Drapkin</p> <p>2 A. I believe so.</p> <p>3 MR. BEMIS: Let me have MS 75, and</p> <p>4 we'll just make sure we have the right</p> <p>5 document.</p> <p>6 A. Can I ask my counsel?</p> <p>7 BY MR. BEMIS:</p> <p>8 Q. Let me get a question pending. Let</p> <p>9 me show you what's been marked as</p> <p>10 MS 75. And I don't have any questions on it</p> <p>11 right now, but I just want to find out if that's</p> <p>12 what you're referring to.</p> <p>13 A. Well, I don't recognize this.</p> <p>14 Q. So you don't recall reviewing that in</p> <p>15 your deposition preparation?</p> <p>16 A. No, sir.</p> <p>17 Q. Or seeing it either?</p> <p>18 A. No, sir.</p> <p>19 Q. You can hand that back to me.</p> <p>20 A. But I would ask -- I wanted to ask my</p> <p>21 counsel a question, because it might have been in</p> <p>22 a different form.</p> <p>23 Q. Well, that's probably -- not to be</p> <p>24 rude, and I'm not trying to be rude to you, it's</p> <p>25 probably best if we just do question and answer.</p>
<p style="text-align: right;">Page 51</p> <p>1 Drapkin</p> <p>2 learned?</p> <p>3 A. No.</p> <p>4 Q. Do you know, did you learn about it</p> <p>5 in a conversation with someone or by reviewing a</p> <p>6 document for example?</p> <p>7 A. I have no idea.</p> <p>8 Q. Do you know of any other Coleman</p> <p>9 Company board of directors who were aware of the</p> <p>10 potential transaction between Sunbeam Corporation</p> <p>11 and the Coleman Company before February 25th?</p> <p>12 MR. MARMER: Object to the form.</p> <p>13 A. Well, certainly Mr. Levin and</p> <p>14 Mr. Slovin. Who else they might have talked to</p> <p>15 prior to that, I think that you have copies of</p> <p>16 chronologies done for other matters, and who knew</p> <p>17 when, where. And I would not want to challenge</p> <p>18 those. I don't have any contemporaneous</p> <p>19 knowledge.</p> <p>20 Q. When you referred to "chronologies,"</p> <p>21 did you review some chronologies in preparation</p> <p>22 for your deposition?</p> <p>23 A. I saw one. I didn't review it.</p> <p>24 Q. Was this prepared by Wachtell,</p> <p>25 Lipton?</p>	<p style="text-align: right;">Page 53</p> <p>1 Drapkin</p> <p>2 If he wants to ask you a question later, I'd</p> <p>3 rather do it that way.</p> <p>4 A. I'm just trying to be accurate.</p> <p>5 Q. I appreciate that. And, again, I'm</p> <p>6 not trying to be rude. As you might know,</p> <p>7 there's forms we have to go through.</p> <p>8 At the February 25th meeting of the</p> <p>9 board of directors of the Coleman Company, Inc.,</p> <p>10 were there any presentations at that meeting by</p> <p>11 investment bankers?</p> <p>12 A. I recall that Credit Suisse First</p> <p>13 Boston had a book, a handout which would have</p> <p>14 been typical.</p> <p>15 Q. Typical of what?</p> <p>16 A. Any deal.</p> <p>17 Q. That the investment bankers would</p> <p>18 prepare some type of handout for the board?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Did -- was anything handed out at the</p> <p>21 board of directors meeting on February 25th that</p> <p>22 had been prepared by Morgan Stanley?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Was there any representative of</p> <p>25 Morgan Stanley at the meeting?</p>

<p style="text-align: right;">Page 54</p> <p>1 Drapkin</p> <p>2 A. Not that I recall.</p> <p>3 Q. Was the February 25th board meeting</p> <p>4 the first time that the independent members of</p> <p>5 the board of directors were told of a potential</p> <p>6 transaction between Sunbeam and the Coleman</p> <p>7 Company?</p> <p>8 A. The same answer that I gave you</p> <p>9 before.</p> <p>10 Q. You don't know?</p> <p>11 A. That there was a chronology floating</p> <p>12 around that was -- prepared more</p> <p>13 contemporaneously, that would have more accurate</p> <p>14 information than my recollection.</p> <p>15 Q. And, again, you did see this</p> <p>16 chronology during your deposition preparation?</p> <p>17 A. Again, I saw a chronology. The one</p> <p>18 that you handed me did not look familiar to me.</p> <p>19 MR. BEMIS: Miss Reporter, would you</p> <p>20 mark this as 173, please.</p> <p>21 (MS Exhibit 173, "Project Laser"</p> <p>22 chronology, marked for identification, as of</p> <p>23 this date.)</p> <p>24 BY MR. BEMIS:</p> <p>25 Q. Do you have exhibit MS 173 in front</p>	<p style="text-align: right;">Page 56</p> <p>1 Drapkin</p> <p>2 favor of the merger, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Was there any -- was there a</p> <p>5 presentation by an investment banking firm at</p> <p>6 that meeting?</p> <p>7 A. I believe Credit Suisse First Boston</p> <p>8 was at that meeting.</p> <p>9 Q. And did Credit Suisse First Boston</p> <p>10 make a presentation to the board members?</p> <p>11 A. I believe so.</p> <p>12 Q. Did anyone from Morgan Stanley attend</p> <p>13 the meeting?</p> <p>14 A. No, sir.</p> <p>15 Q. Were there any documents handed out</p> <p>16 to the directors from Morgan Stanley?</p> <p>17 A. No, sir.</p> <p>18 Q. Did the board of directors vote</p> <p>19 unanimously for the transaction?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Were any of the board members to your</p> <p>22 knowledge told how to vote?</p> <p>23 A. I don't understand the question.</p> <p>24 Q. Just that. Did they exercise -- let</p> <p>25 me try it this way. Did they exercise their own</p>
<p style="text-align: right;">Page 55</p> <p>1 Drapkin</p> <p>2 of you?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Is this the chronology that you</p> <p>5 looked at?</p> <p>6 A. No.</p> <p>7 Q. Okay. You can hand that back to me.</p> <p>8 Do you recall what this chronology</p> <p>9 looked like at all; how many pages for example?</p> <p>10 Did it have a heading on it or anything at all?</p> <p>11 A. I don't recall a heading. It had</p> <p>12 smaller type. And it was in a different -- it</p> <p>13 didn't have a letter. Maybe it's the same one as</p> <p>14 you showed me, but without the letter.</p> <p>15 Q. Without the letter.</p> <p>16 Let me go forward now to the second</p> <p>17 board meeting at which we, I think, placed it</p> <p>18 February 27, 1998. Do you recall that meeting?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And you did attend that as a</p> <p>21 director, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And you -- that was the meeting that</p> <p>24 the board of directors voted -- withdrawn. On</p> <p>25 February 27th, the Coleman board did vote in</p>	<p style="text-align: right;">Page 57</p> <p>1 Drapkin</p> <p>2 independent business judgment or were they given</p> <p>3 instructions how to vote?</p> <p>4 A. I am not aware of any director that</p> <p>5 was instructed to vote any particular way.</p> <p>6 Q. Were you told how to vote?</p> <p>7 A. Course not.</p> <p>8 Q. Like Frank Gifford, did you tell him</p> <p>9 how to vote?</p> <p>10 A. Course not.</p> <p>11 Q. How about Ann Jordan, she was there,</p> <p>12 right?</p> <p>13 A. Yes. Either there or by phone. I</p> <p>14 don't recall.</p> <p>15 Q. Did you tell her how to vote?</p> <p>16 A. Of course not.</p> <p>17 Q. Did Mr. Perelman tell anybody how to</p> <p>18 vote?</p> <p>19 A. Of course not.</p> <p>20 Q. So all of the directors, relying on</p> <p>21 the information that they had, voted using their</p> <p>22 own independent business judgment whether this</p> <p>23 was in the best interests of the shareholders of</p> <p>24 the Coleman Company, correct?</p> <p>25 A. Absolutely.</p>

Page 58

1 Drapkin
 2 Q. At least as to those directors who
 3 were first hearing about the merger at the
 4 meeting, the information that they were provided,
 5 was provided by -- withdrawn.
 6 The information that was provided at
 7 both meetings, February 25th and February 27th,
 8 that consisted of information by Credit Suisse
 9 First Boston, correct?
 10 A. There was a presentation by Credit
 11 Suisse.
 12 Q. I think you said there was also a
 13 handout of some kind, correct?
 14 A. Yes, I believe so.
 15 Q. And did you -- strike that. Did the
 16 board of directors receive a presentation from
 17 its legal advisers?
 18 A. I'm quite sure we did, but I don't
 19 recall it.
 20 Q. Do you recall that the Coleman
 21 Company did have a legal advisor in the
 22 transaction?
 23 A. Of course. I just don't remember. I
 24 don't remember if it was Wachtell. I assume it
 25 was Wachtell.

Page 59

1 Drapkin
 2 THE WITNESS: Is that correct?
 3 MR. MARMER: He does not want me to
 4 provide the answer --
 5 BY MR. BEMIS:
 6 Q. When you say "Wachtell," you mean the
 7 law firm Wachtell, Lipton?
 8 A. Yes.
 9 Q. Were there presentations --
 10 withdrawn.
 11 At the February 25th meeting -- and
 12 you can look at the minutes if you like -- was
 13 there a presentation by an attorney representing
 14 the Coleman Company?
 15 A. Yes.
 16 Q. And who was that?
 17 A. Well, assuming these minutes that you
 18 have accurately -- given me are the accurate
 19 minutes, then that would be Adam Emmerich of
 20 Wachtell, Lipton.
 21 Q. Were there any presentations by any
 22 attorneys representing Sunbeam?
 23 A. I would think not.
 24 Q. Any presentations by attorneys
 25 representing Morgan Stanley?

Page 60

1 Drapkin
 2 A. I would hope not.
 3 Q. Was -- other than the written
 4 materials that you recalled Credit Suisse First
 5 Boston preparing, do you recall any other written
 6 materials being handed out at the February 25th
 7 board meeting?
 8 A. I don't recall.
 9 Q. Now let's move forward to the 27th
 10 board meeting. Do you recall any legal
 11 presentations at that meeting?
 12 A. I'm sure -- I don't have the minutes
 13 in front of me.
 14 Q. Let me give you those. I should have
 15 given them to you, I apologize. I have them,
 16 too.
 17 I hand you what has been marked as
 18 Morgan Stanley 118.
 19 And do you have MS 118 in front of
 20 you?
 21 A. Uh-huh.
 22 Q. That's a yes, right?
 23 A. Yes, sir.
 24 Q. Okay. These previously have been
 25 identified as the minutes of the board of

Page 61

1 Drapkin
 2 directors of the Coleman Company, Inc. on
 3 February 27, 1998. Have you seen these minutes
 4 before?
 5 A. I might have looked at them.
 6 Q. In your deposition preparation?
 7 A. I might have. I don't recall.
 8 Q. How long by the way did you spend
 9 preparing for your deposition?
 10 A. I don't know, two hours,
 11 two-and-a-half hours. Something like that.
 12 Q. Did you do that yesterday?
 13 A. Yes, sir.
 14 Q. Now in -- at the meeting, now turning
 15 to February 27th, I think the question that was
 16 pending when I showed you the minutes, was there
 17 a presentation by attorneys, so --
 18 A. The answer is yes.
 19 Q. Was that the attorneys from Wachtell,
 20 Lipton again?
 21 A. Yes.
 22 Q. And they were the -- still the
 23 attorneys for the Coleman Company, correct?
 24 A. They were the shareholder -- they
 25 were counsel to both MacAndrews and Coleman.

<p style="text-align: right;">Page 62</p> <p>1 Drapkin</p> <p>2 Q. And there was -- was there a further</p> <p>3 presentation by Credit Suisse First Boston?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Were there any written materials</p> <p>6 handed out at the meeting to the directors?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And what materials were handed out to</p> <p>9 the directors?</p> <p>10 A. The First Boston presentation, and I</p> <p>11 imagine that we all would have received copies of</p> <p>12 the proposed resolutions.</p> <p>13 Q. When you say "the proposed</p> <p>14 resolutions," there are resolutions attached to</p> <p>15 the minutes, do you see those?</p> <p>16 A. Correct.</p> <p>17 Q. Is it your understanding --</p> <p>18 withdrawn.</p> <p>19 Is it your recollection that the</p> <p>20 resolutions in draft form were handed out to the</p> <p>21 directors at the meeting?</p> <p>22 A. That would have been standard</p> <p>23 operating procedure.</p> <p>24 Q. In advance of the board of directors</p> <p>25 meeting, was there a package of materials</p>	<p style="text-align: right;">Page 64</p> <p>1 Drapkin</p> <p>2 A. I don't recall.</p> <p>3 Q. Did you read the merger agreement</p> <p>4 before you voted to approve it?</p> <p>5 A. I'm sure I read a synopsis of the</p> <p>6 merger agreement or scanned the merger agreement</p> <p>7 myself since I spent many years writing them.</p> <p>8 Q. Was there a synopsis of the merger</p> <p>9 agreement prepared for the directors at either</p> <p>10 meeting?</p> <p>11 A. I don't recall. There's a summary of</p> <p>12 the proposed transaction.</p> <p>13 Q. In writing?</p> <p>14 A. It's attached to the minutes you</p> <p>15 handed me.</p> <p>16 Q. What's attached to the minutes?</p> <p>17 A. Yes.</p> <p>18 Q. Anything beyond that?</p> <p>19 A. Not that I recall.</p> <p>20 Q. At the February 27th meeting, and</p> <p>21 still focusing on that, Credit Suisse First</p> <p>22 Boston made a presentation for the second time to</p> <p>23 the board, right?</p> <p>24 A. Correct.</p> <p>25 Q. Were there written materials handed</p>
<p style="text-align: right;">Page 63</p> <p>1 Drapkin</p> <p>2 prepared for the directors for them to review</p> <p>3 when they came to the meeting?</p> <p>4 A. I don't recall.</p> <p>5 Q. Is that standard procedure in your</p> <p>6 experience?</p> <p>7 A. It is very often the case that we</p> <p>8 would receive a copy of an agenda and/or proposed</p> <p>9 resolutions. On the other hand, this was 48</p> <p>10 hours after the last board meeting and there</p> <p>11 might not have been time for that.</p> <p>12 Q. Was there a package of materials</p> <p>13 prepared for the directors for the February 25,</p> <p>14 1998 Coleman company board of directors meeting?</p> <p>15 A. I don't recall.</p> <p>16 Q. Was the merger agreement that was</p> <p>17 eventually executed by the Coleman Company, Inc.</p> <p>18 as one of the parties, was that present at the</p> <p>19 meeting?</p> <p>20 A. I would imagine that somebody had it.</p> <p>21 Q. Well, did the directors have it so</p> <p>22 they could review it?</p> <p>23 A. The actual full copy of the merger</p> <p>24 agreement?</p> <p>25 Q. Yes, sir.</p>	<p style="text-align: right;">Page 65</p> <p>1 Drapkin</p> <p>2 out by Credit Suisse First Boston at the meeting?</p> <p>3 A. I assume there was another package,</p> <p>4 yes.</p> <p>5 Q. Well, when you say you assume there</p> <p>6 was, do you have a specific recollection as you</p> <p>7 sit here today that there was a package?</p> <p>8 A. I reviewed a document yesterday that</p> <p>9 looked like the deck of cards that First Boston</p> <p>10 did.</p> <p>11 Q. When you say the "deck of cards," you</p> <p>12 mean by like an eight-and-a-half by eleven piece</p> <p>13 of paper, like a Power Point presentation?</p> <p>14 A. Exactly.</p> <p>15 Q. A/k/a a deck now in our business?</p> <p>16 A. Yes.</p> <p>17 Q. Let me show you what's previously</p> <p>18 been marked as MS 197, which has a cover page</p> <p>19 "Credit Suisse First Boston."</p> <p>20 A. Uh-huh.</p> <p>21 Q. Is this the deck you're referring to?</p> <p>22 A. I don't understand the question.</p> <p>23 Q. Maybe I misunderstood you. I thought</p> <p>24 you said there was at one of the meetings, and I</p> <p>25 think you were placing it at the 27th, a deck --</p>

<p style="text-align: right;">Page 66</p> <p>1 Drapkin</p> <p>2 a deck of cards I think you referred to it, that</p> <p>3 Credit Suisse First Boston prepared. Is this it?</p> <p>4 MR. MARMER: Object to the form.</p> <p>5 A. I don't know which meeting -- this</p> <p>6 says February 25. I don't recall if this was</p> <p>7 given out at the 25th, the 27th. It is one of</p> <p>8 the presentations -- it looks like one of the</p> <p>9 presentations that First Boston would have handed</p> <p>10 out.</p> <p>11 Q. Is this document, MS 197, one of the</p> <p>12 documents that you reviewed yesterday in</p> <p>13 preparing for your deposition?</p> <p>14 A. Actually, it doesn't look like the</p> <p>15 one that I looked at. If you notice also, this</p> <p>16 says February 25th at 7:41 p.m.</p> <p>17 That would have been way after the</p> <p>18 board meeting. So maybe this was the one for the</p> <p>19 27th. I don't know.</p> <p>20 Q. That is -- that is an inference one</p> <p>21 can draw from it, but I'm asking you. I'm not</p> <p>22 trying to tell you the answers --</p> <p>23 A. I don't recall which one is which. I</p> <p>24 don't see the deal page that shows the ratios.</p> <p>25 Q. Let me show you what's been marked in</p>	<p style="text-align: right;">Page 68</p> <p>1 Drapkin</p> <p>2 MacAndrews & Forbes Holdings, Inc. or it's</p> <p>3 subsidiary companies, however the Coleman stock</p> <p>4 was held at any moment in time as of the date of</p> <p>5 these meetings, that they would exchange</p> <p>6 approximately 44.1 million dollars of -- excuse</p> <p>7 me, not dollars but shares of Coleman stock, for</p> <p>8 approximately 14.1 million shares of Sunbeam</p> <p>9 common stock as part of the transaction; is that</p> <p>10 correct?</p> <p>11 MR. MARMER: Object to the form.</p> <p>12 A. I'll take your word for it.</p> <p>13 Q. Look at the summary of the</p> <p>14 transaction on page 1.</p> <p>15 A. That's what it says.</p> <p>16 Q. And in addition, MacAndrews and</p> <p>17 Forbes Holdings, Inc. or its subsidiary companies</p> <p>18 as the case may be, would receive approximately</p> <p>19 \$160 million in cash, correct?</p> <p>20 A. That's what the document says.</p> <p>21 Q. Well, you were at the meeting. I'm</p> <p>22 asking you now as a member of the board of</p> <p>23 directors.</p> <p>24 A. I don't remember the exact numbers,</p> <p>25 but it roughly sounds correct.</p>
<p style="text-align: right;">Page 67</p> <p>1 Drapkin</p> <p>2 a previous deposition as MS 112. Please take a</p> <p>3 look at that.</p> <p>4 A. Yeah, this looks more like what I</p> <p>5 looked at yesterday.</p> <p>6 Q. Now you're referring to MS 112 as one</p> <p>7 of the documents you believe was discussed at one</p> <p>8 of the two board of directors meetings?</p> <p>9 A. Yeah.</p> <p>10 Q. Was this document, MS 112, used at</p> <p>11 the February 25th or the February 27th meeting or</p> <p>12 both?</p> <p>13 A. I would think it would be the 27th.</p> <p>14 Q. And why do you say that?</p> <p>15 A. Because I think this has got the</p> <p>16 right exchange ratio.</p> <p>17 Q. And when you're referring to the</p> <p>18 exchange ratio, are you referring to the figures</p> <p>19 which appear on page -- that's Page 2 of the</p> <p>20 document, but it's numbered page 1 in the</p> <p>21 upper-right-hand corner?</p> <p>22 A. Correct. But I could be confused.</p> <p>23 Q. Now as I understand the -- what the</p> <p>24 board was being told by Credit Suisse First</p> <p>25 Boston that in the -- in the transaction,</p>	<p style="text-align: right;">Page 69</p> <p>1 Drapkin</p> <p>2 Q. And another part of the consideration</p> <p>3 flowing to MacAndrews and Forbes Holdings, Inc.</p> <p>4 and its subsidiary companies, as the case may be,</p> <p>5 was an assumption of debt by Sunbeam Corporation,</p> <p>6 correct?</p> <p>7 A. I believe so.</p> <p>8 Q. And according to the, again, page 1</p> <p>9 of Morgan Stanley 112, there were -- there were</p> <p>10 two sets of notes that were being assumed, a</p> <p>11 first and second priority notes; is that correct?</p> <p>12 A. That's what it says.</p> <p>13 Q. Well, you voted on the transaction,</p> <p>14 so now I'm asking you as a director of the</p> <p>15 company who voted on this for the shareholders.</p> <p>16 Is that correct?</p> <p>17 MR. MARMER: Object to the form.</p> <p>18 A. It is correct that they're assuming</p> <p>19 some notes. Whether the 496 and 525 are the</p> <p>20 exact numbers, taking the document at face value,</p> <p>21 I don't recall eight years later what the exact</p> <p>22 numbers were.</p> <p>23 Q. Okay. Well, taking it at face value,</p> <p>24 assuming that these figures are correct from</p> <p>25 Credit Suisse First Boston, and there was an</p>

<p style="text-align: right;">Page 70</p> <p>1 Drapkin</p> <p>2 assumption of debt of -- if my math is correct,</p> <p>3 \$1,021,000,000; is that correct?</p> <p>4 MR. MARMER: Object to the form.</p> <p>5 A. That's what it says.</p> <p>6 BY MR. BEMIS:</p> <p>7 Q. Well, did you as a director, did you</p> <p>8 vote for that?</p> <p>9 MR. MARMER: Object to the form.</p> <p>10 BY MR. BEMIS:</p> <p>11 Q. On behalf of the Coleman Company --</p> <p>12 A. Again, I voted in favor of the</p> <p>13 assumption of the first and second priority</p> <p>14 notes. I can't remember the exact numbers. If</p> <p>15 your math is right, it's right.</p> <p>16 Q. So in total, the consideration -- the</p> <p>17 consideration that flowed to MacAndrews, and that</p> <p>18 is on page 1 of MS 112 --</p> <p>19 A. I'm a little confused because if you</p> <p>20 look at page 2, the accreted value of the zero</p> <p>21 coupons are at 521 -- 525, rather, which is the</p> <p>22 same number as on page 1. But the 496 number</p> <p>23 does not appear in the total consideration. So I</p> <p>24 don't know where the 496 comes from.</p> <p>25 Q. Well, I'll get back to that in a</p>	<p style="text-align: right;">Page 72</p> <p>1 Drapkin</p> <p>2 notes of CLN Holdings Inc.?</p> <p>3 A. I just don't remember.</p> <p>4 Q. Let me show you what's been marked</p> <p>5 as --</p> <p>6 MR. MARMER: Mr. Bemis, at some point</p> <p>7 be thinking about where is a good breaking</p> <p>8 point.</p> <p>9 MR. BEMIS: Oh, that's fair. Let me</p> <p>10 just finish this.</p> <p>11 BY MR. BEMIS:</p> <p>12 Q. If you take out 279. It's probably</p> <p>13 the very thickest one at the bottom of the pile,</p> <p>14 please. That for the record is the Coleman</p> <p>15 Company, Inc. Notice of Merger and Appraisal</p> <p>16 Rights and Information Statement, which if you</p> <p>17 look on Page 2 is dated December 6, 1999. Is</p> <p>18 that what you have in front of you?</p> <p>19 A. Yes.</p> <p>20 Q. Now, if you'll turn to page 11 of the</p> <p>21 document, which is in the summary section. Look</p> <p>22 under the M&F transaction, and the second</p> <p>23 paragraph, if you will. And read that to</p> <p>24 yourself and tell me when you're done.</p> <p>25 A. Right. Exactly.</p>
<p style="text-align: right;">Page 71</p> <p>1 Drapkin</p> <p>2 second with you.</p> <p>3 A. Maybe it's the 40, less the cash. I</p> <p>4 mean, I just it's eight years ago. I don't</p> <p>5 remember the exact numbers.</p> <p>6 Q. Well, do you remember that there was</p> <p>7 an excess of one billion dollars of assumed debt</p> <p>8 that was part of the consideration flowing to</p> <p>9 MacAndrews as stated on Page 2 -- excuse me, page</p> <p>10 1 of MS 112? And I'm looking at the chart --</p> <p>11 A. I'm a little confused --</p> <p>12 MR. MARMER: Just one moment. I</p> <p>13 object to the form of the question.</p> <p>14 A. I'm a little confused because of page</p> <p>15 2.</p> <p>16 BY MR. BEMIS:</p> <p>17 Q. What is your confusion?</p> <p>18 A. What the total amount of assumed debt</p> <p>19 was and where it was. I know what the 525 was.</p> <p>20 I'm a little confused about the 496.</p> <p>21 Q. What was the 525?</p> <p>22 A. I assume those were the LYONs.</p> <p>23 Q. And the first and second notes,</p> <p>24 weren't those first and second notes -- and I</p> <p>25 could be wrong on this, but weren't those second</p>	<p style="text-align: right;">Page 73</p> <p>1 Drapkin</p> <p>2 Q. And those are indeed the figures</p> <p>3 rounded, if you will, that appear in the MS 112,</p> <p>4 which is the presentation by Credit Suisse First</p> <p>5 Boston?</p> <p>6 A. I don't believe that's correct.</p> <p>7 Q. Where am I incorrect?</p> <p>8 A. The \$525 million was MacAndrews &</p> <p>9 Forbes' consideration, the assumption of the</p> <p>10 parent debt.</p> <p>11 Q. Right?</p> <p>12 A. I believe the 496 was Coleman, Inc.</p> <p>13 debt, the operating company. And that was owed</p> <p>14 by the operating company, which is owned a</p> <p>15 hundred percent by MacAndrews & Forbes and the</p> <p>16 rest of the public shareholders, not MacAndrews</p> <p>17 and Forbes. That's why I was confused when you</p> <p>18 keep asking me the question. I don't believe the</p> <p>19 parent holding company had more than 525 million</p> <p>20 debt. You previously offered me a document --</p> <p>21 and I don't mean to be conducting your deposition</p> <p>22 -- MS 241, which is the LYONs. And the total</p> <p>23 there was 600 face value, which I assume when</p> <p>24 this document is referring to the \$525 million</p> <p>25 worth of accreted value, it is referring to this</p>

<p style="text-align: right;">Page 74</p> <p>1 Drapkin</p> <p>2 Coleman escrow LYONs issue. I believe that the</p> <p>3 balance of the 496 is Coleman Inc. debt, but</p> <p>4 that's what I'm guessing from the documents that</p> <p>5 you've handed me.</p> <p>6 Q. I think that you may be correct in</p> <p>7 that. So let's go back and see if we can get it</p> <p>8 fixed, and then we'll take a break. In terms of</p> <p>9 the consideration that is listed under the</p> <p>10 MacAndrews consideration and the Credit Suisse</p> <p>11 First Boston, there is the consideration in the</p> <p>12 form of the Sunbeam shares, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And that's about 14.1 million shares</p> <p>15 rounded up, correct?</p> <p>16 A. Plus the cash.</p> <p>17 Q. And then there's the cash to</p> <p>18 MacAndrews of \$160 million, correct?</p> <p>19 A. That's what it says here.</p> <p>20 Q. And then Sunbeam assumes debt of the</p> <p>21 \$525 million, which you believe is the LYONs debt</p> <p>22 that we discussed earlier, correct?</p> <p>23 A. Uh-huh.</p> <p>24 Q. You have to answer yes or no.</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 76</p> <p>1 Drapkin</p> <p>2 A. Once again, turn to page 2.</p> <p>3 Q. Okay?</p> <p>4 A. "Total Consideration to be Paid to</p> <p>5 Coleman Shareholders." There are the shares to be</p> <p>6 issued, okay?</p> <p>7 Q. Uh-huh.</p> <p>8 A. There's the cash to be issued. There</p> <p>9 are the zero coupon debt, which we now -- now</p> <p>10 shown to be the accreted value on March 15th,</p> <p>11 which was I guess the estimated closing date at</p> <p>12 that time of 525 million; whatever they had to</p> <p>13 pay out the option holders. So for the common</p> <p>14 equity they were paying 1,583,000,000, which</p> <p>15 would included \$525 million for the assumption of</p> <p>16 debt. Then there's net debt underneath that.</p> <p>17 Q. Right.</p> <p>18 A. Which is here Coleman's management</p> <p>19 estimate of the year-end debt of 1997, less 90</p> <p>20 million they expected from the sale of one of the</p> <p>21 units. Well, if you add the 440 and the 525, you</p> <p>22 get very close to the number that you just gave</p> <p>23 me for the debt assumed by Sunbeam when they did</p> <p>24 the transaction. But far be it for me to do your</p> <p>25 homework.</p>
<p style="text-align: right;">Page 75</p> <p>1 Drapkin</p> <p>2 Q. And then there is debt of the Coleman</p> <p>3 Company, \$497 million?</p> <p>4 A. No, no. I think what this is saying,</p> <p>5 that the first and second priority notes on</p> <p>6 November 15, 1997 had an accreted value of 496,</p> <p>7 which was growing to 525 on May 15, 1998. That I</p> <p>8 believe is the correct reading of that --</p> <p>9 Q. Now I understand.</p> <p>10 A. And you do not add 496 and 525. It</p> <p>11 might have been nice for us to get an extra half</p> <p>12 a billion dollars, and we wouldn't have to have</p> <p>13 this lawsuit because we would have known all the</p> <p>14 facts, but in this case, I don't believe those</p> <p>15 are additive. Sorry. And that's why I was</p> <p>16 confused. I was just trying to be accurate.</p> <p>17 Q. Well, then can you explain, I mean,</p> <p>18 I'm confused then. It does state in the</p> <p>19 Coleman's Company's statement it filed with the</p> <p>20 SEC that Sunbeam did assume one billion sixteen</p> <p>21 million in debt of Coleman and its parent</p> <p>22 corporations?</p> <p>23 A. That's correct.</p> <p>24 Q. Including 497 million debt of</p> <p>25 Coleman?</p>	<p style="text-align: right;">Page 77</p> <p>1 Drapkin</p> <p>2 Q. Okay. When I say "okay," I hear your</p> <p>3 explanation. I don't necessarily accept that's</p> <p>4 what happened --</p> <p>5 A. I'm trying to re-create it for you.</p> <p>6 I'm just trying to be accurate.</p> <p>7 Q. I appreciate how accurate you're</p> <p>8 trying to be --</p> <p>9 A. This is eight years ago, and I'm</p> <p>10 trying to put it back together in twenty seconds.</p> <p>11 MR. BEMIS: Okay. Let's take a break</p> <p>12 here.</p> <p>13 THE VIDEOGRAPHER: The time is 11:17</p> <p>14 a.m. and this completes tape number 1.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: The time is 11:33</p> <p>17 a.m. and this begins tape number 2.</p> <p>18 BY MR. BEMIS:</p> <p>19 Q. All right. Back on the record.</p> <p>20 Would you please look at 241 again.</p> <p>21 I think that should be right off to your right.</p> <p>22 A. Yes, sir.</p> <p>23 Q. Now, the instruments that are</p> <p>24 referred to in this document, the senior secured</p> <p>25 first priority discount notes due 2001, and the</p>

<p style="text-align: right;">Page 78</p> <p>1 Drapkin</p> <p>2 senior secured second priority discount notes due</p> <p>3 2001, are those the same instruments that you see</p> <p>4 referred to on page numbered 1 of the Credit</p> <p>5 Suisse First Boston materials, MS 112, under the</p> <p>6 "Description" column?</p> <p>7 A. I assume they are.</p> <p>8 Q. Okay. Now Coleman Escrow Corporation</p> <p>9 eventually changed its name and it became CLN</p> <p>10 Holdings, right?</p> <p>11 A. I take your word for it.</p> <p>12 Q. If you don't know, you don't know.</p> <p>13 Now, in addition to the -- I may just</p> <p>14 be confused as to this, and you can hopefully</p> <p>15 help me out. Are the senior secured first</p> <p>16 priority discount notes or the second security</p> <p>17 priority discount notes, both of which are</p> <p>18 referred to in MS 241, are those the same things</p> <p>19 as the liquid yield option notes due 2013?</p> <p>20 A. That's what it says on the page.</p> <p>21 Q. Which page now are you referring to,</p> <p>22 on 241?</p> <p>23 A. 241, the first page.</p> <p>24 Q. Where are you reading from?</p> <p>25 A. In the second paragraph, starting</p>	<p style="text-align: right;">Page 80</p> <p>1 Drapkin</p> <p>2 Q. It may well be, but I'm far enough</p> <p>3 along that I've now got my question answered. If</p> <p>4 you want to take a look at it, go ahead.</p> <p>5 A. No, it's just that you had me</p> <p>6 confused by talking about the LYONs.</p> <p>7 Q. I wasn't trying to confuse you.</p> <p>8 Sorry.</p> <p>9 A. I know you weren't trying, you just</p> <p>10 had that effect.</p> <p>11 Q. Okay. But I am correct that the</p> <p>12 LYONs that we've been referring to are an</p> <p>13 instrument, even though they were or were not</p> <p>14 retired, that was an instrument due 2013, and</p> <p>15 these --</p> <p>16 A. I have no idea when the LYONs were</p> <p>17 due.</p> <p>18 Q. Well, it says that on the first page</p> <p>19 of the document.</p> <p>20 A. Well, I missed that, but that's fine.</p> <p>21 Q. So the LYONs are a debt instrument.</p> <p>22 And the two discount notes that are on the front</p> <p>23 page of MS 241, those are different debt</p> <p>24 instruments as well, correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 79</p> <p>1 Drapkin</p> <p>2 "the notes are being offered."</p> <p>3 Q. Right.</p> <p>4 A. "The retirement of the LYONs is</p> <p>5 expected to occur in a series of transactions,</p> <p>6 including an exchange-over by Coleman Worldwide,</p> <p>7 and subsequent redemption by Coleman Worldwide on</p> <p>8 May 27th of all LYONs and outstanding."</p> <p>9 So I guess they're not. I guess</p> <p>10 these are the notes that replaced the LYONs.</p> <p>11 Q. To the extent that they were</p> <p>12 replaced. The LYONs due 2013 are a different</p> <p>13 debt instrument from the senior secured first</p> <p>14 priority discount notes and the second senior</p> <p>15 secured -- excuse me, senior secured second</p> <p>16 priority discount notes due 2001, correct?</p> <p>17 A. On the face of it, these look like</p> <p>18 zero or what we would call zero coupon holding</p> <p>19 company notes. And we use these to retire the</p> <p>20 LYONs. But -- and it's all here on the next</p> <p>21 page. I don't know why we're going through it.</p> <p>22 I just don't remember the chronology.</p> <p>23 Q. All right. I think you can set that</p> <p>24 aside for right now.</p> <p>25 A. It's all here on the second page.</p>	<p style="text-align: right;">Page 81</p> <p>1 Drapkin</p> <p>2 Q. Okay. You can set that aside.</p> <p>3 At the time of the closing, was --</p> <p>4 excuse me. At the time the merger agreements</p> <p>5 were executed, and they're dated as of February</p> <p>6 28, 1998, was the Coleman Company indebted to any</p> <p>7 companies affiliated with Mr. Perelman?</p> <p>8 A. I don't recall. I would add to that,</p> <p>9 there are certified financials in the Coleman</p> <p>10 financial statements that were included. And</p> <p>11 some number of these documents would show that.</p> <p>12 Q. Do you have 166 in front of you?</p> <p>13 We'll give you 166. I hand you what's been</p> <p>14 marked as Exhibit 166 -- excuse me, Morgan</p> <p>15 Stanley 166, which is the offering memorandum for</p> <p>16 the zero coupon senior subordinated debentures</p> <p>17 due 2018 that were issued in connection with the</p> <p>18 Coleman/Sunbeam transaction. Now attached --</p> <p>19 strike that. Have you seen this document before?</p> <p>20 A. No.</p> <p>21 Q. And you were referring to some</p> <p>22 audited financial statements. And I think if you</p> <p>23 look at page F -- look at F 27, which are the CLN</p> <p>24 audited financial statements.</p> <p>25 A. F 27?</p>

<p style="text-align: right;">Page 82</p> <p>1 Drapkin</p> <p>2 Q. F 27. Uh-huh.</p> <p>3 A. Yeah.</p> <p>4 Q. And CLN Holdings and subsidiaries</p> <p>5 included the Coleman Company, correct?</p> <p>6 A. It should.</p> <p>7 Q. And Worldwide, right?</p> <p>8 A. I assume so.</p> <p>9 Q. And I want you to look at the long</p> <p>10 term debt for December 31, 1997. Do you see</p> <p>11 that?</p> <p>12 A. Long term debt?</p> <p>13 Q. Uh-huh.</p> <p>14 A. You mean the 980?</p> <p>15 Q. \$980,000,447.</p> <p>16 A. Okay.</p> <p>17 Q. What does that represent?</p> <p>18 A. I don't know. I'd have to look at</p> <p>19 the footnotes.</p> <p>20 Q. Okay.</p> <p>21 A. Consolidated I guess it would</p> <p>22 probably include these notes plus whatever the</p> <p>23 operating company debt was.</p> <p>24 Q. Well, it would include all of the</p> <p>25 debt of CLN consolidated up from Coleman Company</p>	<p style="text-align: right;">Page 84</p> <p>1 Drapkin</p> <p>2 A. No, I'm just making that assumption.</p> <p>3 Q. Okay. Let's go back to my question</p> <p>4 then. What is the long term debt of \$980,000,447</p> <p>5 --</p> <p>6 A. Would you like to know?</p> <p>7 Q. Yeah.</p> <p>8 A. Yeah. Sure. 7.260 senior notes due</p> <p>9 2007 in the amount of \$200 million --</p> <p>10 Q. Where are you reading from? A little</p> <p>11 slower for the Court Reporter and for me. Where</p> <p>12 are you reading from?</p> <p>13 A. The Court Reporter doesn't have to do</p> <p>14 this. Page F 39 will give you a list of what</p> <p>15 that \$980,000,447. It's usually -- any audited</p> <p>16 financial statements will give you a break down</p> <p>17 of long term debt. Since it's in your client's</p> <p>18 document, I'll defer to you on this.</p> <p>19 Q. Well, but it may be in my client's</p> <p>20 document, but this is a CLN Holdings audited</p> <p>21 financial statement that's attached pursuant to</p> <p>22 the auditors for CLN Holding.</p> <p>23 MR. MARMER: Excuse me. There's no</p> <p>24 question pending.</p> <p>25 MR. BEMIS: All right.</p>
<p style="text-align: right;">Page 83</p> <p>1 Drapkin</p> <p>2 being if you will the bottom of the operating</p> <p>3 company up through the holding companies through</p> <p>4 CLN, right?</p> <p>5 A. It should.</p> <p>6 Q. And we know that some of the debt</p> <p>7 that had been issued is the senior secured first</p> <p>8 priority discount notes that we talked about,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And the seconds that we talked about,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. And we know there were the LYONs of</p> <p>15 2013 that in some amount, whether they had been</p> <p>16 redeemed or not, those are still outstanding?</p> <p>17 A. No.</p> <p>18 Q. No what?</p> <p>19 A. The purpose of doing the zero coupons</p> <p>20 or whatever these first and second priorities</p> <p>21 were, if I'm reading this correctly on page 2,</p> <p>22 was to retire the LYONs.</p> <p>23 Q. Is it your understanding it had all</p> <p>24 been retired by the date of the merger documents,</p> <p>25 December 27, 1998?</p>	<p style="text-align: right;">Page 85</p> <p>1 Drapkin</p> <p>2 BY MR. BEMIS:</p> <p>3 Q. Do you see the liquid yield option</p> <p>4 notes listed there?</p> <p>5 A. Yes. There's a tag end amount. I'm</p> <p>6 reading the foot note on page F 41 which tells</p> <p>7 you why they're out.</p> <p>8 Q. Well, will you at least agree with</p> <p>9 me, sir, that whatever may have been paid or --</p> <p>10 withdrawn.</p> <p>11 Would you agree with me that the</p> <p>12 outstanding debt, at least as presented in the</p> <p>13 audited financial statements of CLN Holdings as</p> <p>14 of December 31, 1997, was \$980,000,447?</p> <p>15 A. According to this document, correct.</p> <p>16 Q. And isn't it a fact, sir, that in the</p> <p>17 consideration that was paid to the MacAndrews</p> <p>18 group as a consequence of the merger agreement</p> <p>19 dated February 28th of 1998 that the long term</p> <p>20 debt of CLN Holdings was assumed by the Sunbeam</p> <p>21 Corporation?</p> <p>22 A. No.</p> <p>23 Q. Which portion was not assumed?</p> <p>24 A. That's not your question.</p> <p>25 Q. Well, assume that is my question.</p>

<p style="text-align: right;">Page 86</p> <p>1 Drapkin</p> <p>2 A. But MacAndrews & Forbes did not</p> <p>3 receive \$ 980 million. You keep asking that</p> <p>4 question.</p> <p>5 Q. Let me try again. Maybe we can't</p> <p>6 answer it and we have to ask somebody else.</p> <p>7 Under the terms of the February 28,</p> <p>8 1998 merger agreement, not necessarily the</p> <p>9 Coleman agreement but the CLN merger agreement</p> <p>10 with Sunbeam, the holdings agreement --</p> <p>11 A. Got it.</p> <p>12 Q. Am I correct that Sunbeam assumed the</p> <p>13 debt of CLN Holdings Inc. as of the date of the</p> <p>14 closing?</p> <p>15 A. CLN Holdings and its subsidiaries.</p> <p>16 Q. And its subsidiaries.</p> <p>17 A. That's correct.</p> <p>18 Q. As of at least December 31, 1997, the</p> <p>19 amount of that outstanding debt, according to the</p> <p>20 certified financial statements, is 980,000,447 --</p> <p>21 excuse me, \$980,000,447; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. In addition to the assumed debt,</p> <p>24 whatever the final figure was as of the date of</p> <p>25 the closing on March 30th of 1998 -- you would</p>	<p style="text-align: right;">Page 88</p> <p>1 Drapkin</p> <p>2 A. Ask me the question again.</p> <p>3 BY MR. BEMIS:</p> <p>4 Q. As of the date of the closing --</p> <p>5 A. March 30, 1998.</p> <p>6 Q. -- CLN Holdings Inc. or one of its</p> <p>7 affiliates received consideration of 160 million</p> <p>8 in cash?</p> <p>9 A. That is what the First Boston</p> <p>10 presentation says we were supposed to receive,</p> <p>11 and I assume that is what happened.</p> <p>12 Q. And indeed if we were to look at MS</p> <p>13 93, which is the actual merger agreement, this</p> <p>14 will get it sorted out and beyond this point --</p> <p>15 if you will look at page 8 -- withdrawn.</p> <p>16 First, let me just make the record</p> <p>17 clear that you do have in front of you Exhibit MS</p> <p>18 93 previously marked, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And this is the agreement and plan of</p> <p>21 merger among Sunbeam Corporation, Laser</p> <p>22 Acquisition Corporation, CLN Holdings Inc. and</p> <p>23 Coleman (Parent) Holdings, correct? And if you</p> <p>24 want to check the signatures on the back, I think</p> <p>25 Mr. Schwartz signed this one.</p>
<p style="text-align: right;">Page 87</p> <p>1 Drapkin</p> <p>2 agree with me that was the date of the closing,</p> <p>3 March 30, 1998?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Was there any, to your knowledge,</p> <p>6 material adjustment upward or downward in the</p> <p>7 amount of CLN Holdings Inc.'s consolidated debt</p> <p>8 as reflected on the financial statements?</p> <p>9 A. I don't know what you mean by</p> <p>10 material. They were normal accruals.</p> <p>11 Q. I mean, was there like a \$500 million</p> <p>12 reduction in the debt between the end of the year</p> <p>13 1997 and March 30th, anything like that?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. In addition to the assumption of debt</p> <p>16 then at the closing, which we know was</p> <p>17 980,000,447,000, at least as of 12/31/97, CLN</p> <p>18 Holdings or it -- received 160 million in cash,</p> <p>19 right?</p> <p>20 MR. MARMER: Excuse me, have you</p> <p>21 finished?</p> <p>22 MR. BEMIS: Yeah.</p> <p>23 MR. MARMER: Is that your question?</p> <p>24 I object to the question; misstates the</p> <p>25 record evidence.</p>	<p style="text-align: right;">Page 89</p> <p>1 Drapkin</p> <p>2 A. Okay.</p> <p>3 Q. Look at page 8.</p> <p>4 A. Yes.</p> <p>5 Q. Under heading section 3.1 (a) (i), do</p> <p>6 you see that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. You have to say yes or no.</p> <p>9 A. Yes, sir.</p> <p>10 Q. The cash consideration paid is shown</p> <p>11 here as \$159,956,765, correct?</p> <p>12 A. That's what it says.</p> <p>13 Q. And rounding that up, would you</p> <p>14 assume that's the \$160 million referred to in MS</p> <p>15 112 by Credit Suisse First Boston?</p> <p>16 A. I would indeed.</p> <p>17 Q. All right. Now, the third part of</p> <p>18 the consideration, it's in addition to the</p> <p>19 assumption of debt that we've talked about and</p> <p>20 the cash, was the issuance of Sunbeam shares,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. And according to Credit Suisse First</p> <p>24 Boston that was about 14.1 million shares,</p> <p>25 correct?</p>

<p style="text-align: right;">Page 90</p> <p>1 Drapkin</p> <p>2 A. Correct.</p> <p>3 Q. And that is consistent is it not with</p> <p>4 the merger agreement, MS 93, at again section</p> <p>5 3.1(a)(i)?</p> <p>6 A. Yes, sir.</p> <p>7 Q. All right you can set that aside.</p> <p>8 Now, at the time of the closing,</p> <p>9 March 30, 1998, when the consideration we've been</p> <p>10 discussing was paid by Sunbeam Corporation, the</p> <p>11 Coleman stock that was outstanding -- do you</p> <p>12 recall that stock?</p> <p>13 A. Uh-huh.</p> <p>14 Q. It was about 44 million shares?</p> <p>15 A. When you say "Coleman," I assume you</p> <p>16 mean the publicly-traded company, Coleman Inc.?</p> <p>17 Q. That's a fair question. The stock</p> <p>18 that CLN Holdings Inc. or its subsidiaries,</p> <p>19 because I think it may have actually been held by</p> <p>20 Worldwide at this point, but I'm not sure. That</p> <p>21 stock represented about -- was it 44 million</p> <p>22 shares?</p> <p>23 A. You're asking me about how many</p> <p>24 shares were outstanding --</p> <p>25 Q. That's a terrible question. No, that</p>	<p style="text-align: right;">Page 92</p> <p>1 Drapkin</p> <p>2 whatever the number is --</p> <p>3 Q. Just confirm what it is.</p> <p>4 A. Actually, this says -- I don't know,</p> <p>5 where was your Sunbeam -- if you go back to the</p> <p>6 Sunbeam financial statements, it will give me the</p> <p>7 total number of shares outstanding. And this</p> <p>8 says MacAndrews & Forbes has 44.1 million CLN</p> <p>9 shares. That's probably correct.</p> <p>10 The reason you're getting screwed up</p> <p>11 is CLN was the ticker I believe for Coleman.</p> <p>12 Q. Yes, I know --</p> <p>13 A. So you keep talking about CLN</p> <p>14 Holdings, which is an up top company which</p> <p>15 MacAndrews owns, while CLN is the publicly-traded</p> <p>16 symbol for Coleman on the New York Stock</p> <p>17 Exchange.</p> <p>18 Q. That I did figure out a couple of</p> <p>19 weeks ago. I appreciate that. But I am</p> <p>20 referring now to the Coleman stock that was held</p> <p>21 by CLN Holdings inc. or its direct subsidiaries.</p> <p>22 A. Well, stop saying "direct</p> <p>23 subsidiaries." That includes publicly owned --</p> <p>24 that includes Coleman. I don't know what Coleman</p> <p>25 had of its own shares in the treasury and the</p>
<p style="text-align: right;">Page 91</p> <p>1 Drapkin</p> <p>2 isn't what I'm asking you --</p> <p>3 A. -- publicly owned -- I don't know what</p> <p>4 you're asking me.</p> <p>5 Q. That's a fair question. Let me try</p> <p>6 again. At the time of the closing on March 30,</p> <p>7 1998, CLN Holdings or its affiliates owned a</p> <p>8 number of shares of the Coleman Company Inc.</p> <p>9 common stock, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And it was about 44 million shares?</p> <p>12 A. And I'll ask the question again. CLN</p> <p>13 Holdings would include publicly-traded Coleman.</p> <p>14 I don't know what shares were in Coleman's</p> <p>15 treasury. You've asked the question Coleman and</p> <p>16 its affiliates. That would include</p> <p>17 publicly-owned Coleman. So I don't understand</p> <p>18 the question you're asking. If you're asking how</p> <p>19 many shares were outstanding in Coleman Inc. that</p> <p>20 were owned, if you will, by MacAndrews & Forbes</p> <p>21 entities, that's a number I could look up..</p> <p>22 Q. How many shares of the Coleman</p> <p>23 Company Inc. common stock were owned by</p> <p>24 MacAndrews & Forbes entities?</p> <p>25 A. I think that's your 44 million or</p>	<p style="text-align: right;">Page 93</p> <p>1 Drapkin</p> <p>2 rest. I mean, you're asking a question --</p> <p>3 Q. Who owned the 44.1 million shares of</p> <p>4 Coleman stock at the time of the meeting before</p> <p>5 the closing --</p> <p>6 A. My understanding is from this</p> <p>7 document it was owned by Coleman Worldwide, which</p> <p>8 is a MacAndrews & Forbes company.</p> <p>9 Q. Let's then focus on that 44.1 million</p> <p>10 shares held by Coleman Worldwide immediately</p> <p>11 before the closing on March 30, 1998. Are you</p> <p>12 there?</p> <p>13 A. Yeah, sure.</p> <p>14 Q. Were any of those 44.1 million shares</p> <p>15 pledged as security for indebtedness?</p> <p>16 A. I would imagine that they were</p> <p>17 pledged somehow to the zero -- I'm sorry, to the</p> <p>18 priority notes that you gave me the prospectus</p> <p>19 for since they are called 600 million face amount</p> <p>20 of senior secured first priority discount notes.</p> <p>21 I imagine if you give me time and I read this, I</p> <p>22 will find out there were shares pledged.</p> <p>23 Q. Let me show you --</p> <p>24 A. Twenty-six million shares of Coleman</p> <p>25 Company Inc. -- of Coleman common stock. So the</p>

<p style="text-align: right;">Page 94</p> <p>1 Drapkin</p> <p>2 answer to your question is yes, there were</p> <p>3 apparently shares pledged to those notes.</p> <p>4 Q. Well, as of the date of the -- as of</p> <p>5 the date of the closing, March 30, 1998, were all</p> <p>6 or substantially all of these 44.1 million shares</p> <p>7 of Coleman stock pledged to secure debt?</p> <p>8 A. I don't know the answer to that.</p> <p>9 Q. Let me show you what's been marked as</p> <p>10 MS 239.</p> <p>11 MR. BEMIS: Ms. Reporter.</p> <p>12 (MS Exhibit 239, information</p> <p>13 statement dated 3/38/98, marked for</p> <p>14 identification, as of this date.)</p> <p>15 BY MR. BEMIS:</p> <p>16 Q. Turn to page -- withdrawn.</p> <p>17 Do you have MS 239 in front of you?</p> <p>18 A. Yes, sir.</p> <p>19 Q. This is an information statement</p> <p>20 dated, if you look at the last page, March 18,</p> <p>21 1998 --</p> <p>22 A. Right.</p> <p>23 Q. -- by the Coleman Company Inc., which</p> <p>24 was printed -- I believe it was printed from</p> <p>25 Edgar, but I'm not positive of that.</p>	<p style="text-align: right;">Page 96</p> <p>1 Drapkin</p> <p>2 say, substantially all of the shares are or from</p> <p>3 time to time may be. So you're asking me to tell</p> <p>4 you what they were on that date. I don't know.</p> <p>5 Q. On that date being March 18, 1998?</p> <p>6 A. That's the date you asked me, yeah.</p> <p>7 Q. That's correct.</p> <p>8 As a result of the transaction, the</p> <p>9 closing on March 30, 1998, the MacAndrews group</p> <p>10 did receive Sunbeam stock as we've discussed,</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. And that stock came -- without --</p> <p>14 withdrawn.</p> <p>15 At the time of the receipt of the</p> <p>16 stock, was that stock in any way pledged to cover</p> <p>17 any indebtedness?</p> <p>18 A. I have no idea.</p> <p>19 Q. Have you ever heard that it was</p> <p>20 pledged as of that -- as of the date of its</p> <p>21 receipt?</p> <p>22 A. I don't recall. We have loan</p> <p>23 agreements. Could it have been somehow swept</p> <p>24 into them? I have no idea.</p> <p>25 Q. I misunderstood your answer. When</p>
<p style="text-align: right;">Page 95</p> <p>1 Drapkin</p> <p>2 If you'll turn to page 17.</p> <p>3 A. Yes, sir. This says those shares</p> <p>4 pledged.</p> <p>5 Q. Well, if you look at -- withdrawn.</p> <p>6 Please look at note 1.</p> <p>7 A. I'm reading it.</p> <p>8 Q. And does it not indeed provide that</p> <p>9 by -- "that substantially all of the shares owned</p> <p>10 are pledged to secure obligations of Coleman</p> <p>11 Worldwide and CLN Holdings, and shares of</p> <p>12 intermediate holding companies are or from time</p> <p>13 to time may be pledged to secure obligations of</p> <p>14 MacAndrews & Forbes Holdings Inc. or its</p> <p>15 affiliates"?</p> <p>16 A. Okay.</p> <p>17 Q. So am I correct then that these</p> <p>18 shares that we -- the 44.1 million shares that we</p> <p>19 were speaking of were indeed pledged at this</p> <p>20 time?</p> <p>21 MR. MARMER: Objection to the form of</p> <p>22 the question.</p> <p>23 A. I have no idea.</p> <p>24 Q. Why is it that you have no idea.</p> <p>25 A. Because the words of this footnote</p>	<p style="text-align: right;">Page 97</p> <p>1 Drapkin</p> <p>2 you say it may have been, the stock once received</p> <p>3 by -- by the MacAndrews group --</p> <p>4 A. Correct.</p> <p>5 Q. -- it could have been as you put it</p> <p>6 swept into some other instrument or debt</p> <p>7 obligation of that group --</p> <p>8 A. Possibly.</p> <p>9 Q. But as you sit here today, you're not</p> <p>10 aware of that?</p> <p>11 A. No.</p> <p>12 Q. When Sunbeam delivered the stock to</p> <p>13 the MacAndrews group, as we've been using that</p> <p>14 term, it was not encumbered with any pledge by</p> <p>15 Sunbeam though, right?</p> <p>16 A. I think all of those pledged were</p> <p>17 probably removed. Although the time period --</p> <p>18 the discovery of the fraudulent financial</p> <p>19 statements occurred quickly thereafter. So the</p> <p>20 Sunbeam stock was rendered not much of an asset</p> <p>21 that you would use for security or anything.</p> <p>22 Q. Setting that issue aside, I just want</p> <p>23 to know at the moment of closing as far as you</p> <p>24 know when the stock was received by the</p> <p>25 MacAndrews group, it wasn't subject to any pledge</p>

<p style="text-align: right;">Page 98</p> <p>1 Drapkin</p> <p>2 on behalf by Sunbeam?</p> <p>3 A. Certainly not that I'm aware of.</p> <p>4 You're asking me if it was pledged by your</p> <p>5 client?</p> <p>6 Q. Yes. Exactly.</p> <p>7 A. They're a better person to ask than</p> <p>8 me.</p> <p>9 Q. Well, I'm asking you what you know,</p> <p>10 and you're telling me you're not aware of any?</p> <p>11 A. No, I'm not.</p> <p>12 Q. So as far as you know, when</p> <p>13 MacAndrews group got the Sunbeam stock, it got</p> <p>14 that stock --</p> <p>15 A. Free and clear.</p> <p>16 Q. -- free and clear, and subject to</p> <p>17 whatever terms and conditions are in the merger</p> <p>18 agreement with regard to its future disposition?</p> <p>19 A. That's not true.</p> <p>20 Q. How is that not true?</p> <p>21 A. I don't think that we could have sold</p> <p>22 the stock the next day.</p> <p>23 Q. No, I said subject to whatever terms</p> <p>24 and conditions were in merger agreement</p> <p>25 concerning the stock's disposition.</p>	<p style="text-align: right;">Page 100</p> <p>1 Drapkin</p> <p>2 Coleman Company for the year-end December 31,</p> <p>3 1997?</p> <p>4 A. That is what it purports to be.</p> <p>5 Q. Look at the financial statements</p> <p>6 which appear on page F --</p> <p>7 A. F 1 at sequence.</p> <p>8 Q. Yes, sir. And I think the page I</p> <p>9 want you to turn to is 13, F 13.</p> <p>10 A. Yes, sir.</p> <p>11 Q. The financial statements here</p> <p>12 provide, if you will, a summary of the two years</p> <p>13 for the periods ending December 31, 1996 and</p> <p>14 1995, correct?</p> <p>15 A. This part of this footnote?</p> <p>16 Q. Yes, sir.</p> <p>17 A. This is a proforma footnote.</p> <p>18 Q. I gave you the wrong page. I</p> <p>19 apologize. Let me get you the right page. I</p> <p>20 think it may be easier to work off of the</p> <p>21 selected financial data on page 13, although we</p> <p>22 can go back to the financial statements as well.</p> <p>23 A. Back to page 13?</p> <p>24 Q. Not F 13.</p> <p>25 A. Oh, page 13?</p>
<p style="text-align: right;">Page 99</p> <p>1 Drapkin</p> <p>2 A. And the security laws of the United</p> <p>3 States.</p> <p>4 Q. Which are by the way incorporated</p> <p>5 into the merger agreement?</p> <p>6 A. I don't know that sitting here, but</p> <p>7 if you say so, I agree. We don't violate the</p> <p>8 law.</p> <p>9 Q. Now, at the time -- at the time of</p> <p>10 the -- withdrawn.</p> <p>11 In 1996, did Coleman Company report a</p> <p>12 loss for the calendar year from its operations?</p> <p>13 A. I would have to look at the 1996</p> <p>14 audited financials to remember.</p> <p>15 Q. Let me show them to you. I'm going</p> <p>16 to show you what we'll mark as MS 251.</p> <p>17 (MS Exhibit 251, Coleman Company 10-K</p> <p>18 form for the year-ended December 31, 1997,</p> <p>19 marked for identification, as of this date.)</p> <p>20 BY MR. BEMIS:</p> <p>21 Q. Sir, I've handed you what's been</p> <p>22 identified as Morgan Stanley Exhibit 251.</p> <p>23 Do you have that in front of you?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And is this the form 10-K for the</p>	<p style="text-align: right;">Page 101</p> <p>1 Drapkin</p> <p>2 Q. Right. Uh-huh.</p> <p>3 A. That is the same as page F 4 in the</p> <p>4 financial statements.</p> <p>5 Q. If you want to look at that.</p> <p>6 A. I don't care. It's your pleasure.</p> <p>7 But since they're audited, they're identical.</p> <p>8 Q. So let's just work off of 13, rather</p> <p>9 than F 13 if it's okay with you.</p> <p>10 Did the Coleman Company have a net</p> <p>11 loss for 1996?</p> <p>12 A. For 1996?</p> <p>13 Q. Yes, sir.</p> <p>14 A. Yes.</p> <p>15 Q. And what was it?</p> <p>16 A. The net loss for 1996 would be</p> <p>17 \$41,000,893 -- thousand dollars.</p> <p>18 Q. And on an earnings-per-share basis,</p> <p>19 what is the loss?</p> <p>20 A. Seventy-nine cents.</p> <p>21 Q. And then for the year-ending December</p> <p>22 31, 1997, did the Coleman Company have a loss?</p> <p>23 A. Yes.</p> <p>24 Q. What was it?</p> <p>25 A. \$2,536,000,000.</p>

<p style="text-align: right;">Page 102</p> <p>1 Drapkin</p> <p>2 Q. And on an earnings-per-share basis,</p> <p>3 what was the gain or loss?</p> <p>4 A. A nickel.</p> <p>5 Q. Five cents. Okay. You can set that</p> <p>6 aside.</p> <p>7 Just to be clear, the nickel was a</p> <p>8 loss for the year not a gain, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you know what the Coleman Company</p> <p>11 -- strike that.</p> <p>12 Did the Coleman Company have a gain</p> <p>13 or a loss for the first three months of 1998?</p> <p>14 A. I don't recall. I also can't tell</p> <p>15 from these financials that you've handed me for</p> <p>16 both 1996 and 1997 where the restructuring</p> <p>17 charges were taken, which could have -- which</p> <p>18 would have impacted net earnings. So the company</p> <p>19 might have shown traditionally higher net</p> <p>20 earnings had those restructuring charges not been</p> <p>21 taken in those years. But I don't remember what</p> <p>22 they were.</p> <p>23 Q. I'm going to go back now to the board</p> <p>24 of directors meeting on the 27th. We actually</p> <p>25 were there when we digressed. We were talking</p>	<p style="text-align: right;">Page 104</p> <p>1 Drapkin</p> <p>2 A. Because I've done thousands of deals</p> <p>3 and it would be usual to rely on financial</p> <p>4 statements that Morgan Stanley and Arthur</p> <p>5 Andersen gave you.</p> <p>6 Q. Are you saying that Morgan Stanley</p> <p>7 audited the financial statements of Sunbeam</p> <p>8 Corporation?</p> <p>9 A. No. I assume not. You would know</p> <p>10 that better than I would. But I assume --</p> <p>11 Q. Do you have any knowledge that Morgan</p> <p>12 Stanley audited the financial statements of</p> <p>13 Sunbeam Corporation?</p> <p>14 MR. MARMER: We're now embarked upon</p> <p>15 a little bit of speaking over each other.</p> <p>16 MR. BEMIS: I agree and I apologize.</p> <p>17 MR. MARMER: Let's slow the pace down</p> <p>18 a bit --</p> <p>19 BY MR. BEMIS:</p> <p>20 Q. Do you have any knowledge that Morgan</p> <p>21 Stanley audited any of the financial statements</p> <p>22 of Sunbeam Corporation?</p> <p>23 A. I'm not sure I understand the</p> <p>24 question. You mean audited in a FASB sense?</p> <p>25 Q. We'll start there.</p>
<p style="text-align: right;">Page 103</p> <p>1 Drapkin</p> <p>2 about the consideration that flowed from the</p> <p>3 transaction.</p> <p>4 And going to the Coleman board</p> <p>5 meeting that you attended, we had been reviewing</p> <p>6 the Credit Suisse First Boston materials which I</p> <p>7 think we identified as MS 112. Its still in</p> <p>8 front of you.</p> <p>9 Can you tell me whether there were</p> <p>10 any materials presented at the board meeting by</p> <p>11 any other investment bankers other than Credit</p> <p>12 Suisse First Boston?</p> <p>13 A. Not that I recall.</p> <p>14 Q. To your knowledge, did Credit Suisse</p> <p>15 First Boston in doing its analysis and</p> <p>16 presentation to the board rely on the audited</p> <p>17 financial statements of Sunbeam Corporation as</p> <p>18 prepared by Arthur Andersen?</p> <p>19 A. You're asking me if Credit Suisse</p> <p>20 relied on --</p> <p>21 Q. To your knowledge. To your</p> <p>22 knowledge.</p> <p>23 A. I'm sure they did.</p> <p>24 Q. Why do you say that "I'm sure they</p> <p>25 did"?</p>	<p style="text-align: right;">Page 105</p> <p>1 Drapkin</p> <p>2 A. No. I have no knowledge.</p> <p>3 Q. Do you have any knowledge that Morgan</p> <p>4 Stanley hired anyone to do an audit of the</p> <p>5 financial statements of Sunbeam Corporation?</p> <p>6 A. You mean to check Arthur Andersen's</p> <p>7 audit?</p> <p>8 Q. Either that or do another audit?</p> <p>9 A. I have no idea.</p> <p>10 Q. And what audited -- what financial</p> <p>11 statements did Morgan Stanley provide to you</p> <p>12 personally?</p> <p>13 A. To me personally?</p> <p>14 Q. Yeah, you personally.</p> <p>15 A. None -- well, indirectly. You asked</p> <p>16 me if they gave them to First Boston and did</p> <p>17 First Boston rely on them.</p> <p>18 Q. Are you saying that Morgan Stanley</p> <p>19 gave audited financial statements to Credit</p> <p>20 Suisse First Boston?</p> <p>21 A. I assume they gave them --</p> <p>22 Q. Not assume. Do you know?</p> <p>23 MR. MARMER: We're having the same</p> <p>24 problem again.</p> <p>25 A. You're getting me a little confused.</p>

<p style="text-align: right;">Page 106</p> <p>1 Drapkin</p> <p>2 You asked me whether or not Credit Suisse First</p> <p>3 Boston would have relied on information in the</p> <p>4 audited financials provided by Arthur Anderson.</p> <p>5 Q. Let me start over. Let's not worry</p> <p>6 about what was asked in the past. Let me try</p> <p>7 again so we can move on and not confuse each</p> <p>8 other.</p> <p>9 Is it your testimony that Morgan</p> <p>10 Stanley provided financial statements of Sunbeam</p> <p>11 Corporation to Credit Suisse First Boston?</p> <p>12 A. I have no idea.</p> <p>13 Q. The Coleman Company at the time of</p> <p>14 the execution of the merger agreements, dated as</p> <p>15 of February 28th, had an accounting firm,</p> <p>16 correct?</p> <p>17 A. Coleman had an accounting firm.</p> <p>18 Q. And the accounting firm was Ernst &</p> <p>19 Young?</p> <p>20 A. E&Y is my recollection, yeah. But do</p> <p>21 you want me to check the certificate and make</p> <p>22 sure I'm right that it was E&Y?</p> <p>23 Q. Sure, if you would like to.</p> <p>24 A. Does someone know what page it's on?</p> <p>25 MR. FASMAN: F 2.</p>	<p style="text-align: right;">Page 108</p> <p>1 Drapkin</p> <p>2 think that's correct.</p> <p>3 Q. After the merger -- after the merger</p> <p>4 agreements were signed, and up to the -- which is</p> <p>5 -- we'll use February 28, 1998 and up through</p> <p>6 the closing on March 30th, did you ever have any</p> <p>7 communications with anyone about -- let me</p> <p>8 withdraw the question and start over again.</p> <p>9 Between the date of the signing of</p> <p>10 the merger agreements, which are in the record as</p> <p>11 MS 93 and MS 117, and the date of the closing,</p> <p>12 which the first agreement is March 30, 1998, did</p> <p>13 you have any face-to-face meetings with anyone at</p> <p>14 Morgan Stanley?</p> <p>15 A. I don't think so.</p> <p>16 Q. How about after the closing on March</p> <p>17 30, 1998 and say up to July 31, 1998, did you</p> <p>18 have any meetings with anyone from Morgan</p> <p>19 Stanley?</p> <p>20 A. With regards to the Coleman</p> <p>21 transaction?</p> <p>22 Q. Yes, sir. Not just a casual meeting</p> <p>23 some place. I realize you may have run into them</p> <p>24 on the street in your business or --</p> <p>25 A. Or they may have pitched us on</p>
<p style="text-align: right;">Page 107</p> <p>1 Drapkin</p> <p>2 A. Yeah, it was E&Y,</p> <p>3 BY MR. BEMIS:</p> <p>4 Q. So in connection --</p> <p>5 A. My only hesitation by the way is</p> <p>6 whether it was called E&Y in those days or some</p> <p>7 other name.</p> <p>8 Q. Fair enough.</p> <p>9 In connection with the merger</p> <p>10 transaction, the Coleman Company and CLN Holdings</p> <p>11 investment banking advice from Credit Suisse</p> <p>12 First Boston; is that right?</p> <p>13 A. Yeah.</p> <p>14 Q. And it had legal advice from the</p> <p>15 Wachtell, Lipton firm, correct?</p> <p>16 A. Correct, yeah.</p> <p>17 Q. And it had access from an accounting</p> <p>18 standpoint to its auditors Ernst & Young,</p> <p>19 correct?</p> <p>20 A. Certainly.</p> <p>21 Q. And Ernst & Young had been the</p> <p>22 auditors for the Coleman Company for a number of</p> <p>23 years preceding the closing of the merger</p> <p>24 agreement on March 30, 1998, correct?</p> <p>25 A. I don't think we changed auditors. I</p>	<p style="text-align: right;">Page 109</p> <p>1 Drapkin</p> <p>2 something.</p> <p>3 Q. Let's focus on the Coleman</p> <p>4 transaction.</p> <p>5 A. I don't believe so.</p> <p>6 Q. Before the vote of the Coleman board</p> <p>7 of directors on February 27, 1998 on the merger</p> <p>8 agreement, which has been identified as MS 117 in</p> <p>9 this case, did you speak to anyone at Morgan</p> <p>10 Stanley about the transaction?</p> <p>11 A. Not that I can recall.</p> <p>12 Q. Did you receive any documents from</p> <p>13 Morgan Stanley between the signing of the merger</p> <p>14 agreements dated as of February 28th and the</p> <p>15 closing on March 30, 1998?</p> <p>16 A. Personally?</p> <p>17 Q. Yes, sir.</p> <p>18 A. Personally, directly to me?</p> <p>19 Q. Yes, sir.</p> <p>20 A. Not that I recall.</p> <p>21 Q. And did you receive documents from</p> <p>22 Morgan Stanley through someone else?</p> <p>23 A. Well, we saw the Sunbeam press</p> <p>24 release announcing that they might miss their</p> <p>25 estimates of sales for the quarter, but was going</p>

<p style="text-align: right;">Page 110</p> <p>1 Drapkin</p> <p>2 to make it for the year. That came from</p> <p>3 somebody, I assume. We didn't just read it off</p> <p>4 the tape. I assume that Morgan or Skadden would</p> <p>5 have sent it over to us in the normal course</p> <p>6 since we were in the middle of a deal. But</p> <p>7 that's an assumption. And I did see that</p> <p>8 prosecutes release.</p> <p>9 Q. Can we refer to that as the March</p> <p>10 19th press release going forward just for</p> <p>11 simplicity?</p> <p>12 A. We can refer to it anything you like.</p> <p>13 Q. I'd like to do it that way, so that's</p> <p>14 what we'll do.</p> <p>15 Other than the March 19th press</p> <p>16 release, did you see anything -- strike that.</p> <p>17 Did you receive indirectly from any other source</p> <p>18 documents that you associated with Morgan</p> <p>19 Stanley?</p> <p>20 A. Not that I can recall.</p> <p>21 Q. Let me ask you the same questions</p> <p>22 about the correspondence from Morgan Stanley.</p> <p>23 After the signing of the merger</p> <p>24 agreements dated as of February 28, 1998 and the</p> <p>25 closing on March 30th, did you receive any</p>	<p style="text-align: right;">Page 112</p> <p>1 Drapkin</p> <p>2 did you have any conference calls where Morgan</p> <p>3 Stanley to your knowledge was on the conference</p> <p>4 call between the execution of the merger</p> <p>5 agreements dated as of February 28, 1998 and the</p> <p>6 closing on March 30, 1998?</p> <p>7 A. No.</p> <p>8 Q. Any conference calls that you're</p> <p>9 aware of from the date of the closing through</p> <p>10 July 1st of 1998?</p> <p>11 A. That I participated in?</p> <p>12 Q. Yes, that you participated in.</p> <p>13 A. Not that I recall.</p> <p>14 Q. Before February 28, 1998, did you</p> <p>15 receive any -- did you receive any documents from</p> <p>16 Morgan Stanley concerning the Sunbeam/Coleman</p> <p>17 transaction?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Before the execution of the merger</p> <p>20 documents dated as of February 28th, do you</p> <p>21 recall any correspondence from anyone at Morgan</p> <p>22 Stanley about the Coleman/Sunbeam transaction?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Can you recall -- can you recall any</p> <p>25 communications with -- from -- withdrawn.</p>
<p style="text-align: right;">Page 111</p> <p>1 Drapkin</p> <p>2 correspondence from anyone from Morgan Stanley</p> <p>3 concerning the Sunbeam transaction?</p> <p>4 A. Not that I recall.</p> <p>5 Q. After the closing on March 30, 1998,</p> <p>6 and through, say, July 1st of 1998, did you</p> <p>7 receive any correspondence from anyone from</p> <p>8 Morgan Stanley concerning this transaction?</p> <p>9 A. Not that I recall. I have to amend</p> <p>10 that. There may have been a research report that</p> <p>11 Morgan Stanley issued. I can't swear to that,</p> <p>12 but I have some vague recollection of Morgan</p> <p>13 Stanley research reports. I don't know whether O</p> <p>14 received that directly from Morgan Stanley or</p> <p>15 heard about it or someone forwarded it to us.</p> <p>16 Q. Was it a research report on Sunbeam?</p> <p>17 A. I think so, but I just can't recall.</p> <p>18 Q. Well, if you remember later in your</p> <p>19 deposition, let me know.</p> <p>20 A. I don't have a copy of it today so.</p> <p>21 Q. I appreciate that.</p> <p>22 A. But there was a research report</p> <p>23 during that period of time and it's my</p> <p>24 recollection that I looked at it.</p> <p>25 Q. Focusing now just on one other area,</p>	<p style="text-align: right;">Page 113</p> <p>1 Drapkin</p> <p>2 Can you recall any communications of</p> <p>3 any kind whether they be documents, face-to-face,</p> <p>4 telephone calls, electronic mail from Morgan</p> <p>5 Stanley to you in connection with the Sunbeam</p> <p>6 transaction?</p> <p>7 A. To me personally?</p> <p>8 Q. Yes, sir.</p> <p>9 A. No, sir.</p> <p>10 MR. BEMIS: Okay. This is a good</p> <p>11 place to break. I know you want to get out</p> <p>12 earlier, so 45 minutes for lunch? I know</p> <p>13 you want to work forever, but that's not</p> <p>14 going to work for the Court Reporter and me</p> <p>15 too. I'm going to have to take a short</p> <p>16 break. What time is your call this</p> <p>17 afternoon?</p> <p>18 THE WITNESS: No, no I have be at a</p> <p>19 presentation. What time do you anticipate</p> <p>20 finishing?</p> <p>21 MR. BEMIS: I suspect we're going to</p> <p>22 go most of the day, but it's possible we</p> <p>23 won't. It depends what you have to say. I</p> <p>24 suspect most of the day.</p> <p>25 THE WITNESS: Okay.</p>

<p style="text-align: right;">Page 114</p> <p>1 Drapkin</p> <p>2 MR. BEMIS: I appreciate your</p> <p>3 courtesy. Forty-five minutes to an hour,</p> <p>4 we'll make sure we're back and still have</p> <p>5 time to eat.</p> <p>6 Well, it's 12:25. Why don't we agree</p> <p>7 to be back here at ten after one.</p> <p>8 MR. BEMIS: Ten after one. You have</p> <p>9 an agreement --</p> <p>10 THE VIDEOGRAPHER: The time is 12:29</p> <p>11 p.m. We're going off the video record.</p> <p>12 (Lunch recess taken.)</p> <p>13 AFTERNOON SESSION</p> <p>14 (1:21 p.m.)</p> <p>15 THE VIDEOGRAPHER: The time is 1:21</p> <p>16 p.m.. We're back on the record.</p> <p>17 (Discussion off the record.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 116</p> <p>1 Drapkin</p> <p>2 A. Correct.</p> <p>3 Q. Before the signing of the document,</p> <p>4 as of February 20, 1998 do you remember having</p> <p>5 any conversations with anyone from Morgan Stanley</p> <p>6 Senior Funding? And in that I will include</p> <p>7 telephone conferences, electronic conferences,</p> <p>8 anything of that nature.</p> <p>9 A. I'd answer that by saying I don't</p> <p>10 recall having any contact with anyone from Morgan</p> <p>11 Stanley. I have no idea what Morgan Stanley</p> <p>12 Senior Funding is. With respect to Coleman.</p> <p>13 Q. Right. I understand we've been</p> <p>14 limiting ourselves with respect to Coleman.</p> <p>15 Let me show you what's been marked as</p> <p>16 MS 93. I'm going to hand you what's previously</p> <p>17 been marked as Morgan Stanley Exhibit 93, which</p> <p>18 you should have in front of you.</p> <p>19 Sir, would you look at section 6.7 of</p> <p>20 MS 93 and tell me when you are there.</p> <p>21 A. Yes, sir.</p> <p>22 Q. This session is titled "Access to</p> <p>23 Information," colon, or it maybe a semi colon,</p> <p>24 Confidentiality." Do you see that?</p> <p>25 A. Sure.</p>
<p style="text-align: right;">Page 115</p> <p>1 Drapkin</p> <p>2 DONALD G. DRAPKIN,</p> <p>3 resumed, having been previously duly sworn,</p> <p>4 was examined and testified further as</p> <p>5 follows:</p> <p>6 EXAMINATION (Cont'd.)</p> <p>7 BY MR. BEMIS:</p> <p>8 Q. Right before we broke, I was asking</p> <p>9 you some questions about Morgan Stanley. And I</p> <p>10 want to talk now about Morgan Stanley Senior</p> <p>11 Funding, the other entity in these cases.</p> <p>12 At any time between the approval of</p> <p>13 the merger agreements, which were dated as of</p> <p>14 February 28, 1998, and the closing on March 30th,</p> <p>15 did you have any face-to-face meetings or</p> <p>16 conference calls for example with anyone from</p> <p>17 Morgan Stanley Senior Funding about the Coleman</p> <p>18 acquisition?</p> <p>19 A. I didn't have any contact with</p> <p>20 respect to the Coleman deal with anybody from</p> <p>21 Morgan Stanley or any related entity about this</p> <p>22 deal that I can recall any of this time.</p> <p>23 Q. And "any of this time frame," that</p> <p>24 would be, say, February 27th through the date I</p> <p>25 asked you earlier, which would be July 8th?</p>	<p style="text-align: right;">Page 117</p> <p>1 Drapkin</p> <p>2 Q. I have a couple of questions about</p> <p>3 this section. If you'd like to read it, please</p> <p>4 do so and let me know when you're finished.</p> <p>5 Otherwise, let me know and I'll go ahead.</p> <p>6 A. I've read it.</p> <p>7 Q. At any time after the execution of</p> <p>8 this document, MS 93, as of February 27, 1998,</p> <p>9 were you ever informed that anyone representing</p> <p>10 the Coleman Company Inc. or CLN Holdings Inc. had</p> <p>11 sought to review the "books, reports, property,</p> <p>12 plans and personnel of Sunbeam"?</p> <p>13 A. I'm not -- I wasn't working on the</p> <p>14 transaction, so I can't tell you what the scope</p> <p>15 of the due diligence that the law firms or First</p> <p>16 Boston or even us internally did.</p> <p>17 Q. When you say you weren't working on</p> <p>18 the transaction, were you working on some other</p> <p>19 transactions during this period?</p> <p>20 A. I imagine I was working on a number</p> <p>21 of them, but I seriously hope you don't ask me</p> <p>22 what they were.</p> <p>23 Q. What were they?</p> <p>24 A. I don't remember. I'm always working</p> <p>25 on something.</p>

Page 118

Page 120

1 Drapkin
 2 Q. But if I understand you correctly,
 3 you did not work on the Sunbeam/Coleman
 4 transaction as an officer or an employee of the
 5 MacAndrews group, right?
 6 A. Other than to hear chitchat, it was
 7 not an area of my primary responsibility.
 8 Q. There was -- withdrawn.
 9 Did you ever hear as chitchat as you
 10 put it whether anyone representing the MacAndrews
 11 group, and all of the companies within the chain
 12 that would be related to the acquisition, if they
 13 ever reviewed the room of document that had been
 14 set up at Skadden, Arps for due diligence?
 15 A. I don't have any great recollection.
 16 I'm sure we did, but I don't know of my own.
 17 Q. Would you -- at any of the board of
 18 directors meetings -- withdrawn.
 19 Were there any board of director
 20 meetings of the Coleman Company after the
 21 February 27th meeting and before the closing on
 22 March 30, 1998 at which the Sunbeam/Coleman
 23 acquisition was discussed in any way?
 24 A. Not that I recall.
 25 Q. So the last --

1 Drapkin
 2 in the sense -- let me withdraw the question.
 3 The last meeting of the board of
 4 directors of the Coleman Company Inc. that you
 5 attended either in person or by telephone would
 6 have been the February 27th meeting?
 7 A. The last formal all together board
 8 meeting that I recall was then. Could we have
 9 signed consents relating to some action or
 10 something? That's quite possible, but I don't
 11 recall.
 12 Q. I hand you, sir, what has previously
 13 been marked as Morgan Stanley 39, which is a
 14 document. It is I believe what you were
 15 referring to as the March 19, 1998 press
 16 release.
 17 First, would you take a look at that
 18 and tell me when you're done reviewing it.
 19 A. Yes, I've looked at it.
 20 Q. Is this the press release that you
 21 referred to earlier as the March 19, 1998 press
 22 release?
 23 A. Yes.
 24 Q. And did you upon receipt of -- strike
 25 that.

Page 119

Page 121

1 Drapkin
 2 A. There would be minutes. You'd have
 3 to refresh my recollection.
 4 Q. I don't have any, that's why I'm
 5 asking the question.
 6 Do you recall any telephone
 7 conference with directors about any issues after
 8 February 27, 1998 and before the closing --
 9 A. Well, remember, some of my cohorts at
 10 work were directors. So the conversation would
 11 have turned to Coleman a number of times post
 12 February 27th.
 13 Q. I'd like you to focus just on
 14 director meetings as opposed to a conversation
 15 you may have had with someone who also happens to
 16 be a director --
 17 A. I'm just trying to be accurate.
 18 Q. And I appreciate that. And that's a
 19 fair question, but now I want to just concentrate
 20 on a director meeting, an official director
 21 meeting --
 22 A. Not that I recall.
 23 Q. So the last, if you will, official
 24 meeting of the Coleman board of directors while
 25 it was still an affiliate of the MacAndrews group

1 Drapkin
 2 Do you remember how you received the
 3 press release?
 4 A. No.
 5 Q. Did you discuss it with any other
 6 board members? Now both formally or informally.
 7 A. I don't recall specific
 8 conversations, but it would be impossible for me
 9 not to have discussed it.
 10 Q. So I take it the press release was
 11 something that was important to you?
 12 A. Anything with respect to Sunbeam
 13 would be important to me.
 14 Q. Did you -- withdrawn.
 15 Do you have any recollection of who
 16 it is that you spoke to the press release about
 17 after you received it, recognizing you didn't
 18 have a formal board meeting?
 19 A. I'll repeat what I said before. I
 20 don't have any specific recollections of any
 21 particular conversation, but I remember the press
 22 release. I remember the interest that it caused,
 23 and it would have been impossible that we didn't
 24 discuss it.
 25 Q. Was it discussed at these breakfast

<p style="text-align: right;">Page 122</p> <p>1 Drapkin</p> <p>2 meetings at Mr. Perelman's home in his townhouse?</p> <p>3 A. Well, Mr. Maher, who was working on</p> <p>4 the transaction, his office is next door to</p> <p>5 mine. Mr. Schwartz, who is our general counsel,</p> <p>6 his office is twenty feet away. Mr. Perelman,</p> <p>7 Mr. Gittis and I, in addition to having breakfast</p> <p>8 everyday, have lunch together for the last 17</p> <p>9 years maybe three or four times a week and very</p> <p>10 frequently dinner, in addition to being together</p> <p>11 throughout most of the day. So you want me to</p> <p>12 pinpoint when we might have discussed this? I</p> <p>13 can't do that.</p> <p>14 Q. No, I really wasn't asking you the</p> <p>15 exact date. Did you discuss it --</p> <p>16 A. At the breakfast. I have no idea.</p> <p>17 Q. Okay. Did you discuss it at the</p> <p>18 lunch?</p> <p>19 A. We discussed it sometimes. I have no</p> <p>20 recollection of the times, dates, substance of</p> <p>21 the discussion or vague -- of the discussion, but</p> <p>22 I know it was discussed.</p> <p>23 Q. Let me shortcut this. You know it</p> <p>24 was discussed and the group it would have been</p> <p>25 discussed with are the people you've identified</p>	<p style="text-align: right;">Page 124</p> <p>1 Drapkin</p> <p>2 have had most likely, as you say, to discuss the</p> <p>3 press release, if you were skiing, it could have</p> <p>4 been skiing or it could have been at breakfast</p> <p>5 lunch or these dinner meetings --</p> <p>6 A. Well, if I was in Aspen I didn't have</p> <p>7 breakfast, lunch and dinner. So I wouldn't have</p> <p>8 been discussing it.</p> <p>9 Q. I'm putting it both in the</p> <p>10 alternative well as the conjunctive --</p> <p>11 A. I talk to the office 19 times a day</p> <p>12 when I'm not there.</p> <p>13 Q. So you weren't out of communication</p> <p>14 when you were skiing if you were skiing?</p> <p>15 A. No.</p> <p>16 Q. As a result of the discussions that</p> <p>17 you had or -- and I realize you said it was</p> <p>18 impossible that you did not have them, did you</p> <p>19 direct that any action be taken?</p> <p>20 A. Did I personally direct any action?</p> <p>21 Q. Yes?</p> <p>22 A. No.</p> <p>23 Q. Are you aware of anyone on behalf of</p> <p>24 Coleman, CPH or CLN Holdings taking any action?</p> <p>25 A. I believe, and I know you're going to</p>
<p style="text-align: right;">Page 123</p> <p>1 Drapkin</p> <p>2 for us: Mr. Perelman, Mr. Maher, Mr. Schwartz,</p> <p>3 Mr. Gittis; is that right?</p> <p>4 A. Yeah. Mr. Nesbitt, who was working</p> <p>5 on the case -- the transaction, not the case. I</p> <p>6 don't know, Richard Halperin might have been</p> <p>7 around in those days. We have a very small</p> <p>8 office, so it would be very unusual for us not to</p> <p>9 discuss whatever goes on.</p> <p>10 Q. Were you out of -- were you in the</p> <p>11 United States --</p> <p>12 A. Oh, actually, thank you very much. I</p> <p>13 have a ski house in Aspen. And on March 19th --</p> <p>14 I don't know where I was March 19, 1998, but</p> <p>15 traditionally the last two weeks in March are my</p> <p>16 kid's--</p> <p>17 Q. Spring break?</p> <p>18 A. Spring break. So there's an</p> <p>19 excellent chance that I was skiing in Aspen those</p> <p>20 two weeks. I'd have to go back and check the</p> <p>21 records. It's also an excellent chance that</p> <p>22 Mr. Maher who has a house not far from me in</p> <p>23 Aspen was also skiing in Aspen those two weeks.</p> <p>24 But sitting here now, I just don't remember.</p> <p>25 Q. And the opportunities that you would</p>	<p style="text-align: right;">Page 125</p> <p>1 Drapkin</p> <p>2 ask me all kinds of details, but I believe the</p> <p>3 Sunbeam side of the transaction -- and whether</p> <p>4 that was Morgan Stanley or Skadden or Al Dunlap</p> <p>5 himself, probably called someone at MacAndrews.</p> <p>6 It wouldn't have been me -- telling then they</p> <p>7 were going to issue this press release and it</p> <p>8 wasn't a big deal. But I don't remember who that</p> <p>9 was and who communicated that.</p> <p>10 Q. Following receipt of the press</p> <p>11 release, do you recall anyone in the MacAndrews</p> <p>12 group of people, regardless which company they</p> <p>13 were affiliated with, being asked to take any</p> <p>14 action with regard to the information in the</p> <p>15 press release?</p> <p>16 A. What I'm saying is I think the</p> <p>17 Sunbeam people preempted that by calling and</p> <p>18 warning us about this press release and saying,</p> <p>19 Don't worry about it. It's not a big deal.</p> <p>20 Q. So as I understand it then, whatever</p> <p>21 happened, nothing happened after the issue of the</p> <p>22 press release on behalf of the MacAndrews -- --</p> <p>23 A. I can't tell you what Mr. Schwartz or</p> <p>24 Mr. Gittis or anybody else did. I know I didn't</p> <p>25 do anything.</p>

<p style="text-align: right;">Page 126</p> <p>1 Drapkin</p> <p>2 Q. Of the group that you've identified</p> <p>3 in the MacAndrews group, from Mr. Perelman on</p> <p>4 down to yourself, and I'm not hierarching</p> <p>5 (phonetic) anybody, who would be the person in</p> <p>6 your judgment would most likely know what, if</p> <p>7 any, steps were taken in follow up on the press</p> <p>8 release?</p> <p>9 A. In this case?</p> <p>10 Q. In this case.</p> <p>11 A. Mr. Maher. Mr. Maher and Mr.</p> <p>12 Schwartz maybe.</p> <p>13 Q. Mr. Barry Schwartz, right?</p> <p>14 A. Correct. But more likely Mr. Maher.</p> <p>15 Q. Recognizing that you didn't</p> <p>16 personally do anything, did you ever hear back</p> <p>17 from any source that somebody had done something</p> <p>18 to follow up on the press release?</p> <p>19 A. My only recollection is that whether</p> <p>20 it was -- again, whether it was from Sunbeam or</p> <p>21 Morgan or Skadden, they said they had a -- they</p> <p>22 were slow in the first couple of months, but they</p> <p>23 were going to make it up in the third quarter and</p> <p>24 this was not a big deal.</p> <p>25 Q. Following the -- following the</p>	<p style="text-align: right;">Page 128</p> <p>1 Drapkin</p> <p>2 MR. BEMIS: Miss Reporter, that was</p> <p>3 previously marked. And I think that was</p> <p>4 Mr. Slovin's deposition.</p> <p>5 BY MR. BEMIS:</p> <p>6 Q. Do you have MS 36 in front of you?</p> <p>7 A. Sure.</p> <p>8 Q. Tell me when you're done looking at</p> <p>9 it, and I'll just have a couple of questions for</p> <p>10 you.</p> <p>11 A. Yeah. I'm reading it.</p> <p>12 Q. Okay.</p> <p>13 Did you see a copy of this article</p> <p>14 from The New York Times dated March 20, 1998?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you recall, even if you didn't see</p> <p>17 this article, that the price of the Sunbeam</p> <p>18 common stock did fall in trading 9.4 percent</p> <p>19 following the March 19th press release?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And, now, going back to MS 93, which</p> <p>22 is the merger agreement, I think we previously</p> <p>23 established that part of the consideration that</p> <p>24 the MacAndrews group was going to receive was</p> <p>25 approximately 14.1 million shares of Sunbeam</p>
<p style="text-align: right;">Page 127</p> <p>1 Drapkin</p> <p>2 issuance of the press release, did you -- I</p> <p>3 recognize you might have been out of town,</p> <p>4 however -- did you for example see an article</p> <p>5 we're going to mark as MS 36?</p> <p>6 A. Actually, could have been Mr. Levin</p> <p>7 as well. Thinking back, Jerry Levin -- it's very</p> <p>8 likely Jerry Levin was in contact with whoever</p> <p>9 his counterpart was at Sunbeam.</p> <p>10 Excuse me. Actually, Gordon Rich</p> <p>11 might have called Morgan Stanley as well.</p> <p>12 Q. Gordon Rich was not with Morgan</p> <p>13 Stanley. Gordon Rich was with Credit Suisse</p> <p>14 First Boston.</p> <p>15 A. I said Gordon Rich might have called</p> <p>16 someone at Morgan Stanley --</p> <p>17 Q. I'm sorry. I misheard you. I'm</p> <p>18 sorry.</p> <p>19 Why do you think that might have</p> <p>20 happened?</p> <p>21 A. Just would seem like the normal thing</p> <p>22 to do.</p> <p>23 Q. Let me show you what's been marked as</p> <p>24 MS 36m which is what I started to do when we got</p> <p>25 distracted.</p>	<p style="text-align: right;">Page 129</p> <p>1 Drapkin</p> <p>2 Corporation, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Was there any provision in MS 93, the</p> <p>5 merger agreement, for a renegotiation of the</p> <p>6 consideration if the price of Sunbeam stock fell</p> <p>7 or rose between the date of the agreement and the</p> <p>8 date of the closing, March 30, 1998?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Are you familiar with the term</p> <p>11 "collar," C-O-L-L-A-R?</p> <p>12 A. Yes, I am.</p> <p>13 Q. Tell the jury what a collar is.</p> <p>14 A. It's exactly what you just said. In</p> <p>15 a lot of cases if the price of the stock goes too</p> <p>16 far one way or the other up or down, the ultimate</p> <p>17 price is adjusted within that collar. It can</p> <p>18 work a hundred different ways, but that's the</p> <p>19 general idea.</p> <p>20 Q. So in this case with regard to both</p> <p>21 the agreement -- let me rephrase the question.</p> <p>22 With regard to MS 93, which is the</p> <p>23 holdings merger agreement, there was no collar in</p> <p>24 that agreement to protect the MacAndrews group's</p> <p>25 Sunbeam stock against a price drop or the benefit</p>

<p style="text-align: right;">Page 130</p> <p>1 Drapkin</p> <p>2 of a price increase?</p> <p>3 A. There was no collar to protect</p> <p>4 against short term swings in the price of</p> <p>5 Sunbeam's stock, but there were lots of other</p> <p>6 protections against bad things happening.</p> <p>7 Q. With regard to -- are you talking</p> <p>8 about -- withdrawn.</p> <p>9 Are you speaking of a material</p> <p>10 adverse event or consequence, "MAC" as they're</p> <p>11 sometimes called?</p> <p>12 A. Well, that's one. But the second,</p> <p>13 and the one you pointed me to just a minute ago</p> <p>14 following the access to information and</p> <p>15 confidentiality, if you read the next paragraph,</p> <p>16 it's called "Advice of Changes." That was</p> <p>17 supposed to mean that they would tell us if</p> <p>18 anything bad was happening.</p> <p>19 Q. We'll come back to that in a second,</p> <p>20 but what you were speaking -- were you speaking</p> <p>21 of anything beyond a material adverse event or</p> <p>22 consequence?</p> <p>23 A. Yeah, sure. They had to tell us if</p> <p>24 anything bad was going on.</p> <p>25 Q. Well, that is a material adverse</p>	<p style="text-align: right;">Page 132</p> <p>1 Drapkin</p> <p>2 shall promptly advise the other party orally and</p> <p>3 in writing of any rep and warranty wouldn't be</p> <p>4 true in a material respect. Failure to comply,</p> <p>5 any change of event, having which insofar as can</p> <p>6 be reasonably foreseen would have, in the case of</p> <p>7 Laser an material adverse effect" -- and on and</p> <p>8 on and on or what you have called a MAC out.</p> <p>9 Q. Where does that provide that if there</p> <p>10 had been -- in the documents does it provide if</p> <p>11 there is a change in the price of the Sunbeam</p> <p>12 common stock --</p> <p>13 A. That wasn't the question that you</p> <p>14 asked me.</p> <p>15 Q. Then I misspoke. I may have not</p> <p>16 asked the question the way I wanted, so I'll try</p> <p>17 again.</p> <p>18 Is there anywhere in Morgan Stanley</p> <p>19 117 that there is a provision that allows Coleman</p> <p>20 to either not go forward with the closing, delay</p> <p>21 the closing, or terminate the agreement if there</p> <p>22 is a decrease in the price of Sunbeam common</p> <p>23 stock between February 27, 1998 and the date of</p> <p>24 the closing of the merger agreement?</p> <p>25 A. There is no collar, if that's</p>
<p style="text-align: right;">Page 131</p> <p>1 Drapkin</p> <p>2 consequence as defined in the document --</p> <p>3 A. I didn't parse that through, but if</p> <p>4 that's so at the time, then okay.</p> <p>5 Q. Let's go to the Coleman agreement,</p> <p>6 which is MS 117. I don't know if you have that</p> <p>7 in front of you, and if you don't, let me pull it</p> <p>8 out for you.</p> <p>9 Do you have MS 117 in front of you?</p> <p>10 A. Yes.</p> <p>11 Q. You can set 93 aside if you like just</p> <p>12 for a minute. We'll probably come back to it,</p> <p>13 but just so you don't have so much paper.</p> <p>14 A. Okay.</p> <p>15 Q. Was there any provision in MS 117,</p> <p>16 which is the agreement and plan of merger</p> <p>17 involving the Coleman Company Inc., that</p> <p>18 protected the public shareholders from a decrease</p> <p>19 in the price of the Coleman or the Sunbeam common</p> <p>20 stock after February 28th -- excuse me, February</p> <p>21 27, 1998 and prior to closing?</p> <p>22 A. Sure.</p> <p>23 Q. Where is it?</p> <p>24 A. Section 6.3. "Upon obtaining</p> <p>25 knowledge of any occurrence, company and Laser</p>	<p style="text-align: right;">Page 133</p> <p>1 Drapkin</p> <p>2 question that you're asking, that I'm aware of.</p> <p>3 Q. So in effect in both the MS 93 and</p> <p>4 117 there were no collars imposed as of February</p> <p>5 27, 1998 on the marketplace of Sunbeam's stock?</p> <p>6 A. No. Of course it wouldn't have</p> <p>7 mattered, but no.</p> <p>8 Q. Let me show you another article which</p> <p>9 we'll mark as MS 215.</p> <p>10 This was previously marked in</p> <p>11 Mr. Slovin's deposition. Please take a minute</p> <p>12 and look at MS 215.</p> <p>13 Do you have MS 215 in front of you?</p> <p>14 A. Yeah. I'm reading it.</p> <p>15 Q. When you're done reading it, just let</p> <p>16 me know. I just have a couple of questions for</p> <p>17 you.</p> <p>18 A. Okay.</p> <p>19 Q. Do you read The Wall Street Journal?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And I'm not trying to be facetious,</p> <p>22 but when you're on vacation skiing, do you read</p> <p>23 The Wall Street Journal, if you can get a copy?</p> <p>24 A. Either I read it if I can get a copy</p> <p>25 or I read the headlines online.</p>

<p style="text-align: right;">Page 134</p> <p>1 Drapkin</p> <p>2 Q. Did you see this article that</p> <p>3 appeared in The Wall Street Journal on Friday</p> <p>4 March 20, 1998 regarding Sunbeam?</p> <p>5 A. I have no recollection.</p> <p>6 Q. The article states in the</p> <p>7 approximately the fifth paragraph beginning,</p> <p>8 "While Sunbeam's," do you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. "While Sunbeam's announcement didn't</p> <p>11 discuss the company's earnings outlook, analysts</p> <p>12 said the sales disappointment is bound to affect</p> <p>13 profit. Sunbeam officials didn't return calls</p> <p>14 seeking comment." Do you see that?</p> <p>15 A. Uh-huh.</p> <p>16 Q. You have to answer yes or no.</p> <p>17 A. Yes, I see it. But it also says on</p> <p>18 the side there "redacted privileged."</p> <p>19 Q. This was produced by your people. I</p> <p>20 don't know what was redacted from it so.</p> <p>21 In that paragraph, when it refers to</p> <p>22 "the sales disappointment is bound to affect</p> <p>23 profit," did you reach the same conclusion when</p> <p>24 you read the press release of March 19th?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 136</p> <p>1 Drapkin</p> <p>2 paragraph?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Were you aware that earlier in 1998</p> <p>5 that Sunbeam had announced that its quarterly</p> <p>6 earnings for 1997 fourth quarter had fallen short</p> <p>7 of analysts' expectations?</p> <p>8 A. I don't recall.</p> <p>9 Q. Look at the very last --</p> <p>10 A. I read the paragraph, and I see it</p> <p>11 says they have done it before, but I -- and I</p> <p>12 don't remember sitting here whether or not they</p> <p>13 made their numbers for the year or not despite</p> <p>14 lowering sales forecast. I just don't remember.</p> <p>15 I'm sure I did at the time.</p> <p>16 Q. In your judgment, given the years of</p> <p>17 your experience in being a strategist, and "the</p> <p>18 inside investment banker for Mr. Perelman's</p> <p>19 companies," would you consider Sunbeam, given</p> <p>20 that it had two drops, one of 9.5 percent</p> <p>21 according to this article and another of 9.4</p> <p>22 percent roughly within a two-month period to be a</p> <p>23 volatile stock?</p> <p>24 MR. MARMER: Object to form.</p> <p>25 A. You know, the stock had risen</p>
<p style="text-align: right;">Page 135</p> <p>1 Drapkin</p> <p>2 Q. Would that be a logical thing you</p> <p>3 would conclude based on your many years of doing</p> <p>4 deals?</p> <p>5 A. I mean, certainly if your sales go</p> <p>6 down, it's possible that your profit would be</p> <p>7 affected. On the other hand, we're talking about</p> <p>8 Al Dunlap who patterned himself as being the</p> <p>9 world's greatest cost cutter. So it's quite</p> <p>10 conceivable that Al could have been saying -- and</p> <p>11 I don't know this but if you're asking me on my</p> <p>12 years of -- did he cut costs in the corner so</p> <p>13 that his profit would remain fine. Big companies</p> <p>14 do that all the time.</p> <p>15 Q. Then the next paragraph --</p> <p>16 A. It happened this morning I think to</p> <p>17 AT&T.</p> <p>18 Q. The next paragraph reads, "The</p> <p>19 company has made promises that they haven't</p> <p>20 delivered on and that is certainly being favored</p> <p>21 into the stock today."</p> <p>22 A. "Factored."</p> <p>23 Q. "Factored." Excuse me. Thank you, sir.</p> <p>24 "Said R. Scott Graham, an analyst for CIBC</p> <p>25 Oppenheimer in New York." Do you see that</p>	<p style="text-align: right;">Page 137</p> <p>1 Drapkin</p> <p>2 dramatically post our deal as I recall. I think</p> <p>3 the stock even after it fell 9.5 percent was</p> <p>4 still above the deal price on the day we approved</p> <p>5 the deal. And there were lots of analysts that</p> <p>6 seemed to be saying this was a short-term</p> <p>7 problem. So I guess anytime a stock is down 10</p> <p>8 percent, there's some degree of volatility.</p> <p>9 Q. My question though is not just a one</p> <p>10 time drop of 10 percent, but here you have a</p> <p>11 stock that drops twice 10 percent in less than a</p> <p>12 two month period based on adverse announcements</p> <p>13 by the company --</p> <p>14 A. But the first time it had recovered</p> <p>15 erred.</p> <p>16 Q. My question is: When you see a stock</p> <p>17 drop 10 percent twice in a two-month period, it</p> <p>18 may have recovered partially, do you consider</p> <p>19 that to be in your experience a volatile stock --</p> <p>20 A. It more than recovered. It had gone</p> <p>21 way above.</p> <p>22 Q. But do you consider it to be a</p> <p>23 volatile stock --</p> <p>24 A. I'm not qualified to answer that</p> <p>25 question. There are volatility index. You can</p>

<p style="text-align: right;">Page 138</p> <p>1 Drapkin</p> <p>2 put pull them for the time and you could get an</p> <p>3 exact answer.</p> <p>4 Q. I didn't ask you this question</p> <p>5 earlier, but do you read The New York Times</p> <p>6 regularly?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And do you read the business section?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Following the -- withdrawn. Let me</p> <p>11 show you now a document marked as MS 212.</p> <p>12 A. After this line of questioning, can I</p> <p>13 take a short break?</p> <p>14 Q. Do you want to take it now?</p> <p>15 A. No let's get through this.</p> <p>16 Q. For the record, do you have MS 212 in</p> <p>17 front of you?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Let me know when you're finished. I</p> <p>20 have a few questions for you. Not very many.</p> <p>21 A. Yes, sir.</p> <p>22 Q. Sir, this document has a print date</p> <p>23 at the bottom of March 23, 1998. And this</p> <p>24 document was produced to Morgan Stanley by CPH,</p> <p>25 Coleman (Parent) Holdings.</p>	<p style="text-align: right;">Page 140</p> <p>1 Drapkin</p> <p>2 A. Yeah.</p> <p>3 Q. If you look at the table of contents</p> <p>4 on Page 2, there is a heading "Four," which</p> <p>5 probably referred to a tab in the original</p> <p>6 version. And if you would turn to the section</p> <p>7 Four, and I believe, sir, if you go all the way</p> <p>8 to -- I'll give you a Bates numbered page what we</p> <p>9 calm it at the bottom. Bates numbered page CPH</p> <p>10 in the lower right hand corner, 147290. And it</p> <p>11 would be a blank page with a "four" on it.</p> <p>12 A. Yup.</p> <p>13 Q. Did you see this package of</p> <p>14 information before your preparation for your</p> <p>15 deposition?</p> <p>16 A. No.</p> <p>17 Q. Is it nonetheless your understanding</p> <p>18 based on looking at these documents that Credit</p> <p>19 Suisse First Boston was following analysts'</p> <p>20 reports on Sunbeam?</p> <p>21 A. Not based on looking at that</p> <p>22 document. I just knew they were.</p> <p>23 Q. Is it customary for an investment</p> <p>24 banker in a deal like the Coleman/Sunbeam</p> <p>25 transaction for the investment banks on each side</p>
<p style="text-align: right;">Page 139</p> <p>1 Drapkin</p> <p>2 Have you ever seen this document</p> <p>3 before?</p> <p>4 A. No, not that I recall. I might have</p> <p>5 at the time.</p> <p>6 Q. Do you know who Andrew Shore is?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Were you reading his analyst reports</p> <p>9 concerning Sunbeam in 1998?</p> <p>10 A. Only if someone gave them to me.</p> <p>11 Q. Is this because you weren't the guy</p> <p>12 tracking this, that would be Mr. Maher again?</p> <p>13 A. Yes, sir. I believe that in one of</p> <p>14 the CSFB books there were analysts estimates, but</p> <p>15 I can't swear to that. We could look at that if</p> <p>16 you wanted to. I'm just trying to be accurate.</p> <p>17 If he was in there, then I would have looked at</p> <p>18 it.</p> <p>19 Q. You are correct. And let me show you</p> <p>20 the document that you're referring to.</p> <p>21 Let me show you what's been marked --</p> <p>22 these documents are really thick -- MS 76.</p> <p>23 A. There it is. Researcher.</p> <p>24 Q. So the record is clear, do you have</p> <p>25 MS 76 in front of you?</p>	<p style="text-align: right;">Page 141</p> <p>1 Drapkin</p> <p>2 to at least collect and look at the analysts</p> <p>3 reports?</p> <p>4 A. I would say so.</p> <p>5 (Discussion off the record.)</p> <p>6 THE VIDEOGRAPHER: The time is 2:02</p> <p>7 p.m. and this complete tape number 2.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: The time is 2:13</p> <p>10 p.m. and this begins tape number 3.</p> <p>11 BY MR. BEMIS:</p> <p>12 Q. Referring to the holdings merger,</p> <p>13 which is identified as MS 93, we talked about the</p> <p>14 consideration in article 3.1 (a) (i). Do you</p> <p>15 recall that discussion earlier about the stock</p> <p>16 and the cash that was being given?</p> <p>17 A. Yes.</p> <p>18 Q. This is a question I just forgot to</p> <p>19 ask you. When we were talking about the debt</p> <p>20 that was assumed, this was a stock merger between</p> <p>21 CLN Holdings Laser Acquisition Corporation,</p> <p>22 correct?</p> <p>23 A. Uh-huh.</p> <p>24 Q. You have to answer yes or no.</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 146</p> <p>1 Drapkin</p> <p>2 letter from, in this case Sunbeam's auditors,</p> <p>3 Arthur Andersen, to attempt to establish to</p> <p>4 whatever degree is legally permissible a due</p> <p>5 diligence defense under Section 11 of the 1933</p> <p>6 Securities Act?</p> <p>7 A. You're tying it to Section 11. I</p> <p>8 think that underwriters ask for a due diligence</p> <p>9 letter, for a cold comfort letter from the</p> <p>10 accountants in a prudent exercise of their due</p> <p>11 diligence, without giving you a legal conclusion</p> <p>12 as to the legal reasons they ask for.</p> <p>13 Q. Do you know why comfort letters refer</p> <p>14 to the underwriter's obligations and duties under</p> <p>15 the 1933 Act when they write such comfort</p> <p>16 letters?</p> <p>17 A. Because the underwriters have such</p> <p>18 duties.</p> <p>19 Q. Under the '33 Act?</p> <p>20 A. Under the '33 Act and case law, yes.</p> <p>21 Q. And Section 11 of the '33 Act?</p> <p>22 A. Section 11, Section 10 (b) (5),</p> <p>23 Section 7, Section 5. Do you want me to</p> <p>24 continue? Section 3.</p> <p>25 Q. Let me show you -- did you -- strike</p>	<p style="text-align: right;">Page 148</p> <p>1 Drapkin</p> <p>2 no.</p> <p>3 Q. Did you ever hear, and again in</p> <p>4 chitchat or when you were discussing things on</p> <p>5 the telephone, if you happened to be skiing or</p> <p>6 what have you during this period of March 19th,</p> <p>7 whether anyone in the MacAndrews group such as</p> <p>8 Mr. Maher, Mr. Perelman or Nesbitt or Gittis,</p> <p>9 whomever was involved in the transaction, asked</p> <p>10 Arthur Andersen whether they had provided a</p> <p>11 comfort letter to Morgan Stanley in connection</p> <p>12 with the underwriting of the two billion 14</p> <p>13 million zero coupon subordinated debentures</p> <p>14 issued in connection with the Sunbeam/ Coleman</p> <p>15 merger?</p> <p>16 A. No.</p> <p>17 Q. Let me show you what's been marked as</p> <p>18 MS 9.</p> <p>19 Do you have MS 9 in front of you,</p> <p>20 sir?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Would you take a moment and review it</p> <p>23 and let me know when you're comfortable. I do</p> <p>24 have some specific questions, but not on every</p> <p>25 paragraph. Just let me know when you're ready.</p>
<p style="text-align: right;">Page 147</p> <p>1 Drapkin</p> <p>2 that.</p> <p>3 To your knowledge, did anyone at the</p> <p>4 MacAndrews group in connection with the Sunbeam/</p> <p>5 Coleman transaction request a copy of the -- let</p> <p>6 me withdraw the question.</p> <p>7 To your knowledge, did anyone in the</p> <p>8 MacAndrews group make inquiry of Sunbeam whether</p> <p>9 or not Arthur Anderson had provided Morgan</p> <p>10 Stanley with a comfort letter in connection with</p> <p>11 the underwriting of the zero coupon debentures?</p> <p>12 A. I personally have no knowledge.</p> <p>13 Q. Do you know whether anyone from the</p> <p>14 MacAndrews group in connection with the Sunbeam/</p> <p>15 Coleman transaction asked Morgan Stanley as</p> <p>16 opposed to Sunbeam whether Morgan Stanley had</p> <p>17 received a comfort letter from Arthur Andersen in</p> <p>18 connection with the underwriting of the two</p> <p>19 billion 14 million face amount of zero coupon</p> <p>20 debentures that we've been discussing?</p> <p>21 A. I was not personally working on it,</p> <p>22 so I have no idea.</p> <p>23 Q. Even if you weren't personally</p> <p>24 working on it, did you ever hear of such a thing?</p> <p>25 A. In connection with the Sunbeam deal,</p>	<p style="text-align: right;">Page 149</p> <p>1 Drapkin</p> <p>2 A. Okay.</p> <p>3 Q. If you need at any point to stop and</p> <p>4 read anything in particular, just tell me and</p> <p>5 we'll stop.</p> <p>6 Have you ever seen MS 9 before?</p> <p>7 A. Yes, sir.</p> <p>8 Q. When did you see it?</p> <p>9 A. Yesterday.</p> <p>10 Q. In your deposition preparation?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Did you recognize it as a comfort</p> <p>13 letter?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Did you recognize it as a comfort</p> <p>16 letter that was issued by Arthur Andersen to</p> <p>17 Morgan Stanley in connection with the offering</p> <p>18 memorandum for the two billion 14 million Sunbeam</p> <p>19 Corporation zero coupon convertible senior</p> <p>20 subordinated debentures due 2018?</p> <p>21 A. That's what it purports to be.</p> <p>22 Q. Do you have any reason to believe</p> <p>23 it's not?</p> <p>24 A. No.</p> <p>25 Q. Is this letter in any way -- strike</p>

<p style="text-align: right;">Page 150</p> <p>1 Drapkin</p> <p>2 that.</p> <p>3 In your view as a person who's done</p> <p>4 many deals and been involved in underwriting and</p> <p>5 is the in-house investment banker, if you will,</p> <p>6 for Mr. Perelman, is this letter in the customary</p> <p>7 form of comfort letters?</p> <p>8 A. Seems to be.</p> <p>9 Q. And in your experience, sir, are you</p> <p>10 familiar at least if not as an expert, but just</p> <p>11 in your practice with the form of comfort letters</p> <p>12 as articulated by the accounting profession?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And are they generally set forth in a</p> <p>15 statement of auditing standards?</p> <p>16 A. Uh-huh. Yes, yes.</p> <p>17 Q. And codified in sometimes what we</p> <p>18 refer to as the statement of auditing standards</p> <p>19 with an AU number followed there behind?</p> <p>20 A. Correct.</p> <p>21 Q. Have you read those standards at any</p> <p>22 time in your career?</p> <p>23 A. Certainly.</p> <p>24 Q. Would you agree with me, sir, that</p> <p>25 one of the matters that a comfort letter in the</p>	<p style="text-align: right;">Page 152</p> <p>1 Drapkin</p> <p>2 A. You asked me whether it was negative</p> <p>3 assurance.</p> <p>4 Q. No, I said was it a negative</p> <p>5 assurance. And you know the know the difference,</p> <p>6 what that is, right?</p> <p>7 A. Sorry. It is not negative assurance,</p> <p>8 it is a bring down of sales for that period of</p> <p>9 time. And I didn't mean to be facetious. It is</p> <p>10 quite negative.</p> <p>11 Q. If you look at-- withdrawn.</p> <p>12 Looking at paragraph 5 (b) of MS 9,</p> <p>13 which is dated March 19, 1998, which by the way</p> <p>14 if it's helpful, that's the date of the offering</p> <p>15 memoranda --</p> <p>16 A. I know.</p> <p>17 Q. -- MS 166. It's also the date of that</p> <p>18 press release. Would you conclude that this is a</p> <p>19 material adverse event under either MS 93, which</p> <p>20 is the merger agreement with CLN, the holdings</p> <p>21 agreement, or the Coleman merger agreement, which</p> <p>22 is marked as MS 117?</p> <p>23 A. I would certainly say that absent</p> <p>24 some rather elaborate explanation that this would</p> <p>25 give rise to one's worrying about it being an</p>
<p style="text-align: right;">Page 151</p> <p>1 Drapkin</p> <p>2 circumstance of this case, where there is an</p> <p>3 underwriting that is approximately 90 days after</p> <p>4 the date of the last certified financial</p> <p>5 statements would cover a negative assurance on</p> <p>6 sales from the period of the last audited</p> <p>7 financial statement to the date of the request?</p> <p>8 A. It would be quite common. But please</p> <p>9 let me add, I am not an accountant. I never went</p> <p>10 to business school. I took accounting for</p> <p>11 lawyers and that was the extent of it. I have</p> <p>12 practiced in the area for many years, but I do</p> <p>13 not hold myself out as an expert in the matters</p> <p>14 and intricacies of accounting.</p> <p>15 Q. If you'll look at paragraph 5 (b),</p> <p>16 please. It's on page 3.</p> <p>17 A. I see it.</p> <p>18 Q. That paragraph, 5 (b), would that be</p> <p>19 in your view -- I recognize you're not claiming</p> <p>20 to be an expert, but a customary paragraph of</p> <p>21 negative assurance with regard to sales for the</p> <p>22 period following the last audited period?</p> <p>23 A. It sure is negative.</p> <p>24 Q. Setting aside whether it was</p> <p>25 negative --</p>	<p style="text-align: right;">Page 153</p> <p>1 Drapkin</p> <p>2 adverse material change. And I assume further</p> <p>3 this was the cause for the March 19th press</p> <p>4 release.</p> <p>5 Q. Let me show you now what's been</p> <p>6 marked as MS 10.</p> <p>7 Do you have MS 10 in front of you,</p> <p>8 sir?</p> <p>9 A. Yeah.</p> <p>10 Q. Please take a look at it and when</p> <p>11 you're finished let know. I just have a couple</p> <p>12 of questions for you.</p> <p>13 A. Yes.</p> <p>14 Q. Did you see this -- have you seen</p> <p>15 this comfort -- strike that. Withdrawn.</p> <p>16 Have you seen this exhibit before, MS</p> <p>17 10?</p> <p>18 A. I saw Page 2 of it yesterday. I</p> <p>19 don't recall page 1, but I certainly saw Page 2</p> <p>20 -- or the numbers there on Page 2.</p> <p>21 Q. Is MS 10, which is dated March 25,</p> <p>22 1998, dated as of the date you understand the</p> <p>23 debentures were actually issued?</p> <p>24 A. Yeah.</p> <p>25 Q. And is it customary in your</p>

<p style="text-align: right;">Page 154</p> <p>1 Drapkin</p> <p>2 experience, both as an attorney in the areas that</p> <p>3 you practice and as the in-house investment</p> <p>4 banker in Mr. Perelman's companies, for an</p> <p>5 underwriter such as Morgan Stanley in a</p> <p>6 transaction similar to what we've been</p> <p>7 addressing, the purchase and underwriting of</p> <p>8 \$2,014,000,000 worth of zero coupon debentures to</p> <p>9 get a bring down letter from the auditors on the</p> <p>10 date of the actual purchase of the securities?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And in your judgment looking at this,</p> <p>13 would you conclude this is indeed the bring down</p> <p>14 letter for the zero coupon debenture offering?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Looking at paragraph E as in echo,</p> <p>17 sir, I'd like you to look at the table which</p> <p>18 appears on Page 2 which has the net sales</p> <p>19 figures?</p> <p>20 A. Uh-huh.</p> <p>21 Q. You have to say yes --</p> <p>22 A. Yes, sir.</p> <p>23 Q. -- or no.</p> <p>24 Looking at that paragraph and the</p> <p>25 figures disclosed therein for net sales and net</p>	<p style="text-align: right;">Page 156</p> <p>1 Drapkin</p> <p>2 A. I see that.</p> <p>3 Q. It provides, "a Laser Material</p> <p>4 Adverse Effect," that's in initial caps and</p> <p>5 quotes, "shall mean a material adverse effect on</p> <p>6 the business results of operation or financial</p> <p>7 condition of laser and its subsidiaries taken as</p> <p>8 a whole," correct?</p> <p>9 A. Correct.</p> <p>10 Q. My question to you, again based on</p> <p>11 your experience and based on being the in-house</p> <p>12 investment banker for Mr. Perelman's companies,</p> <p>13 is the information in paragraph E of MS 10, in</p> <p>14 particularly the table 5A and B, is the</p> <p>15 information there a laser material adverse effect</p> <p>16 in your opinion?</p> <p>17 MR. MARMER: Objection; asked and</p> <p>18 answered.</p> <p>19 A. I'll answer that, but first I'd like</p> <p>20 to correct you. I'm not an investment banker.</p> <p>21 Q. I didn't say you were. I said you're</p> <p>22 the in-house investment banker.</p> <p>23 A. That's a magazine eponym that doesn't</p> <p>24 necessarily mean very much. But as a lawyer,</p> <p>25 which I am, on page 19 of the same agreement</p>
<p style="text-align: right;">Page 155</p> <p>1 Drapkin</p> <p>2 income loss, would this in your judgment be a</p> <p>3 material adverse event or consequence as set</p> <p>4 forth in MS 93 the CLN Holdings merger agreement?</p> <p>5 And I believe it's paragraph 6.6 thereof.</p> <p>6 A. I believe that failure to alert the</p> <p>7 Coleman people under their responsibilities under</p> <p>8 that -- I think it was 6.7 of material adverse</p> <p>9 change, with or without an explanation of 5 E,</p> <p>10 would be a material breach of that obligation by</p> <p>11 both by anybody who is connected with this piece</p> <p>12 of paper.</p> <p>13 Q. Having said that, if you'll look at</p> <p>14 the definition of laser material adverse effect</p> <p>15 which appears on page 4 of MS 93.</p> <p>16 A. I have too many.</p> <p>17 Q. I know you do. I've been trying to</p> <p>18 get some of them back so can with reduce the</p> <p>19 pile.</p> <p>20 A. Page 4?</p> <p>21 Q. Page 4. You'll see the definitions?</p> <p>22 A. You want --</p> <p>23 Q. I'd like you to look at the one,</p> <p>24 "laser material adverse effect," and tell me</p> <p>25 when you're there?</p>	<p style="text-align: right;">Page 157</p> <p>1 Drapkin</p> <p>2 there is a -- there's a section called 6.8,</p> <p>3 "Advice of Changes." "Holdings or Laser shall</p> <p>4 promptly advise the other party orally or in</p> <p>5 writing of anything" -- if you read down. "Any</p> <p>6 change or event, having which insofar as can be</p> <p>7 reasonably foreseen would have, in the case of</p> <p>8 Laser, a laser material adverse effect." I</p> <p>9 believe that the failure to -- as a lawyer, had I</p> <p>10 been faced with this nightmare -- as a lawyer,</p> <p>11 the failure to live up to 6.8 is a clear</p> <p>12 violation of the agreement. This document should</p> <p>13 have been provided to us without having to go</p> <p>14 find Waldo by ourselves.</p> <p>15 Q. Well, I appreciate that, but that</p> <p>16 wasn't my question.</p> <p>17 A. I thought that was your question.</p> <p>18 Q. Fair enough. We'll get there. My</p> <p>19 question is: I take it from you answer though</p> <p>20 that you think this information, as you said, go</p> <p>21 find Waldo, that MS 10 is in your view</p> <p>22 information that constitutes a laser material</p> <p>23 adverse effect as defined in MS 93?</p> <p>24 A. What I'm saying, to use your words</p> <p>25 from before, a volatile enough fact that the</p>

<p style="text-align: right;">Page 158</p> <p>1 Drapkin</p> <p>2 failure -- and certainly in hindsight it was a</p> <p>3 material adverse change, but this document on its</p> <p>4 face, as a lawyer, I would have advised my client</p> <p>5 they had an affirmative obligation not only to</p> <p>6 the Laser people, but to the public to correct</p> <p>7 the March 19th press release, and indeed to tell</p> <p>8 the bond buyers there was something amiss. I</p> <p>9 don't know if that answers your question, but.</p> <p>10 Remember, this is substantially worse</p> <p>11 than it was just a few days before.</p> <p>12 Q. We'll get to the question of how</p> <p>13 substantially worse in a minute, but the focus in</p> <p>14 my next question is the notice provision, which</p> <p>15 you've been referring to under section 6.8.</p> <p>16 My understanding is from your</p> <p>17 testimony that the MacAndrews side of the</p> <p>18 transaction, referenced by MS 93, did not receive</p> <p>19 from Laser a notice of a "laser material adverse</p> <p>20 effect"; is that correct?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. And it's my understanding that to</p> <p>23 your knowledge, that no one, not withstanding</p> <p>24 from -- excuse me. Withdrawn.</p> <p>25 My understanding of your testimony is</p>	<p style="text-align: right;">Page 160</p> <p>1 Drapkin</p> <p>2 L.L.P. to Morgan Stanley, 243.</p> <p>3 Do you have in front of you MS 243?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Have you seen this letter before</p> <p>6 which is addressed to CLN Holdings and Morgan</p> <p>7 Stanley and Co., Incorporated?</p> <p>8 A. No.</p> <p>9 Q. Did you see this letter in your</p> <p>10 preparation for your deposition?</p> <p>11 A. No.</p> <p>12 Q. Do you know what it is?</p> <p>13 A. It looks like a comfort letter</p> <p>14 addressed to Morgan Stanley relating to the</p> <p>15 Coleman financial statements.</p> <p>16 Q. It's also addressed to CLN Holdings,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And this is the CLN Holdings Inc.</p> <p>20 that is the same CLN Holdings that is a party to</p> <p>21 MS 93, the holdings merger agreement we've been</p> <p>22 talking about, correct?</p> <p>23 A. Uh-huh.</p> <p>24 Q. You have to answer yes or no.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 159</p> <p>1 Drapkin</p> <p>2 at least to your knowledge, and I understand you</p> <p>3 didn't work on the deal yourself personally, that</p> <p>4 you're not aware of anyone on the MacAndrews side</p> <p>5 of the transaction, notwithstanding the March</p> <p>6 19th press release, making any inquiry of either</p> <p>7 Sunbeam, Arthur Andersen or Morgan Stanley as to</p> <p>8 whether Morgan Stanley had received a comfort</p> <p>9 letter, and B, the contents of the comfort</p> <p>10 letter?</p> <p>11 A. I am not aware.</p> <p>12 Q. Are you aware of the MacAndrews group</p> <p>13 purchasing any of the zero coupon convertible</p> <p>14 senior subordinated debentures that were</p> <p>15 underwritten by Morgan Stanley pursuant to MS</p> <p>16 166?</p> <p>17 A. No, sir.</p> <p>18 Q. In connection with the Coleman merger</p> <p>19 and that's MS 117 -- you might pull that out,</p> <p>20 that merger agreement, sir.</p> <p>21 A. Sure.</p> <p>22 Q. There is a -- withdrawn. You can set</p> <p>23 that aside for right now.</p> <p>24 Let me show you what's been marked as</p> <p>25 MS 166, which is a letter from Ernst & Young,</p>	<p style="text-align: right;">Page 161</p> <p>1 Drapkin</p> <p>2 Q. Now, it's customary is it not, sir,</p> <p>3 before a comfort letter is issued by the auditors</p> <p>4 in connection with an underwriting such as we've</p> <p>5 been speaking here, MS 166, for the company to</p> <p>6 request the audit letter from its accountants,</p> <p>7 right?</p> <p>8 A. You've got to repeat the question.</p> <p>9 Q. Fair enough. Before an auditor</p> <p>10 issues a comfort letter in connection with an</p> <p>11 underwriting transaction such as the zero coupons</p> <p>12 we've been speaking here about that Morgan</p> <p>13 Stanley underwrote --</p> <p>14 A. Right.</p> <p>15 Q. -- it's customary is it not for the</p> <p>16 company whose financial statements are the</p> <p>17 subject of the auditors' work to request from the</p> <p>18 auditor that they issue such a letter?</p> <p>19 A. My problem with your question is the</p> <p>20 "company." In this case if the company you're</p> <p>21 asking about is Morgan Stanley requesting it from</p> <p>22 our auditors because the Coleman financials were</p> <p>23 inside of the registration statement relating to</p> <p>24 the zero coupons, the answer to your question is</p> <p>25 yes.</p>

<p style="text-align: right;">Page 162</p> <p>1 Drapkin</p> <p>2 Q. I think we're on the same wave</p> <p>3 length. Let me try it again because my question</p> <p>4 probably wasn't clear now that you've pointed it</p> <p>5 to me. In the instance in which the auditors are</p> <p>6 attaching the financial statement of for example</p> <p>7 Coleman to the underwriting offering memorandum</p> <p>8 which they were, it would be customary for</p> <p>9 Coleman to request that its auditors issue a</p> <p>10 comfort letter to Morgan Stanley?</p> <p>11 A. Yes.</p> <p>12 Q. And indeed that is -- even before</p> <p>13 that the auditors would request a representation</p> <p>14 letter from the company whose statements are</p> <p>15 being audited, right?</p> <p>16 A. Normally yes.</p> <p>17 Q. In this -- in the case of Coleman,</p> <p>18 did Coleman request that Ernst & Young issue a</p> <p>19 comfort letter to Morgan Stanley in connection</p> <p>20 with the zero coupon debenture offering</p> <p>21 represented by MS 166?</p> <p>22 A. I have no idea.</p> <p>23 Q. Assuming it was done, who would be</p> <p>24 the person who would have made the request to</p> <p>25 Ernst & Young from the Coleman Company?</p>	<p style="text-align: right;">Page 164</p> <p>1 Drapkin</p> <p>2 you, as either the buyer or the seller as the</p> <p>3 case may be, to declare a material adverse effect</p> <p>4 if that's the term or consequences that's</p> <p>5 sometimes used in documents?</p> <p>6 A. Yes.</p> <p>7 Q. How about the Panavision deal, did</p> <p>8 you do that?</p> <p>9 A. Which Panavision deal are you talking</p> <p>10 about?</p> <p>11 Q. The Panavision -- the Panavision deal</p> <p>12 in which you renegotiated the price for what you</p> <p>13 were going to pay for Panavision?</p> <p>14 A. When we bought it or? I mean,</p> <p>15 there's been six Panavision deals.</p> <p>16 Q. Fair enough. I'll have to pull them</p> <p>17 out for you because I didn't know there were six</p> <p>18 of them.</p> <p>19 A. If you're talking about the original</p> <p>20 deal that we bought it from whatever.</p> <p>21 Q. The transaction that I'm referring to</p> <p>22 was originally signed on December 18, 1997 and</p> <p>23 then there was an amended transaction that</p> <p>24 occurred on June 4, 1998. Does that help? I</p> <p>25 don't have the document. That's the bottom line</p>
<p style="text-align: right;">Page 163</p> <p>1 Drapkin</p> <p>2 A. Probably the CFO.</p> <p>3 Q. Do you remember who that was in 1998?</p> <p>4 A. I don't remember. I knew, but I</p> <p>5 don't remember his name.</p> <p>6 Q. It was a man?</p> <p>7 A. I believe so, but I could be wrong.</p> <p>8 Q. I'm sure we can figure it out --</p> <p>9 A. It's in the materials -- one of the</p> <p>10 materials you gave me listed all of the executive</p> <p>11 officers of Coleman.</p> <p>12 Q. We're not going to take your time to</p> <p>13 do that. We can go back and look for that, if</p> <p>14 that's the person who would have done it.</p> <p>15 A. But Jerry could have asked for it,</p> <p>16 anybody could have asked for it. It's routine.</p> <p>17 Q. Getting the comfort letters and</p> <p>18 making the request is routine?</p> <p>19 A. Absolutely.</p> <p>20 Q. In your history of doing deals, has</p> <p>21 there ever been a transaction that you were</p> <p>22 involved with that after the execution of the</p> <p>23 definitive merger document -- the transaction</p> <p>24 documents and the dates of the closing a material</p> <p>25 adverse event came to your attention which caused</p>	<p style="text-align: right;">Page 165</p> <p>1 Drapkin</p> <p>2 --</p> <p>3 A. Who was the deal with?</p> <p>4 Q. On behalf of -- it was between -- I</p> <p>5 honestly can't remember which entity it was. I</p> <p>6 don't have the document, which irritates me. I</p> <p>7 have five boxes of documents. I don't have that</p> <p>8 one. Well, I can ask somebody else.</p> <p>9 A. We bought Panavision. If we</p> <p>10 renegotiated the price in between, that wouldn't</p> <p>11 have been particularly startling. It was owned</p> <p>12 by -- Panavision was owned by Warburg Pincus. It</p> <p>13 was controlled by Warburg Pincus.</p> <p>14 Q. Did you work on that deal?</p> <p>15 A. No.</p> <p>16 Q. Who handled that deal?</p> <p>17 A. Mr. Maher.</p> <p>18 Q. Well, he's the person we should ask</p> <p>19 that question.</p> <p>20 A. And he was vice chairman of CSFB.</p> <p>21 He's a real investment banker.</p> <p>22 Q. Did you have any involvement with the</p> <p>23 registration rights agreement for the Sunbeam</p> <p>24 stock that was issued to CLN Holdings -- let me</p> <p>25 withdraw that. That is not actually correct.</p>

<p style="text-align: right;">Page 166</p> <p>1 Drapkin</p> <p>2 At the time of the merger between CLN</p> <p>3 Holdings inc. and Laser Acquisition Corporation,</p> <p>4 we've established there was 14.1 million shares</p> <p>5 of Sunbeam stock issued to the MacAndrews group</p> <p>6 in consideration of the extinguishment of their</p> <p>7 stock interests, correct?</p> <p>8 A. (Indicating.)</p> <p>9 Q. You have to answer yes.</p> <p>10 A. Yes.</p> <p>11 Q. There was a registration rights</p> <p>12 agreement, which is attached by the way to MS 93,</p> <p>13 although it's not executed, that was to be</p> <p>14 executed before the closing which covered the</p> <p>15 registration of those securities at some point in</p> <p>16 the future. Did you have any part in the</p> <p>17 negotiation of that agreement?</p> <p>18 A. No.</p> <p>19 Q. Mr. Maher again?</p> <p>20 A. I have no personal knowledge who</p> <p>21 negotiated it.</p> <p>22 Q. Have you heard from any source that</p> <p>23 Arthur Andersen in the period between March 19,</p> <p>24 1998 and the closing, March 30, 1998, refused in</p> <p>25 any fashion to provide CLN Holdings Inc. or</p>	<p style="text-align: right;">Page 168</p> <p>1 Drapkin</p> <p>2 me. Under MS 93, which is the merger agreement,</p> <p>3 we talked about the advice of changes clause and</p> <p>4 material adverse effect. If either CLN Holdings</p> <p>5 Inc. or Coleman (Parent) Holdings Inc. was aware</p> <p>6 of a material adverse change, even if it had not</p> <p>7 received notice, did it have the right to take</p> <p>8 any action under the agreement?</p> <p>9 A. It seems to say so -- I mean, it's</p> <p>10 hypothetical.</p> <p>11 Q. I realize that, but that's my</p> <p>12 question.</p> <p>13 MR. MARMER: Object to the form.</p> <p>14 A. It seems to say that we could.</p> <p>15 BY MR. BEMIS:</p> <p>16 Q. What action could you take?</p> <p>17 A. We could walk away from the deal.</p> <p>18 Q. Could you point me to the section</p> <p>19 where you can walk away from the deal?</p> <p>20 A. This is 93?</p> <p>21 Q. Yes, sir, MS 93.</p> <p>22 A. Section 8.2 (c).</p> <p>23 Q. Let me make sure that I am there.</p> <p>24 A. I'm reading this quickly.</p> <p>25 Q. That's why I want to make sure that</p>
<p style="text-align: right;">Page 167</p> <p>1 Drapkin</p> <p>2 Coleman (Parent) Holdings Inc. a copy of either</p> <p>3 MS 9 or MS 10, which are the two comfort letters,</p> <p>4 that were provided to Morgan Stanley in</p> <p>5 connection with Morgan Stanley's underwriting of</p> <p>6 the 2,014,000,000 of zero coupon debentures?</p> <p>7 A. I have no knowledge.</p> <p>8 Q. Have you ever heard that Sunbeam in</p> <p>9 any way refused or impeded either CLN Holdings</p> <p>10 Inc. or Coleman (Parent) Holdings Inc. access to</p> <p>11 the Arthur Andersen comfort letters, marked as</p> <p>12 Morgan Stanley 9 and Morgan Stanley 10, that were</p> <p>13 issued in connection with the underwriting of the</p> <p>14 zero coupon debentures?</p> <p>15 A. No, sir.</p> <p>16 Q. Have you heard from any source that</p> <p>17 Morgan Stanley took any action that in any way</p> <p>18 interfered with any attempt, if there was one, by</p> <p>19 either CLN Holdings Inc. or Coleman (Parent)</p> <p>20 Holdings Inc. to obtain and read copies of the</p> <p>21 comfort letters, MS 9 and MS 10, that were issued</p> <p>22 by Arthur Andersen in connection with the</p> <p>23 underwriting of the zero coupon debentures?</p> <p>24 A. I have no knowledge on this subject.</p> <p>25 Q. Under the -- under section -- excuse</p>	<p style="text-align: right;">Page 169</p> <p>1 Drapkin</p> <p>2 we get it right. So take as much time as you</p> <p>3 need.</p> <p>4 A. Section 8.2 says "conditions to</p> <p>5 obligations of holdings to affect the holdings</p> <p>6 merger."</p> <p>7 Q. All right.</p> <p>8 A. I assume that refers to, since that's</p> <p>9 the agreement that you gave me, that "holdings" I</p> <p>10 assume "holdings" is us.</p> <p>11 Q. You have the holdings agreement by</p> <p>12 definition in front of you --</p> <p>13 A. Holdings yes. That holdings shall</p> <p>14 be -- "The conditions to our obligations to</p> <p>15 effect the merger includes the reps and</p> <p>16 warranties being true, and it also includes that</p> <p>17 there hasn't been any event change which</p> <p>18 individually or in the aggregate had or has</p> <p>19 reasonably expected to have a material adverse</p> <p>20 effect." You made me read the definition of</p> <p>21 material adverse effect before.</p> <p>22 Q. Can I interrupt for a second, because</p> <p>23 it will go faster. What I want you to do is just</p> <p>24 give me the section first, then we can talk about</p> <p>25 it. So we can follow through. I'll be very</p>

Page 178

1 Drapkin
2 Am I correct that you had no
3 involvement whatsoever in whatever due diligence
4 was done by the MacAndrews companies of Sunbeam,
5 regardless of the time that it was done, in
6 connection with the merger agreement?
7 A. That is correct.
8 Q. And the person that you think would
9 have the most knowledge of that would be
10 Mr. Maher?
11 A. Mr. Levin.
12 Q. Or Mr. Levin perhaps. Are those the
13 two people that you would think would be the
14 knowledgeable -- I'm not holding it to you, just
15 your best assumption based on your position in
16 the company.
17 A. Yeah.
18 Q. You did have some meetings with CSFB
19 in connection with this transaction, didn't you?
20 A. Me personally?
21 Q. Yes. Well, there may have been
22 others present, but you personally did attend
23 meetings where they were present?
24 A. I don't recall. You mean other than
25 board meetings?

Page 179

1 Drapkin
2 Q. I want to get the predicate for it
3 and then I want to focus on it.
4 A. Other than the board meetings?
5 Q. Fair question. Yes, other than the
6 board meetings.
7 A. I don't know. It's quite possible
8 they came over when the transaction was
9 originally being discussed, and I sat in on one
10 or two of those meetings. That's possible.
11 Q. Can we see if you have MS 75 there?
12 I have another copy.
13 MR. BEMIS: It should be in the pile
14 over there of yours, Ron. It's the Wachtell
15 chronology. We looked at it pretty early
16 this morning.
17 A. Right.
18 BY MR. BEMIS:
19 Q. If you would look at Exhibit A --
20 A. Uh-huh.
21 Q. -- which is attached there to, sir.
22 There's two entries where your name appears. The
23 first is on December 16th.
24 A. I see that.
25 Q. Do you see that reference? Do you

Page 180

1 Drapkin
2 have any recollection at all of this meeting?
3 A. No.
4 Q. And then there's another meeting on
5 December 17th where you are identified as being
6 present, and the individuals -- some of the
7 individuals there are with CSFB. Do you remember
8 this meeting?
9 A. No.
10 Q. Do you keep a calendar of any kind?
11 A. Yes.
12 Q. Currently?
13 A. Currently?
14 Q. Yes.
15 A. Yeah.
16 Q. Do you keep the old ones?
17 A. No.
18 Q. When do you throw them out, at the
19 end of the year?
20 A. You have to ask my secretary, but I
21 believe she throws them out when the year is
22 over.
23 Q. Back in 1998 or 1999, did you keep a
24 paper calendar or electronic calendar?
25 A. Always the same.

Page 181

1 Drapkin
2 Q. Was it just a date planner?
3 A. Date planner.
4 Q. Do you keep that yourself or does
5 your secretary keep it?
6 A. My secretary keeps it, but
7 occasionally I'll pencil something in.
8 Q. And in connection with this
9 litigation, were you asked by anyone to locate
10 your old date planners to see whether you still
11 had them going back to '97 or '98?
12 A. I don't know if it was, particularly
13 in connection with this particular litigation,
14 but I saw a piece of paper that purported to be a
15 page from one of my calendars, which is where I
16 think these two dates came from (indicating).
17 Q. A couple of background questions.
18 You know Mr. Gordon Rich, correct?
19 A. Yes, sir.
20 Q. How long -- he's deceased now
21 correct?
22 A. Unfortunately.
23 Q. Would you tell us who he was,
24 please.
25 A. When? I mean, at what period of

<p style="text-align: right;">Page 182</p> <p>1 Drapkin</p> <p>2 time? Or how do I know him? I'm not sure of the</p> <p>3 question.</p> <p>4 Q. Well, he worked for CSFB, correct?</p> <p>5 A. At the time of his demise, yes.</p> <p>6 Q. Was he an uninvestment [sic] banker?</p> <p>7 A. Was he an investment banker?</p> <p>8 Q. Yes.</p> <p>9 A. Yes, he was.</p> <p>10 Q. Had you worked with Mr. Gordon Rich</p> <p>11 on other deals for the MacAndrews group of</p> <p>12 companies?</p> <p>13 A. He went to the Harvard Law School and</p> <p>14 then started at Skadden, Arps. And he worked for</p> <p>15 me on numerous transactions before he left and</p> <p>16 went to First Boston.</p> <p>17 Q. Do you know about how long he was at</p> <p>18 First Boston before he died?</p> <p>19 A. I don't recall. A number of years.</p> <p>20 Q. How many transactions, best you can</p> <p>21 recall, that he worked on with you at the</p> <p>22 MacAndrews group?</p> <p>23 A. I really couldn't say.</p> <p>24 Q. More than -- more than ten?</p> <p>25 A. It depends on how you define</p>	<p style="text-align: right;">Page 184</p> <p>1 Drapkin</p> <p>2 A. The more Lipitor you take, the worse</p> <p>3 it gets. Although, they swear it has no effect.</p> <p>4 Q. I want you to go back to -- I want to</p> <p>5 go back to the Coleman board meeting where the</p> <p>6 merger is approved. And I'd ask you to pull out</p> <p>7 of the pile, it's probably the thickest one in</p> <p>8 the pile, MS 279.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Pull it out.</p> <p>11 A. Got it.</p> <p>12 Q. And I'm going to give you a page</p> <p>13 number to turn to --</p> <p>14 A. Yup.</p> <p>15 Q. -- to make your lives a little bit</p> <p>16 easier.</p> <p>17 Turn to page 40.</p> <p>18 A. Yes, sir.</p> <p>19 Q. And I'd like you first to focus on</p> <p>20 "Terms and Structure of the Transaction."</p> <p>21 A. Yes, sir.</p> <p>22 Q. Referring now to the Coleman board of</p> <p>23 directors, would you read that first paragraph to</p> <p>24 yourself. I want to ask you a couple of</p> <p>25 questions about it.</p>
<p style="text-align: right;">Page 183</p> <p>1 Drapkin</p> <p>2 transactions. Gordon Rich was a very bright,</p> <p>3 very nice guy and he came with ideas all the</p> <p>4 time. Did we take all of his ideas? No. Did he</p> <p>5 do work from time to time for companies in other</p> <p>6 regards? There may have been lots of things that</p> <p>7 he did. I don't want to mislead you. We did</p> <p>8 work with him.</p> <p>9 Q. Was he the lead person on behalf of</p> <p>10 CSFB in the Coleman/Sunbeam transaction?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know Steve Geller?</p> <p>13 A. No. I mean, I think I've met him,</p> <p>14 but if he was here, I couldn't pick him out of a</p> <p>15 line up.</p> <p>16 Q. By name, was he subordinate to</p> <p>17 Mr. Rich --</p> <p>18 A. I don't know.</p> <p>19 Q. Robert Duffy, do you know him?</p> <p>20 A. I think I've met these guys, but I</p> <p>21 just don't remember them. This is eight years</p> <p>22 ago and I sometimes have trouble remembering what</p> <p>23 I did last month.</p> <p>24 Q. Did your doctor ever tell you it's</p> <p>25 going to get worse?</p>	<p style="text-align: right;">Page 185</p> <p>1 Drapkin</p> <p>2 A. Okay.</p> <p>3 Q. Now my first question is, is that</p> <p>4 paragraph accurate based on your being a director</p> <p>5 who voted in terms of the -- withdrawn.</p> <p>6 My first question is, is that an</p> <p>7 accurate statement as to what the Coleman board</p> <p>8 of directors considered, given that you were</p> <p>9 present at the board of directors meetings in</p> <p>10 February of 1998.</p> <p>11 MR. MARMER: Objection; lack of</p> <p>12 foundation. Objection; mischaracterizes the</p> <p>13 material.</p> <p>14 BY MR. BEMIS:</p> <p>15 Q. You can still answer.</p> <p>16 A. It's accurate.</p> <p>17 Q. So with regard to the Coleman merger</p> <p>18 agreement, which we've identified as MS 117,</p> <p>19 there was market risk associated with the</p> <p>20 transaction after the -- after February 27, 1998,</p> <p>21 right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And with regard to the CLN merger</p> <p>24 document, there was also market risk in the</p> <p>25 period between the date of the agreements and the</p>

<p style="text-align: right;">Page 186</p> <p>1 Drapkin</p> <p>2 closing, correct?</p> <p>3 A. Absolutely.</p> <p>4 Q. Now the next paragraph of MS 279,</p> <p>5 which begins on page 40, begins " The Coleman</p> <p>6 board reviewed the economic terms." Would you</p> <p>7 read that paragraph to yourself, sir, and I just</p> <p>8 have a couple of quick questions on that.</p> <p>9 A. Yes, sir.</p> <p>10 Q. Based on being a director of the</p> <p>11 Coleman Company Inc. and being at the board</p> <p>12 meetings at the end of February, is this an</p> <p>13 accurate statement of what was reviewed at the</p> <p>14 board meeting?</p> <p>15 A. To the best of my recollection, yes,</p> <p>16 sir.</p> <p>17 Q. And am I correct in reading this that</p> <p>18 CSFB said there was an implied premium of 44.2</p> <p>19 percent to the market value of the Coleman stock</p> <p>20 based on the consideration that Sunbeam was going</p> <p>21 to provide at the merger?</p> <p>22 MR. MARMER: Objection;</p> <p>23 mischaracterizes the material.</p> <p>24 A. That's what the document appears to</p> <p>25 say, yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 Drapkin</p> <p>2 percent; is that right?</p> <p>3 A. No. This is not the time of closing.</p> <p>4 This is February 26th. That's the time of</p> <p>5 signing.</p> <p>6 Q. At the time of signing then. Just</p> <p>7 tell me what the 44.2 percent is as of what date.</p> <p>8 A. This document speaks to February 26,</p> <p>9 1998. If I am reading it correctly, the premium</p> <p>10 would be 44 percent based on what we just</p> <p>11 discussed.</p> <p>12 Q. And that would be as of February --</p> <p>13 close of business on February 26, 1998?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And then we know -- we know there was</p> <p>16 another board meeting on the 27th. The calendar</p> <p>17 would show us that that's a Friday. And I think</p> <p>18 all the agreements were signed on Saturday, but</p> <p>19 dated back as of the 27th. Is that your</p> <p>20 recollection?</p> <p>21 A. It appears to be, yes.</p> <p>22 Q. Now, there's a long discussion --</p> <p>23 well, I don't want to characterize. I'll let</p> <p>24 somebody else characterize it, but there is a</p> <p>25 discussion beginning on page 40 on the opinion of</p>
<p style="text-align: right;">Page 187</p> <p>1 Drapkin</p> <p>2 BY MR. BEMIS:</p> <p>3 Q. And did CSFB --</p> <p>4 A. I'm sorry, B doesn't say that --</p> <p>5 Q. My question is, somebody computed the</p> <p>6 premium of 44.2 percent, correct?</p> <p>7 A. It's just a mathematical computation.</p> <p>8 Q. Well, no, this is an implied market</p> <p>9 price they're referring to in this sentence.</p> <p>10 A. I don't think so.</p> <p>11 Q. Well, maybe I'm reading it wrong.</p> <p>12 A. I think you take the \$40 and -- \$40</p> <p>13 625 and 20, 686. You take the cash and whatever</p> <p>14 the exact percentage was of \$40 and 625 each</p> <p>15 shareholder would get, and that is 44.2 percent</p> <p>16 higher than \$20.68.</p> <p>17 Q. I think you're correct. I think I</p> <p>18 did misspoke. It was based on the mathematical</p> <p>19 calculations of the cash per share, times the</p> <p>20 fractional share of Sunbeam stock you would get</p> <p>21 at market price?</p> <p>22 A. Correct.</p> <p>23 Q. And when you did that mathematical</p> <p>24 calculation, which most of us could do I think,</p> <p>25 the premium was at the time of closing 44.2</p>	<p style="text-align: right;">Page 189</p> <p>1 Drapkin</p> <p>2 Credit Suisse First Boston, and that discussion</p> <p>3 carries over to the next page. And I think there</p> <p>4 is a more detailed discussion inside of the</p> <p>5 document. Would you please read the section on</p> <p>6 the opinion of Credit Suisse First Boston.</p> <p>7 A. I read it.</p> <p>8 Q. And did Credit Suisse First Boston</p> <p>9 opine at the board of directors meeting on</p> <p>10 February 27, 1998 that the transaction was fair?</p> <p>11 A. That is my recollection.</p> <p>12 Q. In your understanding, what does that</p> <p>13 mean as a board of director of the Coleman</p> <p>14 Company?</p> <p>15 A. That what I as a Coleman shareholder</p> <p>16 was receiving for my stock was fair.</p> <p>17 Q. Did you have any Coleman stock?</p> <p>18 A. Yes, I did.</p> <p>19 Q. How many shares did you have at the</p> <p>20 time of the board meeting?</p> <p>21 A. My recollection is I had about 20,000</p> <p>22 shares, and my kids had about 10.</p> <p>23 Q. Following the announcement of the</p> <p>24 merger transaction, which I think the record will</p> <p>25 show is March 2nd -- I think that's right, it's</p>

<p style="text-align: right;">Page 194</p> <p>1 Drapkin</p> <p>2 A. The Coleman just traded in tandem</p> <p>3 with Sunbeam. Coleman was no longer Coleman;</p> <p>4 Coleman was a right to receive a share of</p> <p>5 Sunbeam.</p> <p>6 Q. But the Coleman stock ran up almost</p> <p>7 \$10 a share --</p> <p>8 A. But I missed that.</p> <p>9 Q. Oh, you missed that. You missed the</p> <p>10 runup of the Coleman stock after the</p> <p>11 announcement?</p> <p>12 A. I sold two days after the</p> <p>13 announcement. Whatever that part of the runup, I</p> <p>14 got. But then the Sunbeam stock performed</p> <p>15 admirably prior to the March 19th bomb and it was</p> <p>16 up another -- I want to say -- I think it got</p> <p>17 over 50 bucks. Which would have been worth</p> <p>18 another 6 bucks a share to me.</p> <p>19 Q. If you look at Page 17, you'll see</p> <p>20 the stock prices there. And for the first</p> <p>21 quarter of 1998, when you get there, just tell me</p> <p>22 and we'll look at that.</p> <p>23 A. I'm there.</p> <p>24 Q. It says the high for the Coleman</p> <p>25 stock was 35.563. Do you see that?</p>	<p style="text-align: right;">Page 196</p> <p>1 Drapkin</p> <p>2 shows?</p> <p>3 A. No.</p> <p>4 Q. You want to attend a road show today</p> <p>5 on a public offering I understand; is that</p> <p>6 correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Tell the jury what a road show is.</p> <p>9 A. When you're selling securities to the</p> <p>10 public, the management and the underwriters</p> <p>11 arrange for meetings with potential investors,</p> <p>12 institutional, retail sales forces and the like,</p> <p>13 and they so-call go on the road to tell their</p> <p>14 story to see whether they can get people</p> <p>15 interested in the deal.</p> <p>16 Q. Did you have any involvement with the</p> <p>17 settlement between the MacAndrews group and</p> <p>18 Sunbeam that resulted in the issuance of warrants</p> <p>19 to the MacAndrews group?</p> <p>20 A. None.</p> <p>21 Q. Did you have any participation in the</p> <p>22 valuation of those warrants?</p> <p>23 A. None.</p> <p>24 Q. Let me show you what the Court</p> <p>25 Reporter will mark as MS 238.</p>
<p style="text-align: right;">Page 195</p> <p>1 Drapkin</p> <p>2 A. Yes.</p> <p>3 Q. What did you sell your stock at, your</p> <p>4 20,000 shares?</p> <p>5 A. I want to say somewhere around \$32</p> <p>6 maybe, 31 or 32. Don't hold me -- I mean, I</p> <p>7 just --</p> <p>8 Q. I won't hold you to it. I'm just</p> <p>9 asking. You got close to --</p> <p>10 A. The Sunbeam stock got over 50 bucks a</p> <p>11 share. And the date that I sold it, I bet it was</p> <p>12 about 41. So maybe I got less than 32. I just</p> <p>13 don't remember.</p> <p>14 Q. Okay, we can put that exhibit back</p> <p>15 together. We're done with it for the time</p> <p>16 being. Why don't we take five minutes here.</p> <p>17 THE VIDEOGRAPHER: The time is 3:34</p> <p>18 p.m. We're going off the video record.</p> <p>19 (Recess taken.)</p> <p>20 THE VIDEOGRAPHER: The time is 3:44</p> <p>21 p.m. We're back on the video record.</p> <p>22 BY MR. BEMIS:</p> <p>23 Q. In connection with the zero coupon</p> <p>24 debenture offering that Morgan Stanley underwrote</p> <p>25 in March of 1998, did you attend any of the road</p>	<p style="text-align: right;">Page 197</p> <p>1 Drapkin</p> <p>2 (MS Exhibit 238, Sunbeam</p> <p>3 Preacquisition Business Plan, marked for</p> <p>4 identification, as of this date.)</p> <p>5 Q. The Court Reporter has handed you MS</p> <p>6 238. Do you have that in front of you?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is that a yes?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Have you ever seen that before?</p> <p>11 A. No, sir.</p> <p>12 Q. Okay, you can hand it back to me.</p> <p>13 There were some meetings between or</p> <p>14 among the parties concerning a potential</p> <p>15 synergies that the combined Coleman/Sunbeam</p> <p>16 enterprise might achieve. Did you attend any of</p> <p>17 those meetings?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. Did you have any input in drafting</p> <p>20 any documentation that purported to analyze the</p> <p>21 dollar amount of those synergies?</p> <p>22 A. No, sir.</p> <p>23 Q. Were you involved in any way with the</p> <p>24 restatement investigation of Sunbeam's financial</p> <p>25 statements that was undertaken under the</p>

<p style="text-align: right;">Page 198</p> <p>1 Drapkin</p> <p>2 direction of the Sunbeam audit committee in 1998?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you ever see the results of it?</p> <p>5 A. I might have.</p> <p>6 Q. Did you ever investigate what the</p> <p>7 actual sales short fall was of Sunbeam in the</p> <p>8 first quarter of 1998 versus the first quarter of</p> <p>9 1997?</p> <p>10 A. Did I personally?</p> <p>11 Q. Yeah. Did you ever determine what it</p> <p>12 was?</p> <p>13 A. I think I saw a piece of paper</p> <p>14 yesterday that actually showed what it was, but I</p> <p>15 didn't do any investigation on my own.</p> <p>16 Q. Do you know what piece of paper that</p> <p>17 you saw?</p> <p>18 A. No. It was some internal document</p> <p>19 that showed-- there was one piece of paper that I</p> <p>20 looked at that actually had the actual number.</p> <p>21 Q. The actual number of the sales or the</p> <p>22 shortfall?</p> <p>23 A. Whatever the first quarter was for</p> <p>24 Sunbeam.</p> <p>25 Q. Do you remember what you saw in</p>	<p style="text-align: right;">Page 200</p> <p>1 Drapkin</p> <p>2 THE VIDEOGRAPHER: The time is 3:50</p> <p>3 p.m. This completes tape 3, and also the</p> <p>4 videotaped deposition of Mr. Donald Drapkin.</p> <p>5</p> <p>6</p> <p>7 DONALD G. DRAPKIN</p> <p>8</p> <p>9 Subscribed and sworn to before me</p> <p>10 this ____ day of _____, 2004.</p> <p>11</p> <p>12 _____</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 199</p> <p>1 Drapkin</p> <p>2 terms -- withdrawn.</p> <p>3 Do you remember what the difference</p> <p>4 was between what Sunbeam eventually recorded in</p> <p>5 1998 for its first quarter sales versus its first</p> <p>6 quarter sales in 1997?</p> <p>7 A. No, I do not.</p> <p>8 Q. Did you ever -- strike that.</p> <p>9 Did you ever see what the difference</p> <p>10 was in sales between the first quarter of 1997</p> <p>11 and the first quarter of 1998 on a restated basis</p> <p>12 as opposed to as originally set forth in the</p> <p>13 financial statements of Sunbeam?</p> <p>14 A. No, I did not.</p> <p>15 MR. BEMIS: Okay. I don't have</p> <p>16 anything else for you. Thank you, sir.</p> <p>17</p> <p>18 (Continued on next page to include jurat.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 201</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4 : ss.</p> <p>5 COUNTY OF WESTCHESTER)</p> <p>6</p> <p>7 I, JANE WATSON, a Shorthand</p> <p>8 Reporter and Notary Public within and for</p> <p>9 the State of New York, do hereby certify:</p> <p>10 That, the witness DONALD G. DRAPKIN</p> <p>11 whose deposition is hereinbefore set forth,</p> <p>12 was duly sworn by me and that such</p> <p>13 deposition is a true record of the</p> <p>14 testimony given by the witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this</p> <p>17 action by blood or marriage, and that I am</p> <p>18 in no way interested in the outcome of this</p> <p>19 matter.</p> <p>20 IN WITNESS WHEREOF, I have hereunto</p> <p>21 set my hand this 24th day of June, 2004.</p> <p>22</p> <p>23</p> <p>24 JANE WATSON</p> <p>25</p>

1	
2	----- I N D E X -----
3	----- EXHIBITS -----
4	MS EXHIBIT FOR ID.
5	MS Exhibit 279, Notice of Merger and
6	Appraisal Rights..... 15
7	MS Exhibit 288, Cigar Afficionado article
8	on Ron Perelman..... 40
9	MS Exhibit 173, "Project Laser" chronology..... 54
10	MS Exhibit 239, information statement dated
11	3/38/98..... 94
12	MS Exhibit 251, Coleman Company 10-K..... 99
13	MS Exhibit 238, Sunbeam Preacquisition
14	Business Plan..... 197
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

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2	*** ERRATA SHEET ***
3	ESQUIRE DEPOSITION SERVICES
4	155 NORTH WACKER DRIVE
5	CHICAGO, ILLINOIS 60606
6	(312) 782-8087
7	NAME OF CASE: Coleman V Morgan Stanley
8	DATE OF DEPOSITION: June 24, 2004
9	WITNESS: Donald Drapkin
10	PAGE LINE FROM TO
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	DONALD G. DRAPKIN
23	Subscribed and sworn to before me
24	this ____ day of _____, 2004.
25	(Notary Public) My Commission Expires:

26

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

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

Subject: Company Update
Industry: Household Appliances

BEAR, STEARNS & CO. INC.
EQUITY RESEARCH

Sunbeam (SOC-45) - BUY

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

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

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

MARKET CAPITALIZATION \$4.0 (b)

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

-- FIRST CALL --

BEAR STEARNS

0051

Previous 1998

\$2.05E

Current 1999

\$3.00E 14.2x

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

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

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

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

-> End of Note <-

-- FIRST CALL --

BEAR STEARNS

0052

27

THE BUCKINGHAM RESEARCH GROUP

Research Notes for March 24, 1998

SOC	Target: \$64	EPS (FY Dec.)			P/E Ratios		3-Year	Debt/	Shares
\$45 15/16	1Q98E EPS	1997A	1998E	1999E	1998E	1999E	Growth	Capital	(mil.)
BUY	\$0.30E/\$0.24A	\$1.40	\$1.90	\$2.85	24.2	16.1	28%	26.8%	88.4

William H. Steele (415) 893-9073

We reiterate our Buy rating on Sunbeam, taking advantage of the recent weakness in share price to increase positions. Last week, the company announced that 1Q98 sales MAY fall short of analysts' estimates. We contend that the cautious comment was driven by Sunbeam's legal staff, which worried about potential disclosure problems since Sunbeam's management was talking to investors about a convertible bond issue. It is our opinion that Sunbeam's legal staff decided if there was ANY possibility (no matter how small) that the company could fall short of sales estimates, then it had to be disclosed before the convertible bond issue was priced. We believe these comments were purely cautionary and we continue to project that 1Q98 sales will increase 15%, to \$291 million. We are encouraged by the strong orders the company has received over the last five days (which will be shipped in this quarter). However, our 1Q98 EPS estimate has been trimmed \$0.01 to \$0.30 versus \$0.24 last year, due to more conservative margin assumptions. Our operating margin has been reduced 0.5 point, to 15.3%, primarily due to a reduction in projected gross margin. We have re-examined the sales mix in the quarter and given the large percentage that outdoor product sales (which we believe is the company's lowest-margin business) represent, we have reduced our gross margin assumption 1.0 point, to 27.4%. Partially offsetting this decline, we are reducing SG&A as a percent of sales 0.5 point, to 12.1%, recognizing that Sunbeam has gotten significantly leaner in the past year. Despite the \$0.01 per share reduction in 1Q98 EPS estimates, our full-year 1998 EPS forecast remains \$1.90, our 1999 EPS estimate remains \$2.85, and our target price remains \$64 per share. Based on our target price, the company has a total return potential of almost 40% -- which is certainly enough to warrant a Buy rating.

ANN	Target: \$19	EPS (FY Jan.)			P/E Ratios		3-Year	Debt/	Shares
\$14 9/16	1Q98E EPS	1996A	1997A	1998E	1999E	1998E	1999E	Growth	Capital
BUY	\$0.19E/\$0.25A	\$0.53	\$0.46	\$1.20	\$1.74	12.1	8.4	15%	26%

Catherine DePuy (212) 922-2103

AnnTaylor reported fully diluted 4Q97 EPS of \$0.09 versus \$0.20 in the year-ago quarter. The company's full-year 1997 EPS came in at \$0.47 (fully diluted) versus \$0.53 in 1996. Sales in 4Q97 came to \$211.8 million versus \$213.1 million a year ago. More details to follow. A rebroadcast of the company's 8:00 AM (EST) conference call will be available today and tomorrow. The replay number is (402) 351-9977.

MUEI	Target: \$18	EPS (FY Aug.)			P/E Ratios		3-Year	Debt/	Shares
\$11 1/2	3Q98E EPS	1997A	1998E	1999E	1998E	1999E	Growth	Capital	(mil.)
BUY	\$0.04E/\$0.20A	\$0.92	\$0.39	\$1.00	29.5	11.5	22%	5%	95.6

Peter Labé (212) 922-3506

We are hosting a breakfast here at Buckingham for Micron Electronics on Tuesday, April 7. Joel Kocher, president, and Steven Laney, vice president corporate communications, will represent the company. The conference call-in number for this meeting will be (212) 346-6476.

This report is based upon information available to the public. No representation is made that it is accurate or complete. The Buckingham Research Group, and others associated with it, may have positions in, and may effect transactions in, the securities of the companies mentioned herein and may also perform or seek to perform investment banking services for those companies.

BRG - 000060

EXHIBIT

367

16dv-000960
CPH 1039208

28

Goldman, Sachs & Co. Investment Research

Sunbeam Corporation

DEFENDANT'S
EXHIBIT

856

JP 7/19/00

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

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

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

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

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

- * Continue to recommend purchase of SOC. 1998E reduced to \$2.00 fm \$2.05. 1999E of \$3.00 unchanged. Spoke with company. By our model, potential Q1 revenue shortfall could place Q1 EPS in \$0.25 to \$0.30 range. New est is \$0.28ps v. \$0.24, down from previous \$0.32 est. We continue to believe the long-term consolidation strategy should create significant value not reflected in SOC shares today. Price target on \$3.00 estimate in 1999 is unchanged at \$60-\$65. We believe short-term issues are far outweighed by the longer-term benefits.
- * Q1:98 revenue estimates were in a range of \$285-\$295 million, about a 15% increase from Q1:97. Our new revenue target is 10% growth to \$275-\$280 million. The company stated that Q1 revenue MAY fall below Wall Street estimates of \$285 million to \$295 million, but should exceed year ago sales of \$253.4 million. Reasons for the shortfall IF ANY, would be retail order patterns and inventory management, not point of sale related. March is the most significant contributor to first quarter sales and profits. As such, these last two weeks of the month will be crucial to determining Q1 results.
- * Our rating on Sunbeam has been and remains a U.S. Recommended List rating. Within that rating we have, in the last year and a half, taken long and short-term postures at different points in time. Current events place our rating emphasis on the twelve-month view. We expect near-term volatility around these fundamental issues until Sunbeam reports earnings in late April.

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

GS 1202.24
CONFIDENTIAL

16dv-000962
CPH 1059641

29

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

30

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

32

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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<p style="text-align: right;">Page 1</p> <p>1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT 2 IN AND FOR PALM BEACH COUNTY, FLORIDA 3 CASE No.CA 03-5045 AI 4 5 COLEMAN (PARENT) HOLDINGS, INC., 6 Plaintiff, 7 -vs- 8 MORGAN STANLEY & CO., INC., 9 Defendant. 10 11 DEPOSITION OF MARK J. BROCKELMAN 12 (Videotaped) 13 14 Wednesday, January 14, 2004 15 9:09 a.m.- 1:25 p.m. 16 17 2139 Palm Beach Lakes Boulevard 18 West Palm Beach, Florida 33409 19 20 21 Reported By: 22 Rachel W. Bridge, RMR, CRR 23 Notary Public, State of Florida 24 Esquire Deposition Services 25 West Palm Beach Office 26 Phone: 800.330.6952 27 561.659.4155</p>	<p style="text-align: right;">Page 3</p> <p>1 - - - 2 INDEX 3 - - - 4 WITNESS: DIRECT CROSS REDIRECT RECROSS 5 Mark Brockelman 6 By Mr. Brody 5 174 7 By Mr. Clare 57 181 8 9 - - - 10 EXHIBITS 11 - - - 12 EXHIBIT PAGE 13 CPH Exhibit 115 22 14 CPH Exhibit 116 37 15 CPH Exhibit 117 55 16 MS Exhibit 39 91 17 MS Exhibit 40 96 18 MS Exhibit 41 122 19 MS Exhibit 42 144 20 MS Exhibit 43 147 21 MS Exhibit 44-47 150 22 MS Exhibit 48 155 23 MS Exhibit 49-54 160 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 On behalf of the Plaintiff: 3 MICHAEL T. BRODY, ESQUIRE 4 CHRISTOPHER M. O'CONNOR, ESQUIRE 5 JENNER & BLOCK, LLP 6 One IBM Plaza 7 Chicago, Illinois 60611-7603 8 Phone: 312.222.9350 9 10 On behalf of the Defendant: 11 THOMAS A. CLARE, ESQUIRE 12 KATHRYN REED DEBORD, ESQUIRE 13 KIRKLAND & ELLIS, LLP 14 655 Fifteenth Street, N.W. 15 Washington, D.C. 20005 16 Phone: 202.879.5078 17 18 On behalf of the Witness: 19 MICHAEL MOSCATO, ESQUIRE 20 CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP 21 101 Park Avenue 22 New York, New York 10178-0061 23 Phone: 212.696.8817 24 25 ALSO PRESENT: 26 EITAN ROSEN, VIDEOGRAPHER</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS 2 - - - 3 Deposition taken before Rachel W. Bridge, 4 Registered Professional Reporter and Notary Public 5 in and for the State of Florida at Large, in the 6 above cause. 7 8 THE VIDEOGRAPHER: We are now going on video 9 record. This is tape number one. The time on the 10 monitor is 9:09 a.m. 11 (Thereupon, the case was introduced by 12 the court reporter.) 13 MR. BRODY: Yes, Michael Brody and 14 Christopher O'Connor for Coleman (Parent) 15 Holdings, the plaintiff. 16 MR. CLARE: Thomas Clare and Katie Debord 17 with Kirkland & Ellis for the defendant, Morgan 18 Stanley. 19 MR. MOSCATO: Michael Moscato from the law 20 firm of Curtis Mallet for the witness, Mark 21 Brockelman. 22 Thereupon, 23 (MARK J. BROCKELMAN) 24 having been first duly sworn or affirmed, was 25 examined and testified as follows:</p>

<p style="text-align: right;">Page 5</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. BRODY:</p> <p>3 Q. Good morning, Mr. Brockelman. As I</p> <p>4 explained, my name is Mike Brody. I represent Coleman</p> <p>5 (Parent) Holdings in this case. I'm going to ask you</p> <p>6 some questions this morning.</p> <p>7 Would you please state your name and spell</p> <p>8 your last name for the court reporter.</p> <p>9 A. Mark Brockelman, B-r-o-c-k-e-l-m-a-n.</p> <p>10 Q. And, Mr. Brockelman, I understand you have</p> <p>11 been deposed before?</p> <p>12 A. Yes, I have.</p> <p>13 Q. So you're aware that you're under oath just</p> <p>14 as if you were at trial?</p> <p>15 A. Yes.</p> <p>16 Q. I will be asking you some questions today on</p> <p>17 behalf of my client. I represent Coleman (Parent)</p> <p>18 Holdings, which is an affiliate of MacAndrews & Forbes</p> <p>19 Holdings, Inc.</p> <p>20 Are you familiar with MacAndrews & Forbes and</p> <p>21 Coleman (Parent)?</p> <p>22 A. Yes, I am.</p> <p>23 Q. And Mr. Clare is here on behalf of Morgan</p> <p>24 Stanley.</p> <p>25 You're aware that Morgan Stanley operated as</p>	<p style="text-align: right;">Page 7</p> <p>1 questions about your background and what you did before</p> <p>2 March of 1998.</p> <p>3 Mr. Brockelman, where did you attend high</p> <p>4 school? Where did you grow up?</p> <p>5 A. Luther North, which is in Chicago, Illinois.</p> <p>6 Q. Did you then attend college?</p> <p>7 A. Yes, I did. I went to Marquette University</p> <p>8 in Milwaukee, Wisconsin.</p> <p>9 Q. Did you receive a degree from Marquette?</p> <p>10 A. Yes, I did.</p> <p>11 Q. What degree did you receive?</p> <p>12 A. Bachelor of arts in accounting.</p> <p>13 Q. When did you receive that degree?</p> <p>14 A. 1992.</p> <p>15 Q. You're laughing. I recall in a prior</p> <p>16 deposition there was some confusion about that date.</p> <p>17 A. That's correct.</p> <p>18 MR. MOSCATO: That's putting it mildly.</p> <p>19 BY MR. BRODY:</p> <p>20 Q. Mr. Brockelman, when you were in school at</p> <p>21 Marquette, did you work in the field of accountancy?</p> <p>22 A. Yes, I did.</p> <p>23 Q. What did you do?</p> <p>24 A. I had an internship at Johnson Controls.</p> <p>25 Q. In Milwaukee?</p>
<p style="text-align: right;">Page 6</p> <p>1 Sunbeam's investment bank in some transactions that</p> <p>2 closed in 1998?</p> <p>3 A. Yes, I am aware.</p> <p>4 Q. Are you aware that there is a lawsuit between</p> <p>5 Coleman (Parent) Holdings and Morgan Stanley arising</p> <p>6 out of that transaction?</p> <p>7 A. Yes.</p> <p>8 Q. Your testimony is being taken in connection</p> <p>9 with that case, sir.</p> <p>10 The sale of Coleman (Parent) Holdings'</p> <p>11 interest in Coleman to Sunbeam took place in the first</p> <p>12 quarter of 1998. Do you recall that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And at that time, early 1998, Sunbeam</p> <p>15 was based here in Florida; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Do you remember where their office was?</p> <p>18 A. In Delray Beach.</p> <p>19 Q. And at that time, in 1998, did Arthur</p> <p>20 Andersen provide accounting services to Sunbeam?</p> <p>21 A. Yes.</p> <p>22 Q. And, sir, did you work on that engagement?</p> <p>23 A. Yes, I did.</p> <p>24 Q. Before we focus on the work you did on that</p> <p>25 engagement for Sunbeam, I'd like to ask you some</p>	<p style="text-align: right;">Page 8</p> <p>1 A. In Milwaukee, Wisconsin.</p> <p>2 Q. When you graduated from college, did you take</p> <p>3 a job in the accounting field?</p> <p>4 A. Yes, I did.</p> <p>5 Q. And where did you take that job?</p> <p>6 A. Arthur Andersen.</p> <p>7 Q. In what city?</p> <p>8 A. In Chicago, Illinois.</p> <p>9 Q. Since then, since you graduated from school,</p> <p>10 have you become certified as a certified public</p> <p>11 accountant?</p> <p>12 A. In Illinois.</p> <p>13 Q. What does one need to do to become a</p> <p>14 certified public accountant?</p> <p>15 A. Sit for the examination and have two years'</p> <p>16 experience.</p> <p>17 Q. And you passed that examination and had the</p> <p>18 required experience?</p> <p>19 A. Yes, I did.</p> <p>20 Q. You were certified as a CPA in Illinois?</p> <p>21 A. In Illinois, that's correct.</p> <p>22 Q. Is that where you were when you sat for the</p> <p>23 exam?</p> <p>24 A. That's correct.</p> <p>25 Q. Now did there come a time after you started</p>

<p style="text-align: right;">Page 9</p> <p>1 at Arthur Andersen that you moved to a different office 2 within the company? 3 A. Yes. 4 Q. What office did you move to? 5 A. West Palm Beach, Florida. 6 Q. And when did you move to West Palm Beach, 7 approximately? 8 A. Approximately -- let me back up my time frame 9 here real quickly. I believe that was 1996. 10 Q. And did you remain -- let me state that 11 differently. 12 Did you stay in the West Palm Beach office of 13 Arthur Andersen for the remainder of your tenure at 14 Arthur Andersen? 15 A. Yes, I did. 16 Q. You didn't move to any other offices? 17 A. That's correct. 18 Q. Now what was your initial position when you 19 joined Arthur Andersen? What was your job title? 20 A. Staff. 21 Q. And how long approximately were you a staff 22 accountant at Arthur Andersen? 23 A. For two years. 24 Q. So that would be '92 to '94, about? 25 A. That's correct.</p>	<p style="text-align: right;">Page 11</p> <p>1 matter in the first half of 1998, were you an audit 2 manager? 3 A. I was a senior at the very beginning of my 4 Sunbeam work. 5 Q. And then you became a manager? 6 A. That is correct. 7 Q. When did you leave Arthur Andersen? 8 A. It was June of 2000. 9 Q. After you left Arthur Andersen, what position 10 did you take? 11 A. Vice-president of finance with American Media 12 Operations. 13 Q. Where is American Media Operations based? 14 A. Our headquarters is in Boca Raton, but I work 15 out of our Delray Beach office. 16 Q. Are you still with American Media? 17 A. Yes, I am. 18 Q. And what is your current position? 19 A. Vice-president of finance. 20 Q. Can you just briefly describe for us what the 21 responsibilities of the vice-president of finance are 22 at American Media? 23 A. Run the day-to-day finance, budgeting and the 24 cash flows of the company, supervise the accounting 25 closes and so forth.</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. Were you then promoted? 2 A. Yes, I was promoted. 3 Q. What was the next position you held? 4 A. Senior. 5 Q. What's the difference in responsibility 6 between a staff accountant and a senior accountant? 7 A. A senior will supervise the staff on an audit 8 engagement. 9 Q. And how long were you a senior? 10 A. For three years. 11 Q. Were you then promoted again? 12 A. Yes, I was. 13 Q. To what position? 14 A. Audit manager. 15 Q. And what are the differences of 16 responsibilities for an audit manager as opposed to a 17 senior? 18 A. Audit manager will supervise the entire 19 engagement from the planning to the actual audit 20 procedures to the actual wrap-up of the audit and will 21 report directly to the partner of engagement. 22 Q. Did you remain an audit manager for the 23 remainder of your tenure at Arthur Andersen? 24 A. Yes, I did. 25 Q. At the time you did work on the Sunbeam</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. To whom do you report? What position 2 do you report? 3 A. The CFO of the company. 4 Q. That's the chief financial officer? 5 A. That's correct. 6 Q. Okay. Returning to the work that Arthur 7 Andersen did for Sunbeam back in the 1998 time frame, 8 are you aware that Arthur Andersen performed audit 9 services for Sunbeam? 10 A. Yes. 11 Q. Did you participate in the audit of -- the 12 audit that Arthur Andersen performed of Sunbeam in 13 1996? 14 A. No. 15 Q. Did you participate in Arthur Andersen's 16 audit of Sunbeam in 1997? 17 A. No. 18 Q. Focusing on the work that Arthur Andersen did 19 for Sunbeam, when did you become involved in that work? 20 A. I'm sorry, can you repeat the question one 21 more time? 22 Q. Sure. When did you become involved in the 23 work that Arthur Andersen performed for Sunbeam? 24 A. It was during the bond offering for the 25 Coleman deal.</p>

<p style="text-align: right;">Page 13</p> <p>1 Q. If I were to tell you that the bond offering 2 closed at the end of March, 1998, would that be 3 consistent with your recollection of when you worked? 4 A. That's my recollection. 5 Q. Do you remember how soon before the bond 6 offering you started working on the Sunbeam matter? 7 A. Approximately two months before. 8 Q. And how long did you work on the project? 9 A. Until the close of the bond offering. 10 Q. Okay. With whom did you work? What other 11 accountants at Arthur Andersen? 12 A. Worked primarily with Larry Bornstein. I 13 also worked with Dennis Pastrana, but I reported 14 directly to Larry Bornstein. 15 Q. What projects do you recall working on in 16 connection with the bond offering? 17 A. I helped draft the pro forma financial 18 results which went into the bond offering. 19 I also verified the historical data within 20 the bond offering. 21 Q. Any other projects you remember working on? 22 A. We're just talking about the bond offering at 23 this point? 24 Q. Yes, sir. 25 A. Yes, that's it.</p>	<p style="text-align: right;">Page 15</p> <p>1 A. Any information that was in the bond offering 2 that related to historical data, it was verified by me. 3 And also I maintain a file that supported the 4 historical data within the bond offering. 5 MR. MOSCATO: Mark, I just want to clarify, 6 when you say historical information in the bond 7 offering, do you mean in the offering memorandum? 8 THE WITNESS: In the offering memorandum, 9 excuse me, let me rephrase that. Within the 10 offering memorandum. 11 BY MR. BRODY: 12 Q. And just so we're clear, by offering 13 memorandum, you mean the document that was used to sell 14 the securities to the people who bought them? 15 A. That is correct, yes. 16 Q. Now in connection with the work that you did 17 with the bond offering, did you do any work on Arthur 18 Andersen's comfort letter? 19 A. Yes, I did. 20 Q. What is a comfort letter? 21 A. Comfort letter is a letter provided by the 22 auditors in connection with a registration statement. 23 Q. And who do they provide it to? 24 A. It's provided, I believe, if I recall 25 correctly, to the company. And also to the</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. In connection with the work you did on the 2 bond offering, did you do any due diligence? 3 A. No, I did not. 4 Q. That was done by others; is that right? 5 A. That's correct. 6 Q. You mentioned the pro formas and said you 7 helped draft the pro formas. 8 Can you explain what a pro forma is? 9 A. Pro forma basically means as if. You take 10 the historical information and adjust them for the 11 transaction at hand. 12 Q. And what is it that you did in working on the 13 pro formas? 14 A. With the help of the Sunbeam company, Bob 15 Gluck actually created a spreadsheet for the various 16 periods, the balance sheets and income statements, and 17 adjusted them for the transactions based on the 18 accounting rules and guidelines. 19 Q. Did those pro forma documents that you worked 20 on find their way into the offering memorandum? 21 A. Yes, that's correct. 22 Q. All right. You also indicated that you did 23 some work in verifying historical data? 24 A. That's correct. 25 Q. What do you mean by that?</p>	<p style="text-align: right;">Page 16</p> <p>1 underwriters. 2 Q. Okay. Do you recall what your involvement 3 was in connection with the comfort letter? 4 A. Yes. 5 Q. What was that? 6 A. Primarily related to the tick marks that are 7 within the comfort letter. By the tick marks, they are 8 defined work that is performed by the auditors on the 9 actual offering memorandum such as tracing to 10 company-provided documentation. 11 Q. Who else was involved with the comfort 12 letter? 13 A. To my knowledge, Larry Bornstein and Dennis 14 Pastrana. 15 Q. Do you recall when the drafting of the 16 comfort letter began? 17 Do you remember the date on which it began? 18 A. Not exactly. 19 Q. I may show you some documents, sir, that will 20 refresh your recollection. We'll come back to that. 21 Did you provide any of, to your recollection, 22 did you provide any of the information that was put 23 into the comfort letter? 24 A. What do you mean by information? 25 Q. Well, the comfort letter contained data and</p>

<p style="text-align: right;">Page 17</p> <p>1 information about the company, didn't it? Do you 2 recall?</p> <p>3 MR. MOSCATO: Would it be helpful if you saw 4 the comfort letter, Mark, to answer this question?</p> <p>5 THE WITNESS: Yeah, potentially that may 6 help.</p> <p>7 BY MR. BRODY:</p> <p>8 Q. I think that's a good way to go. Let me 9 provide that.</p> <p>10 Mr. Brockelman, I'm giving you what 11 previously has been marked as CPH Exhibit 17. That's a 12 letter on the letterhead of Arthur Andersen dated 13 March 19.</p> <p>14 I'm going to ask you just to look at that and 15 tell me if that's a comfort letter.</p> <p>16 A. Yes, this is a comfort letter.</p> <p>17 Q. And is this the comfort letter that was sent 18 to Morgan Stanley in connection with the bond offering, 19 to your recollection?</p> <p>20 A. To my recollection, yes.</p> <p>21 Q. Sir, is this the final version, the final 22 version of the letter?</p> <p>23 MR. CLARE: Objection to the form.</p> <p>24 MR. BRODY: Let me withdraw that.</p> <p>25</p>	<p style="text-align: right;">Page 19</p> <p>1 night at the printer's.</p> <p>2 Q. And after Mr. Bornstein signed the document 3 at the printer's, do you know what he did with it? Did 4 he give it to somebody?</p> <p>5 A. Yes, he did. I don't recall who received 6 copies.</p> <p>7 Q. Do you know if at that time a copy was given 8 to someone for or on behalf of Morgan Stanley?</p> <p>9 A. Yes, correct.</p> <p>10 Q. The question that caused me to show you this 11 document related to the date, or information rather, 12 contained in the information.</p> <p>13 I'd ask you please to turn to page three of 14 the document we have marked as Exhibit 17.</p> <p>15 For example, paragraph 5A and 5B contains 16 information about the operations of Sunbeam.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Is that information that you collected?</p> <p>20 A. No.</p> <p>21 Q. Is it information that you were responsible 22 for putting into the document?</p> <p>23 A. No.</p> <p>24 Q. Do you know who provided that information?</p> <p>25 A. Dennis Pastrana.</p>
<p style="text-align: right;">Page 18</p> <p>1 BY MR. BRODY:</p> <p>2 Q. Do you know if any comfort letters were sent 3 after this one?</p> <p>4 A. Yes, I do know.</p> <p>5 Q. Was a comfort letter sent in connection with 6 this transaction after the draft that you see as -- 7 excuse me, the version marked as Exhibit 17?</p> <p>8 A. Yes.</p> <p>9 Q. When was that sent?</p> <p>10 A. It's called a bring-down letter when it 11 finalizes. I don't know the exact date of that.</p> <p>12 Q. Okay. We'll come back to that. Thank you.</p> <p>13 This document is signed by someone on behalf 14 of Arthur Andersen.</p> <p>15 A. Yes.</p> <p>16 Q. Do you know who put pen to paper and signed 17 the document, do you recall?</p> <p>18 A. To my recollection, it was Larry Bornstein 19 who had the authorization from the partner, Phil 20 Harlow, to sign on his behalf.</p> <p>21 Q. Do you know, were you present when 22 Mr. Bornstein signed the comfort letter?</p> <p>23 A. Yes, I was.</p> <p>24 Q. And when was that, to your recollection?</p> <p>25 A. I don't know the exact date. It was the</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Prior to this comfort letter being signed and 2 given to Morgan Stanley at the printer, do you know if 3 a draft was sent to Morgan Stanley?</p> <p>4 A. Yes.</p> <p>5 Q. And was a draft sent to Morgan Stanley?</p> <p>6 A. To my knowledge.</p> <p>7 Q. Do you know when that was sent?</p> <p>8 A. No, I do not.</p> <p>9 Q. Do you know how long in advance of the 10 meeting at the printer's it was sent?</p> <p>11 A. No, I do not.</p> <p>12 Q. Could you estimate in terms of days or weeks?</p> <p>13 MR. CLARE: Objection.</p> <p>14 BY MR. BRODY:</p> <p>15 Q. Anything?</p> <p>16 A. No, I really can't.</p> <p>17 Q. Prior to Mr. Bornstein delivering the signed 18 copy of the letter to Morgan Stanley at the printer's, 19 do you know if Morgan Stanley had a copy of the comfort 20 letter?</p> <p>21 MR. CLARE: Objection, calls for speculation.</p> <p>22 THE WITNESS: I do not know.</p> <p>23 BY MR. BRODY:</p> <p>24 Q. Did you ever see someone from Morgan Stanley 25 or their lawyers with a copy?</p>

<p style="text-align: right;">Page 21</p> <p>1 A. No.</p> <p>2 Q. Returning to the letter, sir, paragraph 6C,</p> <p>3 paragraph six begins on page four, but paragraph 6C is</p> <p>4 on page five, contains additional information about the</p> <p>5 status of the company.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Did you collect the information that is found</p> <p>9 in paragraph 6C?</p> <p>10 A. No.</p> <p>11 Q. Did you do anything to analyze or prepare</p> <p>12 that portion of the letter?</p> <p>13 A. No.</p> <p>14 Q. Do you know who prepared the information or</p> <p>15 collected the information that's found in paragraph 6C?</p> <p>16 A. Dennis Pastrana.</p> <p>17 MR. MOSCATO: Let me just have a word. There</p> <p>18 is no question pending.</p> <p>19 MR. BRODY: Correct. That's fine.</p> <p>20 (witness confers with counsel).</p> <p>21 MR. BRODY: Are you all set?</p> <p>22 MR. MOSCATO: Yes.</p> <p>23 If it comes up --</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. BRODY: Please mark this as our next</p>	<p style="text-align: right;">Page 23</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. You indicated that you've seen several</p> <p>3 drafts. Did you make revisions to drafts?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Do you remember anything that you changed or</p> <p>6 added?</p> <p>7 A. Several things. I couldn't name one specific</p> <p>8 item, but certainly several items changed throughout</p> <p>9 the drafting of the comfort letter.</p> <p>10 Q. Do you remember anything that you changed as</p> <p>11 opposed to things that might have just been changed in</p> <p>12 the process?</p> <p>13 A. Nothing specifically.</p> <p>14 Q. Okay. Focusing on the draft we've marked as</p> <p>15 Exhibit 115, there is some handwriting on it. Do you</p> <p>16 recognize any of that handwriting?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Is any of it yours?</p> <p>19 A. No.</p> <p>20 Q. Do you know whose handwriting it is?</p> <p>21 A. Yes.</p> <p>22 Q. And whose is it?</p> <p>23 A. Larry Bornstein's.</p> <p>24 Q. The document on its first page contains a fax</p> <p>25 tag line indicating it was faxed from Global Financial</p>
<p style="text-align: right;">Page 22</p> <p>1 exhibit, which I believe is Exhibit 115.</p> <p>2 (CPH Exhibit No. 115 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. BRODY:</p> <p>5 Q. Mr. Brockelman, I've asked the court reporter</p> <p>6 to mark and have given to you a document marked as CPH</p> <p>7 Exhibit 115. Do you have that in front of you?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Do you recognize that this is a draft of the</p> <p>10 comfort letter?</p> <p>11 A. Yes, it has the stamp on top.</p> <p>12 Q. By that, you mean the Preliminary, Intended</p> <p>13 For Discussions Only stamp?</p> <p>14 A. That's correct.</p> <p>15 Q. Aside from discussions with your counsel,</p> <p>16 have you ever seen this document before?</p> <p>17 A. I've seen several draft versions of the</p> <p>18 offering memorandum. I couldn't tell you if I actually</p> <p>19 saw this specific version.</p> <p>20 MR. MOSCATO: You said of the offering</p> <p>21 memorandum again.</p> <p>22 THE WITNESS: I'm sorry, the comfort letter.</p> <p>23 BY MR. BRODY:</p> <p>24 Q. The comfort letter that was done in</p> <p>25 connection with the offering memorandum?</p>	<p style="text-align: right;">Page 24</p> <p>1 Press on the 19th of March in 1998.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you believe that's the night or the</p> <p>5 evening that you were at the printer?</p> <p>6 A. Yes, I do.</p> <p>7 Q. And it was sent at almost midnight, 12</p> <p>8 minutes to midnight.</p> <p>9 Were you at the printer at that time?</p> <p>10 A. Yes, I was.</p> <p>11 Q. Do you remember any discussions, sir, at the</p> <p>12 printer about a draft of the comfort letter or making</p> <p>13 any changes to the comfort letter?</p> <p>14 MR. CLARE: Objection to the form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. BRODY:</p> <p>17 Q. With whom were those discussions? Who</p> <p>18 participated in those discussions?</p> <p>19 A. Larry Bornstein.</p> <p>20 Q. Anyone else?</p> <p>21 A. I don't recall anybody else. I know there</p> <p>22 were discussions. I couldn't tell you names of anybody</p> <p>23 else.</p> <p>24 Q. And focusing on discussions about the comfort</p> <p>25 letter as opposed to other discussions at the printer</p>

<p style="text-align: right;">Page 25</p> <p>1 that evening, what do you remember being discussed?</p> <p>2 A. With regard to changes to the comfort letter?</p> <p>3 Q. Yes, sir.</p> <p>4 A. My specific part was to ensure that all the</p> <p>5 numbers were correct. My job was to place all the tick</p> <p>6 marks throughout the actual exhibit part of the comfort</p> <p>7 letter.</p> <p>8 I wanted to point out this wasn't the entire</p> <p>9 comfort letter, so specifically that was my job to</p> <p>10 change the comfort letter in that fashion, to dropping</p> <p>11 the tick marks on the exhibits.</p> <p>12 Q. Just so we're clear, the document we've</p> <p>13 marked as Exhibit 115 doesn't have the tick marks on</p> <p>14 it, does it?</p> <p>15 A. It has the, the narrative on it, but it does</p> <p>16 not have the actual comfort letter pages that had the</p> <p>17 tick marks on it.</p> <p>18 Q. And if we return to the document that had</p> <p>19 been marked as Exhibit 17, the signed copy of the</p> <p>20 comfort letter.</p> <p>21 A. Yes.</p> <p>22 Q. And turn to page six and seven of the</p> <p>23 document.</p> <p>24 A. Yes.</p> <p>25 Q. Does that have the key for the tick marks?</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. Okay, thank you.</p> <p>2 Okay. Now let's talk a little more generally</p> <p>3 about the discussions that took place that evening at</p> <p>4 the printer's. You've already testified that you were</p> <p>5 present at the printer's?</p> <p>6 A. Yes.</p> <p>7 Q. And the printer's name was Global Financial</p> <p>8 Press?</p> <p>9 A. Yes.</p> <p>10 Q. Where, what city is Global Financial Press</p> <p>11 located in?</p> <p>12 A. New York City.</p> <p>13 Q. And who did you attend that meeting with?</p> <p>14 Who went with you to that meeting?</p> <p>15 A. Larry Bornstein.</p> <p>16 Q. Now for those not familiar with an evening at</p> <p>17 the printer's, what is it like? Do you go to a print</p> <p>18 shop or do you go to offices?</p> <p>19 What type of facility did you visit?</p> <p>20 MR. CLARE: Objection to form.</p> <p>21 THE WITNESS: It was a print facility, and we</p> <p>22 were in a conference room.</p> <p>23 BY MR. BRODY:</p> <p>24 Q. Were there more rooms than just the one</p> <p>25 conference room?</p>
<p style="text-align: right;">Page 26</p> <p>1 A. That is correct.</p> <p>2 Q. And was it your job to place those</p> <p>3 appropriate marks on the exhibits in the areas to which</p> <p>4 they correspond?</p> <p>5 A. That's correct.</p> <p>6 Q. And is that something you did the evening you</p> <p>7 were at the printer?</p> <p>8 A. That is correct.</p> <p>9 Q. Do you remember any discussions, aside from</p> <p>10 that topic, do you remember any discussions about the</p> <p>11 language of the comfort letter or the statements made</p> <p>12 in the comfort letter at the printer?</p> <p>13 A. I do.</p> <p>14 Q. What do you recall being discussed?</p> <p>15 A. I do want to preface that my knowledge is a</p> <p>16 little bit hazy at this point, but I do remember</p> <p>17 discussions regarding disclosure.</p> <p>18 Q. Disclosure of what?</p> <p>19 A. Are we talking about the comfort letter or</p> <p>20 the offering memorandum in general?</p> <p>21 Q. Let's just try to narrow it first to the</p> <p>22 comfort letter.</p> <p>23 A. To the comfort letter itself.</p> <p>24 As far as the comfort letter, no, no</p> <p>25 significant discussions related to the comfort letter.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes, correct.</p> <p>2 Q. How long were you there, from the time you</p> <p>3 arrived to the time you left?</p> <p>4 A. I don't recall precisely, but I estimate</p> <p>5 about ten hours.</p> <p>6 Q. And what was your purpose in going to the</p> <p>7 printer's that evening?</p> <p>8 A. To update the comfort letter.</p> <p>9 Q. Anything else?</p> <p>10 A. No.</p> <p>11 Q. Did you look at draft documents that the</p> <p>12 printer had prepared and decide whether they were</p> <p>13 appropriate or not?</p> <p>14 A. Yes, as part of the comfort letter.</p> <p>15 Q. Can you explain how it is you did that, what</p> <p>16 you were doing?</p> <p>17 A. A final update to the pro forma information.</p> <p>18 As pages turned, you would compare what you submitted</p> <p>19 to the final version.</p> <p>20 Q. Okay.</p> <p>21 MR. BRODY: Can we go off the record for just</p> <p>22 a second.</p> <p>23 THE VIDEOGRAPHER: We are now going off video</p> <p>24 record. The time on the monitor is 9:38 a.m.</p> <p>25 (Discussion held off the record.)</p>

Page 29

1 THE VIDEOGRAPHER: We are now back on video
 2 record. The time on the monitor is 9:44 a.m.
 3 BY MR. BRODY:
 4 Q. Mr. Brockelman, before we went off the
 5 record, we were talking about the evening at the
 6 printer's. I'd like to return to that topic.
 7 What document was being printed?
 8 A. The offering memorandum.
 9 Q. And that was the offering memorandum by which
 10 Sunbeam raised money to finance its acquisitions?
 11 A. That's correct.
 12 Q. And was the pro forma that you worked on
 13 being included in that offering memorandum?
 14 A. Yes, it was.
 15 Q. Now you indicated in a response to a prior
 16 question that as certain pages were turned, you checked
 17 them.
 18 What was it that you meant by that? What did
 19 you do?
 20 A. The historical and pro forma financial
 21 information that was in the document, if there was any
 22 changes or adjustments to those numbers, I would check
 23 and ensure that they were properly changed.
 24 Q. So as the printer prepared draft pages, you
 25 checked them to make sure they were still accurate?

Page 30

1 A. That's correct.
 2 Q. Now at the time of this meeting at the
 3 printer in New York, you were officed in Florida; is
 4 that correct?
 5 A. Yes.
 6 Q. And you traveled to New York to go to the
 7 printer's?
 8 A. Yes, I did.
 9 Q. Did you travel with Mr. Bornstein?
 10 A. Yes.
 11 Q. Are you aware that the day you visited the
 12 printer, Sunbeam issued a press release about its sales
 13 results?
 14 A. Yes, I am.
 15 Q. And did you have any involvement in drafting
 16 or revising the press release?
 17 A. No, I did not.
 18 Q. Were you aware of the press release before it
 19 was issued?
 20 A. No, I was not.
 21 Q. Do you remember where you were when you
 22 learned that Sunbeam had issued the press release?
 23 A. Yes.
 24 Q. And where was that?
 25 A. At the hotel. I do not recall what hotel I

Page 31

1 was staying at with Larry Bornstein, but we were in his
 2 room in the hotel.
 3 Q. Then how did you learn about the press
 4 release?
 5 A. We saw on a news channel the disclosure on
 6 the press release.
 7 Q. What do you remember the news channel or the
 8 news story reported about Sunbeam's press release?
 9 A. It gave a forecasted number. That's all I
 10 recall.
 11 Q. Do you remember after you and Mr. Bornstein
 12 saw the mention of the press release whether you had a
 13 discussion about it at that time in the hotel?
 14 A. Yes.
 15 Q. What do you remember discussing?
 16 A. Larry made a comment that he didn't believe
 17 the number that was disclosed would be obtainable.
 18 Q. And that was after Mr. Bornstein saw the
 19 press release?
 20 MR. CLARE: Objection to form.
 21 MR. MOSCATO: I object to that. It's
 22 inconsistent with his testimony.
 23 BY MR. BRODY:
 24 Q. When was that discussion with Mr. Bornstein?
 25 A. After we saw the news report.

Page 32

1 Q. Okay.
 2 MR. MOSCATO: Did you see the press release
 3 at all?
 4 THE WITNESS: No, I just want to make sure
 5 we're talking about a news release, not a press
 6 release.
 7 BY MR. BRODY:
 8 Q. I understand. You didn't see the actual
 9 press release?
 10 A. That's correct.
 11 Q. Released at that time.
 12 I'd now like to focus on -- let me withdraw
 13 that.
 14 Did you go from the hotel to the printer?
 15 A. Yes.
 16 Q. I'd now like to focus on the events that took
 17 place at the printer.
 18 Sir, was the, were these events at the
 19 printer the same day as the press release came out?
 20 A. Again, I don't recall a press release. The
 21 same day of that news release, yes.
 22 Q. Okay. And who participated in these meetings
 23 at the printer? Who was there?
 24 A. I was there certainly, Larry Bornstein. We
 25 were the team from Arthur Andersen.

<p style="text-align: right;">Page 33</p> <p>1 There was representatives from Morgan 2 Stanley. Several attorneys. I couldn't name 3 everybody. That really wasn't my job there. 4 Q. Sure. Do you know who was there from Morgan 5 Stanley? 6 A. I don't recall any names, no. 7 Q. If I mentioned name John Tyree, does that 8 refresh your recollection? 9 A. Yes, John Tyree was there. 10 Q. Do you remember if there was anyone else 11 there from Morgan Stanley? 12 A. There was. Again, I don't recall any names. 13 Q. Were there lawyers there on behalf of Morgan 14 Stanley? 15 A. Yes. 16 Q. Were there lawyers there on behalf of 17 Sunbeam? 18 A. Yes. 19 Q. Do you know if there was any business person 20 there on behalf of Sunbeam? 21 A. No, there was not. 22 Q. As you sit here, do you remember the names of 23 the lawyers there on behalf of either Sunbeam or Morgan 24 Stanley? 25 A. No, I do not.</p>	<p style="text-align: right;">Page 35</p> <p>1 A. Larry Bornstein to myself. 2 Q. So Mr. Bornstein discussed with you? 3 A. That's correct. 4 Q. What do you remember Mr. Bornstein saying? 5 A. I don't recall the exact substance of the 6 conversation. Just it related to disclosures in the 7 offering memorandum. 8 Q. Do you remember Mr. Bornstein participating 9 in a discussion with the Morgan Stanley representatives 10 about disclosures in the offering memorandum? 11 A. Yes. 12 Q. Would this be between Mr. Bornstein and 13 Mr. Tyree? 14 A. Yes. There were also other people involved 15 in the conversation. He's the only one I remember. 16 Q. What do you remember being discussed? 17 A. I don't recall specifically. It just again 18 related to disclosures within the offering memorandum. 19 Q. Do you remember what position Mr. Bornstein 20 was taking? 21 A. No, I do not. 22 Q. Do you remember what position Mr. Tyree was 23 taking? 24 A. No, I do not. 25 Q. Mr. Brockelman, this conversation at the</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. And do you remember the names of their law 2 firms? 3 A. No, I do not. 4 Q. If I were to suggest that attorneys from 5 Scadden Arps represented Sunbeam, would that refresh 6 your recollection? 7 A. Yes, that does. 8 Q. Were there lawyers from Scadden there? 9 A. There was. 10 Q. Do you remember the names? 11 A. No, I do not. 12 Q. Are you familiar with the firm of Davis Polk? 13 A. Yes, they were the attorneys for the 14 underwriters, I believe. 15 Q. Again, do you remember the names of the 16 individuals lawyers? 17 A. No, I do not. 18 Q. At the printer's that evening, do you recall 19 discussion about what disclosure should be put in the 20 offering memorandum? 21 MR. CLARE: Objection to form. 22 THE WITNESS: Yes, I remember a discussion, 23 yes. 24 BY MR. BRODY: 25 Q. Who participated in this discussion?</p>	<p style="text-align: right;">Page 36</p> <p>1 printer's took place in 1998; is that correct? 2 A. Yes. 3 Q. And we're now sitting here in 2004. Between 4 then and now, did you give other testimony in which you 5 described what happened that evening at the printer's? 6 A. Yes, I did. 7 Q. All right. And it's correct, sir, isn't it, 8 that you were deposed in connection with other 9 litigation arising out of this transaction in which you 10 testified about a number of topics, including the 11 events at the printer's? 12 A. Yes, I did. 13 Q. Do you remember when that deposition took 14 place? 15 A. It was a couple of years ago. 16 MR. BRODY: Do you need a copy? 17 MR. MOSCATO: I wouldn't mind if you have an 18 extra one. 19 BY MR. BRODY: 20 Q. Mr. Brockelman, I'm giving you -- may I have 21 that back? I'm going to mark it. 22 THE WITNESS: Certainly. 23 MR. BRODY: Ask the court reporter to mark 24 this, please, as our next exhibit. 25</p>

<p style="text-align: right;">Page 37</p> <p>1 (CPH Exhibit No. 116 was marked for 2 identification.) 3 BY MR. BRODY: 4 Q. Mr. Brockelman, I've given you what's been 5 marked as CPH Exhibit 116, which appears to be a 6 transcript of the deposition you gave nearly three 7 years ago on January 23rd, 2001. Is that correct? 8 A. Yes, correct. 9 Q. And at the time you gave that testimony, the 10 events of March 1998 were closer in time; is that 11 correct? 12 A. Yes, correct. 13 Q. I'd ask you, please, to review your prior 14 testimony and then I'm going to ask if it refreshes 15 your recollection of the events of that evening. So if 16 you would please turn to page 190. Let me give you a 17 more specific page and line, and see if you recall. 18 I believe you might want to start reading on 19 either page 190 or beginning on page 191. 20 MR. MOSCATO: Why don't you start at the top 21 of 190. 22 MR. BRODY: That would be fine. 23 THE WITNESS: Okay. 24 MR. MOSCATO: How far do you want him to go? 25 MR. BRODY: Well, I'm going to ask you to</p>	<p style="text-align: right;">Page 39</p> <p>1 conversations held there? 2 A. It generally related to the projections for 3 the first quarter, but as far as the actual figures and 4 amounts, I don't recall. 5 Q. Putting aside the figures and amounts, did 6 Mr. Bornstein express a view about whether the 7 projections of sales for the first quarter should be 8 included or not? 9 A. He felt that they should not be included and 10 that they were not going to make analyst expectations 11 for the first quarter. 12 Q. Do you remember anything else Mr. Bornstein 13 said in words or in substance about that subject? 14 A. No. That's the extent of my knowledge. 15 Q. Do you remember what Mr. Tyree from Morgan 16 Stanley said in response to what Mr. Bornstein said? 17 A. No. 18 Q. Did there come a time that evening in which 19 Mr. Tyree discussed Mr. Bornstein out of the presence 20 of Mr. Bornstein; that is, in your presence, but while 21 Mr. Bornstein was not there? 22 A. Yes. 23 Q. What do you remember happening in that 24 conversation? 25 A. I wasn't involved in the conversation, but I</p>
<p style="text-align: right;">Page 38</p> <p>1 read to page 202. 2 MR. MOSCATO: 202? 3 MR. BRODY: Yes, sir. 4 MR. MOSCATO: Off the record. 5 (Discussion held off the record.) 6 BY MR. BRODY: 7 Q. Have you had a chance to look at those pages, 8 sir? 9 A. Yes, I did. 10 Q. Does reviewing your testimony from 2001 11 refresh your recollection about the events of the 12 evening of March 19, 1998? 13 A. To a certain extent. 14 Q. Do you recall, having refreshed your 15 recollection to that extent, do you recall what 16 discussion Mr. Bornstein and Mr. Tyree had on the 17 evening of March 19 about what should be disclosed in 18 the offering memorandum concerning Sunbeam sales? 19 MR. MOSCATO: Mark, why don't you close the 20 thing and then tell him. 21 BY MR. BRODY: 22 Q. I think that's a good idea. 23 A. Yeah. Honestly, I still do not recall the 24 exact conversations held there. 25 Q. Do you remember in substance the</p>	<p style="text-align: right;">Page 40</p> <p>1 was in the same conference room when he was making the 2 comments. 3 Basically John Tyree was very upset and used 4 certain profanity directed at Larry Bornstein. 5 Q. Do you remember what he was upset about? 6 MR. CLARE: Objection, calls for speculation. 7 MR. MOSCATO: I object to that. 8 MR. BRODY: Let me rephrase it. 9 BY MR. BRODY: 10 Q. Did, in that conversation did Mr. Tyree 11 communicate what he was upset about? 12 A. Yes. 13 Q. And what was that? 14 A. It related to disclosure in the offering 15 memorandum. 16 Q. Was he upset with Mr. Bornstein? 17 MR. CLARE: Objection, calls for speculation. 18 THE WITNESS: It appeared he was upset at 19 Larry Bornstein, yes. 20 BY MR. BRODY: 21 Q. Do you remember in words or substance what he 22 said in that conversation? 23 A. No, I do not. 24 Q. As you sit here, I know it's been a number of 25 years, do you remember any of the precise things that</p>

<p style="text-align: right;">Page 41</p> <p>1 he said?</p> <p>2 A. All I could remember is, you know, him saying</p> <p>3 Larry Bornstein is a fucking asshole. That's the</p> <p>4 extent of my recollection of the words he used.</p> <p>5 Q. So those words stuck with you?</p> <p>6 A. Yeah, exactly.</p> <p>7 Q. Do you remember other participants in this</p> <p>8 conversation? Let me withdraw that.</p> <p>9 Do you remember other participants at the</p> <p>10 printer's aside from Mr. Tyree, for example, the</p> <p>11 Scadden lawyers, the Davis Polk lawyers, saying</p> <p>12 anything about the disclosure issue?</p> <p>13 A. No, I don't recall.</p> <p>14 Q. Was Mr. Tyree upset about the things that</p> <p>15 Mr., the position Mr. Bornstein was taking?</p> <p>16 MR. CLARE: Objection, calls for speculation.</p> <p>17 THE WITNESS: He appeared upset.</p> <p>18 BY MR. BRODY:</p> <p>19 Q. On what do you base that? Why do you believe</p> <p>20 he appeared upset?</p> <p>21 A. Profanity he used.</p> <p>22 Q. Did he raise his voice?</p> <p>23 A. Yes.</p> <p>24 Q. When Mr. Tyree made these comments, you were</p> <p>25 in the conference room; is that correct?</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. Aside from the discussions you've recounted</p> <p>2 so far, do you recall any other discussions that</p> <p>3 evening at the printer?</p> <p>4 A. Not specifically.</p> <p>5 Q. Do you remember when in the evening or in the</p> <p>6 morning hours you and Mr. Bornstein left the printer?</p> <p>7 Was it the following morning or was it --</p> <p>8 A. It was in the morning time. I'm not quite</p> <p>9 sure what exact time.</p> <p>10 Q. Now, Mr. Brockelman, a moment ago you had a</p> <p>11 chance to review the testimony you gave in 2001 about</p> <p>12 this subject; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And having done that, that refreshed your</p> <p>15 recollection to an extent and you've testified about</p> <p>16 that; is that correct?</p> <p>17 A. To a certain extent, yes.</p> <p>18 Q. And it's my understanding you don't recall</p> <p>19 anything else concerning those events?</p> <p>20 A. That's correct.</p> <p>21 Q. At the time you gave the testimony that you</p> <p>22 gave in 2001, did you testify based on your</p> <p>23 recollection of the events at that time?</p> <p>24 A. Yes, I did.</p> <p>25 Q. And does the transcript I showed you, the</p>
<p style="text-align: right;">Page 42</p> <p>1 A. Yes.</p> <p>2 Q. Were the comments directed to you or were</p> <p>3 they directed to others?</p> <p>4 A. Directed to others.</p> <p>5 Q. Do you know to whom they were directed?</p> <p>6 A. No, I do not.</p> <p>7 Q. One or another of the lawyers?</p> <p>8 A. The other attorneys, that's correct.</p> <p>9 Q. At the time Mr. Tyree made these statements,</p> <p>10 was Mr. Bornstein present?</p> <p>11 A. No.</p> <p>12 Q. Did Mr. Bornstein later return to the room?</p> <p>13 A. Yes, he did.</p> <p>14 Q. And did you relate what Mr. Tyree had said to</p> <p>15 Mr. Bornstein?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know how the disclosure issue was</p> <p>18 resolved?</p> <p>19 MR. CLARE: Objection to form.</p> <p>20 MR. BRODY: Let me withdraw that.</p> <p>21 BY MR. BRODY:</p> <p>22 Q. Do you know how the issue that Mr. Bornstein</p> <p>23 and Mr. Tyree discussed that evening was resolved in</p> <p>24 the offering memorandum?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 44</p> <p>1 transcript from 2001 contain your testimony, record</p> <p>2 your past recollection about those events?</p> <p>3 A. Yes, it does.</p> <p>4 MR. CLARE: Objection to form.</p> <p>5 MR. BRODY: And what's that objection?</p> <p>6 MR. CLARE: You only asked him to read a few</p> <p>7 pages of his deposition transcript, and I think</p> <p>8 it's improper to ask him whether the entire</p> <p>9 transcript is consistent with his current</p> <p>10 recollection.</p> <p>11 MR. BRODY: Okay, well, I don't think that</p> <p>12 was my question.</p> <p>13 MR. CLARE: Or whether it was based on his</p> <p>14 recollection at that point in time, when he's only</p> <p>15 had a chance to review a few pages of it.</p> <p>16 BY MR. BRODY:</p> <p>17 Q. Have you reviewed the transcript of your 2001</p> <p>18 deposition at any time within the last six months?</p> <p>19 A. No.</p> <p>20 Q. Sir, to deal with Mr. Clare's objection, I'd</p> <p>21 ask you to go back, and I hate to do this to you but</p> <p>22 just to read a few additional pages of the transcript.</p> <p>23 I'd ask you to read your transcript beginning</p> <p>24 at page 187. I believe you started reading at 190. So</p> <p>25 just read from 187 to 190, and I'm going to ask you a</p>

<p style="text-align: right;">Page 45</p> <p>1 couple of questions?</p> <p>2 MR. MOSCATO: I don't want to be an</p> <p>3 obstructionist, but what's the purpose of his</p> <p>4 reading?</p> <p>5 MR. BRODY: Just to establish past</p> <p>6 recollection recorded.</p> <p>7 MR. MOSCATO: I object. I don't think that's</p> <p>8 the proper way to do it, but it's your deposition,</p> <p>9 so do what you think is best.</p> <p>10 BY MR. BRODY:</p> <p>11 Q. Okay, you've had a chance to read that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And Mr. Bornstein -- excuse me,</p> <p>14 Mr. Brockelman, at the time you gave the testimony you</p> <p>15 gave in 2001, you testified based on your recollection</p> <p>16 of those events?</p> <p>17 A. Yes, I did.</p> <p>18 Q. And as I believe you testified today, you no</p> <p>19 longer have recollection of those specific events</p> <p>20 beyond what you've testified about in your prior</p> <p>21 testimony?</p> <p>22 A. That's correct.</p> <p>23 Q. You've had a chance to review pages 187</p> <p>24 through 202 of your transcript from 2001; is that</p> <p>25 correct?</p>	<p style="text-align: right;">Page 47</p> <p>1 return to Florida?</p> <p>2 A. Yes.</p> <p>3 Q. Did you continue to work on the Sunbeam</p> <p>4 transaction?</p> <p>5 MR. MOSCATO: I'm sorry, continue to work on</p> <p>6 what?</p> <p>7 MR. BRODY: On the Sunbeam -- I said</p> <p>8 transaction. I should have said Sunbeam</p> <p>9 engagement.</p> <p>10 THE WITNESS: Only from an administrative</p> <p>11 standpoint, making sure the proper documents were</p> <p>12 filed and so forth.</p> <p>13 BY MR. BRODY:</p> <p>14 Q. After the events of March 19, did you ever</p> <p>15 review a memorandum prepared by Mr. Bornstein</p> <p>16 describing what happened that evening?</p> <p>17 A. Yes, I did.</p> <p>18 Q. I'm going to show you what's previously been</p> <p>19 marked as Exhibit 114, and I'd ask you just to look at</p> <p>20 that.</p> <p>21 MR. BRODY: And, counsel, I'm going to give</p> <p>22 you copies of the identical document, but it bears</p> <p>23 a different exhibit stamp on it. We've not had a</p> <p>24 chance to recopy the one --</p> <p>25 MR. MOSCATO: That's fine. Appreciate it.</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Yes.</p> <p>2 Q. And aside from the extent to which it has</p> <p>3 refreshed your recollection, you do not have</p> <p>4 recollection of those events; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. At the time you testified in 2001, the events</p> <p>7 were sufficiently fresh in your memory that your</p> <p>8 testimony was, to your knowledge, true and correct?</p> <p>9 A. Yes.</p> <p>10 Q. And does those pages from Exhibit 116</p> <p>11 correctly reflect the testimony you gave in 2001</p> <p>12 concerning the events at the printer?</p> <p>13 MR. CLARE: Objection to form.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. BRODY:</p> <p>16 Q. Sir, after the, after you gave your testimony</p> <p>17 in 2001, do you know if you had an opportunity to</p> <p>18 review the transcript?</p> <p>19 A. It was provided to me, but I did not review</p> <p>20 it.</p> <p>21 Q. As you sit here, do you recall ever making</p> <p>22 any changes or corrections in the transcript to change</p> <p>23 things that were not correct?</p> <p>24 A. I did not.</p> <p>25 Q. After the events at the printer, did you</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. CLARE: That was marked as CPH 114?</p> <p>2 MR. BRODY: Yes, I'm going to describe that.</p> <p>3 I'm sorry, sir, could I have Exhibit 114 back</p> <p>4 just so I can make my statement on the record.</p> <p>5 Just for the record, Exhibit 114 which was</p> <p>6 previously marked is another version of the</p> <p>7 document I've given counsel a copy of, the one</p> <p>8 that was marked for purposes of the deposition</p> <p>9 exhibit, bears a Bates stamp Morgan Stanley</p> <p>10 confidential 0027048 through 50.</p> <p>11 The one I've handed to counsel is slightly</p> <p>12 different dates, but it appears to be the same</p> <p>13 document. You can check.</p> <p>14 MR. CLARE: I'll note for the record CPH</p> <p>15 Exhibit 114 bears some fax transmittal pages from</p> <p>16 the 2001 time period that I believe were there in</p> <p>17 connection with the prior litigation. It's not on</p> <p>18 the copy that was provided to counsel, but I don't</p> <p>19 think it's material.</p> <p>20 MR. BRODY: I don't think so either, and I</p> <p>21 don't intend to ask about that, but thank you,</p> <p>22 Tom.</p> <p>23 BY MR. BRODY:</p> <p>24 Q. Mr. Brockelman, I've given you what's been</p> <p>25 marked as Exhibit 114. Did you see this at or about</p>

<p style="text-align: right;">Page 49</p> <p>1 March 31, 1998?</p> <p>2 A. Yes, I did.</p> <p>3 Q. And it's a memorandum drafted by</p> <p>4 Mr. Bornstein?</p> <p>5 A. That is correct.</p> <p>6 Q. Concerning the events at the printer?</p> <p>7 A. Yes.</p> <p>8 Q. Did you read the document back in March of</p> <p>9 1998 or thereabouts?</p> <p>10 A. Yes, I did.</p> <p>11 Q. And at the time did you form an opinion as to</p> <p>12 whether it correctly stated what happened at the</p> <p>13 printer or not?</p> <p>14 A. Yes, I did.</p> <p>15 Q. And what view did you form?</p> <p>16 A. That this was the proper events that unfolded</p> <p>17 that evening.</p> <p>18 Q. And we've already asked you to testify about</p> <p>19 your recollection of that event.</p> <p>20 Does this document refresh your recollection</p> <p>21 further about what happened that evening?</p> <p>22 A. It does not refresh my recollection, but at</p> <p>23 the time I confirmed to Larry Bornstein that I agree</p> <p>24 with this memo.</p> <p>25 Q. And at the time, you mean back in March of</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. Okay. Thank you. You can put that document</p> <p>2 aside, sir.</p> <p>3 Earlier in your testimony today,</p> <p>4 Mr. Brockelman, you described the bring-down letter</p> <p>5 which you I believe said was part of the work you did</p> <p>6 in this matter.</p> <p>7 A. Yes.</p> <p>8 Q. Am I referring to it by a name you</p> <p>9 understand, the bring-down letter?</p> <p>10 A. Yes, you are.</p> <p>11 Q. Were you involved in the preparation of the</p> <p>12 bring-down letter?</p> <p>13 A. Yes, I was.</p> <p>14 Q. What was the nature of your involvement?</p> <p>15 A. To check it with accuracy to our professional</p> <p>16 standards.</p> <p>17 Q. What was involved in checking the letter, to</p> <p>18 make sure it was accurate in keeping with your</p> <p>19 professional standards?</p> <p>20 A. There is certain prescribed standards for the</p> <p>21 letter. It was drafted by Dennis Pastrana, and I</p> <p>22 checked the narrative to ensure it matched our</p> <p>23 accounting guidance for that.</p> <p>24 Q. Mr. Brockelman, I'm going to show you what</p> <p>25 was marked previously as Exhibit 112.</p>
<p style="text-align: right;">Page 50</p> <p>1 1998?</p> <p>2 A. That's correct.</p> <p>3 Q. And at that time the events were fresh in</p> <p>4 your mind?</p> <p>5 A. That is correct.</p> <p>6 Q. And to your recollection, does Exhibit 114</p> <p>7 accurately describe the events that took place that</p> <p>8 evening?</p> <p>9 MR. CLARE: Objection to form.</p> <p>10 MR. MOSCATO: To the extent you had</p> <p>11 involvement in those events.</p> <p>12 MR. BRODY: Thank you for that. I'll accept</p> <p>13 that friendly amendment.</p> <p>14 THE WITNESS: Yes, to the extent I had</p> <p>15 involvement, I confirmed at that time this was the</p> <p>16 proper discussion.</p> <p>17 BY MR. BRODY:</p> <p>18 Q. And by the, to the extent you have</p> <p>19 involvement, there are certain conversations in here</p> <p>20 that Mr. Bornstein relates that took place out of your</p> <p>21 presence?</p> <p>22 A. That is correct.</p> <p>23 Q. And as to those, you can neither confirm nor</p> <p>24 deny them?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 52</p> <p>1 Are the second and third pages of this</p> <p>2 exhibit the bring-down letter?</p> <p>3 A. Yes, it is.</p> <p>4 Q. And the first and the fourth pages of those</p> <p>5 just part of the work papers of Arthur Andersen?</p> <p>6 A. It appears to be.</p> <p>7 Q. Focusing on the letter portion, the second</p> <p>8 and third pages, do you believe that was sent to Morgan</p> <p>9 Stanley on or about March 25th, 1998?</p> <p>10 A. Yes.</p> <p>11 Q. Looking at item E, which begins on the bottom</p> <p>12 of the first page and continues to the top of the</p> <p>13 second page, do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And that item E was intended to amend prior</p> <p>16 statements contained in the March 19th letter; is that</p> <p>17 correct?</p> <p>18 A. Yes, that is correct.</p> <p>19 Q. And turning to the second page of the</p> <p>20 document, sir -- excuse me, the third page of the</p> <p>21 document, page two of the letter, it recites the net</p> <p>22 sales and net income through March 1997 for one period</p> <p>23 and through March 1998 in the other period for Sunbeam;</p> <p>24 is that correct?</p> <p>25 MR. CLARE: I object. Mischaracterizes the</p>

<p style="text-align: right;">Page 53</p> <p>1 document.</p> <p>2 MR. BRODY: Let me just ask it differently.</p> <p>3 BY MR. BRODY:</p> <p>4 Q. What are those numbers at the top of the</p> <p>5 second page of your letter intended to show? By your</p> <p>6 letter, I meant the Arthur Andersen letter.</p> <p>7 MR. MOSCATO: He's objecting because you gave</p> <p>8 the wrong dates. If you try again with the right</p> <p>9 dates --</p> <p>10 MR. BRODY: Okay.</p> <p>11 BY MR. BRODY:</p> <p>12 Q. Mr. Brockelman, does this letter show the net</p> <p>13 sales and net income figures for the period</p> <p>14 December 30, 1996 through March 2, 1997, and</p> <p>15 December 29, 1997, through March 1, 1998, for Sunbeam?</p> <p>16 A. Yes, it does.</p> <p>17 Q. Do you know where that information came from?</p> <p>18 A. Came from the company, from Sunbeam.</p> <p>19 Q. Did you have anything to do with collecting</p> <p>20 those numbers?</p> <p>21 A. No.</p> <p>22 Q. In the text after the numbers I just recited,</p> <p>23 it refers to a one-time charge for, of \$30 million for</p> <p>24 compensation.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 55</p> <p>1 BY MR. BRODY:</p> <p>2 Q. Do you know if a draft of this bring-down due</p> <p>3 diligence letter was provided to Morgan Stanley prior</p> <p>4 to March 25th?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you know if you personally worked on or</p> <p>7 made changes to prior drafts?</p> <p>8 A. Yes.</p> <p>9 Q. What changes do you -- excuse me, let me</p> <p>10 withdraw that.</p> <p>11 What work do you remember doing on those</p> <p>12 prior letters?</p> <p>13 A. I don't recall specifically, but it related</p> <p>14 to making changes to the narrative in the letter.</p> <p>15 Q. And when you refer to the narrative, any</p> <p>16 particular --</p> <p>17 A. The nonnumerical tables.</p> <p>18 Q. I understand. As you sit here and with this</p> <p>19 letter in front of you, do you remember any changes</p> <p>20 that you personally made?</p> <p>21 A. No, I do not.</p> <p>22 MR. BRODY: Please mark that as Exhibit 117.</p> <p>23 (CPH Exhibit No. 117 was marked for</p> <p>24 identification.)</p> <p>25</p>
<p style="text-align: right;">Page 54</p> <p>1 A. Yes, I do.</p> <p>2 Q. Is that information that you had anything to</p> <p>3 do with collecting?</p> <p>4 A. No.</p> <p>5 Q. Net of that \$30 million charge, this letter</p> <p>6 shows Sunbeam suffering a loss of nearly \$11 million</p> <p>7 through the first two months of 1998; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Did you have any discussions with anyone at</p> <p>10 Morgan Stanley about this letter or the subject matter,</p> <p>11 the contents of the letter?</p> <p>12 A. No, I did not.</p> <p>13 Q. Did anyone from Morgan Stanley ever call you</p> <p>14 and ask you a question about this letter or the prior</p> <p>15 comfort letter that you looked at?</p> <p>16 MR. CLARE: Objection to form.</p> <p>17 THE WITNESS: I don't recall.</p> <p>18 BY MR. BRODY:</p> <p>19 Q. Do you know if anyone at Morgan Stanley ever</p> <p>20 called anyone at Arthur Andersen to discuss the sales</p> <p>21 and net income figures for these months that are</p> <p>22 contained in Exhibit 112?</p> <p>23 MR. CLARE: Objection, foundation.</p> <p>24 THE WITNESS: Not to my knowledge.</p> <p>25</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MR. BRODY:</p> <p>2 Q. Mr. Brockelman, I've given you what's been</p> <p>3 marked as Exhibit 117. Do you recognize the</p> <p>4 handwriting on this document?</p> <p>5 A. No, I do not.</p> <p>6 Q. I take it none of it is yours?</p> <p>7 A. It is not.</p> <p>8 Q. Does any of this reflect the changes that you</p> <p>9 personally made on the document?</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay. You can put that document aside.</p> <p>12 After the bring-down due diligence letter</p> <p>13 that we've marked as Exhibit 112 was sent to Morgan</p> <p>14 Stanley, do you remember anything else that you did in</p> <p>15 connection with the bond offering or the transaction by</p> <p>16 which Sunbeam acquired its interest in Coleman?</p> <p>17 MR. MOSCATO: Sunbeam acquired its interest?</p> <p>18 MR. BRODY: Yes.</p> <p>19 MR. MOSCATO: Sorry.</p> <p>20 MR. BRODY: That's okay.</p> <p>21 THE WITNESS: I don't recall.</p> <p>22 MR. BRODY: Can we go off the record for a</p> <p>23 second.</p> <p>24 THE VIDEOGRAPHER: We are now going off video</p> <p>25 record. The time on the monitor is 10:22 a.m.</p>

<p style="text-align: right;">Page 57</p> <p>1 (Discussion held off the record.)</p> <p>2 THE VIDEOGRAPHER: We are now back on video</p> <p>3 record. The time on the monitor is 10:33 a.m.</p> <p>4 BY MR. BRODY:</p> <p>5 Q. Mr. Brockelman, during this deposition I've</p> <p>6 asked you a number of questions about the events at the</p> <p>7 printer. You testified based on your recollection and</p> <p>8 your recollection as refreshed by your prior testimony</p> <p>9 and by Mr. Bornstein's memorandum.</p> <p>10 Are you aware of anything else out there,</p> <p>11 piece of paper, notes, anything, that might refresh</p> <p>12 your recollection of what happened at the printer aside</p> <p>13 from the things that I've already shown you?</p> <p>14 A. No.</p> <p>15 MR. BRODY: Thank you, Mr. Brockelman. I</p> <p>16 have no further questions.</p> <p>17 CROSS (MARK BROCKELMAN)</p> <p>18 BY MR. CLARE:</p> <p>19 Q. Hi, Mr. Brockelman. We met this morning. My</p> <p>20 name is Tom Clare. I'm here representing Morgan</p> <p>21 Stanley, and I have some questions for you this</p> <p>22 morning.</p> <p>23 I'd like to proceed in two parts. I'm going</p> <p>24 to ask you some follow-up questions to the questions</p> <p>25 Mr. Brody asked you this morning, and then I have some</p>	<p style="text-align: right;">Page 59</p> <p>1 with your work on the bond offering memo?</p> <p>2 A. No.</p> <p>3 Q. All of that information was provided by</p> <p>4 Sunbeam to you, correct?</p> <p>5 A. Yes.</p> <p>6 Q. How many days were you in New York, the</p> <p>7 events surrounding the evening at the printer that you</p> <p>8 discussed with Mr. Brody this morning?</p> <p>9 A. Approximately 24 hours.</p> <p>10 Q. So it was just the one day?</p> <p>11 A. That's correct.</p> <p>12 Q. And the work that you did in connection with</p> <p>13 the March 19th comfort letter, was all of that work</p> <p>14 done in New York or was a portion of it done in</p> <p>15 Florida?</p> <p>16 A. Most was done in Florida.</p> <p>17 Q. And then a draft of it was brought to New</p> <p>18 York with you and Mr. Bornstein, and you continued to</p> <p>19 work on it in New York?</p> <p>20 A. Yes, that's correct.</p> <p>21 Q. Was there any work that was done on the</p> <p>22 comfort letter in New York before you arrived at the</p> <p>23 printer?</p> <p>24 A. No.</p> <p>25 Q. The pro forma review that you had done, did</p>
<p style="text-align: right;">Page 58</p> <p>1 additional questions. We might get into a couple of</p> <p>2 different areas that Mr. Brody didn't touch on.</p> <p>3 You mentioned to Mr. Brody this morning that</p> <p>4 you worked on the pro forma financials in connection</p> <p>5 with the bond offering; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Did Morgan Stanley provide any information to</p> <p>8 you in connection with the pro forma financial work</p> <p>9 that you did?</p> <p>10 A. No.</p> <p>11 Q. All of the information that you received for</p> <p>12 your work on the pro forma financials came from</p> <p>13 Sunbeam?</p> <p>14 A. That's correct.</p> <p>15 Q. In the course of your work on the bond</p> <p>16 offering, did you discuss with anybody at Morgan</p> <p>17 Stanley the pro forma financials that you were</p> <p>18 preparing?</p> <p>19 A. No.</p> <p>20 Q. You also indicated that you verified the</p> <p>21 historical financial information that would be included</p> <p>22 in the offering memorandum; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Did Morgan Stanley provide any of the</p> <p>25 historical financial information to you in connection</p>	<p style="text-align: right;">Page 60</p> <p>1 any of that work take place in New York?</p> <p>2 A. Yes.</p> <p>3 Q. Again, that evening at the printer, that was</p> <p>4 part of the duties that you were there to perform?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. Did Morgan Stanley provide you with any</p> <p>7 information to be included in the comfort letter that</p> <p>8 was delivered to it that night?</p> <p>9 A. No.</p> <p>10 Q. All of that information came from Sunbeam,</p> <p>11 correct?</p> <p>12 A. Yes, that's correct.</p> <p>13 Q. Other than the discussion at the printer, did</p> <p>14 you have any other face-to-face meetings with anyone</p> <p>15 from Morgan Stanley?</p> <p>16 A. No, I did not.</p> <p>17 Q. So in connection with all of your work on</p> <p>18 Sunbeam-related engagements, the only time you were</p> <p>19 ever in the same room as anybody from Morgan Stanley</p> <p>20 was that night at Global Financial Press in New York;</p> <p>21 is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Did you attend any drafting session related</p> <p>24 to the offering memo other than the one that occurred</p> <p>25 at the printer that evening in New York?</p>

Page 61

1 A. I believe that's the only drafting session I
 2 attended.
 3 Q. Do you know if Mr. Bornstein had attended
 4 other drafting sessions related to the offering memo?
 5 A. Yes, he did.
 6 Q. Was Mr. Bornstein in New York already and did
 7 you fly up from Florida to join him, or did you travel
 8 from Florida together?
 9 A. I believe we traveled together.
 10 Q. Do you know if these additional drafting
 11 sessions that you think Mr. Bornstein attended, can you
 12 place them in time to the evening at the print shop
 13 that we've been discussing?
 14 A. It preceded.
 15 Q. For some number of days?
 16 A. Certainly.
 17 Q. And Mr. Bornstein had then returned to
 18 Florida to your recollection and then you traveled up
 19 together?
 20 MR. BRODY: Objection to foundation, form.
 21 THE WITNESS: Yes, that's correct.
 22 BY MR. CLARE:
 23 Q. If you have the exhibits that Mr. Brody
 24 marked this morning in front of you, I'd like you to
 25 look at CPH Exhibit 115.

Page 62

1 Do you have that in front of you?
 2 A. Yes, I do.
 3 Q. You've already testified about the
 4 handwriting on the document. There is a fax line on
 5 CPH Exhibit 115 which indicates that it was faxed from
 6 Global Financial Press in New York.
 7 Do you recall that evening a draft of the
 8 comfort letter being faxed to somebody else that wasn't
 9 there that night?
 10 A. Yes.
 11 Q. Do you know who CPH Exhibit 115 was faxed to
 12 that night?
 13 A. It was either Phil Harlow or Bill Pruitt. I
 14 don't recall which one, but it was a two-way partner
 15 with Arthur Andersen.
 16 Q. To your recollection, were there multiple
 17 copies of the comfort letter that were faxed to
 18 partners at Arthur Andersen that evening or was it one
 19 draft as reflected here in CPH 115?
 20 A. I don't recall.
 21 Q. You don't remember there being a series of
 22 them, but you do remember the fact that a draft was at
 23 one point faxed to a partner at Arthur Andersen?
 24 A. That's correct, yes.
 25 Q. What was the purpose, to the best of your

Page 63

1 recollection, in faxing a draft of the comfort letter
 2 to either Mr. Harlow or to Mr. Pruitt?
 3 A. For their review of the changes that we made
 4 that night.
 5 Q. Mr. Bornstein was the person in charge on
 6 site, correct?
 7 A. That is correct.
 8 Q. And you were junior to him at that point?
 9 A. Yes.
 10 Q. You testified that Mr. Bornstein had
 11 authorization to sign the comfort letter on behalf of
 12 Arthur Andersen; is that correct?
 13 A. Yes.
 14 Q. And you were present when he signed it?
 15 A. Yes.
 16 Q. And you signed it there in the offices of
 17 Global Financial Press in New York, correct?
 18 A. Yes.
 19 Q. You indicated that Mr. Bornstein had
 20 authorization from a partner or the partners to sign
 21 the comfort letter; is that correct?
 22 A. Yes.
 23 Q. Is it, is partner authorization required
 24 under the rules of Arthur Andersen internal procedures
 25 before a comfort letter like the one that was delivered

Page 64

1 to Morgan Stanley can be signed and delivered?
 2 A. Yes, it is.
 3 Q. Do you have an understanding as to why
 4 partner authorization is required?
 5 A. Yes.
 6 Q. Can you tell me why?
 7 A. Certainly. Partners are the only people
 8 allowed to sign opinions or reports, and having
 9 authorization basically is as if the partner is
 10 signing, you're signing in their place.
 11 Q. So the comfort letter that was delivered to
 12 Morgan Stanley on March 19th, 1998, was considered to
 13 be an opinion or report that required partner approval
 14 at Arthur Andersen within the internal procedures?
 15 A. Yes, that's correct.
 16 Q. And without that authorization or approval,
 17 Mr. Bornstein could not have signed it on behalf of
 18 Arthur Andersen?
 19 A. Well, I don't know if he could not, but it
 20 would be against our internal control procedures if he
 21 had signed on behalf.
 22 Q. And that's because a comfort letter like the
 23 one that was delivered to Morgan Stanley is deemed to
 24 be an opinion or report of Arthur Andersen?
 25 A. Yes, that's correct.

<p style="text-align: right;">Page 65</p> <p>1 Q. That's why it requires partner approval?</p> <p>2 A. Yes.</p> <p>3 Q. That evening at the printer you indicated</p> <p>4 that you reviewed the financial information contained</p> <p>5 in the offering memo.</p> <p>6 Did you review any of the narrative portions</p> <p>7 of the offering memo as well?</p> <p>8 A. No. Only the numerical information.</p> <p>9 Q. We'll look at some documents in a few minutes</p> <p>10 and I'll get you to go through and maybe you can</p> <p>11 identify for us the sections that you looked at. That</p> <p>12 will probably be a more efficient way to proceed.</p> <p>13 I'd like you to look at CPH Exhibit 114 that</p> <p>14 Mr. Brody showed you this morning, a copy of</p> <p>15 Mr. Bornstein's March 31st, 1998, memo.</p> <p>16 Do you have that in front of you?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And you testified that to the best of your</p> <p>19 knowledge, this is an accurate account of the events of</p> <p>20 that evening; is that correct?</p> <p>21 A. At that time, best of my knowledge, yes,</p> <p>22 correct.</p> <p>23 Q. But if I understand your testimony correctly,</p> <p>24 CPH Exhibit 114 makes reference to a number of</p> <p>25 conversations and telephone conversations that you were</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. Were you part of any of those discussions?</p> <p>2 A. No, I was not.</p> <p>3 Q. The second paragraph talks about Sunbeam</p> <p>4 having issued a press release. And I believe you</p> <p>5 testified this morning, previously testified that you</p> <p>6 had no involvement or discussion in any of the meetings</p> <p>7 or telephone conferences that led to the issuance of</p> <p>8 the press release; is that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Third paragraph talks about the evening of</p> <p>11 March 19th and the drafting session at Global Financial</p> <p>12 Press in New York. And that we've talked about some</p> <p>13 this morning and we'll talk about a little bit more,</p> <p>14 that you were present for at least portions of the</p> <p>15 discussions that took place there?</p> <p>16 A. Yes, that is correct.</p> <p>17 Q. And the fourth paragraph makes reference to a</p> <p>18 telephone conversation between Mr. Bornstein and</p> <p>19 Mr. Harlow. And it appears that that conversation took</p> <p>20 place on the evening of March 19th while Mr. Bornstein</p> <p>21 and you were at the print shop.</p> <p>22 Were you part of that conversation that</p> <p>23 Mr. Bornstein is recording here with Mr. Harlow?</p> <p>24 A. No, I was not.</p> <p>25 Q. Am I correct that Mr. Bornstein called</p>
<p style="text-align: right;">Page 66</p> <p>1 not a party to; is that right?</p> <p>2 A. That's correct.</p> <p>3 Q. And do you have any basis one way or the</p> <p>4 other to say or comment on the accuracy of CPH</p> <p>5 Exhibit 114 with regard to those conversations that you</p> <p>6 were not a part of?</p> <p>7 A. No.</p> <p>8 Q. So to the extent that CPH 114 reflects those</p> <p>9 conversations, you can't comment one way or the other</p> <p>10 as to whether or not it's accurate?</p> <p>11 A. That's correct.</p> <p>12 Q. And we would have to ask Mr. Bornstein about</p> <p>13 those conversations to the extent that he was a party</p> <p>14 to them?</p> <p>15 A. Yes.</p> <p>16 Q. I'd like to look at CPH Exhibit 114 in a</p> <p>17 little bit of detail and understand which of the</p> <p>18 conversations that you were present for and which ones</p> <p>19 you weren't.</p> <p>20 There is a reference to some post audit</p> <p>21 review work in the first paragraph where conversations</p> <p>22 with Mr. Gluck, Mr. Harlow, and Mr. Pruitt preceding</p> <p>23 the events of March 19th.</p> <p>24 Do you see that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 68</p> <p>1 Mr. Harlow or spoke with Mr. Harlow from the print shop</p> <p>2 that evening?</p> <p>3 A. That's what Mr. Bornstein told me.</p> <p>4 Q. Did you see Mr. Bornstein on the phone that</p> <p>5 evening?</p> <p>6 A. He left the room and told me he was going to</p> <p>7 call, but I did not see him on the phone.</p> <p>8 Q. Okay. And you don't know who he was talking</p> <p>9 to or have any knowledge about what was said on that</p> <p>10 telephone call?</p> <p>11 A. That's correct.</p> <p>12 Q. You were not only not on the line for the</p> <p>13 phone call, but you were not even in the same room with</p> <p>14 Mr. Bornstein when he was on the phone?</p> <p>15 A. That's correct.</p> <p>16 Q. So you couldn't even hear what Mr. Bornstein</p> <p>17 was saying on his half of the conversation?</p> <p>18 A. That's correct.</p> <p>19 Q. There is a reference in that same paragraph</p> <p>20 to a conversation, a telephone conversation between</p> <p>21 Mr. Harlow, Mr. Bornstein and Mr. Gluck that evening.</p> <p>22 Were you a part of that telephone</p> <p>23 conversation?</p> <p>24 A. No, I was not.</p> <p>25 Q. Was that part of the telephone conversation</p>

<p style="text-align: right;">Page 69</p> <p>1 that Mr. Bornstein told you he was placing that 2 evening? 3 A. That's what Mr. Bornstein told me, yes. 4 Q. Did he tell you this the night of March 19th? 5 In other words, did he come back into the 6 room and said, "I just spoke with Mr. Harlow and 7 Mr. Gluck," or was it at some point after? 8 A. He told me that night. 9 Q. There is references here to conversations 10 that took place between Mr. Harlow, Mr. Fanin, 11 Mr. Kersh, and Janet Kelly, and it's unclear from the 12 memo whether Mr. Bornstein was even a part of those 13 conversations. 14 On the night of March 19th, were you part of 15 any conversation or telephone conversation with 16 Mr. Harlow, Mr. Fanin, Mr. Kersh or Miss Kelly? 17 A. No. 18 Q. So you can't testify one way or the other 19 whether or not the conversation that's reflected here 20 in CPH 114 that relate to those individuals is accurate 21 or correct? 22 A. That's correct. 23 Q. And there is a reference here about 24 Mr. Harlow being advised something about Mr. Izzi. I 25 think that's a typo error. I think it's Mr. Uzzi.</p>	<p style="text-align: right;">Page 71</p> <p>1 your mind as you sit here today some recollection of 2 the events of March 19th, correct? 3 A. That's correct. 4 Q. And that recollection was refreshed to some 5 extent by some of the materials that Mr. Brody showed 6 you; is that correct? 7 A. I agree. 8 Q. Okay. Is there anything else that you 9 remember currently about the events of that evening 10 that we haven't discussed this evening? 11 A. No. 12 Q. Now, Mr. Brody showed you a deposition 13 transcript from -- 14 (Thereupon, a cellphone rang.) 15 MR. CLARE: Let's go off the record. 16 THE VIDEOGRAPHER: We are now going off video 17 record. The time on the monitor is 10:50 a.m. 18 (Discussion held off the record.) 19 THE VIDEOGRAPHER: We are now back on video 20 record. The time on the monitor, 10:52 a.m. 21 BY MR. CLARE: 22 Q. Thank you, Mr. Brockelman. Before the break, 23 I was about to ask you about your prior deposition. 24 Mr. Brody showed you a transcript from 25 January 2001, and you recall giving that deposition?</p>
<p style="text-align: right;">Page 70</p> <p>1 But you have no recollection of any 2 discussion with Mr. Uzzi that night? 3 A. That's correct. 4 Q. Now Mr. Brody showed you a copy of your 5 deposition transcript from 2001, and you indicated that 6 the pages he referred you to refreshed your 7 recollection to an extent. 8 And I just want to understand as you sit here 9 today in 2004, are there any other -- have we exhausted 10 the extent of your recollection of that evening at the 11 print shop, even as refreshed by your deposition 12 testimony that Mr. Brody showed you and also the 13 memorandum that we just looked at, CPH 114? 14 A. Yes. 15 Q. So even as refreshed, you are unable to 16 testify today or presumably at any point in the future 17 from your current recollection about any additional 18 detail or events from that evening; is that correct? 19 MR. BRODY: Object to the form. 20 MR. MOSCATO: Wait a minute, I object, 21 because I don't understand the question. 22 BY MR. CLARE: 23 Q. Okay, let me withdraw and make, ask a better 24 question. I don't intend to confuse. 25 What I'm trying to understand is you have in</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Yes, I do. 2 Q. Do you recall that it was multiple days? It 3 was a two-day deposition? 4 A. Yes, I do. 5 Q. Other than those two days of deposition 6 testimony, were you ever deposed in any other 7 proceeding relating to Sunbeam-related work? 8 A. No, I was not. 9 Q. And other than that deposition testimony, 10 have you brought in any other sworn testimony in any 11 other setting about your Sunbeam-related work? 12 A. No. 13 Q. Or submitted any sworn written declarations 14 or affidavits? 15 A. No. 16 Q. Have you ever been asked to provide a sworn 17 written declaration relating to your Sunbeam-related 18 work? 19 A. No. 20 Q. Were you ever interviewed by the SEC or any 21 other law enforcement authority related to your 22 Sunbeam-related work? 23 A. No. 24 Q. What did you do to prepare for your 25 deposition today?</p>

Page 73

1 A. Nothing. I was provided a package by Mike
2 Moscato, but I reviewed it maybe in about two minutes
3 and didn't take much time, quite honestly.
4 Q. Did you review any of your prior deposition
5 testimony, either the portion that Mr. Brody showed you
6 this morning or any other portion?
7 A. No, I did not.
8 Q. In preparing for your deposition, did you
9 speak with anybody from Mr. Brody's firm, Jenner &
10 Block, in Chicago?
11 A. No, I did not.
12 Q. Have you spoken with anyone from Mr. Brody's
13 firm at any time this year or last year in 2003?
14 A. No, I did not.
15 Q. Does Mr. Bornstein also work at American
16 Media?
17 A. No.
18 Q. At one point did he?
19 A. Yes.
20 Q. And you worked with him?
21 A. Yes, that is correct.
22 Q. We'll have a chance to talk with
23 Mr. Bornstein separately.
24 When did Mr. Bornstein leave American Media?
25 A. Approximately four and a half months ago.

Page 74

1 Q. And while he was at American Media, what
2 position did you have?
3 A. He was the vice-president, general manager of
4 American Media.
5 Q. Did you report to him?
6 A. No.
7 Q. Were you equal within the company?
8 A. Yes.
9 Q. When was the last time you spoke with
10 Mr. Bornstein?
11 A. Last night at about 10:30.
12 Q. About your deposition today?
13 A. No. We maintain friendly relationships.
14 Q. When was the last time you spoke to
15 Mr. Bornstein about the work that the two of you did on
16 Sunbeam-related matters?
17 A. I don't recall. We did talk that we both
18 were being deposed, but we didn't talk about the actual
19 events on Sunbeam.
20 Q. So other than the fact that you both were,
21 had been asked to be deposed in this lawsuit, there was
22 no discussion with you and Mr. Bornstein about the
23 events that took place in 1998 that you were a part of?
24 A. I'm sure there were. I don't recall any
25 discussions, but I'm sure we had some discussion since

Page 75

1 then, but nothing specifically that I recall.
2 Q. As you sit here today, you don't remember any
3 discussion with Mr. Bornstein about the night at the
4 printer's specifically, since 1998?
5 A. That's correct.
6 Q. And in the discussion that had you with
7 Mr. Bornstein last evening, any discussion of events of
8 1998 in any way?
9 A. No.
10 Q. You're a certified public accountant in
11 Illinois?
12 A. I believe my -- it's lapsed. I haven't had
13 the proper CPE credit, so I need to have that renewed.
14 Q. So it's on basically an inactive status?
15 A. Exactly, yes.
16 Q. But you are licensed as a certified public
17 accountant?
18 A. Yes, that's correct.
19 Q. And you went to Andersen directly after
20 college?
21 A. Yes, that's correct.
22 Q. And you worked at Andersen for eight years,
23 approximately?
24 A. Approximately, yes.
25 Q. Started off as a staff accountant and then

Page 76

1 were promoted through the ranks as you described for
2 Mr. Brody?
3 A. Yes, correct, to manager.
4 Q. And while you were at Andersen, did you think
5 it was a good company?
6 A. Absolutely.
7 Q. Did you think it was an ethical company?
8 A. Absolutely.
9 Q. You thought the people you worked with were
10 competent?
11 A. Very.
12 Q. And you thought the company did good work in
13 serving its clients?
14 A. Yes.
15 Q. While you were at Andersen, did you have an
16 opinion about Andersen's reputation for competence?
17 A. Yes, I felt we had the best reputation.
18 Q. Did you form an opinion about Andersen's
19 reputation for integrity?
20 A. Yes, extremely high.
21 Q. So you felt that Andersen had a strong
22 reputation for integrity and competence?
23 A. Yes, certainly.
24 Q. And in 1998 while you were working on the
25 Sunbeam-related engagements that we discussed, you had

<p style="text-align: right;">Page 77</p> <p>1 the title of manager, correct, for a portion of it at 2 least? 3 A. I'm sorry, for the restatement work or for 4 the -- 5 Q. Well -- 6 A. During the restatement work I was promoted to 7 manager, but during the offering memorandum, I was 8 senior. 9 Q. Senior -- 10 A. I was a senior accountant. 11 Q. Okay, thank you for that clarification. 12 At the time that you were at Sunbeam, did 13 you -- I'm sorry, withdraw, strike that. 14 At the time that you were at Andersen working 15 on Sunbeam-related engagements, were you, did you have 16 aspirations to become a partner at Andersen? 17 A. Yes. 18 Q. And that's what you were working towards? 19 A. At the time, yes. 20 Q. And when you were promoted to manager in 21 1998, you had managerial tasks, internal firm 22 administrative tasks in addition to client-related 23 work; is that correct? 24 A. Yes. 25 Q. Did you have similar internal</p>	<p style="text-align: right;">Page 79</p> <p>1 A. No. 2 Q. Or knowingly damage Andersen's integrity? 3 A. No. 4 Q. What does it mean for, at the time that you 5 were working at Andersen, what did it mean for Andersen 6 to consent? Is that a term that's familiar to you? 7 A. Yes. 8 Q. Can you explain to me what that means in your 9 own words? 10 A. Consent in context with an opinion or a 11 letter means that we give the authorization to release 12 that opinion or letter in a filing. 13 Q. And the comfort letter that we've been 14 describing, the March 19th, is that a form of consent? 15 A. Yes. 16 Q. And there are procedures that have to be 17 followed before a consent can be issued by Andersen? 18 A. Yes, there are. 19 Q. And partner approval is required for the 20 reasons we talked about earlier? 21 A. Yes. 22 Q. In the circumstances of the comfort letter, 23 is a concurring partner approval required for that type 24 of a consent? 25 A. For consents, yes.</p>
<p style="text-align: right;">Page 78</p> <p>1 management-related tasks when you were a senior? In 2 other words, did you supervise other Andersen personnel 3 on client-related engagements? 4 Did you do reviews for other people? 5 A. Yes. 6 Q. That type of work? 7 And in 1997 and in 1998 your responsibilities 8 included -- would you agree that your responsibilities 9 included carrying out client-related work in a 10 professionally competent manner? 11 A. Yes. 12 Q. And following Andersen's internal policies 13 and procedures? 14 A. Yes. 15 Q. Protecting Andersen's reputation that you 16 described? 17 A. Yes. 18 Q. And protecting Andersen's integrity? 19 A. Yes. 20 Q. While at Anderson, did you ever knowingly 21 take any action that violated Andersen's internal 22 policies or procedures? 23 A. No. 24 Q. Or take any action that, where you would 25 knowingly damage Andersen's reputation?</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Do you recall who the concurring partner was 2 for the comfort letters that we've been discussing? 3 A. Yes. 4 Q. Who was that? 5 A. Bill Pruitt. 6 Q. Mr. Harlow was the partner and Mr. Pruitt was 7 the concurring partner? 8 A. That is correct. 9 Q. And the reason that a concurring partner 10 approval is also required is because it's important 11 when Andersen issues a consent? 12 A. A consent or opinion, any kind of report to 13 have a concurring partner for internal control 14 purposes. 15 Q. The reason is because it's a statement that's 16 being made on behalf of Arthur Andersen? 17 MR. BRODY: Object to the form. 18 BY MR. CLARE: 19 Q. Is that fair? 20 A. Yes, that's fair. 21 Q. And in issuing a consent, is it fair to say 22 that Anderson would want to know how its financial 23 statements or how the opinion -- let me withdraw that. 24 In issuing a consent, is it fair to say that 25 Andersen wants to be informed as to how its opinion is</p>

20 (Pages 77 to 80)

<p style="text-align: right;">Page 81</p> <p>1 going to be used?</p> <p>2 A. Yes.</p> <p>3 Q. The decision internally at Andersen to issue</p> <p>4 a consent, it's not a decision that's delegated to the</p> <p>5 client; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. It's a decision that retains solely at</p> <p>8 Andersen?</p> <p>9 A. Yes.</p> <p>10 Q. It's not delegated to the client's attorneys?</p> <p>11 A. No.</p> <p>12 Q. Not delegated to the management of the</p> <p>13 company?</p> <p>14 A. No.</p> <p>15 Q. Or not delegated to the company's investment</p> <p>16 bank?</p> <p>17 A. Only to Arthur Andersen.</p> <p>18 Q. But not to the investment banks of the</p> <p>19 company?</p> <p>20 A. That's correct.</p> <p>21 Q. We looked earlier at what's been marked as</p> <p>22 CPH Exhibit 114, which is Mr. Bornstein's memo dated</p> <p>23 March 31st. We've already been through that document.</p> <p>24 I'm not going to ask you much more about it.</p> <p>25 Did you prepare any documentation of your</p>	<p style="text-align: right;">Page 83</p> <p>1 A. Approximately 11, 12:00.</p> <p>2 Q. And you and Mr. Bornstein were waiting to go</p> <p>3 to the printer that evening?</p> <p>4 A. Yes, correct.</p> <p>5 Q. Was there a designated time that everybody</p> <p>6 was going to convene at the printer?</p> <p>7 A. Afternoon is all I recall.</p> <p>8 Q. And what do you recall was reported -- and</p> <p>9 there was a telephone news report, correct?</p> <p>10 A. Yes, correct.</p> <p>11 Q. So earlier when you referred to a news</p> <p>12 release, it wasn't a written document?</p> <p>13 A. That's correct.</p> <p>14 Q. It was a verbal, a report that you saw on</p> <p>15 some financial television show that you were watching?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall what exactly was reported on</p> <p>18 the news show?</p> <p>19 A. No, I don't.</p> <p>20 Q. You just remember there was a figure given?</p> <p>21 A. Yes, correct.</p> <p>22 Q. Do you recall whether the news show reported</p> <p>23 that Sunbeam was announcing that it would not meet</p> <p>24 analyst expectations for the first quarter of 1998?</p> <p>25 Do you remember that in substance?</p>
<p style="text-align: right;">Page 82</p> <p>1 own, a similar memo to the one that Mr. Bornstein</p> <p>2 prepared describing the events of that evening at the</p> <p>3 print shop?</p> <p>4 A. No, I did not.</p> <p>5 Q. Did you take any notes or make any record of</p> <p>6 it in any way in March or thereafter?</p> <p>7 A. No.</p> <p>8 Q. In '98?</p> <p>9 A. No.</p> <p>10 Q. Have you seen in your time at Andersen either</p> <p>11 on your work on the restatement or on any other work</p> <p>12 any other documentation of the events of that evening</p> <p>13 other than Mr. Bornstein's March 31st, '98 memo?</p> <p>14 A. No.</p> <p>15 Q. I want to go back and talk in a little bit</p> <p>16 more detail about the events of that afternoon and into</p> <p>17 the evening, and I'm going to try to take it one step</p> <p>18 at a time, just to make sure that we've exhausted your</p> <p>19 knowledge and recollection of those events.</p> <p>20 You testified that the first mention that you</p> <p>21 heard of a Sunbeam press release was on a news show in</p> <p>22 Mr. Bornstein's hotel room?</p> <p>23 A. Yes.</p> <p>24 Q. And this was, do you remember what time of</p> <p>25 day this was?</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Generally, yes.</p> <p>2 Q. Do you remember whether the news account that</p> <p>3 you heard in the hotel room also included any</p> <p>4 information about how first quarter 1998 sales might</p> <p>5 relate to first quarter 1997 sales?</p> <p>6 Do you remember whether that was a part of</p> <p>7 the news report that you heard?</p> <p>8 A. I don't recall.</p> <p>9 Q. You don't know one way or the other?</p> <p>10 A. No.</p> <p>11 Q. Was there any mention of Morgan Stanley in</p> <p>12 the news report?</p> <p>13 A. I don't recall any mention.</p> <p>14 Q. Was there any mention of the bond offering?</p> <p>15 A. I don't recall any mention.</p> <p>16 Q. Any mention of the pending acquisitions that</p> <p>17 related to the bond offering?</p> <p>18 A. No.</p> <p>19 Q. Did the news report include a report on how</p> <p>20 the market was reacting to the news?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Do you remember independently how the market</p> <p>23 was reacting to the news?</p> <p>24 A. No.</p> <p>25 Q. Are you aware generally that the stock of</p>

<p style="text-align: right;">Page 85</p> <p>1 Sunbeam was trading down on this announcement?</p> <p>2 A. I didn't have knowledge on that day.</p> <p>3 Subsequent to the bond offering, I have knowledge that</p> <p>4 the stock decreased.</p> <p>5 Q. Based on your experience in the business</p> <p>6 world, was the kind of announcement that you heard that</p> <p>7 day good news or bad news for the financial market?</p> <p>8 MR. BRODY: Object to the form, foundation.</p> <p>9 MR. MOSCATO: For the financial market, you</p> <p>10 said?</p> <p>11 MR. CLARE: Correct.</p> <p>12 THE WITNESS: For the financial market as a</p> <p>13 broad or is as it related to Sunbeam?</p> <p>14 BY MR. CLARE:</p> <p>15 Q. Let me ask a better question.</p> <p>16 Based on your experience in the business, was</p> <p>17 the type of announcement that you heard good news or</p> <p>18 bad news?</p> <p>19 MR. BRODY: Same objection.</p> <p>20 THE WITNESS: Certainly bad news for the</p> <p>21 company.</p> <p>22 BY MR. CLARE:</p> <p>23 Q. Is this the kind of announcement that's known</p> <p>24 as an early warning?</p> <p>25 A. Yes, correct.</p>	<p style="text-align: right;">Page 87</p> <p>1 the comfort letter that was issued. In connection with</p> <p>2 your work on preparing drafts, was that information in</p> <p>3 the drafts that you had been working on?</p> <p>4 A. Yes.</p> <p>5 Q. Prior to the 19th?</p> <p>6 A. Yes.</p> <p>7 Q. So you did have some information about first</p> <p>8 quarter sales prior to that day?</p> <p>9 A. That's correct, as it was in the comfort</p> <p>10 letter.</p> <p>11 Q. Had you focused on that issue at all in</p> <p>12 internal discussions with Andersen?</p> <p>13 Had you been part of any discussions where</p> <p>14 that concept or that subject was discussed?</p> <p>15 A. No.</p> <p>16 Q. Are you aware one way or the other whether</p> <p>17 Andersen had previously told Sunbeam that that</p> <p>18 information about first quarter sales needed to be</p> <p>19 disclosed to Morgan Stanley?</p> <p>20 MR. BRODY: Object to the form.</p> <p>21 THE WITNESS: Previous to the --</p> <p>22 BY MR. CLARE:</p> <p>23 Q. The events of the 19th.</p> <p>24 A. Not that I recall.</p> <p>25 Q. You weren't part of any of those discussions?</p>
<p style="text-align: right;">Page 86</p> <p>1 Q. Is there anything else that you remember</p> <p>2 about the press report that you heard in</p> <p>3 Mr. Bornstein's hotel room?</p> <p>4 A. No.</p> <p>5 Q. What was your reaction to hearing the report?</p> <p>6 Again, we're still in Mr. Bornstein's hotel room.</p> <p>7 A. I didn't have a basis for reaction.</p> <p>8 Q. One way or the other?</p> <p>9 A. That's correct.</p> <p>10 Q. Now at that point did you already know that</p> <p>11 Sunbeam sales for the first quarter of 1998 were soft?</p> <p>12 A. I didn't have a basis.</p> <p>13 Q. So in connection with the work that you had</p> <p>14 done getting ready for this printer meeting, you didn't</p> <p>15 have any knowledge one way or the other as to whether</p> <p>16 or not Sunbeam's first quarter 1998 sales were -- what</p> <p>17 they were?</p> <p>18 A. No.</p> <p>19 Q. Did you know, as a result of the work that</p> <p>20 you had done on the comfort letter, that Sunbeam sales</p> <p>21 for the first two months of the first quarter of 1998</p> <p>22 were lower than they were in the previous period?</p> <p>23 A. I believe that was in the comfort letter,</p> <p>24 yes.</p> <p>25 Q. That information was ultimately contained in</p>	<p style="text-align: right;">Page 88</p> <p>1 A. No, I was not.</p> <p>2 Q. If they took place.</p> <p>3 So you don't know one way or the other what</p> <p>4 Andersen might have said to Sunbeam about disclosures</p> <p>5 that needed to be made to Morgan Stanley about first</p> <p>6 quarter 1998 sales?</p> <p>7 A. No.</p> <p>8 Q. Did you have an understanding that day about</p> <p>9 who had drafted the press release?</p> <p>10 A. Sunbeam. I don't know who at Sunbeam.</p> <p>11 MR. BRODY: I'm sorry, I'm going to object to</p> <p>12 foundation and form on that.</p> <p>13 BY MR. CLARE:</p> <p>14 Q. Were you ever told that anybody from Morgan</p> <p>15 Stanley had a role in drafting the press release?</p> <p>16 A. No.</p> <p>17 Q. Were you ever told or informed by any source</p> <p>18 what role, if any, Morgan Stanley had in the decision</p> <p>19 to issue the press release or its content?</p> <p>20 A. No.</p> <p>21 Q. Other than what you described for Mr. Brody</p> <p>22 this morning, was there any discussions about the press</p> <p>23 release that took place in Mr. Bornstein's hotel room</p> <p>24 that you can recall?</p> <p>25 A. Not that I recall.</p>

Page 89

1 Q. There has been some testimony that from his
2 hotel room, Mr. Bornstein placed a telephone call to
3 others at Andersen after hearing the news report.
4 Do you have any recollection of Mr. Bornstein
5 placing a telephone call in your presence from the
6 hotel room to discuss a news report that you had heard?
7 A. I remember Larry making a telephone call. I
8 don't recall who he called, but he was on the phone
9 afterwards.
10 Q. Do you recall anything that was said at least
11 on Mr. Bornstein's side?
12 A. No, I do not.
13 Q. And you don't have any understanding or
14 knowledge as to who he spoke to?
15 A. No, I do not.
16 Q. Do you recall that his telephone conversation
17 was about the press release?
18 A. I don't recall.
19 Q. So it might have been, might not have been?
20 A. I assume it was right after the press, after
21 we saw the news release.
22 Q. Did he say anything to you before he placed
23 the phone call like "We have to talk to Harlow about
24 this," or anything that might indicate who he talked to
25 or what his purpose was in having that conversation?

Page 90

1 A. I don't recall.
2 Q. And how about after he got off the phone, did
3 he relate to you the substance of any discussion that
4 he had with the person he was talking to?
5 A. Again, I don't recall.
6 Q. At this point, you're still in
7 Mr. Bornstein's hotel room.
8 Did you have an actual hard copy, a paper
9 document of the press release?
10 A. I did not.
11 Q. Do you know if Mr. Bornstein did?
12 A. I don't know.
13 Q. When Mr. Bornstein finished with his
14 telephone conversation, did he indicate to you that he
15 had more information about what the press release said
16 or what the contents of it was other than what was on
17 the news report?
18 A. I don't recall.
19 Q. When was the first time you did see a hard
20 copy of the press release, if you ever did?
21 A. I don't recall seeing any press release. I
22 might have. I don't recall seeing one.
23 Q. Okay. In all the time that you were at the
24 print shop, spilling over now into the next morning,
25 you don't recall ever having been provided with a hard

Page 91

1 copy, a paper copy of the press release?
2 A. That's correct.
3 Q. Okay.
4 MR. CLARE: Let's mark this as Morgan Stanley
5 Exhibit 39.
6 (MS Exhibit No. 39 was marked for
7 identification.)
8 BY MR. CLARE:
9 Q. Mr. Brockelman, I've handed you what's been
10 marked as Morgan Stanley Deposition Exhibit 39 and ask
11 you to take a look at it. It's a press release on
12 Sunbeam paper dated March 19, 1998.
13 Now you've had a chance to look at a hard
14 copy of the press release. Does this refresh your
15 recollection in any way about ever having seen a hard
16 copy of the press release?
17 A. No, it does not.
18 Q. Okay. Do you recall whether there were
19 copies of it at the printer that evening?
20 In other words, as part of any of the
21 discussions that took place that evening, do you
22 remember ever seeing copies, whether or not you ever
23 actually looked at it?
24 A. No, I don't remember seeing a copy of this.
25 Q. And do you know if Mr. Bornstein had a hard

Page 92

1 copy of it during the course of events that you've
2 described this morning?
3 A. Not to my knowledge.
4 Q. You just don't know one way or the other?
5 A. That's correct.
6 Q. Okay. Does Morgan Stanley Exhibit 39, the
7 press release, is this in substance the press release
8 that you recall was summarized in the news report that
9 you heard in Mr. Bornstein's hotel room?
10 In other words, this was the announcement
11 that was being reported on?
12 A. Yes.
13 Q. Does seeing Morgan Stanley Exhibit 39 refresh
14 your recollection in any way about what was being
15 reported that day; in other words, what portion of the
16 announcement was summarized in the news report?
17 A. No. My recollection is the same.
18 Q. There is a contact person at the bottom,
19 Richard Goudis. Do you see that?
20 A. Yes.
21 Q. Did you know Mr. Goudis to be a Sunbeam
22 employee?
23 A. No, I did not.
24 Q. Do you know who he was?
25 A. No, I do not.

Page 93

1 Q. So as far as you are aware, Mr. Brockelman,
2 that during the events at the printer at the print shop
3 that evening, nobody from Andersen had a hard copy of
4 the entire press release; is that correct, to your
5 knowledge?
6 MR. BRODY: Object to the form of the
7 question.
8 THE WITNESS: To my knowledge, yes.
9 BY MR. CLARE:
10 Q. Was there additional discussion at the print
11 shop about what was being said in the press release?
12 MR. BRODY: What had been said or what was --
13 MR. CLARE: What had been said in the press
14 release. In other words -- let me withdraw that
15 and ask a better question.
16 BY MR. CLARE:
17 Q. As part of the discussions, did Mr. Bornstein
18 or you ask anyone else present or discuss with those
19 present what had been disclosed in the press release
20 other than what you had heard on the news show?
21 A. Mr. Bornstein discussed the press release. I
22 don't recall the exact discussion held, but he did
23 discuss it.
24 Q. Okay. Do you remember anything about those
25 discussions?

Page 94

1 A. No, I do not.
2 Q. Did -- on March 19th at Global Financial
3 Press, did you think that Sunbeam had issued a false
4 press release? Did that thought ever occur to you that
5 evening?
6 A. I had no basis.
7 Q. No basis one way or the other to know whether
8 it was false or not?
9 A. That's correct.
10 Q. Did you have any basis to form an opinion as
11 to whether or not Sunbeam had issued a misleading press
12 release?
13 A. I had no basis except for talking to Larry
14 Bornstein.
15 Q. Did you have a discussion with Mr. Bornstein
16 about that topic, about whether the press release was
17 misleading?
18 A. Larry Bornstein told me he felt it was
19 misleading.
20 Q. What did he tell you?
21 A. That he felt it was misleading.
22 Q. Was there any discussion that had you with
23 Mr. Bornstein or anybody else at Andersen about asking
24 Sunbeam to retract or withdraw the press release that
25 it had issued?

Page 95

1 A. No, I did not.
2 Q. You were not part of any of those
3 discussions?
4 A. I was not part of the discussion.
5 Q. Are you aware from any source whether any
6 discussion like that took place?
7 A. Only through Larry Bornstein.
8 Q. Did Mr. Bornstein tell you that he had asked
9 the company to withdraw or retract its press release?
10 A. That I don't recall. I know he had a
11 discussion with Mr. Harlow relating to that context
12 that I heard secondhand from Larry Bornstein.
13 Q. And he told you, again, secondhand, that one
14 of the topics was discussed as to whether or not
15 Sunbeam should withdraw or retract the press release?
16 A. That's correct.
17 Q. Did you have an opinion in that regard?
18 A. No.
19 Q. Did you have any basis to --
20 A. No basis for an opinion.
21 Q. Did Mr. Bornstein tell you that he felt the
22 press release ought to be withdrawn or retracted?
23 A. That I don't recall.
24 Q. Did he tell you whether Mr. Harlow had a view
25 as to whether or not Sunbeam ought to withdraw or

Page 96

1 retract the press release?
2 A. That I don't recall either.
3 MR. CLARE: Mark this as the next exhibit,
4 Morgan Stanley 40.
5 (MS Exhibit No. 40 was marked for
6 identification.)
7 BY MR. CLARE:
8 Q. Mr. Brockelman, we've handed you what's been
9 marked as Morgan Stanley Deposition Exhibit 40, and
10 it's a fairly thick document. Feel free to take as
11 much time as you want to review it. I'm only going to
12 ask you questions about a certain number of pages of it
13 and I'll identify them for you and give you an
14 opportunity to look at it, but if you want to take the
15 time to read any portion of it, let me know and we'll
16 make sure you have that opportunity.
17 Do you recognize Morgan Stanley Exhibit 40 as
18 the offering memo for the bond offering that Sunbeam
19 was making in March of 1998?
20 A. Yes, I do.
21 Q. And is this the document that you were there
22 at the print shop that evening to work on?
23 A. Yes.
24 Q. I'd like you to turn if you would, please, to
25 the table of contents, which is page three of Morgan

<p style="text-align: right;">Page 97</p> <p>1 Stanley Exhibit 40.</p> <p>2 And I'd like you to identify for me to the</p> <p>3 best that you can which sections of the offering memo</p> <p>4 that you read or worked on in any way at the printer's</p> <p>5 that evening.</p> <p>6 MR. BRODY: Object to the form.</p> <p>7 THE WITNESS: I couldn't tell you which</p> <p>8 sections. Again, any historical financial</p> <p>9 information within here, I verified that night.</p> <p>10 Throughout each one of these sections there is</p> <p>11 historical information contained.</p> <p>12 BY MR. CLARE:</p> <p>13 Q. Okay. That's fair, and I appreciate that.</p> <p>14 So if I understand you correctly, that</p> <p>15 through the course of that day and into the next</p> <p>16 morning, that part of your task was to essentially read</p> <p>17 through the entire offering memorandum and verify any</p> <p>18 historical information that was contained in the</p> <p>19 offering memo; is that correct?</p> <p>20 A. That's correct, and also the pro forma</p> <p>21 information, which of course is not historical.</p> <p>22 Q. Thank you. Thank you for that clarification.</p> <p>23 And that includes the entire content of the</p> <p>24 offering memo, because historical information,</p> <p>25 financial information is contained in various sections?</p>	<p style="text-align: right;">Page 99</p> <p>1 BY MR. CLARE:</p> <p>2 Q. In other words, were you part of discussions</p> <p>3 where the contents of it, particular paragraphs were</p> <p>4 discussed or edited back and forth? Was that, were</p> <p>5 those conversations or meetings that you were a part</p> <p>6 of?</p> <p>7 A. Certainly that night there were discussions</p> <p>8 on the narrative.</p> <p>9 Q. But prior to that evening, were there any</p> <p>10 discussions about the narrative that you were involved</p> <p>11 in?</p> <p>12 A. Not that I recall.</p> <p>13 Q. And do you recall as you sit here today any</p> <p>14 discussions about the narrative other than the one at</p> <p>15 the print shop that evening?</p> <p>16 A. No, I don't.</p> <p>17 Q. Throughout your work on the offering memo, do</p> <p>18 you remember any discussion of errors or</p> <p>19 inconsistencies in the offering memo?</p> <p>20 MR. BRODY: Prior drafts or in the final</p> <p>21 product?</p> <p>22 MR. CLARE: In prior drafts.</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MR. CLARE:</p> <p>25 Q. Do you remember any specific errors or</p>
<p style="text-align: right;">Page 98</p> <p>1 A. Yes, that's correct.</p> <p>2 Q. So it's not limited to an appendix to the</p> <p>3 report or what I believe are the F1 pages that are</p> <p>4 pages that come after?</p> <p>5 A. That's correct. Throughout the document is</p> <p>6 historical information.</p> <p>7 Q. This was, was this the first time that</p> <p>8 evening at the print shop that you had seen a copy of</p> <p>9 the offering memo?</p> <p>10 A. No.</p> <p>11 Q. You had seen copies of it prior to arriving</p> <p>12 in New York that day?</p> <p>13 A. Yes.</p> <p>14 Q. And you had been performing that same</p> <p>15 function that you've described?</p> <p>16 A. Yes, correct.</p> <p>17 Q. Do you have any information as you sit here</p> <p>18 today about the content of the offering memo; in other</p> <p>19 words, who supplied the content of it, the narrative,</p> <p>20 other than the financial information that you worked</p> <p>21 on?</p> <p>22 MR. BRODY: The entire document?</p> <p>23 MR. CLARE: Any portion of it.</p> <p>24 MR. BRODY: Object to the form.</p> <p>25</p>	<p style="text-align: right;">Page 100</p> <p>1 inconsistencies?</p> <p>2 A. Nothing specifically, but there is numerous</p> <p>3 numbers throughout here. And as I would find</p> <p>4 something, I would make a correction to a number.</p> <p>5 Q. And it needed to be corrected?</p> <p>6 A. That's correct.</p> <p>7 Q. To your knowledge, were all the errors and</p> <p>8 inconsistencies that you identified actually corrected</p> <p>9 in the final version of the offering memo?</p> <p>10 A. Yes.</p> <p>11 Q. Were there any unresolved errors or</p> <p>12 inconsistencies in the offering memo that were not</p> <p>13 resolved when you left the print shop that evening?</p> <p>14 A. No.</p> <p>15 MR. CLARE: We have to take a short break to</p> <p>16 change the videotape and we'll reconvene.</p> <p>17 THE VIDEOGRAPHER: We are now going off the</p> <p>18 video record on tape number one. We'll be back on</p> <p>19 tape number two. The time on the monitor,</p> <p>20 11:25 a.m.</p> <p>21 (Discussion held off the record.)</p> <p>22 THE VIDEOGRAPHER: We are now back on video</p> <p>23 record. This is tape number two. The time on the</p> <p>24 monitor, 11:26 a.m.</p> <p>25 MR. MOSCATO: I'm going to run get a cup of</p>

<p style="text-align: right;">Page 101</p> <p>1 coffee. Do you want some coffee?</p> <p>2 THE WITNESS: No, thanks.</p> <p>3 MR. MOSCATO: Sorry about that, go ahead.</p> <p>4 BY MR. CLARE:</p> <p>5 Q. Mr. Brockelman, before the short break, we</p> <p>6 were talking about errors and inconsistencies in the</p> <p>7 offering memo. And you testified that to your</p> <p>8 knowledge, that evening when the offering memo was</p> <p>9 finalized and you left the print shop, that all errors</p> <p>10 and inconsistencies that you were aware of had been</p> <p>11 resolved to your satisfaction.</p> <p>12 A. That's correct.</p> <p>13 Q. Now there was this issue with regard to</p> <p>14 disclosures that would be made in the offering memo</p> <p>15 related to first quarter sales. Do you recall that?</p> <p>16 A. Roughly.</p> <p>17 Q. Mr. Brody asked you some questions about that</p> <p>18 this morning.</p> <p>19 A. Yes.</p> <p>20 Q. Was that issue resolved before the print</p> <p>21 shop, before you and Mr. Bornstein left the print shop</p> <p>22 that morning?</p> <p>23 MR. MOSCATO: I'm sorry, I missed something.</p> <p>24 Can you be specific as to when you say that issue?</p> <p>25 MR. CLARE: Sure.</p>	<p style="text-align: right;">Page 103</p> <p>1 MR. MOSCATO: I'd like to make a</p> <p>2 clarification. I'm not trying to be an</p> <p>3 obstructionist. When you use the word consent, is</p> <p>4 that synonymous in your mind with the conform</p> <p>5 letter.</p> <p>6 THE WITNESS: Releasing the opinion report,</p> <p>7 allowing the use of the financial statements that</p> <p>8 were referred to in the registration statement.</p> <p>9 BY MR. CLARE:</p> <p>10 Q. So again, I'm trying to make sure I</p> <p>11 understand your testimony, that it's your understanding</p> <p>12 that the disclosure issue that you've testified about</p> <p>13 was resolved to Andersen's satisfaction because the</p> <p>14 comfort letter was issued that night?</p> <p>15 MR. BRODY: Object to the form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MR. CLARE:</p> <p>18 Q. And it's been your experience that the</p> <p>19 comfort letter, a comfort letter is not issued until</p> <p>20 all outstanding issues are resolved to Andersen's</p> <p>21 satisfaction?</p> <p>22 A. Any material or significant issues certainly.</p> <p>23 Q. Okay. Now this discussion about disclosures</p> <p>24 came up in the context of what would be put in the</p> <p>25 Recent Developments section of the offering memo; is</p>
<p style="text-align: right;">Page 102</p> <p>1 BY MR. CLARE:</p> <p>2 Q. There was a discussion that you've testified</p> <p>3 about regarding what disclosure would be made in the</p> <p>4 offering memo as it related to the events that were</p> <p>5 reported in the press release; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Had that discussion been resolved and a</p> <p>8 decision made at the time that you and Mr. Bornstein</p> <p>9 left the print shop the next morning?</p> <p>10 MR. BRODY: Object to the form of the</p> <p>11 question.</p> <p>12 THE WITNESS: It wasn't a part of the</p> <p>13 resolution, but I can only assume it was resolved</p> <p>14 as we gave our consent that night.</p> <p>15 BY MR. CLARE:</p> <p>16 Q. Okay. So if that issue had not been resolved</p> <p>17 and there was still a disagreement between Andersen and</p> <p>18 the company about the disclosures to be made, the</p> <p>19 consent would not have been issued?</p> <p>20 MR. BRODY: Object to the form of the</p> <p>21 question, foundation.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. CLARE:</p> <p>24 Q. That's correct?</p> <p>25 A. Yes, it's correct.</p>	<p style="text-align: right;">Page 104</p> <p>1 that correct?.</p> <p>2 A. To my recollection, yes.</p> <p>3 Q. Now can you place in time for me when that</p> <p>4 issue came up in the course of the evening?</p> <p>5 In other words, was this the first topic of</p> <p>6 discussion when you and Mr. Bornstein arrived at the</p> <p>7 printer's, or did it come up in the ordinary course of</p> <p>8 working on the offering memo that evening?</p> <p>9 A. I don't recall when.</p> <p>10 Q. You don't recall one way or the other?</p> <p>11 A. That's correct.</p> <p>12 Q. Did you, Mr. Brockelman, as opposed to</p> <p>13 Mr. Bornstein, have a view one way or the other on what</p> <p>14 ought to be included in the Recent Development section</p> <p>15 of the offering memo?</p> <p>16 A. I had no basis for an opinion one way or</p> <p>17 another.</p> <p>18 Q. Did you express a view that evening?</p> <p>19 A. I did not.</p> <p>20 Q. Mr. Bornstein did all the talking on that</p> <p>21 issue?</p> <p>22 A. That's correct.</p> <p>23 Q. Do you remember whether Mr. Bornstein</p> <p>24 objected to including the entire press release in the</p> <p>25 Recent Development section or just a portion of it that</p>

26 (Pages 101 to 104)

<p style="text-align: right;">Page 105</p> <p>1 he was objecting to?</p> <p>2 A. I don't recall one way or another.</p> <p>3 Q. Let's look at what we have just marked as</p> <p>4 Morgan Stanley Exhibit 39, which is the hard copy of</p> <p>5 the press release.</p> <p>6 I invite your attention to the first four or</p> <p>7 five lines of the press release.</p> <p>8 There is an announcement here by Sunbeam that</p> <p>9 net sales for the first quarter may be lower than</p> <p>10 analysts estimates of 285 million to 295 million.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall any discussions about whether</p> <p>14 it was appropriate to include that piece of information</p> <p>15 in the offering memo?</p> <p>16 A. Yes, I believe our opinion was to have that</p> <p>17 in the offering memorandum.</p> <p>18 Q. Okay. And you remember Mr. Bornstein</p> <p>19 expressing that view that evening?</p> <p>20 A. Somewhat, yes.</p> <p>21 Q. So there was no discussion or disagreement</p> <p>22 between Andersen and anybody else who was present that</p> <p>23 evening about whether that piece of information ought</p> <p>24 to be included in the offering memo?</p> <p>25 A. I don't totally recall, but I believe that's</p>	<p style="text-align: right;">Page 107</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall any discussion at the printer</p> <p>3 that evening about whether that additional topic,</p> <p>4 Sunbeam's expectation about its first quarter sales</p> <p>5 exceeding the first quarter prior year sales, should be</p> <p>6 included in the offering memo?</p> <p>7 A. I don't recall discussions on that portion of</p> <p>8 the announcement.</p> <p>9 Q. So as you sit here today, you don't have a</p> <p>10 recollection one way or the other as to what the basis</p> <p>11 of discussion was about what ought to be included in</p> <p>12 the offering memo, what portion of the press release?</p> <p>13 You couldn't differentiate between different</p> <p>14 portions of the press release?</p> <p>15 A. That's correct.</p> <p>16 Q. So your recollection is not detailed enough</p> <p>17 to permit you to testify today or at trial in this</p> <p>18 matter about which portion of the press release would</p> <p>19 be included in the offering memo in the different views</p> <p>20 that were expressed this evening?</p> <p>21 MR. BRODY: Object to the form.</p> <p>22 THE WITNESS: That's correct.</p> <p>23 MR. MOSCATO: That's a little inconsistent</p> <p>24 with his testimony. I thought he said that the</p> <p>25 first part of the sentence was okay.</p>
<p style="text-align: right;">Page 106</p> <p>1 correct.</p> <p>2 Q. Do you recall anything else about that topic</p> <p>3 about whether that specific piece of information should</p> <p>4 be included in the offering memo?</p> <p>5 MR. BRODY: Object to the form. By that</p> <p>6 topic of information, you refer to --</p> <p>7 MR. CLARE: The statement that first quarter</p> <p>8 sales for 1998 may be lower than analysts'</p> <p>9 estimates.</p> <p>10 MR. MOSCATO: I'm sorry, could we have the</p> <p>11 question back?</p> <p>12 MR. CLARE: Sure.</p> <p>13 BY MR. CLARE:</p> <p>14 Q. Other than what we have discussed, do you</p> <p>15 recall any other discussion about whether the</p> <p>16 disclosure that net sales for the first quarter of 1998</p> <p>17 may be lower than the range of Wall Street analysts'</p> <p>18 estimates ought to be included in the offering memo?</p> <p>19 A. No.</p> <p>20 Q. And the press release goes on. There is an</p> <p>21 additional 15 words in that same sentence that</p> <p>22 describes an expectation by Sunbeam that net sales</p> <p>23 would, for 1998, first quarter, would exceed 1991 first</p> <p>24 quarter net sales of 253.4 million.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 108</p> <p>1 THE WITNESS: Yeah, I just can't confirm the</p> <p>2 second part, whether that should or should not be</p> <p>3 in the offering memo.</p> <p>4 BY MR. CLARE:</p> <p>5 Q. You don't remember Mr. Bornstein expressing</p> <p>6 the view on whether the comparison to prior year sales</p> <p>7 ought to be included or not?</p> <p>8 You don't have a recollection?</p> <p>9 A. Yeah, I don't have a recollection.</p> <p>10 Q. You don't have a recollection of what</p> <p>11 Mr. Bornstein's view on that topic was?</p> <p>12 A. No, I do not.</p> <p>13 Q. And you don't have a recollection of what</p> <p>14 Morgan Stanley's view on that topic was?</p> <p>15 A. No, I do not.</p> <p>16 Q. There is some cautionary language at the</p> <p>17 bottom of the press release. You see there is two</p> <p>18 paragraphs labeled Cautionary Statements.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Did you see that language or language like</p> <p>22 that on March 19th when you were at the printer in</p> <p>23 connection with this press release?</p> <p>24 A. I didn't see the press release that night is</p> <p>25 what I stated earlier.</p>

<p style="text-align: right;">Page 109</p> <p>1 Q. But was there any discussion that evening 2 about whether cautionary language like this ought to be 3 included in the offering memo? 4 A. I don't recall. 5 Q. Have you seen language like this in other 6 press releases? 7 A. Yes, I have. 8 Q. And do you have experience in drafting or 9 reviewing disclosures as part of your business? 10 A. At American Media I draft press releases for 11 our company, yes. 12 Q. And you are familiar with cautionary 13 statements of this kind? 14 A. Yes. 15 Q. Do you have an understanding what the purpose 16 of these kind of cautionary statements are? 17 A. Yes. 18 Q. What's your understanding? 19 MR. BRODY: Object to the form, foundation. 20 THE WITNESS: To provide prospective 21 financial information. Obviously the actual 22 results could differ from those prospective 23 numbers you provide. 24 BY MR. CLARE: 25 Q. Do you have a view as you sit here today</p>	<p style="text-align: right;">Page 111</p> <p>1 A. I believe so. 2 Q. When you were provided with a hard copy of 3 the March 19th press release, were you surprised to see 4 cautionary statements like this in the press release? 5 MR. BRODY: Object to the form of the 6 question. 7 MR. MOSCATO: I'm confused. 8 BY MR. CLARE: 9 Q. Does it surprise you that Morgan Stanley 10 Exhibit 39 includes two paragraphs of cautionary 11 statements? 12 MR. BRODY: Same objection. 13 THE WITNESS: It doesn't surprise me, because 14 there is prospective -- 15 MR. MOSCATO: That's the answer. Just keep 16 your answer short in this connection. 17 BY MR. CLARE: 18 Q. It doesn't surprise you? 19 A. No, it does not surprise me. 20 Q. And the forward-looking statements that are 21 referred to here, the statement about the expectations 22 for first quarter 1998 sales, is that an example of the 23 type of forward-looking statement? 24 MR. BRODY: Object to the form of the 25 question.</p>
<p style="text-align: right;">Page 110</p> <p>1 about whether it is appropriate to include cautionary 2 statements like this on Morgan Stanley Exhibit 39 in a 3 press release of this kind? 4 MR. BRODY: Same objection. 5 MR. MOSCATO: I object. I made the same 6 objection as to Mr. Pruitt yesterday, so I'm not 7 playing favorites. Mr. Brockelman is appearing 8 here as a fact witness. He's not appearing as an 9 expert witness. We can negotiate his fee for 10 expert testimony if you want to pursue this, but 11 as it stands now, I really don't want him 12 testifying on matters such as this. 13 If we could keep it to the facts, I'd 14 appreciate it, and I would prefer not to have a 15 fight over it. I would prefer if you can move on 16 to something else. 17 MR. CLARE: I don't think it's necessary to 18 have a fight over it. 19 BY MR. CLARE: 20 Q. I guess let me put it this way, 21 Mr. Brockelman. I've now provided you with a copy of 22 Morgan Stanley 39, which is the Sunbeam press release. 23 Is this the first time that you've seen a 24 hard copy of the press release other than in connection 25 with your prior depositions?</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. MOSCATO: I object to that. 2 BY MR. CLARE: 3 Q. Let me ask you this way. Do you recall any 4 discussion about whether it was appropriate to include 5 cautionary language like this in the offering memo? 6 A. I don't recall. 7 Q. One way or the other? 8 A. One way or another. 9 Q. Mr. Bornstein and Mr. Tyree had a 10 conversation about the Recent Development section of 11 the offering memo, correct? 12 A. Yes. 13 Q. And you testified about that conversation 14 already. 15 Other than -- after that conversation took 16 place, did Mr. Bornstein leave the room? 17 A. Yes. 18 Q. And did he go by himself? 19 A. Yes. 20 Q. Did he tell you where he was going? 21 A. Yes, to a conference room. 22 Q. And to make a telephone call? 23 A. Yes, correct. 24 Q. Now did Mr. Tyree or any of the other 25 attorneys go with him?</p>

<p style="text-align: right;">Page 113</p> <p>1 A. No.</p> <p>2 Q. Was there ever a point in time where</p> <p>3 Mr. Tyree or any of the other attorneys who were</p> <p>4 present that evening joined Mr. Bornstein in the</p> <p>5 conference room outside of your presence?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. Some your recollection is that Mr. Tyree and</p> <p>8 the other individuals who were present stayed in the</p> <p>9 room with you the entire time and Mr. Bornstein then</p> <p>10 rejoined?</p> <p>11 A. To my knowledge, yes.</p> <p>12 Q. You don't have a recollection of</p> <p>13 Mr. Bornstein having a conversation with Mr. Tyree or</p> <p>14 anybody else outside of your presence, out in the</p> <p>15 hallway or in a conference room?</p> <p>16 MR. BRODY: Object to the form and</p> <p>17 foundation.</p> <p>18 THE WITNESS: Not that I had knowledge of.</p> <p>19 BY MR. CLARE:</p> <p>20 Q. You testified this morning that Mr. Tyree was</p> <p>21 using profanity while Mr. Bornstein was out of the</p> <p>22 room. Do you recall that?</p> <p>23 A. Yes.</p> <p>24 Q. And I believe you said he called him a</p> <p>25 fucking asshole.</p>	<p style="text-align: right;">Page 115</p> <p>1 A. It was the timing.</p> <p>2 Q. So at least from your perspective, your</p> <p>3 understanding was Mr. Tyree was unhappy that he was</p> <p>4 finding out about this at such a late date?</p> <p>5 MR. MOSCATO: I object.</p> <p>6 MR. BRODY: Join.</p> <p>7 MR. MOSCATO: You can testify based on words</p> <p>8 you heard, all right? Don't try to put yourself</p> <p>9 into someone else's mind.</p> <p>10 BY MR. CLARE:</p> <p>11 Q. No, that's fair. I'm not asking you to do</p> <p>12 that.</p> <p>13 You formed an impression, sir, as you sat</p> <p>14 there about what was happening, right?</p> <p>15 A. That's correct.</p> <p>16 Q. And I think you testified your impression was</p> <p>17 that Mr. Tyree was unhappy with the timing of this</p> <p>18 issue being raised with him. That was your impression?</p> <p>19 A. That's correct.</p> <p>20 Q. Was it your impression that Mr. Tyree was</p> <p>21 unhappy with the position that Mr. Bornstein was taking</p> <p>22 on disclosure?</p> <p>23 A. It appeared to me it was more based on the</p> <p>24 timing of the events.</p> <p>25 Q. Do you recall Mr. Tyree using any other</p>
<p style="text-align: right;">Page 114</p> <p>1 A. That's correct.</p> <p>2 Q. Do you recall anything else that Mr. Tyree</p> <p>3 said besides that phrase?</p> <p>4 A. No, I don't.</p> <p>5 Q. Did Mr. Tyree direct his comments at you or</p> <p>6 were they directed more generally to those present in</p> <p>7 the room?</p> <p>8 A. They were not directed towards me.</p> <p>9 Q. They were directed towards the lawyers and</p> <p>10 the other people that were present there?</p> <p>11 A. That's correct.</p> <p>12 Q. Did you have an understanding or a belief</p> <p>13 about what Mr. Tyree was upset about? I recognize I'm</p> <p>14 not asking you to put yourself in his mind or speculate</p> <p>15 about it, but as you sat there in the press release --</p> <p>16 I'm sorry, strike that and withdraw.</p> <p>17 As you sat there listening to this, did you</p> <p>18 have an understanding about what Mr. Tyree was upset</p> <p>19 about?</p> <p>20 A. Only generally. It related to the</p> <p>21 disclosures in the offering memorandum.</p> <p>22 Q. Was it your understanding that Mr. Tyree was</p> <p>23 upset about the position that Mr. Bornstein was taking,</p> <p>24 or was it that he was upset about the timing of this</p> <p>25 issue coming to his attention?</p>	<p style="text-align: right;">Page 116</p> <p>1 profanity other than the phrase that you just</p> <p>2 described?</p> <p>3 A. Not that I can recall right now.</p> <p>4 Q. There was some discussion, there has been</p> <p>5 some testimony that Mr. Tyree said that evening to</p> <p>6 Mr. Bornstein, "Are these guys fucking with me? Are</p> <p>7 they going to make their numbers or not?"</p> <p>8 Do you recall Mr. Tyree saying anything like</p> <p>9 that in words or substance?</p> <p>10 A. I only heard that secondhand from Larry</p> <p>11 Bornstein.</p> <p>12 Q. So you were not present when that</p> <p>13 conversation took place?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Does that refresh your recollection at all</p> <p>16 about whether or not there were conversations that took</p> <p>17 place outside of your presence or in a different room?</p> <p>18 A. No.</p> <p>19 Q. There were attorneys there representing</p> <p>20 Morgan Stanley, I believe you said you thought they</p> <p>21 were from Davis Polk?</p> <p>22 A. That's correct.</p> <p>23 Q. Do you remember the names James Lurie? Is</p> <p>24 that one of the names of the individuals that you</p> <p>25 remember?</p>

<p style="text-align: right;">Page 117</p> <p>1 A. I only know that by reading the memo you 2 provided me. That's the only recollection I have. 3 Q. Putting the names aside, do you remember 4 anything that was said by any of the lawyers from Davis 5 Polk that evening on this topic of disclosures? 6 A. Not that I recall. 7 Q. Do you remember any comments or statements 8 that were made by any of the lawyers that were there 9 representing Sunbeam? 10 A. No. 11 Q. Was there anybody else present that evening 12 from the printer who was working in the room with you 13 that evening? 14 A. At various times, yes. They would come in 15 and out of the conference room. 16 Q. These would be Global Financial Press 17 employees? 18 A. That's correct. 19 Q. Do you remember whether any of those 20 individuals were present for this discussion about the 21 disclosures? 22 A. No, I do not. 23 Q. Can you place a time frame for this 24 conversation for us? 25 In other words, how long did it last from</p>	<p style="text-align: right;">Page 119</p> <p>1 A. Yes, I did. 2 Q. Is there anything else that you remember 3 about that conversation with Mr. Bornstein? 4 A. Not that I currently recall. 5 Q. Did he tell you what he had been doing 6 outside of the room? 7 A. He had mentioned he was on the phone with, 8 with Gluck and with Harlow. That's all I recall. 9 Q. Did he tell you what position Mr. Gluck or 10 Mr. Harlow had taken on this, on the issue that was 11 being discussed? 12 A. Not that I recall. 13 Q. What was his reaction when you told him that 14 Tyree was upset? 15 A. Mr. Bornstein was also upset. 16 Q. Did you communicate to Mr. Bornstein in words 17 or in substance that Mr. Tyree appeared to be upset 18 because of the timing of the issue? 19 A. I don't recall. 20 Q. So you don't recall being more specific with 21 Mr. Bornstein one way or the other about what Tyree was 22 saying? 23 A. That's correct. 24 Q. After Mr. Bornstein rejoined the folks in the 25 conference room, did Mr. Bornstein say in words or in</p>
<p style="text-align: right;">Page 118</p> <p>1 beginning to end, the whole topic of disclosures? 2 A. Unfortunately, I cannot. 3 Q. Do you have a, even a general sense of 4 whether this was a topic that was discussed on and off 5 throughout the evening or was it bounded in some finite 6 period of time? 7 A. It was on and off throughout the evening, 8 yes. 9 Q. At any point that evening at the print shop, 10 did you join Mr. Bornstein in a telephone conference? 11 A. No, I did not. 12 Q. There has been testimony that Mr. Bornstein 13 talked that evening with Mr. Harlow and Mr. Gluck, and 14 it's recorded in his memo. 15 And I apologize if I've asked you this 16 before, but you were not part of any telephone 17 conversations that Mr. Bornstein had that evening on 18 this topic of disclosures? 19 A. That's correct. 20 Q. Mr. Bornstein returned, came back to the 21 conference room at some point, correct? 22 A. Yes. 23 Q. And you had a side conversation with him? 24 A. Yes, I did. 25 Q. You told him that Tyree was upset?</p>	<p style="text-align: right;">Page 120</p> <p>1 substance that Mr. Gluck did not agree with how the 2 press release had been worded? 3 A. I don't recall. 4 Q. Do you recall him saying anything like that? 5 A. No, no. 6 Q. Do you recall Mr. Bornstein saying in words 7 or in substance that Mr. Harlow did not agree with how 8 the press release had been worded? 9 A. Again, I don't recall. 10 Q. Do you recall him saying anything like that? 11 A. I don't recall one way or another. 12 Q. Do you recall Mr. Bornstein relaying a view 13 by Mr. Gluck that forward-looking statements should not 14 be included in the offering memo? 15 A. That I do recall. That did refresh my 16 memory. I remember Larry making such a comment to me, 17 but not -- this is all secondhand. 18 Q. Okay. You recall Mr. Bornstein telling that 19 to you? 20 A. That's correct. 21 Q. That evening at the print shop or at some 22 later -- 23 A. That evening at the print shop. 24 Q. Did he, Mr. Bornstein, make that comment to 25 anybody other than you in your presence?</p>

<p style="text-align: right;">Page 121</p> <p>1 MR. BRODY: Can we define what that comment 2 is? 3 MR. CLARE: Sure, the comment about 4 Mr. Gluck's view on forward-looking statements 5 appearing in the offering memo. 6 THE WITNESS: No, I don't remember. 7 BY MR. CLARE: 8 Q. So to your recollection, Mr. Bornstein 9 expressed that view to you, but to nobody else, to the 10 best of your recollection? 11 A. Best of my recollection, yes. 12 Q. Did Mr. Bornstein also tell you that 13 Mr. Harlow did not think that forward-looking 14 statements should appear in the offering memo? 15 A. Yes. What I recall now is that Mr. Gluck and 16 Mr. Harlow both agreed that forward-looking statements 17 should not be in the offering memorandum. 18 Q. Okay. Do you recall Mr. Bornstein being that 19 specific with Mr. Tyree or any of the other individuals 20 in the room about Mr. Gluck's view or Mr. Harlow's 21 view? 22 A. That I don't recall. 23 Q. Do you recall Mr. Tyree asking in words or in 24 substance whether Sunbeam would meet or exceed the 25 prior year's first quarter sales numbers?</p>	<p style="text-align: right;">Page 123</p> <p>1 MR. MOSCATO: Let me just interrupt. When 2 you say this document, you mean this particular 3 one with this particular handwriting or some 4 iteration of this document? 5 MR. CLARE: Let's start with some particular 6 iteration of this handwriting -- of this document 7 without the handwriting. 8 MR. BRODY: Any iteration? 9 MR. CLARE: Any iteration of this document. 10 THE WITNESS: No, I did not. 11 BY MR. CLARE: 12 Q. Do you recall seeing a document that looked 13 like this the night at the print shop? 14 A. No. 15 Q. Do you remember that evening whether 16 Mr. Tyree provided any documents to Mr. Bornstein or to 17 you? 18 A. Not to my knowledge. 19 Q. Was there a discussion about a schedule of 20 actual and anticipated first quarter 1998 sales? 21 Putting aside whether a document was discussed or not. 22 A. Not to my knowledge. 23 Q. Do you recall Mr. Tyree saying that Sunbeam 24 had provided Morgan Stanley with information about 25 first quarter 1998 sales?</p>
<p style="text-align: right;">Page 122</p> <p>1 A. No. 2 Q. Do you recall Mr. Tyree asking in words or in 3 substance whether Andersen had a view as to whether or 4 not Sunbeam would meet analysts' expectations? 5 A. No. 6 Q. Do you recall Mr. Tyree asking Mr. Bornstein 7 any questions at all? 8 A. Only generally, but I don't recall the 9 questions. 10 Q. Do you recall the topics of the questions 11 that Mr. Tyree asked that evening, any of the questions 12 that he asked? 13 A. No, I don't. 14 Q. Do you remember whether they related in any 15 way to Sunbeam's first quarter '98 sales? 16 A. No, I don't. 17 MR. CLARE: 18 (MS Exhibit No. 41 was marked for 19 identification.) 20 BY MR. CLARE: 21 Q. This is Morgan Stanley Exhibit 41. 22 Mr. Brockelman, I'm handing you what's been 23 marked as Morgan Stanley Deposition Exhibit 41 and 24 asking you to take a look at it. 25 Have you seen this document before?</p>	<p style="text-align: right;">Page 124</p> <p>1 A. Not to my knowledge. 2 Q. Do you recall Mr. Bornstein making any 3 comments about first quarter 1998 sales? 4 A. Not to my knowledge. 5 Q. Do you remember Mr. Bornstein saying he was 6 skeptical of Sunbeam's first quarter 1998 sales 7 objectives? 8 MR. MOSCATO: I'm sorry, can you repeat that 9 question? 10 MR. CLARE: Sure. Can you read it back? 11 (Thereupon, a portion of the record 12 was read by the reporter.) 13 MR. MOSCATO: That's a little vague. 14 You can answer, I guess. 15 BY MR. CLARE: 16 Q. Are you able to answer the question or would 17 you like me to rephrase it? 18 MR. MOSCATO: I have a problem with -- which 19 sales objectives? There has been some testimony 20 about some sales objectives, but that's such a 21 broad term, but go ahead. I mean if you want an 22 answer to that question, you can answer it. I'm 23 suggesting it's fairly vague. 24 THE WITNESS: Do you mean comparatively to 25 the prior year as far as --</p>

<p style="text-align: right;">Page 125</p> <p>1 BY MR. CLARE:</p> <p>2 Q. Well, I want to start broad and I'll work my</p> <p>3 way more narrow.</p> <p>4 Do you remember Mr. Bornstein saying he was</p> <p>5 skeptical of any Sunbeam sales objectives?</p> <p>6 A. Yes.</p> <p>7 Q. What do you remember about Mr. Bornstein's</p> <p>8 comments in that regard?</p> <p>9 A. I know he made a comment to me. As far as</p> <p>10 who he made a comment to in the group, I don't recall.</p> <p>11 Q. What do you remember about his comment?</p> <p>12 A. That he was skeptical that Sunbeam would be</p> <p>13 beat the prior year's first quarter results.</p> <p>14 Q. Other than what you just testified to, do you</p> <p>15 remember anything else about Mr. Bornstein's comments</p> <p>16 to you about that topic?</p> <p>17 A. No.</p> <p>18 Q. And as you sit here today, do you have a</p> <p>19 recollection one way or the other about whether</p> <p>20 Mr. Bornstein addressed those or similar comments to</p> <p>21 others in the room?</p> <p>22 A. I don't recall.</p> <p>23 Q. So as you sit here today, you don't recall a</p> <p>24 discussion between Mr. Tyree and Mr. Bornstein about</p> <p>25 Mr. Bornstein's skepticism?</p>	<p style="text-align: right;">Page 127</p> <p>1 other time?</p> <p>2 A. Yes.</p> <p>3 Q. Tell me what you remember.</p> <p>4 A. As part of the first quarter procedures, I</p> <p>5 know Dennis Pastrano was performing certain procedures</p> <p>6 related to the bill and hold. I wasn't party to that,</p> <p>7 but I know just generally that was a discussion leading</p> <p>8 up to the night at the printer's.</p> <p>9 Q. Okay. Do you know what additional procedures</p> <p>10 Mr. Pastrano was performing leading up to the night at</p> <p>11 the printer's?</p> <p>12 A. No, I do not.</p> <p>13 Q. Did you ever discuss with Mr. Bornstein</p> <p>14 whether or not Sunbeam's bill and hold practices might</p> <p>15 make it easier or more difficult for Sunbeam to exceed</p> <p>16 or meet its prior year first quarter sales numbers?</p> <p>17 A. No.</p> <p>18 Q. Did Mr. Bornstein say what his skepticism was</p> <p>19 based on?</p> <p>20 A. I believe he did, but I don't recall.</p> <p>21 Q. Did Mr. Bornstein say that his skepticism was</p> <p>22 based on any study or analysis that he had done of</p> <p>23 Sunbeam's sales trends?</p> <p>24 A. Again, I don't recall.</p> <p>25 Q. Or something that he knew about a particular</p>
<p style="text-align: right;">Page 126</p> <p>1 A. That's correct.</p> <p>2 Q. Did Mr. Bornstein ever say to you in words or</p> <p>3 in substance that it would be impossible for Sunbeam to</p> <p>4 exceed first quarter 1997 sales numbers?</p> <p>5 A. I don't recall the exact words he used. I</p> <p>6 know he was skeptical.</p> <p>7 Q. Do you recall him saying the word skeptical?</p> <p>8 A. That's correct.</p> <p>9 Q. Do you recall Mr. Bornstein saying to anyone</p> <p>10 in the room that he was skeptical about Sunbeam's</p> <p>11 ability to ship any particular quantity of product on a</p> <p>12 per-day basis?</p> <p>13 A. No.</p> <p>14 Q. Do you remember Mr. Bornstein addressing</p> <p>15 comments like that to you?</p> <p>16 A. No, I don't recall.</p> <p>17 Q. Did you ever discuss with Mr. Bornstein that</p> <p>18 evening the impact of Sunbeam's bill and hold practices</p> <p>19 on its ability to meet sales objectives for the first</p> <p>20 quarter of 1998?</p> <p>21 A. No.</p> <p>22 Q. Do you remember that topic being discussed at</p> <p>23 all that evening?</p> <p>24 A. No.</p> <p>25 Q. Do you remember it being discussed at any</p>	<p style="text-align: right;">Page 128</p> <p>1 Sunbeam customer?</p> <p>2 A. I don't recall.</p> <p>3 Q. Or anything he knew about the likelihood of</p> <p>4 potential orders?</p> <p>5 A. I don't recall.</p> <p>6 Q. Or anything that he knew about the timing of</p> <p>7 potential orders?</p> <p>8 A. I don't recall.</p> <p>9 Q. Or any conversations that he had had with</p> <p>10 people in the Sunbeam sales team about the likelihood</p> <p>11 of future orders?</p> <p>12 A. I don't recall.</p> <p>13 Q. Did Mr. Bornstein say that evening in words</p> <p>14 or in substance that Sunbeam was intentionally</p> <p>15 misleading Morgan Stanley about its sales objectives</p> <p>16 for the first quarter 1998?</p> <p>17 A. I don't recall him saying that.</p> <p>18 Q. Do you recall Mr. Bornstein saying that</p> <p>19 privately to you?</p> <p>20 A. No.</p> <p>21 Q. In any setting?</p> <p>22 A. No.</p> <p>23 Q. That evening at the print shop, did you have</p> <p>24 any reason to think that Sunbeam was intentionally</p> <p>25 misleading Morgan Stanley about its sales objectives</p>

<p style="text-align: right;">Page 129</p> <p>1 for first quarter 1998?</p> <p>2 A. I had no basis one way or another.</p> <p>3 Q. Do you remember Mr. Bornstein saying</p> <p>4 something to the effect of if Sunbeam is going to make</p> <p>5 its first quarter revenue number, they are going to</p> <p>6 make it, because I'm going to be sending people to</p> <p>7 shipping docks at the end of the quarter to enforce the</p> <p>8 cutoffs?</p> <p>9 A. Mr. Bornstein said that?</p> <p>10 Q. Yes.</p> <p>11 A. No, I don't recall that being said.</p> <p>12 Q. Did Mr. Bornstein suggest that night in words</p> <p>13 or in substance that the bond offering ought to be</p> <p>14 cancelled as a result of his skepticism?</p> <p>15 A. No, I don't recall that.</p> <p>16 Q. Did Mr. Bornstein ever suggest that evening</p> <p>17 in words or in substance that the bond offering ought</p> <p>18 to be delayed as a result of this skepticism?</p> <p>19 A. I don't recall that either.</p> <p>20 Q. Was there any discussion that you can</p> <p>21 remember even at a different time period about whether</p> <p>22 the bond offering ought to be delayed or cancelled as a</p> <p>23 result of this information about first quarter 1998</p> <p>24 sales?</p> <p>25 A. No, I don't recall.</p>	<p style="text-align: right;">Page 131</p> <p>1 profanity, you continued to work on the offering memo</p> <p>2 for the remainder of the evening and into the next</p> <p>3 morning; is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Can you describe what the atmosphere of the</p> <p>6 room was like?</p> <p>7 In other words, did you continue to work</p> <p>8 amicably together on the rest of the offering memo that</p> <p>9 evening?</p> <p>10 A. Yes, we continued to work together on it.</p> <p>11 Q. So whatever tension there had been as it</p> <p>12 relates to the disclosure issue had been resolved by</p> <p>13 the time the offering memo was finalized?</p> <p>14 MR. BRODY: Object to the form, foundation.</p> <p>15 THE WITNESS: I don't recall if it was</p> <p>16 resolved, but it appeared everything was</p> <p>17 professional and continued to work on the offering</p> <p>18 memorandum.</p> <p>19 BY MR. CLARE:</p> <p>20 Q. As far as you could tell, was there, were</p> <p>21 there any other heated discussions that evening other</p> <p>22 than the one that you've described?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Prior to your providing the comfort letter to</p> <p>25 Morgan Stanley that evening, were there any discussions</p>
<p style="text-align: right;">Page 130</p> <p>1 Q. Turning back to Morgan Stanley Exhibit 40,</p> <p>2 I'd like to, which is the offering memo, I'd like to</p> <p>3 invite your attention to page eight, the Recent</p> <p>4 Announcement section.</p> <p>5 Compare it to Morgan Stanley Exhibit 39, the</p> <p>6 press release.</p> <p>7 Do you recall who made the final decision</p> <p>8 about what the content of the Recent Announcement</p> <p>9 section would be?</p> <p>10 A. No, I do not.</p> <p>11 Q. Do you recall whether Mr. Bornstein had</p> <p>12 another telephone conversation that evening with Janet</p> <p>13 Kelly?</p> <p>14 A. No.</p> <p>15 Q. Do you remember Mr. Bornstein telling you</p> <p>16 that he had spoken with Miss Kelly?</p> <p>17 A. No.</p> <p>18 Q. Did Mr. Bornstein ever tell you whether his</p> <p>19 concerns about disclosure had been overruled by anyone</p> <p>20 at Sunbeam?</p> <p>21 A. No.</p> <p>22 Q. Did Mr. Bornstein tell you that he was</p> <p>23 satisfied with the way the issue had been resolved?</p> <p>24 A. I don't recall one way or another.</p> <p>25 Q. After this discussion where Mr. Tyree used</p>	<p style="text-align: right;">Page 132</p> <p>1 internally about how the comfort letter ought to be</p> <p>2 provided to Morgan Stanley?</p> <p>3 MR. BRODY: Object to the form.</p> <p>4 BY MR. CLARE:</p> <p>5 Q. In other words, was there any discussion</p> <p>6 about who would provide the comfort letter, who would</p> <p>7 physically hand it to or deliver it at the print shop</p> <p>8 that evening?</p> <p>9 A. Who, you mean me versus Larry?</p> <p>10 Q. Correct.</p> <p>11 A. It really didn't matter, although Larry was</p> <p>12 authorized to sign. Once it's signed, I believe I</p> <p>13 handed it to them.</p> <p>14 Q. Now you testified earlier that there were</p> <p>15 drafts of the comfort letter that were being worked on</p> <p>16 prior to the print shop, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And I believe you testified in response to a</p> <p>19 question from Mr. Brody that a draft of the comfort</p> <p>20 letter was provided to Morgan Stanley prior to</p> <p>21 March 19th in the print shop; is that correct?</p> <p>22 A. I believe I said I didn't recall if a draft</p> <p>23 was provided.</p> <p>24 Q. Okay.</p> <p>25 A. Typically one is, but --</p>

<p style="text-align: right;">Page 133</p> <p>1 Q. That's what I'm trying to get at. Do you 2 have a recollection of in this case, as opposed to 3 what's typically done, about whether a draft of the 4 press release was ever provided to Morgan Stanley? 5 MR. MOSCATO: You misspoke. 6 MR. BRODY: Object to form. You said press 7 release. 8 MR. CLARE: Appreciate that, thank you. 9 BY MR. CLARE: 10 Q. I want to put aside what's typically done and 11 I want to focus specifically on this comfort letter and 12 any comfort letter that was provided by Andersen to 13 Morgan Stanley in connection with the Sunbeam bond 14 offering. 15 Do you have any personal knowledge about 16 whether a draft of the comfort letter was sent to 17 Morgan Stanley before March 19th? 18 A. No firsthand knowledge. 19 Q. Do you have any second-hand knowledge? Have 20 you ever heard that it was? 21 A. Yes, through Dennis Pastrana. 22 Q. Did Mr. Pastrana ask you to send it? In 23 other words, did you physically send it to them? 24 A. I recall that Dennis sent it to them. 25 Q. Mr. Pastrana told you that he had?</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. Mr. Pastrana told you that? 2 A. Mr. Pastrana told me that, yes. 3 Q. But you don't have any firsthand knowledge of 4 a draft of the comfort letter being sent to Davis Polk? 5 A. That's correct. 6 Q. And again, no firsthand knowledge of it being 7 sent to Morgan Stanley? 8 A. That's correct. 9 Q. And Mr. Pastrana didn't tell you the 10 individual at Morgan Stanley that he had sent it to? 11 A. That's correct. 12 Q. Or the individual at Davis Polk that he had 13 sent it to? 14 A. That's correct. 15 Q. And you don't recall the context of this 16 discussion with Mr. Pastrana? 17 A. No. 18 Q. About how this topic came up? 19 Mr. Bornstein signed the comfort letter on 20 behalf of Arthur Andersen at the printer's? 21 A. Yes. 22 Q. And then provided a copy to Morgan Stanley? 23 A. I believe Morgan Stanley and their attorneys. 24 Q. Do you recall him doing that? Do you recall 25 him physically handing the comfort letter to --</p>
<p style="text-align: right;">Page 134</p> <p>1 A. That's correct. 2 Q. Did you ever see the copy that Mr. Pastrana 3 said that he had sent to Morgan Stanley? 4 A. Not the actual final draft copy that was sent 5 to them, no. 6 Q. Am I correct then that the only comfort 7 letter that you're aware of having been delivered to 8 Morgan Stanley was the final signed version that night 9 at Global Financial Press? 10 MR. MOSCATO: I object to that, but go ahead. 11 THE WITNESS: The only firsthand knowledge 12 report that was sent to them. 13 BY MR. CLARE: 14 Q. Okay. How did the subject come up with 15 Mr. Pastrana about whether a draft comfort letter would 16 be provided to Morgan Stanley before the evening at the 17 print shop? 18 A. It's part of our typical procedures to send a 19 draft version to the underwriter and their attorney. 20 Q. Do you know who at Morgan Stanley it was sent 21 to? 22 A. No, I do not. 23 Q. Do you know whether a copy was also sent to 24 Davis Polk? 25 A. Yes, yes.</p>	<p style="text-align: right;">Page 136</p> <p>1 A. I believe I handed it to them after Larry 2 signed it. 3 Q. Was there any discussion about the contents 4 of the comfort letter at the printer's that evening 5 with Morgan Stanley or its attorneys? 6 MR. MOSCATO: I'm sorry, repeat the question, 7 please. 8 BY MR. CLARE: 9 Q. Was there any discussion about the contents 10 of the comfort letter with Morgan Stanley or its 11 attorneys that evening at the print shop? 12 A. Yes, there was. 13 Q. What do you recall? 14 A. I don't recall the conversations. 15 Q. The comfort letter that you were working on 16 at the print shop, was it a collaborative effort in 17 drafting that document between Andersen and Morgan 18 Stanley or was it Andersen's work? 19 A. Andersen's work. 20 Q. So with regard to the offering memo, Morgan 21 Stanley was working on it and Andersen was working on 22 it together, correct? 23 A. And the company. 24 Q. And the company, yes, thank you. 25 A. Certainly mostly the company.</p>

Page 137

1 Q. So the offering memo was a collective effort
 2 between Morgan Stanley, Andersen and the company?
 3 A. That's correct.
 4 Q. But the comfort letter, you and Mr. Bornstein
 5 were working on, correct?
 6 A. Along with several other people, yes,
 7 correct.
 8 Q. Several other Andersen people?
 9 A. Andersen people, correct.
 10 Q. Prior to the time that you handed the comfort
 11 letter to Morgan Stanley, had Mr. Tyree or any of the
 12 attorneys representing Morgan Stanley looked at a copy
 13 that evening at the print shop?
 14 A. I believe so. I don't recall, though, who
 15 looked at it.
 16 Q. Do you recall generally, though, reviewing
 17 iterative drafts of it with Morgan Stanley and its
 18 attorneys that evening at the print shop before the
 19 final version was handed to them?
 20 A. Yes. Again, I don't recall who from each
 21 team looked at it, but yes, I do recall.
 22 Q. Did Andersen -- I'm sorry, strike that.
 23 Do you recall any discussion about the
 24 comparison of first quarter 1998 sales to first quarter
 25 1997 sales with Morgan Stanley or its attorneys as it

Page 138

1 relates to the information disclosed in the comfort
 2 letter?
 3 A. No, I don't recall.
 4 Q. Do you remember specifically flagging that
 5 issue for Morgan Stanley or its attorneys?
 6 A. No.
 7 Q. Do you remember Mr. Bornstein doing that?
 8 A. No.
 9 Q. Do you recall what time you left Global
 10 Financial Press that evening or the next morning?
 11 A. It was the next morning. I'm not quite sure
 12 what time.
 13 Q. Did you stay there with Mr. Bornstein the
 14 entire time or did you leave at separate times?
 15 A. We left together, but I believe I took a nap
 16 for an hour or two.
 17 Q. That evening?
 18 A. That evening, as I was separate from him for
 19 a little period of time.
 20 Q. Do you recall at the time that you took a nap
 21 whether the question of the recent development section
 22 had been resolved or not at that time?
 23 A. I assume so. We delivered the comfort letter
 24 with our consent.
 25 MR. MOSCATO: No, the question was at the

Page 139

1 time you took your nap.
 2 THE WITNESS: My nap followed the release of
 3 the comfort letter.
 4 BY MR. CLARE:
 5 Q. So that issue had been resolved?
 6 A. That's correct.
 7 Q. And then you took your nap, and then at some
 8 point you and Mr. Bornstein left together?
 9 A. That's correct.
 10 Q. Did Mr. Bornstein talk to you about any
 11 events that had taken place during your nap?
 12 A. I'm sorry? Repeat one more time.
 13 Q. Did Mr. Bornstein tell you what had happened
 14 or any discussions that occurred while you were taking
 15 a nap and out of the room?
 16 A. No.
 17 MR. CLARE: Why don't we take a few-minute
 18 break and see if I can streamline some of this.
 19 THE VIDEOGRAPHER: We are now going off video
 20 record. The time on the monitor is 12:13 p.m.
 21 (Thereupon, a recess was taken.)
 22 THE VIDEOGRAPHER: We are now back on video
 23 record. The time on the monitor is 12:22 p.m.
 24 BY MR. CLARE:
 25 Q. Mr. Brockelman, I'm going to show you what's

Page 140

1 previously been marked as Morgan Stanley Deposition
 2 Exhibit Number 9. It's a copy of the March 19, 1998,
 3 comfort letter. I'd like you to turn to page three,
 4 please.
 5 Do you recall any discussion with Morgan
 6 Stanley or its attorneys at the printer's about
 7 paragraph 5B of the March 19, 1998, press release?
 8 A. No, I do not.
 9 Q. Do you recall whether you or Mr. Bornstein
 10 identified paragraph 5B to Morgan Stanley and its
 11 attorneys as an issue they should focus on?
 12 A. No, I don't recall.
 13 Q. Same question with regard to paragraph 6B.
 14 A. I don't recall.
 15 Q. Do you recall any discussion about paragraph
 16 6B with Morgan Stanley or its attorneys on March 19th?
 17 A. No.
 18 Q. Same question with regard to paragraph 6C.
 19 Do you remember any discussion with Morgan Stanley or
 20 its attorneys about paragraph 6C?
 21 A. No.
 22 Q. After March 19th, you returned to Florida?
 23 A. Yes, correct.
 24 Q. Did you recall any discussions with anyone at
 25 Arthur Andersen about additional procedures or testing

<p style="text-align: right;">Page 141</p> <p>1 with regard to first quarter 1998 Sunbeam sales?</p> <p>2 A. With regard to what?</p> <p>3 Q. Any aspect of it.</p> <p>4 A. The first quarter review?</p> <p>5 Q. What do you mean by first quarter review?</p> <p>6 You money after the end of the first quarter?</p> <p>7 A. Yes, that's correct.</p> <p>8 Q. And I appreciate that clarification. Let's</p> <p>9 say between March 19th, 1998, and the end of the</p> <p>10 quarter, did you have any discussions or involvement</p> <p>11 with any additional procedures or testing with regard</p> <p>12 to Sunbeam's first quarter 1998 sales?</p> <p>13 A. No, I did not.</p> <p>14 Q. Are you aware of any additional procedures or</p> <p>15 testing that Andersen performed on Sunbeam's sales to</p> <p>16 date in the first quarter of 1998 at that point?</p> <p>17 A. Sales to date through the end of the first</p> <p>18 quarter?</p> <p>19 Q. Well, through that point in the first</p> <p>20 quarter.</p> <p>21 A. Through the point as of the end of February?</p> <p>22 Q. Yes.</p> <p>23 A. No.</p> <p>24 Q. Or were you aware from any source about</p> <p>25 whether Andersen obtained information about any time</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. Do you have any knowledge about whether</p> <p>2 anything was done?</p> <p>3 MR. BRODY: Object, foundation.</p> <p>4 THE WITNESS: No, I don't have knowledge what</p> <p>5 was done.</p> <p>6 BY MR. CLARE:</p> <p>7 Q. Is there -- at the time that -- let's mark</p> <p>8 this.</p> <p>9 I hand you what's been previously marked as</p> <p>10 Morgan Stanley Deposition Exhibit 10. Is this what you</p> <p>11 referred to as the bring-down comfort letter?</p> <p>12 A. Yes.</p> <p>13 Q. And did you have any discussions with Morgan</p> <p>14 Stanley about the information contained in the</p> <p>15 bring-down letter?</p> <p>16 A. No, I did not.</p> <p>17 Q. Did you have any discussions with Morgan</p> <p>18 Stanley after that evening at the print shop on any</p> <p>19 topic?</p> <p>20 A. No.</p> <p>21 Q. Paragraph E of the bring-down letter, and</p> <p>22 specifically the updated information for paragraph 5B</p> <p>23 which you see at the top of the second page --</p> <p>24 A. Yes.</p> <p>25 Q. Did you have an understanding from any source</p>
<p style="text-align: right;">Page 142</p> <p>1 period after the end of February about Sunbeam's sales</p> <p>2 in the first quarter?</p> <p>3 A. For the first quarter, yes.</p> <p>4 Q. Okay. What do you recall about that?</p> <p>5 A. In connection with the first quarter review.</p> <p>6 I thought we're not talking about that.</p> <p>7 Q. Yeah, let me ask it this way.</p> <p>8 Did you get involved in any procedures or</p> <p>9 testing to obtain information about Sunbeam's first</p> <p>10 quarter 1998 sales for the time period after</p> <p>11 February 1st, 1998, which is the period that's</p> <p>12 discussed in the comfort letter?</p> <p>13 A. I was not involved, that's correct.</p> <p>14 Q. Were you involved in drafting the bring-down</p> <p>15 comfort letter?</p> <p>16 A. Yes.</p> <p>17 Q. And the sales figures that are reflected in</p> <p>18 the bring-down comfort letter when provided by</p> <p>19 Mr. Pastrana?</p> <p>20 A. Provided by the company to Mr. Pastrana.</p> <p>21 Q. Thank you. And did you have any discussions</p> <p>22 or involvement in determining what sales Sunbeam had</p> <p>23 made in March of 1998 up to the point of the bring-down</p> <p>24 comfort letter?</p> <p>25 A. I had no involvement.</p>	<p style="text-align: right;">Page 144</p> <p>1 as to Sunbeam's sales for any time period after</p> <p>2 March 1st, 1998?</p> <p>3 A. At that time?</p> <p>4 Q. At that time.</p> <p>5 A. No.</p> <p>6 Q. It was not until the first quarter review</p> <p>7 that you obtained information about Sunbeam sales for</p> <p>8 effectively March 1998?</p> <p>9 A. That's correct.</p> <p>10 (MS Exhibit No. 42 was marked for</p> <p>11 identification.)</p> <p>12 BY MR. CLARE:</p> <p>13 Q. Mr. Brockelman, I'm handing you what's been</p> <p>14 marked as Morgan Stanley Deposition Exhibit 42, a</p> <p>15 document entitled Form for Documentation of Referencing</p> <p>16 Procedures.</p> <p>17 Do you recognize this document?</p> <p>18 A. This specific document or the form?</p> <p>19 Q. This form of document.</p> <p>20 A. Yes, I recognize the form.</p> <p>21 Q. Okay. Can you tell me briefly how this</p> <p>22 document is used internally at Andersen?</p> <p>23 MR. BRODY: How the form is used?</p> <p>24 MR. CLARE: How this form is used, thank you.</p> <p>25 THE WITNESS: An independent person within</p>

<p style="text-align: right;">Page 145</p> <p>1 Arthur Andersen will reference the opinion or 2 letter or report being issued to ensure they match 3 our professional standards, make sure they're 4 accurate, and independently verify numerical data 5 in the report, and this form is their 6 documentation of that review. 7 BY MR. CLARE: 8 Q. Does the review that you just described take 9 place before the opinion is issued? 10 A. Yes, correct. 11 Q. And this is one of the procedures that we 12 talked about earlier that Andersen does prior to 13 issuing an opinion? 14 A. Yes. 15 Q. Did you have any involvement with the 16 preparation of the procedures here in Morgan Stanley 17 Exhibit 42? 18 A. No, I believe Larry Bornstein directly 19 supervised the person referencing this. 20 Q. And the person referencing it is somebody who 21 is independent of the group of Andersen team members 22 who were working on the actual opinion? 23 A. That's correct. 24 Q. Do you know who was the person listed here as 25 the referencer? Do you recognize that signature or</p>	<p style="text-align: right;">Page 147</p> <p>1 A. No. 2 Q. You weren't involved in drafting them or 3 reviewing them or providing comments on them? 4 A. That's correct. 5 Q. Do you know who was? 6 A. No, I do not. 7 (MS Exhibit No. 43 was marked for 8 identification.) 9 BY MR. CLARE: 10 Q. I'm handing you what's been marked as Morgan 11 Stanley Exhibit 43. It's a document entitled Post 12 Audit Review For Subsequent Material Transactions and 13 Events After the Date of the Auditor's Report. 14 Are you familiar with this form of document? 15 A. Yes, I am. 16 Q. Can you tell me how this form of document is 17 used at Arthur Andersen? 18 A. Yes. If our opinion is to be used in a 19 registration statement subsequent to its initial 20 issuance, this form is required to be used to basically 21 bring our report more current, to identify any 22 significant events or items that might impact our 23 opinion of the audited financial statements. 24 Q. In connection with the registration of it? 25 A. Yes, that's correct.</p>
<p style="text-align: right;">Page 146</p> <p>1 handwriting on page three? 2 A. No. 3 Q. Do you recognize the signature at the bottom 4 of the page under engagement partner or manager of 5 Mr. Bornstein's? 6 A. Yes, I do. 7 Q. That is consistent with your testimony that 8 Mr. Bornstein supervised the referencing procedures 9 that you described? 10 A. Yes. 11 Q. On page two of Morgan Stanley Exhibit 42 12 there is a reference to management representation 13 letters in item four. 14 A. Yes. 15 Q. Do you see that? 16 A. In item four? Oh, yes, yes, I see. 17 Q. It says, "If applicable, trace information 18 regarding contingencies, litigation or uncertainties to 19 the financial statements and to legal or management 20 representation letters or other source documents in the 21 working papers." 22 Did you have any involvement with the 23 management representation letters that were prepared 24 for the comfort letters that were provided to Morgan 25 Stanley as part of the bond offering?</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Did you have any involvement in completing 2 the procedures that are described here in Morgan 3 Stanley Exhibit 43 for the registration of the bond 4 offering? 5 A. No, I did not. 6 Q. Is any of the handwriting on Morgan Stanley 7 Exhibit 43 yours? 8 A. No. 9 Q. Was it your understanding in the first 10 quarter of 1998 when you were working on the comfort 11 letters for the bond offering that the bond offering 12 memo and offering materials would be registered and 13 that these type of procedures would be required? 14 A. Yes. 15 Q. Do you see the handwriting at the bottom of 16 the first page? 17 A. Yes. 18 Q. Do you recognize that as Mr. Bornstein's 19 handwriting? 20 A. Yes, I do. 21 Q. Okay. Mr. Gluck and Miss Kelly are 22 identified by name here. 23 Did you have any discussions with Mr. Gluck 24 or Miss Kelly about any of the comfort letters that 25 were provided to Morgan Stanley in connection with the</p>

<p style="text-align: right;">Page 149</p> <p>1 bond offering?</p> <p>2 A. I had some discussions with Mr. Gluck.</p> <p>3 Q. And what was the context of those</p> <p>4 discussions?</p> <p>5 A. I don't recall. Mostly it related to the</p> <p>6 tick marks that I applied on the exhibit, the offering</p> <p>7 memorandum itself.</p> <p>8 Q. So these were discussions that took place</p> <p>9 after the events at the print shop?</p> <p>10 A. No, before, in the actual drafting.</p> <p>11 Q. I see. In the drafting of the offering memo?</p> <p>12 A. That's correct.</p> <p>13 Q. Prior to going to New York?</p> <p>14 A. Yes, that's correct.</p> <p>15 Q. Do you recall any specifics about the topics</p> <p>16 that you discussed with Mr. Gluck?</p> <p>17 A. No, I don't.</p> <p>18 Q. Did Mr. Gluck have a copy of the offering</p> <p>19 memo in draft form when you had those discussions with</p> <p>20 him?</p> <p>21 A. Yes, he did.</p> <p>22 Q. Were these in-person meetings or telephone</p> <p>23 conferences?</p> <p>24 A. In person.</p> <p>25 Q. Who during that time period had document</p>	<p style="text-align: right;">Page 151</p> <p>1 0041651 through 654.</p> <p>2 Morgan Stanley Exhibit 46 is a document with</p> <p>3 Bates numbers CPH 0038712 through 15.</p> <p>4 And then Morgan Stanley Exhibit 47 is a</p> <p>5 March 23rd, 1998, letter on Sunbeam letterhead</p> <p>6 addressed to Arthur Andersen.</p> <p>7 I'd like you to first look at Morgan Stanley</p> <p>8 Exhibit 44, which is a March 16, 1998, letter from a</p> <p>9 group of individuals at Sunbeam to Arthur Andersen.</p> <p>10 Do you recognize Morgan Stanley Exhibit 44 as</p> <p>11 being in the form of a management representation</p> <p>12 letter?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Have you ever seen Exhibit 44 before today?</p> <p>15 A. I don't recall seeing it before.</p> <p>16 Q. Did you have any involvement in drafting it</p> <p>17 or reviewing it or receiving it on behalf of Andersen?</p> <p>18 A. No.</p> <p>19 Q. Okay. Look at the next document, which is a,</p> <p>20 appears to be a draft of a management representation</p> <p>21 letter in connection with the Sunbeam bond offering.</p> <p>22 Have you seen this document before, Exhibit</p> <p>23 45?</p> <p>24 A. No.</p> <p>25 Q. It appears to be a draft of a management</p>
<p style="text-align: right;">Page 150</p> <p>1 control, if you will, of the offering memorandum?</p> <p>2 MR. BRODY: Object to foundation.</p> <p>3 BY MR. CLARE:</p> <p>4 Q. If you know.</p> <p>5 A. Yeah, I don't recall.</p> <p>6 Q. Do you remember who you provided your edits</p> <p>7 and comments to prior to the evening at the print shop?</p> <p>8 A. To Larry Bornstein.</p> <p>9 Q. And you don't know to whom he provided the</p> <p>10 comments in order to get the document changed and fixed</p> <p>11 to reflect your edits?</p> <p>12 A. No, I do not.</p> <p>13 MR. CLARE: Mark these as the next four in</p> <p>14 sequence, and I'll give you each a set.</p> <p>15 (MS Exhibit Nos. 44-47 were marked for</p> <p>16 identification.)</p> <p>17 BY MR. CLARE:</p> <p>18 Q. Mr. Brockelman, I've handed you four</p> <p>19 documents, and we have had them marked as deposition</p> <p>20 exhibits.</p> <p>21 To make sure everybody is on the same page,</p> <p>22 Morgan Stanley Exhibit 44 is a March 16, 1998, letter</p> <p>23 on Sunbeam letterhead.</p> <p>24 Morgan Stanley Exhibit 45 is an undated</p> <p>25 document that appears to be -- with Bates number CPH</p>	<p style="text-align: right;">Page 152</p> <p>1 representation letter.</p> <p>2 A. No.</p> <p>3 Q. In a typical engagement, does Andersen get</p> <p>4 involved in drafting the management representation</p> <p>5 letter for its client?</p> <p>6 A. Yes.</p> <p>7 Q. And have you done that in connection with</p> <p>8 other engagements?</p> <p>9 A. Yes.</p> <p>10 Q. But not the Sunbeam-related matter?</p> <p>11 A. That's correct.</p> <p>12 Q. You had no involvement in that?</p> <p>13 A. That's correct.</p> <p>14 Q. Do you recall any discussion about the</p> <p>15 contents of the management representation letter</p> <p>16 internally at Andersen during the first quarter of</p> <p>17 1998?</p> <p>18 A. No.</p> <p>19 Q. If you'd look at the last -- sorry,</p> <p>20 next-to-the-last page of Exhibit 45, paragraph ten of</p> <p>21 this draft, it's a paragraph that reads, "Despite the</p> <p>22 decrease in net sales described in the preceding</p> <p>23 paragraph, management believes that net sales for the</p> <p>24 first quarter of fiscal 1998 will exceed net sales of</p> <p>25 the first quarter of fiscal 1997."</p>

<p style="text-align: right;">Page 153</p> <p>1 Do you recall any discussion at Andersen</p> <p>2 about including that statement in a management</p> <p>3 representation letter for the Sunbeam bond offering?</p> <p>4 A. No.</p> <p>5 Q. Do you recall any discussions with anyone</p> <p>6 from Sunbeam about whether that was a true statement or</p> <p>7 not?</p> <p>8 A. No.</p> <p>9 Q. About whether Sunbeam management had that</p> <p>10 belief?</p> <p>11 A. No.</p> <p>12 Q. If you look at the next exhibit, Morgan</p> <p>13 Stanley Exhibit 46, similar draft of a management</p> <p>14 representation letter for the Sunbeam bond offering.</p> <p>15 You see there is some handwritten edits.</p> <p>16 Is that your handwriting?</p> <p>17 A. No.</p> <p>18 Q. Do you recognize the handwriting?</p> <p>19 A. Yes.</p> <p>20 Q. Is that Mr. Bornstein's handwriting?</p> <p>21 A. Yes, it is.</p> <p>22 Q. Did Mr. Bornstein ever discuss with you the</p> <p>23 contents of the management representation letter for</p> <p>24 the Sunbeam bond offering?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 155</p> <p>1 Do you have any knowledge one way or the</p> <p>2 other as to why that paragraph was not included in the</p> <p>3 final version of the representation letters?</p> <p>4 A. No.</p> <p>5 (MS Exhibit No. 48 was marked for</p> <p>6 identification.)</p> <p>7 BY MR. CLARE:</p> <p>8 Q. Mr. Brockelman, I've handed you what's been</p> <p>9 marked as Morgan Stanley Deposition Exhibit 48, appears</p> <p>10 to be a draft of the March 19, '98 comfort letter.</p> <p>11 Have you seen this document before?</p> <p>12 A. Yes, I believe I have.</p> <p>13 Q. And when do you recall having seen it before?</p> <p>14 A. Prior to the release of the offering</p> <p>15 memorandum.</p> <p>16 Q. You see that this draft of the March 19, '98</p> <p>17 comfort letter has a header on it.</p> <p>18 Did you draft any portion of this document?</p> <p>19 A. Yes.</p> <p>20 Q. Did you draft this first paragraph of Morgan</p> <p>21 Stanley Exhibit 48?</p> <p>22 A. Yes.</p> <p>23 Q. And do you know to whom this document was</p> <p>24 provided?</p> <p>25 A. I believe I provided it to Larry Bornstein.</p>
<p style="text-align: right;">Page 154</p> <p>1 Q. Or any views that he had about what ought or</p> <p>2 ought not to be included in them?</p> <p>3 A. No.</p> <p>4 Q. If you look at the next-to-the-last page of</p> <p>5 Exhibit 46, Mr. Bornstein made some comments on the</p> <p>6 paragraph ten that we looked at a minute ago.</p> <p>7 Do you recall any discussions about</p> <p>8 Mr. Bornstein's view on that paragraph?</p> <p>9 A. No.</p> <p>10 Q. And whether it ought to be included in the</p> <p>11 engagement letter?</p> <p>12 A. No.</p> <p>13 Q. I'm sorry, not the engagement letter, in the</p> <p>14 management representation letter.</p> <p>15 A. I understand.</p> <p>16 Q. Okay, but no, the answer is --</p> <p>17 A. The answer is no.</p> <p>18 Q. Okay. If you look at Morgan Stanley</p> <p>19 Exhibit 47, it's a signed version of a management</p> <p>20 representation letter dated March 23rd, 1998.</p> <p>21 And going back to Morgan Stanley Exhibit 44,</p> <p>22 the March 16th version of the final representation</p> <p>23 letter, you see neither of these exhibits have that</p> <p>24 paragraph that we just looked at regarding management's</p> <p>25 expectations for first quarter 1998 sales.</p>	<p style="text-align: right;">Page 156</p> <p>1 I only have secondhand knowledge it was provided to</p> <p>2 Morgan Stanley.</p> <p>3 Q. Again, that was the conversation we talked</p> <p>4 about earlier with Mr. Pastrana?</p> <p>5 A. That's right.</p> <p>6 Q. But you didn't send it to Morgan Stanley?</p> <p>7 A. No, I did not.</p> <p>8 Q. And you didn't send it to Davis Polk?</p> <p>9 A. No, I did not.</p> <p>10 Q. And you didn't provide it to Scadden Arps?</p> <p>11 A. No, I did not.</p> <p>12 Q. Did you provide a draft of a comfort letter</p> <p>13 to anybody at Sunbeam?</p> <p>14 A. No, I did not.</p> <p>15 Q. So as far as your own personal knowledge</p> <p>16 goes, you can only testify about providing drafts of</p> <p>17 the comfort letter to other people at Arthur Andersen?</p> <p>18 A. To Larry Bornstein, yes.</p> <p>19 Q. Okay. Do you recall any discussions with</p> <p>20 Mr. Bornstein about this draft, Morgan Stanley</p> <p>21 Exhibit 48?</p> <p>22 A. Not any specific discussion.</p> <p>23 Q. Any changes or comments about what additional</p> <p>24 information to be included or not included in here?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 157</p> <p>1 Q. You described some work on the first quarter 2 review that you did after the close of the first 3 quarter 1998. 4 A. Not that I did. 5 Q. Okay. You had no involvement in the first 6 quarter review? 7 A. That's correct. Only knowledge of it. 8 Q. You worked on the restatement investigation 9 at Sunbeam? 10 A. Yes. 11 Q. And you were assigned to work on specific 12 areas by Mr. Denkhause; is that correct? 13 A. Yes, correct. 14 Q. You worked on customer chargeback deductions? 15 That's one of the topics that you worked on? 16 A. Yes, I did. 17 Q. Co-op advertising? 18 A. Yes. 19 Q. Bill and hold? 20 A. I served in certain parts of bill and hold, 21 yes. 22 Q. Warranty reserves? 23 A. Yes. 24 Q. Freight analysis? 25 A. Yes.</p>	<p style="text-align: right;">Page 159</p> <p>1 BY MR. CLARE: 2 Q. Mr. Brockelman, I understand that you were 3 not involved in the decision to recommend the 4 restatement to Sunbeam; is that correct? 5 A. That's correct. 6 Q. That decision was made by other people at 7 Andersen? 8 A. Yes. 9 Q. And your role was limited to investigation 10 and procedures in some of the areas that we've talked 11 about and documenting that, providing it to other 12 people at Andersen to make decisions on; is that a fair 13 summary? 14 A. That's correct, yes. 15 Q. In connection with your work on the 16 restatement, did you ever discuss any of those areas 17 with Morgan Stanley? 18 A. No. 19 Q. As a result of your work on the restatement, 20 did you ever discover any information that Morgan 21 Stanley was involved in any way in any of those areas? 22 A. No. 23 MR. BRODY: How many exhibits is this? 24 MR. CLARE: It's one, two, three, four, five, 25 six.</p>
<p style="text-align: right;">Page 158</p> <p>1 Q. Shipment confirmations and analysis? 2 A. Yes. 3 Q. Sales return reserves? 4 A. Yes. 5 Q. Are there any other areas as you sit here 6 today that you remember working on in connection with 7 the restatement investigation? 8 A. Not without refreshing my memory. 9 Q. And you reported to Mr. Denkhause in the 10 performance of those duties? 11 A. Yes. 12 Q. Can you approximate for me how much time you 13 spent working on the restatement investigation? 14 Hundreds of hours? Thousands of hours? Do you have 15 any sense? 16 A. I would say hundreds of hours. 17 Q. We've seen some time reports, and I'll just 18 represent to you it shows more than 600 hours that you 19 worked on. 20 Does that sound about right to you? 21 A. Sounds reasonable, yes. 22 MR. MOSCATO: Tom, I trust you don't have a 23 lot to cover. 24 MR. CLARE: I do not. 25</p>	<p style="text-align: right;">Page 160</p> <p>1 MR. MOSCATO: Mr. Clare is going to proceed 2 very briefly through these documents. 3 MR. CLARE: I actually only have one 4 question. 5 (Discussion held off the record.) 6 (MS Exhibit Nos. 49-54 were marked for 7 identification.) 8 BY MR. CLARE: 9 Q. Mr. Brockelman, I've handed you what's been 10 marked as Morgan Stanley Exhibits 49, 50, 51, 52, 53, 11 and 54. They are a series of memos you are shown as an 12 author or a coauthor of. 13 Do you recognize these documents, Exhibit 49 14 through 54 as memos that you prepared in connection 15 with your work on the restatement? 16 A. Yes. 17 Q. Is any of the handwriting that appears on any 18 of these exhibits yours? 19 A. Yes. 20 Q. Can you just identify for me briefly? 21 A. Which handwriting? 22 Q. Correct, on which exhibits? 23 A. Exhibit MS 49. Do you want me to actually 24 say each -- 25 Q. No, I don't think it's necessary.</p>

<p style="text-align: right;">Page 161</p> <p>1 A. Okay. On Exhibit 50 is mine. 2 Exhibit 51 is mine. Let me flip the pages 3 also. 4 Exhibit 51 is mine. I don't know if I 5 mentioned that. 6 Exhibit 52 at the top is mine and at the 7 bottom. 8 Exhibit 53 at the very top is not mine. 9 And Exhibit 54 is mine. 10 Q. As a result of the work that you did on the 11 restatement, did you learn information from Sunbeam 12 that you determined was not previously known to 13 Andersen? 14 MR. MOSCATO: Objection. 15 THE WITNESS: Well, certainly, because we 16 were using hindsight. It wasn't known to either 17 party. 18 BY MR. CLARE: 19 Q. As a result of the work that you did on the 20 restatement, did you form an opinion whether Sunbeam's 21 internal controls were adequate in 1997 or in the first 22 quarter of 1998? 23 MR. MOSCATO: Objection. 24 THE WITNESS: No. 25</p>	<p style="text-align: right;">Page 163</p> <p>1 in the restatement? 2 A. No, I did not form an opinion. 3 Q. My question was did you learn any 4 information? 5 A. Did I learn? I'm sorry, no, I did not learn 6 any information. 7 Q. Did you learn any information as a result of 8 your work on the restatement that Morgan Stanley had 9 conspired with Sunbeam in connection with the bond 10 offering to provide misleading information? 11 A. No. 12 Q. Or did you uncover any information that 13 Morgan Stanley had conspired with Sunbeam to defraud 14 Coleman (Parent) Holdings Company in connection with 15 the acquisition of Coleman? 16 A. No. 17 Q. Did you have any involvement with the 18 management letter that was provided by Andersen to 19 Sunbeam in October of 1998? 20 A. No. 21 Q. At any point in the first quarter of 1998, 22 did you ever talk to anyone representing the Coleman 23 company? 24 A. I don't recall the timing, but I did have 25 discussions with people at the Coleman company. I just</p>
<p style="text-align: right;">Page 162</p> <p>1 BY MR. CLARE: 2 Q. Did you have -- 3 MR. MOSCATO: No, you didn't form an opinion? 4 THE WITNESS: No, I didn't form an opinion, 5 correct. 6 BY MR. CLARE: 7 Q. Do you have an opinion as to whether or not 8 Sunbeam was able to produce accurate financial 9 statements in 1997? 10 A. No, I didn't form an opinion. 11 Q. Or in the first quarter of 1998? 12 A. At that time either. 13 Q. Did not form an opinion? 14 A. Did not form an opinion. 15 Q. Did you form an opinion as to whether or not 16 Sunbeam had withheld information from Andersen during 17 the 1997 audit? 18 A. No, I did not form an opinion. 19 Q. Or during the first quarter of 1998? 20 A. I did not form an opinion at that time 21 either. 22 Q. As a result of the work that you did on the 23 restatement, did you identify any information to 24 suggest that Morgan Stanley had conspired with Sunbeam 25 employees with respect to any of the issues identified</p>	<p style="text-align: right;">Page 164</p> <p>1 don't recall what time that was. It was prior to the 2 acquisition. 3 Q. And what was the purpose of those 4 discussions? 5 A. I don't recall. There is certain due 6 diligence procedures that I was directed to perform, 7 but I don't recall the substance of it. 8 Q. So this was a due diligence that you were 9 asked to perform on Coleman on behalf of Sunbeam; is 10 that correct? 11 A. To what I recall, yes. 12 Q. Were you part of any discussions or meetings 13 that were due diligence performed by Coleman on 14 Sunbeam? 15 A. No. 16 Q. Did you ever talk with anybody representing 17 the Coleman company about Sunbeam? 18 A. Not that I recall, no. 19 Q. Did you ever talk with anyone who identified 20 themselves as being from Coleman (Parent) Holdings 21 Company? 22 A. Not that I recall. 23 Q. Or MacAndrews & Forbes? 24 A. No. 25 Q. Do you have an understanding that MacAndrews</p>

<p style="text-align: right;">Page 165</p> <p>1 & Forbes was the ultimate parent of Coleman, at least 2 for a portion of the stock? 3 A. I understand that. 4 Q. Okay. And you don't recall having spoken 5 with anybody from MacAndrews & Forbes about Sunbeam? 6 A. That's correct. 7 Q. Did you have any conversations with anyone 8 from Credit Suisse First Boston about Sunbeam? 9 A. No. 10 Q. Did you know or understand that Credit Suisse 11 First Boston was advising Coleman in connection with 12 the acquisition? 13 A. No. 14 Q. Did you have any discussion or conversation 15 or meetings with anybody from the law firm of Watchell, 16 Lipton, Rosen & Katz in connection with the 17 acquisition? 18 A. No. 19 Q. Are you aware of any due diligence that 20 anybody representing Coleman did on Sunbeam? 21 A. No. 22 Q. Not aware of any in-person meetings for that 23 purpose? 24 A. No. 25 Q. Are you aware of any accounting due diligence</p>	<p style="text-align: right;">Page 167</p> <p>1 should be doing yesterday. 2 I'm not playing favorites. This is across 3 the board. These guys are fact witnesses and 4 that's it. That's my basis. 5 BY MR. CLARE: 6 Q. Let me ask it this way to try and avoid the 7 objection and an unnecessary dispute that we don't need 8 to have. 9 Did the thought ever occur to you in the 10 first quarter of 1998 regarding the due diligence that 11 was or was not performed by Coleman on Sunbeam? 12 MR. MOSCATO: Answer that yes or no. 13 THE WITNESS: No. 14 BY MR. CLARE: 15 Q. You didn't think about that topic? 16 A. Didn't have any thought about it. 17 Q. Am I correct that you had no involvement in 18 the accounting due diligence that was conducted by 19 Morgan Stanley with Andersen in connection with the 20 Sunbeam transactions? 21 MR. MOSCATO: I'm sorry. You have to -- the 22 word with Andersen threw me. 23 BY MR. CLARE: 24 Q. Were you involved in any way with the 25 accounting due diligence that Morgan Stanley performed</p>
<p style="text-align: right;">Page 166</p> <p>1 for that purpose? 2 A. No. 3 Q. Are you aware of any inquiries by Coleman 4 about Sunbeam's bill and hold practices? 5 A. No. 6 Q. Are you aware of any inquiries by Coleman 7 about Sunbeam's Early Buy program? 8 A. No. 9 Q. Are you aware of any inquiries by Coleman 10 after the press release dated March 19th, 1998? 11 A. No. 12 Q. Did you understand that as part of the 13 acquisition, that Coleman would be receiving Sunbeam 14 stock? 15 A. Yes. 16 Q. Did you have a view or expectation that 17 Coleman would or should be conducting due diligence on 18 Sunbeam as a result of taking Sunbeam stock? 19 MR. MOSCATO: I object. I'm going to 20 instruct him not to answer that. 21 MR. CLARE: On what basis? 22 MR. MOSCATO: He's not an expert witness. 23 You can take it to the court. I instructed 24 Mr. Pruitt not to answer a very similar question 25 that was directed towards what Morgan Stanley</p>	<p style="text-align: right;">Page 168</p> <p>1 in the first quarter of 1998? 2 A. No. 3 Q. On Sunbeam? 4 A. No. 5 Q. Are you aware that Morgan Stanley had a 6 telephone conference with individuals from Andersen to 7 conduct accounting due diligence on Sunbeam? 8 A. I recall somewhat hearing secondhand from 9 Larry Bornstein. 10 Q. You recall hearing that back in the first 11 quarter of 1998? 12 A. That's right. 13 Q. What did he tell you about it? 14 A. I don't recall, just that they had the 15 conversation. 16 Q. Did he tell you any specifics about it? 17 A. No. 18 Q. Were you involved in any way in preparing for 19 that telephone call? 20 A. No. 21 Q. Were you involved in any way in documenting 22 the telephone call after the fact? 23 A. No. 24 Q. Other than what you told me about your 25 conversation with Mr. Bornstein, did you have any</p>

<p style="text-align: right;">Page 169</p> <p>1 involvement in the accounting due diligence that was</p> <p>2 perform by Morgan Stanley --</p> <p>3 A. No.</p> <p>4 Q. -- in the first quarter of 1998?</p> <p>5 A. No.</p> <p>6 Q. I know I asked you earlier whether you had</p> <p>7 any meetings or telephone conversations with anyone</p> <p>8 from Morgan Stanley after the evening at Global</p> <p>9 Financial Press. I'm not sure I asked you the other</p> <p>10 question.</p> <p>11 Did you have any meetings or conversations</p> <p>12 with Morgan Stanley prior to that point?</p> <p>13 A. No.</p> <p>14 Q. Do you have an opinion on the quality of due</p> <p>15 diligence that was conducted by Morgan Stanley with</p> <p>16 regard to Sunbeam?</p> <p>17 MR. MOSCATO: Answer that yes or no.</p> <p>18 THE WITNESS: Do I have an opinion? No.</p> <p>19 BY MR. CLARE:</p> <p>20 Q. Do you have any basis for forming an opinion?</p> <p>21 A. No basis.</p> <p>22 Q. Because you weren't involved in any aspect of</p> <p>23 it?</p> <p>24 A. That's correct.</p> <p>25 Q. Have you had other dealings with Morgan</p>	<p style="text-align: right;">Page 171</p> <p>1 MR. MOSCATO: Can we do it even shorter than</p> <p>2 five minutes?</p> <p>3 MR. CLARE: I hope so.</p> <p>4 THE VIDEOGRAPHER: We are now going off video</p> <p>5 record. The time on the monitor is 1:08 p.m.</p> <p>6 (Thereupon, a recess was taken.)</p> <p>7 THE VIDEOGRAPHER: We are now back on video</p> <p>8 record. The time on the monitor, 1:11 p.m.</p> <p>9 BY MR. CLARE:</p> <p>10 Q. Mr. Brockelman, I asked you earlier whether</p> <p>11 at any point after the evening at Global Financial</p> <p>12 Press you obtained any information about Sunbeam's</p> <p>13 first quarter sales. Do you remember generally me</p> <p>14 asking you those questions?</p> <p>15 A. Yes.</p> <p>16 Q. And you indicated that not until the first</p> <p>17 quarter review.</p> <p>18 Is that correct?</p> <p>19 A. That's correct, yes.</p> <p>20 Q. And then I asked you whether you were</p> <p>21 involved in the first quarter review, and I think you</p> <p>22 said no.</p> <p>23 A. Not in performing procedures, that's correct,</p> <p>24 yes.</p> <p>25 Q. But you later became aware of the first</p>
<p style="text-align: right;">Page 170</p> <p>1 Stanley outside of the Sunbeam engagement?</p> <p>2 A. Yes.</p> <p>3 Q. Business dealings?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have, have you ever had dealings with</p> <p>6 Morgan Stanley as an underwriter?</p> <p>7 A. Yes.</p> <p>8 Q. In what context?</p> <p>9 A. I believe they are the underwriter on one or</p> <p>10 two other deals while I was at Arthur Andersen. I</p> <p>11 don't recall which deals. I did several while I was at</p> <p>12 Arthur Andersen.</p> <p>13 Q. Based on those other deals, did you have more</p> <p>14 involvement with Morgan Stanley in connection with the</p> <p>15 due diligence that were performed as underwriter?</p> <p>16 A. No.</p> <p>17 Q. Did you perform a similar function on those</p> <p>18 deals as you did on the Sunbeam bond offering?</p> <p>19 A. Yes.</p> <p>20 MR. MOSCATO: Just about finished on that</p> <p>21 topic?</p> <p>22 MR. CLARE: Yes, we are. Why don't we take</p> <p>23 five minutes and then come back on. I think I'm</p> <p>24 either done or essentially done. I just want to</p> <p>25 consult for a minute.</p>	<p style="text-align: right;">Page 172</p> <p>1 quarter review that was done; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And that was in connection with your work on</p> <p>4 the restatement?</p> <p>5 A. Yes, correct.</p> <p>6 Q. So it was not contemporaneous with the first</p> <p>7 quarter review being done?</p> <p>8 A. Yes.</p> <p>9 Q. It was months after the fact, while you were</p> <p>10 working on the restatement?</p> <p>11 A. That's correct.</p> <p>12 Q. You also testified that you remember being</p> <p>13 involved in a meeting with people from Coleman or</p> <p>14 telephone conversation with people from Coleman in</p> <p>15 performing due diligence on Coleman; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Is it just a single meeting or telephone</p> <p>18 conference that you remember?</p> <p>19 A. No. Actually it was numerous meetings over</p> <p>20 the course of a couple of days.</p> <p>21 Q. And where were the meetings located?</p> <p>22 A. I forgot where Coleman's headquarters were.</p> <p>23 Q. Wichita?</p> <p>24 A. I believe it was via telephone conference to</p> <p>25 their headquarters.</p>

<p style="text-align: right;">Page 173</p> <p>1 Q. So you were -- do you recall who at Coleman 2 you spoke to? 3 A. No, I don't recall. 4 Q. Any names? 5 A. No names whatsoever. 6 Q. Who else at Andersen was participating in 7 those meetings? 8 A. I don't recall. 9 Q. During those series of telephone video 10 conferences, do you recall whether -- 11 A. It was a telephone conference, not a video. 12 I don't know if that was invented at the time. 13 Q. Sorry. Do you recall those telephone 14 conferences that you had with Coleman, do you recall 15 whether there were any advisors to Coleman that were on 16 the call as well? 17 I mentioned CSFB and a law firm of Watchell 18 Lipton. Do you recall them being participants in those 19 telephone conversations? 20 A. Not that I recall, no. 21 Q. As you sit here today, you don't recall any 22 inquiries that were directed to Andersen by Coleman 23 about Sunbeam during those telephone conferences? 24 A. That's correct. 25 MR. CLARE: That's all I have.</p>	<p style="text-align: right;">Page 175</p> <p>1 expense reports would reflect whatever reality was. 2 Q. But the rest of the work that you did over 3 the month or two that you worked on the project, you 4 did in Florida? 5 A. That's correct, yes. 6 Q. And on the night of the 19th from the 7 printer's when someone called, I guess it was 8 Mr. Bornstein called Mr. Harlow and Mr. Pruitt, they 9 weren't in New York, were they? 10 MR. CLARE: Objection, no foundation. 11 THE WITNESS: I did know they were in 12 Florida. 13 BY MR. BRODY: 14 Q. How do you know that? 15 A. Just from knowing their schedule. 16 Q. Mr. Brockelman, I'm going to give you copies 17 of several of the exhibits that have already been 18 marked. And we'll just walk through a couple of 19 things. 20 Exhibit 114, which I believe is at the top, 21 Mr. Clare took you through there and asked you about 22 certain things in that meeting and whether you were -- 23 excuse me, in that memorandum and whether you were 24 present when the referenced conversations took place, 25 but he didn't ask you about all of them. I'd like to</p>
<p style="text-align: right;">Page 174</p> <p>1 REDIRECT (MARK BROCKELMAN) 2 BY MR. BRODY: 3 Q. Mr. Brockelman, I'll try your patience with 4 just a few follow-up questions. 5 Sir, is it correct to say that in connection 6 with your work on the transaction that led to the bond 7 offering, you only worked on limited projects that were 8 assigned to you? 9 A. That's correct. 10 Q. Prior to that point, you weren't generally 11 assigned to the Arthur Andersen engagement for Sunbeam; 12 is that correct? 13 A. Yes. 14 Q. That's correct? 15 A. That's correct, yes. 16 Q. Okay. Mr. Clare asked you some questions 17 about trips to New York and so on. 18 Is it correct that during the work you did in 19 connection with the transaction, not the restatement, 20 but the transaction, you made only one visit to New 21 York? 22 A. I'm a little hazy on that, quite honestly. 23 There is a potential I might have had a second trip 24 before the finalization of the bond offering. I'm not 25 too sure on that point. Certainly my time reports and</p>	<p style="text-align: right;">Page 176</p> <p>1 ask you about a couple more. 2 On the first page of the document, the third 3 paragraph that begins with the text "On the evening of 4 March 19," do you see that? 5 A. Yes, I do. 6 Q. You were present for those conversations, 7 correct? 8 A. Yes. 9 Q. And on the following page, I believe it's the 10 first full paragraph, begins with "Mr. Tyree and 11 Mr. Lurie were very upset," you were present for those 12 conversations as well, were you not? 13 A. Yes. 14 Q. Okay. You can put that document aside. 15 You were asked some questions by Mr. Clare 16 and by me about the comfort letters. And I believe in 17 your testimony you indicated that typically Arthur 18 Andersen would send drafts of comfort letters and get 19 comments from the underwriter; is that correct? 20 A. Yes, that is correct. 21 Q. And I believe you said that Mr. Pastrana, you 22 learned secondhand that Mr. Pastrana had indeed sent 23 the drafts? 24 A. Yes. 25 Q. Can you explain the basis for your</p>

<p style="text-align: right;">Page 177</p> <p>1 understanding that Mr. Pastrana sent the drafts? 2 A. He told me that. 3 Q. Do you know when he told that you? 4 A. No, I don't recall. 5 Q. Okay. But in March 1998? 6 A. Approximate to the date of the draft version 7 that I was presented. 8 Q. Okay. And after Mr. Pastrana told you that, 9 that was the sort of information you relied on; is that 10 correct? 11 A. Absolutely, yes. 12 Q. Now, I believe, sir, in front of you are 13 Morgan Stanley Exhibits 9 and 10 Mr. Clare showed you, 14 and I think I showed you other versions of some of 15 those letters, maybe the same thing, but let's use 16 those for the time period. 17 Exhibits 9 and 10 are the final versions of 18 the comfort letter from the 19th and the bring-down 19 letter from the 25th; is that correct? 20 A. That's correct. 21 Q. Minus their exhibits? 22 A. Yes. 23 Q. Did you participate in any conversations with 24 Morgan Stanley in which it was discussed that the 25 information in these letters should be put in the</p>	<p style="text-align: right;">Page 179</p> <p>1 A. No. 2 Q. And likewise, on Exhibit 10 at the top of the 3 second page, there are sales and net loss information 4 for '97 and '98. 5 Anyone at Morgan Stanley discuss with you or 6 Arthur Andersen to your knowledge putting that 7 information in the offering memorandum? 8 A. No. 9 Q. After the comfort letters were delivered, did 10 you ever hear anyone from Morgan Stanley suggest that 11 Morgan Stanley would withdraw the offering? 12 A. No. 13 Q. Or delay it? 14 A. No. 15 Q. Mr. Clare also showed you the management rep 16 letter, and I've pulled out of the stack Exhibit 47, 17 which is one of the versions that he showed you. 18 This document is signed by four very senior 19 executives at Sunbeam, is it not? 20 MR. CLARE: Object to the form. 21 THE WITNESS: Yes, it is. 22 BY MR. BRODY: 23 Q. For example, Mr. Dunlap and Mr. Kersh are the 24 number one and number two most senior people there? 25 MR. CLARE: Object to the form.</p>
<p style="text-align: right;">Page 178</p> <p>1 offering memorandum? 2 MR. CLARE: Object to the form. 3 THE WITNESS: I'm sorry, ask one more time. 4 BY MR. BRODY: 5 Q. After these letters were transmitted, did you 6 participate in any conversations with anyone from 7 Morgan Stanley in which Morgan Stanley or anyone else 8 suggested putting this information, the information 9 from these letters, in the offering memorandum? 10 MR. CLARE: Object to the form. 11 THE WITNESS: The actual comfort letter into 12 the offering memo? 13 BY MR. BRODY: 14 Q. For example, that would be one thing, put the 15 comfort letter in in toto. 16 A. I wasn't part of any such discussions. 17 Q. Or if you turn to the comfort letter, for 18 example, on page three of Exhibit 9 towards the bottom, 19 in paragraph 5B there is discussion about sales through 20 February 1, 1998, and then on page five of that 21 document at the top, paragraph 6C, there is mention of 22 sales through March 1. 23 Did anyone at Morgan Stanley discuss with you 24 whether that information should be put in the offering 25 memorandum?</p>	<p style="text-align: right;">Page 180</p> <p>1 BY MR. BRODY: 2 Q. Is that correct? 3 A. I don't know who number two is. Certainly I 4 consider Dunlap number one. 5 Q. Mr. Kersh was an executive vice-president? 6 A. Yes, correct. 7 Q. And Mr. Fanin was the head lawyer for the 8 company? 9 A. Yes, that's correct. 10 Q. And Mr. Gluck was the chief accounting 11 officer? 12 A. Yes. 13 Q. And they signed this letter that they sent to 14 Arthur Andersen on the 23rd; is that correct? 15 MR. CLARE: Objection, foundation. 16 THE WITNESS: It appears to be. 17 BY MR. BRODY: 18 Q. Okay. What I believe is finally -- Mr. Clare 19 and I have both had discussions about the meetings at 20 the printer and the print shop. 21 Just for people who are not familiar with how 22 transactions like this have a better understanding, 23 when you went to the print shop, were you in the 24 vicinity of the printing presses? 25 A. No.</p>

<p style="text-align: right;">Page 181</p> <p>1 Q. You weren't looking at the guys wearing the 2 hats made out of news print stopping the presses? 3 A. Yes, correct. 4 Q. You were in a series of conference rooms and 5 executive offices? 6 A. That's correct. 7 Q. And information was brought to you, copies of 8 draft pages were brought to you for your review? 9 A. That's correct. 10 Q. One moment. 11 MR. BRODY: I have no further questions. 12 Thank you, Mr. Brockelman. 13 RECROSS (MARK BROCKELMAN) 14 BY MR. CLARE: 15 Q. Very briefly returning to CPH Exhibit 114, 16 Mr. Bornstein's memo. 17 Mr. Brody had directed your attention to two 18 paragraphs. The third paragraph on the first page, 19 paragraph beginning "On the evening of March 19th." 20 A. Yes. 21 Q. You indicated that you were present for that 22 conversation, correct? 23 A. Yes. 24 Q. Do you recall Mr. Bornstein making the 25 statements that are reflected in this conversation --</p>	<p style="text-align: right;">Page 183</p> <p>1 MR. MOSCATO: I give up. 2 BY MR. CLARE: 3 Q. Do you recall Mr. Bornstein telling Mr. Lurie 4 that the caveat that the company would still exceed 5 prior year first quarter sales was a forward-looking 6 statement and was not appropriate for an offering 7 document? 8 Do you recall Mr. Bornstein making that 9 statement? 10 A. No. 11 Q. And then on the second page of CPH 12 Exhibit 114, do you recall Mr. Bornstein stating that 13 it was Andersen's recommendation to eliminate that 14 statement in the offering memorandum? 15 A. No. 16 MR. CLARE: Thank you. That's all I have. 17 MR. BRODY: Thank you, Mr. Brockelman. 18 THE VIDEOGRAPHER: This is the conclusion of 19 the videotaped deposition of Mr. Brockelman. We 20 are now going off video record. The time on the 21 monitor, 1:25 p.m. 22 23 (Witness excused.) 24 (Deposition was concluded.) 25</p>
<p style="text-align: right;">Page 182</p> <p>1 in this paragraph? 2 MR. BRODY: Objection, asked and answered. 3 BY MR. CLARE: 4 Q. Well, what I'm trying to get at is you just 5 testified in response to Mr. Brody's question that you 6 were present for the conversation that's described 7 here, but I've asked you a series of questions today 8 about whether you remember Mr. Bornstein making certain 9 statements or taking certain positions, and you've said 10 that you couldn't recall. 11 So what I'm trying to understand is in 12 response to Mr. Brody's question, were you saying that 13 you were present for these conversations or that you 14 recall them exactly as Mr. Bornstein has relayed them? 15 A. I was present for that paragraph, what's 16 being described in that paragraph. Also I confirmed 17 the events of that paragraph at the time this memo was 18 written. 19 MR. MOSCATO: But that's not his question. 20 Why don't you answer his question? 21 THE WITNESS: Yes, I was present at that 22 time. 23 MR. MOSCATO: That wasn't his question. 24 BY MR. CLARE: 25 Q. Do you recall Mr. --</p>	<p style="text-align: right;">Page 184</p> <p>1 THE STATE OF FLORIDA) 2 COUNTY OF PALM BEACH) 3 4 I, the undersigned authority, certify that the 5 witness personally appeared before me and was duly sworn. 6 7 WITNESS my hand and official seal this 16th day 8 of January, 2004. 9 10 11 12 Rachel W. Bridge 13 Notary Public - State of Florida 14 My Commission Expires: 1/15/07 15 My Commission No.: DD164752 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 185</p> <p>1 CERTIFICATE</p> <p>2 THE STATE OF FLORIDA)</p> <p>3 COUNTY OF PALM BEACH)</p> <p>4 I, Rachel W. Bridge, Registered</p> <p>5 Professional Reporter and Notary Public in and for</p> <p>6 the State of Florida at Large, do hereby certify</p> <p>7 that the aforementioned witness was by me first duly</p> <p>8 sworn to testify the whole truth; that I was</p> <p>9 authorized to and did report said deposition in</p> <p>10 stenotype; and that the foregoing pages are a true</p> <p>11 and correct transcription of my shorthand notes of</p> <p>12 said deposition.</p> <p>13 I further certify that said deposition was</p> <p>14 taken at the time and place hereinabove set forth</p> <p>15 and that the taking of said deposition was commenced</p> <p>16 and completed as hereinabove set out.</p> <p>17 I further certify that I am not attorney or</p> <p>18 counsel of any of the parties, nor am I a relative or</p> <p>19 employee of any attorney or counsel of party connected</p> <p>20 with the action, nor am I financially interested in the</p> <p>21 action.</p> <p>22 The foregoing certification of this transcript</p> <p>23 does not apply to any reproduction of the same by any means</p> <p>24 unless under the direct control and/or direction of the</p> <p>25 certifying reporter.</p> <p>IN WITNESS WHEREOF, I have hereunto set my</p> <p>hand this 16th day of January, 2004.</p> <p>_____ Rachel W. Bridge Notary Public State of Florida My Commission Expires: 1/15/07 My Commission No.: DD164752</p>	<p style="text-align: right;">Page 187</p> <p>1 ERRATA SHEET</p> <p>2 IN RE: Coleman vs Morgan Stanley & Co., Inc.</p> <p>3 DEPOSITION OF: Mark Brockelman TAKEN: 1-14-04</p> <p>4 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE</p> <p>5 PAGE # LINE # CHANGE REASON</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 Please forward the original signed errata sheet to this</p> <p>18 office so that copies may be distributed to all</p> <p>19 parties.</p> <p>20 Under penalty of perjury, I declare that I have read my</p> <p>21 deposition and that it is true and correct subject to</p> <p>22 any changes in form or substance entered here.</p> <p>23 DATE: _____</p> <p>24 SIGNATURE OF</p> <p>25 DEPONENT: _____</p>
<p style="text-align: right;">Page 186</p> <p>1 CERTIFICATE</p> <p>2 - - -</p> <p>3 - - -</p> <p>4 THE STATE OF FLORIDA</p> <p>5 COUNTY OF PALM BEACH</p> <p>6 I hereby certify that I have read the</p> <p>7 foregoing deposition by me given, and that the</p> <p>8 statements contained herein are true and correct to the</p> <p>9 best of my knowledge and belief, with the exception of</p> <p>10 any corrections or notations made on the errata sheet,</p> <p>11 if one was executed.</p> <p>12 Dated this ____ day of _____,</p> <p>13 2004.</p> <p>14 _____</p> <p>15 Mark J. Brockelman</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	

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**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
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March 19, 1998

David G. Buck

SUNBEAM CORPORATION (NYSE: SOC) --\$50 1/16

SOC Pre-Announces 1Q Sales Shortfall Due to Timing of Customer Buying; Focus on Bigger Picture, Namely Pending Acquisitions, Price Weakness Represents Buying Opportunity

Recommendation: Strong Buy

3/18/98 Closing Price: \$50 1/16
52 Week Price Range: \$53 -- \$29 3/4
Price Target: \$70

FYE (12/31)	1996A	1997A	1998E	1999E
EPS	(\$0.11)	\$1.41	\$2.00	\$2.80
P/E	NM	35.5X	25.0X	17.9X
Qtrly EPS*	1Q	2Q	3Q	4Q
1996A	\$0.08	\$0.03	(\$0.19)	(\$0.03)
1997A	\$0.24	\$0.30	\$0.39	\$0.47
1998E	\$0.28	\$0.46	\$0.58	\$0.58
	\$0.32	\$0.45	\$0.56	\$0.58

* Quarterly numbers may not add to full year due to rounding or differences in shares outstanding

Diluted Shares O/S (mm): 87.5
Est. LT Earnings Growth Rate: 25%
Dividend/Yield: \$0.04/0.1%
Market Cap. (mm): \$4.380

Company Description: Sunbeam Corporation (NYSE: SOC) designs, manufactures, and markets consumer products. The Company had 1997 sales of \$1.1 billion and net income of \$123 million. SOC's products are primarily sold through mass merchants and other distributors in the United States and internationally. Key product categories include Appliances (25% of sales); Health and Home (8.3% of sales); Personal Care and Comfort (15% of sales); Outdoor Cooking (23% of sales) and Away from Home (4.3% of sales). Wal-Mart (NYSE: WMT) is SOC's largest customer, accounting for about 19% of sales. During 1996, the Company installed a new management team led by Al Dunlap as Chairman. Also in 1996, the Company completed a restructuring and growth plan that should lead to annual cost savings on the order of \$225 million.

Investment Highlights

- Company pre-announces sales shortfall for first quarter. Today the Company indicated that its sales for 1Q 1998 may be below "Street" estimates of \$285 million to \$295 million, but would be higher than last year's \$253 million. SOC indicated that any shortfall would be due to changes in retail customers' buying patterns including increased inventory management. While we do not yet know the products that have been impacted, retail customers may have sharply drawn down inventories of electric blankets, due to warmer-than-expected weather. The Company expressed confidence in its full year revenue outlook due to new product launches and confidence in its brand strength. In reaction to today's announcement, we have cut our 1Q sales assumption to \$259 million from \$290 million, and we have reduced our EPS estimate by \$0.04 to \$0.28. We are maintaining our \$2.00 EPS estimate for the full year for several reasons. First, our \$2.00 estimate was back-weighted towards the second half. Secondly, we expect new products to boost sales, along with increased distribution strength from the Coleman (NYSE: CLN) acquisition. The Company should benefit from increased sourcing of its manufacturing in lower-cost Asia/Pacific countries. Furthermore, SOC should realize cost synergies from an increased focus on outsourcing, with a year-end goal of 50% outsourced product versus 30% at the end of 1997.
- Focus on the big picture. We believe it makes sense to look beyond the first quarter's likely earnings disappointment and focus on value-creation through pending acquisitions of CLN, Signature Brands (NASDAQ: SIGB) and First Alert (NASDAQ: ALRT). Post-transactions, SOC should post 1999 revenues on the order of \$4.1 billion, versus \$2.1 billion in 1997. SOC should achieve at least \$150 million in cost-savings in the acquired companies. Additionally, the acquired companies should be platforms for international growth. SOC has a weak presence in Asia/Pacific and Europe, although its Oster brand has strong recognition in Latin America. Combining forces with CLN should provide SOC with a platform for distribution in Europe and Asia. Our 1999 EPS estimate does not include any further acquisitions, although we expect Al Dunlap to pursue additional accretive acquisitions.
- We recommend buying on weakness. After today's announcement, SOC shares hit an intra-day low of \$45 3/4, a drop of 8.6% from yesterday's close. That level implied a valuation of just 16X our 1999 EPS estimate. In our view, SOC shares still warrant a 25X multiple of our 1999 EPS estimate of \$2.80, a sharp discount to its growth rate. We expect the Company's shares to recover from recent weakness and we believe they can reach \$70 over the next 12 months. We reiterate our Strong Buy rating.

The information set forth herein was obtained from primary and secondary sources which Sands Brothers & Co., Ltd. believes to be reliable, but we do not guarantee its accuracy or completeness. None of the information contained herein nor any opinion expressed constitutes a solicitation by us for the purchase or sale of any securities, but is provided for the information of our clients and customers. Officers, employees and other affiliates of Sands Brothers & Co., Ltd., or members of their families, may hold positions in these securities and may make purchases and/or sales from time to time in the open market or otherwise. This report may not be duplicated without the express permission of Sands Brothers & Co., Ltd. Member SIPC.

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16dy-001032
CPH 1593209

41

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

42

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

43

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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

COLEMAN (PARENT) HOLDINGS INC.,
Plaintiff,

CASE NO.: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO.: CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
et al.

Defendants.

**EXHIBITS EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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

VOLUME III of III

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TABLE OF CONTENTS

	<u>TAB</u>
William Strong Deposition, 12/4/2003	1
Morgan Stanley 85403-85419.....	2
Morgan Stanley 85420-85435.....	3
Morgan Stanley 85436-85452	4
Morgan Stanley 85453-85471.....	5
Morgan Stanley 85472-85493.....	6
Bram Smith Deposition, 2/24/2004	7
Joshua Webber Deposition, 5/18/2004	8
CPH Ex. 84	9
CPH Ex. 9	10
Eugene Yoo Deposition, 6/16/2004.....	11
CPH Ex. 229	12
Lawrence Bornstein Deposition, 1/15/2004	13
CPH Ex. 123	14
First Amended Complaint, <i>Morgan Stanley & Co., Inc. et al. v. Arthur Andersen LLP, et al.</i> ...	15
CPH Ex. 17	16
John Tyree Deposition, 11/14/2003.....	17
CPH Ex. 16	18
CPH 1395046-1395047	19
Alan Dean Deposition, 6/3/2004.....	20
Heather Stack Deposition, 5/25/2004	21

TAB

Dennis Pastrana Deposition, 1/12/2004.....	22
William Pruitt Deposition, 1/13/2004.....	23
CPH Ex. 75	24
Donald Drapkin Deposition, 6/24/2004.....	25
CPH 1241513.....	26
CPH 1039208.....	27
CPH 1059641.....	28
CPH Ex. 121	29
CPH Ex. 118	30
CPH Ex. 119	31
CPH Ex. 114	32
Mark Brockelman Deposition, 1/14/2004.....	33
CPH Ex. 33	34
CPH Ex. 34	35
CPH Ex. 35	36
Michael Hart Deposition, 5/19/2004.....	37
CPH Ex. 76	38
CPH Ex. 112	39
CPH 1393269.....	40
CPH Ex. 36	41
CPH Ex. 187	42
William Wright Deposition, 7/1/2004	43
CPH Ex. 110	44

TAB

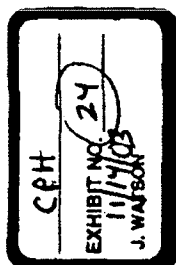
CPH Ex. 24	45
James Lurie Deposition, 6/18/2004	46
Phillip Harlow Deposition, 6/9/1999	47
John Tyree Deposition, 9/15/2003	48

44

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

45

Davis Polk & Wardwell
Chronology Prepared in Response to June 30, 2000 Subpoena
Sunbeam Securities Litigation



The chronology below was prepared in August 2000 in accordance with discussions among counsel concerning the response by Davis Polk & Wardwell to a subpoena dated June 30, 2000, served by Arthur Andersen in the Sunbeam securities litigation pending in the Southern District of Florida. It is based on a review of Davis Polk & Wardwell ("DPW") time records and file documents. The time records were in most cases very general in their descriptions of activities and did not provide sufficient detail to identify with greater particularity timing, place, or attendance. Moreover, the time records may not reflect all meetings and conversations that may have occurred during the relevant period. Similarly, the files may not contain copies of all documents, transmittal letters, memoranda, etc., that may have existed at the time. Consequently, the chronology is only a best efforts attempt to reconstruct events based on available information and may be incomplete or inaccurate to the extent events occurred differently than reflected in the time records and documents that were retained in the file.

Pursuant to the understandings reached among counsel, the chronology covers the period from the inception of DPW's work on the issuance of Sunbeam's zero coupon convertible debentures at the end of February 1998 through April 15, 1998. It identifies communications between DPW and Sunbeam, Arthur Andersen, or debenture purchasers during that time.

In addition to the events specifically listed below, the time records indicate numerous phone calls and document reviews, as to which details do not exist, but many of which may have involved communications between DPW and Sunbeam and its counsel, or Arthur Andersen. Because no detail exists, however, it is impossible at this time to provide specific times and dates for such communications other than to say that such communications took place on a regular basis throughout the period.

<u>Dates</u>	<u>Description</u>
February 25, 1998	Initial time charge relating to proposed offering; introductory telephone calls.

DPW000001

16dv-001046

March 2, 1998	Organizational conference call with issuers' counsel, Skadden Arps.
March 5, 1998	DPW transmits underwriter prepared portions of draft offering memorandum to Skadden.
March 6, 1998	Due diligence conference calls with Sunbeam re: acquisitions and environmental issues.
March 8, 1998	Due diligence review of documents at Skadden.
March 9, 1998	Due diligence meeting at Skadden.
March 10, 1998	Due diligence conference calls with First Alert, Signature, and Sunbeam (Brendel - environmental issues).
March 11, 1998	Additional due diligence calls with Skadden.
March 12, 1998	Drafting session at Skadden; Coleman due diligence calls; accounting due diligence calls.
March 16, 1998	Offering memo reds (subject to completion) distributed.
March 18, 1998	Telephone conference calls re: Sunbeam first quarter results and proposed press release; review of draft comfort letters from Arthur Andersen and KPMG.
March 19, 1998	Pricing; printing of final offering memorandum.
March 24, 1998	Bring down due diligence conference call; pre-closing.
March 25, 1998	Closing.

46

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

COLEMAN (PARENT) HOLDINGS, INC.,)
Plaintiff,) No. CA 03-5045 AI

vs.)

MORGAN STANLEY & CO., INC.,)
Defendant.)

-----)
MORGAN STANLEY SENIOR FUNDING,)
INC.,)

Plaintiff,) No. CA 03-5165 AI

vs.)

MACANDREWS & FORBES HOLDINGS,)
INC.,)

Defendant.)
-----)

VIDEOTAPED DEPOSITION OF JAMES M. LURIE

New York, New York

Friday, June 18, 2004

Reported by:
Jane Watson
JOB NO. 161083

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 June 18, 2004</p> <p>6 9:51 a.m.</p> <p>7</p> <p>8 Videotaped Deposition of</p> <p>9 JAMES M. LURIE, held at the offices of</p> <p>10 Davis Polk & Wardwell, 450 Lexington Avenue,</p> <p>11 New York, New York 10017, pursuant to</p> <p>12 Notice, before Jane D. Watson, a Notary</p> <p>13 Public of the State of New York.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED,</p> <p>3 by and between counsel for the respective</p> <p>4 parties hereto, that the filing, sealing and</p> <p>5 certification of the within deposition shall</p> <p>6 be and the same are hereby waived;</p> <p>7 IT IS FURTHER STIPULATED AND AGREED</p> <p>8 that all objections, except as to the form</p> <p>9 of the question, shall be reserved to the</p> <p>10 time of the trial;</p> <p>11 IT IS FURTHER STIPULATED AND AGREED</p> <p>12 that the within deposition may be signed</p> <p>13 before any Notary Public with the same force</p> <p>14 and effect as if signed and sworn to before</p> <p>15 the Court.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 JENNER & BLOCK, L.L.P.</p> <p>5 Attorneys for: Coleman (Parent) Holdings,</p> <p>6 Inc. and MacAndrews & Forbes Holdings, Inc.</p> <p>7 One IBM Plaza</p> <p>8 Chicago, Illinois 60611-7603</p> <p>9 BY: CLARK C. JOHNSON, ESQ.</p> <p>10 RONALD MARMER, ESQ.</p> <p>11</p> <p>12 KIRKLAND & ELLIS, L.L.P.</p> <p>13 Attorneys for: Morgan Stanley & Co., Inc.,</p> <p>14 and Morgan Stanley Senior Funding, Inc.</p> <p>15 655 Fifteenth Street, N.W.</p> <p>16 Washington, D.C. 20005</p> <p>17 BY: THOMAS A. CLARE, ESQ.</p> <p>18</p> <p>19 DAVIS POLK & WARDWELL</p> <p>20 Attorneys for: James M. Lurie</p> <p>21 450 Lexington Avenue</p> <p>22 New York, N.Y. 10017</p> <p>23 BY: ROBERT F. WISE, JR., ESQ.</p> <p>24</p> <p>25</p> <p>ALSO PRESENT:</p> <p>Ruben Martinez, Videographer</p> <p>Wendy Coats</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2 THE VIDEOGRAPHER: Will counsels</p> <p>3 please introduce themselves.</p> <p>4 MR. JOHNSON: Yes. Clark Johnson,</p> <p>5 Jenner & Block, Chicago, for Coleman</p> <p>6 (Parent) Holdings and MacAndrews & Forbes</p> <p>7 Holdings, Inc.</p> <p>8 MR. CLARE: Tom Clare from Kirkland &</p> <p>9 Ellis L.L.P. on behalf of Morgan Stanley &</p> <p>10 Co. and Morgan Stanley Senior Funding, Inc.</p> <p>11 MR. WISE: And Bob Wise of Davis Polk</p> <p>12 & Wardwell and here representing Mr. Lurie</p> <p>13 as the witness.</p> <p>14 THE VIDEOGRAPHER: Will the Court</p> <p>15 Reporter please swear in the witness.</p> <p>16 JAMES M. LURIE, having been duly</p> <p>17 sworn by the Notary Public, was examined and</p> <p>18 testified as follows:</p> <p>19 EXAMINATION BY</p> <p>20 MR. JOHNSON:</p> <p>21 Q. Good morning, Mr. Lurie.</p> <p>22 A. Good morning.</p> <p>23 Q. Would you please state your full name</p> <p>24 for the record.</p> <p>25 A. James Michael Lurie.</p>

Page 6

1 Lurie
2 Q. And where do you reside?
3 A. Hewlett, Long Island, 130 Cedar
4 Avenue, H-E-W-L-E-T-T.
5 Q. And you've given a deposition before;
6 is that correct?
7 A. Yes.
8 Q. On how many occasions?
9 A. Once.
10 Q. About how long ago was that?
11 A. Ten, twelve years ago, I think.
12 Q. And what -- that was the Avon matter;
13 is that correct?
14 A. Correct.
15 Q. Have you testified in any kind of
16 court proceeding?
17 A. No.
18 Q. Arbitration, any type of --
19 A. No.
20 Q. -- judicial proceeding?
21 A. No. The reason I stuttered, I was
22 called before a -- you know, a jury. And they
23 asked me questions. But that wasn't really
24 testifying --
25 Q. So you've been voir dired but not

Page 7

1 Lurie
2 testified?
3 A. Yes.
4 Q. Well, as Mr. Wise has probably told
5 you, as you will recall from your prior
6 experience --
7 MR. JOHNSON: Let's take a short
8 break here for one second. We'll go off the
9 record.
10 THE VIDEOGRAPHER: We're going off
11 the record. The time is 9:53.
12 (Discussion off the record.)
13 (Whereupon, Mr. Marmer joined the
14 deposition.)
15 THE VIDEOGRAPHER: The time is 9:54.
16 We're back on the record.
17 BY MR. JOHNSON:
18 Q. Mr. Lurie, before the break, I was
19 explaining some of the ground rules of the
20 deposition. Obviously, if you don't understand
21 one of my questions, let me know, and I'll try to
22 rephrase it. If you need to take a break, let me
23 know that, and we can try to accommodate it.
24 The Avon matter where you were
25 previously deposed, that was a matter where

Page 8

1 Lurie
2 Morgan Stanley represented Avon; is that correct?
3 A. That's correct.
4 Q. What do you recall about the Avon
5 litigation?
6 A. It had to do -- with my recollection,
7 it had to do with some language that was in the
8 certificate of designations for the security,
9 which was called a percs security, and what
10 certain language meant is my recollection what
11 this suit was about.
12 Q. And it was a securities fraud case?
13 A. I don't remember what the claim in
14 this case was.
15 Q. Was Morgan Stanley a defendant in
16 that case?
17 A. I believe so. But what was that?
18 Ten, twelve years ago?
19 Q. Do you know how that case was
20 resolved?
21 A. Actually, I don't.
22 Q. Have you served as an expert witness?
23 A. No.
24 Q. Why don't you take me briefly through
25 your educational background from graduation of

Page 9

1 Lurie
2 college to the present.
3 A. Graduated Washington University in
4 St. Louis in 1974. I spent two years working at
5 Irving Trust, in the bank there. Then I went to
6 law school. I went to Rutgers Camden, the Camden
7 campus, graduated in '77, spent two years as a
8 law clerk to Henry Bramwell in the Eastern
9 District of New York.
10 During that period while as a law
11 clerk, I started going to NYU for an LLM. I
12 started at Davis Polk in 1979, I believe. Yeah,
13 1979. I was at Davis Polk through May of --
14 through April of 1998; then went to O'Sullivan
15 Graev & Karabell, which, in 2002, merged with
16 O'Melveny & Meyers. So I was with O'Melveny &
17 Meyers through about -- just about a year ago and
18 joined Holland & Knight a year ago, the end of
19 this June, and got my L.L.M. from NYU. I think
20 it was 1986.
21 Q. What was the area of specialty, if
22 any, for your L.L.M.
23 A. Corporate.
24 Q. So you have -- is it a B.A. or B.S.
25 from Washington?

<p style="text-align: right;">Page 10</p> <p>1 Lurie</p> <p>2 A. B.A., A.B., whatever.</p> <p>3 Q. And a J.D.?</p> <p>4 A. And a J.D. and an L.L.M.</p> <p>5 Q. Any other degrees?</p> <p>6 A. No.</p> <p>7 Q. Do you have any professional</p> <p>8 certifications of any sort?</p> <p>9 A. No.</p> <p>10 MR. WISE: He's member of the bar, I</p> <p>11 suppose.</p> <p>12 A. Yeah. Well, that's a professional.</p> <p>13 Yes. Thank you.</p> <p>14 MR. JOHNSON: We'll have you raise</p> <p>15 your right hand as well.</p> <p>16 MR. WISE: Just trying to be</p> <p>17 helpful.</p> <p>18 A. No. That would be a professional</p> <p>19 certification.</p> <p>20 BY MR. JOHNSON:</p> <p>21 Q. What titles did you hold at Davis</p> <p>22 Polk?</p> <p>23 A. I was an associate. When I left, I</p> <p>24 was a senior attorney.</p> <p>25 Q. And you went to O'Sullivan as a</p>	<p style="text-align: right;">Page 12</p> <p>1 Lurie</p> <p>2 Q. Did you review any documents?</p> <p>3 A. Yes. Yesterday I was shown some</p> <p>4 documents.</p> <p>5 Q. Did those help your memory on the</p> <p>6 events in question?</p> <p>7 A. No.</p> <p>8 Q. Do you have an understanding of who's</p> <p>9 given depositions in this law suit so far?</p> <p>10 A. I was told that some of my former</p> <p>11 colleagues -- two of my former colleagues at</p> <p>12 Davis Polk had given depositions and that there</p> <p>13 had been others. I don't recall -- if you told</p> <p>14 me who the other ones were --</p> <p>15 Q. And which colleagues from Davis Polk?</p> <p>16 A. Alan Dean.</p> <p>17 Q. Right.</p> <p>18 A. Heather Stack.</p> <p>19 Q. And did you get a sense of what their</p> <p>20 testimony was in their depositions?</p> <p>21 A. No.</p> <p>22 Q. Have you spoken with anyone from</p> <p>23 Morgan Stanley about this deposition?</p> <p>24 A. No.</p> <p>25 Q. How is it that you learned you were</p>
<p style="text-align: right;">Page 11</p> <p>1 Lurie</p> <p>2 partner?</p> <p>3 A. Correct.</p> <p>4 Q. Why did you leave Davis Polk?</p> <p>5 A. I got a great opportunity at</p> <p>6 O'Sullivan.</p> <p>7 Q. Why was it a great opportunity?</p> <p>8 A. I got to go head their corporate</p> <p>9 securities, SEC practice. It was a niche firm</p> <p>10 specializing in private equity and needed to</p> <p>11 build up their securities practice.</p> <p>12 Q. What did you do to prepare for your</p> <p>13 deposition today?</p> <p>14 A. Really just was yesterday. I came</p> <p>15 over, met with Bob and Tom, and just sort of</p> <p>16 reviewed what the deposition was going to be.</p> <p>17 They --</p> <p>18 MR. WISE: Well, let's not discuss</p> <p>19 what the substance of our discussions were.</p> <p>20 BY MR. JOHNSON:</p> <p>21 Q. So you met with Mr. Wise and</p> <p>22 Mr. Clare?</p> <p>23 A. (Indicating.)</p> <p>24 Q. What else did you do?</p> <p>25 A. To prepare? Nothing.</p>	<p style="text-align: right;">Page 13</p> <p>1 Lurie</p> <p>2 going to be deposed in this matter?</p> <p>3 A. James Murray from Davis Polk called</p> <p>4 -- I don't know -- three, four months ago and</p> <p>5 said it was possible and then called again about</p> <p>6 six, eight weeks ago and asked if we could</p> <p>7 schedule something. And here I am.</p> <p>8 Q. Since you left Davis Polk, have you</p> <p>9 done any legal work for Morgan Stanley?</p> <p>10 A. They may have been involved in one or</p> <p>11 more transactions deals that I have done. I'd</p> <p>12 have to go back and look. I don't recall</p> <p>13 specifically.</p> <p>14 Q. Have you represented Morgan Stanley</p> <p>15 since leaving Davis Polk?</p> <p>16 A. No. Not directly, no.</p> <p>17 Q. What do you mean by that?</p> <p>18 A. They could have been an underwriting</p> <p>19 syndicate. They could have been a colead manager</p> <p>20 in an offering.</p> <p>21 Q. But as you sit here, you can't think</p> <p>22 of any transaction --</p> <p>23 A. Not specifically, no.</p> <p>24 Q. Since leaving --</p> <p>25 A. There actually was one.</p>

Page 14

1 Lurie
2 Q. Okay.
3 A. We were representing a client -- and
4 I can't think of the name of the client right now
5 -- in a high-yield offering. Morgan Stanley was
6 the -- was going to be the lead underwriter.
7 Q. And you represented the issuer?
8 A. Yes.
9 Q. Was that at Holland & Knight or
10 O'Melveny or O'Sullivan --
11 A. It was O'Sullivan.
12 Q. A high-yield offering, a junk bond
13 offering?
14 A. High yield.
15 Q. Those are different terms?
16 A. I like high yield.
17 Q. Who was that issuer?
18 A. It could have been one of a couple of
19 different ones. I'd have to go back and look to
20 see which one it was.
21 Q. And so is that transaction the last
22 time you've had any interaction with anyone from
23 Morgan Stanley?
24 A. On a business level, yes. I mean, I
25 know some people from other places, you know,

Page 15

1 Lurie
2 through personal associations.
3 Q. So you've had personal contacts with
4 Morgan Stanley personnel?
5 A. Absolutely. Yes.
6 Q. Okay. And which Morgan Stanley
7 personnel?
8 A. I'm literally dealing with one on
9 another matter at Holland & Knight.
10 Q. And who is that?
11 A. Fred Whittemore (phonetic).
12 Q. But that's not in his capacity as a
13 Morgan Stanley --
14 A. No.
15 Q. -- employee?
16 A. No -- well, he is a Morgan Stanley
17 employee, but he's a director of another company
18 we're representing.
19 Q. Since leaving Davis Polk, have you
20 had any contact of any sort with Ruth Porat?
21 A. No.
22 Q. John Tyree?
23 A. No.
24 Q. Bill Strong?
25 A. No.

Page 16

1 Lurie
2 Q. Andy Savare?
3 A. No.
4 Q. Bob Kitts?
5 A. No.
6 Q. Jim Stynes?
7 A. No. I presume these are all Morgan
8 Stanley people, but the answer is still no.
9 Q. How about Alex Fuchs?
10 A. No.
11 Q. And other than Mr. Wise and
12 Mr. Clare, have you spoken to anyone about the
13 fact that you're giving a deposition today?
14 MR. WISE: James Murphy, my office.
15 A. Right. And I advised a couple of my
16 partners that I would be out this morning because
17 I was being deposed.
18 BY MR. JOHNSON:
19 Q. Anyone else?
20 A. Not that I can recall. My wife.
21 Q. When you were at Davis Polk -- and
22 the remainder of the day, there are going to be
23 questions focused on your time at Davis Polk --
24 is it fair to say that Morgan Stanley was a major
25 client of the firm?

Page 17

1 Lurie
2 A. Yes.
3 Q. And you personally had worked on
4 numerous matters for Morgan Stanley?
5 A. Yes.
6 Q. We talked about the Avon matter
7 already. Obviously, there's the Sunbeam matter.
8 A. Yes.
9 Q. Can you think of any other matters
10 that you handled for Morgan Stanley?
11 A. Well, not for Morgan Stanley. I
12 believe Morgan Stanley was the lead underwriter
13 on the Irvine Apartment Communities offering that
14 we represented Irvine Apartment Communities.
15 Morgan Stanley was the lead underwriter. We
16 represented them in the IPO of an entity called
17 TIG, T-I-G.
18 Q. Was that a Transamerica entity --
19 A. Yeah. It was a Transamerica spin-off
20 of their P&C company. Those are the ones that
21 come quickly to mind. There are enumerable
22 others. I did a lot of work for Morgan Stanley
23 in the swap area.
24 Q. So your work for Morgan Stanley was
25 not limited to public offerings. It was M&A work

Page 18

1 Lurie
2 as well?
3 A. I didn't do a great deal of M&A work
4 here at Davis Polk.
5 Q. I take that to mean that you did
6 some?
7 A. Yes, I did some.
8 Q. Can you estimate for me the number of
9 public offerings that you worked on while at
10 Davis Polk.
11 A. Any kind of public offering?
12 Q. Yes.
13 A. Registered with the SEC?
14 Q. Yes.
15 A. Seventy-five, a hundred -- I don't
16 know. Seventy-five. Pick a number.
17 Q. How is it that you came to work on
18 the Sunbeam transaction?
19 A. This is -- it's six years ago.
20 Someone would have come in and said, You've got
21 some time to work on this matter.
22 Q. You didn't receive a call from Morgan
23 Stanley?
24 A. I have no recollection six years
25 later how I specifically got involved.

Page 19

1 Lurie
2 Q. You recall it was in the late
3 February, early March '98 time frame?
4 A. Yes.
5 Q. Do you have any more specific
6 recollection on when you started your work?
7 A. Not specifically other than having
8 been told it started around February 25th, seeing
9 it in a letter, I guess, that we looked at
10 yesterday.
11 Q. That was a Davis Polk chronology?
12 A. Yes.
13 Q. So that document refreshed your
14 memory --
15 A. It didn't refresh it. That's the
16 date it said. I still have no specific
17 recollection of when I actually would have begun.
18 Q. But that's not inconsistent with
19 whatever recollection you had?
20 A. It's not inconsistent with the lack
21 of recollection when specifically, but that would
22 be the time frame about when. Whether it was
23 February or January or early February, I couldn't
24 tell you.
25 Q. And when you initially got involved,

Page 20

1 Lurie
2 what did you understand Davis Polk's assignment
3 to be?
4 A. We were underwriter's counsel.
5 Q. Did you have a sense of the nature of
6 the offering contemplated?
7 A. I -- absolute -- I mean, I would have
8 had to have had. We were doing a convertible --
9 zero coupon convertible debt offering.
10 Q. I guess what I'm asking is, Did, to
11 your knowledge, Davis Polk advise Morgan Stanley
12 on the nature of the offering; or was Davis Polk
13 advised of the nature of the offering and --
14 A. You need to explain to me what you
15 mean by nature of the offering.
16 Q. Sure. Sure. When Davis Polk was
17 first assigned, it was already decided that there
18 would be a convertible debt offering; is that
19 correct?
20 A. I presume so. I have no recollection
21 of the timing of the assignment and what we were
22 told.
23 Q. So you don't recall any discussion
24 about how Sunbeam ought to finance the
25 acquisition in question?

Page 21

1 Lurie
2 A. I don't recall any specific
3 discussions.
4 Q. So, to your knowledge, the issue of
5 how the financing would operate had already been
6 decided?
7 A. I don't recall any specific
8 discussions. So I can't tell you six years later
9 how the decision was made to determine it would
10 be a convertible debt offering and who was
11 involved and who made those decisions.
12 Q. But you don't recall Davis Polk being
13 involved in those decisions?
14 A. I don't have any recollection
15 personally of being involved in those decisions.
16 Q. Who from Davis Polk was on the
17 convertible debt offering team?
18 A. The only one I know specifically
19 remember being on it was Alan Dean. I understand
20 that Heather Stack was involved. But to be
21 honest, I don't recall her involvement at this
22 point.
23 Q. How about Nicole Duncan? Do you
24 recall her involvement?
25 A. I don't recall.

<p style="text-align: right;">Page 22</p> <p>1 Lurie</p> <p>2 Q. Do you know who she is?</p> <p>3 A. I don't even remember the name. I</p> <p>4 apologize.</p> <p>5 Q. Do you remember the name Heather</p> <p>6 Stack?</p> <p>7 A. I remember the name Heather Stack. I</p> <p>8 know Heather Stack. I've had dealings with</p> <p>9 Heather Stack since she's been at Goldman.</p> <p>10 Q. Have you spoken with her about this</p> <p>11 deposition?</p> <p>12 A. No.</p> <p>13 Q. Have you spoken with her about</p> <p>14 Sunbeam at all?</p> <p>15 A. No.</p> <p>16 Q. Alan Dean was the head of the</p> <p>17 convertible team; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. And did you have an understanding of</p> <p>20 Morgan Stanley's responsibilities in connection</p> <p>21 with the convertible debt offering?</p> <p>22 A. If you simply mean were they the lead</p> <p>23 underwriter, the sole underwriter, yes. I don't</p> <p>24 know quite what you mean by an understanding of</p> <p>25 their responsibilities.</p>	<p style="text-align: right;">Page 24</p> <p>1 Lurie</p> <p>2 they should conduct?</p> <p>3 A. I do not recall now six years later</p> <p>4 what specific advice on this transaction we might</p> <p>5 have given to anyone at Morgan Stanley.</p> <p>6 Q. In your prior dealings with Morgan</p> <p>7 Stanley, was it customary for you to comment on</p> <p>8 or provide advice in connection with what due</p> <p>9 diligence would be performed?</p> <p>10 A. Generally, you would discuss with the</p> <p>11 people from the underwriters, whether it was</p> <p>12 Morgan Stanley or another underwriter, the scope,</p> <p>13 the level, who would do what, who would be</p> <p>14 involved.</p> <p>15 Q. But you don't have a recollection of</p> <p>16 that happening in this transaction?</p> <p>17 A. No specific recollection, though,</p> <p>18 again, it -- since it's general practice to talk</p> <p>19 to them about that.</p> <p>20 Q. So you assume that you did, but you</p> <p>21 just don't remember?</p> <p>22 A. Correct.</p> <p>23 Q. And who was your primary contact, if</p> <p>24 you had one, at Morgan Stanley in this</p> <p>25 transaction?</p>
<p style="text-align: right;">Page 23</p> <p>1 Lurie</p> <p>2 Q. As lead or sole underwriter, what</p> <p>3 were they supposed to do in order to make the</p> <p>4 convertible debt offering happen?</p> <p>5 A. They were going to market. We were</p> <p>6 going to do the necessary due diligence with</p> <p>7 them, prepare an offering memo. They would then</p> <p>8 potentially do a road show, market the security,</p> <p>9 sell it, close it.</p> <p>10 Q. And Davis Polk was to provide legal</p> <p>11 advice along the way --</p> <p>12 A. Yes.</p> <p>13 Q. -- is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Did -- and this is a yes-or-no</p> <p>16 question.</p> <p>17 Did Davis Polk comment on the scope</p> <p>18 of the due diligence that would be appropriate in</p> <p>19 connection with this transaction?</p> <p>20 A. I don't -- when you say "comment on</p> <p>21 the scope," we did due diligence.</p> <p>22 Q. Davis Polk did due diligence?</p> <p>23 A. Davis Polk did due diligence.</p> <p>24 Q. And, again, yes or no: Did you</p> <p>25 advise Morgan Stanley as to what due diligence</p>	<p style="text-align: right;">Page 25</p> <p>1 Lurie</p> <p>2 A. Simply because I remember the name,</p> <p>3 it would be -- John Tyree would be the name that</p> <p>4 I remember the best out of the transaction. So</p> <p>5 I'm assuming my recollection is that he was sort</p> <p>6 of the lead corporate finance guy from Morgan</p> <p>7 Stanley. So my dealings would have been often</p> <p>8 with him.</p> <p>9 Q. Did you -- as you sit here, can you</p> <p>10 give me the names of any other Morgan Stanley</p> <p>11 personnel who you dealt with?</p> <p>12 A. Who I dealt with? I mean, the only</p> <p>13 other name that comes to mind, as you mentioned a</p> <p>14 second ago, was Ruth Porat. But I don't remember</p> <p>15 any specific dealings that I individually just</p> <p>16 had with Ruth on the transaction. You mentioned</p> <p>17 a bunch of other names a few minutes ago. And</p> <p>18 several of them, the names rang a bell, but a lot</p> <p>19 of them didn't. And I don't remember any</p> <p>20 specific dealings with any of them.</p> <p>21 Q. Your answer now, you just said -- you</p> <p>22 gave a qualification, any individual dealings</p> <p>23 with --</p> <p>24 A. Right.</p> <p>25 Q. -- Let's put aside a one-on-one type</p>

Page 26

1 Lurie
2 dealing.
3 What kind of meetings or telephone
4 conferences did you have -- strike that.
5 Give me the names of Morgan Stanley
6 personnel with whom you had telephone conferences
7 or other meetings.
8 A. I do not recall today who was at any
9 specific due diligence meetings, organizational
10 meetings or conference calls from Morgan Stanley.
11 The only call I do recall was one on the night
12 of, I believe, March 18th. And Ruth -- at least
13 Ruth Porat I know was on the phone.
14 Q. Did you have any dealings with Shani
15 Boone?
16 A. Would you repeat that name.
17 Q. Shani Boone?
18 A. The name doesn't even ring a bell.
19 Q. Jean Ewe (phonetic)?
20 A. The name doesn't ring a bell.
21 Q. Lily Rafii?
22 A. No.
23 Q. You mentioned one of Morgan Stanley's
24 responsibilities was to prepare an offering
25 memorandum for the convertible offering?

Page 27

1 Lurie
2 A. Correct.
3 Q. Did Morgan Stanley have any
4 responsibility to determine that the offering
5 memorandum was fair and accurate?
6 A. Under the '33 Act, they have a due
7 diligence obligation, yes.
8 Q. And what did you understand that to
9 be?
10 A. To undertake a reasonable
11 investigation.
12 Q. A reasonable investigation into what?
13 A. The affairs of the company.
14 Q. In order to determine that the
15 offering memorandum is fair and accurate?
16 A. That's a fair way to put it.
17 Q. To your knowledge, was there anything
18 secret or confidential about the fact that Morgan
19 Stanley was contemplating a convertible debt
20 offering?
21 Let me give you a better question.
22 To your knowledge, was there anything
23 secret or confidential about the fact that
24 Sunbeam was contemplating a convertible debt
25 offering?

Page 28

1 Lurie
2 A. I don't recall today anything being
3 secret or confidential.
4 Q. And at some point, they would
5 obviously try to sell it?
6 A. Yes. Other than it was a 144A
7 offering. So you can't do a general
8 solicitation. So there were those Security Act
9 obligations.
10 Q. When you first began working on the
11 Sunbeam transaction, did you gain any
12 understanding of Morgan Stanley's existing
13 relationship with Sunbeam?
14 A. I don't recall those -- any
15 discussions along those lines. I have no
16 specific knowledge at this point. I may have at
17 an earlier date, but certainly not now.
18 Q. Did you understand that Morgan
19 Stanley had been Sunbeam's representative in
20 connection with the acquisitions that were to be
21 financed?
22 A. I recall that they were financial
23 advisor to Sunbeam.
24 Q. And when I refer to the acquisitions
25 --

Page 29

1 Lurie
2 A. There were three.
3 Q. And those were?
4 A. Coleman, Signature Brands and --
5 Q. -- First Alert?
6 A. First Alert. Thank you.
7 Q. Did you gain any understanding about
8 how long Morgan Stanley had been working with
9 Sunbeam?
10 A. Today, I don't recall that specific
11 discussions or understanding. Again, I may have
12 known something back then about how long the
13 relationships were, but I do not recall anything
14 today.
15 Q. Would the length of the relationship
16 between Morgan Stanley and Sunbeam be significant
17 to you in connection with your work on the
18 convertible offering?
19 A. Not necessarily. It all depends.
20 That's one fact that may be relevant, given a
21 whole bunch of other facts in any individual
22 situation and depending upon what you're doing.
23 But that one fact would not today raise an issue
24 in my mind, and I do not think it would have
25 raised an issue in my mind.

Page 30

1 Lurie

2 Q. Well, would you take any comfort in

3 the fact that Morgan Stanley was familiar with

4 the company's operations having worked with it in

5 the M&A context?

6 A. I might have. I don't know again

7 what I thought back then.

8 Q. Did you have any understanding as to

9 how Morgan Stanley was to be compensated in

10 connection with the convertible debt offering?

11 A. I do not recall anything specific

12 today. Normally -- and you can confirm -- there

13 would be an underwriting fee that they would

14 receive in a 144A offering. That would be

15 standard. And I -- without having gone back and

16 looked, that is what I'm assuming they received

17 here.

18 Q. That fee would be contingent upon

19 closing the convertible offering?

20 A. Generally, it would be.

21 Q. Did you have any understanding as to

22 how Morgan Stanley was compensated in connection

23 with the M&A work it did for Sunbeam?

24 A. Again, today I don't have any

25 recollection. Normally, they would have received

Page 31

1 Lurie

2 a financial advisory fee. That would be a

3 standard market practice.

4 Q. And that would be contingent upon

5 closing?

6 A. Again, it depends. And I don't

7 recall how it might have been structured here.

8 Q. Do you think you had some knowledge

9 about the fee arrangement six years ago?

10 A. I probably back then would have, but

11 today I don't recall. It might have been

12 described in the offering memo.

13 Q. Did you understand that Morgan

14 Stanley had attempted to sell Sunbeam to a third

15 party in connection with its M&A work?

16 A. I do not today recall that being

17 discussed. It may have been. But it's six years

18 later. I don't remember what the background to

19 the offering at this point was.

20 Q. Would Morgan Stanley's fee

21 arrangements inform in any way the due diligence

22 that Davis Polk performed?

23 A. No.

24 Q. Would the fact that Morgan Stanley

25 had unsuccessfully tried to sell Sunbeam inform

Page 32

1 Lurie

2 what due diligence might be appropriate for the

3 convertible offering?

4 A. I don't believe it would have. We

5 were doing a convertible offering.

6 Q. Did you, when you initially began

7 working on the Sunbeam transaction, know who Al

8 Dunlap was?

9 A. I knew the name.

10 Q. How did you know the name?

11 A. His name was well known.

12 Q. He had a reputation at the time?

13 A. I believe he still had the reputation

14 back then, yes.

15 Q. What's the reputation?

16 A. Well, he had some nicknames, "Chain

17 Saw Al."

18 Q. Do you know what the basis of that

19 nickname was?

20 A. I believe it was he came into some

21 other companies and fired a lot of people very

22 quickly, very rapidly, very harshly, cut expenses

23 very quickly. A chain saw.

24 Q. So he was known as a turnaround

25 specialist?

Page 33

1 Lurie

2 A. I think that's correct, yes.

3 Q. When you began working on the Sunbeam

4 convertible offering, did you investigate

5 Mr. Dunlap's background in any way?

6 A. I do not recall doing any

7 investigation. We -- it may have -- I just --

8 but six years later, I just don't recall what we

9 may have looked into his background or if anybody

10 else did.

11 Q. But do you think that would be an

12 appropriate due diligence step?

13 A. Under certain aspects, certain

14 transactions, yes. If there are questions, you

15 might look into whether at the time we thought

16 there was an issue we should look into. I just

17 do not recall at this point.

18 Q. What do you mean, "if there are

19 questions"?

20 A. I'm not focusing specifically on the

21 Sunbeam transaction. But if there are in general

22 reasons that give rise to questionable practices

23 in the past, it often might be an appropriate due

24 diligence investigation to check into the history

25 of a senior officer.

Page 34

1 Lurie

2 Q. So if there were questions about

3 the --

4 A. Again, I don't recall us ever having

5 that concern -- I don't recall today having that

6 concern that we would have done that.

7 Q. You may have; you just don't recall?

8 A. I do not recall doing anything.

9 Q. If there were questions about the

10 authenticity of Mr. Dunlap's turnaround at other

11 companies, would you look into those questions?

12 A. I would have investigated -- I think

13 we might have investigated if there were

14 questions. I do not recall there ever having

15 been any questions.

16 Q. How would you determine if there were

17 questions?

18 A. At this point, I have no

19 recollection. I have no idea how I might

20 necessarily determine that. If there was another

21 company, and there were issues, you may have read

22 something in the newspaper. There are a lot of

23 possible ways.

24 Q. Business Week, something like that?

25 A. Possibly.

Page 35

1 Lurie

2 Q. Did you gain an understanding about

3 the structure of the acquisitions? And by that I

4 mean, how it was as a legal matter Sunbeam was

5 going to acquire the three companies.

6 A. We would have at the time, because it

7 would have had to have been described in the

8 offering circular.

9 Q. And would you look at the source

10 documents of the description and the offering

11 memorandum?

12 A. We would have looked at the

13 acquisition agreements, if that's what you mean

14 by the "source documents."

15 Q. Merger agreement?

16 A. Merger agreement, whatever. If it

17 were a merger, it could have been a cash purchase

18 of stock. I just don't remember what the

19 agreements were.

20 Q. Were you involved in the public

21 announcement of the acquisitions?

22 A. Not -- Jim Lurie -- when you say

23 "you," you mean Jim Lurie?

24 Q. We'll start there.

25 A. Yeah. I do not recall being involved

Page 36

1 Lurie

2 in the public announcements.

3 Q. Do you, Jim Lurie, recall being

4 involved before the acquisitions were publicly

5 announced?

6 A. I don't recall when the acquisitions

7 were publicly announced. So I can't answer when,

8 whether it was before or after.

9 Q. I'll tell you it's March 2, 1998.

10 A. March 2nd is when the three

11 acquisitions were publicly announced, right.

12 Q. Does that help you recall whether you

13 were involved before or after the announcement?

14 A. Only through having seen Mr. Wise's

15 letter saying the process started before that.

16 Q. So the chronology you're referring

17 to, does that help you recall that you probably

18 were involved prior to the public announcement?

19 A. It indicates. I do not recall when I

20 started.

21 Q. Did you understand that Hill &

22 Knowlton was helping with the publicity

23 surrounding the acquisitions?

24 A. I have no recollection today of that.

25 Q. You may have known it then?

Page 37

1 Lurie

2 A. I may have known it then, but it's

3 six years. I don't remember who else was

4 involved.

5 Q. Have you worked with Hill and

6 Knowlton in the public announcement of

7 transactions in the past?

8 A. From time to time, yes.

9 Q. You don't recall doing it here?

10 A. Not in this deal, no.

11 Q. And, again, this is a question you're

12 going to hear a lot today: Does that mean it

13 didn't happen or that it may have happened; you

14 just don't remember?

15 A. That Hill and Knowlton was involved?

16 I do not recall. Did I have any contact with

17 Hill and Knowlton? I do not recall.

18 Q. Let me see if I can show you some

19 documents that would help you recall. This has

20 been marked previously as Exhibit 140.

21 MR. JOHNSON: For the record, Exhibit

22 140 is marked CPH 0483399 through '407.

23 BY MR. JOHNSON:

24 Q. Mr. Lurie, does this document look

25 familiar to you at all?

<p style="text-align: right;">Page 38</p> <p>1 Lurie</p> <p>2 A. No, it does not.</p> <p>3 Q. Does this look like a script that</p> <p>4 Davis Polk may have prepared?</p> <p>5 A. That's too speculative. I mean, a</p> <p>6 script that Davis Polk may have prepared? It's a</p> <p>7 script that anyone could have prepared.</p> <p>8 Q. So you have no recollection of who</p> <p>9 prepared this?</p> <p>10 A. None whatsoever. I don't even recall</p> <p>11 this document.</p> <p>12 Q. Did you or anyone at Davis Polk have</p> <p>13 any discussions with Morgan Stanley or anyone</p> <p>14 else concerning what statements should or should</p> <p>15 not be made at the public announcement of the</p> <p>16 acquisitions?</p> <p>17 A. I do not recall any specific</p> <p>18 discussions, any general discussions regarding</p> <p>19 those matters six years -- today. I just don't</p> <p>20 recall anything specific.</p> <p>21 Q. And so you don't know whether those</p> <p>22 discussions occurred or not?</p> <p>23 A. I do not recall whether they occurred</p> <p>24 or not.</p> <p>25 Q. Is that different from my question?</p>	<p style="text-align: right;">Page 40</p> <p>1 Lurie</p> <p>2 A. Yes.</p> <p>3 Q. So you would expect to ask about the</p> <p>4 first quarter as one of your first questions on</p> <p>5 the transaction?</p> <p>6 A. I would expect to ask about it many</p> <p>7 times to get updates during the course of it. I</p> <p>8 wouldn't necessarily say it's one of the first</p> <p>9 questions.</p> <p>10 Q. Early and often?</p> <p>11 A. Early and often is fair.</p> <p>12 Q. And did Sunbeam give you answers to</p> <p>13 those questions?</p> <p>14 A. I presume they gave us answers to</p> <p>15 whatever questions we would ask -- we would have</p> <p>16 asked.</p> <p>17 Q. Was it your custom to ask specific</p> <p>18 questions about what the numbers were or more</p> <p>19 general trends or both?</p> <p>20 A. Both. As a general matter, it would</p> <p>21 be both.</p> <p>22 Q. And in the specific context of this</p> <p>23 transaction, do you have any reason to believe</p> <p>24 that you didn't ask both specific numbers and</p> <p>25 trends?</p>
<p style="text-align: right;">Page 39</p> <p>1 Lurie</p> <p>2 A. I don't recall. Something may have</p> <p>3 happened. I may have known something closer to</p> <p>4 1998 or remembered something in '98, '99, 2000</p> <p>5 that I just don't know today. So I'm using the</p> <p>6 word, I don't recall those discussions.</p> <p>7 Q. Well, let give you something a little</p> <p>8 more specific.</p> <p>9 Do you recall any discussions in your</p> <p>10 first days on the Sunbeam transaction concerning</p> <p>11 Sunbeam's first quarter 1998 performance?</p> <p>12 A. I again don't recall any specific</p> <p>13 discussions relating to first quarter or year</p> <p>14 numbers estimates at that point in time or later</p> <p>15 on. We generally would have had those kind of</p> <p>16 discussions, though that would be part of the</p> <p>17 normal due diligence investigation in any</p> <p>18 offering.</p> <p>19 Q. So while you don't recall those</p> <p>20 discussions today, you believe that you would</p> <p>21 have had those discussions in this transaction?</p> <p>22 A. I believe that is correct.</p> <p>23 Q. Would that be an ongoing discussion</p> <p>24 or subject of inquiry during the course of the</p> <p>25 transaction?</p>	<p style="text-align: right;">Page 41</p> <p>1 Lurie</p> <p>2 A. I believe we would have asked both.</p> <p>3 Q. Did you make any trips to Florida?</p> <p>4 A. I don't recall making. I may have.</p> <p>5 I just don't recall where the due diligence --</p> <p>6 where the organizational meeting was, which often</p> <p>7 might have been at the issuer in Florida.</p> <p>8 Q. It was still late winter in New York,</p> <p>9 and you don't remember a trip to South Florida?</p> <p>10 A. Not now, not six years later.</p> <p>11 Q. So, again, that may have happened;</p> <p>12 you just don't remember?</p> <p>13 A. It might happened. I do not recall</p> <p>14 today where those meetings took place.</p> <p>15 Q. But you did have organizational</p> <p>16 meetings early in the assignment?</p> <p>17 A. Organizational meeting, yes, would</p> <p>18 have been the first thing in the assignment. And</p> <p>19 then there would have been other meetings</p> <p>20 throughout the process.</p> <p>21 Q. And the organizational meeting would</p> <p>22 be among Davis Polk, Morgan Stanley, Sunbeam and</p> <p>23 Skadden Arps. Is that --</p> <p>24 A. Correct. And their accountants.</p> <p>25 Q. So Arthur Andersen would be at the</p>

<p style="text-align: right;">Page 42</p> <p>1 Lurie</p> <p>2 organizational meeting?</p> <p>3 A. Again, I do not recall who was at an</p> <p>4 organizational meeting. It would be very common</p> <p>5 to have the accountants in any transaction at an</p> <p>6 organizational meeting.</p> <p>7 Q. So, again, Andersen may have been</p> <p>8 there; they may not. You just don't remember?</p> <p>9 A. That's correct.</p> <p>10 Q. While we're on the organizational</p> <p>11 meeting, I want to show you a document. This has</p> <p>12 been marked previously as CPH 207.</p> <p>13 Mr. Lurie, if you can just flip</p> <p>14 through that, and then I'm going to ask you a</p> <p>15 handful of specific questions.</p> <p>16 A. Sure. Okay.</p> <p>17 Q. Does this appear to be the</p> <p>18 organizational materials relating to the Sunbeam</p> <p>19 transaction?</p> <p>20 A. It looks like an organizational</p> <p>21 meeting's document that Morgan Stanley would have</p> <p>22 prepared. Whether this is the one we had at the</p> <p>23 meeting, I don't recall.</p> <p>24 Q. Would Davis Polk have been involved</p> <p>25 in commenting on these materials before they were</p>	<p style="text-align: right;">Page 44</p> <p>1 Lurie</p> <p>2 A. I don't recall if it was -- if it was</p> <p>3 accelerated or if it was considered an</p> <p>4 accelerated basis at this point. I mean, I see</p> <p>5 the language, but I don't have any recollection.</p> <p>6 Q. Do you have any basis to disagree</p> <p>7 with the language and the text that we just</p> <p>8 looked at?</p> <p>9 A. I don't have any reason to disagree.</p> <p>10 I don't have any reason to agree.</p> <p>11 Q. Let me put it more generally -- well,</p> <p>12 let me strike that. If you look at the calendar</p> <p>13 at Pages -- it's Pages 9 and 10 of the original</p> <p>14 numbering.</p> <p>15 A. Uh-huh.</p> <p>16 Q. This suggests that closing would</p> <p>17 occur on the convertible transaction 24 days</p> <p>18 after the organizational meeting?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Does that strike you as an</p> <p>21 accelerated schedule?</p> <p>22 A. I've done deals faster. I've done</p> <p>23 deals slower. I've done deals about the same</p> <p>24 time frame. I would not necessarily consider</p> <p>25 that fast, slow; just the time frame we got it</p>
<p style="text-align: right;">Page 43</p> <p>1 Lurie</p> <p>2 circulated?</p> <p>3 A. It varies from transaction to</p> <p>4 transaction. Sometimes we would have been asked</p> <p>5 to review it, give comments. Sometimes we just</p> <p>6 got them.</p> <p>7 Q. And in this transaction --</p> <p>8 A. I do not -- I do not recall what</p> <p>9 involvement we had, if any, in the preparation of</p> <p>10 this (indicating).</p> <p>11 Q. I want to call your attention to the</p> <p>12 last page of this document first.</p> <p>13 A. The initial information requirement</p> <p>14 page?</p> <p>15 Q. Exactly. And there's a text box</p> <p>16 which I will read for the record. It states:</p> <p>17 "To prepare a 144A offering memorandum and</p> <p>18 senior credit facility's information memorandum</p> <p>19 on an accelerated basis, the following</p> <p>20 information must be supplied within the first two</p> <p>21 weeks of drafting."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Was the Sunbeam transaction one that</p> <p>25 was occurring on an accelerated basis?</p>	<p style="text-align: right;">Page 45</p> <p>1 Lurie</p> <p>2 done in.</p> <p>3 Q. So you didn't, as a result of that</p> <p>4 time frame, view this as an accelerated</p> <p>5 transaction?</p> <p>6 A. Not today. To my recollection, I</p> <p>7 don't. I didn't then. I don't know what I</p> <p>8 thought then.</p> <p>9 Q. If you could look at Page 3 of the</p> <p>10 original numbering. And for the record, that's</p> <p>11 Bates Page CPH 0471617.</p> <p>12 Do you see there are two columns</p> <p>13 there?</p> <p>14 A. Yeah.</p> <p>15 Q. One for the convertible and one for</p> <p>16 the senior credit?</p> <p>17 A. Yes.</p> <p>18 Q. Did you have any responsibility for</p> <p>19 the senior credit facilities?</p> <p>20 A. I don't believe so, but I don't</p> <p>21 recall. Responsibility in drafting, no. That</p> <p>22 would have been handled by other people. To the</p> <p>23 extent it needed to be described in the offering</p> <p>24 memo, I probably was looking at other documents.</p> <p>25 Q. Were other Davis Polk lawyers, to</p>

Page 46

1 Lurie
2 your knowledge, working on that side of the deal?
3 A. I believe they were, yes.
4 Q. Do you know within Morgan Stanley
5 whether a different group of Morgan Stanley
6 personnel were working on the senior credit
7 facilities?
8 A. I don't specifically today recall if
9 there was. Generally, it would have been a
10 different group.
11 Q. Would you expect any interface, so to
12 speak, between the different teams at Davis Polk
13 or at Morgan Stanley?
14 A. Interface amongst the Davis Polk
15 teams and amongst the Morgan Stanley teams or
16 cross --
17 Q. The first.
18 A. Yes. I can't speak for Morgan
19 Stanley, but I think there would be interface
20 between the offering side at Davis Polk and the
21 debt -- the credit facility side. We had to work
22 together to -- so they would have to give me
23 description of documents or review the
24 description in an offering memo of the credit
25 facilities, or I would have potentially drafted

Page 47

1 Lurie
2 it. I don't recall what I did. And they would
3 have reviewed it.
4 Q. But you can't speak to what Morgan
5 Stanley did as far as interaction between the
6 senior credit and the debt --
7 A. I can't speak to what they did.
8 Generally, in a deal, any deal, there would have
9 been interaction between the underwriting
10 providing part of the bank and the credit
11 facility provider part of the bank.
12 Q. Why do you say that?
13 A. Practice.
14 Q. Just experience?
15 A. Experience and practice.
16 Q. If you could look under the zero
17 coupon convertible column again on Page 3 of
18 Exhibit CPH 207. There's an Item D that states,
19 "next quarterly earnings announcement."
20 What does that refer to?
21 A. The next announcement that the
22 company would make regarding quarterly earnings.
23 Q. Okay. And as I read this list of
24 Items A through J, that is arranged in roughly
25 chronological order of events; is that correct?

Page 48

1 Lurie
2 A. A through J?
3 Q. Correct.
4 A. Yeah. That's pretty close, yes.
5 Q. So it was contemplated, at least as
6 of March 3, 1998, that Sunbeam would make a
7 quarterly earnings announcement during the
8 process of writing the convertible?
9 A. It looks like that way.
10 Q. Do you know whether that earnings
11 announcement occurred?
12 A. Well, there was -- my recollection is
13 there was an announcement. It was pre the end of
14 the quarter. I believe they were a March 30 or a
15 March 28th, 29, whatever the last Friday of March
16 was. So their quarterly earnings announcement
17 normally would have been after that.
18 Q. When you say you recall something
19 before the end of the quarter --
20 A. Yes.
21 Q. -- what are you referring to?
22 A. The press release that went out the
23 18th or 19th of March regarding expectations,
24 estimates, forecasts for the quarter.
25 Q. That press release did not refer to

Page 49

1 Lurie
2 earnings in any way, did it?
3 A. I don't believe -- I don't recall.
4 But I don't believe it did. I'd have to look at
5 it to remember exactly what it covered.
6 Q. So that certainly is not the
7 quarterly earnings announcement referenced by
8 Item D on Page 3?
9 A. Probably not. This was probably
10 talking about a later postquarter announcement.
11 Q. So at least as of March 3, it was
12 contemplated there would be a quarterly earnings
13 announcement before the close of the convertible?
14 A. It looks that way, yeah. I mean, to
15 be fair, you can look at this, and they could
16 just have been asking the question, When would be
17 the next earnings quarterly announcement? And
18 someone might have said, depending when we close,
19 it could be before or after. I mean, it's in
20 here on the list. But they might have just
21 wanted to know when the next announcement was to
22 be able to take it into consideration.
23 Q. Didn't you tell me, though, that
24 Items A through J are in roughly chronological
25 order?

Page 50

1 Lurie

2 A. They are. But it doesn't necessarily

3 mean to me, just looking at it -- yes, you can

4 look and see there might have been. But whether

5 that would have been before rating agency

6 presentations and before sales force

7 presentations -- I wouldn't necessarily say just

8 because D is there that that means that would be

9 chronologically before that. It may have been

10 simply that this would occur.

11 Q. Although you mentioned the rating

12 agency presentation as an example.

13 Do you see the parenthetical after

14 that?

15 A. It says, "none?"

16 Q. Exactly. I don't see any question

17 concerning whether Item D would occur.

18 Do you recall any question about that

19 issue?

20 A. I don't recall specifically

21 discussing the issue.

22 Q. Now, under the title on the same Page

23 3 of Exhibit 207, there is a section called

24 "Composition of Working Group."

25 Do you see that?

Page 51

1 Lurie

2 A. Uh-huh.

3 Q. Item C in the left column, the

4 initial purchaser is Morgan Stanley?

5 A. Correct.

6 Q. And D, initial purchaser's counsel,

7 that's Davis Polk?

8 A. Correct.

9 Q. If you would flip back to the

10 calendar that we looked at briefly, which is on

11 Page 9 continuing on to 10 of Exhibit 207. The

12 timetable entry for March 5th provides "business

13 due diligence, including projections."

14 Do you see that?

15 A. Yes, I do.

16 Q. And Davis Polk is listed among those

17 having responsibility?

18 A. Uh-huh.

19 Q. For that item?

20 A. Uh-huh.

21 Q. And Morgan Stanley is as well?

22 A. Yes.

23 MR. WISE: So is Skadden --

24 A. And so is Skadden.

25 MR. WISE: I mean, we can all read

Page 52

1 Lurie

2 this document.

3 BY MR. JOHNSON:

4 Q. Sure. Sure. Why was --

5 A. I mean, you also used the word

6 "responsibility." And I know the word

7 "responsibility" is there. This probably just

8 means who would be attending the business due

9 diligence, not necessarily who had responsibility

10 for preparing projections.

11 Q. Well, let's focus on that.

12 Did Morgan Stanley have any

13 responsibility for business due diligence on

14 Sunbeam's projections?

15 A. Yes.

16 Q. And did Davis Polk?

17 A. Yes.

18 Q. Why is due diligence performed on

19 projections?

20 A. Well, due diligence is performed on a

21 lot of different things. And you sit and you ask

22 questions. You understand the assumptions used.

23 You try to get a feeling for the basis upon which

24 the projections are prepared.

25 Q. And the reason you do those things?

Page 53

1 Lurie

2 A. As part of your due diligence for

3 your offering.

4 Q. And that is, with respect to

5 projections in particular, to determine that the

6 projections are well-grounded, in fact?

7 A. That they're fair, reasonable

8 projections.

9 Q. What specifically did Morgan Stanley

10 do in terms of due diligence on projections?

11 A. I have today, six years later, no

12 recollection to date of any discussion regarding

13 the projections, what we might have done, who we

14 might have spoken to.

15 Q. Do you remember anybody from Sunbeam

16 who worked with Morgan Stanley or Davis Polk on

17 due diligence?

18 A. No one specific. There were people

19 from Sunbeam, obviously, involved.

20 Q. Do you remember Al Dunlap?

21 A. I do not recall ever speaking to or

22 meeting or being in a meeting with Mr. Dunlap on

23 the phone or at present.

24 Q. How about Russ Kersh?

25 A. The name rings a bell. I assume --

Page 54

1 Lurie
2 and he was on a number of meetings and phone
3 calls. But I could not today tell you which
4 ones.
5 Q. He was the CFO of the company?
6 A. I believe so.
7 Q. You would expect to have multiple
8 conversations with the CFO of the company?
9 A. Absolutely.
10 Q. How about Bob Gluck, the controller?
11 A. The name doesn't ring a bell. But,
12 again, it would be very normal to have the
13 controller involved throughout the process.
14 Q. Do those names trigger the memory of
15 any other names from Sunbeam?
16 A. I want to say Hennesy, but I can't
17 recall. I may be confusing deals at this point.
18 Q. Did you deal with Janet Kelly?
19 A. The name does not ring a bell.
20 Q. David Fanin?
21 A. That names rings a bell. He would
22 have been involved. I don't recall what his tile
23 was. But it's a name that came up and, I think,
24 would have been involved.
25 Q. I'll tell you, he was the general

Page 55

1 Lurie
2 counsel of the company.
3 A. Okay.
4 Q. And, again, you would expect multiple
5 conversations with the general counsel of the
6 issuer?
7 A. I would have expected he would have
8 been involved in a variety of different aspects
9 of the transaction.
10 Q. Can you recall any communications
11 that, in fact, occurred with Mr. Fanin?
12 A. Not today.
13 Q. How about Don Uzzi? Do you remember
14 that name?
15 A. That name does ring a bell.
16 Q. Do you remember who Mr. Uzzi was?
17 A. Fairly senior -- the name rings a
18 bell. He was a fairly senior -- I don't know --
19 marketing guy, maybe, or something.
20 Q. He was the VP of sales.
21 Does that help you remember whether
22 you had any conversations with him --
23 A. He would have certainly been involved
24 throughout the process on the due diligence
25 process.

Page 56

1 Lurie
2 Q. You mentioned that Mr. Uzzi was a
3 senior executive.
4 Is it fair to say that Morgan Stanley
5 talked to personnel other than senior executives?
6 A. They generally would talk to a
7 variety of different people.
8 Q. Do you know whether Morgan Stanley
9 did so in this transaction?
10 A. I have no -- have recollection today
11 of who they would have spoken to back then.
12 Q. So as you sit here, you have no basis
13 to -- strike that.
14 As you sit here, you have no basis to
15 believe that Morgan Stanley did not talk to
16 low-level employees of the company?
17 A. Could you repeat that? There were a
18 couple of double-negatives there. So I have no
19 recollection today whether they spoke to or did
20 not speak to junior people. Or you used
21 "lower-level employees."
22 Q. But you would expect those
23 conversations to occur as part of due diligence?
24 A. Well, in part. It sort of means --
25 what do you mean by lower level and junior level

Page 57

1 Lurie
2 employees? I mean, they would not necessarily
3 have spoken to someone in a factory.
4 Q. But they wouldn't limit their
5 communications to senior management?
6 A. There would have been communications
7 to a variety of people.
8 Q. But, again, you don't know any
9 specifics?
10 A. Correct. I don't recall anything
11 specific.
12 Q. Going back again to Page 9 of Exhibit
13 207. The entry on March 9th includes an item
14 indicating that Davis Polk would receive drafts
15 of auditors' comfort letters.
16 Do you see that?
17 A. Yes, I do.
18 Q. Did you, in fact, receive drafts of
19 the auditors' comfort letters?
20 A. I would have certainly during the
21 course received one or more drafts. Whether I
22 received one on May -- excuse me -- March 9, I
23 could not tell you. But I would have received
24 drafts and reviewed drafts during the course.
25 Q. This timetable here on Page 9 and 10

Page 58

1 Lurie
2 provides that you would receive drafts exactly
3 two weeks before the pricing of the convertible
4 transaction.
5 Do you see that?
6 A. I see the 9th. And the pricing two
7 weeks is 23.
8 Q. So is that two weeks time frame
9 customary as far as when you would start
10 receiving drafts of the comfort letter?
11 A. Customary is a very broad term. I've
12 received them three months in advance. I've
13 received them 48 hours in advance. I've received
14 them two weeks in advance on various deals.
15 Q. Is there any reason why you would
16 expect to receive a draft two weeks in advance of
17 a closing?
18 A. That's just when it was on here. I
19 have no reason -- no recollection of why they
20 picked that date for the first draft, even if it
21 was received that date.
22 Q. You say that sometimes you receive a
23 draft as late 48 hours before a pricing?
24 A. Uh-huh.
25 Q. Is that the shortest time period

Page 59

1 Lurie
2 you've ever had on a draft?
3 A. Yeah. Maybe I may have had one the
4 day before pricing. Different kind of deals, you
5 get different kind of things.
6 Q. How about this convertible offering?
7 Is that -- does that inform how soon --
8 A. Two weeks doesn't say a lot to me. I
9 mean, it doesn't mean anything that I got it two
10 weeks. If I had gotten it in the week before, we
11 would have still gone through the same process.
12 Q. So the nature of the transaction
13 doesn't give you an idea of how far in advance of
14 pricing you would get a draft?
15 A. No.
16 Q. I note here that the responsibility
17 for receiving drafts of the auditors' comfort
18 letter rests with Andersen, Davis Polk and
19 Skadden.
20 Do you see that?
21 A. Yes.
22 Q. Would you share drafts, if you
23 received them, with Morgan Stanley?
24 A. Would I?
25 Q. If you received drafts of the comfort

Page 60

1 Lurie
2 letter, would you share that with Morgan Stanley?
3 A. I would have sent them a copy. That
4 would be my practice.
5 Q. And you have no reason to believe
6 that you deviated from your practice in the
7 context of the Sunbeam transaction?
8 A. Correct. Again -- but I don't recall
9 having sent it to them. But that would have been
10 my practice.
11 Q. Did Davis Polk or Morgan Stanley
12 provide any content or revisions to the offering
13 memorandum?
14 A. We would have clearly reviewed the
15 offering memorandum. We would have given
16 components on the offering memorandum. We would
17 potentially have provided suggested revisions,
18 riders. We would have received comments and
19 looked at comments from Skadden, from the
20 company, from the accountants, from whoever else
21 might have been involved.
22 There was probably descriptions of
23 the three companies being acquired. We might
24 have received comments from those management --
25 the management of those companies on their

Page 61

1 Lurie
2 sections.
3 Q. But Skadden or Sunbeam was the
4 keeper, so to speak, of the offering memorandum?
5 A. I believe Skadden was sort of. It
6 was their master.
7 Q. But you had opportunity to comment on
8 the offering memorandum?
9 A. Yes.
10 Q. Do you recall, as you sit here, any
11 of the revisions or suggestions you had on the
12 offering memorandum?
13 A. I couldn't tell you six years later
14 what my comments were.
15 Q. Let's see if I can refresh your
16 memory a little bit.
17 MR. JOHNSON: We're going to mark
18 this as CPH Exhibit 230.
19 (CPH Exhibit 230, 3/10/98 memo re:
20 Draft Customer Concentration Risk Factor,
21 Bates-stamped CPH 0635890 through CPH
22 0635891, marked for identification, as of
23 this date.)
24 BY MR. JOHNSON:
25 Q. Mr. Lurie, we've given you what we've

<p style="text-align: right;">Page 62</p> <p>1 Lurie</p> <p>2 marked CPH Exhibit 230, which, for the record,</p> <p>3 has the Bates stamp CPH 0635890 through '891.</p> <p>4 I'd ask you just to review that for me.</p> <p>5 A. Okay.</p> <p>6 Q. Does this Exhibit 230 refresh your</p> <p>7 memory about a proposed revision that you had on</p> <p>8 the offering memorandum?</p> <p>9 A. Other than it's got my name</p> <p>10 (indicating), it seems to -- appears to be</p> <p>11 something that I would have sent out. I have no</p> <p>12 recollection of this memo or specifically</p> <p>13 drafting this proposed rider insert.</p> <p>14 Q. And this is a customer concentration</p> <p>15 risk factor insert?</p> <p>16 A. That's what it says.</p> <p>17 Q. Do you have any recollection as to</p> <p>18 why you would propose this revision?</p> <p>19 A. In this specific transaction,</p> <p>20 Sunbeam's transaction, I have no recollection of</p> <p>21 how this came up or why we decided to put this</p> <p>22 in. I will tell you, generally risk factors or</p> <p>23 paragraphs like that are very common in public</p> <p>24 offerings, in 144A offering memos.</p> <p>25 Q. Did you view -- based on your</p>	<p style="text-align: right;">Page 64</p> <p>1 Lurie</p> <p>2 A. They went bankrupt. It was after</p> <p>3 their IPO. It was after at least one other,</p> <p>4 possibly two other offerings after their IPO.</p> <p>5 But they did, I believe, ultimately go bankrupt.</p> <p>6 Q. Did Morgan Stanley get sued in</p> <p>7 connection with their IPOs?</p> <p>8 A. I believe they did get sued --</p> <p>9 MR. WISE: Not in connection with the</p> <p>10 IPO.</p> <p>11 BY MR. JOHNSON:</p> <p>12 Q. Do you recall, based on Mr. Wise's</p> <p>13 testimony --</p> <p>14 A. I recall they got sued. I do not --</p> <p>15 I believe from what Bob said, it would not have</p> <p>16 been in connection with the IPO.</p> <p>17 Q. Other than what Bob said, do you have</p> <p>18 any basis for believing it was not in connection</p> <p>19 with the IPO --</p> <p>20 A. I have no recollection. That was</p> <p>21 literally 1981 or '82, '83, maybe.</p> <p>22 Q. If you look at the last sentence of</p> <p>23 your proposed revision in Exhibit 230. And if</p> <p>24 you would be good enough to read that for the</p> <p>25 record, I'd appreciate that.</p>
<p style="text-align: right;">Page 63</p> <p>1 Lurie</p> <p>2 investigation of Sunbeam, did you view customer</p> <p>3 concentration as a genuine risk with Sunbeam?</p> <p>4 A. I can't tell you today what my</p> <p>5 thoughts were about risks back then. I have no</p> <p>6 specific recollection regarding what the thinking</p> <p>7 was or why we would have proposed this.</p> <p>8 Q. Had you in your practice had</p> <p>9 experience with customer concentration problems?</p> <p>10 A. Yes.</p> <p>11 Q. And can you recall a specific example</p> <p>12 of that?</p> <p>13 A. Yes.</p> <p>14 Q. Who was the issuer in that</p> <p>15 transaction?</p> <p>16 A. MiniScribe.</p> <p>17 Q. Why are you laughing?</p> <p>18 A. It's a long story.</p> <p>19 Q. In the MiniScribe transaction, did</p> <p>20 you represent Morgan Stanley?</p> <p>21 A. Yes. I believe it was, actually.</p> <p>22 Q. Was that a public offering?</p> <p>23 A. It was an IPO.</p> <p>24 Q. And MiniScribe, did they go bankrupt</p> <p>25 after their IPO?</p>	<p style="text-align: right;">Page 65</p> <p>1 Lurie</p> <p>2 A. The last sentence?</p> <p>3 Q. Yes.</p> <p>4 A. "If any of these customers or any of</p> <p>5 the company's other significant customers were to</p> <p>6 substantially reduce their orders or cease buying</p> <p>7 from the company, such an occurrence would have a</p> <p>8 material adverse effect on the company's business</p> <p>9 should the company be unable to replace that</p> <p>10 business with other customers."</p> <p>11 Q. Was there any discussion about that</p> <p>12 sentence in particular in connection with your</p> <p>13 circulation of this proposed revision?</p> <p>14 A. Today, I don't recall -- again, I</p> <p>15 don't recall drafting this (indicating). I don't</p> <p>16 recall any specific discussions on this sentence</p> <p>17 (indicating) or any other sentence. I don't</p> <p>18 recall if this was actually drafted by me or</p> <p>19 someone else, that I reviewed that and we just</p> <p>20 attached to a memo that appears to be under my</p> <p>21 signature, that I would have sent out.</p> <p>22 Q. Do you have any reason to believe</p> <p>23 that last sentence that you just read for the</p> <p>24 record there was not an accurate statement?</p> <p>25 A. It was not an accurate statement?</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 Lurie</p> <p>2 Q. Correct.</p> <p>3 A. It seems that that would be the</p> <p>4 normal conclusion. "You might have in this kind</p> <p>5 of risk factor" is the way I phrased it.</p> <p>6 Q. I'll represent to you that sentence</p> <p>7 does not appear in the offering memorandum.</p> <p>8 A. Okay.</p> <p>9 Q. Do you have any idea why that is?</p> <p>10 A. I have no recollection regarding any</p> <p>11 discussions about putting this in or why that</p> <p>12 might have been deleted.</p> <p>13 Q. I'll also represent to you -- and</p> <p>14 this is just to save time. If you want to see</p> <p>15 the offering memorandum, I'm happy to show it to</p> <p>16 you.</p> <p>17 A. Okay. No.</p> <p>18 Q. The title of the risk factor as it</p> <p>19 appears in the offering memorandum is "no long</p> <p>20 term contracts" as opposed to what you have here</p> <p>21 --</p> <p>22 A. -- "customer concentrations."</p> <p>23 Q. Do you have any idea why that change</p> <p>24 was made?</p> <p>25 A. This is six years later. I don't</p>	<p style="text-align: right;">Page 68</p> <p>1 Lurie</p> <p>2 underwriter's counsel, to be on the phone, to</p> <p>3 call customers. It would be also customary</p> <p>4 probably to call suppliers.</p> <p>5 Q. To determine what inventory they have</p> <p>6 on hand and what their buying expectations are?</p> <p>7 A. Generally. Or to find out what the</p> <p>8 relationship is, how the relationship is going,</p> <p>9 what do they think of the company.</p> <p>10 Q. And did that happen in connection</p> <p>11 with the Sunbeam transaction?</p> <p>12 A. I today, 2004, don't have any</p> <p>13 recollection of what -- who or what calls may</p> <p>14 have occurred and who would have made them and</p> <p>15 who would have been on them.</p> <p>16 Q. Do you have any reason to believe</p> <p>17 those calls didn't occur?</p> <p>18 A. I have no reason to believe they did</p> <p>19 not occur, no reason at this point to recollect</p> <p>20 whether they did occur.</p> <p>21 Q. If you look at the first page of</p> <p>22 Exhibit 230 --</p> <p>23 A. Which is this, this one</p> <p>24 (indicating)?</p> <p>25 Q. Correct.</p>
<p style="text-align: right;">Page 67</p> <p>1 Lurie</p> <p>2 recall. That to me is no big deal to change the</p> <p>3 heading.</p> <p>4 Q. When there is customer concentration,</p> <p>5 is it appropriate to diligence the customers to</p> <p>6 determine what their plans are?</p> <p>7 MR. CLARE: Objection to form;</p> <p>8 incomplete; hypothetical.</p> <p>9 You can answer.</p> <p>10 A. Can you now repeat the question.</p> <p>11 BY MR. JOHNSON:</p> <p>12 Q. Sure.</p> <p>13 When there is a risk associated with</p> <p>14 customer concentration, is it appropriate to</p> <p>15 diligence the customers?</p> <p>16 A. It would generally be the case that</p> <p>17 there would be calls with major customers. If</p> <p>18 there's specific concentrations in any</p> <p>19 transaction with any issuer, you would obviously</p> <p>20 want to call the top ones.</p> <p>21 Now, there is concentration here -- I</p> <p>22 don't know if these are the right numbers. But</p> <p>23 ten customers accounting for 35 percent,</p> <p>24 according to this draft, it would be normal to</p> <p>25 call -- for the underwriter, possibly the</p>	<p style="text-align: right;">Page 69</p> <p>1 Lurie</p> <p>2 A. Okay.</p> <p>3 Q. The memorandum is addressed to Janet</p> <p>4 Kelly, who we've already mentioned today?</p> <p>5 A. It still doesn't ring a bell who it</p> <p>6 is.</p> <p>7 Q. In case you're curious --</p> <p>8 A. Who is it?</p> <p>9 Q. She was an assistant general counsel</p> <p>10 at Sunbeam at the time.</p> <p>11 A. Okay.</p> <p>12 Q. Do you know who Greg Femicola is?</p> <p>13 A. He was the partner at Skadden.</p> <p>14 Q. And Todd Freed?</p> <p>15 A. He was an associate at Skadden.</p> <p>16 Q. Having looked at that proposed</p> <p>17 revision, do you recall any other revisions that</p> <p>18 Davis Polk or Morgan Stanley proposed to the</p> <p>19 offering memorandum?</p> <p>20 A. No.</p> <p>21 Q. I'm going to give you what we marked</p> <p>22 previously as CPH Exhibit 11 (handing).</p> <p>23 A. Do you want me to read each of</p> <p>24 these?</p> <p>25 Q. That won't be necessary. I'm going</p>

<p style="text-align: right;">Page 70</p> <p>1 Lurie</p> <p>2 to ask you about just the first rider --</p> <p>3 A. Rider 1?</p> <p>4 Q. Correct.</p> <p>5 A. "Certain" something.</p> <p>6 Q. "Certain refinements."</p> <p>7 A. Okay.</p> <p>8 Q. Having looked at Rider 1 and the</p> <p>9 cover memo contained in CPH Exhibit 11, does that</p> <p>10 refresh your memory as to revisions proposed by</p> <p>11 John Tyree to the offering memorandum?</p> <p>12 A. Other than this says it's a memo from</p> <p>13 him to a variety of people, I have no</p> <p>14 recollection of him proposing this. But I see</p> <p>15 what it says.</p> <p>16 Q. Rider 1 is directed to the successful</p> <p>17 restructuring of Sunbeam; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And is it the case that Morgan</p> <p>20 Stanley would need to satisfy itself that the</p> <p>21 company had, in fact, been successfully</p> <p>22 restructured?</p> <p>23 A. They would have looked into the</p> <p>24 restructuring and what transpired and what the</p> <p>25 results appear to be, yes.</p>	<p style="text-align: right;">Page 72</p> <p>1 Lurie</p> <p>2 A. Okay.</p> <p>3 Q. If you can read it to yourself, and</p> <p>4 then I'm going to have a few questions.</p> <p>5 A. The last paragraph?</p> <p>6 Q. Correct. Beginning the restructuring</p> <p>7 resulted.</p> <p>8 Do you see that?</p> <p>9 A. Zero point 2 percent. Okay. What's</p> <p>10 the word after --</p> <p>11 Q. Operation -- excuse me. Operating</p> <p>12 margins reaching 20 percent?</p> <p>13 A. Okay.</p> <p>14 Q. And I apologize for the copy.</p> <p>15 A. Don't worry.</p> <p>16 Q. Did Morgan Stanley have any</p> <p>17 responsibility to determine the sustainability of</p> <p>18 this growth rate or the operating margins?</p> <p>19 A. They had a due diligence obligation</p> <p>20 to review. They had a due diligence obligation</p> <p>21 to consider trends. They had a due diligence</p> <p>22 obligation generally with respect to the</p> <p>23 transaction.</p> <p>24 I don't want to put words in anyone's</p> <p>25 mouth about specific obligations, but they would</p>
<p style="text-align: right;">Page 71</p> <p>1 Lurie</p> <p>2 Q. And this memo that we're looking at,</p> <p>3 CPH Exhibit 11, is dated March 9, 1998?</p> <p>4 A. Correct.</p> <p>5 Q. Do you know how long Mr. Tyree had</p> <p>6 been working on this transaction as of March 9?</p> <p>7 A. I have absolutely no idea.</p> <p>8 Q. Do you know what Mr. Tyree had done</p> <p>9 to satisfy himself as to the validity of the</p> <p>10 turnaround by March 9?</p> <p>11 A. I have no recollection today what</p> <p>12 anyone did relating to this paragraph.</p> <p>13 Q. Is it fair to say that the</p> <p>14 restructuring of Sunbeam was an important part of</p> <p>15 the story for the street concerning Sunbeam?</p> <p>16 A. I'm going to assume today that it</p> <p>17 might have been. But I have no recollection</p> <p>18 today what the thinking behind putting together</p> <p>19 the offering circular was back in 1998.</p> <p>20 This kind of disclosure would be</p> <p>21 disclosure you would normally see. They're SEC</p> <p>22 requirements actually to put in restructuring</p> <p>23 information.</p> <p>24 Q. The last paragraph of Rider 1</p> <p>25 indicates percentages of --</p>	<p style="text-align: right;">Page 73</p> <p>1 Lurie</p> <p>2 have certainly -- I mean, this information could</p> <p>3 have been in the company's 10(k) for all I know.</p> <p>4 And he could have just taken it out of that.</p> <p>5 Q. Other than taking it out of the</p> <p>6 10(k), would there be any other --</p> <p>7 A. You would have still due-diligenced</p> <p>8 it, but --</p> <p>9 Q. And to determine its sustainability?</p> <p>10 A. To look into sustainability, to look</p> <p>11 into a whole variety of things. Would it grow?</p> <p>12 Would it stay the same? Would it decrease a</p> <p>13 little bit?</p> <p>14 Q. And as you sit here today, you have</p> <p>15 no reason to believe that Mr. Tyree did not</p> <p>16 undertake that due diligence?</p> <p>17 A. I have no reason to believe he did</p> <p>18 not do that due diligence. But I don't recall</p> <p>19 what due diligence he or I or anyone else did on</p> <p>20 this -- on this paragraph -- paragraphs.</p> <p>21 Q. So you assume that he did it, but you</p> <p>22 don't know what he did?</p> <p>23 A. I assume something might have</p> <p>24 occurred, but I don't know if it did occur.</p> <p>25 Q. Now, you participated on an</p>

Page 74

1 Lurie
2 accounting due diligence call in this
3 transaction; is that correct?
4 A. I assume I did.
5 Q. Why do you assume?
6 A. Because I don't have any
7 recollections from today what I did in 1998.
8 Q. But in that time frame --
9 A. It would have been normal. And I
10 assume I did participate in one or more calls
11 with the accountants.
12 Q. When you say "one or more," is it
13 typical, is it customary to have more than one
14 phone call?
15 A. Oh, God, yeah. It's more than just
16 calls. There could have been drafting sessions.
17 You could have been discussing MD&A and
18 financials with them. You could have called them
19 on those things. You could have questions. You
20 could get phone calls to discuss comfort letters,
21 to give comments on comfort letters, to ask for
22 additions to comfort letters. There's a myriad
23 of reasons to be talking with accountants.
24 Q. So it's customary to be in frequent
25 communications with the accountants?

Page 75

1 Lurie
2 A. Yes.
3 Q. We're going to deal with some of this
4 stuff in more detail, but I want to see what you
5 can specifically remember as to your dealings
6 with the accountants in this case. We talked
7 about the accountant due diligence call. And
8 your testimony is you assume you participated in
9 at least one call, but you don't remember; is
10 that correct?
11 A. That's right.
12 Q. What other interactions did you have
13 with Sunbeam's accountants in connection with
14 this transaction?
15 A. As I said just a minute ago, it could
16 have been a whole myriad of them.
17 Q. I don't want to interrupt. Let's
18 put the could-have-beens aside for a second.
19 Do you remember any other meetings
20 with any other accountants?
21 A. I remember the accountants. I don't
22 remember who being at the printers the night we
23 printed. I recall generic -- I recall speaking
24 to them. I couldn't tell you which ones I spoke
25 to. I couldn't tell you today what the substance

Page 76

1 Lurie
2 of the conversations were. It could have been --
3 it would have been on a variety of different
4 issues relating to the offering.
5 Q. We've already mentioned that Arthur
6 Andersen was the auditor of Sunbeam.
7 Do you recall that?
8 A. Yes.
9 Q. Do you remember the names of any of
10 the auditors from Andersen?
11 A. Other than I was reminded the names
12 yesterday, I'm not even sure I remember today
13 what their names were, but I remember there were
14 three -- there were two people principally --
15 they were managers, I believe their title was --
16 and there was a partner.
17 Q. So you had dealings with three folks
18 from Andersen?
19 A. Probably all three, yeah.
20 Q. Did you learn at any point prior to
21 the closing of the convertible offering that
22 Sunbeam had bill-and-hold sales?
23 A. That rings a bell. But I don't
24 remember specifically what was going on at that
25 point in time.

Page 77

1 Lurie
2 Q. Are you familiar with the term
3 "bill-and-hold sales"?
4 A. Yeah.
5 Q. And so your testimony is you may have
6 been aware of bill-and-hold sales, but you don't
7 remember?
8 A. That's correct.
9 Q. Do bill-and-hold sales have any
10 negative connotation with you?
11 A. Well, you want to understand what
12 they are, why -- who the parties are, why they're
13 set up that way. The accountants would usually
14 have some issues relating to those.
15 Q. Is there a concern with channel
16 stuffing when you hear about bill-and-hold sales?
17 A. It raises a question about channel
18 stuffing.
19 Q. As you sit here today, can you tell
20 me anything that Davis Polk did or Morgan Stanley
21 did to determine whether Sunbeam had engaged in
22 channel stuffing?
23 A. I don't recall any specific
24 discussions or investigations from 1998 that we
25 would have done regarding channel stuffing,

Page 78

1 Lurie
2 bill-and-hold sales, customer concentrations.
3 Q. Did you in March 1998 gain any sense
4 as to whether Sunbeam was aggressive in its
5 accounting practices?
6 A. I don't recall what my thinking was
7 back then. We would have asked questions of the
8 accountants. As a general practice, you would
9 ask questions of the accountants regarding the
10 accounting policies, procedures that are used by
11 an issuer, whether Sunbeam or any other. You
12 often ask the accountants whether, in their mind,
13 they consider it conservative or nonconservative,
14 whether they had suggested any alternative
15 accounting practices, GAP requirements that the
16 company -- alternatives that the company could be
17 doing.
18 Q. And why does the underwriter ask
19 those questions?
20 A. It's part of their due diligence
21 investigation. And when you say "the
22 underwriter," it could have been equally me.
23 Q. And I take it, the answers to those
24 questions could inform what other due diligence
25 may be required?

Page 79

1 Lurie
2 A. Absolutely.
3 Q. Did there come a point that you
4 learned of a potential sales shortfall at Sunbeam
5 in the first quarter of 1998?
6 A. I'm sorry. Did I learn of a
7 potential --
8 Q. -- sales shortfall?
9 A. At some point we must have learned
10 about some questions and issues regarding
11 potential shortfalls, yes.
12 Q. And how did you learn about the
13 potential sales shortfall?
14 A. I have no recollection today of how
15 in 1998 it came up in the course, either of the
16 transaction to me specifically or to -- within
17 Davis Polk or to Morgan Stanley.
18 Q. Do you have any idea when, in the
19 process of underwriting, Davis Polk or Morgan
20 Stanley learned of the sales shortfall?
21 A. I don't know when we would have
22 learned -- I mean, I do recall right around the
23 18th of March -- 19th of March there were
24 meetings and discussions regarding potential
25 sales for the quarter.

Page 80

1 Lurie
2 My Blackberry is going crazy.
3 Q. Actually, do you want to take a
4 break?
5 A. No. Let's continue.
6 Q. Did you learn of a potential sales
7 shortfall through receiving drafts of the comfort
8 letter?
9 A. I apologize. Again, I do not recall
10 how I or anyone else may have learned about a
11 potential, you know, shortfall. I'm sure shortly
12 after the transaction and for a year or so, I
13 probably would have remembered, but I just don't
14 remember today.
15 Q. By the way, let me jump back for a
16 second. I apologize. I see a note to myself --
17 A. Go right ahead.
18 Q. Was someone from Sunbeam management
19 on the accounting due diligence call?
20 A. I don't recall whether anyone was.
21 It is often the case that at least for a portion
22 of the phone call someone from management would
23 be on the phone. Often, though, and generally,
24 we would recommend that an underwriter have an
25 executive session, so to speak, just with the

Page 81

1 Lurie
2 accountants, without management.
3 So whether they were -- if they were,
4 they would have been asked to step off the phone
5 or if it was a meeting, to step out of the
6 meeting. Again, I don't remember if it was a
7 phone call or a meeting.
8 Q. So you view it a good practice to
9 have a session between strictly the underwriter
10 and the auditor?
11 A. Correct.
12 Q. Why is that?
13 A. Just because sometimes the auditors
14 will be a little more forthcoming without
15 management there. They may be willing to say
16 things -- they often do say things in slightly
17 different way without management being in the
18 room.
19 Q. And in connection with the accounting
20 due diligence call with Sunbeam, do you have any
21 idea whether management was or was not on the
22 call?
23 A. Again, I don't recall whether they
24 were -- whether it was a call or meeting. I'm
25 assuming -- you're saying it was a call. So I'll

Page 82

1 Lurie
2 assume it was a call. I don't recall if they
3 were on that phone call today. If they were, I
4 don't recall if they were asked to step off.
5 Q. I take it, the accounting due
6 diligence call session is a fairly involved
7 undertaking?
8 A. Fairly involved? I mean, it's an
9 important session. I don't know what you mean by
10 "fairly involved."
11 Q. Well, do you have any sense of how
12 long it should take or how much time you should
13 spend with the auditor?
14 A. It varies from transaction to
15 transaction. You know, fifteen minutes would be
16 short. Three hours might be long. In IPOs, it
17 might be four or five hours. I mean, it varies.
18 Q. Do you have any recollection of the
19 length you spent -- length of time you spent on
20 the accounting due diligence call with Sunbeam's
21 auditors?
22 A. Not today.
23 Q. I take it, the length of the call
24 turns on the complexity of the issuer?
25 A. The complexity of the issuer, the

Page 83

1 Lurie
2 familiarity that the underwriter and the
3 underwriter's counsel might have with the issuer,
4 whether it was the first or second, third or
5 fourth offering. It varies.
6 Q. You said fifteen minutes is short.
7 Have you ever had a fifteen-minute
8 accounting due diligence phone call?
9 A. Yes.
10 Q. Is that a common occurrence?
11 A. That's fairly rare that it's that
12 short.
13 Q. Jumping back to the sales shortfall
14 issue --
15 A. Go right ahead.
16 Q. -- you told me earlier today that you
17 were having early and often conversations with
18 Sunbeam concerning how it was doing in the first
19 quarter?
20 A. Uh-huh.
21 Q. And you also testified that those
22 conversations would be specific as to numbers and
23 general as to trends.
24 Do you recall that?
25 A. I recall that, yeah. I recall saying

Page 84

1 Lurie
2 that. I don't remember what the --
3 Q. Okay. Does that testimony in any way
4 inform when you would have learned of the sales
5 shortfall at Sunbeam?
6 A. No.
7 Q. Is it safe to assume that you learned
8 of it as it was happening?
9 A. I don't even want to venture a guess.
10 Safe to assume? I can't tell you
11 today in 2004 when I learned of potential sales
12 shortfalls in 1998 in the first quarter in the
13 midst of an offering. It could have been at any
14 point in time, and it could have come from a
15 variety of different people.
16 Q. Do you think that anyone at Sunbeam
17 gave you false numbers as to sales in the first
18 quarter of 1998?
19 A. I don't -- I don't have any thoughts
20 about false numbers today. I didn't think they
21 were false back then, certainly.
22 Q. Prior to mid-March, did the company
23 say anything in general terms other than that it
24 was doing fine?
25 A. To who?

Page 85

1 Lurie
2 Q. To Morgan Stanley or Davis Polk?
3 A. I don't recall any specific comments
4 that the company made back in 1998 regarding
5 their first quarter and how they were doing.
6 Q. So you may have known then, in March
7 1998, that the company was expecting a loss for
8 the quarter?
9 A. I may have known a lot of different
10 things. I may have known that it was not a
11 loss. But there could have been other reasons
12 that it would have been a flat quarter in
13 earnings. There could have been offsetting
14 adjustments. Expenses could have gone down even
15 though sales had gone down. There could have
16 been a lot of different things.
17 Q. Did anything happen in the first
18 quarter of '98 that caused you to question the
19 candor of Sunbeam's management?
20 A. There was discussions regarding the
21 first quarter. I don't know if we were thinking
22 there were questions. I don't recall any
23 questions we had about the candor of Sunbeam's
24 management. I don't recall what I thought back
25 then about the candor of Sunbeam's management.

Page 86

1 Lurie
2 We just inquired regarding the quarter and the
3 full year.
4 Q. And those questions -- the answers to
5 those questions didn't cause you any concern
6 about whether Sunbeam management was being
7 candid?
8 A. I don't recall any concerns today
9 that I might have had back then.
10 Q. Is it fair to say the underwriter is
11 supposed to have skepticism in dealing with
12 management?
13 A. Absolutely.
14 Q. Since March of 1998, have you formed
15 any opinion about the candor of Sunbeam's
16 management you were dealing with?
17 A. To be honest, other than being told,
18 I haven't thought about Sunbeam too much and
19 Sunbeam's management.
20 Q. You did learn that the SEC had sued
21 Al Dunlap and Ron Kersh?
22 A. Absolutely. I had not thought about
23 it.
24 Q. You followed the Wall Street Journal
25 articles --

Page 87

1 Lurie
2 A. Uh-huh.
3 Q. -- on the demise of Sunbeam?
4 A. Uh-huh.
5 Q. Did that cause you to question
6 anything that you were told in March of 1998?
7 A. I don't recall what I would have
8 thought when I read those articles. I probably
9 looked at the articles and went "wow" and knew
10 that there was a problem. I don't recall it
11 doing anything to my thinking about candor at the
12 time of the offering.
13 Q. When you say you've read the articles
14 and knew there was a problem, what do you mean by
15 that?
16 A. Well, whatever was in the articles
17 about the problems -- I think you mentioned the
18 word "channel stuffing" before. I think that
19 became a really significant issue. I think there
20 was clearly some revenue -- my recollection is
21 there were revenue recognition issues with
22 Sunbeam. There may have been others. I remember
23 there were questions about Mr. Dunlap's resume.
24 Q. And reading that information didn't
25 cause you to rethink any of the work that you

Page 88

1 Lurie
2 performed?
3 A. It may have. I do not recall what it
4 caused me to rethink about what I had done back
5 in 1998.
6 Q. Did you learn any lessons from
7 Sunbeam that have informed your practice today?
8 A. That despite as good a due diligence
9 as you think you can do -- you don't necessarily
10 find out -- you do the best you can, but you
11 don't always find out everything that occurred.
12 And sometimes bad things do occur.
13 Q. And so I take it from your testimony
14 then that you believe Morgan Stanley did the best
15 due diligence they could on this transaction?
16 A. I would think with Davis Polk and
17 Morgan Stanley doing it, it would have been-- our
18 due diligence would have been appropriate.
19 Q. By "appropriate," do you mean
20 thorough?
21 A. Thorough, complete.
22 Q. We've already touched on briefly
23 today the press release that issued on March
24 19th?
25 A. Okay.

Page 89

1 Lurie
2 Q. And I want to focus for a few minutes
3 on the events that led to the issuance of that
4 press release.
5 A. Okay.
6 Q. Why don't you tell me how it came to
7 pass that Sunbeam issued a press release on March
8 19th.
9 A. I can't today remember exactly what
10 -- this exact time frame of when and who
11 proposed the press release and how it was put
12 together. There was -- there were phone calls
13 the night of the 18th regarding the quarter --
14 the sales quarter, how they were, and if they
15 were going to be able to meet their earnings or
16 their revenues, I guess.
17 At some point in time, someone
18 prepared a draft of a press release. I don't
19 recall today if that was prepared by Skadden, by
20 the company, by Morgan Stanley or by us. It most
21 likely have been -- the first draft would have
22 come from Skadden, but I don't recall if they
23 did.
24 Q. But the issuance of the press release
25 would be a joint effort?

<p style="text-align: right;">Page 90</p> <p>1 Lurie</p> <p>2 A. It would have been a joint discussion</p> <p>3 of the press release and what should be in the</p> <p>4 press release, because then you'd have to</p> <p>5 consider whether the press release -- how it</p> <p>6 would impact the offering and the offering memo.</p> <p>7 Q. So Morgan Stanley and Davis Polk had</p> <p>8 an opportunity to comment on the press release</p> <p>9 before its issuance --</p> <p>10 A. I assume we did, yes. I don't recall</p> <p>11 any comments that we may have made or when we</p> <p>12 would have been given the press release to</p> <p>13 comment on.</p> <p>14 Q. You said that there were phone calls</p> <p>15 on the night of March 18th?</p> <p>16 A. Correct.</p> <p>17 Q. What event animated the phone calls?</p> <p>18 A. What event? I have -- there was --</p> <p>19 Q. Let me phrase it slightly different.</p> <p>20 Did any event or information cause</p> <p>21 those phone calls to occur?</p> <p>22 A. I think it just related to the issue</p> <p>23 of what the first quarter revenues were going to</p> <p>24 be. I don't know what event precipitated a</p> <p>25 specific phone call occurring or what piece of</p>	<p style="text-align: right;">Page 92</p> <p>1 Lurie</p> <p>2 Small's office, at least the specific phone call</p> <p>3 I'm recollecting right now. Jeff Small. I</p> <p>4 believe Frank Morrison was in that office. Maybe</p> <p>5 Rich Sandler was in. I just don't specifically</p> <p>6 recall him, but maybe he was there.</p> <p>7 Q. We haven't heard Mr. Small's name yet</p> <p>8 today.</p> <p>9 A. Okay.</p> <p>10 Q. He is a Davis Polk partner?</p> <p>11 A. Yes.</p> <p>12 Q. And does he have an area of</p> <p>13 expertise?</p> <p>14 A. Corporate and securities.</p> <p>15 Q. How about Frank Morrison?</p> <p>16 A. He was managing partner at the time,</p> <p>17 right? In corporate and securities? Wasn't he</p> <p>18 managing partner back then?</p> <p>19 MR. WISE: I don't remember.</p> <p>20 A. I think he may have been managing</p> <p>21 partner back then, but he was also corporate</p> <p>22 securities expert.</p> <p>23 BY MR. JOHNSON:</p> <p>24 Q. And prior to March 18th, Mr. Small</p> <p>25 and Mr. Morrison had no involvement in this</p>
<p style="text-align: right;">Page 91</p> <p>1 Lurie</p> <p>2 information we might have had at any point in</p> <p>3 time that would have caused us to make a phone</p> <p>4 call in 1990 -- or have a conference call in</p> <p>5 1998.</p> <p>6 Q. So you don't know why it was the 18th</p> <p>7 as opposed to the 13th --</p> <p>8 A. I don't know. I couldn't tell you.</p> <p>9 Q. Do you know how many calls there were</p> <p>10 on the 18th on the issue of the potential sales</p> <p>11 shortfall?</p> <p>12 A. It was one or more. And I say one or</p> <p>13 more because I don't know if we -- I don't recall</p> <p>14 today whether it was we had first phone calls</p> <p>15 with Morgan Stanley or first phone calls with</p> <p>16 Sunbeam, and then they may have dropped; or first</p> <p>17 Morgan Stanley, and then maybe Sunbeam hooked in</p> <p>18 and Skadden hooked in, or whether it was a series</p> <p>19 of phone calls. It was just one or more phone</p> <p>20 calls that a variety of people were involved in.</p> <p>21 Q. Let's try and get more specific on</p> <p>22 who was involved in the phone calls.</p> <p>23 Who from Davis Polk was involved in</p> <p>24 the March 18th phone calls?</p> <p>25 A. Myself, Alan Dean. It was in Jeff</p>	<p style="text-align: right;">Page 93</p> <p>1 Lurie</p> <p>2 transaction --</p> <p>3 A. I have no recollection of whether</p> <p>4 they would have been involved earlier.</p> <p>5 Q. And you don't have any recollection</p> <p>6 of them, in fact, being involved earlier?</p> <p>7 A. No, I don't.</p> <p>8 Q. Are Mr. Small and Morrison senior to</p> <p>9 Mr. Dean?</p> <p>10 A. Yes.</p> <p>11 Q. And they were on calls with Sunbeam</p> <p>12 and Skadden as well?</p> <p>13 A. Again, the phone call or the meeting</p> <p>14 in Mr. Small's office, I don't recall if it was</p> <p>15 one phone call -- one long phone call that people</p> <p>16 kept coming in and out of the multiple phone</p> <p>17 calls. But my recollection, there would have</p> <p>18 been a variety of different people at different</p> <p>19 points in time on one or more phone calls.</p> <p>20 Q. Was Heather Stack or Nicole Duncan on</p> <p>21 any of the phone calls?</p> <p>22 A. I do not recall whether Heather and</p> <p>23 Nicole were involved in those phone calls.</p> <p>24 Q. How about from Morgan Stanley? Who</p> <p>25 from Morgan Stanley was involved in the March</p>

<p style="text-align: right;">Page 94</p> <p>1 Lurie</p> <p>2 18th phone calls?</p> <p>3 A. The only one -- again, the one I'm</p> <p>4 thinking of in Mr. Small's office, I know Ruth</p> <p>5 Porat was on the phone. I do not recall who</p> <p>6 else. I can presume who might have been. John</p> <p>7 Tyree, I'm sure, would have been involved, but I</p> <p>8 don't recall.</p> <p>9 Q. How about from Sunbeam?</p> <p>10 A. There would probably have been a</p> <p>11 variety of people from Sunbeam, some of the</p> <p>12 people that you mentioned earlier.</p> <p>13 Q. But not Dunlap?</p> <p>14 A. I do not ever recall having been on a</p> <p>15 phone call with Mr. Dunlap, having met Mr. Dunlap</p> <p>16 or heard Mr. Dunlap's voice.</p> <p>17 Q. But Kersh?</p> <p>18 A. Kersh, Fanin.</p> <p>19 Q. Gluck?</p> <p>20 A. Gluck's name -- I think you said he</p> <p>21 was controller?</p> <p>22 Q. Right.</p> <p>23 A. I don't recall him. He likely might</p> <p>24 have been. Kersh, Fanin. Uzzi. I think you</p> <p>25 named another name that would have been on those</p>	<p style="text-align: right;">Page 96</p> <p>1 Lurie</p> <p>2 has maintained the privilege. So to the</p> <p>3 extent that there were phone calls that he</p> <p>4 can recall where people from Sunbeam were</p> <p>5 present or other third parties, obviously,</p> <p>6 he can respond to your question.</p> <p>7 A. Could you repeat your question? It</p> <p>8 was specifically with Morgan Stanley, or was it</p> <p>9 just generically?</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. Subject to Mr. Wise's instruction,</p> <p>12 I'm trying to get you to tell me as much</p> <p>13 information as you can about what was said on the</p> <p>14 March 18th phone calls.</p> <p>15 A. I do not today in 2004 recollect what</p> <p>16 the specific substance of the discussions were</p> <p>17 with anyone, whether it was with Morgan Stanley</p> <p>18 or with Sunbeam or with -- who am I missing? --</p> <p>19 Skadden or Arthur Andersen relating to any phone</p> <p>20 calls that occurred March 18th. I think the</p> <p>21 general scope of the discussions related to first</p> <p>22 quarter revenues.</p> <p>23 Q. Was it a crisis situation in any way?</p> <p>24 A. It was issues. I don't want to</p> <p>25 necessarily use the term "crisis." But,</p>
<p style="text-align: right;">Page 95</p> <p>1 Lurie</p> <p>2 phone calls.</p> <p>3 Q. How about from Skadden?</p> <p>4 A. Greg Fernicola would have been on as</p> <p>5 the partner. Probably Tod Freed. But I don't</p> <p>6 specifically recall. But if you asked who from</p> <p>7 their shop would have likely been involved, it</p> <p>8 would have been at least those two.</p> <p>9 Q. Was Andersen on any of those calls?</p> <p>10 A. I don't recall.</p> <p>11 Q. Anyone else besides the parties we've</p> <p>12 mentioned?</p> <p>13 A. Davis Polk, Skadden, Sunbeam and</p> <p>14 Morgan Stanley --</p> <p>15 Q. Correct.</p> <p>16 A. And possibly Andersen. I can't think</p> <p>17 of anyone else who might have been on those phone</p> <p>18 calls.</p> <p>19 Q. And tell me in as much detail as you</p> <p>20 can the substance of those calls.</p> <p>21 MR. WISE: I'm going to caution the</p> <p>22 witness that with respect to any calls that</p> <p>23 were between Davis Polk and Morgan Stanley,</p> <p>24 that he should be careful not to reveal</p> <p>25 privileged communications. Morgan Stanley</p>	<p style="text-align: right;">Page 97</p> <p>1 Lurie</p> <p>2 obviously, when you're having a phone call like</p> <p>3 that there were concerns that people wanted to</p> <p>4 understand what was going on and what had</p> <p>5 transpired and what the first quarter numbers</p> <p>6 were going to be.</p> <p>7 Q. Why would people be interested in</p> <p>8 what the first quarter numbers were?</p> <p>9 A. Well, again, we may have had some</p> <p>10 disclosure in the prospectus on expectations.</p> <p>11 There was clearly -- a public company</p> <p>12 would have forecast -- there would be forecast</p> <p>13 out on the street of what their first quarter</p> <p>14 numbers were going to be. Whether it was</p> <p>15 earnings or revenue estimates, I don't know.</p> <p>16 This was a convertible debt offering. So,</p> <p>17 obviously, the common stock and where the common</p> <p>18 stock was trading, what the value of it is, what</p> <p>19 the future expectations for the growth and the</p> <p>20 share value of the common stock were obviously</p> <p>21 issues that everyone would have considered, if</p> <p>22 the expectations out on the street were</p> <p>23 significantly different than what possibly would</p> <p>24 be happening that quarter or for the year. Those</p> <p>25 are things underwriters -- underwriters' counsel,</p>

<p style="text-align: right;">Page 98</p> <p>1 Lurie</p> <p>2 the company would be considering.</p> <p>3 Q. That information could have a</p> <p>4 negative impact on the ability to complete the</p> <p>5 transaction?</p> <p>6 A. Possibly.</p> <p>7 Q. Was that possibility discussed?</p> <p>8 A. I do not recall any discussions today</p> <p>9 about not completing the transactions. They may</p> <p>10 have occurred; they may have not occurred. I do</p> <p>11 not recall.</p> <p>12 Q. Was there any discussion concerning</p> <p>13 the impact of first quarter performance on</p> <p>14 Sunbeam's ability to close the acquisitions?</p> <p>15 A. Again, I don't recall whether those</p> <p>16 discussions occurred or did not occur.</p> <p>17 Q. Would you be surprised if they did</p> <p>18 occur?</p> <p>19 A. I'm not sure I would be surprised or</p> <p>20 not surprised. If they occurred, they occurred;</p> <p>21 if they didn't occur, they didn't occur.</p> <p>22 Q. But the sales situation was</p> <p>23 sufficiently significant to be a material event?</p> <p>24 MR. CLARE: Object to form.</p> <p>25 You can answer.</p>	<p style="text-align: right;">Page 100</p> <p>1 Lurie</p> <p>2 the idea?</p> <p>3 A. I don't recall any resistance. I</p> <p>4 don't recall any train to say, let's issue it.</p> <p>5 Q. I assume, given these discussions, it</p> <p>6 was something that was discussed at some length?</p> <p>7 A. I would presume there were</p> <p>8 discussions regarding a press release. I know we</p> <p>9 did issue a press release --</p> <p>10 Q. Did you later learn that there was</p> <p>11 resistance to the press release?</p> <p>12 A. Did I later learn? I don't recall</p> <p>13 that there was. I mean, I've been now advised</p> <p>14 there may have been resistance.</p> <p>15 Q. Who advised you of that?</p> <p>16 A. I think it was in conversations</p> <p>17 yesterday that there may have been some, but I'm</p> <p>18 not sure. I was talking to Bob and Tom, but I</p> <p>19 don't think I should go any further.</p> <p>20 Q. But you never learned from Morgan</p> <p>21 Stanley and Sunbeam --</p> <p>22 A. I haven't spoken to Morgan Stanley in</p> <p>23 years regarding this transaction.</p> <p>24 Q. Let's put aside the years --</p> <p>25 A. Okay.</p>
<p style="text-align: right;">Page 99</p> <p>1 Lurie</p> <p>2 A. It was. Obviously, as I said</p> <p>3 earlier, the first quarter and full year</p> <p>4 expectations are areas of -- that underwriters</p> <p>5 and underwriters' counsel will be reviewing</p> <p>6 through the entire process of an offering. So,</p> <p>7 yes, changes in expectations, changes in company</p> <p>8 forecasts are things that underwriters want to</p> <p>9 understand the reasons for.</p> <p>10 Q. And that's --</p> <p>11 A. If it's a half a penny change versus</p> <p>12 a ten cent change, you know, some things are</p> <p>13 material, the size of the company, than others.</p> <p>14 I mean, if they're going to be within a range</p> <p>15 that's out on the street, what can I say?</p> <p>16 Q. But, in essence, you would agree it's</p> <p>17 important information?</p> <p>18 A. Absolutely. Underwriters are</p> <p>19 interested in.</p> <p>20 Q. Whose idea was it to issue a press</p> <p>21 release?</p> <p>22 A. I have no recollection from today</p> <p>23 back in 1998 who said to issue a press release or</p> <p>24 who wanted to or who didn't want to.</p> <p>25 Q. So you don't recall any resistance to</p>	<p style="text-align: right;">Page 101</p> <p>1 Lurie</p> <p>2 Q. In the days following --</p> <p>3 A. In the time frame of 1998.</p> <p>4 Q. We're starting to talk over each</p> <p>5 other. So the Court Reporter is going to wince,</p> <p>6 if she hasn't already.</p> <p>7 In the days following the issuance of</p> <p>8 the press release, did you ever learn that</p> <p>9 Sunbeam was upset about having to issue the press</p> <p>10 release?</p> <p>11 A. I don't recall ever having heard or</p> <p>12 been told by anyone that they were upset.</p> <p>13 Q. Would that fact be of any</p> <p>14 significance to you?</p> <p>15 MR. WISE: What fact?</p> <p>16 A. That they were upset?</p> <p>17 BY MR. JOHNSON:</p> <p>18 Q. Yes.</p> <p>19 A. It might have. I might have raised</p> <p>20 an eyebrow and tried to understand why they were</p> <p>21 upset. But I don't know what my thinking was</p> <p>22 back then. It's one fact in a myriad of things</p> <p>23 that are going on in an offering that you have to</p> <p>24 weigh and consider. So how I would have</p> <p>25 reacted? I can't tell you.</p>

Page 102

1 Lurie

2 Q. But it would have been in the mix?

3 A. It would have been in the mix.

4 Q. Do you recall reviewing any documents

5 during the course of the March 18th phone call?

6 A. I recall that there was a sheet of

7 paper, maybe a couple of sheets of paper, that we

8 all had that was sort of the basis on which we

9 were discussing the first quarter numbers.

10 THE VIDEOGRAPHER: I'm going to

11 change tape.

12 MR. JOHNSON: Sure.

13 THE VIDEOGRAPHER: This is 11:45.

14 This completes tape number one.

15 (Recess taken.)

16 THE VIDEOGRAPHER: The time is 12

17 p.m. We're back on the record. This begins

18 tape number two.

19 BY MR. JOHNSON:

20 Q. Before the break, we were talking

21 about the March 18th phone calls. And I want to

22 return to that subject.

23 Was there any discussion during the

24 course of those calls concerning Sunbeam's

25 earnings situation for the first quarter of 1998?

Page 103

1 Lurie

2 A. Again, I don't recall any specific

3 discussions that were had that evening. It would

4 have been generally about the first quarter,

5 probably discussions also about the year estimate

6 forecasts.

7 Q. When you say "about the first

8 quarter," do you mean revenue or earnings or one

9 or the other?

10 A. It could have been both.

11 Q. You don't remember?

12 A. I do not recall today.

13 Q. Did you know what Sunbeam's earnings

14 situation was as of March 18th for the first

15 quarter?

16 A. Did I know then? I probably had an

17 idea what their earnings for 2002 were -- or

18 excuse me -- 1997. I probably had an idea then

19 what their expectations for both 2000 -- or 1998

20 the full year and probably the first quarter. I

21 have no recollection today what those were.

22 Q. Was there any discussion during any

23 of the March 18th phone calls concerning whether

24 Sunbeam's actual sales through the first two

25 months of 1998 should be included in the press

Page 104

1 Lurie

2 release?

3 A. I'm sorry. Could you repeat that

4 question.

5 Q. Sure. Was there any discussion

6 during any of the March 18th phone calls

7 concerning whether the press release should

8 include Sunbeam's actual sales figures for

9 January and February?

10 A. I do not recall any discussion today

11 regarding whether -- about what should be

12 included in the press release, whether it related

13 to the first two months of 1998 or otherwise.

14 Q. As you sit here today, do you have

15 any negative reaction or an idea as to why that

16 information would not be included in the press

17 release?

18 A. Often you don't want to include just

19 interim monthly numbers, because it doesn't

20 necessarily represent what a full quarter is

21 going to be. Sometimes, depending upon the facts

22 of a given situation, you might include interim

23 by interim, I mean, part of month sales numbers.

24 Q. Or part of quarter sales --

25 A. Excuse me. Part of quarter sales

Page 105

1 Lurie

2 numbers.

3 Q. So it just depends on the particular

4 circumstances?

5 A. And the facts and everything else

6 that's going on in the company.

7 Q. Can you think of any facts, as you

8 sit here today, indicating that it would be

9 inappropriate to give interim quarter sales

10 information in the March 19th press release?

11 A. I'm sorry. Can you repeat that

12 question again.

13 Q. Sure.

14 A. It was a little convoluted at the

15 beginning to the end.

16 Q. I apologize. These questions are

17 getting longer.

18 Can you think of any reason why

19 Sunbeam did not include January and February

20 sales information in the March 19th press

21 release?

22 A. Can I recall any reasons why we did

23 not include it?

24 Q. Correct.

25 A. I today don't recall what we said or

Page 106

1 Lurie
2 what the thinking was or the reasons for how the
3 ultimate press release came out or any specific
4 discussions regarding what should or should not
5 be included in 2004. I don't recall what we were
6 thinking back in 1998.
7 Q. I guess here's what I'm getting at.
8 You testified that it may be appropriate to give
9 interim results depending on the circumstance.
10 What I'm getting at, Were there any
11 circumstances that indicated it would be
12 inappropriate to give that information in this
13 press release?
14 A. I don't recall, truthfully, what the
15 other circumstances going around the time in
16 March of 1998, middle of March 1998, were of what
17 the thinking would have been and whether we even
18 discussed the question of including the first two
19 -- the specific numbers for the first two
20 months.
21 Q. So is it fair to say, then, as you
22 sit here today, you can't think of any reason why
23 that information was not included?
24 A. I can't think of any information
25 today why we would not have included it.

Page 107

1 Lurie
2 Q. Why doesn't the press release refer
3 to the earnings situation at Sunbeam?
4 A. It doesn't? I don't recall. I have
5 no -- again, the thinking of what we were going
6 to say in the press release and why we decided to
7 say what was said and who made the ultimate
8 decision to say what was said or that we all
9 agreed upon, I don't recall why it was made the
10 way it was today. I'm sure back in 1998 and '99,
11 maybe even 2000, I could have told you more. But
12 six years later, the specific thinking is just
13 beyond me at this point. I don't recall.
14 Q. As you sit here today, can you think
15 of any reason why it would be inappropriate to
16 give interim earnings information in the March
17 19th press release?
18 A. In general? Specifically related to
19 Sunbeam? Specifically related to -- I mean,
20 there are a lot of companies that do 85 percent
21 of their sales in the last two weeks of the
22 quarter.
23 Q. Do you know whether that's the
24 situation --
25 A. I have no recollection of how

Page 108

1 Lurie
2 Sunbeam's sales in 1998 were staggered during the
3 quarter.
4 Q. Well, why was a press release issued
5 at all?
6 A. I --
7 MR. WISE: To the extent that you
8 know.
9 A. I'm trying to recollect. And it's
10 more surmising at this point why it might have
11 been issued.
12 I think there were questions about
13 whether they would meet it -- let me phrase that
14 differently -- whether they would meet the
15 analysts' expectations what was out on the
16 street. And I think there was a feeling if they
17 were not going to be within the range. And
18 analysts generally have ranges, first call
19 numbers where what people would look at for
20 earnings or revenues, whatever was out on the
21 street. And if they were not, there was probably
22 a feeling, one, maybe the offering memo needed to
23 include it. And if we wanted to include the
24 information in an offering memo, which was in a
25 144A, in effect, private placement, we had to get

Page 109

1 Lurie
2 similar information out to the street in
3 general.
4 So to the extent you were going to be
5 putting it in an offering memo, you would also be
6 issuing a press release. That very likely could
7 have been the thinking. I just don't recall
8 specifically what it was.
9 Q. So you don't know as a matter of fact
10 whether inclusion of the offering memorandum
11 motivated the issuance of the press release?
12 A. I don't recall which way, whether it
13 was the issuance of the press release motivated
14 putting it in the offering memo or whether we
15 felt we needed to put something in the offering
16 memo and therefore motivated the press release --
17 Q. And to the extent --
18 A. -- or whether something else even
19 motivated it.
20 Q. To the extent Sunbeam was not going
21 to make analysts' estimates on earnings, that
22 would also be information that should be in the
23 press release?
24 A. If they didn't think they were going
25 to make the earnings, that might be something you

<p style="text-align: right;">Page 110</p> <p>1 Lurie</p> <p>2 would also include. Again, I don't remember what</p> <p>3 estimates were out on the street. I think we</p> <p>4 were focused on revenues. But whether we also</p> <p>5 had earnings estimates for the quarter and for</p> <p>6 the year, I just don't recall.</p> <p>7 Q. Can you think of any reason why you</p> <p>8 would advise the street that revenue estimates</p> <p>9 would not be met but not advise them that</p> <p>10 earnings estimates would not be met?</p> <p>11 A. I'm sure there are a variety of</p> <p>12 scenarios where you know what's going to happen</p> <p>13 with revenues but you're not sure what's going to</p> <p>14 happen with earnings. There could be expense</p> <p>15 reductions. There could be other things going</p> <p>16 on.</p> <p>17 Q. But if you know that earnings</p> <p>18 estimates are not going to be met, why wouldn't</p> <p>19 you include that in the same press release?</p> <p>20 A. If you know. I don't recall what we</p> <p>21 knew.</p> <p>22 Q. Did you know that the street was</p> <p>23 expecting Sunbeam to have a profit for the first</p> <p>24 quarter?</p> <p>25 A. What I knew back then I can't tell</p>	<p style="text-align: right;">Page 112</p> <p>1 Lurie</p> <p>2 to represent?</p> <p>3 A. I can tell you what I think this</p> <p>4 represents looking at it today. I can't remember</p> <p>5 exactly what I might have thought this</p> <p>6 represented back then, but this looks like an</p> <p>7 estimate of actual sales for the first two months</p> <p>8 of 1998. It says, "January consolidated,</p> <p>9 February consolidated net sales actual." And</p> <p>10 then there appears to be some interim</p> <p>11 international sale numbers for the first 15 days</p> <p>12 of March and some forecasted international sales</p> <p>13 through the rest of March, actual domestic sales</p> <p>14 for the first 17 days of March. And then I guess</p> <p>15 open orders is probably forecasted sales for the</p> <p>16 remainder of March or through -- I guess the</p> <p>17 remainder of March.</p> <p>18 Q. What does the potential orders</p> <p>19 represent?</p> <p>20 A. Those look like to me would mean they</p> <p>21 were orders that are possibly coming in but</p> <p>22 haven't yet been booked by the company. They</p> <p>23 haven't received a formal sales order yet from</p> <p>24 any of these listed companies.</p> <p>25 Q. When you say they haven't received</p>
<p style="text-align: right;">Page 111</p> <p>1 Lurie</p> <p>2 you. I don't recall what we thought, what I knew</p> <p>3 back then of what the expectations on the street</p> <p>4 for the first quarter of 1998 were.</p> <p>5 Q. I want to show you what's been marked</p> <p>6 previously as Exhibit 16, Mr. Lurie, Exhibit 16,</p> <p>7 the document that you mentioned that was</p> <p>8 discussed during the March 18th phone call.</p> <p>9 A. This looks like the document. It</p> <p>10 seems to be the document, but I don't recall</p> <p>11 specifically today what was on the document. But</p> <p>12 this does look like something we would have</p> <p>13 looked at.</p> <p>14 Q. And do you see the handwriting in the</p> <p>15 upper right corner: "Ruth," "Alan," "David"?</p> <p>16 A. "Ruth," "Alan," "David," okay.</p> <p>17 Q. Do you know who those are?</p> <p>18 A. Ruth, I presume, is Ruth Porat.</p> <p>19 Allen, I presume, is Alan Dean. Because that's</p> <p>20 his phone number. And David -- I'm not sure who</p> <p>21 David is.</p> <p>22 You're not going to tell me?</p> <p>23 Q. It's David Fanin.</p> <p>24 A. Okay.</p> <p>25 Q. What did you understand this document</p>	<p style="text-align: right;">Page 113</p> <p>1 Lurie</p> <p>2 the formal sales order, do you know whether</p> <p>3 there's been any discussion with respect to any</p> <p>4 of these accounts with respect to any orders in</p> <p>5 the last 12 days of the quarter?</p> <p>6 A. I'm sorry. Can you repeat the</p> <p>7 question again? Because --</p> <p>8 Q. Sure. Actually, I'll have her read</p> <p>9 this one.</p> <p>10 (Record read.)</p> <p>11 (Interruption at the door.)</p> <p>12 (Record read.)</p> <p>13 A. Are you asking me did I have any</p> <p>14 discussions regarding these accounts? Did I</p> <p>15 speak to these accounts? Did anyone speak to</p> <p>16 these accounts?</p> <p>17 BY MR. JOHNSON:</p> <p>18 Q. All of those questions.</p> <p>19 A. I do not recall any specific</p> <p>20 discussions that I had or that anyone else had</p> <p>21 with any of these, let's say, 15, 18 companies</p> <p>22 (indicating). I don't recall any specific</p> <p>23 discussions we had on the phone in March 18th of</p> <p>24 1998 regarding any of these specific companies</p> <p>25 and order numbers that are listed under potential</p>

Page 114

1 Lurie
2 orders.
3 I do know we were discussing them,
4 but I don't recall what was said. I don't know
5 whether there were ever any actual calls in the
6 last 12 days of the quarter with any of these
7 entities by -- certainly, I do not recall having
8 those phone calls. I don't believe anyone, to my
9 knowledge, from Davis Polk had them. Whether
10 Morgan Stanley in the last 12 days of the quarter
11 spoke to any of these companies, I don't know if
12 they did. I don't know if Sunbeam spoke to any
13 of these companies. I don't recall.
14 Q. Do you have any view as to whether it
15 would be appropriate to contact those customers
16 to see what their plans would be for the last 12
17 days of the quarter?
18 A. It's something that would often be
19 done. But, again, it really depends on facts of
20 a given situation. For example -- I mean, we
21 could have been told or we could have known
22 through prior other due diligence that Home Depot
23 puts in their biggest order in the last 12 days
24 of the quarter. And we might have had evidence.
25 I don't know if we had any of this. But there

Page 115

1 Lurie
2 are a myriad of facts with every one of these
3 that would lead us to make one decision versus
4 another decision. I just don't recall what
5 transpired during these phone calls or in the
6 days after the phone calls or the days before the
7 phone calls with regard to these companies and
8 these potential orders.
9 Q. This sheet is designed to show how
10 the company can make \$254.7 million in revenues
11 for the first quarter?
12 A. Uh-huh. That's what it looks like.
13 That's the subtotal, I presume.
14 Q. And that was below the street
15 estimates, wasn't it?
16 A. If the next lines down appear to be
17 where it says -- the handwriting looks like it
18 says, "low and high." Those look like the street
19 estimates between 167 and 193 for revenues --
20 MR. WISE: 267 and 293.
21 THE WITNESS: What did I say?
22 A. 267 and 293. And then the last line
23 looks like what the first quarter of 1997 was,
24 which says 253.5.
25 BY MR. JOHNSON:

Page 116

1 Lurie
2 Q. So this sheet would indicate that if
3 all of the potential orders are obtained, and if
4 the international net sales forecast is met, the
5 company would beat the first quarter of '97?
6 A. Would be slightly above the first
7 quarter of '97, it looks like.
8 Q. But would be below the street
9 estimates?
10 A. Correct.
11 Q. Was there any discussion on March 18
12 concerning whether the company could, in fact,
13 still beat the street estimates in the first
14 quarter of '98?
15 A. There may have been in 2004. I don't
16 today recall what those discussions -- I wish I
17 could give you more, but I just don't recall what
18 those discussions in 1998, March 18th or 17th or
19 22nd, regarding first quarter numbers.
20 Q. But you would agree with me that
21 Exhibit 16 does not illustrate any way for the
22 company to meet street estimates for the first
23 quarter of '98?
24 A. It clearly -- based on the buildup to
25 the 254.7, it's clearly below the low. So it

Page 117

1 Lurie
2 would look like there was nothing on this sheet
3 that would indicate they could beat it. Whether
4 there was other information provided us in 1998
5 that led us to believe that 254.7 was low, I
6 don't recall. There may have been.
7 Q. You just don't know?
8 A. I just don't recall.
9 Q. Was there any discussion on March
10 18th concerning the company's ability to obtain
11 orders and ship product in the amount of \$86
12 million in the last 12 days of the quarter?
13 A. Again, there may have been; there may
14 not have been. I don't recall the substance of
15 the discussions that related to this
16 (indicating), which, I believe, was the subject
17 of the March 18th phone call in Mr. Small's
18 office that we were talking about before. But I
19 don't remember the specifics of who said what,
20 what questions were asked. I'm sure there were a
21 lot of questions that were asked. I just don't
22 recall what they were.
23 Q. So you don't recall whether there was
24 any discussion about the company's physical
25 ability to ship this much product in this time

<p style="text-align: right;">Page 118</p> <p>1 Lurie</p> <p>2 period?</p> <p>3 A. I do not recall if we had those. We</p> <p>4 may have. We may have looked into a variety of</p> <p>5 different questions. I don't know if it's a</p> <p>6 shipping issue, a manufacturing issue. It could</p> <p>7 have been a variety of issues.</p> <p>8 Q. The last item in the potential</p> <p>9 buildup shows \$10.4 million for "other"?</p> <p>10 A. Yup.</p> <p>11 Q. Was there any discussion about</p> <p>12 entities that would comprise the "other"</p> <p>13 category?</p> <p>14 A. I do not recall what we discussed</p> <p>15 regarding the "other" category.</p> <p>16 Q. Was there any discussion or</p> <p>17 skepticism as to whether the "other" category</p> <p>18 would exceed Wal-Mart's purchases?</p> <p>19 A. Would exceed the 10.4 -- where is</p> <p>20 Wal-Mart? Oh, it's up -- the 9.4? I don't</p> <p>21 recall any relationship between Wal-Mart and the</p> <p>22 other category. There may be; there may not be.</p> <p>23 Q. You don't remember any skepticism on</p> <p>24 that issue?</p> <p>25 A. I don't remember the specifics of the</p>	<p style="text-align: right;">Page 120</p> <p>1 Lurie</p> <p>2 concerning Sunbeam's first quarter sales</p> <p>3 situation with either of those banks?</p> <p>4 A. I don't know what -- I presume they</p> <p>5 did. But I have no knowledge of what sharing and</p> <p>6 what information and what discussions transpired</p> <p>7 between Morgan Stanley and the other two banks</p> <p>8 that you mentioned.</p> <p>9 Q. Why do you assume that they did?</p> <p>10 A. Because they were normal discussions</p> <p>11 that would go on between an arranger and the</p> <p>12 other banks. I mean, there is an information</p> <p>13 flow between them, just like there's an</p> <p>14 information flow if you have comanagers of an</p> <p>15 offering.</p> <p>16 Q. So any important information would be</p> <p>17 shared?</p> <p>18 A. Normally, yeah.</p> <p>19 Q. Do you recall how the street reacted</p> <p>20 to the March 19th press release?</p> <p>21 A. I do not recall today how the street</p> <p>22 reacted.</p> <p>23 Q. Obviously, the reaction was not</p> <p>24 significant enough to impair the closing of the</p> <p>25 convertible offering; is that correct?</p>
<p style="text-align: right;">Page 119</p> <p>1 Lurie</p> <p>2 phone call. I mean, we would have had a long</p> <p>3 discussion. What we would have discussed and</p> <p>4 responses that the company gave, whatever they</p> <p>5 were got us comfortable.</p> <p>6 Q. At any point in the first quarter of</p> <p>7 '98, did Morgan Stanley share Sunbeam's sales</p> <p>8 information with any other banks?</p> <p>9 A. I have no idea. I have no</p> <p>10 recollection of that. I wouldn't necessarily</p> <p>11 know. When you say "other banks," you mean</p> <p>12 another investment bank or --</p> <p>13 Q. Well, I'll give you a more specific</p> <p>14 question.</p> <p>15 Did you understand that other banks</p> <p>16 were participating in the senior credit facility?</p> <p>17 A. I think I was told, yeah. I mean,</p> <p>18 senior credit facility, I don't recollect that,</p> <p>19 that Morgan Stanley was providing the whole</p> <p>20 thing. So there may have been other banks --</p> <p>21 Q. I'll tell you, it was First Union and</p> <p>22 Bank of America.</p> <p>23 A. Okay.</p> <p>24 Q. Do you have any reason to believe</p> <p>25 that Morgan Stanley shared any information</p>	<p style="text-align: right;">Page 121</p> <p>1 Lurie</p> <p>2 A. I'm sorry. The market reaction was</p> <p>3 not --</p> <p>4 Q. -- sufficiently dramatic to impair</p> <p>5 your ability to close the convertible offering?</p> <p>6 A. I don't know if there's a necessary</p> <p>7 relationship between the two, but we closed the</p> <p>8 offering.</p> <p>9 Q. You didn't delay the offering, even?</p> <p>10 A. I don't believe we delayed the</p> <p>11 offering.</p> <p>12 Q. Was the subject of delaying the</p> <p>13 offering discussed at any point?</p> <p>14 A. Today, I cannot recall any</p> <p>15 discussions on that. There may have been. I</p> <p>16 don't recall today.</p> <p>17 Q. When you say "there may have been" --</p> <p>18 A. Well, there may have been or there</p> <p>19 may not have been. I just don't recall.</p> <p>20 Q. I'll show you what's been marked as</p> <p>21 Exhibit 14 previously.</p> <p>22 A. Okay.</p> <p>23 Q. Exhibit 14 is the March 19th press</p> <p>24 release that we've been discussing?</p> <p>25 A. It appears to be, yeah.</p>

Page 122

1 Lurie

2 Q. You would agree with me that the

3 press release indicates that Sunbeam may still

4 meet first quarter '98 street estimates in

5 revenue?

6 A. May still?

7 Q. Correct.

8 A. Well, it's expected to be lower. So

9 I guess there's -- it's possible the net sales

10 would be lower. So, yeah, they could maybe still

11 meet it. But they're saying their reading is

12 it's going to be lower than the estimates that

13 were on the street.

14 Q. Well, if you look at midway through

15 the first paragraph it says, "the shortfall from

16 analysts' estimates, if any, would be due to" --

17 A. Yeah. I mean, there is still a

18 possibility they'll be within the range.

19 Q. What's the basis for that statement?

20 A. Today, I recall nothing about the

21 discussions that would have led to that statement

22 or how the statement -- this press release got

23 prepared. I'm sure we had a basis for belief

24 back then. This, I believe, did go into the

25 offering memo. We would have wanted to be

Page 123

1 Lurie

2 comfortable with the statements. So we would

3 have done due diligence. That was probably part

4 of the phone call.

5 I mean, I'm looking at the language

6 here. I'm assuming there were discussions in the

7 phone call that led us to be comfortable with the

8 inventory management and other pattern issues

9 that this was the statement we were comfortable

10 in disclosing and putting in an offering memo.

11 But today I can't tell you what the basis was

12 from what we knew in 1998.

13 Q. Can you tell me what diligence was

14 performed to get comfortable with those

15 statements?

16 A. Today, no. Other than I know we had

17 at least one or more phone calls on the night of

18 the 18th. There were probably a variety of other

19 things going on, phone calls, discussions, either

20 internally with the company. There may have been

21 other pieces of information that we had that back

22 this up that I don't recall today (indicating).

23 Q. But other than a conversation with

24 senior management, you can't tell me any specific

25 diligence that was performed?

Page 124

1 Lurie

2 A. Again, as I said before, I do not

3 recall anyone calling these customers. That may

4 have been done; they may not have been done. We

5 may have been able to see the -- what their

6 earlier patterns of buying were, but I don't

7 recall what we did in 1998.

8 Q. Was there any -- strike that.

9 Does this press release indicate --

10 strike that too.

11 Did you have drafts of comfort

12 letters from Andersen when this press release was

13 issued?

14 A. I resume we did. But I don't recall

15 when we received the drafts. I mean, there was

16 an indication, I believe, in the letter earlier

17 that I was supposed to get a draft on March 9, I

18 think it said. I don't remember if I actually

19 received one March 9.

20 Q. I'm going to give you something we

21 marked previously as CPH 110.

22 Does Exhibit 110 appear to be a draft

23 comfort letter to Morgan Stanley in connection

24 with the convertible debt offering?

25 A. It appears to be a draft of a comfort

Page 125

1 Lurie

2 letter addressed to Morgan Stanley.

3 Q. And the fax header shows a date of

4 March 17, 1998.

5 Do you see that?

6 A. I do see that.

7 Q. Does that refresh your memory in any

8 way as to when you received the drafts of the

9 comfort letter?

10 A. No, it doesn't at all. But if you

11 look -- continue, it's a 561 fax. I don't know

12 who this came to. I don't know if I received

13 this. 561 is South Florida. So I presume it's

14 either Sunbeam's or Arthur Andersen's office down

15 there. Whether it was sent to me, I can't tell.

16 Whether I saw this specific draft, I have no

17 idea.

18 Q. This is sent, as it notes at the top,

19 "for discussion purposes only."

20 Do you see that?

21 A. Yup.

22 Q. Is that a customary header for draft

23 cover letters?

24 A. Some don't put the bold headings.

25 Some just have the draft paragraph. Accountants

<p style="text-align: right;">Page 126</p> <p>1 Lurie</p> <p>2 have different ways they handle it. Some say for</p> <p>3 what this says; others don't.</p> <p>4 Q. So your testimony is that while you</p> <p>5 think you had a draft of the comfort letter</p> <p>6 before the press release, you don't know that for</p> <p>7 sure; and you don't know when you had this draft,</p> <p>8 Exhibit 110. Is that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. If you look at the third page of the</p> <p>11 comfort letter, the draft comfort letter, Exhibit</p> <p>12 CPH 110, there is handwriting at the bottom that</p> <p>13 says, "we had fire sale of inventory"?</p> <p>14 A. Yup.</p> <p>15 Q. Do you know what that refers to?</p> <p>16 A. I can guess. I have no idea. At</p> <p>17 some point in time, there was an inventory fire</p> <p>18 sale that means.</p> <p>19 Q. Is that an explanation as to why</p> <p>20 first quarter '98 revenues were low?</p> <p>21 A. It could. I have absolutely no idea</p> <p>22 who wrote this or what their reasons for it.</p> <p>23 Maybe that there was sales were made in the first</p> <p>24 quarter as part --</p> <p>25 MR. WISE: You don't need to</p>	<p style="text-align: right;">Page 128</p> <p>1 Lurie</p> <p>2 potential effect of early buy programs. When I</p> <p>3 first heard of the concept of early buy programs</p> <p>4 in the course of the offering, I have no</p> <p>5 recollection today.</p> <p>6 Q. Was there any discussion about</p> <p>7 including in the March 19th press release that</p> <p>8 sales had been accelerated into the fourth</p> <p>9 quarter of 1997?</p> <p>10 A. Again, I do not recall what the</p> <p>11 discussions relating to including or excluding</p> <p>12 information in that press release were. I don't</p> <p>13 recall today what those discussions in '98 were.</p> <p>14 Q. Does the acceleration of sales into</p> <p>15 the fourth quarter of '97 raise any concerns</p> <p>16 about the quality of 1997 earnings or revenue?</p> <p>17 A. The quality of 1997?</p> <p>18 Q. Correct.</p> <p>19 A. I'm not even quite sure what you're</p> <p>20 getting at. But I can't -- I don't know how to</p> <p>21 respond to that.</p> <p>22 Q. Let me try and rephrase it, then.</p> <p>23 Does information indicating sales had</p> <p>24 been accelerated into the fourth quarter of '97</p> <p>25 raise any concerns about the sustainability of</p>
<p style="text-align: right;">Page 127</p> <p>1 Lurie</p> <p>2 speculate. You testified you don't know</p> <p>3 what they meant.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MR. JOHNSON:</p> <p>6 Q. I wonder if you could look at the</p> <p>7 Paragraph 6(b) for me, which is on Page 4 of the</p> <p>8 draft comfort letter.</p> <p>9 A. Uh-huh.</p> <p>10 Q. 6(b) indicates that revenues in the</p> <p>11 first quarter of '98 decreased primarily due to a</p> <p>12 program that accelerated sales in the fourth</p> <p>13 quarter of '97.</p> <p>14 Do you see that?</p> <p>15 A. Yup.</p> <p>16 Q. Was that news to you when you</p> <p>17 received a draft comfort letter?</p> <p>18 MR. WISE: He hasn't testified that</p> <p>19 he received this draft comfort letter.</p> <p>20 BY MR. JOHNSON:</p> <p>21 Q. When was the first time, if ever,</p> <p>22 that you heard that Sunbeam had accelerated sales</p> <p>23 into the fourth quarter of '97?</p> <p>24 A. I believe there was disclosure in the</p> <p>25 prospectus about their early buy programs and the</p>	<p style="text-align: right;">Page 129</p> <p>1 Lurie</p> <p>2 the company's revenue performance?</p> <p>3 A. It raises due diligence questions</p> <p>4 that you're going to ask, sure. If you have</p> <p>5 early buy programs, what the meaning of it is how</p> <p>6 they're impacted, what impact they may have had</p> <p>7 in previous early buy programs on revenues. I</p> <p>8 mean, again, it's one issue in the overall</p> <p>9 context that you have to take into account.</p> <p>10 Q. So you would say it's a potentially</p> <p>11 significant fact?</p> <p>12 A. A potential fact that I'd certainly</p> <p>13 want to -- I'm not going to try to quantify it.</p> <p>14 I'm just going to say it's something you</p> <p>15 certainly might want to look into and have</p> <p>16 further discussions on it.</p> <p>17 Q. By the way, the last page of the</p> <p>18 press release --</p> <p>19 A. Of the press release?</p> <p>20 Q. -- Exhibit 14, indicates that</p> <p>21 statements in the press release -- certain</p> <p>22 statements are forward-looking statements.</p> <p>23 What's the significance of that?</p> <p>24 A. Of, well, the significance of the</p> <p>25 word "forward-looking statements," whatever?</p>

Page 130

1 Lurie

2 Q. The significance of forward-looking

3 statement.

4 A. Because it's in the middle of a

5 quarter, you're giving estimates about what your

6 expectations are for a quarter. It is for the

7 full quarter. That is a forward-looking

8 statement.

9 Q. Does that relieve any obligation to

10 provide fair and accurate information?

11 A. No.

12 Q. Did -- in the days following the

13 issuance of the press release, Exhibit 14, did

14 you ever hear any comments to the effect that

15 lawyers made the company do it?

16 A. I don't recall ever hearing those

17 comments, but I don't recall any comments

18 regarding the press release after it was issued.

19 Q. You never heard any effort by Sunbeam

20 to downplay the significance of the press

21 release?

22 A. I don't recall any efforts by anyone,

23 Sunbeam or otherwise, the downplay, up-play of

24 the press release.

25 Q. Would the efforts by the company to

Page 131

1 Lurie

2 downplay the significance of the press release

3 concern you in any way?

4 A. I guess I might have wanted to

5 understand what their thinking was and what they

6 were doing. I mean, I don't know how they were

7 downplaying the significance of the press

8 release. I don't know what they did or didn't

9 do.

10 Q. But, again, depending on the

11 circumstances, that may be an issue that concerns

12 you?

13 A. Of all the facts that we had at the

14 time, it's something that we might have looked

15 into or tried to understand.

16 Q. This has been marked previously as

17 Exhibit 17. Mr. Lurie, Exhibit 17 is the March

18 19th comfort letter that was presented to you; is

19 that correct?

20 A. This is -- appears to be a signed

21 copy of the final comfort letter provided by

22 Arthur Andersen to Morgan Stanley. Whether this

23 was, quote, presented to me, an actual signed

24 copy, I don't recall.

25 Q. So you don't have any recollection of

Page 132

1 Lurie

2 the final letter being signed and delivered to

3 you by hand?

4 A. No, I do not. It may have been. But

5 I don't recall if it did or whether it didn't.

6 Q. Or when it did, for that matter?

7 A. When -- no. I don't recall.

8 Generally, it would have been the day of pricing.

9 Q. And that was March 19th?

10 A. That's my recollection. Correct.

11 Q. I assume you've seen many comfort

12 letters in your career?

13 A. Yes.

14 Q. Is there anything about this comfort

15 letter that is out of the ordinary?

16 A. Are you going to give me 10, 15

17 minutes to review it?

18 Q. Sure.

19 A. Do you want to point me to anything?

20 Q. I'm asking: Based on your

21 experience, is there anything about it that is

22 out of the ordinary?

23 A. The Page 3 at the top, I wouldn't

24 necessarily say out of the ordinary, but there

25 were notations of it, an interim period,

Page 133

1 Lurie

2 shareholder's equity had decreased as well as

3 long term debt having increased.

4 The next paragraph, 5(a), the numbers

5 in 5(a). Then in 5(b), there is an indication

6 that net sales for the two months of 1998 were

7 below the period -- the corresponding period of

8 1997 as well as a net income going from a gain, a

9 net income from last year to a net loss this

10 year.

11 So those are clearly -- you know,

12 those are clearly somewhat out of the ordinary

13 disclosures that you would be looking into.

14 Do you want me to continue? Is there

15 anything further?

16 Q. Let's focus on 6(b). We looked at an

17 earlier draft of that?

18 A. 6(b)?

19 Q. Correct.

20 A. Okay. That's the next page.

21 Q. Is there anything out of the ordinary

22 about Paragraph 6(b)?

23 A. It's an explanation. I can't tell

24 you today if I thought it was out of the

25 ordinary. There is the early buy program

Page 134

1 Lurie
2 reference. I don't recall if the next sentence
3 was in the earlier version of the document that
4 you showed me before -- of this document that you
5 showed me before.
6 Okay. There is this additional
7 sentence regarding -- somewhat out of the
8 ordinary, I'm using that -- nonrecurring January
9 of 1997 sales of excess inventory.
10 And then there is the compensation
11 charge discussion. Again, I'd have to go back
12 and look to see if it was in the earlier version.
13 Q. And I'm going to ask the same
14 question about 6(c).
15 A. 6(c)? It's showing that now
16 throughout the first two full months of '97, that
17 net sales continue to be down, I guess, the
18 first.
19 Q. So 6(c) says that through the first
20 two months of '98, the company's sales are at
21 half of what they were in the prior period?
22 A. Correct.
23 Q. Was that an out-of-the-ordinary
24 revelation to you?
25 A. I have no recollection today of what

Page 135

1 Lurie
2 -- when I first would have received this. But
3 if this came the 19th, this (indicating) is
4 subsequent to having had conversations regarding
5 Exhibit 16 (indicating). So I -- at least if the
6 timing of these came in accordance with what we
7 have been discussing, that this was the 18th and
8 this was the 19th (indicating), we would have had
9 more detailed information based on what Exhibit
10 16 and the discussions that related to that.
11 And I believe -- I'm just curious --
12 the 72 million is what is shown for this list
13 (indicating) is what actually occurred. So this
14 is a more recent version.
15 Q. So it was not news to you that
16 Sunbeam's sales were running at half for the
17 first two months of '98 over '97?
18 A. I'm assuming, given the timing, that
19 by the time I had received this, we had already
20 received that (indicating). So we knew there
21 were some discussions that we had the night
22 before regarding first quarter sales. So getting
23 this delivered to me, if it was delivered to me,
24 or seeing a copy of this on the 19th would not
25 necessarily have surprised me, given what we knew

Page 136

1 Lurie
2 from the days beforehand.
3 Q. So you can't recall any specific
4 reaction to the comfort letters --
5 A. Yes.
6 Q. -- as opposed to other information?
7 A. I cannot recall any specific reaction
8 to this comfort letter (indicating).
9 Q. This letter is addressed to Morgan
10 Stanley.
11 Why is that?
12 A. The underwriter -- the comfort letter
13 is always addressed to the underwriter.
14 Q. Why is it always addressed to the
15 underwriter?
16 A. That's what FAS, now 110, says. It's
17 FAS 72. It's addressed to someone with a due
18 diligence obligation. Morgan Stanley had to give
19 them a representation letter. They had a due
20 diligence obligation. So...
21 Q. And did Morgan Stanley give this
22 letter -- this comfort letter, Exhibit 17, to
23 anyone besides Davis Polk?
24 A. I have no idea who Morgan Stanley
25 would have given this to. I have no recall of

Page 137

1 Lurie
2 any discussion of who they should or should not
3 have given it to. I don't recall giving it to
4 anyone. I don't remember if Morgan Stanley gave
5 it to me or I gave it Morgan Stanley. A signed
6 copy is what I'm getting at.
7 Q. Well, you have no reason to believe
8 that Morgan Stanley and Davis Polk lacked copies
9 of the signed comfort letter?
10 A. I have no reason to believe that we
11 did not have a signed comfort letter.
12 Q. The first page of the comfort letter,
13 Exhibit 17, indicates the offering memorandum is
14 for --
15 A. -- two billion.
16 Q. -- two billion, fourteen million.
17 Did the size of that offering
18 increase at any point in time?
19 A. Apparently it did. I had forgotten
20 that. But when I saw the original offering memo
21 and the final, it had increased. Yes, there had
22 been an increase in the offering size.
23 Q. How did that come about?
24 A. I have no -- I apologize. I have no
25 recollection today of when we were advised, how

<p style="text-align: right;">Page 138</p> <p>1 Lurie</p> <p>2 or why we were advised it was increasing.</p> <p>3 Q. Do you recall the convertible portion</p> <p>4 of the offering increased while the senior credit</p> <p>5 facility decreased?</p> <p>6 A. I have no recollection of the two</p> <p>7 being tied or how that all transpired.</p> <p>8 Q. Or when it transpired?</p> <p>9 A. Or when it transpired.</p> <p>10 Q. Or why it transpired?</p> <p>11 A. Or why it transpired.</p> <p>12 Q. You mentioned already today that you</p> <p>13 were at the printer for the final printing of the</p> <p>14 offering memorandum?</p> <p>15 A. Yes.</p> <p>16 Q. And that was on March 19th?</p> <p>17 A. I believe so. That's correct.</p> <p>18 Q. Who was at the printer?</p> <p>19 A. I have to be honest. I don't</p> <p>20 recall. I remember one or two people from Arthur</p> <p>21 Andersen were there. At some point there must</p> <p>22 have been one or more people from Skadden. I</p> <p>23 don't remember who it was.</p> <p>24 Morgan Stanley would have either been</p> <p>25 there in the beginning, or someone from Morgan</p>	<p style="text-align: right;">Page 140</p> <p>1 Lurie</p> <p>2 recall.</p> <p>3 Q. And Morgan Stanley?</p> <p>4 A. I don't recall how many.</p> <p>5 Q. And this was on the evening of March</p> <p>6 19th; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And was there any decision about</p> <p>9 whether the March 19th press release should be</p> <p>10 included verbatim in the offering memorandum?</p> <p>11 A. At the printers?</p> <p>12 Q. Yes.</p> <p>13 A. I have no recollection of any</p> <p>14 discussions relating to that.</p> <p>15 Q. Did anyone from Andersen advise you,</p> <p>16 or anyone from Morgan Stanley, that the press</p> <p>17 release should not be included verbatim in the</p> <p>18 offering memorandum?</p> <p>19 A. I have no recollection of any</p> <p>20 discussions relating to the press release at all</p> <p>21 at the printers the night of the 19th.</p> <p>22 Q. The press release did end up verbatim</p> <p>23 in the offering memorandum?</p> <p>24 A. That's my recollection, yes.</p> <p>25 Q. How did that come to pass?</p>
<p style="text-align: right;">Page 139</p> <p>1 Lurie</p> <p>2 Stanley, most likely John Tyree or someone else,</p> <p>3 would have been there at some point during the</p> <p>4 evening. When they actually got there, I do not</p> <p>5 recall. They would have normally always been at</p> <p>6 the printer. So that's four main players. I do</p> <p>7 not recall that anyone from Sunbeam, you know,</p> <p>8 the management themselves, were at the printer.</p> <p>9 Q. And other than you being there</p> <p>10 yourself, you can't specifically identify any</p> <p>11 other person who was there?</p> <p>12 A. I can't remember if Alan Dean or</p> <p>13 Heather Stack from Davis Polk were there. I know</p> <p>14 I was there.</p> <p>15 Q. And I think you said a couple of</p> <p>16 people from Andersen?</p> <p>17 A. I have a vague recollection there</p> <p>18 were two people from Arthur Andersen that were</p> <p>19 there.</p> <p>20 Q. Males or females?</p> <p>21 A. I think there were only males on the</p> <p>22 transaction. So I'm going to say males.</p> <p>23 Q. How about Skadden? How many people</p> <p>24 from Skadden?</p> <p>25 A. I don't recall. I'm sorry. I don't</p>	<p style="text-align: right;">Page 141</p> <p>1 Lurie</p> <p>2 A. I -- was agreed to be put in. I</p> <p>3 don't remember who we discussed it with, how it</p> <p>4 was discussed, but there was a consensus and a</p> <p>5 general understanding it would go in the offering</p> <p>6 memo.</p> <p>7 Q. So there was a consensus. You don't</p> <p>8 recall any dissent?</p> <p>9 A. Absolutely, no. I don't recall any</p> <p>10 dissent by anyone.</p> <p>11 Q. Was there any heated discussion of</p> <p>12 any nature at the printer?</p> <p>13 A. Heated discussion?</p> <p>14 Q. Yes.</p> <p>15 A. Absolutely not. Not that I recall.</p> <p>16 It was, to my recollection, a very -- it was a</p> <p>17 very normal, uneventful evening at the printers</p> <p>18 until you were there between 2 and 5 a.m. in the</p> <p>19 morning.</p> <p>20 Q. There was nothing uneventful about</p> <p>21 this printing?</p> <p>22 A. Nothing eventful. It was totally</p> <p>23 uneventful.</p> <p>24 Q. Totally uneventful, okay.</p> <p>25 Did anyone use any profanity?</p>

<p style="text-align: right;">Page 142</p> <p>1 Lurie</p> <p>2 A. Profanity?</p> <p>3 Q. Yes.</p> <p>4 A. Not that I recall.</p> <p>5 Q. Did Mr. Tyree get upset about</p> <p>6 anything?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did you?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Was anyone upset about anything?</p> <p>11 A. If there was someone upset, I think I</p> <p>12 would -- or if there was profanity being used or</p> <p>13 if it was an eventful evening, I think I would</p> <p>14 have remembered. This was a very -- to my</p> <p>15 recollection, it was very uneventful. I don't</p> <p>16 remember anything going on other than making sure</p> <p>17 the numbers got in and it got printed properly.</p> <p>18 Q. So you have no recollection of anyone</p> <p>19 from Andersen saying that everyone in the room</p> <p>20 would get sued if Sunbeam didn't make its numbers</p> <p>21 in the first quarter?</p> <p>22 A. I have no recollection of that</p> <p>23 comment. Someone from Andersen saying that or</p> <p>24 anyone else saying that, I don't remember.</p> <p>25 Q. Did anyone voice skepticism about</p>	<p style="text-align: right;">Page 144</p> <p>1 Lurie</p> <p>2 questioning putting the press release into the</p> <p>3 offering memo. There was probably just someone</p> <p>4 said it's going in the offering memo.</p> <p>5 Q. Did anyone voice skepticism about the</p> <p>6 company's ability to exceed first quarter '97</p> <p>7 revenue results?</p> <p>8 A. I do not recall any discussions</p> <p>9 relating to that at the printer that night.</p> <p>10 Q. If Andersen told you that it was</p> <p>11 skeptical that the company could make the first</p> <p>12 quarter '97 numbers in the first quarter of '98,</p> <p>13 would that cause you any concern?</p> <p>14 A. If they had told me that, it was</p> <p>15 certainly something that I would have questioned</p> <p>16 them further on to see what information and what</p> <p>17 concerns they had. It probably -- if it was</p> <p>18 serious enough from their mind, I probably would</p> <p>19 have picked up the call [sic] and called Alan</p> <p>20 Dean or other people at Davis Polk. But I don't</p> <p>21 recall any discussions, anyone saying anything</p> <p>22 like that. But, again, in the whole mix of</p> <p>23 things, yeah, that might be something that you</p> <p>24 would look into.</p> <p>25 Q. How about if you heard that certain</p>
<p style="text-align: right;">Page 143</p> <p>1 Lurie</p> <p>2 whether Dunlap had truly turned Sunbeam around?</p> <p>3 A. I do not recall any discussions about</p> <p>4 that back in March 19th or 18th or 22nd of 1998.</p> <p>5 Q. Did anyone from Andersen indicate</p> <p>6 that Andersen was going to send personnel to all</p> <p>7 of Sunbeam's shipping docks to monitor the</p> <p>8 quarter close?</p> <p>9 A. No. I don't recall that anyone -- I</p> <p>10 don't recall ever being told that Andersen was</p> <p>11 going to do that.</p> <p>12 Q. Did anyone explain that certain</p> <p>13 personnel within Sunbeam objected to the</p> <p>14 inclusion of the press release in the offering</p> <p>15 memorandum?</p> <p>16 A. Did anyone from Andersen say that</p> <p>17 people from Sunbeam --</p> <p>18 Q. Let's start even broader than that.</p> <p>19 A. Okay.</p> <p>20 Q. Did you hear from anyone at the</p> <p>21 printer that there were Sunbeam personnel who</p> <p>22 objected to the inclusion of the press release in</p> <p>23 the offering memorandum?</p> <p>24 A. I do not recall any discussions</p> <p>25 relating to anyone objecting or anyone</p>	<p style="text-align: right;">Page 145</p> <p>1 Lurie</p> <p>2 Sunbeam personnel objected to including the press</p> <p>3 release in the offering memorandum? Is that</p> <p>4 something that would have been significant to</p> <p>5 you?</p> <p>6 A. It depends upon why, the reason for</p> <p>7 the objection, what their concern was. I mean,</p> <p>8 again, yes, as an individual, it's something that</p> <p>9 I might have questioned. But you have to give me</p> <p>10 more of the facts that relate to what was going</p> <p>11 on the night of the 19th or the evening of the</p> <p>12 18th, I guess, whatever day it was.</p> <p>13 Q. And if you had heard that Andersen</p> <p>14 doubted whether Dunlap had really turned Sunbeam</p> <p>15 around, if you had heard that at the printer,</p> <p>16 would that be something that you would want to</p> <p>17 investigate further?</p> <p>18 A. Again, it depends what the context</p> <p>19 was, what they were saying with those words.</p> <p>20 You're asking me to speculate what we were all</p> <p>21 thinking and what we all knew at the time and</p> <p>22 what due diligence we had done to get</p> <p>23 comfortable.</p> <p>24 Q. So it's possible, if Andersen told</p> <p>25 you they didn't believe the turnaround was</p>

Page 146

1 Lurie
2 authentic, that wouldn't have mattered to you?
3 A. Using those words, it's probably
4 something that would have raised some eyebrows.
5 And I might have asked some more questions and
6 looked into it. Depending on who said it, I
7 might have wanted to speak to more senior people
8 or have Alan or others at Davis Polk or Morgan
9 Stanley speak to more senior people. There's a
10 lot of things that I can speculate today of what
11 I might have done, but I just don't recall any of
12 this occurring.
13 Q. In connection with either the press
14 release or the offering memorandum, was there any
15 discussion about issuing a release that simply
16 stated that the company would not meet the street
17 estimates for the company revenue?
18 A. There may have been -- again, I
19 apologize. I do not recall the specific
20 discussions relating to the content or what the
21 wording of the press release would be. All I can
22 tell you, you showed me what appears to be the
23 press release. I assume it's the press release.
24 We somehow reached the conclusion as a group that
25 this would be the press release. The basis for

Page 147

1 Lurie
2 determining the words in there, I can't tell you
3 today.
4 Q. Although Andersen was not involved in
5 the press release issuance?
6 A. I have absolutely no idea if that's
7 the case. They may have been involved. They may
8 have seen it early. The more senior people at
9 Andersen -- I forgot the name of the gentlemen
10 you mentioned before -- may have seen it before.
11 Whether the two younger people from Andersen had
12 seen it, I just don't know.
13 Q. Can you remember anything that
14 happened at the press release that is a specific
15 event -- excuse me -- anything that happened at
16 the printer that is a specific event?
17 A. Anything that happened at the printer
18 that's a specific event? No. I mean, it was an
19 uneventful evening.
20 Q. So as you sit here today, you don't
21 remember nothing out of the ordinary?
22 A. Nothing out of the ordinary.
23 Q. Does that mean that nothing out of
24 the ordinary happened or that you can't remember
25 anything out of the ordinary?

Page 148

1 Lurie
2 A. That I can't remember anything out of
3 the ordinary. But that likely means that if
4 something out of the ordinary happened, that I
5 probably would have remembered it.
6 THE WITNESS: Can I ask that we take
7 a break? My wife is trying to reach me
8 about a room for my daughter --
9 MR. JOHNSON: Sure.
10 THE WITNESS: -- at law school for
11 next year.
12 THE VIDEOGRAPHER: The time is
13 12:57. We're going off the record.
14 (Luncheon recess taken.)
15 AFTERNOON SESSION
16 (1:42 p.m.)
17 THE VIDEOGRAPHER: The time is 1:42.
18 We're back on the record.
19 JAMES M. LURIE,
20 resumed, having been previously duly sworn,
21 was examined and testified further as
22 follows:
23 EXAMINATION (Cont'd.) BY
24 MR. JOHNSON:
25 Q. Mr. Lurie, on our break I gave you an

Page 149

1 Lurie
2 exhibit marked CPH Exhibit 114 to review.
3 Have you had a chance to look at
4 that?
5 A. Yes.
6 Q. And this is a letter from Lawrence
7 Bornstein to the files dated March 31, 1998.
8 Do you see that?
9 A. Yes.
10 Q. And this memorandum concerns events
11 at the printer on March 19, 1998; is that
12 correct?
13 A. That's what it purports to discuss.
14 Q. Does this memorandum, Exhibit 114,
15 refresh your memory in any way about any of the
16 events that happened at the printer?
17 A. What's in here does not refresh my
18 recollection, and what's in here is news to me.
19 Q. What's in Exhibit 114, is it
20 inconsistent with your recollection?
21 A. My recollection, it was a very
22 uneventful meeting at the printer. I do not
23 remember any of -- no specific recollection of
24 any of the discussions that he refers to here in
25 this memo. I -- he says, "Mr. Tyree and Mr.

<p style="text-align: right;">Page 150</p> <p>1 Lurie</p> <p>2 Lurie were very upset." I have no recollection</p> <p>3 of there being any upset. It being uneventful</p> <p>4 and cordial is my recollection of the meeting at</p> <p>5 the printers.</p> <p>6 Q. Is it possible that your recollection</p> <p>7 six years later is mistaken?</p> <p>8 A. I don't want to say it's mistaken. I</p> <p>9 would think, if this was an event, something</p> <p>10 transpired that would have suggested that I was</p> <p>11 upset, it is probably something that I would have</p> <p>12 remembered.</p> <p>13 Q. So are you saying that</p> <p>14 Mr. Bornstein's memo prepared or dated 12 days or</p> <p>15 so after the event is incorrect?</p> <p>16 A. I have no recollection of any of what</p> <p>17 he says here occurring. And I certainly do not</p> <p>18 remember any discussions about or me being upset.</p> <p>19 I have no knowledge of him talking to any of</p> <p>20 these other people. But I've read the memo, and</p> <p>21 it was interesting reading in places, but --</p> <p>22 Q. Is it possible that the memo is</p> <p>23 correct?</p> <p>24 A. I have no way of knowing what his</p> <p>25 thinking of what transpired that evening were or</p>	<p style="text-align: right;">Page 152</p> <p>1 Lurie</p> <p>2 Can you identify Exhibit 216 for the</p> <p>3 record.</p> <p>4 A. It's a letter from, it looks like --</p> <p>5 who's it from? -- from Adrian Deitz, who is an</p> <p>6 attorney at Skadden, to Alan Dean, myself, the</p> <p>7 Davis Polk team, John Tyree of Morgan Stanley,</p> <p>8 attaching the draft of a purchase agreement with</p> <p>9 their comments, "their" being Skadden and</p> <p>10 Sunbeam's comments on the purchase agreement.</p> <p>11 Q. I wonder if you could look at</p> <p>12 subparagraph (I), which appears on Page 4 of the</p> <p>13 draft. And that's the Bates page CPH 0632913.</p> <p>14 A. Page 4, you said, correct?</p> <p>15 Q. Correct.</p> <p>16 A. Okay.</p> <p>17 Q. In subparagraph (I), there is a</p> <p>18 handwritten notation deleting the phrase "or any</p> <p>19 development involving a prospective material</p> <p>20 adverse change."</p> <p>21 Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Do you have any understanding as to</p> <p>24 why Sunbeam or Skadden was proposing deleting</p> <p>25 that phrase?</p>
<p style="text-align: right;">Page 151</p> <p>1 Lurie</p> <p>2 what his recollection was or what he thought was</p> <p>3 going on that night.</p> <p>4 Q. So it is possible that this is</p> <p>5 Mr. Bornstein's recollection?</p> <p>6 A. This is obviously what he wrote</p> <p>7 down. That is all I can tell you. This is words</p> <p>8 that he put on this piece of paper. I don't know</p> <p>9 what his thinking was or why he phrased it the</p> <p>10 way he did.</p> <p>11 Q. And you have no reason to believe</p> <p>12 that Mr. Bornstein was making this up?</p> <p>13 A. I don't want to criticize</p> <p>14 Mr. Bornstein at all. I don't want to question</p> <p>15 Mr. Bornstein at all. There are things in here</p> <p>16 that I just have no recollection. And I think I</p> <p>17 would. It didn't happen.</p> <p>18 Q. Were you involved in preparing the</p> <p>19 purchase agreement whereby Morgan Stanley</p> <p>20 purchased the convertible offering from Sunbeam?</p> <p>21 A. I would have probably -- I think I</p> <p>22 was the primary draftsman of the purchase</p> <p>23 agreement, correct.</p> <p>24 Q. I want to show you a draft of that,</p> <p>25 if I could, previously marked as Exhibit 216.</p>	<p style="text-align: right;">Page 153</p> <p>1 Lurie</p> <p>2 A. Because every issuer and every</p> <p>3 issuer's counsel proposes to delete that phrase.</p> <p>4 Q. And why is that?</p> <p>5 A. It's prospective, forward-looking,</p> <p>6 and they think it's too generic. And there may</p> <p>7 be other references in this document to prospects</p> <p>8 and prospective. What does that mean? It is a</p> <p>9 standard comment from underwriters -- to</p> <p>10 underwriters' counsel from issuers and their</p> <p>11 counsel.</p> <p>12 Q. And there is obviously a bit of humor</p> <p>13 associated with that?</p> <p>14 A. I saw it crossed out. And you asked</p> <p>15 me about it. I'm just chuckling, because it's</p> <p>16 always crossed out.</p> <p>17 Q. Were there any discussions concerning</p> <p>18 the applicability of that clause to this</p> <p>19 transaction?</p> <p>20 A. I would have -- I have absolutely no</p> <p>21 recollection of any discussions on the</p> <p>22 underwriting agreement, generically or on this</p> <p>23 clause in particular, with either Morgan Stanley,</p> <p>24 Skadden or the company.</p> <p>25 Q. Was there any discussion to the</p>

<p style="text-align: right;">Page 154</p> <p>1 Lurie</p> <p>2 effect that Sunbeam's deteriorating first quarter</p> <p>3 might be a prospective material adverse change?</p> <p>4 A. I do not recall having those</p> <p>5 discussions in 1998 at this point.</p> <p>6 Q. Does that mean those discussions</p> <p>7 could have occurred?</p> <p>8 A. It means they could have occurred.</p> <p>9 It means they could not have occurred. I just</p> <p>10 have no recollection in 2004 of what was</p> <p>11 discussed in 1998.</p> <p>12 Q. Is the fact that Sunbeam's sales</p> <p>13 through the first two months of the first quarter</p> <p>14 of '98, those sales running at half of the prior</p> <p>15 year period, is that a potential prospective</p> <p>16 material adverse change?</p> <p>17 A. In certain context it could be,</p> <p>18 absolutely. Again, you need to look at the</p> <p>19 entire situation.</p> <p>20 Q. Did you work on this purchase</p> <p>21 agreement at the printer?</p> <p>22 A. I have no recollection if this was</p> <p>23 worked on at the printer. What's the date of the</p> <p>24 memo? The 17th. So this would have been two</p> <p>25 days before the printers, right? Three days</p>	<p style="text-align: right;">Page 156</p> <p>1 Lurie</p> <p>2 Page 5.</p> <p>3 A. Okay.</p> <p>4 Q. Do you see the change reflected in</p> <p>5 Paragraph (I)?</p> <p>6 A. Yes.</p> <p>7 Q. Can you tell me why that revision was</p> <p>8 proposed.</p> <p>9 A. I have no recollection of who</p> <p>10 proposed it, why it was proposed. I can</p> <p>11 speculate, but I don't recall any discussions</p> <p>12 relating to it.</p> <p>13 Q. There's a particular part of the</p> <p>14 revision that I want to focus on. The revision</p> <p>15 states that "The press release shall not in and</p> <p>16 of itself constitute a material adverse change or</p> <p>17 prospective material adverse change."</p> <p>18 Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. What's the significance of the "in</p> <p>21 and of itself" phrase?</p> <p>22 A. You want me to speculate now what I</p> <p>23 think the wording was intended to mean? I do not</p> <p>24 recall why those words were put in or the</p> <p>25 discussions that may have been around the use of</p>
<p style="text-align: right;">Page 155</p> <p>1 Lurie</p> <p>2 before the printers? Somewhere in the interim I</p> <p>3 probably worked on it.</p> <p>4 Q. Let me show you what we've marked as</p> <p>5 211.</p> <p>6 MR. JOHNSON: And I'm going to have</p> <p>7 to ask you guys to share. For some reason I</p> <p>8 don't have a spare.</p> <p>9 A. Okay.</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. Exhibit 211 is a markup of the</p> <p>12 purchase agreement and fax cover sheet; is that</p> <p>13 correct?</p> <p>14 A. It's a fax cover sheet. It's a cover</p> <p>15 memo from Nicole Duncan addressed to Adrian Deitz</p> <p>16 with cc's to me and other people with a, quote,</p> <p>17 marked copy of the purchase agreement. It's</p> <p>18 dated two days later. I have no recollection</p> <p>19 whether there were interim versions between the</p> <p>20 one we just looked at and this one.</p> <p>21 Q. And it's faxed to you, among others,</p> <p>22 at the printer?</p> <p>23 A. Yes.</p> <p>24 Q. I wonder if you could look at</p> <p>25 subparagraph (I) again for me. This time it's on</p>	<p style="text-align: right;">Page 157</p> <p>1 Lurie</p> <p>2 those words today. I don't remember what we</p> <p>3 discussed in 2004 --</p> <p>4 MR. WISE: In 1998.</p> <p>5 A. -- in 1998. Excuse me. And I can</p> <p>6 read them and try to come up with reasons why I</p> <p>7 think they're there. But I'm speculating now.</p> <p>8 It's not what I know from before.</p> <p>9 BY MR. JOHNSON:</p> <p>10 Q. Have you seen that phrase in other</p> <p>11 purchase agreements?</p> <p>12 A. Yes, I've seen the term "in and of</p> <p>13 itself."</p> <p>14 Q. What's its significance in other</p> <p>15 context?</p> <p>16 A. That it could be one of many things.</p> <p>17 It would be considered as part of something that</p> <p>18 might lead to a conclusion that a material</p> <p>19 adverse change in the financial condition or</p> <p>20 results of operations, earnings, business or</p> <p>21 prospects of the company had occurred.</p> <p>22 Q. Is this revision designed to avoid</p> <p>23 any dispute about whether the press release</p> <p>24 constituted a material adverse change?</p> <p>25 A. I can speculate that that may have</p>

Page 158

1 Lurie
2 been suggested why this should be put in, so it
3 could not be debated.
4 Q. Because, otherwise, it might have
5 been debated?
6 A. It might have been a debate.
7 Q. Did Morgan Stanley keep track of
8 Sunbeam's sales buildup after March 19th?
9 A. I today do not know exactly -- do not
10 recall what Morgan Stanley or Davis Polk would
11 have been doing on the 19th, 20th through the end
12 of the quarter or actually through, I guess, the
13 closing on the sales buildup. What we might have
14 done, I just do not recall.
15 Q. Do you have any expectation about
16 what would be done?
17 A. Do I have any expectation?
18 Q. Sure.
19 A. I could guess about things you might
20 want to do. But I don't know what we thought
21 about back then or what we advised to do. I
22 don't recall any discussions relating to it.
23 Q. What did Morgan Stanley do on this
24 transaction after March 19th?
25 A. I have no recollection of what Morgan

Page 159

1 Lurie
2 Stanley did with regard to the sales buildup,
3 because I think we're still premised that's the
4 question.
5 Q. I'm asking more generally now.
6 Putting aside the sales buildup,
7 what, if anything, did Morgan Stanley do in
8 connection with the convertible debt offering
9 after March 19th?
10 A. There would have been a closing.
11 They would have had to fund. They would have had
12 to distribute the preliminary prospectus to the
13 purchasers and the offering. There would have
14 been a bring down due diligence phone call.
15 There would have been a bring down comfort
16 letter. There would have potentially been calls
17 with the company on a variety of different
18 matters. I mean, you know.
19 Q. But as you sit here today, you don't
20 know which of those events occurred?
21 A. Well, I mean, there was a closing.
22 Q. Right.
23 A. There was a bring down due diligence
24 phone call. There would have been that. There
25 would have been Morgan Stanley distributing the

Page 160

1 Lurie
2 preliminary -- I mean, the final prospectus or
3 offering memo. I mean, there would have been
4 virtually all of those things.
5 Q. The bring down due diligence phone
6 call, did you participate in that?
7 A. I believe I did, but I don't know
8 specifically recall. Again, it would have been
9 normal for me to participate in that phone call.
10 So I'm assuming I did.
11 Q. Do you have any recollection of when
12 that occurred?
13 A. Well, if the closing was the 25th, if
14 I recall we discussed before, then it would
15 probably have been the morning of the 25th or
16 more possibly the evening before.
17 Q. Was there any discussion about
18 Sunbeam's sales situation in the first quarter as
19 part of the bring-down call?
20 A. I apologize. But I don't remember
21 the specifics of that 1998 March 23rd, 24th,
22 whatever day it was, phone call.
23 Q. This has been marked as Exhibit 35
24 previously.
25 Does Exhibit 35 refresh your memory

Page 161

1 Lurie
2 in any way concerning the subjects of the bring
3 down due diligence calls?
4 A. Other than reading and seeing this is
5 what they would have liked to discuss, it doesn't
6 make me any more recollect what actually
7 transpired on that phone call.
8 Q. Do you have any reason to believe
9 that buildup of first quarter revenues was not a
10 subject?
11 A. I have no reason to believe it was
12 not a subject. I would assume it was a subject.
13 Q. So is it fair to say that Morgan
14 Stanley knew as of the last week of March where
15 Sunbeam was with its first quarter sales?
16 A. They would have known through the
17 date of the bring down comfort letter, which
18 would have brought through a date prior to that
19 date of that comfort letter.
20 Generally, I think back then -- I
21 think it was maybe two days, that the accountants
22 would have been able to confirm -- there would
23 have been discussions with the company. So they
24 would have known through the date of the phone
25 call, which may again, as we were looking at

1 Lurie
2 before, may be actually more information than
3 would be in the bring down comfort letter. They
4 would have, obviously, a better sense March 23rd,
5 24th what the quarter was than March 19th or
6 18th.
7 Q. Do you recall learning that Sunbeam
8 was \$75 million below first quarter '97 numbers
9 during the bring-down call?
10 A. I have no recollection of that
11 discussion during the bring-down call.
12 Q. Would that information warrant an
13 additional press release?
14 A. Again, I can't tell you what other
15 discussions went on. I see this piece of paper
16 (indicating). Whether there were other pieces of
17 paper that had more detailed information, for
18 example, similar to the buildup numbers page we
19 had before -- again, I just have no specific
20 recollection. And for you to just simply say it
21 was 75 million, I don't know what else we knew
22 back in 1998 when those calls were occurring.
23 Q. So simply knowing that with less than
24 a week to go in the quarter Sunbeam was \$75
25 million behind in revenue to make the first

1 Lurie
2 potentially raised issues about a new press
3 release. It could have raised issues about
4 stickering the offering memo, because this is now
5 after the final offering memo had been printed.
6 But, again, I don't know what other information
7 we had. And I don't know where the 75 million
8 number comes from.
9 Q. And you don't know whether any
10 additional due diligence was performed after
11 March 24th?
12 A. After March 24th?
13 Q. Correct.
14 A. We closed the next morning, I
15 recall. So I'm not sure what more due diligence
16 would have been done between the night of --
17 assuming it was the evening of the 24th, when the
18 bring-down call occurred, and 10 o'clock the next
19 morning, when the underwriters like to close, or
20 9 o'clock, whatever.
21 Q. Aside from the bring down due
22 diligence phone call on the 24th or 25th, did
23 Morgan Stanley do any other diligence activities
24 between March 19th and the bring-down call?
25 A. Again, I do not recall today what

1 Lurie
2 quarter '97 number, that alone is insufficient
3 for you to determine whether that is material
4 that needs to be disclosed?
5 MR. WISE: He says he doesn't know
6 where the 75 million -- I don't know whether
7 you're testifying or on what basis you are
8 presenting that to him, but he's already
9 told you he doesn't recognize that number.
10 The question is, at best, hypothetical,
11 assuming that your information is correct.
12 BY MR. JOHNSON:
13 Q. Can you answer the question?
14 A. I'm not sure what the question is at
15 this point. Because, again, where is the 75
16 million? How do we get that information?
17 Q. If Sunbeam advised you that it was
18 \$75 million below first quarter '97 numbers as of
19 March 24, would information, in and of itself, be
20 sufficient for you to determine that it needed to
21 be disclosed?
22 A. It would have certainly raised at
23 March 23rd, 24th, with seven days left in the
24 quarter, questions about further due diligence on
25 the quarterly numbers, and it would have

1 Lurie
2 other work either Davis Polk or Morgan Stanley
3 did back in the March 1998, between the dates,
4 the 19th and the 23rd, 24th, what we would have
5 done, what we did back then.
6 Q. Were there any discussions in March
7 1998 concerning the impact on Sunbeam's second
8 quarter of its efforts to make first quarter
9 numbers?
10 A. I don't again recall any specific
11 questions today that were discussed back in 1998
12 relating to impact on second quarter of first
13 quarter.
14 Q. Would you expect that to be an area
15 of inquiry?
16 A. Well, it's just part of the whole
17 issue that we were talking about earlier on that
18 was in the offering memo about what one of the
19 earlier sales programs, whatever they were
20 called. I mean, it would be issues and questions
21 that you would be looking into as part of the
22 whole process.
23 Q. I'm going to give you what we've
24 marked previously as Exhibit 33. Exhibit 33 is
25 another bring down due diligence call agenda; is

Page 166

1 Lurie
2 that correct?
3 A. Yeah. From -- dated previous, it
4 looks like. This is dated March 19th. The
5 earlier memo is dated four days later, March
6 23rd.
7 Q. And the first bullet point in Exhibit
8 33 refers to the top and bottom line outlook for
9 first quarter, first half and the year?
10 A. Uh-huh.
11 Q. That doesn't appear in Exhibit 35?
12 A. That was the other one?
13 Q. Correct.
14 A. Those specific words obviously don't
15 appear in 35.
16 Q. Why is that?
17 A. Why? I don't know. I can't recall
18 why it got changed, why it was different. I
19 mean, the concepts are in the Exhibit 35: Are
20 you still comfortable with 1998 earning
21 estimates? So that's a bottom-line number for a
22 full fiscal year.
23 Q. So you don't recall any discussions
24 concerning revisions to the bring down due
25 diligence call agenda?

Page 167

1 Lurie
2 MR. WISE: Besides which, if he did,
3 I would tell him not to answer.
4 BY MR. JOHNSON:
5 Q. Looking again at Exhibit 35, the
6 March 23 agenda, the first bullet provides,
7 "Please update us on the build up of first
8 quarter revenue and earnings"?
9 A. Uh-huh.
10 Q. What did you hear about Sunbeam's
11 earnings in that bring down due diligence call?
12 A. I don't recall any specific
13 discussions in that bring-down call regarding
14 earnings.
15 Q. Do you think you would recall if you
16 learned that Sunbeam was showing a loss?
17 A. Well, again, it depends. I mean,
18 what we knew, when we knew -- I mean, if that was
19 the first time I had heard of a loss, yes, it
20 might have caused me to be surprised. But I
21 don't remember when in the whole process we knew
22 what was going on and what the issues were. So I
23 can't tell you if I was surprised --
24 Q. But you don't recall anything out of
25 the ordinary?

Page 168

1 Lurie
2 A. No.
3 Q. Did you ever learn that Sunbeam was
4 extending the ending date of its first quarter?
5 A. I do not recall ever being told that
6 or hearing that or learning that.
7 Q. So you had no discussions with
8 Andersen about whether the first quarter time
9 frame would be extended?
10 A. I have no recollection. That would
11 be very surprising to me.
12 Q. Surprising that the quarter would be
13 extended or surprising that you had the
14 discussions, or both?
15 A. Certainly extending the quarter would
16 have surprised me.
17 Q. Why do you say that?
18 A. Because you can't do that.
19 Q. So if you had known that, that would
20 be something that would cause you to make further
21 inquiry?
22 A. I would have inquired, How can you do
23 that under the accounting rules?
24 Q. Do you know how much bill-and-hold
25 revenue Sunbeam recognized in the first quarter

Page 169

1 Lurie
2 of '98?
3 A. Absolutely no recollection.
4 Q. Did you make any inquiry as to how
5 much bill-and-hold revenue was being recognized
6 in the first quarter of 1998?
7 A. I have no recollection of any
8 discussions -- any specific discussions on that
9 subject at this point.
10 Q. Would the amount of the bill-and-hold
11 revenue in the first quarter be an area of
12 inquiry or concern?
13 A. Again, depends on the context of all
14 the other pieces of information you have at the
15 point in time. You can't necessarily just take
16 one fact and say that's -- it may change the mix
17 of facts that are going to have you do certain
18 things because of that.
19 Q. So if you had known there was \$30
20 million of bill-and-hold revenue in the first
21 quarter, that fact by itself wouldn't cause you
22 any concern?
23 A. Depends on what bill and hold were in
24 the prior quarter. It depends on what we had
25 heard about why there was going to be that amount

<p style="text-align: right;">Page 170</p> <p>1 Lurie</p> <p>2 of bill and hold and if that was a large amount.</p> <p>3 I don't recall any of that.</p> <p>4 Q. Did you receive a bring-down letter</p> <p>5 from Andersen?</p> <p>6 A. We would have received a bring-down</p> <p>7 comfort letter.</p> <p>8 Q. Do you recall, in fact, receiving it</p> <p>9 in this case?</p> <p>10 A. I don't recall specifically, but</p> <p>11 practice with Morgan Stanley and other</p> <p>12 underwriters would be to receive a bring-down</p> <p>13 comfort letter.</p> <p>14 Q. But you don't remember how you got it</p> <p>15 or where you were when you first received a copy?</p> <p>16 A. It would have been delivered at the</p> <p>17 closing, often coming in by fax. Whether that's</p> <p>18 how it was delivered in this. But that's often</p> <p>19 how it's handled.</p> <p>20 Q. I'm going to show you Exhibit 112.</p> <p>21 Does this appear to be the bring-down</p> <p>22 comfort letter delivered to Morgan Stanley?</p> <p>23 A. Yes, it does.</p> <p>24 Q. Do you recall anyone from Davis Polk</p> <p>25 or Morgan Stanley having any reaction to the</p>	<p style="text-align: right;">Page 172</p> <p>1 Lurie</p> <p>2 information that we would have had. Their</p> <p>3 procedures and work actually is only through the</p> <p>4 23rd. That's back in paragraph (c). So we</p> <p>5 actually had potentially more updated information</p> <p>6 than was in here.</p> <p>7 Q. So this information didn't cause you</p> <p>8 any shock?</p> <p>9 A. Again, I don't recall it causing any</p> <p>10 shock, annoyance or surprise.</p> <p>11 Q. Did Morgan Stanley or Davis Polk</p> <p>12 share this information in the comfort letter with</p> <p>13 anyone?</p> <p>14 A. I mean, I would have obviously given</p> <p>15 a copy to Alan and probably the other people on</p> <p>16 our team. Morgan Stanley would have probably</p> <p>17 given it around in-house. Whoever else they</p> <p>18 might have shared it with, I have no knowledge.</p> <p>19 I don't think we would have shared it with</p> <p>20 anyone.</p> <p>21 Q. Why do you say that?</p> <p>22 A. Because it wouldn't be our practice</p> <p>23 to share a comfort letter with anyone else. I</p> <p>24 mean, if there were other underwriters that</p> <p>25 weren't in this offering, they would have</p>
<p style="text-align: right;">Page 171</p> <p>1 Lurie</p> <p>2 information in this letter?</p> <p>3 A. I have no recollection of anyone's</p> <p>4 reaction, positive or negative, to this letter.</p> <p>5 Q. You don't recall anyone being</p> <p>6 surprised by it?</p> <p>7 A. I don't recall anyone being surprised</p> <p>8 by it.</p> <p>9 Q. Were there any discussions at all</p> <p>10 surrounding its contents?</p> <p>11 A. I don't recall any specific</p> <p>12 discussions relating to the contents of this or</p> <p>13 the drafts that we had most likely received</p> <p>14 beforehand.</p> <p>15 Q. And you don't recall any shock over</p> <p>16 the loss of \$40 million in the first two months</p> <p>17 of 1998?</p> <p>18 A. No. I'd have to go back also and</p> <p>19 look at what the earlier March 19th one said.</p> <p>20 Again, this is through -- the period that they're</p> <p>21 covering is through March 1 of '98. The buildup</p> <p>22 that we talked about is from the April -- excuse</p> <p>23 me -- from the March 18th meeting had more</p> <p>24 updated information. The bring down due</p> <p>25 diligence call would have had more updated</p>	<p style="text-align: right;">Page 173</p> <p>1 Lurie</p> <p>2 received copies, but --</p> <p>3 Q. But, otherwise, it's for</p> <p>4 underwriters?</p> <p>5 A. Yeah.</p> <p>6 Q. At any point during your work on the</p> <p>7 Sunbeam transaction, did you have any dealings of</p> <p>8 any sort with anyone from MacAndrews & Forbes?</p> <p>9 A. I don't recall speaking to anyone</p> <p>10 from Andrews [sic] & Forbes. There may have been</p> <p>11 -- they may have been on the phone at some point</p> <p>12 in time, but I don't recall today.</p> <p>13 Q. You can't tell me the name of any</p> <p>14 MacAndrews & Forbes person who was on any phone</p> <p>15 call with you?</p> <p>16 A. Not that I recall today, no. I'm</p> <p>17 sorry.</p> <p>18 Q. How about Wachtel Lipton? Did you</p> <p>19 have any dealings with them in connection with</p> <p>20 the Sunbeam transaction?</p> <p>21 A. Not to my recollection.</p> <p>22 Q. How about Credit Suisse First Boston?</p> <p>23 A. Today, not to my recollection. We</p> <p>24 may have, but I know that they represented.</p> <p>25 Q. Anyone associated with the Coleman</p>

Page 174

1 Lurie
2 company? Did you have any dealings with anyone
3 from Coleman?
4 A. Well, at some point in time during
5 the due diligence process, we would have done due
6 diligence. And we would have had phone calls
7 with management of Coleman, First Alert and --
8 what's the --
9 MR. WISE: Signature Brands.
10 A. -- Signature Brands. We would have
11 done due diligence on those companies. There
12 would have been someone from management of those
13 companies on the phone that we would have spoken
14 to. So, yes, at some point, I presume we had
15 conversations with people from Coleman.
16 BY MR. JOHNSON:
17 Q. But as you sit here today --
18 A. I don't recall specifically who it
19 would have been.
20 Q. Or even if it, in fact, occurred?
21 A. I'm only assuming. And knowing the
22 practice and the process for an offering related
23 to three acquisitions, or even one acquisition
24 that's described, we would have spent time with
25 the management, with the accountants of the

Page 175

1 Lurie
2 acquired target company.
3 Q. Are you aware of anyone outside of
4 Morgan Stanley, Skadden Arps, Davis Polk or
5 Sunbeam who was aware of -- and Andersen -- who
6 was aware of the sales shortfall during the first
7 quarter of 1998?
8 MR. WISE: You said there was a press
9 release that went out. Assuming anyone read
10 that press release.
11 BY MR. JOHNSON:
12 Q. Let me phrase the question
13 differently.
14 Do you know of anyone outside of
15 Andersen, Skadden, Sunbeam, Morgan Stanley and
16 Davis Polk who was aware of the fact through the
17 first two months of '98 sales were running at
18 half of the prior year period?
19 A. I have no knowledge of who else might
20 have been advised or been told of those facts.
21 Q. But, to your knowledge, Davis Polk
22 and Morgan Stanley didn't advise anyone of those
23 facts?
24 A. I do not recall advising anyone. I
25 cannot tell you what Morgan Stanley might have

Page 176

1 Lurie
2 done, whether they advised the other bank
3 syndicate members. Often, they probably would
4 have. But I can't tell you, because I don't know
5 what they did and have no recollection of what
6 they might have done.
7 Q. From your perspective, was the
8 Sunbeam convertible offering a successful one for
9 Morgan Stanley?
10 A. At the time I thought it was.
11 Q. How about today?
12 A. Today, knowing what happened,
13 probably wasn't so successful for them.
14 Q. Why do you say that?
15 A. I have a sneaking suspicion they may
16 have had to buy back a good portion of the bonds.
17 Q. What's your basis for that suspicion?
18 A. Just word of mouth and understanding
19 what often happens in failed deals. In failed
20 deals, in the sense that the company does not
21 meet its expectations.
22 Q. This was a failed deal, it's safe to
23 say?
24 A. Ultimately, you could say that
25 Sunbeam did not meet its expectations. And,

Page 177

1 Lurie
2 therefore, there might have been some significant
3 issues. And Morgan Stanley, I'm assuming, had to
4 buy back a number of bonds.
5 Q. When you say you're assuming that, do
6 you actually know one way or the other whether
7 Morgan Stanley did buy back bonds?
8 A. I do not know as a fact, just word of
9 mouth, understanding this may have occurred.
10 Q. When you say word of mouth,
11 understanding that this may have occurred, can
12 you tell me in any more detail?
13 A. Generally in the market, I could have
14 been -- by the time that might have occurred, I
15 was no longer at Davis Polk. I might have heard
16 it through other underwriters -- other investment
17 banks. Excuse me. And I don't recall how I
18 heard. But that's just what my understanding is,
19 that that's what happened.
20 Q. That it did happen or -- are you
21 assuming that it happened, or did you hear that
22 it happened?
23 A. Well, that is semantics. I'm
24 assuming it happened, because that's what I
25 understood happened. So I don't know as a fact,

Page 178

1 Lurie
2 because I was not at Morgan Stanley, hearing them
3 specifically tell me they bought back X dollars
4 of those bonds.
5 Q. But you heard that happened?
6 A. That is -- I heard that happened.
7 Q. Do you know when that happened?
8 A. I don't know. I don't recall. I
9 presume it was within the first few months after
10 -- three to six months after the offering.
11 Q. And can you give me any more detail
12 on the word of mouth or from whom you heard it?
13 A. I apologize. This is 2004. This is
14 a long time ago. I don't recall.
15 Q. Do you know one way or the other
16 whether Morgan Stanley & Company lost money on
17 the Sunbeam transaction?
18 A. I have no -- I have no knowledge of
19 those facts. I don't know if they made money,
20 lost money, whatever.
21 Q. To your knowledge, was Morgan Stanley
22 or Davis Polk denied access to any information or
23 personnel at Sunbeam?
24 A. Not to my knowledge. I have no
25 recollection of being denied access to anyone.

Page 179

1 Lurie
2 And if I was, it would certainly have raised a
3 question in my mind. But I have no recollection
4 of having that concern.
5 Q. Have you formed the view, with
6 hindsight, that Sunbeam lied to Morgan Stanley,
7 though?
8 A. I really haven't thought about
9 whether they were lying or whether they just
10 missed their sales expectations. I know there
11 were issues later on with channel stuffing and
12 revenue recognition and potentially sales that
13 didn't occur or that were empty boxes, sort of,
14 but I don't know when those -- I don't recall
15 today when those occurred, whether they were in
16 connection with the offering -- or in connection
17 with the first quarter, not saying in connection
18 with the offering. It's just a long time ago.
19 And I don't remember the specifics of the time
20 frame.
21 Q. So as you sit here, you are not in a
22 position to say that Sunbeam lied to Morgan
23 Stanley?
24 A. At the time I didn't -- not think
25 they were lying. I don't know again what all the

Page 180

1 Lurie
2 transactions were and when all the questionable
3 practices occurred. I don't recall, at least.
4 Q. And you were nodding your head "no,"
5 which the Court Reporter can't pick up.
6 A. Oh, I'm sorry.
7 Q. You left Davis Polk in April of '98?
8 A. End of April.
9 Q. Were you negotiating with O'Sullivan
10 while you were -- during March of '98?
11 A. I had agreed -- I think I told people
12 that I was leaving back in February. I think it
13 was like two months before. In fact, Sunbeam was
14 the last real deal I did at Davis Polk.
15 Q. So you had already given notice
16 before you worked on the transaction?
17 A. Yeah. Yeah.
18 Q. But you were still at Davis Polk when
19 the April 3 press release came out; is that
20 correct?
21 A. Yes.
22 Q. That was the press release -- well,
23 let me just show it to you.
24 This was marked previously as Exhibit
25 36.

Page 181

1 Lurie
2 A. Do you want me to read this whole
3 thing?
4 Q. If you could. Thanks.
5 A. Okay.
6 Q. Did you see this press release at
7 around the time it was issued?
8 A. I have absolutely no recollection of
9 seeing this press release.
10 Q. Do you have any recollection, then,
11 of being surprised by Sunbeam's first quarter '98
12 results when they were announced?
13 A. I do not today -- recall today when I
14 heard about the first quarter or this press
15 release or anything else about the Sunbeam.
16 Q. So it's safe to say, then, that you
17 don't recall any surprise about hearing the
18 results?
19 A. That's correct. I don't remember any
20 surprise.
21 Q. I want to ask you about one sentence
22 which is on -- in the second paragraph of the
23 release itself.
24 A. Okay.
25 Q. Towards the middle there is a

Page 182

1 Lurie
2 sentence that states, "We were offered
3 opportunities to sell additional product at
4 margins which we felt were unacceptable and we
5 rejected that business."
6 Had you heard anything like that
7 during the course of your diligence?
8 A. I don't recall any discussion
9 relating to that.
10 Q. How about the next sentence and, in
11 particular, the phrase that "Sunbeam felt it was
12 important to preserve the integrity of our brands
13 and not to sacrifice the future of our business
14 for short term results."
15 Do you see that?
16 A. Yeah.
17 Q. At any time in March of 1998 did you
18 have any discussions concerning Sunbeam's
19 long-term performance as opposed to its
20 short-term results?
21 A. Well, we obviously talked about, as I
22 said earlier, the full year expectations versus
23 quarterly expectations. We very well may have
24 seen projections for 1999 during the course of
25 the due diligence process. So you're always

Page 183

1 Lurie
2 looking at both short-term projections and
3 long-term forecast projections.
4 Q. Did you satisfy yourself that Sunbeam
5 was -- strike that.
6 Did you determine whether Sunbeam was
7 a company being run on a short-term basis?
8 A. I don't remember making -- I don't
9 remember what determination or conclusions we
10 reached back in 1998.
11 Q. Did you have any discussions with
12 anyone at Davis Polk after the convertible
13 offering closed concerning Sunbeam, excluding the
14 past few months?
15 A. I don't recall any discussions. I
16 mean, the last month I was pretty much packing up
17 my office, passing on other transactions, other
18 clients I had been working on. I don't remember
19 really today anything that might have happened
20 regarding Sunbeam during my last month at Davis
21 Polk.
22 Q. So you don't recall any discussions
23 with, say, Mr. Dean after the first quarter
24 closed?
25 A. I do not recall any discussions with

Page 184

1 Lurie
2 Mr. Dean.
3 Q. Did Davis Polk do any kind of
4 postmortem on the convertible offering?
5 A. Not to my recollection. I'm also --
6 I'm not sure what you mean by "postmortem." But
7 I'll assume -- I don't remember anything out of
8 the ordinary. Let's put it that way.
9 Q. You testified earlier today that you
10 looked at the acquisition documents to get a
11 sense of -- the merger documents to get a sense
12 of how they were described in the offering
13 memorandum?
14 A. Uh-huh.
15 Q. I'm going to show you one of those,
16 if I could.
17 A. Sure.
18 Q. It's been marked previously as MS
19 117. And, obviously, it's a lengthy document.
20 So we're not going to have you read the whole
21 thing now.
22 A. Thank you. Thank you.
23 Q. Does this look to be the merger
24 agreement between Sunbeam and Coleman?
25 A. It looks to be the merger agreement

Page 185

1 Lurie
2 between Sunbeam and Coleman, yes.
3 Q. And this would be the document that
4 you reviewed in March of '98?
5 A. Well, again, I can't tell you
6 specifically that I actually looked at that
7 agreement. It could have been looked at by
8 Heather or someone else at Davis Polk. And they
9 may have summarized any provisions to me. I
10 don't recall when I specifically read this
11 document. It varies from deal to deal and
12 transaction to transaction of what I do or
13 someone else may do.
14 Q. But it would be at least subject for
15 discussion within Davis Polk?
16 A. It would have been reviewed as part
17 of the due diligence process. Whether it would
18 have been a subject of discussion is another
19 question, but it clearly would have been
20 reviewed.
21 Q. I wonder if you could look at
22 paragraph -- excuse me -- Section 7.3, which is
23 on Page 29 --
24 A. Uh-huh.
25 Q. -- and, in particular, 7.3(b) and

Page 186

1 Lurie
2 read that for me.
3 A. You want me to read it out loud?
4 Q. Just read it to yourself.
5 A. Oh. Okay.
6 Q. Laser --
7 A. I was just going to look back.
8 Laser, I presume, is Sunbeam?
9 MR. WISE: If you look on the first
10 page, Laser is Sunbeam. The company is the
11 Coleman company.
12 BY MR. JOHNSON:
13 Q. As long as we're looking at
14 definitions, I want to call your attention to the
15 definition of information statement, which is on
16 Page 4.
17 A. Okay.
18 Q. And, of course, that refers you to
19 another section?
20 A. 4.9.
21 Q. 4.9.
22 A. Why should it be any different than
23 any other merger agreement? Uh-huh.
24 Q. Do you see the definition of
25 information statement in 4.9?

Page 187

1 Lurie
2 A. Uh-huh.
3 Q. And that's the information statement
4 referred to in 7.3(b)?
5 A. I have to go back and look. I don't
6 see (b). Is there a reference -- oh, there it
7 is. Yeah. That would be the same definition.
8 Q. Based on the definition of
9 information statement in 4.9, do you have a sense
10 of what that document is?
11 A. It would be the information statement
12 that was distributed in connection with the
13 merger. They must have needed shareholder
14 approval of the merger. So there was some
15 information statement that was being delivered.
16 That appears to be, on a quick reading, what's
17 being referred to. I guess 13(e)(3) is a going
18 private provision of the securities law. So
19 there must have been -- the Coleman transaction
20 must have constituted going private transaction.
21 Were they a public company? I don't
22 even recall beforehand.
23 Q. If you look at Section 4.9, it also
24 refers to a Section 14F, "Notice."
25 Do you see that?

Page 188

1 Lurie
2 A. Yes, I do.
3 Q. That's a different document than the
4 information statement?
5 A. Yes.
6 Q. I want to mark a document, if I
7 could. This will be CPH 231.
8 (CPH Exhibit 231, Coleman Company,
9 Inc. Notice of Merger and Appraisal Rights
10 and Information Sheet, Bates-stamped CPH
11 1398266 through CPH 1398501, marked for
12 identification, as of this date.)
13 BY MR. JOHNSON:
14 Q. Exhibit 231, for the record, is
15 entitled "Coleman Company, Inc. Notice of Merger
16 and Appraisal Rights and Information Statement."
17 And it has the Bates stamp CPH 1398266 through
18 '501. And I recognize this too is a lengthy
19 document.
20 Does this appear to be the
21 information statement referred to in 7.3(b) of
22 the agreement and plan of merger?
23 MR. CLARE: I object to the form of
24 the question, and foundation, as it relates
25 to Mr. Lurie's involvement. He has already

Page 189

1 Lurie
2 testified he didn't have any involvement in
3 the merger agreement. So I think it's
4 improper for you to ask him any questions.
5 BY MR. JOHNSON:
6 Q. You can answer.
7 A. It appears to be the information
8 statement registration statement S4 that's being
9 referred to, or whatever in this other document,
10 in the merger agreement.
11 Q. In 7.3(b) of the merger agreement?
12 A. 4.9.
13 Q. Actually both.
14 MR. WISE: Okay. If you're
15 testifying, then we can all leave --
16 MR. JOHNSON: No, no, no.
17 MR. WISE: And since you know the
18 answers to the questions --
19 MR. JOHNSON: I'm trying --
20 MR. WISE: I'm sorry. I'm talking.
21 Since you seem to know the answers to the
22 questions, there's no sense in, you know,
23 holding us here. So maybe we could wrap it
24 up, then, since you already know the
25 answers.

<p style="text-align: right;">Page 190</p> <p>1 Lurie</p> <p>2 MR. JOHNSON: It's exactly my effort</p> <p>3 to move things along.</p> <p>4 MR. WISE: Why don't we get to a</p> <p>5 question that this witness can answer.</p> <p>6 BY MR. JOHNSON:</p> <p>7 Q. Okay. Does Exhibit CPH 231 appear to</p> <p>8 be the information statement referenced in</p> <p>9 Section 4.9 of the agreement and plan of merger?</p> <p>10 MR. CLARE: If you know.</p> <p>11 A. It looks like an information</p> <p>12 statement. I do not recall ever seeing this. I</p> <p>13 do not recall any involvement in this. I'm just</p> <p>14 looking at what the words are. And it appears to</p> <p>15 be the document.</p> <p>16 MR. WISE: What's the question?</p> <p>17 MR. JOHNSON: He answered.</p> <p>18 MR. WISE: I understand. He doesn't</p> <p>19 know what it is. So go ahead. What's the</p> <p>20 question that you want to get at? Because</p> <p>21 this is obviously prefatory.</p> <p>22 MR. JOHNSON: No, it's not.</p> <p>23 If you want to take a break, I may,</p> <p>24 in fact, be done.</p> <p>25 MR. WISE: Sure. I'm always in favor</p>	<p style="text-align: right;">Page 192</p> <p>1 Lurie</p> <p>2 A. I have no recollection of what</p> <p>3 filings they made or may have had to made or what</p> <p>4 they did make. I just don't know.</p> <p>5 Q. Mr. Johnson showed you an exhibit,</p> <p>6 CPH Exhibit 231. As you sit here today, do you</p> <p>7 have any understanding or knowledge what, if any,</p> <p>8 other mailings may have been --</p> <p>9 A. Any other what?</p> <p>10 Q. -- mailings or filings were made by</p> <p>11 Coleman in connection with the transaction?</p> <p>12 A. None whatsoever. I just note, this</p> <p>13 is a date of 2000 it's talking about, which is</p> <p>14 January, which is 18 months after my involvement.</p> <p>15 Q. Are you aware one way or the other</p> <p>16 whether other filings or mailings were made by</p> <p>17 Coleman?</p> <p>18 A. I have no idea.</p> <p>19 MR. CLARE: Those are all the</p> <p>20 questions I have.</p> <p>21 MR. JOHNSON: I have just a few</p> <p>22 follow-up, naturally.</p> <p>23 FURTHER EXAMINATION BY</p> <p>24 MR. JOHNSON:</p> <p>25 Q. Do you have any understanding as to</p>
<p style="text-align: right;">Page 191</p> <p>1 Lurie</p> <p>2 of that.</p> <p>3 THE VIDEOGRAPHER: The time is 2:35.</p> <p>4 This completes tape number two.</p> <p>5 (Recess taken.)</p> <p>6 THE VIDEOGRAPHER: The time is 2:44.</p> <p>7 We're back on the record. This begins tape</p> <p>8 number three.</p> <p>9 MR. JOHNSON: I have no questions.</p> <p>10 MR. CLARE: Mr. Lurie, I just have a</p> <p>11 few questions for you.</p> <p>12 THE WITNESS: Okay.</p> <p>13 EXAMINATION BY</p> <p>14 MR. CLARE:</p> <p>15 Q. Did you work on any aspect of the</p> <p>16 merger and acquisition part of the transaction</p> <p>17 between Coleman and Sunbeam?</p> <p>18 A. No, not to my recollection. I had no</p> <p>19 involvement in that part of the transaction.</p> <p>20 Q. Did you ever represent Coleman in any</p> <p>21 portion of this transaction?</p> <p>22 A. Absolutely not.</p> <p>23 Q. Are you aware of what, if any,</p> <p>24 filings Coleman made with the SEC related to that</p> <p>25 transaction?</p>	<p style="text-align: right;">Page 193</p> <p>1 Lurie</p> <p>2 why Exhibit 231 is dated, as you say, about 18</p> <p>3 months after the transaction?</p> <p>4 A. I do not ever recall seeing this</p> <p>5 document. I'd have to go through and figure out</p> <p>6 what this is all. I'm assuming this is the</p> <p>7 information memo.</p> <p>8 Q. Did you learn at some point that</p> <p>9 Arthur Andersen withheld its consent to the</p> <p>10 filing of the registration statement on the</p> <p>11 convertible offering?</p> <p>12 A. On the registration statement on the</p> <p>13 -- on the convertible offering?</p> <p>14 Q. Yes.</p> <p>15 A. It was a 144A. I don't recall there</p> <p>16 being a registration related to it.</p> <p>17 Q. You don't recall any subsequent</p> <p>18 registration?</p> <p>19 A. I don't recall any subsequent</p> <p>20 registration.</p> <p>21 Q. Do you recall more generally Andersen</p> <p>22 withholding its consent to any SEC filings for</p> <p>23 Sunbeam?</p> <p>24 A. I don't recall anything. This is, to</p> <p>25 my knowledge, the first I've heard that they</p>

<p style="text-align: right;">Page 194</p> <p>1 Lurie</p> <p>2 withheld their consent.</p> <p>3 Q. As you sit here today, do you have an</p> <p>4 opinion as to whether the offering memorandum</p> <p>5 that you worked on was materially false and</p> <p>6 misleading at the time it was issued?</p> <p>7 A. I'm sorry. Could you repeat the</p> <p>8 question.</p> <p>9 Q. As you sit here today, with the</p> <p>10 benefit of hindsight, do you have opinion as to</p> <p>11 whether, when it issued, the offering memorandum</p> <p>12 was materially false and misleading?</p> <p>13 A. I haven't really thought about it.</p> <p>14 There are obviously questions I might want to</p> <p>15 reconsider today, but I haven't really thought</p> <p>16 about it. It depends on what we knew and what we</p> <p>17 felt at the time we issued the offering</p> <p>18 memorandum that was issued that we had done the</p> <p>19 appropriate, necessary thorough due diligence,</p> <p>20 and we thought it was an appropriate offering</p> <p>21 memo.</p> <p>22 Q. But with the benefit of hindsight,</p> <p>23 you now acknowledge it may not have been an</p> <p>24 accurate offering memorandum?</p> <p>25 A. I don't want to acknowledge anything.</p>	<p style="text-align: right;">Page 196</p> <p>1 Lurie</p> <p>2 and that's not a fair way to put the</p> <p>3 question. And you've gone way beyond the</p> <p>4 questions that Mr. Clare had asked. So I</p> <p>5 would suggest you wrap it up.</p> <p>6 BY MR. JOHNSON:</p> <p>7 Q. Can you answer the question?</p> <p>8 DI MR. WISE: No. I'm going to direct</p> <p>9 him not to answer that.</p> <p>10 BY MR. JOHNSON:</p> <p>11 Q. As you sit here today, you don't know</p> <p>12 where the Sunbeam fraud fits in relation to the</p> <p>13 work that you did for Sunbeam?</p> <p>14 MR. WISE: He just said that. That's</p> <p>15 repetitive. I object and direct him not to</p> <p>16 answer.</p> <p>17 Do you have some new questions for</p> <p>18 this witness?</p> <p>19 MR. JOHNSON: No, I don't. And if --</p> <p>20 DI MR. WISE: Then if you don't, we're</p> <p>21 finished. I direct him not to answer. It's</p> <p>22 repetitive. He answered that. It's in the</p> <p>23 transcript. You already have that answer.</p> <p>24 MR. JOHNSON: Okay. No further</p> <p>25 questions.</p>
<p style="text-align: right;">Page 195</p> <p>1 Lurie</p> <p>2 I mean, again, I'd have to go back and understand</p> <p>3 what the issues related to Sunbeam's actual</p> <p>4 problems were, which I don't specifically recall</p> <p>5 today, what the related SEC concerns and</p> <p>6 investigations were, have to tie it back to what</p> <p>7 was in the offering memo and what we may have</p> <p>8 known at the time. And I just haven't spent any</p> <p>9 time, to be honest, thinking about those.</p> <p>10 Q. So, as you sit here today, you don't</p> <p>11 have an opinion as to whether there was, in fact,</p> <p>12 a massive fraud at Sunbeam?</p> <p>13 A. I understand there was significant</p> <p>14 fraud at Sunbeam through the papers, through the</p> <p>15 SEC proceeding, that there was fraud related to</p> <p>16 Sunbeam. I do not recall today where and how and</p> <p>17 what period that fraud related to or specifically</p> <p>18 how it might have related to the audited</p> <p>19 financials that were in our offering memo. I'd</p> <p>20 have to go back and review all of that if you</p> <p>21 want a specific answer.</p> <p>22 Q. And so you don't have a recollection</p> <p>23 of Sunbeam unraveling within months of the</p> <p>24 offering memorandum?</p> <p>25 MR. WISE: That's not what he said,</p>	<p style="text-align: right;">Page 197</p> <p>1 Lurie</p> <p>2 MR. WISE: Thank you.</p> <p>3 THE VIDEOGRAPHER: The time is 2:49</p> <p>4 p.m. This completes the videotaped</p> <p>5 deposition of Mr. James Lurie.</p> <p>6</p> <p>7</p> <p>8 JAMES M. LURIE</p> <p>9</p> <p>10 Subscribed and sworn to before me</p> <p>11 this ____ day of _____, 2004.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 198

1
2 CERTIFICATE
3 STATE OF NEW YORK)
4 : ss.
5 COUNTY OF WESTCHESTER)
6
7 I, JANE WATSON, a Shorthand
8 Reporter and Notary Public within and for
9 the State of New York, do hereby certify:
10 That, the witness JAMES M. LURIE
11 whose deposition is hereinbefore set forth,
12 was duly sworn by me and that such
13 deposition is a true record of the
14 testimony given by the witness.
15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage, and that I am
18 in no way interested in the outcome of this
19 matter.
20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 20th day of June, 2004.
22
23
24 JANE WATSON
25

Page 199

1
2 ----- I N D E X -----
3 WITNESS EXAMINATION BY PAGE
4 James M. Lurie Mr. Johnson 5, 192
5 Mr. Clare 191
6
7 ----- INFORMATION REQUESTS -----
8 DIRECTIONS: 196
9
10 ----- EXHIBITS -----
11 CPH FOR ID.
12 CPH Exhibit 230, 3/10/98 memo re: "Draft Customer
13 Concentration Risk Factor," Bates-stamped CPH
14 0635890 through CPH 0635891..... 61
15 CPH Exhibit 231, Coleman Company, Inc.
16 Notice of Merger and Appraisal Rights and
17 Information Sheet, Bates-stamped CPH
18 1398266 through CPH 1398501..... 188
19
20
21
22
23
24
25

Page 200

1
2 *** ERRATA SHEET ***
3 ESQUIRE DEPOSITION SERVICES
4 155 NORTH WACKER DRIVE
5 CHICAGO, ILLINOIS 60606
6 (312) 782-8087
7 NAME OF CASE: Coleman V Morgan Stanley
8 DATE OF DEPOSITION: June 18, 2004
9 WITNESS: James M. Lurie
10
11
12
13
14
15
16
17
18
19
20
21
22
23 JAMES M. LURIE
24 Subscribed and sworn to before me
25 this ____ day of _____, 2004.
My Commission Expires:
(Notary Public)

47

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. HO-3433
 SUNBEAM CORPORATION)

WITNESS: Phillip E. Harlow

PAGES: 171 through 311

PLACE: Room 1C10
 Securities and Exchange Commission
 450 Fifth Street, N.W.
 Washington, D.C. 20549

DATE: Wednesday, June 9, 1999

The above-entitled matter came on for hearing, pursuant to notice, at 9:50 a.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:

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 Chicago, IL 60601-1600
 (312) 507-4020

P R O C E E D I N G S

1
 2 MR. LIPMAN: Good morning. It is June 9th,
 3 approximately 10 to 10:00. We are back on the record to
 4 continue the testimony of Mr. Harlow.
 5 This is an investigation by the United States
 6 Securities and Exchange Commission in the matter of Sunbeam
 7 Corporation, HO-3433, to determine whether there have been
 8 violations of certain provisions of the federal securities
 9 laws. However, the facts developed in this investigation may
 10 constitute violations of other federal or state civil or
 11 criminal laws.

12 Sir, as yesterday, I am going to put a copy of the
 13 formal order and all the exhibits on the table for you to
 14 reference if you wish and also Exhibit I, which is the
 15 supplemental information form. And I am Alex Lipman, this is
 16 Deb Heilizer, Ray Hamm, Kyra Armstrong. We are officers of
 17 the Commission for the purposes of this proceeding.

18 Is the witness represented by counsel?

19 MR. HAYNES: Good morning. I am Barney Hayes of
 20 King and Spalding. I represent Mr. Harlow and Arthur
 21 Andersen, LLP, and to my left is George Vrana, who is a
 22 partner with Arthur Andersen who is an expert advising me in
 23 connection with my representation.

24 MR. LIPMAN: Okay. Sir, I just need to remind you
 25 that you are still under oath.

C O N T E N T S

Page 172

WITNESSES: EXAMINATION

Phillip E. Harlow 174

EXHIBITS: DESCRIPTION IDENTIFIED

137 Draft Offering Memorandum,
 dated 3/16/98 203

138 Press Release from Sunbeam,
 dated 3/19/98 249

139 Management Representation
 Letter, from Sunbeam to
 Arthur Andersen, dated 3/23/98 288

Page 174

1 THE WITNESS: Yes, sir.

2 Whereupon,

3 PHILLIP E. HARLOW

4 was called as a witness and, having been previously duly
 5 sworn, was examined and testified as follows:

EXAMINATION

7 BY MR. LIPMAN:

8 Q Before we broke yesterday, we were talking about
 9 the Form 10-K that was filed on March 6th by Sunbeam and the
 10 disclosure in the form that related to the Early Buy program.

11 A Right.

12 Q Have you -- I know it is a large form. Have you
 13 had the chance to look it over since we adjourned yesterday?

14 A Yes. I have had -- I spent a few minutes flipping
 15 through the document this morning.

16 Q Were there any disclosures relating to the Early
 17 Buy program or the Bill and Hold, other than what we have
 18 discussed, that you found in your review of the document?

19 A There was a discussion in the MD&A section on
 20 page 15.

21 MR. HAYNES: Mr. Lipman, before we get into this.

22 MR. LIPMAN: Yes, sir.

23 MR. HAYNES: I know there may be clarifications
 24 that the witness may want to put on the record with respect
 25 to several matters. It is up to you as to when you would

Page 175

1 like that.

2 BY MR. LIPMAN:

3 Q Well, if you would like to do that right away, why

4 don't we get, you know, get it done so that -- go ahead.

5 A Okay. With respect to the WinSmart document that

6 was discussed yesterday, I talked with Larry Bornstein last

7 night to ascertain whether or not that represented the final

8 WinSmart document and the original WinSmart document in our

9 files. And it does. So to remove the question of doubt as

10 to whether that was the filed WinSmart document in our files,

11 it, in fact, is and I am satisfied that what I saw yesterday

12 represents that document.

13 BY MS. HEILIZER:

14 Q What did Mr. Bornstein tell you that assured you

15 that that was the final document?

16 A We discussed the dates at the top of the schedule,

17 and what he found in the files corresponded with the dates on

18 the form that I reviewed yesterday.

19 Q Okay. Was your lawyer in on this call?

20 MR. HAYNES: No.

21 THE WITNESS: No.

22 BY MS. HEILIZER:

23 Q Who else was on the call, other than you and

24 Mr. Bornstein?

25 A I believe Jim Gorsline. He was -- I was on a

Page 176

1 speakerphone.

2 MR. HAYNES: I am sorry, I didn't realize that.

3 THE WITNESS: He was -- he is one of Mr. Haynes'

4 associates.

5 BY MS. HEILIZER:

6 Q Now were you having a conversation with

7 Mr. Bornstein or with Mr. Gorsline?

8 A With Mr. Bornstein with Mr. Gorsline present with

9 Mr. Bornstein in south Florida.

10 Q Was the purpose of this call either to give or to

11 obtain legal advice?

12 A The purpose was to clarify the doubt in my mind as

13 to whether or not that represented the final WinSmart

14 document in our files.

15 Q Do you know whether Mr. Bornstein had the original

16 work papers with him when he was talking to you?

17 A Yes, he did.

18 Q So where was he when he was talking to you?

19 A Mr. Bornstein was in our Ft. Lauderdale office in

20 Florida.

21 Q And what did you say to him and what did he say to

22 you about the date of the documents?

23 A I, sometime yesterday, left a voice mail for

24 Mr. Bornstein to check our files for 1996 and determine if we

25 had more than one WinSmart form in our files and also to

Page 175 - Page 178

Page 177

1 check the dates on the WinSmart form in our files. And last

2 night I talked to Mr. Bornstein and he confirmed that the

3 WinSmart form in our original files was dated -- the first

4 page was dated the same date as the first page of the copy I

5 looked at yesterday. And the subsequent pages were dated

6 with the same date as the copy that I reviewed yesterday.

7 And there was not another WinSmart form in our files.

8 Q Did you talk to him about any other subject matters

9 of your testimony yesterday?

10 A No, I did not.

11 Q Did you talk to him about anything else?

12 A No, I did not. No.

13 BY MR. LIPMAN:

14 Q Sir, there were other things, I believe, that you

15 wanted to clarify.

16 A I wanted to clarify -- there was a question

17 yesterday pertaining to the need for additional disclosure in

18 the 10-K on the shortfall in sales that took place during the

19 first quarter. And I don't know if I misunderstood the

20 question or it was after the point in time I indicated I was

21 somewhat tired, but I believe I answered that question saying

22 it would have been wonderful to have some additional

23 disclosure.

24 When I answered that question, I was taking into

25 consideration or thinking about all of the subsequent events

Page 178

1 during the restatement that I was aware of, and answered in

2 that way. Had I known only what I knew at that point in

3 time, I don't feel that it is a requirement that that

4 information would be disclosed in the 10-K. But had I known

5 everything I knew up to this point in time during our

6 extended procedures on the 1997 audit, not only would

7 additional disclosure have been great, but a restatement

8 would have been necessary.

9 Also, I would like to clarify I believe there was a

10 question on was I comfortable with the disclosures in the

11 10-K. And I believe I testified that I was not a hundred

12 percent comfortable. And I just want to clarify what I meant

13 by that, because comfortable can mean different things and

14 there are many degrees of being comfortable.

15 My answer was not to mean that I felt that the

16 disclosure was incorrect, inadequate, or misleading. You

17 know, my testimony that I was not a hundred percent

18 comfortable, it would have been nice to have, you know,

19 perhaps better wording and different wording in the document,

20 but I did not believe that what ended up in the document was

21 misleading or inadequate.

22 The question on -- there was a question related to

23 the relationship of disclosures in the front part of the 10-K

24 and the financial statements or footnotes to the financial

25 statements. And it is my opinion that the disclosures in the

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 179

1 10-K in the front part and the footnote disclosures are not
2 misleading and are not -- there is not a situation that it
3 creates an inconsistency between the financial statements and
4 the rest of the document.

5 BY MS. HEILIZER:

6 Q Do you believe that as you sit here today that the
7 disclosures in the 10-K for the 1997 fiscal year are not
8 misleading?

9 A As I sit here today, based on what I know today, as
10 compared to what I knew at the time the document was
11 prepared, there is a difference.

12 Q Well, that is why I am asking. You said it is not
13 misleading.

14 A My opinion is different. My opinion is different
15 today than what it was at the time I did the audit work.

16 Q So your statement as of a moment ago that it wasn't
17 misleading was referring back to your knowledge at the time
18 it was filed?

19 A That is correct.

20 Q And your opinion today is what?

21 A Well, my opinion today is --

22 MR. HAYNES: Based on what he knows after the fact.

23 THE WITNESS: Based on --

24 MS. HEILIZER: Based upon what he knows today.

25 THE WITNESS: Based on what I know today, based on

Page 180

1 the expanded audit procedures we performed on Bill and Hold
2 transactions, it is misleading because an adjustment was made
3 to reverse those sales. The disclosure would not even have
4 been in the document had I known what I know today. Had the
5 company not booked those sales, disclosure would not even be
6 there.

7 MR. LIPMAN: Let's --

8 MR. HAYNES: Now I will be more careful in trying
9 to listen to your questions in terms of timing because I

10 think that creates a problem. In other words, what he knew
11 back at the time of the issuance of the 10-K as to what he
12 knows today. Sometimes the questions are clear enough and I
13 don't want to object when you are on one train of thought,
14 but on other occasions, if you would be more specific, I will
15 try to be more alert. And I think it will be more helpful to
16 the witness because the witness is having difficulty in terms
17 of time, in terms of the question in time.

18 BY MR. LIPMAN:

19 Q Well, I appreciate that because my questions
20 yesterday have -- you know, what I wanted to know was how
21 this related -- how this was or should have been affected by
22 what you knew. But also there are -- you know, if it is not
23 clear, then please ask me to clarify it because there is a
24 difference between what you knew and what the company knew or
25 there may be a difference between what you knew and what the

Page 181

1 company knew. And if the question is not clear, then, you
2 know, I will clarify it.

3 A There is one other thing that I would like to
4 clarify and that was related to a question on who did I talk
5 to regarding Mr. Dunlap. And another partner that I talked
6 to was Bill Ramsaur, R-a-m-s-a-u-r. And Bill was an Andersen
7 consulting partner that had worked on the Assistance project
8 in Hattiesburg, Mississippi and worked on Sunbeam for several
9 years as a consulting engagement partner.

10 And as I recall, Bill indicated that he knew the
11 partner that had worked on the Scott Paper project when
12 Mr. Dunlap arrived and became the CEO of Scott Paper. I do
13 not recall any negative references or negative comments made
14 about Mr. Dunlap or Andersen's consulting experience with
15 Mr. Dunlap.

16 BY MS. HEILIZER:

17 Q Now how did you come to remember this contact with
18 Mr. Ramsaur?

19 A I was laying in bed last night just trying to think
20 through the sequence of events and what happened, and I
21 remember that I did mention it to Bill Ramsaur.

22 Q Now you said Mr. Ramsaur was a consulting partner
23 in Hattiesburg?

24 A Hattiesburg.

25 Q Hattiesburg. Now that work hadn't started yet at

Page 182

1 the time Mr. Dunlap became CEO of Sunbeam, right?

2 A The work at Hattiesburg was systems work and it had
3 been started several years before Mr. Dunlap arrived.

4 Q So you had this conversation with Mr. --

5 A Ramsaur.

6 Q -- Ramsaur when?

7 A The conversation would have been about the time
8 Mr. Dunlap joined the company. It would not have been before
9 he joined the company, it would have been after he joined the
10 company.

11 Q Do you recall the name of the partner in Scott
12 Paper?

13 A I do not.

14 MR. LIPMAN: Sir, we started talking about the
15 10-K. You indicated, I believe, that page 15 -- oh, yes. I
16 am sorry. Let me hand you the exhibit, it is Exhibit 136.
17 You said that it was -- was it page 15 did you say?

18 MS. HEILIZER: I would like you to look at the
19 exhibit copy, sir, because that is what we are examining you
20 off of.

21 MR. HAYNES: He needs to look at this copy for his
22 reference purpose. Then he can track it to the exhibit copy.
23 This copy being the paper that you gave us.

24 THE WITNESS: Page 19.

25 BY MR. LIPMAN:

Page 183

1 Q And where is the language that you are --
 2 A It is the second full paragraph that begins, "The
 3 company appliance category sales."
 4 Q Was there anything else that we hadn't mentioned
 5 yesterday that deals with Early Buy or Bill and Hold?
 6 A No.
 7 Q Okay. Now I think you -- what you said earlier,
 8 clarifying what -- your testimony yesterday, you said that
 9 the wording could have been better. And let me preface my
 10 question by saying that I understand that the wording of the
 11 10-K is the company wording. But what did you mean when you
 12 said that the wording could have been better?
 13 A Well, what I meant is everybody has their own
 14 opinions on how you word things, how things are said, how
 15 things are disclosed. And you can ask 10 different people
 16 and you are going to get 10 different answers. And you are
 17 not going to have the exact same wording on those 10
 18 different people. I mean, I -- had I spent a lot of time
 19 thinking about this, I am sure I could come up with a
 20 different verbiage, which would be more succinct and perhaps
 21 easier to understand than what is in this document.
 22 BY MS. HEILIZER:
 23 Q Are you talking about style, sir, or substance?
 24 A I am talking about writing style, ease of
 25 understanding, possibly, to some extent substance, but not to

Page 184

1 a significant extent.
 2 Q Okay. What areas were you concerned about or
 3 dissatisfied with the substance of the disclosures of the
 4 10-K at the time of this filing?
 5 MR. HAYNES: Based on information he knew at the
 6 time of the filing.
 7 MS. HEILIZER: Yes, I was asking at the time it was
 8 filed.
 9 MR. HAYNES: Right.
 10 THE WITNESS: I don't believe I was dissatisfied.
 11 You used the term "dissatisfied." I don't recall being
 12 dissatisfied.
 13 BY MS. HEILIZER:
 14 Q What about uncomfortable, as you used that term and
 15 as you define its meaning here today?
 16 A I believe I was asked a question yesterday was a
 17 comfortable. I was not uncomfortable and I -- you know, I
 18 was not uncomfortable and I was not dissatisfied.
 19 Q With any of it?
 20 A Pardon me?
 21 Q With any of the disclosures in the K?
 22 A Do I have time to flip the document to answer that
 23 question?
 24 Q Certainly.
 25 MR. HAYNES: Well, let's take a break. It is 354

Page 185

1 pages.
 2 MS. HEILIZER: Fine.
 3 MR. HAYNES: Okay.
 4 MR. LIPMAN: We are off the record.
 5 (A brief recess was taken.)
 6 MR. LIPMAN: We are back on the record at
 7 approximately 10 after 10:00. And counsel asked how much of
 8 the document the staff would like the witness to review. And
 9 I think we should make this into a manageable task. There
 10 are 354 pages in here. A lot of the pages in here are
 11 attachments. There is the portion of the document before the
 12 attachments begin that is actual -- that is the actual 10-K
 13 financials, MD&A discussion, all that stuff. So if you could
 14 please look over the portion of the document before the
 15 exhibits. The exhibit index starts on page 61. Okay?
 16 MR. HAYNES: And what do you want him to do?
 17 MS. HEILIZER: Well, the pending question is, what
 18 areas he thought the disclosure should have been better in.
 19 And he asked if he could look at the document. The staff has
 20 agreed. He should look at whatever areas he needs to look at
 21 to answer the question. But that is entirely up to him. And
 22 if you would like to go off the record for him to have that
 23 opportunity, we are happy to do so.
 24 MR. HAYNES: How many pages are we talking about
 25 before the exhibits?

Page 186

1 MS. HEILIZER: Sixty-one is what Mr. Lipman just
 2 indicated.
 3 MR. HAYNES: Okay. He needs to read 61 pages.
 4 MS. HEILIZER: That is fine. We can go off the
 5 record.
 6 MR. HAYNES: Let's just take a break.
 7 MR. LIPMAN: We are off the record.
 8 (A brief recess was taken.)
 9 MR. LIPMAN: We are back on the record at
 10 approximately 11:15. And while we were off the record, there
 11 were no discussions of substance between the staff and the
 12 witness or counsel. Is that correct?
 13 MR. HAYNES: That is correct.
 14 BY MR. LIPMAN:
 15 Q Mr. Harlow, have you had a chance to review the
 16 10-K, the Exhibit 136?
 17 A Yes, I have had a chance to review Exhibit 136
 18 through page 61. I have not reviewed pages 62 to page 354.
 19 I would also like to comment that this is an incomplete copy.
 20 There are numbers in columns, information missing from this
 21 document.
 22 BY MS. HEILIZER:
 23 Q You are referring to the tabular content at the
 24 back from the EDGAR printout?
 25 A Yes.

Page 183 - Page 186

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 187	Page 189
<p>1 Q Okay. Well, is there anything missing from the</p> <p>2 first 61 pages that you reviewed?</p> <p>3 A Yes.</p> <p>4 Q Is that what you are talking about?</p> <p>5 A Yes.</p> <p>6 Q From the -- okay. Well, we were asking you about</p> <p>7 the disclosures, the textual disclosures, sir. Is there</p> <p>8 anything missing from the textual disclosures?</p> <p>9 A I didn't understand that to be the question. I</p> <p>10 thought the question was anything related to the document.</p> <p>11 Q No, we were asking you about the disclosures and</p> <p>12 you were talking about whether it was grammar or substance.</p> <p>13 And we asked you to tell us about the substance of the</p> <p>14 disclosures that you weren't happy with at the time this</p> <p>15 document was filed.</p> <p>16 A I guess I consider financial information to be</p> <p>17 disclosure.</p> <p>18 Q Okay.</p> <p>19 A I consider this entire document to be disclosure.</p> <p>20 All the information in here, regardless of whether it is</p> <p>21 numbers or verbiage.</p> <p>22 Q Can you give us your refreshed recollection as to</p> <p>23 what disclosures you were not happy with at the time this</p> <p>24 document was filed?</p> <p>25 A Is that the same question that was asked of me an</p>	<p>1 identify any such disclosures for me?</p> <p>2 A Can we take each one of those at a time?</p> <p>3 Q However you would like to answer the question.</p> <p>4 A The first one is inaccurate? I don't know of any</p> <p>5 disclosures in here that I think are inaccurate.</p> <p>6 Q Okay.</p> <p>7 A And once again, it is at the time this document was</p> <p>8 prepared.</p> <p>9 Q At the time it was filed, sir. That is the</p> <p>10 question.</p> <p>11 A At the time it was filed. I actually reviewed it</p> <p>12 several days before it was filed. Your second question?</p> <p>13 Q Incomplete.</p> <p>14 A Incomplete. I am not aware of anything that I</p> <p>15 thought was incomplete in this document at the time I</p> <p>16 reviewed it.</p> <p>17 Q Should have been improved.</p> <p>18 A Should have been improved. Exactly what does that</p> <p>19 mean?</p> <p>20 Q Do you know what the word "improved" means?</p> <p>21 A Well, in my mind it means to make better.</p> <p>22 Q Okay. Were the substance of any disclosures you</p> <p>23 think should have been made better at the time this document</p> <p>24 was filed?</p> <p>25 A Nothing significant.</p>
Page 188	Page 190
<p>1 hour and fifteen minutes ago?</p> <p>2 Q Can you answer the question I just posed to you?</p> <p>3 A I was not unhappy with this document. I was not</p> <p>4 unhappy at the time I reviewed it.</p> <p>5 Q Okay. Are there disclosures for which you think</p> <p>6 the substance should have been changed at the time the</p> <p>7 document was filed?</p> <p>8 MR. HAYNES: Based on information he knew then.</p> <p>9 MS. HEILIZER: Correct.</p> <p>10 THE WITNESS: Based on information at that time.</p> <p>11 Nothing significant.</p> <p>12 BY MS. HEILIZER:</p> <p>13 Q Well, even if it is insignificant, which</p> <p>14 disclosures do you think the substance should have been</p> <p>15 changed for?</p> <p>16 A I would have to go through the document again and</p> <p>17 identify those areas.</p> <p>18 Q Well, if you would like to show us, please do so.</p> <p>19 A I didn't understand that we were going to talk</p> <p>20 about insignificant items.</p> <p>21 Q Well, I am talking about the substance of a</p> <p>22 disclosure, sir. Are there any disclosures that you can</p> <p>23 point me to for which you found at the time they were filed</p> <p>24 that the substance was inaccurate, should have been approved,</p> <p>25 was incorrect, omitted information in any respect? Can you</p>	<p>1 Q Is there anything you can think of, whether you</p> <p>2 consider it significant or otherwise, as you sit here today?</p> <p>3 A We can talk about insignificant things all day, if</p> <p>4 that is what you want to talk about.</p> <p>5 Q I am talking about the substance of disclosures,</p> <p>6 sir. If you can think of anything --</p> <p>7 A Nothing significant is my testimony.</p> <p>8 Q Can you think of anything insignificant as you sit</p> <p>9 here today?</p> <p>10 A Anything insignificant. I guess how insignificant</p> <p>11 do we want to get?</p> <p>12 Q Well, I want to find out, sir, if you think any --</p> <p>13 the substance of any of the disclosures should have been</p> <p>14 changed in any way, regardless of whether you characterize</p> <p>15 the change as significant or insignificant. So if you can</p> <p>16 give me any examples, I would appreciate it.</p> <p>17 MR. HAYNES: Let me ask the question, you are not</p> <p>18 asking him to rewrite it in terms of how he would change</p> <p>19 words to make insignificant things --</p> <p>20 MS. HEILIZER: Sir, I am asking --</p> <p>21 MR. HAYNES: -- in his own words.</p> <p>22 MS. HEILIZER: That is correct. I am asking about</p> <p>23 the substance.</p> <p>24 MR. HAYNES: She is asking you about substantive</p> <p>25 things that would bear on whether it is a reasonable</p>

Page 191

1 presentation of the contents of the 10-K.
 2 MS. HEILIZER: I am asking about substance as he
 3 used the term.
 4 MR. HAYNES: Okay. All right.
 5 MS. HEILIZER: He distinguished it from style and
 6 grammar. And I am not asking about those, sir.
 7 MR. HAYNES: Okay. Thank you.
 8 THE WITNESS: Well, I think I am getting confused
 9 with semantics here. If I say something is insignificant, I
 10 guess I mean that it is not of substance.
 11 BY MS. HEILIZER:
 12 Q Okay. So you are --
 13 A You can have various degrees of substance, you can
 14 have various degrees of significance.
 15 Q Okay.
 16 A And in my mind, this type of document, you can have
 17 insignificant items, which may be disclosed one way, could be
 18 disclosed another way, and the effect is insignificant to the
 19 reader and to the quality of the document.
 20 Q Okay. So can you think of any disclosures for
 21 which the substance should have been changed at the time it
 22 was filed?
 23 A In substance, no, at the time it was filed.
 24 Q Can you think of any disclosures from which
 25 information was omitted that you think should have been

Page 192

1 included at the time it was filed?
 2 A No. At the time it was filed, I cannot think of
 3 any omissions.
 4 BY MR. LIPMAN:
 5 Q Sir, I believe you mentioned earlier that the
 6 relationship of the front of the documents and the footnotes
 7 was not misleading or inconsistent. That was one of the
 8 things you said.
 9 A That is correct.
 10 Q This morning. Could you tell me what you meant by
 11 that and what parts you were referring to?
 12 A I was referring to the footnote in the financial
 13 statements that describes Bill and Hold transactions, and I
 14 was referring to your discussion yesterday on the Early Buy
 15 program described here in the front part of the 10-K. And my
 16 point was that the disclosure in the front part and the
 17 disclosure in the financial statement footnote does not
 18 represent an inconsistency or inaccuracy in my mind.
 19 Q Well, is there -- if you look at page 37, is that
 20 the back part of the disclosure that you were talking about,
 21 the revenue recognition part?
 22 A This is the footnote disclosure.
 23 Q Right.
 24 A Footnotes to the financial statements disclosing
 25 the Bill and Hold transactions.

Page 191 - Page 194

Page 193

1 Q Right. Is that what you were talking about when
 2 you said the front part of the document and the back part of
 3 the document. Is this the back part of the document?
 4 A No, this is the financial statement. The back
 5 part, I guess, would be all these exhibits, which I haven't
 6 reviewed. But this represents a footnote to the financial
 7 statement and a disclosure that there were -- Bill and Hold
 8 transactions amount to approximately 3 percent of revenues.
 9 Q Okay. Well, when you testified this morning, you
 10 know, clarifying your previous testimony, and you said that
 11 the disclosure of the front part was not misleading and
 12 inconsistent with the footnotes, is this the footnote you
 13 were referring to?
 14 A Yes, this is the footnote I was referring to.
 15 Q Now that you have had a chance to review this
 16 document, is there any reference in this portion of the
 17 document, the footnotes, to -- that connects the Bill and
 18 Hold transaction with the Early Buy program?
 19 A I can't answer that. The Bill and Hold is separate
 20 from the Early Buy. There were Early Buy transactions that
 21 were not Bill and Hold transactions. Bill and Hold is --
 22 those were sales where delivery was not made to the customer
 23 as of year end. But there were Early Buy sales that were
 24 made and delivered to the customer prior to year end.
 25 Q Do you recall --

Page 194

1 A One is an accounting issue and the other is a
 2 program developed by the company, an Early Buy program of a
 3 marketing program.
 4 Q Do you remember what portion of the Early Buy
 5 program was done on a Bill and Hold basis?
 6 A Well, approximately, you know, 32 million.
 7 Q Out of --
 8 A I think there was a little over 50 million in the
 9 Early Buy program.
 10 Q Now if you would turn to page 9 of the document.
 11 Now when we spoke yesterday, one of the things that we
 12 discussed was the risk that the Bill and Hold program has for
 13 impact on future financial performance. Do you recall that?
 14 A What I recall is a discussion on -- I think we
 15 talked about potential impact a Bill and Hold policy could
 16 have on future sales by the company.
 17 Q Do you recall the discussion?
 18 A I don't recall all the discussion. If you want to
 19 refresh my memory.
 20 Q What I mean is do you recall that you testified
 21 about it yesterday and in that regard, you testified about
 22 what conversations you had with management on January 22,
 23 1998?
 24 A I don't think that is entirely accurate in my
 25 testimony, what I testified to yesterday. Maybe we better go

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 195

1 back and replay it.

2 MR. HAYNES: Let me say to you that he did testify

3 about conversations with management, but I don't recall that

4 it was in the context of discussions about risk of Bill and

5 Hold and the impact in which it was going. But you combined

6 different parts of his testimony into one question and asking

7 him to assume -- and asking him if he recalled that

8 conversation. So I think we should break it out into parts

9 to be clear.

10 THE WITNESS: If I could have one question at a

11 time, that would be good.

12 BY MR. LIPMAN:

13 Q Okay. Do you recall testifying about the

14 December -- I am sorry, the January 23rd meeting with --

15 January 22nd meeting with management? Do you remember

16 testifying about that?

17 A I remember testifying on it, but I don't

18 remember -- if you were to ask me to repeat all the specifics

19 of my testimony today at this point, I can't.

20 Q I am not asking.

21 A Okay.

22 Q Do you recall that we spoke about the -- Arthur

23 Andersen talking to the company that -- about additional

24 disclosure to be made relating to the revenue recognition

25 policy MD&A in the MD&A and risk factors? Do you recall

Page 196

1 that?

2 MR. HAYNES: Related to the January 22nd meeting?

3 MR. LIPMAN: Yes. Yes.

4 THE WITNESS: I -- yes, I remember it being part of

5 that memo and there was some discussion at that meeting on

6 those issues.

7 BY MR. LIPMAN:

8 Q Well, let me ask you this then. Do you think now

9 that a Bill and Hold program may impact -- a Bill and Hold

10 program in one period may impact financial results in a

11 subsequent period?

12 A I believe a Bill and Hold program in one period

13 could impact a subsequent period.

14 Q Okay. Now could you please look at page 9. The

15 last sentence on that page, it says, "During 1997, the

16 company initiated an Early Buy program for highly seasonal

17 products, such as grills and warming blankets, in order to

18 more levelize production and distribution activities." Do

19 you see that?

20 A Yes, I do.

21 Q Is there any discussion of potential impact on

22 future sales of the Early Buy program?

23 A No, there is not, but the Early Buy program was not

24 designed to be a Bill and Hold program. The Early Buy

25 program was a marketing program. Bill and Hold, as I

Page 197

1 testified earlier, that is an accounting treatment for sales

2 that happen to be part of this Early Buy program. There are

3 many other sales that were not Bill and Hold, part of the

4 Early Buy program.

5 Q Okay. Other than the footnote that we spoke about

6 earlier, the footnote relating to revenue recognition, which

7 is on page 37, is there any other mention of the Bill and

8 Hold program? Well Bill and Hold treatment anywhere in this

9 document?

10 A Treatment. I don't believe there are any

11 disclosures outside of the financial statements that used the

12 term "Bill and Hold" in this document.

13 Q Okay.

14 A And that is based on my review of 30 minutes ago of

15 61 pages out of 354 pages. And for the record, they do have

16 information missing from this document.

17 Q The information that appears in tabular form

18 contains numbers; is that right?

19 A It appears to be numbers in tabular form.

20 Q Okay. Now does the -- would the Early Buy program

21 implemented to appear in one period, could that affect a

22 future financial performance in subsequent periods?

23 A I believe it is possible that it could. It is like

24 any sale to a customer. It can potentially have an impact in

25 a subsequent period. It becomes how much the customer buys.

Page 198

1 when they buy it, and if they buy right.

2 Q Yes. Sir, in the -- in this document, there is no

3 risk factor disclosure; is that right?

4 A There is no section entitled, "Risk Factor" in this

5 document.

6 Q Do you recall that a risk factor disclosure was

7 part of the conversation with management on January 22, 1998?

8 A I recall that being part of that memo. What I

9 don't recall is the conversation being in the context that it

10 had to appear in a risk factor section in a 10-K document.

11 Q Well, what do you recall about the risk factor

12 disclosure conversation?

13 A I don't recall very much. I mean, the discussion

14 was along the general terms, and not necessarily in that

15 meeting. As I testified earlier, the discussion of Bill and

16 Hold transactions took place over an extended period of time

17 during the month of January.

18 At the time we found out about it until this

19 meeting and even beyond that meeting, they -- several

20 subsequent meetings with audit committee, in terms of

21 discussion of that particular item, it was along the lines

22 that there is a risk that Bill and Hold can have an impact on

23 subsequent sales and Bill and Hold, by the nature of their

24 payment terms, represent a risk since the collection period

25 is longer than what it is for some of the other sales.

Page 199

1 And as I testified yesterday, things can happen
 2 from the time the transaction is recorded until the time that
 3 the product is ultimately delivered and accepted by the
 4 customer. And those were the types of things we discussed.
 5 You know, I don't recall saying that the company is going to
 6 put a risk factor section in the 10-K and that is going to be
 7 item number 1 in the 10-K. I don't think we had that
 8 discussion.
 9 BY MS. HEILIZER:
 10 Q Did you ever ask the company to include an explicit
 11 risk factor section in the 10-K?
 12 A No, I did not.
 13 Q Did anybody else from Andersen do that?
 14 A I don't have that knowledge.
 15 Q Are you aware of anyone else from Andersen doing
 16 that?
 17 A I am not aware of it. In the front part of this
 18 document, there are risks identified. Throughout the front
 19 part, it talks about certain risks. And perhaps I would have
 20 to go back and ask Mr. Bornstein what did he mean by risk
 21 factor. Did he mean a formal risk factor as in an S filing
 22 or a specific section put in a 10-K? I don't think there is
 23 a requirement to have a risk factor section in a 10-K.
 24 BY MR. LIPMAN:
 25 Q Sir, let me hand you back Exhibit 114. And if I

Page 200

1 may ask you to turn to page AA026760.
 2 A I am sorry. say again the --
 3 Q AA026760. That is the first page of the
 4 January 23, 1998, memo to file from Mr. Bornstein. Do you
 5 see that? I would like you to look back at the Bill and Hold
 6 sales paragraph, particularly the sentence that starts with,
 7 it is, "We further explain that additional disclosure would
 8 need to be made to the company's revenue recognition policy.
 9 Additional disclosure in the MD&A as well as the risk
 10 factors." Do you see that sentence?
 11 A Yes, I see it.
 12 Q Does that sentence refer to the Bill and Hold
 13 sales?
 14 A Yes. that refers to Bill and Hold sales.
 15 Q Thank you.
 16 MS. HEILIZER: You can take that exhibit back.
 17 BY MR. LIPMAN:
 18 Q Yes. We can take, actually, both those exhibits
 19 back. Now sir, was Arthur Andersen at this time still
 20 involved in working on the Coleman transaction?
 21 A At what point in time are we?
 22 Q This is the first or second week of March 1998.
 23 What would you like?
 24 A Do you have a copy of the S-4?
 25 Q Yes, sir.

Page 201

1 A I just -- I need some point of reference.
 2 Q Yes. I am handing the witness Exhibit 135. And
 3 sir, if you could just -- we are done with 136. So I will
 4 just take it from you. Thank you.
 5 MS. HEILIZER: Mr. Haynes, do you have a copy?
 6 MR. HAYNES: Thank you.
 7 (The witness reviewed the document.)
 8 THE WITNESS: I am having difficulty with the exact
 9 dates. You mentioned the first week in March.
 10 BY MR. LIPMAN:
 11 Q Right.
 12 A And your question was, was Arthur Andersen working
 13 on the Coleman deal. Is that correct?
 14 Q Right.
 15 A I guess. what do you mean by working on the Coleman
 16 deal in terms of -- I am not quite sure what you mean.
 17 Q Well, what I mean is was there anything that Arthur
 18 Andersen was doing for Sunbeam that related to the Coleman
 19 deal?
 20 MR. HAYNES: In the first week of March of 1998?
 21 MR. LIPMAN: In the beginning first two weeks of
 22 March of 1998.
 23 THE WITNESS: I can't recall in the first two weeks
 24 we were doing anything specific related to Coleman. I would
 25 have to refer to, you know, notes.

Page 202

1 BY MS. HEILIZER:
 2 Q Well, what is it you would look at, sir?
 3 A I would look at my time reports.
 4 Q Anything else?
 5 A I think that would be primarily it.
 6 Q Now, even if Andersen --
 7 A And discussions with Mr. Bornstein.
 8 Q And where would you look at discussions with
 9 Mr. Bornstein? What is it you would look at?
 10 A I would discuss.
 11 Q Right, but I am asking what you could look at to
 12 help you remember when you were doing something specifically
 13 for Coleman. So what is it you would look at about
 14 discussions? Are there notes or other compilations?
 15 MR. HAYNES: That is a disconnect.
 16 THE WITNESS: I would have a discussion.
 17 MR. HAYNES: He said he would have a discussion
 18 with Mr. Bornstein.
 19 MS. HEILIZER: Oh, I see, to refresh his
 20 recollection?
 21 MR. HAYNES: Right.
 22 THE WITNESS: Yes.
 23 BY MR. LIPMAN:
 24 Q Sir, was Arthur Andersen working on the first
 25 quarter of financials for Sunbeam sometime in early March

Page 199 - Page 202

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

1 1998?

2 A No. we were not. To clarify, the first quarter was
3 not complete at that time. So our work on the first quarter
4 was not done until after the first quarter was over.

5 Q Did Arthur Andersen work on a private debt
6 placement for Sunbeam sometime in early March 1998?

7 A Yes. I believe that our work started in early
8 March on the zero coupon convertible debt.

9 Q What work was that?

10 A I don't recall all the work that Mr. Bornstein was
11 involved in directly with the company, but the initial work
12 in the preparation of pro forma financial statements for the
13 combined companies, that there was some subsequent review
14 activity that took place and we also were requested to do
15 some comfort letter work for the underwriters on the
16 transaction. But I don't recall the time frame. I don't
17 think that necessarily started in early March. I think that
18 might have been later in March.

19 MR. LIPMAN: Let's mark this as the next exhibit.
20 (SEC Exhibit No. 137 was marked for
21 identification.)

22 BY MR. LIPMAN:

23 Q Sir, let me hand you what has just been marked as
24 Exhibit 137. And it is a multi-page document. It appears to
25 be a copy of an offering -- a draft of an offering

1 BY MR. LIPMAN:

2 Q Yes.

3 A On the question -- that is helpful -- yes. I have
4 seen this before.

5 Q Do you see the date at the top that says, "Issued
6 March 6, 1998?"

7 A Yes.

8 Q Does that help you in any way to recall what
9 time -- at what time Arthur Andersen was involved with work?

10 A Yes, that is helpful.

11 Q So let me ask you now, what time do you believe
12 Arthur Andersen began working on the private placement?

13 A Okay. That is different than the question you
14 asked me before, what time did we start working on the -- we
15 were working on the Coleman deal.

16 Q Yes.

17 A Do you consider this to be the Coleman deal or a
18 private placement?

19 Q No. I believe that we -- I asked you about the
20 Coleman deal, I asked you about the first quarter work, then
21 I asked you about the private placement. And this relates to
22 the private placement. So the question I would like you to
23 answer is, when did you, meaning Arthur Andersen, begin
24 working on the private placement?

25 A To the best of my recollection, several weeks prior

1 memorandum. It says, "Issued March 16, 1998, subject to
2 completion." And it is Bates stamped AA031294 through
3 AA031466. Sir, is this -- does this document relate to the
4 private placement -- debt private placement that we just
5 spoke about?

6 MR. HAYNES: Let me ask you, for all these
7 questions when you are handing him these multi-page
8 documents, you say does this document relate to debt private
9 placement. Are you asking him also to authenticate the
10 document?

11 In other words, does he need to go through it page
12 by page and accept that as a draft of a private placement
13 memorandum because I don't believe we have laid for the
14 foundation for that. Has he seen it before, does he know it,
15 can he compare it with what he looked at, is this the
16 document? My question is, are you asking him to authenticate
17 the document?

18 MR. LIPMAN: Well, I haven't asked him to
19 authenticate the document yet.

20 MR. HAYNES: Okay.

21 MR. LIPMAN: I just asked him to -- the front page
22 of the document has some information on it, including a date.
23 And that is all I wanted him to look at.

24 THE WITNESS: So we are just dealing with the front
25 page.

1 to this point in time.

2 BY MS. HEILIZER:

3 Q By this point, you are looking at the date on the
4 document of March 16th?

5 A March 16, 1998. Several weeks before that. I
6 don't know the precise date.

7 BY MR. LIPMAN:

8 Q Now was -- I think that you mentioned that in
9 connection with the private placement, Arthur Andersen was
10 asked to provide the comfort letter. Is that right?

11 A That is right. As I recall, we were asked to
12 provide a comfort letter.

13 Q Okay. And also to give consent; is that right?

14 A We were asked -- well, we -- I think we were asked
15 to, although I wasn't asked directly, we assumed that we
16 would be asked to give a consent to the use of our financial
17 statements in connection with this.

18 Q What kind of work was Arthur Andersen going to do
19 in order to be able to give a comfort letter?

20 A We were going to perform a review of the financial
21 activity of the company subsequent to December 31 or year end
22 December '97. Review minutes of the company's board of
23 directors. In connection with our review, inquire of
24 management whether there had been any significant changes in
25 policies, any significant events which could impact the

Page 207

1 reliability of the 1997 financial statements and obtain the
 2 representation letters from management.
 3 We had discussions with the sales executives
 4 regarding subsequent activity, subsequent sales activity. We
 5 assisted the -- I am sorry, that is not -- we are just on the
 6 comfort letter at this point. I believe we updated our legal
 7 representation letters. I am not a hundred percent sure on
 8 that point, but I believe we did.
 9 Q Anything else?
 10 A I am sure there is more, but I think those are the
 11 primary things.
 12 Q What were the things that you, meaning Arthur
 13 Andersen, do in order to put yourself in the position to give
 14 consent to these -- of the financial statements in the
 15 private placement?
 16 A We performed subsequent review activity. Much of
 17 what I described was done in connection with the comfort
 18 letter. You know, we get financial information from the
 19 company, we ask about variations from comparable periods, and
 20 asked the company to explain the reasons for those variations
 21 and try to understand those.
 22 Once again, we ask about any significant
 23 transactions, we ask about subsequent events, which could
 24 have an impact on the previously issued financial statements.
 25 In this case, I mean the 1997 financial statements. And we

Page 208

1 also get updated legal representation letters. In a general
 2 sense, those are the types of things that we do.
 3 Q In the course of doing this work either for the
 4 comfort letter or for the consent, did anything come to
 5 Arthur Andersen's attention that was in any way out of the
 6 ordinary?
 7 A Can you define out of the ordinary for me?
 8 Q Well, anything unusual?
 9 BY MS. HEILIZER:
 10 Q Sir, I think the staff is asking what you remember
 11 about learning during the process rather than anything in the
 12 document. I don't think you are reviewing the Exhibit 137.
 13 A I thought the question related to this document.
 14 So I was just trying to refresh my memory.
 15 BY MR. LIPMAN:
 16 Q Well, you know, if you are going to refresh your
 17 memory, let's authenticate the document. Have you seen it
 18 before today?
 19 A Once again, I haven't gone through all the pages.
 20 Q Well, why don't you do that then.
 21 (The witness reviewed the document.)
 22 MR. HAYNES: If you ask anybody to look at a
 23 document and say was there anything out of the ordinary, with
 24 an open question like that, you need to list all types of
 25 focus on a whole document.

Page 209

1 MR. LIPMAN: I did not ask him about the document.
 2 MS. HEILIZER: The staff did not ask the gentleman
 3 to look at the document. He asked to look at it in order to
 4 answer the question about whether anything unusual had
 5 occurred. It was not an exercise that the staff asked him to
 6 go to; however, if he wants to consult the document --
 7 MR. HAYNES: No, I agree.
 8 MS. HEILIZER: -- we are making it available to
 9 him.
 10 MR. HAYNES: I agree. But my point is if there is
 11 a focus on any particular area to refresh his recollection --
 12 MS. HEILIZER: And we are not attempting to refresh
 13 his recollection.
 14 MR. HAYNES: Okay.
 15 MS. HEILIZER: He apparently is attempting to do so
 16 with the document.
 17 MR. HAYNES: That is very satisfactory to me.
 18 MS. HEILIZER: If he has an independent
 19 recollection of anything unusual happening during the course
 20 of the services for the comfort letter and the consent, I
 21 would appreciate knowing.
 22 BY MR. LIPMAN:
 23 Q Also, Mr. Harlow, if your answer is that you do not
 24 recall anything and indicate that your memory needs to be
 25 refreshed, then we can do that too.

Page 210

1 A Well, I guess my position is, I want to be as
 2 helpful as I can. And to just give partial testimony is not
 3 productive on my part or your part.
 4 Q Well, I appreciate that.
 5 A What I would like to do is identify -- there are --
 6 you know, there are things that I will be able to testify to,
 7 but I want to make sure that -- I mean, it has been a long
 8 time since I looked at this document. And just to recall
 9 back over a year ago and what happened in a two or three-day
 10 period or a week's period, is very difficult to do. And, you
 11 know, I want to be helpful and I want to be -- I want to try
 12 to bring out those events that are responsive to your
 13 question. That is all I am attempting to do.
 14 MS. HEILIZER: Do you need a few minutes, sir?
 15 MR. HAYNES: Let's just take a break and let him
 16 finish that document.
 17 MR. LIPMAN: Yes.
 18 MS. HEILIZER: Sure.
 19 MR. LIPMAN: We are off the record.
 20 (A brief recess was taken.)
 21 MR. LIPMAN: We are back on the record at
 22 approximately 12:20. And while we were off the record, there
 23 were no discussions of substance between the staff and
 24 witness or counsel; is that correct?
 25 MR. HAYNES: That is correct.

Page 207 - Page 210

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 211

1 BY MR. LIPMAN:
 2 Q Sir, have you had a chance to review Exhibit 137?
 3 A Yes. I have looked through the Exhibit 137.
 4 Q Is this a copy of the offering memorandum for
 5 Sunbeam zero coupon convertible senior subordinated
 6 debentures to 2018 issued on March 16, 1998?
 7 A Yes, it is.
 8 Q Now did you see this document on or about March 16,
 9 1998?
 10 A Yes, I did.
 11 Q Did you see previous drafts of this document?
 12 A I believe I saw one or two previous drafts. I am
 13 not sure. I am not sure how many previous drafts I saw.
 14 Q Did you see any subsequent drafts of this document?
 15 A I believe I did.
 16 Q Sir, before you started looking at the document, I
 17 asked you whether there was anything unusual that came to the
 18 attention of Arthur Andersen in connection with the work that
 19 Arthur Andersen was doing for the -- for Sunbeam for the zero
 20 coupon private placement. Was there anything unusual?
 21 A If -- can you define what you consider to be
 22 unusual?
 23 Q Well, sir, do you understand the meaning of the
 24 word "unusual?"
 25 A It has meanings of meaning things are different.

Page 212

1 What do you want me to testify to as an unusual event?
 2 Q My question is, was there anything unusual. If
 3 unusual is, you know, if that is not clear, what I asked
 4 before was anything out of the ordinary.
 5 A Well, the difficulty that I am having is when
 6 precisely events happened, precisely when I found out about
 7 certain things, which I guess I would consider to be unusual
 8 or different, in the context of a draft of the document --
 9 BY MS. HEILIZER:
 10 Q Sir, the question --
 11 A I can tell you some unusual things I found out
 12 about in March, if that is what you would like to hear, but I
 13 can't tell you the exact date I found out. I don't -- I
 14 can't give you an exact date.
 15 Q The question wasn't limited to the context of the
 16 draft of the document. I think Mr. Lipman was asking about
 17 during the comfort letter or consent letter process.
 18 MR. HAYNES: Well, that wasn't the question --
 19 MS. HEILIZER: The question was not asked simply --
 20 MR. HAYNES: -- as I understood it. Let me also
 21 say that that points out the lack of clarity in the question
 22 because the question was anything unusual that came to the
 23 attention of Andersen.
 24 MS. HEILIZER: Right.
 25 MR. HAYNES: While working on the zero coupon debt.

Page 213

1 MS. HEILIZER: That is fine.
 2 MR. HAYNES: And that is a greater period of time.
 3 And that might elicit a different answer than the answer that
 4 would have been responsive to the question you just asked.
 5 MS. HEILIZER: That is fine. I was simply --
 6 MR. HAYNES: That is the difficulty.
 7 MS. HEILIZER: I was simply trying to make a point,
 8 Counsel, that we weren't asking about a particular document,
 9 which is what the witness keeps going back to.
 10 MR. HAYNES: But the witness is trying to be as
 11 precise as possible to the questions. And some of the
 12 questions are imprecise. Not intentionally, but they are.
 13 And so that is the difficulty.
 14 MS. HEILIZER: Well, if he gives us the
 15 information, then we can sort when he learned it.
 16 MR. HAYNES: Well, then the question is what?
 17 BY MR. LIPMAN:
 18 Q Well, the question -- let's do this. Do you recall
 19 anything out of the ordinary that came to your attention,
 20 meaning Arthur Andersen and/or you personally, prior to the
 21 time that this offering memorandum was prepared, which is
 22 March 16, 1998?
 23 A I don't recall precisely prior to March 16th. I do
 24 recall some unusual events, but --
 25 Q Okay.

Page 214

1 A -- whether it is March 16th or March 17th or
 2 March 20th, I don't recall.
 3 Q Okay. So the next question then is, is there
 4 anything unusual that came to the attention of Arthur
 5 Andersen in March?
 6 A Yes.
 7 Q Okay. What was that?
 8 A In March, sometime in March 1998, we became aware
 9 that the company's year to date sales were less than the
 10 prior year's year to date sales.
 11 Q How did you become aware of that?
 12 A Mr. Bornstein informed me in connection with
 13 preparing the comfort letter draft and doing the detailed
 14 work at the company on the year to date sales numbers.
 15 Q What did he tell you he had done specifically that
 16 brought this information before you?
 17 A I don't think we had a discussion on what he had
 18 done specifically. I think our discussion centered around
 19 the results of his work. I don't think we discussed the
 20 mechanics and how the numbers were derived for the purposes
 21 of the comfort letter.
 22 Q Did he indicate to you whether there were any
 23 particular problem areas?
 24 A Well, I think if you consider a reduced sales level
 25 in 1998 to be a problem area, yes.

Page 215

1 Q Well, did he identify any particular product that
 2 were performing particularly poorly?
 3 A I don't recall that discussion.
 4 Q Did he mention anything about grills or blankets?
 5 A I don't recall. Once again, at some point in time
 6 we talked about blankets and grills. Whether it was on
 7 March 16th, March 20th, or March 27th, I can't give you a
 8 date, but at some point there was a discussion on that.
 9 Q Sir, just so that I understand your testimony, are
 10 you saying that you did discuss the performance of Sunbeam's
 11 performance as it related to the sales of blankets and grills
 12 sometime in March of 1998?
 13 A That is correct.
 14 Q What did you and Mr. Bornstein decide would need to
 15 be done, if anything, in response to finding out this
 16 information?
 17 A We were concerned that the company had not made
 18 disclosures of this particularly at this point in time. And
 19 in light of filing documents with the SEC, we felt that it
 20 was a disclosure that should be included in the documents to
 21 be filed.
 22 Q Now, when you say that you were concerned that the
 23 company had not made disclosure about this up to this time,
 24 what were you referring to, if anything, specifically?
 25 A The company's chairman, Mr. Dunlap, was not shy

Page 216

1 about touting his abilities on improving the performance of
 2 the company. And although I don't recall precise predictions
 3 and analyst estimates and things of that nature, I believe
 4 that the expectations of the company were more than reality
 5 at the point in time we looked at the -- at the point in time
 6 we prepared our work on the comfort letter.
 7 Q Did you think that Mr. Dunlap's public statements
 8 were misleading because they were incomplete?
 9 A I think his statements were misleading because they
 10 were inaccurate.
 11 Q Inaccurate in what way?
 12 A Well, I can't quantify the extent they were
 13 inaccurate, but I believe that a picture had been painted
 14 that presented a more optimistic future financial performance
 15 of the company than what was taking place when we uncovered a
 16 shortfall in sales.
 17 Q Well, do you know whether Mr. Dunlap understood
 18 what the true situation was at the time that he was making
 19 these statements?
 20 A I don't know that.
 21 Q Did you discuss this issue with anyone at the
 22 company management?
 23 A Yes, I did.
 24 Q Who did you discuss this with?
 25 A I discussed it with Mr. David Fannin, Mr. Russ

Page 217

1 Kersh, Mr. Jane Kelly, and Mr. Bob Gluck.
 2 Q Was this one conversation or meeting or successive
 3 conversations or meetings?
 4 A There were several conversations. Not meetings.
 5 they were telephonic conversations.
 6 Q Do you remember what was said about this topic in
 7 your conversations with Mr. Fannin?
 8 A When I discussed this issue with Mr. Fannin,
 9 Mr. Kersh and, I believe, Ms. Kelly was on the telephone. I
 10 was in Florida in my office and Mr. Kersh and Mr. Fannin were
 11 in New York in their hotel. Ms. Kelly was in -- I believe
 12 she was in Florida at her home at the time the call took
 13 place.
 14 I previously had discussions with Mr. Gluck
 15 regarding the company's sales up through, and I am going to
 16 say approximately mid-March. It may be in the time frame of
 17 March 16th, 17th through the 20th. I had received
 18 information about the level of sales and I believe I had seen
 19 a report which showed weekly sales. But I am not sure if it
 20 was weekly sales or the monthly sales and then the month to
 21 date sales for March.
 22 I was somewhat surprised at the level of the sales
 23 compared to the prior year, same period prior year 1997. And
 24 I was skeptical that the company would be able to meet the
 25 analyst estimates for the first quarter sales.

Page 218

1 Mr. Gluck as I recall, somewhat shared my
 2 skepticism, although I don't believe he came out and said
 3 that he doesn't believe it is possible or made an emphatic
 4 statement. But I took away from that conversation that he
 5 shared some of my skepticism on the company's ability to meet
 6 analyst estimates on first quarter sales.
 7 I told him I was obviously concerned. And he told
 8 me that I would have to talk to Mr. Kersh in order to get
 9 additional disclosures, you know, in the documents to be
 10 filed. So after that conversation, there was -- I believe it
 11 was late at night, ten o'clock, eleven o'clock at night when
 12 I was able to finally hook up on the phone with initially
 13 Mr. Fannin, and then he dialed into Mr. Kersh's room in the
 14 hotel. And I expressed my concerns that I was skeptical,
 15 that for the remainder of March the company would have a very
 16 difficult time making the sales level that was, in effect, on
 17 the street.
 18 Mr. Kersh assured me that Don Uzzi has spent the
 19 entire day in New York going over sales plans and the
 20 strategy for making the first quarter sales plan with
 21 Mr. Dunlap, Mr. Kersh, Mr. Fannin, attorneys from Skadden
 22 Arps. I believe the attorney was with Mr. Finn Fogg. I
 23 believe that is where the meeting took place, in Mr. Fogg's
 24 office. And I believe Mr. Fannin attended that meeting as
 25 well, but I don't recall.

Page 215 - Page 218

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 219

1 But he assured me that Mr. Uzzi was very confident
 2 that his staff, his sales people could make those goals and
 3 he had a plan to do that. And that was pretty much the end
 4 of that conversation.
 5 Q Sir, you began with the conversation that involved
 6 Ms. Kelly and then I think you spoke about the conversation
 7 with Mr. Gluck. Just to clarify for me, are we talking about
 8 three different conversations or --
 9 A We are probably talking about more than three. I
 10 had more than one conversation with Mr. Gluck. And then, I
 11 believe, mechanically the way it happened is I got in touch
 12 with Ms. Kelly with the admonition that she would track down
 13 Mr. Fannin and Mr. Kersh.
 14 I believe Ms. Kelly was in on the conversation with
 15 Mr. Kersh and Mr. Fannin, although she did not -- other than
 16 listening, did she not participate in the conversation. It
 17 was primarily Mr. Kersh. Mr. Fannin did not contribute much
 18 to the conversation or have much to say about the issue. It
 19 was primarily dialogue between Mr. Kersh and myself.
 20 Q Now is this the conversation that Ms. Kelly located
 21 Mr. Kersh and Mr. Fannin, was that the conversation in which
 22 Mr. Kersh advised you that Mr. Uzzi had been in New York
 23 going over the numbers at the offices of Finn Fogg?
 24 MR. HAYNES: I am sorry. You have got two
 25 different concepts all combined into one question. You

Page 220

1 dropped the first predicate, retracted it without telling him
 2 you were retracting it. So the question was, was this the
 3 conversation arranged by Ms. Kelly possibly? And then
 4 separately, was this the conversation in which there was a
 5 meeting?
 6 MR. LIPMAN: Oh, I will rephrase it.
 7 MR. HAYNES: Two different questions.
 8 BY MR. LIPMAN:
 9 Q I will rephrase it. Which was the conversation
 10 that involved the discussion of Mr. Uzzi going over financial
 11 information at the offices of, I guess it is, Skadden Arps
 12 with Mr. Fogg?
 13 A That was the -- my conversation with Mr. Fannin and
 14 Mr. Kersh. And like I just testified, I believe Ms. Kelly
 15 facilitated the telephone call, but I don't precisely
 16 remember if -- because she did not participate in the call.
 17 My conversation with Ms. Kelly had been in an earlier point
 18 in time telling her that I would like to get in touch with
 19 Mr. Fannin and Mr. Kersh because they were out of town in New
 20 York.
 21 Q When you say earlier point in time, was that
 22 earlier in that day?
 23 A Yes. Earlier in that day.
 24 Q And how far in advance of this conversation with
 25 Mr. Kersh and Mr. Fannin, did you speak with Mr. Gluck?

Page 221

1 A The last time I spoke to him would have been
 2 several hours before that conversation with Mr. Fannin and
 3 Mr. Kersh.
 4 Q Was that the first time you spoke with him about
 5 the issue of how well the company was doing in Q-1 '98
 6 compared to Q-1 '97?
 7 A It was not the first time I discussed with
 8 Mr. Gluck the sales shortfall of 1998 to 1997 and also the
 9 street estimates. I believe I spoke with him earlier the
 10 same day and possibly the day before.
 11 Q And the day before, was that the first time that he
 12 discussed that -- a potential for the company not meeting the
 13 street expectation?
 14 A The day I spoke with Mr. Gluck -- the first time I
 15 spoke with Mr. Gluck on that issue was shortly -- by that I
 16 mean the same day. Whether it was one hour or two hours, I
 17 don't recall. But it was shortly after I found out about the
 18 situation from Mr. Bornstein.
 19 Q Can you recall how many days before the
 20 conversation with Mr. Kersh and Mr. Fannin was that?
 21 A I believe it was no more than a day.
 22 Q Was there anything else discussed in the
 23 conversation with Mr. Fannin and Mr. Kersh?
 24 A I think, as I testified, a discussion of disclosure
 25 and the need to, in effect, give some information, either in

Page 222

1 the document or a press release, which would bring the
 2 estimates more in line with reality. And that was the gist
 3 of the discussion. First of all, the company's ability to
 4 make the sales projection and bring the sales projection more
 5 in line with reality through additional disclosures.
 6 Q Now what did Mr. Kersh say Mr. Uzzi had told the
 7 participants in the meeting at Skadden Arps about the
 8 company's ability to meet the street's expectation?
 9 A Mr. Kersh told me that Mr. Uzzi was convinced that
 10 he could meet or beat the street expectations. And I don't
 11 recall the number, but I believe it was either 285 or \$295
 12 million of sales. But he said that the company, you know,
 13 would put out a press release. In fact, the company had put
 14 out a press release that day, without me seeing it, that --
 15 me having an opportunity to review it -- that the company
 16 would beat the first quarter results from the prior year.
 17 And they came down from the street estimates of 295.
 18 Q What did you think of Mr. Uzzi's assertion that he
 19 could beat the -- well, of Mr. Uzzi's assertions made at the
 20 meeting with Skadden Arps?
 21 A I thought Mr. Uzzi was going to be a pretty busy
 22 boy the last two months -- or the last few days of March.
 23 Q What do you mean by that?
 24 A What I mean by that is the company was going to
 25 have to sell a fair amount of product to, you know, to beat

Page 223

1 the prior quarter, the prior year's quarter.
 2 Q At that time, did you think it was possible?
 3 A Initially, when I saw the -- what the company had
 4 to sell, and I believe it was approximately ninety to a
 5 hundred million dollars of sales in the last ten or eleven
 6 days of March, I thought it would be a real stretch for the
 7 company to do that. But after the education that I received
 8 from Mr. Kersh, I wasn't as skeptical as when I first saw the
 9 numbers. I was still skeptical, however, but not as
 10 skeptical.

11 Q Were there any reasons, other than seeing the
 12 actual numbers, that you had for your skepticism?

13 A My skepticism related to the ability to sell that
 14 level of product within a relatively short window. And one
 15 of the things that entered my mind at that point was, you
 16 know, the impact of Bill and Hold transactions that took
 17 place at the end of '97.

18 And Arthur Andersen -- in connection with the end
 19 of the first quarter, we insisted on having auditors in the
 20 field to test the cutoff of revenues, to test the Bill and
 21 Hold transactions, to observe that the inventory was treated
 22 in accordance with accounting requirements. But the primary
 23 basis of my skepticism related to the level and the amount of
 24 sales that they needed in a 10 or 11-day period.

25 Q When you say that the Bill and Hold transactions

Page 224

1 entered your mind in this regard, why was that?

2 A Well, as I discussed with the -- certain members of
 3 management earlier in the year, I felt that the Bill and Hold
 4 sales could have an impact on subsequent sales. So in my
 5 mind, I guess I was starting to see that, you know, see that
 6 bird come home to roost.

7 Q Do you recall how far out the Bill and Hold sales
 8 went up?

9 A I am sorry. How far the Bill and Hold sales --

10 Q Yes. In terms of do you know how far the Bill and
 11 Hold -- the deliveries that were a product that were sold on
 12 a Bill and Hold basis. Do you remember where --

13 A At that time I didn't know. Subsequent, in
 14 connection with our expanded procedures on the '97 audit,
 15 most of the product was delivered, I believe, by the end of
 16 March. And there were some very minor product cancellations,
 17 purchase orders canceled, which I believe were less than \$2
 18 million, the total sales. But also the number that had been
 19 represented to us as Bill and Hold sales was not correct.
 20 There were additional Bill and Hold sales that we were not
 21 aware of at the time we did the '97 audit. And we found
 22 those in our expanded procedures as well.

23 So by the point in time I became aware of this
 24 problem, most of the Bill and Hold as of -- that had been
 25 made as of the end of '97 were out of the warehouse, but we

Page 225

1 didn't find out that they were going to do more Bill and Hold
 2 transactions in the first quarter of '98.

3 Q Now you mentioned that you had discussions with
 4 management about the impact of Bill and Hold, and we spoke
 5 earlier about the January 22nd meeting and other meetings
 6 that you have had with management in January. Were there any
 7 other meetings that you haven't talked about, that you
 8 haven't testified about yet between January and sometime in
 9 March when you discussed the impact of Bill and Hold on
 10 future sales with management of the company?

11 A Yes.

12 Q Do you recall what they were?

13 A I don't recall precise dates, but I did have
 14 discussions with Mr. Gluck regarding the company's policies
 15 and procedures related to Bill and Hold transactions.
 16 Mr. Gluck asked Arthur Andersen to review a draft copy or a
 17 draft of the company's policies and procedures relative to
 18 Bill and Hold transactions.

19 And this policy was primarily geared to provide
 20 instruction to members of other parts of the company,
 21 primarily the sales customer service people and also
 22 distribution people as to how Bill and Hold sales should be
 23 handled so that they were handled in accordance with
 24 generally accepted accounting principles.

25 I don't recall precisely what was said, but I made

Page 226

1 comments to him from time to time that I didn't think it made
 2 a whole lot of business sense to do this. And I think
 3 Mr. Gluck shared my viewpoint on that to some extent. But
 4 you know, those discussions were after we signed off on the
 5 '97 audit. It took place probably sometime in February.

6 We had discussions through -- well, throughout the
 7 period of extended procedures, but, you know, discussions up
 8 to the point in time we refused to consent on our report.
 9 But I even discussed with the audit committee that I thought
 10 it was not a good practice and that there was an adverse
 11 impact on the company's sales by entering into those type of
 12 transactions. I discussed that at the May 1998 audit
 13 committee meeting.

14 Q When you were having these discussions with
 15 Mr. Gluck, you know, sometime in February or, I guess,
 16 sometime between January and -- as you testified before,
 17 Arthur Andersen decided to refuse to consent, the discussions
 18 that took place prior to the -- prior to the first
 19 conversation that you had with Mr. Gluck following what you
 20 learned about the results, right?

21 A Results of?

22 Q At some point in March, I think you testified that
 23 you learned that the company wasn't doing all that well in
 24 the first quarter of '98, right?

25 A Sometime in March.

Page 223 - Page 226

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Page 227

1 MR. HAYNES: The first two months of 1998.
 2 BY MR. LIPMAN:
 3 Q Yes. I am sorry. Sometime in March you found
 4 out -- you couldn't remember the precise date, but I thought
 5 you testified that it was sometime in March that you found
 6 out that the company's sales so far that year shed some doubt
 7 upon the company's ability to meet expectations; is that
 8 right?
 9 A Well, the sales themselves didn't shed that. It
 10 was the level of sales -- I have testified to a couple of
 11 things relative to the 1998 sales up through some point in
 12 time in March. Number one is that I testified we identified
 13 that there was a lower level of sales year to date in 1998 as
 14 compared to year to date, same period, 1997.
 15 I also testified that relative to 1998 sales year
 16 to date through sometime mid to, you know, during that week
 17 of the 16th through the 22nd or 23rd, that I did not believe
 18 the sales that the company had at that point in time gave
 19 them the base for making their first quarter estimates.
 20 Q Okay. In your conversations with Mr. Gluck between
 21 the end of January and the time in March when you found out
 22 that the level of sales was not going to be -- was not
 23 keeping up with the level of sales of the previous year, what
 24 was the reason that you discussed with him the impact of Bill
 25 and Hold on subsequent period sales?

Page 228

1 A I didn't like Bill and Hold sales. I thought it
 2 was a lousy business practice. And I communicated that
 3 several times to Mr. Gluck, Mr. Kersh, and others within the
 4 company.
 5 BY MS. HEILIZER:
 6 Q What was going on that led to these conversations
 7 with Mr. Gluck during this period? Were there accounting
 8 auditing services being provided? What was the impetus?
 9 A Well, one exchange or one discussion I think took
 10 place -- pardon me because I have difficulty with precise
 11 dates. But took place at the time he prepared the policies
 12 and procedures for Bill and Hold. And I think I said
 13 something to the effect, "Bob, you know, why are you going to
 14 continue to do this? Why is the company going to continue to
 15 do this? It doesn't make sense because, you know, it catches
 16 up with you at some point in time."
 17 Q And what was his answer when you said that?
 18 A I don't recall his answer, but it was -- I don't
 19 believe Mr. Gluck was the pioneer of the Bill and Hold
 20 program. I think, you know, he, as corporate controller, had
 21 to live with Bill and Hold, and basically try to construct
 22 for other members of management the sales department,
 23 Mr. Kersh and ultimately Mr. Dunlap.
 24 He had to provide the accounting structure to try
 25 to make it work. I don't believe he was thrilled with Bill

Page 229

1 and Hold transactions either. But when the topic would come
 2 up I, you know, I was not shy in voicing my opinion in what I
 3 thought of those types of transactions.
 4 Q Was there a reason the topic was coming up between
 5 the end of January and the time you learned about the sales
 6 figures being off comparable '98 to '97?
 7 A Well, as I just testified, it was in connection
 8 with developing this formal policy for the company. We had
 9 an accounting policy and procedure manual that we would
 10 attempt to you know, indicate what the company's procedures
 11 were going to be relative to those types of transactions.
 12 And he asked us to review them.
 13 So I think that prompted a discussion. And my
 14 comments -- you know, we probably had several conversations
 15 on that particular draft and, you know, it would come up from
 16 time to time. But I can't point to any precise event that --
 17 other than the policy and procedure manual when we talked
 18 about it.
 19 Q Well, why was the company doing a policy manual on
 20 Bill and Hold at that time? Was there some intent to
 21 continue doing Bill and Holds?
 22 A Yes.
 23 Q What do you know about that?
 24 A Yes. At the point in time, sometime in February
 25 after we signed off on the 1997 audit, Mr. Gluck wanted to

Page 230

1 formalize procedures related to that because, well, it is my
 2 understanding that he wanted to make sure the sales people
 3 understood what needed to be done in terms of discussing
 4 those types of sales with customers.
 5 So, you know, he didn't want to have to explain
 6 every time a new salesman would join the company or explain
 7 it every time the topic came up at a management meeting.
 8 They wanted to have a written document that explained the
 9 whole -- what a Bill and Hold transaction was and what
 10 qualified from a generally accepted accounting principle
 11 standpoint what procedures needed to be followed within the
 12 company in terms of purchase order requirements, shipping
 13 requirements, you know, the whole -- all the aspects
 14 associated with those types of transactions.
 15 So at that point in time, it was my understanding
 16 the company intended to have future Bill and Hold sales. And
 17 the first quarter they did have Bill and Hold sales.
 18 BY MR. LIPMAN:
 19 Q Sir, in the conversation that you had with
 20 Mr. Kersh and Mr. Fannin where Mr. Uzzi's report at the
 21 meeting with Skadden Arps was discussed, did you tell
 22 Mr. Kersh what you just told us you were telling Mr. Gluck?
 23 A On the telephone conversation, I did not have a
 24 conversation with -- about Bill and Hold transactions.
 25 Q Do you know what --

1 A As I recall. There might have been a comment made
2 about it, but did I -- I don't think I said at that point in
3 time to Mr. Kersh that "You need to stop the business
4 practice."

5 Q Do you know whether --

6 A I may have said something like "Do you believe that
7 your Bill and Hold sales had an impact on the results here to
8 date?" That may have been part of the conversation, but I
9 don't recall precisely.

10 Q Do you know whether Mr. Uzzi had discussed the
11 impact or potential impact of Bill and Hold on the company's
12 performance at that meeting at Skadden Arps?

13 A I can't testify to that. I was not at the meeting
14 and I don't recall hearing from those in attendance at that
15 meeting that that aspect was discussed.

16 MR. LIPMAN: Why don't we break for lunch now. We
17 are off the record.

18 (Whereupon, at 1:06 p.m., a luncheon recess was
19 taken.)

1 conversations that took place in March that involved
2 Mr. Fannin, Ms. Kelly, or -- and/or Mr. Kersh, either
3 together or in combination or singly that dealt with how the
4 company was doing at that point in 1998?

5 A I believe that I had had a conversation with
6 Ms. Kelly, prior to my conversation with Mr. Fannin and
7 Mr. Kersh, and explained to Ms. Kelly why I wanted to discuss
8 or why I wanted to get in touch with Mr. Kersh and
9 Mr. Fannin. I had a discussion with her on the sales
10 shortfall issue.

11 Beyond that, in conversations with those three
12 individuals prior to that time, prior to that telephone call,
13 I would say, other than the Ms. Kelly conversation, no.
14 Subsequent to that time, there were some discussions that I
15 had with Mr. Fannin, Ms. Kelly, and not necessarily a
16 discussion, but a meeting attended by Mr. Kersh where the
17 topic was discussed.

18 Q Now this is subsequent. You had mentioned the
19 press release was -- the subsequent conversations that you
20 were talking about, these conversations took place after the
21 press release or before the press release?

22 A These conversations -- I believe your question was,
23 did I have any other conversations. The conversations I am
24 referring to now were after the press release.

25 Q In your conversation with Ms. Kelly, did you tell

1 AFTERNOON SESSION

2 MR. LIPMAN: We are back on the record at
3 approximately 2:25. And while we were off the record, there
4 were no discussions of substance between the staff and the
5 witness or counsel; is that correct?

6 MR. HAYNES: That is correct.

7 BY MR. LIPMAN:

8 Q Before we broke for lunch, sir, we were talking
9 about the meeting -- I am sorry, the telephone conference
10 that you had with Mr. Fannin and Mr. Kersh and possibly
11 Ms. Kelly. Were there any other conversations involving
12 Mr. Kersh, Ms. Kelly, and/or Mr. Fannin that related to the
13 impact on the Bill and Hold that you can recall that took
14 place in March of 1998?

15 A Let me clarify that the conversation was not
16 necessarily a conversation about Bill and Hold. That
17 conversation was primarily a conversation about a potential
18 shortfall in sales for the first quarter and a disclosure of
19 such. I believe, as I testified earlier, we did not have,
20 that I can recall, a discussion of Bill and Hold on that
21 telephone conversation. Although, it might have possibly
22 been mentioned, but I cannot testify that we discussed Bill
23 and Hold on that particular conversation.

24 Q I apologize, sir. I didn't mean to misstate your
25 testimony. Let me ask you then, were there any other

1 her anything about what you thought to be disclosed by the
2 company about its performance in 1998?

3 A I discussed with Ms. Kelly that I thought the
4 company should make clear in its disclosures on any documents
5 to be filed that the company was going to incur a sales level
6 different than the street anticipated and also be very
7 careful in -- and this was referring to the press release
8 that was put out, I believe, on March 19th or 20th.

9 Be very careful that the company not put itself
10 into a box in trying to meet an expectation in which it can't
11 meet. Something to that effect. And I had that conversation
12 with Ms. Kelly subsequent to the March 19th and March 20th
13 press release. And that would have been before the end of
14 March.

15 Q Now in the conversations with Ms. Kelly -- in the
16 conversation with Ms. Kelly that you had that preceded the
17 press release, did you also discuss the sales level of --
18 that the company was experiencing?

19 A Yes.

20 Q And did you --

21 A That was the crux of the conversation and the need
22 for disclosure of that fact.

23 Q What was her response to what you told her?

24 A Her response was that the situation had been
25 reviewed by Skadden Arps and that based on their advice from

Page 235

1 counsel, they thought the disclosure -- or the disclosure and
 2 the press release was adequate.
 3 Q I am sorry. I am asking about your conversations
 4 that you had -- conversation that you had with her prior to
 5 the issuance of the press release.
 6 A Okay. Well, there are a number of press releases.
 7 Can you tell me which press release?
 8 Q I am sorry. There was -- I believe you said that
 9 there was a press release that came out on either March 19th
 10 or 20th.
 11 A Yes.
 12 Q And, well, what I am asking about is your
 13 conversation with Ms. Kelly that took place before the
 14 conference call that may have involved Ms. Kelly and also
 15 involved Mr. Fannin and Mr. Kersh.
 16 A Okay.
 17 Q Did you discuss the sales level, the Sunbeam sales
 18 level, with Ms. Kelly in that conversation?
 19 A Yes.
 20 Q And did you also discuss with her the -- your
 21 thoughts on having to have disclosure put out by the company?
 22 A Yes.
 23 Q What was her reaction in that conversation?
 24 A Her reaction was the same as I mentioned before.
 25 that Skadden Arps was of the opinion that the press release

Page 236

1 that was put out that day was sufficient and that there was
 2 no need for additional disclosures in documents to be filed
 3 with the SEC.
 4 Q When did the idea of putting out the press release
 5 spring up?
 6 A I don't know precisely when it sprung up. But I
 7 believe that it was a result of Arthur Andersen's discussions
 8 with the underwriters and the draft of the comfort letter
 9 indicating that there was a decline in sales in 1998 as
 10 compared to 1997. I believe that was the genesis of top
 11 management and counsel of putting out some type of press
 12 release.
 13 Q When was the first time that Arthur Andersen
 14 discussed this information with the underwriters?
 15 A I cannot precisely answer with a date, but it was
 16 very close. And by close, I mean within several days of the
 17 point in time the press release was put out on the 19th or
 18 20th.
 19 Q Realizing that you don't know the specific date
 20 right now when you say several days, more like seven or more
 21 like three?
 22 A More like three. More like two.
 23 Q Was Arthur Andersen involved in any discussions
 24 relating to the content of the press release?
 25 A Arthur Andersen was not consulted on the content of

Page 237

1 the press release.
 2 MR. HAYNES: Now this is the March 19th press
 3 release?
 4 MR. LIPMAN: Yes, sir.
 5 MR. HAYNES: Okay.
 6 BY MR. LIPMAN:
 7 Q Now who was the Arthur Andersen individual who
 8 spoke with the underwriters?
 9 A Larry Bornstein spoke with the underwriters as well
 10 as the underwriters' attorneys.
 11 Q Did you have any personal contact with either the
 12 underwriters or their attorneys?
 13 A I did not have face to face contact. Larry
 14 actually met with them in New York and Larry patched me into
 15 a telephone call. I was in Florida and he was at -- I
 16 believe he was at Morgan Stanley's office, although I am not
 17 a hundred percent certain on that. And I did have a great
 18 conversation with one of the underwriters.
 19 Q Do you recall who was on that conference call?
 20 A I do not recall. That is something I could
 21 research to help my memory, but offhand, I don't recall the
 22 name of the underwriter.
 23 Q Do you mean the firm or the individuals on the
 24 call?
 25 A The individuals.

Page 238

1 Q Let me show you what has been previously marked as
 2 Exhibit 125 and ask you to please look at the last page of
 3 that exhibit. There are names --
 4 A Do you want me to read the entire document?
 5 Q No-no. There are some names at the top of the
 6 exhibit. And if you could look at those and tell me whether
 7 any -- whether that list refreshes your memory as to who may
 8 have been on that conference call with -- that we were just
 9 talking about.
 10 A The only one that -- well, first of all, no one
 11 from the company was on that call. And the call I am
 12 referring to is Larry Bornstein in New York either at the
 13 underwriters or the printers. One of the two. And I am in
 14 Florida and Larry patches me in. I believe John Tyree was
 15 one of the individuals, but these other names I don't believe
 16 they were.
 17 Q Were any lawyers on the call?
 18 A I believe there was an attorney representing the
 19 underwriters.
 20 Q Representing Morgan Stanley?
 21 A Morgan Stanley, right.
 22 Q Was it someone from Davis Polk?
 23 A That was the firm that represented Morgan Stanley.
 24 I believe. I believe there was one of their attorneys on the
 25 call.

1 Q Do you recall what happened on the call, what you
2 said, what Mr. Bornstein said?

3 A I don't remember a detailed conversation, but the
4 objective of the call was to discuss the need for better
5 company disclosure relative to the sales issue.

6 Q Was Morgan Stanley aware of the level of sales
7 issue before that conversation?

8 A I believe that they were because we had prepared a
9 draft comfort letter. And one of the paragraphs in the draft
10 comfort letter identified a decrease in the 1998 sales as
11 compared to the 1997 sales for the same period.

12 Q Do you know if they --

13 A I believe that John Tyree had reviewed a copy of
14 that prior to that point in time.

15 Q Do you know if Morgan Stanley was made aware of the
16 level of the company's sale before they saw a draft of the
17 comfort letter that you were talking about?

18 A I don't know that, but based on -- I mean, based on
19 hearsay, and this is primarily from Larry Bornstein, Larry
20 felt that they were somewhat surprised and was not aware of
21 the sales situation prior to receiving our comfort letter.

22 Q Now did you and the underwriters, you meaning you
23 and Mr. Bornstein, discuss the reasons for the fall off in
24 the sales level?

25 A No, not that I can recall. If a reason was

1 remember if the press release had been sent out, had been
2 prepared. The draft was given to the underwriters at the
3 time Larry and I had our call. Actually, Larry was in New
4 York. I don't recall the precise timing, but specifically on
5 the Bill and Hold issue, I don't recall discussing the Bill
6 and Hold directly with Morgan Stanley.

7 Q Sir, other than the level of sales, which you
8 identified as one of the things that were different that you
9 learned during this period, was there anything else that you
10 learned during this period that falls into the same different
11 category?

12 A Okay. Can you give me the period?

13 Q The period is from the -- from January 22, 1998,
14 through March 1998.

15 A Well, back to our definition of unusual. We did --
16 or the company did enter into discussions with Coleman, in
17 addition to First Alert and Signature Brands, and proceeded
18 to perform due diligence and basically enter into a purchase
19 agreement on those three companies. That was certainly a
20 significant event or unusual event.

21 Another event that occurred was sometime in
22 February, there were some pretty significant upper level
23 management employment contract agreements struck with
24 Mr. Dunlap, Mr. Kersh, and Mr. Fannin. During that period of
25 time, there were significant stock options granted to

1 discussed, it was not a significant component of discussion.

2 Q Were the underwriters in agreement that additional
3 disclosure would be required?

4 A I don't believe they were in agreement with that.

5 Q Do you recall what they said on that score?

6 A I believe the position that they were taking was
7 the company's position along with the company's counsel's
8 position.

9 Q Which was?

10 A Which was that the March 19th or 20th disclosure
11 was, you know, would be adequate. And in other words, no
12 special need to put additional information or disclosure in
13 the document.

14 Q Now that answer assumes that they know at the time
15 that you had spoke with them what the content of that
16 disclosure would be. Did they?

17 A I don't know. I don't know if it was based on the
18 discussion with the company's attorneys, Janet Kelly. We
19 were talking about a matter of a day or two. I just don't
20 know.

21 Q Did you at any time, prior to the issuance of the
22 March 19th press release, discuss the impact of the Bill and
23 Hold on the sales level of the company with anyone, with any
24 of the underwriters?

25 A Well, just as I have just testified, I don't

1 Mr. Gluck and Ms. Kelly. I think those are the more unusual
2 events that I can recall.

3 Q Was there anything else, other than the sales
4 level, that had to do with the company's results --
5 performance?

6 A Once again, what period of time?

7 Q The same period of time. From the third week of
8 January to -- through the -- through March 19.

9 A Okay. Some of the issues -- unusual events that I
10 just mentioned clearly would have an impact on the company's
11 performance for that time period. There were rather large
12 compensation charges, which would have an adverse impact on
13 the company's performance in the first quarter. And those
14 would be recorded at the time they were entered into. So
15 those had a very significant impact on 1998.

16 The purchase transactions obviously would, although
17 they weren't recorded until the end of that period. But as
18 of the time they were recorded in the books and records of
19 the company, it totally changed the balance sheet and the
20 operating results of the company. From a comparability
21 standpoint, it was a different company at that point. I
22 think those are the primary things that would affect
23 performance in that time frame that I was aware of at the
24 time.

25 Q Sir, if you can look back at Exhibit 125. There is

Page 243

1 one of the pages in that exhibit, I think it is the third
 2 page.
 3 A This one?
 4 Q I am sorry. It would be the next page. The last
 5 page. I am sorry. It sets out a -- it sets out an agenda
 6 for a bring down due diligence meeting, I believe. Is this
 7 the meeting that took place at Skadden Arps where Mr. Uzzi
 8 gave a report that you testified about before?
 9 A I can't answer that. I did not participate in this
 10 meeting and I have never seen this agenda. So I can't answer
 11 that.
 12 Q Okay.
 13 BY MS. ARMSTRONG:
 14 Q Mr. Harlow, when Mr. Bornstein called you in this
 15 phone call that you testified to having received Mr. Tyree's
 16 phone call, what was Mr. Bornstein seeking from you? Was it
 17 advice? Do you recall?
 18 A Larry was working on the document. And he would
 19 call me from time to time with just an update on the status
 20 of the project. And he was working closely with, you know,
 21 representatives from the underwriters and also their counsel
 22 in conjunction with putting the document together.
 23 So he may call -- he might call with a question.
 24 "How this should be disclosed?" And, you know, "What should
 25 be done here?" And, "Keep me apprised as to where we were in

Page 244

1 the process." And one of those calls, I don't know if he was
 2 in a conference room or an office, and we had a -- he had --
 3 I believe it was John Tyree, but I am not 100 percent
 4 confident. A representative from Morgan Stanley. And I
 5 believe a representative from their law firm wanted to
 6 discuss the sales issue relative to that point in time. And
 7 that was -- that is the way I recall it was prefaced to me.
 8 Q Did you come to any conclusion about whether or not
 9 there was a need for more disclosure relative to the sales
 10 issue at that time?
 11 A At that time, I felt there was more need for
 12 disclosure.
 13 Q And did you tell Mr. Bornstein? Did you tell, you
 14 know, someone else in New York that this is what, you know,
 15 Andersen wants to do?
 16 A Mr. Bornstein was of the same frame of mind, and I
 17 didn't have to tell him because we had previously discussed
 18 it previous to that call. And Mr. Bornstein had communicated
 19 that to these individuals at that point in time.
 20 Q And what about the individual who is on the call
 21 with Mr. Bornstein and Mr. Tyree, did he have a response to
 22 your decision or the decision that there was a need for more
 23 disclosure on this issue?
 24 A As I testified earlier, to the best of my
 25 recollection, his attitude and his say what he thought would

Page 245

1 be necessary was consistent with the company and the
 2 company's counsel's advice and approach. I mean, that is
 3 what is in my mind that I recall. But I don't remember
 4 exactly how he said it and what words he used. But that is
 5 what I walked away from with that conversation.
 6 Q Was there anything else that was discussed that you
 7 haven't already testified to having occurred during that
 8 phone call?
 9 A Not that I can recall.
 10 Q Was there any other phone calls that day from
 11 Mr. Bornstein relative to this issue of disclosure?
 12 A I am sure there were.
 13 Q Do you recall anything specific about other phone
 14 calls that you received --
 15 A I am sorry?
 16 Q That you received from Mr. Bornstein that day.
 17 A I don't recall anything specific. You know, Larry,
 18 like I said, he was calling me from time to time just to
 19 update me on the status of the project and, you know, how the
 20 document was coming together and the timing and so forth.
 21 BY MR. LIPMAN:
 22 Q Sir, do you recall whether Arthur Andersen
 23 participated in a March 18, 1998, conference call that
 24 involved Don Uzzi and Deborah McDonald and Mr. Fannin?
 25 A That was March 18th?

Page 246

1 Q Yes, sir.
 2 A I have no knowledge of that call with those
 3 individuals.
 4 Q Let me show you what has previously been marked as
 5 Exhibit 86.
 6 MR. HAYNES: Do you want any of this back?
 7 MR. LIPMAN: Yes.
 8 MR. HAYNES: This being these exhibits before they
 9 get --
 10 MR. LIPMAN: Yes.
 11 BY MR. LIPMAN:
 12 Q Sir, if you could please turn to page AAR015941.
 13 Have you ever seen this memorandum?
 14 A Is it just this one page that you are referring to?
 15 Q Well, that one page and then there is some
 16 documents attached. And I think it is a total of three
 17 pages. And they go from 5941 through 5943.
 18 A Can I take just a few minutes to read it?
 19 Q Absolutely.
 20 (The witness examined the document.)
 21 THE WITNESS: I believe I saw this during the
 22 period of time in which we were doing the extended procedures
 23 on the 1997 audit. Prior to that time, I have not seen it.
 24 BY MR. LIPMAN:
 25 Q Would that -- was that --

Page 247

1 A But this letter -- this memo is dated July 27,
 2 1998, which was during the period of time we were doing the
 3 extended procedures.
 4 Q Right. So would you -- do you think you saw this
 5 memo around or about July 27, 1998?
 6 A No, it was sometime after that. And I would be
 7 guessing, but it was probably late in October, sometime in
 8 September.
 9 Q Does this memo refresh your recollection at all
 10 about there being a conference call regarding Arthur Andersen
 11 that took place on March 18, 1998?
 12 A I am sorry, the question again?
 13 Q Well, now that you have seen this memo, do you
 14 recall whether there was a March 18, 1998, conference call
 15 that involved Arthur Andersen and also Don Uzzi and Deborah
 16 McDonald?
 17 A Where does it say Arthur Andersen participated?
 18 Q Well, it is addressed to Skadden Arps and Arthur
 19 Andersen.
 20 A Yes, on July 27, 1998.
 21 Q Right.
 22 A This was a document that Mr. Fannin prepared in
 23 connection with our extended procedures on the 1997 audit.
 24 Q Okay. Is this -- well --
 25 A I don't see any mention in here that Arthur

Page 248

1 Andersen was on this call.
 2 BY MS. HEILIZER:
 3 Q Sir, but the question is something different. The
 4 question is do you remember whether Andersen was in on the
 5 call, whether or not that is reflected in the memo?
 6 A That wasn't the question as I heard it, but to my
 7 knowledge, we did not participate in a call with Don Uzzi and
 8 Deborah McDonald. To my knowledge, I didn't.
 9 BY MR. LIPMAN:
 10 Q Sir did you -- on or about March 18, 1998, did you
 11 know anything about Mr. Dunlap's and Mr. Kersh's
 12 participation in the drafting of the press release that was
 13 being contemplated?
 14 Actually, if you can do me a favor and just make
 15 sure that -- yes, it is part of the exhibit -- they are all
 16 kept in order.
 17 A All right.
 18 Q Thank you.
 19 A Can you be more precise on a press release, press
 20 release date?
 21 Q March 19, 1998.
 22 A And the question is, do I have knowledge of whether
 23 Mr. Kersh and Mr. Dunlap participated in the drafting?
 24 Q Yes.
 25 A I have no knowledge -- I had no knowledge at that

Page 249

1 point in time. Subsequent to that point in time, I learned
 2 that Mr. Dunlap -- I don't think he drafted it, but he was
 3 aware that the press release was going out. Mr. Kersh was
 4 aware. And Mr. Dunlap was very upset that that press release
 5 was sent out.
 6 Q Where did you learn this information?
 7 A I learned that at a board meeting in New York.
 8 Q When was that?
 9 A That was in early June 1998.
 10 Q Was Mr. Dunlap there?
 11 A Yes, he was.
 12 Q Before we go to the board meeting, what was your --
 13 well, did you know that Mr. Kersh participated in the
 14 drafting of the press release?
 15 A I don't know that for a fact if he participated. I
 16 believe that he reviewed a draft and, in his position with
 17 the company, had some input into the draft. But that is a
 18 conjecture on my part.
 19 MR. LIPMAN: Let's mark this as the next exhibit.
 20 Thank you.
 21 (SEC Exhibit No. 138 was marked for
 22 identification.)
 23 BY MR. LIPMAN:
 24 Q Let me show you what has just been marked as
 25 Exhibit 138. And this is a one-page document that purports

Page 250

1 to be a business wire reprint of the March 19th press release
 2 put out by Sunbeam. Would you please take a second and
 3 review this document.
 4 A Okay.
 5 Q Is this the March 19th press release that we have
 6 been talking about?
 7 A I believe it is.
 8 Q And is the beginning of the press release the
 9 announcement, the words that say that Sunbeam Corporation
 10 said today that -- well, I guess it should say it is possible
 11 that its net sales for the first quarter of 1998 may be lower
 12 than the range that Wall Street analysts estimates for 285
 13 million to 295 million. But the net sales are expected to
 14 exceed 1997 first quarter sales of 453.4 million. Is that
 15 the disclosure that you had discussed with Skadden Arps -- I
 16 am sorry, with the underwriters and Ms. Kelly and Mr. Fannin
 17 and Mr. Kersh?
 18 MR. HAYNES: By disclosure, do you mean the
 19 specific words in this press release?
 20 BY MR. LIPMAN:
 21 Q No. I am sorry. The subject of that disclosure.
 22 Is that what you discussed with those individuals?
 23 A Let me clarify because you misread the first
 24 sentence.
 25 Q I am sorry.

Page 247 - Page 250

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 251

Page 253

1 A You misread the 1997 first quarter sales to be 453
2 million.

3 Q I am sorry.

4 A It is 253.4 million. Once again, at what point in
5 time?

6 Q Well --

7 A Give me a point in time that you want me to testify
8 to.

9 Q You have mentioned several conversations in
10 which -- with Ms. Kelly, with Mr. Kersh, with Mr. Fannin,
11 with the underwriters, including Mr. Bornstein, in some of
12 these conversations. And you have indicated that the subject
13 matter of these conversations had to do with level of sales
14 and required disclosure.

15 So my question now, as to those conversations that
16 you have already testified about, is this the subject
17 matter -- the disclosure that is in this press release, does
18 it cover the subject matter that you were talking about in
19 those conversations?

20 A This press release covers the sales issue but prior
21 to March 19th, this press release didn't exist. So to say
22 that precisely what is in here was discussed part of that
23 point in time, I can't say that, but I did have discussions
24 on the disclosure, on the shortfall, on the analyst
25 estimates.

1 possibly after. And the record is all screwed up on this
2 because he is dealing with a document that he reviewed at
3 some point in time after it was published. And that is not
4 clear. He said when he read this. And now we are dealing
5 with before and after. So we have got the chronology all
6 jumping.

7 MR. LIPMAN: Well, the record will reflect what I
8 asked. I don't believe I asked before, but if I did, I will
9 withdraw that.

10 BY MR. LIPMAN:

11 Q And the question is, you had been -- you have
12 testified saying that you had some reaction to the -- to this
13 press release. And what I am asking is whether you had
14 communicated with Mr. Kelly -- with Ms. Kelly or communicated
15 to Ms. Kelly what your reaction was.

16 A So that is obviously after the press release.

17 Q That would be after the press release.

18 A After I had read the press release. Yes, I did.

19 Q And what did you tell her?

20 A Well, at one point in time, I told her, "Janet," I
21 said, "I told you so." That was after the actual results
22 were out. Prior to that point in time between the time the
23 press release was put out and, you know, what time I knew --
24 at the point in time I knew the first quarter results, I let
25 her know that I wasn't real pleased with the disclosure that

Page 252

Page 254

1 I was not real excited about the statement
2 "possible" when I read this. And the other issue I had with
3 this, as I testified earlier, when I discussed with Janet
4 Kelly the statement in here that the company expected to
5 exceed 1997 first quarter net sales of 253.4 million.

6 Q Well, why were you not excited about these
7 particular items?

8 A As I testified earlier, I believe the company had
9 much work to do to make that number. There was a degree of
10 skepticism that I had in my mind on their ability to achieve
11 these results.

12 Q Did you tell Ms. Kelly in any of the conversations
13 that you have testified about before that the company may not
14 make these numbers that are stated here?

15 A I -- repeat the question. Repeat the first part of
16 it. Did I --

17 Q Did you tell Ms. Kelly that the company might not
18 make these results?

19 MR. HAYNES: Let me ask are you withdrawing that
20 earlier question that used the term "before?"

21 MR. LIPMAN: That used --

22 MR. HAYNES: Your earlier question was, "Did you
23 tell Ms. Kelly before?" And then now you are removing the
24 "before." My only concern is, you have identified a
25 document, now you are asking about conversations before and

1 they were going to exceed first quarter 1997.

2 Q Was that a conversation that took place soon after
3 this press release came out?

4 A I believe it took place within several days after
5 receiving a copy of this.

6 Q And what did you tell her?

7 A Well, I don't remember the exact wording, but I
8 tried to scold her in a nice way that I didn't think it was
9 real smart to put estimates out in a press release like this
10 one when they represented a stretch.

11 Q At the time that you had that conversation with
12 Ms. Kelly, which was after March 19th and this was, you know,
13 your first conversation with her after the press release came
14 out, did you think that the company was going to be able to
15 exceed its 1997 first quarter net sales?

16 A I don't believe I had -- at that point in time I
17 knew. But going back to my earlier testimony, I had a degree
18 of skepticism in my mind about their ability to do so. But I
19 received -- I had some conversations with the people that
20 supposedly knew what was going to happen with sales and the
21 executives that were controlling the sales effort. And they
22 appeared to be very confident that the company could beat
23 this number.

24 Q Did you communicate to Ms. Kelly in that
25 conversation that took place a few days after March 19th,

Page 255

1 that you were skeptical about the company being able to meet
2 its 1997 first quarter 1998 sales results?

3 A Yes.

4 Q What did she say to that?

5 A I don't recall her exact words, but in fact, she
6 made me believe that she was relying on the sales executives
7 and their estimates and also counsel regarding this
8 disclosure, the counsel being Skadden Arps, that this was
9 adequate. It was not a significant issue.

10 Q Did you discuss with her any of the reasons why the
11 company might not be able to do what it said it would do in
12 this press release?

13 A Yes.

14 Q What did you discuss with her?

15 A I referred to the year to date estimates -- year to
16 date sales information that had been made known to me. And
17 once again, I don't remember the exact wording, but he
18 company has a long way to go to make this number based on
19 where they are at that point in time.

20 Q Did you talk to her about the impact of the Bill
21 and Hold sales on the company's results in that conversation?

22 A I don't recall discussing Bill and Hold.

23 Q Did you have a conversation with Mr. Kersh about
24 this press release that at any time -- I am sorry. Did you
25 have a conversation with Mr. Kersh about the wording of this

Page 256

1 press release that took place any time within, say, a week of
2 this press release being issued?

3 A The subsequent week?

4 Q Yes.

5 A I don't recall if I had a discussion with
6 Mr. Kersh. I believe that Janet Kelly indicated she was
7 going to relay my comments to Mr. Kersh, but I don't recall
8 having a direct conversation with Mr. Kersh on that point in
9 the following week.

10 Q When was the first time that you spoke with
11 Mr. Kersh about this press release?

12 A I don't recall having a direct conversation with
13 him on this particular press release. I can't recall talking
14 to him specifically about this, other than that call that I
15 mentioned was -- must have been the night of the 18th where
16 he referred to, you know, the press release that was going to
17 go out or it had already been sent out. But I don't think I
18 had a specific conversation on this press release with him
19 after it went out.

20 Q Now before the press release went out, did you tell
21 him about your misgivings or skepticism, as you put it, about
22 the company being able to --

23 A Yes.

24 Q What did you tell him about that?

25 A That was the call we talked about an hour or so.

Page 257

1 It was before lunch. That the year to date sales through

2 March 18th, 19th, whatever the date was at that point,

3 represented a significant shortfall in analyst estimates.

4 Now that is what we primarily focused on. And at the time I

5 discussed it with him, I didn't know they were going to put

6 the first quarter -- exceed first quarter results, but year

7 to date the company was behind the prior year's quarter for

8 the company period.

9 Q What was your reaction when you read this press
10 release to the next sentence in the press release, which is
11 that the company's trust that sales on the products at retail
12 remains very strong?

13 A My reaction was that you know, unless there was --
14 something was going to happen in the last few days of the
15 quarter that I didn't know about, that it wasn't a very
16 accurate statement.

17 Q Well, this sentence is in the present tense. It
18 does not deal with what would happen in -- for the rest of
19 the quarter. Was this sentence truthful as of March 19th?

20 A If you made this statement saying that the sales
21 through March 19th were stronger than they were in the prior
22 year, that would be untruthful. And I guess you would have
23 to define what strong means. But in the context of saying
24 first quarter results from a prior year are going to be
25 exceeded, in my opinion, is a little misleading.

Page 258

1 Q Now the next --

2 A In hindsight, I know it was misleading.

3 Q The next sentence says that the shortfall from
4 analyst estimates, if any, would be due to changes in
5 inventory management and order patterns at certain of the
6 company's major retail customers. Was that true as of as of
7 March 19, 1998?

8 A That was probably true because if you want to go
9 back and analyze the customers period to period, I believe
10 there were some changes in their ordering patterns. And I
11 believe that, you know, there were probably some changes in
12 inventory management of retailers. But that is not something
13 I audited or studied or necessarily reviewed. So this
14 statement could be true.

15 BY MS. HEILIZER:

16 Q What does inventory management mean to your
17 understanding?

18 A Inventory management would be having the right
19 level of inventory at any one time to meet the needs of your
20 business. If you are a retailer, you would want to have the
21 right merchandise in your showrooms at the point in time in
22 which your customers are most likely prone to buy that
23 particular product. It also means not having an excess
24 amount of inventory on hand to manage your inventory levels
25 so you do not have an inefficient investment in the level of

Page 255 - Page 258

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 259

1 inventory.

2 Q So did you understand the shortfall that is being

3 referred to there being due to changes in inventory

4 management, did you understand that to mean that retailers

5 were reducing their inventory level of Sunbeam products?

6 A I don't think I really studied that particular item

7 in this press release at the time.

8 Q I am not asking whether you studied it, I am asking

9 what you understood it to mean.

10 A I don't think I really focused on it at the time.

11 BY MR. LIPMAN:

12 Q Well, let's -- well, how about now? Looking at

13 that sentence right now, does that sentence put the onus of

14 the reasons for the shortfall on Sunbeam or on its customers?

15 A This one refers to Sunbeam's customers.

16 Q Do you think that as of what you know today, do you

17 think that the shortfall was attributable to customers or to

18 Sunbeam?

19 A Based on what I know today, I think it is a

20 combination of those two.

21 BY MS. HEILIZER:

22 Q Well, as you sit here today, do you understand this

23 sentence to mean that customers are reducing their inventory

24 level of Sunbeam products?

25 A Sitting here today, I would say that the analyst

Page 260

1 estimates were unrealistic in the first place. So to say

2 there was a change. I just -- I can't say if there was a

3 change.

4 Q No, I am asking what your understanding of the

5 sentence is, not what the reality was.

6 A You said sitting here today.

7 Q Right.

8 A And I --

9 Q How do you understand the sentence? Yes, you said

10 you didn't understand the sentence at the time or didn't

11 study it at the time you read it.

12 A I didn't focus on the meaning.

13 Q Right. I am asking you to focus on it now and tell

14 me what it means.

15 A It means that analysts had estimates of 285 million

16 to \$295 million in net sales for the first quarter of 1997

17 for Sunbeam.

18 BY MR. LIPMAN:

19 Q 1997 or 1998, sir?

20 A I am sorry. 1998. So that was for the sales

21 estimates, analyst estimates. And the company made the

22 statement in here that some of their major retail customers

23 were changing their ordering patterns and they were managing

24 their inventory.

25 BY MS. HEILIZER:

Page 261

1 Q Okay. Does that mean -- do you understand that to

2 mean reducing the level of inventory of Sunbeam products as

3 you sit here today?

4 A In the context of a shortfall, that would be my

5 understanding.

6 Q Do you understand reducing the level of Sunbeam

7 products to be a result of the company's Bill and Hold

8 program in the fourth quarter of 1997?

9 A I am sorry, do I understand the what?

10 Q The reduction in the level. The change in the

11 inventory management that is referred to here to be a

12 consequence of the company's Bill and Hold program in the

13 fourth quarter of '97.

14 A I can't say that without studying that situation.

15 Q What would you do to study it?

16 A I would have to go talk to these customers.

17 Q Do you have an understanding as to whether the Bill

18 and Hold program increased Sunbeam's customers' inventory for

19 those participating in the program?

20 A I don't have an answer for that. I haven't studied

21 their inventory levels.

22 Q Do you know whether the customers took the products

23 into inventory that they purchased under the Bill and Hold

24 program?

25 A At some point in time they did. But to -- in order

Page 262

1 to evaluate inventory levels of suppliers, you would have to

2 do it on a weekly basis, a monthly basis, and have some basis

3 for comparison. We haven't done that study and I can't -- I

4 don't think I have the data to respond to that.

5 Q Do you have any understanding, apart from this

6 hypothetical study you have just described, as to the effect

7 of the Bill and Hold program on customers' inventory levels?

8 A I can assume effect, but I can't say precisely that

9 Bill and Hold had a direct correlation to the decrease in the

10 analyst -- the company not meeting the analyst estimates. I

11 can't testify to that because I don't have that knowledge.

12 Q That is not what I was asking. I was asking for

13 your understanding of the effect of the Bill and Hold program

14 on the customers' inventory levels.

15 A So you want a theoretical answer.

16 Q I want your understanding.

17 MR. HAYNES: I mean, he has testified that he can't

18 testify to it and then you said, "Besides the theoretical

19 that you have answered, do you have any other information?"

20 He has answered it and you just keep asking the same

21 question.

22 MS. HEILIZER: I don't think that is true, Counsel,

23 I think that misstates what --

24 MR. HAYNES: Well, I think the record will speak

25 for itself. I mean, you make it appear as if he has

Page 263

1 knowledge he is not giving you. And he said he didn't have
2 that knowledge.
3 MS. HEILIZER: I am trying to find out what
4 understanding this gentleman has.
5 MR. HAYNES: Well, that is just another way to
6 restate the same question. If he says, "I don't know," if
7 you ask him then his understanding, he has already given you
8 his understanding.
9 MS. HEILIZER: Well, let me make sure that I have
10 his understanding, okay?
11 MR. HAYNES: Sure.
12 BY MS. HEILIZER:
13 Q Sir, do you have any understanding as to the effect
14 of the Bill and Hold program on customers' inventory levels
15 in the first quarter of 1998?
16 A No, I do not.
17 Q Where would you go to find that out?
18 A I would have to go to all of the customers that
19 participated in the program and basically get their inventory
20 records and determine what their inventory levels of the
21 Sunbeam products were on a week to week day to day basis,
22 depending on how these records were maintained, and then take
23 a look at historic ordering patterns and compare that with
24 current ordering patterns.
25 Q Did you have an understanding as to the effect of

Page 264

1 the Bill and Hold program on the inventory level of customers
2 at the end of the fiscal year 1996?
3 A I did not have an understanding as to the
4 customers' inventory levels at that point in time.
5 Q Now did you ask anybody what this -- given that you
6 didn't focus on the sentence and understand what it meant,
7 did you ask anybody what it meant or what information that
8 sentence was referring to when you first read the release or
9 at any time thereafter?
10 A Well, as I testified earlier, I don't think I
11 really focused on that particular sentence.
12 MR. HAYNES: Let me object before you answer.
13 THE WITNESS: All right.
14 MR. HAYNES: Let me just go on the record and say
15 you have just misstated his testimony. I know it wasn't
16 intentional, but you said he didn't focus on it. And your
17 question was that he admitted that he didn't know what it
18 meant. He hadn't admitted that. That is not the record. He
19 needs to use his own words and have the record use his own
20 words, and the questions need to relate to that too.
21 MS. HEILIZER: I think I melded two different
22 sentences that he said, but I believe he said as he sat here,
23 he didn't know exactly what it referred to.
24 BY MS. HEILIZER:
25 Q And I am asking whether you asked anybody either at

Page 265

1 the time you first read the release or thereafter.
2 A I can't answer that because I -- as I testified
3 earlier, I haven't -- I didn't focus on that particular
4 sentence at the time.
5 Q Okay. You can answer the question. The question
6 is, did you ask anybody about the sentence either at the time
7 you first read the release or after that?
8 A I don't recall.
9 Q Did you find out from anybody what the information
10 was that was referred to in the sentence, either at the time
11 you first read this release or thereafter?
12 A Well, after the release, I got an understanding of
13 what that means.
14 Q Okay. And have you relayed to me your complete
15 understanding as to what that means?
16 A I think I have. The company had sales estimates of
17 up to \$295 million in the first quarter of 1998. And
18 customers' ordering patterns were not such that they were
19 able to sustain that level of sales. Why? I don't know. I
20 don't have the answer to that. I haven't gone to the
21 customers to ascertain why they didn't order more product.
22 It could be --
23 Q Did you go to the company?
24 A -- because of Bill and Hold, but I don't know that
25 for a fact.

Page 266

1 Q Did you ask the company?
2 A I -- subsequent to this period of time, we talked
3 about shortfalls and the impact on sales.
4 Q And what information did you get?
5 A Well, current management believes that there was
6 channel stuffing taking place in 1997. Once again, I haven't
7 verified that information. That is what present management
8 of the company believes.
9 MR. LIPMAN: Now --
10 MR. HAYNES: Let's take a break.
11 MR. LIPMAN: Okay. That is fine. We are off the
12 record.
13 (A brief recess was taken.)
14 MR. LIPMAN: We are back on the record at
15 approximately 4:00 p.m. And while we were off the record,
16 there were no discussions of substance between the staff and
17 the witness or counsel.
18 MR. HAYNES: That is correct.
19 MR. LIPMAN: Go ahead.
20 THE WITNESS: Could I clarify --
21 MS. HEILIZER: Sure.
22 THE WITNESS: -- something from yesterday. And
23 this is something I thought about in the cab ride over this
24 morning. There -- a question was asked had I ever personally
25 resigned from clients. And there are two more that I would

Page 263 - Page 266

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 267

1 like to put on the record that Arthur Andersen -- you know,
2 these were clients that I was involved in -- resigned.
3 One is a company called Dry Clean Depot. And I was
4 driving by a dry cleaners on the way over and I -- that
5 jogged my memory. And we resigned from that client because
6 of management integrity issues. Another one was a company
7 called College Bound. And it was a company for which we
8 never performed work, but we were retained as auditors, and
9 then in the investigative process, we found some integrity
10 issues and resigned.
11 BY MS. HEILIZER:
12 Q Was Dry Clean Depot public at the time Andersen
13 resigned?
14 A Yes.
15 Q Is there anything else you wanted to clarify, sir?
16 A No, just those points.
17 BY MR. LIPMAN:
18 Q Sir, going back to the March 19, 1998, memo, we
19 spent some time before we broke talking about the explanation
20 for the shortfall from analyst estimates. Is there any
21 indication in this memo -- in this memo. I am sorry. Is
22 there any indication in this press release that the shortfall
23 might be in any aspect attributable to the company's own
24 policies?
25 A Yes, there is something in here that indicates that

Page 268

1 as a possibility.
2 Q Where is that?
3 A In the last paragraph when it discusses actual
4 results could differ materially from the company's statements
5 due to various factors. One of those factors -- a number of
6 those factors could be company issues.
7 Q Well, do you understand that sentence to be part of
8 the information, part of the -- what the company was trying
9 to convey with the press release or is this a cautionary
10 statement?
11 MR. HAYNES: Let me ask a question for the record.
12 He didn't see the press release beforehand, he didn't draft
13 the press release. Why -- what relevance in any regard would
14 there be as to what his belief is as to what the company's
15 intentions are, which he wouldn't know?
16 MR. LIPMAN: Well, he is --
17 MR. HAYNES: I am just asking the question.
18 MR. LIPMAN: I understand. And the answer is that
19 he is a witness to events that led up and followed the issues
20 of this press release.
21 MR. HAYNES: A witness to just part of the scene,
22 that actual -- the question would be, properly does he -- has
23 he discussed the matter with anybody so that he could express
24 their intention. And that predicate has not been laid.
25 MR. LIPMAN: Well, respectfully, sir, there -- you

Page 269

1 know, I think that the questions that we find appropriate are
2 the questions that --
3 MR. HAYNES: Well, we are not in a court of law.
4 but I have made my objection.
5 MR. LIPMAN: No. I appreciate that.
6 BY MR. LIPMAN:
7 Q But going back to the question, is that a
8 cautionary statement or is that part of the information that
9 the company was trying to convey with that press release?
10 A Well, it is part of the press release. Why they
11 put that statement in the press release, I assume their
12 attorneys advised them to do so. Clearly they thought about
13 it. It is in the press release.
14 Q Well, is it a factual statement? Does it refer
15 back to -- well, is it a factual statement?
16 A Yes, it is a factual statement because actual
17 results did differ materially.
18 Q Well, does it refer specifically to the information
19 in the first part of this exhibit up to the words "cautionary
20 statement?"
21 A I believe it does because it starts out by saying,
22 "Statements contained in this press release." And the
23 previous two paragraphs are "Statements contained in this
24 press release."
25 Q Do you know if the cautionary statement language is

Page 270

1 different in this press release from other press releases
2 issued by Sunbeam?
3 A The only way I can answer that question is to go
4 through and review every press release sent out by Sunbeam.
5 The answer to that question is no.
6 Q Sir, have you -- in your practice, have you seen
7 other press releases put out by other companies?
8 A I have seen other press releases.
9 Q Have you seen press releases that have cautionary
10 language in them?
11 A Yes, I have.
12 Q Is that cautionary language dealing with the
13 possibility that -- or that actual results might differ from
14 the results that are in the press release that are being
15 announced in the press release?
16 MR. HAYNES: Are we talking now about
17 hypothetical --
18 MR. LIPMAN: No, we are talking about this witness'
19 knowledge. He suggests that he would need to review all of
20 the company's press releases to know whether this is a
21 cautionary statement. I am asking him based on his many
22 years of experience, what he understands this language to be.
23 MR. HAYNES: The question you asked was whether
24 this -- the cautionary statement was different from what the
25 company had in other press releases. That is what he

Page 271

1 answered.

2 BY MS. HEILIZER:

3 Q Sir, do you know of any other or are you aware of

4 any other instance in this release where the shortfall is

5 attributed to actions of Sunbeam rather than the customers?

6 A Do I know of other instances other than.

7 Q Yes. You pointed that out in some examples.

8 A Other than --

9 Q Is there anything else?

10 A -- this example I pointed out. Other than that

11 example. I don't see a specific reference to the sales

12 shortfall being attributable to actions of the company.

13 Q Okay. At the time of the release, of the issuance

14 of this release, did you have an understanding as to the

15 reason or reasons for the sale shortfall that is referred to

16 in this release?

17 A As I testified earlier. I had not focused on this

18 particular sentence.

19 Q I am asking you to step back for a minute now. And

20 what I am asking is what you understood at the time this

21 release came out as to the reason or reasons for the

22 shortfall. I am not asking you to interpret the release for

23 me.

24 A I did not have a full understanding of the reason

25 for the shortfall. You know, there were things discussed

Page 272

1 saying that the -- some of the products that were introduced

2 early in the year did not take off as quickly as anticipated.

3 One of my understandings -- one of the things in my mind was

4 the company's Early Buy program perhaps contributed to this

5 factor.

6 Q Are you using Early Buy to include Bill and Hold in

7 your answer?

8 A That would include Bill and Hold as well as a -- it

9 would include Bill and Hold and all the Early Buy -- all the

10 sales under the Early Buy program.

11 Q Anything else?

12 A I think those were the two main items.

13 Q Can you think of any other items?

14 A Well, I heard -- and this is hearsay, I never

15 substantiated this -- that Mr. Dunlap apparently was -- had

16 perhaps rubbed some of his customers the wrong way. And that

17 could have contributed to the shortfall. That is hearsay. I

18 have no way to substantiate that.

19 Q Any other items that contributed to the shortfall

20 in your understanding?

21 A No. I think the, you know, slow introduction of new

22 models, new products, the Early Buy program, and Dunlap's

23 interaction with some of his customers had impact. I think

24 we discussed weather as well. I think that was the

25 explanation that was given.

Page 273

1 Q Did you credit that explanation? Is that part of

2 your understanding as to what actually caused the shortfall?

3 A I am sorry, did I credit?

4 Q Yes. Did you believe it?

5 A I believed that that could have impacted it. I

6 didn't go back and study the weather patterns throughout the

7 U.S., but that was one of the reasons that I was made aware

8 of. I think that is -- those are the reasons.

9 Q At the time you first read this release, did you

10 form an opinion as to whether the release was misleading?

11 A I am sorry, the release was?

12 Q Misleading.

13 A I did not form that conclusion.

14 Q Did you form any opinion as to whether the release

15 was misleading?

16 A I think I just testified that I didn't form the

17 conclusion that the release was misleading.

18 Q Did you ever come to an opinion in that regard?

19 A Subsequent to?

20 Q Yes.

21 A Any point in time?

22 Q Yes.

23 A Today?

24 Q Including today.

25 A Yes.

Page 274

1 Q And what is your opinion and when did you form it?

2 A Well, I had an issue with the first quarter net

3 sales, but -- because they were not met, but that is based on

4 hindsight. At the time the press release went out, I didn't

5 know that. Today I would say that a statement that sales of

6 its product at retail remains very strong is misleading.

7 Based on hindsight, I know that not to be true.

8 Q At the time the statement was made?

9 A No. Today. Based on my understanding today.

10 Q Right. You know the statement was not true in the

11 press release at the time it was made. In other words, what

12 I am asking you, sir, is do you now understand that the

13 statement is false as contained in the press release?

14 A I believe that there were executives at the company

15 that knew this statement was misleading at the time it was

16 drafted. And that understanding is based on our extended

17 review -- audit of '97 financial statements. I would say

18 today that the puffing up of the analyst estimates, the

19 original analyst estimates, which are identified in this

20 press release, was misleading.

21 Q You mean that the analysts were misled in arriving

22 at those estimates or are you telling me something else?

23 A I believe that the -- I believe the analysts were

24 misled. And I believe there -- some of the reasons I

25 mentioned earlier as to why there was a shortfall from the

Page 271 - Page 274

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 275

Page 277

1 estimates are not present in this press release based on what
2 I know today.

3 Q And do you think the release is misleading for that
4 reason?

5 A I believe that there perhaps should have been some
6 disclosure on disappointment in new products, which is not in
7 this press release. Not only disappointment, but just
8 failure of some new products because in the -- there is a
9 sentence. "The company further stated that based on the
10 strength of its new product offerings." Based once again on
11 hindsight, the new product offerings didn't really
12 materialize.

13 Q Do you understand specific new product offerings to
14 be referred to here? Is there a particular item or items
15 that you understand to be referred to here?

16 A Yes. I believe that they were referring to their
17 countertop filter devices, their new grill designs, their ice
18 cream makers. There were some other new products as well,
19 but I think that those three categories would have comprised
20 the bulk of the new offerings covered in this period. I
21 think that is pretty much it.

22 BY MR. LIPMAN:

23 Q Sir, you mentioned that channel stuffing before.
24 What do you understand by the term "channel stuffing?"

25 A I understand channel stuffing to be the sale of a

1 marketing program.

2 MR. HAYNES: Counsel, he has testified to that four
3 or five times. I mean, do we continually have to go through
4 the same questions?

5 MR. LIPMAN: We do if he is going to classify
6 things differently at different times.

7 MR. HAYNES: Well, the record will speak for
8 itself.

9 MR. LIPMAN: It certainly will.

10 MR. HAYNES: I am just objecting on the grounds of
11 repetitive questions on the same subject.

12 MR. LIPMAN: This is not -- I respectfully
13 disagree. This is not a repetitive question.

14 BY MR. LIPMAN:

15 Q Weren't there \$50 billion in -- \$50 million in the
16 Early Buy program?

17 A Based on what we know, we believe it was \$50
18 million of sales under the Early Buy program.

19 Q Isn't that what you also believed in March of 1998?

20 A No. In March of 1998, we believed it to be a
21 different number because the client misrepresented to us the
22 total amount of the Early Buy program.

23 Q Well, what number did you think it was for --

24 A It was a smaller amount, lesser, than 50 million.

25 Q Do you have any recollection of within \$5 million,

Page 276

Page 278

1 high level product, the sale of a product at a higher level
2 than what could be reasonably expected to be consumed or
3 utilized by the ultimate consumer in a reasonable period of
4 time.

5 Q Did you, at the time that the -- of this press
6 release, which is, you know, the third week of March, did you
7 think that by engaging in the Early Buy/Bill and Hold
8 program, that by engaging in the Early Buy programs and Bill
9 and Hold sales, that Sunbeam was channel stuffing?

10 A At the point in time of this press release?

11 Q Yes.

12 A At that point in time?

13 Q Yes. I am asking what you thought as of that time.

14 A No. No, it was not a significant thought in my
15 mind at that time.

16 Q What do you mean not a significant thought?

17 A I didn't believe \$30 million of Bill and Hold sales
18 as of the end of the year could result in a channel stuffing
19 situation to any significant degree. It was 3 percent of the
20 company's sales, a relatively immaterial amount of gross
21 margin. So I didn't think that created a significant channel
22 stuffing situation.

23 Q Well, I thought -- well, isn't Bill and Hold part
24 of the Early Buy?

25 A Bill and Hold sales fell under the Early Buy

1 do you recall what it was?

2 A I believe the additional amounts that we identified
3 was \$4 million, perhaps. Somewhere -- 4 to 5 million.

4 Q Four to five million dollars? Is that -- was that
5 your understanding of the total of the Early Buy program, 4
6 to \$5 million?

7 A Yes. I need to clarify. We identified, in
8 connection with our additional audit procedures, 4 to \$5
9 million additional Bill and Hold sales. I can't tell you
10 right now if all of that fell under the Early Buy program
11 because some of those products were not grills. So I just
12 don't recall if that was part of the Early Buy program.
13 These were sales that we were not told about as being treated
14 on a Bill and Hold basis at the time we did our original
15 audit work.

16 Q Well, as of the time that you were discussing end
17 of the year results with the company, on January 22, 1998,
18 what did you think was the total scope of the Early Buy
19 program?

20 A I think it was in the 45 to \$50 million range.

21 Q As of the time of this press release, which is
22 March 19, 1998, did you think that the 45 to \$50 million of
23 the Early Buy program was an example of channel stuffing?

24 A As of this date. I thought that it might be a

25 contributing factor, but I didn't think it was an overriding

Page 279

1 significant factor related to channel stuffing. But even so
2 of a sale over and above what a company needs is going to
3 result in a, you know, a channel stuffing situation.

4 On an isolated basis, Bill and Hold/Early Buy. I
5 did not think was a significant factor related to channel
6 stuffing at this point in time. Now I am not stupid enough
7 to think that it can't contribute to it because it could
8 contribute to it. If you have a channel stuffing situation
9 with a particular customer that has participated in a Bill
10 and Hold transaction, that would be channel stuffing.

11 But you would have to go back and look at each
12 customer and, like I testified earlier, see what inventory
13 levels they had at a particular point in time. Because not
14 all the customers participated in the Early Buy program.
15 There were only certain customers that participated. But in
16 my mind, I thought the Bill and Hold/Early Buy could have
17 some impact on channel stuffing.

18 Q In the conversations that you have testified about
19 that you had with Mr. Gluck between January and March of
20 1998, did you ever discuss channel stuffing?

21 A At what point in time again? At what point in
22 time?

23 Q Between January 23, 1998, and March 18, 1998.

24 A I can't answer that precisely, but prior to --
25 within several days of this press release going out, I

Page 280

1 believe that I talked to Bob about channel stuffing. Now did
2 we use the term "channel stuffing?" I don't recall. Channel
3 stuffing was not a term that I had in my vocabulary until I
4 started reading some of the Barron's articles, subsequent
5 articles about Sunbeam.

6 Q I am sorry, but I missed what you said about the --
7 when was it that you recall speaking with Mr. Gluck about
8 channel stuffing?

9 A I believe that I discussed the concept -- like I
10 say, I didn't use the phraseology channel stuffing -- within
11 several days prior to this press release being prepared or
12 released.

13 Q And what did you discuss?

14 A I don't recall.

15 Q I am sorry?

16 A I don't recall.

17 Q Well, I am not asking for you to recall the
18 conversation verbatim. If you could just give us the
19 substance of the conversation, that would be good enough.

20 A I just don't have a recollection of the direct
21 conversation, but I am sure it was along the lines of, "What
22 is the deal with the sales? Why aren't they there?" And
23 trying to get some explanation from Mr. Gluck as to why the
24 sales level was not being achieved.

25 Q And well, what do you recall Mr. Gluck saying on

Page 281

1 that some of

2 A I don't recall what his comment was.

3 Q Well, do you recall what the substance of what he
4 said was?

5 A Well, I think the substance of what he had to say
6 was what I referred to earlier. I believe he mentioned the
7 core product sales on the new product. That was a big part
8 of the sales plan. And their results had been very
9 disappointing. There had been technical difficulties with
10 some of the products. They didn't perform as anticipated.

11 I don't recall if he mentioned the suppliers or
12 customers had a higher level of inventory on hand at that
13 point in time in that conversation, but we had conversations
14 about that at other points in time. He didn't talk about it
15 at that point in time. I think those were the two reasons he
16 gave.

17 Q Well, what in that conversation related to channel
18 stuffing?

19 A As I said, I think we talked about customers, some
20 customers having a higher level of inventory on hand than
21 perhaps what they needed.

22 Q And why was it that they had --

23 A I want to preface by saying I am not absolutely
24 clear when I had that discussion with him. I have had that
25 discussion with Mr. Gluck, but I am not clear on the date or

Page 282

1 dates of those discussions.

2 Q You are not clear meaning you don't know -- well,
3 do you know whether it happened before or after this press
4 release went out on March 19th?

5 A I am very confident that I had a discussion with
6 Mr. Gluck about a sales shortfall prior to seeing this press
7 release. I don't specifically recall if he mentioned channel
8 stuffing or similar phraseology to explain the reason for
9 that. I believe that he did, but I don't know with a hundred
10 percent confidence on that. I know that we have discussed it
11 since that point in time subsequent to this point in time.

12 Q Was the concept of channel stuffing -- I don't mean
13 those words, I just mean the concept. Was that discussed
14 with either Mr. Fannin, Ms. Kelly, or Mr. Kersh prior to the
15 issuance of this press release?

16 A I can't say that I had a conversation on that issue
17 with those individuals prior to this release.

18 Q Do you have any knowledge of those individuals, any
19 of them or all together, discussing channel stuffing as it
20 related to Sunbeam in -- before the press release was issued,
21 this press release?

22 A I have no knowledge of that prior to this press
23 release being issued.

24 Q Did you ever discuss the concept of channel
25 stuffing with Mr. Bornstein before this press release was

Page 279 - Page 282

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 283

1 issued?

2 A I don't recall having a conversation on that issue.

3 We may have, but I don't recall specifically having that

4 conversation with Mr. Bornstein.

5 BY MS. HEILIZER:

6 Q Did you talk about the concept of channel stuffing

7 with anyone during the 1997 audit of Sunbeam?

8 A Would you define during the 1997 audit? What time

9 frames are we covering at this point?

10 Q Whatever you consider to be during the 1997 audit.

11 A Yes.

12 Q Okay. And have you told us about all those

13 conversations already?

14 A No.

15 Q Could you tell us about those, please?

16 A Well, those conversations took place May, June,

17 July, August, September, and maybe even October of 1998. And

18 it includes many people.

19 MR. HAYNES: I think we have got, I think, possibly

20 a disconnect. You are talking about additional procedures

21 related to the 1997 audit and she is using 1997 audit as a

22 term of art, I believe.

23 MS. HEILIZER: Let's clean that up. Is your

24 counsel's characterization accurate?

25 MR. HAYNES: We don't know what term of art you are

Page 284

1 using.

2 THE WITNESS: Well, the 1997 audit covers a long

3 period of time.

4 BY MR. LIPMAN:

5 Q How about the 1997 audit prior to the time that the

6 10-K was filed? Did you discuss from the time that you --

7 Arthur Andersen began working on the -- on auditing Sunbeam,

8 which I assume was sometime in 1997, and until that work was

9 completed and the 10-K was filed, did you have any

10 conversations about the concept of channel stuffing?

11 A The filing of the 10-K on March 6, 1998. Not that

12 I can recall.

13 BY MS. HEILIZER:

14 Q In describing channel stuffing, sir, you used the

15 term "reasonable time" or "reasonable period of time." What

16 did you mean by that?

17 A I think a reasonable period of time in this context

18 would be the amount of time that it would take for -- if you

19 want to deal with Sunbeam customers, the amount it would take

20 a retailer to turn over their inventory. And a reasonable

21 amount of time is going to vary depending on the season, it

22 is going to vary depending on the product, and it is going to

23 vary depending on what point in time we are talking about

24 because business concepts have changed over time.

25 And we discussed earlier the management inventory.

Page 285

1 Retailers typically are trying to reduce their level of

2 inventory that they carry. So what was reasonable five years

3 ago is probably not a reasonable amount today.

4 Q So by reducing inventory levels, that means that

5 the turnover is faster today than it was five years ago?

6 A I would say that it is, although there is probably

7 some retailers that haven't achieved those results. I don't

8 want to testify that those results have been achieved by

9 every retailer out there because I don't know that.

10 Q I wasn't asking you to do that, I was asking for

11 your general understanding.

12 A It is my general understanding that inventory

13 levels of retailers, as measured in terms of turnover, has

14 improved today as compared to five years ago.

15 Q Do you have an understanding as to what Sunbeam's

16 grill customers general experience is for inventory turnover,

17 what that period of time is?

18 A I couldn't answer that.

19 Q Could anybody at Andersen answer that?

20 A I could answer the question if I had the data, and

21 there are probably many people at Andersen that could answer

22 the question if they had the data as well, but it is not

23 something that I have the data on at this point.

24 Q What about for blankets?

25 A Same. The same answer. I cannot answer that.

Page 286

1 Q Do you have an understanding as to whether a

2 reasonable period for channel stuffing purposes can ever

3 extend beyond a quarter?

4 A I don't know the answer to that.

5 Q I am asking for your understanding when you say a

6 reasonable period of time.

7 A Well, I am not an experienced retailer. It is an

8 industry that I don't have experience with. I imagine there

9 may be some retailers out there where that is reasonable and

10 I imagine there is some retailers where that is not

11 reasonable. I don't know the answer.

12 Q Okay.

13 BY MR. LIPMAN:

14 Q Sir, do you remember getting -- do you remember

15 that Arthur Andersen received a management representation

16 letter in connection with the private placement in March of

17 1998?

18 A I don't precisely remember that, but I assume that

19 we did.

20 Q You don't remember which?

21 A I don't -- I would have to see the document to

22 refresh my memory, but we should have a management

23 representation letter relative to that work.

24 Q Well, do you recall any discussions about getting a

25 management representation letter?

Page 287

1 A I don't recall any specific discussion. I had.
 2 That is something that generally our managers and seniors
 3 take the lead role in. They typically are the ones that take
 4 care of that particular document.
 5 Q Do you recall any discussions with anyone,
 6 including Mr. Bornstein, about what would be in a management
 7 representation letter relating to private placement?
 8 A I don't recall the specific discussion. I think we
 9 may have requested something relative to this sales shortfall
 10 issue. There may have been some additional language relative
 11 to the acquisitions. It has been a long time since I have
 12 looked at that document. I just -- I don't recall all the
 13 additional representations in that letter.
 14 Q Well, what, if anything, do you recall about asking
 15 for representation relating to the information that is
 16 contained in the March 19, 1998, press release?
 17 MR. HAYNES: I am going to have to ask you to speak
 18 up. It is getting late in the day, the witness is tired, you
 19 are tired. It is easier for him to follow if you could speak
 20 up a little bit.
 21 BY MR. LIPMAN:
 22 Q Well, did you hear me? Did you hear the question?
 23 A Could you repeat the question, please?
 24 MR. LIPMAN: Sure. Actually, you know what? Do me
 25 a favor. Let's have that question replayed.

Page 288

1 (The reporter read back the record.)
 2 BY MR. LIPMAN:
 3 Q Go ahead, please.
 4 A I don't recall a specific conversation on that.
 5 MR. LIPMAN: Let's please mark this as the next
 6 exhibit. Thank you.
 7 (SEC Exhibit No. 139 was marked for
 8 identification.)
 9 MR. LIPMAN: Let me hand you what has been just
 10 marked as Exhibit 139. If you could take a look at that
 11 exhibit.
 12 (The witness examined the document.)
 13 MR. LIPMAN: Why don't we go off the record.
 14 (A brief recess was taken.)
 15 MR. LIPMAN: Okay. We are back on the record at
 16 approximately 5:00 p.m. And while we were off the record,
 17 there were no discussions of substance relating to this
 18 investigation between the staff, the witness and/or counsel;
 19 is that correct?
 20 MR. HAYNES: That is correct.
 21 BY MR. LIPMAN:
 22 Q Have you had a chance to review this exhibit, sir?
 23 A Yes, I have.
 24 Q Is this a copy of a management representation
 25 letter given to Arthur Andersen by Sunbeam, on or about

Page 289

1 March 23, 1998, relating to the private placement?
 2 A Yes. This is a copy of a management letter signed
 3 by Mr. Dunlap, Mr. Kersh, Mr. Fannin, and Mr. Gluck, dated
 4 March 23rd, related to the \$2,014,000,000 Sunbeam Corporation
 5 zero coupon convertible senior subordinated debentures to
 6 2018.
 7 Q When was the first time you saw this document, sir?
 8 A I don't recall.
 9 Q Was it about the date of the document?
 10 A I am not sure I have ever seen this document.
 11 Q Is there anything that would refresh your
 12 recollection as to whether or not you have seen it before?
 13 A Some of the language in here is very familiar to
 14 me, but I can't testify that I have seen this document.
 15 Q Okay. Let's, please, turn to page Bates stamped
 16 SB086582. There is a paragraph at the top of the page
 17 designated with a lower case "b." If you could look at that
 18 language in that paragraph and tell me whether that language
 19 is familiar to you.
 20 (The witness examined the document.)
 21 THE WITNESS: I believe I have seen similar
 22 language, but in the context of this letter, I can't testify
 23 that I have. As I testified earlier, this is a letter that
 24 typically is handled by, you know, our managers and seniors.
 25 BY MR. LIPMAN:

Page 290

1 Q Well -- I am sorry. When do you think you saw a
 2 similar language to the language that you just reviewed?
 3 A Well, I may have seen it at the time we prepared
 4 the comfort letter. But I don't recall.
 5 BY MS. HEILIZER:
 6 Q Sir, even if you didn't see or don't recall seeing
 7 this letter, Exhibit 139, prior to today, were you aware of
 8 the substance of the representations contained in the small
 9 paragraph "b" on the last page of the exhibit at the time
 10 Andersen issued its consent for the purpose of the private
 11 placement?
 12 A Well, I believe that I had some discussions with
 13 Larry Bornstein regarding a representation letter, but I
 14 don't recall a detailed conversation as to the content of the
 15 representation letter in its entirety.
 16 Q Were you aware that a representation had been
 17 obtained with respect to consolidated net sales decreasing?
 18 A I was aware that there was disclosure in the
 19 comfort letter relative to a decrease in consolidated sales.
 20 And typically our representation will identify abnormal or
 21 disclosable items included in the comfort letter that will be
 22 included in the management letter or the representation
 23 letter. So the linkage of that, I guess in my mind, I would
 24 believe what is in that comfort letter has been reiterated in
 25 the arrangement letter.

Page 287 - Page 290

Diversified Reporting Services, Inc. (202) 296-9626, 6-9-99

Page 291

1 Q And your conclusion is based on your understanding
2 of what is in the comfort letter and Andersen's practice with
3 obtaining -- with respect to obtaining representations that
4 parallel the disclosures in the comfort letter?
5 A We don't parallel all the disclosures in the
6 comfort letter, just those items that we believe should be
7 incorporated in the representation letter. So not every --
8 the comfort letter in its entirety is not included in this
9 letter.
10 Q Do you believe at the time the consent was issued
11 that a representation had been obtained with respect to
12 consolidated net sales decreasing?
13 A I am sorry, do I believe what?
14 Q Did you believe there had been a rep obtained with
15 respect to this subject?
16 A I don't recall focusing on that particular issue
17 relative to a rep letter.
18 BY MR. LIPMAN:
19 Q Well, did you have an understanding around that
20 time, which is March 23, 1998, or thereabouts, about why
21 Mr. Bornstein might have wanted a representation as to this
22 fact from management?
23 A I don't recall a conversation, as I testified
24 earlier, a specific conversation with Mr. Bornstein on the
25 content of the rep letter.

Page 292

1 Q My question was not about conversations that you
2 may have had with Mr. Bornstein, the question was about your
3 understanding of why Mr. Bornstein may have wanted this rep.
4 A And this is my understanding as of March 23rd.
5 Q March 23rd.
6 A I can -- I mean, I don't really have an
7 understanding or recall an understanding, as of March 23rd,
8 why Larry Bornstein had this put in the letter, but it
9 appears to me what Larry was attempting to do was to get an
10 explanation for a sales shortfall as of this date and having
11 Mr. Dunlap, Mr. Kersh, Mr. Fannin, and Mr. Gluck sign off on
12 it. But I don't recall a conversation on that particular
13 paragraph.
14 Q Sir, who signs the comfort letter?
15 A The engagement partner signs the comfort letter.
16 Q And who was that?
17 A That was me.
18 Q Do you recall signing the comfort letter?
19 A No, I don't recall signing it, but I probably did.
20 Q At the time that you signed the comfort letter, did
21 you know that this representation was made by the company?
22 A As I testified earlier, on March 23rd I don't
23 recall reading this representation letter. I don't recall.
24 BY MS. HEILIZER:
25 Q Sir, did you rely on any of the statements in the

Page 293

1 rep letter at the time you signed the comfort letter?
2 A Is that a question or --
3 Q It is a question.
4 A Did I rely on any of the statements in the
5 representation letter.
6 Q At the time you signed the comfort letter.
7 A I am sure I did.
8 Q How did you do that if you didn't see the
9 representation letter?
10 A The question that I testified to earlier, I don't
11 recall. It wasn't that I didn't see it, I just don't recall.
12 That is my testimony. I don't recall.
13 Q Do you have a practice or procedure by which you
14 can assure yourself as a general matter that you see
15 representation letters prior to signing opinions on behalf of
16 Andersen or other documents?
17 A Do I personally or as a program policy?
18 Q Either one.
19 A We have a policy to get general representation
20 letters. And I am not aware of any policy that the review
21 has to review, every aspect of the representation letter, in
22 order to sign off on a report.
23 Q Okay. So you don't have a personal knowledge, and
24 you are not aware of any firm having a policy in that regard
25 either.

Page 294

1 A I know it is a policy to get a representation
2 letter, but to review every aspect of the representation
3 letter, I don't think is a necessity.
4 Q Do you recall putting reliance on any of the
5 representations contained in this letter at the time you
6 signed the comfort letter?
7 A I don't recall.
8 BY MR. LIPMAN:
9 Q Sir, the -- this representation that we have been
10 talking about, which is the first sentence in this paragraph,
11 does this deal with what we had been talking about earlier,
12 which is the concept of channel stuffing?
13 A You said the first paragraph?
14 Q The first sentence.
15 A The first sentence. I think that is what Larry was
16 attempting to do, although we had an Early Buy program in
17 1996 as well.
18 Q I am sorry, what was that last thing you said?
19 A The company had early buy programs from prior years
20 as well.
21 Q But this is not dealing with prior years, right?
22 This is only dealing with the period from December 29, 1997,
23 through March 23, 1998; is that right?
24 A No, that is not right.
25 Q Well, let's go through it then. For the period

1 from December 29, 1997, through March 23, 1998, "Consolidated
 2 net sales decreased, as compared to the corresponding period
 3 from the preceding year, primarily due to the company's new
 4 Early Buy program for outdoor grills, which accelerated
 5 outdoor grill sales into the fourth quarter of fiscal 1997."
 6 Does this sentence describe a situation whereby the sales
 7 made in the fourth quarter of 1997 had resulted in a decrease
 8 in sales made from December 29, 1997, through March 23, 1998?
 9 A Yes, I believe that is the gist of that point.
 10 Q And that concept of sales in the fourth quarter of
 11 1997 resulting in a decrease in sales in the period from
 12 December 29, 1997, through March 23, 1998, that would be --
 13 that concept is what we have been talking about as channel
 14 stuffing, isn't it?
 15 A I am not sure I got all that question.
 16 Q Well, this sentence deals with the -- I will
 17 restate the question. Does this sentence describe an example
 18 of what we have been discussing and termed "channel
 19 stuffing?"
 20 A It could.
 21 Q How could it not?
 22 A Well, if we were dealing with different customers
 23 from 1996 to 1997, if any of those customers had different
 24 buying requirements, different inventory management styles,
 25 philosophy, different product requirements.

1 Q Well, do you know if that was in fact the case
 2 here?
 3 A I don't know. In fact, I don't know if that in
 4 fact was the case.
 5 Q Do you have any reason to believe that it was?
 6 A Do I have any reason to believe that it was the
 7 case?
 8 Q Mm-hmm.
 9 A I don't have a basis at this point for that belief.
 10 Q Now is there any reference in here to new
 11 customers?
 12 A Once again, there could be.
 13 Q Well, is there?
 14 A When you say new Early Buy program, we would have
 15 to go back and see what customers were off the program in the
 16 year before as compared to this year.
 17 Q So is it your testimony that the word "new" in the
 18 new Early Buy program refers to new customers for the Early
 19 Buy program?
 20 A It could. It is a new program. It may have only
 21 been offered to certain customers this year as opposed to
 22 different customers the prior year. Between '96 and '97,
 23 there were substantial changes in the customer sales mix. So
 24 it is possible.
 25 Q Now do you recall calling customers in connection

1 with confirming the Bill and Hold sales, the Bill and Hold
 2 treatment for certain of the Early Buy sales?
 3 A Yes, I do.
 4 Q Do you recall why you picked the customers that you
 5 picked?
 6 A I believe we picked those because they represented
 7 the larger customers -- I say larger customers. The
 8 customers with the larger amount of sales.
 9 Q Was one of those customers Wal-Mart?
 10 A I believe it was.
 11 Q Was Wal-Mart a customer of Sunbeam's in 1996?
 12 A 1996. Yes, it was.
 13 Q Who was some of the other customers if you recall?
 14 A In 1996?
 15 Q Customers you called when you were confirming Bill
 16 and Hold sales. Do you recall calling Home Depot?
 17 A Yes.
 18 Q Do you recall whether Home Depot was a new customer
 19 of Sunbeam's or an old customer?
 20 A I believe Home Depot was a customer in a prior
 21 year.
 22 Q Do you remember Fred Meyer?
 23 A Yes.
 24 Q Was Fred Meyer a new customer or an old customer?
 25 A I don't recall. I don't. I don't remember if that

1 was a '96 customer or not.
 2 Q Now you recall that one of the justifications for
 3 the Bill and Hold program that Mr. Kersh gave you was that
 4 the customers were running out of stock the year before and
 5 this was a program designed to address that problem?
 6 A I don't know if it was a case -- I don't think I
 7 said it was a case where they were running out of stock. It
 8 was a case where the customer was not able to deliver a
 9 product when the customer requested it. I don't know if they
 10 had -- I don't recall him describing a situation where they
 11 had stock on hand and then ran out.
 12 Q Well, are you familiar with the concept of
 13 stock-out?
 14 A I have heard the term.
 15 Q What does that mean?
 16 A That is a situation where a particular product that
 17 is normally carried in a company's product line is either
 18 totally sold out or they are without that particular
 19 inventory item.
 20 Q Were stock-outs the reason used -- one of the
 21 reasons used by Mr. Kersh to explain the business reason for
 22 introducing Bill and Hold?
 23 A I am sorry, there was some paper rattling. Was one
 24 of the reasons --
 25 Q Stock-outs. Was that identified by Mr. Kersh as

Page 299

Page 301

1 one of the reasons for the Bill and Hold program?

2 A Stock-outs by whom?

3 Q By Sunbeam's customers.

4 A I can't recall if he used the term "stock-out." I

5 know that the company itself, we were told, had stock-out

6 conditions with certain grill inventories in the prior year.

7 Whether he used that term with stock-out of his customers, he

8 may have. I mean, it was generally discussed in terms of not

9 being able to provide the grill product to their customers

10 when their customers needed it. Could there have been a

11 stock-out situation? Possibly.

12 Q Would new customers of Sunbeam have any reason to

13 ask for the Bill and Hold transactions if they had no

14 experience with stock-outs?

15 A They could.

16 Q Why would that be?

17 A One reason might be to take advantage of the

18 benefits made available to Sunbeam's customers.

19 Q And how would that be different from a regular

20 discount being offered by a company to increase its sales?

21 A It would be different because there would be a

22 different program.

23 Q How would any individual sale that is made because

24 the company comes to a new client and it offers a discount,

25 extend the terms, or other favors, how would that be

1 a shortage of warehouse space.

2 Q Now is it your testimony then that the customer

3 request aspect of the Bill and Hold requirements is satisfied

4 if a company offers discounts to a customer, but because the

5 customer does not have the space in its warehouse, the

6 company keeps it in a third-party warehouse? Strike that. I

7 am sorry.

8 MR. HAYNES: Look, it is 5:30 and this is beyond

9 the document. You are going back --

10 MR. LIPMAN: Well, I am sorry.

11 MR. HAYNES: Let's wrap this up very quickly and

12 then let's begin in the morning, if you would like.

13 MR. LIPMAN: All right. I will wrap this up. But

14 it is not beyond this document. We will get back to the

15 document in a minute.

16 BY MR. LIPMAN:

17 Q Is it your testimony then that a customer request

18 requirement is satisfied, even if it is the company that

19 approaches the customer and offers incentives, and merely the

20 fact that the customer cannot take the inventory into its own

21 warehouse and ask for the inventory to be held is sufficient

22 to satisfy the customer request aspect of the Bill and Hold

23 requirement?

24 A No, that is not my testimony.

25 Q Okay. Then how is the Bill and Hold -- how is the

Page 300

Page 302

1 different from any other time when the company offers a
2 discount to a customer?

3 A One of the things that would be different is that

4 under the Sunbeam transactions, inventory was put into a

5 third-party warehouse and titled transferred to the customer.

6 In your example of just a straight discount being offered to

7 a customer, the transfer of the title would take place at the

8 time it was shipped directly to the customer.

9 Q Isn't one of the elements for satisfying the Bill

10 and Hold transactions -- the Bill and Hold treatment that the

11 customer has to request that the inventory be held?

12 A You want to clarify that question? Be held -- what

13 about might be held?

14 Q Isn't one of the -- I will withdraw the question

15 and ask this question. Isn't one of the elements that needs

16 to be satisfied in order for a transaction to qualify as a

17 Bill and Hold that the customer has to request a transaction?

18 A Yes.

19 Q Okay. So why would a customer who had no

20 experience with stock-outs with Sunbeam request a transaction

21 on a Bill and Hold basis?

22 A As explained to me by company management, customers

23 requested this program in order to participate in the Early

24 Buy program. However, customers that didn't take shipment of

25 the merchandise until after year end were customers that had

1 customer request aspect satisfied in a transaction where, as

2 you described, Sunbeam approached the customers, offered them

3 incentives, and then the customers asked to have the

4 inventory held?

5 A I don't know if -- I don't know who made the

6 initial approach or initial -- had the initial discussion on

7 all the aspects of the Early Buy program and the Bill and

8 Hold sales. What I believe and what I was told at the time,

9 and also signed by Sunbeam's customers, that these

10 transactions were at their request. And there was a program

11 offered by the company.

12 If a company wanted to participate in an Early Buy,

13 if they took delivery of the product prior to year end, they

14 could participate in the Early Buy program. By definition,

15 they are buying product earlier than what they might have in

16 past seasons. Those customers that did not have their own

17 sufficient warehouse space to store the inventory and

18 participate in -- and be able to participate in the program,

19 that is the inventory that was sent to a third-party

20 warehouse.

21 Q Okay.

22 A So at the request is a chicken and egg type

23 question in my mind. I mean, a customer has to submit a

24 purchase order. Okay. Is a purchase order sent to Sunbeam

25 at request? I believe it is.

1 BY MS. HEILIZER:

2 Q That is your understanding is that --

3 A A purchase order represents a request for
4 merchandise.

5 Q Is it a request for purposes of satisfaction on the
6 Bill and Hold criteria?

7 A Well, I think it is a component of the
8 satisfaction. I mean, you have got copies of all the
9 requirements that need to be met for Bill and Hold
10 transactions. And, you know, we can go through each one of
11 those items, but this at the request issue is something that
12 can be debated from now until who knows when. Obviously, a
13 customer has to make some kind of request to get the
14 merchandise. And whether or not Sunbeam had a program, a
15 discount program, I think is irrelevant.

16 BY MR. LIPMAN:

17 Q Well, let's go back to -- do you remember calling
18 Lowe's Companies to verify that the Bill and Hold preface was
19 proper?

20 A Well, that was one of them, I believe, but I don't
21 remember all the details in the conversation.

22 Q Okay. Do you remember whether they were a new
23 customer or an old customer?

24 A I believe they were a -- they have been a
25 continuing customer of Sunbeam.

1 Q Do you know if Montgomery Ward's was an old
2 customer or a new customer?

3 A I believe that Montgomery Ward's was a customer in
4 '96. I just don't recall the sales level in '97, if it was
5 significant. Montgomery Ward's went into Chapter 11.

6 Q What about BJ's Wholesale Club?

7 A I don't recall. I can't answer. That is not a
8 significant customer.

9 Q Do you remember Quality Stores?

10 A I don't remember that one specifically.

11 Q Palmeda Stores?

12 A Palmeda?

13 Q Palmeda.

14 A I have heard the name. Once again, I don't think
15 that is one of the top 10 or 15 customers.

16 Q Do you remember Arena Distributors?

17 A I recall the name.

18 Q Do you remember whether they were a '96 customer as
19 well?

20 A I don't. I don't know.

21 Q Do you remember Home Depot?

22 A Yes.

23 Q We went over Home Depot already. Do you remember
24 Encore Promotions?

25 A Yes.

1 Q Old customer or new customer?

2 A Well, I remember that one was not a valid sale.

3 Were they making invalid sales the year before? I don't
4 recall. It was not a significant customer.

5 Q K-Mart?

6 A Yes. It was a customer in both '96 and '97.

7 Q Okay. Now going back to the rep letter here,
8 having -- do you recall now that at least a significant
9 portion of the customers with whom the company did Bill and
10 Hold sales were old customers?

11 A That wasn't the point I raised an hour ago or 45
12 minutes ago. The point I raised was that between '96 and
13 '97, the mix of the sales to the top customers changed. In
14 fact, the mix changed to almost all of the customers.

15 Wal-Mart, I can't tell you. We got an analysis in the work
16 papers showing the percentage of sales made to Wal-Mart in
17 1996, percentage of sales represented by 1997, and you are
18 going to see that those top customers change from year to
19 year.

20 So to address your point on channel stuffing and
21 comparing it with a particular customer from year to year, I
22 believe depends on their buying patterns. And those can be
23 different from year to year. Now I will agree that Bill and
24 Hold, as I have testified earlier, can contribute to channel
25 stuffing. I mean, that is my testimony that it can

1 contribute. And I will agree with that.

2 But I have not done adequate work to go through
3 customer by customer and determine that we had channel
4 stuffing in Wal-Mart, to determine we had channel stuffing in
5 Home Depot. I haven't done that work and I can't answer
6 those questions.

7 Q I was asking you about your understanding about the
8 representation made in this letter.

9 A As I testified earlier, I do not recall reading
10 this letter.

11 Q I understand, but you --

12 A At this point in time we were looking at thousands
13 of documents. And with three significant acquisitions
14 underway in all this work, I probably looked at this, but I
15 don't recall it. And I -- you know, I will agree that the
16 practice of Bill and Hold can contribute to channel stuffing.
17 I also testified earlier that I told the board I thought it
18 was a lousy business practice. I didn't say it was a bad
19 accounting answer, I said it was a lousy business practice.

20 Q Because?

21 A Because it can contribute to this situation.

22 Q This situation being what?

23 A As I said 30 seconds ago, I will testify to the
24 fact that Bill and Hold can contribute to channel stuffing.

25 Q Did it in this case?

Page 307

1 A I don't know. I haven't analyzed it.
2 Q What does that sentence mean to you?
3 A Well, Mr. Dunlap, Mr. Kersh, and Mr. Fannin and
4 Mr. Gluck signed off and said that that was the primary
5 reason.
6 Q Okay. What was the primary -- did Mr. Gluck,
7 Mr. Kersh, Mr. Fannin, and Mr. Dunlap -- did I get all of
8 them -- did they sign a letter saying that channel stuffing
9 contributed to the fall off in the -- no?
10 A No.
11 Q Then tell me what it is that they signed.
12 MR. HAYNES: Counsel, the letter speaks for itself.
13 It is late in the day.
14 THE WITNESS: The letter doesn't say channel
15 stuffing.
16 BY MR. LIPMAN:
17 Q Well, what is it that -- you were just telling us
18 what they thought and you said "this" and you were pointing
19 to the letter. All I am asking you --
20 A Mr. Dunlap --
21 Q -- to do is to articulate.
22 A I am sorry. Go ahead and finish your question.
23 Q Go ahead. All I am asking you to do is to
24 articulate what it is that you were saying that they were
25 signing to this and pointing to the page.

Page 308

1 A Okay. Mr. Dunlap, Mr. Kersh, Mr. Fannin, and
2 Mr. Gluck signed this letter, which states, "For the period
3 from December 29, 1997, through March 23, 1998, consolidated
4 net sales decreased as compared to the corresponding period
5 of the preceding year primarily due to the company's new
6 Early Buy program for outdoor grills, which accelerated
7 outdoor grills into the fourth quarter of fiscal 1997." Now
8 I can go on. Do you want me to read the rest of it?
9 Q No.
10 A Or is that enough. That is precisely what is --
11 Q That is right.
12 A -- in this particular letter.
13 Q And that is right. My question for you was and
14 remains whether this describes the concept of channel
15 stuffing as we discussed it?
16 A And as I testified, I think this can contribute to
17 the concept of channel stuffing. I haven't analyzed it.
18 MR. HAYNES: Shall we see you in the morning?
19 MR. LIPMAN: Yes.
20 MR. HAYNES: Okay.
21 MR. LIPMAN: We are off the record.
22 (A brief recess was taken.)
23 MR. LIPMAN: We are back on the record because I am
24 a bozo. I am sorry.
25 MR. HAYNES: Do you want any response? Is that a

Page 309

1 question?
2 MR. LIPMAN: No.
3 MS. ARMSTRONG: We are adjourning your testimony
4 until tomorrow. Even though we are adjourning your testimony
5 until tomorrow, you remain under subpoena.
6 MR. HAYNES: Okay. Thank you very much.
7 MR. LIPMAN: Thank you.
8 (Whereupon, at 5:45 p.m., the examination was
9 adjourned.)
10

Page 310

1
2 PROOFREADER'S CERTIFICATE
3
4 In the Matter of: SUNBEAM CORPORATION
5 Witness: Phillip E. Harlow
6 File Number: HO-3433
7 Date: Wednesday, June 9, 1999
8 Location: Washington, D.C.
9
10
11 This is to certify that I, Rose Hanes (the undersigned),
12 do hereby swear and affirm that the attached proceedings
13 before the U.S. Securities and Exchange Commission were held
14 according to the record and that this is the original,
15 complete, true and accurate transcript that has been compared
16 to the reporting or recording accomplished at the hearing.
17
18
19
20
21 (Proofreader's Name) (Date)
22

48

**EXHIBIT EXCLUDED WITHOUT PRIOR DETERMINATION
OF PROTECTABILITY BY COURT**

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

COLEMAN (PARENT) HOLDINGS, INC.,

Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,

Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,

Plaintiff,

vs.

CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,

Defendant.

MORGAN STANLEY'S MOTION FOR LEAVE TO AMEND PLEADINGS

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

1. Pursuant to the agreement of the parties, amendments to the pleadings are due September 21, 2004.
2. Morgan Stanley has prepared its Amended Answer with the exception of the Seventh Affirmative Defense. Contemporaneously with this Motion, Morgan Stanley has requested an enlargement of time to file its Seventh Affirmative Defense. A copy of Morgan Stanley's Amended Answer is attached hereto as Exhibit "A."

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

CERTIFICATE OF SERVICE

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

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CARLTON FIELDS WPB

008/040

EXHIBIT "A"

16dv-001140

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

AMENDED ANSWER OF MORGAN STANLEY & CO. INCORPORATED

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

Nature of the Action

1. MS & Co. denies the allegations contained in Paragraph 1.
2. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider acquiring other companies instead and

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

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

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

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

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

Jurisdiction and Venue

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

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

Parties and Other Key Participants

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

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

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

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

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

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

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

Factual Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Count I -- Fraudulent Misrepresentation

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

- 79. MS & Co. denies the allegations contained in Paragraph 79.
- 80. MS & Co. denies the allegations contained in Paragraph 80.
- 81. MS & Co. denies the allegations contained in Paragraph 81.
- 82. MS & Co. denies the allegation contained in Paragraph 82.
- 83. MS & Co. denies the allegation contained in Paragraph 83.

Count II -- Aiding and Abetting Fraud

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

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

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

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

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

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

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

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

Count III -- Conspiracy

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

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

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

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

Count IV -- Negligent Misrepresentation

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

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

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

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

DEFENSES AND AFFIRMATIVE DEFENSES

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

First Defense

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

Second Defense

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

First Affirmative Defense

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

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

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

Second Affirmative Defense

CPH's alleged claims are barred, in whole or in part, by the doctrine of estoppel. In particular, CPH, is estopped from asserting its claim for the following reasons.

(a) By virtue of the customs and practices in the New York financial markets observed in connection with the negotiation of mergers and acquisitions among sophisticated parties, CPH as an affiliate of MAFCO, understood and agreed that MS & Co., as Sunbeam's investment banker, did not make any representations or warranties to CPH about the accuracy or completeness of the Sunbeam Information supplied to CPH. CPH further understood and agreed MS & Co. would not have any liability to CPH by reason of CPH's use of the Sunbeam Information that MS & Co. provided to CPH. MS & Co. relied upon CPH's understanding and

agreement to the customs and practices in the New York financial markets when MS & Co. provided Sunbeam Information to CPH. CPH is now estopped from claiming to have relied upon Sunbeam Information that MS & Co. supplied to CPH.

(b) By virtue of a letter agreement with Sunbeam dated February 23, 1998, and acknowledged in the Merger and Company Merger Agreements (Merger Agmt. §§ 6.7, 11.2 12.5; Company Merger Agmt. §§ 7.2, 9.2 10.4), CPH, as an affiliate of Coleman, agreed that Sunbeam and its representatives, including MS & Co., did not make any representations or warranties about the accuracy or completeness of the information that they supplied to CPH. CPH further agreed that Sunbeam and its representatives, including MS & Co., would not have any liability to CPH by virtue of CPH's use of the information that they provided to CPH. MS & Co. relied upon CPH's agreement when it provided Sunbeam Information to CPH, and CPH is estopped from now claiming to have relied upon information supplied to CPH outside of Merger Agreement or the Company Merger Agreement.

(c) By virtue of Section 12.5 of the Merger Agreement and Section 10.4 of the Company Merger Agreement, CPH agreed that the Merger Agreement and the Company Merger Agreement contained the entire agreement and understanding between CPH and Sunbeam and that the provisions of the Agreements superseded "all prior agreements and understandings, oral or written" with respect to the subject of the Agreements. (Merger Agmt. § 12.5; see Company Merger Agmt. § 10.4.) MS & Co. relied upon CPH's agreement when MS & Co. provided Sunbeam Information to CPH, and CPH is estopped from now claiming to have relied upon information supplied to CPH outside of the Agreements.

(d) CPH bargained for and received access to Sunbeam Information pursuant to Section 6.7 of the Merger Agreement and to Sections 7.2 and 7.3 of the Company Merger

Agreement. When MS & Co. provided Sunbeam Information to CPH, MS & Co. relied upon CPH's contractual undertaking and ability to verify independently all statements that MS & Co. or Sunbeam made to CPH. CPH is estopped from now claiming to have relied upon information supplied to CPH by MS & Co. or Sunbeam when CPH, a sophisticated party, had equal access to Sunbeam Information and equal ability to evaluate Sunbeam Information.

(e) CPH held itself out to be and is a commercially and financially sophisticated party, capable of protecting its own interests. MS & Co. relied upon these representations when it provided Sunbeam Information to CPH, and CPH is estopped from now disclaiming these representations.

(f) CPH represented to Sunbeam and MS & Co. that it had retained and would rely upon its own sophisticated advisors, including an investment banker and a law firm capable of protecting CPH's interests. CPH and its advisors represented that they were doing their own due diligence on CPH's behalf through the meetings and information that they requested from Sunbeam and its advisors. MS & Co. relied upon these representations when it provided Sunbeam Information to CPH, and CPH is estopped from now disclaiming these representations.

Third Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of CPH's failure to mitigate its damages. In particular, CPH investigated but failed to pursue reasonable available measures to hedge its position with regard to its ownership of Sunbeam stock. Had CPH implemented the potential hedges available, CPH would not have suffered the loss of the value of Sunbeam stock that occurred during and after June of 1998. In addition, CPH failed to mitigate its damages when it chose to install its own executives at Sunbeam and to accept warrants from Sunbeam to settle its alleged claims against Sunbeam. CPH chose to keep and indeed increase its holdings in

Sunbeam, taking its chances that Sunbeam stock would increase in value, rather than selling its Sunbeam stock and reasonably limiting its losses.

Fourth Affirmative Defense

Any future claim by CPH for punitive damages is barred, in whole or in part, because (i) MS & Co. did not engage in intentional misconduct; (ii) the allegedly tortuous conduct is not gross, wanton, willful, reckless or otherwise morally culpable; and (iii) the alleged conduct was not part of a pattern directed at the public generally.

Fifth Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the comparative negligence, fault or culpable conduct of CPH (including its parent corporations and its direct or indirect wholly and majority owned subsidiaries) at the times and places set forth in the Complaint. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. C.P.L.R. § 1411 and Florida Statute § 768.81. In particular, fault should be apportioned to CPH for its negligence or fault in failing to request, review or make use of available Sunbeam Information. The negligence of CPH, itself or by or through its agents and advisors, caused or contributed to CPH's damages in the following ways:

(a) CPH was negligent in failing to make a reasonable independent inquiry into Sunbeam Information including but not limited to failure to request access to Sunbeam's books and records, *before* agreeing to accept over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman and signing the Merger Agreement, and directing the signing of the Company Merger Agreement.

(b) CPH was negligent in failing to make a reasonable inquiry into the Sunbeam Information available to CPH *after* signing the Merger Agreement and Company Merger

Agreement, including but not limited to information available pursuant to Section 6.7 of the Merger Agreement and to Sections 7.2 and 7.3 of the Company Merger Agreement, and *before* CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(c) CPH was negligent in failing to make a reasonable inquiry into Sunbeam Information *after* Sunbeam issued its March 19, 1998 press release and *before* CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(d) CPH was negligent in failing to make a reasonable inquiry concerning the existence or absence of a "material adverse effect" as defined in the Merger Agreement and the Company Merger Agreement *before* the closing of the Merger Agreement at which time CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(e) CPH was negligent in failing to make use of the means available to CPH to investigate or confirm statements about Sunbeam Information made to CPH by Sunbeam or MS & Co. during late 1997 and the first quarter of 1998 before CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

Sixth Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the negligence or fault of one or more third parties for whom MS & Co. bears no responsibility and over whom MS & Co. had no dominion, authority, or control. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statute § 768.81. More specifically, fault should be apportioned to Sunbeam and its subsidiaries and successors in interest

(collectively "Sunbeam") for its negligence or fault in preparing and providing Sunbeam Information to CPH, MS & Co. and third parties, and its negligence in making disclosures required by federal securities laws. Sunbeam's negligence caused or contributed to CPH's damages in the following ways:

(a) Federal laws and regulations imposed upon Sunbeam, a publicly held company, a duty to prepare and publicly file financial statements that present fairly, in all material respects, the consolidated financial condition of Sunbeam. Sunbeam negligently breached that duty when it filed inaccurate or incomplete financial statements for 1996, 1997, and the first quarter of 1998.

(b) Beginning in the fall of 1997 Sunbeam engaged MS & Co. to serve as its investment banker. As a result of this engagement, MS & Co. acted as an advisor to Sunbeam in certain aspects of Sunbeam's acquisition of Coleman and two other companies. Sunbeam later engaged MS & Co. to purchase for resale ("underwrite") \$2,014,000,000 face value of Sunbeam Zero Coupon Convertible Senior Subordinated Debentures, which were issued by Sunbeam in March of 1998. As part of its activities as an investment banker and an underwriter, MS & Co. made inquiries of Sunbeam concerning Sunbeam Information. Sunbeam had a duty to provide MS & Co. with true and accurate Sunbeam Information. In response to MS & Co.'s inquiries and on its own initiative, Sunbeam provided MS & Co. with Sunbeam Information that Sunbeam knew or should have known, in the exercise of reasonable care was inaccurate or incomplete. Sunbeam provided such Sunbeam Information, including but not limited to the publicly filed financial statements identified in subparagraph (a), to MS & Co. with the knowledge and understanding that MS & Co. would provide such Sunbeam Information to third parties,

including CPH. Sunbeam failed to use reasonable care in providing MS & Co. with truthful and accurate Sunbeam Information.

(c) On March 18, 1998, MS & Co. made inquiries of Sunbeam concerning Sunbeam's sales to date and total projected sales for the first quarter of 1998. In response to MS & Co.'s inquires, Sunbeam provided Sunbeam Information concerning its first quarter 1998 sales which, in the exercise of reasonable care, Sunbeam knew or should have known was incorrect. Sunbeam failed to use reasonable care in providing MS & Co. with truthful and accurate Sunbeam Information.

(d) During the course of Sunbeam's negotiations with CPH, Sunbeam provided CPH with Sunbeam Information, which, in the exercise of reasonable care, Sunbeam knew or should have known was incorrect. Sunbeam failed to use reasonable care in providing CPH with truthful and accurate Sunbeam Information.

(e) In June of 1998, a special committee of Sunbeam's board of directors engaged in an investigation of Sunbeam Information for 1996, 1997, and the first quarter of 1998. As a result of this investigation, Sunbeam determined and announced publicly that it would be required to amend its publicly filed financial statements for 1996, 1997 and the first quarter of 1998. Through these restatements Sunbeam acknowledged in October of 1998 that the Sunbeam Information that it had provided to MS & Co., to CPH, and to the public was inaccurate and incomplete.

(f) Sunbeam's negligence in preparing, filing, and providing inaccurate and incomplete Sunbeam Information as aforesaid is the sole proximate cause of CPH's damages.

Seventh Affirmative Defense

* * * * *

Eighth Affirmative Defense

MS & Co. is entitled to a set-off for any settlement by any party or non-party to CPH for any claim arising out of the transactions that are the subject of the Complaint pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statutes § 46.015, 768.31 and 768.041. The basis for such set-off is set forth fully in these Affirmative Defenses. In particular, MS & Co. is entitled to a set-off as a result of the settlement between CPH and Sunbeam dated August 12, 1998 (Ex. 7) and the settlement between CPH and Arthur Andersen dated October 10, 2002 (*see* Dec. 4, 2003 Order on Defendant's Motion to Compel Production of Settlement Agreement).

WHEREFORE, MS & Co. denies that CPH is entitled to any relief whatsoever, and to the extent that CPH should recover any damage award, that award should be offset by CPH's failure to take appropriate steps to mitigate its damages, CPH's own negligence, the comparative fault of third parties, and the settlements that CPH has already received. MS & Co. respectfully requests that the Court enter judgment for MS & Co. dismissing the complaint with prejudice, and grant such other and further relief as may be just and proper.

CERTIFICATE OF SERVICE

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

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

COLEMAN (PARENT) HOLDINGS, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5045 AI

MORGAN STANLEY & CO., INC.,
Defendant.

_____/

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

vs.

CASE NO: CA 03-5165 AI

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

_____/

MORGAN STANLEY'S MOTION FOR LEAVE TO AMEND PLEADINGS

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

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

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

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

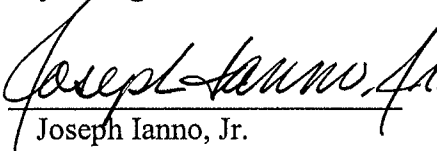
CERTIFICATE OF SERVICE

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

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A

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

CASE NO: CA 03-5045 AI

vs.

MORGAN STANLEY & CO., INC.,
Defendant.

_____ /

MORGAN STANLEY SENIOR FUNDING, INC.,
Plaintiff,

CASE NO: CA 03-5165 AI

vs.

MACANDREWS & FORBES HOLDINGS, INC.,
Defendant.

_____ /

AMENDED ANSWER OF MORGAN STANLEY & CO. INCORPORATED

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

Nature of the Action

1. MS & Co. denies the allegations contained in Paragraph 1.
2. MS & Co. admits that, beginning in mid-1997, MS & Co. served as an investment banker for Sunbeam. MS & Co. admits that it attempted to identify a party interested in purchasing Sunbeam, and that those efforts were ultimately unsuccessful. MS & Co. admits that it recommended that Sunbeam's management consider acquiring other companies instead and

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

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

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

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

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

Jurisdiction and Venue

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

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

Parties and Other Key Participants

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

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

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

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

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

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

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

Factual Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Count I -- Fraudulent Misrepresentation

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

- 79. MS & Co. denies the allegations contained in Paragraph 79.
- 80. MS & Co. denies the allegations contained in Paragraph 80.
- 81. MS & Co. denies the allegations contained in Paragraph 81.
- 82. MS & Co. denies the allegation contained in Paragraph 82.
- 83. MS & Co. denies the allegation contained in Paragraph 83.

Count II -- Aiding and Abetting Fraud

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

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

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

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

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

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

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

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

Count III -- Conspiracy

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

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

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

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

Count IV -- Negligent Misrepresentation

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

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

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

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

DEFENSES AND AFFIRMATIVE DEFENSES

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

First Defense

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

Second Defense

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

First Affirmative Defense

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

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

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

Second Affirmative Defense

CPH’s alleged claims are barred, in whole or in part, by the doctrine of estoppel. In particular, CPH, is estopped from asserting its claim for the following reasons.

(a) By virtue of the customs and practices in the New York financial markets observed in connection with the negotiation of mergers and acquisitions among sophisticated parties, CPH as an affiliate of MAFCO, understood and agreed that MS & Co., as Sunbeam’s investment banker, did not make any representations or warranties to CPH about the accuracy or completeness of the Sunbeam Information supplied to CPH. CPH further understood and agreed MS & Co. would not have any liability to CPH by reason of CPH’s use of the Sunbeam Information that MS & Co. provided to CPH. MS & Co. relied upon CPH’s understanding and

agreement to the customs and practices in the New York financial markets when MS & Co. provided Sunbeam Information to CPH. CPH is now estopped from claiming to have relied upon Sunbeam Information that MS & Co. supplied to CPH.

(b) By virtue of a letter agreement with Sunbeam dated February 23, 1998, and acknowledged in the Merger and Company Merger Agreements (Merger Agmt. §§ 6.7, 11.2 12.5; Company Merger Agmt. §§ 7.2, 9.2 10.4), CPH, as an affiliate of Coleman, agreed that Sunbeam and its representatives, including MS & Co., did not make any representations or warranties about the accuracy or completeness of the information that they supplied to CPH. CPH further agreed that Sunbeam and its representatives, including MS & Co., would not have any liability to CPH by virtue of CPH's use of the information that they provided to CPH. MS & Co. relied upon CPH's agreement when it provided Sunbeam Information to CPH, and CPH is estopped from now claiming to have relied upon information supplied to CPH outside of Merger Agreement or the Company Merger Agreement.

(c) By virtue of Section 12.5 of the Merger Agreement and Section 10.4 of the Company Merger Agreement, CPH agreed that the Merger Agreement and the Company Merger Agreement contained the entire agreement and understanding between CPH and Sunbeam and that the provisions of the Agreements superseded "all prior agreements and understandings, oral or written" with respect to the subject of the Agreements. (Merger Agmt. § 12.5; *see* Company Merger Agmt. § 10.4.) MS & Co. relied upon CPH's agreement when MS & Co. provided Sunbeam Information to CPH, and CPH is estopped from now claiming to have relied upon information supplied to CPH outside of the Agreements.

(d) CPH bargained for and received access to Sunbeam Information pursuant to Section 6.7 of the Merger Agreement and to Sections 7.2 and 7.3 of the Company Merger

Agreement. When MS & Co. provided Sunbeam Information to CPH, MS & Co. relied upon CPH's contractual undertaking and ability to verify independently all statements that MS & Co. or Sunbeam made to CPH. CPH is estopped from now claiming to have relied upon information supplied to CPH by MS & Co. or Sunbeam when CPH, a sophisticated party, had equal access to Sunbeam Information and equal ability to evaluate Sunbeam Information.

(e) CPH held itself out to be and is a commercially and financially sophisticated party, capable of protecting its own interests. MS & Co. relied upon these representations when it provided Sunbeam Information to CPH, and CPH is estopped from now disclaiming these representations.

(f) CPH represented to Sunbeam and MS & Co. that it had retained and would rely upon its own sophisticated advisors, including an investment banker and a law firm capable of protecting CPH's interests. CPH and its advisors represented that they were doing their own due diligence on CPH's behalf through the meetings and information that they requested from Sunbeam and its advisors. MS & Co. relied upon these representations when it provided Sunbeam Information to CPH, and CPH is estopped from now disclaiming these representations.

Third Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of CPH's failure to mitigate its damages. In particular, CPH investigated but failed to pursue reasonable available measures to hedge its position with regard to its ownership of Sunbeam stock. Had CPH implemented the potential hedges available, CPH would not have suffered the loss of the value of Sunbeam stock that occurred during and after June of 1998. In addition, CPH failed to mitigate its damages when it chose to install its own executives at Sunbeam and to accept warrants from Sunbeam to settle its alleged claims against Sunbeam. CPH chose to keep and indeed increase its holdings in

Sunbeam, taking its chances that Sunbeam stock would increase in value, rather than selling its Sunbeam stock and reasonably limiting its losses.

Fourth Affirmative Defense

Any future claim by CPH for punitive damages is barred, in whole or in part, because (i) MS & Co. did not engage in intentional misconduct; (ii) the allegedly tortuous conduct is not gross, wanton, willful, reckless or otherwise morally culpable; and (iii) the alleged conduct was not part of a pattern directed at the public generally.

Fifth Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the comparative negligence, fault or culpable conduct of CPH (including its parent corporations and its direct or indirect wholly and majority owned subsidiaries) at the times and places set forth in the Complaint. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. C.P.L.R. § 1411 and Florida Statute § 768.81. In particular, fault should be apportioned to CPH for its negligence or fault in failing to request, review or make use of available Sunbeam Information. The negligence of CPH, itself or by or through its agents and advisors, caused or contributed to CPH's damages in the following ways:

(a) CPH was negligent in failing to make a reasonable independent inquiry into Sunbeam Information including but not limited to failure to request access to Sunbeam's books and records, *before* agreeing to accept over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman and signing the Merger Agreement, and directing the signing of the Company Merger Agreement.

(b) CPH was negligent in failing to make a reasonable inquiry into the Sunbeam Information available to CPH *after* signing the Merger Agreement and Company Merger

Agreement, including but not limited to information available pursuant to Section 6.7 of the Merger Agreement and to Sections 7.2 and 7.3 of the Company Merger Agreement, and *before* CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(c) CPH was negligent in failing to make a reasonable inquiry into Sunbeam Information *after* Sunbeam issued its March 19, 1998 press release and *before* CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(d) CPH was negligent in failing to make a reasonable inquiry concerning the existence or absence of a “material adverse effect” as defined in the Merger Agreement and the Company Merger Agreement *before* the closing of the Merger Agreement at which time CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

(e) CPH was negligent in failing to make use of the means available to CPH to investigate or confirm statements about Sunbeam Information made to CPH by Sunbeam or MS & Co. during late 1997 and the first quarter of 1998 before CPH accepted over 14 million shares of Sunbeam common stock as partial consideration for the sale of its interest in Coleman.

Sixth Affirmative Defense

To the extent that CPH sustained any cognizable damages, the damages claimed by CPH were the result, in whole or in part, of the negligence or fault of one or more third parties for whom MS & Co. bears no responsibility and over whom MS & Co. had no dominion, authority, or control. As a result thereof, MS & Co. is entitled to have its liability to CPH, if any, reduced pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statute § 768.81. More specifically, fault should be apportioned to Sunbeam and its subsidiaries and successors in interest

(collectively "Sunbeam") for its negligence or fault in preparing and providing Sunbeam Information to CPH, MS & Co. and third parties, and its negligence in making disclosures required by federal securities laws. Sunbeam's negligence caused or contributed to CPH's damages in the following ways:

(a) Federal laws and regulations imposed upon Sunbeam, a publicly held company, a duty to prepare and publicly file financial statements that present fairly, in all material respects, the consolidated financial condition of Sunbeam. Sunbeam negligently breached that duty when it filed inaccurate or incomplete financial statements for 1996, 1997, and the first quarter of 1998.

(b) Beginning in the fall of 1997 Sunbeam engaged MS & Co. to serve as its investment banker. As a result of this engagement, MS & Co. acted as an advisor to Sunbeam in certain aspects of Sunbeam's acquisition of Coleman and two other companies. Sunbeam later engaged MS & Co. to purchase for resale ("underwrite") \$2,014,000,000 face value of Sunbeam Zero Coupon Convertible Senior Subordinated Debentures, which were issued by Sunbeam in March of 1998. As part of its activities as an investment banker and an underwriter, MS & Co. made inquiries of Sunbeam concerning Sunbeam Information. Sunbeam had a duty to provide MS & Co. with true and accurate Sunbeam Information. In response to MS & Co.'s inquiries and on its own initiative, Sunbeam provided MS & Co. with Sunbeam Information that Sunbeam knew or should have known, in the exercise of reasonable care was inaccurate or incomplete. Sunbeam provided such Sunbeam Information, including but not limited to the publicly filed financial statements identified in subparagraph (a), to MS & Co. with the knowledge and understanding that MS & Co. would provide such Sunbeam Information to third parties,

including CPH. Sunbeam failed to use reasonable care in providing MS & Co. with truthful and accurate Sunbeam Information.

(c) On March 18, 1998, MS & Co. made inquiries of Sunbeam concerning Sunbeam's sales to date and total projected sales for the first quarter of 1998. In response to MS & Co.'s inquiries, Sunbeam provided Sunbeam Information concerning its first quarter 1998 sales which, in the exercise of reasonable care, Sunbeam knew or should have known was incorrect. Sunbeam failed to use reasonable care in providing MS & Co. with truthful and accurate Sunbeam Information.

(d) During the course of Sunbeam's negotiations with CPH, Sunbeam provided CPH with Sunbeam Information, which, in the exercise of reasonable care, Sunbeam knew or should have known was incorrect. Sunbeam failed to use reasonable care in providing CPH with truthful and accurate Sunbeam Information.

(e) In June of 1998, a special committee of Sunbeam's board of directors engaged in an investigation of Sunbeam Information for 1996, 1997, and the first quarter of 1998. As a result of this investigation, Sunbeam determined and announced publicly that it would be required to amend its publicly filed financial statements for 1996, 1997 and the first quarter of 1998. Through these restatements Sunbeam acknowledged in October of 1998 that the Sunbeam Information that it had provided to MS & Co., to CPH, and to the public was inaccurate and incomplete.

(f) Sunbeam's negligence in preparing, filing, and providing inaccurate and incomplete Sunbeam Information as aforesaid is the sole proximate cause of CPH's damages.

Seventh Affirmative Defense

* * * * *

Eighth Affirmative Defense

MS & Co. is entitled to a set-off for any settlement by any party or non-party to CPH for any claim arising out of the transactions that are the subject of the Complaint pursuant to N.Y. Gen. Oblig. § 15-108 or Florida Statutes § 46.015, 768.31 and 768.041. The basis for such set-off is set forth fully in these Affirmative Defenses. In particular, MS & Co. is entitled to a set-off as a result of the settlement between CPH and Sunbeam dated August 12, 1998 (Ex. 7) and the settlement between CPH and Arthur Andersen dated October 10, 2002 (*see* Dec. 4, 2003 Order on Defendant's Motion to Compel Production of Settlement Agreement).

WHEREFORE, MS & Co. denies that CPH is entitled to any relief whatsoever, and to the extent that CPH should recover any damage award, that award should be offset by CPH's failure to take appropriate steps to mitigate its damages, CPH's own negligence, the comparative fault of third parties, and the settlements that CPH has already received. MS & Co. respectfully requests that the Court enter judgment for MS & Co. dismissing the complaint with prejudice, and grant such other and further relief as may be just and proper.

CERTIFICATE OF SERVICE

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

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1

AGREEMENT AND PLAN OF MERGER

among

SUNBEAM CORPORATION

LASER ACQUISITION CORP.

CLN HOLDINGS INC.

and

COLEMAN (PARENT) HOLDINGS INC.

Dated as of

February 27, 1998

TABLE OF CONTENTS

PAGE

ARTICLE I DEFINITIONS AND TERMS

Section 1.1.	Certain Definitions.....	1
Section 1.2	Other Terms	7

ARTICLE II THE HOLDINGS MERGER

Section 2.1	The Holdings Merger.....	7
Section 2.2	Closing	7
Section 2.3	Effective Time of the Holdings Merger.....	7
Section 2.4	Certificate of Incorporation.....	7
Section 2.5	By-Laws	7
Section 2.6	Directors.....	8
Section 2.7	Officers	8
Section 2.8	Holdings Merger Election.....	8

ARTICLE III CONVERSION OF SHARES

Section 3.1	Effect on Capital Stock	8
Section 3.2	Exchange of Certificates	9

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF HOLDINGS AND PARENT HOLDINGS

Section 4.1	Organization and Qualification.....	9
Section 4.2	Capitalization	9
Section 4.3	Authority Relative to this Agreement and the Registration Rights Agreement.....	10
Section 4.4	No Business Activities of Holdings and Worldwide	10
Section 4.5	Consents and Approvals; No Violations.....	11
Section 4.6	No Litigation.....	11
Section 4.7	SEC Reports.....	11
Section 4.8	Acquisition of Shares for Investment	12
Section 4.9	Taxes	12
Section 4.10	Affiliate Agreements.....	13

PAGE

Section 4.11	Brokers.....	13
Section 4.12	LYONs Escrow Fund.....	14

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF LASER

Section 5.1	Laser Merger Sub.....	14
Section 5.2	Authority Relative to this Agreement.....	14
Section 5.3	Consents and Approvals; No Violations.....	15
Section 5.4	Acquisition of Shares for Investment	15

ARTICLE VI
COVENANTS

Section 6.1	Conduct of Business	15
Section 6.2	Reasonable Best Efforts	17
Section 6.3	Consents.....	17
Section 6.4	HSR Notification	18
Section 6.5	LYONs Refund	18
Section 6.6	Listing Application	18
Section 6.7	Access to Information; Confidentiality.....	18
Section 6.8	Advice of Changes	19
Section 6.9	Affiliate Agreements; Intercompany Accounts	19
Section 6.10	Registration Rights Agreement.....	19

ARTICLE VII
ADDITIONAL AGREEMENTS

Section 7.1	Sales of Laser Shares	19
Section 7.2	Restrictive Legend	20

ARTICLE VIII
CONDITIONS TO CONSUMMATION OF THE HOLDINGS MERGER

Section 8.1	Conditions to Each Party's Obligation to Effect the Holdings Merger.....	20
Section 8.2	Conditions to Obligation of Holdings to Effect the Holdings Merger.....	21
Section 8.3	Conditions to Obligation of Laser to Effect the Holdings Merger	22

ARTICLE IX
TAX MATTERS

Section 9.1	Taxes.....	22
-------------	------------	----

Section 9.2	Tax Returns	24
Section 9.3	Tax Claims	25
Section 9.4	Assistance and Cooperation	26
Section 9.5	Adjustment to Merger Consideration	27
Section 9.6	Survival of Obligations	27
Section 9.7	Reorganization	27
Section 9.8	Tax Sharing Agreements	27
Section 9.9	Information	27

ARTICLE X INDEMNIFICATION; SURVIVAL

Section 10.1	Parent Holdings' Agreement to Indemnify	27
Section 10.2	Conditions of Indemnification With Respect to Third-Party Claims	28
Section 10.3	Survival of Representations; Covenants	29

ARTICLE XI TERMINATION

Section 11.1	Termination	29
Section 11.2	Effect of Termination	30

ARTICLE XII MISCELLANEOUS

Section 12.1	Notices	30
Section 12.2	Amendment	31
Section 12.3	Extension; Waiver	31
Section 12.4	Assignment	31
Section 12.5	Entire Agreement	31
Section 12.6	Parties in Interest	31
Section 12.7	Expenses	31
Section 12.8	Governing Law	32
Section 12.9	Counterparts	32
Section 12.10	Headings	32
Section 12.11	Further Assurances	32
Section 12.12	Specific Performance	32
Section 12.13	Certain Terms	32
Section 12.14	Interpretation	32

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1998, among Sunbeam Corporation, a Delaware corporation ("Laser"), Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser ("Laser Merger Sub"), Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and CLN Holdings Inc. ("Holdings"), a Delaware corporation and a wholly owned subsidiary of Parent Holdings.

WHEREAS, the Boards of Directors of Laser, Laser Merger Sub, Parent Holdings and Holdings deem it advisable and in the best interests of their respective stockholders that Laser Merger Sub merge with and into Holdings (the "Holdings Merger"), and such Boards of Directors have approved the Holdings Merger upon the terms and conditions set forth herein;

WHEREAS, Parent Holdings, as the sole stockholder of Holdings, and Laser, as the sole stockholder of Laser Merger Sub, have approved this Agreement and the transactions contemplated hereby;

WHEREAS, at the Closing (as hereinafter defined), Laser and Parent Holdings shall enter into a registration rights agreement (the "Registration Rights Agreement") relating to the registration of the Laser Shares (as hereinafter defined) issuable to Parent Holdings in the Holdings Merger, in the form of Exhibit A hereto;

WHEREAS, for United States federal income tax purposes, it is intended that the Holdings Merger provided for herein shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and that this Agreement shall constitute a plan of reorganization; and

WHEREAS, Laser, Laser Merger Sub and Holdings desire to make certain representations, warranties, covenants and agreements in connection with the Holdings Merger and also to prescribe certain conditions to the Holdings Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND TERMS

Section 1.1. Certain Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"1998 Notes" shall have the meaning set forth in Section 4.4(a) hereof.

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall have the meaning set forth in Section 4.10 hereof.

"Agreement" shall mean this Agreement, as the same may be amended or supplemented from time to time in accordance with the terms hereof.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banks in the City of New York are authorized or obligated by law or executive order to close.

"Cash Payment" shall have the meaning set forth in Section 3.1(a) hereof.

"Certificate of Incorporation" shall have the meaning set forth in Section 2.4 hereof.

"Certificate of Merger" shall have the meaning set forth in Section 2.3 hereof.

"Closing" shall mean the closing of the transactions contemplated by this Agreement, as provided for in Section 2.2 hereof.

"Closing Date" shall have the meaning set forth in Section 2.2 hereof.

"Code" shall have the meaning set forth in the recitals hereof.

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

"Company Common Stock" shall mean the common stock, par value \$.01 per share, of the Company.

"Company Merger" shall mean the consummation of the merger contemplated by the Company Merger Agreement.

"Company Merger Agreement" shall mean the Agreement and Plan of Merger among Laser, Merger Sub, and the Company, dated as of the date hereof.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

"Confidentiality Agreements" shall have the meaning set forth in Section 6.7 hereof.

"Consents" shall mean any consent, approval, waiver, authorization or permit of, or to make any filing with or notification to, any Governmental Entity or third party.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract, or other agreement or other instrument or obligation.

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"Damages" shall have the meaning set forth in Section 10.1(a) hereof.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Filed Holdings SEC Reports" shall have the meaning set forth in Section 4.7(b) hereof.

"Filed Worldwide SEC Reports" shall have the meaning set forth in Section 4.7(b).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Holdings" shall have the meaning set forth in the recitals hereof.

"Holdings Common Stock" shall mean the common stock, par value \$1.00, of Holdings.

"Holdings Disclosure Schedule" shall mean the disclosure schedule being delivered by Holdings concurrently with the execution of this Agreement.

"Holdings Effective Time" shall have the meaning set forth in Section 2.3 hereof.

"Holdings Material Adverse Effect" shall mean a material adverse effect on the business, results of operation or financial condition of Holdings and its subsidiaries, taken as a whole.

"Holdings Merger" shall have the meaning set forth in the recitals hereof.

"Holdings SEC Reports" shall have the meaning set forth in Section 4.7(a) hereof.

"Holdings Shares" shall have the meaning set forth in Section 4.2(a).

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person at any date shall include (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (b) any other indebtedness of such Person that is evidenced by a note, bond, debenture or similar instrument, (c) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (d) all liabilities secured by any Lien (as hereinafter defined) on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, and (e) all direct or indirect guarantees of any of the foregoing for the benefit of another Person.

"Indemnifying Party" shall have the meaning set forth in Section 9.2(c) hereof.

"Indenture" shall mean the Indenture between Holdings, as successor to Coleman Escrow Corp., and First Trust National Association dated May 20, 1997 relating to the Notes.

"IRS" shall mean the Internal Revenue Service of the United States.

"Laser" shall have the meaning set forth in the recitals hereof.

"Laser Common Stock" shall mean the common stock, par value \$.01 per share, of Laser.

"Laser Designees" shall have the meaning set forth in Section 8.3(d) hereof.

"Laser Group" shall have the meaning set forth in Section 10.1(a) hereof.

"Laser Material Adverse Effect" shall mean a material adverse effect on the business, results of operation or financial condition of Laser and its subsidiaries, taken as a whole.

"Laser Merger Sub" shall have the meaning set forth in the recitals hereof.

"Laser Merger Sub Common Stock" shall mean common stock, par value \$.01 per share, of Laser Merger Sub.

"Laser Shares" shall have the meaning set forth in the first clause of Section 3.1 hereof.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

"Liens" shall mean any lien, security interest, mortgage, pledge, charge or similar encumbrance.

"LYONs" shall mean the Liquid Yield Option™ Notes due 2013 of Worldwide.

"LYONs Escrow Fund" shall mean the funds held in the escrow account established in connection with the redemption and exchange of the LYONs.

"Mafco Demand Note" shall mean the demand note issued by an Affiliate of Parent Holdings, and held by Worldwide on the date hereof, in connection with the Tax Sharing Arrangement among certain Affiliates of Parent Holdings.

"Merger Consideration" shall have the meaning set forth in Section 3.1(a)(i) hereof.

"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"Notes" shall mean the Senior Secured First Priority Discount Notes due 2001, Senior Secured Second Priority Discount Notes due 2001, Senior Secured First Priority Discount Exchange Notes due 2001; and Senior Secured Second Priority Discount Exchange Notes due 2001 of Holdings, as successor to Coleman Escrow Corp.

"NYSE" shall mean the New York Stock Exchange, Inc.

"Parent Holdings" shall have the meaning set forth in the recitals hereof.

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Pre-Closing Period" shall mean any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period deemed to end on and include the Closing Date.

"Post-Closing Period" shall mean any taxable year or period that begins after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period deemed to begin after the Closing Date.

"Registration Rights Agreement" shall have the meaning set forth in the recitals hereof.

"SEC" shall mean the Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Straddle Period" shall mean any taxable year or period beginning before and ending after the Closing Date.

"subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning set forth in Section 2.1 hereof.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean:

(i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Governmental Entity; and

(ii) any liability for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax Sharing Arrangement or Tax indemnity arrangement.

"Tax Claim" shall have the meaning set forth in Section 9.3(b) hereof.

"Tax Proceeding" shall have the meaning set forth in Section 9.3(a) hereof.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Tax Sharing Arrangement" shall mean any written or unwritten agreement or arrangement for the allocation or payment of Tax liabilities or payment for Tax benefits with respect to a consolidated, combined or unitary Tax Return.

"Termination Date" shall have the meaning set forth in Section 11.1(b) hereof.

"Third-Party Claims" shall have the meaning set forth in Section 10.2 hereof.

"Transfer" shall have the meaning set forth in Section 7.1 hereof.

"Treasury Regulations" shall mean the regulations promulgated by the Treasury Department with respect to the Code.

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

"Worldwide Common Stock" shall mean the common stock, par value \$1.00 per share, of Worldwide.

"Worldwide SEC Reports" shall have the meaning set forth in Section 4.7(b) hereof.

"Worldwide Shares" shall have the meaning set forth in Section 4.2(b).

Section 1.2. Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

ARTICLE II

THE HOLDINGS MERGER

Section 2.1. The Holdings Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Holdings Effective Time (as defined in Section 2.3 hereof), Laser Merger Sub shall be merged with and into Holdings. Following the Holdings Effective Time, Holdings shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Laser Merger Sub shall cease. The Holdings Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.2. Closing. The closing of the Holdings Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which (subject to satisfaction or waiver of the conditions set forth in Article VIII) shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

Section 2.3. Effective Time of the Holdings Merger. The Holdings Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Holdings Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

Section 2.4. Certificate of Incorporation. From and after the Holdings Effective Time, the certificate of incorporation of Holdings as in effect at the Holdings Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by the DGCL and the Certificate of Incorporation.

Section 2.5. By-Laws. From and after the Holdings Effective Time, the by-laws of Laser Merger Sub as in effect at the Holdings Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation of the Surviving Corporation and the terms thereof.

Section 2.6. Directors. The directors of Laser Merger Sub at the Holdings Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Holdings Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by Law.

Section 2.7. Officers. The officers of Laser Merger Sub at the Holdings Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Holdings Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

Section 2.8. Holdings Merger Election. Notwithstanding the foregoing, at any time prior to the Holdings Effective Time, Holdings may elect, in its sole discretion, upon notice to Laser, to effectuate the Holdings Merger such that Holdings will be merged with and into Laser Merger Sub, with Laser Merger Sub as the "Surviving Corporation" for all purposes hereunder. In such event, the parties hereto shall execute an appropriate amendment to this Agreement to reflect the foregoing.

ARTICLE III

CONVERSION OF SHARES

Section 3.1. Effect on Capital Stock. At the Holdings Effective Time, by virtue of the Holdings Merger and without any action on the part of any holder thereof:

(a) Conversion of Holdings Common Stock.

(i) The Holdings Shares shall be converted into the right to receive an aggregate of (A) 14,099,749 fully paid and nonassessable shares of Laser Common Stock (the "Laser Shares") and (B) \$159,956,756 in cash, without interest thereon (the "Cash Payment" and, together with the Laser Shares, the "Merger Consideration").

(ii) If, prior to the Holdings Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the number of Laser Shares to be issued pursuant to Section 3.1(a)(i) hereof shall be adjusted appropriately or (B) pay an extraordinary dividend (other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the Cash Payment shall be adjusted appropriately, such that the aggregate amount of cash, or if a dividend shall have been paid in other property, cash and other property, shall be equal to that which would have been received had the dividend been paid following the Holdings Effective Time at a time when the Laser Shares were already issued to and the Cash Payment made to Parent Holdings.

(iii) The shares of Holdings Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and Parent Holdings, as the holder thereof, shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration.

(b) Conversion of Laser Merger Sub Common Stock. Each share of Laser Merger Sub Common Stock issued and outstanding immediately prior to the Holdings Effective Time shall be converted into and become one fully paid and nonassessable share of common stock, par value \$1.00 per share, of the Surviving Corporation.

(i) Exchange of Certificates. At the Closing, Parent Holdings shall surrender certificates representing the Holdings Shares, and Laser shall deliver or cause to be delivered to Parent Holdings a duly executed stock certificate or stock certificates representing the Laser Shares, and the Cash Payment, in immediately available funds by wire transfer to an account specified in writing by Parent Holdings at least one day prior to the Closing Date. In connection with the delivery by Laser of the Laser Shares, Laser shall utilize all shares of Laser Common Stock held by Laser as treasury shares before issuing any authorized but unissued shares of Laser Common Stock.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF HOLDINGS AND PARENT HOLDINGS

Holdings and Parent Holdings hereby represent and warrant to Laser as follows:

Section 4.1. Organization and Qualification.

(a) Each of Holdings and Worldwide is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted.

Section 4.2. Capitalization.

(a) The authorized capital stock of Holdings consists of 1,000 shares of Holdings Common Stock (the "Holdings Shares"), all of which are issued and outstanding and beneficially owned by Parent Holdings. All of the issued and outstanding shares of Holdings Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. Except as set forth above, there are no other shares of capital stock of Holdings issued or outstanding nor any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Holdings to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

(b) The authorized capital stock of Worldwide consists of 1,000 shares of Worldwide Common Stock (the "Worldwide Shares"), all of which are issued and outstanding and beneficially owned by Holdings, free and clear of all Liens, other than the pledge in connec-

tion with the Notes. All of the issued and outstanding shares of Worldwide Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. Except as set forth above, there are no other shares of capital stock of Worldwide issued or outstanding nor any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Worldwide to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 4.3. Authority Relative to this Agreement and the Registration Rights Agreement. Each of Holdings and Parent Holdings has the requisite corporate power and authority to execute and deliver this Agreement and, if a party thereto, the Registration Rights Agreement, to perform its obligations hereunder and, if a party thereto, thereunder and to consummate the transactions contemplated hereby and, if a party thereto, thereby. The execution, delivery and performance of this Agreement and the Registration Rights Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of Holdings and Parent Holdings, and no other corporate action on the part of Holdings or Parent Holdings (including on the part of their respective stockholders) is required to authorize the execution, delivery and performance hereof and thereof and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by each of Parent Holdings and Holdings and, assuming that it constitutes a valid and binding agreement of Laser and Laser Sub, constitutes the valid and binding obligation of Parent Holdings and Holdings enforceable against Parent Holdings and Holdings in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought. Prior to the Holdings Effective Time, the Registration Rights Agreement will have been duly executed and delivered by Parent Holdings and, assuming that it constitutes the valid and binding agreement of Laser, will constitute the valid and binding obligation of Parent Holdings enforceable against Parent Holdings in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

Section 4.4. No Business Activities of Holdings and Worldwide.

(a) Since its formation, Holdings has engaged in no business activities or operations, other than in connection with holding the Worldwide Shares and the stock of its predecessor corporation and in connection with the Senior Secured Discount Notes due 1998 of Holdings and the Series B Senior Secured Discount Notes due 1998 of Holdings (collectively, the "1998 Notes") and the Notes. Holdings has no material assets other than Worldwide Common Stock, and has no liabilities other than under the Notes and other de minimis liabilities. Worldwide is the beneficial owner of 44,067,520 shares of Company Common Stock, free and clear of all Liens, other than the pledge pursuant to the LYONs and the Notes.

(b) Since its formation, Worldwide has engaged in no business activities or operations, other than in connection with holding shares of Company Common Stock and in connection with the 1998 Notes, the Notes and the LYONs. Worldwide has no material assets other than the Company Common Stock (other than, as of the date hereof, the Mafco Demand Note and the LYONs Escrow Fund), and has no liabilities other than under the LYONs, the Notes and other de minimis liabilities.

Section 4.5. Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, no filing with, and no permit, authorization, consent or approval of, any Governmental Entity is necessary for the consummation by Parent Holdings or Holdings of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate (i) have a Holdings Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Except as set forth on Section 4.5 of the Holdings Disclosure Schedule, neither the execution and delivery of this Agreement by Parent Holdings or Holdings, nor the consummation by Parent Holdings or Holdings of the transactions contemplated hereby, nor compliance by Parent Holdings or Holdings with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Parent Holdings, Holdings or Worldwide; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract or of any license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any Governmental Entity to which Parent Holdings, Holdings or Worldwide is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Holdings, Parent Holdings or Worldwide or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Holdings Material Adverse Effect.

Section 4.6. No Litigation. As of the date hereof, there is no suit, action, proceeding or investigation pending against or affecting Holdings or Worldwide.

Section 4.7. SEC Reports.

(a) Holdings has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Holdings SEC Reports"). As of their respective dates, the Holdings SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Filed Holdings SEC Report has been revised, amended or superseded by a later Filed Holdings SEC Report, none of the Filed Holdings SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which

they were made, not misleading, except that no representation or warranty is made herein with respect to any information relating to the Company and its subsidiaries. For purposes of this Agreement, the Holdings SEC Reports filed and publicly available prior to the date of this Agreement (as revised, amended or superseded by the Holdings SEC Reports filed and publicly available prior to the date of this Agreement) are hereinafter referred to as the "Filed Holdings SEC Reports."

(b) Worldwide has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Worldwide SEC Reports"). As of their respective dates, the Worldwide SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Filed Worldwide SEC Report has been revised, amended or superseded by a later Filed Worldwide SEC Report, none of the Filed Worldwide SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made herein with respect to any information relating to the Company and its subsidiaries. For purposes of this Agreement, the Worldwide SEC Reports filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by the Worldwide SEC Reports filed and publicly available prior to the date of this Agreement) are hereinafter referred to as the "Filed Worldwide SEC Reports."

Section 4.8. Acquisition of Shares for Investment. Parent Holdings is not acquiring the Laser Shares with any present intention of distributing or selling any of such Laser Shares in violation of federal or state securities laws.

Section 4.9. Taxes.

(a) Except as would not have a Holdings Material Adverse Effect or as set forth on Section 4.9 of the Holdings Disclosure Schedule:

(i) Each of Holdings and Worldwide (A) has filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (B) has paid all Taxes due by it;

(ii) There are no outstanding waivers in writing or comparable consents regarding the application of any statute of limitations in respect of Taxes of Holdings or Worldwide;

(iii) There is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of Holdings or Worldwide and to the best of Holdings' knowledge, no basis exists therefor;

(iv) There are no Liens for Taxes upon the assets of Holdings or Worldwide except Liens relating to current Taxes not yet due;

(v) All Taxes which Holdings or Worldwide are required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid or accrued, reserved against and entered on the books of Holdings in accordance with GAAP; and

(vi) No power of attorney which is currently in force has been granted by or with respect to Holdings or Worldwide with respect to any matter relating to Taxes.

(b) Except as would not have a Holdings Material Adverse Effect, Holdings and its subsidiaries have previously delivered or made available to Laser (and its representatives) complete and accurate copies of:

(i) all audit reports, letter rulings, technical advice memoranda relating to United States federal, state, local and foreign Taxes due from or with respect to Holdings or its subsidiaries;

(ii) United States federal Tax Returns (to the extent that such Tax Returns relate to Holdings and its subsidiaries), and those state, local or foreign Tax Returns filed by (or on behalf of) Holdings or any of its subsidiaries (to the extent that such Tax Returns relate to Holdings and its subsidiaries) (including, in each case, workpapers related to such Tax Returns);

(iii) any closing agreements entered into by Holdings or any of its subsidiaries with any taxing authority, in each case existing on the date hereof; and

(iv) any Tax Sharing Arrangements and Tax indemnity arrangements to which Holdings or any of its subsidiaries was a party at any time prior to the Closing Date. Holdings and its subsidiaries will deliver or make available to Laser (and its representatives) all similar materials for all matters arising after the date hereof.

Section 4.10. Affiliate Agreements. Section 4.10 of the Holdings Disclosure Schedule sets forth a true and complete list of all agreements, Contracts, arrangements, payables, obligations and understandings between Holdings or any of its subsidiaries, on the one hand, and Parent Holdings or any of its Affiliates (other than Holdings or its subsidiaries), on the other hand (the "Affiliate Agreements").

Section 4.11. Brokers. No broker, investment banker or other person, other than Credit Suisse First Boston, the Company's financial advisor, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by

this Agreement based upon arrangements made by or on behalf of the Company or any of its Affiliates.

Section 4.12. LYONs Escrow Fund. The LYONs Escrow Fund is sufficient to fund the redemption, exchange or other retirement in full of the LYONs and related expenses.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LASER

Laser hereby makes the same representations and warranties to Parent Holdings and Holdings as the representations and warranties made by Laser to the Company in the Company Merger Agreement, and also represents and warrants to Parent Holdings and Holdings as follows:

Section 5.1. Laser Merger Sub. Laser Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Laser Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Laser Merger Sub consists of 1,000 shares of Laser Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and free of preemptive rights and are owned by Laser. Except as set forth above there are no shares of capital stock of Laser Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other agreements or commitments obligating Laser Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 5.2. Authority Relative to this Agreement. Each of Laser and Laser Merger Sub has the corporate power and authority to execute and deliver this Agreement and, if a party thereto, the Registration Rights Agreement, to perform its obligations hereunder and, if a party thereto, thereunder and to consummate the transactions contemplated hereby and, if a party thereto, thereby. The execution, delivery and performance of this Agreement and the Registration Rights Agreement, and the consummation of the transactions contemplated hereby, thereby and by the Company Merger Agreement, have been duly authorized by all necessary corporate action on the part of Laser and Laser Merger Sub and no other corporate action on the part of Laser or Laser Merger Sub (including on the part of their respective stockholders) is required to authorize the execution, delivery and performance hereof or thereof and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Laser and Laser Merger Sub and constitutes the valid and binding obligation of Laser and Laser Merger Sub, assuming it is the valid and binding obligation of Parent Holdings and Holdings, enforceable against Laser and Laser Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally and other forms of equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefore may be brought. Prior to the Holdings Effective Time, the Registra-

tion Rights Agreement will have been duly executed and delivered by Laser and, assuming that it constitutes the valid and binding agreement of Parent Holdings, will constitute the valid and binding obligation of Laser enforceable against Laser in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter in effect relating to or limiting creditors' rights generally and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

Section 5.3. Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser and Laser Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser and Laser Merger Sub nor the consummation by Laser and Laser Merger Sub of the transactions contemplated hereby, nor compliance by Laser and Laser Merger Sub with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Laser Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract or of any license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any Governmental Entity to which Laser or Laser Merger Sub is a party or by which either of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Laser Merger Sub or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material Adverse Effect.

Section 5.4. Acquisition of Shares for Investment. Laser is acquiring the Holdings Shares for its own account for investment purposes only and not with a view toward or for a sale in connection with, any distribution thereof, or with any present intention of distributing or selling any of such in violation of federal or state securities laws.

ARTICLE VI

COVENANTS

Section 6.1. Conduct of Business. Except as expressly permitted by this Agreement or with the prior written consent of Laser, during the period from the date of this Agreement to the Holdings Effective Time, Holdings shall and shall cause Worldwide to conduct its business only in the ordinary course consistent with past practice, except that Holdings and Worldwide shall be permitted (but not required) to (i) effect the merger of Worldwide with

Holdings, and (ii) take all action necessary in connection with the redemption or exchange of the LYONs and payment of any amounts thereunder and distribution to Parent Holdings from the LYONs Escrow Fund of any excess thereof. Without limiting the generality of the foregoing, and except as otherwise expressly permitted by this Agreement, during the period from the date of this Agreement through the Holdings Effective Time, Holdings shall not and shall cause Worldwide not to, without the prior written consent of Laser:

- (a) declare, set aside or pay any dividend or other distribution (whether in cash, securities or property or any combination thereof) in respect of any class or series of its capital stock, other than in respect of the LYONs Escrow Fund or the Mafco Demand Note;
- (b) settle or compromise any Tax liability or agree to any adjustment of any Tax attribute or make any election with respect to its Taxes other than in the ordinary course of business;
- (c) amend its certificate of incorporation or by-laws;
- (d) acquire by merging or consolidating with, or by purchasing a substantial portion of the assets or securities of, or by any other manner, any corporation, partnership or other entity;
- (e) create, incur, assume or guarantee any Indebtedness;
- (f) except as otherwise required by Law or GAAP, change any of the accounting or Tax principles, practices or methods used by Holdings or Worldwide or fail to maintain the accounts, books and records of Holdings or Worldwide in the usual, regular and ordinary manner on a basis consistently applied;
- (g) make any payments, loans, advances or other distributions to, or enter into any transaction, agreement or arrangement with, any of its Affiliates, officers, directors, or stockholders or it or its Affiliates or any associates or family members of any of the foregoing, or make any changes in or modify any of the Affiliate Agreements, other than in the ordinary course of business consistent with past practice or as required by the Affiliate Agreements, other than in respect of the LYONs Escrow Fund or the Mafco Demand Note;
- (h) adjust, split, combine, subdivide or reclassify any shares of its capital stock;
- (i) issue, sell, deliver, transfer, repurchase, redeem, acquire or pledge or authorize or propose the issuance, sale, delivery, transfer, repurchase, redemption, acquisition or pledge of shares of capital stock of any class or series, or any securities (other than the LYONs) convertible into capital stock of any class or series, or grant or enter into any rights, warrants, options, agreements or commitments with respect to the issuance of such capital stock or convertible securities;

(j) take any action that would make any representation or warranty of Parent Holdings or Holdings contained in this Agreement untrue or incorrect in any material respect and which could reasonably be expected to prevent the satisfaction of any condition to closing set forth in Article VIII hereof or otherwise prevent or materially delay the consummation of the transactions contemplated by this Agreement; or

(k) enter into any agreement or commitment to take any of the foregoing actions.

Section 6.2. Reasonable Best Efforts.

(a) Upon the terms and subject to the conditions of this Agreement, each of the parties hereto agrees to, and Holdings agrees to cause Worldwide and the Company and its subsidiaries to, use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement and the Company Merger Agreement, as applicable, as promptly as practicable (including satisfaction, but not waiver, of the conditions set forth in Article VIII hereof and Article VIII of the Company Merger Agreement).

(b) Laser shall perform all of its obligations under the Company Merger Agreement in accordance with their terms.

Section 6.3. Consents.

(a) Without limiting the generality of Section 6.2(a) hereof, each of the parties hereto shall, and Holdings shall and shall cause Worldwide and the Company and its subsidiaries to, use reasonable best efforts to obtain all Consents of all Governmental Entities and, to the extent that the failure to obtain such Consents would have a Holdings Material Adverse Effect or a Laser Material Adverse Effect, as applicable, all third parties necessary in connection with the consummation of the transactions contemplated by this Agreement and the Company Merger Agreement prior to the Holdings Effective Time. Notwithstanding the foregoing, none of the parties hereto nor Worldwide nor the Company or any of its subsidiaries shall have any obligation to pay any fee to any third party (other than filing or similar fees payable to Governmental Entities) for the purpose of obtaining any Consent or any costs and expenses of any third party resulting from the process of obtaining such Consents. Each of the parties hereto shall make or cause to be made all filings and submissions under laws and regulations applicable to it as may be required for the consummation of the transactions contemplated by this Agreement.

(b) Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity which requires, or to consent to any order, decree or judgment which requires, such party to hold, separate or divest, or to restrict the dominion or control of such party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

Section 6.4. HSR Notification. As soon as reasonably practicable, Laser and Parent Holdings shall make, or cause to be made, all filings and submissions under the HSR Act and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 6.7 hereof, Parent Holdings will furnish to Laser and Laser will furnish to Parent Holdings, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 6.7 hereof, Parent Holdings will provide Laser, and Laser will provide Parent Holdings, with copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any Governmental Entity or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. Parent Holdings and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in any discussions with any Governmental Entity on a joint basis.

Section 6.5. LYONs Refund. Promptly following redemption, exchange or other retirement in full of the LYONs, Laser shall cause to be paid to Parent Holdings all amounts remaining in the LYONs Escrow Fund by wire transfer of immediately available funds to an account(s) designated in writing by Parent Holdings. Until the making of such payment, Laser shall cause Holdings and Worldwide to comply with all of their obligations under the Indenture relating to the LYONs, the Indenture and the related Escrow Agreement, shall not take any action to amend such indenture or agreement in any manner adverse to Parent Holdings and shall use reasonable best efforts to take action to cause the redemption or retirement in full of the LYONs as promptly as practicable. Promptly following the Holdings Effective Time, at the request of Parent Holdings, Laser shall cause Holdings and Worldwide to give the escrow agent under such Escrow Agreement irrevocable written notice of the assignment of all right, title and interest in and to any such amounts to and for the benefit of Parent Holdings, on which notice Parent Holdings may rely. Following the redemption or retirement in full of the LYONs, the Mafco Demand Note shall be canceled automatically without the further action of any Person, and shall be of no further force or effect whatsoever, and, until the time of such cancellation, no demand or request for payment of any kind shall be made with respect to the Mafco Demand Note.

Section 6.6. Listing Application. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Holdings Merger, and shall use its reasonable best efforts to obtain as promptly as practicable approval for the listing of such Laser Shares, subject to official notice of issuance.

Section 6.7. Access to Information; Confidentiality. Holdings and Laser shall each afford, and Holdings shall cause Worldwide, the Company and each of its subsidiaries to afford, to the other and to the other's financial advisors, legal counsel, accountants consultants and other representatives full access at all reasonable times throughout the period prior to the Holdings Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each

report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 6.7 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Holdings Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998. (the "Confidentiality Agreements").

Section 6.8. Advice of Changes. Upon obtaining knowledge of any such occurrence, Holdings or Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of Holdings, a Holdings Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.9. Affiliate Agreements; Intercompany Accounts. Parent Holdings and Holdings shall cause all intercompany accounts to be settled, and all Affiliate Agreements to be treated, as set forth in Section 4.10 of the Holdings Disclosure Schedule.

Section 6.10. Registration Rights Agreement. Immediately prior to the Holdings Effective Time, Parent Holdings and Laser shall execute and deliver the Registration Rights Agreement.

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1. Sales of Laser Shares. Parent Holdings agrees not to, directly or indirectly, sell, transfer, pledge, assign or otherwise dispose of or otherwise transfer (other than, in any such case, in connection with a pledge to secure *bona fide* indebtedness or other obligations) (collectively, "Transfer"), any Laser Shares received pursuant to the terms hereof as consideration for the Holdings Merger, other than to one of its Affiliates who agrees in writing to be bound by the terms of this Section 7.1, for a period of nine (9) months from and after the Holdings Effective Time, except that Parent Holdings may Transfer (A) from and after the date that is three (3) months following the Holdings Effective Time, twenty-five percent (25%) of the total number of the Laser Shares, and (B) from and after the date that is six (6) months following the

Holdings Effective Time, an additional twenty-five percent (25%) of the total number of the Laser Shares (such that a total of fifty percent (50%) of the total number of the Laser Shares shall be Transferable from and after the date that is six (6) months following the Holdings Effective Time).

Section 7.2. Restrictive Legend. Pursuant to Section 7.1 hereof, each certificate representing the Laser Shares received by Parent Holdings shall be stamped or otherwise imprinted with the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER CONTAINED IN THE AGREEMENT AND PLAN OF MERGER DATED AS OF FEBRUARY 27, 1998 AMONG SUNBEAM CORPORATION, LASER ACQUISITION CORP., CLN HOLDINGS INC., AND COLEMAN (PARENT) HOLDINGS INC. AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, ASSIGNED, OR OTHERWISE DISPOSED OF OR TRANSFERRED (OTHER THAN, IN ANY SUCH CASE, IN CONNECTION WITH A PLEDGE TO SECURE *BONA FIDE* INDEBTEDNESS OR OTHER OBLIGATIONS) ("TRANSFERRED") EXCEPT AS PERMITTED BY THE TERMS THEREOF. THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED, AND THE COMPANY WILL NOT REGISTER THE TRANSFER OF SUCH SECURITIES, EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT, (B) PURSUANT TO RULE 144 UNDER THE ACT, OR (C) UPON RECEIPT BY THE COMPANY OF AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE ACT.

Upon request of Parent Holdings, Laser shall cause to be issued certificates representing such Laser Shares as to which the restrictions set forth herein are no longer applicable without such legend.

ARTICLE VIII

CONDITIONS TO CONSUMMATION OF THE HOLDINGS MERGER

Section 8.1. Conditions to Each Party's Obligation to Effect the Holdings Merger. The respective obligations of each party to effect the Holdings Merger shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following conditions:

(a) Any waiting period applicable to the consummation of the Holdings Merger under the HSR Act shall have expired or been terminated.

(b) All of the Laser Shares shall have been previously approved for listing on the NYSE, subject only to official notice of issuance, if required.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of this Agreement or the Holdings Merger shall have been issued and remain in effect.

(d) All authorizations, consents, orders, declarations or approvals of, or filings with, or terminations or expirations of waiting periods imposed by, any Governmental Entity, which the failure to obtain, make or occur would have the effect of making this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby illegal.

Section 8.2. Conditions to Obligation of Holdings to Effect the Holdings Merger. The obligation of Holdings to effect the Holdings Merger shall be subject to the satisfaction by Laser or waiver by Holdings or Parent Holdings, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following additional conditions:

(a) The representations and warranties of Laser in this Agreement and the Company Merger Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Laser in this Agreement and the Company Merger Agreement that are not so qualified shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties refer to a specific date, as of the Closing Date as though made on the Closing Date; provided, however, that this condition shall be deemed satisfied unless the failure or failures of such representations and warranties to be so true and correct (disregarding for this purpose all qualifications in such representations and warranties relating to materiality or knowledge), in the aggregate, would have a Laser Material Adverse Effect.

(b) Laser shall have performed in all material respects all obligations required to be performed by it under this Agreement or under the Company Merger Agreement at or prior to the Closing Date.

(c) Except as disclosed in the Filed Laser SEC Reports, since the date of the most recent audited financial statements included in the Filed Laser SEC Reports, there shall not have been any event, change or development which individually or in the aggregate has had or reasonably would be expected to have a Laser Material Adverse Effect or would impair the ability of Laser to consummate the transactions contemplated by this Agreement or to satisfy its obligations hereunder.

(d) The Registration Rights Agreement shall have been duly executed and delivered by each of the parties thereto.

Section 8.3. Conditions to Obligation of Laser to Effect the Holdings Merger.
The obligation of Laser to effect the Holdings Merger shall be subject to the satisfaction by Holdings and Parent Holdings or waiver by Laser, to the extent permitted by Law, at or prior to the Holdings Effective Time of the following additional conditions, unless:

(a) The representations and warranties of Holdings and Parent Holdings in this Agreement and the representations of the Company in the Company Merger Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Holdings and Parent Holdings in this Agreement and the representations of the Company in the Company Merger Agreement shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties refer to a specific date, as of the Closing Date as though made at and as of the Closing Date; provided, however, that this condition shall be deemed satisfied unless the failure or failures of such representations and warranties to be so true and correct (disregarding for this purpose all qualifications in such representations and warranties relating to materiality or knowledge), in the aggregate, would have a Holdings Material Adverse Effect or Company Material Adverse Effect (as defined in the Company Merger Agreement), as the case may be.

(b) Parent Holdings and Holdings shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date.

(c) The Company shall have performed in all material respects those obligations required to be performed by it under the Company Merger Agreement on or prior to the Closing Date.

(d) Up to six (6) individuals designated by Laser (the "Laser Designees") shall have been duly elected members of the Board of Directors of the Company and all other members of such Board shall have resigned, all effective as of the later of (i) the Closing and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice (as defined in the Company Merger Agreement) shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance with the Company Merger Agreement.

ARTICLE IX

TAX MATTERS

Section 9.1. Taxes.

(a) Parent Holdings shall indemnify and hold Laser and Laser's subsidiaries and Affiliates harmless from and against the following:

(i) any liability for Taxes of any member of the "affiliated group" (within the meaning of Section 1504(a) of the Code) (except for the Company and its subsidiaries) of which Mafco Holdings Inc. (or any predecessor or successor) is the

common parent that arises under the provisions of Treasury Regulation Section 1.1502-6(a) (or any successor provision) or comparable provisions of foreign, state or local law; and

(ii) except to the extent provided in Section 9.1(b)(iii), any liability for Taxes (other than Taxes that arise under the provisions of Treasury Regulation Section 1.1502-6(a) (or any successor provision) or comparable provisions of foreign, state or local law) imposed on Holdings or Worldwide or for which Holdings or Worldwide may otherwise be liable for any Pre-Closing Period (including, without limitation, any Taxes resulting from Holdings or Worldwide ceasing to be a member of the "affiliated group" of which Mafco Holdings Inc. (or any successor) is the common parent, any income Taxes that arise in the Holdings Merger, and any Taxes imposed on Holdings or Worldwide as a result of any transaction effected between (and including) the date hereof and the Closing Date).

(b) Laser shall indemnify and hold Parent Holdings and its Affiliates harmless from and against the following:

(i) Taxes imposed on Holdings or Worldwide for any Post-Closing Period;

(ii) except to the extent provided in Section 9.1(a)(i), any liability for Taxes of the Company and any of its subsidiaries; and

(iii) any liability for Taxes resulting from transactions or actions taken by Holdings or Worldwide on the Closing Date but after the Holdings Effective Time, except for transactions or actions undertaken in the ordinary course of business.

(c) To the extent permitted by law or administrative practice, (i) the taxable year of Holdings or Worldwide which includes the Closing Date shall be treated as closing on (and including) the Closing Date and (ii) all transactions not in the ordinary course of business occurring after the Holdings Effective Time shall be reported on Laser's consolidated United States federal income Tax Return to the extent permitted by Treasury Regulation Section 1.1502-76(b)(1)(ii)(B) and shall be similarly reported on other Tax Returns of Laser or its Affiliates to the extent permitted by Law. For purposes of paragraphs (a) and (b)(i), where it is necessary to apportion between Parent Holdings and Laser the Tax liability of an entity for a Straddle Period (which is not treated under the immediately preceding sentence as closing on the Closing Date), such liability shall be apportioned between the period deemed to end at the close of the Closing Date and the period deemed to begin at the beginning of the day following the Closing Date on the basis of an interim closing of the books, except that Taxes (such as real property Taxes) imposed on a periodic basis shall be allocated on a daily basis.

(d) For purposes of Sections 9.1(a) and (b), whenever it is necessary to allocate an item of income, gain, deduction, loss or credit to either a taxable year or period that is not part of a Straddle Period and that ends on or before the Closing Date or a taxable year or period

that is not part of a Straddle Period and that begins after the Closing Date, such allocation shall be made consistent with the Law.

(e) Any real property transfer or gains Tax, sales Tax, use Tax, stamp Tax, stock transfer Tax, or other similar Tax imposed on Holdings or any of its subsidiaries arising out of or in connection with the transactions contemplated by this Agreement shall be borne by the party primarily obligated for such Tax under applicable Law, and each party shall indemnify the other party for any such Tax for which it is so liable.

(f) (i) Except as set forth in Section 9.1(f)(iii), Laser shall be entitled to any refund of Taxes or the benefit of the utilization of any Tax attribute (including, without limitation, any net operating loss, investment Tax credit, foreign Tax credit, or other credit or deduction) of (x) the Company or any of its subsidiaries and (y) for a Post-Closing Period, Holdings or Worldwide. If Parent Holdings or any of its Affiliates or subsidiaries receives any refund of Tax to which Laser is entitled pursuant to this Section 9.1(f)(i) or utilizes any Tax attribute to which Laser is entitled pursuant to this Section 9.1(f)(i), Parent Holdings shall promptly notify Laser and shall pay the amount of such refund or the benefit realized from such utilization within five (5) days of the receipt of such refund or the realization of such benefit.

(ii) Except as set forth in Section 9.1(f)(iii), Parent Holdings shall be entitled to any refund of Taxes or the benefit of the utilization of any Tax attribute of Holdings or Worldwide for a Pre-Closing Period. If Laser or any of its Affiliates or subsidiaries receives any refund of Tax to which Parent Holdings is entitled pursuant to this Section 9.1(f)(ii) or utilizes any Tax attribute to which Parent Holdings is entitled pursuant to this Section 9.1(f)(ii), Laser shall promptly notify Parent Holdings and shall pay the amount of such refund or the benefit realized from such utilization within five (5) days of the receipt of such refund or the realization of such benefit.

(iii) No payment shall be made in respect of a Tax deduction, Tax credit or other Tax benefit pursuant to this Section 9.1(f) in duplication of payments previously made in respect of the same Tax deduction, Tax credit or other Tax benefit.

(g) Any indemnity payment required under this Article IX as a result of an adjustment shall be paid seven (7) days after a "determination" within the meaning of Section 1313(a) of the Code. Any payment required to be made under this Article IX by one party to the other party that is not made on or before the date specified in this Article IX shall bear interest after such date at the rate specified in Code Section 6621(a)(2) for underpayments.

Section 9.2. Tax Returns. (a) Parent Holdings shall file or cause to be filed when due (i) all Tax Returns that are required to be filed on or before the Closing Date by or with respect to Holdings or any of its subsidiaries and (ii) all consolidated, combined or unitary Tax Returns that are required to be filed by or with respect to Parent Holdings or any entity that will be its Affiliate after the Holdings Merger, on the one hand, and Holdings or any of its subsidiaries, on the other hand, for taxable years or periods that include or precede the Closing Date. Parent Holdings shall remit (or cause to be remitted) any Taxes shown as due on such Tax Returns. In the case of Tax Returns described in clause (ii) above, Laser shall pay Parent Holdings no later

than five (5) days prior to the due date (including extensions) of any such Tax Return the Tax in connection with such Tax Return for which Laser is liable pursuant to this Article IX (or Parent Holdings shall pay Laser on such date the excess, if any, of any estimated Tax payments by the Company or any of its subsidiaries, relating to the period covered by such Tax Return, over the Tax in connection with such Tax Return for which Laser is liable pursuant to this Article IX). Holdings and its subsidiaries shall cooperate in the preparation of any Tax Returns for which Parent Holdings has filing responsibility hereunder. Such cooperation shall include, but not be limited to, furnishing in a timely manner return preparation packages in the form and of the quality provided prior to the Holdings Merger. Such packages shall be prepared in good faith in a manner consistent with past practice.

(b) Laser shall file or cause to be filed when due all other Tax Returns that are required to be filed by or with respect to Holdings or any of its subsidiaries. Laser shall remit (or cause to be remitted) any Taxes shown as due on such Tax Returns. Parent Holdings shall pay Laser no later than five (5) days prior to the due date (including extensions) of any such Tax Return the Tax in connection with such Tax Return for which Parent Holdings is liable pursuant to this Article IX.

(c) The party with filing responsibility under this Section 9.2 for a Tax Return shall, 20 days prior to the due date (including extensions) of such Tax Return, present to the other party (the "Indemnifying Party") for the approval (which approval shall not be unreasonably withheld) of the Indemnifying Party the portion, if any, of the Tax Return reflecting solely the items and positions for which the Indemnifying Party is liable pursuant to this Article IX.

(d) From and after the date hereof, Parent Holdings and each of its Affiliates shall not amend any Tax Return with respect to Taxes for which Laser or any of its Affiliates is liable pursuant to this Agreement, without the written consent of Laser, which consent shall not be unreasonably withheld.

(e) From and after the date hereof, any payment (including any estimated payment) in respect of Taxes pursuant to a Tax Sharing Arrangement that includes Holdings or any of its subsidiaries shall be reduced by any payment that would be owed by the other party pursuant to a Tax Sharing Arrangement.

Section 9.3. Tax Claims.

(a) In the case of any Tax audit, examination or judicial or administrative proceeding (a "Tax Proceeding") relating to a combined, consolidated or unitary Tax Return that includes Mafco Holdings Inc. (or any predecessor or successor thereto), Laser shall be entitled to control the portion of the Tax Proceeding, if any, relating solely to items for which Laser is liable pursuant to this Agreement, and Parent Holdings shall be entitled to control every other portion of the Tax Proceeding; provided, however, that neither Parent Holdings nor any of its Affiliates shall settle or otherwise dispose of any issue in any such Tax Proceeding that could materially affect the Tax liability hereunder of Laser, without the prior written consent of Laser, which consent shall not be unreasonably withheld. Parent Holdings shall be entitled to control the Pre-Closing Period portion of a Tax Proceeding relating to a Straddle Period Tax Return, or a Tax

Return for a Pre-Closing Period ending before the Closing Date, of Holdings or Worldwide; provided, however, that neither Parent Holdings nor any of its Affiliates shall settle or otherwise dispose of any issue in any such Tax Proceeding that could materially affect the Tax liability hereunder of Laser, without the prior written consent of Laser, which consent shall not be unreasonably withheld.

(b) Parent Holdings or Laser, as the case may be, shall promptly notify the other party in writing of any tax claim that could result in liability of the other party under this Agreement (a "Tax Claim"). With respect to any Tax Claim, the party controlling the Tax Proceeding with respect thereto shall (i) not make any submission to any taxing authority without offering the other party the opportunity to review it, (ii) keep the other party informed as to the progress of such Tax Claim, (iii) provide the other party with any information that it receives in connection with the Tax Proceeding, (iv) permit the other party to participate (at its own expense) in all conferences, meetings or proceedings with any taxing authority in which the indemnified Tax Claim is or may be a subject, and (v) permit the other party to participate (at its own expense) in all court appearances in which the indemnified Tax Claim is or may be a subject. With respect to any Tax Claim, the party not controlling the Tax Proceeding with respect thereto shall not take any action or make any representations in connection with such Tax Claim with respect to issues affecting the other party's indemnity hereunder. With respect to any Tax Claim relating to a Pre-Closing Period for which Laser is or may be liable pursuant to this Agreement, Parent Holdings or any of its Affiliates shall either file (or cause to be filed) submissions at Laser's direction or appoint (or cause to be appointed) Laser or its authorized representatives as additional authorized representatives entitled to communicate fully with the Internal Revenue Service or the appropriate state, local or foreign taxing authority with respect to such Tax Claim.

(c) Nothing contained in this Section 9.3 shall be construed as limiting any party's right to indemnification under Section 9.1.

Section 9.4. Assistance and Cooperation. After the Closing Date, each of Parent Holdings and Laser shall (and shall cause their respective Affiliates to):

(a) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Taxes described in Section 9.1(e) (relating to sales, transfer and similar Taxes);

(b) assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing in accordance with Section 9.2;

(c) cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding, any Tax Returns of Holdings and each of its subsidiaries;

(d) make available to the other and to any taxing authority as reasonably requested in connection with any Tax Return described in Section 9.4(b) or any proceeding described in Section 9.4(c), all information relating to any Taxes or any Tax Returns of Holdings

and each of its subsidiaries, including, without limitation, records, returns, schedules, documents, work papers or other relevant materials;

(e) provide timely notice to the other in writing of any Tax audits or assessments of Holdings and each of its subsidiaries that are pending or proposed in writing for taxable periods for which the other may have a liability under this Article IX; and

(f) furnish the other with copies of all correspondence received from any taxing authority in connection with any Tax audit or information request with respect to any such taxable period.

Section 9.5. Adjustment to Merger Consideration. For all Tax purposes, any payment by Laser or Parent Holdings under this Agreement will be an adjustment to the Merger Consideration.

Section 9.6. Survival of Obligations. Notwithstanding anything to the contrary in this Agreement, and notwithstanding Article X of this Agreement, the obligations of the parties set forth in this Article IX shall be unconditional and absolute and shall remain in effect until 90 days after the expiration of the applicable statute of limitations.

Section 9.7. Reorganization. Laser shall not, and shall not permit any of its subsidiaries or Affiliates to, take any action that could prevent the Holdings Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. Laser and Parent Holdings shall treat, and shall cause their respective Affiliates to treat, the Holdings Merger as a reorganization for all Tax and reporting purposes.

Section 9.8. Tax Sharing Agreements. All rights and obligations of Parent Holdings (and the entities that will be its Affiliates after the Holdings Effective Time) pursuant to any of the Tax Sharing Arrangements or any Tax indemnity arrangements involving Holdings or any of its subsidiaries will terminate on the Closing Date.

Section 9.9. Information. Notwithstanding any other provision of this Agreement or the Company Merger Agreement, neither Laser nor any of its Affiliates nor any other Person shall have any right to receive or obtain any information relating to Taxes of Parent Holdings or any of its Affiliates other than information relating solely to Holdings or any of its subsidiaries.

ARTICLE X

INDEMNIFICATION: SURVIVAL

Section 10.1. Parent Holdings' Agreement to Indemnify.

(a) Subject to the terms and conditions of this Article X, from and after the Closing Date, Parent Holdings shall indemnify, defend and hold harmless Laser and its subsidiaries (including after the Closing Date, the Company and its subsidiaries) and each of their re-

spective successors and permitted assigns, directors, officers, employees, representatives, agents, Affiliates and associates (collectively, the "Laser Group") from and against any and all losses, liabilities, expenses (including reasonable attorneys' fees), claims and damages (collectively, "Damages") asserted against, resulting to, imposed upon or suffered by the Laser Group, or any one of them, arising out of or related to any liability or obligation of Holdings or Worldwide existing on or prior to the Closing Date other than any such liability or obligation (i) arising in connection with the Notes, the LYONs and the 1998 Notes, (ii) which is also a liability or obligation of the Company or its subsidiaries (on a joint basis or otherwise), or (iii) which relates to the conduct, operations or activities of the Company or its subsidiaries.

(b) If there are any conflicts between the provisions of this Section 10.1 and Section 9.3 with respect to Tax Claims, the provisions of Section 9.3 shall control.

(c) Any payment by Parent Holdings under Article IX or this Section 10.1 will be an adjustment to the Merger Consideration.

(d) Anything in this Agreement to the contrary notwithstanding, the liability of Parent Holdings to indemnify the Laser Group pursuant to this Section 10.1 against any Damages sustained by reason of any Laser Claim shall be limited to Laser Claims as to which the Laser Group has given Parent Holdings written notice, setting forth in reasonable detail the basis for such Laser Claim, on or prior to the fourth (4th) anniversary of the Closing Date.

Section 10.2. Conditions of Indemnification With Respect to Third-Party Claims. The obligations and liabilities of Parent Holdings with respect to Laser Claims for Damages which arise or result from claims made by third parties ("Third-Party Claims") shall be subject to the following conditions:

(a) The Laser Group shall give Parent Holdings prompt notice of any such Third-Party Claim, and Parent Holdings shall have the right to undertake the defense thereof by representatives chosen by it; provided, however, that failure to provide prompt notice shall not affect Parent Holdings' obligations hereunder except to the extent that Parent Holdings is actually prejudiced by such failure;

(b) If Parent Holdings undertakes the defense of any such Third-Party Claim, the Laser Group shall, to the best of its ability, assist Parent Holdings, at the expense of Parent Holdings, in the defense of such Third-Party Claim, and shall promptly send to Parent Holdings, at the expense of Parent Holdings, copies of any documents received by the Laser Group which relate to such Third-Party Claim;

(c) If Parent Holdings, within a reasonable time after notice of any such Third-Party Claim, fails to defend the member(s) of the Laser Group against which such Third-Party Claim has been asserted, the Laser Group shall (upon further notice to Seller) have the right to undertake the defense, compromise or settlement of such Third-Party Claim on behalf of and for the account and risk of Parent Holdings, subject to the right of Parent Holdings to assume the defense of such Third-Party Claim at any time prior to settlement, compromise or final determination thereof; and

(d) Anything in this Article X to the contrary notwithstanding, (i) if there is a reasonable probability that a Third-Party Claim may materially and adversely affect the Laser Group other than as a result of money damages or other money payments, the Laser Group shall have the right, at its own cost and expense, to defend, compromise or settle such Third-Party Claim, and shall by doing so release Parent Holdings from any liability to provide indemnification with respect to such Third-Party Claim; and (ii) Parent Holdings shall not, without the written consent of the Laser Group, settle or compromise any Third-Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Laser Group a release from all liability with respect to such Third-Party Claim.

Section 10.3. Survival of Representations; Covenants. The representations and warranties in this Agreement shall terminate upon and not survive the Closing Date. This Section 10.3 shall not limit any covenant or agreement of the parties contained herein which by its terms contemplates performance after the Holdings Effective Time.

ARTICLE XI

TERMINATION

Section 11.1. Termination. This Agreement may be terminated at any time prior to the Holdings Effective Time:

- (a) by mutual written agreement of Laser and Holdings;
- (b) by either Laser or Holdings if the Holdings Merger shall not have been consummated on or before August 31, 1998 (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Termination Date;
- (c) by either Laser or Holdings if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action (which order, decree or ruling the parties shall use their reasonable best efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and nonappealable;
- (d) by either Laser or Holdings in the event of a breach by the other party or any of its subsidiaries (including, in the case of Holdings, the Company and its subsidiaries) of any representation, warranty, covenant or other agreement contained in this Agreement or the Company Merger Agreement, as applicable, which would give rise to the failure of a condition set forth in Section 8.2(a) or Section 8.3(a) hereof or Section 8.1 thereof, as applicable, and is not capable of being cured (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained in this Agreement).

Section 11.2. Effect of Termination. In the event of termination of this Agreement as provided in Section 11.1 hereof, this Agreement shall forthwith become void, provided that the last sentence of Section 6.7 and Article XII shall continue, and there shall be no liability on the part of any of the parties, nothing herein shall relieve any party from liability for any willful breach hereof.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

If to Holdings:

CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Fax: (954) 772-3352
Attention: General Counsel

with copies to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Fax: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

If to Laser:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Fax: (561) 243-2191
Attention: David Fannin, Esq.

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Fax: (302) 651-3001
Attention: Richard L. Easton, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

Section 12.2. Amendment. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time before the Closing Date. This Agreement may not be amended except by an instrument in writing signed by the Parties.

Section 12.3. Extension; Waiver. At any time before the Closing Date, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 12.4. Assignment. No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto.

Section 12.5. Entire Agreement. This Agreement (including all Schedules and Exhibits hereto) contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, except for the Confidentiality Agreements which will remain in full force and effect for the term provided for therein.

Section 12.6. Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than Laser, Holdings, Worldwide, their respective subsidiaries or their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 12.7. Expenses. Whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses.

Section 12.8. Governing Law. This Agreement shall be governed by the laws of the State of Delaware, its rules of conflict of laws notwithstanding.

Section 12.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

Section 12.10. Headings. The heading references herein and in the table of contents hereto are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

Section 12.11. Further Assurances. From time to time after the Closing Date, at the request of the other party hereto and at the expense of the party so requesting, Holdings and Laser shall execute and deliver to such requesting party such documents and take such other action as such requesting party may reasonably request in order to consummate the transactions contemplated hereby.

Section 12.12. Specific Performance. Each party hereto acknowledges that money damages would be both incalculable and an insufficient remedy for any breach of this Agreement by such party and that any such breach would cause the other party hereto irreparable harm. Accordingly, each party hereto also agrees that, in the event of any breach or threatened breach of the provisions of this Agreement by such party, the other party hereto shall be entitled to equitable relief without the requirement of posting a bond or other security, including in the form of injunctions and orders for specific performance.

Section 12.13. Certain Terms. As used herein: (i) the term "material adverse effect" (including as used in any definition) with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement and the Company Merger Agreement and (b) affecting in the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of Holdings" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

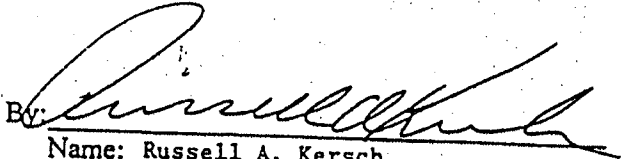
Section 12.14. Interpretation. When a reference is made to this Agreement to an Article or Section, such reference shall be to an Article or Section of, this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument

that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

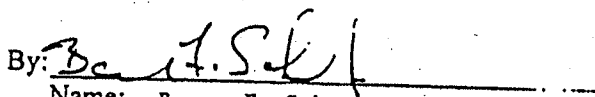
SUNBEAM CORPORATION

By: 
Name: Russell A. Kersch
Title: Executive Vice President


LASER ACQUISITION CORP.

By: 
Name: Russell A. Kersch
Title:

CLN HOLDINGS INC.

By: 
Name: Barry F. Schwartz
Title: Executive Vice President

COLEMAN (PARENT) HOLDINGS INC.

By: 
Name: Barry F. Schwartz
Title: Executive Vice President

MORGAN STANLEY CONFIDENTIAL

0007985

16dv-001247

CLN HOLDINGS INC.

DISCLOSURE SCHEDULE

Reference is made to the Agreement and Plan of Merger (the "Merger Agreement") dated as of February 27, 1998, among Sunbeam Corporation ("Laser"), Laser Acquisition Corp. ("Merger Sub"), CLN Holdings Inc. ("Holdings") and Coleman (Parent) Holdings Inc. ("Parent Holdings"). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement.

This disclosure schedule to the Merger Agreement is qualified in its entirety by reference to specific provisions of the Merger Agreement, and is not intended to constitute, and shall not be construed as constituting, representations or warranties of any party except as and to the extent provided in the Merger Agreement.

Matters reflected herein are not necessarily limited to matters required by the Merger Agreement to be reflected in the schedules. Such additional matters are set forth for information purposes and do not necessarily include other matters of a similar nature.

Any matter disclosed in one provision, sub-provision, section or subsection hereof is deemed disclosed for all purposes hereof to the extent the Merger Agreement requires such disclosure.

Headings and subheadings have been inserted hereon for convenience of reference only and shall to no extent have the effect of amending or changing the express description of the schedules as set forth in the Merger Agreement.

SCHEDULE 4.5

Consents and Approvals; No Violations

1. LYONs
2. The Notes
3. Consent to the transaction is required under an agreement between Parent Holdings and a third party which consent will be obtained prior to the Closing Date

SCHEDULE 4.9

Taxes

1. Internal Revenue Service Audit of the Mafco Holdings Inc. ("Mafco Holdings") consolidated federal income tax return for the years 1989 and 1990
2. Waiver through December 31, 1998 of the Statute of Limitations for the Mafco Holdings federal income tax consolidated group for the years 1991, 1992 and 1993

SCHEDULE 4.10

List of Agreements with Affiliates

Post-Closing

- | | |
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| 1. Lease dated as of 7/1/97 between Revlon Consumer Products Corporation and The Coleman Company, Inc. | Survives by its terms |
| 2. Reimbursement Agreement, dated as of February 26, 1992, between The Coleman Company, Inc. and MacAndrews & Forbes Holdings Inc. | Does not survive |
| 3. Reimbursement Agreement dated as of May 27, 1993 between Worldwide and MacAndrews & Forbes Holdings Inc. | Does not survive |
| 4. Reimbursement Agreement dated as of July 22, 1993 between CLN Holdings Inc. (as successor by merger to Coleman Holdings Inc.) and MacAndrews & Forbes Holdings Inc. | Does not survive |
| 5. Tax Sharing Agreement V, dated as of May 27, 1993, among Mafco Holdings, Worldwide, The Coleman Company, Inc., and certain subsidiaries of The Coleman Company, Inc. | Terminates with respect to Mafco Holdings |
| 6. Tax Sharing Agreement VI, dated as of May 27, 1993, between Mafco Holdings and Worldwide | Terminates with respect to Mafco Holdings |
| 7. Cross-Indemnification Agreement, dated as of February 26, 1992, among New Coleman Holdings Inc., Coleman Finance Holdings Inc., The Coleman Company, Inc. and certain subsidiaries of New Coleman Holdings Inc. and The Coleman Company, Inc. | Survives by its terms |
| 8. Executive Employees Deferred Compensation Plan (May 29, 1984) | Transferred to Coleman |
| 9. The New Coleman Company, Inc. Retirement Plan for Salaried Employees (Amended and Restated as of July 1, 1989) | Transferred to Coleman |
| 10. The New Coleman Company, Inc. Retirement Trust Agreement for Salaried Employees (December 28, 1989) | Transferred to Coleman |

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| 11. | The Coleman Company, Inc. Excess Benefit Plan | Transferred to Coleman |
| 12. | The Coleman Company, Inc. Special Retirement Plan
(effective October 1, 1993) | Transferred to Coleman |
| 13. | The Coleman Retirement Incentive Savings Plan
(Effective as of January 1, 1990) | Transferred to Coleman |
| 14. | Coleman Monthly Salaried Retirement Incentive Savings Plan
(Effective as of January 1, 1996) | Transferred to Coleman |
| 15. | Licensing Agreement with Revlon Consumer Products Corporation | Survives by its terms |
| 16. | Pension Plan for Hourly Employees sponsored by New Coleman Holdings Inc. | Transferred to Coleman |
| 17. | The Special Medical Plan, The Basic Medical, The Regular Medical Plan | Transferred to Coleman |
| 18. | Insurance policies (the " <u>Insurance Policies</u> ") purchased by New Coleman Holdings Inc. (" <u>New Coleman</u> ") and Mafco Holdings with respect to which the Company derives the benefits, including as a subsidiary or affiliate of New Coleman and Mafco Holdings, in certain cases including forms of self-insurance, self-insured retention, deductibles, retrospective rating plans, and similar arrangements (" <u>Self-Insured Arrangements</u> ") | To the extent any Insurance Policies benefit the Company, they shall be retained; to the extent the Company has obligations to pay amounts or post a letter-of-credit pursuant to the Self-Insured Arrangements, the Company shall perform such obligations |
| 19. | Agreement with Tarlow Advertising | Terminates |
| 20. | Stock Purchase Agreement, dated as of August 5, 1997, by and among Revlon K.K. (" <u>Revlon</u> ") and the Company, and Transfer Agreement, dated as of March 31, 1997, by and among Revlon Consumer Products Corporation and the Company | Revlon or its affiliates remain entitled to certain tax benefits |

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|-----|---|--|
| 21. | Stock Purchase Agreement, dated as of December 12, 1997, between New Coleman Holdings, Inc. and the Company | New Coleman Holdings Inc. remains entitled to certain tax benefits |
| 22. | Welfare plans, such as medical, sponsored by New Coleman Holdings or Mafoo Holdings | Transferred to Coleman |
| 23. | Mafoo Demand Note held by Worldwide in connection with advances made for the payment of taxes by Worldwide | Canceled automatically and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998 |
| 24. | The Coleman Company, Inc. provides certain data processing services for Mafoo Holdings and certain of its subsidiaries and is paid a fee for such services | Services terminated on or prior to the closing |
| 25. | The Coleman Company, Inc. assists in the management of certain liabilities and obligations of New Coleman Holdings Inc. generally related to liabilities relating to divested operations of New Coleman Holdings Inc. | Services terminated on or prior to the closing |

All amounts owed pursuant to agreements or arrangements with affiliates shall be paid in the ordinary course and in accordance with the applicable agreement or arrangement except in the case of the Mafoo Demand Note, which shall be canceled automatically and of no further force or effect upon the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998.

SCHEDULE 6.1

Conduct of Business by the Company

1. Sale of the Company's Safety Security Division and other transactions contemplated by the Stock Purchase Agreement, dated February-18, 1998, and certain other agreements related thereto
2. From time to time, the repurchase by the Company of shares of Company Common Stock from certain officers and non-employee directors and cash-out certain Employee Stock Options held by certain officers and non-employee directors to provide a sale under Rule 16b-3 under the Exchange Act
3. The Company may take all action necessary to provide for vesting and exercisability of all outstanding Employee Stock Options as of the Effective Time and to provide for a broker-dealer cashless exercise procedure
4. Assume the sponsorship of all Company Plans maintained by New Coleman Holdings, Inc. pursuant to the Merger Agreement
5. Increase base salaries for Company employees effective as of March 1, 1998
6. Pay discretionary bonuses under the Company's Management Incentive Plan for 1997
7. Mafco Demand Note will be canceled and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998

REGISTRATION RIGHTS AGREEMENT

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

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

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

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

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

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

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1 *Definitions.*

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

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

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

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

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

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

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

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

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

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

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

The term "Laser Common Stock" shall mean common stock, par value \$.01 per share, of Laser.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

REQUIRED REGISTRATION

Section 2.1 *Required Registration.*

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

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

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

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

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

Section 2.2 *Holdback Agreement.*

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

Section 2.3 *Blackout Provisions.*

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

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

Section 2.4 *Registration Procedures.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2.5 *Registration Expenses.*

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

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

Section 2.6 *Indemnification.*

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

(b) *By Parent Holdings.* In connection with the Shelf Registration Statement, Parent Holdings shall furnish to Laser in writing information regarding Parent Holdings' ownership of Registrable Securities and Parent Holdings' intended method of distribution thereof and shall indemnify Laser, its directors, officers, employees and agents

and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such other indemnified Person against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (i) is caused by, arises out of, results from or relates to, or is alleged to be omitted from, such information so furnished in writing by Parent Holdings or (ii) arises out of or results from Parent Holdings' failure to deliver, or Parent Holdings' underwriter's or other agent's failure to deliver, a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished Parent Holdings with the requested number of copies of the same. In connection with an underwritten offering and without limiting any of Parent Holdings' other obligations under this Agreement, (i) Parent Holdings shall indemnify such underwriters, their officers, directors, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriters or such other indemnified Person to the same extent as provided above with respect to the indemnification of Laser and (ii) Parent Holdings shall cause each underwriter of an underwritten offering to indemnify Laser, its directors, officers, employees and agents and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) Laser or such indemnified Person, on terms and subject to conditions customary for such indemnification by nationally known investment banking firms, against all Losses caused by, arising out of, resulting from or relating to any untrue or alleged untrue statement of material fact contained in the Shelf Registration Statement, any prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission or alleged untrue statement or omission (x) is caused by, arises out of or results from information furnished in writing by such underwriter specifically for inclusion in the Shelf Registration Statement or (y) arises out of or results from such underwriter's failure to deliver a copy of the Shelf Registration Statement or prospectus or any amendments or supplements thereto after Laser has furnished such underwriter with the requested number of copies of the same.

(c) *Notice.* Any Person entitled to indemnification hereunder shall give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification; provided, however, the failure to give such notice shall not release the indemnifying party from its obligation, except to the extent that the indemnifying party has been prejudiced by such failure to provide such notice.

(d) *Defense of Actions.* In any case in which any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense

thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such indemnified party hereunder for any legal or other expense subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation, supervision and monitoring (unless such indemnified party reasonably objects to such assumption on the grounds that there may be defenses available to it which are different from or in addition to the defenses available to such indemnifying party, in which event the indemnified party shall be reimbursed by the indemnifying party for the reasonable expenses incurred in connection with retaining one separate legal counsel). An indemnifying party shall not be liable for any settlement of an action or claim effected without its consent. The indemnifying party shall lose its right to defend, contest, litigate and settle a matter if it shall fail to diligently contest such matter (except to the extent settled in accordance with the next following sentence). No matter shall be settled by an indemnifying party without the consent of the indemnified party unless such settlement contains a full and unconditional release of the indemnified party.

(e) *Survival.* The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified Person and will survive the transfer of the Registrable Securities.

(f) *Contribution.* If recovery is not available under the foregoing indemnification provisions for any reason or reasons other than as specified therein, any Person who otherwise would be entitled to indemnification by the terms thereof shall nevertheless be entitled to contribution with respect to any Losses with respect to which such Person would be entitled to such indemnification but for such reason or reasons. In determining the amount of contribution to which the respective Persons are entitled, there shall be considered the Persons' relative knowledge and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission, and other equitable considerations appropriate under the circumstances. It is hereby agreed that it would not necessarily be equitable if the amount of such contribution were determined by pro rata or per capita allocation. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not found guilty of such fraudulent misrepresentation.

ARTICLE III

TRANSFERS OF REGISTRABLE SECURITIES

Section 3.1 *Transferability of Registrable Securities*

Parent Holdings may not Transfer the Registrable Securities except in accordance with Article VII of the Holdings Merger Agreement and under the following circumstances:

- (a) pursuant to Rule 144;
- (b) pursuant to the Shelf Registration Statement; or
- (c) upon receipt by Laser of an opinion of counsel, reasonably satisfactory to Laser, that such Transfer is exempt from registration under the Securities Act.

Section 3.2 *Restrictive Legends.*

Parent Holdings hereby acknowledges and agrees that, during the term of this Agreement, each of the certificates representing Registrable Securities shall be subject to stop transfer instructions and shall include the legend set forth in Section 7.2 of the Holdings Merger Agreement.

ARTICLE IV

MISCELLANEOUS

Section 4.1 *Effectiveness of Agreement.*

The provisions of this Agreement shall be effective as of the date hereof.

Section 4.2 *Recapitalization.*

In the event that any capital stock or other securities are issued as a dividend or distribution on, in respect of, in exchange for, or in substitution of, any Registrable Securities, such securities shall be deemed to be Registrable Securities for all purposes under this Agreement.

Section 4.3 *Notices.*

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by mail (certified or registered mail, return receipt

requested), by reputable overnight courier or by facsimile transmission (receipt of which is confirmed):

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: General Counsel
Facsimile: (561) 243-2191

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Attention: Richard L. Easton, Esq.
Facsimile: (302) 651-3001

(b) If to Parent Holdings, to:

Coleman (Parent) Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Attention: General Counsel
Facsimile: (954) 772-3352

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019-6150
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

or to such other person or address as any party shall specify by notice in writing, given in accordance with this Section 4.3, to the other parties hereto. All such notices, requests, demands, waivers and communications shall be deemed to have been given on the date on which so hand-delivered, on the third business day following the date on which so mailed, on the next business day following the date on which delivered to such overnight courier and on the date of such facsimile transmission and confirmation, except for a notice of change of person or address, which shall be effective only upon receipt thereof.

Section 4.4 *Entire Agreement.*

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, oral and written, with respect to its subject matter.

Section 4.5 *Binding Effect; Assignment.*

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but, except as expressly contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by Laser or Parent Holdings without the prior written consent of the other; provided, that in connection with a bona fide pledge of any Registrable Securities to secure indebtedness or other obligations, Parent Holdings may assign its rights, interests and obligations hereunder to the beneficiary of such pledge. Upon any permitted assignment (other than in connection with any such bona fide pledge), this Agreement shall be amended to substitute the assignee as a party hereto in a writing reasonably acceptable to the other party.

Section 4.6 *Amendment, Modification and Waiver.*

This Agreement may be amended, modified or supplemented at any time by written agreement of the parties hereto. Any failure by Parent Holdings, on the one hand, or Laser, on the other hand, to comply with any term or provision of this Agreement may be waived by Laser or Parent Holdings, respectively, at any time by an instrument in writing signed by or on behalf of Laser and Parent Holdings, but such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

Section 4.7 *Third-Party Beneficiaries.*

Except with respect to Affiliates which have agreed to be bound in accordance with Section 2.1(a), this Agreement is not intended, and shall not be deemed, to confer upon or give any person except the parties hereto and their respective successors and permitted assigns, any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

Section 4.8 *Counterparts.*

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 4.9 *Interpretation.*

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section 4.10 *Governing Law.*

This Agreement shall be governed by the laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 4.11 *Termination; Restrictive Legend.*

Subject to the provisions of Section 2.1(b) hereof, this Agreement shall terminate on the second anniversary of consummation of the Merger; provided, however, that the provisions of Section 2.6 hereof shall survive termination of this Agreement. It is understood and agreed that any restrictive legends set forth on any Registrable Securities shall be removed by delivery of substitute certificates without such legends and such Registrable Securities shall no longer be subject to the terms of this Agreement, upon the resale of such Registrable Securities in accordance with the terms of this Agreement or, if not theretofore removed, on the third anniversary of the date hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Registration Rights Agreement as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name:
Title:

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name:
Title:

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Senior Secured Credit Facilities

CONFIDENTIAL INFORMATION MEMORANDUM

June 1998

MORGAN STANLEY DEAN WITTER



MORGAN STANLEY CONFIDENTIAL 0022175

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MR. COFFEE



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SUNBEAM CORPORATION

Table of Contents

			<u>Page</u>
SECTION	I	ADMINISTRATIVE INFORMATION	1
SECTION	II	EXECUTIVE SUMMARY	19
SECTION	III	INVESTMENT CONSIDERATIONS	33
SECTION	IV	SUMMARY OF TERMS AND CONDITIONS	39
SECTION	V	COMPANY DESCRIPTION	53
SECTION	VI	INDUSTRY OVERVIEW	73
SECTION	VII	FINANCIAL PROJECTIONS AND ASSUMPTIONS	81
APPENDIX	A	INTEGRATION COST SAVING DETAIL	95
APPENDIX	B	REVENUE OPPORTUNITIES DETAIL	109

ADDITIONAL INFORMATION AVAILABLE

Sunbeam S-4	5/11/98
Sunbeam 10-Q	3/31/98
Sunbeam Zero Coupon Convertible Subordinated Debentures Offering Memorandum	3/19/98
Sunbeam 10-K	12/31/97
Coleman 10-Q	3/31/98
Coleman 10-K	12/31/97
First Alert 10-K	12/31/97
Signature Brands 10-Q	12/31/97
Signature Brands 10-K	9/29/97

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SUNBEAM CORPORATION

Notice from the Agents

Unless the context otherwise requires: (i) all references to the "Company" and "Sunbeam" refer collectively to Sunbeam Corporation and its subsidiaries; and (ii) all information relating to the Company contained in this Memorandum, other than historical financial information, gives effect to the Acquisitions described below.

Morgan Stanley Senior Funding, Inc. ("MSSF") as Arranger and Syndication Agent, BancAmerica Robertson Stephens ("BARS") as Co-Arranger, Bank of America NT & SA ("BoFA") as Documentation Agent, and First Union ("First Union") as Co-Arranger and Administrative Agent (together with the Syndication Agent, the "Agents"), have been requested by the Company to arrange \$1,700,000,000 in Senior Secured Credit Facilities (the "Credit Facilities") in connection with its acquisition (the "Acquisitions") of CLN Holdings Inc. ("CLN Holdings"), the parent of The Coleman Company, Inc. ("Coleman"), the publicly held shares of Coleman, Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert"). The Confidential Information Memorandum (the "Information Memorandum") that follows provides details of the Acquisitions and provides information on the Company.

This Information Memorandum is being furnished on a confidential basis. In all cases, prospective lenders should conduct their own investigation and analysis of the Company and of the information set forth in this Information Memorandum. No representation or warranty, express or implied, is made by MSSF, BARS, First Union or by any of their respective affiliates (including in the case of MSSF, Morgan Stanley Dean Witter & Co. Incorporated (together with MSSF, "Morgan Stanley")) as to the accuracy or completeness of this Information Memorandum or the information contained herein, and nothing contained in this Information Memorandum is, or shall be relied upon as, a promise or representation as to past or future performance of the Company. None of Morgan Stanley, BARS, First Union or their respective affiliates have independently verified any such information and assume no responsibility for its accuracy or completeness. In addition, Morgan Stanley may, at times, act as financial advisor and underwriter for the Company.

This Information Memorandum contains statements, estimates, and projections provided by the Company with respect to the Company's future performance. Such information and data reflect various assumptions made by the Company, which assumptions may not prove to be correct, and are subject to many economic and competitive uncertainties and contingencies that are beyond the control of the Company. None of Morgan Stanley, BARS, First Union or the Company make any representations as to the reasonableness of such assumptions or to any other financial information contained in such statements, estimates and projections. There can be no assurances that such statements, estimates and projections will be realized and actual results may vary materially from those indicated.

SUNBEAM CORPORATION

Notice from the Agents (continued)

None of Morgan Stanley, BARS, First Union or the Company, their respective affiliates or any other person undertakes to review the accuracy or attainability or condition (financial or otherwise) or affairs of the Company except for their own respective purposes or to advise any syndicate member or participant in the Senior Secured Credit Facilities of any information coming to Morgan Stanley, BARS, First Union, the Company, their respective affiliates or any other person's attention. This Information Memorandum is not intended by Morgan Stanley, BARS, First Union, the Company or their respective affiliates to provide the sole basis of any credit decision or other evaluation, and should not be considered a recommendation by Morgan Stanley, BARS, First Union, the Company, their respective affiliates, or any other person that any recipient of this Information Memorandum participate in the Senior Secured Credit Facilities. By acceptance of this Information Memorandum, the recipient hereby agrees that none of Morgan Stanley, BARS, First Union, or the Company shall have liability for any misstatement or omission of fact, or for any opinion expressed herein.

This Information Memorandum is submitted to selected prospective lenders solely for their confidential use in connection with the syndication of the Senior Secured Credit Facilities and may not be reproduced or used, in whole or in part, for any other purpose, or furnished to any persons other than those to whom copies have been sent by the Agents. By acceptance of a copy of this Information Memorandum, the recipient agrees that the information contained herein will be kept confidential and shall not, without the prior written consent of the Agents and the Company, be reproduced or disclosed by the recipient in any manner whatsoever, in whole or in part, and shall not be used other than in connection with evaluating the transaction described herein. The recipient further agrees that if it does not wish to pursue its participation in the Senior Secured Credit Facilities, it will promptly return this Information Memorandum, together with any other confidential information relating to the Company which the recipient may have received from the Agents or the Company, and all reproductions, extracts or summaries thereof, to Morgan Stanley. The recipient's acceptance of the enclosed information will constitute its agreement to be bound by the foregoing.

SUNBEAM CORPORATION

Confidentiality Agreement

Much of the information contained in the enclosed Information Memorandum is confidential, non-public or proprietary in nature. In consideration for providing you with this Information Memorandum, you agree that:

1. This Information Memorandum shall be kept confidential and shall not, without the prior written consent of the Agents and Sunbeam, be reproduced or disclosed by you, or your agents, representatives or employees, in any manner whatsoever, in whole or in part, and shall not be used by you, or your agents, representatives or employees, other than in connection with evaluating the transaction described above. Moreover, you agree to reveal the information in this Information Memorandum only to your agents, representatives and employees who need to know the information in this Information Memorandum for the purpose of evaluating the transaction described above, who are informed by you of the confidentiality of this Information Memorandum. You agree to apply the same degree of care to maintain the confidentiality of the information contained in this Information Memorandum as you do to maintain the confidentiality of your own confidential information. You agree to be responsible for any breach of the terms hereof by any of your agents, representatives or employees, and to indemnify and hold Sunbeam, the Agents and their representatives, agents, partners and employees harmless from and against all liabilities, claims, causes of action, costs and expenses (including attorney's fees and expenses) arising out of the breach of the terms hereof by you or your agents, representatives or employees.
2. Without the Agents' and Sunbeam's prior written consent, you and your agents, representatives and employees shall not disclose to any other person or entity the fact that this Information Memorandum has been made available, the fact that discussions are taking place concerning a possible transaction or any other terms, conditions or other facts with respect to any such possible transactions (including the status thereof).
3. This Agreement shall be inoperative as to such portions of this Information Memorandum that: (i) are or become generally available to the public through no fault or action by you or by your agents, representatives or employees or (ii) become available to you on a non-confidential basis from a source, other than Sunbeam, the Agents or any of their representatives, which is not prohibited from disclosing such portions to you by a contractual, legal or fiduciary obligation to Sunbeam or the Agents.
4. If you or anyone to whom you transmit the information in this Information Memorandum pursuant to the terms hereof becomes legally compelled to disclose any of the information in this Information Memorandum, you shall provide the Agents and Sunbeam with prompt prior notice so that the Agents and Sunbeam may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the terms hereof. You agree to cooperate with the Agents and Sunbeam to take all reasonably available actions to obtain a protective order or other appropriate remedy. If such protective order or other

SUNBEAM CORPORATION

Confidentiality Agreement

(continued)

remedy is not obtained, or if the Agents and Sunbeam waive compliance with the provisions hereof, you shall furnish only that portion of this Information Memorandum that you are advised by counsel is legally required and shall exercise your best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded this Information Memorandum.

If you are not prepared to accept the enclosed Information Memorandum on this basis, you will return this Information Memorandum to the Syndication Agent immediately. Your acceptance of the enclosed Information Memorandum will constitute your agreement to be bound by the terms hereof.

Morgan Stanley Senior Funding, Inc.
BancAmerica Robertson Stephens
First Union

June 1998

SUNBEAM CORPORATION

Cautionary Statements

Certain of the information contained herein may contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, as the same may be amended from time to time (the "Act") and in releases made by the Securities and Exchange Commission ("SEC") from time to time. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance, or achievements of the Company to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. The words "estimate," "project," "intend," "expect" and similar expressions, when used in connection with the Company, are intended to identify forward-looking statements. Any such forward-looking statements are based on various factors and derived utilizing numerous important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements. These Cautionary Statements are being made pursuant to the Act, with the intention of obtaining the benefits of the "Safe Harbor" provisions of the Act. The Company cautions investors that any forward-looking statements made by the Company are not guarantees of future performance and that actual results may differ materially from those in the forward-looking statements as a result of various factors, including, but not limited to, those set forth below. Important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements include, but are not limited to: (i) risks associated with leverage, including cost increases due to rising interest rates; (ii) risks associated with Sunbeam's ability to continue its strategy of growth through acquisitions; (iii) risks associated with Sunbeam's ability to successfully integrate all of its recent acquisitions; (iv) risks associated with Sunbeam's ability to increase revenues by leveraging sales of Sunbeam, Signature Brands and First Alert products through Coleman's existing distribution channels, and by leveraging sales of Coleman, Signature Brands and First Alert products through Sunbeam's existing distribution channels, particularly in foreign markets; (v) risks associated with Sunbeam's ability to realize the anticipated cost savings of its restructuring program, including the timing thereof; (vi) risks associated with Sunbeam's ability to implement its planned divestitures, including the amount of the net proceeds to be realized and the timing thereof; (vii) Sunbeam's ability to make effective acquisitions in the future and to successfully integrate newly acquired businesses into existing operations and the risks associated with such newly acquired businesses; (viii) Sunbeam's and Coleman's ability to maintain and increase market share for their respective products at anticipated margins; (ix) Sunbeam's ability to successfully introduce new products and to provide on-time delivery and a high level of customer service; (x) changes in laws and regulations, including changes in tax rates, accounting standards, environmental laws, occupational, health and safety laws; (xi) access to foreign markets together with foreign economic conditions, including currency fluctuations; (xii) uncertainty as to the effect of competition in Sunbeam's or Coleman's existing and potential future lines of business; (xiii) fluctuations in the cost and availability of raw materials and/or products in relation to historical levels; (xiv) changes in the availability and relative costs of labor; (xv) effectiveness of advertising and marketing programs; (xvi) the effect of, or changes in, general economic conditions; (xvii) economic uncertainty in Japan, Korea and

SUNBEAM CORPORATION

Cautionary Statements

(continued)

other Asian countries, as well as Mexico, Venezuela and other Latin American countries; (xviii) weather conditions that are adverse to the specific businesses of Sunbeam and Coleman; and (xix) risks related to product quality, including excess warranty costs, product liability expense and costs of possible product recall. Other factors and assumptions not identified above were also involved in the derivation of these forward-looking statements, and the failure of such other assumptions to be realized as well as other factors may also cause actual results to differ materially from those projected. The Company assumes no obligation to update these forward-looking statements to reflect actual results, changes in assumptions or changes in other factors affecting such forward-looking statements.

SUNBEAM CORPORATION

Invitation to Participate

MSSF, BARS and First Union, on behalf of the Company, are pleased to invite your institution to become a lender in the \$1,700,000,000 Senior Secured Credit Facilities for the Company. The Senior Secured Credit Facilities have been fully underwritten by the Agents.

MSSF, BARS and First Union have enclosed this Information Memorandum, which includes, among other information, a description of the Company and of the transaction, a summary of terms and conditions, and management prepared financial projections.

Lenders' commitments to the Senior Secured Credit Facilities will be accepted by the Agents until 12:00 p.m. Eastern Standard Time on June 30.

Your commitment letter should follow the format shown on the following page as "Form of Commitment Letter" and should be sent by facsimile with an original to follow to:

Roger Gilbert
Principal
Morgan Stanley Senior Funding, Inc.
1585 Broadway
New York, NY 10036
Fax: (212) 761-3932

Final allocated commitment amounts will be determined by the Company and the Agents in their sole discretion.

You are specifically directed not to market or discuss this transaction, or distribute this Information Memorandum or any of its content in the secondary market, until you have received specified notice from the Agents that secondary marketing is permitted.

We look forward to working with you on this transaction.

Morgan Stanley Senior Funding, Inc.
BancAmerica Robertson Stephens
First Union

June 1998

SUNBEAM CORPORATION

Summary Timetable

June 1998

S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July 1998

S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Date	Event
June 9	<ul style="list-style-type: none"> • Lender Meeting <ul style="list-style-type: none"> - Location: The Waldorf-Astoria Starlight Roof, 18th Floor - Address: 301 Park Avenue New York City - Registration/Breakfast: 9:15 a.m. - Presentation: 10:15 a.m. - Dial-In Number: 1-800-597-1219 - Passcode: 872129
June 30	<ul style="list-style-type: none"> • Commitments Due from Lenders by 12:00 p.m. • Distribute Loan Documentation to Committed Lenders
July 6	<ul style="list-style-type: none"> • Comments Due from Lenders on Loan Documentation
July 8	<ul style="list-style-type: none"> • Execution Documents Distributed and Lenders Prepare for Closing
July 9	<ul style="list-style-type: none"> • Closing and Funding

SUNBEAM CORPORATION

Form of Commitment Letter Revolving Credit Facility and Term Loan A *Lender's Letterhead*

Date of Commitment

Roger Gilbert
Principal
Morgan Stanley Senior Funding, Inc.
1585 Broadway
New York, NY 10036
Fax: (212) 761-3932

Re: Sunbeam Corporation
\$1.7 billion Senior Secured Credit Facilities

Dear Mr. Gilbert:

_____ ("Lender") is pleased to confirm its commitment of \$_____ million, on a pro rata basis to the \$400 million Revolving Credit Facility and to the \$550 million Term Loan A, for Sunbeam Corporation (the "Company"), the terms of which are outlined in the Summary of Terms and Conditions accompanying the Information Memorandum dated June 1998.

The Lender acknowledges that it has, independently and without reliance upon Morgan Stanley, BARS, First Union, the Company, or any of their respective affiliates or any other person, and based on the financial statements of the Company and its affiliates and such other documents and information as the Lender has deemed appropriate, made its own credit analysis and decision to enter into this commitment. The Lender acknowledges and agrees that the commitment may be reduced so that the aggregate commitments do not exceed the aggregate amount of the required Senior Secured Credit Facilities. The Company and the Agents reserve the right to allocate commitments at their sole discretion.

The Lender confirms that it has not marketed or discussed this transaction in the secondary market, and will not do so until specific written notice is provided by the Agents.

Our commitment is subject to our satisfaction (not to be unreasonably withheld or delayed) with final documentation.

Very truly yours,

Authorized Signature: _____

By: _____

Title: _____

SUNBEAM CORPORATION

Form of Commitment Letter

Term Loan B

Lender's Letterhead

Date of Commitment

Roger Gilbert
Principal
Morgan Stanley Senior Funding, Inc.
1585 Broadway
New York, NY 10036
Fax: (212) 761-3932

Re: Sunbeam Corporation
\$1.7 billion Senior Secured Credit Facilities

Dear Mr. Gilbert:

_____ ("Lender") is pleased to confirm its commitment of \$_____ million toward the \$750 million Term Loan B for Sunbeam Corporation (the "Company"), the terms of which are outlined in the Summary of Terms and Conditions accompanying the Information Memorandum dated June 1998.

The Lender acknowledges that it has, independently and without reliance upon Morgan Stanley, BARS, First Union, the Company, or any of their respective affiliates or any other person, and based on the financial statements of the Company and its affiliates and such other documents and information as the Lender has deemed appropriate, made its own credit analysis and decision to enter into this commitment. The Lender acknowledges and agrees that the commitment may be reduced so that the aggregate commitments do not exceed the aggregate amount of the required Senior Secured Credit Facilities. The Company and the Agents reserve the right to allocate commitments at their sole discretion.

The Lender confirms that it has not marketed or discussed this transaction in the secondary market, and will not do so until specific written notice is provided by the Agents.

Our commitment is subject to our satisfaction (not to be unreasonably withheld or delayed) with final documentation.

Very truly yours,

Authorized Signature: _____

By: _____

Title: _____

SUNBEAM CORPORATION

Administrative Details Reply Form

Transaction: -
To: SUNBEAM CORPORATION
Fax #: Patrick Engel/First Union
(704) 383-6037

1) Name of entity to appear
on Signature Page:

2) Name of person to receive
Draft Credit Agreement:

Name:

Title:

Street Address
(for courier):

Telephone #:

Fax #:

CREDIT CONTACT	OPERATIONS CONTACT	LEGAL COUNSEL

PAYMENT INSTRUCTIONS

Via Fed Wire:

(Name of Bank) (ABA #)
(Further Credit) (Attention) (Reference)
Ref.: _____

FIRST UNION PAYMENT INSTRUCTIONS

Pay To: First Union National Bank
ABA # 053 000 219
Charlotte, NC
Attention: Syndication Agency Services
R/C 5007 G/L #465906
Ref.: Sunbeam

SUNBEAM CORPORATION

Contact List

SUNBEAM CORPORATION

1615 South Congress Avenue

Suite 200

Delray Beach, FL 33445

Telephone: (561) 243-2100

Telecopier: (561) 243-2027

Albert J. Dunlap <i>Chairman and CEO</i>	(561) 243-2150
Russell A. Kersh <i>Vice Chairman & CFO</i>	(561) 243-2130
David C. Fannin <i>Executive Vice President & Chief Legal Officer</i>	(561) 243-2125
Ronald R. Richter <i>Treasurer</i>	(561) 243-2136
Steven Dalberth <i>Assistant Treasurer</i>	(561) 243-2138
Robert Gluck <i>Vice President, Controller</i>	(561) 243-2139
Janet Kelley <i>Vice President & General Counsel</i>	(561) 243-2127
Robert Totte <i>Vice President, Taxes</i>	(561) 243-2131

SUNBEAM CORPORATION

Contact List

(continued)

MORGAN STANLEY DEAN WITTER & CO.

1585 Broadway

New York, NY 10036

Telephone: (212) 761-4000

Telecopier: (212) 761-3932

Leveraged Loan Structuring

R. Bram Smith <i>Managing Director</i>	(212) 761-2660
Michael A. Hart <i>Principal</i>	(212) 761-1052
Simon Rankin <i>Senior Associate</i>	(212) 761-2924
Ishaan Seth <i>Analyst</i>	(212) 761-1286

Leveraged Loan Sales and Trading

Roger Gilbert <i>Principal</i>	(212) 761-2677
Kristoffer B. Mack <i>Principal</i>	(212) 761-2675
Marianne Carrel <i>Vice President</i>	(212) 761-1054
Patrick McNellis <i>Vice President</i>	(212) 761-2928
Christopher Pucillo <i>Vice President</i>	(212) 761-2684
Christopher Bodner <i>Associate</i>	(212) 761-2776
Robert J. Franz <i>Analyst</i>	(212) 761-2927

Corporate Finance

William H. Strong <i>Managing Director</i>	(312) 706-4400
Andrew B. Savarie <i>Vice President</i>	(312) 706-4412

SUNBEAM CORPORATION

Contact List

(continued)

FIRST UNION NATIONAL BANK

301 South College Street

Charlotte, NC 28288

Telephone: (704) 590-6161

Telecopier: (704) 374-3300

Loan Syndications Origination

Andrew J. Gamble <i>Managing Director</i>	(704) 383-8186
Kimberly A. Quinn <i>Director</i>	(704) 383-7190
Patrick Engel <i>Associate</i>	(704) 383-0808

Loan Syndications - Distributions

Michael Doherty <i>Managing Director</i>	(704) 383-1021
Fred Passenani <i>Director</i>	(704) 383-7925
Ellen Taylor <i>Director</i>	(704) 383-1381

Leveraged Finance

Tom Molitor <i>Director</i>	(704) 383-0018
Barbara Adams <i>Vice President</i>	(704) 383-6668
Courtney Rountree <i>Analyst</i>	(704) 383-0199

Corporate Banking

Walker Duvall <i>Senior Vice President</i>	(561) 338-3901
---	----------------

SUNBEAM CORPORATION

Contact List

(continued)

BANCAMERICA ROBERTSON STEPHENS

335 Madison Avenue
New York, NY
10017
Telecopier: (212) 503-7355

231 S. LaSalle Street,
18th Floor
Chicago, IL 60697
Telecopier: (312) 828-7448

555 California Street,
12th Floor
San Francisco, CA 94104
Telecopier: (415) 953-1873

Loan Structuring

Structuring:
Mark Lies
Managing Director

(312) 828-1715

Steven Sterling
Vice President

(212) 503-7945

Rosemary Halpin
Associate

(212) 503-7715

Loan Sales and Trading

New York Sales:

Cheryl Neff
Managing Director

(212) 503-7307

Alexander Byers
Associate

(212) 503-7329

Chicago Sales:

Joseph Siman
Managing Director

(312) 828-3771

Anne Skoronski
Vice President

(312) 828-7863

Ken Uchiyama
Vice President

(312) 828-1007

San Francisco Sales:

Perry White
Managing Director

(415) 622-3134

Jane Rawles
Vice President

(415) 622-3358

SUNBEAM CORPORATION

Contact List

(continued)

BANK OF AMERICA NT & SA

335 Madison Avenue, 5th Floor

New York, NY 10017

Telecopier: (212) 503-7173

Acquisition Finance

Charles Francavilla (212) 503-7078
Managing Director

Igor Suica (212) 503-7584
Associate

BANK OF AMERICA NT & SA

1230 Peachtree Street NE, Suite 3800

Atlanta, GA 30309

Telecopier: (404) 249-6938

(404) 815-5912

Relationship Management

Larry Schaad (404) 249-6915
Vice President

Deirdre Doyle (404) 249-6905
Vice President

SUNBEAM CORPORATION

Contact List (continued)

DAVIS POLK & WARDWELL

450 Lexington Avenue

New York, NY 10017

Telephone: (212) 450-4000

Telecopier: (212) 450-4800

Peter Levin <i>Partner</i>	(212) 450-4630
William Megevick <i>Associate</i>	(212) 450-4751
Pippa Tudman <i>Associate</i>	(212) 450-4670

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SUNBEAM CORPORATION

Executive Summary

Transaction Overview

Sunbeam Corporation is a leading designer, manufacturer, marketer and distributor of branded consumer products. Prior to the Acquisitions, the Company's principal brands included *Sunbeam*®, *Oster*® and *Grillmaster*® products marketed in five categories. Each of these products has a leading market share in its category and enjoys high levels of brand name recognition among consumers. The Company distributes primarily through mass merchandisers, home centers and club channels, including Wal-Mart, Kmart, Sears, Target and Home Depot. In 1996 Sunbeam commenced a restructuring under the guidance of Chairman and Chief Executive Officer, Albert J. Dunlap (the "1996 Restructuring"). As a result, Sunbeam's net revenues increased to \$1.2 billion from \$984 million and EBITDA increased to \$239 million from \$48.0 million in 1997 over 1996, respectively.

On March 2, 1998, Sunbeam announced the acquisition of three leading branded consumer products companies. The acquisitions included The Coleman Company, Inc., a leading manufacturer and marketer of products for the outdoor recreation market ("Coleman"); Signature Brands USA, Inc., a leading manufacturer of a comprehensive line of consumer and professional products, including the *Mr. Coffee*® brand ("Signature Brands"); and First Alert, Inc., the market leader in smoke and carbon monoxide detectors in the United States ("First Alert" and collectively with Coleman and Signature Brands, the "Acquisitions"). Sunbeam believes that the Acquisitions consist of leading brands in underperforming companies that present significant opportunities for cost savings through the elimination of inefficient and redundant operations. Sunbeam also believes that significant additional revenue can be derived from synergistic use of the global distribution channels that result from the combination of Sunbeam's domestic and the Acquisitions' international distribution networks. On a pro forma basis, Sunbeam's product portfolio consists of 13 leading brand names competing in 10 broad categories with 1997 net revenues and EBITDA of approximately \$2.7 billion and \$426 million, respectively.

On May 11, 1998, Sunbeam announced a comprehensive integration program (the "Integration") with expected annual cost savings of \$253 million (the "Integration Cost Savings"), to be achieved by the middle of 1999. The Company also announced that it expects to achieve incremental revenue of \$265 million as a result of improved sales management techniques, distribution synergies resulting from the Acquisitions and new product introductions ("Revenue Opportunities"). As part of the Integration and Revenue Opportunities, Sunbeam intends to implement a new set of strategic initiatives which it believes will further drive the growth of the Company, including (i) focusing the Company's global marketing effort on six "Power Brands", (ii) the introduction of dedicated, multifunctional sales teams to serve each of Sunbeam's top six customers, and (iii) the introduction of new products. Sunbeam also announced its intention to divest three non-core Coleman businesses.

The total consideration for the Acquisitions is approximately \$2.6 billion (based on the market price of Sunbeam common stock on the date the Acquisitions were announced) consisting of a

SUNBEAM CORPORATION

Executive Summary

(continued)

combination of cash and Sunbeam stock. The cash portion of the consideration was raised through the \$1.7 billion Senior Secured Credit Facilities (the "Facilities") underwritten by Morgan Stanley, BARS and First Union and the issuance of the Zero Coupon Convertible Subordinated Debentures due 2018.

Acquisition Summary

Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Coleman's principal brands include *Coleman*®, *Camping Gaz*®, *EastPak*® and *Peak I*®. The total consideration for Coleman is approximately \$2.1 billion (based on the market price of Sunbeam common stock on the date the Acquisitions were announced). The Company expects to issue approximately 21.3 million shares of common stock with the balance of the consideration paid in cash. Coleman had 1997 net revenues and EBITDA of \$1.2 billion and \$99.0 million, respectively.

Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands' principal brands include *Mr. Coffee*®, *Health o meter*®, *Pelouze*®, *Counselor*® and *Borg*®. The Signature Brands consideration was approximately \$253 million. Signature Brands had fiscal 1997 net revenues and EBITDA of \$276 million and \$31.0 million, respectively.

First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's principal brands include *First Alert*®, *Family Guard*®, *Suregrip*® and *BRK*®. The First Alert transaction was valued at approximately \$178 million. First Alert had 1997 net revenues and EBITDA of \$187 million and (\$2.7) million, respectively.

Sources and Uses:

The table below summarizes the sources and uses for the transaction and the Acquisitions:

Sources		Uses	
(\$ in millions)		(\$ in millions)	
	Amount		Amount
Cash	\$ 6.3	Refinance Acquisition Debt	\$1,283.9
Revolving Credit Facility ⁽¹⁾	79.0	Refinance Sunbeam Debt	311.5
Term Loan A	550.0	Purchase Acquisition Equity	1,209.3
Term Loan B	750.0	Option Costs	24.8
Zero Coupon Subordinated		Transaction Fees	62.5
Convertible Debentures	750.0		
Equity ⁽²⁾	756.7		
Total Sources	\$2,892.0	Total Uses	\$2,892.0

(1) Total facility of \$400.0 million

(2) Represents initial equity issued for the first stage of the acquisition of Coleman, consisting of 14.1 million shares of Sunbeam common stock

SUNBEAM CORPORATION

Executive Summary

(continued)

Summary of Senior Secured Credit Facilities (\$ in millions)

The table below summarizes certain details of the Company's Senior Secured Credit Facilities.

Tranche	Amount	Tenor	Initial LIBOR Spread ⁽¹⁾
Revolving Credit Facility	\$ 400.0	7.0 years	2.25%
Term Loan A	550.0	7.0 years	2.25%
Term Loan B	750.0	8.5 years	2.50%
Total	\$ 1,700.0		

(1) No step downs prior to 12/31/98.

Pro Forma Capitalization (\$ in millions)

The table below sets forth the Company's estimated December 31, 1997 pro forma book capitalization.

	Amount	%
Revolver	\$ 79.0	2.2%
Term Loan A	550.0	15.6
Term Loan B	750.0	21.2
Other Senior Debt ⁽¹⁾	69.9	2.0
Total Senior Debt	1,448.9	41.0
Zero Coupon Convertible Subordinated Debenture	750.0	21.2
Minority Interest	1.2	0.0
Common Stock	1,333.7	37.7
Total Book Capitalization	\$ 3,533.8	100.0%

(1) Includes foreign debt and certain other issues under \$10.0 million each.

SUNBEAM CORPORATION

Executive Summary

(continued)

Summary of Projected Operating and Financial Statistics (*\$ in millions*)

The table below sets forth summary operating and financial statistics for the Company.

Income Statement Data	1997PF	Projected					
		1998	1999	2000	2001	2002	2003
Sales ⁽¹⁾	\$2,699.9	\$2,822.2	\$2,971.7	\$3,120.3	\$3,276.3	\$3,440.1	\$3,612.1
% Growth	NA	4.5%	5.3%	5.0%	5.0%	5.0%	5.0%
Cost of Goods Sold	1,931.3	2,011.6	2,078.2	2,178.4	2,279.6	2,381.9	2,506.5
% of Sales	71.5%	71.3%	69.9%	69.8%	69.6%	69.2%	69.4%
Gross Profit	768.6	810.5	893.5	941.9	996.8	1,058.2	1,105.7
% of Sales	28.5%	28.7%	30.1%	30.2%	30.4%	30.8%	30.6%
SG&A	469.3	487.2	511.9	537.4	564.2	592.3	621.7
% of Sales	17.4%	17.3%	17.2%	17.2%	17.2%	17.2%	17.2%
Integration Cost Savings ⁽²⁾	(60.0)	(60.0)	(150.0)	(150.0)	(150.0)	(150.0)	(150.0)
Operating Income	359.3	383.3	531.5	554.4	582.5	615.9	633.9
% of Sales	13.3%	13.6%	17.9%	17.8%	17.8%	17.9%	17.6%
Amortization/Other	63.0	60.8	60.8	60.8	60.8	60.8	60.8
EBIT	296.3	322.5	470.7	493.5	521.7	555.0	573.1
% of Sales	11.0%	11.4%	15.8%	15.8%	15.9%	16.1%	15.9%
Depreciation & Amortization	130.2	136.9	155.6	171.6	188.4	206.2	224.9
EBITDA	426.4	459.4	626.3	665.1	710.1	761.2	798.0
% Margin	15.8%	16.3%	21.1%	21.3%	21.7%	22.1%	22.1%
Implementation Charges ⁽³⁾	--	280.5	--	--	--	--	--
Net Interest Expense (Income)	151.1	147.8	127.2	105.1	83.1	59.4	(6.0)
Income Tax	68.5	0.0	68.3	153.7	171.2	191.2	220.4
Net Income	\$76.7	(\$105.9)	\$275.1	\$234.8	\$267.3	\$304.5	\$358.7

(1) 1999 Incremental revenue of \$80.0 million from Revenue Opportunities assumed in projections. Company expects total incremental revenue from Revenue Opportunities to be approximately \$265.0 million achieved by the end of 1999 (See Appendix B for detailed description of Revenue Opportunities).

(2) Integration Cost Savings assumed to be \$60.0 million in 1998 and \$150.0 million in 1999. Company expects total Integration Cost Savings to be approximately \$253.0 million by mid-1999 (See Appendix A for detailed description of Integration Cost Savings).

(3) Includes \$150.0 million of cash and \$130.4 million of non-cash Implementation Charges. (See Appendix A for detailed description of Implementation Charges). Excludes Acquisition charges which have been capitalized

SUNBEAM CORPORATION

Executive Summary (continued)

Summary of Projected Operating and Financial Statistics (\$ in millions)

The table below sets forth summary operating and financial statistics for the Company.

Balance Sheet Data	Projections						
	1997PF	1998	1999	2000	2001	2002	2003
ASSETS (selected accounts)							
Accounts Receivable	\$597.2	\$641.8	\$667.6	\$692.5	\$709.1	\$744.6	\$781.8
Inventories	653.0	648.9	649.5	660.1	690.8	721.8	759.5
Net Property, Plant and Equipment ⁽¹⁾	425.6	350.3	376.2	401.2	424.3	444.6	461.3
Trademarks & Tradenames	200.9	193.0	185.2	177.4	169.6	161.7	153.9
Total Assets	4,264.0	4,173.0	4,102.5	4,108.0	4,123.8	4,156.3	4,516.7
LIABILITIES+EQUITY (selected accounts)							
Accounts Payable	233.5	264.5	273.3	286.5	299.8	313.2	329.6
Revolver ⁽²⁾	79.0	2.0	0.0	0.0	0.0	0.0	0.0
Term Loan A ⁽²⁾	550.0	550.0	218.0	0.0	0.0	0.0	0.0
Term Loan B ⁽²⁾	750.0	746.3	738.8	655.9	328.3	0.0	0.0
Other Senior Debt	69.9	69.2	68.5	67.7	66.9	40.4	0.0
Zero Coupon Subordinated Convertible Debentures ⁽³⁾	750.0	788.0	827.9	869.8	913.8	0.0	0.0
Common Equity	1,333.7	1,207.0	1,408.3	1,637.1	1,898.4	3,158.1	3,512.0
Total Liabilities and Equity	4,264.0	4,173.0	4,102.5	4,108.0	4,123.8	4,156.3	4,516.7

(1) Assumes a \$100.0 million adjustment to PP&E and a \$30.4 million adjustment to Other Non-Current Liabilities as a result of non-cash Implementation Charges in 1998.

(2) Assumes 100% excess cash flow sweep, first against Revolver, then against Term Loan A, then against Term Loan B.

(3) Assumes conversion of the Zero Coupon Convertible Subordinated Debentures into common stock in 2002.

Pro Forma Credit Statistics (\$ in millions)

The table below sets forth summary credit statistics for the Company.

Coverage	Projections						
	1997PF	1998	1999	2000	2001	2002	2003
EBITDA/Cash Interest	3.70x	4.10x	7.00x	10.18x	17.20x	49.86x	N.M.
(EBITDA-CapEx)/Cash Interest	2.88	3.21	5.66	8.11	13.57	39.05	N.M.
EBITDA/Total Interest ⁽¹⁾	2.78x	3.06x	4.84x	6.20x	8.32x	12.37x	N.M.
(EBITDA-CapEx)/Total Interest ⁽¹⁾	2.16	2.40	3.91	4.94	6.57	9.69	N.M.
Leverage							
Senior Debt/EBITDA	3.40x	2.98x	1.64x	1.09x	0.56x	0.05x	0.00x
Total Debt/EBITDA	5.16	4.69	2.96	2.40	1.84	0.05	0.00
Senior Debt/Book Cap.	41.0%	40.6%	31.4%	22.4%	12.3%	1.3%	0.0%
Total Debt/Book Cap.	62.2%	64.1%	56.8%	49.3%	40.8%	1.3%	0.0%
Cumulative Free Cash Flow	\$ --	\$81.4	\$423.6	\$725.3	\$1,053.7	\$1,408.5	\$1,771.6
Capital Expenditures	95.0	100.0	120.0	135.0	150.0	165.0	180.0

(1) Assumes conversion of the Zero Coupon Convertible Subordinated Debentures into common stock in 2002.

SUNBEAM CORPORATION

Executive Summary

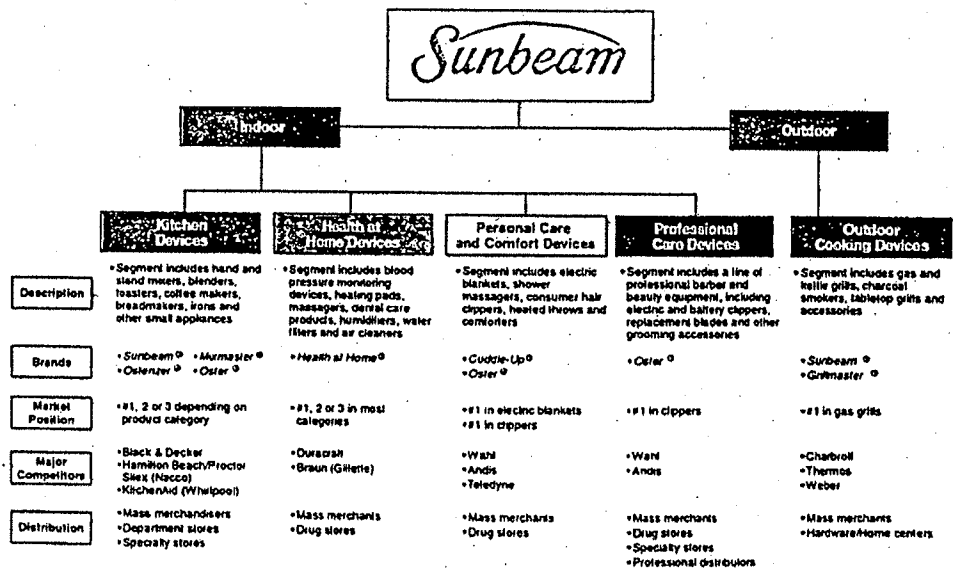
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Company Overview

Sunbeam Corporation is a leading designer, manufacturer, marketer and distributor of branded consumer products. Prior to the Acquisitions, the Company's principal brands included *Sunbeam*[®], *Oster*[®] and *Grillmaster*[®] products marketed in five categories. Each of these products has a leading market share in its category and enjoys high levels of brand name recognition among consumers. The Company distributes primarily through mass merchandisers, home centers and club channels, including Wal-Mart, Kmart, Sears, Target and Home Depot.

The Company's products are generally classified, by use, as either Indoor or Outdoor. Indoor includes (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers); (2) Health at Home products (vaporizers, humidifiers, air cleaners, water purifiers, massagers and scales); (3) Personal Care and Comfort products (shower massagers, hair clippers and trimmers, electric blankets); and (4) Away From Home products (clippers and related products sold to the professional beauty, barber and veterinarian trade through commercial and institutional channels). The Outdoor category includes Outdoor Cooking (electric, gas and charcoal grills and grill accessories).

Sunbeam Pre-Acquisitions



SUNBEAM CORPORATION

Executive Summary

(continued)

On March 2, 1998, Sunbeam announced the Acquisitions including Coleman, a leading manufacturer and marketer of products for the outdoor recreation market; Signature Brands, a leading manufacturer of a comprehensive line of consumer products, including the *Mr. Coffee*® brand; and First Alert, the market leader in smoke and carbon monoxide detectors in the United States. On a pro forma basis Sunbeam had 1997 net revenues and EBITDA of approximately \$2.7 billion and \$426 million, respectively.

On May 11, 1998, Sunbeam announced the Integration with expected annual cost savings of \$253 million to be achieved by the middle of 1999. The Company also announced that it expects to achieve incremental revenue of \$265 million as a result of Revenue Opportunities. As part of the Integration and the Revenue Opportunities, Sunbeam intends to implement a new set of strategic initiatives which it believes will further drive the growth of the Company, including (i) focusing the Company's global marketing effort on six "Power Brands", (ii) the introduction of dedicated, multifunctional sales teams for Sunbeam's top six customers, and (iii) the introduction of new products.

Sunbeam also announced its intention to divest three non-core businesses acquired with Coleman. The businesses to be divested include *EastPak*®, spas and air compressors (the "Dispositions"). The Company has retained Morgan Stanley to evaluate the businesses and expects to complete the sales by late 1998.

The Acquisitions

Sunbeam believes that Coleman, Signature Brands and First Alert comprise leading brands in underperforming companies that present significant opportunities for cost savings through the elimination of inefficient and redundant operations. Sunbeam also believes that significant additional revenue can be derived from synergistic use of the global distribution channels that results from the combination of Sunbeam's domestic and the Acquisitions' international distribution networks. Coleman's products fall principally under Sunbeam's Outdoor division, while Signature Brands and First Alert products fall under Sunbeam's Indoor division.

SUNBEAM CORPORATION

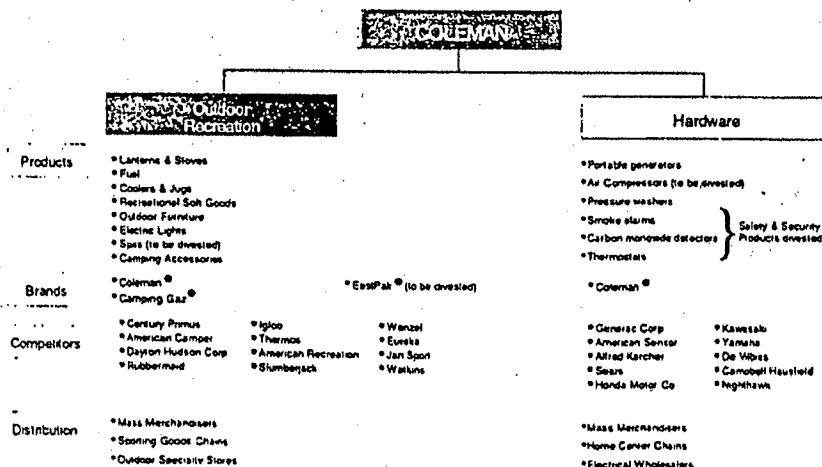
Executive Summary

(continued)

Coleman. Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman had 1997 net revenues and EBITDA of \$1.2 billion and \$99.0 million, respectively.

- **Outdoor Recreation:** Includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffel bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman*[®], *Camping Gaz*[®] and *EastPak*[®]. The Company intends to dispose of *EastPak*[®] and spas.
- **Hardware:** Includes portable generators and air compressors. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains under the *Powermate*[®] brand name. The Company intends to dispose of the air compressor business.

In March 1998, Coleman sold its subsidiary, Coleman Safety Security Products, Inc. for approximately \$105 million. This subsidiary had 1997 net revenues and EBITDA of \$88.4 million and \$11.6 million, respectively. The *EastPak*[®], spas and air compressors businesses of Coleman which Sunbeam intends to divest had 1997 net revenues and EBITDA of \$190 million and \$12.2 million, respectively.

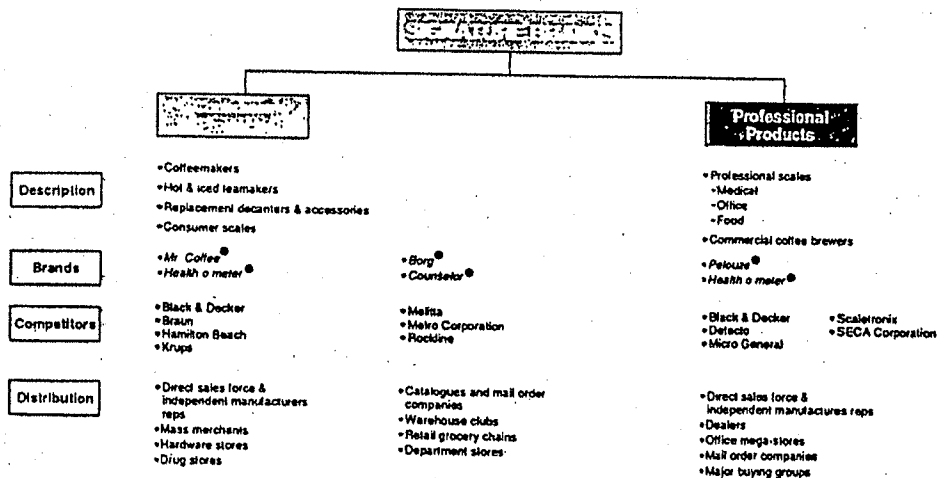


SUNBEAM CORPORATION

Executive Summary (continued)

Signature Brands. Signature Brands, founded in 1919, is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands had fiscal year end September 28, 1997 net revenues and EBITDA of \$276 million and \$31.0 million, respectively.

- **Consumer Products:** Signature Brands markets its consumer products under the *Mr. Coffee*®, *Health o meter*®, *Counselor*® and *Borg*® brand names. Mr. Coffee, Inc. has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. In addition, *Mr. Coffee*® is the leading brand of basket-type coffee filters in the United States. Signature Brands also manufactures a comprehensive line of *Health o meter*® brand analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales.
- **Professional Products:** Professional products include the *Pelouze*® and *Health o meter*® brands of office, foodservice and medical scales and *Mr. Coffee*® brand commercial coffeemakers. Signature Brands' office products, marketed under the *Pelouze*® brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily. *Pelouze*® foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications.

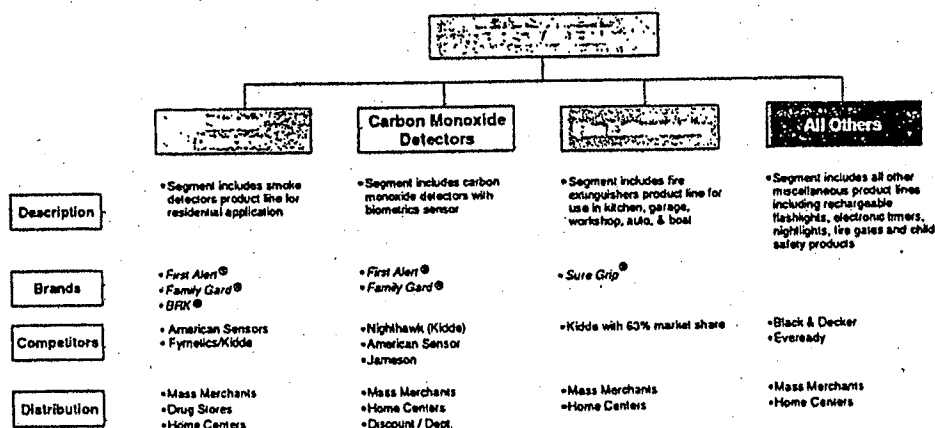


SUNBEAM CORPORATION

Executive Summary (continued)

First Alert. First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the *First Alert*® brand name, which First Alert believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on its brand name and its leading smoke detector market share to develop and market a broad range of residential safety products. First Alert is also one of the leading participants in the United States retail fire extinguisher market. First Alert had 1997 net revenues and EBITDA of \$187 million and (\$2.7) million, respectively.

- **Smoke Detectors.** First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors and has the leading U.S. market share in its markets. First Alert markets its smoke detectors under three principal brand names: *First Alert*®, *Family Gard*® and *BRK*®.
- **Carbon Monoxide Detectors:** These products include carbon monoxide detectors, first introduced by First Alert in September 1993, with biomimetic sensors sold under the *First Alert*® and *Family Gard*® brand names. First Alert holds the leading market position in the carbon monoxide detector market.
- **Fire Extinguishers:** First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert*® brand smoke detectors. These products are sold under the *Sure Grip*® brand name which is one of the leading brand names in the U.S. retail fire extinguisher market.

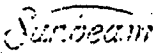






SUNBEAM CORPORATION

Executive Summary (continued)

Sunbeam Post-Acquisitions

On a pro forma basis, Sunbeam has 13 leading brands competing in 10 broad categories.

			
 <ul style="list-style-type: none"> • Kitchen Appliances <ul style="list-style-type: none"> • Mixers, blenders, toasters, coffee makers, bread makers, irons and other small appliances • Health at Home <ul style="list-style-type: none"> • Blood pressure monitoring devices, heating pads, massagers, aromatherapy products, humidifiers, water filters and air cleaners • Personal Care and Comfort <ul style="list-style-type: none"> • Electric blankets, shaver massagers, hair curlers, hair clippers, heated throws and linens • Outdoor Cooking <ul style="list-style-type: none"> • Gas and electric grills, char-broilers, smokers, tabletop grills and accessories • Professional Care <ul style="list-style-type: none"> • Professional barber and beauty equipment, including electric and hot air clippers, replacement blades and other grooming accessories <p style="text-align: center;">Sunbeam 131st St. Cincinnati, OH</p>	<ul style="list-style-type: none"> • Outdoor Recreation <ul style="list-style-type: none"> • Luminaires and stoves • Fuel • Coolers and Jugs • Recreational Soft Goods • Outdoor Furniture • Lighting • Spas • Camping Accessories • Hardware <ul style="list-style-type: none"> • Generators • Air Compressors • Pressure Washers <p style="text-align: center;">Coleman Company, Inc. Dallas, TX</p>	<ul style="list-style-type: none"> • Consumer Products <ul style="list-style-type: none"> • Coffee makers • Toaster ovens • Coffee Filters • Other Kitchen Countertop Appliances • Back, Kitchen and Dish Scales • Other Personal Care Products • Professional Products <ul style="list-style-type: none"> • Office, Food Service and Medical Scales and Timers <p style="text-align: center;">Mr. Coffee Health & more Pittsford, NY Covington, LA St. Louis, MO</p>	<ul style="list-style-type: none"> • Residential Safety Products <ul style="list-style-type: none"> • Smoke detectors • Carbon monoxide detectors • Fire extinguishers • Lighting • Rechargeable flashlights and lanterns • Nightlights • Passive infrared motion sensors • Electronic and electromechanical timers • Personal CareSentry <p style="text-align: center;">First Alert Family Guard Brix, IL</p>

Integration Cost Savings

Management intends to capitalize on its extensive experience in cost containment and operational improvement by eliminating redundant or inefficient operations of the Acquisitions and Sunbeam's Mexican operations. The Company has announced that it expects to achieve annual cost savings of \$253 million by the middle of 1999. The cost savings will be generated from nine categories: procurement, sourcing strategy, staff reduction, facility rationalization, controllable expenses, transportation expense reduction, marketing and sales expense savings, working capital reductions and the implementation of new information technology. In 1998, \$60.0 million of these savings have been included in the projections contained herein, with \$150.0 million per annum included thereafter.

The Company expects to incur approximately \$280 million in charges related to implementing the Integration (the "Implementation Charges"). The Implementation Charges consist of cash charges of approximately \$150 million and approximately \$130 million in non-cash charges. (See Appendix A for detailed description of the Integration Cost Savings and Implementation Charges).

Revenue Opportunities

Sunbeam expects distribution synergies with the Acquisitions, improved sales management techniques and planned new product introductions to generate at least \$265 million in annual incremental revenues commencing in 1999. The distribution synergy is derived predominantly from using Sunbeam's domestic and Latin American distribution networks to promote the Acquisitions' products and the Coleman European and Asian distribution network to promote the Sunbeam, Signature Brands and First Alert brand portfolio. The Company expects to generate

SUNBEAM CORPORATION

Executive Summary

(continued)

\$140 million in incremental 1999 revenues through these cross-marketing initiatives. Sunbeam is also establishing dedicated, multifunctional sales teams to serve each of its six largest customers. The Company expects this and other sales management techniques to generate \$50.0 million in incremental 1999 revenues. The Company also expects new products to contribute \$75.0 million in additional 1999 revenues. In 1999, \$80.0 million of incremental revenues have been included in the projections contained herein. (See Appendix B for detailed description of Revenue Opportunities)

New Management Structure

As part of the Integration and Revenue Opportunities, the Company has established a new corporate organizational structure to improve communications and increase decision-making responsibility. As of February 1, 1998, certain key members of management including Mr. Dunlap, Mr. Kersh, and Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation incentives.

Dispositions

In connection with the Integration, Sunbeam plans to divest three non-core businesses that do not fit its strategic focus. The businesses comprise the *EastPak*[®] backpack, spa and compressor businesses that were acquired as a part of Coleman. The Company believes that the divestitures will generate aggregate pre-tax proceeds of \$250 to \$350 million based on preliminary estimates. These businesses had 1997 net revenues and EBITDA of \$190 million and \$12.2 million, respectively. Proceeds from Dispositions will be applied toward Mandatory Repayment of the facilities, subject to certain baskets as outlined in the Credit Facilities.

The Company considers each of the businesses to be non-core as follows:

EastPak[®] - The *EastPak*[®] product is "fashion" oriented rather than "outdoor recreation" oriented. The Company recognizes that the fashion nature of this offering does not meet the need of the outdoor recreation consumer for highly functional and durable products. Also, the distribution channels for the *EastPak*[®] product are different from those of the Company's other outdoor recreation products. Neither the product nor the channels fit within Sunbeam's long-term strategic focus.

Spas - The distribution channels through which the spa products are sold are incompatible with the Company's other outdoor recreation channels. These channels do not fit within Sunbeam's long-term strategic focus.

Compressors - The Company considers the product to be "power tool" oriented rather than "outdoor recreation" oriented. This sort of product does not fit within Sunbeam's long-term strategic focus.

SUNBEAM CORPORATION

Executive Summary

(continued)

Recent Financial Developments

Actual revenues for the first quarter of 1998 (excluding any pro forma adjustments for the Acquisitions) were \$244.3 million, compared with \$253.5 million in the first quarter of 1997. Before one-time charges of \$36.8 million for early retirement of debt and compensation expense relating to new three-year employment agreements with Sunbeam's top three executives, there was a net loss from continuing operations of \$7.8 million in the 1998 quarter versus net income from continuing operations of \$20.6 million in the year-ago quarter. After the one-time charges of \$.43 per share, the loss per share was \$0.52 in the 1998 quarter compared with earnings per share of \$0.08 in the 1997 period.

Domestic sales, representing 74% of total revenues (excluding Coleman) in the 1998 quarter, declined 15.4% from the 1997 quarter due to lower price realization and unit volume declines. Most of the domestic sales decline was in outdoor cooking products due to lower than anticipated retail sell-through of these products. International sales, representing 26% of total revenues during the first quarter, grew 14.0% over the first quarter of 1997. This sales growth was driven primarily by improved distribution and new products sales in Latin America, partially offset by lower sales of outdoor cooking products in Europe and Canada. The gross margin for the first quarter of 1998 decreased 13.3 percentage points to 13.4%, primarily due to margin erosion in the appliance, health at home and outdoor cooking categories. (See "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in Sunbeam's 10-Q for the period ended March 31, 1998.)

Recent Legal Proceedings

On May 15, 1998 a purported class action entitled *Claybrook et al. v. BRK, Inc. et al.* ("Claybrook") was filed in the Circuit Court of Tuscaloosa County, Alabama against the Company and its wholly owned subsidiary BRK Brands, Inc. The complaint alleges misrepresentation, breach of express and implied warranties, and unjust enrichment due to purported defects in *First Alert*® Ionization Smoke Detectors. The plaintiff has expressly excluded all claims for personal injury or wrongful death from this action. The complaint alleges that ionization smoke detectors do not perform adequately and that the Company concealed and misrepresented information about the alleged limitations of *First Alert*® Ionization Smoke Detectors. The plaintiff seeks economic damages in an unspecified amount. The Company is currently investigating this action and anticipates preparing a vigorous defense to the lawsuit.

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SUNBEAM CORPORATION

Investment Considerations

- Experienced, Committed Management Team Has Proven Success with Restructurings

The Company's Chairman and Chief Executive Officer Albert Dunlap, and management team, have had significant success in restructuring underperforming corporations. Under the guidance of Mr. Dunlap, Sunbeam significantly increased revenues, EBITDA margins, productivity, capacity utilization and reduced product development time as part of the 1996 Restructuring. As of February 1, 1998, the Company entered into new three-year employment contracts with Mr. Dunlap, Russell A. Kersh, the company's Vice Chairman and Chief Financial Officer, and David C. Fannin, the Company's Executive Vice President, Chief Legal Officer and Secretary, each of which include substantial equity-based compensation incentives.

The 1996 Restructuring included the rationalization of Sunbeam's core products, divestiture of non-core businesses, and the closing of 18 factories, 43 warehouses and 5 headquarters offices. The Company also reduced the number of stock keeping units ("SKU's") from approximately 11,400 to 2,000, consolidated all purchasing functions, and outsourced certain of the administrative, manufacturing and distribution activities. These actions led to a reduction of nearly half the work force from 12,000 to 7,000 employees.

	12/31/96	12/31/97	Change
Sales	\$984MM	\$1,168MM	+\$184MM
EBITDA	48MM	239MM	+\$191MM
EBITDA Margin	4.9%	20.5%	+15.6%
Operating Margin	0.5%	17.1%	+16.6%
# of Factories	26	8	-18
# of Headquarters	6	1	-5
# of Warehouses	61	18	-43
# of Employees	12,000	7,000	-5,000
# of SKUs	11,400	2,000	-9,400

In 1997, net sales grew 18.7% and operating margin improved to 17.1% from 0.5% (excluding the impact of special charges) in 1996, with operating margins reaching 20% in the fourth quarter of 1997 up from 0.2% before the turnaround. EBITDA margins also increased from 4.9% in 1996 to 22.3% in the fourth quarter of 1997. The Company also signed 25 new international distribution/licensing agreements which added \$35.0 million in revenue, introduced 89 new products (35 U.S., 54 international) which added \$150 million in revenue. The Company conducted significant expansion of distribution with key retailers such as Wal-Mart, Kmart, Target, Costco and Home Depot. The Company improved capacity utilization to 75% in 1997 (from 50% in 1996) and increased factory productivity by over 20% as a result of more efficient manufacturing processes. New product development time was decreased to 6 months from over 2 years, and Sunbeam gained market share in each of its principal product categories in 1997.

SUNBEAM CORPORATION

Investment Considerations

(continued)

- **Compelling Acquisition Rationale**

Each of Coleman's, Signature Brands' and First Alert's principal products are leaders within their markets and compliment Sunbeam's existing portfolio of leading brand names. On a combined basis Sunbeam has the number one market share in 10 of 13 categories and is number two in the remaining three. The Company believes that leading branded products generate higher margins and have greater influence with distribution channels regarding shelf location, shelf space and promotional activities.

Summary Market Positions

Product Category	U.S. Retail Market Size (\$ millions)	Market Share (%)	Market Position
Camping	\$3,100	33%	#1
Gas Grills	800	29	#1
Coffee Makers	450	30	#1
Breadmakers	310	11	#2
Irons	280	19	#2
Blenders	165	33	#1
Electric Blankets	160	90	#1
Stand Mixers	150	17	#2
Scales	140	57	#1
Clippers	125	33	#1
Smoke Alarms	120	72	#1
Carbon Monoxide Detectors	90	49	#1
Heating Pads	60	65	#1

Source: Company estimates, IMR, various industry publications.




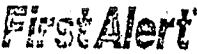
SUNBEAM CORPORATION

Investment Considerations

(continued)

- **Exceptional Brand Recognition Profile**

Coleman, Mr. Coffee and First Alert are highly recognized among consumers with brand recognition ratings ranging from 67% for Coleman to 95% for Mr. Coffee. These products fit well with the Sunbeam and Oster brand portfolios which rate 95% and 90%, respectively. Sunbeam believes that these recognition ratings result in consumers seeking out and purchasing the Company's consumer products.

Brand	Recognition Rating
	95+%
	90+%
MR. COFFEE	95+%
	67+%
	80+%

Source: Company estimates. Ogilvy & Mather, ASD, various industry publications.

- **Critical Mass/Consolidated Supplier to Retail Chains**

On a pro forma basis, Sunbeam had 1997 net revenues of \$2.7 billion with 13 leading consumer brands in 10 broad categories. The Company believes that it will be well-positioned as a consolidated consumer products supplier to the relatively concentrated retail channels to which it sells its products. The Company believes that these retail channels prefer to deal with fewer suppliers, with more comprehensive product lines, and therefore, expect the Acquisitions to improve its relationships with these customers. In particular, the Company believes its dedicated, multifunctional sales teams will maximize its sales to its six key customers.



SUNBEAM CORPORATION

Investment Considerations

(continued)

- **Substantial Integration Cost Savings**

The Company, with the assistance of Coopers and Lybrand, has completed a comprehensive Integration plan which by the middle of 1999 is expected to generate annualized cost savings of \$253 million from the following categories:

Savings Category	Savings (\$ in millions)
Procurement	\$ 66
Sunbeam Sourcing Strategy ⁽¹⁾	52
Staff Reduction	50
Facility Rationalization	32
Controllable Expenses	24
Transportation	11
Marketing and Sales Expenses	8
Working Capital Reduction	7
Information Technology	3
Total Cost Savings	<u>\$253</u>

(1) Commenced prior to the Coopers and Lybrand study.

Sunbeam management has specific experience from the 1996 Restructuring to enable it to implement the Integration. The actions required to realize the cost savings are underway and the Company expects the actual savings to impact EBITDA commencing in the third quarter of 1998, with the full impact expected by the middle of 1999. For projection purposes \$60.0 million of Integration Cost Savings have been included in 1998 with \$150.0 million per annum included thereafter. (See Appendix A for a detailed description of the Integration Cost Savings.)

SUNBEAM CORPORATION

Investment Considerations (continued)

- **Significant Revenue Opportunities**

The Company has also identified \$265 million in Revenue Opportunities in the following categories:

Opportunity	Initiatives Required	Incremental 1999 Revenues (\$ in millions)
<i>Sales Management</i>	<ul style="list-style-type: none">• Order fill improvement• Dedicated customer teams• Telesales leverage	\$ 32 10 8
<i>New Products</i>	<ul style="list-style-type: none">• New Product introductions	75
<i>Distribution</i>	<ul style="list-style-type: none">• Domestic distribution opportunities• Current products to new geographies	40 <u>100</u>
Total		<u>\$265</u>

Sunbeam is implementing initiatives that it expects will increase its order fill efficiency from 79% to 90%. Sunbeam is also establishing dedicated, multifunctional sales teams to serve each of its six largest customers and is improving telesales coverage of its smaller accounts. The Company expects these opportunities to generate \$50.0 million in incremental 1999 revenues.

The Company also expects new product introductions to contribute \$75.0 million in additional 1999 revenues. In addition, Sunbeam has significant air cleaner and water purification product introductions underway which are expected to add \$50.0 million in incremental revenues in the Health at Home category in the second half of 1998.

Sunbeam has a strong existing distribution system in North America and Latin America which it intends to use to promote the Acquisition brands. Coleman has a strong existing distribution system in Europe and Asia which the Company intends to use to promote the remaining Sunbeam brand portfolio. The Company expects to generate \$140.0 million in incremental revenues through these cross-marketing initiatives. (See Appendix B for detailed description of Revenue Opportunities.)

SUNBEAM CORPORATION

Investment Considerations

(continued)

- Significant Revenue Opportunities

The Company has also identified \$265 million in Revenue Opportunities in the following categories:

Opportunity	Initiatives Required	Incremental 1999 Revenues (\$ in millions)
<i>Sales Management</i>	<ul style="list-style-type: none"> • Order fill improvement • Dedicated customer teams • Telesales leverage 	\$ 32 10 8
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SUNBEAM CORPORATION

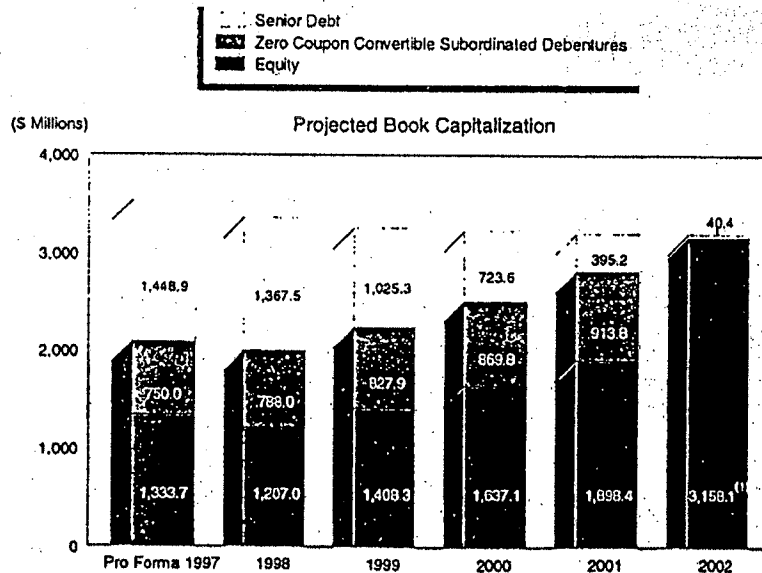
Investment Considerations

(continued)

- Conservative Capital Structure

The Credit Facilities are senior to the Company's recently issued \$750 million Zero Coupon Convertible Subordinated Debentures which mature in 2018 and require no debt service during the tenor of the Credit Facilities. While the holders of the Zero Coupon Convertible Subordinated Debentures have the right to put the securities in year five, the Company (which can satisfy the put in either cash or stock) is prohibited under the Credit Agreement from making this payment in cash while the Facilities remain outstanding. (See Zero Coupon Convertible Subordinated Debentures Offering Memorandum for further detail.)

Pro forma for the Acquisitions, Sunbeam is projected to generate 1998 net revenues of over \$2.8 billion and EBITDA of \$459 million. Pro forma 1997 Total Debt to EBITDA is 5.2x. Senior Leverage is 3.4x, reducing to 1.1x within three years. Cash Interest coverage is 3.7x pro forma 1997, and is 2.9x after subtracting capital expenditures. The Company is projected to generate approximately \$1.8 billion in cumulative free cash flow by 2003.



Note (1) Assumes conversion of Zero Coupon Convertible Subordinated Debentures into common equity in 2002.

SUNBEAM CORPORATION

Summary of Terms and Conditions

Borrowers:	Sunbeam Corporation ("Sunbeam") and its successors. The Coleman Company, Inc. ("Coleman"), Signature Brands USA, Inc. ("Signature") and First Alert, Inc. ("First Alert"). Upon the repayment, or assumption thereof by Sunbeam, of loans (and all other obligations relating thereto) made to any of Coleman, Signature or First Alert, such Borrower will be released from its obligations as a Borrower.
Guarantors:	Sunbeam shall guarantee all obligations of Coleman, Signature and First Alert. Upon repayment of loans made to such entities or assumption thereof by Sunbeam, Sunbeam will be released from its guarantee. In addition, the Senior Facilities will be guaranteed by Subsidiaries of Sunbeam as set forth herein.
Syndication Agent & Arranger:	Morgan Stanley Senior Funding, Inc. ("MSSF").
Co-Arrangers:	BancAmerica Robertson Stephens and First Union Capital Markets, a division of Wheat First Securities, Inc.
Lenders:	MSSF, Bank of America National Trust and Savings Association ("BA"), First Union National Bank ("First Union") and a group of financial institutions (collectively the "Lenders") acceptable to the Borrower and the Agents.
Documentation Agent:	BA
Administrative Agent:	First Union (together with the Syndication Agent and the Documentation Agent, the "Agents").
Purpose:	To provide part of the financing required to consummate the Acquisition, to refinance certain existing indebtedness, to pay related fees and expenses, and to finance ongoing working capital, permitted acquisitions and other general requirements of the Borrowers.
Types and Amounts of Senior Facilities:	Revolving Credit Facility: \$400,000,000 revolving credit facility, with up to an amount to be determined available for letters of credit and multicurrency borrowings. The Lenders have agreed to amend the Senior Credit Facilities to provide for a Competitive Bid feature following receipt of an investment grade rating with respect to Sunbeam's long-term debt or, if Sunbeam's long-term debt is not rated, upon achieving a leverage ratio at or below 2.0 to 1 for a specified period of time to be agreed.

SUNBEAM CORPORATION

Summary of Terms and Conditions

(continued)

	Term Loan A Facility: \$550,000,000 delayed draw term loan facility, subject to reductions as set forth below.
	Term Loan B Facility: \$750,000,000 term loan facility, subject to reductions as set forth below.
Initial Closing Date:	The date of the execution and delivery of definitive loan documents for the Senior Facilities, which occurred on March 31, 1998, one day after the date of consummation of the acquisition of control of Coleman.
Subsequent Closing Dates:	April 3, 1998, the date of consummation of the acquisitions of Signature and First Alert and each of April 20, 1998 and May 8, 1998, which dates relate to the repayment of outstanding debt of Coleman, First Alert and Signature (together with the Initial Closing Date, each a "Closing Date").
Final Maturity:	With respect to the Revolving Credit Facility and the Term Loan A Facility, March 31, 2005, seven years from the Initial Closing Date. With respect to the Term Loan B Facility, September 30, 2006, eight and a half years from the Initial Closing Date.
Amortization:	Revolving Credit Facility: The revolving credit loans shall be repaid in full upon, and all letters of credit shall expire thirty days prior to, Final Maturity. Term Loan Facilities: The Term Loan A Facility shall be amortized in semi-annual installments of \$45,850,000 beginning on September 30, 1999 with a final installment of \$45,650,000 at maturity. The Term Loan B Facility shall be amortized in semi-annual installments aggregating 1% of the Facility per annum, or \$7,500,000, in each of the first seven years, \$465,000,000 in the eighth year and \$232,500,000 in the last six months of this Facility.
Availability:	Revolving Credit Facility: Drawings may be made at any time from the Initial Closing Date to but excluding the Final Maturity of the Revolving Credit Facility. Term Loan Facilities: Drawings may be made under the Term Loan A Facility during an availability period to expire on the earlier of June 30, 1998 and the date of any termination of the

SUNBEAM CORPORATION

Summary of Terms and Conditions (continued)

Term Loan A Facility. A single drawing under the Term Loan B Facility was made on the Closing Date relating to the acquisition of Signature and First Alert. Amounts prepaid or repaid may not be borrowed.

Interest:

Base Rate and LIBOR loans will be available, as follows:

A. Base Rate Option

Interest shall be at the Base Rate of the Administrative Agent plus the applicable interest margin, payable quarterly in arrears. The Base Rate is defined as the higher of the Federal Funds Rate, as published by the Federal Reserve Bank of New York, plus $\frac{1}{2}$ of 1%, or the prime commercial lending rate of the Administrative Agent (the "Prime Rate"), as announced from time to time at its head office. Interest will be calculated on the basis of the actual number of days elapsed in a year of 360 days; *provided that* interest at the Prime Rate will be calculated on the basis of a year of 365 or 366 days, as the case may be. Base Rate borrowings and repayments shall be made available on one business day's prior notice and shall be in minimum amounts to be agreed.

B. LIBOR

Interest shall be determined for periods (subject to availability to each Lender) ("Interest Periods") of one, three or six months (as selected by the Borrower) and shall be at an annual rate equal to the London Interbank Offered Rate ("LIBOR") for the corresponding deposits of U.S. Dollars plus the applicable interest margin. LIBOR will be determined by the Reference Lenders at the start of each Interest Period. Interest will be paid at the end of each Interest Period or quarterly, whichever is earlier, and will be calculated on the basis of the actual number of days elapsed in a year of 360 days. LIBOR will be adjusted for maximum statutory Regulation D reserve requirements (if any). LIBOR borrowings and repayments shall require three business days' prior notice and shall be in minimum amounts to be agreed.

Reference Lenders:

A representative sample of Lenders will be selected as Reference Lenders to establish LIBOR.

Interest Margins:

Initial margins under each of the Revolving Credit Facility and the Term Loan A Facility will be 1.00% for Base Rate loans and

SUNBEAM CORPORATION

Summary of Terms and Conditions

(continued)

2.25% for LIBOR loans. Initial margins under the Term Loan B Facility will be 1.25% for Base Rate loans and 2.50% for LIBOR Loans. Upon delivery of a compliance certificate for fiscal year ended December 31, 1998 of Sunbeam (the "Grid Date"), margins will be determined in accordance with the attached Pricing Grid, based upon Sunbeam's consolidated total leverage ratio. Upon Sunbeam's achievement of an investment grade rating or a leverage ratio of 2.0 to 1 or lower, Sunbeam and the Lenders will amend the Credit Agreement to incorporate a competitive bid loan facility.

Default Interest:

2.00% per annum in excess of the rate (including the applicable interest margin) otherwise applicable on any amount which is not paid when due.

Letter of Credit Fees:

For the account of each Lender, the applicable margin for LIBOR loans, less the fronting fee payable to the issuing bank; and, in each case for the account of the issuing bank, a fronting fee of 1/4% of and all other reasonable and customary fees.

Commitment Fees:

Initially, 0.500% per annum on the daily aggregate unused amounts of the commitments under the Facilities (other than the Term Loan B Facility), payable to the Administrative Agent, for the account of the Lenders, from and after the Initial Closing Date; beginning on the Grid Date, rate to be determined in accordance with the attached Pricing Grid. Accrued commitment fees will be payable quarterly in arrears (calculated on a 360 day basis).

Mandatory Prepayments:

An amount equal to (i) 100% of the net proceeds in excess of \$15,000,000 received from the sale or disposition of all or any part of any asset of Sunbeam or any of its subsidiaries (with exceptions, including (a) in the ordinary course of business and for reinvestment of up to \$50,000,000 per year and (b) sales of accounts receivables up to \$100,000,000), (ii) 100% of the net proceeds received from the issuance of debt (other than permitted debt, which shall include, without limitation, (a) the zero coupon convertible senior subordinated debentures due 2018 of Sunbeam, (b) up to \$6,235,000 of general obligation bonds of Sunbeam Products, Inc., (c) up to \$4,265,000 of Wayne County Development Bonds, (d) local currency loans to foreign subsidiaries, up to an aggregate principal amount to be agreed and (e) up to \$100,000,000 in connection with accounts receivable financing by Sunbeam or any of its subsidiaries after the Initial

SUNBEAM CORPORATION

Summary of Terms and Conditions

(continued)

Closing Date, (iii) 100% of all insurance recoveries or condemnation awards not committed within 180 days toward repair or replacement of the damaged or condemned property or toward environmental remediation costs and (iv) for each fiscal year of Sunbeam (beginning with the fiscal year ending in 1998), the Reduction Percentage of Excess Cash Flow (as defined in the Credit Agreement) of Sunbeam and its subsidiaries, computed on the basis of its audited annual financial statements, shall be applied to repay without penalty or premium (except for LIBOR breakage costs, if any): first, a proportionate part of the outstanding loans under the Term Loan A Facility and, to the extent the Term Loan B Facility Lenders so elect, under the Term Loan B Facility and second (once all the Term Loan Facilities loans have been paid in full), to provide cash collateral for outstanding letters of credit under the Revolving Credit Facility. Term Loan Facilities prepayments shall be applied to reduce scheduled amortization payments pro rata across all maturities. The Reduction Percentage of Excess Cash Flow shall be 50% until the Leverage Ratio (as defined in the Credit Agreement) is less than 2.75 to 1.0, and 25% thereafter.

Voluntary Prepayments: Permitted in whole or in part, with prior notice and without premium or penalty other than payment of LIBOR breakage costs (if any), subject to limitations as to minimum amounts (to be determined) of prepayments. Partial prepayments of the Term Loan Facilities are to be applied in a manner satisfactory to Sunbeam.

Voluntary Reduction of Commitments: Permitted in whole or in part upon three business days' prior notice, subject to minimum amounts to be agreed.

Security: The Senior Facilities, the guarantees referred to below and any interest rate protection provided by a Lender will be secured by perfected first priority (i) pledges of the stock of Sunbeam's direct and indirect material subsidiaries (subject to limitations for tax purposes in the case of foreign subsidiaries), and security interests in all obligations owed to any Borrower from any of its direct or indirect material subsidiaries, whether outstanding on the Initial Closing Date or made thereafter, and (ii) upon the request of the Requisite Lenders, security interests in and liens upon substantially all other assets (subject to exceptions, including for accounts receivables financing and for real property securing or permitted to

SUNBEAM CORPORATION

Summary of Terms and Conditions

(continued)

secure industrial revenue bonds or other similar debt, up to amounts to be agreed) now or hereafter owned by Sunbeam and such subsidiaries, including, but not limited to, accounts receivable, inventory, general intangibles and real property of Sunbeam and such subsidiaries. Notwithstanding the foregoing, no pledge of stock of CLN Holdings, Coleman Worldwide, or Coleman or any Coleman subsidiary shall be created until the later of (i) consummation of the second-step Coleman merger and (ii) the redemption of the CLN Holdings Notes and the Coleman Worldwide LYONs. Since the closing of the second-step Signature merger and the second-step First Alert merger, pledges in the stock of each of the direct and indirect material subsidiaries of Signature and First Alert have been created. The Lenders intend to exercise their rights to require that Sunbeam and the Subsidiary Guarantors grant security interests in and liens upon all of their assets (other than real property assets).

Guarantees:

The Senior Facilities are guaranteed, on a joint and several basis, by all of Sunbeam's direct and indirect material subsidiaries (subject to limitations for tax purposes in the case of foreign subsidiaries) and, any loans made to Coleman, Signature and First Alert, will be guaranteed by Sunbeam. Such guarantees will (i) if requested by the Agents, provide for a complete waiver by the guarantors thereunder of any rights to subrogation, reimbursement or indemnification, (ii) upon the request of the Requisite Lenders, be secured by substantially all assets owned by such guarantors and (iii) be limited to the largest amount that would not render the obligations subject to avoidance under applicable bankruptcy law. Notwithstanding the foregoing, no guarantee will be given by CLN Holdings, Coleman Worldwide, Coleman or any Coleman subsidiary until the later of the consummation of the second-step Coleman merger and the redemption of the CLN Holdings Notes and the Coleman Worldwide LYON's. Since the consummation of the second-step Signature merger and the second-step First Alert merger, guarantees have been given by each of Signature and First Alert and their direct and indirect material domestic subsidiaries.

Documentation:

The Senior Facilities are subject to a Credit Agreement (including schedules, exhibits and ancillary documentation) and related security agreements, guarantees and other supporting documentation satisfactory to the Lenders. The Credit Agreement contains representations and warranties (including, without

SUNBEAM CORPORATION

Summary of Terms and Conditions

(continued)

limitation, as to the absence of a material adverse change in the condition (financial or otherwise), assets, nature of assets, liabilities (including, without limitation, tax, ERISA and environmental liabilities) or prospects of Sunbeam and its subsidiaries taken as a whole), funding and yield protection provisions (including, without limitation, a requirement for compensation for the cost of compliance by the Lenders with capital adequacy and similar requirements), conditions precedent, covenants, events of default and other provisions determined by the Lenders to be appropriate for transactions of this type, including (without limitation) the following:

- A. Conditions Precedent: Conditions precedent to the initial borrowings under the Senior Facilities included (without limitation):
- (i) The Lenders' review of and reasonable satisfaction with the structure and final terms and conditions of, and the documentation relating to, among other things, the Acquisition and the sale or purchase of any securities issued in connection therewith.
 - (ii) The Lenders' satisfaction with Sunbeam's projections and pro forma financial statements reflecting the forecasted financial condition, income and expenses of Sunbeam and its subsidiaries after giving effect to the Acquisition, the borrowings under the Senior Facilities, and the other transactions contemplated hereby, and the Lenders' satisfaction with the condition (financial or otherwise), operations, assets, nature of assets, management, liabilities and prospects of the Targets, Sunbeam and their subsidiaries.
 - (iii) The Lenders completion of their due diligence and satisfaction with such review, including, without limitation, with respect to (a) Sunbeam's tax assumptions, (b) the ownership, corporate, organizational and legal structure of Sunbeam and its subsidiaries, (c) the collateral available to secure the Senior Facilities, (d) the Targets' and Sunbeam's material contracts, including all material purchasing agreements, and (e) all indemnities in favor of the Targets and Sunbeam.
 - (iv) Simultaneously with the initial borrowing under the Senior

SUNBEAM CORPORATION

Summary of Terms and Conditions

(continued)

Facilities, Sunbeam (a) received net cash proceeds of at least \$726.6 million from the issuance of zero coupon subordinated convertible notes, all on terms and conditions satisfactory to the Agents and (b) issued 14,099,749 shares of common stock as partial consideration for the acquisition of Coleman.

- (v) All conditions to the acquisition of Coleman were met or waived with the concurrence of the Lenders.
- (vi) The Agents' and Lenders' review of and reasonable satisfaction with solvency certificates of officers of Sunbeam, supporting the conclusions that, after giving effect to the Acquisition, the borrowings under the Senior Facilities and the other transactions contemplated hereby, none of the entities liable to the Lenders is insolvent or will be rendered insolvent thereby, will be left with unreasonably small capital with which to engage in its business or will have incurred debts beyond its ability to pay such debts as they mature.
- (vii) The Agents' satisfaction that (i) the borrowings under the Senior Facilities and the other funding for the Acquisition are in full compliance with all legal requirements, including (without limitation) Regulations of the Board of Governors of the Federal Reserve System and (ii) all necessary and material licenses, permits and government and third party consents and approvals in connection with such borrowings and the Acquisition have been obtained and remain in effect.
- (viii) Evidence reasonably satisfactory to the Agents of compliance with all applicable laws and regulations, including all applicable environmental laws and regulations, subject to exceptions which are deemed immaterial by the Agents.
- (ix) The Lenders' review of and satisfaction with environmental risks (including the potential levels of environmental liabilities) with respect to the Targets, Sunbeam and their subsidiaries.

SUNBEAM CORPORATION

Summary of Terms and Conditions

(continued)

- (x) The Agents' receipt of favorable legal opinions, including, without limitation, opinions of Borrowers' counsel.
- (xi) The Agents' satisfaction with all litigation and proceedings against or affecting the Targets, Sunbeam and their subsidiaries deemed material by the Agents.
- (xii) The Administrative Agent, for the benefit of Lenders, receipt of a perfected, first priority security interest as required above under the heading "Security"; supported by appropriate lien searches.
- (xiii) All reasonable costs, fees, expenses (including, without limitation, legal fees and expenses) and other compensation payable to the Lenders or the Agents were paid to the extent due.
- (xiv) The Agents' review of and reasonable satisfaction with the form, scope and substance of a pro forma balance sheet (as of a date to be mutually agreed), reflecting the transactions contemplated hereby, of Sunbeam, prepared by an accounting firm acceptable to the Agents.
- (xv) Concurrently with the initial funding of the Senior Facilities, the acquisition of control of Coleman shall be consummated.

The conditions to the funding of each subsequent extension of credit under the Senior Facilities shall include all conditions which are appropriate for this type of transaction, including, without limitation, the absence of a default or unmatured default and the restatement of all representations and warranties and, in the case of the borrowings under the Term Loan B Facility, included consummation of the acquisition of control of Signature and First Alert, and conditions relevant to those acquisitions.

B. Covenants:

Appropriate for this type of transaction, including, without limitation:

- (i) Financial and other information: certified quarterly and audited annual financial statements, annual budgets and such other reports and compliance certificates, all at Sunbeam's expense, as the Agents shall reasonably specify.
- (ii) Written notice of material events including the occurrence

SUNBEAM CORPORATION

Summary of Terms and Conditions (continued)

of a default under the Credit Agreement; filing of any material action, suit or proceeding; the occurrence of certain ERISA events that could reasonably be expected to result in liability to Sunbeam and its subsidiaries in excess of \$25,000,000.

- (iii) Maintenance of existence and conduct of business.
- (iv) Maintenance of property material to Sunbeam's business and that of its subsidiaries.
- (v) Maintenance of proper books of record and account of all business dealings and transactions of Sunbeam and its subsidiaries to be made available for inspection by the Lenders upon reasonable notice.
- (vi) Limitation on dispositions of assets and changes of business and ownership.
- (vii) Limitations on mergers or acquisitions.
- (viii) Capital expenditures for each fiscal year ending on or prior to December 31, 1999 not to exceed the sum of: (a) 6% of consolidated gross sales for the previous fiscal year (and for each fiscal year after December 31, 1999, 5%) plus (b) excess cash flow not required to be applied to prepay loans or applied to make restricted payments during such fiscal year plus (c) an amount equal to the excess (if any) of the aggregate amount of consolidated capital expenditures permitted by clause (a) and (b) above for all fiscal years prior to such fiscal year over the aggregate amount of consolidated capital expenditures made in such prior fiscal years.
- (ix) Limitations on restricted payments, including, without limitation, dividends, prepayments, repurchases and redemptions (with exceptions to include payment by Sunbeam of dividends consistent with past practice, so long as no default exists).
- (x) Limitation on indebtedness (including guarantees and other contingent obligations).
- (xi) Limitation on loans and investments.

SUNBEAM CORPORATION

Summary of Terms and Conditions (continued)

- (xii) Negative pledge.
- (xiii) Limitation on transactions with affiliates (other than wholly-owned subsidiaries).
- (xiv) Financial covenants to include:

(A) maximum leverage ratios as follows:

<u>Period</u>	<u>Ratio</u>
Initial Closing Date - September 30, 1998	5.75:1
October 1, 1998 - March 31, 1999	5.50:1
April 1, 1999 - September 30, 1999	5.25:1
October 1, 1999 - September 30, 2000	4.00:1
October 1, 2000 - September 30, 2001	3.00:1
On or after October 1, 2001	2.00:1

(B) minimum interest coverage ratios as follows:

<u>Period</u>	<u>Ratio</u>
Initial Closing Date - September 30, 1998	2.5:1
October 1, 1998 - September 30, 1999	3.0:1
October 1, 1999 - September 30, 2000	4.0:1
October 1, 2000 - September 30, 2001	5.0:1
On or after October 1, 2001	6.0:1

(C) minimum fixed charge coverage ratio of 1.05 to 1 at the last day of any fiscal quarter.

- (xv) No modifications of organizational documents or of Acquisition agreements or other material documents which could reasonably be expected to materially and adversely affect the Lenders without the consent of the Requisite Lenders.
- (xvi) Maintenance of adequate and customary insurance coverage.
- (xvii) Compliance with all applicable laws and regulations, including, without limitation, environmental matters, taxation and ERISA, except where failure to do so, individually or in the aggregate could not reasonably be expected to materially and adversely affect the Lenders.

SUNBEAM CORPORATION

Summary of Terms and Conditions (continued)

- (xviii) Compliance with provisions of all contracts, except where failure to do so could not reasonably be expected to materially and adversely affect the Lenders.
- (xix) An interest rate protection program acceptable to the Agents shall be in place not later than 120 days after the Initial Closing Date.
- (xx) Limitations on use of proceeds of the Senior Facilities.
- (xxi) Assurances that each entity which becomes a direct or indirect material subsidiary will guarantee the Senior Facilities on a joint and several basis.
- (xxii) Assurances that the stock of each entity which becomes a direct or indirect material subsidiary (subject to limitations for tax purposes in the case of foreign subsidiaries) will be pledged as security for the Senior Facilities, subsidiary guarantees and any interest rate protection program.
- (xxiii) Repayment of outstanding indebtedness.
- (xxiv) Liens on assets as requested by the Required Lenders.
- (xxv) Limitations on accounting changes.
- (xxvi) Assurance of Year 2000 compatibility.

C. Events of Default:

Appropriate for this type of transaction, including (without limitation) nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, ERISA, judgments, collateral and change of ownership or control.

Assignments and Participation:

Each Lender may assign all or a portion of its loans and commitments under any of the Senior Facilities, or sell participations therein, to another person or persons provided that (i) each such assignment shall be in a minimum amount equal to \$5,000,000 (or, if less, shall be of all of such Lender's loans and commitments) and shall be subject to such limitations as may be established by the Arranger (including, without limitation, (x) assignment fees in the amount of \$3,000 to be paid by the respective assignor or assignee to the Administrative Agent, provided that such fees shall be reduced to \$1,500 in the case of an assignment to an existing Lender and shall be reduced to \$0 in the case of an assignment to an affiliate of the respective

SUNBEAM CORPORATION

Summary of Terms and Conditions (continued)

Lender, and (y) the consent of the Agents and, after the Agents have notified Sunbeam that primary syndication of the Senior Facilities has been completed, Sunbeam, in each case not to be unreasonably withheld or delayed) and (ii) no purchaser of a participation shall have the right to exercise or cause the selling Lender to exercise voting rights in respect of the Senior Facilities (except as to certain basic issues). The Senior Facilities shall provide for a mechanism which will allow for each assignee to become a direct signatory thereto and will relieve the assigning Lender of its obligations with respect to the assigned portion of its loans and commitments. During primary syndication, no assignment fees will be charged and the Agents will consult with Sunbeam concerning the identity of the syndicate members.

Expenses:

Sunbeam shall reimburse the Agents for all "out of pocket" expenses, including, but not limited to, legal fees incurred by the Agents in negotiation, syndication, and execution of the Senior Facilities and fees payable by the Agents to third parties in connection with the satisfaction of the conditions precedent referred to above.

Indemnification:

As specified in the Commitment Letter (with appropriate additions and other modifications for inclusion in the definitive financing agreements).

Requisite Lenders:

Lenders holding 51% of total commitments or exposure under the Senior Facilities.

Governing Law:

The law of the State of New York. Each party to the credit documentation will waive the right to trial by jury and will consent to jurisdiction of the state and federal courts located in the City of New York.

**Agents' New York
Counsel:**

Davis Polk & Wardwell.

SUNBEAM CORPORATION

Summary of Terms and Conditions

(continued)

Pricing Grids:⁽¹⁾

Revolving Credit Facility and Term Loan A Facility

Consolidated Total Leverage Ratio	Interest Margins		Letter of Credit Fees	Commitment Fee Rate
	LIBOR	Base Rate		
>5.50 to 1	2.000%	0.750%	1.750%	0.500%
>5.25 to 1 and ≤ 5.50 to 1	1.750%	0.500%	1.500%	0.500%
>4.75 to 1 and ≤ 5.25 to 1	1.500%	0.250%	1.250%	0.375%
>4.25 to 1 and ≤ 4.75 to 1	1.250%	0%	1.000%	0.375%
>3.75 to 1 and ≤ 4.25 to 1	1.125%	0%	0.875%	0.300%
>3.25 to 1 and ≤ 3.75 to 1	1.000%	0%	0.750%	0.300%
>2.75 to 1 and ≤ 3.25 to 1	0.750%	0%	0.500%	0.250%
<2.75 to 1	0.625%	0%	0.500%	0.200%

Term Loan B Facility

Consolidated Total Leverage Ratio	Interest Margins	
	LIBOR	Base Rate
> 5.50 to 1	2.250%	1.000%
> 5.25 to 1 and ≤ 5.50 to 1	2.000%	0.750%
≤ 5.25 to 1	1.750%	0.500%

(1) Initial pricing for the Revolving Credit and Term Loan A is LIBOR plus 2.250% and for the Term Loan B is LIBOR plus 2.500%.
No step downs prior to 12/31/98.

SUNBEAM CORPORATION

Company Description

Overview

The Company was organized in 1989 as Sunbeam-Oster Company, Inc. In September 1990, Sunbeam acquired the assets and assumed certain liabilities, through a reorganization, of Allegheny International, Inc. In August 1992, the Company completed a public offering of 20,000,000 shares of its common stock. In May 1995, the Company changed its name from Sunbeam-Oster Company, Inc. to Sunbeam Corporation.

Sunbeam Corporation is a leading designer, manufacturer, marketer and distributor of branded consumer products. Prior to the Acquisitions, the Company's principal brands included *Sunbeam*®, *Oster*® and *Grillmaster*® products marketed in five categories. Each of these products has a leading market share in its category and enjoys high levels of brand name recognition among consumers. The Company distributes primarily through mass merchandisers, home centers and club channels, including Wal-Mart, Kmart, Sears, Target and Home Depot. As a result of the 1996 Restructuring, Sunbeam's net revenues increased to \$1.2 billion from \$984 million and EBITDA increased to \$239 million from \$48.0 million in 1997 over 1996, respectively.

On March 2, 1998, Sunbeam announced the Acquisitions. Sunbeam believes that the Acquisitions consist of leading brands in underperforming companies that present significant opportunities for cost savings through the elimination of inefficient and redundant operations. Sunbeam also believes that significant additional revenue can be derived from synergistic use of the global distribution channels that result from the combination of Sunbeam's domestic US and the Acquisitions' international distribution networks. On a pro forma basis, Sunbeam's product portfolio consists of 13 leading brand names competing in 10 brand categories with 1997 net revenues and EBITDA of approximately \$2.7 billion and \$426 million, respectively.

On May 11, 1998, Sunbeam announced the Integration with expected annual cost savings of \$253 million to be achieved by the middle of 1999. The Company also announced that it expects to achieve incremental revenue of \$265 million as a result of Revenue Opportunities. As part of the Integration and the Revenue Opportunities, Sunbeam intends to implement a new set of strategic initiatives which it believes will further drive the growth of the Company, including (i) focusing the Company's global marketing effort on six "Power Brands", (ii) the introduction of dedicated, multifunctional sales teams for Sunbeam's top six customers, and (iii) the introduction of new products.

The total consideration for the acquisitions of Coleman, Signature Brands and First Alert is approximately \$2.6 billion which Sunbeam funded with a combination of cash and Sunbeam common stock. The cash portion of the consideration was raised through the Facilities and the Zero Coupon Convertible Subordinated Debentures.

SUNBEAM CORPORATION

Company Description

(continued)

The 1996 Restructuring

The 1996 Restructuring resulted in a significant reduction in employees, facilities and costs and is expected to generate approximately \$225 million in annual savings for the Company. As a part of the 1996 Restructuring, the Company divested certain non-core business and assets.

The 1996 Restructuring included the rationalization of Sunbeam's core products, the closing of 18 factories, 43 warehouses and 5 headquarters offices. The Company also reduced the number of SKU's from approximately 11,400 to 2,000, consolidated all purchasing functions, and outsourced certain of the administrative, manufacturing and distribution activities and included the divestiture of non-core businesses. These actions led to a reduction of nearly half the work force from 12,000 to 7,000 employees.

	12/31/96	12/31/97	Change
Sales	\$984MM	\$1,168MM	+\$184MM
EBITDA	48MM	239MM	+ 191MM
EBITDA Margin	4.9%	20.5%	+15.6%
Operating Margin	0.5%	17.1%	+16.6%
# of Factories	26	8	-18
# of Headquarters	6	1	-5
# of Warehouses	61	18	-43
# of Employees	12,000	7,000	-5,000
# of SKU's	11,400	2,000	-9,400

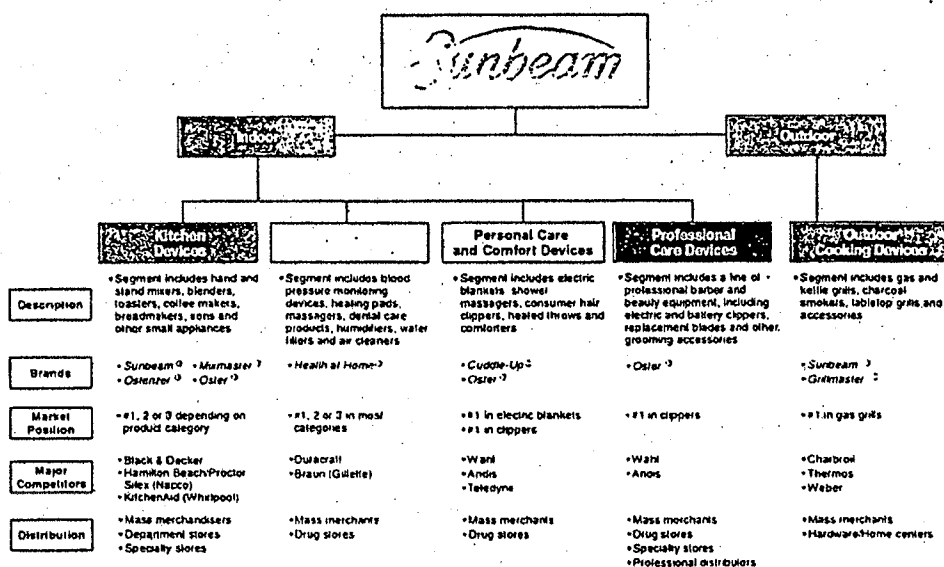
The Company also signed 25 new international distribution/licensing agreements which added \$35MM in revenue, introduced 89 new products (35 U.S., 54 international) which added \$150MM in revenue. The Company conducted significant expansion of distribution with key retailers such as Wal-Mart, Kmart, Target, Costco and Home Depot. The Company improved capacity utilization to 75% in 1997 (from 50% in 1996) and increased factory productivity by over 20% as a result of more efficient manufacturing processes. New product development time was decreased to 6 months from over 2 years and Sunbeam gained market share in each of its principal product categories in 1997.

SUNBEAM CORPORATION

Company Description (continued)

Sunbeam Pre-Acquisitions

The following chart describes Sunbeam prior to the Acquisitions.



The Company's 1997 core product categories were as follows:

Sunbeam - 1997 Sales Breakdown
(\$ in millions)

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

SUNBEAM CORPORATION

Company Description

(continued)

Kitchen Appliances

Small kitchen appliances including *Mixmaster*® stand mixers, hand mixers, *Osterizer*® blenders, food processors, rice cookers, food steamers, toasters, can openers, coffee makers, bread makers, waffle makers, ice cream makers, frying pans, deep fryers and culinary accessories, are sold primarily under the *Sunbeam*® and *Oster*® brand names. The Company holds the number one or two market positions in blenders, mixers and bread makers. The appliances category also encompasses garment care appliances consisting of irons and steamers. Sales of appliances accounted for approximately 32% of the Company's domestic net revenues in 1997.

Health at Home

The Company markets its home health products under the *Sunbeam*® name and the trademark *Health at Home*®. These products include heating pads, bath scales, blood pressure and other health-monitoring instruments, massagers, vaporizers, humidifiers and dental care products. This product category also includes the recently introduced *AllergySmart*™ air detector and air cleaner and the *FreshSource*™ power water filter. Sales of health care products accounted for approximately 10% of the Company's domestic net revenues in 1997.

Personal Care and Comfort

The Company's Personal Care and Comfort products include a broad line of electric blankets, comforters and *Cuddle-Up*® heated throws, shower massagers, and hair clippers and trimmers for animals and humans which are sold through retail channels. The Company holds the number one market position in electric blankets, heated throws and retail hair clippers. Sales of Personal Care and Comfort products accounted for approximately 18% of the Company's domestic net revenues in 1997.

Outdoor Cooking

Sunbeam is a leading supplier of outdoor barbecue grills. Sunbeam has the leading market share in the gas grill industry. Barbecue grills consist of propane, natural gas, electric and charcoal models sold primarily under the *Sunbeam*® and *Grillmaster*® brand names. Sales of outdoor cooking products accounted for approximately 34% of the Company's domestic net revenues in 1997.

Professional Care

The Company markets a line of professional barber, beauty and animal equipment, including the electric and battery clippers, replacement blades and other grooming accessories sold to both conventional retailers and through professional distributors. In addition, the Company is expanding the market of its appliances, scales and Personal Care and Comfort products to

SUNBEAM CORPORATION

Company Description

(continued)

institutional and commercial channels. Sales of Away from Home products described above accounted for approximately 6% of the Company's domestic net revenues in 1997.

International

The Company markets a variety of products (primarily small kitchen appliances, Personal Care and Comfort products, grills, professional clippers and related products) outside the U.S. While the Company sells many of the same products domestically and internationally, it also sells products designed specifically to appeal to foreign markets. The Company, through its foreign subsidiaries, has manufacturing facilities in Mexico and Venezuela, and sales offices in Canada, the United Kingdom, Hong Kong and Australia. The Company's international products are sourced from the Company's United States, Mexican or Venezuelan manufacturing operations or from vendors primarily located in Asia. International sales accounted for approximately 19% of the Company's total net sales in 1997.

Prior to the Acquisitions the Company's activities outside the United States were primarily focused in Mexico, Latin America and Canada. The Company enjoys a strong market position in a number of product categories in Latin America. The *Oster*® brand has the leading market share in small appliances in a number of Latin American countries.

The Acquisitions

Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Coleman's principal brands include *Coleman*®, *Camping Gaz*® and *Peak I*®. The total consideration for Coleman is approximately \$2.1 billion (based on the market price of Sunbeam common stock on the date the Acquisitions were announced). The Company expects to issue approximately 21.3 million shares of common stock with the balance of the consideration paid in cash. Coleman had 1997 net revenues and EBITDA of \$1.2 billion and \$99.0 million, respectively.

Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands' principal brands include *Mr. Coffee*®, *Health o meter*®, *Pelouze*®, *Counselor*® and *Borg*®. The Signature Brands consideration was approximately \$253 million. Signature Brands had fiscal 1997 net revenues and EBITDA of \$276 million and \$31.0 million, respectively.

First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's principal brands include *First Alert*®, *Family Gard*®, *Suregrip*® and *BRK*®. The First Alert transaction was valued at approximately \$178 million. First Alert had 1997 net revenues and EBITDA of \$187 million and (\$2.7) million, respectively.

SUNBEAM CORPORATION

Company Description

(continued)

Coleman

Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand names, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise. Coleman had 1997 net revenues and EBITDA of \$1.2 billion and \$99.0 million, respectively.

- *Outdoor Recreation:* Includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffel bags), outdoor furniture, electric lights, spas and camping accessories. Coleman is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman*®, *Camping Gaz*® and *EastPak*®. The Company intends to dispose of its *EastPak*® and spas businesses.
- *Hardware:* Includes portable generators and air compressors. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains under the *Powermate*® brand name. The Company intends to dispose of the air compressor business.

In March 1998 Coleman sold its subsidiary, Coleman Safety Security Products, Inc. for approximately \$105 million. This subsidiary had 1997 net revenues and EBITDA of \$88.4 million and \$11.6 million, respectively. The *EastPak*®, spas and air compressors businesses of Coleman which Sunbeam intends to divest had 1997 net revenues and EBITDA of \$190 million and \$12.2 million, respectively.

The following table summarizes Coleman's net revenues for the year ended December 31, 1997 by product category and geographic area:

(\$ in millions)					
Product Category	Amount	%	Geographic Area	Amount	%
Outdoor Recreation	\$859.7	74.5%	Domestic	\$ 933.5	80.1%
Hardware	294.6	25.5	Europe	217.9	18.9
			Other Foreign	167.2	14.5
			Eliminations	(164.5)	(13.5)
Total	<u>\$1,154.3</u>	<u>100.0%</u>	Total	<u>\$1,154.3</u>	<u>100.0%</u>

SUNBEAM CORPORATION

Company Description

(continued)

Coleman - Selected Financial Information (\$ in millions)

The following table provides summary historical financial data for Coleman:

	Fiscal Years Ended December 31,		
	1995	1996	1997
Revenues	\$933.6	\$1,220.2	\$1,154.3 ⁽¹⁾
% Change	62.2%	30.7%	-5.4%
EBITDA	127.9	99.0	99.0
% Margin	13.7%	8.1%	8.6%
EBIT	101.4	62.6	62.8
% Margin	10.9%	5.1%	5.4%
Net Income	50.0	11.3	14.3
% Margin	5.4%	0.9%	1.2%
Capital Expenditures	29.1	41.3	27.0

(1) Actual results. Includes Coleman's Safety Security Products, Inc. and *EuroPak*®, spas and compressors.

Signature Brands

Signature Brands, founded in 1919, is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers. Signature Brands had fiscal year end September 28, 1997 net revenues and EBITDA of \$276 million and \$31.0 million, respectively.

- **Consumer Products:** Signature Brands markets its consumer products under the *Mr. Coffee*®, *Health o meter*®, *Counselor*® and *Borg*® brand names. Signature Brands produces and markets an extensive line of *Mr. Coffee*® brand automatic drip coffeemakers, espresso/cappuccino makers and iced and hot teamakers. Sales of automatic drip coffeemakers accounted for approximately 43% of Signature Brands' net revenues in 1997. *Mr. Coffee, Inc.* has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. *Mr. Coffee*® is the leading brand of basket-type coffee filters in the United States. Other consumer products marketed under the *Mr. Coffee*® brand name include water filtration products, coffeemaker related accessories such as replacement decanters and mug warmers, and other kitchen countertop appliances such as food dehydrators. Under the *Health o meter*® brand name, Signature Brands manufactures a comprehensive line of analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales, and offers a range of health and wellness therapeutic products. Sales of consumer scales accounted for approximately 19% of Signature Brands' net sales in fiscal 1997. Signature Brands offers its consumer products through a combination of direct sales and independent

SUNBEAM CORPORATION

Company Description (continued)

manufacturers' representatives to distributors and major retail outlets, including mass merchants, national hardware chains, drugstore chains, catalogue showrooms, warehouse clubs, retail grocery chains, specialty stores, department stores and various mail-order companies. Distribution outlets for Signature Brands products include Sears, J.C. Penney, Macy's, Bed, Bath & Beyond, Caldor, Wal-Mart, Costco, Staples and Office Depot. Signature Brands' products are promoted primarily through national television advertising, magazine advertising, cooperative advertising with retailers and consumer promotions.

- *Professional Products:* Professional products include the *Pelouze®* and *Health o meter®* brands of office, foodservice and medical scales and *Mr. Coffee®* brand commercial coffeemakers. Signature Brands' reputation for quality and its *Health o meter®* brand name recognition have been based on its participation in the medical scale market for over 75 years. Products sold as professional products include analog and digital scales for a full range of medical uses, including traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales for non-ambulatory patients, and home healthcare scales. Signature Brands' office products, marketed under the *Pelouze®* brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily. *Pelouze®* foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications. Professional scale products are marketed through a combination of direct sales and independent manufacturers' representatives to distributors, dealers, office megastores, mail order companies and major buying groups.

The following table summarizes Signature Brands' net revenues for its fiscal year ended September 28, 1997 by product category:

Product Category	Amount	%
Consumer Products	\$236.0	85.6%
Professional Products	<u>39.7</u>	<u>14.4</u>
Total	<u>\$275.7</u>	<u>100.0 %</u>

SUNBEAM CORPORATION

Company Description

(continued)

Signature Brands - Selected Financial Information (\$ in millions)

The following table provides summary historical financial data for Signature Brands:

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

First Alert

First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the *First Alert*® brand name, which Sunbeam believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on its brand name and its leading smoke detector market share to develop and market a broad range of residential safety products. First Alert is also one of the leading participants in the United States retail fire extinguisher market. First Alert had 1997 net revenues and EBITDA of \$187 million and (\$2.7) million, respectively.

- *Smoke Detectors*: First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors and has the leading U.S. market share in its markets. First Alert markets its smoke detectors under three principal brand names: the *First Alert*® premium brand name, which is featured in media and public relations promotional campaigns; the *Family Gard*® brand name, which is marketed as a lower priced, functional alternative for those consumers who are price sensitive; and the *BRK*® brand name, which is sold to the wholesale electrical market.
- *Carbon Monoxide Detectors*: These products include carbon monoxide detectors, first introduced by First Alert in September 1993, with biomimetic sensors sold under the *First Alert*® and *Family Gard*® brand names. First Alert holds the leading market position in the carbon monoxide detector market.

SUNBEAM CORPORATION

Company Description

(continued)

- *Fire Extinguishers:* First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert®* brand smoke detectors. First Alert currently markets a full range of fire extinguisher products for use by the consumer, including fire extinguishers for use in the kitchen, garage, workshop, automobiles and boats. These products are sold under the *Sure Grip®* brand name which is one of the leading brand names in the U.S. retail fire extinguisher market.

The following table summarizes First Alert's net revenues for the year ended December 31, 1997 by product category and geographic area:

Product Category	Amount	%	Geographic Area	Amount	%
Smoke Detectors	\$101.6	54.4%	U.S.	\$169.0	90.4%
CO Detectors	40.4	21.6	Europe	20.2	10.8
Fire Extinguishers	17.1	9.1	Other	17.8	9.5
Other	27.8	14.9	Eliminations	(20.1)	(10.7)
Total	\$186.9	100.0%	Total	\$186.9	100.0%

First Alert - Selected Financial Information (\$ in millions)

The following table provides summary historical financial data for First Alert:

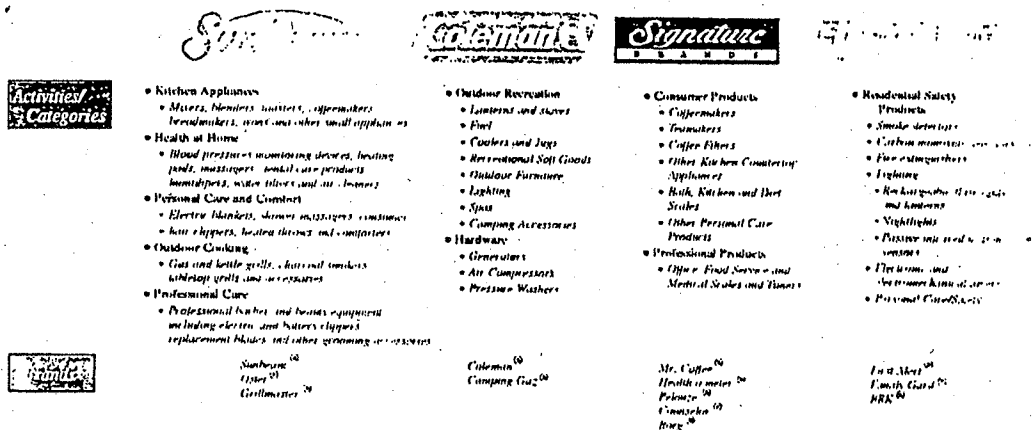
	Fiscal Years Ended December 31,		
	1995	1996	1997
Revenues	\$246.3	\$205.6	\$186.9
% Change	-0.9%	-16.5%	-9.1%
EBITDA	27.9	(18.3)	(2.7)
% Margin	11.3%	-8.9%	-1.4%
EBIT	20.5	(24.6)	(9.5)
% Margin	8.3%	-12.0%	-5.1%
Net Income	11.4	(17.3)	(7.8)
% Margin	4.6%	-8.4%	-4.2%
Capital Expenditures	10.6	5.3	NA

SUNBEAM CORPORATION

Company Description (continued)

Sunbeam Post-Acquisition

On a pro forma basis, Sunbeam has 13 leading brands competing in 10 broad categories.



Integration Cost Savings

Management intends to capitalize on its extensive experience in cost containment and operational improvement by eliminating redundant or inefficient operations of the Acquisitions. The Company believes that there are significant opportunities to realize cost savings at the Acquisitions and has announced that it expects to achieve annual cost savings of \$253 million by mid-1999. The cost savings will be generated from nine categories: procurement, sourcing strategy staff reduction, facility rationalization, controllable expenses, transportation expense reduction, marketing and sales expense savings, working capital reductions and the implementation of new information technology.

Based on its experience during the 1996 Restructuring the Company estimates that procurement spending can be reduced by approximately 10% or \$66 million through centralized raw material and component purchasing, increased percentages of goods sourced from third parties, and improved management of existing sourced goods relationships.

The Company intends to close two factories in Mexico and outsource the production of certain components and finished goods. When complete, Sunbeam will have reduced in-house manufacturing from 70% to 50% and increased outsourced manufacturing from 30% to 50%. The Mexican facilities employ approximately 2,800 employees. Sunbeam will benefit by

SUNBEAM CORPORATION

Company Description

(continued)

utilizing low-cost manufacturers of small electric appliances and external component fabricators. Sunbeam expects to generate \$52 million in savings from these actions.

The Company intends to reduce its number of employment positions by 1,293 through the sale of businesses, with an additional 2,330 positions reduced by rationalization and outsourcing (in addition to the Mexican closures). Sunbeam expects annual labor costs savings of \$50 million to be achieved through these methods.

Sunbeam intends to consolidate 10 headquarters into one, 28 manufacturing facilities into 15, 47 distribution centers into 14 and 35 sales offices into 18. The total facility rationalization through the reduction of facilities from 120 to 48 will generate cost savings of \$32 million.

The Company estimates that controllable expenses can be reduced by \$24 million. The principal categories include training, subscription, travel, entertainment, professional services and office supplies.

The Company believes that it can generate \$11 million in transportation savings through the optimization of its and the Acquisitions' transportation and distribution networks. An additional \$18 million in cost savings is expected from marketing, working capital and MIS.

The Company expects to incur a total of \$280.5 million in charges related to the Integration consisting of cash charges of \$150.1 million and \$130.4 million in non-cash charges. (See Appendix A for detailed description of the Integration Cost Savings and Integration Charges)

Revenue Opportunities

Sunbeam expects distribution synergies with the Acquisitions, improved sales management techniques and planned new product introductions to generate at least \$265 million in annual incremental revenues commencing in 1999.

The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States and Canada. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Acquisitions will significantly expand the Company's global distribution network, adding Brazil, western Europe, Scandinavia, Australia, South Africa, the Middle East and Asia. The Company believes that it can generate \$100 million in incremental 1999 revenue through marketing current products in new geographies.

SUNBEAM CORPORATION

Company Description (continued)

Sunbeam International Distribution

	1997 Actual	1997 Pro Forma
<i>Latin America</i>	\$166 million Revenue 2 Brands	\$202 million Revenue 4 Brands
<i>Europe</i>	\$18 million Revenue 2 Brands	\$208 million Revenue 5 Brands
<i>Asia/Pacific</i>	\$13 million Revenue 2 Brands	\$115 million Revenue 3 Brands
Total Revenue	\$197 million	\$525 million

The Company also believes that it can generate \$40 million of incremental 1999 revenue by marketing acquired products through existing domestic channels.

Sunbeam is also establishing dedicated, multifunctional sales teams to serve each of its six largest customers, which together currently represent a total of approximately \$1 billion in annual revenues to Sunbeam. The Company expects this and other sales management techniques to generate \$50.0 million in incremental 1999 revenues.

In 1999, Sunbeam intends to introduce new products under five of its six Power Brands. The Company believes its new products will create significant revenue opportunities by providing new product innovations and value-added features to compete at higher price-points. Sunbeam's goal is to have 30% of its sales generated from new products within five years and to double new products to 20% of sales by 2000. (See Appendix B for detailed description of Revenue Opportunities.)

Power Brands: The Company intends to arrange its brand portfolio into six "Power Brands", which are *Sunbeam*®, *Grillmaster*®, *Oster*®, *Mr. Coffee*®, *Coleman*® and *First Alert*®. The *Sunbeam*® brand includes irons, blenders and mixers and is positioned as a provider of innovative products. *Grillmaster*® includes gas and charcoal grills and accessories positioned as premium performance products. The *Oster*® brand includes blenders, bread makers and clippers and is positioned as professional performance products for the home. *Mr. Coffee*® includes a variety of coffee makers positioned for mass distribution. *Coleman* includes stoves, coolers and lanterns, positioned as family recreation products. *First Alert*® includes smoke detectors, carbon monoxide ("CO") detectors and fire extinguishers, positioned for family safety. Sunbeam plans to use a single global advertising agency for all of its products to maximize the effectiveness of its \$160 million annual marketing support spending to drive the growth of its Power Brands on a worldwide basis.

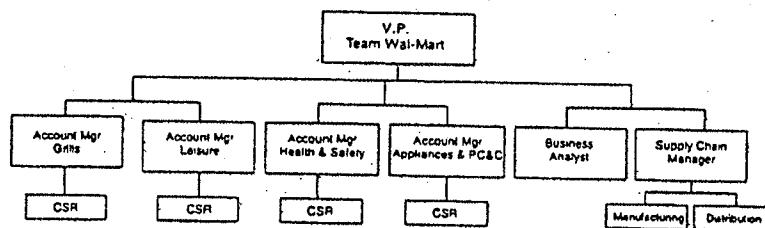
SUNBEAM CORPORATION

Company Description

(continued)

Sales Management: Sunbeam has reorganized its sales organizations to focus on three principal areas: strategic accounts, opportunity accounts and maintenance accounts. The Company's strategic accounts, which include Wal-Mart, Kmart, Target, Sears, Home Depot and club channels accounted for approximately 38% of pro forma 1997 net revenues. Each of these accounts will be supported by a dedicated, multifunctional sales team with account managers focused on each of the Company's principal brands and a business analyst who will align and integrate customer team planning to customer business plans. This initiative is intended to drive incremental growth through brand focus, supply chain efficiency and improved customer relationships.

Customer Team Example



Sunbeam intends to realign its sales representative coverage on its opportunity accounts to improve order-fill rates and maximize category management. The Company intends to expand its telesales to its maintenance accounts to ensure that these accounts receive regular calls and are aware of the Company's entire product line-up.

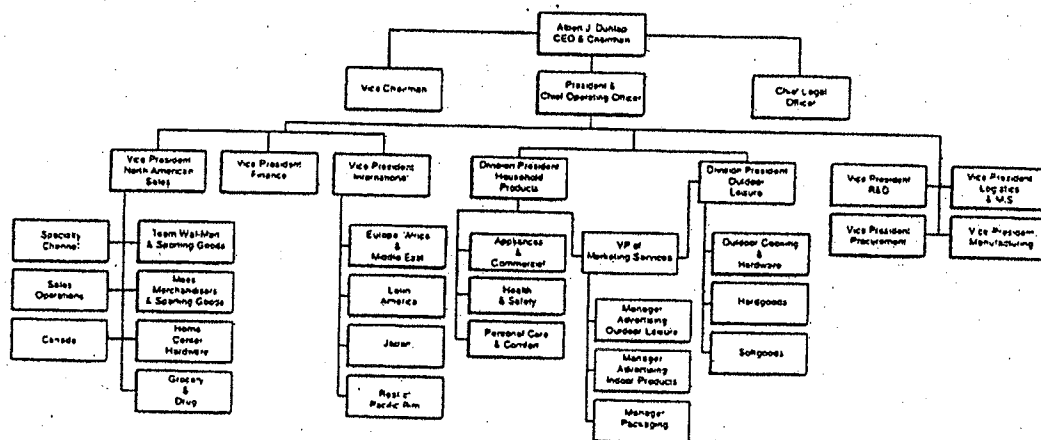
SUNBEAM CORPORATION

Company Description

(continued)

New Management Structure

As part of the Integration and Revenue Opportunities, the Company has established a new corporate organizational structure to improve communications and increase decision-making responsibility. Although some of the positions in the chart remain vacant, the Company believes that all significant positions will be filled in the near term. As of February 1, 1998, certain key members of management including Mr. Dunlap, Mr. Kersh, and Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation incentives.



Environmental Matters

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

SUNBEAM CORPORATION

Company Description

(continued)

Year 2000

The company has assessed and continues to assess the impact of the Year 2000 computer issues on its operations, including the development and implementation of project plans and cost estimates required to make its information systems infrastructure Year 2000 compliant. The Company recently completed acquisitions whereby it obtained control of Coleman, Signature Brands and First Alert and is currently completing preliminary plans for the integration of the computer systems of these acquired companies into Sunbeam. Based on preliminary estimates, the Company believes that anticipated spending necessary to integrate the computer systems of these acquired companies into Sunbeam systems and to upgrade all such systems to become Year 2000 compliant will be approximately \$25 million, however the Company has not yet completed detailed analysis and integration plans with respect to such acquired companies.

Legal Proceedings

The Company and its subsidiaries are involved in various lawsuits arising from time to time. In the opinion of the Company, the resolution of these matters, and of certain matters relating to prior operations of the Company's predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operation of the Company. The Company has established reserves for pending litigation which the Company considers to be adequate to cover loss contingencies determined by the Company associated with such proceedings.

SUNBEAM CORPORATION

Company Description (continued)

Management

The following table sets forth certain information regarding the executive officers and certain senior managers of the Company.

Name	Position
Albert J. Dunlap	Chairman, Chief Executive Officer and Director
Russell A. Kersh	Vice Chairman and Chief Financial Officer
David C. Fannin	Executive Vice President, Chief Legal Officer Secretary
Frank J. Feraco	President, Outdoor Products
Lee B. Griffith	President, Indoor Products
Ronald R. Richter	Vice President, Treasurer
Jack H. Dailey	Vice President, Logistics and Information Systems
George Timchal	Vice President, Procurement and Sourcing
Judy E. Maudlin	Vice President, Manufacturing

Albert J. Dunlap has been Chairman and Chief Executive Officer of the Company since July 18, 1996. From April 1994 to December 1995, he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation).

Russell A. Kersh has been Vice Chairman and Chief Financial Officer of the Company since February 1, 1998, and has been a Director of the Company since his appointment on August 6, 1996. He served as Executive Vice President, Finance and Administration of the Company from July 22, 1996 to January 1998. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as Chief Operating Officer of Adidas America from January 1993 to May 1994.

David C. Fannin is Executive Vice President, Chief Legal Officer and Secretary and has been with the Company since January 1994. From 1979 until 1993, he was a partner in the law firm of Wyatt, Tarrant and Combs.

Frank J. Feraco is the President of Outdoor Products for Sunbeam Corporation. Prior to joining Sunbeam, Mr. Feraco was President and Sector Executive of Kohler Co., International/ Sterling Plumbing Group. Prior to rejoining Kohler Co. in April 1996, Mr. Feraco was the President of the Professional Tool Division of Danaher Corporation, a U.S. based manufacturer of tools for the Do-It-Yourself, Automotive and Hardware/Home Center markets for the Industrial Hardware market.

SUNBEAM CORPORATION

Company Description

(continued)

Lee B. Griffith is the President of Indoor Products for Sunbeam Corporation. He was employed by Sunbeam in September 1996 as Vice President of Sales. Lee was formerly Chairman, President and Chief Executive Officer of Scott Paper Limited, a publicly held Canadian company with headquarters in Mississauga, Ontario. He began his career at Scott Paper in 1964 as a Sales Representative in Atlanta, after receiving his B.S. Degree in Business and an MBA from Auburn University.

Ronald A. Richter has been Vice President, Treasurer since March 31, 1998. He is responsible for the management of the Company's worldwide treasury activities. Mr. Richter joined Sunbeam from ABN AMRO N.A. Bank of Chicago where he was Group Vice President/Senior Banker heading the institution's automotive group responsible for global relationship management. Prior to that, he was a Managing Director for both Bank of America, N.A. and Continental Bank.

Jack H. Dailey will have overall responsibility for all logistics activities, including forecasting, production planning, warehousing, transportation, customer service and consumer service, as well as supervising information systems for the combined operations of Sunbeam, Coleman, First Alert and Signature Brands. Mr. Dailey has served as Vice President, Information Systems, for Sunbeam since June 1997, and prior to that position, he served as Vice President, Corporate Purchasing and Logistics for Sunbeam from August 1996. Dailey served as Vice President of Purchasing at Scott Paper Company from 1994 to 1995 and was credited with achieving significant savings in that post.

George Timchal will have overall responsibility for Sunbeam's procurement and global sourcing activities for both finished goods and components. Mr. Timchal has served as Vice President, Purchasing, for Sunbeam since 1996 and previously was Director, Procurement for Scott Paper Company from 1992 to 1996. Prior to holding that position, George held positions in manufacturing and operations at Scott Paper Company.

Judy E. Maudlin has overall responsibility for worldwide manufacturing and quality control for the combined operations of Sunbeam. Ms. Maudlin most recently served as Vice President, Manufacturing for Sunbeam Corporation since October, 1997. Previously her extensive manufacturing experience included nine years at Digital Equipment Company in such roles as plant manager, division manager and manager of trade licensing. Prior to working at Digital, she was General Manager of the Prestolite Motor Division of Allied Signal Corporation.

SUNBEAM CORPORATION

Company Description

(continued)

New Employment Contracts

As of February 1, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, Chief Legal Officer and Secretary, Mr. Fannin, entered into new three-year employment contracts with the Company, which include substantial equity-based compensation incentives. These employment contracts replaced previous employment contracts entered into in July 1996 that were scheduled to expire in July 1999.

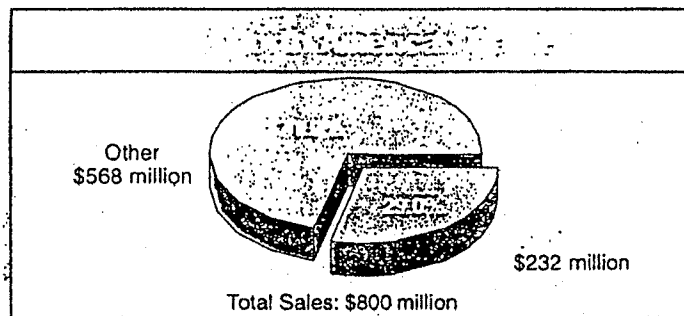
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SUNBEAM CORPORATION

Industry Overview

Outdoor Cooking

The U.S. outdoor cooking industry had net revenues of \$800 million in 1996 and is expected to exceed \$1.0 billion in 1998. Of the total industry, gas grills represent 84% of revenues and 51% of units. The gas grilling segment is growing at over 9% per year while charcoal grilling is declining at a rate of 6% per year as consumers become more diverse in what and how they grill. Key competitors within the industry include Weber, Charbroil and Sunbeam. Weber's best-selling grill is priced at approximately \$499. Charbroil and Sunbeam sell grills primarily below \$350. The average grill sells for \$140 but the fastest selling segment is the \$379-and-up segment as increased disposable income translates into upgraded purchases of household products.



Source: IMR

The U.S. outdoor cooking customer base is highly concentrated within the mass merchant and home center channels. Within these channels, the top 3 customers, Wal-Mart, Sears and Home Depot represent 55% of the market. The top 10 represent 83% of sales. Two-thirds of grills are purchased by men with an increasing emphasis on upgraded features and accessories.

The household penetration of grills is 84% in the U.S. It is expected that the average price point of grills will rise as two significant consumer trends continue:

- (i) Consumers are "moving outdoors" and making patios as sophisticated as their kitchens.
- (ii) With 84% penetration, the "trade-up" gas griller is more experienced in grilling and demands a superior product.

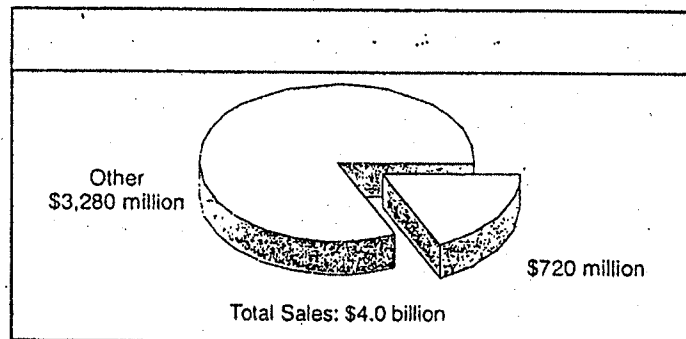
Globally, the outdoor cooking market had 1996 revenues of \$1.5 billion. Outside the U.S., grilling is primarily charcoal, yet in places such as Europe and Latin America, gas grilling is becoming increasingly popular.

SUNBEAM CORPORATION

Industry Overview (continued)

Kitchen Devices

The U.S. appliance industry had net revenue of \$4.0 billion in 1996. The industry is highly fragmented across 30+ categories, with the largest category representing less than 15% of sales. Among the 12 principal manufacturers with greater than \$100 million in consumer sales, Sunbeam with 18% market share is the largest competitor. Others include Black & Decker, Kitchen Aid, Krups, Braun and Cuisinart.



Source: IMR

The U.S. kitchen appliance channel consists predominantly of mass merchants (approximately 50%), C&D and department stores. The overall industry is growing at a pace slower than inflation, yet the consumer will pay premiums for brand names and value added products. In particular, consumers pay premiums for those products which provide convenience (speed, simplicity, reliability) or health benefits (healthy food preparation). New product development which capitalizes on those perceived benefits will likely be key to maintenance and growth of market share and profitability. Companies also compete by adding innovative features to existing products and changing design specifications.

Global markets in Latin American and Asia represent significant growth opportunities for all competitors. Europe is more highly competitive, but also represents growth opportunity.

SUNBEAM CORPORATION

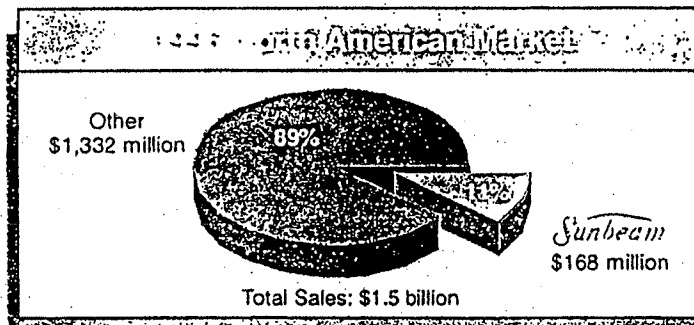
Industry Overview

(continued)

Personal Care

The U.S. personal care industry had net revenues of \$1.5 billion in 1996. The industry has three principal subcategories, which account for 50% of the industry. Each sub-category has one dominant player: Conair in hair dryers, Norelco in shavers, and Teledyne in shower massagers. Other key competitors include Sunbeam, Wahl, Revlon, and Sassoon.

- Clipper (*Oster*® vs. *Wahl*) and mustache/beard trimmer categories (*Wahl* vs. *Norelco*) are most competitive for market share leadership
- In hair dryers, Conair's focus is price. Helen of Troy uses licensing (*Revlon* and *Sassoon*) and *Braun* strives for innovation (volumizer)



Source: IMR

The U.S. personal care distribution channels are predominantly mass merchants, department stores, and drug stores.

- Accounts place a premium on innovation
- Traditionally an attractive, high margin category for retailers

The overall industry has grown at a 5 year annual rate of 8% with styling, fashion, and innovation playing a key role in the consumer purchase decision.

Globally, only the U.S. and European markets are well-developed. Significant growth opportunity exists for those manufacturers able to export personal care innovations, that meet local needs, on a global basis.

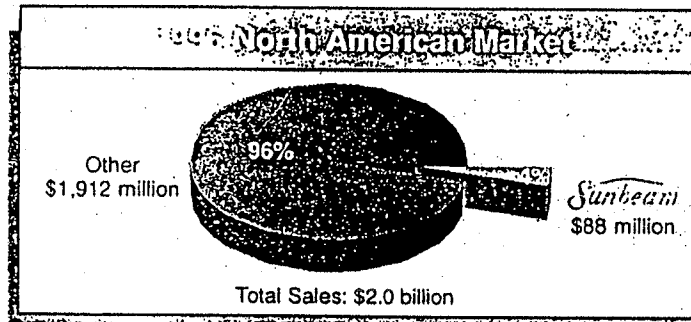
SUNBEAM CORPORATION

Industry Overview (continued)

Health at Home

The U.S. Health at Home industry had net revenues of \$2.0 billion in 1996. The industry is highly fragmented with limited brand awareness across nine categories. Only Sunbeam has breadth of product, with representation in all nine categories, including air cleaners, water purifiers, humidification devices, heating pads, scales, massagers, thermometers, dental products and blood pressure monitors. Sunbeam has #1 or #2 share in 3 out of 9 categories.

Other key competitors within the industry include Holmes (#1 in air cleaners) and Brita (#1 in water purifiers).



Source: IMR

With recent consumer interest in health-related products, the industry has grown at rates greater than inflation across virtually all categories. Further, major mass merchandisers view the category as a significant growth opportunity due to the following trends:

1. 76% of consumers feel they should take primary responsibility for their health.
2. Consumer trust is shifting from doctor to pharmacist.

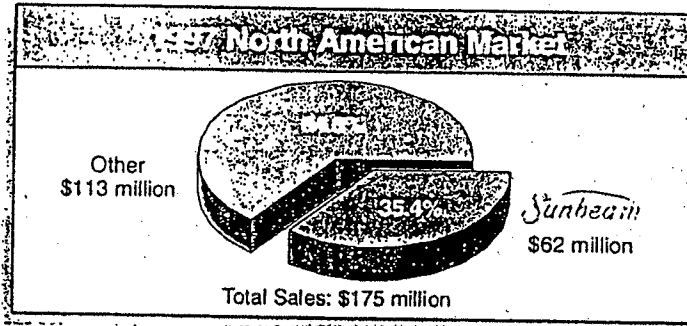
Globally, only the U.S. is well-developed. While Canada, Europe, and Japan represent modest growth opportunities, Latin America and most of Asia remain undeveloped and represent significant growth opportunities to export the "health at home" concept globally.

SUNBEAM CORPORATION

Industry Overview (continued)

Professional Care

The U.S. Professional Care industry (Clippers, Blades, Accessories) had 1997 net revenues of \$175 million. The primary product within this category is the clipper. Key competitors within the industry include *Oster*® (49% share in Pet clippers, 33% Barber and Beauty clippers (B&B), 59% Large Animal clippers), Wahl (19% Pet, 33% B&B) and Andis (11% Pet, 10% B&B). Market shares of blades tend to follow those of clippers (both original equipment and replacement manufacturers).



Source: IMR

Distribution of Professional Care products is concentrated in three channels: 38% through Direct Catalog, 38% through Specialty Retail and 24% through Distributors. Professional Care consumers typically value quality and service over price. The Professional Care consumer is willing to pay a premium for a quality "tool" which will be utilized for income generation. For this consumer, time is money: the more heads/pets groomed, the more revenue earned.

International markets remain partially developed. Moser (acquired by Wahl) is the leader in European B&B. *Oster*® and Lister are Professional Care leaders in Latin America.

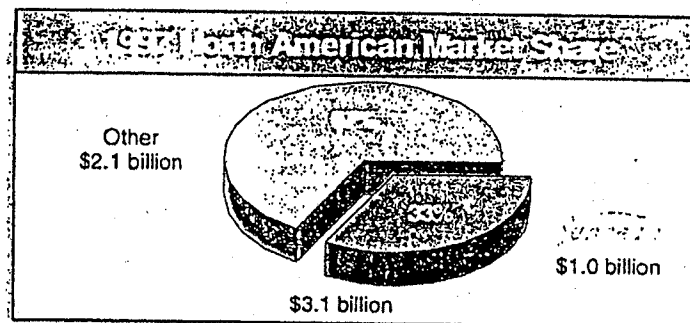
SUNBEAM CORPORATION

Industry Overview

(continued)

Outdoor Recreation and Leisure (excluding Outdoor Cooking)

The U.S. Outdoor Recreation and Leisure industry had had 1997 net revenues of \$3.1 billion. Major categories included Camping Gear (Outdoor Furniture, Coolers/Jugs, Sleeping Bags, Tents, and Outdoor Camping Lights), Accessories, Camping Appliances (liquid/propane stoves and lanterns), Propane Fuel, and Liquid Fuel.



Source: IMR

Revenues and growth rates in the major categories are as follows:

Camping Gear	\$2,700 million (overall growth +4-5%, with sleeping bags +2%, air beds +26%, tents +10%, coolers and lights +5%)
Accessories	\$198 million (growth +7%)
Appliances	\$119 million (growth +0%)
Fuel (All)	\$86 million (growth +2%)

Key competitors within the Outdoor Recreation industry include *Coleman** with 50% to 85% share in Accessories, Appliances, and Fuel; 35% Sleeping Bags (#1), 26% Tents (#1), 50% in Furniture, 24% in Coolers/Jugs, Igloo (36% Coolers/Jugs), and Rubbermaid (21% Coolers/Jugs).

Outdoor Recreation products are distributed primarily through Mass Merchandisers and Sporting Goods outlets.

Research indicates that consumers in the industry are searching for brands which provide durable, reliable products which help them feel prepared, comfortable, and safe while engaging in Outdoor Recreation activities.

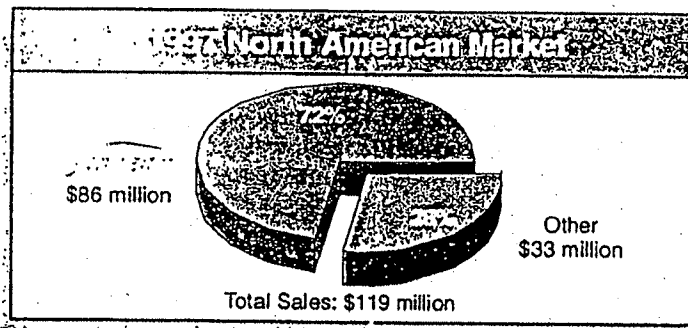
Outdoor recreation is popular on a global scale. European markets are well-developed and growing, while developing markets elsewhere in the world (especially Latin America) are emerging rapidly.

SUNBEAM CORPORATION

Industry Overview (continued)

Smoke Alarms

The U.S. smoke alarm industry experienced 1997 net revenues of \$119 million. Key competitors within the industry include *First Alert*® (72% share), Kidde (6%), and American Sensor (6%).



Source: IMR

The industry has grown significantly over recent years as household penetration has risen from 10% in 1975 to over 90% in 1997. This growth has been fueled by a combination of increased public awareness of the value of smoke detectors and by state and local legislation requiring installation of smoke detectors. The trend to increasingly stringent smoke detector requirements is continuing as more governmental entities adopt legislation and as legislation increasingly covers existing as well as new homes and mandates more smoke detectors per residence. Further growth is expected as the 77 million alarms which are greater than 10 years old are replaced.

Smoke alarms are sold primarily through Mass Merchants (30%) and Home Centers (28%). Purchase of smoke alarms also takes place through Discount Department Stores (12%), Hardware Stores (7%), Warehouse Clubs (5%), Grocery/Drug Stores 1% and various other channels (16%).

International markets are in a much earlier stage of development than the United States market, and the level of development varies greatly from country to country. Market penetration is greatest in the United Kingdom and Canada, where penetration is estimated at 77% and 94% of households, respectively. It is estimated that the penetration rate in developed countries such as France, Germany, and Japan is generally less than 5%. As countries adopt tougher building standards and consumer awareness of fire safety and the value of smoke detectors increases, usage of smoke detectors is certain to increase in developed countries within Europe and Latin America.

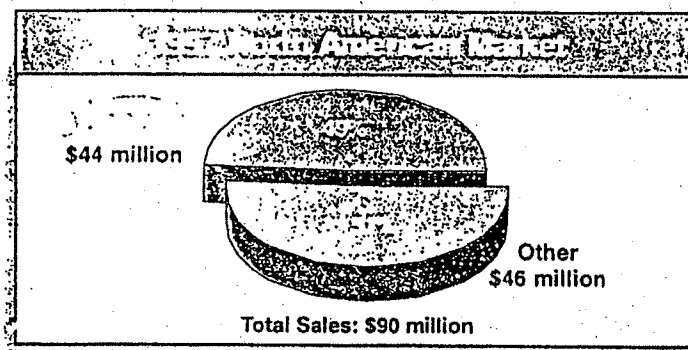
SUNBEAM CORPORATION

Industry Overview

(continued)

Carbon Monoxide Detectors

The U.S. carbon monoxide industry experienced consumer revenues of \$90 million in 1997. Key competitors within the industry include *First Alert*® (49% share), Kidde (27% share), and American Sensor (9% share).



Source: JMR

The industry has grown significantly over recent years as household penetration has grown from almost 0% in 1993 to 17% in 1997. This growth has been fueled by increased public awareness of the dangers of carbon monoxide poisoning. As awareness and promotion increase, it is expected the industry will grow to 40+% penetration by 2000 based upon the growth experienced in the smoke detector industry from 1973 to 1980.

Carbon Monoxide (CO) Detectors are sold primarily through the Mass Market and Home Center channels, with Wal-Mart, Kmart, Home Depot, and Target representing 62% of industry sales. Due to the relative newness of the industry, 73% of purchases are first-time purchases.

Carbon monoxide is produced by the incomplete combustion of fuel. Any device which burns fuel, such as a stove, furnace, water heater, or fireplace, is a potential source of harmful CO gas. Accordingly, consumer purchases of CO alarms are more seasonal than those of smoke detectors, with the majority of sales occurring in winter months when consumers spend more time indoors.

International markets are virtually undeveloped. As a consumer awareness of the dangers of CO gas grows in the global marketplace, demand for the product will most likely follow that of smoke detectors (i.e. Canada and the U.K. first, followed by other developed countries in Europe and Latin America).

SUNBEAM CORPORATION

Financial Projections and Assumptions

Overview

The financial projections are based upon a number of assumptions and estimates prepared by the Company that, while presented with numerical specificity and considered reasonable by the Company when taken as a whole, are inherently subject to significant business, economic, competitive, regulatory and operational uncertainties, contingencies and risks, many of which are beyond the control of the Company. The assumptions described herein constitute all the assumptions that the Company believes are significant to the Financial Projections. Actual results may vary from the financial projections.

General

The Dispositions have not been separated in the projections. In 1997 the Dispositions had net revenues and EBITDA of \$190 million and \$12.2 million respectively and are expected to generate \$250-350 million in pre-tax proceeds based on preliminary projections. The Dispositions are subject to the Asset Sale provisions contained in the Facilities.

While the Company expects to derive incremental 1999 revenues of \$265 million from the Revenue Opportunities, for projection purposes, only \$80 million has been included in the 1999 revenue growth assumptions outlined below. (See Appendix B for a detailed description of Revenue Opportunities.)

While the Company expects total cost savings to be approximately \$253 million, to be achieved by the middle of 1999, for projection purposes \$60.0 million of savings is assumed for 1998 and \$150 million is assumed in the years thereafter. (See Appendix A for a detailed description of Integration Cost Savings.)

The Company expects Implementation charges to be \$280 million of which \$150 million are cash charges in 1998. (See Appendix A for a detailed description of Implementation Charges.)

SUNBEAM CORPORATION

Financial Projections and Assumptions

(continued)

Income Statement:

- Revenues

*Indoor
1998:*

Appliances: Revenues increase \$55.4 million over 1997 as international growth more than offsets domestic revenue decline as domestic retailers sell off excess inventories.

Health and Safety: Revenues increase \$104 million over 1997 as new products and improved distribution of First Alert products increase sales.

PCC/Professional: Revenues are projected to increase \$3.5 million as availability of personal and professional clippers is improved over 1997. Blanket revenues are assumed to be flat.

*Indoor
1999 - 2004:*

Revenues for the Indoor category increase by \$88.6 million, or 6% in 1999 over 1998. Of this increase (i) \$50.0 million is derived from incremental sales of the Company's new air and water filtration products, (ii) \$45.0 million comes from increased international sales, and (iii) \$28.6 million is projected to come from 2% assumed growth in the core Indoor businesses. 1998-1999 growth is reduced by \$35.0 million due to non-core SKU rationalization and forecasted cannibalism of certain coffee-maker SKUs. From the year 2000 onwards, Indoor revenues are projected to grow at a constant 5% per annum.

*Outdoor
1998:*

Revenue projected to decrease by \$40.3 million due to a decline in grill sales and prices, partially offset by increased sales of Coleman products through improved distribution.

*Outdoor
1999 - 2004:*

Revenues for the Outdoor business increase by \$61.0 million in the 1998-1999 period, amounting to a 4.5% increase. Of this increase, (i) \$10.0 million is projected to come from increased sales of core Sunbeam accessories to major retail customers, (ii) \$25.0 million is expected to come from international growth, supported by larger and more efficient distribution networks and cross-distribution into Coleman channels, (iii) \$10.0 million comes from growth of Sunbeam's accessories using Coleman's name and distribution channels, and (iv) \$26.0 million comes from 2% growth assumed in the core Outdoor businesses. 1998-1999 growth is reduced by \$10.0 million due to non-core SKU rationalization. From the year 2000 onwards, Outdoor revenues are projected to grow at a constant 5%.

SUNBEAM CORPORATION

Financial Projections and Assumptions

(continued)

- **COGS:** Cost of goods sold is projected at 71.3% of sales for 1998, and below 70.0% in the years thereafter. The projections assume that one-time margin reductions that were experienced in the first quarter of 1998 do not recur in 1999 and thereafter. Variance in COGS as a percentage of sales is caused by depreciation and capital expenditure assumptions.
- **SG&A:** SG&A assumptions for both the Indoor and the Outdoor categories are identical. For both categories, total SG&A expenses are split evenly between fixed expenses and variable expenses. Fixed expenses are projected to grow at 5% per annum. Variable expenses grow at the rate of revenue growth.
- **Depreciation:** Plant, property and equipment is depreciated over its useful life, which ranges from 15 to 40 years. The absolute level of depreciation is driven primarily by Capital Expenditures.
- **Amortization:** Goodwill resulting from the Company's acquisition of Coleman, Signature Brands and First Alert is amortized over 40 years. Fees associated with the Acquisitions, including financing fees, are amortized over the life of the issues. The Company's trademarks are amortized over 25 years.
- **Interest:** Interest expense on the Revolving Credit facility and the Term Loan A is calculated at the rate of 7.98% (L+2.25%) per annum for 1998 and 7.48% thereafter. Interest on the Term Loan B is calculated at the rate of 8.23% (L+2.50%) per annum for 1998 and 7.73% thereafter. LIBOR is assumed to be 5.73%. Actual interest rates for the Facilities will depend on actual LIBOR and leverage.
- **Taxes:** The nominal tax rate is assumed at 35%.
- **Dividends:** Dividends are assumed at the current rate of 1 cent per share per quarter.

SUNBEAM CORPORATION

Financial Projections and Assumptions

(continued)

Balance Sheet:

- *Inventory:* Inventory turnover, which was 3.0x in 1997, is assumed to be 3.1x for 1998, 3.2x for 1999 and 3.3x for 2000, remaining constant in the years thereafter. The improvement in turnover over the 1997-2000 period comes from improved inventory forecasting.
- *Capital Expenditures:* Capital expenditures which were \$95.0 million in 1997, are projected to be \$100 million in 1998, \$120 million in 1999, and \$135 million in 2000, increasing by \$15.0 million per year thereafter. Maintenance capital expenditures are projected to be approximately 60% of the annual projected expenditures, while the balance is driven by increased investment in new products, technologies and growth.
- *Accounts Receivable:* Days Outstanding, which was 80.7 days in 1997, is projected to be 83.0 in 1998, 82.0 in 1999 and 81.0 in 2000. The increase in 1998 Days Outstanding is assumed to allow for full integration and coordination of the four financial systems currently in use at Sunbeam, Coleman, Signature Brands and First Alert. Days Outstanding returns to its historical levels by 2000.
- *Accounts Payable:* Days Payable, which was 44.1 in 1997, increases to 48.0 in 1998 and remains constant thereafter. This increase results from integration of various Sunbeam financial systems and also from improved negotiation of payment terms with Sunbeam suppliers.

SUNBEAM CORPORATION

Sources & Uses

Base Financing Case
Total Synergies of \$150.0 MM

Sources & Uses

Sources			Uses		
	Amount	%		Amount	%
Cash	\$6.3	0.2%	Pur. Equity	\$1,209.3	41.8%
Revolver	79.0	47.7%	Option (Preds)/Uses	24.8	0.9%
Term Loan A	550.0	0.0%	Ref. Acq. Debt	1,283.9	44.4%
Term Loan B	750.0	0.0%	Trans. Fees	49.2	1.7%
Zero Coup. Sub. Conv.	750.0	25.9%	Misc. Fees	13.3	0.5%
Equity	756.7	26.2%	Ref. Sunbeam Debt	311.5	10.8%
Total	<u>\$2,892.1</u>	<u>100.0%</u>	Total	<u>\$2,892.1</u>	<u>100.0%</u>

SUNBEAM CORPORATION

Credit Statistic Analysis

Base Financing Case
(\$ MM)

	Pro Forma Credit Statistic Analysis							
	PF 1997	1998	1999	2000	2001	2002	2003	2004
Credit Statistics (1)								
<i>Cash Interest Expense</i>								
EBITDA/Interest	3.70 x	4.10 x	7.00 x	10.18 x	17.20 x	49.86 x	822.78 x	N.M. x
(EBITDA-CapEx)/Interest	2.88	3.21	5.66	8.11	13.57	39.05	637.18	N.M.
<i>Total Interest Expense</i>								
EBITDA/Interest	2.78 x	3.06 x	4.84 x	6.20 x	8.32 x	12.37 x	822.78 x	N.M. x
(EBITDA-CapEx)/Interest	2.16	2.40	3.91	4.94	6.57	9.69	637.18	N.M.
<i>Total Fixed Charges</i>								
EBITDA/Fixed Charges (2)	1.33 x	1.78 x	1.67 x	1.33 x	1.39 x	1.46 x	1.58 x	1.58 x
<i>Leverage</i>								
Senior Debt / EBITDA	3.40 x	2.98 x	1.64 x	1.09 x	0.56 x	0.05 x	0.00 x	0.00 x
Total Debt / EBITDA	5.16	4.69	2.96	2.40	1.84	0.05	0.00	0.00
Senior Debt / Book Cap. (3)	41.0%	40.6%	31.4%	22.4%	12.3%	1.3%	0.0%	0.0%
Total Debt / Book Cap.	62.2%	64.1%	56.8%	49.3%	40.8%	1.3%	0.0%	0.0%
<i>Cumulative Free Cash Flow bef. Mand. Debt Retire</i>								
% of Senior Debt Outstanding:	100.0%	94.1%	69.4%	47.6%	23.8%	0.0%	0.0%	0.0%

Notes: (1) PF 1997 and 1998 include \$60MM in pre-tax synergies; assume \$150MM thereafter.

(2) Fixed charges defined as the sum of pre-tax interest expense, scheduled principal amortization, cash dividends, taxes and capital expenditures.

(3) IRBs and Coleman foreign debt included in senior debt calculation.

SUNBEAM CORPORATION
Pro Forma Build-Up
Base Financing Case

	1997	1998	1999	2000	2001	2002	2003	2004
Total Sales	\$1,382.1	\$1,344.8	\$1,402.8	\$1,473.0	\$1,546.6	\$1,623.9	\$1,705.1	\$1,790.4
Indoor Business Sales	1,317.9	1,480.3	1,568.9	1,647.3	1,729.7	1,816.2	1,907.0	2,002.4
% Growth		-2.9%	4.5%	5.0%	5.0%	5.0%	5.0%	5.0%
Total Company Sales	\$2,699.9	\$2,822.2	\$2,971.7	\$3,120.3	\$3,276.3	\$3,440.1	\$3,612.1	\$3,792.8
Total Costs of Goods Sold	\$1,024.7	\$970.5	\$998.0	\$1,045.9	\$1,094.1	\$1,142.8	\$1,202.5	\$1,265.4
Outdoor Business COGS	74.1%	72.3%	71.1%	71.0%	70.7%	70.4%	70.5%	70.7%
% of Outdoor Sales								
Indoor Business COGS	906.6	1,047.7	1,086.9	1,139.2	1,192.1	1,245.8	1,310.6	1,378.9
% of Indoor Sales	68.8%	70.8%	69.3%	69.2%	68.9%	68.6%	68.7%	68.9%
Total Business Unit COGS	\$1,931.3	\$2,018.3	\$2,084.9	\$2,185.1	\$2,286.2	\$2,388.6	\$2,513.1	\$2,644.4
% of Total Sales	71.5%	71.5%	70.2%	70.0%	69.8%	69.4%	69.6%	69.7%
Total Pro Forma Company COGS	\$1,931.3	\$2,011.6	\$2,078.2	\$2,178.4	\$2,279.6	\$2,381.9	\$2,506.5	\$2,637.7
(56.7)								
Outdoor Business Fixed SG&A	\$132.8	\$139.5	\$146.5	\$153.8	\$161.5	\$169.5	\$178.0	\$184.0
% of Outdoor Sales	9.9%	9.9%	9.9%	9.9%	9.9%	9.9%	9.9%	9.9%
Outdoor Business Variable SG&A	132.8	138.9	145.8	153.1	160.8	168.8	177.2	184.0
% of Outdoor Sales	9.9%	9.9%	9.9%	9.9%	9.9%	9.9%	9.9%	9.9%
Total Outdoor SG&A	\$259.8	\$265.7	\$278.4	\$292.3	\$306.9	\$322.3	\$338.3	\$355.2
% of Outdoor Sales	18.8%	19.8%	19.8%	19.8%	19.8%	19.8%	19.8%	19.8%
Indoor Business Fixed SG&A	109.9	115.4	121.1	127.2	133.5	140.2	147.2	154.6
% of Indoor Sales	7.4%	7.4%	7.4%	7.4%	7.4%	7.4%	7.4%	7.4%
Indoor Business Variable SG&A	109.9	116.4	122.3	128.4	134.8	141.5	148.6	155.8
% of Indoor Sales	7.4%	7.4%	7.4%	7.4%	7.4%	7.4%	7.4%	7.4%
Total Indoor SG&A	\$209.5	\$231.8	\$243.4	\$255.6	\$268.3	\$281.7	\$295.8	\$309.8
% of Indoor Sales	15.9%	14.8%	14.8%	14.8%	14.8%	14.8%	14.8%	14.8%
Total Business Unit SG&A	\$469.3	\$485.4	\$510.2	\$535.7	\$562.5	\$590.6	\$620.0	\$651.0
% of Total Sales	17.4%	17.2%	17.2%	17.2%	17.2%	17.2%	17.2%	17.2%
Additional Adjustments (2)	\$469.3	\$487.2	\$511.9	\$537.4	\$564.2	\$592.3	\$621.7	\$652.7
Total Pro Forma Company SG&A	\$469.3	\$487.2	\$511.9	\$537.4	\$564.2	\$592.3	\$621.7	\$652.7
Operating Income Before Cost Savings	\$299.3	\$323.3	\$381.5	\$404.4	\$432.5	\$465.9	\$483.9	\$502.3

Notes: (1) Eliminates \$6.7MM of depreciation related expenses due to PP&E related restructuring write-offs starting 1998.
(2) Adds additional cost impact of \$1.7MM related to new mgmt. contracts starting 1998.

SUNBEAM CORPORATION
Pro Forma Income Statements
Base Financing Case

	2004	2003	2002	2001	1999	1998	1997
Sales	\$3,792.8	\$3,612.1	\$3,440.1	\$3,276.3	\$3,120.3	\$2,971.7	\$2,699.9
% Growth	5.0%	2.50%	5.0%	5.0%	5.3%	4.5%	4.5%
Cost of Goods Sold	2,637.7	2,506.5	2,381.9	2,279.6	2,178.4	2,078.2	1,931.3
% of Sales	69.5%	69.4%	69.2%	69.6%	69.8%	70.3%	71.5%
Gross Profit	1,155.0	1,105.7	1,058.2	996.8	941.9	893.5	768.6
% of Sales	30.5%	30.6%	30.8%	30.4%	30.2%	30.1%	28.7%
SG&A Expense	652.7	621.7	592.3	564.2	537.4	511.9	469.3
% of Sales	17.2%	17.2%	17.2%	17.2%	17.2%	17.2%	17.4%
Pre-Tax Cost Savings	(150.0)	(150.0)	(150.0)	(150.0)	(150.0)	(150.0)	(60.0)
% of Sales	4.0%	4.2%	4.4%	4.6%	4.8%	5.0%	2.1%
Operating Income	407	439	496	582.5	554.4	531.5	383.3
% Growth	11.1%	17.9%	17.8%	17.8%	17.9%	17.6%	13.1%
Net New Goodwill Amortization	49.5	49.5	49.5	49.5	49.5	49.5	49.5
Other Financing Amortization	4.2	4.2	4.2	4.2	4.2	4.2	4.2
Trademark Amortization	7.8	7.8	7.8	7.8	7.8	7.8	7.8
Other Expense/(Income)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)
% of Sales	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
EBIT	296.3	322.5	470.7	493.5	470.7	322.5	296.3
% of Sales	11.0%	11.4%	13.8%	15.0%	15.0%	10.8%	11.0%
Depreciation & Amortization	130.2	136.9	171.6	188.4	171.6	155.6	130.2
% of Sales	4.2%	4.5%	5.0%	5.8%	5.5%	5.2%	4.8%
Net Interest / (Income)	151.1	147.8	127.2	105.1	105.1	147.8	151.1
Implementation Charges (1)	0.0	280.5	0.0	0.0	0.0	0.0	0.0
Earnings Before Taxes	145.2	(105.9)	343.4	388.5	388.5	343.4	145.2
Tax Provision (2)	68.5	0.0	68.3	153.7	153.7	68.3	68.5
Effective Tax Rate	47.2%	0.0%	19.9%	39.6%	39.6%	19.9%	47.2%
Net Income	\$76.7	(\$105.9)	\$275.1	\$234.8	\$234.8	\$275.1	\$76.7
% of Sales	2.8%	-3.8%	9.1%	7.5%	7.5%	9.1%	2.8%
Minority Interest	1.5	0.4	0.4	0.4	0.4	0.4	1.5
Net Income Avail. to Common	\$75.2	(\$106.3)	\$274.7	\$234.4	\$234.4	\$274.7	\$75.2

Note: (1) Includes \$150.1MM of cash and \$130.4MM of non-cash implementation charges; excludes Acquisition charges of approximately \$180.2MM which have been included in sources & uses and balance sheet adj.
(2) See NOL Schedule for detailed tax assumptions.

SUNBEAM CORPORATION

NOL Schedule

Base Financing Case

	PF 1997	1998	1999	Projected Pro Forma				
		1998	1999	2000	2001	2002	2003	2004
Earnings Before Taxes	\$145.2	(\$105.9)	\$343.4	\$388.5	\$438.5	\$495.7	\$579.1	\$609.1
Non-Tax Deductible Amortization (1)	50.6	50.6	50.6	50.6	50.6	50.6	50.6	50.6
Non-Tax Deductible Implementation Charges (2)	0.0	50.0	0.0	0.0	0.0	0.0	0.0	0.0
Taxable Income	\$195.8	(\$5.2)	\$394.1	\$439.1	\$489.1	\$546.3	\$629.7	\$659.7
Nominal Tax Rate	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%	35.0%
Applicable Tax Provision	68.5	(1.8)	137.9	153.7	171.2	191.2	220.4	230.9
Adjusted Tax Provision	68.5	0.0	68.3	153.7	171.2	191.2	220.4	230.9
NOL Beginning Balance	0.0	0.0	1.8	0.0	0.0	0.0	0.0	0.0
Additions	0.0	1.8	0.0	0.0	0.0	0.0	0.0	0.0
(Reductions)	0.0	0.0	(1.8)	0.0	0.0	0.0	0.0	0.0
NOL Ending Balance	0.0	1.8	0.0	0.0	0.0	0.0	0.0	0.0
Tax Benefits Related to Acquisitions								
Beg. Tax Benefits Related to Acquisitions (3)	\$67.8	\$67.8	\$67.8	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Additions		0.0	0.0	0.0	0.0	0.0	0.0	0.0
(Reductions)		0.0	(67.8)	0.0	0.0	0.0	0.0	0.0
End Tax Benefits Related to Acq.	\$67.8	\$67.8	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Cash Flow Change		0.0	67.8	0.0	0.0	0.0	0.0	0.0

Note: (1) Assumes new goodwill amortization of \$49.5MM and advisory fees amortization of \$1.1MM not deductible for tax purposes.

(2) Assumes approximately \$50MM of foreign Implementation Charges not tax deductible.

(3) Represents tax benefit at 37.6% of a) the cash out of stock options as a result of the Acquisitions (approximately \$52.4MM pre tax \$19.7MM after tax) and b) the prepayment penalties on refinanced indebtedness (approximately \$127.8MM pre tax and \$48.1MM after tax) from Zero Coupon Convertible Subordinated Debenture Prospectus.

SUNBEAM CORPORATION

Pro Forma Combined Cash Flow Statements Base Financing Case

		Projected Pro Forma						
	PF 1997	1998	1999	2000	2001	2002	2003	2004
Net Income	\$75.2	(\$106.3)	\$274.7	\$234.4	\$266.9	\$304.1	\$358.3	\$377.8
Depreciation (1)	68.6	75.3	94.1	110.0	126.9	144.7	163.4	183.0
% of CapEx	72.3%	75.3%	78.4%	81.5%	84.6%	87.7%	90.8%	93.8%
Net New Goodwill Amortization	49.5	49.5	49.5	49.5	49.5	49.5	49.5	49.5
Trademark Amortization	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8
Other Financing Amortization	4.2	4.2	4.2	4.2	4.2	4.2	4.2	4.2
Deferred Taxes	57.5	7.5	9.4	11.0	12.7	14.5	16.3	18.3
% Depreciation		10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%
Minority Interest	1.5	0.4	0.4	0.4	0.4	0.4	0.4	0.4
Non Cash Interest Expense	38.0	38.0	39.9	41.9	44.0	46.3	0.0	0.0
Non-Cash Implementation Charges	0.0	130.4	0.0	0.0	0.0	0.0	0.0	0.0
Cash Use From New Mgmt. Contracts	0.0	(16.1)	(1.2)	(1.2)	(1.2)	0.0	0.0	0.0
Operating Cash Flow	302.3	590.8	478.8	458.0	511.2	571.4	599.9	641.0
% of Sales	11.2%	6.8%	16.1%	14.7%	15.6%	16.6%	16.6%	16.9%
Investment in Non-Cash Working Capital	34.2	(5.1)	(12.3)	(17.0)	(28.4)	(47.1)	(52.4)	(55.1)
% of Change in Sales		4.1%	8.2%	11.5%	18.2%	28.8%	30.5%	30.5%
Capital Expenditures	(95.0)	(100.0)	(120.0)	(135.0)	(150.0)	(165.0)	(180.0)	(195.0)
% of Sales	3.5%	3.5%	4.0%	4.3%	4.6%	4.8%	5.0%	5.1%
Common Dividends	(4.2)	(4.3)	(4.3)	(4.4)	(4.4)	(4.4)	(4.4)	(4.4)
Dividends Per Share	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04	\$0.04
Net Scheduled Debt Retirements	0.0	(4.4)	(54.1)	(99.9)	(8.3)	(8.3)	(0.9)	0.0
Free Operating Cash Flow	237.4	77.0	288.1	201.7	320.1	346.5	362.2	386.5
Excess Cash Flow for Debt Service		\$77.0	\$288.1	\$201.7	\$320.1	\$346.5	\$362.2	\$709.2
Total Debt Automatically Added/(Retired) (2)		(77.0)	(288.1)	(201.7)	(320.1)	(346.5)	(39.5)	0.0
Excess Cash		\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$322.7	\$386.5

Note: (1) Pro-forma and projections adjust for PP&E write-offs related to Integration.

(2) Assumes 100% cash sweep first allocated to the Revolver, then Term Loan A, then Term Loan B, and then other senior debt.

SUNBEAM CORPORATION
Pro Forma Non-Cash Working Capital
Base Financing Case

Projected Pro Forma									
	PF 1997	1998	1999	2000	2001	2002	2003	2004	
Current Assets	\$597.2	\$641.8	\$667.6	\$692.5	\$709.1	\$744.6	\$781.8	\$820.9	Account Receivable
	80.7	83.0	82.0	81.0	79.0	79.0	79.0	79.0	Days Outstanding
	3.0	3.1	3.2	3.3	3.3	3.3	3.3	3.3	Inventory Turnover
Other Current Assets	\$118.9	\$124.3	\$130.9	\$137.5	\$144.3	\$151.5	\$159.1	\$167.1	% of Sales
	4.4%	4.4%	4.4%	4.4%	4.4%	4.4%	4.4%	4.4%	
	\$1,369.1	\$1,415.0	\$1,448.0	\$1,490.0	\$1,544.2	\$1,617.9	\$1,700.5	\$1,787.3	Total Current Assets
Current Liabilities	\$233.5	\$264.5	\$273.3	\$286.5	\$299.8	\$313.2	\$329.6	\$346.9	Accounts Payable
	44.1	48.0	48.0	48.0	48.0	48.0	48.0	48.0	Days Outstanding
	\$215.6	\$225.4	\$237.3	\$249.2	\$261.7	\$274.8	\$288.5	\$302.9	Other Current Liabilities
Total Current Liabilities	\$449.1	\$489.9	\$510.6	\$535.7	\$561.4	\$588.0	\$618.1	\$649.8	% of Sales
	8.0%	8.0%	8.0%	8.0%	8.0%	8.0%	8.0%	8.0%	
	\$920.0	\$925.0	\$937.3	\$954.4	\$982.8	\$1,029.9	\$1,082.4	\$1,137.5	Total Working Capital
Investment in Working Capital									
% of Change in Sales									
	\$5.1	\$12.3	\$17.0	\$28.4	\$47.1	\$52.4	\$55.1		
	4.1%	8.2%	11.5%	18.2%	28.8%	30.5%	30.5%		

SUNBEAM CORPORATION

Pro Forma Balance Sheets

Base Financing Case

	PF 1997	1998 (2)	1999	2000	Projections			
					2001	2002	2003	2004
ASSETS								
Cash	\$72.5	\$72.5	\$72.5	\$72.5	\$72.5	\$72.5	\$72.5	\$72.5
Excess Cash	0.0	0.0	0.0	0.0	0.0	0.0	322.7	709.2
Accounts Receivable	597.2	641.8	667.6	692.5	709.1	744.6	781.8	820.9
Inventories	653.0	648.9	649.5	660.1	690.8	721.8	759.5	799.3
Other Current Assets	118.9	124.3	130.9	137.5	144.3	151.5	159.1	167.1
Tax Benefits on Acq. (1)	67.8	67.8	0.0	0.0	- 0.0	0.0	0.0	0.0
Total Current Assets	1,509.4	1,555.3	1,520.5	1,562.6	1,616.8	1,690.4	2,095.7	2,569.0
Net Property, Plant and Equipment (2)	425.6	350.3	376.2	401.2	424.3	444.6	461.3	473.3
New Goodwill	1,980.6	1,931.0	1,881.5	1,832.0	1,782.5	1,733.0	1,683.5	1,634.0
Prepaid Fees & Expenses	53.3	49.1	44.9	40.7	36.5	32.3	28.1	23.9
Trademarks & Tradenames	200.9	193.0	185.2	177.4	169.6	161.7	153.9	146.1
Other Non-Current Assets	94.2	94.2	94.2	94.2	94.2	94.2	94.2	94.2
TOTAL ASSETS	\$4,264.0	\$4,173.0	\$4,102.5	\$4,108.0	\$4,123.8	\$4,156.3	\$4,516.7	\$4,940.4
LIABILITIES & EQUITY								
Accounts Payable	\$233.5	\$264.5	\$273.3	\$286.5	\$299.8	\$313.2	\$329.6	\$346.9
Other Current Liabilities	215.6	225.4	237.3	249.2	261.7	274.8	288.5	302.9
Total Current Liabilities	449.1	489.9	510.6	535.7	561.4	588.0	618.1	649.8
Deferred Tax Liability	59.4	67.0	76.4	87.4	100.1	114.5	130.9	149.2
Other Non-Current Liabilities (2)	221.6	252.0	252.0	252.0	252.0	252.0	252.0	252.0
Existing Long Term Debt	69.9	69.2	68.5	67.7	66.9	40.4	0.0	0.0
Revolver	79.0	2.0	0.0	0.0	0.0	0.0	0.0	0.0
Term Loan A	550.0	550.0	218.0	0.0	0.0	0.0	0.0	0.0
Term Loan B	750.0	746.3	738.8	655.9	328.3	0.0	0.0	0.0
Zero Coup. Sub. Convert	750.0	788.0	827.9	869.8	913.8	0.0	0.0	0.0
Total	2,198.9	2,155.4	1,853.1	1,593.4	1,309.0	40.4	0.0	0.0
Minority Interest	1.2	1.6	2.0	2.4	2.8	3.2	3.6	4.0
Common Equity	1,333.7	1,207.0	1,408.3	1,637.1	1,898.4	3,158.1	3,512.0	3,885.4
TOTAL LIABILITIES & EQUITY	\$4,264.0	\$4,173.0	\$4,102.5	\$4,108.0	\$4,123.8	\$4,156.3	\$4,516.7	\$4,940.4

Note: (1) Represents tax benefit at 37.6% of a) the cash out of stock options as a result of the Acquisitions (approximately \$52.4MM pre tax \$19.7MM after tax) and b) the prepayment penalties on refinanced indebtedness (approximately \$127.8MM pre tax and \$48.1MM after tax) from Zero Coupon Convertible Subordinated Debt Prospectus.

(2) Assumes a \$100.0MM adjustment to PP&E and a \$30.4MM adjustment to Other Non-Current Liabilities as a result of non-cash Implementation Charges in 1998.

SUNBEAM CORPORATION

Pro Forma Debt Paydown Schedule

Base Financing Case

	PF 1997	Projections						
		1998	1999	2000	2001	2002	2003	2004
Other Existing Long Term Debt								
Beginning Balance		69.9	69.2	68.5	67.7	66.9	40.4	0.0
Scheduled Retirements		(0.7)	(0.7)	(0.8)	(0.8)	(0.8)	(0.9)	0.0
Debt Retired from Excess Cash Flow		0.0	0.0	0.0	0.0	(25.7)	(39.5)	0.0
Ending Balance	69.9	69.2	68.5	67.7	66.9	40.4	0.0	0.0
Revolver								
Beginning Balance		79.0	2.0	0.0	0.0	0.0	0.0	0.0
Scheduled Retirements		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Debt Retired from Excess Cash Flow		(77.0)	(2.0)	0.0	0.0	0.0	0.0	0.0
Ending Balance	79.0	2.0	0.0	0.0	0.0	0.0	0.0	0.0
Tranche A 42.3%								
Beginning Balance		550.0	550.0	218.0	0.0	0.0	0.0	0.0
Scheduled Retirements		0.0	(45.9)	(91.7)	0.0	0.0	0.0	0.0
Debt Retired from Excess Cash Flow		0.0	(286.1)	(126.4)	0.0	0.0	0.0	0.0
Ending Balance	550.0	550.0	218.0	0.0	0.0	0.0	0.0	0.0
Tranche B 57.7%								
Beginning Balance		750.0	746.3	738.8	655.9	328.3	0.0	0.0
Scheduled Retirements		(3.8)	(7.5)	(7.5)	(7.5)	(7.5)	0.0	0.0
Debt Retired from Excess Cash Flow		0.0	0.0	(75.3)	(320.1)	(320.8)	0.0	0.0
Ending Balance	750.0	746.3	738.8	655.9	328.3	0.0	0.0	0.0
High Yield								
Beginning Balance		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Scheduled Retirements		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Automatic Retirements		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Ending Balance	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Zero Coup. Sub. Conv. Debt								
Beginning Balance	Accrual Years	750.0	788.0	827.9	869.8	913.8	0.0	0.0
Accruals	5.0	38.0	39.9	41.9	44.0	46.3	0.0	0.0
Scheduled Retire/Conv.	Conv. Prer Share Repurch.	0.0	0.0	0.0	0.0	(960.1)	0.0	0.0
Ending Balance	30.0%	750.0	788.0	827.9	913.8	0.0	0.0	0.0
Total Debt Reduction/(Addition)		\$81.4	\$342.2	\$301.6	\$328.4	\$1,314.9	\$40.4	\$0.0

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SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail

Cost Savings Summary

The Company, in consultation with Coopers and Lybrand, has completed a comprehensive Integration analysis with \$253 million in Integration Cost Savings generated from the following categories:

Savings Category	Savings (\$ in millions)
Procurement	\$66
Sunbeam Sourcing Strategy ⁽¹⁾	52
Staff Reduction	50
Facility Rationalization	32
Controllable Expenses	24
Transportation	11
Marketing and Sales Expenses	8
Working Capital Reduction	7
Information Technology	3
Total Cost Savings	\$253

(1) Analysis completed prior to the Acquisitions, not included in Coopers and Lybrand report.

Implementation Charges

One-time implementation charges associated with the Integration and sourcing strategy are expected to total approximately \$280.5 million pre-tax, including pre-tax cash costs of approximately \$150.1 million.

	2 nd Quarter		3 rd Quarter		4 th Quarter		Total		
	Cash	Non-cash	Cash	Non-cash	Cash	Non-cash	Cash	Non-cash	Combined
Goodwill ⁽¹⁾	\$15.0	\$83.5	\$32.0	\$ -	\$41.0	\$ -	\$88.0	\$83.5	\$171.5
Operations	9.1	2.5	15.1	-	15.3	-	39.5	2.5	42.0
Restructuring	0.9	44.4	12.7	-	9.0	-	22.6	44.4	67.0
Total	\$25.1	\$130.4	\$59.7	\$ -	\$65.3	\$ -	\$150.1	\$130.4	\$280.5

(1) Includes severance, lease buyouts, closure of facilities, environmental cleanup, etc.

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Procurement Cost Reduction

Annual \$663 million procurement spending is expected to be reduced by approximately 10%, saving \$66 million per annum.

Purchase Category	Base Spend (\$ in millions)	Savings (\$ in millions)
Raw Materials & Components	\$354	\$34
Sourced Goods	273	27
Capital Equipment	21	3
Maintenance, Repair, Operations (MRO)	15	2
Total	<u>\$663</u>	<u>\$66</u>

Raw material, components and major commodity categories spending can be reduced by implementing the following:

- Centralize purchasing, consolidate fragmented vendor base, rationalize vendor population to concentrate buying power and leverage vendors
- Establish preferred vendor agreements to drive cost reduction, quality, shared R&D, supply reliability, performance metrics with penalties and efficiency
- Institute commodity bid process with target pricing program for savings
- Use Total Cost of Ownership ("TCO") analyses to identify key cost drivers and maximize savings options within cost components
- Migrate qualified suppliers towards vendor certification to eliminate inspection cost overheads
- Drive standardization of materials/parts for leveraging of common items; reduce material cost through specification revisions of item content
- Implement monetary penalties for vendor performance failure, reject material and consequential downtime
- Manage upstream raw material suppliers for component vendors to facilitate finished component cost reduction

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Sourced goods spending is expected to be reduced by implementing the following:

- Eliminate foreign agent commission structure (3-5%) by shifting from trade companies to direct factory relationships
- Establish and improve product specifications to hold vendor accountable for quality and to facilitate Design For Manufacturability and Assembly considerations
- Implement well defined vendor agreements to enforce performance accountability and to shift vendor caused expediting costs to vendors
- Establish blanket contracts with preferred suppliers to reduce supplier premiums built in for lack of advance raw material buying possibilities
- Implement pre-shipment inspection overseas to reduce logistics costs on reject product
- Institute professional negotiating and procurement practices to restructure and renegotiate informal, unstructured supply relationships
- Reduce cost and lead-times by controlling/limiting frequency of change orders

Sunbeam Sourcing Strategy

Currently, 70% of Sunbeam products sold to U.S. retailers are manufactured at the Company's own facilities in North America. However, the Company's goal is to source approximately 50% of parts and/or products from third parties in order to reduce capital investment in plants' cost of goods sold. Sunbeam expects incremental annual cost savings of approximately \$52 million per annum from closing two factories in Mexico (which have 2,800 employees) and from outsourcing production of certain components and finished goods to less expensive specialized or international producers.

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Staff Reductions

Total number of positions will be reduced by 6,423, consisting of 1,293 through sale of businesses, 2,330 by rationalization and outsourcing and 2,800 from the Mexican factory closings.

	<u>Positions</u>
Sunbeam before Mexico Closings	7,937
Mexico Closings	<u>2,800</u>
Sunbeam after Mexico Closings	5,137
Total Acquisitions	<u>7,987</u>
Total Combined	13,124
Business Sales:	
Spas	140
Compressors	213
Eastpak	<u>940</u>
Total After Business Sales	11,831
Rationalization and Outsourcing:	
Facility and Staff Rationalization	1,227
Outsourcing	<u>1,103</u>
Total Rationalization and Outsourcing (detailed below)	<u>2,330</u>
Total After Integration	<u>9,501</u>

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Estimated annual labor cost savings of \$50 million is expected to be achieved from the 2,330 positions eliminated through Rationalization and Outsourcing categories as follows:

Functional Area	Number of Positions					Savings (\$ millions)
	Baseline (3/1/98)	Rationalize	Outsource	Pro Forma	Reduction	
Marketing & Sales	910	151	98	661	249	\$9.3
Admin & Support	1,064	219	70	775	289	20.4
Operations - Salary	916	185	64	667	249	9.0
Operations - Hourly	<u>11,741</u>	<u>672</u>	<u>871</u>	<u>10,198</u>	<u>1,543</u>	<u>11.2</u>
Total	<u>14,631</u>	<u>1,227</u>	<u>1,103</u>	<u>12,301</u>	<u>2,330</u>	<u>\$49.9</u>

Consolidate management and clerical staff through facility rationalization and integration of overhead functions throughout the four entities.

- Eliminate redundant corporate functions and integrate overhead functions
 - Finance & Accounting
 - Human Resources
 - Procurement
 - Information Systems
 - Legal and Risk Management
- Combine and restructure business operations into a one company approach
 - Marketing
 - Sales
 - Customer Service
 - Consumer service
 - Design engineering
 - International

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued).

Facility Rationalization

Annual savings of \$32 million can be achieved by rationalizing Sunbeam, Coleman, Signature Brands and First Alert facilities.

Facility Consolidation	Savings (\$ in millions)
Headquarters	\$12
Manufacturing	12
Distribution	4
Sales Offices	4
Total Facility Consolidation Savings	\$32

The 120 facilities under the new Sunbeam umbrella will be reduced by 72 facilities to 48 after selling, outsourcing, and closing.

Facility Type	Current Facilities	Facility Reductions				Remaining Facilities
		Sell	Outsource	Close	Reduction	
Headquarters	10	1	--	8	9	1
Manufacturing	28	4	7	2	13	15
Distribution						
Owned/Leased Facilities	35	3	--	26	29	6
Third Party Facilities	12	--	--	4	4	8
Sales Offices	35	--	--	17	17	18
Facility Total	120	8	7	57	72	48

SUNBEAM CORPORATION

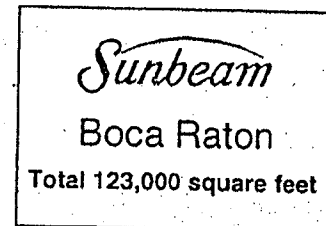
Appendix A Integration Cost Saving Detail (continued)

Facility Rationalization - Headquarters

The current ten headquarters will be consolidated into one worldwide headquarters in Boca Raton with expected savings of \$12 million per annum.

- Delray, FL
- Wichita, KS
- Wichita, KS
- New York, NY
- Omaha, NE
- Lowell, MA
- Brussels, Belgium
- Cleveland, OH
- Aurora, IL
- Bridgeview, IL

Sunbeam
Coleman Corp.
Coleman Outdoor
Coleman Corp.
Powermate
Eastpak
Coleman Europe
Signature Brands
First Alert
Health-O-Meter



Total 360,000 square feet

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Facility Rationalization - Manufacturing Plants

The current 28 plants will be consolidated into 15 focused plants, achieving expected savings of \$12 million per annum.

Sunbeam Facilities

Location	Sell	Close	Keep
Acuna - Appliances		✓ o	
Mexico City - Appliances		✓ o	
Waynesboro - Blankets			✓
Neosho - Grills/Scales			✓
McMinville - Clippers			✓
Hattiesburg - Appliances			✓
Matamoros - Appliances			✓
Venezuela - Appliances			✓

First Alert Facilities

Location	Sell	Close	Keep
Aurora - Fire Extinguisher		✓ o	
Juarez #1 - Detectors			✓
Juarez #2 - Vacant		✓ c	

Signature Brands Facilities

Location	Sell	Close	Keep
Cleveland - Mr. Coffee		✓ o	
Bridgeview - Scales			✓

Coleman Facilities

Location	Sell	Close	Keep
Chandler - Spas	✓		
Springfield - Compressors	✓		
Puerto Rice 1 - EastPak	✓		
Puerto Rice 2 - EastPak	✓		
Maize - Machine Shop		✓ o	
Pocola - Furniture		✓ o	
Costa Rica - furniture/mantles		✓ o	
Cedar City - Sleeping Bags		✓ c	
Lyon - Appliances/Filling			✓
Wichita - Appliances			✓
New Braunfels - coolers			✓
Lake City - Sleeping Bags			✓
Maize - Cylinders			✓
Kearney - Generators			✓
SVB, Italy - Barbecue Grills			✓

c - Consolidation
o - Outsourcing
✓ - Under continuing review

The remaining plants will be organized to produce exclusively Indoor or Outdoor products.

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Facility Rationalization - Distribution Network

Rationalize 47 warehouse and distribution facilities to the following 14 facilities with expected savings of \$4 million per annum:

- Seven domestic warehouses
 - Eastern US distribution center
 - Ontario, CA - Western US distribution center (3rd Party Leased facility)
 - Miami, FL - South American distribution (3PL facility)
 - Lake City, SC - Sleeping Bags
 - McMinnville, TN - Non-retail Clippers distribution
 - El Paso, TX - Juarez Maquilladora warehouse
 - Brownsville, TX - Matamoros Maquilladora warehouse
- Seven international warehouses
 - Benelux - mainland Europe distribution (3PL facility)
 - Bristol, UK
 - Ontario, Canada (3PL facility)
 - Mexico City, Mexico (3PL facility)
 - Kowloon, Hong Kong (3PL facility)
 - Australia (3PL facility)
 - Brazil (3PL facility)
- In addition, plant-direct distribution will also occur at the following locations
 - Neosho, MO plant - Grills
 - Waynesboro, MS plant - blankets
 - New Braunfels, TX plant - Thermal coolers (facility expansion)
 - Bridgeview, IL plant - non retail scales
 - Barquisimento, Venezuela - household appliances

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Facility Rationalization - Sales Offices

Rationalize 35 sales offices to the following 18 with expected annual savings of \$4 million:

	Current Location	Continuing Locations
<i>Coleman</i>	<ol style="list-style-type: none"> 1. Wichita, KS 2. Ontario, CD 3. Bentonville, AR 4. Omaha 5. Austria 6. Breta, Belgium 7. Brussels HQ 8. Holland 9. Italy 10. Czech Republic 11. Paris 12. Frankfurt 13. Portugal 14. Spain 15. Switzerland 16. London 17. Tokyo 18. Australia 19. Dubai 20. Brazil 21. Latin America, (Miami) 	<ol style="list-style-type: none"> 1. Bentonville, AR 2. Brussels HQ, Benelux Cluster 3. Italy 4. Paris Cluster 5. Germany, Switzerland, Austria, Czech Rep Cluster 6. Spain, Portugal Cluster 7. U.K. Cluster 8. Tokyo 9. Australia 10. Dubai 11. Brazil
<i>First Alert</i>	<ol style="list-style-type: none"> 22. Aurora, IL 23. Ontario, CD 24. Sydney 25. London 	
<i>Signature Brands</i>	<ol style="list-style-type: none"> 26. Cleveland 27. Chicago 	
<i>Sunbeam</i>	<ol style="list-style-type: none"> 28. Delray 29. Ontario, CD 30. Milton Keynes, UK 31. Latin America, (Miami) 32. Hong Kong 33. Edo de Mexico 34. Caracas, Venezuela 35. Manila, Philippines 	<ol style="list-style-type: none"> 12. Delray HQ 13. Ontario, CD 14. Latin America HQ 15. Asia Pacific HQ 16. Edo de Mexico 17. Caracas 18. SE Asia Cluster

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Controllable Expense Reduction

Annual \$107 million controllable expenses expected to be reduced by approximately 22%, saving approximately \$24 million per annum.

Category	Baseline (\$ in millions)	Savings ⁽¹⁾ (\$ in millions)
Training, Subscription and Employee Expenses	\$ 10.8	\$ 6.9
Travel and Entertainment	13.1	5.1
Professional/Outside Services	20.6	3.0
Telephone/Postage	7.0	2.2
Production/Office Supplies	9.8	1.8
Rent, Lease and Maintenance	23.6	1.0
Public Relations	0.9	0.8
Utilities	8.1	0.8
Insurance	5.4	0.4
Other	7.7	1.7
Total	\$ 107.1	\$ 23.6

(1) \$26 million facility related expense savings are included in the facility rationalization savings.

The proposed controllable expense reductions are expected to be achieved by implementing the following:

- Eliminate most of controllable expenses associated with the facilities proposed to be closed with minimal offsets experienced for plant integration to existing operations
- Reduce people-related expenses in proportion to the headcount reduction (Telecom, Office Supplies, Travel, Gifts, Awards, Training, Recruiting Relocation)
- Institute aggressive spending policies, controls and budget mechanisms
- Leverage existing Sunbeam contracts and outsourcing arrangements to eliminate the highly localized, fragmented spending
- Capitalize on additional spending volume to renegotiate existing Sunbeam contract rates and agreements

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Transportation

Annual \$60 million transportation expense at the Acquisitions are expected to be reduced by approximately 11% saving \$6.8 million per annum, with an additional annual \$4.2 million savings from current Sunbeam costs.

Transportation	Savings (\$ in millions)		
	Acquisitions	Sunbeam	Total
Ocean container freight	\$1.0	--	\$1.0
Over-the-road Less than Truckload (LTL) freight	2.4	1.0	3.4
Over-the-road Truckload (TL) freight	0.7	0.3	1.0
Small parcel shipment (UPS/RPS)	0.7	0.1	0.8
Reconfiguration of the distribution network ⁽¹⁾	<u>2.0</u>	<u>2.8</u>	<u>4.8</u>
Total	<u>\$6.8</u>	<u>\$4.2</u>	<u>\$11.0</u>

Inbound/outbound transportation expense are expected to be reduced by a total of \$11 million per annum.

- Ocean container freight
 - Use inbound freight to leverage export shipment rates
 - Use independent carriers instead of cartel carriers
- Over-the-road Less than Truckload (LTL) freight
 - Consolidation of most acquired firm's product into Sunbeam appliance DCs will generate more economical ship sizes
 - Load center planning for consolidation of inbound shipments
- Over-the-road Truckload (TL) freight
 - Improved negotiating leverage on inbound and outbound freight
 - Procurement group takes over freight contract negotiation
- Small parcel shipments (UPS/RPS)
 - Improve discounts on Signature Brands and First Alert shipments (15-25%)
- Savings due to re-configuration of the distribution network
 - Consolidate eastern US distribution center (dependent of relocation from Hattiesburg to more central location)
 - European distribution center consolidation

(1) Assumes a relocation of the Eastern US consolidation distribution point from Hattiesburg to a facility in the Indiana/Ohio/Kentucky area

SUNBEAM CORPORATION

Appendix A Integration Cost Saving Detail (continued)

Marketing & Sales Cost Reduction

Marketing and sales expenses, national advertising, Co-op advertising and are expected to yield annual \$8.2 million in savings.

Savings Initiatives	Savings (\$ in millions)
Commission Savings (already achieved)	\$3.0
Advertising/Promotion Working \$'s	4.5
Fixed Sales/Marketing Expenses	<u>0.7</u>
Total	<u>\$8.2</u>

Sunbeam is moving to convert the current broker/manufacturer rep structure to direct sales; consolidation to date has achieved \$3 million in commission savings.

- Strategic accounts should only be served by direct sales personnel
- Brokers and reps will be consolidated to leverage scale which will:
 - Capture increased share of broker/rep attention on Sunbeam's brands
 - Reduce overall average commission rates and total commission expense (\$3 million savings to date)
 - Improve leverage with the customers
- Conversion to direct sales needs to be managed so that the best direct sales personnel can be recruited, hired and trained

Working Capital Reduction

Reduce base inventory of \$325 million⁽¹⁾ of acquired entities by \$66 million for expected annual savings of \$6.6 million.

Inventory Reduction Action Plan	Inventory Reduction (\$ in millions)	Annual Savings (\$ in millions)
Reduce Obsolete Inventory	\$24	\$2.4
Reduce Excess Inventory w/SKU Rationalization	21	2.1
Forecasting and Scheduling Improvement	10	1.0
Eliminate Redundant Storage Locations in Europe (DC Rationalization)	<u>11</u>	<u>1.1</u>
Total	<u>\$66</u>	<u>\$6.6</u>

(1) Excluding *EastPak™*, compressors and spas.

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SUNBEAM CORPORATION

Appendix B Revenue Opportunities

Marketing & Sales Synergies

Sunbeam believes it has the potential to drive \$265 million in topline growth during 1999 in the sales, marketing and international areas by focusing on key customers and leveraging resources to grow the Power Brands.

- Leverage scale and breadth of the domestic business to drive sales synergy at the customer level and marketing synergy through new products
- Build sales international synergy by leveraging the product and distribution strength of established Power Brands

Opportunity	Initiatives Required	Incremental 1999 Revenues (\$ in millions)
<i>Sales Management</i>	<ul style="list-style-type: none">• Order fill improved• Telesales leverage• Customer team category management leverage	\$32 8 10
<i>New Products</i>	<ul style="list-style-type: none">• New Product initiatives	75
<i>Distribution</i>	<ul style="list-style-type: none">• Domestic opportunities• Current products to new geographies	40 <u>100</u>
Total		<u>\$265</u>

SUNBEAM CORPORATION

Appendix B Revenue Opportunities (continued)

Sunbeam expects to generate an incremental \$50 million in 1999 sales revenue with increased replenishment efficiency, new telesales initiatives and improved category management at strategic accounts.

Opportunity	Initiatives Required	Incremental 1999 Revenues (\$ in millions)
<i>Order Fill Improvements</i>	• Improve order fill rates from 79 to 90% for the top 20 accounts	\$13
	• Improve order fill rates in remaining accounts	10
	• Recapture Wal-Mart volume with improved distribution	9
<i>Category Management</i>	• Increase the use of category management best practices with strategic accounts to yield conservatively 1% improvements in sales revenue	10
<i>Telesales</i>	• Expand to accounts with sales of \$250,000	8
Total		\$50

SUNBEAM CORPORATION

Appendix B Revenue Opportunities (continued)

The Company expects new product initiatives to contribute approximately \$75 million in revenue by 1999.

Brand	New Product Initiative	Incremental 1999 Revenues (\$ in millions)
<i>Sunbeam/Oster</i>	• Premium appliance line with value-added features to compete in higher price-point segments	\$10
	1. Oscillating blender	
	2. Premium mixer	
	3. Safety can opener	
	4. Pressure cooker (electric)	
	• Premium microwave (Latin America) - leverage the <i>Oster®</i> brand	13
	• Conventional stove top pressure cooker (Latin America) - replaces business lost to manufacturer failure	3
<i>Coleman</i>	• Soft cooler line captures fastest growing segment in thermal	16
<i>First Alert</i>	• Value added features and new product innovations	
	1. Wireless interconnect	
	2. 10-year battery life smoke detector	30
	3. Combination CO/Smoke detector	
<i>Mr. Coffee</i>	• Enhanced features/new products	3
Total		<u><u>\$75</u></u>

SUNBEAM CORPORATION

Appendix B Revenue Opportunities (continued)

New domestic distribution opportunities are expected to drive 1999 growth by \$40 million.

Opportunity	Initiatives Required	Incremental 1999 Revenues (\$ in millions)
<i>First Alert®</i>	Leverage Signature Brand's Food & Drug channel strength • Expand distribution to 65% ACV	\$13
<i>Grillmaster® Accessories</i>	Capture <i>Grillmaster®</i> accessories business not covered in Coleman licensing agreement	10
<i>Health-O-Meter® Heating Pads</i>	Distribute <i>Health-o-Meter®</i> therapeutic in Coleman Sporting Goods channel	10
<i>Coleman® Portable Meat Grinder</i>	Rebrand <i>Oster®</i> meat grinder and target hunters in Sporting Goods channel	5
<i>First Alert CO®/Smoke Detector</i>	Leverage Home Depot	2
Total		\$40

SUNBEAM CORPORATION

Appendix B Revenue Opportunities (continued)

With Coleman's distribution strengths in Europe and the Asia/Pacific region, and Sunbeam's distribution strength in Latin America, Sunbeam expects to increase 1999 international revenues by \$100 million.

	International	Initiatives Required	Incremental 1999 Revenues (\$ in millions)
<i>Latin America</i>	<i>Coleman Hard Goods</i>	Leverage Sunbeam distribution with sales focus	\$8
	<i>Coleman Soft Goods</i>	Fix distribution in Argentina/sales push Chile	5
	<i>Coleman Thermal</i>	Leverage developing market for hard side thermal boxes	5
	<i>Generators</i>	Increase current distribution	8
	<i>Mr. Coffee</i>	Introduce and position Mexico/ Venezuela/ Columbia opportunistically	4
	<i>Air/Water</i>	Launch in key markets	5
	<i>Sunbeam Branded Kitchen Appliances</i>	Launch in key markets	8
	<i>Grills</i>	Gain market share from Philips/ Moulinex/local brands	
		Opportunistic distribution	2
	Total Latin America		\$45

SUNBEAM CORPORATION

Appendix B Revenue Opportunities (continued)

	International (Europe)	Initiatives Required	Incremental 1999 Revenues (\$ in millions)
<i>Europe</i>	Sunbeam Blankets	Leverage Coleman distribution	\$10
	Retail Clippers	Leverage growth of professional clipper business	3
	Sunbeam Appliances	Secure opportunistic distribution	4
	Air/Water	Leverage Coleman distribution	7
	Coleman Leisure	Leverage Coleman distribution in soft goods line	10
	Total Europe		\$34
<i>Asia/Pacific</i>	Blankets	Leverage Japan distribution and build China business	12
	Clippers	Capture Japan/Australia/N. Zealand	5
	Oster Appliances	Leverage Coleman sales force in Australia	4
	Total Asia		\$21
	Total International		\$100



Sunbeam.

Now there's a bright idea.

Sunbeam.

3

AGREEMENT AND PLAN OF MERGER

among

SUNBEAM CORPORATION

CAMPER ACQUISITION CORP.

and

THE COLEMAN COMPANY, INC.

Dated as of

February 27, 1998

TABLE OF CONTENTS

PAGE

ARTICLE I DEFINITIONS

Section 1.1	Definitions.....	1
-------------	------------------	---

ARTICLE II THE COMPANY MERGER

Section 2.1.	The Company Merger.....	7
Section 2.2	Closing.....	7
Section 2.3	Company Effective Time of the Company Merger.....	7
Section 2.4	Certificate of Incorporation.....	7
Section 2.5	By-Laws.....	7
Section 2.6	Directors.....	8
Section 2.7	Officers.....	8

ARTICLE III CONVERSION OF SHARES

Section 3.1.	Effect on Capital Stock.....	8
Section 3.2	Exchange of Certificates Representing Shares.....	9
Section 3.3	Dividends; Transfer Taxes.....	10
Section 3.4	No Fractional Shares.....	11
Section 3.5	Termination of Exchange Fund.....	11
Section 3.6	Investment of Exchange Fund.....	11
Section 3.7	Closing of Company Transfer Books.....	11
Section 3.8	Dissenting Shares.....	11

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Section 4.1	Organization.....	12
Section 4.2	Capitalization.....	12
Section 4.3	Subsidiaries.....	13
Section 4.4	Authority Relative to this Agreement.....	13
Section 4.5	Consents and Approvals; No Violations.....	14
Section 4.6	Reports and Financial Statements.....	14
Section 4.7	Absence of Certain Changes or Events.....	15
Section 4.8	Litigation.....	16
Section 4.9	Information in Disclosure Documents and Registration Statement.....	17

	<u>PAGE</u>
Section 4.10 Taxes	17
Section 4.11 Compliance with Applicable Law	18
Section 4.12 Labor Matters	18
Section 4.13 ERISA Compliance	18
Section 4.14 Environmental Matters	20
Section 4.15 Intellectual Property	20
Section 4.16 Contracts	20
Section 4.17 Opinion of Financial Advisor	21
Section 4.18 Takeover Statute	21
Section 4.19 Brokers	21

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF LASER AND MERGER SUB

Section 5.1 Organization	21
Section 5.2 Capitalization	22
Section 5.3 Merger Sub	22
Section 5.4 Authority Relative to this Agreement	22
Section 5.5 Consents and Approvals; No Violations	23
Section 5.6 Reports and Financial Statements	23
Section 5.7 Absence of Certain Changes or Events	24
Section 5.8 Litigation	24
Section 5.9 Information in Disclosure Documents and Registration Statement	24
Section 5.10 Taxes	25
Section 5.11 Compliance with Applicable Law	25
Section 5.12 Brokers	25

ARTICLE VI
COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1 Conduct of Business by the Company	26
Section 6.2 Other Actions	28
Section 6.3 Advice of Changes	28
Section 6.4 Conduct of Business of Merger Sub	28
Section 6.5 The Section 14(f) Notice	28

ARTICLE VII
ADDITIONAL AGREEMENTS

Section 7.1 Preparation of the Registration Statement, the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice	29
Section 7.2 Access and Information; Confidentiality	29

	<u>PAGE</u>
Section 7.3 Comfort Letters	29
Section 7.4 Listing Application	30
Section 7.5 Affiliates	30
Section 7.6 HSR Act; Competition Laws	30
Section 7.7 Employee Matters	31
Section 7.8 Continuance of Existing Indemnification Rights.....	32
Section 7.9 Expenses	34
Section 7.10 Public Announcements	34
Section 7.11 Reasonable Best Efforts.....	34

ARTICLE VIII
CONDITIONS TO CONSUMMATION OF THE MERGER

Section 8.1 Conditions to Each Party's Obligation to Effect the Company Merger	35
---	----

ARTICLE IX
TERMINATION, AMENDMENT AND WAIVER

Section 9.1 Termination.....	35
Section 9.2 Effect of Termination.....	35
Section 9.3 Amendment.....	35
Section 9.4 Extension; Waiver.....	36

ARTICLE IX
GENERAL PROVISIONS

Section 10.1 No Survival of Representations and Warranties.....	36
Section 10.2 Notices	36
Section 10.3 Descriptive Headings.....	37
Section 10.4 Entire Agreement; No Third-Party Beneficiary	37
Section 10.5 Interpretation.....	37
Section 10.6 Severability	38
Section 10.7 Assignment	38
Section 10.8 Disclosure Schedules	38
Section 10.6 Governing Law	38
Section 10.10 Specific Performance	38
Section 10.11 Counterparts.....	39
Section 10.12 Certain Terms.....	39

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 1998, among SUNBEAM CORPORATION, a Delaware corporation ("Laser"), CAMPER ACQUISITION CORP. ("Merger Sub"), a Delaware corporation and a wholly owned subsidiary of Laser, and THE COLEMAN COMPANY, INC., a Delaware corporation (the "Company").

WHEREAS, the Boards of Directors of Laser, Merger Sub and the Company deem it advisable and in the best interests of their respective stockholders that Merger Sub merge with and into the Company (the "Company Merger"), and such Boards of Directors have approved the Company Merger, upon the terms and subject to the conditions set forth herein; and

WHEREAS, as a condition to the Company Merger, a newly formed, wholly owned subsidiary of Laser will merge with and into CLN Holdings Inc. ("Holdings") with Holdings continuing as the surviving corporation and a wholly owned subsidiary of Laser (the "Holdings Merger") pursuant to an Agreement and Plan of Merger (the "Holdings Merger Agreement"), dated as of the date hereof, among Laser, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Laser, Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and Holdings; and

WHEREAS, the Board of Directors of the Company has approved the Holdings Merger solely for purposes of rendering Section 203 of the DGCL inapplicable to the transactions contemplated hereby; and

WHEREAS, Laser, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Company Merger and also to prescribe certain conditions to the Company Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings, the definitions to be applicable to both the singular and plural forms of each term defined to the extent that such forms of such terms are used in this Agreement.

"Affiliate" shall mean, as to any Person (as hereinafter defined), any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meanings, the terms "controlled by"

and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interest, by contract or otherwise.

"Affiliate Agreements" shall mean any Contract, agreement or understanding between the Company and any of its subsidiaries, on the one hand, and Worldwide and any of its Affiliates (other than the Company and its subsidiaries), on the other hand.

"Certificate of Incorporation" shall have the meaning ascribed to it in Section 2.4.

"Certificate of Merger" shall have the meaning ascribed to it in Section 2.3.

"Claim" shall have the meaning ascribed to it in Section 7.8(a).

"Closing" shall have the meaning ascribed to it in Section 2.2.

"Closing Date" shall have the meaning ascribed to it in Section 2.2.

"Code" means the Internal Revenue Code of 1986, as amended.

4.13(a). "Commonly Controlled Entity" shall have the meaning ascribed to it in Section

Section 4.6(c). "Company Balance Sheet Date" shall have the meaning ascribed to it in

4.12. "Company Business Personnel" shall have the meaning ascribed to it in Section

"Company Common Stock" shall mean the common stock, par value \$.01 per share, of the Company.

"Company Disclosure Schedule" shall have the meaning ascribed to it in the Introduction to Article IV.

"Company Effective Time" shall have the meaning ascribed to it in Section 2.3.

"Company Licenses" shall have the meaning ascribed to it in Section 4.11.

Section 4.1. "Company Material Adverse Effect" shall have the meaning ascribed to it in

"Company Merger" shall have the meaning ascribed to it in the Recitals.

"Company Plans" shall have the meaning ascribed to it in Section 4.13(a).

"Company Preferred Stock" shall mean the preferred stock, par value \$.01 per share, of the Company.

7.5. "Company Rule 145 Affiliates" shall have the meaning ascribed to it in Section

"Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Company Stock Option Plans" shall mean The Coleman Company, Inc. 1996 Stock Option Plan, The Coleman Company, Inc. 1993 Stock Option Plan and The Coleman Company, Inc. 1992 Stock Option Plan.

"Competition Laws" shall mean foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other foreign Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

"Contract" shall mean any note, bond, mortgage, indenture, license, contract, agreement or other instrument or obligation.

"Conversion Number" shall have the meaning ascribed to it in Section 3.1(a)(i).

"Credit Suisse First Boston" shall mean Credit Suisse First Boston Corporation, the Company's financial advisor.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"D&O Insurance" shall have the meaning ascribed to it in Section 7.8(c).

"Dissenting Shares" shall have the meaning ascribed to it in Section 3.8.

"Employee Stock Options" shall mean all employee and non-employee director stock options issued pursuant to the Company Stock Option Plans.

"Environmental Claim" shall mean any claim, action, investigation or written notice to the Company or any of its subsidiaries by any person or entity alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, personal injuries, or penalties) arising out of, based on, or resulting from, (a) the presence, or release into the environment, of any Hazardous Substance at any location, whether or not owned or operated by the Company or any of its subsidiaries or (b) circumstances forming the basis of any violation, or alleged violation of any applicable Environmental Law.

"Environmental Laws" shall mean all federal, state, local and foreign Laws and regulations, as in effect and as interpreted as of the date of this Agreement, relating to pollution or protection of the environment, including, without limitation, Laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise

relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

"Environmental Permits" shall have the meaning ascribed to it in Section 4.14(a).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Exchange Agent" shall have the meaning ascribed to it in Section 3.2(a).

"Exchange Fund" shall have the meaning ascribed to it in Section 3.2(a).

"Filed Company SEC Reports" shall have the meaning ascribed to it in Section 4.6(a).

"Filed Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time, consistently applied.

"Governmental Entity" shall mean any court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

"Hazardous Substance" shall mean all substances defined as Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law, including any radon, asbestos and oil and petroleum products, by-products and fractions.

"Holdings" shall have the meaning ascribed to it in the Recitals.

"Holdings Disclosure Schedule" shall mean the Disclosure Schedule being delivered by Holdings concurrently with the execution of the Agreement and Plan of Merger relating to the Holdings Merger.

"Holdings Effective Time" shall mean the date and time on which the Holdings Merger is effected.

"Holdings Merger" shall have the meaning ascribed to it in the Recitals.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Information Statement" shall have the meaning ascribed to it in Section 4.9.

"Indemnified Person" shall have the meaning ascribed to it in Section 7.8(a).

"Intellectual Property" shall mean all domestic and foreign patents, patent applications, written invention disclosures to be filed or awaiting filing determinations, trademark and service mark applications, registered trademarks, registered service marks, registered copyrights, trademarks, service marks and trade names.

"Laser Balance Sheet Date" shall have the meaning ascribed to it in Section 5.6(c).

"Laser Common Stock" shall mean the common stock, par value \$.01 per share, of Laser.

"Laser Licenses" shall have the meaning ascribed to it in Section 5.11.

"Laser Material Adverse Effect" shall have the meaning ascribed to it in Section 5.1.

"Laser Preferred Stock" shall mean the preferred stock, par value \$.01 per share, of Laser.

"Laser SEC Reports" shall have the meaning ascribed to it in Section 5.6(a).

"Laser Shares" shall mean the shares of Laser Common Stock to be issued in the Company Merger.

"Laser Stock Option Plans" shall have the meaning ascribed to it in Section 5.2.

"Laser Stock Options" shall have the meaning ascribed to it in Section 5.2.

"Laws" shall mean any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation.

"Liens" shall mean all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever.

"LYONs" shall mean the Liquid Yield Option™ Notes due 2013 of Worldwide.

"Merger Sub Common Stock" shall mean the common stock, par value \$.01 per share, of Merger Sub.

"Morgan Stanley" shall mean Morgan Stanley & Co. Incorporated, Laser's financial advisor.

"NYSE" shall mean the New York Stock Exchange, Inc.

"PBGC" shall mean the Pension Benefit Guaranty Corporation.

"Pension Plan" shall have the meaning ascribed to it in Section 4.13(a).

3.1(a)(i). "Per Share Merger Consideration" shall have the meaning ascribed to it in Section

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Plans" shall have the meaning ascribed to it in Section 7.7(e).

"Properties" shall have the meaning ascribed to it in Section 4.14(c).

"Registration Statement" shall have the meaning ascribed to it in Section 4.9.

"Release" shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

"Schedule 13E-3" shall have the meaning ascribed to it in Section 4.9.

"Section 14(f) Notice" shall have the meaning ascribed to it in Section 4.9.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"subsidiary" shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization or at least 50% of the value of the outstanding equity is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"Surviving Corporation" shall have the meaning ascribed to it in Section 2.1.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean (i) any federal, state, local or foreign net income, gross income, receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and (ii) any liability of Laser or any Laser subsidiary or the Company or any of its subsidiaries, as applicable, for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of Laser or any Laser subsidiary or the Company

or any of its subsidiaries, as the case may be, under any arrangement to share liability for taxes or indemnify any other entity or person for taxes.

"Tax Return" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Welfare Plan" shall have the meaning ascribed to it in Section 4.13(a).

"Worldwide" shall mean Coleman Worldwide Corporation, a Delaware corporation and a wholly owned subsidiary of Holdings.

ARTICLE II

THE COMPANY MERGER

Section 2.1 The Company Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the DGCL, at the Company Effective Time, Merger Sub shall be merged with and into the Company. Following the Company Effective Time, the Company shall continue as the surviving corporation (the "Surviving Corporation"), and the separate corporate existence of Merger Sub shall cease. The Company Merger shall have the effects set forth in Section 259 of the DGCL.

Section 2.2 Closing. The closing of the Company Merger (the "Closing") will take place at 10:00 a.m. on a date to be specified by the parties (the "Closing Date"), which shall be no later than the third NYSE trading day after satisfaction or waiver of the conditions set forth in Section 8.1, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, unless another time, date or place is agreed to in writing by the parties hereto.

Section 2.3 Company Effective Time of the Company Merger. The Company Merger shall become effective on the date and at the time at which a properly executed certificate of merger (the "Certificate of Merger") is duly filed with the Secretary of State of the State of Delaware. The Certificate of Merger shall be filed as soon as practicable on or after the Closing Date. When used in this Agreement, the term "Company Effective Time" shall mean the date and time on which the Certificate of Merger is so filed.

Section 2.4 Certificate of Incorporation. From and after the Company Effective Time, the certificate of incorporation of the Company as in effect at the Company Effective Time (the "Certificate of Incorporation") shall be the certificate of incorporation of the Surviving Corporation until amended as provided by Law and the Certificate of Incorporation.

Section 2.5 By-Laws. From and after the Company Effective Time, the by-laws of Merger Sub as in effect at the Company Effective Time shall be the by-laws of the Surviving Corporation until amended as provided by the DGCL, the Certificate of Incorporation and the terms thereof.

Section 2.6 Directors. The directors of Merger Sub at the Company Effective Time shall be the initial directors of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualify in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation or as otherwise provided by the DGCL (it being understood that the directors of the Company shall resign upon the later of (i) the Holdings Effective Time and (ii) the eleventh (11th) day following the date on which the Section 14(f) Notice shall have been filed with the SEC and mailed to all stockholders of record of the Company in accordance herewith).

Section 2.7 Officers. The officers of the Company at the Company Effective Time shall be the initial officers of the Surviving Corporation and shall hold office from the Company Effective Time until their respective successors are duly elected or appointed and qualifies in the manner provided in the Certificate of Incorporation and by-laws of the Surviving Corporation, or as otherwise provided by Law.

ARTICLE III

CONVERSION OF SHARES

Section 3.1 Effect on Capital Stock. At the Company Effective Time, by virtue of the Company Merger and without any action on the part of any holder thereof:

(a) Conversion of Company Common Stock.

(i) Subject to Section 3.1(b) hereof, each share of Company Common Stock issued and outstanding immediately prior to the Company Effective Time (other than Dissenting Shares and Company Common Stock to be cancelled in accordance with Section 3.1(c) hereof) shall be converted into the right to receive (A) 0.5677 (the "Conversion Number") of a fully paid and nonassessable share of Laser Common Stock and (B) \$6.44 in cash, without interest thereon (the consideration referred to in this Section 3.1(a) being sometimes referred to herein as the "Per Share Merger Consideration").

(ii) If, prior to the Company Effective Time, Laser shall (A) pay a dividend in, subdivide, combine into a smaller number of shares or issue by reclassification of its shares, any shares of Laser Common Stock, the Conversion Number shall be adjusted appropriately or (B) pay a dividend (other than regular quarterly dividend payments, consistent with past practice), whether in cash or property, the amount of the cash portion of the Per Share Merger Consideration shall be appropriately adjusted such that the amount of cash to be received with respect to each share of Company Common Stock, or if a dividend shall have been paid in other property, cash and other property to be received with respect to each share of Company Common Stock, shall be equal to that which would have been received in the aggregate with respect to each share of Company Common Stock (on a per share equivalent basis) had the dividend been paid following the Company Effective Time at a time when the Laser Shares to be

issued pursuant hereto had been issued to the holders of the shares of Company Common Stock.

(iii) Each of the shares of Company Common Stock converted in accordance with paragraph (i) of this Section 3.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Per Share Merger Consideration and cash in lieu of any fractional share of Laser Common Stock (determined in accordance with Section 3.4 hereof), to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 3.2 hereof, without interest.

(b) Company Common Stock Held by Worldwide or Holdings to Remain Outstanding. Notwithstanding Section 3.1(a) hereof, at the Company Effective Time all shares of Company Common Stock held by Worldwide or Holdings shall remain outstanding and unchanged as a result of the Company Merger.

(c) Cancellation of Treasury Stock and Company Common Stock Held by Laser and Company Subsidiaries. Each share of Company Common Stock, if any, held in the treasury of the Company, by any subsidiary of the Company, by Laser or by any subsidiary of Laser (other than Worldwide or Holdings) immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

(d) Cancellation of Merger Sub Common Stock. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Company Effective Time shall be cancelled and retired and cease to exist.

Section 3.2 Exchange of Certificates Representing Shares.

(a) As of the Company Effective Time, Laser shall deposit, or shall cause to be deposited, with an exchange agent selected by Laser and reasonably satisfactory to the Company (the "Exchange Agent"), for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Article III: (i) certificates representing the number of Laser Shares issuable in the Company Merger to be issued in respect of all shares of Company Common Stock outstanding immediately prior to the Company Effective Time and which are to be exchanged pursuant to the Company Merger (exclusive of shares to remain outstanding pursuant to Section 3.1(b) hereof or to be canceled pursuant to Section 3.1(c) hereof); and (ii) cash in an amount sufficient to make any cash payment due under Sections 3.1(a)(i)(B) and 3.4 hereof (such cash and certificates for Laser Shares being hereinafter referred to collectively as the "Exchange Fund").

(b) As soon as reasonably practicable after the Company Effective Time, Laser shall cause the Exchange Agent to mail (or deliver to its principal office) to each holder of record of a certificate or certificates representing shares of Company Common Stock (i) a letter of transmittal which shall specify that delivery shall be effected, and risk of loss and title to the

certificates for shares of Company Common Stock shall pass, only upon delivery of the certificates for such shares of Company Common Stock to the Exchange Agent and which shall be in such form and have such other provisions, including appropriate provisions with respect to back-up withholding, as Laser may reasonably specify, and (ii) instructions for use in effecting the surrender of the certificates for shares of Company Common Stock. Upon surrender of a certificate for shares of Company Common Stock for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, the holder thereof shall be entitled to receive in exchange therefor that portion of the Exchange Fund which such holder has the right to receive pursuant to the provisions of this Article III, after giving effect to any required withholding Tax, and the certificate for shares of Company Common Stock so surrendered shall forthwith be cancelled. No interest will be paid or accrued on the cash portion of the Exchange Fund. In the event of any transfer of ownership of shares of Company Common Stock which has not been registered in the transfer records of the Company, certificates representing the proper number of shares of Laser Common Stock, if any, and a check in an amount equal to the proper amount of the cash component, if any, of the Exchange Fund, will be issued to the transferee of the certificate representing the transferred shares of Company Common Stock, only upon presentation to the Exchange Agent of a certificate or certificates representing such shares of Company Common Stock, accompanied by all documents required to evidence and effect the prior transfer thereof and to evidence that any applicable stock transfer Taxes associated with such transfer were paid.

Section 3.3 Dividends; Transfer Taxes. No dividends that are declared on Laser Common Stock will be paid to persons entitled to receive certificates representing shares of Laser Common Stock until such persons surrender their certificates representing shares of Company Common Stock. Upon such surrender, there shall be paid to the person in whose name the certificates representing such shares of Laser Common Stock shall be issued, any dividends which shall have become payable with respect to such shares of Laser Common Stock between the Company Effective Time and the time of such surrender. In no event shall the person entitled to receive such dividends be entitled to receive interest on such dividends. If any certificates for any shares of Laser Common Stock are to be issued in a name other than that in which the certificate representing shares of Company Common Stock surrendered in exchange therefor is registered, it shall be a condition of such exchange that the person requesting such exchange shall pay to the Exchange Agent any transfer or other Taxes required by reason of the issuance of certificates for such shares of Laser Common Stock in a name other than that of the registered holder of the certificate surrendered or shall establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not applicable. Notwithstanding the foregoing, (i) neither the Exchange Agent nor any party hereto shall be liable to a holder of shares of Company Common Stock for any shares of Laser Common Stock or dividends thereon, any cash payments to be made pursuant to Section 3.1(a)(i)(B) hereof or, in accordance with Section 3.4 hereof, any cash in lieu of fractional share interests, in each case, delivered to a public official pursuant to applicable escheat Laws and (ii) any shares of Laser Common Stock held by the Exchange Agent prior to surrender of certificates representing shares of Company Common Stock shall not be deemed issued.

Section 3.4 No Fractional Shares. No certificates or scrip representing fractional shares of Laser Common Stock shall be issued upon the surrender for exchange of certificates representing shares of Company Common Stock pursuant to this Article III, and no dividend, stock split or other change in the capital structure of Laser shall relate to any fractional security, and such fractional interests shall not entitle the owner thereof to vote or to any rights of a security holder. In lieu of any such fractional shares of Laser Common Stock, each holder of shares of Company Common Stock who would otherwise have been entitled to a fraction of a share of Laser Common Stock upon surrender of stock certificates for exchange pursuant to this Article III will be paid cash upon such surrender in an amount equal to the product of such fraction multiplied by the closing sale price of one share of Laser Common Stock on the NYSE on the day of the Company Effective Time, or, if shares of Laser Common Stock are not so traded on such day, the closing sale price of one such share on the next preceding day on which such share was traded on the NYSE. For purposes of this Section 3.4, shares of Company Common Stock of any holder represented by two or more certificates shall be aggregated, and in no event shall any holder be paid an amount of cash pursuant to this Section 3.4 in respect of more than one share of Laser Common Stock.

Section 3.5 Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of the Company Common Stock for six (6) months after the Company Effective Time shall be delivered to Laser, upon demand, and any holders of the Company Common Stock who have not theretofore complied with this Article III shall thereafter look only to Laser for payment of their claim for the shares of Laser Common Stock and cash and dividends or other distributions, if any, pursuant to this Article III.

Section 3.6 Investment of Exchange Fund. Without prejudice to the rights of any holder of Company Common Stock to receive the Per Share Merger Consideration, the Exchange Agent shall invest any cash included in the Exchange Fund, as directed by Laser, on a daily basis. Any interest and other income resulting from such investments shall be paid to Laser.

Section 3.7 Closing of Company Transfer Books. At the Company Effective Time, the stock transfer books of the Company shall be closed and no transfer of shares of Company Common Stock shall thereafter be made. If, after the Company Effective Time, certificates representing shares of Company Common Stock are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Per Share Merger Consideration applicable thereto.

Section 3.8 Dissenting Shares. Each outstanding share of Company Common Stock as to which a written demand for appraisal is filed in accordance with Section 262 of the DGCL and not withdrawn, and with respect to which a consent is not given in favor of the Company Merger shall not be converted into or represent a right to receive the Per Share Merger Consideration unless and until the holder thereof shall have failed to perfect, or shall have effectively withdrawn or lost, the right to appraisal of and payment for each such share of Company Common Stock under Section 262, at which time each such share shall be converted into the right to receive the Per Share Merger Consideration. All such shares of Company

Common Stock as to which such a written demand for appraisal is so filed and not withdrawn and with respect to which a consent is not given in favor of the Company Merger, except any such shares of Company Common Stock the holder of which, prior to the Company Effective Time, shall have effectively withdrawn or lost such right to appraisal and payment for such shares of Company Common Stock under Section 262, are herein referred to as "Dissenting Shares." The Company shall give Laser prompt notice upon receipt by the Company of any written demands for appraisal rights, withdrawal of such demands, and any other written communications delivered to the Company pursuant to Section 262, and the Company shall give Laser the opportunity, to the extent permitted by Law, to participate in all negotiations and proceedings with respect to such demands. Except with the prior written consent of Laser, the Company shall not voluntarily make any payment with respect to any demands for appraisal rights and shall not settle or offer to settle any such demands. Each holder of Dissenting Shares who becomes entitled, pursuant to the provisions of Section 262, to payment for such shares of Dissenting Shares under the provisions of Section 262 shall receive payment therefor from the Surviving Corporation and such shares of Company Common Stock shall be cancelled thereafter.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as otherwise disclosed to Laser in a schedule delivered to Laser prior to the execution hereof (which schedule shall contain appropriate references to identify the representations and warranties herein to which the information in such schedule relates) (the "Company Disclosure Schedule"), the Company represents and warrants to Laser and Merger Sub as follows:

Section 4.1 Organization. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries, taken as a whole (a "Company Material Adverse Effect").

Section 4.2 Capitalization. The authorized capital stock of the Company consists of 80,000,000 shares of Company Common Stock and 20,000,000 shares of Company Preferred Stock. As of February 23, 1998, (i) 53,488,170 shares of Company Common Stock were issued and outstanding; (ii) 3,282,930 shares of Company Common Stock were issuable upon exercise of Employee Stock Options to acquire 3,282,930 shares of Company Common Stock outstanding under the Company Stock Option Plans (of which options to acquire 2,399,380 were vested); and (iii) no shares of Company Preferred Stock were issued or outstanding. As of such date, no shares of Company Common Stock were held as treasury shares. All of the issued and outstanding shares of Company Common Stock are validly issued,

fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of the Company issued or outstanding or any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities. There are no notes, bonds, debentures or other indebtedness of the Company having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of the Company may vote.

Section 4.3 Subsidiaries. All the outstanding shares of capital stock of, or other ownership interests in, each of the Company's subsidiaries have been validly issued and are fully paid and nonassessable and such shares (other than directors' qualifying shares and similar interests) are owned directly or indirectly by the Company, free and clear of all Liens. Except for the capital stock of the Company's subsidiaries and except as set forth in Section 4.3 of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, limited liability company, joint venture or other entity. Each of the Company's subsidiaries that is a corporation is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation. Each of the Company's subsidiaries that is a partnership or a limited liability company is duly formed and validly existing under the Laws of its jurisdiction of formation. Each of the Company's subsidiaries has the corporate power or the partnership power, as the case may be, to carry on its business as it is now being conducted or presently proposed to be conducted. Each the Company's subsidiaries that is a corporation is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Each of the Company's subsidiaries that is a partnership is duly qualified as a foreign partnership authorized to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.2 hereof, there are no outstanding options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating the Company or any of its subsidiaries to issue, transfer or sell any securities of any Company subsidiary. There are no voting, stockholder or other agreements or understandings to which the Company or any of the Company's subsidiaries is a party or is bound with respect to the voting of the capital stock of the Company or any of the Company's subsidiaries.

Section 4.4 Authority Relative to this Agreement. The Company has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by the Board of Directors of the Company, and no other corporate actions or proceedings on the part of the Company (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions

contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization and valid execution and delivery by Laser and Merger Sub, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and to general principles of equity.

Section 4.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws and state securities or blue sky Laws, and the filing and recordation of the Certificate of Merger as required by the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by the Company of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not individually or in the aggregate have a Company Material Adverse Effect. Except as set forth in Section 4.5 of the Company Disclosure Schedule, neither the execution and delivery of this Agreement by the Company, nor the consummation by the Company of the transactions contemplated hereby, nor compliance by the Company with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of the Company or the certificate of incorporation or by-laws of any of the Company's subsidiaries; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which the Company or any of the Company's subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of the Company's subsidiaries or any of their properties or assets, except in the case of clauses (b) and (c) for violations, breaches or defaults which would not individually or in the aggregate have a Company Material Adverse Effect.

Section 4.6 Reports and Financial Statements.

(a) The Company has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Company SEC Reports"). As of their respective dates, the Company SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Company SEC Report has been amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later Company SEC Report filed and publicly available prior to the date of this Agreement, the "Filed Company SEC Reports"), none of the Filed Company SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of the Company included in the Filed Company SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Company SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Company SEC Reports (the "Company Balance Sheet Date"), neither the Company nor any of its subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of the Company and its consolidated subsidiaries or in the notes thereto.

Section 4.7 Absence of Certain Changes or Events. Except as set forth in the Filed Company SEC Reports, since the Company Balance Sheet Date, the business of the Company and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Company Material Adverse Effect or would impair or delay the ability of the Company to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement. Except as set forth in Section 4.7 of the Company Disclosure Schedule, during the period from the Company Balance Sheet Date through the date of this Agreement, neither the Company nor any of its subsidiaries has:

(i) declared, set aside or paid any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combined, or reclassified any of its capital stock or issued or authorized the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) issued, delivered, sold, pledged or otherwise encumbered any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) in the case of the Company, amended its certificate of incorporation or by-laws;

(iv) acquired or agreed to acquire by merging or consolidating with, or in purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, association or other business organization or division thereof material to the Company;

(v) other than in the ordinary course of business, (x) incurred any indebtedness or (y) made any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), in any case in an amount material to the Company;

(vi) other than in the ordinary course of business or consistent with the Company's capital budgets heretofore disclosed to Laser, made or agreed to make any capital expenditure or capital expenditures;

(vii) other than in the ordinary course of business, made any Tax election or settled or compromised any material income Tax liability;

(viii) except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, entered into any Contracts or amended or terminated any material Contract or agreement to which the Company or any of its subsidiaries is a party or waived, released or assigned any material rights or claims thereunder;

(ix) except as required by Law or contractual obligation or in the ordinary course of business consistent with past practice, (a) increased the compensation of any of its employees, (b) entered into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopted any plan, arrangement or policy which would become a Company Plan or amended any Company Plan to the extent such adoption or amendment would create or increase any material liability or obligation on the part of the Company or its subsidiaries;

(x) entered into any transaction or Contract with, or (except pursuant to the Affiliate Agreements) made any payment to, any Affiliate of the Company (other than to the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); or

(xi) agreed to do any of the foregoing.

Section 4.8 Litigation. Except as disclosed in the Filed Company SEC Reports and as set forth in Section 4.8 of the Company Disclosure Schedule, as of the date hereof, to the Company's knowledge there is no suit, action, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its

subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Company Material Adverse Effect (taking into account any reserve therefor as of the Company Balance Sheet Date), or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against the Company or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 4.9 Information in Disclosure Documents and Registration Statement.

None of the information to be supplied by the Company for inclusion or incorporation by reference in the information statement to be distributed in connection with the Company Merger (as amended or supplemented, the "Information Statement") or the related filing on Schedule 13E-3 (as amended or supplemented, the "Schedule 13E-3") or the notice to be provided to the Company's stockholders pursuant to Section 14(f) of the Exchange Act (as amended or supplemented, the "Section 14(f) Notice") or the registration statement on Form S-4 under the Securities Act for the purpose of registering the shares of Laser Common Stock to be issued in the Company Merger (as amended or supplemented, the "Registration Statement") will, in the case of the Registration Statement, at the time it becomes effective and at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3, the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement, the Schedule 13E-3 at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Information Statement, the Schedule 13E-3 and the Section 14(f) Notice will comply as to form in all material respects with the provisions of the Exchange Act, and the rules and regulations promulgated thereunder.

Section 4.10 Taxes. Except as would not have a Company Material Adverse Effect or as set forth in Section 4.10 of the Company Disclosure Schedule:

(a) Each of the Company and each of its subsidiaries has (i) filed (or there has been filed on its behalf) with the appropriate Governmental Entities all Tax Returns required to be filed by it, and all such Tax Returns are true, correct and complete and (ii) has paid all Taxes due by it;

(b) there is no action, suit, investigation, audit, claim or assessment pending or proposed in writing or threatened in writing with respect to Taxes of the Company or any of its subsidiaries and, to the best of the Company's knowledge, no basis exists therefor;

(c) there are no Liens for Taxes upon the assets of the Company or any of its subsidiaries except Liens relating to current Taxes not yet due;

(d) the United States federal income Tax Returns which include the Company and the Company's subsidiaries have been examined, and such examinations have been completed, by the Internal Revenue Service (or the applicable statutes of limitation for the

assessment of federal income Taxes for such periods have expired) for all periods through and including 1985.

Section 4.11 Compliance with Applicable Law. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Company Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Company SEC Reports and as currently owned or leased and conducted, and all such Company Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as disclosed in Filed Company SEC Reports, the Company and the Company's subsidiaries are in compliance with their respective obligations under the Company Licenses, with only such exceptions as, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Company Material Adverse Effect.

Section 4.12 Labor Matters. Except as disclosed in the Filed Company SEC Reports, neither the Company nor any of the Company's subsidiaries has any labor contracts, collective bargaining agreements or material employment or consulting agreements with any persons employed by or otherwise performing services primarily for the Company or any of the Company's subsidiaries (the "Company Business Personnel") or any representative of any Company Business Personnel. Except as set forth in the Filed Company SEC Reports, neither the Company nor any of its subsidiaries has engaged in any unfair labor practice with respect to Company Business Personnel, and there is no unfair labor practice complaint pending against the Company or any of its subsidiaries with respect to Company Business Personnel which, in either such case, would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as set forth in the Filed Company SEC Reports, there is no material labor strike, dispute, slowdown or stoppage pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries, and neither the Company nor any of its subsidiaries has experienced any material primary work stoppage or other material labor difficulty involving its employees during the last three (3) years.

Section 4.13 ERISA Compliance.

(a) The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time each "employee pension benefit plan" (as defined in Section 3(2) of ERISA) (a "Pension Plan"), each "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) (a "Welfare Plan"), each material bonus, stock option, stock purchase, stock ownership, stock bonus, restricted stock, deferred compensation plan or arrangement and each other material

employee fringe benefit plan or arrangement maintained, contributed to or required to be maintained or contributed to by the Company or any of its subsidiaries or any other person or entity that, together with the Company, is or was treated as a single employer under Section 414(b), (c), (m) or (o) of the Code (each, a "Commonly Controlled Entity") which is currently in effect for the benefit of any current or former directors, officers, employees or independent contractors of the Company or any of its subsidiaries (collectively, the "Company Plans"). The Company has delivered to Laser or will deliver to Laser prior to the Company Effective Time true, complete and correct copies of (x) the two most recent annual reports on Form 5500 filed with the Internal Revenue Service with respect to each Company Plan (if any such report was required), (y) the most recent summary plan description for each Company Plan for which such summary plan description is required and (z) each currently effective trust agreement, insurance or group annuity contract and each other material funding or financing arrangement relating to any Company Plan.

(b) No Commonly Controlled Entity has incurred any liability under Title IV of ERISA, other than for contributions not yet due to a defined benefit pension plan subject to Title IV of ERISA and other than for the payment of premiums to the PBGC not yet due, and no condition exists that presents a material risk of incurring any such liability, which liability, to the extent currently due, has not been fully paid as of the date hereof and would individually or in the aggregate be reasonably likely to result in a Company Material Adverse Effect.

(c) Except as set forth in Company SEC reports or in Section 4.13 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries has any obligation to provide any welfare benefits to employees or former employees following termination of employment except (i) for benefits the cost of which is borne entirely by the employee or former employee, (ii) as required under Section 4980 of the Code or other applicable law or (iii) obligations to provide such benefits to Company employees employed in non-U.S. jurisdictions.

(d) No Commonly Controlled Entity has engaged in a transaction described in Section 4069 of ERISA that could subject the Company or any of its subsidiaries or Laser to liability at any time after the date hereof, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(e) No Commonly Controlled Entity has withdrawn from any multiemployer plan where such withdrawal has resulted in any actual or potential "withdrawal liability" (as defined in Section 4201 of ERISA) that has not been fully paid, which liability would be reasonably likely to result in a Company Material Adverse Effect.

(f) Except as set forth in Section 4.13 of the Company Disclosure Schedule or as specifically provided in this Agreement, the transactions contemplated by this Agreement will not, either alone or in connection with another event, cause there to be paid or become payable any additional benefits or any acceleration of the time of payment or vesting of any benefits under any Company Plan or under any employment, severance, termination or compensation agreement to which the Company is a party as of the Company Effective Time.

Section 4.14 Environmental Matters.

- (a) Except as disclosed in the Filed Company SEC Reports, the Company and its subsidiaries are in compliance with all applicable Environmental Laws, which compliance includes the possession of permits and governmental authorizations required under applicable Environmental Laws ("Environmental Permits") and compliance with the terms and conditions thereof, except where such non-compliance would not result in a Company Material Adverse Effect.
- (b) Except as disclosed in the Filed Company SEC Reports, there are no Environmental Claims pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries that would reasonably be expected to result in a Company Material Adverse Effect.
- (c) Except as disclosed in the Filed Company SEC Reports, the properties presently or to the knowledge of the Company formerly owned, leased or operated by the Company or its subsidiaries (including groundwater under the properties) (the "Properties") do not contain any Hazardous Substance other than as permitted under applicable Environmental Law; provided, however, that with respect to Properties formerly owned, leased or operated by the Company or its subsidiaries, such representation is limited to the period prior to the disposition of such Properties by the Company or its subsidiaries.
- (d) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, no Hazardous Substance has been disposed of or transported from any of the Properties during the time any such Property was owned, leased or operated by the Company or any of its subsidiaries, other than as permitted under applicable Environmental Law and in effect at the time of such disposal or transportation.
- (e) Except as disclosed in the Filed Company SEC Reports, to the knowledge of the Company, the Company and its subsidiaries have not become obligated, whether by operation of Law or through contractual agreement, to indemnify any other person or otherwise to assume liability for any claim brought pursuant to any Environmental Law which could reasonably be expected to have a Company Material Adverse Effect.

Section 4.15 Intellectual Property. The Company has previously delivered to Laser a list, which, to the knowledge of the Company, is true and correct as of the date hereof in all material respects, of all material issued patents and registered trademarks of the Company. Except as set forth in Section 4.15 of the Company Disclosure Schedule, the Company and its subsidiaries own or have sufficient rights to use all material Intellectual Property used in connection with the business of the Company and its subsidiaries as currently conducted. As used in this Section 4.15, the term "material," when applied to Intellectual Property, means that such Intellectual Property is used in a significant manner to conduct the business of the Company and its subsidiaries as it is currently conducted.

Section 4.16 Contracts. Except as set forth in Section 4.16 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is a party to or bound by

any material Contract, other than (i) the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule, (ii) any Contract filed or incorporated by reference as an exhibit to any Filed Company SEC Report or (iii) any Contract (other than the Affiliate Agreements listed in Section 4.10 of the Holdings Disclosure Schedule) entered into in the ordinary course of business consistent with past practice.

Section 4.17 Opinion of Financial Advisor. The Board of Directors of the Company has received the opinion of Credit Suisse First Boston, dated the date hereof to the effect that the Per Share Merger Consideration is fair to the holders of shares of Company Common Stock (other than Worldwide) from a financial point of view.

Section 4.18 Takeover Statute. The Board of Directors of the Company has approved the Holdings Merger solely for the purpose of rendering inapplicable, and such approval is sufficient to render inapplicable, to the Company Merger and the other transactions contemplated by this Agreement the provisions of Section 203 of the DGCL. To the best of the Company's knowledge, no other state takeover statute or similar statute or regulation applies or purports to apply to the Company Merger, this Agreement or any of the transactions contemplated hereby, and no provision of the certificate of incorporation or by-laws of the Company or certificates of incorporation or by-laws (or comparable organizational documents) of any subsidiary of the Company would, directly or indirectly, restrict or impair the ability of Laser to vote, or otherwise to exercise the rights of a stockholder with respect to, shares of capital stock of the Company or any of its subsidiaries that may be acquired or controlled by Laser.

Section 4.19 Brokers. No broker, investment banker or other person, other than Credit Suisse First Boston, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Credit Suisse First Boston and the Company, a copy of which has been furnished to Laser), is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF LASER AND MERGER SUB

Laser and Merger Sub represent and warrant to the Company as follows:

Section 5.1 Organization. Laser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the corporate power to carry on its business as it is now being conducted. Laser is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified would not individually or in the aggregate have a material adverse effect on the business, results of operations or financial condition of Laser and its subsidiaries, taken as a whole (a "Laser Material Adverse Effect").

Section 5.2 Capitalization. The authorized capital stock of Laser consists of 200,000,000 shares of Laser Common Stock, and 2,000,000 shares of Laser Preferred Stock. As of February 23, 1998, (i) 85,988,627 shares of Laser Common Stock were issued and outstanding; (ii) 16,129,197 shares of Laser Common Stock were issuable upon exercise of employee and non-employee stock options (the "Laser Stock Options") outstanding under all stock option plans of Laser (the "Laser Stock Option Plans") or granted pursuant to employment agreements; and (iii) no shares of Laser Preferred Stock were issued and outstanding. As of such date, 4,568,959 shares of Laser Common Stock were held as treasury shares. All of the issued and outstanding shares of Laser Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. All of the shares of Laser Common Stock issuable as consideration in the Company Merger at the Company Effective Time in accordance with this Agreement will be, when so issued, duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. As of such date, except as set forth above, there are no shares of capital stock of Laser issued or outstanding or, as of such date or as of the date hereof, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Laser to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Laser. There are no notes, bonds, debentures or other indebtedness of Laser having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Laser may vote.

Section 5.3 Merger Sub. Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a newly incorporated company formed solely for purposes of consummating the transactions contemplated by this Agreement and has engaged in no activity other than as provided in, or contemplated by, this Agreement. The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Common Stock, all of which are validly issued, fully paid and nonassessable and are owned by Laser. Except as set forth above there are no shares of capital stock of Merger Sub issued or outstanding or any options, warrants, subscription, calls, rights, convertible securities or other agreements or commitments obligating Merger Sub to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities.

Section 5.4 Authority Relative to this Agreement. Each of Laser and Merger Sub has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Laser and Merger Sub and the consummation by Laser and Merger Sub of the transactions contemplated hereby have been duly authorized by the Boards of Directors of Laser and Merger Sub, and no other corporate action or proceedings on the part of Laser or Merger Sub (including any action on the part of its stockholders) is necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Laser and Merger Sub and, assuming it is a valid and binding obligation of the Company, constitutes a valid and binding agreement of Laser and Merger Sub, enforceable against Laser and Merger Sub in accordance with its terms, except that such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and other forms of

equitable relief may be subject to equitable defenses and the discretion of the court before which any proceedings therefor may be brought.

Section 5.5 Consents and Approvals; No Violations. Except for applicable requirements of the HSR Act, the Securities Act, the Exchange Act, Competition Laws, and state securities or blue sky Laws, and the filing of the Certificate of Merger in such form as required by, and executed in accordance with the relevant provisions of, the DGCL, no filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Laser or Merger Sub of the transactions contemplated by this Agreement, except for such filings, permits, authorizations, consents or approvals the failure of which to be made or obtained would not (i) individually or in the aggregate have a Laser Material Adverse Effect or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement. Neither the execution and delivery of this Agreement by Laser or Merger Sub nor the consummation by Laser or Merger Sub of the transactions contemplated hereby, nor compliance by Laser with any of the provisions hereof, will (a) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Laser or Merger Sub; (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material (as defined for purposes of Form 10-K) Contract to which Laser, Merger Sub or any of their subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Laser, Merger Sub, any of their subsidiaries or any of their properties or assets, except, in the case of clauses (b) and (c), for violations, breaches or defaults which would not individually or in the aggregate have a Laser Material Adverse Effect.

Section 5.6 Reports and Financial Statements.

(a) Laser has filed all reports, forms, registrations, schedules, statements and other documents required to be filed by it with the SEC since January 1, 1997 (the "Laser SEC Reports"). As of their respective dates, the Laser SEC Reports complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. Except to the extent that information contained in any Laser SEC Report has been amended, revised or superseded by a later Laser SEC Report filed and publicly available prior to the date of this Agreement (as amended, revised or superseded by a later filed Laser SEC Report to the date of this Agreement, the "Filed Laser SEC Reports"), none of the Filed Laser SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements of Laser included in the Filed Laser SEC Reports complied as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted

by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present the consolidated financial position of Laser and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Except as set forth in the Filed Laser SEC Reports and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since the date of the most recent consolidated balance sheet included in the Filed Laser SEC Reports (the "Laser Balance Sheet Date"), neither Laser nor any of the Laser subsidiaries has any material liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be recognized or disclosed on a consolidated balance sheet of Laser and its consolidated subsidiaries or in the notes thereto.

Section 5.7 Absence of Certain Changes or Events. Except as set forth in the Filed Laser SEC Reports, since the Laser Balance Sheet Date, the business of Laser and its subsidiaries has been conducted only in the ordinary course of business consistent with past practice, and there has not been any event, change or development which individually or in the aggregate has had or would reasonably be expected to have a Laser Material Adverse Effect or would impair or delay the ability of Laser to consummate the transactions contemplated by, or to satisfy its obligations under, this Agreement.

Section 5.8 Litigation. Except as disclosed in the Filed Laser SEC Reports, there is no suit, action, proceeding or investigation pending or, to the knowledge of Laser, threatened against or affecting Laser or any of its subsidiaries that individually or in the aggregate would reasonably be expected to (i) have a Laser Material Adverse Effect (taking into account any reserve therefor as of the most recent balance sheet included in the Filed Laser SEC Reports) or (ii) delay in any material respect or prevent the consummation of any of the transactions contemplated by this Agreement, nor is there any judgment, order, decree, statute, Law, ordinance, rule or regulation of any Governmental Entity or arbitrator outstanding against Laser or any of its subsidiaries having, or which would reasonably be expected to have, any effect referred to in clause (i) or (ii) above.

Section 5.9 Information in Disclosure Documents and Registration Statement. None of the information to be supplied by Laser for inclusion or incorporation by reference in (a) the Registration Statement or (b) the Information Statement, the Schedule 13E-3 or the Section 14(f) Notice will, in the case of the Registration Statement, at the time it becomes effective and at the Company Effective Time contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or, in the case of the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice, at the time of the mailing thereof and, in the case of the Information Statement and the Schedule 13E-3, at the Company Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

The Registration Statement will comply as to form in all material respects with the provisions of the Securities Act and the rules and regulations promulgated thereunder. The Schedule 13E-3 will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations promulgated thereunder.

Section 5.10 Taxes.

(a) Laser and its subsidiaries have filed (or there have been filed on their behalf) with the appropriate governmental authorities all material Tax Returns required to be filed by them and such Tax Returns are true, correct and complete in all material respects and disclose all Taxes required to be paid by them for the periods covered thereby; and

(b) all material Taxes (whether or not shown on any Tax Return) owed by Laser and its subsidiaries and required to be paid on or before the Closing Date have been (or will be) timely paid or, in the case of Taxes which Laser or any of its subsidiaries is presently contesting in good faith, an adequate reserve has been established for such Taxes in accordance with GAAP.

Section 5.11 Compliance with Applicable Law. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries have received such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances from appropriate Governmental Entities (the "Laser Licenses") as are necessary to own or lease and operate their respective properties and to conduct their respective businesses substantially in the manner described in the Laser SEC Reports and as currently owned or leased and conducted, and all such Laser Licenses are valid and in full force and effect, except for any such certificates, permits, licenses, franchises, consents, approvals, orders, authorizations and clearances which the failure to have or to be in full force and effect would not reasonably be expected to have, individually or in the aggregate, a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance in all material respects with their respective obligations under the Laser Licenses, with only such exceptions as, individually or in the aggregate, would not reasonably be expected to have a Laser Material Adverse Effect. Except as disclosed in the Filed Laser SEC Reports, Laser and its subsidiaries are in compliance with all judgments, orders, decrees, statutes, Laws, ordinances, rules and regulations of any Governmental Entity applicable to them, except for such noncompliance which individually or in the aggregate would not have a Laser Material Adverse Effect.

Section 5.12 Brokers. No broker, investment banker or other person, other than Morgan Stanley, the fees and expenses of which will be paid by Laser (as reflected in an agreement between Morgan Stanley and Laser) is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Laser.

ARTICLE VI

COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1 Conduct of Business by the Company. During the period from the date of this Agreement to the Holdings Effective Time, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule, the Company shall, and shall cause its subsidiaries to, carry on the business of the Company and its subsidiaries in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in compliance in all material respects with all applicable Laws and regulations and, to the extent consistent therewith, use all reasonable efforts to preserve intact the current business organizations of the Company and its subsidiaries, and to preserve its relationships with those persons having business dealings with the Company and its subsidiaries to the end that the goodwill and ongoing businesses of the Company and its subsidiaries shall be unimpaired at the Holdings Effective Time. Without limiting the generality of the foregoing, during the period from the date of this Agreement to the Holdings Effective Time, the Company agrees as to itself and its subsidiaries that, except as expressly permitted by this Agreement or with the prior written consent of Laser or as set forth in Section 6.1 of the Company Disclosure Schedule:

(i) Neither the Company nor any of its subsidiaries shall (x) declare, set aside or pay any distributions (whether in cash, stock or property) with respect to its capital stock or (y) split, combine, or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock (other than dividends or stock issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(ii) Neither the Company nor any of its subsidiaries shall issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock, any other voting securities or any securities convertible into, or any options, warrants or rights to acquire, any such shares, voting securities or convertible securities (other than the issuance of Company Common Stock upon the exercise of Employee Stock Options in accordance with their terms and issuances by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company);

(iii) The Company shall not amend its certificate of incorporation or by-laws;

(iv) Other than as would not be material to the Company, the Company and its subsidiaries shall not acquire or agree to acquire (x) by merging or consolidating with, or by purchasing a substantial portion of the assets of, or in any other manner, any business or any corporation, limited liability company, partnership, joint venture, association or other business organization or division thereof or (y) any assets that individually or in the aggregate are material to the Company and its subsidiaries;

(v) Other than as would not be material to the Company, the Company and its subsidiaries shall not sell, lease, license or otherwise encumber or subject to any Lien or otherwise dispose of any of the properties or assets of the Company and its subsidiaries, other than in the ordinary course of business consistent with past practice or pursuant to existing contractual obligations, if any, set forth in Section 6.1 of the Company Disclosure Schedule;

(vi) Other than in the ordinary course of business or as would not be material to the Company, the Company and its subsidiaries shall not (x) incur any indebtedness or (y) make any loans, advances or capital contributions to, or investments in, any other person (other than the Company or a subsidiary of the Company), other than to officers and employees of the Company and its subsidiaries for travel, business or relocation expenses in the ordinary course of business;

(vii) Other than in the ordinary course of business or consistent with the Company's 1998 capital budget;

(viii) Other than in the ordinary course of business, the Company and its subsidiaries shall not make any material Tax election or settle or compromise any material income Tax liability;

(ix) Except in the ordinary course of business or except as would not reasonably be expected to have a Company Material Adverse Effect, the Company and its subsidiaries (i) shall not enter into any Contracts and (ii) shall not modify, amend or terminate any material Contract or agreement to which the Company or any of its subsidiaries is, or as of the Company Effective Time will be, a party or waive, release or assign any material rights or claims thereunder;

(x) Except as required by Law or previously existing contractual arrangements, in the ordinary course of business consistent with past practice or as disclosed or otherwise provided in this Agreement, the Company will not, nor will it permit any of its subsidiaries to, (a) increase the compensation of any of its employees, (b) enter into any Contract with any of its employees regarding his or her employment, compensation or benefits, or (c) adopt any plan, arrangement or policy which would become a Company Plan or amend any Company Plan to the extent such adoption or amendment would create or materially increase any material liability or obligation on the part of the Company or its subsidiaries;

(xi) The Company and its subsidiaries shall not make any change to their accounting methods, principles or practices, except as may be required by GAAP or Regulation S-X promulgated by the SEC or by Law;

(xii) The Company shall not, and shall not permit any of its subsidiaries to, create, incur, suffer to exist or assume any material Lien on any of their assets, except as would not have a Company Material Adverse Effect or materially impair the

Company's conduct of the business and operations of the Company and its subsidiaries, as presently conducted;

(xiii) The Company shall not, and shall not permit any of its subsidiaries to enter into any transaction or contract with, or (except pursuant to the Affiliate Agreements) make any payment to, any Affiliate of the Company (other than the Company's subsidiaries or its or their officers or directors in the ordinary course of business consistent with past practice); and

(xiv) The Company and its subsidiaries shall not authorize, or commit or agree to take, any of the foregoing actions.

Section 6.2 Other Actions. During the period from the date hereof to the Holdings Effective Time, the Company and Laser shall not, and shall not permit any of their respective subsidiaries to, take any action that would, or that could reasonably be expected to, result in (i) any of the representations and warranties of such party set forth in this Agreement that are qualified as to materiality becoming untrue, (ii) any of such representations and warranties that are not so qualified becoming untrue in any material respect or (iii) any of the conditions to the Company Merger set forth in Article VIII hereof not being satisfied.

Section 6.3 Advice of Changes. Upon obtaining knowledge of any such occurrence, the Company and Laser shall promptly advise the other party orally and in writing of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect, (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement or (iii) any change or event (x) having, or which, insofar as can reasonably be foreseen, would have, in the case of Laser, a Laser Material Adverse Effect and, in the case of the Company, a Company Material Adverse Effect, (y) having, or which, insofar as can reasonably be foreseen, would have, the effect set forth in clause (i) above or (z) which has resulted, or which, insofar as can reasonably be foreseen, would result, in any of the conditions set forth in Article VIII hereof not being satisfied; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

Section 6.4 Conduct of Business of Merger Sub. From the date hereof to the Company Effective Time, Merger Sub shall not (i) engage in any activities of any nature, (ii) acquire any assets, or (iii) incur any indebtedness or assume any liabilities or obligations, in each case, except as provided in or contemplated by this Agreement.

Section 6.5 Section 14(f) Notice. Promptly after the date hereof, Laser shall provide to the Company in writing the information with respect to the Laser Designees (as defined in the Holdings Merger Agreement) required by Section 14(f) of the Exchange Act and Rule 14f-1 of the SEC. Promptly after its receipt of such information, the Company shall file with the SEC and mail to all stockholders of record of the Company the Section 14(f) Notice.

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1 Preparation of the Registration Statement, the Information Statement, the Schedule 13E-3 and the Section 14(f) Notice. As soon as reasonably practicable following the date of this Agreement, Laser and the Company shall prepare and file with the SEC the Information Statement and Laser shall prepare and file with the SEC the Registration Statement, in which the Information Statement will be included as a prospectus (including the financial statements and pro forma financial information required to be set forth therein), and the Schedule 13E-3 and the Section 14(f) Notice. Laser shall use all reasonable best efforts to have the Registration Statement declared effective under the Securities Act and the Schedule 13E-3 and the Section 14(f) Notice cleared by the SEC and mailed as promptly as practicable after such filing. The Company will use all reasonable best efforts to cause the Information Statement and the Schedule 13E-3 and the Section 14(f) Notice to be mailed to the Company's stockholders as promptly as practicable after it has been cleared by the SEC. Each of Laser and the Company shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified or to file a general consent to service of process) required to be taken under any applicable state securities Laws in connection with the issuance of Laser Common Stock in connection with the Company Merger and the Holdings Merger. The Company shall furnish all information concerning the Company, its subsidiaries and the holders of the Company Common Stock and Laser shall furnish all information concerning Laser and its subsidiaries, in each case, as may be reasonably requested in connection with any such action.

Section 7.2 Access and Information; Confidentiality. The Company and Laser shall each afford to the other and to the other's financial advisors, legal counsel, accountants, consultants and other representatives full access at all reasonable times throughout the period prior to the Company Effective Time to all of its books, records, properties, plants and personnel (provided that all such access shall be on reasonable advance notice and shall not disrupt normal business operations) and, during such period, each shall furnish promptly to the other (a) a copy of each report, schedule and other document filed or received by it pursuant to the requirements of federal or state securities Laws, and (b) all other information as such other party may reasonably request, provided that no investigation pursuant to this Section 7.2 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Company Merger. Each party and their respective affiliates, representatives and agents shall hold in confidence all nonpublic information in accordance with the terms of the Confidentiality Agreements between Laser and the Company dated February 4, 1998 and February 23, 1998.

Section 7.3 Comfort Letters.

(a) The Company shall use its reasonable best efforts to cause to be delivered to Laser "comfort" letters of Ernst & Young, LLP, the Company's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to

Laser and the Company, in form and substance reasonably satisfactory to Laser and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

(b) Laser shall use its reasonable best efforts to cause to be delivered to the Company "comfort" letters of Arthur Andersen, LLP, Laser's independent public accountants, dated the date on which the Registration Statement shall become effective and as of the date on which the Information Statement is mailed to the Company's stockholders, and addressed to the Company and Laser, in form and substance reasonably satisfactory to the Company and as is reasonably customary in scope and substance for letters delivered by independent public accountants in connection with transactions such as those contemplated by this Agreement.

Section 7.4 Listing Application. Laser shall prepare and submit to the NYSE a listing application covering the Laser Shares to be issued in connection with the Company Merger, and shall use its reasonable best efforts to obtain, prior to the Company Effective Time, approval for the listing of such Laser Shares, subject to official notice of issuance.

Section 7.5 Affiliates. Prior to the Company Effective Time, the Company shall cause to be prepared and delivered to Laser a list (reasonably satisfactory to counsel for Laser) identifying each person who, at the time the Information Statement is mailed to the Company's stockholders, may be deemed to be an "affiliate" of the Company, as such term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act (the "Company Rule 145 Affiliates"). The Company shall use its reasonable best efforts to cause such person who is identified as a Company Rule 145 Affiliate in such list to deliver to Laser on or prior to the Company Effective Time a written agreement, in customary form, that such Company Rule 145 Affiliate will not (i) sell, pledge, transfer or otherwise dispose of, or in any other way reduce such Company Rule 145 Affiliate's risk relative to, any Laser Shares issued to such Company Rule 145 Affiliate in connection with the Company Merger, except pursuant to an effective registration statement or in compliance with such Rule 145 or another exemption from the registration requirements of the Securities Act or (ii) sell or in any other way reduce such Rule 145 Affiliate's risk relative to any Laser Shares received in the Company Merger (within the meaning of Section 201.01 of the SEC's Financial Reporting Release No. 1) during the period commencing thirty (30) days prior to the Company Effective Time and ending at such time as the financial results (including combined sales and net income) covering at least thirty (30) days of post-Merger operations have been published, except as permitted by Staff Accounting Bulletin No. 76 issued by the SEC.

Section 7.6 HSR Act; Competition Laws. As soon as reasonably practicable, the Company, Laser and Merger Sub shall make or cause to be made all filings and submissions under the HSR Act (if applicable) and any other applicable Competition Laws as may be reasonably required to be made in connection with this Agreement and the transactions contemplated hereby. Subject to Section 7.2 hereof, the Company will furnish to Laser and Laser will furnish to the Company, such information and assistance as the other may reasonably request in connection with the preparation of any such filings or submissions. Subject to Section 7.2 hereof, the Company will provide Laser, and Laser will provide the Company, with copies of

all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any governmental agency or authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby. The Company and Laser shall consult with one another with respect to any such correspondence, filings or communications and shall engage in discussions with any Governmental Entity on a joint basis.

Section 7.7 Employee Matters.

(a) From and after the Holdings Effective Time, Laser shall honor, and shall cause the Company to honor, all employment, severance, termination, consulting and retirement agreements to which the Company is a party as of the Holdings Effective Time; provided, however, that (i) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of October 1, 1997, between the Company and Jerry W. Levin (except for the incentive payment provided for in section 3.2(b) thereof (relating to the divestiture of Coleman Safety & Security Products, Inc.), which shall be the responsibility of the Company and paid in accordance with the terms of section 3.2(b) thereof), and (ii) neither Laser nor the Company shall have any responsibility for the Company's obligations under that certain employment agreement entered into as of July 1, 1997, between the Company and Paul E. Shapiro. Except as provided in the first sentence of Section 7.7(b) or the proviso to this sentence, from and after the Holdings Effective Time, Laser will cause the Company to allow Company employees to participate in Laser employee benefit plans on substantially the same basis as similarly situated Laser employees; provided, however, that Laser will cause the Company to continue the Company Plans for at least six (6) months following the Holdings Effective Time. Laser will or will cause the Company to give Company employees full credit for purposes of eligibility and vesting of benefits and benefit accrual for service with the Company and its affiliates prior to the Holdings Effective Time under each Laser employee benefit plan; provided, however, that no such crediting of service results in duplication of benefits. With respect to any welfare benefit plans maintained for the benefit of Company employees from and after the Holdings Effective Time, Laser shall (i) cause there to be waived any pre-existing condition limitations and (ii) give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, such employees with respect to similar plans maintained by the Company for such employee's benefit immediately prior to the Holdings Effective Time. Laser acknowledges that, for the purposes of certain of such Company Plans and certain of such other employment, severance, termination, consulting and retirement agreements to which the Company is currently a party, the consummation of the Holdings Merger will constitute a "change in control" of the Company (as such term is defined in such plans and agreements). Laser agrees to cause the Company, after the Holdings Effective Time, to pay all amounts provided under such Company Plans and agreements as a result of a change in control of the Company in accordance with their respective terms and to honor, and to cause the Company to honor, all rights, privileges and modifications to or with respect to any such Company Plans or agreements which become effective as a result of such change in control.

(b) Laser shall cause the Company to continue the Company's Executive Annual Incentive Policy for the remainder of 1998, and participants therein shall not be eligible for participation in an analogous Laser incentive plan in respect of 1998. Laser shall honor, and shall cause the Company to honor, the Company's Executive Severance Policy without any amendment adverse to participants. Laser shall provide severance benefits for employees of the Company, who are not participants in Company's Executive Severance Policy and who do not have employment agreements with the Company, under the Laser severance policy on the same basis as similarly situated Laser employees provided that severance benefits shall be no less than those set forth on Schedule 7.7(b).

(c) Effective as of the ninety-first (91st) day following the Holdings Effective Time, the participants in the Executive Severance Policy set forth on Schedule 7.7(c) may voluntarily terminate their employment, which termination will be deemed to be for "Good Reason" under the Executive Severance Policy as a result of the consummation of the Holdings Merger.

(d) Laser and the Company agree to take all necessary action to provide that, effective as of the Holdings Effective Time, all outstanding Employee Stock Options shall be vested and exercisable as of the Holdings Effective Time, and between the Holdings Effective Time and the Company Effective Time, Laser shall cause the Company to maintain a broker-dealer cashless exercise procedure for the exercise of Employee Stock Options. Laser and the Company agree to take all other actions necessary to provide for the cancellation, effective at the Company Effective Time, of each outstanding Employee Stock Option and, in settlement therefor, a payment to the holder of the Employee Stock Option in cash by Laser or the Company at the Company Effective Time equal to the product of (i) the total number of shares of Company Common Stock subject to such Employee Stock Option, and (ii) the excess of \$27.50 over the exercise price per share of Company Common Stock subject to such Employee Stock Option, less any applicable withholding taxes.

(e) Laser agrees that, at or prior to the Holdings Effective Time, Holdings may cause the Company to (i) assume sponsorship of the pension, retirement, savings, retiree health care and life insurance and other plans maintained by New Coleman Holdings, Inc. that are reflected in footnotes 7 and 12 to the 1996 financial statements included in the Company's 1996 Annual Report on SEC Form 10-K (as such plans may have been changed in the ordinary course of business since December 31, 1996) (the "Plans"), and (ii) assume the liabilities and obligations of New Coleman Holdings, Inc. under the Plans to the extent reflected in such footnotes (as such liabilities and obligations may have changed in the ordinary course of business since December 31, 1996). The documents used to effect such assumption shall be in form and substance reasonably satisfactory to Parent Holdings and Laser.

Section 7.8 Continuance of Existing Indemnification Rights.

(a) For six (6) years after the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time), Laser shall, or shall cause the Surviving Corporation to, indemnify, defend and hold harmless any person who is

now, or has been at any time prior to the date hereof, or who becomes prior to the Company Effective Time, a director or officer of the Company (an "Indemnified Person") against all losses, claims, damages, liabilities, costs and expenses (including attorneys' fees and expenses), judgments, fines, losses and amounts paid in settlement in connection with any actual or threatened action, suit, claim, proceeding or investigation (each, a "Claim") to the extent that any such Claim is based on, or arises out of: (i) the fact that such Indemnified Person is or was a director or officer of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; or (ii) this Agreement or the Holdings Merger Agreement or any of the transactions contemplated hereby or thereby, in each case to the extent that any such Claim pertains to any matter or fact arising, existing or occurring prior to or at the Company Effective Time, regardless of whether such Claim is asserted or claimed prior to, at or after the Company Effective Time, to the full extent permitted under the DGCL, the Company's certificate of incorporation or by-laws or any indemnification agreement in effect at the date hereof, including provisions relating to advancement of expenses incurred in the defense of any such Claim; provided, however, that neither Laser nor the Surviving Corporation shall be required to indemnify any Indemnified Person in connection with any proceeding (or portion thereof) involving any Claim initiated by such Indemnified Person against the Company unless the initiation of such proceeding (or portion thereof) was authorized by the Board of Directors of the Company or unless such proceeding is brought by an Indemnified Person to enforce rights under this Section 7.8; and provided further that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof. Without limiting the generality of the preceding sentence, in the event any Indemnified Person becomes involved in any Claim after the Company Effective Time, Laser shall, or shall cause the Surviving Corporation to, periodically advance to such Indemnified Person its legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person of an undertaking to reimburse all amounts so advanced in the event of a final non-appealable determination by a court of competent jurisdiction that such Indemnified Person is not entitled thereto.

(b) Laser and the Company agree that all rights to indemnification, and all limitations with respect thereto, existing in favor of any Indemnified Person, as provided in the Company's certificate of incorporation or by-laws and any indemnification agreement in effect at the date hereof, shall survive the Holdings Merger and the Company Merger and shall continue in full force and effect, without any amendment thereto, for a period of six (6) years from the Company Effective Time (and during the period following the Holdings Effective Time but prior to the Company Effective Time) to the extent such rights and limitations are consistent with the DGCL; provided, however, that in the event any Claim is asserted or made within such period, all such rights, liabilities and limitations in respect of any such Claim shall continue until disposition thereof; provided further that any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under the DGCL, the Company's certificate of incorporation or by-laws or any such agreement, as the case may be, shall be made by independent legal counsel selected by such Indemnified Person and reasonably

acceptable to Laser; and provided further that nothing in this Section 7.8 shall impair any rights or obligations of any current or former director or officer of the Company.

(c) Laser or the Surviving Corporation shall use reasonable best efforts to obtain a liability insurance policy ("D&O Insurance") for the benefit of the Company's existing and former directors and officers commencing at the Holdings Effective Time and for a period of not less than six (6) years after the Company Effective Time providing substantially similar coverage in amounts and on terms no less advantageous than that currently provided to such existing and former directors and officers; provided further that neither Laser nor the Surviving Corporation shall be required to pay an annual premium for D&O Insurance in excess of 200% of the last annual premium paid prior to the date hereof, but in such case shall purchase as much coverage as possible for such amount.

(d) The provisions of this Section 7.8 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives.

Section 7.9 Expenses. Whether or not the Company Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

Section 7.10 Public Announcements. Laser and the Company shall consult with each other before issuing their respective initial press releases to be issued with respect to the transactions contemplated by this Agreement and the Holdings Merger.

Section 7.11 Reasonable Best Efforts. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable, to consummate and make effective, in the most expeditious manner practicable, the Company Merger and the other transactions contemplated by this Agreement, including, but not limited to: (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from all Governmental Entities and the making of all necessary registrations and filings with; and the taking of all other reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity (including those in connection with the HSR Act, if applicable); (ii) the obtaining of all necessary consents, approvals or waivers from persons other than Governmental Entities; (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require any party hereto to enter into any agreement with any Governmental Entity or to consent to any order, decree or judgment requiring such party to hold, separate or divest, or to restrict the dominion or control of such

party or any of its Affiliates over, any of the assets, properties or businesses of such party or its Affiliates in existence on the date hereof.

ARTICLE VIII

CONDITIONS TO CONSUMMATION OF THE MERGER

Section 8.1 Conditions to Each Party's Obligation to Effect the Company Merger. The respective obligations of each party to effect the Company Merger shall be subject to the satisfaction or waiver, to the extent permitted by Law, at or prior to the Company Effective Time of the following conditions:

(a) The Registration Statement shall have become effective in accordance with the provisions of the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceeding for such purpose shall be pending before or threatened by the SEC; and all applicable time periods required under the Securities Act and the Exchange Act following the mailing of the Information Statement to the Company's stockholders shall have lapsed.

(b) The Laser Shares shall have been approved for listing on the NYSE, subject to official notice of issuance.

(c) No preliminary or permanent injunction or other order by any federal or state court in the United States of competent jurisdiction which prohibits the consummation of the Company Merger shall have been issued and remain in effect.

(d) The Holdings Merger shall have been consummated in accordance with its terms and the applicable provisions of the DGCL.

ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

Section 9.1 Termination. This Agreement shall terminate automatically upon the termination of the Holdings Merger Agreement in accordance with its terms.

Section 9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1 hereof, this Agreement shall forthwith become void and there shall be no liability on the part of any of the parties; provided that the provisions of Sections 7.2 and 7.9 and of this Article IX shall continue and that nothing herein shall relieve any party from liability for any willful breach hereof.

Section 9.3 Amendment. This Agreement may be amended by the parties pursuant to a writing adopted by action taken by all of the parties at any time prior to (but not

following) the consummation of the Holdings Merger. This Agreement may not be amended except by an instrument in writing signed by all the parties hereto.

Section 9.4 Extension; Waiver. At any time prior to (but not following) the consummation of the Holdings Merger any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only as against such party and only if set forth in an instrument in writing signed by such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 No Survival of Representations and Warranties. No representations or warranties contained herein shall survive beyond the Company Effective Time. This Section 10.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Company Effective Time.

Section 10.2 Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended, if delivered by registered or certified mail, return receipt requested, or by a national courier service, or if sent by telecopier; provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

(a) If to Laser, to:

Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, Florida 33445
Facsimile: (561) 243-2191
Attention: David C. Fannin, Esq.

with a copy to:

Skadden, Arps, Slate, Meagher
& Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Facsimile: (302) 651-3001
Attention: Richard L. Easton, Esq.

(b) If to the Company, to:

CLN Holdings Inc.
5900 North Andrews Avenue, Suite #700-A
Fort Lauderdale, Florida 33309
Facsimile: (954) 772-3352
Attention: General Counsel

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Facsimile: (212) 403-2000
Attention: Adam O. Emmerich, Esq.

Any such notification shall be deemed delivered (i) upon receipt, if delivered personally, (ii) on the next business day, if sent by national courier service for next business day delivery or (iii) the business day received, if sent by telecopier.

Section 10.3 Descriptive Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.4 Entire Agreement; No Third-Party Beneficiary. This Agreement (including the Exhibits, Disclosure Schedules and other documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof; (b) except for the provisions of Sections 7.7(c) and 7.8 hereof, is not intended to confer upon any other person any rights or remedies hereunder.

Section 10.5 Interpretation. When a reference is made in this Agreement to an Article, Section or Annex, such reference shall be to an Article or Section of, or an Annex to, this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular

provision of this Agreement. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. All terms defined in this Agreement shall have the defined meanings used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

Section 10.6 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon any such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect original intent of the parties.

Section 10.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties. Any assignment in violation of the preceding sentence shall be void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.8 Disclosure Schedules. Matters reflected on the Company Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected therein and the inclusion of such matters shall not be deemed an admission that such matters were required to be reflected on the Company Disclosure Schedule. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. Capitalized terms used in the Company Disclosure Schedule but not otherwise defined therein shall have the respective meanings assigned to such terms in this Agreement.

Section 10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without giving effect to the provisions thereof relating to conflicts of Law.

Section 10.10 Specific Performance. The parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in

accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

Section 10.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 10.12 Certain Terms. As used herein, (i) the term "material adverse effect" (including as used in any definition), with respect to any Person, shall exclude any change, event, effect or circumstance (a) arising in connection with the announcement or performance of the transactions contemplated by this Agreement or the Holdings Merger Agreement and (b) affecting the United States economy generally or such Person's industries generally; and (ii) "to the knowledge of the Company" shall mean to the actual knowledge of Paul E. Shapiro, Jerry W. Levin and Steven R. Isko.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the date first above written.

SUNBEAM CORPORATION

By: 

Name: Russell A. Kersch

Title: Executive Vice President

CAMPER ACQUISITION CORP.

By: 

Name: Russell A. Kersch

Title:

THE COLEMAN COMPANY, INC.

By: 

Name: Paul E. Shapiro

Title: *VP*

ANNOUNCE

16dv-001440

THE COLEMAN COMPANY, INC.

DISCLOSURE SCHEDULE

Reference is made to the Agreement and Plan of Merger (the "Merger Agreement") dated as of February 27, 1998, and among Sunbeam Corporation ("Laser"), The Coleman Company, Inc. (the "Company") and Camper Acquisition Corp. ("Merger Sub"). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement.

This disclosure schedule to the Merger Agreement is qualified in its entirety by reference to specific provisions of the Merger Agreement, and is not intended to constitute, and shall not be construed as constituting, representations or warranties of any party except as and to the extent provided in the Merger Agreement.

Matters reflected herein are not necessarily limited to matters required by the Merger Agreement to be reflected in the schedules. Such additional matters are set forth for information purposes and do not necessarily include other matters of a similar nature.

Any matter disclosed in one provision, sub-provision, section or subsection hereof is deemed disclosed for all purposes hereof to the extent the Merger Agreement requires such disclosure.

Headings and subheadings have been inserted herein for convenience of reference only and shall to no extent have the effect of amending or changing the express description of the schedules as set forth in the Merger Agreement.

SCHEDULE 4.4

Subsidiaries

(As of Jan. 19, 1998)

Application des Gaz, S.A.	Australian Coleman, Inc.
Bafiges S.A.	Beacon Exports, Inc.
CC Outlet, Inc.	Camping Gaz (Brazil)
Camping Gaz (Gb) Limited	Camping Gaz (Hong Kong)
Camping Gaz (India) Pvt. Ltd.	Camping Gaz (Poland)
Camping Gaz AG	Camping Gaz Cs, Spol, S.r.l.
Camping Gaz GmbH	Camping Gaz International
Camping Gaz International Hellas Sarl	Camping Gaz International (Portugal) Ltda
Camping Gaz K.K.	Camping Gaz Kft
Camping Gaz Philippines, Inc.	Camping Gaz Senegal
Camping Gaz S.r.l.	Campiran S.A.
The Canadian Coleman Company, Limited	Coleman Argentina, Inc.
Coleman Asia Offices, Ltd.	Coleman Europe
Coleman do Brasil Ltda	Coleman Country, Ltd.
Coleman (Deutschland) GmbH	Coleman Holland B.V.
Coleman Japan Co., Ltd.	Coleman Lifestyles K.K.
Coleman Manufacturing de Mexico, S.A. de C.V.	Coleman Mexico S.A. de C.V.
Coleman Powermate Compressors, Inc.	Coleman Powermate, Inc.
Coleman Safety & Security Products, Inc.	Coleman SARL
Coleman International	Coleman Spas, Inc.
Coleman SVB S.r.l.	Coleman Taymar Limited
Coleman U.K. Holdings Limited	Coleman U.K. PLC
Coleman Venture Capital, Inc.	Eastpak Corporation
Eastpak Manufacturing Corporation	Epigas International Limited
General Archery Industries, Inc.	Jasan Products Ltd.
Kansas Acquisition Corp.	Neves Caria & Ca Ltda
Nippon Coleman, Inc.	Pearson Holdings, Inc.
Productos Coleman, S.A.	PT Camping Gaz
River View Corporation of Barling, Inc.	Sierra Corporation of Fort Smith
Taymar Gas Limited	Tsana Internacional, S.A.
Woodcraft Equipment Company	

SCHEDULE 4.5

Consents and Approvals; No Violations

1. The Company's Amended and Restated Credit Agreement
2. LYONs
3. Senior Secured First Priority Discount Notes due 2001;
Senior Secured Second Priority Discount Notes due 2001;
Senior Secured First Priority Discount Exchange Notes due 2001;
Senior Secured Second Priority Discount Exchange Notes due 2001 of Holdings
4. Company Stock Option Plans
5. Employment, Severance and Retention Agreements with the following executives:

Jerry Levin	Paul Shapiro	Frank Cancelloni
Björn Blomberg	Anthony Lenders	Robert Rosenzweig
Harlan Gardner	Steven Isko	Patrick McEvoy
David Stearns	George Mileusnic	David Yuen
Michael Hammes	Larry Sanford	Fritz van der Bergh
Frederick Fritz	Pietro Perrone	James Reilly
Robert Carter	Brian Althoff	Ron Lazarus
Randy Johnson	Steven Volante	Glen Moore
Steve Kaplan	Robert Ring	Kent Crudup
6. Insurance policies including but not limited to General Liability, Automobile, Umbrella Liability and Excess Liability, and Workers' Compensation policies (the "Insurance Policies") purchased by New Coleman Holdings Inc. ("New Coleman") and Mafco Holdings Inc. ("Mafco Holdings") with respect to which the Company derives the benefits, including as a subsidiary or affiliate of New Coleman and Mafco Holdings, in certain cases including forms of self-insurance, self-insured retention, deductibles, retrospective rating plans, and similar arrangements ("Self-Insured Arrangements")

SCHEDULE 4.7

Absence of Certain Changes or Events

1. Increase in base salaries for Company employees effective as of March 1, 1998
2. Authorization of payments of discretionary bonuses under the Company's Management Incentive Plan for 1997
3. Executive Severance Policy
4. Setting of 1998 Targets under the Management Incentive Plan
5. Employment, Severance or Retention arrangements for the persons listed on Item 5. of Schedule 4.6
6. Stock Purchase Agreement (the "Stock Purchase Agreement"), dated February 18, 1998, by and among the Company, Ranco Incorporated of Delaware ("Ranco") and Siebe PLC ("Siebe"), for the sale of the shares of Coleman Safety & Security Products, Inc.; Letter Agreement, dated February 18, 1998, by and among the Company, Ranco and Siebe and the License Agreement to be entered into at the closing of the transaction under the Stock Purchase Agreement

SCHEDULE 4.8

Litigation

None

SCHEDULE 4.10

Taxes

1. Internal Revenue Service Audit of the Maeco Holdings consolidated federal income tax return for the years 1989 and 1990

SCHEDULE 4.13

ERISA

4.13(c)

1. Employment, Severance or Retention arrangements for the persons listed on Item 5. of Schedule 4.6
2. The Special Medical Plan
3. The Basic Medical Plan
4. The Regular Medical Plan

4.13(f)

1. 1996 Stock Option Plan
2. Executive Severance Policy
3. Employment, Severance and Retention Agreements (see Schedule 4.13(c))
4. Certain foreign jurisdictions may provide for special severance payments

SCHEDULE 4.15

Intellectual Property

None

SCHEDULE 4.16

Contracts

1. Hedging Agreement with Koch Industries
2. Amended and Restated License Agreement dated as of January 1, 1998 between the Company and The Timberland Company
3. Open Purchase Order with Wespak Corporation for cardboard coolers
4. Agreements with Ernst & Young and Oracle Corporation for update of software system
5. Agreement between the Company and AT&T Corporation dated April 3, 1996, as amended
6. Agreement dated as of September 7, 1997 between the Company and Wolverine World Wide Inc.
7. Agreement dated as of April 4, 1994 between the Company and Char-Broil, a division of W.C. Bradley Corporation
8. Stock Purchase Agreement, dated February 18, 1998, by and among the Company, Ranco and Siebe, for the sale of the shares of Coleman Safety & Security Products, Inc.; Letter Agreement, dated February 18, 1998, by and among the Company, Ranco and Siebe and the License Agreement to be entered into at the closing of the transaction under the Stock Purchase Agreement

SCHEDULE 6.1

Conduct of Business by the Company

1. Sale of the Company's Safety & Security Division and other transactions contemplated by the Stock Purchase Agreement, dated February 18, 1998, and certain other agreements related thereto
2. From time to time, the repurchase by the Company of shares of Company Common Stock from certain officers and non-employee directors and cash-out of certain Employee Stock Options held by certain officers and non-employee directors to provide a sale under Rule 16b-3 under the Exchange Act
3. The Company may take all actions necessary to provide for vesting and exercisability of all outstanding Employee Stock Options as of the Effective Time and to provide for a broker-dealer cashless exercise procedure
4. Assume the sponsorship of all Company Plans maintained by New Coleman Holdings, Inc. pursuant to the Merger Agreement
5. Increase base salaries for Company employees effective as of March 1, 1998
6. Pay discretionary bonuses under the Company's Management Incentive Plan for 1997
7. Mafco Demand Note will be cancelled and of no further force or effect on the earlier to occur of (i) the date that all LYONs are redeemed, exchanged or otherwise retired and (ii) May 27, 1998

SCHEDULE 7.7

Employee Matters

7.7(b)

Years of Service

0 - 5

5 - 10

over 10

Period of Base Salary

6 weeks

3 months

6 months

7.7(c)

Joe Tesoriero

Robin Esterson

Bobby Jenkins

Marc Shiffman

Joseph Page

Gwen Wisler

4

February 27, 1998

Board of Directors
Sunbeam Corporation
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445

Members of the Board:

We understand that CLN Holdings Inc. ("Holdings"), Sunbeam Corporation ("Buyer"), Laser Acquisition Corporation, a wholly owned subsidiary of Buyer ("LAC"), and Coleman (Parent) Holdings Inc. have entered into an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"). Pursuant to the Holdings Merger Agreement, LAC will merge with and into Holdings (the "Holdings Merger") and all of the issued and outstanding shares of common stock, par value \$1.00 per share, of Holdings (the "Holdings Common Stock") will be converted into the right to receive \$159,956,756 in cash and 14,099,749 shares of common stock, par value \$.01 per share (the "Buyer Common Stock"), of Buyer (collectively, the "Holdings Consideration").

We also understand that Buyer, Camper Acquisition Corporation, a wholly owned subsidiary of Buyer ("CAC"), and The Coleman Company, Inc. ("the Company") have entered into an Agreement and Plan of Merger, dated as of February 27, 1998 ("the Company Merger Agreement"). Pursuant to the Company Merger Agreement, CAC will be merged with and into the Company (the "Company Merger" and, together with the Holdings Merger, the "Mergers") and each outstanding share of common stock, par value \$.01 per share of The Coleman Company, Inc. (the "Company Common Stock"), will be converted into the right to receive (i) 0.5677 shares of Buyer Common Stock and (ii) \$6.44 in cash. Upon consummation of the Holdings Merger and Company Merger, Buyer will indirectly beneficially own 100% of the outstanding shares of Company Common Stock.

You have asked for our opinion as to whether the Consideration to be paid by the Buyer pursuant to the Merger Agreement is fair from a financial point of view to the Buyer.

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For purposes of the opinion set forth herein, we have:

- (i) reviewed certain publicly available financial statements and other information of the Company and the Buyer, respectively;
- (ii) reviewed certain internal financial statements and other financial and operating data concerning the Company and the Buyer prepared by the managements of the Company and the Buyer, respectively;
- (iii) reviewed certain internal financial statements and other financial data concerning Holdings prepared by management of Holdings;
- (iv) reviewed certain financial projections prepared by the managements of the Company and the Buyer, respectively;
- (v) discussed the past and current operations and financial condition and the prospects of the Company with senior executives of the Company;
- (vi) reviewed with the management of the Buyer their estimates of the synergies and cost savings expected to be achieved from the Merger;
- (vii) discussed the past and current operations and financial condition and the prospects of the Buyer with senior executives of the Buyer;
- (viii) reviewed the pro forma impact of the Merger on the Buyer's earnings per share, cash flow, consolidated capitalization and financial ratios;
- (ix) reviewed the reported prices and trading activity for the Company Common Stock and the Buyer Common Stock;
- (x) compared the financial performance of the Company and the Buyer and the prices and trading activity of the Company Common Stock and the Buyer Common Stock with that of certain other comparable publicly-traded companies and their securities;
- (xi) reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;
- (xii) participated in discussions and negotiations among representatives of the Company and the Buyer and their financial and legal advisors;
- (xiii) reviewed the Company Merger Agreement and Holdings Merger Agreement;
- (xiv) reviewed evaluations prepared by Coopers & Lybrand of the potential synergy opportunities present in the Mergers; and
- (xv) performed such other analyses as we have deemed appropriate.

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Sunbeam Corporation
February 27, 1998
Page 3

We have assumed and relied upon without independent verification the accuracy and completeness of the information reviewed by us for the purposes of this opinion. With respect to the financial projections including the estimates of synergies and cost savings expected to be achieved in the Mergers, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the future financial performance of the Company. With respect to the potential operational improvements associated with the Mergers we have relied upon the evaluation of both Coopers & Lybrand and the Company. We have not made any independent valuation or appraisal of the assets or liabilities of the Company; however, we have reviewed the valuation of Coopers & Lybrand with respect to operational benefits expected to be achieved in the Mergers, and have relied without independent verification upon such valuations for purposes of this opinion. Our opinion is necessarily based on economic, market and other conditions as in effect on, and the information made available to us as of the date hereof.

We have acted as financial advisor to the Board of Directors of the Buyer in connection with this transaction and will receive a fee for our services.

It is understood that this letter is for the information of the Board of Directors of the Buyer and may not be used for any other purpose without our prior written consent.

Based on the foregoing, we are of the opinion on the date hereof that the Consideration to be paid by the Buyer pursuant to the Merger Agreements is fair from a financial point of view to the Buyer.

Very truly yours,

MORGAN STANLEY & CO. INCORPORATED

By: _____

James B. Stynes
Managing Director

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5

Sunbeam.

ZERO COUPON CONVERTIBLE SENIOR SUBORDINATED DEBENTURES DUE 2018

The Debentures are convertible at any time after 90 days following the latest date of original issuance thereof and prior to maturity, unless previously redeemed or otherwise purchased, into shares of the Company's common stock, \$0.01 par value (the "Common Stock"), at a conversion rate of 6.575 shares per \$1,000 principal amount at maturity. The conversion rate will not be adjusted for accrued Original Issue Discount (as defined), but will be subject to adjustment in certain events. See "Description of Debentures—Conversion of Debentures." The Company's Common Stock is listed on the New York Stock Exchange under the symbol "SOC." The reported last sale price of the Company's Common Stock as reported on the New York Stock Exchange Composite Tape on March 19, 1998 was \$45¹/₁₆ per share.

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

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

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

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

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

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

PRICE 37.243% AND ACCRUED ORIGINAL ISSUE DISCOUNT, IF ANY

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

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

MORGAN STANLEY DEAN WITTER

March 19, 1998

THIS OFFERING MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, ANY OF THE SECURITIES OFFERED HEREBY BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH AN OFFERING OR SOLICITATION. NEITHER THE DELIVERY OF THIS OFFERING MEMORANDUM NOR ANY SALE MADE HEREUNDER OF THE SECURITIES DESCRIBED HEREIN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THE INFORMATION HEREIN IS CORRECT AS OF ANY DATE SUBSEQUENT TO THE DATE HEREOF.

This Offering Memorandum is highly confidential and has been prepared by the Company solely for use in connection with the proposed private placement of the Debentures described herein. The Company and the Initial Purchaser reserve the right to reject any offer to purchase Debentures, in whole or in part, for any reason and to sell less than the principal amount at maturity of the Debentures offered hereby. This Offering Memorandum is personal to each offeree and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire the Debentures or the Common Stock issuable upon conversion of the Debentures. Distribution of this Offering Memorandum to any person other than the offeree and those persons, if any, retained to advise such offeree with respect thereto is unauthorized, and any disclosure of any of its contents without the prior written consent of the Company is prohibited. Offerees represent that they are basing their investment decision solely on this Offering Memorandum and their own examination of the Company and the terms of the offering. Each prospective purchaser, by accepting delivery of this Offering Memorandum, agrees to the foregoing and, if the offeree does not purchase Debentures or this offering is terminated, to return this Offering Memorandum and all documents delivered herewith to: Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York, 10036, Attention: Syndicate Department.

Each person receiving this Offering Memorandum acknowledges that (i) such person has been afforded an opportunity to request from the Company and to review all additional information considered by it to be necessary to verify the accuracy of or to supplement the information herein, (ii) it has not relied on the Initial Purchaser or any person affiliated with the Initial Purchaser in connection with its investigation of the accuracy of such information or its investment decision and (iii) no person has been authorized to give any information or to make any representation concerning the Company or the Debentures or the Common Stock issuable upon conversion of the Debentures offered hereby other than as contained or incorporated by reference herein and information given by duly authorized officers and employees of the Company in connection with investors' examination of the Company and the terms of the offering, and, if given or made, such other information or representation should not be relied upon as having been authorized by the Company or the Initial Purchaser.

No representation or warranty, express or implied, is made as to the accuracy or completeness of the information contained or incorporated by reference herein, and nothing contained in this Offering Memorandum, or incorporated by reference herein, is, or shall be relied upon as, a promise or representation. The Initial Purchaser assumes no responsibility for the accuracy or completeness of such information.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

CERTAIN PERSONS PARTICIPATING IN THIS OFFERING MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE PRICE OF THE DEBENTURES AND COMMON STOCK OF THE COMPANY. SPECIFICALLY, THE INITIAL PURCHASER MAY OVERALLOT IN CONNECTION WITH THE OFFERING AND MAY BID FOR AND PURCHASE DEBENTURES AND SHARES OF COMMON STOCK IN THE OPEN MARKET. FOR A DISCUSSION OF THESE ACTIVITIES, SEE "PLAN OF DISTRIBUTION."

TABLE OF CONTENTS

	<u>Page</u>		<u>Page</u>
Available Information	3	Management	43
Incorporation of Certain Documents by Reference	4	Security Ownership of Certain Beneficial Owners	45
Forward-looking Statements	4	Security Ownership of Management	46
Summary	5	Description of Other Indebtedness	47
Risk Factors	12	Description of Debentures	48
The Acquisitions	18	Registration Rights	62
Financing Plan and Use of Proceeds	23	Description of Capital Stock	64
Price Range of Common Stock and Dividend Policy	24	Certain United States Federal Income Tax Considerations	65
Capitalization	25	Plan of Distribution	67
Unaudited Pro Forma Condensed Financial Statements	26	Transfer Restrictions	68
Selected Historical Financial Data	31	Legal Matters	71
Management's Discussion and Analysis of Financial Condition and Results of Operations	32	Independent Auditors	71
Business	37	Index to Financial Statements	F-1
		Appendix A—Accredited Investor Letter ...	A-1
		Appendix B—Selling Securityholder Notice and Questionnaire	B-1

AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information filed with the Commission by the Company can be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's regional offices located at 500 West Madison Street, Room 1400, Chicago, Illinois 60661 and at 7 World Trade Center, Suite 1300, New York, New York 10048. Copies of such material can be obtained from the Public Reference Section of the Commission at 450 Fifth Street, Washington, D.C. 20549, at prescribed rates, or the Commission's site on the World Wide Web at <http://www.sec.gov>. Copies of other materials concerning the Company can be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

The Company has entered into separate definitive agreements to acquire CLN Holdings, Inc. ("CLN Holdings"), the parent of The Coleman Company, Inc. ("Coleman"), Signature Brands USA, Inc. ("Signature Brands") and First Alert, Inc. ("First Alert"), subject to various customary closing conditions, including the receipt of required regulatory approvals. Each of CLN Holdings, Coleman, Signature Brands and First Alert is subject to the informational requirements of the Exchange Act and in accordance therewith files reports, proxy statements and other information with the Commission. The information contained herein with respect to CLN Holdings, Coleman, Signature Brands and First Alert is derived from such filings with the Commission or from information supplied by them for inclusion herein. Neither the Company nor the Initial Purchaser warrant that there have not occurred events, not yet publicly disclosed by CLN Holdings, Coleman, Signature Brands and First Alert which would affect the accuracy of the statements concerning CLN Holdings, Coleman, Signature Brands and First Alert included herein. Investors are referred to each of CLN Holdings', Coleman's, Signature Brands' and First Alert's complete filings with the Commission which are available from the sources described in the immediately preceding paragraph.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following document has been filed by the Company with the Commission (File No. 1-52) pursuant to the Exchange Act and is incorporated herein by reference: the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 1997. All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Offering Memorandum but prior to the termination of the offering to which this Offering Memorandum relates shall be deemed to be incorporated by reference in this Offering Memorandum and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Offering Memorandum to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as modified or superseded, to constitute a part of this Offering Memorandum. The Company will provide without charge to each person, including any beneficial owner, to whom this Offering Memorandum is delivered, upon written or oral request of such person, a copy of any and all of the documents that have been or may be incorporated by reference herein (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into such documents). Requests for such documents should be directed to Rich Goudis, at the principal executive offices of the Company in writing at Sunbeam Corporation, 1615 South Congress Avenue, Suite 200, Delray Beach, Florida 33445 or by telephone at (561) 243-2100.

FORWARD-LOOKING STATEMENTS

This Offering Memorandum, including the documents incorporated by reference herein, contains forward-looking statements that involve risks and uncertainties. The statements contained in this Offering Memorandum or incorporated by reference herein that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, including without limitation statements regarding the expectations, beliefs, intentions, plans or strategies of the Company, Coleman, Signature Brands and First Alert, or their directors or officers regarding the future. All forward-looking statements included in this document or incorporated by reference herein are based on information available to the Company on the date hereof or thereof, and the Company assumes no obligation to update any such forward-looking statements. Prospective investors are cautioned that any such forward looking statements are not guarantees of future performance and involve risks and uncertainties and that actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors. The information included in this Offering Memorandum, including without limitation the information set forth under the headings "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business" identifies important factors that could cause such differences.

Except as otherwise indicated, (i) all references to the "Company" or "Sunbeam Corporation" refer to Sunbeam Corporation and its subsidiaries, unless the context otherwise requires, and (ii) all information in this Offering Memorandum assumes that the Initial Purchaser's over-allotment option will not be exercised.

SUMMARY

The following information does not purport to be complete and is qualified in its entirety by the more detailed financial and other information appearing elsewhere in this Offering Memorandum and in the documents incorporated by reference herein. The offering of the Debentures is referred to herein as the "Offering." For a discussion of certain important factors that should be considered by prospective purchasers of the Debentures, see "Risk Factors" beginning on page 12.

THE COMPANY

The Company is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer products through mass merchandisers, home centers and other channels (such as Wal-Mart, Kmart and Home Depot) in the United States and internationally. The Company also sells its products to commercial end users such as hotels and other institutions. Sunbeam products enjoy a long-standing reputation for quality, and a majority of the Company's sales are from products which hold the number one or two market share in their respective product categories. In 1997, the Company's net sales were approximately \$1,168 million.

The Company's five product categories are: (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers); (2) Health at Home (vaporizers, humidifiers, air cleaners, water filters, massagers and scales); (3) Personal Care and Comfort (shower massagers, hair clippers and trimmers, electric warming blankets); (4) Outdoor Cooking (electric, gas and charcoal grills and grill accessories); and (5) Away From Home (clippers and related products for professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care, grills and comfort products, professional clippers and related products) in all countries other than the United States.

The Company has a management team with extensive consumer products experience and proven expertise in cost containment and operational improvement. On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation.

Competitive Strengths

Sunbeam competes in markets with well-established United States and foreign companies on the basis of various strengths, depending on the country, product category and distribution channels. The Company believes that it is well-positioned to pursue continued growth as a result of these competitive strengths, which include the following:

Market Leadership. The majority of Sunbeam sales are from products in which the Company holds the number one or two market share position. The Company believes that this combination of leading brand-name products and breadth of product offerings makes Sunbeam an attractive vendor to all retailers, particularly those who are consolidating their suppliers.

Brand Name Recognition. The Sunbeam® and Oster® brands have been household names for generations. The Company believes that these brands, along with its other well-known secondary brand names such as Mixmaster®, Osterizer® and Grillmaster®, draw customers into retail stores specifically to purchase products bearing these brand names. During 1997, the Company spent over \$56 million, or approximately 5% of its 1997 net sales, for advertising and sales promotion to support brand recognition.

Distribution Network. The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Company supports its customers' needs with strong warehousing and distribution capabilities, a broad, high-quality product portfolio, electronic data interchange and just-in-time product delivery capabilities. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores and pet supply retailers, as well as independent distributors and military post exchange outlets.

Strong Position in Consolidating Retail Environment. The consolidation trend in the retail industry has resulted in the emergence and global expansion of large mass merchandisers. These merchandisers demand financially strong, efficient suppliers who offer a broad range of innovative, quality products, have the ability to make timely shipments in large volumes and provide strong customer, promotional and merchandising support. The Company continues to benefit from this trend and believes it has the opportunity to further expand

distribution with a number of major retailers while increasing its penetration of existing accounts. In 1997, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Price Costco, Kmart, Target Stores, Home Depot and Sears.

Restructuring and Growth Plan

In the fall of 1996, Sunbeam announced a major restructuring and growth plan under newly appointed Chairman and Chief Executive Officer Albert Dunlap. The restructuring, which was recently completed, included the redefinition of Sunbeam's core products, divestiture of non-core businesses, assembling a new management team, and the closing of 18 factories, 43 warehouses and 5 headquarters offices. The Company also consolidated all purchasing functions, reduced the number of stock keeping units ("SKU's") from approximately 11,400 to 2,000 and outsourced certain of the administrative, manufacturing and distribution activities. These actions led to a reduction of nearly half the work force (approximately 6,000 jobs). In 1997, net sales grew 18.7% and operating margin improved to 17.1% from 0.5% (excluding the impact of special charges) in 1996, with operating margins reaching 20% in the fourth quarter of 1997.

The Acquisitions

Following the successful restructuring of the Company, the management team has extended its strategic focus to identify underperforming companies with strong brand names. The Company intends to capitalize on its proven capability in cost containment and operational improvement by acquiring such companies and their premier brand names, thereby broadening the Sunbeam product offering spectrum and presenting opportunities to eliminate redundant or inefficient operations.

On March 2, 1998, the Company announced that it had entered into separate agreements to acquire Coleman, Signature Brands and First Alert (collectively, the "Acquisitions"). The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions will give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman. With 1997 net revenues of approximately \$1.154 billion, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, the breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- *Outdoor Recreation*: This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffel bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman*®, *Camping Gaz*® and *East Pak*®.
- *Hardware*: This product category includes portable generators and air compressors marketed under the *Powermate*® brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

Based on the assumption that all presently exercisable Coleman options will be exercised prior to the closing of the Coleman acquisition, the Company expects to issue and deliver approximately 21.3 million shares of Common Stock (with an aggregate value of approximately \$1 billion based on current market prices) and to pay an aggregate of \$221 million in cash in connection with the Coleman acquisition. On such basis, the Coleman acquisition is valued at approximately \$2.2 billion (including the assumption of approximately \$976 million of indebtedness). If none of the presently exercisable Coleman options are exercised prior to closing of the Coleman acquisition, the Company would expect to issue and deliver approximately 19.4 million shares of Common Stock and pay aggregate cash consideration of \$261 million in connection with the Coleman acquisition.

Signature Brands. With net sales of approximately \$276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution

in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers.

- **Consumer Products:** Signature Brands markets its consumer products under the *Mr. Coffee*®, *Health o meter*®, *Counselor*® and *Borg*® brand names. Signature Brands produces and markets an extensive line of *Mr. Coffee*® brand automatic drip coffeemakers, espresso/cappuccino makers and iced and hot teamakers. Mr. Coffee, Inc. has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. In addition, *Mr. Coffee*® is the leading brand of basket-type coffee filters in the United States. Other consumer products marketed under the *Mr. Coffee*® brand name include water filtration products, coffeemaker related accessories such as replacement decanters and mug warmers, and other kitchen countertop appliances such as food dehydrators. In addition, Signature Brands manufactures a comprehensive line of *Health o meter*® brand analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales. Capitalizing on the recently acquired rights to the *Borg*® and *Counselor*® brand names, Signature Brands intends to introduce in 1998 a new line of *Borg*® scales that are distinctly European in design for department and specialty stores. *Counselor*® scales, to be introduced in 1998, will represent opening price point scales for the mass market.
- **Professional Products:** Professional products include the *Pelouze*® and *Health o meter*® brands of office, foodservice and medical scales and *Mr. Coffee*® brand commercial coffeemakers. Products sold as professional products include analog and digital scales for a full range of medical uses, including traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales for non-ambulatory patients, and home healthcare scales. Signature Brands' office products, marketed under the *Pelouze*® brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily. *Pelouze*® foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications.

The Signature Brands transaction is valued at approximately \$253 million, consisting of approximately \$84 million in cash and the assumption of approximately \$169 million of indebtedness.

First Alert. With 1997 net sales of approximately \$187 million, First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the *First Alert*® brand name, which First Alert believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on the *First Alert*® brand name and its leading smoke detector market share to develop and market a broad range of residential safety products.

- **Smoke Detectors:** First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors. First Alert has the leading U.S. market share for these products. First Alert markets its smoke detectors under three principal brand names: the *First Alert*® premium brand name, which is featured in media and public relations promotional campaigns; the *Family Guard*® brand name, which is marketed as a lower priced, functional alternative for those consumers who are price sensitive; and the *BRK*® brand name, which is sold to the wholesale electrical market.
- **Carbon Monoxide Detectors:** These products include carbon monoxide detectors, first introduced by First Alert in September 1993, with biomimetic sensors sold under the *First Alert*® and *Family Guard*® brand names. First Alert holds the leading market position in the carbon monoxide detector market.
- **Fire Extinguishers:** First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert*® brand smoke detectors. First Alert currently markets a full range of fire extinguisher products for use by the consumer, including fire extinguishers for use in the kitchen, garage, workshop, automobiles and boats. These products are sold under the *Sure Grip*® brand name which is one of the leading brand names in the U.S. retail fire extinguisher market.

The First Alert transaction is valued at approximately \$178 million, consisting of approximately \$133 million in cash and the assumption of approximately \$45 million of indebtedness.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, including the receipt of required regulatory approvals, there can be no assurance that any or all of such transactions will be consummated.

For further information with respect to the effects of the Acquisitions, see "Capitalization," "Unaudited Pro Forma Condensed Financial Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Financing Plan

In order to finance the cash portion of the Acquisitions and the repayment of all or substantially all of the outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert, the Company intends to negotiate a new bank credit facility (the "New Credit Facility") and to issue the Debentures offered hereby. See "Risk Factors—New Credit Facility Not Yet Committed." For a summary description of the expected terms of the New Credit Facility, see "Description of Other Indebtedness—New Credit Facility."

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Such repayments are expected to be funded with borrowings under the New Credit Facility and from the net proceeds of the Offering of the Debentures. See "Risk Factors—New Credit Facility Not Yet Committed," "Financing Plan and Use of Proceeds" and "Description of Other Indebtedness—New Credit Facility."

The following table sets forth the expected sources and uses of cash in connection with the financing of the Acquisitions:

Sources	Uses
(in millions)	
New Credit Facility(a)	Repayment of existing indebtedness(b)
Debentures offered hereby	Cash Acquisition consideration(c)
	Fees and expenses(d)
Total	Total

(a) The New Credit Facility is expected to consist of a \$1.5 billion term debt facility, and a \$500 million revolving credit facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(b) Represents the repayment of existing indebtedness of the Company, CLN Holdings, Signature Brands and First Alert of \$202.2 million, \$1,077.2 million, \$179.9 million and \$45.0 million, respectively. Existing indebtedness reflects amounts outstanding as of December 28, 1997, except for indebtedness of CLN Holdings issued at an original issue discount which reflects principal accreted through an assumed repayment date of May 15, 1998. The foregoing amounts include \$7.0 million, \$100.3 million and \$5.5 million of estimated prepayment premiums related to the early retirement of indebtedness of the Company, CLN Holdings and Signature Brands, respectively. As of the actual date of repayment, the outstanding amount of existing indebtedness to be repaid is likely to be greater than the amount shown above due to increased borrowings to finance working capital requirements. The Company intends to refinance any such additional indebtedness using its unused borrowing capacity under the New Credit Facility. In particular, as of March 16, 1998 the outstanding indebtedness of the Company and CLN Holdings had increased by approximately \$100 million and \$60 million, respectively. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(c) Represents the estimated net cash consideration payable (including the cash-out of options) in connection with the Acquisitions in the amounts of \$261.1 million, \$83.8 million and \$132.8 million for Coleman, Signature Brands and First Alert, respectively.

(d) Represents estimated transaction costs in connection with the Acquisitions and debt refinancing, including financial advisory fees, Initial Purchaser's commissions, bank fees, and legal and accounting fees and expenses.

Recent Announcement

On March 19, 1998 the Company issued a press release in which it stated that it is possible that its net sales for the first quarter of 1998 may be lower than the range of Wall Street analysts' estimates of \$285 million to \$295 million, but that net sales are expected to exceed 1997 first quarter net sales of \$253.4 million. The Company stressed that sales of its products at retail remains very strong. The shortfall from analysts' estimates, if any, would be due to changes in inventory management and order patterns at certain of the Company's major retail customers. The Company further stated that based on the strength of its new product offerings and powerful brand names, it remains highly confident about the overall sales outlook for its products for the entire year.

Actual results could differ materially from the statements in the press release due to various factors including those set forth in "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business." See "Forward-Looking Information."

SUMMARY HISTORICAL AND PRO FORMA FINANCIAL INFORMATION

The summary historical financial data of the Company for each of the fiscal years listed below have been derived from the Company's audited financial statements. The pro forma financial information has been derived from, and should be read in conjunction with, the unaudited pro forma condensed financial statements, including the notes thereto, appearing elsewhere in this Offering Memorandum. The summary unaudited pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the operating results or financial position that would have occurred had the Acquisitions, the initial borrowings under the New Credit Facility used to fund a portion of the Acquisitions (the "Bank Financing") and the Offering been consummated as of the dates indicated, nor is the summary unaudited pro forma financial information necessarily indicative of future operating results or financial position. This summary should be read in conjunction with the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum and the information set forth under "Capitalization," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Unaudited Pro Forma Condensed Financial Statements."

	Fiscal Year Ended					
	January 2, 1994	January 1, 1995	December 31, 1995	December 29, 1996(a)	December 28, 1997	December 28, 1997 Pro Forma(b)
	(in millions, except percentage, ratio and per share data)					(unaudited)
Statement of Operations Data:						
Net sales	\$ 927.5	\$ 1,044.3	\$ 1,016.9	\$ 984.2	\$ 1,168.2	\$ 2,595.4
Operating earnings (loss)	134.0	151.0	70.3	(285.2)	199.4	207.0
Earnings (loss) from continuing operations	76.9	85.3	37.6	(196.7)	123.1	30.3
Net earnings (loss)	88.8	107.0	50.5	(228.3)	109.4	N/A
Diluted earnings (loss) per share of common stock(c)	1.01	1.30	0.61	(2.75)	1.25	0.28
Average number of common and common equivalent shares outstanding (c)	87.9	82.6	82.8	82.9	87.5	107.0
Other Data:						
Gross margin	27.3%	26.8%	20.4%	8.5%	28.3%	27.6%
Operating margin	14.4	14.5	6.9	N/A	17.1	8.0
Ratio of earnings to fixed charges(d)	16.2x	14.9x	5.3x	—	14.5x	2.5x
Balance Sheet Data:						
	As of December 28, 1997					
	Actual		Pro Forma(e)		(unaudited)	
Cash and cash equivalents	\$ 52.4		\$ 78.9		\$ 78.9	
Working capital	459.9		949.6		949.6	
Total assets	1,120.3		4,054.3		4,054.3	
Total long-term debt	194.6		2,044.4		2,044.4	
Stockholders' equity	531.9		1,278.5		1,278.5	

(a) Includes special charges of \$337.6 million before taxes. See Notes 8 and 9 to Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(b) Gives pro forma effect to (i) the Acquisitions, (ii) the Bank Financing, (iii) the Offering and (iv) the use of net proceeds from the Offering and the Bank Financing as described under "Financing Plan and Use of Proceeds" (collectively, the "Pro Forma Transactions"), as if they had occurred on December 30, 1996.

(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share*. See Note 1 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(d) In computing the ratio of earnings to fixed charges: (a) earnings represent income from continuing operations before income taxes and fixed charges (exclusive of interest capitalized); and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense. For the fiscal year ended December 29, 1996, earnings were insufficient to cover fixed charges by \$285.6 million.

(e) Gives pro forma effect to the Pro Forma Transactions as if they had occurred as of December 28, 1997.

THE OFFERING

Securities Offered	\$2,014,000,000 principal amount at maturity (plus up to an additional \$302,100,000 principal amount at maturity if the Initial Purchaser's over-allotment option is exercised in full) of Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"). There will be no periodic interest payments on the Debentures. See "Description of Debentures—General."
Yield to Maturity of Debentures	5.0% per annum (computed on a semi-annual bond equivalent basis) calculated from March 25, 1998.
Conversion	The Debentures are convertible, at the option of the holder, at any time after 90 days following the latest date of original issuance thereof and prior to maturity, unless previously redeemed or otherwise purchased by the Company, into Common Stock at the rate of 6.575 shares per \$1,000 principal amount at maturity of the Debentures (the "Conversion Rate"). The Conversion Rate will not be adjusted for accrued Original Issue Discount (as defined), but will be subject to adjustment upon the occurrence of certain events. Upon conversion, the holder will not receive any cash payment representing accrued Original Issue Discount; such accrued Original Issue Discount will be deemed paid by the Common Stock received upon conversion. See "Description of Debentures—Conversion of Debentures."
Subordination	The Debentures will be subordinated in right of payment to all existing and future Senior Indebtedness (as defined) of the Company and effectively subordinated in right of payment to all indebtedness and other liabilities of the Company's subsidiaries. The Debentures will rank <i>pari passu</i> with liabilities owed to trade creditors of the Company. At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions, the Bank Financing, the Offering and the application of the net proceeds therefrom, approximately \$1,294 million of Senior Indebtedness would have been outstanding and the Company's subsidiaries would have had approximately \$731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. See "Description of Debentures—Subordination of Debentures."
Original Issue Discount	The Debentures are being issued at an Original Issue Discount for Federal income tax purposes equal to the excess of the stated redemption price at maturity of the Debentures (which is expected to be the principal amount at maturity) over the amount of their issue price (which is expected to be the Issue Price). Prospective purchasers of Debentures should be aware that, although there will be no periodic payments of interest on the Debentures, accrued Original Issue Discount will be included periodically in a holder's gross income for Federal income tax purposes prior to conversion, redemption, other disposition or maturity of such holder's Debentures, whether or not such Debentures are ultimately converted, redeemed, sold (to the Company or

	otherwise) or paid at maturity. See "Certain United States Federal Income Tax Considerations."
Sinking Fund	None.
Redemption	The Debentures will not be redeemable by the Company prior to March 25, 2003. On or after such date, the Debentures will be redeemable for cash on at least 30 days' notice, at the option of the Company, in whole at any time or in part from time to time, at redemption prices equal to the Issue Price plus accrued Original Issue Discount to the date of redemption. See "Description of Debentures—Redemption of Debentures at the Option of the Company."
Fundamental Change	The Debentures may be redeemed for cash at the option of the holder if there is a Fundamental Change (as defined) at a price equal to the Issue Price plus accrued Original Issue Discount to the date of redemption, subject to adjustment in certain circumstances. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change."
Purchase at the Option of the Holder...	The Company will purchase Debentures at the option of the holder as of March 25, 2003, March 25, 2008 and March 25, 2013, at purchase prices equal to the Issue Price plus accrued Original Issue Discount to such dates. The Company may, at its option, elect to pay any such purchase price in cash or Common Stock, or any combination thereof. See "Description of Debentures—Purchase of Debentures at the Option of the Holder."
Financing Plan and Use of Proceeds ...	The net proceeds from the Offering, together with the Bank Financing, will be used to finance the Acquisitions and related transactions. "See Financing Plan and Use of Proceeds."
Registration Rights	The Company will, for the benefit of the holders, file with the Commission as soon as practicable, but in any event within 90 days after the first date of original issuance of the Debentures, a shelf registration statement (the "Shelf Registration Statement") covering resales of the Debentures and the Common Stock issuable upon conversion of the Debentures (the "Registrable Securities"). The Company will use its best efforts to cause the Shelf Registration Statement to become effective as promptly as is practicable, but in any event within 180 days after such first date of original issuance, and to keep the Shelf Registration Statement effective until the earlier of (i) the sale pursuant to the Shelf Registration Statement of all the securities registered thereunder and (ii) the expiration of the holding period applicable to such securities held by non-affiliates of the Company under Rule 144(k) of the Securities Act, or any successor provision, subject to certain permitted exceptions. See "Registration Rights."
Transfer Restrictions	The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and are subject to restrictions on transfer. See "Transfer Restrictions."

RISK FACTORS

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

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

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

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

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

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

The Debentures will be unsecured and subordinated in right of payment to all existing and future Senior Indebtedness of the Sunbeam Corporation. As a result of such subordination, in the event of bankruptcy, liquidation or reorganization of the Company and in certain other events, the assets of the Company will be available to pay its obligations with respect to the Debentures only after all Senior Indebtedness has been paid in full, and there may not be sufficient assets remaining to pay amounts due on any or all of the Debentures then outstanding. The Debentures will be expressly subordinated to borrowings under the New Credit Facility and will be also effectively subordinated to all existing and future indebtedness and other liabilities and commitments of the Company's subsidiaries. The Company expects that the New Credit Facility will permit the Company to incur or guarantee additional indebtedness, subject to certain limitations. The Indenture does not prohibit or limit the incurrence of Senior Indebtedness by the Company or the incurrence of other indebtedness and other liabilities by the Company or its subsidiaries, and the incurrence of additional indebtedness and other liabilities by the Company or its subsidiaries could adversely affect the Company's ability to pay its obligations with respect to the Debentures. After giving pro forma effect to the Acquisitions, the Bank Financing and the Offering, as of December 28, 1997 the Company would have had \$1,294 million of Senior Indebtedness outstanding, and as of the same date the Company's subsidiaries would have had approximately \$731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. The Company anticipates that from time to time it will incur indebtedness, including Senior Indebtedness, and that it and its subsidiaries will from time to time incur other additional indebtedness and liabilities. See "Description of Debentures—Subordination of Debentures."

The Company expects that borrowings under the New Credit Facility will be, and the Company's and its subsidiaries' future indebtedness may be, secured by liens and other security interests over the assets of the Company's subsidiaries and the Company's equity interests in the Company's subsidiaries. Moreover, the Company expects the New Credit Facility will be guaranteed by each of the Company's wholly-owned U.S. subsidiaries and that such subsidiary guarantees will be secured as described above. The ability of the Company, and therefore the holders of the Debentures to benefit from distributions of assets of the Company's subsidiaries may be limited to the extent that the outstanding shares of any of its subsidiaries and such subsidiary's assets are pledged to secure other debt of the Company or its subsidiaries. Any right of the Company to receive assets of any subsidiary upon such subsidiary's liquidation or reorganization will be structurally subordinated to the claims of that subsidiary's creditors.

Risks Associated with Acquisitions. The Company faces significant risks associated with the recently announced acquisitions of Coleman, Signature Brands and First Alert. The Company must, among other things, return these companies to profitable operations; realize synergies from combining these companies with the Company's current operations; integrate the products manufactured by these companies into its existing product lines; consolidate duplicate facilities, systems and personnel; improve the operating efficiencies of such companies; develop new products; and shorten the product development cycle of the acquired companies. This process will require substantial attention from the Company's management team. The diversion of the attention of management from the day-to-day operations of the Company or difficulties encountered in the integration process could have an adverse effect on the Company's business, financial condition and results of operations, which effect could be material. In addition, consummation of the Acquisitions will result in a substantial increase in the size of the Company's operations placing challenges on the Company to effectively use its employees, management, operational and financial resources to manage the expanded operations of the Company. Failure to use such resources effectively could have a material adverse effect on the Company. Other potential risks of the Acquisitions include the presence of unknown liabilities and the possibility of the incurrence of significant charges associated with write-downs of the recorded values of assets acquired or restructurings of the acquired companies. Accordingly, there can be no assurance that the Company will realize the desired benefits of these acquisitions.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, there can be no assurance that any or all of such transactions will be consummated.

New Credit Facility Not Yet Committed. The Company has been advised by an affiliate of the Initial Purchaser that, subject to customary qualifications, it is highly confident that under current market and economic conditions the New Credit Facility can be successfully syndicated to financial institutions, and the Company is

currently discussing the terms of the New Credit Facility with prospective lenders. While the Company is confident that it will be able to obtain the New Credit Facility on a timely basis to complete the Acquisitions, the Company has no commitments yet from lenders to provide the New Credit Facility. The offering of the Debentures is not conditioned upon the availability of the New Credit Facility and the Acquisitions are not conditioned on the availability of adequate financing. If the Company were unable to secure the New Credit Facility on a timely basis, the Company would be required to secure alternative financing sources to fund the Acquisitions or to delay the closing of the Acquisitions until funds became available.

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

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

Risks Associated with New Product Development. The Company's plans to increase its revenues depend on its ability to develop new and innovative products. The Company anticipates that it will be able to rapidly develop and introduce a substantial number of new and innovative products in the future. However, the Company may prove unable to meet its aggressive schedules for future product development. Failure to develop and manufacture new products that achieve market acceptance in the amounts and with the quality required by its customers would likely have an adverse effect on future financial performance, which effect could be material.

Dependence on Key Personnel. The Company depends heavily on the services of its senior management, including Albert J. Dunlap, the Company's Chairman and Chief Executive Officer; Russell A. Kersh, the Company's Vice Chairman and Chief Financial Officer; David C. Fannin, the Company's Executive Vice President, General Counsel and Secretary, and Donald R. Uzzi, the Company's Executive Vice President, Consumer Products Worldwide. The loss of any member of the Company's senior management, including Mr. Dunlap, Mr. Kersh, Mr. Fannin or Mr. Uzzi, could have an adverse effect on the Company, which effect could be material. On February 20, 1998, each of Mr. Dunlap, Mr. Kersh and Mr. Fannin signed new three year employment contracts with the Company which include substantial equity-based compensation.

Economic Conditions. The Company's performance should be expected to be affected by the strength of the retail economy, primarily in the United States, but also in Canada, Latin America and Asia and, subsequent to the consummation of the acquisition of Coleman, Europe. Weakness in consumer confidence and retail outlets (including the financial weakness or bankruptcy of retail outlets, especially mass merchants) should be expected to adversely impact the Company's future financial results. In addition, the extended credit terms provided by the Company in connection with its "early buy" program increase the Company's risk of collection of related accounts receivable.

Competition. The Company operates in a highly competitive environment with numerous domestic and foreign competitors which are financially strong and capable of competing effectively with the Company in the marketplace. Such competitors may take actions to meet the Company's new product introductions and other initiatives. Some competitors may be willing to accept lower margins and to reduce prices to compete with the Company. As a result, the Company could fail to achieve anticipated sales increases, to realize anticipated price increases, or otherwise fail to meet its anticipated goals. Any of such circumstances would likely have an adverse effect on future financial performance, which effect could be material. The Company's future success will depend to a significant extent upon its ability to remain competitive in the areas of price, quality, marketing, product development, manufacturing, distribution and order processing. There can be no assurance that the Company will be able to compete effectively in all such areas in the future.

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

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

No Long Term Contracts with Customers. The Company markets its products through virtually every category of retailer including mass merchandisers, warehouse clubs, department stores, home centers and hardware stores. Due to the consolidation of the U.S. retail industry, the Company's customer base is relatively concentrated with its largest customer Wal-Mart Stores, Inc. accounting for 21%, and its five largest customers accounting for 36% of 1997 net sales. The Company's customers, including all of its large retail customers, place orders for products on an as-needed basis and have no long term supply contracts with the Company. As a result, the Company relies on its ability to obtain a continuing flow of new orders from its large, high-volume retailing customers. While the Company has positioned itself to respond to the challenges of its markets by pursuing strategic relationships with large high-volume merchandisers, there can be no assurance that the Company will continue to be able to successfully meet the needs of its customers.

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

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

The Company has entered into various arrangements with third parties for the provision of back-office administrative services previously provided with internal resources, including provision of all necessary

computer systems. Failure of any of these third-party service providers to perform in accordance with their respective agreements with the Company could result in disruptions of the Company's normal business operations with a consequent impact on sales, collections, cash flow and/or profitability.

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

Litigation. As a consumer goods distributor, the Company's results of operations can be negatively impacted by product liability lawsuits, product recall actions and/or by higher than anticipated rates of warranty returns or other returns of goods. Certain of the product lines to be acquired in the Acquisitions may increase the Company's potential exposure to litigation.

Limitations on Repurchases and Redemptions of Debentures. On March 25, 2003, March 25, 2008 and March 25, 2013 (each, a "Purchase Date"), the Company will become obligated to purchase, at the option of the holder thereof, outstanding Debentures, subject to certain conditions. In addition, upon a Fundamental Change, each holder of the Debentures will have the right, at the holder's option, to require the Company to redeem all or a portion of such holder's Debentures. There can be no assurance that the Company will have sufficient funds to pay the repurchase price on any Purchase Date (in which case, the Company could be required to issue shares of Common Stock to pay the repurchase price at valuations based on then prevailing market prices) or, in the event of a Fundamental Change, the redemption price for all the Debentures tendered by the holders thereof. The New Credit Facility is expected to contain, and future agreements relating to other indebtedness (including Senior Indebtedness) to which the Company becomes a party may contain, restrictions or prohibitions on the repurchase or redemption of the Debentures. It is also expected that the New Credit Facility will prohibit the purchase of the Debentures by the Company in the event of a Fundamental Change, unless and until such time as the indebtedness under the New Credit Facility is paid in full. In addition, it is expected that the New Credit Facility will prohibit the Company's right to purchase Debentures on a Purchase Date for cash, but will not prohibit the purchase of Debentures with Common Stock. If a Purchase Date occurs at a time when the Company is prohibited from repurchasing the Debentures for cash or the Company is prohibited from redeeming the Debentures after the occurrence of a Fundamental Change, the Company could seek the consent of its then existing lenders to repurchase or redeem the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from repurchasing the Debentures for cash or redeeming the Debentures. In such case, the Company's failure to repurchase or redeem Debentures required to be repurchased or redeemed under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the New Credit Facility and may also constitute a default under any other indebtedness of the Company outstanding at such time. In addition, it is expected that the occurrence of a Fundamental Change would constitute a default under the New Credit Facility and might constitute a default under other future indebtedness of the Company. In such circumstances, the subordination provisions in the Indenture would likely prohibit or restrict payments to the holders of Debentures. The inability to repay the indebtedness under the New Credit Facility, if accelerated, would have a material adverse effect on the Company and the holders of the Debentures. The term "Fundamental Change" is limited to certain specified transactions and does not include all events that could adversely affect the Company's financial condition or operating results. The requirement that the Company offer to redeem the Debentures upon a Fundamental Change will not necessarily protect holders of the Debentures in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving the Company. See "Description of Debentures—Redemption at Option of the Holder Upon a Fundamental Change."

Proposed Tax Legislation. On February 2, 1998, the Clinton Administration announced a legislative proposal (the "Administration Proposal") that would generally defer interest deductions for original issue discount on convertible debt, such as the Debentures, until such interest is paid in cash or other property. Payment would not include the conversion of such debt into equity of the issuer or the payment of an amount which is determined by reference to the value of the Common Stock. The Administration Proposal would be effective for convertible debt issued on or after the date of "first committee action." If enacted in its current form

and if "first committee action" is taken with respect to the Administration Proposal on or before the date on which the Debentures are issued, such legislation would apply to the Debentures and the original issue discount accruing in respect of the Debentures would not be deductible by the Company for federal income tax purposes. Nevertheless, it is not possible to predict when or if the Administration Proposal will be enacted, or, if enacted, what form it may take. The federal income tax treatment of holders of Debentures would not be affected by the Administration Proposal if enacted in its current form.

Certain Tax Consequences to the Company. Section 279 of the Internal Revenue Code of 1986, as amended (the "Code") limits the deductibility of interest paid or incurred with respect to certain convertible debt incurred to finance the acquisition of stock of another corporation if such debt constitutes "corporate acquisition indebtedness." It is possible that the Internal Revenue Service could take the position that, as a result of the Acquisitions, the Debentures should be treated as "corporate acquisition indebtedness," which position, if sustained, could limit the Company's ability to deduct all or a portion of the original issue discount on the Debentures. Although the issue is not free from doubt, the Company believes that section 279 of the Code should not limit the Company's ability to deduct original issue discount.

Absence of a Public Market. Prior to the Offering, there has been no trading market for the Debentures. Although the Initial Purchaser has advised the Company that it currently intends to make a market in the Debentures, it is not obligated to do so and may discontinue such market making at any time without notice. In addition, such market making activity will be subject to the limits imposed by the Securities Act and the Exchange Act. Accordingly, there can be no assurance that any market for the Debentures will develop or, if one does develop, that it will be maintained. If an active market for the Debentures fails to develop or be sustained, the trading price of the Debentures could be adversely affected.

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and, unless and until so registered, may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, registration under the Securities Act and applicable state securities laws. See "Registration Rights," "Plan of Distribution" and "Transfer Restrictions."

Initial Ratings Risks. The Company believes it is likely that one or more rating agencies may rate the Debentures. There can be no assurance that any such agency or agencies will rate the Debentures or, if they do, what rating or ratings they will assign to the Debentures. If one or more rating agencies assign the Debentures a rating lower than generally expected by investors, such event would likely have an adverse effect on the market price of the Debentures.

Restrictions on Ability to Pay Dividends. The New Credit Facility is expected to restrict the payment of dividends unless certain financial ratios are achieved. In addition, the Company may in the future issue additional indebtedness which contains similar restrictions.

In addition to the limitations imposed on the payment of dividends by the New Credit Facility and any future agreements governing indebtedness of the Company, under Delaware law the Company is permitted to pay dividends on its capital stock only out of its surplus or, in the event that it has no surplus, out of its net profits for the year in which a dividend is declared or for the immediately preceding fiscal year. Surplus is defined as the excess of a company's total assets over the sum of its total liabilities plus the par value of its outstanding capital stock. In order to pay dividends in cash, the Company must have surplus or net profits equal to the full amount of cash dividend at the time such dividend is declared. In determining the Company's ability to pay dividends, Delaware law permits the board of directors of the Company to revalue the Company's assets and liabilities from time to time to their fair market values in order to create surplus. The Company cannot predict what the value of its assets or the amount of its liabilities will be in the future and, accordingly, there can be no assurance that the Company will be able to pay cash dividends on the Common Stock.

THE ACQUISITIONS

On March 2, 1998, the Company announced the signing of separate definitive agreements to acquire Coleman, Signature Brands and First Alert. The three transactions are subject to customary conditions, including the receipt of required regulatory approvals, and are expected to close early this spring of 1998.

The Company is acquiring these companies primarily due to their strong and established brand names, the potential opportunity to streamline operations, the diversification they provide to the Company's product base and the potential for revenue and operational synergies. In addition, the Company believes that its existing international geographic marketing and distribution strengths and those of the acquired companies will significantly complement each other. The Company's management team believes that these Acquisitions give the Company a platform from which to capitalize on the fragmentation and potential consolidation of the durable household consumer products sector.

Coleman

With 1997 net revenues of approximately \$1,154 million, Coleman is a leading manufacturer and marketer of consumer products for the worldwide outdoor recreation market. Its products have been sold domestically and internationally under the Coleman brand name since the 1920s. Coleman attributes its leading market position to the strength of its brand name, and breadth of products sold, product quality and innovation, marketing, distribution and manufacturing expertise.

- **Outdoor Recreation:** This product category includes lanterns and stoves, propane and butane fuel, coolers and jugs, recreational soft goods (including tents, sleeping bags, backpacks and duffle bags), outdoor furniture, electric lights, spas and camping accessories. Coleman believes it is the leading worldwide manufacturer of lanterns and stoves for outdoor recreational use and is a leading supplier to the worldwide camping and outdoor recreation market of propane and butane cartridges and camping fuel. Coleman's products are marketed under the brand names *Coleman®*, *Camping Gas®* and *East Pak®*.
- **Hardware:** Following the divestiture of the safety and security products business anticipated in March 1998, this product category will include portable generators and air compressors marketed under the *Powermate®* brand name. Coleman is a leading worldwide manufacturer and distributor of portable generators. These products are distributed predominantly through mass merchandisers and home center chains.

The following table summarizes Coleman's net revenues for the year ended December 31, 1997 by product category and geographic area (in millions):

Product Category	Amount	%	Geographic Area	Amount	%
Outdoor Recreation	\$ 859.7	74.5%	Domestic	\$ 933.5	80.9%
Hardware	294.6	25.5	Europe	217.9	18.9
			Other Foreign	167.2	14.5
			Eliminations	(164.3)	(14.3)
Total	<u>\$1,154.3</u>	<u>100.0%</u>	Total	<u>\$1,154.3</u>	<u>100.0%</u>

Signature Brands

With net sales of approximately \$276 million for its fiscal year ended September 28, 1997, Signature Brands is a leading manufacturer of a comprehensive line of consumer and professional products. Signature Brands attributes its leading market position to its strong brand name recognition, distribution in major domestic high volume retail outlets, marketing and sales promotion efforts, electronic data interchange capabilities, merchandise flow systems and established relationships with its retail customers. Signature Brands, founded in 1919, is one of the oldest and largest domestic manufacturers of scales for home and medical use.

- **Consumer Products:** Signature Brands markets its consumer products under the *Mr. Coffee®*, *Health o meter®*, *Counselor®* and *Borg®* brand names. Signature Brands produces and markets an extensive line of

Mr. Coffee® brand automatic drip coffeemakers, espresso/cappuccino makers and iced and hot teamakers. Sales of automatic drip coffeemakers accounted for approximately 43% of Signature Brands' net revenues in 1997. *Mr. Coffee*, Inc. has been the leading producer of automatic drip coffeemakers in the U.S. since 1975. *Mr. Coffee*® is the leading brand of basket-type coffee filters in the United States. Other consumer products marketed under the *Mr. Coffee*® brand name include water filtration products, coffeemaker related accessories such as replacement decanters and mug warmers, and other kitchen countertop appliances such as food dehydrators. Under the *Health o meter*® brand name, Signature Brands manufactures a comprehensive line of analog (mechanical) and digital (electronic) floor scales and waist-high and eye-level scales, and offers a range of health and wellness therapeutic products. Capitalizing on the recently acquired rights to the *Borg*® and *Counselor*® brand names, Signature Brands intends to introduce in 1998 a new line of *Borg*® scales that are distinctly European in design for department and specialty stores. *Counselor*® scales, to be introduced in 1998, will represent opening price point scales for the mass market. Sales of consumer scales accounted for approximately 19% of Signature Brands' net sales in fiscal 1997. Signature Brands offers its consumer products through a combination of direct sales and independent manufacturers' representatives to distributors and major retail outlets, including mass merchants, national hardware chains, drugstore chains, catalogue showrooms, warehouse clubs, retail grocery chains, specialty stores, department stores and various mail-order companies.

- **Professional Products:** Professional products include the *Pelouze*® and *Health o meter*® brands of office, foodservice and medical scales and *Mr. Coffee*® brand commercial coffeemakers. Signature Brands' reputation for quality and its *Health o meter*® brand name recognition have been based on its participation in the medical scale market for over 75 years. Products sold as professional products include analog and digital scales for a full range of medical uses, including traditional balance beam scales, pediatric scales, wheelchair ramp scales, chair and sling scales for non-ambulatory patients, and home healthcare scales. Signature Brands' office products, marketed under the *Pelouze*® brand name, include analog and digital scales designed to provide mailing solutions for small, commercial establishments, home offices and departments within larger companies that process a small to medium volume of letters and packages daily. *Pelouze*® foodservice products include analog and digital portion control scales, thermometers and timers for commercial and non-commercial applications. Professional scale products are marketed through a combination of direct sales and independent manufacturers' representatives to distributors, dealers, office megastores, mail order companies and major buying groups.

The following table summarizes Signature Brands' net sales for its fiscal year ended September 28, 1997 by product category (in millions):

Product Category	Amount	%
Consumer Products	\$236.0	85.6%
Professional Products	39.7	14.4
Total	<u>\$275.7</u>	<u>100.0%</u>

First Alert

With 1997 net sales of approximately \$187 million, First Alert is the market leader in smoke and carbon monoxide detectors in the United States. First Alert's market position is supported by the strength of the *First Alert*® brand name, which First Alert believes is the most widely recognized consumer brand in the home safety market. First Alert has capitalized on the *First Alert*® brand name and its leading smoke detector market share to develop and market a broad range of residential safety products. First Alert is also one of the leading participants in the United States retail fire extinguisher market. The markets for residential smoke and carbon monoxide detectors outside the United States are in a much earlier stage of development than the United States. First Alert's market penetration is greatest in the United Kingdom and Canada. First Alert sells its products to mass merchants, home center and hardware chains, catalog showrooms, warehouse clubs, and electrical wholesale distributors. First Alert also supplies its products to its wholly-owned, non-U.S. subsidiaries and to independent foreign distributors.

- **Smoke Detectors:** First Alert's smoke detector product line consists of UL listed photoelectric and ionization smoke detectors. First Alert has the leading U.S. market share for their products. First Alert markets its smoke detectors under three principal brand names: the *First Alert*® premium brand name which is featured in media and public relations promotional campaigns; the *Family Guard*® brand name, which is marketed as a lower priced, functional alternative for those consumers who are price sensitive; and the *BRK*® brand name which is sold into the wholesale electrical market.
- **Carbon Monoxide Detectors:** These products include carbon monoxide detectors, first introduced by First Alert in 1993, with biomimetic sensors sold under the *First Alert*® and *Family Guard*® brand names. First Alert holds the leading market position in the carbon monoxide detector market.
- **Fire Extinguishers:** First Alert's disposable fire extinguisher product line was introduced in 1985 to complement its *First Alert*® brand smoke detectors. First Alert currently markets a full range of fire extinguisher products for use by the consumer, including fire extinguishers for use in the kitchen, garage, workshop, automobiles and boats. These products are sold under the *Sure Grip*® brand name which is one of the leading brand names in the U.S. retail fire extinguisher market.

The following table summarizes First Alert's total sales for the year ended December 31, 1997 by product category and geographic area (in millions):

Product Category	Amount	%	Geographic Area	Amount	%
Smoke Detectors.....	\$101.6	54.4%	U.S.....	\$169.0	90.4%
CO Detectors.....	40.4	21.6	Europe.....	20.2	10.8
Fire Extinguishers.....	17.1	9.1	Other.....	17.8	9.5
Other.....	27.8	14.9	Eliminations.....	(20.1)	(10.7)
Total.....	<u>\$186.9</u>	<u>100.0%</u>	Total.....	<u>\$186.9</u>	<u>100.0%</u>

Acquisition Structures and Agreements

The Acquisitions will be accounted for by the Company using the purchase method of accounting.

Coleman. Pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), among the Company, Laser Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("LAC"), Coleman (Parent) Holdings Inc., a Delaware corporation ("Parent Holdings"), and CLN Holdings Inc., a Delaware corporation and a wholly owned subsidiary of Parent Holdings ("CLN Holdings"). LAC will be merged with and into CLN Holdings (the "Holdings Merger"). CLN Holdings is an indirect wholly owned subsidiary of Masco Holdings, Inc., a corporation wholly owned by Ronald O. Perelman ("Masco"), and is the indirect beneficial owner of 44,067,520 shares of common stock of Coleman, representing approximately 82.4% of the total number of outstanding shares of common stock of Coleman.

In the Holdings Merger, all of the outstanding shares of capital stock of CLN Holdings will be converted into the right to receive (i) 14,099,749 fully paid and nonassessable shares of Common Stock of the Company and (ii) \$159,956,756 in cash, without interest thereon. As a result of the Holdings Merger, CLN Holdings will become a wholly owned subsidiary of the Company and the Company will become the indirect owner of 82.4% of the outstanding common stock of Coleman.

At the same time that it entered into the Holdings Merger Agreement, the Company also entered into an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), with Coleman and Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("CAC"). Pursuant to the Coleman Merger Agreement, following the consummation of the Holdings Merger, CAC will be merged with and into Coleman (the "Coleman Merger"), with Coleman continuing as the surviving corporation. In the Coleman Merger, each outstanding share of Coleman common stock (other than shares held indirectly by the Company and dissenting shares, if any) will be converted into the right to receive (i) 0.5677 of a share of Common Stock of the Company and (ii) \$6.44 in cash, without interest thereon. Upon consummation of the Coleman Merger, Coleman will become an indirect wholly owned subsidiary of the Company.

Consummation of the Holdings Merger is subject to the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and the satisfaction of certain other customary conditions. It is currently anticipated that the Holdings Merger will be completed in early this spring of 1998. Consummation of the Coleman Merger is subject to the completion of the Holdings Merger and the preparation and filing of definitive documents with the Commission. It is anticipated that the Coleman Merger will be consummated this spring of 1998. Parent Holdings (the direct holder of all outstanding stock of CLN Holdings) and Coleman Worldwide Corporation (the direct holder of 82.4% of the outstanding common stock of Coleman) have approved the Holdings Merger and the Coleman Merger, respectively, and no other stockholder approvals will be required in connection therewith.

Based on the assumption that all presently exercisable Coleman options will be exercised prior to the closing of the Coleman acquisition, the Company expects to issue (and deliver from its treasury) approximately 21.3 million shares of Common Stock (with an aggregate value of approximately \$1 billion based on current market prices) and to pay an aggregate of \$221 million in cash in connection with the Coleman acquisition. On such basis, the Coleman acquisition is valued at approximately \$2.2 billion (including the assumption of approximately \$976 million of indebtedness). If none of the presently exercisable Coleman options are exercised prior to closing of the Coleman acquisition, the Company would expect to issue and deliver approximately 19.4 million shares of Common Stock and pay aggregate cash consideration of \$261 million in connection with the Coleman acquisition.

Signature Brands. Pursuant to the Agreement and Plan of Merger, dated as of February 28, 1998 (the "Signature Brands Merger Agreement"), among the Company, Java Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company ("Java Acquisition"), and Signature Brands, Java Acquisition commenced a tender offer (the "Signature Brands Tender Offer") on March 6, 1998 to acquire all of the outstanding shares of common stock of Signature Brands (the "Signature Brands Common Stock") for \$8.25 per share in cash. Java Acquisition's obligation to purchase shares of Signature Brands Common Stock is subject to there being validly tendered and not withdrawn prior to the expiration of the Signature Brands Tender Offer that number of shares which when added to any shares owned by the Company or Java Acquisition represents at least 51% of the outstanding shares of Signature Brands Common Stock (assuming exercise of all outstanding options and warrants) on the date shares are accepted for payment. In addition, Java Acquisition's obligation to purchase shares of Signature Brands Common Stock is conditioned upon the expiration or termination of the applicable waiting period under the HSR Act prior to the expiration of the Signature Brands Tender Offer and certain other customary conditions.

Pursuant to the Signature Brands Merger Agreement, following the expiration of the Signature Brands Tender Offer, which is initially scheduled to expire at midnight on April 2, 1998, unless extended, and any necessary Signature Brands stockholder approval and provided that Java Acquisition has purchased shares of Signature Brands Common Stock in the Signature Brands Tender Offer and certain other customary conditions are met, Java Acquisition will be merged with and into Signature Brands (the "Signature Brands Merger"), with Signature Brands as the surviving corporation. As a result of the Signature Brands Merger, Signature Brands will become a wholly owned subsidiary of the Company and each outstanding share of Signature Brands Common Stock, which is not owned by Signature Brands or any of its subsidiaries or the Company or any of its subsidiaries, other than shares with respect to which dissenter's rights have been exercised and perfected, will be converted into the right to receive \$8.25 in cash.

Timing of consummation of the Signature Brands Merger is dependent, among other things, upon whether the Signature Brands Tender Offer is extended beyond its initial expiration date and whether, depending on the number of shares tendered and accepted for payment, Signature Brands stockholder approval of the Signature Brands Merger will be required. It is anticipated, however, that the Signature Brands Merger will be consummated early this spring of 1998.

First Alert. Pursuant to an Agreement and Plan of Merger, dated as of February 28, 1998 (the "First Alert Merger Agreement"), among the Company, Sentinel Acquisition Corp., a Delaware corporation and an indirect wholly owned subsidiary of the Company ("Sentinel Acquisition"), and First Alert, Sentinel Acquisition commenced a tender offer (the "First Alert Tender Offer") on March 6, 1998 to acquire all of the outstanding shares of common stock of First Alert (the "First Alert Common Stock"), for \$5.25 per share in cash.

Sentinel Acquisition's obligation to purchase shares of First Alert Common Stock is subject to there being validly tendered and not withdrawn prior to the expiration of the First Alert Tender Offer that number of shares which when added to any shares owned by the Company or Sentinel Acquisition represents at least a majority of the outstanding shares of First Alert Common Stock (assuming exercise of all outstanding options) on the date shares are accepted for payment. In addition, Sentinel Acquisition's obligation to purchase shares of First Alert Common Stock is conditioned upon the expiration or termination of the applicable waiting period under the HSR Act prior to the expiration of the First Alert Tender Offer and certain other customary conditions.

Pursuant to the First Alert Merger Agreement, following the expiration of the First Alert Tender Offer, which is initially scheduled to expire at midnight on April 2, 1998, unless extended, and any necessary First Alert stockholder approval, and provided that Sentinel Acquisition has purchased shares of First Alert Common Stock in the First Alert Tender Offer and certain other customary conditions are met, Sentinel Acquisition will be merged with and into First Alert (the "First Alert Merger"), with First Alert as the surviving corporation. As a result of the First Alert Merger, First Alert will become a wholly owned subsidiary of the Company and each outstanding share of First Alert Common Stock, which is not owned by First Alert or any of its subsidiaries or the Company or any of its subsidiaries, or other than shares with respect to which dissenter's rights have been exercised and perfected, will be converted into the right to receive \$5.25 in cash.

Timing of consummation of the First Alert Merger is dependent, among other things, upon whether the First Alert Tender Offer is extended beyond its initial expiration date and whether, depending on the number of shares tendered and accepted for payment, First Alert stockholder approval will be required, which would require the preparation and filing of definitive documents with the Commission. It is anticipated, however, that the First Alert Merger will be consummated early this spring of 1998.

Although the Company has entered into separate definitive agreements to acquire Coleman, Signature Brands and First Alert, subject to various customary closing conditions, there can be no assurance that any or all of such transactions will be consummated.

For further information with respect to the effects of the Acquisitions, See "Capitalization," "Unaudited Pro Forma Condensed Financial Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Each of CLN Holdings, Coleman, Signature Brands and First Alert is subject to the informational requirements of the Exchange Act. The information contained herein with respect to CLN Holdings, Coleman, Signature Brands and First Alert is derived from filings by Coleman, Signature Brands and First Alert with the Commission or from information supplied by them for inclusion herein. Neither the Company nor the Initial Purchaser warrants that there have not occurred events, not yet publicly disclosed by CLN Holdings, Coleman, Signature Brands and First Alert, which would affect the accuracy of the statements concerning CLN Holdings, Coleman, Signature Brands and First Alert included herein. See "Available Information."

FINANCING PLAN AND USE OF PROCEEDS

The net proceeds from the Offering are expected to be \$726.6 million (\$835.7 million if the Initial Purchaser's overallotment option is exercised in full), after deducting discounts and commissions and expenses related to the sale of the Debentures. The net proceeds from the Offering, together with the Bank Financing, will be used to finance the Acquisitions and related transactions.

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Such repayments are expected to be funded with borrowings under the New Credit Facility and from the net proceeds of the Offering. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

The following table sets forth the expected sources and uses of cash in connection with the financing of the Acquisitions:

Sources		Uses	
	-- (in millions)		
New Credit Facility(a)	\$1,294.3	Repayment of existing indebtedness(b) ...	\$1,504.3
Debentures offered hereby	750.1	Cash Acquisition consideration(c)	477.6
		Fees and expenses(d)	62.5
Total	<u>\$2,044.4</u>	Total	<u>\$2,044.4</u>

(a) The New Credit Facility is expected to consist of a \$1.5 billion term debt facility and a \$500 million revolving credit facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(b) Represents the repayment of existing indebtedness of the Company, CLN Holdings, Signature Brands, and First Alert in the amount of \$202.2 million, \$1,077.2 million, \$179.9 million and \$45.0 million, respectively. Existing indebtedness reflects amounts outstanding as of December 28, 1997, except for indebtedness of CLN Holdings issued at an original issue discount which reflects principal accreted through an assumed repayment date of May 15, 1998. The foregoing amounts include \$7.0 million, \$100.3 million and \$5.5 million of estimated prepayment premiums related to the early retirement of indebtedness of the Company, CLN Holdings and Signature Brands, respectively. As of the actual date of repayment, the outstanding amount of existing indebtedness to be repaid is likely to be greater than the amount shown above due to increased borrowings to finance working capital requirements. The Company intends to refinance any such additional indebtedness using its unused borrowing capacity under the New Credit Facility. In particular, as of March 16, 1998 the outstanding indebtedness of the Company and CLN Holdings had increased by approximately \$100 million and \$60 million, respectively. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

(c) Represents the estimated net cash consideration payable (including the cash-out of options) in connection with the Acquisitions in the amounts of \$261.1 million, \$83.8 million and \$122.7 million for Coleman, Signature Brands and First Alert, respectively.

(d) Represents estimated transaction costs in connection with the Acquisitions and debt refinancing, including financial advisory fees, Initial Purchaser's commissions, bank fees, and legal and accounting fees and expenses.

For a description of the expected terms of the New Credit Facility and other indebtedness of the Company, see "Description of Other Indebtedness—New Credit Facility" and the Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum. See also "Risk Factors—New Credit Facility Not Yet Committed."

PRICE RANGE OF COMMON STOCK AND DIVIDEND POLICY

The Company's Common Stock is listed and traded on the New York Stock Exchange (the "NYSE") under the symbol "SOC."

The following table sets forth the reported high and low sale prices per share for the Common Stock on the NYSE Composite Tape and the cash dividends declared on the Common Stock for the calendar quarters indicated:

	Price Range		Dividends Per Common Share
	High	Low	
1996			
First Quarter	\$19 $\frac{3}{4}$	\$15 $\frac{1}{8}$	\$01
Second Quarter	17 $\frac{1}{8}$	13 $\frac{1}{8}$	.01
Third Quarter	24 $\frac{3}{4}$	12 $\frac{1}{4}$	.01
Fourth Quarter	29 $\frac{1}{2}$	22 $\frac{1}{4}$	.01
1997			
First Quarter	\$34 $\frac{1}{2}$	\$24 $\frac{1}{4}$	\$01
Second Quarter	40 $\frac{3}{4}$	29 $\frac{1}{4}$	.01
Third Quarter	45 $\frac{3}{4}$	35 $\frac{3}{8}$	.01
Fourth Quarter	50 $\frac{7}{16}$	37	.01
1998			
First Quarter (through March 19, 1998)	\$52	\$36	—

On March 19, 1998, the last reported sale price of Common Stock on the NYSE was \$45 $\frac{1}{8}$ per share. On February 27, 1998, there were approximately 1,311 shareholders of record of Common Stock.

The Company presently intends to continue to pay cash dividends at a quarterly rate of \$.01 per share; however, future payments of cash dividends will be at the discretion of the Company's Board of Directors and dependent upon the Company's results of operations, financial condition and other relevant factors, including restrictions expected to be contained in the New Credit Facility.

CAPITALIZATION

The following table sets forth the capitalization of the Company as of December 28, 1997 on a historical basis and on a pro forma basis after giving effect to (i) the Acquisitions, (ii) the initial borrowings under the New Credit Facility, (iii) the Offering and (iv) the use of the net proceeds from the Offering and from the initial borrowings under the New Credit Facility as described under "Financing Plan and Use of Proceeds." This table should be read in conjunction with "Financing Plan and Use of Proceeds," "Unaudited Pro Forma Condensed Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the notes thereto of the Company, CLN Holdings, Signature Brands and First Alert included elsewhere in this Offering Memorandum.

	As of December 28, 1997	
	Actual	Pro Forma (unaudited)
	(in millions)	
Cash and cash equivalents	\$ 52.4	\$ 78.9
Short-term debt and current portion of long-term debt	\$ 0.7	\$ —
Long-term debt, net of current portion:		
New Credit Facility	\$ —	\$ 1,294.3
Existing Revolving Credit Facility(a)	109.3	—
Industrial Revenue Development Notes due 2009	75.0	—
Debentures offered hereby	—	750.1
Other	10.2	—
Total long-term debt	194.5	2,044.4
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (200,000,000 shares authorized; actual shares—89,984,425; issued, unaudited pro forma shares—109,420,895)	0.9	1.1
Paid-in capital	483.4	1,229.7
Retained earnings	141.1	141.1
Other	(30.4)	(30.4)
Total shareholders' equity	595.0	1,341.5
Treasury stock, common stock at cost (4,454,394 shares)	(63.0)	(63.0)
Total shareholders' equity	532.0	1,278.5
Total capitalization	\$727.2	\$3,322.9

(a) Excludes approximately \$59 million from the sale of trade accounts receivable through a revolving trade accounts receivable securitization program. The proceeds from the sale were used to reduce borrowings under the Existing Revolving Credit Facility. The maximum amount of receivables that can be sold under the program is \$70 million.

UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS

The following unaudited pro forma condensed balance sheet as of December 28, 1997 was prepared to illustrate the estimated effects of (i) the Acquisitions, accounted for under the purchase method of accounting, (ii) the Bank Financing, (iii) the Offering and (iv) the use of net proceeds from the Offering and from the Bank Financing as described under "Financing Plan and Use of Proceeds" (collectively, the "Pro Forma Transactions"), as if the Pro Forma Transactions had occurred on December 28, 1997. The following unaudited pro forma statement of operations for the year ended December 28, 1997 was prepared to illustrate the estimated effects of the Pro Forma Transactions as if they had occurred as of December 30, 1996.

The fiscal year of the Company ended on December 28, 1997 and the fiscal years of CLN Holdings and First Alert ended on December 31, 1997. The fiscal year of Signature Brands ended on September 28, 1997. The unaudited pro forma condensed financial statements have been derived from the audited financial statements of the Company as of and for the year ended December 28, 1997, the audited financial statements of CLN Holdings and First Alert as of and for the year ended December 31, 1997 and the unaudited financial statements of Signature Brands as of and for the year ended December 31, 1997. The unaudited statement of operations of Signature Brands for the year ended December 31, 1997 has been derived from the audited statement of operations for the year ended September 28, 1997 and the unaudited statements of operations from the thirteen weeks ended December 31, 1997 and December 31, 1996 in order to present Signature Brands operating results on a basis consistent with the Company's fiscal year.

The pro forma condensed financial statements were prepared utilizing the accounting principles of the respective entities as outlined in each entity's historical financial statements. Certain reclassifications were made to sales, cost of sales and selling, general and administrative expenses as reported in the historical financial statements of CLN Holdings, First Alert and Signature Brands to conform to the classifications of the Company as follows:

	Decrease		
	Sales	Cost of Sales	Selling, General and Administrative
	(in thousands)		
CLN Holdings.....	\$(71,488)	\$(63,886)	\$(7,602)
First Alert	(9,902)	(4,760)	(5,142)
Signature Brands	(23,171)	(3,725)	(19,446)

Included in the historical Statement of Operations of CLN Holdings are cash and non-cash restructuring and other charges totaling \$36.4 million and related tax benefits of \$13.9 million. These costs have been allocated to cost of goods sold and selling, general and administration expense in the amounts of \$19.5 million and \$16.9 million, respectively. These costs primarily relate to closing and relocating certain administrative and sales offices, closing several manufacturing facilities, write-down of inventory and fixed assets, as well as severance costs. Additionally, the expense of the early extinguishment of debt of \$15.2 million shown on the CLN Holdings' historical statement of operations has been excluded from the unaudited pro forma condensed statement of operations.

The pro forma adjustments are based upon available information and certain assumptions that the Company believes are reasonable under the circumstances. For purposes of developing the unaudited pro forma condensed financial statements, the assets and liabilities of CLN Holdings, First Alert and Signature Brands have been recorded at historical cost. The allocation of purchase price for the Acquisitions will be revised when additional information concerning asset and liability valuations is obtained. Adjustments, which could be significant, will be made during the allocation period based on detailed reviews of the fair values of assets acquired and liabilities assumed and could result in a substantial increase in goodwill. The pro forma condensed financial statements do not include a one-time after-tax \$30 million first quarter 1998 charge by the Company related to the execution of new employment contracts with the Company's Chairman and Chief Executive Officer and two other senior officers of the Company as further discussed in Note 14 of the Company's audited financial statements for the year ended December 28, 1997 or any adjustments for potential synergies or cost savings as a result of the Acquisitions.

The unaudited pro forma financial statements should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," the financial statements of each of the Company, CLN Holdings, First Alert and Signature Brands and the notes thereto, and the other financial information included elsewhere or incorporated by reference in this Offering Memorandum. This pro forma financial information is provided for informational purposes only and does not purport to be indicative of the results of operations or financial position which would have been obtained had the Pro Forma Transactions been completed on the dates indicated or the financial condition or results of operations for any future date or period.

UNAUDITED PRO FORMA CONDENSED BALANCE SHEET

As of December 28, 1997
(in thousands)

	The Company	The Acquisitions			Adjustments for Acquisitions, Bank Financing and Offering	Adjustments for Disposition of Safety/Security(a)	Pro Forma
		First Alert	Signature Brands (unaudited)	CLN Holdings			
Cash and cash equivalents	\$ 52,378	\$ 2,996	\$ 4,118	\$ 19,362	\$ —	\$ —	\$ 78,854
Receivables, net	295,550	53,678	67,998	179,756	—	(16,335)	580,647
Inventories	256,180	40,285	37,851	236,327	—	(17,624)	553,019
Prepaid expenses and other current assets	53,897	10,680	7,707	47,815	67,779 (b)	(1,655)	186,223
Total current assets	658,005	107,639	117,674	483,260	67,779	(35,614)	1,398,743
Property, plant and equipment, net	240,897	28,181	16,820	175,494	—	(10,746)	450,646
Other intangibles	169,622	6,496	—	—	(973)(d)	—	175,145
Goodwill	24,750	22,045	134,921	338,989	1,864,215 (e)	(37,874)	1,888,965
Other assets	27,010	—	5,663	100,126	52,281 (f)	469	140,827
					(44,722)(d)(e)		
Total assets	<u>\$1,120,284</u>	<u>\$164,361</u>	<u>\$275,078</u>	<u>\$1,097,869</u>	<u>\$ 1,480,499</u>	<u>\$ (83,765)</u>	<u>\$4,054,326</u>
Short-term debt and current portion of long-term debt	\$ 668	\$ 45,026	\$ 5,000	\$ 67,233	\$ 117,847 (g)	\$ 80	\$ —
Other current liabilities	197,431	33,002	51,494	189,529	13,317 (c)	9,010	449,129
Total current liabilities	198,099	78,028	56,494	256,762	131,164	9,090	449,129
Long-term debt	194,580	—	164,060	980,447	1,250,050 (g)	89,037	2,044,438
					(2,044,438)(h)		
Other long-term liabilities	195,668	4,933	6,539	117,309	42,150 (i)	—	282,299
Shareholders' equity	521,977	81,400	47,985	(256,649)	(112,902)(j)	(14,362)	1,278,460
					(746,523)(k)		
Total liabilities and shareholders' equity	<u>\$1,120,284</u>	<u>\$164,361</u>	<u>\$275,078</u>	<u>\$1,097,869</u>	<u>\$1,480,499</u>	<u>\$ 83,765</u>	<u>\$4,054,326</u>

See Notes to Unaudited Pro Forma Condensed Financial Statements.

UNAUDITED PRO FORMA CONDENSED STATEMENT OF OPERATIONS

As of December 28, 1997
(in thousands, except per share data)

	The Company	The Acquisitions			Adjustments for Acquisitions, Bank Financing and Offering	Adjustments for Disposition of Safety/Security (l)	Pro Forma
		First Alert	Signature Brands (unaudited)	CLN Holdings			
Net sales	\$1,168,182	\$ 177,039	\$255,766	\$1,082,806	\$ —	\$ 88,413	\$2,595,380
Cost of goods sold	837,683	135,731	188,669	776,445	—	(59,886)	1,878,642
Amortization of goodwill and intangibles	7,829	704	3,925	14,704	-46,605 (m) (19,366)(n)	(992)	53,409
Selling, general and administrative expense	123,227	49,071	44,646	259,033	—	(19,608)	456,369
Operating earnings (loss)	199,443	(8,467)	18,526	32,624	27,239	7,927	206,960
Interest expense, net and other expense	10,163	4,593	18,115	93,693	132,039 (n)(p) (125,171)(q)(i)	(4,344)	129,088
Earnings (loss) from continuing operations before income taxes	189,280	(13,060)	411	(61,069)	34,107	3,583	77,872
Income taxes (benefit)	66,152	(5,224)	1,889	(24,162)	10,240(r)	(1,362)	47,533
Earnings (loss) from continuing operations before extraordinary items	\$ 123,128	\$ (7,836)	\$ (1,478)	\$ (36,907)	\$ 44,347	\$ 2,221	\$ 30,339
Earnings (loss) per share of common stock from continuing operations:							
Basic	\$ 1.45						\$ 0.29
Diluted	\$ 1.41						\$ 0.28
Weighted average common shares outstanding:							
Basic	84,945						104,881 (s)
Diluted	87,542						106,978 (s)

See Notes to Unaudited Pro Forma Condensed Financial Statements.

NOTES TO UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS
(in thousands, except percentages and as noted)

- (a) Represents the elimination of the assets and liabilities related to the announced sale of CLN Holdings' Safety/Security Division as of December 31, 1997 and reflects the net proceeds from the sale as a reduction of long-term debt. The sale of this division is expected to be completed prior to the acquisition of CLN Holdings.
- (b) Represents the tax benefit at 37.6% of (1) the cash out of stock options as a result of the Acquisitions and (2) the prepayment penalty on refinanced indebtedness of the Company, Coleman and Signature Brands.
- (c) Represents the elimination of an intercompany tax receivable (\$35,395) and payable on the financial statements of CLN Holdings relating to a tax sharing agreement with Mafco that will be cancelled in connection with the Holdings Merger. The net tax receivable will be assigned to Mafco in connection with the Holdings Merger.
- (d) Represents the elimination of the historical goodwill and organizational costs of First Alert, Signature Brands and CLN Holdings in amounts of \$23,018, \$139,005 and \$306,358, respectively.
- (e) Represents the excess of cost over book value of the net assets acquired of First Alert, Signature Brands and CLN Holdings in the amounts of \$73,457, \$181,954 and \$1,604,436, respectively and an additional \$4,368 relating to the Company's debt prepayment penalty. No estimate has been made in these pro forma statements of the one-time expenses that will be incurred in the rationalization of the businesses that will result from these Acquisitions. The amount of goodwill will change once the Company completes the final allocation of purchase price.
- (f) Represents the estimated capitalizable debt issuance costs.
- (g) Represents the repayment of the existing indebtedness of the Company, CLN Holdings, Signature Brands and First Alert in the amount of \$195,248, \$958,563, \$169,060 and \$45,026, respectively.
- (h) Represents the issuance of new long-term debt to fund the Acquisitions and the refinancing of outstanding indebtedness in the amounts of \$202,248, \$1,338,263, \$263,531 and \$177,896 for the Company, CLN Holdings, Signature Brands, and First Alert, respectively, and to fund approximately \$62.5 million in transaction costs. This new debt will be funded by borrowings of \$1,294,000 under the New Credit Facility at an assumed interest rate of LIBOR plus 1.25% (6.9325% at March 13, 1998) and the Debentures offered hereby at a yield to maturity of 5.0% (or approximately \$2,014,000 principal amount at maturity).
- (i) Represents the elimination of the minority interest of Coleman's equity held by the public shareholders. Amount also includes the elimination of the minority interest loss for the period ended December 31, 1997.
- (j) Represents the elimination of the historical equity balances of First Alert, Signature Brands and CLN Holdings.
- (k) Includes the issuance of 14,099,749 and 5,366,721 shares of the Company's Common Stock to Mafco and public shareholders, respectively, with a total equity value of \$756.7 million less estimated transaction costs of approximately \$10.2 million. This equity value was derived by using the average ending stock price as reported by the NYSE Composite Tape for the day before and day of the public announcement of the acquisition. Additionally, the shares held by Mafco have been discounted 15% due to the restrictive nature of the securities.
- (l) Represents the elimination of the 1997 results of operations relating to the sale of CLN Holdings' Safety/Security Division. The Unaudited Pro Forma Condensed Statement of Operations reflects the sale of CLN Holdings' Safety/Security Division as of January 1, 1997. The sale of this division is expected to be completed prior to the acquisition of CLN Holdings.
- (m) Represents amortization, on a straight-line basis, for goodwill (see Note (e)) over a period of forty years.

NOTES TO UNAUDITED PRO FORMA CONDENSED FINANCIAL STATEMENTS—(Continued)
(in thousands, except percentages and as noted)

- (n) Represents the reduction in amortization expense resulting from the elimination of the historical goodwill and organizational costs as discussed in Note (d) above.
- (o) Represents interest expense on \$2,044,000 estimated borrowing under the New Credit Facility at the assumed rate set forth in Note (h) above and the Debentures in the aggregate amount of \$132,039 (\$89,797 with respect to the New Credit Facility and \$37,504 with respect to the Debentures). Amount also includes estimated debt issuance costs aggregating \$4,738 related to the New Credit Facility amortized on a straight-line basis over a period of seven-years and the Debentures amortized on a weighted average accreted basis over a twenty-year period.
- (p) The interest rate on borrowings under the New Credit Facility may differ from the assumption set forth in Note (h) above. The effect on income of a $\frac{1}{4}$ percent variance in interest rate is approximately \$1.6 million with respect to the borrowings under the New Credit Facility.
- (q) Represents the reduction in interest expense resulting from the debt refinancing as discussed in Note (g) above.
- (r) Represents the incremental change in the consolidated entity's provision for income taxes at 37.6% as a result of the pre-tax earnings of First Alert, Signature Brands and Coleman, and all pro forma adjustments as described above.
- (s) Represents basic and diluted weighted average shares outstanding of the Company as of December 28, 1997 plus the additional equity issued in connection with the acquisition of CLN Holdings as discussed in Note (k) above. The incremental shares relating to the Debentures have not been included, as they would be anti-dilutive.

SELECTED HISTORICAL FINANCIAL DATA

The selected historical financial data set forth below has been derived from the Company's Consolidated Financial Statements. The selected financial data should be read in conjunction with the Consolidated Financial Statements of the Company included elsewhere in this Offering Memorandum.

	Fiscal Year Ended				
	January 2, 1994	January 1, 1995	December 31, 1995	December 29, 1996(a)	December 28, 1997
	(in millions, except percentage, ratio and per share data)				
Statement of Operations Data:					
Net sales	\$927.5	\$1,044.3	\$1,016.9	\$ 984.2	\$1,168.2
Cost of goods sold	674.2	764.4	809.1	900.6	837.7
Selling, general and administrative expense	119.3	128.9	137.5	214.0	131.1
Restructuring, impairment and other costs	—	—	—	154.8	—
Operating earnings (loss)	<u>\$134.0</u>	<u>\$ 151.0</u>	<u>\$ 70.3</u>	<u>\$ (285.2)</u>	<u>\$ 199.4</u>
Earnings (loss) from continuing operations	\$ 76.9	\$ 85.3	\$ 37.6	\$ (196.7)	\$ 123.1
Earnings from discontinued operations, net of taxes(b)	11.9	21.7	12.9	0.8	—
Loss on sale of discontinued operations, net of taxes(b)	—	—	—	(32.4)	(13.7)
Net earnings (loss)	\$ 88.8	\$ 107.0	\$ 50.5	\$ (228.3)	\$ 109.4
Earnings Per Share Data(c):					
Average common and common equivalent shares outstanding	87.9	82.6	82.8	82.9	87.5
Diluted earnings (loss) per share from continuing operations	\$ 0.87	\$ 1.03	\$ 0.45	\$ (2.37)	\$ 1.41
Diluted earnings (loss) per share	1.01	1.30	0.61	(2.75)	1.25
Cash dividends declared per share	0.04	0.04	0.04	0.04	0.04
Other Data:					
Gross margin	27.3%	26.8%	20.4%	8.5%	28.3%
Operating margin	14.4	14.5	6.9	N/A	17.1
Ratio of earnings to fixed charges(d)	16.2x	14.9x	5.3x	—	14.5x
Balance Sheet Data (at end of period):					
Working capital	\$261.4	\$ 294.8	\$ 411.7	\$ 352.6	\$ 459.9
Total assets	928.8	1,008.9	1,158.7	1,072.7	1,120.3
Long-term debt	133.4	124.0	161.6	201.1	194.6
Shareholder's equity	370.0	454.7	601.0	395.3	531.9

(a) Includes special charges of \$337.6 million before taxes. See Notes 8 and 9 to Notes to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(b) Represents earnings from the Company's furniture business, net of taxes and the estimated loss on disposal. See Note 9 to Notes to Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share*. See note 1 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

(d) In computing the ratio of earnings to fixed charges: (a) earnings represent income from continuing operations before income taxes and fixed charges (exclusive of interest capitalized); and (b) fixed charges consist of interest expense, capitalized interest and the estimated interest portion of rental expense. For the fiscal year ended December 29, 1996, earnings were insufficient to cover fixed charges by \$285.6 million.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Year Ended December 28, 1997 Compared to the Year Ended December 29, 1996

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

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

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

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

Sales of Personal Care and Comfort products were up over 30% through September 1997, but suffered during the fourth quarter as a result of lower than expected retail sell-through of electric blankets in key northern markets in late 1997 coupled with the inability to service demand for king and queen sized blankets due to shortages of blanket shells. The Company anticipates shifting to a more level production for blankets in 1998 in order to more adequately service the seasonal demand for bedding products. Health at Home category sales increased as a result of new products and improved distribution in the drug channels. Away From Home sales increased in 1997 as a result of new products, including cordless clippers and titanium blades, coupled with increased distribution of commercially rated appliances. Also contributing to the Company's sales growth in 1997 were its new retail outlet stores, of which 22 were open by the end of 1997.

International sales, which represented 21% of total revenues in 1997, grew 31.2% during the year. This sales growth was driven primarily by 54 new 220 volt product introductions and the execution of 25 new international

distribution and license agreements. Revenue growth of approximately 34% was achieved both in Mexico and by the Company's Latin American export sales organization, and sales in Venezuela and Canada increased approximately 23% each. European sales fell slightly in 1997, however the Company expects that expanded electric blanket and clipper sales along with the help of additional new distribution agreements will benefit European sales in 1998.

The gross margin percentage for 1997 increased 19.8 percentage points to 28.3%. This increase reflects the results of many cost savings and margin enhancement initiatives undertaken as part of the Company's restructuring plan coupled with the incremental margin attributable to new products and higher revenues associated with the Company's growth plan. The Company initiated a manufacturing refinement program in the second quarter of 1997 targeted at aggressively improving factory productivity at all of its remaining operations, including the Neosho, Missouri Outdoor Cooking Products facility which suffered from poor productivity and operating inefficiencies during the 1997 grill season. The benefits of the refinement program began to favorably impact factory productivity in several factories during the third quarter of 1997. The refinement of the Neosho facility, which was completed prior to the initiation of production for the 1998 grill season in the fourth quarter, included a revised plant layout to improve material flow, increased usage of common parts in the manufacturing process and modifications to the paint system to increase capacity and throughput.

Operating earnings for 1997 were \$199.4 million, an increase of \$195.0 million over 1996, excluding the impact of the 1996 special charge. As a percentage of sales, the operating margin of 17.1% increased 16.6 percentage points above last year's operating margin, excluding 1996 special charges. The operating margin improvements for 1997 were the result of the improved gross margin discussed above and lower selling, general and administrative ("SG&A") costs in 1997 associated with the consolidation of six divisional and regional headquarters into one corporate headquarters and one administrative operations center, reduced staffing levels, the outsourcing of certain administrative and distribution functions, a reduction in the number of warehouses, and Company wide cost control initiatives. In addition, SG&A during 1996 included incremental compensation costs associated with restricted stock awards and other costs related to the employment of a new senior management team, higher than normal expenditures for market research, packaging and other initiatives related to the launch of the Company's growth plan, and higher bad debt expenses associated with certain of the Company's customers. The cost reduction initiatives and one time items in 1996 coupled with increased sales in 1997 resulted in SG&A decreasing as a percentage of sales from 17.4% in 1996 (excluding the impact of special charges) to 11.2% for 1997.

Interest expense decreased from \$13.6 million in 1996 to \$11.4 million in 1997 primarily as a result of lower average borrowing levels in 1997 due to improved cash flows.

The effective income tax rate of 35% for 1997 and 1996 for earnings (loss) from continuing operations was lower than the statutory federal and state rates as a result of lower foreign taxes from the utilization of foreign tax credits and loss carryforwards and lower state income taxes as a result of certain state income tax credits.

The Company's diluted earnings per share from continuing operations was \$1.41 per share versus a loss per share from continuing operations in 1996 of \$2.37. The Company's share base utilized in the diluted earnings per share calculation increased approximately 6% during 1997 as a result of an increase in the number of shares of common stock and common stock equivalents outstanding due to the exercise of stock options and a higher market value of the Company's common stock in 1997.

The Company's discontinued furniture operations, which were sold in March 1997, had revenues of \$51.6 million in the first quarter of 1997 prior to the sale and break-even earnings. In 1996, the discontinued furniture operations had net income of \$.8 million on revenues of \$227.5 million and an estimated loss on disposal of the business of \$32.4 million, net of applicable income tax benefits. The sale of the Company's furniture business assets (primarily inventory, property, plant and equipment) was completed in March 1997.

The Company received \$69 million in cash and retained accounts receivable related to the furniture business of approximately \$50.0 million as of the closing date. The final purchase price for the furniture business was subject to a post-closing adjustment based on the terms of the Asset Purchase Agreement and in the first quarter of 1997, after completion of the sale, the Company recorded an additional loss on disposal of \$13.7 million, net of income tax benefits. See discussion of Restructuring, Impairment and Other Costs in Note 8 and Discontinued Operations and Assets Held For Sale in Note 9 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum for further information regarding the individual components of the 1996 special charge and details of the 1997 activity in the Company's restructuring accrual.

Year Ended December 29, 1996 Compared to the Year Ended December 31, 1995

The Company's operating results for 1996 include the effects of a pre-tax special charge of \$337.6 million recorded in conjunction with the implementation of its restructuring and growth plan announced in November 1996. Approximately 20% of the charge was for cash items primarily for severance costs and lease and other facility exit costs. The special charge to earnings in 1996 is included in the following categories on the consolidated statement of operations:

	Pre-tax Dollar Amount	After-tax Per Share Amount
	(in millions)	
Restructuring, impairment and other costs	\$154.9	\$(1.21)
Cost of sales	92.3	(0.72)
Selling, general and administrative	42.5	(0.33)
Estimated loss from discontinued operations	47.9	(0.39)
Total	<u>\$337.6</u>	<u>\$(2.65)</u>

Net sales from continuing operations of \$984.2 million for 1996 represents a decrease of \$32.7 million, or 3.2%, from 1995. The Company experienced a loss from continuing operations of \$196.7 million or \$2.37 per share for 1996 versus earnings from continuing operations of \$37.6 million or \$0.45 per share (diluted) in 1995 primarily as a result of the restructuring activities discussed above. The net loss for 1996 was \$228.3 million, or \$2.75 per share, compared to net earnings of \$50.5 million, or \$0.61 per share (diluted), for 1995. Excluding the impact of special charge items for 1996, earnings from continuing operations before income taxes decreased from \$60.6 million in 1995 to a loss of \$12.9 million in 1996.

Domestic sales represented approximately 80% of total sales of the Company in 1996 and decreased \$28.5 million or 3.4% from 1995. This sales decline was driven by lower sales of outdoor cooking products, which declined 7.3% and lower sales of bedding products which declined 9.0% from 1995, primarily as a result of lower decorative bedding sales (divested in December 1996). Domestic sales of appliance products were flat with sales increases from new products such as vegetable steamers and toaster ovens being offset by reduced pricing on breadmakers. Sales of other product categories such as health and personal care products and time and temperature products (divested in March 1997) were either flat or declined slightly from 1995 levels.

International sales decreased \$4.2 million or 2.2% from 1995 primarily as a result of lower sales in Latin America due to political and/or economic instability in several countries such as Ecuador, Peru, Columbia and Venezuela (which suffered a bolivar devaluation in April 1996), a sales decline of 11.2% in Canada as a result of the bankruptcy filing of the Company's then largest Canadian customer offset by a 55.0% increase in sales in Mexico as a result of a more stable economic environment in 1996.

The Company's gross margin percentage, excluding the impact of special charges, was 17.9% of sales in 1996, down from 20.4% in 1995, primarily from the underabsorption of higher manufacturing costs and excess manufacturing capacity that has been realigned for 1997 and beyond by the Company's restructuring and growth plan cost reduction initiatives.

SG&A expenses, excluding the impact of special charges described above, were 17.6% of sales in 1996 primarily as a result of an inflated cost structure that has been realigned for 1997 and beyond. In addition, a \$12.0 million fourth quarter 1996 media advertising campaign and one-time expenditures for market research, new packaging, and other growth plan initiatives resulted in higher than normal SG&A spending in 1996. Also included in 1996 SG&A costs were \$7.7 million of compensation expense resulting from restricted stock awards made in connection with the employment of a new senior management team.

Interest expense for 1996 increased from \$9.4 million in 1995 to \$13.6 million as a result of increased indebtedness of the Company for working capital requirements and non-recurring capitalized interest in 1995 related to the construction of the Hattiesburg, Mississippi manufacturing and distribution center.

The effective income tax rate for 1996 decreased 3 percentage points from 1995 to 35.0% as a result of certain foreign and state operating losses for which no tax benefits were recorded and the non-deductibility of compensation expense related to restricted stock awards.

The Company's discontinued furniture operations had revenues of \$227.5 million in 1996, up 22.6% from \$185.6 million in 1995. This revenue growth was the result of the acquisition of the Samsonite® furniture business in November 1995. Excluding the impact of this acquisition, furniture business sales declined 2.1%. Earnings from the discontinued furniture operations, net of taxes, declined from \$12.9 million in 1995 to \$.8 million in 1996 primarily as a result of lower gross margins from reduced pricing, underabsorption of higher manufacturing costs and higher raw material costs. In addition, SG&A costs increased due to the inclusion of the Samsonite® furniture business, higher distribution and warehousing costs, particularly with resin furniture products and higher bad debt expenses.

Foreign Operations

During 1997 approximately 90% of the Company's business was conducted in U.S. dollars (including both domestic sales, U.S. dollar denominated export sales primarily to certain Latin American markets, Asian sales and the majority of European sales). The Company's exposure to market risk from changes in foreign currency and interest rates is generally insignificant. The Company's non-U.S. dollar denominated sales are made principally by subsidiaries in Mexico, Venezuela and Canada. Venezuela is considered a hyperinflationary economy for accounting purposes for 1995, 1996 and 1997 and Mexico reverted to hyperinflationary status for accounting purposes in 1997; therefore, translation adjustments related to Venezuelan and Mexican net monetary assets are included as a component of net earnings. Such translation adjustments were not material to 1995, 1996 and 1997 operating results.

On a limited basis, the Company selectively uses derivatives (foreign exchange option and forward contracts) to manage foreign exchange exposures that arise in the normal course of business. No derivative contracts are entered into for trading or speculative purposes. The use of derivatives did not have a material impact on the Company's financial results in 1995, 1996 and 1997. See Note 4 to the Company's consolidated financial statements.

Liquidity and Capital Resources

As of December 28, 1997, the Company had cash and cash equivalents of \$52.4 million and total debt of \$195.2 million. Cash used in operating activities during 1997 was \$8.2 million compared to \$14.2 million provided by operating activities in 1996. This decrease is primarily attributable to an increase in earnings before non-cash charges in 1997 and the utilization of tax benefits generated from the implementation of the Company's restructuring plan, offset by higher accounts receivable due to increased sales in 1997 and certain seasonal dating terms, increased inventory levels in 1997 necessary to support continued anticipated sales growth and the Company's initiatives to improve customer service levels and 1997 cash expenditures required to implement the restructuring plan. In addition, cash used in operating activities reflects \$59 million of proceeds from the sale of trade accounts receivable under the Company's revolving trade accounts receivable securitization program entered into in December 1997 as more fully described in Note 3 to the Company's consolidated financial statements.

Capital spending totaled \$58.3 million in 1997 and was primarily for new products, cost reduction and capacity expansion initiatives. Capital spending in 1996 was \$75.3 million (including \$14.5 million related to the discontinued furniture operations) and was primarily attributable to new product development, cost reduction initiatives and a \$5.0 million warehouse expansion financed with a capital lease. Capital spending in 1995 reflected approximately \$59.4 million associated with the Hattiesburg facility, \$27.4 million related to new product development and \$10.8 million attributable to the discontinued furniture business. The remaining 1995 capital spending was related to cost reduction projects, productivity initiatives and environmental compliance including \$14.4 million for a powder coat paint system for Outdoor Cooking products. The Company anticipates 1998 capital spending to be approximately 5% of sales and primarily related to new product introductions, capacity additions and certain facility rationalization initiatives.

Cash provided by investing activities also reflects \$91.0 million in proceeds from sales of businesses, assets and product categories determined to be non-core to the Company's ongoing operations in conjunction with the 1996 restructuring plan. Cash used in investing activities for 1995 includes the purchase of a portion of the Company's furniture business, which was subsequently divested in full in March 1997.

Cash provided by financing activities totaled \$16.4 million in 1997 and reflects net borrowings of \$5.0 million under the Company's revolving credit facility, \$12.2 million of debt repayments related to the divested furniture operations and other assets sold and \$26.6 million in cash proceeds from the exercise of stock.

options, substantially all by former employees of the Company. In 1996, cash provided by financing activities of \$45.3 million was primarily from increased revolving credit facility borrowings to support working capital and capital spending requirements, \$11.5 million in new issuances of long-term debt and \$4.6 million in proceeds from the sale of treasury shares to certain executives of the Company. In July 1997, the Company reduced the amount of available borrowings under its September 1996 unsecured five year revolving credit facility from \$500 million to \$250 million.

The Company is a party to various environmental proceedings, substantially all related to previously divested operations. In connection with the Company's restructuring plan a comprehensive review of environmental exposures was undertaken and the Company accelerated its strategy for the resolution and settlement of certain environmental claims. This review and change in strategy resulted in additional environmental reserves being recorded in 1996 as more fully described in Note 12 to the consolidated financial statements. In management's opinion, the ultimate resolution of these environmental matters will not have a material adverse effect upon the Company's financial condition.

On March 2, 1998, the Company announced the signing of definitive agreements to acquire Coleman, Signature Brands and First Alert which are subject to various customary conditions including regulatory approvals. The Company's ability to complete the Acquisitions, which is expected in the early spring of 1998, is contingent on acquisition debt issuances. In connection with the Acquisitions, the Company plans to refinance existing indebtedness of the acquired companies as well as all or substantially all of its existing long-term debt. The Company expects to finance the cash portion of the Acquisitions and all debt refinancings through a combination of the Bank Financing and the Offering. For additional information regarding the Acquisitions, see Note 14 to the Company's Consolidated Financial Statements of the Company included elsewhere in this Offering Memorandum.

The Company believes its cash flow from operations, existing cash and cash equivalent balances, its receivable securitization program, together with expected available borrowings under the revolving credit portion of the New Credit facility, will be sufficient to support working capital needs, capital spending, debt service and acquisition related cash requirements for the foreseeable future.

The Company is currently discussing the terms of the New Credit Facility. See "Risk Factors—New Credit Facility Not Yet Committed" and "Description of Other Indebtedness—New Credit Facility."

New Accounting Standards

See Note 1 to the Company's consolidated financial statements for a discussion of Statement of Financial Accounting Standards ("SFAS") No. 130, *Reporting Comprehensive Income* and SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, both of which are required to be adopted for fiscal years beginning after December 15, 1997. The adoption of these standards will not impact the Company's consolidated results of operations, financial position, or cash flows.

Year 2000

The Company has assessed and continues to assess the impact of the Year 2000 issue on its operations, including the development and implementation of project plans and cost estimates required to make its information systems infrastructure Year 2000 compliant. Based on existing information, the Company believes that anticipated spending necessary to become Year 2000 compliant will not have a material effect on the financial position, cash flows or results of operations of the Company, nor will the Year 2000 issues cause any material adverse effect on the future business operations of the Company.

Subsequent Events

For a discussion of the Acquisitions and the new three year employment contracts between the Company and each of Mr. Dunlap, Mr. Kersh and Mr. Fannin, see Note 14 to the Company's Consolidated Financial Statements included elsewhere in this Offering Memorandum.

BUSINESS

General

The Company is a leading designer, manufacturer and marketer of branded consumer products. The Company's primary business is the manufacture, marketing and distribution of durable household consumer products through mass merchandisers, home centers and other channels (such as Wal-Mart, Kmart and Home Depot) in the United States and internationally. The Company also sells its products to commercial end users such as hotels and other institutions. Sunbeam products enjoy a long-standing reputation for quality, and a majority of the Company's sales are from products which hold the number one or two market share in their respective product categories. In 1997, the Company's net sales were approximately \$1,168 million.

The Company's five product categories are: (1) Appliances (mixers, blenders, food steamers, bread makers, rice cookers, coffee makers, toasters, irons and garment steamers); (2) Health at Home (vaporizers, humidifiers, air cleaners, water filters, massagers and scales); (3) Personal Care and Comfort (shower massagers, hair clippers and trimmers, electric warming blankets); (4) Outdoor Cooking (electric, gas and charcoal grills and grill accessories); and (5) Away From Home (clippers and related products for professional beauty, barber and veterinarian trade and sales of products to commercial and institutional channels). The International Group is responsible for sales (primarily of small appliances, personal care, grills and comfort products, professional clippers and related products) in all countries other than the United States.

The Company was organized in 1989 (as Sunbeam-Oster Company, Inc.) and in September 1990, Sunbeam acquired the assets and assumed certain liabilities, through a reorganization, of Allegheny International, Inc. (the "Predecessor"). In August 1992, the Company completed a public offering of 20,000,000 shares of its common stock. In May 1995, the Company changed its name from Sunbeam-Oster Company, Inc. to Sunbeam Corporation.

The Company has a management team with extensive consumer products experience and proven expertise in cost containment and operational improvement. On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three year employment contracts with the Company which include substantial equity-based compensation. See "Management—New Employment Contracts."

Restructuring and Growth Plan

In the Fall of 1996, under newly elected Chairman, Albert J. Dunlap, the Company announced a major restructuring and growth plan. The restructuring portion of the plan was completed during 1997, resulting in a significant reduction in employees, facilities and costs, all of which is anticipated to generate approximately \$225 million in annual savings for the Company. As a part of the restructuring plan, the Company divested its non-core business and assets, including furniture, time and temperature, decorative bedding, gas heaters and logs, Counsellor® and Borg® scale business and the Company's Biddeford, Maine textile mill.

The Company's restructuring plan included the closure of 18 factories, 43 warehouses and 5 headquarters, resulting in the consolidation of all corporate offices into a single headquarters office located in Delray Beach, Florida and an operations facility at its Hattiesburg, Mississippi manufacturing and distribution facility. The number of manufacturing facilities has been reduced from twenty-six to eight (four in the US and four international). See "—Properties" below.

The Company has also consolidated all purchasing functions, substantially reduced the number of stock keeping units maintained by the Company and outsourced certain administrative, manufacturing and distribution activities.

The Company has developed a comprehensive three year growth plan for its core business. Sunbeam's goal is for revenues to double, reaching \$2 billion by 1999, with operating margins improving to 20% of sales. This revenue growth is anticipated to be derived, in large part, by the development of new innovative products and the globalization of the Company. Domestically, the goal is to introduce at least 30 new products each year; during 1997, the Company introduced 35 new domestic products and 54 new international products. In its international business, the Company has a goal to triple international sales to \$600 million by 1999. During 1997, the

Company entered into 25 new international distribution/license agreements. The Company has also identified new channels of distribution as additional sales growth opportunities, including commercial organizations and "direct to the consumer" channels such as catalogs, the Internet and Sunbeam® factory outlet stores. The foregoing contains certain forward-looking statements that involve risks and uncertainties, see "Forward-Looking Statements" and "Risk Factors" for cautionary remarks concerning these statements.

Both international expansion and new product introductions will be supported by a significant investment in a major new advertising program that is geared to strengthen the Sunbeam®, Oster® and Grillmaster® brands in the marketplace.

Products

The Company's core product categories are as follows:

Appliances

Small kitchen appliances including Mixmaster® stand mixers, hand mixers, Osterizer® blenders, food processors, rice cookers, food steamers, toasters, can openers, coffee makers, bread makers, waffle makers, ice cream makers, frying pans, deep fryers and culinary accessories, are sold primarily under the Sunbeam® and Oster® brand names. The Company holds the number one or two market positions in blenders, mixers and bread makers. The Appliance category also encompasses garment care appliances consisting of irons and steamers. Sales of appliances accounted for approximately 32% of the Company's domestic net sales in 1997.

Health at Home

The Company markets its home health products under the Sunbeam® name and the trademark Health at Home®. These products include heating pads, bath scales, blood pressure and other health-monitoring instruments, massagers, vaporizers, humidifiers and dental care products. This product category also includes the recently introduced AllergySmart™ air detector and air cleaner and the FreshSource™ power water filter. Sales of health care products accounted for approximately 10% of the Company's domestic net sales in 1997.

Personal Care and Comfort

The Company's Personal Care and Comfort products include a broad line of electric blankets, comforters and Cuddle-Up® heated throws, shower massagers, and hair clippers and trimmers for animals and humans which are sold through retail channels. The Company holds the number one market position in electric blankets, heated throws and retail hair clippers. Sales of Personal Care and Comfort products accounted for approximately 18% of the Company's domestic net sales in 1997.

Outdoor Cooking

Sunbeam is a leading supplier of outdoor barbecue grills. Sunbeam has the leading market share position in the gas grill industry. Barbecue grills consist of propane, natural gas, electric and charcoal models sold primarily under the Sunbeam® and Grillmaster® brand names. Sales of outdoor cooking products accounted for approximately 34% of the Company's domestic net sales in 1997.

Away from Home

The Company markets a line of professional barber, beauty and animal equipment, including the electric and battery clippers, replacement blades and other grooming accessories sold to both conventional retailers and through professional distributors. In addition, the Company is expanding the market of its appliances, scales and Personal Care and Comfort products to institutional and commercial channels. Sales of Away from Home products described above accounted for approximately 6% of the Company's domestic net sales in 1997.

International

The Company markets a variety of products (primarily small kitchen appliances, Personal Care and Comfort products, grills, professional clippers and related products) outside the U.S. While the Company sells many of the same products domestically and internationally, it also sells products designed specifically to appeal to foreign markets. The Company, through its foreign subsidiaries, has manufacturing facilities in Mexico and Venezuela.

and sales offices in Canada, the United Kingdom, Hong Kong and Australia. The Company's international products are sourced from the Company's United States, Mexican or Venezuelan manufacturing operations or from vendors primarily located in Asia. International sales accounted for approximately 21% of the Company's total net sales in 1997.

To date, the Company's activities outside the United States have been primarily focused in Mexico, Latin America and Canada. The Company enjoys a strong market position in a number of product categories in Latin America. The Oster® brand has the leading market share in small appliances in a number of Latin American countries.

The Company's pending acquisitions of Coleman, Signature Brands and First Alert are anticipated to provide new opportunities for international expansion of the Company's activities. See "The Acquisitions."

Competitive Strengths

Sunbeam competes in markets with well-established United States and foreign companies on the basis of various strengths, depending on the country, product category and distribution channels. The Company believes that it is well-positioned to pursue continued growth as a result of these competitive strengths, which include the following:

Market Leadership. The majority of Sunbeam sales are from products in which the Company holds the number one or two market share position. The Company believes that this combination of leading brand-name products and breadth of product offerings makes Sunbeam an attractive vendor to all retailers, particularly those who are consolidating their suppliers.

Brand Name Recognition. The Sunbeam® and Oster® brands have been household names for generations. The Company believes that these brands, along with its other well-known secondary brand names such as Mixmaster®, Osterizer® and Grillmaster®, draw customers into retail stores specifically to purchase products bearing these brand names. During 1997, the Company spent over \$56 million, or approximately 5% of its 1997 net sales, for advertising and sales promotion to support brand recognition.

Distribution Network. The Company has one of the premier mass merchant distribution networks serving large national retailers in the United States. The Company also has a strong network of well-established distributors and service organizations in Latin America. The Company supports its customers' needs with strong warehousing and distribution capabilities, a broad, high-quality product portfolio, electronic data interchange and just-in-time product delivery capabilities. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, catalogues, Company-owned outlet stores and pet supply retailers, as well as independent distributors and military post exchange outlets.

Strong Position in Consolidating Retail Environment. The consolidation trend in the retail industry has resulted in the emergence and global expansion of large mass merchandisers. These merchandisers demand financially strong, efficient suppliers who offer a broad range of innovative, quality products, have the ability to make timely shipments in large volumes and provide strong customer, promotional and merchandising support. The Company continues to benefit from this trend and believes it has the opportunity to further expand distribution with a number of major retailers while increasing its penetration of existing accounts. In 1997, the Company sold products to virtually all of the top 100 U.S. retailers, including Wal-Mart, Price Costco, Kmart, Target Stores, Home Depot and Sears.

Customers

The rapid growth of large mass merchandisers and warehouse clubs and changes in customer shopping patterns have contributed to a significant consolidation of the U.S. retail industry and formation of dominant multi-category retailers. Sunbeam has positioned itself to respond to the challenges of this changing retail environment by pursuing strategic relationships with large, high-volume merchandisers. The Company markets its products through virtually every category of retailer including mass merchandisers, catalog showrooms, warehouse clubs, department stores, hardware stores, catalogues, television shopping channels, home centers, drug and grocery stores, and pet supply retailers, as well as independent distributors and military post exchange

services. The Company's largest customer, Wal-Mart Stores, Inc., accounted for approximately 21% of the sales in 1997.

Retailers are pursuing a number of strategies in their competition to deliver the highest-quality, lowest-cost brand name products. A growing trend among retailers is to purchase on a "just-in-time" basis in order to reduce inventory cost and increase returns on investment. This trend has required increased working capital investments for manufacturers and requires manufacturers to more closely monitor consumer buying patterns as retailers shorten their lead times for orders. Currently, most Sunbeam products sold to U.S. retailers are manufactured at the Company's own facilities in North America. However, one of the Company's goals for 1998 is to "source" approximately 50% of parts and/or products from others, including suppliers in Asia, in order to reduce capital investment in plants while growing sales volume and to improve operating margins. The Company intends to continue to support its retail partners' "just-in-time" inventory strategies through investments in, among other things, improved forecasting systems, more responsive manufacturing and distribution capabilities and electronic communications. Currently, Sunbeam has approximately 90% of its U.S. customer sales on electronic data interchange (EDI) systems.

The amount of backlog orders at any point in time is not a significant factor in the Company's business.

Patents and Trademarks

Sunbeam believes that an integral part of its strength is its ability to capitalize on the Sunbeam® and Oster® trademarks which are registered in the United States and in numerous foreign countries. Widely recognized throughout North America, South and Central America and Europe, these registered trademarks, along with Osterizer®, Mixmaster®, Toast Logic®, Steammaster®, Oskar®, Grillmaster® and Blanket with a Brain® brands are important to the success of the Company's products. Other important trademarks within Sunbeam include Oster Designer® line, Cuddle-Up® and A5®.

Sunbeam holds numerous patents covering a wide variety of products, the loss of any one of which would not have a material adverse effect on the Company's business taken as a whole.

Employees

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

Seasonality

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

Raw Materials

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

Environmental Matters

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

increase in the Company's capital expenditures or to have a material adverse effect on the Company's results of operations, financial condition or competitive position.

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

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

In addition, the Company is engaged in environmental remediation activities at a site located in Newburgh Heights, Ohio, where a subsidiary formerly conducted operations. The Company has been actively cooperating with the United States Nuclear Regulatory Commission and state regulatory authorities in developing and implementing a plan for remediation of this site; which remediation is anticipated to be substantially completed in 1998.

The Company's costs for environmental remediation activities have not had a material adverse effect on the Company's results of operations, financial conditions or competitive position. The Company has established reserves to cover the anticipated probable costs of remediation, based upon periodic review of all sites for which the Company has, or may have, remediation responsibility. As of December 28, 1997, the amount of such reserves was approximately four percent (4%) of the Company's total liabilities as set forth in the consolidated financial statements. Such environmental reserves do not anticipate any offsets for potential insurance recoveries from certain of the Company's liability insurance carriers which the Company continues to pursue.

Due to uncertainty over the remedial measures to be adopted at some sites, the possibility of changes in Environmental Laws, and the fact that joint and several liability with the right of contribution is possible at federal and state Superfund sites, the Company's ultimate future liability with respect to sites at which remediation has not been completed may vary from the amounts reserved at fiscal year end 1997. In addition, the Company may be required to incur costs relating to remediation of other properties currently or previously owned or leased, including the properties to be acquired in the Acquisitions, as well as properties at which the Company and each of Coleman, Signature Brands and First Alert have disposed of waste. However, the Company believes, based on existing information, that the costs of completing the environmental remediation of all sites for which the Company has a remediation responsibility have been adequately reserved and that the ultimate resolution of these matters will not have a material adverse effect upon the Company's financial condition.

In December 1996, the Company reached a negotiated settlement with the EPA with regard to a notice of violation concerning the construction and operation of two paint lines at the Company's Neosho, MO facility prior to obtaining the necessary permits for construction and operation. The negotiated settlement amount of \$829,825 was agreed upon in connection with the Company's implementation of the "supplemental environmental project" which consisted of the Company's installation of nominal emission powder coating lines to replace solvent paint lines. In October 1997, the Company executed a Consent Decree documenting the settlement and is awaiting the EPA's execution of the Consent Decree; the Company anticipates formal resolution of this matter by the second quarter of 1998.

The Company is not a party to any other administrative or judicial proceedings to which a governmental authority is a party and which involves potential monetary sanctions, exclusive of interest and costs, of \$100,000 or more.

Properties

Active United States and International manufacturing, warehouse, and office locations are set forth below. In addition to the facilities set forth below, the Company leases warehouse space on a short-term basis when needed. Except as otherwise noted, each location is used for manufacturing, warehousing and related administrative office space.

<u>United States</u>	<u>Square Feet</u>	<u>Title</u>
Brownsville, Texas	48,000	Leased (a)
Delray Beach, Florida	51,073	Leased (b)
Del Rio, Texas	10,560	Leased (a)
Hattiesburg, Mississippi	725,000	Owned
Hattiesburg, Mississippi	300,000	Leased (a)
McMinnville, Tennessee	169,400	Leased
Neosho, Missouri	887,200	Owned/Leased
Waynesboro, Mississippi	853,714	Leased
Total	<u>3,044,947</u>	
<u>International</u>	<u>Square Feet</u>	<u>Title</u>
Acuna, Mexico	110,000	Owned
Barquisimeto, Venezuela	75,686	Owned
Caracas, Venezuela	9,367	Leased (c)
Hong Kong	20,550	Leased (d)
Matamoros, Mexico	91,542	Owned
Milton Keynes, England	2,000	Leased (c)
Mississauga, Canada	19,891	Leased (c)
Tlalneapantla, Mexico	297,927	Owned
Total	<u>627,463</u>	

- (a) Warehouse only
- (b) Corporate headquarters
- (c) Administration
- (d) Warehouse and administration

In addition, the Company has 17 United States and 5 Canadian retail outlet stores under lease totaling 103,000 square feet.

The Company believes that its existing facilities will adequately provide sufficient suitable capacity to implement its operating plans.

Legal Proceedings

The Company and its subsidiaries are involved in various lawsuits arising from time to time which the Company considers to be ordinary routine litigation incidental to its business. In the opinion of the Company, the resolution of these matters, and of certain matters relating to prior operations of the Company's predecessor, individually or in the aggregate, will not have a material adverse effect upon the financial position or results of operations of the Company. The Company has established reserves for pending litigation which the Company considers to be adequate to cover loss contingencies determined by the Company associated with such proceedings.

See "—Environmental Matters" for a description of certain legal proceedings related to environmental matters.

MANAGEMENT

Executive Officers and Directors

The following table sets forth certain information regarding the directors and executive officers of the Company as of February 1, 1998.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Albert J. Dunlap	60	Chairman, Chief Executive Officer and Director
Russell A. Kersh	44	Vice Chairman and Chief Financial Officer
David C. Fannin	52	Executive Vice President, General Counsel and Secretary
Donald R. Uzzi	45	Executive Vice President, Consumer Products Worldwide
Charles M. Elson	38	Director
Howard G. Kristol	60	Director
Peter A. Langerman	42	Director
William T. Rutter	67	Director
Faith Whittlesey	59	Director

Albert J. Dunlap has been Chairman and Chief Executive Officer of the Company since July 18, 1996. From April 1994 to December 1995, he was Chairman and Chief Executive Officer of Scott Paper Company. From 1991 to 1993, Mr. Dunlap was the Managing Director and Chief Executive Officer of Consolidated Press Holdings Limited (an Australian media, chemicals and agricultural operation).

Russell A. Kersh has been Vice Chairman and Chief Financial Officer of the Company since February 1, 1998, and has been a Director of the Company since his appointment on August 6, 1996. He served as Executive Vice President, Finance and Administration of the Company from July 22, 1996 to January 1998. From June 1994 to December 1995 he was Executive Vice President, Finance and Administration of Scott Paper Company. Mr. Kersh served as Chief Operating Officer of Adidas America from January 1993 to May 1994.

David C. Fannin has been Executive Vice President, General Counsel and Secretary since January 1994. From 1979 until 1993, he was a partner in the law firm of Wyatt, Tarrant and Combs.

Donald R. Uzzi has been Executive Vice President, Consumer Products Worldwide since January 1997. From November 1996 to January 1997, he held the position of Senior Vice President, Global Marketing. Mr. Uzzi joined the Company in September 1996 as Vice President, Marketing and Product Development. From January 1993 to July 1996, Mr. Uzzi served as President of the Beverage Division of Quaker Oats. During 1990 to 1992, Mr. Uzzi was employed by Pepsi Cola as Senior Vice President for North America (1992) and Vice President and General Manager of the Mid-Atlantic Division (1990-1991).

Charles M. Elson has been a Director of the Company since his appointment to the Board of Directors on September 25, 1996. Mr. Elson has been a Professor of Law at Stetson University College of Law since 1990 and serves as Of Counsel to the law firm of Holland & Knight (since May 1995). He is also a Member of the American Law Institute and the Advisory Council and Commission on Director Compensation and Director Professionalism of the National Association of Corporate Directors. Mr. Elson is Trustee of Talladega College and a Salvatori Fellow of the Heritage Foundation. Mr. Elson has served as a Director of Circon Corporation (a medical manufacturer) since October 1997.

Howard G. Kristol has been a Director of the Company since his appointment on August 6, 1996. Mr. Kristol has been a partner in the law firm of Reboul, MacMurray, Hewitt, Maynard & Kristol since 1976.

Peter A. Langerman has been a Director of the Company since 1990 and served as the Chairman of the Board of Directors from May 22, 1996 until July 18, 1996. Since November 1996, Mr. Langerman has been Senior Vice President and Chief Operating Officer of Franklin Mutual Advisers, Inc., a registered investment

advisor and a wholly owned subsidiary of Franklin Resources, Inc., a diversified financial services organization. Mr. Langerman was a Senior Vice President of Heine Securities Corporation, an investment advisory service company, from 1986 to November 1996, and a Vice President of Mutual Series Fund from 1988 until its acquisition by Franklin Resources, Inc. in 1996. He has been a Director of Franklin Mutual Series Fund, Inc. (previously Mutual Series Fund Inc.) since 1988 and a Director of Metallurg Inc. (a metals and related materials manufacturer) since 1997.

William T. Rutter has been a Director of the Company since his appointment on April 8, 1997. Mr. Rutter is a Senior Vice President/Managing Director, Private Banking of First Union National Bank of Florida, a position he has held since 1986.

Faith Whittlesey has been a Director of the Company since her appointment in December 1996. Mrs. Whittlesey has served as the Chief Executive Officer of the American Swiss Foundation, a charitable and educational foundation, since 1991. She is a member of the Board of Directors of Valassis Communications, Inc. (a publishing and printing company).

New Employment Contracts

On February 20, 1998, each of the Company's Chairman and Chief Executive Officer, Mr. Dunlap; the Vice Chairman and Chief Financial Officer, Mr. Kersh; and the Executive Vice President, General Counsel and Secretary, Mr. Fannin, signed new three-year employment contracts with the Company, which include substantial equity-based compensation. These employment contracts replaced previous employment contracts entered into in July 1996 that were scheduled to expire in July 1999.

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

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

Compensation expense attributed to the equity grant, the acceleration of vesting of restricted stock and the related tax gross-ups will be recognized in the first quarter of 1998 and compensation expense related to the new restricted stock grants and related tax gross-ups will be amortized to expense beginning in the first quarter of 1998 over the period in which the restrictions lapse. Total after-tax compensation expense to be recognized in the first quarter of 1998 related to these items is expected to be approximately \$30 million.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS

The following table sets forth information as of February 27, 1998, with respect to beneficial ownership of the Company's Common Stock by all persons known by the Company to be the record or beneficial owner of more than 5% of the outstanding Common Stock. Except as otherwise noted, all beneficial owners listed below have sole voting and investment power with respect to the shares owned by them.

Name	Amount and Nature of Beneficial Ownership	Percentage of Common Stock
Franklin Mutual Series Fund Inc.	17,541,398(a)	20.3%
including:		
Mutual Shares Fund	11,260,174(a)	13.3%
Mutual Qualified Fund	4,800,554(a)	5.5 %
Franklin Mutual Advisers, Inc.	17,541,398(a)	20.3%
Franklin Resources, Inc.		
Charles B. Johnson		
Rupert H. Johnson, Jr.	17,541,398(a)	20.3%
AXA Assurances I.A.R.D. Mutuelle.....	8,598,784(b)	9.9 %
including:		
AXA Assurances Vie Mutuelle		
Alpha Assurances Vie Mutuelle		
AXA Courtage Assurance Mutuelle		
AXA-UAP and The Equitable Companies Incorporated		
Fred Alger Management, Inc.		
including:		
Fred M. Alger III	4,424,098(c)	5.1 %

(a) Information reflected in this table and the notes thereto with respect to Franklin Resources, Inc., Charles B. Johnson, Rupert H. Johnson, Jr., Franklin Mutual Advisers, Inc., and Franklin Mutual Series Fund Inc., Mutual Shares Fund and Mutual Qualified Fund (collectively, the "Funds Group") is derived from the Schedule 13D, dated November 1, 1996, filed by them. The address of the Franklin Mutual Series Fund Inc. and of Franklin Mutual Advisers, Inc. is 51 John F. Kennedy Parkway, Short Hills, NJ 07078. The address of Franklin Resources, Inc. and each of Charles B. Johnson and Rupert H. Johnson, Jr. is 777 Mariners Island Blvd., San Mateo, California 94404. Shares of Common Stock beneficially owned by Franklin Mutual Series Fund Inc. include shares owned by Mutual Shares Fund and Mutual Qualified Fund, series of portfolios of Franklin Mutual Series Fund Inc. The aggregate number of shares owned by all of the series of Franklin Mutual Series Fund Inc. is 17,541,398. These same shares are also listed as being beneficially owned by (i) Franklin Mutual Advisers, Inc., the investment manager of Franklin Mutual Series Fund Inc., (ii) Franklin Resources, Inc., the sole stockholder of Franklin Mutual Advisers, Inc. and (iii) Charles B. Johnson and Rupert H. Johnson, Jr., the principal stockholders of Franklin Resources, Inc., each of whom owns in excess of 10% of that corporation's common stock. Franklin Mutual Advisers, Inc. has sole voting and dispositive power over the listed shares of Common Stock. Franklin Mutual Advisers, Inc., Franklin Resources, Inc., Charles B. Johnson, and Rupert H. Johnson, Jr. each disclaim beneficial ownership of these shares.

(b) Information reflected in this table and the notes thereto with respect to AXA Assurances I.A.R.D. Mutuelle, AXA Assurances Vie Mutuelle, Alpha Assurances Vie Mutuelle, AXA Courtage Assurance Mutuelle (collectively, the "Mutuelles AXA Group"), AXA-UAP ("AXA-UAP") and The Equitable Companies Incorporated ("Equitable") is derived from the Schedule 13G/A, dated February 17, 1998, filed jointly by the Mutuelles AXA Group, AXA-UAP and Equitable. In the aggregate, Mutuelles AXA Group, AXA-UAP and Equitable own 8,598,784 shares of Common Stock. The members of the Mutuelles AXA Group, AXA-UAP and Equitable each have sole voting power over 5,670,794 of such shares, shared voting power over 1,373,600 such shares, sole dispositive power over 8,591,384 such shares and shared dispositive power over 7,400 such shares. The address of AXA Assurances I.A.R.D. Mutuelle and AXA Assurances Vie Mutuelle is 21 rue de Chateaudun, 75009 Paris, France. The address of Alpha Assurances Vie Mutuelle is 100-101 Terrasse Boieldieu, 92042 Paris La Defense, France. The address of AXA Courtage Assurance Mutuelle is 26, rue Louis le Grand, 75002 Paris, France. The address of AXA-UAP is 23, avenue Matignon, 75008 Paris, France. The address of The Equitable Companies, Incorporated is 1290 Avenue of the Americas, New York, NY 10104.

(c) Information reflected in this table and the notes thereto with respect to Fred Alger Management, Inc. and Fred M. Alger III is derived from the Schedule 13G, dated January 15, 1998, filed by and on behalf of Fred Alger Management, Inc. and Fred M. Alger III. Fred M. Alger III is the Chairman of Fred Alger Management, Inc. The address of Fred Alger Management, Inc. and Fred M. Alger III is 75 Maiden Lane, New York, NY 10038. Fred Alger Management, Inc. and Fred M. Alger III have sole dispositive power over 4,409,498 of the shares listed above, sole voting power over 38,413 of such shares and shared voting power over 4,112,985 of such shares.

SECURITY OWNERSHIP OF MANAGEMENT

The following table sets forth the beneficial ownership, reported to the Company as of February 27, 1998, of the Company's Common Stock, including shares as to which a right to acquire ownership exists, of: (1) each Director of the Company; (2) the four most highly compensated executive officers of the Company for the fiscal year ended December 28, 1997, other than the Chief Executive Officer (collectively, the "Named Executives"); and (3) the Directors and the current executive officers of the Company as a group.

Name	Amount and Nature of Beneficial Ownership(a)(h)	Percentage of Common Stock(h)
Directors		
Albert J. Dunlap	5,241,564	6.06%
Charles M. Elson	9,000(d)	•
Russell A. Kersh	1,045,400(c)	1.21%
Howard G. Kristol	9,000(d)(e)	•
Peter A. Langerman	0(f)	0
William T. Rutter	3,500(d)	•
Faith Whittlesey	5,390(d)	•
Named Executives(g)		
David C. Fannin	371,433(c)	•
Donald R. Uzzi	116,666	•
Lee Griffith	60,543	•
All Directors and current executive officers as a group (9 persons)	6,801,953(h)	7.9%

• Less than one percent.

- (a) All Directors and Named Executives have the sole power to vote and to dispose of the shares of Common Stock listed above except as follows: (i) Mr. Dunlap holds 1,491,564 of the listed shares jointly with his wife; (ii) 151,600 shares listed as owned by Mr. Kersh are held by the Russell A. Kersh Irrevocable Trust as to which Mr. Kersh is the sole beneficiary (the power to vote and to dispose of such shares is held by Howard G. Kristol, Trustee of such Trust) and Mr. Kersh holds 5,000 of the listed shares jointly with his spouse and children; (iii) Mr. Fannin holds 20,433 shares jointly with his wife; and (iv) 5,000 of the shares listed as owned by Mr. Griffith are owned by Mr. Griffith's wife and minor children.
- (b) Includes shares which Directors and Named Executives have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days). Includes 3,750,000, 781,250, 328,500, 16,666 and 50,000 shares which may be acquired by Messrs. Dunlap, Kersh, Fannin, Uzzi and Griffith, respectively, upon the exercise of options which are currently exercisable. Options which are not currently exercisable and will not become exercisable within sixty days are not included in the table.
- (c) Includes 112,500 and 22,500 restricted shares held by Messrs. Kersh and Fannin, respectively, that are subject to restrictions.
- (d) Includes shares of restricted stock granted to each of Directors Elson, Kristol, Rutter and Whittlesey upon their respective elections, appointments and subsequent reelections to the Company's Board of Directors, all of which were immediately vested.
- (e) Does not include shares owned by the Russell A. Kersh Irrevocable Trust (of which Mr. Kristol serves as Trustee) and as to which Mr. Kristol disclaims beneficial ownership.
- (f) Does not include shares owned by the Funds Group as to which Mr. Langerman disclaims beneficial ownership. See "Security Ownership of Certain Beneficial Owners."
- (g) Includes Russell A. Kersh listed above under Directors.
- (h) Includes shares which all Directors and current executive officers of the Company have the right to acquire under options which are currently exercisable (including options which may be exercised within the next sixty days) and shares which are subject to restrictions.

DESCRIPTION OF OTHER INDEBTEDNESS

New Credit Facility

The Company is currently negotiating the terms of the New Credit Facility with a group of banks which the Company expects will provide for borrowings by the Company or one or more of its subsidiaries in the aggregate principal amount of \$2.0 billion. The New Credit Facility is being arranged by an affiliate of the Initial Purchaser who has advised the Company that it is, subject to customary qualifications, highly confident that under current market and economic conditions a \$2.0 billion credit facility can be successfully syndicated to financial institutions. It is expected that the facility will provide for one or more term loans in the aggregate principal amount of \$1.5 billion which, together with the net proceeds of the Offering, will be used to finance the cash portion of the Acquisitions and the repayment of all or substantially all of the indebtedness of the Company and the acquired companies (see "Financing Plan and Use of Proceeds") and a \$500 million revolving credit facility which will be available for general corporate purposes. It is expected that the term borrowings under the New Credit Facility will mature based on an amortization schedule to be negotiated, subject to certain mandatory earlier repayments customary for facilities of a similar nature, and that the revolving credit borrowings will mature seven years from the closing date of the New Credit Facility. It is expected that interest will accrue, at the Company's option, at LIBOR plus a spread margin to be negotiated or at the Agent's (as defined below) Base Rate (generally the higher of the Agent's prime rate or the Federal Funds Rate plus 1/2 of 1%) plus a spread to be negotiated. The Company does not yet have commitments from lenders to provide the New Credit Facility and, in any event, the New Credit Facility is subject to the negotiation and execution of definitive documentation and other customary conditions.

Securities and Guarantees. Borrowings under the New Credit Facility may be secured by (i) a pledge of the stock of each of the Company's subsidiaries and (ii) security interests in substantially all of the assets of the Company and its subsidiaries. The Company expects the New Credit Facility will be guaranteed by each of the Company's wholly-owned U.S. subsidiaries and that such subsidiary guarantees will be secured as described above. To the extent borrowings are made by any subsidiaries of the Company, the obligations of such subsidiaries will be guaranteed by the Company.

Covenants. The Company expects that the definitive New Credit Facility will contain various covenants customary for facilities of this type, including (among others) covenants restricting the incurrence of indebtedness, the payment of dividends and other restricted payments, the incurrence of liens, dispositions of assets, mergers and acquisitions, capital expenditures and loans and investments. In addition, it is expected that the New Credit Facility will require the Company to maintain various financial ratios, including a maximum leverage ratio, a minimum interest coverage ratio and a maximum fixed charge coverage ratio.

Defaults. The Company expects that the New Credit Facility will provide for events of default customary for transactions of this type, including nonpayment, misrepresentation, breach of covenant, cross-defaults, bankruptcy, ERISA, judgments and change of ownership and control (including for this purpose a Fundamental Change.)

Other Debt

The Company intends to repay all or substantially all of the currently outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert as promptly as practicable following consummation of each Acquisition, subject to applicable notice provisions and other prepayment terms of the applicable indebtedness. Until such indebtedness is repaid, the Company will continue to be subject to the covenants and restrictions and limitations contained in the terms of such indebtedness. For additional information concerning outstanding indebtedness of the Company, CLN Holdings, Coleman, Signature Brands and First Alert see the consolidated financial statements set forth elsewhere herein.

DESCRIPTION OF DEBENTURES

The Debentures are to be issued under an indenture to be dated as of March 25, 1998 (the "Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee"). A copy of the form of Indenture will be available from the Trustee upon request by a registered holder of the Debentures. The following summary of certain provisions of the Debentures and the Indenture does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Debentures and the Indenture including the definitions therein of certain terms that are not otherwise defined in this Offering Memorandum. Wherever particular provisions or defined terms of the Indenture (or of the form of Debenture which is a part thereof) are referred to, such provisions or defined terms are incorporated herein by reference. As used in this "Description of Debentures," the "Company" refers to Sunbeam Corporation only and does not, unless the context otherwise indicates, include its subsidiaries.

Holders of the Debentures will also have the benefit of a Registration Rights Agreement between the Company and the Initial Purchaser. Under the Registration Rights Agreement, the Company will agree to file the Shelf Registration Statement with the Commission covering resales of the Debentures and the Common Stock issuable upon conversion thereof. See "Registration Rights."

General

The Debentures will be unsecured general obligations of the Company subordinate in right of payment to the New Credit Facility and certain other secured obligations of the Company as described under "Subordination of Debentures" and convertible into Common Stock as described under "Conversion of Debentures." The Debentures will be limited to \$2,316,100,000 aggregate principal amount at maturity (including \$302,100,000 aggregate principal amount at maturity if the Initial Purchaser's over-allotment option is exercised in full) and will mature on March 25, 2018.

The Indenture does not contain any financial covenants or restrictions on the payment of dividends, the incurrence of indebtedness, including Senior Indebtedness (as defined below under "Subordination of Debentures"), or the issuance or repurchase of securities of the Company. The Indenture contains no covenants or other provisions to afford protection to holders of the Debentures in the event of a highly leveraged transaction or a change in control of the Company except to the extent described under "Redemption at Option of the Holder Upon a Fundamental Change."

The Debentures are being issued at a substantial discount from their stated redemption price at maturity. For U.S. federal income tax purposes, the excess of the stated redemption price at maturity of each Debenture over its issue price (which is expected to be the Issue Price) constitutes Original Issue Discount ("OID"). See "Certain United States Federal Income Tax Considerations." Maturity, conversion, purchase by the Company at the option of a holder or redemption of a Debenture will cause Original Issue Discount and interest, if any, to cease to accrue on such Debenture, under the terms and subject to the conditions of the Indenture. The Company may not reissue a Debenture that has matured or been converted, purchased by the Company at the option of a holder, redeemed or otherwise canceled (except for registration of transfer, exchange or replacement thereof).

The principal amount at maturity of each Debenture will be payable at the office or agency of the paying agent, initially the Trustee, in the Borough of Manhattan, The City of New York, or any other office of the paying agent maintained for such purpose. Debentures may be presented for conversion into Common Stock at the office of the conversion agent and Debentures in definitive form may be presented for exchange for other Debentures or registration of transfer at the office of the registrar, each such agent initially being the Trustee. The Company will not charge a service charge for any registration of transfer or exchange of Debentures; however, the Company may require payment by a holder of a sum sufficient to cover any tax, assessment or other governmental charge payable in connection therewith.

Form, Denomination and Registration

The Debentures will be issued in fully registered form, without coupons, in denominations of \$1,000 principal amount at maturity and whole multiples thereof.

Global Debenture; Book-Entry Form. Debentures held by "qualified institutional buyers," as defined in Rule 144A under the Securities Act ("QIBs"), will be evidenced by a global Debenture (the "Global Debenture"), which will be deposited with, or on behalf of, The Depository Trust Company, New York, New York ("DTC") and registered in the name of Cede & Co. ("Cede"), as DTC's nominee. Except as set forth

below, the Global Debenture may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee.

QIBs may hold their interests in the Global Debenture directly through DTC, or indirectly through organizations which are participants in DTC (the "Participants"). Transfers between Participants will be effected in the ordinary way in accordance with DTC rules. The laws of some states require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer beneficial interests in the Global Debenture to such persons may be limited.

QIBs who are not Participants may beneficially own interests in the Global Debenture held by DTC only through Participants or certain banks, brokers, dealers, trust companies and other parties that clear through or maintain a custodial relationship with a Participant, either directly or indirectly ("Indirect Participants"). So long as Cede, as the nominee of DTC, is the registered owner of the Global Debenture, Cede for all purposes will be considered the sole holder of the Global Debenture. Except as provided below, owners of beneficial interests in the Global Debenture will not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form, and will not be considered the holders thereof.

Payment of the redemption price and the purchase price of the Global Debenture as well as any Liquidated Damages (as defined) due on the Global Debenture arising out of the Company's failure to meet its obligations under the Registration Rights Agreement will be made to Cede, the nominee for DTC, as the registered owner of the Global Debenture by wire transfer of immediately available funds. Neither the Company, the Trustee nor any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Global Debenture or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company has been informed by DTC that, with respect to payment of Liquidated Damages (if any) on and the redemption price or the purchase price of the Global Debenture, DTC's practice is to credit Participants' accounts on the payment date therefor with payments in amounts proportionate to their respective beneficial interest in the Debentures represented by the Global Debenture as shown on the records of DTC (adjusted as necessary so that such payments are made with respect to whole Debentures only), unless DTC has reason to believe that it will not receive payment on such payment date. Payments by Participants to owners of beneficial interests in Debentures represented by the Global Debenture held through such Participants will be the responsibility of such Participants, as is now the case with securities held for the accounts of customers registered in "street name."

Holders who desire to convert their Debentures into Common Stock should contact their brokers or other Participants or Indirect Participants to obtain information on procedures, including proper forms and cut-off times, for submitting such request.

Because DTC can only act on behalf of Participants, who in turn act on behalf of Indirect Participants and certain banks, the ability of a person having a beneficial interest in the Debentures represented by the Global Debenture to pledge such interest to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interest, may be affected by the lack of a physical certificate evidencing such interest.

Neither the Company nor the Trustee (or any registrar, paying agent or conversion agent under the Indenture) will have any responsibility for the performance by DTC or its Participants or Indirect Participants of their respective obligations under the rules and procedures governing their operations. DTC has advised the Company that it will take any action permitted to be taken by a holder of Debentures (including, without limitation, the presentation of Debentures for conversion as described below) only at the direction of one or more Participants to whose account with DTC interests in the Global Debenture are credited and only in respect of the principal amount of the Debentures represented by the Global Debenture as to which such Participant or Participants has or have given such direction.

DTC has advised the Company as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its Participants and to facilitate the clearance and settlement of securities transactions between Participants through electronic book-entry changes to

accounts of its Participants, thereby eliminating the need for physical movement of certificates. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations such as the Initial Purchaser. Certain of such Participants (or their representatives), together with other entities, own DTC. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with a Participant, either directly or indirectly.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the Global Debenture among participants of DTC, DTC is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. If DTC is at any time unwilling or unable to continue as depository and a successor depository is not appointed by the Company within 90 days, the Company will cause Debentures to be issued in definitive form in exchange for the Global Debenture.

Conveyance of notices and other communications by DTC to Participants, by Participants to Indirect Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements that may be in effect from time to time. Redemption notices shall be sent to Cede. If less than all of the Debentures are being redeemed, DTC will reduce the amount of the interest of each Participant in such Debentures in accordance with its procedures.

Certificated Debentures. Debentures sold to investors that are not QIBs will be issued in definitive registered form and may not be represented by the Global Debenture. QIBs may request that any Debentures they hold in definitive registered form be exchanged for interests in the Global Debenture. Certificated Debentures may be issued in exchange for Debentures represented by the Global Debenture if a depository is unwilling or unable to continue as a depository for the Global Debenture as set forth above under "Global Debenture; Book-Entry Form."

Restrictions on Transfer; Legends. The Debentures will be subject to certain transfer restrictions as described below under "Transfer Restrictions" and certificates evidencing the Debentures will bear a legend to such effect.

Conversion of Debentures

A holder of a Debenture may convert it into Common Stock of the Company at any time after 90 days following the latest date of original issuance of the Debentures through the close of business on March 25, 2018; provided that if a Debenture is called for redemption, the holder may convert it only until the close of business on the last trading day prior to the Redemption Date unless the Company defaults in the payment of the redemption price. A Debenture in respect of which a holder has delivered a Purchase Notice exercising the option of such holder to require the Company to purchase such Debenture may be converted only if such notice is withdrawn in accordance with the terms of the Indenture. Similarly, a Debenture in respect of which a holder is exercising its option to require redemption upon a Fundamental Change may be converted only if such holder withdraws its election to exercise its option in accordance with the terms of the Indenture. A holder may convert such holder's Debentures in part so long as such part is \$1,000 principal amount at maturity or a whole multiple thereof.

The initial Conversion Rate is 6.575 shares of Common Stock per \$1,000 principal amount at maturity of Debentures, subject to adjustment upon the occurrence of certain events, as described below. A holder entitled to a fractional share of Common Stock shall receive cash equal to the then current market value of such fractional share.

On conversion of a Debenture, a holder will not receive any cash payment representing accrued Original Issue Discount. The Company's delivery to the holder of the fixed number of shares of Common Stock into which the Debenture is convertible (together with the cash payment, if any, in lieu of fractional Common Stock) will be deemed to satisfy the Company's obligation to pay the principal amount of the Debenture including the accrued Original Issue Discount attributable to the period from the Issue Date to the Conversion Date. Thus, the accrued Original Issue Discount is deemed to be paid in full rather than canceled, extinguished or forfeited. The Conversion Rate will not be adjusted at any time during the term of the Debentures for such accrued Original Issue Discount.

To convert a certificated Debenture into Common Stock, a holder must (i) complete and manually sign the conversion notice on the back of the Debenture (or complete and manually sign a facsimile thereof) and deliver such notice to the conversion agent, (ii) surrender the Debenture to the conversion agent, (iii) if required, furnish appropriate endorsements and transfer documents, and (iv) if required, pay all transfer or similar taxes. The

procedure for converting a Global Debenture is described above under "Form, Denomination and Registration—Global Debenture; Book-Entry Form." Pursuant to the Indenture, the date on which all of the foregoing requirements have been satisfied is the Conversion Date.

The Common Stock issuable upon conversion of the Debentures has not been registered under the Securities Act and is subject to certain restrictions on transfer. See "Registration Rights" and "Transfer Restrictions."

The Conversion Rate is subject to adjustment under formulae as set forth in the Indenture in certain events, including: (i) the issuance of Common Stock of the Company as a dividend or distribution on the Common Stock; (ii) certain subdivisions and combinations of the Common Stock; (iii) the issuance to all holders of Common Stock of certain rights or warrants to purchase Common Stock; (iv) the distribution to all holders of Common Stock of capital stock (other than Common Stock), of evidences of indebtedness of the Company or of assets (including securities (other than Common Stock), but excluding those rights and warrants referred to in clause (iii) above or paid in cash); (v) distributions consisting of cash, excluding any quarterly cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of Common Stock in any quarter does not exceed the greater of (x) the amount per share of Common Stock of the next preceding quarterly cash dividend on the Common Stock to the extent that such preceding quarterly dividend did not require an adjustment of the Conversion Rate pursuant to this clause (v) (as adjusted to reflect subdivisions or combinations of the Common Stock), and (y) 3.75 percent of the average of the last reported sales price of the Common Stock during the ten trading days immediately prior to the date of declaration of such dividend, and excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company; (vi) payment in respect of a tender offer or exchange offer by the Company or any Subsidiary of the Company for the Common Stock to the extent that the cash and value of any other consideration included in such payment per share of Common Stock exceeds the Current Market Price (as defined) per share of Common Stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer; and (vii) payment in respect of a tender offer or exchange offer by a person other than the Company or any Subsidiary (as defined) of the Company in which, as of the closing date of the offer, the Board of Directors is not recommending rejection of the offer. If an adjustment is required to be made as set forth in clause (v) above as a result of a distribution that is a quarterly dividend, such adjustment would be based upon the amount by which such distribution exceeds the amount of the quarterly cash dividend permitted to be excluded pursuant to clause (v) above. If an adjustment is required to be made as set forth in clause (v) above as a result of a distribution that is not a quarterly dividend, such adjustment would be based upon the full amount of the distribution. The adjustment referred to in clause (vii) above will only be made if the tender offer or exchange offer is for an amount that increases the offeror's ownership of Common Stock to more than 25% of the total shares of Common Stock outstanding, and if the cash and value of any other consideration included in such payment per share of Common Stock exceeds the Current Market Price per share of Common Stock on the business day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer. The adjustment referred to in clause (vii) above will generally not be made, however, if as of the closing of such offer, the offering documents with respect to such offer disclose a plan or an intention to cause the Company to engage in a consolidation or merger of the Company or a sale of all or substantially all of the Company's assets.

No adjustment in the Conversion Rate will be required unless such adjustment would require a change of at least 1% in the rate then in effect; provided that any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any subsequent adjustment. Except as stated above, the Conversion Rate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing.

In the case of (i) a reclassification of the Common Stock, or (ii) a consolidation or merger involving the Company or a sale or conveyance to another corporation of the property and assets of the Company as an entirety or substantially as an entirety, in each case as a result of which holders of Common Stock shall be entitled to receive stock, securities, other property or assets (including cash) with respect to or in exchange for such Common Stock, the holders of the Debentures then outstanding will be entitled thereafter to convert such Debentures into the kind and amount of shares of stock, securities or other property or assets (including cash) which they would have owned or been entitled to receive upon such reclassification, consolidation, merger, sale or conveyance had such Debentures been converted immediately prior to such reclassification, consolidation, merger, sale or conveyance assuming that a holder of Debentures would not have exercised any rights of election as to the stock, securities or other property or assets (including cash) receivable in connection therewith.

In the event of a taxable distribution to holders of Common Stock or in certain other circumstances requiring an adjustment to the Conversion Rate, the holders of Debentures may, in certain circumstances, be deemed to have received a distribution subject to United States income tax as a dividend; in certain other circumstances, the absence of such an adjustment may result in a taxable dividend to the holders of Common Stock. See "Certain United States Federal Income Tax Considerations."

The Company from time to time may, to the extent permitted by law, increase the Conversion Rate by any amount for any period of at least 20 days, in which case the Company shall give at least 15 days' notice of such increase, if the Company's Board of Directors has made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. The Company may, at its option, make such increases in the Conversion Rate, in addition to those set forth above, as the Board of Directors deems advisable to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. See "Certain United States Federal Income Tax Considerations."

Redemption of Debentures at the Option of the Company

No sinking fund is provided for the Debentures. Prior to March 25, 2003, the Debentures will not be redeemable at the option of the Company. Beginning on March 25, 2003, the Company may (subject to applicable contractual restrictions including under agreements governing Senior Indebtedness) redeem the Debentures for cash as a whole at any time, or from time to time in part, upon not less than 30 days' nor more than 60 days' notice of redemption given by mail to holders of Debentures. The Debentures will be redeemable in whole multiples of \$1,000 principal amount at maturity.

The table below shows Redemption Prices of a Debenture per \$1,000 principal amount at maturity thereof, at March 25, 2003 and at each March 25, thereafter prior to maturity and at maturity on March 25, 2018, which prices reflect the accrued Original Issue Discount calculated to each such date. The Redemption Price of a Debenture redeemed between such dates would include an additional amount reflecting the additional Original Issue Discount accrued since the next preceding date in the table to the actual Redemption Date.

Redemption Date	(1) Debenture Issue Price	(2) Accrued Original Issue Discount At 5.0%	(3) Redemption Price (1)+(2)
March 25, 2003	\$ 372.43	\$ 104.32	\$ 476.75
March 25, 2004	372.43	128.45	500.88
March 25, 2005	372.43	153.81	526.24
March 25, 2006	372.43	180.45	552.88
March 25, 2007	372.43	208.44	580.87
March 25, 2008	372.43	237.84	610.27
March 25, 2009	372.43	268.74	641.17
March 25, 2010	372.43	301.20	673.63
March 25, 2011	372.43	335.30	707.73
March 25, 2012	372.43	371.13	743.56
March 25, 2013	372.43	408.77	781.20
March 25, 2014	372.43	448.32	820.75
March 25, 2015	372.43	489.87	862.30
March 25, 2016	372.43	533.52	905.95
March 25, 2017	372.43	579.39	951.82
March 25, 2018	372.43	627.57	1,000.00

If less than all of the outstanding Debentures held in certificated form are to be redeemed, the Trustee shall select the Debentures held in such form to be redeemed in principal amounts at maturity of \$1,000 or whole multiples thereof by lot, pro rata or by another method the Trustee considers fair and appropriate (as long as such method is not prohibited by the rules of any stock exchange on which the Debentures are then listed, if any). If a portion of a holder's certificated Debentures is selected for partial redemption and such holder converts a portion of such certificated Debentures, such converted portion shall be deemed to be the portion selected for redemption. Debentures registered in the name of DTC or its nominee will be redeemed pro rata as described under "—Form, Denomination and Registration—Global Debenture; Book-Entry Form."

Redemption at Option of the Holder Upon a Fundamental Change

If a Fundamental Change (as defined) occurs at any time prior to March 25, 2018, each holder of Debentures shall have the right, at the holder's option, to require the Company to redeem any or all of such holder's Debentures on the date (the "Repurchase Date") that is 45 days after the date of the Company's notice of such Fundamental Change. The Debentures will be redeemable in whole multiples of \$1,000 principal amount at maturity at their accreted value on the Repurchase Date.

The Company shall redeem such Debentures at a price equal to the Issue Price plus accrued Original Issue Discount to, but excluding, the Repurchase Date, provided that if the Applicable Price (as defined) in connection with the Fundamental Change is less than the Reference Market Price (as defined), the Company shall redeem such Debentures at a price equal to the foregoing Redemption Price multiplied by the fraction obtained by dividing the Applicable Price by the Reference Market Price.

The Company shall mail to all holders of record of the Debentures a notice of the occurrence of a Fundamental Change and of the redemption right arising as a result thereof on or before the tenth day after the occurrence of such Fundamental Change. The Company shall deliver to the Trustee a copy of such notice. To exercise the redemption right, holders of Debentures must deliver, on or before the 30th day after the date of the Company's notice of a Fundamental Change (the "Fundamental Change Expiration Time"), the Debentures to be so redeemed, duly endorsed for transfer, together with the form entitled "Option to Elect Redemption Upon a Fundamental Change" on the reverse thereof duly completed, to the Company (or an agent designated by the Company for such purpose). Payment for Notes surrendered for redemption (and not withdrawn) prior to the Fundamental Change Expiration Time will be made promptly following the Repurchase Date.

The term "Fundamental Change" means the occurrence of any transaction or event in connection with which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or constitute solely the right to receive consideration (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) which is not all or substantially all common stock of a company listed (or, upon consummation of or immediately following such transaction or event, which will be listed) on a United States national securities exchange or approved for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

The term "Applicable Price" means (i) in the event of a Fundamental Change in which the holders of the Common Stock receive only cash, the amount of cash received by the holder of one share of Common Stock and (ii) in the event of any other Fundamental Change, the average of the reported last sale price for the Common Stock during the ten trading days prior to the record date for the determination of the holders of Common Stock entitled to receive cash, securities, property or other assets in connection with such Fundamental Change, or, if there is no such record date, the date upon which the holders of the Common Stock shall have the right to receive such cash, securities, property or other assets in connection with the Fundamental Change.

The term "Reference Market Price" shall initially mean \$30.2083 (which is equal to 66⅔% of the last sale price of the Common Stock as reflected on the cover page of this Offering Memorandum) and in the event of any adjustment to the Conversion Rate pursuant to the provisions of the Indenture, the Reference Market Price shall also be adjusted so that the Reference Market Price shall be equal to the initial Reference Market Price multiplied by a fraction the numerator of which is the Conversion Rate specified on the cover of this Offering Memorandum (without regard to any adjustment thereto) and the denominator of which is the Conversion Rate following such adjustment.

The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act which may then be applicable in connection with the redemption rights of Debenture holders in the event of a Fundamental Change.

The redemption rights of the holders of Debentures could discourage a potential acquirer of the Company. The Fundamental Change redemption feature, however, is not the result of management's knowledge of any specific effort to obtain control of the Company by means of a merger, tender offer, solicitation or otherwise, or part of a plan by management to adopt a series of anti-takeover provisions.

The term "Fundamental Change" is limited to certain specified transactions and may not include other events that might adversely affect the financial condition of the Company, nor would the requirement that the Company offer to repurchase the Debentures upon a Fundamental Change necessarily afford the holders of the Debentures protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving the Company.

No Debentures may be redeemed at the option of holders upon a Fundamental Change if there has occurred and is continuing an Event of Default described under "—Events of Default; Notice and Waiver" below (other than a default in the payment of the Fundamental Change Redemption Price with respect to such Debentures). In the event of a Fundamental Change and exercise by holders of the Debentures of their associated rights to require the Company to redeem all or a portion of their Debentures, there can be no assurance that the Company would have sufficient funds to pay the redemption price for all the Debentures tendered by the holders thereof. The Company expects that the New Credit Facility will provide, and any future credit agreements (including an extension of the New Credit Facility) or other agreements relating to indebtedness (including Senior Indebtedness) to which the Company becomes a party also may provide, that a Fundamental Change would constitute an event of default thereunder permitting the lenders thereunder to accelerate the maturity thereof and thereby cause the subordination provisions in the Indenture to apply, preventing redemption of the Debentures until Senior Indebtedness thereunder is paid in full. Any such provisions could restrict or prohibit the redemption of the Debentures. If the Company is prohibited from redeeming the Debentures upon the occurrence of a Fundamental Change, the Company could seek the consent of its then existing lenders to redeem the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from redeeming the Debentures. In such case, the Company's failure to redeem Debentures required to be redeemed under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the terms of any other indebtedness of the Company outstanding at such time, including Senior Indebtedness. In such circumstances, or if a Fundamental Change would in and of itself constitute an event of default under agreements governing Senior Indebtedness then outstanding, the subordination provisions in the Indenture would prohibit or restrict payments to the holders of Debentures.

Purchase of Debentures at the Option of the Holder

On March 25, 2003, March 25, 2008 and March 25, 2013 (each, a "Purchase Date"), the Company will become obligated to purchase, at the option of the holder thereof, any outstanding Debenture for which a written Purchase Notice has been delivered by the holder to the office of the paying agent (initially the Trustee) at any time from the opening of business on the date that is 20 Business Days (as defined) prior to such Purchase Date until the close of business on such Purchase Date and for which such Purchase Notice has not been withdrawn, subject to certain additional conditions.

The Purchase Notice shall state (i) the certificate numbers of the Debentures to be delivered by the holder thereof for purchase by the Company; (ii) the portion of the principal amount at maturity of Debentures to be purchased, which portion must be \$1,000 or a whole multiple thereof; (iii) that such Debentures are to be purchased by the Company pursuant to the applicable provisions of the Debentures; and (iv) in the event the Company elects, pursuant to the Company Notice (as defined), to pay the Purchase Price to be paid as of such Purchase Date in Common Stock, in whole or in part, but such Purchase Price is ultimately to be paid to such holder entirely in cash because any of the conditions to payment of the Purchase Price (or portion thereof) in Common Stock is not satisfied by the Purchase Date, as described below, whether such holder elects (x) to withdraw such Purchase Notice as to some or all of the Debentures to which it relates (stating the principal

amount at maturity and certificate numbers of the Debentures as to which such withdrawal shall relate), or (y) to receive cash in respect of the entire Purchase Price for all Debentures subject to such Purchase Notice. If the holder fails to indicate, in the Purchase Notice and in any written notice of withdrawal relating to such Purchase Notice, such holder's choice with respect to the election described in clause (iv) above, such holder shall be deemed to have elected to receive cash in respect of the entire Purchase Price for all Debentures subject to such Purchase Notice in such circumstances. For a discussion of the tax treatment of a holder receiving cash or Common Stock pursuant to its election to tender its Debentures to the Company on a Purchase Date, see "Certain United States Federal Income Tax Considerations."

Any Purchase Notice may be withdrawn by the holder by a written notice of withdrawal delivered to the paying agent prior to the close of business on the Purchase Date. The notice of withdrawal shall state the principal amount at maturity and the certificate numbers of the Debentures as to which the withdrawal notice relates and the principal amount at maturity, if any, which remains subject to the Purchase Notice.

The Purchase Price payable in respect of a Debenture shall be equal to the Issue Price plus accrued Original Issue Discount to the Purchase Date. The table below shows the Purchase Prices of a Debenture as of the specified Purchase Dates. The Company may elect to pay the Purchase Price payable as of any Purchase Date in cash or Common Stock or any combination thereof.

<u>Purchase Date</u>	<u>Purchase Price</u>
March 25, 2003	\$476.75
March 25, 2008	610.27
March 25, 2013	781.20

If the Company elects to pay the Purchase Price, in whole or in part, in Common Stock, the number of shares to be delivered in respect of the portion of the Purchase Price to be paid in Common Stock shall be equal to such portion of the Purchase Price divided by the Market Price (as defined) of the Common Stock. However, no fractional shares of Common Stock will be delivered upon any purchase by the Company of Debentures through the delivery of Common Stock in payment, in whole or in part, of the Purchase Price. Instead, the Company will pay cash based on the Market Price for all fractional shares of Common Stock.

The Company will give notice (the "Company Notice") not less than 20 Business Days prior to the Purchase Date (the "Company Notice Date") to all holders at their addresses shown in the register of the registrar (and to beneficial owners as required by applicable law) stating, among other things, whether the Company will pay the Purchase Price of the Debentures in cash or Common Stock, or any combination thereof (specifying the percentage of each) and, if the Company elects to pay in Common Stock, in whole or in part, the method of calculating the Market Price of the Common Stock.

The "Market Price" means the average of the Sale Prices (as defined) of the Common Stock for the five trading day period ending on the third Business Day prior to the applicable Purchase Date (if the third Business Day prior to the applicable Purchase Date is a trading day or, if it is not a trading day, then on the last trading day prior to such third Business Day), appropriately adjusted to take into account the occurrence during the period commencing on the first of such trading days during such five trading day period and ending on such Purchase Date of certain events that would result in an adjustment of the Conversion Rate under the Indenture with respect to the Common Stock. The "Sale Price" of the Common Stock on any date means the closing per share sale price (or if no closing sale price is reported, the average bid and ask prices or, if more than one in either case, the average of the average bid and average ask prices) on such date as reported in the composite transactions for the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional stock exchange, as reported by the National Association of Securities Dealers Automated Quotation System. Because the Market Price of the Common Stock is determined prior to the applicable Purchase Date, holders of Debentures bear the market risk with respect to the value of the Common Stock to be received from the date of determination of such Market Price to such Purchase Date. The Company may elect to pay the Purchase Price in Common Stock only if the information necessary to calculate the Market Price is reported in a daily newspaper of national circulation.

Upon determination of the actual number of shares of Common Stock in accordance with the foregoing provisions, the Company will publish such determination in a daily newspaper of national circulation.

The Company's right to purchase Debentures with Common Stock is subject to the satisfaction of various conditions, including: (i) the registration of the Common Stock under the Securities Act, if required; and (ii) compliance with other applicable federal and state securities laws, if any. If such conditions are not satisfied by a Purchase Date, the Company will pay the Purchase Price of the Debentures to be purchased on such Purchase Date entirely in cash. See "Certain United States Federal Income Tax Considerations." The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act which may then be applicable and will file a Schedule 13E-4 or any other schedule required thereunder in connection with any offer by the Company to purchase Debentures at the option of holders.

Payment of the Purchase Price for a Debenture for which a Purchase Notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of such Debenture (together with necessary endorsements) to the paying agent at its office in the Borough of Manhattan, The City of New York, or any other office of the paying agent maintained for such purpose, at any time (whether prior to, on or after the Purchase Date) after delivery of such Purchase Notice. Payment of the Purchase Price for such Debenture will be made promptly following the later of the Purchase Date or the time of book-entry transfer or delivery of such Debenture. If the paying agent holds, in accordance with the terms of the Indenture, money or securities sufficient to pay the Purchase Price of such Debenture on the Business Day following the Purchase Date, then, on and after such date, such Debenture will cease to be outstanding and Original Issue Discount on such Debenture will cease to accrue whether or not book-entry transfer of such Debenture is made or such Debenture is delivered to the paying agent, and all other rights of the holder shall terminate (other than the right to receive the Purchase Price upon delivery of the Debenture).

No Debentures may be purchased at the option of the holder for cash if there has occurred (prior to, on or after the giving by the holders of such Debentures of the required Purchase Notice) and is continuing an Event of Default described under "Events of Default; Notice and Waiver" below (other than a default in the payment of the Purchase Price with respect to such Debentures).

If the Company becomes obligated to purchase any outstanding Debenture on a Purchase Date, there can be no assurance that the Company would have sufficient funds to pay the Purchase Price on that Purchase Date (in which case, the Company could be required to issue shares of Common Stock to pay the Purchase Price at valuations based on then prevailing market prices) for all the Debentures tendered by the holders thereof. The Company expects that the New Credit Facility will prohibit the purchase of the Debentures for cash but will permit the purchase of Debentures with shares of Common Stock on a Purchase Date. There can be no assurance that any future credit agreements (including an extension of the New Credit Facility) or other agreements relating to indebtedness (including Senior Indebtedness) to which the Company becomes a party will not contain prohibitions on or defaults with respect to the repurchase of the Debentures or provide that prepayment or redemption would constitute an event of default. In the event a Purchase Date occurs at a time when the Company is prohibited from repurchasing the Debentures, the Company could seek the consent of its then existing lenders to repurchase the Debentures or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company would remain prohibited from repurchasing the Debentures. The Company's failure to repurchase Debentures required to be repurchased under the terms of the Indenture would constitute an Event of Default under the Indenture and would likely constitute a default under the terms of any other indebtedness of the Company outstanding at such time, including Senior Indebtedness. In such circumstances, the subordination provisions in the Indenture would prohibit or restrict payments to the holders of Debentures.

Subordination of Debentures

The Indebtedness evidenced by the Debentures is subordinated to the extent provided in the Indenture to the prior payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all existing and future Senior Indebtedness. Such subordination will not prevent the occurrence of any Event of Default under the Indenture.

Upon any distribution of assets of the Company upon any dissolution, winding up, voluntary or involuntary bankruptcy, insolvency, liquidation, reorganization, receivership or similar proceeding relating to the Company or its property, an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, the holders of Senior Indebtedness will be entitled to receive payment in full, in cash or other payment satisfactory to the holders of Senior Indebtedness, of all obligations due in respect of such Senior Indebtedness before the holders of Debentures will be entitled to receive any payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Fundamental Change Redemption Price, interest, if any, Liquidated Damages, if any, or any other payment in respect of the Debentures (a "Payment on the Debentures"), and until all obligations with respect to Senior Indebtedness are paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness, any Payment on the Debentures to which the holders of Debentures would be entitled shall be made to the holders of Senior Indebtedness. By reason of the subordination, in the event of the Company's dissolution, winding up, bankruptcy, insolvency, liquidation, reorganization, receivership or similar proceeding relating to the Company or its property, an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, holders of Senior Indebtedness may receive more, ratably, and the holders of Debentures may receive less, ratably, than the other creditors of the Company.

In the event that the Debentures are declared due and payable prior to their stated maturity by reason of the occurrence of an Event of Default, then the Company is obligated to notify promptly holders of Senior Indebtedness of such acceleration. The Company may not pay monies owed pursuant to the Debentures until 120 days have passed after such acceleration occurs and may thereafter pay the Debentures if the terms of the Indenture otherwise permit payment at that time.

The Company also may not make any Payment on the Debentures if (i) a default in any payment obligations in respect of Senior Indebtedness occurs and is continuing, without regard to any applicable period of grace (whether at maturity or at a date fixed for payment or by declaration or otherwise) (each a "payment default") or (ii) any other default occurs and is continuing with respect to Designated Senior Indebtedness that permits holders of the Designated Senior Indebtedness as to which such default relates to accelerate its maturity and the Trustee receives a notice of such default (a "Payment Blockage Notice") from the Company or from a representative for any issue of Designated Senior Indebtedness. Payments on the Debentures may and shall be resumed (a) in case of a payment default, the earlier of the date on which such default is cured or waived in accordance with the terms of the governing instrument or ceases to exist and (b) in case of a nonpayment default, the earlier of the date on which such nonpayment default is cured or waived in accordance with the terms of the governing instrument or ceases to exist or 179 days after the date on which the applicable Payment Blockage Notice is received by the Trustee if the terms of the Indenture otherwise permit payment at that time. No new period of payment blockage may be commenced pursuant to a Payment Blockage Notice unless and until 365 days have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or shall be made, the basis for a subsequent Payment Blockage Notice unless such default shall have been cured or waived for a period of not less than 90 days (it being acknowledged that (x) any action of the Company or any of its subsidiaries occurring subsequent to delivery of a Payment Blockage Notice that would give rise to any event of default pursuant to any provision of Senior Indebtedness under which an event of default previously existed (or was continuing at the time of delivery of such Payment Blockage Notice) shall constitute a new event of default for this purpose and (y) any breach of a financial covenant giving rise to a nonpayment default for a period ending subsequent to the date of delivery of the respective Payment Blockage Notice shall constitute a new event of default for this purpose).

The term "Senior Indebtedness" means the principal of, premium, if any, interest (including all interest accruing subsequent to, or which would accrue but for, the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding), original issue discount, rent and end of term payments payable on or in connection with, and, to the extent not included in the foregoing, all amounts payable as fees, costs, expenses, liquidated damages, indemnities, repurchase and other put obligations and other amounts to the extent accrued or due on or in connection with Secured Indebtedness (as defined) of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals,

extensions or refundings of, or amendments, modifications or supplements to, the foregoing). Notwithstanding the foregoing, the term Senior Indebtedness shall not include (i) Indebtedness of the Company to any subsidiary of the Company, a majority of the voting stock of which is owned, directly or indirectly, by the Company, (ii) accounts payable or other indebtedness to trade creditors created or assumed by the Company in the ordinary course of business and (iii) any particular Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof expressly provides that such Indebtedness shall not be senior in right of payment to, or is pari passu with, or is subordinated or junior to, the Debentures.

The term "Indebtedness" means, with respect to any Person (as defined) and without duplication: (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof); (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees, bankers' acceptances or similar facilities; (c) all obligations and liabilities (contingent or otherwise) in respect of leases of such Person (i) required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person, or (ii) required, in conformity with generally accepted accounting principles, to be accounted for as an operating lease, provided either (A) such operating lease requires, at the end of the term thereof, that such Person make any payment other than accrued periodic rent in the event that such Person does not acquire the leased real property and related fixtures subject to such lease or (B) such Person has an option to acquire the leased real property and related fixtures, whether such option is exercisable at any time or under specified circumstances; (d) all obligations of such Person (contingent or otherwise) with respect to an interest rate swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge or exchange agreement or other similar instrument or agreement; (e) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities (contingent or otherwise) of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (a) through (d); (f) any indebtedness or other obligations described in clauses (a) through (d) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person; and (g) any and all deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (a) through (f).

The term "Designated Senior Indebtedness" means (i) Senior Indebtedness incurred under the New Credit Facility or (ii) any other particular Senior Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof (or related agreements or documents to which the Company is a party) expressly provides that such Senior Indebtedness shall be "Designated Senior Indebtedness" for purposes of the Indenture; provided that such instrument, agreement or other document may place limitations and conditions on the right of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness.

The term "Secured Indebtedness" means, with respect to any Person, Indebtedness of such Person secured by any mortgage, pledge, lien or other encumbrance existing on the property or assets which is owned or held by such Person.

The Debentures are obligations exclusively of the Company. Since the operations of the Company are conducted through subsidiaries, the cash flow and the consequent ability to service debt, including the Debentures, are dependent upon the earnings of its subsidiaries and the distribution of those earnings to, or upon loans or other payments of funds by those subsidiaries to, the Company. The subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amount pursuant to the Debentures or to make any funds available therefor, whether by dividends, loans or other payments. In addition, the payment of dividends and making of loans and advances to the Company by its subsidiaries are subject to statutory or contractual restrictions, including those expected under the New Credit Facility, are contingent upon the earnings of those subsidiaries and are subject to various business considerations.

Any right of the Company to receive assets of any of its subsidiaries upon their liquidation or reorganization (and the consequent right of the holders of the Debentures to participate in those assets) will be effectively subordinated to the claims of that subsidiary's creditors (including trade creditors), except to the extent that the Company is itself recognized as a creditor of such subsidiary, in which case the claims of the Company would still be subordinate to any security interests in the assets of such subsidiary and any indebtedness of such subsidiary senior to that held by the Company.

At December 28, 1997, on a pro forma basis after giving effect to the Acquisitions, the Bank Financing, the Offering and the application of the net proceeds therefrom, approximately \$1,294 million of Senior Indebtedness would have been outstanding and the Company's subsidiaries would have had approximately \$731 million of indebtedness and other liabilities outstanding (excluding intercompany liabilities and liabilities of a type not required to be reflected on a balance sheet in accordance with generally accepted accounting principles) to which the Debentures would have been effectively subordinated. The Debentures rank *pari passu* with all outstanding indebtedness and other liabilities of the Company, including trade payables. Upon the consummation of the Offering, on a pro forma basis the Company will have no outstanding indebtedness or other liabilities other than trade payables. The Indenture will not limit the amount of additional indebtedness, including Senior Indebtedness, which the Company can create, incur, assume or guarantee, nor will the Indenture limit the amount of indebtedness which any subsidiary can create, incur, assume or guarantee.

In the event that, notwithstanding the foregoing, the Trustee or any holder of the Debentures receives any payment or distribution of assets of the Company of any kind in contravention of any of the subordination provisions of the Indenture, whether in cash, property or securities, including, without limitation, by way of set-off or otherwise, in respect of the Debentures before all Senior Indebtedness is paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness, then such payment or distribution will be held by the recipient in trust for the benefit of holders of Senior Indebtedness or their representatives to the extent necessary to make payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution, or provision therefor, to or for the holders of Senior Indebtedness.

The Company is obligated to pay reasonable compensation to the Trustee and to indemnify the Trustee against certain losses, liabilities or expenses incurred by it in connection with its duties relating to the Debentures. The Trustee's claims for such payments will generally be senior to those of holders of the Debentures in respect of all funds collected or held by the Trustee.

Events of Default; Notice and Waiver

The Indenture provides that, if an Event of Default specified therein shall have occurred and be continuing, either the Trustee or the holders of not less than 25% in aggregate principal amount at maturity of the Debentures then outstanding may declare the Issue Price of the Debentures plus the Original Issue Discount on the Debentures and any liquidated damages under the Registration Rights Agreement accrued to the date of such declaration to be immediately due and payable, but if the Company shall cure all defaults (except the nonpayment of Issue Price and accrued Original Issue Discount which shall have become due by acceleration) and certain other conditions are met, such declaration may be annulled and past defaults may be waived by the holders of a majority in principal amount at maturity of the Debentures then outstanding. In the case of certain events of bankruptcy or insolvency, the Issue Price of the Debentures plus the Original Issue Discount accrued thereon to the occurrence of such event shall automatically become and be immediately due and payable. Under certain circumstances, the holders of a majority in aggregate principal amount at maturity of the outstanding Debentures may rescind any such acceleration with respect to the Debentures and its consequences. Interest shall accrue at the rate of 5.0% per annum and be payable on demand upon a default in the payment of the Issue Price, accrued Original Issue Discount, accrued liquidated damages, if any, or any Redemption Price, Purchase Price or Fundamental Change Redemption Price to the extent that payment of such interest shall be legally enforceable.

Under the Indenture, Events of Default are defined as: (i) default in payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, accrued Liquidated Damages, if any, Redemption Price, Purchase Price or Fundamental Change Redemption Price with respect to any Debenture when such becomes due and payable (whether or not payment is prohibited by the subordination provisions of the Indenture), provided

that in the case of any failure to pay Liquidated Damages, such failure continues for a period of 30 days; (ii) failure by the Company to comply with any of its other agreements in the Debentures or the Indenture upon the receipt by the Company of notice of such default by the Trustee or by holders of not less than 25% in aggregate principal amount at maturity of the Debentures then outstanding and the Company's failure to cure such default within 60 days after receipt by the Company of such notice; or (iii) certain events of bankruptcy or insolvency.

The Trustee shall give notice to holders of the Debentures of any continuing default known to the Trustee within 90 days after the occurrence thereof, provided that the Trustee may withhold such notice if it determines in good faith that withholding the notice is in the interests of the holders.

The holders of a majority in aggregate principal amount at maturity of the outstanding Debentures may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided that such direction shall not be in conflict with any law or the Indenture and subject to certain other limitations. Before proceeding to exercise any right or power under the Indenture at the direction of such holders, the Trustee shall be entitled to receive from such holders reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in complying with any such direction. No holder of any Debenture will have any right to pursue any remedy with respect to the Indenture or the Debentures, unless (i) such holder shall have previously given the Trustee written notice of a continuing Event of Default; (ii) the holders of at least 25% in aggregate principal amount at maturity of the outstanding Debentures shall have made a written request to the Trustee to pursue such remedy; (iii) such holder or holders have offered to the Trustee reasonable indemnity satisfactory to the Trustee; (iv) the holders of a majority in aggregate principal amount at maturity of the outstanding Debentures have not given the Trustee a direction inconsistent with such request within 60 days after receipt of such request; and (v) the Trustee shall have failed to comply with the request within such 60-day period.

In the event that the Debentures are declared due and payable prior to their stated maturity by reason of the occurrence of an Event of Default, then the Company is obligated to notify promptly holders of Senior Indebtedness of such acceleration. The Company may not pay monies owed pursuant to the Debentures until 120 days have passed after such acceleration occurs and may thereafter pay the Debentures if the terms of the Indenture otherwise permit payment at that time.

However, the right of any holder (x) to receive payment of the principal amount at maturity, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Fundamental Change Redemption Price and any interest in respect of a default in the payment of any such amounts on a Debenture, on or after the due date expressed in such Debenture, (y) to institute suit for the enforcement of any such payments or conversion or (z) to convert Debentures shall not be impaired or adversely affected without such holder's consent. The holders of at least a majority in aggregate principal amount at maturity of the outstanding Debentures may waive an existing default and its consequences, other than (i) any default in any payment on the Debentures, (ii) any default with respect to the conversion rights of the Debentures or (iii) any default in respect of certain covenants or provisions in the Indenture which may not be modified without the consent of the holder of each Debenture as described in "Modification" below. The Company will be required to furnish to the Trustee annually a statement as to any default by the Company in the performance and observance of its obligations under the Indenture.

Mergers and Sales of Assets by the Company

The Company may not consolidate with or merge into any other person or convey, transfer or lease its properties and assets substantially as an entirety to another person, unless, among other items, (i) the resulting, surviving or transferee person (if other than the Company) is organized and existing under the laws of the United States, any state thereof or the District of Columbia, (ii) such successor person assumes all obligations of the Company under the Debentures and the Indenture and (iii) the Company or such successor person shall not immediately thereafter be in default under the Indenture. Upon the assumption of the Company's obligations by such person in such circumstances, subject to certain exceptions, the Company shall be discharged from all obligations under the Debentures and the Indenture. Certain such transactions which would constitute a Fundamental Change would permit each holder to require the Company to redeem the Debentures of such holder as described under "Redemption at Option of the Holder Upon a Fundamental Change."

Modification

Modification and amendment of the Indenture or the Debentures may be effected by the Company and the Trustee with the consent of the holders of not less than a majority in aggregate principal amount at maturity of the Debentures then outstanding. Notwithstanding the foregoing, no such amendment may, without the consent of each holder affected thereby: (i) reduce the principal amount at maturity, Issue Price, Purchase Price, Fundamental Change Redemption Price or Redemption Price, or extend the stated maturity of any Debenture or alter the manner or rate of accrual of Original Issue Discount or interest, or make any Debenture payable in money or securities other than that stated in the Debenture; (ii) make any change to the principal amount at maturity of Debentures whose holders must consent to an amendment or any waiver under the Indenture or modify the Indenture provisions relating to such amendments or waivers; (iii) make any change that adversely affects the right to convert any Debenture or the right to require the Company to purchase a Debenture or the right to require the Company to redeem a Debenture upon a Fundamental Change; (iv) modify the provisions of the Indenture relating to the subordination of the Debentures in a manner adverse to the holders of the Debentures in any material respect; or (v) impair the right to institute suit for the enforcement of any payment with respect to, or conversion of, the Debentures. The Indenture also provides for certain modifications of its terms without the consent of the holders. No amendment may be made to the subordination provisions of the Indenture that adversely affects the rights of any holder of Senior Indebtedness then outstanding, unless the holders of such Senior Indebtedness (as required pursuant to the terms of such Senior Indebtedness) consent to such change.

Limitations of Claims in Bankruptcy

If a bankruptcy proceeding is commenced in respect of the Company, the claim of the holder of a Debenture is, under Title 11 of the United States Code, limited to the Issue Price of the Debenture plus that portion of the Original Issue Discount that has accrued from the date of issue to the commencement of the proceeding. In addition, the Debentures will be subordinated in right of payment to Senior Indebtedness to the extent set forth in the Indenture and effectively subordinated to the indebtedness and other obligations of the Company's subsidiaries. See "Subordination of Debentures" above.

Taxation of Debentures

See "Certain United States Federal Income Tax Considerations" for a discussion of certain tax considerations relevant to a holder of Debentures.

Rule 144A Information Requirement

The Company has agreed to furnish to the holders or beneficial holders of the Debentures or Common Stock issued upon conversion thereof and prospective purchasers of the Debentures or such Common Stock designated by such holders, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act until such time as such securities are no longer "restricted securities" within the meaning of Rule 144 under the Securities Act (assuming such securities have not been owned by an affiliate of the Company).

Information Concerning the Trustee

The Bank of New York, as Trustee under the Indenture, has been appointed by the Company as paying agent, conversion agent, registrar and custodian with regard to the Debentures. The Indenture provides that, except during the continuance of an Event of Default, the Trustee thereunder will exercise such rights and powers vested in it under the Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

The Indenture and provisions of the Trust Indenture Act of 1939, as amended ("TIA"), incorporated by reference therein contain limitations on the rights of the Trustee thereunder, should it become a creditor of the Company, to obtain payment of certain claims in certain cases or to realize on certain property received by it in respect of any such claims, as security or otherwise. The Trustee is permitted to engage in other transactions; provided, however, that if it acquires any conflicting interest (within the meaning of the TIA) it must eliminate such conflicting interest or resign.

REGISTRATION RIGHTS

A copy of the Registration Rights Agreement will be available from the Trustee upon request by a registered holder of the Debentures. The following summary of certain provisions of the Registration Rights Agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Registration Rights Agreement, including the definitions of certain terms that are not otherwise defined in this Offering Memorandum. The Company will enter into a registration rights agreement with the Initial Purchaser (the "Registration Rights Agreement") pursuant to which the Company, at its expense, will, for the benefit of the holders, file with the Commission the Shelf Registration Statement covering resale of the Registrable Securities as soon as practicable, but in any event within 90 days after the first date of original issuance of the Debentures. The Company will use its best efforts to cause the Shelf Registration Statement to become effective as promptly as is practicable, but in any event within 180 days of such first date of original issuance and to keep the Shelf Registration Statement effective until the earlier of (i) the sale pursuant to the Shelf Registration Statement of all the securities registered thereunder and (ii) the expiration of the holding period applicable to such securities held by persons that are not affiliates of the Company under Rule 144(k) under the Securities Act, or any successor provision, subject to certain permitted exceptions. The Company will be permitted to suspend the use of the prospectus that is a part of the Shelf Registration Statement under certain circumstances relating to pending corporate developments, public filings with the Commission and similar events for a period not to exceed 30 days in any three-month period or not to exceed an aggregate of 90 days in any 12-month period; provided, however, that the Company will be permitted to suspend the use of the prospectus for a period not to exceed 60 days in any 3-month period or 90 days in any 12-month period under certain circumstances relating to probable acquisitions, acquisitions, financings or similar transactions. The Company will agree to pay predetermined liquidated damages as described herein ("Liquidated Damages") to holders of Debentures and holders of Common Stock issued upon conversion of the Debentures if the Shelf Registration Statement is not timely filed or made effective or if the prospectus is unavailable for periods in excess of those permitted above. Such Liquidated Damages shall accrue until such failure to file or become effective or unavailability is cured, (i) in respect of any Debenture, at a rate per annum equal to 0.25% for the first 90 day period after the occurrence of such event and 0.5% thereafter on an amount equal to the sum of the Issue Price of the Debenture plus accrued Original Issue Discount thereon and, (ii) in respect of each share of Common Stock, at a rate per annum equal to 0.25% for the first 90 day period and 0.5% thereafter on the then applicable conversion price for a share of Common Stock which equals the Issue Price of \$1,000 principal amount at maturity of Debentures plus accrued Original Issue Discount thereon divided by the Conversion Rate in effect. A holder who sells Debentures and Common Stock issued upon conversion of the Debentures pursuant to the Shelf Registration Statement generally will be required to be named as a selling stockholder in the related prospectus, deliver a prospectus to purchasers of such Debentures and/or Common Stock issued upon conversion thereof and be bound by certain provisions of the Registration Rights Agreement that are applicable to such holder (including certain indemnification provisions). The Company will pay all expenses of the Shelf Registration Statement, provide to each registered holder copies of such prospectus, notify each registered holder when the Shelf Registration Statement has become effective and take certain other actions as are required to permit, subject to the foregoing, unrestricted resales of the Debentures and the Common Stock issued upon conversion of the Debentures. The plan of distribution of the Shelf Registration Statement will permit resales of Registrable Securities by selling security holders through brokers and dealers.

Attached to this Offering Memorandum as Appendix B is a notice and questionnaire (the "Questionnaire") to be completed and delivered by a holder to the Company at least three business days prior to any intended distribution of Registrable Securities pursuant to the Shelf Registration Statement. Holders are required to complete and deliver the Questionnaire prior to the effectiveness of the Shelf Registration Statement so that such holders may be named as selling stockholders in the related prospectus at the time of effectiveness. Upon receipt of such a completed Questionnaire, together with such other information as may be reasonably requested by the Company, from a holder following the effectiveness of the Shelf Registration Statement, the Company will, as

promptly as practicable but in any event within five business days of such receipt, file such amendments to the Shelf Registration Statement or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Registrable Securities (subject to the Company's right to suspend the use of the prospectus as described above). The Company has agreed to pay Liquidated Damages in the amount set forth above to such holder if the Company fails to make such filing in the time required or, if such filing is a post-effective amendment to the Shelf Registration Statement required to be declared effective under the Securities Act, if such amendment is not declared effective within 45 days of the filing thereof. Any holder that does not complete and deliver a Questionnaire or provide such other information will not be named as a selling stockholder in the prospectus and therefore will not be permitted to sell any Registrable Securities pursuant to the Shelf Registration Statement.

DESCRIPTION OF CAPITAL STOCK

The Company's authorized capital stock consists of 200,000,000 shares of Common Stock, par value \$.01 per share and 2,000,000 shares of preferred stock, par value \$.01 per share.

Common Stock

As of February 27, 1998, there were 86,457,201 shares of Common Stock outstanding. Each share of Common Stock has one vote on all matters upon which stockholders are entitled or permitted to vote, including the election of directors. There are no cumulative voting rights. Shares of Common Stock would participate ratably in any distribution of assets in a liquidation, dissolution or winding up of the Company, subject to prior distribution rights of any shares of preferred stock then outstanding. The Common Stock has no preemptive rights or conversion rights nor are there any redemption or sinking fund provisions applicable to the Common Stock. Holders of Common Stock are entitled to participate in dividends as and when declared by the Company's Board of Directors out of funds legally available therefor. The Company's ability to pay cash dividends is subject to certain restrictions. The Company expects that the New Credit Facility will contain limitations on the ability of the Company to pay dividends. The Company's Proxy Statement for its next annual meeting which is scheduled for May 13, 1998, includes an amendment to the Company's Restated Certificate of Incorporation increasing the total number of authorized shares of Common Stock to 500,000,000 shares from 200,000,000 shares.

The transfer agent and registrar for the Common Stock is The Bank of New York.

Preferred Stock

There are no shares of preferred stock currently outstanding. The Certificate of Incorporation provides that the Board of Directors of the Company may authorize the issuance of one or more series of preferred stock having such rights, including voting, conversion and redemption rights, and such preferences, including dividend and liquidation preferences, as the Board may determine without any further action by the stockholders of the Company.

Delaware General Corporation Law Section 203

Section 203 of the Delaware General Corporation Law (the "DGCL") prohibits certain transactions between a Delaware corporation and an "interested stockholder," which is defined as a person who, together with any affiliate and/or associates of such person, beneficially owns, directly or indirectly, 15% or more of the outstanding voting shares of a Delaware corporation. This provision prohibits certain business combinations (defined broadly to include mergers, consolidations, sales or other dispositions of assets having an aggregate value in excess of 10% of the consolidated assets of the corporation or the aggregate value of all of the outstanding capital stock of the corporation, and certain transactions that would increase the interested stockholder's proportionate share ownership in the corporation) between an interested stockholder and a corporation for a period of three years after the date the interested stockholder acquired its stock, unless (i) the business combination is approved by the corporation's board of directors prior to the date the interested stockholder acquired shares, (ii) the interested stockholder acquired at least 85% of the voting stock of the corporation in the transaction in which it became an interested stockholder or (iii) the business combination is approved by a majority of the board of directors and by the affirmative vote of two-thirds of the votes entitled to be cast by disinterested stockholders at an annual or special meeting. Any future election to opt out of Section 203 can be effected only by an amendment to the Certificate of Incorporation or the Bylaws. Any such election would not be effective until 12 months after the adoption of such amendment and would not apply to a business combination with any interested stockholder who became such on or prior to the date of adoption.

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain material U.S. federal income tax considerations relating to the purchase, ownership and disposition of the Debentures and Common Stock to a holder of a Debenture or Common Stock that is, for U.S. federal income tax purposes, (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, (iii) an estate, the income of which is subject to United States federal income taxation regardless of its source, or (iv) a trust, the administration of which is subject to the primary supervision of a court within the United States and which has one or more United States persons with authority to control all substantial decisions. This summary is based on laws, regulations, rulings and decisions now in effect, all of which are subject to change, possibly with retroactive effect. There can be no assurance that the Internal Revenue Service (the "IRS") will not challenge one or more of the tax consequences described herein, and the Company has not obtained, nor does it intend to obtain, a ruling from the IRS or an opinion of counsel as to any U.S. federal income tax consequences relating to the Debentures.

This summary deals only with holders of Debentures who purchase the Debentures pursuant to the Offering and hold the Debentures and any Common Stock into which the Debentures are converted as capital assets. This summary does not address tax considerations applicable to investors that may be subject to special tax rules (including, without limitation, banks, insurance companies, tax-exempt entities, regulated investment companies, common trust funds, dealers in securities, or persons who hold Debentures or Common Stock as part of a hedge conversion or constructive sale transaction, straddle or other risk reduction transaction). This discussion also does not address the tax consequences arising under the laws of any foreign, state or local jurisdiction.

INVESTORS CONSIDERING THE PURCHASE OF A DEBENTURE SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF ACQUIRING, HOLDING, CONVERTING OR OTHERWISE DISPOSING OF THE DEBENTURES AND COMMON STOCK, INCLUDING THE EFFECT AND THE APPLICABILITY OF STATE, LOCAL OR FOREIGN TAX LAWS.

Original Issue Discount on the Debentures. The Debentures are being issued at a substantial discount from their stated redemption price at maturity. For U.S. federal income tax purposes, the excess of the stated redemption price at maturity of each Debenture over its issue price (which is expected to be the Issue Price) constitutes Original Issue Discount ("OID"). The issue price of the Debentures will equal the initial price at which a substantial amount of the Debentures is sold for cash (other than to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers), and the stated redemption price at maturity of a Debenture will be the sum of all payments due under the Debenture (which is expected to be the principal amount at maturity).

For U.S. federal income tax purposes, each holder of a Debenture must include in gross income a portion of the OID in each taxable year during which the Debenture is held in an amount equal to the OID that accrues on the Debenture during such period, determined by using a constant yield to maturity method. The OID included in income for each year will be calculated under a compounding formula that will result in the allocation of less OID to the earlier years of the term of the Debenture and more OID to later years. For the approximate cumulative total amount of OID accrued annually, see the chart under "Description of Debentures—Redemption of Debentures at the Option of the Company." Any amount included in income as OID will increase a holder's tax basis in the Debenture.

Sale, Exchange or Retirement of the Debentures. A holder's tax basis for determining gain or loss on the sale or other disposition of a Debenture will generally equal the holder's cost of the Debenture increased by any accrued OID includible in such holder's gross income and reduced by payments, if any. Except as described in the next paragraph, upon the sale, exchange or retirement of a Debenture, a holder will recognize gain or loss equal to the difference between the amount realized on the sale or other disposition of the Debenture and the

holder's tax basis in such Debenture. Gain or loss realized on the sale, exchange or retirement of a Debenture will generally be capital gain or loss and will be long-term capital gain or loss if the Debenture is held for more than one year.

If a holder elects to exercise its option to cause the Company to purchase its Debentures on a Purchase Date and the Company issues Common Stock in satisfaction of all of the Purchase Price, the exchange of the Debentures for Common Stock should generally not be a taxable event (except with respect to cash received in lieu of a fractional share). A holder's tax basis in the Common Stock received in such exchange of a Debenture should be the same as the holder's tax basis in the Debenture at the time of the conversion (except for any tax basis allocable to a fractional share) and the holding period for the Common Stock received in such exchange should include the holding period of the Debenture exchanged. If the Purchase Price is paid with a combination of Common Stock and cash, gain (but not loss) realized by the holder should be recognized, but only to the extent of the cash received (including cash received in lieu of a fractional share). A holder's tax basis in the Common Stock received should be the same as such holder's tax basis in the Debenture at the time of the conversion (except for any portion allocable to a fractional share of Common Stock), increased by the amount of gain recognized (other than with respect to a fractional share) and decreased by the amount of any cash received (except cash received in lieu of a fractional share). The holding period for Common Stock received in the exchange should include the holding period of the Debenture tendered to the Company in exchange therefor. The receipt of cash in lieu of a fractional share of Common Stock should generally result in capital gain or loss, measured by the difference between the amount of cash received for the fractional share and the holder's tax basis in the fractional share interest.

Conversion of Debentures. A holder's conversion of a Debenture into Common Stock will generally not be a taxable event (except with respect to cash received in lieu of a fractional share). A tax basis in the Common Stock received on conversion of a Debenture will be the same as the holder's tax basis in the Debenture at the time of conversion (except for any tax basis allocable to a fractional share) and the holding period for the Common Stock received on conversion will include the holding period of the Debenture converted, except that it is possible that the Internal Revenue Service may argue that the holding period of the Common Stock allocable to OID will commence on the date of the conversion and a holder would be required to hold such Common Stock for more than twelve months before long-term capital gain (or loss) treatment could be obtained upon a sale of such Common Stock. The receipt of cash in lieu of a fractional share of Common Stock should generally result in capital gain or loss, measured by the difference between the cash received for the fractional share interest and the holder's tax basis in the fractional share interest.

Dividends; Adjustment of Conversion Price. Dividends, if any, paid on the Common Stock generally will be includible in the income of a holder as ordinary income to the extent of the Company's current or accumulated earnings and profits.

If at any time the Company makes a distribution of property to shareholders that would be taxable to such shareholders as a dividend for federal income tax purposes (for example, distributions of evidences of indebtedness or assets of the Company, but generally not stock dividends or rights to subscribe for Common Stock) and, pursuant to the anti-dilution provisions of the Indenture, the Conversion Rate of the Debentures is increased, such increase may be deemed to be the payment of a taxable dividend to holders of Debentures. If the Conversion Rate is increased at the discretion of the Company or in certain other circumstances, such increase may also be deemed to be the payment of a taxable dividend to holders of Debentures. Moreover, in certain other circumstances, the absence of such an adjustment to the Conversion Rate of the Debentures may result in a taxable dividend to holders of the Common Stock.

Sale of Common Stock. Upon the sale or exchange of Common Stock, holders generally will recognize capital gain or capital loss equal to the difference between the amount realized on such sale or exchange and the holder's adjusted tax basis in such shares.

PLAN OF DISTRIBUTION

Under the terms and subject to the conditions set forth in the Purchase Agreement between the Company and Morgan Stanley & Co. Incorporated (the "Initial Purchaser") dated March 19, 1998 (the "Purchase Agreement"), the Initial Purchaser has agreed to purchase, and the Company has agreed to sell to the Initial Purchaser, \$2,014,000,000, aggregate principal amount at maturity of Debentures at a purchase price of 37.243% of the principal amount at maturity thereof. After the initial offering of the Debentures, the offering price and other selling terms may from time to time be varied by the Initial Purchaser.

The Purchase Agreement provides that the obligation of the Initial Purchaser to pay for and accept delivery of the Debentures is subject to approval of certain legal matters by its counsel and to certain other conditions. The Initial Purchaser is obligated to take and pay for all of the Debentures offered hereby if any are taken (other than the Debentures covered by the over-allotment option described below).

The Company has granted to the Initial Purchaser an option, exercisable within 30 days of the date of the Purchase Agreement, to purchase up to an additional \$302,100,000 aggregate principal amount at maturity of the Debentures solely for the purpose of covering over-allotments, if any.

The Purchase Agreement provides that the Company will indemnify the Initial Purchaser against certain liabilities, including liabilities under the Securities Act.

The Company has been advised by the Initial Purchaser that the Initial Purchaser proposes to resell the Debentures initially at the price set forth on the cover page hereof to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) in reliance on Rule 144A under the Securities Act and to a limited number of other institutional "accredited investors" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act, that agree in writing to comply with the transfer restrictions and other conditions set forth in the Purchase Agreement. See "Transfer Restrictions."

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except as described in the immediately preceding paragraph.

The Debentures are eligible for trading in The Portal Market. The Initial Purchaser has advised the Company that it presently intends to make a market in the Debentures as permitted by applicable laws and regulations. The Initial Purchaser is not obligated, however, to make a market in the Debentures and any such market making may be discontinued at any time at the sole discretion of the Initial Purchaser. Accordingly, no assurance can be given as to the liquidity of, or trading markets for, the Debentures.

The Company and the directors and current executive officers referred to under "Security Ownership of Management" will agree that they will not (a) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or (b) enter into any swap or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, for a 90-day period after the date of this Offering Memorandum, without the prior written consent of Morgan Stanley & Co. Incorporated, other than (i) the Debentures offered hereby, (ii) the Common Stock issuable upon conversion of the Debentures, (iii) securities of the Company (and the agreement to provide such securities) as full or partial consideration in connection with any future acquisitions or strategic investments by the Company or securities of the Company issuable upon exercise or conversion of the foregoing securities; provided that the market value of such securities does not exceed \$500 million in the aggregate, (iv) options granted or stock issued upon the exercise of outstanding stock options or otherwise pursuant to the Company's stock option or employee stock purchase plans or other executive compensation arrangements existing at the date of this Offering Memorandum and (v) in connection with the acquisition of CLN Holdings and Coleman.

In order to facilitate the offering of the Debentures and the Common Stock, the Initial Purchaser may engage in transactions that stabilize, maintain or otherwise affect the price of the Debentures or the Common Stock.

Specifically, the Initial Purchaser may over-allot in connection with the offering, creating a short position in the Debentures for its own account. In addition, to cover over-allotments or stabilize the price of the Debentures and the Common Stock, the Initial Purchaser may bid for, and purchase, the Debentures or shares of the Common Stock in the open market. Finally, the Initial Purchaser may reclaim selling concessions allowed to dealers for distributing the Debentures in the offering, if the Initial Purchaser repurchases previously distributed Debentures in transactions to cover short positions established by the Initial Purchaser, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the Debentures or the Common Stock above independent market levels. The Initial Purchaser is not required to engage in these activities, and may discontinue any of these activities at any time.

The Initial Purchaser has performed various investment banking and other services for the Company in the past, and may do so from time to time in the future. In particular, the Initial Purchaser is acting as the Company's financial advisor in connection with the Acquisitions. In addition, an affiliate of the Initial Purchaser is arranging the New Credit Facility and expects to be a lender thereunder.

TRANSFER RESTRICTIONS

The Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act. The Debentures and Common Stock issuable upon conversion of the Debentures may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except (i) in compliance with the registration requirements of the Securities Act and all other applicable securities laws, or (ii) pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any other applicable securities laws. Accordingly, the Debentures are being offered and sold only (1) to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) ("QIBs") in compliance with Rule 144A and (2) to a limited number of other institutional "accredited investors" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) ("Institutional Accredited Investors") that, prior to their purchases of Debentures, deliver to the Initial Purchaser a letter attached hereto as Appendix A, which contains certain representations and agreements.

Each purchaser of Debentures will be deemed to (1) represent that it is purchasing the Debentures for its own account or an account with respect to which it exercises sole investment discretion, and that it or such account is a QIB, or an institutional accredited investor, (2) acknowledge that the Debentures and the Common Stock issuable upon conversion of the Debentures have not been registered under the Securities Act, and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except as set forth below, (3) agree that if it should resell or otherwise transfer the Debentures or the Common Stock issuable upon conversion of the Debentures within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), it will do so within the United States or to, or for the account or benefit of, U.S. persons only (a) to the Company or any subsidiary thereof, (b) to a QIB in compliance with Rule 144A, (c) to an institutional accredited investor that, prior to such transfer, furnishes to the Trustee, as registrar for the Debentures (or in the case of the Common Stock, the transfer agent for the Common Stock (the "Transfer Agent")), a signed letter containing certain representations and agreements relating to the restrictions on transfer of the Debentures (or the Common Stock, as the case may be) (the form of which letter can be obtained from the Trustee for the Debentures or the Transfer Agent for the Common Stock), (d) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (e) pursuant to a registration statement which has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), and (4) agree that it will give each person to whom it transfers such Debentures or Common Stock issuable on conversion of the Debentures notice of any restrictions on transfer of such Debentures and such Common Stock. Each institutional accredited investor (other than a QIB) that is an original purchaser of the Debentures will be required to sign an agreement to the foregoing effect in the form attached hereto as Appendix A. In the case of any certificated Debentures, prior to any proposed transfer of Debentures within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the holders thereof must check the appropriate box set forth on the certificate representing the Debentures relating to the manner of such transfer and submit the certificate representing the Debentures to the Trustee. If (i) such transfer is to an institutional accredited investor or (ii) any holder proposes to transfer Common Stock issued upon conversion of Debentures

in either case prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the holder (or beneficial holder, as the case may be) will be required to furnish to the Trustee (or, in the case of the Common Stock, the Transfer Agent) such certifications, legal opinions or other information as it may reasonably require to confirm that the proposed transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Each certificate representing a Debenture will bear the following legend (unless such Debenture has been sold pursuant to a registration statement that has been declared effective under the Securities Act):

THE DEBENTURE EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (I) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) ("INSTITUTIONAL ACCREDITED INVESTOR"); (2) AGREES THAT IT WILL NOT, PRIOR TO EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), RESELL OR OTHERWISE TRANSFER THE DEBENTURE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH DEBENTURES WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OF, U.S. PERSONS EXCEPT (A) TO SUNBEAM CORPORATION OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE DEBENTURE EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM SUCH TRUSTEE OR A SUCCESSOR TRUSTEE, AS APPLICABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (3) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (4) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE DEBENTURES EVIDENCED HEREBY ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE DEBENTURE EVIDENCED HEREBY PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFEREE IS AN INSTITUTIONAL ACCREDITED INVESTOR OR IS A PURCHASER WHO IS NOT A U.S. PERSON, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS IT MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE DEBENTURE

EVIDENCED HEREBY PURSUANT TO CLAUSE 2(E) ABOVE OR UPON ANY TRANSFER OF THE DEBENTURE EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "UNITED STATES PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

Each stock certificate representing Common Stock issued upon conversion of the Debenture will bear the following legend (unless such Common Stock has been sold pursuant to a registration statement that has been declared effective under the Securities Act):

THE COMMON STOCK EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF AGREES THAT UNTIL THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), (1) IT WILL NOT RESELL OR OTHERWISE TRANSFER THE COMMON STOCK EVIDENCED HEREBY WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OF, U.S. PERSONS EXCEPT (A) TO SUNBEAM CORPORATION OR ANY SUBSIDIARY THEREOF, (B) TO A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A, (C) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT) THAT PRIOR TO SUCH TRANSFER, FURNISHES TO THE BANK OF NEW YORK AS TRANSFER AGENT (OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM SUCH TRANSFER AGENT OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (2) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK AS TRANSFER AGENT (OR A SUCCESSOR TRANSFER AGENT, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) IT WILL DELIVER TO EACH PERSON TO WHOM THE COMMON STOCK EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY PURSUANT TO CLAUSE 1(E) ABOVE OR UPON ANY TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY AFTER THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "UNITED STATES PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

LEGAL MATTERS

Certain legal matters will be passed upon for the Company by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York and for the Initial Purchaser by Davis Polk & Wardwell, New York, New York.

INDEPENDENT AUDITORS

The consolidated financial statements of Sunbeam Corporation and its subsidiaries, included in this Offering Memorandum, have been audited by Arthur Andersen LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Arthur Andersen LLP.

The consolidated financial statements of CLN Holdings and its subsidiaries, included in this Offering Memorandum, have been audited by Ernst & Young LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Ernst & Young LLP.

The consolidated financial statements of Signature Brands USA, Inc. and its subsidiaries, included in this Offering Memorandum, have been audited by KPMG Peat Marwick LLP, independent certified public accountants to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of KPMG Peat Marwick LLP, independent certified public accountants.

The consolidated financial statements of First Alert, Inc. and its subsidiaries, included in this Offering Memorandum, have been audited by Price Waterhouse LLP to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Price Waterhouse LLP.

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INDEX TO FINANCIAL STATEMENTS

	<u>Page</u>
Sunbeam Corporation	
Report of Independent Certified Public Accountants	F-2
Consolidated Statements of Operations for the Fiscal Years Ended December 28, 1997, December 29, 1996 and December 31, 1995	F-3
Consolidated Balance Sheets as of December 28, 1997 and December 29, 1996	F-4
Consolidated Statements of Shareholders' Equity for the Fiscal Years Ended December 28, 1997, December 29, 1996 and December 31, 1995	F-5
Consolidated Statements of Cash Flows for the Fiscal Years Ended December 28, 1997, December 29, 1996 and December 31, 1995	F-6
Notes to Consolidated Financial Statements	F-7
CLN Holdings Inc.	
Report of Independent Auditors	F-26
Consolidated Balance Sheets as of December 31, 1997 and December 31, 1996	F-27
Consolidated Statements of Operations for the Years ended December 31, 1997, December 31, 1996 and December 31, 1995	F-28
Consolidated Statements of Stockholder's Deficit for the Years Ended December 31, 1997, December 31, 1996 and December 31, 1995	F-29
Consolidated Statements of Cash Flows for the Years Ended December 31, 1997, December 31, 1996 and December 31, 1995	F-30
Notes to Consolidated Financial Statements	F-31
Signature Brands USA, Inc.	
Independent Auditors' Report	F-55
Consolidated Balance Sheets as of September 28, 1997 and September 29, 1996	F-56
Consolidated Statements of Operations for the Years ended September 28, 1997, September 29, 1996 and October 1, 1995	F-57
Consolidated Statements of Stockholders' Equity for the Years Ended September 28, 1997, September 29, 1996 and October 1, 1995	F-58
Consolidated Statements of Cash Flows for the Years Ended September 28, 1997, September 29, 1996 and October 1, 1995	F-59
Notes to Consolidated Financial Statements	F-60
Unaudited Consolidated Balance Sheets as of December 28, 1997 and September 28, 1997	F-70
Unaudited Consolidated Statements of Operations for the thirteen weeks ended December 28, 1997 and December 29, 1996	F-71
Unaudited Consolidated Statements of Cash Flows for the thirteen weeks Ended December 28, 1997 and December 29, 1996	F-72
Notes to Unaudited Consolidated Financial Statements	F-73
First Alert, Inc.	
Report of Independent Accountants	F-75
Consolidated Balance Sheets as of December 31, 1997 and December 31, 1996	F-76
Consolidated Statements of Operations for the Fiscal Years ended December 31, 1997, December 31, 1996 and December 31, 1995	F-77
Consolidated Statements of Cash Flows for the Fiscal Year ended December 31, 1997, December 31, 1996 and December 31, 1995	F-78
Consolidated Statements of Shareholders' Equity for the Fiscal Years Ended December 31, 1997, December 31, 1996 and December 31, 1995	F-79
Notes to Consolidated Financial Statements	F-80

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Shareholders of
Sunbeam Corporation:

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

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

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

ARTHUR ANDERSEN LLP

Fort Lauderdale, Florida,

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

SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands, except per share amounts)

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

See Notes to Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(Dollars in thousands)

	December 28, 1997	December 29, 1996
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 52,378	\$ 11,326
Receivables, net	295,550	213,438
Inventories	256,180	162,252
Net assets of discontinued operations and other assets held for sale	—	102,847
Deferred income taxes	36,706	93,689
Prepaid expenses and other current assets	17,191	40,411
Total current assets	658,005	624,163
Property, plant and equipment, net	240,897	220,088
Trademarks and trade names, net	194,372	200,262
Other assets	27,010	28,196
	<u>\$1,120,284</u>	<u>\$1,072,709</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Short-term debt and current portion of long-term debt	\$ 668	\$ 921
Accounts payable	105,580	107,319
Restructuring accrual	10,938	63,834
Other current liabilities	80,913	99,509
Total current liabilities	198,099	271,583
Long-term debt	194,580	201,115
Other long-term liabilities	141,109	152,451
Deferred income taxes	54,559	52,308
Commitments and contingencies (Note 12)		
Shareholders' equity:		
Preferred stock (2,000,000 shares authorized, none outstanding)	—	—
Common stock (issued 89,984,425 and 88,441,479 shares)	900	884
Paid-in capital	483,384	447,948
Retained earnings	141,134	35,118
Other	(30,436)	(25,310)
	594,982	458,640
Treasury stock, at cost (4,454,394 and 4,478,814 shares)	(63,045)	(63,388)
Total shareholders' equity	<u>531,937</u>	<u>395,252</u>
	<u>\$1,120,284</u>	<u>\$1,072,709</u>

See Notes to Consolidated Financial Statements.

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

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

See Notes to Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)

	Fiscal Years Ended		
	December 28, 1997	December 29, 1996	December 31, 1995
Operating activities:			
Net earnings (loss)	\$ 109,415	\$ (228,262)	\$ 50,511
Adjustments to reconcile net earnings (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	38,577	47,429	44,174
Restructuring, impairment and other costs	—	154,869	—
Other non-cash special charges	—	128,800	—
Loss on sale of discontinued operations, net of taxes	13,713	32,430	—
Deferred income taxes	57,783	(77,828)	25,146
Increase (decrease) in cash from changes in working capital:			
Receivables, net	(84,576)	(13,829)	(4,499)
Inventories	(100,810)	(11,651)	(4,874)
Accounts payable	(1,585)	14,735	9,245
Restructuring accrual	(43,378)	—	—
Prepaid expenses and other current assets and liabilities	(9,004)	2,737	(8,821)
Income taxes payable	52,844	(21,942)	(18,452)
Payment of other long-term and non-operating liabilities	(14,682)	(27,089)	(21,719)
Other, net	(26,546)	13,764	10,805
Net cash provided by (used in) operating activities	(8,249)	14,163	81,516
Investing activities:			
Capital expenditures	(58,258)	(75,336)	(140,053)
Decrease in investments restricted for plant construction	—	—	45,755
Proceeds from sale of divested operations and other assets	90,982	—	—
Purchase of businesses	—	—	(13,653)
Other, net	—	(860)	—
Net cash provided by (used in) investing activities	32,724	(76,196)	(107,351)
Financing activities:			
Net borrowings under revolving credit facility	5,000	30,000	40,000
Issuance of long-term debt	—	11,500	—
Payments of debt obligations	(12,157)	(1,794)	(5,417)
Proceeds from exercise of stock options	26,613	4,684	9,818
Purchase of common stock for treasury	—	—	(13,091)
Sale of treasury stock	—	4,578	—
Payments of dividends on common stock	(3,399)	(3,318)	(3,268)
Other financing activities	320	(364)	(264)
Net cash provided by financing activities	16,377	45,286	27,778
Net increase (decrease) in cash and cash equivalents	40,852	(16,747)	1,943
Cash and cash equivalents at beginning of year	11,526	28,273	26,330
Cash and cash equivalents at end of year	<u>\$ 52,378</u>	<u>\$ 11,526</u>	<u>\$ 28,273</u>

See Notes to Consolidated Financial Statements.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Operations and Significant Accounting Policies

Organization

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

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

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

Principles of Consolidation

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

Presentation of Fiscal Periods

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

Use of Estimates

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

Concentrations of Credit Risk

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

Inventories

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

Property, Plant and Equipment

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

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

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

Long-lived Assets

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

Capitalized Interest

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

Amortization Periods

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

Revenue Recognition

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

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

Warranty Costs

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

Advertising Costs

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

Foreign Currency Translation

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

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

Stock-Based Compensation Plans

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

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

Earnings Per Share of Common Stock

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

1. Operations and Significant Accounting Policies—(Continued)

Reclassification

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

New Accounting Standards

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

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

2. Shareholders' Equity

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

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

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

2. Shareholders' Equity—(Continued)

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

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

3. Credit Facilities and Long-Term Debt

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

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

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

The aggregate annual principal payments on long-term debt, excluding amounts outstanding under the Credit Agreement, due in each of the years 1998-2002, are \$5.7 million, \$7.5 million, \$7.6 million, \$7.6 million and \$7.7 million, respectively.

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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

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

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

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

4. Financial Instruments

Fair Value of Financial Instruments

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

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

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

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

Derivative Financial Instruments

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

4. Financial Instruments—(Continued)

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

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

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

5. Employee Stock Options and Awards

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

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

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

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

	1997	1996	1995
Net earnings/(loss)			
As reported	\$109,415	\$(228,262)	\$50,511
Pro forma	\$ 94,887	\$(238,186)	\$49,731
Diluted earnings/(loss) per share			
As reported	\$ 1.25	\$ (2.75)	\$ 0.61
Pro forma	\$ 1.06	\$ (2.87)	\$ 0.60

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

5. Employee Stock Options and Awards—(Continued)

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

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

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

5. Employee Stock Options and Awards—(Continued)

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

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

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

6. Employee Benefit Plans

Retirement Plans

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

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Employee Benefit Plans—(Continued)

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

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

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

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

Other Postretirement Benefits

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

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

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

	<u>1997</u>	<u>1996</u>
Accumulated postretirement benefit obligation	\$14,220	\$14,555
Plan assets	—	—
Accumulated postretirement benefit obligation in excess of plan assets	14,220	14,555
Unrecognized reduction in prior service cost	15,934	18,877
Unrecognized net gain	340	95
Accrued postretirement benefit obligation recognized on the balance sheet	<u>\$30,394</u>	<u>\$33,527</u>

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Employee Benefit Plans—(Continued)

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

Defined Contribution Plans

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

7. Supplementary Financial Statement Data

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Supplementary Financial Statement Data—(Continued)

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

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

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

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

Non-cash Transactions

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

8. Restructuring, Impairment and Other Costs

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

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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

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

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

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

9. Discontinued Operations and Other Assets Held For Sale

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

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Income Taxes

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

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

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

	1997	1996	1995
Current:			
Federal	\$ 3,420	\$ (28,567)	\$ (1,329)
State	3,266	(202)	(1,402)
Foreign	1,683	707	626
	<u>8,369</u>	<u>(28,062)</u>	<u>(2,105)</u>
Deferred:			
Federal	49,513	(65,833)	23,127
State	3,962	(11,050)	1,962
Foreign	4,308	(945)	57
	<u>\$7,783</u>	<u>(77,828)</u>	<u>25,146</u>
	<u>\$66,152</u>	<u>\$ (105,890)</u>	<u>\$23,041</u>

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

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

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Income Taxes—(Continued)

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

11. Customer and Geographic Data

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

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

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

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Commitments and Contingencies

Environmental Matters

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

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

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

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

Leases

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Commitments and Contingencies—(Continued)

Certain Debt Obligations

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

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

Litigation

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

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

Product Liability Matters

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

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

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

SUNBEAM CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

13. Unaudited Quarterly Financial Data

FISCAL 1997(a)

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	\$253.5	\$287.6	\$289.0	\$338.1
Gross profit	67.7	74.5	88.8	99.5
Operating earnings	34.7	43.0	54.9	66.8
Earnings from continuing operations	20.6	26.2	34.6	41.7
Basic earnings per share from continuing operations	\$.24	\$.31	\$.41	\$.49
Diluted earnings per share from continuing operations .....	.24	.30	.39	.47
Earnings from discontinued operations, net of taxes	—	—	—	—
Loss on sale of discontinued operations, net of taxes	(13.7)	—	—	—
Net earnings	6.8	26.2	34.6	41.8
Basic earnings per share(c) .....	.08	.31	.41	.49
Diluted earnings per share(c) .....	.08	.30	.39	.47
Market price for common stock				
—high	\$ 34½	\$ 40¼	\$ 45¼	\$ 50½
—low	24¾	29¼	35¾	37
Dividends paid	\$.01	\$.01	\$.01	\$.01

FISCAL 1996(a)

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(Dollars in millions, except per share data)			
Net sales	\$229.7	\$253.9	\$231.8	\$268.8
Gross profit (loss)	48.1	47.2	28.8	(40.5)
Operating earnings (loss)	15.5	9.2	(20.7)	(289.2)(b)
Earnings (loss) from continuing operations	6.7	2.8	(15.8)	(190.4)
Basic earnings (loss) per share from continuing operations	\$.08	\$.03	\$ (.19)	\$ (2.29)
Diluted earnings (loss) from continuing operations .....	.08	.03	(.19)	(2.29)
Earnings (loss) from discontinued operations, net of taxes	10.7	4.4	(2.3)	(12.0)
Loss on sale of discontinued operations, net of taxes	—	—	—	(32.4)
Net earnings (loss)	17.4	7.2	(18.1)	(234.8)
Basic earnings (loss) per share(c) .....	.21	.09	(.22)	(2.83)
Diluted earnings (loss) per share(c) .....	.21	.09	(.22)	(2.83)
Market price for common stock				
—high	\$ 19¼	\$ 17½	\$ 24¼	\$ 29½
—low	15¼	13½	12¼	22¼
Dividends paid	\$.01	\$.01	\$.01	\$.01

(a) Each quarter consists of a 13-week period.

(b) Refer to Notes 8 and 9 regarding the Company's 1996 restructuring and growth plan.

(c) Reflects the adoption of SFAS No. 128, *Earnings Per Share*.

14. Subsequent Events

New Employment Agreements

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

SUNBEAM CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

14. Subsequent Events—(Continued)

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

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

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

Pending Acquisitions

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

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

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

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

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

REPORT OF INDEPENDENT AUDITORS

The Board of Directors and Stockholder
CLN Holdings Inc.

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

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

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

/s/ Ernst & Young LLP

Wichita, Kansas
February 18, 1998

CLN HOLDINGS INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)

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

See Notes to Consolidated Financial Statements

F-27

CLN HOLDINGS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands)

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

See Notes to Consolidated Financial Statements

F-28

CLN HOLDINGS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDER'S DEFICIT
(In thousands, except share data)

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

See Notes to Consolidated Financial Statements

F-29

CLN HOLDINGS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

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

See Notes to Consolidated Financial Statements

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except share data)

1. Significant Accounting Policies

Background:

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

Principles of Consolidation:

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

Cash and Cash Equivalents:

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

Inventories:

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

Property, Plant and Equipment:

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

1. Significant Accounting Policies—(Continued)

Intangible Assets:

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

Revenue Recognition:

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

Research and Development:

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

Advertising and Promotion Expense:

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

Insurance Programs:

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

Foreign Currency Translation:

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

Derivative Financial Instruments:

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

1. Significant Accounting Policies—(Continued)

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

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

Credit Risk:

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

Fair Value of Financial Instruments:

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

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

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

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

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

1. Significant Accounting Policies—(Continued)

Stock-Based Compensation:

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

Reclassifications:

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

Use of Estimates:

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

Recently Issued Accounting Standards:

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

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

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

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

2. Acquisitions and Divestitures

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

2. Acquisitions and Divestitures—(Continued)

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

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

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

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

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

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

2. Acquisitions and Divestitures—(Continued)

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

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

3. Restructuring and Other Charges

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

3. Restructuring and Other Charges—(Continued)

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

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

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

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

4. Inventories

Inventories consisted of the following:

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

5. Property, Plant and Equipment, Net

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

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

6. Accrued Expenses

Accrued expenses consisted of the following:

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

7. Other Liabilities

Other liabilities consisted of the following:

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

8. Short-Term Borrowings

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

9. Long-Term Debt

Long-term debt consisted of the following:

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

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

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

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

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

9. Long-Term Debt—(Continued)

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

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

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

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

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

9. Long-Term Debt—(Continued)

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

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

9. Long-Term Debt—(Continued)

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

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

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

10. Derivative Financial Instruments

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

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

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

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

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

10. Derivative Financial Instruments—(Continued)

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

11. Taxes

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

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

11. Taxes—(Continued)

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

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

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

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

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

11. Taxes—(Continued)

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

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

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

12. Related Party Transactions

Capital Contributions

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

Insurance Programs

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

Services Agreement

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

Management Agreement

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

12. Related Party Transactions—(Continued)

Licensing Agreement

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

Other

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

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

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

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

13. Employee Benefit Plans

Pension Plans

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

13. Employee Benefit Plans—(Continued)

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

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

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

Net pension expense includes the following components:

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

13. Employee Benefit Plans—(Continued)

Savings Plan:

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

Retiree Health Care and Life Insurance:

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

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

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

Net periodic postretirement benefit expense includes the following components:

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

13. Employee Benefit Plans—(Continued)

Stock Option Plans:

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

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

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

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

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

F49

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(In thousands, except share data)

13. Employee Benefit Plans—(Continued)

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

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

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

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

14. Commitments and Contingencies

Leases:

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

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

Environmental Matters:

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

14. Commitments and Contingencies—(Continued)

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

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

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

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

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

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

Other:

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

15. Significant Customers

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

16. Cash Flow Reporting

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

17. Geographic Segments

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

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

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

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

(a) Includes restructuring and other charges of \$21,025 in 1997 and \$49,257 in 1996.

(b) Includes restructuring and other charges of \$114 in 1997 and \$20,002 in 1996.

(c) Includes restructuring and other charges of \$4,151 in 1997 and \$4,941 in 1996; and \$12,289 of asset impairment charges in 1995.

(d) Includes restructuring and other charges of \$11,129 in 1997.

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

18. Quarterly Financial Summaries (Unaudited)

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

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

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

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

19. Impact of Year 2000 (Unaudited)

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

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

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

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

CLN HOLDINGS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(In thousands, except share data)

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

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

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

20. Subsequent Event (Unaudited)

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

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

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

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

INDEPENDENT AUDITORS' REPORT

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

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

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

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

KPMG PEAT MARWICK LLP

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

F-55

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY

CONSOLIDATED BALANCE SHEETS

September 28, 1997 and September 29, 1996

(Amounts in thousands, except per share data)

	1997	1996
ASSETS		
Current assets		
Cash	\$ 890	\$ 736
Trade accounts receivable, less allowance for doubtful accounts and discounts of \$1,978 in 1997 and \$2,592 in 1996	52,336	57,960
Inventories	39,607	43,037
Refundable income taxes	497	—
Deferred income taxes	6,329	5,432
Other current assets	1,333	1,479
Total current assets	100,992	108,644
Property, plant and equipment, net	17,598	18,522
Other assets		
Excess of cost over fair value of net assets acquired, net	135,893	139,830
Deferred financing costs, net	3,723	4,579
Other	1,504	1,552
Total other assets	141,120	145,961
Total assets	<u>\$259,710</u>	<u>\$273,127</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Current portion of long-term debt	\$ 8,750	\$ 6,000
Accounts payable	21,004	22,851
Accrued liabilities	22,217	19,542
Total current liabilities	51,971	48,393
Long-term debt	154,112	170,531
Product liability	3,212	3,516
Other	3,818	2,043
Total liabilities	<u>\$213,113</u>	<u>\$224,483</u>
Stockholders' equity		
Common stock, par value \$.01 per share; authorized 20,000 shares; issued and outstanding 9,082 shares at September 28, 1997 and 9,080 shares at September 29, 1996	91	91
Paid-in capital	51,937	51,772
Warrants	1,773	1,773
Accumulated deficit	(7,204)	(4,992)
Total stockholders' equity	<u>46,597</u>	<u>48,644</u>
Total liabilities and stockholders' equity	<u>\$259,710</u>	<u>\$273,127</u>

See accompanying notes to consolidated financial statements.

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF OPERATIONS

Years ended September 28, 1997, September 29, 1996, and October 1, 1995
(Amounts in thousands, except per share data)

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Net sales	\$275,708	\$282,977	\$267,887
Operating costs and expenses			
Cost of goods sold	190,083	193,117	184,454
Selling, general, and administrative expenses	62,578	59,635	56,642
Amortization of intangible assets	3,937	4,000	3,961
Unusual item	2,350	—	—
Total operating costs and expenses	<u>258,948</u>	<u>256,752</u>	<u>245,057</u>
Operating income	16,760	26,225	22,830
Interest expense	18,638	19,134	19,354
Other income	(454)	(357)	(195)
Income (loss) before income taxes	(1,424)	7,448	3,671
Income tax expense	788	4,727	2,687
Net income (loss)	<u>\$ (2,212)</u>	<u>\$ 2,721</u>	<u>\$ 984</u>
Net income (loss) per share	<u>\$ (.24)</u>	<u>\$.30</u>	<u>\$.11</u>
Weighted average shares outstanding	<u>9,081</u>	<u>9,073</u>	<u>9,071</u>

See accompanying notes to consolidated financial statements.

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
Years ended September 28, 1997, September 29, 1996, and October 1, 1995
(Amounts in thousands)

	Common Stock		Paid-In Capital	Warrants	Accumulated Deficit
	Shares Issued	Dollars			
Balance at October 2, 1994, as previously reported	9,071	\$91	\$51,741	\$1,773	\$ (8,300)
Retroactive effect on prior years of change in accounting method	—	—	—	—	(397)
Balance at October 2, 1994, as restated	9,071	91	51,741	1,773	(8,697)
Net income	—	—	—	—	984
Balance at October 1, 1995	9,071	91	51,741	1,773	(7,713)
Net income	—	—	—	—	2,721
Issuance of common stock pursuant to exercise of stock options	9	—	31	—	—
Balance at September 29, 1996	9,080	91	51,772	1,773	(4,992)
Net loss	—	—	—	—	(2,212)
Issuance of common stock under option plans and awards	2	—	165	—	—
Balance at September 28, 1997	<u>9,082</u>	<u>\$91</u>	<u>\$51,937</u>	<u>\$1,773</u>	<u>\$ (7,204)</u>

See accompanying notes to consolidated financial statements.

F-58

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF CASH FLOWS

Years ended September 28, 1997, September 29, 1996, and October 1, 1995
(Amounts in thousands)

	1997	1996	1995
Cash flows from operating activities			
Net income (loss)	\$ (2,212)	\$ 2,721	\$ 984
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities			
Depreciation and amortization of plant and equipment	6,554	6,011	5,108
Loss on asset write-offs and disposals	64	63	119
Amortization of intangible assets	3,937	4,000	3,961
Amortization of deferred financing costs	856	858	823
Deferred tax expense (benefit)	(283)	349	2,547
Accretion of debt discount	223	223	223
Changes in			
Trade accounts receivable	5,624	(3,809)	(12,479)
Inventories	3,430	(1,674)	2,356
Refundable income taxes	(497)	—	—
Other assets	194	482	3,198
Accounts payable	(1,847)	(2,952)	(7,306)
Accrued liabilities	2,675	(286)	60
Noncurrent liabilities	857	(127)	(492)
Net cash provided by (used in) operating activities	19,575	5,859	(898)
Cash flows from investing activities			
Capital expenditures	(5,694)	(4,439)	(4,636)
Net cash used in investing activities	(5,694)	(4,439)	(4,636)
Cash flows from financing activities			
Proceeds from revolving credit facilities	66,100	76,700	80,600
Repayments of revolving credit facilities	(74,000)	(74,500)	(70,600)
Repayment of long-term debt	(5,992)	(3,750)	(5,000)
Proceeds from stock issuances under option plans and awards	165	31	—
Payment of financing fees	—	—	(315)
Net cash provided by (used in) financing activities	(13,727)	(1,519)	4,685
Increase (decrease) in cash	154	(99)	(849)
Cash at beginning of the period	736	835	1,684
Cash at end of the period	<u>\$ 890</u>	<u>\$ 736</u>	<u>\$ 835</u>
Supplemental disclosures of cash flow information			
Cash paid during the period for			
Interest	\$ 15,872	\$ 18,092	\$ 18,820
Income taxes	\$ 1,891	\$ 3,490	\$ 280

See accompanying notes to consolidated financial statements.

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

September 28, 1997 and September 29, 1996
(Amounts in thousands, except share and per share data)

I. Summary of Significant Accounting Policies

(a) Description of Business

Signature Brands USA, Inc. (the Company) is a holding company which, through its wholly owned subsidiary, Signature Brands, Inc. (Signature Brands), designs, manufactures, markets, and distributes a comprehensive line of consumer and professional products. The Company's consumer products, marketed under the Mr. Coffee® and Health o meter® brand names, include automatic drip coffeemakers, iced and hot teapots, coffee filters, water filtration products, accessories, and other kitchen countertop appliances as well as bath, kitchen, and gourmet scales and therapeutic devices. Professional products include the Pelouze® and Health o meter® brands of office, foodservice, and medical scales.

(b) Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. All significant intercompany accounts and transactions are eliminated in consolidation.

(c) Revenue Recognition

The Company recognizes revenue from product sales upon shipment to the customer. Costs or losses estimated to be incurred in connection with product returns and warranties are charged against revenues at the time of sale, based upon consideration of historical experience and information available from customers.

(d) Inventories

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

(e) Property, Plant and Equipment

Property, plant and equipment are stated at cost. The Company calculates depreciation using the straight-line method over the estimated useful lives of the respective assets.

(f) Excess of Cost over Fair Value of Net Assets Acquired

The Company's excess of cost over the fair value of net assets acquired primarily represents the value of its brand names, created by advertising and product performance over many years, and is being amortized on the straight-line basis over a 40-year period. The Company assesses the recoverability of this intangible asset by determining whether the brand name dominance in terms of market share and the national distribution secured can generate sufficient revenues, growth, and cash flow to recover the intangible asset balance over its remaining life. Accumulated amortization amounted to \$15,195 and \$11,258 at September 28, 1997 and September 29, 1996, respectively.

(g) Deferred Financing and Stock Issuance Costs

Financing costs related to the issuance of debt are capitalized and amortized over the term of the debt. Accumulated amortization of financing costs amounted to \$2,606 and \$1,750 at September 28, 1997 and September 29, 1996, respectively. Issuance costs related to the sale of common stock reduce paid-in capital.

F-60

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

1. Summary of Significant Accounting Policies—(Continued)

(h) Income Taxes

The Company accounts for income taxes under the asset and liability method whereby deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amount of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using the tax rates in effect at the end of the period. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that the new tax rate is enacted.

(i) Product Liability Costs

Costs estimated to be incurred with respect to product liability claims are accrued based upon actuarially determined estimates derived from experience factors. The current portion represents product liability costs estimated to be paid within one year.

(j) Net Income (Loss) per Common Share

Net income per common share is calculated by dividing net income by the weighted average of outstanding common stock and common stock equivalents using the treasury stock method, except when the effect of common stock equivalents would be antidilutive or when dilution is less than 3 percent. Net loss per common share is based on the weighted average of outstanding common shares.

(k) Use of Estimates

Generally accepted accounting principles require management to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent liabilities, at the date of the financial statements, and the reported amounts of revenues and expenses during the period in preparing these financial statements. Actual results could differ from those estimates.

(l) Stock-Based Compensation

During 1995, the FASB issued Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation, which provides a basis for measurement and recognition of all stock-based employee compensation plans. The disclosure requirements of this Statement are effective for fiscal years beginning after December 15, 1995. The Company chose to maintain its current accounting method for stock-based compensation and disclose the pro forma effects on net income and net income per share of the fair market value method, if material, as permitted by the Statement.

(m) Advertising Costs

The Company expenses reimbursement of customers' advertising costs at the time the related revenues are recognized. Advertising expense was \$23,450, \$20,087 and \$18,458 for the years ended September 28, 1997, September 29, 1996 and October 1, 1995, respectively.

2. Name Change

On March 6, 1997, the stockholders of the Company approved an amendment to the Company's Certificate of Incorporation to change the name of the Company to "Signature Brands USA, Inc." In view of the Company's name change, on April 30, 1997, Health o meter, Inc., the Company's operating subsidiary, was merged with and into a wholly-owned subsidiary of the Company, Signature Brands, Inc., an Ohio corporation, formed by the Company solely for the purpose of changing the name of Health o meter, Inc. to "Signature Brands, Inc."

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

3. Accounting Change

As of September 30, 1996, the Company changed its method of determining the cost of certain inventories from the last-in, first-out (LIFO) method to the first-in, first-out (FIFO) method. Management believes that the change in accounting for inventories is preferable because it will more appropriately measure operating results and inventory value, better match revenues and expenses, and conform all inventories of the Company to the same accounting method.

The change in the method of valuing inventories has been applied retroactively by restating financial statements for prior years. The effect of this restatement was to reduce retained earnings as of September 29, 1996 by \$363. The following summarizes the effect of changing the accounting method for certain inventories:

	1996	1995
Net income as previously reported	\$2,959	\$ 712
Effect of change in accounting method for inventories, net of income tax	(238)	272
Net income as restated	<u>\$2,721</u>	<u>\$ 984</u>
Net income per share as previously reported	\$.33	\$.08
Effect of change in accounting method for inventories, net of income tax	(.03)	.03
Net income per share as restated	<u>\$.30</u>	<u>\$.11</u>

4. Unusual Item

The Company charged \$2,350 to operations in the year ended September 28, 1997 primarily for costs associated with the severance of several senior executive officers.

5. Inventories

The components of inventories are as follows:

	1997	1996
Raw materials and purchased parts	\$11,233	\$13,446
Finished goods	<u>28,374</u>	<u>29,591</u>
	<u>\$39,607</u>	<u>\$43,037</u>

Work-in-process inventories are not significant and are included with raw materials.

6. Property, Plant and Equipment

Property, plant and equipment are as follows:

	1997	1996
Land, buildings and building improvements	\$ 6,241	\$ 6,108
Machinery and equipment	9,477	7,862
Tools, dies and patterns	22,783	21,657
Furniture and fixtures	5,635	4,192
Leasehold improvements	578	413
Construction in progress	<u>2,106</u>	<u>1,018</u>
	46,820	41,250
Accumulated depreciation	<u>(29,222)</u>	<u>(22,728)</u>
Property, plant and equipment, net	<u>\$ 17,598</u>	<u>\$ 18,522</u>

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Amounts in thousands, except share and per share data)

7. Accrued Liabilities

The components of accrued liabilities are as follows:

	<u>1997</u>	<u>1996</u>
Product returns under warranties	\$ 6,007	\$ 6,200
Advertising and promotional costs	5,807	4,866
Accrued compensation	2,585	1,945
Interest	3,094	1,364
Product liability	965	965
Other	<u>3,759</u>	<u>4,202</u>
Accrued liabilities	<u>\$22,217</u>	<u>\$19,542</u>

8. Long-Term Debt

Debt is summarized as follows:

	<u>1997</u>	<u>1996</u>
Revolving Credit Facility dated August 17, 1994, bearing interest at prime plus 1% or the London Interbank Offered Rate (LIBOR) plus 2.5% (weighted average interest rate was 8.45% at September 28, 1997); due August 15, 2001; secured by substantially all of Signature Brands' assets and a pledge of all its issued and outstanding common stock; Signature Brands' obligations under the Bank Credit Agreement are also guaranteed by the Company.	\$ 33,700	\$ 41,600
Term Loan dated August 17, 1994, bearing interest at prime plus 1% or LIBOR plus 2.5% (weighted average interest rate was 8.38% at September 28, 1997); due August 15, 2001; principal payable on a quarterly basis in aggregate 12-month amounts of \$8,750, \$17,500, \$15,000, and \$19,000 during fiscal 1998 through fiscal 2001; secured by substantially all of Signature Brands' assets and a pledge of all its issued and outstanding common stock; Signature Brands' obligations under the Bank Credit Agreement are also guaranteed by the Company.	60,258	66,250
Senior Subordinated Notes, net of unamortized discount of \$1,096 and \$1,319 at September 28, 1997 and September 29, 1996, respectively, bearing interest at 13%, payable semiannually; due August 15, 2002.	68,904	68,681
	162,862	176,531
Current portion of long-term debt	(8,750)	(6,000)
Long-term debt	<u>\$154,112</u>	<u>\$170,531</u>

Bank Credit Agreement

Signature Brands' Bank Credit Agreement (the Agreement) includes a \$60.0 million revolving credit facility (including an \$18.0 million letter of credit subfacility) and a \$75.0 million term loan facility. The revolving credit facility includes a charge of 0.5 percent on the unused line and 2.5 percent for letter of credit guarantees.

Signature Brands is required to make prepayments on the term loan and revolving credit facility with a percentage of Excess Cash Flow, as defined, and 100 percent of the proceeds from certain asset sales, issuances

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Amounts in thousands, except share and per share data)

8. Long-Term Debt—(Continued)

of debt and equity securities, and extraordinary items outside the ordinary course of business. There is no required prepayment for fiscal 1998. Signature Brands may also make optional prepayments, in full or in part, on the term loan.

Borrowing availability under the revolving credit facility at September 28, 1997 was \$13.6 million after giving effect to outstanding letters of credit of \$1.2 million, actual borrowings of \$33.7 million, and sufficiency of collateral.

Signature Brands is subject to certain customary affirmative and negative covenants contained in the Agreement. These include, without limitation, covenants that restrict, subject to certain exceptions, incurrence of additional indebtedness; mergers, consolidations, or asset sales; changes in the nature of the business; granting of liens to secure any other indebtedness; and transactions with affiliates. In addition, the Agreement requires that the Company maintain certain specified financial ratios, including minimum interest and fixed charge coverage ratios, maximum leverage ratios, minimum net worth levels, and ceilings on leverage and capital expenditures. At September 28, 1997, the Company was in compliance with such covenants.

In December 1997, the Agreement was amended to increase the term loan facility by \$1.0 million and to modify the amortization schedule such that the annual aggregate payments are \$5.0 million, \$8.75 million, \$14.5 million, and \$33.0 million during fiscal 1998 through fiscal 2001, respectively. A portion of the annual payment for fiscal 2001 may be accelerated into fiscal 2000 if certain EBITDA levels are not achieved in fiscal 1999. In addition, the revolving credit facility was reduced to \$55.0 million, however, because the advance rate on collateral was increased, the Company's availability thereunder should not be materially impacted.

Senior Subordinated Notes

The Senior Subordinated Notes (the Notes) are general obligations of Signature Brands. Signature Brands' payment obligations under the Notes are unconditionally guaranteed by the Company. The Notes and the Company's guaranty are subordinated to the prior payment of the Company's amounts outstanding under the Agreement. The Indenture governing the Notes contains customary provisions restricting mergers, consolidations, or sales of assets; issuances of preferred stock or the incurrence of additional indebtedness; payment of dividends; creation of liens; and transactions with affiliates. Provided that certain financial tests are met, the Indenture does not limit the amount of additional indebtedness that Signature Brands and its subsidiaries may incur.

The Notes are generally not redeemable at the option of the Company until August 15, 1999. Under certain limited circumstances, the Company may be required to use a portion of the proceeds from asset sales to make an offer to purchase a portion of the Notes, at a price of 101 percent of the principal amount thereof, together with accrued and unpaid interest. In addition, in the event of a change in control of the Company, each holder will have the right to require Signature Brands to repurchase its Notes at a price of 101 percent of the principal amount thereof, together with accrued and unpaid interest thereon. Except for the foregoing circumstances, Signature Brands is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

The Agreement currently prohibits the Company from purchasing any Notes prior to the expiration thereof and also provides that certain change in control events with respect to the Company would constitute a default thereunder.

F-64

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

9. Warrants

The Company, in conjunction with the issuance of the Notes, issued 70,000 warrants. Each warrant entitles the holder thereof to purchase 10.96 shares of common stock at \$6.25 per share, subject to adjustment under certain circumstances. The warrants expire on August 15, 2002.

10. Income Taxes

Income tax expense (benefit) for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively, consisted of:

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Current			
Federal	\$856	\$4,052	\$ 100
State	215	326	40
Deferred	<u>(283)</u>	<u>349</u>	<u>2,547</u>
	<u>\$788</u>	<u>\$4,727</u>	<u>\$2,687</u>

The principal items accounting for the difference in taxes on income computed at the U.S. statutory rate and as recorded for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively, are as follows:

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Tax expense (benefit) at statutory rate of 35%	\$ (498)	\$2,607	\$1,285
State taxes, net of federal benefit	86	455	206
Goodwill amortization	1,241	1,302	1,255
Other	<u>(41)</u>	<u>363</u>	<u>(59)</u>
	<u>\$ 788</u>	<u>\$4,727</u>	<u>\$2,687</u>

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities at September 28, 1997 and September 29, 1996 are as follows:

	<u>1997</u>	<u>1996</u>
Deferred tax assets		
Compensation and vacation	\$1,096	\$ 340
Warranties and sales reserves	2,259	2,897
Advertising	676	683
Product liability	1,646	1,746
Above market rate lease	—	219
Bad debts	751	456
Other	<u>455</u>	<u>741</u>
Total gross deferred tax assets	\$6,883	\$7,082
Deferred tax liabilities		
Depreciation and amortization	(1,493)	(1,928)
Other	<u>(232)</u>	<u>(279)</u>
Total gross deferred tax liabilities	(1,725)	(2,207)
Net deferred tax asset	<u>\$5,158</u>	<u>\$4,875</u>

The realization of the Company's net deferred tax asset is dependent on the generation of future taxable income. Management believes that it is more likely than not that the Company will generate sufficient future

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Amounts in thousands, except share and per share data)

10. Income Taxes—(Continued)

taxable income to fully utilize the established net asset. Accordingly, no valuation allowance for the net deferred tax asset has been provided.

11. Lease Commitments

The Company leases various buildings and equipment under leases expiring at various dates. At September 28, 1997, minimum rental commitments under noncancelable leases are as follows:

<u>Fiscal Year Ending</u>	
1998	\$ 2,031
1999	1,903
2000	1,800
2001	1,790
2002	1,750
Thereafter	<u>18,400</u>
	<u>\$27,674</u>

Rental expense amounted to approximately \$1,630, \$1,438, and \$1,447, for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively.

12. Contingencies

The Company is involved in various claims and items of litigation. Management believes that the ultimate outcome of such matters will not have a material adverse effect upon the operations or financial position of the Company.

13. Stock Incentive Plans

The Company has five stock-based compensation plans. Options granted under these plans have ten-year terms and generally have graded vesting schedules of either four or five years. Options scheduled over five years require achievement of company-wide performance goals in order for options to vest.

The Company applies APB Opinion 25 (APB 25) in accounting for its stock incentive plans and, accordingly, recognizes compensation costs only to the extent that the market price of shares granted exceeds the exercise price at the grant date. During 1995, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (SFAS 123), which permits the continued use of APB 25 and requires disclosure of the pro forma effects on net income and net income per share had the fair value method of accounting prescribed under SFAS 123 been used. Under SFAS 123, an option's fair value is estimated at the grant date using an option pricing model, the resulting fair value is then recognized as compensation cost over the vesting period of the related option. In the Company's case these pro forma disclosures are required to be applied only to options granted after October 1, 1995 (fiscal 1996). In estimating fair value, the Company has used the Black-Scholes option pricing model with the following weighted-average assumptions for 1997 and 1996, respectively; risk free interest rate of 6.21 percent and 6.10 percent, expected lives of 4.1 years and 4.7 years, and stock price volatility of 29.3 percent. The weighted

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Amounts in thousands, except share and per share data)

13. Stock Incentive Plans—(Continued)

average fair value of options granted during 1997 and 1996 was \$1.18 and \$1.70, respectively. The following chart depicts the pro forma affects on net income of applying the provisions of SFAS 123.

	1997	1996
Net income (loss)		
As reported.....	\$(2,212)	\$2,721
Pro forma	\$(2,302)	\$2,673
Net income (loss) per share		
As reported.....	\$ (.24)	\$.30
Pro forma	\$ (.25)	\$.29

The following is a summary with respect to options outstanding at September 28, 1997, September 29, 1996, and October 1, 1995, and the activity during those years:

	1997	1996	1995
Options unexercised at beginning of the year	919,853	813,853	502,353
Weighted average exercise price.....	\$4.15	\$3.86	\$3.96
Options granted during the year	669,000	211,000	377,000
Weighted average exercise price.....	\$3.99	\$5.55	\$4.44
Options exercised during the year.....	(1,250)	(9,125)	—
Weighted average exercise price.....	\$3.44	\$3.46	—
Options canceled during the year	(186,375)	(95,875)	(65,500)
Weighted average exercise price.....	\$5.24	\$4.82	\$4.44
Options unexercised at end of year	1,401,228	919,853	813,853
Weighted average exercise price.....	\$3.93	\$4.15	\$3.86
Options exercisable at end of year	567,728	443,478	398,353
Weighted average exercise price.....	\$3.52	\$3.15	\$3.08

At September 28, 1997, the range of exercise prices and weighted average remaining contractual life of outstanding options was \$2.61—\$14.50 and 8.5 years.

1992 Incentive Stock Option Plan

In February 1992, the Company adopted a new incentive stock plan (1992 Plan). The 1992 Plan provides that incentive stock options and nonqualified stock options may be granted to such officers and key employees as the administrators of the 1992 Plan may select. The 1992 Plan is administered by a committee of the board of directors which selects the participants and determines (i) the type of options; (ii) the vesting schedule of options; (iii) the exercise price (which may not be less than fair market value on the date of grant); and (iv) the duration of the options (which cannot exceed 10 years). A total of 220,000 shares of common stock have been reserved for issuance under the 1992 Plan. No options may be granted under the 1992 Plan after December 31, 2001.

1994 Nonqualified Stock Option Grant

In August 1994, the Company granted an executive officer of the Company 362,353 nonqualified stock options at an exercise price of \$2.61 per share in exchange for canceled options of Mr. Coffee. The difference between the aggregate exercise price of such new options and the fair value of the Company's stock was equal to the option spread for the canceled Mr. Coffee options. The options are exercisable immediately, but may not be exercised more than one year after termination or death while in the employ of the Company or more than 10 years from date of grant.

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

13. Stock Incentive Plans—(Continued)

1995 Stock Option and Incentive Plan

In April 1995, the Company adopted a new stock option and incentive plan (1995 Plan). The 1995 Plan provides authority for the grant of stock options and stock appreciation rights to directors, employees, and consultants by the Compensation Committee (Committee) of the board of directors. The total number of shares of common stock that may be subject to awards granted under the 1995 Plan is equal to 750,000 shares of common stock, subject to certain adjustments. The Committee selects the participants and determines (i) the type of option; (ii) the vesting schedule of options; (iii) the exercise price; and (iv) the duration of the options. No options may be granted under the 1995 Plan after April 27, 2005.

1997 Stock Option and Incentive Plan

In March 1997, the Company adopted a new stock option and incentive plan (1997 Plan). The 1997 Plan provides the Compensation Committee (Committee) of the board of directors the authority to grant stock options and stock appreciation rights to directors, employees, and consultants. The Committee selects the participants and determines (i) the type of award; (ii) the vesting schedule of awards; (iii) the exercise price; and (iv) duration of the award. The total number of shares of common stock that may be subject to awards granted under the 1997 Plan is equal to 270,000 shares of common stock, subject to certain adjustments. No awards may be granted under the 1997 Plan after March 5, 2007.

1997 Nonqualified Stock Option Grant

In August 1997, the Company granted an executive officer of the Company 500,000 nonqualified stock options at an exercise price of \$3.50 per share. One-half of the options become exercisable on September 30 of each year following the date of grant, but may not be exercised more than ten years from the date of grant.

14. Unaudited Quarterly Financial Data

	Quarter			
	First	Second	Third	Fourth
Year ended September 28, 1997 (1)				
Net sales	\$87,136	\$61,925	\$64,194	\$62,453
Gross profit	26,059	19,613	20,018	19,935
Interest expense	4,982	4,575	4,484	4,597
Net income (loss)	491	(267)	75	(2,511)
Net income (loss) per share .....	.05	(.03)	.01	(.28)
Weighted average shares outstanding (in thousands)	9,080	9,080	9,080	9,081
Year ended September 29, 1996 (2)				
Net sales	\$97,407	\$6,275	\$9,339	\$9,956
Gross profit	30,544	17,737	19,011	22,568
Interest expense	5,097	4,717	4,637	4,683
Net income (loss)	1,977	10	(218)	952
Net income (loss) per share .....	.22	—	(.02)	.10
Weighted average shares outstanding (in thousands)	9,071	9,071	9,071	9,078

- (1) The results for the fourth quarter include an unusual item of \$2.4 million primarily for expenses associated with severance costs for several senior executive officers.
- (2) Amounts for the fourth quarter have been restated for the effect of the Company's change from the LIFO method of accounting for certain inventories to the FIFO method. Amounts for the first, second and third quarters were not restated as the impact was not material to those quarters.

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except share and per share data)

15. Business and Credit Concentrations

The Company distributes and sells its products through major retail outlets, including discounters/mass merchants, department stores, warehouse clubs, specialty stores, catalog showrooms, mail order catalog companies, and national hardware, drugstore, and retail grocery chains. Approximately 39 percent, 36 percent, and 33 percent of the Company's revenues were from two customers in the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively. The largest of these two customers accounted for 27 percent, 23 percent, and 23 percent of the Company's revenues in those same years, respectively.

16. Related Party Transactions

Signature Brands pays a management fee to a related party for certain administrative and professional services performed by the related party. Amounts paid to this related party for management fees, including reimbursed expenses, were \$252, \$263, and \$305 for the years ended September 28, 1997, September 29, 1996, and October 1, 1995, respectively.

17. Financial Instruments

Management has determined that at September 28, 1997 and September 29, 1996, the fair value of financial instruments included in the balance sheets approximated their carrying values. With respect to cash, receivables, payables, and accrued liabilities, this determination was based on the short maturity of the instruments. With respect to debt, the assessment was based on management's judgment as to currently available rates on debt with similar maturities.

18. Condensed Consolidated Financial Information

Condensed consolidated financial information for Signature Brands, Inc. at September 28, 1997 and September 29, 1996, and for the years ended September 28, 1997, September 29, 1996, and October 1, 1995 is as follows:

	September 28 1997	September 29 1996
Current assets	\$100,992	\$108,644
Noncurrent assets	158,718	164,483
Total assets	<u>\$259,710</u>	<u>\$273,127</u>
Current liabilities	\$ 51,971	\$ 48,393
Noncurrent liabilities	161,142	176,090
Intercompany payables	47,823	47,658
Total liabilities	<u>\$260,936</u>	<u>\$272,141</u>
Stockholder's equity:		
Common stock—\$1.00 stated value; authorized 850 shares; issued and outstanding 100 shares in 1997 and \$.01 par value; authorized and outstanding 1,000,000 shares in 1996	—	10
Paid-in capital	2,821	2,811
Accumulated deficit	(4,047)	(1,835)
Total stockholder's equity	<u>(1,226)</u>	<u>986</u>
Total liabilities and stockholder's equity	<u>\$259,710</u>	<u>\$273,127</u>

	September 28 1997	September 29 1996	October 1 1995
Net sales	\$275,708	\$282,977	\$267,887
Gross profit	85,625	89,860	83,433
Net income (loss)	\$ (2,212)	\$ 2,721	\$ 984

F-69

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except per share data)

	December 28, 1997 (Unaudited)	September 28, 1997
ASSETS		
Current assets		
Cash	\$ 4,118	890
Trade accounts receivable, net	67,501	52,336
Inventories	37,851	39,607
Refundable income taxes	497	497
Deferred income taxes	6,329	6,329
Other current assets	1,378	1,333
Total current assets	117,674	100,992
Property, plant and equipment, net	16,820	17,598
Other assets		
Excess of cost over fair value of net assets acquired, net	134,921	135,893
Deferred financing costs, net	4,084	3,723
Other	1,579	1,504
Total other assets	140,584	141,120
Total assets	<u>\$275,078</u>	<u>259,710</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Current portion of long-term debt	\$ 5,000	8,750
Accounts payable	21,849	21,004
Accrued liabilities	29,645	22,217
Total current liabilities	56,494	51,971
Long-term debt		
Revolving Credit Facility	40,100	33,700
Term Note	55,000	51,508
Senior Subordinated Notes	68,960	68,904
Total long-term debt	164,060	154,112
Product liability	2,813	3,212
Other	3,726	3,818
Total liabilities	<u>\$227,093</u>	<u>\$213,113</u>
Stockholders' equity		
Common stock, par value \$.01 per share; authorized 20,000 shares; issued and outstanding 9,174 shares at December 28, 1997 and 9,082 shares at September 28, 1997	92	91
Paid-in capital	52,099	51,937
Warrants	1,773	1,773
Accumulated deficit	(5,979)	(7,204)
Total stockholders' equity	47,985	46,597
Total liabilities and stockholders' equity	<u>\$275,078</u>	<u>259,710</u>

See accompanying notes to unaudited consolidated financial statements.

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(Amounts in thousands, except per share data)

	Thirteen weeks ended	
	December 28 1997	December 29 1996
Net sales	\$90,365	\$87,136
Operating costs and expenses		
Cost of goods sold	63,388	61,077
Selling, general and administrative expenses	18,219	19,055
Amortization of intangible assets	972	984
Total operating costs and expenses	<u>82,579</u>	<u>81,116</u>
Operating income	7,786	6,020
Interest expense	4,800	4,982
Other income	(76)	(189)
Income before income taxes	3,062	1,227
Income tax expense	<u>1,837</u>	<u>736</u>
Net income	<u>\$ 1,225</u>	<u>\$ 491</u>
Basic and diluted net income per share	<u>\$ 0.13</u>	<u>\$ 0.05</u>

See accompanying notes to unaudited consolidated financial statements.

F-71

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(Amounts in thousands)

	Thirteen Weeks Ended	
	December 28, 1997	December 29, 1996
Cash flows from operating activities		
Net income	\$ 1,225	\$ 491
Adjustments to reconcile net income to net cash used in operating activities		
Depreciation and amortization of plant and equipment	1,598	1,730
Amortization of intangible assets	972	984
Amortization of deferred financing costs	214	214
Accretion of debt discount	56	56
Changes in		
Accounts receivable	(15,165)	(8,163)
Inventories	1,756	(410)
Other assets	(120)	271
Accounts payable	845	(140)
Accrued liabilities	7,428	4,202
Noncurrent liabilities	(491)	22
Net cash used in operating activities	(1,682)	(743)
Cash flows from investing activities		
Capital expenditures	(820)	(728)
Net cash used in investing activities	(820)	(728)
Cash flows from financing activities		
Proceeds from revolving credit facility	32,100	19,900
Repayments of revolving credit facility	(25,700)	(15,600)
Repayment of long-term debt	(1,250)	(1,250)
Proceeds from Term Note	992	—
Proceeds from stock issuances under option plans and awards	163	—
Payment of financing fees	(575)	—
Net cash provided by financing activities	5,730	3,050
Increase in cash	3,228	1,579
Cash at the beginning of the period	890	736
Cash at the end of the period	<u>\$ 4,118</u>	<u>\$ 2,315</u>
Supplemental disclosures of cash flow information		
Cash paid during the period for		
Interest	\$ 2,251	\$ 2,375
Income taxes	—	\$ 415

See accompanying notes to unaudited consolidated financial statements.

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
(Amounts in thousands, except per share data)

1. Basis of Presentation

The consolidated financial statements include the accounts of Signature Brands USA, Inc. (the "Company") and its wholly owned subsidiary. All significant intercompany accounts and transactions are eliminated in consolidation.

In the opinion of management, the information furnished herein includes all adjustments of a normal recurring nature that are necessary for a fair presentation of results for the interim periods shown in accordance with generally accepted accounting principles. The unaudited interim consolidated financial statements have been prepared using the same accounting principles that were used in preparation of the Company's annual report on Form 10-K for the year ended September 28, 1997, and should be read in conjunction with the consolidated financial statements and notes thereto. Because of the seasonal nature of the small appliance and consumer scale industries, the results of operations for the interim period are not necessarily indicative of results for the full fiscal year.

2. Inventories

The components of inventories are as follows:

	December 28, 1997	September 28, 1997
Raw materials and purchased parts	\$10,040	\$11,233
Finished goods	27,811	28,374
	<u>\$37,851</u>	<u>\$39,607</u>

Work-in-process inventories are not significant and are included with raw materials.

3. Earnings per share

The Company adopted Statement of Financial Accounting Standards No. 128, Earnings per Share ("SFAS No. 128"), in the quarter ended December 28, 1997. SFAS No. 128 requires the Company to disclose two earnings per share amounts, basic and diluted. Basic earnings per share is based on net income available to common stockholders and weighted average common stock outstanding during the period. Diluted earnings per share includes the effect of all dilutive securities which are convertible to common stock of the Company such as stock options and warrants.

Below is a table which reconciles basic earnings per share with diluted earnings per share for the thirteen weeks ended December 28, 1997 and December 29, 1996.

	Net Income		Shares		Per Share Amounts	
	1997	1996	1997	1996	1997	1996
Basic Earnings Per Share						
Net income available to common stockholders	\$1,225	\$491	9,109	9,081	\$0.13	\$0.05
Effect of Dilutive Securities ¹						
Stock Options	—	—	298	268		
Diluted Earnings Per Share	<u>\$1,225</u>	<u>\$491</u>	<u>9,407</u>	<u>9,349</u>	<u>\$0.13</u>	<u>\$0.05</u>

¹ The Company's outstanding warrants and certain outstanding stock options have not been included as they are currently antidilutive.

SIGNATURE BRANDS USA, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)
(Amounts in thousands, except per share data)

4. Condensed Consolidated Financial Information

Condensed consolidated financial information for Signature Brands, Inc. at December 28, 1997 and September 28, 1997, and for the thirteen week periods ended December 28, 1997 and December 29, 1996 is as follows:

	<u>December 28,</u> <u>1997</u>	<u>September 28,</u> <u>1997</u>
Current assets	\$117,674	\$100,992
Noncurrent assets	157,404	158,718
Total assets	<u>\$275,078</u>	<u>\$259,710</u>
Current liabilities	\$ 56,494	\$ 51,971
Noncurrent liabilities	170,599	161,142
Intercompany payables	47,986	47,823
Total liabilities	<u>\$275,079</u>	<u>\$260,936</u>
Stockholder's equity		
Common stock—\$1.00 stated value; authorized 850 shares; issued and outstanding 100 shares	—	—
Paid-in capital	2,821	2,821
Accumulated deficit	(2,822)	(4,047)
Total stockholder's equity	(1)	(1,226)
Total liabilities and stockholder's equity	<u>\$275,078</u>	<u>\$259,710</u>
	<u>Thirteen week period ended</u>	<u>Thirteen week period ended</u>
	<u>December 28,</u> <u>1997</u>	<u>December 29,</u> <u>1996</u>
Net sales	\$ 90,365	\$ 87,136
Gross profit	26,977	26,059
Net income	1,225	491

REPORT OF INDEPENDENT ACCOUNTANTS

Price Waterhouse LLP

To the Board of Directors and Stockholders of First Alert, Inc.

In our opinion, the accompanying consolidated balance sheet and related consolidated statements of operations, of cash flows and of stockholders' equity present fairly, in all material respects, the financial position of First Alert, Inc. and its subsidiaries at December 31, 1997 and 1996 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 1997, in conformity with generally accepted accounting principles. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with generally accepted auditing standards which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

/s/ PRICE WATERHOUSE LLP

Chicago, Illinois
March 13, 1998

F-75

FIRST ALERT, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

(In thousands, except share data)

	<u>At December 31,</u>	
	<u>1997</u>	<u>1996</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 2,996	\$ 6,846
Accounts receivable, less allowance for doubtful accounts of \$3,837 at December 31, 1997, \$3,820 at December 31, 1996	46,106	40,617
Income tax receivable	7,572	8,503
Inventories (Note 4)	40,285	58,222
Deferred taxes (Note 9)	6,646	10,510
Prepayments and other assets	4,034	3,249
Total current assets	107,639	127,947
Property, plant and equipment, net of accumulated depreciation of \$22,994 at December 31, 1997, \$22,763 at December 31, 1996 (Note 6)	28,181	29,803
Other Assets:		
Goodwill, net of accumulated amortization of \$3,453 at December 31, 1997, \$2,815 at December 31, 1996 (Note 5)	22,045	22,683
Other intangibles, net of accumulated amortization of \$3,440 at December 31, 1997, \$2,905 at December 31, 1996 (Note 5)	6,496	6,058
Total assets	\$164,361	\$186,491
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 15,897	\$ 7,304
Accrued expenses (Note 7)	17,105	26,395
Short-term revolving credit facility (Note 8)	45,026	20,500
Total current liabilities	78,028	54,199
Long-term revolving credit facility (Note 8)	—	40,000
Other long-term liabilities	71	71
Deferred taxes (Note 9)	4,862	3,369
Contingencies (Note 13)	—	—
Total liabilities	82,961	97,639
Stockholders' equity:		
Common stock (\$.01 par value, 30,000,000 shares authorized, 24,335,112 issued and outstanding at December 31, 1997; 24,183,116 issued and outstanding at December 31, 1996)	243	242
Preferred stock (\$.01 par value, 1,000,000 shares authorized at December 31, 1997 and 1996, none issued and outstanding)	—	—
Paid-in capital	72,012	71,637
Stockholder loans	—	(8)
Retained earnings	9,145	16,981
Total stockholders' equity	81,400	88,852
Total liabilities and stockholders' equity	\$164,361	\$186,491

See accompanying notes to Consolidated Financial Statements.

FIRST ALERT, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF OPERATIONS
(In thousands, except per share data)

	Year Ended December 31,		
	1997	1996	1995
Net sales	\$186,941	\$205,607	\$246,266
Operating expenses:			
Cost of sales, excluding depreciation	134,349	150,611	140,980
Selling, general and administrative	54,213	72,663	77,548
Restructuring charge (Note 3)	—	2,499	—
Depreciation and amortization	6,846	6,353	7,305
Operating income (loss)	(8,467)	(26,519)	20,433
Other expenses (income):			
Interest expense	3,555	3,803	1,487
Miscellaneous, net	1,038	628	(113)
Income (loss) before taxes	(13,060)	(30,950)	19,059
Income tax provision (benefit)	(5,224)	(12,248)	7,622
Net income (loss)	\$ (7,836)	\$ (18,702)	\$ 11,437
Basic net income (loss) per share	\$ (0.32)	\$ (0.78)	\$ 0.48
Diluted net income (loss) per share	(0.32)	(0.78)	0.46
Basic weighted average shares outstanding	24,242	24,119	24,043
Diluted weighted average shares outstanding	24,242	24,119	24,831

See accompanying notes to Consolidated Financial Statements.

F-77

FIRST ALERT, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CASH FLOWS
(In thousands)

	Year ended December 31,		
	1997	1996	1995
Operating Activities:			
Net income (loss)	\$ (7,836)	\$ (18,702)	\$ 11,437
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	6,846	6,353	7,305
Restructuring charge	—	4,497	—
Changes in assets and liabilities:			
(Increase)/Decrease in accounts receivable	(5,489)	22,350	(4,351)
Decrease/(Increase) in income tax receivable	1,039	(6,910)	(1,340)
Decrease/(Increase) in inventories	17,937	8,731	(28,933)
Increase in prepayments and other assets	(785)	(770)	(1,028)
Decrease/(Increase) in net deferred taxes	5,357	(4,252)	3,028
Decrease in accounts payable/accrued expenses	(697)	(11,266)	(14,034)
Other changes, net	(18)	(41)	87
Net cash and cash equivalents provided by (used in) operating activities	16,354	(10)	(27,829)
Investing Activities:			
Capital expenditures	(3,992)	(5,274)	(10,648)
Disposal of property, plant and equipment	255	848	4,159
Other	(1,246)	554	(997)
Net cash and cash equivalents used in investing activities	(4,983)	(3,872)	(7,486)
Financing Activities:			
Borrowings under revolving credit facilities	38,645	59,300	65,550
Payments under revolving credit facilities	(54,119)	(51,000)	(29,050)
Payment of Former Credit Facility	(36,896)	—	—
Proceeds from Credit Facility	36,896	—	—
Proceeds from sale of stock	245	226	28
Proceeds from stockholder loans	8	8	43
Other	—	(193)	—
Net cash and cash equivalents (used in) provided by financing activities	(15,221)	8,341	36,571
Net (decrease) increase in cash and cash equivalents	(3,850)	4,459	1,256
Cash and cash equivalents at beginning of period	6,846	2,387	1,131
Cash and cash equivalents at end of period	\$ 2,996	\$ 6,846	\$ 2,387
Interest paid	\$ 4,108	\$ 3,586	\$ 1,701
Income taxes paid (refunded), net	(8,668)	1,274	12,559

See accompanying notes to Consolidated Financial Statements.

F-78

FIRST ALERT, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(In thousands, except share data)

	<u>Common Stock</u>		<u>Paid in</u>	<u>Stockholder</u>	<u>Retained</u>
	<u>Shares</u>	<u>Par Value</u>	<u>Capital</u>	<u>Loans</u>	<u>Earnings</u>
Balance December 31, 1994	24,025,616	\$240	\$70,986	\$(59)	\$ 24,246
Net income during the year ended					
December 31, 1995	—	—	—	—	\$ 11,437
Stock options exercised	17,500	—	\$ 28	—	—
Income tax benefit related to the exercise of					
stock options	—	—	112	—	—
Payment of stockholder loans, net	—	—	—	\$ 43	—
Value of stock options granted	—	—	11	—	—
Balance December 31, 1995	24,043,116	\$240	\$71,137	\$(16)	\$ 35,683
Net loss during the year ended					
December 31, 1996	—	—	—	—	\$(18,702)
Stock options exercised	140,000	\$ 2	\$ 224	—	—
Income tax benefit related to the exercise of					
stock options	—	—	253	—	—
Payment of stockholder loans, net	—	—	—	\$ 8	—
Value of stock options granted	—	—	23	—	—
Balance December 31, 1996	24,183,116	\$242	\$71,637	\$ (8)	\$ 16,981
Net loss during the year ended					
December 31, 1997	—	—	—	—	\$ (7,836)
Stock options exercised	151,996	\$ 1	\$ 244	—	—
Income tax benefit related to the exercise of					
stock options	—	—	108	—	—
Payment of stockholder loans, net	—	—	—	\$ 8	—
Value of stock options granted	—	—	23	—	—
Balance December 31, 1997	<u>24,335,112</u>	<u>\$243</u>	<u>\$72,012</u>	<u>\$ —</u>	<u>\$ 9,145</u>

See accompanying notes to Consolidated Financial Statements.

FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 1—The Company

Effective July 31, 1992, THL-FA Operating Corp. acquired substantially all the net assets of the BRK Electronics Division and all the issued and outstanding shares of certain non-U.S. subsidiaries of the Fire Safety Group of Pittway Corporation (hereinafter referred to as the "Predecessor" or the "Division") for approximately \$92,500 ("Acquisition"). THL-FA Operating Corp. is a wholly owned subsidiary of THL-FA Holding Corp. THL-FA Operating Corp. subsequently changed its name to BRK Brands, Inc. and THL-FA Holding Corp. subsequently changed its name to First Alert, Inc. ("Company" or "First Alert"). After this acquisition, the Company was owned by Thomas H. Lee Company and related entities, Pittway Intellectual Property Corporation, a subsidiary of Pittway Corporation ("Pittway") and management of the Company. On April 5, 1994, the Company completed an initial public offering ("IPO") of 5,180,000 shares of its common stock. An additional 3,100,000 shares of the Company's common stock were sold by Pittway as part of the same offering.

The Company, through its subsidiaries, manufactures and markets residential safety products including smoke and carbon monoxide detectors, fire extinguishers, motion sensing lighting control devices, timers, fire security safes and chests, fire escape ladders, child safety products and rechargeable flashlights. The Company's manufacturing operations are located in Juarez, Mexico and Aurora, Illinois.

While the Company has a number of customers in the retail and wholesale markets, a significant amount of its net sales are concentrated in three major U.S. national retail chains comprising 13%, 7% and 7% of consolidated net sales for the year ended December 31, 1997; 15%, 7% and 5% for the year ended December 31, 1996 and 13%, 8% and 6% for the year ended December 31, 1995.

Most of the components used in the Company's products are available from multiple sources; however, the Company has elected to purchase integrated circuit components used in the Company's smoke detectors and carbon monoxide detectors, and certain other components used in the Company's products, from single sources. The Company has developed an alternative source of supply for these integrated circuit components. However, there can be no assurance that the Company will be able to continue to obtain these components on a timely basis given the unpredictability of the demand for carbon monoxide detectors. In addition, the biomimetic sensor, which is the key component used in the Company's battery-powered carbon monoxide detector, is obtained by the Company pursuant to a license from Quantum Group, Inc. (Quantum), its sole supplier of this component. Commencing on January 1, 1997, Quantum was permitted to sell its sensors to other customers. There is no alternative supply for the biomimetic sensor. An extended interruption or termination in the supply of any of the components used in the Company's products, or a reduction in their quality or reliability, would have an adverse effect on the Company's business and results of operations.

Note 2—Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements of the Company include those assets, liabilities, revenue and expenses of the Company and its subsidiaries and its foreign operations after eliminating significant intercompany accounts and transactions. The financial statements include the operations in the United States, Canada, Europe, Mexico and Australia.

Revenue Recognition

Revenue is recorded at the time products are shipped to customers and title passes. Net sales include estimates for returns, warranties, discounts and volume rebates. The Company grants credit terms to its customers consistent with normal industry practices.

F-80

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued) (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 2—Summary of Significant Accounting Policies—(Continued)

Cash and Cash Equivalents

Only highly liquid investments with initial maturities of less than three months are considered as cash and cash equivalents. Substantially all of the Company's cash is held by one bank at December 31, 1997. The Company does not believe that as a result of this concentration, it is subject to any unusual credit risk beyond the normal risk associated with commercial banking relationships.

Earnings per Share

In 1997, the Company adopted Financial Accounting Standards Board Statement No. 128 (SFAS 128), "Earnings per Share." This statement establishes standards for computing earnings per share (EPS) and simplifies the standards for computing EPS previously found in APB Opinion No. 15 (APB 15), "Earnings per Share." It replaces the presentation of Primary EPS with a presentation of Basic EPS. It also requires dual presentation of Basic and Diluted EPS on the face of the income statement for all entities with complex capital structures. Basic EPS is based on the weighted average number of shares of common stock while Diluted EPS is based on the weighted average number of shares of common stock and dilutive potential shares of common stock outstanding during the periods. In accordance with the requirements of SFAS 128, the Company has restated all EPS data for prior periods.

A reconciliation of both the income and shares used in the calculation of Basic and Diluted EPS are as follows:

	1997	1996	1995
Basic EPS calculation:			
Numerator:			
Net income (loss)	\$ (7,836)	\$ (18,702)	\$ 11,437
Denominator:			
Common shares outstanding	24,242	24,119	24,043
Basic EPS	<u>\$ (0.32)</u>	<u>\$ (0.78)</u>	<u>\$ 0.48</u>
Diluted EPS calculation:			
Numerator:			
Net income (loss)	\$ (7,836)	\$ (18,702)	\$ 11,437
Denominator:			
Common shares outstanding	24,242	24,119	24,043
Dilutive Options	0	0	788
Total shares	<u>24,242</u>	<u>24,119</u>	<u>24,831</u>
Diluted EPS	<u>\$ (0.32)</u>	<u>\$ (0.78)</u>	<u>\$ 0.46</u>

Stock options were outstanding at December 31, 1997, 1996 and 1995, as discussed in Note 11.

Translation of Foreign Currencies

The functional currency of the foreign operations included in these financial statements is the U.S. dollar. Translation adjustments and transaction gains and losses are reflected in net income and consisted of a loss of \$1,149 in the year ended December 31, 1997, a gain of \$733 in the year ended December 31, 1996, and a loss of \$39 in the year ended December 31, 1995.

FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 2—Summary of Significant Accounting Policies—(Continued)

Inventories

Company inventories are valued at the lower of cost, determined on the first-in, first-out (FIFO) basis, or market.

Property, Plant and Equipment

Properties are stated at cost. Depreciation of all assets is computed over their estimated useful lives using the straight-line method for financial reporting and accelerated methods for income tax reporting.

Upon sale or retirement of property, plant and equipment, a gain or loss is recognized. Expenditures for maintenance and repairs are charged to expense.

Useful lives for property, plant and equipment are as follows:

	Years
Buildings	Up to 40
Building improvements	20
Furniture and fixtures	10
Machinery and equipment	10
Tools, jigs and dies	3

Goodwill

Goodwill, representing the difference between the total purchase price and the fair value of assets (tangible and intangible) and liabilities at the date of acquisition, is being amortized on a straight-line basis over 40 years. Amortization expense totalled \$638 for each of the three years in the period ended December 31, 1997.

Impairment of Assets

In 1996, the Company adopted Financial Accounting Standards Board Statement No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of." This statement requires that long-lived assets and certain identifiable intangibles be reviewed for impairment whenever events or changes in circumstance indicate that the carrying amount of an asset may not be recoverable. Under provisions of the statement, impairment losses are recognized when expected future cash flows are less than the assets' carrying value.

Patents, Trademarks and Other Intangibles

Patents, trademarks and other intangibles are carried at cost less accumulated amortization, which is calculated on a straight-line basis over the estimated useful lives of the assets, not to exceed 40 years (see Note 5). Amortization expense was \$704, \$682 and \$1,054 for the years ended December 31, 1997, 1996 and 1995, respectively.

Fair Value of Financial Instruments

The carrying values of cash and cash equivalents, accounts receivable and payable and accrued liabilities approximate fair value due to the short-term maturities of these assets and liabilities. The aggregate fair value of the Credit Facility approximates its carrying amount because of the recent and frequent repricing based on market conditions.

FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Stock Based Compensation

Effective January 1, 1996, the Company adopted the "disclosure method" provisions of Financial Accounting Standards Board Statement No. 123 "Accounting for Stock-Based Compensation." As permitted under this statement, the Company continues to recognize stock-based compensation costs under the intrinsic value based method of accounting as prescribed by Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees."

Income Taxes

Income taxes of the Company are accounted for using Financial Accounting Standards Board Statement No. 109, "Accounting for Income Taxes."

Advertising and Research and Development Costs

Advertising costs, including advertising allowances granted to customers, are accrued at the date of sale of certain products to reflect advertising commitments made to customers. Research and development costs are charged to expense as incurred. Expense charged to operations for the periods presented were as follows:

	Year Ended December 31,		
	1997	1996	1995
Advertising and product promotion	\$12,796	\$22,899	\$33,258
Research and development	\$ 2,012	\$ 3,121	\$ 2,866

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

Impact of New Accounting Standards

Financial Accounting Standards Board Statement No. 130 (SFAS 130), "Reporting Comprehensive Income" and Financial Accounting Standards Board Statement No. 131 (SFAS 131), "Disclosures about Segments of an Enterprise and Related Information," were issued in June 1997 and are effective for the Company's fiscal year 1998. SFAS 130 establishes standards for the reporting and display of comprehensive income, which includes net income and changes in equity except those resulting from investments by, or distributions to, stockholders. SFAS 131 establishes standards for disclosures related to business operating segments. The Company is currently evaluating the impact that these statements will have on the consolidated financial statements.

Note 3 — Restructuring Charge

During the fourth quarter of 1996, the Company adopted a plan to revitalize the Company's core product lines of smoke and carbon monoxide detectors and discontinue, reposition or outsource non-performing product lines, right-size and consolidate manufacturing operations, reduce the Company's selling, general and administrative cost structures and aggressively address inventory levels. As a result of this plan, the Company recorded a pre-tax restructuring charge of \$4,497 including a provision of \$1,998 for inventory write-downs which was appropriately charged to cost of sales, excluding depreciation. The remaining restructuring charge of \$2,499 includes \$1,789 for the write-down of the net book value of manufacturing equipment for product lines that will be outsourced or eliminated, \$410 for severance costs for approximately 600 manufacturing and corporate office employees who were released from employment in the fourth quarter of 1996 and \$300 for

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued) (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 3 — Restructuring Charge—(Continued)

contractual plant restoration costs. The provision for inventory write-downs relates primarily to inventory for product lines that either have been or will be outsourced or eliminated. The following table sets forth the details of activity for 1997:

	Balance at December 31, 1996	1997 Charges	Balance at December 31, 1997
Manufacturing equipment write-down	\$1,789	—	\$1,789
Inventory write-down	1,998	\$1,283	715
Severance	93	93	—
Plant restoration	300	135	165
Total	<u>\$4,180</u>	<u>\$1,511</u>	<u>\$2,669</u>

Of the 1997 charges, \$93 of severance was a cash charge with the remainder being non-cash charges.

During the fourth quarter of 1997, the Company released \$1,005 of inventory write-down and plant restoration cost accruals which were determined by the Company's management as no longer being required. The release, reflected as a non-cash charge in the above table, was recorded through cost of sales, excluding depreciation. These accruals were deemed no longer necessary as the Company, in light of market conditions faced in 1997, reassessed its original cost estimates associated with repositioning certain product lines and consolidating its manufacturing operations.

Note 4 — Inventories

The components of inventory are as follows:

	At December 31,	
	1997	1996
Raw materials	\$19,311	\$25,575
Work-in-process	4,892	3,656
Finished goods	19,657	33,497
Reserves	(3,575)	(4,506)
Total	<u>\$40,285</u>	<u>\$58,222</u>

Note 5 — Goodwill and Other Intangibles

	At December 31,		Useful Lives (Years)
	1997	1996	
Goodwill	\$25,498	\$25,498	40
Trademarks	5,000	5,000	40
Patents	2,995	2,995	Various
Other	1,941	968	3-5
Less: accumulated amortization	(6,893)	(5,720)	
Total	<u>\$28,541</u>	<u>\$28,741</u>	

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued) (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 6—Property, Plant and Equipment

	At December 31,	
	1997	1996
Land	\$ 816	\$ 816
Buildings	4,040	3,815
Machinery and equipment	30,392	29,686
Leasehold improvements	3,600	3,611
Tools, jigs and dies	12,327	14,638
Less: accumulated depreciation	(22,994)	(22,763)
Net property, plant and equipment	<u>\$28,181</u>	<u>\$29,803</u>

Note 7—Accrued Expenses

	At December 31,	
	1997	1996
Advertising/promotion	\$ 3,634	\$ 8,859
Warranty and product related	6,000	6,526
Other	7,471	11,010
Total	<u>\$17,105</u>	<u>\$26,395</u>

Note 8—Revolving Credit Facility

	At December 31,	
	1997	1996
Revolving credit facility (average rate of 7.85% at December 31, 1997, and 7.2% at December 31, 1996)	\$45,026	\$60,500
Less: Short-term portion	45,026	20,500
Long-term revolving credit facility	<u>\$ —</u>	<u>\$40,000</u>

On May 14, 1997, the Company entered into an \$80.0 million revolving three-year credit facility (the "Credit Facility") with an agent financial institution, replacing its Former Credit Facility (as defined below). Advances under the Credit Facility are limited to (a) 85% of eligible accounts receivable plus (b) the lesser of 60% of eligible inventory or \$35.0 million. During the period of May 1997 through October 1997, \$10.0 million in additional borrowing was available and from June 1998 through September 1998, \$5.0 million in additional borrowing will be available under the Credit Facility. All obligations under the Credit Facility are secured by first priority liens upon certain of the Company's assets. Amounts outstanding under the Credit Facility bear interest at prime rate plus 1/2% or the London Interbank Offered Rate (LIBOR) plus 2%. The Company is subject to a commitment fee of 0.375% per annum on the unused portion of the Credit Facility less \$2.0 million. The Credit Facility agreement contains covenants for, among other things, total liabilities to tangible net worth and fixed charge ratios; maintenance of tangible net worth; and restrictions on additional indebtedness, capital expenditures and payment of dividends.

At December 31, 1997, the Company was not in compliance with the total liabilities to tangible net worth, fixed charge coverage ratio and minimum tangible net worth covenants set forth in the Credit Facility. While a waiver was obtained from the lender for the noncompliance with these covenants at December 31, 1997, it is not expected that the Company will be able to meet the restrictive covenants throughout 1998. Accordingly, the Credit Facility has been classified as a current liability. The Company is currently negotiating the terms of an extension of the Credit Facility, as well as a modification of the restrictive covenants and fully expects that a new agreement with its current lender will be in place by the second quarter of 1998.

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 8—Revolving Credit Facility—(Continued)

At December 31, 1996, under the terms of the Company's former revolving credit facility (the "Former Credit Facility"), the Company was able to borrow up to \$77.5 million until January 31, 1997, when the amount available was reduced to \$70.0 million. In connection with a September 4, 1996 amendment, the Company granted a security interest in all of its assets which included the stock of wholly owned subsidiaries to secure the obligations to the lenders under the Former Credit Facility. Similarly, Electronica BRK de Mexico S.A. de C.V., a wholly owned subsidiary, agreed to pledge all of its assets to secure repayment of advances under the Former Credit Facility.

Under the Former Credit Facility, the Company was subject to a commitment fee of 0.35% per annum on the unused portion of the Former Credit Facility. The Former Credit Facility carried an interest rate of LIBOR plus 1.5% for amounts up to \$70.0 million (LIBOR plus 2.0% for amounts in excess of \$70.0 million) on the LIBOR based portion of the Former Credit Facility and the higher of the lender's corporate borrowing rate or the Federal Funds Rate plus 0.75% for amounts up to \$70.0 million (Federal Funds Rate plus 1.25% for amounts in excess of \$70.0 million) on the remaining balance. Additionally the Former Credit Facility contained covenants restricting, among other things, the payment of dividends, the sale of assets, mergers and acquisitions and required maintenance of interest coverage ratios, leverage ratios and a minimum tangible net worth. At December 31, 1996, the Company was not in compliance with the interest coverage ratio and the leverage ratio covenants. On May 14, 1997, proceeds from the Credit Facility were used to fully reduce the Company's indebtedness under the Former Credit Facility.

Note 9—Income Taxes

The domestic and foreign components of income (loss) before taxes are as follows:

	Year Ended December 31,		
	1997	1996	1995
Domestic	\$ (14,517)	\$ (31,578)	\$ 19,563
Foreign	1,457	628	(504)
Total	<u>\$ (13,060)</u>	<u>\$ (30,950)</u>	<u>\$ 19,059</u>

The elements of the income tax provision (benefit) of the Company are as follows:

	Year Ended December 31,		
	1997	1996	1995
Current income taxes:			
Federal	\$ (8,982)	\$ (6,467)	\$ 3,232
State	(2,246)	(1,911)	813
Foreign	647	382	549
	<u>\$ (10,581)</u>	<u>\$ (7,996)</u>	<u>\$ 4,594</u>
Deferred income taxes:			
Federal	\$ 4,318	\$ (3,685)	\$ 3,183
State	1,206	(393)	618
Foreign	(167)	(174)	(773)
	<u>\$ 5,357</u>	<u>\$ (4,252)</u>	<u>\$ 3,028</u>
Income tax provision (benefit)	<u>\$ (5,224)</u>	<u>\$ (12,248)</u>	<u>\$ 7,622</u>

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued) (All dollar amounts in thousands unless otherwise indicated, except per share data)

The tax effects of the significant temporary differences which comprise the deferred tax assets and liabilities are as follows:

	At December 31,	
	1997	1996
Assets:		
Foreign statutory operating losses	\$ 2,028	\$ 1,861
Advertising/promotion accruals	830	3,342
Warranty and product related accruals	1,788	1,997
Alternative minimum tax	1,125	—
Other	3,598	3,827
Gross deferred assets	<u>\$ 9,369</u>	<u>\$11,027</u>
Liabilities:		
Accelerated depreciation	\$(5,092)	\$(3,369)
Accounts receivable and other	(1,976)	—
Gross deferred liabilities	<u>\$(7,068)</u>	<u>\$(3,369)</u>
Valuation allowance	<u>(517)</u>	<u>(517)</u>
Net assets	<u>\$ 1,784</u>	<u>\$ 7,141</u>

Reconciliations of the differences between income taxes computed at the Federal statutory rate and consolidated income tax provision (benefit) are as follows:

	Year ended December 31,		
	1997	1996	1995
Income taxes computed at Federal statutory rate (35%) ...	\$(4,571)	\$(10,833)	\$6,671
State taxes, net of Federal benefit	(678)	(1,497)	930
Foreign losses and rate differentials	(30)	(12)	(48)
Other, net	55	94	69
Income tax provision (benefit)	<u>\$(5,224)</u>	<u>\$(12,248)</u>	<u>\$7,622</u>

Note 10—Retirement Plans

The Company has retirement plans covering substantially all U.S. employees of its subsidiaries. No other post-retirement benefits are offered to retirees.

Eligible U.S. employees may participate in the Company's defined contribution plans. Company contributions to the plans are based upon a percentage of the employee contribution and vest over a five-year period commencing with date of employment. Such contributions amounted to \$182, \$210, and \$154 for the years 1997, 1996 and 1995, respectively.

There are two non-contributory defined benefit plans covering substantially all U.S. employees. Benefits are based on years of service and annual compensation as defined by such plans. Employees vest in plan benefits after five years of service.

Pursuant to the terms of the purchase agreement with Pittway, all retirement obligations earned by Company employees through July 31, 1992, were retained by Pittway. Obligations arising subsequent to that date are the responsibility of the Company. Pension costs recorded for the fiscal years 1997, 1996 and 1995 aggregated \$307.

FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 10—Retirement Plans—(Continued)

\$379 and \$346, respectively. The components of net pension cost for the fiscal years 1997, 1996 and 1995 consist of:

	Year ended December 31,		
	1997	1996	1995
Service cost of benefits earned during the year	\$ 346	\$ 378	\$ 328
Interest cost on projected benefit obligation	89	74	50
Return on plan assets	(289)	(188)	(172)
Net amortization and deferred gains and losses	161	115	140
Net pension cost	<u>\$ 307</u>	<u>\$ 379</u>	<u>\$ 346</u>
Discount rate	7.0%	7.0%	7.0%
Rate of compensation increase	5.0%	5.0%	5.0%
Long-term rate of return on assets	7.0%	7.0%	7.0%

A reconciliation of the funded status of the plans is as follows:

	At December 31,	
	1997	1996
Actuarial present value of benefit obligations:		
Vested benefit obligation	\$ 1,049	\$ 878
Non-vested benefit obligation	244	197
Accumulated benefit obligation	1,293	1,075
Projected benefit obligation	1,659	1,500
Plan assets at fair value	<u>1,905</u>	<u>1,498</u>
Plan assets (in excess of) less than projected benefit obligation	(246)	2
Unrecognized net gain	<u>531</u>	<u>145</u>
Accrued pension cost included in the consolidated balance sheet	<u>\$ 285</u>	<u>\$ 147</u>

The cost of benefit plans covering non-U.S. employees is not significant.

Note 11—Stock Options

Following the Acquisition, the Company established the 1992 Time Accelerated Restricted Stock Option Plan ("1992 Plan") under which it is authorized to grant non-qualified options to purchase shares of Company common stock at a price equal to the market value of a share of such stock on the date of grant. Such options vest over a five-year period if certain provisions are met and are generally exercisable once vested, or, in the case of a terminated employee, become exercisable pursuant to the terms of the plan.

During 1994, the Company established the 1994 Stock Option Plan ("1994 Plan") which provides for the grant of options to purchase up to 1,226,666 shares of common stock. During 1997, the Company established the 1997 Stock Option Plan ("1997 Plan") which provides for the grant of options to purchase up to 1,300,000 shares of common stock. The 1994 and 1997 Plans allow for the issuance of incentive stock options and non-qualified options. Options granted under the 1994 and 1997 Plans are generally issued at an exercise price of not less than the current market price and vest over periods determined by the Board of Directors. Under the 1994 and 1997 Plans, no option shall be exercisable after ten years from the date on which it was granted.

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued) (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 11—Stock Options—(Continued)

During 1996, the Company established the Nonqualified Stock Option Plan for Non-Employee Directors ("Non-Employee Director Plan") which provides for the grant of options for the purchase of an aggregate of 100,000 shares of common stock by all independent directors of the Company. Options to purchase 12,912 shares of common stock at an exercise price of \$1.78 per share 6,456 of which have expired and 6,827 shares of common stock at an exercise price of \$1.17 per share were granted in 1997 under the Non-Employee Director Plan. Options granted under the Non-Employee Director Plan are generally granted at an exercise price of one half of the market price of a share of common stock at the date of grant and become fully exercisable on the first anniversary of the date of grant. Under the Non-Employee Director Plan, options expire ten years after the date granted.

In February 1997, options for 314,000 shares of common stock were repriced to \$3.19 per share, the market price of the Company's common stock on the date of repricing. Of these options, 114,000 shares have a time-based vesting schedule while 200,000 shares were only to become exercisable in the event of a change in control of the Company consummated on or before December 31, 1997. Options for those 314,000 shares were granted apart from any Company stock option plan. The option for 114,000 shares was outstanding at December 31, 1997, while the one for 200,000 shares expired by its terms on December 31, 1997.

In February 1997, 505,200 options under the 1994 Plan were repriced to \$3.19 per share, the market price of the Company's common stock on the date of the repricing.

Stock option activity for fixed plans is as follows:

	Year ended December 31,		
	1997	1996	1995
Outstanding at beginning of period.....	1,587,224	1,541,864	1,238,364
Granted	1,322,939	814,194	324,000
Exercised	(151,996)	(140,000)	(17,500)
Cancelled	(1,013,505)	(628,834)	(3,000)
Outstanding at end of period	1,744,662	1,587,224	1,541,864
Options exercisable at end of year	483,346	643,457	725,963

The weighted average exercise price per share related to this stock option activity is as follows:

	At December 31,		
	1997	1996	1995
Outstanding at beginning of period.....	\$5.55	\$ 6.34	\$ 4.25
Granted	3.11	6.83	14.12
Exercised	1.61	1.61	1.61
Cancelled	6.19	10.00	13.50
Outstanding at end of period	\$3.67	\$ 5.55	\$ 6.34
Options exercisable at end of year	\$4.12	\$ 3.59	\$ 2.74

The weighted average fair value of options granted under fixed plans was \$1.42 per share in 1997, \$3.13 per share in 1996 and \$6.59 per share in 1995 using the Black-Scholes option pricing model.

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued) (All dollar amounts in thousands unless otherwise indicated, except per share data)

The following tables summarize information about employee stock options outstanding for fixed plans at December 31, 1997:

Range of Exercise Price	Shares Outstanding at December 31, 1997	Weighted-Average Remaining Life	Weighted-Average Exercise Price
\$1.17-8.50	1,699,662	7.7 years	\$ 3.33
13.50	45,000	7 years	13.50
Range of Exercise Price	Shares Exercisable at December 31, 1997	Weighted-Average Exercise Price	
\$1.17-8.50	460,846	\$ 3.66	
13.50	22,500	13.50	

Shares of common stock have been reserved for future issuance under all of the foregoing options.

The Company applies APB Opinion No. 25 and related interpretations in accounting for the aforementioned stock option plans. Accordingly, no compensation cost has been recognized for its fixed stock option plans while compensation expense has been recognized for its compensatory plans. Had compensation cost for the Company's fixed stock option plans been determined based on the fair value based method, as defined in Statement No. 123, the Company's net earnings (loss) and earnings (loss) per share would not be significantly different from those reported and consequently pro forma amounts have not been disclosed.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions used for grants: expected volatility of 27.0% in 1997, 29.3% in 1996 and 28.0% in 1995; expected lives of seven years for 1997, 1996 and 1995 and risk free interest rate of 6.3% in 1997, 6.4% in 1996 and 7.8% in 1995. It has been assumed that no dividends will be paid for the expected term of the options.

Note 12—Lease Commitments

The Company leases certain warehouses, office space and equipment under noncancelable operating leases expiring at various dates through the year 2010. Minimum annual rental commitments under all noncancelable leases for the next five years beginning with 1998 are as follows:

1998	1999	2000	2001	2002	Thereafter
\$2,879	\$2,852	\$2,483	\$2,172	\$2,165	\$11,547

Total rent expense including taxes, insurance and maintenance when included in rent amounted to \$3,223, \$3,801 and \$2,681 for the years ended December 31, 1997, 1996 and 1995, respectively.

Note 13—Contingencies

In November 1994, the Company and certain of its officers and directors were named as defendants in four purported class action lawsuits filed in the United States District Court for the Northern District of Illinois, Eastern Division. The plaintiffs in these actions, pursuant to a Court order, filed a consolidated and amended complaint resulting in the consolidation of the four actions. The consolidated case is entitled *Gilbert et al. vs. First Alert, Inc. et al.* ("Gilbert"). The amended complaint sought compensatory damages, costs and attorneys' fees on behalf of the purchasers of the Company's Common Stock during the period from October 12, 1994 through November 10, 1994. By order dated August 21, 1995, the Court certified the class. Subsequently, the plaintiff's motion to amend the complaint to expand the class period to September 20, 1994 through December 7, 1994, was granted and a second consolidated and amended complaint was filed on January 16, 1996. The new class was certified by the Court. The complaint alleges generally that the Company and other defendants disseminated false and misleading information to the investing public regarding the *First Alert*® Carbon Monoxide Detector in connection with an anticipated secondary public offering of the Company's Common Stock in late 1994 in violation of various provisions of the Securities Exchange Act of 1934 and the rules

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 13—Contingencies—(Continued)

promulgated thereunder. The Registration Statement with respect to the proposed secondary public offering was declared effective by the Securities and Exchange Commission on November 9, 1994, but was subsequently withdrawn by the Company at the request of the selling stockholders. The public offering was solely to facilitate the sale of shares by certain selling stockholders and the Company would not have received any proceeds therefrom.

The Company vigorously contested all claims and denied liability. Nevertheless, to avoid further expense and the burdens of litigation, in November 1996, the Company agreed to a tentative settlement of the consolidated class actions. An executed settlement agreement was filed with the Court on February 11, 1997 and the Court entered an order on February 25, 1997, giving preliminary approval to the settlement.

Pursuant to the Court's February 25, 1997, order, members of the class had until May 12, 1997, to opt out of the class and until July 28, 1997, to file proofs of claim if they wished to receive a share of the settlement amount. The Court held a hearing on June 20, 1997, to consider the fairness of the settlement and, at that time, the Court approved the settlement.

Under the terms of the settlement agreement, defendants will pay a fixed amount per share to class members, depending on when they bought or sold their shares, with a maximum amount of \$3.0 million (including attorney's fees and costs for class counsel) to be paid out in settlement. The majority of the settlement amount is being paid by the Company's directors and officers liability insurance carrier. The pendency of the *Gilbert* complaint has not had a material effect on the Company's financial results for any period and adequate reserves exist at December 31, 1997, for the Company's share of the settlement amount.

A purported class action entitled *Belley et al. vs. First Alert, Inc. et al.* ("Belley") was filed in the Circuit Court of Cook County, Illinois on January 3, 1995, against the Company and its wholly owned subsidiary, BRK Brands, Inc., alleging common law fraud, breach of warranties, and a statutory violation of the Illinois Consumer Fraud Act, all related to alleged defects in the original *First Alert*® Carbon Monoxide Detector (Model FACO) design and the manner in which the detector was marketed. The Company does not believe that the plaintiffs claim any personal injuries or property damage; nor do the plaintiffs claim that their detectors failed to detect dangerous levels of carbon monoxide. Instead, they claim (i) that the Company failed to disclose that the product alarms in non-life threatening conditions (which they state in their complaint to be a "nuisance"), (ii) that the Company falsely proclaims the product resets "automatically" when, in fact, the product can take several hours or days to reset after it has gone into alarm and (iii) that the Company falsely claims that the product met Underwriters Laboratories' listing criteria for residential carbon monoxide detectors in effect at the time the Model FACO was manufactured. The plaintiffs seek a refund of their purchase price, other out-of-pocket expenses, punitive damages, and attorneys' fees. The Company has raised numerous defenses to this claim and will continue to oppose it forcefully.

In February 1997, the Company and its wholly owned subsidiary, BRK Brands, Inc., were named as defendants in a purported class action lawsuit entitled *Houlihan et al. vs. First Alert, Inc. et al.* ("Houlihan") in the Circuit Court of Cook County, Illinois, alleging breach of express warranty and statutory violations of various states' consumer protection statutes due to alleged misrepresentations and product defects involving *First Alert*® Carbon Monoxide Detectors. The Company does not believe the plaintiff claimed any personal injuries or property damage; nor did he claim specifically that his detector failed to detect dangerous levels of carbon monoxide. Rather, the plaintiff sought "rescissory damages" and attorneys' fees. The plaintiff's original complaint was stricken by the Court on April 9, 1997, but the Court gave the plaintiff leave to re-plead the case which was done. The Company filed a Motion to Dismiss the amended complaint and that motion was granted on August 22, 1997. The case has now been settled by refunding the plaintiff's purchase price of the detector.

On February 11, 1998, a jury returned a verdict against the Company's BRK Brands, Inc., subsidiary, awarding damages totaling \$16.9 million in the case of *Mercer et al. vs. BRK Brands, Inc. et al.*, which was tried

FIRST ALERT, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 13—Contingencies—(Continued)

in the Iowa District Court for Scott County. The verdict includes \$12.5 million of punitive damages. The case alleged negligence, breach of warranty and fraudulent nondisclosure in connection with a BRK® Electronics smoke detector that alarmed during a residential fire. The punitive damage award was based upon the jury finding a preponderance of clear, convincing and satisfactory evidence the Company's conduct constituted willful and wanton disregard for the rights or safety of others. Substantially all of the cost of defense and the damages assessed in this case are covered by the Company's insurance. The Company intends to continue to vigorously contest this case by pursuing a number of post-trial motions to overturn the verdict and appealing the decision, if necessary.

In addition to the *Gilbert, Betley and Mercer* actions, the Company and its subsidiaries, including BRK Brands, Inc., are parties to various product liability and other types of lawsuits and are from time to time subject to investigations by various governmental agencies, including investigations regarding environmental matters. Although the ultimate liabilities, if any, arising out of the *Gilbert, Betley, Mercer* and other pending legal actions or investigations cannot presently be determined, based on its past experience and assessment of such matters, the Company believes that the outcome of these matters will not have a material adverse effect on the Company's financial position.

Note 14—Related Party Transactions

Certain administrative fees were paid to Thomas H. Lee Company aggregating \$214, \$195 and \$326, for the years ended December 31, 1997, 1996 and 1995, respectively.

The First Alert trademark is owned by the First Alert Trust in which the Company has a 75% beneficial interest. The Company entered into a license agreement with the First Alert Trust and Pittway which permits the Company in perpetuity and on an exclusive, royalty-free basis, to manufacture and market under the First Alert brand name any products other than products which are designed to be monitored by an alarm or building control system or to work in conjunction with a communication panel or other building control system ("Professional Products"). Pittway owns the remaining 25% beneficial interest in the First Alert Trust and is a party to such license agreement with the First Alert Trust under which Pittway has, in perpetuity, an exclusive, royalty-free license to manufacture and market Professional Products under the First Alert Professional® and First Alert Professional Security System® brand names. Either Pittway or the Company may terminate their further obligations and rights under the license by providing notice to the other party.

FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 15—Segment Information

The Company operates in one segment—residential safety products.

Presented below is information on the geographic areas in which the Company operates. Sales between geographic areas are made at approximate arms-length prices.

Geographic Areas

	<u>Year Ended December 31, 1997</u>		<u>At December 31, 1997</u>
	<u>Net Sales</u>	<u>Operating Income (Loss)</u>	<u>Identifiable Assets</u>
United States	\$169,017	\$ (7,891)	\$144,978
Europe	20,243	1,418	7,396
Other	17,823	(1,973)	11,987
Elimination	(20,142)	(21)	—
Total	<u>\$186,941</u>	<u>\$ (8,467)</u>	<u>\$164,361</u>

	<u>Year Ended December 31, 1996</u>		<u>At December 31, 1996</u>
	<u>Net Sales</u>	<u>Operating Income (Loss)</u>	<u>Identifiable Assets</u>
United States	\$188,363	\$(25,382)	\$167,824
Europe	16,877	(278)	7,315
Other	18,120	(838)	11,352
Elimination	(17,753)	(21)	—
Total	<u>\$205,607</u>	<u>\$(26,519)</u>	<u>\$186,491</u>

	<u>Year Ended December 31, 1995</u>		<u>At December 31, 1995</u>
	<u>Net Sales</u>	<u>Operating Income (Loss)</u>	<u>Identifiable Assets</u>
United States	\$225,430	\$ 20,511	\$187,045
Europe	16,964	(1,840)	5,961
Other	23,661	1,807	13,987
Elimination	(19,789)	(45)	—
Total	<u>\$246,266</u>	<u>\$ 20,433</u>	<u>\$206,993</u>

Operating income includes costs of goods sold, selling, general and administrative expenses, restructuring charge and depreciation and amortization expense.

FIRST ALERT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
 (All dollar amounts in thousands unless otherwise indicated, except per share data)

Note 16—Quarterly Results (unaudited)

Quarterly Results of Operations for the years ended December 31, 1997 and 1996 are shown below:

	1997			
	Three Month Period Ended			
	March 30	June 29	September 28	December 31
Net sales	\$37,413	\$27,481	\$50,774	\$71,273
Gross profit	10,536	7,097	14,163	20,796
Net income (loss)	(3,274)	(4,404)	(1,543)	1,385
Basic net income (loss) per share	(0.14)	(0.18)	(0.06)	0.06
Diluted net income (loss) per share	(0.14)	(0.18)	(0.06)	0.06
Common stock price range—				
High	4.125	3.50	4.00	3.50
Low	2.688	1.875	2.75	1.875

	1996			
	Three Month Period Ended			
	March 31	June 30	September 30	December 31
Net sales	\$55,489	\$28,981	\$60,860	\$60,277
Gross profit	15,351	6,579	24,276	8,790
Net income (loss)	(4,501)	(5,937)	2,203	(10,467)
Basic net income (loss) per share	(0.19)	(0.25)	0.09	(0.43)
Diluted net income (loss) per share	(0.19)	(0.25)	0.09	(0.43)
Common stock price range—				
High	11.375	7.75	6.375	6.125
Low	6.375	4.00	4.375	3.00

Income per share amounts for each quarter are required to be computed independently and, therefore, may not equal the amount computed for the entire year.

Results of operations in the three month period ended December 31, 1997 include costs associated with inefficiencies incurred in manufacturing operations, premium freight out charges and key customer allowances which were partially offset by the release of \$4.5 million of reserves established in prior years deemed no longer necessary. These reserves had been established over a period of years and their initial recording was not significant to any individual prior reporting period.

Results of operations during the three months ended December 31, 1996, include a pre-tax restructuring charge of \$4,497, including inventory write-down, and a pre-tax charge to operations of \$4,972. The pre-tax charge to operations includes additional inventory related costs, anticipated product allowances for sales made prior to December 31, 1996, severance and asset impairment costs.

Note 17—Subsequent Events

On March 2, 1998, the Company announced that it had entered into a definitive agreement with Sunbeam Corporation (the "Agreement") providing for the acquisition of the Company by Sunbeam in a transaction valued at approximately \$175 million including the assumption of existing debt. The consummation of the offer is subject to certain customary conditions, including expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvement Act. The Agreement provides that the Company pay a fee of \$3.75 million in the event that the acquisition is terminated.

APPENDIX A

ACCREDITED INVESTOR LETTER

Sunbeam Corporation
1615 S. Congress Avenue, Suite 200
Delray Beach, Florida 33445

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Ladies and Gentleman:

We are delivering this letter in connection with an offering by Sunbeam Corporation (the "Company") of its Zero Coupon Convertible Senior Subordinated Debentures due 2018 (the "Debentures"), which are convertible into shares of the Company's common stock, \$0.01 par value per share (the "Common Stock"), all as described in the Offering Memorandum (the "Offering Memorandum") relating to the Offering. We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933 (the "Securities Act") or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act (an "Institutional Accredited Investor") able to bear the economic risk of an investment in the Debentures;

(ii) (A) any purchase of Debentures by us will be for our own account or for the account of one or more other Institutional Accredited Investors for each of which we exercise sole investment discretion (and have authority to make, and do make, the statements contained in this letter) or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which we exercise sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring Debentures as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

(iii) in the event that we purchase any Debentures, we will acquire Debentures having a minimum purchase price of not less than \$100,000 for our own account or for any separate account for which we are acting;

(iv) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing Debentures;

(v) we are not acquiring Debentures with a view to distribution thereof or with any present intention of offering or selling Debentures or the Common Stock issuable upon conversion thereof, except as permitted below; provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control; and

(vi) we have received a copy of the Offering Memorandum and acknowledge that we have had access to such financial and other information, and have been offered the opportunity to ask such questions of representatives of the Company and receive answers thereto, as we deem necessary in connection with our decision to purchase Debentures.

We understand that the Debentures are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Debentures and the Common Stock issuable upon conversion thereof have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for which we acquire any Debentures, that if in the future we decide to resell or otherwise transfer such Debentures or the Common Stock issuable upon conversion thereof, such Debentures or Common Stock may be resold or otherwise transferred within the United States or to, or for the account or benefit of, U.S. persons only (i) to the Company or any subsidiary thereof, (ii) to a person who is a "qualified institutional

buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (iii) to an Institutional Accredited Investor that, prior to such transfer, furnishes to the Trustee for the Debentures (or in the case of Common Stock, the transfer agent therefor) a signed letter containing certain representations and agreements relating to the restrictions on transfer of such securities (the form of which letter can be obtained from the Trustee or transfer agent, as the case may be), (iv) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available) or (v) pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer), and in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Debentures and any Common Stock, as the case may be. We further agree to provide to any person purchasing any of the Debentures or the Common Stock issuable upon conversion thereof (other than pursuant to clause (v) above) from us a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the registrar and transfer agents for the Debentures and the Common Stock will not be required to accept for registration of transfer any Debentures or any Common Stock issued upon conversion of the Debentures, except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Debentures and any Common Stock issued upon conversion of the Debentures will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

(Name of Purchaser)

By: _____

Name: _____

Title: _____

SUNBEAM CORPORATION

SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial holder of Zero Coupon Convertible Senior Subordinated Debenture due 2018 (the "Debenture") of Sunbeam Corporation (the "Company" or "Registrant") or Common Stock, \$0.01 par value (the "Common Stock" and, together with the Debentures, the "Registrable Securities") of the Company understands that the Registrant has filed or intends to file with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (the "Shelf Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement, dated as of March , 1998 (the "Registration Rights Agreement"), between the Company and the Initial Purchaser named therein. A copy of the Registration Rights Agreement is available from the Company upon requests at the address set forth below. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Registration Rights Agreement.

Each beneficial owner of Registrable Securities is entitled to the benefits of the Registration Rights Agreement. In order to sell or otherwise dispose of any Registrable Securities pursuant to the Shelf Registration Statement, a beneficial owner of Registrable Securities generally will be required to be named as a selling securityholder in the related prospectus, deliver a prospectus to purchasers of Registrable Securities and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions, as described below). Beneficial owners that do not complete this Notice and Questionnaire and deliver it to the Company as provided below will not be named as selling securityholders in the prospectus and therefore will not be permitted to sell any Registrable Securities pursuant to the Shelf Registration Statement. Beneficial owners are encouraged to complete and deliver this Notice and Questionnaire prior to the effectiveness of the Shelf Registration Statement so that such beneficial owners may be named as selling securityholders in the related prospectus at the time of effectiveness. Upon receipt of a completed Notice and Questionnaire from a beneficial owner following the effectiveness of the Shelf Registration Statement, the Company will, as promptly as practicable but in any event within five business days of such receipt, file such amendments to the Shelf Registration Statement or supplements to the related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of Registrable Securities. The Company has agreed to pay liquidated damages pursuant to the Registration Rights Agreement under certain circumstances as set forth therein.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Securityholder") of Registrable Securities hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under Item 3) pursuant to the Shelf Registration Statement. The undersigned, by signing and returning this Notice and Questionnaire, understands that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Company's directors, the Company's officers who sign the Company Registration Statement, and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), from and against certain losses arising in connection with statements concerning the undersigned made in the Company's Registration Statement or the related prospectus in reliance upon the information provided in this Notice and Questionnaire.

B-1

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

1. (a) Full Legal Name of Selling Securityholder:

- (b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities listed in (3) below are held:

- (c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which Registrable Securities listed in (3) below are held:

2. Address for Notices to Selling Securityholder:

Telephone: _____

Fax: _____

Contact Person: _____

3. Beneficial Ownership of Registrable Securities:

- (a) Type and Principal Amount Registrable Securities beneficially owned:

- (b) CUSIP No(s). of such Registrable Securities beneficially owned:

4. Beneficial Ownership of Other Securities of the Company owned by the Selling Securityholder:

Except as set forth below in this Item (4), the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item (3).

- (a) Type and Amount of Other Securities beneficially owned by the Selling Securityholder:

- (b) CUSIP No(s). of such Other Securities beneficially owned:

5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here: _____

6. Plan of Distribution:

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Registrable Securities listed above in Item (3) pursuant to the Shelf Registration Statement only as follows (if at all): Such Registrable Securities may be sold from time to time directly by the undersigned or, alternatively, through underwriters, broker-dealers or agents. If the Registrable Securities are sold through underwriters or broker-dealers, the Selling Securityholder will be responsible for underwriting discounts or commissions or agent's commissions. Such Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions) (i) on any national securities exchange or quotation service on which the Registrable Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market, or (iv) through the writing of options. In connection with sales of the Registrable Securities or otherwise, the undersigned may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Registrable Securities in the course of hedging in positions they assume. The undersigned may also sell Registrable Securities short and deliver Registrable Securities to close out short positions, or loan or pledge Registrable Securities to broker-dealers that in turn may sell such securities.

State any exceptions here: _____

Note: In no event will such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

The undersigned acknowledges that it understands its obligation to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Registrable Securities pursuant to the Shelf Registration Agreement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Selling Securityholder hereby acknowledges its obligations under the Registrable Rights Agreement to indemnify and hold harmless certain persons as set forth herein.

Pursuant to the Registration Rights Agreement, the Company has agreed under certain circumstances to indemnify the Selling Securityholder against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing at the address set forth below.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items (1) through (6) above and the inclusion of such information in the Shelf Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Shelf Registration Statement and the related prospectus.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated: _____

(Beneficial Owner)

By: _____

Name: _____

Title: _____

PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO
SUNBEAM CORPORATION AT:

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

Attention: Rich Goudis

B-4

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Sunbeam®

6

FOR IMMEDIATE RELEASE

Sunbeam States that First Quarter Revenues
May Be Lower than Street Estimates

Delray Beach, Florida; March 19, 1998 - - Sunbeam Corporation

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

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

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

Contact:

Richard Goudis
(561) 243-2100

7

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT, dated as of August 12, 1998, by and between Sunbeam Corporation, a Delaware corporation ("Sunbeam" or the "Company"), and Coleman (Parent) Holdings Inc., a Delaware corporation ("Coleman Parent").

For the purposes of this Agreement, Sunbeam, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators (but excluding for all purposes under this Agreement, Mr. Albert J. Dunlap, former Chief Executive Officer of Sunbeam, Mr. Russell A. Kersh, former Executive Vice President of Sunbeam, Arthur Andersen LLP, Sunbeam's independent auditors, PriceWaterhouseCoopers, consultants to Sunbeam, and any financial advisor to Sunbeam, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators), are collectively hereinafter referred to as the "Sunbeam Group"; and Coleman Parent, together with each direct or indirect parent, subsidiary, division, or affiliated corporation or entity, and each employee, agent, attorney, representative, administrator, executor, receiver, officer, director, or stockholder of any such corporation or entity, and any other person, firm, corporation or entity now or hereafter affiliated in any manner with any of them or claiming through or in the right of any of them and all of their respective predecessors, successors, assigns, heirs, executors and administrators, are collectively hereinafter referred to as the "Coleman Group".

W I T N E S S E T H

WHEREAS, CLN Holdings Inc., a Delaware corporation ("CLN Holdings"), was the indirect beneficial owner of approximately 82% of the outstanding common stock, par value \$.01 per share (the "Coleman Common Stock"), of The Coleman Company, Inc., a Delaware corporation ("Coleman"); and

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Holdings Merger Agreement"), by and among Sunbeam, Laser Acquisition Corp., a Delaware corporation and, as of such date, a wholly owned subsidiary of Sunbeam ("Laser Acquisition"), CLN Holdings, as of such date, a wholly owned subsidiary of Coleman Parent, and Coleman Parent, CLN Holdings was merged with and into Laser Acquisition (the "Holdings Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam, and pursuant to which Coleman Parent received certain shares of common stock, par value \$.01 per share, of Sunbeam ("Sunbeam Common Stock"); and

WHEREAS, pursuant to an Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam ("Camper Acquisition"), and Coleman, Camper Acquisition is to be merged with and into Coleman (the "Coleman Merger"), with the surviving corporation becoming an indirect wholly owned subsidiary of Sunbeam; and

WHEREAS, as a result of the Holdings Merger, Sunbeam acquired an indirect approximately 82% interest in Coleman (the "Coleman Acquisition"); and

WHEREAS, Sunbeam and Coleman Parent are parties to a Registration Rights Agreement, dated as of March 29, 1998 (the "Registration Rights Agreement"), pursuant to which Sunbeam agreed to provide certain registration rights to Coleman Parent; and

WHEREAS, following the dismissal by Sunbeam of certain of its executive officers in mid-June 1998, Coleman Parent has made available to Sunbeam certain senior officers employed by members of the Coleman Group to serve as senior executive officers of Sunbeam (the "Senior Executives") and has provided certain other management support to Sunbeam, and Sunbeam desires to continue the service of the Senior Executives and such management support; and

WHEREAS, Coleman Parent and Sunbeam believe it is desirable that Sunbeam put in place as promptly as possible a permanent management team to prevent jeopardizing the ongoing operations and financial viability of Sunbeam; and

WHEREAS, Coleman Parent believes that it possesses legal and equitable claims against Sunbeam arising out of the Coleman Acquisition and out of what it contends were certain breaches of contract and fraudulent and negligent or other misrepresentations and omissions made to Coleman Parent and its representatives in connection therewith (the "Claims"), and Sunbeam disputes such Claims; and

WHEREAS, there are also now pending or may be filed putative class actions in which Sunbeam is named as a defendant and in which Coleman Parent is a class member (the "Class Actions"), and Sunbeam denies liability with respect to and intends to contest the claims that have been asserted in the Class Actions; and

WHEREAS, the accountants who audited Sunbeam's 1997 financial statements, assisted by another firm of accountants, are in the process of reviewing those financial statements, and believe, as has been publicly announced, that it will be necessary to restate those financial statements by reflecting a variety of adjustments the magnitude of which has not yet been determined; and

WHEREAS, Sunbeam and Coleman Parent desire to terminate the disputes between them, and desire to assure one another that Coleman Parent will not prosecute the Claims or any related or potential claims arising out of or relating to the Coleman Acquisition, directly or indirectly in any capacity, against the Sunbeam Group, so as to avoid the substantial burdens and expense of litigation and the interference with the business and operations of Sunbeam and with the work of its management and employees and to obtain the continued services of certain executives and employees of the Coleman Group, and in accordance with the terms and provisions hereof, that Coleman Parent and Sunbeam each forever release, waive and discharge any

and all manner of actions, causes of action, proceedings, suits, claims, demands, liens, debts, accounts, obligations, rights, costs, contracts, agreements, promises, controversies, judgments, expenses, demands, damages and liabilities, of any nature whatsoever, in law or in equity, whether or not now foreseen, known, suspected, matured, accrued or claimed, and whether or not asserted in litigation, including court costs and attorneys' fees (each an "Action and Liability" and collectively, "Actions and Liabilities"), which any member of the Coleman Group controlling, controlled by or under common control with Coleman Parent (such persons, together with Coleman Parent, the "Coleman Controlled Group") may have against any member of the Sunbeam Group and which any member of the Sunbeam Group controlled by Sunbeam (such persons, together with Sunbeam, the "Sunbeam Controlled Group") may have against any member of the Coleman Group as of the effective date hereof or prior thereto in any manner arising out of or relating to the Coleman Acquisition, irrespective of any present lack of knowledge on the part of either of them of any such possible Action and Liability, but excluding any claim for breach of this Agreement or the agreements and documents entered into or delivered pursuant hereto;

NOW, THEREFORE, in consideration of the respective covenants, agreements and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be bound hereby, the parties hereto agree as follows:

1. Issuance of Warrants; Closing.

(a) On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction or waiver (to the extent permitted) of the applicable conditions expressly set forth herein, at the closing of the transactions contemplated by this Section 1 (the "Closing"):

(i) Sunbeam shall issue to Coleman Parent certain warrants to purchase shares of Sunbeam Common Stock (the "Warrants") by duly executing and delivering to Coleman Parent a Warrant Agreement in the form attached as Exhibit A hereto (the "Warrant Agreement");

(ii) Sunbeam and Coleman Parent shall enter into an amendment to the Registration Rights Agreement, in the form attached as Exhibit B hereto (as so amended, the "Amended Registration Rights Agreement");

(iii) Sunbeam and Coleman Parent agree to be bound by the releases and covenants set forth in Section 2 of this Agreement;

(iv) Coleman Parent agrees to supply management services of the Senior Executives, and to the covenants and provisions of Section 3 of this Agreement; and

(v) Sunbeam and Coleman Parent agree to be bound by the provisions regarding the restrictions on transfer on the shares of Sunbeam Common Stock received by Coleman Parent in the Holdings Merger and the Warrants set forth in Section 4 of this Agreement.

(b) The Closing shall take place on the first day when all conditions thereto set forth herein shall be satisfied or waived or

such other date as Sunbeam and Coleman Parent may agree in writing (the "Closing Date"), but in no event sooner than the tenth day following the mailing of the letter to Sunbeam shareholders contemplated by Section 7. The Closing shall take place on the Closing Date at 10:00 a.m., New York City time, at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York and shall be deemed effective as of the opening of business on the Closing Date.

(c) At the Closing, Sunbeam shall deliver or cause to be delivered to Coleman Parent, in addition to the Warrant Agreement, such other instruments or documents as Coleman Parent may reasonably request.

2. Granting of Releases and Indemnification.

(a) At the Closing, simultaneously with receipt by Coleman Parent of the Warrants, and without any further action by any of the parties hereto, each of the following shall be fully and legally effective:

(i) Coleman Parent shall, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, remise, release and forever discharge the Sunbeam Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Sunbeam Group or any of their predecessors, successors or assigns, which Coleman Parent or any other member of the Coleman Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Sunbeam Group and parties acting on behalf of any member of the Sunbeam Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Coleman Parent and any other member of the Coleman Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Coleman Parent's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

(ii) In the event any member of the Coleman Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(i) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnification or contribution from any member of the Sunbeam Controlled Group for any amounts they are required to pay to any member of the Coleman Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Coleman

Controlled Group (each a "Sunbeam Group Indemnification Obligation"), Coleman Parent will indemnify and hold harmless each member of the Sunbeam Controlled Group against such Sunbeam Group Indemnification Obligation. No member of the Sunbeam Controlled Group will enter into any settlement of a Sunbeam Group Indemnification Obligation without the prior written consent of Coleman Parent, which shall not be unreasonably withheld. Any amounts so paid by a member of the Sunbeam Controlled Group in a settlement so consented to by Coleman Parent shall be treated for purposes hereof as a Sunbeam Group Indemnification Obligation.

(iii) Sunbeam, on behalf of itself and on behalf of each other member of the Sunbeam Controlled Group, shall remise, release and forever discharge the Coleman Group of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against any of the Coleman Group or any of their predecessors, successors or assigns, which Sunbeam or any member of the Sunbeam Controlled Group has or ever had from the beginning of the world to the Closing with respect to or arising out of the Coleman Acquisition or any alleged misrepresentations and omissions and/or breach of contract by any member of the Coleman Group and parties acting on behalf of any member of the Coleman Group in connection with the Coleman Acquisition, including with respect to the Actions and Liabilities; provided that neither the foregoing release nor the dismissals or withdrawals described in this Section 2(a) shall apply to the rights of Sunbeam and any other member of the Sunbeam Controlled Group under Article IX of the Holdings Merger Agreement, any breach or failure to comply with this Agreement, the Warrant, the Amended Registration Rights Agreement or the transactions contemplated hereby or thereby, the transactions contemplated by the Coleman Merger Agreement (including the Coleman Merger), which shall not be terminated or amended in any respect hereby, or shall otherwise affect Sunbeam's right to enforce this Agreement, the Warrant or the Amended Registration Rights Agreement in accordance with its or their terms.

(iv) In the event any member of the Sunbeam Controlled Group pursues a claim against any person(s) not released hereby involving the matters that are the subject of the release set forth in Section 2(a)(iii) and it is finally judicially determined that such person(s) are entitled directly or indirectly to indemnification or contribution from any member of the Coleman Controlled Group for any amounts they are required to pay to any member of the Sunbeam Controlled Group in connection with such claims, or to reimbursement of litigation expenses solely attributable to such claims of any member of the Sunbeam Controlled Group, (each, a "Coleman Group Indemnification Obligation"), Sunbeam will indemnify and hold harmless each member of the Coleman Controlled Group against such Coleman Group Indemnification Obligation. No member of the Coleman Controlled Group will enter into any settlement of a Coleman Group Indemnification Obligation without the prior written consent of Sunbeam, which shall not be unreasonably withheld. Any amounts so paid by a member of the Coleman Controlled Group in a settlement so consented to by Sunbeam shall be treated for purposes hereof as a Coleman Group Indemnification Obligation.

(v) Sunbeam, on behalf of itself, and on behalf of each other member of the Sunbeam Controlled Group, and Coleman Parent, on behalf of itself and on behalf of each other member of the Coleman Controlled Group, agree to indemnify and hold harmless one another from and against any and all Actions and Liabilities arising from, or in connection with, any action or proceeding, brought by, or prosecuted by, or on the initiative of, either of them, or by any of their predecessors, successors or assigns, contrary to the provisions of this Agreement. It is further agreed that this agreement of indemnity shall be deemed breached and a cause of action shall be deemed to have accrued thereon immediately upon the commencement of any action contrary to this Agreement, and that in any such action this Agreement may be pleaded by either of them as a defense, or either of them may assert this Agreement by way of counterclaim or cross-claim in any such action.

(vi) This Agreement shall inure to the benefit of and shall be binding upon Sunbeam and Coleman Parent, and to the benefit of and shall be binding upon each person or entity in the Sunbeam Group and the Coleman Group.

(b) Coleman Parent agrees that it shall opt out, as to and only as to any claims against any member of the Sunbeam Group, of any class that may be certified in any of the Class Actions or in any other action that may be certified as a class action with respect to or arising out of any other matter released hereby.

3. Provision of Management Services.

(a) The parties hereto acknowledge that Coleman Parent has caused other members of the Coleman Group to make available to Sunbeam the services of certain employees and Senior Executives and has encouraged such persons to continue to provide services to Sunbeam as employees of Sunbeam.

(b) Coleman Parent agrees that it shall, and it shall use its reasonable efforts to cause the other members of the Coleman Group to, continue to, for a minimum period of 36 months from the date hereof, make available to Sunbeam the services of Coleman Group's employees who are Senior Executives, or who become Senior Executives, for so long as they remain employees of a member of the Coleman Group and otherwise to continue to provide advice and assistance to Sunbeam in connection with the business and operations of Sunbeam consistent with that provided to date; provided, however, that, other than pursuant to the employment arrangements currently in place between such employees and members of the Coleman Group, no member of the Coleman Group shall be required bear any incremental expense with respect to any Senior Executive in order to comply with the foregoing.

(c) Sunbeam agrees to pay the compensation of any such persons who become employees of Sunbeam in accordance with the terms of the employment arrangements entered into by Sunbeam with such persons. This Agreement shall not prevent any of the Senior Executives from continuing to perform services for members of the Coleman Group to the extent that the provision of such services does not materially interfere with the performance of services by the Senior Executive for Sunbeam under his employment arrangements with Sunbeam.

(d) Coleman Parent agrees to use its reasonable efforts to cause the other members of the Coleman Group to continue, for a period of 36 months from the date hereof, to provide assistance and support to Sunbeam on a basis consistent with the manner in which such assistance and support are generally provided to other companies in which members of the Coleman Group have a substantial interest (and without the payment of additional consideration by Sunbeam to Coleman Parent, other than with respect to the reimbursement of out-of-pocket expenses paid to third parties) and of a similar nature to those which have been so provided to Sunbeam from time to time from mid-June 1998 through the date hereof, including as to the following matters:

- (i) financings, and dealings with financing sources and the capital markets;
- (ii) investor and public relations;
- (iii) acquisitions, divestitures and other extraordinary transactions;
- (iv) executive benefits and compensation and other personnel matters; and
- (v) compliance, litigation, insurance, regulatory and other legal matters.

4. Restrictions on Transfer of Securities. Coleman Parent hereby agrees not to, directly or indirectly, for a period of three (3) years from the date hereof, Transfer (as such term is defined in Section 7.1 of the Holdings Merger Agreement) (A) any shares of Sunbeam Common Stock received pursuant to the terms of the Holdings Merger Agreement or (B) any of the Warrants or the Warrant Shares (as defined in the Warrant Agreement), in either case in whole or in part, other than to one of its Affiliates (as such term is defined in the Holdings Merger Agreement) who agrees in writing to be bound by the terms of this Section 4, except that (A) the holder or holders of such shares of Sunbeam Common Stock may at any time or from time to time Transfer so many of such shares of Sunbeam Common Stock as represent in the aggregate seventy-five percent (75%) of such shares of Sunbeam Common Stock, and (B) the holder or holders of the Warrants or the Warrant Shares may at any time or from time to time Transfer so many of the Warrants or the Warrant Shares as represent in the aggregate fifty (50%) of the Warrant Shares Amount (as defined in the Warrant Agreement). The provisions of this Section 4 shall not be applicable, and Coleman Parent shall be free to Transfer any and all shares of Sunbeam Common Stock, Warrants and Warrant Shares, (i) following any change of control of Sunbeam or (ii) in connection with any transaction in which the holders of all of the outstanding shares of Sunbeam Common Stock have the opportunity to Transfer at least 50% of their shares of Sunbeam Common Stock on the same terms. The provisions of this Section 4 shall supersede any and all other restrictions on Transfer that Coleman Parent or any of its Affiliates may have agreed to with Sunbeam or any of its Affiliates.

5. Representations and Warranties of Sunbeam. Sunbeam hereby represents and warrants to Coleman Parent as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Sunbeam, and no other corporate actions or proceedings on the part of Sunbeam (including any

action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Sunbeam and constitutes a valid and binding agreement of Sunbeam enforceable against it in accordance with its terms. The Audit Committee of the Board of Directors of Sunbeam (the "Audit Committee") has expressly approved the transactions contemplated hereby as contemplated by Paragraph 312 ("Paragraph 312") of the New York Stock Exchange ("NYSE") Listed Company Manual and has determined that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company. Upon application duly made by Sunbeam, the NYSE has advised that it has accepted Sunbeam's reliance on the exception to the shareholder approval policy of Paragraph 312 as contained therein in connection with the transactions contemplated hereby (the "Exception").

(b) Due Organization. Sunbeam is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power to enter into and perform this Agreement and to carry on its business as it is now being conducted.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Sunbeam of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Sunbeam nor the consummation by Sunbeam of the transactions contemplated hereby, nor compliance by Sunbeam with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Sunbeam; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Sunbeam is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Sunbeam or any of its properties or assets.

(d) Validity of Warrants and Underlying Shares. At the Closing, the issuance of the Warrants will have been duly authorized and, upon their issuance pursuant to the terms of this Agreement, the Warrants will be validly issued and will not be subject to any preemptive or similar right other than the rights and obligations under the Warrant Agreement. All shares of Sunbeam Common Stock to be issued upon the exercise of the Warrants, when issued, will be duly authorized and validly issued, fully paid and nonassessable and will not be subject to any preemptive or similar right.

(e) Capitalization. The authorized capital stock of Sunbeam consists of 500,000,000 shares of Sunbeam Common Stock, and 2,000,000 shares of preferred stock, par value \$.01 per share, of Sunbeam. As of the date hereof, (i) 100,860,129 shares of Sunbeam Common Stock were issued and outstanding (excluding any shares of Sunbeam Common Stock issued upon the exercise of Sunbeam Stock Options (as defined

below) since August 6, 1998); (ii) 7,199,452 shares of Sunbeam Common Stock were issuable upon the consummation of the Coleman Merger Agreement; (iii) 13,242,050 shares of Sunbeam Common Stock were issuable in accordance with the terms of the Zero Coupon Convertible Senior Subordinated Debentures due 2018 of the Company; and (iv) no shares of Sunbeam preferred stock were issued and outstanding. As of the date hereof, not more than 9,000,000 shares of Sunbeam Common Stock were issuable upon exercise of vested and unvested employee and non-employee stock options (the "Sunbeam Stock Options") outstanding under all stock option plans of Sunbeam or granted pursuant to employment agreements (although Sunbeam is contesting the validity of certain of such Sunbeam Stock Options). As of the date hereof, no shares of Sunbeam Common Stock were held as treasury shares. All of the issued and outstanding shares of Sunbeam Common Stock are validly issued, fully paid and nonassessable and free of preemptive rights. As of the date hereof, except as set forth above, there are no shares of capital stock of Sunbeam issued or outstanding or, except as set forth above, any options, warrants, subscriptions, calls, rights, convertible securities or other agreements or commitments obligating Sunbeam to issue, transfer, sell, redeem, repurchase or otherwise acquire any shares of its capital stock or securities, or the capital stock or securities of Sunbeam. There are no notes, bonds, debentures or other indebtedness of Sunbeam having the right to vote (or convertible into or exchangeable for securities having the right to vote) on any matters upon which stockholders of Sunbeam may vote.

(f) Brokers. Other than Blackstone Financial Group, which has acted as financial advisor to the Special Committee of the Sunbeam Board, no broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sunbeam or any member of the Sunbeam Group.

6. Representations and Warranties of Coleman Parent. Coleman Parent hereby represents and warrants to Sunbeam as follows:

(a) Due Authorization. This Agreement has been duly authorized by all necessary corporate action on the part of Coleman Parent, and no other corporate actions or proceedings on the part of the Coleman Parent (including any action on the part of its stockholders) are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed by a duly authorized officer of Coleman Parent and constitutes a valid and binding agreement of Coleman Parent enforceable against it in accordance with its terms.

(b) Due Organization. Coleman Parent is a corporation duly organized, validly existing and in good standing under the laws of State of Delaware and has the requisite corporate power to enter into and perform this Agreement.

(c) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory authority is necessary for the consummation by Coleman Parent of the transactions contemplated hereby, other than as may be required under the Hart-Scott-Rodino Antitrust Improvements Act with respect to the exercise of the Warrants. Neither the execution and delivery of this Agreement by Coleman Parent nor the consummation by Coleman Parent of the transactions contemplated hereby, nor compliance by Coleman Parent

with any of the provisions hereof, will (i) conflict with or result in any breach of any provisions of the certificate of incorporation or by-laws of Coleman Parent; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any material contract or of any material license, franchise, permit, concession, certificate of authority, order, approval, application or registration of, from or with any governmental authority to which Coleman Parent is a party or by which it or any of its properties or assets may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Coleman Parent or any of its properties or assets.

(d) Acquisition of Warrants for Investment. Coleman Parent is acquiring the Warrants (and will acquire any Warrant Shares upon exercise of the Warrants) for its own account for investment purposes only and not with a view toward or for a sale in connection with, any distribution thereof, or with any present intention of distributing or selling any of such in violation of federal or state securities laws.

(e) Brokers. No broker, investment banker or other person is entitled to any broker's, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Coleman Parent or any member of the Coleman Group.

7. Covenants.

(a) Within one day following the date hereof, Sunbeam shall cause to be mailed to all shareholders of Sunbeam a letter informing them of the transactions contemplated hereby as contemplated and required by Paragraph 312 of the NYSE Listed Company Manual and indicating that the Audit Committee has expressly approved the Exception in light of the Audit Committee's determination that delay in securing shareholder approval of the transactions contemplated hereby would seriously jeopardize the financial viability of the Company and that the NYSE has accepted the Company's reliance on the Exception .

(b) The anti-dilution provisions of the Warrant shall be given retroactive effect to the date hereof.

8. Specific Performance. The parties acknowledge that money damages are an inadequate remedy for breach of this Agreement. Therefore, the parties agree that each of them has the right, in addition to (and not in lieu of) any other right they may have under this Agreement or otherwise, to specific performance of this Agreement in the event of any breach hereof by any other party.

9. Conditions to the Obligations of both Parties. The obligations of each of Sunbeam and Coleman Parent to effect the transactions contemplated hereby shall be conditioned on the non-existence of any order, decree or injunction of a court of competent jurisdiction which restrains the consummation of the transactions contemplated by this Agreement.

10. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual agreement of the Boards of Directors of Coleman

Parent and Sunbeam; or

(b) by Coleman Parent if the Warrants to be issued to Coleman Parent pursuant hereto have not been issued or will not be issued at the Closing or if there has been a material violation or breach by Sunbeam of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Coleman Parent impossible and such violation or breach has not been waived by Coleman Parent; or

(c) by Sunbeam if there has been a material violation or breach by Coleman Parent of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of Sunbeam impossible and such violation or breach has not been waived by Sunbeam.

In the event of termination and abandonment of this Agreement by Coleman Parent or Sunbeam or both of them pursuant to the terms of this Section 10, written notice thereof shall forthwith be given to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto.

11. Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses.

12. Tax Matters. Coleman Parent shall in good faith provide to Sunbeam information concerning the tax treatment under the Internal Revenue Code of 1986, as amended (the "Code"), of the transactions contemplated hereby. Sunbeam shall report such transactions for all tax purposes consistent with such information and take no position with any taxing authority inconsistent therewith. Coleman Parent and Sunbeam shall report the Holdings Merger as a reorganization within the meaning of Code Section 368(a) for all tax purposes.

13. Best Efforts. Each of the parties hereto agrees to use its best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each corporation which is a party to this Agreement shall take all such necessary action.

14. Parties in Interest; Assignments. This Agreement is binding upon and is solely for the benefit of the parties hereto, the Sunbeam Group and the Coleman Group and their respective successors and legal representatives.

15. Entire Agreement. This Agreement and the agreements to be entered into and delivered pursuant hereto constitutes the entire agreement between Sunbeam and Coleman Parent with respect to the subject matter hereof, and it is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever, except by a writing duly executed by authorized representatives of both Sunbeam and Coleman Parent. No party to this Agreement has relied upon any representation or warranty, written or oral, except as expressly included herein.

16. Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto.

17. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by telecopy or other standard form of telecommunication, or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Coleman Parent:

Coleman (Parent) Holdings Inc.
c/o MacAndrews & Forbes Holdings Inc.
35 East 62nd Street
New York, New York 10021
Attention: Barry F. Schwartz, Esq.
Facsimile: (212) 572-5056

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

If to Sunbeam:

Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: Corporate Secretary
Facsimile: (561) 243-2191

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, New York 10022
Attention: Blaine V. Fogg, Esq.
Facsimile: (212) 735-3597

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10152
Attention: Stephen E. Jacobs, Esq.
Facsimile: (212) 310-8007

or to such other address as any party may have furnished to the other parties in writing in accordance herewith.

18. Governing Law; Forum.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of law rules.

(b) The parties hereto irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Delaware and/or of the United States of America located in the State of Delaware for any actions, suits or proceedings out of or relating to this Agreement and the transactions contemplated hereby.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one agreement.

20. Effect of Headings. The descriptive headings contained herein are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

21. Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the day and year first above written.

COLEMAN (PARENT) HOLDINGS INC.

By: /s/ Barry F. Schwartz

Name: Barry F. Schwartz
Title: Executive Vice President
and General Counsel

SUNBEAM CORPORATION

By: /s/ Howard Kristol

Name: Howard Kristol
Title: Chairman of the Special
Committee

EXHIBIT A

SUNBEAM CORPORATION
WARRANT FOR THE PURCHASE OF SHARES OF
COMMON STOCK OF SUNBEAM CORPORATION

ISSUE DATE: AUGUST__, 1998

WARRANT NO. W-1

23,000,000 WARRANT SHARES

THIS WARRANT AND THE SHARES OF COMMON STOCK PURCHASEABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED OR DISPOSED OF UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS SUCH REGISTRATION, QUALIFICATION OR OTHER SUCH ACTIONS ARE NOT REQUIRED UNDER ANY SUCH LAWS.

FOR VALUE RECEIVED, SUNBEAM CORPORATION, a Delaware corporation (the "Company"), hereby certifies that Coleman (Parent) Holdings Inc., its successor or permitted assigns (the "Holder"), is entitled, subject to the provisions of this Warrant, to purchase from the Company, at the times specified herein, a number of the fully paid and non-assessable shares of Common Stock of the Company, par value \$.01 per share (the "Common Stock"), equal to the Warrant Share Amount (as hereinafter defined) at a purchase price per share equal to the Exercise Price (as hereinafter defined).

SECTION 1. DEFINITIONS. (a) The following terms, as used herein, have the following meanings:

"AFFILIATE" shall have the meaning given to such term in Rule 12b-2 promulgated under the Securities and Exchange Act of 1934, as amended.

"BUSINESS DAY" means any day except a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized by law to close.

"CERTIFICATE OF INCORPORATION" means the Restated Certificate of Incorporation of the Company.

"CLOSING PRICE" on any day means (1) if the shares of Common Stock then are listed and traded on the New York Stock Exchange, Inc. ("NYSE"), the Closing Price on such day as reported on the NYSE Composite Transactions Tape; (2) if shares of Common Stock then are not listed and traded on the NYSE, the Closing Price on such day as reported by the principal national securities exchange on which the shares of Common Stock are listed and traded; (3) if the shares of Common Stock then are not listed and traded on any such securities exchange, the last reported sale price on such day on the National Market of The National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"); or (4) if the shares of Common Stock then are not traded on the NASDAQ National Market, the average of the highest reported bid and the lowest reported asked price on such day as reported by NASDAQ.

"COMMON SHARE EQUIVALENT" means, with respect to any security of the Company and as of a given date, a number which is, (i) in the case of a share of Common Stock, one, (ii) in the case of all or a portion of any right, warrant or other security which may be exercised for a share or shares of Common Stock, the number of shares of Common Stock receivable upon exercise of such security (or such portion of such security), and (iii) in the case of any security convertible or exchangeable into a share or shares of Common Stock, the number of shares of Common Stock that would be received if such security were converted or exchanged on such date.

"COMMON STOCK" shall have the meaning set forth in the first paragraph

hereof.

"COMPANY" shall have the meaning set forth in the first paragraph hereof.

"CONVERTIBLE SECURITIES" shall have the meaning set forth in Section 7(d).

"DETERMINATION DATE" shall have the meaning set forth in Section 7(f).

"EXERCISE PRICE" means a price per Warrant Share equal to \$7.00.

"EXPIRATION DATE" means 5:00 p.m. New York City time on August __, 2003 [the fifth anniversary of the date of this Warrant].

"FAIR MARKET VALUE" as at any date of determination means, as to shares of the Common Stock, if the Common Stock is publicly traded at such time, the average of the daily Closing Prices of a share of Common Stock for the ten (10) consecutive trading days ending on the most recent trading day prior to the date of determination. If the shares of Common Stock are not publicly traded at such time, and as to all things other than the Common Stock, Fair Market Value shall be determined in good faith by an independent nationally recognized investment banking firm selected by the Company and acceptable to a majority of the Holders and which shall have no other substantial relationship with the Company.

"HOLDER" shall have the meaning set forth in the first paragraph hereof.

"OPTIONS" shall have the meaning set forth in Section 7(d).

"PERSON" means an individual, partnership, corporation, limited liability company, trust, joint stock company, association, joint venture, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"SECURITIES ACT" means the Securities Act of 1933, as amended.

"SUBSIDIARY" means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"WARRANT SHARE AMOUNT" means 23,000,000 (Twenty Three Million) shares of Common Stock as such number may be adjusted pursuant to Sections 7 and 8.

"WARRANT SHARES" means the shares of Common Stock deliverable upon exercise of this Warrant, as adjusted from time to time.

SECTION 2. EXERCISE OF WARRANT. (a) The Holder is entitled to exercise this Warrant in whole or in part at any time, or from time to time, until the Expiration Date or, if such day is not a Business Day, then on the next succeeding day that shall be a Business Day. To exercise this Warrant, the Holder shall deliver to the Company this Warrant, including the Warrant Exercise Subscription Form forming a part hereof duly executed by the Holder, together with payment of the applicable Exercise Price. Upon such delivery and payment, the Holder shall be deemed to be the holder of record of the number of Warrant Shares equal to the Warrant Share Amount

(or, in the case of a partial exercise of this Warrant, a ratable number of such shares), notwithstanding that the stock transfer books of the Company shall then be closed or that certificates representing such shares shall not then be actually delivered to the Holder.

(b) At the option of the Holder, the Exercise Price may be paid in cash (including by wire transfer of immediately available funds) or by certified or official bank check or bank cashier's check payable to the order of the Company or by any combination of such cash or check. At the option of the Holder, the Exercise Price may in the alternative be paid in whole or in part by reducing the number of shares of Common Stock issuable to the Holder by a number of shares of Common Stock that have a Fair Market Value equal to the Exercise Price which otherwise would have been paid (so that the net number of shares of Common Stock issued in respect of such exercise shall equal the number of shares of Common Stock that would have been issuable had the Exercise Price been paid entirely in cash, less a number of shares of Common Stock with a Fair Market Value equal to the portion of the Exercise Price paid in kind); provided that this option shall be available only with respect to the exercise of this Warrant with respect to not more than one-half of the total number of Warrant Shares. The Company shall pay any and all documentary, or similar issue or transfer taxes payable in respect of the issue or delivery of the Warrant Shares. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer involved in the issue or delivery of Warrants or Warrant Shares (or other securities or assets) in a name other than that in which the Warrants so exercised were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of such transfer tax or has established, to the satisfaction of the Company, that such transfer tax has been paid.

(c) If the Holder exercises this Warrant in part, this Warrant shall be surrendered by the Holder to the Company and a new Warrant of the same tenor and for the unexercised number of Warrant Shares shall be executed by the Company. The Company shall register the new Warrant in the name of the Holder or in such name or names of its transferee pursuant to Section 6 as may be directed in writing by the Holder and deliver the new Warrant to the Person or Persons entitled to receive the same.

(d) Upon surrender of this Warrant in conformity with the foregoing provisions, the Company shall, subject to the expiration of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act, transfer to the Holder of this Warrant appropriate evidence of ownership of the shares of Common Stock or other securities or property (including any money) to which the Holder is entitled, registered or otherwise placed in, or payable to the order of, the name or names of the Holder or such transferee as may be directed in writing by the Holder, and shall deliver such evidence of ownership and any other securities or property (including any money) to the Person or Persons entitled to receive the same, together with an amount in cash in lieu of any fraction of a share as provided in Section 5, subject to any required withholding.

SECTION 3. RESTRICTIVE LEGEND. Each certificate representing shares of Common Stock issued pursuant to this Warrant, unless at the time of exercise such shares are registered under the Securities Act, shall bear a legend substantially in the form of the legend set forth on the first page of this Warrant.

SECTION 4. RESERVATION OF SHARES. The Company hereby agrees that at all times there shall be reserved for issuance and delivery upon exercise

of this Warrant such number of its authorized but unissued shares of Common Stock or other securities of the Company from time to time issuable upon exercise of this Warrant as will be sufficient to permit the exercise in full of this Warrant. The Company hereby represents and agrees that all such shares shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and non-assessable, free and clear of all liens, security interests, charges and other encumbrances or restrictions on sale and free and clear of all preemptive or similar rights, except to the extent imposed by or as a result of the status, act or omission of, the Holder.

SECTION 5. FRACTIONAL SHARES. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant and in lieu of delivery of any such fractional share upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the Fair Market Value thereof; provided, however, that, in the event that the Company combines or reclassifies the outstanding shares of its Common Stock into a smaller number of shares, it shall be required to issue fractional shares to the Holder if the Holder exercises all or any part of its Warrants, unless the Holder has consented in writing to such reduction and provided the Company with a written waiver of its right to receive fractional shares in accordance with this Section 5.

SECTION 6. TRANSFER, EXCHANGE OR ASSIGNMENT OF WARRANT. (a) Each taker and holder of this Warrant by taking or holding the same, consents and agrees that the registered holder hereof may be treated by the Company and all other persons dealing with this Warrant as the absolute owner hereof for any purpose and as the person entitled to exercise the rights represented hereby.

(b) Subject to the requirements of state and federal securities laws, the Holder of this Warrant shall be entitled, without obtaining the consent of the Company to assign and transfer this Warrant, at any time in whole or from time to time in part, to any Person or Persons. Subject to the preceding sentence, upon surrender of this Warrant to the Company, together with the attached Warrant Assignment Form duly executed, the Company shall, without charge, execute and deliver a new Warrant in the name of the assignee or assignees named in such instrument of assignment and, if the Holder's entire interest is not being assigned, in the name of the Holder and this Warrant shall promptly be canceled.

(c) Upon receipt by the Company of evidence satisfactory to it (in the exercise of its reasonable discretion) of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of indemnification or security reasonably required by the Company, and upon surrender and cancellation of this Warrant, if mutilated, the Company shall execute and deliver a new Warrant of like tenor and date.

(d) The Company shall pay all expenses, taxes (other than transfer taxes) and other charges payable in connection with the preparation, issuance and delivery of Warrants hereunder.

SECTION 7. ANTI-DILUTION PROVISIONS. So long as any Warrants are outstanding, the Warrant Share Amount shall be subject to change or adjustment as follows:

(a) Common Stock Dividends, Subdivisions, Combinations. In case the Company shall (i) pay or make a dividend or other distribution to all holders of its Common Stock in shares of Common Stock, (ii) subdivide or

split the outstanding shares of its Common Stock into a larger number of shares, or (iii) combine the outstanding shares of its Common Stock into a smaller number of shares (which shall not in any event be done without the express written approval of Holders of a majority of the outstanding Warrants), then in each such case the Warrant Share Amount shall be adjusted to equal the number of such shares to which the holder of this Warrant would have been entitled upon the occurrence of such event had this Warrant been exercised immediately prior to the happening of such event or, in the case of a stock dividend or other distribution, prior to the record date for determination of shareholders entitled thereto. An adjustment made pursuant to this Section 7(a) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(b) Reorganization or Reclassification. In case of any capital reorganization or any reclassification of the capital stock of the Company (whether pursuant to a merger or consolidation or otherwise), or in the event of any similar transaction, this Warrant shall thereafter be exercisable for the number of shares of stock or other securities or property receivable upon such capital reorganization or reclassification of capital stock or other transaction, as the case may be, by a holder of the number of shares of Common Stock into which this Warrant was exercisable immediately prior to such capital reorganization or reclassification of capital stock; and, in any case, appropriate adjustment (as determined in good faith by the Board of Directors of the Company) shall be made for the application of the provisions herein set forth with respect to the rights and interests thereafter of the Holder of this Warrant to the end that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably practicable, in relation to any shares of stock or other securities or property thereafter deliverable upon the exercise of this Warrant. An adjustment made pursuant to this Section 7(b) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(c) Distributions of Assets or Securities Other than Common Stock. In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of its capital stock (other than Common Stock), or other debt or equity securities or evidences of indebtedness of the Company, or options, rights or warrants to purchase any of such securities, cash or other assets, then in each such case the Warrant Share Amount shall be adjusted by multiplying the Warrant Share Amount immediately prior to the date of such dividend or distribution by a fraction, of which the numerator shall be the Fair Market Value per share of Common Stock at the record date for determining shareholders entitled to such dividend or distribution, and of which the denominator shall be such Fair Market Value per share less the Fair Market Value of the portion of the securities, cash, other assets or evidences of indebtedness so distributed applicable to one share of Common Stock. An adjustment made pursuant to this Section 7(c) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(d) Below Market Issuances of Common Stock and Convertible Securities. In case the Company shall issue Common Stock (or options, rights or warrants to purchase shares of Common Stock (collectively, "Options") or other securities convertible into or exchangeable or exercisable for shares of Common Stock (such other securities, collectively, "Convertible Securities")) at a price per share (or having an effective exercise, exchange or conversion price per share together with the purchase price thereof) less than the Fair Market Value per share of

Common Stock on the date such Common Stock (or Options or Convertible Securities), is sold or issued (provided that no sale of securities pursuant to an underwritten public offering shall be deemed to be for less than Fair Market Value), then in each such case the Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such Common Stock (or Options or Convertible Securities) by a fraction, the numerator of which shall be (x) the sum of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the number of additional Common Share Equivalents represented by all securities so issued multiplied by (y) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance and (B) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance plus (y) the aggregate consideration received by the Company for the total number of securities so issued plus, (z) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities; provided that no adjustment shall be required in respect of issuances of Common Stock (or options to purchase Common Stock) pursuant to stock option or other employee benefit plans in effect on the date hereof, or approved by the Board of Directors of the Company after the date hereof. Notwithstanding anything herein to the contrary, (1) no further adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock pursuant to (x) the exercise of any Options or (y) the conversion or exchange of any Convertible Securities, if in each case the adjustment in the Warrant Share Amount was made as required hereby upon the issuance or sale of such Options or Convertible Securities or no adjustment was required hereby at the time such Option or Convertible Security was issued, and (2) no adjustment to the Warrant Share Amount shall be made upon the issuance or sale of Common Stock upon the exercise of any Options existing on the original issue date hereof, without regard to the exercise price thereof. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of Common Stock, Options, or Convertible Securities in a bona fide arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance of Common Stock, Options, or Convertible Securities to the public stockholders of The Coleman Company, Inc. ("Coleman") in connection with the acquisition of their shares of Coleman common stock pursuant to the Agreement and Plan of Merger, dated as of February 27, 1998 (the "Coleman Merger Agreement"), by and among Sunbeam, Camper Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Sunbeam, and Coleman, or otherwise). An adjustment made pursuant to this Section 7(d) shall become effective immediately after such Common Stock, Options or Convertible Securities are sold.

(e) Below Market Distributions or Issuances of Preferred Stock or Other Securities. In case the Company shall issue non-convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities) at a price per share (or other similar unit) less than the Fair Market Value per share (or other similar unit) of such preferred stock (or other security) on the date such preferred stock (or other security) is sold (provided that no sale of preferred stock or other security pursuant to an underwritten public offering shall be deemed to be for less than its fair market value), then in each such case the

Warrant Share Amount shall thereafter be adjusted by multiplying the Warrant Share Amount immediately prior to the date of issuance of such preferred stock (or other security) by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (ii) the Fair Market Value of a share of Common Stock immediately prior to the date of such issuance, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such issuance and (B) the Fair Market Value of a share of the Common Stock immediately prior to the date of such issuance minus (y) the difference between (1) the aggregate Fair Market Value of such preferred stock (or other security) and (2) the aggregate consideration received by the Company for such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the issuance or sale of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) in a bona fide arm's-length transaction to any Person or group that, at the time of such issuance or sale, is not an Affiliate of the Company (including any possible issuance of preferred stock (or other securities of the Company other than common Stock or Options or Convertible Securities) to the public stockholders of Coleman in connection with the acquisition of their shares of Coleman common stock pursuant to the Coleman Merger Agreement, or otherwise). An adjustment made pursuant to this Section 7(e) shall become effective immediately after such preferred stock (or other security) is sold.

(f) Above Market Repurchases of Common Stock. If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of Common Stock of the Company (or any Options or Convertible Securities) at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the earliest of (i) the date of such repurchase, (ii) the commencement of an offer to repurchase, or (iii) the public announcement of either (such date being referred to as the "Determination Date"), the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to such Determination Date by a fraction, the numerator of which shall be the product of (1) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date minus the number of Common Share Equivalents represented by the securities repurchased or to be purchased by the Company or any Subsidiary thereof in such repurchase and (2) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to the Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the sum of (1) the aggregate consideration paid by the Company in connection with such repurchase and (2) in the case of Options or Convertible Securities, the additional consideration required to be received by the Company upon the exercise, exchange or conversion of such securities. Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of Common Stock (or any Options or Convertible Security) in a bona fide arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(g) Above Market Repurchases of Preferred Stock or Other Securities. If at any time or from time to time the Company or any Subsidiary thereof shall repurchase, by self-tender offer or otherwise, any shares of non-

convertible and non-exchangeable preferred stock (or other debt or equity securities or evidences of indebtedness of the Company (other than Common Stock or Options or Convertible Securities) or options, rights or warrants to purchase any of such securities), at a purchase price in excess of the Fair Market Value thereof, on the Business Day immediately prior to the Determination Date, the Warrant Share Amount shall be determined by multiplying the Warrant Share Amount immediately prior to the Determination Date by a fraction, the numerator of which shall be the product of (i) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (ii) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date, and the denominator of which shall be (x) the product of (A) the number of Common Share Equivalents represented by all securities outstanding immediately prior to such Determination Date and (B) the Fair Market Value of a share of Common Stock immediately prior to such Determination Date minus (y) the difference between (1) the aggregate consideration paid by the Company in connection with such repurchase and (2) the aggregate Fair Market Value of such preferred stock (or other security). Notwithstanding the foregoing, no adjustment to the Warrant Share Amount shall be made pursuant to this paragraph upon the repurchase, by self-tender offer or otherwise, of non-convertible and non-exchangeable preferred stock (or other securities of the Company other than Common Stock or Options or Convertible Securities) in a bona fide arm's-length transaction from any Person or group that, at the time of such repurchase, is not an Affiliate of the Company.

(h) Readjustment of Warrant Share Amount. If (i) the purchase price provided for in any Option or the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities or the rate at which any Convertible Securities, in each case as referred to in paragraphs (b) and (f) above, are convertible into or exchangeable for Common Stock shall change at any time (other than under or by reason of provisions designed to protect against dilution upon an event which results in a related adjustment pursuant to this Section 7), or (ii) any of such Options or Convertible Securities shall have irrevocably terminated, lapsed or expired, the Warrant Share Amount then in effect shall forthwith be readjusted (effective only with respect to any exercise of this Warrant after such readjustment) to the Warrant Share Amount which would then be in effect had the adjustment made upon the issuance, sale, distribution or grant of such Options or Convertible Securities been made based upon such changed purchase price, additional consideration or conversion rate, as the case may be (in the case of any event referred to in clause (i) of this paragraph (h)) or had such adjustment not been made (in the case of any event referred to in clause (ii) of this paragraph (h)).

(i) Exercise Price Adjustment. Upon each adjustment of the Warrant Share Amount pursuant to this Section 7, the Exercise Price of each Warrant outstanding immediately prior to such adjustment shall thereafter be equal to an adjusted Exercise Price per Share determined (to the nearest cent) by multiplying the Exercise Price for the Warrant immediately prior to such adjustment by a fraction, the numerator of which shall be the Warrant Share Amount in effect immediately prior to such adjustment and the denominator of which shall be the Warrant Share Amount in effect immediately after such adjustment.

(j) Consideration. If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for cash, the consideration received in respect thereof shall be deemed to be the amount received by the Company therefor, before deduction therefrom of any reasonable, customary and adequately documented expenses incurred in

connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the Fair Market Value of such consideration, before deduction of any reasonable, customary and adequately documented expenses incurred in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefor shall be deemed to be the Fair Market Value of such portion of the assets and business of the non-surviving corporation as shall be attributable to such Common Stock, Options or Convertible Securities, as the case may be. If any Options shall be issued in connection with the issuance and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration.

(k) No Impairment. The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 7 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will not increase the par value of any shares of Common Stock receivable on the exercise of the Warrants above the amount payable therefor on such exercise.

(l) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Warrant Share Amount pursuant to this Section 7, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Holder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of the Holder, furnish or cause to be furnished to Holder a like certificate setting forth (1) such adjustments and readjustments and (2) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the exercise of this Warrant.

(m) Proceedings Prior to Any Action Requiring Adjustment. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 7, the Company shall take any action which may be necessary, including obtaining regulatory approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all shares of Common Stock which the Holders are entitled to receive upon exercise thereof.

(n) Notice of Adjustment. Upon the record date or effective date, as the case may be, of any action which requires or might require an adjustment or readjustment pursuant to this Section 7, the Company shall forthwith file in the custody of its Secretary or an Assistant Secretary at its principal executive office and with its stock transfer agent or its warrant agent, if any, an officers' certificate showing the adjusted number of Warrant Shares determined as herein provided, setting forth in reasonable detail the facts requiring such adjustment and the manner of computing such adjustment. Each such officers' certificate shall be signed

by the chairman, president or chief financial officer of the Company and by the secretary or any assistant secretary of the Company. Each such officers' certificate shall be made available at all reasonable times for inspection by the Holder or any Holder of a Warrant executed and delivered pursuant to Section 6(b) and the Company shall, forthwith after each such adjustment, mail a copy, by first-class mail, of such certificate to the Holder or any such holder.

(o) Payments in Lieu of Adjustment. The Holder shall, at its option, be entitled to receive, in lieu of the adjustment pursuant to Section 7(c) otherwise required thereof, on (but not prior to) the date of exercise of the Warrants, the evidences of indebtedness, other securities, cash, property or other assets which such Holder would have been entitled to receive if it had exercised its Warrants for shares of Common Stock immediately prior to the record date with respect to such distribution. The Holder may exercise its option under this Section 7(o) by delivering to the Company a written notice of such exercise simultaneously with its notice of exercise of this Warrant.

SECTION 8. CONSOLIDATION, MERGER OR SALE OF ASSETS. In case of any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock) or any sale or transfer of all or substantially all of the assets of the Company to the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, the Holder shall have the right thereafter to exercise this Warrant for the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Common Stock for which this Warrant may have been exercised immediately prior to such consolidation, merger, sale or transfer. Adjustments for events subsequent to the effective date of such a consolidation, merger, sale or transfer of assets shall be as nearly equivalent as may be practicable to the adjustments provided for in this Warrant. In any such event, effective provisions shall be made in the certificate or articles of incorporation of the resulting or surviving corporation, in any contract of sale, merger, conveyance, lease, transfer or otherwise so that the provisions set forth herein for the protection of the rights of the Holder shall thereafter continue to be applicable; and any such resulting or surviving corporation shall expressly assume the obligation to deliver, upon exercise, such shares of stock, other securities, cash and property. The provisions of this Section 8 shall similarly apply to successive consolidations, mergers, sales, leases or transfers.

SECTION 9. WARRANT AGENT. At the written request of the Holders of a majority of the outstanding Warrants, the Company shall as soon as is reasonably practicable:

(i) appoint a warrant agent to act as agent for the Company in connection with the issuance, transfer and exchange of the Warrants and shall enter into an agreement with such warrant agent reflecting the terms and conditions of such appointment, which terms and conditions shall be customary for such appointments, and such other matters as are customarily included in such agreements so as to facilitate the transfer and registration of the Warrants; and

(ii) use its reasonable best efforts to cause the Warrants to be eligible to be publicly traded, including, without limitation,

amending this Warrant to provide terms and conditions necessary and appropriate for the Warrants to be publicly traded.

SECTION 10. NOTICES. Any notice, demand or delivery authorized by this Warrant shall be in writing and shall be given to the Holder or to the Company, as the case may be, at its address (or facsimile number) set forth below, or such other address (or facsimile number) as shall have been furnished to the party giving or making such notice, demand or delivery:

If to the Company: Sunbeam Corporation
1615 South Congress Avenue, Suite 200
Delray Beach, Florida 33445
Attention: Corporate Secretary
Facsimile: (561) 243-2191

with copies to: Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, New York 10022
Attention: Blaine V. Fogg, Esq.
Facsimile: (212) 735-3597

and to: Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Stephen E. Jacobs, Esq.
Facsimile: (212) 310-8007

If to the Holder: Coleman (Parent) Holdings Inc.
c/o MacAndrews & Forbes Holdings Inc.
35 East 62nd Street
New York, New York 10021
Attention: Barry F. Schwartz, Esq.
Facsimile: (212) 572-5056

with copies to: Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Adam O. Emmerich, Esq.
Facsimile: (212) 403-2000

Each such notice, demand or delivery shall be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified herein and the intended recipient confirms the receipt of such telecopy, or (ii) if given by any other means, when received at the address specified herein.

SECTION 11. RIGHTS OF THE HOLDER. Prior to the exercise of any Warrant, the Holder shall not, by virtue hereof, be entitled to any rights of a shareholder of the Company, including, without limitation, the right to vote, to receive dividends or other distributions, to exercise any preemptive right or to receive any notice of meetings of shareholders or any notice of any proceedings of the Company except as may be specifically provided for herein.

SECTION 12. GOVERNING LAW. THIS WARRANT AND ALL RIGHTS ARISING HEREUNDER SHALL BE CONSTRUED AND DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE, AND THE PERFORMANCE THEREOF SHALL BE GOVERNED AND ENFORCED IN ACCORDANCE WITH SUCH LAWS.

SECTION 13. AMENDMENTS; WAIVERS. Any provision of this Warrant may

be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Holder and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 14. Interpretation. When a reference is made in this Warrant to a Section such reference shall be to a Section of this Warrant unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Warrant, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Warrant shall refer to this Warrant as a whole and not to any particular provision of this Warrant. The definitions contained in this Warrant are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References to a person are also to its permitted successors and assigns and, in the case of an individual, to his heirs and estate, as applicable.

IN WITNESS WHEREOF, the Company has duly caused this Warrant to be signed by its duly authorized officer and to be dated as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND AGREED:
COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name: _____
Title: _____

WARRANT EXERCISE SUBSCRIPTION FORM

(To be executed only upon exercise of the Warrant
after delivery of the Warrant Exercise Notice)

To: Sunbeam Corporation

The undersigned irrevocably exercises the Warrant for the purchase of _____ shares (the "Shares") of Common Stock, par value \$.01 per share, of Sunbeam Corporation (the "Company") ("Common Stock") at an exercise price of \$_____ per Share and herewith makes payment of \$_____ (such payment being made in cash or by certified or official bank or bank cashier's check payable to the order of the Company or by any permitted combination of such cash or check or by the reduction of the number of shares of Common Stock that otherwise would be issued upon this exercise by the number of shares of Common Stock that have a value equal to such exercise price), all on the terms and conditions specified in this Warrant, surrenders this Warrant and all right, title and interest therein to the Company and directs that the Shares deliverable upon the exercise of this Warrant be registered or placed in the name and at the address specified below and delivered thereto.

Date: _____, _____, _____.

(Name - Please Print)

(Signature of Owner)

(Street Address)

(City) (State) (Zip Code)

Securities and/or check to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

Any unexercised portion of the Warrant evidenced by the
within Warrant to be issued to:

Please insert social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

WARRANT ASSIGNMENT FORM

Dated _____, _____

FOR VALUE RECEIVED, _____ hereby sells, assigns and
transfers unto _____ (the "Assignee"),
(please type or print in block letters)

(insert address)

its right to purchase up to _____ shares of Common Stock represented by
this Warrant and does hereby irrevocably constitute and appoint
_____ Attorney, to transfer the same on the books of
the Company, with full power of substitution in the premises.

Signature: _____

EXHIBIT B

AMENDMENT TO REGISTRATION RIGHTS AGREEMENT

AMENDMENT, dated as of August ____, 1998 (this "Amendment"), to the REGISTRATION RIGHTS AGREEMENT, dated as of March 29, 1998 (the "Registration Rights Agreement"), by and among SUNBEAM CORPORATION, a Delaware corporation ("Laser" or "Sunbeam"), and COLEMAN (PARENT) HOLDINGS INC., a Delaware corporation ("Parent Holdings"). Capitalized terms used in this Amendment have the meanings ascribed to them in the Registration Rights Agreement unless otherwise defined herein. References to Articles and Sections shall, unless otherwise stated, be to the Articles and Sections of the Registration Rights Agreement. In all respects not inconsistent with the terms and provisions of this Amendment, the Registration Rights Agreement shall continue to be in full force and effect in accordance with the terms and conditions thereof, and is hereby ratified, adopted, approved and confirmed. From and after the date hereof, each reference to the Registration Rights Agreement therein or in any other instrument or document shall be deemed a reference to the Registration Rights Agreement as amended hereby, unless the context otherwise requires, and this Amendment and the Registration Rights Agreement shall for all purposes and matters be considered as one agreement, including that all of the ministerial and miscellaneous provisions of the Registration Rights Agreement shall apply equally thereto as so amended and to this Amendment.

WHEREAS, pursuant to the Holdings Merger Agreement, by and among Sunbeam, a subsidiary of Sunbeam, CLN HOLDINGS INC., a Delaware

corporation and wholly owned subsidiary of Parent Holdings ("Holdings"), and Parent Holdings, the Holdings Merger was consummated on March 30, 1998 and Holdings became an indirect wholly owned subsidiary of Sunbeam; and

WHEREAS, following consummation of the Holdings Merger, the shares of Holdings Common Stock issued and outstanding immediately prior to the effective time of the Holdings Merger were converted into an aggregate of (A) 14,099,749 fully paid and nonassessable shares of common stock, par value \$.01 per share, of Sunbeam ("Laser Common Stock") and (B) \$159,956,756 in cash, without interest thereon; and

WHEREAS, following the dismissal by Sunbeam of certain of its executive officers in mid-June 1998, Sunbeam retained certain senior officers employed by Affiliates of Parent Holdings as executive officers of Sunbeam; and

WHEREAS, Sunbeam and Parent Holdings have entered into a Settlement Agreement (the "Settlement Agreement") pursuant to which Sunbeam will issue to Parent Holdings certain warrants to purchase shares of Laser Common Stock (the "Warrants") and has agreed to enter into this Agreement; and

WHEREAS, in order to induce Parent Holdings to enter into the Settlement Agreement, Sunbeam has agreed to amend the Registration Rights Agreement and modify the registration rights with respect to the shares of Laser Common Stock issued to Parent Holdings in the Holdings Merger and to provide for registration rights with respect to the Warrants and Laser Common Stock issuable upon exercise of the Warrants.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 is amended with respect to certain of the definitions therein as follows:

The definition of the term "Agreement" is amended and restated in its entirety to mean the Registration Rights Agreement as amended by this Amendment.

The definition of the term "Registrable Securities" is amended and restated in its entirety to mean (i) the Holdings Merger Stock, (ii) the Warrants, and (iii) any shares of Laser Common Stock issued pursuant to the Warrants, and, in each case, any other securities issued or issuable upon or in respect of such securities by way of conversion, exchange, dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when such securities have been sold or otherwise transferred by Parent Holdings pursuant to the Shelf Registration Statement or pursuant to Rule 144 under the Securities Act.

The following defined term shall be added to the list of definitions in their respective alphabetically ordered positions:

The term "Holdings Merger Stock" shall mean the shares of Laser Common Stock issued to Parent Holdings in the Holdings Merger.

The term "Warrants" shall mean the warrants to purchase 23,000,000 (Twenty-Three Million) shares of Laser Common Stock issued to Parent Holdings pursuant to Warrant No. W-1 dated August ____, 1998.

ARTICLE II

REQUIRED REGISTRATION

Sections 2.1, 2.2 and 2.3 of Article II are amended and restated to read in their entirety as follows:

Section 2.1 Required Registration.

(a) Form S-3. Promptly following a demand to such effect from any holder of Registrable Securities, Laser shall prepare and file with the SEC a registration statement (the "Shelf Registration Statement") on an appropriate form permitting registration of the Registrable Securities so as to permit the resale of the Registrable Securities pursuant to an offering on a delayed or continuous basis under the Securities Act and shall use reasonable best efforts to (i) cause the Shelf Registration Statement to be declared effective by the SEC as promptly as practicable thereafter and (ii) permit the Shelf Registration Statement to be used by Affiliates of Camper for resales of shares of Laser Common Stock held by such Affiliates; provided, however, that any such Affiliate using the Shelf Registration Statement shall agree in writing to be bound by all of the restrictions, limitations and obligations of Parent Holdings contained in this Agreement.

(b) Effectiveness. Laser shall use reasonable best efforts to keep the Shelf Registration Statement continuously effective under the Securities Act until the date that is the earliest to occur of (i) the date by which all Registrable Securities have been sold and (ii) the date by which all Registrable Securities are eligible for immediate sale to the public without registration under Rule 144 under the Securities Act, with such sale not being limited by the volume restrictions thereunder or otherwise.

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

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

Section 2.2 Holdback Agreement.

From and after the Effective Date, upon the request of Laser, Parent Holdings shall not effect any public sale or distribution (including

sales pursuant to Rule 144) of Registrable Securities that are equity securities of Laser, or any securities convertible into or exchangeable or exercisable for such securities, including the Warrants, (other than any such sale or distribution of such securities pursuant to registration of such securities on Form SB-8 or any successor form) during the period commencing on the date on which Laser commences a Laser Offering through the sixty (60)-day period immediately following the closing date of such Laser Offering; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.2 on more than two (2) occasions in any twelve (12)-month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.2 or Section 2.3, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-twenty (120) days during any twelve (12)-month period.

Section 2.3 Blackout Provisions.

In the event that, at any time while the Shelf Registration Statement remains effective, Laser determines in its reasonable judgment and in good faith that the sale of Registrable Securities would require disclosure of material information which Laser has a bona fide business purpose for preserving as confidential, Parent Holdings shall, upon receiving written notice from Laser of such good faith determination, suspend sales of the Registrable Securities for a period beginning on the date of receipt of such notice and expiring on the earlier of (i) the date upon which such material information is disclosed to the public or ceases to be material or (ii) forty-five (45) days after the receipt of such notice from Laser; provided, however, that Parent Holdings shall not be obligated to comply with this Section 2.3 on more than two (2) occasions in any twelve (12) month period; and provided, further, that notwithstanding anything to the contrary in this Section 2.3 or Section 2.2, in no event shall Parent Holdings be disabled from effecting offers or sales of Registrable Securities for more than one-hundred-and-twenty (120) days during any twelve (12)-month period.

* * *

Section 2.4(a) of Article II is hereby amended by deleting the word "and" from the end of paragraph (12) thereof, replacing the period at the end of paragraph (13) thereof with "; and" and adding the following additional paragraph:

(14) will enter into customary agreements (including an underwriting agreement in customary form) and take such actions as are reasonably required in order to expedite or facilitate the sale of such Registrable Securities, including, without limitation, cooperation, and causing its officers, employees and advisors to cooperate, with the sellers of such Registrable Securities and the underwriter(s), if any, including participation in meetings and road shows held in connection with such sale.

ARTICLE III

TRANSFERS OF REGISTRABLE SECURITIES

Sections 3.1 and 3.2 of Article III are amended and restated to read in their entirety as follows:

Section 3.1 Transferability of Registrable Securities.

(a) Parent Holdings may not Transfer the Registrable Securities, other than

(1) pursuant to Rule 144;

(2) pursuant to the Shelf Registration Statement; or

(3) in any other Transfer exempt from registration under the Securities Act, and as to which Laser has received an opinion of counsel, reasonably satisfactory to Laser, that such Transfer is so exempt;

and shall in no event Transfer any Registrable Securities in violation of the Settlement Agreement.

Section 3.2 Restrictive Legends.

Parent Holdings hereby acknowledges and agrees that, during the term of this Agreement, all of the Registrable Securities shall include the legend set forth in Section 7.2 of the Holdings Merger Agreement, the legend set forth on the Warrants or as provided in the Warrants or as may otherwise be reasonably appropriate to reflect the fact that such Registrable Securities have not been issued in transactions registered under the Securities Act, unless at the time such Registrable Securities have been registered under the Securities Act.

ARTICLE IV

MISCELLANEOUS

Sections 4.5 and 4.11 of Article IV are amended and restated in their entirety to read as follows:

Section 4.5 Binding Effect; Assignment.

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns, but, except as expressly contemplated herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by Laser or Parent Holdings without the prior written consent of the other (except in the case of any assignment in whole or in part by Parent Holdings to any Affiliate, as to which no such consent shall be required); provided, that in connection with a bona fide pledge of any Registrable Securities to secure indebtedness or other obligations, Parent Holdings may assign its rights, interests and obligations hereunder to the beneficiary of such pledge in whole or in part. Upon any permitted assignment (other than in connection with any such bona fide pledge), this Agreement shall be amended to substitute or add the assignee as a party hereto in a writing reasonably acceptable to the other party.

Section 4.11 Termination; Restrictive Legend.

This Agreement shall terminate only following such time as Sunbeam shall have no further obligation under Section 2.1(b) to use its reasonable best efforts to keep the Shelf Registration Statement effective; provided, however, that the provisions of Section 2.6 hereof shall survive termination of this Agreement. It is understood and agreed that any

restrictive legends set forth on any Registrable Securities shall be removed by delivery of substitute certificates without such legends and such Registrable Securities shall no longer be subject to the terms of this Agreement or upon the resale of such Registrable Securities in accordance with the terms of this Agreement.

ARTICLE V

OTHER

The following provisions shall also apply to this Amendment:

Section 5.1 Effectiveness of this Amendment. The provisions of this Amendment shall be effective as of the date hereof.

Section 5.2 Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 5.3 Governing Law. This Amendment shall be governed by the laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 5.4 No Waiver. The execution, delivery and performance of this Amendment shall not operate as a waiver of any condition, power, remedy or right exercisable in accordance with the Registration Rights Agreement, and shall not constitute a waiver of any provision of the Registration Rights Agreement, except as expressly provided herein.

Section 5.5 Descriptive Headings. The article and section headings contained in this Amendment are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Amendment.

IN WITNESS WHEREOF, the undersigned hereby agree to be bound by the terms and provisions of this Amendment as of the date first above written.

SUNBEAM CORPORATION

By: _____
Name:
Title:

COLEMAN (PARENT) HOLDINGS INC.

By: _____
Name:
Title: