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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

In re )  
WASHINGTON PUBLIC POWER SUPPLY )  
SYSTEM SECURITIES LITIGATION ) MDL No. 551 (All cases )  
)

DEPOSITION UPON ORAL EXAMINATION  
OF  
WALLACE L. TIMMENY  
(Volume 2)  
EXPERT TESTIMONY

9:10 a.m.  
July 28, 1988  
Financial Center  
Seattle, Washington

Date of Distribution: July 28, 1988

Leslie Sherman, RPR  
Court Reporter

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## A P P E A R A N C E S

1  
2 FOR CHEMICAL BANK: CARL HAGENS, ESQ.  
3 Betts, Patterson & Mines  
4 FOR CLASS PLAINTIFFS: LEONARD SIMON, ESQ.  
5 Milberg, Weiss, Bershad  
6 Specthrie & Lerach  
7 FOR WPUG: DONALD S. COHEN, ESQ.  
8 Gordon, Thomas, Honeywell,  
9 Malanca, Peterson & Daheim  
10 FOR SUPPLY SYSTEM: JAMES. L. STENGEL, ESQ.  
11 Donovan, Leisure, Newton  
12 & Irvine  
13 FOR BLYTH: MARGARET SUNDBERG, ESQ.  
14 Williams, Kastner & Gibbs  
15  
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I N D E XEXAMINATION BY:PAGE

MR. SIMON

221, 310

MR. HAGENS

298

EXHIBIT:DESCRIPTIONPAGE

Timmeny 4 1-page List of documents, 4-9-87;

221

unnumbered

Timmeny 5 1-page Letter, Cohen to Counsel,

221

7-18-88; unnumbered

Timmeny 6 4-page Billings, 8-19-87;

235

unnumbered

Timmeny 7 11-page Release of Final Report

277

of SEC, May, 1978; unnumbered

Timmeny 8 33-page Final Report re New York

279

City, 2-5-79; unnumbered

1                   IT IS HEREBY STIPULATED AND AGREED, by and  
2 between the attorneys for the respective parties  
3 hereto, that the sealing, filing and certification  
4 of the within deposition be, and the same hereby  
5 are, waived (consistent with the order on  
6 confidentiality dated February 3, 1984); and that  
7 said deposition may be signed and sworn to before  
8 any officer authorized to administer an oath, with  
9 the same force and effect as if sworn to before an  
10 officer of this court.

11 Whereupon,

12                   WALLACE L. TIMMENY,  
13 having been previously sworn, was called as a  
14 witness herein and was examined and testified as  
15 follows:

16  
17                   MR. SIMON: I'd like to mark the other two  
18 documents regarding the materials the witness has  
19 seen as the next exhibits.

20                   (Marked Deposition Exhibits Timmeny 4 and  
21 Timmeny 5.)

22  
23                   E X A M I N A T I O N

24 BY MR. SIMON:

25                   Q. Mr. Timmeny, do you have Exhibit 4 in

1 front of you?

2 A. Yes, I do.

3 Q. Have you ever seen it before?

4 A. Yes, I have.

5 Q. Can you tell me what it is?

6 A. It appears to be a copy of a telex or  
7 something describing a listing of documents and  
8 court papers, and it appears to be a listing of  
9 materials that were sent to me for review.

10 Q. Did you have any role in the compilation  
11 of that list?

12 A. I'm sorry, I didn't hear what you said.

13 Q. Did you have any role in the compilation  
14 of that list?

15 A. No, I did not.

16 Q. Could you tell me what Exhibit 5 is?

17 A. Exhibit 5 is a Xerox copy of a letter to  
18 lead and liaison counsel from Mr. Cohen containing a  
19 supplementary list of materials that were sent to me.

20 Q. Did you have any role in the compilation  
21 of that list?

22 A. Not in the compilation of the list, but I  
23 think I can fairly say I had asked for some of the  
24 information on the list.

25 Q. Do you have a file containing

1 correspondence between yourself and defense counsel  
2 regarding this matter?

3 A. I think I do.

4 Q. Do you know whether that file has been  
5 reviewed for purposes of determining whether any  
6 portions of it need to be produced pursuant to the  
7 court's protocol on expert discovery?

8 A. I don't think it's been reviewed in that  
9 regard by counsel. I mean, I know what's in the  
10 file and I can tell you now, I'm almost certain that  
11 whatever is in that file has been produced. There  
12 is nothing in it with the exception of this kind of  
13 material, transmittal letters transmitting documents,  
14 and a retainer agreement, I think.

15 MR. COHEN: I can give you a copy of that  
16 correspondence. I think I have it. I pulled it out  
17 last night, if you will wait, you know, just in a  
18 few minutes during -- I mean don't stop your  
19 examination, but I think I can give you what you  
20 need. I think most of it you have.

21 MR. SIMON: I'm just trying to finish the  
22 deposition as quickly as I can, and the later I get  
23 documents the harder it is to make useful use of  
24 them.

25 MR. COHEN: There isn't going to be

1 anything that will delay it from this stuff.

2 A. There is nothing in this file of substance,  
3 as I said I think there is nothing in the file  
4 except correspondence relating to the transmittal of  
5 documents.

6 Q. Is there any correspondence in your file  
7 between yourself and your colleagues at McGuire  
8 Woods?

9 A. I'm not so sure I follow the question.

10 Q. Are there any internal memoranda in your  
11 file between associates and yourself?

12 A. No, no one has worked on this matter in my  
13 firm with the exception of myself. I said possibly  
14 at the very outset of the retainer I might have  
15 asked someone to find a file for me or something,  
16 but I have not consulted with any lawyers about the  
17 substance of my testimony.

18 Q. And you have not had anyone -- you don't  
19 have any memoranda in your files from associates,  
20 colleagues, what have you, regarding what they found,  
21 what they looked for?

22 A. No, no. I didn't ask anyone to research  
23 any issues, if that's your point, no.

24 Q. Do you still have a copy of Exhibit 1 over  
25 on your side of the table there?

1 MR. SIMON: Would you place Exhibit 1 in  
2 front of the witness?

3 MR. COHEN: I'm going to hand to Len a  
4 copy of the correspondence, transmittal letter  
5 correspondence to Mr. Timmeny from our office and  
6 from Donovan Leisure.

7 (Exhibit Timmeny 1 proffered to the  
8 witness.)

9 MR. SIMON: Don, have we made any progress  
10 on bills?

11 MR. STENGEL: I have asked my office to  
12 look for the missing bills with the idea that that  
13 might be where they reside since Don's office has  
14 been unable to find them and to date we have not had  
15 success but they are going to continue to look.

16 MR. SIMON: It looks to me that there are  
17 more bills missing than we suspected yesterday.  
18 Somebody ought to have a full set of the bills. I  
19 think McGuire Woods might be able to put a set on  
20 the telecopier and have them here in an hour. But  
21 I'd like to see them before we complete the  
22 deposition.

23 THE WITNESS: Don't look at me.

24 Q. Mr. Timmeny, could you look at Exhibit 1,  
25 Exhibit 4 and Exhibit 5 and tell me whether to your



1 knowledge there are any documents you have reviewed  
2 in connection with your retention here which are not  
3 listed? I understand you don't have a knowledge of  
4 what every one of those exhibits is, but if any type  
5 of document comes to mind which you have seen which  
6 does not appear to be listed anywhere, something  
7 you've seen more recently or something of a  
8 different kind which wouldn't have an exhibit number,  
9 please let me know.

10 MR. COHEN: This is other than he  
11 previously testified that he had browsed through  
12 some things.

13 MR. SIMON: Right, other than he has  
14 testified to at this deposition.

15 THE WITNESS: Let me confer with counsel  
16 for just a second here about the meaning of some of  
17 these things.

18 MR. SIMON: All right.

19 (Conference between witness and counsel  
20 out of the hearing of the reporter.)

21 A. As I look at the materials here I think  
22 exhibits 1, 4 and 5 are pretty exhaustive in terms  
23 of what I've seen with the possible exception of a  
24 few pages of transcript. When I have been preparing  
25 for the deposition in the last couple of days in the

1 offices of Gordon Thomas Honeywell I had asked to  
2 see some deposition testimony, and I think I saw a  
3 few pages of Mr. Perko that may not be listed on  
4 this material. They weren't sent to me but I've  
5 seen them in the last few days.

6 Q. Is it also your recollection that the  
7 materials that are listed on exhibits 4 and 5 are  
8 materials that you had not seen at the time Exhibit  
9 1 was prepared, that is that they are supplements  
10 rather than corrections to Exhibit 1?

11 A. I think that's correct, that's correct.

12 Q. We had discussed some meetings that you  
13 had with defense counsel in this case yesterday, and  
14 I don't think we had come to the end of the line on  
15 that.

16 A. Right.

17 Q. I wonder if you could take us forward from  
18 the last meeting you described to the present in  
19 terms of in-person sessions with defense counsel.

20 A. I don't recall where we left off yesterday.  
21 Does anybody know?

22 MR. STENGEL: Was the large meeting in  
23 Seattle the last one you covered?

24 MR. SIMON: The meeting in Seattle in the  
25 fall, I believe.

1 MR. STENGEL: I think we had a meeting  
2 with the Rule 26 statement.

3 A. Let me tell you what I recall and see if  
4 we are on the right track. We had the meeting in  
5 Seattle, there was a -- a meeting followed that in  
6 Washington in my office with Mr. Cohen and Mr.  
7 Stengel in which we discussed the Rule 26-B  
8 statement.

9 Q. All right.

10 A. I believe I had two meetings after that in  
11 my office, one with Mr. Cohen and Mr. Flores, who is  
12 associated with Mr. Stengel, and a second with Mr.  
13 Cohen and Mr. Stengel -- I shouldn't say a second --  
14 another one with Mr. Cohen and Mr. Stengel.

15 Q. Now, the last meeting that you --

16 A. Let me finish the list, then you can go  
17 back and take it apart.

18 Q. Okay.

19 A. Then we had the meeting, a meeting here in  
20 preparation for the deposition this week with Mr.  
21 Cohen and Mr. Stengel. I think that's the universe  
22 of meetings that I've had face-to-face with counsel.

23 Q. Okay. Now, let's go back briefly to the  
24 last meeting we discussed yesterday which was in  
25 your office in Washington and it was at about the

1 time the Rule 26 statement was being prepared, is  
2 that correct?

3 A. Yes.

4 Q. At that meeting were you given further  
5 materials or further assignments?

6 A. I can't recall exactly. I don't think the  
7 assignment broadened, but I don't remember getting  
8 any additional materials at that time.

9 Q. How much time passed before the next  
10 meeting with Mr. Cohen and Mr. Flores?

11 A. I really don't know. You know, we need  
12 something like a billing statement at this point.

13 Q. We will be back to the bills in a few  
14 minutes. Maybe that will help us. Was that meeting  
15 in Washington?

16 A. It was in Washington.

17 Q. And what was the subject matter --

18 A. I think it was sort of like by this time  
19 we were into this, into 1988, spring.

20 Q. What was the subject matter of the meeting?

21 A. Where are you, you know, what are you  
22 doing, where are you, what do you think?

23 Q. How long did the meeting last?

24 A. About four hours, maybe. Probably started  
25 mid-morning, had some lunch, went a little bit past

1 lunch, broke up.

2 Q. What subjects did you discuss?

3 A. We discussed the assignment that I had  
4 been given, that is to review the information that  
5 was being sent to me, and essentially I was  
6 questioned as to what my thoughts were based on what  
7 I had seen.

8 Q. And what did you tell them?

9 A. I can't remember exactly. This is still  
10 on the same lines of what I've testified here.

11 Q. Was there any particular subject that you  
12 recall being discussed? I remember yesterday when  
13 we talked about the Seattle meeting you said you  
14 made a point of reliance and that stuck in your mind.  
15 Is there something, one or two subjects that you  
16 recall being discussed with Cohen and Flores?

17 A. No. I thought it was a pretty broad  
18 ranging session, but it was sort of skimming the  
19 surface of everything that I had talked about or  
20 looked at.

21 Q. Then you said the next meeting you recall  
22 is one with Mr. Cohen and Mr. Stengel?

23 A. I do recall another meeting with Mr. Cohen  
24 and Mr. Stengel, that's right.

25 Q. In Washington?

1 A. In Washington.

2 Q. About when was that?

3 A. I think it was in June of this year.

4 Q. What was the subject matter of that  
5 meeting?

6 A. The state of my review, readiness,  
7 preparation.

8 Q. Do you recall any particular subjects  
9 being discussed at that meeting?

10 A. It was broad ranging, pretty much what  
11 we've talked about in the deposition to this point.

12 Q. Nothing particular comes to mind as to  
13 either items that you discussed or items that  
14 counsel discussed with you?

15 A. No, I don't think so. I mean, we just  
16 discussed all the topics pretty much that have come  
17 up in our discussions here.

18 Q. And the next meeting you recall would be  
19 one this week in preparation for this deposition?

20 A. That's right.

21 Q. Were you given any instructions at the  
22 meeting with Mr. Cohen or Mr. Stengel in Washington  
23 in June or thereabouts as to what you ought to be  
24 doing next or looking at next?

25 A. It was pretty much the other way around.

1 I mean, I think I was asking for -- whenever we got  
2 to that general area as to what one should be  
3 looking at I was asking for information as opposed  
4 to being told what to look at.

5 Initially the selection was -- the  
6 selection of materials was by defense counsel, but  
7 as we moved a long it got to be my asking for  
8 materials to review.

9 Q. How long did that meeting last?

10 A. I would say about, it was a three,  
11 four-hour meeting. I don't recall exactly. It  
12 might have been five hours. I really don't know.

13 That may have been pretty much -- a pretty  
14 long meeting, if I'm not mistaken. It pretty much  
15 shot the day, I mean starting in late morning and  
16 running into the afternoon.

17 Q. Did you consult with any of the defense  
18 counsel in this case regarding the drafting or  
19 formulation of their motions for summary judgment?

20 A. No, not to my knowledge. I mean, I have  
21 espoused theories, you know, talked about the law in  
22 my conversations with them, but I have never been  
23 asked to specifically treat any issues that came up  
24 in a motion.

25 Q. You haven't reviewed draft motions?

1           A.    No -- well, right.  The answer is no.  I  
2 have not reviewed draft motions.

3           Q.    Could you look at Exhibit 1 again and  
4 particularly the opinion which appears on page 2,  
5 lines 4 to 6.

6           A.    Yes.

7           Q.    With regard to your opinion that the  
8 Supply System met or exceeded applicable disclosure  
9 standards for municipal bond issues.

10          A.    Yes.

11          Q.    Could you tell me when you first formed  
12 that opinion in this case?

13          A.    Well, it's really evolutionary.  I mean, I  
14 had it to a degree when the 26-B statement was  
15 drafted, and I continued to do work with respect to  
16 the opinion, and I continue to hold the opinion.

17          Q.    You say you had it to a degree when the  
18 26-B statement was drafted, I assume you had it when  
19 the 26-B statement was drafted or you would not have  
20 signed off on the statement?

21          A.    That's right, that's right.

22          Q.    And from what you said yesterday, I  
23 apologize for not having the transcript references  
24 because I have had the transcript for about five  
25 minutes, but from what you said yesterday I surmised



1 that you had that opinion when the September 1987  
2 meeting in Seattle took place, although I understand  
3 the opinion becomes refined over time, is that  
4 correct?

5 A. I didn't express any opinion at the -- as  
6 I recall, at the September meeting in Seattle.

7 Q. You did express --

8 A. I think I testified yesterday that I  
9 generally was expounding with respect to theories of  
10 law, but I hadn't at that point, at that point I had  
11 only seen a complaint and an OS and I don't think I  
12 was -- I don't know. I don't recall being firm in  
13 any opinion at that point.

14 Q. You did express some opinions at that  
15 September '87 meeting regarding reliance, didn't you?

16 A. I discussed reliance in general, as I said.

17 Q. Did you express the view at that meeting  
18 that it would be reasonable for the Supply System  
19 and Mr. Cohen's clients to rely upon various  
20 professionals?

21 A. Yes, I did, in a theoretical sense, but I  
22 had not examined evidence at that point, so, I know  
23 I qualified whatever I said by virtue of the fact I  
24 hadn't reviewed any evidence.

25 Q. But by the time of the Rule 26-B statement

1 you had formed the opinion as stated on page 2,  
2 lines 6 through 11, that the Supply System and the  
3 WPUG group reasonably relied upon various  
4 professionals?

5 A. Yes.

6 Q. Let's mark the bills such as they exist  
7 and see if we can supplement it some time.

8 I would like to mark as the next exhibit  
9 bills that have been provided me by counsel at this  
10 deposition.

11 (Marked Deposition Exhibit Timmeny 6.)

12 Q. Do you have Exhibit 6 in front of you?

13 A. Yes, I do.

14 Q. Please describe it for the record.

15 A. Exhibit 6 is a four-page exhibit  
16 consisting of four copies of bills sent from my law  
17 firm to the Washington Public Utilities Group, care  
18 of Mr. Kieffer.

19 MR. COHEN: Just so we have a complete  
20 record let me just state again that the fourth page  
21 of that, the bill dated April 12th, 1988, contains  
22 some notations made by our office after the bill was  
23 received from Mr. Timmeny. That only relates to two  
24 numerical items down toward the bottom of the page.

25 Q. Could you look at the first page of the

1 exhibit which is the bill dated August 19th, 1987.

2 I take it, Mr. Timmeny, if you take the  
3 \$595 amount for services rendered and we divide it  
4 by your rate at that time we will be able to discern  
5 how many hours you spent on this matter in the month  
6 or the reporting period reflected in this bill, is  
7 that correct?

8 A. Yes, generally.

9 Q. Can you think of any exceptions to that  
10 principle other than the one bill which appears to  
11 contain some time from one of your associates?

12 A. The only exception would be there could be  
13 some time that wasn't billed, but, you know.

14 Q. You mean inadvertently wasn't billed?

15 A. Yes. I might sit home and read something  
16 on a Sunday and not bill it or whatever.

17 Q. This bill shows an unpaid balance due of  
18 \$5,392.10 preceding this reporting period. Am I  
19 reading this correctly, does that suggest that you  
20 had done at least \$5,392 worth of work prior to this  
21 reporting period?

22 A. That's the way it would read, but we may  
23 have -- we may have some dates messed up here in  
24 terms of meetings and what-not.

25 I can't imagine running up a bill of that

1 size other than to come out to Seattle for a meeting  
2 and so forth and so on.

3 Q. Well, at least the bill on the face of it  
4 would suggest that there was some amount of work  
5 done before this time?

6 A. Yeah. Well, it may have just been  
7 studying materials. I just don't know.

8 Q. The next page dated October 14, 1987 --

9 A. I don't have a page dated October 14, 1987.

10 MR. COHEN: Upper right.

11 THE WITNESS: I'm sorry, yes, yes.

12 Q. That reflects one telephone call to Mr.  
13 Kieffer by you, and that would be the only work you  
14 would have done in that time period, is that correct?

15 A. Looks that way.

16 Q. And the --

17 A. That would probably be -- we bill monthly,  
18 so that would probably be the pickup of the month of  
19 September.

20 Q. And I would surmise you didn't do anything  
21 in August based on the fact that the balance brought  
22 forward is the same as the balance that appears at  
23 the bottom of the July bill?

24 A. It looks that way.

25 Q. Okay. Then the next page we have is a

1 bill dated November 17, '87, for the month of  
2 October. Again the balance comes forward so this  
3 suggests that it's the next consecutive bill, and  
4 shows \$960 worth of your time spent on this matter,  
5 is that correct?

6 A. Yes.

7 Q. And then the last bill in the set dated  
8 April 12, 1988, shows \$2,317.50 worth of the firm's  
9 time, and this is the one that has some indications  
10 of work by someone else in the office, correct?

11 A. Yes.

12 Q. Would the internal time records of McGuire  
13 Woods permit you to determine how many hours you  
14 spent that month on this matter?

15 A. I don't think we preserve them after we  
16 send the bill out. It's purged from the computer as  
17 I recall once the bill goes out, so we retain copies  
18 of the bills but not the underlying computer  
19 information. It's all my time, though. I just  
20 don't understand this, two telephone conversations  
21 with Mr. Timmeny.

22 Q. You don't mean to say that as a general  
23 matter that if you did have someone else working on  
24 this account, let's assume you did --

25 A. You can't make that assumption. As I say,

1 I don't know of anybody who worked on this. I  
2 didn't ask anybody to do any work on this thing with  
3 me, so, it could be a typo, we have lots of typos in  
4 bills, believe me. So it may have just been two  
5 telephone conferences. Timmeny, re: Expert witness,  
6 somebody might have just stuck a "with" in there. I  
7 just don't know.

8 Q. Prepare materials for review by Mr.  
9 Timmeny. That's pretty direct. It's a heck of a  
10 typo if it's a typo.

11 A. That wouldn't be a typo.

12 Q. Well, it's another entry of the same kind,  
13 isn't it, that suggests someone else doing something?

14 A. Yeah, I guess so. It could have been a  
15 paralegal or somebody that I had pull stuff, you  
16 know, sort of organize the files, I was going to go  
17 someplace. You know what I think this might be, it  
18 just dawns on me, I have from time to time asked  
19 people in the office to go get certain materials out  
20 of the file and either have it Fed Ex'd to me or  
21 delivered to me through a messenger. That may be  
22 the explanation here. That is the most likely  
23 explanation because I travel a lot, and I like to  
24 work on airplanes and in airports and so forth, so I  
25 put together, often put together a package of

1 materials to take with me on trips that I can read  
2 when I am going. It looks to me there might have  
3 been a situation where I was at home anticipating  
4 catching a plane or something and called the office  
5 and said put something together and some paralegal  
6 did it and sent it out.

7 Q. The only question I have is would your  
8 records reflect how much time of this is yours, is  
9 it your testimony that would already be purged?

10 A. It's the vast majority. If those two  
11 things come to more than a couple hundred dollars it  
12 would amaze me.

13 Q. Would or would not that be reflected on  
14 the time records of McGuire Woods?

15 A. It would have been reflected on the  
16 records. Whether it is still reflected on the  
17 records I couldn't tell you.

18 The one thing I can tell you, I will tell  
19 you this over and over again, no one prepared  
20 anything for me to review in the way of a research  
21 paper or anything of that sort.

22 Q. Given that the bills are incomplete, could  
23 you tell us your understanding of how much time  
24 you've put into this matter either in hours or in  
25 dollars?

1           A.    I can give you a rough estimate from  
2 memory.  I just -- the total billings were probably,  
3 if you exclude this week, would probably be in the  
4 range of \$20,000.  So that would be a hundred plus  
5 hours.  You knock out some costs in there, like  
6 airfare and the like that might have been reflected  
7 in the bills.

8           Q.    We don't have anywhere near those kinds of  
9 bills so we would like to see the rest of the bills.

10                    Yesterday we had some discussion about  
11 your views about the sufficiency of certain of the  
12 disclosures contained in the Official Statements,  
13 and several times I believe you used the word  
14 "projections" in describing those disclosures.

15                    In making your own determination that  
16 these projections were not contrary to law, what  
17 standard were you applying?

18           A.    What legal standard?

19           Q.    Legal or industry or other standard.

20           A.    It would have to be a legal standard.

21           Q.    How were you deciding whether the  
22 projections were --

23           A.    Based on my understanding of the federal  
24 securities laws with respect to the use of  
25 projections.



1 Q. And what is that understanding?

2 A. That it is appropriate and permissible to  
3 use projections as long as one has a reasonable  
4 basis for the projections.

5 Q. Are you aware of the plaintiffs'  
6 allegation in this case that defendants had no  
7 reasonable basis for asserting that the participants  
8 had the ability to pay for these projects?

9 A. Yes.

10 Q. And that the plaintiffs' position  
11 essentially boiled down is that the defendants had  
12 not undertaken the steps that would have been  
13 necessary to put themselves in a position to make a  
14 projection on that subject?

15 A. That's the allegation.

16 Q. You understand that's the allegation?

17 A. Yes, uh-huh.

18 Q. Have you made a determination as to  
19 whether that allegation has merit?

20 A. Yes.

21 Q. And what is your determination?

22 A. That it does not have merit.

23 Q. Why?

24 A. Because I thought that the Supply System  
25 and the other nonexpert defendants essentially

1 relied on the expertise of Beck in its capacity as a  
2 feasibility consultant, and Beck's determination  
3 that the participants did have the ability to pay.

4 Q. You read the record in this case as  
5 indicating that Beck made that determination?

6 A. I read the record in this case as  
7 reflecting the fact that Beck issued a feasibility  
8 report, and the other parties in the case properly  
9 relied on it.

10 Q. As a statement that the participants could  
11 pay?

12 A. Beck opined that the transaction,  
13 basically that the participants had the wherewithal  
14 to pay based on their review of all the  
15 circumstances, you know, with respect to the  
16 projects.

17 Q. Now, was it your understanding that Beck's  
18 opinion was to the effect that the participants  
19 could pay either for an operating plant or for a dry  
20 hole?

21 A. That's my understanding.

22 Q. Do you recall anyplace in the record of  
23 this case that you've seen in which any of the  
24 participants or the Supply System employees went to  
25 Beck and asked for their advice or opinion on that

1 subject?

2 A. No, I do not.

3 Q. Isn't it a part of the reliance on  
4 experts' analysis that you are employing here that  
5 the client or the principal needs to go to the  
6 professional and ask his advice before he can rely  
7 upon it?

8 A. Well, how did they get the feasibility  
9 report in the OS unless someone put it in there? So  
10 the process that you are describing takes place, I  
11 mean it's encompassed in the entire process.

12 Q. You are saying it's implicit?

13 A. Yes.

14 Q. And you don't have any doubts that the  
15 scope of the feasibility study is as broad as you  
16 are suggesting, that is that Beck intended to and  
17 was understood to be giving an opinion that the  
18 participants could pay for an operating plant or for  
19 a dry hole?

20 A. Beck would not have issued the opinion if  
21 they thought to the contrary, that's my view.

22 A. And the other participants had the right  
23 to rely on Beck in that instance. They can rely on  
24 Beck's integrity and expertise to the effect that  
25 they would expect Beck to issue a feasibility report

1 if they, Beck, thought the project was not feasible.

2 Q. And again feasibility in your mind  
3 includes the ability to pay for a dry hole?

4 A. Yes.

5 Q. I take it you don't claim to have any  
6 expertise in the areas in which Beck opined in this  
7 case, is that correct?

8 A. That's correct.

9 Q. Could you describe for us what expertise  
10 you are bringing to bear on the questions on which  
11 you intend to testify in this case?

12 A. I thought we tried to do that all day  
13 yesterday.

14 Q. I'm not asking you to go over your  
15 background, I'm --

16 A. That's it, my background and experience in  
17 the federal securities laws, my entire professional  
18 career in dealing with disclosure questions.

19 Q. Anything else, any other expertise you are  
20 bringing to bear?

21 A. No.

22 Q. Are you intending to express any opinions  
23 in this case regarding whether the participants or  
24 the Supply System violated the Washington securities  
25 act or the common law doctrine of negligent

1 misrepresentation?

2 A. To the extent that my analysis of the  
3 disclosure requirements of the federal securities  
4 laws would be analogous to or would include  
5 analogous of similar or identical elements in the  
6 Washington securities act, I suppose that I could be  
7 asked to opine with respect to the Washington  
8 Securities Act.

9 Q. But you have no particular expertise with  
10 regard to Washington law, I take it?

11 A. I have done a lot of blue sky work. It's  
12 generally the state blue sky statutes track rule  
13 10(b)5, so it pretty much -- the elements are pretty  
14 much the same.

15 Q. To the extent the securities act or the  
16 common law doctrine of negligent misrepresentation  
17 do not require scienter, I take it that is not --  
18 that would not then track and it would not be within  
19 the scope of your testimony?

20 A. You doubled up on your question there.  
21 You have got to break it out.

22 Q. What do you want me to break out, the two  
23 acts?

24 A. You are talking about common law  
25 negligence as opposed to state statutory provision.

1 Q. I'm asking you whether, if either varies  
2 from 10(b) it will be outside your opinion?

3 A. Well, I'm not trying to say that anything  
4 I say with respect to 10(b) applies with respect to  
5 an analysis with respect to negligence or an  
6 analysis with respect to the state blue sky law.  
7 All I'm saying is that the elements sometimes are  
8 the same.

9 Q. Let me ask the question --

10 A. So if one finds an element lacking with  
11 respect to 10(b)5 the same element might be lacking  
12 with respect to the state blue sky law or with  
13 respect to a negligence claim.

14 Q. Let me ask you the question another way  
15 then. Assume with me that one or more of the state  
16 law claims here requires only negligence and not  
17 scienter. Have you formed an opinion regarding  
18 whether the participants or the Supply System acted  
19 negligently with regard to any of the disclosures in  
20 this case?

21 A. You see, my analysis basically has been in  
22 the context of whether or not the alleged  
23 nondisclosures would have been, one, material; and  
24 two, whether there would be evidence of scienter.  
25 So that really I have not reviewed -- I have not

1 reviewed the entire record with a view toward  
2 opining as to whether or not there was negligence in  
3 this context.

4 Q. Mr. Timmeny, you are aware that Official  
5 Statements for municipal securities offerings do not  
6 need to be registered with the SEC, correct?

7 A. Yes.

8 Q. And there are no binding regulations which  
9 prescribe a particular form or format of Official  
10 Statement?

11 A. That's correct.

12 Q. In fact, there is no requirement for an  
13 Official Statement, is there?

14 A. No, there isn't.

15 Q. Would it be fair to say that given that  
16 lack of regulation that there is less uniformity in  
17 the sale, less uniformity regarding disclosure  
18 practices in the sale of municipal bonds than there  
19 is in the sale of equity securities?

20 A. I think that's a fair statement.

21 Q. Would it be fair to say that industry  
22 practices vary substantially from issuer to issuer  
23 in the municipal securities area?

24 A. Industry practices vary from issuer to  
25 issuer?

1 Q. Right.

2 A. No, that doesn't follow. I mean, either  
3 it's an industry practice or it's not.

4 Q. Would it be fair to say --

5 A. You've got it backwards.

6 Q. Issuers' practices vary from issuer to  
7 issuer.

8 A. Issuer's practices vary from issuer to  
9 issuer; industry practices would not vary from  
10 issuer to issuer.

11 Q. Would you agree with me that issuers'  
12 practices vary from issuer to issuer?

13 A. They can and do.

14 Q. And do they vary more in the municipal  
15 area and in the equity area?

16 A. I think that's a fair statement, yes.

17 Q. Would it be fair to say that the role and  
18 responsibilities of an underwriter varies more from  
19 issue to issue in the municipal area than it does in  
20 the equity area?

21 A. There is more debate about it, that's for  
22 sure.

23 Q. Isn't there also more variation in the  
24 actual practice?

25 A. Probably.



1 Q. Mr. Timmeny, you are aware of the  
2 allegations in this case regarding the authority  
3 questions, is that correct?

4 A. Yes, I am.

5 Q. Could you tell me whether you believe that  
6 the allegations which plaintiffs' have made in this  
7 case relate to facts which would be material?

8 A. Yes. I think the authority question is  
9 material.

10 Q. You are aware that there are allegations  
11 in this case relating to the issues of budgets and  
12 schedules?

13 A. Yes.

14 Q. Do you believe that those allegations  
15 relate to matters which are material?

16 A. Yes, but I have to say that there is a  
17 distinction. I think the core issue is really  
18 whether or not there was authority and whether or  
19 not the participants agreements were binding.

20 Once you get beyond that I think your  
21 other issues are, if I can put sort of secondary  
22 materiality, I mean you really, once you get beyond  
23 authority and the binding nature of the participants  
24 agreement, you can almost stop there. I mean an  
25 Official Statement in this context could arguably

1 stop right there. That's the credit, that's the  
2 security for the bonds.

3 And then your next level analysis sort of  
4 drops down to, well, is there some possibility that  
5 at some point there would be an unwillingness on the  
6 part of ratepayers, whatnot, to pay the rates to  
7 support this -- the flow of revenue to pay the bonds.  
8 It gets pretty academic at that stage because if the  
9 participants agreement is binding, and if the  
10 parties truly believe it's binding, then the  
11 obligation on the part of the participants, all the  
12 entities, is to raise the funds to pay for the bonds,  
13 and short of, you know, the French revolution or  
14 something of that sort, you would expect that they  
15 would do that.

16 But there is a level of analysis that  
17 takes place where one -- where I think the investors  
18 would be interested in the level of risk in a  
19 transaction, and in order to enable them to assess  
20 that level of risk there is information presented  
21 with respect to, you know, revenues and the like.

22 Q. There is a lot of information presented on  
23 that subject, isn't there?

24 A. Yeah, but it varies from transaction to  
25 transaction.

1 Q. Well, in this transaction, for example,  
2 the vast bulk of the Official Statement relates to  
3 matters other than authority, doesn't it?

4 A. Yes, it does.

5 Q. And you would agree with me that that  
6 information is material as that term is used in the  
7 securities laws?

8 MR. COHEN: Which one, the authority or  
9 the other stuff?

10 MR. SIMON: The other stuff.

11 A. I think it's material, I do, but as I said,  
12 I think there is -- you have to make a distinction.  
13 There is a secondary level of materiality.

14 You are presenting information in the  
15 Official Statement that goes to different audiences,  
16 if I can put it this way. And the information, the  
17 financial information that's in there is for a very  
18 sophisticated audience that is capable of  
19 understanding it and capable of working with it in  
20 order to make an assessment as to risk, so that in  
21 turn they can make a determination as to whether  
22 they would be willing to invest in this project,  
23 whether it would be compatible with their risk  
24 standards for investment.

25 Q. Those sophisticated readers would include

1 the rating agencies?

2 A. Yes.

3 Q. The institutional investors?

4 A. Yes.

5 Q. The municipal bond funds?

6 A. Yes.

7 Q. And the conduct of those people in many  
8 ways affects the price at which the securities can  
9 be offered, is that correct?

10 A. Well, I don't know quite what you mean by  
11 the conduct. I mean, their receptivity to the  
12 information --

13 Q. The reactions --

14 A. -- will set price.

15 Q. The reactions of those people to the  
16 information which we are discussing in the Official  
17 Statement, let's limit it at this point to the  
18 information other than authority will affect price,  
19 is that correct?

20 A. Yes.

21 Q. And leaving aside this concept of  
22 secondary or primary materiality which at least I'm  
23 not familiar with in the securities laws as being a  
24 doctrine, wouldn't you agree with me that as the  
25 term "materiality" is used in the securities laws

1 that information about, for example, cost and  
2 schedules is material in that sense?

3 A. Yes.

4 Q. Would information about need for the  
5 projects also be material in the same sense?

6 A. You are saying in the sense of a credit  
7 analysis basically or a risk analysis?

8 Q. Right.

9 A. Yes.

10 Q. It would be of interest to investors?

11 A. Yes.

12 Q. And wouldn't information about the  
13 participant's ability to pay for the projects be  
14 material in the same sense?

15 A. Yes.

16 What I'm saying is some things are more  
17 material than others is what I'm saying.

18 Q. I understand, but you and I understand  
19 there is a line drawn in the securities laws, maybe  
20 a fuzzy line, but a line drawn between that which is  
21 material and that which is not material.

22 A. Yes.

23 Q. And I am trying to focus you on that line  
24 rather than a distinction between what is material  
25 or more or the --

1 A. More material.

2 Q. More or the most material?

3 A. Uh-huh.

4 Q. Would you agree with me that information  
5 regarding the willingness of the participants to pay  
6 would be material?

7 A. Yes.

8 Q. Would you agree with me that information  
9 regarding the risks that the project would be  
10 terminated would be material in that sense?

11 A. With assumptions with respect to ripeness  
12 and the like, yes.

13 Q. And by ripeness you mean how imminent the  
14 threat of termination was?

15 A. That's right, as we had the debate  
16 yesterday whether somebody is musing about this off  
17 in a hallway as opposed to the fact being on the  
18 horizon or being very close.

19 Q. Yesterday you equated the Supply System  
20 directors, at least I believe you did, please  
21 correct me if I mischaracterize your testimony any  
22 time today, I have not had access to the transcript  
23 -- but you characterized the Supply System directors  
24 as being comparable to the, I believe the outside  
25 directors who were discussed in the Lanza against

1 Drexel case, am I correct?

2 A. I don't know that actually, I did refer to  
3 Lanza V Drexel and I did refer to a standard that  
4 would apply to outside directors as opposed to a  
5 standard that would apply to involved directors, not  
6 inside directors but involved directors.

7 Q. All right.

8 A. There is that distinction. You have  
9 outside uninvolved, outside involved and inside in  
10 terms of categories of directors.

11 Q. Well, let's start with the real basics.  
12 Is it your understanding that that Lanza versus  
13 Drexel distinction is the law today in the United  
14 States?

15 A. I think it's the law in the Second Circuit.  
16 There certainly is a distinction between the  
17 application of the R. W. Beck concept to the parties,  
18 and one area in which the distinction is made, the  
19 area of directors' responsibility, the Second  
20 Circuit has made distinctions.

21 Q. Of course we are in the Ninth Circuit, but  
22 I guess the question being put to you is relating to  
23 your general understanding of the securities laws,  
24 and my question is whether that is --

25 A. I think it's applied in the Ninth Circuit

1 in the White V Abrams, the flexible duty standard.

2 It's the same thing.

3 Q. So it's your view that recklessness is not  
4 applicable to what you call an inactive director?

5 A. Uninvolved, not inactive.

6 Q. Uninvolved director?

7 A. Yeah.

8 Q. So you have made no determination in this  
9 case of whether you believe that the Supply System  
10 directors were reckless, is that correct?

11 A. I haven't analyzed the activities of the  
12 directors to determine whether I thought they were  
13 involved in a transaction or uninvolved, that's  
14 right.

15 Q. Have you analyzed the conduct of the  
16 directors to determine whether they were reckless?

17 A. I just said to you I haven't analyzed  
18 their conduct to determine whether they were  
19 involved or uninvolved so if I haven't done that I  
20 can't analyze it in terms of whether or not they  
21 were reckless.

22 Q. Have you analyzed the conduct of the  
23 Supply System to determine whether it was reckless?

24 A. As an institution?

25 Q. Right.



1 A. Yes.

2 Q. And what conclusions have you drawn?

3 A. That it was not reckless.

4 Q. Why not?

5 A. Based on my analysis of the conduct of the  
6 Supply System officials who were involved in the  
7 disclosure process I felt that they had acted  
8 responsibly.

9 Q. Have you analyzed the conduct of Mr.  
10 Cohen's clients, the City of Tacoma and the other  
11 public utility districts in the WPUG group to  
12 determine if you believe that they were reckless?

13 A. No, I have not.

14 Q. Now, where I started was on this concept  
15 of what I called inactive and you corrected me now  
16 to uninvolved.

17 A. Yes.

18 Q. You have made no determination of whether  
19 the Supply System directors are involved or  
20 uninvolved as you are using the term, is that  
21 correct?

22 A. That's correct.

23 Q. Is one of the criteria for an involved  
24 director one who has a financial stake in the  
25 transaction at issue?

1           A.     That could be an element, not the sole  
2 element. I was thinking more of involvement in the  
3 sense of more participation in the transaction other  
4 than just reviewing a staff recommendation.

5           Q.     Yesterday you testified that your  
6 understanding of the term "scienter" included not  
7 only a knowledge that there was a falsehood in the  
8 Official Statement, but some form of intent to  
9 deceive. What is the basis for that interpretation  
10 of the scienter requirement?

11          A.     Essentially the language of the Supreme  
12 Court in the Hockfelder case, when the court said  
13 that scienter is an intent to deceive, an intent to  
14 manipulate, defraud or deceive.

15          Q.     Anything else?

16          A.     Well, there have been subsequent -- there  
17 is a debate, really, in the courts, I think, as to  
18 what scienter is. It continues, and there is -- I  
19 think there is a range of decisions with some saying  
20 just knowledge of a nondisclosure would suffice and  
21 others saying there has got to be something more,  
22 not just knowledge does it, and I'm of the view that  
23 there has got to be something more. I mean, some  
24 inference or some fact from which you can draw an  
25 inference that the parties intended to defraud.

1 Something is wrong as opposed to a mistake.

2 Q. Now, if there is a --

3 A. Wrong in the sense of mental state, you  
4 know, impropriety.

5 Q. Now, if there is a debate on that subject  
6 how have you determined which side of the debate to  
7 employ in your expert testimony in this case?

8 A. The better view. I think I reasoned to  
9 the conclusion that the Court means, what the  
10 Supreme Court meant, was there was some -- there had  
11 to be something wrong, as I said before, some  
12 impropriety, and that's just a -- not just a  
13 nondisclosure that could result from any number of  
14 reasons, mistake being one.

15 Q. Are your --

16 A. It's kaleidoscopic, I mean, that's where  
17 you start -- that's where you would look for  
18 indications of something from which to draw an  
19 inference that something was wrong, like motive.

20 Q. Would it be fair to say that in this  
21 debate as to what scienter means, leaving aside the  
22 views of judges, the views of -- I take it you  
23 become aware of the views of many practitioners in  
24 the field in your practice and in your attendance at  
25 seminars, forums, what have you?

1 A. Yeah, teaching, right, uh-huh, yes.

2 Q. Would it be fair to say that the views of  
3 most plaintiffs' counsel and SEC attorneys are in  
4 the direction of a looser definition of scienter  
5 than you have espoused today?

6 A. I don't know. I don't think that's a fair  
7 statement, no. I don't think you can generalize at  
8 that level.

9 Q. As a matter of your professional practice  
10 of the securities laws isn't it the case that you  
11 have taken the position that you are taking here in  
12 the defense of clients in SEC enforcement actions  
13 and civil litigation?

14 A. Yeah, I think that's right.

15 Q. And you took the position in those cases  
16 because you believed it was a legitimate position,  
17 justifiable under the law?

18 A. Yes.

19 Q. You understand that counsel on the other  
20 side representing the SEC or some private litigant  
21 would take a contrary position also believing that  
22 their view was justified by the law?

23 A. They might. I don't think you can say the  
24 SEC's position is that mere knowledge equates to  
25 scienter. I spent a long time on the staff of the

1 SEC during the period when there was great debate  
2 about scienter and trying to make decisions as to  
3 when you would or would not include people as  
4 defendants in actions, and I have a pretty good feel  
5 for what goes on at the SEC in this regard.

6 Q. Would you agree with me that people take  
7 different positions as to what scienter means?

8 A. Sure.

9 Q. And they take it in good faith?

10 A. Sure.

11 Q. Their own justifiable reading of the same  
12 precedents coming to a different conclusion?

13 A. Yes.

14 Q. And you would not have taken this  
15 retention in this case if it had required you to  
16 state views in this case which were inconsistent  
17 with the views that you take as a general matter  
18 representing clients in SEC enforcement actions,  
19 isn't that correct?

20 A. I think that's right. I wouldn't take the  
21 representation unless I thought I could express my  
22 views freely and honestly without having to sit down  
23 and parse them at every second.

24 Q. Now, you've mentioned the Rule 42  
25 statement a few times as one of the items that you

1 have reviewed here. What has the Rule 42 statement  
2 -- let me start the question a different way.

3 What in the Rule 42 statement was  
4 instructive to you as to what the plaintiffs'  
5 evidence was?

6 A. Well, I tried to use the Rule 42  
7 statements to really pull together the, you know,  
8 the evidence as seen by both sides.

9 Q. Did you understand the Rule 42 statement  
10 to be a compilation of the evidence that plaintiffs'  
11 had in this case?

12 A. A representation of what the plaintiffs'  
13 believed the evidence to be.

14 Q. Focusing on the opposition to the motion  
15 for summary judgment, did you understand that to be  
16 a compilation of all the evidence the plaintiffs'  
17 had in this case?

18 A. A representation of what the plaintiffs'  
19 believed to be the evidence in the case, yes.

20 Q. All of the evidence?

21 A. All the evidence that went to their  
22 allegations.

23 Q. Or all the evidence that went to the  
24 question whether there were material facts on the  
25 issues on which --

1 A. Actually all the evidence that went to the  
2 issues presented on summary judgment.

3 Q. Which were less than all the issues  
4 presented by less than all the parties, isn't that  
5 correct?

6 A. Yes. They were not all treated --  
7 everyone did not move for summary judgment, that's  
8 my understanding.

9 Q. And even those who moved did not move on  
10 every issue, isn't that correct?

11 A. I think that's right.

12 Q. So there may be bodies of evidence you  
13 haven't seen in this case?

14 A. That's right.

15 Q. I take it you don't have any views --  
16 strike the question.

17 We discussed yesterday the motives or the  
18 lack of a personal profit motive by the persons  
19 involved at the Supply System and at certain of the  
20 participant defendants, do you recall that general  
21 subject matter?

22 A. Yes, and we discussed it -- as we did a  
23 little bit before in the context of scienter, that  
24 being an element that one would look to in order to  
25 draw an inference as to whether or not there would

1 be scienter.

2 Q. When these projects were, let's say half  
3 financed, seven of the 14 offerings having been sold,  
4 wouldn't it be fair to say that the representatives  
5 of the participants, for example, the city officials  
6 at the City of Tacoma or the PUD officials at  
7 Snohomish County PUD, would have an institutional  
8 financial interest in keeping the projects going and  
9 continuing to sell bonds rather than terminating the  
10 projects and having to pay back the bonds  
11 immediately?

12 A. Wouldn't have an institutional financial  
13 interest? I'm not sure I know how you mean that.  
14 You mean in order to generate revenues to pay for  
15 the bonds?

16 Q. I guess what I mean is that just as an  
17 individual might have an interest in a securities  
18 transaction for his own pocket, a City of Tacoma  
19 official might have an interest in these  
20 transactions on behalf of the City of Tacoma. And  
21 for example when one has sold a billion dollars  
22 worth of bonds and one knows that a failure to get  
23 the next offering out may terminate the projects and  
24 may immediately require the city to pay its share of  
25 a billion dollars white elephant, that may give that



1 party a motive to shade the truth. I'm asking you  
2 whether you would agree with me that theoretically  
3 that is the same kind of motive that can cause  
4 people to act with scienter?

5 A. I can see where you are raising a  
6 theoretical question as to the existence of motive.  
7 I'm not so sure that I would equate that to the kind  
8 of profit motive that is typically present in a  
9 securities fraud case.

10 Q. Are you talking about a personal profit  
11 motive or a corporate profit motive?

12 A. It could be both.

13 Q. You would agree with me that an official  
14 of Ford Motor Company could -- that an inference of  
15 fraud could be drawn from some conduct which would  
16 assist Ford even if it didn't put any money in his  
17 pocket?

18 A. Sure.

19 Q. And in the same way isn't it true that an  
20 inference of fraud could be drawn as to an official  
21 of the City of Tacoma or an official of Snohomish  
22 County PUD if his conduct was helpful to the city or  
23 the PUD either in obtaining a nuclear power plant  
24 which could not otherwise be financed or continuing  
25 the financing even if the money wasn't going

1 directly into his pocket?

2 A. I see the theoretical distinctions that  
3 you are making. In my own mind I think that the  
4 occurrence of one set of theoretical possibilities  
5 is much more frequent than the other. In fact, I  
6 don't know of many examples of any kind of  
7 institutional fraud or overzealousness or whatnot  
8 that you are raising as a theoretical possibility in  
9 the public segment.

10 To put it another way, I think there are  
11 lots of examples of actionable fraud with respect to  
12 private profit motives. I can't think of examples  
13 of actionable fraud with respect to public officials  
14 who have done something in the interest of the  
15 institution, that is the public body that is deemed  
16 to be actionable in the fraud context.

17 Q. Well, might that not be owing to the fact  
18 that there are very few municipal bond defaults in  
19 the history of the United States?

20 A. It might be owing to the fact that it  
21 would be highly, highly improbable for a public  
22 official to do what you are suggesting.

23 Q. Wasn't one of the findings of the City of  
24 New York investigation by the SEC that the mayor and  
25 other public officials had misled the investment

1 community?

2 A. It wasn't deemed to be actionable, though.

3 Q. Didn't they find that the mayor had misled  
4 the investment community?

5 A. There wasn't any action filed by the SEC.

6 Q. I understand that. But wasn't that a  
7 finding?

8 A. It was a statement in a staff report,  
9 that's right.

10 Q. A statement in a commission report, I  
11 believe, wasn't it?

12 A. No; it was a staff report.

13 Q. The commission report did not say --

14 A. It was not a commission report. It was an  
15 SEC staff report.

16 Q. Did the staff report say that the mayor  
17 had misled the investment community?

18 A. I think it did, words to that effect. I  
19 mean, that was the general thrust of it.

20 Q. What motive did the mayor have for  
21 misleading the investment community; did he pocket  
22 any of the money?

23 A. I don't know what his motive was, but I  
24 tell you it wasn't deemed to be actionable. That  
25 was my point.

1 Q. The mayor wasn't sued, that's what you  
2 mean.

3 A. That's right.

4 Q. Sort of like --

5 A. I mean more than that.

6 Q. Sort of like the attorney general not  
7 being indicted?

8 A. I mean more than that. His conduct was  
9 not deemed to be actionable. An action was not  
10 brought against him.

11 Q. Isn't that because disclosure standards in  
12 the municipal field were viewed as vague and  
13 uncertain at the time?

14 A. It might have been for a lot of reasons.

15 Q. Wasn't that one of the reasons?

16 A. That I can't say.

17 Q. And isn't it the case that municipal  
18 disclosure standards were expected to be increased  
19 following the City of New York debacle and the  
20 report?

21 A. In an aspirational vein, yes.

22 Q. So a higher standard of conduct might be  
23 expected in 1977 to 1981 from municipal officials  
24 than earlier?

25 A. I think the SEC staff hoped that would

1 take place.

2 Q. In your view has it happened?

3 A. I think there has been a lot of progress  
4 made in terms of the disclosure practices in the  
5 bond business, yes, not necessarily all attributable  
6 to the New York City report. It has been due to a  
7 number of factors.

8 Q. Were 1975 amendments one of them?

9 A. Not really. I think you misunderstand the  
10 '75 amendments. They really went to dealer conduct,  
11 not to issuer conduct.

12 Q. What else has happened that would have  
13 changed the standards of disclosure?

14 A. I think the entire SEC enforcement program  
15 in the period, in the early '70s, through the '70s.

16 Q. The SEC --

17 A. There has been a lot of plaintiff's  
18 litigation, too, I think has heightened the  
19 awareness of participants in the bond business.

20 Q. The SEC let it be known that it would  
21 enforce the exchange act against municipal officials  
22 in appropriate circumstances?

23 A. Yeah, I think we talked about this a  
24 little bit yesterday. I think you could say that  
25 because the SEC took the position that they could

1 sue municipalities or municipal officials, that's  
2 right. But I tried to make it quite clear yesterday  
3 that the SEC did not espouse that position with  
4 respect to your typical municipality. It was really  
5 in the atypical sense, and that is in the sense  
6 where there was some sort of an issuer that fell  
7 within the generic description of a municipal issuer  
8 such as a public utility district that was  
9 controlled by private parties, and in that context  
10 the SEC was bringing actions.

11 Q. The public utility officials involved in  
12 this case, those representing the participants, for  
13 example, again to use Tacoma and Snohomish PUD as  
14 examples, are at least in part elected officials, is  
15 that correct?

16 A. If you represent that I'll accept that  
17 representation.

18 Q. Are you not aware whether they are elected  
19 or appointed officials?

20 A. That's right.

21 Q. Would it be fair to say if they are  
22 elected officials that their political future might  
23 be affected by what happened to the PUDs multi  
24 million dollars investment in Projects 4 and 5?

25 A. Could be.

1 Q. And that an early cancellation resulting  
2 in a dry hole might be unpopular with the ratepayers?

3 A. That might be.

4 Q. It might give someone an incentive to  
5 shade the truth in an Official Statement?

6 A. That's theoretically possible.

7 Q. Just as possible --

8 A. I have not seen any evidence to that  
9 effect. I mean, I saw --

10 Q. I am speaking in theoretical terms as you  
11 were doing yesterday. It's just as theoretically  
12 possible for a politician to act with scienter for  
13 his own political purposes as it would be for an  
14 employee of Ford Motor Company to act with scienter  
15 to benefit the company, isn't it?

16 A. You are raising theoretical possibilities.  
17 I mean --

18 Q. I am responding to your theoretical views.  
19 Isn't it just as likely?

20 A. No, I don't think it's just as likely. I  
21 said before I don't think it's just as likely  
22 because, I mean, I infer from the fact that there  
23 are so few actions against political officials on  
24 that basis that it's not just as likely as it is in  
25 the private arena.

1 Q. The politicians are more trustworthy than  
2 corporate officials?

3 A. I don't know that "trustworthy" is the  
4 right word. I mean, they don't have the opportunity,  
5 there isn't the motivation to do something to  
6 mislead the public in connection with an offering of  
7 securities.

8 Q. Are you aware that this investment in  
9 Projects 4-5 was the largest individual investment  
10 or commitment that many of these participants had  
11 ever made?

12 A. If you represent that I'll accept that  
13 representation.

14 Q. Wouldn't that cause you to leave open the  
15 distinct possibility that conduct in connection with  
16 that investment would have political implications,  
17 personal prestige implications, and could put the  
18 same kind of pressures on an individual as would  
19 financial or corporate motives in another case?

20 A. No more so than it would open a distinct  
21 possibility that people engaged in this process  
22 would be supercautious because of the great  
23 responsibility that they were assuming.

24 Q. You testified yesterday a few times about  
25 how detailed the Official Statements were in this



1 case, do you recall that?

2 A. Yes.

3 MR. COHEN: Are you going into another big  
4 area?

5 MR. SIMON: Let's take a break.

6 (Recess.)

7 Q. Mr. Timmeny, yesterday we had some  
8 testimony on the level of detail that was in the  
9 Official Statemens; do you recall that?

10 A. Yes, I do.

11 Q. I take it you would agree with me as a  
12 general proposition that a highly detailed Official  
13 Statement can nevertheless be false or misleading?

14 A. It is possible for a detailed offering  
15 statement to be false and misleading, yes.

16 Q. The mere level of detail in the Supply  
17 System Offical Statements would not lead you to  
18 conclude that they were fair and accurate, would it?

19 A. No, what I said yesterday was I thought  
20 the level of detail was sufficient and appropriate  
21 under the circumstances --

22 Q. There was sufficient detail --

23 A. -- so as not to be inaccurate.

24 Q. Well, I guess now you have confused me  
25 again. There is enough detail so that it could not

1 be inaccurate, is that what you said?

2 A. I said it contained sufficient detail so  
3 as not to be inaccurate.

4 Q. But if the details are wrong then the  
5 Official Statement can be inaccurate?

6 A. Yes, it's possible.

7 Q. What was your role in the SEC's New York  
8 City investigation? I know we touched on it  
9 yesterday but I want to be sure we have a full  
10 description.

11 A. We talked about it extensively yesterday.

12 Q. Did you approve the written materials that  
13 were issued by the SEC?

14 A. I think your question assumes a fact  
15 that's not correct.

16 Q. Okay. Help me out, what does it assume,  
17 that there was anything issued?

18 A. The SEC didn't issue it. It's a staff  
19 report. I think when you say the SEC you could  
20 imply that it was a commission report.

21 Q. What I have looks like a commission report  
22 but frankly we can let the record speak for itself  
23 on that. Did you review whatever it was that the  
24 SEC issued?

25 A. Portions of it. It wasn't issued by the

1 SEC. I reviewed portions of what the staff issued.

2 Q. I have something called the final report  
3 in the matter of transactions in the securities of  
4 the City of New York. Even as a footnote it says  
5 that Commissioner Carmel did not participate in  
6 consideration of this matter. Is that a staff  
7 report?

8 A. I know what the staff report was and what  
9 you have is some sort of a, looks to me like a  
10 printout or something, a Lexis or something. But  
11 the staff --

12 Q. I got it from CCH, it looks just about the  
13 same.

14 A. It was a staff report. There is no doubt  
15 in my mind, and that fact can be established, just  
16 if you had the original report you would see that.

17 MR. COHEN: This came up in another  
18 deposition months ago, by the way, that your data  
19 base or somebody had something that was a summary of  
20 the staff report that they thought was the right one.

21 THE WITNESS: That's what this is. This  
22 is some sort of a summary from a Lexis --

23 MR. COHEN: It came up in the O'Brien  
24 deposition.

25 MR. SIMON: I will give you the CCH, too,

1 if you don't like computer printouts I will give you  
2 the hardcopy. It's not as easy to read.

3 MR. COHEN: It's the same probably the CCH  
4 one.

5 THE WITNESS: The report was not in CCH  
6 like this. The report is about a two inches report.

7 Q. I believe you, there is a staff report.  
8 I'm just trying to get the sense, and I'm happy to  
9 be corrected on this whether there was in addition  
10 to the staff report some kind of a SEC issuance?

11 A. It says -- I invite your attention to page  
12 2 of the material you just gave me. It says "staff  
13 report."

14 THE WITNESS: What you have given me is  
15 clearly a summary and I can read from it in part on  
16 page 2. It says, "Following the release of the  
17 staff report," in other portions it says "the staff  
18 report concluded."

19 Q. Let's make it real simple. Let's take  
20 something of the files of the Securities and  
21 Exchange Commission.

22 Could you mark this as the next exhibit,  
23 please.

24 (Marked Deposition Exhibit Timmeny 7.)

25 MR. COHEN: For the record we'll object to

1 the use of any of these exhibits as not having been  
2 properly designated, predesignated under the  
3 protocol.

4 MR. SIMON: Noted.

5 Q. Would you look at --

6 A. I have looked at your Exhibit 7.

7 Q. What is it?

8 A. It is a carbon copy, it would appear to be,  
9 of the release put out by the Securities and  
10 Exchange Commission announcing the release of the  
11 staff report.

12 MR. COHEN: Could you give us a minute or  
13 two to read this or give me another copy of it or  
14 something?

15 MR. SIMON: There is another copy. This  
16 is my last copy. It's all yours.

17 Q. Have you had a chance to review that now,  
18 Mr. Timmeny?

19 A. Just generally. I think we can go on. If  
20 you want me to go back and look at it I will.

21 Q. Having looked at it now do you have any  
22 better understanding of what it is?

23 A. I know what it is.

24 Q. The exhibit. I'm talking about the  
25 exhibit. I know there is a staff report, I believe

1 you. I'm trying to get a handle on this exhibit and  
2 maybe the other two, none of which I think are  
3 properly described as, quote, the staff report, end  
4 quote. So tell me what this is.

5 A. This is, it appears to be a copy of a  
6 release that the commission put out announcing and  
7 summarizing the staff report.

8 Q. Okay. Did you have any role in the  
9 preparation of Exhibit 7?

10 A. No.

11 Q. Tell me -- let's mark this as 8 and you  
12 can tell me what this is. I'm sorry, I don't have  
13 another copy of this.

14 (Marked Deposition Exhibit Timmeny 8.)

15 (Conference between witness and counsel  
16 out of the hearing of the reporter.)

17 MR. COHEN: Same objection as to the use  
18 of this document in the deposition.

19 Maybe you could give him an idea of what  
20 you want to --

21 Q. I want to know what it is.

22 MR. STENGEL: 7 or 8?

23 MR. SIMON: 8.

24 THE WITNESS: I'm still looking at 7 for a  
25 second.

1 Q. Could I just ask the witness what it is  
2 and maybe we could study it further --

3 A. I can't make out what it is is my problem.  
4 It's a Lexis printout. It appears to incorporate a  
5 couple of things, but it looks like what is called a  
6 final report in the matter of transactions in the  
7 securities of the City of New York, so that in  
8 contrast to the staff report, which was a volume  
9 that I referred to earlier, this is a final report  
10 and it looks like a covering document or a  
11 subsequent document that was put out by the  
12 commission as opposed to the staff.

13 I had forgotten about this entirely. I  
14 don't recall exactly the format, and of course it  
15 wasn't in the Lexis format. It would have been in  
16 the format of a commission release originally.

17 Q. Did you have any role in that document?

18 A. I don't remember.

19 Q. We have had considerable testimony in the  
20 last day and a quarter about reliance by the Supply  
21 System and by the participants upon the  
22 professionals. I'd like to turn that concept around  
23 a little bit and ask you whether it isn't generally  
24 considered acceptable under securities disclosure  
25 concepts for the professionals to rely upon the

1 issuer or the principals for certain of the facts  
2 underlying the transaction?

3 A. Yes.

4 Q. And in this case wouldn't it be normal for  
5 Blyth and Beck and Wood Dawson to rely upon the  
6 participants to provide them reliable information  
7 regarding the participant's historic loads and  
8 customer base and other matters unique to that  
9 participant?

10 A. Yes.

11 Q. And wouldn't it be normal to expect the  
12 Supply System to provide the professionals with  
13 information regarding how the construction of the  
14 project was going, labor problems, management  
15 problems, other things known to the Supply System  
16 itself?

17 A. Yes.

18 Q. And if the facts regarding those matters  
19 or the accurate facts regarding those matters are  
20 not provided to the professionals, then the conduct  
21 of the professionals in reviewing the Official  
22 Statement, discussing disclosure issues, is not  
23 going to insulate the issuer or other principals  
24 from liability under the securities laws, isn't that  
25 correct?



1           A.     That would depend on whether the facts  
2 were material.

3           Q.     If the facts were material.

4           A.     I think we said that yesterday.  If  
5 material facts were withheld from the professionals  
6 then I think the reliance defense would not be  
7 appropriate.

8           Q.     Yesterday we had a little discussion about  
9 the --

10          A.     Let me modify that.  If material facts are  
11 withheld from the professionals in a way that is  
12 designed to deceive the professionals, other than  
13 through mistake, for example, reliance would not be  
14 available.

15          Q.     Is it your position that the personnel of  
16 the issuer and the participants would have to act in  
17 a way designed to deceive the professionals, or  
18 designed to deceive the investing public, or both,  
19 in order to be liable?

20          A.     I think either would suffice.

21          Q.     Yesterday we talked a little bit about  
22 this concept that a participant or its officials  
23 might have a fiduciary obligation to go to court  
24 rather than to pay for a cancelled plant, do you  
25 recall that discussion generally from yesterday?

1 A. Yes.

2 Q. I wanted to follow up on that a little bit  
3 to be sure I understand your testimony.

4 Have you read a Supply System Official  
5 Statement, let's say the 1977A Official Statement,  
6 the first one, have you seen that one?

7 A. Yes.

8 Q. If you read it in 1977 and you were an  
9 investor, potential investor in that bond, would you  
10 read into that statement the warning that if the  
11 projects were cancelled that the participants might  
12 feel under a fiduciary obligation to go to court and  
13 test those obligations?

14 A. I don't think I would have read that into  
15 the statement, no. But looking at the way things  
16 developed I can see how that occurs.

17 Q. If a, say a city official of Tacoma  
18 believed in 1977 when he -- believed in 1976 when he  
19 signed the participants agreements and believed in  
20 1977 when he sat, for example, at a board of  
21 directors meeting of the Supply System as a Supply  
22 System director, and approved an Official Statement  
23 containing a take-or-pay obligation, he believed at  
24 that time that he in the event of a cancellation  
25 would have a fiduciary duty to the ratepayers to go

1 to court in advance of paying for a cancelled plant,  
2 isn't that something he should have put in the  
3 Official Statement?

4 A. Not necessarily. I think what went in the  
5 Official Statement was appropriate, and that is the  
6 opinion of counsel with respect to authority. Once  
7 you get beyond that there are all kinds of  
8 possibilities that could occur, World War III and  
9 whatever. I don't know how you would list all that  
10 in an Official Statement and still make sense of the  
11 Official Statement.

12 Q. Well, the projects were financed through  
13 the take-or-pay obligation which contemplated two  
14 possibilities; the projects would work, or the  
15 projects would be cancelled, right?

16 A. Uh-huh, yeah.

17 Q. So it's not like something totally out of  
18 the blue that the projects might be cancelled, you  
19 would agree?

20 A. There was discussion with respect to the  
21 possibility of termination, that's correct.

22 Q. If a City of Tacoma official believed that  
23 in the event of termination he would have to go to  
24 court to get a determination as to whether he could  
25 pay, isn't that something that's material to an

1 investor?

2 A. As I said, I think the most material  
3 factor here is the authority question.

4 Q. If you were an investor --

5 A. To the extent that your hypothetical, your  
6 hypothetical would run to the authority question,  
7 then I think it would be up to counsel to make a  
8 determination as to whether they would issue an  
9 opinion with respect to authority in the face of the  
10 kind of scenario that you paint. Counsel could  
11 still believe in that context that there was  
12 authority, and they could opine on authority, and  
13 their belief that the authority issue bound this  
14 entity, I think that's what would be material to an  
15 investor.

16 Q. So your view would be, at least part of  
17 your view -- I'm not trying to encapsulate the whole  
18 thing and I'll come back to some other part -- but  
19 in part your view is this hypothetical City of  
20 Tacoma official could simply advise Wood Dawson of  
21 this fiduciary duty that he believed he had and if  
22 Wood Dawson still would opine that there was  
23 authority, that would suffice?

24 A. Yes.

25 Q. So Wood Dawson would make the final call

1 as to whether this, what we call unwillingness, was  
2 something that was material to their opinion on  
3 authority, is that correct?

4 A. Yes.

5 Q. And if the City of Tacoma official did not  
6 advise Wood Dawson of this unwillingness, again  
7 assuming my hypothetical is correct that he had it,  
8 then he wouldn't --

9 A. He wouldn't say he had an unwillingness.  
10 He said he had a thought that he might have to go to  
11 court and determine whether or not he had the  
12 authority to pay at that point.

13 Q. If he didn't give that information to Wood  
14 Dawson it couldn't include that within its thought  
15 process as expressed in the opinion, right?

16 A. They could reason that pretty easily.

17 Q. Pardon me?

18 A. They could reason to that pretty easily,  
19 that's one of the possibilities they could reason to  
20 in rendering an opinion.

21 Q. You mean Wood Dawson could figure it out  
22 without anybody telling them?

23 A. They could take into consideration that  
24 possibility without anybody telling them, that's  
25 correct.

1 Q. Did they?

2 A. I don't know.

3 Q. But a more prudent approach for the City  
4 of Tacoma official would be to advise Wood Dawson of  
5 his belief in a fiduciary obligation to go to court,  
6 isn't that correct?

7 A. I'm not sure that would be -- I'm not sure  
8 that would be required in order to be prudent in the  
9 circumstance.

10 Q. Well, you are trying to take this  
11 fiduciary obligation issue and make it an authority  
12 issue, and I'm asking you if it's an authority issue  
13 shouldn't it have been -- shouldn't the information  
14 have been provided to the party rendering the  
15 opinion on authority, Wood Dawson?

16 A. I think it's clearly -- everything that  
17 can take place doesn't have to be presented to  
18 counsel. Counsel could understand some day that  
19 someone in one of these entities could challenge  
20 this authority. I suppose you could put a statement  
21 to that effect, that's the most you could put in an  
22 Official Statement. The absence of that kind of  
23 statement would not be material.

24 Q. The way you've put it you wouldn't say  
25 they could challenge, you would say they probably

1 would challenge because your testimony yesterday was  
2 one of the things that might have happened here is  
3 they might have had a fiduciary obligation. Now, if  
4 a City of Tacoma official believed in 1976 and 1977  
5 that he had a fiduciary obligation to go to court  
6 before he paid, he could put a lot stronger  
7 disclosure in, he could say these will be challenged  
8 in court?

9 A. If you could say a city official had taken  
10 the requisite steps to establish substantially that  
11 he had in mind a fiduciary authority to go to court  
12 to challenge the willingness issue I think that is  
13 something that would impact the authority issue, but  
14 I think bond counsel could reason to that.

15 Q. Do you think bond counsel knew that?

16 A. They could reason to that as a possibility  
17 that somewhere along the line some city official  
18 before he signed the check might have to consider  
19 whether or not he could issue the check.

20 Q. Now you are back to "might have to" again.  
21 You are moving away from the hypothetical. I am  
22 suggesting to you --

23 A. You are suggesting at some point the city  
24 official took the requisite steps to determine  
25 before he signed the participants agreement --

1 Q. Or he knew as a matter of municipal law in  
2 the state of Washington, it might have been an  
3 experienced city official and he might have known in  
4 his judgment he would not pay 10 percent of a multi-  
5 billion dollars obligation for a cancelled nuclear  
6 plant without going to court, and the simple  
7 question I'm asking you is separate from what bond  
8 counsel might have surmised or guessed or drawn upon  
9 from its offices in New York, whether that city  
10 official shouldn't have advised bond counsel of his  
11 view as to the requirements of Washington law and  
12 his duties as a municipal official?

13 A. Wouldn't that be incorporated in  
14 Washington law? I mean, wouldn't that be something  
15 that would be available to bond counsel in their  
16 review of Washington law? The way you phrased it I  
17 think it is.

18 Q. So even though he knows it and even though  
19 he knows it is material to authority, in your view  
20 he could simply remain silent and expect bond  
21 counsel to find it on their own?

22 A. He could expect bond counsel to factor in  
23 that possibility in their opinion.

24 Q. It's not possibility now it's a certainty,  
25 isn't it?



1 A. It's not a certainty because nothing has  
2 taken place. How could it be a certainty.

3 Q. It's a certainty if the projects are  
4 cancelled there is going to be litigation unless  
5 this official has lost his job by then?

6 A. Let's not get lost in the woods here.  
7 There is no such evidence as far as I know. There  
8 is nothing on which to even base an inference to  
9 that effect.

10 Q. But your position would be if a city  
11 official knew that, he could withhold it from bond  
12 counsel and still rely on bond counsel's opinion on  
13 authority, is that your testimony?

14 A. I think so. I think if a city official,  
15 even in his own mind, felt that he would have to go  
16 to court some day before he could pay he could still  
17 believe the authority was there, the authority  
18 actually existed as a result of signing the  
19 participants agreement.

20 Q. I didn't ask if he could believe that the  
21 authority was there, I asked whether he could  
22 withhold it from bond counsel?

23 A. Since you are dealing in an area of pure  
24 theory, I think that bond counsel could -- he could  
25 engage in this kind of discussion, too, this kind of

1 theoretical analysis before rendering an opinion.  
2 I'm sure bond counsel would have thought that  
3 somewhere along the line it would be possible for  
4 someone to say I'm going to challenge the authority  
5 here. Bond counsel is opining at this point that  
6 the authority is present.

7 Q. So you think bond counsel should have  
8 known --

9 A. I think you are raising the kind of  
10 question that is so theoretical, that it's the kind  
11 of question you can't factor into -- it's the kind  
12 of discussion that could not appear in an Official  
13 Statement. As I said, it's like saying, well  
14 perhaps World War III is going to intervene, are  
15 they supposed to put that in the Official Statement.

16 Q. What was so uncertain about it, Mr.  
17 Timmeny? There were only two possibilities, they  
18 would furnish the plants and generate power at  
19 economic rates and everyone would be happy, or they  
20 would cancel the plant, that's all there was, is  
21 that right?

22 A. That's right.

23 Q. And they contemplated the possibility of  
24 cancelling the plants?

25 A. Termination.

1 Q. Termination?

2 A. That was disclosed widely. It's in the  
3 Official Statement.

4 Q. What was disclosed?

5 A. The possibility of termination.

6 Q. Fine. That's just fine. Now, if they  
7 were considering the possibility of termination as  
8 one of the two things that could happen here, and if  
9 a city official knew that there would have to be  
10 litigation before he would pay his obligations,  
11 that's not World War III, it's not some speculative  
12 hypothetical, it is a fact that is going to occur in  
13 one of the two scenarios, and all I'm asking you --  
14 I think it's a very simple question -- is whether a  
15 city official believing that to be the case should  
16 not have advised bond counsel of his belief on that  
17 subject before asking bond counsel to render an  
18 opinion?

19 A. I don't think so because I think it's in  
20 an area where bond counsel would say this is one of  
21 the possibilities that could occur in this situation.  
22 And therefore should we issue an opinion, faced with  
23 the possibility at some point someone might  
24 challenge the authority.

25 Q. So you think --

1           A.     They issued their opinion on the basis  
2     that they are comfortable that the authority is  
3     solid.

4           Q.     So you think knowing that it's a  
5     possibility is the same as knowing that it's going  
6     to happen in those circumstances?

7           A.     It raises the same issue for bond counsel.  
8                   (Conference between witness and counsel  
9     out of the hearing of the reporter.)

10          Q.     Now, I want to try to divorce what I call  
11     the willingness issue from the authority issue, and  
12     I want to ask you separate from authority isn't it a  
13     material fact to the investing public that there  
14     will be litigation before there is payment?

15          A.     I don't know how you separate that from  
16     the authority issue, but I think --

17          Q.     Let's assume the authority issue is solid.

18          A.     That could be material.

19          Q.     Pardon me?

20          A.     That could be material. I think the two  
21     intertwine, at least in my mind they do.

22                   I think that could affect the judgment of  
23     an investor, yes.

24          Q.     Because it could delay payment of interest  
25     on the bonds, right?

1 A. Yes, among other things.

2 Q. Even if authority was ultimately upheld  
3 years later in the courts?

4 A. Might, uh-huh.

5 Q. If you were investing in these bonds you  
6 would have wanted to know that there was going to be  
7 years of litigation before payment was made and that  
8 that might interrupt the flow of coupons and drop  
9 the price of the bonds?

10 A. If someone knew that at the time the  
11 Official Statement was prepared I think that's  
12 something that should be disclosed, if they knew it,  
13 if that were a fact.

14 Q. By the way, have you ever purchased any  
15 Supply System 4-5 bonds?

16 A. No.

17 Q. Any Supply System 1, 2, 3 bonds?

18 A. No.

19 Q. Have you ever considered --

20 A. No.

21 Q. Have you ever considered purchasing either  
22 of those?

23 A. No. The only reason I hesitate, I had  
24 some bond funds but I don't think they had any,  
25 either one.

1 Q. Do you recall that the opinion of bond and  
2 special counsel addressed 72 of the 88 participants?

3 A. Yes.

4 Q. Would it be fair to say that no one could  
5 rely upon bond counsel's views as to the authority  
6 of the other 16 since they didn't issue an opinion?

7 A. I think that's right, they did not issue  
8 an opinion on the other 16, that's what they  
9 disclosed.

10 Q. So no one could have been relying on  
11 Houghton Cluck or Wood Dawson as to authority  
12 questions regarding those 16?

13 A. I think that's right, although my  
14 understanding is that there were opinions as to  
15 authority with respect to all the participants, at  
16 least by local counsel or something, you know. Bond  
17 counsel to each one of the participants -- I  
18 shouldn't say bond counsel to each one of the  
19 participants.

20 Q. Is it your understanding that anyone  
21 involved in the disclosure process in connection  
22 with these bonds was relying upon the opinions of  
23 those local counsel with regard to authority?

24 A. Anyone?

25 Q. Any of the defendants in this case.

1 A. Yes, I'm sure the Supply System did.

2 Q. They relied on the opinions of local  
3 counsel?

4 A. I think so.

5 Q. And you think it would be reasonable to  
6 rely on the opinion of local counsel to one of the  
7 participants knowing that the, both bond and special  
8 counsel had expressly not rendered an opinion on  
9 that subject?

10 A. Yes.

11 Q. Are you aware of the position -- are you  
12 aware of the fact that there was a case filed called  
13 the Mirotznic case involving bond counsel, the local  
14 counsel in this case?

15 A. Not really. I don't think so.

16 Q. You are not aware then of the fact that  
17 the parties in that case took the position that no  
18 one relied on local counsel, local counsel opinions  
19 for anything in connection with these bond offerings?

20 A. I know --

21 MR. COHEN: That's wrong. Let's state it  
22 right.

23 A. I was going to ask you whether what you  
24 are saying in effect is that they were contending  
25 they didn't publish their opinions in connection

1 with the issuance of bonds and therefore no one  
2 should properly rely on their opinions in connection  
3 with the issuance of bonds.

4 Q. Different people were contending different  
5 things. It would be hard to describe in one  
6 sentence what each of the defendants was contending,  
7 but they were contending that their opinions were  
8 not germane to any disclosure issue in the case, and  
9 no one had relied on them, no one had seen them,  
10 what have you. There were a variety of contentions  
11 all to the effect that those underlying local  
12 counsel opinions were not material to this bond --  
13 this set of bond litigations in any fashion.

14 A. The answer to your question is I am not  
15 aware of what went on in that litigation, no.

16 MR. COHEN: Just for the record since you  
17 are done with that question it is a gross  
18 mischaracterization of the positions, but, for what  
19 it's worth.

20 MR. SIMON: I don't have any further  
21 questions at this time. I'd like to see the bills  
22 and if there is anything additional to be produced,  
23 I will let Mr. Hagens ask the next questions.

24 MR. COHEN: Let me just state where we are  
25 on the bills, just for the record. We provided



1 copies of four bills that were in the possession of  
2 our firm. The person in charge of billing in our  
3 firm when we receive bills from Mr. Timmeny would  
4 typically send them on to Donovan Leisure for  
5 payment of half of them to Mr. Timmeny's firm. She  
6 did not keep copies for whatever reason, didn't keep  
7 copies of all the bills. We have provided copies of  
8 all those that we have retained in our files. Mr.  
9 Stengel is in the process of trying to determine  
10 whether they have other bills, and Mr. Timmeny has  
11 asked his firm to try to obtain copies of any  
12 additional bills as well. So that's where we are.  
13 That's why we don't have them. There is nothing  
14 being concealed intentionally.

15

16 E X A M I N A T I O N

17 BY MR. HAGENS:

18 Q. Mr. Timmeny, my name is Carl Hagens, I am  
19 here on behalf of Chemical Bank.

20 Have you got Exhibit 1 in front of you,  
21 Mr. Timmeny?

22 A. Sure.

23 (Exhibit Timmeny 1 proffered to the  
24 witness.)

25 Q. The focus of my questions will be with

1 respect to your opinions as they relate to Chemical  
2 Bank.

3 A. Yes.

4 Q. Would you please turn to page 2 of Exhibit  
5 1, lines 11 through 16, and in there you'll see the  
6 recitals of your opinions with respect to Chemical  
7 Bank.

8 My first question is in there you say  
9 "Chemical Bank failed to fulfill its  
10 responsibilities in the disclosure process."

11 What responsibilities do you refer to in  
12 that statement?

13 A. Well, I don't know. Maybe we can cut this  
14 short because as I understand it, the only thing  
15 I've reviewed in this connection was a draft of the  
16 complaint that was prepared by some of the  
17 defendants, and I think a motion was made either to  
18 file it or to amend the present action to include it  
19 as a cross claim -- I mean a counterclaim or  
20 whatever, and I gather that motion was denied by the  
21 Court.

22 And as a result I did not do much in the  
23 way of review of any evidence with respect to  
24 Chemical Bank. And specifically the only thing I  
25 reviewed was that draft complaint, so I haven't

1 formed an opinion in the sense that I have described  
2 opinions that I formed in other portions of the 26-B  
3 statement.

4 Q. Are you saying you don't have an opinion  
5 that Chemical Bank failed to fulfill its  
6 responsibilities, then, based upon anything of an  
7 evidentiary nature you reviewed, is that accurate?

8 A. The only thing I did -- I mean I have sort  
9 of an embryo opinion -- that's not even the proper  
10 way -- I have a view, having looked at that draft  
11 complaint with respect to the activities described  
12 in the draft complaint concerning Chemical's actions  
13 primarily with respect to its activities in its  
14 trust account and its internal proprietary trading  
15 account, but I really don't have a view with respect  
16 to the disclosure process.

17 Q. Well, did you have a view at the time you  
18 prepared this Rule 26-B statement?

19 A. Let's say that counsel asked me to  
20 consider certain factors, and if certain factors  
21 were present I would possibly opine with respect to  
22 Chemical's responsibilities in the disclosure  
23 process.

24 Q. Have you done any work or seen any  
25 materials that show that those factors were present?

1           A.    No, I have not.  It's a two-part question.  
2   No, I have not done the work, so no, I have not seen  
3   the factors.

4           Q.    So as you sit here today then you cannot  
5   testify that you have an opinion that Chemical Bank  
6   failed to fulfill its responsibilities in the  
7   disclosure process, is that correct?

8           A.    That's correct.

9           Q.    Now, you mentioned something about their  
10  role as a trust officer -- excuse me, a trustee  
11  versus their role as in some other respect, and then  
12  I --

13          A.    I said that -- what I meant was that their  
14  conduct of their activities with respect to their  
15  trust accounts as opposed to the conduct of their  
16  activities with respect to their proprietary trading  
17  accounts, it doesn't go to their role as a trustee  
18  in this transaction directly.

19          Q.    What did you review in that regard, if  
20  anything?

21          A.    As I said, I reviewed this draft complaint  
22  that represented certain facts in that regard.

23          Q.    And what facts in there did you rely on,  
24  if any, to form any opinions you may have with  
25  respect to Chemical Bank's conduct in that regard,

1 that is, in its different capacities that you have  
2 testified to?

3 A. With the modification that I haven't  
4 formulated opinions, as I said I started to use the  
5 term certain embryo opinions, views, whatever, I  
6 have seen something and obviously I have reacted to  
7 it in a Pavlovian sense.

8 But I think the, what I'm talking about  
9 would be a description of the possibility that  
10 Chemical Bank had come to the conclusion that an  
11 investment in the securities of the Supply System  
12 would be too risky for its own proprietary trading  
13 account, whereas at the same time it may well have  
14 been that they were in their capacity as managers of  
15 trust accounts placing trust account funds in the  
16 securities, or purchasing these securities with  
17 trust account funds, and I think that could present  
18 a conflict and perhaps a problem for Chemical in  
19 this context.

20 Q. Well, you say you think, but have you  
21 formed any conclusions along those lines?

22 A. I haven't dug, I really haven't dug into  
23 it. If you hadn't pulled it out of me I wouldn't  
24 even be discussing it.

25 Q. When you saw this Rule 26 statement did

1 you tell counsel that you didn't think you had the  
2 basis to support any of the opinions in this Rule 26  
3 statement as they relate to Chemical Bank?

4 A. I basically said that I expected to see  
5 information that would support this conclusion, and  
6 this conclusion was arrived at based on discussions  
7 with counsel. And I was essentially accepting the  
8 representations of counsel with respect to certain  
9 facts. It's quite possible there were crossed wires  
10 in that process.

11 Q. Well, I'm a little bit confused. Did you  
12 tell counsel that you could no longer support this  
13 opinion respecting Chemical's responsibilities to  
14 make the disclosure process at least based upon what  
15 you hadn't been given at that point in time?

16 A. No. I told -- let's back up. You asked  
17 me a question as to what was my view at the time  
18 this thing was drafted or what is my view now? I'm  
19 confused. What question are we dealing with?

20 Q. Well, I thought you testified that as you  
21 sit here today you had no basis to conclude that  
22 Chemical had a responsibility of any kind in the  
23 disclosure process. Now my question is --

24 A. I have no basis for saying they failed to  
25 fulfill their responsibilities in the disclosure

1 process.

2 Q. Yes.

3 A. Right.

4 Q. Now, my question is did you convey that  
5 view to counsel?

6 A. Yes, right. They know it. They didn't  
7 give me anything to read other than this draft  
8 complaint.

9 Q. Did you ask them for additional materials  
10 in connection with this?

11 A. No. I think it all went -- the discussion  
12 essentially was along the lines of it doesn't look  
13 like this is going to be an issue.

14 Q. And who said that?

15 A. It wasn't me. I didn't know; counsel.

16 Q. Which one?

17 A. Both, Mr. Cohen and Mr. Stengel.

18 Q. And when did they --

19 A. I think they were explaining to me that  
20 there was a distinct possibility that this matter  
21 would not come up because of the ruling of the court  
22 with respect to the draft -- the motion to file the  
23 complaint.

24 Q. And when did they make these statements to  
25 you?

1           A.    Pretty much all along in our discussions.  
2 I mean, to the point where I wasn't doing any work  
3 on the matter.

4           Q.    Okay. And hadn't done any work on the  
5 matter?

6           A.    Other than read that draft complaint  
7 that's it, that's right.

8           Q.    In this exhibit, Mr. Timmeny, it says,  
9 line 11, "He is further expected to offer his  
10 opinion that under the circumstances."

11                    What was your understanding of what that  
12 expression entailed, "under the circumstances," or  
13 do you have one?

14           A.    It was intended to allow me to focus on  
15 the possibility that there might be an aiding and  
16 abetting allegation with respect to Chemical Bank,  
17 and that the circumstances would suffice to  
18 establish that allegation.

19           Q.    But having done no work you have no  
20 opinion along those lines, is that correct?

21           A.    That's right.

22           Q.    When was the first time that you were  
23 asked to review or analyze any of Chemical Bank's  
24 conduct in this case?

25           A.    Well, it came up at the time the 26-B



1 statement was drafted, in that process.

2 Q. Which was?

3 A. We went over that before.

4 Q. I know --

5 A. I'm sloppy on my dates here. Let me think,  
6 November of '87, in that time.

7 Q. Was Chemical, was it mentioned as a topic,  
8 Chemical Bank's involvement, or conduct, was it  
9 mentioned as a topic the first time you met with  
10 either Mr. Cohen or Mr. -- or any other counsel in  
11 this case?

12 A. No, it wasn't. The first time we met was  
13 at dinner at the Georgetown Club. I know it wasn't  
14 mentioned then.

15 Q. Was it mentioned the second time that you  
16 met?

17 A. I said I don't think it was mentioned then.  
18 I don't have any recollection of it. I don't have  
19 any recollection of it being mentioned at the larger  
20 meeting that we had in Seattle with counsel.

21 Q. Pardon me?

22 A. I don't have any recollection of it being  
23 mentioned at the larger meeting that we had in  
24 Seattle with counsel. I think it came up for the  
25 first time in a meeting I had with Mr. Cohen and Mr.

1 Stengel in my office in connection with the 26-B  
2 statement.

3 Q. Have you discussed doing any further work  
4 perhaps to form an opinion with respect to Chemical  
5 Bank, has that been a topic of discussion between  
6 you and any counsel?

7 A. Well, I think it's -- yeah, generally it's  
8 been, the way I would interpret it, we are in a  
9 position now where if there is an issue in the case  
10 that they might ask me to look at something, but at  
11 this time they are not asking me to look at anything.

12 Q. Well, are you saying that -- strike that.  
13 Are you going to or are you not, as you  
14 currently understand the situation, conduct some  
15 analysis or evaluation of Chemical Bank's conduct in  
16 this -- in the circumstances of this case?

17 A. At the moment I don't have any ability to  
18 make that analysis because I have no materials to do  
19 it, to use to make the analysis, that's number one.

20 Number two, it really is within the --  
21 it's up to counsel as to whether they want to ask me  
22 to do that. I haven't been asked.

23 Q. Did they say they might ask you to do that  
24 at some subsequent point in time?

25 A. I guess that's my interpretation of where

1 we are. I don't want to put words in their mouth,  
2 or mouths.

3 Q. Okay. Where you are is they might ask you  
4 at some point in time to analyze and opine on the  
5 conduct of Chemical Bank, is that correct?

6 A. At some point that might be the case.

7 Q. Okay. Have you ever represented or been a  
8 counsel to a bond fund trustee?

9 A. I have counseled an institution that  
10 considered becoming trustee in this context.

11 Q. That considered becoming a trustee?

12 A. Yes.

13 Q. And did not?

14 A. I don't know whether they did or they  
15 didn't, to tell you the truth. I know they retained  
16 me to give them advice as to how they would go about  
17 it and what they would do, what risks that would  
18 entail and so forth and so on, or would incur, I  
19 should say.

20 Q. Is the name of that institution  
21 confidential?

22 A. I think it should be. You can ask me  
23 questions about what went on but I think it should  
24 be. It's a firm client.

25 Q. Apart from that have you ever on any other

1 occasion advised or represented a bond fund trustee?

2 A. No.

3 Q. And this one occasion was what, in the  
4 last three or four years, Mr. Timmeny?

5 A. Yes. It's within the last couple, about  
6 the last three, I'd say.

7 Q. Have you ever been employed by or  
8 represented a bank's trust department in any  
9 capacity, you personally I'm talking about.

10 A. I don't think so.

11 Q. Have you ever drafted a trust instrument?

12 A. No, I would say no.

13 Q. Have you ever acted as a trustee for  
14 anyone?

15 A. Not acted. I think -- I am on a document  
16 as a backup trustee or something, but I have not  
17 acted in that capacity.

18 Q. Apart from that, though, you haven't  
19 performed the services as a trustee, is that correct,  
20 in any capacity?

21 A. No, no.

22 Q. Do you recall who it was that first -- I  
23 think you said both the attorneys mentioned it.

24 MR. HAGENS: I don't have anything else.

25 Thank you,

1 MR. SIMON: Just a question or two about  
2 the Rule 26 statement as it relates to Chemical Bank.

3

4 EXAMINATION

5 BY MR. SIMON:

6 Q. When you signed off on this statement did  
7 you then have an opinion that Chemical had failed to  
8 fulfill its responsibilities in the disclosure  
9 process?

10 MR. COHEN: You already asked him, Carl  
11 already asked him that. It's in violation of the  
12 protocol that there can't be duplicative questioning.  
13 He asked him that exactly. Mr. Timmeny, if you  
14 already answered that tell him.

15 THE WITNESS: I think I did.

16 Q. And what responsibilities were you  
17 referring to?

18 A. Pardon?

19 Q. What responsibilities were you referring  
20 to at that time when you had that opinion?

21 A. It's responsibilities as a participant in  
22 the transaction.

23 Q. Section 10(b) responsibilities?

24 A. Yes.

25 Q. As a trustee?

1 A. As a trustee.

2 Q. What was your understanding in November of  
3 '87 of the law with regard to the responsibilities  
4 of a trustee under the securities laws?

5 A. You mean under 10(b)5, in the 10(b)5  
6 context, in the context of a municipal securities  
7 issue?

8 Q. Right.

9 A. My understanding at that time was, and it  
10 is today, that under normal circumstances a trustee  
11 would not undertake to -- would not undertake  
12 responsibilities with respect to disclosure, but  
13 that in the context of potential aiding and abetting  
14 liability that a trustee might possess information  
15 that would require it to seek to have such  
16 information disclosed in the offering process, and  
17 failing in that attempt might have to withdraw as a  
18 trustee or else possibly incur liability for aiding  
19 and abetting.

20 Q. I take it when you looked at the  
21 disclosure obligations of the defendants in this  
22 case, the Supply System, Tacoma and the like, you  
23 considered the possibility of aiding and abetting  
24 there as well?

25 A. Of the Supply System?

1 Q. Or Tacoma or the directors or any of the  
2 defendants we've talked about for the last day and a  
3 half, you haven't excluded aiding and abetting  
4 liability from your analysis, have you?

5 A. It's been part, it's a general part of the  
6 analysis, that's right.

7 Q. Okay. And it was your view in November  
8 that Chemical Bank had more exposure in this case  
9 than the defendants you have been retained by?

10 MR. COHEN: I think again you are asking  
11 him a question that he has already answered.

12 MR. SIMON: He hasn't answered that  
13 question.

14 A. Based on my understanding at that point  
15 there was a possibility that Chemical could have had  
16 a problem, and I was asked to consider opining on  
17 that basis, and I said that I would, based on my  
18 understanding at the time, and have since told you  
19 that I don't necessarily have the same understanding  
20 and I don't have the same opinion.

21 Q. Well, this statement refers to his opinion,  
22 his being you.

23 A. Uh-huh.

24 Q. That under the circumstances present with  
25 respect to WPPSS 4-5 bonds Chemical Bank failed to

1 fulfill. It suggests that you had that opinion at  
2 the time.

3 A. That's right.

4 Q. So I take it in November you had that  
5 opinion as to Chemical Bank but you didn't have it  
6 as to any --

7 A. Based on what I thought the facts were,  
8 and I now do not believe, based on the review that I  
9 have understanding, that the facts were as I thought  
10 they were then.

11 Q. What facts did you believe in November  
12 that you don't believe now on that subject?

13 A. I thought that Chemical Bank had come upon  
14 information with respect to the offering that was  
15 not generally available to the public that caused  
16 them to take certain actions, and that they  
17 continued to act as trustee nevertheless.

18 Q. And how have you -- what have you learned  
19 that's inconsistent with that?

20 A. That my understanding was erroneous.

21 Q. How did you learn that?

22 A. From counsel.

23 Q. What particular fact or facts or  
24 circumstances have you learned since November that  
25 has caused you to conclude that your understanding



1 at the time was erroneous?

2 A. I was of the impression, as I said, that  
3 Chemical Bank had come upon material not public  
4 information in the context of its efforts as trustee  
5 which it had used for its own benefit in connection  
6 with its proprietary trading account, and then  
7 continued to participate as trustee in the offerings.  
8 And I thought that was troublesome, but I have now  
9 learned that the facts that I thought were the case  
10 are not in fact the case.

11 Q. Well, to use the word you've used on me a  
12 few times, that's a compound statement which you  
13 made about Chemical Bank, that they knew this, they  
14 did this, they continued that. I'm trying to get  
15 you to tell me what about that have you now been  
16 shown not to be true; all of it?

17 A. That they did not have material nonpublic  
18 information that was obtained in the context of  
19 their duties as trustee.

20 Q. All right. What was the material  
21 nonpublic information that you understood them to  
22 have in November?

23 A. I was told that they had, I don't know  
24 what it was, I don't remember at this point.

25 Q. And you were told that by counsel?

1 A. Yes, uh-huh.

2 Q. And on the basis --

3 A. At least that's my interpretation of what  
4 counsel told me. I think there were some crossed  
5 wires here.

6 Q. And on the basis of counsel's  
7 representations you were willing at least for the  
8 purposes of the Rule 26 statement to express an  
9 opinion at that time?

10 A. That's right.

11 Q. Wouldn't it be fair to say that your other  
12 opinions on the Rule 26 statement were also based in  
13 part on representations by counsel as to the facts  
14 in this case?

15 A. No, I don't think so. I reviewed the -- I  
16 reviewed a lot of material in connection with the  
17 other statements in the 26-B statement.

18 Q. When you made this statement you didn't  
19 have much idea what the plaintiffs' evidence was in  
20 the case, did you?

21 A. I had reviewed the complaint.

22 Q. All right. The complaint doesn't have  
23 evidence in it, does it?

24 A. No, but I accepted the idea that the  
25 complaint, there would be something to support the

1 allegations. I didn't think you had Rule 11  
2 problems.

3 Q. You accepted the allegations as true and  
4 you still held these opinions?

5 A. I didn't say I accepted the allegations as  
6 true. I accepted the representations that there --  
7 certain things had occurred.

8 Q. How could you have opined in November that,  
9 for example, the Supply System and the WPUG  
10 defendants reasonably relied upon financial advisors,  
11 underwriters, counsel and other financial  
12 professionals without knowing the underlying  
13 evidence that the defendants would put in to support  
14 that assertion and the plaintiffs' would put in to  
15 rebut that assertion?

16 MR. COHEN: Hold on a minute.

17 THE WITNESS: I testified on --

18 MR. COHEN: That question goes beyond the  
19 proper scope of redirect examination.

20 MR. SIMON: I don't think so. Let's get  
21 an answer.

22 A. I testified to it yesterday. I reviewed  
23 materials before I prepared -- worked on the  
24 preparation of the 26-B statement.

25 Q. But you never saw plaintiffs' case, did

1 you?

2 MR. COHEN: I'm going to suggest, Len,  
3 that this is the last --

4 MR. SIMON: You can suggest what you want.  
5 We are going to finish the deposition.

6 MR. COHEN: Let me finish what I was going  
7 to say.

8 MR. SIMON: I don't want you to tell the  
9 witness he shouldn't answer the question. If you  
10 want to instruct him, instruct him.

11 MR. COHEN: Would you please allow me to  
12 continue.

13 MR. SIMON: No, because you have no  
14 opportunity to talk, you can object.

15 MR. COHEN: Recess the deposition and call  
16 the Judge. I'm going to continue what I was going  
17 to say. I was going to say you may ask this  
18 question, he may answer. If you continue along this  
19 line of repetitive questioning and questioning that  
20 is not properly in redirect I'm going to instruct  
21 the witness not to answer. I'm doing you the  
22 courtesy of telling you that. That's what I'm doing.  
23 I'm not coaching the witness or telling him not to  
24 answer that question, okay?

25 MR. SIMON: Is there a question pending,

1 Leslie?

2 (Record read as requested.)

3 A. I didn't see plaintiffs' entire case, no.

4 Q. You didn't see any of the evidence, did  
5 you, at that time?

6 MR. COHEN: You are pushing it.

7 A. I told you, I thought I reviewed the Buck  
8 transcripts, I was in the process of reviewing the  
9 Buck transcripts at the time. A lot of your  
10 exhibits and whatnot would be included in that  
11 process.

12 Q. One deposition?

13 A. A lot of exhibits in that deposition.

14 Q. It's a big case.

15 A. There were some key exhibits.

16 Q. Isn't it true that your opinion in this  
17 Rule 26 statement on the defendants is like your  
18 opinion in this Rule 26 statement on Chemical Bank,  
19 it's an opinion of -- that's been based upon  
20 representations of counsel to you as to what the  
21 facts would be?

22 A. There is a real distinction between the  
23 26-B statement with respect to Chemical Bank and the  
24 rest of the 26-B statement.

25 Q. Not a distinction one would be able to

1 find on the face of the document, is it?

2 A. No.

3 MR. SIMON: I have nothing further subject  
4 to the production of the billings and any other  
5 materials.

6 MR. HAGENS: Nothing further.

7 MR. SIMON: We have been unable to obtain  
8 the rest of the bills today, and defense counsel  
9 have agreed to produce the bills as soon as they are  
10 available and to make the witness available for  
11 further questioning if necessary.

12 (Deposition recessed at 12:00 noon.)

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\_\_\_\_\_  
WALLACE L. TIMMENY

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 1988

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.

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C E R T I F I C A T E

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

I, the undersigned Notary Public in and for the State of Washington, do hereby certify:

That the annexed and foregoing deposition of each witness named herein was taken stenographically before me and reduced to typewriting under my direction;

I further certify that the deposition was submitted to each said witness for examination, reading and signature after the same was transcribed, unless indicated in the record that the parties and each witness waive the signing;

I further certify that all objections made at the time of said examination to my qualifications or the manner of taking the deposition, or to the conduct of any party, have been noted by me upon said deposition;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not



1 financially interested in the said action or the  
2 outcome thereof;

3 I further certify that each witness before  
4 examination was by me duly sworn to testify the  
5 truth, the whole truth and nothing but the truth;

6 I further certify that the deposition, as  
7 transcribed, is a full, true and correct transcript  
8 of the testimony, including questions and answers,  
9 and all objections, motions, and exceptions of  
10 counsel made and taken at the time of the foregoing  
11 examination, with the exception of the accuracy of  
12 transcription of any audio tapes played and  
13 transcribed during the course of the deposition  
14 proceeding.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand and affixed my official seal this \_\_\_ day  
17 of \_\_\_\_\_, 1988.

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\_\_\_\_\_  
LESLIE SHERMAN  
Notary Public in and for  
the State of Washington,  
residing at Seattle.

1 financially interested in the said action or the  
2 outcome thereof;

3 I further certify that each witness before  
4 examination was by me duly sworn to testify the  
5 truth, the whole truth and nothing but the truth;

6 I further certify that the deposition, as  
7 transcribed, is a full, true and correct transcript  
8 of the testimony, including questions and answers,  
9 and all objections, motions, and exceptions of  
10 counsel made and taken at the time of the foregoing  
11 examination, with the exception of the accuracy of  
12 transcription of any audio tapes played and  
13 transcribed during the course of the deposition  
14 proceeding.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand and affixed my official seal this \_\_\_ day  
17 of \_\_\_\_\_, 1988.

18  
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21 \_\_\_\_\_  
22 LESLIE SHERMAN

23 Notary Public in and for  
24 the State of Washington,  
25 residing at Seattle.

PG LN	exhibit1	
220 7	310 MR. HAGENS 298	EXHIBIT: DESCRIPTION PAGE
221 19	has seen as the next	exhibits. (Marked Deposition
221 20	(Marked Deposition	Exhibits Timmeny 4 and
221 25	Timmeny, do you have	Exhibit 4 in front of you? A.
222 16	you tell me what	Exhibit 5 is? A. Exhibit 5
222 17	Exhibit 5 is? A.	Exhibit 5 is a Xerox copy of
224 24	still have a copy of	Exhibit 1 over on your side
225 1	Would you place	Exhibit 1 in front of the
225 7	Donovan Leisure. (	Exhibit Timmeny 1 proffered
225 24	could you look at	Exhibit 1, Exhibit 4 and
225 25	look at Exhibit 1,	Exhibit 4 and Exhibit 5 and
225 25	1, Exhibit 4 and	Exhibit 5 and tell me
226 4	every one of those	exhibits is, but if any type
226 8	wouldn't have an	exhibit number, please let
226 22	here I think	exhibits 1, 4 and 5 are
227 7	that are listed on	exhibits 4 and 5 are
227 8	not seen at the time	Exhibit 1 was prepared, that
227 10	than corrections to	Exhibit 1? A. I think that's
233 3	Q. Could you look at	Exhibit 1 again and
235 8	to mark as the next	exhibit bills that have been
235 11	(Marked Deposition	Exhibit Timmeny 6.) Q. Do
235 12	6.) Q. Do you have	Exhibit 6 in front of you? A.
235 15	for the record. A.	Exhibit 6 is a four-page
235 15	6 is a four-page	exhibit consisting of four
236 1	first page of the	exhibit which is the bill
277 22	this as the next	exhibit, please. (Marked
277 24	(Marked Deposition	Exhibit Timmeny 7.) MR.
278 1	use of any of these	exhibits as not having been
278 6	have looked at your	Exhibit 7. Q. What is it? A.
278 24	what it is. Q. The	exhibit. I'm talking about
278 25	talking about the	exhibit. I know there is a
279 1	get a handle on this	exhibit and maybe the other
279 9	the preparation of	Exhibit 7? A. No. Q. Tell me
279 14	(Marked Deposition	Exhibit Timmeny 8.)
298 20	Bank. Have you got	Exhibit 1 in front of you,
298 23	Timmeny? A. Sure. (	Exhibit Timmeny 1 proffered
299 4	turn to page 2 of	Exhibit 1, lines 11 through
305 8	right. Q. In this	exhibit, Mr. Timmeny, it
318 10	time. A lot of your	exhibits and whatnot would
318 13	A. A lot of	exhibits in that deposition.
318 15	There were some key	exhibits. Q. Isn't it true

PG LN	confidential1	
221 6	with the order on	confidentiality dated
308 21	of that institution	confidential? A. I think it

1 anything that will delay it from this stuff.

2 A. There is nothing in this file of substance,  
3 as I said I think there is nothing in the file  
4 except correspondence relating to the transmittal of  
5 documents.

6 Q. Is there any correspondence in your file  
7 between yourself and your colleagues at McGuire  
8 Woods?

9 A. I'm not so sure I follow the question.

10 Q. Are there any internal memoranda in your  
11 file between associates and yourself?

12 A. No, no one has worked on this matter in my  
13 firm with the exception of myself. I said possibly  
14 at the very outset of the retainer I might have  
15 asked someone to find a file for me or something,  
16 but I have not consulted with any lawyers about the  
17 substance of my testimony.

18 Q. And you have not had anyone -- you don't  
19 have any memoranda in your files from associates,  
20 colleagues, what have you, regarding what they found,  
21 what they looked for?

22 A. No, no. I didn't ask anyone to research  
23 any issues, if that's your point, no.

24 Q. Do you still have a copy of Exhibit 1 over  
25 on your side of the table there?