

1 Proceedings

2 A R T H U R E. N E W M A N ,

3 called as a witness, having been first duly  
4 sworn by a Notary Public, was examined and  
5 testified as follows:

6 JUDGE GERBER: Please have a seat.  
7 Mr. Newman, and if I could impose on you.  
8 come up real close to the microphone and  
9 speak into it.

10 DIRECT EXAMINATION

11 BY MR. WALSH:

12 Q Mr. Newman, please state your full name  
13 for the record?

14 A Arthur B. Newman.

15 Q By whom are you employed?

16 A The Blackstone Group.

17 Q How long have you worked at Blackstone?

18 A since 1991.

19 Q What is your position at Blackstone?

20 A I am a senior managing director in  
21 charge of our restructuring group.

22 Q As the senior managing director, your  
23 responsibilities include?

24 A We render financial advice to companies  
25 and creditors, in over and bankruptcy situations,

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2 and other parties at interest in a bankruptcy,  
3 and I oversee the group.

4 Q Prior to joining Blackstone, where did  
5 you work?

6 A I was with Chemical Bank for 20 months,  
7 and I was with the accounting firm then known as  
8 Ernst & Whinney for 24 years.

9 Q Mr. Newman, what is your educational  
10 background?

11 A I have a Bachelor's of Science and an  
12 MBA at Rutgers University.

13 Q Do you have any licenses or  
14 certifications?

15 A I am a licensed CPA and I have  
16 certifications under the NASD.

17 Q Overall, roughly how many years of  
18 experience do you have as a financial advisor?

19 A At least 25.

20 Q Mr. Newman, have you ever been involved  
21 in other Chapter 11 cases or restructurings?

22 A Yes.

23 Q Approximately how many?

24 A One hundred, gave or take.

25 Q Can you name some of the major cases

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2 that you have been involved in?

3 A Macy's. Eastern Airlines, Texaco. and  
4 Johns Manville. Going back, white Motor  
5 corporation, wicks Corporation. More recertly.  
6 Arah Wireless, Chiquita Banana, and AMF Bowling.

7 Q As part of your duties as a financial  
8 advisor, have you valued companies?

9 A Yes.

10 Q As part of your duties have you  
11 marketed companies in financial distress or  
12 portions of their assets?

13 A Yes.

14 Q Can you give me some examples of cases  
15 where you have had that role?

16 A Mobile Media, Paragon Trade Brands,  
17 Singer Corporation, American Pad & Paper, as well  
18 as others.

19 Q Have you ever testified in a Chapter 11  
20 case before?

21 A Yes, I have.

22 Q Have you ever been qualified as an  
23 expert in a bankruptcy case?

24 A Yes, I have.

25 Q Has Blackstone been retained in this

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1 Newman - Direct - Walsh

2 case?

3 A Yes, we have.

4 Q By whom?

5 A By the debtors.

6 MR. WALSH: Your Honor, I will be  
7 asking Mr. Newman to give his opinion on.  
8 not *just the facts of the bidding process,*  
9 but also his evaluation of the bids  
10 received. I would ask the Court to accept  
11 Mr. Newman as an expert witness on this  
12 basis.

13 JUDGE GERBER: Does anybody want to be  
14 heard with respect to Mr. Newman's ability  
15 to be heard and to give opinions as an  
16 expert?

17 Hearing no objection, I am going to  
18 take his opinions, Mr. Walsh, and you may  
19 ask questions of that nature.

20 MR. WALSH: Thank you, Your Honor.

21 Q Let's start with the premise here of  
22 the assets to be sold. Would you describe the  
23 assets that the debtors decided to market?

24 A Yes. The debtors decided to market the  
25 global business of Global Crossing, which

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1 Newman - Direct - Walsh  
2 connects over 200 cities throughout the world,  
3 and also to market separately three non-core  
4 businesses. One being the United Kingdom direct  
5 mail business, the other GCUK or Raca; two,  
6 being Global Marine undersea cable-laying and  
7 maintenance business: and three, being the  
8 debtors' teleconferencing business.

9 Q The first two businesses are located  
10 where?

11 A In the United Kingdom.

12 Q And the teleconferencing business?

13 A Is principally located here, with  
14 operations in the United Kingdom as well.

15 Q During this process, were the debtors  
16 marketing pieces of their core global business?

17 A No.

18 Q Why is that?

19 A The debtors believe and we have agreed  
20 that if more value exists in the global business  
21 as a whole, then in attempting to break it up  
22 into pieces.

23 Q In the bidding process, Mr. Newman. did  
24 you communicate to all interested parties which  
25 assets were for sale and which assets were not

1 Newman - Direct - Walsh

2 for sale?

3 A We did communicate that. In fact, with  
4 respect to the three non-core businesses, we told  
5 the people interested in bidding that they may or  
6 may not be sold at the end of the day.

7 Q Why might they not be sold?

8 A We advised them that we were seeking  
9 bids for the global business. We did not know if  
10 the ultimate bidder or winner of this auction  
11 would require ownership of those three businesses  
12 or would desire not to own any of the three  
13 businesses. So we left ourselves the  
14 flexibility, but we were careful to advise  
15 potential bidders of those alternatives.

16 Q Now, getting to the auction process  
17 itself, what was Blackstone's role in the  
18 auction?

19 A We were responsible and the bank was  
20 responsible for running the auction for the  
21 global business, as well as running the auction  
22 for the teleconferencing business. Both brothers  
23 in the United Kingdom were responsible for  
24 running the auction for Rael, and JP Morgan  
25 Chase was responsible for running the auction of

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2 Global Marine. We obviously interfaced closely  
3 with those two bidders.

4 Q What were the first steps you took in  
5 preparing for the auction process for the global  
6 business?

7 A The first steps were assisting the  
8 company in preparing their information  
9 memorandum, as well as identifying potential  
10 bidders or buyers for the global business.

11 Q The information memorandum included  
12 what sort of data or materials?

13 A You see, I am including an extensive  
14 description of the business and its assets. It  
15 contained an executive summary, and then went  
16 into significant detail of the various aspects of  
17 the company's business. It also included  
18 financial forecasts of the company's business.

19 Q As part of this process, did the  
20 company prepare its own financial models and  
21 projections?

22 A Yes, they did.

23 Q Did Blackstone assist in that process?

24 A Yes. we did.

25 Q What other initial steps, getting ready

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2 for the auction process, did you oversee?

3 A We worked with the company in an effort  
4 to prepare what we call "management  
5 presentations," where the senior management of  
6 the company would be available to and in a  
7 position to describe in significant or greater  
8 detail than is contained in the information memo,  
9 the various aspects of the business in  
10 anticipation of siccing down with potential  
11 investors. In addition, we prepared or helped  
12 the company prepare an online data room, as well  
13 as a Legal data room located at the company's  
14 headquarters in Madison, New Jersey.

15 Q Why did you choose to do an online data  
16 room?

17 A For several reasons. The online data  
18 room -- we knew we would have a lot of people  
19 looking at the company. The online data room  
20 permits several potential investors to look at  
21 the company at the same time. It promotes  
22 efficiency in that fashion. We knew we would  
23 have people from all over the globe looking at  
24 the company. That way, they could do it from  
25 their location. Lastly, it permitted us to

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1 Newman - Direct - Walsh  
2 monitor exactly who was looking at the data in  
3 the data room and for how long a period of time.

4 Q Now, you said that you prepared an  
5 initial list of potential bidders. How did you  
6 do that?

7 A Well, firstly, we identified, I  
8 believe, every major telecommunications company  
9 in the world. We identified other potential  
10 strategic bidders and a very long list of  
11 potential financial bidders.

12 Q Did you stop with your original list?

13 A No. Obviously this was a public  
14 process. Much was written about it. We received  
15 many inquiries from people who were not on the  
16 list. Creditors and representatives suggested  
17 other people. We have gotten phone calls. So we  
18 added people to the list, as the process  
19 continues.

20 Q By the time you had compiled your total  
21 list, about how many potential bidders did we  
22 have?

23 A There were over one hundred bidders or  
24 potential bidders that were contacted.

a5 Q Of the potential bidders contacted,

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2 what kind of responses did you get?

3 A Somewhat over 60 expressed an interest  
4 in going further. In going further, the next  
5 step would have been the execution of the  
6 confidentiality agreement which would permit the  
7 bidder to receive the confidential information  
6 memo.

9 Q Did any of these bidders go on and do  
10 further diligence?

11 A Yes. Many did. A small subset of the  
12 60 chose not to go on. By far, the majority did  
13 choose to go on, and the next step was giving  
14 them access to the online data room and access to  
15 the legal data zoom.

16 Q Were all of the bidders advised that  
17 management was available to provide additional  
18 information and presentation to them?

19 A Yes, they were.

20 Q About how many bidders actually took  
21 advantage of meetings with management?

22 A I would say somewhere in the 30s.

23 Q What did these meetings with management  
24 involve?

25 A Typically, it would involve the

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2 potential bidder coming in with a large number of  
3 people into the conference room -- most often, at  
4 the company's headquarters and sometimes at  
5 Blackstone's offices. John Legere and the senior  
6 management team would meet with them. I would  
7 say the formal presentation took two to three  
8 hours, but most of those meetings took much  
9 longer with a question and answer period.  
10 Mr. Legere would start with an overview of the  
11 business, and then a number of senior executives  
12 would speak to their particular areas of  
13 oversight and responsibility.

14 Q Were these basically two-hour or  
15 half-day meetings?

16 A I would say it was a couple of hours,  
17 if you just went through the presentation and  
18 didn't get questions. Most of them took the  
19 better part of the day, and some of them took  
20 even longer.

21 Q How much longer?

22 A More than one day.

23 Q During this process, between the time  
24 the original information memorandum was available  
25 and in the time when these meetings were going

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1  
2 on, did the company's operational performance  
3 change?

4 A Yes. In March the company adopted its  
5 new operational plan, which called for a  
6 significant reduction in both its operating costs  
7 and its capital expenditures. There was  
8 significant downsizing of the employee base, as  
9 well as major reductions in real estate offices  
10 throughout the world. That resulted sometime in  
11 March with the company making a presentation of  
12 its new operational plan to both sets of its  
13 creditors, and it resulted in us including or  
14 revising the previous forecasts that were in the  
15 information memo and recontacting everyone who  
16 said that they didn't want to go forward, but had  
17 received the information memo to give them the  
18 new financial forecasts and, obviously, giving to  
19 the people who were active in the process copies  
20 of the financials.

21 Q So the information was immediately  
22 given to all the bidders who had expressed  
23 interest, and you went further and recontacted  
24 people who had indicated their initial interest?

25 A Yes.

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1 Newman - Direct - walsh

2 Q Not counting the recent discussions  
3 with Hutch-Sing, how many bids or expressions of  
4 interest were ultimately received?

5 A I would say about 15 or 16.

6 Q Now, I have a couple of questions on  
7 evaluating the bids, what were your initial  
8 steps when you received bids or expressions of  
9 interest?

10 A The first thing we did was distribute  
11 them to both the company and the two sets of  
12 creditors. Then we evaluated those bids sort of  
13 based on three criteria: (1) what were the  
14 assets that were being bid for; (2) what amount  
15 of due diligence had the bidder done during this  
16 process; and (3) did the bidder have or appear to  
17 have the financial wherewithal to consummate the  
18 transaction.

19 Q What was the relevance of determining  
20 what they were bidding for?

21 A Well, as with any public process like  
22 this, we received a number of bids for very, very  
23 small assets of the company. One was for as  
24 little as \$1 million for a discrete asset of the  
25 company. So we received three or four bids of

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1 Newman - Direct - walsh  
2 that nature. We also received three or four bids  
3 for larger groups of assets of the company's, but  
4 short of the global business.

5 Q What did you do with those bids?

6 A The first group we just contacted and  
7 said, "We thank you for your interest. Right now  
8 we are concentrating on finding an investor or  
9 buyer for the global business. When that process  
10 is complete and these assets are available for  
11 sale, we will recontact you."

12 The second group which our bidders bid  
13 for were larger portions of assets, but not the  
14 whole global network. We contacted them. In  
15 fact, we spent a lot of time with a few of them  
16 trying to see if we could induce them to expand  
17 the bid to cover the global network and.  
18 obviously, pay more money in the process.

19 Q You mentioned the level of diligence as  
20 one of the factors that you used in evaluating  
21 the bid. What was the relevance of how much  
22 diligence someone had done?

23 A Well, in a company of this nature, a  
24 global company and a very complicated company. it  
25 is our view that unless we did a lot of due

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1 Newman - Direct - Walsh  
2 diligence, it goes to the credibility of the bid  
3 in terms of whether or not the bidder would  
4 ultimately be in a position to close.

5 Q Did you get any large bids where  
6 entities had done essentially no diligence at  
7 all?

8 A Essentially we got a few of chose. All  
9 of them, I think, had access to the onlins data  
10 room. I don't believe any of them, and I know  
11 none of them, met with the management and went  
12 through the more intensive due diligence that  
13 many, many people did.

14 Q The parties who did tho most diligence  
15 would you say they spent days or weeks?

16 A We had a number of parties chat spent  
17 months, not weeks, with teams of people poring  
18 over the company's information. We had prepared  
19 many, besides the major management presentations,  
20 many subset management presentations where one  
21 executive and his team would meet with potential  
22 bidders to go through the particular area chat  
23 the executive was responsible for. Then many,  
24 many parties came back with pages and pages of  
25 information requests, analyses required, and so

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1 Newman - Direct - Walsh

2 forth. Many parties did a lot of due diligence.

3 Q In your third criteria of evidence of  
4 ability to close the transaction, how did you  
5 effect that with respect to the 15 or 16 bids  
6 that were received?

7 A As I said, three or four were for very  
8 small pieces, with three or four of them were for  
9 less than a global network. All the rest were  
10 working with the global network. We were very  
11 familiar with several of the bidders, as were our  
12 creditor constituents. and well-known  
13 organizations that we knew had the financial  
14 wherewithal to consummate a transaction. We also  
15 had three or four bids from entities that were  
16 hardly known or not known at all by anyone in the  
17 process. What we did in those cases was request  
18 evidence of their financial ability to meet the  
19 price in the bid in order to qualify them to move  
20 forward and be taken seriously.

21 Q Can you give me an example of asking  
22 for proof of purchase?

23 A Well, with one bidder we asked for  
24 evidence, and we received a letter from the  
25 corporation. or LLC, or whatever. whose name was

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1 Newman - Direct - Walsn  
2 also supplied to us. It basically started out by  
3 stating that they were prepared to fund the  
4 purchase price subject to several conditions.  
5 The first condition was that this company -- and  
6 we will call it X, Y, Z, that wrote the letter --  
7 the X, Y, is received an irrevocable letter of  
8 credit from a recognized financial institution,  
9 and then they would fund it. They were just the  
10 middlemen. We went back to the bidder and the  
11 middlemen, "Where are you going to get an  
12 irrevocable letter of credit?" What we got was a  
13 form letter of credit not filled out, and no  
14 numbers, no name, no bank. no anything. We kept  
15 contacting the bidder. As is usual in these  
16 cases. we always get a couple of three people who  
17 put in those types of bids, and really cannot  
18 demonstrate their ability to fund it.

19 Q In the evaluation processes that you  
20 went through, what contact did Blackstone and the  
21 debtors have with representatives of the  
22 creditors' committee and the banks?

23 A We had daily contact with both groups.  
24 This was, in my opinion, a very cooperative  
25 effort. Our goal, collectively, was to try and

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1 Newman " Direct - walsh  
2 get the highest and best bid for these assets or  
3 investments in these assets, and both the  
4 creditors' committee. and the Bank Group. and  
5 their advisors were very active with the debtor  
6 and us throughout this process.

7 Q Based on the standards that you  
8 described, how many of the companies' submitting  
9 bids or expressions of interest were serious?

10 A I would say there were three.

11 Q In your judgment, why were there so few  
12 bidders that ultimately fell in this category?

13 A I think principally because of the  
14 current state of the telecommunications  
15 industry. We had one potential bidder who  
16 literally spent months and had hundreds of people  
17 from their organization involved in doing due  
18 diligence. They right up until the end kept  
19 telling me that they were going to prepare a  
20 bid. This was a strategic investor. A few days  
21 before the bid was due, I received a phone call  
22 from them. They basically said in this  
23 environment, their board decided that they were  
24 not going to make the bid and spend a lot of  
25 money on a telecommunications asset.

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2 We had similar reactions in the bidding  
3 for the Racal business in the U.K., where we had  
4 people working on contracts, and again the board  
5 overruled what management and had said, "We are  
6 not letting you spend money in the  
7 telecommunications business. It is a very  
8 difficult world out there for this industry."

9 Q Of the three financial bids, were any  
10 of them acceptable to the bidders and for the  
11 creditors?

12 A I would say none of them really were at  
13 the end. I mean, we went back and forth with  
14 these bidders.

15 Q Without identifying, can you just  
16 describe roughly what the issues were?

17 A Well, the issues ranged from not  
18 investing enough money in the company, suggesting  
19 and refusing to move from a capital structure  
20 that was unacceptable to both sets of creditors.  
21 Some requiring extensive continuing due diligence  
22 and concern on the part of the creditors. It  
23 would be a while before a contract could be  
24 signed without due diligence or commencing outs  
25 in that contract. Those was the principal

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2 reasons.

3 Q Did the sale process for the non-core  
4 assets affect any of these final bids?

5 A Yes. Quite dramatically, I would say.  
6 We required that the bids for the non-core assets  
7 be submitted shortly before the original date of  
8 July 11th, when we were seeking bids for the core  
9 business. We did receive some bids for non-core  
10 assets. Those bids were extremely  
11 disappointing. The anticipation upon everyone's  
12 part was part of the process, and I think the  
13 debtors' and both sets of creditors', was that  
14 the company would be able to receive  
15 significantly more cash for those assets than the  
16 bids represented.

17 We have been talking all along with the  
18 people while they were doing due diligence,  
19 sharing with them our views as to what proceeds  
20 might be received within ranges for these  
21 assets. So that as people prepared a bid, they  
22 could contemplate potential asset sales, if their  
23 bidder chose to sell assets, as opposed to keep  
24 the entire business intact.

a5 So what happened was when we received a

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2 number of bids, initially they worked on those  
3 bids contemplating a receipt of cash for the  
4 non-core assets was substantially greater than  
5 what we were able to deliver.

6 So the first thing we had to do,  
7 struggling after July 11th in consultation with  
8 our creditors -- and when I say "creditors," I am  
9 always referring to the two groups -- was to go  
10 back to these bidders and share with them the  
11 results of the auctions of the non-core assets.  
12 In all cases, they had to restructure their bids,  
13 because there was substantially less cash  
14 available to the company than had been  
15 anticipated. So this extended the process.

16 Q How did you try to manage this process  
17 to maximize the bids by each of those parties?

18 A First, we asked them to rebid based on  
19 the facts and results of the sales efforts of the  
20 non-core assets, because none of the bids could  
21 have been consummated. They all contemplated  
22 greater proceeds. We then called each of the  
23 bidders into joint meetings with representatives  
24 of the both sets of creditors, and had them make  
25 presentations and had a question and answer

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1 Newman - Direct - walsh  
2 period about their bids. Of course, Blackstone  
3 had been talking to these bidders prior to those  
4 meetings. We basically asked each of the bidders  
5 to *prove* their bids. We told them where their  
6 bids appeared to be deficient in terms of  
7 ultimately becoming a successor bidder. We tried  
8 to work one off against another, as one always  
9 does, in this process. We did receive improved  
10 bids, but ultimately they were not improved  
11 sufficiently to a point where we felt we could  
12 utilize that bid and with confidence suggest a  
13 bid that would support a plan of reorganization  
14 and that would be consensual with both sets of  
15 creditors.

16 Q Was Hutch-sing one of the bidders in  
17 the auction?

18 A No. They were not.

19 Q How did they get involved?

20 A As you probably know, Hutch-Sing is a  
21 multi-interest company since long before its  
22 bankruptcy. We continued to have informal  
23 discussions with their advisors during this  
24 entire process. They had expressed an interest  
25 in potentially consummating a transaction, but

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2 did not want -- "they" being the principals and  
3 the investors today -- expressed an interest in  
4 consummating a transaction, but did not want to  
5 be or refused to be part of a bidding process.

6 So based on these ongoing discussions,  
7 we had some sense from their advisors that a  
8 potentially a wary transaction could occur. We  
9 invited the principals to come to New York and  
10 sit down and have extensive discussions with  
11 ourselves and both sets of creditors.

12 Q The end product of those discussions  
13 was?

14 A The product of those discussions is the  
15 agreement before the Court today.

16 Q Even though they were not part of the  
17 bidding process, the debtors and creditors  
18 certainly had an opportunity to see the terms of  
19 that and compare themselves against what was  
20 available in the auction process?

21 A Absolutely.

22 Q In your view, and based upon your  
23 experience as a financial advisor, is the  
24 agreement, that is being proposed today between  
25 the company Hutch-Sing and supported by the

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1 Newman - Direct - Walsh  
2 creditors, the best alternative for the debtors  
3 in those cases?

4 A Yes.

5 Q Why?

6 A I think it provided the highest and  
7 best value under a contract which has no due  
8 diligence and no financing outs. It is  
9 consensual with both sets of creditors,  
10 susceptible to a fairly rapid, as these things  
11 go, confirmation. The nature of the investors is  
12 such that they bring a great deal of credibility  
13 to the company and its ongoing and future  
14 business. I think that was not only the  
15 company's conclusion and Blackstone's conclusion,  
16 but clearly it the conclusion of both sets of  
17 creditors as well.

18 Q Ultimately, the debtors decided to  
19 cancel the public auction. Why did they do that?

20 A Well, in effect, we had an auction.  
21 One might call it a private auction. We scoured  
22 the world for potential bidders, and investors,  
23 and buyers for the company. We came up with a  
24 limited number. We negotiated with those people  
25 and tried to get a better deal from them. As I

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1 Newman - Direct - Walsh  
2 described the process, in my judgment we had an  
3 auction. I think the second reason was, as I  
4 said before, these investors said they did not  
5 want to participate in a public auction and would  
6 not be willing to enter into this contract, if it  
7 were subject to a public auction. I think we all  
8 collectively -- ourselves being the creditors'  
9 representatives -- felt that we had conducted an  
10 auction, actually quite a thorough one, and we  
11 would accept this proposal and cancel the public  
12 auction.

13 MR. WALSH: Your Honor, that concludes  
14 my direct.

15 JUDGE GERBER: Is there anybody who  
16 feels a desire to cross-examine Mr. Newman  
17 in any way?

18 Come on up, please, Mr. Weisfelner.

19 CROSS-EXAMINATION

20 BY MR. WEISFELNER:

21 Q Mr. Newman, we have had an opportunity  
22 to spend quite a bit of time together over the  
23 last couple of weeks; is that correct?

24 A That is certainly correct.

25 Q During that time period, you have been

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