WORKING CAPITAL PROCEEDINGS

IVACO AND HEICO

--- This is the Interview of JON HICKS, conducted at the offices of Cassels Brock & Blackwell, Scotia Plaza, 40 King Street West, Suite 2100, Toronto, Ontario, on Thursday, the 27th day of April, 2006.

APPEARANCES:

John W. Buschhausen	KPMG
John Rockx	KPMG
E. Bruce Leonard	Cassels Brock & Blackwell
Robert B. Martin	PricewaterhouseCoopers
Brian M. Denega	Ernst & Young
Peter F.C. Howard	Stikeman Elliott

--- Upon commencing at 1:06 p.m.

JON HICKS: Interviewee.

INTERVIEW BY MR. BUSCHHAUSEN AND MR. ROCKX:

BY MR. BUSCHHAUSEN:

1. Q. We're continuing with the working capital proceedings, and interviewing Jon Hicks from Heico.

Thanks for your card, Jon, and I see that you're vice-president. That was your role, was it not, during the time of the due diligence for the acquisition of Ivaco; is that correct?

A. Yes, that's correct.

2. Q. Okay. Just a bit of your professional educational background?

A. Okay. I graduated from Georgetown University, undergraduate. I graduated from, or got a degree, an MBA from Kellogg. I've been in investment since getting out of Kellogg in '94, doing first early stage telecommunications investments and then joining Heico in 2000 and doing industrial investments with Heico. My role at Heico is primarily M&A analysis and execution of different deals that we bring in.

3. Q. Okay, and was that your role during the Ivaco acquisition as well then?

A. Yes, it was.

4. Q. Right. What was the time frame and the nature of the examination that you were involved in with Ivaco?

A. I forget when we originally started looking at Ivaco. Early in 2004 probably, and then it -- I think we started looking at it more intensively probably around April of 2004 going into May.

5. Q. Mm-hmm.

A. So I participated in looking at the, initially, the offering memorandums and starting Q&A about the business, initially through UBS and then, as we got further into the transaction, with the management at Ivaco itself.

6. Q. Okay, and just in terms of some of the key dates or milestones, I just want to confirm them with you. May the 14th was the date of the initial letter of intent from Heico to Ivaco; is that correct?

A. Sounds about right, yeah.

7. Q. Okay, and was there secondary or an updated offer that was made, do you recall?

A. I think we made the bid in May and then we signed the contract in August. I'm not --

8. Q. Okay. What about dates you may recall in terms of key offer terms or conditions? I understand there were two significant conditions. Can you recall

when those were addressed?
A. I'm not sure what conditions you're referring to.
9. Q. One was with respect to the union contracts and one was with respect to the QIT contract.
A. I don't recall the specific dates of when we changed terms on those.
10. Q. Okay. Is that because you weren't involved, do you think?
A. I knew they were going on at the time. It wasn't my -- I heard of them at the time.
11. Q. Right.
A. I haven't thought about that in a while. I don't specifically recall where in the process we did that.
12. Q. Okay. Just want to talk about the dates and kind of the rationale regarding decisions regarding the working capital adjustment provision. You may recall that on -- in the May 14th letter of intent and the draft agreement that was required to be included that it was a -- there was a working capital adjustment provided for in that letter of intent or described in that letter of intent, and in the draft agreement, it would be a working capital adjustment that was based on the most immediately available balance sheet and working capital

numbers in relation to the numbers as they would have been determined based on the closing date. Do you recall that?

A. I don't recall. I haven't seen that letter of intent in some time. I recall seeing some discussion that there was -- yes, that they were looking to find a, I guess, a balance sheet numbered near the time as close as they could to the time of the deal, I guess.

13. Q. Right. That's normally how it's done, right?

A. Right.

14. Q. And you're obviously familiar with what was provided for in the asset purchase agreement in terms of the working capital adjustment.

A. Right.

15. Q. Which was a projected vis-a-vis a November 30th closing date working capital adjustment, right?

A. A September 30th.

16. Q. Was projected September 30th, or estimated September the 30th, or I think Exhibit "B" indicates that it's an estimate of working capital projected to September the 30th.

A. Right.

17. Q. To be precise, right? And then it was adjusted from there to the working capital at the closing

date and -- which was November 30th, so it was projected to vis-a-vis a November 30th actual.

A. That's what the adjustment is, correct.

18. Q. Right. So that's what -- that was the final determination of the working capital adjustment that evolved from May the 14th letter of intent to the date of the final agreements.

A. Right.

19. Q. Moved from a standard form of working capital adjustment to something else. Have you had one of those forms, the projected working capital adjustments in other agreements that you've worked with, projected to actual, projected to closing?

A. You're questioning whether a projected versus an actual balance sheet as the kind of the starting point?

20. Q. Have you seen -- have you ever --

A. I've seen deals where they say they use something that is, you know, an estimate of kind of the mid season, if you will, or kind of average working capital of the business. I've also seen them where they're, you know, they pick a point in time in the business. I think it varies.

BY MR. ROCKX:

21. Q. Was there any, in the process, was

there any search to try to get an average working capital, looking at a bunch of month-ends perhaps and trying to take an average, or was it -- do you recall that?

A. Well, we -- I think we spent a fair amount of -- we spent some time trying to determine what might be working capital, but the business was going through a lot of change at the time and I think there was, you know, discussion at the time whether there should be using a March balance sheet, which I think actually came out maybe even after we put in the first bid, within, you know, hours or so, but -- or whether it should be, you know, May or this forecast, but we asked a lot of questions and were trying for a long time to get good information about working capital and were generally referred to what was in the data room, which was a lot of historical information that was at pretty different levels relative to the working capital at the time.

We questioned management about that and were told that they had changed the way they were operating the business. They were operating the business for cash now, so they were collecting receivables, so receivables were tighter than they had been historically. They had sold billets and stopped -- I think there was some term, rolling, roll, to do roll and hold, and other changes in the way they were running their inventory so that inventory was lower.

So we weren't able to really look at historical information and come up with something that we thought was a really credible number for what average working capital might be, and I think that's some of the reason we ended up, you know, trying to design a contract that would, you know, have some protections and why there was some, you know, discussion of what is the right number to use, and at the end of the day, we wound up with the September forecast which was what management was telling us working capital was most likely to be at a time near closing, which was what we were trying to get to.

BY MR. BUSCHHAUSEN:

22. Q. Just want to clarify: You'd indicated that the March 31 actuals might have been the most recent that were viewed prior to the letter of intent, and this is a document. It's the business plan update, March quarterly reforecast, and it's dated that it went into the data room on May 5th.

A. Mm-hmm.

23. Q. And I know that this was one of the documents that you viewed, and I just want to confirm that this was the March actuals, to the extent that they're in here, that you reviewed?

BY MR. ROCKX:

24. Q. This document represents a -- in the original CIM's, it would have had some forecasts, the UBS financial model, and they updated the model and put it in the data room on early May, but it did include actuals for Q1 and then had a reforecast --

A. Right.

25. Q. -- for the balance of the nine months.

A. I don't remember these bar charts particularly. I do remember looking at this forecast in this kind of format that we had called a bottoms-up format, in that they did come out with this reforecast at a P&L level, and we persistently over a long period of time asked to get a balance sheet and cash flow in the same format to match this P&L forecast and that was never produced.

There was a version of this forecast that was I think based off of year-end data that had been produced around March or earlier in the year that did have a balance sheet and cash flow to go with it, but we were never able to get an updated forecast that had an updated balance sheet and cash flow, and as a result, we were -- you know, that's one of the reasons we continued to have questions about what the working capital might be because there were significant changes in the P&L, the business was behaving very differently from the kind of the

December version of this which had a balance sheet forecast, and we never really had a good way to say how should that -- what's the appropriate way to change that December forecast that we had.

BY MR. BUSCHHAUSEN:

26. Q. Can I just confirm that this is the December that you were referring to? This is a document that would appear to have December actuals, and it's -- I think it's identified as, excuse my writing up here, but I think it's the model that was developed by UBS, and it went in in March 31st, '04. So it has -- where are we here? Actuals, fiscal year actuals I guess to -- I'm looking at this upside down, obviously.

A. Right. I'm not going to know from checking these exact numbers, but in general, it looks like the one and I'll take your word for it because I just --

27. Q. Well, just flip through there because it had a balance sheet in --

A. The one I'm thinking of was produced in around March and was -- had forecasts for January, February, March instead of actual.

28. Q. Yes.

A. And that was the change between the two.

29. Q. Right.
A. This looks like it.
30. Q. Because it does have, does it not, a balance sheet and a --
A. It does have a balance sheet.
31. Q. And a cash flow.
A. And cash flow. That's what I'm referring to, that we never got a new updated version of that.
32. Q. Oh. Prior to the letter of intent.
A. Ever. I mean, prior to the -- like the Exhibit "B" or Exhibit "C", but we never got a monthly balance sheet and cash flow in this kind of format to go along with the revised P&L forecasts that they produced in May.
33. Q. Okay.
BY MR. ROCKX:
34. Q. Who else from Heico was involved as the key parties in terms of the due diligence and negotiation team? I mean, just want -- and would it be fair to say you were the contact person or the lead?
A. No, I think there were a number of us involved in the due diligence side. El Roskovensky is the president of -- El Roskovensky, R-O-S-K-O-V-E-N-S-K-Y.
MR. HOWARD: E-L, not Al.

MR. HICKS: He's the president of Heico. He has a background in the steel industry, so he assisted in the diligence. We had some outside consultants do market research on the rolling mill and on the fastener industry. We've had other personnel from our deal side, if you will, including Damian Covery and Chris Rogers who have roles somewhat similar to my own. They work in our New York office. Larry Wolski is our CFO. Those people among others. You know, people -- we would, you know, field questions about the steel business and the wire business to people in our wire operations as Heico has other operations in the industry. So we would draw on a lot of people in the diligence process.

I would maybe be a point person trying to consolidate some of the findings from that group and provide some co-ordination I guess of that group to assist El, and then on the negotiations of the actual terms and contract, I was less the point person there. That mostly went through McDermott Will & Emery.

BY MR. ROCKX:

35. Q. Sorry, when you say it went through them, I mean, were they -- they were doing negotiations or making decisions?

A. They were at the negotiations, yeah.

36. Q. Your legal counsel.

A. Yes.

37. Q. Is that a little unusual or...

A. No. We've had a long relationship. Michael Heisley's had a long relationship with McDermott Will & Emery and the key people there, and he relies on them and they know him pretty well, so they've done transactions together for 20 years.

38. Q. I noticed on the -- even on the letter of intent of May 14th it was signed by Stan Meadows.

A. Right.

39. Q. And that would be typical that he would sign on behalf of Heico?

A. Yes.

40. Q. The due diligence process, you indicated that, well, certainly the individuals involved, but was that process, was that front-ended, back-ended, or pretty -- I mean, just describe the process a little bit, I mean in terms of the due diligence. You had access to the data room starting in let's say March, April.

A. Right.

41. Q. And would you have done a due diligence real quick up front or was -- I mean, just describe as you recall it.

A. I think we looked mostly at the business on the front end, you know, prior to preparing a bid at a fairly high level from the offering memorandums and from looking at, you know, the businesses performance over ten years and that's typically how we look at businesses, their long-term performance and that's really how we came up with a valuation for the business. You know, what is its average EBITDA over the last ten years and do we think that can continue, are there potentially ways we can improve that business, and that, while it sounds pretty simplistic, is really the way we looked at the business and came up with a purchase price.

Then as we got -- we did diligence in some Q&A I would say, you know, into the May time frame and then once we thought we had a real chance at obtaining the business, I would think at that point our diligence intensified, and so late May and into June when we were thinking we were going to be a successful bidder, I think the diligence became more formal, and there's more of a series of correspondence which you've probably seen in written Q&A going back and forth between us and UBS and the company, you know, going through a variety of business issues, and that's probably when we had outside, you know, help looking at the rolling mill and things like that, between the time we signed the letter of intent and the time we signed the contract.

42. Q. You mentioned in coming up with the

letter of intent the purchase price that was implicit in that you built to model, pricing model, if you will, probably a long-term cash flow I would assume.

A. We really in pricing the business looked at the historicals. It wasn't based on a, really, on a forward-looking model. It was looking at what the business had done and, you know, a multiple of earnings and that was really the basis of our bid. It was not done on an asset, you know, adding up a balance sheet or, you know, adding up appraisals or anything like that. It was looking at the earnings of the business and would they continue.

43. Q. So multiple of EBITDA approach?

A. Right.

44. Q. Is what I think you did.

A. Mm-hmm.

45. Q. And in that, coming up with the letter of intent, you carved it up by the three divisions, if you will. You had to put separate prices on each of the three divisions making up the entire group, and is it fair to say then the process you described, in putting the pricing, you would have put, figured out the EBITDA, the normalized or historical EBITDA for each of those three divisions and put multiples, one or similar multiples on those and come up with your enterprise value?

A. That's a fair guess. I honestly don't remember how we did that allocation at the time. I'm sure we did the allocation because that's how the bid process was required to be run, but I know as a whole, you know, we looked at it pretty much as a whole.

46. Q. In terms of the enterprise value, did you work backwards and sort of try to come up, and now I'm talking on a combined basis, 375, did you try to get a sense of here's how much would be fixed assets versus working capital versus, I don't know, other assets and liabilities that were acquired in the process?

A. In terms of how did we -- what --

47. Q. Just to see what assets you would have at the end of the day, you know, if you had to allocate it.

A. No, I don't really think that was a part of how we valued the business. It really was EBITDA and earnings based. I think we're aware that it was, you know, an asset-intensive business and that's, you know, good for downside protection, but it's not how we valued the business by any means.

48. Q. So as the approach, ultimately, the request for a -- call it a working capital baseline Exhibit "B", if you will, the September forecast, that was driven, presumably, by both sides? I mean, you had to

have some kind of benchmark because working capital does fluctuate, of course. Was that --

A. I think it's driven by the nature of doing an acquisition and having to put a line in time in the sand somewhere on what you get, and as a result of just the nature of doing that, you need to say how is that working capital going to be measured and there's an acknowledgement that the working capital will change from that measurement date to whenever you get it closed.

I think we look at it as, you know, we bid for the business based on the earnings for the business and you're going to get some working capital with the business. We tried to -- you know, I think when we come up with the bid, we're, you know, we're not anticipating it's bid plus or minus working capital. It's a number we're paying for the business and we try to get the purchase price as close to that as possible and that's why we tried to come up with a working capital adjustment that was as close to a potential closing date as possible.

Beyond that, I think we're looking at that working capital as a way to protect us, that working capital adjustment, as a way to protect us from manipulation of the business, if you will, post reaching a deal because there's, you know, there's, as we all know, there's lots of ways to change numbers to, and we wanted to have, you know, some protection that, you know, money isn't taken out of the business or numbers aren't adjusted arbitrarily. If there's fluctuation in the working capital because the business improves or declines in a period, that's fine. We just wanted protection from, you know, other manipulation of the business that wasn't related just to how the business was going in the year.

BY MR. BUSCHHAUSEN:

49. Q. How do you normally protect that in words?

A. You write a contract that protects you from that with the working capital adjustment. I think that's why we came up with the contract that we did.

50. Q. What would the words normally say?

A. That's where you get into words like, "Things will be measured according to GAAP, in ordinary course, in accordance with past practices." All of those words are put in there so that you have measurements between whatever your measurement is at point A and point B and so you know that you're dealing with apples to apples between those two points.

51. Q. And what if you had concerns about those standards of measures? How would you protect yourself then?

A. It gets a little bit beyond my

expertise, I would say, but you rely on looking at how -- you rely on an opportunity to look at the past practices of the business, to look at assumptions that had been previously made, and are those assumptions being made on a continuous basis, both in the past and in whatever the future closing number is. You look to -- look at the accounting principles and GAAP guidelines and are those, all those things being consistently applied, or are there along the way in there some, you know, big jumps that are saying, "Why are you doing something different now than you did in the past, and what is the, you know, what is -- what caused that?"

And it's really -- you know, you can do all the diligence you want and say you have access to the company and everything, but until you can really get in and examine those types of adjustments at a pretty micro level, that's your real opportunity to try to prove that out.

52. Q. Be safe to assume that you did review the audited statements that outline the accounting principles used in the past in the historical audited financial statements?

A. We did somewhat. We looked at audited statements that were available and annual reports that were available, but they encompassed a lot of other businesses that had been closed, divested otherwise, so you know, in terms of the numbers that were in there, it was hard to draw big conclusions between the audits and the businesses that we were acquiring because the businesses that we were acquiring were only a portion of what was included in the audits.

We spent a fair amount of time trying to reconcile pro formas that were produced by UBS and the company to audits and things like that, but that was always a difficult exercise.

53. Q. I mean, I know, for example, that each of the companies had an audited statement for December 31st, 2003 in the data room; is that correct?

A. I think that was correct, yes.

54. Q. I'm just looking at which ones you reviewed.

A. I'm trying to remember.

55. Q. And, for example, the Ivaco Rolling Mills audited financial statements that were in the data room in file 5 or folder 5.2 were reviewed by you nine times, the last time being October 1st, '04. Now, this doesn't tell me when you first reviewed it, but I believe that that document was in the data room and would have been available --

A. Mm-hmm.

56. Q. -- for your due diligence. Have you got file number 1 there, John?

MR. ROCKX: Due diligence?

MR. BUSCHHAUSEN: I just --

MR. ROCKX: January?

BY MR. BUSCHHAUSEN:

57. Q. Yes. And so that Ivaco Rolling Mills December 31, 2003 audited statements was in the data room, and if you want, you can have a look at it in terms of the description of the accounting policies that are in there. My question to you is, did you review those audited statements for each of those three entities prior to the letter of intent?

A. I looked at them. Did I look at them in terms of -- I assume I looked at them. You have evidence that I did. I think I remember looking at some of these reports. Did I look at them in terms of the accounting policies that were used? No. That's not what I normally do. Not my area of expertise.

58. Q. Okay. What was your focus?

A. Probably trying to pull out what historical numbers that I could and look at how they would trend versus other numbers that I had.

59. Q. Right.

A. And compare and contrast that, but I'm just making a point that I wouldn't have read the fine print in this about, you know, the accounting policies. It's not something I normally do.

60. Q. Right. Was there somebody on the Ivaco team that looked at the accounting policies?

A. On the Heico team?

61. Q. Heico team. I'm sorry, you're right.

A. I'm not sure. I think people, other people read these. Probably looked at these audited reports. What they focused on at the time I can't speak to.

62. Q. Right.

A. I think in general, we, you know, in terms of working capital, we wrote the contract and in terms of working capital relied on the contract as what was going to protect us and knew that at the time that it came to look at the true-up, then we would have the opportunity to go in with people who are expert in those types of policies and, you know, review the working capital adjustment in the detail possible.

So I didn't personally spend a lot of time trying to anticipate that or guess at that in advance. I think we looked at -- you know, we asked questions about the working capital, but we really relied on the contract and the structure of the contract to dictate that we would when the time came have an opportunity for an apples-to-apples comparison.

63. Q. Okay. The definitions that were in the asset purchase agreements, did you review those?

A. The definitions?

64. Q. As it related to the working capital items, accounts receivable, accounts payable and so on?

A. We did. I'm sure I read through those and saw in general that they pointed that it would be according with GAAP, consistent with past practices, those types, that type of language that I discussed before. I'm not an accountant, so I might not draw greater distinction on those types of definitions than others might, but I looked at it to the extent that I saw that that type of language was in there and that we could rely on that type of language to get us an appropriate true-up after the closing.

65. Q. Right. There wasn't any modifications of the sort that would indicate that it was GAAP consistently applied except otherwise modified, but where modified by the agreement, to your knowledge?

A. I think there is -- there are a couple of places where it says, "except otherwise modified." I only remember that looking at it more recently, but I don't -- I'm not -- I don't recall what that was pointing at.

66. Q. Okay.

BY MR. ROCKX:

67. Q. We spoke a little bit earlier about the dates that were involved in the working capital and I think it's fair to assume that the reforecast did have the March 31 working capital figures for the three divisions, the reforecast that was provided before the letter of intent was prepared on May 14th.

A. I'm sorry, I'm not following you. The reforecast had what?

68. Q. Had balance sheet figures in there for the three divisions?

A. No, the reforecast -- the May reforecast you were just showing me did not have a balance sheet.

MR. BUSCHHAUSEN: Yes, there wasn't a balance sheet in there, but there was in the data room and I just, you know, noted this, that the date that the March 31st balance sheet went in, the statements went in, was March the 13th according to the date of --

MR. ROCKX: May 13th?

MR. BUSCHHAUSEN: May 13th.

MR. ROCKX: May 13, so it was around the time that the letter of intent was prepared then.

BY MR. BUSCHHAUSEN:
69. Q. Just point that out here. Yeah. March 30, the March balance sheet went in May 13th, '04. That's the dates indicated it was updated. Whether there was an earlier version I don't know.
A. On what date did we submit our bid?
MR. ROCKX: The 14th.
BY MR. BUSCHHAUSEN:
70. Q. The 14th, yeah.
A. Okay.
71. Q. I think you had indicated earlier that you didn't see a March 31 balance sheet.
MR. ROCKX: And may well not have in light of the --
MR. HICKS: No, actually, in looking through my -- through some of my notes, I thought that UBS had produced a set of balance sheets that they had said were, you know, balance sheets for deal basis or for bid basis, and looking at that, we actually received those after, at least after I had seen the last version of our bid going in, you know, by a couple of hours, but they showed up after the fact.
BY MR. ROCKX:
72. Q. Well, the original CIMs involved in the transaction had September 30th, 2003 working capital

numbers and said, you know, 'Provide your bid and use these as the -- call it assumed working capital numbers or tie your bid to these assumed numbers.'

The March 31 balance sheet came in May 13th and I'm going to assume that by the time the transaction closed, the May 31 balance sheets were available, but once again, there was no real desire to look at those. It was, 'Let's put a forecast to September,' which is closer to the proposed closing date --

A. Yeah.

73. Q. -- as the approach to use here and that was just the methodology that was selected, and was that something that was proposed by UBS or Ivaco, or is that ultimately a Heico preference?

A. September?

74. Q. September.

A. I think there was a -- I mean, I think that Ivaco was pushing to use the March balance sheet and saying that -- arguing that that was, you know, the most recent thing and should be the basis of the bid. I don't think we necessarily based our bid on that. I think we wanted something as close as possible, as I've explained, to the closing because it was our intent that, you know, if all else equal, it would be a zero adjustment.

I think we had concerns by the way the

business was performing that March could be an unusually low point. I think we looked at May or something in that time frame and I think Ivaco actually pushed back on that because they were concerned that might be a high point right prior to their July shutdown period, and so I assume, I don't recall exactly how we wound up with September, but that September might have been a compromise.

75. Q. Was there any consideration of the state of the industry, steel industry, in 2004 where prices were going through the roof, you know, in scrap and pricing in the marketplace which, presumably, would have increased overall working capital for --

A. I think we were conscious of that. That's one reason we weren't comfortable with March. We saw that March was lower than it had been in the past because of the way they claimed to be managing the business and working down receivables and things like that. So we were concerned that it was low to start and we were conscious that the business and the pricing was going up, as you say, so we were concerned that it might not be a good, you know, point in time to come up with something that is more representative of the kind of steady state or average state of the business at that time.

76. Q. But in fairness, the 2004 was an unusual year. It certainly was not a ten-year average, typical year. I mean, that's probably fair.

A. It was certainly an exceptional year at that point. Did we know how long it was going to last? No.

BY MR. BUSCHHAUSEN:

77. Q. You would consider what was happening in 2004 in the steel industry to be a cyclical event. Is that what you would view it as a professional? Is that how I would -- just trying to rephrase your earlier comment that you were questioning how long it would be up and whether it would go back down.

A. You know, clearly, it's a cyclical industry and we thought that that was certainly a good time in the cycle. I don't think there's any question about that.

78. Q. The -- excuse me. I just -- I finally found the March 31 that was in the data room dated May 31st, and these were just internally generated?

A. May 13th?

79. Q. They're dated May 13th up here which is the date that they went into the data room.

A. Okay.

80. Q. Which you would not have seen based on

your earlier comment with the time that -- at the time that the letter of intent went in. Is that a fair statement?

A. I think that's correct.

81. Q. Yeah.

A. I don't specifically remember this sheet, but --

82. Q. Yeah. It's hard to imagine that you saw it the one day and the letter of intent went in the next day, isn't it? Did you -- but you -- I would presume you saw these later; is that correct?

A. I did see, I know I saw March numbers.

83. Q. Yeah, yeah. In fact, I can confirm that because they seem to track that on those -- in the data room, right?

A. Okay.

84. Q. Now, these are the working capital items indicated on the statement. You want to just look at those items I've circled as item number 1?

A. Okay.

85. Q. Okay. Now, the numbers that are identified there, I've just summed them all up, and I know you're a numbers guy, but if you took a quick scan of those, those are, you know, kind of what you see there is probably a working capital total for all the divisions

that was around 270 or 80,000 -- $270 or $80 million?

A. Do you want me to add them up?

86. Q. Yeah, just satisfy yourself.

A. Looks to be in that ballpark. I don't have a reason to disagree with you.

87. Q. Well, I'm just -- look at the same numbers you looked at presumably, right?

A. Yeah, I mean --

88. Q. Right, and I think you'd indicated earlier that the challenge was trying to find a normalized working capital level; is that correct?

A. The challenge was trying to find, trying to come to a point where what working capital would be near closing and to find, you know, basically a, you know, find a structure where we would have a contract with a, in theory, a zero closing, and then I guess in, you know, economic theory, it would be nice if that were something, you know, that is an average, that is representative of what the business requires at that time to sustain its earnings.

89. Q. The working capital that's indicated at March 31, would that be a level of working capital that would be sufficient to sustain the earnings of that business?

A. That's what we weren't able to

determine. That's why we were asking a lot of questions about working capital, but as I said before, since the business had changed significantly from prior years when we -- where we had, you know, data, quarterly data in the data room for a couple of years, the business was being operated very differently from those times, so we were struggling to, you know, understand what would be a representative point of working capital. I don't know that we ever really got a lot of comfort in what would be the representative amount of working capital for the business at that time.

There was a lot going on at that time. As you said, the steel market was going crazy. At the same time, these guys have been managing the business for cash. They'd been in CCAA. They were trying to squeeze cash out of everything they could. They had dramatically changed the way they were managing their inventory. So to, you know, judge at that point in time what was normal was very challenging.

90. Q. But you needed to know that, did you not?

A. You would like to know that, but there's not -- that doesn't mean you can know that. We asked a lot of questions, we looked at the data that was in the data room, but questions, you know, that we got was, you know, it was kind of a cumbersome diligence process. It wasn't sitting down with all the controllers or anything like that. It was, by and large, you know, prior to signing anyway, sending, you know, written answers into the company or into UBS, waiting. We'd get back, you know, some written answers. You know, sometimes the answers you get back in writing are colourful, sometimes they're not. There were conference calls, but it's, you know, it's somewhat limited still, and to say that we had comfort that we knew what would be the right number at that time, I don't feel that we did. I think working capital was an area that we, you know, we were never quite comfortable with.

We asked management at the time, you know, in and around that, you know, May/June time frame, you know, and when we first got forecasts of September, you know, and the September forecasts, you know, surprisingly to me was pretty much the same as the March numbers, you know. Go figure? Because that's what Ivaco had wanted us to be at originally, but you know, we asked why wouldn't it go up. Prices are going up. Business is booming. Shouldn't working capital be going up?

The answers we got were that, 'No, you know, we're managing accounts receivable very tightly for cash. We have different inventory practices. We sold off, you know, excess billets. We're not doing roll and hold anymore. We have a Capgemini report that said that we should be able to take a lot of inventory out of Ifastgroupe and we're trying to implement that report and we're planning to implement that report, so, in fact, we think we're going to be maintaining inventory at this low level.'

So we were being told by management that there were a lot of different management practices going on that were new that was going to allow them to sustain this, you know, flat or lower-than-normal working capital level. That didn't quite make sense to us in light of what was going on in the market, but as an outsider, we didn't really have a way to second-guess management and say, 'No, management,' or, 'No, Ivaco, I think your working capital should be 20 million higher in September.'

We were somewhat relying on them and we were relying on them because they were, you know, the people we were planning to run the business afterwards as well, so that's what, you know, we ended up defaulting to, what management was telling us.

91. Q. I just want to be, yeah, clear on that because my understanding is that the estimates came together sometime in July of '04.

A. Mm-hmm.

92. Q. And so the questions you were asking or the questions that Heico was asking and the responses that you were being provided, I take it they were occurring as well in July as the estimates came together? Is that a fair statement?

A. Well, I think we were asking questions about, you know, balance sheet and can we get a balance sheet for -- similar to the May reforecast, if you will, from pretty much when that came out and we continued to ask those questions, yes, through into May, June and July. It was an ongoing topic to try to understand what was going on with the working capital.

93. Q. Yes. Now, we see the data room does contain the March balance sheets. Were there other balance sheets that you would have had then after March the 31st and to the date that the estimated working capital was coming together? Because my understanding from Hugh Blakely is that the financial statements were continuing to be produced.

A. Yeah, I think the --

94. Q. And they were --

A. -- financial statements, they would put out -- like in the data room, you would see like the IRM monthly report, for example. That's one that I remember. Those would typically come into the data room and they would have balance sheets for those divisions, and they would come in. It was somewhat after 45 days, maybe 60 days after a month-end. So those continued to be produced over time.

I'm not sure, you know, after May. I think in the May time frame, we were just getting March, for example, and I'm not sure, you know, by say August in the signing time, how many more of those might have been in the data room.

By the signing time, obviously, then we had their forecast of September and we did -- I had discussions with Hugh Blakely over that time trying to understand at least a little bit about what was in his September forecast. That became Exhibit "B".

95. Q. All right. Was the CRO involved in those discussions?

A. I don't remember specifically talking with him about that. He could have participated in, you know, the call, if we had a call with Hugh asking him questions about it. I don't -- I recall we had some feedback I think from Andy Kramer at UBS on -- responding to some of our questions about working capital and some of this question I was referring to of why, why isn't it going up, for example. Most of that was at least directly back and forth with Hugh Blakely.

96. Q. Were those questions verbal or in a -- like in a conference call or were they by e-mails?

A. Both.

97. Q. Okay.

A. We would submit, I think we submitted questions in some of our questionnaires and we might get responses in writing and we also had some conference calls on the topic.

98. Q. Are you familiar with the copies of e-mails that were provided on the working capital issue as part of our information requirements?

A. No, I don't know what you have.

99. Q. Okay. Perhaps Bruce maybe could review that with him at a later date?

MR. LEONARD: Well, sorry, which e-mails?

MR. BUSCHHAUSEN: The e-mails regarding the working capital process. There was a request that we made back in March for documentation on the chronology of the working capital discussions between the parties, and Heico did provide documents and I think -- so there were some documents that were provided. They're e-mail documents with attachments.

BY MR. BUSCHHAUSEN:

100. Q. Maybe just kind of flip through that quickly, the e-mail documents that were provided by Heico.

I think, Jon, you're copied on some of them.

A. Probably.

101. Q. And so my question is, if there are some other specific e-mails that you're alluding to that we don't have copies of, is it possible for us to get copies of them as it relates to the working capital discussions because that's the information that we requested earlier.

MR. LEONARD: Did you get that from the --

MR. BUSCHHAUSEN: Heico.

MR. LEONARD: -- computer? Heico? From me or directly from --

MR. BUSCHHAUSEN: Well, it would have come through you or Bob.

MR. LEONARD: Sorry, I don't have any recollection of that request.

MR. HOWARD: Sorry, that's what's attached to your letter from --

MR. LEONARD: Oh, the --

MR. HOWARD: -- the first information.

MR. LEONARD: Okay. The request is if there's other e-mail communications beyond those we attached February 27th, we'll try and produce them. Yes. We'll look for those.

MR. HICKS: This is -- this has some,

obviously, some of my correspondence with Hugh in there.

The other things I'm thinking about: I don't recall specifically which working capitals were adjusted, and there was kind of an ongoing kind of laundry list of our outstanding diligence questions that went through UBS and that the company would respond to, and I think there was some more about working capital in there, and then included in there are things like our -- one of our kind of running requests for working capital forecasts on a monthly basis and stuff, and that one I know was always in process, but we never really got it.

BY MR. ROCKX:

102. Q. Would a lot of your requests, a number of them were written requests to UBS?

A. Yeah, that was the procedure at the time.

103. Q. I'm just wondering whether it may be worthwhile to get something from UBS if they've got the written questions and responses.

MR. HOWARD: May be something we can talk about later because part of our problem, of course, is the responses. Some of the things we're talking about now would be remaining at the Ivaco files, stayed at Ivaco.

With respect to UBS, I think that was the procedure early, and then into July and August, the contacts went back and forth either between the law firms or directly between with management as the exclusivity period, UBS steps back. In the UBS period, we can certainly get what you want, but I think for July and August, it's more a different matrix.

MR. BUSCHHAUSEN: Right.

MR. HOWARD: And to get it complete, which we should for you, we need both the Ivaco level, McDermott Will Emery, the Davies Ward Beck, and any files that Mr. Benson took with him.

MR. LEONARD: So I do July and August and you do May and June?

MR. HOWARD: For the UBS side, I can do. We can -- you have asked for May and June and I don't think it's going to -- anyway...

BY MR. ROCKX:

104. Q. Jon, you had --

MR. HOWARD: I don't want to give evidence, much. I want to, but Bruce isn't going to let me.

BY MR. ROCKX:

105. Q. Jon, you'd earlier stated that in your pricing model, you looked at a ten-year average of earnings and EBITDA and so forth, correct?

A. Yes.

106. Q. 2004, calendar 2004 was an unusual

year, and I think the projected EBITDA in the March 30 -- March reforecast showed that the combined EBITDA would be 103 million or something of that. That was factored into your pricing model, per se, or was it diluted down on a ten-year average or --

A. I'm trying to remember what we had in the ten-year average at the time. We did it -- I don't remember what -- if we included '04 in that number or excluded it as kind of extraordinary.

107. Q. But the enterprise value was driven on more of a ten-year average of some sort.

A. Right.

108. Q. And 2004 was an unusual year.

A. Right.

109. Q. With high pricing and profits. The working capital, presumably, you -- did you look at a ten-year average for that as well or --

A. No, I don't think we had access to that. I don't know. Maybe there was something on that at the bottom of the CIMs. I don't remember.

110. Q. Okay, but presumably, the working capital in the exceptional year of 2004 would have been higher than the average, so --

A. Presumably.

111. Q. Presumably.

A. That's one of the reasons we were questioning it because it was lower.

BY MR. BUSCHHAUSEN:

112. Q. I think, Jon, what you might be alluding to is the model that you used to value the business and I don't know if that's something you can share with us?

A. Well, really, to value the business was, like I said, looking at the historical earnings and, you know, multiplying it. We didn't -- in terms of the way we bid on the business, that wasn't the result of a, you know, a DCF calculation or something like that.

113. Q. Right, but you would have documented your calculations somewhere. Is that -- am I correct?

A. I think somewhere we have a -- yeah, we have a, you know, pretty much a one-pager that shows kind of ten years of history. I think that's what it -- you know, what our real look at and valuation of the business came from.

114. Q. And how that boiled down to the 375; is that correct?

A. I don't know that there's a sheet that multiplies it to 375. I don't think -- you know, at the time, I -- really, I think when we were talking about bidding and putting on the bid, that was a discussion, you know, around a conference table of here's what the ten-year average is. Here's the sheet of paper with a ten-year average. Can multiply that in my head. 'Here's what we should bid, guys.'

115. Q. Right.

A. And that was it.

BY MR. ROCKX:

116. Q. And the working capital, you'd pick from 2004 close to the closing date which would, presumably, be a higher number than an average over the ten years, just --

A. I'm not sure of what you're asking, but we didn't, in terms of coming up with a 375, working capital wasn't even a consideration in coming up with that number.

117. Q. Okay.

A. It was EBITDA times, you know, three and a half or whatever it turned out to be, and that was it, and working capital really comes into play, as I said, after the fact to say, yeah, in terms of structuring a contract and snapping a line in the sand of when you take over the business, you need to set some working capital numbers, and you need to have some protection from manipulation of those working capital numbers after you, you know, pick a price, and that's really where working capital comes into play.

Like I said, we did not look at this business and add up the value of the assets. We did not value it saying, 'I'm going to get 375 million and of that, I'm anticipating getting 278 million in working capital.' We just didn't look at it that way.

118. Q. But it sounds like you took a ten-year average EBITDA model to get the enterprise value and let's overlay that with the historically high point in the working capital just by the nature of where the pricing was, which was a 2004 fall number, presumably.

A. I'm not sure what you're saying by overlay that with it. We --

119. Q. Well, I mean, that's where the deal would have closed.

A. We valued the business at -- based on that ten-year average. We understand that when the business is as high, the working capital is going to be high. We assume that when we buy the business, it's going to have a normal amount of working capital that will sustain its earnings at the time. We're really trying to buy the business, you know, for the earnings.

We would, you know -- we're not buying it to go in and liquidate inventory. We're not buying it assuming that we're going to liquidate excess inventory at the time, nor are we hoping that when we close, that there's some big shortfall and we don't have nearly enough inventory and we have to go invest a lot of inventory just to run the business the next day.

BY MR. BUSCHHAUSEN:

120. Q. John's the business valuator. I'm just going to kind of boil it down in layman's terms because I see this all the time. You've got an EBITDA approach to valuation, correct?

A. Mm-hmm.

121. Q. And it really boils down to, does it not, a normalized EBITDA; is that correct?

A. Yeah.

122. Q. Because you don't want to overpay and, of course, there's always a risk in underpaying as well --

A. Right.

123. Q. -- in a competitive bidding process. You want to really understand what's normal; is that correct?

A. Yes.

124. Q. Right. And I think what John is asking you is, if you had an abnormal year in there, how would you handle that in the valuation process, if you had abnormal EBITDA? Does it work its way into the average or do you discount it in some way? How do you manage the

risk of overpaying or overvaluing if there's a spike in EBITDA?

A. I tried to -- I can't remember specifically to what extent, if at all, 2004 was included in that ten-year average as it was early in 2004 when we were looking at the historicals on the business, but in general, you know, you look at a ten-year average and, hopefully, it's going to blend in those highs and lows, and that's the reason we look at, you know, that ten-year average and this is a business that's been around for a long time and that we believe will stay around for a long time, and so you look at a long enough period of history to try to even that out. We certainly did not go and base our EBITDA multiple on 2004 because that would be overpaying for the reality of the business.

125. Q. Mm-hmm.

A. Does that answer your question?

126. Q. Yeah, that's my question. Now, go to phase two of that question, and here again, I'm not the business valuator, but I'm just looking at it in kind of strict business terms. You've got a -- when a business has a good year that's driven by pricing changes in the market and that's the factor behind the EBITDA increase, and that's what happens in cyclical industries, does it not, like steel --

A. Yes.

127. Q. -- for example? That has a direct bearing, does it not, not only on the EBITDA, but also on the working capital?

A. What has a direct bearing? The -- how the business is -- the nature of the market and pricing and all of that?

128. Q. If prices go up --

A. Pricing and volume is going to drive your working capital.

129. Q. Yeah. So -- and it drives EBITDA typically as well if you manage the price increases appropriately; is that right?

A. Which is a big "if" in the steel business.

130. Q. Yes.

A. It's a spread business.

131. Q. Right, but your expectation in 2004 was that working capital would be increasing based on your due diligence and what you were learning about the business, the steel business at that time.

A. That was our --

132. Q. Is that correct?

A. Yes, and that was one of the reasons, as I've said, that we were never quite comfortable with how working capital was being presented to us because it was not increasing in forecasts we were getting, even though we suspected that it should.

That's why we tried to at some point say, we don't have, you know, legitimate basis to tell Ivaco in our negotiation that, you know, this working capital basis should be some higher number. I mean, you can't say, okay, you know, it should be 50 million more than it is today, but that's why we tried to come up with a contract that would protect us. That's the default.

I mean, there was not a good way to have a real perception of what is average working capital at that time. Management was not telling us that it was going to go up. We didn't have a resort in terms of looking at the business other than to say, 'Let's get a contract that has mechanisms in it to allow for the fluctuation in the business, but that protects us from, you know, changes in numbers,' manipulation of numbers, as I said, and we will have to live with the contract.

133. Q. Your pricing was based on the previous ten years, not the 2004. Just want to come back; is that correct?

A. That's correct.

134. Q. And the asset purchase agreement is based on a $375-million purchase price, plus a purchase

price adjustment for working capital change; is that correct?

A. That's correct.

135. Q. Okay. So it does come into the pricing of the business, does it not, working capital and EBITDA?

A. It does, but my perspective, as I've said, is that that is there as a necessary mechanism for an asset-based purchase when you're not getting the cash out of the business, and so you're at risk of the seller harvesting cash and harvesting working capital prior to closing, and so you need a working capital adjustment mechanism there as a protection, but it's not there as the way we valued the business, and that's why we were looking for, you know, to come up with a structure as best we could and that would give us a working capital adjustment of zero because we're valuing the business on ten years and 375 million, not on ten years and 375 million plus "X".

136. Q. Yeah. Now, the harvesting risk, isn't that addressed by having a minimum working capital requirement as a condition like there was in these contracts?

A. No. I think the minimum working capital there was there almost as a walk-away. I mean, I guess you can tell that as a -- call that an "a" protection, but maybe one of a couple of protections. I'm not sure that -- I'm not sure exactly where the minimum number came from, honestly.

137. Q. You weren't involved in advising on that?

A. No, I didn't set that number. I don't remember, I don't remember picking that number or saying this is what the minimum should be. I don't think I did that, but the protection --

138. Q. But what do you think in your capacity as a valuator why the 278 million -- why would there be a minimum as a condition in an asset-purchase agreement?

A. As a protection for the seller from unduly taking cash out of the business which was their focus at the time and leaving the business with a shortage of working capital that would make it difficult to operate on the day you take it over.

139. Q. Right. I mean, that's what it seems to me.

A. That's what it is.

140. Q. Right.

A. It's a walk-away. If something goes, you know, so different from what we're expecting or you take so much out of this business, then we have a right to walk as opposed to saying, 'We're going to have to step in the door and put a lot more money into this or have difficulty operating it on day one because we're short of inventory or something like that,' and I think that's the purpose of it.

141. Q. Wouldn't it seem that there would be a reciprocal protection if more is put into the business than what was normal?

A. That's what the working capital adjustment gives you.

142. Q. Right.

A. Protection on the upside, and it's -- and I don't think we're arguing with that. That's the structure of it. If the business is doing well and the business is growing and as a result, more earnings get put into working capital --

143. Q. Right.

A. -- then the working capital adjustment compensates the seller to that. The whole point of what we're discussing here in the contract and the language in the contract is not to say that that shouldn't happen and not to say that there shouldn't be an allowance for the other side for that growth that results from the business.

All the language in the contract that is being debated is there to protect from, you know, arbitrary changes in the numbers or mismanagement or manipulation of the numbers to the benefit of the seller. So I don't think we're trying to argue, you know, the magnitude or the fact that working capital went up as part of that mechanism. It's really is the reason for the change appropriate or not.

144. Q. Yes. Now, you had indicated that working capital was a challenge.

A. Mm-hmm.

145. Q. And I think I understand that from, you know, everything that we've heard --

A. Right.

146. Q. -- in terms of what was happening coming out of CCAA because of the cyclical nature of the industry and what was happening in the steel industry at the time. All those things that you've indicated earlier, you know, present a challenge, and challenge, is that a challenge that was directed to you to come up with a solution different from what was contemplated in the May 14th letter of intent which was an actual-to-actual adjustment? Where did that idea come from I guess is what I'm asking?

A. Where did what idea come from?

147. Q. The idea to use a projected -- an estimated. Where did that come from?

A. I think that came more out of the deal negotiation where I was not the lead.

148. Q. Right.

A. Might have been asked to, you know, show the numbers that we had to the, you know, to McDermott and the people negotiating, but I think, as I said, I think using, and this is somewhat speculation on my part because I wasn't the person doing the negotiating, but I think it came from a look at the numbers we had at the time.

March we were concerned was too low. I was concerned it was too low. I think other people in our company were concerned it was too low. The nearest thing we had to the time of the deal was, you know, May, and I think Ivaco was concerned that that was too high because they thought they were going into their shutdown period and they would have built inventory before their plant shuts down, and so they were looking for something else that would be a compromise, and we said, 'Well, when are we going to close?', because we were pushing again to -- for the concept of a zero adjustment and so how do we come up with the best estimate we have of what it's going to be when we close and when are we likely to close? September seemed, you know, a reasonable target at the time and I think that's how we came to that.

149. Q. Yeah. I guess the only time you get no

adjustment is when you don't provide for an adjustment in these cases, right?
A. Right, but again, then you're at risk.
150. Q. Yes.
A. If they get the cash.
151. Q. Who was primarily involved in the negotiation, do you recall, from the Heico end?
A. I think McDermott was leading the negotiation.
152. Q. So, you're -- you'd surmise that that's where the estimate approach to working capital was developed was in the negotiation process?
A. Yes. I mean, in terms of picking September versus May versus March? Yeah.
153. Q. Yeah. Somebody called the shots in that negotiating team.
A. Right.
BY MR. ROCKX:
154. Q. Okay. Jon, you said earlier that Hugh Blakely was -- provided Exhibit "B" which was the working capital forecast at September 30th, or his team did.
A. He provided that to us.
155. Q. Yes.
A. Yes.
156. Q. And did you have any understanding how

that was built up internally by Ivaco at that time? Did you -- was that a focus or just or was it --

A. The process?

157. Q. Yeah, the process, or was it just, 'Let's see what those numbers are,' and didn't really focus on the process or --

A. We didn't have great insight into the process. That was, you know, the forecasts that they were delivering to us. Who participated in it and what, we didn't really have visibility to that.

158. Q. And it's probably fair to say there was no due diligence or limited due diligence on the forecasts themselves other than saying, looking at the numbers at a high level, and saying, 'Looks like it's a little bit low'?

A. Well, it's hard to diligence a forecast. I mean, it's people's -- it's estimates. Like I said, we looked at historicals. We asked questions about, you know, historicals and were told that's in the data room. We looked at what's in the data room, but we were told that that was not necessarily applicable to how the business was being run today, you know, and we were told, 'This is, you know, this is our forecast.'

BY MR. BUSCHHAUSEN:

159. Q. But you did ask questions.

A. We did ask questions. I asked questions I think somewhere in July. We got a September forecast somewhere later in July or early August. We got an actual Exhibit "B". I tried to reconcile the resulting -- the Exhibit "B" from the forecast, September forecast we'd received a few days ago. I think there was some minor adjustments in there that weren't changing -- I don't think they were changing the actual forecast. I think they were including or excluding different balances from the Exhibit "B", but we did that type of diligence, if you will. It's hardly diligence. It's just trying to reconcile with some --

160. Q. Yeah, I think we've been provided with the e-mails that address why is this number different from the prior one.

A. Right.

161. Q. And I think it was to do with the "what's in, what's out" question.

A. Looking at definitions and saying, 'According to the definition that we now have, we don't think this should be in there,' stuff like that.

162. Q. Tax things --

A. Right.

163. Q. -- for example.

A. Well, we didn't -- weren't able to go

in and say, you know, 'How did you reserve that or what assumptions drove that?' We didn't do that.
164. Q. Right.
BY MR. ROCKX:
165. Q. Were you involved in the, much, in the asset purchase agreements and negotiating, not the drafting, but input into the asset purchase agreements?
A. Not heavily. I would have read the drafts and provided what input, you know, I had.
166. Q. In terms of the definition of working capital, there was a lot of things that were added and deducted out to really clarify what working capital constituted.
A. Mm-hmm.
167. Q. Was that a part of your role as well or was that -- who was negotiating I guess?
A. Mostly from McDermott.
168. Q. McDermott?
A. Doing the detail of the document. Again, I would have looked at it and I looked to it to see that it had some of these protections I was talking about, GAAP, past practices, that kind of stuff, but parsing the language was really done by McDermott.
BY MR. BUSCHHAUSEN:
169. Q. As you'd indicated earlier, beyond the

wording with respect to GAAP as the standard, consistently applied, there wouldn't have been any more in depth to actually look at what GAAP was being used, what accounting policies were being selected and so on. It was an acceptance of GAAP as the standard; is that correct? I just want to reiterate what I think you told us earlier.

A. In terms of -- I didn't certainly -- I don't recall focusing on, you know, exceptions to GAAP. I think in general, we were looking at applying GAAP and past practices as a way to have assurances that the numbers in Exhibit "B" would be prepared on the same basis as the numbers in Exhibit "C", and that they would be apples to apples, and that when we went back, when we had the opportunity to really examine them post-closing, we would have protections under the contract to make sure that there had not been arbitrary changes in there, and the only way that you can compare apples to apples is if they're both prepared on the same basis. Otherwise, you're comparing an apple and an orange and there's not much point in that.

170. Q. The norm would be to compare actual to actual, actual GAAP prepared, consistently applied to actual GAAP prepared, consistently applied. That's the norm, is it not, for working capital adjustment?

A. I don't know if that's the norm.

That's certainly a way to do it versus just a number or something, but I think that if you look at, you know, any business preparing a forecast, and when you ask for a forecast from management and they tell you what is your business going to be, you expect that they're going to give you those numbers the way that they report their business, not that they're going to say, 'Well, I'm going to do -- I'm going to give you this, but it has nothing to do with the way I report my business.' That's just logical.

171. Q. The document isn't described as a forecast. It's described as an estimate.

A. Okay. What does that mean? I mean, we're looking at that number --

172. Q. The English definition of "estimate"?

A. I didn't pull up the dictionary at that time. I think we were looking at that as this is what management says the business is going to do as they forecast their business, and this is -- and we would assume, maybe we're wrong in assuming, we would assume when you tell us what your business is going to be doing in September that you're telling it to us as you report your business in March and May and December and every other time, not that you're coming up with some entirely different method of measurement because that's just --

it's nonsensical to me. What -- you know, then it's meaningless if it's not in the same basis as the way you manage your business at all other times.

173. Q. The September -- September is described as projected to September. It's an estimate of working capital projected to September 30th. That's what it says in the asset purchase agreement, correct?

A. Okay.

174. Q. But the asset purchase agreement requires it be based on the application of GAAP consistently applied, same as the November 30th actual, right? The same basis. December -- November 30th, sorry, actuals which were used in the preparation of the other exhibits in the agreement.

So, you know, to my mind simply, and this is why I just want to understand your thought process on it, if you were looking at it and providing advice in the drafting of the agreement, is that the distinguishing feature is that the words would suggest that the only thing that's different about the two exhibits is that one's an estimate, one's an actual, but they both have to be GAAP consistently applied; is that correct?

A. Yes. They have to be -- yes, they both have to be, and GAAP I think is a default to have a framework of how they're developed, but the point is they're both developed the same way.

175. Q. Right.

A. So that you are comparing apples and apples. Otherwise, you have a meaningless comparison.

176. Q. I'm still puzzling over the judge's words, though, where he says it's more like colour to colour, and perhaps it's not. What did he say? Blue to blue or as much as it's green and yellow or blue or something.

A. But -- I don't know about those words, but I think my concept and our concept in doing this is very simple and straightforward, you know. You want to have two points in time that are comparable, that are done the same way. Yes, one was not an actual, it was a forecast, but the intent all along was that that is prepared the same way and so it is a like comparison when you get to the end of the year.

And the reason for the language in the contract was so we could go do that and so we could have the protections I'm talking to you about. Not protections from the business going up, which is fine. That's how the adjustment mechanism works and that's why the mechanism is there. It's protection from playing around with the numbers, and if you could say that one can be prepared one way and one can be prepared with another way, then by definition, you're playing with the numbers. The whole point is that they're both prepared in the same way so that anything that is extraordinary jumps out and you're protected by the contract.

177. Q. Would you not agree one's an estimate and one's an actual?

A. I agree one's an estimate and one is -- I don't want to slice the words. One is an estimate or a forecast to what the business is supposed to be. The point is they should be prepared in the same manner.

BY MR. ROCKX:

178. Q. Right. When I asked about due diligence on the forecasts, September 30th forecasts, I think your comment you'd said was it was hard to do due diligence on a forecast.

A. Mm-hmm.

179. Q. You can't tie it in, but you can sort of look at the basis as to whether September 30th is reasonable by looking at the underlying documentation, if you will, that got you to the forecast.

A. Mm-hmm.

180. Q. It sounds like there may have been some concerns that the number was low, but you never really -- nobody from the Heico side really looked at how that forecast was developed until after the transaction closed?

A. Yes, and I don't think we really had a good way to do that. I mean, we were asked for the forecast -- we asked for the forecast, we asked questions about the forecast, and we asked why wasn't the forecast higher. We got the explanations that I told you about, but beyond that, we relied on having a contract. We said okay, we're not going to be able to -- you know, management is telling us what they're going to tell us for whatever reason they're telling that to us. We have questions, but all we can do is rely on the contract and make sure that we have a good contract in place that protects us.

If that number turns out to be not the right number and it becomes higher or lower, we'll live with the adjustment of the mechanism as long as it's resulting from changes in the normal fluctuation of the business, not from what I'm talking about which is changes in the number that are solely for the purpose of changing how much money somebody gets.

181. Q. Were there any fixed asset appraisals done as part and parcel of the process? The mills and so forth?

A. I think there were some out there. I don't remember. I haven't looked at those in a long time.

182. Q. Would they --

A. I think at the time there was some old ones and there may have been some new ones done in terms -- I'm not sure if we did new ones or not in terms of our financing effort before the end of November.

183. Q. But these appraisals would have been commissioned by Heico?

A. That's what I'm not sure of. I think there might have been some pre-existing ones that were not commissioned by us, and we may have commissioned new ones as part of the requirements of our own banks.

184. Q. Right. Do you happen to recall what the dollar value of some of -- do you know roughly what they added up to?

A. No, I don't.

185. Q. Now, I know you've alluded to the financing process as well. When did that happen from Heico's side? Presumably -- your letter of intent was not conditional upon financing. So, presumably, pre-May 14th, you had the financing in place or you had it from internal resources.

A. Mm-hmm.

186. Q. I'm going to assume that before closing, the financing, you did get some financing, some external sources. Was there any tie-in with the working capital into those agreements or fixed asset values or

anything like that? Was there --
A. In terms of tie-in. I mean --
187. Q. That you need a certain minimum or anything of that nature?
A. I don't think there was a stipulation by the bankers that we had to have some "X" asset amount. I think there would have been a revolver facility that was -- you know, availability was based on the working capital at the time, but I don't think there was a walk-away where, 'We won't give you financing unless you have "X".'
BY MR. BUSCHHAUSEN:
188. Q. Were you involved in the financing side of the equation?
A. I was involved in helping the bankers through their --
189. Q. Their due diligence?
A. -- view of the business, providing them with access to the data room, helping them, helping, you know, kind of taking the Hugh Blakely role and trying to answer the banker's questions about Ivaco.
190. Q. Their due diligence.
A. Right, and that went on and that went on through the fall.
BY MR. ROCKX:

191. Q. That was the fall time frame, was it?

A. I mean, I think there was a bankers' meeting where bankers came up and Ivaco management made a presentation to our bankers I think in September, early September, somewhere in there.

BY MR. BUSCHHAUSEN:

192. Q. What about prior to the asset purchase agreement being signed? Was there banker involvement from your perspective?

A. I'm sure we were --

193. Q. Their due diligence?

A. -- talking to bankers at the time prior to signing the contract. I don't -- let me think. Yeah, I mean, I think throughout, we were talking to different banks to have a general understanding of what type of financing would be available to us, sharing with them enough perspective on the business so they could say in general terms, you know, 'We could loan you, you know, something in this ballpark,' to give us enough comfort to sign the contract, and then when the contract was signed, then, you know, we went out more aggressively for the banks to really refine their estimates and refine their commitments.

194. Q. Just a question regarding GAAP. The GAAP refers to in section CICA 4250, and excuse me if I'm

quoting things that don't --

A. You're out of my league.

195. Q. Out of your league, okay, but you weren't knowledgeable of CICA 4250 when you were looking at the documents in the data room and assisting in the due diligence, I take it?

A. No.

196. Q. Okay, and had you heard of it at the time?

A. Heard of?

197. Q. 4250. Was it discussed at the time?

A. Not by me.

198. Q. Okay. You had -- had anybody else mentioned it to you at the time?

A. No, I don't recall talking about that.

199. Q. Okay.

A. To me, GAAP was a general framework that we were relying on in the contract to, as I said, to get to something that would give us a basis of getting to an apples-to-apples comparison.

200. Q. It was a standard.

A. Yeah.

BY MR. ROCKX:

201. Q. We've heard from others that there were some important meetings in New York in early July 2005

when the final business terms were sort of hashed out between Heico and Ivaco, and were you part of those discussions in New York?

A. No, I don't think I went to that meeting. I heard someone ask me about that. I don't think I did.

202. Q. Ernst & Young was the monitor during the process?

A. Mm-hmm.

203. Q. Were there any, many or any discussions with them, per se, in terms of your process or were they -- do you recall anything?

A. Minimal. I think we participated in some of the same things. I've seen Brian before in around the table, but not as a source of answering questions.

204. Q. The Exhibit "C", the final working capital, when it arose, what was your first reaction? Obviously, there was a discrepancy in dollars. I mean, is that the thing that struck you or -- and maybe can you elaborate a little bit on, you know, when you got the first cuts and what happened shortly thereafter?

A. I was kind of on to other things by the time Exhibit "C" came out, so that went more into our accounting group. We had been looking at, you know, may have been looking at the working capital, you know, up until prior to that time and trying to understand what was going on, but I think really that was, you know, the time where, you know, that's really, when that comes out, that's really your time to go back and take advantage of the protections in the contract and get all the questions answered that you weren't able to get answered earlier in the process.

205. Q. So your role post -- was it post-August 6 or post-closing was --

A. More post-closing. Post-closing. I mean, I was involved in -- prior to closing, my focus was more on some transitional items: Getting LC's in place, getting insurance in place, you know, stuff, transitional stuff like that, helping finalize bank agreements, not so much on working capital at that point.

BY MR. BUSCHHAUSEN:

206. Q. Just referring you once again to your activity, your report here, your report card, the dates where they're indicating last access, there's a number of them as you can see here in September and October. That would be on account of the activities you just described. Is that fair to say? Just looking at the nature of the items indicated and the dates.

A. Are you pointing me just to what's highlighted here or all of it?

207. Q. No, no, all of it. No, those are my highlights.
A. Looks like it pretty much tapers off after early October and that's pretty much how it works.
208. Q. Yeah.
BY MR. ROCKX:
209. Q. Presumably, you were involved with the financing and getting that set up in the fall, so --
A. Right.
210. Q. -- and the deal was done. Do you have any -- the QIT contract, are you familiar with the divulgement of the termination of that arrangement in --
A. You're talking about the consignment arrangement?
211. Q. Yes, the consignment. Were you involved in that process or --
A. I'm not the one who heard about it. I know that it came out after the time of signing, but I don't know specifically or recall exactly when it came up.
212. Q. Okay. So as part of the due diligence, I think that contract was, you know, was not in the data room, so it was an issue that -- did you have to deal with that one at all or at least have some preliminary considerations and --
A. Well, we had -- you know, there was

ongoing discussion of an awareness that we had to come to an agreement at some point with QIT. I think there were requests to see a copy of the contract, but I didn't have too much involvement with it beyond that.

BY MR. BUSCHHAUSEN:

213. Q. And what were you advised when you requested the contract?

A. I think it was -- I think they said that QIT wasn't allowing them to disclose it. We never quite understood that because we could see all their other contracts and we were under a confidentiality agreement, but I think that was the story at the time.

214. Q. Right.

BY MR. ROCKX:

215. Q. Are you familiar with the -- ultimately, what happened was the QIT consigned inventory arrangement was discontinued.

A. Yes.

216. Q. And Ivaco purchased the consigned inventory for a little over $10 million.

A. Yes.

217. Q. Was there some discussion in terms of the impact of that on the working capital or normal working capital of the business? Did you have any discussions of that in the 2004 time frame?

A. Well, I think in 2004, I'm not sure if it was, you know, August, you know, later August, September when we found out about it, that we found out it had happened and were concerned that it had happened and didn't feel that it was appropriate that it had not been -- we had not been told about it, you know, prior to signing or as part of the Exhibit "B" and that it was a -- kind of an extraordinary change in the business.

218. Q. It was a significant change in that it increased the working capital requirements, if you will.

A. Yes, but it did it -- I mean, it wasn't a change in working capital that results just from the business growing. It was a change in working capital that is because of a different structure of the business, different way the business is being run.

219. Q. Were you cognizant that there was some monthly fees that were paid for having the consigned inventory in probably the magnitude of a million dollars a year that discontinued when that protocol was discontinued?

A. No, I'm not familiar with those fees.

220. Q. But presumably, that would add to EBITDA and add some value.

A. If that's the case, I suppose it would.

BY MR. BUSCHHAUSEN:

221. Q. But you didn't see the contract.

A. Right. We thought it was, you know, it was something that Ivaco was going to try to, you know, get out of us in the working capital true-up that, you know, we thought was extraordinary, and we thought the structure of this, of the agreement was there to protect from just that kind of thing, and that, you know, if they said, 'Well, I'm not going to, I'm not going to have a consignment agreement with Ivaco anymore, so you guys pay me 10 million more for the business,' that's not what we normally want to do. It doesn't add to the value of the business for us. It doesn't add to the earnings performance of the business.

222. Q. You were aware that QIT was a supplier to Ivaco Rolling Mills; is that correct?

A. Yes.

223. Q. Just not the terms because you weren't provided with the contract; is that correct?

A. That's correct.

224. Q. Right, and you were aware that it was QIT that indicated their reluctance to have that made available as part of the due diligence process; is that correct? That was what you were advised?

A. Right, and I think that's my recollection. When we asked for the QIT contract, they

said they weren't allowed to disclose it by QIT.
225. Q. Right.
A. At some point along the line, we started negotiation with QIT. I don't remember when that started.
226. Q. Okay. The -- were options considered for other sources of billets?
A. I think we looked at other options, but I think the main focus all along was that we would -- we believed that we would be able to get a new agreement with QIT.
227. Q. Mm-hmm.
A. I think that was one of our bets going into the deal, that the two companies were closely enough aligned and had interests that were enough aligned that that was an agreement we would be able to reach.
228. Q. Right. The fact that you weren't allowed access to the agreement and the fact that you were advised it was because QIT had concerns about that, was it considered that the supply arrangement might be at risk?
A. Clearly, that's the risk.
229. Q. Yeah.
A. We were able to talk with management at Ivaco to understand the history, to understand what they were able to tell us about the contract and how it was

structured and that there was a pricing mechanism and all that, that the -- you know, Ivaco and QIT had designed their processes and products hand in hand for a long period of time, and so yes, we knew there was a risk that we'd have to, you know, buy billets somewhere else, and Ivaco had purchased billets from other suppliers in the past, not in high volume, but they had, and yeah, that was a risk, but we thought it was maybe not as big a risk as some of the other bidders might have thought.

230. Q. The CIM addressed the --

THE REPORTER: Sorry, the CIM?

MR. BUSCHHAUSEN: CIM, yes. I was going to say "Sim", but that always raises a question.

BY MR. BUSCHHAUSEN:

231. Q. The CIM had indicated the extent of the purchase of billets.

A. Where they purchased billets? I mean, I think we had information on --

232. Q. Yeah, it was in the --

A. -- how many billets they purchased from who.

233. Q. Yeah. I don't know that QIT, per se, was mentioned in there, but here again, I'm sure if we speak to it, but the CIM was a starting point for anybody looking into the -- before they get into the data room

because I understand the CIM wasn't in the data room, but if you refer to -- I think there was reference to the fact that in addition to the IRM's own melt shop, there were billets being sourced from third party suppliers.

A. Mm-hmm.

234. Q. I think that was a fact, right?

A. Right.

235. Q. In the CIM. Okay. And you would want to address that because the risk associated with third party supply and security of supply and all those normal things is part of your due diligence; is that correct?

A. Yes.

236. Q. Yeah. Okay.

BY MR. ROCKX:

237. Q. And I just want to confirm once again, it was your understanding that the disclosure of the QIT termination of their consigned arrangement was advised to Heico post-signing of the asset purchase agreement?

A. Yes, post-signing.

238. Q. Post-signing.

A. And honestly, I don't know where that consignment agreement falls. When we're talking about not being able to see the QIT agreement, I'm talking about the kind of the master agreement under which they were purchasing billets. I don't know whether the consignment arrangement was within that agreement, whether it was a verbal agreement, whether it was another piece of paper. I don't know how that was documented.

BY MR. BUSCHHAUSEN:

239. Q. I believe it was referred to as a consignment protocol.

A. But we did not know of the change until after signing.

240. Q. All right. And you wouldn't have seen the QIT contract until after signing as -- did you see it after signing?

A. I don't -- I didn't see it. I don't know when we first saw that contract. I remember that for some extended period, we were asking for it and couldn't get it. I don't remember if and when we got it.

241. Q. Right. I think you'd indicated as well that part of the due diligence team from Heico's perspective was some of your internal steel people.

A. Right.

242. Q. And I think you'd mentioned that there were other external people. Were they steel people as well?

A. We had a company. I was referring to a consultant call Hatch, who went in and looked at the operations in the rolling mill.

243. Q. Right.
A. And helped us to assess the capacity and the machinery there.
244. Q. Right.
A. I don't know to what extent Hatch made any evaluation of the QIT relationship.
245. Q. Right. Your steel people, were they tasked to look at the supply, understand the supply risk?
A. Yes. I think we talked to people in our buyers and our wire company and the people who -- the executives of those businesses, and talking with the executives of Ivaco, David Goldsmith and Gord Silverman, and they're giving us the history of that relationship and what our options would be.
246. Q. Right. Did they indicate where they might be getting other third party billets?
A. I think there were a couple of sources. I think one was called Acominas and one was called Fundia, I think maybe Brazil and Finland. Had a couple of offshore sources. There are other, and those in particular were because there's a, you know, it's a high quality steel that QIT produces. I think you could buy standard billets anywhere, but the challenge is to get the quality that QIT was producing.
BY MR. ROCKX:

247. Q. Any recollection pre-closing of something now referred to as topside adjustments to working capital?

A. Yes, I know what you're referring to. Did we -- when did we hear about that? I think -- I think I heard about that before closing. I'm not sure exactly when I heard about that. I know that -- I believe it was Larry Wolski and Dan Yadron, some of our finance people --

BY MR. BUSCHHAUSEN:

248. Q. Y-A-D-R-O-N.

A. -- spoke to Hugh Blakely shortly after closing and were told I think by him that, to my understanding, that, you know, he was expecting already that there would be a working capital adjustment of some magnitude. I think at that time they were only anticipating it 15 million or so, but I know that they were surprised that shortly after closing that we should already be talking about a significant working capital adjustment and were a little bit alarmed that that should be the case when we thought that we were shooting for something closer to zero and that that was the intent. I'm not sure at what point the kind of the topside adjustments, supposedly by Randy Benson or something, I don't know when those came out.

249. Q. But there was discussions regarding or

addressing your questions around why working capital had not grown in relation to your expectations that it might and I think you'd indicated --

A. That was prior to signing that we were asking those questions.

250. Q. That was prior to signing, yes. You were asking those questions. Right.

MR. HOWARD: I haven't objected. I remind you this witness is giving his subjective views of what the contract means or otherwise, that we -- and our position, but at a certain point when we're talking about a fourth level recitation of what Hugh Blakely said to Danny Yadron who said to this person, I think we're a little far afield.

MR. LEONARD: Well, it's an interview, Peter.

MR. HOWARD: I agree with that. I'm just -- and get it for what it's worth. I'm just putting my position on the record as to what it's worth.

MR. LEONARD: Thank you for that.

MR. BUSCHHAUSEN: We'll take it for what it's worth. Thanks.

MR. HOWARD: And you'll recall that I've been suggesting Mr. Yadron all along, but anyway.

--- Off Record Discussion

MR. ROCKX: I think we're effectively done.

--- Whereupon the interview was adjourned at 2:49 p.m.

I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of my shorthand notes
to the best of my skill and ability.

Beverley Killen, CSR
Computer-Aided Transcription