VOLUME II

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

WILLIAM B. WEINBERGER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 5642
	)	
UOP, INC., THE SIGNAL COMPANIES, INC.,	)	
	)	
Defendants.	)	

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Chancery Courtroom No. 2
Public Building
Wilmington, Delaware
Tuesday, June 19, 1984
9:30 a.m.

- - -

BEFORE: HONORABLE GROVER C. BROWN, Chancellor

- - -

APPEARANCES:

WILLIAM PRICKETT, ESQ.,
MICHAEL J. HANRAHAN, ESQ. and
MICHAEL F. BONKOWSKI, ESQ.
Prickett, Jones, Elliott, Kristol & Schnee
for Plaintiff

ROBERT K. PAYSON, ESQ.
Potter, Anderson & Corroon
-and-
ALAN N. HALKETT, ESQ., of the California Bar
Latham & Watkins
for Defendant The Signal Companies

1 APPEARANCES (Continued):

2 A. GILCHRIST SPARKS, ESQ.
Morris, Nichols, Arsht & Tunnell
3 for Defendant UOP, Inc.

4 ALSO PRESENT:

5 BREWSTER L. ARMS

6 JOHN G. WOODS

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1 P R O C E E D I N G S

2 MR. PRICKETT: Good morning, Your Honor.

3 MR. PAYSON: Good morning, Chancellor.

4 THE COURT: Good morning.

5 All right. Are we ready to resume with

6 Mr. Kavanaugh, or do we have anything to discuss

7 before we get to that point?

8 MR. PRICKETT: Your Honor, I acknowledge

9 for purposes of the record a document that

10 Mr. Payson handed me this morning entitled "June 1984,

11 W. H. Purcell, Signal/UOP Summary Regarding Applicable

12 Companies from Exhibits 7 and 8 Used in the Averages

13 Presented in the Memorandum Text."

14 I acknowledge that I received that

15 this morning for purposes of the record. I assume

16 that Mr. Purcell has no further report comparable to

17 the comments that Mr. Bodenstein prepared for us on

18 the Dillon Read report. This is what we are going

19 to get from Mr. Purcell.

20 MR. PAYSON: That's all I have so far,

21 Chancellor.

22 THE COURT: All right.

23 MR. PRICKETT: We live in hope.

24 MR. PAYSON: I might ask if Mr. Prickett

1 has been able to yet review our exhibit list, and to
2 determine whether he has any objections to any of
3 the documents we have designated.
4 MR. PRICKETT: Your Honor, that slipped
5 my mind, but I will do it.
6 THE COURT: All right. Fair enough.
7 MR. PAYSON: May I ask Mr. Kavanaugh to
8 resume the stand, Your Honor?
9 THE COURT: Yes, indeed.
10 Mr. Kavanaugh, if you will, please.
11 EDWARD FRANCIS KAVANAUGH, having been
12 previously sworn as a witness, was resumed, and
13 testified further as follows:
14 DIRECT EXAMINATION, Continued
15 BY MR. PAYSON:
16 Q. Mr. Kavanaugh, I'll ask the Register to
17 hand you Defendants' Exhibits 10 and 11.
18 MR. PAYSON: Your Honor, these are two
19 of the exhibits included in the notebook which we
20 provided the Court yesterday.
21 BY MR. PAYSON:
22 Q. Mr. Kavanaugh, can you identify those
23 documents?
24 A. Yes, I can.

1 Q. What are they?

2 A. Exhibit 10 is the historical

3 consolidated income statement for UOP for the

4 year ended December 31, 1983, and Exhibit 11 is

5 the historical balance sheet of UOP at December 31, 1983.

6 Q. By whom were those documents prepared?

7 A. Both those documents were prepared for

8 me under my supervision.

9 Q. And when did you direct that those

10 exhibits be prepared?

11 A. Those exhibits were prepared during the

12 weeks of May 14, 1984, and May 21, 1984.

13 Q. Prior to those weeks in May of 1984 had

14 consolidated financial statements for 1983 for UOP

15 ever been prepared on a stand-alone basis?

16 A. No, they were not.

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1 Q. Why was that?

2 A. Well, as has been testified to earlier
3 by Mr. Corirossi, all of the debt for UOP was either
4 assumed or guaranteed by the Signal Corporation. In
5 that regard, it was no longer necessary to have
6 separate audited financials for UOP.

7 Q. Why, then, did you direct the preparation
8 of Defendants' Exhibits 10 and 11?

9 A. These were prepared in connection with
10 the plaintiff's request for production of documents.
11 And under that request we were to submit the consolidated
12 financial statements of UOP for the year ended Decem-
13 ber 31, 1983 and for prior years.

14 Q. When did Signal first book and publicly
15 disclose any of the reserves reflected in Exhibits 10
16 and all?

17 A. We first booked in the first quarter of
18 1983 part of those reserves. More specifically, under
19 Exhibit No. 10, I make reference to JE 7. JE 7 was
20 booked in the first quarter of 1983.

21 Q. I ask the Register to hand you Defendants'
22 Exhibit 12. Can you identify that document?

23 A. Yes, I can.

24 Q. What is it?

1 A. This document is the Form 10-Q of The
2 Signal Companies for the quarter ended March 31, 1983
3 as filed with the Securities and Exchange Commission.
4 Q. Are the reserves reflected under JE 7
5 on Defendants' Exhibit 10 reflected in Defendants'
6 Exhibit 12?
7 A. Yes, they are. If you would turn to
8 Page No. 1 --
9 Q. Of which exhibit?
10 A. I am sorry. Turn to Page No. 1 of
11 Exhibit 12. And I make reference to the consolidated
12 statement of income, and I am going to refer to the
13 right-hand column, which is the three months ended
14 March 31, 1983. I then ask you to turn to Exhibit 10.
15 And under JE No. 7 you will see an amount of 56,965,000
16 beside the line called "Cost of Sales." That reserve,
17 that total reserve adjustment, is included in Exhibit 12
18 under Expenses, cost of sales, in the amount of
19 $1,098.1 thousand.
20 Again, going back to Exhibit 10, JE 7,
21 the next amount is $56,960,000. That is beside the
22 caption "General and Administrative Expenses." Again,
23 turning back to Exhibit 12, under "Expenses, General
24 and Administrative," that amount is included in the

1 $191.6 million balance.

2 Following down JE 7, the next amount
3 below the subtotal of 113,925,000 relates to taxes,
4 and that is a bracketed amount of $34,928,000 for
5 income taxes. Again referring back to Exhibit 12, under
6 the caption about half-way down, is income taxes. That
7 balance is included within the bracketed amount of
8 $49.1 million.

9 And lastly, going back to Exhibit No. 10,
10 JE 7, the net loss number for the first quarter of '83
11 of 78,997,000, again going back to Exhibit 12, that
12 amount is included in the net income (loss) number for
13 Signal of a bracketed $83.0 million.

14 Q. Is there any other reference in Defendants'
15 Exhibit 12 to the reserves you have just testified about?

16 A. Yes, if you turn to Page No. 9 of
17 Exhibit 12. Page No. 9, headed up "Management's
18 Discussion Analysis of Financial Statements, of Finan-
19 cial Information," is a narrative disclosure of what
20 happened the first quarter of 1983. I make reference
21 to Paragraph No. 2, the fourth line down, starting with
22 the word "Operate" and I pick up the word from the
23 prior line that says, "Signal did operate profitably
24 in the first three months of 1983 before merger-related

1 expenses and restructuring costs. These costs included
2 provisions for plant relocation and consolidation,
3 severance and contract reserves."
4 Q. When were the total reserves relating to
5 the Come-By-Chance project established in 1983?
6 A. The total reserve for the Come-By-Chance
7 litigation, amounting to $52 million before taxes, was
8 booked by the end of the second quarter of 1983.
9 Q. I will ask the Register to show you
10 Plaintiff's Exhibit 7. Can you identify that document?
11 A. Yes, I can.
12 Q. What is it?
13 A. This is the 1983 annual report for
14 The Signal Companies, Inc.
15 Q. When were all of the reserves reflected
16 in Defendants' Exhibit 10 and 11 finalized for 1983?
17 A. They were finalized in connection with
18 the year-end 1983 audit examination, and that would
19 have been in January of 1984.
20 Q. Are all of the reserves reflected in
21 Defendants' Exhibits 10 and 11 included in Signal's
22 consolidated financial statements for 1983 as reported
23 in Signal's 1983 annual report; that is, Plaintiff's
24 Exhibit 7?

A. Yes, they are.

1 Q. Were Signal's consolidated financial
2 statements for 1983 certified by anyone?
3 A. Yes. They were certified by Deloitte
4 Haskins & Sells, and specifically with regard to
5 their opinion there was a clean opinion. All that
6 means in non-technical terms is they did not take
7 exception to any of the financial statements.
8 Q. Why were the reserves reflected in
9 Defendants' Exhibit 10 and 11 established in 1983?
10 A. Well, they were established in 1983
11 because business decisions were made to restructure,
12 to close, to hold for sale a number of the UOP
13 operations that were losing substantial amounts of
14 money. Once those business decisions were made,
15 under generally accepted accounting principles,
16 the general accounting rules we must follow in
17 preparing financial statements, those entries had
18 to be made in 1983. If they were not made in 1983,
19 Deloitte Haskins & Sells in connection with their
20 audit of Signal for the year ended 1983 would have
21 taken exception to our report.
22 Q. Does that mean Deloitte Haskins & Sells
23 would not have certified the financial statements?
24 A. Would not have certified the financials,

1 is right.

2 Q. What, if any, relationship is there

3 between the establishment of the reserves and their

4 amounts in 1983 and this trial?

5 A. There is absolutely none.

6 Q. Were any of the reserves reflected in

7 Defendants' Exhibits 10 and 11 made retroactive to

8 1983 at the direction of Mr. Arms or anyone else?

9 A. Absolutely not.

10 Q. Would you please refer to Defendants'

11 Exhibit 10?

12 How would UOP's earnings have been

13 reported for 1983 if it had been a stand-alone company

14 with certified financial statements?

15 A. If UOP had been a stand-alone company,

16 its net loss would have approximated $80,000,000.

17 Q. In 1983?

18 A. In 1983.

19 Q. Would you please refer to Defendants'

20 Exhibit 11?

21 How would UOP's book value have been

22 reported as at December 31, 1983, if it had been a

23 stand-alone company with certified financial

24 statements?

1 A. As a stand-alone company with certified
2 financial statements for 1983, UOP's book value would
3 have approximated $263,000,000.
4 Q. You can return those exhibits to the
5 Register, if you will, and I will ask that the
6 Register hand you a copy of Plaintiff's Exhibit 26.
7 THE COURT: Is that $263,000,000 figure
8 reflected anywhere in Exhibit 11?
9 MR. PAYSON: I think, Your Honor, if
10 you will look at the note which is part of Exhibit 11,
11 the second page of Defendants' Exhibit 11 shows total
12 shareholders' equity of $293,491,000. If you then do
13 the subtraction mandated by the note, the figure is
14 reduced by approximately $30,000,000 to $263,000,000.
15 So that the total shareholders' equity, or book
16 value, goes from a $293,000,000 figure shown on the
17 second page of Defendants' Exhibit 11 to approximately
18 263,000,000. You will see the $293,000,000 figure
19 in the far right-hand column just above the column
20 total. Then if you make the adjustments mandated
21 by the note, 293,000,000 becomes approximately
22 263,000,000.
23 THE COURT: All right. Thank you.
24

BY MR. PAYSON:

Q. If you will turn to Page B-2 of Plaintiff's Exhibit 26, I note an entry on Line 12 which shows 157.8 million in cumulative advances by UOP to Signal as at 12-31-83. Is that correct?

A. That is correct.

Q. Were those advances encumbered by any obligations?

A. Yes, they were. That represents a net accounting balance of a number of transactions between UOP and Signal.

I direct your attention on B-2 to Line No. 5. Line No. 5, the account is called Billings in Excess of Cost. The amount is 6.6-million dollars.

What that represents is customer advances on contracts. The cash that came in from those customers has been passed along through that 157.8-million-dollar balance. When those contracts are completed during 1984, Signal now as the cashier for all of UOP will have to fund those advances.

Secondly, now that -- I think it's been testified to earlier -- that the treasury function for UOP has been centralized within Signal, Signal now

1 is the bill payer for all of the bills of UOP, so
2 Signal will not have to pay the day-to-day bills of
3 UOP, any working capital needs, and any time they
4 need money for large capital expenditures those funds
5 will have to again come from Signal. All of those
6 amounts will come out of the 157.8-million dollars.
7 Q. Has there been any payment in connection
8 with the Come-By-Chance settlement?
9 A. Yes, there has. Within the past month
10 a payment approximating $30,000,000 was made for
11 Come-By-Chance. That $30,000,000 would also go
12 against, or deduct, or reduce the 157.8-million-dollar
13 balance.
14 Q. Was the consolidation of the treasury
15 function applicable only to UOP and Signal?
16 A. No, it was not. All of the subsidiaries
17 within Signal except the Garrett Corporation were
18 centralized. Signal is now the cashier, or the bill
19 paying agent, for all of those subsidiaries.
20 Q. Does the 157.8-million-dollar entry
21 represent cash which Signal could use at its sole
22 discretion?
23 A. No, it does, and it does not for the
24 reasons I have just enumerated.

1 Q. Would you repeat those again?

2 A. Those reasons are, one, customer advances

3 of 68.6; two, day-to-day expenses, capital

4 expenditures, working capital needs, and three, the

5 Come-By-Chance payment of $30,000,000.

6 Q. As of January 1, 1984, what happened to

7 the 157.8-million-dollar entry?

8 A. Well, as of January 1, 1984, UOP as a

9 separate financial reporting entity no longer existed.

10 Secondly, I have indicated that because

11 of the consolidation of the treasury function,

12 Signal is now the bill paying agent for all of the

13 UOP organization. So as of January 1, 1984, from an

14 accounting sense the 157.8 was eliminated. It's

15 proper accounting now no longer to have that balance

16 outstanding. It just does not make accounting sense.

17 MR. PAYSON: Thank you, Mr. Kavanaugh.

18 MR. PRICKETT: Are you finished?

19 MR. PAYSON: Yes, sir.

20 MR. PRICKETT: All right. Thank you.

21 CROSS-EXAMINATION

22 BY MR. PRICKETT:

23 Q. Mr. Kavanaugh, let me start off by asking

24 you were you here yesterday?

1 A. Yes, I was.

2 Q. And Mr. Corirossi, the chief financial
3 officer of UOP, told us that on December 31, 1983,
4 the company of which he was chief financial officer
5 had $157,000,000, and on January 1, 1984, he didn't
6 have it. Do you remember that?

7 A. Well, the way you have expressed it,
8 there was --

9 Q. Well, do you remember that testimony?

10 A. I remember --

11 Q. Just do you remember it? That's the
12 first question.

13 A. Not in the phraseology used. There was
14 an account of $157,000,000 at the end of 1983.

15 Q. And at the beginning of 1984 he did not
16 have that account, to use your phraseology?

17 A. That account no longer existed, yes.

18 Q. And he didn't know what happened to it.
19 Do you remember that?

20 A. That's right.

21 Q. And he thought, I think, that some people
22 from La Jolla by the name of Signal had taken over
23 that account. Is that right?

24 A. That's right.

1 Q. And that is the explanation for what
2 happened to that 157 that he didn't know about; is
3 that right?
4 A. When you say "take over," what happened
5 is that that balance was eliminated versus the
6 offsetting balance existed in La Jolla. They were
7 just canceled out, netted out.
8 Q. Did you ever explain that to Mr. Corirossi,
9 that this is what was happening to that 157?
10 A. No, I did not.
11 Q. So that he never knew what happened to
12 that, that it was an accounting adjustment whereby on
13 December 31st he had a balance of 157,000,000, and
14 on January 1, 1984, he didn't? You never told him
15 what happened to that?
16 A. I did not have to tell him that because
17 effective 1-1-84 the UOP group that Mr. Corirossi
18 now was in charge from a financial point of view is
19 not the same UOP that existed at December 31, 1983.
20 Q. Well --
21 A. He did follow every account that
22 existed on the UOP separate financial reporting entity
23 from one day to the following day.
24 Q. Well, my question is a little simpler than

1 that. Is it your testimony that Mr. Corirossi never
2 asked you, and you never explained that between
3 December 31, 1983, and January 1, 1984, the
4 $157,000,000 that he had on his books was going to
5 Signal, and you've never told him that?
6 A. No, I have not.
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1 Q. And so he never knew what happened to
2 that?
3 A. He did not.
4 Q. Though he was chief financial officer;
5 is that correct, of UOP?
6 A. He was chief financial officer of UOP,
7 Inc. through December 31, 1983.
8 Q. And --
9 A. I think it is more of a technicality
10 than that. Effective 1/1/84, as Mr. Corirossi has
11 testified, the pieces of UOP moved around, and UOP
12 Group was made up of some UOP pieces and some of the
13 old Wheelabrator-Frye pieces.
14 Q. Now, let's be clear about something.
15 When you came aboard, there was a company that was
16 100-percent owned by Signal, and what was its correct
17 title?
18 A. When I came aboard?
19 Q. Yes.
20 A. When I came aboard, its title was UOP,
21 Inc.
22 Q. And on December 31, 1984 was its title
23 still UOP, Inc.?
24 MR. PAYSON: Mr. Prickett, I think you

1 misspoke the date.

2 MR. PRICKETT: I did, in fact.

3 BY MR. PRICKETT:

4 Q. December 31, 1983?

5 A. Yes.

6 Q. Was it still called UOP, Inc.?

7 A. At the end of December 31, 1983 it was

8 still called UOP, Inc.

9 Q. And on January 1, 1984 was it still called

10 UOP, Inc.?

11 A. On January 1, 1984 there was a UOP legal

12 entity still existing, but as has been testified to

13 earlier, the operations had been moved out of that

14 entity and put elsewhere.

15 MR. PRICKETT: Look, would you answer my

16 question. Could I have the question again, and you will

17 get a chance to put that in. But let's stick to my

18 question, if you would. Could I have it again.

19 (The court reporter read back as

20 requested.)

21 THE WITNESS: On January 1, 1984 there

22 was still a UOP, Inc.

23 BY MR. PRICKETT:

24 Q. And was it the same corporate entity as

1 it existed the night before, on Decmeber 31, 1983?
2 A. It was the same corporate entity.
3 Q. Now let's go forward to today. Is there
4 still the same corporate entity, UOP, Inc.?
5 A. There is the same legal corporate entity
6 existing.
7 Q. That is all we are talking about; okay?
8 A. Yes.
9 Q. Now, do you have in front of you the
10 annual report, DX No. 12? That is the Form 10-Q of
11 Signal.
12 MR. PRICKETT: Could I ask the Register
13 to give the witness DX-12.
14 MR. PAYSON: Mr. Prickett, I don't
15 believe that is the annual report.
16 THE WITNESS: That is not the annual report.
17 MR. PAYSON: That is the Signal Form 10-Q
18 for the first quarter of 1983.
19 MR. PRICKETT: I think that's right.
20 BY MR. PRICKETT:
21 Q. Do you have that there?
22 A. I have the 10-Q for the first quarter,
23 ended March 31, 1983.
24 Q. And is it marked DX-12, so that we are

1 in the same ballpark?

2 A. Yes.

3 Q. Now, you referred to certain numbers in

4 that report; do you remember that?

5 A. Yes, I do.

6 Q. And the pages that you referred to was

7 Page 1; is that correct?

8 A. That is one of the pages, yes.

9 Q. It is the first page you referred to?

10 A. It is the first page.

11 Q. And the first number you referred us to

12 was Signal's cost of sales; is that correct?

13 A. That is right.

14 Q. And the number that you referred us to

15 was the 1,098,100,000; is that right?

16 A. That is right.

17 Q. Now, you said that that had reference

18 to the cost of sales number appearing in DX-10; is

19 that right?

20 A. Can you repeat the question?

21 Q. I think you said that the cost of sales

22 appearing in DX-12 had some relevance to the figures

23 appearing in DX-10.

24 A. Yes, I did.

1 Q. Now, let's get the dates of these
2 straight. DX-12 is a 10-Q for the first quarter of
3 Signal and was filed with the SEC by March 31, 1983;
4 isn't that right?
5 A. Well, it was filed by -- within 45 days
6 after March 31, 1983.
7 Q. And DX-10 and DX-11 were prepared
8 May 10 and May 11, after that date; is that right?
9 A. Exhibits 10 and 11 were prepared in May
10 of 1984, using documents that existed in 1983.
11 Q. But the date of the preparation of these
12 two documents was May 14 and May 21, 1984, after the
13 date of DX-12; isn't that right?
14 A. That is right.
15 Q. They weren't in existence when that
16 document was filed; isn't that correct?
17 A. That is not correct.
18 Q. Okay. I am going to go back over it.
19 DX-10 and 11 were in existence at the
20 time that DX-12 was filed?
21 A. If you want to start with DX-10 --
22 THE COURT: We are talking about the
23 documents or the information?
24 MR. PRICKETT: Documents.

1 THE COURT: Documents themselves.

2 THE WITNESS: Fine. Okay.

3 MR. PRICKETT: And that is clear by the

4 question. Do you want it again?

5 THE WITNESS: Yes, I do.

6 MR. PRICKETT: Could we read it.

7 ("Question: DX-10 and 11 were in existence

8 at the time that DX-12 was filed?")

9 BY MR. PRICKETT:

10 Q. That was supposed to be a question. Is

11 that right or not right?

12 A. That is not right.

13 Q. They were not in existence at the time

14 DX-12 was filed?

15 A. That is not correct.

16 Q. The documents were in existence when it

17 was filed?

18 A. Yes, they were. And if I can make

19 reference to DX-10 and turn to the third page, that did

20 exist at the time DX-12 was filed. If I turn to two

21 more pages down, the work paper headed up "Entry

22 No. 0007," that is the original documentation that

23 existed at the time DX-12 was filed.

24 Q. Okay. So what you are telling me is that

1 the front page of DX-10 was done on May 14 or May 21.
2 Some of the back-up papers, particularly the third page
3 in and the paper entitled 00007 was in existence; is
4 that right?
5 A. If you want me to answer that complete,
6 you asked me first what was existing at the first
7 quarter. The rest of this package I can go through
8 page by page. Most of it existed at the end of
9 December 31, 1983. It was not created since that time.
10 Q. The first page was?
11 A. The first page is the historical financial
12 income statement for UOP that did not exist in that
13 form but did exist at the end of 1983.
14 Q. Well, the page did not exist; is that
15 right?
16 A. The page did not exist, that one page.
17 Q. Certain of the back-up exhibits did?
18 A. Certain of the back-up pages did. All
19 of the entries, all of the reserves, existed in 1983.
20 Q. All right. Now I think we have finally
21 gotten the dates of these things correct.
22 Now, I notice that, referring to your
23 first reference on Page 1 of DX-12, the expenses, cost
24 of sales for Signal is listed as 1,098,100,000; is that

1 right?

2 A. That is right.

3 Q. And what is the figure that you reference

4 in DX-10?

5 A. On DX-10 I referenced in under the first

6 page, JE No. 7, I referenced in the 56,965,000.

7 Q. Now, tell me, the number 1,098 million

8 is larger than 56,965,000. And what you tell us is,

9 in the cost of sales of the 10-Q, the 56,965,000 is

10 included; is that right?

11 A. Is included within. It is a part of.

12 Q. And do we know how much from the 10-Q is

13 ascribed to UOP in DX-12?

14 A. Not in DX-12.

15 Q. Let's stick to DX-12 for a second. Let's

16 go to the second figure, general and administrative

17 expenses. In DX-12 the figure for 1983 is $191,600,000;

18 is that right?

19 A. That is right.

20 Q. And the figure in DX-10 is 56,960,000;

21 is that right?

22 A. That is right.

23 Q. Again, there is no indication in DX-12

24 that $56,960,000 is going to be ascribed to UOP in

1 DX-12; is that right?

2 A. In DX-12 the specific amount is not

3 mentioned.

4 Q. And if we go through the income taxes

5 and the net income (loss) from DX-12, we can't tell

6 that, can we?

7 A. You cannot tie in the specific amounts

8 from Exhibit No. 12. They are not spelled out

9 separately. They would not be spelled out because of

10 naturally their size in relation to Signal on a

11 consolidated basis. This is a consolidated report.

12 It is not a consolidating report, where you spell out

13 the individual Signal subsidiaries.

14 Q. And so when it came time in May, out of,

15 for example, the general and administrative expenses of

16 $191,600,000, the figure 56,960,000 was ascribed to

17 UOP; is that right?

18 A. No, that is not exactly put properly.

19 It is not a question of ascribed to UOP. The 56,960,000

20 are UOP's adjustments, directly related to UOP, not

21 ascribed to them.

22 Q. Well, who decided what amounts would be

23 UOP's?

24 A. I think that has been testified to earlier

1 by Mr. Corirossi, when he submitted his summary of
2 all of the UOP problems that arose because of re-
3 structuring and closing down some operations. Those
4 were submitted on to La Jolla and going to the concept
5 of a reserve, reserve being a known loss.
6 Q. Let's stick to my question. And the
7 question was, who decided that. And the answer to that
8 question, as I understand it, is La Jolla, and that
9 means Signal; isn't that right?
10 A. Decided what? I don't understand the
11 question. I am sorry.
12 Q. Why don't you try to --
13 A. I kind of --
14 Q. (Continuing) -- follow my question. Who
15 decided the question of what amount would be charged
16 to general and administrative expenses for UOP? And
17 the answer is Signal at La Jolla; isn't that right?
18 A. It was Signal at La Jolla, with direct
19 input from UOP personnel.
20 Q. All right. Now you are getting ahead
21 of me. Now, let me ask you, Mr. Corirossi was asked
22 by Signal at La Jolla to submit a list of possible
23 reserves; isn't that right?
24 A. To submit a list of potential problems,

1 yes.

2 Q. And reserves?

3 A. And reserves.

4 Q. And adjustments?

5 A. And adjustments.

6 Q. So Signal said to Corirossi, submit to us

7 a list of adjustments and reserves, and then they made

8 the decision; is that right?

9 A. They made the final decision.

10 Q. And the final decision to ascribe

11 56,960,000 of general and administrative expense out of

12 191,600,000 was Signal's; isn't that right?

13 A. Well, not in the sense that you are

14 putting it. I refer back to Exhibit 10. Under JE 7

15 the total of all of those reserves for the first quarter

16 were 113,925,000. They were made up of particular

17 problems that totaled that amount. A piece of them

18 went to cost of sales and a piece of them went to an

19 account called General and Administrative.

20 Q. No, no. But you are shying off my

21 question, sir. We will get to that in a second.

22 My question to you was -- and it is very

23 simple -- who made the decision that UOP would be

24 charged $56,960,000 for general and administrative

1 expense; Signal?

2 A. The final decision was made by Signal.

3 Q. And is the same thing true of the entry

4 on the other JE 7 entries; that is, Signal made all

5 these decisions?

6 A. Signal made the final decision, yes.

7 Q. Well, who else was making decisions on

8 this besides the hundred-percent owner?

9 A. Signal makes the final decision but can't

10 create reserves without knowing the underlying facts.

11 Q. It has to --

12 A. UOP personnel identified a number of

13 problems, brought those to Signal's attention, and the

14 final determination was made by La Jolla.

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1 Q. Well, all you are saying is that UOP
2 personnel made input, and Signal made a decision?
3 A. No. I --
4 Q. All right. I'm not going to waste any
5 more time. I think we understand what you are saying.
6 Let's move on.
7 Now, what was the total amount of the
8 Signal adjustments and reserves in the year 1983?
9 A. As it relates to UOP?
10 Q. No, no. I was thinking total.
11 A. I can't quantify that number.
12 Q. Okay. Let me ask you this: Does the
13 number 121,000,000 have any significance to you in
14 connection with the reserves and adjustments made in
15 1983 for Signal?
16 A. $121,000,000?
17 Q. Yes. Adjustments and reserves.
18 A. For the entire company? For UOP?
19 Q. No. For the entire company.
20 A. No. I can say that besides the
21 reserves that were taken for uOP, some also very
22 large reserves were taken for other Signal subsidiaries.
23 I can't tell you the exact amount.
24 Q. Would you refer to DX12? Have you got that

1 there? Page 1.

2 A. Yes, sir.

3 Q. This is the 10-Q for the first quarter

4 of 1984 for Signal, and does that show --

5 A. 1983.

6 Q. 1983. Sorry. And does that show the

7 amount of the reserves that were taken, and charges

8 that were taken by Signal that produced a total net

9 income in the form of a loss of $83,000,000 for

10 Signal in the first quarter?

11 A. Can you read that back?

12 Q. I think it's kind of a broken question,

13 and I'll withdraw it.

14 Now let me cover a point:

15 You said that DX10 and DX11 were

16 prepared by Mr. Corirossi; is that right?

17 A. DX10 and DX11 were not prepared by

18 Mr. Corirossi.

19 Q. I'm sorry. Were prepared by you;

20 is that right?

21 A. They were prepared for me under my super-

22 vision.

23 Q. Who did it?

24 A. Mr. Jerry Wills, who is in my accounting

department.

1 Q. Right. And this document had not been
2 prepared prior to May 14th and May 21st, and we have
3 been over that ; isn't that right?
4 A. That's incorrect.
5 Q. Okay. Page 1 --
6 A. You are using the document all-inclusive?
7 Q. No. Page 1 of DX10 and 11 had not been
8 prepared prior to that time? There are certain
9 back-up documents that do preexist that date?
10 A. The actual pieces of paper on the top
11 page of both DX10 and 11 were produced, were prepared
12 between May 14th and May 21st, 1984.
13 Q. And at whose direction did you have
14 Mr. Wills prepare this?
15 A. They were prepared at my direction.
16 Q. Well, who told you to do it, or did you
17 just do it?
18 A. I have already testified to that, and
19 that --
20 Q. Well, I know it's painful, but would you
21 tell me again who did it? Who told you to do it?
22 A. I told Mr. Wills to do it when I
23 received the copy of the plaintiff's request for
24 production of documents. In that document it requested

1 that we submit UOP consolidating financial statements
2 for 1983.
3 Q. All right. Mr. Kavanaugh, isn't it a
4 fact that Mr. Arms told you to do this?
5 A. That is incorrect.
6 Q. Did you tell me at your deposition
7 that he did?
8 A. I think if you check my deposition and
9 the errata sheet, I have clarified and corrected
10 that section of the deposition.
11 Q. Okay. On Page 37 of your deposition I
12 asked you this question:
13 "Question: Now, who directed you
14 to prepare Exhibits E, F and G? I know
15 you directed the personnel under you to
16 prepare them physically, but who told you
17 to draw these up?
18 "Answer: Mr. Brewster Arms in
19 connection with the response -- I guess
20 the terminology is interrogatories -- of
21 the consolidating financial statements, -
22 response to these interrogatories.
23 "Question: Now, these three
24 financial statements have not been published,

1 have they, in the sense of disseminated
2 beyond" --
3 MR. PAYSON: Excuse me. I think the
4 errata sheet indicates the entire Page 37, Lines 17
5 through 20, was clarified by Mr. Kavanaugh in the
6 notarized errata sheet.
7 MR. PRICKETT: Oh, we will get to that,
8 but this is what he said before he put in an
9 errata sheet. Let me continue:
10 BY MR. PRICKETT:
11 Q. "Question: Now, these financial
12 statements have not been published, have
13 they, in the sense of disseminated beyond
14 the Signal management?
15 "Answer: That is true."
16 Now, that's what you said at the time;
17 isn't that correct? I mean the reporter --
18 A. At the time of the deposition, yes.
19 Q. And then you filled out and signed an
20 errata sheet on June 12th, and it reads:
21 "Page 37, Line 17: After Mr. Brewster
22 Arms strike the balance of the answer, and
23 insert 'gave me a copy of the stipulation
24 and order on plaintiff's modified second

1 request for production, and I had these
2 exhibits prepared for me by Mr. Wills in
3 response to requests therein contained.'"
4 Then it says: "Clarification."
5 Is that right?
6 A. That is correct.
7 Q. Okay. Now, Mr. Kavanaugh, you didn't
8 prepare DX10 and 11 in the course of regular business,
9 did you? You did it at the direction of
10 Mr. Brewster Arms who had sent you a stipulation and
11 order on plaintiff's second request for the production
12 of documents; isn't that right?
13 A. That is not correct the way you expressed
14 it. Mr. Arms gave me a copy of that request. With
15 regards to the request for financial information,
16 since I am in charge of all the financial information
17 and accounting information, I saw to it that the
18 Signal and UOP financial information was pulled
19 together and submitted in accordance with that request.
20 I was not directed to prepare anything.
21 Q. Okay. Now, what the stipulation and
22 order called for was the production of existing
23 documents. Is there anything in there that suggested
24 to you that you were to prepare documents that were not

1 in existence?

2 A. Yes; because if I had submitted to you

3 just the UOP reporting package, and take all of the

4 original documentation, and Xeroxed that and put

5 that together, there would be no way for you

6 to come up with a financial statement. I could

7 have responded to the letter of the stipulation.

8 Q. Yes. So you were trying to be helpful

9 to me; is that right?

10 A. No. I was responding to any request --

11 If someone asked me today the identical request, to

12 present the consolidating financial statements for

13 the Garrett Corporation, I would have to do the exact

14 same exercise.

15 Q. But that wasn't what you were asked.

16 You were asked to produce documents, and you drew

17 a document that wasn't in existence; is that right?

18 A. It wasn't in existence in this form.

19 Q. And so you weren't producing a document

20 in response to me that existed. You drew a new

21 document that hadn't been in existence, and that

22 you wouldn't have drawn except for this trial, is

23 that right?

24 A. That's not right. I think if you check

1 through some of the documents that were produced,
2 we presented the Signal consolidating financial
3 statements. In the Signal consolidating financial
4 statements there are two parts to it as relates to
5 UOP. The first part is the typed column on
6 Exhibit 10. The second part is all of the adjustments
7 that were booked in La Jolla as they relate to UOP.
8 Q. All right. Show me that.
9 A. The final column is the consolidated.
10 Q. Show me that. What are you talking
11 about?
12 A. I think you have got a copy of the
13 consolidation, the consolidation with UOP, and the
14 consolidated accounts.
15 Q. Tell me in simple language what you are
16 referring to, sir. What is the date of this document,
17 and what is the title of it?
18 A. It should be headed up "Consolidating
19 Financial Statements of Signal."
20 Q. And what date?
21 A. December 31, 1983.
22 Q. And that is the document that you say
23 contains the same information as the documents you
24 prepared that are now DX10 and 11; is that right?

1 A. Again, not in this particular form
2 MR. PRICKETT: May I have that document?
3 Could the witness be handed PDX24?
4 (The document was produced.)
5 BY MR. PRICKETT:
6 Q. Have you been handed PDX24?
7 A. Yes, I have.
8 Q. Is this the document you are referring to?
9 A. Yes, it is.
10 Q. And it is entitled, just so that it
11 reflects in the record, "The Signal Companies
12 Consolidating Income Statements for the Year Ended
13 December 31, 1983, in Thousands of Dollars," is
14 that correct?
15 A. That is correct.
16 Q. Who drew this document?
17 A. It was drawn by the accounting department
18 that reports to me.
19 Q. When? It's not dated.
20 A. When?
21 Q. When?
22 A. It was drawn approximately January of
23 1984 in connection with the year-end Signal annual
24 report.

1 Q. Is there any information in here that
2 is different from the Signal annual report?
3 A. I have not personally tied in every one
4 of these numbers, but I think if you give me back
5 that exhibit I can show you how these numbers tie
6 into that annual report.
7 Q. Well, assuming that they tie in, is
8 there anything in here, in PDX24, that relates to
9 the first page of DX10 and 11 that were done in
10 May 1984?
11 A. Yes. The column headed up "UOP" is the
12 same column that was used in Exhibit 10.
13 Q. Okay. Now --
14 MR. PRICKETT: I don't know whether
15 the Chancellor wants one of these so that he can
16 follow. I just happen to have an extra one.
17 (The document was produced.)
18 BY MR. PRICKETT:
19 Q. As I read PDX24, it suggests income
20 from continuing operations for UOP of $41,680,000.
21 A. On PDX24 that is correct, but that
22 does not include the top consolidation adjustments.
23 Q. And DX10 shows a net loss of $55,151,000;
24 isn't that right?

1 A. Starting with the same beginning point,
2 the $41,680,000 profit, working down to a net loss
3 of $55,151,000.
4 Q. Well, the short answer is that one shows
5 a net loss of $55,000,000, and the other one shows
6 an income from continuing operations, or net
7 earnings of $41,680,000; is that right?
8 A. That is right.
9 Q. So that it would seem to me that
10 PDX24 is not the same as DX10 in the sense that it
11 does not show all these reserves. Is that right?
12 A. PDX24 does not. The only column that's
13 missing from that page is the top consolidation
14 adjustments for UOP and all other Signal subsidiaries.
15 Q. So that this consolidating income
16 statement for December 31, 1983, reflects income
17 from UOP of $41,000,000; isn't that right, and net
18 income of the same amount since there is nothing
19 shown for income for discontinued operations; isn't
20 that right?
21 A. Again, as I repeated, it does without
22 the consolidation adjustments that relate directly
23 to UOP.
24 Q. It also shows retained earnings of

1 $226,504,000; is that right?

2 A. On that page, yes, it does.

3 Q. It shows dividends to Signal for the

4 year ended of $10,000,000?

5 A. Yes, it does.

6 Q. And it shows retained earnings at the

7 end of the year of $258,184,000; is that correct?

8 A. On PDX24 that is right.

9 Q. And that is not the same as DX10, the

10 first page, at all, is it?

11 A. The last three numbers you read to me

12 come from the retained earnings section for UOP.

13 DX10 is an income statement. It would not

14 include retained earnings. The information you

15 referred to you will find summarized in DX11.

16 You will find those amounts, if I can make

17 reference to it.

18 Q. But there is nothing on PDX24 that

19 reflects all the adjustments that were made and

20 reflected on the first page of DX10 in May 1984;

21 isn't that right?

22 A. That's incorrect.

23

24

1 Q. All right. Show me on PDX-24 -- and I
2 think we are going back again, sir -- where on PDX-24
3 the reserves that are reflected in JE 7 are found on
4 that consolidating statement.
5 A. Do you want to focus on just JE 7? You
6 said JE 7.
7 Q. Yes.
8 A. Okay. The reserves for JE 7, the cost
9 of sales amount of 56,965,000 is included in the first
10 column, "Consolidated Cost of Sales for Signal,"
11 4,912,990,000. It is within that amount. And conversely,
12 that is the amount that is in the annual report for the
13 Signal Corporation, which has been audited by Deloitte
14 Haskins & Sells.
15 Q. Okay. So it is in there under the first
16 column under the consolidated; is that right?
17 A. It has to be.
18 Q. It has to be?
19 A. I have no option.
20 Q. And so that in the first column you show
21 the consolidated figures for Signal, and in the second
22 you show UOP; isn't that correct?
23 A. UOP as submitted from Des Plaines.
24 Q. And there is nothing there that reflects

1 that in May of 1984 the JE 7 columns are going to be
2 posted against UOP; isn't that right? There is nothing
3 on that page that suggests that?
4 A. On --
5 Q. PDX-24.
6 A. Not on that page.
7 Q. Now, turning back again to DX-10, you
8 said that if you look at DX-10, it indicates a
9 $55 million loss from operations; is that correct?
10 A. DX-10 indicates a net loss for UOP of
11 $55 million, which is the loss that is included within
12 Signal's 1983 financial statements.
13 Q. Now, you said that that loss was a
14 necessary reflection of the decisions made by Signal
15 in 1983 in connection with UOP; isn't that right?
16 A. Made by Signal with input from UOP
17 personnel.
18 Q. Yes, but in the year 1983?
19 A. In 1983, in 1983.
20 Q. That is, if you disregard the decisions
21 made by Signal, you come up with a net income from
22 operations of $41,680,000. If you take into account
23 the adjustments and reserves resulting from the
24 decisions of Signal, with input from UOP -- because I

1 know you are going to add that -- you come up with a
2 loss of 55 million; is that right?
3 A. You broke twice. Can you read that back
4 to me.
5 (The court reporter read back as follows:
6 "Question: That is, if you disregard the
7 decisions made by Signal, you come up with a net income
8 from operations of $41,680,000. If you take into
9 account the adjustments and reserves resulting from the
10 decisions of Signal, with input from UOP -- because I
11 know you are going to add that -- you come up with a
12 loss of 55 million; is that right?")
13 THE WITNESS: I can't answer that
14 question in that form. You have gone off in two or
15 three thoughts.
16 BY MR. PRICKETT:
17 Q. Let's take it in tiny steps.
18 A. Oh, I need tiny steps.
19 Q. The first question, UOP, as shown on
20 DX-10, had an income from continuing operations of
21 $41,680,000 in the year that ended December 31, 1983.
22 A. That is right; from their separate
23 reporting package from Des Plaines.
24 Q. And then you see a number of adjustments

1 that are entitled "Consolidated Adjustments" and
2 "Group Adjustments"; is that right?
3 A. That is right.
4 Q. And this reflects the accounting impact
5 of decisions made by Signal during that year?
6 A. Yes, with input from UOP personnel.
7 I have got to get that in.
8 Q. I knew you were going to add that.
9 So then is when you come up, when you take
10 into account the adjustments, when you come up with
11 a $55 million loss?
12 A. And the $55 million loss is the final
13 net loss for UOP as it appears within Signal's
14 consolidated accounts.
15 Q. The consolidated adjustments are
16 reflections not of what UOP did in its operations but
17 what happened as a result of Signal's business decisions,
18 such as closing down certain pieces, such as selling
19 certain pieces, such as reserving certain matters; is
20 that right?
21 A. That is not right.
22 Q. It is a fact that there were decisions
23 to sell certain pieces of UOP in the year 1983?
24 A. Among other adjustments, yes.

1 Q. Let's take them one at a time, as you
2 said, tiny steps. One of them was the decision to
3 sell?
4 A. Sell some of the UOP operations, yes.
5 Q. That's right. One was a decision to
6 close down some of the operations?
7 A. That is right.
8 Q. And some of the decisions were to set up
9 reserves?
10 A. To set up reserves for known losses;
11 that is correct.
12 Q. And these were decisions that were made
13 by the owner of UOP, Signal; isn't that correct, owned
14 it 100 percent?
15 A. That is correct. And again, it cannot
16 be done in a vacuum. We need the input from the people
17 directly in the operations.
18 Q. No. You don't do this by whimsy. You
19 get the input. But in the end, Signal makes the
20 decision. We have been over that.
21 A. Makes the final decision.
22 Q. Okay. We have been over that. So Signal
23 makes these decisions. When it makes the decisions,
24 then they turn to you, and you are the guy who translates

1 these decisions into accounting adjustments, you or your
2 people under you, and that is the way you get from
3 $41 million of income from continuing operations to a
4 $55 million loss; isn't that right?
5 A. Yes, except I take one exception to the
6 word "translate." The entries are identified throughout
7 the organization as to which individual Signal subsidiary
8 had a loss. Once that loss is identified by the
9 particular subsidiary, that is where the loss goes.
10 Q. And then you take that and you make it
11 into the appropriate accounting adjustment that you say
12 is reflected here on DX-10; right?
13 A. What I do is, I take those appropriate
14 adjustments and in consolidation I summarize all those
15 adjustments to impact Signal consolidated. If there is
16 a separate report requirement, only then do I go back
17 and in a sense take the UOP information as submitted
18 and only at that time to prepare this kind of a
19 schedule. And I repeated earlier that if someone said
20 to me, give the separate financials for Garrett, I
21 would have to do this exact same thing.
22 Q. But you haven't done it?
23 A. I have had no need to.
24 Q. And so that I come back again, that the

1 exercise represented by Page 1 of DX-10 and 11 was done
2 in connection with the preparation for the trial of this
3 damage case; is that right?
4 A. In response to that request for documents,
5 these historical financial statements were prepared.
6 Q. Yes. It would not have been done but
7 for this trial?
8 A. Not necessarily true.
9 Q. Well, it hadn't been done?
10 A. That's true.
11 Q. And you haven't done it for Garrett,
12 have you?
13 A. Not at this time.
14 Q. And you haven't done it for any of the
15 other divisions, have you?
16 A. I have not done it at this point, no.
17 Q. So the answer is, you hadn't done it for
18 UOP, and you hadn't done it for anybody else, but when
19 this trial came up, you then prepared DX-10 and 11 that
20 by accounting changes changes a profit from continuing
21 operations of $41,680,000 into a $55 million loss;
22 is that right?
23 A. It properly presents a historical income
24 statement for UOP with a net loss of $55 million.

1 MR. PRICKETT: That is not the answer
2 to my question. Could we have the question again.
3 (The court reporter read back as follows:
4 "Question: So the answer is, you hadn't
5 done it for UOP, and you hadn't done it for anybody
6 else, but when this trial came up, you then prepared
7 DX-10 and 11 that by accounting changes changes a profit
8 from continuing operations of $41,680,000 into a
9 $55 million loss; is that right?")
10 MR. PAYSON: Would you read the answer.
11 THE WITNESS: Would you read the answer,
12 too.
13 (The court reporter read back as follows:
14 "Answer: It properly presents a
15 historical income statement for UOP with a net loss
16 of $55 million.")
17 MR. PAYSON: Your Honor, I think that is
18 fully responsive to the argumentative question.
19 MR. PRICKETT: Your Honor, I am going to
20 pass on. The effect of the question and the answer is
21 in the record, and I am tempted to say it speaks for
22 itself, but I won't.
23 Your Honor, let me pass on.
24

1 BY MR. PRICKETT:

2 Q. Let's focus on DX-10. It shows a

3 $41 million income from continuing operations in the

4 left-hand column; isn't that right?

5 A. That is right.

6 Q. And that is the same figure that we see

7 on PX-24, the consolidating income statement of Signal

8 for the year ended December 31, 1983?

9 A. Except down to the 41,680,000. There is

10 some additional information that is not --

11 Q. Yes, that pertains to the balance sheet.

12 A. Exactly.

13 Q. I was confining myself to the $41,680,000

14 figure. That is net income from operations without the

15 adjustments?

16 A. That is correct.

17 Q. Okay. Now let's focus on that. That

18 $41 million net operating profit is the summary of the

19 net operating profits from all of the UOP divisions in

20 the year 1983; isn't that right?

21 A. Before final adjustments, yes.

22 Q. Look, I am going to say it one more time.

23 This figure does not include the adjustments, and I am

24 not going to be talking about them anymore.

1 A. Fine.

2 Q. Let's agree that $41 --

3 A. I will agree that the $41,680,000 net

4 income number for UOP from this point on does not

5 include final consolidation adjustments.

6 Q. We have talked about that at some length.

7 Now let's focus on that number. That includes the

8 income or losses for all the UOP divisions during the

9 year 1983, doesn't it? It is a net figure.

10 A. It is a net figure, yes.

11 Q. And during that year are you familiar

12 with the fact that UOP had some divisions that were

13 net losers; that is, they produced losses?

14 A. Yes, I am.

15 Q. And does one in particular come to mind?

16 And I am going to suggest to you the Procon Division.

17 A. Procon is right.

18 Q. And do you have any feeling as to the

19 extent of the yearly losses of Procon, order of

20 magnitude?

21 A. Order of magnitude was in the range of

22 approximately $12 million for the last -- for '82 and

23 '81.

24 Q. And were there other divisions of UOP

1 in 1983 that produced losses? And I am not going to
2 ask you the precise amount at this point, but were there
3 other losing divisions?
4 A. Yes, there were.
5 Q. And so this figure includes the losses
6 that some of the divisions produced, but it was offset,
7 and you ended up with a net figure of $41,680,000 as
8 the net income produced by UOP even with the losers;
9 is that too long?
10 A. I follow. Yes, that's true.
11 Q. Now, in DX-10 there is a footnote that
12 refers to Come-By-Chance. Do you have DX-10?
13 A. Yes, I do.
14 Q. And when was the reserve for Come-By-Chance
15 litigation set up?
16 A. The reserve for Come-By-Chance in the
17 gross amount of $52 million was set up by the end of
18 Quarter 2 in 1983.
19 Q. And did you have any hand in setting that
20 reserve?
21 A. Yes, I did.
22 Q. Before the second quarter of 1983 it had
23 always been the position of Signal and UOP that Come-By-
24 Chance was a claim that could be successfully defended;

1 isn't that correct?

2 A. I don't know the exact words that appear

3 in the annual report. Whatever was referred to in the

4 1982 annual report.

5 Q. Well, whatever the terminology was, it

6 was treated as a contingent liability, and the standard

7 words were used that it could be defended and wouldn't

8 be material anyway or something like that?

9 A. Well, it was a contingent liability, and

10 on top of that there was no way at that point in time

11 to determine a reasonable range of liability, if any.

12 Q. And then in 1982 the mist parted, and what

13 had been for 10 years a contingent liability was then

14 able to be quantified, and it was decided it should be

15 reserved; is that right?

16 MR. PAYSON: Mr. Prickett, I think you

17 misspoke as to the year.

18 THE WITNESS: Not '82.

19 BY MR. PRICKETT:

20 Q. I am sorry. '83. The mist parted in

21 '83, the second quarter; is that right?

22 A. In 1983 additional information became

23 available whereby we could quantify a potential

24 liability.

1 Q. And what was the additional information
2 that became available in the second quarter of 1983
3 that enabled you to quantify what had always been a
4 contingent liability as to which counsel had assured
5 you you were going to win, and you suddenly in that
6 year, bang, put down $52 million as the appropriate
7 reserve.
8 A. The additional information is not
9 available to me. I don't know.
10 Q. Who does know?
11 A. The reserve for Come-By-Chance was booked
12 after Mr. Cypres, who is chief financial officer, spoke
13 with me.
14 Q. Well, what did he tell you that he
15 learned that now -- let me go back again. When a claim
16 is known and can be quantified, is there an accounting
17 requirement that it be booked and reserved immediately?
18 A. Exactly, immediately.
19 Q. What information did Mr. Cypres reveal
20 to you that changed a situation that existed over 10
21 years and suddenly made it a claim that had to be
22 booked because it could be quantified and was going to
23 produce a loss after 10 years of saying that it was a
24 defensible claim? What did he tell you?

1 A. He did not tell me.

2 Q. So you don't know?

3 A. I don't know.

4 Q. And do you know how the figure of

5 $52 million was selected as the quantifiable amount

6 that should be set as a reserve for the Come-By-Chance

7 litigation? Didhe tell you that?

8 A. I only know one part, to which

9 Mr. Corirossi has testified: That there was a

10 $18 million amount, which was an estimate, I believe,

11 of legal expenses. Beyond that, I don't know.

12 Q. Well, how was the amount of 52 million

13 selected as the reserve; do you know?

14 A. I do not know.

15 Q. And let me get on with this. Did

16 Mr. Cypres say we now should book a $52 million reserve

17 against UOP income because I am telling you that that

18 is the amount that is appropriate under accounting

19 rules?

20 A. No, he did not.

21 Q. Well, how did the number come about?

22 A. Mr. Cypres told me to book a $52 million

23 liability and not against UOP's income but under the

24 footnote under the purchase accounting theory, it would

1 be put on the balance sheet of Signal and amortized
2 over a period of time, spread over a number of years.
3 The point about against UOP's income was never
4 discussed.
5 Q. Okay. Fair enough. Let me see if I
6 understand that. The $52 million figure was something
7 that you don't know how it came up, how that number
8 was selected?
9 A. I do not know.
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1 Q. Okay. And what Mr. Cypres suggested
2 was that there be a footnote to Signal's financial
3 statements?
4 A. He did not, no.
5 Q. Well, I really don't want to waste time
6 on this.
7 In the second quarter of '83 Mr. Cypres
8 indicated that $52,000,000 was the appropriate
9 number for the Come-By-Chance. Now, how was that
10 reflected in Signal's or UOP's financial records as
11 of that time?
12 Let's take UOP first. Was it
13 reflected in any way in the year 1983 so far as
14 UOP was concerned?
15 A. In 1983, similar to these other top
16 consolidation adjustments, they are not booked
17 individually to UOP. They are booked as part of a
18 total number of consolidation adjustments, identified
19 as UOP related, but booked to effect Signal.
20 Q. Okay. So that on UOP's records, at
21 least, there was no thing that said reserve against
22 income $52,000,000, Come-By-Chance? Nothing like
23 that?
24 A. Not on their separate financials.

1 Q. All right. So far as Signal was
2 concerned, it was not booked as a reserve, but it was
3 carried as a footnote in which it was suggested that
4 it would be amortized over seven years?
5 A. No. As far as Signal is concerned, it
6 was actually booked. A liability, the net amount of
7 $28,080,000 was put on the balance sheet, and an
8 offsetting asset was put on the balance sheet.
9 That asset is the item that's being amortized through
10 the income statement.
11 Q. Okay. Let's see if I -- and I'm sorry
12 I'm a slow learner on this.
13 So far as Come-By-Chance was concerned,
14 it was put on the balance sheet of Signal as a
15 liability of $52,000,000, but net after taxes of
16 28,000,000?
17 A. That is right.
18 Q. And then it was shown -- it was
19 then amortized on Signal's income statement over a
20 seven-year period?
21 A. That is right. And the charge for 1983,
22 the piece of that for 1983 that reduced Signal's
23 net income was $2,500,000. I make reference to
24 JE5 on this exhibit.

1 Q. And what you are saying is that on
2 DX11 there is an entry under JE5 under "Other Assets,
3 Intangible (Net)" of a loss of $2,500,000; isn't that
4 right?
5 A. The account description you gave was
6 incorrect, but the amount -- it's a charge of
7 $2,500,000.
8 Q. Well, as I read it, the line that is
9 under "Other Assets, Intangible (Net)."
10 A. I don't know.
11 Q. I'm referring to DX11.
12 A. You are referring to the wrong exhibit.
13 That's the balance sheet. We were talking about the
14 income effect, and you will find that on DX10.
15 Q. Well, does it also appear in DX11?
16 A. Yes, it does, because that would be
17 the balance sheet effect.
18 Q. Okay. Well, that is what I was talking
19 about first.
20 A. Okay.
21 Q. It does appear, just so that I don't
22 look like an ass on the record, under the line
23 "Intangible (Net)" minus 2,500?
24 A. Minus 2,500,000 is right.

1 Q. All right. So now let's switch to DX10.
2 It also appears on DX10 as a charge from continuing
3 operations in that line as a loss of $2,500,000;
4 isn't that correct?
5 A. That is correct.
6 Q. Okay. Now, the footnote, however --
7 strike that.
8 What we have now been through is what
9 actually happened. That is, Signal is going to pay
10 this over seven years at $2,500,000 -- at a rate of
11 $2,500,000 as a charge against income; is that right?
12 A. Just to correct your wording, you said
13 "pay." Signal will charge to income, spread to income
14 over a period of seven years the $28,000,000 net
15 amount.
16 Q. Or $2,500,000 each year?
17 A. That is not correct. The $2,500,000
18 represents just a portion of a year's amortization
19 for 1983.
20 Q. Okay. Now, what is suggested in the
21 footnote is a different treatment for this, the net
22 of the amount of the Come-By-Chance settlement; is
23 that correct?
24 A. It represents the treatment that would have

1 to be made for UOP if UOP were a stand-alone company.
2 If UOP were a stand-alone company, it would have to
3 write off the entire $28,000,000 in 1983.
4 Q. So that what you are saying here is
5 that if UOP were stand-alone, it would have to take
6 a charge against income of $28,000,000 in one year?
7 A. In 1983.
8 Q. Right. In 1983. But in fact the
9 charges shown on DX10 and the consolidated adjustments
10 are the adjustments made, as we have been through,
11 by Signal, albeit with UOP's adjustment as a result
12 of the changes that Signal made in 1983; is that
13 right?
14 A. As a result of the reserves and
15 adjustments that were actually booked by Signal in 1983.
16 Q. So that the footnote postulates what
17 would happen if UOP were a stand-alone company.
18 The consolidated income statement, which is DX10,
19 is what happened since UOP was not a stand-alone
20 company, but was a hundred percent owned by Signal,
21 which was making the decisions; right?
22 A. Not in those words, no. The important
23 point is that the Come-By-Chance litigation, again,
24 must be charged off by UOP in one year as a stand-alone

1 company for Signal under purchase accounting theory.
2 When there is a difference between the price you pay
3 for a company and its book value, that becomes a
4 valuation account, and for Signal that's spread over
5 seven years.
6 MR. PRICKETT: Your Honor, I would now
7 change to a different subject. Would it be an
8 appropriate time to recess?
9 THE COURT: Yes, I think so.
10 Could I make just one -- I need
11 several points of clarification, but I'll settle for
12 one right before the recess.
13 On that figure, Mr. Kavanaugh, the
14 $28,080,000 figure, according to the note that
15 would have to be added. The note goes on to say
16 that this would result in a net loss for the year of
17 $80,731,000.
18 THE WITNESS: Right.
19 THE COURT: What do you add the $28,080,000
20 to on Page 1 of that exhibit to get the $80,731,000?
21 THE WITNESS: What you do, Your Honor,
22 is you take the right-hand column, and the net loss
23 is $55,151,000, and you increase that loss by
24 28,080,000, and then if you look over on the column JE5,

1 you will see that I have already used a piece of
2 the $28,000,000, $2,500,000. I can't count it twice.
3 THE COURT: You take that back out.
4 THE WITNESS: Add that back up, and
5 the sum total of those three numbers gets to my
6 $80,000,000.
7 THE COURT: All right. The other
8 question I had, before I forget it coming back from
9 recess:
10 I really had the impression as I heard
11 the testimony earlier that the $52,000,000 reserve
12 for Come-By-Chance was included in these figures
13 here on Exhibit 10.
14 THE WITNESS: Well, that's --
15 THE COURT: Well, that leads to where
16 I'm going. Then I get the impression the footnote
17 says -- well, if the 52,000,000 reserve was added in
18 among other things, other reserves or charges, that
19 you would have ended up with the loss of 55,000,000.
20 Then the note seems to indicate that if UOP was
21 accounted for as a separate company, you would have
22 to put the 28,000,000 back in, and that would up the
23 loss to eighty-some-million.
24 I almost get the impression you are

1 counting it twice. How does that work out?

2 THE WITNESS: I think I can clarify that,

3 Your Honor:

4 If you turn to DX11 --

5 THE COURT: All right.

6 THE WITNESS: DX11 is the balance sheet.

7 If you turn to the second page -- and I make

8 reference to JE20 -- the second number down, the

9 28,080,000, that's the recording of the Come-By-Chance

10 litigation reserve. That's the liability for it.

11 For this balance sheet, if you turn

12 to the first page now, under JE20 you will see the

13 amount about three numbers from the bottom,

14 21,041,000.

15 What you do for the balance sheet is

16 you have to record the liability, and as an offset

17 you put the offsetting amount up on the balance sheet,

18 and let's say it's $28,000,000. What I would do is

19 reduce that amount on the balance sheet every year

20 for Signal until it goes away.

21 The same set of facts, UOP as a

22 separate company. They have still booked the

23 liability, but they can't put this piece on the

24 balance sheet. That piece now has got to go directly

1 to income.

2 So it's not a case of double accounting.

3 The liability has always got to be booked. It's the

4 offset. The offset in the case of Signal goes to

5 the balance sheet. The offset for UOP goes directly

6 to net income; a loss directly to book value, a

7 further loss.

8 THE COURT: I can appreciate maybe it's

9 accounting that does that, and I don't fully

10 understand accounting, but you did have to include

11 the 52,000,000 charge to get to the 55,000,000 loss?

12 THE WITNESS: In the $55,000,000 loss

13 you have included onlya piece of it, a very small

14 piece.

15 THE COURT: Not the whole 52?

16 THE WITNESS: The 52 after taxes is

17 approximately 28. Okay?

18 THE COURT: I understand that.

19 THE WITNESS: Of the 28, the only

20 piece I have included is JE5, 2,500,000. That's all

21 I've done.

22 THE COURT: All right. Well, back to --

23 I don't mean to prolong this. I'm sorry it takes

24 me a while to pick it up. I think I'm getting near

1 the clarification anyway.

2 When you go back to Defendants' Exhibit 10,

3 in the JE5 column, the 2,500,000 --

4 THE WITNESS: That's only a very small

5 piece of the 28.

6 THE COURT: I had the impression in the

7 JE7 column, those figures you went over earlier, that

8 included within those various things was in some

9 fashion the $52,000,000. That's not correct.

10 THE WITNESS: That's not correct. That

11 is not there at all.

12 THE COURT: That was my error then.

13 Thank you for the clarification.

14 We'll take a 15-minute recess.

15 (Recess.)

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1 BY MR. PRICKETT:

2 Q. Mr. Kavanaugh, in connection with the

3 merger between Signal and Wheelabrator, Signal has

4 prepared consolidating statements, has it not?

5 A. Signal has consolidated statements.

6 Q. I said it wrong. Consolidated statements;

7 right?

8 A. Yes.

9 Q. And the effect of that for IRS purposes

10 is to allow Signal in connection with the adjustments

11 that are made to write off the goodwill that had been

12 previously shown on Signal's books; isn't that right?

13 A. What goodwill? I mean, what are you

14 referring to?

15 Q. Was there goodwill shown on the books

16 of Signal prior to this merger?

17 A. No, there was not. There was goodwill

18 but not in connection with Wheelabrator-Frye.

19 Q. I am not asking you in connection with

20 Wheelabrator-Frye. I am asking you if prior to the

21 merger between Wheelabrator-Frye and Signal there was

22 goodwill shown on Signal's books?

23 A. There could be. I don't know exactly.

24 Q. Well, isn't the effect of the accounting

1 to get that goodwill off, and haven't you gotten that
2 off?
3 A. No, that is not true. That is not true.
4 Q. Totally untrue?
5 A. The statement you made is totally untrue,
6 that the Wheelabrator merger with Signal was made to
7 get the goodwill off the books.
8 Q. Oh, no, no. That is not what I asked
9 you. I said did it get it off, not the purpose. I
10 said was one of the effects that you were able to do
11 was to get the goodwill off the books, not that that
12 was the purpose.
13 A. The answer is no.
14 Q. You didn't get it off?
15 A. No.
16 Q. At all?
17 A. No.
18 Q. Didn't write up any assets? This is
19 a separate question.
20 A. We wrote up assets of Wheelabrator when
21 Signal acquired Wheelabrator, but the action of Signal
22 and Wheelabrator merging, in connection with that
23 merger there was goodwill for Wheelabrator because of
24 that acquisition. It had nothing to do with Signal's

1 old books.

2 Q. Now, say that again. I didn't follow

3 you there.

4 A. Okay. You said in connection with the

5 merger of Signal and Wheelabrator was there some

6 goodwill written off on Signal's books. The answer

7 is no.

8 In connection with the Signal-Wheelabrator

9 merger, as it relates to Wheelabrator there was good-

10 will.

11 Q. And what happened in the merger to that

12 goodwill?

13 A. That goodwill is still on the books of

14 Signal.

15 Q. And was some portion of it written off

16 as a result of accounting changes by the write-up of

17 assets or other accounting changes?

18 A. We are talking about Wheelabrator now?

19 Q. Yes.

20 A. Okay. With regards to the purchase of

21 Wheelabrator, there was a valuation made, and as part

22 of that valuation fixed assets of Wheelabrator were

23 written up to appraised value, and the remaining part

24 was called goodwill. Both of those accounts would then

1 be spread, charged off over a period of years.
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1 Q. So that you by purchase accounting
2 weren't able to get all the goodwill of Wheelabrator
3 in the merger written off; is that right?
4 There is still some on the books?
5 A. Goodwill is charged off, and it's
6 spelled out in the annual report, over a 40-year
7 period. You don't charge it off in one year. You
8 spread it over a 40-year period.
9 Q. I understand. But in any case, in the
10 purchase accounting and write-up of the
11 Wheelabrator assets there was still some remaining
12 goodwill which could not be accounted for by the
13 write-up of the assets, and that's got to be
14 amortized over a 40-year period; is that right?
15 A. Well, both can be amortized. When you
16 write up fixed assets, if you write up the value of
17 a plant -- if the plant had a value of $10 and now
18 it has a value of $20, you will charge to income
19 over a period of 20 years the $20. Anything
20 called goodwill will be charged to income over
21 40 years.
22 Q. I think we all understand. And
23 that's the books that Signal-Wheelabrator is using
24 for tax and audit purposes; is that correct?

1 A. I don't understand the question.

2 MR. PAYSON: Excuse me. I don't

3 recall any direct testimony with respect to the

4 effect on goodwill of the Wheelabrator-Signal merger,

5 and I just think this is way beyond the scope of

6 direct examination.

7 THE COURT: Well, I think you are

8 probably correct in that, but I assume Mr. Prickett

9 is heading somewhere with this in the background.

10 Is that right?

11 MR. PRICKETT: Yes. Your Honor, let's

12 have no secrets about this. They have one set of

13 books for tax purposes, and what they report to the

14 SEC, and they have another set of books when they

15 come to value UOP. It's the old two-book system.

16 One for one purpose, and one for another.

17 THE COURT: Is that the purpose of this

18 line of questioning?

19 MR. PRICKETT: Certainly.

20 THE COURT: An attempt to establish that?

21 MR. PAYSON: I would like to ask if

22 there is anything in the record to establish that kind

23 of assertion. It's a very serious assertion.

24 MR. PRICKETT: Indeed it is, Your Honor,

1 and I suggest to you that DX10 and 11 are precisely
2 that. They have one set of books that they have
3 audited, and then when they come to this trial they
4 make another set of books, and that's precisely what
5 I'm talking about.
6 MR. SPARKS: Your Honor, I think that's
7 going a little too far. That's exposure on counsel
8 who participated in the process of this trial
9 as well as the witnesses here. I think I heard it
10 in the opening argument, and we put in the evidence.
11 I think that just goes too far, and I take offense
12 to it, and I want that to be on the record.
13 MR. PRICKETT: Well, okay. And I
14 take offense to what has been done here.
15 THE COURT: All right. Well, before we
16 begin trading accusations for the balance of the
17 morning --
18 MR. PRICKETT: I'm not trading
19 accusations, Your Honor.
20 THE COURT: And I don't want it to get
21 to that point either. But let's -- -
22 We had an objection that went to your
23 line of questioning on the series that it exceeded
24 the scope of direct, and your response is that you are

1 asking these questions to explore the possibility,
2 and trying to establish that maybe books were kept in
3 two separate ways; is that correct?
4 MR. PRICKETT: Yes.
5 THE COURT: All right. I'll permit you
6 to go ahead along that line for a while to see
7 where we go. I agree it's not part of the direct,
8 and I'm not sure how far we can get into it, but we
9 will play it by ear.
10 MR. PRICKETT: Well, Your Honor, let
11 me say that there was elaborate questioning on DX10
12 and 11, these two statements that were prepared in
13 preparation for trial. So they don't call it two
14 books, but at least I think I'm entitled to --
15 THE COURT: I understand your point.
16 MR. PRICKETT: All right.
17 BY MR. PRICKETT:
18 Q. Now, are the entries that appear on the
19 first page of DX10 and 11 -- have they ever been
20 published?
21 A. Have the entries on DX10 and 11 ever been
22 published?
23 Q. Yes. You remember I asked you that at
24 your deposition, and you said they hadn't been.

A. The entries on DX10 in the format, this form, were not published. The entries on DX10 were published and included in the schedule you made me give you in connection with the Signal annual report where we had to break down our segment disclosure. In our segment disclosure I gave you that schedule. These reserves are spelled out.

1 Q. When you say the segment -- I am not
2 aware of what PX --
3 A. I make reference to my deposition. When
4 I mentioned that all the reserves for UOP were identified
5 in connection with the year-end annual report, you took
6 exception that that schedule was not made available to
7 you. You requested that schedule, and since that time
8 it was made available to you.
9 Q. Okay. You don't happen to know the
10 number of it or anything, do you?
11 MR. PRICKETT: Your Honor, could I ask
12 counsel off the record?
13 (Discussion off the record.)
14 MR. PRICKETT: I ask that the witness be
15 handed PX-31 and 32.
16 THE WITNESS: I have them.
17 BY MR. PRICKETT:
18 Q. Is this what you are referring to?
19 A. Yes, it is.
20 Q. And what is it that you are telling me
21 in connection with these PX-31 and 32?
22 A. What I am saying is, as I have testified
23 in my deposition, this is a schedule prepared in
24 January of 1984 in connection with the 1983 Signal

1 annual report. In the Signal annual report under our
2 accounting rules I have got to break down the segments
3 of my operations. The segments are spelled out in that
4 annual report. They are audited by Deloitte Haskins &
5 Sells, and this is a schedule that supports all that
6 financial information.
7 And I read down one of the segments.
8 "Process Technologies and Services, reserves APD,"
9 1.1; Resco, 1.1; Engineering and Construction, reserves,
10 Procon first quarter, 42.8 million; reserves, Procon
11 closing, year-end adjustment, 8.3; reserves, Air
12 Correction, 25.4.
13 Other operations, and I read down,
14 reserves, Fluid Systems, 4.7; reserves, Bostrom, 22.0.
15 You will find all of those numbers in a
16 different form in Exhibit No. 10.
17 Q. And looking at this PDX-31, I would go
18 to the last line. And what does it show for the
19 operating profit?
20 A. For what last line?
21 Q. Bottom line.
22 A. There are different segments. There is
23 more than one segment.
24 Q. Just look at the bottom line of the page,

1 PX-31.

2 A. Yes.

3 Q. Under the column "Operating Profit."

4 A. Yes.

5 Q. What does it show?

6 A. Operating profit for Signal for other

7 operations is a loss of 2.4. You will find that amount

8 in the annual report.

9 Q. Okay. Does this have any indication that

10 the net operating loss for UOP is $55 million?

11 A. No, because UOP is not a separate segment

12 for Signal. UOP for Signal's purposes has got to be

13 shown under Signal's segments. And making it very

14 simple, rather than --

15 Q. If you could, because I am not following

16 you.

17 A. Yes. Rather than showing the $55 million

18 loss for UOP as a separate item, if you were to add up

19 the operating profits identified here for all of the

20 pieces for UOP, you will come close not to the 55.

21 The $55 million is a net loss. You would come to a

22 number much higher than 55. Operating profit means

23 profit before taxes and before interest income. The

24 information is the same. There has been nothing done

1 after the fact and thrown back to '83.

2 Q. So you are saying that if we add up the

3 column on PX-31 entitled "Operating Profit, 1983," we

4 will come to a figure that approaches $55 million

5 loss; is that right? You don't happen to have a

6 calculator there that you can add that up, do you?

7 A. No, I don't.

8 Q. Would you like to make me a little bet

9 that it doesn't come to $55 million loss?

10 A. No, because you would come up with a

11 loss much larger.

12 Q. That is what you are saying the addition

13 of that figure is?

14 A. Yes. Don't be confused by the subtotals.

15 When I say that the loss was $2.4 million for other

16 operations, if I can pull the Signal annual report,

17 that is the total net loss for all of the operations

18 of UOP, Garrett, Ampex, other pieces that end up in

19 that segment. UOP is just one piece. So if you add

20 the pieces identified for UOP, you will see obviously

21 that it is much larger than 2.4.

22 And I would just look at the numbers.

23 Wolverine, they made a profit pre-tax of 9.3. Johnson

24 made a profit of 5.1. I skipped Fluid Systems' loss,

1 $6 million. Water Services lost 400,000. Reserves for
2 Fluid Systems were $4.7 million. Reserves for Bostrom --
3 Q. But you are skipping over the winners.
4 A. You add them all up, you add them all up,
5 you are going to get a much bigger number if someone
6 ran an adding machine of all those numbers.
7 Q. Let's refer to the fact that Aerospace
8 Electronics and Instrumentation indicates an operating
9 profit of $121.5 million; right?
10 A. No. Say that again.
11 Q. Aerospace Electronics and Instrumentation.
12 A. Aerospace -- Your Honor, Aerospace
13 Electronics and Instrumentation, which made $121.5 mil-
14 lion, no part of UOP was in that piece.
15 Q. Well, how about Process?
16 A. In Process.
17 Q. What amount did it make?
18 A. That segment made on a pre-tax, pre-
19 interest basis $85.1 million.
20 Q. And Norplex made?
21 A. Of that amount the Process Group made
22 75.7. Norplex made 12.8. The Resco Group -- that is
23 the waste treatment -- was a loss of 3.3. We have
24 reserves of 2.2. The part that is blocked out is the

1 part that are non-UOP companies. So if you add the
2 numbers that appear, you won't get 85.1. The missing
3 piece are non-UOP companies.
4 Q. Well, are you telling me that when you
5 delivered this sheet, there was something blocked out
6 of this?
7 A. The pieces that are not UOP were not
8 given to you. There is no information -- for example,
9 take the very first one. You mentioned Aerospace
10 Electronics and Instrumentation. There is no mention
11 of any companies in that group made $121.5 million.
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1 MR. PRICKETT: Let me say for the
2 record that PX31 bearing Bates No. S000942 doesn't
3 indicate that there is redaction on it, so I --
4 MR. PAYSON: I belive, Mr. Prickett,
5 I either represented to you in writing or orally
6 when these documents were delivered that these sheets,
7 both Exhibits 31 and 32, were both redacted so as
8 to exclude non-UOP information.
9 MR. PRICKETT: That may be. I can't --
10 THE WITNESS: If I could finish off my
11 thought on the Aerospace Electronics & Instrumenta-
12 tion, that group made 121.5. If you want, I can
13 show you that in the annual report.
14 The companies you don't see in there
15 are Garrett, Ampex, the MPB Corporation, all companies
16 that were not germane to UOP.
17 BY MR. PRICKETT:
18 Q. Now, I just am unclear on one thing,
19 and maybe you are too:
20 When was the Come-By-Chance litigation
21 settled?
22 A. The actual settlement occurred within
23 the past month, of which $30,00,000 has been paid.
24 Q. Well, by that you mean there was a

1 settlement agreement in May of 1984? That's when it
2 was signed?
3 A. That's when it was signed, in May of 1984.
4 Q. And $30,000,000 of that has been paid
5 over as of this time?
6 A. That is correct.
7 Q. And what is the balance that is owed
8 on that settlement?
9 A. The balance owed on that settlement
10 approximates $12,000,000 of the settlement, and
11 there are some legal expenses that are ongoing.
12 So the settlement part of the 52 approximates
13 $42,000,000.
14 Q. It was reserved at $52,000,000?
15 A. It was reserved at $52,000,000 to
16 cover both legal and settlement costs.
17 Q. And it was in this document -- and I'm
18 referring to DX10 and 11 -- the suggestion is made
19 that the full amount of the reserve should be charged
20 against UOP's income for 1983; is that right?
21 A. Yes; because in 1983, through the second
22 quarter of 1983 we had sufficient information to make
23 a reasonable estimate of what it would cost. And by
24 nature of reasonable estimations, the $52,000,000 --

1 if the final amount is $50,000,000, there will be
2 an adjustment of $2,000,000 in 1984.
3 Q. Well, in preparing DX10 and 11 for
4 presentation to this Court, the figure is 52, though
5 you now know that it's only 42 in total; is that
6 right?
7 A. That's not right. It's 42 plus at
8 least five or six-million in legal fees, and until
9 the amount is finally resolved, you don't change the
10 reserve.
11 Q. Well, you at least know the settlement
12 is not going to be $52,000,000; right?
13 A. But the reserve covered both settlement
14 and legal costs at that time. It's your projection
15 of what it's going to cost you both in legal and
16 settlement to settle that.
17 The second thing is that this is the
18 1983 UOP historical financial statement. Throughout
19 all of Signal we have estimates, reasonable estimates.
20 Those estimates are always changing slightly from
21 year to year, and that's how accounting -- that's
22 how in the rules of accounting you pull together
23 financial statements.
24 Q. Well, so in May 1984 you are going back to

1 charge against UOP's income $52,000,000 gross, though
2 as of the time you know that the settlement is less,
3 and you have an estimate of the legal fees that
4 makes that reserve high?
5 A. That is incorrect.
6 MR. PAYSON: Your Honor, I also think
7 that's unfair in that it ignores Mr. Corirossi's
8 testimony that only some of the Come-By-Chance
9 litigation has been settled.
10 MR. PRICKETT: Your Honor, that's
11 leading, and I --
12 MR. PAYSON: It's an objection.
13 MR. PRICKETT: Well, it's not an
14 objection, Your Honor. It's suggesting to the
15 witness that he remember that there is some other
16 stuff which he hasn't testified about, and it is
17 suggesting the testimony of Mr. Corirossi to this
18 witness. And if there is anything unfair, it's
19 suggesting that to this witness, so I --
20 THE WITNESS: I think, Mr. Prickett,
21 it's --
22 MR. PRICKETT: Excuse me, sir. You will
23 get your chance.
24 So I object to that technique, Your Honor.

1 I think it's highly inappropriate, and I'm very
2 surprised to see it done.
3 THE COURT: All right. Where does
4 that leave me?
5 You have an objection pending, and you
6 object to the manner of the objection?
7 MR. PRICKETT: Yes.
8 THE COURT: All right.
9 I guess, Mr. Payson, if that was the
10 design of the question -- or your statement -- and
11 I don't say it was -- Mr. Prickett objects to it,
12 and I guess we certainly do it hereafter.
13 With regard to the objection made by
14 Mr. Payson, I get the impression maybe it went to
15 the fact that he thought your questions were
16 perhaps misconstruing, or misstating the evidence in
17 the case of anything that was offered by this
18 witness.
19 MR. PAYSON: That's exactly right.
20 THE WITNESS: I would like to finish the
21 answer.
22 THE COURT: I have forgotten what the
23 question was.
24 THE WITNESS: That's my problem.

1 THE COURT: All right. I'll overrule
2 that objection at this time, Mr. Prickett, and you
3 may proceed.
4 The question was?
5 (The following testimony was read by the
6 reporter:
7 "Question: Well, so in May, 1984,
8 you are going back to charge against UOP's
9 income $52,000,000 gross, though as of
10 this time you know that the settlement is
11 less, and you have an estimate of the
12 legal fees that makes that reserve high?
13 "Answer: That is incorrect.")
14 THE WITNESS: That is incorrect because
15 you made reference that in May of 1984 I'm going
16 back. I'm not going back. That reserve was booked
17 probably by the second quarter of 1983, number one.
18 Number two, the estimate reserve was
19 to cover both settlement costs plus legal fees.
20 And number three, right through the current date,
21 June of 1984, there has been no adjustment made
22 until we get the final results of the Come-By-Chance
23 litigation with regard to the $52,000,000.
24 I do not change a reserve -- In your

1 example, at 42 plus legal, which is 5, that's 47, and
2 my difference from 52 is five. I don't change the
3 reserve down to 47, wait until the end of '84,
4 bring it back up to 52, and keep on chasing it up
5 and down. I wait until I have the best information
6 now through the end of 1984.
7 BY MR. PRICKETT:
8 Q. Now, do you have in front of you
9 DX10?
10 A. Yes, I do.
11 Q. I think you indicated that the first
12 page of DX10 was prepared in May of 1984 under
13 your direction. Is that correct?
14 A. That is correct.
15 Q. But you said that the pages beyond
16 Number 2 preexisted May 1984; is that correct?
17 A. I said some of the pages beyond the
18 first page existed.
19 Q. All right. Would you take DX10 -- do
20 you have it in front of you?
21 A. Yes, I do.
22 Q. The second page, the note, was done
23 at the time or after the time of the first page;
24 is that correct, in May of 1984?

1 A. That is correct.

2 Q. Now let's turn to the third page.

3 That is a handwritten document entitled "The Signal

4 Companies December 31, 1983"?

5 A. Yes.

6 Q. Is this one that existed in the first --

7 as you said, in the first quarter of 1983?

8 A. Yes. If you look at it, you will see

9 it starts with '82, and it rolls forward by quarter

10 right through the end of 1983.

11 Q. And at the bottom of it it says: "Purpose:

12 To analyze change in UOP fair value adjustment."

13 Is that correct?

14 A. Yes, that is correct

15 Q. Now, you say that that was done in

16 the first quarter of '83?

17 A. It was done -- it's a continuation

18 work paper that's done in the first quarter of '83,

19 and continued all the way through the end of '83.

20 The same type of schedule would be continued into

21 the first quarter of 1984.

22 Q. I'm just asking when it was done.

23 A. It was done in the first quarter of 1983.

24 Q. Notice the next item above that where it

1 says: "Premium due to sale of Flexonics."

2 Do you see that?

3 A. The word is "primarily."

4 Q. I'm sorry. I misread it.

5 A. "Primarily due to sale of Flexonics."

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1 Q. What is the date of the sale of Flexonics?
2 A. What is the --
3 Q. The date of the sale of Flexonics.
4 A. Flexonics was sold during 1983. I don't
5 know the date.
6 Q. All right. Does October, 1983 sound
7 right to you?
8 A. That sounds reasonable, yes.
9 Q. Do you still say that this schedule
10 containing a footnote referring to the sale of Flexonics
11 in October, '83 was done in the first quarter?
12 A. As I told you at the very beginning, it
13 is a schedule supporting the first quarter, and it
14 continues to go through the entire year.
15 Q. I am going to ask you again, when was
16 this schedule drawn up, not what it was done to do;
17 when was it drawn up, because you told me clearly that
18 it was done in the first quarter. Do you want to
19 change that?
20 A. No. To the best of my recollection, this
21 was done in the first quarter of 1983.
22 Q. Even though it has a footnote that says,
23 "Primarily due to the sale of Flexonics," and Flexonics
24 was only sold in October of 1983? Still want to stick

1 to that?

2 A. Across the top, if you look at the

3 headings, it talks about activity of each of the quarters

4 through 1983.

5 Q. Well, how could it be done in the first

6 quarter? And that was going to be my next question.

7 How could it be done in the first quarter if it refers

8 to activities that took place in the subsequent quarters?

9 A. The schedule starts with 1982, and it is

10 rolling forward activity which is accounted for in the

11 first quarter, more activity that is accounted for in

12 the second quarter, more activity that is accounted

13 for in the third quarter, and finally finishing up at

14 the end of the year for year-end '83 purposes the final

15 fair value adjustments on UOP. We have carry-forward

16 schedules that are --

17 Q. Look --

18 THE COURT: Excuse me. May I butt into

19 it. Do you add to it every quarter?

20 THE WITNESS: Yes.

21 THE COURT: As you go along?

22 THE WITNESS: As you go along, because

23 the matter is continuous.

24 THE COURT: It is a page, a ledger page,

1 a book page or whatever that you as each quarter is
2 completed put in it figures for that quarter?
3 THE WITNESS: Yes.
4 THE COURT: So that you started at the
5 first quarter and you worked on the second and the
6 third and you finished in the last quarter.
7 THE WITNESS: And you will see that at
8 different points we have struck balances.
9 THE COURT: Okay.
10 THE WITNESS: You will see that at
11 June 30 we struck a balance.
12 THE COURT: That is what I was getting
13 the impression.
14 MR. PRICKETT: Yes, and that is why I
15 wondered when he said it was prepared in the first
16 quarter --
17 THE COURT: I guess part of it was.
18 THE WITNESS: Part of it was.
19 MR. PRICKETT: Part of it was.
20 THE COURT: Not the whole thing in the
21 first quarter. All right.
22 MR. PRICKETT: But that is not -- I mean,
23 my point, Your Honor, was that he told me clearly it
24 was done in the first quarter, and it is just not so.

1 It is done, as it indicates, in each of the four
2 quarters, and it wasn't done in the beginning of 1983.
3 And if he had said it had been done in all four
4 quarters, we wouldn't have wasted this time.
5 Now, let's go to the other thing.
6 THE WITNESS: Okay. I thought you
7 understood.
8 BY MR. PRICKETT:
9 Q. Behind that there is a document entitled
10 "Signal Companies for the Year Ended December 31, 1983,"
11 and it has behind that "December YTD," which I believe
12 means December year to date; is that right?
13 A. That is correct.
14 Q. And that shows an entry 005; is that
15 correct?
16 A. Oh, Entry 005, yes. I am sorry. I lost
17 you.
18 Q. And then there are some subsequent
19 entries. There is 007. And was that done after 5?
20 A. Was 007 done after 5?
21 Q. Yes.
22 A. 005 is the year-end adjustment, as it
23 says, year to date. It is the year-end adjustment to
24 reflect what is on the top of the exhibit, the

1 two million-five.

2 Q. My point is, when was this prepared.

3 A. When was this prepared? At the end of

4 1983.

5 MR. PAYSON: "This" referring to 005?

6 THE WITNESS: 005.

7 MR. PRICKETT: Yes.

8 BY MR. PRICKETT:

9 Q. So that was not done in the first quarter

10 of 1983, was it?

11 A. This particular entry was not done.

12 Q. That is what we are talking about. This

13 particular one was done after year-end 1983; is that

14 right?

15 A. I am sorry. Read that back. I didn't

16 hear that.

17 Q. Well, I will re-state it. It was done

18 after December 31, 1983, because it says on the top

19 for the year ended December 31, 1983.

20 A. Sure. It was done in January of 1984

21 in connection with the 1983 financials.

22 Q. And the next page behind it doesn't have

23 the information that it was year-end December 31, but

24 it is No. 7. Is this also a year-end adjustment?

1 A. What this represents --

2 Q. No. Focus, if you would, not on what it

3 represents but whether it was a year-end adjustment.

4 And it is No. 7. It would appear to come after No. 5.

5 A. I can't answer your question exactly the

6 way you put it.

7 Q. Is it a year-end adjustment?

8 A. It is the adjustment at the end of 1983

9 to reflect the same kind of adjustment that was booked

10 in the first quarter of 1983.

11 Q. You have led me to another question.

12 When was this prepared; January of 1984?

13 A. Yes. I think it would be very helpful

14 to explain how you mechanically close books.

15 Q. No, I really don't need that particular

16 course at this time. I just want to know when this

17 was prepared.

18 A. This entry was physically prepared in

19 January of 1984. A similar type entry was prepared in

20 March of 19 -- or April of 1983.

21 Q. So let's turn to another page. It is

22 Entry 0040. Does that represent year-end adjustments?

23 A. This represents the year-end audit

24 adjustments resolved with Deloitte Haskins & Sells,

1 booked in January of 1984 for the year ended 1983.
2 Q. And I am going to get back to when was
3 this prepared. Was this also January, 1984?
4 A. This entry was January, 1984.
5 Q. And turn to the page Entry 00042. Do
6 you have that?
7 A. Yes, I do.
8 Q. Was that a year-end adjustment?
9 A. That is a year-end adjustment.
10 Q. Prepared in January, 1984?
11 A. Prepared in January, 1984 for the 1983
12 year end.
13 Q. Turn the next page. It is a handwritten
14 page dated 12/31/83. It is adjustments from gross
15 to net for some properties of UOP.
16 A. You asked me to turn the very last page?
17 Q. No; next to the last.
18 A. Okay.
19 Q. Was this prepared in January, 1984?
20 A. No, it was not.
21 Q. It is dated December 31, 1983.
22 A. That is not a dating. That is referring
23 to the year end.
24 Q. Tell me when it was prepared?

1 A. This schedule was prepared May of 1984.
2 Q. And the last page is a Wheelabrator-Frye
3 corporate headquarters journal entry form. Does it
4 carry a date on it?
5 A. The date is December 31, 1983, right up
6 in the middle, journal entry date.
7 Q. And the batch date is 1/9/84?
8 A. That is the date it was inputted into
9 the computer.
10 Q. Now, having reviewed page by page the
11 reserve entries, does that indicate to you when the
12 supporting documents attached to the first and the
13 second pages of DX-10 were, in fact, prepared, prepared?
14 A. I am sorry. Read that back, please.
15 Q. We have reviewed the journal entry
16 back-ups to DX-10. Is it not a fact that at least so
17 far as the journal entries were concerned, they were
18 not in the first quarter of 1983 but, in fact, were
19 in January, 1984?
20 A. Yes. The reason for that --
21 Q. Well, I am not asking you the reason,
22 but I want a clear answer. It is a fact that as far
23 as the journal entries are concerned, they were all
24 done in January, 1984; is that right?

A. The journal entries were done in January of 1984 to support an annual income statement through the end of -- I am sorry. January of 1984. To support an annual income statement of UOP for 1983.

Q. And the third page, which is the handwritten statement, was not prepared in the first quarter of 1983 but has entries starting back in '82 and continuing through the end of 1983?

A. The term for that is that they carry forward a rolling schedule that is continually updated by quarter for 1983.

Q. Okay. It was started back in '82 and continued through the end of 1983?

A. That is correct.

Q. Now, is there anyplace that we can look at in the first quarter of 1983 that reflects the adjustments that were made in May of 1984 and appear on the first page of DX-10?

MR. PAYSON: Could I have that re-read, please.

(Pending question read back.)

MR. PAYSON: Adjustments made in May, 1984. I just don't understand the question.

1 MR. PRICKETT: I will withdraw the
2 question.
3 BY MR. PRICKETT:
4 Q. On DX-10 there are certain adjustments
5 that appear; is that correct?
6 A. I didn't hear the last word. There are
7 certain adjustments that --
8 Q. Appear.
9 A. Appear, yes.
10 Q. Now, let's see if you can follow me. Is
11 there any document in the first quarter of 1983 that
12 reflects the adjustments that appear on the first page
13 of DX-10?
14 A. In this package?
15 Q. Anyplace.
16 A. Not in this package. Yes, there is.
17 Q. Where?
18 A. That would be part of the consolidation
19 for the first quarter, 1983 out in La Jolla.
20 Q. And what is the document that reflects
21 that?
22 A. That is why I tried to explain a little
23 bit earlier, every month when -- the best thing to do
24 is give you an example.

1 Q. No, no. Just tell me the name of the
2 document.
3 A. There is a journal entry supporting what
4 was booked in the first quarter of 1983. When I pull
5 off an annual statement, I have to "repeat" that entry.
6 I make up a new one to support the December 31, 1983
7 financials.
8 What you see here, for example, in JE 7
9 is the repeating of that entry from the first quarter.
10 Q. And we don't have --
11 A. It is bookkeeping mechanics that --
12 Q. That may be. I am just asking you for a
13 piece of paper that is produced in the first quarter
14 of 1983 that reflects the adjustments found on the first
15 page of DX-10. And will you give me your best shot
16 at that?
17 A. Well, that was not in this package,
18 because --
19 Q. I am not asking you that. I am not asking
20 you the reasons why it is not here. I am just asking
21 you if there exists a document --
22 A. Yes, there does.
23 Q. (Continuing) -- dated in the first quarter
24 of 1983 that reflects the adjustments found on the first

1 page of DX-10. And you say yes?

2 A. Yes.

3 Q. And I am now going to ask you what it is.

4 It is simple language, not why or anything else.

5 A. What it is --

6 Q. What is it?

7 A. It is a journal entry.

8 Q. A single journal entry?

9 A. That I don't know.

10 Q. And to your knowledge, has that ever

11 been produced in this case? Did you ever produce that?

12 A. To my knowledge, that has not been.

13 Q. Okay.

14 MR. PAYSON: Your Honor, I don't want to

15 leave any implication there. It was not requested to

16 be produced.

17 BY MR. PRICKETT:

18 Q. Now, we are getting along, you will be

19 pleased to know. Could you turn to DX-11. I think

20 that you have indicated that as of December 31, 1983

21 Signal, which had become the treasurer for the complex

22 of companies, had centralized -- this is not an

23 accounting term -- cash amounting to $157 million from

24 UOP, among others. It had gotten cash from everybody,

1 but it centralized about $157 million; is that right?
2 MR. PAYSON: Excuse me, Mr. Prickett.
3 I lost the date.
4 MR. PRICKETT: December 31, 1983.
5 MR. PAYSON: Thank you.
6 THE WITNESS: That is not correct. You
7 used the amount of $157 million. What do you mean by
8 the amount of 157?
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1 BY MR. PRICKETT:

2 Q. What amount do you think that Signal

3 had gotten from UOP, or had as of December 31, 1983?

4 A. I don't know the exact amount, but as

5 of --

6 Q. In round numbers.

7 A. There is some part of the $517,000,000

8 that represents cash that was transferred up.

9 Q. I want the total, and then we'll talk

10 about the pieces of it.

11 What was the total amount of cash that

12 I thought Mr. Corirossi told us was $157,000,000 that

13 went from UOP in Des Plaines to La Jolla?

14 A. The point I made was that the 157 is a

15 net accounting balance. Part of that is -- the

16 cash part of that is other transactions like the

17 transfer of debt.

18 Q. Give us the total, and then we'll work

19 back. That's where my figure came from, 157.

20 A. The 157 is the account balance you are

21 picking off Exhibit 11, Page 2.

22 Q. All right.

23 A. Where it's headed up "Advances from

24 Subsidiaries," it's a transfer account. It's made up

1 of cash, made up of a lot of things.

2 Q. Now that we have gotten where the 157

3 is, Signal had gotten more than that, and had paid

4 a couple of indebtednesses of UOP, had it not?

5 $24,000,000 comes to my mind. Is that right?

6 A. That appears reasonable, yes.

7 Q. So the 157 was a net of the payment of

8 about that amount; is that correct?

9 A. That is correct.

10 Q. I think you sort of indicated that

11 that was not cash that Signal was free to do as it

12 liked with. It had certain obligations in connection

13 with that.

14 A. It did indeed.

15 Q. Yes. Some of it was cash advances for

16 customers; isn't that correct -- from customers?

17 A. From customers.

18 Q. And Signal would have to make good on

19 those customer advances at some point; is that correct?

20 A. At some point that is correct.

21 Q. And I think you also said that Signal

22 would have to pay the day-to-day expenses; is that

23 right?

24 A. Day-to-day expenses, working capital

needs, capital expenditures.

Q. Yes. Let's turn back to the first page of your Exhibit DDX11. That's the balance sheet. Have you got it there?

A. Yes, I do.

Q. And on the right-hand side there is "Cash and Short-Term Investments and Marketable Securities." The cash is $15,859,000, and the short-term investments and market securities is $17,854,000; isn't that right?

A. I see those amounts.

Q. Now, that is in addition to the 157,000,000; is it not?

A. That is cash and marketable securities on hand at the end of December 31, 1983.

Q. You didn't answer the question. Is it in addition to the 157,000,000? And the answer is yes?

A. It's a -- You are equating the $157,000,000 as if it's cash. It's not cash. It's a net into company account.

Q. Try my question. Is the $32,000,000, which is the sum of cash and short-term investments, in addition to the 157,000,000, or is it part of it?

A. It's in addition.

1 Q. Thank you. Now let's go to the next entry.
2 There at year-end by your own statement
3 receivables of how much money to UOP?
4 A. Receivables, $173,071,000.
5 Q. Right. Is that in addition to the
6 $157,000,000? The answer is yes?
7 A. It's just another account. It's not
8 part of the 157, the 157 not being cash.
9 Q. And it's not part of the cash?
10 A. Not part of the cash.
11 Q. And these receivables, are they short-term
12 or long-term?
13 A. Those are short-term.
14 Q. Sixty, 90 days?
15 A. I don't know the terms.
16 Q. Well, okay. In any case, this is what
17 the customers are going to owe to UOP of short-term,
18 whatever it is, whatever the terms they are dealing
19 under; is that right?
20 A. That is right. And more than likely
21 an equal amount, if not a greater amount, will appear
22 next year. So therefore, the net effect might be
23 negative. If I'm running a growing business, and I
24 replace the receivables I have had at the end of the

1 year with larger receivables, it costs me cash.

2 Q. In any case, for December 31, 1983,

3 Signal not only had the $157,000,000 that we talked

4 about, but it had coming into its treasury $173,00,000

5 worth of short-term receivables; is that correct?

6 A. Not in that simplistic way, no.

7 Q. Well, okay. Knocking out the pejorative,

8 that is not correct, that Signal was not going to

9 get $173,000,000 in receivables?

10 A. Not as the way you stated it.

11 Q. Well, you state it your way then.

12 What was going to happen so far as the receivables

13 and Signal which had now become the treasurer

14 for UOP, among others, in connection with these

15 short-term receivables?

16 A. You cannot isolate just receivables.

17 Q. Well, taking them one step at a time,

18 so far as the receivables were concerned, Signal

19 was going to get this money; isn't that right, and

20 that was what it was going to use to pay UOP bills,

21 or was going to be available to pay UOP bills; right?

22 A. That is incorrect because I just

23 indicated that if you collected the $173,000,000,

24 and the business were to grow in 1984, I would have a

like amount for 1984. In terms of cash nothing would have happened.

Q. I'm not talking about cash. I'm just talking about receivables.

A. No. You are talking about cash. You are saying the 173 becomes cash, and that I can spend it. That's not true.

Q. No, I'm not saying that, sir. I'm saying that when the bills come due, Signal can expect the receivables to pay those bills; isn't that right?

A. Signal will receive the cash from those receivables and use that cash to turn around and fund other bills of UOP.

Q. Okay. Now, turning to the second page -- Well, let's stick on the first page.

The total current assets by your calculation for UOP at the end of December 31, 1983, was $343,735,000; is that right?

A. That is correct.

Q. And its total current liabilities were less than that, were they not?

A. The total current liabilities amounted to $337,000,483.

1 Q. So that the current liabilities were
2 sufficient to meet the current liabilities; is that
3 right?
4 THE COURT: The current assets were
5 sufficient to meet current liabilities.
6 MR. PRICKETT: Yes.
7 BY MR. PRICKETT:
8 Q. With a little bit over?
9 A. At that one day snapshot, yes.
10 Q. Yes. Well, that's all a balance
11 sheet is, as I was taught in Accounting 101.
12 A. Except that you and I have already
13 been discussing Come-By-Chance which is three lines
14 down below, and we have already made a payment of
15 $30,000,000 that we thought we were going to make
16 over a long term that we made currently. So the
17 next day, or in the month of May I'm short.
18 Q. Yes. But on the other hand, you also
19 have -- Let's go down another couple of lines.
20 You having reserved all that, you also
21 have $157,000,000 some part of which is customer
22 advances, and some part of which is not customer
23 advances; isn't that right?
24 A. Yes.

1 Q. You also have retained earnings in
2 what amount?
3 A. Retained earnings?
4 Q. Yes.
5 A. I have retained earnings as included
6 within Signal of approximately $293,000,000, but
7 as I also have testified earlier, on a stand-alone
8 basis I would only have $263,000,000.
9 Q. Against which to offset a possible
10 loss after tax of $24,000,000; is that right?
11 MR. PAYSON: Excuse me, Your Honor.
12 I think the record is getting confused.
13 Mr. Prickett made reference to
14 retained earnings, not to shareholders' equity. I
15 think the question was to retain earnings.
16 MR. PRICKETT: Well, Mr. Payson always
17 is helpful, and gets me straightened out.
18 BY MR. PRICKETT:
19 Q. Let's go to shareholders' equity.
20 The shareholder equity after all the
21 reserves are taken is what amount? $293,491,000;
22 right?
23 A. Yes; without the effect of Come-By-Chance
24 if UOP were a stand-alone company.

1 Q. Let's visualize that.

2 As of December 31, 1983, if you had

3 taken all the reserves and all of the adjustments

4 suggested by DX11 except Come-By-Chance, you

5 calculate that the value of UOP to Signal, the

6 hundred percent owner, was $293,491,000; is that right?

7 A. Yes. And as you indicated, without

8 Come-By-Chance.

9 Q. Okay. If you then said well, let's

10 add in Come-By-Chance, you would have to deduct a

11 $24,000,000 item from your $293,491,000; is that right?

12 A. That and also, as indicated in the

13 attached note, $4,539,000 which were consolidation

14 adjustments.

15 Q. Yes. Okay. So you would end up with a

16 net figure for what Signal ended up with of 293 minus

17 28 in round numbers? $293,000,000 minus $28,000,000,

18 rounding it all off?

19 A. Minus approximately $30,000,000.

20 Q. Okay. So that you would end up with an

21 equity in round numbers of $263,000,000; is that right?

22 A. That is correct.

23 Q. And that's what Signal by your

24 calculations would end up with in terms of the value

1 of UOP, having reserved everything it possibly could
2 in 1983 against income, is that right; written
3 everything off? There is nothing more thay can write
4 off, is there?
5 A. Provided -- I take exception to the
6 words "written everything off." Providing all of
7 the known adjustments and reserves at that time.
8 Q. Okay. After you have provided reserves
9 and you have expensed everything, you would still
10 end up with a company that you -- Including Come-By-Chance
11 and the other item, you would still end up with some-
12 thing worth $263,000,000; is that right?
13 A. That is correct
14 Q. And you would end up at that point,
15 and in fact have ended up with a company that has
16 gotten rid of all of the losers; isn't that right?
17 That is, Process is gone, Flexonics is gone --
18 A. That's --
19 Q. Well, you tell me. What have you gotten
20 ridden of? All the losers?
21 A. What has been shut down is Procon.
22 Q. Right.
23 A. Air Correction.
24 Q. Right.

1 A. Bostrom has been held for sale or
2 restructure.
3 Q. Right.
4 A. And I believe just from memory those
5 are the major ones.
6 Q. Transportation?
7 A. Aerospace has been sold.
8 Q. So what do you end up with now?
9 Process?
10 A. That's correct. You end up with Process --
11 Q. Norplex?
12 A. Norplex, Wolverine.
13 Q. Wolverine.
14 A. Bostrom continues.
15 Q. Right.
16 A. And Fluid Systems.
17 Q. Right.
18 A. Realty, and there are maybe one or two
19 others. I can't recall.
20 Q. And are any of those other than the
21 Bostrom losers? That is, did they lose money in 1983?
22 A. Yes. Fluid Systems.
23 Q. And it lost $6,000,000; is that right?
24 I'm referring to PX31.

A. On PX31 I just want to clarify it. Before taxes and before interest -- therefore it's an operating profit number -- Fluid Systems lost $6,000,000 if it were on its own, and there were additional reserves of Fluid Systems on that schedule for 4.7-million dollars.

1 Q. Now, have you ever calculated what the
2 divisions remaining with UOP are going to earn in terms
3 of net operating during the year 1984?
4 A. No, I have not.
5 Q. What is the amount of the debt
6 attributable to the remaining divisions of UOP in 1984?
7 A. That I don't know. I don't know.
8 Q. So that you have made no calculations
9 after all the reserves and adjustments reflected in
10 DX-10 and 11 are made as to what sort of a projected
11 earnings UOP will now make for Signal in 1984; is
12 that right?
13 A. That is correct.
14 Q. Has anybody performed that function in
15 Signal, as far as you know?
16 A. As far as I know, no.
17 Q. So that what you have done is to make a
18 calculation in DX-10 and 11 to show what charges you
19 could make against UOP's income in 1983, with the
20 result that what was operating income from continuing
21 operations of $41 million and ended up as a loss, but
22 you never calculated that once all those were taken and
23 all the dust had settled, what Signal would end up with
24 in terms of UOP and its ability to generate income in

1984, 1985 and 1986?

MR. PAYSON: Excuse me. Could I have the question read back, please.

MR. PRICKETT: Sure. It may be a little bit long.

(The court reporter read back as follows:

"Question: So that what you have done is to make a calculation in DX-10 and 11 to show what charge you could make against UOP's income in 1983, with the result that what was operating income from continuing operations of $41 million and ended up as a loss, but you never calculated that once all those were taken and all the dust had settled, what Signal would end up with in terms of UOP and its ability to generate income in 1984, 1985 and 1986?")

MR. PRICKETT: Your Honor, I would object to that question.

MR. PAYSON: Sustained.

THE WITNESS: I counted four questions, at least.

THE COURT: All right. Why don't you start over.

MR. PRICKETT: There are at least that many and a lot more implications. Let me take them one

1 step at a time and let me do it in inverse order.
2 BY MR. PRICKETT:
3 Q. Did you ever calculate what net operating
4 income can be expected from UOP in 1984, 1985, 1986?
5 A. No, I did not, because the UOP that you
6 keep making reference to going forward to '84, '5 and
7 '6 is not the same UOP that was there prior to then.
8 Q. It is very different, isn't it?
9 A. It really is.
10 Q. It is a lot better than the one in 1983,
11 isn't it? It has gotten rid of all the losers.
12 A. I certainly hope so.
13 Q. So do I, but perhaps for different reasons.
14 In any case, looking at the broad picture,
15 in 1983 the charges reflected in DX-11 and DX-10 are
16 reflected as against UOP's income; that's correct,
17 isn't that right?
18 A. They are UOP's adjustments. They have
19 not been taken against it. They are UOP's adjustments.
20 Q. And the UOP that emerges in 1984 is one
21 that has taken one-time charges or that has had, to use
22 your phraseology, one-time charges against its income
23 and has gotten rid of divisions such as Procon that
24 were creating losses against its income statement; isn't

1 that right?

2 A. I think you have to read that back.

3 MR. PRICKETT: Sure.

4 (The court reporter read back as follows:

5 "Question: And the UOP that emerges in

6 1984 is one that has taken one-time charges or that

7 has had, to use your phraseology, one-time charges against

8 its income and has gotten rid of divisions such as

9 Procon that were creating losses against its income

10 statement; isn't that right?")

11 THE WITNESS: I don't believe I ever

12 used the terminology "one-time charges."

13 BY MR. PRICKETT:

14 Q. All right. Let's pause on that. The

15 charges that are found and adjustments that are found

16 on DX-10 and 11 are one-time charges, are they not?

17 A. With regards to the reserves, I hope

18 so.

19 Q. Well, I mean, aside from the expression

20 of hope, isn't it a fact that unless there is a change

21 of some kind, these are one-time charges? If you have

22 estimated them correctly, they are one-time charges?

23 A. That is true.

24 Q. And hence, they are reflected both in the

1 balance sheet and on the income statement; isn't that
2 correct?
3 A. That is correct.
4 Q. And you kind of take your medicine by
5 doing that, but unless there is a change, that is over
6 and done with? You are not going to have it again.
7 A. That is too simplistic a way to put it.
8 You have taken your reserves and adjustments that you
9 are aware of in 1983. You still end up with business-
10 es, such as Fluid Systems, that still have problems.
11 Q. Oh, sure.
12 A. And those problems -- it is an operating
13 problem. We have other businesses that we have not
14 solved the operating problems. Two years out we could
15 have a very large further write-off because Fluid
16 Systems deteriorated.
17 Q. But at least as of January 1, 1984 you
18 have reserved and charged off everything that you knew
19 about in terms of what were losses; isn't that right?
20 I mean, there may be something in the future.
21 A. As of December 31, 1983, that is right.
22 Q. And I have forgotten where you said you
23 went to take your undergraduate work.
24 A. Boston College.

1 Q. And you graduated in accountancy, I
2 believe?
3 A. Bachelor of science in accounting.
4 Q. And what year was that?
5 A. 1964.
6 Q. And at the time did you study and become
7 familiar with a financial analysis technique called
8 the discounted cash flow method?
9 A. I had some contact with it, not much,
10 back then.
11 Q. Then you became a CPA; is that correct?
12 A. That's correct.
13 Q. And did you become more familiar with
14 the concept that you had at least run up against when
15 you were in college?
16 A. Yes, I did.
17 Q. And was this a technique that you used
18 at times in your work for Peat Marwick, one of the
19 Big 8?
20 A. Yes, at times.
21 Q. It is something you do all the time, is
22 to discount stuff back. It may be very simple or it
23 may be quite complicated.
24 A. That is correct.

1 Q. But it is a regular tool not only of
2 analysis but also of accountants; isn't that correct?
3 A. In connection with auditing and accounting,
4 yes, that is correct.
5 Q. And there is nothing particularly
6 esoteric about the methodology, is there?
7 MR. PAYSON: Chancellor, I don't think
8 there was any direct testimony relating to the
9 methodology of discounted cash flow analysis.
10 Obviously, he can test Mr. Kavanaugh's qualifications,
11 but Mr. Kavanaugh is not here as an expert on evaluation.
12 He has not testified about the utilization of that
13 methodology, and I think it goes beyond the scope of
14 the direct.
15 MR. PRICKETT: Let me ask one more
16 question, and then we will get off it.
17 THE COURT: Fair enough, Mr. Payson?
18 All right.
19 BY MR. PRICKETT:
20 Q. Did you ever do a discounted cash flow
21 analysis of what UOP is going to be worth to Signal
22 from January 1, 1984 onward?
23 A. No, I never did.
24 Q. Do you know of anybody in Signal who has

1 done that?

2 A. No, I do not.

3 MR. PRICKETT: May I have a moment

4 with my colleague.

5 THE COURT: Yes, Mr. Prickett.

6 MR. PRICKETT: I have no further

7 questions, Your Honor.

8 THE COURT: All right. Thank you,

9 Mr. Prickett.

10 MR. PAYSON: Chancellor, may I have a

11 moment to consult with Mr. Halkett?

12 THE COURT: Yes, by all means.

13 (There was a pause.)

14 REDIRECT EXAMINATION

15 BY MR. PAYSON:

16 Q. Mr. Kavanaugh, you tried to testify

17 earlier about the mechanics of closing the books, as

18 you called it, in an attempt to assist Mr. Prickett in

19 understanding your testimony. He didn't want that.

20 Would you please describe for the Court

21 the mechanics of closing the books as it relates to

22 the establishment and recordation of the reserves in

23 this case.

24 A. Okay. Going back to the first quarter

1 of 1983 -- let me back off a second.

2 Exhibit 10 and Exhibit 11, as I have

3 testified to earlier, were the submission of the UOP

4 historical financial statements at December 31, 1983

5 and for the year ended December 31, 1983. In general,

6 the documentation supporting that work would be

7 documentation that was originated, if you would, in

8 January of 1984 in connection with the year-end audit

9 of Signal.

10 Now, going back to the first quarter of

11 March 31, 1983, when I closed the books back then, I

12 have original documentation back then as to closing

13 those books and affecting those accounts. The JE 7

14 that we made reference to, there is original documenta-

15 tion back in that first quarter supporting the booking

16 of those reserves.

17 I don't mechanically take that piece of

18 paper and pull it out of the book and bring it forward

19 to April, pull it out of the book and bring it forward

20 to May. That stays with that closing package, set of

21 documents. When it comes time to do April's, I repeat

22 that entry. In essence, I create a new entry in April

23 repeating what was done in March. If that entry

24 doesn't change, I repeat it again in June, July, so

1 finally, when I come to the end of the year, if that
2 same adjustment is in place, as was done here, I have
3 to create another piece of paper to mechanically close
4 the books at the end of the year.
5 Every period is discrete.
6 Q. Thank you. And let me ask you one other
7 question. There seems to be some confusion as to UOP,
8 Inc. as of December 31, 1983 prior. What happened to
9 UOP, Inc. as we knew it on December 31, 1983 as of
10 January 1, 1984 from both a financial and an operational
11 viewpoint?
12 A. From both a financial and an operating
13 viewpoint UOP, Inc. no longer exists. The operating
14 divisions that comprise UOP have been reassigned either
15 to the Hampton operation or in the case of Procon down
16 to the M. W. Kellogg operation. There is no longer a
17 separate set of financials and a separate set of
18 operating results for UOP, Inc.
19 MR. PAYSON: Thank you. I have no
20 further questions, Chancellor.
21 MR. PRICKETT: Your Honor, I have
22 nothing further.
23 THE COURT: Well, on that last answer
24 then, Mr. Kavanaugh, what is the result of that? UOP

1 is still a legal entity, a separate corporation?
2 THE WITNESS: That is right.
3 THE COURT: It exists under the laws of
4 the State of Delaware.
5 THE WITNESS: Yes.
6 THE COURT: It has a shareholder, Signal.
7 But it, in effect, does nothing.
8 THE WITNESS: It, in a sense, is a shell.
9 THE COURT: That means it has no business,
10 pays no dividends, nothing at all.
11 THE WITNESS: No. It is what you call
12 a non-operating entity. And that is similar to other
13 entities within Signal.
14 MR. PAYSON: Chancellor, on that, I
15 thought you were finished. There is something that
16 needs clarification there.
17 THE COURT: Sure. Go ahead.
18 MR. PAYSON: Mr. Kavanaugh, does UOP, Inc.,
19 the corporate entity, still hold title to various
20 property and real estate?
21 THE WITNESS: Yes, it does.
22 MR. PRICKETT: Your Honor, that provokes
23 some inquiry from me.
24

RECROSS-EXAMINATION

BY MR. PRICKETT:

Q. Administratively, UOP has changed, but we still identify Process and all of these prior divisions, and they still exist, do they not?

A. The individual divisions still exist.

Q. So that you can trace -- let me go back again. It is perfectly clear that on December 31, 1982 -- I am taking you back a whole year -- UOP was the same corporate entity financially and operationally that it had been from 1978; is that correct?

A. That is correct.

Q. Then in 1983 Signal made certain changes. It closed some down. Sold some off, and it reorganized some; is that right?

A. That is correct.

Q. In 1984, January 1, 1984, there are certain divisions that title to which is still held by UOP: Process, Wolverine? We have been through them; is that right?

A. That is correct.

Q. And they will produce in 1984, 1985, 1986 their own individual income streams?

A. That is correct.

1 Q. And those income streams do not go
2 through UOP now. They go directly to Signal; is that
3 correct?
4 A. They go through the respective group,
5 where they are included, and then on to Signal.
6 Q. Sure. So that instead of going back to
7 UOP, then on to Signal, they go through their group
8 now, and then they go on to Signal; is that right?
9 A. That is correct.
10 Q. So that if you were of a mind to, you
11 could say, well, let's see what Process is doing,
12 let's see what Wolverine is doing, let's see what
13 some of the others are doing, and just take their
14 income stream, and you could see, though they happened
15 to go through their group and then to Signal, if you
16 took them individually, you could see what these
17 particular divisions of UOP are doing individually,
18 and then you could add them up?
19 A. You could get some individual pieces of
20 UOP, but there are some major negatives, such as
21 interest expense or corporate overhead, that used to
22 exist in DesPlaines that no longer is there. So it
23 is like taking half the pie and saying, well, that
24 gives me an answer. I don't know what answer it gives

1 me, but it gives me an addition. You really can't in
2 '84 re-create what UOP would have looked like.
3 Q. So are you suggesting that for purposes
4 of this case UOP disappears and that there is no way that
5 you can figure out what up until that time had been UOP
6 and what it is worth on the other side? Is that what
7 you are suggesting?
8 A. No, no. UOP doesn't disappear. UOP
9 legal entity still is there, and the individual pieces
10 that you made reference to, Process, Norplex, they are
11 still there. They are continuing forward. It is just
12 that I can't go into '84 and create a meaningful UOP,
13 Inc. as it existed in 1983.
14 Q. I see. You can go back as you did in
15 DX-11 and 10 in May and make the charges against the
16 old UOP, but you can't go forward and see what the new
17 one would look like; is that right?
18 A. That is not true. That is not true.
19 I said that is not true, what you said about going back
20 from May, '84 to '83. Again, everything existed at '83.
21 I am not re-creating something.
22 Q. Okay. We have been over that.
23 Are you suggesting to me that on
24 December 31, 1984 there was, in effect, a liquidation

1 of UOP in the sense that the pieces were all reassigned,
2 and though the name exists, that is really all?
3 MR. PAYSON: I think you misspoke on the
4 date again.
5 MR. PRICKETT: I am sorry.
6 BY MR. PRICKETT:
7 Q. December 31, 1983 there was, in effect,
8 a liquidation of UOP.
9 A. I can't answer that in the legal or
10 technical sense --
11 Q. No. In an accounting sense.
12 A. No. It is just that the legal entity
13 continues forward, and --
14 Q. Let's agree that the shell --
15 A. The shell continues forward.
16 Q. As you say, the shell. And I am not
17 agreeing with that. But the shell continues forward.
18 And, in effect, there was a liquidation over the period
19 1983 and culminating on December 31, 1983 there was, in
20 effect, a liquidation of UOP?
21 MR. PAYSON: Your Honor, I think that
22 calls for a legal conclusion.
23 MR. PRICKETT: Well, I am not asking in
24 a legal sense.

1 THE COURT: All right. Let's clarify it.
2 You are asking him from an accounting standpoint?
3 MR. PRICKETT: Yes.
4 BY MR. PRICKETT:
5 Q. In effect, didn't Signal decide to
6 liquidate the old UOP? The name carried forward, but,
7 in effect, they liquidated the company that we all
8 knew and loved in 1982?
9 A. No, I can't answer that from an accounting
10 standpoint there was liquidation. I cannot.
11 Q. Well, you say it is not true or you just
12 don't know?
13 A. I just don't know the terminology you
14 are using in this regard in an accounting sense.
15
16
17
18
19
20
21
22
23
24

1 Q. Well, parts of it were liquidated?

2 A. Parts of it were liquidated in the sense

3 of sold.

4 Q. And parts were discontinued?

5 A. That is true.

6 Q. And other parts were reassigned?

7 A. Other parts were reassigned.

8 Q. So you are taking the position that

9 there was nothing left in the shell except maybe

10 legal title, but there was nothing left there?

11 It had been dispersed; either sold, discontinued or

12 reassigned?

13 A. The operating assets were reassigned

14 within the Signal Companies.

15 Q. So that it was sort of liquidated

16 within Signal except for the parts that were sold

17 outside of --

18 A. Again, I prefer to use the word

19 "reassigned." The "liquidated," I'm not a hundred

20 percent sure of.

21 MR. PRICKETT: I think I've gotten

22 everything I can, Your Honor. Thanks very much.

23 THE COURT: Could I ask just one very

24 brief point of clarification, Mr. Kavanaugh?

1 THE WITNESS: Sure.

2 THE COURT: Going back to the accounting
3 method for making these charges, I think you were
4 using an example a short time ago of Fluid Systems
5 having a $6,000,000 reserve, and you talked about
6 two years down the line things might be different.
7 You would have to adjust. I understand that, but I
8 just want to be sure:

9 If, for example, Fluid Systems had a
10 $6,000,000 reasonably well established known
11 liability such that you have to make a reserve for
12 it now, that goes against income in the year that
13 the charge is made; is that correct.

14 THE WITNESS: That's right.

15 THE COURT: Then if, for example, two
16 years from now it incurs further liabilities so
17 that it has now liabilities including that 6,000,000
18 of let's say 10,000,000, what do you do in that
19 second year? Do you add -- Obviously you have to
20 add an additional $4,000,000 charge.

21 THE WITNESS: Okay. In that second year,
22 in your example it's now 10.

23 THE COURT: A total of 10.

24 THE WITNESS: You now have to hit

1 another $4,000,000 the following year. But the key
2 thing is that all these reserves from well over a
3 hundred-million dollars were established, and cannot
4 be established in a vacuum. They were each audited
5 by the outside accountants.
6 THE COURT: I understand that. I'm
7 just using a hypothetical in trying to understand
8 from my limited knowledge of accounting how it would
9 work.
10 THE WITNESS: Sure.
11 THE COURT: If two years down the
12 line it went from six to 10,000,000, on its books
13 for that year you obviously have a total reserve of
14 10,000,000.
15 THE WITNESS: That's right.
16 THE COURT: But would normally 4,000,000
17 of that be accounted against the income?
18 THE WITNESS: 4,000,000 accounted against
19 income for that year.
20 THE COURT: All right. Thank you.
21 MR. PRICKETT: Your Honor, since we
22 are all learning, may I see if there is one other
23 point that Mr. Kavanaugh can help us on?
24

BY MR. PRICKETT:

Q. When you establish a reserve -- and let's take your example again -- a $6,000,000 reserve, you charge it against income; isn't that correct?

A. In that year.

Q. In that year?

A. Yes.

Q. And then do you earn interest on it?

A. Do I earn interest on that reserve?

Q. Yes.

A. No, I don't.

Q. Not at all?

A. No.

Q. So you don't -- If you set a reserve, say, of $6,000,000 this year, and you don't pay it off for 10 years, you are not earning interest on that at all?

A. Let's stay with your example. If I set a reserve of $6,000,000 that I know I'm going to have to pay three years out, that reserve stays at six for the next three years.

When I finally reach that third year, and someone says pay the bill, I spend $6,000,000. The reserve goes away. The reserve at 6,000,000 is

1 the same number for all three years, assuming no
2 change in that reserve.
3 Q. Sure. But are there any circumstances
4 under which the reserve earns interest?
5 A. Not that I'm familiar with, no.
6 MR. PRICKETT: Okay. Thank you.
7 MR. PAYSON: I have no questions,
8 Your Honor.
9 THE COURT: All right. Thank you,
10 Mr. Kavanaugh. You have been very patient in putting
11 up with us. You may be excused.
12 (Witness excused.)
13 THE COURT: It's time for the lunch
14 break. What are we going to do after lunch?
15 MR. PAYSON: Mr. Purcell will go on
16 the record.
17 THE COURT: All right. Since we have
18 had a long morning, let's break until 2:15. Is
19 that satisfactory?
20 MR. PRICKETT: Yes, sir.
21 MR. PAYSON: Fine, Your Honor.
22 THE COURT: We will recess until 2:15.
23 (Luncheon recess.)
24

AFTERNOON SESSION

(Reconvened at 2:18 p.m.)

MR. PRICKETT: Your Honor, a housekeeping detail before we start.

THE COURT: All right.

MR. PRICKETT: I was asked to state my position on the defendants' exhibits.

THE COURT: Objection to exhibits.

MR. PRICKETT: Yes, sir. Your Honor, we object to Defendants' Exhibits 10 and 11. We object on the grounds that they are presented supposedly in response to our request for production. We made no such request that they prepare any such exhibit. They have prepared the exhibit. They have presented it as if it was in response to our request. We requested documents that were in existence, and instead they have gone forward at the direction of counsel, and prepared an exhibit in 1984. And furthermore, they have not presented the underlying documents.

I refer to the stipulation and order on plaintiff's modified second request for production.

THE COURT: May I interrupt just a second?

1 MR. PRICKETT: Sure.

2 THE COURT: My recollection is hazy,

3 since it was yesterday that this occurred, but

4 haven't I already admitted those two documents

5 subject to your right to strike 10?

6 MR. PRICKETT: Yes. And therefore, this

7 objection is broader than the objection made

8 yesterday. I now know what has happened; and

9 therefore, I have reserved on 10 because there were

10 some changes in it. I now know what they did.

11 They prepared a document. They represent that it is

12 in response to a document request. It is not that.

13 It is a document that is prepared --

14 THE COURT: For trial.

15 MR. PRICKETT: For trial.

16 THE COURT: Which you feel has no

17 evidentiary value as a document itself.

18 MR. PRICKETT: Well, it is presented

19 to me as in response to my document request. It is

20 not that at all. It is their trial preparation

21 document.

22 I had assumed until I talked to these

23 two guys today that it was, in fact, a document that

24 existed, but it now fully comes out that what they

1 have done is prepared what purports to be a document
2 in response to a request for production, but it is
3 not that at all. It is something that they have now
4 prepared, and they couple that with the fact that
5 the underlying documents -- and I refer to Request
6 No. 4, "All documents describing, referring to or
7 commenting on all or any of the documents referred
8 to in Paragraphs 2 or 3 but only insofar as
9 such comments relate to UOP." Those are not produced.
10 So that I get the document that is
11 prepared that is not called for and is a trial
12 preparation document, and I don't get the underlying
13 documents that this gentleman said were, in fact,
14 in existence before that. So that I would object to
15 those.
16 THE COURT: All right. Let me see
17 where we are on these two documents, then.
18 My recollection is this, Mr. Payson:
19 You offered them in evidence, and I don't recall you
20 indicating any particular purpose that they were
21 offered for at the time. You simply wanted to offer
22 them so they would be in evidence for the purpose of
23 the examination of the witness, and Mr. Prickett
24 indicated that he thought he would probably go along

1 with that, subject to reserving the right, perhaps,
2 if the document he had, I think he indicated,
3 differed in any respect from the one he had
4 seen earlier, he might wish to object to it. But my
5 point is, I never based on that scenario understood
6 any particular reason why you were offering it.
7 Now Mr. Prickett objects to them. So I
8 treat that, Mr. Prickett, as a motion to strike the
9 documents from evidence.
10 MR. PRICKETT: Yes, sir.
11 THE COURT: Since I already put them in,
12 and I understand his basis now being that they are
13 self-serving documents made for the purpose of
14 trial and use at trial and have no evidentiary value
15 standing alone as documents of Signal.
16 MR. PAYSON: Yes, Your Honor.
17 THE COURT: So maybe we had better go
18 back to why you would have offered them had he
19 objected at the time.
20 MR. PAYSON: I think it is apparent
21 that the witnesses, both Mr. Corirossi and Mr. Kavanaugh,
22 have now laid the foundation for the admissibility
23 of these two exhibits. Mr. Prickett's claim of
24 surprise comes with ill grace in that he deposed both

1 of these gentlemen, I believe, on May 29th and June 1st,
2 and both of these documents were the subject of his
3 examination at those depositions.
4 More significantly, Plaintiff's Exhibit
5 No. 30, which has been admitted without objection,
6 is identical to Defendants' Exhibit 11. Plaintiff's
7 Exhibits Nos. 28 and 29 are identical in that if you
8 take the first three pages of Plaintiff's Exhibit 29
9 and attach to those three pages the back-up exhibits
10 to Plaintiff's Exhibit 28, you get exactly
11 Defendants' Exhibit 10. So they are in effect
12 already in evidence, having been put in evidence by
13 the plaintiff.
14 In all events, Mr. Corirossi and
15 Mr. Kavanaugh have testified as to why the exhibits
16 were prepared, how they were prepared and what they
17 reflect. They reflect UOP's consolidated financial
18 position as of December 31, 1983, and that is
19 certainly relevant to this Court's inquiry in this
20 proceeding.
21 THE COURT: All right.
22 Mr. Prickett, is there anything you
23 want to say with regard to that? It's not necessary,
24 but I wanted to afford you the opportunity.

1 MR. PRICKETT: Your Honor, until the
2 trial, I repeat we did not know fully as to what
3 they had done. We now know, and we also now know
4 they haven't produced the underlying documents.
5 That's the basis of the objection.
6 THE COURT: Let me approach it this
7 way:
8 From what I have heard, it's been my
9 understanding from the two witnesses who have
10 testified that there was no such document as the
11 cover page on Defendants' Exhibit 10 in existence
12 because of the internal structure of UOP and Signal
13 for 1983. So therefore, any kind of a summary of the
14 financial income status of UOP for 1983 apparently
15 had to be constructed in order to get it on one
16 document.
17 It strikes me that maybe under Rule 1006
18 of our Rules of Evidence, which deals with summaries,
19 there is some leeway for allowing into evidence
20 documents which in effect are summaries of more
21 voluminous documents provided the underlying basis
22 for them is made available for cross-examination
23 purposes and that sort of thing.
24 I would be inclined to think that that

1 might be an apt instance to apply that particular
2 rule in view of the fact that any kind of a summary
3 document for UOP for 1983 does not exist. But I'm
4 not sure how content you might be -- I can pretty
5 well guess, but with regard to this specific question,
6 as far as the underlying documents or the basis for
7 the cover page, I guess -- Admittedly the cover
8 page was produced for Mr. Kavanaugh by somebody in
9 his department, and he has indicated the other
10 documents all did exist, and I think maybe to some
11 degree purport to justify what's on the cover page,
12 although I don't think totally. Some reference was
13 made to other documents; Plaintiff's Exhibits 24 and
14 31.
15 I guess what I'm saying is I don't
16 know that the cover page itself has any independent
17 evidentiary value. It's obviously just a summary.
18 It's not something that's a record kept in the
19 normal course of business. It's not a reproduction
20 of an accounting page in UOP's books or Signal's
21 books. It was obviously made for the purpose of
22 this trial in the sense that it was made to answer
23 a discovery request of yours. So on its face I
24 don't think it has any evidentiary value as such other

1 it may be a summary, or a way for the Court to look
2 at what defendant Signal in this case is claiming
3 to be the status of UOP. And I understand you object
4 to that, and don't think it's accurate. But I
5 wonder if I should strike it on that basis.
6 MR. PRICKETT: Your Honor, we think you
7 should, but let me say that Your Honor correctly
8 states, I think, the situation except that it is -- I
9 disown the parentage of this -- I won't give any
10 expletive of the nature of this document or its
11 legitimacy or illegitimacy. It's not in response to
12 my document request. It didn't exist. It was made
13 up in response to the needs of Signal. It's not
14 something that I called for.
15 THE COURT: Let me explore that --
16 MR. PRICKETT: It was put out as if
17 it was, and I was suckered into thinking it was,
18 but it wasn't.
19 It turns out that counsel in preparation
20 for trial prepared a trial preparation document, and
21 then presented it as if it were something I called
22 for, and didn't present the underlying things.
23 That states my position. Otherwise,
24 Your Honor, I think your evaluation is correct. And I

1 do think in fairness, Your Honor, that if they want
2 to present that as something that they have prepared
3 in connection with trial as their document, not in
4 response to a request from me, but as what they do,
5 that's one thing.
6 THE COURT: I get the impression that
7 perhaps your objection, now that I think about it,
8 goes more to surprise than anything else.
9 MR. PRICKETT: Shock.
10 THE COURT: Shock, or whatever the degree.
11 You accepted the document as something authentic,
12 and prepared for trial on that basis, and you find
13 now that it's not, and therefore, maybe you are
14 claiming surprise to some degree in that you can't
15 properly cross-examine on it, or something.
16 MR. PRICKETT: The surprise is that what
17 is the underlying documents are not produced. What
18 is produced is what is a purported result. I'm
19 also surprised that they can do it for them, but
20 they can't do it for me. That is, they can do the
21 charges, but they can't do the affirmative.
22 THE COURT: All right.
23 MR. PRICKETT: So that fairly states my
24 position.

1 MR. PAYSON: I would like to respond,
2 Your Honor.
3 THE COURT: Sure.
4 MR. PAYSON: In the first place,
5 Mr. Prickett says that we suckered him. In fact
6 when we --
7 THE COURT: Sometimes he uses harsh
8 terms along those lines.
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1 MR. PAYSON: In fact, when we produced
2 the UOP 1983 year-end package report, Mr. Sparks and I
3 called Mr. Prickett and advised him that did not
4 accurately reflect UOP's condition on a stand-alone
5 consolidated basis as of the end of 1983 and that we
6 would be providing him with documents showing various
7 adjustments. The back-up exhibits to Defendants'
8 Exhibits 10 and 11 are the 1983 contemporaneous back-up
9 documents, which explains each and every entry or
10 reserve reflected on both of those exhibits.
11 So the claim of surprise just doesn't
12 make sense, and, in fact, he has been given the
13 relevant back-up material.
14 THE COURT: All right. Well, I will
15 view it this way, then, since the objection has now
16 arisen after the fact through a motion to strike for
17 the reasons given and you now having given your basis
18 for the original offer: I am inclined to think that
19 it would be admissible as a summary of UOP's income
20 status for 1983. I don't treat it as necessarily
21 something that has been produced and offered in evidence
22 as being in direct response to that which Mr. Prickett
23 sought by discovery. He seems to be concerned about
24 that, and if that is a concern, I agree with you,

1 Mr. Prickett.

2 It is your document. You offered it.

3 I think if we had gone into this initially before it

4 ever came in, I think I would have probably admitted

5 it as a summary under Rule 1006. And I think Mr. Prickett's

6 objection primarily goes to the fact that he is surprised,

7 shocked, whatever, by virtue of now discovering that in

8 the course of trial it wasn't an original document. I

9 am not prepared at this point to think that that status

10 is such that it has prejudiced him unfairly at this

11 point; and therefore, I will deny his motion to strike

12 at this time.

13 MR. PAYSON: Thank you, Chancellor.

14 THE COURT: Should the matter rear its

15 ugly head later on, Mr. Prickett, or it becomes even

16 more apparent that by virtue of not knowing what that

17 was at the time that you have been in some way prejudiced,

18 you can let me know, and we will reconsider it again.

19 But on the strength of what has gone heretofore, I find

20 no basis to strike it and I deny it at this time.

21 MR. PRICKETT: Your Honor, I want to be

22 perfectly clear. A form of these documents was

23 available at the depositions both of Mr. Kavanaugh and

24 Mr. Corirossi. So it would be incorrect for me to let

1 the Court have the impression that it was at the trial
2 that I first discovered these. That is not the fact.
3 THE COURT: All right.
4 MR. PRICKETT: The full import of the
5 documents and the circumstances surrounding their birth
6 came out at trial and their parentage.
7 MR. PAYSON: I disagree with Mr. Prickett's
8 characterization of ancestry, but I think the record
9 speaks for itself.
10 THE COURT: All right. Fair enough.
11 MR. PRICKETT: Your Honor, can I get a
12 motion on that?
13 THE COURT: All right. Well, that will
14 be the Court's ruling on it at the time. Those two
15 documents can remain in evidence.
16 MR. PAYSON: May we proceed, Your Honor.
17 THE COURT: All right.
18 MR. PAYSON: Mr. Purcell, would you please
19 take the stand.
20 THE COURT: Let me ask, was there any
21 problem with the other documents, defendants' exhibits?
22 MR. PRICKETT: No, Your Honor. As to the
23 other documents produced, marked and offered by the
24 defendants, we have no objection and agree that they can

1 and should be admitted in evidence.
2 THE COURT: All right. They were what,
3 numbers what through what, please.
4 MR. PAYSON: 1 through 13, Defendants'
5 Exhibits 1 through 13.
6 THE COURT: All right. I have already
7 admitted 2, 10, 11 and 12, for whatever that means.
8 Defendants' Exhibits 1 through 13 other than 2, 10, 11,
9 and 12 are without objection admitted into evidence.
10 (Defendants' Exhibits 1, 3, 4, 5, 6, 7,
11 8, 9 and 13 received in evidence.)
12 WILLIAM H. PURCELL, having been first
13 duly sworn, was examined and testified as follows:
14 MR. PAYSON: Chancellor, before I begin
15 the examination, I believe last Thursday or Friday we
16 submitted to the Court a copy of Dillon Read & Company's
17 opinion dated June 7, 1984. That has been marked as
18 Defendants' Exhibit 13. We also submitted a copy of
19 the Dillon Read report dated April 29, 1980, which was
20 marked at the previous trial as DX-40. In addition,
21 and supplementing DX-40 are DX-40A, B and C, which
22 basically took care of some typographical errors, as
23 I recollect. I believe we also gave the Court a copy
24 of DX-40A, B and C last Thursday.

1 THE COURT: All right. I may have
2 overlooked the A, B, C part.
3 MR. PAYSON: They were inserted loosely
4 in various pages.
5 THE COURT: Okay. If that is the case,
6 then I have it. And I will acknowledge on the record
7 that at my request through Mr. Prickett I was provided
8 in advance of the trial a copy of both of those reports
9 to which you made reference and also a copy of the
10 report of Mr. Bodenstein, the Duff and Phelps report
11 and the attached exhibits, and I have read both reports,
12 not all the documents. I didn't even bother to try
13 that. I was waiting for explanations. But I have read
14 both reports, for whatever assistance that may or may
15 not prove to be, and I thank you both for affording me
16 that opportunity.
17 MR. PAYSON: Thank you, Chancellor.
18 THE COURT: All right.
19 DIRECT EXAMINATION
20 BY MR. PAYSON:
21 Q. Mr. Purcell, where do you live?
22 A. I live in New York City, 330 West 56th
23 Street.
24 Q. And would you please share with the Court

1 your educational background.

2 A. I went to Boston Latin High School,

3 Princeton University, graduating in 1964, and New York

4 University Graduate Business School, graduating in

5 1966.

6 Q. And what was your degree from Princeton?

7 A. An AB in economics.

8 Q. Did you receive any special honors at

9 NYU?

10 A. At NYU I received an MBA and graduated

11 Number One in my class.

12 Q. Who was your first employer after

13 graduating from NYU?

14 A. Dillon Read & Company, where I began work

15 in 1966 and have been there ever since.

16 Q. What was your first position with

17 Dillon Read?

18 A. I began as an associate, was promoted

19 to vice president in 1973, to senior vice president

20 in 1979 and to a managing director in 1982.

21 Q. Approximately how many professionals --

22 by that I exclude clerical and support staff -- form

23 the Dillon Read organization?

24 A. Approximately 300.

1 Q. And how many managing directors are
2 there?
3 A. 23, I believe.
4 Q. And is that the highest office one can
5 attain at Dillon Read?
6 A. Well, we do have a chairman and a presi-
7 dent, both of which are managing directors, and those
8 would be the two most senior managing directors.
9 Q. In general, can you explain to me what
10 Dillon Read does?
11 A. Well, Dillon Read is a major investment
12 banking firm. We have clients both internationally and
13 domestically that are primarily either corporations,
14 governmental entities, municipalities and large families
15 in certain instances. We do not deal with the retail
16 public in any way.
17 Q. You said you were investment bankers.
18 Can you generally explain to the Court what an
19 investment banker is and what it does?
20 A. Well, in terms of my own experience,
21 being an investment banker in the corporate finance
22 end of the business, we deal with all facets of
23 financial advice for either corporations or governmental
24 entities, which would cover the areas of financings

1 both publicly and privately in both the U. S. market
2 or in the Eurodollar market or anywhere in the world,
3 for that matter, project financings, mergers, and
4 acquisitions, leaf financings and other general
5 financial advice that our clients ask us to perform.
6 Q. Over the past 10 years or so have you
7 had any particular specialty?
8 A. I have been somewhat of a generalist
9 during my career. I would say in the last five years
10 I have spent approximately 50 percent of my time in the
11 merger and acquisition area and approximately 50 percent
12 of my time in all other areas of the investment banking
13 business.
14 Q. In the mergers and acquisitions area
15 what have you done in the last five or six or seven
16 years?
17 A. In terms of the number of transactions
18 that I have worked on?
19 Q. What have you done and the number of
20 transactions also.
21 A. Well, I worked basically on all aspects
22 of mergers and acquisitions, representing companies
23 that were looking to buy other companies, representing
24 the selling company in some cases, working on

1 divestitures, working on fairness opinions in certain
2 instances where we represented the companies through
3 the negotiations and other instances where we represented
4 independent boards of directors where we were not
5 involved in the negotiations. And I have spent a
6 particularly large amount of time on this area of
7 so-called control mergers.
8 Q. How many fairness opinions would you
9 estimate you have been personally responsible for in
10 the context of mergers over the last six or seven years?
11 A. Oh, from a personal point of view my guess
12 would be approximately 20.
13 Q. And what order of magnitude of dollars
14 were involved in those fairness opinions for which you
15 were responsible?
16 A. They would range from, oh, on the low
17 end probably $25 million and on the high end about
18 a billion dollars.
19 Q. Have you ever been retained as an expert
20 in connection with acquisitions or mergers and
21 acquisitions other than for fairness opinion work?
22 A. Yes. I have been retained, as our firm
23 has, in a number of instances as expert witnesses in
24 certain matters involving litigation where we were not

1 involved in the original transaction, this particular
2 assignment being one of those.
3 I was recently the expert witness or one
4 of the expert witnesses in the Marathon Oil-U. S. Steel
5 litigation and presently one of the expert witnesses
6 in the litigation involving the Texaco buy-back of
7 approximately 10 percent of their shares from the Bass
8 family.
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1 Q. Were you qualified as an expert, and
2 did you testify at the U.S. Steel litigation?
3 A. We were deposed, and presented studies.
4 We were not physical witnesses at the trial through
5 the elimination of various expert witnesses, but our
6 report and depositions were part of that trial.
7 Q. Were you retained by The Signal
8 Companies in connection with this particular trial?
9 A. We were retained by The Signal Companies
10 in both 1980 and in 1984 in connection with this
11 matter.
12 Q. And could you tell me what your initial
13 assignment was in connection with your retention in
14 1984?
15 A. In 1984?
16 Q. Yes, sir.
17 A. Well, we were requested to do basically
18 three things as part of our 1984 retention.
19 We were asked to review the financial
20 terms and conditions of the merger of UOP into
21 Signal, and to opine whether in our opinion those
22 terms from a financial point of view were fair and
23 equitable to the shareholders of UOP other than
24 Signal.

1 Q. And I would like to stick to that
2 first assignment for purposes of this part of the
3 questioning.
4 A. Okay.
5 Q. In connection with that assignment
6 what did you do?
7 A. Well, first of all, we reviewed all the
8 work we had done in 1980 in terms of our original
9 study and the financial documents, and reviewing
10 our notes as to interviews, depositions in that
11 matter. Then in addition to that we reviewed --
12 Well, actually if you are just sticking to the first
13 part of our assignment, the review of the additional
14 information that's been prepared regarding UOP
15 since 1978 was really a function of two other
16 aspects of our study, and not necessarily with the
17 basic fairness of the merger, so perhaps I should
18 wait on that unless you want me to go into that.
19 Q. Yes. I would like to concentrate just
20 on your rereview of the fairness of the
21 the 1978 merger.
22 In connection with the 1978 merger and
23 your evaluation of the fairness of the price, did
24 you meet in 1980 and/or in 1984 with any officers or

1 directors of UOP and Signal in connection with your
2 evaluation?
3 A. Yes. In 1980 I met with Mr. Crawford
4 and with Mr. Woods of UOP, and talked with Mr. Arledge
5 of Signal. In 1984 I met with Mr. Kavanaugh of
6 Signal, Mr. Corirossi of UOP, Mr. Woods of UOP and
7 a gentleman whose name I can't recall right now that
8 was involved in the realty and timber operations.
9 Mr. Grasseschi, I believe his name was.
10 Q. Yes, that's correct.
11 Are the various documents which
12 you reviewed in connection with your 1980 assignment
13 and the first part of your 1984 assignment set forth
14 in your original report and in your most recent
15 report?
16 A. They are. In both reports we set forth
17 the various materials we looked at, the various
18 depositions we read and the various people we talked
19 with, and set forth a list of comparable companies
20 and other financial information we looked at in both
21 those years.
22 Q. And are the various tables and
23 comparitive analyses or the statistics upon which
24 you based your comparitive analyses set forth

as exhibits to your 1980 and 1984 reports?

A. Yes. In both reports we have a list of a number of exhibits which we prepared and relied upon in various areas of our study. Both reports have all those exhibits encompassed with them.

Q. Based upon your review of the various documents about which you have testified and your meetings with various members of management of Signal and UOP, did you in 1984 form an opinion as to the fairness of the price of the merger in May of 1978 as of May 26, 1978?

A. We did. In our report in April of 1980 we concluded that the price of $21 per share in cash was fair and equitable from a financial point of view to the shareholders of UOP other than Signal, and in our supplemental study in 1984 we made the same conclusion.

Q. Are you familiar with the phrase "Delaware Block Method," or "Delaware Block Rule"?

A. Yes, I am.

Q. Would you explain generally what you understand that phrase to mean?

A. Well, based on my understanding, having worked on a number of projects, and being generally

1 familiar with Delaware law, it's been, if you will,
2 somewhat of a weighting method that's been used in
3 various Delaware cases in terms of putting more
4 or less emphasis on certain categories of value
5 in making a judgment and opinion in these evaluation
6 cases.
7 Q. Did you utilize that methodology in
8 forming your opinion either in 1980 or 1984 with
9 respect to the fairness of the 1978 merger price?
10 A. No, I did not use that specific
11 method in either year.
12 Q. Why did you not use that methodology?
13 A. Well, I think as a general statement
14 some of the concepts obviously in the so-called
15 Delaware Block Method are general concepts that are
16 used in a financial analysis of fairness which we
17 would be using in any case. As a general statement,
18 when we undertake a fairness opinion at any time,
19 we look at all the relevant information that's
20 given to us. We exercise due diligence regarding
21 that information, and we use whatever techniques
22 we feel are appropriate in analyzing the situation
23 and forming a judgment on fairness. That's standard
24 language in our fairness procedure. It's standard

1 procedure at Dillon Read to in effect look at
2 everything, and analyze it every particular way we
3 think is appropriate, and then we can make a
4 judgment as to whether we think the transacton is
5 fair or not. We used that procedure in both 1980
6 and 1984, and generally use that procedure in all our
7 work.
8 Q. Are you familiar with the discounted
9 cash flow analysis?
10 A. I am.
11 Q. Do you ever use that methodology in
12 your professional work?
13 A. We use it quite a bit.
14 Q. Did you use that methodology in
15 forming your opinions in 1980 and 1984 in this matter
16 with respect to the fairness of the 1978 merger price?
17 A. I did not utilize the discounted cash
18 flow technique in either my 1980 or 1984 study because
19 in my judgment, given this particular situation of
20 facts relating to this particular situation, I did
21 not think it was a relevant tool to use in our analysis.
22 Q. Would you explain in some more detail
23 why you did not think it was a relevant tool? You
24 can utilize any exhibits that you think might help you

1 explain to the Court why you do not believe that the
2 discounted cash flow methodology would be an
3 appropriate methodology in this particular case.
4 A. Certainly. A number of these things
5 naturally I said back in 1980 and in previous
6 depositions, so I assume it doesn't matter whether I
7 repeat myself.
8 MR. PAYSON: Your Honor, Mr. Prickett
9 and we have agreed that all of the record including
10 trial transcripts, depositions, everything that
11 formed part of the record at the 1980 trial and at
12 the April 5th and 6th preliminary hearing, form
13 part of the record for purposes of this case, or
14 for purposes of this week's trial, so that we are
15 all going to try not to repeat a lot of what was
16 said before except where we think it needs highlight-
17 ing.
18 THE COURT: All right. Well, I find
19 it difficult to think we could have treated it any
20 other way, quite frankly.
21 Is that correct, Mr. Prickett?
22 MR. PRICKETT: Yes. Here Mr. Payson is
23 correct.
24 THE COURT All right. Fine. Thank you.

1 MR. PAYSON: Could you read the
2 pending question?
3 (The following testimony was read by
4 the reporter:
5 "Question: Would you explain in some
6 more detail why you did not think it was a
7 relevant tool? You can utilize any
8 exhibits that you think might help you
9 explain to the Court why you do not believe
10 that the discounted cash flow methodology
11 would be an appropriate methodology in
12 this particular case?
13 "Answer: Certainly. A number of
14 these things naturally I said back in 1980
15 and in previous depositions, so I assume it
16 doesn't matter whether I repeat myself.")
17 BY MR. PAYSON:
18 Q. I would like to hear your complete
19 reasons for deciding not to use the discounted cash
20 flow analysis in this particular case.
21 A. Okay. The discounted cash flow tool
22 as a financial tool is most useful when one has a
23 situation that has a certain amount of predictability
24 and consistency. UOP as a company, both during the
six or seven years, and, frankly, its entire history

1 for ten years prior to the 1978 merger, and in fact
2 after the 1978 merger, has been a diversified
3 conglomerate type of company which has had a
4 number of lines of businesses most of which have had
5 great volatility in their earnings. So the company
6 not only has volatility and unpredictability in
7 its earnings from a consolidated point of view,
8 but even on a divisional point of view it has that
9 characteristic.
10 So in order to make any projection,
11 it would be very difficult to have any degree of
12 faith in that projection. And in fact because of the
13 level of uncertainty, if one were to apply a
14 discounted cash flow method, you would be using a
15 discount rate basically that would have to be high
16 enough to reflect that, and in my judgment would
17 make the analysis meaningless from our point of view
18 in coming up with what was a fair price in that
19 particular merger, and so we did not utilize that
20 financial tool in either the 1980 or the 1984 study.
21 Q. Are there any exhibits attached to
22 either of your reports which reflect the volatility
23 of the earnings either on a bottom line consolidated
24 basis or on a business segment basis?

1 A. Well, actually, I guess it's easiest
2 to refer to our 1984 study because I repeated the
3 applicable, or most of the important exhibits from
4 the 1980 study in the 1984 study, so we can turn to
5 Exhibit 2A, and that gives the consolidated
6 performance of UOP from 1972 to 1977 in which it can
7 be seen -- And I might add 1971, which is the year
8 just prior to the first year shown on this
9 exhibit, was another loss year for UOP which we did
10 not include in terms of setting forth these
11 financial statements.
12 But basically in the seven years 1971
13 through 1977, the company had two large losses of a
14 magnitude of almost $3 per share. Its earnings
15 went from that loss position up to a high point
16 of $2.46 from continuing operations, and $2.78
17 on a totally consolidated basis in 1974 before
18 incurring another loss, and then coming back up to
19 $2.12 from continuing operations and $2.74 on a
20 consolidated net income basis in 1977.
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1 So you had tremendous cycles of earnings.
2 You had operations being discontinued. You had an
3 earnings effect from discontinued operations in six of
4 those seven years, and you had various extraordinary
5 items reported in three of those seven years. And that
6 is on a consolidated basis.
7 If one referred to Exhibit 4A, which
8 gives the same years on a segment basis, on a business-
9 segment basis, one can look at each of those business
10 segments and see dramatic volatility in the earnings
11 performance in each and every one of those segments,
12 with the general exception from a relative point of
13 view, even though it also had its ups and downs, of the
14 Petroleum and Petrochemical Division, which had a
15 reasonably consistent rate, although it had down
16 earnings in both '73 and '75, continuing out in the
17 future, had down earnings in '82 and '83. Other
18 operations were up or down practically every other year.
19 So in terms of anybody making any sort
20 of intelligent estimate of what the future earnings of
21 this particular company were going to be in terms of
22 utilizing a discounted cash flow financial tool, in
23 my judgment it was, you know, a very difficult task and
24 for this type of study, frankly, inappropriate.

1 Q. In your professional career have you
2 ever seen a discounted cash flow analysis utilized in
3 evaluating a minority interest of a company which had
4 earnings and business-segment respective earnings with
5 such a volatile mix?
6 A. As a general statement, for a company or
7 for any situation, whether it be a minority situation
8 or not, for a situation that involves this type of
9 cyclicality in earnings stream, we do not use that
10 tool. Obviously, we run across projections and other
11 people's calculations in certain instances of discounted
12 cash flows, which we make judgments on as we come to
13 them. But in terms of our work and in terms of our
14 clients' work in making recommendations to our clients,
15 in that sort of a situation we do not generally see it
16 and we do not use it.
17 Q. You have now explained why you did not
18 use either the Delaware block method or the discounted
19 cash flow analysis in your evaluation of the fairness
20 of the 1978 merger price. Would you explain to the
21 Court what you did do in reaching the conclusion or
22 your opinion about which you earlier testified. And I
23 think the easiest way is to make reference to your
24 report and explain to the Court the highlights of how

1 your analysis proceeded.

2 A. Okay. Well, basically, it would be going

3 right back to the 1980 report. The 1984 report, as

4 I stated, was a review again of everything that we had

5 done in 1980.

6 And in 1980, as I stated previously, we

7 basically looked at the entire situation and analyzed

8 a number of facts, all of which are set forth in the

9 18 pages that encompass our 1980 report, and they

10 involved such things as studying the historical market

11 price of UOP shares, the volume of trading of UOP

12 shares, which was quite actively traded on the New York

13 Stock Exchange, observing that over that five-year

14 period the stock basically never traded over 18-3/4,

15 $18.75 per share, which is back in 1974. We calculated

16 average prices for each of those five years as between

17 the high, the low and closing prices of each year, the

18 summary of that particular analysis showing that the

19 stock over the five-year period generally traded on

20 average in the $14-per-share range, where it was

21 trading at the end of February, 1978, when Signal and

22 UOP announced the transaction.

23 We analyzed the various financial

24 parameters and statistics for the company, which

1 included its balance sheet and capitalization data,
2 and we made various observations as to its level of
3 debt, levels of working capital, et cetera.
4 We analyzed the various lines of business
5 of UOP in terms of which particular segment contributed
6 what percent of total revenues, what percent of
7 operating profit. We discussed the volatility of those
8 components. We discussed the business make-up of those
9 various components. We discussed the levels of assets
10 dedicated to each of those particular components.
11 We discussed the earnings taken as a
12 whole and again from a segment point of view in terms
13 of margins, in terms of the company's return on equity
14 over a period of time and relative to other companies
15 that we deemed somewhat comparable.
16 We discussed the company's dividend
17 history, the fact that it had eliminated its dividend
18 a number of times over the 1971-78 period, which was a
19 negative aspect and one that does not happen with great
20 frequency and again was a symptom of the company's
21 basic volatility in its earning power.
22 We talked about the estimated earnings of
23 UOP as disclosed in the proxy statement at that time
24 and made the observation that, in fact, even that one

1 year in hindsight obviously, since we were doing our
2 study after the merger had closed, that even in that
3 one year where the company had estimated that its
4 earnings would be up approximately 23.6 percent in terms
5 of disclosing the relevant information to the share-
6 holders voting on the merger, that, in fact, that year
7 came in only up 11.8 percent, or about 50 percent, only
8 about 50 percent of the estimated gain, which again was
9 further comment on the lack of ability of management
10 to accurately forecast its earnings, even though they
11 were part-way through 1978 when they made that
12 estimate.
13 We compiled lists of companies which we
14 deemed to be somewhat comparable to UOP, making the
15 statement in our report that, in fact, there were
16 very few companies, if any, that were strictly
17 comparable to UOP and, in fact, Standard & Poor's,
18 which we pointed out in our 1980 report didn't even
19 list UOP in one of its industry surveys, despite UOP
20 being a pretty good size company, because it basically
21 wasn't "comparable" to other companies.
22 We did compile two lists of companies
23 that we deemed somewhat comparable, and those two lists
24 included a list of companies, 14 companies, I believe,

1 that at least competed with UOP in some of its products
2 lines. We composed a second list of over 30 companies
3 of so-called general diversified industrial companies
4 that had many lines of businesses to try and make
5 judgments on where those companies traded in the
6 marketplace as a function of price/earnings ratio, as
7 a function of market price to book value, as a function
8 of their financial performance, as to whether their
9 margins and return on equity, et cetera, were better
10 or worse than UOP's.
11 We discussed general market conditions
12 as to where the stock market averages were selling at,
13 the component companies in the stock market averages as
14 to where they were selling in the market on some of
15 those same basic ratios.
16 We discussed the net asset value of UOP
17 and made certain comments therein. We obviously looked
18 at the company as a going concern. We mentioned in
19 that particular section that we had discussed with the
20 management of UOP, Mr. Crawford, who was then the
21 president of UOP, in particular as to whether he had
22 any plans to liquidate certain businesses in UOP as
23 part of that analysis, which he indicated that he did
24 not. And we so commented upon that in our report.

1 We discussed royalty revenues, research
2 and development expenses, how those related, if at all,
3 to the patent position of UOP. We discussed the
4 premium that was being paid for the UOP shares in general
5 and relative to other transactions.
6 And based on all of that information as
7 set forth in our report, in our general experience as
8 investment bankers in rendering fairness opinions, we
9 rendered the opinion in 1980, which we repeated in June
10 of 1984, that it was our opinion that the $21 per share
11 price paid to the UOP shareholders, the cash price paid
12 to the UOP shareholders other than Signal, was fair and
13 equitable from a financial point of view.
14 Q. In your 1980 opinion did you rely on the
15 results of the 1975 partial tender offer by Signal plus
16 the purchase from UOP of a certain number of shares in
17 evaluating the fairness of the 1978 merger price?
18 A. We did not rely on that fact at all.
19 We were aware of it. We commented upon it. But it was
20 not a factor in our opining on the fairness of the
21 $21 price.
22 Q. In looking at Page 5 of Defendants'
23 Exhibit 40, which is your April 29, 1980 opinion, I
24 notice that the caption on that page is "(B), Structure

1 of Transaction." Would you please explain what that
2 means and what you relied on in connection with the
3 structure of the transaction.
4 A. Right. The structure of the transaction
5 as described in our report basically had to do with
6 what I thought was, you know, an interesting aspect of
7 the transaction at that time, which was providing the
8 mechanism of the majority of the minority voting in
9 favor, which was one of the first deals to do that, and
10 on top of that making sure that enough people voted so
11 that you had a 66-percent turnout at the ballot box,
12 so to speak, in order to validate the election. That
13 particular item had nothing to do with the value of
14 what a fair price would be. It was an observation, if
15 you will, and an extra, not to use a slang expression,
16 but somewhat of a bonus, you know, in the fairness pot
17 as to just one extra thing that was being done for the
18 shareholders to ensure fairness. Whether it was there
19 or not there had nothing to do with, in our judgment,
20 the fairness of the $21 price. The fact that it was
21 there, we observed that fact.
22 I, frankly, liked that structure. It was
23 one more element in the transaction that I personally
24 thought was interesting and so commented upon it.

1 Q. Would you turn now to the 1984 report
2 and review for Chancellor Brown what you did to review
3 and, as you have testified, confirm your opinion in
4 1980 that the 1978 merger price was fair.
5 A. Well, as stated --
6 Q. And obviously, you don't have to review
7 all of that which you have already reviewed from your
8 1980 report.
9 A. I was just going to state that we
10 obviously went over everything that we did in 1980,
11 which I had just discussed. So I won't state that
12 again.
13 Obviously, we were aware of the Supreme
14 Court's ruling, and so in our supplemental study we
15 didn't consider at all or give any weight to the
16 structure of the transaction. We did review everything
17 else that we had done.
18 In terms of additional information, we
19 were aware of the fact that the Come-By-Chance litig-
20 ation, which had been a statement of fact, if you will,
21 in 1978, was coming to a head in terms of a legal
22 settlement, and we commented upon that.
23 But let me go back and be clear. In our
24 1980 study we commented upon that particular contingent

1 liability.

2 Q. That is the Come-By-Chance liability?

3 A. The Come-By-Chance contingent liability,

4 which was noted in the audited financial statements of

5 UOP.

6 Q. Is that unusual to have an outside

7 independent accountant qualify an opinion because of

8 a contingent liability?

9 A. If the contingent liability is a

10 potentially large one and the accountant cannot

11 satisfy himself that, in fact, it may not come about,

12 it is not unusual for him to qualify a financial

13 statement. On the other hand, there are not that many

14 large contingent liabilities of that nature, so in

15 terms of a percentage of companies, of publicly traded

16 companies that have that qualification, it is a very

17 small percentage, and it is basically a negative

18 implication.

19 Q. Is it significant to you as an investment

20 banker when you see a qualified financial statement

21 because of a contingent liability?

22 A. Yes, it is, not only as an investment

23 banker but as an investment person, whether commenting

24 upon stock market values and what-have-you. It is an

1 element of uncertainty which indicates that from the
2 accountant's point of view could have a significant
3 impact on the financial statements of that particular
4 company, and the magnitude of uncertainty in his view --
5 and that is why he puts the qualification in there --
6 is such that as an investor and as a banker you would
7 have an element of nervousness in seeing a qualified
8 financial statement.
9 Q. I interrupted you. How did you treat
10 the qualification of UOP's financial statements in your
11 1980 study with respect to the value of the 1978 merger
12 price?
13 A. In regard to our 1980 study, we commented
14 upon it in our report. We indicated in our report
15 that we did not in any way place any discount on the
16 value of UOP because of it, and the reason that we did
17 not was because in our due diligence and in speaking
18 with the management of UOP, we were convinced that
19 they were convinced, if you will, that this was not
20 going to be a material item, that they were going to
21 probably settle this. And in spite of the accountant's
22 qualification, we accepted that and placed no discount
23 on the valuation of UOP, which we so stated in our 1980
24 report.

1 In our 1984 report, we are now aware
2 of what has happened in that particular situation,
3 i.e., the settlement has been made which will
4 result in UOP and Signal, its parent, having to pay
5 out approximately $50,000,000 and the establishment
6 of a $52,000,000 pre-tax reserve which equates to
7 approximately $28,000,000 after-tax effect.
8 Q. Do you know whether that $52,000,000
9 reserve was in fact booked in 1983?
10 A. That particular reserve was booked
11 in 1983 in that the first element, the first dollar
12 piece of that particular reserve was taken in 1983.
13 In other words, it was recorded in 1983. Its
14 financial impact in 1983 was only modest, as has
15 been testified to by Mr. Kavanaugh earlier.
16 $2-1/2 million, I believe.
17 Q. Insofar as Signal's consolidated
18 financial statements are concerned?
19 A. That is correct.
20 Q. So how did you view the Come-By-Chance
21 problems in connection with your '84 opinion as you
22 looked back and reviewed the fairness of the 1978
23 merger price?
24 A. Well, in terms of our 1984 study, in

1 hindsight, which is obviously much easier than
2 foresight -- in hindsight, in terms of reviewing
3 our opinion of 1980 it made me feel even more
4 comfortable by, you know, a rather large order of
5 magnitude in that in 1980 we opined and felt
6 comfortable that a $21-cash price was fair and
7 equitable to the minority shareholders of UOP.
8 If in fact we had known then what eventually happened
9 in the Come-By-Chance litigation, i.e., a
10 $28,000,000 hit that would have been applicable
11 to UOP back in 1977 and '78 if it had been settled
12 then, which would have been about $2.44 in terms of
13 an effect on book value, a $28,000,000 reduction in
14 cumulative earnings, in our judgment knowing that
15 today just makes us be able to reconfirm our
16 opinion with that much more, for lack of a better
17 word, enthusiasm, or what have you, or a comfort
18 feeling that the transaction was clearly fair and
19 equitable to the minority shareholders of UOP at
20 that time.
21 MR. PAYSON: May I have just a moment,
22 Your Honor?
23 THE COURT: Sure.
24 (Brief pause.)

1 MR. PAYSON: Chancellor, I would now like
2 to turn to the second part of Mr. Purcell's assignment
3 in connection with his 1984 report. That goes to
4 the value of UOP common shares if the company
5 continued without Signal acquiring in 1978 the
6 49 percent of the outstanding shares of UOP. We do
7 this only in anticipation of the plaintiff's proof.
8 As Mr. Halkett explained in his opening,
9 for many reasons we do not believe that rescissory
10 damages is an appropriate or provable measure of
11 damages in this case, but as I said, in anticipation
12 of plaintiff's proof, we will offer this at this
13 time.
14 THE COURT: All right.
15 BY MR. PAYSON:
16 Q. Mr. Purcell, could you explain to the
17 Court the second leg of your assignment in 1984?
18 A. Certainly. Since I'm not an expert in
19 the concept of rescissory damages, I would like to
20 read the first sentence of our assignment, or what
21 the assignment was, since it is rather tricky:
22 "As part of our supplemental study you
23 have asked us to study the business of UOP after the
24 date of the May of '78 merger with Signal in order

1 to make a judgment as to what the value of the UOP
2 common shares not held by Signal would have been at
3 the end of both 1982 and 1983 assuming that the
4 merger had not taken place."
5 In other words, if the shareholders
6 still had their shares today, they had not been
7 taken away from them, 49.5 percent of UOP would be
8 owned by public shareholders, and the stock would
9 continue to trade on the New York Stock Exchange.
10 That is the premise on which we went forward and
11 performed the work that's in our memorandum.
12 Q. What did you review in connection
13 with that assignment?
14 A. Well, we reviewed all the financial
15 information which is set forth on Page 6 of our
16 study. Without repeating every particular item,
17 we obviously studies all the various annual reports
18 for both Signal and UOP during the 1978 to 1983
19 period, the various Form 10-K's that had been filed
20 with the SEC during those years, UOP audited
21 financial statements for the years in which they had
22 audited financial statements. We studied their
23 year-end 1983 report packaged together with the UOP
24 consolidated balance sheet as of December 31, 1983, and

1 consolidated income statement as adjusted for the
2 top adjustments and reclassifications.
3 We studied the various internal quarterly
4 financial statements, various budget reports and
5 profit plans of both Signal and UOP, the various
6 proxy statements relating to mergers that Signal
7 had undertaken during the period; specifically
8 Ampex and Wheelabrator-Frye. We studied the
9 various minutes and financial presentations to
10 various UOP board meetings during the '79 to '83 period.
11 We studied certain brokerage house research reports
12 that were issued on Signal. We studied certain
13 reports and documents regarding UOP real estate.
14 We updated our study in terms of
15 reviewing the general nature of the businesses
16 conducted by UOP and the industries in which it
17 operated. We studied the market prices and ratios
18 of various securities deemed to be somewhat
19 comparable to UOP, which was basically the name list
20 that we had done in 1980. We studied the various
21 movements and ratios in the stock market.
22 We had, as I stated before, discussions
23 in terms of our due diligence with the various
24 officers of Signal and UOP that I mentioned before,

1 and I read the depositions that were taken of
2 Mr. Kavanaugh and Mr. Corirossi, you know, in
3 regatd to this matter.
4 Q. Did you meet with any members of
5 management of UOP and/or Signal in connection with
6 the second leg of your assignment?
7 A. As I stated before, I met with both
8 Mr. Kavanaugh, Mr. Corirossi, Mr. Woods and
9 Mr. Grasseschi.
10 Q. Did you use either the Delaware block
11 rule or the discounted cash flow analysis in connection
12 with the second leg of your assignment?
13 A. We did not.
14 Q. Why not?
15 A. For basically the same reasons that I
16 stated earlier. That we didn't use it in either
17 the 1980 or '84 reports because of the basic nature
18 of the business of UOP which continued in a very
19 cyclical fashion from product line to product line.
20 Q. Would you explain to the Court your
21 methodology, or methodologies which you used in
22 forming the opinions called for by the second leg
23 of your assignment?
24 A. Yes. We basically -- The first step was

1 to study the financial performance of UOP for the
2 1978 through '83 period which was what we also did
3 in the 1980 report. And basically we analyzed a
4 number -- we continued our analysis of the same type
5 of factors that we had analyzed before.
6 We looked at the balance sheet, we
7 looked at the income statement taken as a whole, and
8 the various lines, segment lines of businesses of
9 UOP. We observed what was making UOP grow, what
10 businesses were doing well, which businesses were
11 not doing well. We looked at the stock market
12 during this period of time. We updated our analysis
13 of the companies deemed to be at least somewhat
14 comparable to UOP as to how they were selling in
15 the marketplace.
16 Based on our knowledge of how analysts
17 looked at stocks we made a judgment based on the
18 earnings performance of UOP and the quality of UOP's
19 earnings and the events that were taking place at
20 UOP as to what the stock in our judgment would trade
21 at in the stock market if it was still a publicly
22 traded stock just as it was before the 1978 merger,
23 and we so stated in our conclusions as to what
24 that price would be both at the end of 1982 and at the

1 end of 1983.

2 Q. Where is that conclusion shown in your

3 report?

4 A. Well, as to the price at the end of

5 1982, that conclusion would be on Page 16 regarding

6 the end of 1982, and regarding the end of 1983 it

7 would be on Page 17.

8 Q. What is the conclusion with respect to

9 the value of the shares as at the end of -- or as

10 of December 31, 1982?

11 A. We concluded for all the various

12 reasons set forth on Pages 16, 15 and 14 that in

13 our judgment, at the end of 1982 the UOP shares

14 would be trading in a range of $27.25 to $28.50 per

15 share.

16 Q. And what was your conclusion with

17 respect to the year ending December 31, 1983?

18 A. That was stated, as I said, on Page 17

19 of our report, and our conclusion was that at

20 the end of 1983 the shares would be trading in the

21 public market at a range of $23 to $24.25.

22 Q. Did you also compute what the value of

23 $21 invested as of June 1, 1978, in various

24 investment vehicles would have been as of

1 December 31, 1982, and December 31, 1983?

2 A. We did. That was the third part of

3 our assignment, which is discussed on Page 18 of

4 our report, and in Exhibit 9. We took that $21

5 in cash, and we made the assumption that either a

6 shareholder would have invested in with a

7 conservative investment philosophy of fixed income

8 in liquid short-term investments, and therefore,

9 we tracked what that return would be in one year

10 treasury bills, 30-day certificates of deposits,

11 and money market mutual funds the results of which

12 are set forth in Exhibit 9.

13 We also assumed a somewhat more

14 aggressive but reasonable equity investment

15 philosophy, and assumed that since the UOP

16 shareholder had been an equity investor in UOP in

17 fact, that he would continue to be an equity

18 investor, and we took the Standard & Poor's 400

19 and Standard & Poor's 500 stock index, and calculated

20 what his $21 investment would be worth at the end

21 of 1982 and at the end of 1983 if he had invested

22 in those indices.

23 Q. Would you please turn to Page 18 of

24 your 1984 report?

1 If an investor had invested $21 as of
2 June 1, 1978, in a S&P 500 composite stock average
3 stock, what would he have had at December 31, 1982?
4 A. He would have had $36.37.
5 Q. What would that figure have been at
6 December 31, 1983?
7 A. That would have been $43.14. And I
8 might add that assumes no compounding of dividends
9 that he received on the index during that period.
10 Q. Just above that you have an average of a
11 group on the one-year treasury bills, 30-day
12 certificates of deposit and money market mutual
13 funds, an average of $32.13. What does that reflect?
14 A. That reflects what his investment
15 would have been worth if he had invested in, if
16 you will, the average, or a mix of those conservative
17 fixed income short-term liquid money market instruments.
18 Q. And what would that figure have been
19 as at December 31, 1983?
20 A. It would have been $34.18.
21 Q. Does the investment in treasury bills,
22 30-day certificates of deposit or money market mutual funds
23 reflect compounding, or non-compounding of interest?
24 A. That reflects the non-compounding of interest.

1 Q. Let me direct your attention to Page 7.
2 A. I'm sorry. Of the 1984 report?
3 Q. Of the 1984 report. The last sentence
4 of Subparagraph a states:
5 "The cash position increased significantly
6 in 1983 (about $111,000,000) primarily due to reduced
7 inventories and receivables (about $60,000,000) as a
8 result of closed and discontinued businesses, a
9 higher amount of advanced payments from normal,
10 (a timing item accounting for about 32,000,000) and
11 a lower dividend to Signal by 10,000,000 versus the
12 previous year."
13 Is that sentence entirely accurate?
14 A. No. My shorthand method of writing
15 actually was somewhat inaccurate. I should have
16 said there the cash position increased significantly
17 in 1983, about $111,000,000, primarily due to -- and
18 then there would be a change right here -- due to
19 the decreased working capital requirements including
20 the reduced inventories and receivables and increased
21 current liabilities. This is information that I
22 got directly from Signal, and it was reflecting the
23 decrease in working capital requirements due to the
24 shrinkages of some businesses in 1983, and I did not

1 write it in this paragraph as accurately as I
2 should have.
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1 Q. So to make it the longhand rather than
2 the shorthand version, what would you insert after the
3 words "due to" in the fifth line from the bottom in
4 that paragraph?
5 THE COURT: Excuse me. What page are
6 you on?
7 MR. PAYSON: Page 7, Chancellor. It is
8 paragraph numbered (a), five lines from the bottom of
9 that paragraph.
10 THE COURT: Okay.
11 THE WITNESS: The words being "due to"
12 being the first two words, after "due to" I would
13 insert "decreased working capital requirements,
14 including," and then it picks up, "reduced inventories
15 and receivables," and then I would insert "and increased
16 current liabilities," and then the sentence would continue
17 as is.
18 THE COURT: Mr. Payson, on the exhibit
19 itself, how do you want to handle that for the record?
20 I know it is in the record.
21 MR. PAYSON: Since it is in the record,
22 I think it could be interlineated in hand in the
23 exhibits, if Mr. Prickett has no objection.
24 THE COURT: Well, I think that would

1 probably be the thing to do. If you don't have any
2 objection to that, I think it would be -- I am thinking
3 of hereafter, somebody might pick up that exhibit who
4 was not here today, and that might pose a problem. But
5 I think that might be a good idea, unless Mr. Prickett
6 has --
7 MR. PAYSON: After we get the transcript,
8 which we will be receiving on a daily copy basis, if I
9 may, I would ask the Register to make interlineations
10 in accordance with the testimony, and Mr. Prickett and
11 I can watch her do it, in the exhibits which have been
12 officially admitted into evidence.
13 MR. PRICKETT: Your Honor, I have no
14 objection even to Mr. Payson doing it by himself. I
15 would suggest seriously that he take a pen and put it
16 legibly in and note at the bottom there that these
17 interlineations are made at the suggestion of the
18 witness and then give the page number, so that the
19 person reading it sometime knows when these inter-
20 lineations were made, who made them and how to refer
21 to the transcript to get back to that. But I leave that
22 up to Mr. Payson as to how to do it. Of course, I may
23 check it.
24 MR. PAYSON: I wouldn't doubt that you

1 would look over my shoulder.

2 THE COURT: All right. Well, I think

3 probably something to that effect should be accomplished,

4 and you can do it either way.

5 What do you say we take an afternoon

6 recess, 15 minutes before we resume?

7 MR. PAYSON: Thank you, Chancellor.

8 (Recess taken.)

9 THE COURT: Mr. Payson.

10 BY MR. PAYSON:

11 Q. Mr. Purcell, let me turn for a moment

12 back to the first leg of your assignment. I may have

13 asked you this question, but I am not sure.

14 In connection with your 1984 opinion as

15 to the fairness of the 1978 merger price, did you give

16 any weight in your evaluation to the 1975 tender offer

17 and partial purchase and purchase?

18 A. No, I didn't give any value to the 1975

19 tender offer in arriving at our opinion as to the

20 merger being fair and equitable. It was a fact. We

21 observed it and commented upon it.

22 The only comment that I could make upon

23 that was what I said in my deposition with Mr. Prickett,

24 so I might as well repeat it, in the sense that I

1 think, having -- if I could have put myself in that
2 situation in terms of having looked at all the facts
3 of the matter and being asked to sign a fairness
4 opinion, I think an argument could have been made for
5 a price lower than $21 per share, and I think the
6 existence of that tender offer, again, given my
7 experience and putting myself back into that situation --
8 I think the parties involved, including their advisers,
9 given the fact that that had happened, would probably
10 lean over backwards to duplicate that price rather than
11 go under it. That is the observation I made in our
12 study. That is the comment I made in my deposition,
13 and I just repeat that for the record, because that is
14 the only weight, if that is the right word, I gave it.
15 It had nothing -- it had no effect at all on opining
16 on the fairness of the $21 price.
17 Q. Thank you. Now will you turn to Page 15
18 of your 1984 report. In the first paragraph, (i) there
19 is a statement, "At December 31, 1982 the average
20 price/earnings ratio was basically the same at 7.5
21 times, although the median price/earnings ratio for the
22 group was somewhat lower at 6.9 times. (The 1982 averages
23 did not include those companies in the group
24 which reported losses in 1982 or whose earnings had

1 declined by more than 25 percent.)"

2 In the next sentence there is a statement --

3 I am sorry. Going down to (iii), there is a statement,

4 "At December 31, 1982 the average market-to-book-value

5 ratio for the same companies discussed above had

6 increased somewhat to 122 percent, with the median

7 being 114 percent."

8 If you would please turn to Exhibit 7

9 to your report, the averages or the average -- do you

10 have that, Mr. Purcell?

11 A. I do.

12 Q. The average for December 31, 1982 on a

13 historical price/earnings ratio appears to be 9.1 times,

14 yet your text shows an average of 7.5 times and a

15 median of 6.9 times.

16 A. Right.

17 Q. Similarly, on Page 2 of Exhibit 7, the

18 average market-to-book-value for December 31, 1982 is

19 1.15 times. And in your text at Page 15 you refer to

20 an increase to 122 percent, with the median being

21 115 percent.

22 Can you explain the difference between

23 your exhibit presentation and your textual presentation?

24 A. Yes. I explained that actually in my

1 deposition with Mr. Prickett, and the actual numbers
2 are set forth on a typed piece of paper that I believe
3 you inserted into the record someplace.
4 Q. It has not yet been inserted. I believe
5 that it will be.
6 A. Okay.
7 Q. Is that the --
8 A. Yes.
9 Q. What does that document reflect?
10 A. First of all, let me just explain. On
11 Exhibit 7 on Page 1 and 2, where you pointed out the
12 numbers applicable for December 31, 1982, those were
13 the averages of all the companies "deemed to be some-
14 what comparable" to UOP and which were included in our
15 1980 study also. Those averages basically included
16 all the companies on the list, with the exception of
17 a couple that had been footnoted by the associate that
18 was given the responsibility at Dillon Read to prepare
19 this schedule, of eliminating a couple of companies
20 that had, you know, losses or earnings so low that the
21 price/earnings ratio was not meaningful.
22 Given the fact that these exhibits had
23 been typed and we had to get our report to Mr. Prickett
24 on a particular day, I personally went through the list

1 and had the companies on my work papers and since my
2 deposition with Mr. Prickett had it typed up,
3 eliminating for purposes of that average the companies
4 on the so-called comparable list on both this and
5 Exhibit 8 that had had earnings declines in 1982 of
6 25 percent or more on the basis that companies with
7 depressed earnings of that magnitude, the price/earnings
8 ratio gets out of whack because it is not -- it is
9 based more on a normalized earnings number, if you
10 will, rather than that year's depressed number. So it
11 gives you an inaccurate number.
12 So the statistics on Page 15 of the text
13 are based on the same companies in Exhibits 7 and 8,
14 with the exception that those companies that I deemed
15 not to be appropriate that had the earnings decline of
16 25 percent or more were not included in that average
17 calculation. Those companies are so identified on this
18 piece of paper that you handed to me.
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1 Q. And was this piece of paper prepared
2 at your direction? This is the document entitled
3 "June 1984, W. H. Purcell."
4 A. This piece of paper was, you know,
5 prepared by me the day after Mr. Prickett deposed
6 me and asked me about that. I had indicated to him
7 that I had those statistics, but not with me, so
8 when I went back I had them -- I copied them from my
9 work paper onto a piece of paper that could be
10 typed and given to you to give to him.
11 MR. PAYSON: Your Honor, I asked that
12 that document be introduced as Defendants' Exhibit 13A.
13 THE COURT: I noticed the sheet I have
14 also makes some reference to Exhibit 8.
15 MR. PAYSON: Yes. Mr. Purcell explained
16 that, but let me explain it in a little more detail.
17 I think that would be helpful.
18 THE COURT: Since you are offering the
19 document into evidence, I wasn't sure how it
20 applied to Exhibit 8.
21 MR. PAYSON: I'll explain that, and
22 then I'll reoffer it.
23 BY MR. PAYSON:
24 Q. Mr. Purcell, on Page 15, the first

1 paragraph, II, the statement appears:

2 "At December 31, 1982, the average

3 price/earnings ratio had increased somewhat to

4 7.7 times with the median also being 7.7 times."

5 If you will turn to Exhibit 8, Page 1,

6 you will that the average P/E ratio for

7 December 31, 1982, is shown at 8.3 times. Is that

8 correct?

9 A. That's correct. And if one eliminated

10 the companies that are listed on the piece of

11 paper, all of which had earnings declines of

12 25 percent or more, that 8.3 average would become

13 7.7.

14 Q. Do I understand that you personally

15 made the calculations reflected in the text in the

16 first paragraph of Page 15, and that the data

17 reflecting those computations is shown on Exhibit 13A

18 for identification?

19 A. That is correct. And just as further

20 information for the Court and for Mr. Prickett, the

21 earnings per share of those particular companies

22 are on Exhibit 8, Page 3 of 3, so one can just

23 turn back there and see, you know, which companies

24 had the decline without taking my word for it.

1 MR. PAYSON: I now offer that as
2 Defendants' Exhibit 13A, Your Honor.
3 MR. PRICKETT: Your Honor, might I
4 examine the witness on that?
5 THE COURT: Yes, Mr. Prickett. That's
6 acceptable.
7 BY MR. PRICKETT:
8 Q. Mr. Purcell, as I understand it, in
9 1980 you selected certain companies as comparables
10 for purposes of your report. That is, you wanted
11 companies to compare to UOP; is that correct?
12 A. That's correct. I picked companies
13 that I called "somewhat comparable to UOP."
14 Q. Somewhat comparable. But at least
15 comparable enough so that you thought that it was
16 appropriate in 1980 to make comparisons between those
17 companies and UOP?
18 A. That is correct.
19 Q. And none of the companies originally
20 selected in 1980 were eliminated from the list,
21 were they?
22 A. That is correct.
23 Q. Then in 1984 you said to the associates,
24 take the same list of companies, and prepare for me a

1 chart showing the P/E's for December 31, 1982; is
2 that right?
3 A. Actually, Exhibits 7 and 8 tracked the
4 P/E's for each year from 1978 through the end of 1983.
5 Q. Right. And you also had them give you
6 a year-by-year historical review of what happened
7 to each of the companies that had appeared in 1980,
8 and you had used for comparison purposes; is that
9 correct?
10 A. That's right.
11 Q. And they did that for you?
12 A. That's correct.
13 Q. And you had a complete list of all
14 of the companies; is that correct?
15 A. That is correct.
16 Q. And then on Page 7 -- Page 1 of Exhibit 7,
17 you find what the value is when you average all
18 those companies; is that right?
19 A. That is correct with the exception of
20 the couple of companies that the associate himself
21 eliminated pursuant to the footnote on the page
22 because they either had losses, or very low --
23 Q. I didn't hear you.
24 A. Because they either had losses or minimal

1 earnings. As footnoted on Exhibit 7, Page 1 of 4,
2 the associate had Footnote 2 that he put next to a
3 couple of those companies that were excluded from
4 averages due to severely depressed earnings.
5 Q. So that when you came to 1984, the
6 associate himself eliminated some companies due,
7 as it said in the footnote, to severely depressed
8 earnings; is that correct?
9 A. That's correct.
10 Q. And how many did the associate eliminate?
11 A. Well, it depends on which average you
12 are looking at. You can look at the page and see
13 which ones have Footnote 2 next to them.
14 Q. Okay. Why don't we take a look.
15 He eliminated Aluminum Company of
16 America?
17 A. I don't think that's correct.
18 Q. Well, it has "2" there.
19 A. It has "2" next to the June 30, 1982,
20 average.
21 Q. I see. It's just where it's eliminated
22 in the column, is that right?
23 A. That's correct.
24 Q. So the ones then that I see in

December 31, 1982, that the associate did are Aluminum Company of America -- no. I'm sorry. That's not right for December 31st.

I don't see any he did there.

A. I believe he eliminated none in tht particular year.

Q. How about that.

A. Except for two, a couple of non-meaningfuls, which meant they had losses.

Q. Okay. So that the associate eliminated the ones that had losses because they -- you couldn't figure price/earnings ratios for them. He didn't eliminate any for depressed earnings, and the figure comes out for his calculation as 9.1 for December 31, 1982; is that correct?

A. That is correct.

Q. And then you took this, and you eliminated, as I understand it, the following companies: Aluminum Company of America, American Cyanamid, Braun Engineering, Deere, Federal Mogul, Fluor and International Harvestor; is that right?

A. That's correct.

Q. Now, the reason you did that was because these companies had earnings declines of

1 25 percent or more; is that right?

2 A. That's correct.

3 Q. So that the original list in 1980

4 included all these companies, and then seven out of

5 the 14 companies were exhibiting a decline of

6 25 percent or more in earnings; is that right?

7 A. That's correct.

8 Q. Half of your list, therefore, was

9 exhibiting a decline of 25 percent or more?

10 A. Half of the list on Exhibit 7. Not

11 half of the list on Exhibit 8.

12 Q. Well, we are still talking about

13 Exhibit 7. We'll get to what we did to 8 later.

14 So you took out half of the list;

15 is that right?

16 A. That's correct.

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1 Q. And so, Mr. Purcell, isn't it a fact,
2 then, that half of the companies were displaying a
3 decline of 25 percent or more?
4 A. In 1982, that's correct.
5 Q. Yes, that is what we are talking about.
6 So you took out half of the list, but doesn't that show
7 that, in fact, half of the companies were, in fact,
8 showing a decline of earnings? 50 percent of them
9 were showing that decline?
10 A. That's correct.
11 Q. And therefore, to measure what was
12 happening to the complete list, wouldn't you have to
13 include those that had a 25-percent decline, since that
14 wasn't an aberration but half of the list was doing
15 this?
16 A. I don't understand your question.
17 Q. You had a list of 14. Half of them are
18 showing a decline of 25 percent; is that right?
19 A. That is correct regarding Exhibit 7.
20 That is correct.
21 Q. Now, how do you know that the seven that
22 you have eliminated are not the normal ones and the
23 ones that don't show the decline of 25 percent are the
24 abnormal ones? I mean, why do you pick the ones that

1 have declines to eliminate them?

2 A. When one is doing a comparison of

3 price/earnings ratios and market-to-book-value ratios

4 as to where companies are trading in the market at a

5 particular point in time, A, one should use where

6 possible a list large enough so that it is representa-

7 tive; and number two, one should eliminate those

8 companies that have earnings depressed beyond some

9 defined level, because what happens is the price/earnings

10 ratio is distorted.

11 Q. Yes. But you have taken those that have

12 gone down to five percent. You say those are distorted,

13 and those that have not gone down you say are not

14 distorted. How do you choose which ones are distorted

15 and which ones are not distorted?

16 MR. PAYSON: Your Honor, it seems to me

17 this all goes to credibility or weight, not admissibil-

18 ity, and it is not proper voir dire. This is classic

19 cross-examination. It does not have anything to do

20 with admissibility.

21 THE COURT: I must indicate I tend to

22 agree with that, Mr. Prickett. I was letting it go

23 as long as Mr. Payson didn't care. But what we have

24 before the Court is an offer of this document, which

1 I understand is being offered by Mr. Purcell for the
2 reason he has given to alter or change the content of
3 his report. And you wanted voir dire on that, and I
4 get the impression that you have really lapsed into
5 cross-examination on how he could justify doing this.
6 And I think that is proper cross-examination, but I am
7 not sure it is proper voir dire.
8 MR. PRICKETT: Well, Your Honor, with
9 Mr. Payson's compliment that it is classic
10 cross-examination and Your Honor's suggestion, I
11 will forego the pleasures at the moment and come back
12 to this.
13 I think we have some understanding at
14 least of what Mr. Purcell is doing so far as Exhibit 7
15 is concerned. We haven't gotten to 8, but I think he
16 would tell us the same thing, and perhaps we will go
17 a little more deeply into how he justifies doing this
18 when and if I have an opportunity for cross.
19 THE WITNESS: I would just add, if it
20 helps the Court for me to answer the question, I can
21 answer the question, but it is up to you.
22 THE COURT: Well, I think it would be
23 better in the proper context.
24 MR. PAYSON: I suspect you will hear the

1 question again.

2 MR. PRICKETT: What?

3 MR. PAYSON: I suspect that Mr. Purcell

4 will hear the question again.

5 THE COURT: I have no problem about you

6 coming back to it. I look upon this simply as

7 Mr. Purcell making a correction to his report and his

8 opinion and put this document in to show what he has

9 done, and I would have no problem about admitting it

10 on that basis subject to cross-examination.

11 MR. PRICKETT: Thank you, Your Honor.

12 THE COURT: It can be admitted as

13 Defendants' Damage Exhibit 13A.

14 MR. PAYSON: Thank you, Your Honor.

15 (Document entitled "Signal/UOP Summary

16 Regarding Applicable Companies from Exhibits 7 and 8

17 Used in the Averages Presented in Memorandum Text,"

18 received in evidence as Defendants' Exhibit 13A.)

19 BY MR. PAYSON:

20 Q. Mr. Purcell, would you please turn to

21 Page 16 of your report.

22 A. 1984?

23 Q. Yes, sir. I am sorry. In the next to the

24 last paragraph you conclude that the price of the UOP

1 minority shares would have traded at year-end 1982 at
2 $27.25 to $28.50 per share. Then in the last paragraph
3 you add to those figures certain hypothetical dividends.
4 Would you explain to the Court what you
5 have done in the last paragraph on that page.
6 A. On the theory that a shareholder of UOP,
7 if he still held his shares during this period of time,
8 he would have received dividends on those shares at
9 whatever rate management decided to declare as dividends,
10 just as he was receiving dividends at least on occasion
11 when they weren't cutting the dividend prior to 1978.
12 The dividends I used are stated on Page 12 and 11 of
13 my report, and those are the dividends that UOP
14 actually paid to Signal in each year divided by the
15 number of UOP shares that would have been outstanding;
16 i.e., the same number of shares that were outstanding
17 at the date of the merger, to get a dividend-per-share
18 number.
19 I then added those dividends on a
20 cumulative basis up to the end of 1982 and the end of
21 1983 to find out what cumulative amount of dividends
22 a shareholder would have received given those
23 assumptions, and I added that to the price at which
24 I felt the UOP shares would be trading at in the market

1 to come up with a number that, for lack of a better
2 term, I call the total consideration that he would have
3 had as of those two periods of time.
4 Now, in fact, in the real world whether
5 the dividends would have been that high is just a
6 matter of speculation. The dividends actually paid
7 out from UOP to Signal, you know, were somewhat higher
8 in terms of a percentage of earnings than they had been
9 before the merger, but in terms of this study, you know,
10 I had no choice other than give the benefit of the
11 doubt to the UOP minority shareholder, you know,
12 pursuant to what the project was.
13 Q. Would you then turn, please, to Page 17
14 of your report, the last paragraph on that page. Is
15 that the same exercise which you have just described
16 but you have added additional dividends for 1983?
17 A. That's correct.
18 MR. PAYSON: I have no further questions,
19 Your Honor.
20 THE COURT: All right. What is your
21 pleasure, Mr. Prickett? Do you want to start
22 cross-examination?
23 MR. PRICKETT: Oh, yes. Your Honor,
24 I have a few things to ask Mr. Purcell. I doubt that

1 we can finish what we haven't talked about by the
2 end of the day, but let's make a start.
3 THE COURT: Okay. Fair enough. We will
4 try to go to about quarter of, 10 of, in that area,
5 if that helps for your planning purposes.
6 MR. PRICKETT: Thank you.
7 CROSS-EXAMINATION
8 BY MR. PRICKETT:
9 Q. Mr. Purcell, as I understand it, in the
10 last five years you have divided your time at Dillon
11 Read about 50 percent in mergers and acquisitions and
12 50 percent in other investment banking activities; is
13 that right?
14 A. That's correct.
15 Q. And as part of your work in mergers and
16 acquisitions you have participated in the giving of
17 fairness opinions in the sense that you have signed
18 them on behalf of the firm; is that right?
19 A. That's correct.
20 Q. Can you give me the number that you have
21 participated in over the last five years? I thought
22 you said it was -- I don't know what it is.
23 A. Mr. Payson asked a question approximately
24 the last seven years, and I would give the same answer

1 to the last five. Order of magnitude, approximately
2 20, I would say.
3 Q. And this is opinion that the firm has
4 given or you have given?
5 A. No. Every opinion that is given by
6 Dillon Read is a firm opinion. The issues are
7 discussed, you know, with other partners in the firm.
8 Our style is, our opinions are signed by a particular
9 partner. You know, unlike some firms that just give
10 the name of the company, our opinions are signed by
11 an individual.
12 Q. How many have you been principally
13 responsible for, whether you signed it or another
14 managing partner did, in the last five to seven years?
15 A. I gave that number. I said order of
16 magnitude, about 20.
17 Q. Have you ever given an opinion to a
18 client that the transaction was unfair?
19 A. We have had situations where we could
20 not sign off on a fairness opinion for particular
21 facts involved. In those situations one or two things
22 usually happens. A, either the company in question
23 through conversations and what-have-you decides to
24 change that price, and they change it to a price at

1 which we can sign the fairness opinion, or to give you
2 one example, in the case of the Pacific Telephone-AT&T
3 merger, we were about to send a letter to the board
4 saying that we couldn't sign the letter or so stating
5 that we thought the price was not fair, and as we were
6 about to get on the airplane AT&T, you know, pulled
7 the deal. So there was no need to issue the letter.
8 Q. Well, the answer to my question is no,
9 you have never issued an opinion that a price was
10 unfair; is that right?
11 A. That is correct; and I was trying to be
12 helpful to you for you to understand why that is the
13 case.
14 Q. But I would prefer the answer first, and
15 the answer is, you have never done that?
16 A. We have never -- I have never signed a
17 letter. I cannot speak back -- I do not recollect in
18 which the firm has --
19 Q. I haven't asked you that. I am asking
20 you first whether you have ever signed on behalf of
21 Dillon Read a letter saying this transaction is unfair,
22 and the answer is no?
23 A. That is correct.
24 Q. Now let's go to the firm. Do you know

1 of any situation in which Dillon Read as opposed to a
2 situation where you were the person principally involved
3 has ever issued a letter, a fairness letter, in which
4 they have said this transaction is unfair?
5 A. To the best of my recollection, in terms
6 of a written letter form as distinct from an oral
7 opinion, which I discussed with you before and which
8 I have been involved in, to the best of my recollection,
9 the answer to that is no.
10 Q. Have you ever represented a group of
11 minority stockholders in a cash-out merger in which
12 you were asked to give a fairness opinion?
13 A. I will make the same preface that we
14 always make when you ask that question, including in
15 my last deposition. The term "cash-out merger" I don't
16 recognize personally as proper term. I call them
17 control mergers or the merger in which the minority
18 shareholders are bought out for cash. "Cash-out merger"
19 is a term which I find particularly uncomplimentary,
20 which you always use and I always make that introductory
21 statement, so I will do it again.
22 Q. Okay. Well, using your own definition,
23 avoiding and tiptoeing around this phrase you don't
24 like, have you ever represented the minority in a

1 situation in which they were controlled out?

2 A. I personally have worked on a number of

3 control mergers, and Dillon Read as a firm, I believe,

4 has probably worked on as many or more than any major

5 investment banking firm.

6 Q. I am not asking you that. I am asking

7 you whether you represented the minority shareholders

8 who were controlled out and have you ever given an

9 opinion in that situation?

10 A. We have represented the board of directors

11 in many situations, whose responsibility it is to

12 represent the minority shareholders in that type of

13 merger. If you are asking whether we after the fact

14 ever represented somebody who was suing or what-have-you,

15 the answer is no.

16 Q. Thank you. Now, in this phase of this

17 litigation you have again been retained by Signal,

18 have you not?

19 A. That is correct.

20 Q. And your fee arrangements with Signal

21 were $75,000, were they not?

22 A. That is correct.

23 Q. But there was a returnable feature, was

24 there not? That is, if the case was disposed of before

trial, you only received $50,000; is that right?

A. That's correct.

Q. So that your appearance here today is at a cost of $25,000 to Signal; is that correct?

A. It is still far too low, Mr. Prickett, but that's correct.

1 Q. That depends on who is paying it.
2 I think you enumerated the things
3 that you had looked at in connection with your
4 $25,000 appearance here today, and one of the
5 things that I didn't note you said was whether you
6 had looked at Mr. Bodenstein's 1980 report.
7 A. I have read Mr. Bodenstein's report
8 both in 1980 and 1984.
9 Q. So that in addition to all the other
10 things you told us about, you looked at Mr. Bodenstein's
11 1980 and his 1984 report; is that correct?
12 A. That's correct. I didn't mention
13 Mr. Bodenstein's report because the question was
14 what did I look at in terms of forming a judgment,
15 and I didn't look at that in order to form a judgment.
16 Q. No, no. I just wanted to make sure
17 that we were clear about that.
18 Did you also take a look at the
19 comments that Mr. Bodenstein of Duff & Phelps made
20 after reviewing your 1984 report?
21 A. I did.
22 Q. And have you yourself -- I think you
23 told me on your deposition that you made some
24 distinction between looking and reviewing, and let me

1 see if I can get a feel for that.
2 Have you reviewed Mr. Bodenstein's 1984
3 report, or have you just looked it over and read it?
4 A. Since you asked me that last question
5 at my deposition, I have read it one more time.
6 Q. Right. And have you prepared any
7 response, critique or review of what is contained in
8 Mr. Bodenstein's report?
9 A. I did not.
10 Q. And were you asked to?
11 A. I was not asked to prepare a critique.
12 Q. Now, in response to your counsel's
13 question you indicated, somewhat to my surprise,
14 that you had not used what is described in the
15 opinions in this case as the Delaware Block Method
16 in arriving at your opinion in 1980 and 1984.
17 A. That's correct.
18 Q. I heard you correctly, is that correct?
19 A. I can't assume what you heard, but I
20 mean that's what I said.
21 Q. Okay. I just want a starting point.
22 Now, what is the difference between
23 what you did and what your understanding of the
24 Delaware Block Method is?

1 A. I'm not sure I understand what you are
2 asking.
3 Q. Well, I want to know what it is you
4 think you did that is different from the Delaware
5 Block Method.
6 A. All right. Well, what I did -- I
7 thought I was clear, but I'll paraphrase it again.
8 Q. Make it easy.
9 A. All right. In any fairness opinion,
10 any fairness opinion, which this is one of a number,
11 we look at everything there is to look at. We do
12 our due diligence, talk with people. We question
13 things. We analyze all the relevant factors. We use
14 whatever tools of analysis we think are appropriate
15 in that particular case. And based on all those
16 facts we make a judgment as to whether we think the
17 transaction is fair and equitable from the point of
18 view of the shareholders we are discussing. And
19 nothing that we feel appropriate has been left out of
20 that analysis period.
21 That's our standard procedure. That is
22 so stated in all our fairness opinions, whether they
23 appear in proxy statements, or just go to boards of
24 directors, or what have you.

1 Q. Okay. The Delaware Block Method, I
2 take it, is somewhat more restricted. It simply
3 involves evaluating three elements: Markets,
4 earnings and assets, and then weighting them, and
5 that's the opinion; is that right?
6 A. The Delaware Block Method, as I
7 understand it --
8 Q. Yes.
9 A. -- covers some items which any analyst
10 should obviously cover in that sort of an
11 assignment, but it is a very, at least as I understand
12 it, and as I have read other court cases in the
13 past -- it's very formulistic. It is almost like a
14 scale where somebody comes up with a number, and
15 they say okay, this has such and such a weight,
16 and this has such and such a weight, and then they
17 calculate, and come up with a final number, and
18 based on just looking at those particular items
19 say that is the price without taking into considera-
20 tion any number of facts that may be relevant in
21 that particular situation.
22 As you know, every particular situation
23 is different, so the Delaware Block by definition,
24 in my judgment, always leaves something out. It

1 depends on which particular, you know, case is
2 involved.
3 Q. What you did, as I understand your
4 1980 report, was to examine three principal categories,
5 or rather four. I'm sorry. It's four. And you
6 discuss them.
7 A. That's incorrect. We did discuss
8 this in my deposition in great detail.
9 Q. Yes.
10 A. So we can discuss it again.
11 Q. Yes. We are going to discuss it,
12 Mr. Purcell.
13 Do you have a copy of your 1980 report
14 in front of you?
15 A. I do.
16 Q. And am I not correct that there are
17 four categories that you refer to in your 1980 opinion?
18 A. Let me try and state what I stated in
19 my deposition without having it in front of me.
20 Q. Just, if you would, state the answer to
21 my question, and I refer to A, B, C and D.
22 A. We'll go through the same exercise we
23 did in my deposition.
24 Q. Look, Mr. Purcell. Bear with me. That

1 was a deposition, and we are now trying this case,
2 and if you would, I would -- I appreciate that, that
3 we went through it then, but we are going to go
4 through it again.
5 A. I apologize. I'll go through it again.
6 Q. Okay. Let's start over again.
7 Are there four categories in your 1980
8 report? They are listed as market value, investment
9 value, structure of the transaction and net asset
10 value before you get to the premium?
11 A. The last section you mentioned was
12 Section D, Asset Value. There is also a Section E,
13 F and G. And each of those sections, as I
14 discussed before, have a number of subsections in
15 them.
16 For instance, Section C has, I believe,
17 a total of eight little Roman numeral sections under
18 it. These headings are exactly what they are, and
19 which I have so stated before. They are headings
20 under which this report, at least in my judgment at
21 that time, was made more readable by breaking it
22 into sections and subsections. In each of those
23 sections you will find every aspect of evaluation
24 which I discussed before discussed therein.

1 Q. Okay, Mr. Purcell. Now let's turn to
2 net asset value.
3 I think you have told us there that
4 that was not given much weight because of the fact
5 that there was going to be no liquidation. At Page 16
6 you say:
7 "We were advised that neither Signal
8 nor UOP management had any intention of liquidating
9 UOP's assets, and accordingly we believe that little
10 weight should be given to book value, or net
11 asset value, in attempting to evaluate the common
12 shares of UOP."
13 Do I read that correctly?
14 A. You read that correctly.
15 Q. And is that what you did, you gave it
16 little weight?
17 A. We gave it much less weight, which is
18 what it says on Page 15 at the bottom, than the
19 other items that we had looked at.
20 Q. Fair enough.
21 A. And that's particularly in regard to
22 the range it was in. Obviously, if net asset
23 value had been a number different than it was,
24 $80 a share, or what have you, for whatever particular

1 reasons, it would have become an item of much more
2 importance, and subject to much more due diligence.
3 Q. The net asset you did arrive at was
4 $19.86 at year-end 1977, and $20.69 as of March 31, 1978?
5 A. No, we did not arrive at that. That
6 was the stated book value of the company per
7 its audited financial statements as of those two
8 dates.
9 Q. Okay. Did you come up with a separate
10 net asset value?
11 A. No, we did not.
12 Q. Did you accept that as the statement of
13 net asset value, or did you make -- Is that what
14 you accepted?
15 A. Based on our due diligence in discussing
16 with the management as to whether in their opinion
17 there were any assets that they owned that were in
18 their judgment -- or had appraisals for that had
19 significant values different from book value, either
20 plus or minus, and which they responded to the
21 best of their knowledge there were not, we accepted
22 this number as a legitimate approximation of net
23 asset value, and which, I might add, as I have
24 stated before, we did not take any discount for the

1 Come-By-Chance potential litigation, which if we
2 had pursuant to the recent settlement would have
3 reduced those two book value numbers by approximately
4 $2.44.
5 Q. Okay. We will get to Come-By-Chance.
6 Let's stick to this.
7 Now, in 1978 you met with Mr. Crawford
8 and Mr. Woods, and asked them as to whether there
9 were any undervalued assets, and their answer was
10 no, and therefore, the $19.86 at year-end '77 and
11 $20.69 as of March 31, 1978, was accepted by you;
12 is that right?
13 A. Right. You did leave out one word.
14 I had asked Mr. Crawford and Mr. Woods in their
15 judgment were there any, you know, material or
16 significant under or overvaluations that they were
17 aware of, and they said no.
18 Q. Now, did you do the same thing in 1984
19 when you did what you tell us is a due diligence
20 visit? Did you ask again whether there were any
21 undervalued assets of UOP?
22 A. Not to Mr. Crawford.
23 Q. No, I don't mean Mr. Crawford.
24 Mr. Corirossi or Mr. Kavanaugh.

1 A. We discussed the financial situation
2 in a number of different areas. I discussed it
3 with both Kavanaugh or Mr. Corirossi. I believe I
4 asked that question during one of our due diligence
5 sessions.
6 Q. And did Mr. Corirossi make a representa-
7 tion to you as to whether there were any undervalued
8 assets of UOP as of the time of your 1984 conversation
9 with him?
10 A. I don't recall who -- I asked a number --
11 as I said before, I asked a number of questions
12 regarding many, many subjects focusing more
13 importantly on issues other than that, but I
14 believe I asked one of the gentleman that I talked
15 with that particular question. And in fact we
16 spent quite a bit of time, not because I wanted to,
17 but because it's an issue you brought up, on the
18 timberlands.
19 Q. And did Mr. Corirossi tell you that the
20 timberlands were carried at historical cost at which
21 they were put on the books in 1967 when UOP's
22 predecessor -- strike predecessor -- when UOP had
23 acquired the acquisition in connection with the
24 Hecla Calumet transaction?

1 A. I met in Chicago with Mr. Corirossi,
2 Mr. Kavanaugh and Mr. Woods, and we discussed a
3 number of questions regarding the timberlands.
4 Q. Well, that's very interesting, but my
5 question was did he tell you that the -- or did you
6 know that the timberlands in Michigan and Wisconsin
7 were carried on the books at the figure at which
8 they had been acquired, the historical cost in
9 1967, as a result of the Hecla Mining and Calumet
10 transaction?
11 A. I'm aware of that.
12 Q. And did Mr. Corirossi represent to you
13 that the timberlands were undervalued in his opinion?
14 That is, they were not being carried at current
15 values?
16 A. He did not say that.
17 Q. Did you ask him?
18 A. I asked a number of questions about
19 the timberlands.
20 Q. No. That question. Did you ask him
21 are the timberlands being carried at an undervalued
22 figure on the books of UOP?
23 A. I asked people what they thought the
24 timberlands were worth.

1 Q. No. I know it's late, but let's get the
2 answer to this question.
3 Did Mr. Corirossi tell you that he
4 thought the timberlands were carried, or were under-
5 valued on UOP's books?
6 A. He did not state that, nor did I ask
7 the question in that fashion. If one asks what are
8 the timberlands worth, one can come to that
9 conclusion themselves if one got an answer to the
10 question.
11 Q. Well, all right. You didn't ask it,
12 he didn't volunteer it, but you had asked the
13 question as to whether there were any undervalued
14 assets; is that right?
15 A. As a general statement, that's correct.
16 Q. Yes. Now, did you ask what the timber-
17 lands were worth, to pick up on your question?
18 A. I asked if anybody had any knowledge
19 as to what the timberlands were worth, whether there
20 were any appraisals, judgments, had anybody
21 approached them to buy the timberlands, had they
22 received any offers, was there anything of substance
23 in the records or knowledge of the company that could
24 put a value on those timberlands.

1 Q. And what was his response?

2 A. And the answer was there was none.

3 They have never been approached to be purchased

4 despoite the fact that people know they are divesting

5 themselves of a number of different assets. They

6 had no comparable transactions that they were

7 aware of. The timberlands had been used in their

8 best use in terms of generating income. We went

9 over whether they could generate more income from

10 the timberlands, and they could not because, A,

11 of the restrictions of tax laws in Wisconsin, and B,

12 because just as the market demand for timberlands

13 are reviewed, the financial results of that

14 operation that were generating approximately, to

15 the best of my recollection, somewhere between

16 three and $400,000 after tax, which income was

17 reflected in each year's financial statement, and

18 I satisfied myself to the extent that these

19 timberlands, you know -- there was no hidden goody,

20 at least that I could distinguish from these

21 timberlands. In fact no one has ever approached

22 them to buy them.

23

24

1 THE COURT: Is it close enough that
2 maybe we can quit on that point?
3 MR. PRICKETT: Yes, on the note of
4 goodies, we will close up, an investment banker's
5 term.
6 THE COURT: What is the pleasure of
7 counsel with regard to starting at 9:00 tomorrow
8 morning? Should we go again at 9:30, or do you think
9 things are sufficiently progressing that we can start
10 at 10:00?
11 MR. PAYSON: If that suits the Court,
12 I think everybody would be happy to start at 9:30.
13 MR. SPARKS: We would like to start at
14 9:30.
15 THE WITNESS: Yes. If I get the early
16 train, it gets in at quarter of. So that should be
17 plenty of time; right? Fine.
18 MR. PAYSON: Subject to Mr. Purcell's
19 train.
20 MR. PRICKETT: Your Honor, let's not
21 make it subject to that. I have had a little
22 experience on the train.
23 THE COURT: We certainly can't argue
24 that based on what I have heard. Is 9:30 all right?

1 MR. PRICKETT: Yes, sir.

2 MR. SPARKS: Sure.

3 THE COURT: Or as soon thereafter as

4 Mr. Purcell's train gets him here. We will shoot for

5 9:30.

6 Recess until 9:30 tomorrow morning.

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8 (Court adjourned at 4:53 p.m.)

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I N D E X

DEFENDANTS' WITNESSES

DEFENDANTS' EXHIBITS

DEFENDANTS' EXHIBITS (Cont'd.)

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