

1 UNITED STATES DISTRICT COURT
2 BEFORE THE HONORABLE WILLIAM H. ORRICK, JUDGE
3 AMERICAN BOOKSELLERS)
4 ASSOCIATION, INC., ET AL.,)
5)
6 PLAINTIFFS,)
7)
8 VS.) NO. C 98-1059 WHO
9)
10 BARNES & NOBLE, INC.,)
11 ET AL.,)
12)
13 DEFENDANTS.)
14 _____)

SAN FRANCISCO, CALIFORNIA
TUESDAY, APRIL 17, 2001

TRANSCRIPT OF COURT TRIAL - VOL. 6

17 APPEARANCES:
18 FOR PLAINTIFFS: FARELLA, BRAUN & MARTEL LLP
19 235 MONTGOMERY STREET, 30TH FLOOR
20 SAN FRANCISCO, CALIFORNIA 94104
21 BY: DOUGLAS R. YOUNG
22 (APPEARANCES CONTINUED ON FOLLOWING PAGE.)
23 REPORTED BY: LEO T. MANKIEWICZ, CSR 5297 RMR, CRR
24 RAYNEE H. MERCADO, CSR 8258 RMR, CRR
25 OFFICIAL REPORTERS

1 APPEARANCES: (CONTINUED)FOR PLAINTIFFS: JENNER & BLOCK
2 601 13TH STREET N.W.
3 WASHINGTON, D.C. 20005
4 BY: DAVID W. DEBRUIN
5 BRUCE V. SPIVA
6 DANIEL MACH
7 JANIS KESTENBAUM
8 WILLIAM HOHENGARTEN
9 FOR DEFENDANTS: O'MELVENY & MYERS LLP
10 (BARNES & NOBLE) 1999 AVENUE OF THE STARS, 7TH FLOOR
11 LOS ANGELES, CALIFORNIA 90067-6035
12 BY: DANIEL M. PETROCELLI
13 DAVID R. GARCIA
14 ALAN RADER
15 JANE LIPPMAN
16 MATTHEW KLINE
17 FOR DEFENDANTS: SKJERVEN, MORRILL, MAC PHERSON
18 (BORDERS GROUP)
19 THREE EMBARCADERO CENTER, 28TH FLOOR
20 SAN FRANCISCO, CALIFORNIA 94111
21 BY: REGINALD D. STEER
22 ANDREW D. MASTIN
23 RICHARD J. NELSON
24 JAMES HEIDEMAN
25 DIANNE SWEENEY

1 THE COURT: MR. DEBRUIN, CALL YOUR NEXT WITNESS.
2 (PAUSE IN THE PROCEEDINGS.)
3 THE COURT: WE STILL HAVE MISS KESTENBAUM.
4 MS. KESTENBAUM: YES, YOUR HONOR. PLAINTIFFS CALL
5 JOHN EVANS.
6 THE COURT: ALL RIGHT. YOU'RE STILL UNDER OATH,
7 MR. EVANS.
8 DIRECT EXAMINATION (RESUMED)
9 BY MS. KESTENBAUM:
10 Q. GOOD MORNING, MR. EVANS.
11 A. GOOD MORNING.
12 Q. YESTERDAY WE WERE TALKING ABOUT THE TERMS OF SALE THAT
13 LEMURIA GETS FROM PUBLISHERS AND WHOLESALERS, AND I WANTED TO
14 CONTINUE WITH THAT TOPIC FOR A LITTLE BIT MORE.
15 LET ME ASK YOU, DOES LEMURIA -- DO YOU TRY TO GET THE
16 BEST TERMS AVAILABLE FOR LEMURIA?

17 A. YES, I DO.
18 Q. OKAY. AND HOW DO YOU DO THAT?
19 A. WELL, MY SALESMAN WILL CALL ME, AND I WILL ASK HIM IF THERE
20 IS ANY STOCK OFFERS OR ANY PUBLISHER-ANNOUNCED STOCK OFFERS THAT
21 ARE AVAILABLE FOR ME AT THAT TIME. I WILL ALSO ASK HIM IF THEY
22 HAVE ANY CHANGES IN THEIR POLICIES DIFFERENT FROM THE RED BOOK.
23 AND I WILL TRY TO MAKE SUGGESTIONS AS TO BUSINESS CHANGES IN THE
24
25

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1 POLICIES THAT MIGHT HELP ME BUY MORE BOOKS.
2 Q. OKAY. WHEN YOU SAY "MAKE SUGGESTIONS," ARE YOU SAYING THAT
3 YOU EXPRESS DISSATISFACTION WITH VENDOR'S CURRENT TERMS?
4 A. YES, I MIGHT SAY I WOULD LIKE FREE FREIGHT, MIGHT HELP ME
5 BUY MORE BOOKS. OR IF YOU HAVE A BACK STOCK OFFER, I MIGHT
6 COULD GIVE YOU A BACK STOCK OFFER AT THAT TIME.
7 Q. AND IS THAT SOMETHING THAT YOU DO JUST ON OCCASION, OR DOES
8 THAT FREQUENTLY COME UP?
9 A. NO, I TRY TO -- A LOT OF TIMES, THE SALESPERSON FROM COMPANY
10 WILL COME IN AND SAY WE HAVE A STOCK OFFER, BUT IF HE DOESN'T
11 VOLUNTEER THAT INFORMATION, I WILL ASK THAT. USUALLY.
12 AT THE BEGINNING OF EVERY SALES CALL, I'LL SEE IF
13 THERE'S A CHANGE IN POLICY OR AN OFFER.
14 Q. OKAY. AND IN TERMS OF THE SUGGESTIONS AS TO CHANGES OF
15 BUSINESS TERMS THAT YOU MENTIONED, HAS A PUBLISHER EVER CHANGED
16 ITS TERMS IN RESPONSE TO ONE OF YOUR SUGGESTIONS?
17 A. NO, I DON'T THINK SO. I -- I COULDN'T IMAGINE THAT THEY
18 WOULD CHANGE ANYTHING.
19 Q. OKAY. NOW, IN YOUR EXPERIENCE, ARE PUBLISHERS' TERMS
20 NEGOTIABLE?
21 A. NO.
22 Q. AND WHAT'S YOUR SENSE OF -- CAN YOU EXPLAIN?
23 A. WELL, IF I'M -- IF I AM MAKING SUGGESTIONS AND TRYING TO
24 INQUIRE AND I DON'T EVER GET ANY CHANGES FROM THE PUBLISHERS,
25 WHY WOULD I THINK THEY WOULD BE NEGOTIABLE?

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1 Q. NOW, MR. EVANS, WE TALKED YESTERDAY ABOUT THE FACT THAT YOU
2 HAVE BEEN, SINCE LEMURIA WAS OPENED IN 1975, THE STORE'S MAIN
3 BUYER, CORRECT?
4 A. THAT IS CORRECT.
5 Q. OKAY. AND THAT IN ADDITION TO THAT, THAT YOU ARE THE ONE
6 WHO PAYS THE BILLS?
7 A. THAT IS CORRECT.
8 Q. OKAY. AND SO YOU'VE TOLD THE COURT THAT YOU ARE FAMILIAR
9 WITH LEMURIA'S TERMS.
10 A. YES, I AM.
11 Q. OKAY. BUT I ASSUME THAT -- WELL, CAN YOU TELL ME -- CAN YOU
12 JUST GIVE ME AN ESTIMATE OF APPROXIMATELY HOW MANY PUBLISHERS
13 LEMURIA BUYS BOOKS FROM?
14 A. HUNDREDS.
15 Q. OKAY. SO I ASSUME THAT YOU COULDN'T OFF THE TOP OF YOUR
16 HEAD JUST REMEMBER ALL OF YOUR TERMS WITH ALL OF YOUR VENDORS?
17 A. NO.
18 Q. OKAY. BUT -- BUT WITH RESPECT TO LEMURIA'S MOST SIGNIFICANT
19 VENDORS, FIRST OF ALL, IF YOU COULD JUST QUICKLY TELL ME IN
20 TERMS OF PUBLISHERS, WHO DO YOU PURCHASE FROM -- THE MOST BOOKS
21 FROM?
22 A. AS FAR AS PUBLISHERS?
23 Q. YES.
24 A. PROBABLY RANDOM HOUSE, SIMON SCHUSTER, PENGUIN, HARPER.
25 Q. OKAY.

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1 A. LITTLE BROWN, TIME WARNER.
2 Q. OKAY. WELL, LET ME ASK YOU FOR THOSE PUBLISHERS WHICH
3 YOU'RE WORKING WITH MUCH MORE OFTEN.
4 CAN YOU TELL ME AT LEAST TODAY WHAT TERMS LEMURIA
5 RECEIVES FROM RANDOM HOUSE. AND WHEN I SAY "RANDOM HOUSE," I'M
6 INCLUDING IN THAT BANTAM DOUBLEDAY DELL.
7 A. YES, WE RECEIVE 46 ON TRADE BOOKS. WE RECEIVE 44 ON MASS
8 MARKETS AND 48 ON BANTAM CLASSICS. WE RECEIVE 50 PERCENT ON

9 AUDIO, AUDIO BOOKS.
10 Q. OKAY. AND ONE OF THE LINES THAT THEY -- THAT THEY SELL IS
11 FODOR'S, THE FODOR'S TRAVEL GUIDES, DOES LEMURIA PURCHASE THOSE?
12 A. YES, WE DO. I THINK WE GET 50 PERCENT.
13 Q. OKAY.
14 A. GET A LITTLE MORE.
15 Q. SORRY TO BE TESTING YOUR MEMORY, BUT LET'S MOVE ON TO LITTLE
16 BROWN AND WARNER BOOKS, WHICH ARE OBVIOUSLY BOTH OWNED BY TIME
17 WARNER TRADE PUBLISHING; IS THAT RIGHT?
18 A. YES.
19 Q. AND DO YOU -- CAN YOU TELL THE COURT WHAT YOUR TERMS ARE
20 WITH LITTLE BROWN AND WARNER BOOKS?
21 A. YES, I THINK MY STANDARD TERMS ARE 46 PERCENT TRADE; AND
22 MASS MARKETS, 44; AND AUDIO BOOKS WAS, ONCE AGAIN, 50 PERCENT.
23 Q. OKAY. AND ON TRADE BOOKS, DO YOU GET FREE FREIGHT?
24 A. NO, I DON'T.
25 Q. OKAY. WHAT ABOUT -- WHAT ABOUT --

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1 A. I DO ON MASS MARKET.
2 Q. YOU DO ON MASS MARKET?
3 A. I THINK. YES, I DO.
4 Q. OKAY. AND WHAT ABOUT THE AUDIO BOOKS?
5 A. I BELIEVE I GET FREE FREIGHT ON AUDIO. I BELIEVE IT'S A
6 DIVISION OF THE MASS MARKET.
7 Q. OKAY. TURNING TO SIMON & SCHUSTER, CAN YOU EXPLAIN WHAT
8 YOUR TERMS ARE WITH SIMON & SCHUSTER?
9 A. LET'S SEE. I BELIEVE I GET 46 AND FREE FREIGHT ON THE TRADE
10 BOOKS. 46 ON THE -- 44 ON THE MASS MARKET BOOKS AND THEN ONCE
11 AGAIN, I GET 50 ON AUDIO BOOKS. AND I GET FREE FREIGHT ON ALL
12 OF THEM.
13 Q. AND YOU ALSO MENTIONED HARPERCOLLINS, AND JUST TO BE CLEAR,
14 THAT TODAY INCLUDES WILLIAM MORROW AND AVON; ISN'T THAT RIGHT?
15 A. THAT'S CORRECT.
16 Q. AND CAN YOU TELL THE COURT WHAT YOUR TERMS ARE TODAY FROM
17 HARPERCOLLINS?
18 A. BELIEVE I CAN. THEY'RE 46 PERCENT FOR TRADE BOOKS.
19 44 PERCENT FOR MASS MARKET AND ONCE AGAIN, IT'S 50 PERCENT FOR
20 AUDIO.
21 Q. AND DID YOU -- DID YOU SAY THAT YOU RECEIVE FREE FREIGHT
22 FROM HARPER?
23 A. YES, I DO.
24 Q. OKAY.
25 A. DO RECEIVE FREE FREIGHT.

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1 Q. IS THERE A FLOOR -- DO YOU HAVE TO PURCHASE A MINIMUM DOLLAR
2 AMOUNT IN ORDER TO GET THAT?
3 A. YES, I BELIEVE YOU HAVE TO HAVE A \$200 MINIMUM TO GO FOR
4 FREE FREIGHT, BUT WE TRY TO ALWAYS DO THAT TO GET OUR FREE
5 FREIGHT. SO IN MY MIND, IT'S --
6 Q. AND DOES LEMURIA PLACE ITS ORDERS ELECTRONICALLY, IN OTHER
7 WORDS, BY EDI?
8 A. YES, WE DO. AS MUCH AS WE CAN.
9 Q. I'D LIKE TO TURN SPECIFICALLY TO YOUR TERMS WITH -- WITH
10 INGRAM, THE WHOLESALER. AND FIRST OF ALL, CAN YOU TELL ME
11 WHAT -- WHAT OTHER WHOLESALERS -- WELL, FIRST OF ALL, DO YOU USE
12 INGRAM?
13 A. VERY MUCH, YES.
14 Q. OKAY. AND ARE THERE OTHER WHOLESALERS THAT YOU REGULARLY
15 USE?
16 A. BAKER & TAYLOR.
17 Q. AND WHICH IS -- WHICH IS THE WHOLESALER THAT YOU RELY ON THE
18 MOST?
19 A. WE RELY ON INGRAM CONSIDERABLY MORE.
20 Q. OKAY.
21 A. CONSIDERABLY MOST.
22 Q. AND JUST TALKING ABOUT YOUR STANDARD INGRAM TERMS, CAN
23 YOU -- CAN YOU JUST EXPLAIN WHAT THEY ARE?
24 A. YES, INGRAM TERMS ARE BY TITLE AND BY VOLUME. AND IF YOU'RE
25 ABLE TO ORDER ONE BOOK, YOU GET 40 PERCENT AND FIVE BOOKS,

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1 41 PERCENT, TEN BOOKS, 42 PERCENT AND IF YOU ORDER A SPECIFIC
2 VOLUME, YOU CAN GET FREE FREIGHT.

3 CONSEQUENTIALLY (SIC) WITH YOUR INGRAM PURCHASES, YOU
4 HAVE AUDIO BOOKS, WHICH YOU GOT A HIGHER DISCOUNT. I BELIEVE
5 IT'S 45. AND WITH YOUR VENDOR OF RECORD BOOKS WITH INGRAM, YOU
6 CAN GET A 1 PERCENT EXTRA ON THAT, AND THERE ARE SOME OTHER
7 TIMES -- OTHER ANNOUNCEMENTS THAT INGRAM MAKES DURING THE YEAR
8 TO GIVE YOU A OPPORTUNITY TO MAKE AN EXTRA DISCOUNT.

9 Q. OKAY. THESE OPPORTUNITIES, CAN YOU -- CAN YOU GIVE US AN
10 EXAMPLE OF WHAT YOU'RE TALKING ABOUT?

11 A. OH, SURE. THEY'RE -- THEY DIDN'T DO IT THIS LAST YEAR. I
12 CAN'T REMEMBER HOW MANY YEARS, BUT PREVIOUSLY, THEY WOULD
13 ANNOUNCE IF YOU WOULD DO ELECTRONIC ORDER BETWEEN THE TIMES OF
14 SATURDAY AFTERNOON AT 6:00 O'CLOCK AND SUNDAY AFTERNOON AT 6:00
15 O'CLOCK, YOU WOULD GET AN EXTRA DISCOUNT ON -- WHICH I TRY TO
16 TAKE ADVANTAGE OF.

17 Q. OKAY. AND YOU MENTIONED BEFORE THAT WITH YOUR INGRAM TERMS,
18 INGRAM DOES IT BY TITLE. SO DOES THAT MEAN THAT IN ORDER TO
19 GET, FOR INSTANCE, THE 41 PERCENT DISCOUNT YOU MENTIONED FOR
20 PURCHASES OF, SAY, FIVE BOOKS, YOU ACTUALLY HAVE TO PURCHASE
21 FIVE OF THE SAME TITLE?

22 A. FIVE OF THE SAME TITLE, AND THEN ORDER OF MAYBE HUNDRED
23 FIFTY BOOKS.

24 Q. OKAY. YOU ALSO MENTIONED THE VOR PROGRAM. SO YOU
25 PARTICIPATE IN THE INGRAM VOR --

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1 A. YES, I DO.

2 Q. AND THAT'S -- JUST FOR THE RECORD, THAT STANDS FOR VENDOR OF
3 RECORD?

4 A. YES, I THINK IT'S A -- WOULD YOU LIKE ME TO EXPLAIN THAT.

5 Q. WELL, SURE. I MEAN, YOU MENTIONED THAT YOU GOT AN EXTRA
6 DISCOUNT FOR VOR?

7 A. RIGHT.

8 Q. FOR THE VENDOR OF RECORD.

9 DO YOU PARTICIPATE IN VOR FOR ALL OF PUBLISHERS THAT
10 YOU --

11 A. NO, JUST THE SMALL PUBLISHERS. THE PUBLISHERS THAT I BUY IN
12 THE -- SMALL QUANTITY FROM OR -- OR PUBLISHERS THAT I HAVEN'T
13 EVER ORDERED A BOOK FROM THAT IF I MIGHT, THAT INGRAM HAS IT IN
14 STOCK, I CAN BUY FROM THEM, GET AN EXTRA DISCOUNT.

15 THE REASON I DON'T DO IT WITH THE LARGER PUBLISHERS
16 IS THAT THE DISCOUNT IS SO MUCH LOWER THAN IF I BUY DIRECT THAT
17 I WOULD -- AND IT'S A VERY SMALL PART OF MY INGRAM PURCHASES,
18 BUT I DO TAKE ADVANTAGE OF IT WHENEVER I CAN.

19 Q. ARE THERE ANY OTHER REASONS WHY YOU DO NOT USE THE VOR
20 PROGRAM FOR LARGER VENDORS OTHER THAN A DISCOUNT DIFFERENTIAL
21 THAT YOU JUST MENTIONED?

22 A. YES. MULTIPLE REASONS. MY -- MY LARGER PUBLISHERS SEND ME
23 A SALES REP, WHICH PROVIDES ADVICE AND HELP AS FAR AS BEING ABLE
24 TO BUY THE RIGHT BOOKS FOR MY BOOKSTORE. BUYING BOOKS FROM THE
25 PUBLISHER ALSO GIVES ME A LARGER LEAD TIME IN THE NEW TITLES,

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1 AND I'M ABLE TO BUY MY NEW TITLES SOMETIMES AS MUCH AS FIVE
2 MONTHS IN ADVANCE OF THE ISSUE DATE. AND IF I WAS BUYING FROM
3 INGRAM, IT COULD BE AS LOW AS 60 DAYS.

4 Q. WHEN DID YOU START PARTICIPATING IN INGRAM'S VOR PROGRAM?

5 A. I WOULD HAVE TO ESTIMATE THAT. BUT I WOULD THINK FOUR YEARS
6 AGO, SOMETHING LIKE THAT. THEY APPROACHED ME.

7 Q. NOW, JUST TALKING ABOUT YOUR FIRST -- LOOKING BACK TO YOUR
8 STANDARD INGRAM TERMS, MEANING YOUR NON-VOR TERMS, DO YOU GET
9 ANY KIND OF A CASH DISCOUNT?

10 A. YES, I DO.

11 Q. AND WHAT DO YOU HAVE TO DO TO OBTAIN THE CASH DISCOUNT?

12 A. YOUR INVOICE WITH WEEKLY WITH YOUR ORDERS, SO YOU GET YOUR
13 PACKING LIST AND YOU MATCH YOUR VOICES. AND AT THE END OF THE
14 MONTH, YOU GET A STATEMENT.

15 I TAKE THAT STATEMENT AND ANALYZE ON MY INVOICES, AND
16 I HAVE -- IF THAT STATEMENT USUALLY COMES IN ABOUT THE 2ND OR
17 3RD OF THE MONTH -- AND ON THAT STATEMENT, IF I CAN WRITE MY
18 CHECK AND HAVE IT POSTMARKED BY THE 10TH, I GET A 2 PERCENT CASH
19 DISCOUNT OFF MY PAYMENT.

20 Q. IN YOUR EXPERIENCE, HOW STRICT IS INGRAM IN ENFORCING THAT
21 10TH OF MONTH OR TEN-DAY DEADLINE?
22 A. I'VE BEEN TRYING TO TAKE ADVANTAGE OF IT FOR 25 YEARS, AND I
23 THINK THAT THEY'RE REAL STRICT.
24 Q. AND WITH RESPECT TO THE VOR PROGRAM, ARE YOU OFFERED THE
25 SAME CASH DISCOUNT TERMS ON VOR?

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1 A. YES.
2 Q. OKAY.
3 A. YES. I THINK IT'S ON ALL INGRAM PURCHASES.
4 Q. OKAY. AND UNDER THE VOR PROGRAM, IS THERE ANY KIND OF AN
5 ANNUAL REBATE OR INCENTIVE THAT'S OFFERED TO YOU IF -- FOR
6 INCREASES IN YOUR PURCHASES FROM INGRAM FROM ONE YEAR TO THE
7 NEXT?
8 A. NOT THAT I'M AWARE OF.
9 Q. OKAY. I WOULD LIKE TO ASK YOU ABOUT SOME OTHER INGRAM
10 PROGRAMS AND SEE IF YOU'RE FAMILIAR WITH THEM. FIRST OF ALL,
11 ARE YOU FAMILIAR WITH THE PROGRAM CALLED BACKLIST PLUS?
12 A. I DON'T THINK SO.
13 Q. AND WHAT ABOUT INGRAM'S VISITING AUTHOR PROGRAM?
14 A. YES, I AM FAMILIAR WITH THAT.
15 Q. OKAY. VERY BRIEFLY, COULD YOU EXPLAIN WHAT YOUR
16 UNDERSTANDING IS OF HOW IT WORKS.
17 A. YES, IF YOU'RE HAVING AN AUTHOR EVENT FROM INGRAM AND YOU --
18 I CAN'T REMEMBER THE MINIMUM. IT MAY NOT BE BUT A TEN-BOOK
19 MINIMUM. YOU'RE ABLE TO BUY BOOKS AT AN INCREASED DISCOUNT OF
20 43 PERCENT. HOWEVER, YOU HAVE TO PAY FREIGHT. AND IF YOU'RE
21 BUYING THEM IN 43 AND YOU PAY FREIGHT, YOU HAVE A PERIOD OF TIME
22 WHERE YOU CAN RETURN THOSE BOOKS AND GET YOUR 43 PERCENT, BUT
23 YOU HAVE TO PAY FREIGHT TO YOUR STORE AND TO YOUR -- BACK TO
24 INGRAM.
25 I'VE NEVER TAKEN ADVANTAGE OF IT BECAUSE I TRY TO

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1 AVOID NOT (SIC) PAYING FREIGHT TO INGRAM.
2 Q. OKAY.
3 A. IT'S TOO COSTLY FOR ME.
4 Q. OKAY. AND WHAT ABOUT AN INGRAM PROGRAM CALLED THE COMPUTER
5 BOOKS RECOMMENDED INVENTORY PROGRAM?
6 A. I DON'T KNOW ANYTHING ABOUT THAT, BUT I -- THERE AGAIN, I
7 DON'T SELL VERY MANY COMPUTER BOOKS.
8 Q. OKAY. AND WHAT ABOUT A PROGRAM CALLED RECOMMENDED OPENING
9 STORE INVENTORY OR ROSI PROGRAM?
10 A. I HAVE HEARD ABOUT THAT. BEING IN MISSISSIPPI, THE WAY I
11 HEARD ABOUT IT, I THINK THEY MAYBE STARTED THAT 15 YEARS OR SO
12 AGO. AND THERE WERE SOME SMALL STORES TRYING TO OPEN AND -- AT
13 THAT POINT IN TIME THERE IN SOME SMALL TOWNS. AND I HEARD ABOUT
14 IT AT THAT POINT IN TIME WITH SOME STORES EXPERIMENTING WITH IT.
15 Q. OKAY.
16 A. BUT I DON'T KNOW MUCH ABOUT IT OTHER THAN HEARSAY THAT WAY.
17 Q. OKAY. NOW, WHAT ABOUT SOMETHING CALLED THE RECOMMENDED
18 INVENTORY EXPANSION PROGRAM OR RISE?
19 A. NO, I DON'T KNOW MUCH ABOUT THAT, OR I DON'T RECALL EVER
20 HEARING ABOUT IT.
21 Q. OKAY. AND WHAT ABOUT SOMETHING CALLED SCHEDULED DELIVERY,
22 THE SCHEDULED DELIVERY PROGRAM?
23 A. NO.
24 Q. SO YOU'VE NEVER BEEN ADVISED BY YOUR REP --
25 A. IF I DO, I DON'T REMEMBER.

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1 Q. OKAY.
2 A. INGRAM -- CAN I SAY --
3 Q. OF COURSE.
4 A. INGRAM'S -- DOESN'T REALLY HAVE A SALES REP. THEY MORE HAVE
5 LIKE A CUSTOMER SERVICE PERSON THAT COMES AROUND MAYBE ONCE
6 EVERY YEAR OR TWO.
7 Q. OKAY. AND WHAT ABOUT A PROGRAM, AN INGRAM PROGRAM CALLED
8 SUMMARY BILLING?
9 A. I DON'T KNOW ANYTHING ABOUT THAT.
10 Q. OKAY. NOW, JUST AS A GENERAL MATTER WITH INGRAM, ARE THERE
11 ANY RESTRICTIONS ON HOW MANY OF THE BOOKS THAT YOU BUY FROM THEM

12 YOU CAN RETURN?
13 A. OH, YEAH. AND THAT'S -- IT'S A -- YOU'RE ALSO RECEIVE A
14 PENALTY WHEN YOU RETURN BOOKS. THEY'RE ACTUALLY TWO TYPES OF
15 WAYS TO RETURN BOOKS TO INGRAM. ONE IS HASSLE FREE, AND ONE IS
16 OVERSTOCK. HASSLE --
17 Q. OKAY. I'M SORRY.
18 A. HASSLE FREE WOULD BE THE -- MORE OR LESS THEIR ERROR, WHICH
19 WOULD BE A BOOK RECEIVED AND DAMAGED OR PICKING ERROR OR A TITLE
20 CODE ERROR. AND IT WOULD BE A WAY THAT -- THAT INGRAM ALLOWS
21 YOU, I THINK ON A TWICE-A-MONTH BASIS -- YOU HAVE TO DO IT
22 WITHIN A SHORT TIME FRAME -- TO RETURN THEIR ERROR TO THEM, AND
23 THEY WILL GIVE YOU FULL REFUND FOR YOUR RETURN PLUS YOUR FREIGHT
24 BACK TO THEM.
25 Q. OKAY.

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1 A. AND NOW -- AND THEN OVERSTOCK RETURN, YOU WOULD RECEIVE A
2 PENALTY, AND YOU WOULD -- YOU WOULD -- WHATEVER YOU BOUGHT YOUR
3 BOOKS AT, YOU WOULD ONLY RECEIVE 50 PERCENT REFUND FOR YOUR
4 BOOKS. AND THERE AGAIN, YOU WOULD HAVE TO PAY FREIGHT BACK.
5 Q. OKAY. SO YOU'RE TALKING ABOUT A RETURNS CAP FOR OVERSTOCK
6 RETURN?
7 A. RETURNS CAP IS 10 PERCENT.
8 Q. OKAY.
9 A. 10 PERCENT OF YOUR PURCHASES.
10 Q. OKAY. SO I'M SORRY. YOU'RE SAYING THERE'S TWO THINGS. YOU
11 DON'T GET FULL CREDIT, AND THERE'S THE RETURN CAPS, OKAY.
12 A. EXCUSE ME. AND YOUR HASSLE-FREE RETURNS DO NOT COUNT AS
13 YOUR INVENTORY -- YOUR RETURN PENALTY FOR OVERSTOCK.
14 Q. DOES INGRAM OFFER YOU COOPERATIVE ADVERTISING MONEY?
15 A. NO.
16 Q. OKAY. HAVE YOU EVER RECEIVED COOPERATIVE ADVERTISING MONEY
17 FROM INGRAM?
18 A. NO.
19 Q. NOW, I'D LIKE TO JUST TURN A LITTLE BIT BRIEFLY TO THE
20 SUBJECT OF CASH DISCOUNTS AND NOT NECESSARILY WITH -- WITH
21 INGRAM BUT WITH ANY VENDOR.
22 IN THE YEARS 1994 TO THE PRESENT, HAS LEMURIA BEEN
23 OFFERED CASH DISCOUNTS FROM ANY VENDORS?
24 A. YES.
25 Q. CAN YOU TELL ME WHICH ONES.

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1 A. I BELIEVE HARPERCOLLINS MAYBE -- IN THAT TIME PERIOD MAYBE
2 HAVE A CASH DISCOUNT. I'M NOT SURE.
3 RANDOM HOUSE DID. I THINK THEY WERE BOTH MAYBE 1
4 PERCENT. WE HAVE ALWAYS TRIED TO TAKE ADVANTAGE OF THE CASH
5 DISCOUNTS WHENEVER THEY WERE OFFERED TO US IN PAYMENT. THERE
6 AGAIN, I WOULD GO TO THE BOOK BUYER'S HANDBOOK TO SEE IF THAT
7 COMPANY OFFERED A CASH DISCOUNT.
8 Q. AGAIN, FOCUSING ON PERIOD 1994 TO THE PRESENT, WERE YOU EVER
9 OFFERED CASH DISCOUNTS FROM PENGUIN?
10 A. NOT THAT I RECALL.
11 Q. OKAY. DOES LEMURIA EVER RECEIVE FEWER BOOKS FROM THE
12 PUBLISHER THAN IT'S SUPPOSED TO, IN OTHER WORDS, RECEIVE
13 SHORTAGES IN THE SHIPMENTS THAT THEY -- IT RECEIVES?
14 A. SURE. MISTAKES.
15 Q. RIGHT. MISTAKES.
16 CAN YOU JUST BRIEFLY EXPLAIN THE PROCESS AT YOUR
17 STORE FOR TRACKING THAT AND CATCHING THOSE SHORTAGES?
18 A. SURE. IN MY PROCUREMENT AREA, MY RECEIVING ROOM, THE
19 PACKING LIST -- SOMETIMES AN INVOICE WOULD COME INTO THE -- WITH
20 THE BOX OF BOOKS.
21 I HAVE TWO PEOPLE IN PROCUREMENT PREDOMINANTLY, AND
22 THEY WOULD CHECK THE BOOK WITH THE INVOICE OR PACKING LIST
23 THAT'S IN THERE.
24 IF THERE IS A MISTAKE AT THAT POINT IN TIME, THEY
25 WOULD THEN CALL THE CUSTOMER SERVICE DEPARTMENT OF THAT

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1 PUBLISHER AND ASK THEM HOW THEY WOULD LIKE TO HANDLE THIS
2 MISTAKE. IT CAN BE HANDED COUPLE OF WAYS.
3 Q. OKAY. CAN YOU EXPLAIN THE WAYS IN WHICH IT CAN BE HANDLED?

4 A. WELL, BASICALLY OUR REQUEST TO THE PUBLISHER IS HOW WOULD
5 YOU LIKE US TO HANDLE THIS MISTAKE. AND THEY COULD VERY EASILY
6 SAY, WELL, SEND US THIS BOOK BACK AND WE WILL SEND YOU A
7 REPLACEMENT IMMEDIATELY. THEY CAN SAY -- IF IT'S DAMAGED AND
8 YOU NEED IT IN A QUICK TIME FRAME. THEY COULD SAY, WE WILL BE
9 GLAD TO ISSUE YOU A CREDIT AND RESHIP THE BOOKS UNDER A SEPARATE
10 INVOICE.

11 THEY WOULD SAY, IF IT'S A VERY SMALL AMOUNT OF MONEY,
12 MAYBE UNDER \$20, CUSTOMER SERVICE REP WOULD SAY, MY NAME IS
13 JOSHUA, AND THE DATE IS 4/17, AND WOULD YOU PLEASE TAKE THE
14 \$6.96 DEDUCTION WHEN YOU PAY YOUR INVOICE ON YOUR STATEMENT
15 UNDER MY NAME AND UNDER THAT DATE.

16 AT THAT POINT IN TIME, THEY COULD ALSO GIVE ME AN
17 AUTHORIZATION NUMBER. SOME COMPANIES DO. SOME COMPANIES DON'T.

18 Q. HAS LEMURIA EVER TAKEN A CREDIT FOR A SHORTAGE IN BOOKS
19 WITHOUT RECEIVING PRIOR AUTHORIZATION TO DO SO?

20 A. NO.

21 Q. CAN YOU GIVE -- TELL THE COURT APPROXIMATELY HOW MUCH --
22 WHAT THIS COST IS TO YOUR STORE OF THE WHOLE PROCESS THAT YOU'VE
23 DESCRIBED IN TERMS OF THE DETAIL RECEIVING AND THEN THE
24 FOLLOW-UP WITH THE PUBLISHERS?

25 A. I HAVE ONE FULL-TIME EMPLOYEE THAT'S IN THE RECEIVING AND

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1 PROCUREMENT -- THE RECEIVING PART OF PROCUREMENT. HE ALSO HAS
2 AN ASSISTANT THAT HAS -- THAT WORKS FULL-TIME, BUT APPROXIMATELY
3 HALF OF HIS DUTIES -- HALF OF HIS TIME THAT HE SPENT WITH HIS
4 DUTIES ARE BACK THERE, IF NOT MORE.

5 Q. SO IN TERMS OF JUST LABOR --

6 A. AN EMPLOYEE AND A HALF.

7 Q. IN TERMS OF LABOR HOURS, DO YOU HAVE AN APPROXIMATION AS TO
8 HOW MUCH TIME IS SPENT ON A WEEKLY BASIS, SAY, WORKING THROUGH
9 THESE SHORTAGES?

10 A. SIXTY.

11 Q. SIXTY.

12 OKAY. AND HAVE YOU EVER BEEN -- HAVE YOU EVER BEEN
13 OFFERED BY A PUBLISHER, OTHER THAN THE HOLTZBRINCK COMPANY, ANY
14 TYPE OF AUTOMATIC ALLOWANCE OR DEDUCTION FOR AN ESTIMATED NUMBER
15 OF SHORTAGES?

16 A. REPEAT THAT, PLEASE.

17 Q. SURE. HAVE YOU EVER BEEN OFFERED AN AUTOMATIC ALLOWANCE OR
18 DEDUCTION FROM YOUR INVOICES FOR A PROJECTED OR ESTIMATED NUMBER
19 OF SHORTAGES?

20 A. NO.

21 Q. DO PUBLISHERS EVER ASK YOU FOR INFORMATION ABOUT HOW THEIR
22 BOOKS ARE SELLING AT LEMURIA?

23 A. YES.

24 Q. AND DO YOU PROVIDE IT WHEN THEY REQUEST IT?

25 A. GENERALLY, YES.

page 19

1 Q. OKAY. AND HAVE YOU EVER BEEN OFFERED ANY KIND OF EXTRA
2 DISCOUNT OR DEDUCTION FOR THAT?

3 A. NO.

4 Q. HAVE YOU BEEN OFFERED FROM ANY PUBLISHERS ANY TYPE OF ANNUAL
5 INCENTIVE OR REBATE TO YOU FOR INCREASING YOUR PURCHASES FROM
6 THAT VENDOR FROM ONE YEAR TO THE NEXT?

7 A. NO.

8 Q. DO YOU ADVERTISE -- DO YOU PLACE ADVERTISEMENTS IN
9 NEWSPAPERS OR OTHER -- OTHER FORMS?

10 A. YES, I DO. I DO. NEWSPAPERS AND LOCAL MAGAZINES AND
11 NEWSLETTERS.

12 Q. AND DO YOU REQUEST COOPERATIVE ADVERTISING MONEY TO
13 REIMBURSE YOU FOR THOSE COSTS?

14 A. YES, I DO.

15 Q. AND HAVE YOU EVER -- HAVE YOU EVER RECEIVED CO-OP
16 REIMBURSEMENT THAT EXCEEDED THE -- YOUR OUT-OF-POCKET COSTS
17 IN -- WITH RESPECT TO THE ADVERTISEMENT IN QUESTION?

18 A. NO.

19 Q. OKAY. WHAT ABOUT AUTHOR APPEARANCES? DO YOU EVER RECEIVE
20 CO-OP MONEY FOR AUTHOR -- AUTHOR EVENTS?

21 A. YES, I DO.

22 Q. OKAY. AND THE SAME QUESTION, HAVE YOU EVER OBTAINED IN

23 CO-OP REIMBURSEMENT AN AMOUNT THAT EXCEEDED YOUR OUT-OF-POCKET
24 EXPENSES?

25 A. NO, I HAVEN'T.

page 20

1 Q. OKAY. AND HAVE YOU EVER GOTTEN CO-OP FOR UNDOCUMENTED COSTS
2 OR SORT OF UN -- NON-TANGIBLE COSTS, LIKE LABOR COSTS?

3 A. NO.

4 Q. AND DO YOU ALSO HAVE TO SUBMIT PAPERWORK TO THE PUBLISHER IN
5 ORDER TO GET CO-OP REIMBURSEMENT?

6 A. YES, I CALL IT A CLAIM.

7 Q. AND HAVE YOU EVER GOTTEN CO-OP FROM A PUBLISHER FOR SOME
8 TYPE OF -- SAY, AN ADVERTISEMENT WHICH DID NOT FEATURE THAT
9 PUBLISHER'S BOOKS?

10 A. NO. OR EITHER THE PUBLISHER'S NAME. THAT'S PART -- WE TRY
11 AND ALWAYS FEATURE THE PUBLISHER AND THE BOOK.

12 Q. NOW, DO SALES REPS EVER COME DOWN AND MEET WITH YOU
13 PERSONALLY AT YOUR STORE?

14 A. YES.

15 Q. OKAY. AND CAN YOU JUST GENERALLY GIVE ME AN IDEA ABOUT HOW
16 OFTEN THAT HAPPENS.

17 A. IT DEPENDS ON THE PUBLISHER'S SALE SEASONS, BUT IT'S USUALLY
18 THREE, TWO, FOUR TIMES A YEAR.

19 Q. OKAY.

20 A. THREE I WOULD SAY WOULD BE THE GENERAL RULE.

21 Q. HAVE YOU EVER RECEIVED ANY KIND OF ALLOWANCE OR PAYMENT FROM
22 PUBLISHERS FOR MEETING WITH THEM?

23 A. NO.

24 Q. THE LAST THING I'D LIKE TO DO IS TO JUST GET A SENSE OF THE
25 PUBLISHERS AND WHOLESALERS -- I GUESS WE'VE ALREADY TALKED ABOUT

page 21

1 WHOLESALERS -- BUT THE PUBLISHERS FROM WHOM LEMURIA PURCHASES
2 BOOKS.

3 AND THIS ACTUALLY -- IF I COULD GET YOU TO TURN TO --
4 BACK TO YOUR BINDER AND -- YOUR HONOR, I BELIEVE THAT YOUR
5 BINDER IS OPEN TO EXHIBIT 2612.

6 THE COURT: THANK YOU.

7 THE WITNESS: (REVIEWING DOCUMENTS.)

8 (PAUSE IN THE PROCEEDINGS.)

9 MS. KESTENBAUM: LET ME SEE IF I CAN ASSIST YOU. DO
10 YOU HAVE IT?

11 THE WITNESS: YEAH.

12 MS. KESTENBAUM: NO, THAT'S NOT IT.

13 (PAUSE IN THE PROCEEDINGS.)

14 BY MS. KESTENBAUM:

15 Q. ALL RIGHT. I'M ACTUALLY GOING TO GIVE YOU, MR. EVANS, 2612,
16 WHICH FOR SOME REASON WE'RE NOT ABLE TO -- (HANDING DOCUMENT).

17 AND IF I COULD GET YOU TO TAKE A LOOK AT THIS
18 EXHIBIT, WHICH, OF COURSE, IS A LIST OF -- OF VENDORS. AND IF
19 YOU LOOK TO THE RIGHT COLUMN AT THE BOTTOM, THERE'S -- THERE'S
20 THREE WHOLESALERS, AND I'D LIKE TO, FOR THE MOMENT, JUST PUT
21 THOSE ASIDE.

22 A. OKAY.

23 Q. SO LOOKING AT THE PUBLISHERS, CAN YOU TELL ME FOR EACH OF
24 THE YEARS BETWEEN 1994 AND THE PRESENT, HAVE YOU MADE DIRECT
25 PURCHASES FROM EACH OF THESE VENDORS?

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1 OR FROM WHICH OF THESE VENDORS HAVE YOU MADE DIRECT
2 PURCHASES EACH YEAR?

3 A. I HAVE NOT MADE DIRECT PURCHASES FROM ALL OF THEM. IT LOOKS
4 TO ME LIKE THE PUBLISHERS ON THE LEFT-HAND SIDE OF THIS PAGE ARE
5 ONES THAT I HAVE BOUGHT DIRECT FROM, AND THE PUBLISHERS -- THE
6 SMALL AMOUNT ON THE RIGHT-HAND SIDE LOOK LIKE ONES THAT I HAVE
7 NOT.

8 Q. OKAY.

9 A. BOUGHT MOST OF THOSE BOOKS THROUGH THE WHOLESALERS.

10 Q. OKAY. AND SO JUST TO BE CLEAR, THE ONES ON THE LEFT-HAND
11 SIDE, IT'S YOUR TESTIMONY THAT YOU HAVE MADE DIRECT PURCHASES
12 FROM THOSE VENDORS?

13 A. YES.

14 Q. EVERY YEAR FROM 1994 TO THE PRESENT?

15 A. YES. I THINK THAT WOULD BE CORRECT.
16 Q. AND HAVE YOU MADE DIRECT PURCHASES OF BOTH FRONT LIST AND
17 BACKLIST BOOKS FROM THOSE VENDORS?
18 A. YES, MA'AM.
19 Q. OKAY. AND, AGAIN, FOCUSING ON THE LEFT-HAND COLUMN THAT YOU
20 DO BUY FROM EVERY YEAR, TO THE EXTENT THAT ANY OF THOSE VENDORS
21 PUBLISH MASS MARKET BOOKS, DO YOU PURCHASE MASS MARKET FROM
22 THEM?
23 A. YES, I DO.
24 Q. OKAY. AND WHAT ABOUT TRADE BOOKS?
25 A. YES, I DO.

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1 Q. OKAY. TO THE EXTENT THAT ANY OF THOSE VENDORS PUBLISH AUDIO
2 BOOKS, DO YOU PURCHASE AUDIO BOOKS FROM THEM?
3 A. YES, I DO.
4 Q. OKAY. NOW, LOOKING AT THOSE -- THE VENDORS ON THE PAGE --
5 AND FOR THIS, I'M ACTUALLY -- YOU CAN LOOK AT ALL THE VENDORS,
6 INCLUDING THE WHOLESALERS, DO YOU RECEIVE SHIPMENTS FROM ANY OF
7 THOSE VENDORS FROM WITHIN THE STATE OF MISSISSIPPI?
8 IN OTHER WORDS, ARE THE BOOKS SHIPPED TO YOU FROM A
9 WAREHOUSE WITHIN THE STATE?
10 A. NOT TO MY KNOWLEDGE.
11 Q. OKAY. OKAY. THANK YOU.
12 I HAVE NO FURTHER QUESTIONS.
13 THE COURT: CROSS-EXAMINATION?
14 (PAUSE IN THE PROCEEDINGS.)
15 MR. GARCIA: MORNING, YOUR HONOR.
16 THE COURT: GOOD MORNING, MR. GARCIA.
17 MR. GARCIA: NICE TO BE HERE.
18 WE ARE TRYING TO PRE-POSITION OUR BINDERS AGAIN
19 TODAY. AND HOPEFULLY IN THE SPIRIT OF YOUR HONOR'S ADMONISHMENT
20 YESTERDAY AFTERNOON, WE HAVE REFORMED THE BINDERS.
21 THE COURT: FRIENDLY SUGGESTION.
22 MR. GARCIA: THANK YOU, YOUR HONOR.
23 AND HOPEFULLY, WE HAVE RETURNED TO THE PATH OF
24 RIGHTEOUSNESS.
25 (PAUSE IN THE PROCEEDINGS.)

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1 MR. GARCIA: YOUR HONOR, FORGIVE THE DELAY. WHEN I
2 HAVE BOTH VOLUMES OF HIS DEPOSITION TRANSCRIPT, I'LL PROCEED.
3 THE COURT: ALL RIGHT.
4 CROSS-EXAMINATION
5 BY MR. GARCIA:
6 Q. MORNING, MR. EVANS.
7 A. GOOD MORNING.
8 Q. MY NAME'S DAVID GARCIA. AND I'M HERE ON BEHALF OF BARNES &
9 NOBLE.
10 I BELIEVE YOU TESTIFIED THAT LEMURIA CURRENTLY
11 CONTAINS ABOUT 3500 SQUARE FEET?
12 A. IT WAS 3500 SQUARE FEET UNTIL NOVEMBER 2ND, OF 2000. WE
13 EXPANDED IN NOVEMBER OF LAST YEAR.
14 Q. AND HAVE YOU BEEN IN THE BARNES & NOBLE STORE IN JACKSON?
15 A. IN JACKSON, YES, I HAVE.
16 Q. HOW BIG IS IT, APPROXIMATELY, WOULD YOU THINK?
17 A. TWENTY-FIVE, THIRTY THOUSAND SQUARE FEET. I -- I DON'T KNOW
18 WHAT THEIR BACK ROOM SIZE IS.
19 Q. ALMOST TEN TIMES AS BIG?
20 A. NO, SIR. I WOULDN'T SAY ALMOST TEN.
21 Q. MY MATH'S A LITTLE OFF.
22 CONSIDERABLY BIGGER THAN YOURS. ORDERS OF MAGNITUDE
23 BIGGER THAN YOUR STORE?
24 A. MAYBE FOUR, FIVE TIMES.
25 Q. ALL RIGHT. IT'S DIFFICULT TO SEE ON THE PICTURE THAT -- IN

page 25

1 THE EXHIBIT, BUT LEMURIA IS ON THE SECOND FLOOR OF THE BUILDING;
2 THAT CORRECT?
3 A. YES, SIR, THERE'S A SECOND FLOOR.
4 Q. AND THERE'S AN ENTRANCE INTO THE -- THE -- INTO THE
5 CHILDREN'S SECTION, I THINK YOU SAID, FROM THE FIRST FLOOR?
6 A. NO, SIR.

7 Q. NO. IS -- IS THERE A FIRST-FLOOR ENTRANCE TO LEMURIA?
8 A. NO, SIR. THERE IS A SECOND-FLOOR ENTRANCE ON PARKING. WE
9 HAVE SECOND-FLOOR PARKING EXTERNALLY IN THE BUILDING, AND WE
10 HAVE FIRST-FLOOR PARKING, AND WE HAVE AN ENTRANCE ON THE
11 SECOND-FLOOR PARKING.
12 Q. OKAY. AND ARE THERE ANY OTHER STORES THAT -- THAT ARE
13 LOCATED ON THE SECOND FLOOR OF THE BUILDING --
14 A. YES, SIR.
15 Q. -- WHERE YOUR ENTRANCE IS?
16 A. YES, SIR.
17 Q. WHAT ARE THEY?
18 A. A TUXEDO RENTAL SHOP, A CD STORE, AND THE LEASE IS JUST UP
19 ON A LAW OFFICE, AND IT WILL BE A BEAUTY SALON.
20 Q. OKAY. DO YOU GET MUCH FOOT TRAFFIC FROM THOSE STORES?
21 A. YES, SIR, I DO.
22 Q. LET'S GO BRIEFLY TO REVIEW HOW YOU GET NOTICES OF
23 PUBLISHERS' TERMS. YOU PREVIOUSLY TESTIFIED THAT YOU RECEIVE
24 NOTICES OF CHANGES IN PUBLISHERS' TERMS WHEN PUBLISHER
25 REPRESENTATIVES VISIT YOU; IS THAT CORRECT?

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1 A. WOULD YOU ASK THAT AGAIN, PLEASE.
2 Q. WELL, REVIEWING BRIEFLY, HOW DO YOU LEARN ABOUT PUBLISHERS'
3 TERMS?
4 A. PUBLISHERS' TERMS, I INITIALLY GOT TO THE RED BOOK, THE ABA
5 BOOK BUYER'S HANDBOOK. AND THEN IF THERE IS A PUBLIC
6 ANNOUNCEMENT FROM THE COMPANY ABOUT, YOU KNOW, A STOCK OFFERING
7 OR SOME SUCH CHANGE LIKE THAT, I WILL GET AN ANNOUNCEMENT FROM
8 THE PUBLISHER OR THROUGH MY SALES REP OR FROM PW.
9 Q. AND YOU ALSO, AS YOU PREVIOUSLY TESTIFIED IN YOUR
10 DEPOSITION, LEARN ABOUT CHANGES IN POLICIES FROM SALESMAN'S
11 VISITS; IS THAT CORRECT?
12 A. YES, SIR.
13 Q. AND YOU ALSO READ PUBLISHERS WEEKLY TO GET UPDATES ON
14 CHANGES IN PUBLISHERS' TERMS?
15 A. YES, SIR.
16 Q. AND YOU READ THE ABA NEWswire FOR THE SAME REASON?
17 A. NOT JUST FOR THAT REASON.
18 Q. BUT ALSO TO INFORM YOURSELF --
19 A. THAT IS ONE OF THE REASONS.
20 Q. RIGHT.
21 AND YOU PREVIOUSLY TESTIFIED THAT YOU INSERT CHANGES
22 IN THE HANDBOOK AND ALSO UPDATE YOUR COMPUTER WITH CHANGES IN
23 PUBLISHERS' TERMS; IS THAT CORRECT?
24 A. WHEN I'M NOTIFIED BY AN ANNOUNCEMENT THAT A PUBLISHER HAS
25 CHANGED ITS TERMS, YES, I DO MAKE THE CHANGES IN MY REDBOOK AND

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1 THEN TRY TO MAKE THEM INTO MY VENDOR FILE ON MY COMPUTER.
2 Q. RIGHT. AND WHAT OTHER KIND OF INFORMATION IS CONTAINED IN
3 YOUR VENDOR FILE ON YOUR COMPUTER?
4 A. MY ACCOUNT NUMBER; THE TERMS IN WHICH I BUY; HOW MANY
5 QUANTITIES I COULD BUY FOR, WHATEVER DISCOUNT THAT WOULD BE; MY
6 SALES REP'S NAME, HIS ADDRESS; COULD BE THE PUBLISHER'S NAME AND
7 ITS ADDRESS; IT COULD BE THE FAX NUMBER OF THE PUBLISHER; PHONE
8 NUMBER OF THE PUBLISHER. I HAVE THE DISCOUNT, THE ACCOUNT
9 NUMBER.
10 Q. AND THE DISCOUNTS TO THE EXTENT THEY CHANGE --
11 A. WELL, I TAKE --
12 Q. -- BY PUBLICATIONS DURING THE YEAR?
13 A. I BASICALLY TAKE THE REDBOOK'S TERMS AND PUT THEM INTO MY
14 COMPUTER VENDOR FILE SO THAT I DON'T HAVE TO QUICKLY -- I CAN
15 USE IT AS CUTTING OUT A STEP.
16 Q. RIGHT.
17 NOW, WITH RESPECT TO CO-OP, I BELIEVE YOU PREVIOUSLY
18 TESTIFIED THAT YOU KEEP TRACK OF DIFFERENT PUBLISHERS' CO-OP
19 POLICIES MOSTLY THROUGH CONTACT WITH SALESPEOPLE?
20 A. I BELIEVE THAT WOULD BE FAIR TO SAY.
21 Q. OKAY. AND YOU DO KNOW THAT CERTAIN PUBLISHERS PROVIDE CO-OP
22 WHEN THEIR TITLES ARE PURCHASED THROUGH A WHOLESALER; THAT
23 CORRECT?
24 A. CERTAIN PUBLISHERS -- I WOULD INTERPRET THAT CERTAIN
25 PUBLISHERS GIVE YOU THE OPTION TO USE YOUR WHOLESALER SALES TO

1 ADD TO YOUR CO-OP POOL FOR THE YEAR.
2 Q. RIGHT. AND YOU'VE DONE THAT ON AT LEAST TWO OCCASIONS WITH
3 HARCOURT BRACE AND TIME WARNER?
4 A. I BELIEVE THAT I HAVE PROVIDED MY PERCENTAGE OF SALES
5 INFORMATION TO THOSE COMPANIES TO POSSIBLY INCREASE MY ANNUAL
6 POOL. YES. I BELIEVE MY MEMORY'S CORRECT ON THAT.
7 Q. ALL RIGHT. AND IN ADDITION TO THE CO-OP POOL AMOUNTS THAT
8 ARE TYPICALLY PROVIDED BY A PUBLISHER, ADDITIONAL FUNDS WILL BE
9 PROVIDED TO SUPPORT AUTHOR EVENTS; IS THAT CORRECT?
10 A. IT CAN BE THAT WAY.
11 Q. OKAY. LEMURIA ALSO CLAIMS CO-OP FOR PHYSICAL DISPLAY OF
12 BOOKS, DOESN'T IT?
13 A. I THINK OF IT AS A PLACEMENT.
14 Q. RIGHT. SO YOU DO CLAIM PLACEMENT ALLOWANCES?
15 A. WHEN IT'S PRESENTED TO ME AND I HAVE THE OPPORTUNITY TO TAKE
16 ADVANTAGE OF THAT, YES.
17 Q. RIGHT. HOW DO YOU DECIDE WHAT TO CHARGE THE PUBLISHER?
18 A. I DON'T -- IT'S THE POLICY THAT THE PUBLISHER GIVES ME FROM
19 THE SALES REP, AND HE SAYS -- HE GIVES YOU THE OPTION THAT QUITE
20 LIKELY IF YOU BUY THIS AMOUNT OF BOOK AND YOU DISPLAY IT, YOU
21 WILL HAVE THIS MUCH OF AN ADVERTISING CO-OP CONTRACT, THAT YOU
22 CAN THEN MAKE A CLAIM FOR AND THEN RECEIVE THE BENEFIT.
23 Q. RIGHT. AND YOU TESTIFIED THAT YOU HAVE RECEIVED CO-OP FOR
24 FRONT WINDOW PLACEMENT?
25 A. I WOULDN'T CALL IT FRONT WINDOW PLACEMENT. I WOULD JUST
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1 CALL IT PLACEMENT IN MY STORE.
2 Q. PLACEMENT IN YOUR STORE AND PLACEMENT ON TABLES?
3 A. YES.
4 Q. AND PLACEMENT ON ENDCAPS?
5 A. I -- I CALL IT A DISPLAY PLACEMENT. I DON'T REALLY HAVE
6 ENDCAPS.
7 Q. YOU PUT IN CLAIMS FOR THOSE -- FOR THAT PLACEMENT?
8 A. FOR DISPLAY PLACEMENT?
9 Q. RIGHT.
10 A. YES, SIR.
11 Q. AND HOW DO YOU CALCULATE THE AMOUNT THAT YOU CLAIM?
12 A. IT IS -- IN MOST CASES, IT'S FIGURED ON THE QUANTITY OF THAT
13 BOOK THAT I BUY.
14 Q. NOW, YOU'VE ACTUALLY NEGOTIATED WITH PUBLISHERS'
15 REPRESENTATIVES ABOUT CO-OP, HAVEN'T YOU?
16 A. I DON'T KNOW WHAT YOU NECESSARILY MEAN BY "NEGOTIATE." I'LL
17 BE GLAD TO MAKE SUGGESTIONS ABOUT TRYING TO GET THEM TO IMPROVE
18 POLICY CHANGES THAT WOULD ENABLE ME TO ADVERTISE THEIR BOOKS
19 MORE.
20 Q. WELL, YOU'VE TALKED TO PUBLISHERS' REPRESENTATIVES ABOUT
21 CO-OP POLICIES THAT OTHER PUBLISHERS HAVE DONE WITH YOU THAT YOU
22 THOUGHT WOULD BE EFFECTIVE FOR YOUR USAGE, RIGHT?
23 A. I COULD -- I WOULD THINK THAT I HAVE TALKED ABOUT BUSINESS
24 PRACTICES THAT HAVE BEEN EFFECTIVE WITH ME.
25 Q. AND THAT'S IN AN EFFORT TO TRY AND GET ADDITIONAL CO-OP?
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1 A. NO, SIR. I WOULD SAY IT'S AN EFFORT TO MAKE SUGGESTIONS FOR
2 POLICY CHANGES TO THAT COMPANY THAT WOULD THEN ALLOW ME TO
3 ADVERTISE THE BOOKS MORE FREQUENTLY.
4 Q. RIGHT. WHICH WOULD ENTAIL GIVING YOU ADDITIONAL CO-OP,
5 RIGHT?
6 A. IF -- IF THEY CHANGE THEIR POLICIES IN FAVOR OF GIVING ME
7 MORE CO-OP, THEN I WOULD THINK THAT THAT WOULD POSSIBLY BE --
8 WOULD BE THE RESULT. IF I DID MORE BUSINESS WITH THEM THE NEXT
9 YEAR.
10 Q. THERE HAVE BEEN A COUPLE OF OCCASIONS AT LEAST WHERE
11 LEMURIA'S CLAIMS FOR CO-OP HAVE BEEN REJECTED BECAUSE THE CLAIMS
12 WERE EXECUTED WITHOUT PRIOR APPROVAL; IS THAT CORRECT?
13 A. I BELIEVE THAT HAS HAPPENED.
14 Q. LET'S MOVE ON TO SOME DISCOUNT TYPES. LEMURIA OCCASIONALLY
15 BUYS BOOKS ON NON-RETURNABLE BASIS, RIGHT?
16 A. WE TRY TO TAKE ADVANTAGE OF THAT WHEN WE THINK IT'S IN OUR
17 BEST INTEREST.

18 Q. RIGHT. WHICH WILL AFFECT DISCOUNT TERMS.
19 A. I'M CONFUSED BY --
20 Q. WELL, TYPICALLY, BUYING A BOOK ON A NON-RETURNABLE BASIS
21 WILL RESULT IN A HIGHER DISCOUNT; ISN'T THAT CORRECT?
22 A. IT IS A DIFFERENT TERM FROM A RETURNABLE BASIS.
23 Q. AND TYPICALLY HIGHER?
24 A. THAT IS A REWARD FOR BUYING IT NON-RETURNABLE.
25 Q. LET ME DIRECT YOUR ATTENTION TO TAB 3.

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1 A. (REVIEWING DOCUMENT.)
2 Q. NOW, THERE'S NO INDICATION ON THIS PARTICULAR INVOICE THAT
3 THESE BOOKS WERE PURCHASED ON A NON-RETURNABLE BASIS.
4 A. (REVIEWING DOCUMENT.)
5 Q. IS THERE?
6 A. THERE IS TO ME.
7 Q. AND -- AND HOW IS THAT?
8 A. 08050 IS THE PREFIX FOR HOLT, RINEHART, WINSTON. IN THAT
9 PERIOD OF TIME, I WAS BUYING HOLT, RINEHART, WINSTON BOOKS
10 NON-RETURNABLE.
11 Q. RIGHT. SO, IN FACT, THE INVOICE INDICATES --
12 A. TO ME, IT DOES.
13 Q. -- THAT THE BOOKS WERE PURCHASED ON A NON-RETURNABLE BASIS.
14 A. IT DOESN'T STATE THAT. BUT TO ME, IT DOES, BECAUSE I BOUGHT
15 THAT PUBLISHER'S NON-RETURNABLE DURING THAT TIME.
16 Q. NOW, LEMURIA RECEIVES FREE FREIGHT FROM AT LEAST SOME
17 PUBLISHERS; IS THAT CORRECT?
18 A. YES, SIR.
19 Q. AND THAT TYPICALLY DEPENDS ON SOME LEVEL OF VOLUME PURCHASE,
20 DOESN'T IT?
21 A. I'M -- I'M NOT SURE I UNDERSTAND WHAT YOU'RE ASKING.
22 Q. WELL, WITH RESPECT TO WHETHER OR NOT FREE FREIGHT IS
23 PROVIDED FROM A FREE-FREIGHT PUBLISHER, THERE TENDS TO HAVE TO
24 BE A CERTAIN AMOUNT PURCHASED IN ORDER TO QUALIFY FOR FREE
25 FREIGHT; IS THAT CORRECT?

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1 A. GENERALLY, THERE'S A MINIMUM, YES --
2 Q. YES.
3 A. -- THAT YOU HAVE TO BUY.
4 Q. RIGHT. AND YOU HAVE TO EXCEED THAT MINIMUM?
5 A. OR BE AT THAT MINIMUM.
6 Q. RIGHT. AND THOSE PUBLISHER REQUIREMENTS FOR FREE FREIGHT
7 DIFFER FROM PUBLISHER TO PUBLISHER, DON'T THEY?
8 A. YES, SIR.
9 Q. ALL RIGHT. LEMURIA ALSO GOT FREIGHT PASS-THROUGH FOR A
10 WHILE, DIDN'T IT?
11 A. THERE'S -- THERE WAS A PERIOD OF TIME WITH CERTAIN
12 PUBLISHERS EXPERIMENTED WITH THAT. I -- THAT'S WHAT I CALL,
13 EXPERIMENT, YES, SIR.
14 Q. AND THERE HAVE BEEN OCCASIONS WHERE YOU HAVE QUESTIONED THE
15 AMOUNT OF FREIGHT CHARGES TO PUBLISHERS' REPRESENTATIVES,
16 HAVEN'T THERE?
17 A. I -- I DON'T REALLY KNOW WHAT YOU MEAN BY THAT. I -- I
18 WOULD DISCUSS THE FREIGHT POLICIES WITH THE PUBLISHERS AND -- I
19 GUESS IF THEY -- IF I THOUGHT THEY HAD OVERCHARGED ME, THEN I
20 WOULD DISCUSS THAT. I DON'T RECALL THE INSTANCE YOU MAY BE
21 TALKING ABOUT.
22 Q. NO, BUT ALSO INSTANCES IN WHICH YOU COMPLAINED THAT FREIGHT
23 WAS TOO HIGH.
24 A. UM, YES, MY FREIGHT HAS BEEN TOO HIGH. IN MISSISSIPPI,
25 IT'S -- AT CERTAIN TIMES, IT TAKES MORE MILEAGE TO GET THE BOOKS

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1 FROM THE WAREHOUSE TO MY -- TO MY STORE, AND IT TAKES MORE TIME.
2 Q. AND THAT HAS CAUSED YOU, ON OCCASION, TO HAVE TO BALANCE
3 WHETHER OR NOT YOU'RE GOING TO GO DIRECT OR THROUGH A WHOLESALE
4 DISTRIBUTOR THAT PROVIDED FREE FREIGHT TO DETERMINE WHICH ONE'S
5 MORE PROFITABLE?
6 A. I WOULD DEFINITELY THINK THAT'S A CRITERIA OF MY JUDGMENT.
7 Q. RIGHT. AND THAT'S FOR THE SAME BOOK TO DETERMINE WHETHER OR
8 NOT YOU BUY THAT SAME BOOK FROM THE WHOLESALE OR THE PUBLISHER?
9 A. YES, SIR.

10 Q. AND FREIGHT WOULD BE ONE OF THE CRITERIA --
11 A. FREIGHT WOULD DEFINITELY BE ONE OF THE CRITERIA THAT I WOULD
12 USE IN DECIDING WHETHER I WOULD BUY THE BOOK.
13 Q. SO THIS THE CIRCUMSTANCES WHEN YOU'RE PERFORMING THAT
14 CALCULATION IN YOUR MIND, THE WHOLESALER AND THE PUBLISHER ARE,
15 IN EFFECT, COMPETING WITH ONE ANOTHER TO SELL YOU THAT BOOK,
16 RIGHT?
17 A. I GUESS THEIR POLICIES WOULD BE.
18 Q. RIGHT.
19 NOW, AND THIS MAY BE IMPLICIT IN YOUR TESTIMONY SO
20 FAR, BUT LET'S MAKE IT EXPLICIT. EACH PUBLISHER TENDS TO GIVE
21 WHAT, IN EFFECT, IS A VOLUME DISCOUNT BY GIVING DIFFERENT
22 DISCOUNT PERCENTAGES DEPENDING UPON HOW MANY BOOKS YOU BUY; IS
23 THAT RIGHT?
24 A. THAT'S A LITTLE VAGUE. IF YOU WOULD EXPLAIN THAT MORE.
25 Q. WELL, YOU MENTIONED IN YOUR DIRECT TESTIMONY THAT THERE ARE

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1 OCCASIONS WHERE YOU BUY ONE BOOK AND YOU HAVE ONE DISCOUNT
2 PERCENTAGE. YOU GET -- YOU BUY FIVE BOOKS, FIVE COPIES OF THE
3 TITLE, YOU GET A DIFFERENT PERCENTAGE. YOU BUY TEN BOOKS, YOU
4 GET ANOTHER PERCENTAGE?
5 A. OKAY.
6 Q. THAT'S THE PRICING MECHANISM THAT ALL THE LARGE PUBLISHERS
7 USE; ISN'T THAT RIGHT?
8 A. IT'S THE TERMS --
9 Q. IT'S A TERM?
10 A. -- THAT I MIGHT --
11 Q. RIGHT.
12 A. IT'S THE TERMS THAT I -- THAT I MAKE MY PURCHASES ON.
13 Q. RIGHT. AND THE TERM ULTIMATELY REFLECTS THE PRICES THEY
14 CHARGE YOU FOR THE BOOK?
15 A. I THINK I SEE WHAT YOU'RE SAYING, BUT --
16 (CONTINUED NEXT PAGE; NOTHING OMITTED.)
17
18
19
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23
24
25

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1 BY MR. GARCIA:
2 Q. LEMURIA HAS TAKEN ADVANTAGE OF SHARED MARKDOWNS, HASN'T IT?
3 A. OCCASIONALLY.
4 Q. COULD YOU DESCRIBE WHAT A SHARED MARKDOWN IS?
5 A. I THINK I CAN, SIMPLY. IT SEEMS TO ME THAT A PUBLISHER
6 WILL SOMETIMES SEE THAT THE BOOK IS NOT SELLING AS WELL AS THEY
7 EXPECTED TO SELL. SO THEY WILL STATE, FOR A PERIOD OF TIME,
8 POSSIBLY ONE MONTH, THAT FOR ALL THE BOOKS THAT YOU SELL DURING
9 THAT MONTH THEY WILL GIVE YOU A REBATE, OR A SHARED MARKDOWN;
10 THAT YOU CAN THEN SUBMIT A CLAIM OF THOSE SALES DURING THAT
11 TIME PERIOD TO THE PUBLISHER, AND THEY CAN THEN GIVE YOU AN
12 AUTHORIZED CREDIT THAT APPEARS ON YOUR STATEMENT, WHICH
13 VALIDATES THAT YOU SOLD THOSE BOOKS DURING THAT TIME PERIOD,
14 AND YOU SAY YOU SOLD 10 BOOKS DURING THAT TIME PERIOD, YOU
15 WOULD SUBMIT THAT GRAPH OR DOCUMENT OF SALES TO THE PUBLISHER.
16 I USUALLY DO IT WITH MY COMPUTER GRAPH, AND THEY SUBMIT THE
17 CREDIT BACK TO ME ON MY STATEMENT, AND I'M ABLE TO THEN DEDUCT
18 IT FROM MY NEXT STATEMENT.
19 Q. SHARED MARKDOWN AMOUNTS ARE NOT TYPICALLY IN THE REDBOOK,
20 ARE THEY?
21 A. THEY ARE AN INDUSTRY-WIDE ANNOUNCEMENT THAT I RECEIVE
22 GENERALLY THROUGH FAX.
23 Q. SO THEY'RE NOT IN THE REDBOOK.
24 A. I'VE NOT LOOKED SPECIFICALLY TO SEE, BUT I DO KNOW THAT
25 IT'S AN INDUSTRY ANNOUNCEMENT THAT I RECEIVE THROUGH FAX, FOR

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1 MOST CASES.

2 Q. AND IF YOU RECEIVED IT BY FAX IN MOST CASES, IT WOULDN'T BE
3 IN THE REDBOOK, WOULD IT?
4 A. YOU KNOW, I HAVE SEEN IT IN PUBLISHERS WEEKLY ALSO, SO I
5 CAN'T SAY THAT --
6 Q. AND IF IT WAS IN PUBLISHERS WEEKLY, IT WOULDN'T BE IN THE
7 REDBOOK, WOULD IT?
8 A. I CAN'T SAY THAT. I HAVEN'T LOOKED AT THE REDBOOK WITH
9 THAT PARTICULARLY IN MIND.
10 Q. NOW, THERE ARE OCCASIONS WHEN LEMURIA DECIDES NOT TO USE A
11 SHARED MARKDOWN, BUT INSTEAD, TO CONTINUE THE PRICING POLICY
12 THAT YOU HAD ON THE BOOK, CORRECT?
13 A. I'M SORRY? WOULD YOU REPEAT THAT, PLEASE?
14 Q. LEMURIA HAS ALSO DECIDED NOT TO MARK DOWN BOOKS DESPITE THE
15 EXISTENCE OF AN APPLICABLE SHARED MARKDOWN, RIGHT?
16 A. THERE ARE SHARED MARKDOWN SITUATIONS THAT I COULD NOT TAKE
17 ADVANTAGE OF --
18 Q. RIGHT.
19 A. -- THAT WERE PRESENTED TO ME.
20 Q. RIGHT, BECAUSE IN THOSE CASES, YOU THOUGHT YOU COULD ADD
21 VALUE TO THE BOOK BY NOT MARKING IT DOWN.
22 A. OR IN SOME CASES MY SALES WOULD BE SO INSIGNIFICANT IT
23 WOULD NOT BE OF VALUE TO DO THE PAPERWORK OR MAKE THE CLAIM OR
24 SPEND MY TIME TO DO THAT.
25 Q. SURE, BECAUSE IN YOUR CIRCUMSTANCES IT DIDN'T MAKE ANY
page 37

1 ECONOMIC SENSE, IS THAT RIGHT?
2 A. I WOULD SAY THAT IF I DID NOT MAKE A CLAIM FOR A SHARED
3 MARKDOWN, THAT IT WAS NOT TO MY ADVANTAGE.
4 Q. RIGHT, AND SO THE POLICY EXISTED, BUT YOU DECIDED NOT TO
5 USE IT, AS A MATTER OF YOUR BUSINESS MODEL?
6 A. I DID NOT ACKNOWLEDGE THAT ANNOUNCEMENT BY THE INDUSTRY.
7 Q. NOW, LET'S MOVE TO STOCK OFFERS. I BELIEVE YOU TESTIFIED
8 THAT SOME 10 TO 15 PERCENT OF YOUR PURCHASES, ON AN ANNUAL
9 BASIS, AS YOU ESTIMATE IT SITTING HERE TODAY, ARE MADE PURSUANT
10 TO STOCK OFFERS, IS THAT CORRECT?
11 A. I THINK THAT'S A FAIR ESTIMATE.
12 Q. DOES THAT 10 TO 15 PERCENT REFER TO TRANSACTIONS OR NUMBER
13 OF BOOKS? IN OTHER WORDS, 10 TO 15 PERCENT OF THE TRANSACTIONS
14 YOU DO ON AN ANNUAL BASIS ARE PURSUANT TO STOCK OFFERS, OR 10
15 TO 15 PERCENT OF THE BOOKS YOU BUY EACH YEAR ARE PURCHASED
16 PURSUANT TO STOCK OFFERS? WHAT DID YOU HAVE IN MIND?
17 A. WHAT'S THE DIFFERENCE BETWEEN BOOK AND TRANSACTION? I
18 THINK I'M CONFUSED BY "TRANSACTION."
19 Q. WELL, OBVIOUSLY, A PARTICULAR ORDER COULD RELATE TO A LOT
20 OF BOOKS, COULDN'T IT, SOME OF WHICH ARE SUBJECT TO A STOCK
21 OFFER, AND SOME OF WHICH AREN'T?
22 A. OKAY.
23 Q. RIGHT? AS OPPOSED TO PARTICULAR BOOKS, I'M TRYING TO
24 DETERMINE WHAT YOU HAD IN MIND WHEN YOU USED THE 10 TO
25 15 PERCENT FIGURE. ARE YOU TALKING ABOUT A VOLUME OF BOOKS OR
page 38

1 A NUMBER OF TRANSACTIONS THAT YOU ENGAGE IN?
2 A. VOLUME OF BOOKS.
3 Q. OKAY. NOW, I'M GOING TO DIRECT YOUR ATTENTION, TO TRY TO
4 DO IT QUICKLY, TO A NUMBER OF STOCK OFFERS -- WELL, ACTUALLY,
5 THEY'RE INVOICES, AND YOU'VE PREVIOUSLY TESTIFIED THAT IN A LOT
6 OF CASES YOU THINK THEY'RE STOCK OFFERS.
7 LET'S START WITH TAB 4, WHICH IS A MULTI-PAGE
8 INVOICE FROM PUTNAM, AND GO TO PAGE 4 OF THE ACTUAL EXHIBIT.
9 YOU WILL SEE THERE ARE DISCOUNTS OF 50 PERCENT REFLECTED THERE?
10 A. YES, SIR.
11 Q. AND ON THE NEXT PAGE OF THE EXHIBIT, A DISCOUNT OF
12 66 PERCENT?
13 A. YES, SIR.
14 Q. AND IF YOU KEEP ON GOING FOUR MORE PAGES, DISCOUNTS OF
15 75 PERCENT?
16 A. YES, SIR.
17 Q. ALL RIGHT. THOSE ARE DISCOUNTS ABOVE YOUR NORMAL TERMS
18 WITH THAT PUBLISHER, AREN'T THEY?
19 A. I DON'T KNOW WHAT YOU MEAN BY "NORMAL," BUT I HAVE AN
20 EXPLANATION FOR --

21 Q. WELL, THE REGULAR TERMS.
22 A. NO, SIR.
23 Q. WELL, LET ME REFLECT -- ACTUALLY, JUST BEHIND THE EXHIBIT
24 THERE IS AN EXCERPT FROM THE REDBOOK FOR THAT YEAR FROM PUTNAM.
25 COULD YOU REFER TO IT, AND REFER TO THE DISCOUNT SCHEDULE UNDER
page 39

1 PUTNAM PUBLISHING.
2 A. YES, SIR.
3 Q. I DON'T BELIEVE YOU WILL FIND ANY OF THOSE DISCOUNT AMOUNTS
4 THERE THAT WE PREVIOUSLY REFERRED TO.
5 A. WOULD YOU LIKE ME TO EXPLAIN THEM?
6 Q. CERTAINLY.
7 A. ON PAGE 4, THIS 50 PERCENT IS A PUTNAM PROMOTIONAL TITLE.
8 IT IS AN AGATHA CHRISTIE BOOK, AND I BELIEVE IT'S JOHN SANFORD.
9 THEY'RE OMNIBOOKS, AND THEY'RE PRODUCED AS PROMOTIONAL BOOKS,
10 MUCH LIKE A SALE BOOK ITEM WHERE THEY'VE GONE AND TAKEN THREE
11 BOOKS AND PUT IT IN ONE, AND IT'S PART OF YOUR CATALOG AS A
12 PROMOTIONAL BOOK. AS IT APPEARS ON PAGE 5, I BELIEVE, IS
13 ACTUALLY 0448, IT'S A GROSSETT & DUNLAP BOOK --
14 Q. LET ME STOP YOU. YOU SAID IT WAS A BOOK -- THE PREVIOUS
15 PAGE WAS A PROMOTIONAL BOOK.
16 A. YES, SIR.
17 Q. IS THAT SOMETHING THAT'S NOT A STOCK OFFER?
18 A. IT IS A PROMOTIONAL TITLE FROM PUTNAM, AND IT'S THEIR
19 GENERAL TERMS ON WHICH YOU WOULD BUY THAT TITLE IN THEIR
20 CATALOG, AND IT IS LISTED THAT WAY IN THEIR CATALOG.
21 Q. RIGHT, BUT IT'S NOT A STOCK OFFER.
22 A. IN THAT PARTICULAR CASE, IT IS A PROMOTIONAL TITLE BY THE
23 TRADE TERM.
24 Q. RIGHT, AND THE PROMOTIONAL DISCOUNT AMOUNT IS LISTED IN THE
25 PUTNAM CATALOG.
page 40

1 A. YES, IT IS.
2 Q. RIGHT. WHICH IS NOT THE REDBOOK.
3 A. BUT IT'S A GENERAL ANNOUNCEMENT TO THE TRADE, AND WHICH I
4 USED AS SOMETHING THAT I THINK IS A STANDARD DISCOUNT IN MY
5 INDUSTRY.
6 Q. RIGHT, IT'S A STANDARD DISCOUNT, AND YOU BELIEVE IT TO BE
7 GENERALLY AVAILABLE, BUT IT'S NOT IN THE REDBOOK.
8 A. NO, IT'S MY STANDARD TERM THAT I BUY FROM.
9 Q. THANK YOU. CONTINUE. I'M SORRY I INTERRUPTED YOU, SIR.
10 A. I BELIEVE ON PAGE 5, THIS INVOICE THAT SAYS 66 PERCENT, I
11 BELIEVE IT'S PAGE 5, THAT'S A GROSSETT & DUNLAP TITLE. I CAN
12 TELL BY THE ISBN OF 0448, IT'S PROBABLY EITHER A NANCY DREW OR
13 A HARDY BOYS. I BELIEVE PUTNAM WAS DISTRIBUTING GROSSETT &
14 DUNLAP DURING THIS TIME IN 1995. THEY HAVE A PROMOTIONAL STOCK
15 OFFER THAT WAS 66 PERCENT DISCOUNT AT THAT TIME, WHICH I WAS
16 ABLE TO TAKE ADVANTAGE OF.
17 Q. NOW, WAS THAT IN CATALOG?
18 A. EXCUSE ME?
19 Q. WAS THAT 66 PERCENT, THE PROMOTION THAT YOU REFERRED TO,
20 WAS THAT IN A CATALOG?
21 A. I BELIEVE IT WAS A SPECIAL ORDER FORM THAT THE SALESMAN
22 PRESENTED TO ME.
23 Q. OKAY.
24 A. I MAY HAVE HAD THE SAME PUTNAM SALES REP, BUT I MAY HAVE
25 HAD A DIFFERENT SALES REP FROM GROSSETT AT THAT TIME.
page 41

1 Q. SURE.
2 A. I BELIEVE THAT YOU ASKED ME ABOUT -- I DON'T KNOW WHICH
3 PAGE NUMBER IT IS, BUT IT'S -- IT LOOKS LIKE AN INVOICE WITH
4 48 PERCENT.
5 Q. NO, IT WAS ACTUALLY 75 PERCENT.
6 A. OKAY, EXCUSE ME. THAT ALSO, IF YOU WILL NOTICE ON THIS
7 INVOICE, 0399, IS A PUTNAM ISBN, WHICH IS AT 44 PERCENT, AND
8 THEIR 0448 IS A GROSSETT ISBN, WHICH IS AT 75 PERCENT, WHICH IS
9 ALSO A GROSSETT & DUNLAP SEASONAL STOCK OFFER TERM. I BELIEVE
10 ALSO --
11 Q. WAS THAT IN THE GROSSETT & DUNLAP CATALOG?
12 A. I THINK IT WAS ON THE ORDER FORM. YOU HAD TO USE A SPECIAL

13 ORDER FORM.
14 Q. WELL, A SPECIAL ORDER FORM, BUT HOW DID YOU FIND OUT ABOUT
15 IT?
16 A. THROUGH THE SALES REP. THE SALES REP BROUGHT IT TO ME.
17 WITH GROSSETT & DUNLAP YOU HAD TO BUY A CERTAIN AMOUNT OF
18 TITLES. AND THAT WOULD BE A PROMOTIONAL STOCK OFFER THAT I
19 WOULD TAKE ADVANTAGE OF.
20 Q. PLEASE DON'T ADOPT THE TERM "STOCK OFFER" FOR ME. USE IT
21 ONLY IF YOU THINK IT APPLIES.
22 A. I THINK IT APPLIES.
23 Q. LET'S GO TO TAB 5. ALL RIGHT, TAB 5 IS ANOTHER PUTNAM
24 INVOICE, WHICH IS REFLECTING 66 PERCENT DISCOUNT, AND ALSO SOME
25 50 PERCENT DISCOUNTS.

page 42

1 A. YES, SIR.
2 Q. ALL RIGHT. NOW, THOSE 66 PERCENT DISCOUNTS THERE ARE NOT
3 REGULAR TERMS, ARE THEY?
4 A. NO, SIR. ONCE AGAIN, THAT'S YOUR GROSSETT & DUNLAP HARDY
5 BOY, NANCY DREW, JUVENILES STOCK, SEASONAL STOCK OFFER, THAT'S
6 0448, AND YOU CAN TELL THOSE BOOKS FROM THAT.
7 Q. RIGHT. WAS THAT IN THE GROSSETT & DUNLAP CATALOG?
8 A. NO, SIR. ONCE AGAIN, THERE WOULD BE AN ORDER FORM THAT WAS
9 PRESENTED TO ME BY THE PUTNAM OR GROSSETT REP, WHICHEVER IT WAS
10 THAT WAS CALLING ON ME.
11 Q. WELL, LET'S SKIP OVER SOME OF THESE. TAB 12, AND IN TAB 12
12 GO THREE PAGES IN. ON THE FOURTH PAGE YOU WILL SEE A HOUGHTON
13 MIFFLIN INVOICE --
14 A. YES, SIR.
15 Q. -- WITH AN INVOICE FOR A BOOK CALLED ROCKS AND MINERALS,
16 AND A DISCOUNT OF 46 PERCENT.
17 A. YES, SIR.
18 Q. THEN ON THE NEXT PAGE OF THE EXHIBIT YOU WILL SEE ANOTHER
19 HOUGHTON MIFFLIN INVOICE WITH ANOTHER INVOICE FOR ROCKS AND
20 MINERALS, THE SAME BOOK, AND A 50 PERCENT DISCOUNT?
21 A. YES, SIR.
22 Q. AND THEN LET'S GO ONE MORE PAGE, AND YOU'LL SEE YET A THIRD
23 HOUGHTON MIFFLIN INVOICE FOR, YET AGAIN, ROCKS AND MINERALS,
24 WITH A 47 PERCENT DISCOUNT.
25 A. YES, SIR, AND IT'S ALL THE SAME BOOK.

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1 Q. AND IT'S ALL FOR THE SAME BOOK. YOU'VE ANTICIPATED MY
2 QUESTION. HOW DOES THAT HAPPEN?
3 A. I THINK I HAVE AN EXPLANATION THAT WOULD BE CLEAR TO YOU
4 AND HELPFUL. IF YOU WILL NOTICE, THAT ALL THREE OF THESE
5 INVOICES ARE FROM THREE DIFFERENT PURCHASE ORDERS. THIS IS A
6 PETERSON FIELD GUIDE. PETERSON FIELD GUIDES ARE UPDATED ON AN
7 IRREGULAR BASIS. THIS IS A PETERSON FIELD GUIDE TO THE ROCKS
8 AND MINERALS.
9 IT LOOKS TO ME THAT IT WAS SOLD TO ME THREE TIMES BY
10 A SALES REP. I WOULD SAY THAT I CAN TELL THAT BECAUSE IT'S
11 THREE DIFFERENT PURCHASE ORDERS. ONE AT 46 FOR EXAMPLE, AND
12 FREIGHT CHARGED TO ME IS UNDER THE PURCHASE ORDER MOUNT BASS,
13 M-T-N-B-A-S-S. THE ONE THAT IS 50 PERCENT DISCOUNT AND FREE
14 FREIGHT IS SOLD TO ME UNDER THE ORDER OF J.G. BROWN -- PURCHASE
15 ORDER, EXCUSE ME. THE ONE THAT IS 47 PERCENT AND FREE FREIGHT
16 IS SOLD TO ME UNDER THE PURCHASE ORDER OF SLEEPY.
17 I BELIEVE THAT HOUGHTON MIFFLIN HAD A POLICY CHANGE
18 DURING THE TIME PERIOD BETWEEN THE 46 AND -- 46 PERCENT
19 DISCOUNT AND FREIGHT CHARGE AND THE 47 AND FREE FREIGHT. I
20 BELIEVE THAT MY SALES REP SOLD ME THIS BOOK ON THREE SEPARATE
21 OCCASIONS, AND ON THE THIRD OCCASION, THE 50 PERCENT OFF, HE
22 SOLD ME THAT BOOK AS A BACK STOCK OFFER, BECAUSE THE BOOK WOULD
23 HAVE COME OUT DURING THAT TIME PERIOD AND I MYSELF HAD NOT
24 RECEIVED IT. CONSEQUENTIALLY, I THOUGHT MY ORDER HAD BEEN
25 LOST.

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1 SEASONALLY, WHEN THE SALES PERSONNEL FROM THE
2 COMPANY ISSUE YOU THE INVOICE, THEY DO NOT KNOW IF THE BOOK HAS
3 BEEN DELAYED OR NOT. CONSEQUENTIALLY, THE SALESMAN WILL SELL
4 ME THE BOOK AGAIN.

5 I SUGGEST THAT I HAD LOOKED AT THE ROCKS AND
6 MINERALS, I SAW THAT IT HAD NOT COME IN, AND I INCLUDED IT ON
7 MY BACK LIST ORDER BECAUSE I THOUGHT THAT THE PUBLISHER HAD
8 CANCELLED IT. CONSEQUENTLY, IN JANUARY, ALL THREE BOOKS CAME
9 IN UNDER SEPARATE INVOICES IN THREE SEPARATE PACKAGES.
10 Q. RIGHT, AND AT YOUR DEPOSITION YOU SPECULATED THAT EDI MIGHT
11 HAVE PLAYED A ROLE HERE, AS WELL.

12 A. I MAY HAVE SPECULATED THAT DURING MY DEPOSITION, BUT IT
13 COULD VERY WELL. I JUST DON'T RECALL OFF THE TOP OF MY --

14 Q. RIGHT, IT COULD BE EDI, IT COULD HAVE BEEN THE OTHER
15 FACTORS YOU JUST DESCRIBED, IT COULD HAVE BEEN SOME
16 COMBINATION.

17 NOW, FROM THE PURCHASE ORDERS YOU WOULDN'T BE ABLE,
18 SINCE YOU ORDERED IT AT THREE DIFFERENT TIMES, YOU WOULDN'T
19 NECESSARILY HAVE BEEN ABLE TO DETERMINE WHAT THE DISCOUNT WAS
20 GOING TO BE FROM THE PURCHASE ORDER, RIGHT?

21 A. BY LOOKING AT IT RIGHT HERE, I MIGHT NOT BE ABLE TO, BUT I
22 COULD GO BACK TO MY WORK AND LOOK AT IT. I HAVE MY --

23 Q. WELL, YOU --

24 A. WHEN I DO AN ORDER WITH MY PUBLISHER, I INCLUDE THE
25 DISCOUNT ON MY PUBLISHER'S --

page 45

1 Q. RIGHT, BUT YOU CAN CERTAINLY DETERMINE THE DISCOUNT FROM
2 THE INVOICE THAT WE LOOKED AT, RIGHT?

3 A. IN THIS PARTICULAR BOOK, I CAN SEE WHAT I PAID FOR EACH ONE
4 OF THESE -- EACH PARTICULAR BOOK -- EACH PARTICULAR BILLING
5 SITUATION OF THIS BOOK.

6 Q. LET ME TURN TO YOUR TESTIMONY ABOUT HOW YOU RECONCILE
7 ACCOUNTS. FIRST OF ALL, YOU TESTIFIED ABOUT SOMETHING CALLED A
8 RECEIVING FILE. WHAT IS YOUR RECEIVING FILE?

9 A. WOULD YOU READ TO ME IN THE CONTEXT OF WHICH I SAID THAT,
10 SO THAT I DON'T CONFUSE YOU WITH MY ANSWER?

11 Q. SURE. LET'S TURN TO YOUR DEPOSITION AND READ THE QUESTION
12 AND ANSWER TO YOURSELF, BEGINNING AT PAGE 28, LINE 21. THE
13 ANSWER GOES ON TO THE FOLLOWING PAGE. DO YOU HAVE YOUR
14 DEPOSITION?

15 WHY DON'T I JUST READ THIS ONE TO YOU. IT WILL BE
16 QUICKER?

17 A. THAT'S FINE.

18 Q. (READING):

19 "Q. WITHIN THAT SORT OF FILE, DO YOU KEEP TRACK
20 OF, FOR EXAMPLE, DISCOUNTS YOU MAY HAVE OR NOT
21 RECEIVED ON THE BOOKS?"

22 YOUR ANSWER,

23 "A. WE TRY TO. IT'S IN THE RECEIVING -- IT'S
24 WHEN -- IT'S IN YOUR RECEIVING FILE. THAT'S NOT
25 NECESSARILY ALWAYS CORRECT, BUT GENERALLY IT IS."

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1 A. OKAY, I THINK I UNDERSTAND WHAT YOU'RE ASKING.

2 Q. NOW, WHAT IS THE RECEIVING FILE?

3 A. AS I WAS DISCUSSING, WHEN THE BOOKS COME IN THROUGH THE --
4 OUR PROCUREMENT DIVISION, OR RECEIVING, THE BOOKS PHYSICALLY
5 COME IN THE BOX WITH THE PACKING LIST AND/OR AN INVOICE. AT
6 THAT POINT IN TIME THEY ARE CHECKED IN MANUALLY ON PAPER COPY.
7 THEY ARE THEN TRANSFERRED INTO THE COMPUTER FOR OUR OWN HAND
8 QUANTITIES, TRANSFERRED OUT OF "ON ORDER" INTO "ON HAND."

9 Q. SO YOU ENTER THE TERMS OF THE INVOICE INTO YOUR COMPUTER
10 FILES.

11 A. YES.

12 Q. RIGHT.

13 A. BUT MY COMPUTER -- EXCUSE ME -- MY RECEIVING FILE IS FOR
14 THE HARD -- WHERE THE HARD COPY GOES AFTER IT HAS BEEN PUT INTO
15 THE COMPUTER.

16 Q. AND IN ORDER TO DETERMINE TIME TO PAY FOR YOUR OWN FILE
17 KEEPING SYSTEM, YOU HAVE TO REFER TO THE INVOICES, CORRECT?

18 A. I REFER TO MY RECEIVING PAPER FILE.

19 Q. RIGHT, WHICH CONTAINS THE INVOICES.

20 A. CONTAINS INVOICES, PACKING LIST, ANY DOCUMENT THAT RELATES
21 TO THE RECEIVING OF THAT BOOK.

22 Q. AND YOU HAVE TO REVIEW INVOICES TO DETECT BILLING ERRORS,
23 IS THAT CORRECT?

24 A. YOU CAN DO IT ON THE PACKING LIST OR YOU CAN DO IT ON THE
25 RECEIVING DOCUMENT, AND THEN, WITH YOUR STATEMENT, WHEN YOU PAY
page 47

1 YOUR STATEMENT, YES, YOU REVIEW THOSE DOCUMENTS.
2 Q. ALL RIGHT, BUT TYPICALLY YOU REVIEW INVOICES IN ORDER TO
3 DETECT BILLING ERRORS, ISN'T THAT CORRECT?
4 A. IT IS TYPICAL.
5 Q. AND YOU DECIDE TO PAY ONLY AFTER THE INVOICES ARE DEEMED
6 CORRECT AND ANY ERRORS ARE OKAYED AND INITIALED BY THE PERSON
7 THAT'S IN CHARGE OF RECEIVING AT YOUR STORE. IS THAT CORRECT?
8 A. YES, SIR. THERE IS A HOLDING FILE THAT WE HAVE IN THE
9 RECEIVING DEPARTMENT FOR WHERE THE ERRORS ARE BASICALLY KEPT
10 UNTIL THEY ARE CORRECTED AND -- SO THEY CAN BE DEALT WITH IN AN
11 ACCOUNTING PROCEDURE, AND THERE'S ANOTHER FILE AFTER THAT WHERE
12 IT GOES AFTER IT'S CORRECTED.
13 Q. AND OCCASIONALLY YOU DEDUCT AMOUNTS DIRECTLY OFF INVOICES
14 RATHER THAN WAITING FOR A CREDIT STATEMENT IF THE PUBLISHER
15 GIVES YOU PERMISSION.
16 A. IF THE PUBLISHER'S CUSTOMER SERVICE PERSON ADVISES ME TO
17 TAKE A DEDUCTION, A SMALL DEDUCTION OFF MY INVOICE, YES, SIR,
18 THAT IS WHAT I DO.
19 Q. RIGHT, AND YOU INDICATE THAT ON THE INVOICE.
20 A. I INDICATE IT ON MY STATEMENT AND MY INVOICE.
21 Q. NOW, YOU OCCASIONALLY DEDUCT AN ENTIRE INVOICE FROM A
22 STATEMENT WITHOUT WAITING FOR A CREDIT MEMO WHEN YOU BELIEVE
23 THAT PARTICULAR INVOICE IS INCORRECT.
24 A. ESPECIALLY IF MY CUSTOMER SERVICE OR ACCOUNT PAYABLE'S
25 SALES REP FROM THE COMPANY TELLS ME TO, YES, SIR.
page 48

1 Q. NOW, IN ORDER TO DETERMINE THE PRICES THAT LEMURIA ACTUALLY
2 PAID FOR BOOKS, WE'RE GOING TO HAVE TO REVIEW YOUR INVOICES OF
3 LEMURIA, OR SOME COMPILATION THEREOF, RIGHT?
4 A. NO, SIR, I DON'T THINK THAT'S NECESSARY.
5 Q. WHY NOT?
6 A. I THINK IT'S -- THAT YOU CAN BASICALLY JUST INTERPRET THE
7 TERMS ON WHICH I PURCHASE 90 PERCENT OF MY BOOKS, AND --
8 Q. AT LEAST 10 TO 15 PERCENT OF THE TIME, THOUGH, YOUR TERMS
9 ARE GOING TO GET CHANGED ON A NOTICE BASIS. SO FOR THOSE WE'RE
10 GOING TO HAVE TO EXAMINE INVOICES, AREN'T WE?
11 A. I DON'T KNOW IF I STILL -- I DON'T THINK THAT'S
12 NECESSARILY -- IT'S SUCH A SMALL AMOUNT OF MY OVERALL PURCHASES
13 THAT, NO, SIR, I DON'T --
14 Q. AND IT WILL CHANGE THE AVERAGE DISCOUNTS, THAT 10 TO
15 15 PERCENT, IT WILL CHANGE THE AVERAGE DISCOUNTS FROM ANY
16 PARTICULAR PUBLISHER ON ANY PARTICULAR CLASS OF BOOKS DURING A
17 PARTICULAR YEAR, WON'T IT?
18 A. I'M SORRY, YOU'RE GOING TO HAVE TO REPHRASE THAT AGAIN.
19 THAT WAS A MULTIPLE QUESTION --
20 Q. THE AVERAGE DISCOUNT THAT YOU RECEIVE ON, LET'S SAY, TRADE
21 BOOKS FROM RANDOM HOUSE IN 1996, THAT'S GOING TO GET CHANGED BY
22 THE 10 OR 15 PERCENT OF THE PURCHASES FROM RANDOM HOUSE THAT
23 WERE EFFECTUATED PURSUANT TO A STOCK OFFER THAT WASN'T IN THE
24 REDBOOK, RIGHT?
25 A. NO, SIR, I DON'T KNOW. I DON'T KNOW IF I CAN ANSWER THAT.
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1 IT'S A LITTLE COMPLEX FOR ME TO UNDERSTAND.
2 Q. FINE. LET'S STICK WITH REDBOOK TERMS FOR A SECOND. EVEN
3 WITH REDBOOK TERMS, THERE ARE CIRCUMSTANCES WHERE REDBOOK TERMS
4 CHANGE DURING THE YEAR, AS YOU PREVIOUSLY TESTIFIED, CORRECT?
5 A. YES, SIR, THERE ARE TIMES THAT THE REDBOOK TERMS DO CHANGE.
6 Q. RIGHT. AND AS YOU'VE ALSO TESTIFIED, THE PERCENTAGE
7 DISCOUNT THAT YOU RECEIVE FROM A PUBLISHER WILL ALSO CHANGE
8 DEPENDING UPON HOW MANY BOOKS YOU BUY FROM THAT PUBLISHER AT
9 ANY GIVEN TIME, CORRECT?
10 A. I'M SORRY, I WAS DISTRACTED. WOULD YOU ASK THAT QUESTION
11 AGAIN, PLEASE?
12 Q. FORGIVE US, SIR. YOU'VE ALSO PREVIOUSLY TESTIFIED THAT THE
13 DISCOUNT YOU RECEIVE FROM A PARTICULAR PUBLISHER WILL VARY
14 DEPENDING UPON HOW MANY COPIES OF THE TITLE YOU PURCHASE FROM
15 THAT PUBLISHER AT ANY GIVEN TIME, CORRECT?

16 A. I DON'T KNOW. I THINK IT'S THE TERMS THAT I'M BUYING
17 UNDER.
18 Q. YES, BUT AS WE PREVIOUSLY DISCUSSED, IF YOU BUY ONE COPY OF
19 A TITLE, YOU GET ONE DISCOUNT LEVEL, IF YOU BUY FIVE COPIES,
20 YOU GET ANOTHER DISCOUNT LEVEL, AND TEN COPIES, YOU GET
21 ANOTHER, AND THAT'S STILL STICKING WITH REDBOOK TERMS, RIGHT?
22 A. YES, TERMS IS WHAT -- I DEFINITELY FEEL THAT I STICK TO THE
23 TERMS OF THE REDBOOK.
24 Q. RIGHT, AND IF YOU STICK TO THE TERMS OF THE REDBOOK, YOU
25 COULD GET DIFFERENT DISCOUNT PERCENTAGES AT ANY GIVEN TIME

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1 DEPENDING UPON HOW MANY BOOKS YOU ORDER, RIGHT?
2 A. IF I STICK TO THE TERMS OF THE REDBOOK, YES, SIR.
3 Q. RIGHT. AND SO THAT MEANS THAT ANY PARTICULAR TIME, TO
4 DETERMINE WHAT DISCOUNT YOU ACTUALLY GET FROM A PUBLISHER,
5 YOU'RE GOING TO HAVE TO LOOK AT THE INVOICE TO SEE WHAT THE
6 PUBLISHER BILLS YOU FOR, BECAUSE IT'S GOING TO DEPEND ON HOW
7 MANY BOOKS YOU PURCHASED, RIGHT?
8 A. NO, SIR, I CAN'T AGREE WITH THAT. I THINK THAT MY TERMS
9 BASICALLY TELL ME THAT.
10 Q. THE TERMS YOU RECEIVE, STICKING WITH REDBOOK, WILL ALSO
11 DEPEND ON WHETHER OR NOT YOU'RE GETTING FREE FREIGHT, RIGHT?
12 A. IF FREE FREIGHT IS PUBLISHED IN THE REDBOOK UNDER MY TERMS,
13 YES, SIR, I WOULD GET IT.
14 Q. THAT'S RIGHT, AND THAT, IN TURN, DEPENDS ON VOLUME, AS YOU
15 PREVIOUSLY TESTIFIED. YOU HAVE TO MEET A MINIMUM, YOU SAY.
16 A. YES, SIR, MINIMUM.
17 Q. SO IN ORDER TO DETERMINE WITH RESPECT TO ANY SPECIFIC
18 TRANSACTION WHETHER OR NOT YOU MET THAT MINIMUM, YOU'D HAVE TO
19 LOOK AT THE INVOICE, WOULDN'T YOU?
20 A. NO, SIR, NOT NECESSARILY. I DON'T THINK SO, BECAUSE THE
21 INVOICES COULD BE SOMETHING THAT'S COMING OFF BACK ORDER THAT
22 MAY NOT HAVE THE TERMS OF THE P.O.
23 Q. YES, BUT AT SOME POINT THE INVOICE REFLECTS WHAT THE
24 PUBLISHER IS ACTUALLY BILLING YOU, CONSISTENT WITH WHETHER OR
25 NOT HE IS OFFERING YOU FREE FREIGHT ON THOSE BOOKS.

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1 A. BUT I DON'T THINK AN INVOICE NECESSARILY REFLECTS THE TERMS
2 WHICH I PURCHASED UNDER.
3 Q. HOW ELSE WOULD YOU DETERMINE?
4 A. BY LOOKING AT MY PURCHASE ORDER.
5 Q. OKAY, SO IT WOULD BE THE PURCHASE ORDER FOR THE INVOICE.
6 FAIR ENOUGH.
7 A. THE PURCHASE ORDER WOULD REFLECT THE TERMS UNDER WHICH I --
8 Q. NOW, IT WILL ALSO DEPEND ON WHETHER OR NOT IT WAS -- THE
9 DISCOUNT LEVEL WILL ALSO DEPEND ON WHETHER OR NOT THE BOOK WAS
10 PURCHASED RETURNABLE OR NON-RETURNABLE, CORRECT?
11 A. THAT THIS --
12 Q. YOU --
13 A. THE DISCOUNT LEVEL.
14 Q. YES.
15 A. IF I BOUGHT ON THE TERM NON-RETURNABLE, IT WOULD BE
16 REFLECTED IN THE DISCOUNT OF THE REDBOOK, YES, SIR.
17 Q. YES, BUT IT WOULD ALSO -- WE'D HAVE TO LOOK AT EITHER A
18 PURCHASE ORDER OR AN INVOICE IN A PARTICULAR TRANSACTION TO
19 DETERMINE WHAT YOU WERE -- WHAT YOU WERE BILLED BY A PUBLISHER,
20 DEPENDING UPON WHETHER OR NOT YOU BOUGHT IT RETURNABLE OR
21 NON-RETURNABLE.
22 A. I WOULD JUST KNOW THE TERMS THAT I BOUGHT IT UNDER.
23 Q. RIGHT, BUT TO DETERMINE THE ACTUAL AMOUNT OF DISCOUNT THAT
24 YOU PAID.... WITHDRAWN.
25 TO DETERMINE THE ACTUAL AMOUNT OF DISCOUNT THAT WAS

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1 GIVEN TO YOU BY ANY PUBLISHER ON A SPECIFIC TRANSACTION, WE'RE
2 GOING TO HAVE TO LOOK AT YOUR INVOICES, RIGHT?
3 A. NO, SIR. I, ONCE AGAIN, I DON'T THINK I CAN AGREE WITH
4 THAT. I THINK I WOULD NEED TO LOOK AT MY P.O.
5 Q. PRIOR TO COMING HERE TODAY.... WELL, OR THE PURCHASE
6 ORDER.
7 A. I THINK I WOULD HAVE TO LOOK AT MY P.O. TO ACTUALLY KNOW

8 THE TERMS UNDER WHICH I HAD PURCHASED THOSE BOOKS.
9 Q. NOW, PRIOR TO TESTIFYING TODAY, HAVE YOU PREPARED ANY
10 ANALYSIS OF PURCHASE ORDERS OR INVOICES TO DETERMINE THE ACTUAL
11 PRICES OR DISCOUNTS RECEIVED BY LEMURIA FROM PARTICULAR
12 PUBLISHERS DURING ANY PARTICULAR PERIOD?
13 A. I'M SORRY, YOU'RE GOING TO HAVE TO ASK THAT QUESTION AGAIN.
14 Q. PRIOR TO YOUR TESTIMONY HERE TODAY, HAVE YOU ANALYZED YOUR
15 RECORDS TO DETERMINE THE ACTUAL PRICES OR ACTUAL DISCOUNTS THAT
16 YOU RECEIVED FROM A PUBLISHER DURING ANY SPECIFIC PERIOD OF
17 TIME?
18 A. I WOULD SAY THAT I'VE ANALYZED MY BUSINESS PRACTICES TO SEE
19 WHAT TERMS I HAVE HAD WITH THE PUBLISHER.
20 Q. RIGHT, BUT NOT ANALYZED ANY ACTUAL TRANSACTIONS. JUST THE
21 TERMS.
22 A. I THINK THE TERMS PROBABLY REPRESENT THE TRANSACTIONS. I
23 MEAN, I THINK --
24 Q. LET'S TURN TO INGRAM. YOU TESTIFIED THAT INGRAM IS AN
25 INTEGRAL PART OF YOUR BUSINESS.

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1 A. IS A WHAT KIND OF...?
2 Q. IS AN INTEGRAL PART OF YOUR BUSINESS.
3 A. IT'S VERY IMPORTANT TO ME.
4 Q. HOW MANY BOOKS A WEEK DO YOU BUY FROM THEM?
5 A. I THINK, ON A GENERAL, FOUR TO FIVE HUNDRED.
6 Q. IS YOUR CREDIT GOOD?
7 A. I CERTAINLY HOPE SO.
8 Q. RIGHT. IF YOU BUY FOUR TO FIVE HUNDRED BOOKS A WEEK AND
9 YOUR CREDIT IS GOOD, YOU'RE ENTITLED TO THEIR SCHEDULED
10 DELIVERY PROGRAM. DID YOU KNOW THAT?
11 A. NO, SIR.
12 Q. WHICH WOULD GET YOU A 41 PERCENT ACROSS-THE-BOARD DISCOUNT
13 WITH NO MINIMUM TITLES PER PURCHASE, AS LONG AS YOU ORDER
14 ELECTRONICALLY. YOU ORDER ELECTRONICALLY, DON'T YOU?
15 A. YES, SIR.
16 Q. RIGHT, AND A 1 PERCENT VOLUME, YOU SAID, SOUNDS LIKE A GOOD
17 DEAL, DOESN'T IT?
18 A. I DON'T REALLY KNOW WHAT THE FULL DESCRIPTION OF THE PLAN
19 IS, SO IT'S VERY DIFFICULT FOR ME TO SAY IF IT'S A GOOD DEAL IF
20 I DON'T KNOW WHAT OTHER ALTERNATIVES ARE PRESENTED TO ME IN
21 THAT TIME.
22 Q. RIGHT, BUT YOU'RE GOING TO CHECK IT OUT WITH YOUR INGRAM
23 REPRESENTATIVE AFTER THE TRIAL, RIGHT?
24 A. I DON'T KNOW. I GUESS I MIGHT INQUIRE. I CAN'T SAY THAT
25 I'M -- IT WOULD BE A PRIORITY OF MINE.

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1 Q. RIGHT. NOW, YOU DO ELECTRONIC PURCHASING AND YOU HAVE GOOD
2 CREDIT. SO YOU'RE ALSO ELIGIBLE FOR SOMETHING CALLED SUMMARY
3 BILLING FROM INGRAM. HAVE YOU EVER HEARD OF THAT?
4 A. I'VE HEARD OF IT, BUT --
5 Q. YOU HAVE HEARD OF IT. HAVE YOU EVER ASKED?
6 A. I HEARD IT YESTERDAY AT THIS TRIAL, I BELIEVE.
7 Q. ALL RIGHT. NOW, THAT GIVES YOU CASH DISCOUNT OF 25 DAYS,
8 END OF MONTH, AND A 1 PERCENT -- ONE-TENTH OF 1 PERCENT
9 SHORTAGE ALLOWANCE ACROSS THE BOARD. SOUNDS LIKE A PRETTY GOOD
10 DEAL, DOESN'T IT?
11 A. I DON'T KNOW WHAT THE REST OF THE PROPOSITION FROM INGRAM
12 WOULD BE, BUT I'D LIKE TO HEAR IT OUT BEFORE I REFRAIN
13 JUDGMENT.
14 Q. LET'S REFER TO TRIAL EXHIBIT 7853, WHICH IS TAB 15. NOW,
15 THIS IS A MAP THAT WE PREPARED, DEFENDANTS PREPARED, WHICH IS
16 SIMILAR TO ONE OF THE MAPS THAT YOU'VE ALREADY SEEN PREPARED BY
17 YOUR COUNSEL, BUT IT INDICATES SOME MORE BOOKS IN THE
18 VICINITY -- BOOKSTORES IN THE VICINITY OF YOUR BOOKSTORE, AND
19 SOME OTHER ENTITIES OR TYPES OF BUSINESSES THAT SELL BOOKS.
20 REFERRING TO THE MAP, ARE THE APPROXIMATE LOCATIONS
21 OF ALL OF THOSE OTHER BUSINESS ENTITIES CORRECT, AS FAR AS YOU
22 CAN TELL?
23 A. WHEN YOU SAY, "OTHER," I DON'T REALLY --
24 Q. WELL, FOR EXAMPLE, THERE'S A RED STAR FOR LEMURIA BOOK SHOP
25 RIGHT IN THE MIDDLE.

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1 A. OKAY.
2 Q. AND THEN THERE'S AN INDICATION THERE OF A
3 BOOKS-A-MILLION --
4 A. YES.
5 Q. -- JUST ACROSS I-55. IS THAT APPROXIMATELY CORRECT, AS YOU
6 UNDERSTAND THE LOCAL GEOGRAPHY?
7 A. ACTUALLY, THE BOOK RACK SHOULD BE WHERE THE BOOKS-A-MILLION
8 IS AND THE BOOKS-A-MILLION WHERE THE BOOK RACK IS, THE WAY I
9 WOULD VIEW IT, LOOKING AT THIS MAP.
10 Q. THANK YOU. SO THE BOOKS-A-MILLION IS ACTUALLY CLOSER. WE
11 DON'T HAVE IT CLOSE ENOUGH TO YOUR STORE, DO WE? OKAY, AND I
12 BELIEVE YOU TESTIFIED --
13 A. I THINK THE KROGER'S IS RIGHT NEXT DOOR TO IT.
14 Q. KROGER'S RIGHT NEXT DOOR, AS WELL. THIS IS -- I WAS STRUCK
15 BY THE WAY YOU DESCRIBED DISTANCES YESTERDAY IN YOUR TESTIMONY.
16 IT'S VERY FAMILIAR TO THOSE OF US WHO LIVE IN LOS ANGELES. YOU
17 DESCRIBE IT IN TERMS OF HOW LONG IT TAKES TO DRIVE TO A PLACE,
18 RIGHT?
19 A. YES, SIR.
20 Q. AND A BOOKS-A-MILLION STORE, HOW CLOSE IS THAT?
21 A. I'D SAY ABOUT ONE MINUTE.
22 Q. ONE MINUTE. ALL RIGHT, NOW, LET'S LOCATE THE BARNES &
23 NOBLE STORE. THAT'S ON YOUR SIDE OF I-55, BUT IT'S FURTHER
24 AWAY THAN THE BOOKS-A-MILLION, CORRECT?
25 A. BARNES & NOBLE IS ACTUALLY NOT ON MY SIDE OF I-55. IT'S ON
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1 THE SAME SIDE AS BOOKS-A-MILLION.
2 Q. THANK YOU FOR THE CORRECTION. SO IT'S OVER THERE BY --
3 WELL, IT'S ACTUALLY, YOU TESTIFIED PREVIOUSLY, IT'S SURROUNDED
4 BY A NUMBER OF OTHER STORES, ISN'T IT, BARNES & NOBLE?
5 A. YES, SIR.
6 Q. AND THERE'S -- THERE ARE A NUMBER OF LARGE DEPARTMENT
7 STORE-LIKE STORES IN THE AREA WHERE IT'S LOCATED, IS THAT
8 CORRECT?
9 A. YES, SIR. CAN I MAKE ANOTHER SUGGESTION ABOUT THE MAP?
10 Q. SURE.
11 A. IT ALSO LOOKS HERE LIKE THE B. DALTON STORE IS ACTUALLY
12 CLOSER TO MY STORE THAN BARNES & NOBLE, AND ACTUALLY IT'S NOT.
13 Q. WELL, THE B. DALTON AND THE BARNES & NOBLE ARE ALMOST IN
14 THE SAME SPOT, BUT --
15 A. THERE'S A MINUTE OR TWO DIFFERENCE.
16 Q. NOW, THE BARNES & NOBLE LOCATION NEXT TO ALL OF THESE OTHER
17 LARGE DEPARTMENT-LIKE STORES IS GOING TO RESULT IN THE BARNES &
18 NOBLE GETTING SIGNIFICANT FOOT TRAFFIC COMING BY ITS STORE,
19 ISN'T IT?
20 A. NO, SIR, I CAN'T SAY THAT I WOULD SAY SIGNIFICANT FOOT
21 TRAFFIC, BECAUSE I THINK PEOPLE DRIVE THERE.
22 Q. RIGHT, AND SO IF THEY WERE DRIVING -- LET'S -- OR DRIVE-BY
23 TRAFFIC, CERTAINLY, PEOPLE WERE GOING TO DRIVE TO THE OTHER
24 DEPARTMENT STORE-LIKE STORES THAT ARE LOCATED NEAR BARNES &
25 NOBLE, ARE GOING TO BE IN THE SAME VICINITY.
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1 A. YES, BARNES & NOBLE IS LOCATED ON COUNTY LINE ROAD, WHICH
2 HAS A HIGH DRIVE-BY PERCENTAGE.
3 Q. AND IT'S GOING TO GIVE THAT BARNES & NOBLE STORE A
4 COMPETITIVE ADVANTAGE OVER YOUR STORE, ISN'T IT?
5 A. WELL, I HAVE A HIGH DRIVE-BY TRAFFIC COUNT, TOO, IN FRONT
6 OF MY STORE.
7 Q. RIGHT, BUT YOU DON'T HAVE STORES LOCATED NEXT TO YOU THAT
8 OCCASION A LARGE NUMBER OF PEOPLE TURNING OFF THE ROAD AND
9 STOPPING, DO YOU?
10 A. WELL, I THINK I DO, BUT....
11 Q. NOW, YOU'VE TESTIFIED THAT YOU COMPETE WITH
12 BOOKS-A-MILLION. JUST SO WE CAN GET THE OTHERS LISTED HERE,
13 YOU'VE ALSO TESTIFIED PREVIOUSLY THAT YOU COMPETE WITH CHOCTAW
14 BOOKS, WHICH IS JUST BELOW YOU, FOR FIRST EDITIONS?
15 A. YES, SIR, I HAVE WORKED VERY HARD ON DEVELOPING MY FIRST
16 EDITIONS BUSINESS.
17 Q. AND YOU COMPETE WITH THE MISSISSIPPI COLLEGE BOOKSTORE IN
18 YOUR AREA, IS THAT CORRECT?

19 A. YES, SIR, I WOULD THINK THAT IT'S PROBABLY WITHIN MY
20 COMPETITIVE MINUTE.
21 Q. RIGHT, AND YOU COMPETE WITH THE WALMART'S AND THE COSTCO'S
22 AND THE GROCERY STORES AND THE DRUG STORES AND THE OTHER
23 NON-BOOK MASS MARKET RETAILERS TO THE EXTENT THAT THEY SELL
24 BOOKS, CORRECT?
25 A. YES, SIR, THEY DO SELL BOOKS.

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1 Q. RIGHT. AND IN FACT, YOU TESTIFIED AT YOUR DEPOSITION THAT
2 KROGER'S, AT LEAST, WHICH IS A SUPERMARKET, WAS SELLING A TITLE
3 FOR LESS THAN YOU COULD -- SELLING IT AT RETAIL FOR LESS THAN
4 YOU COULD HAVE PURCHASED IT AT WHOLESALE.
5 A. I BELIEVE THAT TO BE CORRECT.
6 Q. RIGHT?
7 A. I THINK THE PERSON THAT WAS GIVING ME MY DEPOSITION QUOTED
8 TO ME THE PRICE THAT HE SAW IT THERE THE DAY BEFORE, AND I
9 BELIEVE THAT'S THE PRICE I WAS GOING ON.
10 Q. THAT'S RIGHT, BUT YOU SAID IF THAT WAS THE PRICE, THAT IT
11 WAS GOING TO BE LESS THAN YOU COULD BUY IT FOR?
12 A. OR VERY CLOSE.
13 Q. OR VERY CLOSE.
14 A. YES.
15 Q. YOU ALSO MENTIONED THAT SAM'S WHOLESALE -- WERE YOU
16 REFERRING TO SAM'S CLUB, OR...?
17 A. PROBABLY.
18 Q. PROBABLY -- SELLS JOHN GRISHAM BEST SELLERS AT RETAIL FOR
19 LESS THAN YOUR WHOLESALE PRICE.
20 A. OR VERY CLOSE TO IT.
21 Q. YOU ALSO COMPETE WITH AMAZON.COM, RIGHT?
22 A. TO WHAT EXTENT, IT'S HARD TO SAY, BUT I WOULD HAVE TO THINK
23 TO SOME EXTENT.
24 THE COURT: I THINK I'LL LET YOU THINK WHILE WE HAVE
25 A RECESS, UNTIL 10:45.

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1 THE CLERK: ALL RISE.
2 (RECESS TAKEN AT 10:30 A.M.)
3 (CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)
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1 (PROCEEDINGS RESUMED AT 10:55 A.M.)
2 THE COURT: ALL RIGHT. FURTHER CROSS-EXAMINATION,
3 MR. GARCIA.
4 MR. GARCIA: THANK YOU, YOUR HONOR.
5 Q. MR. EVANS, THE EXISTENCE OF GREATER SIDELINES AT BARNES &
6 NOBLE, THINGS BESIDES SELLING BOOKS, CAUSED YOU TO LOSE BOOK
7 SALES TO BARNES & NOBLE, DIDN'T IT?
8 A. HOW WOULD YOU SUGGEST THAT?
9 Q. WELL, FOR EXAMPLE, THE FACT THAT THEY HAD A COFFEE SHOP YOU
10 ACKNOWLEDGED WAS GOING TO CAUSE YOU TO LOSE SALES?

11 A. I THINK THAT COFFEE SHOP PROBABLY PRODUCED MORE TRAFFIC INTO
12 THEIR BOOKSTORE THAN THE BOOKS THEMSELVES CAN PRODUCE.
13 Q. RIGHT. AND THAT THAT WOULD RESULT IN PEOPLE BUYING MORE
14 BOOKS.
15 A. IT COULD RESULT INTO THAT.
16 Q. ALL RIGHT.
17 THERE HAVE BEEN CRIME PROBLEMS AROUND YOUR
18 BOOKSTORE'S LOCATION IN THE LAST FIVE YEARS, HAVEN'T THERE?
19 A. YES, THERE HAS.
20 Q. RIGHT. THERE HAVE BEEN MUGGINGS IN THE PARKING LOT?
21 A. ON OCCASION, I BELIEVE THAT THERE HAS.
22 Q. RIGHT. AND BREAK-INS?
23 A. YES, SIR.
24 Q. AND CARS GETTING BROKEN INTO IN THE PARKING LOT?
25 A. YES, SIR.

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1 Q. ALL RIGHT. AND THAT'S CAUSED YOU TO LOSE SALES, HASN'T IT?
2 A. I -- I CAN'T REALLY PINPOINT THAT IT HAS.
3 Q. ALL RIGHT.
4 A. IF THE PERSON WAS COMING TO BUY FROM ME WAS BROKEN INTO IT,
5 I GUESS THEY DIDN'T MAKE IT TO MY STORE.
6 Q. IN RESPONSE TO BARNES & NOBLE OPENING ITS STORE, YOU PUT AN
7 INCREASING EMPHASIS ON MAKING FEWER MISTAKES, DIDN'T YOU?
8 A. YES, SIR.
9 Q. AND YOU ENLARGED YOUR INVENTORY AND YOU ENLARGED YOUR STORE
10 AND YOU ENLARGED YOUR STORE HOURS?
11 A. AND MY STAFF.
12 Q. ALL RIGHT. LET ME DIRECT YOUR ATTENTION TO PLAINTIFF'S
13 EXHIBIT 2614, WHICH IS IN THE WHITE BINDER.
14 A. YES, SIR.
15 Q. NOW, I BELIEVE YOU TESTIFIED THAT BARNES & NOBLE OPENED ITS
16 STORE IN APRIL OF 1997?
17 A. YES, SIR, I BELIEVE THAT TO BE CORRECT.
18 MS. KESTENBAUM: EXCUSE ME.
19 MR. GARCIA: YOUR HONOR (HANDING DOCUMENT).
20 THE COURT: FINE. THE BATTLE OF THE BINDERS.
21 (LAUGHTER)
22 MR. GARCIA: THANK YOU, YOUR HONOR.
23 THE COURT: THIS BINDER DOESN'T HAVE 2614.
24 MR. GARCIA: THAT'S THE PLAINTIFF'S BINDER, YOUR
25 HONOR.

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1 (LAUGHTER)
2 THE COURT: I MADE A NOTE OF THAT.
3 (LAUGHTER)
4 BY MR. GARCIA:
5 Q. ALL RIGHT. THIS IS A LIST OF LEMURIA'S SALES BY FISCAL
6 YEAR; IS THAT CORRECT?
7 A. YES, SIR.
8 Q. ALL RIGHT. AND YOU TESTIFIED THAT BARNES & NOBLE ENTERED
9 YOUR MARKET IN APRIL OF 1997; THAT CORRECT?
10 A. YES, SIR.
11 Q. ALL RIGHT. AND IN THE NEXT FULL FISCAL YEAR, YOUR SALES --
12 THAT WOULD BE THE FISCAL YEAR ENDING AUGUST 31, 1998, YOUR SALES
13 WENT DOWN? THAT CORRECT?
14 A. YES, SIR. IT LOOKS LIKE APPROXIMATELY \$160,000.
15 Q. RIGHT. AND IN THE NEXT FISCAL YEAR ENDING AUGUST 31, 1999,
16 YOUR NET SALES WENT UP FROM THE PREVIOUS FISCAL YEAR, CORRECT?
17 A. YES, SIR.
18 Q. AND THEY ARE APPROXIMATELY EQUAL TO THE SALES IN THE FISCAL
19 YEAR PRIOR TO THE FIRST FULL FISCAL YEAR THE BARNES & NOBLE IS
20 IN THE MARKET, CORRECT?
21 A. YES, SIR. I BELIEVE --
22 Q. RIGHT. SO IT DIDN'T TAKE FOUR YEARS LIKE YOU SUGGESTED
23 YESTERDAY IN YOUR DIRECT FOR YOUR SALES TO BEGIN TO TREND UPWARD
24 AGAIN, DID IT?
25 A. TO BEGIN TO TREND, I -- I MAY BE MADE --

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1 THE REPORTER: I'M SORRY, I DIDN'T HEAR YOU. "I MAY
2 BE MADE..."

3 THE WITNESS: WOULD YOU ASK THAT QUESTION AGAIN,
4 PLEASE.
5 BY MR. GARCIA:
6 Q. SO IT DIDN'T TAKE FOUR YEARS LIKE YOU SUGGESTED YESTERDAY
7 FOR THE DOWNWARD TREND TO STOP, DID IT?
8 A. I -- IT DID NOT TAKE FOUR YEARS FOR THE DOWNWARD TREND TO
9 BOTTOM.
10 MR. GARCIA: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.
11 THE COURT: MR. STEER?
12 MS. PREVOLOS: YOUR HONOR, I'D LIKE TO INTRODUCE MY
13 COLLEAGUE DIANNE SWEENEY, WHO'S GOING TO QUESTION THE WITNESS.
14 CROSS-EXAMINATION
15 MS. SWEENEY: MORNING, YOUR HONOR.
16 Q. GOOD MORNING, MR. EVANS. MY NAME IS DIANNE SWEENEY.
17 A. GOOD MORNING.
18 Q. GOOD MORNING. I REPRESENT THE BORDERS GROUP, WHICH INCLUDES
19 WALDENBOOKS. I HAVE A COUPLE OF FOLLOW-UP QUESTIONS.
20 YOU TESTIFIED EARLIER THIS MORNING THAT INGRAM
21 OFFERED YOU AN EXTRA DISCOUNT IF YOU PLACED ORDERS BETWEEN
22 6:00 P.M. ON SATURDAY AND 6:00 P.M. ON SUNDAY; IS THAT CORRECT?
23 A. THAT'S ROUGHLY THE HOURS.
24 Q. NOW, WAS THAT DISCOUNT REPORTED IN THE REDBOOK?
25 A. I -- I COULDN'T RECALL EXACTLY. IT WAS AN ANNOUNCEMENT THAT

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1 I RECEIVED -- PUBLIC ANNOUNCEMENT TO THE TRADE THAT I RECEIVED
2 FROM INGRAM.
3 Q. I SEE. SO IT'S NOT SOMETHING THAT YOU FOUND IN THE REDBOOK;
4 IS THAT CORRECT?
5 A. NO, SIR -- NO, MA'AM, IT WAS SOMETHING THAT WAS MAILED TO
6 ME.
7 Q. OKAY. TO TAKE ADVANTAGE OF THAT DISCOUNT, YOU THEN HAD TO
8 PLACE YOUR ORDER BETWEEN 6:00 P.M. ON SATURDAY AND 6:00 P.M. ON
9 SUNDAY, ROUGHLY?
10 A. ROUGHLY. I CAN'T REMEMBER THE EXACT HOURS.
11 Q. DO YOU UNDERSTAND WHY INGRAM HAD THIS PROGRAM IN PLACE?
12 A. I COULD SPECULATE. BUT I DON'T --
13 Q. IS IT PERHAPS THAT INGRAM WANTS TO KEEP ITS ORDER IN BALANCE
14 THROUGHOUT THE WEEK SO THAT THEY'RE ENCOURAGING YOU AS A
15 COST-EFFICIENT MEASURE AT THAT TIME --
16 MS. KESTENBAUM: OBJECTION, YOUR HONOR. THERE'S NO
17 FOUNDATION HERE THAT THE WITNESS KNOWS ANYTHING ABOUT INGRAM'S
18 INTERNAL COSTS OR REASONS FOR THIS DISCOUNT.
19 THE COURT: LAY A FOUNDATION.
20 BY MS. SWEENEY:
21 Q. IN YOUR EXPERIENCE, WOULD YOU BELIEVE THAT -- STRIKE THAT.
22 ARE YOU AWARE OF WHETHER OR NOT CONTINUALLY PLACING
23 ORDERS -- LET'S SEE. LET'S SEE.
24 IN YOUR EXPERIENCE, YOU PLACE ORDERS TO INGRAM
25 GENERALLY THROUGHOUT THE WEEK, MONDAY THROUGH FRIDAY, REGULAR

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1 BUSINESS HOURS?
2 A. GENERALLY MONDAY AND WEDNESDAY.
3 Q. AND SO BY PLACING THOSE HOURS (SIC) ON SATURDAY -- BY
4 PLACING YOUR ORDERS ON SATURDAY AND SUNDAY, THEN YOU WOULD BE
5 PROVIDING INGRAM AN ORDER AT AN UNUSUAL TIME FOR INGRAM?
6 A. WE WOULD BASICALLY PUSH OUR MONDAY ORDER UP TO SUNDAY.
7 Q. OKAY. LET'S MOVE ON TO AN ISSUE ON CO-OP. YOU HAD
8 PREVIOUSLY TESTIFIED THAT YOU TOOK ADVANTAGE OF CO-OP FUNDS IN
9 ORDER TO SUPPORT AUTHOR EVENT; IS THAT CORRECT?
10 A. YES, THAT IS ONE WAY THAT I WOULD TAKE ADVANTAGE OF CO-OP
11 FUNDS.
12 Q. OKAY. FOR THOSE AUTHOR EVENTS, DID YOU EVER -- WAS LEMURIA
13 EVER PROVIDED ADDITIONAL CO-OP FUNDS ABOVE THEIR ORDINARY CO-OP
14 POOL?
15 A. WELL, YOU USE YOUR CO-OP POOL PLUS YOUR AUTHOR EVENT MONEY
16 AND COMBINE THE TWO.
17 Q. OKAY.
18 A. BUT IT WOULD BE -- IT WOULD BE HOW YOU WOULD HAVE THE TOTAL
19 DOLLARS THAT YOU WOULD SPEND FOR THAT AUTHOR EVENT.
20 Q. OKAY. SO THAT AUTHOR EVENT MONEY WAS ABOVE YOUR ORDINARY
21 CO-OP POOL; IS THAT CORRECT?

22 A. I WOULD SAY IT WAS AN ADDITIONAL.
23 Q. "ADDITIONAL" MEANING ABOVE YOUR ORDINARY CO-OP POOL?
24 A. NO, I WOULD SAY ADDED TO MY CO-OP POOL.
25 Q. OKAY.

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1 A. NOT ABOVE IT.
2 Q. IF WE COULD TURN TO PAGE 371 OF YOUR DEPOSITION.
3 A. (REVIEWING DOCUMENTS.)
4 Q. I'M JUST GOING TO READ IN PAGE 371, LINES 5 THROUGH 14.
5 THE COURT: WHAT LINE?
6 MS. SWEENEY: LINE 5 THROUGH 14, PAGE 371.
7 "Q. DO PUBLISHERS EVER PROVIDE LEMURIA WITH
8 ADDITIONAL CO-OP FUNDS ABOVE THEIR ORIGINAL --
9 ABOVE THAT OF THEIR ORDINARY CO-OP POOL TO
10 SUPPORT AN AUTHOR EVENT?
11 "A. AUTHOR APPEARANCE ALLOWANCE.
12 "Q. SURE. YES. DO YOU TRY AND TAKE
13 ADVANTAGE OF AUTHOR APPEARANCE ALLOWANCE?
14 "A. I TRY TO."
15 Q. MR. EVANS, ISN'T IT TRUE THAT THERE ISN'T A BORDERS IN THE
16 STATE OF MISSISSIPPI?
17 A. I DON'T BELIEVE THERE'S ONE AT THIS TIME. BUT THEY'VE
18 ANNOUNCED THAT THEY'RE GETTING READY TO BUILD ONE IN JACKSON.
19 Q. BUT AT THIS TIME, THERE IS NOT A BORDERS IN THE STATE?
20 A. AS FAR AS I KNOW, THERE'S NOT. THERE WILL BE SOON.
21 Q. YESTERDAY YOU TESTIFIED THAT THERE HAVE BEEN TWO WALDENS IN
22 JACKSON; IS THAT CORRECT?
23 A. THERE HAVE BEEN. I THINK THERE'S ONLY ONE NOW.
24 Q. OKAY. AND THOSE TWO WALDENS, ONE WAS LOCATED IN RIDGELAND,
25 AND ONE WAS LOCATED IN METRO CENTER; IS THAT CORRECT?

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1 A. YES, THE RIDGELAND -- THERE'S A COUNTY LINE, RATHER THAN
2 CITY LIMITS, AND IT WAS ON THE OPPOSITE SIDE OF -- OF --
3 THE REPORTER: I'M SORRY. "... ON THE OPPOSITE SIDE
4 OF..." AND THEN I DIDN'T HEAR.
5 THE WITNESS: THE ROAD THAT DIVIDES JACKSON AND
6 RIDGELAND, AND IT WAS ON THE RIDGELAND SIDE.
7 BY MS. SWEENEY:
8 Q. OKAY. IF WE COULD TURN TO DEFENDANT'S TAB 15, IT'S TRIAL
9 EXHIBIT 7853. THAT'S GOING TO BE IN THE BLACK BINDER THAT
10 MR. GARCIA USED WITH YOU.
11 THE COURT: WHAT TAB DID YOU SAY?
12 MS. SWEENEY: TAB 15. IT'S TRIAL EXHIBIT 7853.
13 Q. THAT SHOWS THE MAP OF THE BOOKSTORES THAT MR. GARCIA WAS
14 DISCUSSING WITH YOU.
15 A. (REVIEWING DOCUMENTS.)
16 Q. SHOULD BE TAB 15, THAT COLORED MAP.
17 A. 15. SORRY. I SEE 13.
18 Q. THAT'S FINE.
19 OKAY. IF YOU COULD HELP ME ESTABLISH WHERE THE TWO
20 DIFFERENT WALDENBOOKS WERE. I BELIEVE YOU SAID ONE WAS IN
21 RIDGELAND; IS THAT CORRECT?
22 A. THE B. DALTON THAT WAS IN -- I MEAN, THE WALDEN, EXCUSE ME,
23 THAT WAS IN RIDGELAND, IS -- WOULD HAVE BEEN IN THE SAME
24 SHOPPING MALL THAT THE SQUARE -- THE B. DALTON THAT'S
25 REPRESENTED ON THIS MAP. THE B. DALTON AND WALDEN WERE IN THE

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1 SAME SHOPPING MALL, SO I GUESS IT WOULD BE APPROXIMATELY IN THIS
2 MAP WHERE THE B. DALTON IS.
3 Q. OKAY. AND SO THAT'S ON THE UPPER RIGHT-HAND CORNER ABOUT
4 TWO INCHES DOWN THE RIGHT-HAND SIDE?
5 A. YES, MA'AM.
6 Q. AND THE OTHER WALDENBOOKS, COULD YOU ADVISE ME WHERE THAT
7 LOCATION IS IN METRO CENTER?
8 A. METRO CENTER IS BASICALLY AT THE -- WHERE THE 220 LOOP GOES
9 INTO THE I-220, AND IT'S BORDERED BY HIGHWAY 80 AND THE 220
10 LOOP, AND IT'S IN THE METRO CENTER MALL.
11 Q. CAN YOU TELL ME WHICH OF THOSE LOCATIONS IS CLOSER TO
12 LEMURIA?
13 A. YES, MA'AM. THE FIRST ONE.

14 Q. "FIRST ONE" MEANING THE RIDGELAND LOCATION?
15 A. YES, MA'AM.
16 Q. NOW, ISN'T IT TRUE THAT THAT LOCATION CLOSED IN JANUARY OF
17 1995?
18 A. I COULDN'T REMEMBER EXACTLY. BUT IT HAS CLOSED.
19 Q. AND IT'S BEEN CLOSED FOR SOME TIME?
20 A. YES.
21 Q. SO THEN WOULDN'T IT BE TRUE THAT AS OF THE TIME THAT THAT
22 WALDENS CLOSED -- LET'S ASSUME IT WAS JANUARY OF 1995 -- THAT
23 YOUR WALDENS COMPETITION IN JACKSON DECREASED. WOULD THAT BE
24 CORRECT?
25 A. (PAUSE.)

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1 POSSIBLY.
2 Q. OKAY. WELL, IT IS TRUE, THOUGH, THAT PRIOR TO THE CLOSING
3 OF THE RIDGELAND LOCATION, THAT YOU WERE COMPETING WITH TWO
4 DIFFERENT WALDENS; IS THAT CORRECT?
5 A. THAT IS CORRECT.
6 Q. AND THEN AFTER THE CLOSING, YOU WERE ONLY COMPETING WITH ONE
7 WALDENS?
8 A. I WOULD DEFINITELY AGREE WITH THAT.
9 Q. OKAY. NOW, THE METRO CENTER WALDENS, YOU TESTIFIED THAT IS
10 20 -- 20 MINUTES AWAY FROM LEMURIA; IS THAT CORRECT?
11 A. I WOULD SAY THAT'S PRETTY CLOSE.
12 Q. IS THAT RIGHT?
13 DO YOU KNOW APPROXIMATELY HOW MANY MILES THAT IS?
14 A. NO. I DON'T. I THINK OF THINGS IN TIME. I THINK IN TIME.
15 Q. OH.
16 A. EXCUSE ME.
17 Q. NO, I UNDERSTAND. THANKS.
18 AND SO IT WOULD TAKE APPROXIMATELY 20 MINUTES. YOU'D
19 HAVE TO TAKE SOME MAJOR HIGHWAYS TO GET TO THE WALDENBOOKS; IS
20 THAT CORRECT?
21 A. NOT NECESSARILY IN THIS CASE. NORTHSIDE DRIVE, WHICH IS THE
22 MAIN -- IT LOOKS TO ME CLOSE TO -- YOU COULD CUT ACROSS THIS.
23 THERE'S A STREET, IT'S NOT ON THIS MAP. IT'S CALLED NORTHSIDE
24 DRIVE. THAT'S A MAJOR ARTERY BETWEEN I-55 AND 220, AND YOU
25 WOULDN'T HAVE TO GO UP HERE AND ALL THE WAY DOWN HERE.

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1 Q. LET'S LOOK AT IT THIS WAY: THE 20 MINUTES' DISTANCE THAT
2 YOU SAID BETWEEN THE TWO, THAT WAS HIGHWAY TIME; IS THAT
3 CORRECT?
4 A. NOT NECESSARILY.
5 Q. WOULD IT TAKE LONGER IF YOU TOOK THE ROAD THAT YOU JUST
6 MENTIONED?
7 A. I HAVEN'T TIMED IT. YOU CAN GO FASTER ON THAT ROAD.
8 Q. ON THE HIGHWAY?
9 A. YES.
10 Q. OKAY. DO YOU KNOW THE MANAGER OF THE REMAINING WALDENS
11 THAT'S THERE AT METRO CENTER?
12 A. NO, I DON'T.
13 Q. LET'S STEP BACK TO A COUPLE ISSUES THAT WERE COVERED
14 YESTERDAY ON THE GROWTH OF LEMURIA. YOU ORIGINALLY OPENED
15 LEMURIA IN 1975; IS THAT CORRECT?
16 A. YES, MA'AM.
17 Q. AND THEN IN 1977, YOU EXPANDED YOUR BUSINESS AND MOVED TO A
18 NEW LOCATION WHICH HAD GREATER SQUARE FOOTAGE; IS THAT CORRECT?
19 A. YES, MA'AM.
20 Q. AND THE NEW SQUARE FOOTAGE WAS 1,224 SQUARE FEET; IS THAT
21 CORRECT?
22 A. I BELIEVE THAT TO BE CORRECT.
23 Q. AND THEN THE REMAINING WALDENS THAT WE'VE TALKED ABOUT, THE
24 ONE THAT IS IN METRO CENTER, YOU TESTIFIED YESTERDAY THAT THAT
25 WALDENS OPENED IN 1978; IS THAT CORRECT?

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1 A. I -- OR CLOSE TO IT. I BELIEVE THAT TO BE CORRECT.
2 Q. OKAY. AND SO THE WALDENS OPENED IN 1978. AND THEN, AGAIN,
3 IN 1987, YOU EXPANDED YOUR BUSINESS WHEN YOU MOVED INTO THE
4 BANNER HALL LOCATION?
5 A. YES, MA'AM. I MOVED ACROSS THE STREET.

6 Q. AND YOU INCREASED YOUR RETAIL SPACE MORE THAN TWICE BY THAT
7 MOVE; IS THAT CORRECT?
8 A. I INCREASED IT FROM BASICALLY 1200 TO 3500.
9 Q. SO MORE THAN DOUBLE. ALMOST TRIPLED.
10 A. (NO AUDIBLE RESPONSE.)
11 Q. IS THAT CORRECT?
12 A. TWELVE HUNDRED TO THIRTY-FIVE HUNDRED.
13 Q. OKAY. YESTERDAY YOU TESTIFIED THAT SINCE 1975, LEMURIA
14 SALES HAVE INCREASED FOR EACH YEAR; IS THAT CORRECT?
15 A. EXCEPT FOR ONE, I THINK IS WHAT I SAID.
16 Q. OKAY. WELL, LET'S TURN TO PLAINTIFF'S EXHIBIT 2614.
17 YOUR HONOR, THIS IS THE EXHIBIT MR. GARCIA WAS JUST
18 REFERRING TO, THE ONE-PAGE SALES --
19 IF YOU COULD TURN TO THAT.
20 A. (REVIEWING DOCUMENTS.)
21 Q. WHAT I'D LIKE TO FOCUS ON IS THE PERIOD BETWEEN 1989 AND
22 1993. NOW, YOU TESTIFIED THAT THE PERIOD IN THE EARLY '90S WERE
23 A PERIOD OF TREMENDOUS GROWTH; IS THAT CORRECT?
24 A. YES, MA'AM.
25 Q. AND THAT WAS DURING THE TIME THAT THERE WERE ACTUALLY TWO
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1 WALDENBOOKS THAT WERE IN JACKSON, IS THAT CORRECT?
2 A. I DON'T KNOW EXACTLY WHEN THE LAST WALDEN -- WHEN THE NORTH
3 PARK WALDEN CLOSED.
4 Q. OKAY. BUT --
5 A. I DON'T KNOW EXACTLY.
6 Q. BUT BASICALLY YOU WERE EITHER COMPETING WITH ONE OR TWO
7 WALDENS DURING THIS TIME OF TREMENDOUS GROWTH; IS THAT CORRECT?
8 A. I WOULD THINK SO, ACCORDING TO THE DATE THAT YOU GAVE ME
9 THAT IT CLOSED.
10 Q. OKAY. NOW, JUST LOOKING FROM THE YEAR 1989 TO 1993, IS IT
11 CORRECT THAT YOUR SALES ALMOST DOUBLED DURING THAT TIME?
12 A. UM, FROM 1989 TO 1993?
13 Q. CORRECT.
14 A. NO, I WOULDN'T SAY THEY ALMOST DOUBLED. I WISH THEY HAD.
15 Q. WELL, YOU WENT FROM 953,000, ROUGHLY, TO 1.6 MILLION?
16 A. RIGHT.
17 Q. SO YOU SAW AN INCREASE OF OVER \$700,000?
18 A. YES, MA'AM. OR THERE AROUND.
19 Q. APPROXIMATELY \$700,000.
20 SO IS IT CORRECT, THEN, THAT AFTER THE TIME THAT
21 WALDEN MOVED INTO JACKSON, LEMURIA WAS BOTH ABLE TO DOUBLE ITS
22 RETAIL SPACE AND THEN SEE THAT \$700,000 GROWTH IN ITS NET SALES?
23 IS THAT CORRECT?
24 A. DURING THIS TIME PERIOD, I WAS ABLE TO SEE THESE -- THESE
25 SALES.
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1 Q. OKAY. SO DURING THIS TIME PERIOD BETWEEN 1989 AND 1993 WHEN
2 YOU WERE COMPETING WITH AT LEAST ONE WALDENBOOKS, YOU WERE ABLE
3 TO BOTH GROW YOUR BUSINESS, DOUBLING THE RETAIL SPACE AND
4 BRINGING A \$700,000 GAIN IN THE TIME PERIOD; IS THAT CORRECT?
5 A. DURING THIS TIME PERIOD, THAT'S WHAT I WAS ABLE TO DO AS FAR
6 AS MY SALES AND SPACE GROWTH.
7 MS. SWEENEY: THANK YOU, SIR. THAT'S ALL I HAVE.
8 THE COURT: REDIRECT.
9 REDIRECT EXAMINATION
10 MS. KESTENBAUM: THANK YOU, YOUR HONOR.
11 Q. MR. EVANS, JUST A FEW FOLLOW-UP QUESTIONS. YOU TESTIFIED IN
12 RESPONSE TO QUESTIONS FROM BARNES & NOBLE'S COUNSEL THAT YOU
13 HAD -- YOU PREVIOUSLY USED TO BUY FROM THE PUBLISHER HOLT,
14 RINEHART & WINSTON ON A NON-RETURNABLE BASIS; IS THAT RIGHT?
15 A. YES, MA'AM.
16 Q. OKAY. AND YOU DO NOT -- YOU PURCHASED THAT LINE OR HENRY
17 HOLT BOOKS TODAY ON A RETURNABLE BASIS; IS THAT RIGHT?
18 A. YES, I DO NOW.
19 Q. OKAY. WHEN YOU PURCHASED THEM ON A NON-RETURNABLE BASIS,
20 DID YOU PURCHASE ALL OF THOSE BOOKS, HOLT BOOKS, ON A
21 NON-RETURNABLE BASIS AS OPPOSED TO A COMBINATION OF RETURNABLE
22 AND NON-RETURNABLE?
23 A. I WOULD SAY ALL RETURNABLE.
24 Q. AND WAS THAT CONSISTENT WITH HOLT, RINEHART & WINSTON'S

1 A. IT WOULD -- I WOULD SAY IT'S WHAT WAS PUBLISHED IN THE
2 REDBOOK, AND SO IT WOULD BE CONSISTENT.
3 Q. YOU WERE ALSO ASKED ABOUT THE PROCESS THAT OCCURS WHEN
4 THERE'S SOME KIND OF A DISPUTE OR A DISCREPANCY BETWEEN WHAT YOU
5 BELIEVE YOU -- YOU OWE A PUBLISHER AND WHAT AN INVOICE SHOWS AND
6 HOW YOU DEAL WITH THAT.
7 NOW, HAVE YOU EVER -- DO YOU EVER TAKE A DEDUCTION
8 OFF AN INVOICE, IN OTHER WORDS, IN WRITING YOUR CHECKS TO THE
9 PUBLISHERS, HAVE YOU EVER TAKEN A DEDUCTION OFF THE INVOICE
10 WITHOUT FIRST SEEKING APPROVAL FROM THE PUBLISHER TO DO THAT?
11 A. NO.
12 Q. THERE WAS ALSO SOME QUESTIONING ABOUT YOUR TERMS WITH INGRAM
13 AND, IN PARTICULAR, TWO PROGRAMS SCHEDULED DELIVERY AND SUMMARY
14 BILLING. I JUST WANT TO CONFIRM, HAS INGRAM EVER ADVISED YOU OF
15 THE EXISTENCE OF A PROGRAM CALLED SCHEDULED DELIVERY?
16 A. IT'S NEVER BEEN EXPLAINED TO ME. BY "ADVISING," I WOULD SAY
17 I HAVE TO UNDERSTAND IT. I MAY HAVE HEARD THE TERM, BUT I DON'T
18 UNDERSTAND IT.
19 Q. WELL, DO YOU HAVE ANY RECOLLECTION OF INGRAM EVER MENTIONING
20 TO YOU THE EXISTENCE OF A PROGRAM CALLED SUMMARY BILLING?
21 A. NO.
22 Q. YOU ALSO MENTIONED THAT THERE'S A -- A BORDERS THAT'S
23 SCHEDULED OR THAT'S GOING TO BE COMING TO THE JACKSON AREA; IS
24 THAT RIGHT?
25 A. YES. THEY'VE ANNOUNCED IT, AND I THINK THEY'VE GROUND
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1 BROKEN IT.
2 Q. OKAY. WHAT'S YOUR UNDERSTANDING?
3 A. I'M NOT SURE OF THE GROUND BREAKING. THEY'VE ANNOUNCED THAT
4 THEY'VE GROUND-BROKEN THE SHOPPING CENTER, SHOPPING AREA.
5 Q. AND DO YOU -- DO YOU HAVE AN UNDERSTANDING OF WHERE THAT NEW
6 BORDERS WILL BE LOCATED?
7 A. YES, MA'AM.
8 Q. AND CAN YOU GIVE THE COURT AN IDEA OF APPROXIMATELY WHERE
9 THAT WILL BE IN RELATION TO YOUR STORE?
10 A. I CAN APPROXIMATELY DO IT. WITHOUT A MAP, I'D SAY 10 TO 15
11 MINUTES.
12 Q. OKAY. AND, AGAIN, THAT'S DRIVING TIME?
13 A. YES, MA'AM.
14 Q. NOW, IN TALKING ABOUT YOUR -- THE -- YOUR FINANCIALS ON A
15 YEAR-TO-YEAR BASIS IN TERMS OF HOW YOUR SALES OR GROSS SALES
16 CHANGED FROM YEAR TO YEAR, AND FOR THIS, I'D ACTUALLY LIKE TO
17 DIRECT IF I COULD, THE WITNESS AND THE COURT BACK TO PLAINTIFF'S
18 EXHIBIT 2614, WHICH IS THE LIST OF FISCAL YEARS AND FISCAL YEAR
19 SALES FOR LEMURIA.
20 AGAIN, IF YOU COULD PLEASE TELL THE COURT WHEN -- HOW
21 DOES YOUR FISCAL YEAR RUN IN TERMS OF WHEN DOES IT START AND
22 WHEN DOES IT END?
23 A. IT BEGINS THE 1ST DAY OF SEPTEMBER THE YEAR AND THEN ENDS
24 THE NEXT YEAR'S LAST DAY OF AUGUST.
25 Q. OKAY. SO FOR -- SINCE BARNES & NOBLE OPENED, YOU'VE
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1 TESTIFIED, IN APRIL OF 1997, THEN THAT OPENING FELL WITHIN THE
2 FISCAL YEAR THAT ENDED ON AUGUST 31ST, 1997; IS THAT RIGHT?
3 A. YES, IT IS.
4 Q. OKAY. NOW, PRIOR TO BARNES & NOBLE OPENING, IN OTHER WORDS,
5 FOR THE -- FROM SEPTEMBER THROUGH MARCH -- SEPTEMBER '96 THROUGH
6 MARCH OF 1997, CAN YOU -- CAN YOU EXPLAIN GENERALLY WHAT WAS
7 GOING ON WITH YOUR -- WITH YOUR SALES AT THAT TIME?
8 A. BEGINNING AT -- IF I REMEMBER CORRECTLY, BEGINNING IN
9 OCTOBER OF THAT YEAR, MY BUSINESS STARTED SHOWING SUBSTANTIAL
10 INCREASE OF WHICH IT WAS DOING FOR THE NEXT SIX MONTHS.
11 MY INCREASES RUNNING FROM SEPTEMBER TO THE END OF
12 MARCH -- SEPTEMBER '96 TO THE END OF MARCH OF '97 WERE
13 APPROXIMATELY \$160,000 IN SALES INCREASES.
14 Q. OKAY. AND SO THE SALES FIGURES FOR THE FISCAL YEAR ENDING
15 IN AUGUST OF 1997, THOSE DO NOT INCLUDE -- OR -- OR THOSE --
16 THOSE DO NOT INCLUDE, FOR INSTANCE, A CHRISTMAS -- A HOLIDAY

17 SEASON IN WHICH YOU WERE COMPETING WITH BARNES & NOBLE.
18 IN OTHER WORDS, DECEMBER OF '96, YOU WERE NOT
19 COMPETING WITH POSSIBLY YET?
20 A. NOVEMBER AND DECEMBER SEASON IN 1996, I WAS NOT COMPETING
21 WITH BARNES & NOBLE.
22 Q. OKAY. NOW, ON THIS EXHIBIT 2614, THE FIRST FISCAL YEAR --
23 OR THE FIRST FULL FISCAL YEAR IN WHICH THROUGHOUT THE YEAR, YOU
24 WERE COMPETING WITH BARNES & NOBLE, THAT WOULD BE THE FISCAL
25 YEAR ENDING IN AUGUST 31ST, 1998; IS THAT CORRECT?

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1 A. THAT IS CORRECT.
2 Q. OKAY. AND HOW WERE YOUR -- HOW WERE YOUR GROSS SALES
3 AFFECTED FOR THAT FISCAL YEAR?
4 A. I THINK THAT THEY WERE DOWN ABOUT APPROXIMATELY \$160,000.
5 Q. OKAY. NOW, YOU'VE ALSO MENTIONED -- THERE'S BEEN SOME
6 DISCUSSION OF YOUR FIRST EDITIONS BUSINESS?
7 A. YES, MA'AM.
8 Q. AND THAT'S -- THAT'S AN AREA OF YOUR BUSINESS THAT YOU'VE
9 BEEN WORKING TO EXPAND; IS THAT CORRECT?
10 A. YES, IT IS. IN FACT, I THINK A LOT OF THIS GROWTH COULD
11 HAVE BEEN DETERMINED OR ENFORCED BY MY GROWTH IN FIRST EDITIONS
12 BUSINESS. I HAVE BEEN VERY ACTIVE IN TRYING TO INCORPORATE
13 THAT PARTICULAR INVENTORY AND INVENTORY SALES INTO MY RETAIL
14 BUSINESS.
15 Q. OKAY. AND THE MARKUP THAT YOU TYPICALLY RECEIVE ON FIRST
16 EDITIONS, HOW DOES THAT COMPARE TO THE MARKUP OR MARGIN THAT YOU
17 TYPICALLY RECEIVE IN SELLING, YOU KNOW, NEW BOOKS?
18 A. GENERALLY IT'S MUCH BETTER.
19 MS. KESTENBAUM: THANK YOU.
20 THANK YOU, YOUR HONOR. I HAVE NO FURTHER QUESTIONS.
21 THE COURT: OKAY. RECROSS?
22 MR. GARCIA: NO FURTHER QUESTIONS, YOUR HONOR.
23 THE COURT: MISS SWEENEY?
24 MS. SWEENEY: NO, YOUR HONOR.
25 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

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1 THE WITNESS: THANK YOU.
2 THE COURT: CALL YOUR NEXT WITNESS.
3 MR. DE BRUIN: YOUR HONOR, THE PLAINTIFFS CALL
4 DR. GARY FRAZIER.
5 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.
6 GARY L. FRAZIER,
7 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,
8 TESTIFIED AS FOLLOWS:
9 THE CLERK: THANK YOU. PLEASE BE SEATED.
10 PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME
11 FOR THE RECORD.
12 THE WITNESS: GARY L. FRAZIER, F-R-A-Z-I-E-R.
13 MR. DE BRUIN: YOUR HONOR, IF I MAY, I'LL HAND UP TO
14 THE COURT A BINDER FOR DR. FRAZIER'S EXHIBITS.
15 THE COURT: THANK YOU.
16 MR. NELSON: MAY I INQUIRE, YOUR HONOR? I SEE THAT
17 THE BINDER I HAVE FOR GARY FRAZIER IS BINDER 1 OF 2.
18 MR. DE BRUIN: YOUR HONOR, WHAT I HAVE DONE FOR THE
19 COURT'S CONVENIENCE -- I DON'T THINK WE'RE GOING TO FINISH
20 DR. FRAZIER TODAY. I'M HAPPY TO GIVE THE SECOND VOLUME, BUT FOR
21 THE COURT'S CONVENIENCE, I ONLY PUT IN THE SMALL VOLUME WE'RE
22 GOING TO USE TODAY SO YOU DON'T HAVE QUITE SO MANY EXHIBITS TO
23 FIGHT WITH.
24 MR. NELSON: FINE BY ME, YOUR HONOR.
25 MR. DE BRUIN: BEFORE THIS TRIAL'S OVER, YOUR HONOR,

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1 WE WILL PERFECT ABSOLUTELY THE EASIEST WAY TO PRESENT THESE TO
2 YOU.
3 THE COURT: THE BATTLE OF THE BINDERS.
4 MR. DE BRUIN: WE'RE WORKING ON IT.
5 DIRECT EXAMINATION
6 BY MR. DE BRUIN:
7 Q. GOOD MORNING, DR. FRAZIER.
8 A. MORNING.

9 MR. DE BRUIN: YOUR HONOR, I KNOW YOU ALSO DO NOT
10 WANT LENGTHY QUALIFYING TESTIMONY, HOWEVER, I BELIEVE THAT A
11 BRIEF EXAMINATION INTO DR. FRAZIER'S BACKGROUND WILL HELP
12 SUPPORT THE WEIGHT OF HIS TESTIMONY AND WILL BE USEFUL TO THE
13 COURT.
14 THE COURT: WELL, BEAR IN MIND I'VE HAD THE PRIVILEGE
15 OF HAVING HIS BACKGROUND -- HIS REPORT, AND -- WHICH IS RATHER
16 COMPLETE. SO BEYOND HIS DEGREES AND MAYBE A COUPLE
17 PUBLICATIONS, I'D LIKE TO GET INTO THE --
18 MR. DE BRUIN: I'LL TRY TO PROCEED.
19 THE COURT: -- GUTS OF HIS TESTIMONY.
20 MR. DE BRUIN: I'LL TRY TO PROCEED AS QUICKLY AS I
21 CAN.
22 Q. GOING DIRECTLY TO YOUR GRADUATE DEGREE, SIR, CAN YOU PLEASE
23 IDENTIFY THE GRADUATE DEGREES THAT YOU'VE OBTAINED.
24 A. AN MBA DEGREE FROM INDIANA UNIVERSITY IN BLOOMINGTON,
25 INDIANA, IN 1977, AND A DOCTORAL DEGREE -- A DBA FROM INDIANA

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1 UNIVERSITY IN 1979.
2 Q. AND WHAT WAS YOUR DOCTORATE OBTAINED IN?
3 A. IN MARKETING WITH AN EMPHASIS ON PHYSICAL DISTRIBUTION.
4 Q. WHAT DID YOU DO AFTER YOU FINISHED YOUR DOCTORATE, SIR?
5 A. I WILL TOOK MY FIRST FACULTY POSITION AT THE UNIVERSITY OF
6 ILLINOIS IN CHAMPAIGN URBANA.
7 Q. WHAT IS YOUR CURRENT POSITION?
8 A. I'M THE RICHARD AND JARDA HURD PROFESSOR OF DISTRIBUTION
9 MANAGEMENT IN THE MARSHALL SCHOOL OF BUSINESS AT THE UNIVERSITY
10 OF SOUTHERN CALIFORNIA IN LOS ANGELES.
11 Q. CAN YOU EXPLAIN FOR THE COURT EXACTLY WHAT IS DISTRIBUTION
12 MANAGEMENT.
13 A. SURE. DISTRIBUTION MANAGEMENT ENTAILS HOW COMPANIES
14 ORGANIZE AND MANAGE RELATIONSHIPS WITH INTERMEDIARIES WHICH
15 INVOLVES HOW MANUFACTURERS, WHOLESALERS, RETAILERS BASICALLY
16 INTERACT AND WORK TOGETHER.
17 IT INVOLVES DECISIONS IN TERMS OF TRADE. IT INVOLVES
18 DEVELOPMENT OF MARKETING PROGRAMS. IT INVOLVES EFFORTS TO
19 EFFECTIVELY MANAGE WAREHOUSES AND PROCESS ORDERS AND CONTROL
20 COSTS SO AS TO EFFECTIVELY GET ORDERS AND PRODUCT WHERE THAT
21 PRODUCT IS NEEDED.
22 Q. HOW LONG HAVE YOU BEEN TEACHING IN THE FIELD OF DISTRIBUTION
23 MANAGEMENT?
24 A. AT LEAST 20 YEARS.
25 Q. HAVE YOU ALSO WRITTEN IN THE FIELD?

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1 A. YES. QUITE A LOT.
2 Q. VERY BRIEFLY, CAN YOU IDENTIFY THE TYPES OF RESEARCH AND
3 WRITING YOU'VE DONE.
4 A. I FOCUS ON DISTRIBUTION ISSUES PRIMARILY IN TERMS OF HOW IT
5 RELATES TO GENERAL MARKETING STRATEGY. AND I -- I'VE BEEN NOTED
6 BY OTHERS AS BEING ONE OF THE TOP THREE CONTRIBUTORS OF ALL TIME
7 TO THE JOURNAL OF MARKETING, WHICH IS ONE OF OUR TOP JOURNALS
8 INITIATED IN THE 1930S.
9 Q. NOW, IN ADDITION TO YOUR WRITING, HAVE YOU DONE SPECIFIC
10 RESEARCH IN THE FIELD OF DISTRIBUTION MANAGEMENT?
11 A. YES, I HAVE.
12 Q. CAN YOU DESCRIBE WHAT THAT RESEARCH HAS EXPOSED YOU TO.
13 A. ONE OF THE ISSUES I'VE LOOKED AT QUITE EXTENSIVELY IS HOW A
14 FIRM'S POWER OR CLOUT INFLUENCES HOW OTHERS DEAL WITH IT.
15 I'VE EXAMINED HOW POWER IS USED BETWEEN FIRMS IN
16 CHANNELS OF DISTRIBUTION. I'VE EXAMINED ORDER FULFILLMENT
17 SYSTEMS, IN PARTICULAR HOW JUST-IN-TIME EXCHANGE RELATIONSHIPS
18 WORK BETWEEN CHANNEL MEMBERS IN TERMS OF PROCESSING ORDERS AND
19 DELIVERY OF GOODS.
20 I'VE LOOKED AT HOW CHANNELS ARE ORGANIZED AND
21 STRUCTURED. ACTUALLY A RATHER BROAD RANGE OF ISSUES.
22 Q. NOW, IN CONNECTION WITH YOUR RESEARCH, HAVE YOU HAD THE
23 OCCASION TO ACTUALLY VISIT WAREHOUSES AND WORK WITH WAREHOUSES?
24 A. WHAT I LIKE TO DO IS -- I SIT BACK AND READ THE LITERATURE
25 AND TRY TO UNDERSTAND THE PROBLEM I'M CONFRONTING AND COME UP

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1 WITH SOME ORIGINAL IDEAS. BUT THEN I ALSO GO TO CONTACTS THAT I
2 HAVE, BUSINESS PEOPLE, DISTRIBUTORS IN PARTICULAR AND TALK TO
3 THEM. IN THAT PROCESS I'VE BEEN OVER 20 WAREHOUSES JUST TRYING
4 TO UNDERSTAND HOW THEY WORK AND HOW IT WOULD AFFECT MY RESEARCH
5 STUDIES.

6 Q. APART FROM YOUR TEACHING AND RESEARCH, DO YOU HAVE ANY
7 DIRECT EMPLOYMENT OR CONSULTING EXPERIENCE IN WAREHOUSING OR
8 DISTRIBUTION?

9 A. IN PUTTING MYSELF THROUGH UNDERGRADUATE SCHOOL, I WORKED FOR
10 ABOUT A YEAR IN A WAREHOUSE WHERE I ACTUALLY WOULD RECEIVE
11 PRODUCT FROM THE PRODUCTION LINE PACKAGED. I WOULD PUT IT AWAY
12 IN THE WAREHOUSE.

13 I WOULD GET ORDERS FROM CUSTOMERS, WHOLESALERS OR
14 CONTRACTOR CUSTOMERS, AND I'D FILL THE ORDERS AND GO THROUGH THE
15 WAREHOUSE AND CHECK THE APPROPRIATE PRODUCT OR STOCK-KEEPING
16 UNIT PER CUSTOMER ORDER. BOX THEM, STAPLE BOXES, PUT PRODUCT
17 IN, PUT SOME STYROFOAM IN, SO THAT JOB ENTAILED THE ISSUES
18 REALLY WE'RE DISCUSSING IN THIS CASE IN PART.

19 I ALSO RUN A PROGRAM IN DISTRIBUTION MANAGEMENT AT
20 THE UNIVERSITY OF SOUTHERN CALIFORNIA SINCE APPROXIMATELY 1991
21 THAT IS SUPPORTED BY A GROUP OF DISTRIBUTORS WITH OVER
22 20 BILLION IN SALES, AND I'VE BEEN IN MOST OF THEIR WAREHOUSES
23 IN TERMS OF HELPING UNDERSTAND HOW THAT'S DONE SO I CAN TEACH
24 THE STUDENTS EFFECTIVELY IN THE CLASSROOM.

25 I ALSO HAVE HAD THE OPPORTUNITY TO CONSULT FOR AND

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1 ALSO PROVIDE EXPERT WITNESS TESTIMONY FOR A NUMBER OF COMPANIES
2 STARTING WITH GENERAL MOTORS IN 1977 THROUGH THE CURRENT TIME
3 WHERE COCA COLA, FOR EXAMPLE, HAS USED ME IN HELPING DESIGN THE
4 CHANNELS CHINA AND THROUGH THE COURSE OF THOSE ACTIVITIES, I'VE
5 BEEN IN AT LEAST 20 WAREHOUSES AS IT PERTAINS TO MY ASSIGNMENTS.

6 (CONTINUED NEXT PAGE; NOTHING OMITTED.)

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1 BY MR. DEBRUIN:

2 Q. CAN YOU DESCRIBE, IN PARTICULAR, THE CONSULTING WORK YOU'VE
3 DONE WITH HONEYWELL?

4 A. I WAS THE HEAD OF HONEYWELL'S DISTRIBUTOR CONSULT FOR ITS
5 PERFECT CLIMATE DIVISION FOR A COUPLE OF -- FOR TWO, THREE
6 YEARS IN THE MID-90'S.

7 ONE OF THE ISSUES THE DISTRIBUTORS BROUGHT BEFORE
8 HONEYWELL IS THAT THEY WERE NOT SATISFIED WITH THE SERVICE
9 LEVELS AND ORDER FILL RATES THAT HONEYWELL WAS PROVIDING THEM.
10 SO HONEYWELL UNDERTOOK A PROJECT TO ASCERTAIN THEIR COSTS OF
11 INVENTORYING PRODUCTS, OF RECEIVING PRODUCT INTO THE WAREHOUSE,
12 OF PICK-AND-PACK, COSTS ASSOCIATED WITH THEIR OPERATION; AND
13 THEY USED ME AS A GENERAL CONSULTANT TO SORT OF LOOK AT THEIR
14 RESULTS AND TRY TO ADVISE THEM IN TERMS OF HOW THEY COULD
15 ACTUALLY IMPROVE THEIR PERFORMANCE IN FILLING ORDERS TO THEIR
16 DISTRIBUTOR CUSTOMERS.

17 THE COURT: ALL RIGHT, I THINK THE WITNESS IS WELL
18 QUALIFIED TO DISCUSS THE AREA OF HIS EXPERTISE, AS IT BEARS ON
19 THE ISSUES IN THIS CASE. SO LET'S GET TO THAT.

20 MR. DEBRUIN: I WAS RIGHT THERE. IN VIEW OF THAT
21 FINDING, I TENDER HIM AS AN EXPERT THAT THE FIELD OF
22 DISTRIBUTION MANAGEMENT, FOR THE RECORD.
23 THE COURT: YES.
24 BY MR. DEBRUIN:
25 Q. DR. FRAZIER, YOU JUST USED A PHRASE THAT I THINK WE'LL USE

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1 FREQUENTLY DURING YOUR TESTIMONY, AND THAT WAS PICK-PACK.
2 A. RIGHT.
3 Q. CAN YOU PLEASE IDENTIFY FOR THE COURT EXACTLY WHAT YOU MEAN
4 BY "PICK-PACK"?
5 A. WHEN YOU HAVE A PURCHASE ORDER FROM A CUSTOMER THAT
6 INVOLVES ONE BOOK HERE AND ONE BOOK THERE, DIFFERENT TITLES,
7 YOU ACTUALLY HAVE TO HAVE A WAREHOUSE WORKER OPEN UP A BOX OF
8 STEPHEN KING, AND OPEN UP A BOX OF FRANK HERBERT, AND PICK FROM
9 EACH CARTON A BOOK OR TWO. YOU HAVE TO HAVE THEM TAKE A
10 CARDBOARD BOX, OPEN IT UP, HOLD IT TOGETHER, STAPLE THE BOTTOM,
11 TURN IT OVER, AND ACTUALLY THEN START PUTTING THESE ONESIES OR
12 TWOSIES INTO EACH BOX; SOMETIMES AN EXPENSIVE BOOK, WRAPPING
13 THEM PERHAPS TO MAKE SURE THEY AREN'T DAMAGED IN TRANSIT, AND
14 YOU OFTENTIMES WILL PUT WHAT IS CALLED DUNNAGE OR STYROFOAM
15 PARTICLES IN THERE, AGAIN, TO PROTECT THE BOOKS AND CUSHION IT,
16 AND THEN YOU HAVE TO FOLD THE FLAPS OVER, AND STAPLE CLOSE THE
17 CARTON. THAT BASIC PROCESS INVOLVES WHAT IS KNOWN AS
18 "PICK-AND-PACK."
19 Q. ALL RIGHT. NOW, DR. FRAZIER, YOU OBVIOUSLY WERE RETAINED
20 AS AN EXPERT BY PLAINTIFFS IN THIS CASE. WHAT WERE YOU ASKED
21 TO CONSIDER?
22 A. I WAS ASKED TO CONSIDER SEVEN ISSUES.
23 Q. CAN YOU BRIEFLY IDENTIFY THEM?
24 A. THE FIRST ISSUE IS WHETHER THE RDC DISCOUNTS PROVIDED
25 DEFENDANTS BY PUBLISHERS ARE COST-JUSTIFIED IN TERMS OF

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1 REPRESENTING ACTUAL PUBLISHER COST SAVINGS BY SERVING THE
2 DEFENDANTS THROUGH THE RETAIL DISTRIBUTION CENTERS. THAT'S
3 NUMBER ONE.
4 Q. OKAY, AND WERE THERE ANY FURTHER QUESTIONS RELATED TO THE
5 RDC DISCOUNTS?
6 A. WELL, THE SECOND ONE IS RELATED TO IT, AND THAT IS, WHAT
7 SHOULD DEFENDANTS' TOP MANAGEMENT -- WHAT SHOULD THEY HAVE
8 KNOWN REGARDING HOW THE RDC DISCOUNTS AND THEIR LEVEL COMPARED
9 TO ACTUAL PUBLISHER COST SAVINGS AND SERVING THEM THROUGH THE
10 RDC'S.
11 Q. OKAY, SO THOSE TWO QUESTIONS RELATED TO THE RDC DISCOUNT.
12 WERE THERE ANY OTHER PARTS OF THE CASE THAT YOU ALSO CONSIDERED
13 AS PART OF YOUR EXPERT WORK?
14 A. THE THIRD ISSUE IS WHETHER OR NOT THE RETURN CENTER
15 DISCOUNTS THAT THE BORDERS ORGANIZATION HAS RECEIVED IS -- HOW
16 THAT COMPARES TO ACTUAL PUBLISHER COST SAVINGS IN HAVING BOOKS
17 RETURNED THROUGH THE RETURN CENTER RATHER THAN FROM INDIVIDUAL
18 STORES.
19 Q. AND WAS THERE A SECOND RELATED QUESTION RELATING TO THE
20 BORDERS RETURNS CENTER?
21 A. NUMBER FOUR, WHAT SHOULD BORDERS' TOP MANAGEMENT -- WHAT
22 SHOULD THEY HAVE KNOWN REGARDING THE COMPARISON OF THE RETURN
23 CENTER DISCOUNT AND ACTUAL PUBLISHER COST SAVINGS.
24 Q. ALL RIGHT. WAS THERE A THIRD MAJOR AREA OF YOUR WORK?
25 A. REPRESENTED BY THE FIFTH ISSUE, WHICH IS, ARE THE DISCOUNTS

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1 PROVIDED THE DEFENDANTS BY INGRAM ACTUALLY JUSTIFIED BASED ON
2 INGRAM COST SAVINGS AND SERVING THE DEFENDANTS.
3 Q. AND AGAIN, WAS THERE A QUESTION RELATED TO THE INGRAM
4 DISCOUNTS THAT ARE PROVIDED TO DEFENDANTS?
5 A. ISSUE NUMBER SIX, WHAT SHOULD TOP MANAGEMENT IN DEFENDANTS'
6 ORGANIZATIONS -- WHAT SHOULD THEY HAVE KNOWN REGARDING WHETHER
7 THE VARIOUS DISCOUNTS PROVIDED TO THEM WERE REPRESENTED BY
8 ACTUAL INGRAM COST SAVINGS AND SERVING THEM.
9 Q. SO THOSE WERE THE THREE MAJOR AREAS YOU ARE LOOKED AT, RDC
10 DISCOUNTS, RETURN CENTER AND INGRAM. IS THERE A FINAL ISSUE
11 THAT YOU WERE ASKED TO CONSIDER IN THIS CASE?

12 A. THE SEVENTH ISSUE IS, WHAT IMPACT DOES THE FIRM POWER OF
13 THE DEFENDANTS' ORGANIZATIONS HAVE ON PUBLISHER DECISION-MAKING
14 ACTIONS, BEHAVIORS.

15 Q. ALL RIGHT. BEFORE I TURN TO YOUR SPECIFIC OPINIONS IN
16 THESE AREAS AND THE BASES FOR THOSE OPINIONS, WHAT MATERIALS
17 DID YOU EXAMINE IN CONNECTION WITH YOUR WORK IN THIS CASE?

18 A. ONCE I UNDERSTOOD THE ISSUES THAT I WAS TO DEVELOP OPINIONS
19 ON, I ASKED TO RECEIVE ANY DEPOSITION OR ANY DOCUMENT RELATED
20 TO THE CASE THAT RELATED TO THOSE PARTICULAR ISSUES.

21 Q. NOW TURNING FIRST TO DEPOSITIONS, DID YOU, IN FACT, RECEIVE
22 AND EXAMINE DEPOSITION TESTIMONY IN CONNECTION WITH THIS CASE?

23 A. QUITE A FEW, OVER 30 DEPOSITIONS.

24 Q. HOW ABOUT DOCUMENTS? DID YOU, IN FACT, RECEIVE AND EXAMINE
25 DOCUMENTS IN CONNECTION WITH THIS CASE?

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1 A. BOXES FULL OF DOCUMENTS, MANY DOCUMENTS.

2 Q. HOW WERE THOSE MATERIALS THAT YOU REVIEWED -- HOW WERE THEY
3 SELECTED?

4 A. WELL, FIRST, WHEN I -- WHEN THE DECISION WAS MADE FOR ME TO
5 BE AN EXPERT IN THE CASE, I JUST ASKED IN GENERAL FOR ANY
6 INFORMATION THAT APPLIED TO THE ISSUES IN MY ASSIGNMENT, AND
7 THEN, OVER TIME, AS I READ MATERIAL AND JUST WORKED THROUGH THE
8 MATERIALS, IF I FELT THAT I NEED SOME MORE INFORMATION ON
9 INGRAM, FOR EXAMPLE, I WOULD CALL BILL HOHENGARTEN, AND AS AN
10 EXAMPLE, AND ASK HIM FOR ADDITIONAL INFORMATION, OR YOU MIGHT
11 CALL PEOPLE -- I MIGHT CALL PEOPLE WHO I SUPERVISED ASSOCIATED
12 AT THE COMPANY, CALLED ECONOMIC ANALYSIS CORPORATION, TO ASSIST
13 ME WITH THAT, AS WELL.

14 AND SO I DID RECEIVE ADDITIONAL DOCUMENTS, BASED ON
15 THOSE INQUIRIES, BUT OFTENTIMES IT IS JUST A MATTER OF
16 DIRECTING MY ATTENTION TO PARTICULAR DEPOSITIONS OR DOCUMENTS
17 THAT RELATED TO THE ISSUES THAT I WANTED MORE INFORMATION ON.

18 Q. NOW, YOU'VE MENTIONED THAT YOU WORKED WITH OTHER PEOPLE IN
19 CONNECTION WITH YOUR WORK.

20 A. THAT'S CORRECT.

21 Q. AND BY THAT YOU MEAN PEOPLE OTHER THAN THE LAWYERS IN THE
22 CASE?

23 A. CORRECT.

24 Q. AND WHO WAS THAT?

25 A. AT ECONOMIC ANALYSIS CORPORATION, THE PRESIDENT OF THAT

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1 ORGANIZATION IS MIKE SMITH, AND THEN THEY HAVE SOME SENIOR
2 ANALYSTS, GLEN MITCHELL AND KAREN LOMBARD, WHO I ALSO WORKED
3 WITH. I DIRECTED THEIR ACTIVITIES.

4 Q. WHO RETAINED THE INDIVIDUALS AT ECONOMIC ANALYSIS?

5 A. I DID.

6 Q. AND WHO DID THOSE PERSONS WORK UNDER?

7 A. ME.

8 Q. WHAT FUNCTIONS SPECIFICALLY DID THEY PERFORM?

9 A. THERE'S A LOT OF INFORMATION HERE AND SOME RATHER TIGHT
10 DEADLINES FACED IN TERMS OF REPORTS. SO I HAD THEM, FOR
11 EXAMPLE, SUMMARIZE VARIOUS DEPOSITIONS FOR ME EARLY ON, AND I
12 WOULD READ THE SUMMARIES OF THE DEPOSITIONS. I DID MAINLY READ
13 WHAT I FELT WERE THE VITAL DEPOSITIONS COMPLETELY MYSELF, AND
14 OBVIOUSLY, ANYTHING THAT IS INCLUDED IN MY REPORTS I READ
15 MYSELF, BUT THEY DID HELP ME GO THROUGH AND LOOK THROUGH THE
16 DOCUMENTS AND THE INFORMATION, AND IN ASSISTING ME IN ARRIVING
17 AT MY REPORTS AND MY OPINION.

18 Q. DID YOU DO ANY RESEARCH ON YOUR OWN, IN ADDITION TO
19 REVIEWING THE DEPOSITIONS AND DOCUMENTS THAT YOU'VE DESCRIBED?

20 A. I DID TRY TO FIND A NUMBER OF INDUSTRY SOURCES, SOURCES ON
21 THE BOOK INDUSTRY, THAT WOULD GIVE ME A GENERAL BACKGROUND IN
22 THE INDUSTRY. THERE WAS A STUDY CALLED, "BOOK INDUSTRY
23 TRENDS." THERE'S A BOOK BY A MR. GRECO THAT I READ. THERE
24 WERE VARIOUS MARKET STUDIES RELATED TO GROWTH OF BOOKS -- BOOK
25 SALES OR LACK THEREOF, DURING THE MID-TO-LATE 90'S.

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1 SO I TRIED TO LOOK AT A NUMBER OF INDUSTRY SOURCES
2 RELATED TO THE INDUSTRY, HOW IT CONDUCTED ITS BUSINESS, THE
3 OPERATIONAL DETAILS, THE SALES GROWTH, THE PRICING LEVELS ON

4 BOOKS.
5 Q. NOW, DR. FRAZIER, DID YOU, IN FACT, SUBMIT EXPERT REPORTS
6 IN CONNECTION WITH THIS CASE?
7 A. I DID.
8 Q. AND HOW MANY REPORTS DID YOU SUBMIT?
9 A. TWO.
10 Q. SO AN OPENING AND A REBUTTAL REPORT?
11 A. THAT'S CORRECT.
12 Q. SINCE THE TIME THAT YOU PREPARED AND SUBMITTED THOSE
13 REPORTS, HAVE YOU DONE ANY ADDITIONAL WORK IN THIS CASE?
14 A. I'VE READ THE CHANDLER DEPOSITION, THE HEAD OF INGRAM,
15 WHOSE DEPOSITION WAS TAKEN RATHER RECENTLY; AND I DID GO OVER
16 MY EXPERT REPORTS AND THE MATERIAL REFERENCED IN THEM IN MAKING
17 SURE I WAS AWARE OF THE ISSUES SINCE MY DEPOSITION.
18 MR. DEBRUIN: ALL RIGHT. YOUR HONOR, I'M NOT SURE
19 IF IT WILL COME UP TODAY, BUT I JUST WANT TO CLARIFY FROM YOUR
20 HONOR'S PREVIOUS RULING THAT ANY TESTIMONY BY DR. FRAZIER
21 RELATING TO THE INGRAM ISSUES OR MR. CHANDLER'S DEPOSITION IS
22 SOMETHING THAT HE CAN DISCUSS IN CONNECTION WITH THIS CASE,
23 DESPITE ANY PROTECTIVE ORDERS THAT HAVE BEEN ENTERED FROM THE
24 COURT IN TENNESSEE.
25 THE COURT: WHAT DO YOU WANT THE COURT TO DO?

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1 MR. DEBRUIN: THIS CAME UP, YOUR HONOR, PREVIOUSLY,
2 AND MAYBE IT WASN'T CLEAR TO THE COURT --
3 THE COURT: ABOUT THE PROTECTIVE ORDER?
4 MR. DEBRUIN: YES. I JUST WANT TO BE CLEAR THAT WE
5 CAN PROCEED.
6 THE COURT: AS FAR AS I'M CONCERNED, YOU CAN. PUT
7 ON THE BEST CASE YOU CAN. THAT'S YOUR JOB.
8 MR. DEBRUIN: I UNDERSTAND. JUST, I WANT TO BE
9 CLEAR, YOUR HONOR, ON THIS, JUST SO YOU UNDERSTAND WHAT WE'RE
10 ASKING. BECAUSE INGRAM IS A THIRD PARTY, WE HAD TO SUBPOENA
11 THEM OUT OF TENNESSEE --
12 THE COURT: I UNDERSTAND THE PROBLEM.
13 MR. DEBRUIN: -- AND THAT COURT ISSUED A PROTECTIVE
14 ORDER --
15 THE COURT: I UNDERSTAND THE PROBLEM.
16 MR. DEBRUIN: OKAY.
17 Q. DR. FRAZIER, LET ME MOVE DIRECTLY TO YOUR OPINION AS TO
18 WHETHER THE RETAIL DISTRIBUTION CENTER, OR RDC, DISCOUNTS THAT
19 THE DEFENDANTS RECEIVE ARE COST-JUSTIFIED.
20 BEFORE WE DISCUSS YOUR SPECIFIC OPINION, I THINK IT
21 MIGHT BE HELPFUL FOR YOU TO DESCRIBE BRIEFLY WHAT DISTRIBUTION
22 FACILITIES THE DEFENDANTS OPERATE THAT ARE AT ISSUE.
23 LET ME FOCUS FIRST ON THE BORDERS DEFENDANTS. CAN
24 YOU DESCRIBE THE DISTRIBUTION FACILITIES THAT ARE OPERATED BY
25 THE BORDERS DEFENDANTS?

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1 A. YES, AND WALDEN WAREHOUSE FACILITIES ARE DISTINCT AND
2 SOMEWHAT DIFFERENT THAN THE BORDERS FACILITIES.
3 Q. ALL RIGHT. SO JUST FOR THE RECORD, THE BORDERS GROUP HAS
4 TWO DIFFERENT DIVISIONS, ONE OF WHICH IS THE WALDENBOOKS
5 DIVISION AND THE OTHER IS THE BORDERS. WHY DON'T YOU DESCRIBE
6 FIRST THE WALDEN DISTRIBUTION FACILITIES, AS YOU UNDERSTAND
7 THEM.
8 A. WALDEN OPERATES AND RUNS TWO TRADITIONAL WAREHOUSE
9 OPERATIONS, ONE IN TENNESSEE, ONE IN CALIFORNIA, WHERE THE
10 WALDEN RDC'S WILL RECEIVE SHIPMENTS FROM PUBLISHERS, THEY WILL
11 RECEIVE THE BOOKS, PROCESS THEM AND PUT THEM INTO THE
12 WAREHOUSE, AND THEN OVER TIME THEY WILL MAKE DECISIONS ON WHEN
13 TO SEND WHAT BOOKS TO WHICH WALDEN BOOKSTORES THEMSELVES.
14 Q. SO DO I UNDERSTAND FROM YOUR TESTIMONY THAT ONE OF THE
15 FUNCTIONS THAT THE WALDEN DISTRIBUTION CENTERS PERFORM IS A
16 RECEIVING FUNCTION?
17 A. MOST DEFINITELY, YES.
18 Q. AND SECONDLY, YOU MENTIONED WAREHOUSE. IS THERE A
19 WAREHOUSING FUNCTION THAT IS PERFORMED BY THE WALDEN CENTERS?
20 A. RIGHT. IN MY DISTRIBUTION DISCIPLINE, A WAREHOUSING
21 FUNCTION MEANS THAT YOU ACTUALLY WILL TAKE OR RECEIVE PRODUCT
22 INTO THE WAREHOUSE AND PUT IT IN APPROPRIATE LOCATIONS FOR

23 FILLING ORDERS LATER.
24 Q. WHAT EFFECT, IF ANY, DOES WALDEN'S PERFORMANCE OF THE
25 RECEIVING FUNCTION AT ITS DISTRIBUTION CENTER HAVE ON THE
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1 WALDEN STORES?
2 A. IT ACTUALLY TAKES A LOT OF COSTS OUT OF THE WALDEN STORE
3 OPERATIONS. I BELIEVE THAT'S A KEY HERE, BECAUSE TO THE EXTENT
4 THAT YOU REDUCE THE NUMBER OF SHIPMENTS BEING SENT TO
5 INDIVIDUAL RETAIL STORES, YOU TAKE THE BURDEN OFF THE STORE
6 MANAGER IN HAVING TO OPEN ALL THE CARTONS AND PROCESS ALL THE
7 ORDERS AND RECONCILE THEM. IT MEANS YOU NEED LESS INVENTORY TO
8 STORE BOOKS AT THE RETAIL STORES, AND YOU CAN MAXIMIZE THE
9 SHELF SPACE ON BOOKS THAT YOU ACTUALLY ARE TRYING TO SELL TO
10 CUSTOMERS WALKING IN YOUR STORE.

11 SO ACTUALLY, THERE'S TREMENDOUS EFFICIENCIES
12 AFFORDED AT THE STORE LEVEL BY HAVING WALDEN DO ITS WORK AT ITS
13 RETAIL DISTRIBUTION CENTERS.

14 Q. I WANT TO FOCUS PRIMARILY ON FUNCTIONS. WHAT STEPS ARE
15 INVOLVED IN THE RECEIVING FUNCTION? WHEN A COMPANY RECEIVES
16 BOOKS, AS AN ISSUE IN THIS CASE, WHAT STEPS ARE INVOLVED IN
17 RECEIVING?

18 A. WELL, AT THE WALDEN RDC'S, THEY WILL HAVE A SHIPMENT COME
19 IN FROM SIMON & SCHUSTER, ON A SEMI TRUCK, MAYBE FULL
20 TRUCKLOAD. THE BOOKS NEED TO BE UNLOADED. LIKELY THEY'RE ON
21 PALLETS. YOU NEED TO BREAK UP THE PALLETS, AND MOST LIKELY
22 THROUGH SCANNERS, YOU CHECK TO ENSURE THAT WHAT'S ON THE
23 SHIPPING LIST OR THE PURCHASE ORDERS IS ACTUALLY DELIVERED TO
24 YOU.

25 YOU THEN HAVE TO HAVE WORKERS TAKE THE CARTONS OFF
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1 THE PALLET BY FORKLIFT OR BY WHATEVER MEANS, AND TAKE THEM INTO
2 THE PHYSICAL WAREHOUSE AND PUT THEM IN APPROPRIATE LOCATIONS
3 THAT, BY DESIGN, OKAY, WE'RE GOING TO PUT SIMON & SCHUSTER
4 FRONT LIST HERE, WE'RE GOING TO PUT BACK LIST THERE, WE'RE
5 GOING TO PUT STEPHEN KING HERE.

6 SO THAT IS BASICALLY WHAT'S INVOLVED IN TERMS OF THE
7 RECEIVING FUNCTION OF AN RDC.

8 Q. AND IS THAT THE STAGE AT WHICH THE BOOKS ARE ENTERED INTO
9 THE COMPANY'S INVENTORY?

10 A. CORRECT.

11 Q. AND SO AS THOSE FUNCTIONS ARE PERFORMED AT THEIR
12 DISTRIBUTION CENTER, WILL THERE BE THE SAME FUNCTIONS PERFORMED
13 AT THE STORE LEVEL?

14 A. IT SIMPLIFIES IT AT THE STORE LEVEL. THE VARIETY OF
15 FUNCTIONS THAT THE STORE MANAGER NEEDS TO UNDERTAKE AS A RESULT
16 OF ALL THESE STEPS AT THE WALDEN RDC -- IT'S LIKE A
17 TRANSFERRING OF WORK FROM THE STORE TO THE WALDEN RDC.

18 Q. AND DOES THE PERFORMANCE OF THE WAREHOUSING FUNCTION AT THE
19 DISTRIBUTION CENTER AFFECT THE AMOUNT OF STORAGE SPACE THAT IS
20 NEEDED AT THE STORE LEVEL?

21 A. MOST DEFINITELY. YOU NEED TO STORE LESS INVENTORY IN A
22 BOOK ROOM AT THE STORE LEVEL, AND YOU CAN MAXIMIZE THE SPACE
23 FOR ACTUALLY HAVING BOOKS ON DISPLAY FOR CONSUMERS TO PURCHASE.
24 Q. DID YOU BECOME FAMILIAR --

25 MR. NELSON: YOUR HONOR, I'D LIKE TO OBJECT AT THIS
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1 POINT. APPARENTLY THERE WAS A MOTION IN LIMINE THAT THE COURT
2 HAD GRANTED WHICH LIMITED THE EVIDENCE WITH REGARD TO BENEFITS
3 OF THE RDC'S AT THE STORE LEVEL. IT WAS RULED BY THIS COURT AS
4 BEING IRRELEVANT. I MOVE TO STRIKE THIS LINE OF QUESTIONING.

5 MR. DEBRUIN: YOUR HONOR, WHAT I'M TRYING TO ELICIT
6 IS INFORMATION RELATING TO THE COSTS, AND SIMPLY THE
7 TRANSFERENCE OF FUNCTION.

8 THE COURT: YOU KNOW WHICH NUMBER OF MY ORDER IT
9 WAS?

10 MR. NELSON: I DO NOT AT THIS POINT, YOUR HONOR.
11 SORRY. ACTUALLY, I BELIEVE IT WAS -- WAS IT NUMBER 7?

12 MR. RADER: NUMBER 7, YOUR HONOR, DEFENDANTS' MOTION
13 IN LIMINE NUMBER 7.

14 THE COURT: MY RULING NUMBER 7, IN THE ORDER WHICH

15 WAS FILED APRIL 5TH, READS,
16 "THE PLAINTIFFS' MOTION IN LIMINE TO BAR EVIDENCE
17 RELATING TO THE PLAINTIFFS' CREDIT TERMS IS GRANTED.
18 AS THE COURT HAS ALREADY GRANTED SUMMARY JUDGMENT
19 FOR THE DEFENDANTS ON THE ISSUE OF WHETHER THEY
20 RECEIVE DISCRIMINATORY CREDIT TERMS FROM EITHER
21 PARTY, THERE IS NO NEED FOR EITHER PARTY TO PRESENT
22 TESTIMONY ABOUT CREDIT TERMS."
23 THAT DOESN'T SEEM TO APPLY HERE.
24 MR. NELSON: YOUR HONOR, I BELIEVE I CALLED THE
25 COURT'S ATTENTION TO THE COURT'S ORDER AT PAGE 6.

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1 THE COURT: WHICH NUMBER?
2 MR. NELSON: MY UNDERSTANDING WAS, IT WAS IN MOTION
3 IN LIMINE NUMBER 7, BUT THAT'S THE COURT'S ORDER AT PAGE 6.
4 MR. PETROCELLI: IT'S DEFENDANTS'.
5 THE COURT: ON PAGE 6, MY ORDERS ARE 16 AND 17,
6 NEITHER OF WHICH APPLY HERE. MAYBE YOU CAN LOOK THAT UP AND
7 CALL IT TO MY ATTENTION AT THE NEXT RECESS. YOU MAY PROCEED.
8 BY MR. DEBRUIN:
9 Q. DR. FRAZIER, IN THE COURSE OF YOUR WORK, DID YOU LEARN WHAT
10 QUANTITIES OR TYPES OF SHIPMENTS WALDEN RECEIVES AT ITS RDC'S
11 OF BOOKS? HOW DID THEY TAKE BOOKS INTO THEIR RDC?
12 A. THE WALDEN RDC'S.
13 Q. THE WALDEN RDC'S.
14 A. WELL, THEY WILL GET SHIPMENTS DIRECT FROM PUBLISHERS, AND
15 THEY WILL, YOU KNOW, TAKE -- I THINK I'VE DESCRIBED --
16 Q. HOW ARE THE CARTONS PACKED FOR THE WALDEN RDC?
17 A. OH, I UNDERSTAND. THE WALDEN RDC'S ONLY ORDER IN CARTON
18 LOTS. SO IN PROCESSING ORDERS BY PUBLISHERS FOR WALDEN RDC'S,
19 THERE WOULD BE NO PICK-AND-PACK ASSOCIATED WITH RDC ORDERS.
20 THAT'S AN IMPORTANT POINT.
21 Q. AND JUST FOR THE RECORD, CAN YOU DEFINE WHAT YOU MEAN BY
22 CARTON LOTS?
23 A. RIGHT. IF WALDEN WOULD ORDER -- LET'S SAY IF THERE WERE 20
24 TITLES IN A CARTON. THEY MIGHT ORDER 60 TITLES, OR THREE
25 CARTONS. YOU'D NEVER -- THEY'D NEVER ORDER, ON A P.O., A SPLIT

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1 CARTON WHERE SOMEBODY WOULD HAVE -- AT THE PUBLISHER WAREHOUSE
2 WOULD HAVE TO OPEN UP A CARTON AND PUT PARTIALS INTO A BOX AND
3 THEN PUT OTHER BOOKS IN AND SEND IT TO A WALDEN RDC. A WALDEN
4 RDC GETS ALL CARTON LOT BOOKS.
5 Q. DR. FRAZIER, DO THE WALDEN STORES, THE ACTUAL RETAIL
6 STORES, RECEIVE ALL OF THEIR BOOKS THROUGH THE TWO DISTRIBUTION
7 CENTERS?
8 A. NO.
9 Q. HOW ELSE DO THEY RECEIVE BOOKS?
10 A. THE INDIVIDUAL WALDEN BOOKSTORES RECEIVE A CONSIDERABLE
11 NUMBER OF BOOKS DIRECTLY FROM PUBLISHERS, STILL, ON A DROP SHIP
12 BASIS. THEY ALSO RECEIVE BOOKS THROUGH WHOLESALERS, LIKE
13 INGRAM.
14 Q. AND DO THEY RECEIVE, THOSE STORES -- DO THOSE STORES
15 RECEIVE FROM INGRAM ALSO ON A DROP SHIP BASIS?
16 A. INGRAM DEALS WITH THEM ON A DROP SHIP BASIS, YES.
17 Q. SO DO I UNDERSTAND CORRECTLY THAT A GIVEN PUBLISHER WOULD
18 BOTH SHIP BOOKS TO THE WALDEN RDC BUT ALSO SHIP BOOKS TO
19 INDIVIDUAL WALDEN STORES?
20 A. YES, THAT HAPPENS REGULARLY.
21 Q. ALL RIGHT. LET ME SWITCH TO THE BORDERS DISTRIBUTION
22 FACILITIES. CAN YOU DESCRIBE FOR THE COURT THE DISTRIBUTION
23 FACILITIES THAT THE BORDERS PARENT, THE BORDERS GROUP, THE
24 BORDERS STORES THEMSELVES OPERATE?
25 A. IT'S MY UNDERSTANDING THAT BORDERS HAS FOUR FACILITIES,

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1 PRIMARILY DEDICATED TO BOOKS, AND THESE FACILITIES ARE NOT
2 TRADITIONAL WAREHOUSES, AS I'VE JUST DESCRIBED HOW WALDEN
3 CONDUCTS ITS BUSINESS.
4 THE BORDERS FACILITIES ARE CALLED FLOW-THROUGH
5 FACILITIES, WHERE A TRUCK FROM SIMON & SCHUSTER WOULD PULL IN
6 TO THE BORDERS FACILITY, ONE OF THE FOUR, IT WOULD BE UNLOADED,

7 AND PROCESSING WOULD BE DONE RIGHT THERE. YOU'D PUT A SPECIAL
8 BINC, B-I-N-C, I BELIEVE, STICKER ON IT, YOU'D -- THE WORKERS
9 AT THE FLOW-THROUGH FACILITIES WOULD START PROCESSING ORDERS
10 RIGHT THEN AND THERE FOR SHIPMENT ON OTHER TRUCKS TO THE
11 INDIVIDUAL BORDERS STORE.

12 AND VERY LITTLE OF THE BOOK -- OF THE BOOKS SENT TO
13 BORDERS FLOW-THROUGH FACILITIES ARE ACTUALLY RECEIVED AND PUT
14 INTO INVENTORY IN A PHYSICAL BUILDING. THAT IS NOT A MAIN PART
15 OF THE FLOW-THROUGH FACILITY THAT BORDERS OPERATES.

16 Q. NOW, IN YOUR ANSWER YOU REFERENCED CULLED A BINC, B-I-N-C,
17 STICKER. DO YOU KNOW WHAT THAT IS?

18 A. IT'S A STICKER THAT, FOR SALES AND INVENTORY CONTROL
19 PURPOSES AND PERHAPS OTHER PURPOSES, ARE PUT ON BOOKS IN THE
20 BORDERS OPERATION.

21 Q. SO IT'S NOT A PARTICULAR -- IS THAT A PARTICULAR BORDERS
22 FUNCTION OR IS THAT SOMETHING --

23 A. I THINK THAT -- OTHERS WILL PUT VARIOUS LABELS ON BOOKS,
24 BUT I THINK THE BORDERS BINC IS DIFFERENT IN SOME SENSE.

25 Q. ALL RIGHT. NOW, WHAT QUANTITIES OR TYPES OF SHIPMENTS DOES
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1 BORDERS RECEIVE AT ITS RDC'S?

2 A. BECAUSE THEY DO NOT ACTUALLY RECEIVE AND STORE A LOT OF
3 INVENTORY, THAT -- AND THE FACT OF HOW THEY OPERATE THE
4 FLOW-THROUGH FACILITIES THAT I JUST DESCRIBED, THEY WILL ORDER
5 QUITE A SIZEABLE NUMBER OF BOOKS IN NON-CARTON LOT QUANTITIES,
6 WHICH MEANS THAT, FOR EXAMPLE, ON A CERTAIN TITLE THEY MIGHT
7 HAVE AN ORDER FOR 23 BOOKS, AND IF THERE WERE 20 IN ONE CARTON,
8 THE WORKER WOULD PULL ONE CARTON DOWN. THERE'S NO
9 PICK-AND-PACK ASSOCIATED WITH THAT. BUT THE OTHER -- THE OTHER
10 THREE BOOKS, THEY'D HAVE TO STAPLE A BOX, THEY'D HAVE TO OPEN
11 UP ONE OF THE CARTONS, THEY'D HAVE TO TAKE THREE BOOKS OUT, PUT
12 IT IN THE CARTON, AND THEN START PUTTING SOME OTHER NON-CARTON
13 LOT ORDERS IN THAT CARTON, AS WELL.

14 SO THERE'S CONSIDERABLY MORE PICK-AND-PACK EXPENSE
15 THAT THE PUBLISHERS INCUR IN SERVING BORDERS THROUGH ITS FOUR
16 FLOW-THROUGH FACILITIES.

17 Q. I WAS GOING TO ASK YOU, WHEN YOU SAY A WORKER WOULD HAVE TO
18 PULL BOOKS, ARE YOU REFERRING TO A WORKER AT THE BORDERS
19 FACILITY OR AT THE PUBLISHER'S?

20 A. PUBLISHER'S FACILITIES, I'M SORRY.

21 Q. OKAY. NOW, IN ADDITION TO RECEIVING BOOKS THROUGH ITS
22 DISTRIBUTION FACILITIES, ARE THERE OTHER WAYS IN WHICH THE
23 BORDERS STORES RECEIVE BOOKS?

24 A. IT'S MY UNDERSTANDING THEY RECEIVE A VERY SMALL NUMBER OF
25 DROP SHIPMENTS FROM PUBLISHERS, AND THAT THEY DO RECEIVE BOOKS

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1 FROM WHOLESALEERS LIKE INGRAM, FOR EXAMPLE.

2 Q. AND THOSE ARE ALSO RECEIVED DIRECTLY TO THE STORES?

3 A. YES, DROP SHIP.

4 Q. ARE YOU FAMILIAR WITH ANY OTHER DISTRIBUTION FACILITIES
5 OPERATED BY THE BORDERS DEFENDANTS?

6 A. THEY HAVE WHAT IS CALLED A FULFILLMENT CENTER IN NEW
7 JERSEY.

8 Q. AND CAN YOU DESCRIBE WHAT THE BORDERS FULFILLMENT CENTER
9 IS?

10 A. THIS IS A FACILITY THAT CARRIES MANY, MANY TITLES OF BOOKS,
11 BUT VERY FEW OF EACH TITLE, TWOSIES, THREESIES, SOMETHING LIKE
12 THAT, AND IT'S A FACILITY USED TO GET INTERNET ORDERS TO
13 CUSTOMERS, BUT IMPORTANTLY, IT'S ALSO USED WHEN A CUSTOMER MAY
14 GO INTO A WALDEN BOOKSTORE AND THEY DON'T FIND THE WILLIE MAYS
15 BOOK THAT THEY WANTED, THEY CAN SPECIAL ORDER IT, AND THAT
16 ORDER WOULD BE PROCESSED AT THE FULFILLMENT CENTER OF BORDERS,
17 SENT TO THE INDIVIDUAL STORE, AND THE CUSTOMER WOULD BE
18 NOTIFIED, AND THEY WOULD COME IN AND PICK UP THEIR WILLIE MAYS
19 AUTOBIOGRAPHY. SO THAT'S MY UNDERSTANDING OF THE PURPOSE FOR
20 THE FULFILLMENT CENTER.

21 Q. NOW, JUST FOR THE RECORD, DO YOU RECALL WHERE THE BORDERS
22 FULFILLMENT CENTER PHYSICALLY IS LOCATED?

23 A. LET'S SEE. I REMEMBER WHERE BARNES & NOBLE'S IS, BUT....

24 I'M GOING TO SAY TENNESSEE, BUT I'M NOT CERTAIN OF THAT ANSWER.

25 Q. ALL RIGHT. WHAT QUANTITIES OR TYPES OF SHIPMENTS OF BOOKS

1 DOES BORDERS RECEIVE AT ITS FULFILLMENT CENTER?
2 A. IT WOULD RECEIVE NON-CARTON LOTS, JUST INITIALLY BUILDING
3 UP INVENTORY THEY MAY HAVE HAD TWO, THREE OF A TITLE, BUT THEN
4 TO, OVER TIME, AS -- IN TERMS OF REORDERS, THEY WOULD LIKELY
5 GET BOOKS SENT ONE PER TITLE. SO IT'S VERY SMALL QUANTITIES OF
6 INDIVIDUAL TITLES.
7 Q. IS IT YOUR UNDERSTANDING THAT THE FULFILLMENT CENTER IS
8 USED ONLY TO FILL EITHER INTERNET OR SPECIAL ORDER ORDERS?
9 A. THAT'S MY UNDERSTANDING.
10 Q. DO YOU KNOW HOW MANY DIFFERENT TITLES OF BOOKS ARE HELD BY
11 BORDERS AT ITS FULFILLMENT CENTER?
12 A. MANY. I DON'T HAVE A PRECISE NUMBER, BUT COMPARED TO A
13 HUNDRED TO A HUNDRED AND FIFTY THOUSAND TITLES IN A BORDERS
14 SUPERSTORE, I MEAN, THESE TITLES WOULD TOTAL OVER A MILLION,
15 MOST LIKELY.
16 Q. CAN YOU DESCRIBE FOR THE COURT THE DISTRIBUTION FACILITIES
17 THAT ARE OPERATED BY BARNES & NOBLE?
18 A. BARNES & NOBLE, OVER TIME, HAS PRIMARILY RELIED ON ONE
19 TRADITIONAL WAREHOUSE IN NEW JERSEY, AND IT IS SIMILAR IN
20 OPERATION TO THE TRADITIONAL WAREHOUSES THAT I DESCRIBED, THE
21 TWO THAT WALDEN OPERATES.
22 Q. SO THE LARGE BARNES & NOBLE DISTRIBUTION FACILITY BOTH
23 RECEIVES BOOKS AND ALSO HAS A WAREHOUSING FUNCTION?
24 A. CORRECT.
25 Q. AND HOW ARE BOOKS RECEIVED BY BARNES & NOBLE AT ITS

1 DISTRIBUTION FACILITIES?
2 A. THEY ARE RECEIVED IN CARTON LOTS, JUST AS WALDEN.
3 Q. NOW, DO THE BARNES & NOBLE STORES RECEIVE BOOKS OTHER THAN
4 THROUGH THE BARNES & NOBLE DISTRIBUTION CENTER?
5 A. YES. BARNES & NOBLE, OVER TIME, HAS RECEIVED SIGNIFICANTLY
6 MORE BOOKS DROP-SHIPPED THAN WALDENBOOKS. IN '97, I THINK,
7 ONLY 47 PERCENT OF THE BOOKS SOLD BY BARNES & NOBLE ACTUALLY
8 WENT THROUGH THE RDC. SO A SIZEABLE NUMBER OF PUBLISHERS
9 DROP-SHIP BOOKS TO BARNES & NOBLE, AND THEN, OF COURSE, BARNES
10 & NOBLE CAN, AT THE INDIVIDUAL STORES, CAN RECEIVE BOOKS FROM
11 WHOLESALERS LIKE INGRAM, AS WELL.
12 Q. SO AGAIN, AS IN THE CASE WITH WALDEN, THE BARNES & NOBLE
13 RETAIL STORES RECEIVES BOOKS DIRECTLY FROM PUBLISHERS JUST AS
14 THE RETAIL DISTRIBUTION CENTER IS ALSO RECEIVING BOOKS FROM
15 THOSE SAME PUBLISHERS?
16 A. SURE.
17 Q. SO THE PUBLISHER IS SENDING BOTH PLACES.
18 A. IN LARGE AMOUNTS, YEAH.
19 Q. ARE YOU FAMILIAR WITH BARNES & NOBLE'S EXTENDED TITLE BASE
20 FACILITY?
21 A. YES.
22 Q. CAN YOU DESCRIBE THAT, PLEASE?
23 A. IT'S SIMILAR TO THE FULFILLMENT CENTER IN THE BORDERS
24 GROUP. IT'S A FACILITY -- I KNOW WHERE THIS IS -- LOCATED
25 CLOSE TO THE TRADITIONAL WAREHOUSE IN NEW JERSEY THAT BARNES &

1 NOBLE OPERATES, AND AGAIN, THIS IS DESIGNED TO FACILITATE
2 INTERNET ORDERS FROM BARNESANDNOBLE.COM, AND ALSO SPECIAL
3 ORDERS FROM INDIVIDUAL STORES.
4 Q. WHAT QUANTITIES OR TYPES OF SHIPMENTS OF BOOKS DOES BARNES
5 & NOBLE RECEIVE AT ITS EXTENDED TITLE BASE FACILITY?
6 A. MANY, MANY, TITLES, VERY FEW COPIES OF EACH. IN INITIALLY
7 SETTING UP THE EXTENDED TITLE BASE FACILITY, THEY LIKELY HAD
8 ORDERS OF TWO, THREE, FOUR PER TITLE, AND IN REPLENISHING THOSE
9 TITLES OVER TIME, LIKELY, IN MOST CASES, AN ORDER OF ONE PER
10 TITLE.
11 Q. SO DOES THE EXTENDED TITLE BASE FACILITY FOR BARNES & NOBLE
12 OBTAIN BOOKS IN CARTON QUANTITIES OR NOT IN CARTON QUANTITIES?
13 A. NON-CARTON QUANTITIES.
14 Q. DR. FRAZIER, DID YOU FORM AN OPINION AS TO WHETHER THE
15 RETAIL DISTRIBUTION CENTER DISCOUNTS THAT DEFENDANTS HAVE
16 RECEIVED ARE GREATER THAN OR LESS THAN ANY COST SAVINGS
17 REALIZED BY PUBLISHERS FROM SHIPPING TO THOSE RDC'S?

18 A. YES.
19 Q. AND WHAT IS YOUR OPINION? JUST, FIRST OF ALL, STATING IT
20 OVERALL, AND THEN WE'LL EXPLORE THE BASIS FOR THAT OPINION.
21 A. THE RDC DISCOUNTS RECEIVED BY DEFENDANTS ARE SIGNIFICANTLY
22 GREATER THAN ANY PUBLISHER COST SAVINGS FROM SERVING THE
23 DEFENDANTS THROUGH THE RETAIL DISTRIBUTION CENTERS.
24 Q. IN GENERAL, CAN YOU DESCRIBE FOR THE COURT THE METHODOLOGY
25 THAT YOU USED TO FORM THAT OPINION, JUST THE BASIC STEPS OF
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1 YOUR ANALYSIS?
2 A. MY ANALYSIS IN THIS AREA INVOLVED THREE STEPS, THE FIRST OF
3 WHICH WAS TO IDENTIFY THE RDC DISCOUNTS IN QUESTION, AND WHAT
4 THEY ENTAILED.
5 Q. AND WHAT WAS THE SECOND STEP?
6 A. THE SECOND STEP WAS TO IDENTIFY POTENTIAL OR MAXIMUM
7 POSSIBLE PUBLISHER COST SAVINGS FROM SERVING THE DEFENDANT
8 ORGANIZATIONS THROUGH THE RDC'S RATHER THAN THROUGH A DROP
9 SHIPMENT METHODOLOGY.
10 Q. AND YOU MENTIONED THERE WERE THREE STEPS. WHAT, THEN, WAS
11 THE LAST STEP?
12 A. THE LAST STEP IS SIMPLY COMPARING STEPS TWO AND ONE,
13 EARLIER STEPS, WHAT ARE PUBLISHER COST SAVINGS, HOW DO THEY
14 COMPARE TO THE LEVEL OF THE RDC DISCOUNTS AFFORDED DEFENDANTS.
15 Q. ALL RIGHT, LET'S BEGIN WITH THE FIRST STEP AND SEE IF WE
16 CAN DO THIS QUICKLY.
17 DO YOU UNDERSTAND THAT THE DEFENDANTS, IN FACT,
18 RECEIVE ADDITIONAL DISCOUNTS ON PURCHASES THAT ARE SHIPPED TO
19 THEIR RDC'S?
20 A. THAT IS MY UNDERSTANDING.
21 Q. AND FROM -- WHAT IS THE BASIS FOR THAT UNDERSTANDING?
22 A. IN PART, I LOOKED AT THE ABA BOOK BUYER'S HANDBOOK, BUT I
23 ALSO RELIED ON A VARIETY OF TESTIMONY OF PEOPLE IN THE CASE,
24 AND THEIR DEPOSITIONS, AND VARIOUS RECORDS THAT I EXAMINED.
25 Q. IN OTHER WORDS, YOU RELIED ON TESTIMONY BY THE DEFENDANTS
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1 ON THE DISCOUNTS THEY HAD RECEIVED?
2 A. CORRECT.
3 Q. IN YOUR REVIEW OF DOCUMENTS, INCLUDING PUBLISHERS' STATED
4 TERMS AS SET FORTH IN THE ABA REDBOOK, DID YOU FIND EVIDENCE OF
5 DIFFERENCES IN TERMS FOR SHIPMENTS TO RETAIL DISTRIBUTION
6 CENTERS AND SHIPMENTS DIRECTLY TO RETAIL STORES?
7 A. YES.
8 Q. CAN YOU DESCRIBE FOR THE COURT THE AMOUNT OF DIFFERENCE
9 THAT YOU MOST TYPICALLY FOUND INVOLVED IN RDC SHIPMENTS?
10 A. THE BASE OR TYPICAL OR STANDARD RDC DISCOUNTS TENDED TO BE
11 2 PERCENT RDC'S DISCOUNT FOR HARDCOVER AND TRADE PAPERBACK
12 BOOKS, AND 4 PERCENT RDC DISCOUNT FOR MASS MARKET BOOKS.
13 BUT IT'S IMPORTANT FOR ME TO ALSO ADD THAT THERE ARE
14 A VARIETY OF OTHER CONCERNS THAT WE NEED TO CONSIDER,
15 ESPECIALLY THE FACT THAT THERE'S FREIGHT OUT ALLOWANCE INVOLVED
16 IN MANY SHIPMENTS, AND THERE'S SPECIAL INCENTIVES THAT BARNES &
17 NOBLE RECEIVES, THERE'S CHARGE BACK PENALTIES THAT BORDERS
18 RECEIVES.
19 SO THE STANDARD TEND TO BE 2 AND 4, 2 FOR THE TRADE
20 BOOKS AND 4 FOR MASS MARKET, BUT OFTENTIMES WHEN FREIGHT'S
21 INVOLVED, THOSE GO UP TO 3 PERCENT TO 5 PERCENT, AND THEN YOU
22 CAN ADD ON OTHER INCENTIVES FOR PENALTIES, AS WELL. SO IN
23 ACTUALITY, THE 2 AND 4 ARE SORT OF STANDARD, BUT THEY CAN BE
24 SIGNIFICANTLY GREATER THAN THAT, AS WELL.
25 Q. NOW, WHEN YOU SAY THAT THEY CAN BE SIGNIFICANTLY GREATER,
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1 IS IT YOUR TESTIMONY THAT YOU'VE SEEN INSTANCES WHERE, IN FACT,
2 THE RDC DISCOUNTS THAT THE DEFENDANTS HAVE RECEIVED HAVE BEEN
3 GREATER THAN WHAT YOU'VE DESCRIBED AS THE BASE OR TYPICAL
4 DISCOUNT?
5 A. YES, BASED ON EVIDENCE IN THE CASE, YES.
6 Q. ALL RIGHT. LET'S START FIRST, AND JUST EXPLORE AN EXAMPLE
7 OF WHAT YOU'VE DESCRIBED AS THE BASE OR TYPICAL DISCOUNT.
8 YOUR HONOR, IF YOU CAN LOOK TO THE BINDER.
9 FIRST TURN TO TAB 2, PLEASE.

10 A. ALL RIGHT. I'M FIGHTING BIFOCALS, SO FORGIVE ME. I HAVE
11 IT.
12 Q. CAN YOU IDENTIFY FOR THE RECORD -- DO YOU RECOGNIZE WHAT
13 TAB 2 IS AN EXCERPT OF?
14 A. IT'S AN EXCERPT FROM THE ABA BOOK BUYER'S HANDBOOK, 1999,
15 AND IT INVOLVES SIMON & SCHUSTER'S TRADE TERMS.
16 Q. CAN YOU SHOW FOR THE COURT AND EXPLAIN WHAT THESE TERMS
17 PROVIDE IN TERMS OF THE DIFFERENTIAL FOR AN RDC DISCOUNT?
18 A. WELL, IF WE FOCUS ON THE DISCOUNT SCHEDULE, WHICH IS IN THE
19 TOP RIGHT-HAND PORTION, ON THIS PAGE, 689 --
20 Q. LET ME JUST IDENTIFY FOR THE RECORD, YOU'RE REFERRING TO
21 PAGE 689 AT THE TOP RIGHT-HAND CORNER?
22 A. AND 776 AT THE BOTTOM.
23 Q. LET'S JUST USE ONE FOR CONSISTENCY. WHY DON'T WE USE THE
24 PAGE AT THE BOTTOM.
25 A. OKAY, 776.
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1 Q. WHICH WOULD BE PAGE 776 OF EXHIBIT NUMBER 6. OKAY.
2 A. AND WE CAN SEE, FOR EXAMPLE, THAT EDI ORDERS, ANY QUANTITY,
3 THERE'S A 46 PERCENT DISCOUNT, AND --
4 Q. FOR WHAT TYPE OF BOOK IS THAT ON THE DISCOUNT SCHEDULE?
5 A. THAT'S AN ELECTRONIC ORDER FROM A CUSTOMER.
6 Q. AND DOES THIS DISCOUNT SCHEDULE APPLY TO.... YOU
7 PREVIOUSLY IDENTIFIED IN TESTIMONY TRADE BOOKS AND MASS MARKET
8 BOOKS. DO YOU KNOW WHICH...?
9 A. THIS IS TRADE. HARD COVER TRADE PAPERBACK.
10 Q. AND HOW DO YOU KNOW THAT, DR. FRAZIER?
11 A. BECAUSE I THINK SIMON & SCHUSTER TRADE ONLY INVOLVES THOSE
12 TYPES OF BOOKS.
13 Q. ON THE DISCOUNT SCHEDULE ITSELF, DO YOU SEE, IS THERE ANY
14 REFERENCE AT THE TOP OF THE DISCOUNT SCHEDULE TO THE TYPE OF
15 BOOK? YOU MAY NEED YOUR MAGNIFYING GLASS. I'M AFRAID I DON'T
16 KNOW IF THERE'S STILL ONE UP THERE.
17 A. IT SAYS, "TRADE."
18 Q. SO THE BASIC TRADE DISCOUNT FROM SIMON & SCHUSTER ON ANY
19 QUANTITY, IF YOU'RE ORDERING ELECTRONICALLY, IS 46 PERCENT?
20 A. CORRECT.
21 Q. AND DOES SIMON & SCHUSTER, AS PART OF ITS PUBLISHED TERMS,
22 PROVIDE AN RDC DISCOUNT?
23 A. YES. IF YOU GO DOWN, RIGHT BELOW THE DISCOUNT SCHEDULE,
24 SORT OF IN THE MIDDLE OF THE RIGHT-HAND COLUMN OF PAGE 776, YOU
25 SEE A "RETAIL DISTRIBUTION CENTER PLAN" IN BOLD, AND IT READS,
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1 "A 48 PERCENT DISCOUNT PLUS FREE FREIGHT FOR CARTON QUANTITIES
2 SHIPPED TO RETAIL DISTRIBUTION CENTER."
3 Q. ALL RIGHT, AND IS THIS AN EXAMPLE OF AN INSTANCE WHERE THE
4 PUBLISHER'S PUBLISHED RDC TERMS PROVIDE FOR AN ADDITIONAL
5 2 PERCENT DISCOUNT ON TRADE BOOKS?
6 A. THAT'S CORRECT.
7 Q. LET'S LOOK AT TAB NUMBER 3, WHICH IS ALSO AN EXCERPT FROM
8 PLAINTIFFS' EXHIBIT 6. CAN YOU IDENTIFY THIS FOR THE RECORD?
9 A. THIS IS A PAGE FOR POCKET BOOKS, A DIVISION OF SIMON &
10 SCHUSTER FROM THE ABA BOOK BUYER'S HANDBOOK, 1999.
11 Q. AND DO YOU KNOW WHAT KIND OF BOOKS POCKET BOOKS, THAT
12 DIVISION OF SIMON & SCHUSTER, SELLS?
13 A. I THINK IT DOES PRIMARILY MASS MARKET, BUT IT DOES SAY,
14 RIGHT BELOW THE WEB ADDRESS, "PUBLISHER OF MASS MARKET,
15 HARDCOVER AND TRADE PAPERBACKS." SO APPARENTLY, ALL THE
16 CATEGORIES OF -- OF BOOKS THAT WE'RE TALKING ABOUT IN THIS
17 CASE.
18 Q. DOES THIS EXCERPT FROM THE BOOK BUYER'S HANDBOOK ALSO SET
19 FORTH A DISCOUNT SCHEDULE FOR POCKET BOOKS?
20 A. YES. IN THE UPPER LEFT-HAND CORNER OF PAGE 686.
21 Q. OKAY. I'M SORRY, JUST FOR THE RECORD, THE 686 IS THE LOWER
22 RIGHT-HAND PAGE NUMBER?
23 A. THAT'S CORRECT.
24 Q. WE HAVE SOMEWHAT COMPETING PAGE NUMBERS, EXHIBIT PAGE
25 NUMBERS AND THE BOOK PAGE NUMBERS. WHAT IS THE DISCOUNT
page 109

1 SCHEDULE FOR POCKET BOOKS THAT IS SHOWN ON EXHIBIT PAGE 686?

2 A. WELL, FIRST WE HAVE THE MASS MARKET CATEGORY, AND WE CAN
3 SEE HERE THAT ANY QUANTITY IS 44 PERCENT.
4 Q. SO THE BASIC DROP SHIP DISCOUNT IS 44 PERCENT?
5 A. 44 PERCENT FOR MASS MARKET. AND THEN WE CAN SEE RIGHT
6 BELOW THERE THAT THEY'RE TALKING ABOUT HARD COVER AND TRADE
7 PAPERBACK, AND ANY QUANTITY, THAT IS 46 PERCENT.
8 Q. SO THE POCKETS STANDARD NON-RDC DISCOUNTS ARE 44 PERCENT
9 FOR MASS MARKET AND 46 PERCENT FOR TRADE?
10 A. THAT'S CORRECT.
11 Q. AND AGAIN, DOES THIS SCHEDULE SHOW A PUBLISHED DIFFERENTIAL
12 FOR SHIPMENTS TO A RETAIL DISTRIBUTION CENTER?
13 A. RIGHT. IF WE GO A LITTLE BIT BELOW THE DISCOUNT SCHEDULE,
14 IN BOLD IT HAS "RETAIL DISTRIBUTION CENTER PLAN" ON THE
15 LEFT-HAND COLUMN, AND IT READS, "48 PERCENT DISCOUNT PLUS FREE
16 FREIGHT FOR CARTON QUANTITIES SHIPPED TO A RETAIL DISTRIBUTION
17 CENTER."
18 SO THE COMPARISON IS, FOR MASS MARKET, THAT
19 44 PERCENT COMPARED TO THE 48 PERCENT, OR A 4 PERCENT RDC
20 DISCOUNT FOR MASS MARKET; AND FOR HARDCOVER AND TRADE
21 PAPERBACK, IT'S A COMPARISON OF THE 46 PERCENT DISCOUNT
22 COMPARED TO THE 48 PERCENT RDC DISCOUNT, OR THE GAP OF
23 2 PERCENT.
24 Q. SO AGAIN, THIS IS AN EXAMPLE OF WHAT YOU'VE DESCRIBED AS
25 THE BASIC TYPICAL DIFFERENTIAL OF A 2 PERCENT DIFFERENTIAL ON

page 110

1 TRADE BOOKS AND A 4 PERCENT DIFFERENTIAL ON MASS MARKET BOOKS?
2 A. CORRECT.
3 Q. DO YOU KNOW WHETHER ALL PUBLISHERS, AS PART OF THEIR
4 PUBLISHED TERMS, PROVIDE A DISCOUNT DIFFERENTIAL THAT IS
5 2 PERCENT FOR TRADE BOOKS AND 4 PERCENT FOR MASS MARKET BOOKS?
6 A. NOT ALWAYS.
7 Q. ARE YOU AWARE OF ANY PUBLISHERS THAT PROVIDE A DIFFERENT
8 DIFFERENTIAL?
9 A. AS I INDICATED IN MY ORIGINAL EXPERT REPORT, I BELIEVE
10 LITTLE, BROWN IS A PUBLISHER THAT ONLY PROVIDES A 1 PERCENT RDC
11 DISCOUNT.
12 Q. LET'S TURN TO TAB 4, IF YOU WOULD, WHICH AGAIN IS AN
13 EXCERPT FROM PLAINTIFFS' EXHIBIT 6. CAN YOU IDENTIFY THIS FOR
14 THE RECORD?
15 A. THIS IS FROM THE ABA BOOK BUYER'S HANDBOOK 1999, PAGE 533
16 IN THE LOWER RIGHT-HAND CORNER OF THE PAGE, AND IT TALKS ABOUT
17 THE TERMS OF LITTLE, BROWN & COMPANY.
18 Q. AND WHAT CAN I HAVE AN RDC DISCOUNT DOES THIS SET FORTH FOR
19 LITTLE, BROWN & COMPANY?
20 A. THEY HAVE MASS MARKET 44 PERCENT, FOR EXAMPLE, TRADE PAPER
21 46 PERCENT. DEPENDING UPON QUANTITIES, MAYBE SLIGHTLY HIGHER
22 DISCOUNTS.
23 Q. SO YOU'RE AT THE LOWER RIGHT-HAND?
24 A. YES, I WAS LOOKING AT THE LOWER RIGHT-HAND COLUMN OF 533,
25 PAGE 533.

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1 Q. NOW, DOES LITTLE, BROWN ALSO HAVE CLOTH AND TRADE PAPER
2 BOOKS ON THIS SCHEDULE?
3 A. YES.
4 Q. LET ME JUST ASK YOU TO TURN TO THE NEXT PAGE. WHAT DOES
5 LITTLE, BROWN PROVIDE AS THEIR RDC DISCOUNT DIFFERENTIAL?
6 A. ON THE MIDDLE OF THE LEFT-HAND COLUMN OF THE NEXT PAGE,
7 PAGE 534, IN BOLD, "RETAIL DISTRIBUTION CENTER PLAN," IT SAYS,
8 "CUSTOMERS MEETING REQUIREMENTS FOR RETAIL DISTRIBUTION CENTERS
9 MAY EARN AN ADDITIONAL 1 PERCENT DISCOUNT."
10 Q. SO IN THIS CASE, THE PUBLISHED DIFFERENTIAL FOR ALL BOOKS
11 IS SIMPLY 1 PERCENT?
12 A. THAT'S CORRECT.
13 Q. ARE YOU AWARE OF ANY OTHER EXAMPLES OF PUBLISHERS WHO
14 PROVIDE A DISCOUNT DIFFERENTIAL ON RDC SHIPMENTS OF ONLY
15 1 PERCENT?
16 A. I BELIEVE WARNER BOOKS IS SIMILAR.
17 Q. ALL RIGHT, LET'S LOOK AT THAT AS ONE LAST EXAMPLE. LOOK AT
18 TAB 5, PLEASE. AGAIN, THIS IS AN EXCERPT OF PLAINTIFFS'
19 EXHIBIT 6. CAN YOU IDENTIFY THIS FOR THE RECORD?
20 A. THIS IS FROM THE ABA BOOK BUYER'S HANDBOOK 1999, ON PAGE

21 892, THE TERMS FOR WARNER BOOKS.
22 Q. AND WHAT TERMS DOES WARNER BOOKS PROVIDE FOR SHIPMENTS TO A
23 RETAIL DISTRIBUTION CENTER?
24 A. IF YOU TURN TO THE NEXT PAGE, IN THE LEFT-HAND COLUMN NEAR
25 THE TOP, IT HAS, "RETAIL DISTRIBUTION CENTER PLAN. CUSTOMERS
page 112

1 MEETING REQUIREMENTS FOR RETAIL DISTRIBUTION CENTERS MAY EARN
2 AN ADDITIONAL 1 PERCENT."
3 Q. NOW, YOU SAID THAT THE FIRST STEP IN FORMING YOUR OPINION
4 AS TO WHETHER THE RDC DISCOUNTS WERE COST-JUSTIFIED WAS TO
5 UNDERSTAND WHAT THE DIFFERENTIAL WAS, AND I BELIEVE YOU
6 TESTIFIED EARLIER THAT IN ADDITION TO THESE BASE OR TYPICAL
7 DISCOUNTS, THERE WERE OTHER CASES WHERE THE DEFENDANTS RECEIVED
8 MORE THAN THE TYPICAL 2 PERCENT TRADE OR 4 PERCENT MASS MARKET.
9 A. THAT'S CORRECT.
10 Q. CAN YOU DESCRIBE BRIEFLY, AGAIN, WHAT ADDITIONAL DISCOUNTS
11 YOU FOUND EVIDENCE OF?
12 A. WELL, IMPORTANT TO ME IS THAT FOR THE DEFENDANTS, MANY FREE
13 FREIGHT PUBLISHERS PAY A 1 PERCENT PRICE DISCOUNT TO COVER
14 EXPENSES INCURRED FROM -- BY THE DEFENDANTS IN SHIPPING BOOKS
15 FROM THEIR RETAIL DISTRIBUTION CENTERS TO THE INDIVIDUAL
16 STORES.
17 Q. AND SO WHAT EFFECT DOES THAT HAVE ON THE DIFFERENTIAL
18 BETWEEN THE AMOUNTS THAT THE DEFENDANTS ARE PAYING ON RDC
19 SHIPMENTS AND THE PUBLISHERS' NON-RDC TERMS?
20 A. YOU HAVE TO CONSIDER EACH AND ALL COMPONENTS IN TERMS OF
21 PRICE DISCOUNTING THAT THE DEFENDANTS RECEIVE, AND EFFECTIVELY
22 THAT INCREASES THE TRADE -- THE HARDCOVER AND TRADE PAPERBACK
23 RDC DISCOUNT TO 3 PERCENT, AND THE MASS MARKET DISCOUNT TO
24 5 PERCENT, IN THOSE CASES.
25 Q. ARE THOSE ADDITIONAL DISCOUNTS OR PAYMENTS THAT THE
page 113

1 DEFENDANTS HAVE RECEIVED RELEVANT TO YOUR ANALYSIS?
2 A. OH, MOST DEFINITELY.
3 Q. AND WHY IS THAT?
4 A. AGAIN, AS A DISTRIBUTION EXPERT AND ASKED TO EXAMINE WHAT'S
5 INVOLVED IN RDC DISCOUNTS AND WHETHER PUBLISHER COST SAVINGS
6 ARE EQUIVALENT TO OR LESS OR GREATER THAN THOSE DISCOUNTS, I
7 CERTAINLY HAVE TO TAKE FREIGHT ALLOWANCES INTO ACCOUNT IN
8 JUDGING WHAT THE LEVEL OF THE ACTUAL DISCOUNTS ARE.
9 Q. DID BOTH BARNES & NOBLE AND BORDERS RECEIVE ADDITIONAL
10 DISCOUNTS IN THE FORM OF WHAT YOU'VE DESCRIBED AS FREIGHT
11 ALLOWANCES FROM PUBLISHERS?
12 A. MR. VENTRONE IN THE BARNES & NOBLE ORGANIZATION TESTIFIED,
13 FOR EXAMPLE, THAT MOST FREE FREIGHT PUBLISHERS PAY THE
14 1 PERCENT FREIGHT OUT ALLOWANCE TO BARNES & NOBLE, AND I
15 BELIEVE A MR. HOPKINS IN THE BORDERS ORGANIZATION TESTIFIED
16 THAT TWO OF THE LARGEST FREE FREIGHT PUBLISHERS, SIMON &
17 SCHUSTER AND HARPER COLLINS, ALSO PAY THE 1 PERCENT FREIGHT OUT
18 ALLOWANCE TO THE BORDERS ORGANIZATION.
19 Q. ALL RIGHT. NOW, FINALLY YOU TESTIFIED, I BELIEVE, THAT IN
20 ADDITION TO FREIGHT ALLOWANCES YOU FOUND EVIDENCE OF OTHER
21 TERMS THAT AFFECTED THE DIFFERENTIAL BETWEEN RDC SHIPMENTS AND
22 NON-RDC SHIPMENTS.
23 A. THE RECORD IS QUITE CLEAR THAT BARNES & NOBLE AT TIMES HAS
24 RECEIVED SPECIAL INCENTIVES OR REBATES THAT CAN TOTAL SEVERAL
25 PERCENT, AND THE RECORD'S QUITE CLEAR THAT THE BORDERS
page 114

1 ORGANIZATION HAS OVER TIME RECEIVED SIZEABLE PENALTIES FOR
2 PUBLISHERS VIOLATING COMPLIANCE STANDARDS AND FULFILLING ORDERS
3 THROUGH THEIR RDC'S. THOSE ARE JUST A COUPLE EXAMPLES.
4 Q. WHEN YOU SAY, SIZEABLE PENALTIES THAT THE BORDERS GROUP HAS
5 RECEIVED, CAN YOU DEFINE WHAT YOU MEAN BY "SIZEABLE"?
6 A. SEVERAL MILLION.
7 Q. NOW, DID YOU ATTEMPT TO QUANTIFY THE TOTAL AMOUNT OF THE
8 DIFFERENTIAL THAT THE DEFENDANTS RECEIVED FROM EACH PARTICULAR
9 PUBLISHER?
10 A. I FELT THAT THAT WAS NOT NECESSARY, BECAUSE I USED THE
11 STANDARD 2 PERCENT RDC DISCOUNT FOR HARDCOVER AND TRADE
12 PAPERBACK AND THE 4 PERCENT RDC DISCOUNT FOR MASS MARKET, AND

13 JUST PUBLISHERS' COST SAVINGS FOR FREIGHT ON BOARD PUBLISHERS
14 WHO DON'T PAY FREIGHT AND FREE FREIGHT PUBLISHERS WHO DON'T PAY
15 THE FREIGHT ALLOWANCE. SO I USED THOSE STANDARD DISCOUNT
16 LEVELS.

17 NOW, IF THOSE STANDARD DISCOUNT LEVELS FOR THOSE
18 TYPE OF COMPANIES ARE NOT -- NOT EQUAL TO THEIR COST SAVINGS,
19 ANYTHING ABOVE THOSE WOULD NOT BE JUSTIFIED, EITHER. SO I
20 DIDN'T QUANTIFY, LIKE, SPECIAL INCENTIVES OR I DIDN'T TAKE
21 COMPLIANCE PENALTIES INTO ACCOUNT.

22 IMPORTANTLY, HOWEVER, FOR FREE FREIGHT PUBLISHERS
23 THAT ARE PAYING THIS 1 PERCENT FREIGHT ALLOWANCE, THEN THE
24 COMPARISON IS NOT 2-4, 3-5. SO I DID TAKE THE FREIGHT
25 ALLOWANCE INTO ACCOUNT.

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1 Q. DID YOU FORM AN OPINION AS TO WHETHER THE BASE 2 PERCENT
2 TRADE DIFFERENTIAL OR 4 PERCENT MASS MARKET DIFFERENTIAL,
3 WHETHER THOSE DIFFERENTIALS WERE GREATER THAN OR LESS THAN
4 PUBLISHER COST SAVINGS?

5 A. I HAVE A DEFINITE OPINION ON THAT, YES.

6 Q. WHAT WAS THAT OPINION, EVEN AS TO THE BASE 2 PERCENT TRADE,
7 4 PERCENT MASS MARKET?

8 A. THE RDC DISCOUNTS THAT THE DEFENDANTS HAVE BEEN RECEIVING
9 FOR QUITE A LONG TIME ARE MUCH GREATER THAN PUBLISHER COST
10 SAVINGS ASSOCIATED WITH SERVING THE DEFENDANTS THROUGH THEIR
11 RDC'S.

12 Q. HOW DID YOU GO ABOUT IDENTIFYING WHAT THE PUBLISHER COST
13 SAVINGS WERE IN PROVIDING SHIPMENTS TO AN RDC AS OPPOSED TO
14 SHIPMENTS DIRECTLY TO RETAIL STORES?

15 A. I TOOK BASICALLY TWO STEPS IN THAT ENDEAVOR. THE FIRST
16 STEP WAS THAT I CONSIDERED PHYSICAL ASSETS AND WORK FUNCTIONS,
17 OR WORK -- JOB FUNCTIONS THAT WOULD HAVE BEEN AFFECTED BY THE
18 DIFFERENT METHODS OF, ONE, GOING TO RDC VERSUS FULFILLING
19 ORDERS TO INDIVIDUAL STORES; AND I JUDGED WHICH ACTIVITIES,
20 WHICH FUNCTIONS WOULD HAVE BEEN AFFECTED BASED UPON SERVING THE
21 DEFENDANT ORGANIZATION ONE WAY OR THE OTHER. THAT WAS THE
22 FIRST STEP.

23 Q. AND WHAT WAS THE SECOND STEP, THEN, OF YOUR ANALYSIS?

24 A. ONCE I IDENTIFIED SPECIFIC FUNCTIONS OR WORK OR ACTIVITY
25 THAT WOULD BE AFFECTED BY SERVING OR FULFILLING ORDERS TO

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1 DEFENDANTS' RDC VERSUS DROP-SHIPPED, I ATTACHED COSTS TO THOSE
2 PARTICULAR FUNCTIONS WHICH REPRESENTS, IN MY MIND, MAXIMUM
3 POTENTIAL COST SAVINGS THAT PUBLISHERS WOULD HAVE ATTAINED BY
4 GOING THROUGH RDC'S RATHER THAN DROP SHIP.

5 Q. OKAY, SO LET ME FOCUS ON THE FIRST STEP, WHICH WAS SIMPLY
6 IDENTIFYING THE FUNCTIONS THAT ARE INVOLVED IN A PUBLISHER
7 SHIPPING OF BOOKS TO A CUSTOMER.

8 HOW DID YOU GO ABOUT IDENTIFYING THOSE FUNCTIONS,
9 AND WHAT DID YOU DRAW UPON IDENTIFYING THOSE FUNCTIONS?

10 A. WELL, I'VE BEEN TEACHING DISTRIBUTION AND DEALING WITH
11 THESE FUNCTIONS FOR OVER 20 YEARS, SO PARTLY IT'S BASED UPON MY
12 EXPERIENCE. IT'S ALSO BASED UPON TESTIMONY AND EVIDENCE IN
13 THIS CASE, IN TERMS OF WHAT ARE THE FUNCTIONS IN RECEIVING
14 PRODUCT INTO A WAREHOUSE, HOW DO YOU PROCESS ORDERS, HOW DO YOU
15 RECEIVE ORDERS IN FOR CUSTOMERS, HOW DO YOU FILL THOSE ORDERS,
16 HOW DO YOU SHIP THEM TO INDIVIDUAL CUSTOMERS; JUST BASED UPON
17 THE RECORD IN THIS CASE, AND MY GENERAL EXPERTISE AS A
18 DISTRIBUTION MANAGEMENT EXPERT.

19 (CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)

20
21
22
23
24
25

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1 BY MR. DE BRUIN:

2 Q. LET ME ASK YOU TO TURN TO TAB 10, WHICH IS PLAINTIFF'S
3 EXHIBIT 2573.

4 DR. FRAZIER, DO YOU RECOGNIZE THIS DOCUMENT?

5 A. YES.
6 Q. WHAT IS IT?
7 A. IT IS A -- A GENERAL OVERVIEW FOR ANY SUPPLIER'S WAREHOUSE,
8 WHETHER A MANUFACTURER OF POWER DRILLS OR CARS OR BOOKS, WHAT
9 WORK ACTIVITIES OR FUNCTIONS ARE ASSOCIATED WITH OPERATING A
10 TRADITIONAL WAREHOUSE.
11 Q. NOW, JUST FOR THE RECORD, THESE FUNCTIONS THAT YOU'VE LISTED
12 HERE ARE FOR THE FUNCTIONS PERFORMED BY WHICH PLAYER IN THE
13 DISTRIBUTION SYSTEM? WHICH --
14 A. WELL, FOR THIS PARTICULAR ANALYSIS, IT WAS FOCUSED ON THE
15 PUBLISHER AND WHAT PUBLISHERS WOULD BE DOING IN THEIR OWN
16 WAREHOUSES, AND DOWN THE ROAD, WHICH OF THESE WORK ACTIVITIES
17 WOULD HAVE BEEN AFFECTED BY SERVING THE DEFENDANTS THROUGH THEIR
18 RDC'S RATHER THAN DROP-SHIPING ORDERS TO INDIVIDUAL STORES.
19 Q. ALL RIGHT. CAN YOU DESCRIBE BRIEFLY THE VARIOUS FUNCTIONS
20 THAT, BASED ON YOUR EXPERTISE, ARE INVOLVED IN A WAREHOUSE
21 OPERATION THAT A PUBLISHER WOULD OPERATE IN FILLING ORDERS FOR
22 CUSTOMERS?
23 A. WELL, THE PUBLISHER WOULD EITHER IN ITS OWN PRODUCTION
24 FACILITIES OR IF THEY OUTSOURCE THE PRODUCTION OF BOOKS TO A
25 THIRD PARTY, ONCE THE BOOKS ARE PRODUCED, THEY'D BE DIRECTED TO
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1 THE WAREHOUSE.
2 AND SO AT THE WAREHOUSE, YOU'D HAVE TO RECEIVE THE
3 FINISHED PRODUCT OR THE BOOKS FROM THE FACTORY, THE BINDERY.
4 AND THAT WOULD MEAN UNLOADING THE TRUCK. IT WOULD MEAN
5 PROCESSING AND RECONCILING THE FACT -- WHAT DID WE RECEIVE, AND
6 LET'S ADJUST OUR INVENTORY LEVELS TO ACCOUNT FOR THE SHIPMENT
7 WE'VE JUST RECEIVED.
8 IT WOULD MEAN HAVING SOMEONE PUT AWAY THE PRODUCT IN
9 THE WAREHOUSE IN CERTAIN SHELVES OR BIN LOCATIONS.
10 Q. AND THOSE ARE THE -- THOSE ARE THE FIRST TWO ITEMS ON YOUR
11 LIST, RECEIVING PRODUCT FROM FACTORY AND SHELVING PRODUCT IN THE
12 WAREHOUSE?
13 A. EXACTLY. AND I MEAN, YOU COULD BREAK THAT UP ON OTHER WORK
14 ACTIVITIES MORE MICRO THAN WHAT I HAVE, BUT THAT'S BASICALLY
15 WHAT I DESCRIBED.
16 Q. AND WHAT ARE THE FUNCTIONS THAT ARE PERFORMED AT THE
17 PUBLISHER'S WAREHOUSE?
18 A. WELL, SO ONCE THOSE FUNCTIONS ARE DONE APPROPRIATELY, YOU'RE
19 READY NOW TO FILL ORDERS FROM A BARNES & NOBLE OR LITTLE
20 PROFESSOR OR INGRAM OR WHOEVER THE CUSTOMER IS. SO ORDER ENTRY
21 SIMPLY MEANS YOU'RE TAKING ORDERS IN FROM YOUR RETAIL CUSTOMERS.
22 AND YOU OFTENTIMES WILL SCREEN ORDERS TO ENSURE THAT,
23 OH, I BETTER NOT PROCESS THIS ORDER FROM THAT CUSTOMER BECAUSE
24 THEY HAVEN'T PAID THEIR BILLS THE LAST TWO MONTHS, SO YOU MAY
25 PUT A CREDIT HOLD ON A CERTAIN ORDER AND UNTIL THAT GETS
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1 RESOLVED, NOT PROCESS IT ANY FURTHER.
2 ONCE IT PASSES SCREENING, YOU MAY PRIORITIZE AND SAY,
3 OKAY, THIS CUSTOMER WANTS SPECIAL DELIVERY OR THIS CUSTOMER'S
4 MORE IMPORTANT THAN OTHERS SO I'M GOING TO PUT THAT ORDER TO THE
5 TOP OF THE QUEUE, BUT THERE'S SOME SCREENING PRIORITIZING
6 PROCESS DONE IN MOST WAREHOUSES.
7 THE COURT: I THINK WE'LL TAKE THE SECOND BREAK TILL
8 12:40.
9 MR. DE BRUIN: THANK YOU.
10 THE CLERK: ALL RISE.
11 (RECESS TAKEN AT 12:20 P.M.)
12 (PROCEEDINGS RESUMED AT 12:47 P.M.)
13 THE COURT: MR. NELSON, WITH RESPECT TO THE QUESTION
14 CONCERNING MY RULING ABOUT THE VALUE OR BENEFITS THAT HAD TO DO
15 WITH PARAGRAPH 16 OF THE ORDER, AND IT'S REALLY IN RESPONSE TO A
16 LEGAL ARGUMENT, WHICH WE'LL DEAL WITH WHEN WE GET DOWN -- MAYBE
17 POST-TRIAL, BUT FOR -- SO FAR AS HIS TESTIMONY WENT THIS MORNING
18 AS TO WHAT HAPPENS IN THE WAREHOUSE AND HOW IT WORKS, I FOUND IT
19 VERY HELPFUL. AND THE OBJECTION IS OVERRULED WITH RESPECT TO
20 WHAT WE DID THIS MORNING. BUT I HAVEN'T REVOKED MY NUMBER.
21 MR. NELSON: THANK YOU, YOUR HONOR.
22 THE COURT: WE'LL DEAL WITH THAT LATER.
23 MR. NELSON: THANK YOU, YOUR HONOR.

24 BY MR. DE BRUIN:
25 Q. DR. FRAZIER, BEFORE WE TOOK A BRIEF RECESS YOU WERE LOOKING
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1 AT THE EXHIBIT AT TAB 10, PLAINTIFF'S EXHIBIT 2573, AND YOU WERE
2 JUST TRYING TO WALK THROUGH -- AND I WANT TO TRY TO DO IT FAIRLY
3 QUICKLY -- BUT THE BASIC STEPS OR THE FUNCTIONS THAT ARE
4 PERFORMED IN THE PUBLISHER WAREHOUSE.

5 I BELIEVE YOU HAD GOTTEN THROUGH THE FUNCTION OF
6 SCREENING AND PRIORITIZING ORDERS. CAN YOU CONTINUE JUST
7 DESCRIBING THE FUNCTIONS THAT ARE PERFORMED.
8 A. SURE. SO ONCE AN ORDER HAS SURVIVED THE SCREENING PROCESS
9 AND IT'S BEEN PRIORITIZED, THEN IT'S TRANSMITTED IN SOME FASHION
10 TO THE WAREHOUSE. IT COULD BE -- MOST COMMONLY NOW IT'S
11 ELECTRONIC TRANSMISSION BY COMPUTER. BUT IT COULD BE SIMPLY ONE
12 PERSON HANDING ORDER TO SOMEONE ELSE, A WAREHOUSE WORKER.

13 THE WAREHOUSE WORKERS THEN IN -- ONCE RECEIVING THE
14 ORDERS, WILL START PULLING CARTONS FOR ORDER FULFILLMENT. AND
15 THAT'S TRUE WHETHER IT'S A FULL CARTON ORDER OR WHETHER IT'S A
16 NON-CARTON ORDER.

17 IMPORTANTLY, FOR ORDERS THAT DO NOT COME IN FULL
18 CARTONS, AS WE TALKED ABOUT BEFORE, THEN THERE'S A LOT OF LABOR
19 ASSOCIATED WITH WAREHOUSE WORKERS PICKING AND PACKING THE
20 NON-CARTON ORDERS OR -- THAT'S SOMETIMES CALLED LOOSE PICK AS
21 WELL. FOR FULL CARTON ORDERS, THAT ISN'T REALLY INVOLVED TO ANY
22 EXTENT WHATSOEVER.

23 YOU HAVE TO LABEL THE ORDER WHETHER IT'S A LARGE --
24 CARTON -- CARTON ORDER OR A NON-CARTON ORDER. YOU MUST -- TO
25 THE RDC'S INVOLVING A LOT OF BOOKS AND A LOT OF CARTONS, YOU
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1 HAVE TO PALLETIZE THOSE BOXES. MOST OFTEN, YOU'LL SHRINK-WRAP
2 THE WHOLE PALLET TO MAKE SURE IT'S PROTECTED PROPERLY.

3 ACTUALLY EVEN FOR SOME DROP SHIPMENTS TO INDIVIDUAL
4 STORES, YOU MIGHT HAVE AT PUBLISHER WAREHOUSE, INDIVIDUAL STORE
5 ORDERS PALLETIZED AND SHRINK-WRAPPED, AND THEN A FREIGHT
6 CONSOLIDATOR WILL TAKE IT TO -- PERHAPS FROM NEW JERSEY WHERE
7 THE PUBLISHER'S WAREHOUSE IS TO A PLACE IN CALIFORNIA, ANOTHER
8 FREIGHT FACILITY, WHERE THEY'LL BREAK OPEN THE PALLET AND THEN
9 PUT IT ON -- THE DROP SHIPMENTS ON INDIVIDUAL TRUCKS TO
10 INDIVIDUAL STORES.

11 THAT JUST SAVES OF FREIGHT COSTS IF YOU DO IT THAT
12 WAY, SO THAT COULD EVEN BE INVOLVED IN DROP-SHIP ORDERS AS WELL.

13 ONCE THAT'S DONE, YOU HAVE TO MOVE THE ORDER ONTO THE
14 LOADING DOCK. YOU LOAD THE ORDER FOR TRANSPORT TO THE CUSTOMER,
15 TYPICALLY IN TRUCKS. THIS --

16 THE NEXT ONE, SPECIAL HANDLING AND QUALITY CONTROL,
17 THE -- THE DEFENDANTS HAVE ESTABLISHED RATHER EXTENSIVE VENDOR
18 COMPLIANCE STANDARDS.

19 WALDENS' COMPLIANCE STANDARDS TOTAL OVER FIVE PAGES.
20 I BELIEVE BARNES & NOBLE, TYPICALLY THEY ARE AT LEAST 11
21 GUIDELINES OR CONDITIONS THAT THEY ASK THE WAREHOUSE PERSONNEL
22 AND THE PUBLISHER WAREHOUSE TO MEET. AND SO THAT INVOLVES A LOT
23 OF THE SPECIAL HANDLING AND QUALITY CONTROL THAT IS UNIQUE TO
24 THE DEFENDANTS' RDC ORDERS COMPARED TO REGULAR PROCESSING OF
25 ORDERS.

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1 FREIGHT IS A BIG ONE. THE -- THE CHARGES ASSOCIATED
2 WITH FREIGHT, AND THAT'S ESPECIALLY IMPORTANT FOR A FREE FREIGHT
3 PUBLISHERS. SOME PUBLISHERS ARE CALLED F.O.B. OR FREIGHT ON
4 BOARD WHERE IT'S UP TO THE RETAIL CUSTOMER TO PAY FREIGHT FROM
5 THE PUBLISHER -- PUBLISHER WAREHOUSE TO WHATEVER. OBVIOUSLY,
6 FREIGHT'S NOT IMPORTANT FOR THEM. BUT FOR FREE PUBLISHERS, IT
7 IS IMPORTANT.

8 BILLING AND INVOICING IS BASICALLY AS IT IS DESCRIBED
9 THERE IN TERMS OF THE INVOICE AND THE BILLING PROCESS.

10 THEN FINALLY WAREHOUSE ADMINISTRATION INVOLVES THE
11 OTHER MANAGERS AND THE COMPUTER OPERATORS AND EVERYONE ELSE
12 INVOLVED IN MAKING SURE THAT THE WAREHOUSE OPERATION RUNS
13 SMOOTHLY AND EFFECTIVELY FOR CUSTOMERS. SO THAT'S JUST A BRIEF
14 OVERVIEW OF THESE ORDER FULFILLMENT PROCESS, IF YOU WILL.
15 Q. AND, AGAIN, YOU PREPARED THIS LIST OF FUNCTIONS BASED ON

16 YOUR GENERAL KNOWLEDGE OF HOW WAREHOUSES OPERATE ACROSS MANY
17 DIFFERENT INDUSTRIES?
18 A. YES, PRIMARILY. IT'S MY UNIQUE LIST. YOU'LL SEE DIFFERENT
19 PEOPLE WITH DIFFERENT LISTS, BUT THIS, I THINK, CHARACTERIZES IT
20 RATHER WELL.
21 Q. NOW, STEPPING BACK FROM THIS LIST FOR A MOMENT, CAN YOU
22 DESCRIBE WHAT ARE THE RELEVANT DIFFERENCES BETWEEN AN RDC
23 SHIPMENT AND A INDIVIDUAL DROP SHIPMENT TO A PARTICULAR STORE?
24 A. SURE.
25 BEFORE RDC'S, THE DEFENDANTS WERE CONSOLIDATING

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1 ORDERS ACROSS STORES. SO EVEN BEFORE RDC'S, YOU KNOW, THIS ONE
2 BARNES & NOBLE STORE IN SANTA MONICA WASN'T SENDING AN ORDER
3 DIRECTLY TO THE PUBLISHER. THEY WERE CONSOLIDATING ORDERS AS
4 MR. CUMELLO IN HIS DEPOSITION FORMERLY -- AND NOW I'M TALKING
5 ABOUT THE WALDENBOOKS SIDE -- BUT MR. CUMELLO TESTIFIED TO THAT
6 IN HIS DEPOSITION.
7 HE WAS HEAD OF WALDENBOOKS FOR A TIME, SO GIVEN THAT
8 AND GIVEN, YOU KNOW, YOU JUST THINK OF HOW THE PROCESS WORKS.
9 THE REAL BIG DIFFERENCE IS FOR AN ORDER GOING TO AN RDC, IT'S
10 GOING TO BE A REAL LARGE ORDER TYPICALLY INVOLVING, AT LEAST FOR
11 THE BARNES & NOBLE WAREHOUSE FACILITIES AND THE WALDENBOOK
12 WAREHOUSE FACILITIES, CARTON ORDERS.
13 AND SO FOR THOSE RDC ORDERS, THIS PICK-AND-PACK
14 ORDER, FULL CARTON VERSUS LOOSE PICK AND ASSOCIATED CARTONS AND
15 STYROFOAM, YOU SAVE MOST OF THOSE EXPENSES ON RDC ORDERS.
16 THAT'S WHY I'VE GOT THAT HIGHLIGHTED IN RED. I'M NOT SURE I
17 PICKED THE RIGHT COLOR, BUT --
18 AND THEN THE OTHER THING IS -- THE IMPORTANT
19 DIFFERENCE IS ONCE THE ORDER'S READY TO BE SENT, RATHER THAN
20 DROP-SHIPPING TO A THOUSAND STORES IN THE BARNES & NOBLE
21 NETWORK, YOU'RE TAKING THAT SHIPMENT AND YOU'RE SENDING IT TO
22 ONE RETAIL DISTRIBUTION CENTER, AND SO THOSE ARE THE PRIMARY
23 DIFFERENCES ON RDC ORDERS.
24 Q. OKAY. NOW, YOU'RE RUNNING A LITTLE BIT AHEAD OF ME.
25 A. OKAY. SORRY.

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1 Q. LET ME JUST CLARIFY FOR THE RECORD. SO THE DIFFERENCE, IF I
2 UNDERSTAND YOUR TESTIMONY, IN THE ORDERS IS THE SIZE OF THE
3 ORDER IS AFFECTED, AND YOU MENTIONED THAT IN AN RDC ORDER,
4 TYPICALLY IT'S GOING TO BE IN CARTONS?
5 A. THAT'S CORRECT. THOSE ARE CRITICAL DIFFERENCES.
6 Q. NOW, HOW DID THOSE DIFFERENCES THAT YOU'VE DESCRIBED AFFECT
7 WHAT THE PUBLISHER DOES AT THE PUBLISHER'S WAREHOUSE?
8 A. WELL, THIS IS WHAT I REALLY HAD TO FOCUS ON WHEN I WAS
9 LOOKING AT THESE FUNCTIONS. AND I SPENT A LOT OF TIME DOING
10 THAT. I HAD TO ASCERTAIN BASED UPON COMPARING THIS RDC
11 METHODOLOGY OF FULFILLING THESE CONSOLIDATED ORDERS THROUGH THE
12 WAREHOUSE AND TO THE RDC AS OPPOSED TO DOING THAT SAME PROCESS
13 IN TERMS OF DROP SHIPMENTS.
14 I WENT THROUGH ALL OF THESE FUNCTIONS LISTED IN
15 EXHIBIT 10 AND CAREFULLY EXAMINED, BASED UPON MY EXPERIENCE,
16 WHICH OF THESE FUNCTIONS WOULD HAVE BEEN AFFECTED BY THOSE
17 DIFFERENT METHODOLOGIES.
18 Q. AND WHICH FUNCTIONS DID YOU CONCLUDE WOULD BE AFFECTED BY
19 RDC ORDERS BEING MADE IN CARTON QUANTITIES?
20 A. THE FUNCTIONS INVOLVED ARE HIGHLIGHTED IN RED IN THIS
21 EXHIBIT. IT'S PICK AND PACK; ORDER EXPENSES, WHICH INVOLVES
22 VARIABLE LABOR AS WELL AS SHIPPING SUPPLIES; AND IT'S FREIGHT.
23 THOSE ARE THE -- THE TWO FUNCTIONS.
24 Q. WHAT ABOUT THE OTHER FUNCTIONS? WHY DID YOU CONCLUDE THAT
25 THOSE WERE NOT AFFECTED?

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1 A. BECAUSE THE EXISTENCE OF RDC'S DOES NOT CHANGE THE FACT THAT
2 PUBLISHERS STILL ARE GOING TO OPERATE A WAREHOUSE. AND THAT
3 THEY'RE GOING TO HAVE TO RECEIVE PRODUCT FROM THE BINDERY AND
4 THEY'RE GOING TO HAVE TO SHELVE THE PRODUCT OR TAKE IT INTO THE
5 THEIR WAREHOUSE FOR FURTHER PROCESSING.
6 THE EXISTENCE OF RDC'S DOES NOT CHANGE ORDER ENTRY
7 BECAUSE THE DEFENDANTS WERE CONSOLIDATING ORDERS PRE-RDC. AND,

8 OF COURSE YOU WOULDN'T TIE CONSOLIDATION OF ORDERS TO JUST THE
9 MERE EXISTENCE OF AN RDC.
10 THE SCREENING AND PRIORITIZING ORDERS, TRANSMITTING
11 ORDERS, THOSE AREN'T CHANGED BECAUSE OF THE WAY CONSOLIDATED
12 ORDERS WERE BEING SENT TO PUBLISHERS BEFORE.
13 PULLING CARTONS FOR ORDER FULFILLMENT, WHETHER IT'S A
14 SMALL ORDER FROM A STORE OR A LARGE ORDER FOR AN RDC, YOU'RE
15 STILL GOING TO HAVE TO CARRY OUT THAT PROCESS OF GETTING THE
16 APPROPRIATE CARTONS TO THE APPROPRIATE STAGING AREAS FOR
17 ACTUALLY FILLING THE ORDER.
18 PICKING AND PACKING THE ORDER, THAT'S -- THAT'S
19 REALLY AFFECTED BY THIS, AS I'VE SUGGESTED.
20 LABELING ORDER, YOU'RE GOING TO HAVE TO LABEL ORDERS
21 DROP SHIP; YOU'RE GOING TO HAVE TO LABEL INDIVIDUAL CARTONS ON
22 LARGE ORDERS TO RDC'S AS WELL. YOU ALSO HAVE TO HAVE
23 DOCUMENTATION LABELING ASSOCIATED WITH EACH PALLET.
24 WRAPPING AND PALLETIZING ORDERS, I MEAN, THAT EXPENSE
25 ACTUALLY MAY INCREASE WITH LARGE RDC ORDERS COMPARED TO THE WAY

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1 THEY TRADITIONALLY HANDLED DROP SHIPMENTS. SO YOU AREN'T GOING
2 TO SEE LOWERED COSTS THERE, IN MY JUDGMENT.
3 MOVING ORDER TO LOADING DOCK, LOAD ORDER, I JUST
4 DON'T SEE HOW THOSE WOULD BE AFFECTED.
5 BILLING AND INVOICING, AGAIN, I DON'T BELIEVE THE
6 EXISTENCE OF AN RDC CHANGES THAT WHATSOEVER. YOU CAN HANDLE
7 BILLING AND INVOICING ELECTRONICALLY AND IN AGGREGATE WITH OR
8 WITHOUT RDC'S.
9 WAREHOUSE ADMINISTRATION'S NOT GOING TO CHANGE.
10 AND, AGAIN, MAYBE I'M GOING TOO FAR, BUT -- WELL,
11 I'LL STOP THERE.
12 Q. ONE OF THESE ITEMS YOU'VE PUT IN BLUE INK, THE SPECIAL
13 HANDLING QUALITY CONTROL VENDOR COMPLIANCE STANDARD. WHY DID
14 YOU PUT THAT IN BLUE?
15 A. I PUT IT IN BLUE BECAUSE I THINK THAT'S GOING TO HAVE
16 SIGNIFICANT IMPACT ON INCREASING PUBLISHER COSTS OF FULFILLING
17 RDC ORDERS, BUT I DID NOT TRY TO QUANTIFY IT. SO MY ESTIMATES
18 ARE GENEROUS, I BELIEVE, IN TERMS OF MAXIMUM POSSIBLE COST
19 SAVINGS FOR PUBLISHERS BASED UPON PICK AND PACK AND SHIPPING
20 SUPPLY SAVINGS AND FREIGHT SAVINGS BECAUSE I DID NOT ADJUST THEM
21 DOWNWARD BY THE COSTS ASSOCIATED WITH THIS SPECIAL COMPLIANCE
22 HANDLING THAT PUBLISHERS HAVE TO TRY TO MEET FOR THE DEFENDANTS.
23 Q. DO YOU KNOW FROM YOUR REVIEW OF INFORMATION IN THIS CASE THE
24 CONSEQUENCE THAT HAS BEEN IMPOSED ON PUBLISHERS BY THE
25 DEFENDANTS IF THEY FAIL TO COMPLY WITH THE DEFENDANTS' OWN

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1 QUALITY CONTROL STANDARDS?
2 A. ESPECIALLY BORDERS HAS BEEN RATHER AGGRESSIVE IN CHARGING
3 BACK PENALTIES TO PUBLISHERS WHO FAIL TO FOLLOW STEP BY STEP THE
4 COMPLIANCE STANDARDS THAT BORDERS HAS ESTABLISHED FOR THE
5 FULFILLMENT OF ORDERS INTO THEIR RDC'S.
6 Q. DO YOU RECALL THE -- THE APPROXIMATE AMOUNT OF THE ORDER OF
7 MAGNITUDE IN ANY GIVEN YEAR THAT BORDERS CHARGED FOR THESE
8 FAILURE TO COMPLY WITH THEIR QUALITY CONTROL STANDARDS?
9 A. I BELIEVE I -- I NOTICED IN ONE YEAR THAT CHARGEBACKS FROM
10 PUBLISHERS ON PENALTIES ASSOCIATED WITH NOT MEETING THESE
11 COMPLIANCE STANDARDS TOTALED AROUND THREE AND A HALF MILLION
12 DOLLARS.
13 Q. NOW, HAVE YOU SEEN ANY EVIDENCE OR BASED ON YOUR EXPERIENCE
14 IN WAREHOUSING IN GENERAL OF COMPARABLE PENALTIES THAT WOULD BE
15 ASSOCIATED WITH ORDERS FILLED ON A DROP-SHIP BASIS?
16 A. I HAVE NOT SEEN COMPARABLE PENALTIES THAT WOULD BE CHARGED
17 AGAINST DROP-SHIP ORDERS, NO.
18 Q. AND IN ASSESSING THE NET IMPACT ON PUBLISHERS, IN TERMS OF
19 COST SAVINGS -- AND JUST TO BE CLEAR, DID YOU MAKE ANY
20 ADJUSTMENT FOR THE POTENTIAL INCREASED COSTS ASSOCIATED WITH THE
21 ITEM HERE MARKED IN BLUE?
22 A. I DID NOT.
23 Q. OKAY. NOW, YOUR LIST OF FUNCTIONS HERE IN TAB 10 IS A
24 NUMBER OF WORK ITEMS ASSOCIATED WITH FILLING ORDERS. BESIDES
25 THE TASKS THAT ARE IDENTIFIED HERE, HOW ARE OTHER ASPECTS OF A

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1 PUBLISHER'S BUSINESS AFFECTED, IF AT ALL, BY THE EXISTENCE OF
2 RDC ORDERS?
3 A. WELL, YOU HAVE TO CONSIDER THAT ALL OF THE -- THIS WORK IS
4 CONDUCTED IN A WAREHOUSE FACILITY. AND YOU HAVE TO CONSIDER
5 THAT ALL OF THIS WORK INVOLVES BOOK INVENTORY STORED IN THAT
6 PARTICULAR WAREHOUSE. AND YOU HAVE TO CONSIDER EQUIPMENT AND --
7 LIKE FORKLIFTS AND CONVEYER SYSTEMS THAT ARE PART OF THE
8 WAREHOUSE FACILITY.

9 SO THIS JUST ENTAILS THE WORK FUNCTIONS. YOU HAVE
10 PHYSICAL ASSETS INVOLVED WHEREIN THIS WORK IS EITHER CONDUCTED
11 OR WITH THE BOOKS THEMSELVES, ACTUALLY WHAT IS BEING HANDLED
12 BASED UPON THIS PROCESS.

13 Q. IN YOUR OPINION AS AN EXPERT, DOES THE EXISTENCE OF RDC
14 ORDERS HAVE ANY IMPACT ON THE PUBLISHER'S ACTUAL WAREHOUSE
15 FACILITIES?

16 A. NO, IT DOES NOT.

17 Q. AND WHY IS THAT?

18 A. YOU -- I THINK PERHAPS THE KEY IN ANSWERING THIS FROM MY
19 PERSPECTIVE AS A DISTRIBUTION EXPERT IS THAT YOU'VE GOT WHAT I
20 CALL HETEROGENEITY OF ORDER FULFILLMENT METHODS THAT PUBLISHERS
21 HAVE TO ADOPT TO AND REACT TO.

22 AND WHAT DO I MEAN BY THAT? WELL, IF THE ONLY WAY
23 PUBLISHERS SERVED THE DEFENDANTS WERE THROUGH RDC ORDERS AND
24 THEY HAD NO OTHER CUSTOMERS, YOU COULD REALLY AFFECT A CHANGE IN
25 YOUR PHYSICAL ASSETS, THE WAREHOUSE, OR NUMBER OF WAREHOUSE
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1 WORKERS, OR INVENTORY. BUT THAT'S NOT WHAT WE HAVE HERE.

2 YOU HAVE MIXED MODES OF FULFILLMENT EVEN IN THE
3 DEFENDANTS' ORGANIZATIONS. BARNES & NOBLE IN TYPICAL YEARS,
4 RECEIVED OVER HALF OF THEIR PRODUCTS FROM PUBLISHERS STILL
5 DROP-SHIPPED, NOT THROUGH RDC'S.

6 WALDENBOOKS STILL RECEIVED 20 PERCENT OR MORE OF ITS
7 ORDERS FROM PUBLISHERS DROP-SHIPPED TO INDIVIDUAL STORES, NOT
8 THROUGH RDC'S.

9 Q. AND SO WHAT'S THE CONNECTION BETWEEN THAT FACT AND THIS
10 QUESTION ABOUT THE -- WHAT FACILITIES THE PUBLISHER HAS TO
11 MAINTAIN?

12 A. WELL, THE POINT IS, IS THAT BECAUSE THE PUBLISHERS STILL
13 NEED TO OPERATED A WAREHOUSE, AND BECAUSE THE PUBLISHERS ARE
14 DEALING WITH THE DEFENDANTS IN MULTIPLE WAYS, AND, IMPORTANTLY,
15 BECAUSE THE PUBLISHERS ARE DEALING WITH THOUSANDS OF OTHER
16 CUSTOMERS FROM INDEPENDENT BOOKSTORES, WHOLESALERS LIKE INGRAM,
17 BAKER & TAYLOR, LARGE DISCOUNT COMPANIES LIKE WAL-MART,
18 WAREHOUSE CLUBS LIKE COSTCO, MAIL ORDER COMPANIES, DOT COM
19 COMPANIES LIKE AMAZON.COM, RETAIL DRUGSTORE CHAINS -- THERE'S A
20 MYRIAD OF DIFFERENT CUSTOMERS WITH DIFFERENT DEMANDS AND
21 ORDERING PATTERNS THRUST ON EACH PUBLISHER.

22 AND SO IN THE GRAND SCHEME OF THINGS, TAKING A
23 BIG-PICTURE LOOK, YOU CANNOT REALLY CHANGE THE WAREHOUSE
24 FACILITIES THAT MUCH, NOT -- NOT BASED ON RDC'S, AT LEAST.

25 YOU CANNOT CHANGE YOUR SYSTEMS. YOU CANNOT CHANGE
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1 INVENTORY LEVELS BECAUSE YOU'RE DEALING WITH A COMPLEX ARRAY OF
2 DIFFERENT CUSTOMERS AND EACH ONE'S IMPORTANT TO THE CUSTOMER,
3 AND YOU HAVE TO TRY TO SERVE EACH ONE AS WELL YOU CAN.

4 Q. DID YOU PREPARE SOME DEMONSTRATIVE EXHIBITS TO DEPICT
5 VISUALLY THE HETEROGENEITY POINT THAT YOU'VE MADE TO THE COURT?

6 A. I DID NOT -- I DON'T THINK I DID IT VERY WELL, BUT I TRIED.

7 Q. WELL, LET'S LOOK AT A COUPLE EXHIBITS. TURN FIRST TO TAB
8 11, THE NEXT EXHIBIT IN YOUR BINDER, WHICH IS PLAINTIFF'S
9 DEMONSTRATIVE EXHIBIT 2563.

10 CAN YOU DESCRIBE WHAT IS DEPICTED IN THIS EXHIBIT?

11 A. THIS IS --

12 AND, YOUR HONOR, SORRY. I DIDN'T CATCH THE
13 MISSPELLING OF "FULFILLMENT." I APOLOGIZE FOR THAT.

14 THIS DEPICTS THE TRADITIONAL DROP-SHIP METHODOLOGY OF
15 PUBLISHERS SERVING DEFENDANTS' ORGANIZATIONS OR OTHER RETAILERS.

16 Q. AND CAN YOU TRACE ON THIS CHART HOW BOOKS FLOW FROM
17 BEGINNING TO END.

18 A. WELL, YOU STILL HAVE EITHER A BINDERY THAT PRODUCES THE

19 BOOKS. IT COULD BE AN INDEPENDENT -- INDEPENDENT MANUFACTURING
20 OPERATION THAT A PUBLISHER OUTSOURCES, OR IT COULD BE A
21 PRODUCTION FACILITY OPERATED BY A PUBLISHER, BUT ONCE THE BOOKS
22 ARE PRODUCED, YOU HAVE TO HAVE A PUBLISHER'S WAREHOUSE RECEIVE
23 THEM.
24 AND THEN ONCE YOU PUT THEM INTO THE WAREHOUSE, YOU'RE
25 READY TO START FULFILLING ORDERS.

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1 AND THE ORDERS FROM THE DEFENDANTS' STORES WOULD THEN
2 COME IN CONSOLIDATED, AND THE PUBLISHER WAREHOUSE OPERATIONS
3 WOULD FULFILL THEM. AND THEY'D BE SENT TO DROP SHIPMENT TO THE
4 INDIVIDUAL STORES.
5 Q. ALL RIGHT. IS -- LOOK AT EXHIBIT 12, AND PLEASE EXPLAIN HOW
6 THAT EXHIBIT DIFFERS FROM EXHIBIT 11. I'M SORRY, THAT'S THE
7 EXHIBIT AT TAB 11.
8 THE EXHIBIT AT TAB 12 IS EXHIBIT NUMBER 2563.
9 A. OKAY. THIS TRIES TO PINPOINT A PRIMARY DIFFERENCE BETWEEN
10 FULFILLING ORDERS DROP SHIP VERSUS FULFILL ORDERS THROUGH THE
11 RETAILERS' RDC.
12 Q. AND, AGAIN, EXPLAIN HOW THE BOOKS FLOW THROUGH THIS EXHIBIT
13 2562.
14 A. WELL, THERE'S NO CHANGE IN HOW THE WAY THE PUBLISHER'S
15 WAREHOUSE RECEIVES BOOKS. AND THEY'LL GET THE CONSOLIDATED
16 ORDER. BUT THE BIG CHANGE HERE, AT LEAST FOR BARNES & NOBLE AND
17 FOR WALDENBOOKS, IS THAT THE ORDERS WILL BE IN CARTON LOTS,
18 WHICH MINIMIZES PICK/PACK IN THE PUBLISHER'S WAREHOUSE.
19 AND THEN THERE'LL BE -- INSTEAD OF PAYING FREIGHT OUT
20 TO INDIVIDUAL STORES, SOME FREE-FREIGHT PUBLISHERS WOULD ONLY
21 INCUR A LOWER FREIGHT COST BY SENDING A LARGER ORDER TO A RDC, A
22 SINGLE RDC.
23 Q. AND THAT'S REPRESENTED BY THE THICKER BAR GOING FROM THE
24 PUBLISHER'S WAREHOUSE TO THE RETAILER'S RDC?
25 A. EXACTLY. AND IN SOME SENSE, THE RETAILER -- THE PUBLISHER

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1 IS TRANSFERRING WORK THAT IT TRADITIONALLY DID AT ITS OWN
2 WAREHOUSE, AND THAT WORK IS THEN BEING CONDUCTED IN THE
3 RETAILER'S RDC, THE PICK AND PACK AND SOME OF THE FREIGHT
4 ISSUES.
5 Q. OKAY. LASTLY LET ME ASK YOU TO LOOK AT THE DOCUMENT BEHIND
6 TAB 13, WHICH IS EXHIBIT 2561. AND CAN YOU EXPLAIN WHAT IS
7 DEPICTED ON THIS DEMONSTRATIVE EXHIBIT?
8 A. THE REASON I SUGGESTED I DIDN'T DO A VERY GOOD JOB OF THIS,
9 'CAUSE I DON'T THINK THIS IS VERY GOOD AT ALL IN COMMUNICATING
10 THE COMPLEXITY OF THIS MIXED MODE ORDER FULFILLMENT.
11 Q. FIRST -- LET'S FIRST START WITH THIS EXHIBIT AND EXPLAIN
12 WHAT'S HERE, AND THEN IF THERE'S ANYTHING THAT YOU WOULD STILL
13 ADD TO THIS, LET'S GO THERE NEXT.
14 A. AS I'VE INDICATED BEFORE, THE DEFENDANT ORGANIZATIONS
15 RECEIVE ORDERS THROUGH THE RDC, WHICH I'VE DESCRIBED BEFORE, BUT
16 ALSO AS I'VE INDICATED BEFORE, BARNES & NOBLE ALSO RECEIVES A
17 SIZABLE NUMBER OF ORDERS DROP-SHIPPED, AS DOES WALDENBOOKS.
18 ONLY BORDERS REALLY PRIMARILY TAKES MOST OF ITS
19 PUBLISHER ORDERS THROUGH ITS PUBLISHER ORDERS THROUGH ITS FOUR
20 FLOW-THROUGH CENTERS. SO IT'S MIXED MODES OF ORDER FULFILLMENT,
21 COMPLEXITY, CROSS-ORDERS -- AND THEN WITHIN BORDERS, BECAUSE
22 THEY ORDER IN CARTON AND NON-CARTON LOTS, THERE'S MIXED MODES OF
23 FULFILLMENT WITHIN ORDERS AS WELL FOR BORDERS.
24 Q. SO JUST FOR THE RECORD, ON THIS EXHIBIT, DO THE RED ITEMS
25 ALL RELATE TO THE DEFENDANTS?

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1 A. I THINK YOU NEED -- WELL, IN PART, IT MIGHT SUGGEST THAT,
2 BUT WHAT I WAS TRYING TO INDICATE IS THIS PUBLISHER WAREHOUSE
3 MUST DEAL WITH ALL THESE OTHER ENTITIES AS WELL THE INDEPENDENT
4 BOOKSTORES.
5 Q. I UNDERSTAND THAT. I'M JUST TRYING TO GET A CLEAR STATEMENT
6 ON THE RECORD ABOUT THIS CHART.
7 YOU HAVE THE RED STORES CONNECTED TO THE RETAILER'S
8 RDC?
9 A. RIGHT.
10 Q. SO BY THAT YOU'RE LOOKING ONLY AT THE STORES THAT ARE BEING

11 SERVED BY THE RDC AS WELL AS THAT ARE BEING SERVED BY THE
12 PUBLISHER?
13 A. THAT'S CORRECT.
14 Q. AND NOW IF I UNDERSTAND YOU CORRECTLY, YOU'RE SAYING THAT
15 THERE ARE THINGS MISSING YET ON THIS CHART?
16 A. YEAH, THE COMPLEXITY OF THE FULFILLING ORDERS IS BASED ON
17 PUBLISHER WAREHOUSE OPERATIONS IS EXTREME. IT'S BEEN INCREASING
18 OVER THE '90S AS DIFFERENT CHANNELS HAVE BECOME MORE IMPORTANT,
19 AND THIS -- THIS JUST DOESN'T, I THINK, VERY WELL ILLUSTRATE
20 THAT COMPLEXITY.
21 Q. WHAT WOULD YOU ADD TO THIS CHART TO TRY TO MAKE IT AS
22 COMPLETE AS POSSIBLE.
23 A. I'D ADD GREEN BOXES FOR THE INDEPENDENT BOOKSELLERS. I'D
24 ADD PURPLE BOXES FOR WAL-MART. I'D ADD ORANGE BOXES FOR RETAIL
25 DRUG CHAINS OR SUPERMARKETS.

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1 IT'S JUST SO MANY DIFFERENT CHANNEL FORMATS, SO MANY
2 DIFFERENT CHANNEL CUSTOMERS ARE INVOLVED, INCLUDING WHOLESALERS
3 LIKE INGRAM, THAT A PUBLISHER WAREHOUSE NEEDS TO TRY TO FULFILL
4 PROPERLY.
5 Q. NOW, IF YOU WERE TO HAVE THOSE GREEN BOXES AND ORANGE BOXES
6 AND PURPLE BOXES AND THEY WERE ALL RECEIVING BOOKS, THE ARROW
7 WOULD COME TO THEM. WHERE WOULD THE ARROW CONNECT TO IN EVERY
8 CASE?
9 A. TO THE PUBLISHER'S WAREHOUSE.
10 Q. SO WHAT, THEN, IS THE EFFECT OF THE EXISTENCE OF THE
11 RETAILER'S RDC, THE RED -- THE BIG RED BOX HERE? WHAT IS THE
12 EFFECT THAT THAT HAS ON WHETHER OR NOT THE PUBLISHER STILL HAS
13 TO MAINTAIN ITS -- THE BIG PUBLISHER WAREHOUSE?
14 A. WELL, IT HAS NO EFFECT.
15 Q. NOW, YOU ALSO TESTIFIED EARLIER BESIDE FACILITIES, YOU MADE
16 A COMMENTS ABOUT INVENTORY. WHAT EFFECT DOES THE DEFENDANT'S
17 RDC'S HAVE, IF ANY, ON THE AMOUNT OF INVENTORY THAT A PUBLISHER
18 HAS TO MAINTAIN IN ITS WAREHOUSE?
19 A. I DON'T BELIEVE THE INVENTORY LEVELS MAINTAINED BY
20 PUBLISHERS ARE GOING TO BE AFFECTED BY THE EXISTENCE OF RDC'S.
21 IF ANYTHING, PERHAPS THE EXISTENCE OF RDC'S WOULD INCREASE THE
22 NEED FOR PUBLISHERS TO HAVE MORE INVENTORY IN THEIR WAREHOUSES.
23 I DON'T SEE ANY INDICATION THAT PUBLISHERS' INVENTORY WOULD BE
24 REDUCED BASED UPON THE EXISTENCE OF RDC'S.
25 Q. LET ME ASK YOU -- ON THIS -- LOOKING AT THIS CHART, 2561,

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1 ARE THERE EVER INSTANCES, TO YOUR KNOWLEDGE, WHERE PRODUCT WOULD
2 FLOW DIRECTLY FROM THE BINDERY TO ONE OF THE DEFENDANTS' RDC'S?
3 A. I BELIEVE THAT HAPPENS IN VERY SMALL AMOUNTS. BUT YES, I
4 HAVE READ ABOUT THAT.
5 Q. HOW SIGNIFICANTLY, BASED ON YOUR UNDERSTANDING, IS IT THAT
6 SHIPMENTS MOVE DIRECTLY FROM THE BINDERY TO THE RDC?
7 A. IT'S MY UNDERSTANDING THAT VERY, VERY LOW. IT WOULD ONLY
8 INVOLVE VERY HOT OR POTENTIALLY BIG-SELLING FRONT LIST BOOKS.
9 BUT I UNDERSTAND THAT PRACTICE IS NOT USED VERY OFTEN, IF AT
10 ALL.
11 Q. AND WHAT IS THAT UNDERSTANDING BASED ON?
12 A. SIMPLY EVIDENCE, READING ABOUT THIS PRACTICE IN TERMS OF
13 VARIOUS TESTIMONY.
14 Q. SO THE -- YOU BASE THAT OPINION ON THE TESTIMONY YOU'VE READ
15 IN THIS CASE?
16 A. YES.
17 Q. BASED ON YOUR GENERAL EXPERTISE IN DISTRIBUTION SYSTEMS, CAN
18 YOU EXPLAIN WHY BOOKS ARE NOT SHIPPED DIRECT FROM THE BINDERY TO
19 THE DEFENDANTS RDC'S MORE OFTEN?
20 A. BECAUSE THE BINDERY OPERATIONS ARE FOCUSED ON PRODUCING THE
21 BOOKS AND MEETING CERTAIN QUALITY STANDARDS REGARDING THE BOOK
22 QUALITY ITSELF.
23 THEY DO NOT HAVE FUNCTIONS, NOR DO THEY HAVE
24 EXPERTISE, IN FACILITATING -- FULFILLING ORDERS AND FACILITATING
25 SHIPMENTS TO INDIVIDUAL RETAIL CUSTOMERS.

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1 Q. ALL RIGHT. I'D LIKE TO GO BACK TO EXHIBIT 10.
2 IF I UNDERSTAND CORRECTLY, YOU IDENTIFIED TWO

3 FUNCTIONS, THE PICK/PACK FUNCTION, AND FOR FREE-FREIGHT
4 PUBLISHERS, THE FREIGHT FUNCTION THAT ARE AFFECTED BY RDC
5 SHIPMENTS?
6 A. YES.
7 Q. I'D LIKE TO NOW ASK YOU SOME QUESTIONS ABOUT HOW YOU WENT
8 ABOUT QUANTIFYING THE POTENTIAL OF THE SAVINGS TO PUBLISHERS
9 ASSOCIATED WITH EACH OF THESE FUNCTIONS.
10 A. SURE.
11 Q. FIRST OF ALL, BEFORE WE -- FOCUSING ON THE PICK/PACK
12 FUNCTION, IS IT -- ARE THERE ALWAYS PICK/PACK SAVINGS ON ORDERS
13 GOING TO THE RDC?
14 A. TO THE EXTENT THEY'RE FULL CARTON ORDERS, YES. TO THE
15 EXTENT BORDERS ORDERS A -- NON-CARTON LOTS, THERE'D BE FEWER
16 SAVINGS TO BORDERS.
17 Q. ALL RIGHT. SO WHEN THERE ARE SHIPMENTS TO THE RDC'S IN
18 CARTON LOTS, HOW DID YOU GO ABOUT ESTIMATING THE AMOUNT OF
19 PUBLISHER COST SAVINGS ASSOCIATED WITH THAT FUNCTION THAT IS NOW
20 TRANSFERRED FROM THEIR WAREHOUSE TO THE DEFENDANT'S WAREHOUSES?
21 A. WELL, I BASICALLY USED DEFENDANTS COST DATA IN TERMS OF
22 THEIR RDC OPERATIONS TO MAKE A DETERMINATION OF MAXIMUM POSSIBLE
23 COST SAVINGS THAT PUBLISHERS WOULD INCUR BASED ON REDUCING THE
24 LEVEL OF PICK/PACK NECESSARY IN SERVING LARGE RDC ORDERS.
25 Q. CAN YOU EXPLAIN FOR THE COURT WHY DID YOU USE DEFENDANTS'

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1 DATA ASSOCIATED WITH THEIR PERFORMANCE OF THIS PICK/PACK
2 FUNCTION AT THEIR WAREHOUSE RATHER THAN PUBLISHER DATA?
3 A. THE SECOND ISSUE I WAS ASKED TO ADDRESS IS WHAT SHOULD
4 DEFENDANTS' MANAGEMENT -- WHAT SHOULD THEY HAVE KNOWN REGARDING
5 HOW RDC DISCOUNTS COMPARED TO PUBLISHER COST SAVINGS, AND SO
6 THEIR KNOWLEDGE WAS IMPORTANT TO ME.
7 THEY WOULD HAVE HAD KNOWLEDGE OF THEIR OWN COSTS OF
8 OPERATING THEIR OWN WAREHOUSE FACILITIES, SO THAT WAS ONE REASON
9 WHY I DECIDED TO USE THE DEFENDANTS' COST DATA IN DETERMINING
10 THE POTENTIAL PUBLISHER SAVINGS.
11 Q. WERE THERE ANY OTHER REASONS?
12 A. THE SECOND REASON IS VERY IMPORTANT, AND THAT IS THERE'S
13 CLEAR TESTIMONY FROM CERTAIN PEOPLE IN THE DEFENDANTS'
14 ORGANIZATIONS -- ONE EXAMPLE, MR. CUMELLO, WHO WAS PRESIDENT OF
15 WALDENBOOKS FOR A TIME; TESTIMONY BY MS. ERCOLANO, A TOP
16 EXECUTIVE IN BARNES & NOBLE -- THAT THEY FELT THAT THE COST THAT
17 THEY INCUR IN OPERATING THE RETAIL DISTRIBUTION CENTERS WOULD
18 MIRROR OR PARALLEL THE COST OF OPERATING THE PUBLISHERS'
19 WAREHOUSES.
20 AND I COULD HAVE JUST AS WELL PUT RETAILER RDC ORDER
21 FULFILLMENT ON THIS EXHIBIT TAB, BECAUSE THESE ACTIVITIES HAVE
22 TO BE PERFORMED IN RETAIL RDC'S AS WELL. SO I FELT THAT BASED
23 ON DEFENDANTS' KNOWLEDGE ON HOW THE DISCOUNT LEVELS COMPARED TO
24 COST SAVINGS, AND BASED ON THE FACT THAT KNOWLEDGEABLE PEOPLE IN
25 THE DEFENDANTS' ORGANIZATIONS FELT THAT THEIR COST DATA WOULD

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1 MIRROR THOSE OF THE PUBLISHER, I THEREFORE EMBRACED THE
2 DEFENDANTS' COST DATA IN MY ANALYSIS.
3 Q. LET ME ASK YOU THIS QUESTION: WITH RESPECT TO RDC ORDERS,
4 HOW DOES THE DEFENDANTS' PERFORMANCE OF THE PICK/PACK FUNCTION
5 COMPARE TO THE PUBLISHER'S PERFORMANCE OF THE PICK/PACK
6 FUNCTION?
7 A. THE BASIC WORK IS THE SAME. I MEAN, YOU'RE FULFILLING
8 ORDERS FOR DROP SHIPMENT TO INDIVIDUAL STORES. AND YOU HAVE TO
9 BREAK OPEN CARTONS OF VARIOUS TITLES. YOU HAVE TO STAPLE A BOX
10 TOGETHER, START PUTTING ONESIES, TWSIES IN THE BOX. I MEAN,
11 THE WORK ACTIVITY IN BOTH IS PARALLEL.
12 Q. AM I CORRECT IN YOUR EARLIER DESCRIPTION OF THE DEFENDANTS'
13 OPERATIONS, THAT WHAT IS HAPPENING AT THEIR RDC'S IS THAT LARGE
14 SHIPMENTS THAT HAVE COME IN ARE BROKEN DOWN INTO SMALLER
15 SHIPMENTS THAT THEN GO OUT TO THE INDIVIDUAL DEFENDANTS' STORES?
16 A. WHAT -- YEAH. BUT REMEMBER, WALDENBOOKS AND BARNES & NOBLE
17 RECEIVE AND PUT AWAY THE BOOKS THAT THEY RECEIVE FROM PUBLISHERS
18 JUST LIKE PUBLISHERS RECEIVE AND PUT AWAY THE BOOKS THEY RECEIVE
19 FROM BINDERIES.
20 IT'S SLIGHTLY -- IT'S DIFFERENT IN THE BORDERS
21 FLOW-THROUGH FACILITIES. BUT STILL PICK/PACK ACTIVITY HAS TO BE

22 DONE THERE AS WELL.
23 Q. AND THAT IS PICKING AND PACKING SHIPMENTS THAT ARE GOING TO
24 GO TO A SINGLE DEFENDANT'S STORE LOCATION?
25 A. EXACTLY.

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1 Q. ALL RIGHT. HOW DID YOU IDENTIFY THE COSTS THAT THE
2 DEFENDANTS INCURRED IN PICKING AND PACKING INDIVIDUAL SHIPMENTS
3 GOING TO THEIR INDIVIDUAL STORES?
4 A. I LOOKED AT VARIOUS FINANCIAL STATEMENTS OR VARIABLE COST
5 SUMMARIES PROVIDED BY THE DEFENDANT ORGANIZATIONS IN THE CASE.
6 Q. LET ME FIRST ASK YOU TO TURN TO TAB 15, WHICH IS PLAINTIFF'S
7 EXHIBIT 1969. AND IN PARTICULAR -- WELL, THERE'S SEVERAL
8 EXHIBITS THAT ARE -- LET ME TRY TO BE CLEAR FOR THE RECORD.
9 PLAINTIFF'S EXHIBIT 1969 IS SEVERAL PAGES, EACH OF
10 WHICH IS LABELED AN EXHIBIT NUMBER, EXHIBIT 7, EXHIBIT 8,
11 EXHIBIT 9 REVISED. CAN YOU IDENTIFY WHAT THESE PAGES ARE?
12 A. SURE. EXHIBIT 7 PROVIDES --
13 Q. JUST IN GENERAL -- GIVE ME THE BIG PICTURE. WHAT ARE THESE?
14 A. OH, ALL THESE EXHIBITS?
15 Q. WHAT ARE THESE?
16 A. THESE EXHIBITS INVOLVE MY ESTIMATION OF PUBLISHER COST
17 SAVINGS BASED ON FULFILLING ORDERS THROUGH RDC'S AS OPPOSED TO
18 DROP SHIPMENTS, BASED ON PICK/PACK, BASED ON SHIPPING SUPPLIES,
19 AND ALSO EVENTUALLY BASED ON FREIGHT SAVINGS.
20 Q. SO THESE ARE EXHIBITS THAT YOU PREPARED?
21 A. RIGHT.
22 Q. LET ME -- YOU'VE IDENTIFIED TWO THINGS. YOU SAID BASED ON
23 PICK/PACK AND BASED ON SUPPLIES. CAN YOU DESCRIBE FOR THE
24 COURT, ARE THERE MULTIPLE COMPONENTS OF PICK/PACK FUNCTION?
25 A. YES. ORIGINALLY IN MY FIRST REPORT, I ONLY LOOKED AT THE
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1 ACTUAL VARIABLE LABOR EXPENSE ITSELF ASSOCIATED WITH PICK AND
2 PACK, MEANING WHAT DID IT COST TO BASICALLY HAVE WAREHOUSE
3 PEOPLE GO THROUGH ALL THIS PICK AND PACK ACTIVITIES.
4 BUT A COUPLE OF DEFENDANTS' EXPERTS CRITICIZED MY
5 ANALYSIS AND SAID THAT YOU SHOULD ALSO LOOK AT NON-PRODUCTIVE
6 LABOR, AND THAT MEANS THAT, WELL, IF YOU'RE ABLE TO REDUCE
7 PICK-AND-PACK ACTIVITIES, THE DOWN TIME OF HAVING WAREHOUSE
8 WORKERS STANDING AROUND AND REALLY NOT DOING ANYTHING BUT
9 SHOOTING THE BREEZE WOULD BE REDUCED. AND ALSO PERHAPS EMPLOYEE
10 BENEFITS OR PAYROLL TAXES OR VACATION TIME WOULD BE REDUCED AS
11 WELL BASED UPON REDUCING THE VARIABLE PICK/PACK EXPENSE.
12 I FELT THEIR CRITICISMS WERE REASONABLE, AND
13 THEREFORE IN MY SECOND REPORT, I HAVE -- I'VE TAKEN INTO ACCOUNT
14 COST SAVINGS BASED UPON NON-PRODUCTIVE LABOR AS WELL.
15 (CONTINUED NEXT PAGE; NOTHING OMITTED.)
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1 BY MR. DEBRUIN:
2 Q. NOW, BOTH OF THESE YOU'VE DESCRIBED, THE PRODUCTIVE LABOR
3 AND THE POTENTIAL NON-PRODUCTIVE LABOR, THEY'RE OBVIOUSLY LABOR
4 EXPENSES. IN ADDITION TO LABOR, IS THERE ANY OTHER COSTS
5 ASSOCIATED WITH THE PICK-PACK FUNCTION?
6 A. SHIPPING SUPPLIES, THE NUMBER OF CARTONS YOU USE UP IN
7 FULFILLING ORDERS FOR NON-CARTON ORDERS, AND IN -- CERTAINLY
8 THE DUNNAGE OR STYROFOAM OR SPECIAL PACKAGING MATERIALS YOU PUT
9 IN THOSE BOXES TO PROTECT THE BOOKS IN SHIPMENT.
10 Q. ALL RIGHT, LET ME ASK YOU TO LOOK AT EXHIBIT NUMBER 8 OF
11 YOUR EXHIBITS, WHICH ARE LABELED TRIAL EXHIBIT 1969 BEHIND TAB
12 15. CAN YOU IDENTIFY WHAT YOU SET FORTH ON YOUR EXHIBIT
13 NUMBER 8?

14 A. RIGHT. THIS INVOLVES ONLY ESTIMATES OF MAXIMUM POSSIBLE
15 PUBLISHER COST SAVINGS BASED ON BARNES & NOBLE DISTRIBUTION
16 DATA FOR THREE YEARS, 1997, 1998 AND 1999, AND AS WE SEE IN
17 EXHIBIT 8, I HAVE AN ESTIMATE OF PUBLISHER COST SAVINGS BASED
18 ON VARIABLE PICK-PACK LABOR COST PER BOOK, WHICH ALSO INCLUDES
19 NON-PRODUCTIVE LABOR COST.

20 I ALSO, BASED UPON HAVING DATA ON SHIPPING SUPPLY
21 COSTS FOR BARNES & NOBLE FOR THREE YEARS, AND THE NUMBER OF
22 BOOKS NET THAT WERE PROCESSED THROUGH THE BARNES & NOBLE
23 DISTRIBUTION, I WAS ABLE TO ESTIMATE SHIPPING SUPPLY COSTS PER
24 BOOK, AND THEREFORE, THE BOTTOM ENTRY IN EXHIBIT 8 IS THE TOTAL
25 OF PICK-PACK AND SHIPPING SUPPLIES COSTS PER BOOK THAT I

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1 ESTIMATE, AND I CHARACTERIZE IT AS MAXIMUM POSSIBLE PUBLISHER
2 COST SAVINGS BASED ON DEALING THROUGH RDC'S AND SAVING ON THESE
3 PARTICULAR FUNCTIONS.

4 Q. NOW, WHERE DID THE INFORMATION IN THIS CHART COME FROM?

5 A. VARIOUS BARNES & NOBLE FINANCIAL SUMMARIES, OR COST
6 SUMMARIES.

7 Q. ALL RIGHT, I'D LIKE TO TAKE A MOMENT AND JUST WALK THROUGH
8 THOSE, SO YOU CAN SHOW THE COURT HOW YOU OBTAINED THE
9 INFORMATION. LET'S LOOK AT TAB NUMBER 18, TRIAL EXHIBIT 917.
10 IS THIS ONE OF THE DOCUMENTS THAT YOU RECEIVED AND REVIEWED IN
11 CONNECTION WITH YOUR WORK?

12 A. YES.

13 Q. THE DOCUMENT BEHIND TAB 18, CAN YOU IDENTIFY FOR THE RECORD
14 WHAT THIS DOCUMENT IS?

15 A. BEHIND TAB 18, IT'S THE -- FOR BARNES & NOBLE,
16 DISTRIBUTION, THE MONTHLY FINANCIAL SUMMARY FOR JANUARY OF
17 2000, WHICH BASICALLY I UNDERSTAND IT TO MEAN THIS IS THE
18 FISCAL YEAR 1999, WHICH ENDS IN JANUARY 2000.

19 Q. SO THIS WAS A FINANCIAL DOCUMENT THAT WAS PRODUCED BY
20 BARNES & NOBLE?

21 A. CORRECT.

22 Q. AND DOES IT INCLUDE BOTH MONTHLY AND YEAR-TO-DATE
23 INFORMATION?

24 A. THAT'S CORRECT.

25 Q. SO IF I UNDERSTAND CORRECTLY, YOUR UNDERSTANDING IS THAT

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1 THE YEAR-TO-DATE INFORMATION AS OF JANUARY 2000 WOULD INCLUDE
2 THE YEAR-TO-DATE AS OF THE END OF BARNES & NOBLE'S FISCAL YEAR
3 1999?

4 A. THAT'S MY UNDERSTANDING.

5 Q. NOW, DR. FRAZIER, AND JUST FOR THE RECORD, I WILL STATE
6 THAT THESE PAGES ARE ONLY AN EXCERPT OF THE ENTIRE FINANCIAL
7 DOCUMENT. IS THAT CORRECT?

8 A. CORRECT.

9 Q. AND I'VE SELECTED THESE PAGES SO YOU CAN ILLUSTRATE TO THE
10 COURT WHERE YOU OBTAINED THE DATA THAT YOU THEN COMBINE ON
11 EXHIBIT NUMBER 8, OR I'M SORRY, THE DOCUMENT -- YOUR EXHIBIT 8
12 FROM YOUR EXPERT REPORT, WHICH WE LOOKED AT BEHIND TAB 15.

13 A. RIGHT.

14 Q. CAN YOU IDENTIFY IN THIS FINANCIAL REPORT OF BARNES & NOBLE
15 BEHIND TAB 18 WHERE YOU OBTAINED INFORMATION ON THE COSTS THAT
16 BARNES & NOBLE INCURRED IN PERFORMING THE PICK-PACK LABOR
17 FUNCTION AT ITS RDC'S?

18 A. IF WE TURN TO PAGE 26 OF EXHIBIT 18, THIS LAYS OUT FOR
19 BARNES & NOBLE DISTRIBUTION VARIABLE LABOR COSTS FOR THE YEAR
20 1999 IN CENTS PER UNIT, AND IF WE LOOK AT LINE NUMBER 1 IN --
21 AT THE VERY TOP OF THIS TABLE, IT PROVIDES AN ACTUAL
22 PICK-AND-PACK COST OF .043 CENTS ON A UNIT BASIS INCURRED BY
23 BARNES & NOBLE DISTRIBUTION IN 1999. THAT FORMS THE LARGEST
24 PORTION OF MY ESTIMATE OF THE PICK-PACK SAVINGS TO PUBLISHERS
25 FOR 1999 IN EXHIBIT 8.

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1 Q. I SHOULD CLARIFY, JUST FOR THE RECORD, THAT THE COVER PAGE
2 OF THIS FINANCIAL REPORT IN TAB 18 SAYS, "BARNES & NOBLE
3 DISTRIBUTION." DO YOU UNDERSTAND THESE TO BE THE COSTS THAT
4 ARE REPORTED BY THE DISTRIBUTION DIVISION OF BARNES & NOBLE?
5 A. THAT'S CORRECT.

6 Q. AND IS THAT THE DIVISION THAT OPERATES ITS RDC'S?
7 A. CORRECT, OR RDC, YES.
8 Q. NOW, THIS DOCUMENT IDENTIFIES A PICK-PACK COST OF 4.3 CENTS
9 PER UNIT. IS THAT THE FIGURE THAT YOU USED, THEN, ON YOUR
10 EXHIBIT NUMBER 8 TO YOUR EXPERT REPORT?
11 A. WELL, IT WOULD HAVE BEEN IF THIS IS IN MY ORIGINAL REPORT,
12 BUT I ALSO ADDED TO THIS AN ESTIMATE OF SAVINGS ON
13 NON-PRODUCTIVE LABOR, AS I DESCRIBED BEFORE.
14 SO IN EXHIBIT 8, FOR 1999, I HAVE VARIABLE PICK-PACK
15 LABOR COST PER BOOK OF 5.77 CENTS. OF THAT AMOUNT, 5.77 CENTS,
16 4.3 CENTS WOULD BE THIS ESTIMATE OF ACTUAL VARIABLE
17 PICK-AND-PACK LABOR EXPENSE, AND THE REMAINDER WOULD BE AN
18 ESTIMATE OF NON-PRODUCTIVE LABOR SAVINGS BASED UPON ALL OUR
19 PICK-PACK ACTIVITY.
20 Q. SO FROM THE DOCUMENT YOU FOUND A REPORT OF THE PICK-PACK
21 COSTS OF 4.3 CENTS. YOU ULTIMATELY USED IN YOUR CHART A FIGURE
22 OF 5.77 CENTS. AND THE DIFFERENCE IS WHAT, AGAIN?
23 A. NON-PRODUCTIVE LABOR COST SAVINGS.
24 Q. AND HOW DID YOU ESTIMATE THE AMOUNT OF NON-PRODUCTIVE LABOR
25 COST THAT YOU WOULD ASSOCIATE WITH THE PICK-PACK COSTS, JUST IF
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1 YOU CAN BRIEFLY DESCRIBE THAT?
2 A. WELL, IF WE STILL STAY ON PAGE 26 --
3 Q. AND THIS IS THE DOCUMENT BEHIND TAB 18?
4 A. YEAH, EXACTLY, I'M SORRY, PAGE 26 BEHIND TAB 18. ITEM
5 NUMBER 16 IN BARNES & NOBLE DISTRIBUTION VARIABLE LABOR COSTS
6 IS AN ENTRY FOR NON-PRODUCTIVE LABOR OF .008. ALSO, IN LINE 18
7 THEY'VE GOT MISCELLANEOUS ALLOCATION OF LABOR OF .003.
8 I ADDED THOSE TWO TOGETHER, AND THEN TOOK AS A
9 PERCENTAGE OF TOTAL VARIABLE LABOR WHAT PICK-AND-PACK ENTAILED,
10 AND THEN MULTIPLIED THE TWO TOGETHER TO GET THE LIKELY SAVINGS
11 FROM HAVING WAREHOUSE WORKERS JUST STANDING AROUND NOT BEING
12 PRODUCTIVE BASED UPON LOWERED PICK-PACK.
13 Q. SO YOU DID NOT ALLOCATE ALL OF THE NON-PRODUCTIVE LABOR
14 REPORTED HERE TO PICK-PACK?
15 A. NO, BECAUSE SOME OF THIS WOULD BE RELATED TO SOME OF THESE
16 OTHER FUNCTIONS, LIKE THE RECEIVING FUNCTION, FOR EXAMPLE, IN
17 LINE NUMBER 3 THAT WE'VE DESCRIBED BEFORE.
18 Q. SO THERE WOULD BE TIME WHEN THE PEOPLE WHO RECEIVE BOOKS
19 WOULD BE IDLE BECAUSE THERE'S NO BOOKS THAT HAVE COME IN?
20 A. RIGHT, AND THAT ISN'T AFFECTED BY RDC FULFILLMENT.
21 Q. SO YOU TOOK A PROPORTION OF THE NON-PRODUCTIVE LABOR AND
22 ALLOCATED IT TO PICK-PACK, IS THAT RIGHT?
23 A. RIGHT, BUT THAT ISN'T ALL, BECAUSE -- THAT'S ONE PART OF
24 THE ESTIMATE OF NON-PRODUCTIVE LABOR. THEN, IF WE GO TO THE
25 PREVIOUS PAGE, IT'S ACTUALLY LABELED 9, PAGE 9, IN TAB 18, THIS
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1 IS THE BARNES & NOBLE DISTRIBUTION INCOME STATEMENT, AND IT
2 BASICALLY HAS PAYROLL AT THE UPPER LEFT, AND SO -- AND THEN IT
3 GIVES BONUS AND BENEFITS AND PAYROLL TAXES.
4 WELL, BONUS, BENEFITS, PAYROLL TAXES, IN ADDITION TO
5 THIS DOWNTIME OR NON-PRODUCTIVE TIME ITSELF THAT I'VE ALREADY
6 TAKEN INTO ACCOUNT, I'VE GOT TO MAKE AN ADJUSTMENT HERE AS
7 WELL.
8 SO WHAT I DID WAS, I HAD TO ASK MYSELF WHAT
9 PERCENTAGE OF BONUS, BENEFITS, PAYROLL APPLIED ITSELF JUST TO
10 WAREHOUSE LABOR IN GENERAL, BECAUSE YOU HAVE ADMINISTRATION AND
11 OTHER PEOPLE WITH BONUSES, BENEFITS, PAYROLL TAXES, TOO.
12 SO WHAT I DID IS I TOOK THE SALARY FOR OFFICE TEMPS
13 ON LINE 21, AND I ADDED LINE 22 AND I ADDED LINE 23, AND I
14 TOTALED THAT, WHICH GIVES YOU PAYROLL ASSOCIATED WITH THE
15 OPERATION OF BARNES & NOBLE DISTRIBUTION CENTER IN GENERAL.
16 AND THEN NEXT, I DIVIDED THE WAREHOUSE LABOR, THE 10,000,190,
17 BY THE TOTAL, TO COME OUT WITH A PERCENTAGE OF PAYROLL
18 DEDICATED TO THE WAREHOUSE.
19 THEN WHAT I DID IS I ADDED BONUS OF 326,000,
20 BENEFITS OF 757,900, AND PAYROLL TAXES OF 1.176 MILLION
21 TOGETHER, AND MULTIPLIED THAT TIMES THIS PERCENTAGE, WHICH WAS
22 DEVOTED JUST TO WAREHOUSE WORKERS.
23 AND I KNOW THIS IS KIND OF TEDIOUS -- SORRY, YOUR
24 HONOR -- BUT THEN I HAD TO MULTIPLY THE PERCENTAGE OF PICK-PACK

1 BENEFITS, PAYROLL TAXES SAVED BASED ON REDUCING PICK-AND-PACK.
2 SO ADDING THOSE TWO TOGETHER, THAT'S THE DIFFERENCE
3 BETWEEN THE .043 CENTS IN TAB 18 FOR PICK-PACK LABOR AND THE
4 5.77 CENTS IN EXHIBIT 8 FOR 1999. IT'S A NON-PRODUCTIVE LABOR
5 ADJUSTMENT.
6 Q. JUST FOR THE RECORD, THE NUMBERS YOU'RE GIVING US ARE FROM
7 THE YEAR-TO-DATE ACTUAL COLUMN?
8 A. RIGHT, YES.
9 Q. ALL RIGHT, SO ONCE YOU HAD MADE AN ADJUSTMENT TO THE
10 PICK-PACK FIGURE SO AS TO INCLUDE AN AMOUNT OF NON-PRODUCTIVE
11 LABOR, YOU THEN TRANSFERRED THAT TO YOUR EXHIBIT NUMBER 8?
12 A. RIGHT, AND I FOLLOWED A SIMILAR APPROACH FOR '97 AND '98,
13 AS WELL.
14 Q. ALL RIGHT. KEEPING FOCUSED ON 1999, THE NEXT ITEM ON YOUR
15 EXHIBIT 8, WHICH IS BEHIND TAB 15, IS "SHIPPING SUPPLIES COST."
16 A. RIGHT.
17 Q. AND THERE'S A FIGURE FOR 1999 OF 2,070,700.
18 A. CORRECT.
19 Q. WHERE DID YOU GET THAT FIGURE FROM?
20 A. IF WE GO TO TAB 18, AND WE GO TO PAGE 9, WHICH IS BARNES &
21 NOBLE DISTRIBUTION INCOME STATEMENT IN MILLIONS -- IN THOUSANDS
22 OF DOLLARS, 1999, TRADED IN FOR JANUARY, IS WHAT IT IS IT SAYS,
23 AND THEN YOU GO TO WAREHOUSE EXPENSE NEAR THE BOTTOM, LINE 43
24 IS SHIPPING SUPPLIES, AND IF YOU GO OVER TO YEAR-TO-DATE
25 ACTUAL, IT'S 2,070,700, AND THAT'S THE FIGURE THAT YOU FIND IN
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1 THAT SECOND COLUMN IN THE FAR RIGHT PORTION OF EXHIBIT 8.
2 Q. AND THAT'S A TOTAL DOLLAR FIGURE?
3 A. OF SHIPPING SUPPLY EXPENSE, YES.
4 Q. AND THEN DID YOU CONVERT THAT TOTAL DOLLAR FIGURE INTO A
5 PER BOOK AMOUNT?
6 A. YES, BECAUSE WE HAVE IN TAB 18, PAGE 8, JUST THE PRIOR PAGE
7 FROM WHERE I WAS BEFORE, BARNES & NOBLE DISTRIBUTION INCOME
8 STATEMENT, IF YOU GO DOWN TO LINE 12, IT HAS "NET UNITS SOLD,"
9 WHICH IS 100,247,900, AND THAT ENTAILS THE THIRD ENTRY IN THE
10 FAR RIGHT COLUMN FOR 1999 OF BOOKS SOLD NET THROUGH THE
11 DISTRIBUTION CENTER.
12 Q. ALL RIGHT. SO IF I UNDERSTAND YOUR CHART CORRECTLY, THEN,
13 YOU, DRAWING ON THESE DOCUMENTS, CONCLUDED THAT THE SHIPPING
14 SUPPLIES COST PER BOOK, IN YOUR EXHIBIT 8 BEHIND TAB 15, WAS
15 2.07 CENTS PER BOOK.
16 A. WHICH IS SIMPLY DIVIDING 2,070,700 BY THE NUMBER OF UNITS,
17 OR 100,247,900.
18 Q. AND THEN WHAT'S THE LAST LINE ON YOUR CHART, TOTAL
19 PICK-PACK AND SHIPPING SUPPLIES COST PER BOOK?
20 A. THAT SIMPLY DEPICTS SAVINGS AND PICK-AND-PACK, INCLUDING
21 NON-PRODUCTIVE LABOR AND SHIPPING SUPPLIES, THE TOTAL COST
22 SAVINGS PER UNIT BASED ON THOSE FUNCTIONS.
23 Q. AND ONCE YOU HAD A UNIT COST PER BOOK OF 7.84 CENTS PER
24 BOOK, WHAT DID YOU DO NEXT WITH THAT FIGURE?
25 A. WELL, THE PRACTICE IS TO APPLY RDC DISCOUNTS TO THE RETAIL
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1 SELLING PRICE OF BOOKS. SO I HAD TO ADJUST THE PER UNIT COST
2 TO A SELLING PRICE OF BOOKS IN ORDER TO GET A PERCENTAGE
3 DISCOUNT THAT I COULD COMPARE TO THE RDC DISCOUNT.
4 Q. ALL RIGHT. NOW, IF YOU TURN TO THE VERY NEXT PAGE BEHIND
5 TAB 15, YOUR EXHIBIT NUMBER 9 --
6 A. YES.
7 Q. -- IF WE CONTINUE WITH THE BARNES & NOBLE 1999, CAN YOU --
8 IS THE FIGURE IN YOUR EXHIBIT 9, BARNES & NOBLE 1999, MAXIMUM
9 COST SAVINGS PER BOOK, 0.0784 DOLLARS, IS THAT THE SAME FIGURE
10 YOU CARRY OVER FROM EXHIBIT 8?
11 A. THAT'S CORRECT.
12 Q. AND THEN WHAT DID YOU DO WITH THAT FIGURE IN ORDER TO
13 CONVERT THE UNIT COST PER BOOK INTO AN ACTUAL PERCENTAGE OF THE
14 RETAIL PRICE OF THE BOOK?
15 A. I FOLLOWED TWO DIFFERENT METHODS. THE INFORMATION IN
16 BARNES & NOBLE DISTRIBUTION INVOLVED HARDCOVER, TRADE PAPERBACK

17 AND MASS MARKET BOOKS ALL LUMPED TOGETHER, AND I HAD
18 INFORMATION ON CERTAIN OF THE AVERAGE DISCOUNTS OFF OF THE
19 RETAIL PRICE WITHIN THE BARNES & NOBLE SYSTEM ITSELF.
20 SO I ESTIMATED FOR EACH OF THREE YEARS THE AVERAGE
21 SUGGESTED PRICES, OR THE RETAIL PRICES, IN BARNES & NOBLE, AND
22 IT SORT OF REPRESENTS A BLENDING ACROSS ALL THESE CATEGORIES.
23 Q. ALL RIGHT, LET'S JUST CONTINUE TO FOCUS ON 1999. THE
24 BLENDED AVERAGE SUGGESTED RETAIL PRICE THAT YOU HAVE FOR 1999,
25 THE BLENDED IS \$14.20?

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1 A. CORRECT.
2 Q. TELL ME AGAIN, WHERE DID THAT FIGURE COME FROM?
3 A. WELL, THERE WAS CERTAIN INFORMATION THAT GAVE, BASED ON
4 BARNES & NOBLE, THE VARIOUS CATEGORIES OF BOOKS, A PROFIT
5 MARKUP PERCENTAGE. THERE'S AN INTERNAL SELLING PRICE FROM
6 BARNES & NOBLE DISTRIBUTION TO THE BARNES & NOBLE STORES, AND
7 ONE DOCUMENT LAID OUT THE PROFIT MARKUP INVOLVED.
8 Q. ALL RIGHT.
9 A. SO I JUST TOOK WEIGHTED AVERAGES OF THAT TO COME UP WITH AN
10 ESTIMATE OF THE DISCOUNT PERCENTAGE, AND THEN BASED UPON --
11 WE'D HAVE TO GO BACKWARDS, IT'S 2 AND 3 IN MY ORIGINAL
12 REPORT -- FOR ME TO PRECISELY DESCRIBE THAT.
13 Q. I DON'T WANT TO GO THROUGH THE DETAILS, BUT THIS \$14.20
14 FIGURE, YOU'RE SAYING YOU DERIVED THAT FROM BARNES & NOBLE'S
15 DOCUMENTS?
16 A. YES.
17 Q. NOW, THE NON-BLENDED RETAIL PRICES FOR HARDCOVER, TRADE
18 PAPER, \$18, MASS MARKET, \$6, WHERE DID THOSE FIGURES COME FROM?
19 A. I WASN'T COMPLETELY HAPPY WITH THE BLENDED METHOD, AND SO
20 BASED UPON VARIOUS REPORTS FROM PUBLISHERS, SUCH AS ON RETURNS
21 CENTER ANALYSES, OR BASED UPON TESTIMONY BY MR. RIGGIO, THE
22 HEAD OF BARNES & NOBLE -- I'M SORRY IF I DIDN'T PRONOUNCE THAT
23 RIGHT -- IT SEEMED LIKE THERE WAS A RANGE OF PRICES PROVIDED
24 RANGING FROM MAYBE \$17 TO \$21 OR ABOVE FOR THE AVERAGE PRICE
25 FOR A HARDCOVER OR TRADE PAPERBACK.

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1 SO THAT'S THE \$18 ESTIMATE HERE, IN EXHIBIT 9, IS
2 BASED ON THAT. AND SIMILARLY, BASED UPON VARIOUS TESTIMONY OR
3 EVIDENCE BY CALLING ON OTHERS, IT SEEMED LIKE A VERY
4 CONSERVATIVE ESTIMATE OF THE AVERAGE SELLING PRICE FOR A MASS
5 MARKET BOOK TO BE \$6.
6 AND SO I ACTUALLY USE THE BLENDED METHODOLOGY AS
7 WELL AS TRYING TO SEPARATE OUT THE CATEGORIES IN TERMS OF THIS
8 EXHIBIT.
9 Q. ALL RIGHT, IF WE CAN THEN GO TO THE BOTTOM LINE, AND
10 LOOKING AT THE INDIVIDUAL CATEGORIES, IN TERMS OF THE PICK-PACK
11 FUNCTION, INCLUDING BOTH LABOR AND SUPPLIES, WHAT DID YOU
12 CONCLUDE WAS THE COST, ON A PERCENTAGE BASIS, THAT IS INVOLVED
13 IN THAT FUNCTION, USING BARNES & NOBLE'S FINANCIAL DATA FOR
14 1999?
15 A. WELL, YOU CAN SEE THAT YOU GET A RATHER CONSISTENT
16 ESTIMATE, BASED ON THE BLENDED PRICE, OF .55 PERCENT COST
17 SAVINGS.
18 Q. BUT LET'S FOCUS ON THE PARTICULAR CATEGORIES.
19 A. OKAY.
20 Q. THE TRADE CATEGORY, TRADE -- HARDCOVER TRADE PAPER
21 CATEGORY, WHAT ARE THE AMOUNT OF PICK-PACK SAVINGS EXPRESSED AS
22 A PERCENTAGE?
23 A. FOR BARNES & NOBLE IT RANGES FROM .37 PERCENT TO
24 .44 PERCENT.
25 Q. OKAY, SO FOCUSING JUST ON 1999, THE YEAR WE'VE BEEN USING.

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1 A. .44 PERCENT IS MY ESTIMATE OF MAXIMUM POSSIBLE COST SAVINGS
2 BASED UPON SAVINGS AND SERVING RDC'S.
3 Q. OKAY, SO TO PUT THIS IN THE CONTEXT OF YOUR TESTIMONY TODAY
4 AS A WHOLE, YOU TESTIFIED EARLIER THAT THE RDC DIFFERENTIALS
5 THAT YOU'VE SEEN FOR MANY PUBLISHERS ON TRADE BOOKS WAS
6 2 PERCENT?
7 A. CORRECT.
8 Q. 2 PERCENT DIFFERENCE ON TRADE BOOKS.

9 A. CORRECT.
10 Q. WHAT WAS YOUR OPINION OF THE ACTUAL AMOUNT OF COST SAVINGS
11 ASSOCIATED WITH THE TRANSFERENCE OF THE PICK-PACK FUNCTION FROM
12 PUBLISHERS TO BARNES & NOBLE ON TRADE BOOKS?
13 A. WELL, OBVIOUSLY, THE 2 PERCENT RDC DISCOUNT IS MUCH, MUCH
14 ABOVE ACTUAL COST SAVINGS BASED ON PICK-AND-PACK AND SHIPPING
15 SUPPLIES. IT'S FOUR OR FIVE TIMES GREATER THAN COST SAVINGS.
16 Q. I JUST WANT TO MAKE SURE THAT I UNDERSTAND. SO THE TRADE
17 COVER SAVINGS THAT YOU ESTIMATED FOR THE PICK-PACK FUNCTION WAS
18 .44 PERCENT, SO A LITTLE LESS THAN A HALF OF A PERCENT?
19 A. RIGHT.
20 Q. AS COMPARED TO THE 2 PERCENT DIFFERENTIAL FOR TRADE BOOKS
21 AS A WHOLE?
22 A. THAT IS CORRECT.
23 Q. AND HOW ABOUT FOR MASS MARKET BOOKS --
24 A. HERE WE HAVE TO CONSIDER THAT THE TYPICAL OR STANDARD RDC
25 DISCOUNTS IS 4 PERCENT, IN MY ESTIMATE OF, PUBLISHER --

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1 THE REPORTER: I'M SORRY, COULD YOU --
2 THE WITNESS: WOULD IT BE ALL RIGHT IF I STARTED
3 OVER AGAIN?
4 THE REPORTER: SURE.
5 THE WITNESS: FOR MASS MARKET CATEGORY BOOKS, IN
6 1999, MY ESTIMATE OF MAXIMUM POSSIBLE COST SAVINGS TO
7 PUBLISHERS, BASED UPON THE PICK-AND-PACK AND SHIPPING SUPPLY
8 EXPENSES, IS 1.31 PERCENT; AND WE HAVE TO COMPARE THAT TO THE
9 4 PERCENT RDC DISCOUNT THAT'S STANDARD FOR MASS MARKET BOOKS.
10 BY MR. DEBRUIN:
11 Q. NOW, AGAIN, IF WE'RE DEALING WITH A PUBLISHER THAT IS NOT A
12 FREE FREIGHT PUBLISHER, AN F.O.B. PUBLISHER, ARE THERE ANY
13 FUNCTIONS OTHER THAN THE PICK-PACK FUNCTION, BOTH THE LABOR AND
14 THE SUPPLIES, THAT YOU BELIEVE THE PUBLISHER SAVES BY SHIPPING
15 BOOKS TO AN RDC?
16 A. NO.
17 Q. SO FOR A NON-FREE FREIGHT PUBLISHER, ARE THE AMOUNTS THAT
18 YOU'VE IDENTIFIED HERE -- AND AGAIN, I'M JUST FOCUSED ON BARNES
19 & NOBLE FOR 1999 -- IS THIS YOUR OPINION OF THE TOTAL AMOUNT OF
20 COST SAVINGS A NON-FREE FREIGHT PUBLISHER WOULD SAVE BY REASON
21 OF SHIPPING BOOKS TO AN RDC AND TRANSFERRING THAT PICK-PACK
22 FUNCTION FROM ITS OWN WAREHOUSE TO THE DEFENDANTS' WAREHOUSE?
23 A. THIS IS AS GOOD AS IT GETS.
24 Q. SO THE ROUGH COMPARISONS ARE, JUST SO THAT WE'RE CLEAR, ON
25 TRADE BOOKS IT'S ABOUT A HALF OF 1 PERCENT COMPARED TO A

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1 DIFFERENTIAL OF 2 PERCENT; FOR MASS MARKET BOOKS, A SAVINGS OF
2 1.3 PERCENT AS OPPOSED TO A DIFFERENTIAL OF ABOUT 4 PERCENT.
3 A. CORRECT.
4 Q. NOW, I DON'T WANT TO GO THROUGH IT TODAY IN THE SAME
5 DETAIL, BUT DID YOU DO A SIMILAR ANALYSIS LOOKING AT WALDEN'S
6 DATA?
7 A. IT'S SIMILAR. ORIGINALLY I HAD INFORMATION IN 1997 FOR THE
8 WALDEN WAREHOUSE IN CALIFORNIA, AND SO I DID AN ESTIMATE, AND
9 THERE IS SIMPLY ONE PAGE OF THE COST SUMMARY THAT GAVE THE
10 PICK-AND-PACK EXPENSE AND THE SHIPPING SUPPLY EXPENSE, AND I
11 UTILIZED THOSE.
12 I MIGHT ADD, I MADE ONE ADJUSTMENT THAT, BASED UPON
13 THE INFORMATION THAT I HAD FROM WALDEN, THE SHIPPING SUPPLY
14 UNIT COST SEEMED VERY, VERY LOW TO ME, BASED UPON THEIR DATA.
15 IT MAY NOT HAVE REALLY BEEN ACTUAL SHIPPING SUPPLIES USED IN
16 FULFILLING NON-CARTON LOT ORDERS. IT MAY HAVE BEEN SUPPLIES
17 YOU USED UP BY THE WAREHOUSE LABORERS IN SOME FASHION, BUT IT
18 IS .0089 CENTS. SO INSTEAD OF USING THAT, I USED THE BARNES &
19 NOBLE ESTIMATE OF SHIPPING SUPPLY SAVINGS OF OVER 2 CENTS TO
20 COME UP WITH MY ESTIMATE OF COST SAVINGS.
21 THEN, BASED UPON A SPREADSHEET THAT A MR. COX HAD IN
22 HIS WORK FOR THE DEFENDANTS, IT PROVIDED A BUNCH OF DATA FOR
23 THE WALDEN TENNESSEE WAREHOUSE IN 1997. SO IN MY REBUTTAL
24 REPORT, I USED INFORMATION IN THAT, AND ALSO ADJUSTED IT BASED
25 UPON NON-PRODUCTIVE LABOR COST SAVINGS, TOO. BUT THE TWO

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1 RESULTS ARE PRETTY SIMILAR.
2 Q. AND JUST FOR THE RECORD, DOCTOR, COX, WAS HE AN EXPERT
3 EMPLOYED BY BORDERS?
4 A. I BELIEVE SO.
5 Q. AND SO YOU USED SOME DATA -- HE HAD MORE EXTENSIVE DATA
6 FROM A WALDEN FACILITY IN TENNESSEE?
7 A. IT LOOKED MORE COMPLETE THAN WHAT I HAD FOR CALIFORNIA,
8 YES.
9 Q. AND SO YOU THEN USED THAT DATA.
10 A. YES.
11 Q. NOW AGAIN, JUST TO JUMP TO THE BOTTOM LINE, USING THE
12 WALDEN DATA FOR 1997, WHAT WAS SUGGESTED TO YOU AS THE MAXIMUM
13 AMOUNT OF PUBLISHER COST SAVINGS ON TRADE BOOKS RESULTING FROM
14 THEIR PERFORMANCE OF THE PICK-PACK FUNCTION?
15 A. MY ESTIMATE IS .33 PERCENT.
16 Q. SO IT'S SLIGHTLY LOWER THAN YOUR ESTIMATE USING BARNES &
17 NOBLE'S DATA?
18 A. YES.
19 Q. BUT AGAIN, HOW DOES THAT ESTIMATE COMPARE TO THE BASIC
20 TRADE DIFFERENTIAL THAT WE'VE TALKED ABOUT?
21 A. IT WOULD BE EITHER 2 PERCENT TYPICAL RDC DISCOUNT FOR
22 HARDCOVER AND TRADE PAPERBACK COMPARED TO THE .33 PERCENT.
23 Q. AND USING THE WALDEN DATA, WHAT WAS YOUR ESTIMATE OF COST
24 SAVINGS TO PUBLISHERS FOR MASS MARKET BOOKS?
25 A. .99 PERCENT.

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1 Q. AND AGAIN, WE'RE JUST LOOKING AT THE PICK-PACK FUNCTION,
2 NOT YET LOOKING AT FREIGHT.
3 A. EXACTLY.
4 Q. NOW, IN, FINALLY, PERFORMING THIS ANALYSIS FOR BORDERS, DID
5 YOU MAKE ANY -- HOW DID YOU GO ABOUT CONDUCTING THIS ANALYSIS
6 LOOKING AT BORDERS DATA?
7 A. WELL, FOR BORDERS, I DID NOT HAVE FINANCIAL INFORMATION ON
8 THEIR DISTRIBUTION CENTER OPERATIONS LIKE I DID FOR BARNES &
9 NOBLE AND WALDEN. AND ALSO, BECAUSE THE FLOW-THROUGH CENTERS
10 THAT BORDERS USES OPERATE DIFFERENT THAN TRADITIONAL WAREHOUSES
11 AND THAT OTHER OF ITS ORGANIZATIONS, AS WELL, OPERATE
12 DIFFERENTLY THAN PUBLISHER WAREHOUSES, I DECIDED TO RELY ON
13 WALDEN DISTRIBUTION COST CENTER DATA AND EMBRACE IT FOR
14 BORDERS, WITH ONE ADJUSTMENT.
15 Q. AND WHAT WAS THAT ADJUSTMENT THAT YOU MADE?
16 A. AS I DISCUSSED BEFORE, BARNES & NOBLE GETS THEIR RDC ORDERS
17 IN CARTON ORDERS, AND SO DOES WALDEN BOOKS. A SIZEABLE AMOUNT
18 OF ORDERS BORDERS RECEIVES THROUGH ITS FOUR FLOW-THROUGH
19 CENTERS ARE NON-CARTON LOT QUANTITIES, AND THERE'S BEEN A LOT
20 OF EVIDENCE TO SUGGEST OBVIOUSLY THAT COSTS MORE, AND SO THERE
21 WOULD BE LESS PICK-AND-PACK SAVINGS FOR PUBLISHERS AS A RESULT,
22 AND --
23 Q. WHEN YOU SAY -- SORRY TO CUT YOU OFF, BUT JUST TO KEEP THE
24 RECORD CLEAR, YOU SAID THERE'S A SIZEABLE AMOUNT OF ORDERS THAT
25 BORDERS RECEIVES THAT ARE NOT IN CARTON QUANTITIES. DID YOU

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1 HAVE ANY EVIDENCE OF THE APPROXIMATE AMOUNT OF ORDERS THAT
2 BORDERS RECEIVES THAT ARE NOT IN CARTON QUANTITIES?
3 A. YES, IN PARTICULAR, ROBIN WAGNER IS THE V.P. OF
4 INTERNATIONAL MERCHANDISING IN THE BORDERS ORGANIZATION, AND
5 SHE INDICATED THAT WHILE CERTAIN PUBLISHERS MAY HAVE ESTIMATED
6 THIS TO BE GREATER, A 30 PERCENT ESTIMATE OF THE AMOUNT OF
7 ORDERS IN NON-CARTON QUANTITIES IN THE BORDERS SYSTEM IS MORE
8 IN THE BALLPARK.
9 Q. NOW, WITH RESPECT TO ORDERS FROM A PUBLISHER THAT ARE NOT
10 IN CARTON QUANTITIES, IS THERE ANY TRANSFERENCE OF COSTS OR ANY
11 COSTS SAVINGS TO PUBLISHERS IN PACKING THOSE ORDERS GOING TO A
12 BORDERS RDC?
13 A. THERE WOULD BE SOME, BUT BECAUSE IF YOU ACCEPT THE
14 30 PERCENT, THAT MEANS 70 PERCENT OF THE ORDERS RECEIVED AT
15 BORDERS FACILITIES ARE IN CARTON LOT ORDERS, BUT THERE WOULD BE
16 LESS PICK-AND-PACK SAVINGS FOR A PUBLISHER IN DEALING WITH
17 BORDERS THAN THERE WOULD BE IN DEALING WITH WALDEN.
18 Q. SO HOW DID YOU GO ABOUT PREPARING AN ESTIMATE OF THE COST
19 SAVINGS TO PUBLISHERS WHO ARE DEALING WITH BORDERS?

20 A. I TOOK A SIMPLE APPROACH. I JUST TOOK THE COST SAVINGS
21 ASSOCIATED WITH PICK-AND-PACK FOR WALDEN AND REDUCED IT BY
22 30 PERCENT, AND USED THOSE FIGURES FOR BORDERS.

23 Q. AND IS THAT ALSO SET FORTH IN EXHIBIT 9?

24 A. THAT'S CORRECT.

25 Q. SO AGAIN, JUST GOING TO THE CONCLUSIONS, WHAT DID YOU

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1 CONCLUDE, BASED ON YOUR ANALYSIS, AS AN APPROXIMATE ESTIMATE OF
2 THE AMOUNT OF PUBLISHER COST SAVINGS RESULTING FROM SHIPPING TO
3 BORDERS RDC'S, LOOKING FIRST AT TRADE BOOKS?

4 A. IT'S .23 PERCENT.

5 Q. AND WHAT WAS YOUR ESTIMATE OF THE PUBLISHER COST SAVINGS IN
6 SHIPPING MASS MARKET BOOKS TO BORDERS?

7 A. .7 PERCENT.

8 Q. AND THIS, AGAIN, IS JUST FOCUSED ON THE PICK-PACK FUNCTION.

9 A. RIGHT.

10 Q. NOW, YOU'VE TESTIFIED REGARDING YOUR LIST OF FUNCTIONS
11 THAT, FOR FREE FREIGHT PUBLISHERS, THERE ARE ADDITIONAL
12 SAVINGS, IS THAT CORRECT?

13 A. ESPECIALLY IF THEY DON'T PAY A FREIGHT ALLOWANCE, OR IF
14 THEY DON'T PAY A FREIGHT ALLOWANCE, I GUESS I SHOULD SAY.

15 Q. CAN YOU DESCRIBE BRIEFLY HOW YOU WENT ABOUT TRYING TO --
16 DID YOU ATTEMPT TO ESTIMATE THE AMOUNT OF FREIGHT SAVINGS THAT
17 A FREE FREIGHT PUBLISHER WOULD SAVE BY SHIPPING TO A
18 DISTRIBUTION CENTER AS OPPOSED TO A STORE?

19 A. YES, I DID.

20 Q. CAN YOU FIRST DESCRIBE FOR THE RECORD, FOR THE COURT, WHY
21 ARE THERE FREIGHT SAVINGS WHEN YOU'RE SHIPPING TO AN RDC AS
22 OPPOSED TO SHIPPING TO INDIVIDUAL STORES?

23 A. WELL, IF YOU GET AN ORDER FOR A THOUSAND BOOKS FROM -- AND
24 IT COVERS 200 STORES, INSTEAD OF HAVING TO DIRECT 200 ORDERS TO
25 THE INDIVIDUAL STORES, YOU JUST TAKE THE WHOLE SHIPMENT OF A

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1 THOUSAND AND SHIP IT TO ONE LOCATION, THE RDC, AND SO THERE ARE
2 SIGNIFICANT COST SAVINGS IN FREIGHT ASSOCIATED WITH THAT FOR A
3 FREE FREIGHT PUBLISHER, POTENTIALLY.

4 Q. AND HOW DID YOU GO ABOUT TRYING TO ESTIMATE THE EXACT
5 AMOUNT OF THOSE FREIGHT SAVINGS FOR A FREE FREIGHT PUBLISHER?

6 A. I DID IT SEPARATELY FOR EACH ORGANIZATION. FIRST, FOR
7 BARNES & NOBLE, MR. LICHTENSTEIN IS A VICE PRESIDENT IN THE
8 BARNES & NOBLE ORGANIZATION, AND HE TESTIFIED THAT IT COSTS
9 PUBLISHERS ROUGHLY 3 TO 4 CENTS PER POUND TO SHIP PRODUCTS INTO
10 THE RDC; AND THEN HE ALSO TESTIFIED THAT IT COSTS BARNES &
11 NOBLE ROUGHLY 18 CENTS PER POUND TO SHIP THEIR BOOKS TO
12 INDIVIDUAL STORES, AND OBVIOUSLY, YOU'RE SHIPPING SMALLER
13 QUANTITIES, AND THE HIGHER THE NUMBER OF POUNDS IN A SHIPMENT,
14 THE LOWER THE FREIGHT COST PER UNIT.

15 Q. AND LET ME JUST STOP YOU THERE. IS THAT TYPICAL IN
16 DISTRIBUTION, GENERALLY, THAT LARGER SHIPMENTS ARE -- HAVE
17 LOWER FREIGHT COSTS PER POUND THAN SMALLER SHIPMENTS?

18 A. THAT'S GOSPEL, YEAH.

19 Q. OKAY. AND JUST TO FIX THESE NUMBERS, THE COST OF SHIPPING
20 INTO THE RDC, THE LARGER SHIPMENTS, WHAT WAS YOUR EVIDENCE THAT
21 YOU RELIED ON IN TERMS OF THE COST PER POUND FOR THOSE
22 SHIPMENTS?

23 A. THERE MAY HAVE BEEN OTHERS, BUT I LARGELY RELIED ON
24 TESTIMONY BY MR. LICHTENSTEIN OF BARNES & NOBLE THAT THAT WOULD
25 COST BETWEEN 3 AND 4 CENTS PER POUND.

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1 Q. OKAY. AND HOW DID THAT COMPARE TO COSTS FOR SHIPMENTS
2 RIGHT TO STORES?

3 A. WELL, AS I WAS BEGINNING TO SAY, THERE -- MR. LICHTENSTEIN
4 INDICATED THAT ROUGHLY IT COST 18 CENTS PER POUND TO SEND
5 SHIPMENTS FROM THE RDC TO THE INDIVIDUAL STORES.

6 Q. THOSE ARE SHIPMENTS FROM BARNES & NOBLE'S RDC TO BARNES &
7 NOBLE STORES?

8 A. RIGHT. SO I DIDN'T -- I LOOKED AT THAT, BUT I WANTED TO
9 LOOK AT MORE THAN JUST THAT. SO THERE WAS OTHER EVIDENCE THAT
10 THE COST THAT PUBLISHERS INCURRED PER POUND OF SENDING ORDERS
11 FROM THEIR WAREHOUSE TO THE INDIVIDUAL STORES, I THINK THE

12 RANGE WAS 18 CENTS TO ALMOST 21 CENTS.
13 AND SO BEING, AGAIN, WANTING TO BE GENEROUS, I
14 GUESS, I TOOK THE ESTIMATE OF PUBLISHER COST PER POUND, DROP
15 SHIPPING, TO BE ABOUT .2093, AND THEN I TOOK THE MEDIAN OF
16 MR. LICHTENSTEIN'S ESTIMATE OF 3 AND 4 CENTS TO SHIP TO THE
17 RDC, AND SO IT'S LIKE .2093 MINUS 3.5 CENTS, AND IT COMES OUT
18 ROUGHLY A SAVINGS OF 17.4 CENTS PER POUND.
19 Q. WHERE DID YOU SEE THE EVIDENCE OF SHIPPING COSTS OF .2093?
20 A. I'D HAVE TO -- I CAN'T REMEMBER SPECIFICALLY, BUT IT WAS
21 EVIDENCE REGARDING -- EITHER TESTIMONY OR RECORDS REGARDING
22 WHAT IT COSTS PUBLISHERS TO DROP-SHIP ORDERS PER POUND FROM
23 THEIR WAREHOUSE TO INDIVIDUAL STORES.
24 Q. WAS THAT THE HIGHEST FIGURE YOU HAD SEEN IN TERMS OF
25 PUBLISHER COSTS IN SHIPPING FROM PUBLISHER WAREHOUSE DIRECTLY
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1 TO STORES?
2 A. THAT'S CORRECT.
3 Q. AND SO YOU USED THAT HIGHEST FIGURE YOU HAD SEEN OF .2093,
4 AND COMPARED IT TO THE COSTS FOR SHIPPING FROM THE PUBLISHER TO
5 THE RDC.
6 A. RIGHT.
7 Q. AND AGAIN, WHAT WAS THE DIFFERENCE, THEN, BETWEEN THOSE TWO
8 FIGURES, ABOUT?
9 A. IT WAS ROUGHLY 17 AND-A-HALF CENTS, RIGHT AROUND THERE, PER
10 POUND.
11 Q. NOW, DOES THAT SAVINGS PER POUND APPLY TO BOTH TRADE BOOKS,
12 MASS MARKET BOOKS? DOES IT MATTER WHAT KIND OF BOOKS YOU'RE
13 DEALING WITH WHEN YOU'RE TALKING ABOUT FREIGHT?
14 A. YES, BECAUSE WEIGHT VARIES ACROSS CATEGORIES. YOU HAVE TO
15 MAKE AN ADJUSTMENT BASED UPON THE WEIGHT OF THE TYPICAL BOOK.
16 Q. OKAY, SO IT MATTERS WHEN YOU'RE LOOKING AT THE UNIT -- THE
17 ALLOCATION OF THAT TO A PARTICULAR UNIT.
18 HOW ABOUT JUST SHIPPING A POUND OF TRADE BOOKS AND
19 SHIPPING A POUND OF MASS MARKET BOOKS, OR A HUNDRED POUNDS?
20 DOES IT MATTER WHAT THE BOOKS ARE IN TERMS OF WHAT THE PER
21 POUNDAGE SHIPPING COST IS?
22 A. NOT PER POUND. THE CUBE MIGHT AFFECT IT, THE SIZE OF THE
23 BOXES, BUT NOT PER POUND.
24 Q. DID YOU, THEN, AFTER YOU DERIVED YOUR ESTIMATE OF THE
25 AMOUNT OF SAVINGS PER POUND, DID YOU TRANSLATE THAT INTO A UNIT
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1 COST BASIS?
2 A. RIGHT. THERE IS -- I READ SOME STUDIES THAT SUGGESTED --
3 OR SOME TESTIMONY THAT SUGGESTED THAT THE AVERAGE PRICE (SIC)
4 OF A HARDCOVER AND TRADE PAPERBACK BOOK WOULD HAVE BEEN AROUND
5 1.17 POUNDS, AND I ALSO LOOKED AT EVIDENCE THAT SUGGESTED THAT
6 THE AVERAGE WEIGHT OF A MASS MARKET BOOK WOULD HAVE WENT --
7 BEEN AROUND .52 POUNDS.
8 SO I EMBRACED THOSE ESTIMATES AND SIMPLY TOOK THE
9 SAVINGS PER POUND TIMES THE WEIGHT, TO COME UP WITH A PER UNIT
10 COST SAVINGS, BASED ON FREIGHT, FOR THE TWO CATEGORIES OF
11 BOOKS.
12 Q. OKAY. SO YOU HAD AN ESTIMATE OF THE DIFFERENTIAL, YOU HAD
13 INFORMATION ABOUT HOW MUCH DIFFERENT KINDS OF BOOKS WEIGH, AND
14 THEN YOU COMPUTED SEPARATE PER UNIT FREIGHT SAVINGS FOR TRADE
15 BOOKS AND MASS MARKET BOOKS.
16 A. THAT'S CORRECT.
17 Q. AND THEN FOR FREE FREIGHT PUBLISHERS, WHAT DID YOU DO WITH
18 THAT DATA, WITH THE PREVIOUS DATA YOU HAD CALCULATED FOR THE
19 PICK-AND-PACK SAVINGS?
20 A. I ADDED THAT TOGETHER TO GET THE PER UNIT COST SAVINGS FOR
21 PICK-AND-PACK SHIPPING SUPPLIES AND FREIGHT, AND THEN I --
22 Q. LET ME ASK YOU TO LOOK AT EXHIBIT NUMBER 10 OF TRIAL
23 EXHIBIT 1969, WHICH IS BEHIND TAB 15.
24 A. YES.
25 Q. CAN YOU IDENTIFY FOR THE COURT WHAT IS SET FORTH ON YOUR
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1 EXHIBIT NUMBER 10?
2 A. THIS PROVIDES THE MAXIMUM POTENTIAL FULFILLMENT
3 DISTRIBUTION AND FREIGHT COST SAVINGS TO PUBLISHERS FROM USING

4 RDC'S, AND THIS IS MOST RELEVANT, AGAIN, FOR FREE FREIGHT
5 PUBLISHERS WHO ARE NOT PAYING ANY FREIGHT ALLOWANCE.
6 Q. SO THIS CHART SETS FORTH THE COMBINATION, IF I UNDERSTAND
7 YOUR ANSWER, OF THE PICK-PACK SAVINGS THAT YOU'VE PREVIOUSLY
8 DESCRIBED, THE FREIGHT SAVINGS THAT YOU'VE JUST DESCRIBED
9 BRIEFLY, AND THEN COMBINE THEM TOGETHER TO SET FORTH THE
10 MAXIMUM COST SAVINGS PER BOOK FOR BOTH TRADE BOOKS AND MASS
11 MARKET BOOKS.
12 A. THAT'S CORRECT.
13 Q. AND AGAIN, YOU DID THIS SEPARATELY USING THE DATA FOR EACH
14 OF THE DEFENDANTS, OR FOR BARNES & NOBLE, WALDEN AND BORDERS?
15 A. CORRECT.
16 Q. NOW, FOR BARNES & NOBLE, YOU JUST DESCRIBED THE FREIGHT
17 SAVINGS AND HOW YOU CONVERTED THOSE FREIGHT SAVINGS INTO A UNIT
18 COST. WHAT WERE THE MAXIMUM COST SAVINGS PER BOOK THAT YOU
19 FOUND USING THE BARNES & NOBLE DATA?
20 A. FOR HARDCOVER AND TRADE PAPERBACK, IT'S 1.57 PERCENT.
21 FOR -- AND THIS IS IN THE FAR RIGHT-HAND COLUMN OF EXHIBIT 10.
22 AND FOR MASS MARKET FOR BARNES & NOBLE IT'S 2.82 PERCENT.
23 Q. ALL RIGHT, AND THAT'S USING THE AVERAGE SUGGESTED RETAIL
24 PRICES THAT YOU IDENTIFIED PREVIOUSLY?
25 A. CORRECT.

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1 Q. SO AGAIN, FOR NOW A FREE FREIGHT PUBLISHER, HOW DID THE
2 TOTAL SAVINGS, INCLUDING BOTH PICK-AND-PACK SAVINGS AND FREIGHT
3 SAVINGS, COMPARE FOR TRADE BOOKS TO THE DIFFERENTIALS THAT YOU
4 IDENTIFIED AT THE BEGINNING THAT EXIST FOR RDC DISCOUNTS FOR
5 TRADE BOOKS?
6 A. WELL, LET'S TAKE TWO SCENARIOS. FOR A FREE FREIGHT
7 PUBLISHER WHO IS NOT PAYING ANY FREIGHT OUT ALLOWANCE, YOU'D
8 COMPARE 1.57 TO 2 PERCENT.
9 IF, ON THE OTHER HAND, YOU HAVE A FREE FREIGHT
10 PUBLISHER PAYING 1.1 PERCENT FREIGHT ALLOWANCE, WHICH IS
11 TYPICAL IN A BARNES & NOBLE ORGANIZATION, YOU'D ACTUALLY
12 COMPARE THE 1.57 PERCENT TO 3 PERCENT, AND THAT ALSO OCCURS IN
13 BORDERS FOR SIMON & SCHUSTER AND HARPER-COLLINS, TWO OF THE
14 LARGEST FREE FREIGHT PUBLISHERS, AND THERE COULD BE OTHERS,
15 TOO.
16 Q. ALL RIGHT, SO YOUR CONCLUSION IS THAT THE SAVINGS FOR A
17 FREE FREIGHT PUBLISHER ARE LESS ON TRADE BOOKS EVEN THAN THE
18 2 PERCENT, --
19 A. CORRECT.
20 Q. -- CERTAINLY LESS IF THE DEFENDANTS ARE GETTING AN
21 ADDITIONAL FREIGHT ALLOWANCE, TAKING IT TO 3 PERCENT.
22 A. EXACTLY.
23 Q. HOW ABOUT MASS MARKET BOOKS?
24 A. AND THE BOTTOM LINE HERE IS 2.82 PERCENT, AND SO IF YOU
25 HAVE A FREE FREIGHT PUBLISHER NOT PAYING A FREIGHT ALLOWANCE,

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1 IT WOULD BE 2.82 PERCENT COMPARED TO 4 PERCENT, WHICH IS STILL
2 QUITE A BIT UNDER. IF IT'S A FREE FREIGHT PUBLISHER PAYING A
3 FREIGHT OUT ALLOWANCE, IT WOULD BE THE 2.82 PERCENT COMPARED TO
4 5 PERCENT.
5 Q. NOW, CAN YOU DESCRIBE BRIEFLY THE EXERCISE YOU WENT THROUGH
6 FOR FREIGHT FOR THE BORDERS DEFENDANTS? WAS IT THE SAME
7 EXERCISE?
8 A. THERE WAS TESTIMONY BY A WALDEN EMPLOYEE ON FREIGHT -- I'M
9 TRYING TO REMEMBER WHO IT WAS. I'M SORRY, BUT MY MEMORY IS
10 FAILING ME HERE. BUT HE TESTIFIED THAT TYPICALLY IT COSTS
11 PUBLISHERS ABOUT 7 AND-A-HALF PERCENT -- 7 AND-A-HALF CENTS PER
12 POUND TO GET BOOKS INTO THE BORDERS RDC'S, AND HE TESTIFIED
13 THAT IT COSTS PUBLISHERS AROUND 25 CENTS TO SHIP FROM THEIR
14 WAREHOUSES TO THE INDIVIDUAL STORES.
15 AND SO I BASICALLY TOOK THOSE NUMBERS, AND AGAIN,
16 IT'S INTERESTING THAT YOU'RE STILL RIGHT AROUND THE COST
17 SAVINGS OF 17 AND-A-HALF CENTS OR SO, AND SO THAT'S THE
18 APPROACH I TOOK WITHIN THE BORDERS ORGANIZATION.
19 Q. SO FOR SOME REASON, BORDERS' ESTIMATES OF THE COSTS OF
20 FREIGHT BEING MOVED INTO THEIR RDC WAS HIGHER THAN THE COSTS
21 FOR BARNES & NOBLE BRINGING BOOKS INTO THEIR RDC.
22 A. THAT MAKES SENSE, BECAUSE AS MR. PFEFFER, NORMALLY -- HEAD

23 OF INGRAM AND WITH A LOT OF EXPERIENCE, HE TESTIFIED TYPICALLY
24 PUBLISHERS HAVE A SINGLE WAREHOUSE IN THE NORTHEAST, AND BARNES
25 & NOBLE, AS MOST -- FOR MOST OF THIS TIME, HAD A SINGLE

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1 WAREHOUSE IN NEW JERSEY; WHEREAS WALDEN AND BORDERS HAVE THEIR
2 DISTRIBUTION CENTERS IN ANOTHER AREA OF THE COUNTRY. SO IT
3 DOESN'T SURPRISE ME THAT THE FREIGHT IN COST FOR BORDERS WOULD
4 BE LOWER THAN THE FREIGHT IN COST INTO THE RDC FOR -- DID I SAY
5 THAT RIGHT? THE FREIGHT IN COST FOR BARNES & NOBLE WOULD BE
6 LOWER THAN THE FREIGHT IN COST FOR THE BORDERS ORGANIZATION.
7 Q. BUT THEN YOU ALSO FOUND EVIDENCE THAT THE COST OF SHIPPING
8 FROM THE BORDERS WAREHOUSES TO THEIR STORES WAS ALSO SLIGHTLY
9 HIGHER.

10 A. YEAH, THAT I -- I REALLY CAN'T EXPLAIN.

11 Q. BUT IN ANY EVENT, THE DIFFERENTIAL FREIGHT SAVINGS WAS
12 APPROXIMATELY THE SAME, 17 AND-A-HALF CENTS?

13 A. CORRECT.

14 Q. AND THEN DID YOU ADD THAT FOR THE BORDERS DEFENDANTS TO THE
15 PICK-PACK SAVINGS YOU HAD PREVIOUSLY FOUND?

16 A. YES.

17 Q. ON THIS EXHIBIT 10?

18 A. YES.

19 Q. AND JUST TO STATE YOUR CONCLUSIONS, WHAT, THEN, WAS YOUR
20 ESTIMATE OF THE MAXIMUM PUBLISHER COST SAVINGS FOR FREE FREIGHT
21 PUBLISHERS FOR TRADE BOOKS SHIPPED TO THE WALDEN RDC?

22 A. IT WOULD BE 1.47 PERCENT COMPARED TO 2 PERCENT FOR FREE
23 FREIGHT PUBLISHERS NOT PAYING A FREIGHT OUT ALLOWANCE, AND
24 1.47 PERCENT COMPARED TO 3 PERCENT FOR THOSE FREE FREIGHT
25 PUBLISHERS PAYING A 1 PERCENT FREIGHT OUT ALLOWANCE.

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1 Q. AND WHAT WAS YOUR CONCLUSION ON MASS MARKET BOOKS SHIPPED
2 TO THE WALDEN DISTRIBUTION CENTERS? WHAT WAS THE MAXIMUM
3 SAVINGS YOU FOUND?

4 A. 2.51 PERCENT COMPARED EITHER TO 4 OR 5 PERCENT.

5 Q. AND HOW ABOUT FOR BORDERS, JUST AGAIN, TO GO TO THE BOTTOM
6 LINE, WHAT WAS YOUR CONCLUSION AS TO THE MAXIMUM COST SAVINGS
7 ON TRADE BOOKS?

8 A. 1.37 PERCENT, COMPARED EITHER TO 2 OR 3 PERCENT.

9 Q. AND FOR MASS MARKET BOOKS?

10 A. 2.21 PERCENT, COMPARED EITHER TO 4 OR 5 PERCENT.

11 THE COURT: SOUNDS LIKE A GOOD STOPPING PLACE.

12 WE'LL RECESS TILL 9:00 O'CLOCK TOMORROW MORNING.

13 THE CLERK: ALL RISE.

14 (PROCEEDINGS CONCLUDED FOR THE DAY AT 2:00 P.M.)

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