

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE  
4 RICHARD BOEKEN, )  
5 PLAINTIFF, )  
6 )  
7 ) CASE NO. BC226593  
8 VS. )  
9 PHILIP MRRIS, )  
10 INCORPORATED, A )  
11 CORPORATION; INTERNATIONAL )  
12 HOUSE OF PANCAKES )  
13 INCORPORATED, A )  
14 CORPORATION. )  
15 )  
16 DEFENDANTS. )  
17 )  
18 )  
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28 )

13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
14 MONDAY, APRIL 23RD, 2001  
15 APPEARANCES:  
16 (FOR PLAINTIFF) LAW OFFICES OF  
MICHAEL J. PIUZE  
17 11755 WILSHIRE BLVD.  
SUITE 1170  
18 LOS ANGELES, CA 90025  
19 (FOR DEFENDANTS) ARNOLD & PORTER  
BY: MAURICE A. LEITER  
20 JOHN CARLTON  
777 S. FIGUEROA ST.  
21 44TH FLOOR  
LOS ANGELES, CA 90017  
22  
23 LISA C. RIDLEY  
24 OFFICIAL REPORTER  
600 S. COMMONWEALTH AVE.  
25 ROOM 308  
LOS ANGELES, CA 90005  
26 VOLUME 21 OF  
27 PAGES 3359 THROUGH 3439  
28

1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 23RD, 2001

2 1: 30 P. M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5 (THE FOLLOWING PROCEEDINGS

6 WERE HELD IN OPEN COURT IN

7 THE PRESENCE OF THE JURY.)

8

9 THE COURT: OUR JURY PANEL IS WITH US  
10 ALTHOUGH I UNDERSTAND THAT SEVERAL HAVE -- WELL,  
11 WHAT WE ARE GOING TO DO IS, YOU WILL BE OUT OF HERE  
12 BY 4:00 AND FOR THOSE OF YOU WHO AREN'T FEELING  
13 WELL, GO HOME AND HAVE SOME GOOD CHICKEN SOUP. MY  
14 MOTHER ALWAYS USED TO GIVE ME CHICKEN SOUP. YOU  
15 WILL BE FEELING BETTER.

16 OUR JURY PANEL IS WITH US.  
17 COUNSEL ARE PRESENT AS WELL.  
18 GOOD AFTERNOON, COUNSEL, IT'S GOOD  
19 TO SEE YOU.

20 OUR WITNESS IS ON THE WITNESS  
21 STAND.

22 MA'AM, YOU UNDERSTAND YOU ARE STILL  
23 UNDER OATH.

24 THE WITNESS: YES.

25 THE COURT: THANK YOU.

26 MR. PIUZE.

27 /// /// ///

28 /// /// ///

1 JUDY BOEKEN,  
2 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
3 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
4 AND TESTIFIED FURTHER AS FOLLOWS:

5

6 DIRECT EXAMINATION (RESUMED)

7

8 BY MR. PIUZE:

9 Q. YOU ARE COUGHING TOO. DID I MAKE  
10 YOU SICK TOO?

11 A. YES.

12 Q. I APOLOGIZE.  
13 IS YOUR HUSBAND IN THE BUILDING  
14 TODAY?

15 A. YES.

16 Q. DID YOU THINK IT BEST THAT HE NOT  
17 COME IN HERE TODAY?

18 A. YES.

19 Q. REASON, PLEASE.

20 A. WELL, WHEN WE LEFT THE OTHER DAY,  
21 HE STARTED TO CRY IN THE CAR AND HE SAID --

22 Q. EXCUSE ME FOR ONE SECOND.

23 DON'T TELL US WHAT HE SAID.

24 A. OH, WELL, I FELT THAT HE SHOULDN'T  
25 HEAR WHAT I SAY BECAUSE IT UPSET HIM THE OTHER DAY.

26 Q. OKAY. HERE'S WHERE WE WERE FRIDAY  
27 AFTERNOON AT 4 O' CLOCK.

28 IT HAD TO DO WITH THE FACT THAT

1 YOUR SON, YOUR YOUNGEST SON, HAS AN IDEA WHAT'S  
2 GOING ON.

3 A. YES.

4 Q. YOU MENTIONED SOMETHING ON FRIDAY  
5 ABOUT STEROIDS AND I THINK, NOT TRUSTING YOUR  
6 HUSBAND WITH YOUR YOUNGEST SON, WHAT DID YOU MEAN  
7 BY THAT?

8 A. I MEANT THAT THE STEROIDS MAKE HIM  
9 SICK AND BECAUSE HE DOESN'T FEEL WELL, HE IS MORE  
10 IRRITABLE AND LESS PATIENT AND HE WAS NEVER LIKE  
11 THAT WITH MY SON BEFORE. SO I LIKE TO BE AROUND.

12 Q. THE POINT I AM TRYING TO GET AT IS  
13 ARE YOU AFRAID OF PHYSICAL VIOLENCE?

14 A. NO.

15 Q. WHAT IS IT THEN?

16 A. JUST MAYBE OVER PROTECTIVE, BUT  
17 JUST NOT -- JUST WANTING TO BE THERE TO HANDLE ALL  
18 THE SITUATIONS WITH MY SON, FEEDING HIM OR -- AND  
19 HELPING HIM WITH HIS HOMEWORK OR TELLING HIM TO  
20 TAKE A SHOWER JUST BECAUSE THE STEROIDS MAKE MY  
21 HUSBAND MORE -- MAKE HIM SHORT-TEMPERED AND  
22 IMPATIENT WHERE HE WAS NOT LIKE THAT BEFORE.

23 Q. OKAY.

24 TAKE A LITTLE TIME, A COUPLE  
25 PARAGRAPHS' WORTH, AND TELL US -- DOESN'T MATTER TO  
26 ME WHETHER IT IS THE CANCER OR WHETHER IT'S THE  
27 DRUGS THAT YOUR HUSBAND IS TAKING FOR THE CANCER OR  
28 WHETHER IT'S THE STEROIDS, WHETHER IT'S ANY

1 COMBINATION, I DON'T CARE WHAT IT IS, BUT I'D LIKE  
2 YOU TO TELL THE JURY HOW ALL OF THIS HAS AFFECTED  
3 HIS, LET'S START OFF WITH MENTAL ABILITIES. IS HE  
4 AS SHARP AS HE WAS, IS HIS MEMORY AS GOOD AS IT  
5 WAS, STUFF LIKE THAT TOO?

6 A. HE'S VERY SICK. NEVER SEEN HIM  
7 THIS SICK. HE'S SICK FROM THE CANCER AND HE'S SICK  
8 FROM THE MODALITIES THAT THEY USE TO TREAT THE  
9 CANCER. HE CAN'T HANDLE SITUATIONS, PROBLEMS, AS  
10 HE USED TO.

11 I USED TO SAY, GIVE HIM A PROBLEM  
12 BECAUSE HE WAS THE TYPE THAT COULD PICK UP THE  
13 PHONE, YOU KNOW, HANDLE ANY SITUATION WITH NO -- NO  
14 PROBLEM AND NOW HE DOESN'T -- HE ISN'T ABLE TO  
15 HANDLE ANY SITUATIONS. HE'S VERY -- HE CAN'T  
16 FOCUS. HE CAN'T CONCENTRATE. HE'S VERY WEAK.  
17 HE'S VERY TIRED AND HE SLEEPS MOST OF THE DAY  
18 BECAUSE HE CAN'T SLEEP AT NIGHT BECAUSE, I THINK,  
19 BECAUSE HE'S AFRAID HE WILL DIE.

20 Q. HE'S AFRAID HE WON'T WAKE UP IF HE  
21 GOES TO SLEEP?

22 A. YES. WE TALKED ABOUT THAT.

23 Q. SO YOU ANSWERED THE QUESTION I  
24 WANTED AND YOU GOT INTO ONE OF THE NEXT ONES TOO,  
25 WHICH WAS GOING TO BE HOW HAS ALL OF THIS AFFECTED  
26 HIS PHYSICAL ABILITIES, AND WHY DON'T YOU TALK  
27 ABOUT THAT A LITTLE BIT.

28 A. A LOT. HE'S THE TYPE THAT IS ALSO,

1 HAS ALWAYS BEEN HANDY AROUND THE HOUSE. HE CAN FIX  
2 ANYTHING. NOW HE DOESN' T HAVE THE STRENGTH OR THE  
3 MOTIVATION AND THE STEROIDS MAKE -- HAVE MADE HIS  
4 SKIN VERY THIN. AND DOING THE SLIGHTEST TYPE OF  
5 PHYSICAL ACTIVITY MAKES HIM BRUISE AND BLEED. HE' S  
6 ALL MARKED UP.

7 Q. SO WHEN YOU SAY HIS SKIN IS THIN,  
8 HE' S THIN-SKINNED, YOU ARE TALKING LITERALLY,  
9 PHYSICALLY, HE' S THIN-SKINNED?

10 A. PHYSICALLY AND EMTIONALLY.

11 Q. BOTH?

12 A. YES.

13 Q. WHAT ABOUT HIS MEMORY, HAVE YOU  
14 SEEN CHANGES IN YOUR HUSBAND' S MEMORY SINCE HE  
15 STARTED TAKING ALL OF THE STUFF THAT HE IS TAKING?

16 A. DEFINITELY. I USED TO SAY THAT HE  
17 WAS MY MEMORY. NOW HE CAN' T REMEMBER ANYTHING.

18 SO, YES, HIS MEMORY HAS BEEN  
19 AFFECTED. I TELL HIM SOMETHING AND A LITTLE WHILE  
20 LATER HE DOESN' T REMEMBER THAT.

21 Q. ALL RIGHT. I AM SORRY TO  
22 INTERRUPT. GO AHEAD.

23 A. ALSO, HE CAN' T -- WELL, MAYBE I  
24 SAID THIS BEFORE, BUT HE CAN' T COPE WITH DAILY  
25 SITUATIONS WHICH USED TO NOT EVEN BE A BIG DEAL TO  
26 HIM BEFORE.

27 Q. WHEN YOU SAY THAT YOUR HUSBAND  
28 SLEEPS MOST OF THE DAY, I GUESS MOST OF THE DAY

1 WOULD BE IF HE SLEPT 12 HOURS AND ONE MINUTE OUT OF  
2 THE DAY, THAT WOULD BE MOST OF THE DAY. WHAT DO  
3 YOU HAVE IN MIND WHEN YOU SAY HE SLEEPS MOST OF THE  
4 DAY?

5 A. THE WHOLE TIME -- WHEN WE ARE NOT  
6 COMING HERE, PRACTICALLY THE WHOLE TIME MY SON IS  
7 AT SCHOOL, SO FROM 8:00 TO 3:00 OR 4:00.

8 Q. HOW LONG AGO WAS IT THAT YOUR  
9 HUSBAND WAS DIAGNOSED WITH LUNG CANCER?

10 A. IN OCTOBER OF 2000.

11 Q. HOW ABOUT OCTOBER '99?

12 A. OCTOBER '99. YEAH, IT'S BEEN A  
13 YEAR AND A HALF THAT WE HAVE BEEN GOING THROUGH  
14 THIS.

15 Q. WHEN WAS HE DIAGNOSED WITH BRAIN  
16 CANCER?

17 A. IN THE SUMMER, AROUND AUGUST.

18 Q. IS THAT BRAIN OR BACK?

19 A. FIRST THE SPINE AND THEN BRAIN.

20 Q. WHEN THE SPINE?

21 A. AUGUST, SEPTEMBER.

22 Q. WHEN THE BRAIN?

23 A. VERY SHORTLY AFTER THE SPINE, LESS  
24 THAN A MONTH LATER.

25 Q. AFTER YOUR HUSBAND WAS DIAGNOSED  
26 WITH LUNG CANCER BUT BEFORE IT SPREAD TO HIS SPINE  
27 AND BEFORE IT SPREAD TO HIS BRAIN, TO YOUR EYES,  
28 DID HE PUT ON AT LEAST A BRAVE FRONT?

1           A.     A HUNDRED PERCENT.  HE WAS SO  
2 STRONG, "I AM GOING TO BEAT THIS, I AM GOING TO  
3 BEAT THIS."  AND ALL HIS OUTLOOK TOWARDS THE FUTURE  
4 WAS FOR LIFE.

5           Q.     IS HE STILL PUTTING ON A BRAVE  
6 FRONT?

7           A.     NO, NO.

8           Q.     WHEN YOUR HUSBAND FIRST GOT  
9 DIAGNOSED WITH LUNG CANCER, SOMETIME AROUND WHEN HE  
10 HAD HIS OPERATION IN HIS LUNG, DID HE STOP SMOKING?

11          A.     YES, HE DID STOP SMOKING.

12          Q.     WHEN DID HE START AGAIN?

13          A.     HE STARTED TO TAKE PUFFS WHEN HE  
14 FOUND OUT ABOUT HIS SPINE AND THEN STARTED TO SMOKE  
15 AGAIN WHEN HE FOUND OUT ABOUT HIS BRAIN, BECAUSE OF  
16 BEING SO SCARED AND THEN HE DIDN'T ACT BRAVE ANY  
17 MORE, HE ACTED DEFEATED.

18                     IT WAS LIKE, WELL, I DID EVERYTHING  
19 AND NOT EXPECTING IT TO BE -- EXPECTING IT TO BE  
20 OVER, NOT -- HE CRACKED COMPLETELY AND WHEN HE WAS  
21 ON THE COUCH DURING THE DAY, AND I AM WITH HIM, AND  
22 I AM WONDERING IF HE IS DYING, RIGHT THEN, RIGHT  
23 THEN.  AND I DON'T KNOW IF HE, YOU KNOW, IS HE  
24 DYING RIGHT NOW

25          Q.     OKAY.  I THINK I AM DONE.

26                     THANKS.

27                     THE COURT:  FROM THE DEFENSE.

28                     MR. LEITER:  THANK YOU, YOUR HONOR.

1 CROSS-EXAMINATION

2

3 BY MR. LEITER:

4 Q. GOOD AFTERNOON, LADIES AND  
5 GENTLEMEN.

6 GOOD AFTERNOON, MRS. BROKEN.

7 A. GOOD AFTERNOON.

8 Q. I JUST HAVE A FEW QUESTIONS FOR  
9 YOU.

10 YOU HAVE THREE CHILDREN?

11 A. YES.

12 Q. AND WHEN WAS DAVID BORN?

13 A. 1970.

14 Q. AND WHEN WAS DAMIEN BORN?

15 A. 1974.

16 Q. AND WHEN WAS DYLAN BORN?

17 A. 1991.

18 Q. NOW, DID YOU STOP SMOKING WHEN YOU  
19 WERE PREGNANT EACH TIME?

20 A. YES.

21 Q. AND YOU DIDN'T SMOKE THE WHOLE TIME  
22 YOU WERE PREGNANT?

23 A. I WOULD IN THE BEGINNING, I WOULD  
24 TRY TO SMOKE AND FOUND, BECAUSE I COULDN'T STOP,  
25 HAD FOUND THAT IT MADE ME NAUSEOUS AND DIZZY AND  
26 SICK SO I DIDN'T SMOKE.

27 Q. SO WHEN YOU WERE PREGNANT WITH  
28 DAVID AND DAMIEN, AND THAT'S LATE 1960'S, EARLY

1 1970' S, YOU STOPPED SMOKING BECAUSE IT WAS MAKING  
2 YOU FEEL ILL; RIGHT?

3 A. YES.

4 Q. AND YOU STOPPED SMOKING UNTIL THE  
5 PREGNANCY, UNTIL THE BABIES WERE BORN; RIGHT?

6 A. YES.

7 Q. AND THEN YOU STARTED SMOKING AGAIN;  
8 IS THAT RIGHT?

9 A. YES.

10 Q. NOW, WHEN YOU WERE PREGNANT WITH  
11 DYLAN, ABOUT 1990?

12 A. YES, AND THEN HE WAS BORN IN  
13 OCTOBER OF '91.

14 Q. OKAY. YOU STOPPED SMOKING WHEN YOU  
15 WERE PREGNANT WITH DYLAN TOO; RIGHT?

16 A. AGAIN, I DID SMOKE AT FIRST BUT  
17 FELT ILL FROM IT SO I THINK I STOPPED.

18 Q. BUT BY THE TIME YOU WERE PREGNANT  
19 WITH DYLAN, YOU ALSO KNEW THAT SMOKING WOULD BE  
20 UNHEALTHY FOR THE BABY; RIGHT?

21 A. YES.

22 Q. AND YOU STOPPED SMOKING THAT TIME  
23 BECAUSE YOU KNEW THAT SMOKING WOULD BE UNHEALTHY  
24 FOR THE BABY; RIGHT?

25 A. I WANTED TO NOT SMOKE. I WANTED TO  
26 BE PERFECT. BUT IT WAS, I FOUND IT VERY DIFFICULT  
27 TO STOP.

28 Q. BUT YOU DID STOP?

1           A.     FEELING ILL, YOU KNOW, THEN I DID  
2 STOP.

3           Q.     AND YOU KNEW THAT SMOKING WAS  
4 UNHEALTHY FOR THE BABY YOU WERE CARRYING; RIGHT?

5           A.     I DIDN'T A HUNDRED PERCENT BELIEVE  
6 THAT BECAUSE I HAD HEARD THAT, FOR INSTANCE,  
7 SMOKING DURING PREGNANCY CAUSED LOW BIRTH RATES BUT  
8 I HAD HAD -- I HAD MY SON HADN'T -- HAD BEEN OVER  
9 SEVEN POUNDS AND OVER EIGHT POUNDS, SO I WASN'T --  
10 I WAS A SMOKER. SO I DIDN'T WANT TO, YOU KNOW, SO  
11 I LOOKED FOR REASONS TO NOT BELIEVE WHAT THEY SAID.

12          Q.     WHEN YOU WERE PREGNANT WITH DYLAN,  
13 YOU KNEW THAT SMOKING WHILE YOU WERE PREGNANT WOULD  
14 BE UNHEALTHY FOR THE BABY; RIGHT?

15          A.     YEAH.

16          Q.     AND YOU KNEW THAT IT COULD LEAD YOU  
17 TO LOWER BIRTH RATE; RIGHT?

18          A.     NO. I HAD HEARD THAT BUT I  
19 DIDN'T -- I WASN'T CONVINCED OF IT BECAUSE I HADN'T  
20 HAD LOW BIRTH RATE BABIES.

21          Q.     AND YOU HAD HEARD THAT FROM THE  
22 NEWS; RIGHT?

23          A.     YES.

24          Q.     BUT IN 1990, WHEN YOU WERE  
25 PREGNANT, OR '91, YOU WEREN'T SURE YOU BELIEVED IT;  
26 RIGHT?

27          A.     BECAUSE I WASN'T A SMOKER, I  
28 DIDN'T -- AND I HAD HAD HEALTHY WEIGHT BABIES, AND

1 BECAUSE I WAS A SMOKER, I DIDN' T WANT TO -- WANT TO  
2 BELIEVE THAT WAS TRUE.

3 Q. MY QUESTION WAS SIMPLY, DID YOU  
4 BELIEVE IT OR DIDN' T YOU BELIEVE IT OR YOU  
5 DIFFERENT KNOW?

6 A. I DIDN' T KNOW

7 Q. DID YOU EVER DISCUSS WITH  
8 MR. BOEKEN WHEN YOU WERE PREGNANT WITH DYLAN THAT  
9 SMOKING COULD BE BAD FOR THE BABY?

10 A. NO.

11 Q. NEVER CAME UP?

12 A. NO.

13 Q. NOW, SINCE DYLAN WAS BORN AND THAT  
14 WAS 1991; IS THAT RIGHT?

15 A. YES.

16 Q. YOU HAVE HAD A RULE IN YOUR HOUSE  
17 THAT PEOPLE CAN' T SMOKE AROUND DYLAN, ISN' T THAT  
18 RIGHT?

19 A. YES.

20 Q. AND WHY DID YOU MAKE THAT RULE?

21 A. I HAD HEARD, AGAIN, ON THE NEWS,  
22 THAT IT WOULD BE UNHEALTHY FOR HIM

23 Q. DID YOU BELIEVE THAT IT WOULD BE  
24 UNHEALTHY FOR HIM?

25 A. I WASN' T SURE BUT I DIDN' T WANT TO  
26 TAKE ANY CHANCES.

27 Q. SO EVEN THOUGH YOU WEREN' T SURE,  
28 YOU THOUGHT IT WAS THE PRUDENT THING TO DO; RIGHT?

1 A. PRUDENT OR PRUDE?

2 Q. PRUDENT, THE WISE THING TO DO?

3 A. YES. I THOUGHT THAT IT WAS, BY  
4 NOW, I THOUGHT THAT, BY THAT TIME, I THOUGHT THAT  
5 IT WAS GROSS TO BE, SMOKE IN THE AIR AROUND A BABY.

6 Q. DID YOU DISCUSS THAT RULE WITH  
7 MR. BOEKEN?

8 A. WE AGREED, YES. WE AGREED WE WOULD  
9 NOT SMOKE RIGHT ON TOP OF HIM OR IN THE SAME ROOM  
10 GO IN A DIFFERENT ROOM

11 YES, WE DISCUSSED IT BECAUSE, FOR  
12 INSTANCE, THE SISTER SMOKED AND, A LOT, AND IT WAS  
13 THE TYPE OF PERSON WHO WOULDN'T CARE ABOUT BEING  
14 CONSIDERATE UNLESS YOU STAYED ON HER CASE AND SO  
15 MAINLY HAD TO DISCUSS IT WHEN SHE WAS GOING TO BE  
16 AROUND.

17 Q. DID YOU DISCUSS WITH MR. BOEKEN WHY  
18 IT WOULD BE A GOOD IDEA TO HAVE THAT RULE OF NO  
19 SMOKING AROUND DYLAN?

20 A. DID I DISCUSS IT WITH HIM? I  
21 THINK -- I DON'T THINK IT WAS LIKE A BIG  
22 DISCUSSION. IT WAS JUST THAT I DIDN'T WANT LOTS OF  
23 SMOKE AROUND DAVID. HIS MOTHER ALSO SMOKED A LOT.  
24 AND SO IT JUST WASN'T A BIG DISCUSSION, I JUST SAID  
25 IT.

26 Q. DID MR. BOEKEN FOLLOW THE RULE?

27 A. HE DID THEN.

28 Q. NOW, YOU HAVE BEEN A SMOKER SINCE

- 1 YOU WERE 17 OR 18 YEARS OLD; IS THAT RIGHT?
- 2 A. YES.
- 3 Q. YOU STARTED WHEN YOU WERE ABOUT 17
- 4 OR 18?
- 5 A. YES.
- 6 Q. AND YOU MET MR. BOEKEN IN WHAT
- 7 YEAR?
- 8 A. 1977. NO, I MEAN -- NO. WAIT.
- 9 YEAH, 1977.
- 10 Q. 1977. AND I KNOW YOU TALKED ABOUT
- 11 THAT A LITTLE BIT IN YOUR TESTIMONY HERE. IN 1977
- 12 WHEN YOU MET MR. BOEKEN, YOU WERE A SMOKER; RIGHT?
- 13 A. YES.
- 14 Q. AND MR. BOEKEN WAS A SMOKER; RIGHT?
- 15 A. YES.
- 16 Q. NOW, SINCE YOU AND MR. BOEKEN HAVE
- 17 BEEN TOGETHER, HE TRIED, FROM TIME TO TIME, TO QUIT
- 18 SMOKING; IS THAT RIGHT?
- 19 A. YES.
- 20 Q. AND YOU TRIED, FROM TIME TO TIME,
- 21 TO QUIT SMOKING, IS THAT RIGHT?
- 22 A. YES.
- 23 Q. AND A COUPLE OF TIMES, I THINK YOU
- 24 MENTIONED THIS DURING YOUR DIRECT EXAMINATION, YOU
- 25 AND MR. BOEKEN WENT TOGETHER TO SMOKERS' ANONYMOUS
- 26 MEETINGS; RIGHT?
- 27 A. YES.
- 28 Q. WELL, FROM THE BEGINNING OF YOUR

1 MARRIAGE TO THE TIME OF MR. BOEKEN' S DIAGNOSIS WITH  
2 LUNG CANCER, DO YOU HAVE THAT TIME PERIOD IN MIND?

3 A. YES.

4 Q. BEGINNING -- YOU GOT MARRIED ABOUT  
5 1981?

6 A. YES.

7 Q. LET' S SAY, 1999, DID YOU AND  
8 MR. BOEKEN EVER TALK ABOUT THE HEALTH RISKS OF  
9 SMOKING?

10 A. NO.

11 Q. NOT ONCE?

12 A. NO. WE WERE JUST LIKE BOTH DIEHARD  
13 SMOKERS AND THE ATTEMPTS HE MADE WERE BECAUSE HE  
14 HAD -- HE MADE MANY ATTEMPTS BECAUSE HE HAD  
15 BRONCHITIS.

16 Q. AND THE SUBJECT OF WHETHER SMOKING  
17 COULD CAUSE DISEASE OR SHORTENS ONE' S LIFE JUST  
18 NEVER CAME UP?

19 A. NO.

20 Q. I WANT YOU TO KEEP THAT SAME TIME  
21 PERIOD IN MIND FROM THE TIME YOU WERE MARRIED,  
22 1981, TO MR. BOEKEN' S DIAGNOSIS IN 1999, DID YOU  
23 AND MR. BOEKEN EVER TALK ABOUT WHETHER SMOKING IS  
24 ADDICTIVE?

25 A. I PROBABLY SAID SOMETHING TO HIM  
26 WHEN DAMIEN, MY MIDDLE SON, WAS IN JUNIOR HIGH AND  
27 PROBABLY TAKING HEALTH CLASS AND THEY STARTED TO  
28 TEACH THAT CIGARETTES WERE -- THEY CLUMPED

1 CIGARETTES WITH ALCOHOL AND DRUGS, AND BEING A  
2 SMOKER. BUT MY CHILDREN, KNOWING I WAS CLEAN AND  
3 SOBER AND IN A. A. , AND NOT YET BELIEVING CIGARETTES  
4 WERE A DRUG, I WAS ANGRY THAT THEY SAID CIGARETTES  
5 WERE A DRUG BECAUSE I DIDN'T WANT MY CHILDREN TO  
6 THINK I USED A DRUG.

7 AND I REMEMBER SAYING, YOU KNOW,  
8 BEING ANGRY ABOUT THAT AND SAYING SOMETHING TO MY  
9 HUSBAND BUT, ACTUALLY, YOU KNOW, IT WAS NOT A  
10 DISCUSSION, JUST MY SAYING MY OPINION.

11 Q. AND IS THAT THE SAME INCIDENT THAT  
12 YOU TALKED ABOUT ON FRIDAY WHERE YOU AND YOUR  
13 HUSBAND GOT KIND OF ANGRY WITH DAMIEN?

14 A. IT WAS -- I GOT MAD AT HIM FOR  
15 CRUSHING MY PACKS OF CIGARETTES.

16 Q. BUT IT'S THE SAME INCIDENT THAT WE  
17 ARE TALKING ABOUT; RIGHT?

18 A. SAME TIME PERIOD, YEAH.

19 Q. OTHER THAN THAT INCIDENT, AT ANY  
20 TIME FROM 1981 WHEN YOU GOT MARRIED TO 1999 WHEN  
21 MR. BOEKEN WAS DIAGNOSED, DID YOU AND MR. BOEKEN  
22 TALK ABOUT WHETHER CIGARETTE SMOKING WAS ADDICTIVE?

23 A. NO.

24 Q. AND AGAIN, I WANT TO HAVE MY  
25 QUESTIONS APPLY TO THAT WHOLE TIME PERIOD, DID YOU  
26 EVER TALK ABOUT THE HEALTH WARNINGS THAT APPEAR ON  
27 THE CIGARETTE PACKS?

28 A. NO.

1 Q. DID YOU EVER TALK ABOUT THE HEALTH  
2 WARNINGS THAT APPEAR ON CIGARETTE ADVERTISEMENTS?

3 A. NO.

4 Q. DID YOU EVER TALK ABOUT  
5 ANTI-SMOKING MESSAGES THAT WERE ON BILLBOARDS OR  
6 TELEVISION OR WHEREVER?

7 A. ONLY IF, AGAIN, WAS SAYING THAT IT  
8 WAS MAKING ME ANGRY THAT THEY WOULD CLASSIFY  
9 CIGARETTES WITH DRUGS AND ALCOHOL BECAUSE I DIDN'T  
10 WANT TO CONSIDER MYSELF USING A DRUG SINCE I  
11 CONSIDER MYSELF CLEAN AND SOBER.

12 Q. OTHER THAN THAT, WHAT YOU HAVE TOLD  
13 US ABOUT, AT ANY OTHER TIME, DID YOU TALK WITH  
14 MR. BOEKEN ABOUT ANTI-SMOKING MESSAGES THAT YOU  
15 MIGHT HAVE SEEN IN MAGAZINES OR ON TELEVISION OR ON  
16 BILLBOARDS?

17 NEVER CAME UP?

18 A. NO.

19 MR. LEITER: I DON'T HAVE ANY OTHER  
20 QUESTIONS. THANK YOU.

21 THE COURT: COUNSEL?

22

23 REDIRECT EXAMINATION

24

25 BY MR. PIUZE:

26 Q. JUST A COUPLE FROM ME.

27 WERE THERE A COUPLE OF TIMES DURING  
28 YOUR MARRIAGE THAT HAD ABSOLUTELY NOTHING AT ALL TO

1 DO WITH PREGNANCY WHEN YOU, PERSONALLY, QUIT  
2 SMOKING?

3 A. YES.

4 Q. FOR HOW LONG?

5 A. I STOPPED TWICE FOR A WHOLE YEAR.  
6 TWO DIFFERENT OCCASIONS, FOR A WHOLE YEAR.

7 Q. THIS HAD NOTHING AT ALL TO DO WITH  
8 PREGNANCY?

9 A. NO.

10 Q. HAD NOTHING AT ALL TO DO WITH  
11 FEELING NAUSEOUS WHEN YOU SMOKED A CIGARETTE?

12 A. NO.

13 Q. WHY?

14 WHY TWICE DID YOU STOP?

15 A. BY THIS TIME, IT HAD REACHED -- THE  
16 HEALTH MESSAGES HAD INFILTRATED ALCOHOLICS  
17 ANONYMOUS AND A BIG HEALTH WAVE KICK, AND SO IT WAS  
18 SORT OF GETTING ON THE BAND WAGON WITH THAT.

19 Q. OKAY. WELL, IF YOU, TWICE, STOPPED  
20 SMOKING FOR AN ENTIRE YEAR, AND THIS HAD NOTHING TO  
21 DO WITH PREGNANCY, WHY IN THE WORLD DID YOU RESUME?

22 A. THE FIRST TIME I JUST BECAME SO  
23 EXTREMELY ANXIOUS THAT I WENT TO MY CIGARETTES. IT  
24 WOULD BE EXACTLY LIKE AN ALCOHOLIC WHO, ON THEIR  
25 OWN, WAS ON THE WAGON AND THEN, YOU KNOW, GOT UPSET  
26 OVER SOMETHING AND RAN TO THE LIQUOR STORE FOR A  
27 BOTTLE. THAT'S EXACTLY WHAT I DID.

28 Q. SECOND TIME?

1           A.     SECOND TIME THAT I STOPPED MY  
2 HUSBAND WAS STILL SMOKING AND THERE WERE CIGARETTES  
3 AROUND THE HOUSE AND THEY WERE JUST LYING THERE ON  
4 THE TABLE AND I WAS UPSET ABOUT SOMETHING AND TOOK  
5 A CIGARETTE.

6           Q.     IN ONE OF THOSE TWO ANSWERS YOU  
7 USED THE WORD "ANXIOUS." THE WAY YOU USED THAT  
8 WORD, WHAT DO YOU MEAN?

9           A.     EXTREMELY AGITATED, EXTREMELY  
10 EMOITIONAL.

11          Q.     IS THAT THE END OF YOUR ANSWER?

12          A.     CRAVING SOMETHING TO CALM DOWN.

13          Q.     CIGARETTES CALM YOU DOWN?

14          A.     UH-HUH.

15          Q.     MADE YOU LESS EMOITIONAL?

16          A.     THEY USED TO MAKE ME LESS ANXIOUS.

17          Q.     SO I THINK THIS IS THE END OF THE  
18 LINE WITH MY QUESTIONING RIGHT HERE. WITH ALL OF  
19 THE A. A. MEETINGS YOU HAVE GONE TO, STARTING WAY  
20 BACK WHEN, I GUESS YOU HAVE SEEN PEOPLE -- LET ME  
21 INTERRUPT MYSELF.

22                   WHAT'S ON THE WAGON AND WHAT'S OFF  
23 THE WAGON, WHICH IS WHICH?

24                   WHEN YOU ARE DRINKING WHAT ARE YOU,  
25 ON THE WAGON OR OFF THE WAGON?

26          A.     YOU ARE ON THE WAGON WHEN YOU ARE  
27 NOT DRINKING, THEN YOU FALL OFF THE WAGON AND  
28 DRINK.

1 Q. FINE. SO WITH ALL OF THE A. A.  
2 MEETINGS YOU HAVE BEEN TO, I GUESS SOME PEOPLE HAVE  
3 TO STAND UP THERE AND SAY THEY HAVE FALLEN OFF THE  
4 WAGON?

5 A. OH, YEAH. PEOPLE HAVE DIED.

6 Q. AND YOU HAVE HEARD THAT MANY TIMES?

7 A. OH, YES.

8 Q. AND WHEN YOU ARE TELLING THE JURY  
9 ABOUT QUITTING SMOKING FOR A YEAR AND ANALOGIZING  
10 IT TO ALCOHOL AND AN ALCOHOLIC GOING INTO A LIQUOR  
11 STORE TO BUY A BOTTLE, YOU ARE SAYING HE FELL OFF  
12 THE TOBACCO WAGON?

13 MR. LEITER: OBJECTION, ARGUMENTATIVE AND  
14 LEADING.

15 THE COURT: SUSTAINED.

16 I THINK THE JURY UNDERSTANDS.

17 MR. PIUZE: I WILL WITHDRAW THE QUESTION.

18 Q BY MR. PIUZE: I DO LITERALLY MEAN  
19 THAT AFTER A YEAR, WHEN YOU WALK INTO A STORE TO  
20 BUY A PACK OF CIGARETTES, YOU SAW YOURSELF AS SOME  
21 ALCOHOLIC WHO FELL OFF THE WAGON TO GO GET A  
22 BOTTLE?

23 MR. LEITER: SAME OBJECTION.

24 THE COURT: OVERRULED.

25 THE WITNESS: YES. I DESPISED GOING INTO  
26 LIQUOR STORES FOR CIGARETTES.

27 MR. PIUZE: I AM DONE, THANK YOU.

28 THE COURT: MR. LEITER.

1                   MR. LEITER: THANK YOU, YOUR HONOR. JUST  
2 A COUPLE QUESTIONS, MRS. BROKEN.

3

4                   REXCROSS-EXAMINATION

5

6 BY MR. LEITER:

7                   Q. YOU WERE JUST ASKED BY YOUR  
8 HUSBAND'S LAWYER ABOUT A COUPLE OF OCCASIONS WHEN  
9 YOU QUIT SMOKING FOR A YEAR AT A TIME.

10                   SEPARATE AND APART FROM WHEN YOU  
11 QUIT SMOKING WHEN YOU WERE PREGNANT; RIGHT?

12                   A. YES.

13                   Q. ABOUT WHEN IN TIME DID THOSE TWO  
14 QUILTS TAKE PLACE?

15                   A. DURING MY SOBRIETY, BETWEEN -- ONE  
16 WAS -- THEY WERE BOTH IN THE '80'S.

17                   Q. SO BOTH BEFORE DYLAN WAS BORN?

18                   A. YES.

19                   Q. BOTH IN THE '80'S, AND YOU SAID  
20 THAT AT THAT POINT, AND CORRECT ME IF I WROTE THIS  
21 DOWN INCORRECTLY, HEALTH MESSAGES ABOUT SMOKING HAD  
22 INFILTRATED ALCOHOLICS ANONYMOUS; RIGHT?

23                   A. YES.

24                   Q. DID YOU EVER DISCUSS WITH YOUR  
25 HUSBAND WHAT YOU LEARNED AT ALCOHOLICS' ANONYMOUS  
26 ABOUT THE HEALTH RISKS OF SMOKING?

27                   A. THERE'S A LOT OF WAYS MY HUSBAND  
28 AND I ARE DIFFERENT. I WAS A PSYCH MAJOR AND HE

1 THINKS IT IS PSYCHO BABBLE. AND WHEN I WENT TO  
2 A. A. AND THEY SAID YOU CAN'T TAKE ANY MEDICINE WITH  
3 ALCOHOL IN IT, AND I WENT THE WHOLISTIC ROUTE, HE  
4 DIDN'T -- HE WASN'T OPEN TO ALTERNATIVE REMEDIES  
5 FOR ANYTHING.

6 Q. I GUESS MY QUESTION WAS, DID YOU  
7 DISCUSS WITH YOUR HUSBAND WHAT YOU HAD LEARNED AT  
8 ALCOHOLICS' ANONYMUS ABOUT THE HEALTH RISKS OF  
9 SMOKING?

10 A. NO, BECAUSE HE WAS NOT OPEN TO  
11 HEARING IT.

12 Q. HOW LONG HAS YOUR HUSBAND BEEN IN  
13 ALCOHOLICS' ANONYMUS?

14 A. 24 AND A HALF YEARS.

15 MR. LEITER: NOTHING FURTHER.

16 MR. PIUZE: AND THAT JUST PROMPTS ME FOR  
17 ONE LAST SUBJECT HERE.

18

19 FURTHER REDIRECT EXAMINATION

20

21 BY MR. PIUZE:

22 Q. WAS THERE A TIME AT ALCOHOLICS'  
23 ANONYMUS WHERE THE TIME PERIOD, WHERE NOT ONLY DID  
24 TOBACCO GET TALKED ABOUT NEGATIVELY, BUT SO DID  
25 MANY OTHER SUBSTANCES HAVING TO DO WITH PURITY?

26 A. YES.

27 Q. TELL THE JURY.

28 A. SUGAR -- SUGAR, COFFEE, RED MEAT,

1 THE ENTIRE HEALTH CRAZE.

2 Q. SO FOR A PERIOD OF TIME, AT LEAST  
3 AT THE MEETINGS YOU WERE ATTENDING, PEOPLE AT THE  
4 MEETINGS WERE INTO SOME SORT OF A PURE HEALTH KIND  
5 OF LIFE?

6 A. YES. ALL OF A SUDDEN SOMEONE HAD  
7 LONG-TERM SOBRIETY BUT WHO WAS OVER-WEIGHT WOULD BE  
8 CRITICIZED BECAUSE, YOU KNOW, MAYBE THEY ARE EATING  
9 OR SOMETHING, FEELING.

10 Q. WAS IT AT THAT TIME THAT TOBACCO  
11 WAS DOWN?

12 A. YES.

13 Q. TALKED DOWN ONTO?

14 A. YES.

15 Q. OKAY, THANK YOU AGAIN.

16 A. OKAY.

17 MR. LEITER: NOTHING FURTHER, YOUR HONOR.

18 THE COURT: MA'AM YOU MAY STEP DOWN.

19 THE WITNESS IS EXCUSED.

20

21

22 PETER FORMUZIS, PH. D. ,

23 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN

24 AND TESTIFIED AS FOLLOWS:

25 THE CLERK: YOU DO SOLEMNLY STATE THE  
26 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING  
27 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE  
28 TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

1 THE WITNESS: I DO.

2 THE CLERK: HAVE A SEAT, SIR.

3 SIR, IF YOU COULD STATE YOUR FIRST  
4 AND LAST NAME AND SPELL THEM FOR US, PLEASE.

5 THE WITNESS: MY NAME IS PETER FORMUZIS,  
6 P-E-T-E-R F-O-R-M-U-Z-I-S.

7

8 DIRECT EXAMINATION

9

10 BY MR. PIUZE:

11 Q. HI.

12 A. HELLO.

13 Q. THE JURY HAS HEARD FROM A WHOLE  
14 BUNCH OF DOCTORS IN HERE, MOST OF WHOM ARE MEDICAL  
15 DOCTORS, SOME OF WHOM WERE PH. D. 'S. WHERE DO YOU  
16 FALL?

17 A. A PH. D.

18 Q. IN WHAT?

19 A. ECONOMICS.

20 Q. OKAY. IT'S MONDAY AFTERNOON, THAT  
21 SOUNDS LIKE AN EXCITING TOPIC TO START WITH.

22 WHAT'S ECONOMICS?

23 A. WELL, ECONOMICS IS THE STUDY OF WHY  
24 ECONOMIC LIFE WORKS OUT THE WAY IT DOES. SO  
25 ECONOMISTS STUDY ALL THE THINGS THAT ALL OF US  
26 EXPERIENCE EVERY DAY, THE INFLATION, THE CHANGE IN  
27 OUR PRICES, OUR WAGES, THE EMPLOYMENT, THE INTEREST  
28 RATES IN THE ECONOMY. ECONOMISTS STUDY THESE

1 THINGS AND TRY TO FIGURE OUT WHY THESE THINGS OCCUR  
2 AND THAT'S BASICALLY THE STUDY OF ECONOMICS, THE  
3 STUDY OF OUR ECONOMIC LIFE.

4 Q. HOW LONG HAVE YOU BEEN AN  
5 ECONOMIST?

6 A. I GOT MY PH.D. IN 1969 AND I HAVE  
7 BEEN ACTIVELY EMPLOYED IN THE FIELD SINCE.

8 Q. TELL THE JURY YOUR EDUCATIONAL  
9 BACKGROUND THAT ALLOWS YOU TO BECOME AN ECONOMIST,  
10 PLEASE.

11 A. I HAVE A B.A. DEGREE IN ECONOMICS  
12 FROM WASHINGTON STATE UNIVERSITY. I RECEIVED THAT  
13 DEGREE IN 1963. I HAVE A PH.D. IN ECONOMICS FROM  
14 MICHIGAN STATE UNIVERSITY. I RECEIVED THAT DEGREE  
15 IN 1969.

16 THOSE WERE MY EDUCATIONAL DEGREES  
17 AND SINCE THEN I HAVE WORKED FULL TIME 25 YEARS AS  
18 A PROFESSOR OF ECONOMICS AND FOR SEVERAL YEARS I  
19 HAVE WORKED WITH THE FEDERAL RESERVE SYSTEM AND THE  
20 FEDERAL RESERVE BOARD IN WASHINGTON D. C.

21 Q. LET'S TALK ABOUT YOUR TEACHING  
22 EXPERIENCE FIRST AND THEN WE WILL GO BACK TO THE  
23 FEDERAL RESERVE.

24 TELL THE JURY ABOUT THE TEACHING  
25 EXPERIENCE.

26 A. I TAUGHT, MY FIRST POSITION WAS AT  
27 THE UNIVERSITY OF MONTANA. I TAUGHT THERE NINE  
28 YEARS, BOTH GRADUATE AND UNDERGRADUATE CLASSES IN

1 ECONOMICS.

2 AND IN 1976, AFTER NINE YEARS AT  
3 THAT UNIVERSITY, I CAME HERE TO SOUTHERN CALIFORNIA  
4 AND I BECAME A MEMBER OF THE DEPARTMENT OF  
5 ECONOMICS AT CAL STATE FULLERTON AS PROFESSOR OF  
6 ECONOMICS AND DIRECTOR OF THE GRADUATE PROGRAM IN  
7 ECONOMICS, AND I ACTIVELY TAUGHT FULL TIME AND  
8 DIRECTED MASTERS THESES AND SO FORTH FOR A PERIOD  
9 OF 16 YEARS AT THAT UNIVERSITY.

10 Q. STILL CONNECTED WITH CAL STATE  
11 FULLERTON?

12 A. I DIDN'T HEAR.

13 Q. STILL CONNECTED WITH THEM?

14 A. YES, I AM A PROFESSOR OF ECONOMICS  
15 EMERITUS, WHICH MEANS I REMAIN A MEMBER OF THE  
16 FACULTY, BUT I AM NOT ACTIVELY TEACHING.

17 Q. HOW LONG HAS IT BEEN SINCE YOU  
18 ACTIVELY TAUGHT ECONOMICS AT CAL STATE?

19 A. FULL TIME IN 1991, I DID TEACH FOR  
20 ONE SEMESTER IN 1993 AFTER I BECAME PROFESSOR  
21 EMERITUS.

22 Q. SO IT'S BEEN TEN YEARS?

23 A. ROUGHLY.

24 Q. WHAT HAVE YOU BEEN DOING FOR THE  
25 LAST TEN YEARS?

26 A. I AM A PRINCIPLE AND PART OWNER OF  
27 AN ECONOMIC CONSULTING FIRM WE ARE LOCATED IN  
28 SANTA MONICA AND OUR ENTIRE LINE OF WORK IS THE

1 ESTIMATION AND MEASUREMENT OF ECONOMIC LOSSES IN  
2 CIVIL LITIGATION MATTERS. IT CAN BE LOST EARNINGS  
3 SITUATIONS. IT CAN BE LOSS OF GOODWILL OR PROFITS  
4 IN CORPORATE SITUATIONS.

5 AND THAT'S WHAT WE DO AT OUR FIRM

6 Q. SO IF YOU ARE INVOLVED WITH  
7 FORENSIC ECONOMICS AND CIVIL LITIGATION --

8 A. YES.

9 Q. -- I GUESS YOU HAVE BEEN UP ON A  
10 WITNESS STAND LIKE THAT A COUPLE TIMES?

11 A. MANY TIMES.

12 Q. ARE YOU COMFORTABLE?

13 A. YES, I AM

14 Q. NERVOUS?

15 A. NO, I AM NOT.

16 Q. WHAT DID YOU DO AT THE FEDERAL  
17 RESERVE BOARD?

18 A. THE TITLE OF MY POSITION WAS  
19 VISITING PROFESSOR OF ECONOMICS BECAUSE I WAS  
20 PULLED OUT OF MY UNIVERSITY AND I WENT BACK TO  
21 WASHINGTON WHERE I WAS A MEMBER OF THE DIVISION OF  
22 RESEARCH AND STATISTICS. AND AT THE DIVISION OF  
23 RESEARCH AND STATISTICS I WAS ASSIGNED TWO KINDS OF  
24 MAJOR RESEARCH TASKS. BUT OTHER THAN THAT, I  
25 SIMPLY PARTICIPATED AS AN ECONOMIST IN THE DIVISION  
26 OF RESEARCH AND STATISTICS AND ANALYZED DAY-TO-DAY  
27 ECONOMIC PROBLEMS, AND FROM TIME TO TIME APPEARED  
28 BEFORE THE FEDERAL RESERVE BOARD.

1 Q. GIVE US JUST A LITTLE BIT ON THE  
2 FEDERAL RESERVE BOARD, WHAT'S THAT, WHAT DO WE  
3 MEAN?

4 A. THEY ARE THE ONES THAT CONTROL OUR  
5 INTEREST RATES. THEY ARE THE ONES THAT MEET EVERY  
6 MONTH AND BASICALLY PUSH OUR HOME MORTGAGE RATES UP  
7 AND DOWN AND A VARIETY OF OTHER FACTORS.

8 IT'S THE ORGANIZATION IN WASHINGTON  
9 D. C. WHICH CONTROLS MONETARY POLICY. AND THAT'S  
10 ESSENTIALLY WHAT THE BOARD IS.

11 Q. SO LET'S TALK CIVIL LITIGATION.

12 I AM GOING TO WANT TO KNOW, AT THE  
13 END OF WHEN I AM ASKING YOU THE QUESTIONS, WHAT THE  
14 PRESENT CASH VALUE IS OF MR. BOEKEN'S LOSS OF  
15 EARNINGS IN THE FUTURE. OKAY?

16 A. YES.

17 Q. TELL THE JURY WHAT PRESENT CASH  
18 VALUE IS, PLEASE.

19 A. PRESENT CASH VALUE IS THE AMOUNT OF  
20 MONEY THAT SOMEBODY WOULD NEEDED TO, INVESTED AT  
21 INTEREST, THAT WILL REPLACE A FUTURE LOST EARNINGS  
22 STREAM UP TO THE POINT IN TIME WHERE THAT  
23 INDIVIDUAL REASONABLY WOULD HAVE RETIRED.

24 Q. HAVE I ASKED YOU QUESTIONS IN FRONT  
25 OF JURIES BEFORE?

26 A. YES, YOU HAVE.

27 Q. I GOT A COUPLE OF EXAMPLES THAT I  
28 WOULD LIKE TO USE, IF I COULD.

- 1           A.     SURE.
- 2           Q.     SOME OF THESE ARE DUSTY.
- 3                     HAVE YOU EVER HEARD OF THE
- 4 CALIFORNIA STATE LOTTERY?
- 5           A.     YES, I HAVE.
- 6           Q.     HAVE YOU EVER HEARD OF A MILLION
- 7 DOLLAR WINNER?
- 8           A.     YES.
- 9           Q.     HAVE YOU HEARD THAT THE MILLION
- 10 DOLLAR WINNER GETS 50,000 BUCKS A YEAR FOR 20
- 11 YEARS?
- 12          A.     YES.
- 13          Q.     IS THE MILLION DOLLAR WINNER REALLY
- 14 A MILLION DOLLAR WINNER?
- 15          A.     NO.
- 16          Q.     WHAT KIND OF A WINNER IS THE
- 17 MILLION DOLLAR WINNER?
- 18          A.     PRESENTLY, ABOUT \$600,000 OR ABOUT,
- 19 IT'S ABOUT A 40 PERCENT DISCOUNT OFF THE MILLION
- 20 DOLLARS.
- 21          Q.     IF THE MILLION DOLLAR WINNER IS
- 22 GETTING 50,000 BUCKS FOR 20 YEARS, THEN
- 23 MULTIPLICATION COMES OUT TO A MILLION BUCKS RIGHT
- 24 ON THE NOSE?
- 25          A.     THAT IS RIGHT.
- 26          Q.     WHY ISN'T IT A MILLION DOLLARS
- 27 REALLY, IN REAL MONEY?
- 28          A.     BECAUSE USUALLY THE STATE OF

1 CALIFORNIA, OR THE INDIVIDUAL, IF THEY HAD \$600,000  
2 COULD GENERATE THE MILLION DOLLARS. \$600,000,  
3 INVESTED OVER THE COURSE OF 20 YEARS, AND EACH YEAR  
4 PULLING OUT OF THE INVESTMENT \$50,000 A YEAR, THAT  
5 INVESTMENT WILL THROW OFF ABOUT \$400,000 IN  
6 INTEREST.

7 THAT \$400,000 IN INTEREST, TOGETHER  
8 WITH THE \$600,000 THAT WAS INVESTED, IS THE MILLION  
9 DOLLARS.

10 SO THAT THE PRESENT VALUE OF THIS  
11 MILLION DOLLAR TOTAL STREAM OF INCOME IS ONLY  
12 \$600,000 BECAUSE THAT'S THE AMOUNT OF MONEY THAT  
13 ACTUALLY IT TAKES TODAY TO PRODUCE THAT SUM OF  
14 MONEY, THE MILLION, OVER 20 YEARS.

15 Q. OKAY. HERE'S A DUSTIER EXAMPLE.

16 ABOUT 20 YEARS AGO, THERE WAS A  
17 PRETTY GOOD BASKETBALL PLAYER HERE IN LOS ANGELES  
18 WHO HAD WHAT, AT THAT TIME, WAS AN EARTH-SHATTERING  
19 CONTRACT, 25 MILLION BUCKS FOR 25 YEARS. DO YOU  
20 REMEMBER THAT?

21 A. YES.

22 Q. IF THAT PERSON GOT A MILLION  
23 DOLLARS A YEAR FOR 25 YEARS, WAS THAT CONTRACT  
24 REALLY WORTH 25 MILLION DOLLARS?

25 A. NO.

26 Q. WHY NOT?

27 A. IT WASN'T WORTH 25 MILLION DOLLARS  
28 BECAUSE THE TEAM DID NOT -- THE MANAGEMENT OF THE

1 TEAM DID NOT HAVE TO SET ASIDE 25 MILLION DOLLARS  
2 TO PAY THAT.

3 AT TODAY'S LEVEL OF INTEREST RATES,  
4 IT WOULD TAKE ABOUT 12 MILLION DOLLARS. SO THEY  
5 COULD TELL SOMEBODY, WE WILL GIVE YOU A MILLION  
6 DOLLARS A YEAR FOR 25 YEARS.

7 BUT IF THEY TOOK ABOUT 12 MILLION  
8 DOLLARS AND JUST TOOK IT DOWN AND PUT IT IN THE  
9 BANK OR BOUGHT SOME GOVERNMENT T-NOTES WITH IT,  
10 THAT 12 MILLION DOLLARS WOULD GENERATE ANOTHER 12  
11 OR 13 MILLION DOLLARS IN INTEREST AND TOGETHER IT  
12 WOULD COME TO THE 25 MILLION.

13 THE AMOUNT OF MONEY THAT IT WOULD  
14 TAKE WOULD DEPEND UPON THE LEVEL OF INTEREST RATES.  
15 AND AT THAT TIME, IT RATES WERE CONSIDERABLY HIGHER  
16 THAN THEY ARE IN THE PRESENT DAY ECONOMY. AND SO  
17 IN MY OPINION, THAT 25 MILLION DOLLAR CONTRACT WAS  
18 NOT EVEN WORTH 12 MILLION. IT WAS PROBABLY WORTH  
19 SOMETHING LESS THAN THAT, 10, 9, 8 MILLION DOLLARS.

20 Q. THANK YOU.

21 WHEN WE ARE TALKING ABOUT A FLAT  
22 AMOUNT OF MONEY, WHETHER IT'S \$50,000 A YEAR FROM  
23 THE LOTTERY OR A MILLION BUCKS A YEAR FOR THAT  
24 BASKETBALL PLAYER WHO IS WORTH THAT MUCH IN ONE  
25 YEAR NOW, IF IT'S FLAT, THE SAME EVERY YEAR, AND  
26 IT'S OVER A PERIOD OF TIME, IS THE PRESENT CASH  
27 VALUE ALWAYS GOING TO BE A LOT LESS?

28 A. YES, IT WILL BE.

1 Q. LET ME CHANGE THE -- MAKE IT A  
2 LITTLE MORE COMPLICATED.  
3 WHAT HAPPENS IF THE AMOUNT OF MONEY  
4 THAT HAS TO BE PAID IN THE FUTURE DOESN'T STAY  
5 FLAT, WHAT HAPPENS -- AND I DON'T WANT YOU TO  
6 ANSWER THIS YET, I AM GETTING TO THE QUESTION.  
7 WHAT HAPPENS IF, OVER TIME, THAT AMOUNT OF MONEY  
8 GOES UP SLOWLY, SO, FOR INSTANCE, AND I DON'T WANT  
9 TO USE MR. BOEKEN, BUT I AM GOING TO MAKE SOMEONE  
10 UP NOW OKAY?  
11 A. OKAY.  
12 Q. LET'S TAKE SOMEONE IN SOME UNION  
13 SOMEWHERE WHO GETS -- MAYBE THE DELTA AIRLINE  
14 PILOTS, MAYBE THAT'S A BAD EXAMPLE, BUT LET'S SAY  
15 THAT SOMEONE IN THE UNION GETS A NEW CONTRACT AND I  
16 AM GOING TO MAKE IT EASY, THEY ARE GETTING ONE  
17 DOLLAR AN HOUR.  
18 A. OKAY.  
19 Q. THEY GOT REALLY BAD NEGOTIATORS.  
20 AND OVER A PERIOD OF TIME, THEIR WAGES ARE GOING TO  
21 GO UP PER THE CONTRACT. SO OVER SEVERAL YEARS THE  
22 WAGES ARE GOING UP, I DON'T KNOW, THREE, FOUR, FIVE  
23 PERCENT A YEAR, WHATEVER, SOMETHING LIKE THAT.  
24 NOW, IF YOU ARE FINDING THE PRESENT  
25 CASH VALUE OF WAGES THAT GO UP IN THE FUTURE, AS  
26 OPPOSED TO A FLAT STREAM, DOES THE EQUATION BECOME  
27 A LITTLE MORE COMPLICATED?  
28 A. YES, IT DOES.

1 Q. WHY?

2 A. IT BECOMES MORE COMPLICATED BECAUSE  
3 EACH PAYMENT IS GOING TO BE A HIGHER NUMBER AND  
4 THAT HAS TO BE FIGURED IN.

5 SO, FOR EXAMPLE, THAT -- LET'S GO  
6 BACK TO THE CALIFORNIA LOTTERY. LET'S JUST SUPPOSE  
7 IT WAS CONSTRUCTED DIFFERENTLY SO THAT IN YEAR ONE  
8 SOMEBODY GOT \$50,000, IN YEAR TWO, LET'S SUPPOSE IT  
9 IS 5 PERCENT HIGHER THAN THAT AND SOMEBODY GOT  
10 \$52,500, AND THEN THE NEXT YEAR, 5 PERCENT HIGHER  
11 THAN THAT AND SO ON DOWN THE LINE.

12 IN THAT CASE, IN ORDER TO FIND THAT  
13 PRESENT VALUE, ONE WOULD HAVE TO SET OUT THE 20  
14 PAYMENTS, EACH ONE, 5 PERCENT HIGHER THAN THE ONE  
15 THAT PRECEDED IT AND THEN FIGURE THE PRESENT VALUE  
16 ON THE BASIS OF THAT STREAM

17 SO IT'S A MORE COMPLICATED PROBLEM  
18 IT'S BASICALLY A SIMPLE PROBLEM TO SOLVE, BUT  
19 GENERALLY IT TAKES MORE ARITHMETIC.

20 Q. AND THE POINT I WANT TO GET TO, AND  
21 I WANT TO ASK FOR A BREAK, PROBABLY, AFTER THIS, IF  
22 YOU ARE JUST DEALING WITH A FLAT NUMBER, LIKE THE  
23 \$50,000 A YEAR FROM THE CALIFORNIA LOTTERY AND A  
24 MILLION BUCKS A YEAR FROM 20 BUCKS A YEAR FROM THE  
25 BASKETBALL PLAYER, WE CAN SEE FROM WHAT YOU HAVE  
26 ALREADY SAID, OVER A LONG RUN LIKE THAT, PRESENT  
27 CASH VALUE'S HALF, 60 PERCENT, SOMETHING LIKE THAT.  
28 WHEN THE CONCEPT GETS CHANGED AND THERE'S A SLIGHT

1 RAISE, BECAUSE OF A UNION CONTRACTS OR SOMETHING,  
2 OVER A PERIOD OF TIME, DOES THAT MEAN THE 50 TO 60  
3 PERCENT IS STILL GOING TO BE ABOUT RIGHT OR IT IS  
4 HIGHER OR LOWER?

5 A. THE 50 OR 60 PERCENT IS NOT RIGHT.  
6 THE AMOUNT WILL BE HIGHER. AND IT WILL TEND TO  
7 CONVERGE ON WHAT THE FULL VALUE, THE TOTAL NUMBER  
8 OF DOLLARS OF THAT STREAM IS. IT WILL TEND TO  
9 CONVERGE ON IT.

10 Q. OKAY. I WAS WITH YOU HALFWAY AND I  
11 LOST YOU ON THE CONVERSION.

12 A. OKAY. LET'S TAKE THE -- GO BACK TO  
13 THE \$50,000 A YEAR LOTTERY.

14 WHEN I SAID ITS PRESENT VALUE IS  
15 ABOUT \$600,000 FOR THAT, IN MY THINKING ON THAT  
16 PROCESS, I WAS USING AN INTEREST RATE OF ABOUT 5  
17 PERCENT. THAT HAPPENS TO BE ALMOST EXACTLY THE  
18 INTEREST RATE TODAY ON UNITED STATES GOVERNMENT  
19 BONDS, 10, 15, 20, 20 YEARS.

20 SUPPOSE THAT THE LOTTERY GAVE THE  
21 WINNER A FIVE PERCENT INCREASE EACH YEAR, IN OTHER  
22 WORDS, THIS YEAR IT'S \$50,000, NEXT YEAR IT'S  
23 52,500. IN THAT CASE, YOU HAVE A FIVE PERCENT  
24 ANNUAL GROWTH AND YOU HAVE A FIVE PERCENT INTEREST  
25 RATE THAT YOU CAN INVEST MONEY. THE FIVE AND THE  
26 FIVE ARE PERFECTLY OFFSETTING. AND WHAT ECONOMISTS  
27 CALL THE NET DISCOUNT RATE OF ZERO IN THAT CASE AND  
28 THE PRESENT VALUE OF THAT LOTTERY WINNER IS A

1 MILLION DOLLARS. IT'S A MILLION DOLLARS NOW  
2 IT HAS RISEN UP TO THAT MILLION  
3 DOLLAR FIGURE.

4 Q. IF THE PAYOFF GOES UP 5 PERCENT A  
5 YEAR, AND THE INTEREST YOU CAN EARN IN THE BANK IS  
6 5 PERCENT A YEAR, IT'S A PUSH?

7 A. IT'S A PUSH, RIGHT. YOU JUST TAKE  
8 THE AMOUNT OF THE PAY OUT TODAY AND JUST MULTIPLY  
9 THAT BY THE NUMBER OF YEARS OF THE PAY OUT AND YOU  
10 WILL END UP, MATHEMATICALLY, WITH THE PRESENT  
11 VALUE.

12 Q. AND YOU JUST MULTIPLY IT?

13 A. IN THAT PARTICULAR CASE, YOU WOULD  
14 JUST MULTIPLY IT BY THE 20 YEARS, 50,000 TIMES 20  
15 YEARS, AND THAT WILL GIVE YOU THE PRESENT VALUE.

16 Q. IF THE LOTTERY WENT UP 5 PERCENT A  
17 YEAR, BUT YOU COULD GET 6 PERCENT A YEAR ON THE  
18 BANK, THEN WHAT?

19 A. WELL, IN THAT CASE, THE PRESENT  
20 VALUE WILL BE ABOUT 5 PERCENT LESS. SO IT WOULD  
21 END UP BEING ABOUT \$950,000.

22 YOU WOULD BE VERY CLOSE TO THE  
23 MILLION BECAUSE THE TWO PERCENTAGES ARE VERY CLOSE  
24 TOGETHER.

25 Q. SO THIS IS THE LOTTERY EXAMPLE NOW?

26 A. RIGHT. IN THE LOTTERY EXAMPLE, IF  
27 IT WENT UP 5 PERCENT BUT YOU COULD PUT YOUR MONEY  
28 IN THE BANK AT 6 PERCENT, THE EFFECT OF DISCOUNT IS

1 ONLY ONE PERCENT, THE DIFFERENCE BETWEEN THE 5 AND  
2 THE 6.

3 AND THAT THAT WOULD END UP TAKING,  
4 EXCUSE ME, TAKE OFF ABOUT TEN PERCENT, IT WOULD  
5 MAKE IT ABOUT \$900,000.

6 Q. LET'S FLIP IT THE OTHER WAY, AND  
7 THIS WILL BE THE LAST SERIES OF QUESTIONS HERE.

8 WHAT IF THE LOTTERY PAY OFF WENT UP  
9 5 PERCENT A YEAR, YOU PUT YOUR MONEY IN THE BANK  
10 YOU ONLY GOT FOUR PERCENT A YEAR, THEN WHAT  
11 HAPPENS?

12 A. IN THAT CASE, THE PRESENT CASH  
13 VALUE IS BIGGER THAN A MILLION DOLLARS, BECAUSE YOU  
14 HAVE SUCH A GOOD INCREASE IN THE ANNUAL PAYMENT  
15 RELATIVE TO WHAT YOU CAN MAKE IN THE BANK. SO  
16 PRESENT VALUE WOULD BE ABOUT TEN PERCENT HIGHER, IT  
17 BEING ABOUT, IT WOULD BE ABOUT A MILLION, ONE.

18 Q. WHEN WE COME BACK AND DISCUSS MR.  
19 BOEKEN'S SPECIFICS, WE WILL -- WILL IT BE RIGHT FOR  
20 US TO KEEP IN MIND HOW MUCH WAGES RISE OVER TIME  
21 VERSUS HOW MUCH INTEREST YOU CAN GET?

22 A. YES.

23 Q. ARE THOSE THE TWO THINGS THAT WE  
24 ARE GOING TO KEEP IN MIND?

25 A. YES.

26 MR. PIUZE: OKAY, YOUR HONOR.

27 THE COURT: VERY WELL, LADIES AND  
28 GENTLEMEN. WE WILL TAKE A BREAK. I WILL SEE YOU

1 ALL AT FIVE MINUTES PAST 3:00. DON'T DISCUSS THE  
2 CASE WITH ANYONE.

3 COUNSEL, IF YOU WOULD ALL STAY WITH  
4 ME.

5

6 (AT THIS TIME, A RECESS  
7 WAS TAKEN.)

8

9 (THE FOLLOWING PROCEEDINGS  
10 WERE HELD IN OPEN COURT IN  
11 THE PRESENCE OF THE JURY.)

12

13 THE COURT: SIR, YOU UNDERSTAND YOU ARE  
14 STILL UNDER OATH.

15 THE WITNESS: I DO.

16 THE COURT: MR. PIUZE.

17 MR. PIUZE: THANK YOU.

18

19 DIRECT EXAMINATION (RESUMED)

20

21 BY MR. PIUZE:

22 Q. RICHARD BOEKEN, WHAT DO YOU KNOW  
23 ABOUT RICHARD BOEKEN?

24 A. HE'S PRESENTLY 56 YEARS OF AGE. HE  
25 WAS IN THE OIL AND GAS BUSINESS. HIS EARNINGS  
26 AVERAGING FROM 1988 THROUGH 1998 AVERAGED ABOUT  
27 \$187,000 A YEAR.

28 HE INTENDED TO WORK TO EITHER AGE

1 66 OR 67, AND THAT HE WILL NOT WORK AGAIN, WILL NOT  
2 LIVE VERY LONG.

3 Q. HOW DO YOU KNOW THESE THINGS?

4 A. YOU INFORMED ME OF ALL THESE  
5 MATTERS AND SENT ME VARIOUS DOCUMENTS TO ASCERTAIN  
6 HIS INCOME.

7 Q. BEFORE YOU COULD GO ANY FURTHER ON  
8 RICHARD BOEKEN, SHOULD IT BE MADE CLEAR THAT YOU  
9 DON' T KNOW HIM?

10 A. I DO NOT.

11 Q. ANY CALCULATIONS YOU HAVE DONE ARE  
12 BASED UPON DOCUMENTS I HAVE SENT YOU?

13 A. YES.

14 Q. AND INFORMATION I HAVE PROVIDED YOU  
15 ABOUT HIS AGE, DATE OF BIRTH, STUFF LIKE THAT?

16 A. THAT IS CORRECT.

17 Q. WELL, DO YOU KNOW WHAT A  
18 HYPOTHETICAL QUESTION IS?

19 A. YES, I DO.

20 Q. WHAT?

21 A. WELL, A HYPOTHETICAL QUESTION IS  
22 THAT YOU WILL ASK ME TO ASSUME CERTAIN FACTORS, AND  
23 BASED UPON THOSE FACTORS, I WILL RENDER AN OPINION,  
24 ASSUMING THAT THOSE FACTORS YOU HAVE ASKED ME TO  
25 ASSUME ARE TRUE.

26 Q. RIGHT. SO BEFORE WE GET INTO THE  
27 MEAT OF IT, THERE ARE A COUPLE THINGS I WANT YOU TO  
28 ASSUME AS TRUE.

1                   RICHARD BOEKEN WAS BORN ON AUGUST  
2 15TH, 1944. SO AT LEAST FOR THE NEXT COUPLE MONTHS  
3 THAT MAKES HIM 56 YEARS OLD?

4                   A.     THAT IS RIGHT.

5                   Q.     RICHARD BOEKEN WAS PLANNING ON  
6 WORKING UNTIL AGE 66 OR 67, ASSUME THAT TO BE TRUE.

7                   A.     YES.

8                   Q.     OKAY.

9                   AND THEN FOR RIGHT NOW, OTHER THAN  
10 TELLING YOU WHEN HE WAS BORN AND HOW LONG HE  
11 INTENDED TO WORK, AND I AM GETTING THAT OUT OF A  
12 VIDEO TAPED DEPOSITION THE JURY HAS SEEN, I DON'T  
13 WANT YOU TO ASSUME ANYTHING ELSE, JUST THOSE  
14 THINGS, DID MY FIRM SEND YOU DOCUMENTS HAVING TO DO  
15 WITH MR. BOEKEN'S EARNINGS?

16                  A.     YES.

17                  Q.     WHAT?

18                  A.     I HAVE TAX RETURN DATA FOR THE  
19 YEARS 1988, 1992, '93, '94, '95, '96, '97, AND THEN  
20 YOU INFORMED ME OF A FIGURE FOR 1998 AS WELL AS TO  
21 FIGURES FOR 1990 AND 1991.

22                  Q.     LET'S STICK WITH THE FIGURES, AT  
23 LEAST FOR OPENERS, THAT COME RIGHT OFF OF INCOME  
24 TAX RETURNS. OKAY?

25                  A.     OKAY.

26                  Q.     OKAY, ACCORDING TO TAX RETURNS THAT  
27 WERE PROVIDED TO YOU, DID YOU GET THE WHOLE HUGE  
28 TAX RUN OR JUST THE FIRST COUPLE PAGES OF TAX

1 RETURN?  
2 A. FIRST COUPLE OF PAGES.  
3 Q. CAN EVERYBODY SEE THAT? 1988, HOW  
4 MUCH?  
5 A. \$82, 322.  
6 Q. NOW, WHAT'S THE NEXT YEAR FOR WHICH  
7 YOU HAVE GOT A TAX RETURN?  
8 A. 1992.  
9 Q. DO YOU HAVE ANY INFORMATION AT ALL  
10 FOR '89?  
11 A. NO.  
12 Q. DO YOU HAVE SOME INFORMATION FOR  
13 '90 AND '91, NOT BASED ON TAX RETURNS?  
14 A. YES, I DO.  
15 Q. I AM GOING TO COME BACK AND FILL IN  
16 THE BLANKS. LET'S JUST GO WITH STRAIGHT TAX  
17 RETURNS; OKAY?  
18 A. OKAY.  
19 Q. 1992. HOW MUCH?  
20 A. \$234, 389.  
21 Q. 1993?  
22 A. 1993 IS \$237, 135.  
23 Q. 1994 TAX RETURN?  
24 A. \$227, 178.  
25 Q. 227, 178?  
26 A. YES.  
27 Q. IN 1995, WITHOUT MENTIONING  
28 FIGURES, WAS THERE A TAX RETURN AND THEN AN AMENDED

1 TAX RETURN?

2 A. YES.

3 Q. I WANT TO GO WITH THE AMENDED, AND

4 THE AMENDED WAS THE LATER ONE?

5 A. YES.

6 Q. I WANT TO GO WITH THE AMENDED TAX

7 RETURN. HOW MUCH?

8 A. \$250,000.

9 Q. AND THAT AMENDMENT WAS FROM A

10 HIGHER NUMBER OF INCOME?

11 A. YES, SIR.

12 Q. SO LET ME JUST DO THAT.

13 IN 1995 SOMETHING WAS FILED, WHICH

14 WAS LARGER THAN THIS 250 NUMBER, BUT THE LAST

15 AMENDED RETURN WAS \$250,000?

16 A. YES.

17 Q. OKAY. 1996?

18 A. \$100,000.

19 Q. 1997?

20 A. \$205,271.

21 Q. 1998?

22 A. I DO NOT HAVE A TAX RETURN FOR THAT

23 YEAR IN MY SESSION.

24 Q. YOU DON'T?

25 A. I DON'T HAVE A RETURN FOR THAT

26 YEAR.

27 Q. I JUMPED THE GUN ON THIS. HANG ON.

28 NOW, AS TO '89, I PUT NO

1 INFORMATION OF ANY KIND, AND IS THAT WHAT YOU ARE  
2 LEFT WITH, NO INFORMATION OF ANY KIND?

3 A. YES.

4 Q. LET ME GET A DIFFERENT COLOR PEN TO  
5 WRITE WITH.

6 FOR 1990, TELL THE JURY WHAT  
7 INFORMATION YOU HAVE AND THE SOURCE OF YOUR  
8 INFORMATION?

9 A. THE INFORMATION IS \$77,000. IT WAS  
10 INCOME THAT WAS REPORTED PER A BANKRUPTCY PETITION.

11 Q. 1991?

12 A. \$75,000 AND THAT WAS INCOME  
13 REPORTED ON A BANKRUPTCY PETITION.

14 Q. 1998?

15 A. \$167,000, YOU HAVE PROVIDED ME THIS  
16 FIGURE.

17 Q. 167?

18 A. YES.

19 Q. HAVE YOU -- I DON'T WANT ANYTHING  
20 ABOUT CONTENT RIGHT NOW, BUT HAVE YOU HAD ANY  
21 CONVERSATIONS WITH OR COMMUNICATIONS, LET'S START  
22 WITH COMMUNICATIONS, WITH BERNARD LEWAK?

23 A. NO.

24 Q. SO HERE'S WHAT I WANT YOU TO DO,  
25 USING ALL OF THE BLACK NUMBERS THERE WHICH COME OFF  
26 OF TAX RETURNS, AND USING THE GREEN NUMBERS WHICH  
27 THE TOP TWO OF WHICH COME OFF OF A BANKRUPTCY  
28 PETITION AND THE BOTTOM ONE, WHICH YOU HAVE TO

1 TRUST ME ON AT LEAST FOR OVERNIGHT, WHAT, IF  
2 ANYTHING, CAN YOU DO WITH THOSE NUMBERS IN ORDER TO  
3 FIGURE OUT FOR A REASONABLE ECONOMIC PLAUSIBILITY,  
4 WHAT MR. BOEKEN'S FUTURE WAGE LOSS WILL BE?

5 A. THE FIRST THING THAT I HAVE TO DO  
6 TO THOSE IS TO EXPRESS THEM IN TERMS OF WHAT WE  
7 CALL 1999 DOLLARS. SO, IN OTHER WORDS, LET'S LOOK  
8 AT THE \$82,322 MR. BOEKEN EARNED IN THE YEAR 1988.

9 IN THE YEAR 1988, JUST THE AVERAGE  
10 LEVEL OF PRICES AND WAGES IN THE UNITED STATES WERE  
11 ABOUT A THIRD LESS THAN THEY ARE TODAY. WAGES  
12 GENERALLY FOR ALL TYPES OF WORK ARE ABOUT A THIRD  
13 MORE, PRICES ARE ABOUT A THIRD MORE.

14 SO THAT WHAT THE ECONOMIST DOES IS  
15 TO LOOK BACK AT THE EARLIER YEARS AND EXPRESS THEM  
16 IN TERMS OF THE 1999 PRICE LEVEL. AND IF THAT'S  
17 DONE, THE \$82,322 THAT HE MADE IN THE YEAR 1988, AT  
18 TODAY'S PRICE LEVEL, WITH TRANSLATE TO ABOUT  
19 115,933.

20 Q. STOP FOR A SECOND.

21 I AM GOING TO WIND UP ASKING YOU TO  
22 COME DOWN HERE AND ASKING YOU TO PUT YOUR OWN  
23 HANDWRITING ON THESE THINGS THAT ARE MODIFIED FROM  
24 THE HARD TAX RETURNS.

25 A. YES.

26 Q. WE HAVE ALL HEARD, OBVIOUSLY, WE  
27 HAVE ALL HEARD OF INFLATION.

28 A. YES.

1 Q. AND WE HAVE AN IDEA ABOUT  
2 INFLATION. HOW DOES INFLATION FACTOR INTO WAGES?

3 A. IT FACTORS INTO WAGES BECAUSE IT IS  
4 ONE OF THE FACTORS WHICH MAKES WAGES RISE. WAGES  
5 RISE PARTLY BECAUSE PRODUCTS SELL FOR A HIGHER  
6 PRICE. VERY SIMPLEST EXAMPLE, AND IT WON'T APPLY  
7 TO MR. BOEKEN'S TRADE, BUT SOMEBODY SELLS APPLES,  
8 THEY SOLD AN APPLE IN THE YEAR 1988, WHEN THEY SOLD  
9 THAT APPLE, THEY SOLD IT, LET'S SUPPOSE, FOR A  
10 DIME, AND THEY RECEIVE A DIME. THEIR EARNINGS WERE  
11 A DIME.

12 IF THEY SOLD THAT APPLE TODAY, THEY  
13 WOULD SELL IT FOR A HIGHER NUMBER, LET'S SUPPOSE  
14 THEY WOULD SELL IT FOR 14 CENTS OR 15 CENTS, THEY  
15 THEN WOULD EARN 14 OR 15 CENTS FOR SELLING THE SAME  
16 APPLE.

17 AND AS INFLATION PROCEEDS, WAGES,  
18 THE WAGES PEOPLE GET ARE HIGHER. AND THAT'S  
19 BECAUSE THAT FOR EVERY DOLLAR SPENT IT'S A DOLLAR  
20 EARNED.

21 SO WHEN PEOPLE ARE SPENDING, HAVING  
22 TO SPEND MORE DOLLARS FOR PRODUCTS BECAUSE THINGS  
23 SELL AT A HIGHER PRICE, THERE IS SOMEBODY ON THE  
24 OTHER SIDE OF THAT COUNTER WHO'S RECEIVING THOSE  
25 DOLLARS. FOR EVERY DOLLAR SPENT THERE'S A DOLLAR  
26 EARNED.

27 AND THE BULK OF THOSE DOLLARS ARE  
28 GOING TO GO TO SOMEBODY'S WAGES, MAYBE THE STORE

1 CLERK' S WAGES, MAYBE THE OWNER' S WAGES, MAYBE THE  
2 TRUCK DRIVER WHO DELIVERS THE GOODS TO THE STORE TO  
3 BE SOLD. BUT FOR EVERY DOLLAR SPENT THERE' S A  
4 DOLLAR EARNED AND THE INFLATION MAKES WAGES RISE.  
5 WAGES CAN RISE FOR OTHER FACTORS AS WELL.

6 Q. SO HOPEFULLY MOST OF US ARE MAKING  
7 MORE NOW THAN 1988?

8 A. THAN 1988.

9 Q. NOW, AS WE GO DOWN THIS LINE HERE,  
10 SAME EXPLANATION APPLIES TO EACH?

11 A. YES. IT APPLIES TO EACH, BUT THE  
12 EFFECT IS SMALLER. BECAUSE, LET' S JUST TAKE, FOR  
13 EXAMPLE, IF WE ARE PUTTING THINGS IN THE \$167, 000  
14 THAT WE HAVE FOR 1998, THAT' S ALMOST A CURRENT  
15 DOLLAR. IT' S VERY LITTLE DIFFERENCE BETWEEN A 1998  
16 DOLLAR AND A 1999 DOLLAR.

17 SO THE \$167, 000 IS ABOUT WHAT IT  
18 WOULD BE AT THE CURRENT LEVEL OF PRICES. SO THE  
19 EFFECT BECOMES SMALLER AS WE MOVE CLOSER TO CURRENT  
20 TIME.

21 Q. THE LONGER THE SPREAD, THE MORE THE  
22 INFLATION, THE MORE YOU GOT TO BUMP THE NUMBER UP  
23 TO GET INTO TO TODAY' S MARKET?

24 A. YES, SIR.

25 Q. THE CLOSER WE ARE TO TODAY, THE  
26 LESS INFLATION, THE LESS YOU HAVE TO BUMP THE  
27 NUMBER UP TO GET IT TO TODAY' S MARKET?

28 A. YES.

1 Q. HAVING SAID THAT THEN, I' D  
2 APPRECIATE IT IF YOU WOULD COME DOWN, JUST PUT THE  
3 CURRENT DOLLAR VALUE RIGHT OFF HERE WITH SOME SORT  
4 OF A LITTLE HEADING SO WE WILL REMEMBER IT LATER.

5 A. THE 1988, THE INFLATION ADJUSTED  
6 FIGURE IS \$115,933.

7 FOR 1990 FIGURE IS \$98,150.

8 THE 1991 FIGURE IS \$91,740.

9 THE 1992 FIGURE IS \$278,326.

10 THE 1993 FIGURE IS \$273,403.

11 THE 1994 FIGURE IS \$255,384.

12 THE 1996 FIGURE IS \$273,294.

13 Q. WHAT YEAR WAS THAT YOU JUST SAID?

14 A. 1995.

15 Q. OKAY.

16 A. THE 1996 FIGURE IS \$106,182.

17 THE 1997 FIGURE IS \$213,073.

18 AND THE 1998 FIGURE IS \$170,688.

19 Q. NOW, TELL THE JURY WHAT YOUR  
20 HEADING UP AT THE TOP OF THE PAGE IS.

21 A. THESE ARE THE EARNINGS IN 1999  
22 PRICE LEVEL DOLLARS.

23 Q. SEEING THAT WE ARE HERE IN 2001,  
24 HOW DID 1999 GET UP THERE?

25 A. 1999 IS THE LAST YEAR, BASICALLY,  
26 THE FIRST YEAR THAT THERE WOULD BE ANY LOSSES. SO  
27 I AM STARTING THE LOSS CALCULATION AS OF THE  
28 DOLLARS OF THE YEAR 1999.

1 Q. OKAY.

2 NOW, I AM GOING TO COME BACK TO  
3 THIS LATER BUT I WILL FORCE IT OUT OF YOU NOW DID  
4 I GIVE YOU ANY KIND OF AN AMOUNT FOR 1999?

5 A. YES, YOU DID.

6 Q. WHAT WAS THAT?

7 A. APPROXIMATELY \$500,000.

8 Q. AND DID YOU CHOOSE NOT TO PUT THAT  
9 UP ON THIS CALCULATION?

10 A. YES.

11 Q. WHY NOT?

12 A. I DIDN'T PUT IT UP BECAUSE, TO MY  
13 KNOWLEDGE, WE -- THE TAX RETURN HAS NOT BEEN  
14 PREPARED FOR THAT YEAR. AND SO I JUST SIMPLY CHOSE  
15 TO LEAVE IT OFF.

16 SECONDLY, THAT GIVEN -- IF IT IS  
17 APPROXIMATELY \$500,000, OR ANYTHING MATERIALLY  
18 ABOVE THE AVERAGE OF THE FIGURES WE HAVE HERE, IT  
19 WOULD TEND TO RAISE THE ECONOMIC LOSS BUT NOT BY A  
20 LARGE AMOUNT BECAUSE WE ARE AVERAGING MANY YEARS'  
21 WORTH OF PAST EARNINGS. SO FOR THOSE TWO REASONS,  
22 I HAVE NOT.

23 Q. SO WHETHER MR. BOEKEN, HE MADE AN  
24 ESTIMATE ON THE VIDEO TAPE THAT HE HAD, FOR 1999,  
25 WHETHER THAT HAPPENED OR NOT, FOR THE PURPOSE OF  
26 THESE CALCULATIONS, YOU ARE GOING TO FORGET IT?

27 A. YES.

28 Q. IF YOU TOOK IT INTO ACCOUNT, YOUR

1 ULTIMATE NUMBER WOULD BE HIGHER, LOWER OR THE SAME?

2 A. THE ULTIMATE NUMBER WOULD BE HIGHER  
3 BY ABOUT \$100,000.

4 Q. ALL RIGHT. NOW, LET'S LOOK AT  
5 SOMETHING ELSE HERE.

6 WE HAVE HEARD THROUGH VIDEO TAPED  
7 DEPOSITION THAT MR. BOEKEN HAD STARTED UP A  
8 BUSINESS OF HIS OWN IN THE LATE '80'S.

9 AND I WILL JUST SHOW YOU THAT SOME  
10 OF THE NUMBERS WE ARE LOOKING AT HERE IN THE LATE  
11 '80'S, EARLY '90'S, '82, '77, '75, ARE A HECK OF A  
12 LOT DIFFERENT THAN THE NUMBERS THAT WE SEE RUNNING  
13 THROUGH THE '90'S.

14 WOULD YOU AGREE TO THAT?

15 A. YES, I WILL.

16 Q. I DON'T WANT YOU TO DO THIS, BUT IF  
17 I HAD SAID TO YOU, YOU KNOW WHAT, HE WAS LEARNING  
18 THE ROPES, HE WAS STARTING A NEW BUSINESS, HIS  
19 ORIGINAL NUMBERS WERE LOWER, LET'S NOT TAKE THEM  
20 INTO ACCOUNT, LET'S ONLY TAKE INTO ACCOUNT ONCE HE  
21 GETS ROLLING HERE, WOULD THE ULTIMATE LOSSES, AS  
22 YOU FIGURE THEM, BE HIGHER, LOWER OR THE SAME?

23 A. THEY WOULD BE HIGHER.

24 Q. BY TAKING THE ENTIRE TEN-YEAR RUN,  
25 INCLUDING THE KIND OF MONEY THAT MR. BOEKEN WAS  
26 MAKING STARTING UP IN THE '50'S AND TAKING THE  
27 ENTIRE RUN ALL THE WAY DOWN TO HERE, GIVE YOU  
28 ANOTHER CHOICE, YOU FIGURE THIS IS A RELATIVELY

1 CONSERVATIVE WAY OF DOING IT, OR SORT OF BENDING IT  
2 IN MR. BOEKEN'S DIRECTION TO MAKE THE NUMBER  
3 BIGGER?

4 A. NO, I THINK IT'S A RELATIVELY  
5 CONSERVATIVE WAY.

6 Q. WHY?

7 A. BECAUSE I AM TAKING INTO ACCOUNT  
8 THESE EARLY YEARS WHERE HE MADE, GENERALLY,  
9 CONSIDERABLY LESS THAN HE MADE IN ALL OTHER YEARS,  
10 EXCEPT FOR, PERHAPS, AROUND 1996.

11 SO BY AVERAGING THESE EARLIER YEARS  
12 IN, AND THEY GIVE ESSENTIALLY THE SAME DEGREE OF  
13 IMPORTANCE AS SOME OF THE, IN THE LATER YEARS, IT'S  
14 AS IF WE ARE ASSUMING HERE THAT THERE WAS NO  
15 LEARNING CURVE FOR THIS BUSINESS, WHEN IT STARTED  
16 GOING, HE STARTED WITH FULL KNOWLEDGE AND ABILITY  
17 AND INFORMATION AND SKILL AND SO FORTH IN THE  
18 BUSINESS, AND GENERALLY THAT IS NOT TRUE, USUALLY  
19 IT TAKES A WHILE FOR SOMEBODY TO GET A HANDLE ON  
20 ANYTHING.

21 AND SO I THINK IT'S A CONSERVATIVE  
22 WAY OF LOOKING AT IT.

23 BUT I THINK IT'S ALSO A FAIR WAY  
24 BECAUSE, OBVIOUSLY, THE INCOME FLUCTUATES. THIS IS  
25 THE KIND OF A JOB, AN INCOME POSITION WHERE INCOME  
26 DOES FLUCTUATE. IT'S NOT LIKE BEING A SALARIED JOB  
27 LIKE A SCHOOL TEACHER. SO YOU HAVE TO CONSIDER THE  
28 FACT THAT SOMETIMES HE CAN MAKE SIGNIFICANT AMOUNTS

1 OF MONEY AND ONCE IN AWHILE, HE COULD HAVE GONE OFF  
2 IN SOME DIRECTION AND THE INCOME COULD HAVE BEEN  
3 SHARPLY LOWER, FOR EXAMPLE, AS IT WAS IN 1996, BUT  
4 THEN, ESSENTIALLY, DOUBLED WHEN IT GOT TO 1997.

5 SO WE TAKE INTO ACCOUNT THE HIGHS  
6 AND LOWS FOR ALL THE YEARS.

7 Q. SO THAT'S WHAT I WANT, AVERAGE THE  
8 WHOLE THING OUT AND IN 1999 DOLLARS, WHAT DOES THAT  
9 ALL COME OUT TO, ON THE AVERAGE, PLEASE.

10 A. THE AVERAGE IS \$187,617.

11 Q. THANKS.

12 WHY DON'T YOU TAKE YOUR SEAT,  
13 PLEASE.

14 NOW, BEFORE WE GO FURTHER, I WANT  
15 TO DIGRESS BRIEFLY.

16 REMEMBER, BEFORE YOU WERE TALKING  
17 ABOUT JUST THE GENERAL CONCEPT OF INFLATION?

18 A. YES.

19 Q. PRICES GENERALLY GO UP OVER A  
20 PERIOD OF TIME?

21 A. YES, THEY DO.

22 Q. DO PRICES -- THIS IS JUST  
23 GENERALLY, BUT GENERALLY, DO PRICES GO UP SLOWLY,  
24 RAPIDLY, NEITHER OF THE ABOVE, ALL OF THE ABOVE?

25 A. IN THIS COUNTRY, THEY GO UP  
26 GRADUALLY, MOST OF THE TIME.

27 WE HAVE HAD A FEW EXPERIENCES IN  
28 THIS COUNTRY OF SIGNIFICANT INFLATION. WE HAD ONE

1 IN THE LATE '70'S AND VERY EARLY '80'S.

2 WE HAD A SPURT OF INFLATION AFTER  
3 THE SECOND WORLD WAR.

4 BUT GENERALLY, PRICES HAVE  
5 INCREASED GRADUALLY IN THIS COUNTRY COMPARED TO  
6 INTERNATIONAL EXPERIENCE OF OTHER COUNTRIES AROUND  
7 THE WORLD, AND OVERALL, OUR INFLATION HAS TENDED TO  
8 AVERAGE IN THE RANGE OF THREE TO FOUR PERCENT PER  
9 YEAR. AND THAT'S ABOUT THREE PERCENT, THAT'S WHAT  
10 IT'S BEEN IN THE LAST FEW YEARS IN THIS COUNTRY.

11 Q. HAVE YOU EVER HEARD OF ELECTRICITY?

12 A. I HAVE HEARD OF IT.

13 Q. DO YOU HAVE LIGHTS IN YOUR OFFICE?

14 A. I HAVE LIGHTS IN MY OFFICE.

15 Q. IN YOUR HOUSE?

16 A. IN MY HOUSE.

17 Q. IS THAT SUPPLIED BY S. C. E?

18 A. YES, IT IS.

19 Q. DO YOU NOTICE YOUR BILLS HAVE BEEN  
20 GOING UP?

21 A. YEAH, THAT'S FOR SURE. MORE THAN  
22 DOUBLE.

23 Q. MORE THAN DOUBLE?

24 A. MORE THAN DOUBLE.

25 Q. THIS INCOME IS DERIVED FROM THE  
26 ENERGY BUSINESS, DID YOU KNOW THAT?

27 A. YES, I DID.

28 Q. FROM OIL AND GAS WELLS IN TEXAS?

1           A.     YES.

2           Q.     WE HEARD THAT AS THE PRICE OF  
3 ELECTRICITY GOES UP, THAT THE PROFITS FROM THE OIL  
4 AND GAS BUSINESS GO UP. DOES THAT SOUND RIGHT TO  
5 YOU?

6           A.     YES. RIGHT. THAT WOULD CONFORM  
7 WITH JUST BASIC STANDARD ECONOMIC THEORY.

8           Q.     WHATEVER YOU WERE ABOUT TO SAY AND  
9 DO, EXPLAIN TO THE JURY, HAS THAT, IN ANY WAY,  
10 SHAPE OR FORM, TAKEN INTO ACCOUNT THE RATHER  
11 UNBELIEVABLY DRAMATIC INCREASE IN OUR ELECTRICITY  
12 BILLS LATELY?

13          A.     NO, IT DOES NOT.

14          Q.     SO WHAT YOU ARE ABOUT TO SAY MAKES  
15 BELIEVE THAT WE ARE NOT PAYING THROUGH THE NOSE?

16          A.     THAT IS CORRECT.

17          Q.     ONCE YOU ARRIVE AT \$187,000 THAT  
18 YOU AVERAGE IN 1999 DOLLARS, WHAT DO YOU DO WITH IT  
19 TO CALCULATE MR. BOEKEN'S FUTURE WAGE LOSS,  
20 ESPECIALLY THE PRESENT CASH VALUE?

21                   BEFORE YOU ANSWER THE QUESTION, I  
22 HAVE ASKED YOU TO ASSUME A COUPLE THINGS HERE.  
23 HERE'S THE NEXT THING.

24                   HE'S NOT WORKING ANY MORE. OKAY?

25          A.     YES.

26          Q.     HOW DO YOU GO ABOUT DOING THAT?

27          A.     WHAT I DID IS THAT I JUST STARTED  
28 IN 1999 AND SAID THAT I ROUNDED THE FIGURE TO

1 \$187,000, FROM THE 187,677.

2 SO I PLACED HIS EARNING CAPACITY AS  
3 AN AVERAGE OF \$187,000 A YEAR.

4 AND I TOOK THOSE NUMBERS AND I  
5 TOTAL THEM UP AND I TOTAL THEM ON OUT TO AGE 66 AND  
6 A HALF, WHICH IS HALFWAY BETWEEN 66 AND 67, AND I  
7 DISCOUNTED THE FIGURES BACK TO THE PRESENT CASH  
8 VALUE, USING A DIFFERENCE OF 2 PERCENT BETWEEN THE  
9 INTEREST ON MONEY AND THE INFLATION AND WAGES OR  
10 WHAT TODAY WOULD BE ABOUT A 5 PERCENT INTEREST ON  
11 MONEY AND ABOUT A 3 PERCENT INCREASE IN WAGES FOR  
12 INFLATION.

13 Q. WHERE DO YOU, TELL THE JURY WHERE  
14 YOU GET A 3 PERCENT PER WAGES ON INFLATION NUMBER?

15 A. THAT IS APPROXIMATELY THE CURRENT  
16 RATE IN THE UNITED STATES AND IT HAS BEEN THAT WAY  
17 FOR THE LAST FEW YEARS AND THE PROJECTIONS ARE FROM  
18 THE FEDERAL GOVERNMENT THAT IT'S GOING TO CONTINUE  
19 AT AROUND THAT RATE FOR THE FORESEEABLE FUTURE.

20 Q. ON THESE THREE PERCENT ANNUAL  
21 INCREASES IN WAGES, ARE THOSE FOR PEOPLE WHO  
22 PACKAGE OIL AND GAS DEALS OR IS IT FOR PEOPLE WHO  
23 ARE COURT REPORTERS OR IS IT FOR POLICE OFFICERS,  
24 WHO IS IT FOR?

25 A. IT'S REALLY FOR MORE OR LESS KIND  
26 OF ALL OF THE ABOVE.

27 IT WOULD BE THE AVERAGE FOR  
28 EVERYBODY ALL PUT TOGETHER. IT IS JUST SIMPLY

1 SAYING THAT IN A MONETARY ECONOMY, WHERE PRICES  
2 RISE AT AROUND 3 PERCENT PER YEAR, EACH PERSON, ON  
3 AVERAGE, HAS THE OPPORTUNITY AND PROBABLY WILL  
4 SHARE THE EXPERIENCE OF HAVING AROUND A 3 PERCENT  
5 INCREASE OF WAGES. THERE ARE SOME PEOPLE, FOR  
6 EXAMPLE, WHO MAY HAVE A SEVERAL HUNDRED PERCENT  
7 INCREASE IN WAGES AND MAYBE SOME PEOPLE HERE AND  
8 THERE THAT THEIR WAGES WILL FALL FROM YEAR TO YEAR.

9 BUT ON AVERAGE, THAT PEOPLE WILL  
10 ENJOY INCREASES IN WAGES PROBABLY IN THE AREA OF  
11 THREE, MAYBE AS HIGH AS FOUR PERCENT.

12 Q. IF YOU FIGURE THAT MR. BOEKEN'S  
13 FIELD, IF YOU THROW IT IN A POT AND AVERAGE IT OUT  
14 WITH EVERYTHING ELSE THERE IS, AND IT GOES UP 3  
15 PERCENT A YEAR, BUT YOU CAN INVEST YOUR MONEY AT 5  
16 PERCENT A YEAR, IS THAT WHAT YOU DID?

17 A. THAT'S WHAT I DID.

18 Q. LET'S STAY THERE FOR A SECOND. WHY  
19 5 PERCENT, WHERE DO YOU GET THAT?

20 A. THAT'S THE CURRENT RATE OF INTEREST  
21 ON UNITED STATES TREASURY SECURITIES MATURING OUT  
22 FOR APPROXIMATELY THE NEXT 20 YEARS. IT'S LESS FOR  
23 ONE, TWO AND THREE YEARS. BUT WHEN YOU GET TO THE  
24 TEN-YEAR UNITED STATES TREASURY SECURITY, IT'S JUST  
25 A HAIR OVER 5 PERCENT, LESS THAN TEN YEARS IS A  
26 LITTLE LESS THAN 5 PERCENT. WHEN YOU BLEND IT  
27 TOGETHER, THE AVERAGE RATE, I THINK, IS FAIRLY PUT  
28 AT ABOUT A 5 PERCENT AVERAGE RETURN.

1 Q. WHY USE SOMETHING LIKE U. S.  
2 SECURITIES, AREN' T THERE OTHER INVESTMENTS THAT PAY  
3 MORE?

4 A. THERE ARE OTHER INVESTMENTS BUT  
5 WHETHER THEY PAY MORE OR NOT IS ALWAYS A QUESTION  
6 MARK. BECAUSE EVERY HIGHER RATE THAT ONE SEES,  
7 THERE IS ALSO MORE RISK. WITH A HIGHER RATE COMES  
8 RISK. AND WITH THAT RISK, THERE MAY NOT BE THE  
9 RETURN THERE.

10 SO IF SOMEBODY OFFERS YOU A 7  
11 PERCENT RETURN OR AN 8 PERCENT RETURN ON A SECURITY  
12 AND THAT SECURITY IS SELLING ON THE SAME DAY IN THE  
13 MONEY MARKETS OF THE UNITED STATES WITH A FIVE  
14 PERCENT SECURITY, LIKE THE U. S. TREASURY, THE ONLY  
15 WAY THOSE HIGHER RATES, THOSE OTHER SECURITIES CAN  
16 BE SOLD IS TO PAY PEOPLE ENOUGH MONEY TO TAKE THE  
17 RISK.

18 SO ESSENTIALLY, WHEN YOU ADJUST FOR  
19 THE RISK, ALL THE INTEREST RATES ARE EQUIVALENT TO  
20 THE GOVERNMENT RATE AND THAT' S WHY THE UNITED  
21 STATES TREASURY SECURITIES ARE THE MOST WIDELY  
22 ISSUED AND PURCHASED SECURITIES IN THE WORLD.

23 Q. WELL, A COUPLE YEARS AGO, WERE  
24 THERE TIMES, A COUPLE YEARS AGO, WHEN YOU WERE  
25 TESTIFYING IN TRIALS, SORT OF LIKE THIS?

26 A. YES.

27 Q. AND WERE THERE TIMES, A COUPLE  
28 YEARS AGO, WHEN YOU WOULD BE DISCUSSING WHY

1 TREASURY BILLS WERE THE WAY TO GO?

2 A. YES.

3 Q. AND WERE THERE TIMES WHEN LAWYERS  
4 WOULD CROSS-EXAMINE YOU AND SAY WHY IN THE WORLD  
5 WOULD YOU PUT YOUR MONEY IN TREASURY BILLS AT 5  
6 PERCENT WHEN YOU COULD GO WITH, GO FOR DOT COM AND  
7 GET A TRILLION PERCENT?

8 A. OH, SURE, I AM ASKED THOSE  
9 QUESTIONS WHEN THE DOT COM S ARE GOING STRAIGHT UP  
10 AND I AM NEVER ASKED THOSE QUESTIONS WHEN THEY ARE  
11 GOING DOWN. BUT THE UNITED STATES TREASURY  
12 SECURITIES ARE ALWAYS THERE, PAYING 6 PERCENT AND  
13 THERE ARE PROBABLY A LOT OF PEOPLE THAT WISH THEY  
14 WOULD HAVE KEPT THE MONEY AT 6 PERCENT HERE IN THE  
15 YEAR 2000 RATHER THAN TRYING TO CHASE THE -- THOSE  
16 SPECULATIVE RATES OF RETURN.

17 Q. HAS "GO TO DOT COM" CHANGED ITS  
18 NAME TO "WHERE DID YOU GO DOT COM"?

19 OKAY. I GUESS WE MADE THE POINT,  
20 SO HERE WE ARE. WAGES GO UP, THE WHOLE GAMUT OF  
21 THREE PERCENT A YEAR, BUT YOU CAN EARN MORE ON THE  
22 MONEY THROUGH U. S. T-BILLS AT 5 PERCENT A YEAR?

23 A. YES.

24 Q. SO IF YOU SUBTRACT ONE FROM THE  
25 OTHER, DOES THAT GIVE YOU SOMETHING CALLED A NET  
26 DISCOUNT RATE?

27 A. YES, IT DOES.

28 Q. 5 MINUS 3 EQUALS 2?

1           A.     2.

2           Q.     2 PERCENT NET DISCOUNT RATE?

3           A.     THAT IS RIGHT.

4           Q.     WHAT DID YOU DO WITH THAT?

5           A.     YOU SIMPLY TAKE, AND TAKE ALL THOSE

6 FUTURE EARNINGS, THE 187,000 A YEAR RISING THREE

7 PERCENT EACH YEAR, TAKING IT OUT FOR THE NEXT TEN

8 YEARS UNTIL HE WOULD BE AGE 66 AND A HALF AND

9 DISCOUNT EACH OF THOSE BACK TO THEIR PRESENT VALUE

10 AT A RATE OF 2 PERCENT. THAT'S WHAT'S DONE WITH

11 EACH OF THE FUTURE TEN YEARS OF LOST EARNINGS TO

12 GET THE PRESENT VALUE OR THE AMOUNT OF MONEY ONE

13 WOULD NEEDED TO INVEST AT INTEREST TO REPLACE THE

14 FURTHER LOSS AND ALSO TO PAY FOR THE LAST COUPLE

15 YEARS' OF PAST LOSS.

16          Q.     HAVE YOU DONE THAT?

17          A.     YES, I HAVE.

18          Q.     COULD YOU WRITE IT DOWN ON THIS

19 PIECE OF PAPER SO WE WILL REMEMBER AFTER YOU ARE

20 DONE, PLEASE.

21          A.     THE PRESENT VALUE OF THE ECONOMIC

22 LOSS IS \$2,118,599.

23          Q.     SOMEPLACE DOWN THERE WOULD YOU PUT

24 IN WHAT YOU USED FOR A NET DISCOUNT RATE, PLEASE.

25          A.     SURE. 2 PERCENT.

26          Q.     SO HERE'S THE QUESTION. IF YOU ARE

27 RIGHT AND IF WAGES CONTINUE TO GO UP AT 3 PERCENT

28 AND T-BILLS CONTINUE TO PAY FIVE PERCENT, DO YOU

1 THINK YOU ARE RIGHT ABOUT THOSE TWO THINGS?

2 A. YES.

3 Q. IF WE TOOK \$2, 118, 599 AND PUT IT  
4 INTO T-BILLS, AND WE DEDUCTED, ARE WE GOING TO  
5 DEDUCT YEARLY OR MONTHLY?

6 A. MONTHLY.

7 Q. IF WE DEDUCTED MONTHLY, MONTHLY  
8 LOOKS LIKE ABOUT 15, 000 BUCKS?

9 A. YES.

10 Q. IF WE DEDUCTED MONTHLY, THE MONTHLY  
11 AMOUNT, THAT WOULD ADD UP TO \$187, 000 A YEAR.

12 AT 66 AND A HALF YEARS, WHICH IS  
13 HALFWAY BETWEEN THE TWO RETIREMENT AGES MR. BOEKEN  
14 MENTIONED, WHAT WOULD BE LEFT?

15 A. NOTHING. IT WOULD ALL BE USED.

16 Q. ON THAT DAY?

17 A. ON THAT DAY. IT WOULD WORK OUT  
18 EXACTLY, AT THAT LAST MONTH, AT AGE 66 AND  
19 ONE-HALF, THE LAST WITHDRAWAL HE WOULD MAKE ON THAT  
20 LAST MONTH WOULD DEplete THE BANK ACCOUNT TO ZERO.

21 Q. NOW, I'D JUST LIKE YOU TO ASSUME  
22 THE FOLLOWING: MR. BOEKEN TESTIFIED IN THIS VIDEO  
23 TAPED DEPO THAT HE REALLY LOVED WHAT HE DID, HE WAS  
24 AN ACTIVE KIND OF GUY AND BETWEEN 66 AND 67, HE  
25 WOULD OFFICIALLY RETIRE BUT WOULDN'T COMPLETELY  
26 RETIRE, HE WOULD CERTAINLY KEEP HIS HAND IN IT.

27 HAVE YOU TAKEN ANY OF THAT INTO  
28 ACCOUNT AFTER 66 AND A HALF?

1           A.     NO.

2           Q.     THAT' S ALL THE QUESTIONS I HAVE.

3     THANK YOU VERY MUCH.

4           MR. PIUZE:   BEFORE MR. LEITER ASKS, CAN I  
5     PICK A NUMBER ON THIS AND PUT AN EXHIBIT NUMBER ON  
6     IT.

7           THE CLERK:   I HAVE 10, 004.

8           MR. PIUZE:   EXCELLENT.

9

10                         (EXHIBIT 10, 004, DIAGRAM  
11                         MARKED FOR I. D. )

12

13                         CROSS-EXAMINATION

14

15     BY MR. LEITER:

16           Q.     GOOD AFTERNOON, DOCTOR.

17           A.     GOOD AFTERNOON.

18           Q.     IT' S GETTING A LITTLE CROWDED HERE.

19                         NOW, WHAT YOU HAVE CALCULATED HERE,

20     AS I UNDERSTAND IT, IS YOU HAVE LOOKED AT MR.

21     BOEKEN' S INCOME GOING BACK ABOUT TEN YEARS; RIGHT?

22           A.     YES, I HAVE.

23           Q.     FROM THE SOURCES THAT YOU TALKED

24     ABOUT WITH MR. PIUZE.

25                         AND THEN YOU CAME UP WITH A PRESENT

26     VALUE NUMBER FOR EACH OF THOSE YEARS; CORRECT?

27           A.     THAT IS RIGHT.

28           Q.     OKAY.   AND THEN YOU CAME UP WITH AN

- 1 AVERAGE OF THE TEN YEARS; IS THAT RIGHT?
- 2 A. YES, SIR.
- 3 Q. LET' S STOP THERE FOR JUST A MINUTE.
- 4 NOW, YOU HAVEN' T DONE ANY
- 5 INDEPENDENT INVESTIGATION OF MR. BOEKEN' S FINANCIAL
- 6 CONDITION, HAVE YOU?
- 7 A. NO.
- 8 Q. YOU RELIED ON THE MATERIALS THAT
- 9 WERE GIVEN TO YOU; CORRECT?
- 10 A. YES.
- 11 Q. AND FOR SEVERAL OF THOSE YEARS, YOU
- 12 RELY ON WHAT' S LISTED HERE AS TAX RETURNS; RIGHT?
- 13 A. YES, SIR.
- 14 Q. BUT YOU DIDN' T SEE THE WHOLE TAX
- 15 RETURN FOR ANY OF THOSE YEARS; IS THAT CORRECT?
- 16 A. THAT IS CORRECT.
- 17 Q. YOU SAW A COUPLE OF PAGES FROM EACH
- 18 YEAR?
- 19 A. YES, I DID.
- 20 Q. THAT WERE PROVIDED TO YOU BY
- 21 COUNSEL?
- 22 A. YES.
- 23 Q. NOW, THOSE PAGES THAT YOU GOT OF
- 24 THE TAX RETURNS WEREN' T SIGNED, WERE THEY?
- 25 A. NO.
- 26 Q. THEY WEREN' T SIGNED BY MR. BOEKEN?
- 27 A. NO, THEY ARE NOT SIGNED.
- 28 Q. AND THEY WERE JOINT RETURNS WITH

- 1 MR. AND MRS. BROKEN; CORRECT?
- 2 A. YES.
- 3 Q. AND THEY WEREN' T SIGNED BY
- 4 MRS. BROKEN EVEN?
- 5 A. NO.
- 6 Q. AND THEY WEREN' T SIGNED BY A TAX
- 7 PREPARER, ALTHOUGH THERE' S OFTEN A TAX PREPARER' S
- 8 NAME TYPED IN; IS THAT CORRECT?
- 9 A. THAT IS CORRECT.
- 10 Q. AND CAN YOU TELL FROM LOOKING AT
- 11 THESE WHETHER THESE WERE OBTAINED FROM THE INTERNAL
- 12 REVENUE SERVICE?
- 13 A. NO. I CAN' T, BUT I SEE NO I. R. S.
- 14 STAMPS ON THEM
- 15 Q. OKAY. SO YOU DON' T KNOW WHETHER
- 16 THESE PIECES OF PAPER WERE THE ACTUAL RETURNS THAT
- 17 WERE FILED, DO YOU?
- 18 A. I CANNOT SAY.
- 19 Q. THEY MAY BE, THEY MAY NOT BE, YOU
- 20 JUST DON' T KNOW?
- 21 A. I CANNOT SAY.
- 22 Q. BUT THESE WERE THE PAPERS THAT YOU
- 23 GOT FROM COUNSEL?
- 24 A. YES.
- 25 Q. NOW, YOU MENTIONED ALSO THAT
- 26 MR. BOEKEN, YOU GOT SOME NUMBERS FROM A BANKRUPTCY
- 27 FILING?
- 28 A. I WAS PROVIDED THOSE NUMBERS BY MR.

1 PIUZE BUT HE TOLD ME THAT' S WHERE THEY ORIGINATED.

2 Q. AND THAT' S A BANKRUPTCY FILING BY  
3 MR. AND MRS. BROKEN, ISN' T THAT RIGHT?

4 A. THAT' S MY UNDERSTANDING.

5 Q. THIS IS DEFENSE EXHIBIT 797.

6 YOUR HONOR, I HAVE A RED RIBBON  
7 COPY OF DEFENDANT' S EXHIBIT 7097 WHICH I OFFER.

8 THE COURT: VERY WELL.

9 MR. PIUZE: AS TO THE ENTIRE THING, YOUR  
10 HONOR, I THINK WE SHOULD TABLE IT AS TO THE ENTIRE  
11 DOCUMENT.

12 THE COURT: MARKED FOR IDENTIFICATION  
13 PURPOSES ONLY. THE EXHIBIT NUMBER? DO WE HAVE AN  
14 EXHIBIT NUMBER ON THAT?

15 MR. LEITER: YES, DEFENSE 7097.

16

17 \* (EXHIBIT 7097, TAX DOCUMENT,  
18 MARKED FOR I. D.)

19

20 THE COURT: THANK YOU, COUNSEL.

21 Q BY MR. LEITER: I' D LIKE TO SHOW  
22 YOU ONE PAGE, I' D LIKE TO SHOW YOU ONE PAGE FROM  
23 THIS. FIRST, CAN YOU TELL FROM LOOKING AT THIS  
24 WHEN IT APPEARS TO HAVE BEEN FILED?

25 THAT' S A DISCHARGE.

26 A. IT LOOKS LIKE JUNE 17TH, 1992.

27 Q. OKAY. SO A FILING DATE OF A  
28 BANKRUPTCY PETITION FROM MR. AND MRS. BROKEN ON

1 JUNE 17TH, 1992?

2 A. YES.

3 Q. OKAY. I'D LIKE TO FLIP TO THE PAGE  
4 THAT'S TABBED AND IS THAT THE PAGE OF THIS  
5 BANKRUPTCY PETITION THAT INDICATES MR. AND  
6 MRS. BOEKEN'S CURRENT INCOME AS OF JUNE 1992?

7 A. YES, IT APPEARS SO.

8 Q. AND WHAT DOES IT LIST AS THE  
9 CURRENT GROSS WAGES, SALARY AND COMMISSIONS OF MR.  
10 AND MRS. BROKEN AS OF JUNE 1992 WHEN THIS PETITION  
11 WAS FILED?

12 A. \$7,000.

13 Q. \$7,000 A MONTH IN JUNE OF 1992.

14 NOW, IF WE WERE TO TURN THAT \$7,000 A MONTH INTO AN  
15 ANNUAL FIGURE FOR INCOME, WHAT WOULD WE GET?

16 A. \$84,000.

17 Q. \$84,000?

18 A. YES.

19 Q. AND THE NUMBER YOU HAVE FOR 1992 IS  
20 \$234,000; IS THAT RIGHT?

21 A. YES.

22 Q. NOW, THE SECOND THING THAT YOU DO,  
23 AFTER COMING UP WITH THE AVERAGE -- BY THE WAY,  
24 BEFORE I MOVE TO THE SECOND THING YOU DID, YOU  
25 HAVEN'T SEEN ANY SUPPORTING DOCUMENTATION FOR ANY  
26 OF THESE YEARS OTHER THAN THESE TAX RETURNS AND  
27 WHATEVER IT IS YOU WERE PROVIDED BY COUNSEL?

28 A. CORRECT.

1 Q. NOW, THE SECOND THING THAT YOU DID  
2 AFTER COMING UP WITH THE AVERAGE WAS TO PROJECT OUT  
3 MR. BOEKEN'S INCOME FOR THE NEXT TEN YEARS, IS THAT  
4 RIGHT?

5 A. YES.

6 Q. NOW, ACCORDING TO YOUR REPORT, YOU  
7 HAVE INDICATED THAT IT IS YOUR UNDERSTANDING THAT  
8 MR. BOEKEN IS SELF-EMPLOYED IN SALES OF OIL AND GAS  
9 PROPERTIES AND SECURITIES?

10 A. THAT'S MY UNDERSTANDING.

11 Q. DO YOU UNDERSTAND EXACTLY WHAT IT  
12 IS HE DOES?

13 A. NOT EXACTLY.

14 Q. DO YOU UNDERSTAND HOW HE GENERATES  
15 INCOME?

16 A. NO.

17 Q. DO YOU UNDERSTAND WHAT KIND OF  
18 SALES OF OIL AND GAS PROPERTIES AND SECURITIES HE  
19 IS INVOLVED IN?

20 A. NO.

21 Q. BUT YOU ARE PROJECTING OUT HOW MUCH  
22 MONEY HE MAY MAKE FROM THAT OVER THE NEXT TEN  
23 YEARS; IS THAT RIGHT?

24 A. YES.

25 Q. NOW, YOU WERE ASKED BY MR. PIUZE,  
26 RIGHT NOW, ELECTRICITY PRICES ARE GOING UP;  
27 CORRECT?

28 A. YES.

1 Q. AND YOU DIDN' T TAKE THAT INTO  
2 ACCOUNT IN PROJECTING OUT MR. BOEKEN' S FUTURE  
3 INCOME; IS THAT RIGHT?

4 A. THAT IS RIGHT.

5 Q. DO YOU KNOW HOW ELECTRICITY PRICES  
6 MIGHT EFFECT MR. BOEKEN' S BUSINESS?

7 A. WELL, FROM AN ECONOMIST' S  
8 STANDPOINT, THE EXPECTATION IS THAT IT WOULD  
9 PROBABLY RAISE OIL PRICES AND PROBABLY WOULD RAISE  
10 THE RETURNS FROM OIL AND GAS WELLS BECAUSE OF  
11 SUBSTITUTION. PEOPLE WOULD BEGIN TO SUBSTITUTE OUT  
12 ELECTRICITY AND TRY AND USE ALTERNATIVE FUELS, FOR  
13 EXAMPLE, TRY TO MOVE TOWARDS NATURAL GAS, TRY TO  
14 MOVE TOWARDS OTHER FUELS. AND SO OIL COMPANIES AND  
15 PEOPLE WHO HAVE OIL AND GAS WELLS WILL FIND THEIR  
16 WELLS TO BE MORE PROFITABLE THAN THEY WOULD AT  
17 LOWER PRICES.

18 Q. BUT YOU DON' T EXACTLY UNDERSTAND  
19 WHAT MR. BOEKEN SELLS AND HOW HE MAKES HIS MONEY?

20 A. NOT EXACTLY. I THINK I HAVE A  
21 GENERAL IDEA BUT I DON' T THINK I WOULD WANT TO  
22 TESTIFY AS TO THE SPECIFICS OF EXACTLY HOW HE DOES  
23 IT.

24 Q. OKAY. AND THE PRICE OF OIL WELLS  
25 COULD FLUCTUATE IN ANY DIRECTION OVER THE NEXT 10  
26 YEARS?

27 A. IT CAN GO UP OR DOWN OR STAY THE  
28 SAME.

1 Q. THE WELLS THAT MR. BOEKEN SELLS  
2 COULD BE DRY WELLS?  
3 A. I SUPPOSE THEY COULD BE DRY WELLS.  
4 Q. INVESTORS COULD DECIDE TO PUT THEIR  
5 MONEY ELSEWHERE?  
6 A. THEY COULD.  
7 Q. LIKE TREASURY BILLS?  
8 A. YES.  
9 Q. MR. BOEKEN'S PROFIT MARGIN, HOWEVER  
10 HE MAKES HIS PROFIT, COULD CHANGE?  
11 A. YES, IT COULD.  
12 Q. NOW, THE JURY HAS HEARD TESTIMONY  
13 ABOUT SALE OF OIL AND GAS INVESTMENTS BEING A RISKY  
14 BUSINESS.  
15 WOULD YOU AGREE WITH THAT?  
16 A. YES, I WOULD.  
17 Q. POSSIBLE MR. BOEKEN COULD END UP IN  
18 BANKRUPTCY AGAIN IF HE CONTINUED WORKING IN THE  
19 HYPOTHETICAL WORLD THAT YOU HAVE GIVEN TO THE JURY?  
20 A. IT'S POSSIBLE.  
21 Q. YOU JUST DON'T KNOW?  
22 A. I DON'T KNOW.  
23 MR. LEITER: NOTHING FURTHER.  
24 MR. PIUZE: NO FURTHER QUESTIONS.  
25 THE COURT: ALL RIGHT. RIGHT AT 4  
26 O' CLOCK. THANK YOU, GOOD COUNSEL, ON BOTH SIDES.  
27 SIR, YOU MAY STEP DOWN. YOU ARE  
28 EXCUSED.

1 LADIES AND GENTLEMEN, YOU ARE  
2 EXCUSED -- YOU ARE NOT EXCUSED, BUT "YOU ARE  
3 EXCUSED" MEANS YOU DON'T HAVE TO COME BACK AGAIN.  
4 I SAY THAT TO WITNESSES SO WE WON'T SEE MR.  
5 FORMUZIS AGAIN.

6 THANK YOU, SIR.

7 BUT I AM GOING TO LET YOU GO UNTIL  
8 8:45 TOMORROW MORNING, BUT ONLY ON ONE CONDITION,  
9 CHICKEN SOUP, RIGHT. OKAY.

10 THANK YOU.

11

12 (THE FOLLOWING PROCEEDINGS  
13 WERE HELD IN OPEN COURT OUT  
14 OF THE PRESENCE OF THE JURY:)

15

16 THE COURT: WE ARE ON THE RECORD OUTSIDE  
17 THE PRESENCE OF THE JURY.

18 THE COURT IS GOING TO CONDUCT AN IN  
19 CAMERA REVIEW OF CERTAIN DOCUMENTS THAT ARE IN A  
20 CARDBOARD BOX AND A PLASTIC CONTAINER.

21 THESE ARE DOCUMENTS WHICH  
22 PLAINTIFF'S COUNSEL HAS REPRESENTED TO THE COURT  
23 ARE MATERIALS THAT WERE GIVEN TO AN EXPERT.

24 HIS NAME?

25 MR. PIUZE: BERNARD LEWAK.

26 THE COURT: MR. LEWAK HAS TESTIFIED THAT  
27 HE DID NOT REVIEW THESE PARTICULAR MATERIALS. THE  
28 COURT HAS MADE A STATEMENT TO THE DEFENSE THAT, OF

1 COURSE, IT MAKES NO JUDGMENT AS TO THE TRUTH OF  
2 THAT ASSERTION.

3 THE PLAINTIFF IS INDICATING THAT  
4 THESE DOCUMENTS ARE BASICALLY IRRELEVANT TO THE  
5 INQUIRY AND MAY CONTAIN INFORMATION THAT WOULD BE  
6 CONFIDENTIAL TO THE PLAINTIFF.

7 THE COURT HAS INDICATED THAT IT  
8 WOULD DO AN IN CAMERA REVIEW OF THESE PARTICULAR  
9 DOCUMENTS TAKING A RATHER LIBERAL VIEW TOWARDS  
10 DISCLOSURE, WHICH I WILL SAY ON THE RECORD.

11 BUT I WANT TO ASK THE DEFENSE ON  
12 THE RECORD WHAT IS IT THAT YOU ARE PARTICULARLY  
13 INTERESTED IN, WHAT DO YOU THINK MIGHT BE IN THESE  
14 DOCUMENTS THAT YOU WOULD BE PARTICULARLY INTERESTED  
15 IN AND NOT JUST IN TERMS OF GENERAL CATEGORIES, NOT  
16 PINNING YOU DOWN TO ANY SPECIFICS?

17 MR. CARLTON: WELL, YOUR HONOR, AGAIN, AS  
18 YOU KNOW, WE DON'T KNOW WHAT'S IN THERE.

19 BUT THIS IS, AS I UNDERSTAND IT,  
20 WHAT MR. LEWAK HAS TO SAY.

21 HE HAS -- HE ISN'T AN ACCOUNTANT.

22 HE HAS TESTIFIED AT HIS DEPOSITION  
23 THAT HE WAS PROVIDED CERTAIN MATERIALS AND HE  
24 REQUESTED CERTAIN MATERIALS AND WAS PROVIDED  
25 CERTAIN MATERIALS TO ENABLE HIM TO PREPARE TAX  
26 RETURNS FOR THE PLAINTIFF FOR THE YEARS 1998, '99  
27 AND 2000.

28 AMONG THE THINGS HE REVIEWED IN

1 ATTEMPTING TO DO THIS WERE THE TAX RETURNS THAT MR.  
2 FORMUZIS HAS JUST DESCRIBED AS WELL AS A 1998 TAX  
3 RETURN PREPARED BY ANOTHER ACCOUNTANT, JOSEPHINE  
4 TUBEROSI.

5 ALONG THE WAY, HE WAS INSTRUCTED BY  
6 MR. PIUZE TO FOCUS JUST ON THE YEAR 1998.

7 AND HE HAS LOOKED AT CERTAIN  
8 MATERIALS, NOT THE MATERIAL, APPARENTLY, THAT YOUR  
9 HONOR HAS, IN ORDER TO FIGURE OUT WHAT A CORRECT  
10 TAX RETURN FOR THE YEAR 1998 WOULD BE.

11 AND WHAT HE ENDED UP WITH WAS  
12 BASICALLY NOT MUCH.

13 HE HAD SOME BANK STATEMENTS, HE HAD  
14 THE INFORMATION ON THE PRIOR TAX RETURNS AND A VERY  
15 LITTLE BIT OF INFORMATION FROM THE PLAINTIFF  
16 HIMSELF.

17 FROM THAT, HE HAS ATTEMPTED TO  
18 CRAFT AN EVALUATION OR ANALYSIS OF HOW MUCH MONEY  
19 THE PLAINTIFF MADE IN THE YEAR 1998 AND THAT FIGURE  
20 TURNS OUT FROM HIS CALCULATIONS TO BE THE \$167,000  
21 THAT MR. FORMUZIS JUST TALKED ABOUT IN HIS  
22 CALCULATIONS HERE.

23 THAT ESTIMATE IS BASED ON ALMOST NO  
24 INFORMATION.

25 WHAT HE DID WAS LOOK AT BANK  
26 STATEMENTS, MR. BOEKEN TOLD HIM THAT ANY DEPOSIT  
27 THERE, THESE ARE BANK STATEMENTS FOR MR. BOEKEN'S  
28 BUSINESS, BY THE WAY, NOVA L. L. C., BROKEN SAYS, ANY

1 DEPOSIT THERE IS INCOME. THAT'S THE ONLY WAY THAT  
2 MR. LEWAK KNOWS ANYTHING ABOUT MR. BOEKEN'S INCOME  
3 IN THE YEAR 1998 IS THAT STATEMENT FROM THE  
4 PLAINTIFF AND THE BANK STATEMENTS AND IT'S ONLY ONE  
5 OF SEVERAL BANK ACCOUNTS THAT MR. BOEKEN HAD.

6 HE THEN WENT THROUGH AND LOOKED AT  
7 CANCELED CHECKS AND ON HIS OWN DECIDED, WELL, THIS  
8 IS A LEGITIMATE BUSINESS EXPENSE AND SHOULD BE AN  
9 EXPENSE FROM THE BUSINESS BUT, AS IT TURNS OUT,  
10 MANY, MAYBE EVEN MOST OF THE CHECKS ON THIS  
11 BUSINESS ACCOUNT WERE WRITTEN FOR PERSONAL EXPENSES  
12 OF MR. BOEKEN.

13 SO HE PUT THOSE IN ANOTHER PILE.

14 AND HE ENDS UP, AFTER THIS PROCESS  
15 OF GOING THROUGH BANK STATEMENTS, ESSENTIALLY, WITH  
16 THIS \$167,000 FIGURE.

17 NOW, WHAT WE HAVE IN THOSE BOXES,  
18 GOD KNOWS. BUT FROM WHAT I UNDERSTAND, IT MAY  
19 INCLUDE RECORDS OF BUSINESS AND FINANCIAL  
20 TRANSACTIONS FOR THE YEARS 1999 AND 2000.

21 NOW, THOSE WOULD BE RELEVANT, OF  
22 COURSE, FOR EVALUATING INCOME FOR THOSE TWO YEARS.

23 BUT THAT MAY ALSO SHED A TREMENDOUS  
24 AMOUNT OF LIGHT ON WHETHER MR. LEWAK'S ESTIMATES  
25 AND EVALUATIONS OF INCOME IN 1998 WERE CORRECT.

26 THEY MAY SHED LIGHT ON MR. BOEKEN'S  
27 REPRESENTATION THAT ANYTHING REFLECTED AS A DEPOSIT  
28 IN THIS BUSINESS BANK ACCOUNT IS ACTUALLY INCOME TO

1 HIM AS OPPOSED TO, SAY, INVESTMENT CONTRIBUTIONS  
2 MADE BY SOME OF THE INVESTORS IN HIS PROJECTS,  
3 TRANSFERS FROM OTHER BANK ACCOUNTS, INTEREST,  
4 WHATEVER.

5 AND IT MAY SHED, THE INFORMATION IN  
6 THESE BOXES MAY SHED LIGHT ON DISTRIBUTIONS ON  
7 EVALUATING AND IDENTIFYING THE SIGNIFICANCE OF THE  
8 ACTUAL CHECKS THAT APPEAR IN THE BUSINESS BANK  
9 ACCOUNT.

10 WE JUST DON'T KNOW ANYTHING REALLY,  
11 OTHER THAN WHAT'S ON THE BANK STATEMENTS WE HAVE,  
12 BOXES OF DOCUMENTS FOR THE IMMEDIATE SUCCEEDING  
13 YEARS MAY CAST CONSIDERABLE LIGHT ON THE YEAR 1998  
14 AND EVEN PRIOR YEARS.

15 THE COURT: ALL RIGHT.

16 HAS THE DEFENSE REQUESTED THESE  
17 DOCUMENTS APART FROM LEWAK AND HIS USE OF THEM? IN  
18 OTHER WORDS, IS THERE A DISCOVERY REQUEST OR  
19 SOMETHING OUTSTANDING TO WHICH 1999 AND 2000  
20 TRANSACTIONAL DOCUMENTS MAY ALSO BE DISCOVERABLE?

21 MR. CARLTON: INTERROGATORY AND DOCUMENT  
22 REQUESTS WERE SERVED QUITE A LONG TIME AGO ASKING  
23 FOR THE PLAINTIFF TO SPECIFY ANY LOSS, PAST AND  
24 FUTURE DAMAGES, AND THEN TO PROVIDE DOCUMENTS THAT  
25 WERE RELIED UPON IN MAKING THOSE ESTIMATES. THOSE  
26 WERE SEPARATE AND APART FROM THE DOCUMENT REQUESTS  
27 DIRECTED TO MR. LEWAK.

28 BUT WHAT WE WERE TOLD AT THE TIME

1 THE WRITTEN DISCOVERY WAS SERVED QUITE A WHILE AGO,  
2 WAS WE HAVEN' T MADE THAT CALCULATION YET AND THIS  
3 WAS PROVIDED IN RESPONSE TO THAT DISCOVERY.

4 SO APPARENTLY THIS IS IT.

5 WELL, I WILL SAY THAT FOR THE TIME  
6 BEING.

7 THE COURT: MR. PIUZE, DO YOU WISH TO BE  
8 HEARD ON THIS MATTER?

9 MR. PIUZE: YES, I DO.

10 LET ME JUST CORRECT SOMETHING MR.  
11 CARLTON SAID, WHICH I AM SURE WAS INADVERTENT. AND  
12 IT GOES LIKE THIS: THERE WAS A DOCUMENT REQUEST  
13 WHICH WAS A -- WAS FINALLY DONE, BUT NO QUARRELS  
14 WITH IT, THAT SAID LET' S SEE WHAT YOU ARE GOING TO  
15 BASE YOUR WAGE STUFF ON, GENERALLY. I DON' T KNOW  
16 IF THAT' S WHAT IT SAID, BUT I AM READY TO SAY THAT  
17 IT BASICALLY WAS BROAD ENOUGH TO SAY THAT.

18 AT THE TIME WE HAD NOTHING.

19 AS THINGS CAME IN, THEY HAVE BEEN  
20 PRODUCED. AT THE CROSS-EXAMINATION TRIAL,  
21 CROSS-EXAMINATION DEPOSITION OF RICHARD BOEKEN,  
22 WHICH WAS THE LAST ONE SHOWN TO THE JURY AND THE  
23 COURT, ON THAT DAY, I TURNED OVER TO MR. CARLTON  
24 ALL OF THE TAX RETURN DOCUMENTS WHICH MR. -- WHICH  
25 DR. FORMUZIS HAD TODAY.

26 I GAVE THEM TO MR. CARLTON DURING  
27 THE COURSE OF THAT DEPOSITION. MR. BOEKEN  
28 IDENTIFIED THEM DURING THE COURSE OF THE

1 DEPOSITION. THEY ARE EXHIBITS TO THE DEPOSITION  
2 AND UNDOUBTEDLY, FOR SURE, THEY WERE TURNED IN.

3 MR. CARLTON: THAT IS CORRECT, YOUR  
4 HONOR.

5 MR. PIUZE: SUBSEQUENT TO THAT TIME,  
6 HERE'S WHAT HAS OCCURRED: I GOT MY HANDS ON A 1996  
7 INCOME TAX RETURN WHICH I PREVIOUSLY HAD NOT HAD,  
8 AND I PROVIDED THAT TO THE DEFENSE AS SOON AS I GOT  
9 IT.

10 AND THEN SUBSEQUENT TO THAT TIME,  
11 THE DEFENSE DID SOME DISCOVERY ON MS. TUBEROSI AND  
12 THAT DISCOVERY WAS MULTI-FACETED AND INCLUDED A  
13 PRODUCTION OF DOCUMENTS AND ALSO INCLUDED  
14 DEPOSITION.

15 MS. TUBEROSI IS NOT AN ACCOUNTANT,  
16 SHE IS A BOOKKEEPER.

17 AND I HAVE A FEELING SHE'S PRETTY  
18 MUCH INCOMPETENT FROM WHAT I HAVE SEEN AND BEEN  
19 TOLD.

20 MISS TUBEROSI HAD, WHAT I BELIEVE  
21 TO HAVE BEEN A DRAFT OF AN INCOME TAX RETURN FROM  
22 1998 AND IT CAME IN AT A VERY LOW NUMBER, WHETHER  
23 IT IS 37,000, 73,000, I DON'T KNOW, BUT IT IS  
24 NUMBERS OF THOSE MAGNITUDES.

25 AT THAT POINT, WHEN I -- FOR  
26 VARIOUS REASONS, HAD ZERO CONFIDENCE IN  
27 MS. TUBEROSI'S ABILITIES, I ASKED MY PERSONAL  
28 ACCOUNTANT, C. P. A., A REAL C. P. A., BERNARD LEWAK,

1 TO TAKE A LOOK AT THE DOCUMENTATION BECAUSE I  
2 WANTED A REAL C. P. A. TO TAKE A LOOK AT THIS STUFF  
3 AND TELL ME WHAT WAS WHAT.

4 MY ORIGINAL REQUEST TO MR. LEWAK  
5 WAS THAT HE LOOKED AT '98, '99 AND 2000.

6 FOR TWO DIFFERENT REASONS, HE WAS  
7 UNABLE TO FULFILL THAT TASK.

8 REASON NUMBER 1, HE'S IN THE MIDDLE  
9 OF TAX SEASON. AND THE COURT WILL TAKE NOTICE, I  
10 AM SURE, THAT LAST MONDAY WAS APRIL 16TH, THAT WAS  
11 THE LAST DAY TO FILE TAXES AND MR. LEWAK WAS  
12 WORKING HIS TAIL OFF FOR ALL OF HIS CLIENTS TO GET  
13 THEIR TAX RETURNS DONE.

14 REASON NUMBER 2, WHICH WAS MORE  
15 SIGNIFICANT AND WHICH MR. LEWAK WILL TESTIFY WAS  
16 MORE SIGNIFICANT, IS THAT MR. BOEKEN HAS A VERY  
17 LIMITED ABILITY TO HELP. AND THAT LIMITED ABILITY  
18 IS DUE TO HIS LACK OF FOCUSED CONCENTRATION,  
19 MEMORY, AND PHYSICIAN STAMINA.

20 AND SO OVER A PERIOD OF TIME, WHEN  
21 I WAS TRYING TO RIDE HERD ON THIS AND GET STUFF  
22 DONE BECAUSE WE ARE APPROACHING TRIAL, IN LIMINE,  
23 IN JURY SELECTION, IN TRIAL AND I WANT THIS STUFF  
24 DONE, I AM SORT OF TRYING TO KICK A LITTLE TAIL  
25 MYSELF, AND MR. BOEKEN JUST ISN'T COMING THROUGH  
26 AND MR. LEWAK WOULD SAY, I NEED THESE EXACT FOUR  
27 DOCUMENTS, AND MR. BOEKEN WOULD SAY, SURE -- BY THE  
28 WAY, MR. LEWAK CAN TESTIFY TO ALL THIS, I AM NOT

1 GOING TO TESTIFY TO IT. BUT MR. BOEKEN WILL SAY,  
2 YEAH, I CAN GIVE YOU THOSE FOUR DOCUMENTS AND  
3 MR. LEWAK WOULD SAY THE ONE THING I DON'T WANT IS  
4 TOO MUCH PAPER BECAUSE UP IN THE MIDDLE OF THE TAX  
5 SEASON, KEEP IT TO THE POINT. AND THE BOTTOM LINE  
6 IS THESE TWO BOXES WERE DELIVERED.

7 MR. LEWAK WAS LESS THAN HAPPY,  
8 ALTHOUGH I HAVEN'T LOOKED AT EITHER OF THOSE THINGS  
9 EVER, I AM TOLD THAT ONE OF THEM IS BASICALLY A  
10 BUNCH OF MEDICAL BILLS AND MAYBE GROCERY BILLS AND  
11 JUNK LIKE THAT, TOTAL JUNK, AND THE OTHER MAY BE A  
12 LITTLE MORE GERMANE.

13 THESE THINGS WERE BROUGHT IN BY MR.  
14 BOEKEN AGAINST EXPRESS ORDERS TO BRING IN A BUNCH  
15 OF JUNK. THEY WERE BROUGHT IN IN MR. BOEKEN'S  
16 ATTEMPT TO PROVIDE HELP.

17 BUT WHAT HE PROVIDED WAS STATIC AND  
18 CLUTTER. AND MR. LEWAK'S TESTIMONY IN THE  
19 DEPOSITION AND THEN FINE-TUNED IN A COUPLE OF  
20 DISCUSSIONS HERE, WAS THAT FORGET READ AND RELIED  
21 ON VERSUS READ AND DIDN'T RELY ON, IT WAS NOT  
22 REVIEWED. IT IS A BUNCH OF JUNK WHICH WASN'T  
23 REVIEWED.

24 SO AS FAR AS THEIR ABILITY TO  
25 CROSS-EXAMINE MR. LEWAK ON THE STUFF, IF HE NEVER  
26 REVIEWED IT, THEY SHOULDN'T CROSS-EXAMINE HIM ON  
27 IT. I DON'T KNOW WHAT'S IN THERE. BUT I HAVE A  
28 FEELING, MOST OF IT, ONE BOX IS TOTALLY JUNK, AND

1 THE OTHER BOX PROVIDES BASICALLY A BREACH OF MR.  
2 BOEKEN' S PRIVACY.

3 PLEASE KEEP IN MIND THAT WE TRIED  
4 TO GUARD THE NAMES OF HIS CLIENTELE ALONG THE WAY.  
5 AND THAT IS STILL ONE OF THE  
6 CONSIDERATIONS.

7 SO THAT' S WHAT I HAVE TO SAY.

8 AS I HAVE OBTAINED DOCUMENTS,  
9 I HAVE TURNED THEM OVER TO ARNOLD & PORTER AS SOON  
10 AS I HAVE GOTTEN THEM

11 I HAVE NEVER SEEN THAT STUFF. THE  
12 TWO OF US ARE EQUALLY IN THE DARK.

13 AND THAT' S IT FOR ME UNLESS THE  
14 COURT HAS SOME DIRECT QUESTIONS.

15 THE COURT: MY ONLY QUESTION TO PLAINTIFF  
16 WOULD BE, AT THIS POINT WOULD BE, EVEN THOUGH LEWAK  
17 STATES THAT HE CANNOT RELY ON ANY OF THE MATERIAL  
18 FOR 1999 AND 2000, THOSE DOCUMENTS, DIDN' T EVEN  
19 REVIEW IT, NONETHELESS, WOULD THERE BE AN  
20 INDEPENDENT BASIS FOR WHICH THOSE DOCUMENTS OUGHT  
21 TO BE GIVEN TO THE DEFENSE FOR THE PURPOSES, EVEN  
22 IF LEWAK WERE NOT CROSS-EXAMINED ON THE MATERIAL?

23 MR. PIUZE: THAT' S A POINT. I DON' T  
24 KNOW, LEGITIMATE POINT.

25 I DON' T KNOW THAT THE 99 AND 2000  
26 DOCUMENTS ARE IN THERE, AND I JUST, JUST FOR  
27 COMPLETENESS HERE, FORGIVE ME FOR BABBLING, BUT I  
28 WANT TO ADD ONE THING THAT I FORGOT. AS TIME WENT

1 ON, THOUGH MY SELF-STATED TAIL KICKING EFFORTS WERE  
2 INEFFECTIVE, I FINALLY TRIAGED THE SITUATION AND  
3 SAID THERE'S NO WAY WE ARE EVER GOING TO GET THIS  
4 DONE, CONCENTRATE ON '98. LET'S AT LEAST GET ONE  
5 OF THEM DONE.

6 THE COURT: I UNDERSTAND THAT. I GOT  
7 THAT.

8 OKAY.

9 MR. PIUZE: SO AS FAR AS THE INDEPENDENT,  
10 IS IT INDEPENDENTLY MAYBE VALUABLE TO THE DEFENSE,  
11 YES, FAIR POINT. I DON'T KNOW -- I DON'T EVEN KNOW  
12 WHAT THEY HAVE GOT THERE. NO, I CAN'T EVEN TELL  
13 YOU WHAT'S IN THERE.

14 THE COURT: AND NEITHER CAN I.

15 OKAY.

16 MR. CARLTON: AGAIN, YOUR HONOR, MAY WELL  
17 HAVE INDEPENDENT VALUE, DON'T KNOW BUT I CAN SAY  
18 THIS. WHAT MR. LEVAK HAD TO WORK WITH IN CRAFTING  
19 THE 1998 TAX RETURN THAT HE DID WAS ALMOST NOTHING.  
20 HE HAD SEVERAL BOXES OF INFORMATION THAT THE  
21 PLAINTIFF AT LEAST THOUGHT WAS RELEVANT TO HIS  
22 TASK. HIS DECISION NOT TO REVIEW THAT, WHETHER IT  
23 WAS BASED ON BEING TOO BUSY AT THE TIME OR  
24 WHATEVER, IS SOMETHING THAT I THINK IS RELEVANT AND  
25 CERTAINLY GIVEN THE ALMOST TOTAL PAUCITY OF  
26 EVIDENCE TO SUPPORT WHAT HE DID COME UP WITH, JUST  
27 ABOUT ANYTHING THAT MIGHT CAST LIGHT, FURTHER LIGHT  
28 ON WHAT HAPPENED IN MR. BOEKEN'S FINANCIAL

1    CONDITION IN 1998 IS GERMANE TO DAMAGES AND GERMANE  
2    TO THE CREDIBILITY OF THE TAX RETURN THAT MR. LEWAK  
3    CAME UP WITH.

4               MR. PIUZE:    COULD I TAKE 30 SECONDS.

5               THE COURT:    YES, SIR.

6               MR. PIUZE:    JUST SO THE COURT DOESN'T GET  
7    THE WRONG IMPRESSION, BURNEY LEWAK IS YOUR NEXT  
8    CONSERVATIVE C. P. A. TYPE AND THAT'S THE WAY HE ACTS  
9    WITH ME.    HE TESTIFIED IN HIS DEPOSITION HE HAD  
10   ENOUGH INFORMATION TO MAKE HIMSELF FEEL -- IT ISN'T  
11   THAT, HEY, THIS WAS A DOWN AND DIRTY AND I RAN OUT  
12   OF TIME, HIGH THOUGHT THAT HE HAD DONE A REAL,  
13   HONEST, FINAL TAX RETURN FOR MR. BOEKEN FOR '98 AND  
14   THEY ARE GOING TO AMEND WHAT TUBEROSI DID AND SEND  
15   IT IN.

16              THE COURT:    SO THEY WOULD GO BACK AND --  
17   THE -- WAS THE 1998 TAX RETURN EVER FILED?

18              MR. PIUZE:    THE ANSWER IS YES.

19   MR. BOEKEN TOLD MR. LEWAK YES.    I WAS SKEPTICAL OF  
20   THAT BECAUSE I AM SKEPTICAL OF SOME OF THE THINGS  
21   MR. BOEKEN SAYS NOWADAYS, NOT BECAUSE I THINK HE IS  
22   DISHONEST, BECAUSE I THINK HE IS DISABLED AND  
23   MR. LEWAK, SUBSEQUENT TO THE DEPOSITION, CALLED THE  
24   FRANCHISE TAX BOARD AND THEY, IN FACT, TOLD HIM IN  
25   THAT EVENT.

26              THE COURT:    WELL, WE WILL TAKE A LOOK AT  
27   IT AND WE WILL GET BACK TO YOU AS SOON AS WE HAVE  
28   COMPLETED OUR WORK.    CERTAINLY BY THE END OF

1 BUSINESS TOMORROW

2                                   THANK YOU VERY MUCH.

3                   MR. PIUZE: I NEED THE FOLLOWING  
4 GUIDANCE, PLEASE.

5                                   TOMORROW IS THE DAY WHEN MR. LEWAK  
6 WOULD BE SCHEDULED TO BE A WITNESS.

7                                   AND THERE ARE SEVERAL WAYS OF  
8 HANDLING IT. ONE IS JUST TELL HIM TO STAND DOWN  
9 FOR A MINUTE, THE OTHER WAY IS BRING HIM IN AND IF  
10 THEY HAVE FURTHER CROSS-EXAMINATION OF HIM BASED ON  
11 THE DOCUMENT STUFF THEY CAN BRING HIM BACK LATER, I  
12 AM PUTTING THAT OUT. I DON'T HAVE -- I AM NOT  
13 TRYING TO SELL ONE SIDE OR THE OTHER, BUT THAT'S  
14 WHAT WE ARE LEFT WITH.

15                   THE COURT: SO IS COUNSEL SUGGESTING TO  
16 ME THAT IF WE DECIDED TO POSTPONE HIS TESTIMONY  
17 THAT COUNSEL WOULD REST AND THE OTHER SIDE WOULD  
18 BEGIN THEIR CASE AND THEN WE WOULD BRING -- PUT  
19 LEWAK ON THE STAND EARLY IN THE PRESENTATION, OUT  
20 OF ORDER OR WHAT IS BEING SUGGESTED?

21                   MR. PIUZE: I AM NOT ACTUALLY  
22 SUGGESTING -- NEITHER. JUST LETTING THE COURT KNOW  
23 THAT THERE'S A POTENTIAL HOLE THERE, BECAUSE IF HE  
24 COMES IN AND TESTIFIES TOMORROW, AND IF THE COURT  
25 DOES ALLOW SOME OF THE STUFF OUT, IT WILL TAKE TIME  
26 FOR THAT, TO DIGEST IT, AND I DON'T KNOW WHEN THEY  
27 WOULD FINISH THEIR CROSS-EXAMINATION. IF THEY  
28 WANTED TO DO IT LATER, IT'S OKAY WITH ME.

1                   MR. LEITER: GIVE US ONE MOMENT, YOUR  
2 HONOR.

3

4                   (INTERRUPTION IN PROCEEDINGS.)

5

6                   MR. CARLTON: AGAIN, THINKING ON THE FLY  
7 HERE, WHAT ABOUT THIS SUGGESTION: YOU CALL LEWAK  
8 AT THE CONCLUSION OF OUR CASE, INSTEAD OF IN THE  
9 MIDDLE OF IT SOMETIME, OR US CROSSING HIM, GOD  
10 KNOWS HOW LONG AFTER HE GIVES HIS DIRECT, WHY NOT  
11 JUST CLOSE WITH THE EXCEPTION OF MR. LEWAK, WHO  
12 COULD BE CALLED WHEN OUR CASE IS OVER.

13                  MR. PIUZE: WELL, I'D ACTUALLY RATHER NOT  
14 DO THAT. I WOULD RATHER BUTTON UP AND LET THE JURY  
15 KNOW WHERE THE 167 CAME FROM THAT WOULD BE MY  
16 PREFERENCE.

17                  THE COURT: I AM NOT GOING TO CLOSE YOUR  
18 CASE.

19                  WELL, FORMUZIS -- IT'S FORMUZIS,  
20 LEWAK AND THAT'S IT?

21                  MR. PIUZE: NO, YOUR HONOR. WE HAVE  
22 DR. SARNA TOMORROW, TREATING ONCOLOGIST, AND THEN  
23 DOCTOR -- MR. JOHNSON. MR. JOHNSON IS THE  
24 ECONOMIST THAT WE ARE TALKING ABOUT WHO'S DOING THE  
25 FINANCIAL CONDITION STUFF. AND I AM ABOUT READY TO  
26 WALK OUT OF THIS ROOM, CALL HIM AND TELL HIM TO GET  
27 DOWN HERE FOR DEPOSITION TOMORROW MORNING.

28                  SO OF THE THREE LIVE WITNESSES THAT

1 I HAVE GOT LEFT, TWO ARE SORT OF NOT TOTALLY NAILED  
2 DOWN RIGHT NOW

3 THE COURT: WELL, LEWAK, HERE'S WHAT I  
4 CAN DO, I WILL LET YOU PUT LEWAK ON THE WITNESS  
5 STAND AND TAKE HIM IN ORDER AND DIRECT HIM AS YOU  
6 WISH ON DIRECT EXAMINATION, ALLOW CROSS-EXAMINATION  
7 TO THE EXTENT THAT YOU FEEL THAT YOU CAN  
8 CROSS-EXAMINE HIM BUT EXCUSE HIM -- BUT NOT  
9 EXCUSE HIM AS A WITNESS AND ORDER HIM BACK AND, OF  
10 COURSE, HE WOULD HAVE TO COME BACK BECAUSE YOUR  
11 CROSS-EXAMINATION WOULD NOT BE COMPLETED. AND IT  
12 WOULD PUT THE PLAINTIFF'S CASE AT RISK IF YOU HAVE  
13 A WITNESS OUT THERE THAT YOU NEVER GOT TO FULLY  
14 CROSS-EXAMINE.

15 SO I WOULD LEAVE YOUR  
16 CROSS-EXAMINATION OPEN. BUT I WOULD PUSH YOU TO  
17 GET READY FOR AND TO DO IT QUICKLY AND NOT GET DEEP  
18 INTO YOUR CASE BEFORE YOU -- IN OTHER WORDS, NOT  
19 ALLOW YOU TO JUST PUT IT OFF AND ULTIMATELY ACHIEVE  
20 THE RESULT OF GETTING TO THE END OF YOUR CASE IN  
21 ANY EVENT.

22 FAIR ENOUGH.

23 OKAY. SO THEN WE ARE GOING TO HAVE  
24 A WITNESS COME IN HERE -- WE ARE GOING TO HAVE ONE  
25 PERSON BEING DEPOSED TOMORROW STARTING IN THE  
26 MORNING.

27 MR. LEITER: I THINK WE HAD AGREED THAT  
28 WE WOULD TRY TO GET THE REPORT TONIGHT, GIVE US

1 SOME TIME DO UNDERSTAND IT AND DEPOSE HIM IN THE  
2 AFTERNOON TOMORROW

3 THE COURT: ALL RIGHT. TOMORROW  
4 AFTERNOON. AND THEN HE WOULD GO ON THE WITNESS  
5 STAND WEDNESDAY MORNING.

6 MR. PIUZE: YES.

7 THE COURT: AND WE WOULD ANTICIPATE THAT  
8 THE PLAINTIFF WOULD BE RESTING WEDNESDAY NOON OR  
9 SO.

10 MR. PIUZE: NO. AND THE REASON NO IS  
11 BECAUSE WE HAVE SOME TRANSCRIPT TESTIMONY TO READ.  
12 AS FAR AS THE LIVE TESTIMONY, THOUGH, I HAVE JUST  
13 INFORMED THE COURT OF THE REMAINDER OF THE LIVE  
14 TESTIMONY.

15 THE COURT: WE ARE IN GOOD SHAPE.

16 YOU ALL HAVE A GOOD EVENING.

17

18 (AT THIS TIME, THE PROCEEDINGS  
19 IN THE ABOVE-ENTITLED MATTER  
20 CONTINUED TO TUESDAY, APRIL  
21 24TH, 2001 AT 9:30 A.M.)

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