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UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

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In Re: BKY No: 08-46617

Polaroid Corporation,

Debtor.

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BEFORE THE HONORABLE GREGORY F. KISHEL

United States Bankruptcy Judge

\* \* \*

TRANSCRIPT OF PROCEEDINGS

4-16-09

\* \* \*

Proceedings recorded by electronic sound recording, transcript prepared by transcription service.

NEIL K. JOHNSON REPORTING AGENCY  
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St. Paul, MN 55102

LISA M. THORSGAARD, RPR

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APPEARANCES

MR. DARYLE UPHOFF and MR. GEORGE SINGER, Attorneys at Law, Suite 4200, 80 South Eighth Street, Minneapolis, Minnesota 55402, appeared on behalf of Debtor.

MR. JASON PRICE AND MR. STEPHEN SPENCER, Attorney at Law, Fourth Floor, 123 North Wacker Drive, Chicago, Illinois 60606-1700, appeared on behalf of Debtor.

MR. DENNIS RYAN, Attorney at Law, Suite 2200, 90 South Seventh Street, Minneapolis, Minnesota 55402-3901, appeared on behalf of unsecured creditors.

MR. RICHARD CHESLEY and MR. GREGORY OTSUKA, Attorneys at Law, 13th Floor, 191 North Wacker Drive, Chicago, Illinois 60606, appeared on behalf of unsecured creditors.

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APPEARANCES (Cont'd)

MR. CHRIS LENHART AND MR. MARK KALLA,  
Attorneys at Law, Dorsey & Whitney, Suite 1500, 50  
South Sixth Street, Minneapolis, Minnesota  
55402-1498, appeared on behalf of Hilco Gordon  
Brothers.

MR. ADAM MAIER, Attorney at Law,  
Suite 2300, 150 South Fifth Street, Minneapolis,  
Minnesota 55402, appeared on behalf of Patriarch.

MS. LYNN TILTON AND MR. GREGORY GORDON,  
Attorney at Law, 2727 North Harwood Street,  
Dallas, Texas 75201, appeared on behalf of  
Patriarch.

MR. STEVE MEYER, Attorney at Law,  
3300 Plaza VII Building, 45 South Seventh Street,  
Minneapolis, Minnesota 55402, appeared on behalf  
of Stylemark.

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APPEARANCES (Cont'd)

MR. GREGG A. LOWRY, Attorney at Law,  
Suite 2200, 2200 Ross Avenue, Dallas, Texas 75201,  
appeared on behalf of Stylemark.

MR. DAVID RUNCK, Attorney at Law,  
Suite 400, 775 Prairie Center Drive, Eden Prairie,  
Minnesota 55344, appeared on behalf of Petters  
unsecured creditors.

MR. BRYAN KRAKAUER, Attorney at Law,  
One South Dearborn, Chicago, Illinois 60603,  
appeared on behalf of Ritchie Capital.

MR. JAMES M. JORISSEN, Attorney at Law,  
Suite 2500, 100 South Fifth Street, Minneapolis,  
Minnesota 55402, appeared on behalf of Ritchie  
Capital.

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APPEARANCES (Cont'd)

MS. AMY SWEDBERG, Attorney at Law,  
Suite 3300, 90 South Seventh Street, Minneapolis,  
Minnesota 55402-4140, appeared on behalf of  
Flextronics.

MR. PETER KREBS, Attorney at Law,  
Suite 2100, 333 W. Wacker Drive, Chicago, Illinois  
60606, appeared on behalf of Harmer Group.

MR. MICHAEL ROSOW, Attorney at Law,  
Winthrop & Weinstine, Suite 3500, 225 South Sixth  
Street, Minneapolis, Minnesota 55402-4629,  
appeared on behalf of Acorn Capital.

MR. MICHAEL DOVE, Attorney at Law,  
P.O. Box 458, 2700 South Broadway, New Ulm,  
Minnesota 56073-0458, appeared on behalf of  
Trustee.

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P R O C E E D I N G S

THE COURT: We are on the record. The matters at bar this morning are in two groups of related Chapter 11 cases. The first in which the Polaroid Corporation is the lead case as file 08-46617. The second is the grouping of cases in which the Petters Company, Inc. is the lead case, file 08-45257.

This morning's hearing is continued to this morning pursuant to the order I entered on April 9. The lead matter at bar is the Debtor's motion in the Polaroid Corporation for authority to sell certain assets free and clear of liens and then there are a grouping of motions ancillary to that.

Let's note appearances for the record for starters here counsel.

MR. SINGER: Good morning, Your Honor. George Singer of Lindquist & Vennum and Daryl Uphoff on behalf of Polaroid. At counsel table with us is Jason Price and Stephen Spencer from Houlihan Lokey which is the financial advisors to the debtor, and we have a number of representatives of the debtor

1 here in the courtroom as well.

2 MR. RYAN: Good morning, Your  
3 Honor. Dennis Ryan of Faegre & Benson on  
4 behalf of the unsecured creditors committee,  
5 together with Rick Chesley and Gregg Otsuka of  
6 Paul, Hastings also representing unsecured  
7 creditors committee.

8 MR. LENHART: Good morning,  
9 Your Honor. Chris Lenhart and Mark Kalla of  
10 Dorsey & Whitney on behalf of PLR  
11 Acquisitions, Gordon Brothers Brands, Hilco  
12 Consumer Capital. And also at counsel's table  
13 we have Eric Kaup of Hilco and Rafael Klotz of  
14 Gordon Brothers. In addition, we have various  
15 principals of both Hilco and Gordon Brothers  
16 in the courtroom.

17 THE COURT: Okay.

18 MR. MAIER: Good morning, Your  
19 Honor. Adam Maier of Leonard, Street and  
20 Deinard on behalf of Patriarch Partners with  
21 Greg Gordon, Jones, day, also on behalf of  
22 Patriarch Partners. And with us we have Lynn  
23 Tilton, the CEO of Patriarch Partners.

24 MR. MEYER: Your Honor, Steve  
25 Meyer, Stylemark, Inc. and related entities.

1 I'm here with Gregory Lowry of Locke, Lord,  
2 Bissell & Liddell also on behalf of Stylemark  
3 and various entities. We have various  
4 principals here as well.

5 MR. RUNCK: Good morning, Your  
6 Honor. David Runck on behalf of the Petters  
7 unsecured creditors.

8 MR. DOVE: Good morning, Your  
9 Honor. Michael Dove for Ronald Peterson,  
10 trustee, and with me is Michael Terrien.

11 MR. KRAKAUER: Good morning,  
12 Your Honor. Brian Krakauer and also Jim  
13 Jorissen on behalf of Ritchie.

14 MS. SWEDBERG: Good morning,  
15 Your Honor. Amy Swedberg. I'm local counsel  
16 for Flextronics, Summit Technologies, and  
17 Harmer Group.

18 MR. KREBS: Good morning, Your  
19 Honor. Peter Krebs of Skadden, Arps on behalf  
20 of the Harmer Group.

21 MR. ROSOW: Good morning, Your  
22 Honor. Michael Rosow for Acorn Capital.

23 THE COURT: Other appearances?  
24 All right. Very good. Well, let's get  
25 started here. We've got a lot of business on



1 tap. If I remember correctly from the status  
2 conference we had a couple of weeks ago, a  
3 motion was going to be argued first. So I'm  
4 going to defer to counsel for their timing of  
5 things. Generally they've got a better grasp  
6 of how these matters fit together in sequence  
7 than I will. So Mr. Ryan.

8 MR. RYAN: Good morning, Your  
9 Honor. Dennis Ryan on behalf of the Polaroid  
10 unsecured creditors committee.

11 You're correct. When we had the status  
12 conference a couple days ago, we had asked and  
13 the Court agreed to consider the motion which  
14 was filed at the end of the day on Tuesday to  
15 be able to file certain portions of the  
16 prevailing bid under seal certain of the  
17 economic terms between the bidders and the  
18 debtors relating to how assumption or  
19 rejection of certain contracts and licenses  
20 will be handled and we would like to argue  
21 that motion before we proceed to the auction  
22 with the Court's permission.

23 THE COURT: All right. Very  
24 good. Any comment on that? Hearing none, go  
25 ahead, Mr. Ryan.

1 MR. RYAN: Thank you. This is  
2 a joint motion of the Committee and the  
3 Debtor. We believe it's important in the  
4 context of the auction. It is really  
5 effectively just the sealed bid process.  
6 Certain portions of the bids from each of the  
7 two active bidders currently deal with  
8 economic terms and how they may compensate the  
9 debtor or how they may treat certain of the  
10 executory contracts and licenses if they're  
11 assumed or rejected.

12 We believe that by being able to seal  
13 these, it permits the dynamic negotiations  
14 that have been ongoing between the estate and  
15 the bidders and the contract parties to  
16 continue. We don't believe that this  
17 prejudices any party. Obviously they will be  
18 filed under seal with the prevailing bids so  
19 the Court will have the opportunity in camera  
20 to review and assure that the terms are fair  
21 and do not deprive the counter parties of any  
22 of their rights.

23 As we discussed at the status  
24 conference on Tuesday, these -- this is not a  
25 hearing today to assume or reject these

1 agreements. The debtor must eventually file  
2 appropriate motions seeking authority and  
3 approval to either assume and assign or to  
4 reject. At that point the counter-parties  
5 will certainly be entitled to know all of the  
6 terms of that arrangement. They will have  
7 their rights to contest the assignability, to  
8 contest the cure amounts, to contest adequate  
9 assurance of future performance if the  
10 agreements are being assumed and assigned.  
11 Conversely, if they're being rejected, they  
12 have their rights to contest the bidders --  
13 the debtor's business judgment and any damages  
14 that may arise from the rejection.

15 So we feel that this prejudices no one.  
16 It enhances the economic value and advances  
17 essentially the bidding process that we expect  
18 to bring to conclusion here this morning.

19 I did check the docket before coming  
20 over here this morning. There were no  
21 objections filed but obviously since we filed  
22 it at the end of the day on Tuesday as agreed,  
23 it's possible that there may be objections and  
24 we would be happy to respond to any if there  
25 are.

1 THE COURT: All right. Very  
2 good. All right. I'm going to open the floor  
3 up. Do we have any responses to the motion?  
4 Mr. Meyer?

5 MR. MEYER: Your Honor, on  
6 behalf of Stylemark, I don't believe that we  
7 object to the motion to file the assignment  
8 information and agreements under seal. We  
9 don't think that that necessarily disposes of  
10 the objection that Stylemark has with respect  
11 to the sale free and clear of interest and I  
12 just want to make that clear. I don't know if  
13 this -- the motion was intended to do, you  
14 know, void that issue. We think it's still on  
15 the table. Thank you, Your Honor.

16 THE COURT: I don't think I  
17 read the joint motion as affecting Stylemark's  
18 objection. Mr. Ryan, that's correct?

19 MR. RYAN: That is not our  
20 intention.

21 THE COURT: All right. Okay.  
22 Anybody else? All right. Hearing no  
23 objections, I'm going to grant that motion and  
24 I'll see that an order providing for that as  
25 submitted is entered as soon as I can,

1 undoubtedly at a break at some point this  
2 morning. Okay.

3 Mr. Ryan, if I can just ask you, then,  
4 how mechanically, then, would this kind of go  
5 forward? How is this contemplated to work?

6 MR. RYAN: I'll defer to the  
7 Debtor. I think the intention was that we  
8 needed this motion to be heard and decided and  
9 then we'd be prepared to move toward the  
10 auction. But I'll defer to Mr. Singer as to  
11 how he wants to run the agenda.

12 THE COURT: Right. Okay.  
13 Well, I wasn't speaking to that. I guess I  
14 was speaking more in terms of how  
15 mechanically, then, the filing of the  
16 prevailing --

17 MR. RYAN: Oh, I'm sorry.

18 THE COURT: -- bid with  
19 portions under seal would then work in  
20 connection with any further judicial  
21 consideration because you made reference to me  
22 considering it in-camera for some substantive  
23 purpose. And I just want you to state for the  
24 record just how that all goes forward.

25 MR. RYAN: Sure. I'm sorry.

1 I misunderstood. Yes. Our expectation is  
2 that at the conclusion of the auction today, a  
3 prevailing bid will be picked. And we will  
4 proceed directly, then, to the sale hearing  
5 where we will represent all of the terms and  
6 conditions at least generally on the record  
7 other than the terms that would be subject to  
8 being sealed and seek the Court's approval of  
9 the prevailing bid subject to our then filing  
10 the prevailing bid together with any sealed  
11 portions, obviously depending on what time  
12 that hearing concludes at the end of the day  
13 today or sometime tomorrow. And then the  
14 Court obviously would be able to review the  
15 final version of the prevailing bid and the  
16 sealed portions to be certain that it is  
17 consistent with what was represented on the  
18 record and that it meets all of the  
19 requirements obviously of the Bankruptcy Code  
20 before the Court and enters the proposed order  
21 which, again, we would envision would have  
22 been circulated amongst the parties so it  
23 could be presented to the Court after the  
24 hearing with that bid package as an order that  
25 the parties have agreed the Court can enter

1 obviously upon the Court's final review and  
2 approval. Understand it is ultimately the  
3 Court's discretion and if you feel there's  
4 some discrepancies or problems, we may have to  
5 come back and see you.

6 THE COURT: Okay. So the  
7 review you're contemplating, then, would be  
8 for my sort of quality control and consistency  
9 review as between the order and the bid.

10 MR. RYAN: Correct.

11 THE COURT: And the terms  
12 previously set.

13 MR. RYAN: Correct.

14 THE COURT: All right. Now I  
15 understand.

16 MR. RYAN: Thank you.

17 THE COURT: All right. Good  
18 enough. Let's move on here. Turn it over to  
19 Debtor's counsel.

20 MR. SINGER: Your Honor, we  
21 have a number of motions pending today. Our  
22 thought was to conclude the formal part of the  
23 hearing at this point and take all the  
24 remaining motions, some of which are  
25 interrelated to the Debtor's sale motion after

1 conclusion of the auction. So our proposal  
2 would be to adjourn the hearing now and start  
3 commencement with the auction proceedings.

4 THE COURT: Very good. I  
5 think that was the understanding all around  
6 coming out of the status conference and  
7 previous to that, of course, from last week.

8 All right. I did set forth in the  
9 order that I entered on April 9 what I thought  
10 were going to be principles under which an  
11 orderly bidding process would go forward  
12 according to prescribed terms so let's go  
13 ahead and do that.

14 MR. SPENCER: Your Honor,  
15 Steve Spencer from Houlihan Lokey. We will  
16 open up the auction. Let me start by laying  
17 the ground rules for purposes of transparency  
18 and to ensure that we advance the bidding at a  
19 reasonable pace.

20 We will open the auction with a bid  
21 from Patriarch, our current lead bidder. For  
22 the record, the Patriarch bid is comprised of  
23 \$57 million -- \$57,425,000 of cash  
24 consideration, 15 points of equity  
25 consideration which we are valuing at



1           \$9,750,000 on 650,000 a point and 8,325,000 of  
2           excluded assets. In total, the Patriarch bid  
3           is valued at \$75,500,000. For purposes of  
4           clarity, this yields proceeds to the estate of  
5           \$73,800,000 net of the \$1,700,000 breakup in  
6           fee and expense reimbursement.

7                     The current backup bid is the bid from  
8           Hilco Gordon Brothers. For the record, the  
9           Hilco Gordon Brothers bid comprised of  
10          40 million of cash consideration, 25 points of  
11          equity consideration which we are valuing  
12          equivalently at \$650,000 a point or  
13          \$16,250,000, and \$16,362,000 of excluded  
14          assets. Again, for clarity, in total the  
15          Hilco Gordon Brothers bid is valued at  
16          \$72,612,000 which yields proceeds to the  
17          estate net of the \$1,700,000 breakup fee and  
18          expense reimbursement of \$70,912,000.

19                     The minimum bid increments going  
20          forward will be as they were previously  
21          \$150,000 of consideration. Equity  
22          consideration will be capped at 25 percent.  
23          Bids that reduce the amount of cash  
24          consideration below the amounts currently  
25          offered in either bid structure will not be

1 considered by the estate. Bidders will have  
2 five minutes to consider making a competing  
3 offer. Houlihan Lokey will maintain the bid  
4 clock.

5 And we now turn to Hilco Gordon  
6 Brothers as the current backup bidder to ask  
7 if you wish to make a competing bid. I would  
8 also remind both parties that bids made here  
9 are irrevocable.

10 THE COURT: All right. And  
11 before we enter into the auction proceedings  
12 here, let me just speak to a mechanical matter  
13 here. The Court's electronic court recording  
14 facility is not set up real well for reading  
15 back anything that folks may have to have read  
16 back. I'm hoping that the ground rules are  
17 now sufficiently clear and simplified that  
18 that won't be required.

19 However, the debtors did bring in a  
20 court reporter who should be in a position,  
21 then, to read back if that's necessary. And  
22 that in turn, whatever she says on the record,  
23 will be taken as part of the official report.  
24 The Court will continue to make an official  
25 record of these proceedings even though

1 they're technically outside the judicial  
2 purview. I determined after the April 9  
3 proceedings that we'd convene the auction in  
4 open court one last time. My role here is  
5 basically just going to be to observe,  
6 maintain order and decorum. And I believe one  
7 of the local newspapers said that I said I was  
8 going to supervise it. Well, not supervise it  
9 per se because I do not really participate in  
10 the administration of the assets of the estate  
11 but I'm here basically for the purpose of  
12 ensuring that things go forward at an  
13 appropriate pace.

14 I do not anticipate any legal disputes,  
15 which is basically my job resolving disputes  
16 of law and fact, but if any such arise, then I  
17 will chime in. So I intend to stay back at a  
18 remove from what goes on here and that's  
19 another part of the ground rules.

20 So, Mr. Spencer, then, you called for a  
21 response.

22 MR. SPENCER: Yes. I'll turn  
23 it over to the Hilco Gordon Brothers team to  
24 counter the current lead bid from Patriarch.

25 MR. KAUP: Okay. Eric Kaup,

1 K-A-U-P, on behalf of the joint venture of  
2 Hilco Consumer Capital and Gordon Brothers  
3 Brands which I'll refer to as the Hilco Gordon  
4 Brothers Joint Venture, submits the following  
5 bid. It's the bid that was submitted at the  
6 sealed bid auction deadline with all the  
7 accompanying schedules and the LLC agreement  
8 and other agreements with the following  
9 clarifications and conditions and  
10 modifications.

11 The first is the cash purchase price  
12 delivered at closing will be increased by  
13 \$3,000,038,000 increasing the total cash  
14 consideration at closing to \$43,038,000 which,  
15 by our math, increases the total gross value  
16 of our bid -- or I'm sorry, the gross -- the  
17 net value of our bid, net of the breakup fee  
18 payable to the first stalking horse to  
19 \$73,950,000.

20 Our bid has the following  
21 clarifications. First off, it's conditioned  
22 on the continuing support of the debtors for  
23 the breakup fee which was agreed to on  
24 March 31 in that auction.

25 Number two, we've incorporated the

1 identical language contained in the Lithograph  
2 asset purchase agreement regarding inclusion  
3 of the Zink equity as an acquired asset under  
4 our asset purchase agreement. We worked out  
5 that language with the debtors, and as I  
6 understand, the debtors do not have any  
7 disagreement with that.

8 Finally, I have a list of contracts  
9 here relating to the Stylemark membership  
10 agreement, licenses, permissions, et cetera  
11 that the Hilco Gordon Brothers Joint Ventures  
12 designated as definitively acquired contracts  
13 under our asset purchase agreement which means  
14 that they are to be assumed and assigned to  
15 our joint venture at closing and may not be  
16 rejected at any time by the Join Venture.

17 We are able to do this as a result of  
18 negotiations and agreement with Stylemark  
19 regarding the assumption assignment of their  
20 agreement that includes modified royalty terms  
21 and purchase option, et cetera. It's our  
22 belief that by giving the debtors the  
23 assurance that these contracts will not be  
24 rejected if the debtors accept the Hilco  
25 Gordon Brothers bid as higher and better, that

1 the estate avoids tens of millions of dollars  
2 in rejection damage claims.

3 MR. SPENCER: We will break  
4 for just a minute. We'll be back on the  
5 record shortly.

6 THE COURT: All right.

7

8 (A break was had in the proceedings)

9

10 MR. SPENCER: We will resume  
11 at this point. We accept the revised Hilco  
12 Gordon Brothers bid which exceeds the -- well,  
13 which meets the required \$150,000 bid  
14 increment. We are valuing, we accept your  
15 valuation of that bid at \$73,950,000 of net  
16 proceeds to the estate.

17 And I will say that we'll reserve the  
18 right to confer with the committee and their  
19 professionals at points when we receive the  
20 bid to make any clarification that's necessary  
21 and debate the merits of the bid and come back  
22 on record. We'll start the clock, the  
23 five-minute clock at that point in time.

24 So we'll turn at this point, Lynn, to  
25 Patriarch to submit a competing bid and we'll

1 start the clock.

2

3 (A discussion was had off the record)

4

5 THE COURT: All right. Go  
6 ahead, then.

7 MS. TILTON: In the interest  
8 of keeping the playing field even and raising  
9 our bid, we are going to add the breakup fee,  
10 the same breakup fee as a condition to our  
11 bid. Not something I would have normally  
12 thought of but I don't want it to be an added  
13 expense to the estate only if we win. And  
14 then we will add \$500,000 to our bid which  
15 would be a total bid of \$76 million, less the  
16 1.7 which would get us to \$74,300,000.

17 MR. SPENCER: We'll break for  
18 a few minutes. We'll come back.

19 THE COURT: All right. We'll  
20 go off the record, then.

21

22 (A break was had in the proceedings)

23

24 MR. SPENCER: The estate  
25 accepts the revised Patriarch bid which we are

1 valuing on a net basis net of the breakup fee  
2 and expense reimbursement at \$74,300,000. For  
3 purposes of clarity, we value that as \$350,000  
4 higher than the Hilco Gordon Brothers bid. At  
5 this point we would turn it back over  
6 actually --

7 MR. CHESLEY: Before doing  
8 that, Your Honor, Richard Chesley on behalf of  
9 the unsecured creditors committee. We would  
10 reserve the right to object to any attempt to  
11 seek a secondary or alternative breakup fee as  
12 we have with Hilco as well. But with that  
13 being said, the bid has been accepted by the  
14 estate.

15 THE COURT: All right. So  
16 noted.

17 MR. SPENCER: Eric, we'll turn  
18 it back over to Hilco Brothers for the --

19 MR. KAUP: Thank you. The  
20 Hilco Gordon Brothers JV will increase the  
21 cash consideration of its bid to \$43,538,000,  
22 increasing the gross value of our bid by my  
23 math to \$76,150,000 net of the breakup fee to  
24 Genii totaling \$74,450,000.

25 MR. SPENCER: The debtor



1 accepts the revised Hilco Gordon Brothers bid  
2 which we are valuing at 74,000 --  
3 \$74,150,000 -- \$450,000. Let me clarify that  
4 again. \$74,450,000 which is \$150,000 higher  
5 than the Patriarch bid.

6 Lynn, we would turn it back over to  
7 you.

8 MS. TILTON: Okay. Patriarch  
9 will raise its bid, it's last bid, previous  
10 bid by 400,000 to what we would calculate net  
11 of the breakup fee at 74,700,000.

12 MR. CHESLEY: I'm sorry, what  
13 was the cash increase? I'm sorry, Lynn.

14 MS. TILTON: Cash increase is  
15 400,000.

16 MR. CHESLEY: Thank you.

17 MR. SPENCER: And, Lynn, for  
18 the record, could you go back and recite the  
19 constituent elements of your bid?

20 MS. TILTON: Okay. So we have  
21 8,325,000 of excluded assets. We have  
22 9,750,000 of equity and now you're going to  
23 make me do math in front of the judge which is  
24 really mean. That's 18,000,025 from  
25 74,700,000. 75? Yes, thank you. I brought a

1 calculator. 56,625,000 of cash.

2 UNKNOWN SPEAKER: Post

3 breakup.

4 MS. TILTON: Post breakup.

5 That's net number if you add the 1,700,000 to  
6 it, that would take you to 58,325,000.

7 MR. SPENCER: Okay. Thank you  
8 very much. The debtor accepts the revised  
9 Patriarch bid which we are valuing at  
10 \$74,700,000 net, on a net basis, net of  
11 breakup fee and expense reimbursement for  
12 stalking horse bidder. That is \$250,000  
13 higher than the Hilco Gordon Brothers  
14 preceding bid. Eric, we would turn it back  
15 over to Hilco Gordon Brothers for a response.

16

17 (A discussion was had off the record)

18

19 THE COURT: Are we ready to  
20 go?

21 MR. SPENCER: We're a minute  
22 away.

23 THE COURT: Okay. Very good.

24 MR. GORDON: Your Honor, I'd  
25 like to interrupt for a second if I could.

1 It's Greg Gordon on behalf of Patriarch. I  
2 would just like the record of the auction to  
3 reflect that during a break, I represented  
4 that Hilco Gordon Brothers exited the room and  
5 had a meeting with Mr. Chesley. I'd just like  
6 to note that for the record. Mr. Chesley,  
7 counsel for the Polaroid committee.

8 MR. KAUP: Okay. So the Hilco  
9 Gordon Brothers joint venture is willing to --  
10 will increase the cash component of its bid to  
11 \$43,938,000. By my math that's a gross value  
12 of our bid of \$76,550,000 net of the Genii  
13 breakup fee \$74,850,000.

14 MR. SPENCER: The debtor  
15 accepts the revised Hilco Gordon Brothers bid  
16 which we are valuing on a net basis at  
17 \$74,850,000 which is the required \$150,000 bid  
18 increment higher than the preceding Patriarch  
19 bid of \$74,700,000.

20 At this point we turn it over to Lynn,  
21 to Patriarch.

22 MS. TILTON: I need a second  
23 to do my math before you make me calculate in  
24 public. Okay?

25 MR. SPENCER: Sure. That's

1 fine.

2

3 (A discussion was had off the record)

4

5 MS. TILTON: Okay. Patriarch  
6 will raise its bid by \$500,000 of cash which  
7 raises our total cash consideration to  
8 58,825,000, which less the breakup fee and  
9 expense fee would take you to 57,125,000 in  
10 cash. The excluded assets and the equity  
11 would stay the same for a total bid of  
12 76,900,000 less the 1.7 million of fees,  
13 75,200,000.

14 MR. SPENCER: Lynn, the debtor  
15 confirms your math.

16 MS. TILTON: Thank you.

17 MR. SPENCER: That the bid is  
18 valued at \$75,200,000 on a net basis. Eric, I  
19 turn it back over to Hilco Gordon Brothers for  
20 a competing bid.

21 THE COURT: Okay. So the  
22 debtor has accepted the revised Patriarch bid.

23 MR. SPENCER: For the record,  
24 the debtor has accepted the revised Patriarch  
25 bid.

1 THE COURT: Okay. Confirming  
2 the math is different from accepting the bid.

3 MS. TILTON: But it was  
4 important to me.

5  
6 (A discussion was had off the record)

7  
8 MR. KAUP: Okay. So the Hilco  
9 Gordon Brothers JV is prepared to raise the  
10 cash purchase price at closing to \$45 million  
11 which provides a gross value of our bid to  
12 77,612,000 net to the estate of the Genii  
13 breakup fee 75,912,000.

14  
15 (A discussion was had off the record)

16  
17 MR. SPENCER: Eric, the debtor  
18 accepts the revised Hilco Gordon Brothers bid  
19 which we value at \$75,912,000 on a net basis  
20 net of the \$1.7 million breakup fee and  
21 expense reimbursement for the stalking horse  
22 bidder. At this point we would turn it over  
23 to Lynn, to Patriarch for a competing bid.

24  
25 (A discussion was had off the record)

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MS. TILTON: All right.

Patriarch is prepared to revise its bid and the total bid amount will be 77,800,000 which, minus the breakup fee, would be 76,100,000. It's an increase of cash of 900,000 which would take us to 59,725,000 in cash which, less the breakup fees, is 58,000,025 of cash.

(A discussion was had off the record)

MR. SPENCER: Lynn, the debtor accepts the revised Patriarch bid which we value also on a net basis at \$76 million -- \$76,100,000 which clears the prior Hilco Gordon Brothers bid by 188,000 which is above the 150,000 required bid increment. We are now bidding off the Patriarch lead bid of \$76,100,000 on a net basis.

Eric, I would turn it back over to you and to Hilco Gordon Brothers to submit a revised bid.

(A discussion was had off the record)

1 MR. KAUP: Okay. The Hilco  
2 Gordon Brothers Joint Venture is prepared to  
3 increase the cash component of its bid by  
4 \$500,000, increasing the cash at closing to  
5 45,500,000 which we believe is a gross value  
6 of 78,112 --

7 UNKNOWN SPEAKER: 78 million.

8 MR. KAUP: 78,112,000 net of  
9 the breakup fee and expenses paid to Genii of  
10 76,412,000.

11

12 (A discussion was had off the record)

13

14 MR. SPENCER: Eric, the debtor  
15 accepts the revised Hilco Gordon Brothers bid  
16 which on a net basis we value at \$76,412,000.  
17 That is now the lead bid. Lynn, I'll turn it  
18 over to you at this point to --

19 MS. TILTON: I just need a  
20 couple minutes.

21 MR. SPENCER: -- for a  
22 competing bid.

23

24 (A discussion was had off the record)

25

1 MR. SPENCER: I'll offer a 60  
2 second warning at this point.

3 MS. TILTON: Well, I'm going  
4 to raise my bid by \$400,000. I'm just trying  
5 to figure out where I left off on the cash so  
6 I apologize. So my total bid would be raised  
7 to 78,200,000 with my net bid to 76,500,000  
8 with total cash I believe to 60,175,000. I  
9 ask you to check me there. 60 -- no. Excuse  
10 me. 60,000,125 is correct, less the  
11 1.7 million would get me to net cash of  
12 58,425,000.

13 MR. SPENCER: Lynn, just --

14 MS. TILTON: I may have done  
15 the math wrong.

16 MR. SPENCER: Yeah. I think  
17 you did. You're \$62,000 light to meet the --  
18 at 76,500 on a net basis your bid would need  
19 to be at 76,562.

20 MS. TILTON: So raise my bid  
21 by 500,000, then, which would take my bid to  
22 76,600,000.

23 MR. KOTZ: What's the gross on  
24 that one?

25 MR. SPENCER: That's the net.



1 MS. TILTON: It's 76,600,000  
2 plus 1.7 million would get you to 78,300,000.

3 MR. SPENCER: The debtor  
4 accepts the revised bid from Patriarch  
5 Partners which we are valuing on a net basis  
6 at \$76,600,000 which exceeds the prior Hilco  
7 Gordon Brothers bid of \$76,412,000 by the  
8 requisite amount.

9 At this point I'll turn it over, Eric  
10 to Hilco Gordon Brothers to contemplate a  
11 competing bid.

12  
13 (A discussion was had off the record)

14  
15 MR. KAUP: Okay. So the Hilco  
16 Gordon Brothers group will increase the cash  
17 component of its bid by an additional \$500,000  
18 which brings the total cash at closing under  
19 our APA to \$46 million. It's a gross value to  
20 our bid of 78,612,000 and net of the Genii  
21 breakup fee and expenses it's a value of  
22 76,912,000.

23  
24 (A discussion was had off the record)

25

1 MR. SPENCER: The debtor  
2 accepts the revised Hilco Gordon Brothers bid  
3 which we too value on a net basis at  
4 \$76,912,000. At this point I'll turn it back  
5 over to Lynn, you and Patriarch.

6  
7 (A discussion was had off the record)

8  
9 MS. TILTON: Patriarch is  
10 going to increase its bid by one point of  
11 equity equal to \$650,000 which raises its  
12 total bid to 78,950,000, net of fees  
13 77,250,000. Cash remains, total cash remains  
14 at 60,225,000, less fees 58,525,000.

15 MR. SPENCER: We'd like to  
16 take a two-minute break.

17 THE COURT: Okay. We'll go  
18 off the record, then.

19  
20 (A break was had in the proceedings)

21  
22 THE COURT: On the record,  
23 then. All right. Go ahead, Mr. Spencer.

24 MR. SPENCER: Lynn, the debtor  
25 accepts the revised Patriarch bid which we are

1 valuing on a net basis at \$77,250,000 which  
2 exceeds the preceding Hilco Gordon Brothers  
3 bid by \$338,000 which is in excess of the  
4 required bid increment of 150. Eric, turn it  
5 back over to Hilco Gordon Brothers.

6

7 (A discussion was had off the record)

8

9 MR. KAUP: Okay. So the Hilco  
10 Gordon Brothers Joint Venture is prepared to  
11 increase the cash portion of our purchase  
12 price to \$46,500,000 providing a net value to  
13 the estate as we've been calling it of  
14 77,412,000, a gross value of 79,112,000.

15

16 (A discussion was had off the record)

17

18 MR. SPENCER: The debtor  
19 accepts the revised Hilco Gordon Brothers bid  
20 which we value on a net basis at \$77,415,000  
21 which exceeds the required bid increment.

22 UNKNOWN SPEAKER: 412,000.

23 MR. SPENCER: I'm sorry.  
24 412,000 net which exceeds the required bid  
25 increment. Again, for the record and for

1 clarity, Lynn, we are valuing the revised  
2 Hilco Gordon Brothers bid at \$77,412,000.  
3 Turn it over to Lynn and Patriarch.

4 MS. TILTON: Patriarch's  
5 prepared to increase its bid by another  
6 percent of equity valued at \$650,000, you  
7 know, a net bid of 77,900,000 keeping the cash  
8 the same at 60,225,000 or a net cash bid of  
9 58,225,000.

10 MR. SPENCER: Lynn, could you  
11 recite the components again?

12 MS. TILTON: Okay. Increasing  
13 to 17 percent equity which increases our bid  
14 amount by \$650,000 it a gross bid of  
15 79,600,000, a net bid of 77,900,000. The cash  
16 component remains the same at 60,225,000 or a  
17 net cash bid to the estate of 58,525,000.

18 MR. KAUP: Can I just ask for  
19 the record what the equity stake is right now?  
20 I don't know if anybody recited --

21 MS. TILTON: I just said  
22 17 percent.

23 MR. KAUP: Is it 17? I'm  
24 sorry, I didn't hear you. Thank you.

25 MR. SPENCER: The debtor

1 accepts the revised Patriarch bid which we are  
2 valuing on a net basis at \$77,900,000. At  
3 this point I'll turn it back over to you,  
4 Eric.

5 MR. KAUP: Thanks.

6 UNKNOWN SPEAKER: Give me five  
7 minutes more.

8 MR. KAUP: I think he means  
9 we'd like to have an extra five minutes, a  
10 ten-minute break. Is that what you meant,  
11 Jamie?

12 UNKNOWN SPEAKER: Only because  
13 I --

14 MR. KAUP: We'll be back in  
15 ten minutes.

16 THE COURT: Shall we take a  
17 midmorning break here? Maybe everybody could  
18 use it. All right. Let's break until, let's  
19 make it five after by the courtroom clock.  
20 That's about 11 minutes.

21  
22 (A break was had in the proceedings)

23  
24 THE COURT: All right. We are  
25 back on the record here and I'll go so far as

1 to say I believe the last thing I have noted  
2 in my notebook here anyway is that the debtor  
3 had accepted the revised Patriarch bid valued  
4 net at \$77,900,000.

5 Mr. Spencer, is that correct as to the  
6 status?

7 MR. SPENCER: That's correct,  
8 Your Honor.

9 THE COURT: Okay. Back to  
10 you, then.

11 MR. SPENCER: And for  
12 everybody's benefit, the composition of that  
13 bid which we agree is 77,900,000 on a net  
14 basis is net cash of \$58,525,000, 17 points of  
15 equity which is being valued at \$11,050,000,  
16 excluded assets of \$8,325,000 which, again,  
17 totals 77,900,000 on a net basis. That is  
18 currently the lead bid.

19 We turn it back over to Hilco Gordon  
20 Brothers for a competing bid.

21 MR. KAUP: The Hilco Gordon  
22 Brothers Joint Venture would increase the cash  
23 at closing \$650,000 so that the cash component  
24 of our APA would be \$47,150,000 which brings  
25 us to a gross bid of \$79,762,000, a net value

1 of the Genii breakup fee and expenses of  
2 \$78,062,000.

3

4 (A discussion was had off the record)

5

6 MR. SPENCER: The debtor  
7 accepts the revised Hilco Gordon Brothers bid  
8 which we value at \$78,062,000 net. It exceeds  
9 the \$150,000 bid increment. The Hilco Gordon  
10 Brothers bid is now our lead bid and I turn it  
11 back over to Patriarch for a competing bid.

12 MR. KAUP: Steve, if you  
13 could, I'd like to have the same sort of  
14 components of our bid read out like Patriarch  
15 just so at this point in the bidding we all  
16 know where we are.

17 MR. SPENCER: Sure. Eric, why  
18 don't you recite them for the benefit and  
19 we'll confirm. I can read them to you if  
20 you'd like, Eric.

21 MR. KAUP: If you could read  
22 them and then --

23 MR. SPENCER: Sure. Our net  
24 cash figure is \$45,450,000. The value of the  
25 equity which is 25 points is \$16,250,000. The

1 excluded assets are valued at \$16,362,000.

2 MR. KAUP: We agree.

3 MR. SPENCER: The total net of  
4 \$78,062,000. Okay.

5 MR. KAUP: Thank you.

6 MR. SPENCER: We accept that  
7 bid. We turn it over to Patriarch for a  
8 revised bid.

9

10 (A discussion was had off the record)

11

12 MS. TILTON: Patriarch is  
13 ready to revise its bid. The equity  
14 percentage will be increased by one point to  
15 18 percent which is an additional 650,000 to  
16 the bid which takes the total bid to  
17 80,250,000 the net bid to 78,550,000. Should  
18 take the equity component to 11,700,000. The  
19 total cash will remain at 60,225,000. The net  
20 cash of 58,525,000. The excluded assets stay  
21 the same at 8,325,000.

22 MR. SPENCER: The debtor  
23 accepts the revised Patriarch bid which we are  
24 valuing at \$78,550,000. We turn it over to  
25 Hilco Gordon Brothers for a competing bid.



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(A discussion was had off the record)

MR. KAUP: So the Hilco Gordon Brothers Joint Venture will increase its bid by \$2 million of cash. Our total cash at closing is \$49,150,000, bringing our net value of our bid, net of the Genii breakup expenses to 80,062,000, the gross value of our bid to 81,762,000.

(A discussion was had off the record)

MR. SPENCER: Eric, for the record, could you recite the components of the constituent elements of your bid for everyone's benefit?

MR. KAUP: So the gross cash of our bid would be, gross cash paid at closing is 49,150,000. The net number there is 1.7 million less of cash. We have 25 percent equity in newco valued at \$16,250,000. We have excluded assets left with the estate valued at \$16,362,000. The gross value of that bid by my math is

1 \$81,762,000, net of the Genii breakup fee and  
2 expenses that's a value of \$80,062,000.

3 MR. SPENCER: The debtor  
4 accepts the revised Hilco Gordon Brothers bid  
5 which we value on a net basis at \$80,062,000.  
6 The Hilco Gordon Brothers bid is now our lead  
7 bid and we turn it back over to Patriarch to  
8 contemplate a competing bid.

9  
10 (A discussion was had off the record)

11  
12 MS. TILTON: Okay.  
13 Patriarch's new bid will be for a total of  
14 \$82,800,000. That will be comprised of an  
15 increase of equity up to 20 percent which  
16 gives you \$1.3 million of that increase and an  
17 additional \$1,250,000 of cash. To my  
18 calculation, and I would appreciate  
19 confirmation, that takes our total cash up to  
20 61,475,000, a net cash of 59,775,000. The  
21 excluded assets would remain the same at  
22 8,325,000. The 20 percent equity would now be  
23 worth \$13 million.

24  
25 (A discussion was had off the record)

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MR. SPENCER: Lynn, to clarify, your gross you calculate at 82,800,000. The net would then be 81,100,000.

MS. TILTON: Correct.

(A discussion was had off the record)

MR. SPENCER: The debtor accepts the revised Patriarch bid which we are valuing on a net basis at 81,100,000.

Eric, would you like us to recite the constituent elements?

MR. KAUP: Yeah. We would respectfully request a 20-minute break at this point. We're at a point here where among our group we need to caucus and continue to talk.

MR. CHESLEY: Your Honor, we're all -- from the Committee's standpoint, we're at a point that I would actually appreciate the opportunity to a -- my committee have a very short meeting. We could probably do it in 15 minutes. Hopefully Hilco can do it in 15 minutes.

MR. SPENCER: Eric, does 15

1 minutes work for you?

2 MR. KAUP: We'll live with 15,  
3 sure. Thank you.

4 MR. CHESLEY: Thank you, Your  
5 Honor.

6 THE COURT: Anybody have any  
7 problem with that? Okay. All right. Let's  
8 reconvene, then, at 20 to by the courtroom  
9 clock, 11:40 a.m. All right. We're in recess  
10 then.

11

12 (A break was had in the proceedings)

13

14 THE COURT: Back on the  
15 record, then. The break was requested by the  
16 people from Hilco Gordon so I'm going to  
17 turn back over to Mr. Spencer.

18 MR. SPENCER: Okay. Should  
19 wait for Rick.

20 MR. KAUP: Wait for Rick.  
21 We're missing one guy too.

22 THE COURT: Okay. All right.  
23 We'll go back off the record, then.

24

25 (A break was had in the proceedings)

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MS. TILTON: -- revise its bid by \$2 million to \$84,800,000. That rise in \$2 million will be comprised of two points of equity equivalent to \$1.3 million and \$700,000 of cash. I believe that takes the gross cash to 62,125,000, the net cash to 60,475,000, the total equity value to 14,300,000, and the excluded assets to 8,325,000.

(A discussion was had off the record)

MR. SPENCER: Lynn, sorry to bother but would you recite the constituent elements of the bid one more time for the record?

MS. TILTON: Yeah. And appreciate it if you correct me if I'm wrong. I have excluded assets of 8,325,000, the equity which is now at 22 percent at 14,300,000, and net cash of 60,475,000, with gross cash at 62,125,000. 175? I apologize. Learn to add.

MR. RYAN: What is the gross cash?

1 MS. TILTON: I believe it's  
2 62,175,000.

3 MR. SPENCER: Correct. That's  
4 right.

5 MS. TILTON: Okay. Thank you.

6 MR. SPENCER: Net cash of  
7 60475.

8 MS. TILTON: Correct.

9 MR. SPENCER: For a total net  
10 consideration of \$83,100,000.

11 THE COURT: 83 or 84?

12 MR. SPENCER: The net  
13 consideration, Your Honor, of \$83,100,000.

14 THE COURT: I'm sorry, yes.

15

16 (A discussion was had off the record)

17

18 MR. SPENCER: Your Honor, a  
19 request for a two-minute break to confer  
20 with --

21 THE COURT: Okay. We'll go  
22 off the record.

23

24 (A break was had in the proceedings)

25

1 MR. SPENCER: The debtor  
2 accepts the revised Patriarch bid which we are  
3 valuing on a net basis at \$83,100,000. The  
4 constituent elements for the benefit of all  
5 are \$14,300,000 in equity consideration,  
6 60,475,000 in cash consideration, and  
7 8,325,000 in excluded assets which totals  
8 83,100,000.

9 Eric, turn it back over to you.

10 MR. CHESLEY: For the record,  
11 however, Your Honor, let me just state the  
12 Committee is reserving its rights with respect  
13 to whether or not that bid is highest and  
14 otherwise best taking into account all the  
15 considerations and subjective and qualitative  
16 facts. We will continue to review that but we  
17 understand the Debtor's position and we concur  
18 with the Debtor's calculation of the numbers.

19 MR. GORDON: Your Honor, may  
20 I?

21 THE COURT: You may.

22 MR. GORDON: Greg Gordon on  
23 behalf of Patriarch. We obviously will  
24 reserve on that. We object to that. If  
25 there's now going to be an argument after all

1 this back and forth that the rules should not  
2 be applied the way the Court set them out in  
3 the order and the items should be revalued or  
4 considered in a different way, we will  
5 vehemently object to that, Your Honor.

6 THE COURT: I guess I'm not  
7 sure where the Committee is coming from.

8 MR. CHESLEY: Where the  
9 Committee is coming from, Your Honor, this was  
10 the issue that was raised with respect to the  
11 LLC agreement and our ability to object to  
12 certain of the qualitative factors comparing  
13 the two agreements. You cannot quantify those  
14 numerically, Your Honor. We just are simply  
15 reserving the right if the Debtor goes forward  
16 with this as the highest and otherwise best to  
17 object to that if the Committee makes that  
18 decision. That's all.

19 MR. GORDON: Your Honor, with  
20 respect to the LLC agreement, they did reserve  
21 on the record a couple of hearings ago on that  
22 point. We then came back to the hearing the  
23 other day and counsel for Creditors Committee  
24 advised that there had been an exchange where  
25 the Committee had put in some comments. We



1           responded. I do want Your Honor to know that  
2           we never had a direct discussion with the  
3           Committee about the LLC agreement. The  
4           Committee has refused to talk to us about it.  
5           The comments have only been made through the  
6           Debtor. They've come through e-mails that  
7           were forwarded by the Debtor to us. We  
8           responded. We moved on a number of points.  
9           In terms of other points, we indicated why we  
10          thought the points were cosmetic or didn't  
11          have any meaning and why in our view the LLC  
12          agreements are basically identical in all  
13          material respects. We've never been able to  
14          have a dialogue with the Committee about that.

15                 From our perspective, and the Debtor  
16          can weigh in, there's no material difference  
17          between the agreements. And we can take that  
18          up at some point if Your Honor would like but  
19          I did want Your Honor to know notwithstanding  
20          this reservation of rights, we've never had a  
21          single conversation with the Committee over  
22          the last week regarding the LLC agreement, not  
23          one.

24                         MR. CHESLEY: Your Honor, just  
25          for point of clarification, we filtered all of

1 our comments to both parties back through the  
2 Debtors to make sure that we don't have the  
3 back and forth side to side that led to where  
4 we were last week.

5 THE COURT: Understood.

6 MR. CHESLEY: Thank you, Your  
7 Honor.

8 THE COURT: Okay.

9 MR. KAUP: Your Honor, I'd  
10 like to put our point of view on the record as  
11 well, you know, which is that we've now  
12 negotiated two LLC agreements with the Debtors  
13 and with the Committee. We've signed them  
14 both. We have Debtor's signatures on our  
15 documents. We have an APA with schedules that  
16 we've negotiated on two separate occasions  
17 with this estate and this Committee. We  
18 signed them twice. The estate signed the one  
19 after the sealed bid auction.

20 For the record, I've never seen filed  
21 anywhere in this record a signed document  
22 between Patriarch and the Debtors. They were  
23 highest and best at an auction that ended on  
24 the 31st of March. There hasn't been a  
25 signature page filed with the record between

1 the Debtor and Patriarch. Ours are on the  
2 record. They're done.

3 There are significant differences in  
4 the LLC agreements between Lithograph Legends  
5 and the Hilco Gordon Brothers JV. To say that  
6 they are identical or is cosmetic is not  
7 accurate in any way. In order to capitalize  
8 the -- our company or Lithograph Legends, you  
9 can either put debt or equity into either  
10 company. In our case if we put in capital as  
11 opposed to debt, the estate is never diluted  
12 beyond the 25 percent that they're diluted.  
13 Our capital comes out first that we put into  
14 the debtor but they're never -- then to the  
15 newco but we are never diluted. Therefore, if  
16 we put money in, we've got to know we get it  
17 back but the Debtor -- the estate always  
18 remains at 25 percent interest.

19 Under the Lithograph Legends LLC  
20 agreement, Your Honor, if capital is put into  
21 the newco, the estate must have cash to  
22 exercise preemptive rights to retain its  
23 22 percent stake in the debtor. So, for  
24 example, if they were to put \$10 million into  
25 the new company to capitalize it to pay for

1 the employees that Patriarch claims that  
2 they're taking and they're not bound to do so  
3 under their agreement, the estate would have  
4 to come up with \$2.2 million or they would be  
5 diluted down in terms of their equity. I  
6 don't know of any bankruptcy estates that keep  
7 cash aside to exercise preemptive rights.

8 So that's the difference, Your Honor,  
9 between the LLC agreement of the Hilco JV and  
10 Lithograph Legends. So there are significant  
11 differences, Your Honor.

12 Right now as it stands, Lithograph is  
13 160 -- \$188,000 higher than ours. There's not  
14 a whole lot of dilution that needs to go on  
15 here for that bid to, in the end, six months a  
16 year from now, not actually be higher and  
17 better than our bid. So I know it's the  
18 Debtor's judgment. I know everybody thinks  
19 I'm biased just like Lithograph Legends is  
20 biased about who's higher is better but I do  
21 want to make on the record there are  
22 differences between the JV agreements and they  
23 are significant and they're worth value. And  
24 it's not something that we should say it's too  
25 late in the day or we've done too much

1 already. We've come very far and the Debtor  
2 should be allowed to make the right decision  
3 here.

4 MR. CHESLEY: If I may, Your  
5 Honor, just by way of clarification.

6 THE COURT: Yeah, are you  
7 really sure that you wanted to get into this?

8 MR. CHESLEY: No, I didn't. I  
9 just wanted to reserve the rights.

10 THE COURT: I mean, I thought  
11 we were kicking along here in a fairly orderly  
12 fashion.

13 MR. CHESLEY: We were doing  
14 fine. I just -- the Debtor's accepted a  
15 bid --

16 THE COURT: And I also would  
17 have thought that the whole matter of the LLC  
18 agreements as a floor to each party's bidding  
19 participation was pretty much settled.

20 MR. CHESLEY: It is settled,  
21 Your Honor.

22 THE COURT: All right.

23 MR. CHESLEY: They are done.  
24 They are both executed. I'm not sure if  
25 they're executed but both parties have

1 completed their documents. They are  
2 different. That's the only issue.

3 And the point we raise, Your Honor, is  
4 as we look at the total package of  
5 consideration, we have conferred with Ritchie,  
6 with Acorn, with the Petters committees to  
7 obviously get their input because they are  
8 stakeholders and at the end of the day, Your  
9 Honor, a critical component in the ability to  
10 wrap these estates up quickly as opposed to  
11 winding our way through several years of  
12 litigation. So we did take -- we have taken  
13 their counsel in looking at these issues and  
14 all we wanted to do at this point is note the  
15 differences, reserve the rights and obviously  
16 open it up for Hilco Gordon Brothers to make  
17 another bid based upon the Debtor's  
18 determination.

19 THE COURT: But reserve what  
20 rights? I mean, it's good to be lawyerly and  
21 reserve some wiggle room but I don't know what  
22 rights you're reserving if we've already  
23 reached final terms as to both of these  
24 parties.

25 MR. CHESLEY: The debtors will

1 present to Your Honor a sale motion as soon as  
2 we wrap up here that this is highest and  
3 otherwise best. We simply are reserving  
4 whether or not that, in light of all the  
5 criteria, beats that standard. That's all.  
6 It's the debtor's business judgment. It's the  
7 debtor's burden.

8 MR. GORDON: May I speak, Your  
9 Honor?

10 THE COURT: Yeah.

11 MR. GORDON: First of all,  
12 Your Honor, we came back here today with a  
13 clear understanding that we were going to  
14 follow rules that were very explicitly laid  
15 out in Your Honor's order, and we can't begin  
16 to tell you how much we appreciated the fact  
17 that you laid out the specifics in the order  
18 because, as Your Honor knows from having read  
19 the transcript from the hearing, we were  
20 highly critical of the fact that we felt that  
21 the auction as it was initially run didn't  
22 have a concrete set of rules making it very  
23 chaotic in terms of trying to pick a winning  
24 bid, in terms of trying to make further bids.  
25 We came back with a clear understanding we

1 were working off of your order which was very  
2 clear how bids were to be evaluated. They  
3 were to be evaluated based on that comparison  
4 of all the assets with the Houlihan values,  
5 with the equity values laid out by Houlihan.  
6 It was made very clear that we were talking  
7 about cash bidding only with respect to Hilco,  
8 cash and equity from Patriarch. We've done  
9 nothing but follow the rules.

10 With respect to the LLC agreement, it's  
11 the same thing. I mean, we negotiated that.  
12 We can talk about negotiations and signed  
13 documents. I'm sure we negotiated just as  
14 much as Hilco did. We've signed at least  
15 twice as far as I know as well. We've had to  
16 revisit those documents. We've made  
17 concessions. If we need to, and I don't think  
18 Your Honor would want to do this, we can go  
19 through the LLC agreement point by point but,  
20 you know, what counsel's not telling you is  
21 yes, they put new capital in. They're  
22 entitled to get 34 and a half million dollars  
23 back at 10 percent in front of the equity. I  
24 mean, we can stack them up side by side. But  
25 I think the way we looked at it was if you



1 think of them on an economic basis, they're  
2 basically the same. They've got some  
3 differences which, again, in my view are  
4 cosmetic. I think the debtor has to present  
5 its own view because it negotiated with both  
6 sets of parties.

7 But to suggest that we've now come back  
8 today, gone through an entire auction process  
9 according to the rules and now the creditors  
10 can stand up and say we reserve on that and  
11 can now argue to Your Honor that the winning  
12 bid isn't the winning bid, we're just back to  
13 where we were before. And to me that means we  
14 were proceeding under false pretenses here  
15 today. That's not what we signed up for  
16 today. Do we need to roll it back and start  
17 all over again and renegotiate the LLC  
18 agreements? I mean, that's what we're opening  
19 up here, Your Honor.

20 MR. KAUP: I'll be brief, Your  
21 Honor. It's absurd for a bidder that  
22 submitted a bid after the sealed bid auction  
23 to complain about not following rules, absurd.  
24 I'm not going to complain about it. What I'm  
25 saying, Your Honor, is that you cannot let a

1 bidder somehow object and prevent the Debtors  
2 and the Committee from deciding which is the  
3 highest and best bid. They've got two bids in  
4 front of them. They've accepted both bids and  
5 they can go decide which one is higher and  
6 better. That's all that the Debtor is saying.  
7 That's all the Committee is saying. There  
8 have been lots of rules. There have been lots  
9 of rules broken and we are at the end of this  
10 road and the Debtor is allowed to make a  
11 choice.

12 MR. RUNCK: Your Honor, David  
13 Runck on behalf of the Petters Committee. And  
14 just briefly I'd like to note for the record  
15 the Petters Committee support for the Polaroid  
16 Committee's reservation of rights, Your Honor,  
17 I agree that the Debtors in this case  
18 certainly have the business judgment to  
19 determine for the auction process what is the  
20 highest and best bid. But, Your Honor, I'm  
21 aware of no authority point that says that the  
22 creditors at this stage of the game need to be  
23 bound by that determination. And I think all  
24 that Mr. Chesley is saying, Your Honor, is  
25 that we reserve our rights to look at the

1 highest and best bid and determine whether or  
2 not it truly is the highest and best bid,  
3 evaluate the competing LLC agreements, Your  
4 Honor. That is the Debtor's burden of proof  
5 at the later stage of this hearing and we want  
6 to reserve our rights at that time.

7 THE COURT: Okay. Thank you.

8 MR. RUNCK: Thank you, Your  
9 Honor.

10 THE COURT: All right. Well,  
11 I basically said in the order I entered on  
12 April 9 that I did not anticipate having to  
13 get into legal issues at this point and I'm  
14 not going to. I'm only here as an observer  
15 for the purpose of keeping order and I'm not  
16 going to come in and referee this.

17 I will say, number one, that this  
18 bidding process is not a court proceeding.  
19 It's not a judicial proceeding. I'm just here  
20 because I felt I had to be to make sure things  
21 went together -- went forward as an orderly  
22 process.

23 So Mr. Chesley can say whatever he  
24 wants about reserving rights. The process of  
25 administering these assets has to go through

1 this bidding process to arrive at a proposed  
2 sale which then the Debtor can evaluate and in  
3 turn I guess it is correct the question of  
4 which is the highest and best may ultimately  
5 become an issue that is presented judicially  
6 here. And I'll take that in due course at  
7 that time. I'm going to have some problems  
8 just at a gut level with unseating the result  
9 of a competitive bidding process, but on the  
10 other hand, I think the question of which is  
11 the highest and best isn't judicially ripe at  
12 this point. So I can't cut the Committee off  
13 at its knees. I'm really outside of my sphere  
14 of authority sitting here anyway because we  
15 are only going through a bidding process. I  
16 tried to set up rules, yes, but I didn't set  
17 up rules ultimately and certainly did not make  
18 an advisory opinion as to what I was going to  
19 consider or not consider when we got to the  
20 point of actually convening the sale hearing  
21 and I passed on the Debtor's determination as  
22 to which party to sell these assets to under  
23 which circumstances.

24 So I'll let Mr. Chesley's notation of  
25 the Committee's reservation of its rights

1 stand for the record just as a memorialization  
2 of a position. I can get into this issue  
3 later on, frankly. The more I talk my way  
4 through this, the more I think it's probably  
5 not even ripe at this point. The parties can  
6 go through a bidding process here and I will  
7 say, you know, to the extent that I can -- I  
8 really have the issue framed up at all in  
9 front of me. You know, I'm going to have a  
10 hard time listening to any objection that the  
11 highest dollar value net bid is not the one  
12 that should be approved but the issue isn't  
13 ripe.

14 All right. Let's go forward here.

15 MR. SPENCER: Your Honor,  
16 speaking on behalf of Debtor, we did not give  
17 opinion on the Patriarch bid. We merely  
18 recited the constituent elements.

19 THE COURT: Right.

20 MR. SPENCER: I'll review  
21 those again for everybody's benefit. They are  
22 in equity \$14,300,000, in cash 60,475,000, in  
23 two of the assets 8,325,000. These are net  
24 numbers. The net consideration under the  
25 Patriarch revised bid is 83,100,000. The

1 Debtor accepts that bid as the lead bid right  
2 now and would go back to Hilco Gordon Brothers  
3 and ask if they wish to provide a revised bid.

4 MR. KAUP: We need another --  
5 we need 15 minutes. We'll be back in 15  
6 minutes, to 11:30.

7 THE COURT: 12:30.

8 MR. KAUP: That gives us three  
9 extra minutes. 11:30 or 12:30? I'm sorry,  
10 12:30.

11 THE COURT: All right. I'm  
12 going to remind everybody here I did specify  
13 in the order that parties were to come into  
14 this courtroom with authority. It sounds to  
15 me like you're going back to get more  
16 authority and I'm not going to have a lot of  
17 patience with this ongoing.

18 MR. KAUP: Your Honor, we  
19 brought principals from Gordon Brothers and  
20 Hilco with us.

21 THE COURT: Right.

22 MR. KAUP: We have two parties  
23 that we need to confer outside the courtroom  
24 to come to our bid. The CEO and chairman of  
25 Hilco is in the courtroom. Principals from

1 Gordon Brothers are in the courtroom. We  
2 brought our authority with us. We just can't  
3 have these conversations in open court.

4 THE COURT: All right.

5 Understood.

6 MR. KAUP: Thank you.

7 THE COURT: All right. Well,  
8 15 minutes then and let's get on with it.

9

10 (A break was had in the proceedings)

11

12 THE COURT: All right. We are  
13 back on the record. Mr. Spencer, then.

14 MR. SPENCER: Sure. We  
15 accepted the revised Patriarch bid which we  
16 value at \$83,100,000 net basis. We turned  
17 over the bidding to Hilco Gordon Brothers.

18 Eric, I'll turn it over to you to  
19 respond.

20 MR. KAUP: Thank you. The  
21 Hilco Gordon Brothers JV in light of the  
22 comments that were made on the record will  
23 increase the cash component of our bid by  
24 \$338,000 so cash at closing would be  
25 \$52,338,000. That's a gross bid value of

1 \$84,950,000, net value of \$83,250,000.

2

3 (A discussion was had off the record)

4

5 MR. SPENCER: Could you repeat  
6 the net number? I'll repeat it for you.

7 83,250,000 net?

8 MR. KAUP: Correct.

9 MR. SPENCER: Eric, just to  
10 clarify, please go through the constituent  
11 elements of your bid again.

12 MR. KAUP: Sure. The gross  
13 value of the cash at closing is \$52,338,000.  
14 The net of the breakup fee payable to Genii  
15 and expense reimbursement, the net cash as  
16 we've been calling it would be \$50,638,000.  
17 The value of the equity that we're providing  
18 is \$16,250,000. The value of the excluded  
19 assets is \$16,362,000.

20 MR. SPENCER: The debtor  
21 accepts the revised Hilco Gordon Brothers bid  
22 which we value at \$83,250,000 net.

23 We turn bidding over to Patriarch at  
24 this time.

25 MS. TILTON: All right.



1 Patriarch will increase its equity stake to  
2 23 percent which is increasing its bid by  
3 \$650,000. That takes the equity component to  
4 14,950,000. Everything else would remain the  
5 same. We -- I can go through it if you like.  
6 60,475,000 of net cash, 8,425,000 of excluded  
7 assets. That would take the gross bid to  
8 85,450,000 the net bid to 83,750,000.

9  
10 (A discussion was had off the record)

11  
12 MR. SPENCER: The Debtor  
13 accepts the revised Patriarch bid which we  
14 value on a net basis at \$83,750,000. We turn  
15 the bidding over to Hilco Gordon Brothers if  
16 you wish to submit a competing bid.

17 MR. KAUP: Thank you.

18  
19 (A discussion was had off the record)

20  
21 MR. KAUP: The Hilco Joint  
22 Venture will increase our bid by \$650,000 in  
23 cash so the gross value of the cash will be  
24 \$52,988,000. The net cash of breakup fee is  
25 51,288,000. The net value of our bid is

1 83,900,000. The gross is eighty-five million  
2 six hundred.

3

4 (A discussion was had off the record)

5

6 MR. SPENCER: Eric, we accept,  
7 the Debtor accepts the revised Hilco Gordon  
8 Brothers' bid which we value on a net basis of  
9 \$83,900,000 which clears the Patriarch bid by  
10 \$150,000. We turn the bidding back over to  
11 Patriarch.

12 Lynn, do you wish to submit a competing  
13 bid?

14 MS. TILTON: I need a little  
15 bit of time to look at numbers here.

16

17 (A discussion was had off the record)

18

19 MS. TILTON: Patriarch is  
20 prepared to increase its bid by \$950,000, an  
21 increase of one point of equity and \$300,000  
22 in cash which takes its gross bid to  
23 \$86,400,000, it's net bid to \$84,700,000, it's  
24 gross cash bid to \$62,475,000, it's net cash  
25 bid to \$60,775,000.

1 MR. SPENCER: And for  
2 everybody's benefit would you just go through  
3 those components again?

4 MS. TILTON: Does that mean I  
5 added wrong?

6 MR. SPENCER: No.

7 MS. TILTON: Do you want me to  
8 go through it again?

9 MR. SPENCER: Yes, please.

10 MS. TILTON: I believe that  
11 I've increased my bid by \$950,000 to include  
12 one point of equity and 300,000 of cash. That  
13 takes the gross bid to 86,400,000, the net bid  
14 to 84,700,000, the gross cash to 62,475,000,  
15 the net cash to 60,775,000, the equity value  
16 is now 15,600,000, and the excluded assets is  
17 8,325,000.

18 MR. SPENCER: The Debtor  
19 accepts the revised Patriarch bid which we  
20 value on a net basis at \$84,700,000.

21 Turn to you, Eric, to ask if Hilco  
22 wishes to submit a competing bid.

23

24 (A discussion was had off the record)

25

1 MR. KAUP: Okay. So the Hilco  
2 Gordon Brothers Joint Venture is prepared to  
3 increase its bid \$950,000 which would increase  
4 the gross value of the cash paid at closing to  
5 \$53,938,000. The cash net of the breakup fee  
6 would be \$52,238,000. It's a gross value of  
7 our bid with the equity and the excluded  
8 assets of 86,550,000, a net value to the  
9 estate after payment of the Genii breakup fee  
10 of \$84,850,000.

11 MR. SPENCER: The Debtor  
12 confirms and accepts the Hilco Gordon Brothers  
13 revised bid which we value at \$84,850,000  
14 which tops the prior Patriarch bid of  
15 \$84,700,000 by the required 150,000 increment.  
16 We turn the auction back over or the bidding  
17 back over to Patriarch.

18 Lynn, do you wish to make a competing  
19 bid?

20 MS. TILTON: I need a few  
21 minutes.

22  
23 (A discussion was had off the record)

24  
25 MS. TILTON: All right.

1 Patriarch will raise its bid by \$700,000 which  
2 is an additional 650,000 of equity which takes  
3 us up to the limit of 25 percent and an  
4 additional \$50,000 of cash. That should take  
5 the total bid to 87,100,000, the net bid to  
6 85,400,000, gross cash to 62,525,000, net cash  
7 to 60,825,000, equity is now at the  
8 \$16,250,000 level, and excluded assets are now  
9 at 8,325,000.

10 MR. SPENCER: The debtor  
11 confirms and accepts the revised Patriarch bid  
12 which we value at \$85,400,000 net. Turn the  
13 bidding back over to you, Eric, to contemplate  
14 a competing bid. And we would also --

15 MR. KAUP: Can you give me --  
16 I'm sorry, could you just give me the net and  
17 the gross numbers again?

18 MR. SPENCER: Sure. Lynn,  
19 would you mind reciting the components of your  
20 bid?

21 MS. TILTON: The gross number  
22 is 87,100,000 the net number is 85,400,000.  
23 The cash is --

24 MR. KAUP: Okay. Thanks. You  
25 raise your bid 700,000 or 750.

1 MS. TILTON: No. 700,000.

2 MR. KAUP: Okay. Thank you.

3 MS. TILTON: 650 of equity and  
4 50,000 of cash.

5

6 (A discussion was had off the record)

7

8 MR. KAUP: Okay. Hilco Gordon  
9 Brothers Joint Venture is prepared to -- will  
10 raise its bid by an additional \$1,062,000.  
11 Gross cash at closing is \$55 million. Cash  
12 net of breakup fee is 53,300,000. The gross  
13 value of the bid when you include equity  
14 valued at 16,250,000, excluded assets at  
15 16,362,000, totals 87,612,000, leaving net  
16 cash after payment of the breakup fee to the  
17 estate of \$85,912,000.

18 In addition, the Hilco Joint Venture --  
19 Hilco Gordon Brothers Joint Venture will  
20 modify one term of our LLC agreement which is  
21 to eliminate the preferred return payable on  
22 our initial capital contributed to the -- to  
23 the newco. And I'm happy to expound upon that  
24 if anybody needs further clarification but I  
25 think we all know what we're talking about

1 there. We believe that the final concession  
2 does have a monetary value.

3 MR. SPENCER: The debtor  
4 accepts the revised Hilco Gordon Brothers bid  
5 which we value at \$85,912,000. We turn the  
6 bidding back over to Patriarch Partners.

7

8 (A discussion was had off the record)

9

10 MS. TILTON: Patriarch's going  
11 to raise its bid by a million dollars in cash  
12 which takes the gross amount of the bid to  
13 88,100,000, the net bid to 86,400,000, the  
14 gross cash to 63,525,000, and the net cash to  
15 61,825,000.

16 MR. SPENCER: We agree with  
17 the calculations and we accept, the Debtor  
18 accepts the revised Patriarch bid which we  
19 value on a net basis of \$86,400,000.

20 Eric, we would turn it it back over to  
21 you to enter competing bid.

22

23 (A discussion was had off the record)

24

25 MR. KAUP: Hilco Gordon

1 Brothers JV declines to bid any further and we  
2 look forward to the creditors and Debtor's  
3 determination of which bid is higher and  
4 better.

5 MR. SPENCER: The Debtor  
6 accepts the Patriarch bid as the winning bid  
7 which we value on a net basis again at  
8 \$86,400,000. This concludes the auction.

9 THE COURT: All right. Here's  
10 where it stands. Mr. Uphoff?

11 MR. UPHOFF: Your Honor, if we  
12 could meet with our client, the Debtor, for  
13 about two minutes just to affirm that the  
14 Debtor is going to present this bid as the  
15 highest and best bid and then we're ready to  
16 proceed.

17 THE COURT: All right. I  
18 think probably we -- we'll take a break for  
19 some interval after that but why don't you go  
20 ahead and take your two minutes and we'll go  
21 from there. All right. We'll go off the  
22 record momentarily.

23

24 (A break was had in the proceedings)

25



1 MR. UPHOFF: -- would like  
2 perhaps another five or ten minutes. I think  
3 I need to confer with Houlihan Lokey and with  
4 a couple of other of my partners here. Just  
5 want to review this to be certain that we're  
6 comfortable in making this recommendation.  
7 It's about the lunch hour, too.

8 THE COURT: Right. It  
9 probably would profit everybody to break here.  
10 Having no idea whatsoever what's going to be  
11 coming at me this afternoon, I'm not quite  
12 sure how long to make this but let's just go  
13 ahead. Shall we reconvene at 2:00?

14 MR. UPHOFF: That's a good  
15 idea.

16 THE COURT: I think that's  
17 appropriate here. So we'll break, then, for  
18 55 minutes.

19 MR. UPHOFF: Thank you, Your  
20 Honor.

21  
22 (A break was had in the proceedings)

23  
24 THE COURT: We are back on the  
25 record, then. We are now over to a formal

1 judicial proceeding, that being the  
2 commencement of the hearing on the Debtor's  
3 motion for authority to sell free and clear  
4 and various ancillary motions. So we're going  
5 to turn the floor over to debtor's counsel,  
6 then. Mr. Uphoff.

7 MR. UPHOFF: Thank you. May  
8 it please the Court, Your Honor. The Debtors  
9 will now move for approval of the asset  
10 purchase agreement between the Debtors and  
11 Lithograph Legends, LLC. The debtors are  
12 prepared to offer testimony that the decision  
13 to sell these assets and the agreement to sell  
14 these assets satisfies the business judgment  
15 standard.

16 The testimony will show that there are  
17 no improper or bad faith motives in connection  
18 with this sale, that the price is fair, and  
19 that the bidding occurred at arm's length,  
20 that adequate procedures including proper  
21 exposure to the market was employed and that  
22 accurate and reasonable notice to all parties  
23 in interest has been given. And finally, that  
24 the purchaser is not an insider.

25 Your Honor, the winning bid by

1 Lithograph Legends, \$88,100,000, was and is  
2 \$488,000 greater than the competing bid  
3 offered by the joint venture of Hilco and  
4 Gordon Brothers.

5 The debtor has analyzed those competing  
6 bids and believe that the Court should confirm  
7 the Debtor's judgment here that the Lithograph  
8 Legends bid is the best and highest bid for  
9 this estate.

10 Your Honor, I would also ask the Court  
11 that Mr. Singer and I be permitted to share  
12 the podium in connection with certain aspects  
13 of this hearing. Mr. Lodoen, as you know, is  
14 not here and Mr. Singer will be doing  
15 primarily the -- addressing the objections  
16 that have been raised to the sale and I will  
17 be doing the testimony in support of the sale  
18 with the Court's permission.

19 THE COURT: Very good. Okay.

20 MR. UPHOFF: With that, Your  
21 Honor, I would like to call my first witness,  
22 Steve Spencer.

23 THE COURT: All right. Sir,  
24 I'm going to ask you to come up to the podium.  
25 I will swear you in. And if you'll raise your

1 right hand.

2

3

STEPHEN J. SPENCER

4

5

A witness in the above-entitled action,

6

after having been first duly sworn,

7

testifies and says as follows:

8

9

THE WITNESS: I do, Your

10

Honor.

11

THE COURT: Thank you. Please

12

take the witness stand.

13

MR. UPHOFF: And, Your Honor,

14

we have seven or eight exhibits which we have

15

previously marked. We have them in books. We

16

would ask the Court's permission to provide a

17

set for your clerk. And if I may approach the

18

bench and provide a set for you.

19

THE COURT: Okay. Please do.

20

Mr. Chesley?

21

MR. CHESLEY: Yeah. Just,

22

Your Honor, before -- I didn't know we were

23

going right to testimony and that's fine.

24

This process is fine. We just reserved our

25

rights and we'll proffer our objection. We'll

1 just do it through the cross-examination of  
2 Mr. Spencer.

3 THE COURT: Okay.

4  
5 EXAMINATION

6  
7 BY MR. UPHOFF:

8 Q Mr. Spencer, if you could give us your full  
9 name and address, please.

10 A Sure. Stephen J. Spencer. I reside here in  
11 St. Paul, 642 Goodrich Avenue.

12 Q And if you give us a brief description of your  
13 education?

14 A Sure. I received my undergraduate degree at  
15 the University of Wisconsin Madison. I  
16 received a master's in finance at Fordham  
17 University in New York.

18 Q Okay. And what is your present position?

19 A I'm a director in the financial restructuring  
20 group of Houlihan Lokey.

21 Q And are you based in the Minneapolis office?

22 A I am. I'm based in Minneapolis where I head  
23 the distressed mergers and acquisition  
24 practice group for the group out of  
25 Minneapolis office.

1 Q Okay. And how long have you been with  
2 Houlihan Lokey?

3 A I have been with Houlihan Lokey since 2001.

4 Q And how many years of transactional experience  
5 have you had not only with Houlihan Lokey but  
6 with other employment?

7 A I have approximately 15 years of relevant  
8 transactional experience. Before Houlihan  
9 Lokey I was briefly a mergers and acquisitions  
10 banker at Piper Jaffrey also here in the Twin  
11 Cities. Before that I was one of a  
12 four-person team that helped start the kind of  
13 national debtor-in-possession lending practice  
14 at GE Capital in New York City.

15 Q Okay. Approximately how many Section 363  
16 sales have you either led or been involved  
17 with in some material sort of way?

18 A Sure. Half dozen that I've either led or had  
19 some material involvement with. I've done  
20 roughly 50 restructuring transactions. And in  
21 many of those there were either divestitures  
22 that were of -- you know, in all of those they  
23 were broadly relevant but in any of those they  
24 were divestitures of assets that occurred  
25 either in connection with a plan of

1 reorganization or in a 363 sale.

2 Q Thank you. Could you for a moment describe  
3 Houlihan Lokey?

4 A Sure. We are the largest restructuring  
5 investment bank in the world. I have  
6 approximately 170 colleagues both in the U.S.,  
7 in Europe and Asia where we have a substantial  
8 platform as well. We're involved in a wide  
9 spectrum of restructuring transactions from,  
10 at the large end of the spectrum, the Lehmann  
11 Brothers insolvency where we're representing  
12 the official committee and a number of others.  
13 I think the last time I checked we are  
14 currently involved in over a hundred  
15 transactions, many of them middle market deals  
16 averaging, I think, approximately \$500 million  
17 in indebtedness. So Polaroid fits squarely in  
18 that definition.

19 Q Okay. In connection with this engagement,  
20 Steve, when were you or Houlihan Lokey first  
21 engaged?

22 A We were engaged early in October. I believe  
23 formally in mid-October but we were on the  
24 ground at the company the first week in  
25 October and that's when we began our work.

1 Q All right. And could you briefly describe the  
2 team that Houlihan Lokey assigned to this  
3 project?

4 A Sure. We had a comparatively large team for  
5 the size of the deal. We leveraged both  
6 professionals in our financial restructuring  
7 group but also professionals in our private  
8 equity coverage group where we have the  
9 largest mid-market coverage effort. We also  
10 leveraged corporate finance professionals, M&A  
11 professionals in our offices throughout the  
12 United States, in Europe and in Asia.

13 Q All right. Can you briefly describe the  
14 marketing process that occurred here?

15 A Sure. As we do in most cases like this, we  
16 initially made an assessment as to whether a  
17 marketing process was indeed required. In  
18 other words, we approach the situation without  
19 any preordained conclusion that a marketing  
20 process or a sale of business is necessary.  
21 We wanted to determine if, in fact, a  
22 standalone reorganization was available, if  
23 that was value maximizing, or if indeed it was  
24 more prudent to begin a rapid marketing  
25 process where we would sell the business as



1           opposed to embark on an effort to reorganize  
2           the business on the standalone basis.

3    Q    What did you conclude from that initial  
4           analysis?

5    A    The level of financial distress at the outset  
6           of our engagement we made a determination that  
7           it was quite severe.  When we entered the  
8           situation when we began work in that first  
9           week in October, I think the company had four  
10          million in cash.  It was burning cash at a  
11          rate of four or five million a month which  
12          it -- that burn rate has been relatively  
13          constant throughout our case, or throughout  
14          the case, rather.

15                 Very shortly thereafter we realized the  
16           benefit of settlement proceeds, approximately  
17           \$21 million of net settlement proceeds that  
18           allowed us to really approach the assessment  
19           that I characterized as determining whether a  
20           standalone was really available to the  
21           business.  We could approach that on a more  
22           measured basis.  We were very concerned when  
23           we were initially engaged that we might run  
24           out of cash and be administratively insolvent  
25           before we had the opportunity to do that.

1           Once we got the proceeds, we worked  
2           with management closely to understand what  
3           sorts of standalone restructuring alternatives  
4           were available. We concluded that the  
5           magnitude of the required investment in the  
6           business was such that third parties -- first  
7           of all, we concluded that there was no ability  
8           to obtain external financing. The company  
9           depleted substantially it's working capital  
10          assets. We might get a debtor-in-possession  
11          financing facility but largely I think they  
12          would look to the company's cash as their  
13          collateral. We thought that would be  
14          liquidity diluted.

15                 So after that we -- after looking very  
16          closely at the company's liquidity  
17          requirements, we stood back, we went through a  
18          number of scenarios, a number of standalone  
19          reorganization scenarios. They all required  
20          substantial incremental capital beyond what we  
21          felt we could obtain absent a change of  
22          control. At that point we -- and that I think  
23          took approximately three weeks where we were  
24          on the ground at the company both in its  
25          location in Massachusetts and here in the Twin

1 Cities and working every day on competing  
2 standalone scenarios. At the end of  
3 approximately three weeks we determined that  
4 the standalone alternative was not available  
5 whereupon we embarked on a sale process.

6 At that point in time we spent a fair  
7 amount of time with the company developing a  
8 list, a marketing list which I think you have  
9 as an exhibit.

10 Q I do. Let me get another book for you.

11 MR. UPHOFF: If I may approach  
12 the witness?

13 THE COURT: You may.

14 THE WITNESS: This is  
15 Exhibit A.

16 BY MR. UPHOFF:

17 Q Yeah, Mr. Spencer, showing you what has been  
18 marked for identification as Exhibit A, could  
19 you first identify that exhibit for us?

20 A Sure. This exhibit covers the first round  
21 marketing process, the participants in it, the  
22 various parties that we reached out to to test  
23 whether they were interested in acquiring  
24 Polaroid.

25 Q And then Houlihan Lokey prepared this exhibit?

1 A We did. We -- although, as I mentioned, we  
2 spent a significant time with the management  
3 team preparing this list. This is a company  
4 that had for a period of several years talked  
5 to a variety of different parties about their  
6 interest in acquiring the business. So we  
7 wanted to leverage the prior market-related  
8 insight of the management team which we did in  
9 preparing this list.

10 The objective is to prepare something  
11 that's comprehensive but also streamlined  
12 enough that we can conduct a sale process on a  
13 relatively expedited basis which we felt was  
14 necessary even though we had \$21 million in  
15 incremental liquidation proceeds which boosted  
16 our cash reserves. That was obviously finite,  
17 and we felt it was important to proceed on an  
18 expeditious basis.

19 MR. UPHOFF: I'd like to offer  
20 Exhibit A, Your Honor.

21 THE COURT: Very good. Any  
22 objection?

23 MR. CHESLEY: None, Your  
24 Honor.

25 THE COURT: Hearing none, I

1 will receive Debtor's Exhibit A.

2 BY MR. UPHOFF:

3 Q Looking at Exhibit A, Steve, can you briefly  
4 describe the meaning of the various columns  
5 there, active diligence and call meeting with  
6 management and submitted written proposal?

7 A Sure. The -- and actually, up above too, the  
8 total number I should address, 126 contacted.  
9 Approximately 55 parties engaged in some form  
10 of diligence. We've characterized it as  
11 active. Some were obviously more active than  
12 others. We had meetings with, either calls or  
13 meetings with 15 parties and five submitted  
14 indications of interest. The 15 parties that  
15 met with or had calls with management were all  
16 very active, had scrutinized the contents of  
17 data which we prepared in connection with this  
18 marketing process. The five that submitted  
19 bids obviously made a determination that it  
20 was sufficiently attractive to them to put  
21 something in writing, some formal indication  
22 of interest in writing indicating the value  
23 that they would place on the company and the  
24 structure that they would pursue an  
25 acquisition under.

1 Q Now, Steve, were Houlihan Lokey's European and  
2 Asian offices also involved in the attempt to  
3 contact prospective parties that may have an  
4 interest in this?

5 A Extensively. As I mentioned, we have a  
6 broad -- in two different spheres. We have a  
7 broad private equity coverage universe. There  
8 are two spheres of buyers, financial parties  
9 with -- many of them with relevant investments  
10 and strategics. We involved our private  
11 equity coverage officers both in the U.S. and  
12 in Asia and in Europe to assess interest of  
13 various financial parties. We involved  
14 corporate finance professionals with insight  
15 into various strategic acquirers to call, make  
16 calls and assess interest of both European,  
17 Asian, and U.S. prospective acquirers.

18 Q Okay. I notice in the right column of  
19 Exhibit A, submitted written proposal, it's  
20 somewhat self-explanatory but perhaps you  
21 could tell us what that is?

22 A These were the parties that had submitted a  
23 formal indication of interest.

24 Q All right. And after those indications of  
25 interest were provided to you, what was

1 Houlihan Lokey's next step in this process?

2 A Among the parties that from the very beginning  
3 have exhibited a very high level of interest  
4 in acquiring Polaroid were Hilco Gordon  
5 Brothers. They distinguish themselves both in  
6 terms of the initial indication of interest  
7 and also the level of diligence that they had  
8 performed. We made a determination that we  
9 would proceed to try to advance their interest  
10 and reach a binding purchase agreement that we  
11 would then submit to the Court as the stalking  
12 horse purchase agreement. We did that. We  
13 did that on a fairly aggressive time frame.  
14 That document was fully negotiated. It was  
15 ultimately deemed to be insufficient  
16 consideration to present to the court as the  
17 stalking horse bid whereupon we were able to  
18 advance Genii Capital as the stalking horse  
19 bid. Genii was, in fact, the stalking horse  
20 bid in our auction that took place now I guess  
21 almost two weeks ago.

22 Q Do you recall the stalking horse bid today,  
23 Steve, that Genii submitted?

24 A I do, yes.

25 Q And that was?

1 A \$42 million bid, yes.

2 Q Okay. After the stalking horse was determined  
3 in this case and after the bidding procedure  
4 order was entered by this court, did Houlihan  
5 Lokey continue to try to market these assets?

6 A Yes, we did. I would characterize this  
7 marketing process as distinct from other  
8 distressed M&A processes that I've run as a  
9 very aggressive process. It's unusual to have  
10 two fully negotiated stalking horse purchase  
11 agreements which we were able to achieve in  
12 this process.

13 After submitting the Genii stalking  
14 horse purchase agreement, we continued to run  
15 a highly aggressive process. We used the  
16 Genii purchase agreement and the structure and  
17 certainty that it provided with other bidders  
18 who were -- many of whom questioned the  
19 ability of the debtor to sell itself. Not  
20 just to reorganize but to, in fact, accomplish  
21 a successful sale. The purchase agreement  
22 that was submitted to the Court as the  
23 stalking horse purchase agreement did provide  
24 some certainty and structure.

25 We also greatly expanded the data room



1 in the two processes that were run with both  
2 Hilco Gordon Brothers and Genii to reach  
3 binding purchase agreements. That added  
4 information was very helpful in terms of phase  
5 two of the marketing process providing  
6 significant incremental information for other  
7 parties looking at acquiring the business.

8 Q Steve, just for a moment, perhaps you could  
9 describe the data room. What was in it, when  
10 it was first constructed just for the benefit  
11 of the record and the Court?

12 A Sure. It was -- the data room was evolving up  
13 until really probably a month ago, continued  
14 to evolve. We assembled it initially in the  
15 October, November time frame. I reference  
16 that as a part of the negotiation process with  
17 the two interested stalking horse bidders. We  
18 expanded the number of documents in the data  
19 room materially. I don't recall the specific  
20 number but there are a great number of  
21 schedules that were expanded in a significant  
22 way as a function of the two negotiation  
23 processes, and I think it was really concluded  
24 about the time that we -- probably about a  
25 month ago is when there was no material

1 improvement or increase in the documents that  
2 were in the data room itself.

3 Q And interested parties after signing a  
4 confidentiality agreement would have  
5 electronic access to the data room?

6 A Yes. We provided that immediately.

7 Q Okay. Steve, if you could look at Exhibit B  
8 for a moment and if you can identify that  
9 exhibit for us, please?

10 A Sure. I mentioned that we run a very  
11 aggressive process. As a part of phase two,  
12 we expanded the number of parties that we  
13 approached to assess their interest in an  
14 acquisition materially. Roughly 90 parties  
15 were added, many of them were strategics. Our  
16 assessment was that the initial, I'll call it  
17 somewhat refined list although it was  
18 comprehensive in scope in our view at 126  
19 parties, our assessment was that that was  
20 sufficient based on various conversations we  
21 had had, based on -- with parties in interest  
22 and also with other parties as a part of the  
23 public disclosure that Genii was the stalking  
24 horse bid. We welcomed additional parties in.  
25 We vetted their interest exhaustively in the

1 period that we were allowed to do that. We  
2 expanded the list of buyers greatly during  
3 that period of time. None of the parties that  
4 we added ended up expressing a material  
5 interest in the company so we felt confirmed  
6 basically that the initial list was on target.  
7 But we wanted to leave no stone unturned and  
8 that's why this phase two list expanded  
9 greatly.

10 Q And this exhibit was prepared by your office?

11 A Yes, it was. Again, in conjunction with  
12 management.

13 MR. UPHOFF: Offer Exhibit B,  
14 Your Honor.

15 THE COURT: Any objection?

16 MR. CHESLEY: No, Your Honor.

17 We have no objection to any of the exhibits in  
18 the binder.

19 THE COURT: Okay. Hearing  
20 none, I will receive Debtor's Exhibit B.

21 BY MR. UPHOFF:

22 Q And Steve, just so I'm clear, Exhibit B is the  
23 list of those additional parties you've  
24 contacted after the stalking horse bid was  
25 filed?

1 A That's correct.

2 Q I want to step back just for a minute, Steve,  
3 and you mentioned your early on analysis of  
4 the company and its financial circumstances.

5 Was there a point at which you advised  
6 the company that it was going to be better for  
7 it to attempt to engage in a 363 sale process  
8 rather than keeping the assets and attempting  
9 to reorganize?

10 A Yes, there was. As I mentioned really sort of  
11 three, four weeks into our engagement, we had  
12 made a, after exhaustive exploration of  
13 alternative plans, we made a recommendation  
14 that they embark on a rapid 363 sale process.  
15 We continued to be interested in the cash  
16 proceeds and ability to live on those cash  
17 proceeds which we have been doing but they  
18 were finite. We understood there to be a  
19 significant cash burn. And given the  
20 magnitude of the capital required to  
21 facilitate the standalone objectives, the  
22 organization objectives, we felt that there  
23 was no other alternative and we made that case  
24 and continued to make that case to various  
25 parties in interest for the next several

1 months.

2 Q Did you discuss these options and your opinion  
3 with various creditors group during the course  
4 of your engagement?

5 A Yes, we did. We met early with Acorn Capital.  
6 We also met with Ritchie on a half dozen  
7 occasions, both in person and also  
8 telephonically. We met with professionals of  
9 Ritchie to entertain -- to first go through  
10 our analysis of the standalone alternatives  
11 for the business and to help them understand  
12 why we felt the company needed to be sold and  
13 then to entertain any competing business plans  
14 that they might put forward and help address  
15 them. We did this both with lawyers from  
16 Lindquist and Vennum and also with the  
17 management team present. And I don't know the  
18 specific number but I believe there were six  
19 or seven different meetings or telephonic  
20 conferences with Ritchie.

21 Q And did you also provide your analysis and  
22 assessment to representatives of the creditors  
23 committee?

24 A Yes, we did.

25 Q Okay. Anyone ever disagree with your

1 assessment or analysis?

2 A We had -- there was a protracted dialogue with  
3 Ritchie who continued to believe, based on  
4 where we were at in business cycle and for  
5 other reasons, that there may be a standalone  
6 alternative still available for this business.  
7 We were able to convince I think readily other  
8 constituents and their professionals that we  
9 were embarking on the right course. We feel  
10 reaffirmed by the process that that was indeed  
11 the right course of action.

12 Q You mentioned in your previous testimony about  
13 the financial distress that Polaroid was under  
14 and in that connection I would like to direct  
15 your attention to Exhibit D.

16 Do you have that in front of you?

17 A I do, yes.

18 Q And can you identify Exhibit D?

19 A Yes. This is a summary of historical  
20 financial performance for the business from  
21 years 2005 through 2008.

22 MR. UPHOFF: All right. Offer  
23 Exhibit D.

24 THE COURT: Any objection?

25 MR. CHESLEY: None, Your

1 Honor.

2 THE COURT: Hearing none, I'll  
3 receive Debtor's Exhibit D.

4 BY MR. UPHOFF:

5 Q Steve, if you could highlight what you believe  
6 to be the significant numbers on this exhibit  
7 and the financial numbers obviously?

8 A Sure. I'll really start with 2008 actual  
9 numbers. The -- as I mentioned, when we were  
10 engaged initially, it was our observation that  
11 the business was experiencing severe financial  
12 distress. We generated gross margin in 2008  
13 of approximately 9 million which was  
14 20 million under what was projected and that  
15 was a mid-year projection. So it was revising  
16 a projection that had already been revised.  
17 We ended up generating negative 120 million of  
18 operating profit. The -- this speaks for the  
19 level of financial distress, I think, quite  
20 clearly. The trend lines were all negative.

21 And what doesn't come out in this  
22 exhibit is that management were doing all they  
23 could to reposition the business. The old  
24 buy-sell model had failed and the financial  
25 results demonstrate that clearly.

1 Q Could you just elaborate on what a buy-sell  
2 model means?

3 A Sure. Basically they'd run the business as a  
4 consumer electronics company purchasing  
5 inventory, taking positions and inventory and  
6 selling it to various retail customers. They  
7 were migrating from a business model that had  
8 been purchasing, making those purchases,  
9 taking inventory positions and selling it to a  
10 direct model where essentially they were  
11 facilitating the sale of the same types of  
12 consumer electronics, branded consumer  
13 electronics directly to retail customers. And  
14 so one of the key benefits of that obviously  
15 is not taking material inventory risk. You're  
16 merely facilitating the sale from OEMs largely  
17 in Asia to retail customers here in the U.S.

18 THE COURT: OEM for the  
19 record?

20 THE WITNESS: For the record,  
21 Original Equipment Manufacturers. That was a  
22 change, a rather dramatic change in the  
23 business model that was happening about the  
24 time that we originally got engaged. It was,  
25 in essence, making virtue of necessity because



1 the old buy-sell model was not working, was  
2 generating material cash losses. They had  
3 migrated to that. They had two other  
4 platforms, business platforms that were, in  
5 our estimation, venture propositions employing  
6 Zink technology, zero ink printing technology  
7 that would allow the company to reposition  
8 itself and generate incremental profits but in  
9 the future. Our assessment, however, was that  
10 given the change in the company's core  
11 business and the fact that it was embarking on  
12 two new venture propositions as we were  
13 engaged, this was really a venture  
14 proposition. Business had changed in its  
15 entirety.

16 I think it's also important to note  
17 that as we got engaged and throughout this  
18 process, business had -- well, actually,  
19 substantially prior to our engagement had made  
20 a determination to discontinue the old instant  
21 line of business that everybody new Polaroid  
22 had for many years. These are the instant  
23 cameras. We can debate whether that was the  
24 right decision. There are various arguments  
25 for and against it but the company had

1 already, management had already made the  
2 determination to discontinue that. That has  
3 continued throughout this case to be one of  
4 the principal means of cash generation for the  
5 business.

6 The new buy-sell model that the  
7 business has embarked on does not have the  
8 type of success that I think management would  
9 hoped, and we have no -- we are not materially  
10 further along in realizing the benefits of the  
11 two other venture propositions that the  
12 business is now embarking on.

13 BY MR. UPHOFF:

14 Q Historically had the instant film business  
15 been a highly profitable business for  
16 Polaroid?

17 A It had and it continued to be throughout as we  
18 liquidated the old instant inventory  
19 throughout this case.

20 Q You mentioned the new ventures, if you will,  
21 that Polaroid has embarked upon.

22 Did you make an estimate of the amount  
23 of incremental cash or capital infusion that  
24 would be necessary for the development of  
25 those ventures?

1 A We did. This was part of our assessment of  
2 standalone reorganization opportunities. In  
3 our view they were critical to generating  
4 future profitability. Management's views were  
5 the same. We determined that an incremental  
6 80 to \$120 million of investment would have  
7 been required to commercialize those new  
8 propositions.

9 And I should speak to that. This is a  
10 combination of working capital, necessary  
11 working capital investment, ongoing -- well,  
12 and in marketing, upfront marketing to  
13 successfully launch those technologies once  
14 they were on the cusp of being commercialized.

15 Q And I assume the company doesn't have those  
16 resources or access to these types of  
17 resources?

18 A No. As I mentioned, we've continued to exist  
19 and have depleted substantially the tort  
20 proceeds that we realized back in the November  
21 time frame.

22 Q If you could, if you could briefly describe  
23 the company's cash flow since the Chapter 11  
24 filing in December?

25 A Sure. We continued to generate cash. We've

1 done that through, largely through liquidation  
2 of the instant inventory as I mentioned. We  
3 have not been making investments in new  
4 inventory because of our cash constraints.  
5 The company's new -- the first iteration of  
6 its new Zink technology, the Pogo product  
7 line, has not sold as well as had been hoped.  
8 So that hasn't generated material cash flow  
9 for the business, and we have not invested in  
10 incremental inventory, Pogo inventory which  
11 was really the only line of business that the  
12 company was selling. We have been on a burn  
13 rate of roughly 3 to \$5 million per month  
14 since the company filed for bankruptcy.

15 Q And does the company presently have any  
16 working capital?

17 A It's -- as I mentioned, because we're not  
18 investing in inventory because sales have been  
19 less than projected, we've substantially  
20 depleted. We've been living on a working  
21 capital and have substantially depleted that.

22 As an example, to elaborate, we have a  
23 negative AR balance actually at this point  
24 which may seem odd that there are various  
25 offsets that some of our retail customers

1 would seek to impose and impinging on our  
2 ability to collect receivables.

3 Q Steve, if I could direct your attention to  
4 Exhibit Q. I think you may have to skip one  
5 or two in your book to get there.

6 Do you have that in front of you?

7 A Yes, I do.

8 Q And can you identify that?

9 A Sure. This is a weekly cash flow forecast.  
10 This is a tool that we had helped develop with  
11 the company shortly after our initial  
12 engagement. We've used it as a dashboard, if  
13 you will, to help us monitor the cash position  
14 and also understand the cash burn and make  
15 sure that we were doing everything we could to  
16 conserve as much cash as possible.

17 Q Okay.

18 MR. UPHOFF: I'd like to move  
19 the admission of Exhibits Q.

20 THE COURT: Any objections?

21 MR. CHESLEY: None, Your  
22 Honor.

23 THE COURT: Hearing none, I'll  
24 receive Debtor's Exhibit Q.

25

1 BY MR. UPHOFF:

2 Q And again, Steve, a lot of numbers on this  
3 page. Perhaps you could direct our attention  
4 to those that you believe are most relevant  
5 for our considerations here today?

6 A Sure. The -- obviously the total net cash  
7 flow line is the one that we focused on most  
8 closely.

9 Q And that's about two thirds of the way down on  
10 the left-hand side?

11 A That's right. It's the highlighted line in  
12 the middle of the page.

13 Q Okay.

14 A What you'll observe is that in most weeks,  
15 this is a 13-week forecast, in most weeks the  
16 total net cash flow of the business is  
17 negative. We are collecting less than we are  
18 spending on a weekly basis which is the reason  
19 that that total net cash flow line is  
20 negative. That's obviously a point that we  
21 scrutinize weekly with management.

22 The other, I guess, key line is -- I  
23 would direct you to the tort claim proceeds  
24 line which is three lines beneath it and  
25 you'll see a total ending cash balance. We've

1       been focused less on the total ending cash  
2       balance more and on the residual tort claim  
3       proceeds. As I mentioned, that was originally  
4       \$21 million in the -- at the end of October is  
5       when I think we realized that \$21 million  
6       inflow. As of the end of March, that had  
7       dwindled to \$6.7 million. We are projected to  
8       exhaust the remaining tort claim proceeds by  
9       the end of May. We believe that because of  
10      various expenses associated with  
11      professionals, the proceedings that we're  
12      going through presently, that we will likely  
13      exhaust the remaining tort claim proceeds in  
14      advance of that time frame.

15    Q    And just something you relied on in advising  
16       the company on their financial matters and on  
17       the sale process?

18    A    It is. As I mentioned, we've been living on a  
19       finite amount of cash. We ran an aggressive  
20       sale process in part because we realized we  
21       were -- that cash was dwindling and we needed  
22       to execute a sale before we exhausted our  
23       residual cash reserves.

24    Q    You talked about the tort proceeds, Steve. Is  
25       the other remaining cash subject to security

1 interest from Acorn Capital and other  
2 entities?

3 A It's my understanding that it is, yes.

4 Q If the sale does occur, will the company's  
5 projections, did they show that they'll have  
6 enough unencumbered cash to wind down its  
7 business operations through the end of the  
8 year?

9 A It's my belief that if a sale occurs, that  
10 yes, they will.

11 Q Sale occurs in the next 30 days or so?

12 A We are under a material time constraint, yes.

13 Q Okay. Steve, are you aware that Polaroid was  
14 acquired by Petters Group Worldwide sometime  
15 in the spring of 2005?

16 A I'm aware of that, yes, sir.

17 Q And are you aware of the purchase price of  
18 that acquisition?

19 A I'm aware that it was approximately  
20 \$426 million, yes.

21 Q Since the acquisition, Steve, are you aware  
22 whether assets of Polaroid have been sold  
23 before your engagement?

24 A Yes. We -- at the outset of our engagement,  
25 this was something that we had looked at, what



1 assets remained.

2 Q Okay.

3 A Under the Petters ownership substantially all  
4 of the material assets, anything that they  
5 could monetize, they had. I think there were  
6 roughly 145 million of asset sales that  
7 occurred subsequent to the acquisition by  
8 Petters group in the '05 time frame.

9 Q Steve, I'm going to direct your attention to  
10 Exhibit R.

11 Do you see that?

12 A I do, yes.

13 Q Okay. And are you able to identify that  
14 exhibit?

15 A Yes. These are the discreet asset sales that  
16 have occurred since April 25, 2005. And I  
17 indicated approximately 145 million or a  
18 precise number of 144.8.

19 MR. UPHOFF: Offer Exhibit R.

20 THE COURT: Any objection?

21 MR. CHESLEY: None, Your  
22 Honor.

23 THE COURT: Having no  
24 objection, I'll receive Debtor's Exhibit R.

25 MR. UPHOFF: Thank you.

1 BY MR. UPHOFF:

2 Q And, Steve, to the best of your knowledge,  
3 this list fairly represents the assets sold  
4 after the acquisition in 2005 and before your  
5 engagement and the consideration received for  
6 those assets?

7 A Yes, to the best of my knowledge.

8 Q Thank you. During the course of your  
9 engagement, did you become aware of  
10 evaluations that had been done by a company  
11 called Duff and Phelps?

12 A Yes.

13 THE COURT: I'm sorry,  
14 Mr. Uphoff. That was what, Duff and Phelps?

15 MR. UPHOFF: Duff, D-U-F-F.

16 THE COURT: And Phelps?

17 MR. UPHOFF: Phelps,  
18 P-H-E-L-P-S. Sorry.

19 THE COURT: Thank you.

20 BY MR. UPHOFF:

21 Q And Steve, I'm going to direct your attention  
22 to Exhibit F.

23 Do you have that in front of you?

24 A I do.

25 Q Are you able to identify that exhibit?

1 A Yes. This was a page in one of the  
2 presentations we prepared for the benefit of  
3 the various of the creditors committees and  
4 also for Ritchie. It describes the principal  
5 differences between the assumptions that were  
6 used for the Duff and Phelps valuation and the  
7 actual performance of the company.

8 MR. UPHOFF: I'm going to  
9 offer Exhibit F.

10 THE COURT: Any objection?

11 MR. CHESLEY: No, Your Honor.

12 THE COURT: Hearing none, I'll  
13 receive Debtor's Exhibit F.

14 BY MR. UPHOFF:

15 Q Steve, if you could spend a minute for us and  
16 tell us briefly what Duff and Phelps gave  
17 their opinion on and what that opinion was?

18 A The Duff and Phelps valuation posited a value  
19 for Polaroid that was significantly higher  
20 than what we have realized in this auction  
21 process, distress M&A process. The only --  
22 what we did is went back and looked at the  
23 analytics that were provided by the company to  
24 Duff and Phelps at the time that it had  
25 performed this analysis and compared that to

1 actual performance. Evaluation is only as  
2 good as the information that's provided to the  
3 evaluating party. What you can see below is a  
4 substantial variance between the numbers that  
5 were provided to Duff and Phelps and the  
6 numbers and the performance that was actually  
7 realized by the company.

8 Q Okay. But just so we're clear, Polaroid  
9 provided financial projections to Duff and  
10 Phelps in connection with their valuation?

11 A Yes, they did.

12 Q And a portion of that valuation was the then  
13 projections for their fiscal year 2008?

14 A That is correct.

15 Q And Duff and Phelps relied on that I assume?

16 A Yes, they did. And what you see below, again,  
17 is the variance between the numbers that Duff  
18 and Phelps used for purposes of its valuation,  
19 various valuation methodologies and the actual  
20 performance. And what you'll note is a  
21 variance at the operating profit line of  
22 approximately \$132 million.

23 Q Okay. So the operating profit that at least  
24 Polaroid had projected was \$20.7 million for  
25 their fiscal 2008?

1 A That is correct.

2 Q And their actual -- I assume the next column  
3 2008A means actual?

4 A That's correct.

5 Q And that number was and is?

6 A Negative \$112 million.

7 Q And you mentioned the variance at 132 million?

8 A That's correct. Now, this was prepared, I'll  
9 point out for the record, this analysis was  
10 prepared several months ago before the actual  
11 2008 numbers were known. There's a difference  
12 at the operating profit line between this  
13 number and the number that was previously  
14 discussed on Exhibit D. The actual number on  
15 Exhibit D was materially worse. It was  
16 \$121.4 million versus the 112 that we have in  
17 this exhibit. The reason for that variance is  
18 at the time that we prepared this for the  
19 benefit of the reviewing parties, we didn't  
20 know the exact loss for the company until  
21 2008.

22 Q So the variance is approximately 141 million?

23 A That's correct.

24 Q Given the substantial difference between the  
25 projections and the actual performance, do you

1 consider the Duff and Phelps valuation to be  
2 relevant to the value of Polaroid today?

3 A I don't for two reasons. One, the actual  
4 performance of the business was substantially  
5 worse as we discussed. The second is we've  
6 run an incredibly robust and incredibly  
7 aggressive process. The only definitive means  
8 of price determination that I know is a  
9 willing seller and a willing buyer. I think  
10 we've vetted that. We've established that.  
11 We, through an exhaustive process, cleared the  
12 market as it were. And for those two reasons,  
13 I view the Duff and Phelps valuation as  
14 largely irrelevant at this point.

15 Q Thank you. Now, Steve, we concluded the  
16 auction process here about two hours ago. At  
17 the end of the auction who did you declare to  
18 have the highest and best bid?

19 A We declared Patriarch to have the highest and  
20 best bid.

21 Q And why was that?

22 A It exceeded the Hilco Gordon Brothers bid by  
23 approximately \$488,000.

24 Q And at this time do you believe their bid to  
25 be the highest and best bid?

1 A At this time I believe their bid to be the  
2 highest and best bid, yes.

3 Q Steve, I'm going to direct your attention to  
4 Exhibit H.

5 Do you have that in front of you?

6 A I do, yes.

7 Q And can you identify that document for us?

8 A Yes. This is a bid comparison between the  
9 Patriarch, their winning bid and the Hilco  
10 Gordon Brothers backup bid in comparison to  
11 our initial stalking horse bid from Genii.

12 Q Can you just briefly go through the exhibit  
13 and describe for us how the two bids compare?

14 A Sure.

15 Q And when I say the two, I'm referring to the  
16 Patriarch and the Hilco Gordon Brothers.

17 A Yes. We -- and the Court has had the benefit  
18 this morning of some insight into how we've  
19 run the auction. All the way along we were  
20 evaluating bids which had three different key  
21 elements, cash, equity and excluded assets.  
22 We valued the excluded assets. There was a  
23 limited universe of assets that various buyers  
24 had contemplated leaving behind. For the  
25 benefit of the bidding parties we valued those

1 so that they had an apples to apples basis on  
2 which to compare the consideration for the  
3 excluded assets. We valued the equity as has  
4 been discussed at \$650,000 per point. We did  
5 that on the basis of an evaluation of the  
6 business plans for both Patriarch and for  
7 Hilco Gordon Brothers and then the cash  
8 component is -- doesn't need any further  
9 elaboration I don't think.

10 The Patriarch bid on the basis of those  
11 three constituent elements we valued as  
12 indicated here at \$86,400,000.

13 Q And that is \$488,000 greater than the Hilco  
14 Gordon Brothers?

15 A As you'll see by the bid comparison, yes, it  
16 exceeds Hilco Gordon Brothers by 488,000. We  
17 valued the three constituent elements of the  
18 Hilco Gordon Brothers bid at \$85,912,000.  
19 That is how we established the difference.

20 I would add that this is something, a  
21 side by side bid comparison that we  
22 distributed to bidders at the outset of the  
23 auction process for purposes of comparisons so  
24 this should be familiar to both bidders.

25 MR. UPHOFF: Offer Exhibit H,



1 Your Honor.

2 THE COURT: Any objection?

3 MR. CHESLEY: No, Your Honor.

4 THE COURT: Hearing no

5 objection, I'll receive Debtor's Exhibit H.

6 BY MR. UPHOFF:

7 Q Steve, if you could, just for a moment tell us  
8 what the term excluded assets means in a  
9 practical sense?

10 A Yes. Absolutely. The purchase agreements are  
11 explicit. There are various assets that are  
12 left behind. These were assets that the  
13 buyers did not wish to pick up and would leave  
14 behind for the estate to monetize. The values  
15 that we've ascribed to these assets below are  
16 the values that we believe the estate can  
17 realize through efficient monetization of  
18 these residual assets.

19 Q Steve, did you also do a liquidation analysis?

20 A We did.

21 Q And I'm going to direct your attention to  
22 Exhibit G.

23 THE COURT: Why am I missing  
24 that in my binder?

25 MR. UPHOFF: Missing --

1 THE COURT: Wait. Hold on.

2 Nope. Just misplaced under Tab F.

3 MR. UPHOFF: Sorry.

4 THE COURT: No problem.

5 BY MR. UPHOFF:

6 Q Do you have Exhibit G in front of you?

7 A I do.

8 Q Okay. And are you able to identify that  
9 exhibit?

10 A I am. This was an analysis that we had  
11 prepared to assess the value of proceeds we  
12 might realize in a liquidation versus what we  
13 felt we could realize by a prior bid from  
14 Hilco Gordon Brothers. This is obviously  
15 outdated the total value to the estate of this  
16 prior Hilco Gordon Brothers bid on this  
17 exhibit is \$70.9 million approximately.  
18 Obviously we haven't had a chance to update  
19 this because we've been in court all morning.  
20 The -- that value now the Hilco Gordon  
21 Brothers would be replaced by Patriarch. That  
22 value to the estate would be \$86.4 million,  
23 roughly \$16 million higher.

24 The key point on this Exhibit G is the  
25 difference of the final, the total value to

1 the estate to the liquidation value. Under  
2 the prior comparison that was approximately  
3 56 million. Given that we are now  
4 approximately \$16 million higher than the bid  
5 that it was being compared to, that would  
6 improve to approximately \$72 million.

7 Q Okay.

8 MR. UPHOFF: Offer Exhibit G.

9 THE COURT: Any objection?

10 MR. CHESLEY: No, Your Honor.

11 THE COURT: Hearing none, I'll  
12 receive Debtor's Exhibit G.

13 BY MR. UPHOFF:

14 Q Steve, in your professional opinion, is  
15 Patriarch the highest and best bid and do you  
16 recommend that it be approved by this Court as  
17 the successful bidder?

18 A As established in Exhibit -- in the exhibit  
19 comparing Patriarch and Hilco.

20 Q Exhibit H.

21 A Exhibit H, Patriarch is \$488,000 higher than  
22 the competing Hilco Gordon Brothers bid. On  
23 that basis, I believe it is the highest and  
24 best bid.

25 Q And to your knowledge did it proceed in good

1 faith through the sales process?

2 A Yes.

3 Q Okay. And further, Steve, in your  
4 professional opinion is the bid by Hilco and  
5 Gordon Brothers the second highest and best  
6 bid and do you recommend that it be approved  
7 by the Court as the backup bidder?

8 A I do recommend that it be approved by the  
9 Court as the backup bidder and it is in second  
10 place.

11 Q Okay. And to the best of your knowledge did  
12 it also proceed in good faith throughout the  
13 sales process?

14 A Yes.

15 MR. UPHOFF: Thank you, Your  
16 Honor. I have nothing further at this time  
17 for this witness.

18 THE COURT: All right. Let's  
19 see. Mr. Chesley?

20 MR. CHESLEY: Thank you, Your  
21 Honor. Mr. Spencer, Your Honor, I'll be  
22 brief. We obviously have no questions with  
23 respect to the process engaged by Houlihan  
24 Lokey to arrive at where we are today.

25

EXAMINATION

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BY MR. CHESLEY:

Q Mr. Spencer, true, is it not, sir, that these cases will liquidate shortly after the conclusion of this sale?

A Yes.

Q And the recovery that is attained from this sale and other assets that are in the estate will be for the benefit of the creditors, correct?

A That's correct.

Q And that will include the equity components of both the -- both of the bids that we've been discussing?

A That's correct.

Q Now, let's talk about the difference between the two because you've -- you mentioned \$488,000. That effectively is the difference in the cash consideration when you add up cash and the excluded assets, correct?

A That is correct, yes.

Q And today we started where there was a difference between Patriarch and Hilco Gordon Brothers up around \$10 million?

1 A I don't think that was in front of me but  
2 that's my recollection, yes.

3 Q And you were aware, were you not, Mr. Spencer,  
4 throughout the process that the creditors,  
5 certainly the official committee of unsecured  
6 creditors, had a strong preference for cash as  
7 opposed to equity?

8 A Through the course of various conversations  
9 with the financial professionals for those  
10 creditors, yes. We were made aware of that.

11 Q Now, with respect to excluded assets just so  
12 we're clear, the only material difference  
13 between the two bids is the exclusion of the  
14 art collection.

15 Is that correct?

16 A That's correct.

17 Q So those bids are basically apples to apples  
18 except for the art?

19 A The art is the single large discrepancy, yes.

20 Q And was there an appraisal done on the art to  
21 your knowledge recently?

22 A Yes, there was.

23 Q And what did that number come in at?

24 A The Sotheby's appraisal, which I do not have  
25 in front of me, posited a range of value

1 between 7.3 and just over \$11 million, I  
2 believe.

3 Q Now, let's talk about the cash difference  
4 because I think we can all agree that in the  
5 context of where we are today, it's relatively  
6 small certainly from where we began?

7 A Yes, it is.

8 Q Now, you are familiar with the equity  
9 components of both of these bids, are you not?

10 A I am, yes.

11 Q You have reviewed the structures including  
12 their respective LLC agreements, have you not?

13 A I have.

14 Q Are you aware, sir, of any qualitative  
15 differences between those two agreements?

16 A It's my professional opinion that there are  
17 distinct qualitative differences between the  
18 equity.

19 Q And which of those structures in your  
20 professional view is more favorable to the  
21 eventual minority holder of that equity?

22 A In my professional opinion the key qualitative  
23 distinction between the equity offered by  
24 Patriarch and that of Hilco relates to two  
25 principal factors. One, reporting and

1 transparency as was represented in the  
2 Patriarch presentation to the creditors  
3 committees. They have a very different  
4 stylistic approach, a very different control  
5 orientation than that of Hilco. Hilco in  
6 particular represents that they will provide  
7 regular reporting on a monthly basis. So one  
8 of the key differences in the way this company  
9 will be run under Hilco's ownership and run  
10 under Patriarch's ownership relates to  
11 information content that is provided to the  
12 owners of those equity interests. That is one  
13 critical distinction.

14 The second critical distinction is that  
15 this is a feature of acquisitions that Hilco  
16 Gordon Brothers have made in the past, aware  
17 of three, Linens & Things, Bombay, and Sharper  
18 Image. It's something that they are using.  
19 It being equity. It's something that they are  
20 using to do two things. One, provide -- to  
21 minimize their cash, to minimize the cash that  
22 they use to make the acquisition. And two, to  
23 provide some, term of art, shmuck insurance to  
24 interested parties. And I use that  
25 respectfully. It's -- there are differences



1 in the ability when you're selling an asset at  
2 a low ebb in the cycle as we are here  
3 admittedly. Many parties want to be assured  
4 that if there is some staggering value  
5 realization down the road, that they have some  
6 ability to participate in that value  
7 realization.

8 Hilco Gordon Brothers again to the  
9 point has featured equity as a component of  
10 consideration they have offered in the three  
11 instances that I referenced and views this to  
12 be an important part of how they will  
13 structure offers in the future. That is  
14 another critical distinction. My  
15 understanding is that, and I have not  
16 experienced or seen Patriarch's offer material  
17 equity components like that in similar auction  
18 processes. I'm not familiar with every  
19 acquisition they have made but it is very  
20 clearly a very public element of three prior  
21 acquisitions for Hilco. That is the second  
22 major difference.

23 Q Would it be fair to say with respect to that  
24 second difference that at least in your  
25 experience and Houlihan Lokey's experience

1 Hilco Gordon Brothers has effectively a track  
2 record or a proven track record in  
3 acquisitions of this type where equity is  
4 afforded to creditors committees?

5 A They very clearly do, yes.

6 Q Now, let me ask you about one other  
7 qualitative difference. Did you notice in  
8 your review any qualitative difference, and  
9 this may relate to your first point, with  
10 respect to the participation of the minority  
11 stakeholder in the course -- in the actions of  
12 the business?

13 A Say that again.

14 Q In your review of the different structures,  
15 did you -- was there an appreciable difference  
16 in the role of the minority equity holder in  
17 participation with the business and  
18 deliberations regarding the business?

19 A We sat and reviewed both business plans. We  
20 talked that this was an element that was  
21 discussed in both of the presentations. It  
22 was a distinction by omission. It was not  
23 something that was presented to a greater  
24 degree as Hilco Gordon Brothers did in their  
25 presentation to the committees. This is

1 something that they feature prominently.

2 Q Now, you heard a change that was offered to  
3 the LLC agreement on the record of the auction  
4 today by Hilco Gordon Brothers, did you not,  
5 with respect to the preferred?

6 A Yes, I did.

7 Q Can you explain that change to the Court,  
8 please?

9 A Sure. They -- they, Hilco Gordon Brothers --  
10 had a 10 percent interest rate on the  
11 preferred. That would be part of the post  
12 close capital structure put in place. My  
13 understanding of that preferred instrument is  
14 that it is to provide recoveries for the  
15 amount of cash consideration that Hilco Gordon  
16 Brothers would contribute to the reorganized  
17 entity. The elimination of the ten percent  
18 interest rate that would be charged to that  
19 preferred instrument would be a material,  
20 provide a material difference to -- there  
21 would be accretion feature in that preferred  
22 instrument which would be senior to in rights  
23 of liquidation to the equity.

24 Q Were you able to calculate what that  
25 difference would be?

1 A We did. It was approximately \$5 million a  
2 year.

3 Q \$5 million per year?

4 A That's correct.

5 Q Now, during the course of this process, have  
6 you had the opportunity to discuss the equity  
7 component with the other creditor stakeholders  
8 in addition to the official committee  
9 including Ritchie, Acorn, and the Petters  
10 Committee?

11 A I believe we did exhaustively as a feature of  
12 the auction that we ran, the initial auction.  
13 We provided both parties with the opportunity  
14 to present their case, their business plan,  
15 how they would run the reorganized entity and  
16 make a case as to the value of the equity that  
17 they would be distributing to the creditors.

18 Q And in the discussions you've had with Acorn,  
19 Ritchie, the Petters Committee as well as our  
20 constituency, have they expressed a uniform  
21 preference for which equity, all things being  
22 equal, they preferred?

23 A There appears to be a -- we had many  
24 discussions with these various constituencies.  
25 There appears to be a preference for the Hilco

1 Gordon Brothers equity.

2 Q Now, you described in the beginning of your  
3 testimony your significant experience, and I'm  
4 certainly familiar with it firsthand, in 363  
5 sales and reorganizations.

6 Have you ever been involved in a 363  
7 sale that would eventually result in a  
8 liquidation of the debtor's assets where the  
9 determination of the creditors committee as to  
10 what was highest and otherwise best was  
11 rejected by the debtors?

12 A I have not been involved in such case, no.

13 MR. CHESLEY: I have nothing  
14 further, Your Honor. Thank you.

15 THE COURT: All right. Other  
16 parties cross-examination? Mr. Runck?

17

18 EXAMINATION

19

20 BY MR. RUNCK:

21 Q Good afternoon, Mr. Spencer. Mr. Spencer, I  
22 just have one question for you which is in  
23 comparing the equity structures in the LLC  
24 agreements between the two bidders, with  
25 respect to the Patriarch LLC agreement, how is

1 the creditor's committee or how is the  
2 bankruptcy estate supposed to get its money  
3 out, out of this equity investment?

4 A It's not entirely clear how we realize value.  
5 As was represented in her presentation to the  
6 creditors committee, Ms. Tilton indicates that  
7 her interest is not in buying and holding on  
8 to companies forever, that she would at some  
9 point allow the equity interest to realize  
10 value in connection with some future liquidity  
11 event. That's all that I am aware.

12 Q In the Hilco agreement, isn't it true that  
13 there is a provision for an actual waterfall  
14 of net income to the various members in  
15 accordance with their relative priorities and  
16 pro rata shares?

17 A My recollection is that that is correct.

18 Q And that waterfall provision does not exist in  
19 the Patriarch agreement to your recollection,  
20 does it?

21 A I'll defer to Lindquist for the definitive LLC  
22 side by side comparison.

23 Q If I told you that the Patriarch agreement  
24 provides that all distributions to members in  
25 the Patriarch new LLC shall be made in the

1 sole discretion of the manager, does that  
2 sound correct to you?

3 A That does sound correct, yes.

4 Q In addition, in the Patriarch LLC agreement,  
5 there's the potential for the issuance of new  
6 membership interest.

7 Isn't that correct?

8 A That is correct.

9 Q And that is also in the sole discretion of the  
10 manager.

11 Isn't that correct?

12 A My recollection is that that's correct, yes.

13 Q In light of -- well, does that provision  
14 appear in the Hilco agreement?

15 A My recollection is that that explicit  
16 provision does not.

17 Q If new membership interests were issued from  
18 the Patriarch LLC, that could have the affect  
19 of diluting the estate's membership share in  
20 the new company.

21 Isn't that correct?

22 A Very clearly it would, yes.

23 Q And in fact, if the new membership interests  
24 are issued at a value that is relatively  
25 inexpensive, that would very greatly dilute

1 the estate's membership interest.

2 Isn't that correct?

3 A Potentially it would, yes.

4 Q Thank you very much, Mr. Spencer. I  
5 appreciate that.

6 THE COURT: All right. Other  
7 questions?

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

3  
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24

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