

1 UNITED STATES BANKRUPTCY COURT  
2 MIDDLE DISTRICT OF FLORIDA  
3 JACKSONVILLE DIVISION

4 In re:

5 LYDIA CLADEK, INC.,

6 Debtor.

CASE NO. 10-02805-3G1

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8  
9 **TRANSCRIPT OF PROCEEDINGS**

10  
11 Various Objections held before Chief  
12 Judge Paul M. Glenn, United States Bankruptcy  
13 Judge, Courtroom 4A, 300 North Hogan Street,  
14 Jacksonville, Florida, Thursday, August 12,  
15 2010, to commence at 4:00 p.m., as reported  
16 by Loretta D. McDonald, a Notary Public in  
17 and for the State of Florida at Large.

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1 promise I can't keep, Your Honor.

2 THE COURT: That's okay. No. This  
3 is an important hearing.

4 MR. KANE: Thank you. I'll call  
5 Charles Ellyson.

6 THE COURT: Mr. Ellyson, if you would  
7 raise your right hand, please.

8 WHEREUPON,

9 **CHARLES ELLYSON,**

10 was called as a witness herein and, after  
11 having first been duly sworn by the courtroom  
12 administrator, was examined and testified as  
13 follows:

14 COURTROOM ADMINISTRATOR: Please be  
15 seated.

16 **DIRECT EXAMINATION**

17 BY MR. KANE:

18 Q. Please state your full name. Can you  
19 please state your full name?

20 A. Charles Lynn Ellyson.

21 Q. And what is your current occupation,  
22 Mr. Ellyson?

23 A. Well, actually, I do two things.

24 Q. Okay.

25 A. One is I'm a qualified international

1 pilot and air crew program designee, which  
2 represents the FAA with Delta Airlines. And  
3 then I also operate a factoring business  
4 that -- we purchase auto loans.

5 Q. Okay. And is that Ellyson Financial?

6 A. That's correct.

7 Q. And what is your position with  
8 Ellyson Financial?

9 A. I'm the owner.

10 Q. And how long have you owned Ellyson  
11 Financial.

12 A. Officially, August of last year.  
13 That's when we incorporated.

14 Q. Okay. Were you operating before  
15 then?

16 A. In an unofficial way, yes. We got  
17 into this industry, if you will, in 2006.  
18 And prior to August of last year, started  
19 extensive research and due diligence in  
20 trying to determine if this was a business  
21 that we would like to get into. And after  
22 months and months and months worth of  
23 research and so forth, we made that decision.  
24 And then we made it official, if you will,  
25 August of 2009.

1 Q. I see. And so I'd like you to take a  
2 look at the Chapter 11 Trustee's Exhibit  
3 Number 16. That's in the brown folder.

4 Did you find it?

5 A. Okay.

6 Q. Have you seen that before?

7 A. Yes, I have.

8 Q. And what is Exhibit 16?

9 A. That is the home page for our web  
10 site.

11 Q. Okay. And so this is the web site  
12 for your business Ellyson Financial?

13 A. That is correct.

14 Q. It's ellysonfinancial.com?

15 A. The web site would be yes.

16 Q. Okay. And it talks about programs.  
17 It says: We specialize in POS contracts.  
18 What are those?

19 A. Those are point of sale contracts.  
20 Those are contracts that are essentially  
21 purchased and consummated as the vehicle is  
22 sold.

23 Q. I see. And about how many contracts  
24 does Ellyson Financial purchase in a year?

25 A. Well, when we first got started, we

1 laid out a very detailed spreadsheet for a  
2 three-year period such that we -- even if we  
3 got too excited, we didn't get ahead of  
4 ourselves. And we are currently in the phase  
5 right now where we purchase six to eight  
6 contracts a month, and we're on schedule so  
7 far to meet our projections. But that  
8 increases, obviously, over time.

9 Q. So over time you're buying more every  
10 month?

11 THE COURT: How many was that per  
12 month?

13 THE WITNESS: Six to eight, sir. Six  
14 to eight.

15 THE COURT: Six to eight.

16 BY MR. KANE:

17 Q. So that's considerably less than what  
18 Lydia Cladek was purchasing?

19 A. That is correct.

20 Q. And you said you started doing this  
21 in 2006. Has that been a pretty steady  
22 process or how is that?

23 A. 2006 is when we were introduced into  
24 the industry by initially investing some  
25 money with Lydia through a very, very close

1 friend. And it was through that introduction  
2 to the industry that we did a considerable  
3 amount of due diligence at that time just to  
4 fully understand the industry.

5 But around two years ago, give or  
6 take, is when we seriously became interested  
7 in looking at this as a business for  
8 ourselves, as my wife and I have previously  
9 owned businesses and operated those. And it  
10 would have been around that time that I  
11 started extensive research in due diligence.

12 For example, I canvassed over 100  
13 dealers. I have personally interviewed  
14 between two to three dozen dealers. I have  
15 researched in detail over a dozen of some of  
16 the better -- I'm going to call them  
17 factoring companies. Some people might call  
18 them finance companies in the industry.

19 When I say research, I don't mean I  
20 Googled them and looked them up on the web  
21 site. I actually made hours and hours worth  
22 of phone calls. I visited their sites. I  
23 talked to directors of marketing. I talked  
24 to chief operating officers. I talked to the  
25 owners. I talked to CEOs.

1           In some cases I was actually on their  
2 property for a period of two straight days  
3 doing research before we finally made the  
4 decision that this was an industry we would  
5 get into.

6           Q. And how many hours of research would  
7 you say that you had into this industry  
8 before you finally got your own company and  
9 got involved?

10          A. It was six months part time where I  
11 would probably define part time 20 hours a  
12 month or so. And then about eight months  
13 prior to actually purchasing our first  
14 contracts, which would translate into about  
15 four months prior to actually just becoming  
16 incorporated in the state of Georgia, I was  
17 working as much as 30 hours a week on the  
18 research and the visitations.

19          Q. And are you involved in the purchase  
20 of subprime automobile loan contract?

21          A. Yes.

22          Q. Okay. And have you done any work  
23 dealing with how to expense out those auto  
24 dealer loans, those subprime auto loan  
25 contracts?

1           A. Yes.

2           Q. And what's involved in collecting  
3 those loans?

4           A. Yes.

5           Q. The expenses involved and  
6 repossession?

7           A. Yes.

8           Q. The expenses involved in dealer  
9 buyback --

10          A. Yes.

11          Q. -- if any?

12                 The expenses involved, if any, in  
13 insurance buyback?

14          A. Yes.

15          Q. And you've researched all those  
16 issues, and you've personally been involved  
17 in all those issues?

18          A. That is correct.

19          Q. Okay. Have you been involved in  
20 trying to determine the cost of recovery  
21 sales from repossessed automobiles?

22          A. Yes.

23          Q. And when I ask about your  
24 involvement, have you been doing that for a  
25 year?

1           A. We purchased our first contracts nine  
2 months ago as far as the actual purchase is  
3 concerned. Based on my research, I had some  
4 pretty extensive spreadsheets and so forth  
5 put together based on the averages of the  
6 companies that I researched.

7           This can be a difficult industry to  
8 get what they call industry averages, because  
9 so many of the companies are private  
10 companies. And so it relies on  
11 self-disclosure if they choose to actually  
12 report data. And that's where my actual  
13 personal visits and so forth paid off.

14          Q. I see. So some of that may be  
15 considered trade secret information?

16          A. Correct.

17          Q. And by your personal investigations  
18 and involvement and research before you  
19 started your company, you were able to obtain  
20 some of that information?

21          A. That is correct.

22          Q. And prior to your current experience  
23 with Ellyson Financial and also as a pilot,  
24 where did you work?

25          A. Twenty-two years with Delta Airlines.

1 Prior to that, I was employed for  
2 seven-and-a-half years as an officer in the  
3 United States Air Force as a fighter pilot.  
4 Within Delta itself I have held positions  
5 where I've been responsible for over 3,000  
6 individuals, 45 foreign countries, and all  
7 the associated committees and budgets and  
8 everything that go with that.

9 At one time I was in charge of the  
10 largest training department in the world with  
11 a budget of over 600 -- I'm sorry --  
12 \$60,000,000 and well over 200 personnel. And  
13 interspersed in that my wife and I have also  
14 owned two separate businesses over the years.

15 Q. And what is the highest level of  
16 education you've achieved?

17 A. Masters in business administration.

18 Q. So where did you get your MBA?

19 A. At Florida Tech. That's short for  
20 Florida Technology Institute.

21 Q. And is your position as owner of  
22 Ellyson Financial -- I guess we've covered  
23 most of the scope of your duties. And you've  
24 been doing that for about nine months or  
25 longer, I guess, studying it?



1           A. Between 50 and 100.

2           Q. And how many of those contracts,  
3 those 50 and 100, have been in default?

4           A. Define default. I mean, that's one  
5 of the things that's been tossed around here  
6 this evening is the definition of default.

7           Q. Well, I'll break it down then. How  
8 many of those have been repossessed?

9           A. Two.

10          Q. How many have you had insurance  
11 claims on?

12          A. One.

13          Q. How many have you had late payments?

14          A. At 30 percent, 40 percent. I have at  
15 one point in time, had at least one late  
16 payment.

17          Q. Who makes the calls when there's a  
18 late payment?

19          A. Both my wife and I do.

20          Q. Are you a member on any professional  
21 society or an organization related to a  
22 factoring business?

23          A. Well, we are members of the GIADA,  
24 which is the Georgia Independent Auto Dealers  
25 Association. We are members of the National

1 Independent Auto Dealers Association, and  
2 it's really those two associations that play  
3 probably the biggest role in this industry.

4 Q. Those are for contacts, to meet  
5 people to try to buy loans from?

6 A. As far as contacts are concerned,  
7 that would probably be considerably down on  
8 the list as far as what we use their services  
9 and so forth for.

10 Q. Is this your first business  
11 involvement in the subprime financing  
12 industry?

13 A. Correct.

14 Q. And do you have any honors,  
15 acknowledgements, awards in this industry?

16 A. Well, given the fact that there are  
17 none given that I'm aware of nationally, I  
18 don't expect to earn any. Even given the  
19 largest publicly traded company, the only  
20 award that they have earned is not because  
21 they're in the subprime business. It is for  
22 business in general.

23 Q. Do you teach on this subject at all?

24 A. Formally, no.

25 Q. Did you ever get training at Lydia

1 Cladek, Incorporated?

2 A. No, I did not.

3 Q. You never worked at Lydia Cladek,  
4 Incorporated?

5 A. I did not.

6 Q. Who was your friend that worked at  
7 Lydia Cladek, Incorporated?

8 A. He was not an employee there.

9 Q. Who was that?

10 A. I'm not sure I want to divulge his  
11 name, unless I have to.

12 Q. So you're not willing to divulge his  
13 name?

14 A. Well, I mean, he doesn't even know  
15 that I'm here probably, yet, this evening.  
16 But he is the one that introduced me to their  
17 company, which eventually led to investment,  
18 if that's what you're driving at.

19 Q. And you're facing a loss as well?

20 A. Correct.

21 Q. How many times have you given expert  
22 testimony in this field?

23 A. Officially, this would be the first.

24 Q. Have you ever consulted for anyone  
25 other than the committee on any subprime

1 financing related issues?

2 A. Actually, yes.

3 Q. Who was that?

4 A. Two individuals back in the state of  
5 Georgia.

6 Q. And they're operators like yourself?

7 A. They are keenly interested in the  
8 industry.

9 Q. Did you charge them any money for  
10 consulting?

11 A. Not to this point.

12 Q. Have you had any publications in this  
13 field?

14 A. No. And there are very few. This is  
15 a very, very proprietary industry.

16 MR. BROWN: Nothing further but  
17 argument, Your Honor.

18 THE COURT: All right. Mr. Brown.

19 MR. BROWN: Judge, I don't think he's  
20 qualified. He's been in the business  
21 nine months. He doesn't run any business  
22 anywhere near a big financing business.  
23 He's got 50 contracts. He's had very few  
24 rates of default. He just doesn't have  
25 the background to testify as an expert in

1 the subprime automobile financing  
2 industry.

3 I mean, he seems like he's a very  
4 knowledgeable person, nice man, has  
5 business background but not as an expert  
6 in this particular industry.

7 THE COURT: Thank you.

8 MR. KANE: If I may, Your Honor.

9 After two years of intensive study  
10 and nine months in the industry, I have  
11 to confess it's been difficult to find an  
12 expert because of the proprietary  
13 information and because a lot of them are  
14 interested in actually purchasing  
15 contracts at such a low price.

16 That being said, an expert has to  
17 start somewhere. And I understand that  
18 Mr. Ellyson hasn't testified before, but  
19 I believe that he has testified about his  
20 study, he's testified about his  
21 background, he's testified about how  
22 educated he has become in the industry  
23 even prior to getting started.

24 So I would submit to Your Honor that  
25 it's really two years and nine months

1           between education and actual investment.  
2           And I believe that Mr. Ellyson is in a  
3           position to testify about things such as  
4           default rates, expenses, and the types of  
5           variables that we have specifically here.

6           And he has testified that not only  
7           does he do it in his own business, but he  
8           studied it for two years before he even  
9           got started to find out what those  
10          numbers would be.

11          THE COURT: Let me say this, Rule 702  
12          of the Federal Rules of Evidence applies  
13          and the Federal Rules of Evidence apply  
14          in this Court.

15          And that provides that if specialized  
16          knowledge will assist the trier of fact  
17          in understanding the evidence or to  
18          determine the factual issue, the witness  
19          qualifies as an expert by knowledge,  
20          skill, experience, training, or education  
21          may testify, thereto, in a form of an  
22          opinion or otherwise if it's based on  
23          sufficient facts.

24          I have little personal knowledge in  
25          the substandard automobile loan area.

1           Although, there have been some  
2           substandard automobile lenders or  
3           creditors of substandard lenders in  
4           Bankruptcy Court over the years, I  
5           understand that Mr. Ellyson does not have  
6           extensive experience or background. And  
7           I will take that into consideration as I  
8           listen to his testimony.

9           But I do believe that he has gained  
10          some knowledge of the area by his  
11          investigation of the area in recent  
12          years. He has very limited experience in  
13          the area in operating in the area  
14          himself, but he has examined the area for  
15          a period of time. And he has more  
16          information in that area than I do.

17          And I think with the realization that  
18          his experience isn't extensive, he,  
19          nevertheless, will assist me in  
20          understanding the evidence in determining  
21          facts. So I believe that he may continue  
22          to testify.

23          MR. KANE: Thank you, Your Honor.

24                 **DIRECT EXAMINATION (continued)**

25          BY MR. KANE:

1           Q. Mr. Ellyson, I want to talk to you a  
2 bit about the spreadsheets that were prepared  
3 by Mr. Imler. And I guess we can start  
4 looking at Tab Number 11 in the white book.  
5 And there are certain assumptions that  
6 Mr. Imler has already testified to that he  
7 made in preparing some of these spreadsheets.

8           And have you had an opportunity to  
9 review Mr. Imler's spreadsheets, Mr. Ellyson?

10          A. Yes.

11          Q. Okay. When was the first time that  
12 you reviewed Mr. Imler's work?

13          A. Probably July 22nd, maybe 21st, 22nd,  
14 the first set of spreadsheets, somewhere in  
15 that time frame.

16          Q. So shortly after the committee got  
17 the information and from the trustee, input  
18 it into a spreadsheet, then you had the  
19 opportunity to examine the result?

20          A. Correct.

21          Q. Okay. And have you had an  
22 opportunity to review the spreadsheets that  
23 are in this exhibit book, namely, that are  
24 marked as Exhibit 11 through 20?

25          A. Yes.

1           Q. Okay. Now, one of the committee's  
2 objections or -- excuse me -- one of the  
3 trustee's objections -- it is getting late --  
4 to the committee's spreadsheets and the work  
5 that Mr. Imler has done is that the operating  
6 cost of 15 percent are too low. And there's  
7 an assumption of an operating cost -- that 15  
8 percent and no less than \$75,000; do you see  
9 that?

10           A. Yes.

11           Q. Okay. Do you have an opinion as to  
12 whether 15 percent and no less than \$75,000  
13 would be a reasonable expense rate for the  
14 operation of a business such as that that's  
15 being proposed in Mr. Imler's spreadsheets?

16           A. Yes, it is reasonable. And I have  
17 very specific knowledge to a couple of  
18 companies that operate that have on their  
19 books between 1,000 and 2,000 --

20           MR. BROWN: Objection, Your Honor.

21           THE WITNESS: -- contracts.

22           MR. BROWN: What another company has  
23 on its books and records is hearsay for  
24 this witness to testify to when you're a  
25 representative from that company. He

1 can't testify to what another company has  
2 on its books. He can testify to what he  
3 has personal knowledge of, but that is  
4 hearsay.

5 MR. KANE: If I may, Your Honor.

6 THE COURT: Mr. Kane.

7 MR. KANE: And I don't have Rule 702  
8 in front of me, but I believe an expert  
9 can testify based on hearsay information,  
10 that he can base his -- he can base his  
11 opinion not hearsay. It just simply has  
12 to be disclosed, and he has to know what  
13 it is.

14 Is that incorrect?

15 MR. BROWN: Your Honor, that's not an  
16 exception to the hearsay rule. It's  
17 hearsay he can testify to what his  
18 knowledge of the rate is, but not what  
19 other companies have on their books and  
20 records.

21 THE COURT: He can use hearsay  
22 information in formulating his opinion.

23 MR. KANE: Thank you, Your Honor.

24 BY MR. KANE:

25 Q. In your opinion, Mr. Ellyson, 15

1 percent is a reasonable expense rate to apply  
2 and no less than 75,000?

3 A. Based on this size of company, yes.

4 Q. Okay. And, Mr. Ellyson, there's been  
5 some talk and you were asked by Mr. Brown in  
6 voir dire about the repossession rate of 30  
7 percent that's in the analysis.

8 Do you consider a repossession rate  
9 of 30 percent to be reasonable?

10 A. I actually consider that high.

11 Q. You do?

12 A. Yes.

13 Q. Okay. And what do you consider to be  
14 a reasonable repossession rate on the type of  
15 notes that are contemplated in the  
16 spreadsheets that we've got in front of us?

17 A. Based on my research, that number  
18 would be closer to 20 percent based, again,  
19 on these assumed types of contracts.

20 Q. And is there a difference in the  
21 default rate as notes continue to be paid?  
22 For example, is there a difference in the  
23 default rate in the first or second month of  
24 repayment versus, for example, the 12th or  
25 18th month of repayment?

1           A. Yes.

2           Q. How would you explain the difference  
3 in those default rates?

4           A. In general, you're going to  
5 experience most of your defaults in the third  
6 through the ninth to twelfth month. After  
7 that -- and I'm going to define default rate  
8 here as lack of payment.

9           Again, we've been tossing around this  
10 term this evening that I think has been  
11 grossly abused, but a repossession due to a  
12 lack of payment typically falls in the three-  
13 to twelve-month range. Outside of that the  
14 numbers are very, very small.

15          Q. Okay. And so wouldn't you consider a  
16 default rate of 50 percent to be reasonable  
17 under these circumstances?

18          A. I wouldn't consider a default rate of  
19 50 percent under any definition reasonable.

20          Q. You heard the Chapter 11 trustee  
21 testify that over the last ten years, the  
22 default rate for Lydia Cladek, Inc. was  
23 somewhere in the neighborhood of 53 percent.

24          A. Correct.

25          Q. Okay. And you would consider that to

1 be reasonable?

2 A. No, I would not. But given the type  
3 of note that was being purchased and based on  
4 that business model and using their  
5 definition of a default rate, that may be  
6 realistic.

7 Q. Okay. So when you say, using their  
8 definition of default rate, does that  
9 including dealer buybacks and insurance  
10 buybacks?

11 A. Correct.

12 Q. What's a dealer buyback?

13 A. Dealer buyback happens in most  
14 contracts, although, there are some that  
15 exist that do not have any period of  
16 recourse. Period of recourse is used  
17 typically for one of three things, and that  
18 is lack of payment, an insurance payoff --  
19 meaning that the vehicle has been totaled --  
20 or fraud.

21 There are some other ancillary type  
22 reasons, but those are the three primary  
23 reasons. Typical recourse period in most  
24 contracts is 30 to 45 days, although, there  
25 are some that exist much longer than that

1 under specific circumstances.

2 Q. Okay. What percentage would you say  
3 are in the 30- to 45-day period?

4 A. Less than 50 percent I'm going to say  
5 of the contracts that are purchased fall on a  
6 30- to 45-day to recourse. The majority of  
7 contracts that are purchased fall under a  
8 30-day recourse.

9 Q. Okay. And so most fall within 30,  
10 some fall within 30 to 45, and I guess  
11 there's some percentage that fall outside of  
12 that?

13 A. Correct.

14 Q. And do you have any idea what that  
15 percentage might be?

16 A. It would be very small.

17 Q. Like 5 percent, 10 percent?

18 A. An educated answer or an educated  
19 deduction would be less than 10 percent.

20 Q. Okay. So you've heard testimony  
21 while you've been sitting here about  
22 that these -- some of the dealer buybacks,  
23 insurance buybacks create a brief  
24 interruption in cash flow.

25 Do they create a break in the cash

1 flow?

2 A. Only to break in so much that, you  
3 know, maybe for 30 days or so that money is  
4 not available to be reinvested.

5 Q. Okay. Mr. Brown had questioned  
6 Mr. Imler about the fact that in four years  
7 \$4 million, roughly, of cash flow could turn  
8 into a \$14 million investment.

9 Have you been able to run the numbers  
10 on some of these spreadsheets?

11 A. Yes. In fact, I have had to supply  
12 my bank with very detailed specific  
13 projections, also.

14 Q. Is a projection of a \$4 million  
15 investment into 14 million in four years, is  
16 that an unreasonable projection?

17 A. No.

18 Q. Is that consistent with the subprime  
19 automobile loan industry when properly run?

20 A. It would not only be considered  
21 consistent, there are those in the industry  
22 that would consider that low.

23 Q. One of the criticisms raised by the  
24 trustee is that it would be difficult to  
25 purchase roughly 300 notes in one shot, in

1 one month. Your experience, I understand, is  
2 purchasing considerably smaller amounts of  
3 notes?

4 A. Correct.

5 Q. Your research, have you dealt with  
6 any companies that would purchase a volume of  
7 notes of, for example, 300 in a month?

8 A. I've dealt with companies that  
9 purchased five times that amount in a month.

10 I know -- I think the heart of the  
11 issue here -- and if you'll permit me, I'll  
12 address that -- would it be -- would it be  
13 absolutely prudent in that first month to try  
14 and target this many contracts so that by the  
15 end of that month you had purchased roughly  
16 300 contracts? You know, I would advise not  
17 doing that. And I had spoken, you know, to  
18 Tom about that.

19 You know, my advice would be to take  
20 that sum of money and spread that over three  
21 or four months. That allows a much more  
22 prudent approach to getting all of the  
23 processes in place and making sure that  
24 you're dealing with the right individuals.

25 Q. And so you would advise that those

1 notes be purchased incrementally rather than  
2 doing one initial large purchase and then  
3 purchasing smaller amount notes over time?

4 A. Correct. That is a number there that  
5 to be prudent would probably be best spread  
6 over approximately four months.

7 Q. Would that dramatically affect the  
8 outcome in terms of the profitability of the  
9 company at the end of the day?

10 A. It really doesn't because I've run  
11 that type of -- I've run that type of  
12 variability in my own spreadsheet.

13 Now, is there an effect? Yes, there  
14 is an effect on it. Is it a large material  
15 effect when you're projecting out for four or  
16 five years? The answer is no.

17 Q. Looking at the existing notes, we  
18 talked about -- well, what I had referred to  
19 originally as seasoned notes. But let's call  
20 them notes that have been paid on for 12  
21 months or more. Is the default rate -- while  
22 we're on those notes then -- a note that's  
23 been paid on less than 12 months?

24 A. Yes.

25 Q. And so your 20-percent average

1 default rate, would that be actually less on  
2 notes that are 12 months old or more?

3 A. In this specific -- now, let me  
4 answer that two ways. In the business model  
5 slash quality of notes that were being  
6 purchased by LCI, that number may be  
7 realistic. In the business model that I've  
8 patterned my business after and as have many  
9 other very successful businesses, 20 percent  
10 after 12 months would be very high.

11 Q. Okay. So at least for purposes of  
12 the spreadsheets prepared by Mr. Imler, he  
13 shows a 20-percent default rate on those  
14 existing notes. And so for a company like  
15 LCI, you would consider that to be  
16 reasonable?

17 A. I would say so.

18 Q. Okay. At this point in time?

19 A. Correct.

20 Q. Now that they've been paid on,  
21 because we know the trustee hasn't purchased  
22 any notes so these have been paid on for  
23 quite some time?

24 A. Correct.

25 Q. And for new notes we've got an

1 estimate of 30 percent in Mr. Imler's  
2 spreadsheet. You're saying that that's  
3 actually high. Do you think it would be  
4 roughly half that?

5 A. That's the way we would run -- that's  
6 the way that the business should run; that is  
7 correct.

8 Q. And on a \$6,000 auto note is a  
9 recovery average of \$2,500 on a repossession  
10 considered reasonable?

11 A. Actually, that's extremely  
12 conservative, extremely conservative.

13 Q. So you think it would be more than  
14 that?

15 A. Yes.

16 Q. When you talk about a default  
17 recovery, would that be the cost after  
18 repossessing a vehicle, sending it to  
19 auction, selling it and the net proceeds  
20 coming back to you --

21 A. Correct.

22 Q. -- or to the company?

23 A. Yes.

24 Q. Okay. And as reasonable to purchase  
25 notes, the values for vehicles that are

1 purchased at \$6,000 each with an income  
2 stream of 12?

3 A. I'm sorry. Say the question again.

4 Q. I'm looking at the spreadsheets, and  
5 I'm trying to walk through some of these  
6 assumptions.

7 New notes purchased at average price  
8 of \$6,000, is that reasonable to be able to  
9 purchase the volume of notes that are set  
10 forth in Mr. Imler's spreadsheets at an  
11 average of \$6,000 per vehicle?

12 A. Yes.

13 Q. And is that some sort of target? Is  
14 that like -- I think I heard Mr. Imler talk  
15 something about a bell curve, trying to hit  
16 the center of that curve?

17 A. You'll hear people refer to different  
18 things, sometimes even called the sweet spot,  
19 if you will. And this is that type of  
20 contract.

21 I mean, I understand in any sales  
22 industry, you know, you've got a bell curve.  
23 Certainly, some of these contracts sell for a  
24 much higher value because you've got people  
25 with substantial incomes but their credit is

1 damaged. So they may be out buying a \$25,000  
2 car, but they're having to -- they're having  
3 to finance it, you know, through a factoring  
4 company.

5 But in the heart of where I'm  
6 operating in the heart of the successful  
7 companies that I've researched and patterned  
8 my business after, this is right where they  
9 operate.

10 Q. Okay. So that on the payment stream  
11 on that note is an average of \$12,000 over a  
12 30-month payment period, is that reasonable  
13 to assume?

14 A. Yes.

15 Q. And using a 30-month maturation at  
16 the end instead of 24, that was part of the  
17 LCI business model; is that reasonable?

18 A. That's very, very reasonable. Within  
19 this bell curve -- if that's what you want to  
20 call it -- within this particular envelope,  
21 virtually all of those notes are written at  
22 30 or 36 months.

23 Q. Okay. And under the existing notes,  
24 which are the LCI notes, which I understand  
25 are not only subprime auto loans but are

1 subpar subprime auto loans; is that a fair  
2 way to say it?

3 A. Yes.

4 Q. Okay. That Mr. Imler has a repo sale  
5 and default recovery of it of a  
6 thousand dollars per vehicle, which is  
7 roughly, I believe, 25 percent of the average  
8 vehicle cost.

9 Does that seem reasonable to you?

10 A. Yes.

11 Q. Okay. Is that conservative or is  
12 that just a -- does that sound like the right  
13 figure?

14 A. I would call it very reasonable, and  
15 anything on top of that would be a bonus.

16 Q. Okay.

17 A. One thing that would -- here we go.  
18 One thing that would affect that number is  
19 the fact that these loans are in their later  
20 stages. So, if anything, you would expect  
21 that number to increase as the maturation  
22 goes along.

23 Q. So if the trustees were to assert  
24 that the default ratio was as high as 35 to  
25 40 percent in the type of paper that we're

1 talking purchasing on this feasibility study,  
2 would that number seem high to you?

3 A. Again, it depends on how we define  
4 default.

5 Q. I see.

6 A. If the default simply means the loan  
7 is not taken to completion, that may be a  
8 reasonable number. But within that number,  
9 that doesn't mean that all of those come to a  
10 material loss. A considerable number of  
11 those may actually still have made money that  
12 just maybe wouldn't have made as great a  
13 return as if they paid off the completion.

14 Q. So when we're talking about the  
15 repossessions that are estimated in  
16 Mr. Imler's spreadsheets, at 30 percent for  
17 new notes and 20 percent on existing, what  
18 we're talking about there are the defaults  
19 that result in a material loss;  
20 is that correct?

21 A. Correct.

22 Q. We're not talking about dealer  
23 buyback, correct?

24 A. Correct.

25 Q. We're not talking about insurance

1 buybacks, right?

2 A. For the most part, correct.

3 Q. Because those don't result in the  
4 same material loss that a repossession does?

5 A. Correct.

6 Q. Okay. Are you familiar with any risk  
7 of changes in applicable legislation dealing  
8 with subprime automobile loans?

9 A. No. But that is the one of the  
10 reasons I belong to both of the organizations  
11 that I do. They have specialists that  
12 monitor all 50 states and federal legislation  
13 to cover any eventualities, if you will, that  
14 something is being discussed in a  
15 subcommittee or something is being discussed  
16 in committee.

17 And we actually get reports from sea  
18 to shining sea, so to speak. And that's one  
19 of the key things that those organizations  
20 provide for us.

21 Q. Do those organizations also help you  
22 draft some of this paper so that you have a  
23 proper form for an auto note, or how does  
24 that work?

25 A. They actually -- there are, as you

1 might imagine in this legal world in which we  
2 live, certain things that do have to be  
3 included in contracts as they are written up  
4 for the customers. And they can assist  
5 dealers and factoring/finance companies in  
6 making sure that they are complying with the  
7 law. They do not themselves produce a  
8 product.

9 Q. Okay. I'd like you to take a look at  
10 the Trustee's Exhibit Number 6. It's a  
11 spreadsheet that provides numbers from the  
12 trustee. And I want you to look at a couple  
13 of things.

14 The first one would be the LCI  
15 expenses. Do you see where they're listed,  
16 \$100,000 a month for the first four months?

17 A. Yes.

18 Q. Would you consider that to be a  
19 reasonable expense to collect the remaining  
20 900 or so notes of LCI?

21 A. If I were in charge, no.

22 Q. How many employees would it take to  
23 collect on roughly 900 notes?

24 A. Total employees -- and, again, this  
25 is based on my research and the way my

1 business has been set up -- you have anywhere  
2 from 120 to 150 contracts per employee. And  
3 that includes everybody right down to the  
4 person that turns the lights off at night,  
5 anyone that would be in purchasing,  
6 collections, insurance, titles, and so forth.

7 Q. So if we've got 1,000 notes, we would  
8 have maybe eight employees?

9 A. That would be a very good target,  
10 yes.

11 Q. Would 15 seem excessive?

12 A. Yes.

13 Q. And so if it took \$100,000 to pay 15  
14 employees, would \$50,000 be a more reasonable  
15 expense number?

16 A. You're saying on 15 employees or 8  
17 employees?

18 Q. Eight employees. If you're running  
19 with eight employees as you've defined so  
20 that -- I believe you said that eight  
21 employees was a more reasonable number than  
22 fifteen; is that correct?

23 A. Correct.

24 Q. So let's say that you have eight  
25 employees, would it cost 100,000 to pay those

1 eight employees and keep the lights on and  
2 pay the rent?

3 A. Not at the average going salaries,  
4 no.

5 Q. And how much do you think it might  
6 cost?

7 A. Even if you wanted to be  
8 conservative, you might say \$60,000.

9 Q. Okay. How about legal expenses  
10 associated with running a subprime auto loan  
11 business with let's say, you know, start  
12 1,000 notes, do you know what the legal  
13 expenses might be?

14 A. Typically, they are factored into the  
15 operating expenses. And, again, typically,  
16 that is to buy insurance. The largest  
17 charge, typically, that someone in this  
18 industry may come up against is the Fair Debt  
19 Collections Act. And that is so well-known  
20 within the industry that complaints against  
21 that act now are very, very rare. Such that  
22 some companies actually have scripts that  
23 employees either read from or refer to that  
24 prevent violating that act.

25 Q. Okay. So the \$100,000 a month in

1 legal fees, you don't think would be a  
2 reasonable figure to run a business such as  
3 this?

4 A. Outside of bankruptcy, it wouldn't be  
5 a fraction of that number.

6 Q. Do you think it might be ten?

7 A. No.

8 Q. Less?

9 A. Yes.

10 Q. Okay. Looking at Exhibit 6 where the  
11 trustee has listed a default rate of 40  
12 percent, assuming that they are -- that we're  
13 talking about material defaults, which are  
14 not the dealer buybacks, insurance buybacks  
15 and other things that merely cause a brief  
16 interruption in cash flow, would that default  
17 rate of 40 percent seem reasonable to you?

18 A. No.

19 Q. And I think you've testified already  
20 that you think the default rate should be  
21 closer to 15 to 20 percent?

22 A. That is correct.

23 Q. If properly run?

24 A. Correct.

25 Q. Same thing, when they list on the

1 existing notes, we're talking about the LCI  
2 notes that got a default rate of 50 percent.  
3 Assuming that we're not talking about dealer  
4 buybacks, insurance buybacks, would that  
5 number seem reasonable?

6 A. No.

7 Q. And you would say that number is  
8 closer to 20 percent or less?

9 A. Twenty, you could even stretch it to  
10 thirty. I wouldn't go any higher.

11 Q. Okay. Looking at my notebook, again,  
12 the committee notebook, which is the white  
13 one, and I want you to take a look at Tab 17.  
14 And I understand that all of these  
15 spreadsheets contemplate reinvestment of  
16 capital for a period of four years and then  
17 followed by a payout plan.

18 Now, looking at that spreadsheet it  
19 says: Delay reinvestment to October 2010 and  
20 add the nonperforming assets sale; do you see  
21 that?

22 A. Yes.

23 Q. And that runs out to a payout of net  
24 earnings of \$15.7 million for the first 12  
25 months of a 30-month payout stream beginning

1 at the end of year four; is that correct?

2 A. Yes.

3 Q. And you had the opportunity to review  
4 the table that's marked as Exhibit 17; is  
5 that right?

6 A. Correct.

7 Q. And does that payout stream seem  
8 reasonable in your experience and also based  
9 upon the research that you have conducted  
10 over the last 2.9 years?

11 A. Yes. The one variable that is  
12 missing here is the income taxes that we had  
13 factored in earlier.

14 Q. Okay. So there's --

15 A. But that is correct.

16 Q. But let's call it taxable payout of  
17 \$15.7 --

18 A. Correct.

19 Q. -- million at the end of four years.

20 A. Correct.

21 Q. And that's just for the first 12  
22 months, and we would have another -- the next  
23 year would also be a payout in somewhat less  
24 than 15 million?

25 A. Yes. Over the next 18 months, you

1 would expect to realize at least another \$15  
2 million.

3 Q. So, really, what we're talking about  
4 is a \$30 million payout?

5 A. Correct.

6 Q. Thereabouts.

7 And then have you done any research  
8 with respect to the value of a company such  
9 as this subprime loan company per sale with  
10 purchase.

11 A. Yes.

12 Q. Okay. Are you aware of any sales of  
13 similar subprime loan businesses in the last  
14 three years?

15 A. Yes.

16 Q. Okay. And based on your experience  
17 or -- and your research, do you have an  
18 opinion as to how to calculate the sales  
19 price of a similar subprime automobile loan  
20 business?

21 MR. BROWN: Objection, Your Honor.

22 This is outside of what the witness has  
23 been qualified to testify as an expert.  
24 He's qualified to testify about running a  
25 subprime automobile business not about

1 buying and selling businesses.

2 MR. KANE: Your Honor, I believe  
3 buying and selling them is part of  
4 running it. That's why you run them.  
5 You run them for the purpose of hopefully  
6 calculating EBITDA and ultimately selling  
7 them and making a profit. That's part of  
8 the business.

9 THE COURT: Of course, you have the  
10 Daubert Test to look to as well.

11 Does he have information about the  
12 sales of businesses? He said there had  
13 been some in the last three years. Does  
14 he have information about that? Does he  
15 know what those sales are? Can he form  
16 an opinion based on those sales?

17 MR. KANE: That's correct. Thank  
18 you, Your Honor.

19 THE COURT: You can ask him that  
20 question.

21 MR. KANE: I would be happy to.

22 BY MR. KANE:

23 Q. Mr. Ellyson, you have some knowledge  
24 of sales occurring over the last three years  
25 of similar subprime automobile loan

1 businesses, correct?

2 A. Correct.

3 Q. And based upon your research and your  
4 knowledge of prior sales in the subprime auto  
5 loan business, do you have any -- have you  
6 formed an opinion as to the sales price of a  
7 subprime automobile loan business?

8 A. Yes.

9 Mr. KANE: Are you waiting for the  
10 question?

11 MR. BROWN: Well, Your Honor, if he's  
12 going to -- if you're going to extend the  
13 qualification of Mr. Ellyson to testify  
14 on this subject in expert capacity, I'd  
15 like the opportunity to voir dire.

16 THE COURT: Mr. Brown.

17 MR. BROWN: I don't know, Mr. Kane --

18 MR. KANE: No. Please, go ahead.

19 **VOIR DIRE EXAMINATION**

20 BY MR. BROWN:

21 Q. Mr. Ellyson, have you seen actual  
22 contracts for the sale of any subprime  
23 automobile business or portfolio?

24 A. Finalized signed contracts?

25 Q. Correct.

1 A. No.

2 Q. Have you been part of the  
3 negotiations of any of those contracts?

4 A. No.

5 Q. Do you understand any of the tax  
6 consequences of such a large transaction?

7 A. Yes.

8 Q. Okay. And you said that you're  
9 familiar with two of them?

10 A. Two in the last six months.

11 Q. Okay. Those are the only two that  
12 you ever -- you're familiar with?

13 A. Those are the two that I have a great  
14 deal of knowledge about. I'm familiar with  
15 others, but those are the two that I have the  
16 most knowledge of.

17 Q. You've never been involved with one,  
18 you've never negotiated one, you've never  
19 signed one on the dotted line?

20 A. Correct.

21 MR. BROWN: Okay. Nothing further.

22 **DIRECT EXAMINATION (continued)**

23 BY MR. KANE:

24 Q. Mr. Ellyson --

25 THE COURT: Let me say this, I'm not

1 going to give it a great deal of weight.

2 MR. KANE: Okay.

3 THE COURT: But he can testify as to  
4 that because he has some knowledge about  
5 it. There are, as you both have well  
6 brought out, there are a number of  
7 factors to consider in making this  
8 decision.

9 This is one of those factors. It's  
10 one of many factors. He can testify with  
11 respect to that. I will give it some  
12 weight. It is not going to make or break  
13 this testimony. He can do it or not.

14 MR. KANE: Thank you, Your Honor.

15 Well, since we're --

16 THE COURT: Right.

17 MR. KANE: -- here and we might as  
18 well just go through it.

19 BY MR. KANE:

20 Q. Mr. Ellyson, based on your experience  
21 and your knowledge, do you have some  
22 opinion -- or have you formulated an opinion  
23 as to a sales price for a similar business to  
24 the one that's contemplated in the  
25 spreadsheet?

1           A. Yes.

2           Q. Okay. And can you elaborate on that  
3 and tell us what it is?

4           A. Let me qualify everything as far as  
5 valuation is concerned, if I might. Two of  
6 the largest variables that I know that are in  
7 the industry when sales are discussed, are  
8 the quality of the notes that have been  
9 purchased. And if the business is to be  
10 purchased as an ongoing entity, how  
11 efficiently, you know, is the business being  
12 run.

13                   That has a considerable impact on  
14 what the valuation of the corporation is.  
15 And when I say "considerable," I truly mean  
16 considerable difference in how the company is  
17 evaluated.

18                   A well-run company in this business  
19 model in today's environment, given the fact  
20 that these last two sales were within the  
21 last six months, would fall somewhere between  
22 the two to three times earnings.

23           Q. And I want you to look at Tab 18 of  
24 the materials, which involves the  
25 reinvestment of four years. It's the sale of

1 both the performing and nonperforming assets;  
2 do you see that?

3 A. Yes.

4 Q. And with the sale of both the  
5 performing and nonperforming assets -- and  
6 that's assuming a buy and sell price of  
7 1,878,000, which I believe is now about  
8 \$300,000 too high, you can see that there's  
9 an \$11.3 million initial payout in the first  
10 12 months following the four-year investment  
11 plan; is that right?

12 A. Correct.

13 Q. So there's roughly a \$4.4 million  
14 difference, which is based on whether the  
15 performing assets are sold by the trustee or  
16 whether those assets can be put into a plan  
17 and reorganized to purchase existing notes;  
18 is that right?

19 A. Yes.

20 Q. And that would be in the first 12  
21 months. So, really, we're talking about  
22 double that in terms of the actual impact,  
23 right?

24 A. What do you mean by double the impact?

25 Q. Well, it reflects only the first 12

1 months of a 30-month payout stream?

2 A. Oh yes. I see what you're saying,  
3 yes.

4 Q. So the difference of 4.4 million  
5 really ends of up being 8.8 million over the  
6 income stream?

7 A. Yes.

8 Q. And the sales price likewise is  
9 affected by roughly \$10- to \$15 million based  
10 on a two to three times earnings?

11 A. Correct.

12 Q. Is there another problem that's  
13 associated with the sale of the performing  
14 assets, for example, if they're sold now so  
15 that -- and invested later. Are there any  
16 problems that would be associated with like  
17 trying to keep the business alive?

18 A. That might be the most difficult is,  
19 you know, keeping the employees there.  
20 Although, if they're being paid, they would  
21 probably stay there. That time could be used  
22 productively if a reorganization was to go  
23 forward. As far as any type of retraining  
24 and so forth, that time actually could be  
25 used.

1           But you really -- if you've got any  
2 business, even if you're making doughnuts and  
3 you quit making doughnuts for three or four  
4 months, that has a significant impact to any  
5 business.

6           Q. It renders the business somewhat  
7 stale?

8           A. Correct.

9           Q. Do you have any opinion as to whether  
10 the performing assets of Lydia Cladek, Inc.  
11 should be sold by the trustee under the asset  
12 purchase agreement or whether those funds  
13 should be reinvested -- or I shouldn't say  
14 reinvested but invested in a new business,  
15 which is reflected in those spreadsheets?

16           MR. BROWN: Your Honor, again, this  
17 is outside of his testimony as a person  
18 of subprime entity. That's going into a  
19 bigger question of reorganizing a  
20 business, liquidating a business.  
21 There's basis for this witness as a  
22 testimony for that.

23           THE COURT: Sustained.

24           MR. KANE: That's fine, Your Honor.

25           MR. KANE: I have no further

1 questions.

2 THE COURT: Thank you.

3 Cross-examination, Mr. Brown?

4 MR. BROWN: I will be brief, Your  
5 Honor.

6 **CROSS-EXAMINATION**

7 BY MR. BROWN:

8 Q. Mr. Ellyson is it true -- and I'm  
9 going to ask you yes or no questions. Let me  
10 focus on that.

11 It's true that you've never run a  
12 subprime business that had either hundreds of  
13 loans or thousands of loans that were being  
14 monitored, collected, and operated; is that  
15 correct?

16 A. Correct.

17 Q. And you've never gone to the market  
18 and taken a million-something dollars at one  
19 time and see if you could buy 200 quality  
20 notes of the kind that we've been talking  
21 about tonight in one given month, have you?

22 A. No. And I just testified to that  
23 fact as to what would be prudent.

24 Q. And then when we talked earlier about  
25 this whole tax thing, you buy a \$12,000 note

1 for \$6,000. That means there's a \$6,000  
2 gain, right, if you collect all of it?

3 A. No. There's not a total of a \$6,000  
4 gain; because out of that gain, out of that  
5 \$6,000 gain, you will subtract all of your  
6 expenses. What's left over for tax purposes  
7 would be considered a gain.

8 Q. And what percentage of that -- of the  
9 expenses do you set from that 12,000? What  
10 was the percentage from the gain?

11 A. As far as taxable is concerned?

12 Q. What percentage would you take from  
13 the 12,000 on the hypothetical -- on the  
14 12,000 car note that you purchased for  
15 \$6,000?

16 A. Take as a percentage of taxes, take a  
17 percentage --

18 Q. Percentage of costs.

19 A. It's 15 percent overall, as far as  
20 operating expenses are concerned.

21 Q. And then you also have the interest  
22 component on top of that at 29 percent?

23 A. Correct.

24 Q. And that's another taxable component  
25 as well?

1           A. Yes. Well, you have two taxable  
2 components to these types of transactions.

3           Q. And you listened to Mr. Imler's  
4 testimony earlier?

5           A. You have what's called a discounted  
6 gain, and then you also have the interest.  
7 Those two events are taxable. Out of that  
8 you do subtract all of your business  
9 expenses. What remains then is what is taxed  
10 federally and -- federally and state.

11           As a very good rule of thumb, to set  
12 aside money for taxes since those are to be  
13 paid quarterly, you would set aside 10  
14 percent, 10 percentage points, 10 percent of  
15 any of the funds collected, which would come  
16 very close to satisfying your tax bill when  
17 that bill came. There are several ways it  
18 figure that in. That just happens to be the  
19 easiest rule of thumb.

20           Q. That's the tax on the gain component?

21           A. You would be paying tax on the gain  
22 after subtracting for expenses, correct.

23           Q. And then you have another tax on the  
24 interest component?

25           A. No. No. No. No. That's -- you

1 don't separate the two. There isn't any such  
2 thing as separating the two. When it comes  
3 to your bookkeeping, you keep three separate  
4 components as far as bookkeeping. But for  
5 tax purposes, as far as any gain is  
6 concerned, you take the interest that is  
7 received and you take the discounted gain.  
8 You add those two together. That's what  
9 becomes your income, if you will.

10 From that you will subtract all of  
11 your expenses, whatever that number happens  
12 to be. That leaves then your taxable income.  
13 Depending on how the business is structured,  
14 it depends on what tax rate you're going to  
15 be paying.

16 It just so happens that as a good  
17 rule of thumb, if you set aside 10 percent of  
18 all of your receipts, that allows you to set  
19 aside enough cash to make your quarterly tax  
20 payments when the quarterly tax payments are  
21 due. Now, 10 percentage points, obviously,  
22 is not your tax rate. That's just a good  
23 rule of thumb derived from other figures.

24 Q. There could be other taxes owed and  
25 true up at the end of the year?

1           A. Typically, on a business like this,  
2 about the only taxes you're paying, you know,  
3 if you happen to own the building, you may  
4 pay a little -- small amount in property  
5 taxes. But the taxes that you're responsible  
6 for typically is the income tax.

7           Q. How is your company taxed?

8           A. As a C corporation.

9           Q. So you pay tax both of the corporate  
10 level and of the shareholder level if you  
11 make distributions?

12          A. If we make distributions; that's  
13 correct.

14          Q. And these models don't account for  
15 the tax at the shareholder level, at  
16 distribution level, do they?

17          A. No. When that time comes, we  
18 absolutely have the right to change the  
19 taxation category of the corporation also.

20          Q. You understand the concept of a  
21 pass-through taxation?

22          A. Correct.

23          Q. So sometimes there could be, in this  
24 projection, four years of earnings in which  
25 if there was pass-through, each individual

1 investor would have to pay taxes without  
2 getting distribution on a pass-through  
3 concept, correct?

4 A. Correct. I actually own investments  
5 like that. I absolutely understand that  
6 taxation.

7 Q. And with respect to these competitors  
8 you visited, is it possible that they didn't  
9 give you 100 percent of all their trade  
10 secrets when you went to see them?

11 A. No. Is it possible, I would not  
12 expect them to probably share with me  
13 everything. But as you do your research,  
14 it's pretty quickly obvious to what level  
15 they're willing to share or in certain areas  
16 they may not be willing to share at all;  
17 i.e., they may have individual investors in  
18 which they're not going to share with you  
19 that proprietary information.

20 Q. Do you know if the trustee in his  
21 current running of this Chapter 11 bankruptcy  
22 estate, requires additional employees in the  
23 business to do things such as chase down  
24 information, reconcile the books, help with  
25 building a case for prosecuting preference

1 claims, help building a case for fraudulent  
2 transfer claims, help for providing  
3 information to the creditors' committee?

4 Do you know if there's additional  
5 cost expenses, employees that the trustee  
6 would need over and above just running the  
7 portfolio that is the remaining portfolio of  
8 this business?

9 A. At this stage I would probably expect  
10 that, yes.

11 Q. Same with the legal fees, do you  
12 understand that there's cost in advancing a  
13 plan of reorganization, prosecuting  
14 preference claims, prosecuting fraudulent  
15 transfer claims? I know other things such as  
16 that to try to maximize the recovery to this  
17 estate?

18 A. Yes. Unfortunately, I've been  
19 associated with two other bankruptcies that I  
20 was not the principal party to, thankfully.

21 Q. So you went through those figures  
22 with Mr. Kane. It actually -- it could have  
23 been that the trustee had prepared very  
24 accurate?

25 A. There's two -- if I might -- there

1 are two aspects to that. One is testifying  
2 to how would this type of a business be run  
3 as it should be without the additional, if  
4 you will, umbrella of expenses there.

5 Q. But you called in to question  
6 \$100,000 per month projection --

7 A. Based on the assumption that we're  
8 out from underneath that umbrella.

9 If \$100,000 a month is the number for  
10 next three months, then that is the number.  
11 I'm not going to presume and try and guess  
12 what those exact fees would be, other than  
13 seeing the monthly statements that come in.  
14 I was attempting to testify to an  
15 organization being run, as it should, out  
16 from under that umbrella.

17 Q. Are you familiar with the concept of  
18 having growing pains when you start a  
19 business up?

20 A. Absolutely.

21 Q. Is this the kind of business that  
22 could have some growing pains and starting to  
23 get it ramped up?

24 A. Well, one of the benefits that it has  
25 is it already has people in place, and

1 they're also within the community there,  
2 extensive people that have lots and lots of  
3 current experience. So to ramp up  
4 specifically let's say a purchasing  
5 department in this particular case, would not  
6 take near the operating cost that it would if  
7 you were to hand me tomorrow \$5 million to  
8 say I want this invested in the next eight  
9 months. That would take considerable ramp-up  
10 cost.

11 But in this case while there would be  
12 some, this is different from a start-up.

13 Q. And then all these multiples that we  
14 discussed, those are based on you actually  
15 achieving these feasibility projections that  
16 are set forth in the various charts we've  
17 gone through tonight?

18 A. Give me specifics.

19 Q. Just in general, in order to achieve  
20 a multiple for a business, it has to be  
21 running smoothly and achieve these figures,  
22 correct?

23 A. Correct.

24 MR. BROWN: No further questions,  
25 Your Honor.

1 THE COURT: Thank you.

2 Any redirect?

3 MR. KANE: Extraordinarily brief.

4 **REDIRECT EXAMINATION**

5 BY MR. KANE:

6 Q. Mr. Ellyson, looking at the  
7 spreadsheets, if the performing assets are  
8 sold that's proposed by the trustee, are the  
9 odds more likely than not that this debtor  
10 will not be able to reorganize because it  
11 won't have -- it's going to have that gap and  
12 it won't have the cash flow income?

13 A. I would say it probably makes it more  
14 difficult.

15 Q. And so if we have that cash flow of  
16 roughly 3.3 million coming in, we could use  
17 that money and reinvest it. But if we have  
18 the performing assets sold for \$1 million,  
19 that would hamper the ability of the company  
20 to reorganize?

21 A. Yes.

22 MR. KANE: Nothing further.

23 THE COURT: Cross-examination with  
24 respect to that area?

25 MR. BROWN: No, Your Honor.

1 THE COURT: Thank you.

2 Thank you very much. You may step  
3 down.

4 (Witness excused.)

5 MR. KANE: As a housekeeping matter,  
6 Your Honor, there are a number of  
7 exhibits I would like to introduce into  
8 evidence based on testimony, which would  
9 be pivot table analysis that's Exhibit 10  
10 that's been testified to by both  
11 Mr. Ellyson and Mr. Imler, as well as  
12 Exhibits 11, 12, 13, 14, 15, 16, 17, 18,  
13 19, and 20, which deal with the four-year  
14 cash flow analyses, which were prepared  
15 by Mr. Imler and identified and testified  
16 to by Mr. Imler and then supported  
17 ultimately by Mr. Ellyson.

18 THE COURT: Any objection?

19 MR. BROWN: Your Honor, I'll reserve  
20 argument that these projections are  
21 wholly inaccurate. But for purposes of  
22 admitting them for what they are, based  
23 on the testimony that's presented, we  
24 don't object to them.

25 THE COURT: They are admitted.