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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Polaroid Corporation, BKY No. 08-46617
Debtor.

BEFORE THE HONORABLE
GREGORY F. KISHEL
United States Bankruptcy Judge

* * *

TRANSCRIPT OF PROCEEDINGS

4-16-09

(VOL. II)

* * *

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P R O C E E D I N G S

MR. KRAKAUER: Thank you, Your Honor. Brian Krakauer on behalf of the Ritchie entities.

EXAMINATION

BY MR. KRAKAUER:

Q. Who actually put -- what individuals made the decision not to reorganize?

A. We made that decision in conjunction with the management team. It was a joint determination based on our recommendation, the recommendations of the company's legal advisors, but the management team ultimately

17 made the determination to support the sale
18 process.

19 Q. And who supervised the management team that
20 made that decision?

21 A. I don't recall anybody supervising the
22 management team. The management team made
23 that determination. It was Mary Jeffries and
24 others on her team.

25 Q. Was this Mary Jeffries during the process the
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1 senior person at the company making the
2 decisions?

3 A. Yes, she is.

4 Q. It was ultimately her decision whether to
5 pursue a reorganization strategy or sale
6 strategy.

7 A. It was ultimately her decision, yes.

8 Q. She said she was the one if you wanted to
9 know ultimately how the decision was made,
10 you would have to ask Mary Jeffries for that?

11 A. Ultimately you would have to ask Mary
12 Jeffries if it was a joint determination.

13 Q. Did Doug Kelly participate in the decision at
14 all?

15 A. We briefed Mr. Kelly on numerous occasions
16 throughout the process. He reviewed various
17 presentations that we made to him and he was
18 a party that was part of the process and
19 determination that was ultimately made, yes.

20 Q. But did he actually -- did he direct
21 Ms. Jeffries at all in terms of the decision
22 or did he actually make the decision in his
23 capacity as either Receiver or Trustee for
24 the shareholder?

25 A. I don't know.

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1 Q. In connection with the sales process, would
2 your answer be the same? Was it Ms. Jeffries
3 who's making the ultimate decisions in terms
4 of how the sales process was conducted and
5 ultimately who -- who the company would chose
6 to propose today ultimately as it's preferred
7 bidder?

8 A. Yes, we interacted with Ms. Jeffries.

9 Q. So it was ultimately Ms. Jeffries' decision
10 to direct the Debtor at this hearing a few
11 minutes ago to chose Patriarch as the --

12 A. In conjunction with her advisors, the advice
13 of her advisors, yes.

14 Q. But in terms of decision making, she was the
15 decision maker?

16 A. That's correct.

17 Q. Same if you wanted to know the basis for that
18 decision, you would again have to ask
19 Ms. Jeffries?

20 A. I would guess.

21 Q. Houlihan does a fair amount of work in the
22 middle market M&A, don't they, mergers and
23 acquisitions, advisory work for various kinds

24 of people.

25 Is that correct?

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1 A. Yes, we do.

2 Q. Both in distress situations and then not in
3 distress situations, correct?

4 A. We're the No. 1 advisor by both number and
5 volume of transactions for -- transactions
6 below a billion dollars on a healthy side.
7 No lead tables are kept for DM&A, distressed
8 M&A transactions, but we believe that we are
9 based on our industry insight by a wide
10 margin the most active entity in DM&A
11 processes as well.

12 Q. Over the last 6 or 7 months it's fair to say,
13 isn't it, that there's been a rather dramatic
14 contraction in the size and volume of cash
15 deals, the merger acquisition cash deals in
16 the United States.

17 Isn't that correct?

18 A. I haven't reviewed numbers. My understanding
19 on the basis of the number of transactions
20 that we are involved in currently, equity and
21 other forms of consideration are factoring in
22 in a more significant way perhaps than they
23 have in the past, but I can't speak to
24 aggregate numbers because I haven't seen
25 anything dispositive on that.

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- 1 Q. But it would be your impression certainly
2 based on your own experience that cash deals
3 are much less frequent at this point?
- 4 A. It's my impression that that's the case, yes,
5 Brian.
- 6 Q. Did -- in structuring this process prior to
7 the original auction you had about two weeks
8 ago that took place at Lindquist & Vennum, how
9 did you structure that auction to take into
10 account equity bidding at that point?
- 11 A. Sure. The bid procedures were very clear
12 that we would entertain offers that included
13 different forms of consideration, including
14 equity.
- 15 Q. But walking into that auction there wasn't a
16 pre-determined valuation of equity, was
17 there, for the bidders?
- 18 A. There was not, no.
- 19 Q. And I think there's some statements on the
20 record that when Hilco made an equity bid
21 what you did with it is take their business
22 plan and send it back to some of your people
23 in, I think you said, San Francisco who spent
24 the night reviewing it?
- 25 A. Yep.
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- 1 Q. And confirmed with people and you came up
2 ultimately with a number attached to Hilco's

3 plan based on their LLC agreement?

4 A. Yes.

5 Q. Is that correct?

6 A. Yes, yes.

7 Q. And how much -- and that was a 24-hour period
8 approximately?

9 A. Actually it was quicker than that. We
10 reached out to -- as I mentioned, the
11 reorganized Polaroid will in many respects
12 look like a venture capital proposition, a
13 pure venture entity.

14 We reached out to my partners in our San
15 Francisco office who are among the more
16 experienced in the world in valuing early
17 stage venture propositions to evaluate what
18 types of discount rates they apply and what
19 types of valuation methodologies they use.

20 They were able to give us guidance in
21 terms of how to approach this on a
22 methodological basis which we found helpful.

23 Q. And you did that over the course of an
24 evening into the next day?

25 A. That's correct, over the course of a couple

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1 hours, yes.

2 Q. Just one thing. On your Exhibit A you wrote
3 submitted written proposals.

4 Is that -- did you prepare this Exhibit A?

5 A. Yes, we did prepare this exhibit.

- 6 Q. When you listed No. 3, Ritchie Capital
7 Management, that's actually not correct, is
8 that right? It was -- are you referring to
9 the proposal that was submitted jointly
10 between Ritchie, Acorn and Lancelot, and
11 Lancelot being the trustee for Lancelot?
- 12 A. I guess technically that's correct, yes.
- 13 Q. Not just technically, that's what it was,
14 right?
- 15 A. Yes.
- 16 Q. So that's a mistake? Sir, I didn't hear an
17 answer.
- 18 A. Yes.
- 19 Q. Then along the way in an equity proposal from
20 Patriarch -- and that was in the second day
21 of the bidding?
- 22 A. That's correct.
- 23 Q. And how much time elapsed between the time
24 you first saw Patriarch's business plan and
25 you're coming up with this -- the same

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- 1 \$650,000.00 number per person?
- 2 A. Probably no more than 60 minutes.
- 3 Q. It was very quick?
- 4 A. We -- while we were listening to the
5 Patriarch presentation, which we allowed in
6 the context of the auction, we were modeling
7 their financial projections and coming up
8 with their own value determination concurrent
9 with other presentations.

10 Q. Is that in your experience typical for
11 valuing equity, that somebody would do it in
12 a 60-minute period?

13 A. Valuations take in some cases many weeks. In
14 some cases they can be done very quickly.

15 In this case the reorganized entity was
16 something that was rather straightforward and
17 it was quick to be certain, but certainly not
18 something that is completely out of the
19 ordinary.

20 Q. You said straightforward.

21 Did it involve elements of transactions
22 between the new entity and its affiliates?

23 A. We were not -- there was no specific
24 discussion about what types of
25 transactions -- my recollection what types of

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1 transactions might occur post-acquisition.

2 Q. So you valued the equity without trying to
3 find out what type of transactions the
4 company would engage in?

5 A. To be clear, we valued these on an all equity
6 basis. There are very -- we reviewed the LLC
7 agreements at the time. We have reviewed
8 them subsequently exhaustively. There's very
9 little ability for the creditors to
10 influence -- in fact, there's no ability for
11 the creditors to influence layering of
12 incremental indebtedness, for example, so a

13 minute after the acquisition occurs there are
14 various provisions in the LLC agreements
15 which allow the two parties to layer
16 incremental debt which would change the cash
17 structure.

18 The cash structure is an important
19 component of how one would value the equity
20 consideration.

21 Q. That wasn't my question. I was asking
22 whether in connection with looking at the
23 Patriarch proposal you looked at the nature
24 of the business plan, the nature of the
25 transactions the company would enter into

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1 that comprised its projections?

2 A. As presented, we vetted them fully, yes.

3 Q. In 60 minutes you vetted them fully?

4 A. Yes, we did.

5 Q. Did that include inter-company transactions
6 as part -- generating revenues from
7 inter-company -- from transactions with
8 affiliates?

9 A. There was various representations made as to
10 how Patriarch would realize value based on
11 the basis of what she would do and Patriarch
12 would do after they acquired the company.

13 The 73 companies that are owned by
14 Patriarch, some of them, would license, as we
15 understand it, the Polaroid brand and one of
16 the features that was touted by the Patriarch

17 presentation was the ability to realize
18 guaranteed royalty streams on the basis of
19 those relationships, but they are all
20 something that would occur under the
21 Patriarch banner?

22 Q. At the time you valued Patriarch had the LLC
23 agreement with Patriarch been worked out?

24 A. It had not in its entirety, no.

25 Q. And you have had experience with other equity
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1 deals, haven't you?

2 A. Yes, I have.

3 Q. And isn't it true that one typically spends a
4 fair amount of time working through what the
5 terms of that -- of equity rights are
6 particularly for a minority participate?

7 A. It's true that one does, yes.

8 Q. And that's because it's important from the
9 standpoint of having the value associated
10 with the minority interest.

11 Isn't that right?

12 A. Very clearly, yes.

13 Q. Okay. Are you familiar with a business
14 strategy for the Polaroid brand which
15 involves essentially taking that brand and
16 basically having a company that's a branding
17 company that essentially doesn't manufacture
18 it's own products, but uses the brand to make
19 money off of it essentially?

- 20 A. As you'll recall when we met with you and the
21 other advisors for Ritchie, that was one of
22 the four different operate out or stand alone
23 reorganization strategies that we detailed
24 with you and the other reviewing entities.
- 25 Q. And that's -- in looking at it, that's a
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- 1 pretty low capital business, it doesn't need
2 much working capital?
- 3 A. It does not need much working capital, no.
- 4 Q. And it also doesn't need a large number of
5 overhead. It's not a lot of overhead
6 associated with it. It's not a large number
7 of employees. It's not a large number of
8 leased premises, what have you.
- 9 Is that correct?
- 10 A. That's correct.
- 11 Q. In terms of the resources currently available
12 to Polaroid, there's certainly enough working
13 capital to fund that kind of business going
14 forward, isn't there?
- 15 A. In my assessment the working capital has been
16 substantially diminished. It was not our
17 belief at the time that we reviewed that
18 strategy with you and it's not our belief
19 today that there are adequate resources
20 within the company to pursue that type of
21 strategy.
- 22 I would admit, and it all depends, Brian,
23 on your assumptions regarding how radically

24 you can slash head count and SG&A
25 expenditures, related SG&A expenditures, to
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1 operate that model.

2 There are some models that you would pause
3 it that you could dramatically eliminate the
4 head count, reduce this down to a very, very
5 small amount of ongoing SG&A expenditures to
6 facilitate that type of strategy, but would
7 there be sufficient capital in the business
8 to facilitate that, potentially but it
9 depends critically on the assumptions you
10 apply.

11 Q. Let's just take that apart. In terms of
12 working capital, you wouldn't dispute the
13 fact that you could run that kind of business
14 on \$2 to \$5 million dollars working capital a
15 year?

16 A. We have looked at it. I am hazarding a guess
17 and shooting from the hip that you could
18 radically reduce the working capital needed
19 to operate under that model, yes.

20 Q. To that range?

21 A. Is it two to five, I can't state with
22 certainty. I don't have the analytics in
23 front of me, but you could -- close to that
24 range you could probably achieve that type of
25 model, yes.

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1 Q. And if you radically reduced the employee
2 base on that, you're basically off and
3 running on that kind of model.

4 Is that correct?

5 A. There is substantial execution risk to -- to
6 achieving that result but, yes, if one were
7 to pursue it aggressively, immediately,
8 potentially you could -- you could operate
9 under that model.

10 Q. And in terms of expertise of running that
11 kind of business, there are people out there
12 who do that, who are engaged in that business
13 and you could hire them as management if you
14 wanted to, couldn't you?

15 A. There are a variety of people that position
16 themselves as individuals capable of running
17 an entity like that, yes.

18 Q. But if you wanted to reorganize around that
19 model, the elements in terms of working
20 capital, reducing your costs and getting
21 management are all there essentially.

22 Isn't that correct?

23 A. Conceivably that could be done.

24 Q. In terms of -- you were talking about the
25 valuations and you looked at the valuation of

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1 the branding, you talked about Duff and
2 Phelps --

3 A. Yes.

4 Q. -- and their valuation?

5 A. Yes, Sir.

6 Q. When you compared the actual -- you said
7 actual results that took place at Polaroid
8 during 2008, right?

9 A. That's right.

10 Q. And the strategy for Polaroid during 2008 was
11 not a strategy that was built around branding
12 strategy. It was built around developing
13 products, isn't that fair to say, the same
14 products and some other products trying to
15 make those products work so that you could
16 potentially hit a, for lack of a better term,
17 a home run the way Mr. Randall -- or not
18 ultimately but did a number of years ago with
19 the original Polaroid product. You get a
20 very good technological break, you get a
21 product that really works, you take the
22 Polaroid brand and you market that product
23 and you make a lot of money. I mean that's
24 the basic element to what they were trying to
25 do, isn't it?

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1 A. Not entirely true. That was a critical
2 component of their business plan, but there
3 have always been various out licenses and
4 various attempts on the part of the Debtor to
5 realize streams of income from licensing the

6 brand. That has always been a critical
7 component of their strategy.

8 Q. But they were pursuing the product
9 development strategy at the same time?

10 A. No, they were concurrently, yes.

11 Q. So if you are looking at the results for
12 2008, those results, a lot of them are
13 explained by the fact that they were pursuing
14 technological development, that's what they
15 were doing?

16 A. Very clearly the large negative results were
17 influenced by -- first by the buy sell, the
18 attempt to run a consumer electronics model
19 using the Polaroid brand.

20 Q. And if you -- if you wanted -- if you were
21 looking at the Duff and Phelps brand
22 strategy, which was ultimately a valuation of
23 the brand, not of the business.

24 Isn't that correct?

25 A. Uh-huh.

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1 Q. You would have to go back to Duff and Phelps
2 and ask them, okay, how, if at all, does this
3 venture into technology affect the value of
4 the brand, that would be a threshold question
5 for Duff and Phelps to figure out whether
6 there was a difference, correct?

7 A. One would have to do that and, in fact, there
8 are various valuation methodologies that look
9 to quantify the value of a brand as separated

10 from a commercial entity. Relief of
11 royalties is one valuation methodology, for
12 example.

13 Q. And you didn't go back to Duff and Phelps and
14 ask how that technological venture may have
15 affected their value, if at all, that's not
16 something you did?

17 A. We did not, no.

18 Q. Turning to the equity of Patriarch for a
19 second, Mr. Chesley asked you about the
20 preference that Hilco had in taking out the
21 interest component and you said the value of
22 that was around five million dollars a year?

23 A. We assessed it to be about five million, yes.

24 Q. As I was sitting here a couple -- an hour and
25 a half, I guess about two hours ago now, a

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1 little bit mystified how much -- given five
2 million dollars a year which sounds like one
3 heck of a lot of value? I didn't say the
4 other word.

5 THE COURT: I heard it. The heat
6 of the moment.

7 BY MR. KRAKAUER:

8 Q. How did you factor that increased value into
9 your analysis of deciding that the Patriarch
10 bid was so better?

11 A. As I mentioned, the LLC agreements are
12 structured such that there's no ability for

13 the creditors or Trustee of the creditors to
14 prohibi t, for example, ei ther Hilco or
15 Patri arch from layering on a \$75 million
16 dollar (Unintelligible), for example, so we
17 don't have control. We don't have negative
18 control. We don't have relevant consent
19 rights under these LLC agreements to
20 influence the post reorganization, post
21 ownership capitalization of these businesses
22 with respect to data or preferred stock, so
23 while we analyzed it, there's nothing to say
24 that we should penalize Hilco vis-a-vis the
25 Patri arch bid or penalize Patri arch vis-a-vis

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1 Hilco.

2 Q. I am not quite sure I follow that.

3 If there were an effort post -- post
4 consummation date to put new money in, which
5 is what you're talking about, presumably you
6 have to put new money in, right?

7 A. That's right.

8 Q. Here we're talking about -- if you put new
9 money in there are at least some terms that
10 take care of what happens with that new money
11 and Hilco, one of the things they said I
12 think, was that they were agreeing to term
13 that if they put new equity in they would get
14 the new equity back, but it's -- but they are
15 agreeing not to dilute existing equity,
16 correct?

17 A. That's right.

18 Q. And Patri arch doesn't have that provisi on,
19 correct?

20 A. That is my recollecti on, yes.

21 Q. Okay. So let's just talk about -- there are,
22 at least under the Hilco structure, there's
23 some protections on that point. Let's talk
24 about what's there on Day 1.

25 A. Yes.

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1 Q. On Day 1 there was, as I was sitting here
2 listening, you had Hilco first bidding with
3 one LLC and instead basically there was --
4 they were taking over their initial
5 contribution, 34 million. They wanted to get
6 that 34 million back plus interest and you
7 valued their bid on that basis?

8 A. That's right.

9 Q. And then they said, well, we're going to
10 reduce that in terms of our return by
11 5 million dollars a year and it sounded to me
12 like even though they said we are going to
13 take 5 million dollars a year less out of
14 this business you valued that at zero?

15 A. That's right.

16 Q. I will make a comment on that in summation I
17 think.

18 What did Patri arch -- Patri arch also has
19 in their model an initial contribution, don't

20 they?

21 A. Patriarch had a two million dollar preferred
22 stock component which was subsequently
23 eliminated. It does not exist.

24 Q. But they have a note component, don't they,
25 their model?

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1 A. They do not explicitly in the LLC, existing
2 LLC agreement is my recollection.

3 Q. But they do in the materials that's been
4 given to you?

5 A. We reviewed materials that had a 50 million
6 dollar note in as part of the projections
7 that were provided.

8 Q. And that's on Day 1?

9 A. We don't know if that will be put in place
10 Day 1 or not.

11 Q. You didn't even ask in determining what their
12 components were, what their equity component
13 was worth?

14 A. We -- we asked. We vetted their projections.
15 We don't know. They have reserved the
16 ability to put that in place. We're done.

17 Q. So how -- if you don't know what the terms of
18 the note are, don't know what the interest
19 rate is, don't know what the return is based
20 upon, do you even know whether it's still 50?
21 I mean there was a lot of bidding here today.
22 Do you know whether it went up to 60 or 70
23 based on the increased bidding?

24 A. As I mentioned, we valued the equity on an
25 all equity -- presuming an all equity capital
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1 structure Day 1. We valued an apples to
2 apples and looked at the projections. We
3 valued them as if the two entities were on an
4 all equity basis Day 1.

5 Q. Well, how can you value the return when you
6 don't know what the capital structure is even
7 on Day 1? Without knowing how much the note
8 is, what the terms of the note are, which as
9 a note would come senior to the equity,
10 right?

11 A. Uh-huh.

12 Q. How can you possibly value the equity on that
13 basis?

14 A. We value the equity as if the two entities
15 were an all equity capital structure Day 1.
16 What happens beyond that will materially
17 influence the value, as you point out. The
18 LLC agreements are structured loosely. Both
19 entities can put incremental indebtedness on
20 the businesses. That will impact recoveries.

21 Q. But let's talk about that. Let's go back to
22 that. Incremental indebtedness that comes in
23 after the consummation of the transaction is
24 only there because you're putting new money
25 into the company after the transaction,

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1 right?

2 A. That's correct.

3 Q. We're talking about what's there on Day 1
4 presumably is related to actually funding
5 this acquisition?

6 A. Yes.

7 Q. So that's -- you would concede that's a
8 different kind of issue, isn't?

9 A. To be clear on that point, Brian, it is our
10 understanding based on the models that we
11 looked at with Patriarch that there would be
12 note put in place and that would be the means
13 by which the initial cash consideration put
14 in by Patriarch would be recovered. It's a
15 senior claim, so that would be the means by
16 which they would realize recovery of that
17 invested capital.

18 Q. For this transaction?

19 A. For this transaction. The same is true with
20 respect -- this is our understanding, is that
21 the preferred instrument would provide the
22 same recovery rights to Hilco under their
23 structure.

24 Q. Here's where I am having trouble, you came to
25 a conclusion in your expert opinion and

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1 advised the debtor \$650,000.00 per point for
2 Hilco, \$650,000.00 per point for Patriarch.

3 A. Yep.

4 Q. And what I hear you saying is that with
5 regard to Patriarch you don't know what the
6 initial note is. You don't know what the
7 terms are. You don't know the amount or the
8 terms.

9 How do you come up with the numbers?

10 A. We valued the two entities again on an all
11 equity basis Day 1. We negotiated with these
12 two entities throughout to try to realize
13 various protections, anti-layering provisions
14 and such, that would give us negative consent
15 rights. We were unable to do that
16 successfully.

17 We valued these two entities, reorganized
18 entities, on an all equity basis.

19 Q. The next question, we talked a little bit
20 about how in terms of Patriarch they are
21 having -- anticipating inter-company
22 transactions which may be an appropriate part
23 of their -- for business purposes, they may
24 want that, but they disclosed to you that
25 that's part of what they would like to do?

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1 A. Yes.

2 Q. How does -- as a minority interest holder,
3 how does one police those transactions under
4 the LLC agreement to ensure that they are
5 done fairly?

6 A. One has effectively no rights to police those
7 transactions. If what you mean by that is
8 render your consent, there are effectively no
9 provisions that allow for that policing
10 authority.

11 Q. It's more than even that, isn't it? Under
12 the existing LLC agreement that Patriarch has
13 proposed, if they deem transactions to be --
14 involve confidential information, they don't
15 have to disclose it?

16 A. That's my understanding, that's my read of
17 the LLC agreement.

18 Q. So the estate essentially wouldn't even know
19 what occurred?

20 A. I believe the term used throughout the
21 document is in the manager's sole discretion.

22 Q. In terms of deciding that it's confidential?

23 A. That's correct.

24 Q. So you wouldn't even know that there's
25 anything to complain about?

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1 A. That's correct.

2 Q. In terms of this process, you talked about
3 you conferred quite a bit with the Creditor's
4 Committee?

5 A. Yes.

6 Q. There are also a number of inter-company
7 notes on the books of Polaroid, aren't there?

8 A. Yes.

9 Q. And those notes are held by entities in the

10 Petters family?

11 A. Yes, PCI and PGW.

12 Q. In this whole process, who represented the
13 interests of those -- of those notes? How
14 was that representative --

15 A. Mr. Runck has been our principle point of
16 contact and is representing those interests.

17 Q. What about the -- the holder of the -- what
18 about the entity that's the obligor -- I'm
19 sorry, obligee under those things, would that
20 be Doug Kelly in his capacity as Receiver?

21 A. Yes, and we corresponded with Mr. Kelly
22 frequently.

23 Q. And did Mr. Kelly ever express an interest on
24 recovery on those notes?

25 A. Frequently, yes.

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1 Q. He did?

2 A. He expressed an interest in maximizing the
3 value of Polaroid as a means of potential
4 recovery for the benefit of all affected
5 credit constituencies.

6 Q. But I was asking a little bit more specific
7 question.

8 Did he express an interest in trying to
9 obtain a recovery on those notes?

10 A. I don't recall an explicit expression of
11 interests in that very narrow manner, no.

12 Q. Was there any effort that you were aware of

13 to deal with the conflict, if you will? I
14 mean he is Receiver for those -- for those
15 notes and we're talking about a significant
16 amount of dollars, a few hundred million
17 dollars.

18 Is that right?

19 A. Yes.

20 Q. And at the same time he is Trustee for the
21 sole shareholder of Polaroid participating in
22 the sale process.

23 How is that conflict dealt with in this
24 process?

25 A. It was substantially --

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1 MR. UPHOFF: I am going to object
2 to the question. I am not sure this witness
3 is qualified to testify as to how Mr. Kelly
4 dealt with supposed conflicts.

5 MR. KRAKAUER: Your Honor, I am
6 going to ask him a factual question, not as
7 an expert. He was involved in every step of
8 the way of this process, so I am asking what
9 he observed.

10 THE COURT: I am going to sustain
11 the objection.

12 BY MR. KRAKAUER:

13 Q. And you referred to in Exhibit F something
14 that was prepared for Ritchie?

15 A. I believe this was prepared -- it was
16 prepared for various parties and I believe

17 this was shared with Ritchie, the
18 professionals for Ritchie.

19 Q. When was this shared?

20 A. I can't recall specifically. As you recall,
21 we met on several different occasions. There
22 was several different presentations. I may
23 be mistaken. I may -- we may not have
24 provided this, but I know we discussed in
25 substantial detail with you on several

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1 occasions the prior Duff and Phelps'
2 valuation analysis.

3 MR. KRAKAUER: I am not here
4 testifying, but I have never seen this before
5 or a paper like this.

6 I don't have any further questions, Your
7 Honor.

8 THE COURT: Thank you. All
9 right.

10 MR. TERRIEN: Good afternoon,
11 Your Honor. Mike Terrien on behalf of Ron
12 Peterson as Trustee for the Lancelot
13 (Unintelligible) estates. I think most of
14 it's been covered, but I just have a few
15 cleanup questions.

16

17 EXAMINATION

18

19 BY MR. TERRIAN:

20 Q. First of all, you talked to Mr. Chesley about
21 the different approaches with respect to
22 transparency between Hilco and Patriarch.

23 Is that right?

24 A. Yes.

25 Q. And would it be fair to say that generally
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1 speaking Hilco has an approach that favors
2 greater transparency than Patriarch?

3 A. It was prominently featured in their
4 presentation. It's something that is a
5 calling card, if you will, given that they
6 have used equity consideration in three very
7 public DM&A auction processes. It was
8 something that was comparatively absent or
9 they omitted in the Patriarch presentation.

10 Q. You have seen both the LLC agreement
11 proposals from both Hilco and Patriarch,
12 right?

13 A. I have.

14 Q. And you have reviewed them?

15 A. I have.

16 Q. And, for example, the Patriarch LLC agreement
17 provides that the manager may hold regular or
18 special meetings at such time and place as
19 she chooses and no member will be entitled to
20 attend or to receive notice of any such
21 meeting.

22 Are you familiar with that provision?

23 A. I am.

24 Q. Are you familiar with any provision in the
25 Patriarch Partners, LLC agreement that
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1 provides for a minority member to receive
2 audited financial statements?

3 A. I don't believe there's any such provision.

4 Q. Okay. And with respect to Hilco, management
5 meetings generally -- there's a provision for
6 minority members to attend manager's
7 meetings, isn't there?

8 A. What I am saying is that there are observer
9 rights and that there is monthly reporting
10 that is provided on -- to what would be the
11 trustee.

12 Q. And the financial statements are also
13 provided.

14 Isn't that right?

15 A. My understanding is that's correct, yes.

16 Q. So would it be fair to say that at least on
17 those two metrics, Hilco's -- the Hilco
18 approach offers greater transparency to a
19 minority member than the Patriarch approach?

20 A. That was why I cited it as a distinguishing
21 qualitative feature between the two.

22 Q. I thought you were making the distinction
23 between the presentations that were made and
24 your opinion about the level of transparency?

25 A. Of both the presentations and as that was
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1 translated into the respective LLC documents.

2 Q. So it is, in fact, your view that the Hilco
3 approach offers materially greater
4 transparency?

5 A. I believe that the Hilco approach offered a
6 materially greater transparency.

7 Q. And if you were receiving this equity, which
8 would you prefer, the greater or the lesser
9 transparency?

10 A. As a financial professional I always favor
11 greater transparency.

12 Q. If it was your money would you favor greater
13 transparency?

14 A. As an investor I always favor greater
15 transparency.

16 Q. Okay. What -- what is the trailing 12-month
17 EBITDA of Polaroid today?

18 A. The operating -- the negative -- the closest
19 approximation to that was the 2008 negative
20 operating income, approximately 120 million
21 dollars negative. It's a good proxy for
22 EBITDA.

23 Q. Would it be fair to say that the trailing
24 12-month EBITDA is, in fact, negative today?

25 A. It is substantially negative.

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1 Q. And in the cash that Polaroid -- that the
2 Polaroid estates have today is not being sold

3 in the transaction with Patriarch or in the
4 transaction with Hilco? Nobody has proposed
5 to take the cash. The cash is staying with
6 the estate.

7 Is that correct?

8 A. The cash is staying with the estate.

9 Q. And on Day 1 you valued the equity on Day 1
10 on an all equity basis?

11 A. We did for the reasons discussed.

12 Q. On Day 2 regardless of which party acquires
13 this business, isn't the business going to
14 require cash infusion of some sort?

15 A. It would very likely require substantial cash
16 infusion.

17 Q. So whether Hilco buys it or whether Patriarch
18 buys it, somebody is going to have to put in
19 cash in some form or fashion on Day 2?

20 A. That's my belief, yes.

21 Q. Does the brand licensing model that Hilco has
22 proposed require less working capital than
23 the operating model that Patriarch has
24 proposed?

25 A. One of the features of the type of business

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1 plan that Hilco is running as opposed to
2 Patriarch is that it will require in my view,
3 in our assessment, a less -- potentially less
4 working capital funding because it is, as you
5 mentioned, more focused on realization of

6 brand value.

7 Q. Okay. And as you have discussed previously,
8 whatever working capital Hilco puts in is not
9 going to dilute the common equity under their
10 structure.

11 Is that right?

12 A. I will defer to Lindquist for the definitive
13 views on the respective LLC agreements,
14 that's my understanding.

15 Q. And Patriarch could put in working capital
16 that did dilute the common equity on Day 2,
17 couldn't it?

18 A. There is the ability for them to do that
19 through a variety of measures.

20 Q. Isn't it true that the only rights that the
21 minority member has with respect to Patriarch
22 putting in new common equity is a requirement
23 that the new common equity be valued based on
24 fair market value, fair value, excuse me?

25 A. There's a fair value provision which dictates

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1 a five (Unintelligible) as the means of value
2 determination.

3 Q. So five times zero is zero, isn't it?

4 A. That's correct.

5 Q. So how does that work on Day 2 when Patriarch
6 wants to put ten million dollars in?

7 A. There's substantially ability to -- well,
8 five -- it's a negative number so --

9 Q. The dilution is, fact, infinite, isn't it?

10 A. It is potentially.

11 MR. TERRIAN: No further
12 questions.

13 THE COURT: All right.
14 Mr. Meyer.

15 MR. MEYER: Thank you, Your Honor.
16 Steve Meyer for Stylemark, Inc. and the
17 various Stylemark related entities.

18

19 EXAMINATION

20

21 BY MR. MEYER:

22 Q. Good afternoon, Mr. Spencer.

23 Are you familiar with Stylemark?

24 A. I am.

25 Q. And are you familiar with the license
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1 agreements that Stylemark has with Polaroid?

2 A. Yes. I am familiar with the license
3 agreement, yes.

4 Q. And you're aware that Stylemark acquired
5 Polaroid eyewear business about two years
6 ago, correct?

7 A. I am aware of that.

8 Q. And that -- I think it's on your exhibit that
9 of the sales that took place over the last 2
10 or 3 years that was the second largest of the
11 sales?

12 A. It was one of the material sales, yes.

13 Q. Forty million dollars.

14 Is that correct?

15 A. Yes.

16 Q. When you are valuating in this other cases,
17 not necessarily this one, in any case if you
18 are valuating opposing bids and one is going
19 to cause substantial reduction in the amount
20 of unsecured claims that will remain in the
21 estate, do you view that as a benefit, that
22 offer? Does that make that offer more
23 beneficial to the estate?

24 A. One has to factor in the potential dilutive
25 impact of a large springing claim obligation.

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1 Q. It will cause a lower percentage recovery
2 for -- for the remaining recovery creditors?

3 A. That's correct.

4 Q. And you're aware that the Hilco bid proposed
5 to assume the Stylemark license and thus
6 leaving no unsecured claim by Stylemark
7 against the estate and that the Patriarch
8 proposal is excluding -- has an excluded
9 contract under the Patriarch.

10 Is that correct?

11 A. More that Hilco is proposing to include it,
12 there are provisions that allow Patriarch to
13 reach a negotiated settlement.

14 Q. Have -- are you aware of Patriarch reaching a
15 negotiated settlement with Stylemark?

16 A. I am not aware of them reaching such a

17 settlement.

18 Q. And at this point it's an excluded contract,
19 meaning it would not be assumed by and
20 assigned to Patri arch.

21 Is that correct?

22 A. At this point it -- there's some ability to
23 move it on and off.

24 Q. And nothing changes, what happens?

25 A. If it is excluded -- let me say this because
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1 it's a sensitive point.

2 There's a provision that allows Patri arch
3 to deal with this issue to reach a settlement
4 that will not cause any material inflation of
5 claims.

6 Q. Explain that. What would they do? Are you
7 saying that the resolution would be that they
8 would protect the estate if there was any
9 kind of claim made by an unsecured creditor
10 such as Style mark?

11 MR. UPHOFF: I am going to object,
12 Your Honor. This is part of the agreement
13 that we filed under seal.

14 THE COURT: Overruled. Go ahead,
15 but don't go too far.

16 MR. MEYER: I am not sure where I
17 am going with it.

18 THE COURT: Well, you know, I'm
19 getting this stuff just cold. All of this is

20 new to me. I haven't been living with this,
21 Mr. Uphoff, like you have been.

22 MR. MEYER: I don't want to go too
23 far if I know where too far is. I will tell
24 you what I am trying to accomplish. I am
25 trying to say that one offer assumes our

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1 contract and the other doesn't on it's face
2 and if our agreement --

3 THE COURT: I think that's been
4 brought out, I think, already.

5 MR. MEYER: And that would leave
6 our client with a large claim against the
7 estate which would if it stood would then
8 dilute what the rest of the unsecured
9 creditors would get.

10 Now, if that's the case it seems to me
11 that the Hilco offer would have that -- that
12 that would be an advantage.

13 THE COURT: I know that's where
14 you're driving. That's where others are
15 driving too.

16 BY MR. MEYER:

17 Q. And I think we're getting some testimony that
18 that is, in fact, not the case here because
19 perhaps of an agreement that's under seal, so
20 I guess we just have to understand why if our
21 contract is not assumed by Patriarch and it's
22 a successful bidder why that wouldn't be --
23 have a dilutive affect against the unsecured

24 creditors, that's my question?

25 A. It gets to the substance of the agreement

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1 that has been filed under seal. We are --
2 the Debtor believes that there are -- I want
3 to be very careful, because it's a sensitive
4 matter.

5 Patriarch has the ability to reach a
6 negotiated settlement.

7 Q. With whom?

8 A. With Stylemark and -- whereby the Debtor
9 would be indifferent. It would not cause a
10 dilutive impact.

11 MR. MEYER: Your Honor, I don't
12 know if -- I think this is important for the
13 Court to know and for the parties to know and
14 I don't know if I can ask him any further
15 questions, if I have gone too far. We don't
16 know what's sealed. I think it's a fair
17 inquiry.

18 THE COURT: Where do I have this
19 stuff now? Is it on file yet or what? I
20 entered the order during the break this
21 morning.

22 MR. SINGER: We have not been back
23 to the office since the break, Your Honor,
24 but we have -- got the signed document that
25 we intend to file with the final bid, the bid

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1 agreements with the Court once we get a
2 chance to get back to the office. I do have
3 a copy of what we intend file.

4 THE COURT: How can I review --
5 how can I rule on objections and determine
6 the scope of what can come out on to the
7 public record or not if I can't access that?

8 MR. SINGER: Well, Your Honor, I
9 am prepared to deliver for in camera review
10 the document and file --

11 THE COURT: Do you have a hard
12 copy right now?

13 MR. SINGER: Yes, I do, Your
14 Honor.

15 MR. CHESLEY: Certainly the
16 Creditor's Committee is familiar. They
17 have -- I don't think they take issue with
18 the economic representations.

19 THE COURT: In lieu of this, I
20 don't know where we are going to go with this
21 people. You know, this is coming in -- well,
22 I won't use the expression I want to use
23 because -- well, because it wouldn't be
24 polite, but this is coming in backwards here.
25 Anyway, all right, somebody suggest

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1 somethi ng.

2 MR. SINGER: Your Honor, what I
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3 would suggest, with the Court's permission,
4 is to offer the letter that we intend to file
5 in connection with the (Unintelligible)
6 motion that we had intended to file.

7 THE COURT: The letter, the
8 agreement, the --

9 MR. SINGER: The specific
10 agreement that we intended to have filed
11 subject to the order sealing that
12 information.

13 THE COURT: All right.

14 MR. SINGER: Your Honor, I'm
15 prepared to deliver this to you for the
16 Court's in camera review if that's the
17 appropriate -- that was my suggestion.

18 THE COURT: All right. Now I
19 don't know how that helps him.

20 MR. MEYER: It seems to me it's
21 something we should see, Your Honor. We did
22 not object to this motion under seal which I
23 didn't think involved something like this. I
24 guess I'd like an opportunity to argue that
25 then.

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1 THE COURT: We're not going back
2 to that, no, Sir. I am not sure whether the
3 point you're driving at is just sort of
4 inherent in the situation. Of course
5 Patriarch could arrive at a negotiated

6 resolution of the issue of disposition of the
7 rights. I mean that sort of comes with the
8 territory anyway, doesn't it?

9 MR. MEYER: I guess -- I guess
10 what the testimony --

11 THE COURT: Patriarch leaves it
12 behind and then it has to be resolved one way
13 or another by the Debtor's subsequent motion.

14 MR. MEYER: I think what we're
15 hearing here is that there's an agreement
16 that is under seal that -- I don't know, I
17 guess the Creditor's Committee did see it. I
18 guess the other -- the rest of us haven't,
19 that -- where Patriarch is going to hold the
20 estate harmless in some fashion, so if we
21 have some claim against it, I guess we're
22 supposed to gather that Patriarch will make
23 sure that the estate is held harmless.

24 Is that true?

25 THE WITNESS: I think that gets
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1 to the substance. I don't want to comment on
2 that question.

3 MR. MEYER: I don't know how
4 parties can evaluate the -- whether, in fact,
5 the estate is protected without seeing the
6 agreement and so --

7 THE COURT: Well, the real
8 question here it seems to me, and I guess I
9 am just throwing this out for general

10 commentary, the real question here is how
11 much at this point is settled via the
12 structure of the proffers that were made
13 earlier on and how much would involve
14 continuing risk to the estate.

15 Isn't that really kind of what it's all
16 about people?

17 MR. CHESLEY: It is, Your Honor.

18 THE COURT: Okay. Presumably if
19 the Creditor's Committee is going to jump up
20 and advocate for the Hilco bid as being,
21 quote, highest and best, unquote, despite the
22 fact that the calculated quantified value is
23 less because of the resolution of that issue
24 and certain other aspects, then the real
25 question is the carry over of the risk

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1 which -- is that supposed to then be an
2 intangible consideration that I'm supposed to
3 take into consider -- that I'm supposed to
4 take into account in determining who wins,
5 who gets it? Is that what this is sort of
6 all about here? I mean intuitively that's
7 what I am sensing.

8 MR. CHESLEY: I believe, Your
9 Honor, that's effectively where we go.
10 Without divulging what the terms of this are,
11 is there some -- I am very uncomfortable
12 going too far. This was heavily negotiated

13 by Patri arch and there' s si gni fi cant value to
14 everyone here by what' s been done and I am
15 not comfortable at thi s point going much
16 further on the record out of respect for
17 Patri arch' s posi ti on.

18 THE COURT: All right. And, you
19 know, they have got the right to -- both
20 sides sort of have the right to -- to the
21 benefit of the sealing at thi s point because
22 that was what was pi tched wi thout obj ecti on
23 by the Debtor and the Commi ttee a couple of
24 days ago, but the real questi on here is
25 weighi ng the two of them and it seems to me

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1 that, I don' t know, I am not going to di ctate
2 to you what' s -- what basi s you need to
3 advocate for your cli ent, but understandi ng
4 it in that context, do you have a basi s in
5 which to pursue whatever you want to pursue
6 today, whether it be as an obj ector to the
7 sale or otherwi se?

8 MR. MEYER: Well , our obj ecti on to
9 the sale is --

10 THE COURT: Your cli ent prefers
11 certainty versus ri sk, ri ght?

12 MR. MEYER: Well , not only that,
13 Your Honor, I mean we -- we need to -- our
14 obj ecti on on the sale has to do wi th whether
15 or not our li cense ri ghts survive the sale
16 wholly apart from whether they are

17 subsequently rejected and there's a 365
18 issue, where there's both license rights and
19 we think ownership rights under European law
20 with respect to the European subsidiaries.
21 This deals more with whether -- what's a
22 better offer, this line of cross examination
23 on my part, but that won't dispose of our
24 underlying objection which is whether or not
25 the sale order can be entered which would

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1 eliminate the rights that we have as a
2 licensee and an owner --

3 THE COURT: Well, at this point
4 let's just take care of what we can take care
5 of through this witness.

6 MR. MEYER: Agreed, Your Honor.

7 THE COURT: All right. So I mean
8 I don't know, do you want to persist in
9 asking more questions and I will have to
10 address any objections or don't you?

11 MR. MEYER: I have one or two more
12 questions. I won't go -- I won't ask further
13 questions about the agreement. I think we
14 know what the agreement does. It gives
15 Patriarch the ability to negotiate in a way
16 they wouldn't otherwise with us and we
17 understand that.

18 THE COURT: And I am not going to
19 tell you that your client has to like that.

20 We'll get to that later.

21 MR. MEYER: Yes, I understand
22 that. All right.

23 BY MR. MEYER:

24 Q. You did not analyze -- spend any time
25 analyzing whether -- the amount of the claim

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1 that Stylemark might have, I take it.

2 Is that correct?

3 A. To the contrary, we looked at it in some
4 detail.

5 Q. Okay. Tell me about that. What do you think
6 it might be?

7 A. We believe it to be a potentially substantial
8 claim.

9 Q. And how much? What range?

10 A. I am not prepared to posit a range. We
11 believe it to be a substantial claim.

12 Q. Substantial claim in this case?

13 A. In this case, yes.

14 MR. MEYER: That's all I have,
15 Your Honor. Thank you.

16 THE COURT: All right.

17

18 EXAMINATION

19

20 BY MR. GORDON:

21 Q. Mr. Spencer, Greg Gordon on behalf of
22 Patriarch.

23 MR. CHESLEY: Your Honor, before
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24 this begins, I would object to any bidder
25 questioning the witness. This is an issue

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1 now -- the Debtor's have postured what they
2 believe is the highest and best. The
3 creditors are now taking their position.

4 To turn this into now the bidder's
5 basically selling their wears using this
6 witness, I don't think, A, there is any basis
7 for it. I don't think it's appropriate at
8 this point. If there are questions that the
9 Debtor's have to support their bid,
10 Mr. Uphoff is more than welcome to ask
11 whatever he would like to in response to what
12 the creditors have posited, but I don't think
13 this is certainly appropriate at this point.

14 THE COURT: I mean are you
15 basically raising the question as to whether
16 the bidders even have standing?

17 MR. CHESLEY: I don't believe they
18 do, Your Honor.

19 THE COURT: Yes. I mean how do
20 you have standing at this point?

21 MR. GORDON: Because, Your Honor,
22 we were selected as the prevailing bidder
23 here and much of the cross examination was
24 directed at an attack on our LLC agreement
25 that's been accepted as part of the highest

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1 and best bid.

2 We have standing directly on the issues
3 that have been raised by the parties.

4 MR. CHESLEY: Your Honor, they
5 don't have standing until the deal closes.

6 MR. GORDON: But we are not a
7 disgruntled bidder here at this point, Your
8 Honor. We have been accepted as the highest
9 bid. We have signed agreements with the
10 parties and the cross examination has been
11 taking things out of context from our LLC
12 agreement in an effort to convince you that
13 our LLC agreement is somehow deficient and I
14 think I am entitled to explore that. I think
15 I clearly have standing to do that.

16 MR. CHESLEY: If the Debtor wants
17 to do that to support the bid they chose,
18 Your Honor, they have that right. A bidder
19 does not. Neither bidder has that right.

20 MR. GORDON: I mean, Your Honor,
21 what's happening here my feeling is through
22 these questions it's almost like we're trying
23 to negotiate this in LLC agreement through
24 this hearing which I think is very
25 unfortunate.

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1 As I indicated earlier, we have not had
2 one conversation with any of the creditors

3 about the terms of the agreement. I am
4 hearing for the first time through questions
5 to this witness what some of the issues are
6 and I think I am entitled to at least clarify
7 some of the points for Your Honor if
8 ultimately if these counts are going to come
9 back and argue based on this cross
10 examination that some somehow our LLC
11 agreement is deficient and therefore our bid
12 is not the highest and best bid.

13 MR. CHESLEY: Your Honor, if I
14 may, the issue here is not as granular as
15 Counsel would like it to be. It is which is
16 highest and otherwise best.

17 You have heard from the Debtors through
18 Mr. Spencer, the banker, why he believes it
19 is highest and otherwise best. We have asked
20 questions based upon issues that have been
21 raised as to the creditor's -- this is their
22 money, Your Honor. This is their equity as
23 to which they believe is the highest and
24 otherwise best and to allow bidders to now
25 try and renegotiate this through the witness,

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1 which is exactly what's being done, it is not
2 only improper, but they have -- neither
3 bidder has standing to do so.

4 THE COURT: I am going to sustain
5 the objection and neither bidder is going to

6 be cross examining. All right. This is not
7 really a question ultimately that's affected
8 by the testimony of this witness.

9 I will vet these documents, I guess. When
10 the time comes I will have to, but we're not
11 going to renegotiate anything here as has
12 been sort of put in a rather colored
13 characterization of what this would all be
14 about.

15 There are other ways to get into this
16 issue, but you don't have standing to
17 participate in the evidentiary development
18 here. Your client's bid was recognized as
19 being the highest as it came out in dollar
20 value out of the auction, but I conclude that
21 that's only a part of the considerations when
22 it comes to determining the quote, highest
23 and best offer, unquote, so that's my ruling.

24 MR. GORDON: And again, Your
25 Honor, I'd obviously just note our exception

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1 to that on the record. I understand Your
2 Honor's --

3 THE COURT: You don't have to do
4 that to preserve your record, but I wouldn't
5 expect you to agree with me.

6 All right. Who's next? Nobody else? All
7 right. Mr. Uphoff, it's back to you, and I
8 think I do agree with Mr. Chesley given the
9 Debtor's position and it's proffer of the

10 Patri arch bid as the, quote, highest and best
11 offer, unquote, it's really ultimately up to
12 the Debtor to be the proponent here.

13 MR. UPHOFF: Thank you, Your
14 Honor.

15

16 EXAMINATION

17

18 BY MR. UPHOFF:

19 Q. Steve, I want to direct my examination to the
20 issue raised by a couple of the cross
21 examiners and that is the issue related to
22 the valuation of the equity.

23 At the time that Houlihan Lokey valued the
24 equity, did you consult with the Creditor's
25 Committee of Polaroid, the Creditor's

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1 Committee of PCI and PGW and their
2 consultants?

3 A. We did.

4 Q. And was an agreement reached on the valuation
5 to be placed on this equity?

6 A. I think minor differences with the financial
7 professionals for PGW and PCI. I think we
8 were very close, however, to recognizing that
9 it was essentially the same value. I believe
10 then that they value both -- the equity in
11 both cases is slightly less. We compared
12 notes, compared analyses, and we were in

13 agreement broadly.

14 THE COURT: And ultimately if it
15 came down to both sides bidding the same
16 equity percentage, the value really doesn't
17 matter in terms of the component of a
18 prevailing bid in raw value, right?

19 THE WITNESS: Which is why we set
20 them equivalent to one other.

21 THE COURT: Right. I am talking
22 about the per unit though.

23 THE WITNESS: Yes, yes.

24 BY MR. UPHOFF:

25 Q. There was testimony about the change made to
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1 the Hilco LLC in part of your.

2 Examination?

3 Do you recall that?

4 A. Yes.

5 Q. Okay. And that testimony you indicated, I
6 believe, or perhaps the examiner indicated
7 was worth five million dollars a year,
8 something to that affect?

9 A. He was merely taking the ten percent interest
10 rate on approximately 50 million dollars of
11 preferred equity.

12 Q. Okay. Now, there is no such provision in the
13 Patriarch LLC, is there?

14 A. No, there's not.

15 Q. Okay. In regard to the Stylemark agreement,
16 Patriarch has the right to assume that

17 agreement, do they not?

18 A. They do.

19 Q. There's nothing that precludes them from
20 doing that?

21 A. That's correct.

22 Q. Okay.

23 Did you meet with any experts from the
24 Ritchie Group during the sales process?

25 A. We did.

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1 Q. Did those experts dispute Houlihan Lokey's
2 conclusion that a sale was appropriate for
3 Polaroid at this time?

4 A. In our last in person meeting with
5 Mr. Krakauer, the various other
6 professionals, they had an expert with them
7 who rendered the opinion that a sale was, in
8 deed, necessary.

9 Q. Okay. In regard to the excluded assets of --
10 in the bid procedures or in the bids that
11 have been submitted, to your knowledge, has
12 Patriarch put in all of the excluded assets
13 into an LLC?

14 A. No, they are not.

15 Q. That's staying with the company?

16 A. No, they are not. It says -- as was
17 mentioned previously, one of the material
18 differences is that they are acquiring the
19 art valued at approximately 6.5 million

20 dollars.

21 Q. Okay. And that is the primary difference?

22 A. That is the principle different difference,
23 yes.

24 MR. UPHOFF: Nothing further, Your
25 Honor.

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1 THE COURT: All right. Anything
2 else?

3 MR. CHESLEY: Very quick
4 follow-ups, Your Honor.

5 THE COURT: Go ahead.

6

7

EXAMINATION

8

9 BY MR. CHESLEY:

10 Q. Mr. Spencer, with respect to the \$650,000.00
11 that was agreed to as the valuation of equity
12 at the first auction, your recollection that
13 the committee and the other professionals
14 agreed so that everyone was getting apples to
15 apples?

16 A. Yes, that's correct.

17 Q. And at the time that those numbers were
18 created, in fact, Patriarch had not even
19 provided a form of an LLC agreement to either
20 the Debtors or the creditors, had they?

21 A. My memory fails me, but I believe that that's
22 correct, that we received their LLC after
23 that.

24 Q. And as you testified to earlier, other than
25 the value that you placed on it, equity has
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1 in these situations different qualitative
2 differences, does it not?

3 A. I have cited the two key qualitative
4 differences previously.

5 Q. And based upon those and the testimony you
6 provided extensively this afternoon,
7 qualitatively the Hilco Gordon Brothers
8 equity is preferable to the Patriarch equity?

9 A. I stated that my preference is for
10 transparency. I believe that there are
11 qualitative factors that favor the Hilco
12 Gordon Brothers equity.

13 Q. By the way, on the five million dollar piece
14 you mentioned, and I apologize which cross
15 examination, you mentioned that there was
16 certain possibilities that that five million
17 dollars may not be realized, for example, as
18 a pick -- if a senior pick piece was placed
19 on it that may prove illusory?

20 A. Both parties have the ability to do that,
21 yes.

22 Q. But as the document as written with the
23 modification made, that's a five million
24 dollar delta, is it not?

25 A. I'm sorry?

1 Q. As written, as the document is written, it is
2 a five million dollar difference based on
3 your calculations?

4 A. That's correct, yes.

5 MR. CHESLEY: Thank you. Nothing
6 further, Your Honor.

7 THE COURT: Anybody else? All
8 right. Thank you, Sir. You may step down.
9 Next witness.

10

11 LYNN TILTON

12

13 A witness in the above-entitled action,
14 after having been first duly sworn, testifies
15 and says as follows:

16

17 EXAMINATION

18

19 BY MR. UPHOFF:

20 Q. Could you please state your name and address
21 for the record, please?

22 A. My name is Lynn Tilton and my home address is
23 3575 South Ocean Boulevard, Highland Beach,
24 Florida.

25 Q. Ms. Tilton, are you either a director or
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1 officer of the Debtor here?

2 A. I am not.

3 Q. And do you have any controlling or ownership
4 interest in any of the Debtors, any stock or
5 bonds or anything?

6 A. No, I do not.

7 Q. And have you made any commitments to any of
8 the executives of the Debtors for employment?

9 A. I have not.

10 Q. Okay. And is it your present intention to
11 continue in some fashion or form the
12 operations of the Debtor at their Minnesota
13 location?

14 A. Yes, it is.

15 Q. Okay. And can you just elaborate on that a
16 bit?

17 A. Well, we are picking up the lease in
18 Minnetonka and we plan on working with
19 certain of the management team that would
20 like to sign on. We have not negotiated any
21 agreements, but we certainly talked during
22 our due diligence with certain people who
23 would like to continue on if we were to
24 purchase the company and we plan to hire back
25 a number, if not all of the employees. We

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1 need to go through that with the management
2 team and the business plan when we finally
3 have time to really roll up our sleeves.

4 MR. UPHOFF: All right. Thank you
5 very much.

6 THE WITNESS: Thank you.

7 THE COURT: All right.

8 Mr. Chesley.

9 MR. CHESLEY: Just one question,
10 Your Honor.

11 THE COURT: Sure.

12

13 EXAMINATION

14

15 BY MR. CHESLEY:

16 Q. Ms. Tilton, is there anything in your asset
17 purchase agreement that requires you or binds
18 you to hire any Polaroid employees?

19 A. There's nothing in the asset purchase
20 agreement that does.

21 MR. CHESLEY: Thank you. Nothing
22 further, Your Honor.

23 THE COURT: All right. Anybody
24 else? Okay. Thank you, Ma'am. You may step
25 down.

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1 MR. UPHOFF: Your Honor, this
2 concludes the Debtor's case in chief. We
3 reserve the right to recall a rebuttal
4 witness if there is no further witnesses
5 being offered by either of the Committee's.

6 THE COURT: All right.

7 MR. CHESLEY: Your Honor, we will
8 rest on the testimony of Mr. Spencer.

9 THE COURT: All right. May I ask
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10 then, does anybody else have testimony that
11 would be proffered?

12 MR. LOWRY: We would like to call
13 a witness, Your Honor, Stylemark.

14 THE COURT: Okay.

15 MR. LOWRY: Your Honor, my name is
16 Greg Lowry and I represent Eyewear Brand,
17 Limited and Stylemark.

18 THE COURT: All right. Sir, I am
19 going to ask you to raise your right hand.

20

21 CHARLES DUKE LANDORF

22

23 A witness in the above-entitled action,
24 after having been first duly sworn, testifies
25 and says as follows:

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1

2 MR. LOWRY: May I approach, Your
3 Honor.

4 THE COURT: You may.

5 MR. LOWRY: This will be very
6 brief, Your Honor.

7

8 EXAMINATION

9

10 BY MR. LOWRY:

11 Q. State your name please.

12 A. My name is Charles Duke Landorf.

13 THE COURT: Spell your last name
14 for the record, Sir.

15 THE WITNESS: L-A-N-D-O-R-F.

16 BY MR. LOWRY:

17 Q. How are you employed, Mr. Landorf?

18 A. I am employed with Stylemark.

19 Q. What's your position?

20 A. I'm the chief financial officer.

21 Q. What are your responsibilities there?

22 A. My responsibilities are for the overseeing

23 the financial operations of Stylemark and

24 it's -- all of it's wholly owned

25 subsidiaries, including Polaroid Eyewear

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1 subsidiaries.

2 Q. Does Stylemark, explain to the Judge in most

3 general terms, does Stylemark own or operate

4 a business called the Polaroid Eyewear

5 business?

6 A. We do.

7 Q. What is that business?

8 A. It's a business consisting of six European

9 subsidiaries built on the sale and

10 distribution of Polaroid Eyewear.

11 The Polaroid Eyewear trademark is

12 absolutely essential and that was the basis

13 of why we bought the company. It's a company

14 that manufacturers lenses on a proprietary

15 basis based on a patented process, based on

16 the Polaroid lenses manufacturing process.

17 We design and distribute and sell Polaroid
18 Eyewear throughout Europe and the world.

19 Q. So in simple terms, for example, a pair of
20 Polaroid sunglasses?

21 A. Exactly.

22 Q. Using the special lens that is patented?

23 A. Using the lens manufacturing technology that
24 we acquired.

25 Q. Does Stylemark and Eyewear have a licensing
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1 arrangement with Polaroid Corporation to use
2 that brand name?

3 A. We do.

4 Q. And do I understand that Stylemark and
5 manufacturers -- actually manufactures
6 lenses?

7 A. We do.

8 Q. And has a distribution system?

9 A. We have, as I said, we have a full,
10 functioning six subsidiaries in Europe that
11 are solely for the purposes of our 157
12 employees to sale -- to sell and distribute
13 Polaroid eyewear.

14 Q. Did Stylemark acquire this eyewear business
15 from Polaroid?

16 A. We did.

17 Q. When was that?

18 A. That was in March of 2007.

19 Q. And what was the purchase price generally?

- 20 A. It was approximately 40 million dollars.
- 21 Q. Describe for the Court very generally what
- 22 assets were purchased in 19 -- excuse me, in
- 23 2007?
- 24 A. We purchased the operating entities. There
- 25 were four operating entities, subsidiaries in
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- 1 Europe again that were selling and
- 2 distributing Polaroid eyewear products. We
- 3 also bought certain assets. These were the
- 4 assets, the lenses manufacturing operations,
- 5 in the U K.
- 6 Q. And was there also some patents purchased?
- 7 A. There were.
- 8 Q. Just very briefly describe the important
- 9 patents?
- 10 A. The significant patents deal with the actual
- 11 manufacturing process of how we actually
- 12 prepare the lenses. We're, in essence, being
- 13 able to actually through our processes
- 14 provide the end users a lens that's almost as
- 15 superior as an injected molded lens at a
- 16 substantial less price.
- 17 Q. And this patent -- these patents were
- 18 purchased outright from Polaroid?
- 19 A. Right.
- 20 Q. And the brand name is attached to the
- 21 sunglasses?
- 22 A. Correct.
- 23 Q. And does the business depend on the Polaroid

24 brand name?

25 A. Absolutely.

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1 Q. What was the revenue of the eyewear business
2 in the year 2008?

3 A. We did approximately 65 million dollars.

4 Q. Profitable business?

5 A. Yes.

6 Q. Approximately how many employees are directly
7 tied into the business?

8 A. We have approximately 157 employees.

9 Q. Mr. Landorf, would you turn to what's
10 called -- Your Honor, we marked our exhibits
11 E for eyewear dash one to try to distinguish
12 them from the other exhibits. That was our
13 best guess at the time.

14 Would you identify that document, please?

15 A. This is the amended and restated license
16 agreement that basically establishes the
17 master license agreement with eyewear brand.

18 MR. LOWRY: Your Honor, we have
19 discussed with the Debtor, they don't have an
20 objection to our exhibits, so we'd move for
21 admission of E-1 at this point in time.

22 THE COURT: Any other objections?
23 Hearing none, I will receive what has been
24 marked here as Stylemark 1.

25

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1 BY MR. LOWRY:

2 Q. Just very generally what is the business
3 purpose of this document, without going into
4 terms, just the business purpose?

5 A. The business purpose is essentially to allow
6 our operating subsidiaries and Stylemark to
7 use the trademarks and brand for Polaroid
8 Eyewear which is essentially what we bought
9 for purposes of running our business.

10 Q. I want to make sure the Court understands
11 something.

12 Eyewear Brand Limited is the direct
13 licensee from Polaroid?

14 A. Correct.

15 Q. Who owns Eyewear Brand Limited?

16 A. It is a joint venture owned by Polaroid
17 Corporation and a subsidiary of Stylemark AJ.

18 Q. Actually a Bermuda Corporation, is it not?

19 A. A Bermuda corporation.

20 Q. And does Eyewear Brand Limited actually pay a
21 royalty to Polaroid?

22 A. They do.

23 Q. They pay a royalty to Polaroid?

24 A. They do.

25 Q. Mr. Landorf, is it possible that Eyewear

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1 Brand Limited pays distributions to Polaroid
2 as an owner of Eyewear Brand Limited?

3 A. Oh, yes, that's exactly what they do.

4 Q. So would you like to correct your prior
5 testimony on that, Sir?

6 A. Yes, it's not a royalty. It is actually a
7 distribution of profits.

8 Q. Thank you. Would you identify Exhibit E-2
9 please?

10 A. This is the amended restated sub-license
11 agreement. This is the actual -- gives us
12 the right to use the trademarks and trade
13 names and Polaroid from the Eyewear Brand to
14 our operating entities under the Polaroid
15 Eyewear business.

16 MR. LOWRY: Your Honor, I move
17 for admission of Exhibit E-2 please.

18 THE COURT: Any objection?
19 Hearing none, I will receive Styl emark
20 Exhibit 2.

21 BY MR. LOWRY:

22 Q. Does this document provide for Styl emark to
23 pay a royalty to Eyewear Brand Limited?

24 A. Yes.

25 Q. And how much was a royalty paid to -- by
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1 Styl emark to Eyewear Brand Limited in the
2 year 2008?

3 A. Well, the business essentially generated
4 approximately two million dollar gross
5 royalties that was paid to Eyewear Brand in

6 approximately half of that, 50 percent of
7 that, was the distribution to Polaroid.

8 Q. Mr. Landorf, there are different arguments
9 that the lawyers are making in court or will
10 be making in court about who gets to use the
11 trademarks and brand names and the rest of
12 all that. I want to set all that aside. I
13 just want you to assume for me and the Court
14 that you were told, you being Stylemark and
15 Eyewear Brand Limited, are told that you can
16 no longer use the Polaroid brand name, just
17 assume that for whatever reason, what's going
18 to -- what's going to be the impact on
19 Stylemark business?

20 A. Well, obviously these brands, as I said, are
21 essential to the Polaroid Eyewear business
22 that we acquired. It would have a material
23 adverse impact on the investment that we made
24 in there. It would have a material adverse
25 impact on the inventory we own, marketability

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1 of the inventory we own right now in excess
2 of 12 million dollars.

3 It would have a material adverse impact on
4 our collection of receivables, which are
5 right now --

6 Q. Let me cut you off for a minute.

7 What do you mean material adverse impact?

8 A. I mean, we might not be able to collect.
9 They may be worthless.

10 Q. Well, just talk about --

11 A. Inventory could become worthless.

12 Q. Tell me about your business. Can you operate
13 your business without --

14 A. We can't operate a business, no. The
15 business is done.

16 Q. So you have a got a bunch of -- 12 million
17 dollars worth of sunglasses and eyewear with
18 the Polaroid name on it?

19 A. And 157 employees that are essentially out of
20 a job.

21 Q. What do you do with those 12 million dollars
22 of inventory with the Polaroid brand name on
23 it? What are you going to do with that?

24 A. We can't do anything with it. If we don't
25 have the license we have no ability to sell

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1 them.

2 Q. You have pending orders outstanding to fill
3 for --

4 A. We do.

5 Q. Let me finish, Sir.

6 -- Polaroid Eyewear brand lenses?

7 A. We do.

8 Q. How long will it take you to fill those
9 orders if you stop today?

10 A. If we stop today, it's probably, and we
11 accept no new orders, it's a three to six
12 month period.

13 Q. How long would it take you to liquidate the
14 12 million dollars worth of inventory with
15 the Polaroid Eyewear brand name on it at a
16 rationale basis at a reasonable price?

17 A. Probably about year.

18 Q. Why so long?

19 A. Well, you're talking in an environment where
20 the business community knows that you're
21 winding down your business and it becomes --
22 you're trying to sell products that's a
23 licensed product which there maybe no market
24 for that licensed product.

25 Q. What happens to the 160 employees of

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1 Styl emark if you can't use the brand name
2 Polaroid?

3 A. We would have -- I mean we would have no
4 business use for those employees.

5 Q. And are most of those employees in Europe, by
6 the way?

7 A. They are.

8 Q. And are there specific or special rules about
9 terminating employees?

10 A. Very expensive.

11 Q. Mr. Landorf, again, I want you to assume,
12 assume it just for today, that you couldn't
13 use the Polaroid brand name, would you
14 anticipate that Styl emark and Eyewear would
15 file a proof of claim in this bankruptcy
16 case?

17 A. Yes, we would.

18 Q. And you would anticipate it to be a very
19 large claim?

20 A. Yes, we would.

21 Q. Would you include elements of lost profit and
22 loss of investments?

23 A. We would.

24 Q. Would you expect that claim to be in the
25 several, if not higher, tens of million

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1 dollar range?

2 A. Absolutely.

3 Q. Your Honor, I'm sorry, Mr. Landorf, would you
4 turn to Exhibit E-3 please. Would you
5 identify that please?

6 A. This is the patent assignment document which
7 essentially shows the acquisition of certain
8 patents from the Polaroid Corporation.

9 Q. Are these the special patents that you talked
10 about before?

11 A. Yes.

12 MR. LOWRY: Move to admit Exhibit
13 E-3, Your Honor.

14 THE COURT: Any objection?
15 Hearing none, I will receive Styl emark
16 Exhibit 3.

17 BY MR. LOWRY:

18 Q. What would be the value of these patents if
19 you can't use the Polaroid brand name?

20 A. Well, I mean, we would essentially -- if we
21 lost the use of those patents we have lost
22 our ability to create the lens that we
23 produce for our eyewear product.

24 Q. I am asking you the impact on the patent
25 themselves if you couldn't produce eyewear?

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1 A. They are worthless to us.

2 Q. Would you turn to Exhibit E-4 please, Sir?
3 Identify that document, please.

4 A. This is the actual asset and stock purchase
5 agreement when we acquired the Polaroid
6 Eyewear business.

7 Q. This is what was executed in March '07 when
8 you paid 40 million dollars for the eyewear
9 business?

10 A. Correct.

11 MR. LOWRY: Move for admission of
12 E-4, Your Honor.

13 THE COURT: Any objection?
14 Hearing none, I will receive Styl emark
15 Exhibit 4.

16 MR. LOWRY: I will pass the
17 witness, Your Honor.

18 THE COURT: All right. Cross
19 examination here.

20

21 EXAMINATION

22

23 BY MR. UPHOFF:

24 Q. Good afternoon. Sir, tell me, have you ever
25 reached out to anyone from Patri arch to
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1 determine if an agreement can be reached with
2 them?

3 A. Just through attorneys.

4 Q. Your attorney has contacted Patri arch
5 attorneys?

6 A. Yes.

7 Q. And when was that?

8 A. Within the last several days.

9 Q. Now, directing your attention to Exhibit 1 in
10 my book, I guess it's E-1, Page 17, do you
11 see that, Limitation of Liability?

12 A. Yes.

13 Q. And that Limitation of Liability excludes
14 claims for loss of profits?

15 MR. LOWRY: Your Honor, this
16 document speaks for itself. You can't ask
17 the witness about a legal conclusion on a
18 document. If he wants to read the words.

19 THE COURT: You're jumping the
20 gun. Your objection is overruled at this
21 point.

22 BY MR. UPHOFF:

23 Q. Well, I will defer to your Counsel. If you
24 could read the words of Paragraph 10.1, just
25 highlight it for the Court's attention?

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1 A. Okay. Paragraph 10.1 says limitation of
2 liability except for claims or damages
3 stemming from either parties indemnification
4 obligations pursuant to Section 7, either
5 Polaroid nor a licensee shall be liable for
6 loss of profits or goodwill or other
7 financial loss or special indirect,
8 incidental, (Unintelligible) covered,
9 punitive or consequential damages, whether or
10 not foreseeable and even if the other party
11 has been advised of the possibility of such
12 damages.

13 MR. UPHOFF: Thank you. I have
14 no further questions.

15 THE COURT: All right. Other
16 cross examination? Does anybody else have
17 cross examination?

18 MR. CHESLEY: Nothing, Your Honor.

19 THE COURT: Okay. Go ahead.

20 BY MR. LOWRY:

21 Q. Would you turn to Page 15, Mr. Landorf,
22 please?

23 A. E-1.

24 Q. Of E-1, yes, Sir. And I am so sorry to do
25 this, but I will, would you please read

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1 Paragraph 7.2.

2 A. 7.2 is under indemnification. It says
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3 Pol aroid shall defend, indemni fy and hold
4 harmless licensees, it's affiliates and their
5 respective officers, directors, agents,
6 employees and permitted assigns from and
7 against any and all claims, demands, causes
8 of action or damages including reasonable
9 costs, experts and attorney's fees and settle
10 amounts arising out of Pol aroid's breach of
11 any of it's representation of warranties or
12 obligations under this agreement.

13 MR. LOWRY: Thank you, Si r. No
14 further questi ons.

15 THE COURT: Does anybody else
16 have questi ons of thi s witness?

17 MR. CHESLEY: Nothi ng.

18 THE COURT: All right. Thank you,
19 Si r. You may step down. All right. Other
20 proof? Anybody else have testi mony? Okay,
21 Mr. Krakauer.

22 MR. KRAUKER: Your Honor, I wou ld
23 call Ms. Jeffries to the stand.

24 THE COURT: All right. All right.

25 MR. UPHOFF: Your Honor, at thi s

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1 time could we have our moti on in l i mi ne that
2 was filed a week ago be heard pri or to Ms.
3 Jeffries testi fyi ng?

4 THE COURT: All right. I am goi ng
5 to have to pull that one up. I don' t suppose

6 you happen to have the docket number of that
7 one handy?

8 MR. UPHOFF: 251.

9 THE COURT: All right. Let's get
10 on with it.

11 MR. UPHOFF: Your Honor, could we
12 have just a few minutes to talk to counsel.

13 THE COURT: All right. We'll go
14 off the record for a moment here. Let's
15 break for ten minutes.

16
17 (A recess was had in the proceedings)

18

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1 STATE OF MINNESOTA)
2 COUNTY OF DAKOTA) ss.

3

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