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UNITED STATES BANKRUPTCY DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Docket No. 86B10552

KAISER STEEL CORPORATION, et al.,
Debtors,
Denver, Colorado

REPORTER'S TRANSCRIPT
BEFORE THE HONORABLE CHARLES E. MATHESON

TRANSCRIPT ORDERED BY: DAVID POWER, ESQ.
AND PENSION BENEFIT GUARANTY CORPORATION

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EXHIBIT
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Volume 2

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1 THE COURT: Be seated, please. All
2 right. We're reconvened in Kaiser on the
3 confirmation issue.

4 MR. UPHOFF: Daryle Uphoff on behalf
5 of the Debtor. At this time, Your Honor, I would
6 request that the Debtor be permitted to call a
7 representative of Mine Reclamation Corporation, in
8 part, to testify regarding the feasibility of the
9 plan, but also there's a motion appearing before this
10 Court requesting approval of the Debtor's proposed
11 agreement with MRC.

12 The reason that I make this request,
13 Your Honor, is that the representatives of MRC that
14 are here today that were here yesterday are from
15 California and need to return to that state.

16 THE COURT: Are there any objections
17 to taking this matter up?

18 MR. QUINN: No objection, Your Honor.

19 THE COURT: That's fine, Mr. Uphoff.

20 MR. UPHOFF: Call James McCall.

21 JAMES McCALL,
22 having been called as a witness on behalf of the
23 Debtor, being first duly sworn upon his oath,
24 testified as follows:

25 * * * * *

1 MR. QUINN: Thank you.

2 THE COURT: Mr. Bugg, any questions?

3 MR. BUGG: No questions, Your Honor.

4 THE COURT: Mr. Uphoff, anything
5 further?

6 MR. UPHOFF: Nothing further.

7 THE COURT: Thank you, Mr. McCall.
8 You may step down.

9 MR. CHRISTENSEN: If it please the
10 Court, at this time, the proponents will call Mr.
11 Rick Stoddard.

12 RICHARD E. STODDARD,
13 having been called as a witness on behalf of the
14 Debtor, being first duly sworn upon his oath,
15 testified as follows:

16 EXAMINATION

17 BY MR. CHRISTENSEN:

18 Q Please state your full name and
19 address for the record.

20 A My name is Richard E. Stoddard. That
21 is S-t-o-d-d-a-r-d. I currently live at 745 Emerson,
22 Denver.

23 Q Do you hold a position with the Debtor
24 herein?

25 A Yes. I am the chief executive officer

1 of Kaiser Steel Corporation.

2 Q Will you give the Court, please, a
3 brief overview of your involvement in this matter,
4 how you came to hold that position.

5 A Yes. Late in the summer of 1987,
6 while serving as managing director at Roath and
7 Brega, I was asked by the retiree subcommittee to
8 evaluate the joint ventures that were being proposed
9 by the Debtor to determine whether or not they were
10 being structured in a manner to insure that Kaiser
11 would not bear the costs of the capital infusion, and
12 structured in a manner such that the probable value
13 that would accrue to those joint ventures could be
14 realized at the earliest possible date.

15 Later, in 1987, I was appointed by the
16 entire creditors committee as their business
17 consultant to continue to evaluate the proposals of
18 the Debtor and to work with the Debtor in the
19 negotiations of those joint ventures. During a
20 management transition that began roughly in January,
21 I became the business consultant and, with Mr.
22 Uphoff, in effect, ran the company from January on.

23 During the first quarter of 1988, the
24 creditors committee and management had formed a CEO
25 search committee, and in May of 1987, they offered me

1 the job as chief executive officer and effective June
2 1, this year, I took over that position. The Court
3 approved that, I believe, sometime in July.

4 Q During your involvement as both the
5 business consultant and eventually the chief
6 executive officer, did you have an opportunity to
7 review the assets and liabilities of the companies?

8 A Yes, I did, extensively.

9 Q Did you have the opportunity and have
10 you formulated business plans for the reorganized
11 companies?

12 A Yes, I have.

13 Q Can you tell the Court, please, what
14 the business plans of the reorganized companies are
15 in the event the Court were to confirm this plan?

16 A Yes. The new businesses of the
17 reorganized Kaiser will consist of either three or
18 four businesses. The three businesses include the
19 Eagle Mountain project, which has been described by
20 Mr. McCall in previous testimony, which basically is
21 the rail haul of municipal trash from the
22 metropolitan area surrounding Los Angeles and San
23 Diego into a remote desert site, which is the site of
24 old Kaiser iron ore mines near Desert Center,
25 California. Kaiser still owns the 52-mile railroad

1 which delivers -- which used to haul iron ore from
2 the mine.

3 Kaiser's interest, as Mr. McCall
4 indicated, is in the form of the lease and royalty
5 payments on that lease amounting to 8 percent of all
6 of the garbage delivered to that site. It has
7 advance royalty and guaranteed minimum royalties
8 beginning in the three years.

9 Q Can you give the Court some magnitude
10 on what that means; that is, how much garbage is
11 available to be hauled in the area? What's the
12 capacity for haulage? What's the capacity for the
13 pit, and how does that translate into dollars? Can
14 you give us some quantification?

15 A Yes. The business plan of MRC, which
16 we have agreed with, proposes a start-up and
17 breakeven point of 4,000 tons of garbage to be hauled
18 a day. The breakeven point appears, today, to be
19 around the \$26 a ton range. The SCAG report, which
20 Mr. McCall referred, to has validated a per ton price
21 in the 35 to \$40 a ton range.

22 Q That's the Southern California
23 Associated Governments when you say SCAG?

24 A That's correct.

25 Q Thank you.

1 A It is anticipated that the start-up
2 will be approximately 4,000 tons a day. The actual
3 limiting factor, without extensive additional capital
4 infusion, is the ability of the railroad to haul
5 enough railroad cars, that occurs at approximately
6 16,000 tons of garbage a day. At 16,000 tons of
7 garbage a day, it is estimated that the pits, in
8 their present configuration, have a useful life in
9 excess of 100 years. The dollar volume to Kaiser is
10 a complete net revenue. There are no costs
11 associated with it at all. At the 16,000-ton-a-day
12 maximum capacity, and at the \$40 tip fee, the annual
13 revenue to Kaiser is approximately \$16 million a
14 year.

15 At the 4,000-ton start-up projection,
16 if we are able to achieve the \$40 a ton tip fee, is
17 in the 4 to \$4 1/2 million range per year.

18 THE COURT: What was the other figure,
19 Mr. Stoddard?

20 THE WITNESS: At the 16,000 level?

21 THE COURT: Yes, sir.

22 THE WITNESS: At 16,000 tons a day,
23 the net revenue to Kaiser at \$40 a ton tip fee is
24 approximately \$16 million a year.

25 Q (By Mr. Christensen) Can you describe

1 very briefly the need for such a facility in the
2 area, particularly with reference to the city and
3 county of Los Angeles?

4 A Yes. The City of Los Angeles, in
5 particular, has been unable to permit any additional
6 landfill space in recent years and it is anticipated
7 and forecasted at their current levels that the City
8 of Los Angeles will be entirely out of landfill space
9 in early 1992.

10 The City of Los Angeles controls today
11 approximately 6,000 tons of garbage per day and wants
12 to commit to 3,000 -- to a capacity of new landfill
13 of 3,000 tons per day. The reason they are unwilling
14 to commit beyond the 3,000-ton figure is they have a
15 goal of achieving 50 percent reduction in garbage by
16 recycling.

17 Today in the California areas, the
18 maximum success of recycling rests in the 17 to 18
19 percent level, so a contract with the City of Los
20 Angeles, in my opinion, would be significantly higher
21 than the 3,000 tons a day. In addition, in the
22 broader Southern California metropolitan areas, it is
23 estimated under that same SCAG report that there will
24 be new garbage of 50,000 tons a day, which currently
25 has no landfill to use for that disposal. That is

1 simply the new garbage, not assuming that the Kaiser
2 landfill cuts into any of the existing market share.

3 Q Have there been any discussions with
4 the authorities in Riverside County with respect to
5 permitting this project?

6 A Yes. There have been significant
7 discussions by Kaiser and by MRC over the last six
8 months. The County of Riverside is very supportive
9 of the Kaiser project for two reasons: One, a large
10 portion of Riverside County is in the desert and it
11 is not an economically healthy geographical area.
12 For that reason, the tax revenues that will be
13 generated by this project will be of substantial help
14 to the County of Riverside and specifically to the
15 area surrounding Eagle Mountain and Desert Center.

16 Secondly, many of the constituents of
17 the governmental authorities are former Kaiser
18 employees and Kaiser retirees and they are very
19 anxious to do whatever they can do to assist in the
20 return of certain of the benefits and the other
21 opportunities those Kaiser retirees have lost.

22 Q Finally, with respect to Eagle
23 Mountain business in the disclosure statement, the
24 Debtor placed a going-forward value on the project of
25 \$30 million, approximately. Can you tell the Court

1 how that number was derived?

2 A Yes. That number was arrived at by a
3 discounted present value of the cash flow anticipated
4 from the Eagle Mountain project. It estimated in the
5 first year of operation at 2,000 tons a day, not the
6 4,000-ton-a-day operating level. During the five
7 year forecast, I believe the maximum that it hit was
8 6200 tons of garbage a day and basically continued on
9 after that five-year forecast for the life of the
10 project, lagging somewhat behind the MRC projections.

11 Q That is taking a more conservative
12 view?

13 A That's correct. Assuming basically
14 the same business plan, but that it would take a
15 longer period of time to achieve those levels.

16 Q What discount rate did you then apply
17 to those cash flows?

18 A 17 percent.

19 Q All right. That's the business of
20 Eagle Mountain. Can you describe the other business
21 plans of the company should the confirmation be
22 allowed?

23 A Yes. The second major business that
24 is before the Court for approval today is a joint
25 venture with the Lusk Company. That joint venture

1 will call for the cleanup and development of all of
2 Kaiser's real estate in the Fontana area. Kaiser
3 currently owns approximately 850 acres of real
4 estate, including and surrounding the old Kaiser
5 Steel mill. In addition, Kaiser has lawsuits calling
6 for the return of other acreage surrounding that site
7 which would call for a total real estate development
8 in the neighborhood of 1200 acres if all of that real
9 estate were returned.

10 Q Let me interrupt you for just a
11 second. Does that property of which you discussed
12 the potential return include the property that Mr.
13 Bugg talked about in his opening statement, the West
14 End property?

15 A Yes, it does include the 240 acres
16 known as the West End option.

17 Q Is the agreement conditioned on
18 recovery of that property, or will it go forward if
19 the property is not recovered?

20 A No. The agreements were not
21 conditioned upon the return of the West End property.
22 There are really two separate agreements: One
23 calling for the development of the West End property,
24 and the second calling for the development of the
25 mill site itself.

1 It was specifically designed that way
2 so as to allow the real estate development of either
3 the West End or the mill site, and, obviously,
4 preferably, both properties in tandem, but neither
5 one is dependent on the other.

6 Q Well, we will get to it later. The
7 cash flows, the five-year projections for the
8 reorganized company, does it include any profit or
9 sale from the West End property?

10 A No. The projection that is included
11 in the disclosure statement includes no profits
12 whatsoever from the development of any real estate,
13 including the West End property.

14 Q Okay. I am sorry. Having diverted to
15 that point, could you continue your explanation for
16 the Court of the industrial park development.

17 A Yes. The real estate development
18 works in the form of a traditional joint venture
19 where Kaiser has received a capital account credit
20 for the contribution of its lands to the joint
21 venture. That capital account credit is at a rate of
22 \$1.36 per foot. The Lusk Company has agreed to
23 provide 89 cents a foot for the clean up of the
24 property. Spread over the entire acreage, that
25 provides for an infusion of \$44 million for the

1 cleanup of the property. That 89 cents will reduce
2 Kaiser capital account such that its remaining
3 capital account would be the net value related to the
4 then cleaned-up property. That net capital account
5 would be approximately \$9 1/2 million.

6 Kaiser return from the development of
7 this real estate takes three forms. The earliest
8 probable return to Kaiser will be any savings that
9 can be achieved in the cleanup or remediation of the
10 property. So, for example, if we are able to clean
11 up the property at \$30 million, the excess of the 44
12 million that Lusk will make available over the actual
13 cleanup costs will be distributed to Kaiser. The
14 first installment of that, equal to 50 percent, will
15 be payable upon the time that we have entered into
16 the remedial action plan with the Department of
17 Health Services. Thereafter, the remaining amount
18 will be distributed to Kaiser in three equal
19 installments to insure that the actual costs are in
20 line with the budget under the remedial action plan.

21 The second form of distribution to
22 Kaiser will be the return of the capital account of
23 \$9 1/2 million which will occur pro rata as
24 properties are sold, but in no event -- I believe, it
25 is more than five years after the formation of the

1 joint venture.

2 Thirdly, the profits from the sale of
3 the real estate will be shared 50 percent to the Lusk
4 organization and 50 percent to Kaiser. To give us
5 some idea of the potential magnitude of that profit,
6 the Lusk organization is the major owner of the
7 company of a very similar project called the
8 California Commerce Center. The California Commerce
9 Center is approximately four or five miles from the
10 Kaiser site. It is currently selling comparable
11 industrial sites in the \$6 a foot range. It is
12 anticipated that cleanup costs and development costs
13 will be in the \$2 range, 89 cents for the cleanup
14 costs and approximately \$1 a square foot for the real
15 estate development and, using a 1988 value on the
16 sale of that land of \$6 a foot, the potential profits
17 are about \$85 million.

18 Q Does the overall Lusk transaction also
19 involve a loan by the Lusk Company to the reorganized
20 Debtor?

21 A Yes. The proposal as submitted to the
22 Court requires the Lusk organization to make a \$3
23 million loan to Kaiser. As it has been renegotiated
24 in recent weeks and as submitted to the Court
25 yesterday, that loan amount has been increased to \$5

1 million.

2 Q And confirmation is required as part
3 of the Lusk agreement?

4 A That's correct.

5 Q And as part of the loan?

6 A That's correct.

7 Q Does the Lusk agreement, as well as
8 the development of the industrial park itself, as
9 well as the plan, all contemplate an agreement with
10 the Department of Health Services, a consent order,
11 if you will, for the cleanup of the project?

12 A Yes, it does.

13 Q Do you have a copy of that consent
14 order in front of you as Exhibit No. 1, Debtor
15 Exhibit No. 1?

16 A Yes, I do.

17 Q Is that your signature at the back?

18 A Yes, it is.

19 Q Is that the consent order provided for
20 by the plan and agreed to by the Debtor and by the
21 California Department of Health Services?

22 A That's correct.

23 MR. CHRISTENSEN: I would move the
24 admission of Exhibit No. 1. I have copies if you
25 want.

1 MR. QUINN: No objection.

2 THE COURT: It will be received.

3 Q (By Mr. Christensen) All right. That
4 covers Eagle Mountain and the industrial park. What
5 would be the next business of the reorganized
6 committee, next, in terms of your discussion?

7 A The third business that we are
8 proposing has been submitted to the Court, I believe,
9 yesterday in the form of a preliminary letter of
10 intent for the modernization and upgrading of our
11 aqueous waste treatment plan bordering the mill site
12 in Fontana.

13 That aqueous waste treatment plant has
14 been in business with Kaiser, and it continues in
15 business today, but has been in business for over 40
16 years. It has primarily treated the oily and acid
17 waste generated by the steel mill. Currently, we are
18 under contract with California Steel Industries known
19 as CSI, for the treatment of their waste generated
20 from the rolling mill which Kaiser sold to them in
21 the early '80s.

22 We have requested this Court's
23 approval to enter into a 75-day period with American
24 New Camp out of Paramus, New Jersey. They operate
25 several different types of waste treatment facilities

1 around the country and have a plant that will serve
2 as the model for Kaiser's upgraded and modernized
3 plant in Detroit, Michigan. They are currently
4 proposing to provide all of the engineering studies,
5 the market studies, and the design contracts for that
6 proposed waste treatment plan. That waste treatment
7 plant will initially provide three services to the
8 community surrounding Fontana.

9 First, it will continue to service the
10 waste generated by CSI. Secondly, the technology
11 that exist in the American New Camp family of
12 companies will allow Kaiser to self-remediate, in
13 essence, to clean up our own environmental damage to
14 a large extent, and have the ability to bring that
15 cleanup in at what we hope to be a substantially
16 reduced cost.

17 Thirdly, the industrial park that is
18 proposed as part of the Lusk organization real estate
19 redevelopment is intended to be a magnet for waste
20 producers to that industrial park. That will be very
21 beneficial to Kaiser in two separate areas. One,
22 studies have shown that those type of waste
23 generators who have a on-site treatment plant can be
24 expected to pay \$1 to \$2 more per square foot in the
25 retail sales of that land, 50 percent of which would

1 attribute to Kaiser's profit-sharing interests in the
2 real estate joint venture. Obviously, that also
3 would, in turn, generate additional revenues for the
4 waste treatment plant, which it is anticipated that
5 Kaiser also would own a 50 percent share in. Those
6 studies have just begun. And we are anticipating 75
7 days of exclusive negotiations with the American New
8 Camp organization.

9 Q All right. You said there may
10 possibly be a fourth business in your current plans?

11 A Yes. As the disclosure statement
12 provides, one of the valuable resources remaining in
13 the Kaiser properties is our ownership of
14 approximately 51 percent of the Fontana Union Water
15 Company. Water is an incredibly scarce resource in
16 Southern California. The nature of Fontana Union
17 Water Company is that of a mutual water company. It,
18 in essence, allows the shareholder to receive water
19 at cost and it's typically used by that shareholder,
20 and was indeed used by Kaiser during the operations
21 of the steel mill when they had incredible needs for
22 large quantities of water. Kaiser use of that water
23 has been relatively dormant in recent years.
24 However, there is a very active leasing market in the
25 Southern California area for shares of stock to

1 provide water at cost. The cost of our water is
2 approximately \$47 per acre-foot and any alternative
3 source of water is well in excess of \$100 or greater,
4 in the \$150 range.

5 Kaiser's share of the water that's
6 generated by Fontana Union Water Company is
7 approximately 15,000 acre-feet of water a year and I
8 believe that will be utilized to generate a
9 significant revenue stream so that, in effect,
10 Kaiser, through the lease of its shares of Fontana
11 Union, will be in the wholesale water distribution
12 business. It has not yet been determined whether we
13 will engage in that business or not.

14 Q Is there a market for the stock that
15 is for sale as opposed to lease?

16 A Yes, there are active markets, both in
17 the sale of stock of that nature or in the lease of
18 the stock.

19 Q Can you give the Court the indication
20 of the value of that stock in that market, both today
21 and as you see it in the future?

22 A Yes. The value, the actual value on a
23 sales basis today, is very hard to determine. I can
24 give you the history of some of the negotiations
25 which Kaiser has entered into and has not reached any

1 satisfactory conclusion from Kaiser's perspective.

2 The City of Fontana has been the most
3 active city wishing to acquire that water stock.
4 They initially submitted a formal offer to Kaiser
5 calling for the purchase for that stock of \$10
6 million. In that same meeting, they acknowledged
7 that the city council had authorized them to increase
8 that bid to \$12 million, and they never did up their
9 offer to \$12 million.

10 At that point in time, we told them we
11 were not interested in the sale, but we're more
12 interested in a lease arrangement with a possible
13 sale at a later date. Discussions centered around
14 that lease arrangement and we also had exploratory
15 discussion with four other municipalities: Ontario,
16 Chino, I believe Uplands, it might have been
17 Redlands. And the Cucamonga Water District.

18 Those four parties have joined
19 together and have expressed a great deal of interest
20 in the long-term lease of that water stock. There
21 have been no discussions with that particular group
22 about sale of the water stock.

23 Subsequently, the City of Fontana came
24 in and requested the ability to make an offer for the
25 long-term lease of that water stock resulting in the

1 eventual sale. The last number that they proposed to
2 us, by their own admission, had a present value of
3 \$15 million, I believe there -- in excess of \$15
4 million. And also, they indicated to us that they
5 had an authority from the city council to increase
6 that by a \$5 million number which would be payable in
7 the five-year, which, by my calculations, which were
8 slightly more conservative than theirs, comes up to
9 between 17 1/2 million and \$18 million total, in
10 total value.

11 We have, at that time, indicated that
12 that form of an arrangement was probably not
13 satisfactory to Kaiser at that point in time.

14 Q Because the amount was too small?

15 A That's correct. Since then, we have
16 explored various arrangements of other opportunities
17 to finance that water stock and to use that as a
18 basis of capital and other revenue stream for the new
19 Kaiser. We have been approached by the municipal
20 people of Prudential-Bache, who have indicated that
21 they are advisers, financial advisers for the City of
22 Chino and City of Fontana and have indicated that
23 they would have the ability to finance that in the
24 \$25 million range, if the City of Chino or the City
25 of Fontana were interested in purchasing at that

1 range.

2 They also have indicated that they
3 felt there may be a public market for a financing
4 that would be sponsored by Kaiser, and the financing
5 proceeds would go directly to Kaiser in approximately
6 the same range, if Kaiser could enter into a
7 long-term lease contract with some other municipality
8 which would, of course, back the bond.

9 We also have been in contact with
10 another private water company by the name of Suburban
11 Water Company through the Lusk Company, exploration
12 of the value of that contract. They have recently
13 been -- acquired water at a range that would approach
14 \$2 million annually to Kaiser if it were to enter
15 into, excuse me, identical contracts. And we also
16 have been in contact with certain water brokers who
17 have started the exploration and started the
18 compilation of comparable sales and comparable leases
19 in Southern California.

20 It is my opinion that, given enough
21 time, and that may take 6 months to 12 months, that
22 we should be able to realize very close to the 1984
23 appraised value of that water stock, of \$27.8
24 million.

25 Q When you say "given enough time," that

1 is, 6 to 12 months, is it an important component of
2 that time that the prospective purchasers with which
3 you deal must have the belief that you don't have to
4 sell the stock?

5 A Absolutely.

6 Q That is, if they knew you had to sell
7 it, the value would not be as high as if they
8 believed you could hold on to the water, in your
9 judgement?

10 A That's correct.

11 Q Have you done cash flows with respect
12 to the reorganized companies, if this Court were to
13 allow confirmation, showing the expected net receipts
14 as well as the expenditures going forward after
15 confirmation for the company?

16 A Yes, we have.

17 Q Do you have that in front of you as an
18 exhibit? It should be marked.

19 A Yes, I do.

20 Q That is Debtor Exhibit Number 2?

21 A That's correct.

22 Q Were those estimates prepared by
23 employees directly under your supervision and
24 control?

25 A Yes, they were.

- 1 Q And have they been reviewed by you?
- 2 A Yes, they have.
- 3 Q And they contain your projections of
4 these business plans you have just identified going
5 forward?
- 6 A That is correct.
- 7 Q For what period of time?
- 8 A Five years.
- 9 Q Are these the same projections that
10 were contained in the disclosure statement?
- 11 A That's correct.
- 12 Q You have -- also have the disclosure
13 statement in front of you marked as an exhibit?
- 14 A Yes.
- 15 Q Is it No. 3?
- 16 A No. I am sorry, the summary of cash
17 flows was marked separately as Debtor Exhibit No. 3.
- 18 Q The disclosure statement is No. 2?
- 19 A That's correct.
- 20 MR. CHRISTENSEN: I move Exhibits 2
21 and 3.
- 22 MR. BUGG: No objection.
- 23 MR. QUINN: No objection.
- 24 THE COURT: They will be received.
- 25 Q (By Mr. Christensen) Do the cash

1 flows for the next five years show a positive cash
2 flow; that is, the company paying its debts?

3 A Yes, they do.

4 Q Can you tell me with respect to the
5 those cash flows, let's start with Eagle Mountain. I
6 think you have already said this, but I would just
7 like to repeat it. These cash flows start at the
8 2,000 tons per day in 1991?

9 A That's correct.

10 Q Now, they show positive income prior
11 to that. How is that income derived?

12 A For purposes of the disclosure
13 statement, Eagle Mountain includes all of our
14 properties near Eagle Mountain, which are properties
15 other than that included in the joint venture
16 proposal with MRC. So we do have a positive cash
17 flow today from various contracts, including the
18 rental of certain housing units, the rental of part
19 of the Eagle Mountain town site, certain mining
20 contracts and various other miscellaneous sources of
21 income.

22 Q Does this also include a prepayment,
23 if you will, by MRC of certain minimum rentals?

24 A It does, in 1989, of \$1 1/2 million
25 and the actual rentals which are in there, I believe,

1 at the minimum level in 1991 through 1993.

2 Q Okay. And the maximum amount of
3 tonnage that you assumed in these projections occurs
4 in 1993 at 6,200 tons a day?

5 A That's correct.

6 Q That would be about 40 percent of both
7 -- of the capacity of the facility?

8 A 40 percent of the capacity of the
9 railroad tracks.

10 Q I apologize. Yes. Without
11 improvement to the tracks?

12 A That's correct.

13 Q Now, the next line --

14 THE COURT: Excuse me, Mr.

15 Christensen. Is that \$40 a ton for the tipping fee?

16 THE WITNESS: I believe that is at \$40
17 a ton, yes.

18 Q (By Mr. Christensen) With respect to
19 the next line, the industrial park. Does that have
20 any income in it at all from the sale of properties,
21 profit from the sale of properties?

22 A No, it does not. It has no profits in
23 any of those five years from any of the three
24 sources. Not profits, not return of capital, nor any
25 distributions to Kaiser, based on the savings from

1 the \$44 million cleanup budget.

2 Q Okay. So if any of those things were
3 to happen, that would increase the revenues?

4 A That is correct.

5 Q But you have assumed that none of
6 those will happen in five years?

7 A That's correct.

8 Q On the waste treatment facility, can
9 you tell us if those numbers are projected, just
10 based on current contracts, or if they include the
11 increased income from the new project you described
12 to us moments ago?

13 A That income is based solely on the
14 existing CST contract, assuming the CST contract
15 continues at its present level throughout the
16 five-year projection and no other increases from that
17 particular proposal during that five-year period.

18 Q Does CSI have any alternative source
19 to treat its waste?

20 A Currently, CSI has no alternative
21 source. CSI always has the ability to build their
22 own plant on-site. That would take a number of years
23 to accomplish.

24 Q My point is, there is no competitor
25 they could go to as alternative? The only other

1 alternative is build their own plant?

2 A I believe that is correct. May I
3 correct an error in line 2? The 3,655,000 shown in
4 the three months ending in 1988, as I stated earlier,
5 the \$3 million loan from the Lusk organization has
6 now become \$5 million, so that is \$2 million higher.

7 Q Assuming the Court approves, these
8 cash flows would increase a positive \$2 million?

9 A That's correct.

10 Q Now, I assume that the disbursements
11 are just what they say they are. The projected
12 expense associated with each of those three
13 businesses?

14 A That's correct.

15 Q And I assume that the next grouping,
16 the net cash receipts, is nothing more than an
17 arithmetic function of the first two groupings?

18 A That's correct.

19 Q Now, turning, then, to corporate cash
20 flows. Can you tell us basically what's in corporate
21 expenses, in particular, the 2 million amount in the
22 next 90 days and then, thereafter, the annual
23 amounts?

24 A The annual amounts, if I may take
25 those first, are simply the cost of personnel and the

1 ongoing continuing employees of Kaiser, rental costs,
2 insurance costs, so on.

3 Q Are those at levels that you have
4 already achieved, or are those projecting some new
5 reductions?

6 A Those are at levels which are nearly
7 achieved as of this date. And they do not anticipate
8 further reductions. I believe there will be further
9 reductions.

10 Q That is, you think there will be more
11 savings, but these numbers alone have already been
12 achieved?

13 A Have nearly been achieved. We are not
14 quite at that level.

15 Q When you say "nearly," give us a feel
16 for what the difference is.

17 A I think we're within 10 percent of
18 what's there. Probably closer than 10 percent.

19 Q In the line, financing and water
20 lease, can you tell us what that line includes? How
21 much does it assume for leases? It is a million a
22 year?

23 A Yes. The backup, and I believe it's
24 in that line, of the assumption of the water stock
25 lease is \$1 million a year.

1 Q When you say finance, what is being
2 financed that is noted out in there?

3 A The financing that is anticipated
4 there is the Lusk loan and the Internal Revenue
5 Service \$5 million note that is projected.

6 Q If either elect -- if the IRS were to
7 elect Alternatives 2 or 3, or if the litigation
8 proceeds were to come in under the amendment to the
9 plan, would that line then go positive by the amount
10 of the IRS note; that is, if it's paid to some other
11 source?

12 A It would be increased by the amount of
13 the IRS note, yes.

14 Q Is the amount of the note that's
15 assumed in that line \$5 million?

16 A Yes, it is.

17 Q So that line could go positive another
18 five million in this five-year projection?

19 A Well, I think it could even be more
20 than that \$5 million, because the 5 million is a
21 principal amount and interest would be in addition to
22 that \$5 million.

23 Q You are quite correct. I stand
24 corrected. The next line, litigation and claims
25 management which is shown both negative in the next

1 three months and then positive.

2 A Yes.

3 Q Can you tell us how the PBGC loan of 4
4 million will impact those numbers?

5 A Yes. If I could explain the
6 assumptions that are on that line first, I believe it
7 would make more sense as to how the PBGC arrangement
8 will affect it. What was contemplated was that
9 Kaiser would bear all of the costs of the continued
10 litigation and that that cost during the third
11 quarter or, excuse me, the fourth quarter of 1988
12 would be a negative \$1,100,000, and continue at that
13 level through the end of the first quarter of 1989.
14 At that point, the two million eight positive number
15 in 1989, assumes that sometime during 1989 Kaiser
16 would be successful in its litigation, and that the
17 cost expended for the litigation would be reimbursed
18 to the company out of those litigation proceeds, and
19 that, thereafter, enough money from the litigation
20 would be escrowed to go forward and pay for the
21 litigation cost.

22 The PBGC 4 million loan that was
23 referred to yesterday and is part of the application
24 before the Court will have a dramatic effect on that.
25 There will no longer be requirement for the company

1 to fund that in the early inception nor will it be
2 dependent upon reimbursement on success of any one
3 piece of that litigation during early to mid-1989.
4 So that negative number in the fourth quarter will
5 indeed be a positive number calling for the
6 up-to-date reimbursement of the litigation costs
7 borne by Kaiser.

8 So the projection based on the PBGC
9 loan would, in essence, have a positive number in the
10 fourth quarter in the approximate range of 1 1/2 to
11 \$2 million and zeros thereafter. It is important to
12 understand that the PBGC loan is not simply a \$4
13 million loan, but rather a revolving line of credit
14 which is allowed to be drawn down on a total of 2 1/2
15 times, up to a total of \$10 million over the next 30
16 months, with agreements as to extensions beyond that.
17 So that we can spend \$4 million, pay back that loan
18 from whatever source we might choose, draw it down
19 again, so that total 10 million facility should make
20 all of our litigation self-financeable.

21 Q You mean if you settle part of the
22 litigation, or one piece, but not all, you can pay
23 down from that settlement and finance the next 4
24 million the same way, rolling forward through the end
25 of the litigation?

1 A That's correct.

2 Q Up to \$10 million?

3 A That's correct.

4 Q And if I understand your testimony,
5 then, what you are saying is that line, litigation
6 and claims management, will remain the same in terms
7 of the net dollars to the company, but you have
8 removed totally the assumption that you will make a
9 recovery in 1989 and assured that those monies will
10 come in?

11 A That's correct.

12 Q Finally, the last line on groundwater
13 remediation, noting the expenditures in the first two
14 years, can you explain how that goes to zero
15 thereafter?

16 A Yes. We currently are required to
17 remediate a groundwater contamination problem caused
18 by the steel mill through seepage into the ground in
19 the early 1970s. Measures were taken in the early
20 1980s to stop all of that activity, but the
21 groundwater that was contaminated at that time has
22 never been cleaned.

23 We are currently in the process and
24 have plans for the drilling of test wells and barrier
25 wells which will allow us to clean up that

1 contamination. The groundwater, in large part, it is
2 believed, has moved off of the Kaiser site, and, as a
3 result, is no longer the responsibility, for example,
4 and has no effect on the Lusk Real Estate
5 Development.

6 Nevertheless, that mine continues to
7 be an obligation of Kaiser. It is anticipated that
8 the downside scenario of the cleanup costs is
9 approximately a million dollars a year for 10 years.

10 What this line item assumption is it
11 that we will have to bear the cost of the cleanup and
12 the investigation during the first year and
13 thereafter that we will reach a settlement with
14 Kaiser insurance companies for the payment of that
15 cleanup cost.

16 Q Okay. And if you don't reach such a
17 settlement, then that lien would be increased by a
18 million a year?

19 A That's correct.

20 Q Starting in 1990, where it goes zero,
21 or would it start in 1989?

22 A It would start in 1989.

23 Q Okay. So if I may summarize, you have
24 used the existing company and its expenses in these
25 projections with the PBGC loan, save only for the

1 fact that you assumed a settlement with the insurance
2 company on groundwater that saves a million a year,
3 and you have assumed that starting in 1991, Eagle
4 Mountain will start up at 2,000 tons?

5 A That's correct.

6 Q Everything else is just the way the
7 company is now?

8 A With the exception of the loan from
9 the Lusk organization, yes.

10 Q That's correct, which would increase
11 this by another \$2 million?

12 A That's correct.

13 Q Suppose you don't settle with the
14 insurance company, will you be able to handle the
15 groundwater remediation problem?

16 A Yes. It is my belief that from the
17 positive cash flows of these businesses, as
18 anticipated in this cash flow analysis, as you can
19 see for yourself from the projections at the bottom,
20 if there was a million dollar reduction in cash flow
21 each year, we would still be able to absorb that.

22 It's important to note that these kind
23 of possible downsides and this particular downside
24 specifically is why we have not entered into any
25 long-term arrangement yet for the Fontana Union Water

1 Company. We have held that in reserve so that as
2 unexpected things arise, or as our projections go
3 wrong, that, if necessary, we can sell that stock.

4 Q That is, if you will, your ace in the
5 hole if the cash flows don't materialize in any short
6 term?

7 A Yes, that's correct.

8 Q Have you had an opportunity as the
9 chief executive officer to examine the assets and the
10 liabilities of the company?

11 A Yes, I have.

12 Q We have already heard some testimony
13 extensively yesterday about range of liabilities for
14 medical and pension. Have you had employees directly
15 under your supervision review the general and trade
16 unsecured claims?

17 A Yes. Employees under my direction
18 have started that review process.

19 THE COURT: All right. I think we
20 will take a five-minute recess.

21 MR. CHRISTENSEN: Thank you, Your
22 Honor.

23 (Recess.)

24 THE COURT: Be seated, please.

25 Q (By Mr. Christensen) Just before the

1 adjournment, Mr. Stoddard, I asked you to give the
2 company's estimate of the general unsecured claims
3 based on the company's review.

4 A The claims as filed in both the trade
5 and general category totaled in, slightly in excess
6 of \$1 1/2 billion. In our analysis of those claims,
7 we have excluded approximately \$1,140,000,000 as
8 duplicate. Included in those duplicates are claims
9 that are technically not duplicates because they are
10 claims, if we were to pay them once, the others would
11 go away, primarily in the form of indemnities. This
12 leaves us with approximately \$375 million of claims
13 that we have begun the analysis of. Of that 376
14 million approximately, 207 million exist in what we
15 believe are the steel estate alone.

16 We have performed an initial analysis
17 of those claims which consisted of examining the
18 claim, any documents related to the claim, any
19 company contracts or accounting records which can
20 validate the existence of those claims and discussion
21 with remaining company personnel about those claims.

22 After that examination, the company
23 has concluded in its preliminary estimate that \$93
24 million of those claims are valid. There are claims
25 that the company is not yet ready to determine as to

1 their validity which might increase that amount up to
2 \$150 million.

3 Now, it is important to understand
4 that that does not include claims that are for
5 employees, whether medical, pension or other claims,
6 and there will be a relatively small number that will
7 be added to these numbers that will fit into the
8 general category.

9 Secondly, there has been no analysis,
10 to my knowledge, of coal claims, and there is a
11 potential for error in that some of them have been
12 improperly characterized. If that were a 10 percent
13 error that may have the range go up another, I am
14 guessing, about 20 to \$25 million. So I believe the
15 best guesstimate is in the 93 to \$150 million, and
16 that high side may increase by 25 million or so. Has
17 not.

18 Q The plan requires that you pay the
19 administrative and certain of the priority claims in
20 full on an effective date. Assuming that the PBGC
21 and Lusk loans were approved, would you have the cash
22 to pay all of those claims or have you made
23 arrangements to defer the ones you can't pay?

24 A Yes. We believe we would have
25 sufficient cash to pay all of those claims, including

1 a deferral arrangement, primarily with New York Life
2 and various professionals in the case.

3 Q Now, having studied assets and
4 liabilities of the company, do you have an opinion as
5 chief executive officer as to the solvency of the
6 company?

7 A Today?

8 Q Today.

9 A Yes. My opinion is it is hopelessly
10 insolvent.

11 Q Assuming for a minute that you could
12 realize all of the money in the currently pending
13 lawsuits that you have; that is, in the prayer for
14 relief without expense, and that you could realize
15 the going-forward values that are in the disclosure
16 statement, would the company still be insolvent?

17 A Yes. If you take the most optimistic
18 view, and you assume that all of the litigation
19 proceeds that we are seeking are returned in full,
20 with no related expense, and if you include the
21 going-forward values that are set forth in the
22 disclosure statement, also achieved today with no
23 related expense, the company, by my estimate, would
24 still be \$400 million under water.

25 Q Could you compare for us the

1 difference from treatment which the unsecured
2 creditors might expect in Chapter 7 liquidation as
3 opposed to the plan you are asking the Court to
4 confirm?

5 A Yes. It is my --

6 MR. QUINN: Objection, Your Honor, I
7 think the question calls for opinion answer, and this
8 witness has not been qualified to express an opinion
9 as an expert as to these matters.

10 THE COURT: He is the chief executive
11 officer of the corporation.

12 MR. CHRISTENSEN: He's also, as you
13 know, by training, a lawyer.

14 THE COURT: The 10th Circuit has very
15 clearly held that an owner, including chief executive
16 officer, can testify as to values without any
17 foundation being laid.

18 MR. QUINN: I will accept that, Your
19 Honor.

20 A Yes. I believe that the liquidation
21 value, as set forth in the disclosure statement of
22 approximately 20 million, is what could be achieved
23 on an immediate sale of the assets.

24 The bulk of that \$20 million, as I
25 have previously testified, would be attributable to

1 the value that could be achieved from the Fontana
2 Union Water Company. It is my estimation that,
3 currently, that we have in excess of \$10 million of
4 administrative cost of this estate, which would eat
5 up at least half of the assets before we got to the
6 cost of any, excuse me, not before, but which do not
7 include any costs of administration of a Chapter 7
8 proceeding. The result of that, I believe, is the
9 net assets available would eliminate any distribution
10 whatsoever to the unsecured creditors.

11 Q (By Mr. Christensen) Under the plan,
12 specifically Article 3 in the consent order, both the
13 Department of Health Service and the EPA agree to
14 make no claim for the cost of Fontana cleanup against
15 any of the distributable proceeds; is that correct?

16 A That's correct.

17 Q Now, if the plan is not confirmed, the
18 consent order provides that that agreement is not
19 binding on them; is that correct?

20 A That's correct.

21 Q So under the consent order, how long
22 is it anticipated by the parties will it take to
23 clean up this property?

24 A 10 years.

25 Q With respect to the pursuit of the

1 litigation, in your judgement, without the PBGC loan
2 and Lusk loan, would this estate or subsequent
3 trustee have the money to pursue that litigation
4 effectively?

5 A No, not as effectively as it would
6 under the current arrangement.

7 Q As chief executive officer and based
8 upon your review of the claims and liabilities, as
9 well as your assessment of the business plans and the
10 litigation claims of the company, do you have an
11 opinion as to whether the percentage division amongst
12 the unsecured creditors as modified, is fair for
13 those groups?

14 A Yes, I do. I have examined the
15 underlying claims. I have either participated in or
16 observed the various negotiations that have taken
17 place with respect to those various constituents, and
18 I believe they have come to rest at a very fair
19 level.

20 Q Does the inclusion of the \$4 million
21 PBGC loan as a part of the readjustment of those
22 percentages bear any weight, in your judgement?

23 A Yes, it does. I believe that the 4
24 million loan arrangement calling for a total
25 financing of \$10 million, which the PBGC has

1 approved, needs to be taken into very careful
2 consideration when evaluating those percentages. It
3 is my opinion that a well-financed pursuit against
4 what I believe to be some of the more aggressive
5 corporate raiders in this country today and certainly
6 some of the more powerful institutions on Wall
7 Street, is dramatically more valuable to all of the
8 classes of creditors than an underfinanced pursuit of
9 that litigation.

10 Q Mr. Stoddard, to the best of your
11 knowledge, does the plan that you are asking the
12 Court to confirm comply with the Bankruptcy Code?

13 A Yes, it does.

14 Q To the best of your knowledge, have
15 the proponents of the plan complied with the Code?

16 A Yes, they have, to the best of my
17 knowledge.

18 Q To the best of your knowledge, has the
19 plan been proposed in good faith and not by any means
20 forbidden by law?

21 A Yes, it has.

22 Q Are any payments being made under the
23 plan to any proponents or professionals or otherwise
24 subject to review by this Court as to reasonableness?

25 A I am sorry -- all of the payments are

1 subject to review by this Court; that's correct.

2 Q Has the disclosure statement disclosed
3 identity and affiliation of individuals who will
4 serve as officers and directors of the reorganized
5 Debtor?

6 A Yes, it has. With the exception of
7 the director to be named by the PBGC.

8 Q Until named, you will be that
9 director, correct?

10 A That's correct.

11 Q Okay.

12 A Secondly, a contract for a key officer
13 who will become our chief finance officer by the name
14 of Stuart Dillingham, which was filed with this Court
15 yesterday.

16 Q Do you believe the appointment of
17 those people as directors and officers is consistent
18 with the interests of the creditors and with public
19 policy?

20 A Yes, I do.

21 Q I think I have asked you this before.
22 But except to the extent that holders of
23 administrative claims or priority claims have agreed
24 to defer their payment, do you have the money and
25 does the plan provide that you will make payment of

1 those claims in full on the effective date?

2 A Yes. We will have the money, assuming
3 the loan applications are approved and, yes, we will
4 make the payments by the effective date.

5 Q Do you believe, based on your review
6 of the business plans and your cash projections, that
7 this Debtor will be able to pay its debts as it goes
8 forward so that this confirmation is not likely to be
9 followed by a liquidation or another bankruptcy
10 proceeding?

11 A Yes, I do.

12 Q Have all of the fees that are payable
13 under Section 1930 either been paid currently with
14 the U.S. trustee or does the plan provide it will be
15 paid in full on the effective date?

16 A Yes, they have and yes the plan does
17 so provide.

18 MR. CHRISTENSEN: No further
19 questions.

20 THE COURT: Mr. Quinn.

21 EXAMINATION

22 BY MR. QUINN:

23 Q Mr. Stoddard, I just understood you to
24 testify that it is your belief that in a liquidation
25 of this company, the unsecured creditors of Kaiser

1 would receive nothing?

2 A That is my belief.

3 Q If I understand you correctly, that's
4 based upon your estimation that all of the assets of
5 Kaiser, including the litigation in which Kaiser is
6 currently involved, in Chapter 7 liquidation would
7 yield some 20 million?

8 A I believe that is not correct. It is
9 the other assets, other than the litigation, which I
10 believe will yield \$20 million.

11 Q What is your estimate of what the
12 litigation would generate in a Chapter 7 proceeding?

13 A In a Chapter 7 proceeding, with the
14 financing that I believe that would be available, I
15 think it would be rather minimal. I have no number
16 for that.

17 Q Let me ask you this: With respect to
18 each item of litigation described in the disclosure
19 statement, have you received any settlement offers --
20 by you, I mean Kaiser -- during your tenure or before
21 your tenure?

22 A I don't believe that there have been
23 any formal settlement offers to Kaiser at this stage.
24 There have been numerous discussions.

25 MR. CHRISTENSEN: Just for the record,

1 because there may be confusion since the pending
2 proceeding is in the coal matter, there is the one
3 alternative settlement pending on Chase Manhattan.

4 Q (By Mr. Quinn) Have there been any
5 informal discussions of settlement?

6 A Yes, there have been substantial
7 informal settlement discussions.

8 Q And would you describe the terms
9 regarding which the settlement has been discussed
10 with respect to each of these pieces of litigation?

11 A No. As chief executive officer of
12 Kaiser, I believe it would be very imprudent for me
13 to disclose those at this time.

14 Q So you decline to state what those
15 settlement offers -- settlement discussions were?

16 A Yes.

17 MR. QUINN: I would ask the Court to
18 direct the witness to answer the question.

19 THE COURT: There have been no
20 objections interposed, Mr. Stoddard, and clearly the
21 question of whether there are defendants in this case
22 that have made offers of settlement may have some
23 bearing on whether there is any value to that
24 litigation.

25 MR. CHRISTENSEN: I think, Your Honor,

1 we will impose an objection at this time that the
2 settlement offers between the parties are privileged
3 both under Rule 408, but also to disclose them at
4 this time, as Mr. Stoddard points out, can only chill
5 any attempt with respect to settlement, it seems to
6 me, in the future.

7 THE COURT: Mr. Quinn.

8 Q (By Mr. Quinn) Mr. Stoddard, as I
9 understand your testimony, as it now stands,
10 settlement discussions have ensued, but you are not
11 willing to reveal the substance of those settlement
12 discussions to this Court; is that correct?

13 MR. CHRISTENSEN: I object to that
14 because he did say that -- before he was required to
15 make that decision, I interposed an objection.

16 THE COURT: Objection was made. I
17 asked for a response. Maybe you did not understand,
18 Mr. Quinn. Do you have a response to the objection?

19 MR. QUINN: Oh, I'm sorry. Your
20 Honor, it may well be that the effect of telling this
21 Court what the financial condition of the Debtor is
22 and the value of its assets is may have some effect
23 on the Debtor and it may be something which the
24 Debtor desires not to do, but it is a matter that the
25 Debtor is required to prove the value of this company

1 in the Chapter 7 proceeding in this case, and that
2 settlement discussions are clearly relevant and
3 essential. If you look back to the disclosure
4 statement, these assets have been valued at some 200
5 million, far exceeding the values attached to the --
6 any of the tangible assets regarding which there's
7 been extensive, extensive testimony here today.

8 THE COURT: The problem is, Mr. Quinn,
9 that the question, the valuation that Mr. Stoddard
10 has placed on it, has been in the assumption that the
11 case is in Chapter 7, and circumstances where the
12 estate is without funds to diligently and
13 aggressively pursue the litigation. And settlement
14 offers that are made at the present time in the face
15 of a Debtor geared to proceed are very different in
16 what a trustee might perceive.

17 MR. QUINN: In my view, Your Honor,
18 the first question is what the settlement offers are
19 and follow-up question is whether any of those
20 settlement offers are conditioned upon the Debtor
21 being a Debtor in Reorganization as opposed to
22 Chapter 7 Debtor.

23 THE COURT: I don't agree. The
24 question is, the hypothetical question is, would an
25 offer -- would a defendant in one of those cases be

1 willing to make a settlement on, with the trustee, on
2 the same terms that he would make with debtor in
3 possession.

4 MR. QUINN: Your Honor, I differ with
5 the Court's suggestion that that's a hypothetical
6 question. I don't think that it's a hypothetical
7 question. I think it's an actual question as to
8 whether or not that has been a condition of any of
9 the terms of negotiation.

10 And if it is not a condition of any of
11 the terms of negotiation, I would submit that the
12 offer is equally available to a Chapter 7 trustee as
13 it is to this Debtor.

14 THE COURT: Well, I submit you don't
15 deal with realities of how people bargain with Debtor
16 in Possession or with the trustee, Mr. Quinn. I will
17 sustain the objection.

18 Q (By Mr. Quinn) In coming back to your
19 valuation, Mr. Stoddard, you deposit a value of 20
20 million for all of the nonlitigation assets of
21 Kaiser; is that correct?

22 A That's correct.

23 Q And of that amount, what amount do you
24 include for the Fontana water stock?

25 A I believe at the time the disclosure

1 statement was formulated, we used the actual written
2 offer from the City of Fontana, which was \$10
3 million.

4 Q So that's value?

5 A That's correct, that is the number
6 that is included.

7 Q And I believe it was also your
8 testimony that the Fontana, City of Fontana officials
9 indicated to you that they had an authority to
10 increase that offer to \$12 million which was rejected
11 by Kaiser; is that correct?

12 A I indicated that they had authority to
13 increase that offer by \$2 million. Since it was
14 never offered, Kaiser never rejected; that Kaiser
15 would have, however, rejected that.

16 Q But Kaiser felt that was inadequate
17 offer for that --

18 A That's correct.

19 Q What is it about the Fontana water
20 company stock which makes it not susceptible to
21 liquidation by a Chapter 7 trustee?

22 A I am sorry. I am not sure I
23 understood your question.

24 Q What is it about the Fontana water
25 stock that makes it more difficult for a Chapter 7

1 trustee to liquidate that than for Kaiser to
2 liquidate that asset?

3 A I think it is probably the timing and
4 the necessary pieces of the puzzle that have to be
5 put together all at the same time to achieve maximum
6 value for that water stock.

7 The value in that water company, which
8 is Fontana Union Water Company, not Fontana Water
9 Company, there are two separate companies, but is
10 simply the flow of the water. Basically, you need to
11 put together a finance arm, a user who needs the
12 water at the right point in time, needs it over the
13 right period of time, at the same time that water is
14 available. To cause all of those elements to come
15 together at the same point in time to achieve maximum
16 value simply is not controllable in any short period
17 of time where you are necessarily required to
18 liquidate that in a given point in time.

19 Q When you say maximum value, are you
20 positing a value in excess of \$10 million. I guess
21 what I am saying, do you think the City of Fontana
22 will not pay a Chapter 7 trustee \$12 million for that
23 water stock; is that what your testimony is?

24 A My best guess of what the City of
25 Fontana would do, if you are proposing a trustee,

1 assuming this was converted to Chapter 7, they would
2 come in with an offer substantially less than \$10
3 million.

4 Q So your answer is yes?

5 A If you repeat your question.

6 Q The answer to the question -- the
7 question is, you think that a Chapter 7 trustee could
8 not sell that water stock for more than \$10 million?

9 A No, I did not answer yes. I answered
10 what I thought the City of Fontana would do. I
11 believe that the trustee could sell that at \$10
12 million.

13 Q Not above?

14 A I don't know.

15 Q What other valuations did you include
16 in the balance of the \$20 million in assets?

17 A I can just read from the disclosure
18 statement, which totals \$19 1/2 million. The first
19 item is cash of \$2.2 million. The second item is
20 miscellaneous receivables, which Kaiser still has on
21 its books, of \$500,000. The third item is the
22 existing waste treatment facility which is estimated
23 at \$2 1/2 million. The land is estimated at zero.
24 The Eagle Mountain site is estimated at \$1 1/2
25 million, the Lake Tamarack and Union Steel real

1 estate which is primarily desert real estate is
2 estimated at a half million dollars. The existing
3 mine properties or properties are estimated at
4 nothing. The office equipment, miscellaneous
5 properties in the corporate headquarters are
6 estimated at \$100,000. We already discussed the
7 Fontana Union Water stock which is estimated at \$10
8 million. We have estimated the IMAC note receivable,
9 which is a zero coupon note, at \$2 million. And
10 another note receivable of \$200,000 totaling \$19 1/2
11 million.

12 Q Let's turn to the Fontana property,
13 for a moment.

14 A Yes.

15 Q Under plan reorganization, the Fontana
16 property is to be developed and liquidated or revenue
17 generated therefrom under an agreement with Lusk,
18 correct?

19 A That's correct.

20 Q What management and business activity
21 is Kaiser going to undertake with respect to that
22 venture, other than contributing the land?

23 A Kaiser, its management, its former
24 employees and retirees will be extremely active, both
25 in the political and necessary permitting process

1 that will go on with the various governmental
2 agencies in both the City of Ontario, the City of
3 Fontana, and unincorporated San Bernardino County.

4 Q The joint venture calls for the
5 appointment of a managing partner, does it not?

6 A Yes, it does.

7 Q Who is the managing partner?

8 A Lusk organization.

9 Q Is Kaiser a managing partner?

10 A No, it's not.

11 Q What are the duties of the managing
12 partner?

13 A The duties of the managing partner are
14 primarily all aspects surrounding the actual
15 development of the real estate.

16 Q What role in management of the
17 partnership is reserved to Kaiser?

18 A The role in the management, the
19 development of the real estate, as I indicated, is
20 the activities surrounding both the permitting and
21 governmental approvals necessary as well as the
22 process of determining how to clean up and remediate
23 the property.

24 Q Where does Kaiser reserve that power
25 in the management of the partnership under the terms

1 of the joint venture?

2 A I am not sure that it is specifically
3 reserved under the documents, and I would have to
4 look to refresh my memory whether it is or isn't.
5 However, it is provided in the documents that there
6 will be a five-person management team composed of two
7 members of Kaiser and three -- excuse me, two members
8 of Lusk organization and one managing director. That
9 committee has been formed, has been meeting on a very
10 regular and periodic basis and the management
11 decisions that have come down from that committee
12 have identified the duties and roles in the
13 development of that real estate project, as I have
14 testified.

15 Q Is it not true that the joint venture,
16 by its terms at least, vests the management of the
17 partnership in Lusk not in Kaiser?

18 A That's correct.

19 Q Tell me, if you can, in what way,
20 beyond the contribution of property, that Kaiser's
21 involvement in this joint venture is so essential to
22 its success that, under Chapter 7, this property has
23 a value of zero and under the reorganization plan it
24 has a value of tens of millions of dollars?

25 A Let me explain that a little bit.

1 Q I wish you would.

2 A Henry Kaiser created an empire that
3 was centered in Fontana, California. By example, the
4 Fontana football team are called the Fontana
5 Steelers. The impact of the Kaiser retirees and its
6 former employees in that area is pervasive. We have
7 local politicians who, as a very large proportion of
8 their constituents, represent former Kaiser
9 employees, former Kaiser retirees, and the existing
10 management of Kaiser today. They are acutely aware
11 of the need for the success of these ventures, for
12 that matter, the success of the litigation, so as to
13 be able to achieve an ongoing company to not only
14 create the value in that company so that the
15 shareholders of the reorganized Kaiser will have
16 returned to them some of the value which they have
17 lost, but also to bring back to life certain jobs and
18 the reputation of the Kaiser name in that area.

19 Because of that, those politicians are
20 very, very helpful to us and to that joint venture
21 with obtaining the necessary approvals and being
22 positive forces behind the development of the Eagle
23 Mountain project. The real estate development and
24 the waste treatment plant, as has been testified to,
25 are very dependent upon various permitting processes

1 which we have now started.

2 In addition, and specifically
3 responsive to your question regarding the real estate
4 development, I believe that Kaiser has formed an
5 unique and very beneficial partnership with the
6 Department of Health Service and with the
7 Environmental Protection Agency calling for the
8 cleanup of that land in an orderly fashion. It is my
9 opinion that without both the active involvement of
10 the Kaiser employees and retirees, who are also their
11 constituents, and the Lusk organization, which
12 provides real estate expertise and financial backing,
13 that that partnership today would not exist.

14 Q If I understand you correctly, you are
15 saying that the political support of the retirees and
16 other persons affiliated with Kaiser having a
17 historical involvement with Kaiser, somehow aids the
18 development of this real estate project?

19 A That's correct.

20 Q And that it's your belief that that
21 political support would not be available to a Chapter
22 7 trustee or an entity to whom that Chapter 7 trustee
23 might transfer the asset?

24 A That is one of the components I
25 testified to. To stand on another component, the

1 cleanup, which has been left primarily to Kaiser as
2 part of the management team, is very instrumental.
3 Kaiser participation is very instrumental. Reason
4 for that is most real estate developers, including
5 the Lusk organization, do not have any strong
6 environmental cleanup arm.

7 You are aware from previous testimony,
8 Kaiser has been in the waste treatment business as to
9 the type of wastes that are produced with the
10 steel-making activities, for over 40 years. In
11 addition, Kaiser has on its management staff people
12 who have 30, 35, and 38, if I recall the numbers, but
13 they are approximate, that many years of experience
14 with Kaiser.

15 Part of the reason that the Department
16 of Health Service is so anxious to work with us and
17 has been so supportive of this public/private
18 partnership is because we know exactly what wastes
19 were deposited on what piece of that real estate. We
20 know exactly what year, we know what produced them,
21 what the technology was to make the steel, so we are
22 able to identify the by-products that leaked into
23 that soil and that eventually contaminated the
24 groundwater; that management staff, under my
25 direction is still on staff and plans to stay on

1 staff through the Chapter 11 proceeding and through
2 the reorganized company and indeed employment
3 contracts have been approved by this Court providing
4 for that.

5 Under a Chapter 7, I question whether
6 or not that expertise would remain available, and I
7 question whether or not the Department of Health
8 Service would be an active supporter of our
9 development.

10 Q So, based on that, it's your belief,
11 having examined this, that you really believe that a
12 Chapter 7 trustee would realize nothing from that
13 land?

14 A Yes, I do.

15 Q Turn your attention to the Eagle
16 Mountain property.

17 THE COURT: Let me ask this point of
18 clarification. Do you believe that, Mr. Stoddard,
19 even if the Court approves the Lusk joint venture, if
20 that's in place, since we have that staring at us
21 now, that contract is approved, and the Kaiser estate
22 should convert to a 7, is it still your view that
23 Lusk joint venture contract would have no value to a
24 Chapter 7 trustee.

25 THE WITNESS: As you know, Your Honor,

1 the contract provides for Lusk, in essence, to have
2 an option. They are infusing 2 1/2 to \$3 million
3 during the investigatory period, and at any time that
4 they determine that it cannot be cleaned up or it
5 cannot be cleaned up within the type of budget they
6 are willing to go at risk for, they can withdraw.

7 We have had a major event like that in
8 recent months. As you know, or may know, the Kaiser
9 properties have been proposed to be listed on the
10 national Superfund list. That has caused a
11 substantial amount of concern and has created a
12 hurdle that the Lusk organization has had to overcome
13 that they were not anticipating.

14 The Lusk organization, primarily
15 through the California Commerce Center, has already,
16 in the last few months, become aware of the value
17 that the ongoing company and the desire of the
18 constituents, of the politicians have for an ongoing,
19 profitable Kaiser.

20 I cannot answer on behalf of Lusk if
21 whether or not the conversion to Chapter 7 coupled
22 with the appropriate listing on the Environmental
23 Protection -- excuse me, inclusion on the Superfund
24 list, together would be enough to cause Lusk to
25 dispense with their joint plan, but, in my

1 estimation, it would be.

2 THE COURT: Thank you.

3 Q (By Mr. Quinn) Turn your attention,
4 Mr. Stoddard, to the Eagle Mountain venture. Is
5 Kaiser required to undertake an active part in
6 management of that venture?

7 A No.

8 Q Is Kaiser permitted to take active
9 role in the management of that venture?

10 A I don't know the answer to that
11 question. We have been requested to take a very
12 active role in certain aspects of that joint venture,
13 have done so, and continued to do so jointly with
14 MRC.

15 Q That venture has not yet commenced,
16 has it?

17 A That's correct.

18 Q What's the total value on liquidation
19 basis of the assets that you have embodied under that
20 venture?

21 A What's the total value of the assets
22 embodied under that venture on liquidation basis?

23 Q Yes.

24 A That is probably the most difficult
25 asset to determine. It is simply four incredibly

1 large holes in the ground way out in the desert. We
2 estimated a value on liquidation basis of one and a
3 half million. The support for that, or the
4 assumption that was made is, as you know, as part of
5 the MRC Corporation Joint Venture, they were willing
6 to put totally at risk a million and a half dollars
7 in advance royalty payment, which, basically, in my
8 mind, can be compared for an option to determine
9 whether or not those holes can, indeed, be used as a
10 municipal landfill.

11 Because of that, I used the million
12 and a half, assuming that some other party and
13 perhaps even MRC itself, would be willing to purchase
14 that property for the same reason at that amount.

15 Q Have you solicited any appraisals or
16 contracted for any appraisals of that property?

17 A No, we have not, in recent years.

18 Q Have you solicited any offers to
19 purchase the property?

20 A No. We have not, under order of this
21 Court, approving the preliminary agreement with MRC.
22 It's my view that we are prohibited from doing that
23 for the last 12 months.

24 Q How long has Kaiser been in Chapter 11
25 proceedings?

1 A Approximately 18 months.

2 Q Prior to the entry into the
3 preliminary agreement with MRC, had you solicited any
4 sale agreements for that asset?

5 A I was not active with Kaiser at that
6 point in time, but it is my understanding that we
7 solicited several proposals from a wide variety of
8 people in the waste management business for joint
9 venture type of purposes. I do not know whether
10 there were any actual solicitation of sales.

11 Q Have you made any investigation of
12 that?

13 A I am sorry. Of what?

14 Q Have you investigated to see whether
15 or not Kaiser had received any offers to purchase
16 those assets?

17 A No, I have not made any investigation,
18 but I believe I would know if they had.

19 MR. QUINN: I have no further
20 questions, Your Honor.

21 THE COURT: Mr. Bugg.

22 EXAMINATION

23 BY MR. BUGG:

24 Q Mr. Stoddard, you just testified that
25 you -- Kaiser, I mean -- have a very intimate

1 understanding of the problems of the environmental
2 problems on the mill site. Do you have a preliminary
3 estimate of what the cleanup is going to cost on the
4 mill site?

5 A We have had two different
6 environmental engineering firms evaluate, on a very
7 preliminary basis, the cleanup costs. One is
8 Montgomery Engineers, who has given us a general
9 estimate of \$31 million to clean up the property.
10 The second is a firm out of Houston,
11 Texas, who has been employed by the cleanup of the
12 Amoco steel mill, which has since been converted into
13 an industrial park, which is about three years ahead
14 of our planned development. That firm name is Jones
15 and Neuse. And they have come in with an
16 approximately \$28 million cleanup cost.

17 Q I understand that this cleanup under
18 the Lusk agreement is to be funded at 89 cents a
19 square foot?

20 A That's correct.

21 Q And based on the amount of square
22 footage of the mill site, how much does that come to?

23 A Right at 32 or \$34 million. I would
24 have to do the arithmetic on that. This encompasses
25 all of the planned development which includes

1 approximately 1200 acres.

2 Q In other words, it encompasses -- the
3 44 million that you testified earlier to encompasses
4 89 cents per square a foot on the West End property?

5 A That's correct.

6 Q Therefore, the capital account that
7 you testified to of \$9 1/2 million that was going to
8 be developed in the -- on the West End property,
9 would be reduced if you don't get the West End
10 property?

11 A That is not correct. The capital
12 account is based solely on property which we own
13 today.

14 Q At \$1.36 a square foot?

15 A That's correct.

16 Q So there would be --

17 A If I could bring those two answers
18 together, the net capital account would be increased
19 if the cleanup was only performed on the mill site,
20 because the cleanup costs would be about \$10 million
21 less; therefore, the capital account would be about
22 \$10 million more.

23 Q Are you testifying that it would cost
24 \$10 million to clean up the West End property?

25 A I am not.

1 Q But the cleanup there would be 10
2 million less than if you cleaned up the rest of the
3 property?

4 A I have made no testimony whatsoever
5 about the cleanup costs on the West End property. I
6 have solely testified as to what the economic
7 workings of the joint venture between Lusk and Kaiser
8 are. They do not in any way bear any resemblance to
9 what any anticipated costs may be for any specific
10 piece of property, including the West End property.

11 Q But it's true that cleanup money
12 available under the Lusk agreement, if you do not get
13 the West End property, is reduced by approximately
14 \$10 million; is that correct?

15 A Yes, that's correct. Very
16 approximate. As I said, I haven't done the
17 arithmetic but, yes, that's correct.

18 Q And therefore the \$10 million, if they
19 do not put in that extra \$10 million, that would
20 reduce the amount of money that might come back to
21 Kaiser if the cleanup costs are less?

22 A I don't believe so. I believe that it
23 simply changes the form in which those dollars come
24 back to Kaiser. As I testified, the \$10 million less
25 that would go into the cleanup costs, would have the

1 effect of increasing the net capital account. So
2 that rather than getting them back in the form of the
3 savings of the remediation cost, we would get them
4 back in the form of our capital account, which would
5 then be approximately \$19 1/2 million not \$9 1/2
6 million.

7 Q It would be a dollar-for-dollar
8 savings?

9 A It would be a dollar-for-dollar
10 savings according to the arithmetic. The capital
11 account comes back to Kaiser slightly slower than the
12 remediation savings, so there would be a slightly
13 reduced amount if it came back in the form of a
14 capital account, due to the present value money.

15 Q And if the cleanup costs exceed 33
16 million, how does Kaiser propose to raise the money
17 to do that cleanup?

18 A The joint venture agreement with the
19 Lusk company does not provide that the \$44 million
20 for the total project or the lesser amount for the
21 mill site on the stand-alone basis is the cap at
22 which Lusk ceases to infuse cleanup money. It simply
23 provides the cap at which we accrued to the savings;
24 and, secondly, the cap as to where they fund all of
25 the cleanup costs without our 50 percent interests

1 being affected.

2 There is a formula that provides for
3 the Lusk Company to infuse in excess of \$44 million,
4 or in excess of the smaller amount, solely on the
5 mill site and Kaiser percentage interest, 50 percent
6 interest is then reduced acknowledging the fact that
7 Kaiser may not have cleanup cost available at the
8 point in time they are needed.

9 As an additional benefit to Kaiser, we
10 have a look-back period so that we have the ability,
11 after the cleanup has been accomplished, after the
12 dollars have been spent, to reimburse Lusk for our 50
13 percent share for that overage. In that event, our
14 50 percent interest in the partnership is left
15 intact. We get a 20-20 hindsight look at whether or
16 not we want to find an alternative measure to fund
17 that excess cleanup cost. But keep in mind at all
18 times, Kaiser is not required to fund that. And that
19 Lusk understands that the cleanup cost in excess of
20 that amount are coming initially from the Lusk
21 organization.

22 Q Under the option out terms of that
23 agreement, can Lusk opt not to fund that cleanup cost
24 at all if they -- the West End is not acquired?

25 A Well, let me answer that a little more

1 broadly, which I think answers your question. Lusk,
2 at any time during the investigatory period, can
3 choose not to go forward with development of this
4 real estate project at all, if it determines it to be
5 economically unfeasible.

6 Q So that is -- that would be something
7 that falls within that term, as you see it?

8 A No, I don't think it falls within that
9 term. Keep in mind, I testified earlier that there
10 are really two joint ventures, two different
11 documents; that one is an option contract, one is a
12 joint venture agreement, which I believe is in the
13 form of partnership agreement.

14 The West End property is in a separate
15 agreement. So if they did not want to go forward
16 with the development of the West End property because
17 it was not returned to Kaiser, or for any other
18 reason, that would have no effect on the
19 determination of whether or not they wanted to go
20 forward with the mill site development.

21 Q Well, I want to make my question
22 clear. Well, either doesn't necessarily affect it.
23 It would be something they could use as a reason not
24 to go ahead with mill site development because they
25 didn't then deem it economically feasible; is that

1 correct?

2 A You are asking me to look into the
3 minds of Lusk of why they might not want to go
4 forward with the mill site. I can only answer you
5 that negotiations were very specific. There are two
6 separate sets of negotiation: One that focused on
7 mill site, and one that focused on development of the
8 West End property, and they were totally separate.

9 Q Except that option agreement for
10 putting funds into it is one agreement and
11 anticipates the putting in of funds on both
12 agreements pursuant to its terms; isn't that correct?

13 A That is correct. That cleanup funds
14 are anticipated to be spread over the entire parcel.
15 That's how that particular monetary element was
16 negotiated.

17 Q Now, I would like to go back very
18 briefly to, I believe, it was Exhibit 2, which is the
19 summary of projected cash flows. Just very briefly,
20 and this may have been asked before, did you prepare
21 these yourself or have someone else prepare it under
22 your direction?

23 A This was the joint effort of, I am
24 guessing, 12 employees of Kaiser Steel Corporation,
25 with the assistance of Price Waterhouse through the

1 arithmetic and computer compilation.

2 Q The line under project cash receipts
3 from operations, next to the industrial part.

4 A Yes.

5 Q What are the sources of those
6 receipts? I understand that the first year, the
7 first quarter there, 3 million of that comes from
8 Lusk; is that correct?

9 A Yes, which is now corrected to be 5
10 million.

11 Q But the --

12 A Other than that 5 million, we have
13 various leases on the property today and various -- I
14 am sorry. We are talking about the industrial park
15 line?

16 Q Yes.

17 A And various contracts that we are
18 receiving revenue from today and we have been
19 receiving revenue from throughout pendency of the
20 Chapter 11 proceedings. These are leases, sales of
21 salvage materials, certain storage contracts, the
22 processing and sale of slag. I believe the other
23 contracts are in the waste treatment facility line,
24 so I believe that's everything.

25 Q So anyway, they come from leases and

1 other contracts related to the properties that were
2 considered included in these projected cash flows?

3 A Yes.

4 Q In regard to the waste treatment
5 facility, are you familiar with a contract between
6 Parson's Company and CSI under which Parson's will
7 build an aqueous waste treatment plant for CSI?

8 A I am not familiar with the contract.
9 I am totally familiar that CSI has employed the
10 Parson's Company for the purpose of evaluating the
11 cost of building their own in-house waste treatment
12 plant.

13 MR. BUGG: I have no further
14 questions, Your Honor.

15 THE COURT: Anyone else?

16 MR. CHRISTENSEN: What I would like to
17 do at this time, Your Honor, we have one witness with
18 a 1:30 airplane. I don't know what your preference
19 is. I think he's a short witness. I would like to
20 take him out of order so he can catch the airplane
21 and take a late lunch break. I don't know Your
22 Honor's preference or calendar.

23 THE COURT: That's all right.

24 MR. CHRISTENSEN: I might want to
25 recall Mr. Stoddard.

1 THE COURT: All right. Mr. Stoddard,
2 if you would, step down, please.

3 MR. CHRISTENSEN: Mr. Don Thomas,
4 please.

5 DONALD THOMAS,
6 having been called as a witness on behalf of the
7 Debtor, being first duly sworn upon his oath,
8 testified as follows:

9 EXAMINATION

10 BY MR. CHRISTENSEN:

11 Q Would you state your full name and
12 address, please, for the record.

13 A My name is Donald E. Thomas. I live
14 in Dallas, Texas, at 6025 Del Rey.

15 Q By whom are you employed?

16 A I am partner with the firm Price
17 Waterhouse.

18 Q What position do you hold?

19 A As a partner, I am responsible for a
20 specialized group in the consulting practice that
21 deals with financial restructures, bankruptcy and
22 litigation support services.

23 Q Do you have in front of you Exhibit 4?

24 A Yes.

25 Q Can you tell the Court what that is,

1 please?

2 A Exhibit 4 is our standard resume
3 format for Price Waterhouse, resume on myself.

4 Q This has your education and vocational
5 background?

6 A Yes, it does.

7 MR. CHRISTENSEN: I would move the
8 admission of Exhibit 4.

9 MR. QUINN: No objection.

10 MR. BUGG: No objection.

11 THE COURT: It will be received.

12 Q (By Mr. Christensen) The only
13 question I would like to ask you, based on Exhibit 4,
14 if you would, Mr. Thomas, have you testified in other
15 bankruptcy proceedings as an expert witness with
16 respect to the feasibility of business plans?

17 A Yes, I have.

18 Q Approximately how many?

19 A Approximately half a dozen.

20 Q How did you come to be involved in
21 this particular case?

22 A We were asked by you and your firm,
23 representing the Debtor, to take on an assignment to
24 review the projections and assumption and feasibility
25 of the plan presented by the proponents.

1 the business plan feasible?

2 A If Lusk or someone else does not make
3 a contribution like this, and if those environmental
4 problems were very large, then I think that the
5 company does have a difficult time in spending money
6 to clean up those environmental issues.

7 Q Is that a yes?

8 THE COURT: That's what it is, Mr.
9 Quinn.

10 MR. QUINN: I have no further
11 questions, Your Honor.

12 MR. BUGG: I have no questions.

13 MR. CHRISTENSEN: No redirect, Your
14 Honor. The witness might be excused. I would
15 appreciate it.

16 THE COURT: Okay. Thank you, Mr.
17 Thomas. Nice to see you again.

18 MR. CHRISTENSEN: Convenient time for
19 lunch break.

20 THE COURT: Recess until 1:30.

21 (Recess.)

22 THE COURT: Be seated, please.

23 MR. CHRISTENSEN: I would like to
24 recall Mr. Stoddard to the stand.

25 THE COURT: Mr. Stoddard, if you would

1 take the stand, please.

2 Q (By Mr. Christensen) Mr. Stoddard, I
3 would like to just cover three areas with you very
4 briefly. Mr. Quinn asked you if the MRC or Eagle
5 Mountain transaction had been shopped. I think you
6 indicated that it had not been actively because of an
7 agreement with MRC. Subsequent, however, to the MRC
8 transaction being filed with this Court and being
9 made public, did you receive independent inquiries
10 from third parties about this transaction?

11 A Yes, we did.

12 Q Who were those third parties?

13 A There were two separate parties. One
14 was Western Waste Corporation. And secondly, a
15 railroad contracting company by the name of Sharp and
16 Fellows.

17 Q Did they indicate that they wanted to
18 review this project with an idea of making a better
19 proposal to Kaiser?

20 A Yes, they both did.

21 Q Did Kaiser make available whatever
22 documents they requested?

23 A Yes, they did.

24 Q And did they both decide not to make
25 any better offer?

1 A That's correct.

2 Q With respect to the company's cash
3 position, in the absence of a confirmation, and the
4 two loans that are contemplated in a subsequent, but
5 a hearing part of the confirmation, what is the
6 company's cash position and how long can you go on?

7 A In unrestricted cash, cash that has
8 not been required to be set aside for some other
9 purpose, pursuant to some Court order or stipulated
10 settlement, we have slightly in excess of \$2 million
11 today.

12 Q How long will that last? Give the
13 Court some of the different variables as to what you
14 might or might not do.

15 A The biggest variable is whether or not
16 we were required to pay professional fees on an
17 ongoing basis to keep the litigation alive and to
18 continue these proceedings, or events surrounding
19 these proceedings.

20 It is my estimate, based on that cash
21 value alone, that we have 60 to 90 days to survive on
22 that cash balance, if we were required to pay those
23 professional fees. If we were not required to pay
24 those ongoing professional fees, and, in essence,
25 would shut down the part of the litigation that is

1 not currently on contingent fee, we might be able to
2 stretch that to something like 120 to 150 days.

3 Q That's assuming that nothing adverse
4 happens in that time frame?

5 A Yes.

6 Q Requiring any additional expenditures?

7 A That's correct.

8 Q And on the importance of the Lusk
9 transaction and the consent order, can you just
10 describe for the record the interrelationship; that
11 is, does the consent to confirmation of a plan, is
12 the Lusk agreement itself dependent on a confirmed
13 plan? Does the consent order itself also depend on a
14 confirmed plan?

15 A Technically, I cannot remember whether
16 or not the Lusk agreement is subject to a confirmed
17 plan or solely approval of the joint venture
18 agreement. As a practical matter, the Lusk
19 organization has advised us that Kaiser going forward
20 is an element of their continuing in the joint
21 venture. The interrelationship of that joint venture
22 and the consent order is critical.

23 The consent order is dependent upon
24 the Lusk organization going forward and us going
25 forward with that cleanup. And it is what provides

1 the separation of the litigation proceeds, the
2 distributable proceeds from the new company.

3 Without that in place, we have no
4 ability to isolate those litigation proceeds.

5 Q The consent order isolates all the
6 litigation and tax refund proceeds?

7 A That's correct.

8 Q Even if you eventually and
9 subsequently breach the consent order?

10 A That's correct.

11 Q Except that the consent order requires
12 that the plan currently before the Court be
13 confirmed?

14 A That's correct.

15 Q If it's not confirmed, they do not
16 waive or isolate the litigation and tax proceeds?

17 A That is my understanding.

18 MR. CHRISTENSEN: No other questions,
19 Your Honor.

20 THE COURT: Mr. Quinn.

21 EXAMINATION

22 BY MR. QUINN:

23 Q Mr. Stoddard, referring to the Western
24 Waste and Sharp and Fellows negotiation, did you
25 participate in those negotiations?

1 A I would not describe them as
2 negotiations. They were inquiries by telephone.
3 There were further telephone discussions, both with
4 Kaiser counsel, primarily Mr. Christensen, and with
5 Jerry Faucet, one of the key Kaiser employees
6 involved in that particular project, but I would not
7 describe them as negotiations, by my meanings.

8 Q Are you aware of the position of
9 either of those entities vis-a-vis development of the
10 Eagle Mountain venture in a Chapter 7 reorganization?

11 A No, I am not.

12 Q Thank you.

13 MR. QUINN: No further questions, Your
14 Honor.

15 MR. CHRISTENSEN: Nothing further.

16 THE COURT: Thank you, Mr. Stoddard,
17 you may step down.

18 MR. EKLUND: Your Honor, I believe the
19 Debtor has concluded their witnesses. And now I
20 would like to call Scott Gregory.

21 THE COURT: Mr. Gregory.

22 ROBERT SCOTT GREGORY,
23 having been called as a witness on behalf of the
24 Retirees Subcommittee, being first duly sworn upon
25 his oath, testified as follows:

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 IN BANKRUPTCY

FILED
STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

SEP 23 1987 B 1552 E

4 In Re.

5 KAISER STEEL CORPORATION

6 (1) Continued Hearing on Confirmation of
Chapter 11 Plan

BRADFORD L. BOLTON, Clerk

BY

7 (2) Continued Hearing on Debtors'

DEPUTY CLERK

8 Motion to Approve Sale of Assets
9 Pursuant to Section 363(b) and (f)
10 and the Agreement and Lease with Mine
Reclamation Corporation and Related
Documents and Transactions

11 (3) Objections of UCC and Perma Pacific
12 to Settlement Agreement between "Edison
Group" and Kaiser Steel

13 (4) Objections of (a) Thelen, Marrin,
14 (b) Steelworkers of America and
(c) Retiree Subcommittee of Official
UCC to Debtors' Motion for Order
15 Authorizing Use of Cash Collateral

16 (5) Meritor's Objection to Debtors'
17 Motion for Determination that Meritor's
Secured Claim is Satisfied, or in the
18 Alternative, that it be Estimated and
Modified.

19 Courtroom A
20 1845 Sherman Street
21 Denver, Colorado

22 September 23, 1988

23 BEFORE THE HONORABLE CHARLES E. MATHESON, Judge.
24
25

EXHIBIT

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Volume 4

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I N D E X

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WITNESSES:

John Houston

<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
5	12	18	18

PARTIAL TRANSCRIPT OF PROCEEDINGS

JOHN HOUSTON

was called as a witness herein and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHRISTENSEN:

Q Would you state your name and address for the record?

A My name is John Houston, and I live at #2 Shining Oak Drive, Littleton, Colorado.

Q And by whom are you employed, sir?

A Kaiser Steel.

Q For what company do you work?

A The Procyon Group.

Q All right. Can you spell that, please?

A P-r-o-c-y-o-n Group.

Q What is the business of the Procyon Group?

A Our business is, as principals, to buy and sell water, as consultants, to value and market water for municipalities and private individuals.

Q Can you tell the Court briefly your educational background?

A I have a Master's Degree from Stanford University in Geology. I have a J.D. from the University of Colorado.

Q How long -- let's turn to your experience. How long have you been active in the purchase, sale and evaluation of

1 water rights?

2 A The last 13 years.

3 Q And in what states do you conduct business?

4 A Colorado, Arizona and California.

5 q Are there publications or literature in this particular
6 field that you use to keep up to date?

7 A That's correct; it's voluminous.

8 Q Can you give the Court a feel for the type of literature
9 that you regularly examine and what information you derive
10 from it?

11 A We read the monthly publication of the Metropolitan Water
12 District of Southern California, by the name of Focus. We
13 read --

14 Q What kind of information is in that literature?

15 A All of the activities of the Metropolitan Water District
16 of Southern California in terms of their construction of new
17 projects, acquisition of water rights, their political
18 position with regard to marketing of such things as Indian
19 water rights and other private transactions.

20 Q Okay, go ahead. What other literature do you regularly
21 use?

22 A The American Water Works Association, which is head-
23 quartered here in Denver, has a monthly publication called
24 The Journal, and it describes all recent market transactions,
25 reports on the amounts and qualities, quantities of water that

1 are distributed by all the various agencies, as topical sort
2 of articles by lawyers and engineers as to water transactions,
3 trades, policy, federal and state statutes and that sort of
4 thing.

5 Q Have you or your company been involved in the purchase
6 and sale of water in Southern California?

7 A That's right.

8 Q Have you been involved in the evaluation of water rights
9 in Southern California?

10 A That's correct.

11 Q Were you asked by Kaiser Steel to value its water rights?

12 A That's correct.

13 Q Would you tell the Court what you did in order to make an
14 evaluation? What did you review or do?

15 A First, we reviewed the documentation furnished to us by
16 Mr. Stoddard, which included the articles and by-laws of the
17 Fontana Union Water Company, and we reviewed engineering
18 documentation as to the amounts of water that have been
19 diverted by the mutual. We reviewed engineering documentation
20 as to the demands and use of water by the Fontana Water
21 Company, which is the local purveyor. We reviewed the
22 valuation, 1985, Don Owens' appraisal of water rights. We
23 reviewed the decrees in the Rialto Basin and the Chino Basin
24 situation in Liddle (phonetic) Creek. We reviewed the report
25 of the water master for the Chino Basin, and various other

1 documentation. In addition to that, we pulled out and re-
2 viewed our own information as to recent transactions --

3 Q Comparables --

4 A -- comparable situation, what people are paying for water
5 in Southern California and various districts, including Orange
6 County Water District, City of Inglewood, California, San
7 Diego County Water Authority, and what the average cost in
8 terms of their wholesale acquisition costs are for those
9 various districts, as well as their sale prices and revenues.

10 Q And based upon your experience in Southern California
11 and your review as you have described it of the Kaiser water
12 rights, did you reach a conclusion or an opinion as to the
13 value of those rights?

14 A That's correct.

15 Q And what is your opinion as to the value of those water
16 rights?

17 A We value the water rights at in excess of 27.5 -- or .8
18 million dollars, as previously appraised; we would agree with
19 that figure.

20 Q So you're saying the previous appraisal would be the
21 floor number?

22 A Would be the floor number.

23 Q And they could be worth more?

24 A Absolutely.

25 Q Will you describe for the Court the analysis which you

1 performed that led you to that conclusion? That is, what were
2 your methodologies of valuation?

3 A Well, in valuing water rights, we used, and have used in
4 this situation, three basic means. One is comparable sales.
5 We looked at comparable recent transactions for the purchase
6 of water rights in the Southern California area for distribu-
7 tion in the Southern California area. The second means that
8 we used was basic income or valuation method in terms of
9 looking at what the cost of raw water supplies are, for
10 example, of the San Diego County Water Authority, and then
11 looking at that income stream and discounting it to net
12 present value. And the other means that we used, the third
13 means, was avoided cost basis. That is to say there is a cost
14 of importation of water into Southern California, Southern
15 California being largely dependent upon imported supplies, and
16 we looked at the cost of importation, and then compared that
17 to this local supply of water, taking the Metropolitan Water
18 District's present cost of water importation and their pro-
19 jected cost of imported water supplies, capping that out and
20 discounting that to net present value.

21 Q Dealing now specifically with the comparable sales, can
22 you tell us in brief what the comparable sale range was?

23 A Comparable sale range was 1,500 to \$2,500.00 per acre
24 foot right in perpetuity.

25 Q And approximately how many acre feet does Kaiser have?

1 A 24,000 -- nearly 25,000 acre feet.

2 Q So that would yield a value somewhere between 36 and 48
3 million on comparable sales?

4 A That's correct. And you are a lawyer, your arithmetic
5 is a little different than mine.

6 Q All right. What about the second means; can you just
7 give us a more specific indication on how you performed that
8 analysis?

9 A Certainly. If one looks at the value of the resource in
10 terms of per household in the City of Inglewood, the
11 average --

12 Q Inglewood, California?

13 A Inglewood, California. The average water bill in
14 Inglewood, California per home owner is in the neighborhood of
15 \$365.00 an acre foot per year, because each home takes about
16 an acre foot of water. Backing out the various infra-
17 structure costs and the rest of it, one gets a figure of in
18 the neighborhood of \$200.00 per household per year just for
19 the water resource in the City of Inglewood, California. If
20 one looks at the amount of water that Kaiser's stock repre-
21 sents, being on the order of 25,000 acre feet, that's
22 sufficient to serve on the order of 25,000 homes. So 25,000
23 homes times 200 to \$250.00 an acre foot per household, and
24 capping that out, discounting it to net present value, you
25 get a figure in excess of 40 million dollars, depending on

1 the discount rate one uses.

2 Q Okay. And on the avoided cost basis, can you tell the
3 Court how that analysis went?

4 A Certainly. Avoided cost situation, the Metropolitan
5 Water District of Southern California is the largest importer
6 of water into Southern California, and the largest wholesale
7 purveyor. They enjoy, therefore, the lowest per unit cost of
8 importation of water into the Southern California area. Their
9 cost of importation through the state water project from
10 Northern California to Lake Matthews of raw water was \$212.00
11 an acre foot this year. If one subtracts the \$47.00 per acre
12 foot cost of production that the mutual --

13 Q But the mutual, do you mean Fontana Union Water Company?

14 A By the Fontana Union Water Company. -- from that figure,
15 capitalize that income stream, or discount it to present value
16 over a 20 year period of time, also generates a figure in
17 excess of 40 million dollars.

18 Q Can you tell the Court -- one last question -- with
19 respect to your minimum value of 27.8 million dollars, can you
20 characterize for the Court your level of confidence in that
21 value? That is, are you pretty sure, are you real sure; just
22 characterize for us --

23 A Real sure.

24 MR. CHRISTENSEN: Okay. I have no further questions.

25

1 CROSS-EXAMINATION

2 BY MR. PRATT:

3 Q Mr. Houston, I'm Warren Pratt. I represent Meritor
4 Savings Bank. You testified that you have an M.A. from
5 Stanford in Geology?

6 A They call it an M.S. there.

7 Q An M.S., okay. Could you tell me what the Pacific Plate
8 is?9 A The Pacific Plate is a geotechnic plate that is being
10 subducted under the California coastline presently.

11 Q Which way is it moving?

12 A Well, it depends on if you -- relative to the piece of
13 land we're standing on or relative to the plate on which you
14 would --15 Q Is it possible that there could be a severe earthquake
16 in California at some time within the next five years or so
17 because of the movement of the Pacific Plate?18 A In my reading of the MWD's Focus situation, the USGS has
19 determined that there's a 70 percent chance of such an earth-
20 quake in the next 30 years.21 Q What would happen to the water right values that you
22 testified to in the event that occurs?23 A That would be a unique valuation exercise, and one that
24 we have not presently conducted. I can only speculate on it.

25 Q You have no opinion on that?

1 A The -- I do have an opinion about it, but it does not
2 relate to the economics presently.

3 Q Well, would the value of the water rights go up or down
4 in that event?

5 A My opinion is that they would go up.

6 Q That they would go up?

7 A Up.

8 Q -- Okay. Now, you said that, among other things, you looked
9 at an earlier appraisal of the water rights that was done in
10 1985, was your testimony?

11 A That's correct.

12 Q Was that performed by Stetson Engineers?

13 A No, that was performed by Don Owens. He may or may not
14 be with Stetson Engineering.

15 Q All right, could you explain to me -- well, let's first
16 establish that Fontana Union Water Company is a mutual water
17 company in California; is that correct?

18 A That's correct.

19 Q And could you tell me what a mutual water company is?

20 A I'm not a licensed California attorney, but a mutual
21 company, water company in Southern California, is very much
22 like a mutual water company in the state of Colorado, although
23 California being a code state, it's created and exists under
24 special statutes provided for mutual water companies in
25 California.

1 Q Now, because it's a mutual water company, is it subject
2 to regulation by the California Public Utilities Commission,
3 if you know?

4 A No, it's not.

5 Q And why is it not?

6 MR. CHRISTENSEN: Excuse me, could you speak up just a
7 little bit? There's a fan back here. I'm just having a
8 little trouble hearing.

9 A Not being a California attorney, I can only give you my
10 basic understanding of why it is not subject to the PUC, and
11 that being is it does not distribute water to customers at
12 large, as defined under the code, and that the code being
13 jurisdictional, then it's not covered in that sense.

14 Q (by Mr. Pratt) Well, who does it sell the water to?

15 A It really doesn't sell water to anybody. It produces
16 water for the benefit of its stockholders. The stockholders
17 are entitled to take their pro-rational amount of water from
18 the total production at cost.

19 Q And you testified that that cost was \$47.00 an acre foot?

20 A That's correct.

21 Q So that the mutual water company does not make a profit,
22 it's not intended to make a profit; isn't that right?

23 A That's absolutely true.

24 Q Now, what basin does this water company derive its water
25 from in California?

1 A It derives its water from three different sources. It
2 derives water from the Chino Basin, the Rialto Basin, and
3 from Liddle Creek surface sources, and alluvium from wells
4 in the Liddle Creek area.

5 Q Are those subject to -- are those sources of water --
6 are the water rights appurtenant to the land in those
7 instances, or are they not?

8 A It varies. In the case of the water rights that have
9 been decreed to the Fontana Union Water Company, those rights
10 are not appurtenant to land.

11 Q So that the Fontana Union Water Company's rights are not
12 appurtenant; is that your testimony?

13 A That's correct.

14 Q And on what basis do you say that? Court judgments?

15 A Court judgments.

16 Q And when were those entered?

17 A The Liddle Creek decree was entered in, I believe, 1924.
18 The Chino Basin decree was 1978, and the Rialto Basin decree,
19 if my memory doesn't fail me, was 1961.

20 Q Now, you've testified basically that Kaiser owns water
21 rights. What does Kaiser own, really, with respect to Fontana
22 Union Water Company?

23 A Water stock.

24 Q Stock in the Fontana Union Water Company?

25 A That's correct.

1 Q What percentage of the stock of the Fontana Union Water
2 Company does Kaiser Steel own?

3 A A little in excess of 50 percent.

4 Q Can that stock be conveyed?

5 A It's my opinion that it can be conveyed.

6 Q Is it your opinion that the stock can be pledged as
7 collateral?

8 A That would be correct.

9 Q If the pledgee were to foreclose on that collateral,
10 could the pledgee then take title to the stock?

11 A Absolutely.

12 Q Could the pledgee then -- the pledgee would then own the
13 stock?

14 A Yes.

15 Q Would the pledgee then have -- excuse me -- yes, pledgee.
16 Would the pledgee then have all of Kaiser's rights, the water
17 rights that you testified to?

18 A No. In addition to the water stock, Kaiser has 2,930
19 acre feet in fee title in the, I believe, it's the Chino Basin
20 decree -- yes, it is the Chino Basin decree -- 2,930 acre feet
21 annually.

22 Q That's apart from the Fontana Union stock?

23 A Yes.

24 Q Okay. But with respect solely to the Fontana Union
25 stock, is the owner of that stock entitled to use the water?

1 In other words, is that a right -- is that use of the water,
2 is that right appurtenant to the stock, so to speak?

3 A That's correct.

4 Q Goes along with ownership of the stock?

5 A That's correct.

6 Q And that's freely transferrable, in your opinion?

7 A Absolutely.

8 Q Now, you've testified with respect to values relating to
9 the water itself. Is the reason for that because the owner
10 of the stock can do whatever it wants to with the water?

11 A That's correct.

12 Q Would your opinion of the value of the stock be any
13 different from the figures that you've testified to?

14 A If -- would my opinion --

15 Q If you were asked to value the stock that Kaiser owns in
16 the Fontana Union Water Company, would you testify that your
17 opinion as to the value of the stock is the same as what
18 you've testified to as the value of the water rights?

19 A That's correct.

20 MR. PRATT: Thank you. No further questions.

21 THE COURT: Mr. Appel?

22 MR. APPEL: No questions, Your Honor.

23 THE COURT: Mr. Krasnow?

24 MR. KRASNOW: No questions, Your Honor.

25 THE COURT: Ms. Breene?

1 MS. BREENE: (No audible response.)

2 THE COURT: Mr. Christensen?

3 MR. CHRISTENSEN: Just one question on redirect just to
4 clarify the last point with respect to the testimony of water
5 rights being the same as the value of the stock.

6 REDIRECT EXAMINATION

7 BY MR. CHRISTENSEN;

8 Q The Chino Basin rights that are held in fee and not
9 represented by the stock, those values would be in addition
10 to the Fontana Union water stock; correct?

11 A That is correct.

12 Q So there are two different sets of water rights, if you
13 will?

14 A That's correct.

15 Q And I think you said the Chino Basin is about 3,000 acre
16 feet?

17 A 2,930.

18 Q Okay. And so using 1,500 to 2,000 per acre feet, that
19 would have a value of 4 1/2 to 6 million?

20 A That's correct.

21 MR. CHRISTENSEN: I have no further questions.

22 MR. PRATT: Just one point of clarification, if I may?

23 RECROSS-EXAMINATION

24 BY MR. PRATT:

25 Q The figures that you testified to earlier on direct, was

1 that just relating to Fontana Union Water Company, or was
2 that everything together?

3 A Just to Fontana Union Water Company.

4 MR. PRATT: Thank you.

5 THE COURT: Thank you, Mr. Houston, you may step down.

6 (End of testimony of Mr. John Houston.)
7
8

9 I certify that the foregoing is a correct transcript
10 from the record of proceedings in the above-entitled matter.
11

12 September 24, 1988

Mary Chevrolet

J. Ford & Associates, Inc.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
IN BANKRUPTCY

-----		:
In Re.	:	:
KAISER STEEL CORPORATION	:	87 B 1552 E
(1) Continued Hearing on Confirmation of Chapter 11 Plan	:	:
(2) Continued Hearing on Debtors' Motion to Approve Sale of Assets Pursuant to Section 363(b) and (f) and the Agreement and Lease with Mine Reclamation Corporation and Related Documents and Transactions	:	:
(3) Objections of UCC and Perma Pacific to Settlement Agreement between "Edison Group" and Kaiser Steel	:	:
(4) Objections of (a) Thelen, Marrin, (b) Steelworkers of America and (c) Retiree Subcommittee of Official UCC to Debtors' Motion for Order Authorizing Use of Cash Collateral	:	:
(5) Meritor's Objection to Debtors' Motion for Determination that Meritor's Secured Claim is Satisfied, or in the Alternative, that it be Estimated and Modified.	:	:
-----		:

Courtroom A
1845 Sherman Street
Denver, Colorado

September 23, 1988

BEFORE THE HONORABLE CHARLES E. MATHESON, Judge.

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1 FINDINGS OF FACT AND CONCLUSIONS OF LAW

2 THE COURT: All right. We have a variety of matters on
3 the plate, if you will. One of those concerns the Mine
4 Reclamation Corporation agreement. Under that agreement, MRC
5 will proceed to lease the Eagle Mountain facilities and rail
6 trackage owned by the debtor to develop that into a gigantic
7 dump site for the waste of Southern California. It is, in
8 simplest terms, if it is successful, for the debtor, a money
9 machine; that's all it is. It generates dollars based on the
10 tippage fees and the need for a place to deal with waste of
11 that gigantic center of humanity; was amply testified to by
12 the representatives from MRC at the time of the confirmation
13 hearings and on that application.

14 The transaction is one whereby the debtor will con-
15 vey the properties to a wholly owned subsidiary, with that
16 conveyance to be free and clear of the encumbrances of
17 Meritor. And that is where the nub comes, because it is
18 from Meritor that the objection is lodged; that objection
19 primarily, at least at the time of the hearing, revolving
20 around the fact that once the properties -- that the Meritor
21 lien would attach to the consideration being received by the
22 debtor for the transfer, i.e. the stock, essentially, of the
23 wholly owned subsidiary, because that's where the transfer
24 occurs. Meritor's concern is that its liens will not continue
25 on the underlying property, and that the debtor, the re-

1 organized debtor may, by vote or otherwise, encumber the
2 underlying properties and make them valueless.

3 The testimony at the hearing indicated that in
4 terms of future cash flows, the value of the interests with
5 MRC on a present discounted cash flow basis was something in
6 the neighborhood of 40 million dollars, I believe. The
7 authority for the sale is sought under the Code pursuant to
8 363, which authorizes the transfer of property free and clear
9 of encumbrances if the interest that is being asserted against
10 the property, the encumbrances, are in bona fide dispute.
11 Clearly, that is the case as between the debtor and Meritor.

12 The fundamental issue that arises under 363 is
13 whether the interest of Meritor can be adequately protected
14 if the transaction that is requested takes place. Meritor has
15 been an active thorn in the reorganization hearings and pro-
16 ceedings, as is its right, and the Court certainly respects
17 the legitimate interests of any creditor to pursue aggressive-
18 ly the right of that creditor to be paid. The pursuit by
19 Meritor, in my view, exceeds all reasonable bounds, con-
20 sidering the scope of its legitimate interests and the extent
21 of the properties in which it has a lien or encumbrance.

22 The evidence that has been before the Court as
23 concerns the value of the stock of the mutual water interests,
24 as concerns the other properties owned by the debtor indicate
25 that the loan of Meritor of now approximately \$600,000.00 is

1 secured by properties having a value, under almost any
2 measure put before the Court, in excess of 30 million dollars.

3 Meritor clings to its position on the indemnifi-
4 cation argument, an argument that in the final analysis, has
5 merit truly only if Meritor prevails in the underlying liti-
6 gation, because if Meritor does not prevail, the indemnifi-
7 cation claim is simply an offset against the judgment that the
8 debtor would have against Meritor in any event. So the
9 interests of Meritor, in this Court's view, are enormously
10 protected, not simply adequately, egregiously protected.

11 As to the question of whether the transaction itself
12 is in the best interests of this debtor, the evidence is that
13 the Eagle Mountain property, standing alone, has a value of
14 2 or 3 million dollars, perhaps. This debtor does not have
15 the financial resources with which to develop the kind of
16 program that MRC contemplates, nor the contacts to do that.
17 MRC clearly does. It's kind of a joint venture partner that
18 was identified at the outset of this reorganization case to
19 be the probable linchpin of being able to effect any kind of
20 plan of reorganization. It maximizes the value of that pro-
21 perty, and does so under prospects that, it seems to the
22 Court, have a reasonably high degree of likelihood of success.
23 And the Court, therefore, will approve the MRC transfer on the
24 terms requested.

25 With respect to the transaction with PBGC, truly,

1 the only objection that focuses on that transaction are the
2 objections that have arisen in connection with confirmation,
3 not as they pertain to the merits of the transaction itself;
4 in particular, the ability of the debtor to borrow the funds.
5 The Court understands the impact on the feasibility of the
6 reorganization plan if the transaction with PBGC is not
7 consummated. The Court thinks that to argue that the debtor
8 ought not to be approved to enter into the transaction with
9 PBGC to obtain the loan because the PBGC does not have the
10 authority to make the loan borders on the specious.

11 The transaction can be approved. If the PBGC does
12 not have the authority to make the loan, that does not affect
13 the validity of the debtor being authorized in the first
14 instance to enter into the transaction. It may affect the
15 breach of the agreement -- or effect a breach of the agreement
16 between the parties, but does not affect the efficacy of the
17 agreement itself.

18 The testimony has been very clear by all who testi-
19 fied concerning the plan that the loan agreement with the PBGC
20 maximized the opportunity for this debtor to maximize the
21 litigation of the claims. And for that reason I can
22 appreciate the interest of the Jacobs group who would like to
23 forestall that occurring. The PBGC has certainly, on repeated
24 occasions, made it clear to this Court that if this debtor
25 declined in any way to prosecute vigorously that litigation,

1 the PBGC would do so at its expense on behalf of the estate.

2 I think that there is no question whatsoever that
3 the PBGC would have the authority to expend its money to pro-
4 secute in the name and for the benefit of the estate those
5 claims. And I see no reason why it would not be similarly
6 authorized to utilize its funds, on a loan basis, to see to it
7 that the recovery of those funds is possible.

8 There having been no other objection to the concept
9 of the PBGC borrowing transaction, as I recall, and certainly
10 the interests of any other parties that are involved are to be
11 maximized by the consummation of that transaction, the Court
12 will approve the PBGC borrowing transaction.

13 I might say in response to the arguments made by
14 Meritor that I do not view the MRC transaction as being one of
15 the nature dealt with in the Continental or Braniff cases
16 where they are, in and of themselves, tantamount to reorgani-
17 zation, and I do not think that the timing is inappropriate.
18 And most particularly, I think however it occurs, the position
19 of Meritor is so overwhelmingly protected, that its objections
20 simply do not merit serious consideration.

21 On the confirmation issue, I had committed when we
22 finished the evidentiary hearings on confirmation, to render
23 my decision on that issue today. I might have wished that I
24 had not been quite so optimistic, and considering the
25 significance of what is involved, I might wish that the

1 findings and conclusions that I will render were more artfully
2 prepared. But we will deal with what I have, because I
3 really don't have the time to spend to further it in any
4 event.

5 I think that in ruling on confirmation in this case,
6 one must look at some historical perspective of what the
7 debtor has had, what the creditors and the Court have been
8 faced with. Certainly it was made evident at the prior
9 hearings that there was a time in this country when this
10 debtor was one of the proud giants of American industry, and
11 now faces the focus of the attorneys and the Court in this
12 backwater of bankruptcy, if you will.

13 When the case was filed and we had hearings early
14 in the case on the motions to dismiss that were aggressively
15 pursued, the problems besetting this debtor and its estate
16 were seemingly insurmountable. The debtor arrived in this
17 court bearing the scales and scars of a bitter proxy fight,
18 an upheaval in management, transactions that are now the
19 subject of hotly contested enormous litigation concerning the
20 leveraged buyouts. Its primary assets were real estate
21 holdings in the state of California that had been the under-
22 pinnings of the steel manufacturing operations in those
23 states, and the values that might be attributable or obtain-
24 able out of those properties were burdened with enormous
25 environmental problems from the wastes and the waste waters

1 that have been left on those properties over the years.
2 Certainly this debtor did not have within its possession the
3 funds or the time necessary to deal with the extent of those
4 problems.

5 Also, the hearings have shown us that historically,
6 whether out of an excess of generosity on the part of manage-
7 ment, an excess of success on the part of the labor unions,
8 a combination of those, the company was burdened by what the
9 witnesses who have testified certainly have characterized as
10 unusually generous fringe benefit health and welfare programs
11 for the employees. The pension plans were enormously under
12 funded 200 to 250 million dollars. The PBGC, which always
13 appeared before this Court, as a governmental agency being
14 the single largest unsecured creditor in this estate, was
15 vigorously pursuing its rights in an area that is clouded by
16 tremendous uncertainties and litigation that is ongoing and
17 eating alive some of the other bankruptcy proceedings that are
18 going on in this country where there are these enormous pro-
19 blems having to do with the rights of employees and the
20 Pension Benefit Guaranty Corporation in unwinding these fringe
21 benefit programs.

22 With no money, virtually no management, with the
23 outstanding caliber of attorneys that were representing the
24 diverse interests against the estate, the prospects for re-
25 organization of this debtor were dim indeed.

1 We are now a year and a half later, not an extra-
2 ordinarily long period of time in the life of a proceeding of
3 this range and nature, and the company has presented to the
4 Court a plan to let it emerge from the rubble in which it
5 found itself when it came. A combination of factors, it
6 seems to me, have brought the debtor to this point. First,
7 there certainly have been the unstemming efforts of company
8 management, what was left, and other professionals who repre-
9 sented the company, both in pursuing the reorganization plan
10 and in pursuing the litigation.

11 Out of those efforts, the company has been able to
12 liquidate excess assets, to realize the funds necessary to
13 keep the door open and operations, such as they were, going
14 forward, to negotiate settlements which, after all, is the
15 heart and soul of a reorganization proceeding, to find the
16 joint venture partners in the form of Lusk and MRC, to find
17 the funding to solve the Metzenbaum problems with the
18 retirees, to resolve the differences with the PBGC that ranged
19 in the neighborhood of a quarter of a billion dollars, and to
20 bring a plan to the Court for confirmation.

21 I made a random note to remind myself that I had
22 not dealt with the cash collateral motion, and I will do that.

23 The fundamentals of the plan, as the Court observes
24 it, really revolves around five principal areas; the MRC
25 agreement, the Lusk agreements that pertain to the Fontana

1 properties, the rehabilitation of that properties -- those
2 properties, solving the environmental problems and marketing
3 the real estate, the realization of the values attributable
4 to the Mutual Ditch Company water stock, the aqueous
5 reclamation project, and the litigation.

6 Under that proposed business plan, the MRC project
7 will go forward, as the Court has already commented on, to use
8 the empty coal pits in the California desert as the depository
9 for the waste of Southern California, to be shipped in on the
10 railroad tracks, an exceedingly inventive and practical
11 solution to a problem that is haunting the world of what to do
12 with the waste that we generate on a daily basis. It requires
13 no money on the part of the debtor, and provides the likeli-
14 hood, to a very high degree, of a future cash flow from the
15 tippage fees and the guaranteed rentals to be provided by that
16 company.

17 The Lusk venture is more difficult because it must
18 start with studies and with the development of ways to deal
19 with the environmental problems that encumber that real
20 estate. There's ongoing litigation as to a portion of the
21 property, and whether that will be a part of this estate or
22 a part of another reorganization estate pending before this
23 Court. And the problems may not be solvable. If they are,
24 the profits are spoken of in terms of gross sales of real
25 estate in the neighborhood of 90 million dollars. There is

1 the benefit of a 5 million dollar up front loan that
2 enhances the ability of the debtor to meet its ongoing
3 business commitments, and it does relieve from this debtor's
4 estate the primary problem of dealing with the rehabilitation
5 problems of that real estate.

6 The water stock presents an opportunity for value
7 that certainly is not unknown to those of us who live in
8 Colorado, who recognize that water resources are an extremely
9 valuable right, that there is an ever increasing need in the
10 urban areas for water. The range of values of that stock have
11 been from in the neighborhood of 8 to 10 million dollars to in
12 excess of 40. And under any circumstances, perhaps enhanced
13 in the event of an earthquake, something of value to this
14 debtor.

15 The aqueous reclamation project is something that is
16 ongoing. There is 2 million dollars to be committed out of
17 the Lusk money to dealing with the -- some of the water
18 pollution problems. That has been an operation conducted by
19 the debtor, and one that can continue. And the litigation,
20 then, provides the extra, or the prospects for extra.

21 The funds from the PBGC certainly have been recog-
22 nized to be of enormous assistance in prosecuting the litiga-
23 tion. I differ with Mr. Krasnow's evaluation of what the
24 testimony has been, however. I don't think anyone has testi-
25 fied that without the PBGC funds, the debtor would be without

1 means to prosecute the litigation. It might be more costly,
2 there may be more contingent fee agreements, but I have not
3 heard, that I can recall, that without those funds, the plan
4 will fail.

5 Without those funds, and without the prosecution of
6 the litigation, the opportunity for the significant payout
7 might not arise, but the underlying business programs through
8 MRC and Lusk and the water stock and the aqueous treatment
9 programs remain and could be operated. The testimony of the
10 experts that was presented at confirmation was that, in
11 cautious terms as the experts have all come to me, that it
12 was likely, more likely than not, that the debtor could
13 succeed. Not assured, few things are in this court, but more
14 than a fair opportunity for the debtor to succeed. Not just
15 smoke, as many plans are, and not just wishful expectations
16 that if this Court would but confirm a plan, the debtor could
17 find a joint venture partner. The debtor has done that, and
18 those parties have come forward.

19 The reorganization plan itself is an interesting
20 mix, drawn, I think in an inventive fashion, to meet the
21 unique problems that this case presents. The secured credi-
22 tors are dealt with as specified, and the debtor has filed
23 an amended statement of treatment of the individual secured
24 creditors under the plan, and all of the secured creditors,
25 save Meritor, have, I believe, withdrawn objections to the

1 plan.

2 The plan was submitted to the creditors pursuant
3 to a disclosure statement approved by this Court in
4 accordance with 11 USC Section 1125, and the debtor presented
5 to the Court a tally of the ballots, and has filed with the
6 Court now the formal tally of the ballots received. That
7 tally showed that all affected classes had accepted the plan
8 except Class 4-C, which was the pension claimants, which had
9 not accepted the plan due to the ballot of PBGC against that
10 plan, and the stockholder classes had not accepted the plan.

11 At the confirmation hearing, the Court was presented
12 with the amendments to the plan. Those amendments had the
13 effect -- well, the concept of Class 4, which was the un-
14 secured creditors, was that that class, in fact, was made up
15 of three separate classes; Class 4-A providing for the payment
16 of the claims held by the trade creditors, Class 4-B providing
17 for the claims of the retirees, Class 4-C providing for the
18 claims of the pension claimants. Each class was to receive a
19 portion of the shares of the common stock of the reorganized
20 debtor, and a specified percentage of the funds expected to be
21 realized, or that might be realized out of the litigation.

22 The conflict with PBGC was resolved. As a part of
23 that, the PBGC committed to loan the 4 million dollars on a
24 revolving basis, to which the Court has made reference and
25 approved today. And further, the plan was amended so that as

1 to Class 4-A, the pro-rata share of net distributable proceeds
2 to be distributed to the claimants of that class was reduced
3 from 17 percent to 15 1/2 percent, and the number of shares of
4 common stock were reduced from 4,590,000 shares to 4,320,000.
5 The Class 4-B retiree benefits, the percentage of net distri-
6 butable proceeds to be allocated to that class was reduced
7 from 55 percent to 52 1/2 percent, and the number of shares of
8 stock to be attributable to the interests of that class
9 reduced from 14,850,000 to 14,310,000.

10 With respect to the Class 4-C claims, the PBGC, the
11 share of the distributable proceeds attributable to that class
12 was increased from 24 percent to 28 percent, and the shares of
13 stock increased from 6,480,000 to 7,755,000. The shares of
14 the preferred stock interests, those classes were zeroed out
15 so that they would not participate in the reorganized company,
16 and that amendment was presented to the Court.

17 The PBGC moved to withdraw its objections to the
18 plan and to cast its ballot in favor of the plan, and the
19 Court approved that, notwithstanding the provisions of the
20 bankruptcy rules. It is my view that negotiation is the heart
21 and soul of the reorganization process, and that it is silly
22 and fruitless to require a re-solicitation of this plan in
23 order to let the PBGC exercise its franchise to vote in favor
24 of the provisions that it had negotiated.

25 With respect to Classes 4-A and 4-B, the Court found

1 that their interests were adversely affected. It was argued
2 that the Court need not deal with that problem if the Court
3 found that the interests were not materially and adversely
4 affected, and it was my view then, and remains, that the
5 statute and the rules, in fact, say that the votes cannot be
6 counted in favor if the plan is amended and the interests are
7 adversely affected. It is not for the Court to rule or to
8 determine whether it is so insignificant that the individual
9 creditor, if given the opportunity, would not change his vote.

10 Therefore, despite what the Court truly considers to
11 be a de minimis amendment in light of the size of the claims
12 of this estate, the Court determined that the favorable vote
13 previously given by the members of Classes 4-A and 4-B could
14 not be accepted for purposes of confirmation, and determined
15 that we could only go forward if the debtor either re-
16 solicited those classes, or was prepared to confirm the plan
17 under 1129(b), and the debtor elected to do the latter.

18 1129 sets forth the standards for confirmation of a
19 plan. The Court can confirm a plan only if the following
20 requirements are met. The plan complies with the applicable
21 provisions of this title, and the Court finds that this plan
22 does that. That the proponent of the plan complies with the
23 applicable provisions of this title. It has been argued by
24 the Jacobs group that this debtor -- these plan proponents,
25 I should say -- have not complied with the applicable pro-

1 visions of this title because of the failure to re-solicit
2 votes in light of the amendments to the plan, which the Court
3 has found were adverse to the interests of Classes 4-A and
4 4-B.

5 It is argued that the Code specifies, and that the
6 rules specify that if there is an amendment, and if the Court
7 finds that the amendment is adverse, that the debtor then must
8 comply with 1125. And I simply disagree. The Code provides
9 that the debtor can amend the plan at any time up until con-
10 firmation, and that the plan, as amended, becomes the debtor's
11 plan. The Code does provide that a vote in favor of the plan
12 cannot be counted -- well, in the rule, I think is truly where
13 it is -- cannot be counted if the change is adverse, unless
14 that creditor is given the opportunity to change his vote
15 after disclosure pursuant to 1125. And Code Section 1125
16 specifies that you cannot solicit that acceptance except with
17 a disclosure statement duly approved under 1125.

18 The Jacobs group cites the opinion of my colleague,
19 Glen Clark, from Utah, which is certainly the longest opinion
20 that deals with the applicability of 1125, to the effect that
21 you must have a disclosure statement, even under circumstances
22 which, if I remember correctly in that case, there was not an
23 impaired class. I have a great deal of respect for Judge
24 Clark and for his opinions, but in that respect, he's simply
25 wrong. 1125 very clearly says that acceptance or rejection of

1 a plan may not be solicited after the commencement of the case
2 except with a disclosure statement. There is nothing in the
3 Code which says that you must solicit acceptances or
4 rejections. And there is nothing in the Code that I have ever
5 read that requires the debtor to promulgate a disclosure
6 statement in every case.

7 The Securities and Exchange Commission has been
8 known to take the position that the debtor must solicit votes
9 from the common stockholders of a public company in connection
10 with a plan that proposes the sale of the assets of that
11 company, even though the company is clearly insolvent and the
12 stockholders will not participate under the plan. A degree of
13 folly that has always baffled me. There is no reason why
14 debtors should be put to that kind of expense to go through a
15 fruitless act where it is clear that the shareholders will
16 reject the proposal in any event, and the plan very clearly
17 can be confirmed despite their rejection.

18 And so here, in my view, it was not necessary for
19 the debtor to re-solicit. The debtor could not argue that the
20 acceptances received would be binding, but the debtor could
21 confirm under 1129(b) as if the classes had not accepted and
22 were impaired.

23 I don't think that we have, and no one has argued,
24 a due process problem. The debtor's plan clearly proposed
25 that there would be distributed to the members of Classes

1 4-A, B and C, a percentage of proceeds and a number of shares
2 of common stock, or such other percentage of proceeds or
3 shares of common stock as the Court might determine necessary
4 to permit confirmation of the plan. There was notice that at
5 the confirmation hearing, there may be adjustments to the
6 distributions made, and parties had every opportunity to be
7 present at the confirmation hearing and deal with that issue.
8 And I think that for due process purposes, that notice is
9 sufficient. Therefore, I find that the debtor, the plan pro-
10 ponents, complied with the applicable provisions of Title 11.

11 1129(a)(3) requires that the plan has been proposed
12 in good faith, and not by any means forbidden by law. To the
13 extent that the provisions stating that it has been proposed
14 not by any means forbidden by law encompasses the problems
15 just alluded to concerning the solicitation of acceptances, I
16 find the same. Further, the Court is entitled to presume good
17 faith in the absence of the showing of bad faith, and there
18 has not been any assertion, even by the most vigorous of the
19 dissenters, that the plan proponents have proposed and pro-
20 ceeded with the plan other than in the best of good faith.

21 The Court finds that there is nothing in the
22 evidence to indicate that the debtor or proponents propose to
23 make any payments to any person issuing securities or
24 acquiring property under the plan, or in connection with the
25 plan which is not -- which payments have not been approved by,

1 or which are not subject to the approval of the Court as
2 reasonable. The proponents have disclosed the identity and
3 affiliation of the individuals proposed to serve after con-
4 firmation of the plan as directors and officers of the
5 debtor, and as affiliates of the viva trust for the benefit
6 of the retirees, and of the successor to the debtor, which is
7 the reorganized entity. And the appointment and continuance
8 of those persons is consistent with the interests of the
9 creditors and the equity security holders and with public
10 policy, and there has been disclosed the identity of any
11 insiders that will be employed or retained by the reorganized
12 debtor, and the nature of the compensation for those persons.
13 There is no governmental regulatory commission which governs
14 the rates charged by this debtor in the general operation of
15 its affairs.

16 With respect to 1129(a)(7) -- excuse me -- (a)(8),
17 passing (a)(7) for the moment; with respect to each class of
18 claim or interest, each class has not accepted the plan, and
19 some of those classes are impaired, which brings into play the
20 confirmation standards of 1129(b). With respect to
21 1129(a)(7), the claims specified, the type specified therein,
22 have been provided for to be paid on the effective date of the
23 plan, or the evidence disclosed that arrangements have been
24 made with attorneys and professionals and others to pay those
25 on satisfactory terms.

1 With respect to the tax claims, 507(a)(7), with all
2 due respect to the Congress inability to re-number, those
3 claims will receive, in the agreed cases, deferred cash pay-
4 ments over a period not exceeding six years equal to the
5 allowed amount of the claim.

6 At least one class of claims that is impaired has
7 accepted the plan; that being Class 4-C. The Court has found
8 already that confirmation of this plan is not likely to be
9 followed by the liquidation or the need for further financial
10 reorganization, and that the fees payable under Section 1930
11 have been paid, or will be paid on the effective date.

12 The primary focus, and the objections to confirma-
13 tion is on the treatment of Class 4-B, at least it was at the
14 confirmation hearing -- today we have heard from the voices of
15 4-A -- and on the application from those objecting on the
16 retiree group who seem to be noticeably absent today, the
17 arguments that the plan failed to meet the requirements of
18 1129(a)(7) and 1129(b)(2). Those arguments require the Court
19 to focus on the makeup of those classes, the claims repre-
20 sented in those classes, the assets that are to be dealt with.

21 The Class 4-B claimants is made up of the former
22 Kaiser employees who were participants in the medical benefit
23 plans and other fringe benefit plans that had been implemented
24 by Kaiser for the benefit of its employees. The testimony of
25 the expert, Mr. Spring, indicated that the benefits provided

1 by Kaiser for its employees were extremely generous, perhaps
2 exceedingly so. There is an inherent difficulty in this type
3 of claim as opposed to the normal creditor claim. It was
4 expressed very well by Mr. Dankner (phonetic), who testified
5 that programs of this nature are expressed to the employees,
6 the claimants, in terms of benefits, not in terms of dollars.
7 It's expressed in the form of future promises, not in the form
8 of commitments to pay. The employees were offered continuing
9 medical, health, welfare, life, disability benefits. They
10 were not promised additional pay or fixed dollars.

11 The question then is what claims do these employees
12 have, and how does the Court estimate or determine those
13 claims. The general consensus from everyone who testified was
14 that it is virtually impossible to quantify the claims. The
15 testimony on behalf of the objectors, Mr. Pritchett and Mr.
16 Pratt, was that they could not, in filling out their claim
17 forms, put a dollar figure to their claims -- the claimants
18 themselves.

19 There are a variety of factors that feed into this
20 problem. One question is exactly what is the claim. To the
21 bankruptcy lawyers, we see -- and to the Court -- we see
22 claims by creditors, claims for services rendered, claims for
23 products purchased, claims on loans, dollar claims. Mr.
24 Quinn, counsel for Mr. Pritchett, appeared to argue that it
25 is -- that the claim should be measured by the employee's

1 present cost of obtaining benefits. But the Court wonders
2 whether that is a relevant measure.

3 Again, we are speaking of claims for breach of a
4 promise to provide a benefit in the future. What of the
5 employee who does not need that benefit, what of the employee
6 whose health is such that he has de minimis medical claims --
7 blessed is he -- what claim does he have against this debtor's
8 estate? He's not paid any doctor bills. He may not have to
9 pay any doctor bills of any significance at any time in the
10 future. And if he does not, what has been his loss, and how
11 do you measure the likelihood of that? What of the employee
12 who has gone back to work for another entity which has
13 provided him with as good or better coverage? What are the
14 claims of the employee whose wife is employed and there are
15 family benefits that are as good or better from her employer?
16 What are the claims of the employee who has partial coverage
17 elsewhere?

18 It truly seems impossible to be able to quantify
19 the claims of individual retirees under those circumstances.
20 Certainly the problem is fact driven. Mr. Pritchett commenced
21 a class action on behalf of the retirees for the purpose of
22 determining their claims, which this Court dismissed, in
23 large part because it was procedurally improvident, and in
24 large part, because there were not, it seemed to me, these
25 overriding common issues, because you must deal with each

1 retiree. And dealing with that claims process could take
2 years, and an enormous cost to the retirees if they must come
3 one by one and prove their claim, particularly in light of
4 the acknowledgements by Mr. Pritchett and Mr. Pratt that there
5 was no way that they could estimate what their claims were.

6 The evidence that was introduced described the claim
7 forms that were developed by Kaiser, the retiree subcommittee,
8 through the help of the experts, and that were sent out to the
9 employees. Those claim forms, and as a part of those,
10 estimates were made of the cost of coverage premised on the
11 insurance -- kind of insurance coverage the particular retiree
12 had, and the cost to Kaiser of providing that coverage at that
13 time, taking into account the risks of future price increases,
14 the cost of money, et cetera. And those claims estimates were
15 sent out to the employees in an effort to give them some guide
16 as to the range of figures that might be appropriate.

17 Pursuant to the report filed by Coopers and Lybrand, adding up
18 those claims totalled some 316 million dollars.

19 But that figure, as the experts acknowledged, was
20 misleading because of the premise on the starting fixed cost
21 of coverage and the fact that it was an explicit figure
22 dealing with each individual claimant without taking into
23 regard the variables that could attach to the claims. It
24 truly was not an effort to determine claims; it was a very
25 significant effort nonetheless.

1 With the advent of the Metzenbaum legislation
2 applicable here, the focus changed, perhaps for the better,
3 at least in some part. The Metzenbaum focus is not on claims.
4 The Metzenbaum focus is on benefits. The debtor is not
5 called upon to pay the claims of retirees, but is admonished
6 to provide the benefits. It's easy to see some of the wisdom
7 of the Metzenbaum legislation superimposed on the needs of
8 LTD where there is a continuous revolving pool of employees;
9 difficult or harder to superimpose Metzenbaum on a Kaiser
10 Steel, where the employee group has long since been
11 terminated.

12 But nonetheless, the requirements of the interim
13 Metzenbaum legislation were applicable, and put the focus on
14 the benefits. And, thus, here the focus was on the cost of
15 the benefits, and the study done by the professionals started
16 with the basic analysis that was sent out to the employees.
17 The testimony was that the experts who worked in this area,
18 who described it as a truly evolving area, they utilized their
19 judgment to fix trend rates of rising health care costs, to
20 the extent anyone can deal with that crystal ball, future
21 interest rates to determine present values, mortality tables
22 to figure out how long the employees will live.

23 Acknowledgement was made that it was an extremely
24 difficult group to work with because it is a fixed aging
25 group, not a revolving pool. And, therefore, the risks of

1 higher health coverage are enhanced. It makes it a group
2 that is not attractive to an insurer, to insure on a group
3 basis. And the experts could, but at best, estimate the
4 range of the benefit costs 350 to 500 million dollars. Then
5 the experts all agreed that this was a reasonable range, but
6 it is not a determination of great precision.

7 Dealing with valuation ranges of that nature is
8 not the inherent stuff of which confirmation decisions are
9 rendered. There are other factors that come into play in
10 terms of viewing confirmation. Pursuant to the Metzenbaum
11 legislation when it was initiated, the company was obligated
12 to continue to apply benefits. But the company had no funds.
13 Under that Metzenbaum bill, it was provided that if the
14 company was converted to Chapter 7, the right to benefits
15 would terminate. So the retirees did not want to see the case
16 converted, but were anxious to see that the Metzenbaum
17 requirements were met. And that was done via the funding
18 provided by GATX whereby the debtor borrowed 7 million dollars
19 and used that to fund the settlement, to establish what the
20 parties have referred to as the viva trust.

21 The purpose of that trust was to take the funds
22 provided from the settlement, and to provide the maximum level
23 of health care benefits to the largest group of people for the
24 longest period of time, estimated to be two years. Pursuant
25 to the so-called Metzenbaum legislation as ultimately adopted,

1 the claims of the employees for benefits pending the Chapter
2 11 are to be administrative claims, and those claims were
3 settled pursuant to the viva settlement.

4 But in evaluating the impact of 1129(a)(7), the
5 fact remains that if the case is converted, the employees
6 have no ongoing right to benefits. And I must confess I don't
7 know what to make of the language, and what the impact is on
8 the employees who have received interim benefits at a priority
9 to the claims of other creditors of the estate once the estate
10 is converted, and what their status is, and on what basis they
11 are entitled to retain those payments as opposed to the rights
12 and interests of all other creditors of the estate. As usual,
13 special legislation weaves very special kinds of problems,
14 and there will come an unfortunate time when some court will
15 have to unwind that kind of problem, and I earnestly hope it
16 is not this one.

17 If the case is converted, even at this stage and
18 even separate and apart from this problem of what do you do
19 with the interim administrative claims, the Court is then back
20 to the problem of trying to determine what the claims are. In
21 the final analysis, as I view the matter, the employees were
22 promised benefits to be paid for by the employer. It was
23 recognized that the debtor would dedicate those funds that
24 were necessary to provide those benefits. And, thus, it seems
25 to me that it is reasonable to estimate the employee claims

1 based on the funds, the dollar amount that the company had,
2 in effect, agreed to dedicate to provide the benefits. And
3 the experts say that amount is 350 to 500 million dollars.
4 And the Court accepts that estimate and believes there's
5 reasonable basis to do so.

6 There are other claims in this estate. There are
7 claims of the trade creditors. Mr. Stoddard estimated that
8 in the final analysis, those claims will fall in the range of
9 93 million to 175 million dollars. And there are the pension
10 claims, including PBGC, in the range of 200 to 250 million
11 dollars.

12 In looking to the standards for confirmation under
13 1129(a)(7) and 1129(b), the Court must also consider the
14 assets and their values. I've already made mention of the
15 assets, the fundamental assets that will underpin the re-
16 organized estate. Mr. Stoddard generally testified as to
17 values. Some values are reasonably certain to be present.
18 Mr. Stoddard's testimony was that the stock in the mutual
19 water company might be maximized in value of 28 million
20 dollars. It appears that once again the debtor's estimates
21 may be low, and perhaps bids on that ought to be brought to
22 this Court for an auction where we have had some success in
23 extracting higher values. But those values are there.

24 There is the MRC contract with a value, a present
25 value of future cash flows estimated to be 30 million dollars,

1 some speculation there, but some reasonable degree of
2 certainty. The Lusk contract, it seems to the Court, is
3 highly speculative, highly volatile because of the significant
4 environmental problems that may or may not be solved. But the
5 contract offers a reasonable basis for the solution of those
6 problems; one that is not present in a Chapter 7 case. There
7 is no evidence to controvert Mr. Stoddard's testimony that
8 much of the motivation underpinning the Lusk contract, much of
9 the values to be derived there come from the commitment of
10 Kaiser to remain, to be actively involved with the environ-
11 mental agencies in assisting with the efforts with those
12 properties. And there are a variety of returns possible in
13 the reorganization case; the 5 million dollar loan is the
14 benefit up front, the opportunity to cover the cost of the
15 environmental cleanup, the profits to be derived from the
16 land, a gross amount of maybe 90 million dollars.

17 If this case were premised in its entirety on the
18 Lusk contract, as many reorganization cases are, the Court
19 would be skeptical, indeed, of the prospects of feasibility.
20 But it is, in large part, an adjunct; it is a way to deal
21 with the environmental problems, to have the funding for those
22 problems, with the chance to maximize the value of the pro-
23 perties. Absent the Lusk contract, the proposition is to try
24 to find someone to buy those properties at some price, and
25 take on the burden of the environmental problems. And the

1 values that you can attribute to property under those circum-
2 stances is very difficult to arrive at.

3 There are values attributable to the ongoing water
4 treatment projects, and there is the litigation. Smaller than
5 an elephant; bigger than a flea. Claims in the neighborhood
6 of 300 million dollars. One thing is, I think, certain; even
7 with values of this nature, maximizing the dollars attri-
8 butable to the litigation, maximizing the MRC values, the
9 Lusk contracts, all of the various bits and pieces, the
10 company truly is, as Mr. Stoddard testified, hopelessly
11 insolvent. And, therefore, there is no basis for any partici-
12 pation in the reorganized company by the former shareholders
13 of this debtor.

14 By contrast to the potential values to be derived
15 in the reorganization, the Court must look to the values if
16 the company were to convert to Chapter 7. The debtor's
17 estimate of values of the assets in a Chapter 7 were that the
18 assets might be worth 20 to 30 million dollars. An estimate
19 of 10 million dollars or less from the water stock if the
20 company was pressed to sell that, an estimate of zero from
21 Lusk because of the fact that Kaiser would not be involved in
22 the ongoing cleanup, and the values, if any, of the Fontana
23 properties would be eaten up by the reclamation costs that
24 would extend over a good many years before those problems
25 were solved. And the MRC values, to the extent that they are

1 there to a reorganized company, are something else again if
2 this debtor were put to the point of selling that stock to
3 a third party with the resultant discounts.

4 The litigation, the company estimates, is zero to
5 the Chapter 7. The Court is not so sanguine that a trustee
6 in a Chapter 7 would realize no value out of this litigation,
7 presuming there is any value in it anyway. But I don't
8 question the judgment that a trustee's role is much different
9 from that of a debtor, and that the ability of a trustee to
10 settle or litigate is reduced. The opportunities to stay
11 with long-term litigation at high cost to the estate are very
12 curtailed. The interests of a Chapter 7 trustee ought to be
13 to administer the estate quickly and efficiently, and distri-
14 bute money. The interests really are not to litigate on a
15 long-term committed basis, and any defendants know that. And
16 that knowledge wreaks great pressures in settlements.

17 I don't think it's necessary for me to fix specific
18 values. What is clear to me is that the realizable value of
19 the assets in Chapter 7 is significantly lower than the values
20 to the reorganized company. For confirmation purposes, Mr.
21 Pritchett has argued that the plan fails to meet the require-
22 ments of 1129(a)(7), which requires that for every class of
23 creditors who are impaired, each creditor in that class has
24 either accepted the plan or will receive, or retain under the
25 plan on account of such claim, property of a value, as of the

1 effective date of the plan, not less than the amount that such
2 holder would so receive or retain if the debtor were
3 liquidated under Chapter 7 of this title.

4 Mr. Pritchett really made two kinds of arguments.
5 One argument was that the values to be realized upon liqui-
6 dation would be greater than those estimated by the debtor.
7 And I think that may be true. The other argument actually had
8 to facets to it. One argument was that the retirees did not
9 receive anything of benefit under the plan -- anything. The
10 retiree class is set up under 4-B so that distributions are
11 not made to the retirees. The plan is set up so that the
12 retirees receive what Senator Metzenbaum has mandated retirees
13 are supposed to receive, which is to say benefits. Those
14 benefits will be provided by the expanded viva trust, in which
15 all retirees may participate. They are direct beneficiaries
16 of that trust on a dollar for dollar basis. Every dollar of
17 value that goes into that trust goes to the benefit of those
18 retirees, and it is specious to argue that the members of that
19 class do not, because they are participants in a trust,
20 receive anything of value under the plan.

21 The other inherent part of Mr. Pritchett's argument,
22 as I understood it, is that the claims of the retirees,
23 estimated as they were for reorganization purposes, did not
24 reflect the true claims that they would have in a Chapter 7,
25 which would be significantly greater. And, therefore, in a

1 Chapter 7, as a class, they would command a right to a larger
2 share of the pot. And to that, I simply must return to my
3 findings that it is reasonable to determine those claims based
4 on the dollar amounts that the company had inherently
5 committed to provide for those retirees. That was the money
6 that the company was going to pay out to them or for their
7 benefit, if you will, and that is a reasonable measure of the
8 claims of that class, to wit, 350 to 500 million dollars.

9 Therefore, I cannot accept the argument that in
10 Chapter 7, the aggregate claims of that class would be signi-
11 ficantly different from those estimated by the experts for
12 purposes of confirmation.

13 It was argued by the counsel for Mr. Pritchett that
14 there was an unidentified retiree who had not voted in favor
15 of the plan, who lived in a remote area, who would not be able
16 to participate in a program for continued coverage under the
17 viva trust, and who, therefore, was being disenfranchised and
18 would not receive as much under the plan as he would receive
19 in a Chapter 7. But it is clear that even that individual who
20 might not be able to afford to make the cash contributions
21 necessary to participate in the viva trust, would nonetheless
22 have the benefit of the enhanced prescriptive drug program and
23 of the life insurance coverage, and of access to the other
24 benefits that can be provided by the viva trust with the
25 funding provided under the plan.

1 Those rights, as beneficiaries of that trust, have
2 obvious values. The Court also cannot ignore the fact that
3 the beneficiaries of the viva trust already enjoy 7 million
4 dollars, a benefit that was not available to other creditors
5 and was not available to the retirees in Chapter 7. The
6 Court must also recognize, I think, that if the case were
7 converted, the time and expense to be involved in determining
8 the claims of the retirees, the administrative costs attri-
9 butable to the cleanup problems, 20 to 40 million dollars at
10 Fontana alone, the other administrative or priority claims
11 for the PBGC and for taxes, the general uncertainty as to what
12 the claims of the retirees ought to be or how they ought to be
13 determined, the limited amount of dollars that could be
14 realized from the assets, certainly a reduced amount in
15 Chapter 7 from the reorganization case, the 7 million already
16 in the viva trust and the continued benefits to be provided
17 to the retirees, leads the Court, inescapably, to the con-
18 clusion that they are significantly better off under the
19 reorganization than they would be in Chapter 7.

20 The claims of the unsecured creditors in Class 4-A
21 are not quite as enhanced as the retirees; they are not quite
22 the same problems. We know what claims are for the business
23 creditors; they're measured in dollars and cents, can be
24 determined. They have not had the benefit of a viva trust
25 during the pendency of this Chapter 11. But nevertheless,

1 their claims are not going to escalate, as Mr. Pritchett
2 would argue that the claims of the retiree class might in a
3 Chapter 7. And since their claims have remained relatively
4 the same, and since the Court is clearly satisfied that the
5 value of the assets in Chapter 11 in the reorganized debtor
6 exceed, significantly, the values that could be realized in
7 Chapter 7, the interests of those creditors, similarly, they
8 will receive more by reason of their claims through the re-
9 organization process than they would receive if the case were
10 converted.

11 Mr. Pritchett has argued that the plan cannot be
12 confirmed under 1129(b)(2). That section provides that the
13 Court can confirm the plan even though a class has not voted
14 in favor of the plan, provided the plan does not discriminate
15 unfairly and is fair and equitable with respect to the
16 impaired interests.

17 Fair and equitable is a term of art in reorganiza-
18 tion proceedings. It is incorporated in the Code as to these
19 unsecured creditors in 1129(b)(2)(C), and the Court can find
20 that the class -- that the plan is fair and equitable if the
21 holder of any claim or interest that is junior to the claims
22 of such class will not receive or retain under the plan on
23 account of such junior claim or interest any property. The
24 classic test of Consolidated Rock. And that is the effect of
25 the amended plan.

1 The shareholder classes do not participate. The
2 classes junior to those of Classes 4-A, B and C take nothing
3 under the plan. And, therefore, as to the Classes 4-A, B and
4 C, the plan is fair and equitable. The real question as it
5 pertains to Classes 4-A and 4-B is whether the plan unfairly
6 discriminates. As to the claims in 4-B, the Court returns
7 once again to its findings that the range of retiree benefits
8 and those values as set forth in 4-B is reasonable, and that
9 it is reasonable to estimate their benefits in the range of
10 350 to 500 million.

11 There's been no suggestion that the range of claims
12 for the classes in 4-A and 4-C are unreasonable. Thus, the
13 debt range on a high and low basis can be examined, and the
14 interests of the Class 4-B can be examined under a best case
15 basis. If the claims of the retirees were estimated at 500
16 million dollars, the unsecured creditors at 93 million, and
17 the PBGC claims at 200 million, the retirees would have 63
18 percent of the debt versus 12 percent for the unsecured and
19 225 percent for PBGC. On a worst case basis, at least as
20 pertains to the retirees, where their claims were allowed at
21 350 million, the unsecureds at 175 and the PBGC at 250, the
22 retirees would have 45 percent, the unsecured 23 and the PBGC
23 32. The average of the claims, if averages mean anything
24 under these circumstances, for the retirees is 54 percent.
25 Under the plan, they will receive 54 percent in stock and

1 52 1/2 percent from the litigation.

2 The retirees also get the 7 million already in the
3 viva trust. They get voting control of the ongoing company,
4 which in many respects, is even more significant here because
5 that voting control will be held by a single unified trust and
6 voted as a block, as opposed to splintering it among the hands
7 of many in a given class. They receive priority funding of
8 3 1/2 million dollars a year out of litigation proceeds. They
9 receive the benefits of the funding from the PBGC to fund the
10 ongoing litigation. And perhaps most importantly of all, they
11 receive the benefit of speed in resolving the basis upon which
12 their interests can be provided for. There is no evidence
13 before the Court of any reasonable basis to estimate a higher
14 claim for the retirees.

15 The same analysis can be made from and for the
16 interests of the unsecured creditors. Certainly their repre-
17 sentative testified that as to 1129(a)(7), the representatives
18 on the creditors committee of the trade creditors were con-
19 vinced that they would receive nothing in Chapter 7, and that
20 the allocation of the interests among Classes 4-A, 4-B and
21 4-C had been the result of informed, well represented,
22 diligent negotiations carried on over a number of months to
23 arrive at the final allocations. Those parties, representa-
24 tives of 4-A, 4-B and 4-C, were all satisfied, and so testi-
25 fied and represented to the Court that the plan represented a

1 fair balancing, that the plan is fair and equitable among the
2 interests, and that the plan does not unreasonably dis-
3 criminate in allocating the interests of the reorganized
4 company. And the Court believes that is true; that the plan
5 strikes a balance which is not unreasonable, and which clearly
6 does not discriminate unfairly.

7 Meritor had its objection. The plan provides that
8 Meritor will retain its interests under the plan. An argument
9 was made that the plan does not adequately provide for its
10 implementation because it does not specify the manner and
11 means in which Meritor is to have a continuing claim to cash
12 and cash collateral. And I don't think that there is anything
13 under the Code that requires that that detail be specified
14 under the plan. The debtor is dedicated under the plan to
15 provide for the continuing interests. On one point, Mr. Pratt
16 and I see truly eye to eye; Meritor receives the indubitable
17 equivalent under 1129(b), and the plan ought to be confirmed
18 with respect to those interests.

19 The Court, therefore, concludes, based on those
20 findings, that the debtor's plan, the proponents' plan, since
21 it is a multiple proponent, meets the requirements of 1129 of
22 Title 11 of the United States Code, and, therefore, will be
23 confirmed.

24 Let me back up. The last matter that the --
25 MR. CHRISTENSEN; Excuse me, Judge, there are two

1 matters. You may have thought you covered it, but the Lusk
2 loan, you just did not mention in your statement.

3 THE COURT: I signed that order, Mr. Christensen.

4 MR. CHRISTENSEN: That was for the joint venture. The
5 loan came along separately.

6 THE COURT: I'm sorry, all right.

7 MR. CHRISTENSEN: Because it also primed the Meritor --

8 THE COURT: Well, as to the Lusk loan, I will incorporate
9 my findings as to the MRC transaction, insofar as the
10 interests of Meritor are concerned, to be adequately pro-
11 tected. As to the requirements for the Lusk loan, I have made
12 mention of the 5 million dollars to be provided by Lusk. Mr.
13 Stoddard testified today that those funds are needed to pro-
14 vide the 2 million dollars to deal with the water pollution
15 problems on a current basis, and to provide working capital.
16 There is no question that this debtor has, throughout this
17 proceeding, been strapped for cash, and that that cash is
18 necessary, and that that loan is reasonable under the terms
19 provided, and will be approved.

20 With respect to the cash collateral, the evidence
21 before the Court indicated that the debtor holds a promissory
22 note for 3 1/2 million dollars from IMAC, and cash in the
23 amount of roughly 900,000, which it proposes to use. That
24 cash will be used, in part, to provide for the claim of GATX
25 of \$150,000.00. Out of those funds, there will be escrowed

1 \$400,000.00 to provide for the principal amount of the Meritor
2 claim. And the debtor would propose to utilize the balance of
3 the cash collateral for working capital or other necessary
4 purposes, and to provide adequate protection to those who
5 claim interests in that, in particular, Mr. Appel's clients,
6 by letting their disputed lien attach to the value of the
7 promissory note.

8 It has been argued that there has been no values
9 established for that note. The testimony was presented by
10 Mr. Bradford. He is familiar with IMAC because of the fact
11 that he sat on the board. He has seen the cash flows, the
12 financial statements of that company. He valued the under-
13 lying collateral for the note, the machinery and equipment,
14 at some 12 million dollars based on its book value, which is
15 of little meaning in valuing machinery and equipment, an
16 appraisal which the Court has not seen, but finally, on a
17 realization of the cash flows and profits derived by IMAC in
18 the continued operations of its business utilizing that
19 machinery and equipment for the manufacture of steel drums
20 and others for the production of plastic mouldings.

21 The company has had ongoing dealings with IMAC in
22 selling back to it preferred stock and other notes, liqui-
23 dating a portion of the debts and obligations between the two
24 companies. The note is for 3 1/2 million dollars. The
25 interests of Mr. Appel's clients are contested and consist,

1 if I understand it correctly, of claims for attorneys fees,
2 claims that are in dispute and ultimately will be resolved
3 either by negotiations or by hearings before this Court to
4 determine the reasonableness of fees and the amount to be
5 allowed as claims. Something that lends itself to virtually
6 a degree of imprecision commensurate with that that pertains
7 to retiree claims, figures that sometimes are as hard to fix
8 or determine. Claims of a size and significance that are
9 something other than claims for monies advanced or for pro-
10 ducts sold, where the figures are rather hard and fast.

11 Given the nature of those claims and the offer that
12 those claims will be secured, to the extent they exist, by
13 the outstanding note which comes due in a year, I believe
14 offers those claimants adequate protection for that disputed
15 claim. The interests of Meritor are otherwise adequately
16 protected.

17 I certainly concur that the prior arrangements made
18 to permit the sale of the underlying notes which allowed the
19 claims of Mr. Appel's clients to attach the proceeds did not
20 serve to commit those cash proceeds irrevocably and forever
21 for the payment of those claims. Those interests are subject
22 to being dealt with under 363 of the Code, and to allow the
23 cash collateral to be used for the debtor's operations with
24 those interests to be adequately protected by the notes.

25 Have we now covered all outstanding matters that

1 are before the Court today?

2 MR. CHRISTENSEN: That covers everything before the
3 Court. I'd like leave not later than, like, Tuesday or
4 Wednesday, and hopefully Monday, just some other parties
5 haven't seen it, to submit a form of confirmation order, not
6 dealing so much with these facts, but as you may recall, the
7 plan itself requires that the order contain certain provisions
8 with respect to the prescription drug plan and just other
9 technical things. So we'd like to submit a form of that
10 order to Your Honor.

11 THE COURT: That's fine. The formal order that was
12 submitted on the MRC transaction --

13 MR. LEWIS: It was submitted, and I would like to submit
14 another order, an amended order --

15 THE COURT: All right.

16 MR. LEWIS: Just in the legal description.

17 THE COURT; That's fine. I was just going to say, I have
18 it sitting on my desk to look at.

19 MR. LEWIS: We'll get that up to you first thing Monday.

20 THE COURT: All right. Mr. Feuerstein?

21 MR. FEUERSTEIN: Your Honor, I would also submit a pro-
22 posed form of order in connection with USWA and retiree
23 subcommittee settlement on the cash collateral.

24 THE COURT; All right, that's fine. That can be done.
25 If you will submit, then, the form of order for confirmation,

1 Mr. Christensen, reflecting that it is entered based on the
2 findings and conclusions rendered by the Court on the record,
3 then that order will enter.

4 MR. CHRISTENSEN: Thank you, Your Honor.

5 THE COURT: There being nothing further, we'll be in
6 recess.

7 (End of findings of fact and conclusions of law.)
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14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.
16

17 September 26, 1988


18 J. Ford & Associates, Inc.
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