OCHOA

PART 2
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<td>1 BY MR. BESSETTE: 12:28:40</td>
<td>1 particular or unique to Adams Golf. It was how they 12:31:19</td>
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<td>2 Q. What was unique about Adams' business 12:28:41</td>
<td>2 were engaging in each of those that was 12:31:24</td>
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<td>3 model that made it especially vulnerable to gray 12:28:44</td>
<td>3 BY MR. BESSETTE: 12:31:24</td>
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<td>4 marketing? 12:28:48</td>
<td>4 Q. How were they engaging in those that 12:31:27</td>
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<td>5 A. I think I have laid that out. It is a 12:28:48</td>
<td>5 made it unique? 12:31:30</td>
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<td>6 different question from the first question you 12:28:50</td>
<td>6 A. For example, the pricing policies and 12:31:31</td>
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<td>7 asked, for which I also had a response 12:28:54</td>
<td>7 the high built-in retailer profits -- 12:31:32</td>
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<td>8 But there were a number of things 12:28:56</td>
<td>8 Q. I'm sorry. Let's stick with 1, 2 and 12:31:35</td>
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<td>9 that were particular about Adams' business plan that 12:28:57</td>
<td>9 3 12:31:38</td>
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<td>10 made it particularly directed to gray marketers. 12:28:59</td>
<td>10 A. That was Number 3. 12:31:38</td>
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<td>11 Its high profit margins, high retailer profit 12:29:04</td>
<td>11 MR. COLLINS: Wait, wait, wait, wait 12:31:40</td>
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<td>12 margins were one. Its desire to restrict sales to 12:29:07</td>
<td>12 Let's have a question. She was answering 3, and you 12:31:41</td>
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<td>13 its authorized retailers -- I'm sorry To restrict, 12:29:18</td>
<td>13 cut her off. 12:31:44</td>
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<td>14 to maintain sales through its authorized retailers 12:29:21</td>
<td>14 MR. BESSETTE: That's fine. I thought 12:31:46</td>
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<td>15 and to maintain strong and exclusive relationships 12:29:25</td>
<td>15 it was four, so go ahead. 12:31:46</td>
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<td>16 with those authorized retailers. In addition, the 12:29:28</td>
<td>16 MR. COLLINS: Not a problem. 12:31:48</td>
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<td>17 company had plans to internationalize. And there 12:29:32</td>
<td>17 Do you have the question in mind? 12:31:48</td>
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<td>18 are others that are listed in my report 12:29:35</td>
<td>18 THE WITNESS: Yes. 12:31:50</td>
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<td>19 Q. Is wanting to offer your retailers, 12:29:43</td>
<td>19 MR. COLLINS: Go ahead then 12:31:50</td>
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<td>20 you know, high margins, is that unique in the 12:29:47</td>
<td>20 BY THE WITNESS: 12:31:53</td>
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<td>21 business world? 12:29:50</td>
<td>21 A. So for example, as to Number 3, Adams 12:31:53</td>
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<td>22 A. Wanting to offer your retailers good 12:29:51</td>
<td>22 Golf in its road trip presentation stated and made 12:31:57</td>
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<td>23 profit margins is not unique in the business world, 12:29:56</td>
<td>24 clear that it offered a significantly higher profit 12:32:00</td>
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<td>24 no. 12:29:58</td>
<td>24 margin than its competitors. That made it unique, 12:32:04</td>
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<td>1 Q. Is wanting to internationalize unique? 12:29:58</td>
<td>1 because it created a wider gap which gray 12:32:08</td>
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<td>2 A. It is not unique. The methods, the 12:30:01</td>
<td>2 marketers could play, especially more space for 12:32:13</td>
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<td>3 particularities of how Adams was going about each of 12:30:04</td>
<td>3 arbitrage to occur. 12:32:16</td>
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<td>4 those was unique 12:30:08</td>
<td>4 BY MR. BESSETTE: 12:32:18</td>
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<td>5 Q. Well, let's go to Paragraph 5A of your 12:30:09</td>
<td>5 Q. How about one and two? 12:32:19</td>
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<td>6 rebuttal, where I think you list the elements that 12:30:17</td>
<td>6 A. Maintaining the strength of the Tight 12:32:21</td>
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<td>7 make Adams' business model particularly attractive 12:30:20</td>
<td>7 Lies brand. Adams Golf was a new company that was 12:32:24</td>
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<td>8 to gray marketers. You write these included, one, 12:30:26</td>
<td>8 trying to enter into the golf consumer mind. And 12:32:28</td>
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<td>9 maintaining the strength of the Tight Lies brand; 12:30:32</td>
<td>9 their desire was to do so in a way that made it 12:32:33</td>
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<td>10 two, strong and exclusive relationships with its 12:30:36</td>
<td>10 highly desirable, highly sought after, highly 12:32:36</td>
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<td>11 distributors and retailers; three, pricing policies 12:30:40</td>
<td>11 prestigious brand. The fact that Adams was a new 12:32:41</td>
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<td>12 which included high built-in retailer profit; four, 12:30:41</td>
<td>12 company seeking that image made it unique 12:32:46</td>
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<td>13 reliance on its in-house sales force and customer 12:30:45</td>
<td>13 Q. And Number 2, what is unique about 12:32:49</td>
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<td>14 service infrastructure to maintain its competitive 12:30:49</td>
<td>14 that? 12:32:53</td>
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<td>15 strengths; and five, an intention to further 12:30:52</td>
<td>15 A. What is unique about that is that -- 12:32:53</td>
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<td>16 internationalize. So looking at 1, 2 and 3, 12:30:57</td>
<td>16 well, first, I don't know -- I don't know in the 12:32:57</td>
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<td>17 Professor, aren't these strategies that every golf 12:31:03</td>
<td>17 golf industry as a whole, I haven't studied the 12:33:00</td>
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<td>18 club manufacture wants? In other words, are those 12:31:05</td>
<td>18 business models of every golf company in the golf 12:33:04</td>
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<td>19 unique to Adams Golf? 12:31:07</td>
<td>19 industry to know the steps that they take to ensure 12:33:08</td>
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<tr>
<td>20 MR. COLLINS: Asked and answered 12:31:09</td>
<td>20 strong and exclusive relationships with their 12:33:11</td>
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<tr>
<td>21 Go ahead 12:31:10</td>
<td>21 distributors and retailers. But I can tell you that 12:33:14</td>
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<td>22 BY THE WITNESS: 12:31:11</td>
<td>22 having strong and exclusive relationships with 12:33:20</td>
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<tr>
<td>23 A. Yeah. As I stated, those strategies 12:31:12</td>
<td>23 retailers as a business strategy creates among the 12:33:22</td>
</tr>
<tr>
<td>24 sort of in a broad sweep are not necessarily 12:31:14</td>
<td>24 reasons to have that strong and exclusive 12:33:31</td>
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BY THE WITNESS:  
12:56:04

A. I don't remember exactly what Myers & 12:56:05
Griffith -- what Myers & Griffith's analysis of that 12:56:08
question is. 12:56:08

BY MR. BESSETTE:  12:56:11

Q. Okay. Do you recall them saying that 12:56:11
over production is one factor within management 12:56:12
control that causes gray markets to thrive? 12:56:15

A. Again, I don't recall that Myers & 12:56:19
Griffith stated that. but that would certainly be 12:56:22
one 12:56:24

Q. Do you have any evidence that Adams 12:56:24
Golf overproduced clubs? 12:56:29

A. Overproduced, no. 12:56:29

Q. By the way, does Adams by definition 12:56:30
have any control over factors that are outside of 12:56:35
management's control that cause gray markets to 12:56:38
thrive? 12:56:40

A. By definition, no 12:56:40

Q. In practice, have you seen that? I'm 12:56:42
sorry, in academic literature have you seen to the 12:56:47
contrary any indications that something 12:56:50
characterized as outside of management control 12:56:53
management really does have control over? 12:56:56

BY THE WITNESS:  12:57:04

A. Not that I recall, though I can 12:57:07
imagine -- sitting here and speculating, I could 12:57:10
imagine, for example, that a company might take on 12:57:14
lobbying efforts to try to effect sort of larger 12:57:18
economic conditions that might make gray marketing viable, but that's speculative 12:57:23

Q. Have you ever been involved in any 12:57:24
IPOs? 12:57:28

A. Yes 12:57:29

Q. How many? 12:57:33

A. One 12:57:34

Q. Which one was that? 12:57:35

A. I don't remember the name of the 12:57:36
company. It was a Polish copper extraction and 12:57:38
production company. I was involved with its IPO 12:57:44
when I was a summer associate at Clifford Chance 12:57:51

Q. Was this a company traded on an 12:57:56
American exchange? 12:58:01

A. I think it was a 144(a) offering 12:58:01

Q. And what's that? 12:58:04

A. If I can remember. A 144(a) offering 12:58:05

allows for qualified investors to purchase 12:58:12

securities without the company -- I'm sorry 12:58:20

Qualified investors in the United States to purchase 12:58:25

securities in the company without the company going through the same rigorous disclosure requirements that are required under the securities laws. 12:58:34

Q. Okay. So the involvement you had in the one you just talked about was as a summer associate. You were not a lawyer at the time? 12:58:48

A. Correct 12:58:50

Q. And it was an offering that didn't have the same disclosure requirements as the securities laws that govern IPOs in the United States. Do I understand that right? 12:59:00

MR. COLLINS: Calls for a legal conclusion. 12:59:03

BY MR. BESSETTE:  12:59:03

Q. To the best of your understanding? 12:59:04

MR. COLLINS: Foundation. 12:59:05

Go ahead 12:59:07

BY THE WITNESS:  12:59:07

A. To the best of my understanding -- actually, if you can restate the question, that would be great. Can you read it back? 12:59:11

MR. BESSETTE: Can you repeat it, please? 12:59:11

MR. BESSETTE: Sorry. We need to break when it is convenient. 12:59:49

MR. BESSETTE: Okay 12:59:51

BY MR. BESSETTE:  12:59:57

Q. Have you ever counseled companies in any of their -- in disclosure documents? In other words, what companies need to put in various disclosure documents? Do you have that background? 13:00:08

A. In connection with that same transaction, I was not the person in contact with clients, but I was reviewing company documents and trying to make some effort of determining what was relevant and material to investors 13:00:17

Q. And this was as a second year law student? 13:00:33

A. No. This -- all right. I should have 13:00:33

let you finish. 13:00:33

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1 No, this was as a -- yes, the 13:00:37
2 summer after my second year of law school. 13:00:40
3 Q Right. Okay. So other than that 13:00:42
4 experience as a summer associate, intern, whatever 13:00:45
5 you want to call it, do you have any other 13:00:49
6 experience counseling companies as to the disclosure 13:00:52
7 requirements of the Securities & Exchange 13:00:56
8 Commission? 13:01:00
9 A I am just trying to recollect the body 13:01:08
10 of work that I did when I was working for Chance, 13:01:06
11 because I did other securities work. And I just am 13:01:09
12 hesitant to say absolutely not, but to the best of 13:01:15
13 my recollection, no. 13:01:19
14 MR. BESSETTE: I think this is a fine 13:01:33
15 place to stop 13:01:34
16 (Break taken.) 13:40:50
17 BY MR BESSETTE: 13:40:50
18 Q How many clubs were sold pre IPO at 13:40:51
19 Costco, do you know? 13:40:55
20 MR. COLLINS: Vague and ambiguous 13:40:57
21 BY THE WITNESS: 13:40:57
22 A The numbers are difficult to actually 13:41:01
23 determine. But I reviewed the Costco figures, and I 13:41:06
24 believe the amount is 3,917. I have the exact 13:41:08

1 number in my report 13:41:19
2 BY MR. BESSETTE: 13:41:19
3 Q I think it's 3,860, but give or take. 13:41:19
4 Somewhere in the 3,900 range. 13:41:19
5 Do you know the breakdown of that 13:41:21
6 number between U.S. and Canada? 13:41:22
7 A I believe it was something like 13:41:24
8 82 percent of those clubs were sold in the United 13:41:26
9 States, and the remainder was in Canada. 83, 82 13:41:29
10 something like that. 13:41:34
11 Q So 3,200 or so in the U.S and 600 in 13:41:34
12 Canada is I think the breakdown 13:41:38
13 A I am not comfortable with the numbers, 13:41:41
14 because I am not doing the math right now, but yeah, 13:41:44
15 something like that. 13:41:48
16 Q And I think you said in your report 13:41:48
17 that that's a relatively small number compared with 13:41:50
19 A Yes 13:41:57
20 Q And do you know what the number of 13:41:58
21 Adams pre 1998 -- I am sorry -- pre IPO sales 13:42:00
22 were in terms of units? 13:42:07
23 A I believe it was somewhere under 13:42:08
24 500,000. 13:42:11

1 Q Now, is it your -- let me ask this: 13:42:12
2 That number, that relatively small number as you 13:42:31
3 admit in your report, by itself, that number of 13:42:38
4 clubs being sold at Costco, was that material in 13:42:41
5 your mind as an expert witness in gray marketing? 13:42:45
6 MR. COLLINS: Vague and ambiguous. 13:42:48
7 BY THE WITNESS: 13:42:50
8 A The number standing alone may or may 13:42:51
9 not be material. 13:42:53
10 BY MR. BESSETTE: 13:42:54
11 Q I understand your opinion is that when 13:42:55
12 viewed -- that number, when viewed with the 13:42:59
13 company's business model as we've talked about this 13:43:05
14 morning, in your mind, made the risk of gray 13:43:07
15 marketing material at the time of the IPO? 13:43:12
16 A That also in combination with the 13:43:14
17 trend of the gray marketing sales that was occurring 13:43:17
18 at the time, yes 13:43:21
19 Q And let me ask you, do you -- just to 13:43:21
20 be sure You have not, as a professional, as an 13:43:37
21 attorney, advised a client as to what was material 13:43:42
22 or what was not material which would go in an 13:43:49
23 offering document, is that -- do I understand that 13:43:53
24 correctly or at least you can't remember doing that? 13:43:55

1 MR. COLLINS: I think it is asked and 13:43:58
2 answered. 13:44:00
3 BY THE WITNESS: 13:44:00
4 A Yeah. I have reviewed company 13:44:04
5 documents trying to look for and flag issues that 13:44:04
6 might be material that I would pull out, but only on 13:44:08
7 occasion and -- yeah 13:44:16
8 BY MR. BESSETTE: 13:44:20
9 Q And you have no experience as a deal 13:44:20
10 attorney, actually, any experience as a deal 13:44:24
11 attorney as opposed to a summer associate making 13:44:27
12 calls of materiality in documents to be filed with 13:44:30
13 the SEC and advising clients of that? 13:44:34
14 A Yeah. I actually would like to go 13:44:37
15 back to my answer to that question previously, 13:44:38
16 because in thinking about it, I remember a dismal 13:44:40
17 day that I think might rather be forgotten that I 13:44:46
18 spent in Buffalo, New York, in a dark conference 13:44:51
19 room sifting through documents for materials -- for 13:44:53
20 documents I thought might be material to investors, 13:44:56
21 but I can't remember anything else about the deal. 13:44:58
22 Q Okay. And I am drawing a distinction, 13:45:00
23 I am not talking about reviewing documents that you 13:45:03
24 personally thought were material. I am talking 13:45:05
BY THE WITNESS: 13:45:50

A Yes My hesitation is because there 13:45:53
was obviously also information that I read in 13:45:58
preparation for this in connection with this 13:45:59
litigation 13:46:03
17
BY MR. BESSETTE: 13:46:04
Q Sure, All right. Fair enough 13:46:05
When did Adams Golf learn 13:46:19
19

BY MR. BESSETTE: 13:46:19
Q Professor, do you know how many Adams 13:50:06
Golf distributors or retailers complained to it pre 13:50:10
IPO about gray marketing? 13:50:14
A I think that's impossible to know. 13:50:16
Q You have seen references in many of 13:50:19
your readings in this case? 13:50:21
A I have seen some references, yes 13:50:22
Q Why don't you look at Professor 13:50:24
12 Frazier's report. Paragraph 40, where he writes 13:50:27
there were a total of eight out of some 7,000 13:50:44
retailers complained, and he cites the Grace report. 13:50:48
15 Do you see that? 13:50:51
A Uh-huh. 13:50:51
17 Q And you have read the Grace report? 13:50:51
A I have 13:50:53
Q Okay. Do you have any knowledge that 13:50:54
the number of complaints was higher or lower than 13:50:56
this? 13:50:59
22 A Concrete knowledge, no. 13:50:59
23 Q So I take it from your answer you have 13:51:06
24 a view that it was higher? 13:51:07

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<td>2 question. 14:09:02</td>
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<td>3 Q. Did you read the deposition of Darl 14:09:02</td>
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<td>4 Hatfield, the former CFO? 14:09:17</td>
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<tr>
<td>5 A. I don't remember. If I did, it was 14:09:19</td>
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<tr>
<td>6 probably touching on parts of it and not focusing on 14:09:21</td>
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<tr>
<td>7 all of it 14:09:26</td>
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<td>8 Q. Okay. Did you read the part where he 14:09:27</td>
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<td>9 stated that he didn't think gray market sales had 14:09:30</td>
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<td>10 any financial impact at all on Adams Golf? 14:09:34</td>
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<td>11 A. I don't recall 14:09:38</td>
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<td>12 Q. Let me give you the -- hand you -- 14:09:38</td>
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<td>13 well, I'm sorry. Let's mark this 14:10:04</td>
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<td>14 (Exhibit No. 307 was 14:10:13</td>
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<td>15 marked for 14:10:13</td>
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<td>16 identification.) 14:10:14</td>
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<td>17 BY MR. BESSETTE: 14:10:14</td>
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<tr>
<td>18 Q. Okay. Professor, you have now been 14:10:14</td>
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<td>19 handed a document marked Exhibit 307 by the court 14:10:17</td>
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<td>20 reporter. I think it is the Eagle study that you 14:10:20</td>
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<tr>
<td>21 cite in your report at Paragraph 21B, I think also 14:10:23</td>
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<td>22 Paragraph 7 of your rebuttal. 14:10:34</td>
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<td>23 MR. COLLINS: For the record, it is 14:10:36</td>
<td></td>
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<td>24 OCH 71 through 88 14:10:38</td>
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<td>2 A. What paragraph of the rebuttal, I am 14:10:45</td>
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<td>3 sorry? 14:10:45</td>
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<td>4 BY MR. BESSETTE: 14:10:45</td>
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<tr>
<td>5 Q. Now, on Paragraph 7 -- 14:10:52</td>
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<td>6 A. Of the rebuttal, right? 14:10:54</td>
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<tr>
<td>7 Q. Uh-huh. Yes, ma'am 14:10:57</td>
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<tr>
<td>8 Although the part -- it might be 14:10:57</td>
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<tr>
<td>9 your initial report. Let me just look. Yeah, it's 14:11:29</td>
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<tr>
<td>10 actually -- the quote is in Paragraph 21B of your 14:11:29</td>
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<td>11 initial report. He is saying, &quot;In a recent study of 14:11:32</td>
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<td>12 the effects of gray marketing on brand image, each 14:11:43</td>
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<td>13 of 15 brand owners believe that parallel import 14:11:46</td>
<td></td>
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<td>14 activity of their products into discount retail 14:11:49</td>
<td></td>
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<td>15 stores was negatively impacting or had the potential 14:11:52</td>
<td></td>
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<tr>
<td>16 to impact on their brands perceptions.&quot; And I think 14:11:59</td>
<td></td>
</tr>
<tr>
<td>17 you cite the Eagle report on page 1342? 14:11:59</td>
<td></td>
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<tr>
<td>18 A. Correct. 14:12:05</td>
<td></td>
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<tr>
<td>19 Q. Okay. If you turn to page 1335 of 14:12:05</td>
<td></td>
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<tr>
<td>20 that article, and it's obviously going to be one of 14:12:09</td>
<td></td>
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<tr>
<td>21 the underlined lines, because I've underlined that 14:12:09</td>
<td></td>
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<tr>
<td>22 but I don't remember which one. I believe the 14:12:19</td>
<td></td>
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<tr>
<td>23 article cites a source stating that parallel export 14:12:20</td>
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<td>24 channels may assist in penetrating foreign markets 14:12:20</td>
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<tr>
<td>1 Mr. Collins: Same objection. 14:14:35</td>
</tr>
<tr>
<td>2 By the witness: 14:14:37</td>
</tr>
<tr>
<td>3 A. It does say that, that was the gap she 14:14:38</td>
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<tr>
<td>4 was aiming to fill. 14:14:40</td>
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<tr>
<td>5 By Mr. Besnette: 14:14:44</td>
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<tr>
<td>6 Q. And didn't Eagle tell the reader in 14:14:44</td>
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<tr>
<td>7 the study that parallel importing activities 14:14:44</td>
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<tr>
<td>8 explored only in the consumer goods sector of the 14:14:44</td>
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<tr>
<td>9 New Zealand economy? 14:14:49</td>
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<tr>
<td>10 Mr. Collins: Speaks for itself 14:14:49</td>
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<tr>
<td>11 Where are you referring to, please? For the record, 14:14:51</td>
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<tr>
<td>12 it's OCH 78. 14:14:51</td>
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<tr>
<td>13 By the witness: 14:14:51</td>
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<tr>
<td>14 A. Yes. She is informing the reader of 14:14:57</td>
</tr>
<tr>
<td>15 the place in which she did her study 14:14:59</td>
</tr>
<tr>
<td>16 By Mr. Besnette: 14:15:01</td>
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<tr>
<td>17 Q. How similar is New Zealand's gray 14:15:01</td>
</tr>
<tr>
<td>18 market economy to Canada's, if you know? 14:15:06</td>
</tr>
<tr>
<td>19 A. I don't know 14:15:08</td>
</tr>
<tr>
<td>20 Q. Do you know whether any of the 14:15:08</td>
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<tr>
<td>21 interviewees of that study sell golf clubs? 14:15:10</td>
</tr>
<tr>
<td>22 A. I don't know 14:15:14</td>
</tr>
<tr>
<td>23 Q. 28 C 2 of your report. I think you 14:15:14</td>
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<tr>
<td>24 quote — 14:15:38</td>
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<td>1 A. Hang on a second. 14:15:49</td>
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<tr>
<td>2 Q. Sure. 14:15:55</td>
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<td>3 A. That's page 19, right? 14:15:58</td>
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<td>4 Q. Yes. Uh-huh 14:16:01</td>
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<tr>
<td>5 A. Okay 14:16:04</td>
</tr>
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<td>6 Q. You cite where Eagle writes that many 14:16:06</td>
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<td>7 trademark holders have noted substantial losses in 14:16:08</td>
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<td>8 sales, and you say up to 30 percent as the direct 14:16:10</td>
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<tr>
<td>9 result of parallel import activity 14:16:16</td>
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<td>10 A. I don't say up to 30 percent. That's 14:16:17</td>
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<td>11 part of the quote. 14:16:23</td>
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<td>12 Q. Right. Doesn't the very next sentence 14:16:24</td>
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<td>13 state that others generally where there was a high 14:16:26</td>
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<td>14 element of rapidly changing technology or fashion 14:16:31</td>
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<td>15 reported minimal impact? 14:16:37</td>
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<td>16 Mr. Collins: Just so we have a clear 14:16:44</td>
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<tr>
<td>17 record here, what page of Eagle are you referring to 14:16:50</td>
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<td>18 now? 14:16:55</td>
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<tr>
<td>19 By Mr. Besnette: 14:16:57</td>
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<tr>
<td>20 Q. It's 1342 that was cited in your 14:16:59</td>
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<td>21 report. 14:17:04</td>
</tr>
<tr>
<td>22 Mr. Collins: That's fine. I just 14:17:10</td>
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<td>23 want the record to be clear as to what you are 14:17:16</td>
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<td>24 reading 14:17:22</td>
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<td>1 Mr. Besnette: Okay. 14:17:25</td>
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<tr>
<td>2 By the witness: 14:17:31</td>
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<tr>
<td>3 A. I would just like to read it, just for 14:17:37</td>
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<tr>
<td>4 a second 14:17:43</td>
</tr>
<tr>
<td>5 By Mr. Besnette: 14:17:47</td>
</tr>
<tr>
<td>6 Q. Uh-huh 14:17:53</td>
</tr>
<tr>
<td>7 A. Yes. That is the next phrase found in 14:17:59</td>
</tr>
<tr>
<td>8 the Eagle article 14:18:05</td>
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<tr>
<td>9 Q. That's not Adam's growth strategy 14:18:10</td>
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<td>10 including — include the developing of new 14:18:16</td>
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<td>11 technology in product design? 14:18:22</td>
</tr>
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<td>12 A. Yes, but I don't know how fast. 14:18:28</td>
</tr>
<tr>
<td>13 Q. Did Adam's Tight Lies club win an 14:18:34</td>
</tr>
<tr>
<td>14 award for technical reasons in 1998? 14:18:40</td>
</tr>
<tr>
<td>15 A. I don't know 14:18:46</td>
</tr>
<tr>
<td>16 Q. You can turn, Professor, to your 14:18:52</td>
</tr>
<tr>
<td>17 initial report at 28 C 2. I guess, actually, right 14:18:58</td>
</tr>
<tr>
<td>18 probably where you are 14:19:04</td>
</tr>
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<td>19 Mr. Collins: Page 19? 14:19:10</td>
</tr>
<tr>
<td>20 By the witness: 14:19:16</td>
</tr>
<tr>
<td>21 A. Yes, that's where I am 14:19:22</td>
</tr>
<tr>
<td>22 By Mr. Besnette: 14:19:28</td>
</tr>
<tr>
<td>23 Q. Let me hand you what has been marked 14:19:34</td>
</tr>
<tr>
<td>24 previously as Exhibit 80, which you reference in 14:19:40</td>
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44 (Pages 170 to 173)
1. Costco?  
   Yes. And again, I will point to that.  
   same memo, which I don't think I've seen yet today.  
   And this is how. The company was in a very good position to assess the causes of its own gray market problem once it started to occur. And when it tried to do that, one of the first places that it looked was its pricing policy. I believe the company's assessment of what was causing its own gray market problem speaks for itself.  

2. Q. So, okay. And in that document, did the company indicate just what you have said, that it looked at the cause and it was trying to deal with the cause of gray marketing and one of the causes was its retail pricing?  
   MR. COLLINS: Vague and ambiguous.  
   BY MR. BESSETTE:  

3. Q. Is that your recollection?  
   MR. COLLINS: Vague and ambiguous.  
   speaks for itself.  

4. Go ahead.  

5. BY THE WITNESS:  
   A. My recollection of that document was not that it spoke about the causes. What it spoke about was the proactive steps the company was using in order to try to stem gray marketing in the future. One would assume or hope, at least, that respect, and in devising strategies to try to minimize gray marketing in the future, it was trying to get to the causes of its gray market activity.  

6. BY MR. BESSETTE:  
   Q. But you are just assuming that, are you not?  
   MR. COLLINS: Asked and answered.  

7. BY THE WITNESS:  
   A. Again, like I said, I don't know the company's internal process, but I do assume that if the company is taking the time to devise a new pricing policy which is going to adversely affect the company as well, that it wouldn't do so -- it wouldn't do so without cause. So it would do so in an honest and earnest attempt to actually try to stem its gray market problem, trying to get at the real cause of its gray market problem.  

8. BY MR. BESSETTE:  
   Q. Wasn't it just as likely that it was just trying to fix the problem and that was one way it thought it could at least alleviate the harm to its retailers?  

9. A. In fact, I think that's exactly what I'm trying to say. It is trying to fix the problem. The way you fix the problem is by spotting its causes and trying to alleviate the causes. And I think that's what the company was trying to do.  
   Q. So you draw from that memo that one of the causes of the gray marketing was a high retail margin?  

10. MR. COLLINS: Excuse me. Are you finished?  
   THE WITNESS: I didn't finish.  
   BY THE WITNESS:  

11. A. From that memo, together with other documents --  
   BY MR. BESSETTE:  

12. Q. Okay. What are the other documents?  
   A. Okay. For example, if I had seen that the company had, just to give a hypothetical, a 05 percent retailer profit margin and it was significantly lower than all of its competitors.  

13. then I would think it was an odd strategy.  
   Q. Well, my question was, what other documents beside the pricing policy memo leads you to the conclusion that retail pricing and retail margin was a cause of gray marketing for Adams Golf?  
   MR. COLLINS: Asked and answered.  

14. We've had a lot of answers along that line.  
   BY THE WITNESS:  

15. A. I haven't heard any other documents. I apologize if you've said them.  
   BY MR. BESSETTE:  

16. Q. Besides that memo, what other documents?  
   A. What other documents do I believe -- I am sorry.  

17. Q. You said that that document, along with others, leads you to the conclusion that the retail margin caused the gray marketing in Adams Golf at least in part. What other documents?  
   A. Okay. So in addition to that document, there is the road trip document, which we were just talking about, which outlines very clearly Adams' high retail -- the retail profit margin that Adams' high retail -- the retail profit margin that
Adams presented to its retailers And in addition, there is a awful lot in the academic literature as well about profit margins being an invitation to gray marketers. Q. Okay. I understand the academic literature. I see the chart and the road show documents showing the retail margin. And then you have got the document you are talking about where the company provided a new policy for Canada. for certain retailers in Canada that were effected where they got a credit, okay? Any other documents that you are referring to that, in your mind, lead to the conclusion that the pricing margin or the retail margin caused some of the gray marketing? A. At the moment, no. At the moment, 1 don't recall is what I meant to say. Q. I believe you said somewhere, probably in your rebuttal report, yeah, I think you said that 1 that information about retail margins was omitted from the prospectus? A. Yes. Q. Is it your -- do you have any basis to conclude that it should have been in the prospectus? 15:01:33

There was a negative correlation. The sales were decreasing. Gray market sales were increasing. Q. So what do you mean by correlation? How do you use the word "correlation" in that sentence? A. There was a relationship between the two. Q. Do you understand the difference between a correlation and causation? A. Yes. Q. Can you explain that to me? A. Well, for those who use this language, it seems pretty -- so causation is -- there is you have got a factor occurring and it is the cause of another factor that is occurring. That is a causal relationship. A correlation is two things happening at the same time. Q. Okay. Because they are correlated, they could be unrelated. I mean, they are not causative? A. It's possible that they are unrelated. Q. All right. Could be causative, not?

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1. A. Sorry. Let me rephrase that. 15:06:47
2. MR. COLLINS: And before you do, I 15:06:47
3. object to causation as outside the scope. 15:06:47
4. Go ahead 15:06:49
5. BY THE WITNESS: 15:06:49
6. A. Yeah. It is possible that they are 15:06:50
7. it is possible that one is not the cause for the 15:06:53
8. other. 15:06:55
9. BY MR. BESSETTE: 15:06:56
10. Q. Okay. And what is the basis for your 15:06:57
11. assumption or observation, whichever it is, of 15:06:58
12. decreasing authorized sales? 15:07:02
13. A. The -- you said what is the basis for 15:07:07
14. my assumption about decreasing authorized sales? 15:07:13
15. Q. Yes 15:07:17
16. A. The company's sales figures, quarterly 15:07:18
17. sales figures 15:07:24
18. Q. So which sales figures are you talking 15:07:25
19. about, which quarters? 15:07:28
20. A. The second, third and fourth. 15:07:29
21. Q. So when were sales decreasing? 15:07:31
22. A. Sales started to decrease in the third 15:07:35
23. quarter and continued in the fourth 15:07:38
24. Q. So were there decreasing authorized 15:07:41

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1. sales prior to the IPO? 15:07:43
2. A. I don't believe so, no. It's hard to 15:07:45
3. say actually, because the IPO happened in the middle 15:07:50
4. of the third quarter -- or during the third quarter 15:07:54
5. So it is actually hard to really separate that out 15:07:56
6. clearly. 15:07:58
7. Q. Well, then why don't we do it as of 15:07:58
8. the end of June. Were there decreased authorized 15:08:00
9. sales in Q2? 15:08:03
10. MR. COLLINS: I think asked and 15:08:05
11. answered, but go ahead 15:08:07
12. BY THE WITNESS: 15:08:08
13. A. No. 15:08:08
14. BY MR. BESSETTE: 15:08:10
15. Q. Are you saying here, just to be clear, 15:08:19
16. I guess that -- well, strike that 15:08:21
17. You are not saying this in 15:08:26
18. paragraph, are you, Professor, that increasing gray 15:08:28
19. market sales prior to the IPO was causing decreased 15:08:31
20. authorized sales prior to or shortly after the IPO? 15:08:35
21. A. No I am not opining as to causation 15:08:39
22. Q. When we were talking about that 15:08:45
23. pricing policy change, in fact, I -- well, strike 15:08:59
24. that 15:08:59

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1. Let me strike my reference to an 15:09:04
2. earlier document, but Paragraph 14 of your rebuttal, 15:09:06
3. you say that a Web Street Golf report -- I think 15:09:13
4. it's supposed to be Wall Street. Sorry. 15:09:24
5. A. It is supposed to be Wall Street. 15:09:24
6. Q. Is it Web Street? Oh, it says Web 15:09:27
7. Street. 15:09:27
8. A. Yeah 15:09:27
9. Q. Is it different than the Wall Street 15:09:28
10. one in the paragraph above? 15:09:30
11. A. That should say Web Street. 15:09:31
12. Q. Oh, oh. I see. All right. 15:09:34
13. So the report dated March 22, 1999 15:09:34
14. reports that Adams had adopted a new retail pricing 15:09:38
15. structure in order to combat the gray market sale of 15:09:42
16. its clubs. Do you know, as you sit here, know for a 15:09:47
17. fact what factors influenced Adams Golf's decision 15:09:47
18. to change its pricing policy at that time? 15:09:50
19. A. I couldn't tell you that I know all of 15:09:50
20. the factors with complete assurance 15:09:57
21. Q. Do you know any of them? 15:10:00
22. A. Yes. 15:10:03
23. Q Which ones? 15:10:04
24. A. The gray market. 15:10:05

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1. Q. And how do you know that? 15:10:09
2. A. I know it from a couple of different 15:10:10
3. sources One would be the Web Street golfers 15:10:15
4. report, which I cite, which I believe also contained 15:10:18
5. pieces of interviews with Barney Adams And then in 15:10:24
6. addition, there was the pricing strategies the 15:10:29
7. company was undersaking, the internal company 15:10:33
8. documents in which the company talks about pricing 15:10:38
9. strategies I believe also refer to the gray market 15:10:41
10. Q Is it your testimony that Barney Adams 15:10:44
11. testified that the new retail pricing structure had 15:10:47
12. something to do with gray marketing? 15:10:51
13. A. No 15:10:53
14. Q. Then I misunderstood. You mentioned 15:10:53
15. Mr. Adams' testimony What you did mean? 15:10:58
16. A. I didn't. I said I believe that Web 15:11:00
17. Street Golf report also included interviews with 15:11:04
18. Barney Adams. 15:11:06
19. Q. Okay And what about those interviews 15:11:08
20. support your conclusion that the pricing structure 15:11:10
21. change had anything to do with gray market? 15:11:14
22. A. The Web Street Golf report covered a 15:11:16
23. number of issues. The pricing structure was one of 15:11:19
24. them. And when the Web Street Golf report said that 15:11:22

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53 (Pages 206 to 209)
1. Anywhere? 15:18:00
   MR. COLLINS: Speak for themselves. 15:18:01
2. BY THE WITNESS: 15:18:03
3. A. I don't recall 15:18:04
4. BY MR. BESSETTE: 15:18:04
5. Q. Well, you reviewed it I guess in 15:18:05
6. connection with your work in this case, so is it 15:18:07
7. detailed somewhere in your reports? 15:18:09
8. MR. COLLINS: She just said she 15:18:11
9. doesn't know. 15:18:14
10. BY THE WITNESS: 15:18:14
11. A. I don't recall. I reviewed a lot of 15:18:15
12. documents. I didn't cite them all. 15:18:17
13. BY MR. BESSETTE: 15:18:19
14. Q. Why didn't you cite them all, by the way? 15:18:21
15. A. My understanding is that there is some limitation on the page limit of the report. If I 15:18:25
16. were to cite every document that I received, I can't 15:18:31
17. even imagine how long the report would have been. 15:18:34
18. Q. What is this understanding of some page limit? 15:18:36
19. A. It is my own understanding from 15:18:40
20. talking to people who have worked in litigation 15:18:43

1. Transcript, because otherwise you haven't listed all the documents you have reviewed or relied on. 15:21:23
2. A. My understanding of the exhibits that I reviewed was that they were all in connection with deposition transcripts. 15:21:27
3. Q. And that's what I asked you. 15:21:31
4. MR. COLLINS: That's what she answered. 15:21:36
5. Q. MR. BESSETTE: I don't think I got an answer before just now. 15:21:38
6. MR. COLLINS: Well, I am glad to tell you, if this is helpful, that we gave her all the deposition transcripts. 15:21:40
7. Q. MR. BESSETTE: Okay. I just want to -- 15:21:43
8. MR. COLLINS: And all of the deposition transcript exhibits. And I don't recall any other document -- I don't know of any documents that we provided that aren't listed here. 15:21:45
9. MR. BESSETTE: Okay. 15:21:50
10. BY MR. BESSETTE: 15:21:51
11. Q. Now, go to page -- I'm sorry -- 15:22:02
12. Paragraph 27 of your initial report. You say, low sales force morale is another common effect of gray. 15:22:19
world, the universe of authorized retailers that 15:25:35
were displeased with Adams. The entire universe 15:25:40
Q Tell me some 15:25:44
A Okay. I can tell you that all the 15:25:45
retailers that sent complaints to Adams, in addition 15:25:46
to those that were represented by WDC Mackenzie when 15:25:49
they corresponded with Adams, and related to Adams 15:25:55
that authorized retailers in Canada were quite 15:25:58
displeased. 15:26:02
Q Okay. So we have Mackenzie as the 15:26:02
Canadian distributor, we have got six or seven 15:26:05
distributors that complain. And what else do we have? 15:26:09
MR COLLINS: Asked and answered 15:26:12
BY THE WITNESS: 15:26:12
A We talked about that earlier in the 15:26:13
day. As far as written documentation, we have got 15:26:15
the communications between authorized retailers and 15:26:19
distributors and the company. And that's what we've 15:26:23
got 15:26:25
BY MR BESSETTE: 15:26:25
Q Okay. 15:26:25
A If I can just add to that response 15:27:24
Just talking back to that earlier conversation, I 15:27:27
just want to make sure that it is clear that I am 15:27:28
referring to also having knowledge of the practice 15:27:32
of regional account coordinators going into the 15:27:35
field, having strong relationships with the 15:27:38
retailers. Especially after the gray market problem 15:27:41
arose, they were making trips into the fields to 15:27:43
work with authorized retailers. And so like I said, 15:27:46
and we talked about the speculative nature of this 15:27:50
as well, I could imagine that an awful lot of 15:27:53
unofficial complaints were made sort of in those 15:27:56
engagements 15:28:00
Q Sure. Do you have any evidence of 15:28:01
any? 15:28:02
A No 15:28:02
Q Okay. At Paragraph 19 and I think 21 15:28:03
of your report, and I don't know that you need to 15:28:09
refer to them, but you say, again, one of the other 15:28:14
things that make Adams Golf particularly vulnerable 15:28:16
to the gray market — well, no. Strike that. 15:28:21
You actually say, citing Myers, 15:28:27
you say, problems can arise in the form of 15:28:31
ineffective pricing policies, which you talked 15:28:33
about, deteriorated distributor relationships, which 15:28:36
you talked about, low sales force morale, again, 15:28:40
which you've talked about, and poor customer 15:28:41

1 have been aware of and therefore disclosed? 17:54:08
2 MR. COLLINS: Asked and answered. 17:54:10
3 BY MR. BESSETTE: 17:54:14
4 Q. Is it just based on assumption that 17:54:15
5 they were aware of the Lehman estimates? 17:54:18
6 A. There was that. There is also, as 17:54:21
7 you’ve discussed and I’ve seen in a number of 17:54:22
8 documents in which Barney Adams is discussing 17:54:24
9 seasonality, and that there is often a downward turn 17:54:28
10 during that time of the year 17:54:31
11 Q. Okay. So now you are saying that the 17:54:32
12 seasonality effect in Q3 and Q4 should have put the 17:54:36
13 company on alert that there is a serious risk that 17:54:40
14 the gray market, even if it stayed at the same 17:54:43
15 level of activity, would cause -- would cause an 17:54:47
16 increase in the magnitude of the problem for the 17:54:53
17 company? 17:54:57
18 A. Yes. 17:54:57
19 Q. And do you know the percentage of 17:54:57
20 decline on average that the company experienced in 17:54:59
21 Q3 or Q4 due to seasonality alone versus Q1 and Q2 17:55:03
22 in any given year? 17:55:12
23 MR. COLLINS: Vague. 17:55:14
24

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1 Adams Golf should have realized a serious risk due 17:56:05
2 alone to a downturn in Q3 and Q4 due to seasonality 17:56:09
3 when you don’t know the effect seasonality has in 17:56:10
4 any given year to Adams Golf? 17:56:14
5 MR. COLLINS: Asked and answered. 17:56:16
6 A. Do you have anything to add to 17:56:17
7 what you already said? 17:56:18
8 THE WITNESS: No, I don’t 17:56:18
9 BY MR. BESSETTE: 17:56:18
10 Q. Well, can you answer my question, 17:56:21
11 please? 17:56:22
12 MR. COLLINS: Asked and answered. 17:56:45
13 BY THE WITNESS: 17:56:45
14 A. Can you ask the question again? 17:56:45
15 MR. BESSETTE: Can you read it back, 17:56:45
16 please? 17:56:45
17 (Record read.)
18 BY THE WITNESS: 17:56:45
19 A. We talked about this already. The 17:56:48
20 Lehman report was out there in the world, and Adams 17:56:50
21 was working closely with Lehman. In addition, Adams 17:56:55
22 had its own experiences with seasonality and knew 17:56:59
23 the effect of that. And I have seen statements by 17:57:04
24 Barney Adams in which he addresses the seasonality 17:57:06

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1 effects, particularly in that time of the year. 17:57:11
2 BY MR. BESSETTE: 17:57:11
3 Q. Is it your testimony, Professor, that 17:57:11
4 this internal Lehman commitment committee memo was 17:57:13
5 public or otherwise made available to Adams Golf? 17:57:15
6 A. Let me restate that. 17:57:18
7 MR. COLLINS: That’s also asked and 17:57:20
8 answered. 17:57:20
9 BY THE WITNESS: 17:57:20
10 A. I don’t know whether it was available 17:57:22
11 to Adams Golf 17:57:23
12 BY MR. BESSETTE: 17:57:24
13 Q. Well, you said in your testimony out 17:57:25
14 there I just wanted to know what you meant by out 17:57:27
15 there 17:57:30
17 A. It was in existence 17:57:30
18 Q. Okay. Did you study the life cycle of 17:57:31
19 the Tight Lies club when doing your work in this 18:00:02
20 case? 18:00:05
21 A. What do you mean by the life cycle? 18:00:05
22 Q. Are you aware that golf clubs 18:00:06
23 generally have life cycles? 18:00:10
24 A. Am I aware now or was I aware then? 18:00:13

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77 (Pages 302 to 305)
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1 Q Well, when you did your report 18:00:15
2 A From reading the documents, I was 18:00:17
3 aware of what the documents say regarding life 18:00:19
4 cycles. 18:00:24
5 Q No independent knowledge before you 18:00:25
6 started your work in this case about life cycles of 18:00:32
7 various golf clubs or golf products? 18:00:35
8 A No. 18:00:38
9 Q Do you know what the lifespan was of 18:00:38
10 the Tight Lies club? 18:00:58
11 MR. COLLINS: Vague and ambiguous. 18:01:00
12 BY THE WITNESS: 18:01:00
13 A I don't know 18:01:05
14 BY MR. BESSETTE: 18:01:06
15 Q You are aware that the company 18:01:06
16 produced a newer one, a Tight Lies 2 I think or 18:01:08
17 whatever they called it, beyond the original, they 18:01:13
18 made a series of clubs? 18:01:16
19 A Yes, I am aware that they were -- 1 18:01:16
20 believe there was more than just the two 18:01:19
21 I believe 18:01:19
22 there were additional 18:01:21
23 Q Right. If Adams Golf had continued to 18:01:24
24 produce only the original Tight Lies, do you have an 18:01:28
25 opinion here what would have happened to sales of 18:01:32

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1 the original Tight Lies over time? 18:01:35
2 MR. COLLINS: Outside the scope 18:01:37
3 BY THE WITNESS: 18:01:38
4 A No 18:01:38
5 BY MR. BESSETTE: 18:01:39
6 Q Do you have any opinion on what would 18:01:41
7 have been the impact of gray marketing on the 18:01:43
8 continued sales of only the original Tight Lies 18:01:48
9 clubs if that's all the clubs Adams Golf had? 18:01:51
10 A I would be really in the realm of 18:01:56
11 speculation to answer that question 18:01:59
12 MR. BESSETTE: We are good. I am done 18:02:00
13 for now. Thanks. 18:02:03
14 EXAMINATION 18:02:03
15 BY MR. GLUCKOW: 18:02:03
16 Q Professor Ochoa, Paul Gluckow, I'm 18:02:03
17 with Simpson Thatcher. My firm represents the 18:02:09
18 underwriter defendants in this matter. 18:02:11
19 I take it from your report you 18:02:13
20 have had an opportunity to review Mr Miller's 18:02:17
21 report as well? 18:02:20
22 A Correct 18:02:21
23 Q And you understand that Mr Miller is 18:02:21
24 prepared to offer testimony concerning whether the 18:02:24

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1 due diligence investigation by the underwriters in 18:02:26
2 connection with the IPO of Adams Golf was reasonable 18:02:30
3 and adequate? 18:02:34
4 A Yes 18:02:35
5 Q And do you have any intention of 18:02:35
6 offering any opinion on that question? 18:02:37
7 A No 18:02:39
8 Q Coming back to the drafting process 18:02:39
9 that you used in preparing both your initial report 18:02:46
10 and your rebuttal report. From the time that you 18:02:49
11 first began working on this matter until we started 18:02:55
12 the deposition this morning, do you have an estimate 18:02:58
13 of how many hours you've spent on this matter? 18:03:01
14 A Yeah. From what was the beginning 18:03:04
15 time, I'm sorry? 18:03:09
16 Q Whenever you started 18:03:10
17 A Whenever I started the matter until 18:03:13
18 now? Approximately, I believe it is something like 18:03:14
19 100 hours 18:03:17
20 Q And has anybody else connected with 18:03:17
21 the law school provided any research or other 18:03:19
22 assistance to you in connection with your work? 18:03:22
23 A I have had -- I have been working 18:03:24
24 mostly at home. I have had difficulty downloading 18:03:27

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1 PDF files, my secretary has assisted me in 18:03:30
2 delivering PDF files 18:03:35
3 Q And other than secretarial assistance, 18:03:36
4 have you had anybody doing any actual research to 18:03:39
5 help you? 18:03:41
6 A No, no. 18:03:41
7 Q Who wrote your initial -- 18:03:42
8 A Actually, let me back up. 18:03:44
9 Q Yeah. 18:03:44
10 A I have asked a librarian to pull some 18:03:46
11 documents for me. But not doing actual research, 18:03:49
12 just pulling documents. 18:03:52
13 Q To pull documents that you identified 18:03:52
14 yourself? 18:03:57
15 A That I had previously identified, yes. 18:03:57
16 Q Who wrote your initial report? 18:03:58
17 A I did 18:03:59
18 Q Is every word in that initial report 18:03:59
19 yours? 18:04:02
20 A Yes 18:04:02
21 Q And did anyone other than yourself 18:04:02
22 have any input on the initial report? 18:04:05
23 A I had discussions with Mr. Collins 18:04:10
24 about the questions that I was being asked. I also 18:04:13

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1 reviewing materials, correct? 18:15:43
2 A I prepared handwritten notes as I was 18:15:44
3 reviewing the exhibits and other materials in 18:15:47
4 connection with this. 18:15:52
5 Q So those are certainly part of the 18:15:52
6 work, the work product that you generated in terms 18:15:54
7 of your consideration of the substantive matters as 18:15:57
8 part of your engagement, correct? 18:16:01
9 A I don't think of them as product I 18:16:04
10 think of them as a way of indexing the information 18:16:06
11 that I reviewed 18:16:09
12 Q They reflect your thought process, 18:16:09
13 right? 18:16:12
14 A Process, yes 18:16:12
15 Q And did you refer to those notes as 18:16:13
16 you were preparing your report? 18:16:17
17 A Yes 18:16:18
18 Q So you obviously relied on them, 18:16:18
19 correct? 18:16:23
20 A I think it's a strange question The 18:16:23
21 notes were a way of my -- offering me a way to 18:16:28
22 reengage with the exhibits themselves. 18:16:33
23 Q Right And you looked at them as you 18:16:34
24 were working on your report? 18:16:37

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1 A Yes 18:16:38
2 Q Have you ever, while you were a 18:16:39
3 lawyer, had any complaints lodged against you in 18:16:48
4 connection with your professional work? 18:16:52
5 A No 18:16:54
6 Q Have you ever been involved in any 18:16:54
7 lawsuits? Have you ever been sued? 18:16:59
8 A Not that I know of 18:17:01
9 Q Have you ever been subject to any 18:17:03
10 disciplinary proceedings in connection with being an 18:17:08
11 attorney or otherwise? 18:17:11
12 A No 18:17:12
13 Q Any criminal record? 18:17:12
14 A No 18:17:13
15 Q Ever been arrested? 18:17:14
16 A No 18:17:18
17 Q In preparing your report, did you rely 18:17:18
18 in any way on the references in the documents to 18:17:49
19 possible transshipments going through either King 18:17:55
20 Par or Manatee? 18:17:59
21 A In preparing my reports, did I rely on 18:18:00
22 documents that referred to King Par or Manatee Golf? 18:18:03
23 If they were in the documents, I did. 18:18:07
24 Q And do you recall those names, King 18:18:09

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1 Par and Manatee? 18:18:12
2 A Yes 18:18:13
3 Q And do you recall that there was 18:18:14
4 discussion in the documents about whether those two 18:18:17
5 authorized retailers had been involved in potential 18:18:20
6 transshipments? 18:18:27
7 A Can you ask that question again? I 18:18:28
8 was sort of flipping through the catalog in my head 18:18:32
9 of the documents. 18:18:33
10 Q Sure. Do you recall that there was 18:18:33
11 discussion in the documents about possible 18:18:37
12 transshipments going through King Par and Manatee? 18:18:39
13 A I don't recall right now. 18:18:42
14 Q In what way, if you recall, did you 18:18:46
15 rely on Manatee's or King Par's possibly involvement 18:18:49
16 as transshippers in preparing your report? 18:18:59
17 A I don't recall right now 18:19:02
18 Q Do you recall any way in which Manatee 18:19:03
19 or King Par influenced your opinions in this matter 18:19:07
20 A I don't recall right now. 18:19:12
21 Q In your report, your initial report 18:19:19
22 that is, on page 21. 18:19:21
23 MR. COLLINS: Now you are referring to 18:19:30
24 Exhibit 303, the final report? 18:19:32

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1 MR. GLUCKOW: Correct I'm sorry 18:19:34
2 BY MR. GLUCKOW: 18:19:34
3 Q The final report, 303, page 21, 18:19:36
4 Paragraph 30. The first line of Paragraph 30 says, 18:19:37
5 "At the time of its initial public offering, 18:19:40
6 Callaway had disclosed " I am assuming the "its" is 18:19:44
7 Adams, right? 18:19:44
8 A Yes 18:19:44
9 Q Okay. At the time of Adam's public 18:19:45
10 offering, Callaway had disclosed, and then you have 18:19:48
11 a disclosure from a Callaway public offering, 18:19:52
12 correct? 18:19:52
13 MR. COLLINS: No 18:19:52
14 BY THE WITNESS: 18:19:52
15 A I'm sorry 18:19:52
16 BY MR. GLUCKOW: 18:19:52
17 Q The Callaway 10K? 18:19:52
18 A Yes 18:19:53
19 Q Correct? 18:19:54
20 A Yes. 18:19:54
21 Q And then after the block quote, you 18:19:57
22 say that, "This is notable, because in determining 18:20:00
23 whether a given disclosure is necessary, it is 18:20:03
24 common to consult the risk factors described by 18:20:18

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82 (Pages 322 to 325)
1. others in a given market segment when drafting SEC.
2. disclosure documents, such as the company's prospectus. Do you see that?
3. A. Yes.
4. Q. What was or is the basis for your statement as to what is common in terms of drafting risk factors?
5. 18:20:35
6. A. My experience at Clifford Chance.
7. Q. And what was that experience at Clifford Chance?
8. 18:20:40
9. MR. COLLINS: Asked and answered.
10. BY THE WITNESS:
12. BY MR. GLUCKOW:
13. Q. Oh, so it's what we talked about before when you were a summer associate in London.
14. A. No. I also worked at Clifford Chance.
15. after that time.
16. Q. And did you have any involvement in advising clients? I think we have already established, in fact, that you did not have any involvement in advising clients on what should or should not go into the risk factors when drafting SEC.
17. files, correct?
18. A. I see a distinction between advising clients and observing others advising clients.
19. Q. And you saw others advising clients?
20. A. Yes.
21. Q. And what did you see?
22. A. What do you mean?
23. Q. Well, do you consider yourself an expert on advising clients on what should or should not go into the SEC filing?
24. MR. COLLINS: Counsel, you have one minute.
25. Q. Do you recall Exhibit 7 to the Grace report?
26. A. Yes.
27. Q. You can pull it out, but you don't need to. If you recall it? I recall it. If we can pull it out, though, so I can have it in my hands, that would be great.
28. Q. Sure. Does this support your view that gray marketing was increasing and was a serious risk for the IPO?
29. A. Yes.