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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In the Matter of:

WASHINGTON MUTUAL, INC., et al.,
Debtors.

Case No. 08-12229 (MFW)
(Jointly Administered)

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NANTAHALA CAPITAL PARTNERS, LP,
BLACKWELL CAPITAL PARTNERS, LLC,
AXICON PARTNERS, LLC,
BRENNUS FUND LIMITED,
COSTA BRAVA PARTNERSHIP III, LLP,
SONTERRA CAPITAL MASTER FUND, LTD.

Plaintiffs,

Adv. Proc. 10-50911 (MFW)

v.

WASHINGTON MUTUAL, INC.,
MICHAEL MURPHY,
WILLIAM REED, JR.
THOMAS LEPPERT,
STEPHEN CHAZEN,
STEPHEN FRANK,
REGINA MONTOYA,
PHILLIP MATTEWS,
ORIN SMITH,
MARGARET OSMER MCQUADE,
JAMES STEVER,
FRANCIS BAIER,
DAVID BONDERMAN,
CHARLES LILLIS

Defendants.

- - - - - x

1 - - - - -x
MICHAEL WILLINGHAM and ESOPUS
2 CREEK VALUE LP,
3 Plaintiffs,
4 v. Adv. Proc. 10-51297 (MFW)
5 WASHINGTON MUTUAL, INC.,
6 Defendant.
7 - - - - -x
8 - - - - -x
9 WASHINGTON MUTUAL, INC. and
10 WMI INVESTMENT CORP.
11 Plaintiffs,
12 v. Adv. Proc. 10-53420 (MFW)
13 PETER J. AND CANDANCE R. ZAK
14 LIVING TRUST OF 2001 U/D/O
15 AUGUST 31, 2001, ET AL.
16 Defendant.
17 - - - - -x
18 - - - - -x
19 OFFICIAL COMMITTEE OF UNSECURED
20 CREDITORS OF WASHINGTON MUTUAL,
21 INC., ET AL., ON BEHALF OF CHAPTER
22 11 ESTATES OF WASHINGTON MUTUAL,
23 INC., ET AL.
24 Plaintiff,
25 v. Adv. Proc. 10-53149 (MFW)
26 ALEXANDER SASHA KIPKALOV,
27 - - - - -x
28 AMY DRIVER ANDERSON, Adv. Proc. 10-53135 (MFW)
29 - - - - -x
30 ANTHONY BOZZUTI, Adv. Proc. 10-53131 (MFW)
31 - - - - -x
32 CHANDAN SHARMA, Adv. Proc. 10-53147 (MFW)
33 - - - - -x
34 DAVID M. SCHWARTZ, Adv. Proc. 10-53144 (MFW)
35 - - - - -x
36 EDWARD F. BACH, Adv. Proc. 10-53132 (MFW)
37 - - - - -x
38 GREGORY H. WOOD, Adv. Proc. 10-53137 (MFW)
39 - - - - -x

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2	2	- - - - -x	
		HENRY J. BERENS,	Adv. Proc. 10-53134 (MFW)
3	3	- - - - -x	
		HOWARD MATTHEWS,	Adv. Proc. 10-53134 (MFW)
4	4	- - - - -x	
		JAMES CORCORAN,	Adv. Proc. 10-53134 (MFW)
5	5	- - - - -x	
		JIANGUO ZHONG,	Adv. Proc. 10-53148 (MFW)
6	6	- - - - -x	
		JOHN M. BROWNING,	Adv. Proc. 10-53156 (MFW)
7	7	- - - - -x	
		JONI WYCKOFF,	Adv. Proc. 10-53151 (MFW)
8	8	- - - - -x	
		KEITH O. FUKUI,	Adv. Proc. 10-53139 (MFW)
9	9	- - - - -x	
		MARC MALONE,	Adv. Proc. 10-53152 (MFW)
10	10	- - - - -x	
		MATTHEW WAJNER,	Adv. Proc. 10-53136 (MFW)
11	11	- - - - -x	
		MICHAEL R. ZARRO,	Adv. Proc. 10-53143 (MFW)
12	12	- - - - -x	
		NIRMAL BAID,	Adv. Proc. 10-53145 (MFW)
13	13	- - - - -x	
		PETER GERRALD,	Adv. Proc. 10-53138 (MFW)
14	14	- - - - -x	
		PETER HELLER,	Adv. Proc. 10-53146 (MFW)
15	15	- - - - -x	
		RACHEL M. MILEUR a/k/a	Adv. Proc. 10-53133 (MFW)
16	16	RACHELLE M. MILEUR,	
		- - - - -x	
17	17	RICHARD BLUNCK,	Adv. Proc. 10-53157 (MFW)
		- - - - -x	
18	18	ROBERT C. HILL,	Adv. Proc. 10-53153 (MFW)
		- - - - -x	
19	19	STEPHEN E. WHITTAKER,	Adv. Proc. 10-53150 (MFW)
		- - - - -x	
20	20	STEVEN HERUTY,	Adv. Proc. 10-53141 (MFW)
		- - - - -x	
21	21	THOMAS E. MORGAN,	Adv. Proc. 10-53154 (MFW)
		- - - - -x	
22	22	WILLIAM K. GLASBY,	Adv. Proc. 10-53142 (MFW)
23	23	Defendants.	
24	24	- - - - -x	
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United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

July 15, 2011

9:45 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

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HEARING re Debtors' Fifth Omnibus (Substantive) Objection to
Claims [Docket No. 1233; filed 6/26/09]

HEARING re Debtors' Sixth Omnibus (Substantive) Objection to
Claims [Docket No. 1234; filed 6/26/09]

HEARING re Debtors' Motion Pursuant to Sections 105 and 363 of
the Bankruptcy Code for Order Approving Procedures for the Sale
of Certain Intellectual Property [Docket No. 1701; filed
10/7/09]

HEARING re Debtors' Twenty-Third Omnibus (Substantive)
Objection to Claims (Claim Nos. 2463, 2470, 2500, and 2505)
[Docket No. 2443; filed 3/1/10]

HEARING re Debtors' Objection to Proof of Claim filed by the
Oregon Department of Revenue (Claim No. 3693) [Docket No. 3196;
filed 4/14/10]

HEARING re Debtors' Objection to Proof of Claim Filed by AT&T
Corp. (Claim No. 3725) [Docket No. 3691; filed 5/10/10]

HEARING re Debtors' Forty-Third Omnibus (Substantive) Objection
to Claims [Docket No. 4749; filed 6/16/10]

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HEARING re Debtors' Forty-Fourth Omnibus (Substantive)
Objection to Claims [Docket No. 4750; filed 6/16/10]

HEARING re Debtors' Forty-Sixth Omnibus (Non-Substantive)
Objection to Claims [Docket No. 5117; filed 7/21/10]

HEARING re Debtors' Fifty-Fifth Omnibus (Substantive) Objection
to Claims [Docket No. 5616; filed 10/17/10]

HEARING re Debtors' Fifty-Sixth Omnibus (Substantive) Objection
to Claims [Docket No. 5618; filed 10/18/10]

HEARING re Michael Willingham Esopus Creek Value, LP v.
Washington Mutual, Inc. et al. (Adv. Pro. No. 10-51297)

HEARING re Nantahala Capital Partners, LP, Blackwell Capital
Partners, LLC, Axicon Partners, LLC, Brennus Fund Limited,
Costa Brava Partnership III, LLP, and Sonterra Capital Master
Fund, Ltd. v. Washington Mutual, Inc., Michael Murphy,
William Reed, Jr., Thomas Leppert, Stephen Chazen, Stephen
Frank, Regina Montoya, Phillip Mattews, Orin Smith, Margaret
Osmer McQuade, James Stever, Francis Baier, David Bonderman and
Charles Lillis (Adversary Proceeding No. 10-50911)

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Alexander Sasha
Kipkalov re: Adversary Proceeding No. 10-53149.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Amy Driver
Anderson re: Adversary Proceeding No. 10-53135.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Anthony Bozzuti
Re: Adversary Proceeding No. 10-53131.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. David M.
Schwartz re: Adversary Proceeding No. 10-53144.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Gregory H.
Wood re: Adversary Proceeding No. 10-53137.

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. James Corcoran
re: Adversary Proceeding No. 10-53158.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Jianguo Zhong re:
Adversary Proceeding No. 10-53148.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. John M.
Browning re: Adversary Proceeding No. 10-53156.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Joni Wyckoff re:
Adversary Proceeding No. 10-53151.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Keith O. Fukui
re: Adversary Proceeding No. 10-53139.

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Marc Malone
Re: Adversary Proceeding No. 10-53152.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Matthew Wajner
Re: Adversary Proceeding No. 10-53136.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Nirmal Baid
Re: Adversary Proceeding No. 10-53145.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Peter Gerrald re:
Adversary Proceeding No. 10-53138.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Peter Heller
Re: Adversary Proceeding No. 10-53146.

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Rachel M.
Mileur a/k/a Rachelle M. Mileur re: Adversary Proceeding No.
10-53133.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Richard Blunck
re: Adversary Proceeding No. 10-53157.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Robert C. Hill
re: Adversary Proceeding No. 10-53153.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Stephen E.
Whittaker re: Adversary Proceeding No. 10-53150.

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Steven Heruty
re: (Adversary Proceeding No. 10-53141.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Thomas E.
Morgan re: Adversary Proceeding No. 10-53154.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. William K.
Glasby re: Adversary Proceeding No. 10-53142.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Chandan Sharma
Re: Adversary Proceeding No. 10-53147.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Edward F. Bach
re: Adversary Proceeding No. 10-53132.

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HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Henry J. Berens
re: Adversary Proceeding No. 10-53134.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Howard
Matthews re: Adversary Proceeding No. 10-53155.

HEARING of Official Committee of Unsecured Creditors of
Washington Mutual, Inc., et al., on behalf of Chapter 11
estates of Washington Mutual, Inc., et al. v. Michael R. Zarro
re: Adversary Proceeding No. 10-53143.

HEARING re Modified Sixth Amended Joint Plan of Affiliated
Debtors Pursuant to Chapter 11 of the United States Bankruptcy
Code [Docket No. 6696; filed 2/8/11]

HEARING re Application for an Order Pursuant to 11 U.S.C. §§
328, 330 and 1103 and Fed. R. Bankr. P. 2014 Authorizing the
Retention and Employment of Schwabe, Williamson & Wyatt as
Securities Counsel to the Official Committee of Equity

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Security Holders of Washington Mutual, Inc., et al., Nun Pro
Tunc to June 1, 2011 [Docket No. 7981; filed 6/23/11]

HEARING re Motion to Compel Aurelius Capital Management LP and
Centerbridge Partners, LP to Produce Documents [Docket No.
8117; filed 7/8/11]

HEARING re Debtors' Motion In Limine to Exclude Portions of the
Expert Reports and the Testimony of the Equity Committee's
Expert Witnesses Anders J. Maxwell and Kevin D. Anderson
[Docket No. 8159; filed 7/11/11]

Transcribed by: Clara Rubin

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MARGOT P. ERLICH, ESQ.

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Co-Counsel to Official Committee of Equity Holders

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P R O C E E D I N G S

THE COURT: Good morning.

MR. ROSEN: Good morning, Your Honor. Brian Rosen and John Mastando and others for Weil Gotshal & Manges on behalf of the debtors. I believe that we start at this point in the hearing with Mr. Maxwell who is the equity committee's witness.

THE COURT: All right. Thank you.

MR. ARD: Good morning, Your Honor. Seth Ard, Susman Godfrey on behalf of the equity committee. I'd like to call Anders Maxwell.

THE COURT: Okay.

ANDERS MAXWELL, WITNESS, SWORN

THE COURT: Would you state your name for the record?

THE WITNESS: Anders John Maxwell.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. ARD:

Q. Good morning, Mr. Maxwell.

A. Good morning.

Q. What is your professional experience?

A. I am an investment banker and advisor. I've been with Peter J. Solomon Company for the past twelve years as a managing director and partner in the restructuring area. Peter J. Solomon, not unlike Blackstone, was started by Peter Solomon, a former Lehman Brothers partner twenty-five years

1 ago, and I've been with the firm twelve years.

2 Prior to joining Peter J. Solomon, for a number of years,
3 I was in investment banking, and sales and trading with firms
4 including Dean Witter Reynolds, Kidder Peabody, Lazard, L.F.
5 Rothschild and Smith Barney Harris Upham in various capacities,
6 including investment banking and private placements, high-yield
7 sales and trading, and for two years as head of high-yield
8 research at Smith Barney.

9 In addition, I spent fourteen years with General Electric,
10 most of that time working in the finance subsidiary, GE
11 Capital, and in capacities including managing a substantial
12 equity portfolio and for a period of couple of years running a
13 large tax driven leverage leasing business at GE.

14 My academic credentials include a masters in business from
15 the Wharton School, and a bachelors of architecture with honors
16 from the University of California at Berkeley.

17 Q. And have you authored any articles on valuation issues?

18 A. I have, along with at least one other professional in the
19 courtroom today, am a contributor to a text on bankruptcy
20 valuation to be published later this summer. And I regularly
21 contribute a column to the Dow Jones News Service covering
22 distressed securities, and periodically speak and author other
23 articles from time to time on the state of distressed investing
24 and bankruptcy.

25 Q. And have you been admitted as an expert in other cases on

1 valuation related issues in bankruptcy matters?

2 A. Yes, I have. Major cases in the last few years where I
3 have been qualified as an expert would include Mirant, Calpine,
4 Six Flags, GSI Corporation, and I think two or three other
5 cases in which I've been involved as a testifying expert.

6 Q. And what type of work have you done in this case relating
7 to the value of reorganized WMI?

8 A. I have done a critique of the Blackstone valuation done of
9 reorganized WMI. That critique, in addition to reviewing the
10 work product of Blackstone has included reviewing the operating
11 statements and projections provided by Alvarez & Marsal, a
12 review of the Norman report, which is the foundation for some
13 of that work, and other supporting documents that have been
14 provided to me by the debtors.

15 Q. And did you prepare a report in this case?

16 A. Yes, I did. It was recently submitted and dated April
17 29th, a critique of the valuation of the reorganized WMI.

18 Q. And could you please pull off Exhibit 154 from the binder
19 behind you?

20 A. Yes.

21 Q. Is that 152 (sic), is that an accurate copy of the report
22 you prepared in this case?

23 A. I --

24 Q. I'm sorry, 154.

25 A. Yes, it is.

1 Q. And that report relates to the value of Wimrick?

2 A. It relates to a critique of the valuation of reorganized
3 WMI.

4 Q. And you prepared this report?

5 A. Yes, I did.

6 MR. ARD: Your Honor, I tender Mr. Maxwell as an
7 expert and offer the 154 into evidence.

8 THE COURT: Voir dire?

9 MR. MASTANDO: Your Honor, no objection to the offer
10 as an expert, but I do object to the admission of the report at
11 this time for the reasons set forth in our Daubert motion, and
12 if I might propose that we revisit the issue at the end of Mr.
13 Maxwell's testimony to determine which portions, if any, might
14 be admissible as expert testimony and which might not be.

15 THE COURT: All right. We'll --

16 MR. MASTANDO: No objection.

17 MR. ARD: Thank you. So we move 154 into evidence
18 now?

19 THE COURT: And I'm going to reserve on that until
20 after the testimony and cross.

21 MR. ARD: Okay. Thank you, Your Honor.

22 BY MR. ARD:

23 Q. Mr. Maxwell, did you perform a valuation of Wimrick?

24 A. I did not perform a valuation of Wimrick.

25 Q. What did you do?

1 A. I completed a critique of the Blackstone valuation,
2 commenting on the value of the reorganized WMI as a liquidating
3 trust, and commenting that in my opinion, that the business
4 could be operated as a going concern, and as a going concern,
5 would reasonably have greater value than reflected in the
6 liquidation analysis that is the focus of the Blackstone
7 valuation.

8 Q. And why did you not perform a valuation?

9 A. Because I didn't have the resources to undertake a
10 valuation. If I were to do a valuation of a business, it would
11 be predicated on a business plan, an in-place management, and a
12 review of that management and critique of that management, an
13 analysis of the competitive landscape, the prospects for the
14 business, the different business scenarios that would be
15 possible for the business, a capital structure in place, and
16 the other attendant analyses that we rely on for doing a
17 business valuation. This is simply a critique of the analysis
18 that's been done to this point by the debtor's investment
19 banker.

20 Q. Okay. Were you authorized to interview the soon-be owners
21 of the company?

22 A. No, I was not.

23 Q. What conclusion did you reach broadly speaking in your
24 critique?

25 A. That I concurred with Blackstone's analysis of the

1 business as a liquidating trust, although I observed some
2 inconsistencies in their analysis, but commented that as a
3 going concern, the business would have greater value predicated
4 on what I thought were reasonable assumptions, introduced in
5 the critique.

6 Q. And why would this company be operated as a going concern?

7 A. It would be operated as a going concern primarily because
8 it would have greater value. That greater value would be a
9 derivative of the business going forward in a market that I
10 perceive to be opportune given the dislocation that's occurred
11 in housing over the course of the last three or four years, the
12 potential returns in that business as a result of that
13 dislocation, predicated on access to capital.

14 I thought that the returns would reasonably justify the
15 investment to capitalize the business, and have it operate as a
16 going concern.

17 MR. MASTANDO: Your Honor, rather than object to each
18 question and answer, I'd just like to note a standing objection
19 that I can revisit on cross the issues and --

20 THE COURT: You may.

21 MR. MASTANDO: -- so that I don't have to object to
22 every question. Thank you.

23 THE COURT: You may.

24 BY MR. ARD:

25 Q. Turning to page 11 of your report, can you explain how the

1 company would have greater value if it were to operate as a
2 going concern?

3 A. What I had endeavored to do to substantiate the opinion
4 that the business would have value as a going concern, is put
5 forward a scenario acknowledging as Mr. Zelin did in his
6 testimony, that to move the company forward on a going concern
7 basis would require additional capital, and we put forward a
8 scenario where predicated on the placement of 140 million
9 dollars of equity capital and corresponding to that,
10 approximately 200 million dollars of debt placed on top of the
11 140 million of equity, and the existing value of the
12 liquidating estate, we did an investment analysis, which is
13 technically referred to as a net present value calculation, as
14 differentiated from the present value analysis otherwise done
15 in considering the value of a business.

16 And based on that net present value calculation, looking
17 on page 11 at the impact of investing 140 million dollars of
18 equity capital, garnering what we estimated were the pre-tax
19 equivalent yields on reinsurance businesses, whether acquired
20 or built up on an investment basis, calculating based on a
21 return on the 140 million dollars to whoever may be attracted
22 to providing that equity capital of between 15.8 percent, which
23 was the determination of the equity cost of capital that we
24 came to, and a twenty percent which is the high end of the
25 range that we relied on for a -- opining as to the cost of

1 equity capital, determined the net present value of that
2 investment after a return of the 140 million dollars in
3 capital, as well as the re-yield on that 140 million dollars
4 between 15.8 and twenty percent of fifty-three million dollars
5 as reflecting the first tranche of the financing between the 140
6 million dollars of equity capital and a fifty-six million
7 dollar raise of debt capital, which was the first part of the
8 calculation.

9 And then on page 12, we did a second equity or excuse me,
10 a second debt raise of 160 million dollars, so that we came to
11 a leverage ratio of .4-to-1 debt to cap, which is a leverage
12 ratio we thought was substantiated by observations of
13 transactions in the market, either precedent transactions, or
14 specific transactions that we were aware of, and therefore,
15 supportable level of leverage to come to a conclusion as to the
16 impact after a return of the equity invested in the company
17 indicating the level of increase possible for reorganized WMI,
18 if it were to be operated as a going concern.

19 Q. Okay. Let's just quickly talk through a couple of steps
20 of what you just said. If you'll notice here, there's a 1.4
21 times multiple for the terminal value on page 11. What does
22 that represent?

23 A. The -- this is a net present value calculation looking at
24 the investment of 140 million dollars through the eyes of the
25 investor, putting up the equity capital. It is normal practice

1 in doing an investment analysis to look at a five-to-ten year
2 investment horizon. We assume that that investor would be a
3 private equity investor or hedge fund investor who would want
4 to liquidate his position at some point in time.

5 So we estimated a terminal value derived from the
6 precedent transactions, where the indication was over a long
7 period of time going back over ten years, recognizing that we
8 don't have any recent precedence in the context of the very
9 volatile market.

10 But using a 1.4 times precedent transaction multiple
11 derived from those transactions, use that to approximate
12 terminal value for that would be part of the return to the
13 investor who picks up the 140 million dollars of equity, and
14 applied that in the net present value calculation that is
15 reflected on page 11.

16 Q. Okay. And if you see below that, you're subtracting out
17 140 million. Why are you doing that?

18 A. Because that is 140 million dollars of equity principal
19 that is returned to the investor in addition to the 15.8 to
20 twenty percent after tax IRR that we estimated as a range of
21 return in the market to that investor for putting up that risk
22 capital.

23 Q. So are you looking at the value of this investment to the
24 current company?

25 A. No. Only to the extent that what we have calculated

1 arithmetically on this page, is that for the estate, the
2 investment of 140 million dollars by an existing investor in
3 the business, or beneficiary of the business, or some third
4 party private equity or other investor would be in the case of
5 a 15.8 percent return on equity, fifty-three million dollars
6 net to the estate, and that the higher discount rate or the
7 higher return rate of twenty percent, twenty-four million
8 dollars to residual or reorganized WMI.

9 Q. So to clarify my question, you're looking at the value of
10 this to the estate?

11 A. That is correct. Net recovery of principal and a return
12 on that principal to the equity investor, or in this case,
13 including the provider of the debt facility to the company.

14 Q. Okay. And why is a 140 million dollar equity raise a
15 realistic assumption in the reinsurance industry?

16 A. Well, originally we selected the 140 million dollars
17 because it was consistent with a rights offering that was
18 earlier contemplated for the company. It is also in line with
19 what recently has been referenced in the June Blackstone
20 report, and we thought particularly in the context of another
21 start-up reinsurance company that has been funded in the course
22 of the last eighteen months that 140 million dollars in terms
23 of a placement, whether as a rights offering or a private
24 placement, was realistic and the potential returns on that
25 investment, and the relatively modest size of that investment

1 in the context of the various funds that specialize in
2 financial services in the current market would make this a
3 reasonable expectation in terms of a placement for the
4 business.

5 It also appeared to be very consistent with the thinking
6 of the tax counsel for the debtor at the time of the
7 structuring of the rights offering.

8 Q. Okay. But that rights offering wasn't fully subscribed,
9 at 140?

10 A. That is my understanding.

11 Q. All right. And has that changed your analysis as to
12 whether --

13 A. I wouldn't draw any conclusions from the fact that the
14 rights offering was not fully subscribed.

15 Q. Why not?

16 A. Because I have no idea what the context or the thinking of
17 the prospective investors or the creditors of the company were
18 last fall. It was a surprise to us that this was contemplated,
19 recognizing that it would make more sense to do an equity raise
20 post emergence when perspective investors had the benefit of a
21 business plan, and a management team and in any case the
22 signaling represented by pulling the rights offering we took to
23 be quite likely to be political as it was economic.

24 Q. Okay. And so what value does this give to the company,
25 this combined debt and equity raise?

1 A. If you -- from, in terms of a net -- after the net present
2 value calculation and the residual value to the estate from the
3 140 million dollar equity investment and the approximately 200
4 million dollars of debt financing for the estate, I believe
5 this is page 6 of my critique, it indicates a value of the
6 business in the range of 240 to 280 million dollars, which Your
7 Honor represents a net gain of approximately 140 million
8 dollars over the anticipated value of the residual portfolio or
9 the legacy portfolio, which both we and Blackstone valued in
10 the range of 130 to 140 million dollars.

11 Q. And why is the 216 million dollar debt raise reasonable in
12 the context of this equity raise in the value of the company?

13 A. Again, we were benchmarking the leverage at .4 times the
14 capital of the business. We observed, for example, in the
15 Castlewood acquisitions which are several years old, but
16 nonetheless indicative of where existing portfolios of mortgage
17 reinsurance are financed, that those were in the context of
18 this range of leverage.

19 We had observed that other reinsurance companies
20 referenced in our comparable company universe have leverage
21 greater than this, and thought that in terms of market
22 acceptability that this was not an unreasonable level of
23 leverage. Again, predicated on a business plan and a credible
24 management team.

25 Q. Did you review Zelin's report?

1 A. Yes, I did.

2 Q. Did he consider debt raises?

3 A. No, he did not.

4 Q. Is it important to consider debt raises along with equity
5 raises if you want to maximize value?

6 A. It is, I think, generally speaking for any business to the
7 extent that as Mr. Zelin observed, building a capital structure
8 so as to maximize return for any given business is common
9 business practice. And there certainly are adequate -- there's
10 adequate indications in the market that reinsurance businesses
11 do rely on some degree of financial leverage in order to
12 maximize or endeavor to maximize returns on equity, that this
13 was a reasonable assumption to undertake in providing the Court
14 with some indication of what the potential value of reorganized
15 WMI would be as a going concern.

16 Q. So is raising debt a more profitable way of running a
17 business than raising equity to the extent that you can raise
18 debt versus equity?

19 A. It is to the extent that debt, by definition, is less
20 expensive, or generally speaking, less expensive than equity
21 capital.

22 Q. What borrowing rate do you assume here?

23 A. Here, we assume that double B rate of -- the current
24 double B cost of debt, which is six percent in the current
25 market. Again, in anticipation in my cross, that six percent

1 is intended to represent the long-term cost of capital. It is
2 common practice in gauging weighted average cost of capital and
3 the cost of debt capital to look at a business over a long
4 period of time, not in its condition as it is emerging from a
5 bankruptcy proceeding. And we thought that in terms of an
6 indicative indication of the value of this business as a going
7 concern, it was reasonable to use a six percent cost of debt.

8 Q. Okay. Did Zelin make any adjustments to Milliman's
9 analysis?

10 A. Yes, he did. He -- I gather Blackstone increased the
11 returns from the portfolio over and above that reflected in the
12 Milliman report, and incorporated that in their liquidation
13 analysis. We did not undertake to do that, lacking the
14 information that Blackstone would be privy to in working with
15 the debtor, and simply relied on the base case provided by
16 Milliman in the investment analysis that we undertook.

17 Q. Was Zelin wrong to increase it by ten percent?

18 A. I have no idea. I'm sure with Blackstone's experience and
19 knowledge of the company, that would be a reasonable
20 assumption, but we did not have the information to follow suit.

21 Q. Is it fair to say that in this context, you were more
22 conservative than Zelin's report?

23 A. I believe in that -- in at least this respect, yes.

24 Q. Turning to page 7 of your report. What did you do next?

25 A. In addition to the discounted cash flow analysis and net

1 present value calculation that was reflected on page 6, we also
2 did a precedent transaction analysis looking at those
3 reinsurance companies that over the last decade have traded,
4 that are qualified as going concerns, as opposed to liquidating
5 portfolios, recognizing that the focus of this critique was on
6 the potential value of the business as a going concern, derived
7 a range of multiples of book from those transactions, and used
8 that as a second indication of value of the business as a going
9 concern.

10 Q. Okay. And given the companies that you list here and the
11 precedent transactions that you list, why is the precedent
12 transaction analysis appropriate here?

13 A. Because it was our determination that while precedent
14 transactions are never perfect, they are another indication of
15 value. These are all small reinsurance businesses that are
16 being run as going concerns, and I thought that this was an
17 adequate indication in addition to that derived from the
18 discount, the so-called discounted cash flow analysis.

19 Q. And in the facts of the recent -- in light of the facts of
20 the recent market, are older -- the older date of some of these
21 transactions bothersome to you?

22 A. They are bothersome to the extent that these are all dated
23 transactions. However, in the context of what's happened in
24 the capital markets in the course of the last three years, it's
25 hard to find meaningful indications given the extraordinary

1 volatility and paucity of transactions. Moreover, we were
2 using these multiples to gauge values ten years out in the
3 context of the net present value calculation that we were
4 doing; therefore, it really is meant to be indicative of what I
5 would refer to as intrinsic value of the estate, and clearly
6 not meant to indicate trading value in the near term.

7 Q. Okay. So is your precedent transaction analysis assuming
8 that the company will necessarily be sold?

9 A. It is not, although in the net present value calculation
10 that we did, by its nature as an investment analysis, we are
11 assuming that the company is sold in ten years time in order to
12 derive a yield and return on the investment to the party that
13 invests the 140 million dollars.

14 Q. But no part of this analysis is assuming that it's going
15 to be sold before ten years?

16 A. That is correct.

17 Q. Okay. What is the resulting precedent transaction
18 valuation range?

19 A. At 200 --

20 Q. At page 8 of your report.

21 A. 280 million to 320 million. We weighted that as somewhat
22 lower than the discounted cash flow analysis, so that in our
23 final indication of value on a composite basis it increases the
24 range approximately fifteen million dollars from that derived
25 strictly from the net present value calculation of the DCF

1 calculation to suggest a range of 255 million to 295 million,
2 which again is approximately 120 to 130 million dollars higher
3 than the value that was reflected in the liquidation analysis.

4 Q. Okay. Do you need to somehow account for the risk that
5 this company won't be a going concern?

6 A. Well, I think that's a binary point. It either will be a
7 going concern or it won't be a going concern. That's a
8 determination that the residual beneficiaries or the new owners
9 of reorganized WMI will have to make.

10 I do believe that this business can be run as a going
11 concern, but that is not a determination that I can make.

12 Q. Why would one make the determination?

13 A. They would make that determination to run this as a going
14 concern because they saw it as a profitable opportunity, and it
15 is my opinion that given the dislocation in the mortgage
16 reinsurance business today, given the availability of equity
17 capital in financial services generally, and given the
18 potential returns on these contracts on a go forward basis,
19 that this would, in fact, be an attractive opportunity.

20 We've used assumptions that we think are reasonable, if
21 not conservative, in gauging what those returns would be, and I
22 think it justifies serious consideration, if not the decision
23 by the new investors to move forward and run this as a going
24 concern, as opposed to simply looking at it as a liquidation.

25 Q. So if it runs a going concern, what you're showing here is

1 that -- are you showing here whether the company will have more
2 value as a going concern?

3 A. That is the intention of the exhibit that appears on this
4 page is to quantify the range of value if the business were
5 operated on a going concern basis predicated on raising 140
6 million dollars of equity.

7 Q. And you think it's a reasonable assumption that the future
8 owners, or the soon to be owners will want the company to be
9 more profitable?

10 A. Well, it's yet to be determined who the future owners are.
11 Certainly if they are at all sophisticated and looking to
12 maximize the return on their residual investment in the estate,
13 I would think that they would be compelled to investigate this
14 opportunity, and in due course pursue the opportunity.

15 There's some indication from the discovery process that,
16 in fact, at least one of the settlement noteholders who
17 potentially would be a residual beneficiary in reorganized WMI
18 has, in fact, undertaken to look at that analysis.

19 Q. Is 275 million the final value you place on reorganized
20 WMI?

21 A. This is only the value based on the scenario that we've
22 outlined in my critique. I think there is certainly potential
23 using this as a platform to achieve and create greater value
24 through subsequent later equity raises, or other merger or
25 acquisition opportunities that may be uncovered in a fluid and,

1 I think, highly opportunistic environment that exists today,
2 and it's likely to exist over the next two or three years in
3 mortgage reinsurance.

4 We have not attempted to gauge what that value might be
5 beyond a traditional summary of value of the remaining net
6 operating loss.

7 Q. If you assume that the soon to be owners will be large
8 wealthy hedge funds, would that increase their ability to
9 utilize the NOLs?

10 A. Certainly given the stature, the sophistication, the track
11 records, and the access to capital of the group of settlement
12 noteholders, I think it's an inescapable conclusion that if
13 they were to become the controlling parties of this entity,
14 that by their nature, they would investigate and pursue every
15 opportunity to maximize their potential return on investment in
16 reorganized WMI.

17 Q. I'm going to show you exhibits -- Equity Committee 135 and
18 136. A little hard to see. I'm going to blow up the bottom of
19 the page. Do you recognize this document?

20 A. Yes, I do. I believe this a worksheet highly redacted
21 from one of the settlement noteholders.

22 Q. And what does it indicate at the bottom right?

23 A. It --

24 Q. Regarding the usage of NOLs?

25 A. It appears to indicate a value of the NOL carry-forward in

1 parens, present value of 500 million dollars, not inconsistent
2 with the worksheets that we provided as an exhibit in our
3 critique with a --

4 Q. Haircut, I think, is referred to.

5 A. With a haircut or a discount of eighty percent applied to
6 that 500 million to suggest a 100 million dollar value to the
7 net operating loss carry forward, which given the line that
8 appears at the top of the page is in addition to, or appears to
9 be in addition to the 140 million dollars reflected as the
10 amount of value, not subject to a haircut for reorganized WMI.

11 Q. Okay. And if you assume that there's a twenty percent
12 chance of utilizing the entire NOL, how would you value the
13 NOL?

14 A. I would follow the example set here, and assume twenty
15 percent of that gross NOL in looking at the potential value of
16 my investment.

17 Q. Is it a recognized practice in the valuation field that
18 you do not value a NOL unless you can get an opinion from a tax
19 expert, that it's more likely than not, that the post
20 transaction will not violate 269 or any other provision of the
21 tax code?

22 A. Not to my knowledge. I've never heard of that criteria.
23 If that criteria were involved in every valuation in
24 bankruptcy, I don't think you'd ever have any attribution of
25 value to a NOL.

1 And as the professionals here are all well aware, most
2 major bankruptcies have as an additional asset, in the
3 determination of the testifying expert, some value attributed
4 to a net operating loss, because almost every bankruptcy
5 results in some fairly material losses for tax purposes, and
6 that is normally treated as a below the line addition. And
7 I've never seen a report where that addition was qualified by a
8 tax opinion from a major Wall Street firm as its being more
9 likely than not, that the estate would be the beneficiary of
10 that NOL.

11 The only time I have seen an opinion of a tax partner, as
12 to a more likely than not utilization of a NOL was in my years
13 of experience at General Electric managing a leveraged lease
14 portfolio, where it is common to get such opinions entirely for
15 purposes of GAAP accounting.

16 Q. Okay. And so if there's an eighty percent risk, the
17 methodology used here, discounting by eighty percent times the
18 total net present value of the NOL, is an accepted way of
19 valuing a NOL?

20 A. Again, I think it's the determination of at least this
21 prospective investor that that is the way he apparently -- he
22 or she were apparently thinking of valuing this. I don't think
23 that's an uncommon approach for investors to take in gauging
24 the perspective return on investment in a circumstance such as
25 this.

1 Q. You said you reviewed Zelin's report and heard his
2 testimony. Do you have any criticisms of that report?

3 A. I would simply comment that as Mr. Zelin observed certain
4 issues with my report, I would observe certain issues in Mr.
5 Zelin's report. Needless to say, we both have the highest
6 regard for each other, but I would observe that to me, it's
7 internally inconsistent in the approach taken.

8 And that is very simply that clearly we concur on the
9 value of the legacy portfolio, but given the debtor's
10 characterization of the business as a liquidating estate, I see
11 no justification for the inclusion of the so-called corporate
12 opportunity value that Blackstone includes in its analysis, as
13 well as a qualifier for precedent transactions, albeit a very
14 small addition, nonetheless an addition that I think is
15 inconsistent with the conclusion that the debtors reached that
16 the business be valued and operated as a liquidating estate.

17 Q. So the internal inconsistency you're referring to is that
18 he's valuing it both as a runoff and as a going concern?

19 A. That's correct.

20 Q. Okay. And why is it important to a valuation to do the
21 entire analysis as a going concern, how does that affect it?

22 A. If the business is operated as a going concern, it
23 inherently has greater value because of the value into the
24 future of future of the potential for future cash flows that is
25 normally reflected in the so-called terminal value, or an

1 additional increase in multiple based on perspective investors
2 or acquirer's interest in a business that has a future in terms
3 of generating more free cash flow by its nature as a going
4 concern.

5 Q. Okay. Turning to page 34 of his report --

6 THE COURT: Of Mr. Zelin's report?

7 MR. ARD: Yeah, sorry. This is DC-152, admitted into
8 evidence yesterday.

9 Q. What WACC is he applying here for the corporate
10 opportunity model?

11 A. My understanding is Blackstone is using a -- its implied
12 cost of equity capital of twenty-five to thirty-five percent in
13 doing the analysis of the so-called corporate opportunity
14 value.

15 That number is effectively grossed up, however, by an
16 adjustment done on the worksheets in that analysis that are
17 provided in the report.

18 Q. Is that the adjustment referred to on page 37 on the
19 bottom right-hand corner?

20 A. In the bottom right-hand corner, that is correct.

21 Q. Okay. And grossed up, what's the effective discount rate
22 that he's using?

23 A. It is in the high thirties to low fifties. Again, Your
24 Honor, this is obviously a very unconventional analysis, as it
25 was qualified by Mr. Zelin. It's an option analysis,

1 nonethless the discount rate that is being applied against the
2 estimated tax savings is an extraordinarily high effective
3 discount rate, because it's really -- after you take out the
4 adjustment, the twenty-five to thirty-five percent discount
5 rate effectively is approximately thirty-eight to fifty-two
6 percent as a discount rate. And again, I don't know how that's
7 supported.

8 Q. What's a proper discount rate to use here?

9 A. Well, it is normal practice that the -- an NOL is
10 discounted back based on a period of time in which it is
11 assumed the NOL is consumed in the Blackstone report, that's
12 assumed to be consumed over twenty years, and discounted back
13 at the equity cost of capital. And the reason for the -- that
14 is the traditional methodology for valuing the NOL.

15 Q. And what's that, the equity cost of capital, what's the
16 number?

17 A. Well, in Mr. Zelin's analysis it's twenty-five to thirty-
18 five percent. We disagree with that, and have opined that the
19 equity cost of capital for a reinsurance business like this on
20 a going forward basis and stable basis, is between eighteen --
21 is between 15.8 percent and twenty percent.

22 Q. Okay. And if you look here on the second bullet point
23 underneath the valuation approach where he references eight to
24 12.5 percent annual rate of return on investment based on
25 historical returns generated by similar portfolios, did you

1 hear his testimony yesterday whether he said that was pre-tax
2 or after tax?

3 A. I believe he said it was a pre-tax return.

4 Q. Is that a reasonable assumption?

5 A. I don't believe it is. From what we understand, long term
6 returns on equity, as reflected in street research or academic
7 research is -- would indicate that these are after tax or
8 should be after tax ranges of return, not pre-tax returns --
9 rates of return.

10 Q. What street analysis are you referring to?

11 A. I think we proffered a Morgan Stanley research report,
12 which indicates that over a fifteen year period of time, in the
13 universe of coverage in reinsurance, that Morgan Stanley was
14 considering a thirteen percent return on equity was observed.

15 Q. Is EC-294 the Morgan Stanley document upon which you
16 relied?

17 A. In this reference, yes.

18 MR. ARD: Your Honor, we move that into evidence as a
19 document upon which he relied.

20 MR. MASTANDO: Objection, Your Honor, it's hearsay.

21 THE COURT: Well, to the extent he's an expert, he may
22 rely on hearsay.

23 MR. MASTANDO: I don't know what the foundation is or
24 where the document came from or.

25 THE COURT: Well, I'll overrule. It's something he

1 relied upon.

2 (Equity Committee's Exhibit No. 295, Morgan Stanley report, was
3 received into evidence.)

4 BY MR. ARD:

5 Q. Okay. And you said it was a thirteen percent return on
6 equity, what return of equity did you use in your report?

7 A. Ten percent.

8 Q. Ten percent. Why did you use ten percent as opposed to
9 thirteen percent?

10 A. I -- we were basically looking at the ranges that
11 Blackstone was using, and rather than take the high point we
12 tried to take a midpoint, and thought that that was reasonable,
13 if not a conservative approach in terms of the model that we
14 used to gauge the return on investment.

15 Q. Okay. And again, you said that the thirteen percent here
16 is pre-tax or after tax?

17 A. It is an after tax return as represented to us by the
18 analysts at Morgan Stanley.

19 Q. Okay. And pre-tax, if you use a ten percent after tax,
20 what does that translate into pre-tax return?

21 A. Assuming a thirty-five percent federal tax rate,
22 approximately fifteen percent pre-tax.

23 Q. So that's a number that Zelin should've been using, right?

24 A. I believe so, although again, in -- it's reasonable to say
25 I didn't really follow the analysis done for this corporate

1 opportunity valuation.

2 Q. Okay. Just to give the Court a sense of the difference
3 that makes, if you assume 15.8 percent cost of equity instead
4 of his twenty-five to thirty-five percent, and you assume pre-
5 tax earnings of fifteen percent, instead of his eight to 12.5
6 percent, using the exact same calculations that he does on page
7 37 of his report, where he calculates the present value of the
8 NOLs, what number would that give you for the present value of
9 the NOLs?

10 A. Taking the Blackstone formulation and simply changing the
11 discount rate for equity from the range reflected on page 37 of
12 twenty-five to thirty-five percent, which effectively as I
13 commented a few minutes ago, after the netting out of -- or the
14 adjustment that is reflected in the lower right-hand matrix on
15 the page, translates into approximately a thirty-eight to
16 fifty-two percent effective discount rate.

17 And using our rate at 15.8 percent, which is the low end
18 of our estimate of the cost of equity capital, and using a pre-
19 tax equivalent yield of fifteen percent, and then simply
20 running the numbers out using the same arithmetic methodology
21 used by Blackstone would yield a substantially higher present
22 value calculation of approximately 123 million dollars.

23 Again, in fairness to Blackstone, we are simply using
24 their formulation without an appreciation of exactly what it
25 was meant to accomplish.

1 MR. ARD: Your Honor, may I approach?

2 THE COURT: You may.

3 THE WITNESS: I think what this primarily indicates is
4 the substantial impact as is always the case in a discounted
5 cash flow analysis of varying your weighted average cost of
6 capital and discount rates.

7 MR. ARD: Your Honor, I'm going to -- I'm sorry.

8 BY MR. ARD:

9 Q. Are you done?

10 A. I would not represent to Your Honor that it's -- goes
11 substantially beyond that point.

12 THE COURT: Okay.

13 Q. Is this the demonstrative that shows that calculation
14 using those two simple adjustments, but running the calculation
15 the same way that Zelin runs it?

16 A. We believe it does.

17 MR. MASTANDO: Your Honor, I'm going to object to the
18 exhibit. The equity committee has had Mr. Zelin's report for
19 several weeks, and this is the first we're seeing of it, and
20 wasn't in Mr. Maxwell's report. And obviously, it's a detailed
21 calculation that is just being handed out as he's testifying.
22 So I object. There's no reason not to provide it in advance.

23 MR. ARD: We're not trying to admit it into evidence,
24 Your Honor, we're just showing the simple result of the
25 calculation.

1 MR. MASTANDO: Well, I still object to the testimony
2 on the same basis.

3 THE COURT: Well, I'll overrule as to the testimony.
4 He's allowed to critique testimony or the report of your
5 expert.

6 BY MR. ARD:

7 Q. Did you file a declaration on Tuesday night?

8 A. Yes, I did.

9 MR. ARD: May I approach, Your Honor?

10 THE COURT: Yes.

11 Q. Is that a copy of the declaration you filed?

12 A. Yes, it is.

13 THE COURT: Just for the record, it's Docket No. 8178.

14 MR. ARD: Thank you, Your Honor.

15 Q. Is this a true and correct copy of Exhibit A to your
16 declaration?

17 A. Yes.

18 Q. What does it show? Excuse me, it's EC-301.

19 A. These are the daily federal judgment rates, one year
20 weekly averages which are taken directly from a database
21 maintained by the Federal Reserve.

22 Q. Okay. Is this a reliable source of this data?

23 A. Yes.

24 Q. Okay. And what dates does it go from?

25 A. It goes from filing in September 2008 to June 17th of this

1 year.

2 Q. And is this a true and correct copy of the data?

3 A. Yes.

4 MR. ARD: Your Honor, we'd like to move this into
5 evidence as evidence of the federal judgment rate.

6 MR. MASTANDO: Objection, hearsay. And I don't think
7 he's been proffered, he was proffered on --

8 THE COURT: All right.

9 MR. MASTANDO: -- valuation, not on anything related
10 to this.

11 MR. ARD: Well, Your Honor, I think you can --

12 MR. MASTANDO: And I don't think sufficient
13 foundation's been laid for that.

14 MR. ARD: I think first of all, you can take judicial
15 notice of the federal judgment rate, but second, he's testified
16 that this is a true and correct copy of the federal judgment
17 rate, and that that's the source from where you get the federal
18 judgment rate, so not a problem.

19 MR. MASTANDO: Well, Your Honor can take judicial
20 notice of it, but it doesn't need to be -- this document to be
21 judicial notice of whatever the rate is.

22 THE COURT: Well, I'm going to take judicial notice of
23 what the rate is. It would be helpful for me to have it
24 delineated by somebody. I'm going to reserve on this. I'll
25 give the debtor an opportunity to confirm whether this, in

1 fact, an accurate compilation of the reported federal judgment
2 rate, but otherwise, I will admit it.

3 MR. ARD: Thank you, Your Honor.

4 BY MR. ARD:

5 Q. This is Exhibit EC-302. Is that what was attached as
6 Exhibit B to your declaration?

7 A. Yes, it is.

8 Q. Okay. Is that -- what is it?

9 A. That's simply a charting of the proceeding data.

10 Q. Is that an accurate chart of the proceeding data?

11 A. Yes.

12 MR. ARD: Okay. Your Honor, we'd like to move that
13 into evidence as a chart of the proceeding data.

14 MR. MASTANDO: Same objections, Your Honor.

15 THE COURT: Why is it -- why do I need the chart?

16 MR. ARD: Just to help you see how it looks over the
17 course of the case, Your Honor.

18 THE COURT: Well, I'll reserve on this as well.

19 MR. ARD: Thank you.

20 THE COURT: And if the EC, Equity Committee 301 is
21 accurate, I'll --

22 MR. ARD: Okay, great. Thank you, Your Honor.

23 THE COURT: -- admit 302 as well.

24 MR. ARD: There's also an Exhibit C, but we've agreed
25 ahead of time that we're not going to try to admit it now. We

1 stipulated that it'll be admissible, provided that we get a
2 good -- that he explains the methodology for how 303 was
3 derived, and we will stipulate to the admission of their
4 similar evidence of price trading data is what Exhibit C was,
5 is the exhibit on the -- the prices of the securities
6 throughout the history of the case. And we agreed before the
7 testimony that they have price data that they're using as well
8 from a different source, and we agreed that we'll both admit --
9 stipulate to admitting our competing -- you know, price they're
10 not competing, but the two different sources, provided that
11 both sides explain the methodology behind their sources.

12 THE COURT: Okay. And --

13 MR. ARD: So we'll do that on Monday.

14 THE COURT: On Monday, okay.

15 MR. ARD: So we're not going to go through testimony
16 on that.

17 THE COURT: Gotcha.

18 BY MR. ARD:

19 Q. Finally, I want to turn to Goulding's declaration from
20 yesterday and to the waterfall analysis that he does. I'll put
21 up the contract rate one.

22 How would you calculate the waterfall --

23 A. Do you -- can you make that a little clearer for me?

24 Q. Yeah, I'm sorry. Can you see that?

25 A. It's clearly time for me to go back to the eye doctor.

1 Okay.

2 MR. ARD: This is Goulding's declaration from
3 yesterday, Your Honor. I apologize, I don't remember the
4 exhibit number.

5 THE COURT: I don't either, but okay.

6 MR. ARD: I apologize, Your Honor.

7 THE COURT: Does the debtor remember what is
8 Goulding's --

9 MR. ROSEN: His declaration, Your Honor?

10 MR. ARD: Yes.

11 THE COURT: The liquidation analysis is attached to
12 it.

13 MR. ROSEN: It wasn't attached to it, Your Honor.

14 THE COURT: It was a separate exhibit, but.

15 MR. ROSEN: Yeah, I think 374.

16 MR. JOHNSON: 375.

17 MR. ROSEN: 375, I was close.

18 MR. ARD: Thank you, Mr. Johnson. Debtor's 375.

19 THE COURT: Okay.

20 BY MR. ARD:

21 Q. Okay. Anders -- Mr. Maxwell, excuse me, can you explain
22 how you would calculate the waterfall if you assume a federal
23 judgment rate of .18 percent?

24 MR. MASTANDO: Your Honor, I'm going to object and
25 note this is beyond the scope of his report, and what he was

1 offered on. It's not in his report.

2 MR. ARD: It's a simple calculation he's going to help
3 us do. It's just math.

4 MR. MASTANDO: Then I don't know why we need him to do
5 it.

6 THE COURT: Yes, I agree.

7 MR. ARD: Okay.

8 THE COURT: I don't think we need it.

9 BY MR. ARD:

10 Q. Okay. One final question.

11 In the debt and equity raises that you're contemplating in
12 your report, is the principal purpose of the company making
13 those debt and equity raises to avoid taxes?

14 MR. MASTANDO: Objection, Your Honor, calls for
15 speculation and a legal conclusion. I've let the speculation
16 go to this point, but I think this goes too far.

17 THE COURT: Well, I -- doesn't it go to the ultimate
18 conclusion I have to make?

19 MR. MASTANDO: Well, but he's already speculated, you
20 know, ten levels, but now he's going to the next level to say
21 what people were thinking when they did all the stuff he just
22 speculated on. I just don't see how that's appropriate for a
23 valuation.

24 THE COURT: Well, certainly experts can speculate.
25 It's called reviewing hypotheticals.

1 MR. ARD: It's a conclusion, it's 1129(e).

2 MR. MASTANDO: It's speculation and a legal
3 conclusion, and he's speculating --

4 MR. ARD: That's her job.

5 MR. MASTANDO: -- hypothetically about future
6 investments.

7 THE COURT: I think it's a legal conclusion.

8 MR. ARD: Can I ask it this way, Your Honor? Are
9 there non-tax reasons for doing the debt and equity raises?

10 THE COURT: You may.

11 MR. ARD: All right.

12 THE WITNESS: I believe there are. I -- as I said
13 earlier, I think this is an opportune time to build a portfolio
14 in mortgage reinsurance given the extraordinary dislocation in
15 the market, and the very, very substantial change in lending
16 standards that have been imposed on the housing industry over
17 the course of the last couple of years.

18 There is some evidence that to the extent that a group
19 of Goldman partners started a de novo reinsurance business in
20 the last eighteen months, raising at last -- from what we've
21 been able to determine, 600 million dollars of equity capital,
22 and I think that's indicative of the opportunity for
23 sophisticated and well capitalized funds to pursue the
24 opportunities created by this kind of dislocation in mortgage
25 reinsurance.

1 MR. ARD: Thank you. No further questions.

2 THE COURT: Thank you.

3 CROSS-EXMAINATION

4 BY MR. MASTANDO:

5 Q. Good morning, Mr. Maxwell.

6 A. Good morning.

7 Q. John Mastando from Weil Gotshal on behalf of the debtors.

8 We met at your deposition a few weeks ago.

9 Mr. Maxwell, you agree with me that for the purpose of
10 determining distributions under the plan, the Court should
11 value the stock of reorganized WMI at 130 to 135 million
12 dollars, correct?

13 A. I do.

14 Q. Okay. And you agree with Blackstone's valuation of the
15 reinsurance run-off portfolio, right?

16 A. Effectively that is correct.

17 Q. And you've been calling it a liquidating trust a few times
18 this morning, you're referring to the reinsurance run-off
19 portfolio, correct?

20 A. The legacy portfolio of reorganized WMI, yes.

21 Q. And there's nothing that requires that reorganized WMI
22 going forward is a liquidating trust, correct?

23 A. There is nothing that requires it to be a liquidating
24 trust --

25 Q. Okay.

1 A. -- it is proffered as a liquidating trust in the current
2 plan --

3 Q. And again that --

4 A. -- and it is being valued on that basis.

5 Q. And again, that's the reinsurance run-off portfolio you're
6 referring to?

7 A. Yes, it is.

8 Q. And you're aware that Blackstone also valued the corporate
9 opportunity of the net operating loss as they described it,
10 correct?

11 A. As we understand it, that's correct.

12 Q. Okay. And your report is not meant to challenge the
13 debtor's or Blackstone's valuation of the reinsurance run-off
14 portfolio, correct?

15 A. As it is qualified under the plan, that is correct.

16 Q. Okay. And you're aware that in its objections
17 confirmation, the equity committee alleged that Blackstone
18 undervalued reorganized WMI, right?

19 A. I don't remember how that was phrased.

20 Q. We could take a look.

21 MR. MASTANDO: Do we have the exhibit?

22 Q. It's Docket No. 8073. Well, in the equity committee
23 objection, it said the debtors have undervalued reorganized WMI
24 both as a run-off company and as it will actually be used in
25 the hands of the settlement noteholders who will take control

1 of the company.

2 Now, you do not believe that Blackstone undervalued
3 reorganized WMI, correct?

4 A. That is correct.

5 Q. Okay. And, in fact, your valuation of the run-off
6 portfolio is somewhat lower than Blackstone's, correct?

7 A. It is again because I think of this inconsistency in the
8 Blackstone report that I commented on a few minutes ago.

9 Q. And that's the adjustment to the Milliman analysis? The
10 adjustment to the Milliman's numbers?

11 A. Is primarily the corporate opportunity value and the
12 precedent transactions value that are included in the total
13 value that Blackstone attributes to the business, which we
14 think is inconsistent with the debtor's qualification of the
15 business as essentially a liquidating estate.

16 Q. Okay. Well, you understand that Wimrick is currently a
17 reinsurance run-off portfolio, correct?

18 A. Yes.

19 Q. Okay. And you agree that you can't speak to the goals,
20 objectives, and intentions of the settlement noteholders
21 concerning how reorganized WMI will actually be used, correct?

22 A. I have said that, yes.

23 Q. Okay. Now, we looked at your report earlier, it's
24 entitled critique, correct?

25 A. Yes.

1 Q. Okay. And it's not a conventional valuation, correct?

2 A. Correct.

3 Q. And if you were doing a valuation report, it would've been
4 done with considerably greater diligence that you did here,
5 correct?

6 A. That is correct.

7 Q. And if you're doing a valuation report, you would've
8 incorporated values reflective of what you thought were
9 comparable companies, correct?

10 A. To the extent that I could divine adequate comparables,
11 that is correct.

12 Q. Okay. And if you were doing a valuation report, you
13 would've had the benefit of a business plan that would
14 substantiate the projections for the business, correct?

15 A. As well as a management team in place that I could gauge
16 as part of that business plan and their abilities to implement
17 that business plan, that is correct.

18 Q. And you have done a fairly in-depth study of the future
19 prospects of the business well beyond what you did here,
20 correct?

21 A. Well beyond what I was able to do here, that is correct.

22 Q. Right. And you said what you were able to do, you partly
23 referenced, I think, the time that you had to do it?

24 A. The time is secondary to the access and availability of a
25 business plan, a management team --

1 Q. Right. But --

2 A. -- and access to people in the industry where we were
3 clearly constrained here subject to the confidentiality of this
4 information.

5 Q. Right. It --

6 A. The timing is secondary to those considerations.

7 Q. Okay. And the business plan and management didn't exist
8 because Wimrick doesn't have them, right?

9 A. That is correct.

10 Q. Okay. And the confidentiality agreement you're referring
11 to is the confidentiality agreement you have with the equity
12 committee that prevented you from being able to talk to people,
13 correct?

14 A. That is correct.

15 Q. Okay. And the other issue as to timing, you started
16 working on this critique in late March or early April, correct?

17 A. Correct.

18 Q. Okay. And you were retained in this case February 2010,
19 correct?

20 A. February 2010, that is correct.

21 Q. Okay. And you didn't prepare a valuation or a report
22 before the December 2010 hearing, correct?

23 A. That is correct.

24 Q. Okay. And I believe you testified in your deposition that
25 your report is a plausible scenario reflective of the potential

1 for incremental value, correct?

2 A. If those were my words, I stand by that testimony.

3 Q. Okay. And you agree that your report is not a valuation
4 as you normally use that term, correct?

5 A. And as I was explaining in my direct, this analysis
6 incorporates what is a net present value calculation or an
7 investment analysis, which is by its nature different than what
8 a present value calculation is in a bankruptcy valuation
9 context.

10 Q. And so to answer my question, your report is not a
11 valuation as you normally use that term, correct?

12 A. That is correct.

13 Q. And your report is also not a valuation of the type
14 normally relied upon by a Court, correct?

15 A. That is correct.

16 Q. Okay. Now, we've discussed, you understand that the
17 principal asset of reorganized WMI will be the stock of Wimrick
18 under the plan, correct?

19 A. That is my understanding.

20 Q. And you understand Wimrick's only asset is the reinsurance
21 run-off portfolio, correct?

22 A. Yes.

23 Q. But your report is based on the assumption that
24 reorganized WMI, the reinsurance run-off portfolio, acts as a
25 going concern rather than a reinsurance run-off, right?

1 A. It assumes an equity raise and a debt raise. It is -- it
2 assumes a certain return on equity, which by definition,
3 incorporates provisions for the cost of operating a business
4 because it's net after those costs.

5 It does not include a provision for the start-up costs
6 that are inherent in a going concern, although I would argue
7 that that may also be embedded in long term returns on equity
8 absorbed in the business. So to that extent, you're correct.

9 Q. So back to my question, your report is based on the
10 assumption that reorganized WMI acts as a going concern rather
11 than a reinsurance run-off, correct?

12 A. That's correct.

13 Q. And it's actually a key assumption of your report,
14 correct?

15 A. It is that -- that is correct.

16 Q. Okay. And in making this assumption, you're not speaking
17 at all to the current plan, right?

18 A. That is correct.

19 Q. Okay. And you are not opining as to the likelihood that
20 reorganized WMI will be a going concern, correct?

21 A. That is correct, but I wouldn't proffered this report if I
22 didn't think it was possible.

23 Q. Okay. Let's take a look at your deposition. Do you have
24 your deposition transcript?

25 MR. MASTANDO: If I could offer that, and could we

1 provide the Court a copy?

2 THE WITNESS: Thank you.

3 THE COURT: Thank you.

4 BY MR. MASTANDO:

5 Q. Take a look at page 24 of your deposition, please, line
6 15:

7 "Q. And what are you opining is the likelihood that
8 residual WMI will become an ongoing concern, rather than a
9 reinsurance run-off portfolio?

10 "A. I'm not opining as to the likelihood of that
11 happening."

12 Did I read that correctly, Mr. Maxwell?

13 A. You did.

14 Q. Okay. And the value of reorganized WMI as a going concern
15 would be value added by a future owner, rather than value
16 inherent today; isn't that right?

17 A. That is correct.

18 Q. And you understand that Wimrick, it's a captive
19 reinsurance company organized under the laws of Hawaii, right?

20 A. That is my understanding.

21 Q. And it has no business plan as we've discussed? I think
22 you mentioned that.

23 A. That is correct.

24 Q. And it has no means of originating business currently,
25 right?

1 A. That is correct.

2 Q. Okay. And you understand that as of today, it will not be
3 a party to any exit financing or similar credit facility upon
4 its emergence, correct?

5 A. Yes. And I acknowledged that in my critique.

6 Q. Okay. And you agree that Wimrick will have no ongoing
7 relationship with customers or vendors under the current plan
8 once it emerges, correct?

9 A. Yes.

10 Q. And you did not come to any conclusion as to reorganized
11 WMI's current capability to operate an ongoing mortgage
12 reinsurance business; isn't that correct?

13 A. That is correct.

14 Q. Okay. And you're not an expert in the mortgage
15 reinsurance business, right?

16 A. That is correct.

17 Q. And in doing your critique, you didn't learn anything
18 about what types of hard assets you need to run a mortgage
19 reinsurance business, right?

20 A. During my -- in preparing my critique, I did not. In the
21 course of my engagement in this case, I have formed some
22 opinion as to what might be involved in addressing those issues
23 in converting this liquidating trust to a going concern.

24 Q. Okay. If I could just direct you to your deposition
25 again, Mr. Maxwell.

1 A. Yes.

2 Q. Page 143, line 19:

3 "Q. But did you learn anything about what types of hard
4 assets you need, for example, to run a mortgage reinsurance
5 business?

6 "A. Specifically, no."

7 Did I read that correctly, Mr. Maxwell?

8 A. Yes, you did.

9 Q. Okay. And you did not conclude how many employees you
10 would need to operate an ongoing mortgage reinsurance business,
11 correct?

12 A. That is correct.

13 Q. Okay. You just assumed basically that it is possible for
14 reorganized WMI to build a book of business, right?

15 A. Build a book of business or acquire a book of business, we
16 did have some indication of start-up costs based on some of the
17 work that we did in the course of the year.

18 Q. But just answer my question. You assumed that it could
19 build a book of business, or I think you said make an
20 acquisition -- you assumed that, correct?

21 A. That is correct.

22 Q. Okay. And you're not opining on what the book of new
23 business would be based on, right?

24 A. We are to the extent that we have used an estimated return
25 on mortgage reinsurance assets observed in the market over a

1 long period of time, in order to complete the investment
2 analysis to come to the net present value calculations that I
3 referred to earlier.

4 Q. Okay. If I could direct you to page 73 of your
5 deposition, Mr. Maxwell, please.

6 A. Yes.

7 Q. Starting on line 4 and reading down and going to line 19:

8 "You don't assume what's it's based on --

9 "I don't assume what it's based on.

10 "-- right?

11 "I just assume that it can, that it is possible in the
12 current market to build a book, a book of business, whether
13 that's acquired or generated by the company itself in terms of
14 new contracts entered into, you know, with the GSCs or other,
15 you know, mortgage companies, I haven't opined."

16 Did I read that correctly, Mr. Maxwell?

17 A. Yes, you did.

18 Q. Okay. And you would agree with me that there are many
19 steps that would have to be taken before reorganized WMI could
20 become a going concern, right?

21 A. Yes.

22 Q. Okay. For instance, it would need to find a manager,
23 right?

24 A. Correct.

25 Q. And it would need to develop a business plan?

1 A. Yes.

2 Q. Okay. And it would need to arrange some credit facility
3 or financing facility, right?

4 A. Absolutely.

5 Q. And it would need to perform an equity raise of some form,
6 correct?

7 A. Yes.

8 Q. Okay. And it would need to develop an implementation plan
9 to turn the business plan into an operating entity, right?

10 A. That is correct.

11 Q. And other steps as well that it would need to take,
12 correct?

13 A. I readily acknowledge that.

14 Q. Okay. And each of these steps involve costs, right?

15 A. Costs and some time, yes.

16 Q. Excuse me?

17 A. Costs and some time, yes.

18 Q. Okay. And each of these -- you got my next question.
19 Each of these steps would take time to accomplish, correct?

20 A. Yes.

21 Q. And there is also risk inherent in each of these factors,
22 right?

23 A. That is correct.

24 Q. And your critique does not account for the costs of
25 converting reorganized WMI to a going concern; isn't that

1 correct?

2 A. It does not explicitly address that cost; however, that
3 cost, you know, we would estimate it as relatively modest, and
4 again I would look at the start-up, for example, of the
5 reinsure we discussed in my deposition of essence, where I
6 think with a capable credible manager given the prevailing
7 dislocation in the market, and the potential returns from the
8 reinsurance business in the current environment, that it is
9 reasonable to assume that this business as a platform could
10 raise capital and could move forward as a going concern.

11 Q. All right. But back to my question, your critique does
12 not account for the costs of converting reorganized WMI to a
13 going concern, correct?

14 A. That is correct.

15 Q. Okay. And your critique does not account for the risks
16 involved in converting reorganized WMI to a going concern, the
17 fact that it might not work, for instance, correct?

18 A. That is correct. However, I've used an equity cost of
19 capital that is common for investors who are making relatively
20 speculative investments. So to the extent embedded in my
21 analysis is a 15.8 to twenty percent return on equity, I would
22 argue that it is indicative of those types of inherent risks.

23 Q. Okay. If I could direct you to your deposition, please,
24 Mr. Maxwell, page 91.

25 A. Yes.

1 Q. Page 91, line 12, and you also --

2 "Q. You haven't endeavored to account for the risks
3 involved in converting this to a going concern, the fact that
4 it might not work?

5 "A. I think that's a fair characterization."

6 Did I read that correctly, Mr. Maxwell?

7 A. Yes, you did.

8 Q. Mr. Maxwell, there's a portion of your report on page 8
9 entitled additional potential value, which I don't believe you
10 addressed on direct, and I wasn't sure if you're still offering
11 this portion of your report. We'll get to it, I just wasn't
12 sure if you're still offering this portion of your report.

13 A. Yes, I am.

14 Q. Okay. It wasn't addressed on direct, though, right?

15 A. I alluded to it, but it wasn't explicitly addressed.

16 Q. Okay. And we'll get to this portion in more detail. It
17 deals with your calculation of some potential regarding the net
18 operating losses, correct?

19 A. That is correct.

20 Q. Okay. And in this portion of your report, this additional
21 potential value, you don't discount this value for any of the
22 risks associated with converting reorganized WMI to a going
23 concern, correct?

24 A. That -- I think that's correct.

25 Q. Okay. Now, you assume that reorganized WMI could be

1 profitably grown with the possible benefit of recapitalizations
2 through debt and equity raises, right?

3 A. Those are my words.

4 Q. And that is also assuming the availability of attractive
5 investments for reorganized WMI, correct?

6 A. That is correct.

7 Q. Okay. You are postulating scenarios going forward should
8 the new owners choose to manage reorganized WMI as a going
9 concern, right?

10 A. That is correct.

11 Q. I think you said on direct, you believe it's an option
12 that the new owners may pursue, right?

13 A. I can't speak for the new owners.

14 Q. So you don't even think it's an option?

15 A. No. I do think it's an option.

16 Q. Right.

17 A. I said that that's why I would --

18 Q. Okay. You don't know what they will or won't do, correct?

19 A. I cannot speak for the new owners of this company.

20 Q. Okay. And there are certainly --

21 A. I think --

22 Q. -- other scenarios that are equally viable, if not more
23 viable, right?

24 A. There may well be --

25 Q. Okay.

1 A. -- but as I said in my direct, I think it's reasonable to
2 assume particularly if the settlement noteholders inherit the
3 business, they will certainly consider these options.

4 Q. And what prevented you from talking to them was your
5 confidentiality agreement with the equity committee; is that
6 correct?

7 A. Under the circumstances, I didn't even approach the
8 prospect of addressing this with the settlement noteholders.

9 Q. Okay.

10 A. I don't think that would've been appropriate, whether it
11 was allowed or not.

12 Q. Now, you'll agree with me that your report speculates as
13 to the value of reorganized WMI as a going concern, correct?

14 A. That is correct.

15 Q. Okay. And your scenarios require a substantial investment
16 of additional capital, right?

17 A. As they said, 140 million dollars of equity capital.

18 Q. And you're not opining on the likelihood that additional
19 capital will be raised, correct?

20 A. I believe it can be raised, but I haven't endeavored to
21 place a probability on that likelihood.

22 Q. So you are not opining on the likelihood it'll be raised,
23 correct?

24 A. That is correct.

25 Q. Okay. And you don't know of anyone who was interested or

1 able to infuse capital into reorganized WMI, correct?

2 A. I do not know sitting here today a qualified investor who
3 is interested today in investing in reorganized WMI.

4 Q. Okay. And you'll agree that there is no certainty to the
5 potential value in your report, correct?

6 A. There's no certainty in anything.

7 Q. Okay.

8 A. Except death and taxes.

9 Q. And we've already discussed taxes a lot.

10 If you take a quick look at page 8 of your report, which
11 we discussed earlier, you discuss additional potential value of
12 NOLs, correct?

13 A. Yes.

14 Q. And this is premised on a substantial additional
15 investment capital, right?

16 A. And I acknowledge that I think in my concluding sentence.

17 Q. And without the substantial investment of additional
18 capital, the potential value will not be achieved, correct?

19 A. Within this context, that's correct.

20 Q. And what you are postulating here is billions of dollars
21 of capital being raised such that hundreds of millions of
22 dollars a year in income is generated to be shielded by net
23 operating losses, correct?

24 A. Well, I haven't endeavored to calculate how much would be
25 required to do this. We've looked at the value of the NOL in a

1 conventional formulation, assuming the NOL were to be used over
2 a ten-year period of time out to a twenty-year period of time,
3 and estimated what range of taxable income would be necessary
4 in order to use the NOL, the -- this is referring to the
5 unlimited NOL over that period of time, and discounted that tax
6 shelter back, using our equity cost of capital, that's what
7 this reflects.

8 Q. And the amount of income you assumed that would be
9 generated annually was 273 million dollars in annual income,
10 correct?

11 A. I believe that's the case for the ten-year calculation.

12 Q. Right. Because you assume that ten percent of the NOL
13 available would be shielded. The ten percent of the income
14 would be -- I'm sorry. Ten percent of the NOL would be used to
15 shield the income every year, correct?

16 A. In that case. We also did a fifteen-year analysis, and a
17 twenty-year analysis --

18 Q. And a very --

19 A. -- and that's how we came up with the range.

20 Q. Sorry. And a very substantial investment would be needed
21 to generate 273 million dollars of income per year, correct?

22 A. I believe I acknowledged that.

23 Q. And it would be a billion, if not billions of dollars
24 invested, would be needed to generate that level of income per
25 year, correct?

1 A. It would certainly be more than a billion dollars.

2 Q. Okay. And again that analysis you were performing is a
3 potential value should an investor pursue reorganized WMI as a
4 going concern, correct?

5 A. Yes. But again, I refer back to the exhibit on my direct.
6 I mean, clearly at least one of the settlement noteholders has
7 looked at it exactly this way when that was reflected in the
8 worksheet that I talked to.

9 Q. Okay. And these values that you ascribed here are not
10 values that you're ascribing to the net operating loss in your
11 expert opinion; isn't that correct?

12 A. That is correct.

13 Q. Okay.

14 A. This is not part of the net value calculation that I
15 proffered and discussed in my direct.

16 Q. Right. It's not your expert opinion that the net
17 operating losses have the values discussed on page 8, correct?

18 A. That is correct.

19 Q. Okay.

20 A. This is intended to be helpful to the Court to just gauge
21 the economic value as it is normally reflected by an investment
22 banker in looking at a NOL without opining as to how that could
23 be captured.

24 Q. You mention that spreadsheet or whatever the document is
25 you were looking at, EC-135 -- you focused a lot on this

1 document. You didn't, you hadn't seen this document at the
2 time you prepared your critique; isn't that correct?

3 A. That is correct.

4 Q. Okay. And there's a lot of information redacted on this
5 document, correct?

6 A. Correct.

7 Q. And you don't know if other documents were run like this
8 or what was done with this, or what was intended by this,
9 correct?

10 A. That is correct.

11 Q. Kind of one document just pulled out of who knows how many
12 documents, right?

13 A. That's normally the case, yes.

14 Q. Okay. And it's your understanding that the noteholders
15 will be the new owners of reorganized WMI, right?

16 A. I understand that that is one alternative. I don't know
17 the certainty of that outcome.

18 Q. It's your understanding, though, right?

19 A. I think it's generally the estate's understanding that
20 that's more likely than not, but I don't know that with any
21 certainty.

22 Q. And you believe that their testimony is, regarding their
23 intentions for reorganized WMI is relevant to the determination
24 of its value, correct?

25 A. I don't know that that's determinative of value at all.

1 Q. I didn't say determinative. I said it's relevant to the
2 determination of the value of reorganized WMI, correct?

3 A. I suppose it has some relevance.

4 Q. To the extent that it speaks to their expectations or
5 intentions, right?

6 A. Well, it speaks to their intentions and expectations as of
7 the date of that testimony.

8 Q. Correct.

9 A. But what they think the following morning I -- would be
10 pure conjuncture on my part.

11 Q. And that's true also of EC-135 the chart you looked at,
12 right, what someone might think of it at a different time would
13 be pure conjuncture, correct?

14 A. Fair enough.

15 Q. Did you read the deposition transcripts of the
16 noteholders?

17 A. No, I did not. I would not have had those available at
18 the time I did the report.

19 Q. Are you aware that Aurelius valued reorganized WMI at
20 approximately seventy-five to 150 million dollars?

21 A. No, I'm not.

22 Q. Are you aware that Aurelius hasn't made any attempt to
23 identify potential acquisition targets for reorganized WMI?

24 A. No, I'm not, but that doesn't surprise me.

25 MR. ARD: Objection, Your Honor, insofar as he's

1 testifying about what Aurelius valued the company to be.

2 MR. MASTANDO: I'm just asking if he's aware, Your
3 Honor. He testified that he thought it'd be relevant.

4 THE COURT: Well, don't --

5 MR. MASTANDO: Well, Your Honor, counsel showed him a
6 spreadsheet from one of the noteholders that --

7 THE COURT: Yeah, I know, but in asking a question
8 don't say are you aware, and then testify.

9 MR. MASTANDO: Okay.

10 THE COURT: So if you want to ask him if he's aware of
11 what their intentions are, fine, but.

12 MR. MASTANDO: Okay. Thank you, Your Honor.

13 BY MR. MASTANDO:

14 Q. So back to EC-135, Mr. Maxwell, you have no idea what
15 anyone's intention was with this document, correct?

16 A. I do not.

17 Q. Okay. All right. I think that eliminates some of my
18 questions here.

19 Mr. Maxwell, you mentioned the rights offering as part of
20 your direct testimony, correct?

21 A. Yes.

22 Q. And the rights offering was for a hundred million dollars,
23 not 140; isn't that correct?

24 A. I seem to recall in the fall of last year, there was
25 discussion of a rights offering to one of the earlier plans

1 that was as much as 140 million dollars. I think it was in a
2 range of a hundred to 140.

3 Q. And I believe you testified you understood only
4 approximately thirty-one million dollars was subscribed, right?

5 A. I don't remember if I testified to that. I think that's
6 correct.

7 Q. Okay.

8 A. Whether I testified to it or not.

9 Q. And the current plan doesn't contain a rights offering,
10 correct?

11 A. Correct.

12 Q. And the reason for that is because of securities laws;
13 isn't that right?

14 A. I believe that's correct.

15 Q. Okay.

16 (Pause)

17 MR. MASTANDO: Excuse me, Your Honor.

18 Q. Mr. Maxwell, on page 5 of your report, you discussed the
19 discounted cash flow method, correct?

20 A. Yes.

21 Q. And for that analysis, you relied on the ten-year
22 projections that the debtors provided, right?

23 A. Correct.

24 Q. Still on page 5, you discuss two scenarios in the middle
25 of the page, a non-amortizing financing of the existing legacy

1 portfolio.

2 A. Yes.

3 Q. At a leverage of .4-to-1, debt-to-assets.

4 A. Yes.

5 Q. And an equity rights offering of 140 million dollars,
6 right?

7 A. Yes.

8 Q. For the non-amortizing financing, you based the .4-to-1,
9 debt-to-assets ratio on an observation of the debt-to-capital
10 ratios of other reinsurance companies, right?

11 A. That's correct.

12 Q. And I think page 15 of your report lists the comparable
13 company universe you looked at to determine this .4-to-1 debt-
14 to-capital ratio?

15 A. Yes, as we discussed in my deposition.

16 Q. Okay. And none of the companies on page 15 are
17 reinsurance run-offs; isn't that right?

18 A. That is correct.

19 Q. And if you look back to page 11 of your report, you
20 calculate what you call the incremental value of the capital
21 raises. It's on the right-hand side in that top box on the
22 right. Do you see that?

23 A. Yes.

24 Q. And you list the cost of debt on this chart as six
25 percent --

1 A. Yes.

2 Q. -- correct?

3 And you base that estimate for the cost of debt on a
4 double B rated security, right?

5 A. In the current market, that's correct.

6 Q. And the reinsurance companies listed on page 15 of your
7 report, if you could turn back to page 15, they have credit
8 ratings of B minuses and triple C pluses; isn't that right?

9 A. Yes, that is correct.

10 Q. And those would have a higher cost of debt; isn't that
11 right?

12 A. Normally, yes.

13 Q. Okay. And you also assume an after tax rate of return of
14 ten percent, right, on -- back to page --

15 A. Yes.

16 Q. -- 5?

17 A. Yes.

18 Q. Actually 11 is easier. Sorry, Kim.

19 And the ten percent rate of return is based on the return
20 on equity for ongoing reinsurance companies; isn't that right?

21 A. That is correct.

22 Q. It's not based on any reinsurance run-offs, correct?

23 A. No, it is not.

24 Q. Okay. On this page, you also -- you discussed on direct
25 the 1.4 terminal multiple that you used in the DCF?

1 A. Yes.

2 Q. And this is based on the book multiples for the precedent
3 transactions listed on page 7 of your report, right?

4 A. That is correct.

5 Q. Okay. But you agree that it would've been equally
6 reasonable to use a going concern multiple derived from
7 comparable companies, right?

8 A. In the instance that I'm addressing on page 11, which is
9 looking at the prospect of investing by a new investor, where
10 you're doing a net present value calculation so that by its
11 nature, the investor is contemplating a -- exiting the
12 investment at some finite period of time. Here we're using ten
13 years. For most private investors, that's probably too long a
14 period of time, but this is not akin to the issue we addressed
15 in a business valuation context, where we're looking at a
16 terminal value and contemplating the business as a going
17 concern.

18 Here we're looking at the value where the return to the
19 investor, and the net differential of value that goes to the
20 estate, in this case, reorganized WMI. So I thought it was
21 appropriate to use the precedent transactions as a guide to
22 define the terminal value from the point of the view of the new
23 investor.

24 Q. Okay. So you agree that it would've been equally
25 reasonable to use a going concern multiple derived from

1 comparable companies, correct?

2 A. Not in this instance.

3 Q. Okay.

4 A. It would be more appropriate to use the precedent
5 transaction if you look at this as a net present value
6 calculation.

7 Q. If I could direct you to page 82 of your deposition, Mr.
8 Maxwell.

9 A. Yep.

10 Q. Line 5.

11 "Q. Okay. And if you had done it, I would -- it would
12 have been" --

13 Sorry, let me start over.

14 "And if you had done it, it would have at least been
15 equally reasonable to go use a going concern multiple.

16 "A. You mean a multiple derived from comparable
17 companies?

18 "Q. Yes.

19 "A. Yes."

20 Did I read that correctly, Mr. Maxwell?

21 A. You did, however, on reflection I would say that looking
22 at the essence of the analysis that's being done on page 11,
23 which is a net present value calculation, on reflection I think
24 it's more appropriate to use precedent transactions,
25 recognizing that inherently what we're doing here is looking at

1 this from the point of view of the new investor, who is going
2 to want to terminate the investment in order to do the
3 calculation that we're doing on the page, which is defining
4 what the return to the new investor is, and what the
5 corresponding net recovery would be to reorganized WMI.

6 Q. Okay. The -- if you could turn to page 15 of your report,
7 the comparable company chart on that page shows that the price
8 book going concern multiple would've been a mean of one and a
9 median of .9 if you look down the price --

10 A. Yes.

11 Q. -- book column --

12 A. Yes, I do --

13 Q. -- about midway --

14 A. I do see --

15 Q. -- through the column?

16 A. -- that.

17 Q. Okay.

18 A. I do see that.

19 Q. And if the insurance companies in this chart were used as
20 a basis for valuing reorganized WMI, you would come up with a
21 lower terminal value, right?

22 A. That is clearly the case.

23 Q. Okay. And like reorganized WMI, these businesses are in a
24 transitional state, correct?

25 A. Well, reorganized WMI today is clearly in a transitional

1 state, it's --

2 A. Clearly.

3 Q. -- clearly, what the supposition on page 11 is that ten
4 years hence, it will not be in a transitional state.

5 Q. Right. You assume ten years down the road a rosy future,
6 right?

7 A. I assume a future that is not --

8 Q. You assume a better future?

9 A. -- materially different than is reflected in the precedent
10 transactions that we looked at.

11 Q. You assume a better future ten years down the road,
12 correct?

13 A. I think by definition, that's correct.

14 Q. You're an optimist, right?

15 A. Not often.

16 Q. Okay. Now, you used comparable companies to calculate the
17 WACC for your DCF, right?

18 A. That is the sole use of the comparable companies in my
19 critique, yes.

20 Q. And precedent transaction multiples like the one you used
21 here, those include control premiums, right?

22 A. By their nature, yes.

23 Q. And you didn't back out the control premium from your
24 analysis, correct?

25 A. That is correct, but again, in the context of the net

1 present value calculation, looking at this from the point of
2 view of the investor, I think that's not unreasonable. We're
3 not doing the same calculation we normally do in a bankruptcy
4 valuation, which --

5 Q. Okay.

6 A. -- by its nature is different.

7 Q. And you rely on the old precedent transactions for your
8 terminal multiple, because you believe they may be indicative
9 of values in the optimistic future, ten years down the road,
10 correct?

11 A. I think they're indicative of intrinsic value in the
12 market over a long period of time.

13 Q. And you think that may be indicative of ten years down the
14 road, correct?

15 A. Yes.

16 Q. Okay. So you assume the 160 million dollar debt raise, we
17 discussed that, right?

18 A. Yes.

19 Q. On top of the 140 million dollar equity raise.

20 A. Yes.

21 Q. And fifty-six million dollars in debt on the 140 million
22 equity, right?

23 A. Yes, as we discussed in order to come to the .4-to-1.

24 Q. And you'll agree with me that you are not in a position to
25 substantiate whether the company today could raise 160 million

1 dollars in debt, right?

2 A. We have not gone into the market to see what the level of
3 interest might be, and therefore, I'm not in a position to tell
4 the Court the likelihood of placing the debt or the equity. I
5 do think, as I've said repeatedly, that's a reasonable
6 expectation under the circumstances.

7 Q. But again, you're not opining on the likelihood, correct?

8 A. I am not opining on the likelihood.

9 Q. And if you turn -- I'm sorry, if I could direct you back
10 to page 11 of your report. You used the DCF analysis to
11 calculate the incremental potential value of the equity and
12 debt investments. That's on the right-hand side, those two
13 boxes, right?

14 A. Yes.

15 Q. And your view is that the fifty-three million dollar
16 incremental value that's shown in the top box there of the
17 equity and debt investments is basically created on the day
18 that the equity and the debt are raised; isn't that correct?

19 A. Here we go again. The fifty-three represents the
20 conclusion drawn from a traditional net present value
21 calculation of what the net return would be to reorganized WMI
22 stakeholders after ceding return to the new investment -- the
23 new investor of between 15.8 and twenty percent after tax.

24 Q. And so back to my question. Your view is that the fifty-
25 three million dollar incremental value of the equity and debt

1 investments is created on the day that the equity and debt are
2 raised, correct, using these projections here?

3 A. It is a --

4 Q. If you could just go to the deposition if you --

5 A. I appreciate that. It's a theoretical value. It is not
6 meant to indicate to the Court that fifty-three million dollars
7 could be captured in cash at emergence, if this scenario were
8 pursued.

9 Q. Okay. If I could direct you to your deposition, Mr.
10 Maxwell, page 85, line 16. So your view -- question, sorry.

11 "Q. So your view is that the fifty-three million dollar
12 incremental value of the equity and debt investment is
13 basically created on the day that the equity and debt are
14 raised; isn't that correct?

15 "A. On a -- discounting back these cash flows, yes."

16 Did I read that correctly, Mr. Maxwell?

17 A. Yes, you did.

18 Q. Okay. And on page -- I think it's page 12 of the report,
19 you calculate the present value of the assumed 160 million
20 dollar debt investment, correct?

21 A. Correct.

22 Q. And you used the weighted average cost of capital for
23 this, the twelve percent?

24 A. Twelve to thirteen percent, yes.

25 Q. Okay. And using the twelve percent weighted average cost

1 of capital, I think the upper right-hand box shows you
2 calculate the incremental value of the debt raise at ninety
3 million dollars, right?

4 A. Correct.

5 Q. And the twelve percent WACC is really the present value of
6 the difference between your assumed six percent cost of debt
7 and the fifteen percent rate of return that you assume, right?

8 A. That's correct. That is correct.

9 Q. So according to these projections, on the day that the 160
10 million dollars in debt is raised, it is worth 250 million
11 dollars, correct?

12 A. Reflective of the intrinsic value of the estate predicated
13 on these assumptions.

14 Q. And you assume full and immediate implementation of the
15 scenario involving the debt and equity raise, as of the first
16 day of the first year, correct?

17 A. That is correct. We haven't endeavored to defer this. It
18 is a ten period analysis --

19 Q. Uh-huh.

20 A. -- on the investment without deferral.

21 Q. And you agree that the assumption of full and immediate
22 implementation on day one is inaccurate, right?

23 A. That would have some impact, yes.

24 Q. If you had a realistic business plan, you would account
25 for the timing of when capital would come in, for instance,

1 right?

2 A. That is correct.

3 Q. And you would account for how long it would take to invest
4 the capital, right?

5 A. That is correct.

6 Q. And you would account for the timing of when revenues
7 would start to come in, right?

8 A. That is correct.

9 Q. Okay.

10 A. I do not think that the staging of the investment where
11 those refinements that would be necessary in doing a robust
12 analysis, however, would change the basic thrust of the
13 conclusions drawn from this net present value calculation,
14 however.

15 Q. I think we discussed, Mr. Maxwell, you haven't spoken to
16 any potential investors about investing in reorganized WMI,
17 correct?

18 A. I have not.

19 Q. Okay. Do you know if there are any offers made for
20 reorganized WMI?

21 A. I gather --

22 Q. For Wimrick?

23 A. I gather from testimony in court this week, that that is
24 the case.

25 Q. Okay. You're aware that there was a bid for Wimrick for

1 approximately forty-one million dollars, right?

2 A. I believe that was the testimony.

3 Q. And there was also another bid for a hundred million
4 dollars, right?

5 A. I also understand that to be the case.

6 Q. And the hundred million dollar bid was based on less
7 diligence than the forty-one million dollar bid, right?

8 A. I gather that's the case.

9 Q. And you'll agree that these bids are less than your
10 valuation of even the reinsurance run-off, right?

11 A. I am quite aware, yes.

12 Q. Okay. You'll agree with me, too, on the debt and equity
13 raise that reorganized WMI couldn't go raise the 160 million
14 dollars in debt without an additional equity raise as well,
15 correct?

16 A. That is correct.

17 Q. The 160 million dollar debt raise is premised on the
18 successful 140 million dollar equity raise, right?

19 A. It is in our scenario.

20 Q. Okay. If we could discuss your precedent transaction
21 analysis a little more.

22 If you take a look back to page 7 of your report, there
23 are five precedent transactions listed there, correct?

24 A. Yes.

25 Q. And some of these precedent transactions were in

1 Blackstone's report as well, right?

2 A. Yes.

3 Q. And you're aware that Blackstone listed ten companies for
4 its precedent transaction analysis, right?

5 A. Yes, I am aware.

6 Q. And that Blackstone used the seven run-off companies in
7 its precedent transactions analysis, correct?

8 A. Yes.

9 Q. And you used the three going concern companies, rather
10 than the run-off companies in your precedent transaction
11 analysis, right?

12 A. Yes, because that was the characterization we were making
13 in our critique.

14 Q. Right. You did not use any of the seven run-offs that
15 Blackstone used, correct?

16 A. That is correct.

17 Q. Okay. And that's because as you just said, you're
18 characterizing the business as a going concern, right?

19 A. That is correct.

20 Q. Okay. And your transactions cited here on page seven
21 occurred between 1998 and 2007, right?

22 A. Yes.

23 Q. And reinsurance companies today are working through fairly
24 distressed portfolios, right?

25 A. Yes, I'm aware.

1 Q. And so looking at the market today, valuation multiples
2 are fairly depressed, right?

3 A. They're all over the place, generally depressed.

4 Q. And if you use the multiples reflected in the market
5 today, the precedent transaction value would be lower, right?

6 A. I have no doubt that's the case.

7 Q. Okay. And actually based on the general outlook in the
8 market today, it would be difficult to give much credence to
9 investing in this business on a go forward basis under almost
10 any scenario; isn't that right?

11 A. Well, all the more reason that I'm relatively bullish
12 about the prospects for investing in this area today. If you
13 go back to Graham and Dodd or any other value investment
14 thesis, which is heavily relied upon by, you know, funds such
15 as the settlement noteholders manage, this is a marvelous time
16 to be investing in mortgage reinsurance.

17 Q. And back to my question, based on the general outlook in
18 the market today, it would be difficult to give much credence
19 to investing in this business on a go forward basis under
20 almost any scenario, correct?

21 A. That's true. But to make money in this business,
22 investing with the herd or selling with the herd, is a well
23 defined formula for losing money. That is not what
24 sophisticated investors rely on in terms of where the herd is
25 headed.

1 Q. Okay. And you weighted your precedent transactions forty
2 percent and your DCF sixty percent, right, in your analysis --
3 in your critique?

4 A. Yes.

5 Q. But you agree that forty percent is a rather high
6 weighting to give precedent transactions that occurred under
7 very different market conditions, correct?

8 A. Yes, I did. But I also observed that it didn't really
9 make much of an impact whether we used thirty percent, twenty-
10 five percent, or forty percent --

11 Q. Okay.

12 A. -- in terms of the indication of value.

13 Q. And you used the sixty/forty because you originally
14 thought Blackstone had done that as a sixty/forty split, but
15 you subsequently realized that was not the case, right?

16 A. That is true.

17 (Pause)

18 Q. Mr. Maxwell, you'll agree with me that the unique
19 opportunity presented by Wimrick versus investing in another
20 reinsurance company is the ability of a potential investor to
21 take advantage of the net operating loss, correct? We
22 discussed that at your deposition.

23 A. That's correct.

24 Q. Okay. And you understand that Blackstone was trying to
25 value the future corporate opportunity as they saw it, the

1 value of the NOL that made this investment different from
2 investing in any other reinsurance company, correct?

3 A. I understood Blackstone's approach to corporate
4 opportunity value as being a form of option value. It's not
5 one that I subscribe to. I, you know, respectfully disagree
6 with that approach, but it's an unconventional way of
7 guesstimating a value.

8 Q. I'm not talking about the method, but you understand that
9 the unique opportunity presented by Wimrick versus another --
10 investing in another reinsurance company is the NOL, and that's
11 what Blackstone was attempting to value, whether you agree with
12 the method or not, correct?

13 A. I gather to be the case, yes.

14 Q. Okay. And if you take a look at page 30- -- if we could
15 pull up DX-341, the Blackstone report, which you were looking
16 at earlier.

17 A. I --

18 Q. Page 35.

19 A. Can you just point me in what exhibit should I be --

20 Q. I'm sorry. It's -- I thought you had it before, the
21 Blackstone report, DX-341.

22 A. Hold on. Okay.

23 Q. Would you take a look at page 35. You understand that
24 Blackstone was, in valuing the future corporate opportunity was
25 accounting for IRS risks and execution risks, correct?

1 A. That's my understanding, yeah.

2 Q. Okay. And your report, your critique doesn't account at
3 all for any Section 269 risks under the Internal Revenue Code,
4 correct?

5 A. That is correct.

6 Q. Okay.

7 A. But again, as I said in my deposition, my report was
8 reviewed by the committee's tax advisor.

9 Q. Right. And you understand that he testified that he
10 didn't approve of any of the calculations in your report. You
11 were here when he testified as to that, right?

12 A. I did not hear that testimony.

13 Q. Oh, you stepped out during that part?

14 A. Yes.

15 Q. Okay. And Blackstone is also accounting for execution
16 risks in this future corporate opportunity, correct?

17 A. Yes, they are.

18 Q. And the risks include, listed on 35, the lack of an
19 existing management team with experience in related
20 infrastructure to implement the corporate opportunity, correct?

21 A. Yes, I understand that.

22 Q. And the nature of the historical business in which all
23 reinsurance assets were sourced solely from reorganized WMI
24 former affiliate, i.e., reorganized WMI never independently
25 acquired reinsurance assets, and is thus currently operating as

1 a run-off portfolio.

2 A. No, I'm well aware.

3 Q. And also uncertainties surrounding the availability of
4 capital, and the availability of portfolios to be acquired,
5 correct?

6 A. Yes.

7 Q. And the deterioration in reorganized WMI's existing
8 mortgage portfolio that made direct proceeds from new
9 opportunities to cover future losses, correct?

10 A. Yes. Yes.

11 Q. And the hand-out that you passed out this morning on the
12 adjusted value of tax savings that you attempted to calculate,
13 does not account for all of the risks that Blackstone is
14 accounting for in its future corporate opportunity presentation
15 in its report; isn't that correct?

16 A. We're certainly using an entirely different discount rate.

17 Q. Okay. And the reason you're using a different rate is
18 because you're assuming a different level of risk, right? Your
19 position --

20 A. You're assuming that -- we're assuming that the
21 determination has been made to move forward with this business
22 as a going concern, and as I said earlier --

23 Q. Right.

24 A. -- I think having made that assumption, using these
25 extraordinarily high discount rates is inappropriate.

1 Q. Right. So using your scenario, your rosy future ten years
2 down the road, and those assumptions, that's how you come up
3 with this chart that you've calculated here, right?

4 A. The chart speaks for itself. We simply adopted our
5 discount rates as opposed to Blackstone's discount rates, and
6 came to a markedly different conclusion in terms of the present
7 value of the tax shelter.

8 Q. Right. And that was your discount rates based on
9 reorganized WMI, considering it as a going concern, right?

10 A. That is correct.

11 Q. If you consider it to continue operating as it is, as a
12 reinsurance run-off, this doesn't apply; isn't that right?

13 A. Not only does not it apply, but I questioned, as I said
14 earlier why it is even taken into consideration in the
15 Blackstone report, because if this is simply the disposition of
16 a legacy portfolio, it is, in my opinion, inconsistent and
17 inappropriate to include that value in the report.

18 Q. All right. And you understand that Blackstone was
19 including a future corporate opportunity NOL value, valuing
20 just the portion of the NOL that they considered might be able
21 to be used, correct?

22 A. I gather that's the case.

23 Q. It's your understanding?

24 A. That's my general understanding.

25 Q. And what you're doing in your hypothetical critique is

1 you're valuing both any potential NOL value, plus the value of
2 the hypothetical business that you create that generates income
3 and profits and everything else, correct?

4 A. I'll restate it. I'm simply applying the WACC that we
5 derived and the cost of equity capital premised on this
6 business going forward as a going concern, and use that to
7 illustrate to the Court the magnitude of the impact, if you
8 substitute the cost of capital of what we think a going concern
9 would enjoy against the same analysis that Blackstone did in
10 terms of looking at the value of the tax shelter.

11 Q. Right. But my question is a narrow one -- narrower one,
12 excuse me.

13 In creating an ongoing business here, you're not just
14 valuing the opportunity that we just discussed, the NOL, which
15 is the unique opportunity that Wimrick, reorganized WMI
16 presents compared to investing in some other reinsurance
17 company? You're not valuing just that, correct?

18 A. That is correct.

19 Q. You're creating a whole new business and taking credit for
20 all the value that you assume could be created.

21 A. In the scenario that we put forward, that is correct.

22 Q. Okay. Now, you were retained as an expert, I think you
23 mentioned this morning, by the equity committee in the Mirant
24 case, right?

25 A. That is correct.

1 Q. And in Mirant, you provided a report regarding the
2 valuation of the debtor, right?

3 A. That is correct.

4 Q. And you performed a comparable company analysis as part of
5 your report there?

6 A. That is my recollection.

7 Q. And to value the comparable companies there, you used an
8 EBIT multiple instead of EBITDA multiple, correct?

9 A. I don't remember.

10 Q. Okay. If we could take a look -- well, do you remember
11 there being an issue with whether it made sense to use an EBIT
12 multiple or a EBITDA multiple in doing a comparable company
13 analysis?

14 A. I -- sitting here today, I don't remember. I mean, we had
15 a twenty-seven day trial and there were a lot of issues --

16 Q. Okay.

17 A. -- in divining value in that case.

18 Q. If we could take a look at Debtor's 354, Exhibit 354. I
19 think it's in the binder in front of you, Mr. Maxwell, 354,
20 Volume 8.

21 MR. MASTANDO: Volume 8, Your Honor.

22 THE COURT: I have it.

23 Q. If you could take a look at the transcript page 3976 lines
24 4 through 16.

25 MR. MASTANDO: Or maybe Kim can just pull it up and we

1 can just follow there.

2 Q. Right in front of you; 4 through 16. And you see here
3 there's a discussion about it being conventional to use a
4 EBITDA multiple in a comparable company analysis, correct?

5 A. Yep.

6 Q. And you have used an EBIT multiple instead, correct?

7 A. Sitting here today, I honestly don't remember.

8 Q. Okay. If we could go to page 3986 of the transcript, line
9 23, I believe it is to the next page. There's a question:

10 "And the use of a 2005 EBIT number increases your
11 valuation over EBITDA by some 1.3 billion dollars; is that
12 right?"

13 And your answer was, "Well, arithmetically that's correct.
14 That is not the reason it's included on that page."

15 Do you recall that testimony in Mirant?

16 A. No, I don't.

17 Q. Do you have any reason to think it didn't happen?

18 A. No, I have no reason at all. But again, I mean, I was,
19 you know, testifying for six days. This is the least of my
20 problems.

21 Q. Were there a lot of issues that came up regarding
22 increases in valuation of a billion or more dollars in that
23 case?

24 A. Yes, but I think as Judge Lynn, you know, concluded at the
25 end of the trial, I, you know, very credibly represented the

1 value and as some of you know, based on the draft of this text
2 that's been published this summer, I think the market over the
3 following year or two corroborated the conclusions that I drew
4 however I got there.

5 Q. Mr. Maxwell, are you testifying today as an advocate on
6 behalf of the equity committee or a disinterested neutral?

7 A. I've been retained by the equity committee, and therefore
8 clearly by definition, I'm an advocate.

9 Q. So you don't consider yourself a disinterested expert,
10 correct?

11 A. Well, I am a disinterested expert who's been retained by
12 the equity committee, and I would readily acknowledge as a
13 representative of the equity committee, I'm trying to see that
14 the equity in this case gets a fair shake.

15 Q. So you think it's appropriate for experts to act as
16 advocates for the parties they represent?

17 A. Whether it's appropriate or not, they necessarily do.

18 Q. And the Bankruptcy Court in Mirant criticized you for
19 being an advocate for the equity committee instead of a
20 disinterested neutral; isn't that right?

21 A. I don't recall Judge Lynn making that comment.

22 Q. Okay. Let's take a look at Debtor's 355. It's the In Re:
23 Mirant decision, 334 B.R. 800. If you could take a look at
24 page 814. I think it's in your binder also, Mr. Maxwell, but
25 we'll try to pull it up on the screen. It's --

1 A. Yeah.

2 Q. 355 is the exhibit.

3 UNIDENTIFIED SPEAKER: It's an internal 814.

4 MR. MASTANDO: 354.

5 Q. Oh, I'm sorry, it's 354.

6 A. Okay. I'm at 354. I just --

7 Q. Page 10.

8 A. Page 10.

9 THE COURT: 354 is the --

10 UNIDENTIFIED SPEAKER: 355, page 10.

11 THE COURT: -- transcript.

12 MR. MASTANDO: I'm sorry, 355, Your Honor.

13 THE WITNESS: Okay. What page?

14 BY MR. MASTANDO:

15 Q. I think it's page 10 of the document. There's a quote on
16 the page presentation materials submitted by PJSC to the equity
17 committee, identified PJSC as not simply a disinterested
18 neutral, but as an advocate for the equity committee.

19 Do you see that?

20 A. Yes.

21 Q. Okay. And you mentioned, Mr. Maxwell, I think it's
22 because you just saw the transcript, you were also an expert in
23 In Re: Innkeepers, you testified.

24 A. Yes, I did.

25 Q. Okay. And you filed the declaration in support of the

1 motion for appointment of an equity committee in that case,
2 correct?

3 A. That is correct.

4 Q. And you testified in support of the motion to appoint the
5 equity committee, correct?

6 A. That is correct.

7 Q. And in the declaration there, you examined six hotel
8 properties with individual mortgages. That was part of the
9 analysis you were doing.

10 A. That was.

11 Q. And you used those six properties to imply a value for the
12 debtor, right?

13 A. That is correct.

14 Q. And if you could take a look at Debtor's 353, the Exhibit
15 353 in your binder, please.

16 A. Okay.

17 UNIDENTIFIED SPEAKER: What page is it in the exhibit?

18 MR. MASTANDO: It's page 119 in the transcript, see if
19 we can figure out what page in the exhibit it is.

20 Q. Do you have it?

21 A. Okay.

22 Q. If you look on the bottom of the page, the Court
23 indicated, "Mr. Maxwell, the ad hoc committee's expert, was
24 extremely clear in his testimony that his work was not a
25 valuation, but rather an attempt to develop a first basis for a

1 something value on six properties, which should be
2 characterized as a quote, implied value."

3 Do you see that?

4 A. Yes.

5 Q. And you also have talked about implied value in this case,
6 right?

7 A. That is correct.

8 Q. And the Innkeepers' Court going to page 120, I believe,
9 found that you were careful to hedge your opinions in that
10 case, right?

11 A. Yes.

12 Q. And the Court found that you did not perform a true
13 valuation in Innkeepers, correct, to --

14 A. Well, I --

15 Q. -- on the screen, the middle paragraph.

16 A. I'm well aware of the Judge's response to my testimony,
17 and that is correct. I would hasten to add, however, that
18 based on my opinion, we proffered a point of view that these
19 properties were worth order of magnitude 200 million dollars.
20 And a year later, as the case was finally adjudicated, it was
21 established that, in fact, those properties were worth
22 approximately that amount, and that what was paid for those
23 properties.

24 So while we're talking about the form of the Court's
25 reaction to the testimony that I proffered, in due course, and

1 as I've advocated in other cases, substantiated by the market,
2 I wasn't far off.

3 Q. And the Court went on to say that you hedged your
4 opinions, and that "left your implied value analysis well short
5 of an expert opinion on which I can rely to find that the ad
6 hoc committee's burden has been sustained." Do you see that?

7 A. And I respect the Court's position in that regard.

8 Q. Okay.

9 (Pause)

10 MR. MASTANDO: I have nothing further, Your Honor.

11 THE COURT: Thank you. Does the committee or anybody
12 else have any cross?

13 MR. JOHNSON: Very briefly, Your Honor. Robert
14 Johnson from Akin Gump on behalf of the official committee of
15 unsecured creditors.

16 THE WITNESS: Mr. Johnson.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q. Mr. Maxwell, in the scenario that you're presenting,
20 reorganized WMI would raise another 140 million dollars in
21 equity and also obtain another 160 million dollars in debt,
22 right?

23 A. That is correct.

24 Q. So in your critique, what you're presenting is not a
25 valuation of the legacy business of reorganized WMI.

1 A. That is correct.

2 Q. Instead, it's really taking that new 300 million dollars
3 of capital and creating a new business, isn't it?

4 A. That is correct.

5 Q. So in essence it's creating a start-up company?

6 A. It is creating a start-up company around the shell of a
7 legacy portfolio, that was what was contemplated.

8 Q. And that start-up company would have to obtain its own new
9 management, correct?

10 A. I'd certainly acknowledge that.

11 Q. And it would have to develop its own business plan.

12 A. That is correct.

13 Q. And why would it do this?

14 A. Because there would be a profit in doing so.

15 Q. And would a purpose of doing this, be to take advantage of
16 those NOLs?

17 A. That would be a benefit. The purpose of doing so would be
18 to capitalize on market opportunity that exists today in the
19 mortgage reinsurance business.

20 Q. Do you think that a purpose of this would be to take
21 advantage of the NOLs?

22 A. Yes.

23 Q. Do you think that would be the principal purpose?

24 A. I wouldn't characterize it that way. That is, as I've
25 acknowledged, a unique asset to this estate differentiating it

1 possibly from other run-off portfolios in the market.

2 Q. Don't you think the Internal Revenue Service would look at
3 this very carefully?

4 A. I don't know what the Internal Revenue Service would look
5 at.

6 Q. If there were a risk that those NOLs would be jeopardized
7 by this transaction, do you think that there should be a
8 discount taken to the valuation of that opportunity?

9 A. I'm presuming here that a determination has been made to
10 move forward with this as a going concern. Having made that
11 decision, I wouldn't further discount the cost of capital or
12 increase the perceived risk over and above the levels that I've
13 indicated in my opinion as to weighted average cost of capital,
14 or in particular, the cost of equity capital.

15 Q. So in your scenario, you do not incorporate any discount
16 for the possibility of Section 269 being invoked?

17 A. That is correct.

18 MR. JOHNSON: Thank you. Nothing further.

19 MR. HOROWITZ: Good morning, Your Honor. For the
20 record, Gregory Horowitz from Kramer Levin for Aurelius.

21 CROSS-EXAMINATION

22 BY MR. HOROWITZ:

23 Q. Good morning, Mr. Maxwell.

24 A. Good morning.

25 Q. Nice to see you again.

1 Just a few questions. First, I know you've said this
2 before, I just want to make sure it's clear. You are not here
3 today offering any opinion at all as to the value of the stock
4 that will be distributed to certain creditors under the current
5 proposed plan of reorganization, right?

6 A. No, I am not.

7 Q. And, in fact, you agree that Blackstone used an
8 appropriate methodology for determining that value.

9 A. That is correct.

10 Q. Okay. Now, you are offering an opinion on a hypothetical
11 potential going concern that might come into existence at some
12 time after the effective date if somebody decides to raise new
13 capital, right?

14 A. I wouldn't provide as many qualifications as you just did,
15 but I think in essence, that's correct.

16 Q. Well, you'd agree that it's hypothetical?

17 A. Anything to occur in the future is, by definition, a
18 hypothetical.

19 Q. And you are the chief financial advisor for the equity
20 committee in this case, right?

21 A. That is correct.

22 Q. And you don't have any idea how this opinion that you're
23 offering on a hypothetical value of a potential future going
24 concern has any relevance to any legal issue in this case,
25 right?

1 A. I'm obviously not an attorney, and I do not know how the
2 Court will look on the critique that I provided.

3 Q. Okay. And you also don't know why it's being offered, why
4 your opinion is being offered?

5 A. I think it's being --

6 Q. Do you think --

7 A. -- offered to inform the Court as to a -- the value, the
8 potential value of reorganized WMI, beyond the scope of the
9 definition provided in the current plan.

10 Q. Okay. But just to be clear, you've told me you do not
11 think it's relevant to the value that will be distributed to
12 creditors under the current plan?

13 A. As the plan --

14 MR. ARD: Objection, Your Honor, insofar as it calls
15 for a legal conclusion about --

16 THE COURT: Well, it's been asked and answered also.

17 MR. HOROWITZ: Okay. Withdrawn.

18 BY MR. HOROWITZ:

19 Q. Now, this morning you took some pains to distinguish the
20 analysis that you did in your report as a net present value
21 analysis as opposed to a present value analysis, right?

22 A. That is correct.

23 Q. Okay. And what you determined from this analysis is that
24 this hypothetical going concern project would have a positive
25 net present value, as of the date of investment, right?

1 A. That is correct.

2 Q. Okay. And you've testified that there -- that positive
3 net present value would partially be the result of the value of
4 the NOLs associated with this shell company, right?

5 A. It is, yes.

6 Q. But also partially associated with your belief that there
7 are currently attractive positive net present value
8 opportunities to invest in the mortgage reinsurance business.

9 A. What we have assumed in that -- in this analysis, is that
10 there are assets available in the market, either generated
11 through new contractual agreements, or through acquisition of
12 portfolios that have yields consistent with those observed over
13 a long period of time in the reinsurance business.

14 Q. Okay. I'm not sure that was an answer to my question.

15 My question was, you also offered the opinion that part of
16 the positive net present value shown in your analysis is
17 attributable to the valuable business opportunities for new
18 investment in the mortgage reinsurance of business wholly aside
19 from use of net operating losses, right?

20 A. That's correct.

21 Q. And you have made no effort in your analysis to
22 distinguish the value attributable to the NOLs from the value
23 attributable to the business opportunity.

24 A. No. But as I said in my deposition, one can do that. We
25 have not broken out explicitly the value attributable to the

1 tax shelter.

2 Q. Okay. So you've not presented anything to the Court that
3 would tell the Court what the value is attributable to the tax
4 shelter, right?

5 A. No. But as we discussed in my deposition, I would
6 indicate to the Court that it's roughly a third of the net
7 present value from the projected stream of cash flow from the
8 acquisitions.

9 Q. Nothing in your report shows that roughly a third
10 calculation?

11 A. I don't believe so, but I think we discussed that in the
12 deposition.

13 Q. Okay. And the remainder of it -- of the remainder of the
14 value, none of that value is attributable to any unique
15 attribute of current Wimrick, the current mortgage reinsurance
16 business, right?

17 A. That is correct.

18 Q. It doesn't have any valuable intellectual property that
19 you're aware of?

20 A. None that I'm aware of.

21 Q. You wouldn't say that the WaMu trademark has any value?

22 A. I readily concede that.

23 Q. Okay. So that roughly two-thirds potential net present
24 value is value that could be obtained by any investor today, in
25 your opinion, who wanted to go out and could raise enough money

1 to start a new mortgage reinsurance business?

2 A. That I would agree with.

3 Q. The projected revenues for this new business that are
4 shown on pages --

5 MR. HOROWITZ: Can I have the ELMO?

6 Thank you.

7 Q. On pages 11 and 12 of your report, these are the top lines
8 showing income.

9 A. Yes.

10 Q. You were assuming immediate revenues from the first year
11 of your projection period onward, right?

12 A. Yes, as we discussed.

13 Q. So from the -- you refer in your report to two scenarios.
14 The first is an equity raise of forty million dollars together
15 with a debt raise of fifty-six million, right?

16 A. Yes, 140 and fifty-six. And I explained, we looked at
17 this in two stages in order to get to a debt-to-cap ratio .4-
18 to-1.

19 Q. Okay. But let's be clear on this.

20 You present in your report what you say are two different
21 scenarios, but in fact, they are not alternative scenarios --

22 A. They were --

23 Q. -- except for -- I'm sorry.

24 A. Yes. Yes.

25 Q. That were presupposed as the initial equity raise, right?

1 A. That is correct.

2 Q. Okay. So there was no necessary reason for you to
3 separate it into two scenarios, that's just how it evolved in
4 your thinking.

5 A. That is correct.

6 Q. Okay. So in the first scenario, the one that's shown on
7 page 11, you show an equity raise of 140 million and you assume
8 a debt raise of fifty-six million, because that debt raise, I
9 think it says it in the footnote, is forty percent of -- I
10 mean, would be a 1.4-to-1 debt-to-equity ratio on 140 million
11 dollars in new equity?

12 A. Yes. Although I think we looked at it in due course on a
13 consolidated basis.

14 Q. That leads to the second scenario?

15 A. Yes.

16 Q. Okay. What happened after that is you said, well, wait a
17 minute, we now have an entity that has the 140 million dollars
18 in value from the run-off portfolio, plus 140 million dollars
19 in new equity value, and we can leverage this up a bit more.

20 A. That's essentially correct.

21 Q. And that led to your coming up with the second scenario,
22 the debt raise scenario, the pure debt raise scenario.

23 A. Yes.

24 Q. And the incremental value that you attributed to the first
25 scenario was either twenty-four million or fifty-three million

1 depending on which WACC you used?

2 A. That is correct.

3 Q. So the second scenario was actually significantly more
4 valuable.

5 A. That is correct.

6 Q. What I wanted to get to here is that you have income
7 generated from the first scenario, the 140 plus fifty-six
8 million of twenty-two million dollars a year from year one,
9 right?

10 A. Correct.

11 Q. And I don't mean this to be a gotcha, we discussed it at
12 your deposition, but you have 2011, and you acknowledge that
13 there's no way that you could generate twenty-two million
14 dollars for 2011?

15 A. That is correct.

16 Q. We should read that as year one through year ten?

17 A. Yes.

18 Q. Following the effective date.

19 A. Yes. I readily acknowledge that.

20 Q. Okay. And on the debt investment side, you -- the debt
21 investment would generate, in your calculations, an additional
22 fifteen million dollars in revenue from year one, right?

23 A. That is correct.

24 Q. So that's a total of -- doing the math in my head, the
25 arithmetic in my head, thirty-seven million dollars a year

1 between those two; is that right?

2 A. Correct. Recognizing that we're netting out the interest
3 expense associated with the debt.

4 Q. Right, okay. Well, that's a good point. So the pre, that
5 interest expense, the actual income would be higher?

6 A. Pre that interest expense, the pre-tax income would be
7 higher.

8 Q. Okay. Now, you -- I think, I know you were in the
9 courtroom for part of Mr. Anderson's testimony, I just learned
10 this morning that you were out for some part of it.

11 Did you hear Mr. Anderson explaining that his conclusions
12 about the potential 269 IRS review under Section 269 were based
13 on his assumption that it would be some years out before the
14 new entity would start generating revenue?

15 A. I was not in the courtroom when he testified to that.

16 Q. Okay. So you didn't hear him testify that in his
17 experience, the IRS usually doesn't start scrutinizing
18 deductions until the year that they're taken?

19 A. No. I was not in court for that testimony.

20 Q. And you didn't hear him testify that the reason he didn't
21 even think about there being a 269 problem with the change and
22 control on the effective date, is because he assumed that it
23 would be several years at least before the entity would start
24 generating revenues?

25 A. Unfortunately, I did not hear that testimony.

1 Q. Okay. But you did run your report, or a draft of your
2 report past Mr. Anderson for tax advice, right?

3 A. That is correct.

4 Q. And he never looked at it, and said to you, hey, you have
5 this new entity earning thirty-seven million dollars in income
6 in the first year, and presumably taking the thirty-seven
7 million dollar NOL deduction in the first year, and that's
8 likely to lead to IRS scrutiny, he never said that to you, did
9 he?

10 A. He did not.

11 Q. Oh, let me -- while I still have this up.

12 Your terminal value shown over here --

13 A. Yes.

14 Q. -- is based on a --

15 MR. HOROWITZ: That's shown over here? Sorry. It may
16 be on page 11, I apologize.

17 Q. Your terminal value is based on the 1.4 precedent
18 transaction derived multiple and a 140 million dollar book
19 value of assets, right?

20 A. Yes. But again, we're defining book here as equity book.
21 So you notice on page 12 we apply no multiple on debt. It is
22 simply applied to the equity infusion.

23 Q. Probably why I turned the page over to page 11.

24 A. I gather that.

25 Q. And the reason you're assuming that there'd be a 140

1 million dollar book value of equity in the final year of your
2 projection, is because you raised 140 million dollars to
3 purchase new assets in the first year.

4 A. Yes, that's correct.

5 Q. Okay. And now you're assuming in the final year that
6 you'd be able to sell that 140 million dollars book value of
7 assets for 1.4 times that amount, right?

8 A. That is correct.

9 Q. But you were assuming that you would acquire them in the
10 first year at 1.1 times -- at 1.0 times because you'll spend
11 140 million dollars to get 140 million dollars in assets; is
12 that right?

13 A. Yes. Although it remains to be determined how that would
14 be accomplished, but that's correct.

15 Q. Okay.

16 A. And we're looking at acquiring assets, as opposed to
17 selling a business.

18 Q. Right. But -- well, at the same time in the football
19 field evaluation, you -- part of your weighting, forty percent
20 of your weighting is a precedent transaction that assumed that
21 you can sell the residual business, the current business at 1.4
22 times the book value of its assets, right?

23 A. All right. Again, though, I explained the justification
24 for using this engaging a terminal value here. Again, I would
25 comment, as I was asked on my direct, we thought that the

1 assumptions we were making as to the earning potential of the
2 business were relatively conservative. We're using a ten
3 percent after tax yield, which is below the thirteen percent
4 observed by Blackstone.

5 I might also add in the example that Black -- excuse me,
6 Morgan Stanley, referencing the research report, and I would
7 add in the Zelin analysis on his page 37, he is using a
8 substantially more aggressive way of estimating the yield and
9 growth opportunities in this business, by using a compounded
10 annual growth rate of eight to twelve and a half percent.

11 Q. My question was, part of your report assumes that you
12 could sell 140 million dollar book value of assets today for
13 1.4 times that amount, correct?

14 A. That's correct.

15 Q. And another part of your report assumes that you can raise
16 140 million dollars and go out and acquire assets with a book
17 value of 140 million dollars, right?

18 A. Well, it -- I don't think they're comparable. They're not
19 necessarily comparable cases. If I'm -- if we're starting this
20 business de novo today, a very reasonable scenario would be to
21 enter into new contracts with various insurance companies, and
22 acquire assets as they're generated in the market. In which
23 case, there would be clearly no reason to have any premium at
24 all placed on those acquisitions.

25 What we're looking at ten years or ten periods forward, is

1 a valuation of this business as a going concern.

2 Q. You're not suggesting to go out, so that you could raise
3 140 million dollars today, create a business with a 140 million
4 dollars in book value with assets, and turn around and sell it
5 for 1.4 times that amount?

6 A. I'm not representing that in this analysis.

7 Q. But you said one of the ways that you could possibly
8 develop this new going concern business, is to go out -- is
9 through acquisition, right?

10 A. That is correct.

11 Q. And if the 1.4 multiple is correct, then 140 million
12 dollars in new capital will buy a business that has a book
13 value of assets equal to whatever the reciprocal of 1.4 is.

14 A. That is true.

15 Q. Probably something less than a hundred million dollars; is
16 that right?

17 A. That is true.

18 Q. Okay. And by the way, just since we were -- you were
19 talking about the weighting of precedent transactions a little
20 bit earlier today.

21 A. Yes.

22 Q. You attribute a forty percent weighting, which is more
23 than you would do if you were applying your own professional
24 judgment de novo, right?

25 A. Generally, yes.

1 Q. Okay. You agree that valuation professionals generally
2 assign relatively little weight to precedent transactions?

3 A. It's hard to generalize. Maybe -- it is not uncommon for
4 -- in valuation analyses to value it as high as a third.

5 Q. As high as a third?

6 A. As high as a third.

7 Q. Depending on the concurrency and similarity of the
8 precedent transaction pull you have.

9 A. I don't disagree with that.

10 Q. And here all of the precedent transactions were prior to
11 the largest financial upheaval in recent -- in modern times?

12 A. I know, but in contemporary valuations, that's a common
13 problem.

14 Q. Right.

15 THE COURT: How much longer are you going to be?

16 MR. HOROWITZ: Just a couple of minutes, Your Honor.

17 THE COURT: All right.

18 MR. HOROWITZ: I really am almost done.

19 BY MR. HOROWITZ:

20 Q. In addition to that forty percent weighting that you put
21 on the precedent transaction side of your analysis, your DCF
22 analysis uses a precedent transaction multiple for its terminal
23 value, right?

24 A. Yes. The net present value calculation does.

25 Q. And approximately fifty percent of the value is in the

1 terminal value?

2 A. In this case --

3 Q. Something less, but close.

4 A. That's approximately correct.

5 Q. Right. So it's forty percent on one side, and then fifty
6 percent of the remaining sixty percent, so seventy percent of
7 your valuation is based on precedent transaction multiples.

8 A. In that respect, I suppose that's reasonable.

9 Q. Okay. And by the way, you said that in retrospect --
10 having thought about it after your deposition, you do think
11 that using the precedent transaction multiple is appropriate
12 for the terminal value?

13 A. To the extent -- I mean, it's a very good question. I
14 mean to the extent that this really is an analysis looking at
15 the investor's point of view, who's considering making this 140
16 million dollar investment, and what we're essentially trying to
17 gauge is what the net benefit might be to reorganize WMI, an
18 investor normally, whether it's a hedge fund or a private
19 equity group or other institutional investor looks for, is a
20 termination value which effectively reflects a disposition of
21 the investment.

22 This is a relatively long period of time for any private
23 equity group or hedge fund to contemplate an investment. So it
24 would be reasonable to assume that you'd have to sell this
25 business.

1 Furthermore, in anticipation of your next question, when
2 we looked at the precedent transactions, there was no
3 indication that those multiples were affected by material tax
4 assets embedded in those businesses. And therefore, when I
5 looked at these terminal values, I thought it was a fair gauge
6 of the terminal value to use the derived multiples from those
7 transactions. Because clearly I know you're going to say that
8 well, we've eviscerated whatever NOL may still be embedded in
9 the transaction, but after ten years, that's not an unlikely
10 outcome for this business. People will want to liquidate their
11 positions and ten years hence, they will have used or not used
12 the NOL.

13 Q. Okay. You've really tried to anticipate quite a lot
14 there, so let me just make sure nothing was lost, because I
15 think you did anticipate part of my point.

16 You understand that the only reason to create a new going
17 concern mortgage reinsurance business with this shell, is
18 because this shell has NOLs, right? That's the only unique
19 attribute that this shell has that makes it a good vehicle.

20 A. Yes. Although it's proximity or control by some very
21 -- it's likely controlled by some very sophisticated investors
22 who do have a tremendous business acumen and ready access to
23 capital, makes this outcome, I would say, more likely than not.

24 Q. Yes, the only reason to use this shell is that it has
25 NOLs?

1 A. That is correct.

2 Q. Okay. And a transaction -- a changing control
3 transaction, selling this business will effectively terminate
4 the tax benefit?

5 A. I think that remains to be seen, but I readily admit that
6 that is an issue clearly created by -- a risk created by a sale
7 of the business in less than twenty years.

8 Q. All right.

9 MR. HOROWITZ: I have nothing further. Thank you,
10 Your Honor.

11 THE COURT: Thank you. We're going to break now. All
12 right. Come back at 1:30. You're under oath, so you should
13 not discuss your testimony with anyone.

14 (Recessed at 12:21 p.m.; reconvened at 1:30 p.m.)

15 THE CLERK: All rise. Please be seated.

16 THE COURT: All right. Anybody else have any cross-
17 examination of the witness?

18 MR. SIEGEL: Good afternoon, Your Honor, Martin Siegel
19 from Brown Rudnick for the trust preferreds.

20 I only have a couple of questions, but one set of my
21 questions was going to relate to the federal judgment rate
22 questions, and earlier this morning you sustained an objection
23 to that, and if I may be heard briefly as to why you should
24 permit to ask me to ask those questions --

25 THE COURT: Well --

1 MR. SIEGEL: -- rather than asking them and getting
2 another objection. May I revisit that issue, Your Honor?

3 MR. MASTANDO: I object, Your Honor.

4 THE COURT: Now you may respond to the objection.

5 MR. SIEGEL: Thank you very much, Your Honor.

6 Clearly one of the objections that's been raised
7 relates to whether the issue of the contract rate or the trust
8 preferred -- or the federal judgment rate. And, in fact, Mr.
9 Goulding yesterday actually even testified about the debtor's
10 view if you do use the federal judgment rate, when it should be
11 and talked about that issue.

12 And should you sustain that objection later on, you're
13 going to have to consider what's the economic impact, and it's
14 not only whether you use the federal judgment rate, but it's
15 also on what date that you apply it, whether it's the petition
16 date, the confirmation date, or the effective date.

17 And the very brief testimony we were hoping to elicit
18 from a financial advisor was with respect to the economic
19 impact should you use the federal judgment rate, for instance,
20 as of the confirmation date.

21 THE COURT: Well, I think the question was just if you
22 apply that rate, do we really need him to take --

23 MR. SIEGEL: Well --

24 THE COURT: -- you know, .25 or whatever and --

25 MR. SIEGEL: -- perhaps the attorneys can do it

1 another way. The reason why we were hoping to bring that out
2 through a financial advisor, Your Honor, is to avoid at closing
3 the dueling calculators by lawyers.

4 We all know that lawyers aren't very good at calculations,
5 but we thought that it might be more efficient and helpful to
6 the Court if a financial advisor actually did the calculation
7 and that was in the record, rather than, as I said, dueling
8 calculators.

9 THE COURT: Well --

10 MR. SIEGEL: And that was the reason for putting those
11 questions forward.

12 THE COURT: Well, I think it would be more helpful if
13 somebody just sat down and did a chart.

14 MR. SIEGEL: Okay. We'll do it that way, Your Honor.

15 THE COURT: And gave -- I think nobody is going to
16 disagree on the --

17 MR. SIEGEL: We'll exchange a chart before closings.

18 THE COURT: -- multiplication.

19 MR. SIEGEL: We'll exchange charts with the other
20 side.

21 THE COURT: All right.

22 MR. SIEGEL: That'll be fine.

23 THE COURT: That would be helpful.

24 MR. SIEGEL: That will reduce some of my questions.

25 (Pause)

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CROSS-EXAMINATION

BY MR. SIEGEL:

Q. Mr. Maxwell, you were asked some questions on cross-examination with regard to the Mirant case.

A. Yes.

Q. And at the start of that case, I think you understood your clients were the equity committee.

A. That is correct.

Q. And just approximately how deep in the hole was the equity committee at the beginning of that case?

A. In the words of one partner from Jay Alix, hopelessly out of the money.

Q. Was it billions of dollars?

A. Yes.

Q. And at the end of the case after you testified, what were the end results of that case, with regard to the equity committee?

A. Recovery to the equity before a subsequent rally in the common stock of several hundred millions of dollars. After an eighteen to twenty-four month period, that value had appreciated substantially.

MR. SIEGEL: Thank you very much, I have no other questions.

MR. MASTANDO: Your Honor, I'm going to move to strike the question and testimony, I don't think it's relevant to what

1 was questioned on on cross, and I don't think the facts of
2 another case are relevant here, nor are they relevant to the
3 questions that I asked him on cross-examination.

4 THE COURT: Well, I'll deny the request to strike, for
5 what it's worth. Anybody else wish to cross?

6 CROSS-EXAMINATION

7 BY MS. HAPER:

8 Q. Mr. Maxwell, hi. Bettina Haper and James Berg, we're pro
9 se.

10 I just had a question about the debtor's characterization
11 of your testimony. The debtors characterized you as not being
12 disinterested or neutral in your role. I did -- I was a little
13 bit confused, and I'd like to -- I'm hoping you can clarify
14 something for me.

15 Is it fair to say that experts hired by adversaries, by
16 their very nature, are neither disinterested or neutral?

17 A. I'm sorry, I'm not an attorney, and I'm not used to
18 mincing words. I meant to say when I was asked the questions
19 this morning, the intent of my response was to acknowledge that
20 I think after any period of time that you do this sort of work,
21 you come to appreciate that effectively you're being retained
22 by an interested party in a case --

23 Q. Uh-huh.

24 A. -- and it is that party's expectation that you will serve
25 as an effective advocate, but that advocacy has to be

1 undertaken in the context of the standards applied to a
2 financial professional.

3 Q. Uh-huh.

4 A. And I readily acknowledge that by the nature of my
5 engagement, or by the nature of any professional's engagement
6 in a contested matter, one is serving effectively as an
7 advocate, but it is being done with clearly defined ground
8 rules, and with due respect to the law.

9 Q. Within the confines of that advocacy, is it your
10 performance or an expert's performance, is it fair to say that
11 that can be done with accuracy?

12 A. Well, again, it depends on how you defines accuracy. My
13 position as it relates to the type of advice that I render and
14 the issues that I'm normally called upon to -- as a testifying
15 expert, which is financial matters, or in particular,
16 valuation, I do think there are ways of gauging one's
17 effectiveness over time, and that is to actually relate one's
18 opinion to valuations which in due course are reflected either
19 in transactions or in the market after the date of the
20 rendering of the opinion.

21 So I think there are ways of gauging the efficacy of one's
22 work over time; however, it's my position as testifying expert
23 in a court of law, that it's my responsibility in any case, to
24 provide the Court with a reasoned, thoughtful, and to the best
25 of my ability accurate point of view or opinion, as to the

1 issues that are put before me for my consideration.

2 MS. HAPER: Thank you.

3 CROSS-EXAMINATION

4 BY MR. BERG:

5 Q. Mr. Maxwell, James Berg, pro se shareholder.

6 Are you generally familiar with the with the requirements
7 of Internal Revenue Code Sections 269 and 382?

8 A. I am not a tax expert. I am aware of the thrust of those
9 sections of the Code, but I'm not being put forward as a tax
10 expert.

11 Q. Okay. I'm not asking so much as a tax expert, but
12 considering that Mr. Goulding yesterday suggested that a
13 rejection of this plan would cause a three to four month delay,
14 and assuming a six billion dollar total NOL, of which two
15 billion dollars is unrestricted due to Section 382 requirements
16 with an August 31 exit, what would happen to the NOLs if there
17 were a three month delay causing a November 31 exit?

18 A. Again, I would not hold myself up as a tax expert.
19 There's certainly a number of them involved in the case. It's
20 my general understanding if there is a deferral of the estate's
21 emergence, it will have an impact on the services
22 characterization of the NOL and as such, the utility value of
23 the NOLs over time.

24 Generally speaking, it's my understanding that the later
25 in the year the estate emerges from bankruptcy in this case,

1 the greater the proportion of the existing NOL that would be
2 characterized as limited as opposed to unlimited.

3 Q. Thank you.

4 So with the November 31 exit it's fair to say that just
5 being one month prior to the end of the year, that it would be
6 a fairly significant reduction, most likely in that two billion
7 dollars that had been unrestricted with an August 31 exit?

8 A. That is my general understanding. I have not done any
9 analysis of that, nor am I particularly qualified to do so.

10 Q. Okay. Thank you.

11 What would happen if the delay were in say four months and
12 we were to exit right at the end of the year, what would happen
13 to the -- what is your understanding of what would happen to
14 the unrestricted NOL?

15 A. Again --

16 THE COURT: I'm going to interrupt, because he is not
17 a tax expert. He's not the --

18 MR. BERG: Okay. All right. I'm sorry, thank you,
19 Your Honor. I will -- I'm sorry, I misunderstood because he
20 had been asking -- answering some questions that had relevance
21 to the section, but.

22 (Pause)

23 Q. With all other factors remaining the same, with more
24 capital available to the reorganized WMI, would the likelihood
25 of the ability to use these unrestricted NOLs be more likely to

1 increase or to decrease?

2 A. Again, going back to my example, if more equity capital
3 were made available, and all other assumptions were maintained,
4 it would increase or I would expect it to increase the value of
5 the estate over time. Recognizing that that is a series of
6 assumptions that would have to be maintained in order for that
7 to be the case.

8 Q. Certainly, thank you.

9 For the purpose of the next few questions, assume that
10 there are two companies that each return 10,000 dollars in cash
11 to their investors over a five-year period. The first company
12 Widgets 2 returns 2,000 dollars per year for each of the next
13 five years. Widgets 5 returns nothing in the first three years
14 with 5,000 dollars in each of the years four and five.

15 Assuming a discount rate of twenty-five percent, which
16 company is more valuable?

17 A. Well, I -- again, I don't -- I'd have -- if there are two
18 cases, if I understand your question correctly, let me restate
19 what I understood you to say.

20 One has a steady stream of cash distributions over five
21 periods, and the other has two distributions of cash in the
22 last two years --

23 Q. Correct.

24 A. -- at a twenty-five percent discount rate with no other
25 adjustments, I would arithmetically at that high a discount

1 rate, the company with the earlier distributions is likely to
2 have the higher net present value where the higher valuation
3 implicit in those distributions.

4 Q. Yes. That is my understanding as well, that would be
5 company Widgets 2 that I had referred to?

6 A. Which --

7 Q. The one with the steady stream, 2,000 dollars per year
8 over time?

9 A. Yes.

10 Q. If the discount rate was instead 15.8 percent, which
11 company then would be more valuable, under the same
12 assumptions?

13 A. It's going to be a much closer call, but I'd have to
14 calculate that to answer it, I don't -- I'm reticent to
15 guesstimate. But as you drop the discount rate, the fact that
16 the second case has the greater distributions in the later
17 periods is going to be less significant, and there will come a
18 crossover point, and in my head, I don't know what that would
19 be. A crossover point being a discount rate at which the two
20 are equally valued.

21 Q. Okay. Would it not require a discount rate of zero for
22 them to be equally valued, given we've got the same
23 distributions?

24 A. If the distributions are exactly the same, you're right.

25 Q. Yes, we've got 2,000 dollars being distributed over five

1 years each per year, being distributed over each five -- each
2 of five years, totaling 10,000 dollars. And in the second
3 example, there were two distributions, one in year four of
4 5,000 dollars, one in year five.

5 A. I'm sorry. Okay. Yeah.

6 Q. So the -- I had intended to set this up --

7 A. I'm sorry.

8 Q. -- to be truly obvious.

9 A. Sorry. I was getting confused with the case numbers and
10 the distributions.

11 Q. I'm sorry. Due to this change, would the percentage
12 change in value between the two companies be the same?

13 A. I'm sorry, would you repeat the question?

14 Q. Due to the change in the discount rate, would the
15 percentage change in value of both of the companies be the
16 same? So would the first one with the steady stream decrease
17 or the value change at the same rate as the other company with
18 the -- what I'm trying to get at is, which one of these would
19 be more sensitive to a change in the discount rate?

20 A. The one with the deferred distributions.

21 Q. That would be the one -- the second example, which had the
22 two 5,000 distributions way at the tail end?

23 A. Yes.

24 Q. Thank you.

25 With all other factors remaining the same, what would

1 happen to the value obtained by the discounted cash flow
2 analysis if the discount rate were reduced, just as a general
3 question, not regarding those examples.

4 A. As the discount rate is reduced, the value, the net -- the
5 present value of the cash distributions increases.

6 Q. Thank you.

7 Which of the two companies in this example most closely
8 resembles your equity raise example given earlier in your
9 earlier testimony today?

10 A. I'm not sure. In the -- to the extent the analysis that
11 we did assumes a steady distribution over a ten-year period,
12 and relative to that cash flow, a very -- a relatively modest
13 terminal value in the net present value calculation that I've
14 done, I would assume that your first example of the steady cash
15 distributions would be the more comparative.

16 Q. Thank you.

17 Does it make sense to you that WMI should be considering
18 the difficulties of a debt or equity raise just after having
19 paid out over six billion dollars to WMI's existing bond
20 holders if this plan is confirmed?

21 A. I think -- I can't address that. The estate obviously has
22 a responsibility to its creditors to make these distributions.
23 Again, I'm not a lawyer, I'm just making an observation as a
24 valuation expert.

25 Beyond that, the substance of my critique or commentary on

1 the valuation is that, in my opinion, reorganized WMI
2 independent of the estate, should be expected to be able to
3 raise equity capital on a go forward basis.

4 Q. In your view, should WMI have considered selecting certain
5 lower coupon, longer maturity existing WMI notes than paid them
6 their back interest to cure the default, allowing WMI the use
7 of this debt capital?

8 A. I don't have an opinion in that regard.

9 Q. Thank you.

10 Could you describe the -- are you familiar with the
11 section -- oh, you'd previously stated you don't -- you -- are
12 you generally familiar with the requirements of the bankruptcy
13 exception covered in Internal Revenue Code Section 382.05?

14 A. I am generally familiar with that.

15 Q. All right. If WMI's present common stockholders were to
16 own to at least fifty percent of the reorganized company, how
17 would that affect the usability of the NOLs?

18 MR. MASTANDO: Your Honor, I think this gets back to
19 some of the --

20 THE COURT: Yeah, I agree. Keep --

21 MR. BERG: Okay. Thank you, Your Honor, I'll withdraw
22 that last question, and that concludes my cross-examination.
23 Thank you. No further questions.

24 THE COURT: Okay. Anybody else?

25 Redirect?

1 MR. ARD: Your Honor, I have a few brief questions on
2 redirect.

3 THE COURT: Okay.

4 MR. ARD: If I may.

5 REDIRECT EXAMINATION

6 BY MR. ARD:

7 Q. Good afternoon, Mr. Maxwell.

8 A. Good afternoon.

9 Q. You've testified repeatedly this morning and a little bit
10 this afternoon that if you treat WMI as a going concern with
11 modest debt and equity raise, you'll arrive at a higher MPV
12 than the value placed on WMI by the debtors, right?

13 A. Yes.

14 Q. And when you were asked on cross whether you agreed that
15 the stock should be valued at 127.5 million dollars, in
16 answering that question, were you answering in the context of a
17 debtor's business plan, or in the context of the company being
18 operated as a going concern?

19 A. In the context of the debtor's business plan.

20 Q. There were a lot of questions regarding whether the income
21 will be generated in year one. Can I refer you to --

22 MR. ARD: Is the ELMO on?

23 Q. -- page 37 of Zelin's report.

24 A. Yes.

25 Q. In what year is income being generated under this future

1 corporate opportunity valuation?

2 A. In period one, although these headers are labeled by
3 period where as it was pointed out to me in my cross, mine are
4 years.

5 Q. Right. But it's in year one, for example, in Zelin's
6 report?

7 A. Yes, it is.

8 Q. Okay. Mr. Mastando asked a number of questions, and
9 others, regarding uncertainties of the future company's value,
10 of WMI's future operations. Are those uncertainties present in
11 Zelin's analysis of future corporate opportunity value? Do the
12 same questions arise with respect to the valuation he did,
13 future corporate opportunity?

14 A. As he presents it, I -- as my reading of the Blackstone
15 report is that the justification for the extraordinarily high
16 discount rates is a range of risks that Blackstone identifies.

17 Q. Okay. And does your cost of equity number also take into
18 account risks of operating the company?

19 A. By definition, yes. They're reflective of risks that
20 investors perceive and we observed through the capital asset
21 pricing model, which is the standard basis for determining cost
22 of equity capital over long periods of time for businesses
23 similar to the one similar to the reinsurance business that
24 we've contemplated on a go forward basis here.

25 Q. Okay. In his corporate opportunity analysis, does Mr.

1 Zelin have at his disposal and rely upon a business plan for
2 how this company's going to go out and acquire new assets?

3 A. None that I'm aware of.

4 MR. ARD: Your Honor, I would like to again move to
5 admit EC-154, which is his report into evidence.

6 MR. MASTANDO: Can I have recross first, Your Honor?

7 THE COURT: Yes. So are you done on cross -- I mean,
8 redirect?

9 MR. ARD: That's the end of my cross. Yes. And with
10 one other question. I had also offered earlier EC-301 and 302
11 subject to their verifying that the federal judgment rate as
12 reflected on the federal judgment rate website is correct. I
13 just wanted to know if they had the opportunity to do that
14 during lunch, and we can move it now or perhaps I'll do it
15 later.

16 MR. MASTANDO: We have not had the opportunity, and I
17 thought the prior discussion talked about putting together a
18 chart that the parties can try to agree on.

19 THE COURT: Well, I think that was multiplying various
20 federal judgment rates against the --

21 MR. MASTANDO: Maybe it can incorporate both. We just
22 haven't -- I don't think we've been able to verify.

23 MR. ARD: That's fine.

24 MR. MASTANDO: I was just asking.

25 THE COURT: All right.

1 MR. ARD: Yes, Your Honor, that is all I have, thank
2 you.

3 MR. MASTANDO: Just briefly, Your Honor.

4 RE-CROSS-EXAMINATION

5 BY MR. MASTANDO:

6 Q. Mr. Maxwell, you were testifying briefly about being an
7 advocate within clearly defined ground rules in respect to the
8 law. But you'll agree with me that you're supposed to be an
9 advocate for your position, not for a particular client; isn't
10 that right?

11 A. That is absolutely correct.

12 Q. Okay. And Mr. Ard asked if your cost of equity takes
13 certain risks into account just now on redirect, and you'll
14 agree with me as we discussed this morning, that that does not
15 account for the risks inherent in converting reorganized WMI
16 into an ongoing concern, all of the risks we discussed this
17 morning, correct?

18 A. That is correct, although I think it's a very consistent
19 way of thinking about risks to the extent that we do these --
20 we come to these findings on every case, and the issue always
21 arises that as a company emerges from bankruptcy, should we be
22 using a cost of capital reflective of the condition of the
23 company, as it is emerging which by implication would require a
24 series of premiums on top of those costs of capital observed in
25 the market, and it's my position, and I think others in this

1 field that it's appropriate to look at a stable long-term cost
2 of capital in valuing these businesses as they emerge from
3 bankruptcy, recognizing that the extraordinary risks attendant
4 to a business in bankruptcy or on the eve of emergence, would
5 lead to a very depressed and misleading indication of value, as
6 opposed to the stabilized and long-term cost of capital
7 observed in the market.

8 Q. Right. And those stabilized and long term factors you
9 point to are not based on reorganized WMI as it will exist on
10 the date of emergence, correct?

11 A. That is correct. I was making a general observation in
12 terms of justifying why I used the weighted average cost of
13 capital that I used in the example that I put forward.

14 Q. And when you were looking at this page that's still up
15 here, Mr. Ard asked you in what year was the income generated,
16 and you said period one, but you'll agree with me that this
17 calculation is not valuing the income or the profit inherent in
18 the new enterprise in the way you were positing in your
19 scenarios, correct?

20 A. And that's why I quickly made that acknowledgement to the
21 question.

22 Q. So that's a yes; am I correct?

23 A. That's a yes, I'm sorry. Do you want me to be direct
24 about it, I was asked earlier this morning about the schedule
25 that I put forward on page 11 where I had inadvertently

1 referenced all of the figures by their headers to a calendar
2 year, and it was properly pointed out to me that given that we
3 are already in the month of July, even should one accept the
4 schedules as they're presented on page 11, it was not fair to
5 assume that all those cash flows could possibly be realized in
6 the year, and I acknowledged what we had meant to indicate was
7 consistent with the Blackstone format, that these were periods
8 implicitly following from the emergence date.

9 Q. All right. And -- but in addition to that issue, you're
10 actually in your postulating scenarios, in your critique,
11 you're attributing value to the future income of the ongoing
12 business that you create, correct?

13 A. That is correct.

14 Q. Okay. Blackstone is not doing that, correct? This chart
15 is just attempting to value the corporate opportunity of the
16 net operating loss, correct?

17 A. That is as I understand it.

18 Q. Okay. And I think we discussed this morning, that that's
19 the unique opportunity that Wimrick presents, vis-a-vis any
20 other reinsurance company, correct, the opportunity to use the
21 NOL, right?

22 A. Correct.

23 Q. And you didn't value the NOLs separately in your report,
24 correct?

25 A. That is correct.

1 Q. I think you might have said or if you look at the chart,
2 the value might be approximately a third of --

3 A. Of the --

4 Q. -- some of the numbers?

5 A. Of a portion of the figures.

6 Q. Because that's the thirty-five percent tax rate?

7 A. Yes.

8 Q. So two-thirds of the value attributed to that ongoing
9 created enterprise is value for the new start-up business,
10 correct, not for the NOL?

11 A. It would actually be more than two-thirds, recognizing
12 that we've taken into account as well a terminal value, and
13 we've also looked at precedent transactions.

14 Q. So even more than two-thirds would be attributable to the
15 value of the new start-up business, as opposed to the NOL,
16 correct?

17 A. In theory, that's correct.

18 Q. Okay. So why would there be value in reorganized WMI
19 versus any other company except for the NOL?

20 MR. ARD: Your Honor, we're getting far beyond the
21 scope of the redirect.

22 THE COURT: I think we are. But go ahead and answer
23 the question.

24 THE WITNESS: Could you repeat the question, please?

25 BY MR. MASTANDO:

1 Q. Why would there be value in reorganized WMI versus any
2 other company other than the NOL?

3 A. The practical answer to that question is, I readily
4 acknowledge that by the numbers, the NOL is the driving
5 differentiating factor. In all candors, it may be helpful to
6 the Court, what will be determinative in terms of the value of
7 this estate is the, in due course, the selection of a
8 management team and that will be the driving factor behind the
9 value of this business going forward as a practical matter.

10 Q. And why would value accrue to the estate beyond just the
11 value of the NOL? That's the only unique attribute, correct?

12 A. That is the unique attribute structurally today of
13 reorganized WMI.

14 Q. Okay. And that's what Blackstone was valuing in their
15 future corporate opportunity valuation as you understand it,
16 correct?

17 A. As I understand it, that's correct.

18 MR. MASTANDO: Okay. Thank you. Nothing further,
19 Your Honor.

20 MR. ARD: Two very brief questions, if I may, Your
21 Honor.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. ARD:

24 Q. First, in order to get tax savings on the NOL in year one,
25 do you need to generate income in year one?

1 A. Would you repeat the question?

2 Q. In order to get tax savings from usage of the NOL in year
3 one as Zelin shows in his chart, would you need to generate
4 income in year one as Zelin shows in his chart?

5 A. Yes, unless you're consolidating this with another
6 taxpayer, yes.

7 Q. All right. Is the reinsurance industry a good industry to
8 invest in right now?

9 A. I --

10 MR. MASTANDO: Object, Your Honor, and that's
11 certainly far afield from the --

12 MR. ARD: It's directly responsive to his last
13 question.

14 MR. MASTANDO: He testified on direct he wasn't an
15 expert in reinsurance issues and cross.

16 MR. ARD: I apologize for over speaking. But it's
17 directly responsive to his last question as to whether there's
18 a reason to invest in this company outside of the NOL.

19 THE COURT: Well, I've had enough on that point from
20 both of you.

21 MR. ARD: Sure, okay. Sure.

22 THE COURT: I don't think you need to go over it.

23 MR. MASTANDO: Thank you, Your Honor.

24 MR. ARD: Okay. Thank you, Your Honor. No further
25 questions, again, but I'd move to admit EC-154 into evidence.

1 MR. MASTANDO: And, Your Honor, I move to renew the
2 motion in limine to exclude under Daubert that we discussed at
3 the beginning of the trial, almost entirely what we've heard
4 today is speculation and assumptions. I know Your Honor has
5 stated that experts can speculate to some degree. I think the
6 case law is clear, though, that when it goes to this level, and
7 basically what you're talking about is a complete hypothetical
8 with very little grounding in the actual facts of the case,
9 that is speculation and assuming, that's inappropriate for an
10 expert, and it's inadmissible under Daubert.

11 THE COURT: I'm going to take this issue under
12 advisement and determine --

13 MR. ARD: I wasn't sure if he was referring to Zelin's
14 future corporate opportunity value work.

15 THE COURT: No, he's referring to your expert.

16 MR. ARD: Oh, okay.

17 THE COURT: I don't think he's seeking to strike his
18 expert.

19 MR. MASTANDO: That's already in so, yeah.

20 THE COURT: All right. I will take that matter under
21 advisement then.

22 MR. MASTANDO: Your Honor, one other issue that we
23 just sought to clarify. At the end of yesterday, when Mr. --
24 oh, I have nothing else for the witness if the witness --

25 THE COURT: The witness may -- Mr. Maxwell, you may

1 step down.

2 MR. ARD: And, Your Honor, we'd be asked that he be
3 excused from the rest of the proceedings, release him.

4 THE COURT: Any objections?

5 MR. MASTANDO: No objections.

6 THE COURT: All right. He may.

7 MR. MASTANDO: Your Honor, at the end of yesterday's
8 testimony, when Mr. Goulding was released for the day, and I
9 know that the TPS said they were considering calling him at
10 some point, it just wasn't clear to us what his status was, and
11 we wanted to just make sure he was able to speak with counsel
12 and other witnesses but we weren't certain of that given that
13 it was unclear -- we thought he was released from cross and
14 testifying, but we just wanted to confirm that.

15 THE COURT: I think that's right, you would only be
16 recalling him as a rebuttal witness; is that correct?

17 MR. ROSEN: That's correct, Your Honor.

18 MR. MASTANDO: Okay.

19 THE COURT: All right. So, yes, he may speak with
20 counsel.

21 MR. MASTANDO: Thank you, Your Honor.

22 THE COURT: Do you want to give me a preview of coming
23 attractions?

24 MR. ROSEN: Yes, Your Honor, I'll try to do my best on
25 that one.

1 Your Honor, as you may have heard this morning,
2 unfortunately, there was a loss in the family of one of the
3 counsel who was going to be presenting one of the settlement
4 noteholders, and it was going to be the lead witness.

5 And as a result, Your Honor, we ask that we not go
6 forward this afternoon with the presentation of that witness or
7 any of the other settlement noteholders, but instead start that
8 on Monday. We've been informed by that counsel that he will be
9 available starting at 1:00 p.m. on Monday. So if we could ask
10 the Court that we adjourn for the balance of the day and Monday
11 morning, and reconvene then at one o'clock on Monday.

12 Obviously, our great concern is making sure that we
13 can fit the balance of the trial in for -- during that week,
14 and I know the Court had some items already calendared, but we
15 do risk potentially losing other witnesses, and we want to make
16 sure that we get it in.

17 So assuming that we start on Monday at one o'clock,
18 we've been told that Mr. Groper will go forward at that time.
19 I have no idea the length of direct. I refer back to Mr.
20 Sargent's comment to me last week about two hours on cross, so
21 I don't know if that will be concluded on Monday or tip into
22 Tuesday, but my guess is Tuesday the way things have been going
23 so far in this case.

24 THE COURT: Uh-huh.

25 MR. ROSEN: But that leaves us then, Your Honor, with

1 trying to squeeze in more things, and at least finishing all of
2 the evidence, hopefully by Thursday -- by the close of business
3 Thursday when, as I indicated, we start to lose some very
4 important people.

5 So we did ask over the lunch hour, we inquired as to
6 what the Court's calendar would be, we know what's on line, but
7 we don't know what the Court might be available or able to move
8 for us.

9 THE COURT: Well, I do have Chapter 7 day on
10 Wednesday, which I don't think will be long, so I think you can
11 have the bulk of Wednesday. There are two matters scheduled
12 for Thursday, and I just do not know yet how long they will be.

13 Mr. Steinberg, do you want to be heard on this?

14 MR. STEINBERG: Yeah, I do. I'm very sorry for the
15 loss of -- that someone has experienced, but there are four
16 settlement noteholders, and if one can't go forward, I wasn't
17 quite sure why the second one in line couldn't be substituted
18 in and we can make some progress.

19 If there's some magical reason, then that's fine. But
20 for my own personal schedule, which I had talked to you before,
21 it looks like I either have to cut short a vacation or cancel a
22 vacation depending on how this thing plays out. And I just
23 need to be able to talk to my wife this weekend about what our
24 plans are, so.

25 I know there's a lot of other counsel, everybody has

1 schedules, this is an important matter, and it's an important
2 matter enough for me to believe that I need to be here in
3 person, but I do need to manage my schedule personally more
4 precisely.

5 THE COURT: Well, we're having four settlement
6 noteholders, so what about the suggestion of others going
7 first?

8 MR. TRACHTMAN: Jeffrey Trachtman from Kramer Levin
9 for Aurelius. Your Honor, Mr. Eckstein is our lead counsel,
10 lost his mother-in-law this morning, it was fairly sudden.

11 THE COURT: I know.

12 MR. TRACHTMAN: Mr. Groper is prepared to go first.
13 The settlement noteholders have discussed an order in which the
14 case most coherently can be presented, and we think it's going
15 to prejudice our case if we can't present it in the order that
16 was discussed.

17 I think Mr. Groper's anticipating doing a slightly
18 longer presentation covering a little more of the narrative,
19 and we think it's appropriate to stick to the order. That's
20 how we want to present our case, and we've actually asked for
21 the smallest possible accommodation. Mr. Eckstein really ought
22 to be with his family all next week. There was a lot of
23 dialogue today and the phone calls back and forth, and he's
24 making a lot of sacrifices and juggling, because he does not
25 want to be responsible for delaying the trial. We want to get

1 the trial moving, and he's going to come at one o'clock on
2 Monday, and you know, we didn't even have Monday until we got
3 it back, there's been a lot of vicissitudes here, that was also
4 fortuitous because it was another --

5 THE COURT: Yeah.

6 MR. TRACHTMAN: -- similar kind of conflict it's kind
7 of ironic.

8 So we're all doing the best we can, trying to work
9 together, trying to be cooperative, but it's very important to
10 the noteholders who are facing very serious charges, be able to
11 present their case with their lead counsel in the manner they
12 want to present it. So we would object to any change in the
13 order, and ask that this schedule be adhered to with all
14 respect to Mr. Steinberg and his vacation. Thank you.

15 MR. ROSEN: Your Honor, Mr. Steinberg's request is the
16 same request that the debtors made initially when we heard
17 about this. But we do understand Mr. Trachtman's point, and
18 that was why we said that we were prepared.

19 Nobody wants to finish this more, Your Honor, than the
20 debtors. And I know some folks have been tweeting on line
21 about Mr. Rosen running out and talking to people, the reason
22 is we've been trying to reach this resolution to move forward
23 as quickly as we can. We want to move forward, but we don't
24 want to prejudice anybody's rights here, Your Honor, whether it
25 be the settlement noteholders, the equity committee or anyone

1 else.

2 And they want our witness to be available, and that's
3 one of reasons we pushed to even start as early as we could on
4 Monday, because we want to make sure that they have available
5 to them Mr. Kostoros, and we know that that might not occur
6 until Wednesday afternoon or Thursday, and we don't even know.
7 But we know that it has to be concluded.

8 So we understand his perspective, Your Honor, and the
9 debtors are amenable to working with them and starting at one
10 o'clock on Monday.

11 MR. SACKS: Your Honor, Robert Sacks for JPMorgan
12 Chase. Obviously, we have a substantial interest in the
13 outcome of these proceedings, and while we are not actively
14 participating in some of this cross-examination because it
15 doesn't directly relate to us, I do think it's important that I
16 be here for the closing arguments. I cannot be here on
17 Thursday. I have a court ordered mediation, and Court
18 conducted mediation in another matter.

19 And so we will accommodate every other schedule,
20 except I cannot be here for closings on Thursday.

21 THE COURT: All right. Well, my point is we get the
22 testimony in, then I think it's a much easier determination
23 when we have argument, and argument may not be next week.

24 MR. ROSEN: Your Honor, that is fine with the debtors.
25 I was only concerned about concluding testimony --

1 THE COURT: Uh-huh.

2 MR. ROSEN: -- by the close of Thursday, when I knew
3 that we were going to be losing some witnesses, that other
4 people have desired to call. And I know that Mr. Eckstein in a
5 phone conversation with me earlier today requests that even if
6 we finish the testimony, that perhaps we take a day or two so
7 everyone can digest it, and then we can formulate our closings.

8 While we would be ready to go forward on Friday, we're
9 happy to work with him, and as you say, Your Honor, perhaps
10 have the closings the following week.

11 THE COURT: Which will further complicate your
12 vacation plans, Mr. Steinberg?

13 MR. STEINBERG: It's kind of amusing that there's so
14 many lawyers here, and I'll tell my wife that everybody was
15 concerned about my vacation plan.

16 I actually don't have a lot with regard to the
17 settling noteholder issues, so I actually feel that if that was
18 going to dominate the next week's activity, that that would not
19 be a problem with me. I do feel that I need to be available
20 for the closing argument, and if these -- if this is going to
21 be done either on submissions or I might be able to participate
22 for one day through a squawk box for the closing argument. I
23 think people know what I look like, so --

24 THE COURT: Or alternatively --

25 MR. STEINBERG: -- if I knew what the schedule is, and

1 if people will accommodate me on slotting me in for the closing
2 argument discussion, I might be able to figure this out.

3 THE COURT: Do you need to be here for Mr. Kostoros'
4 testimony?

5 MR. STEINBERG: My understanding was that Mr. Kostoros
6 was related to the settling noteholder issue.

7 MR. ROSEN: Correct.

8 THE COURT: Only.

9 MR. ROSEN: Only.

10 MR. STEINBERG: Only. And I think whatever was the
11 Chapter 11 requirements, the debtor put in through Mr.
12 Goulding, and I was here for that.

13 MR. ROSEN: Correct. And, Your Honor, if it helps and
14 he wants to appear telephonically, we're happy to have a blow-
15 up doll here for him, so we can make it look like he's talking.

16 THE COURT: No comment. Yes?

17 MR. FOLSE: Your Honor, I'd like to introduce myself.
18 I'm Parker Folse, also with the Susman Godfrey firm on behalf
19 of the equity committee.

20 THE COURT: Uh-huh.

21 MR. FOLSE: And I wondered whether I might be so bold
22 as to ask whether -- if it were true that the evidence could be
23 completed by Thursday, which I think it could if we started
24 Monday at one o'clock, even given the fact that all estimates
25 so far have proven to be overly optimistic. Would it be

1 possible to conduct closing argument on Friday, rather than run
2 the risk of I think additional schedule conflicts that might
3 arise, if we were then pushing the closing into the following
4 week or perhaps later?

5 THE COURT: I think from my calendar's perspective,
6 Friday might be difficult. I have scheduled a whole day trial
7 in Harry and David and I do not know that that's been settled.
8 So I think that's difficult. The alternative is to submit your
9 closing arguments in written form.

10 MR. FOLSE: And does the Court have a preference as to
11 whether closing should be a live presentation or a written
12 submission?

13 THE COURT: Yes.

14 MR. FOLSE: What is your preference?

15 THE COURT: My preference is in writing, quite
16 frankly.

17 MR. ROSEN: Your Honor, I appreciate that but I think
18 it was very helpful last time around for us to distill it and
19 convey it to you, and because there are some people who want to
20 make some statements who were not even here today or any of the
21 prior days, I know they want to come back and talk to you, Your
22 Honor.

23 MR. TRACHTMAN: Your Honor --

24 THE COURT: It may require both.

25 MR. ROSEN: It may require both and maybe we revisit

1 this issue next week, Your Honor.

2 MR. TRACHTMAN: Your Honor, if I can just say --
3 suggest that Your Honor's suggestion and Mr. Rosen's suggestion
4 that we concentrate on getting the evidence completed, and then
5 figure out the most efficient way to do closings is probably
6 the best, because it's been very hard to predict how long
7 things will take.

8 I just want to underscore one point here. I'm not
9 just concerned with maintaining the order of the witnesses, we
10 believe we need our lead counsel present for the entire module
11 3. This is a very serious matter, very serious charges that
12 have been made, and we need our lead counsel for every part of
13 the third module.

14 THE COURT: Well, I think it's going to start Monday
15 at 1:00 to accommodate lead counsel.

16 MR. TRACHTMAN: We really appreciate that. Thank you
17 very much.

18 MR. FOLSE: And, Your Honor, Parker Folse again. I
19 wanted to just make sure based on that last statement, I don't
20 know what their lead counsel's schedule is going to be
21 particularly with the loss in the family, but I do trust that
22 we're going to start Monday at one o'clock, and we are going to
23 go consistent with the Court's calendar until we have finished
24 the evidence next week.

25 THE COURT: I think that's correct.

1 MR. FOLSE: And, Your Honor, given the fact that we're
2 now going to have a delay of what's left of this afternoon, the
3 first half of Monday, I assume that the rule is still in place,
4 and that therefore, counsel should not be talking with fact
5 witnesses over the break about testimony that has been given in
6 the trial up to this point. Would that be a fair assumption?

7 MR. MASTANDO: One clarification I think as to Mr.
8 Goulding, who testified and was released as we discussed
9 earlier --

10 MR. FOLSE: With that exception.

11 MR. MASTANDO: -- and may be called --

12 THE COURT: Yes. All right. The rule will be in
13 effect then.

14 MR. ROSEN: Your Honor, I think that would conclude
15 today, and if we -- oh, I'm sorry.

16 MS. NAGLE: Your Honor, Shannon Nagle on behalf of --
17 not Aurelius, but Appaloosa, Owl Creek and Centerbridge, but I
18 think I'm clarifying this for the settlement noteholders as
19 well.

20 At the beginning of the trial, Your Honor said that
21 until we started module 3, that the witnesses could listen or
22 be in the courtroom and some of them have, and so since module
23 3 has not started yet, the discussion of testimony that they've
24 heard already, I think that clarification about the rule needs
25 to be made. I didn't know which witnesses Mr. Folse was

1 referring to when he said we couldn't talk about prior
2 testimony, because with respect to our witnesses, a lot of them
3 have been in the courtroom. They haven't been sequestered yet.

4 MR. MASTANDO: And that was true also of Mr. Kostoros,
5 Your Honor, who's been here as WMI's corporate rep for the
6 first part because he's testifying in module 3.

7 MR. FOLSE: Your Honor, the representation was made at
8 the beginning when this was first discussed that the reason why
9 the request was made that witnesses who would be called by the
10 settlement noteholders did not need to be sequestered until the
11 beginning of that case, because nothing that was going to be
12 said during module 1 or module 2 would be related to or
13 relevant to it.

14 And if that remains true, although I'm not at all sure
15 that it is true any longer, now that we've heard the testimony,
16 then there would not be any reason for them to be discussing
17 the testimony to begin with. Again, we can't undo whatever may
18 have happened if witnesses were present during modules 1 and 2,
19 but I do think that from this point forward, with this delay,
20 that there should be clarity, that there should not be
21 discussion of prior fact testimony with the witnesses, because
22 to the extent they intend to talk to them about the testimony,
23 is because they do believe something was said during module 1
24 or module 2 that is relevant to the inequitable conduct part of
25 the case. And I don't think that would be consistent with the

1 intent behind the rule.

2 MR. TRACHTMAN: Just two comments, Your Honor. First
3 of all, the four settlement noteholders are parties in the
4 case, who have interest in many issues beyond the inequitable
5 conduct issues. So that's not the only reason they might be
6 interested in what's going on in this confirmation hearing.

7 But it raises another issue, which I'm sorry we didn't
8 rise to raise a few days ago, but as I read Federal Rule of
9 Evidence 615, parties in the case have an absolute right to
10 designate a representative --

11 THE COURT: I know.

12 MR. TRACHTMAN: -- and that can be a witness, even if
13 that person is a witness.

14 THE COURT: And that's why Mr. Kostoros was here.

15 MR. TRACHTMAN: Well but, I think that goes for the
16 settlement noteholder representatives as well. They are
17 representatives of a party, and have a right to participate and
18 be here and hear what's going on, even if they're witnesses.

19 So I don't think that applying the rule to them is
20 appropriate with all respect.

21 THE COURT: All right.

22 MR. FOLSE: This might have been said when this issue
23 came up on Monday. Instead there was no objection by any of
24 the settlement noteholders that the people they intended to
25 call would be subject to the rule. There was no claim that

1 they were being designated at the outset of the evidentiary
2 part of this hearing --

3 THE COURT: Well --

4 MR. FOLSE: -- as corporate representatives. And in
5 addition, the argument that they are parties to the case, I
6 suppose everybody is interested in the bankruptcy, as my
7 understanding is they are not plan proponents. But in any
8 event, this is something that should have been brought out, I
9 think, at the outset.

10 THE COURT: Well, whether it was or not I agree with
11 him, they have a right to have a representative, and apparently
12 their witnesses are their corporate representative. I don't
13 know if any of the testimony is relevant, but they may speak
14 with their clients.

15 MR. ROSEN: Your Honor, one last question, and that is
16 the equipment and other materials, I know that we are not going
17 to be here first thing Monday morning, I don't know if anyone
18 else is, but we may leave our materials in the courtroom?

19 THE COURT: You may. There is no other hearings
20 Monday morning, so I think you've been advised that the flow --
21 overflow will be Judge Kerry's (ph) Monday and Tuesday, I don't
22 know if it's available Wednesday though, we'll have to find
23 out.

24 All right. We'll stand adjourned until one o'clock on
25 Monday.

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MR. ROSEN: Thank you very much, Your Honor.

THE COURT: Thank you.

(Whereupon these proceedings were concluded at 2:21 p.m.)

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I N D E X

T E S T I M O N Y

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	MR. MASTANDO	67	3
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EXHIBITS

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C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

CLARA RUBIN

AAERT Electronic Certified Transcriber CET**D-491

Veritext

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Date: July 18, 2011