VOLUME IV

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
Thursday, June 21, 1984
9:30 a.m.

- - -

BEFORE: HONORABLE GROVER C. BROWN, Chancellor

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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
Lathan & Watkins
for Defendant The Signal Companies

HENRY D. SKOGMO - LORRAINE B. MARINO
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APPEARANCES (Continued):

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

ALSO PRESENT:

BREWSTER L. ARMS.

JOHN G. WOODS

P R O C E E D I N G S

MR. PRICKETT: Good morning, Your Honor.

THE COURT: Good morning.

MR. PRICKETT: The defendants having rested, the plaintiff now puts on his case in chief, and I will call Kenneth Bodenstein as a witness for the plaintiff.

THE COURT: All right. Mr. Bodenstein.

KENNETH A. BODENSTEIN, having been first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. PRICKETT:

Q. What is your full name, sir?

A. Kenneth Alan Bodenstein.

Q. And where do you live, Mr. Bodenstein?

A. 340 Diversey Parkway, Chicago.

Q. By whom are you employed?

A. Duff & Phelps, Inc.

Q. Now I would like to start with your formal education. Where did you do your college or university work?

A. At Columbia University, City of New York.

Q. And in what year did you graduate?

A. I received a A.B. degree in 1957, and then I have a B.S. in chemical engineering in 1958.

Q. And are they both from Columbia University, New York?

A. Well, one is from the college, and one is from the School of Engineering, Columbia University.

Q. Following your completion of your studies at Columbia College and University, by whom were you first employed?

A. You missed something. I also have a graduate degree from Columbia, a master's in business administration, 1960. But then I was employed by Air Products and Chemical Company.

Q. Let me cover that.

So that you got an A.B. as an undergraduate degree, and then a degree in chemical engineering?

A. That is correct.

Q. And then you got a master's in business?

A. Administration.

Q. Is that an M.B.A.?

A. That's an M.B.A.

Q. Also from Columbia?

A. From Columbia in 1960.

Q. Following the completion of your studies at Columbia University and college, by whom were you first employed?

A. Air Products and Chemicals.

Q. And what sort of a company is that?

A. Air Products and Chemicals is presently a large chemical company whose major area is in industrial gases and chemicals, catalysts.

Q. Is it comparable to UOP in any way?

A. Well, I would say in one of the areas it is a direct competitor with UOP's Process Division.

Q. And when you went with Air Products were you employed in your capacity as a chemical engineer, or in your capacity that you learned in getting your M.B.A. from Columbia?

A. I would like to think both had a relationship to my employment.

Q. Well, during the time that you were with Air Products did you function as a chemical engineer or as a financial analyst, or both?

A. Well, originally I was in the economic evaluation section and market planning group for around a year, and then I moved into the treasury function.

Q. And what was your function with Air Products after you moved into the treasury department?

A. I was in charge and I did the capital expenditure review and analyses, handled some of the foreign financing requirements and also was involved in acquisition and merger analysis.

Q. And was Air Products in merger and acquisition work? Were they doing mergers and acquisitions?

A. Well, they were buying companies, yes.

Q. And how long were you with Air Products, roughly?

A. A little over four years.

Q. And when you left Air Products, by whom were you employed?

A. Armour & Company in Chicago.

Q. And when you went with Armour & Company, what was your position with Armour?

A. I think my title was Senior Planning and Investment Analyst.

Q. And with whom did you work at Armour?

A. Originally with the vice president, corporate development.

Q. And then did that change?

A. The last few years I was reporting to the vice chairman of the board.

Q. And how long were you with Armour, roughly?

A. Again, four and a quarter years.

Q. And what were your duties at Armour & Company?

A. Well, they varied during the period. But essentially I was part of the corporate development staff that was in charge of the overall planning of the company, looking at -- doing both operation planning and strategic planning, doing acquisition analysis.

Q. During the last part of your tenure was Armour itself the subject of attempted acquisition?

A. Yes, it was.

Q. And how long a period did that continue over? I mean, how long was it --

A. Well, it started in December of '67, and it really proceeded over the next several years. I left, though, in the fall of '68, during the process of it being taken over.

Q. And was Armour eventually acquired?

A. Yes, it was.

Q. By whom?

A. Greyhound Corporation.

Q. After you left Armour by whom were you employed?

A. Goodbody & Company.

Q. What is Goodbody & Company?

A. Well, Goodbody & Company was an investment banking and national brokerage house.

Q. And was it New York-based or Chicago-based or both?

A. Well, the headquarters was in New York, but Goodbody was a nationwide firm, and they had a regional office in Chicago.

Q. And in what capacity were you employed by this investment banking house?

A. As manager of corporate finance.

Q. And was that for the regional office or for the entire operation?

A. No. That was just for the Chicago region, which stretched from, say, St. Louis on the south side to Minneapolis on the west and Detroit on the east.

Q. What did you do in connection with those duties? I mean, what --

A. General investment banking functions and financing for corporations, new public offerings, acquisition-merger work, financial consulting work.

Q. How long did you stay with Goodbody?

A. A little over two years.

Q. And what happened to Goodbody?

A. Well, at that point Goodbody was merged into Merrill Lynch.

Q. And did you stay through the acquisition by Merrill Lynch?

A. No, I didn't.

Q. After you left Goodbody by whom were you employed?

A. CNA, the initials CNA Financial Corporation.

Q. What is CNA Financial Corporation or what was it at the time?

A. Well, it is and was a large financial service base company to lynchpin corporations, were two very large insurance companies, one a property and casualty company. The other was a life company. And at that time in 1970, when I joined, they had just finished a major acquisition program, acquiring a major -- the second-largest homebuilder in the country in Los Angeles. They owned a large conglomerate loan company and other various -- and a mutual fund company in New York, Jerry Tsai Manhattan. It was kind of a financial services conglomerate at the time.

Q. And what was your position with CNA Financial?

A. I was a member of the corporate development staff, and I think, if I remember correctly, I had the title of Director of Business Research.

Q. And what did you do during your tenure at CNA Financial?

A. Similar to the work I had done at Armour and at Air Products. One, the strategic planning, which involved both the future planning of the company, both on a financial basis and on a strategic business basis; also reviewed performance of the various divisions; and, number three, the area of acquisition work, doing acquisition negotiations, acquisition analysis work.

Q. And was CNA Financial in mergers and acquisitions? Were they acquiring companies?

A. Yes.

Q. And how long were you with them, roughly?

A. Again, four years. I guess I have a four-year itch.

Q. And at that time by whom were you employed?

A. Well, I left CNA, and I joined Duff and Phelps.

Q. Now, in the meanwhile, have you become a chartered financial analyst?

A. Not until after I joined Duff & Phelps.

Q. Had you started any part of that process?

A. Before?

Q. Yes.

A. I attempted to. I attempted to become a C.F.A. when I was at Armour & Company, and that's when the program started in the early '60's. But because my work wasn't directly involved in security and investment analysis as prescribed by the C.F.A. code, but application to take the exams was turned down.

Q. Now, you said that you were employed by Duff & Phelps. Tell me what Duff & Phelps is, or what it's not.

A. Well, Duff & Phelps is an independent firm of investment and financial analysts. I have to preface that now because we are soon to lose our independence.

As of April this year the board of directors and stockholders of Duff & Phelps signed a definitive agreement to be bought by Security

Pacific Corporation, which is a large bank holding company out of Los Angeles which in itself owns the tenth largest bank in the country, Security Pacific National Bank. But we are, and hopefully will still remain an independent firm working in four major areas. The first area is investment and security research where we write and produce research and sell it to our clients across the country. Our clients are mainly large money management, large banks, and small banks, trust companies. The investment banking community are our clients. As Mr. Purcell said yesterday, Dillon Read is one of our clients. In fact Dillon Read takes our complete research package, as others do. Salomon Brothers and Goldman Sachs are our clients.

The second area is --

Q. Well, let me pause on that.

What do you do for a client such as an investment bank like Dillon Read or Goldman Sachs? What do you provide them with?

A. We produce for them our analysts. Our firm is 160 people strong, 90 to a hundred of which are professionals, and in the investment research end we have somewhere between 40 to 50 analysts.

By the way, that's the second largest firm in the country, second only to Merrill Lynch in number of security analysts under one organization.

These analysts write research. They are professionals and specialists in certain areas. We will have people that follow just the chemical industry, people that follow the automobile industry, et cetera, and they write security research. They write research on, oh, around 350 utilities and another 450 industrial companies, and we monitor those companies, visit these companies, and write research on a regular basis.

What we supply our clients are several things. We supply them with written material. Every Friday whatever was written during the week goes out to our analysts.

Number two, we are now on an electronic data disbursement system, so our clients -- it's possible that Dillon Read has a cathode ray tube in its office, and they can pick up our research direct from our computer. And third, they can make calls to us, and inquire about various companies.

Q. So you are selling the research that your analyst do to people like Dillon Read and Golden Sachs and things like that?

A. Yes.

Q. And organizations like that?

A. That's exactly right.

Q. And is this type of research financial analysis on various companies?

A. Yes. We call it security analysis.

Q. Right. Now, that is the one area, and I think you said there were four. Let's go briefly over the other three.

A. The second is as of 1980 we became a public rating agency, and we publicly rate bonds in the industrial and utility area of the country, and that puts us competing directly with Standard & Poor's and Moody's as a public rating facility.

Q. Historically was this the original function of Duff & Phelps?

A. We always rated bonds privately for our private clientele. For example, Dillon Read and Salomon Brothers and Goldman Sachs took our rating service on a private basis. We would rate bonds, but the company was not allowed to distribute on a public basis our ratings, and because of the interest in the investment banking community we went public with those ratings in 1980.

Q. All right. Now, that's the second area.

What is the third area of Duff & Phelps' work?

A. The third area is that we are a money manager. We manage on a discretionary basis over a billion dollars of money that's mostly pension fund, profit sharing fund money, and we also are folio consultants and advisors to over $4,000,000,000 of money located in various estate, pension sharing and profit sharing funds.

Q. That's three. What is the fourth area?

A. The fourth area is the area I'm involved, and that's called financial consulting, and here we do all sorts of financial consulting work. Mainly we call it financial problem solving, but the base of our -- I would say at this point 70 percent of our practice is strictly valuation oriented, and we will do -- oh, in 1983 we did approximately 160 assignments a year.

Q. Of valuations?

A. No. That's total. If you apply the 70 percent number to that, I would say it would be strictly valuation.

Q. For whom do you do the valuations?

A. Whoever wants an evaluation done. It's a broad spectrum of assignments.

We do work in the estate planning area where there is a tax orientation, estate tax problems; back in the '70's when there was gift tax evaluation required. We work for the IRS in some cases.

Q. You do what?

A. Yes, we will work for the government.

Q. And do you do it in the corporate field?

A. Well, most of that work is done on the corporate side. We will do valuations in acquisitions and mergers, either representing, working for the seller or working for the buyer advising them what we think the fair price of the transaction should be.

Q. And do you at times other than in this case work representing minority shareholders in a buy-out or cash-out merger situation?

A. Oh yes.

Q. Now, what is the difference between Dillon Read and Duff & Phelps? Well, let me make it broader.

What differentiates you from an investment banker?

A. That's a leading question, but --

Q. No, it's not.

A. Two things. Maybe there are more, but two major things. One is that we do not trade securities as an agent. We are strictly -- We are not registered -- plus we are not registered with the SEC as an investment banker to raise money for anybody. We are strictly advisors. We are registered with the SEC as a security advisor, and we registered with the SEC as a money manager, but we do not trade securities, and we do not raise capital for funds.

Q. Now, I think you indicated that when you joined Duff & Phelps you reapplied for permission to sit for the chartered financial analysts exam. Is that right?

A. That's correct.

Q. And could you describe first of all who administers the chartered financial analysts program, and then we'll go into what you have to do to be certified?

A. The Institute of Charted Financial Analysts in Virgina supervises the program.

Q. And what is it designed to do?

A. Well, it is designed to do mainly two functions: To maintain competence and quality of work in the financial and investment community; and two is to provide a code of ethics to be attained.

Q. To become entitled to the designation of chartered financial analyst do you have to have as a prerequisite a certain amount of work in the securities field?

A. Yes.

Q. And I won't spend any time on this, but generally how much time do you have to spend there before you are qualified to apply for the exam?

A. It is a two-part -- it is a two-part process. One is, as you describe it, it is an experience factor. At the time I took it, it was five years directly working in security analysis and investment analysis work, and it is a three-level program given once a year, and you have to pass Level 1 before you move on to Level 2 and go on to Level 3. And you must complete the exam, the successful exams, the three exams, within a seven-year period from starting on Level 1.

Q. And when did you become a chartered

financial analyst, roughly?

A. 1978.

Q. Just in time. And are there others in your firm besides yourself who have earned the right to the designation of chartered financial analyst?

A. Yes. Out of our professional staff I would say we have in excess of 40 chartered financial analysts.

Q. Now, I would like to turn to the Arledge-Chitiea report, Exhibit No. 74. I don't think you need to get it.

Do you recall that at a preliminary hearing before this Court in the spring of this year the Arledge-Chitiea report was the subject of the hearing or at least the principal subject of the hearing? Do you remember that?

A. Yes, I do.

Q. On the other hand, do you remember that there was a trial in 1980 at which you were a witness and at which you made no comment on the Arledge-Chitiea report? Do you recall that?

A. I recall that.

Q. Now, you were familiar with the existence of the Arledge-Chitiea report at the time of the 1980 trial, were you not?

A. I was.

Q. Is there any reason why you made no comment on it in your testimony before this Court at that time?

A. Well, if I remember, I wasn't asked about it in my testimony, so I didn't make any comment. I think you have to go back then and you have to -- in my same context of the assignment now, I am putting myself in the position of being essentially retained by the UOP board, and I am looking at the value of UOP to the shareholders of UOP. And that was the thrust of my effort.

As I answered, I had knowledge of the report. It essentially said to me that Signal was willing to pay up to $24 per share. My conclusions back in '78 was that a price of no less than 26 was fair. You know, the two kind of -- my work was 26, and they were saying they were willing to pay up to 24. The two really don't match, but there was no need for me to bring it up.

Q. Were you attempting to establish the value of the shares from the point of view of the minority shareholder?

A. That's exactly what I was doing.

Q. Was the price that Signal's management characterized as a good investment directly related to the task that you were performing? Was it directly related?

A. Well, not directly, but there was some relationship. And having read it, I knew that they were going to pay up to 24 and it would have been a good investment for them based on my analysis that the price of UOP was fair at at least $26.

Q. If the only thing you had known at the time of the 1980 hearing was what is contained in the Arledge-Chitiea report, could you have given an opinion on the fair value of the minority stock of UOP? That is the only thing you know. They hand you this and say, "We have this. Can you tell us what the fair value is?" Could you say that alone would determine what the fair value is?

A. Would I be able to opine to the UOP board? No.

Q. What would you have to say to the UOP board having been handed only this document? What would that tell you?

A. Well, obviously, that there is a willing buyer out there that would pay at least $24.

Q. At the preliminary hearing held in the spring of this year were you asked and at my request did you focus on the Arledge-Chitiea report, that being the principal subject of that hearing?

A. I was.

Q. And at that point did you review the methodology found in the Arledge-Chitiea report?

A. I did.

Q. And did the methodology as such play any part or had it played any part in your original valuation as to the worth of the shares in the 1980 trial?

A. Did the methodology in the Chitiea report have any --

Q. Did you use that methodology?

A. No, no. In my work, no, no, I did not.

Q. That is, you were working the other side, the buyer's side, not the seller's?

A. Right. I didn't use that.

Q. Now, at the preliminary hearing were you asked to employ the methodology that Arledge and Chitiea had chosen to present the transaction from Signal's point of view to its executive committee?

A. Yes.

Q. And using their methodology, did you then determine whether, in fact, using their methodology and their numbers, it was a good investment from Signal's point of view at any price up to 24?

A. Well, they did it, and that is what the report said, that it was worth -- it was a good investment up to $24.

Q. And did you check their methodology and numbers? If you assume their methodology and their numbers, did that check out?

A. Nothing there did not -- it checked out to me.

Q. Then did you employ the methodology and extend it beyond the $24, where their work ended, and carry it up to I think $30?

A. Well, what I did was to take their methodology after understanding what they did, and I just extended their methodology through various prices up to 30, and then I think I had $35 there, too.

Q. In using their methodology and plugging in Signal's numbers, did you find that the investment was a good one beyond $24?

A. Yes, I did.

Q. And is that in your work that was done in connection with the preliminary hearing before this Court?

A. It is.

Q. Now, I turn to the subject of premium. Let me start with something pretty basic.

In 1978 there was a cash-out merger in which the majority stockholder acquired the stock of the minority stockholders of UOP; is that not correct?

A. That's correct.

Q. Now, in your experience in such a transaction is there a price paid to the minority that is above the then-market price for minority shares?

A. Yes.

Q. And what is that called in the financial community, the difference between the market price and the cash-out price?

A. The premium.

Q. And have you done any research and published anything on premium?

A. One of my associates and I wrote an article in I think it is 1981, and it was published in the National Law Journal, and the title had to do with premiums, the value behind premiums.

Q. Now, can you tell us somewhat briefly why it is that in a cash-out merger the minority gets a price that is different from the price that they can get if they sold their shares on a national exchange, for example?

A. Well, it is a complex subject but easy, I think, to understand. The minority shareholder is giving up certain rights. If he wants to sell, he goes to the New York Stock Exchange any day of the week and he could get what the best offer is at that point. He has the option to keep it.

In a merger that shareholder is being asked to give up his future rights to that company. He doesn't have the choice to hold it or sell, but through the system he is required to turn in his share and turn in his future rights to future earnings, to future growth, to future dividends.

Q. And is that all shareholders or just one? It is not just one?

A. Well, it depends how many shareholders there are in the corporation. All shareholders are being asked to -- not asked to but are required to give up their ownership. And in giving up these rights, there is value. There is value received by the buyer.

Q. And what does the buyer receive that the seller, the forced seller in this case, is giving up?

A. Well, obviously, in each situation there is different rights, but in general the rights to have full control of the corporation, a hundred-percent control. With a hundred-percent control comes the right to do anything you want. You could take out --

Q. Well, let me ask you, supposing I have 95-percent of the stock of a company. I just haven't been able to get five. What is the difference in my situation and my neighbor's situation, who has gotten a hundred percent? I can vote down anything I want. What is the difference?

A. Well, there are several different things there. Mainly it is that if you wanted to take out as a dividend $10 million, you are going to have to give five percent of that to this other group. Two is that, in a five-percent ownership-type basis, there is a nuisance value. If it is a publicly-held company, there is the SEC filings, the legal costs, which could be material. And so there is all sorts of rights in there and there is all sorts of reasons to value to that seller to get rid of that five-percent minority.

I have come across some situations where it is a financially strapped company, and it is the 95-percent owner that is taking on the financial obligations, the guarantees of maybe a lot of debt, and the minority is going along on a free ride in that case. And so at that point the majority is looking to get another right. If I take all the risk, I want all the reward. And there is a value to that.

Q. Is there, then, a difference between the individual price or value of minority shares as contrasted with the value of a hundred percent of the control of a company?

A. When you are talking about a control transaction, I am on the record not only in this court but in that article and Duff and Phelps is and other people are, that the true value is that that minority block or minority shareholder should get his fair share to the present value of that company on a hundred-percent basis.

Q. Okay. Now, in your view, is there any difference between these two situations: A company is a hundred-percent owner owned by A, A sells to B; and a situation where there is a company that is 80-percent owned by A and 20-percent owned by the minority and there is a cash-out merger? Is there a difference there in terms of the value of the transaction? Do you follow what I am saying?

MR. HALKETT: Excuse me. May I have it re-read, please.

MR. PRICKETT: I think it is a lousy question. I will withdraw it.

BY MR. PRICKETT:

Q. Let me ask you if there is a difference between a sale of a hundred percent to a third party and a transaction, a cash-out transaction whereby the acquiror acquires a hundred percent of the company.

A. In terms of valuation?

Q. Yes.

A. No.

Q. And if in the case of a sale to a third party the seller gets a million dollars, and in the case of a cash-out merger the price -- what should the price be paid to the 20-percent owners assuming that it's the same million-dollar company?

A. It should be 20 percent of the million dollars. Now, it's from valuation technique -- By definition, when we are brought in to ask to opine on fair value, what's the fair value for giving up this ownership on a control basis, obviously your example of A selling to B is what we attempt to do by definition. It's what a willing buyer and a willing seller, you know, would do in a transaction. It doesn't necessarily mean for a valuation expert like myself to have to know that there is a willing buyer out there or a willing seller.

I'm brought into a situation, and I say I need the fair value of this stock, and we attempt to translate what that fair value is by assuming what would happen if there was a willing buyer and a willing seller knowing all information. This is what the value would be.

Q. Selling a hundred percent of the company?

A. By definition that's what the fair value is.

Q. And is that what you were doing here?

A. Yes.

Q. To determine what the value of UOP was, say, the day after the merger when Signal had it all? What was it the very day afterwards?

A. Exactly.

Q. So what you are saying is if Signal had sold to Litton UOP the day after, what was the price that they should get?

A. Right.

Q. And then if you determine that, you say well, 49.5 percent of that belongs to the minority?

A. That's correct.

Q. And you measure that against what was paid to determine what, if anything, is owed to the minority shareholders?

A. Exactly. You know, this is done daily.

When a controlling shareholder of a corporation, of a public corporation -- You read in the paper -- and I don't have examples here. If I think of one, maybe I'll come up with one. I know I wrote one in this article I wrote.

But if a 60-percent -- Using Signal, if in February of '78 the decision was to sell UOP, I'm sure the Signal directors would negotiate in good faith a potential buyer, and that potential buyer would then offer the 49-percent block at the same price that Signal was getting for its 50 percent. I mean, this happens every day. Maybe not every day, but it's general practice.

Q. Now, we had started this discussion focusing a little on premium. Let me get back to it.

We had agreed the premium was the difference between the market price and the cash-out price; is that correct?

A. That's correct.

Q. And that is the amount that is paid in a particular transaction for what the sellers collectively are giving up in the minority stock situation and the buyer is getting?

A. That's correct. Again, it's retrospective. The price is established, and the difference is the premium, and that premium represents the value for all these tangible and intangible rights that the seller is giving up and the buyer is buying.

Q. Now, is premium sort of like what I have sometimes called a prize in the Cracker Jack box? Just something that the buyer happens to get? Or is it a determined figure that is bought and sold regularly in the marketplace?

A. Well, when you say a determined figure, I don't know what you mean by a determined figure, but as I said, it's a value. It's a value for this intangible and tangible right that the buyer is purchasing.

Q. And is one way of determining whether a fair amount of premium, or a fair amount of money is being paid in a transaction, in a particular transaction for these rights, to take a look at the amount or the percentage of premium paid in as comparable a group of transactions as you can determine, as you can get?

MR. HALKETT: Objection. I think up to now it's been fine in laying a foundation. But this is a leading question, and I think particularly an expert witness should be asked to testify without being led.

THE COURT: Well, I guess it was leading, but heretofore no objection has been made. Now that there has been one made, I'll have to sustain it, and we'll see if you can go at it a different way.

BY MR. PRICKETT:

Q. What is the function of assembling comparables in an analysis of premium?

A. It's a function of all comparable analysis to get an understanding of what is happening in a comparable situation, and again, it's a tool. After calculating a price, a fair value through other methods, you are testing it against what's happening in the marketplace. And in tracking one tracks the range of premiums over periods of time. In certain market situations when the overall market is relatively depressed, people are willing to pay control prices based on economic value, not based on intangible values, but they are willing to pay prices that result in bigger premiums as the general market increases and maybe becomes overvalued relatively.

On any given day the market is what the market is, but in terms of financial analysis you hear people talking that the overall is either undervalued or overvalued. But as the market becomes more overvalued this value of economic earnings doesn't really vary that much, and therefore, the spread between the market price and what a hundred percent buyer will pay decreases, and therefore the premium decreases, and it's like a sea out there. As the environment changes, so do premiums paid change. And it's a test against -- When you do your work, and if you come up and see that there is -- for all the basis of your work you see that your premium is falling, doesn't make sense, you better do some rechecking. At least try to explain it.

Q. Okay. Now, what are the mechanics of making a comparison between the premium in a particular transaction and comparable ones?

A. Well, the process is that -- obviously, as I said, the time element. The time frame is of key importance. You are not going to compare a transaction that happened today that was happening 20 years ago. You get a timely group of statistics to measure that premium.

Q. And then what about size?

A. Again, it's like any other comparable analysis. You can look at sizes, you can look at businesses. Obviously if you are selling a newspaper, if you could get recent newspapers that were bought and sold, and the information that's very directly comparable -- you would look for that industry grouping, not depending on size. Size wouldn't matter. A newspaper is a newspaper, and people are willing to pay certain dollars for certain economic earnings.

Q. Now, having assembled your timely comparables and your related comparables, then you know the percentage in the price of the company that you are measuring, right?

A. Right.

Q. And then what do you do in connection with each of the comparables?

A. Well, we don't really do anything at Duff & Phelps. Usually this is on an ongoing basis. We researched this premium on a daily basis. When we have identified the time reference point, we identify those transactions that took place in that time span, and we call on the data that's been developed at a previous time to represent the premium.

Q. Tell me daily what the data is that you assemble at that time? What is the research, or the analysis that's done as the transactions unfold?

A. When a complete transaction is announced in the press we research that transaction as to what was the price/earnings ratio of that transaction, what was the price to book, and what was the premium paid.

Q. Let's concentrate on the premium paid.

The transaction is announced, price/earnings and other things are also put into your data file, but so far as the premium is concerned, how do you analyze that, and what are you trying to get?

A. We are trying to get what we feel is the unaffected premium, and when I say unaffected, it's that we try to eliminate certain noise that occurs in the marketplace prior to a certain merger announcement.

Q. Are you trying to get a percentage, or a number? Percentage of the price?

A. Well, that's -- the premium is the ultimate -- is representing a percentage increase between the unaffected price and the actual transaction price.

Q. Now we'll go on. But why do you do this on a daily basis, or on a transaction basis?

A. Well, because we -- this is our business of research, and we do this because we are building up a data bank.

Q. And is that so the comparisons will be available when you need them in any given situation?

A. I often like to say we try to save money for our clients because if we had to research each group at the time we have an assignment, it takes a long time. We want to keep this on a rolling basis.

Q. Now, I think you said that you measure the transaction by comparing the merger price against some other price. What is the other price?

A. We call it the unaffected price, the minority price.

Q. Now, what do you mean by the unaffected price, or the minority price?

A. First, we call the minority price that price that's represented in the marketplace, and if we are talking about a New Stock Exchange firm, it's that price that is traded every day; a hundred shares, a thousand shares, 20,000 shares. That's what we call the minority price, or the unaffected price.

Q. Then in making the review, what are you looking for? I mean, what is the person doing it on a daily basis looking for?

A. We are looking for unusual activity and unusual market price during the period just prior to the merger announcement.

Q. Now, why are you examining the profile of the stock to determine unusual activity prior to the day of the announcement?

A. Well, because several things can happen. As you discussed earlier in the trial, there could be rumors, leaks --

Q. Take them one at a time.

A. Well, a rumor --

Q. A leak.

A. Well, a leak is to me a rumor, or it's an announced -- not announced, but it's an effort by somebody who knows some information that's not publicly known to capitalize on that, and he goes into the marketplace, and he buys up some shares.

Q. And what is the effect of that, if it's significant, on the market?

A. If it's significant volume, obviously the price is going to go up.

Q. Now let's take rumors. Is a rumor different from a leak?

A. Indeed in -- The word rumor could be -- For instance, yesterday in The Wall Street Journal, the great column, "Heard on the Street," people were talking about with the event of Esmark being purchased by Beatrice, now food stocks would be interesting acquisition candidates, and they -- you know, these are the likely candidates people have been talking about, and they list, you know, five or six companies.

Well, obviously the investment public goes into the market on speculation that there is going to be an acquisition announcement on these companies. That's what I would consider a rumor.

Q. Yes. That is not a leak about any particular company?

A. No.

Q. It is a rumor about the industry, and it affects the volume in those stocks; is that right?

A. That's exactly right.

Q. Now, there are other things that can drive the stock up prior to the day before a formal announcement of a merger?

A. Two other things. Probably others, but two that come to my mind that we look for carefully.

One is in the last, oh, I would say -- at least in my professional career it happened at Armour -- is that the potential buyer goes into the market, and under SEC rules now he is allowed to buy up to five percent, just under five percent, before he discloses any ownership. And so what happens, potential buyers go into the marketplace to get that initial block. Some people don't do it, but other people do. It is kind of a negotiating tool. It is an investment tool. If I am going to buy this company, I might as well try to buy up as much as I can up to that five percent to get a hold on the company.

That if it is done in a concerted period of time -- and that might be a month, it might be a week, it might be two months. But again, we analyze the price action to volume. You can almost spot when this is done. And if it does affect the price and does affect that minority price, we try to eliminate that from the -- there was one other.

Q. In getting at the unaffected market price to measure the percentage of premium; is that right?

A. Right.

Q. Now, there is one other, and then we will move on.

A. The other is when there is a step transaction. And the best that I could use as an example, which is a recent -- I am sure everybody knows about it -- is the Gulf transaction. Mesa Petroleum and a group headed by Mesa made -- there was rumors in the marketplace that they were accumulating Gulf. There was an announcement that they do have a position, and they actually came out and made an offer on a particular date. Well, within a three-week period SoCal made a higher offer.

Well, what we find is that sometimes when people use that day before the announcement, they look at a transaction -- it says SoCal buying Gulf. They look and they see, well, SoCal made their announcement on X date, and so that becomes -- that is the price that they use as the market price in calculating their premium. And that is not proper, because Mesa had four weeks previously driven the price in Gulf's situation from 40 to 60. And the price, the ultimate price of the acquisition, was 80. And the unaffected premium on the Gulf transaction, one must go from the $80 figure back to the $40, eliminating all this acquisition noise.

Q. And on a daily basis do you all do this sort of analysis routinely in order to filter out the noise so that you get a correct percentage of premium?

A. We don't -- on a daily, in a general sense, using the daily basis, yes, we do. We have people assigned professionals to look at it.

Q. Now, when it came time for you to make an analysis of the UOP cash-out merger, did you determine based upon the services as to whether there was any leak or noise in connection with the UOP-Signal transaction or whether it was clean, so to speak?

MR. HALKETT: Point of clarity. Are we talking about 1978 or are we talking about some other point in time?

MR. PRICKETT: In 1978 there was a merger, and that is what I am referring to.

THE WITNESS: Yes, I did.

BY MR. PRICKETT:

Q. And was it clean or was there noise?

A. It was a very clean transaction.

Q. And is this pejorative or non-pejorative or simply a reflection that there was no pre-advance in the volume of the stock of UOP that indicated that anyone had gone into the market?

A. First, let me say in relation to my past discussion here is that not every transaction has noise. There are in the normal course -- and I don't have any percentage how much there is noise and how much -- unfortunately, in the period up to today it is getting more and more noise with the activity and the way the acquisition and merger market is proceeding. But there are very clean transactions, and UOP, if you look at the chart, was a very, very clean transaction.

Up to that date of the first announcement the stock was in a natural pattern. The volume was in a natural, long-term pattern, and there was no problem with the unaffected price being the price the day before the announcement.

Q. And then in connection with your presentation in 1980 did you select a series of comparable merger transactions for the purpose of a premium comparison?

A. Can I just -- I have a problem. What we did is, we selected a group of transactions that happened during that period of time, and I think our criteria was $100-million transaction or better.

Q. And then did you assemble the information on the percentage of premium in those transactions?

MR. HALKETT: Objection; leading.

THE COURT: I will overrule the objection.

BY MR. PRICKETT:

Q. Did you assemble the information previously gather on percentage of premium?

A. Yes, we did.

Q. Had the process filtered noise out to go to an unaffected market price in that situation?

A. Hopeful --

MR. HALKETT: May I have the question re-read, please.

MR. PRICKETT: I think it is a terrible question.

BY MR. PRICKETT:

Q. Had noise been filtered out or had it not been filtered out in the comparison on premium that you made in connection with the 1980 report?

A. I am sure in some of the examples here there was noise and it was filtered out, and others had no noise; therefore, used the actual price before the announcement.

Q. And what did you indicate that the percentage of premium was in comparable transactions in that period?

A. We say in our 1980 report that the average for the group was 78 percent, with the median at 74 percent.

Q. And what was the percentage of premium in the Signal-UOP transaction of 1978, the one that we are talking about?

A. I think approximately 44 percent.

Q. And did you also do the calculations as to if the premium in the Signal-UOP transaction of 1978 had been within the range of premium in comparable transactions, what the price would be measured by that standard?

A. By the 74 percent? I don't have that

calculation in front of me, but it is a simple calculation.

Q. Well, if it is that simple, what is it?

A. Well, if you use the average or the median -- the median was 74 percent. It would have been $25.23 as an exact calculation.

THE COURT: Excuse me, if I might. What did you multiply that by; 14.50?

THE WITNESS: Right.

THE COURT: Thank you.

BY MR. PRICKETT:

Q. And is that a precise number?

A. No. Again, Mr. Prickett, this is a test. After we do our work we are testing it against this premium. And obviously, one has to look -- use your vast knowledge that you created in doing the analysis. Now, in context of the fact that UOP was getting 10 times earnings versus the same comparable group were getting 15 times earnings on an acquisition basis, and knowing what we did about UOP, you know, you could say that that 44 percent versus the average was not fair.

Q. Okay. It is just one test?

A. It is a test.

Q. And it is just a range? It is not a precise number?

A. It is not a precise number.

Q. I think you were present yesterday when Mr. Purcell indicated the method by which he had the associates at that firm determine premium, were you not?

A. I was.

Q. So I won't go all back through it. But let's focus on the day selected for measurement. And it was the last day before the formal announcement. Do you recall that?

A. Right.

Q. Now, can you tell the Court whether, in your view, that is the appropriate day or the inappropriate day and, if it is the inappropriate day, why it is inappropriate.

A. Well, it is a reflection of the discussion of this noise problem. Again, it is inappropriate, picking any day on a calendar basis, one day a week before --

Q. Let's concentrate just on the day before the announcement, and then we will get to other days.

A. Well, the single date is an arbitrary date. And if all these other factors were happening in the marketplace, you are not getting the realistic premium that that transaction had behind it.

Q. Now, if you pick a list of, say, 30 comparables and there are some with noise, doesn't the fact that you add them up and average it take care of the problem?

A. No, indeed not.

Q. Why not?

A. Because that is just luck. If you are going to do a job, averages on -- when you have apples and oranges, it doesn't come out to be the right number.

Q. Now, that is the day before the formal announcement of the transaction. Now, how about saying, well, you know, there may be noise, so let's pick a day 30 days before. Is that right or wrong in terms of making an accurate measurement for comparative purposes of the percentage of premium?

A. For the same reason that picking the day before, 30 days provides the same problems, and it is wrong.

Q. And if you say 30 days before, haven't you taken care of the noise problem?

A. You may have and you may have not.

Q. And why do you say you may not have?

A. Well, if the noise started -- again, let's take the stepped transaction. If there were one competing bid that happened three months before and it moved -- if Mesa made the offer three months prior, the stock of Gulf was selling at 40. Mesa makes a bid for $53. The price moves up to close to $53. Well, all of a sudden it moves across this 30-day line, and then SoCal makes the offer for 80. Well, if you did the 30-day period, the price that they were using as their base number was 53 and not the 40, and that does not give the accurate premium paid.

Q. Well, okay. Now, is there any particular day when you could say, I am going to use that day and hope to get an accurate comparative percentage figure?

A. We don't feel that -- we don't think there is integrity to that.

Q. Do you have to go through each transaction and make an analysis of the transaction in order to find that price?

A. Exactly.

Q. Now, did you take the list of transactions that had been drawn up by Mr. Purcell's associates, Mr. Reid and somebody else, in 1980 and do the analysis to determine what that list would show if, in fact, there was an analysis to filter out what I am going to call generically noise?

A. Well, I think what you are talking about is the exhibit that was presented to me last night.

Q. No, I am not. I am talking about what you did in 1976.

A. What I did in '76. Yes, I did.

Q. I am sorry. In '80.

A. Yes, in '80, based on the '78 data.

MR. PRICKETT: Andwe marked that yesterday as Plaintiff's Exhibit 122. And Mr. Bonkowski reminds me that we did not put it in evidence. We marked it for identification.

Let me now establish that and then move it, unless there is agreement that it can go into evidence at this point.

MR. PAYSON: It was already marked as Plaintiff's Exhibit 6 at the prior trial, Your Honor. We don't care if it goes in again. It is sitting there in that black book.

MR. PRICKETT: All right. Let's see if we can just make certain we don't get a glitch on the record. A document entitled "UOP/Signal Analysis of Premium in Certain Merger Transactions by Duff & Phelps from Exhibit 6 - Dillon Read & Company Report of 4/29/80," has previously been admitted at the prior trial as --

THE COURT: Plaintiff's Exhibit 6.

MR. PRICKETT: Plaintiff's Exhibit 6. And yesterday I marked it as Plaintiff's for Identification 122.

I would ask for clarity purposes, subject to the Court's approval, that we put another sticker over the one that marks it PD Identification No. 122 for identification, and we mark this copy as PX-6, so that we have only one copy in the record.

THE COURT: What is your thought, Mr. Payson?

MR. PAYSON: Well, now you are going to have two copies, because you have Plaintiff's Exhibit 6 sitting there. I don't know why you simply don't withdraw that and -- I don't care. I am just trying to make the record consistent.

MR. PRICKETT: I am trying to do that, too, but I seem to be complicating it. I agree with Mr. Payson. With the Court's permission, I will withdraw the copy that has been --

THE COURT: I have a wonderful idea. Why don't you let me have that copy to follow your examination.

MR. PRICKETT: I was going to give you one.

Could we withdraw that, and we will refer henceforth to the document entirely as Plaintiff's Exhibit 6.

THE COURT: All right. Fair enough.

MR. PRICKETT: Sorry to take so long.

THE COURT: No. I thought you handled it very well, with Mr. Payson's help.

BY MR. PRICKETT:

Q. Does the witness have one? I am handing you PX-6.

Mr. Bodenstein, now that we know what it is, does this report represent your review of the Dillon Read list of premiums, list of transactions in which they measured premium and alongside of it your calculations as to what the premium is based not on the difference between the merger price and the day-before-the-announcement price, but rather the merger price versus the unaffected-market price?

A. It does.

Q. Now, before we turn to specific transactions, are there some transactions, like the UOP transaction, in which there is no difference between the two? And I take, for example, the Racal/Milgo transaction. Both you and Dillon Read calculate the percentage of premium as 88 percent?

A. Right.

Q. And are there other transactions in which you agree that the number comes out the same?

A. The same or relatively the same. Again, remember, these aren't precise numbers. But if you look at --

Q. 33, for example.

A. Well, 33 is 80 and 79.

There is No. 27, Carrier and Inmont, 78 and 79; 38, Kaneb and Diamond, 70 and 70.

Q. But then are there others where there is a very significant disparity?

A. Yes, there are.

Q. I am not going to take you through each one of these, you will be glad to know, but let's take for illustrative purposes the Carborundum transaction. It is No. 26, and it appears on a graph. It is --

MR. HALKETT: Before we get completely lost, on my list I think it is 25.

THE COURT: 25? Kennecott/Carborundum.

THE WITNESS: Yes. But the chart is listed as No. 26, so I think that is where Mr. Prickett --

MR. PRICKETT: And it is Page 1537. That is, A1537, because it appears in the appendix of the Supreme Court.

BY MR. PRICKETT:

Q. In the upper left-hand corner there is a notation of Carborundum Company and the number 26. What does this graph show in connection with the problem that we are concerned with; that is, measurement of premium, Mr. Bodenstein?

A. This shows essentially a situation where there is no essential noise. And if you will see in the summary, Dillon Read was 98 percent premium, and ours was 106, and --

Q. But let's start with the basics.

The bottom line has on the right-hand side an entry entitled "Volume"

A. That's correct.

Q. And what does that show?

A. That represents -- it's a bar chart, and it represents the daily trading activity on the New York Stock Exchange for the company.

As you see, 75,000 shares, 150,000, 225,000 is the vertical axis, and if you could see over the period of a year, the normal trading doesn't event get up to around 50,000. You can hardly even see the tops of those bar charts, if you look very carefully. But yet when the announcement was made, there was a substantial increase in volume. This is natural. The arbitrageurs are moving into the market, and the price quickly moves up, a reflection of the announced price of the merger.

Q. It is this a clean transaction?

A. It's a clean transaction.

Q. It goes directly vertically up virtually to the merger price?

A. That's correct. The price -- well, it moves up over a two-week period, yes. There obviously were two announcements, and to read the chart technically, to help the Court, those arrows that say "TO" and "TO," that says tender offer announcement.

These charts are nice because they do indicate the major announcements. If you look at the middle of the graph you will see "Barrons, 3-28-79." That means somewhere in March there was an article on this company in Barrons.

So we can identify certain events in this company to help us do our research.

Another thing we do in analysis is we use the Dow Jones computer service, so when we have our analysts taking out the noise, they get a copy of the last year's principal announcements and articles that were written, press releases, earnings releases that were released by the company, or written on the company, and so we again can filter that in the time frames whether that might be affecting the price of the stock.

Q. But in any case, so far as Carborundum is concerned, it is a clean situation, so to speak?

A. It was.

Q. Now, if we look at the other graphs here, and we concentrate, we can see that unlike Carborundum, an outfit directly under it called Carpenter Technology has a sort of sawtooth volume and price situation, does it not?

A. Yes, it does.

Q. So that they are all simply not Carborundum where there is no volume at all, and suddenly a dramatic upward move?

A. Yes.

Q. But you have to look at these things in order to determine where in the unaffected market price?

A. Not only these things. You have to do other work, but yes, right.

Q. Now let's turn then to one where there is noise.

How about the Nestle/Alcon situation? Do you have a page number on that?

A. It would be the page before A1535, the page prior to that.

Q. You lost me.

A. It's the page prior to A1535. It would be A1534.

Q. Could you state it the other way?

A. A1533.

Q. I'm getting close. I think the page he's on has no page number. Apparently in photocopying it was photocopied in such a manner that the page number was cut off.

MR. PRICKETT: Yes. Page A1534.

THE COURT: That's what it should be.

BY MR. PRICKETT:

Q. Now, I refer you to the upper right-hand graph. It's entitled "Alcon Laboratories." Tell me what -- Let's start at the beginning.

What is the picture that we see in the

volume of the trading prior to the last week in September?

A. Well, here again, like the other chart, if you look across, you have the vertical axis of 50, 100 and 150,000 shares, and we have a history from December '76 through September of '77, a normal pattern of volume. The price action of the stock, you know, reacted to its own peculiar market, and all of a sudden in -- well, probably the first week in October the volume starts to jump, and the price starts to jump dramatically, and then we see there was an announcement -- it's not a specific date, but there is that "TO" and an arrow indicating that there was a tender offer made and the price -- it had a jump, a mini jump, and then it moved up to the $40 range.

Obviously, if I remember correctly, the tender offer for this was around $42 a share.

So there was a period of approximately two weeks prior to the announcement that there was substantial noise. Now, it could be a result of a leak, it could be a result of a rumor, it could be a result of several things, but naturally right before the tender announcement it clearly was affected by that announcement -- or caused by the impending announcement.

Q. And in that situation what price does Dillon Read -- Well, tell me how that affects their calculation of premium, and how your calculation comes out.

A. If I recollect properly, Dillon Read used around a 28 figure as the day before the announcement price, and if you look at 28 again on the vertical axis, you will see numbers on the right side, 20, 30, 40. That's the price of the stock. And if you see right prior to the announcement, the stock had jumped to 28 as a result of that two weeks of increased trading.

Their price, if you again do the calculation of calculating the premium, that's around a 50 percent premium. It's 51. So it's close in this quick calculation. And we have a premium calculated 83 percent, which I think in our case we used 23 or 24 dollars as the price right before the volume started to run. That would be -- Well, if we use 23, that was 83 percent.

Well, that's what we used. We were using $23.

Q. Right. So going back to what is PX6, if you go back to that, and you do each one of these calculations, that accounts for the differences where they occur between your calculations and Dillon Read's calculations; is that correct?

A. That's correct.

Q. If we turn the page, we then get -- they come up with a median of 41 percent and an average of 48 percent, and your calculations indicate a median of 71 percent and an average of 75 percent; is that right?

A. That's correct.

Q. Now, I notice that you starred their transactions 16 through 54, and you have a note, "38 acquisitions announced during June 1, 1977 through May 31, 1978."

Why did you do that further calculation?

A. Again, this list is a general list of all acquisitions, and while there might be some companies directly comparable to UOP in a business sense, these are just a general list of acquisitions, and it's our feeling that again, if you go back too far, then you are not really getting apples to apples.

Q. You mean some of the apples may have gone rotten?

A. No, no. These are all valid, but something that happened in the spring of '78.

Again, you can't directly compare it to the overall market performance, something that happened in '77 or '76.

Now, there is one -- let me point out one understanding here. If there is a direct comparable analysis, I mean such as UOP sold back maybe a year and a half, I mean an exact business, you know, we might include it because it's more important that it was a direct comparable business with all the same economic variables that we will keep it in over a longer period of time. But when just looking at the general market, we kind of just look at a year basis.

Q. And did you want to see what would happen if you made a cut-off of a year on their list?

A. Well, obviously that's what -- -

Q. And is it significant in your view?

A. It just shows that their list -- and this is probably a reflection of the general market, that premiums were going up during this period, and if you cut off the list in a year, their premiums averages in median moved from 41/48 to 51/54.

Q. And yours moved up by about five points -- no. I'm sorry. They moved up from 71/75 to 76/777; is that right?

A. That's correct.

Q. Now, one more thing, and then I think we would ask whether it would be appropriate to recess:

There is a note here that the Phillip Hunt transaction was omitted since it was a tender offer for only 52 percent.

Now, tell me why you omitted that in this calculation. Well, was it appropriate among those lists, or is it in somehow a different transaction?

A. Well, again, I think we were again trying to be comparable and consistent in our data. All these others were for a hundred percent control, and this was just a tender offer for a 52-percent interest, and tender offers, when you are not going for complete control, are a different --

Q. Animal?

A. Well, it's a different ballgame.

Q. Right.

A. You are not getting that extra 48 percent of control, and all those attributes with it, and therefore the shareholder had the opportunity to take the offer or leave it, so the premiums aren't comparable.

Q. Well, in this list does this represent in your view, at least, an aberration?

A. It did at that time, yes.

Q. And did you take it out for that reason?

A. I did that.

MR. PRICKETT: Your Honor, would this be an appropriate time to recess?

THE COURT: I think it's perfect as far as timing is concerned. It's 11 o'clock. So let's recess for 15 minutes.

(Recess.)

BY MR. PRICKETT:

Q. Mr. Bodenstein, I ask the Register to hand you a copy of what has been marked PD-123. It is a document entitled, "Dillon Read & Company Signal-UOP Mergers and Acquisition Offers for Selected Industrial Companies Valued at $50 Million or More, 1977 through May, 1978." Do you have that document?

A. I do.

Q. I hand an additional copy to the Court.

Were there calculations on the right-hand column here that purported to measure the premium 30 days before the date of the transaction in question?

A. I assume so. That is what -- there is one column called "Price one month prior."

Q. And at my request did you make a financial analysis or make an analysis of the entries that appear under that column?

A. I don't know what you mean by "financial analysis." I reviewed it and late last night in bed I made some observations.

Q. First of all, you have already indicated your professional opinion as to whether selecting a 30-day date satisfies or takes care of what I refer to as the noise problem. Does it?

A. No, it doesn't.

Q. However, this is a column that indicates what would happen if you took a date 30 days before the announced date of the transaction; is that correct?

A. That's correct.

Q. And what comments do you have, having reviewed the entries made under that?

A. Well, unfortunately, I can't show whether the noise is eliminated or not, because I just didn't have the data to do that between 1:00 and 7:00 this morning. But several observations.

First of all, in the work product, if you go to the second item, February 8, '77, Racal Electronics/Milgo Electronic Corporation, and if you read across the line, you see the type that based on a day before the announcement the premium pricing -- excuse me. I will start over.

The day prior to the announcement and based on that pricing there was an imputed premium of 88 percent. Now, under the column "Price one month prior," there is a notation NA. Again, I would assume from my knowledge it says "not available," and then under that premium a blank. And I did some quick calculation, and there are several. If you turn the pages, there are several of these.

Well, here is where somebody obviously looked in the paper or looked at some data bank, and there obviously was no price for Milgo that day, and so it becomes a nonentity. Here it is a blank, and in the calculation of the 59 percent this was omitted. You know, it doesn't make sense.

You know, here you come up and you say that there is an average premium of 59 percent for this group, and then when you go back, you see, well, you know, there were several that were just left out of the group because there was no data.

And the point is two things. One is that it is just not proper. You just don't leave it out. And number two is, again, that day it could have been that it didn't trade. Now, nobody had -- I don't want to, you know -- what you do is you go to the next day one way or the other. But here it was just left out.

So it is just arbitrary. You just don't get consistent and data with integrity.

There is another point.

Q. Well, let me ask you, so that just taking the second transaction here, it had an input of 88 percent premium when you add it up in arriving at the 41-percent median premium; is that right?

A. Well, it would be when you add it up for the average of 48 or 47. There are two notations on the average. But it is included in that average.

Q. And then when you come to the 30-day before, than one, for example, is totally left out?

A. Of the calculation of the 59, yes.

Q. Now, I think you said you had two observations, and I may have taken one of them.

A. The other observation -- and there are several of these on the page, not on the page but throughout the pages. But on the first page, let me see if I can identify it. Yes. It is around -- it is the date 6/23/77, the Union Oil of California/Molycorp acquisition. And if you read across, the day before the announcement there was a premium of 26 percent, but 30 days before there is a 20-percent premium. Again, I can't tell you why. You know, I can assume why. Obviously, the price was trading, and it could be that Molycorp was in a slow decline, and it was Union Oil that picked it up at the announcement date. It could have been a clean transaction, and the imputed premium was 26. I don't know.

But here is one where the premium is less

30 days before than it is at the point of the --

Q. One day before --

A. One day prior. And I think if you go through here, there are several of these. This is just an arbitrary appraisal -- it just proves that one day, 30 days, two weeks, any period of time is really arbitrary. You really have to do the research behind each of these transactions.

Q. Now, at my request did you make a review of the transactions that Dillon Read has identified as being involved in in the 1981-1983 period, in which there was a transfer of control?

A. I did.

Q. I hand you the document. And would you tell us in your own language what it was you were doing.

A. Well, as a result of --

MR. HALKETT: Excuse me, Your Honor. Before he goes forward, could we have a copy of what it is and identify it in some fashion?

THE COURT: I got the impression that it is not something in evidence already.

MR. PRICKETT: No, no. I simply asked him to work it up. And perhaps the fastest thing to do would be to step outside and make a copy or two.

THE COURT: Off the record.

(Discussion off the record.)

MR. PRICKETT: I hand Mr. Halkett one.

MR. HALKETT: Thank you.

MR. PRICKETT: Mr. Sparks one.

MR. SPARKS: Thank you.

MR. PRICKETT: Mr. Payson one.

MR. PAYSON: Thank you.

MR. PRICKETT: The witness one.

BY MR. PRICKETT:

Q. Now, Mr. Bodenstein, would you tell us in your own words what this --

A. This is -- it is not all-inclusive, because, again, data is not just available to us. But I tried to have my people identify transactions that Dillon Read was a party to. When I say "a party to," I mean either representing the buyer or the seller in merger or acquisition transactions. Some of this data is available in public information. Fortune and several other magazines at the end of the year list the top 50 or the top hundred transactions completed during the year, and they identify who the investment bankers were, plus there are several here that

Mr. Purcell had identified at trial earlier this week and in deposition.

And what we just have here is what -- we are talking about a comparable analysis -- we have seen it before -- of that transaction. The completion date is on the left column. The seller's name is the next column. The buyer's name is the third column.

And while I am on that, the Dillon Read client is asterisked. For instance, to read it properly, in the Campbell Taggart, Dillon Read was the adviser to Anheuser-Busch. In the Arcata one in June of '82 they represented the seller.

The fourth column across is the price/earnings ratio of the transaction. If you notice, just to point out, there were two companies that had operating deficits at the time they were sold, so we don't have a price/earnings ratio there. But the price/earnings ratio of the transaction is listed, the price-to-book of the transaction, the premium involved. And I guess the date of the unaffected stock price was put in here just as an indication of what we used to calculate the premium.

And the bottom just gives an average and the median for the transactions, average P/E ratio of

12.6, a median of 13.6, price to book of almost two times, 192 percent, 180 percent, and the average and median premiums around 60 percent, 57 percent for the median, 60 percent for the average.

Q. Now, the period involved is from the middle of '81 through the present; is that correct?

A. Right.

Q. Okay. And in the presentation made by Mr. Purcell there was a calculation of what the value of the shares of UOP would be if the 1978 transaction had not taken place; is that correct?

A. That's correct.

Q. And I may be repeating myself: The date of that was December 31, 1983; is that correct? The end of '82, end of '83?

A. That's correct.

Q. And was there any premium applied to that number?

A. No.

Q. And does the schedule indicate the levels of premium of transactions in which Dillon Read had represented either the buyer or the seller in the period from the middle of 1981 through the present?

MR. HALKETT: Your Honor, I'm going to object at this point. There is no foundation in the record for this testimony, or for that matter, the prior testimony that he has given, which I would also move to strike, in which he states as a fact what information is contained on this sheet.

There is no foundation that it is in fact correct. There is no foundation as to how it was computed, and on what basis, and I assume that the question now asked is for the truth of the matter. It is therefore hearsay and without foundation, and we object.

MR. PRICKETT: Your Honor, it's sort of a conglomerate objection, but I don't think, no matter which way you sort it out, it has any bearing.

What he has said is that he has researched and found a list of transactions in which Dillon Read has represented the buyer or the seller in a cash-out merger situation in a finite period from public sources, and then he has done an analysis to determine the amount of premium in those transactions, and he tells us the sources. They are public sources, or in some cases Mr. Purcell's own testimony.

So just -- You know, when you say it's hearsay --

THE COURT: All right.

Excuse me, Mr. Halkett. Did you have something that you wanted to say?

MR. HALKETT: Your Honor, one of the

differences is I think as we go through with this trial the data which is included in various forms, in reports and in testimony of the witnesses, is not in evidence for the purpose of proving the truth of the matter. It is in the record as the data upon which the expert bases his opinion, and therefore, one does not take as a fact the background data either in Mr. Bodenstein's report or in the Dillon Read report.

What one does is use that information in determining the credibility and the foundation for the witness' expert opinion. There is no testimony in this case, and in fact the contrary is true, given the timing, that this witness utilized any of the information contained in this sheet of paper, whether in tabular form or in testimony, in arriving at his opinion of value. In fact he has testified that he arrived at his opinion of value prior to doing this.

Therefore, there is no evidentiary basis for this in the standard form, and it is hearsay because it goes, and it is predicated upon information which is not here in Court, and it is without foundation.

MR. PRICKETT: Your Honor, we are not

trying to prove whether Heublein merged with Reynolds. We couldn't care less about that. We are not trying to prove the truth of that. And if Mr. Halkett thinks that's what we are doing, he's mistaken, is all I can say, because we don't care about that.

What we are trying to do is to show that on publicly available sources, and based in part on what Mr. Purcell, a witness who has testified on behalf of the defendants, said, these are transactions in which Dillon Read has been involved.

THE COURT: What opinion is it that you are attempting to elicit from Mr. Bodenstein through this line of questioning? In other words, you are not moving the admission of this document at this point? That's not what the objection goes to?

MR. PRICKETT: No. I may offer it. I can do this question-by-question. It may take from now until lunchtime. This is a shorthand way of doing it because it summarizes what he did.

What I asked him to do was to say there is no premium that Mr. Purcell put on the 1982 and 1983 share values. Therefore, what I want you to do is to see in all of the transactions that we can identify readily, whether they were involved with the buyer or seller, what the amount of the percentage of premium was. That's all we are doing.

THE COURT: And for that purpose you have selected transactions in which Dillon Read was involved?

MR. PRICKETT: Yes. We just picked up all the ones we could. And we are not asserting that Heublein merged with Reynolds or anything else. All we are saying is that in these transactions that are identifiable from public places the average premium was 60 percent, the median premium was 57 percent, to give the Court some handle.

Supposing you accept Mr. Purcell's thing. You've got to have a --

THE COURT: I think I see what --

MR. PRICKETT: -- a multiplier for them.

Now, what I think Mr. Halkett is talking about, he doesn't refer us to any rule. I think he goes to the weight. But he can cross-examine. You know, he can say whatever he likes about these transactions.

He may want to bring Mr. Purcell back. He may bring us a whole list in which he shows something different. But it goes to the weight of what this witness does, and therefore, it would seem to me that the objection is not well taken.

THE COURT: All right. Well, there are two rules of evidence, it seems to me, that come to mind. Rule 703 which provides that the facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. That's one rule.

Rule 705 also provides that the expert may testify in terms of opinion or inference provided he first identifies the facts and data upon which he bases his opinion and his reasons for the opinion, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

MR. PRICKETT: Your Honor, you took it right out of my mouth.

THE COURT: Actually I took it right out of the Rules of Evidence.

Mr. Halkett.

MR. HALKETT: Both of those, Your Honor, go to the matter of the witness' expert opinion. What we have here is we are not being asked -- this witness has not been asked whether or not he has utilized any of the information about which he is being asked in arriving at any opinion of his relative to this lawsuit.

What it is being offered for is in effect to prove a fact standing alone; namely, number one, Dillon Read was involved in all of these transactions. Number two, that if you took certain data involved in those transactions, and did certain things to it, the price/earnings ratio of those companies would be what is shown on this sheet.

What is being offered as a fact is that the price/book is a column of figures. What is being asked to be accepted as evidence to stand alone in this case is what the premiums were as calculated by someone and the averages and medians of those.

That is the purpose of this, to put those in as stand-alone facts in the record, and not as a matter in support of the opinion of any expert.

Mr. Bodenstein has already testified it is in his report, the 1984 report, what he considered to be an appropriate premium based upon his own expert analysis for the time periods at issue in this lawsuit including 1983 and 1984.

MR. PRICKETT: Well, Your Honor, we --

MR. HALKETT: We haven't challenged that. We do challenge this type of evidence being offered on a stand-alone basis to prove the truth of the matter.

MR. PRICKETT: Well, Your Honor, Mr. Halkett has shifted grounds. I think here he is saying that there is -- that this witness should not be permitted to testify on the basis of this, and that this document is not admissible because it does not go to his opinion on value.

Well, conceding for a second that it doesn't go affirmatively to his opinion that the value is in the neighborhood of $30 per share, it does go to supply a deficiency in the testimony of Mr. Purcell who said he agreed that there was a premium. He said he hadn't calculated it, and he supplied no information on it, and it seemed to us that that was a great big glaring hole in his testimony. Even if you accept his view, you've got to have some sort of a premium, and he agreed entirely with that, but he hadn't done any work on it.

So I said to my long-suffering expert, Mr. Bodenstein, take what information is available, and let's see what on both sides of the street Dillon Read in cash-out mergers -- what sort of premium ranges in this time period they have been coming up with, and that's what he does, and that surely is an issue in this case.

Unless Mr. Halkett has another ground -- I've chased him through two of them now, but unless he has another one, it doesn't seem to me that the objection is well taken.

THE COURT: Well, you haven't asked Mr. Bodenstein for an opinion as to what a proper premium would be in '82 or '83, yet, have you? I mean, if you have, I've missed it. I don't think you have.

MR. PRICKETT: It's in the report, Your Honor, and we'll get to that when we get -- I mean as to his opinion. I'm now asking him as to what -- if you follow Mr. Purcell's line, you've got to supply for him at least a premium, and this is in the nature of what premium does the house of Dillon Read come up with in transactions in the relevant period recently in which they represented both buyers and sellers. And then we average them out.

It's a comparable analysis of the premiums that they have been involved in. They didn't do it. We are trying to show Your Honor what if they had taken that next step they would have come up with. This is their experience record on this representing buyers and sellers on this.

THE COURT: Well, you're getting down now to asking Mr. Bodenstein to give an opinion on what premium Dillon Read would come up with if they would compute one out?

MR. PRICKETT: Yes. They haven't done it, and this is what -- I don't know what they will say, but this is what their record is.

THE COURT: That's where you are headed?

MR. PRICKETT: Yes, sir. In fact I am there.

THE COURT: I wasn't sure I was perceiving exactly what it was being offered for to this point.

Mr. Halkett.

MR. HALKETT: I think all of the objections

I have made still stand, and I still object to the introduction of either the oral testimony of what is on that document or to the introduction of the document itself for the purposes of this case.

THE COURT: Well, you haven't offered the document. I think if we get to that point, and we probably should so I can make a record -- I think I would be inclined to sustain the objection to the offer of the document to establish the facts that are set forth on there. I'm not sure there is a proper foundation laid for that, or has been so far. But I'm inclined to overrule the objection with regard to your asking Mr. Bodenstein his opinion along these lines. I think he's entitled to give it, and I certainly think Mr. Halkett is entitled to attack it on cross-examination if he feels he has developed it far enough to have the Court not consider it.

But with regard to the oral testimony being elicited from Mr. Bodenstein, I'll overrule the objection.

MR. PRICKETT: All right. Could I then give a foundation for the Court's ruling that you won't admit it by moving it, that it be admitted, and getting it marked for identification? You have ruled on that, so I'm not going to go back through that.

THE COURT: Yes. I think that's appropriate so that the record is clear on it. I was just trying to save some time.

(A document headed "UOP Supporting Schedule, Public Transactions Involving Dillon Read Opinions" was marked Plaintiff's Exhibit No. 124 for identification.)

THE COURT: As I understand it, the document is being offered as showing the figures, the financial basis for an opinion to be sought of Mr. Bodenstein as to what Dillon Read would offer by way of its opinion as to a proper premium at either the end of 1982 or 1983 if asked.

MR. PRICKETT: No, that's not quite it, because --

THE COURT: Not quite?

MR. PRICKETT: No. Because he doesn't know what they would say.

THE COURT: Well, that point obviously struck me, but I thought maybe you were going to ask him that anyway.

MR. PRICKETT: No. He doesn't know what

they would say. This is their record, and they might say that the appropriate premium was 80 percent. They might say it was 20 percent. They might say it's nothing. We don't know what they would say. They said there wasn't a premium. They said they hadn't calculated it.

What this document is offered for is to show not what they would say, because we don't know what they would say, and they can speak for themselves, but actions speak louder than words, and these are the actions. So that's what it's offered for. I understand the Court's ruling.

THE COURT: Yes. The ruling would be that I don't think there is a proper foundation laid for offering this document in evidence as proving the facts and figures set forth on this document.

MR. PRICKETT: Well, Your Honor, I don't mean to prolong this, and I understand the ruling. But I am not clear as to what foundation Your Honor thinks I have got to make to get the document in. I am not sure I am going to do it, but I don't even understand --

THE COURT: I am not sure either. But I just don't think there is enough here for me to admit it on. I am not sure what it would require, but I don't have anything other than Mr. Bodenstein saying he has caused or had someone get these figures together for him recently. I mean, that is about all I have to work with.

MR. PRICKETT: Yes, okay.

THE COURT: They may well be accurate, but I don't have any way of knowing that for sure. It is not like, as Mr. Halkett says, there are other documents in evidence as with regard to other opinions that counsel agreed upon that are in evidence. And I really get the impression that is at the heart of his objection, that this is something new that he doesn't really have any basis to check out on cross-examination. He has nothing to work with, because it is not part of the record, as is the case with the materials that formed the foundation for the other reports that are in.

MR. HALKETT: If I may, Your Honor, for just a moment, with regard to the oral testimony, obviously, the information on the sheet is inadmissible for a different reason. To simply ask a witness to, in effect, read what is on it so that the oral testimony is evidence is a way to just get around the ruling. My objection was to that testimony of the witness, which merely recites that which is on the sheet, standing alone as a fact. I object to that and move to strike it. And to the extent that it forms a basis for some other question that may or may not be objectionable, that is a different question.

But so the record is clear, merely because the witness read that at Line 1, Sheet whatever for identification says such and such, that is not a fact for purposes of this trial.

THE COURT: Well, I must confess, I tend to agree with you on that and thought as much as I was hearing it coming out. I thought these were simply being offered as the basis for perhaps some opinion that Mr. Bodenstein was going to give. In any event, I will overrule the objection to strike or the motion to strike the testimony.

BY MR. PRICKETT:

Q. Now, Mr. Bodenstein, referring to what has now been marked PD for identification 124, is the source of the data that appears there on public records or records that are available publicly?

A. They had to be for us to obtain it, yes.

Q. And what are the sources of the information that is contained on PD for identification 124?

A. Well, I would have to -- again, this was done back in Chicago, but I think I could fairly state where the information came from. Obviously, they came from Standard & Poor's or the Moody's Industrial Guides giving us the actual numbers for the income statements and the balance sheets for these companies.

The premium calculations obviously came from our files on each of these companies, which I would almost for sure think that at least 80 percent we had already calculated, as we described earlier, that we do it on a running basis.

The information as far as when the completion date was, that obviously came out of a data bank, from the Dow Jones data bank.

The identification that, indeed, Dillon Read was associated with the transaction, I think there are several here that Mr. Purcell -- I got some of that from the court record. He identified it. The others would come from the January issues of Fortune Magazine in 1984, '83 and probably '82, where it clearly lists the transaction and who were the investment bankers.

Q. And based on those sources of information were the calculations made that are reflected for average and median at the bottom of PD for identification 124?

A. That's correct.

MR. PRICKETT: Your Honor, I would move again for purposes of the record the admission of PD-124. But I understand you ruling. I have done what I could to satisfy Your Honor as to the source and the foundation.

THE COURT: I appreciate that. The ruling would be the same.

I think in all fairness to Mr. Bodenstein, his testimony indicates he is not 100-percent -- he didn't compile the figures himself, and he assumes they must have come from various things, and I am sure he assumes all that in good faith, but I don't think that provides the foundation necessary to admit the document, so I will sustain the objection to it.

MR. PRICKETT: Okay.

BY MR. PRICKETT:

Q. Now, Mr. Bodenstein, in 1980, at the request of ourselves on behalf of the minority shareholders, you made a determination of the value of the minority shares; is that correct?

A. That's correct.

Q. Now, in making that determination were there three basic approaches that you took? And I will take them one at a time. There is no mystery about them.

MR. HALKETT: Objection. I think at this point --

MR. PRICKETT: All right. I will withdraw it, Mr. Halkett. We will do it the other way.

BY MR. PRICKETT:

Q. What were the bases or approaches that you took?

A. Now you are talking about the report we did in 1980.

Q. Yes.

A. We did comparative analysis. We looked at discounted cash flow, and we did look at the assets of the company.

Q. Now, I would like to turn to the comparative analysis, and I will put discounted cash flow and a look at the assets aside for a minute.

In making a comparative analysis was that one analysis or more than one analysis?

A. Well, it was several. If --

Q. Let's go over them one at a time. What were the component parts of the comparative analysis?

A. Well, first, we looked -- we developed a list of comparable companies that we felt the investing public would consider to be similar in economic variables to UOP and, therefore, would perceive to have similar operating characteristics and similar investment characteristics. Then we compared UOP's market statistics with those companies for the period of the spring of '78. We looked at the P/E ratios --

Q. Let's take it one at a time. Then was there a separate one on comparing P/E's?

A. It was all-inclusive, but there was a P/E analysis, there was dividend analysis, and there was market-to-book-ratio analysis.

Q. And was this comparable analysis similar to the analysis made by Dillon Read?

A. In technique, yes.

Q. Were you at that point measuring a minority interest or a hundred-percent interest?

A. What we would call the going-concern value or the minority price. We were looking at the $14.50 price as represented by the latest trading in the New York Stock Exchange.

Q. And then did you in connection with the comparative analysis make a premium analysis?

A. Well, that was a separate analysis, and we had another group of transactions that we described earlier this morning, and we compared that to the transaction premium.

Q. Now, was the comparative analysis entirely separate from the discounted cash flow analysis?

A. I would say yes.

Q. And based on the different approaches in the comparative analysis did you come to a conclusion as to the value of the shares of UOP as of the time of the trial in 1980?

A. Could you repeat the question?

(The court reporter read back as follows:

"Question: And based on the different approaches in the comparative analysis did you come to a conclusion as to the value of the shares of UOP as of the time of the trial in 1980?")

THE COURT: That is when you are looking for his conclusion. That is not the value date you are after, the time of trial.

MR. PRICKETT: Yes.

BY MR. PRICKETT:

Q. Did you just come to a conclusion?

A. Well, on just the comparative analysis, I don't know whether I did it separately from my knowledge of the discounted cash flow, but I could come to it, and it would support my opinion at that time that the price for the transaction was a price of not less than $26.

Q. Now, in connection with the retrial of this damage phase have you reviewed your comparative analysis made in 1980?

A. I have.

Q. And do you have any changes or corrections?

I am not talking about additions. I will get to that. But any changes or corrections in what you did at that time in the comparative analysis?

A. No, I don't.

Q. And again, confining yourself, if you can, to the comparative analysis, what is your conclusion at this point so far as what that comparative analysis shows? And I am just talking about what you did then.

A. Well, I still feel that the price of not less than $26 is appropriate.

Q. I think you said there were two other methods besides the comparative analysis and its components that you did in 1980.

A. Well, we also looked at the assets of the company and --

Q. Let's pause on that. What do you mean by looking at the assets of the company?

A. Well, we looked at the balance sheet and the earnings, production from those assets, and we had identified certain assets of the balance sheet that we said were -- in one case we felt that there was excess of cash in the company, and we identified at the time that there was timberland, 275,000 acres of timberland that weren't reflecting its fair market value on the balance sheet, and we also, I think, discussed the patents situation.

Q. And based on that, was that a component part of your ultimate conclusion?

A. Well, it, indeed, gave us background. And I think we discussed this at the trial back in 1980, that it was our opinion, and most importantly, that there was considerable excess cash, excess liquidity in the company that really didn't reflect itself in the price.

Q. And skipping forward a second, has your view held in 1980 that there was excess cash even at that time? Has that been confirmed in any way by subsequent events?

A. Well, indeed, it has. The track record of UOP from 1978 through 1983 has just been outstanding in its ability to throw off cash, more than I think I would have expected.

Q. And when you say "throw off cash," what do you mean by that?

A. Well, to produce cash from operations that are not required back in the support of those operations. It is the cash, what we call free cash, that management has the right to do with what it wants, put in its pocket or go out and buy another company. It is cash that is not required for the continuing operations of the business.

Q. And what cash is required for the continuing operations?

A. Well, that cash that is part of the working capital, the cash plus the accounts receivable plus the other current assets in relation to the current liabilities of the company.

Q. Now, in addition to the two methods of determining what you thought was the value of the minority shares, did you also do a discounted cash flow analysis or sets of analysis in 1980?

A. I did.

Q. And the three of them were for what periods?

A. Well, we did three. The first one, we were looking on a historical basis. We looked at the cash flow developed from operations in 1977 and treated it as a no-growth situation, that that performance could be sustained into the future.

Now, I should probably preface this. You know, as we over the four years of learning that discounted cash flow method is a little more extensive than this to do it not on what I call a proper basis but on a full-blown process, but there are techniques to use on an abbreviated basis, which I did back in 1980, to apply the concept. I was very careful in not trying to use projections.

Q. In the 197 --

A. In the 1980, the three 1980 discounted cash flows.

Q. So that the 1977 cash flow involved retrospective cash flows?

A. Just for 1977, yes.

Q. And that was all stuff that had happened?

A. Exactly.

Q. And when analyzing the cash flows, did you come to a conclusion as to the value per share?

A. Well, the cash flows that I was working with came out to a certain range of values, but it supported our conclusion that a price not less than 26 was fair, and we opined on a conservative basis that a price not less than 26 was fair.

Q. Now, in 1984 did you review that transaction that is set out on Page A1502 of the appendix in the Supreme Court?

A. I did.

Q. And is that analysis valid now?

A. Oh, I would hope they are valid, but I think we are able to now with new comfort prepare the present discounted cash flow using the full information that was available at the time of 1978, and, sure, it is still valid.

Q. Okay. Now, was there a second one done in 1980?

A. Well, there was another method. We took it one step at a time, and we then looked at the cash flow using the 1978 projections or the '78 budget, but it was four months or three months of actual basis and the rest of the year on a budgeted basis. And we did it again, though, in a limited way looking just at the performance of '78 and making the assumption that this was going to continue with no growth into the future.

Q. And at the time that you did that, as an analyst could you foresee growth, though you didn't take it into account?

A. Oh, yes.

Q. So that you projected no growth, and what did that calculation work out to?

A. Well, again, it supported our basis that a price greater than 26 was fair.

Q. And was that analysis valid at the time and is it valid now?

A. Again, as I answered the first method, it is valid, but it really is superseded in my work that I did this spring, in '84.

Q. Well, if you hadn't done any further work, would this still be valid, though you may have better work now?

A. Oh, definitely.

Q. Now, let's go to the third, discounted cash flow analysis, and appearing in the record as A1504. What was this discounted cash flow analysis?

A. Well, this was one step into the future. We did have the 1978 five-year plan. Again, in the precaution of not using the projection of earnings, we used just the dividend projections as indicated in the UOP five-year plan during the five-year period and in the later years some conservative estimates of what cash could be thrown off in the later years. And we ran through a discounted cash flow on that basis.

Q. But was this a discounted cash flow analysis based on earnings or just cash and cash throw-off?

A. Well, you know, it was based on just the dividends as forecasted by UOP at the time. Obviously, when you say "on earnings," there is back-up to get to those earnings, and obviously, earnings had a piece, you know, had a part. But we didn't do our full-blown DCF methodology but just tried to restrain ourselves to identify cash streams that were clearly identified by UOP.

Q. And if you had done no work in '84 and were asked now as to whether the discounted cash flow entitled "UOP Cash Flow Analysis," appearing on Page A1504, what would your answer be as to its validity or invalidity?

A. Oh, the analysis is valid, and, in fact, in retrospect it proved much better than this.

THE COURT: Mr. Prickett, where are you getting all these Supreme Court appendix numbers? I am not following. I guess I don't have the right document in front of me. If I have them up here someplace, that is all right. I just thought perhaps I wasn't looking in the right place.

MR. PRICKETT: I don't think Your Honor is looking at the right place, because the right place is me, and I had not given them to you. And I am not sure whether counsel over here has them readily at hand.

MR. PAYSON: Are these trial exhibits?

MR. PRICKETT: Yes.

THE COURT: These were exhibits in the previous trial, were they not?

MR. PRICKETT: Yes.

THE WITNESS: Yes.

THE COURT: All right. I was looking at Mr. Bodenstein's 1980 report, and I couldn't find it. But I see the reason now. Excuse me. Thank you. I didn't mean to interrupt.

BY MR. PRICKETT:

Q. Just so that the record is clear, Mr. Bodenstein, these three analyses that are on Pages A1502, 1503 and 1504 were not in your 1980 report, were they?

A. That's correct.

Q. They were prepared and presented at the 1980 trial?

A. That's correct.

Q. Now, we have been through the three of these --

MR. HALKETT: Excuse me, but it may be of help. A1502 was PX-4. A1503 was PX-5, and A1504 was PX-7.

MR. PRICKETT: Thank you very much.

THE COURT: Thank you, Mr. Halkett. That is helpful. I recognize the documents now, 4, 5 and 7.

MR. PRICKETT: I appreciate that.

BY MR. PRICKETT:

Q. Now, in 1984 you had available to you the actual results of Signal for the period from '78 through '84, did you not?

A. Yes, I did.

Q. And Table A of the appendix to your report, which is on the large diagram, could you tell us what that is? I think it is fairly self-evident, but can you tell us what it is?

A. Table A just is a representation of various expenditures, revenues, income items, assets, long-term debt, taken from the '78 plan, taken from the UOP 1978 basic plan, and just related back to related to the actual performance for that period of time.

Q. And what does that show so far as you are concerned in terms of performance, actual performance contrasted with the projection?

A. Well, first of all, UOP's performance, you know, for all purposes met plan, and in fact exceeded plan. And besides that, it paints a picture -- not only paints it, but proves the picture of an outstanding company. Tremendous earnings growth.

In fact in the three-year period from 1978 through 1981, in the three-year period it doubled earnings. And this is not from a trough. We have many companies in America doubling earnings in a three-year period, but coming from their own Come-By-Chance disasters. There is a doubling of earnings from a -- not from a trough, but close to a peak. And indeed it's a strong growing and outstanding company.

I also would like to just pass a comment that I think the UOP operating management and staff has been really done an injustice during the trial. They have done an outstanding planning job.

If you read the five-year plans as submitted to me for the past five-year period, it's not something that's just been whacked together and hoped for. What I see -- and I've been there -- it's been a thoughtful -- each five-year plan was a thoughtfully put together observation of the strengths and weaknesses, the opportunities and the problems. All of them were talked to, and it was management's best guess at each of these -- in '78, and then the ones I received since that, of a good planning job.

Now, you know, whether one hits the plan, or not, that's a function of the environment. But at the time the management was doing an outstanding job.

The flavor if you read the record up to this point was that, you know, plan, you know, it wasn't reliable, wasn't predictable. But if you analyze those documents, it was thoughtful pieces. I just want to --

Q. Well, did they hit the plan on every time, every lick?

A. Well, Mr. Prickett, you don't hit the plan on every lick. You look at over a period of time. Yes, indeed, from an overall observation the plan was hit, and better.

Sure, in some years it's below, some years above, but in general, if you look at the picture of that company, it's outstanding.

You are talking about a decline of earnings in 1982 from 53,000,000 to 47,000,000. Well, first of all, the environment in '82, companies were losing their fannies, and to only have a slight decline like that shows tremendous strength.

On top of that, if you look at the R&D expenditure line, the company was actually spending $17,000,000 more than plan in 1982, and if you would just say that they just kept spending at plan, their earnings, if you can do that, and it's not -- You know, you can't just trade dollars, but from an analytical standpoint you surely can do it. If they just spent according to the plan, even in that recession, or depression year as many people think it was, their earnings would have been at plan, and even higher than '81. So --

Q. Let me pause there. Is R&D a discretionary item?

A. Well, it is a discretionary item, but not over the long run.

Q. I understand. And if a management having a hundred percent control of UOP had decided we want to make the earnings look better, and we are going to take it out of the R&D budget, could you do that?

A. Well, you can, and unfortunately in many companies around the country it's done where they sit looking at the next year's earnings, and they are looking at their R&D budget, and they forego growth for next year's earnings. I don't agree to that, but it's done.

And again, giving UOP credit, you know, here is a company that just was socking it away, and to me that's a credit to them. R&D is future growth, and they were investing in future growth.

Q. Even in the downturn of 1982?

A. Even in the downturn of '82. In fact they increased their budget in 1982 -- or excuse me. They increased their actual expenditures in 1982 for R&D by 10 percent over '81.

Q. And was that above plan?

A. That was above the '78 plan, yes.

Q. And how about so far as capital expenditures? When the downturn that has been made so much about in 1982 occurred, did they sacrifice capital expenditures by not taking capital expenditures and putting into earnings?

A. Well, again, from the numbers which are visible, they kept their capital expenditure level at a constant level, so obviously there might have been some cuts because they might have wanted to do more, but at least it's still almost 80 percent higher than it was in '78. And indeed, you know, 30 percent -- maybe not 30 -- 25 to 30 percent greater than the '78 basic plan.

Q. Now, in 1978 Mr. Arledge said that UOP represented an outstanding investment for Signal. Does Table A bear that out?

A. I would believe so.

Q. Now, looking at Table A, does that have any relevance in terms of confirming or contradicting the discounted cash flow analyses that you made in 1980 that are Exhibits 4, 5 and 7?

A. Well, it confirms -- Again, I wouldn't call it the word "contradicts," but again, in the three exhibits, or at least two exhibits, we were just looking at '77 and '78, and looking at it on a no-growth basis, so obviously this shows that this company wasn't a no-growth situation. This company had substantial growth, and therefore, the actual record almost supersedes '77 and '78 type figures.

And indeed in our last DCF analysis where we were looking at the future dividend stream and cash generation, while this table does not do it on this table, this record does indeed confirm at -- at least confirms the original DCF calculation, if not better.

Q. Now I would ask you to turn to Table L of your report, and I have put the enlargement of that on the easel.

Looking at that table, what does that tell you so far as the performance of UOP was concerned in the period from '78 through '82?

A. Well, that it was outstanding, but -- And what I tried to do here was to try to in retrospect go back and do in actuality what actually happened in comparsion to our third DCF that we did in 1980.

Q. The third DCF is --

A. A1504, or --

Q. Or PX7. So that Table L may be viewed in connection with PX7, the cash flow analysis made in 1980, and what does it show?

A. Well, using the actual numbers, we came up with a per share price of around $29 per share.

Q. That's based on actual figures as contrasted with what you had to work with then, which was the projected figures relating only to dividends and cash throw-offs?

MR. HALKETT: Objection.

THE WITNESS: Exactly. I want to --

MR. HALKETT: Objection, Your Honor.

THE COURT: Just a moment.

MR. HALKETT: Could we please not have the leading questions? I would appreciate it. I think that question is leading.

MR. PRICKETT: I'll withdraw the question, Your Honor. It was indeed leading.

BY MR. PRICKETT:

Q. What does it show?

A. Well, first of all, it shows that on a DCF method basis we came up on an actual basis with a $29 value, but again, it's not on a total actual basis. That was just utilizing Signal's advances and dividend stream which we call free cash. We did not, as we will get to in the work we did this year -- There are other cash generations here that we didn't bring into the fact. This is just what Signal was able to take out on a yearly basis and dividends and advances, and just that stream and a residual value of a $400,000,000 -- a $400,000,000 basis, comes up to 29. I think if you took the total operations of the company you would get a higher number, but this table just, again, is doing something in retrospect to what we did in '80.

Q. So that you are plugging in in 1984 -- I think we understand that. Let me go on.

Now, there is a suggestion that the discounted cash flow method is not applicable, or should not be applied to a situation in which there does not exist a hundred percent owner. Is that in your view correct?

A. No.

Q. And in any case, after June 1, 1978, was Signal a one-hundred-percent owner?

A. Yes, it was.

Q. So that regardless, at that point you could value it that way?

A. Well, I think your first question was that it was not applicable to a non-hundred percent owner, and I said no. Because the technique can be used -- If you are valuing a minority price even on the

New York Stock Exchange, you could still back down from a discounted cash flow analysis. So a discounted cash flow analysis is valid in any analysis, under any ownership.

Now, it's how you utilize it. If you do it properly, you could come back. The analysis itself winds up with a hundred percent ownership.

Now, we could go from this $29 price to a minority price, if you like. I mean, nothing prevents us from taking one more step.

Q. All right. Now, the other suggestion is that UOP had erratic performance. Do you have any comment on that, prior to 1978 and from '78 to '82?

A. Well, I indeed in looking at that track record of UOP would not in any sense say that it was erratic. Indeed, if we go from the data that we have seen in this trial, which goes back to '72, and if you look at the stream from '72 forward, in that 11-year period, '72 through '83, I would not call this company an erratic earnings performer. Indeed, early on in the early days, in 1975 they had a major, major down year, but subsequently it's been nothing but on a secular basis straight up until 1982 and 1983 during the recession where they had a decline in earnings, but a very, very commendable decline.

A key point here is that you must really look at this company not prior -- You know, you must look at this company as an entity after Signal took over management. I mean, there are two entities. When a new company takes over management it becomes a new entity, and in fact under Signal's tutelage it has been an outstanding American company.

Q. All right. Now I show you a blow-up of one of your exhibits entitled "UOP, Inc., Selected Income Statement Items 1974-1983."

Does that document have any relevance to the erraticalness or lack of erraticalness -- withdraw that.

Does it have any bearing on whether this company was erratic or not erratic?

A. Well, this is just a picture of its history, and the key line on this chart is the short dotted line which represents net income before extraordinary items. And if you see, you have the 1975 disastrous year, but starting in '76 this is a company that's had a phenomenal growth record.

Q. But let me ask you, if you look behind the dotted line from '76 through '82 when the downturn starts, if you look behind that line at the divisions, may it be said from an analysis point of view that UOP is erratic, and hence you can't use the discounted cash flow method?

A. There is no basis for that. We are looking at the value of the company in total, and the fact -- the total of the company is this dramatic growth situation.

Now, it's a multi-divisional company. It's a credit to UOP management. Corporations in America strive to do what UOP has done; diversify. You have your winners, and you have your losers, and you have those that rise and have good times in one year when other divisions have bad times. But on a total basis they were able to put together operations that moved steadily in a growing pattern.

Q. And if you did find that the pattern was erratic, either -- well, in total, would that make the use of the discounted cash flow tool inapplicable?

A. No.

Q. Why not?

A. Because the discounted cash flow method looks to the future, and if you are doing your planning, and if you are putting out your five-year projections, or ten-year projections, whatever you are doing, you are building into that projection the cyclical nature of the business.

In fact if I recall, UOP in one of their plans talked about we expect a recession in'82 and '83, or '81 and '82, and this was built into their numbers.

So you just -- The DCF method is applicable to any situation.

Q. You don't just disregard it because you see a depression coming?

A. No.

Q. And do you disregard it if you see on the other hand a great boom coming?

A. No, you don't.

Q. Can you use it either way?

A. In all ways you use it.

Q. And is it regularly used whether or not the future is erratic, or whether it's stable such as UOP has?

A. That's correct.

Q. Now, there is also a suggestion that the earnings of UOP were hard to measure. Do you find that they are hard to measure?

A. I don't understand what that -- Hard to measure? You have good accountants and good financial people, and you measure them.

Q. No. I mean -- Well, I probably said it wrong. Or hard to project?

A. Well, as I said, I don't think UOP management had trouble in projecting. As I said, I was very, very impressed with the planning documents. The planning documents I got, as I say -- I was part of this for 12 years of my life -- was a summation of all divisional plannings. But those documents and the information supplied on them show that they -- each division projects their own business, and they know when they are going to have downturns, and they know when they are going to have problems, and they do their projections in line of the economic environment they see ahead. There is no one better than the operating manager of Process and the operating manager of Fabricating Metals to project his business than he can.

Q. Now, did you see anything in this picture that would preclude the use of the discounted cash flow method because of the difficulty or non-difficulty of earning projections, so-called?

A. No.

Q. Incidentally, do you use the discounted cash flow method widely, or very rarely, or what is the instance of use in your business, that of a financial analyst?

A. I would say very often. In fact we try to do it in every situation.

Now, there are some situations where the weight we put on the DCF calculation might not be as great, and that's on peculiar situations where there might be heavy capital intensive investment in a project for a good many years where there is no cash coming out, and therefore, the weight of the near-term cash throw-off is less precise.

THE COURT: Mr. Prickett, I need a stretch. Can we take a brief five-minute recess?

MR. PRICKETT: It wouldn't both me at all if we broke for lunch now, Your Honor, and came back earlier, if that would suit.

THE COURT: Does that cause any problem?

MR. HALKETT: No. I think that would be fine. It may save time.

THE COURT: I have to confess I was getting a little stale trying to keep up with things. I thought a short break would be in order.

If that is no problem, and if that suits everybody, we can break for lunch now, and we'll return at two o'clock.

MR. PRICKETT: Thank you.

THE COURT: We'll recess until two o'clock.

(Luncheon recess.)

AFTERNOON SESSION

(Reconvened at 2:07 p.m.)

MR. PAYSON: Chancellor, I am not quite sure where we are on scheduling, but obviously, we are prepared to come back on Monday or any other day at the Court's convenience if we can't finish. But in light of the schedule and where we have been going, if we could work a little bit later tonight and/or tomorrow night so as to finish by tomorrow, I think that would be helpful.

I realize that is an imposition both on the Court and its staff. I am just not sure where Mr. Prickett is with respect to Mr. Bodenstein's testimony.

MR. PRICKETT: Well, Your Honor, I would try to finish Mr. Bodenstein by the end of this afternoon, and that would give them a full day tomorrow. And I would start whenever they are willing to start, and I would end whenever they are willing to end tomorrow. I also would like to finish this trial.

THE COURT: Well, I am in the same predicament. It would help greatly to be able to finish this trial by the end of the week. So we will all shoot for that.

MR. PRICKETT: Well, and depending on the Court and the staff, we would be willing to go later tonight.

THE COURT: Friday night is not a good night to go late. That sometimes provokes resistance. But we will try not to go late at all if we can help it, but we will play it by ear. We will see where we are at the end of the day.

MR. PRICKETT: Well, with that in mind, let me proceed to see what we can do to complete Mr. Bodenstein as quickly as possible.

BY MR. PRICKETT:

Q. Mr. Bodenstein, I would now like to turn to Table G of your report entitled "Report on Fair Value, June, 1984," and the appendix thereto. And this is the development of the discount rate for UOP, April, 1978. Do you have that in front of you?

A. I do.

Q. Now, we spent perhaps too much time yesterday in going through it with Mr. Purcell, so let me see if I can go a little more rapidly today. I think that 1 and 2 are obvious. Let me go to 3, and that is entitled "April, 1978 Statistics," and then there are a series of entries under there, seven in number. What are they and did you average them to come up with a blended debt cost?

A. First, what they are are just a series of interest rates that were in effect and reflected in the market on April, or during April, 1978. The first is the prime rate, which was eight percent. The rate on prime commercial paper was 6.8. Three-month Treasury bills were yielding 6.3 percent; 10-year Treasury notes, 8.2, and then the Triple A, Single A and Triple B corporate bonds, identified on the chart. And I did not blend this rate. These were just set out here for identification purposes.

Q. Then the next entry is "UOP 6.78 percent bonds rated Triple B, 8.5 percent." That's a little bit separated from the seven above. What is that?

A. That was the yield. The 8.5 percent was the yield that those bonds were yielding in the marketplace during April of 1978.

Q. And did you make any determination for the purposes of coming up with a disoount factor as to what you thought in April 1978 UOP would have to pay in the way of interest in order to borrow?

A. I did, and that is indicated at the bottom on a double asterisk, which is where we used the after-tax rate. The before-tax rate was nine percent interest, and the way we came to the conclusion -- The UOP 6 7/8 bond was rated Triple B, and we see that the Triple B corporate bonds during that environment in April of 1978 were in the marketplace at around 9.1 percent, and therefore, it's our conclusion that if UOP went to the marketplace for long-term money, they would be paying nine percent interest.

Q. So that anybody who thought that there was any blending of those seven rates to come up with some sort of an average, and then use that simply mistook what that exercise was about; is that right?

A. That is correct.

Q. And the next entry on Table G is entitled "Capital Asset Pricing Model," and below that, "Expected future return on equity equals risk-free return plus (excess market return times beta coefficient.)"

Would you explain to me what you are trying to do there, or I mean what it is are doing?

A. Well, we are trying to calculate the second part of what we call in number one the discount rate formula which was to determine what UOP, based on capital asset pricing model, what UOP's expected future return on equity was, and as we laid it out, the formula for expected future return on equity is the risk-free return plus the excess market return times the beta coefficient of the company we are dealing with.

There are two factors to expected future return on equity. One is the basic demand in the marketplace in a risk-free return, and by definition the risk-free return is long-term treasury bonds which at this point, as we see up on that chart under No. 3, was the ten-year treasury notes which were yielding around eight percent, 8.2 percent.

To that you must add what the market expect over and above that risk-free return from the company that you are looking at, and you then calculate the excess market return, which we discuss as six percent. This has been analyzed and calculated. It's always been known that it's around -- the excess market return is six over the market, over the risk-free return. You multiply that by the beta factor of the company you are analyzing.

Q. Now, yesterday we heard that this was flat wrong; that what you had to do was calculate the company's hurdle.

A. Well, I think you have misspoken a bit. I think Mr. Purcell agree with this as I heard it. Mr. Purcell agreed that this calculation is what he calls the company's hurdle rate, and I have no problem with that. This is in fact the hurdle rate.

Now, he said the --

Q. Let's pause. What do you mean by the company's hurdle rate?

A. It's by definition the weighted average of the company's expected costed debt plus the future return on equity.

Q. And that's the hurdle rate?

A. That's what a company would call its internal hurdle rate, yes.

Q. Explain to me why the slang expression, the shephard's expression, a hurdle. What do you mean by that?

A. Well, when corporations calculate this rate, this is what they determine is going to be the cost of capital, and when a company looks at its future opportunities of investments, whether they are in a new plant or acquisition, they say well, our cost of capital, or weighted cost of capital, or hurdle rate is -- let's use in this case -- is 12 percent for UOP because that's what the calculation comes out to be. And they say we are not going to -- we shouldn't invest in new projects.

Q. Should not?

A. Should not invest in any new project, whether it is a new plant or a new acquisition, where it is going to cost us. Our return is not going to be as great as our cost of capital. And so it is a slang -- it is not a slang. Well, I wouldn't call it a slang. It is an accepted term. This is a corporation's hurdle rate, internal hurdle rate.

Q. What is the hurdle rate for UOP internally, using this formula?

A. Well, as I said in my answer to the question before, it is the 12-percent rate.

Q. Now, I then apparently mistook the place where you and Mr. Purcell part company. What does he say? Where does he differ with you, if at all?

A. Well, as I understood his testimony, he says that for the purpose of my evaluation he would have used the hurdle rate plus some X factor that he said that he would determine by looking at the risk of this new project or this new investment.

Q. Now, is there a difference between UOP's internal hurdle rate and the hurdle rate that would be applicable if it were going into a new company, buying Winnebago or something like that?

A. Well, Mr. Prickett, you confuse the word hurdle rate. There is a hurdle rate. That is established. UOP's hurdle rate is 12 percent.

Now, when they are looking to buy a new company, obviously it is not their hurdle rate that they have to use as a discount. You have to look at the company they are buying. That is where the discount factor comes in. You are looking at the risk not of UOP --

Q. Wait a minute. More slowly. You are looking at what?

A. The risk of the acquisition and not of UOP. For example, you use Winnebago. I would not use Winnebago. I would use C. F. Braun. We discussed that yesterday.

If, in fact, UOP was looking at C. F. Braun, a company in their business, they were going to make an acquisition, the discount rate in that analysis of C. F. Braun would be the discount rate based on C. F. Braun's risk, not on UOP's risk. My assignment in this case is to look at UOP. It is a self-analysis. This is UOP today, 1978.

Q. And is 12 their risk rate?

A. That is their -- by definition, it is their internal hurdle rate. This is based on what they have done in the past and what they are going to be doing in the immediate future.

Q. Now, if you were asked to determine the proper risk rate for UOP in making an acquisition of C. F. Braun or of something else, would you have to add something to UOP's risk discount rate of 12?

A. Well, that depends on who we are buying.

Q. Fair enough.

A. But it is determined by the target company, not by UOP's internal rate of return. They might refuse that acquisition, but the value of the acquisition is based on the acquiree's risk and hurdle rates.

Q. And by that do you mean the risk that UOP would take in taking on C. F. Braun?

A. That's exactly right.

Q. So that if you were doing it that way, would you say the expected future return on equity equals the risk -- and I am going to Subparagraph 4, the risk-free return plus the excess market return of C. F. Braun times its Beta factor.

A. Exactly.

Q. Because you are measuring the risk of

Braun, not UOP?

A. That's exactly right.

Q. And is that where you and Mr. Purcell differ in this?

A. Yes. There is another point that Mr. Purcell brought up that I disagree with, in that he mentioned that he works with corporations throughout the country and this is what they do. Now, unfortunately, I work with maybe not the same corporations but in generic term with the corporate world, and when companies are making acquisitions, this is where the mistakes are made. There are certain companies that look at their own internal hurdle rates when they want to diversify and refuse to budge from what they perceive to be their own inherent risk. So U. S. Steel when they are looking to get into a new market will apply their internal hurdle rate to that acquisition and a lot of times overpay for that acquisition.

In converse, there are people that go out and take on more risky situations, and sometimes pay more -- well, in that case, what is happening is, they are taking on more risky situations and are paying more. In converse, there are people that say, "I want to diversify and I want to diversify because of business reasons" and yet won't pay up the price to buy the company of value to get that diversification effort.

And it is the misuse of this concept of the hurdle rate when purchasing companies where corporate managements make mistakes in making their acquisitions.

Q. And if, for example, UOP were buying C. F. Braun, is it possible that there you would by plugging in Braun's excess market times its Beta coefficient and adding it to the risk-free return come up with a substantially higher discount factor than UOP's own discount rate or hurdle rate?

A. Sure. I mean, I don't know if specific C. F. Braun --

Q. I am not asking you the specific. I am asking you generally if that could happen.

A. Yes, it could be higher.

Q. It just depends on what you are acquiring?

A. Exactly.

Q. And what their excess market and Beta coefficient comes out?

A. Exactly.

Q. In Table G, then, you determine the UOP hurdle rate or discount rate by going through this formula, and I think we have been through the rest of it, so that we understand it; is that right?

A. Exactly right.

Q. Does the discount rate for, say, UOP remain the same given time or does it change?

A. Oh, it changed because of two reasons.

Q. All right. Give them to me one at a time.

A. Its internal performance and the external --

Q. Let's pause on that. Where would its internal performance change the discount rate as it appears on Table G?

A. A substantial change in, for example, its capital structure would have an effect on the overall discount rate. The change in its Beta coefficient as its earnings and its volatility are reflected in the marketplace.

Q. That is one. Now, what is the second place why discount rates change?

A. Because we are placing the calculation in a finite period of time. We are looking at what the investment environment is as of April, '78. If, for example, in April, '78 -- not for example. As fact, in 1978 the cost of capital was relatively cheap to what it is today. Short-term money was in the six-to-seven-percent range. Ten-year Treasury notes were at eight percent. If we were looking at it today, needless to say, we know interest rates are higher. Government Treasury bonds are at --

Q. Well, why don't you run down the seven things and tell us approximately what they are today. What is the prime rate?

A. The prime rate is 12 percent.

Q. What is prime commercial paper, roughly?

A. 12, 12-1/2 percent.

Q. What are three-month Treasury bills?

A. 10 percent, 10 to 11.

Q. And Triple A bonds?

A. Triple A bonds are probably in the 14 to 15 percent rate.

Q. Single A bonds?

A. A little higher. It would be a half a percentage point higher as you move up.

There is an interesting phenomenon what is happening in America, and it is that we are going more to conservative -- to less risky investments.

Q. Okay. Triple B bonds, do you know what that would be? And I recognize you are doing it without the advantage of The Wall Street Journal.

A. I would say Triple B bonds today are probably yielding in the 15 to 15 1/2 percent range.

Q. And of course, so far as UOP is concerned, we don't have that, but what is Signal's debt cost?

A. I couldn't answer that question.

Q. How would you have to determine that?

A. Well, you would have to determine what Signal's bond rating is and if there are any debts, and in the marketplace you could see what it's trading for today.

Q. That plus what you have told us about their performance in the market would change the discount or hurdle factor for the company depending on what time you are using; is that right?

A. Exactly.

Q. Okay. Now, the method that is described in Table G, was that the method that was used in the preparation of Exhibits 4, 5 and 7 in the 1980 trial?

A. Well, in the three exhibits we used different discount rates for specific purposes.

It indeed was a method that was developed and used, or at least the method and the understanding of the method was used for Exhibit 7.

Am I right, it's four and five?

Q. Yes.

A. There we are using a different concept, as I said before, in the discounted rates. We were only using a single year, and we are using historical numbers, and we are treating as not a growth company, but as bond, and so therefore, since it's a bond annuity type, we went more to the bond rates available at the time than the hurdle rate.

Q. Okay. Now, in 1984 did you make another discounted cash flow analysis of UOP for 1978?

A. We did.

Q. I ask you if that appears in Table I of the appendix to your report of June 7, 1984?

A. It does.

Q. And I have put on the easel for ease in examining it an enlargement of Table I, and I ask you if that is what you are talking about.

A. That is.

Q. This was developed from UOP's 1978 five-year basic plan; is that right?

A. That's correct.

Q. Now, how does this differ from Exhibit 7, which is the final one?

A. Well, it differs in general because here we are displaying and using the total sources, and analyzing the total sources and uses of capital for UOP for the five-year period instead of just using the dividend stream and certain assumptions I had made at the time of certain increases in cash position.

Q. So that is, Exhibit 7 is only a part of the picture, and Exhibit I is the full picture?

A. That's correct.

Q. I'm not clear why you did only the dividend and free cash throw-off for the discounted cash flow analysis in Exhibit 7. Why did you do that in place of doing the full one that appears here in Table I of your appendix to the 1984 report?

A. If you remember correctly, at the time of the trial, or at the period of the trial in 1980, we were concerned about the introduction of the discounted cash flow method and the use of earnings projections, and we just took it on a conservative basis.

Q. And was the conservative basis to restrict it to dividends and free cash throw-offs?

A. That's correct.

Q. Here is it based on earnings?

A. Not just earnings. It's on the total change of the corporation's source and application of funds. The total generation of funds over the period which includes net income. Net income is the first line under Sources. That's one input.

Q. And then depreciation is another?

A. That's correct.

Q. Okay. I think we can see.

Then you end up with the free cash flows over the period from '78 through '82?

A. That's correct.

Q. Then what do you do?

A. We apply our discount rate to those annual free cash flows, and applying this in this presentation, this comes out of our computer -- we have a range of discount rates around the 12 percent, 11.5, and the 12.5, and for each of those years -- For example, in the column 1978, the free cash flow of 17.6 million was discounted back to a present value of 16 million for the first year. In '79, the

23.6 million deficit in cash also was discounted back. In '80 --

Q. Wait a minute. Why did you include a deficit number?

A. Well, that's what the numbers show.

Q. Okay. So that applying the discount had reduced the deficit. At least that worked my way.

A. Well, if you think that.

Q. Then did you apply discounts as it shows all the way along, and then add them up?

A. Exactly.

Q. I notice that the discount rate is not 12, but a range from 11.5 to 12.5. Why is that?

A. It is again to give a feel of the sensitivity of the discount rate, and the computer puts it out in our program at half percent intervals around the selected discount rate.

Q. And the next thing you do there is what sort of a transaction? It's entitled "Present Value in 1978 of the 1982 Residual Value."

A. Well, in the technique of discounted cash flow, you discount the free cash flow during the period you are looking at, and then obviously you have to add to that the residual value of the entity at the end of the period of time. And here we used the calculation of residual value by using a multiple of earnings, a multiple of the earnings in 1982 which if you see, is the top line, net income 1982, 55.7 million.

Q. And you multiply that by a P/E factor?

A. We multiplied it by a P/E factor, price/earnings ratio, of 10 to come up with our estimate of residual value in 1982 of 55.7 million.

Q. Then again applied the range of discount factors?

A. Exactly. We do that because this is the value at the end of 1982 of the UOP entity, and we have to discount that value back to give us a present value in 1978.

So we multiply the 55.7 by the appropriate discount factor, and the present value of that residual value was in the range of 310 to 320,000,000 dollars.

Q. And then what is the final calculation on that sheet?

A. Well, it's an additive calculation of the cumulative present value of the annual free cash flows plus the present value of the residual value. We come up with the present value of the total entity, and then we calculated it on a per-share basis.

Q. What does that come out to be?

A. Approximately at 12 percent $32 per share.

There is a type that -- The dollar figure next to the 10 in the last column is a typo.

Q. It should be --

A. It should just read 10. It's a multiple of 10.

Q. And tell me then what Table I represents in summary.

A. In summary, it's a presentation of the discounted cash flow method for the 1978 five-year basic plan to arrive at the present value of the UOP shares on a hundred-percent basis in 1978.

Q. And does Table I properly belong with Exhibits 4, 5 and 7?

A. Well, it not only --

Q. In time.

A. It not only properly -- It really supersedes them. This is what we would say would be our final, complete work product.

Q. On discounted cash flow?

A. On discounted cash flow.

Q. And is there a comparable update on the comparative analysis?

A. No.

Q. So that you would have to say that this which would supersede four, five and seven is in addition to the comparative data that had been worked up in 1980; is that right?

A. That's correct.

Q. Now, in addition to the calculations that we have already discussed, did you make a calculation as to the value of the minority shares if there had not been a cash-out merger in 1978, but the minority shareholders continued to hold their shares until the spring of 1983 and the spring of 1984?

A. I did.

Q. How did you calculate what they would be?

A. Well, it's a whole series of analyses.

First, we took each of the five-year plans that were made available to us as background, and we performed similar discounted cash flow analyses based on each updated plan. So we received a '79 plan, an '80 plan, an '81 plan, an '82 plan, and we in fact performed the discounted cash flow analysis on those. Then we --

Q. Well, let's pause on that. Does that appear in one of your graphs?

A. The 1982 basic plan is on Table M, and the '79 is Table Y. The '80 plan is --

Q. Well, let me pause on Table M.

Tell me what you did here.

A. Basically it's the same procedure. In fact it in fact is the same procedure that we used for the 1978 plan. However, we did change our discount rate. I'm trying to look.

The discount rate was 15.5 percent as calculated and a 15 to 16 range there. And --

Q. Let me pause on that.

A. Sure.

Q. Is this a reflection of changes in the input that would go into the calculation on Table G?

A. That's exactly right.

Q. So we end up with a higher discount factor; is that correct?

A. That's correct.

Q. But it's a calculated one? Not just selected? It's calculated?

A. It was calculated.

Q. And what is this Table M based on?

A. The 1982 five-year basic plan.

Q. And does it give you a present value as of the spring of 1983 for what the value of the shares would have been if there had not been a cash-out of the minority shareholders in 1978?

A. This does give you a value. It would be again based on data that was available in the spring of 1982, done in the spring of 1982, of $65 per share.

Q. So when I said '83, it was the wrong year. It is 1982?

A. '82. That was the last five-year plan that we received.

Q. Now, the final figure that you come out with is in a range of --

A. Well, we took $65 from here. It is the 15.5, 64.59, 65.

Q. And just to make sure that we are covering one base, that, of course, is a figure that includes the premium; isn't that correct?

A. Yes.

Q. I mean, there is no suggestion here that you have got to multiply this by any factor. It is in there?

A. Yes. This is a valuation technique that gives you a value for the total company.

Q. Now, this is in contrast, of course, to what Mr. Purcell did in constructing a per-share minority-basis price; isn't that right? Do you remember he came up with a 1982-1983 figure?

A. Well, the numbers aren't comparable; right.

Q. But the technique isn't comparable?

A. Well, he didn't use discounted cash flow.

Q. That is what I am saying. His technique was to build a minority price?

A. Right.

Q. And yours was to build a hundred-percent price?

A. Well, we built a minority price in our comparable analysis, as you will see in our report. But in the discounted cash flow we get right to the majority price.

Q. So that here you don't have to apply a factor to put in the premium because it is there; isn't that right?

A. That's correct.

Q. And on his, on the contrary, because it is a minority price, you do have to apply a discount factor?

A. That's correct.

Q. And just to tidy this up, does this also include the dividends?

A. No, it does not.

Q. So that to determine the proper value for 1982 would you have to then go forward and add the dividends that were missed?

A. Well, that would be a proper thing to do.

Q. And if you wanted to be totally correct, would you have to compound the interest on the dividends that were missed?

A. That's correct. I just want to -- I don't want to mislead you or the Court. We are not opining that the value of the stock in the spring of '82 was $65 based on just this analysis.

Q. No.

A. Okay. We opined in our conclusion on Table U that we felt that in the spring of '82 the price of the stock was $60 a share based on input from these analyses.

Q. Well, is it correct that you took all of these analyses and then came to a final judgment?

A. That's correct.

Q. This is only one of the spokes or methods by which you arrived at the ultimate determination?

A. That's correct.

Q. Now, on the following page were comparable companies selected to measure their dividends yields and their price/earnings ratios?

A. That is Table N; that's correct.

Q. And what are you doing here?

A. Well, this Table N refers to our process of starting to do comparative analysis of UOP to its -- to our comparable group back in 19 -- that was developed in 1980. And this lays out for the six-year period approximately in the middle of April each of the statistics for our comparable group, dividend yield and P/E at each of those dates.

Q. And I note you include Signal in this list?

A. I do.

Q. And why is that?

A. Well, it is my feeling that as hard as it is to find comparable companies in this world, I feel that if anybody would perceive in the marketplace what a comparable company to UOP is, it would be UOP itself, and Signal, indeed, owned UOP. And I think Signal would be a very comparable company to look at to see its trading characteristics.

Q. And what is the ultimate purpose of this computation?

A. Well, this was a background and provided us data to do our comparable analysis. We proceed -- first of all, it is interesting to note that on our nine comparable list that we had used in 1980, several of the companies have disappeared on us. If we go down the list, Combustion Equipment went bankrupt. Pullman was acquired by Wheelabrator-Frye. Wheelabrator-Frye was acquired by Signal.

It is another after-the-fact -- I feel it is. It is another after-the-fact confirmation that other than Combustion Engineering going bankrupt we had an -- that two of our acquisitions were made by a comparable group here. Signal buys Wheelabrator-Frye, which bought Pullman.

Q. And does it give you a series of median and average figures for dividend yields and price/earnings?

A. Well, we adopted a median and average from this list.

Q. And turning to Table O on the next page, is this your computation of the premium over market in transactions of comparable companies from '78 to '82?

A. This is a tabulation of eight transactions that took place during the period '78 to '82 of companies I perceive to be comparable to UOP during this period of time. And we not only present the premium over market but we presented the size of the transaction for reference, the offer price as a multiple of book and the offer price as a multiple of earnings, and we calculated the median of this group and the average of this group.

Q. And would this give you a measuring point for what UOP would be in the year 1982?

A. Well, it gives us a reference point for what comparable transactions had accomplished in terms of ratios to the selling shareholders.

Q. Now, going to the next table, which is P, what is this table designed to do?

A. Well, this is one of the series of our comparable analysis where we tried, as Mr. Purcell did, to estimate what the UOP stock would be selling for if, indeed, it was selling in the open market, sold on the New York Stock Exchange.

We carried it one step further and we arrived at what we felt was the fair value of the block of UOP minority shares on a per-share basis. But this particular chart is a comparative analysis of dividend yields, using both our average dividend yields of the comparable company and then we isolated on the bottom half of the page the fair value of UOP's minority shares based on Signal's dividend yield. And there is rhyme and reason for that.

Again, as I said, if you want to take a look at a picture of a company, the best is to take a picture of itself, if you can, and UOP was part of Signal.

Now, interestingly enough, Signal's tremendous cash flow provided substantial in relationship to -- obviously, it wasn't the exact dollar that came up. But if you analyze Signal's 10-K reports for the period '78, I think it was, through '82, you notice that the upstream dividends from Garrett and from UOP represented almost 80 -- in the later years represented 80 percent of Signal's actual cash dividend to their shareholders. So if UOP was supplying that cash that

Signal was using to ultimately pay to their, Signal's, shareholders, it was an interesting comparable analysis to present here.

Q. And are these two tables comparable to Mr. Purcell's computation as to what the fair value of the UOP minority shares would have been but for a cash-out merger in 1982 and 1983?

A. Well, it is comparable only, in effect, that that is what we were attempting to do in the UOP stock value columns. But Mr. Purcell did not do a dividend yield analysis as this.

Q. And does his computation stop without the last two columns appearing on Table P of your appendix to your 1984 report?

A. That's correct.

Q. And in order to determine what the shareholders should have gotten, you have to multiply it by a premium factor, do you not?

A. Well, we felt that it is proper.

Q. Well, if they are being excluded from the corporation at that point -- that is, had no longer an interest -- that would be a control transfer situation and would command a premium?

A. That's correct.

Q. Now, did you make a determination in each of the years as to what the appropriate premium factor was?

A. I did not do it on an analytical basis other than from my knowledge and understanding of the marketplace. What I did is, I had it on a decreased basis. We have seen decreasing premiums given in the marketplace, and we move down from the 1.8 in '79 down to a 1.4 in '83 and '84.

Q. So that the premium becomes more conservative over time, reflecting what is happening in the market?

A. That's correct.

Q. Now, on Table Q what sort of a determination are you making?

A. Well, this is another one of our comparative analyses, but now basee on UOP's earnings and comparing it to the average P/E of the comparable company and to P/E's offered in control transactions.

Q. And again, having reached a per-share value for the six years in question, you then have the same premium computation in descending order from 1.8 in '79 and a 1.4 in '83 and '84?

A. That's correct. And that is only on the upper half of the page. That is when we are using the comparable companies, because the comparable P/E's were based on minority-type prices. However, in the bottom half of the page this calculation was not necessary because we were using control transaction P/E's, which the average was 14-1/2.

THE COURT: Mr. Prickett, I have to admit confusion on several things, but one of them is that -- maybe I can be enlightened on what the premiums mean. What is meant by 1.8 premium in this Table Q, Mr. Bodenstein?

THE WITNESS: Well, it is a multiplier. But, in essence, the 1.8 represents an 80 percent premium. 1.7 is a 70 percent premium. It is just a mathematical connotation.

THE COURT: I should ignore the number to the left of the decimal, then? Is that how it works out?

THE WITNESS: Right. I mean, if you want to understand what the percent as you understand it to be, the 1.4 is really representing a 40 percent premium.

THE COURT: All right. Thank you.

BY MR. PRICKETT:

Q. Now, of course, if the stockholders are not cashed out in the spring of any one of these years, then the premium is not appropriate?

A. Exactly. Because the stockholders are going to continue to hold their shares, it is just a valuation as of that time.

Q. What about dividends in Tables P and Q?

A. We did not add on that, but, indeed, they were lost dividends to these shareholders, and they should be cumulative to the shareholder if they are being cashed out. They would have received it in any instance.

Q. Well, whether they are cashed out or not, they would have gotten the dividends that all went to Signal over the years?

A. Exactly, or their fair share of those dividends.

Q. Their fair share. Their 49.5 percent of those dividends. And to make the calculation would you apply compounded interest to the amount of the dividends over the years since they were paid entirely to Signal and not to the minority shareholders?

A. That is appropriate.

Q. But that is not shown here?

A. No, that is not.

Q. Now, Table R is what sort of a computation?

A. Another of our comparative analyses, but based on multiples of book in control transactions. If we go back to the reference table, Table O, that column of offer price is a multiple of earnings. Excuse me. Offer price is a multiple of book value. We see that the median was 1.98, the average was 2.05, around two times book.

What we did here is, we just presented an array. It was our feeling based on our understanding of the marketplace, the comparable group, our understanding of UOP's businesses, that a minimum of one and a half to two times book would be what the total company would get in the marketplace, and so we applied those ratios to UOP's books value as of the end of the preceding year.

Q. And here again, if you had used this as the method of determining a cash-out price as of the years involved, you would have to add dividends.

A. Dividends to these, yes.

Q. Now, Table S is what sort of an analysis?

A. Table S is just a presentation of data taken from The Signal Companies 1982 annual report for the period 1978 through 1982 detailing the contribution of earnings on continuing operations to Signal. And it lists Ampex, Garrett, Mack, UOP and other. And it is a presentation, the basis of which we used for the next comparable analysis. But it shows that UOP from 1978 to '82 represented a growing and more important percentage of Signal's overall earnings. In 1978 they represented 21 million of 163 million, and in 1981 fifty-three of 200 million and in '82 a dynamic 47 million of 113 million.

Q. I think you said that that was a table that was -- or an analysis that was used in the next table, Table T, of your appendix to your 1984 report. What does Table T show?

A. Well, Table T is, again, another of our series of comparable analyses trying to develp a market value per share of UOP at the various -- at the springs of each of the years, and what we do in Table T is comparing UOP directly to Signal, we are saying if UOP is part of Signal, and Signal is being valued in the marketplace by the general public, it would be a comparable analysis to say what part of that valuation of Signal, that the market is giving Signal can be represented by UOP.

Q. And how do you do it?

A. Well, what we did is we calculated Signal's overall stock market value, or market value, and that's the third column in. We took the outstanding shares of Signal, and multiplied by Signal's stock price in mid-April, and then we continue, and by taking the percentage of Signal's earnings that UOP represents, we calculate UOP's earnings contribution translated to a percentage of Signal's market value. Then divided by the shares outstanding of UOP, added our premium for control, and came up with the fair value of UOP shares.

Q. Based on this method?

A. Based on the valuation the market was giving to Signal.

Q. And that brings us to Table U. Let me put that up so that we can look at it together.

Table U is entitled "Summary of UOP Fair Values by Various Valuation Methods."

Is there any new material on this that we haven't seen in the preceding tables?

A. No.

Q. This is simply --

A. Excuse me. I correct that. There is new material in that we have our summary, our opinion summary at the bottom.

Q. Yes. But at least before the line entitled "Duff & Phelps Reasonable Estimate," this simply summarizes all the various spokes or analyses that had been made before in determining the per share value of the minority shares from '79 through '84?

A. That's correct.

Q. Assuming there hadn't been a cash-out in

'78?

A. That's correct.

Q. And these are the figures that you get, and are they all apples and apples in the sense that are these -- these include in them the premium?

A. They do.

Q. You don't have to multiply any of them by any factor of 80 percent or 1.8? They all have that in there?

A. That's correct.

Q. And do they all share the fact that they do not include the cumulative amount of dividends that the shareholder would have had if he had not been cashed out in '78, but continued to hold the shares until this time?

A. That's correct.

Q. So that you would have to add those and compound them; is that correct?

A. That's correct.

Q. And then at the bottom you have what you call Duff & Phelps reasonable estimate, and for 1979 that is your reasonable estimate that the value of those shares but for the cash-out merger in 1978 would have been $32 per share exclusive of dividends?

A. That's correct.

Q. And is that a precise number, or simply your rounded off summary of the estimate represented by the various analyses, seven in number, that appear above that?

A. It's our opinion what we feel based on the column above, what we feel UOP would have sold for in the marketplace in the spring of '79.

Q. And likewise, in 1980 based on the seven analyses above, is it your reasonable estimate that UOP would have sold in the marketplace at $45 per share in the spring of 1980?

A. That's correct.

Q. And $55 per share in the spring of '81?

A. That's correct.

Q. $60 per share in the spring of 1982?

A. That's correct.

Q. And $60 in the spring of 1983?

A. That's correct.

Q. And $50 in the spring of 1984?

A. That's correct.

Q. Now, the next two tables contain an analysis on what bases?

A. Well, in our 1980 report we indicated, or had a short section on the possibility of a stock alternative offer; that should Signal, instead of paying cash, have offered Signal shares at the time, what the value would have been by the time the cash-out merger happened in May. What we do here is we have said if in fact the UOP shareholders received value not in cash, but in Signal shares, what those shares would be worth today. And it's an array, a table -- Table V is based on the ratio of UOP acquisition price per share based on Signal's March 6th price of $28. March 6th was, I think, the day of the board approval. And we did it for four prices: If UOP paid 21, 24, 28 and 30. And these would be what those shares that they would have received from Signal would have been worth at each of these periods in '79, '80, '81, '83 and '84.

Q. Now, I think it's pretty clear, but would you explain to me the adjusted Signal Company share price? I mean, that's the first column.

A. Well, several things -- not several things, but several events happened since the merger, and I -- Well, here it's footnoted.

There is a footnote there that says

Signal Company's reported share prices have been adjusted to reflect a hundred percent stock dividend in December of '78 and another 50 percent stock dividend in December '80. So if a UOP shareholder had received, say, one share of Signal at the time of the merger, that shareholder would have been two shares as of January 1, 1979, and then on top of the 50 percent dividend in December of '80, by January 1, 1981, he would have had three shares of Signal.

Q. And is this all done in terms of those adjustments?

A. That's correct.

Q. So that it simply translates the adjustments as if they had all been made the day before the merger?

A. Well, Table V represents a price as of the announcement date, and Table W represents the data based on a Signal price as of the actual date of the merger on May 26th.

If you see, Table V, we used a price of Signal shares of $28, and in Table W that represents Signal at a price of $42.75.

You remember Signal's price ran up from 28 to $42.75 by May.

Q. So that if they paid off in Signal shares as of May 26, 1978, they would have paid a lot less in number of shares?

A. That's correct.

Q. Because the market ran up?

A. That's correct.

Q. Now, behind that page there is a page entitled "Economic Indicators, April 1984." Is this simply an inclusion of interest rates so that you can calculate the interest on any figure that seems -- It's just the interest tables; right?

A. This is an interest table from the April 1984 Economic Indicators which is prepared by the government printing office, and if you look at the chart we just included, it gives you a good array of interest rates during the period 1978 to '83.

If you look in the middle of the page, the top of the table, you have an array of what interest rates did over this period.

For example, the first column is a schedule of the U.S. Treasury three-month bills. In 1978 it averaged 7.2. In '79 it averaged 10 percent; '80, 11 1/2; '81, 14; '82, 10.7, et cetera.

Q. Now, finally in your report there are three more tables culminating in Table ZZ. Are these discounted cash flows for '79, '80 and '81 similar to the one that we have seen for 1982, the last one of the five-year forecasts made by UOP itself?

A. That's correct.

MR. PRICKETT: Your Honor, would this be an appropriate time to recess?

THE COURT: Yes.

MR. PRICKETT: It's a good stopping place.

THE COURT: If it's good for you, it's fine for me.

We'll take a 15-minute recess.

(Recess.)

BY MR. PRICKETT:

Q. Mr. Bodenstein, in the records that were presented to you relating to UOP was there any change indicated in the status of UOP or any of its divisions from the time of the merger, May 26, 1978, through the close of the year that ended December 31, 1982?

A. Nothing out of the ordinary.

Q. Right. So that from the point of view of analyzing UOP, did it continue as a stand-alone division of The Signal Companies from 1978, the time Signal became a hundred-percent owner, until December 31, 1982 or shortly thereafter?

A. It did.

Q. And did it maintain its own records, financial records, its own cash, its own debt and everything else?

A. As best as I could see in the documents provided me, yes.

Q. Now, on February 1, 1980 was there a merger between Signal, the hundred-percent owner of UOP, and Wheelabrator-Frye?

A. There was.

Q. And did you review the records that were presented to you in connection with the calendar year 1983 so far as UOP was concerned?

A. I did.

Q. And I show you a document dated 4/25/83, with the small notation "Board President." It is entitled "UOP Products and Processes." It is numbered S000938. I am sorry. I don't have copies of it.

If I ask you if this is a document that you reviewed --

MR. HALKETT: May we have a moment, Your Honor.

THE WITNESS: There are copies.

MR. PRICKETT: I am sorry. I do have copies.

MR. HALKETT: Has that been marked? I understand it is Plaintiff's Exhibit 27 in this proceeding.

MR. PRICKETT: Mr. Halkett remains helpful. PX-27. I am sorry, gentlemen. I did not realize that that had previously been marked.

May I hand the Court a copy of what is PX-27.

THE COURT: Thank you.

BY MR. PRICKETT:

Q. Does the first page of this document

simply reiterate the divisions within UOP itself and its production and processes?

A. It does.

Q. And then when we turn to the first page, does this document reflect over the years and by division the earnings per millions by division?

A. It does.

Q. And then does it totalize them?

A. Yes.

Q. And does it include for the year 1983 the plan per division?

A. It does.

Q. And on the following pages is there a revision of operating earnings reflecting changes the total of which indicates that they are projecting $7,000,000 less than the $46 in the plan?

A. Mr. Prickett, first of all, it's based on millions, so it's $46,000,000 in plan, and as I interpreted this exhibit, which I think was presented -- was a presentation -- First of all, this is a presentation to the Signal board on April 25, and it presents the plan for the year, and then with a revised operating earnings as of that period in time.

Q. Well, when you say revised operating earnings, is that --

A. Well, I interpret that to be the new revised plan for the year.

Q. Right. And then the final column is simply indicating the difference between the plan and the revised operating earnings for the year; is that right?

A. That's correct.

Q. So they have revised from plan downward $7,000,000 for that year; isn't that right?

A. That's correct.

Q. And was this during the recession, or depression of 1982-83?

A. I would think so.

Q. And then on the next page is there a page entitled "UOP Major Reserves"?

A. That's correct.

Q. And what do the total reserves amount to?

A. On this page, as I see, it's obviously an allocation -- not an allocation, but a listing by major division of the major reserves set up, and the grand total in the lower right-hand corner was 98,000,000 pre-tax and a net of 65,000,000 in reserves.

Q. And does it on the next page indicates the expenses related to the merger?

A. It says -- right. "UOP Major Merger Related Expenses in Millions." Here you have a 38,000,000 pre-tax expense and a net expense after tax of 25,000,000.

Q. So that at least so far as this page is concerned, it indicates the amount of the merger expense as between Signal and Wheelabrator that is being allocated to UOP; is that correct?

A. Well, as I understand it, that's how I best interpret it.

Q. Turning back a page, if you took out the 25 related to the expenses related to the Signal-Wheelabrator merger, you would have a figure that indicates the reserves, at least, that are unrelated to the merger; is that right?

No. That's not right. Is it?

A. As I interpret it, Mr. Prickett, these are two separate exhibits. One setting up the major reserves for UOP by division, the Procon, the Air Correction, Bostrom, those that are identified that are closing down operations, and the next page were separately identified as the major merger related expenses. I interpret it not as one inclusive of the other, but they were two separate categories.

Q. Now, do you have a copy of the UOP 1983 year-end report?

A. Yes, I do.

Q. And would you turn to that report. It is --

MR. HALKETT: Exhibit 26.

MR. PRICKETT: You know, I may hire Mr. Halkett yet.

THE COURT: I assume when we are talking about these exhibits, we are using the numbers related to this hearing.

MR. PRICKETT: Yes.

THE COURT: Plaintiff's Damage Exhibit 26 and Plaintiff's Damage Exhibit 27.

MR. PRICKETT: I am, and I have perhaps not used PDX, as I should. The only ones that I know of that we are referring to from the former trial are PX-4, 5, 7 and PX-6.

THE COURT: 74. Excuse me. All right. 6.

MR. PRICKETT: So to that extent they are correctly referred to in the record as PX-4, 5, 6 and 7. All the others that are referred to ought to be PDX.

THE COURT: Plaintiff's damage exhibit.

MR. PRICKETT: DDX. Yes, sir.

MR. HALKETT: To avoid confusion, PX-74 is still PX-74.

THE COURT: I thought I heard that one mentioned also.

MR. PRICKETT: Yes. Arledge-Chitiea will and always will be our beloved PX-74.

BY MR. PRICKETT:

Q. Now, do you have PDX-26, which is --

A. Yes.

Q. (Continuing) -- the UOP 1983 year-end report package?

A. Yes, I do.

Q. And do you have a typed summary of that?

A. I do.

Q. And what does that document indicate to you or those documents indicate to you?

MR. HALKETT: Excuse me, Your Honor. May I inquire, is this a summary prepared by the witness?

MR. PRICKETT: No, no.

MR. HALKETT: I know of no typed summary of this document.

MR. PRICKETT: It is a document entitled "Signal Companies, Inc. Consolidating Income Statement for the Year Ended December 31, 1983." It is S000831 through S000833. It is PDX Exhibit 24.

MR. HALKETT: Thank you.

THE COURT: I take it it is not a summary prepared by Mr. Bodenstein but a summary coming from other sources.

MR. PRICKETT: Yes.

THE COURT: All right.

MR. PRICKETT: Though I don't think that that was probably clear.

BY MR. PRICKETT:

Q. Is it, in fact, a summary prepared and produced by The Signal Companies?

A. That's what I am assuming.

Q. And does PDX-24 incorporate in typed form the primary information appearing in PDX-26, the UOP 1983 Year-End report package?

A. In a summary form it is a representation of their consolidating income statement for UOP and the balance sheet as prepared in the accountant's working papers of S000836, which is PDX-24, I guess.

Q. 26.

A. 26.

Q. Now, having established the identity of the two documents, would you tell me what they show you in terms of reviewing this situation.

A. Well, I should preface -- the question is kind of open-ended. And first, I had the assignment to look at UOP at the year-end based on valuation, you know, looking at this company at what it is worth. And as I did in the past and I continued to do, I looked at this company at what this company's future earnings streams and its present position was worth. I received these documents, the 1983 work papers and the typed report, and it indicated that for the year-end 1983 the company earned $83 million pre-tax, or even more, $85 million pre-taxes, 41.7 million after taxes. It had generated a hell of a lot of cash, which the cash position and the cash accounting for was changed, which I think we can get into in a minute. And it reflected on this basis a fairly good record for this period of time.

Subsequent to analyzing this document I had communication from Mr. Prickett that we were going to be supplied by Signal with certain adjustments that had to be made to these packages, which subsequently came, and were hard to interpret in that they were journal entries, accounting work sheets where I could identify things but not really understand. It wasn't until -- it could be that I got this at the same time, but in my quest for knowledge I finally, you know, arrived at PDX-27, which is this outline that we just went through, and it kind of clarified to me what happened or as I interpret what happened in '83. And I was proceeding, I felt, and still do, in the right direction as to what the value was at the end of '83.

Indeed, I interpreted the results that there was a $41.7 million operating earnings from the company.

Q. Now, what does that show you?

A. Well, that the companies as a combined unit were operating profitably based on their business, selling product, collecting revenues, subtracting their expenses, and coming up with a net operating profit.

When I, as I said, reviewed this board presentation which was made in April of '83, it was clear to me that was the intent of Signal, of the Signal board. They took their reserves, they took their major merger related expenses, identified it, and revised their operating plan, but in no way presented it to me or to themselves that we should start allocating to cost of goods sold, and we should allocate to the daily operation these reserves.

I recognize what they are. They were appropriate, well taken, and taken at a good time in Signal's development. They were having problems, and they were going to have a major downturn in earnings, and it's a time to -- let's look at our businesses, and take the reserves that we can.

But this document clearly gives me comfort that the Signal board and the UOP operating management was looking at this company as they did at at the year-end report. Here is our operations. It's not going to earn 46,000,000 this year. We are going to earn 39,000,000. We are going to take off these one-time reserves and expenses, and we are going to move on into the future.

The second page of this report clearly identified this as they laid out this -- I think the bracketed companies, if we could look at the second page -- the bracketed companies as they were bracketed were the losers, the ones they were writing off. Procon, Air Correction, Bostrom and Fluid Systems. The remaining divisions, the Process Division, which we talked about earlier this morning, which is the star, and which is really UOP in essence, and the Norplex, Wolverine and the other identified divisions, which, as you see, all in total don't equal the Process Division's net earnings.

Q. But they are all profit makers?

A. They are profit makers, or at least shown here to produce profit in those years. There were losses in the earlier year.

The flavor of this document gave me comfort that indeed we don't look at this company as a company that lost $55,000,000 after taxes from operations, and that, you know, things were bad, and we were making product, selling product, but not making money on it.

So with this document, and with the year-end report I proceeded to create my document, my analysis.

Q. And let me ask you, in the calendar year 1983 did it become clear to you as to what Signal's strategy was for itself? That is, the merged Wheelabrator-Signal Company as well as UOP in that universe.

A. Well, it became clear to me that they did reorganize. In their '83 annual report they reorganized different divisionally, gave obviously certain management responsibilities to certain groups, and they were going to face '84 and '85 in a very, very positive nature. I would describe it as an analyst that they cleaned up the balance sheet dramatically. I think the balance sheet -- the book value of the adjusted that I have seen in, I think, the Dillon Read report reflecting a net worth of 293,000,000 was immensely stronger than the 350,000,000, or 385,000,000 figure that we were using based on this year-end report.

They cleaned off all the bad assets. They cleaned off their liabilities, their contingent liabilities, and now they were facing the future in a very solid position, and that is the important part in our conclusion as to the value at the end of '83.

Q. Now let's turn a second to the cash in all this.

On December 31, 1982, what had been the amount of the dividends that gone from UOP to Signal since the 1978 cash-out merger of the minority shareholders?

A. I think the total is $79,000,000. Let me just check it.

Well, the actual dividends to Signal from -- my data here doesn't do it at the point of the merger, but through '79 -- that is, '79, '80, '81, '82 and '83 would have been 85, $86,000,000 in dividends.

Q. Now, before you close that up, does that same page reflect the amount of cash that had gone from UOP to Signal either in the form of loans or -- well, in the form of loans or any other way?

A. Well, only advances. In the form of advances, up through 1982 there were $79,000,000 in advances to Signal or its subsidiaries.

Q. And what happened in '83 so far as the advances were concerned?

A. Well, in an analysis of the year-end report, an additional -- well, an additional amount of the difference between 79,000,000 and 158,000,000 which is another 79,000,000, was further advanced to Signal.

Q. Okay. So that a total of 157,000,000 --

A. At the end of 1983 there was $158,000,000 advanced to Signal.

Now, there was an additional exchange in accounting for this, which as an analyst I feel is an important concept here, and if the Court would turn to PDX26, the first two pages are S000837 and 000838, which would be -- the first page is the balance sheet, or the asset side of the balance sheet, and the second page is the liability side.

THE COURT: All right.

THE WITNESS: And there is a dramatic -- there is a change to the way UOP is accounting for the cash advanced to Signal.

If we look at the first page, the first four numbers in the right column under 1982, we see cash $7,023,000. Then we see intercompany notes, 54,000,000 and 25,000,000, which is the 79,000,000 we spoke of before. That was advanced to Signal. It's carried as a current asset meaning that that advance should be, or could be given back within the year.

Then underneath that there is an additional 16,000,000 that UOP has invested themselves in marketable securities for their total cash position. However, in 1983 there is a careful, distinct -- well, there is a distinction made now between the cash given to Signal, and as you see, in 1983 we just have 13,000,874 cash, and that's UOP's cash, plus another 17,854,000, which is a total of around 31,000,000 in UOP's hands on their balance sheet. But the cash advanced to Signal is now turned as a contra-account to the liability side, and if you look to the second page, Line 12, you will see there is a 157,838,000-dollar entry which is in brackets, which means it's not a long-term advance from Signal, but it's a long-term advance to Signal.

So there is a conscious effort here to indeed book it properly, and I'm not saying anything is wrong here. I heard testimony from Mr. Kavanaugh, and I read the testimony of Mr. Corirossi, and, you know, they are C.P.A.'s, and they come from fine firms, and I'm sure they did what's proper.

What this indicates here is that these advances now move into a long-term category. It's no longer due back within a year. It's no longer needed in UOP's operations for working capital. The working capital for 1984 is going to be taken care of by the current assets of 31,872,000.

If you look at Line 13 on that first page, B1, there is the current assets. The current liabilities of the firm are on Line 10 of B2, which is 260,000,000, and indeed the nature of UOP, there is no need for that $158,000,000 in its operations. It's as if they took it and lent it, or bought another company, or just deposited it someplace else. And it's a clear distinction the way they handle it between 1983 and '82, and that, you know, in my work is saying there is another 70,000,000. One year -- they took out 79,000,000 in the four years previous, or five years previously. In '83 they took out the whole 79.

BY MR. PRICKETT:

Q. And you went a little bit lightly over the fact that the total current liabilities are 260,138,000, and you said that the cash was a total in 1983 of about $30 million. Where are they going to get the balance to meet their current liabilities?

A. No. I think I explained that, Mr. Prickett. On Line 13, the total current assets, which were 330 -- approximately, it is 331,872,000. That is made up of the notes and the accounts receivable of 168 million and the inventory. These items are expected to turn into cash in the next year to be paid by the bills, which are expected to be paid in the next year as a current liability.

Q. So the total current assets are sufficient to meet the total current liabilities by a considerable margin?

A. Well, it is by a very adequate margin, and it is over 1 for 1. It is again going back to our original discussion in 1980, where I identified that their current ratio was so high then and the nature of the company was that you don't need that high of a current ratio. If we look here, the current ratio is around 1.3, and I think that is an adequate current ratio for this type business.

If I remember, we looked at companies back in our '80 reports there, that there should be no problem in meeting their obligations.

And, in fact, another point, if you look at Line 5 of B-2, this includes -- the current liability includes the additional $32 million that we heard about of the billings in excess of cost, the customer advances. So this also includes the obligations of UOP for their customers. It is not in Signal. It is in the operating company's hands.

Q. Now, in connection with the transfer in the form of advances to Signal, did Signal pay certain obligations of UOP?

A. The best that I can answer that question is, in further documentation in this report it is indicated that besides the $79 million that I talked about that they sent up or they advanced to Signal in '83, an additional 24 -- the number -- I think it is B-1, B-11, if we could -- no, that is not the chart. But it is an indication that Signal was also going to take over $24 million in long-term debt of UOP.

Now, whether they were going to pay it off or whether they were going to keep it on their books, I don't have that information. But, indeed, there was a transfer of long-term debt to reduce the long-term debt.

If we look on Page B-2, Line 11, if you notice, long-term debt decreases from 46.9 million in 1982 to $25 million in 1983. There is almost a $22-million reduction in long-term debt, and this was a transfer to Signal but offset by additional cash over the seventy-nine to Signal to compensate for the acceptance of these liabilities. Whether it was paid off to the lender or whether it is just sitting on Signal's books, I don't have that information in hand.

Q. But in any case, UOP paid that?

A. Right. The UOP obligation was paid.

Q. By UOP?

A. By UOP.

Q. In your view, what is the ultimate test of the value of a company? What do you come back to?

A. Future earnings.

Q. And if you take a look at UOP on January 1, 1984, is it possible to measure the future earnings of the company as it comes out of that reorganization?

A. Of course.

Q. And how do you do it?

A. You look at the pieces. You look at what you have left, what is the operations, and you look to the future of those companies.

Q. And if the minority stockholders had been stockholders through the Wheelabrator-Signal merger, either in the form of holding their UOP stock or being Signal stockholders and came out the other side on January 1, 1984 they would have had a poor year earning-wise if all these charges had been made against UOP, would they not?

A. No doubt about it.

Q. That would have been a graph that would have been somewhat similar to the -- there would have been on the UOP chart a dip similar to the Come-By-Chance?

A. Yes. And I want to just clarify it, that it is possible -- and again, I am not an accountant. It is possible that if UOP was standing alone, that some of those charges and reserves would be classified from discontinued operations or extraordinary, and therefore, you know -- I am not here to say there won't be a dip down, but the extent of the dip might not be the full $55 million.

Q. Right. Well, to some extent, as we have seen in PX-27, they are classified as major merger related expenses?

A. That's correct.

Q. So that if UOP had been stand-alone and not absorbing merger-related expenses, to some extent that would not accentuate the debt, but if you took all the charges for closing out the dogs, Procon and all those other losers, you would have in 1983, in contrast to this upward situation, a strict downturn?

A. That's right.

Q. And whether it would cross the zero mark or not is unclear, but you would clearly have that?

A. Definitely.

Q. But having taken your financial cash to Royal, you would then have in 1984 a company that would have an earning potential?

A. Definitely.

Q. And again, if you wanted to determine the value then, you would measure the value of the earnings stream?

A. Well, you have the value of the earnings stream. It is not that difficult, because we know that earnings stream at least in 1983 did earn forty-one-six.

That wouldn't change. So it is not as esoteric as you are trying to sound.

We know what it is earning today. It is that it could have earned. It earned forty-one-six. There were charges against it, but now we have a base to build on, and from my analysis and my observation, sure, the question of '83, the business environment, there is a question is there going to be growth or not. But, indeed, you now have a continuation of those businesses as it operated in the past.

If you again turn back to Page 2 of PX-27 -- am I right?

Q. Yes, PDX-27.

A. If you look above the line, you have a predictable stream. I guess I sound really contra to Mr. Purcell, but here you look at the Process Division. You know, no one is saying that it doesn't go up and down a bit, but that is, indeed, a predictable stream. And you look at the Norplex and Wolverine. Later, as I know, they sold the Aerospace Division. Some of these things are being liquidated.

But, indeed, the focus and the jewel, as I call it, the Process Division, is going to be turning out their revenue and receiving their royalties, doing their research and making money for this company.

Q. Now, is there anything to the suggestion that on January 1, 1984 UOP disappeared and there is no explanation as to what happened to $157 million of advances?

A. Well, you know, again, from the legal sense and the fact it is a shell corporation, I can't talk from that. I don't know the situation. But, indeed, UOP did not disappear. As we know, the Petrochemical and Petroleum Division is there. The Norplex Division is there. The Fabricated Metal Products Division is there.

And it is operating maybe in different management reporting relationships, but they are there.

Q. At my request did you make a diagram that illustrates what happened to UOP or reflects UOP on December 31, 1982, UOP on December 31, 1983 and UOP in the spring of 1984?

A. I did.

Q. And I hand you that document and ask you if that is the one that you prepared at my request to illustrate the situation of UOP in those three time modes.

A. This is it.

MR. HALKETT: Again, I don't know what this is. I don't believe we have ever been furnished a copy.

MR. PRICKETT: That's right. Your Honor, this is worked up. This is not an exhibit. This is a work-up of what Mr. Bodenstein did at my request. I take it that Mr. Halkett is asking to be furnished with a copy of this.

THE COURT: Well, I suspect he probably anticipates you are going to attempt to offer it in evidence, and I assume on that basis he would like to see it first.

MR. HALKETT: Or if he is going to examine the witness on its contents, I believe it would be helpful.

MR. PRICKETT: Anticipating Mr. Halkett, we happen to have one.

BY MR. PRICKETT:

Q. Now, would you tell us, first of all, Mr. Bodenstein, what this document is?

A. This is just a kind of a one-page summary, if you could say a one-page snapshot of UOP in general financial terms for '82, '83 and '84. If you look at the top, it is as of December, '82. The total company had $1.2 billion in revenue, net income of 46.7 million. The provided the parent $20 million in dividend that year, and they had a major contingent liability on their books, Come-By-Chance.

THE COURT: Mr. Prickett, excuse me. Before we get too far into the content, it might be appropriate -- I am maybe trying to anticipate the objection, but it might be appropriate to have Mr. Bodenstein indicate where these figures came from.

MR. PRICKETT: Yes.

BY MR. PRICKETT:

Q. Where did the figures come from, Mr. Bodenstein?

A. The documents supplied to me by UOP and Signal. It was from one of their year-end reports or the documents supplied. I can't put my finger on it. If I do, I will give you the exact --

Q. Well, let me ask you, would the UOP 1982 year-end report supply you with the revenues, net income and the dividends?

A. I am not trying to be obnoxious here. I have seen various documents with various numbers.

For instance, 1983 I have three sets of numbers, all --

Q. No, no, Mr. Bodenstein --

A. I am trying to find it, and I will be with you in a minute.

Q. I will supply it to you if you will --

A. I can't tell you at this time where the numbers come from, but it was from year-end reports.

Q. Why don't we take a look, since the Court has raised it, at the UOP 1982 year-end report and see if that is where we can get the net income figure and the dividend figure.

A. Okay.

Q. I show you PDX-23, the 1982 year-end packet, and ask you if on examining that what amount we find for the revenues.

A. Well, the revenues doesn't -- the 1,184 million doesn't foot into this figure. On the statement here it is one billion-two. It is exactly one billion-two.

Q. All right. Shall we substitute one billion-two, since we know that that is the figure that appears in the year-end report?

A. That is fine with me.

Q. All right. Now, what does it show for net income for December, 1982?

A. 46,682,000.

Q. Right on the money. How about dividends?

A. Dividends, 20 million.

Q. Right on the money. Okay.

Now, where does the contingent liability of Come-By-Chance come from?

A. Well, everybody knows that, and you could read that in the Signal annual report, I guess.

Q. Now, we better turn to the Petroleum and Petrochemical figure for the year-end December, 1982 as its operating profit.

A. That I took -- now I know where the 1,184 million came from. It came from the Dillon Read report, their Exhibit 2-B, as presented in their report as a summary of the revenues for UOP in 1982. So obviously --

Q. No, no. Mr. Halkett won't accept that.

A. Well, I guess we have got to stick to the document. Yes, okay. The Petrochemical and Petroleum operating profits as footnoted came from the Dillon Read Exhibit B presentation.

Q. And were all the other figures under December 1982 from that source as well?

A. Yes.

Q. Okay. Now let's go to UOP 1983.

A. Here again, it's just the same type of picture, what the total revenues were for the company.

The left-hand side obviously is for the total company. The right-hand side, we are looking at the divisions. The net income of 41.7 million, the extraordinary reserves and charges of 97.165, the dividends and permanent advances to Signal as I identify it as 177,800,000, and the contingent liability is none. I mean, in '83 they did their work, and they eliminated this contingent liability.

Q. By making that a reserve charged against income?

A. Well, no. I think more -- definitely no. As I understand it, it's because they had -- anticipating the settlement of it.

Q. Well, what did they do?

A. Well, as I understand it, there was some settlement, and they took off -- they identified the cost of it. They took the reserve, and now the contingent liability is no longer a contingent liability.

Q. Right. Okay. Now, the final entry is UOP spring of 1984. Let me take the right-hand side first -- Well, in the first place, these are all estimates; is that correct?

A. Right. These are my estimates.

Q. Right. Now, so far as the actual companies that are enumerated, there is Petroleum and Petrochemical, or Process, Construction is closed, Fabricated Metal Products is there, Transportation Equipment is sold, Chemical and Plastics is 5,000, and Other Products; is that right?

A. Exactly.

Q. Did you make an estimate of the operating profit by division?

A. Yes, I did.

Q. And how did you estimate the profit of the Petrochemical, or the Process Division?

A. This was done by looking at its recent track record. It had operating profits of 85,000,000 in '81, 72,000,000 in '82, 68,000,000 in '83, and I just said it's a reasonable expectation that in '83 they should earn around $70,000,000.

Q. And is that --

THE COURT: Did you mean '83?

THE WITNESS: I mean '84. Excuse me.

BY MR. PRICKETT:

Q. And is that the same way that you made an estimate on the Fabricated Metals?

A. That's exactly correct.

Q. And Chemicals and Plastics?

A. That's right.

Q. And does this account for the end, or near end of the recession in the year 1984?

A. Well, we are out of the recession, and although the Petroleum and Petrochemical Division is obviously affected by the petrochemical and petroleum industry, which is still not coming back in full force, you know, I think it's a reasonable expectation that they should do as well as they did in '83 and '82.

Q. All right. Now, going to the left-hand side of the entry, UOP spring 1984, there is an estimate of revenues for the coming year. Who made that estimate?

A. This was just my overall observation

that based on these group of companies and what they have done in the past, and what is reasonable to expect in '84, it's an estimate.

Q. And do you estimate the net income?

A. Well, I took the operating profit from the divisions. If you notice, it's 70 plus 20 plus 5. It's 95 minus 3 is 92, and then I did put some -- looked at some of the overhead charges that was presented to me in the Dillon Read report, and made certain reasonable assumptions as to past corporate expenses, interest expense offset by the income, and then additional income from partially owned subsidiaries; tax affected it at a reasonable rate to come up with a $50,000,000 estimate.

Q. Right. And the figure, "Dividends and Advances," is your estimate of what UOP could pay as a dividend with these other figures?

A. Exactly. They have been paying 20,000,000 for the last four or five years. They are an outstanding cash generator. There should be no problem in providing a 20,000,000-dollar -- if not more, but it's a reasonable estimate to say they will be at least able to do what they have done in the past.

Q. In 1983 they only paid 10,000,000?

A. No. But they also paid another $79,000,000 that they made a stream to Signal. So that's like $90,000,000.

Q. Now, I note that you have a contingent liability of none.

A. Well, hopefully like in '83, there is no -- as I understand, no major new litigation on the books, and Come-By-Chance is gone, and this is a general picture as I could see it at this point.

Q. And would this be the picture that the UOP minority stockholders would be facing assuming that they had continued to have their stock, and not been cashed out in 1978, and had carried it through until the spring of 1984 as of the present time?

A. That's correct.

Q. That's what they would have. Is this what Signal has, since it has a hundred percent of the company?

A. It does.

Q. And does this then represent what UOP looked like before the Signal-Wheelabrator merger, during the year of the merger, and what happens on the other side?

A. That's correct. That's what I tried to portray here.

MR. PRICKETT: Your Honor, on that basis I would offer the sheet entitled "UOP, Inc.," as the plaintiff's next exhibit.

THE COURT: You offer it, as I understand it, as summary of what?

MR. PRICKETT: Of Mr. Bodenstein's review of this situation, and illustrating his testimony in summary fashion.

THE COURT: I think you started out by referring to it as an illustrative summary. All right.

MR. HALKETT: Before objecting or not objecting, may I inquire briefly on voir dire?

THE COURT: Yes. That might be appropriate, yes.

BY MR. HALKETT:

Q. Mr. Bodenstein, did you prepare this document yourself?

A. Yes, I did.

Q. Is that your handwriting that appears there?

A. That's right.

Q. When did you prepare it?

A. This week sometime.

Q. While you have been here in Delaware?

A. In Wilmington.

Q. Prior to that time had you prepared a schedule comparable, or similar to this?

A. No.

Q. Did you use this document, or the information in this form, in arriving at your opinion as to the value of UOP as of the spring of 1983 or 1984?

A. Oh, sure. Well, not in this form, but the numbers were there. I mean, I knew the numbers.

MR. HALKETT: I object to it, Your Honor.

THE COURT: What would be the basis for the objection?

MR. HALKETT: Because it did not form the basis of this -- this document in this form did not form the basis of this witness' opinion as stated in his report which has been produced.

THE COURT: All right. Well, let me see if I can fathom what I have here.

Mr. Bodenstein has prepared a report

setting forth his opinion with regard to the issues before the Court in this matter. That report has been produced, and it has been admitted in evidence.

MR. PRICKETT: Yes, sir.

THE COURT: He has testified in response to the voir dire questions that the figures and numbers on this document were available to him, and utilized by him in reaching the opinion set forth in his report.

Mr. Halkett, however, objects to the admission of this document as a document coming into evidence because it is not, if I understand the objection, anything utilized by Mr. Bodenstein in arriving at his opinion in this case.

MR. PRICKETT: Well, I agree with that. It was done after his written report, et cetera. He already made his opinion. What is the purpose of all this?

THE COURT: That's what I was going to ask. Maybe that will help clarify it.

MR. PRICKETT: Because the two people sitting in the front row here as well as Mr. Purcell are trying to convince the Court that on December 31, 1983 UOP disappeared like the rabbit in the magician's hat, and there was nothing left of it, and the company treasurer said he didn't even know where the $157,000,000 had gone.

THE COURT: All right. Let me stop you there then.

Is this document offered by way of simply a written summary of Mr. Bodenstein's testimony in response, or to counter that particular evidence?

MR. PRICKETT: Yes.

THE COURT: To try and show through his testimony that you can account for the existence of UOP from 1984 and hereafter as a viable company in his opinion?

MR. PRICKETT: Yes. Not only that. You can account for it, but that when you look at it on the other side, it's not only alive and well, but it's producing money.

THE COURT: All right. The figures, I assume, set forth on this document are used to justify that opinion.

MR. PRICKETT: Yes, as he so testifies in contrast to the idea that is suggested by the defendants that UOP is nothing but a name and an empty shell. On the contrary, it's gotten rid of all the losers, has all the winners, and it has all the prospects of doing in the future as in the past, and that is make a lot of money for the guy who owns a hundred percent of it.

THE COURT: All right. On that basis I'll overrule the objection and admit the document. However, I do so only on the grounds that it is nothing more than the figures justifying the opinion which Mr. Bodenstein has given from the stand concerning his view that UOP is still in existence, has not gone away, if that is the proper term, and that these are the figures on which he bases that opinion. The document itself, as far as I'm concerned, has no value other than to provide the basis for the opinion that he's given.

MR. PRICKETT: I agree.

THE COURT: It's more of a help to me, I suppose, if we get into it in any degree later on as to cross-examination. It probably helps all of us, and I think it's permissible to come in on that basis. I don't accord it any independent evidentiary value. Simply background information from which the opinion is drawn.

So on that basis it can be admitted.

(A document entitled "UOP, Inc." was received in evidence as Plaintiff's Exhibit No. 125.)

MR. PRICKETT: I ask the witness to refer to his report of June 14, 1984. It has been admitted, and carries the number PDX119. I have a copy for the Court.

BY MR. PRICKETT:

Q. Mr. Bodenstein, at my request did you review the --

MR. PAYSON: Excuse me. You said it was admitted. I had thought it was admitted for identification, but I'm not positive. Yes, I believe that's right.

THE COURT: I wasn't aware of that. I'm sorry.

MR. PRICKETT: I wasn't either, and I'll now take it up:

BY MR. PRICKETT:

Q. Mr. Bodenstein, at my request did you review the written review of Mr. Purcell of Dillon Read, dated June 7, 1984?

A. Yes, I did.

Q. And pursuant to that direction did you draw a letter report to me, dated June 14, 1984, which has been marked for identification PDX119?

A. That's correct.

Q. And is this report a summary of the reasons why you do not agree with Mr. Purcell in his evaluation of the value of the UOP minority stock as of May 26, 1978, as of the end of 1982 and as of the end of 1983?

A. That's a long question, Mr. Prickett. Let me answer it by saying in this letter report I tried to identify certain items that I don't agree with and some other items that I found to have faulty information.

Q. Let me ask you an overall question:

Do you agree or disagree with Mr. Purcell's conclusions, the first conclusion that $21 was a fair price for the minority shares of UOP as of May 26, 1978?

A. I disagree with that conclusion.

Q. And he also comes to a numerical conclusion as to the value of the stock of the UOP stockholders as if they had not been cashed out as of the end of 1982 and '83. Do you disagree with that conclusion in terms of the number?

A. Yes, I do. I disagree with it.

Q. And beyond that, does the number itself omit the premium that would be necessary if in fact the cash-out took place in December 1982 or December 1983 rather than May of 1978?

A. I agree.

Q. Now, having established the basic disagreement on the fundamental conclusions, let me go through this report and ask you to comment on it.

The first item that you took up was the failure both in the 1980 report and the 1984 report by Mr. Purcell to employ, among other things, a discounted cash analysis of UOP as a means of determining the fair value. Why do you think that that is a failure on his part?

A. As we discussed this morning, I just feel that -- and it's almost imperative -- that this is the type of company that should have a discounted cash flow analysis applied to it, and in fact I think most situations can use this technique, and it was -- still is -- amazing to me that Dillon Read didn't use this approach in their analysis.

Q. Now, the second item that you have focused on is Dillon Read's analysis of UOP's performance in '73-'78.

A. Well, I disagree with the term that their operating record was erratic and that their earnings per share were volatile. If you look at the record, the record clearly, I feel, disagrees with that totally. UOP has had a very good growth record.

Q. Now, on the bottom of Page 3 of your letter of June 14 you say, "Further earnings per share were primarily from continuing operations, making incorrect Dillon Read's statement that earnings per share were 'composed of items from discontinued operations and/or extraordinary items in most profitable years.'"

A. Well, I think there is one -- in looking at the past record back in the period prior to '78, there is a division, the Fragrance Group, it is identified, that was obviously closed in 1976. And in putting this comparative statement together showing '72 through '77, there is a line taking out this one discontinued operation for the five years and to me is really immaterial.

First of all, the income generated by

this division never exceeded $3 million, and that was in the year when the rest of UOP earned 24 million. And to identify the fact that this company had discontinued -- it appears that this company had constant -- every year another business was closed and re-cast is just misleading.

Q. And where did the bulk of the earnings come from whether you start in '73 or you start in '76?

A. The Process Division, which they identify now as the Petroleum and Petrochemical Division.

Q. Now, in addition you comment on the fact that Dillon Read suggests that the earnings per share from continuing operations were lower in '77 than in '74. Now, why is that misleading to make that suggestion?

A. You will have to refer where --

Q. Page 4, the top of Page 4.

A. Oh, well, here is a point. Again, in '74 they had an unusually good year. It was due to one or two projects. And it is just, again, a point that I pointed out, that the fact that '77 was lower than '74 when '74 had a large refinery project, and, in fact, the '78 annual report of Signal stated that

'78 was an artificially high base period, and it is not really a valid point to compare one period to another when you had an unusual area like that.

Q. And are we referring on the graph that is entitled "Selected Income Statement Items," appearing in your report, to the difference between the -- I am trying to find the net earnings. Well, it doesn't really appear here clearly to be discernible, does it?

A. Well, right. It is the 24.6 million figure for '74, and we have not identified the '77 figure, or maybe we did, the twenty-four-three. It is about equal. And as we said, the Signal report in itself identified that the twenty-four-six was unusually high or artificially high. To quote it properly, it was an artificially high base.

Q. Now, I think I have covered your views on whether earnings were difficult to project or not. Now I come to Page 5. There is a reference in the Dillon reports, both of '80 and '84, to the 1975 tender offer.

In your view, does the '75 tender offer price and direct purchase have any bearing whatsoever on the fairness of the price in the 1978 cash-out merger or in determining the price that UOP stock would have been but for the cash-out in 1982 and '83?

A. It has no relevant factor to it.

Q. Now, the next subject is the 1983 results. You say, "In analyzing UOP's 1983 results Dillon Read report places total emphasis on the $55 million loss created by certain one-time accounting charges while ignoring the $41.7 million after-tax operating earnings," et cetera. Why is it that you believe that there is undue emphasis in the Dillon Read on the $55 million loss?

A. I think that we discussed this in the previous questioning. If you read the Dillon Read report, you really get the picture that this company lost $55 million from their operating business, and I don't think it clearly reflects the total -- the actual picture of UOP.

Q. And does it reflect accurately the earning picture as contrasted with the accounting picture?

A. It does not.

Q. And is the key to the determination of value future earning potential?

A. It is.

Q. And does the Dillon Read report mention in any way the cash that UOP had generated to its hundred-percent owner over the years since the 1978 cash-out merger?

A. It obviously presents it in the statements, but it really didn't talk to it at all.

Q. And what is, in your view, the importance of the cash and ability to generate cash, as demonstrated by UOP in the period from '78 through '83?

A. That is what this exercise is all about. Value is based on future earnings, which eventually creates cash to be taken out by the investor or the owner. And you are looking for that cash as the reward to your investment.

Q. And does any report that fails to focus on the ability of the entity to throw off cash miss the whole point?

A. Well, it misses a good, big picture of the point.

Q. Now, in particular, focusing on Page 8 of the report, is the text of the Dillon Read report at odds with the numbers contained in Exhibit 1-B of that report?

A. It is.

Q. Now, would you lead us through that.

A. Well, I had in my letter to you as it read, as the Dillon Read report originally read -- and this is Page 7 of the Dillon Read report. The paragraph reads, "The cash position increased significantly in 1983 about 111 million," and then the Dillon Read report proceeds to try to explain how that $111 million figure was obtained, how this cash was obtained. And it talks in terms of reduced inventories and receivables of 60 million, added to that another 32 million from advance payments from customers, and a lower dividend payment of 10 million. And if you add up the three numbers, it is sixty plus thirty-two plus ten is 102 million, which explained 102 million of the 111 million increase in cash.

Well, that just isn't right. We heard-- Mr. Purcell came in yesterday and amended that statement because in his first statement reduced receivables and inventories did not increase cash by $60 million. The report was corrected to read -- and I don't have the exact reading. But it was corrected to say, "Due to decreased working capital, including current liabilities." It makes part of that statement correct. It is fine.

Now, the first line of $60 million is explained for. But now what happens is, Mr. Purcell proceeds to double-account the second 32 million, because the second 32 million is included in the working -- the increase in liabilities. So he has a double accounting there.

So really, Mr. Purcell, even after correcting the paragraph still only explains 60 million plus the $10 million of decreased dividends, which is $70 million. So we really can't find and we can't explain -- I shouldn't say we can't explain. It is not identified where the additional $41 million in cash came from. Now --

Q. There is $40 million, though --

A. Oh, yes. Now, another interesting point here is that an analyst, to find where that cash came from, would go to the source and application of funds statement. There should be three statements with most financial statements: The balance sheet, income statement and a source and application of funds statements. That is the key -- to me that is one of the key statements in analyzing any company, the source and application of funds statement.

If we turn in the Dillon Read report to the display of source and application from operations -- excuse me. They title it UOP Sources and Uses of Funds Statement -- there is a display for 1973 through 1977 on Exhibit 3-A that continues on to Exhibit 3-B for 1978 through '82. And there is no source and uses of funds statement provided for 1983.

Now, to me that is a glaring omission, because you can really not -- I couldn't interpret the balance sheet for 1983 as presented on Exhibit 1-B of the Dillon Read report, because, first of all, it is a new balance sheet. I have never seen this balance sheet before. It has no comparability to the work documents I got of the year-end package of UOP.

However, it is not footnoted, but Mr. Purcell said it was supplied by UOP to him. This is a new balance sheet. There is items on here that are footnoted but not explained. For instance, Footnote 6 includes purchase accounting adjustments. I have --

Q. Okay. Let me see if I can move on. In any case, it would appear that $40 million is still unaccounted for and not explained by Mr. Purcell; is that right?

A. Well, it is accounted for but not explained.

Q. Now, I turn, then, to an item that we have talked about before, and that is the comparable price/earnings ratios and the list supplied by Mr. Purcell. In the original 1980 report Dillon Read selected some companies with which to make a comparison with UOP on price/earnings; is that correct?

A. That's correct.

Q. And how many were there, in round numbers?

A. 14.

Q. And those were used for the comparison in 1980?

A. That's correct.

Q. And then in 1984 were those same 15 companies originally listed in order to provide a basis for a price/earnings multiple?

A. They were.

Q. And pursuant, as Mr. Purcell tells us, to his directions, did his associates or the people working under him prepare that exhibit to determine what the price/earnings ratio of that 15-company group was?

A. They did for the period June, '78 through December, '83.

Q. And what did the number come out?

A. For what period?

Q. Well, for the period in question, December 31, 1982.

A. 9.1.

Q. And if that figure were used, so far as UOP is concerned, what would that show for a stock value?

A. Well, it would, indeed, increase his number of 28.50 to somewhere in the low 30's.

Q. And then did Mr. Purcell eliminate, as he tells us, the companies on that list that showed a depressed, according to him, earnings of 25 percent or more?

A. He did.

Q. Now, from the point of view of a financial analyst, is it appropriate to do what he did; that is, to take 15 companies, use them for comparable purposes in 1980 and then eliminate half of them in 1984?

A. Indeed, it is not comparable and it is not proper.

Q. Why is it not proper? Why shouldn't you eliminate those companies that show a 25-percent decline in earnings?

A. Because that is a reflection of what is happening amongst the comparable group. And, indeed, the fact is half the group had declines of 25 percent or more, that is a reflection of what the comparable group was doing. And, in fact, there is no basis for taking it out.

Q. Well, you have taken out half of the comparables?

A. Right.

Q. And those half of the comparables are those that have gone down by 25 percent?

A. That's correct.

Q. What does that do to your final number?

A. Well, in this case, in his case, it reduces his 9.1 to 7.5, as he said.

Q. And then you multiply that by the UOP number, and you get a lower number; is that right?

A. Well, that is what he did, yes.

Q. And is there any justification from a financial analysis point of view for striking out those numbers?

A. Not in the procedure that he used. There could be a case if, indeed, there was a comparable where the P/E was 100 or 60 or an unbelievable number out of the range, for a certain reason you might take that out of the group.

Q. As a sport?

A. As a what?

Q. A sport, as an aberration.

A. As an aberration, yes. Oh, a spore.

Q. No; sport, S-P-O-R-T.

A. Oh, as an aberration, yes. But not when half of your group -- this is what the comparable group is showing, that it is a recession. All the companies are getting affected by it, and earnings are going down. And you just don't eliminate it because you don't like the number.

Q. Well, would there be any justification the other way? Supposing half were 25 percent up. Would there be any reason why in financial analysis you could then strike out the 25 percent that were up?

A. No.

Q. I mean, could we have done that with any justification?

A. I wouldn't.

Q. Now, was that done, so far as you know, on both lists?

A. That was done on both lists.

Q. That is, they struck out the ones and lowered the numbers; is that right?

A. They struck out the ones -- well, they didn't do -- interestingly enough, they said they did it in both lists for 25 percent or more. As we found out yesterday, there was one in the group that was struck out that wasn't 25 percent or more. In reviewing Mr. Purcell's second list, he struck out 25 percent, but there was another one that had 25 percent or more, Gulf & Western, which had a low P/E, and that remains in the group.

So I don't agree with the justification of striking them out, and if he does strike them out, at least he should do it across the board.

Q. So is it fair to say that it is not only incorrect as a technique but there were errors in even doing what he said he was doing?

A. That's correct.

Q. Now, on Page 11 you referred to his treatment of dividends. And you say, "However, Dillon

Read does not analyze this stream of dividends from the point of view of the investing public."

Now, what is the significance of that in the context of his analysis of the fairness of the price and the 1982 and '83 price?

A. Well, I just felt that here was a company that was providing its owner with substantial dividends, and it was a good treatment, good analysis of taking the dividends and applying it to some sort of comparable analysis. He does agree that UOP's dividend pay-out was reasonable and within the range normally paid out by publicly traded industrial companies. And I did a little analysis, taking Mr. Purcell's 14-company list and the 32-company list and comparing it with Duff & Phelps' nine-company list, to see what these average dividend yields were in 1983, January, 1983. And, indeed, they were comparable. Our list showed a range of dividend yield between 3.8 and 4.1, which was a little later in the year, April of '83, but it would be no major change in that period of time.

Dillon Read's list of 14 showed a range of 3.6 or a median of 3.6 and an average of 4.5, and his larger list showed a much higher dividend range.

Q. Now, I come to the next to the last and perhaps most important point that you make, and that is found on Page 13, failure to allow a premium. Let me ask you to tell us, since the hour grows late, what it is that you find that is incorrect in terms of Mr. Purcell's attempt to evaluate the worth to the UOP stockholders of what they would have had if they were cashed out in '82 and '82 rather than '78.

A. Well, Mr. Purcell's approach to value was to come up with a value, a price of UOP shares should it be selling in the New York stock market and assuming that the UOP shareholders would still own those shares into the future. And that is not, as I understand, a possibility in this situation. And he fails to take into account that those shareholders no longer have a piece of the future earnings stream of the company and, therefore, must compensate them for that.

Q. By a premium?

A. Well, by what we call a premium.

Q. And, let me ask you, do you agree with his method by which he comes to the minority or the market value?

A. Well, he used comparative analysis, and

I have no complaint with the fact that he is using a normal approach to comparable analysis.

Q. Right. But having come to that figure, he does not apply a premium?

A. Well, I don't think he applied -- the method was right. I don't think he applied reasonable valuation data that was generated by his study, and subsequently after doing that he fails to put a premium on those values.

Q. And does he in that evaluation make any reference to the missed dividends?

A. Yes, he does.

Q. Does he indicate whether he thinks they should carry compound or simple interest?

A. I don't think he talks in terms of either. He doesn't apply an interest factor to his dividend stream.

Q. Do you think that since the dividends were not given, if you were going that way you should apply interest, and you should apply compound interest in order to make them whole?

A. I believe that's the proper approach.

Q. Now, one other question along those lines:

This report was available to Mr. Purcell prior to the time that he testified here in this Court; is that correct?

A. That's my understanding.

Q. Right. Now, based on everything that you have reviewed in connection with the -- I'll withdraw that. I think it's been asked.

Mr. Bodenstein, let me conclude: I asked you many hours ago at the beginning of this direct testimony about your association with Duff & Phelps. I neglected to ask you what your present position with Duff & Phelps is. I got when you joined in as a chartered financial analyst, and what you did, but I did not ask you, and not deliberately, but inadvertently, as to what your position is now with the company.

A. I'm a senior vice president, member of the board of directors, and a member of the management committee.

MR. PRICKETT: Thank you.

Your Honor, I have no further questions.

THE COURT: All right.

Mr. Halkett, what is your thought? It's five o'clock, all but three minutes or so before it. Do you want to bother, or would you rather just wait? I would almost as soon wait until tomorrow.

MR. HALKETT: It's not a bother. It's really a question of trying to assume what our time will be tomorrow, and I do not want to find myself at the end of the day tomorrow foreshortened. There is a lot to cover with this witness.

I leave it to the pleasure of the Court. If we could possibly go a little bit later tomorrow if we don't finish by 5:00, I would very much appreciate that opportunity.

MR. PRICKETT: Well, let me suggest, Your Honor, that as Your Honor suggests, Friday night is a tough time. I mean, we have out of town witnesses including Mr. Bodenstein who has to go back to Chicago.

Given the choice, we would suggest we go forward tonight, and get as much done as we can rather than wait until tomorrow. If we've got do it one way or the other, let's start now and get the preliminaries out of the way, and then start at a reasonable hour tomorrow, because I think that the most undesirable thing is to have it go over until Monday.

THE COURT: I agree. And the second most undesirable is going Friday night.

Well, let's take a five-minute recess, and let me confer with my supportive staff, and see what provocations this brings about, and I'll report back to see what our best consensus will be.

MR. PRICKETT: Well, Your Honor, would a suggestion of going for an hour or maybe three-quarters of an hour tonight be a good one? Not later than that.

THE COURT: I wouldn't anticipate going any more than that. We do have to get the people out of here tonight in time to get them back tomorrow.

MR. PRICKETT: Yes.

THE COURT: All right. Let's take a five-minute recess.

(Recess.)

MR. PRICKETT: Your Honor, we now offer in evidence Mr. Bodenstein's report of June 14, 1982. It has been previously marked for identification, and I now move it.

MR. PAYSON: Your Honor, with the understanding that we do not agree with the contents of the report, we do not object to its being introduced.

THE COURT: I certainly understand that. You certainly have the right to inquire into it on cross-examination. But on that basis it can be admitted as Plaintiff's Damage Exhibit 119.

MR. PRICKETT: Thank you, Your Honor.

(A copy of the report of Mr. Bodenstein of June 14, 1982, having been previously marked for identification Plaintiff's Damage Exhibit No. 119, was received in evidence as Plaintiff's Damage Exhibit No. 119.)

THE COURT: I might add before we proceed that the poll has been taken, as usual, Chancery, or its employees make their customary sacrifice, and we will go to six o'clock.

MR. HALKETT: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HALKETT:

Q. Good afternoon, Mr. Bodenstein.

Have you made any changes in either your report or your tables from that which is in the printed form, copies of which were given to us some time ago?

A. No, I haven't.

Q. Have you brought with you today any calculations, worksheets, tables of any kind other than those which have been identified now and marked as exhibits?

A. Yes. You had requested in deposition that I bring in the data I used, or the calculations I used for my various DCF discount rates, and I brought this worksheet for you.

Q. If I might have that, please.

(The document was produced.)

MR. HALKETT: I ask that this document be marked as a Defendants' damage exhibit.

(A handwritten worksheet of Mr. Bodenstein was marked Defendants' Damage Exhibit No. 14 for identification.)

MR. HALKETT: If I may, Your Honor, at six o'clock, if we could withdraw that, we will make adequate numbers of copies, and return the original and copies to counsel.

MR. PRICKETT: No objection, Your Honor.

THE COURT: All right. That will be fine.

BY MR. HALKETT:

Q. Do you have any other calculations, worksheets, other than those which have now been marked either for identification or in evidence in this case?

A. No, I don't.

Q. Are you a C.P.A.; that is, a certified public accountant, Mr. Bodenstein?

A. No, I am not.

Q. Are you a licensed real estate appraiser or broker?

A. No, I am not.

Q. In approaching your task for your valuation in 1984, did you approach it in the same manner as you did in 1980 for your 1978 evaluation? In other words, did you look upon your client, so to speak, as being the minority shareholders of UOP as of May 26, 1978?

A. Yes, I did.

Q. And did you then seek to determine what a hypothetical willing buyer would have paid to a hypothetical willing seller for 100 percent of UOP, and for the first part of your report as of May 26, 1978?

A. Yes.

Q. Did you approach your work for your 1984 report in the manner in which you approached in 1980; that is, on a conservative basis?

A. Yes.

Q. And in making your analysis on that basis, did you take into account that where there might be, let's say, a range within which you might come out, or come down on a given matter, you came out on that side that would give the advantage to your client, the minority shareholder?

A. No.

Q. You did that, though, in 1980; is that correct?

A. Maybe I misinterpeted that first question. Could I have that first question read back?

(The following question was read by the reporter:

"Question: And in making your analysis on that basis, did you take into account that where there might be, let's say, a range within which you might come out, or come down on a given matter, you came out on that side that would give the advantage to your client, the minority shareholder?")

THE WITNESS: "Came out to the advantage," and I said no. Continue.

MR. HALKETT: I would like to read a portion of the transcript of the testimony taken in this case on May 23, 1980. This was on the cross examination of Mr. Bodenstein on that day, and this is at Page 555 of the trial transcript commencing at Line 8, and going over to Page 557, Line 13:

"Question: "How do you define 'conservative'? You have used it a lot the last couple of days. What do you mean by it in terms of your analysis?

"Answer: I use 'conservative' from the standpoint of trying to take as little risk as possible. The least risk approach, I would consider conservative.

"Question: What risk was there in putting down 14 and 1/2 as a prior level price and 45 percent as a premium rather than 12 and 3/4 and 42?

"Answer: The risk -- you are playing with my words. But as I said, the conservative approach, the risk was, looking at the minority price of my client, who I am working for, UOP, and advising the UOP shareholders. The risk was that, if I may use my calculator, and again, if you would like to record, the premium based on, let's again use my word "conservative" -- just use a $15 closing price of several days prior. That would only have been 40 percent. And if we again use the 15 and 7/8 price of just two weeks prior to that, you have a premium of only 32 percent. And again, the risk is that my client comes back and says here I am saying the maximum premium that I could go on that day was 42 or the minimum premium I was going to go to was 42 percent.

"Question: In approaching your study and your evaluation for purposes of coming up with this report, Plaintiff's Exhibit 3, did you understand that your job was to approach it as if your clients were the minority shareholder of UOP, and to do the best you could for them?

"Answer: To do the best, no. It was to come up with what our fair value was.

"Question: And to be conservative on their side of the fence?

"Answer: No. That's my input.

"Question: But that's what you did though?

"Answer: Yes."

BY MR. HALKETT:

Q. Did you approach your evaluation

methodology and your studies and your conclusions in 1984 in the same manner as you did in 1980?

A. Yes, I did.

Q. In making your analysis in 1984, what you sought to do was to make an analysis of 100 percent of UOP as of the three dates involved in the study you were asked to make; namely, the date of the merger, spring 1983 and spring 1984; is that correct?

A. That's correct.

Q. And the question of financial analysis involves something much more than just simply multiplying numbers together, is it not, Mr. Bodenstein?

A. That's correct.

Q. You don't, for example, just look at one line on a financial statement, and base your conclusion on that line, or what information is contained on that one line?

A. It depends on what's on that one line, but you are right.

Q. Normally, and correctly, you would look at the entire situation that you have been asked to evaluate?

A. That's correct.

Q. And that would involve a knowledge of the company's past performance?

A. That's correct.

Q. Would it involve a prediction as to how it will perform in the future?

A. That's correct.

Q. Does it involve how other companies have and will perform?

A. What do you mean by other companies?

Q. Companies other than the company directly under study.

A. Could you give me an example? I don't understand the question.

Q. You have used the term "comparative analysis." Does that involve a comparison of the company that you are evaluating and something else?

A. Yes.

Q. What else are you comparing it to?

A. To a group of comparable companies.

Q. Would you agree then that one of the facts that you must know is how other companies have and will perform?

A. I think in essence how it has performed, I don't think we could do much in predicting how all companies will perform. That's difficult.

Q. Difficult as it may be, is that one of the factors that a financial analysis involves?

A. In looking at a comparable group of companies predicting how all that group of companies are going to perform? Not in a specific basis. Maybe in a general basis, yes.

Q. Generally, you have got to look out to the future to see what is going to happen to these comparable companies in the marketplace, do you not?

A. I don't agree with that.

Q. Do you agree that in doing a financial analysis you must consider the economic conditions locally, nationally and internationally?

A. Yes.

Q. Do you consider the effect of inflation and what it may be presently and in the future?

A. On an indirect basis, yes.

Q. In all, the process of determining value of a particular company involves knowledge, judgment and confidence in the ability and credibility of the individual making that analysis; would you agree with that statement?

A. That's correct.

Q. One of the tools used by financial analysts, and apparently by your testimony a very important tool, is that of making comparisons of various kinds year to year, company to company; do you agree with that?

A. That's correct.

Q. In fact, on a year-to-year basis for the company involved you would have to be sure that you are making comparisons of comparables. You would not want to be comparing, would you, apples with oranges, to use a term you used earlier today?

A. That's correct.

Q. And you do that, I take it, to make sure that that which you are comparing both with other companies and from year to year with the same company are, indeed, comparable?

A. As comparable as you can get; I agree.

Q. As a financial analyst approaches his task of evaluating a particular company, he has available to him a variety of different analytical tools which he may use; is that correct?

A. That's correct.

Q. And among those tools there are the discounted cash flow method of analysis; would you agree with that?

A. I agree.

Q. And that is but one of a number of tools?

A. That's correct.

Q. And another is the method of comparative analysis, and that is another one of the tools?

A. That's correct.

Q. Now, the two tools of financial analysis which you used in coming to your opinions stated at the trial in 1980 with regard to the valuation at the time of the merger in 1978 were the discounted cash flow method and the comparative analysis method; is that correct?

A. That's correct.

Q. And of those two you relied more definitively on the discounted cash flow method than the comparative analysis method; is that correct?

A. I don't know whether I would characterize it as more definitively, but I, indeed, place great importance on the discounted cash flow method.

Q. I would like to refer to the trial transcript of May 27, 1980, and specifically to Page 692, during the cross-examination of this witness, Mr. Bodenstein, commencing at Line 21.

"Question: Now, I am asking you now to for the purposes of these questions assume that you had never done the discounted cash flow method. Just cast that away. You have told us you separately and differently used a comparative analysis method. You also have testified as to what your opinion was as to the value of the shares, your report, and, as you have testified, it says not less than $26, and your deposition testimony was that 26 was fair. Whether you call the 26 a fair price or not less than 26, how did you get to that $26 figure, Mr. Bodenstein, using your comparative analysis method?

"Answer: Well --" the answer was interrupted by Mr. Prickett.

"Your Honor, I am going to object to that. The witness has told the examiner about three times that he didn't do it that way. What the examiner is doing is saying I want you to assume that you didn't do it the way you said you did it. Now, how in the world did you do it? You can't do that. You can't ask a witness to assume. He has been very patient in assuming a lot of things for Mr. Halkett, but you can't ask him to assume he did it in a way that he has already told you he hasn't done it."

"The Court: Let me see if I understand correctly, then. Did you reach that figure as a result of your comparative analysis approach, Mr. Bodenstein?

"The Witness: The 26?

"The Court: Yes.

"The Witness: Well --

"The Court: The second part of your assignment.

"The Witness: No. I think we reached it more definitively on the discounted cash flow method, and we test it.

"The Court: I certainly understand that. But specifically, were you able to come up with a figure of 26 or not less than 26 using the comparative analysis approach?

"The Witness: Sure, and I was just going to turn to it in our summary.

"The Court: You did do it?

"The Witness: Right. I mean, we tested against it, and it was fair."

Now, is that, in fact, what you did in coming to your opinion of value in 1980, Mr. Bodenstein?

A. Yes.

Q. I would like to turn to the transcript of today's session on direct; that is, of June 21, 1984, commencing at Page 91, Line 9.

Question by Mr. Prickett: "Now, Mr. Bodenstein, in 1980, at the request of ourselves on behalf of the minority shareholders, you made a determination of the value of the minority shares; is that correct?

"Answer: That's correct.

"Question: Now, in making that determination were there three basic approaches that you took? And I will take them one at a time. There is no mystery about them.

"Mr. Halkett: Objection. I think at this point --

"Mr. Prickett: All right. I will withdraw it, Mr. Halkett. We will do it the other way.

"By Mr. Prickett:

"Question: What were the bases or approaches that you took?

"Answer: Now you are talking about the report we did in 1980.

"Question: Yes.

"Answer: We did comparative analysis. We looked at discounted cash flow, and we did look at the assets of the company."

You looked at discounted cash flow in 1980 or it formed the more definitive part of your analysis in 1980, Mr. Bodenstein? Which was it?

A. Well, I think you are playing on words here. When I said, "looked," meaning that we did it.

Q. You did it, and it was the more definitive part of your analysis in coming to your stated opinion of value; is that not correct?

A. That's correct.

Q. Now, in your 1984 report also you more definitively relied upon the discounted cash flow method, did you not, as to 1978?

A. Yes.

Q. Do you have your report in front of you, please.

A. Yes, I do.

Q. Would you please turn to Page 2, numbered Page 2 of that report, the section "Conclusions." Paragraphs 1 and 2 both relate, do they not, to your evaluation of the shares of UOP as of May, 1978?

A. Yes.

A. Now, in Paragraph 2 you state, "Further, based on additional information now available, which makes more detailed cash flow analyses possible, the fair value of the UOP minority shares at the time of the merger was $28 to $30 a share."

Have I quoted you correctly?

A. You have.

Q. The only additional information to which you there refer is a document to which you make reference in the footnote on Table A of your appendix; is that correct?

A. That's correct.

Q. Table A of your appendix, to identify that a little bit more clearly, are the actual figures taken from The Signal Companies 1982 annual report, Pages 26 and 27, plan figures taken from UOP 1978 Five-Year Business Plan dated April, 1978 (du000166).

Now, the additional information that you were referring to in Paragraph 2 of the conclusion of your text is the UOP five-year business plan dated April, 1978; correct?

A. That's correct.

Q. And that was the only additional information to which you were referring in Paragraph 2 of your conclusions?

A. That's correct.

MR. HALKETT: I wonder, Your Honor, if the Register could show to the witness two documents: PDX-69 and the trial exhibit from the original trial U-400.

BY MR. HALKETT:

Q. So the record is clear, you have PDX-69 in front of you, Mr. Bodenstein?

A. Yes, I do.

Q. Now, that has a so-called Bates stamp number in the lower right-hand corner of DU000166, which is the document to which you refer in the footnote to Table A of your recent appendix?

A. That's correct.

Q. And that is the additional information you referred to in your conclusions section?

A. That's correct.

Q. Would you look at U-400 and tell me if there is one iota of difference between those two documents?

A. Well, other than it is a different document because there are different notations on it, it is the same document.

Q. Other than some writing or some circling or some Bates stamp number is there any financial information either in figures or in text that is one iota different than U-400?

A. No, but the point is, there was more comfort in '84 of our using this than I had comfort back in '80, and that is our reference in our paragraph.

Q. I have not spoken of comfort. We are identifying the information at this time, Mr. Bodenstein.

It is the same document?

A. It is the same document.

Q. And U-400 was a document which you had and which you had read prior to the time of your testimony in this court in 1980?

A. That's correct.

Q. The document which was previously testified about today by you, Plaintiff's Exhibit 7 from the prior trial -- I wonder if the witness could be shown that document.

A. I have that, yes.

Q. Do you have it?

A. Yes, I do.

Q. Now, that document was prepared by you using the information contained in then-marked Exhibit U-400, was it not?

A. Using some information.

Q. So that in preparing your discounted cash flow analysis for May, 1978 in 1980 and again in 1984, on both occasions you had available to you exactly the same financial data?

A. That's correct.

Q. By the way, in making your recent study -- that is, the one for 1984, in which you again state an opinion as to the value of the UOP shares in May, 1978 -- it is correct, is it not, that you used only data which existed as of May, 1978?

A. That's correct.

Q. And you did not in arriving at your present opinion of value use actual data that occurred after that period of time?

A. Other than the knowledge of what happened, no.

Q. Did you use hindsight -- that is, knowledge now of what actually happened -- in arriving at your stated opinion in this court in this trial of the value of the shares of UOP as of May, 1978?

A. No.

Q. Let us, if we may, talk about the discounted cash flow method a little bit in general terms, if we may, Mr. Bodenstein.

First of all, as I understand it, the discounted cash flow method can actually be used to evaluate almost anything that produces a sum of cash into the future; is that correct?

A. That's correct.

Q. So it could be a machine. It could be a bond. Any income stream anticipated in the future can be discounted back to a present value?

A. That's correct.

Q. In utilizing the discounted cash flow method would it be correct to state that there are either two or three basic elements, depending on how it is done? First of all, you must know the so-called free cash throw-off for the item being evaluated for some period of time into the future?

A. That's correct.

Q. And by the way, the free cash throw-off is something different than just the earnings, isn't it?

A. That's correct.

Q. The second thing you must know, and depending on the first part of it, which I will come back to in a minute, is a residual value; is that right?

A. That's correct.

Q. If you project the income to out into infinity or into a long period of time, you don't need and don't use a residual value as a part of that calculatio; is that correct?

A. Do you mean income or cash?

Q. Cash?

A. That's correct.

Q. If you project the cash flow out far enough, you don't use a residual value as part of a discounted cash flow analysis?

A. That's correct.

Q. The third item which you must use in every case is the discount factor by which you are going to ascertain the present value of that future income?

A. Discount rate; that is correct.

Q. With regard to the free cash throw-off, in effect, what you do is you produce a source and application of funds statement out into the future and come down with a number of cash that is going to be utilized in the methodology?

A. That's correct.

Q. If you would turn in your appendix to Table I, please, you have stated on direct examination that this table shows the calculations which you have made for purposes of the discounted cash flow analysis to come up with the value of the UOP shares as of May, 1978?

A. That's correct.

Q. The only line item that you actually use in the upper third of your Table I for purposes of putting into the calculation itself is that line item "free cash flow"?

A. That is just a resultant of all the other figures.

Q. I realize that.

A. Okay.

Q. But in order to get to that line of numbers you have got to go through that which precedes it to come down to those numbers?

A. That is exactly right.

Q. So that in order to come up with those numbers which you are going to use, you are going to have to come up with projections out into the future for five years of such items as net income, depreciation, deferred taxes, other sources and uses, long-term debt repayment, capital spending and working capital; correct?

A. That's correct.

Q. And all of those numbers are projections that someone is making as to what is going to happen out in the future for five years?

A. That's correct.

Q. And until you make all of those projections, you can't come down to the line you need to make your discounted cash flow analysis; correct?

A. That's correct.

Q. By the way, all discounted cash flow analyses require projections of income into the future, do they not? I mean cash into the future?

A. You have to make assumptions or have the projections or make assumptions; that's correct.

Q. But the assumptions are to future cash, are they not?

A. Definitely.

Q. Because without a future number for cash, you can't do a discounted cash flow analysis, can you?

A. Well, you could do it on a negative basis, too. It could be a capital user. So you could do it -- you don't have to have a positive cash stream. You could have a negative cash stream.

Q. Positive or negative, it has to speak as of some date in the future; would you agree with that?

A. I agree.

Q. Now, there are different ways, are there not, in coming up with this future projection of future cash? And those ways are, number one -- and there may be others, but I will state three to you.

Number one, you could take the earnings of a company for the past year, known earnings, and you could make an assumption -- excuse me. I will undoubtedly misspeak often. Earnings and cash. Let me start over.

You could take the free cash flow or throw-off of a company actual for the prior year and you could by projecting that number just on a constant basis as if it never changes over the next five years make a discounted cash flow analysis; could you not?

A. You can.

Q. Another way you could do it is you could take a projection of the present year income, and then cash, free cash throw-off, and you could then project that number on a constant basis out for a number of years, could you not?

A. You can.

Q. Another way you could do it is to actually go through some sort of analysis to come up with actual year-by-year projections on an individual year basis of what the expected free cash throw-off would be?

A. You can.

Q. In 1980 when you were here before the Court, you had in fact done a discounted cash flow analysis for UOP as of May 1978 utilizing each of these three methods of projecting future income?

A. That's correct.

Q. And the one in which you used the past year's actual cash, and projected that out for five years was your Exhibit No. 4?

A. That's --

Q. Is that right?

A. I assume the number is right. You are good at the numbers. I agree, yes.

Q. And the one in which you used the 1978 projections and not beyond, but just took 1978 cash projections, and used that on a constant basis out for the next five years was your Exhibit No. 5, was it not?

A. That's correct.

Q. Your Exhibit No. 7 was one in which you made a projection year by year on an individual year basis for the five years commencing in 1978; is that correct?

A. Using the UOP '78 dividend stream in there, the '78 five-year plan, that's correct.

Q. Well, we will get to what you used, but right now that was the method that you used, was it not?

A. That's correct.

Q. And that was your Exhibit No. 7?

A. Yes.

Q. With regard to the element of a residual value, is the theory of that that at some point in the future, as long as you are not going out to a long period of time, or to infinity, that you will still have something capable of generating future cash flows, and therefore has a salable value at that point in the future?

A. That's correct.

Q. What you want to do in your discounted cash flow method is to say that if I am going to look at that value five years out, you are going to ascertain it, project it as of five years out, and discount it back to present value also?

A. That's correct.

Q. So that if you are going to have a residual value, the total present value of that which you are evaluating is the sum of the discounted cash flow plus the discounted residual value of the asset you are evaluating, or the company in this case?

A. It's the discounted cash flow for the period of time plus the residual value, you are correct.

Q. Plus the residual value?

A. Yes, you are correct.

Q. In applying the discounted rate which you determined then, you apply that discount rate both to that projected cash flow and to the residual value which you have found as of some period out in the future?

A. That's correct.

Q. And residual value itself can be calculated by at least a couple of different methods, can it not?

A. That's correct.

Q. One of those methods is to in effect place yourself in time, let's say, five years out, and say to yourself I am now going to have this cash producing asset. What will somebody pay for it at that time. What would a willing buyer pay for it at that time. That's what you are doing in essence, aren't you?

A. That's correct.

Q. So you can again do a discounted cash flow analysis five years out in the future? That's one way of finding the residual value, is it not?

A. That's correct.

Q. Which then, say, projects another five years out, and brings back the residual value plus a present value, et cetera; correct?

A. That's correct.

Q. Now, another way to do it is to assume that you are going to evaluate that asset out in the future on a comparitive analysis basis; what the market might be in buying that asset at that time; correct

A. That's correct.

Q. Is either of those methods better than the other?

A. Depending upon the situation you are valuing, it shouldn't be a question of which one is better than the other, no.

Q. Is that one of the judgmental factors that a financial analyst must make in using the discounted cash flow method; namely, which of those methods of residual value should I use in this situation?

A. I guess it's a judgmental decision, yes.

Q. I gather by your expression it's sort of a half a dozen of one, six of the other thing.

A. Depending on the situation and the ease of looking at that situation five years out, right. It's a judgmental decision. In some cases it's the same, and the other one might be easier to do than the other.

Q. I would like to talk for a minute, if I may, about the final factor that we have been talking about in discounted cash flow analysis; namely, that the discount rate to be applied -- and I wonder as we start into that if you would turn to Table G in your 1984 report appendix about which we have heard a great deal in the last couple of days.

What you have done here, as I understand it, is you have computed what you believe to have been an appropriate discount rate to have been used as of May 1978 in doing a discounted cash flow analysis for the evaluation of UOP.

A. That's correct.

Q. This method which is shown here is a method known to the financial community and to you for a number of years; is that not correct?

A. That's correct.

Q. It's not something that you just learned in the last year or two?

A. That's correct.

Q. All of the information which is contained on Table G was available as of April 1978, was it not?

A. That's correct.

Q. So that had someone in fact in May 1978 been sitting down to determine an appropriate discount rate to be used in doing a discounted cash flow analysis of UOP, they could have come up with precisely this equation and these numbers and this result; correct?

A. If you are talking about maybe of '78, you would be using the same statistic, but it wouldn't be referenced by the Ibbotson, Singerfield study, because that was done in 1982, but it was general knowledge in the financial community based on other studies that the expected excess market return was in the area of six percent.

Q. I believe you told us during your recent deposition that that factor of six percent had been known to financial analysts for many, many years.

A. That's what I just said.

Q. So that to come back to my question, every number onthis sheet could have been used, and could have been utilized in this formulation as of May 1978?

A. Yes.

Q. In doing a discounted cash flow analysis, is there any particular magic to picking one year or two years or five years, or some number of years for purposes of making the calculation?

A. There is no particular magic, but you try to do -- to get for the individual situation the best forecast available for a given period of time.

Q. But you can use one year or two years or three years or five years in doing this type of analysis, can you not?

A. You can.

Q. Now, you've told us in terms of the projections one of the ways is to come up with a projection year by year for the number of years in your formulation of what is estimated to be the free cash throw-off of that company.

A. Yes. One qualification. What is the connotation of my formulation? I don't understand that.

Q. Maybe we can clear that up.

I assume that one way it might be done is for the ifinancial analyst himself to gather original data, and to make such projections for the particular entity for the years that he is going to use in his projection.

A. That's correct.

Q. And another would be for the analyst to use the company's projections if the company had indeed done projections?

A. The two are usually the same. A financial analyst coming in to a company is not as conversant with the operations as management is, and what we attempt to do is have management create that forecast, whether that's produced or not. We sit down with management, and if there is no five-year forecast, we say well, let's roll up our sleeves, and before we get to work let's get to understand your businesses, and what do you think is going to happen in the next five years.

So working with them, we indeed create as best a forecast as we can.

MR. HALKETT: I wonder if the witness could now please be shown Plaintiff's Exhibit 4.

THE COURT: Plaintiff's Damage Exhibit 4?

MR. HALKETT: Yes, from the original trial. This one is entitled "UOP Cash Flow-1977."

THE COURT: I believe he has that.

(Brief pause.)

BY MR. HALKETT:

Q. Do you have that in front of you?

A. Number 4, yes.

Q. Let us assume for a moment that having -- Let me come back:

For purposes of this analysis you used the net free cash from operations of UOP actual for 1977; correct?

A. No. Number 4 is for 1978. Am I right, or am I --

I'm sorry. Okay. I miswrote on here.

Q. For 1977.

A. Right.

Q. So what you have done in effect is you have projected as your part of the formula for the future cash for UOP 20.8 million dollars a year for the next five years; is that right?

A. That's correct.

Q. Which you then discounted back at 7 1/2 percent?

A. And 8.5 percent.

MR. HALKETT: May I hand the witness this book, which is called "Financial Compound Interest and Annuity Tables, Sixth Edition."

BY MR. HALKETT:

Q. Let us assume, Mr. Bodenstein, that instead of the 7 1/2 percent you used the 12 percent as you now show us in your Table G.

A. I'll do it for you on the basis that you understand that the 12 percent would be incorrect in using it. I don't want to let the Court think that the 12 percent rate is used properly in this context, but I will do the calculation. I could do it without using this table, if I can, but --

Q. You can do it any way you want, because I think I know what the numbers are.

A. Okay. 173.3333. Is that correct?

Q. Very close. I have 173,000,000.

A. All right.

Q. That is the present value of the net free cash; right?

A. That's correct.

Q. Now, if we were to add to that --

MR. PRICKETT: Well, Your Honor, let's be clear. That is if you are assuming a twelve point X percent.

THE COURT: I understand it is simply after applying a 12 percent discount factor to the figures on Plaintiff's Exhibit 4, whatever that may turn out to be.

MR. PRICKETT: That's right. It's a mathematical computation, and that's all it is. We are doing it for the benefit of Mr. Halkett, though he has already done it.

MR. HALKETT: We hope it will be for the benefit of the Court also, Mr. Prickett.

MR. PRICKETT: I hope so too.

BY MR. HALKETT:

Q. Now, to the 173,000,000, just using your formulation on Exhibit 4, if you add the 37,000,000, and then you add the 7,000,000 more for extraordinary items, instead of the 321.3 million you would have what? 217,000,000?

A. That's correct.

Q. And on a per-share basis what would that be? Divide that by 14.48 million.

A. You want 14, or 11?

Q. 11.48, I believe.

A. $18.90.

Q. Now, you have testified at your deposition that in doing a discounted cash flow analysis in 1978 it would have been appropriate and proper to have used a 12 percent rate shown in Table G.

MR. PRICKETT: Could I have that question, please?

(The pending question was read by the

reporter.)

MR. PRICKETT: Could I have the page number on that, please?

MR. HALKETT: If you will give us a moment.

Given the time, do you want us to adjourn now, and I'll find it, and we'll start with that in the morning?

THE COURT: Well, are we going to get into a line of questioning concerning his deposition on this point?

MR. HALKETT: No. I just want to verify the statement that I made for purposes of the record, and rather than fumble here, I'll find it. I notice it's three minutes to 6:00. I'm perfectly happy --

THE COURT: Let's take a look. If anybody knows handily where it is, why --

(Brief pause.)

MR. HALKET: All right. I'm turning to the deposition taken of Mr. Bodenstein on June 14, 1984, at Page 64 commencing with Line 4:

"Question: We are now back on the record following our break for lunch.

Mr. Bodenstein, would you please turn to Table G of your report on the fair value of UOP of June 1984 at the appendix portion of it? Do you have that before you?

"Answer: I do.

"Question: The information contained on this Table G, is this information which you compiled and composed in the form in which it here appears?

"Answer: Yes.

"Question: What is it that generally -- Generally that is shown on which chart? Is it the discount rate to be appropriately applied as of May 1978 in utilizing the discounted cash flow method?

"Answer: It's the development of that rate. It's entitled -- We did it at the time of April, '78, but I'm sure it wouldn't change dramatically from May '78 if change at all.

"Question: But is the goal, so to

speak, of the calculations made on this table to come up with an appropriate discount rate to be used in the discounted cash flow analysis for development of a value of UOP as of April or May 1978?

"Answer: That's correct."

I also turn to the same deposition, Page 76, Line 9:

"Question: In arriving at your discount rate you have applied a weighted factor of 30 percent to the expected cost of debt and a weighted factor of 70 percent to your expected future return on equity, have you not?

"Answer: That's correct.

"Question: As you understand it, having gone through this calculation, the 11.78 is the appropriate discount rate for someone to have utilized in April or May of 1978 in arriving at the market value of UOP shares using the discounted cash flow method?

"Answer: That's correct."

That is the portion of the deposition to which I was making reference.

28-1 BY MR. HALKETT:

Q. Was that your testimony, Mr. Bodenstein?

A. That was my testimony. And I still agree with it. However, Mr. Halkett, you should understand that Exhibit 4 is not the appropriate discounted cash flow method to apply that 12 percent to. That 12 percent discount rate applies to when you consider growth. If you went through Exhibit G and understood the development, that implies future growth to a company. Here in Exhibit 4 you are changing the ground rules.

And as we discussed earlier, this was an abbreviated or a special method of the discounted cash flow to look at historical performance. Here you are treating this historical flow as a bond annuity. And the proper discount factor to use in cases as this is to use a long-term bond rate, which we did in our Footnote 2, which was the 8.5. As an order of testing of that we also used 7.5, and I footnoted "on the high side of discount range found in samples of '77/'78 acquisitions" and in my testimony at the trial based on the fact of looking at those acquisitions from a year historical basis assuming no growth.

So I agree and I still agree that 12 percent is the proper discount rate to use when you are considering a discount cash flow analysis when you are considering growth into the future.

MR. HALKETT: Is this a good time?

THE COURT: Is this a good point, Mr. Halkett, if that is all right?

All right. Let's call it a day. And I presume that given the circumstances all would desire to resume at 9:30 again tomorrow morning.

MR. HALKETT: Thank you, Your Honor.

THE COURT: All right. We will recess to 9:30.

MR. PRICKETT: Your Honor, could we get a little bit of a feel as to where we are going tomorrow. I know we are going to continue with Mr. Bodenstein, and he is now under cross-examination. And what else do we have to do tomorrow?

MR. HALKETT: It depends on the testimony of this witness as to whether we will have any rebuttal. If we do, it would be very, very short.

MR. PRICKETT: Okay.

MR. HALKETT: It certainly depends on

what we get through the cross-examination.

THE COURT: All right. Fair enough.

MR. PRICKETT: Thank you, Your Honor.

THE COURT: We are in recess again.

(Court adjourned at 6:05 p.m.)

I N D E X

PLAINTIFF'S WITNESS	DIRECT	CROSS
Kenneth A. Bodenstein	3	226

PLAINTIFF'S EXHIBITS

NO.		MARKED	REC'D
124	Document headed "UOP Supporting Schedule, Public Transactions Involving Dillon Read Opinions"	85	--
125	Document entitled "UOP, Inc."	--	203
119	Copy of the report of Mr. Bodenstein of June 14, 1982	--	225

DEFENDANT'S EXHIBITS

NO.		MARKED
14	Handwritten worksheet of Mr. Bodenstein-----------------	227