

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

7 _____/

8
9 **TRANSCRIPT OF PROCEEDINGS**

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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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A P P E A R A N C E S

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I N D E X1
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11
12
13
14
15
16
17
18
19
20
21
22
23
24
25WitnessPage**MICHAEL PHELAN**

Direct Examination by Mr. Brown	20
------------------------------------	----

Cross-Examination by Mr. Kane	45
----------------------------------	----

THOMAS A. IMLER

Direct Examination by Mr. Kane	92
-----------------------------------	----

Cross-Examination by Mr. Brown	196
-----------------------------------	-----

Redirect Examination by Mr. Kane	219
-------------------------------------	-----

Recross-Examination by Mr. Brown	221
-------------------------------------	-----

Further Direct Examination by Mr. Kane	221
---	-----

CHARLES ELLYSON

Direct Examination by Mr. Kane	224
-----------------------------------	-----

Voir Dire Examination by Mr. Brown	233
---------------------------------------	-----

Direct Examination by (cnt'd) Mr. Kane	240
---	-----

Voir Dire Examination by Mr. Brown	266
---------------------------------------	-----

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

Direct Examination by (cnt'd) Mr. Kane	267
Cross-Examination by Mr. Brown	272
Redirect Examination by Mr. Kane	281

E X H I B I T S

Trustee's Exhibit No. 1	17
Trustee's Exhibit No. 2	17
Trustee's Exhibit No. 3	21
Trustee's Exhibit No. 5	30
Trustee's Exhibit No. 6	44
Trustee's Exhibit No. 7	44
Trustee's Exhibit No. 8	44
Trustee's Exhibit No. 9	18
Trustee's Exhibit No. 10	19
Trustee's Exhibit No. 11	19
Trustee's Exhibit No. 12	19

- - -

Committee's Exhibit No. 1	91
Committee's Exhibit Nos. 10 through 20	284

1 MR. KANE: With that, Your Honor, I'd
2 like to call Mr. Tom Imler.

3 THE COURT: Mr. Imler.

4 If you would raise your right hand,
5 please, sir.

6 WHEREUPON,

7 **THOMAS A. IMLER,**

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

12 **DIRECT EXAMINATION**

13 BY MR. KANE:

14 Q. Please state your full name.

15 A. Thomas A. Imler.

16 Q. And what is your occupation,
17 Mr. Imler?

18 A. I'm semi-retired right now. I still
19 am retained by a systems engineering firm
20 that consults with the government.

21 Q. And prior to your current retention,
22 where were you employed?

23 A. I've been employed by Scitor
24 Corporation for ten years full time, and in
25 the last two years, in a consultant basis.

1 Q. And then prior to that?

2 A. I retired after 26 years' service in
3 the U.S. Air Force as a colonel.

4 Q. And in your systems background, do
5 you have the -- do you have experience in
6 reviewing and preparing spreadsheets,
7 proposals, things of that nature?

8 A. Yes, I do. I've served -- my
9 background is in aerospace engineering. I
10 have an MBA in master's assistance
11 management. Most of my 26 years in the
12 service, I served in program office
13 procurement acquisition as program manager,
14 head of program control, associate director
15 for acquisition, major satellite programs.

16 I have had the opportunity and
17 responsibility to conduct source elections,
18 feasibility analysis, cost estimation
19 analysis to support, program office analysis,
20 and evaluation activities at the Pentagon.

21 Q. And are you a creditor in the Lydia
22 Cladek, Inc. bankruptcy case?

23 A. I am. Both me and my wife.

24 Q. And how much are you owed?

25 A. I think the claim went in for the two

1 of us for 400,000.

2 Q. Okay. And are you in any way related
3 to Ms. Cladek?

4 A. I am. She's one of my first cousins.

5 Q. I see.

6 And why are you here today? How did
7 you get involved in this case?

8 A. I was surprised by the bankruptcy. I
9 didn't -- it blindsided me. I did not know
10 it was coming. And when the creditors'
11 meeting occurred down here, I came down. I
12 fully believed that there would be discussion
13 of reorganization, because it was a
14 Chapter 11, not a Chapter 7.

15 Along with many creditors that
16 attended that day, I was surprised by the
17 decision that had already been made about
18 liquidation. That just didn't make sense to
19 me.

20 I was somewhat familiar with the
21 industry as a creditor and had done some due
22 diligence. And so I thought that it should
23 at least be evaluated.

24 As a systems engineer and analyst,
25 you're trained to analyze things, put the

1 numbers to the -- in the out algorithms and
2 then we withhold judgment until you get to
3 the answer. And I started looking at it
4 because I thought somebody should be doing a
5 reorganization feasibility analysis. And so
6 very early on -- I think immediately after
7 the 5 May meeting, I started requesting
8 information from the trustee.

9 Q. I see.

10 And do you know who specifically you
11 requested information from?

12 A. I don't recall specifically whether I
13 e-mailed Mr. Phelan or someone on his staff,
14 but I e-mailed the trustee's office. I had
15 the initial request I'm guessing around the
16 10th of May, 15th of May, something like
17 that. The answer I got back -- I asked for
18 P&Ls and any other information that I could
19 use to sort of see what the situation was.

20 Q. What was the response?

21 A. The first response I got was that
22 they were not complete, and they would be
23 posted shortly.

24 Q. Okay. And that was sometime in May,
25 to the best of your recollection?

1 A. Something like that.

2 Q. Did you follow up?

3 A. I followed up about a week later.

4 And I said: They haven't been posted yet.
5 And I never received an answer to that
6 e-mail.

7 Q. And when you say "posted," you're
8 talking about on the trustee's web site?

9 A. Yes.

10 Q. So was that the only response that
11 you had gotten from the trustee?

12 A. That was the only one that I received
13 from the trustee at that time. At that time
14 I was supportive of those creditors that were
15 trying to set up a creditors' committee. And
16 so there was a fairly strong effort to
17 establish a creditors' committee, because
18 there were many people that believed that
19 reorganization should at least be looked at
20 as an option.

21 Q. Did you ever see a plan that was
22 proposed by Ms. Cladek?

23 A. I did see some information that she
24 had. One of the things -- she was my cousin.
25 And early on in, I think, March, she said:

1 Can you come down and help me get the
2 business, you know, we -- I forget her exact
3 words. It was a very terse text and said:
4 Can you come help me?

5 I never was able to close with her.
6 I didn't know what the problem was. And,
7 finally, I put the dog in the car and I drove
8 down here to Jacksonville -- St. Augustine.

9 Q. When was that?

10 A. That was probably the middle of
11 March, maybe the 20th of March, something
12 like that.

13 Q. At that point did you ever see a plan
14 that was proposed?

15 A. That first trip down here I found her
16 in a terrible mental condition. And the
17 familial side of me, you know, if I can,
18 compartment -- I have a cousin that I care
19 about as a relative. I have the personal
20 financial interest that I have. I had
21 somewhat of an embarrassment that my daughter
22 and son-in-law also invested and lost really
23 a lot of money they couldn't afford to.

24 And so I have this fiduciary money
25 issue on the one side and then the concern

1 about the health and well-being of a relative
2 on the other. And in those first months, I
3 tried to compartment those. And so I was
4 down here. I found her talking about
5 suicide. I found her just distraught, unable
6 to pay for food. No place to live. So I
7 tried to get her in a stable place.

8 And in the first trip that was all
9 there was. I think I came down another time,
10 and by then she had sort of stabilized a
11 little bit. And I think she was concerned
12 about what had happened, and she began -- she
13 had scads of spreadsheets on her computer.
14 And she would just lose herself in the
15 computer like some people lose themselves in
16 Sudoku, you know. She would just go do all
17 kinds of stuff.

18 And her concern was she was trying to
19 figure out how to make it right for all the
20 people that she knew that had been hurt by
21 this, and so she was doing a lot of that.

22 I was not involved in it. I knew she
23 was doing that. I was more concerned with
24 trying to figure out how she was going to
25 live and where she was going to live and that

1 she was mentally okay.

2 Q. So at that point it's not as if you
3 were reviewing her spreadsheets or doing
4 anything like that, you just knew that she
5 was working on something?

6 A. I didn't even know that she was going
7 to file for bankruptcy. I had no idea. I
8 knew she had problems. I knew because she
9 asked me if I would defer my payments for a
10 while, you know, back in January that things
11 were tough.

12 And I said: If you need to do that,
13 you can roll it over. Okay. So I said:
14 Whatever you do. But I didn't know that
15 bankruptcy was even imminent. I was shocked
16 when that happened.

17 Q. So at least prior to the bankruptcy
18 petition date, you don't recall ever seeing a
19 plan or anything that was put together, a
20 spreadsheet or anything from Lydia?

21 A. I saw them on the screen. I knew she
22 was working on them.

23 Q. But it's not something that you
24 received or used to prepare an analysis or
25 anything?

1 A. No. I wasn't involved in anything at
2 that time.

3 Q. Was there a point at which you saw a
4 plan that was proposed by Lydia?

5 A. Because I was down there and back in
6 the -- I guess it was probably the May time
7 frame -- when I started requesting
8 information from the trustee and I wasn't
9 getting it, I started requesting information
10 from her.

11 I said: You know, do you have a cash
12 flow? Do you have a cash flow that I could
13 use for a reorganization plan? Do you have
14 some sort of industry figures? You know, do
15 you have some place you can point me? If I
16 was going to do a reorganization plan, what
17 would this look like?

18 She had all kind of numbers and
19 things, but they were not really useful to
20 me. I couldn't sort through them. So one of
21 the things we did is, you know, I tried to
22 understand what they were. Because I had, at
23 that mind, an idea that if no one else was
24 going to do a reorganization plan, I was
25 going to at least do a feasibility analysis.

1 And at that time that was the only source of
2 data that I had.

3 Q. So at some point you -- I guess, you
4 decided to start working on a feasibility
5 analysis, and then did you just -- does that
6 mean you had data from Lydia to do that at
7 first or --

8 A. It was probably the end of May as we
9 were getting ready for the -- I guess, when
10 the creditors' committee was about to be
11 started and I had been contacted by some of
12 the people, some of the big creditors. And I
13 have another first cousin who also lost a lot
14 of money that's on the top 20 list. So I'm
15 also related to her.

16 There was a lot of interest in
17 putting together a reorganization plan. And
18 so at that time, through some people on the
19 committee, they introduced me to Paul Hitner,
20 who runs a business like this out in
21 California. And over the next two weeks, we
22 took the data that he had, the data that I
23 had absorbed from Lydia and my own
24 assessments and information I had gathered.
25 And I started putting it together in some

1 spreadsheets.

2 And then those spreadsheets were way
3 too detailed. When I looked at them and
4 would try to explain them to somebody, there
5 were just too many -- too many spreadsheets.
6 And so I continued to try to refine what I
7 was doing, and I think Paul and I made a
8 presentation to the creditors' committee on
9 the 17th of June.

10 Q. Okay.

11 A. And at that time we didn't have
12 spreadsheets. We had a feeling. We had --
13 you know, he's in this business, Paul Hitner
14 is in this business out in California.

15 And so we made a presentation to the
16 creditors' committee that said: You know, we
17 don't have the answers and there are no
18 promises. But just a top-level feasibility
19 analysis with some very gross spreadsheets
20 look like there could be returns on the order
21 of \$4-, \$5-, \$10- maybe even \$15 million,
22 depending on how much money you start with
23 and how long you're waiting to get repayment.

24 And we presented that to the
25 committee around the 17th of June, if I'm not

1 mistaken.

2 Q. So if I understand you correctly, you
3 were able to prepare a spreadsheet with a
4 number of variables or --

5 A. I had done -- I had some
6 spreadsheets, but it was -- at that time what
7 we presented was really based on some stuff
8 that Paul had done. I put together some
9 spreadsheets. He looked at some
10 spreadsheets, and we sort of collaborated.
11 But we both agreed that the spreadsheets were
12 way too preliminary to present to the
13 committee.

14 So all we presented to the committee
15 was just a very -- I think it was a 15-page
16 PowerPoint presentation that said, this is
17 something that you ought to look at.

18 Q. Okay. I want you to look at
19 Trustee's Exhibit Number 13.

20 Is there a pile of exhibits in front
21 of you?

22 I can tell you, Exhibit 13 consists
23 of an e-mail from Ms. Cladek with an attached
24 document called Draft One Projected Funds
25 Available for LCI Investors; do you see that?

1 A. Are you sure it's Exhibit 13?

2 Q. Mine says Exhibit 13. I'll tell you
3 what, I'll just hand you mine, in the
4 interest of time.

5 That's my book. If you look at
6 trustee's exhibits --

7 A. Oh, I'm sorry.

8 Q. -- in that folder. It's Exhibit
9 Number 13.

10 Did you find it?

11 A. Yes.

12 Q. Okay.

13 A. Yes, I see it.

14 Q. Have you seen that document before?

15 A. I have.

16 Q. When was the first time that you saw
17 it?

18 A. I came down sometime in May. I think
19 we were -- I was trying to help her with an
20 attorney, and she told me, she said --

21 MR. BROWN: Objection, Your Honor.

22 He's testifying to what Ms. Cladek -- or
23 about to testify what Ms. Cladek was
24 telling him. That's clear hearsay.

25 THE WITNESS: Excuse me?

1 MR. KANE: That's fine.

2 BY MR. KANE:

3 Q. The question, Mr. Imler, was
4 simply --

5 A. You asked me when?

6 Q. -- when did you first --

7 A. It was in the probably May time
8 frame. I'm not even sure what the date of
9 this e-mail is.

10 Q. I believe the date of the e-mail --
11 it looks like it's June 14th.

12 A. Okay. Then I knew -- I found out she
13 sent this after the fact.

14 Q. Okay. So you learned about it after
15 Ms. Cladek sent it?

16 A. Uh-huh. And this was from
17 information she had done.

18 Q. I see.

19 So this wasn't the spreadsheet that
20 you had prepared --

21 A. No.

22 Q. -- or any work that -- product of
23 yours?

24 A. No. I was totally unaware that this
25 existed or that she had intended to send it

1 or that she sent it. And I was annoyed,
2 because at the time I had already, in my
3 mind, planned to talk to the creditors'
4 committee about a plan that I was putting
5 together with Paul Hitner. And so I was
6 quite annoyed that she sent this.

7 Q. So when you met with Mr. Hitner, did
8 you have a spreadsheet prepared or a plan?

9 A. We had some spreadsheets that we sent
10 back and forth. He was in California, so we
11 had never actually met. Because he's in this
12 business, I asked him, you know, I had taken
13 the best information I could find.

14 And I said: You're in this business.
15 What do you think? What factor would you
16 use?

17 MR. BROWN: Your Honor, again, he's
18 testifying to what Mr. Hitner, who he has
19 never met, is telling him. So anything
20 that Mr. Hitner would have said would
21 also be hearsay.

22 MR. KANE: Your Honor, it's not being
23 admitted for what Mr. Hitner said so much
24 as the basis for a spreadsheet.

25 THE COURT: And he hasn't offered

1 anything that Mr. Hitner said yet, as I
2 recall.

3 BY MR. KANE:

4 Q. You can continue.

5 A. I'm sorry. I didn't hear the
6 question.

7 Q. The question, Mr. Imler, was -- I
8 guess you said you never personally met with
9 Mr. Hitner. You dealt with him over the
10 phone; is that right?

11 A. Right. We were introduced by the
12 creditors' committee. We were asked to work
13 together. We exchanged e-mails and we
14 exchanged, you know, I gave him some drafts,
15 spreadsheets I had. He reviewed them. He
16 provided some recommendations on factors and
17 figures and reasonable amounts and looked at
18 them and said, you know, you should adjust
19 this and you should do this.

20 Together we sort of said these look
21 okay, and we thought they were good enough to
22 at least make the presentation to the
23 creditors' committee saying: We don't
24 know -- and we put a bracket -- we said: It
25 could be 4 to 10 here, it could be 10 to 14.

1 We simply put it out as sort of an expression
2 of interest.

3 And at that time what we had was
4 fairly raw, fairly raw.

5 Q. And at that point you didn't have any
6 information from the Chapter 11 trustee; is
7 that right?

8 A. No, I did not. No, I didn't receive
9 any information from the Chapter 11 trustee.
10 I think the first time was the 22nd of June,
11 and again on the 24th of June in answer to
12 two data requests that were forwarded to the
13 trustee by the creditors' committee. So I
14 made the request to the creditors' committee,
15 and it was sent down.

16 And they were very timely in their
17 response. I think we made a request on the
18 20th. We got it on the 22nd. I had a
19 follow-up request, because not all the
20 information had been addressed in the first
21 one. And the answer came back I think late
22 on the 24th after I had departed for my --

23 Q. So in cooperation with Mr. Hitner,
24 then, you were able to establish some
25 parameters as to the information that needed

1 to be input and how that information would
2 then be processed into a cash flow analysis
3 or a feasibility analysis for Lydia Cladek,
4 Inc.; is that right?

5 A. That's true.

6 The committee thought what we really
7 should do rather than building on the way
8 Lydia Cladek, Inc. was run, was look at
9 someone else that was running it according to
10 industry standards.

11 Q. I see.

12 A. And that's why they wanted us to work
13 together was because he was running this
14 business successfully.

15 MR. BROWN: Objection, Your Honor.

16 There's no foundation here for what
17 Mr. Hitner has done, what his business
18 is. This witness is not able to testify
19 if Mr. Hitner has a good business, a bad
20 business, how he runs his business, any
21 of those items.

22 Mr. Hitner is the one to testify to
23 that.

24 MR. KANE: Your Honor, I really have
25 no response to that. I don't think

1 that's what he's testifying to. Again,
2 we're talking about the basis for the
3 spreadsheet for the numbers that were
4 prepared by Mr. Imler.

5 THE COURT: Right. You may continue.

6 THE WITNESS: So once we had the
7 creditors' committee presentation and
8 there was unanimous support for pursuing
9 it, I said that the next step would be to
10 refine the spreadsheets into a competent,
11 carefully crafted approach.

12 And so I took on an effort in the
13 next week or ten days to try to simplify
14 the information, put it on an Excel
15 spreadsheet that I could use for
16 sensitivity analysis. And it would be
17 easy to manipulate across the range of
18 variables so I can demonstrate the
19 sensitivity of the approach to different
20 input variables like cash flow, different
21 expense rates, repo rates, and events
22 like the maturation of the contracts and
23 the injection of new cash from
24 forfeitures or the recovery of repo
25 costs.

1 BY MR. KANE:

2 Q. I'd like to direct your attention to
3 Tab Number 11 of my notebook, which is the
4 white one.

5 A. Uh-huh. This looks familiar.

6 Q. Okay. Did you prepare the document
7 that's marked Tab 11?

8 A. I did.

9 Q. And what is Tab 11?

10 A. It is my Proof of Claim for the
11 Bankruptcy Court.

12 Q. Let's try this again. My notebook,
13 the white notebook, Tab 11.

14 A. Sorry.

15 Q. That's all right.

16 A. Yes.

17 Q. Okay. And now do you recognize that
18 document?

19 A. Oh, do I.

20 Q. Okay. And did you prepare the
21 document that's marked as Exhibit 11?

22 A. Yes. This is, I think, Version 7 of
23 a series of documents that look like this.
24 The first one was prepared somewhere around
25 the 24th of June. But it was a very

1 simplistic one. I think it only addressed a
2 couple of years.

3 Q. Okay.

4 A. After I got back we had requested
5 some more information from the trustee, and
6 there was a huge data dump. And this set,
7 first the baseline and then all the variance,
8 was the best effort to incorporate all of the
9 pertinent data from the data delivered by the
10 trustee. And where there was data that was
11 requested that was missing, we tried to be
12 transparent about what we used instead.

13 Okay.

14 Q. Okay.

15 A. And so I can call out those different
16 approaches.

17 Q. Okay. And so when you got the
18 information in late July, you prepared
19 this -- or I guess this says updated
20 8/10/2010 --

21 A. I returned from vacation on the 14th
22 of July. And when I returned, I found that
23 there was a -- that the second data request
24 that we made in July had come in the morning
25 I left. So I got to see that data for the

1 first time, and then we made a subsequent
2 request for data. And then we got a tsunami
3 of all kind of data in response to that.

4 Q. Is that the information that came in
5 on July 20th; do you recall?

6 A. Right. Which is -- yes, the next
7 week.

8 Q. And then you took the time to sift
9 through that financial information?

10 A. I have -- in 31 e-mails and 106
11 megabytes of information and 80 attachments
12 or something like that, and I went through
13 and I tried to find the pieces and parts that
14 I needed to put in here. And wherever I
15 could get actual real data to replace what
16 was in there, which was preliminary data, I
17 did that.

18 Q. Okay. And so Exhibit 11 --

19 A. Yes.

20 Q. -- that's your feasibility -- your
21 baseline study of a feasibility analysis?

22 A. I call that the baseline, because you
23 have to start somewhere when you're doing a
24 sensitivity analysis.

25 Q. And when you're referring to a

1 sensitivity analysis, you're saying that you
2 can -- what does that mean to you?

3 A. In my industry when there are known
4 unknowns, you do an analysis. And then you
5 take key variables, and you let them vary
6 over a range. And that lets you bound the
7 results. And so if you have a certain weapon
8 system or cash flow and you don't know what
9 the actual variable is going to be but you
10 know what the family is, if you know the
11 expense rate of 15 percent is reasonable and
12 it doesn't go below 8 percent even at high
13 volumes and it probably should never exceed
14 20 percent, then you might test the approach
15 over a range from 7 to 20 percent.

16 If you have repo rates of 30 percent,
17 which is a national average, and you think it
18 might be a little higher, you can put in 35
19 percent and you see what happens.

20 Q. Let me ask you, how do you know the
21 repo rate is 30 percent on average now?

22 A. I did some research, and I found this
23 National Association of Independent Dealers.
24 And they stated that 30.11 percent was the
25 industry average.

1 Q. National Association of Independent
2 Dealers, are those auto dealers?

3 A. Right. NAID.

4 Q. And you had the -- and you found --
5 how did you find that list --

6 A. Google.

7 Q. -- of members of the National
8 Association of Auto Dealers?

9 A. You just --

10 Q. It's on line?

11 A. Yes. It was just a Google search.

12 Q. Okay. And so you found a 30-percent
13 average default rate and then you tried to
14 find other industry averages?

15 A. Well, I found that. And then when
16 I've been talking to Paul Hitner, I got
17 support that 30 percent was maybe a
18 reasonable number. I got information from
19 him that talked about the fact that while
20 there may be other kinds of defaults, they're
21 not always negative events.

22 Like dealer buyback, which is
23 something that -- recourse is what it's
24 called. If a dealer sells you a bad car and
25 you don't even get the first payment, within

1 the first 30 days, you can take it back to
2 the dealer and get that back. So it counts
3 as a default, but it's really not a cash
4 event. It's a timing event.

5 The cash that you are investing is
6 going to lose a month, but once that money
7 comes back to you, you can buy another note
8 the next month.

9 Q. So, in other words, the cash gets
10 back in sooner so all that happens is you
11 turn around and reinvest that cash with
12 another note at the same percentage rate?

13 A. So you don't lose value on the note
14 and you don't really lose the cash stream,
15 because you're going to reinvest it in
16 another similar note.

17 Q. Okay. And so we've now established
18 that you've got some averages. You've met
19 with -- you at least discussed with
20 Mr. Hitner whether those numbers were
21 reasonable, right?

22 A. In the June time frame, yes.

23 Q. Okay.

24 A. He basically -- pretty much he
25 basically looks at the spreadsheet and says:

1 This looks good --

2 MR. BROWN: Objection, Your Honor.
3 Again, that's hearsay.

4 THE COURT: Sustained.

5 MR. KANE: That's fine. No response,
6 Your Honor.

7 THE COURT: Sustained.

8 MR. KANE: I'm sorry. I didn't hear
9 you.

10 BY MR. KANE:

11 Q. But you discussed with Mr. Hitner
12 what reasonable averages might be. And
13 pursuant to those discussions, you arrived
14 with some figures to put into your
15 spreadsheet; is that right?

16 A. Right.

17 Q. So looking at Tab 11 where it says:
18 Reinvest for four years, baseline with
19 computed cash flow of approximately 2.3
20 million; do you see that?

21 A. Uh-huh.

22 Q. Where did you get the approximately
23 \$2.3 million computed cash flow?

24 A. One of things that we requested early
25 on was the projected cash flow of the

1 existing notes. We knew they were around
2 1,300 at the time, and we wanted the cash
3 flow to be able to do a projection like this.
4 Because, otherwise, you don't know how much
5 money.

6 And so I had requested that
7 information, and I don't remember getting it
8 early on. And then when I got it, it seemed
9 low to me. And I asked the question: Does
10 this include all principal and interest? And
11 I was told that this does not include -- it
12 includes all -- I'm sorry.

13 Q. I was going to ask, who did you speak
14 to?

15 A. Speak to?

16 Q. Specifically.

17 A. I think -- I don't remember whether
18 Mark Healy -- I think Mark Healy was my
19 source. I think that all the e-mails were
20 between Mark Healy and myself, because I
21 reference Healy several times. Per Healy
22 e-mail, 7/21.

23 Q. So what did Mr. Healy tell you?

24 A. On several exhibits -- several
25 documents that they sent me, they said that

1 the cash flow did not -- the cash flow
2 included the principal amount for all notes,
3 the interest for rule of 78 notes, but did
4 not include the simple interest on the -- did
5 not include the interest on the simple
6 interest notes. And the simple interest
7 notes make up about two-thirds of the
8 portfolio.

9 So to my mind as soon as I saw that,
10 I said: Wait a minute. I am trying to get a
11 cash flow to look about injecting back into a
12 business. I really need to know the full
13 amount coming in.

14 And what I was told was the
15 projection was principal for all notes and
16 interest for a third of them.

17 So I responded in the second e-mail.
18 And I said: Wait a minute. I need to know
19 what the full projection is. And they
20 responded again that it didn't include simple
21 interest -- the simple interest-interest,
22 simple interest note interest.

23 And then in another e-mail they said:
24 Actually, this cash flow doesn't consider
25 repos and it doesn't include interest, that

1 we figured the repo of 30 percent sort of
2 offsets the 30 percent of interest. And so
3 that's what's in there.

4 Q. Okay.

5 A. Which, again, raised concerns for me
6 about was that the right cash stream.

7 Q. Well, and I want to ask you some
8 questions about the cash flow where it says
9 on your spreadsheet: Projected cash flow,
10 paren, (payments), close paren, per Healy
11 e-mail, 7/21 and 8/9.

12 There were two e-mails from Mr. Healy?

13 A. Right. And they were the same cash
14 flow.

15 Q. And now what I'd like you to do is
16 take a look at that line -- I'm color blind,
17 but I think it's some sort of lavender or
18 purple.

19 A. Right.

20 Q. And take a look at Trustee's Exhibit
21 Number 5, which is the exhibit that's in the
22 folder. Not in the white book but in the
23 brown folder, Exhibit Number 5.

24 A. Uh-huh.

25 Q. And if you look at that projected

1 cash flow starting on August of 2010 and
2 compare your table and your Exhibit
3 Number 11 -- or our Exhibit Number 11 versus
4 the Trustee's Exhibit Number 5, you can see
5 how they match up each month.

6 Do you see that?

7 A. Looks to be exact.

8 Q. And it's your understanding that
9 those numbers did not include interest
10 accruing on the simple interest notes, which
11 comprised approximately two-thirds of those
12 notes; is that correct?

13 A. Correct.

14 Q. And that's what Mr. Healy told you;
15 is that right?

16 A. Correct.

17 I never verbally talked to him, but
18 on an e-mail he sent me, it says that under
19 the cash flow.

20 Q. Okay.

21 A. So it was a -- it was a document.

22 Q. So you wouldn't happen to have that
23 e-mail here today, would you?

24 A. I could have it in my bag but I don't
25 know.

1 Q. Okay. We'll hold off on that.

2 Now, looking back and comparing those
3 numbers, do you know whether the 261, 358 in
4 active account cash flow included proceeds
5 from repossessed vehicles?

6 A. I don't know. I never got that
7 clarification.

8 Q. Okay. Now, you prepared what's
9 marked as Exhibit Number 11 in the official
10 creditors' committee book, the white book; is
11 that right?

12 A. Yes. I prepared this.

13 Q. And what does that show us? What am
14 I looking at?

15 A. Well, the baseline case takes a
16 projected cash flow, and because I knew the
17 1.3 was wrong, I created one by taking the
18 number of notes that I got from Mr. Healy,
19 1,184, using an average cash payment amount
20 of 275 and then taking a declining balance as
21 they mature and then taking initially a 30
22 percent and then later a 20 percent repo
23 rate.

24 Q. Okay.

25 A. And so that's how I created the cash

1 flow at the bottom -- okay -- the bottom of
2 the existing note block. And then that
3 rolled up to cash available in the next month
4 for purchase.

5 Q. Okay. So looking at Column 2, August
6 of 2010, where it shows investment cash flow
7 from previous month of Line 35 to replace
8 Line 5, it says three 0 seven five eleven; do
9 you see that?

10 A. Right. In the three 0 seven five
11 eleven, comes from down at the bottom, the
12 end-of-month cash flow. And because this is
13 a sensitivity analysis, we put in a variable
14 here. And so we knew that 1,184 was the
15 exact number of notes on the 21st of June.
16 We put in the figure of 275 as a variable.

17 If somebody thinks that's too high,
18 we could put in 250. If they think it's too
19 low, we could put in 300. But it allowed us
20 to run a cash flow across, and then the
21 intent was to do a sensitivity analysis by
22 varying that number up and down until we got
23 the actual number.

24 Q. I see.

25 A. Until we have the actual number.

1 Q. So you showed the 1,184 notes?

2 A. Uh-huh.

3 Q. And it says repo sales and default
4 recovery at a thousand-dollar average.
5 What's that?

6 A. Well, what I'm told by Paul and
7 Chuck, who is collaborating with me on this,
8 is that an industry average is a target in
9 trying to get 25 percent of the value of the
10 car back when you sell the car at auction.
11 So we knew that the value of the car is
12 typically 4,000, so we put in 1,000.

13 And, again, that's a variable. And
14 if somebody thinks it's too low, we can put
15 in 1,500. If they think it's too high, we
16 can put in something else.

17 We didn't fully exercise the
18 sensitivity analysis portion of this. We
19 have that ability, and you can vary that and
20 see what the effect is on the bottom line.
21 But this established the base case.

22 Q. Okay. So if you take those numbers,
23 the 275, multiply it by the notes at the
24 beginning of the month of 1,184, is that how
25 you come up with the three 0 seven five

1 eleven?

2 A. Well, actually, we took the 1,184 at
3 the time, beginning of the month, and then we
4 said: Well, things are going to happen in
5 July. There's going to be some of those
6 notes that mature and some of those notes
7 that are going to default or repo. I'm going
8 to use that word.

9 And so what we did is I took the rate
10 of the repo, and I divided it by the number
11 of months. And, basically, I did a flatline
12 reduction declamation of the total of active
13 notes by a presumed repo rate.

14 Similarly, I knew that these were
15 going to mature over 18 months, because I had
16 understood that the last ones were bought in
17 December of '08; and so that by December of
18 '10 -- I'm sorry -- December of '09 -- so by
19 December of '11 they should be all fully
20 matured. So I put in a maturation rate,
21 again, flatline because I didn't have a
22 better number. This was an effort to
23 replicate what the true cash flow was.

24 Q. I see.

25 A. And so we put in a line that, you

1 know, we created it. It's transparent. It's
2 adjustable, and so that gave us the three 0
3 seven. And what I did from August forward,
4 because I knew this included the simple
5 interest and I knew it included repos, I put
6 that in in place of the trustee's cash flow.

7 Q. And the trustee's cash flow figure,
8 did you get any breakdown as to how they
9 arrived at those numbers?

10 A. I asked several times. Again, as
11 I've mentioned, I got the same number with
12 the same statement at the bottom. This
13 doesn't include interest, doesn't include
14 repos, and takes account of industry averages
15 or something that was nonprecise.

16 Q. But there was nothing that showed a
17 calculation as to how they arrived at those
18 numbers?

19 A. No. No.

20 Q. Okay.

21 A. And, again, I had been told that it
22 did not include interest on simple interest
23 notes.

24 Q. And was that actually requested, the
25 breakdown for the cash flow?

1 A. Yes.

2 Q. And it was never provided; is that
3 correct?

4 A. Several times I asked for a
5 clarification and a specific one that
6 included the principal and interest, because
7 I was going to explicitly back out the repo
8 rate and back out -- and record the interest
9 rate, because I needed to be able to see that
10 for analysis. I can't do the analysis if I
11 don't know what the true amount of money
12 coming in and then take the repos.

13 Because the rate of repos is
14 important, because I'm going to inject that
15 the next month in recapturing that money from
16 sales.

17 Q. I guess that's part of that systems
18 engineering background, you just need to add
19 the breakdown of the data for the underlying
20 number; is that right?

21 A. If you want your formulas to work,
22 you have to understand the data that the
23 formulas are going to work.

24 Q. Okay. On your spreadsheet that's
25 marked as Exhibit Number 11, there is --

1 again, it's not the easiest to read, but it
2 shows cash in the back of eleven sixty-six
3 five forty-nine; do you see that?

4 A. Right.

5 Q. And that was information furnished by
6 Mr. Healy?

7 A. Yes. And part of what's happened
8 here is we had a meeting with the trustee's
9 counsel on Friday, and we had a set of
10 spreadsheets. And at that time we didn't
11 really have July actuals. So at that time
12 those numbers were not in gray. Those were
13 the ones I was using. Okay.

14 As we told them on Friday, they were
15 not done yet. We still had to -- we knew
16 there was more information that was coming in
17 that we had requested, and we wanted to
18 update the spreadsheets.

19 So what I've done between Friday's
20 spreadsheets and this one is I replaced those
21 gray lines, which I used to develop the
22 additional cash available for investment for
23 July, with the actual draft monthly
24 operations report that the trustee provided
25 me, just the cover page. But it was

1 sufficient to see the bottom line of
2 available cash.

3 So, essentially, everything above the
4 1,690,900, that's OBE, overcome by events;
5 because I have the actual number from the
6 trustee for the money available at the end of
7 July.

8 Q. I see.

9 A. So that's why the numbers are grayed
10 out. I tried to -- I tried to do that so
11 that you didn't -- people didn't try to add
12 up all the numbers. Okay. I find that when
13 it's in black and white, you don't know that.
14 But the 1,690,900 comes off the draft monthly
15 operation report cover page. I only have the
16 one page and it is a draft.

17 Q. And that's the one that is -- I
18 believe is in Tab 6? You're talking about
19 the scheduled receipts and disbursements? Is
20 that what you're talking about, or is that
21 something else?

22 Yeah, the one million six ninety-nine.

23 A. That's in June.

24 Q. July. There's May, June, and July on
25 the last page?

1 A. Right. It's the July marked draft.
2 You see the 1,690,900.27 at Line 7?

3 Q. Okay. So you tried to use the
4 information provided by the trustee wherever
5 you could get it?

6 A. Wherever possible. Wherever
7 possible. And when I didn't, like the cash
8 flow, I tried to make it very clear what we
9 used instead.

10 Q. Okay. And why?

11 A. Right.

12 Q. Looking at Exhibit Number 11, are
13 there any numbers in there whatsoever that
14 were furnished by Lydia Cladek?

15 A. No.

16 Q. And so this spreadsheet was prepared
17 based upon your study of the industry and the
18 information from the trustee; is that right?

19 A. Yes, and input from Paul Hitner and
20 Chuck.

21 Q. And Chuck, you mean Mr. Ellyson?

22 A. Yes.

23 Q. And this is a cash flow analysis,
24 Exhibit Number 11; is that correct?

25 A. I'm not sure I would call it a cash

1 flow analysis. It's a business feasibility
2 analysis.

3 Q. Okay.

4 A. Because it looks at more than just
5 cash flow. It looks at the parameters you
6 use as a business and the timing you use as a
7 business. And then allows us variables to
8 explore the uncertainty associated with those
9 variables.

10 Q. Okay. So if we take -- so this is
11 the feasibility study to determine that if
12 you take the cash that's available now and
13 you continue to roll it in notes, where
14 you're ultimately going to end up?

15 A. Correct.

16 Q. Okay. And at least in Tab 11, you
17 use all the available cash, right, the cash
18 in the account plus whatever is available for
19 forfeiture?

20 A. As the baseline case from which to
21 run excursions, yes. We assumed everything
22 in the cash -- everything in the bank was
23 available. And for the baseline case,
24 because I wanted a contemporaneous case, we
25 assumed that it would be reinvested in

1 August.

2 Q. So you're taking the total balance
3 that's being held by the trustee in
4 Exhibit 11 and using that money to invest in
5 new notes?

6 A. To buy new notes in the following
7 month -- if you look at the 1,690,900, that
8 money is available at the end of the month,
9 while you can't buy at the end of the month,
10 you have to buy at the beginning of the next
11 month, if you will.

12 So the way you get the 314.43 in
13 August is basically dividing that available
14 money by the average cost of the new note.

15 And here I'd like to add something.
16 One of the fundamental differences between
17 this spreadsheet that I'm working with
18 Mr. Ellyson and the spreadsheet that I worked
19 with Mr. Hitner was Mr. Ellyson has brought a
20 really good awareness of the southeast and of
21 what good industry practices are. And so a
22 fundamental tenant of this plan is buying
23 higher quality, longer term notes than LCI
24 was buying originally.

25 From his research and the industry he

1 operates in, buying a \$12,000 contract for 50
2 percent discount, about 6,000 is right in the
3 heart of the bell curve of the notes that are
4 available from the dealers.

5 Q. Is that what Lydia Cladek was buying?

6 A. No.

7 Q. To your knowledge, what was Lydia
8 Cladek buying?

9 A. I think it was stated before -- I
10 believe that all of them were 24-month notes.
11 I believe all of them were like \$4- or
12 \$5,000. I think somebody mentioned that the
13 average -- Mr. Phelan, I think, mentioned
14 that the average car was ten years old. It
15 was a 2000. So these are older cars with
16 little value, maybe some maintenance
17 problems. They may be a more troublesome
18 part of that bell curve. They are on the
19 lower side, higher risk side.

20 What Mr. Ellyson operates in is in
21 the center of the bell curve where the better
22 quality notes are. To get the better quality
23 notes, you have to go to a longer term and
24 you have to pay more for them. And so
25 that's -- every new note assumes that higher

1 quality note.

2 Q. So the business plan is not exactly
3 the same as what Lydia Cladek had?

4 A. Explicitly not, explicitly not the
5 same.

6 Q. And, obviously, you've spent -- about
7 how many hours do you think you've spent
8 preparing these analyses?

9 A. Probably 200. These are very
10 time-consuming to build. And when new data
11 comes in and you have to insert it or a new
12 assumption is made or a new relationship is
13 implied, you have to build it.

14 And then you have to be very, very
15 careful that you don't create an artifact in
16 your spreadsheets, because they are live
17 spreadsheets. An entry in one place changes
18 an entry in another. So it's a very
19 time-consuming process.

20 Q. Okay.

21 A. Not the least of which is sorting
22 through data trying to find the information
23 that you need.

24 Q. And you've made certain assumptions
25 in here, that I think we've heard some

1 criticism about. One is the expenses of
2 \$75,000 a month. Where did you get that
3 number from?

4 A. Well -- and this is an evolution from
5 the spreadsheets that existed on Friday, and
6 I think I completed these Monday or Tuesday.

7 And, basically, when we met with the
8 trustee's counsel, there were several
9 objections to what we had done. And so what
10 I tried to do was to incorporate variance to
11 address their specific concern that they
12 said, you know, that money is not going to be
13 available until fourth quarter.

14 I said okay. So I did one. Or if
15 all the money has to wait until the fourth
16 quarter. Well, I did one. So I made all of
17 those changes in here. Okay. Those are part
18 of the variations.

19 Q. Okay. And this is kind of more
20 refined than what you had presented to the
21 committee, which was then presented to the
22 trustee back on Friday?

23 A. This is -- this is an evolution from
24 the one on Friday. It isn't significantly
25 different in many respects. I changed a

1 couple of things before. I did not -- at the
2 time I didn't have a cash flow number for
3 August, so I was still using the trustee's
4 cash flow number for August. And that's
5 where the double count that was referred to
6 before came in.

7 When I was making that change, I
8 didn't fix the formula in Cell C11, I believe
9 it is. And so it did do a double count in
10 that one cell. And when I was going through
11 this weekend creating these new ones, I found
12 that and corrected it.

13 There were a few other changes that
14 we made. One of the ones was I reduced the
15 default rate -- I mean, the repo rate on the
16 existing notes, because we found in the data
17 that they sent the 20 percent was the
18 average. And after talking to Mr. Ellyson,
19 he said that these are notes that were
20 purchased for the most part, as Mr. Phelan
21 said, in the late '08 and early '09.

22 So many of these notes only have
23 maybe four months, six months, ten months
24 left on them. The bulk of them are going to
25 be recovered by March of next year, I mean,

1 60 percent, 70 percent of them.

2 So Mr. Ellyson said: That's way too
3 high a number. You know, you ought to use a
4 lower number. And then we found the industry
5 standard was -- or we found it referenced to
6 22. So we put .2 in. But as I said, that's
7 a variable that can be changed with a key
8 stroke.

9 Q. But according to the analysis at
10 least as presented in Tab 11, what were the
11 results of that analysis?

12 A. Basically, if you take the cash in
13 the bank of \$1.7 million and you invest that
14 along with collecting the notes that are
15 active and currently making payments, you can
16 expect to reinvest those for four years. All
17 the money is rolled over for four years. And
18 at the end of four years, you stop buying
19 notes and you begin a 30-year payout to the
20 investors -- I'm sorry -- 30-month payout to
21 the investors. And the 30 months come from
22 the 30-month notes.

23 So if you look at the last year of
24 this five-year spreadsheet, you see that that
25 would amount to \$13.9 million. So, roughly,

1 \$10 million would be paid out to the
2 creditors in the fifth year of a five-year
3 program. And I want to add that's the first
4 12 months of a 30-month payout. So the true
5 payout would probably be closer to 20 or 22.
6 It's declined.

7 But I did not want to rebuild all my
8 spreadsheets to go out to six or seven years.
9 So I just cut it off.

10 Because, again, this is not an exact
11 analysis. It's an analysis that is trying to
12 provide relative results. So this
13 establishes a baseline number given this case
14 of \$14 million paid out to creditors in the
15 fifth year.

16 An alternative to pay out,
17 which would be a declining rate, because
18 there's no new notes, 13 million over the
19 last 12 months of a five-month period. An
20 alternative to that would be marketing the
21 company and selling it as a going concern.
22 If you market the company, it's typically the
23 sales of -- the sales of the company that are
24 in the 1 to 5 million --

25 MR. BROWN: Your Honor, I'm going to

1 object. I think he's about to testify to
2 valuation of sale of business. I don't
3 believe there's been any foundation that
4 the witness is qualified to testify as to
5 the going concern and to selling a
6 business.

7 MR. KANE: I'm just simply asking
8 Mr. Imler for the results of his analysis
9 in the spreadsheet and the numbers that
10 he reached based on the calculation that
11 we've simply discussed.

12 THE COURT: I think that objection
13 has to be sustained.

14 BY MR. KANE:

15 Q. Mr. Imler, have you -- well, let's
16 start with where it says: Payout of net
17 earnings beginning in year five. According
18 to your spreadsheet it says: Reinvest for
19 four years and then pay out net earnings
20 13,962,627. And it says: Reflects only the
21 first 12 months of a 30-month payout stream.

22 What does that mean?

23 A. If you imagine all the net cash flow
24 for the first four years, it's totally
25 returned to buy new notes in the next month.

1 So there are no payouts to creditors. You
2 cover the expenses. You have your repos.
3 You recover your repo rates. All free cash
4 is restored to a funding stream, and you let
5 that build up over four years.

6 So at the end of four years, you have
7 several -- let's see what is the number. At
8 the end of four years, you have a couple of
9 thousand contracts. You have a couple of
10 thousand contracts you've purchased over
11 time.

12 But in the first month of the fifth
13 year, you stop buying those contracts. You
14 don't have your purchasing director anymore.
15 Now you're just going to collect out --
16 okay -- in this scheme. You just say at the
17 end of four years, I'm going to stop buying
18 new notes. And all the proceeds that come in
19 the door get paid out to the owners of the
20 company. And that would be the 13.9.

21 And then that funding would continue
22 into the fifth -- into the sixth year and
23 halfway into the seventh year as the 30-month
24 notes that were bought in the last month of
25 the fourth-year payout.

1 Q. So according to your spreadsheets and
2 your analysis -- it's at Tab 11 -- there
3 would be -- if the funds were continued to be
4 reinvested for a period of four years, in
5 year five there would be a payout of roughly
6 \$13.9 million, roughly, based on the
7 feasibility analysis?

8 A. Based on these assumptions and these
9 variables and this cash flow.

10 Q. And then there would be an additional
11 payout, I presume, in year six and seven that
12 are smaller?

13 A. It would be on a declined basis. I
14 would estimate just from seeing the profile,
15 that it be nine or ten in year six and maybe
16 four or three in year seven.

17 Q. Okay.

18 A. So I would estimate it to be around
19 22 or 23 or something like that. I didn't
20 want to rebuild all my spreadsheets to go out
21 and project. So since this is just for a
22 relative comparison, I thought one year of
23 payout was reasonable to see how the
24 perturbations were going to make to the
25 variables and the assumption to change that

1 number.

2 Q. And then going back to the first page
3 of Exhibit 11 where it says sale of company;
4 do you see that?

5 A. Uh-huh.

6 Q. And then it has reinvest for four
7 years, then sell -- it says -- at two times,
8 three times, four times, five times earnings;
9 do you see that?

10 A. Uh-huh.

11 Q. What were you trying to do there?
12 What are those numbers comprised of?

13 A. I did some research and I found
14 several web sites that --

15 MR. BROWN: Your Honor, again, the
16 same testimony. There's no foundation.

17 MR. KANE: I agree, Your Honor.

18 BY MR. KANE:

19 Q. Mr. Imler, what I'm asking for is how
20 you arrived at the mathematical computation
21 of 26. For example, it says reinvest for
22 four years, then sell at two times earnings
23 equals 26,782,295; do you see that?

24 A. Right.

25 Q. Where did that number come from?

1 A. I'm aware --

2 Q. Let's just look at your spreadsheets
3 and tell me where that number came from.

4 A. The number comes -- the multiple is
5 done times -- it's normally two times EBITDA,
6 earnings before interest, taxes,
7 amortization -- deductions and amortization.

8 Q. Right.

9 A. That's the normal valuation method
10 that is used in the industry. And so I found
11 that that's never a projected number going
12 forward. It's always a look-back number.

13 So if you go to the third page -- I
14 think it's the third page of the exhibit, as
15 you would expect, as you're building up notes
16 over time, your highest year of cash flow is
17 going to be in that last year as you continue
18 to add notes before you stop in the fourth --
19 at the beginning of the fifth year. So I
20 added up that total, 12 months of payments,
21 to create an annual return that's shown as
22 13,391,147 on the last page.

23 Q. So that would be the --

24 A. So that's the annual --

25 Q. That would be four --

1 A. That's annual earning -- I mean,
2 that's the annual net earnings that would be
3 used for evaluating in the -- in that
4 approach.

5 Q. So I think I understand what you're
6 saying. So if I understand this correctly,
7 you look at the last year, year four, and
8 take a snapshot of the cash flow in that year
9 and then you multiply it by two; is that
10 right?

11 A. Well, you multiply it by two if it's
12 two times the earnings or by three. The
13 range that I've seen is three to five and a
14 half.

15 Q. So you were just simply giving
16 options on your spreadsheet?

17 A. Right. Right. I'm not saying which
18 one it is. I don't know what it is. I don't
19 know how to value this specific niche of the
20 automobile industry.

21 I know that in general two and a half
22 to five and a half are used for all
23 companies. When we sold our -- when our
24 company went -- was sold --

25 MR. BROWN: Again, Your Honor, he's

1 testifying to multiples for valuation of
2 companies. There's no basis for this
3 testimony.

4 MR. KANE: He's just testifying about
5 his own personal experience, Your Honor,
6 why he came up with a range. I don't
7 think that's inappropriate.

8 THE COURT: Well, I don't think I
9 need that.

10 MR. KANE: Okay.

11 BY MR. KANE:

12 Q. Mr. Imler, looking at Exhibit 11, I
13 think there was a lot of time devoted
14 initially and the trustee's response to the
15 failure to include taxes. And I'd like to
16 direct you to kind of the sixth page of
17 Exhibit 11 where it says Case 1H.

18 A. Right.

19 Q. Baseline with taxes.

20 A. Right. Well, that question came up
21 in our conversation on Monday. And so I had
22 a lot of cases to build in in response to the
23 questions raised by the trustee slipping out
24 some of the cash availability.

25 One of the ones I didn't get around

1 to until yesterday morning at 6:00 was
2 trying -- I'm sorry -- I did it this morning
3 at 6:00 -- was trying to figure out a way to
4 account for the taxes.

5 I talked to Chuck. Chuck Ellyson
6 mentioned that in the industry -- you can
7 verify it when he's up here -- the income
8 from a note is not only the interest but the
9 discount that's recovered. You buy it at a
10 discount, and so that discount has to be
11 declared as income as well. And he said
12 that's normally about 40 percent of the value
13 of the payment. So he took 40 percent.

14 And we said: Well, 40 percent at a
15 28-percent rate, that's about 10 percent.
16 And so for a quick and dirty assessment of
17 how I would accommodate taxes, I simply
18 bumped the expense rate up from 15 percent to
19 25 percent.

20 Q. I see.

21 A. And, again, 40 percent times 28
22 percent, it's about 10 percent. So I
23 essentially added 10 percent.

24 Q. I see.

25 A. Is that rough? Yes, it's rough.

1 And we can see what that would
2 affect, and it creates some other things. If
3 I were going to do that, I would probably go
4 in and change the minimum number of the
5 expenses. I'd probably raise that.

6 Currently, there's an if-then
7 statement imbedded in this sale that makes it
8 at least \$75,000. If I knew it was going to
9 be 25 percent, I would bump that number up.
10 So there's an adjustment I would make to
11 this.

12 So in the out years that 25 percent
13 really kicks in big time. But you can
14 compare from the first part of 11 to the back
15 part. In the baseline we have a range, a
16 valuation between 26 and 66, and in the
17 second ones the valuation drops to 19 to 49.
18 Another measure would be you look at the last
19 year of cash flow, the free cash flow. It
20 drops from 13 to 9.7 -- 13.9 to 9.7. So in
21 general that approach of trying to cover
22 taxes reduces your payout to about \$4,000 in
23 the fifth year and the valuation
24 substantially as you can see by correcting
25 these, maybe 10 million.

1 Q. So what you tried to do -- and I
2 believe you had testified to this before --
3 is you worked on a baseline and then you have
4 various permutations based upon issues that
5 have been raised by the trustee or what
6 you've learned over time; is that right?

7 A. Exactly.

8 Q. So, in fact, that Case 1H, which is
9 also part of Exhibit Number 11, includes the
10 accommodation for taxes, you believe?

11 A. It does but it's not perfect.

12 Q. I understand.

13 A. You know, given more time, I would
14 change that variable.

15 Q. Okay.

16 A. Okay. So it is something that would
17 need to be further refined, but this was the
18 best I could do to try to be responsive in
19 the few minutes I had.

20 Q. Right. And so if we look at Tab
21 Number 12, that provides Case 1A: Delay
22 forfeiture cash to October 2010.

23 A. Right.

24 Q. What were you doing there?

25 A. The trustee, in our conversation on,

1 I think, both Friday and Monday, mentioned
2 the liens against that -- the forfeiture cash
3 and the fact that it had to be held separate
4 from the bankruptcy cash at least for the
5 time being. And I think Mr. Phelan, on the
6 conversation on Monday, said it might be
7 reasonable to think that wouldn't be
8 available until the fourth quarter.

9 Being an optimist, I picked the first
10 month of the fourth quarter, and I slid it
11 out into October. So I reduced -- if you
12 notice, there's two in blue. I reduced the
13 cash available for reinvestment and notes
14 down to one-two-two-one-eight-eight, and that
15 money slipped out three months to be
16 available in October.

17 Q. Okay.

18 A. In that return --

19 Q. And still it looks like you're
20 talking about payouts. And according to your
21 calculations, at least the payouts would be
22 roughly the same --

23 A. Roughly the same. It looks to me
24 like the payout valuation drops by a couple
25 of hundred thousand and the 2X valuation on

1 the low side reduces by a million. So it has
2 an effect, but it is -- at the margin it's
3 not substantial.

4 Q. And then Tab 13, it says: Case 1B,
5 delay all reinvestments to October 2010.

6 What was that?

7 A. In 13 one of the concerns that the
8 trustee raised was, you know, you've assumed
9 that you're going to start in August. And
10 that's patently untrue. You can't start in
11 August.

12 And I said: I know. We've got to
13 get a reorganization plan written. We've got
14 to get it voted on by the creditors. We've
15 got to get it approved by the Judge.

16 And they said: Well then you
17 shouldn't be showing in August.

18 And I said: Well, I established the
19 baseline, but I can certainly slip that money
20 out.

21 So what I did here was I took the
22 availability of the money in July to buy
23 August notes, and I slipped it out to
24 October.

25 And I said: Okay. We won't buy

1 August notes. We'll buy October notes. And
2 so that was trying to accommodate that
3 question.

4 Okay. So if we slip that out, which
5 is reasonable -- okay -- it's reasonable,
6 what would that effect be? And that
7 basically drops the return from, you know,
8 maybe a million dollars on the payout, drops
9 from thirteen nine to thirteen one on the
10 last year of payout. And it reduces the
11 valuation comparison another million dollars.

12 So the first case dropped from 27 to
13 26, second case dropped it from 26 to 25.

14 Q. Okay. And if we go to Tab 14, what
15 is that?

16 A. Okay. In 14 an issue was brought up
17 on Friday and again on Monday that there was
18 nothing inconsistent with the idea of selling
19 the performing assets and also reorganizing
20 the company. There was a question that we
21 posed that, you know, if you could get \$5
22 million for the performing assets -- and I
23 didn't think they were worth that -- then
24 that would certainly be a wonderful thing and
25 we would be happy to go with that.

1 But there would be some point where
2 you could test the valuation. And in the
3 spreadsheets I did on Friday, which are
4 different from this one a little bit, that
5 number, that equivalent valuation came out
6 that you'd have to get about \$1.8 million in
7 sales for the notes instead of the 1.3 that
8 we -- that we had heard before.

9 Q. Okay. So that --

10 A. To have it -- to have it be a neutral
11 event.

12 Q. So, now if I'm looking at Tab 14,
13 that provides for -- it looks like starting
14 to purchase notes. And you have to purchase
15 them, I guess, with existing cash on hand?

16 A. Well, in this case, if you slide out
17 the 1.3, you don't have any income now.
18 Okay. Although, I understand now there's
19 some income from the nonperforming that is
20 not reflected here. I didn't know there was
21 income from nonperforming notes.

22 If you slip -- if you sell the
23 performing notes, all of a sudden on the 1st
24 of September, there is no cash in the door.
25 So if your intent is to reorganize, you have

1 no cash in the door to cover expenses while
2 you're waiting for that money to be available
3 in October. Okay.

4 So what I had to show on this one is
5 in order to cover cost, you would have to
6 take some of the money in the bank and you'd
7 have to cover expenses. You didn't have
8 income to cover expenses. You had to use
9 some of the money in the bank.

10 Q. So then Exhibit 14 starts to show us
11 what happens if the trustee is permitted to
12 move forward with the asset sale of the --

13 A. Absolutely.

14 Q. -- performing assets?

15 A. Absolutely.

16 Q. And according to your calculations,
17 you've got a difference here of looks like
18 about \$4.5 million?

19 A. \$4.5 million on the payout on the
20 fifth year.

21 Q. Payout on the fifth year. That's not
22 counting the sixth year or the seventh year?

23 A. And about \$10 million on the low side
24 evaluation.

25 Q. And according to your calculations,

1 depending upon what the appropriate earnings
2 factor would be upon sale, you're looking at
3 somewhere between -- it looks like \$10- to
4 \$20 million?

5 A. Right.

6 Q. How about Tab 15, what's that?

7 A. Fifteen -- fifteen builds another
8 element into it. So 14 said: What if we
9 simply move the performing assets, we sell
10 those and we delay the availability of that
11 cash?

12 Fifteen, it starts being sort of a
13 worst case. And it says: Well, we're going
14 to delay the availability of the performing
15 assets. We're going to delay those, and
16 we're going to delay the availability of the
17 cash in the bank.

18 This means, essentially, that you
19 couldn't buy anything with the cash in the
20 bank money. Okay. This delays all moneys
21 until October.

22 In this case you really do go into
23 the negative. You have no cash coming in.
24 You still have expenses, because you have a
25 staff that, in a reorganization, you're

1 trying to maintain to be ready to buy notes
2 and collect notes beginning in October.

3 So in this case instead of moving the
4 full amount of the cash in the bank out to
5 October, all of that money is not going to be
6 available. Some of that is going to get
7 chewed up in covering expenses for August and
8 September. So you're reducing the amount of
9 cash you're investing when this happens, and
10 it has a dramatic effect on earnings.

11 Q. So now we're really seeing what
12 happens. If the performing assets are sold,
13 you then have to somehow pay the employees
14 with existing cash even though they weren't
15 working for a few months --

16 A. To keep them around.

17 Q. -- just to keep them around. And
18 then you would lose a lot of the momentum, if
19 you will, of investing in new notes.

20 A. Correct.

21 Q. And so now we're down to --

22 A. Half of the baseline, roughly.

23 Q. Right. Okay.

24 Aside from just the overall
25 feasibility of trying to keep employees

1 together and trying to keep the business
2 afloat when there's no business to manage for
3 a few months, right?

4 A. Right.

5 Q. And what is Tab 16?

6 A. Sixteen, again, goes back to the
7 baseline and says: Well, what if we sell the
8 nonperforming assets.

9 So the sell of the nonperforming
10 assets is about 600,000. So in this case we
11 show a new insertion of 600,000 in August.
12 Again, that's the baseline. You do it as
13 soon as it's available.

14 That provides a return of about 17 in
15 the year end up from 13 and a valuation
16 between 32 and 80. So that's about a -- I
17 don't know -- about 20 percent, plus up in
18 the valuations by inserting this new money.

19 Q. And so comparing Tab 11 with Tab 16,
20 is Tab 16 just basically the baseline that's
21 at Tab 11 and now just taking the money from
22 the nonperforming assets that everybody has
23 agreed at this point should be sold?

24 A. Yes. The baseline is the point of
25 departure for every one of these options.

1 Q. So really the number that you're
2 looking at is sixteen eight after four years
3 for the fifth-year payout?

4 A. Right.

5 Q. And depending upon the appropriate
6 multiplier for earnings, could be somewhere
7 between 32 and 80, right?

8 A. Right.

9 Q. Okay.

10 A. Now, in the next one, again --

11 Q. Let me keep up with you here. So
12 we're talking about 16.

13 Now, let's go to Tab 17 where it
14 says: Case 1 at delay reinvestments of
15 October of 2010 at NPA sale.

16 A. This is basically taking the previous
17 case, which was just adding the NPA sale.
18 And the delayed case of saying the money
19 can't -- the new money can't be put in until
20 October. And it's doing both of those.

21 So now I take the one-six-0-nine --
22 I'm sorry -- in this one -- the last one was
23 adding the NPA. This one takes the -- adds
24 the NPA in August but slips out the rest of
25 the money until October.

1 Q. Okay. Because if the sale goes
2 through, the nonperforming assets --

3 A. Those are available and could be
4 purchased by the trustee.

5 Q. Right. So that money could be
6 available now?

7 A. Right.

8 Q. But then the rest of it would have to
9 be subject to planned confirmation?

10 A. Right. Right. So that's what this
11 case shows. And the return here, instead of
12 thirteen nine, it goes up to fifteen seven
13 for that first year of payout. And the range
14 of valuation is 30 to 75.

15 Q. And then in Tab 18, what is that one
16 that says Case 1G: Delay of reinvestment --

17 A. Now, in 18 this is sort of taking
18 worst case, worst case -- or different cases.
19 And so what you do here is you say: Well, if
20 we're not allowed to take any of the cash in
21 bank and buy notes until October and the --
22 the sale of the NPA, the nonperforming assets
23 and performing assets are also delayed until
24 October, then you have no cash coming in the
25 door for August and September.

1 And you need to take about \$290,000
2 out of cash in the bank and spend it to cover
3 your expenses for August and September,
4 waiting to get to October where you'll have
5 roughly \$4 million available to purchase.

6 Q. Okay. And what we're looking at is
7 the difference between Tabs 17 and 18,
8 really. If we have the sale of the
9 performing assets go through, you're looking
10 at roughly, again, about a \$4.5 million swing
11 in the first year payout and the roughly \$10
12 to \$20 million difference in sale price,
13 depending upon the appropriate multiplier?

14 A. Yes.

15 Q. And then Tab 19 it says: Case 2, use
16 trustee's protective cash flow. What's that?

17 A. Well, as I mentioned at the beginning
18 in the baseline, I did not feel confident
19 that the number I was getting from the
20 trustee reflected all interest and didn't
21 tell me how many repos there were. And so I
22 needed to find another way.

23 In this case I simply replaced my
24 projection with their projection. So if
25 their projection of 1.3 in total cash flow is

1 true, this is what results. Now -- so you
2 see a dramatic impact. The payout drops from
3 13 to almost -- to about 9,000 in the first
4 year. And, you know, it might be another
5 six.

6 Q. About 9 million?

7 A. It drops by 5 million in the first
8 year.

9 Q. So even using the trustee's figures,
10 you're still -- even using the trustee's cash
11 flow figures with your projections, there's
12 still \$8.8 million available at the end of
13 year four?

14 A. Right. And if you sell the company,
15 valuations range 16 to 41.

16 Q. So long as the performing assets are
17 not sold and they are used?

18 A. As long as the performing assets are
19 not sold.

20 Q. And then Tab 20, what is that?

21 A. Okay. As we continue to try to
22 determine what was the content in the various
23 items that were included in the trustee's
24 cash flow, we asked for data. And so they
25 gave us two data drops. One, I think, was in

1 mid-July and the other one was over the
2 weekend.

3 And the first one was an Auto Mas
4 pull of all of their data and was -- I don't
5 know -- 4,000 lines or something like that by
6 20 columns, a very large spreadsheet. And
7 because of the nature of the format, it was
8 not conducive to being able to determine
9 what -- how many notes there were or what the
10 days passed due were, couldn't figure out any
11 of that. So I found someone that was very
12 skilled in applying a pivot table.

13 A pivot table is a little trick of
14 Excel that lets you take massive spreadsheets
15 and, essentially, orthodically rotate them
16 into a way that you can group query and sum
17 them. And so it takes masses of data and
18 converts it to something that can be used as
19 a tool. It takes data and turns it into
20 information.

21 So when we did that, we were able to
22 sum up how many payments on the actual
23 accounts receivable notes that existed in the
24 portfolio, how many of those payments were
25 due next month and what their exact value

1 was, including principal and interest. And
2 we were able to determine how many in the
3 next month and how many in the next month.

4 And so we were able to precisely
5 determine the projected cash flow associated
6 with the actual notes in the portfolio. And
7 that's represented in the green line on --
8 well, the green line is the first time we did
9 the data pull and pivot table. That starts
10 with the 455.

11 Q. Okay.

12 A. The August pivot table begins with
13 323.

14 Q. Okay. That uses an expected cash
15 flow of approximately \$2.3 million?

16 A. Right. So the pivot table
17 specifically says there are \$2.3 million
18 worth of payments required to be paid over
19 the remaining term of these contracts. Now,
20 it does not include repos. We deal with that
21 separately, but that's the true cash in the
22 door without repos. And then we separately
23 account for those losses.

24 Q. Okay. So now I want you to flip back
25 to Tab Number 10.

1 A. Yes.

2 Q. Because we were just talking about
3 that \$2.3 million cash flow at the pivot
4 table, right?

5 A. Right.

6 Q. Okay. I'm looking at Exhibit Number
7 10, and I see there's a spreadsheet with a
8 bunch of numbers and then with a whole lot of
9 contract information behind it. What is
10 that?

11 A. This is the second of two data pools
12 we got on the accounts receivable.

13 The first was from Auto Mas, which is
14 the basic accounting process they use. The
15 second is from Intelliview or something like
16 that that allows you to sort of do pivot
17 table kind of work with this data. So this
18 was pulled from the second software approach.
19 It basically shows all of these notes.

20 The interesting thing was all of the
21 sudden we only have 900 notes on here, and in
22 the last pool we had 1,300. There's 407
23 notes that had gone missing. That's not
24 unusual. I mean, there's some defaults,
25 there's some maturation. But there's 400

1 that changed in the month between the two
2 deliveries to us.

3 So we took this data and we applied a
4 pivot table to it. And given the fact that
5 there are only 900 notes here, not the 1,184,
6 not the 1,051 that something else said, but
7 this is what the trustee says is available,
8 900 notes. When we do the pivot table, the
9 first column shows the sum of the current
10 balance, \$2.1 million. And if I'm to believe
11 the information I've gotten, that number
12 includes all the principal and the interest
13 on the Rule 78 notes.

14 Q. What's Rule 78?

15 A. I think it says it's compounded
16 interest, but I'm not sure.

17 Q. Okay.

18 A. Okay. But there are two classes of
19 notes, simple interest notes and Rule 78,
20 which I think is just compounding notes.

21 Q. All right.

22 A. So the first column is the sum of the
23 current balance. And from the discussions
24 and e-mails with the trustee, it is my
25 understanding -- and I don't understand

1 why -- but it's my understanding that they do
2 not include simple interest note interest in
3 the first column. I don't know that but
4 that's what I'm told.

5 Q. Okay. That's what you Mr. Healy told
6 you, what you got in the e-mails?

7 A. Right, the e-mails.

8 The second column shows the sum of
9 the payment amounts. Okay.

10 So if you go through this data table
11 in the back and you add up all of the monthly
12 payments that are due in each month, what you
13 get is \$26,398.42 in the first month. And
14 you get 30,598.60 in the second month. This
15 is actually money due in the door.

16 Q. And that's based on the actual
17 spreadsheet that follows --

18 A. Absolutely.

19 Q. -- that was provided by the trustee?

20 A. Right. Now, if I sum those up, I get
21 a total of 323. That's sort of my starting
22 point. That's the maximum amount of money
23 I'm going to have coming in the first month.

24 So, the last column, the maturity
25 drop off, says in month one you're going to

1 have 323. In month two you're going to have
2 296. In month three you're going to have
3 266. So these are not -- this isn't a
4 factor-like repo. This is just the note.
5 It's finished. It's paid off.

6 Q. So in other words, maturity drop-off,
7 that's just the total of all the notes that
8 are currently outstanding?

9 A. Correct.

10 Q. Without consideration of repos,
11 expenses, or anything else?

12 A. Right. We deal with that separately.
13 We want true cash flow.

14 Q. The maturity drop-off figures, that
15 locks through the next 23 months, I guess,
16 because these were 24-month notes?

17 A. Right. And one thing that you can
18 see here that's quite interesting is you can
19 see how much of those -- what great amount of
20 those notes are collected in the next eight
21 to twelve months. You know, just collecting
22 through Christmas probably gets \$1.3 million
23 and have to deal with the repo rate, so you
24 lose some. But we found that if you actively
25 try to recover the repo cost, that's a

1 significant input to the cash stream.

2 So it looks like collecting through
3 Christmas would give you on order what
4 they're proposing from the sale.

5 Q. And the proposed sale is a million 0
6 forty-nine, I believe.

7 A. Well, we thought it was 1.3. So it
8 may be Thanksgiving instead of Christmas.

9 Q. And the maturity drop-off, at least
10 my copy did not have the total of maturing
11 notes; do you have that?

12 A. It's shown on the spreadsheets. It's
13 the total at the end of the yellow line,
14 which is -- just a second. It's on Tab 20.

15 Q. Okay.

16 A. It's 3,321,382.

17 Okay. And that's on the third page
18 of Tab 20.

19 A. Right.

20 Q. And that's the total. And how is
21 that number derived? That's just the --

22 A. It's just the sum of everything to
23 the left.

24 Q. Okay. I see what you did. You just
25 ran a table of all the notes that were due

1 and that's it?

2 A. Yeah. That's right.

3 Q. So we've got \$3.3 million coming in
4 the door before we start taking out other
5 expenses, right?

6 A. That's it.

7 Q. And that's purely on the trustee's
8 numbers?

9 A. Right. Well, on the AR database.
10 It's not the trustee's data -- it's not the
11 trustee's number. It's the database we were
12 providing of the active accounts receivable
13 notes.

14 Q. I'm sorry. You're right. You're
15 more accurate than I am. It's the database
16 provided to the committee by the trustee?

17 A. Correct.

18 Q. Okay. I'd like you to take a look at
19 what's been marked as the Chapter 11
20 Trustee's Exhibit Number 7. That's in the
21 brown folder.

22 A. Yes.

23 Q. Okay. And it's entitled "Chapter 11
24 Trustee's Summary of Issues with Committee's
25 Projection"?

1 A. Right.

2 Q. And I just kind of want to walk
3 through them with you and see if you have any
4 comment. The first reflects -- it says: The
5 committee's projections double-count cash
6 flow from the collection of current accounts
7 in the upper section and then the lower
8 section for existing notes.

9 A. Basically, that's the only double
10 count is the C11 cell formula that was an
11 artifact of moving over and using the
12 computed cash flow rather than the trustee's.
13 I found that over the weekend and corrected
14 it in the current --

15 Q. That was the one cell in August?

16 A. Right.

17 Q. And other than that, you know of no
18 other double counts?

19 A. No.

20 Q. Are there any double counts in any of
21 the exhibits that we looked at today?

22 A. Not that I'm aware of. If I knew
23 there were, I would have corrected them.

24 Q. Number 2, it says: The committee's
25 projections assume a variable operating cost

1 of 15 percent of the total cash flow
2 regardless of what the total cash flow is.

3 This figure is low.

4 A. Well, it's either low or it's high.
5 In the near years when you don't have any
6 notes, it's probably low. In the out years
7 when you have high volume, it's probably way
8 too high.

9 And so if you were doing this in a
10 reorganization plan, you would probably
11 propose something like say 17 or 20 percent
12 in the first couple of years until you've got
13 the income of over a half million a month.
14 Then you might use 15 percent until you got
15 it over a million or \$2 million a month.
16 Then you might drop it down to 13, maybe even
17 12.

18 Because in some of these
19 projections -- I don't remember exactly --
20 but you have \$300,000 of expenses, and
21 that's -- we don't have -- we don't need an
22 army to collect even several thousand notes.
23 Okay. You may, you know, 200 a note and you
24 have 3,000, you might need what, 50,
25 something like that?

1 So we did use 15 percent, but I
2 remind you it's a variable. And this is a
3 sensitivity analysis and a feasibility
4 analysis. We have looked at the numbers, you
5 know, just to see if 15 percent is in the
6 ballpark. If you take the numbers these
7 project, it comes out to be -- when you don't
8 have any notes, it's too low.

9 And so I put an if-then statement in
10 that if you have less than a half million
11 dollars coming in the door, it's just going
12 to be 75,000, which appears to be a number --
13 it's a round number that covers maybe eight
14 staff, which is what Chuck Ellyson believed
15 that this might take, six or eight.

16 And so it's a baseline. Okay.

17 Q. All right.

18 A. It's a baseline, and it can be
19 changed with a keystroke and see what the
20 impact is.

21 Q. And at least in July, according to
22 the trustee's draft, there's payroll of about
23 42,000 with taxes of about 13?

24 A. Right.

25 Q. And then other expenses, which

1 include things like U.S. quarterly trustee's
2 fees and bank adjustments but -- did you look
3 at those?

4 A. I did and we've been requesting that
5 data. One of the pieces of information I got
6 from Mr. Healy back early on is I think he
7 said that the cash -- the legal expenses to
8 date had been 160,000. And I'd asked him to
9 forecast them through August 1. And he came
10 back and said it would be about 200,000.

11 So knowing that they came on in early
12 April and it was the end of July, four
13 months, I figured \$50,000 a month was a
14 reasonable expectation. I didn't know how
15 far to carry it out. I don't know if we do a
16 reorganization whether you still have
17 tremendously high legal fees or whether once
18 it's a going concern, those back off.

19 So I ran it out to the end of the
20 year simply as a placeholder. It's \$300,000
21 for legal fees. That's over and above
22 whatever you carry in the expense line.

23 Q. And you're talking about legal fees
24 associated with operation of the business,
25 not necessarily fees associated with the

1 Chapter 11 trustee's other duties like
2 preference cases, fraudulent and conveyance
3 litigation --

4 A. No.

5 Q. -- or anything like that?

6 A. No. What I had asked for was the
7 legal fees, legal and accounting fees
8 associated with the trustee. The U.S.
9 trustee's fees and the Bankruptcy Court's
10 fees, because I had no way to project those
11 costs. And they hadn't appeared on one of
12 the monthly operating reports. So I had no
13 way to estimate.

14 Now I see what the Bankruptcy Court
15 fees and the U.S. trustee's fees are, so I
16 could -- I could project those out, but I
17 didn't have those at the time. And so it's
18 like many things here, it's a place holder or
19 based on the 200,000 that I was told by
20 Mr. Healy was what they were going to incur
21 between the 1st of April and the 1st of
22 August and divide it by four months.

23 Q. If you look at Number 3, it says:
24 The committee's projections assume a
25 repossession rate of 30 percent with no

1 consideration for the default rate, other
2 defaults not included in repossession.
3 Actual default rate is 50 percent, not 30
4 percent. This leads to a loss of future cash
5 flow?

6 A. That's really not an accurate
7 statement. Let's take the part default.
8 Okay. Because default, you know, you and I
9 default on a home loan, that's not a good
10 thing. Right. Defaults as used here -- or
11 used by the trustee mean anything that
12 doesn't pay to maturity.

13 So I have a 24-month note. If it
14 doesn't pay the maturity, they've called it a
15 default. That's how they get 53 percent as a
16 default rate over time; because they include
17 the guy that came in, and he only had a \$600
18 payment next month, and he paid early. So
19 since he paid a month early, that's a
20 default. A dealer buyback, those only occur
21 in the first 30 days if you have recourse on
22 the contracts you buy.

23 And in a dealer buyback, you get the
24 money back, because he sold you a contract
25 that you didn't get the first month's

1 payment. And so you have a time loss. You
2 lose a month's worth of investing, but you
3 don't have a dollar loss. And the money that
4 comes back, you reinvest the next month. So
5 that's sort of a neutral event.

6 Insurance -- in insurance buyback,
7 the car is totaled. Ideally, it would cover
8 the cost of the car. We're calling that a
9 neutral event. Somebody takes -- hides the
10 collateral, steals the car, those are very
11 seldom, so we ignored those. So we use the
12 30.11 percent that is the industry average
13 and validate it by both Paul Hitner and Chuck
14 Ellyson.

15 Q. And so when the trustee is talking
16 about defaults, he's really including dealer
17 buybacks, insurance buybacks?

18 A. Early payments.

19 MR. BROWN: Objection, Your Honor.
20 Mr. Kane can cross-exam Mr. Healy -- I
21 mean, Mr. Phelan on this point. He can
22 call him. This witness is not qualified
23 to testify about what Mr. Phelan thinks a
24 default is.

25 BY MR. KANE:

1 Q. You heard Mr. Phelan testify, didn't
2 you, Mr. Imler?

3 A. Yes, I did.

4 Q. Did you hear Mr. Phelan testify that
5 defaults include other things other than just
6 simple repossession?

7 A. All those things I mentioned, plus in
8 the discussions we've had and in the e-mails
9 we've received, we were told that the 51 and
10 the 53 percent included anything that didn't
11 pay to term, including early payoff,
12 insurance payoffs, dealer buybacks, voluntary
13 repossession, involuntary repossession. I
14 can't -- there's three other categories. I
15 can't remember what they are.

16 Q. That's all right. It's getting late.

17 The trustee just defined default
18 differently than you're defining it in your
19 spreadsheet, right?

20 A. I'm using repo rates, because that's
21 the one that really matters, because it comes
22 out of the cash flow. You have to repossess
23 the car. You may have some cash lost, and
24 you need to reinject that cash.

25 Q. And in using the increased default

1 rate with the buybacks by dealers or
2 insurance, really it's just a brief
3 interruption in cash flow.

4 A. It's just an interruption. It's not
5 a loss.

6 Q. Number 4, it says: There's no
7 provision for writing down principal after a
8 repossession?

9 A. Well, I guess I would say the
10 provision would be changing the variable on
11 what you collect through the repo, you know,
12 we have 1,000 in one place and 4,000 in
13 another. What we -- what I'm told by Chuck
14 Ellyson is that the industry average is
15 trying to recover 25 percent of the principal
16 value. So if the notes were \$4,000, you're
17 trying to get \$1,000 back. That's why we use
18 that on the lower one. Okay.

19 Q. So in other words, \$1,000 accounts
20 for the breakdown in principal?

21 A. Right. Right. That number is not
22 principal. That's what you get at auction.
23 If you open up the comments, most all these
24 cells have comments in them that described
25 what happened or why that is. So there's

1 comments that's embedded throughout this that
2 explain the nature of the sale.

3 And in that one it said: We assumed
4 a \$3,000 car and you spend \$500 for
5 collection and so you get \$2,500. Okay.

6 Q. Let's look at Number 5. It says:
7 Total at the end of year two and the initial
8 cash total is used to purchase notes and
9 create cash flow. Again, this is a double
10 counting of investment funds.

11 A. I think this goes back to the error
12 in the cell because the 307 was up there at
13 the top -- you see where the three 0 seven
14 five eleven --

15 Q. Yes.

16 A. -- moves up to the top?

17 The formula error in net cash flow,
18 the one that's highlighted in yellow where
19 it's 195, that formula double counted both
20 the 261 and the 307. So they're exactly
21 right that in the spreadsheet they looked at
22 on Friday and the live spreadsheet we gave
23 them on Saturday, there was a double count in
24 the formula in C11. But we have corrected
25 that formula and it no longer exists.

1 Q. Okay. And let's move on to Number 6:
2 the \$470,000 of forfeiture assets are not
3 currently available to be used to purchase
4 notes. Now, you've accounted for that, I
5 guess, in some of your tables?

6 A. We heard this complaint, I mean, this
7 question on Monday. So I tried to show if
8 they were late, and I didn't hear that they
9 would not be available. I heard that they
10 would be late and potentially have other
11 claims against them.

12 I think we asked if they were
13 significant and the answer was they're not
14 significant claims but they are claims.

15 Q. Although, Edison has made a claim,
16 that claim has not yet been listed and fully
17 litigated or determined?

18 A. Right. And it does not appear that
19 that is -- that it's a full claim. It's like
20 a mechanic's lien or something, I would
21 guess. It seemed from what I heard from them
22 that it is a claim that will take up time to
23 resolve, but it was not a -- it's not a claim
24 to the entire amount, if you will.

25 Q. Okay. Let's move on to Number 7:

1 The committee understates operating costs;
2 and therefore, cash flow projections should
3 be reduced.

4 I guess we talked about that some
5 already, right?

6 A. Uh-huh.

7 Q. Those are the expenses that we're
8 talking about?

9 A. Uh-huh. Yeah. And they have a good
10 point here. And in the spreadsheet we've
11 provided for the Friday discussion and,
12 again, the live one we provided on Saturday,
13 I had not figured out how to do the if-then
14 statement in that line to create a minimum
15 amount to cover all those costs.

16 Q. So looking at less LCI expenses at
17 rate of, you've got 15 percent and NLT
18 75,000?

19 A. Not less than 75K.

20 Q. So you've since added that?

21 A. I added that from this set of
22 spreadsheets, because I knew I could not
23 leave the expenses uncovered. So it was not
24 appropriate in a time of low cash flow to
25 determine expenses on that cash flow. You

1 have to maintain minimum staff and utilities.

2 So whether 75 is the right number or
3 not, I'm open to that. I could make that a
4 variable, and, you know, that's probably what
5 I should do is just to make that a live
6 variable. And then that would allow people
7 to play with this.

8 Q. But at least for this -- purposes of
9 this initial feasibility study, you've made
10 it so the expenses didn't drop below \$75,000?

11 A. Right. And I recognize another error
12 is that I probably should put an if-then
13 statement that doesn't let them go above
14 200,000, because in the tail end of this, the
15 15 percent is a very large number. And as I
16 think the trustee mentioned earlier, you
17 know, in large volumes you need to cut that.

18 So if you go back to the end,
19 especially on some of these that have the
20 additional investments coming in -- let me
21 find one.

22 Q. Looking at -- if you look at Tab 11.

23 A. Well, probably one that has money
24 invested would be one of the best ones. So
25 let me find one. If we go to Tab 16, for

1 instance, and you go out to the end --

2 Q. You can see where the --

3 A. You have -- you've got a peak
4 expenditure \$266,000, a quarter million
5 dollars a month.

6 Q. I see that.

7 A. And you think about \$50,000 a person
8 for collectors, and I think the number that
9 I've heard is somewhere between 150 to 300
10 notes for collector, depending on which
11 business. Chuck can testify to some of those
12 actual numbers, but it appears to be too
13 high.

14 And so in the next iteration of this,
15 I would put a cap on expenses, just like I
16 put in a front-end limit on expenses.

17 Q. So that would actually bring more
18 money into the estate?

19 A. Yes, it would.

20 Q. Okay. Number 9, it says: The
21 committee's projection contemplates the
22 purchase of 294 new performing notes in month
23 one. This is substantially more than the
24 debtor ever purchased in any given month?

25 A. You missed one, Number 8.

1 Q. Yeah, I sure did.

2 The committee's projection assumes
3 bankruptcy fees and cost will not exceed
4 \$50,000 total. I think you've spoken to
5 that.

6 A. Well, they may have mistook the fact
7 that it was a variable. It's 50,000 per
8 month, although, it says that clearly. And I
9 basically just put in a number based on their
10 actual \$200,000 they project through August
11 divided by four. And I said: So that's the
12 explicit data, real data. And I just put
13 \$50,000 in for six months. So we have
14 addressed that.

15 Q. And it says: The current amount of
16 fees and cost exceed \$150,000 per month.

17 A. I don't understand that, because I
18 looked at the monthly operating report for
19 each of the last three months. I think the
20 only time that they were exceptionally high
21 was when the quarterly legal fees were billed
22 in June at 164 or something like that. So
23 the total expenses in June were much higher.

24 But if you look at the payroll
25 expenses, payroll expenses are, you know,

1 they were like 65 or so and they dropped to
2 like 45, payroll taxes at another 10 or 15 on
3 top of that.

4 Q. Just looking at Tab 6, which are the
5 debtor's reports for May, June, and July, if
6 you total up the professional fees, I think
7 they only -- for three months are about
8 \$138,000; do you see that?

9 A. Which line am I looking at?

10 Q. Tab 6?

11 A. Tab 6, which month?

12 Q. If you look at -- there's a schedule
13 for May, June, and July. If you look at the
14 item 510 professional fees: accounting and
15 legal.

16 A. Right.

17 Q. You see there's actually zero in May.

18 A. Right.

19 Q. There's 135,000 in June.

20 A. Right. That was the quarterly
21 billing.

22 Q. Right. And then there's 3,200 in
23 July?

24 A. Right.

25 Q. So we're talking about \$138,000 over

1 a three-month period, roughly, for
2 accountants and attorneys?

3 A. Yeah. Not per month but over the
4 four-month period.

5 Q. Right. If you look at tab -- at
6 Number 9 -- I think we've covered 8 -- you
7 see the committee's projection contemplates
8 the purchase of 294 new performing notes in
9 month one; do you see that?

10 A. Uh-huh.

11 Q. And that's -- I guess they're
12 referring to the baseline study, which is
13 Tab 11; is that right?

14 A. I'm not seeing a 294, so it may be a
15 different one.

16 Oh, it's the spreadsheet they have.
17 It's the Friday spreadsheet. Okay. They're
18 referring to the Friday's spreadsheet.
19 That's probably equivalent to the 300,000
20 that we're saying is available.

21 So their point here -- their point
22 here is you don't have a purchaser on staff,
23 and that's absolutely right. I think they
24 have a vice-president for operations and
25 eight collectors or something. So part of

1 the reorganization plan would have to hire
2 someone that would purchase notes.

3 And Chuck Ellyson would be much
4 better -- appropriate to talk to on how you
5 do that.

6 Q. And, obviously, we've gone through a
7 whole slew of permutations here. But if you
8 look at Tab 11, it shows, I believe, 314
9 notes being purchased in the first month. Is
10 that just because of all the available cash
11 on hand but in the various permutations
12 that's not necessarily always true, is it?

13 A. I believe their comments are against
14 the baseline case of the earlier version.
15 They were looking at Version 2. This is
16 Version 4, I think. Okay. And so the 294,
17 if I translated it, it's probably the 300
18 notes I'm saying would be bought in August.

19 And this is August, and we don't have
20 a purchaser and we don't have an approved
21 plan. This is a sensitivity analysis. It's
22 a feasibility study. We've seen that if we
23 slip that out three months, it doesn't have a
24 huge impact.

25 The one case I didn't get to do, that

1 Mr. Ellyson suggested, is we can always take
2 a purchase like that and spread it over
3 several months. There's no obligation to
4 spend all your money in the first month.
5 It's certainly the best use of the cash.

6 And I'm also told that sort of an
7 industry standard is 200 notes per -- I'm
8 sorry -- 100 notes per collector is a
9 reasonable number per month. So you might
10 need -- you might need to spread that over a
11 couple of months and hire a couple of
12 collectors. But, again, I don't know that
13 number.

14 Q. Okay. Item Number 10, it says: The
15 start date for the maturity paid off on the
16 projection does not start until month 31.
17 This assumes no trade-ins, which is not
18 realistic. Is that a similar discussion to
19 what we were talking about, the default rate?

20 A. Yes, I believe it is. You know, we
21 have treated a payoff as early return of the
22 principal due. You do forgo the interest you
23 were going to collect over the balance, and
24 that's not insignificant at 30 percent. But
25 that cash is available to inject the next

1 month and get that 30 percent again.

2 Q. So if it's a trade-in, just like
3 dealer buyback or insurance buyback, it's
4 all -- it's a brief interruption in the cash
5 flow of that particular note. But it gets
6 reinjected back into the business?

7 A. Exactly.

8 And this is a back-office business
9 when run well. This is not a financing
10 business. This is a back-office business of
11 collection: collecting the existing notes,
12 tracking the repos, collecting the repos and
13 reinjecting the cash.

14 Q. And, I guess, to a certain extent are
15 you familiar with factoring?

16 A. I am.

17 Q. What you're describing to me doesn't
18 sound that different from what a factor does.

19 What's your understanding what a
20 factor does.

21 A. Well, you're buying at a discount.
22 So buy a future value at a price that is
23 substantially less. So best example would be
24 that dealer. You know, somebody comes in and
25 buys the car, he gets a contract for 30

1 months, but if he just waits for that money
2 to come in, he doesn't have any cash to go
3 buy new cars to sell them.

4 So he's willing to sell that note to
5 get today's cash so that he can go buy more
6 cars, because that's how he makes money is
7 buying more cars. So two of the figures that
8 I've heard are sort of traditional factoring
9 numbers are 65 percent in principal or 50
10 percent of cash flow. They're not
11 tremendously different when you figure them
12 at this interest rate.

13 Q. Okay. Item Number 11 says: The
14 committee's projections failed to account for
15 tax consequences. I guess that's what you
16 tried to do in the second part of Tab 11?

17 A. I tried to at least start that way.
18 Again, I only did that this morning, and I
19 just went down and I changed that factor.
20 And we were able to print it out and put it
21 in the books to let somebody look at.

22 Well, what if you did that.

23 I did talk to Chuck Ellyson to get
24 what kind of numbers would be reasonable,
25 because I knew there was this recapture of

1 the discount. I wasn't aware of that before.
2 So that changes the amount.

3 So based on his information, we were
4 able to put in something very quickly that
5 tried to account for it.

6 Q. And the trustee submitted a response
7 in this case last night that speaks to the
8 applicability of net operating losses or the
9 lack of applicability of known operating
10 losses to ongoing future earnings of the
11 reorganized debtor. And, obviously, we
12 haven't had the ability to flush that out.

13 But in your projection, at least in
14 the second part of Tab 11, have you tried to
15 account for that?

16 A. Second part.

17 Q. Was that too long of a question?

18 A. I have tried to account for that, but
19 I would like to give a slightly expanded
20 answer, if I may.

21 When I began this process, I knew
22 EBITDA would be the measure for valuing. And
23 that's earning before interest, taxes,
24 deductions, and allocation. So it didn't
25 concern me too much that taxes weren't

1 included, because I knew that the earning
2 stream I was looking for would be free of
3 taxes and maybe that was a simplistic
4 approach.

5 I put that in because after thinking
6 about it, it does minimize the cash injection
7 in the next month. And so I recognize that
8 that's there, but it's an overstatement to
9 say that these spreadsheets are built about
10 trying to capture that net operating loss.

11 What I began in the beginning at the
12 very start, was being faced with getting
13 pennies on the dollar and then thinking about
14 the possibility that those pennies could be
15 turned into quarters. And so it was the
16 existing money in managing that and trying to
17 figure out how to maximize that value, those
18 assets, those crowned jewels.

19 There was a multiple effect up until
20 about three days ago. Our team believed from
21 the information we were getting that they
22 would be available. So I was operating under
23 what was the best information we had at the
24 time.

25 Q. All right. And then it says also:

1 The committee's projections failed to account
2 for risk of changes and applicable
3 legislation.

4 Do you have any idea how to ascribe a
5 number to something like that?

6 A. Same way I do to my investment in
7 stocks and bonds. I mean, Congress can do
8 anything tomorrow. There's a risk to every
9 industry. But I don't know how to account
10 for it other than put something that is
11 repeatable, understandable, well explained.
12 And if there is an assumption that's wrong,
13 we can correct the assumption. If there's
14 formulas that are improper, we can fix that,
15 if there's a variable that needs to be
16 changed.

17 This was a sensitivity analysis, a
18 feasibility analysis to try to get a range
19 across a variety of approaches to say this
20 family of reorganization option compares to
21 this liquidation option. How do you feel
22 about that?

23 Q. I've got it.

24 But the trustee hasn't advised the
25 committee, to your knowledge at least, or you

1 don't know of any risks of changes in
2 applicable legislation?

3 A. Well, I'm unaware of any in the
4 secondary car market. The Chuck Ellyson
5 would be a better one to ask that question
6 to, because he's in that industry.

7 Q. How about claims for violation of
8 applicable consumer collection practice acts,
9 are you familiar -- have you been advised --

10 A. Where are you?

11 Q. We're still on Item 11. So it's
12 actually kind of a three-part objection.

13 Did you ascribe any number to
14 potential claims for violation?

15 A. I'm unaware of that as a risk. If
16 someone knows how to quantify that risk and
17 tell me how I can add it to the spreadsheet.
18 Whether it's a 1-percent impact or a
19 .01-percent impact, I don't know what it is.
20 I don't know whether that means you have to
21 set aside a pool of cash like Bridge
22 Petroleum is doing, I don't know what that
23 means.

24 Q. Looking at Item Number 12, it says:
25 The committee's projections, all customers

1 pay on time except the ones that get
2 repossessed.

3 A. That's not exactly true. I guess the
4 way we look at it is if you use the broad
5 term default, there are a lot of things that
6 happen to notes. Repossession is one of the
7 most painful, because lots of times when it's
8 an involuntary repossession, it's hard to
9 find that car. That car may be gone for a
10 month, two months, three months, four months.

11 And it takes \$500 or so to go out and
12 find that car. And when you get a car that's
13 been involuntary repossessed, it may have
14 been trashed. So there's concerns about
15 repossession, valid, legitimate concerns.

16 All the others seem to be time
17 events. You lose the opportunity of getting
18 29-percent interest on that time that the
19 money is not invested. Dealer buyback, you
20 don't get any payments for a month or 45
21 days. You force them to take it back.
22 You've lost one month of 29.5-percent
23 interest.

24 So there's an impact, but it's a
25 timing interest. And that money is available

1 to reinvest. Same thing with industry --
2 same thing with an insurance buyback and even
3 a voluntary repo: if somebody brings the car
4 into you, they don't trash it, and they're
5 not hard to find.

6 They walk in and they say: I can't
7 pay this car. You have it on that day. So
8 each event is slightly different in its
9 impact. But the involuntary repossession is
10 the one that has the most threat to the
11 bottom line.

12 MR. KANE: That's all I have, Your
13 Honor.

14 THE COURT: Thank you.

15 Cross-examination?

16 MR. BROWN: Yes, Your Honor.

17 THE WITNESS: Could I possibly take a
18 break?

19 THE COURT: Would you like to take a
20 short break?

21 MR. KANE: Your Honor, I appreciate
22 the indulgence.

23 THE COURT: Take a short break.
24 Let's start again at 8:00, because we do
25 need to get finished tonight.

1 (Break taken.)

2 THE COURT: Mr. Brown.

3 MR. BROWN: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. BROWN:

6 Q. Good evening, Mr. Imler.

7 A. I guess it is good evening.

8 Q. The spreadsheets that you have
9 prepared in general, you acknowledge there's
10 a number of risks built into those?

11 A. (Straightening documents.)

12 Q. I'll put it back later.

13 You haven't accounted for all the
14 risks in your spreadsheets?

15 A. No.

16 Q. What you're saying, in essence, is
17 that you understand that the liquidation that
18 the trustee is proposing is going to net
19 about \$1.6 million.

20 THE COURT: Let me interrupt for a
21 minute.

22 (Brief interruption.)

23 THE COURT: Sorry, Mr. Brown.

24 MR. BROWN: Thank you, Your Honor.

25 BY MR. BROWN:

1 Q. Mr. Imler, are you ready?

2 A. Yes.

3 MR. KANE: I'm ready to raise an
4 objection, Your Honor.

5 THE COURT: Mr. Kane.

6 MR. KANE: I think that Mr. Brown is
7 misstating the facts. We've already
8 conceded to the sale of the nonperforming
9 assets. The sale of the performing
10 assets will only net a million 0
11 forty-nine.

12 MR. BROWN: Your Honor, I don't think
13 I finished my question, but that is
14 not -- what Mr. Kane is raising is not at
15 all to do with what I'm going to ask, so
16 maybe I can finish.

17 THE COURT: He's standing ready to
18 object.

19 MR. BROWN: That's fine. That's
20 fine.

21 BY MR. BROWN:

22 Q. Mr. Imler, are you aware that the
23 total amount that would be realized by the
24 two sales is \$1.6 million?

25 A. Correct.

1 Q. Of that --

2 A. Let me --

3 Q. Well, let me finish my question.

4 A. I understand as of today, it's 1.6.
5 When we had our conversation on Friday and
6 Monday, I understood that the performing
7 assets were going to be sold for 1.3 and the
8 nonperforming for 600,000. So in my
9 spreadsheets I carry 1.3 and 586. Those are
10 the last numbers I have on Friday and Monday.

11 Q. On the Trustee's Exhibit 5, you've
12 reviewed that.

13 A. I saw that it has changed.

14 Q. The active account amount is over a
15 million dollars, just over a million dollars,
16 a million fifty, approximately.

17 A. Right.

18 Q. And so I guess you're working with
19 the committee and saying let's do something
20 else with that million fifty. But instead of
21 getting that million fifty in, that cash in
22 the store, let's do something else, correct?

23 A. Yes.

24 Q. And you're saying, let's take it and
25 let's put it in the same business that the

1 debtor was in, maybe a little bit better than
2 the debtor we're going to change a few
3 things. But it's the same general business.
4 We're going to buy subprime automobile loans,
5 correct?

6 A. That's not accurate.

7 Q. What are you going to do with the
8 money?

9 A. The part that is at issue, the
10 performing assets, we're not talking about
11 investing that money, you know, taking the 1
12 million proceeds and investing that. What
13 we're talking about is taking the accounts
14 receivable that, by the pivot table, is worth
15 about \$3.3 million. And we're talking about
16 letting that be collected.

17 Okay. Now, as that money is
18 collected out over the 18 months, the bulk of
19 it in the next six or eight, that would be
20 invested in the higher quality notes that
21 Mr. Ellyson recommended, the \$12,000 notes
22 with a 30-month time frame. So new money
23 that comes in is invested in higher quality,
24 longer term notes.

25 Q. And those notes cost more to

1 purchase?

2 A. They do.

3 Q. And that is the same business that
4 this debtor was in before?

5 A. It is the secondary car note
6 business; you're right.

7 Q. And you didn't consider taking these
8 funds that come into this debtor and doing
9 anything else except to put them into the
10 subprime automobile industry, did you?

11 A. No. We looked at Chapter 11 as being
12 reorganization of the company.

13 Q. That's all of my question.

14 You weren't part of the groups that
15 met with the trustee early on in this case?

16 A. No.

17 Q. And you weren't involved in any of
18 the meetings between the trustee and the
19 committee members?

20 A. I was even unaware they occurred.

21 Q. Have you visited the Lydia Cladek
22 office premises since the trustee has been in
23 place?

24 A. No.

25 Q. Have you asked to come in and visit

1 that premises?

2 A. No.

3 Q. You said you weren't involved with
4 Ms. Cladek's spreadsheets in any capacity
5 whatsoever?

6 A. I saw her spreadsheets. I saw the
7 data she used. I asked questions of her, and
8 I was a sponge to absorb all the data that I
9 could from the one person I knew that was in
10 the industry. So I collected what I could.
11 As soon as I was able, I requested
12 information from the trustee.

13 Once the committee was in place, they
14 assisted in getting me information. When I
15 was paired with Paul in California, I got
16 information from him. And when I got back
17 from my trip and talked to Chuck, I got
18 information from him.

19 So in each case I tried to use the
20 best information that was available to me
21 replacing prior information with the best
22 industry sources.

23 Q. Mr. Imler, I ask that you just answer
24 the questions I ask you.

25 So Ms. Cladek -- you took information

1 from Ms. Cladek, and that is factored into
2 your feasibility projections?

3 A. Initially, it was. It's been
4 replaced.

5 Q. And then it's just ironic that the
6 projections that are in Exhibit 13, roughly
7 taking \$4 million to start with in current
8 accounts, in investing that over a period of
9 time and turning it after four or five years
10 into 14 million, matches up exactly at least
11 with the projections that you initially
12 presented to the trustee.

13 MR. KANE: Your Honor, I just -- I
14 find that argumentative, and I think it
15 misstates the fact.

16 THE COURT: Overruled.

17 BY MR. BROWN:

18 Q. It's a yes or no question, Mr. Imler.

19 A. Say it one more time.

20 Q. Is it just ironic that the Option 2
21 in the Exhibit 13 that are Ms. Cladek's
22 projections, match virtually dollar for
23 dollar with your initial projections that
24 were presented to the trustee?

25 A. It is ironic.

1 Q. Okay. It's just ironic.

2 And then your projections say that no
3 money gets distributed out to creditors for
4 how long?

5 A. In the early version of the
6 spreadsheets, I had a two-year, three-year,
7 and four-year option. In the beginning we
8 started working with the two. It became
9 easier to work with the four because it's
10 easier to go backwards in time and chop off
11 some of it, then start at two years and
12 rebuild.

13 So at one point I was building a two,
14 three, and a four -- I mean, two, three and a
15 five. And it became too hard. So I zeroed
16 in on the four knowing that once I built four
17 as a standard, then I could lop off a year by
18 simply moving formula back. And I could
19 create the three in a heartbeat.

20 Q. Well, the projections you've
21 contemplated today contemplate no
22 distribution for at least four years?

23 A. In the baseline case that is correct.

24 Q. Do you understand the concept of
25 pass-through taxation?

1 A. Probably not.

2 Q. And do you know if -- have you
3 surveyed all thousand or so creditors of the
4 estate to know whether they want to --

5 A. Absolutely not.

6 Q. -- go through with this plan?

7 A. No, I don't know that. I only know
8 what the creditors' committee has represented
9 to me, which is they are interested.

10 Q. You said that there was a dealer
11 buyback average. Do you remember talking
12 about that in your direct examination?

13 A. What I had been told by my two
14 associates that are in the industry is that
15 there is an average, there is a rule of thumb
16 for -- I'm sorry. You asked about dealer
17 buyback.

18 Dealer buybacks -- I'm told, come if
19 you have recourse on the note and recourse on
20 the note is usually only for the first 30
21 days, and so if they miss the first
22 payment -- my understanding from talking to
23 others -- if they miss the first payment,
24 then they're sort of on notice. And if they
25 miss the second one, then the dealer has to

1 buy back the note.

2 Q. And that's on a new car concept?

3 A. No. A used car, that the note
4 that -- Joe's Auto Sales sells you a car and
5 it goes out the door and you expect to get
6 payments. I buy it at a factor. I expect to
7 get those payments.

8 If the payments aren't made in the
9 first 30 days, I can go back to the dealer
10 and say, you sold me a lemon here. You need
11 to take this back. It's just like returning
12 something to Home Depot. And they pay you
13 back for the note, and it's their
14 responsibility. You don't own that note
15 anymore.

16 Q. That's an assumption on your part
17 that they pay you back right away or that
18 they pay you back and don't fight you?

19 A. I'm assuming if you, you know, that
20 if you go back and you say, here's the note,
21 they give you the money. Now, the timing of
22 it, I don't know. I would probably say --
23 I'm assuming that it happens in the same
24 month so that those dollars are available the
25 following month.

1 Q. And assuming that maybe the contracts
2 don't provide for that at all and assuming
3 that sometimes a dealer may not willingly pay
4 the money back right away?

5 A. Well, there are assumptions built in
6 here, and the assumption is if there's a
7 dealer buyback that occurs in the first 30
8 days, which in this case that has already
9 expired. The dealer buybacks are not an
10 issue on these notes. The period for
11 recourse has long since passed.

12 Q. You acknowledge that at some sale
13 price that the trustee could achieve for the
14 active portfolio that that is a better
15 alternative than what you're proposing?

16 A. Certainly. At some sales price you
17 can do an algorithm and you could say,
18 getting it now and investing it in a return
19 versus collecting out and investing in a
20 return. We have the ability to do that.

21 And as I mentioned earlier, I think
22 in my earlier testimony when we were dealing
23 with that number on Friday -- and I think I
24 said this to you guys when we spoke -- that a
25 very quick figuring, just running some

1 iterations, it came out to be 1.875. Now,
2 that's when I thought that you were going to
3 get 1.3 for the notes. So instead of 1.3,
4 you would need to get 1.875.

5 Now you're telling me you're only
6 getting 1 million for the notes. So I don't
7 know if that analysis is the same. I think
8 that it would be dramatically different.

9 Q. But that's based on your projections
10 with these various assumptions and things?

11 A. Absolutely. Everything that's been
12 presented here is part of a feasibility
13 analysis.

14 Q. There's other possibilities of taking
15 these funds and doing other things with them
16 to make money other than putting them in a
17 subprime business?

18 A. For this company?

19 Q. For funds in general. One, you have
20 a million dollars in cash, you can invest it
21 in any number of ways, couldn't you?

22 A. Fair point.

23 Q. You said that there was a 10-percent
24 bump on taxes and that was only on the gain
25 between your hypothetical of buying a \$10,000

1 note for \$6,000 for a dealer and you pay 10
2 percent on that \$4,000 spread?

3 A. I'm not the expert here. But as I
4 understand it from my discussions with Chuck,
5 the discount, the paying back the discount,
6 that part of the monthly payment has to be
7 broken into three pieces. You have to have
8 the principal, you have to have the interest,
9 and you have to have return of discount. And
10 for tax purposes, the interest and the return
11 of discount are taxable income where the
12 return of principal is not.

13 Now, that's secondhand knowledge, but
14 that's what I've been told by Chuck Ellyson.

15 Q. And you said that on -- so your
16 hypothetical was you had a \$10,000 note. It
17 was purchased for \$6,000, so there's a \$4,000
18 return of discount.

19 A. There's a \$12,000 note -- okay --
20 that's bought at a 50-percent discount, so
21 that's 6,000. So that would be a 6,000
22 discount. Now, I'm going to -- I'm going to
23 take this part -- I did not, you know, Chuck
24 is the expert on this one. So I will ask you
25 to -- I used his numbers here, and that's --

1 what we were primarily trying to do was to
2 put in a higher quality, longer-term note to
3 get a higher quality car in there that would
4 have increased return and decreased repo
5 rate; but we had to go over a longer term.

6 So those numbers are, as I understand
7 from Chuck, industry averages and sort of the
8 center of the bell curve and his market
9 analysis.

10 Q. And you've not worked in this
11 industry before?

12 A. I have not.

13 Q. And you've not gone out and bought
14 notes in the market before?

15 A. I have not.

16 Q. And you said that on the taxes, you
17 gave it a 10-percent bump in your
18 projections?

19 A. Right. Given that --

20 Q. That's right. A 10-percent is what
21 you counted for tax liability?

22 A. Correct.

23 Q. Okay. You said that insurance events
24 were another event --

25 A. Let me make one correction. It was

1 not a 10-percent as the tax rate that would
2 be suffered, it was adding 10 percent
3 additional expenses to the 15 percent that
4 was there. Okay. And that 10 percent was
5 figured on 40 percent of the payment stream
6 being taxable as interest or returned
7 discount at a 28-percent rate and 28 percent
8 times 40 percent, 10 percent -- so 10 percent
9 of the value of the note, which is what we
10 compute the expenses on, gets rolled in.

11 It's approximate. Okay. It's an
12 approximate but that's how -- it's not a
13 10-percent rate. It's 28 percent times 40
14 percent of the payment that's taxable is
15 about 10 percent.

16 Q. Didn't you just tell me the discount
17 was actually 50 percent from the face
18 principal value?

19 A. Uh-huh.

20 Q. And then that doesn't include the
21 interest that's earned on the note?

22 A. The key here is in a monthly basis
23 that -- and again, I plead for you to talk to
24 Chuck on this. In a monthly basis, if \$259 a
25 month comes in, that piece needs to be broken

1 into principal, interest and recovered
2 discount. And the number he's used in his
3 business and the one he mentioned to me --
4 and I'm only relating it -- is that in your
5 taxes, you can sort of assume as a rule of
6 thumb that as 40 percent of the payment
7 stream is taxable. Forty percent of the
8 payment stream is taxable.

9 Okay. And I'm doing expenses on the
10 full payment stream. So if you have 40
11 percent that's taxable and you do it at a
12 28-percent rate, by my computation you had 10
13 percent and you've covered -- 10 percent on
14 the total -- on the 40 percent, 10 percent on
15 the total is the same as 28 percent of 40
16 percent.

17 Q. And all that is just your assumption?

18 A. No. That's just math.

19 Q. The 10-percent rate is just an
20 assumed rate of what the tax would be?

21 A. No. It's based on an assumption that
22 came from Chuck Ellyson that 40 percent of
23 the payment on a monthly basis is broken into
24 three components, two of which are taxable
25 and represent about 40 percent of the dollars

1 in the door. Okay. My interest rate of 15
2 percent is computed against the entire amount
3 that comes in the door.

4 To do the math right, 28 percent
5 times 40 percent is about 10 percent of -- is
6 the same number if you'll apply 10 percent
7 more to the total. That's just the way the
8 numbers work out.

9 Q. If you take --

10 A. The only assumption in there -- the
11 only assumption in there is that the
12 percentage of the payment that is a taxable
13 event is 40 percent. That's the only
14 assumption. The other assumption is that
15 it's a 28-percent tax rate. And in the
16 future, who knows what it's going to be.

17 So 40 percent is taxable at a
18 28-percent rate, which if you put a
19 10-percent bump on the computation against
20 the entire amount, it's the equivalent
21 amount.

22 Q. Said insurance event was another
23 bump?

24 A. A bump?

25 Q. You said an insurance event was

1 another bump. And when I took bump, I took
2 that was to be a decrease in the result --
3 the ultimate result.

4 A. The assumption after talking to the
5 team is that when you have a dealer buyback,
6 you lose a month's worth of payment. So
7 you've lost time but you haven't lost value.
8 An insurance event that occurs may be six
9 months or 12 months into the term, you've
10 made 30 percent on that note for five, six,
11 twelve months. You've gotten all your money
12 back after about 11 months. So if the
13 insurance event occurs after 11 months,
14 you're already whole.

15 Q. That assumes the insurance company
16 pays you back the full principal value of the
17 amount that's due?

18 A. Based on the payments prior to that,
19 just based on the payments prior to that.
20 You've got to remember this is a 29.5-percent
21 interest. There's a lot of money coming in
22 the door, and you bought it at discount. So
23 After about 11 months -- at least just
24 looking at some of the numbers I saw, after
25 about 11 or 12 months, you've essential

1 gotten your investment back.

2 Now, if the insurance event takes
3 place and you get 75 percent of the principal
4 value, you're more than whole.

5 Q. The bank could take place from day
6 one you drive off the lot or the last day
7 that the loan --

8 A. Absolutely. So in average -- on
9 average if it occurs in the middle of the
10 term because some can be at one end and some
11 can be at the other, the important thing to
12 remember -- even on a repo -- is you are
13 collecting 29.5-percent interest every month
14 until that event occurs. And that event is
15 spread over a 30-month time frame.

16 Q. Collecting 29 percent on every single
17 note that you have?

18 A. Until the event occurs, and the
19 events don't all occur in day one. They
20 don't all occur in day 29 -- month 29. What
21 I did was I simply said they occur at a level
22 rate, because I didn't have a better number.
23 And that's an assumption and it can be
24 changed.

25 We could keep it, you know, we could

1 say nobody repos in the -- or nobody defaults
2 in the first three months. The highest rate
3 is at the six to nine month, and nobody
4 defaults in the last three months or six
5 months. They may pay you but they're not
6 going to, you know, abandon the car or stop
7 paying for it when they've only got one
8 payment left.

9 Q. So you want to have the trustee and
10 the Court and everyone believe that you're
11 going to take \$4 million, roughly, in payment
12 streams that you think is available now? I'm
13 just saying hypothetically.

14 A. Right.

15 Q. And over a four-year period, you're
16 going to turn that into \$14 million that's
17 going to be available for the creditors?

18 A. Yes. And what you need to remember
19 is this is a high margin industry. The 29.5
20 percent notes purchased at 50-percent
21 discount starts getting to be equivalent of
22 80-percent returns. These are high rates of
23 return. That's why it's such a big lucrative
24 industry.

25 The key is it has to be run well.

1 And there's nobody that will argue that LCI,
2 especially in the last. Five years, appears
3 to have been run into the ditch. And there's
4 no one on the creditors' committee and no
5 creditor that wants that to be rebuilt. But
6 there are models in California, in Atlanta,
7 and in the entire industry that this is a
8 working, profitable industry if it is run
9 well.

10 Q. With risks?

11 A. There's risks in any business and
12 risks in any investments.

13 Q. And it's a competitive market.

14 A. And it is a competitive market, yes.

15 Q. And there's no 100 percent guarantee
16 that if the sale didn't go through, that you
17 could achieve a better result from the sale,
18 is there?

19 A. There's not a 100 percent guarantee,
20 but I think that the facts are --

21 Q. It's a yes or no answer, Mr. Imler.

22 A. It's not a yes or no answer. I think
23 the facts demonstrate that there is a high
24 preponderance that there could be two or
25 three or four times greater return.

1 Q. Those are your facts?

2 A. Well, we asked you to provide any
3 input, different variable. We tried to be
4 responsive to any suggestion you had about
5 changing the assumption. I've made accounts
6 for every item that you raised to me on
7 Friday, every one you have raised to me on
8 Monday. I tried to take those into account
9 and do those as fairly and rigorously as
10 possible. And even the worst case that you
11 gave me is a 4X return.

12 Now, I'm not promising a 4X return.
13 What I am saying is I feel the trustee was
14 derelict in not doing an analysis like that
15 and presenting it to the creditors to show
16 them that this can't be done. And everything
17 I've done and both of the industry partners
18 I've worked with have said this looks good.

19 And in every case we've tried to use
20 conservative assumptions. I didn't say a 5X
21 multiple. I said a 2X. Nobody uses a 2X.
22 It's two and a half -- okay -- as the very
23 floor. So I'm not trying to gold plate this.
24 I believe in underpromising and
25 overdelivering, and that's sort of the way we

1 built this.

2 We tried to build conservatives a
3 minute. And every time you raised an issue,
4 I tried to incorporate that.

5 Q. The spreadsheet wasn't provided until
6 Saturday night, correct?

7 A. We --

8 Q. This past Saturday night.

9 A. We gave you a copy of the spreadsheet
10 for the Friday meeting. You asked for a live
11 version. I pleaded with you to get me the
12 information so I could update it. You said
13 the information wouldn't be available until
14 Monday, so I didn't have the information to
15 update the spreadsheet. You wanted the live
16 old spreadsheet. We gave you that on
17 Saturday. On Saturday and -- let's see. We
18 had the Telecom. I didn't know the
19 information --

20 Q. It's a yes or no answer, Mr. Imler.

21 A. -- until Monday afternoon.

22 Q. Mr. Imler, these are yes or no
23 answers.

24 You didn't give us the live version
25 of the spreadsheet until late Saturday night,

1 did you?

2 A. Correct.

3 Q. When was the last time you were in
4 touch with Ms. Cladek?

5 A. When I was in the Mediterranean, I
6 e-mailed her and I said: Are you okay? And
7 she said: Yes, I am.

8 Q. When was that?

9 A. Maybe around the 4th of July.

10 Q. And how long were you in the
11 Mediterranean?

12 A. About three weeks. And then when I
13 got back, I called her and I said --

14 Q. That's all I asked you.

15 A. Okay.

16 MR. BROWN: Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Brown.

18 Any redirect examination?

19 MR. KANE: Very, very brief.

20 **REDIRECT EXAMINATION**

21 BY MR. KANE:

22 Q. I think Mr. Brown had pointed to the
23 fact that there are certain assumptions in
24 some of your analyses and spreadsheets.

25 The one thing -- I'd like to direct

1 your attention is to Tab 10, which is that
2 pivot table you talked about. That's in my
3 book, the white book.

4 A. Your book.

5 Q. Correct. Now, are there any
6 assumptions contained in that pivot table
7 that's marked as Tab 10?

8 A. Not that I'm aware of.

9 Q. In fact, they're based directly off
10 of the information provided by the trustee to
11 the committee, correct?

12 A. Right.

13 Q. And that shows the maturity if all
14 the notes are paid out at \$3.3 million,
15 correct?

16 A. Right.

17 MR. KANE: That's all I have, Your
18 Honor.

19 THE WITNESS: Of the performing assets.
20 Now, we've --

21 BY MR. KANE:

22 Q. I'm sorry. You're absolutely right.
23 It is getting late. Excuse me.

24 The payout on the performing
25 assets --

1 MR. BROWN: No.

2 THE WITNESS: Okay.

3 **FURTHER REDIRECT EXAMINATION**

4 BY MR. KANE:

5 Q. I'll ask you to explain it.

6 A. Okay.

7 MR. KANE: Do you want me to stop?

8 THE COURT: No. No. You can ask the
9 question.

10 MR. KANE: Okay.

11 THE COURT: This is an important
12 hearing.

13 MR. KANE: Thank you, Your Honor.

14 THE WITNESS: 3.3 pivot table, you
15 know, looking at just adding up all the
16 notes and saying the payment is in the
17 door, that gives you the 3.3 million.
18 Once we have the money in the door, then
19 we apply a repo rate and we reduce that
20 by a number of notes. We apply a
21 maturation factor and then we reduce
22 that. Okay.

23 And then we add in money the next
24 month from recapturing the money through
25 auction. And then we take out expenses,

1 and then I'm left with the bottom line
2 that I can reinvest.

3 BY MR. KANE:

4 Q. So Exhibit 10, the \$3.3 million is
5 just a simple payout on the notes before
6 application of expenses, correct?

7 A. Correct. Which we account for in our
8 spreadsheet.

9 MR. KANE: Thank you.

10 THE COURT: I think that covers all
11 of the questions here.

12 MR. BROWN: Yes, Your Honor.

13 THE COURT: Good.

14 Thank you very much. You may step
15 down.

16 (Witness excused.)

17 THE COURT: Just for planning
18 purposes, how many witnesses more do you
19 have?

20 MR. KANE: I'm hopefully only going
21 to have one, Your Honor. And it's going
22 to be relatively short, a lot shorter
23 than Mr. Imler.

24 THE COURT: Relatively short.

25 MR. KANE: I don't want to make a