

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO  
DEPARTMENT NO. 29 HON. MICHAEL M. ANELLO, JUDGE

JAMIE ZEPPELELLA, AN INDIVIDUAL, ET AL.,	}	NO. GIN034151
PLAINTIFFS,		
VS.	}	PAGES 225 - 363
SECOND CHANCE BODY ARMOR, INC.,		
TOYOBO AMERICA, INC., ET AL.,		
DEFENDANTS.	}	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
AUGUST 10, 2006

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REPORTED BY:	ROBIN K. CASEY, CSR NO. 8824

I N D E X

Thursday 8/10/06	at 1:18 P.M.	225
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21 TIME AS IT MAY BEAR UPON HIS ATTENTION AND ABILITY TO RECALL  
22 AND WHATNOT.

23 BY MR. GREEN:

24 Q DO YOU HAVE THE QUESTION IN MIND?

25 A WAS I FOCUSED ON THE HOLE, SIR?

26 Q WERE YOU FOCUSED ON TRYING TO LINE UP THE HOLE IN  
27 THE VEST AND THE INJURY, OR WERE YOU TRYING TO ATTEND TO  
28 OFFICER~ZEPPELELLA?

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1 A I WAS TRYING TO SAVE HIS LIFE, SIR.

2 MR. GREEN: THANK YOU.

3 NO FURTHER QUESTIONS, YOUR HONOR.

4 MR. CAILTEUX: ONE LAST QUESTION, YOUR HONOR.

5

6 RE-CROSS-EXAMINATION

7 BY MR. CAILTEUX:

8 Q TO BE CLEAR, YOU DIDN'T OPEN UP THE VEST TO LOOK  
9 AT THE BALLISTIC PANEL INSIDE IT, WERE YOU?

10 A NO, SIR. I WAS FOCUSED ON SAVING HIS LIVE.

11 THE COURT: ANYTHING ELSE, MR. ~EMERSON?

12 MR. EMERSON: NO, YOUR HONOR.

13 THANK YOU, MR. TELLEZ.

14 THE COURT: THANK YOU FOR COMING IN. YOU CAN STEP  
15 DOWN.

16 THE WITNESS: THANK YOU, SIR.

17 THE COURT: NEXT WITNESS FOR THE PLAINTIFFS?

18

19 AARON WESTRICK,

20 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

21

22 THE COURT: GOOD AFTERNOON, SIR. COME UP. HAVE A  
23 SEAT.

24 THE WITNESS: THANK YOU.

25 THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR  
26 FIRST AND LAST NAMES FOR THE RECORD.

27 THE WITNESS: MY NAME IS AARON, A-A-R-O-N. MIDDLE  
28 INITIAL J. LAST WESTRICK, W-E-S-T-R-I-C-K.

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1 THE COURT: THANKS, MR. WESTRICK.

2 GO AHEAD, SIR.

3 MR. EMERSON: THANK YOU, YOUR HONOR.

4

5 DIRECT EXAMINATION

6 BY MR. EMERSON:

7 Q GOOD AFTERNOON.

8 A GOOD AFTERNOON.

9 Q DR. WESTRICK, WE HAVE A LOT TO GO THROUGH. I WANT  
10 YOU TO -- I WANT YOU TO START, IF YOU WOULD, BY TELLING THE  
11 JURY A LITTLE BIT ABOUT YOUR EXPERIENCE AT SECOND CHANCE  
12 BODY ARMOR, JUST GENERAL EMPLOYMENT HISTORY AT SECOND CHANCE  
13 BODY ARMOR.

14 A I FIRST JOINED SECOND CHANCE BODY ARMOR IN APRIL  
15 OF 1996. I WAS TERMINATED FROM SECOND CHANCE BODY ARMOR IN  
16 OCTOBER OF 2004. I WORKED AS DIRECTOR OF TRAINING AT FIRST  
17 FOR THE FIRST COUPLE YEARS OR SO AND DIRECTOR OF RESEARCH  
18 AND COMPOSITE DEVELOPMENT.

19 MY DUTIES WERE TO INTERACT WITH POLICE AND  
20 SOLDIERS TO EXPLAIN THE APPLICATION OF BODY ARMOR, GIVE  
21 NUMEROUS TALKS THROUGHOUT THE UNITED STATES AND PUT A  
22 LENGTHY RESUME IN THAT AREA. I WAS ALSO RESPONSIBLE FOR

23 DOING SOME BALLISTIC TESTING AND WORKED AT FIRST DIRECTLY  
24 UNDER ED BACHNER, VICE-PRESIDENT OF TECHNOLOGY, LEARNING  
25 ABOUT BALLISTIC TESTING AND TESTING BODY ARMOR.

26 Q WE'RE GOING TO GO BACK THROUGH SOME OF THAT IN A  
27 FEW MINUTES, BUT WHEN YOU WERE AT SECOND CHANCE BODY ARMOR,  
28 DID YOU BECOME FAMILIAR WITH A PRODUCT KNOWN AS ZYLON?

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1 A YES, SIR.

2 Q JUST TELL THE JURY JUST VERY BRIEFLY WHAT ZYLON  
3 IS.

4 A ZYLON IS A -- IT'S A FABRIC -- EXCUSE ME. IT'S A  
5 FIBER. IT'S A RAW MATERIAL THAT WAS USED TO MAKE BULLET  
6 PROOF -- OR SOFT BODY ARMOR. VERY, VERY CONTEMPORARY WHEN  
7 IT FIRST CAME OUT. VERY STRONG. VERY STRONG. HIGH HEAT  
8 RESISTANCE, HIGH TENACITY AND MODULUS. A GOOD -- WHAT  
9 PEOPLE -- WHAT I THOUGHT AT FIRST WAS A GOOD MATERIAL.

10 Q DID YOU AT SOME POINT IN TIME -- YOU SAID YOU  
11 "THOUGHT AT FIRST." DID YOU AT SOME POINT IN TIME HAVE A  
12 DIFFERENT OPINION?

13 A ABSOLUTELY.

14 MR. LYLE: OBJECTION, YOUR HONOR. THIS IS CALLING FOR  
15 OPINION TESTIMONY OF A FACT WITNESS.

16 THE COURT: WELL, YEAH. I THINK THAT HE'S HERE AS A  
17 PERCIPIENT WITNESS TO TELL US WHAT HE SAW, DID, WHATNOT AND  
18 NOT RENDER EXPERT OPINIONS, SO SUSTAINED.

19 BY MR. EMERSON:

20 Q DID YOU AT SOME POINT IN TIME BECOME CONCERNED  
21 ABOUT THE USE OF ZYLON IN BALLISTIC MATERIAL?

22 A YES, SIR.

23 Q WHAT WAS YOUR CONCERN?

24 MR. GREEN: SAME OBJECTION.  
25 MR. LYLE: SAME OBJECTION.  
26 THE COURT: I THINK HE CAN TELL US WHAT HE SAID AND  
27 WHAT HE DID, BUT IT SOUNDS LIKE THAT WOULD CALL FOR AN  
28 OPINION WITH RESPECT TO QUALITY OF THE PRODUCT.

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1 MR. EMERSON: OKAY. YOUR HONOR, I WILL -- I WANT TO  
2 BRING UP, YOUR HONOR -- LET ME GET INTO IT THIS WAY -- JOINT  
3 EXHIBIT 211. IF THERE'S ANY OBJECTION BEFORE I DO?  
4 MR. GREEN: MAY WE HAVE A MOMENT, YOUR HONOR?  
5 THE COURT: THE JURY IS ALREADY GETTING NERVOUS:  
6 EXHIBIT 211. WE HAVEN'T EVEN HEARD ABOUT ONE, TWO AND THREE  
7 YET.  
8 I DON'T KNOW THAT I -- I PROBABLY HAVE THEM ALL UP  
9 HERE SOMEWHERE.  
10 THE JURORS PROBABLY THINK WE'D HAVE IT ALL  
11 TOGETHER BY NOW; RIGHT?  
12 DO WE HAVE A COMPLETE SET? I HAVE THE 400 SERIES  
13 UP HERE. I'M NOT SEEING --  
14 MR. GREEN: YOUR HONOR, YOU HAVE A SET IN THE BOXES.  
15 THE COURT: I CAN KIND OF RUN BACK AND FORTH, I GUESS?  
16 WE WON'T TAKE THE TIME NOW, AS LONG AS YOU FOLKS  
17 HAVE -- KNOW WHAT WE'RE TALKING ABOUT.  
18 MR. LYLE: WE HAVE AN EXTRA COPY THAT WE CAN TENDER TO  
19 THE COURT IF YOU'D LIKE.  
20 THE COURT: IF YOU WANT TO HAND IT TO THE BAILIFF.  
21 CRAIG GETS NERVOUS WHEN LAWYERS CHARGE THE BENCH  
22 THESE DAYS.  
23 MR. EMERSON: YOUR HONOR, I HAVE ONE FOR THE WITNESS,  
24 AS WELL.

25 THE COURT: FEEL FREE TO SHOW SOMETHING TO THE WITNESS  
26 IF YOU'D LIKE.  
27 THIS IS, FOR THE RECORD, THEN, SOMETHING MARKED AS  
28 EXHIBIT 211; RIGHT?

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1 MR. EMERSON: JOINT 211.  
2 (COURT'S EXHIBIT NO. 211 IDENTIFIED)  
3 THE COURT: FOR THE JURY'S BENEFIT, AS WE GO THROUGH,  
4 AS YOU'VE SEEN, THE LAWYERS MAY BE SHOWING YOU STUFF FROM  
5 TIME TO TIME ON THE SCREEN, BUT YOU WOULDN'T SEE EVERYTHING  
6 BECAUSE IT WOULD TAKE TOO LONG.  
7 WHEN WE GIVE AN EXHIBIT NUMBER, YOU MIGHT WANT TO  
8 WRITE IT IN YOUR NOTES AND DESCRIBE IT. WHEN YOU GO INTO  
9 THE DELIBERATION ROOM, YOU WILL HAVE ALL THE EXHIBITS  
10 ACTUALLY ADMITTED INTO EVIDENCE, SO YOU CAN FIND WHAT YOU  
11 WANT TO SEE IF YOU HAVEN'T ACTUALLY SEEN IT HERE.  
12 GO AHEAD.  
13 BY MR. EMERSON:  
14 Q SIR, I'VE HANDED YOU WHAT WE'VE MARKED AS COURT'S  
15 EXHIBIT 211.  
16 DO YOU RECOGNIZE THAT DOCUMENT?  
17 A YES, SIR, I DO.  
18 Q AND HAVE YOU SEEN IT BEFORE?  
19 A YES, I HAVE.  
20 Q WHEN HAVE YOU SEEN IT?  
21 A I WROTE IT.  
22 Q WHEN DID YOU WRITE IT?  
23 A I WROTE IT AROUND 12/18 OF '01, I BELIEVE ON THAT  
24 SAME DAY.  
25 Q THERE APPEARS TO BE A SECTION ON 211 THAT SAYS

26 "FROM," AND IT SAYS "AARON WESTRICK, DIRECTOR OF RESEARCH"  
27 AND THERE'S SOME INITIALS.  
28 DO YOU SEE THOSE?

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1 A YES, SIR.  
2 Q DO YOU RECOGNIZE THOSE INITIALS?  
3 A THOSE ARE MY INITIALS.  
4 Q WHO IS THE MEMO WRITTEN TO?  
5 A RICHARD DAVIS, PRESIDENT.  
6 Q AND WHO IS PRESIDENT OF WHAT?  
7 A SECOND CHANCE BODY ARMOR.  
8 Q THE DOCUMENT AS YOU HAVE IT BEFORE YOU, IS THAT IN  
9 EXACTLY THE SAME MANNER AS YOU WROTE THAT?  
10 A YES, SIR, IT IS.  
11 Q IN OTHER WORDS, ARE THERE ANY MODIFICATIONS ON  
12 THAT DOCUMENT THAT ARE NOT YOURS?  
13 A NO. I BELIEVE -- I DON'T SEE ANYTHING THAT IS NOT  
14 MINE, AS YOU WOULD SAY, SIR.  
15 MR. EMERSON: I'D LIKE TO PUBLISH 211 TO THE JURY, YOUR  
16 HONOR.  
17 MR. GREEN: OBJECTION: FOUNDATION; CALLS FOR  
18 IMPERMISSIBLE OPINION.  
19 THE COURT: I THINK, THEN, WE WILL DEFER ON SHOWING IT  
20 TO THE JURY. YOU CAN JUST MOVE ON WITH OTHER MATTERS OR  
21 FURTHER AUTHENTICATION OR WHATEVER ELSE YOU WANT TO DO.  
22 MR. EMERSON: I'M NOT SURE I UNDERSTAND THE OBJECTION,  
23 YOUR HONOR.  
24 THE COURT: WE CAN'T DEBATE IT NOW. THE OBJECTION HAS  
25 BEEN MADE AND SUSTAINED, SO WE'LL JUST DEFER THAT PORTION OF  
26 IT.



27 BY MR. EMERSON:

28 Q WHO DID YOU -- DID YOU GIVE THAT MEMO TO SOMEBODY?

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1 A YES, SIR, I DID.

2 Q WHO DID YOU GIVE IT TO?

3 A RICHARD DAVIS.

4 Q CAN YOU JUST TELL -- TELL US WHAT THE PURPOSE OF  
5 THAT MEMO WAS.

6 A THERE HAD BEEN CONVERSATIONS BETWEEN RICHARD AND  
7 MYSELF AND OTHER MEMBERS OF THE BOARD OF DIRECTORS OF THE  
8 SECOND CHANCE BODY ARMOR OF THE DEGRADATION --

9 MR. GREEN: OBJECTION, YOUR HONOR: FOUNDATION; EXPERT  
10 OPINION.

11 THE COURT: WELL, HE CAN TELL US -- THE ISSUE HERE, I  
12 ASSUME, IS WHAT DID HE TELL, WHAT INFORMATION DID HE  
13 COMMUNICATE, WHAT NOTICE DID HE GIVE TO THE PRESIDENT OF THE  
14 COMPANY; RIGHT?

15 MR. EMERSON: CORRECT.

16 THE COURT: ALL RIGHT. SO YOU UNDERSTAND WE'RE -- HE'S  
17 NOT HERE TO GIVE OPINIONS ABOUT ANYTHING. IF HE -- IF HE  
18 TOLD THE PRESIDENT OF THE COMPANY SOMETHING, I THINK THAT'S  
19 FAIR GAME.

20 BY MR. EMERSON:

21 Q CAN YOU TELL THE JURY WHAT THE PURPOSE OF THIS IS,  
22 THIS MEMO IS, AND WHAT YOU'RE TELLING RICHARD DAVIS.

23 A RICHARD AND I, THROUGH NUMEROUS CONVERSATIONS  
24 STEMMING FROM JULY 2001 REGARDING THIS ZYLON ISSUE, IN MY  
25 OPINION AT THIS POINT THE BOARD OF DIRECTORS AND RICHARD  
26 DAVIS WERE NOT GOING TO DO THE RIGHT THING.

27 MR. LYLE: OBJECTION, YOUR HONOR. THIS IS NOW

28 SPECULATION.

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1 THE COURT: YEAH. SEE, WE'RE GETTING WAY BEYOND --  
2 THIS IS -- COUNSEL, WE'RE GOING TO HAVE TO TAILOR THIS A  
3 LITTLE BIT AND STAY AWAY FROM ARGUMENT, OPINION  
4 CHARACTERIZING THINGS. JUST BE FACTUAL. HE'S HERE AS  
5 PERCIPIENT FACTUAL WITNESS. HE'S GOING TO TELL US WHAT HE  
6 SAID, WHAT HE DID, ET CETERA.

7 BY MR. EMERSON:

8 Q DR. ~WESTRICK, IN THE MEMO YOU SAID YOU NEED TO  
9 IMMEDIATELY NOTIFY OUR CUSTOMERS.

10 MR. LYLE: OBJECTION, YOUR HONOR. THIS IS A HEARSAY  
11 DOCUMENT AS TO TOYOBO.

12 MR. GREEN: AND IT'S BEST EVIDENCE, YOUR HONOR.

13 THE COURT: WELL, I THINK WHAT WE OUGHT TO DO IS MOVE  
14 ON WITH OTHER MATTERS. WE'RE GOING TO BE HERE ALL DAY.  
15 WE'LL HAVE A CHANCE TO DISCUSS THIS AGAIN, SO LET'S MOVE ON  
16 TO SOMETHING ELSE WITH THIS WITNESS.

17 BY MR. EMERSON:

18 Q OKAY. WELL, WE'LL COME BACK TO THAT,  
19 DR. ~WESTRICK. LET ME GO BACK TO YOUR EMPLOYMENT.

20 WHEN DID YOU START WITH SECOND CHANCE BODY ARMOR?

21 A APRIL 1996.

22 Q AND WHAT WAS YOUR POSITION WITH SECOND CHANCE BODY  
23 ARMOR IN APRIL OF 1996?

24 A MY FIRST TITLE, I BELIEVE, WAS DIRECTOR OF  
25 TRAINING.

26 Q AND WHO HIRED YOU?

27 A RICHARD DAVIS, ED BACHNER, KAREN DAVIS -- KAREN  
28 DAVIS THEN.

1 Q WERE YOU EMPLOYED PRIOR TO 1996 IN ANY CAPACITY?

2 A YES. DEPUTY SHERIFF.

3 Q FOR WHERE?

4 A DEPUTY SHERIFF FIRST FOR SANTA CLARA COUNTY,  
5 MICHIGAN, ON THE CANADIAN BORDER, AND THEN LATER ON OAKLAND  
6 COUNTY, MICHIGAN, WHICH IS JUST IMMEDIATELY NORTH OF  
7 DETROIT.

8 Q AND WERE YOU -- WERE YOU ASSOCIATED WITH OR WERE  
9 YOU AWARE OF SECOND CHANCE BODY ARMOR PRIOR TO JOINING AS  
10 DIRECTOR OF TRAINING IN 1996?

11 A YES, I WAS VERY AWARE.

12 Q HOW WERE YOU AWARE?

13 A I WAS SHOT ON SECOND CHANCE BODY ARMOR AS A POLICE  
14 OFFICER.

15 Q AND WAS IT -- WAS IT THAT EVENT THAT YOU JUST  
16 SHARED THAT LED YOU TO JOIN SECOND CHANCE BODY ARMOR?

17 A THAT WAS -- THAT EVENT EVENTUALLY LED TO ME BEING  
18 HIRED. I WAS SHOT IN 1982 BY A FELON, AND I ACTUALLY  
19 JOINED, AS I INDICATED, SECOND CHANCE IN APRIL OF 1996. SO  
20 IN THE MEANTIME, I CONTINUED MY POLICE CAREER OUTSIDE OF  
21 DETROIT AS A DEPUTY SHERIFF AND A SUPERVISOR, SERGEANT, AND  
22 THEN IN '96, I WAS HIRED BY SECOND CHANCE BODY ARMOR.

23 Q WHAT WERE YOUR DUTIES AS DIRECTOR OF TRAINING FOR  
24 SECOND CHANCE BODY ARMOR?

25 A MY INITIAL DUTIES AS DIRECTOR OF TRAINING WERE TO  
26 EDUCATE POLICE OFFICERS AND SOLDIERS ABOUT THE BENEFITS OF  
27 SECOND CHANCE BODY ARMOR. I WAS ALSO ASSIGNED IMMEDIATELY  
28 UNDER ED BACHNER, WHERE I WAS -- LEARNED AND GIVEN MANUALS

1 AND LEARNED ABOUT BALLISTIC TESTING, HOW BODY ARMOR WORKED,  
2 THE TECHNICAL ASPECTS OF SECOND CHANCE BODY ARMOR AND BODY  
3 ARMOR IN GENERAL.

4 Q WHEN YOU SAY YOU LEARNED ABOUT THE TECHNICAL  
5 ASPECTS, WHAT DID YOU LEARN ABOUT THE TECHNICAL ASPECTS OF  
6 BODY ARMOR?

7 A MANY DIFFERENT THINGS. I MEAN --

8 Q GENERALLY?

9 A HAD ME PRETTY MUCH MEMORIZE, FOR LACK OF A BETTER  
10 TERM, TWO BIG, THICK MANUALS. MOST OF THE ARTICLES -- SOME  
11 OF THE ARTICLES THAT HE HAD WRITTEN HIMSELF. I LEARNED  
12 ABOUT TESTING, BALLISTIC PROTOCOLS AND SO FORTH BODY ARMOR.  
13 HE ACTUALLY HAD TAKEN ME TO HP WHITE AT LEAST ONCE, MAYBE  
14 TWICE -- I'M NOT SURE ANYMORE. IT'S BEEN A LONG TIME -- TO  
15 ACTUALLY WITNESS BODY ARMOR TESTING. HP WHITE BEING AN  
16 APPROVED GOVERNMENT TESTING FACILITY.

17 I DID MANY, MANY, MANY HOURS ON SECOND CHANCE  
18 BALLISTIC LAB SHOOTING BODY ARMOR, MOSTLY HARD -- MOSTLY  
19 SOFT ARMOR, BUT ALSO HARD ARMOR. THERE'S TWO DIFFERENT  
20 TYPES.

21 I WAS PRETTY MUCH PUT IN THE MODE OF PICKING UP A  
22 LOT OF THE WORK AS FAR AS BALLISTICS GO.

23 Q YOU TOLD US WHAT YOU LEARNED IN THAT -- IN THAT  
24 CAPACITY OF DIRECTOR OF TRAINING. DID YOU THEN IMPART THAT  
25 KNOWLEDGE THROUGH TRAINING TO ANYBODY ELSE?

26 A YES. I -- I SPOKE ALL OVER THE UNITED STATES TO  
27 DIFFERENT GROUPS ABOUT HOW BODY ARMOR BEHAVES AND ITS  
28 APPLICATION. I GOT CALLED -- APPLICATION TECHNICAL --

1 TACTICS ABOUT BODY ARMOR IS MY OWN TERMS. AND SPOKE ALL  
2 OVER THE UNITED STATES, AND ALSO, MY INPUT WAS GIVEN TO THE  
3 COMPANY AND SO FORTH AS DIFFERENT -- ON THESE DIFFERENT  
4 ISSUES.

5 Q AND DID -- I WANT TO -- WE'RE GOING TO IN A FEW  
6 MINUTES GO BACK OVER SOME OF THE THINGS YOU MENTIONED. I  
7 WANT TO SPEED THIS UP AND GET A HISTORY WITH SECOND CHANCE  
8 BODY ARMOR.

9 DID YOUR POSITION AT SOME TIME CHANGE FROM  
10 DIRECTOR OF TRAINING TO SOMETHING ELSE?

11 A YES. WITHIN A YEAR OR SO -- I'M NOT SURE. MAYBE  
12 A LITTLE LONGER THAN A YEAR -- I WAS PROMOTED TO DIRECTOR OF  
13 RESEARCH AT SECOND CHANCE.

14 Q AND HOW DID YOUR RESPONSIBILITIES OR DUTIES CHANGE  
15 IF AT ALL WHEN YOU WERE PROMOTED TO DIRECTOR OF RESEARCH?

16 A I WAS GIVEN MORE RESPONSIBILITY AS FAR AS LOOKING  
17 AT BALLISTICS AND BALLISTIC APPLICATIONS. I BELIEVE MY  
18 TERM -- THE TITLE ON MY CONTRACT IS DIRECTOR OF RESEARCH --  
19 RESEARCH AND COMPOSITE DEVELOPMENT OR COMPOSITE DEVELOPMENT.  
20 AND I WAS GIVEN MORE RESPONSIBILITIES AS FAR AS BALLISTICS  
21 GO.

22 Q CAN YOU TELL THE JURY WHAT SOME OF THOSE  
23 ADDITIONAL RESPONSIBILITIES THAT PERTAIN TO BALLISTICS WERE  
24 THAT YOU --

25 A AS I INDICATED BEFORE, I FOUND MYSELF ON THE  
26 RANGE, ON SECOND CHANCE'S RANGE, MORE OFTEN DOING  
27 EXPLORATORY RESEARCH. I WORKED EXTENSIVELY WITH MY CLOSE --  
28 THEN CLOSE FRIEND RICHARD DAVIS, PRESIDENT OF THE COMPANY,

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1 DOING EXPLORATORY RESEARCH ON DIFFERENT TYPES OF BODY ARMOR.

2 I DID SEND DIFFERENT BODY ARMOR SAMPLES IN TO THE  
3 GOVERNMENT, PER SAY, FOR NATIONAL INSTITUTE OF JUSTICE-TYPE  
4 CERTIFICATION. MOST OF THOSE SAMPLES BEING HARD ARMOR BUT  
5 SOME SOFT BODY ARMOR. SO I OVERSAW DIFFERENT TYPES OF  
6 BALLISTICS APPLICATIONS.

7 Q AND FROM -- AGAIN, WE MIGHT TOUCH ON A COUPLE OF  
8 THOSE POINTS, BUT FROM DIRECTOR OF RESEARCH, DID YOU HAVE  
9 ANY OTHER POSITIONS AT SECOND CHANCE BODY ARMOR?

10 A I THINK THAT'S -- AFTER -- FROM DIRECTOR OF  
11 TRAINING TO DIRECTOR OF RESEARCH. I HAVE A COUPLE DIFFERENT  
12 BUSINESS CARDS. THE TITLE VARIES A LITTLE BIT, BUT I WAS --  
13 DEFINITELY DIRECTOR OF RESEARCH WAS THE COMMON DENOMINATOR.

14 Q WHEN YOU LEFT SECOND CHANCE BODY ARMOR, THAT WAS  
15 YOUR TITLE AT THE TIME?

16 A YES, DIRECTOR OF RESEARCH, COMPOSITE DEVELOPMENT,  
17 YES.

18 Q AND YOU INDICATED THAT YOU WERE TERMINATED FROM  
19 SECOND CHANCE BODY ARMOR?

20 A YES, SIR.

21 Q WHEN WAS THAT?

22 A I WAS TERMINATED IN OCTOBER OF 2004.

23 Q WHY WERE YOU TERMINATED?

24 A BECAUSE I HAD GIVEN TESTIMONY IN WASHINGTON,  
25 D. C. --

26 MR. GREEN: OBJECTION: CALLS FOR SPECULATION.

27 THE COURT: HE CAN TELL US GENERALLY WHY HE WAS  
28 TERMINATED, BUT WE AREN'T GOING TO GET INTO THE DETAILS,

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1 RIGHT, OF ANY OTHER PROCEEDING?

2 MR. EMERSON: THAT'S RIGHT.  
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3 THE COURT: HE WAS TERMINATED UNHAPPILY.

4 THE WITNESS: BECAUSE I -- BECAUSE I TESTIFIED AND I  
5 TOLD THE TRUTH IN WASHINGTON, D. C.

6 BY MR. EMERSON:

7 Q WHAT WAS THE TRUTH THAT YOU TOLD?

8 A THAT ZYLON --

9 MR. GREEN: OBJECTION, YOUR HONOR.

10 THE COURT: COUNSEL, WE'RE NOT GOING INTO THAT. NOW GO  
11 ON.

12 BY MR. EMERSON:

13 Q CAN YOU TELL THE JURY BRIEFLY ABOUT YOUR  
14 EDUCATION, SIR, YOUR COLLEGE EDUCATION TO START WITH.

15 A I'VE GOT A BACHELOR'S DEGREE IN SOCIAL SCIENCE  
16 CRIMINAL JUSTICE FROM MICHIGAN STATE UNIVERSITY. RECEIVED  
17 THAT IN 1982.

18 I ALSO ATTENDED OAKLAND POLICE ACADEMY. I'M A  
19 CERTIFIED MICHIGAN POLICE OFFICER.

20 I HAVE A MASTER OF SCIENCE DEGREE IN CRIMINAL  
21 JUSTICE FROM WAYNE STATE UNIVERSITY, 1986, AND A DOCTORATE  
22 DEGREE IN SOCIOLOGY, CRIMINAL JUSTICE, WHERE I STUDIED  
23 PSYCHOLOGICAL AND PHYSICAL EFFECTS OF BEING STRUCK BY BODY  
24 ARMOR FROM WAYNE STATE UNIVERSITY IN 1998.

25 Q DO YOU -- WHAT ACTIVITIES ARE YOU INVOLVED IN  
26 TODAY IN TERMS OF EMPLOYMENT?

27 A PRESENTLY I'M EMPLOYED AT LAKE SUPERIOR STATE  
28 UNIVERSITY WHERE I'M A PROFESSOR. I ALSO HAVE A CONSULTING

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1 FIRM, AND I'M ALSO CONSIDERED AN ARMOR EXPERT; WORK WITH THE  
2 GOVERNMENT AND SO FORTH.

3 Q IN YOUR CAPACITY WITH LAKE SUPERIOR UNIVERSITY,  
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4 WHAT DO YOU DO? WHAT'S YOUR ASSOCIATION WITH THEM?

5 A TWO DIFFERENT THINGS I DO THERE. DIRECTOR OF THE  
6 INSTITUTE FOR PUBLIC SAFETY AND HOMELAND SECURITY  
7 TECHNOLOGIES. I'M A DIRECTOR AND I'M ALSO A PROFESSOR OF  
8 CRIMINAL JUSTICE, SO I TEACH AND I RUN A PUBLIC SAFETY  
9 INSTITUTE.

10 Q YOU MENTIONED THAT YOU DO SOME CONSULTING, AS  
11 WELL?

12 A YES, SIR.

13 Q WHAT TYPE OF CONSULTING DO YOU DO?

14 A I DO USE-OF-FORCE CONSULTING AS FAR AS POLICE  
15 CASES GO. I ALSO DO BALLISTIC CONSULTING AS FAR AS ARMOR.  
16 AND MY MAIN CLIENT IS THE GOVERNMENT, WHERE I WORK ON  
17 DIFFERENT GOVERNMENT PROJECTS DEVELOPING NEXT GENERATION  
18 BODY ARMOR SYSTEMS.

19 Q DO YOU HAVE ANY PUBLICATIONS, ANY ARTICLES, THINGS  
20 LIKE THAT?

21 A I HAVE A FEW. I HAVE A FEW FROM A FEW YEARS BACK.

22 MR. GREEN: OBJECTION, YOUR HONOR: RELEVANCE.

23 THE COURT: YEAH. I -- I MEAN, I'M SURE THAT

24 MR. WESTRICK IS HIGHLY QUALIFIED, BUT HE'S NOT HERE AS AN  
25 EXPERT; RIGHT? HE'S NOT AN EXPERT WITNESS IN THIS CASE.

26 FOR THE JURY, LIKE WE SAID PREVIOUSLY, WE HAVE  
27 PEOPLE THAT COME IN HERE AND THEY KNOW A LOT OF STUFF, BUT  
28 WE KIND OF DIVIDE IT UP. AND WE HAVE CERTAIN PEOPLE

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1 DESIGNATED TO COME IN AND ACT AS EXPERT WITNESSES AND GIVE  
2 CERTAIN OPINIONS AND OTHERS DESIGNATED ONLY AS PERCIPIENT  
3 WITNESSES, WHICH I UNDERSTAND MR. WESTRICK IS. HE'S HERE TO  
4 TELL US WHAT HE SAW, WHAT HE DID, NO OPINIONS. SINCE HE'S



5 NOT HERE AS AN EXPERT, HIS CV IS NOT RELEVANT.

6 MR. EMERSON: MAY I BE HEARD AT SIDEBAR?

7 THE COURT: NO. LET'S GET THROUGH THIS. WE'LL TAKE A  
8 BREAK.

9 BY MR. EMERSON:

10 Q DR. WESTRICK, ARE YOU FAMILIAR WITH N.I.J. --

11 A YES, SIR.

12 Q -- OF SOFT?

13 A AND HARD ARMOR, SOFT AND HARD BODY ARMOR.

14 Q CAN YOU EXPLAIN TO THE JURY THE DIFFERENCE BETWEEN  
15 SOFT BODY ARMOR AND HARD BODY ARMOR, JUST GENERALLY?

16 A WITHOUT GETTING INTO A LONG DISSERTATION, SOFT  
17 BODY ARMOR IS MADE OF FIBER, FABRIC, AND GENERALLY CATCHES  
18 THE BULLET AND DISPERSES ENERGY, GENERALLY SPEAKING.

19 AND HARD ARMOR IS FOR MORE SEVERE THREATS LIKE  
20 RIFLE THREATS THAT HAVE MORE KINETIC ENERGY. BEING HARD,  
21 THAT THE BULLET WILL STRIKE THE HARD ARMOR AND START -- THE  
22 BULLET WILL DESTROY ITSELF BECAUSE IT HITS A HARD OBJECT.

23 BASICALLY, ELEMENTARY SPEAKING, HARD ARMOR STOPS  
24 RIFLE BULLETS, AND SOFT ARMOR -- AND WOULD STOP PISTOL  
25 BULLETS, ALSO, AND SOFT ARMOR IS GENERALLY FOR SHOTGUN  
26 PROJECTILES, SUB MACHINE GUN PROJECTILES AND PISTOL  
27 PROJECTILES.

28 Q I SAID WE'RE GOING TO TALK ABOUT N.I.J.

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1 CERTIFICATION, AND WE WILL, BUT ARE YOU FAMILIAR WITH THE  
2 LINE OR THE MODELS OF SOFT BODY ARMOR MADE BY SECOND CHANCE  
3 BODY ARMOR IN THE YEAR 2002?

4 A YES, GENERALLY. IT'S BEEN A WHILE, BUT YES, I AM.

5 Q ARE YOU FAMILIAR WITH THE ULTIMA 2A GENERATION

6 VEST?

7 A YES, I AM.

8 Q NOW, WHAT IS THE -- THE TERM ULTIMA, WHAT DOES  
9 THAT REFER TO?

10 A THAT'S A BRAND NAME.

11 Q AND ARE THERE DIFFERENT KINDS OF ULTIMA VESTS?

12 A YES. THERE'S DIFFERENT THREAT LEVELS OF ULTIMA  
13 VESTS. MY RECOLLECTION IS TWO DIFFERENT TYPES OF ULTIMAS,  
14 ALSO. BUT THE ULTIMA VEST LEVEL -- SOFT BODY ARMOR LEVEL  
15 2A, WHICH WOULD BE THE LOWEST; LEVEL 2, WHICH TODAY IS THE  
16 MOST COMMON TYPE OF BODY ARMOR USED BY POLICE OFFICERS TO  
17 STOP COMMON THREATS; LEVEL 3A ARMOR, AGAIN, FOR SIMPLE  
18 PURPOSES, GENERALLY USED IN TACTICAL TYPE -- THE TACTICAL  
19 VESTS YOU SEE ON SWAT OFFICERS AND SO FORTH, AND IT'S  
20 HEAVIER AND THICKER; THUS, MORE BALLISTICS.

21 Q ARE YOU FAMILIAR WITH HOW -- WHAT MATERIAL SECOND  
22 CHANCE BODY ARMOR USED IN 2002 TO MANUFACTURE THE ULTIMA 2A  
23 VEST?

24 A ZYLON.

25 Q AND WHAT PERCENTAGE OF THE FIBER, THE BALLISTIC  
26 RESISTANCE FIBER, THAT WAS CONTAINED IN THAT VEST WAS ZYLON?

27 A A HUNDRED PERCENT.

28 Q AND ARE YOU ALSO FAMILIAR WITH THE MATERIAL THAT

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1 WAS USED TO COMPRISE THE BALLISTIC RESISTANCE MATERIAL IN  
2 THE LEVEL 2A VEST?

3 A YES.

4 Q WHAT MATERIAL WAS THAT?

5 A LEVEL 2A ULTIMA IS 100 PERCENT ZYLON, ALSO, AND SO  
6 WOULD LEVEL 3A.

7 Q DID YOU HAVE ANYTHING TO DO WITH THE DEVELOPMENT  
8 OF ZYLON AT SECOND CHANCE BODY ARMOR?

9 A A LITTLE, YES.

10 Q AND CAN YOU TELL THE JURY WHAT YOUR INVOLVEMENT  
11 WAS. JUST TAKE THE JURY FROM WHEN YOU FIRST HEARD ABOUT IT,  
12 WHAT YOUR INVOLVEMENT WAS. IF YOU JUST START THERE.

13 MR. GREEN: OBJECTION, YOUR HONOR: CALLS FOR A  
14 NARRATIVE.

15 THE COURT: IT MAY AS PHRASED.

16 AND FOR THE JURY, THE CONCERN THERE IS IF SOMEONE  
17 IS ASKED AN OPEN-ENDED QUESTION, THEY MIGHT JUST TALK FOR  
18 30, 40 MINUTES. WE LIKE TO KEEP IT QUESTION AND ANSWER BIT  
19 BY BIT BY BIT.

20 LET'S TRY TO BE MORE SPECIFIC WITH OUR QUESTIONS.

21 BY MR. EMERSON:

22 Q HOW DID YOU FIRST GET INVOLVED WITH ZYLON AS A  
23 BALLISTIC MATERIAL WHILE AT SECOND CHANCE BODY ARMOR?

24 A I WAS PART OF THE -- I WAS PART OF THE EXECUTIVE  
25 TEAM WHEN ED BACHNER WAS INTRODUCING ZYLON INTO ARMOR AROUND  
26 1996.

27 Q AND AS PART OF THAT EXECUTIVE TEAM, WHAT WERE YOUR  
28 RESPONSIBILITIES OR WHAT WAS YOUR -- WHAT ACTIVITIES WERE

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1 YOU ENGAGED IN? WHAT WERE YOUR RESPONSIBILITIES?

2 A AT THAT POINT I ATTENDED MEETINGS WITH  
3 REPRESENTATIVES FROM TOYOBO AND I ALSO ATTENDED DINNER  
4 MEETINGS AND I ALSO WAS RESPONSIBLE FOR ENTERTAINING SOME OF  
5 THE GUESTS AFTER HOURS AND SO FORTH.

6 Q WHEN YOU SAY "GUESTS," WHO ARE YOU REFERRING TO?

7 A THE TOYOBO EXECUTIVES.

8 Q AND AT THOSE MEETINGS, WAS THERE ANYTHING  
9 DISCUSSED ABOUT ZYLON AND ITS APPLICATION IN BODY ARMOR?

10 A YES.

11 Q AND WHAT WAS DISCUSSED?

12 A AS AN EXAMPLE, HOW WE WOULD ADVERTISE IT THAT IT  
13 WAS CONSIDERED -- THE QUOTE WAS KEVLAR --

14 MR. LYLE: OBJECTION, YOUR HONOR. THIS IS FOUNDATION.  
15 HE'S STARTING TO QUOTE WHO SAYS WHAT.

16 THE COURT: WE WANT TO BE A LITTLE MORE SPECIFIC.

17 FOR THE JURY, THERE'S CERTAIN EXCEPTIONS TO THE  
18 HEARSAY RULE, AND IF HE'S GOING TO TELL US WHAT SOME PARTY  
19 OR EMPLOYEE OF A PARTY SAID, THAT'S ONE THING. IF HE'S  
20 GOING TO TELL US WHAT SOMEBODY ELSE SAID, THAT'S ANOTHER  
21 THING.

22 LET'S BE REAL SPECIFIC AND LAY A FOUNDATION.

23 MR. EMERSON: I WAS TRYING TO HURRY, YOUR HONOR, BUT I  
24 WON'T.

25 BY MR. EMERSON:

26 Q THINK OF THE MEETING THAT YOU WERE ABOUT TO SHARE  
27 WITH THE JURY.

28 A THERE WAS MORE THAN ONE.

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1 Q AT THAT MEETING --

2 A YES.

3 Q TAKE THE FIRST ONE. AT THAT MEETING, WHO WAS  
4 PRESENT, BEST YOU CAN RECALL?

5 A IT'S BEEN A LONG TIME. I KNOW THE SECOND CHANCE  
6 PERSONNEL FOR SURE, RICHARD DAVIS, KAREN DAVIS THEN, KAREN  
7 MC-CRANEY NOW, ED BACHNER, KAROKI TADAO, I BELIEVE, FROM --

8 THE COURT: YOU KNOW HOW TO SPELL THOSE NAMES, DON'T

9 YOU, FOR OUR REPORTER?  
10 THE WITNESS: CAREFULLY.  
11 AND THAT'S WHAT I RECALL FOR SURE.  
12 BY MR. EMERSON:  
13 Q WHEN YOU SAY BACHNER -- WHEN YOU SAID RICHARD  
14 DAVIS, RICHARD DAVIS IS, AGAIN, THE PRESIDENT OF SECOND  
15 CHANCE BODY ARMOR?  
16 A YES.  
17 Q ED BACHNER AT THE TIME WAS WHAT?  
18 A WELL, HE HAD DIFFERENT TITLES, BUT VICE-PRESIDENT  
19 OF TECHNOLOGY.  
20 Q AND KAREN -- THEN KAREN DAVIS, NOW KAREN  
21 MC~CRANEY -- IS WHO AT SECOND CHANCE? WHAT'S HER POSITION?  
22 A I BELIEVE HER TERM IS -- EXECUTIVE VICE-PRESIDENT  
23 WAS HER TITLE.  
24 Q AND YOU SAID MR. KAROKI; IS THAT RIGHT?  
25 A MR. KAROKI.  
26 Q WHO IS HE?  
27 A TOYOBO EXECUTIVE. WE BECAME FRIENDS.  
28 Q WHAT WAS DISCUSSED AT THAT MEETING WHEN YOU --

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1 TELL THE JURY.  
2 A ATTRIBUTES OF ZYLON -- ZYLON IS, QUOTE, KEVLAR ON  
3 STEROIDS -- AND WHAT -- HOW GOOD IT WOULD BE TO DO BUSINESS  
4 AND WHAT FINE BODY ARMOR WE COULD MAKE TOGETHER AS A  
5 PARTNERSHIP.  
6 MR. LYLE: OBJECTION, YOUR HONOR. MOVE TO STRIKE:  
7 REFERENCES TO WHAT THE WITNESS SAID IN VIOLATION OF MOTION  
8 IN LIMINE.  
9 THE COURT: WELL, WE'VE ALREADY, I THINK, DISCUSSED

10 THIS WITH THE JURY.

11 WHEN THE TERM "PARTNERSHIP" COMES UP IN THIS CASE,  
12 THAT DOESN'T MEAN A LEGAL PARTNERSHIP WHERE, YOU KNOW,  
13 THEY'RE SHARING PROFITS OR ONE IS RESPONSIBLE FOR CONDUCT OF  
14 THE OTHER. THIS IS JUST A TERM THAT WAS LOOSELY USED THAT  
15 WE'LL SEE IN SOME OF THE DOCUMENTS.

16 SO I THINK WE ALL UNDERSTAND THAT, SO OVERRULED AT  
17 THIS POINT.

18 GO AHEAD.

19 BY MR. EMERSON:

20 Q YOU USED THE TERM "PARTNERSHIP." WHAT DO YOU MEAN  
21 BY THAT?

22 A THE TWO COMPANIES PARTICIPATED IN A PARTNERSHIP  
23 DEVELOPING ZYLON BODY ARMOR. AND SECOND CHANCE AT FIRST HAD  
24 AN EXCLUSIVE, SO THE ONLY COMPANY MAKING ZYLON BODY ARMOR.

25 Q WHEN YOU SAY THEY SHARED IN THE DEVELOPMENT, CAN  
26 YOU JUST TELL THE JURY WHAT YOU KNOW ABOUT THAT DEVELOPMENT  
27 AND ABOUT THE SHARING IN THAT DEVELOPMENT.

28 MR. GREEN: OBJECTION, YOUR HONOR. AGAIN, CALLS FOR A

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1 NARRATIVE, AND HE'S ASKING HIM TO INTERPRET A COMMENT THAT  
2 HE SAID WAS MADE BY SOME OTHER PARTY IN THE MEETING.

3 THE COURT: IT MAY CALL FOR A NARRATIVE. IT MAY GET  
4 INTO LEGAL CONCLUSIONS. CERTAINLY HIS PERCIPIENT KNOWLEDGE  
5 ABOUT THE RELATIONSHIP BETWEEN THE TWO COMPANIES IS  
6 RELEVANT, BUT YOU'RE GOING TO HAVE TO BE SPECIFIC AND AVOID  
7 LEGAL CONCLUSIONS.

8 BY MR. EMERSON:

9 Q WITHOUT USING "PARTNERSHIP" IN A LEGAL MANNER,  
10 WITHOUT INDICATING IN ANY RESPECT ANY LEGAL OBLIGATION BY

11 ONE PARTY OR THE OTHER OR SECOND CHANCE, CAN YOU DESCRIBE  
12 FOR THE JURY WHAT -- WHEN YOU SAID PARTNERSHIP AND YOU SAID  
13 THAT THEY WERE WORKING TOGETHER ON DEVELOPMENT, WHAT DID YOU  
14 MEAN BY THAT?

15 A THAT -- THAT TOYOBO WOULD SHIP ZYLON -- ZYLON TO  
16 SECOND CHANCE, AND IT -- AND IT WOULD BE -- THEY WOULD  
17 CHOOSE A -- WE, BACK THEN, CHOOSE A COMMON GROUP TO WEAVE  
18 ZYLON, MAKE IT INTO A FABRIC, INTO A MATERIAL, AND THAT WE  
19 WOULD BUILD, THROUGH ED BACHNER -- MOSTLY HIS  
20 RESPONSIBILITY -- BUILD BODY ARMOR FROM THAT.

21 IT WAS A JOINT EFFORT. MANY MEMOS BACK AND FORTH  
22 WITH MY INITIALS ON THE BOTTOM THAT INDICATE THAT I WAS PART  
23 OF THAT.

24 Q AND WHAT DID --

25 MR. GREEN: OBJECTION, YOUR HONOR. MOVE TO STRIKE AS  
26 NONRESPONSIVE THE PART ABOUT HIS MEMOS AND HIS INITIALS.

27 THE COURT: OVERRULED AT THIS POINT. I THINK IT WAS  
28 GENERALLY RESPONSIVE.

268

1 GO AHEAD.

2 BY MR. EMERSON:

3 Q YOU SAID THAT THERE'S THIS KIND OF JOINT EFFORT.

4 IF YOU CAN, FOR THE JURY, JUST BREAK DOWN AT THAT  
5 POINT IN TIME WHAT WAS TOYOBO'S INVOLVEMENT OR PARTICIPATION  
6 IN THAT JOINT EFFORT?

7 A HELP DEVELOP BODY ARMOR AND JOINTLY DEVELOP SOFT  
8 BODY ARMOR SYSTEMS.

9 Q AND HOW WOULD THEY DO THAT?

10 A PROVIDE THE RAW MATERIAL, ZYLON.

11 Q DID THEY DO ANY TESTING ON THAT MATERIAL?

12 MR. LYLE: OBJECTION: FOUNDATION, YOUR HONOR.

13 THE COURT: YEAH. I DON'T KNOW THAT YOU'VE ESTABLISHED  
14 A FOUNDATION THAT HE WOULD KNOW, SO ABSENT SUCH A  
15 FOUNDATION, I'LL SUSTAIN THE OBJECTION.

16 BY MR. EMERSON:

17 Q DID -- IN YOUR CAPACITY AS DIRECTOR OF RESEARCH AT  
18 SECOND CHANCE BODY ARMOR, DID YOU EVER SEE ANY TEST DATA  
19 COMING BACK FROM TOYOB0?

20 A AT SOME POINTS, YES.

21 Q AND TELL THE JURY WHAT THAT DATA WAS THAT YOU SAW.

22 A IT'S BEEN A LONG TIME.

23 MR. GREEN: OBJECTION, YOUR HONOR: BEST EVIDENCE;  
24 HEARSAY; FOUNDATION.

25 MR. LYLE: WHAT HE SAID, JUDGE.

26 THE COURT: OTHER THAN THAT --

27 MR. GREEN: OTHER THAN THAT --

28 THE COURT: -- IT'S A GOOD QUESTION.

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1 OVERRULED AT THIS POINT.

2 LET'S GET THROUGH THIS. WE'RE GETTING WRAPPED  
3 AROUND THE AXLE RIGHT AT THE VERY BEGINNING, AND WE'VE GOT  
4 TO GET MOVING, FOLKS. LET'S GET THROUGH THIS AND GET TO THE  
5 GOOD PART.

6 MR. EMERSON: TRYING.

7 THE COURT: LET HIM ASK YOU AGAIN. BE AS SPECIFIC AS  
8 YOU CAN. YOU SEE THE ISSUES WE HAVE. BE SPECIFIC, AVOID  
9 NARRATIVES AND LET'S GET THROUGH THIS.

10 BY MR. EMERSON:

11 Q DID YOU SEE TEST DATA FROM TOYOB0?

12 A YES.



13 Q WHAT DID THAT TEST DATA RELATE TO? FOR EXAMPLE,  
14 WAS IT RELATED TO FIBER, FABRIC, BALLISTIC TESTING THAT THEY  
15 DID? WHAT KIND OF TESTING DO YOU KNOW -- DO YOU HAVE  
16 PERSONAL KNOWLEDGE THAT TOYOBO DID?

17 A THE DATA I RECALL --

18 MR. LYLE: OBJECTION, YOUR HONOR. HE DID NOT LAY THE  
19 FOUNDATION THAT THIS MAN HAS ANY IDEA --

20 THE COURT: ALL RIGHT. REMEMBER, WE'RE GOING TO AVOID  
21 THE SPEAKING OBJECTIONS. JUST GIVE ME A LEGAL GROUND, AND  
22 YOU GUYS WILL HOPE I'M PAYING ATTENTION AND I'LL RULE.

23 OVERRULED AT THIS POINT.

24 LET'S MOVE THROUGH THIS.

25 THE WITNESS: THE DATA I RECALL EARLY ON HAD TO DO WITH  
26 LIGHT DEGRADATION, EARLY ON. WAS PRETTY MUCH, LACK OF A  
27 BETTER TERM, OVERRULED. AND THEN AFTER THAT AS TIME GOES  
28 ON, WE LOOKED AT WHAT I CALL MECHANICAL EVALUATION OF THE

270

1 ZYLON.

2 BY MR. EMERSON:

3 Q AS TO THE LIGHT DEGRADATION, DO YOU REMEMBER  
4 APPROXIMATELY WHAT TIME PERIOD IT WAS THAT YOU RECEIVED THAT  
5 DATA?

6 A WE RECEIVED -- SECOND CHANCE RECEIVED IT  
7 APPROXIMATELY -- AND I'M NOT SURE. '96 IS WHEN I RECALL  
8 SEEING IT. I JUST RECALL THAT THERE WAS AN ISSUE.

9 Q AND DID YOU RECEIVE THAT TEST DATA IN YOUR --  
10 RELATIVE TO YOUR RESPONSIBILITIES AND DUTIES AT SECOND  
11 CHANCE?

12 A RELATIVE TO BEING WITH THE GROUP, YES.

13 AND I RECALL THE TEST DATA BEING VERY COMPLEX:

14 JUST BE AWARE THAT THERE'S AN ISSUE.

15 Q I JUST WANT TO MAKE SURE: WHEN YOU SAY AS A  
16 MEMBER OF THE GROUP, YOU RECEIVED THE TEST DATA BECAUSE OF  
17 YOUR RESPONSIBILITIES IN THAT GROUP, NOT BECAUSE YOU SAW IT  
18 NEXT TO THE WATER COOLER; IS THAT CORRECT?

19 A NO. I WAS IN THE GROUP THEN.

20 Q AND WHAT IS YOUR -- WHAT IS -- WHAT'S YOUR BEST  
21 RECOLLECTION OF WHAT THAT TEST DATA CONVEYED TO SECOND  
22 CHANCE BODY ARMOR REGARDING LIGHT?

23 MR. GREEN: OBJECTION, YOUR HONOR: BEST EVIDENCE;  
24 HEARSAY.

25 THE COURT: OVERRULED.

26 GO AHEAD.

27 THE WITNESS: THAT SECOND CHANCE SHOULD BE AWARE  
28 THAT -- THAT ZYLON DEGRADES IN DIFFERENT TYPES OF LIGHT.

271

1 BY MR. EMERSON:

2 Q WAS THERE, WITH THAT CAUTION FROM TOYOBO, WAS  
3 THERE ANY KIND OF EMPIRICAL DATA ASSOCIATED WITH THAT  
4 CAUTION?

5 A I DON'T -- I DON'T -- I THINK THERE WAS, BUT I  
6 DON'T RECALL. I REMEMBER -- I HAVE A CHART, BUT I DON'T  
7 RECALL.

8 Q DID YOU AT ANY POINT IN TIME EVER SEE ANY DATA  
9 FROM TOYOBO AS IT RELATES TO DEGRADATION WHEN EXPOSED TO  
10 LIGHT THAT HAD ANY KIND OF EMPIRICAL DATA WITH IT?

11 A I MAY HAVE, BUT I DON'T RECALL.

12 Q OKAY. WHEN YOU -- WHAT OTHER -- WE TALKED ABOUT  
13 LIGHT. WHAT OTHER KIND OF TEST DATA DID YOU RECEIVE AT  
14 SECOND CHANCE BODY ARMOR FROM TOYOBO CONCERNING ZYLON?

15           A     I -- I RECEIVED FROM -- THROUGH PAUL -- FROM  
16 TOYOBO THROUGH PAUL BANDUCCI, WHO WAS VICE-PRESIDENT THEN IN  
17 EARLY JULY OF 2001, A -- DATA, A CHART AND SOME DIFFERENT  
18 POINTS MEASURING STRENGTH OF ZYLON.

19           Q     WHEN YOU SAY "MEASURING STRENGTH OF ZYLON," CAN  
20 YOU JUST TELL THE JURY WHAT -- WHAT DOES THAT MEAN TO US WHO  
21 DON'T KNOW ANYTHING ABOUT SOFT BODY ARMOR?

22           A     WELL, IT SHOWED THAT SOME OF THE -- SOME OF THE  
23 STRENGTH, BALLISTIC STRENGTH, THE STRENGTH ZYLON HAD,  
24 DECREASED.

25           Q     AND THAT WAS IN JULY OF 2001?

26           A     YES.

27           Q     AND THAT WAS WITH PAUL BANDUCCI? HE SHARED THAT  
28 WITH YOU?

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1           A     PAUL BANDUCCI GAVE IT TO ME TO REVIEW, YES, SIR.

2           Q     DID YOU HAVE A CONVERSATION WITH PAUL BANDUCCI  
3 ABOUT THAT?

4           A     YES, AND OTHER EXECUTIVES, ALSO.

5           Q     WHAT WAS THE DISCUSSION THAT YOU HAD WITH THE  
6 OTHER EXECUTIVES AT SECOND CHANCE BODY ARMOR CONCERNING THAT  
7 DATA?

8           A     THAT THE -- THAT THE DATA CONCERNED ME ON A NUMBER  
9 OF DIFFERENT FRONTS.

10          Q     WHY?

11          A     BECAUSE I FELT THAT TOYOBO HAD NOT -- AT THAT  
12 POINT HAD NOT PRESENTED THE TOTAL PACKAGE --

13          MR. LYLE: OBJECTION, YOUR HONOR. HE'S NOW SPECULATING  
14 ABOUT WHAT INFORMATION WAS GIVEN BY TOYOBO.

15          THE COURT: AND THE OBJECTION IS SPECULATION?

16 MR. LYLE: YES, SPECULATION; NO FOUNDATION.

17 THE COURT: ALL RIGHT. WE'VE GOT TO LIMIT THESE

18 OBJECTIONS TO ONE OR TWO WORDS, NOT THE SPEECH.

19 OVERRULED AT THIS POINT.

20 HE IS TELLING US NOW, AS I UNDERSTAND IT, FROM A

21 PERCIPIENT STANDPOINT WHAT REPRESENTATIVES OF THESE TWO

22 PARTIES TOLD TO HIM, GAVE TO HIM, COMMUNICATED TO HIM. SO

23 LET'S MOVE ON.

24 BY MR. EMERSON:

25 Q YOU CAN PROCEED, DR. WESTRICK.

26 A I'M TRYING TO GET BACK ON TRACK.

27 IF -- THAT I -- THAT THE -- IF I CAN LOOK AT IT --

28 LOOK AT THE PAPERWORK, THAT IT WAS TWO OR THREE PAGES IN

273

1 LENGTH AT THAT TIME I RECEIVED A DAY LATER OR SO, BUT IT

2 SEEMED TO ME, BEING A RESEARCHER, THAT THIS -- THIS WAS NOT

3 A TOTAL REPORT.

4 MR. LYLE: OBJECTION, YOUR HONOR.

5 THE COURT: SEE, THERE'S A LITTLE PROBLEM THERE. WE

6 NEED TO AVOID SPECULATION, OPINION, AND JUST TELL US

7 FACTUALLY WHAT HE -- NOT CHARACTERIZING IT.

8 HE WAS DOING OKAY. HE WAS TELLING US HE RECEIVED

9 SOME REPORTS AND PIECES OF PAPER AND SOME STATEMENTS. WE'RE

10 NOT GOING TO OPINE ABOUT THEM OR SPECULATE ABOUT THEM.

11 BY MR. EMERSON:

12 Q WHEN YOU LOOKED AT THAT DATA IN JULY OF 2001 WITH

13 EXECUTIVES OF SECOND CHANCE BODY ARMOR --

14 A YES.

15 Q -- DID YOU DO OR SAY ANYTHING IN CONNECTION WITH

16 YOUR RECEIPT OF THOSE MATERIALS, THAT DATA?

17 A THAT DATA CONCERNED ME AND WE SHOULD DO FURTHER  
18 TESTING.

19 Q WHO DID YOU TELL THAT TO?

20 A ALL THE EXECUTIVE BOARD, PRETTY MUCH: RICHARD  
21 DAVIS, PAUL BANDUCCI, ED BACHNER.

22 Q DID YOU GET A RESPONSE FROM THAT?

23 A YES. NOT AN IMMEDIATE RESPONSE BUT YES.

24 Q WHAT WAS THE RESPONSE?

25 A THAT I WOULD DO -- WE WOULD DO FURTHER BALLISTIC  
26 TESTING.

27 Q DID YOU DO FURTHER BALLISTIC TESTING?

28 A I STARTED A STUDY, YES.

274

1 Q WHEN DID YOU START THAT STUDY?

2 A SOON THEREAFTER. AGAIN, THERE'S DOCUMENTS TO THE  
3 FACT OF THIS. JULY 15TH OR SO, IN THAT AREA, STARTED -- I  
4 NOTIFIED LONG BOAT KEY POLICE DEPARTMENT IN FLORIDA THAT --  
5 ONE OF THE FIRST DEPARTMENTS TO HAVE THE ULTIMA VEST -- THAT  
6 WE WANTED TO PULL THEM IN, REPLACE THEM AND PULL THEM IN AND  
7 DO SOME TESTING TO SEE HOW THE ARMOR WAS HOLDING UP,  
8 BALLISTIC TESTING IN THIS CASE.

9 Q DID YOU ACTUALLY GET THOSE USED VESTS IN?

10 A I TALKED TO CHIEF KINCE (PHONETIC), WROTE THE  
11 LETTER, AND YES, WE DID GET THEM IN.

12 Q WHAT HAPPENED WHEN THEY CAME IN?

13 A SOON THEREAFTER, THE STUDY -- THE STUDY WAS TAKEN  
14 FROM MY CONTROL.

15 Q DO YOU KNOW WHY THE STUDY WAS TAKEN FROM YOUR  
16 CONTROL?

17 A YES.

18 Q WHY?

19 A I DON' T BELIEVE SECOND CHANCE WANTED TO KNOW THE  
20 TRUTH.

21 Q WHEN YOU SAY THEY DIDN' T WANT TO KNOW THE TRUTH,  
22 WHAT WAS THE TRUTH?

23 MR. GREEN: OBJECTION, YOUR HONOR: CALLS FOR  
24 SPECULATION.

25 THE COURT: IT DOES AS PHRASED.

26 MR. GREEN: AND MOVE TO STRIKE THE LAST ANSWER AS  
27 CALLING FOR SPECULATION AND NONRESPONSIVE.

28 THE COURT: I' M GOING TO GRANT THE MOTION TO STRIKE AND

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1 ASK THE JURY TO DISREGARD THE LAST ANSWER.

2 WE NEED TO TRY TO KEEP ON TRACK HERE. PERCIPIENT  
3 WITNESS: JUST WHAT HE SAID, WHAT HE DID, OBJECTIVE FACTS.  
4 GO AHEAD.

5 BY MR. EMERSON:

6 Q WHEN YOU RECEIVED THOSE, DID YOU HAVE ANY  
7 CONVERSATION WITH RICHARD DAVIS ABOUT THAT TIME PERIOD ABOUT  
8 ZYLON?

9 A THROUGHOUT THAT MONTH OR SO?

10 Q YES.

11 A MANY.

12 Q AND JUST -- IF YOU COULD, IN YOUR MIND PUT THEM IN  
13 CHRONOLOGICAL ORDER AND JUST TELL US ABOUT THE FIRST  
14 CONVERSATION YOU HAD WITH RICHARD DAVIS ABOUT ZYLON.

15 A I INDICATED TO HIM THAT I THOUGHT THERE COULD BE A  
16 PROBLEM.

17 Q WHAT WAS THE PROBLEM THAT YOU WERE REFERRING TO?

18 A THAT IT DID SHOW -- IT DID SHOW THAT THERE WAS A

19 DEGRADATION. THE TOYOBO CHART DID SHOW DEGRADATION AND THAT  
20 I WAS CONCERNED ABOUT WHAT WE DIDN' T KNOW, "WE" BEING SECOND  
21 CHANCE.

22 Q YOU WERE FAMILIAR WITH OTHER -- OTHER MATERIALS  
23 USED TO MAKE SOFT BODY ARMOR; CORRECT?

24 A YES.

25 Q CAN YOU JUST TELL THE JURY WHAT SOME OF THE OTHER  
26 MATERIALS ARE?

27 A ARAMIDS, POLY ARAMIDS. THE MOST COMMON IS KEVLAR.  
28 I' M SURE MOST OF YOU HAVE HEARD THAT. ANOTHER ONE IS CALLED

276

1 TWARON, WHICH IS SIMILAR. BOTH ARE POLY ARAMIDS. DIFFERENT  
2 TYPES OF LAMINATE FORM, BE IT KEVLAR AND TWARON. AND  
3 THERE' S ALSO A POLYETHYLENE CALLED SPECTRA, THE BRAND NAME  
4 SPECTRA, OR DYNEEMA. DEPENDS ON THE TYPE YOU USE.

5 Q DID THOSE OTHER -- YOU MENTIONED YOU HAD  
6 DEGRADATION OF ZYLON. DO THOSE OTHER MATERIALS TO YOUR  
7 KNOWLEDGE SUFFER FROM DEGRADATION?

8 A THEY DON' T SUFFER -- THEY DO DEGRADE, BUT THEY  
9 DON' T SUFFER FROM IT.

10 Q WHY, THEN, WAS THE -- WAS THE DEGRADATION OF ZYLON  
11 IMPORTANT TO YOU AND THE SUBJECT OF YOUR DISCUSSIONS WITH  
12 RICHARD DAVIS IF ALL BODY ARMOR DEGRADES?

13 A MY CONCERN WAS THAT IT DEGRADED -- IT DEGRADED  
14 VERY, VERY FAST. IT WOULDN' T MEET ANYWHERE NEAR THE FIVE  
15 YEAR WARRANTY THAT WE HAD ON THE ARMOR.

16 Q WHAT WOULD BE THE PROBLEM IF IT DIDN' T MEET THE  
17 FIVE YEAR WARRANTY?

18 A POLICE OFFICER -- A POLICE OFFICER, SOLDIER WOULD  
19 EXPECT HIS OR HER ARMOR TO PERFORM TO A GIVEN STANDARD, AND

20 IT WOULDN' T.

21 Q TELL THE JURY WHAT YOU MEAN BY -- WHEN YOU HAD  
22 THIS CONVERSATION RICHARD DAVIS ABOUT DEGRADATION, TELL THE  
23 JURY WHAT THAT MEANS WHEN YOU SAY DEGRADATION. DEGRADATION  
24 OF WHAT?

25 MR. GREEN: OBJECTION: CALLING FOR AN EXPERT OPINION  
26 HERE NOW. GOES BEYOND WHAT HE SAID TO MR. DAVIS.

27 THE COURT: HE CAN EXPLAIN TO US WHAT HE MEANT WHEN HE  
28 USED THAT TERM, AGAIN, FROM A PERCIPIENT STANDPOINT.

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1 HE' S NOT HERE AS AN EXPERT; RIGHT? WE' VE GOT LOTS  
2 OF OTHER EXPERTS THAT ARE GOING TO COME IN HERE TO EXPLAIN  
3 THAT TO US.

4 BY MR. EMERSON:

5 Q WHEN YOU HAD THOSE DISCUSSIONS ABOUT DEGRADATION  
6 WITH RICHARD DAVIS, TELL THE JURY WHAT YOU MEANT BY  
7 DEGRADATION. WHAT DOES THAT MEAN?

8 A I MEANT THE VEST WAS BREAKING DOWN, AND IN THIS  
9 CASE, THAT -- THIS CASE THAT I FEARED THAT IT WOULD NOT STOP  
10 PROJECTILES, BULLETS, THE WAY THAT IT SHOULD.

11 Q AND THIS WAS IN THE SUMMER OF 2001 WHEN YOU  
12 STARTED HAVING THESE CONVERSATIONS WITH RICHARD DAVIS?

13 A LATE SUMMER OF 2001, EARLY FALL, YES, SIR.

14 Q AND DO YOU HAVE A -- DID YOU HAVE ANOTHER -- YOU  
15 SAID YOU HAD SEVERAL DISCUSSIONS. WHAT WAS THE NEXT  
16 DISCUSSION THAT YOU HAD WITH RICHARD DAVIS THAT YOU CAN  
17 RECALL?

18 A I HAVE NOTES I CAN REFER TO. I WAS VERY CONCERNED  
19 ABOUT THIS, SO I STARTED TAKING NOTES BECAUSE I FEARED THAT  
20 THE RIGHT THING WASN' T GOING TO BE DONE. I GOT THAT



21 IMPRESSION RIGHT AWAY.

22 MR. LYLE: OBJECTION, YOUR HONOR.

23 THE COURT: THAT WENT A LITTLE BIT BEYOND THE QUESTION,  
24 SO MAYBE PUTTING IT ANOTHER WAY, WE HAVE KIND OF A  
25 STRUCTURED ENVIRONMENT HERE, AS YOU PROBABLY EXPECT. WE  
26 HAVE ALL KINDS OF WEIRD RULES, YOU KNOW, THAT WE TRY TO  
27 FOLLOW. IT ISN'T LIKE HAVING A CONVERSATION ON THE STREET.  
28 THE LAWYERS KNOW WHAT THE RULES ARE. THE WITNESSES DON'T,

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1 SO WE'VE GOT TO KIND OF HELP THEM OUT.

2 SO I THINK, MR. WESTRICK, IT'S GOING TO BE REAL  
3 HELPFUL IF YOU TRY TO ANSWER JUST THE QUESTION ASKED,  
4 NOTHING ELSE. DON'T VOLUNTEER. DON'T GO BEYOND. DON'T  
5 ANTICIPATE THE NEXT QUESTION. JUST ANSWER THE QUESTION  
6 ASKED, PERIOD, AND WAIT FOR THE NEXT ONE; OKAY?

7 THE WITNESS: YES, SIR.

8 THE COURT: THAT MIGHT HELP US.

9 COUNSEL WILL DO HIS BEST TO ASK FOCUSED, SPECIFIC  
10 QUESTIONS, SO WE'LL GO BIT BY BIT; RIGHT?

11 BY MR. EMERSON:

12 Q IN THE SUMMER OF 2001, HOW MANY CONVERSATIONS  
13 WOULD YOU ESTIMATE YOU HAD WITH RICHARD DAVIS, JUST RICHARD  
14 DAVIS, CONCERNING DEGRADATION OF ZYLON FIBER?

15 A MANY. I COULD CHECK MY LOGBOOK AND GIVE YOU A  
16 BETTER -- BUT MANY. TWENTY.

17 Q AND IN THOSE 20 CONVERSATIONS THAT YOU HAD WITH  
18 RICHARD DAVIS, DID YOU EXPRESS TO HIM AN OPINION ABOUT THE  
19 USE OF ZYLON IN BALLISTICS?

20 A YES.

21 Q WHAT WAS THAT OPINION?

22 MR. LYLE: OBJECTION, YOUR HONOR.  
23 THE COURT: WELL, HE CAN --  
24 MR. EMERSON: IT'S LIMITED, YOUR HONOR.  
25 THE COURT: WE'RE NOT -- THIS ISN'T A DEBATING SOCIETY.  
26 WE'LL DO THAT AFTER COURT; OKAY?  
27 THE OBJECTION IS OVERRULED.  
28 HE CAN TELL US WHAT HE SAID TO HIM, BUT AVOID THE

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1 OPINIONS. YOU KNOW, JUST ASK HIM WHAT HE SAID.  
2 ONCE YOU ASK HIM WHAT'S HIS OPINION, WE'RE GOING  
3 TO HAVE TO DEAL WITH THAT WHOLE TABLE OVER THERE. HE'S NOT  
4 HERE TO GIVE OPINIONS.  
5 BY MR. EMERSON:  
6 Q WHAT DID YOU TELL RICHARD DAVIS ABOUT THE USE OF  
7 ZYLON AND BALLISTICS?  
8 A I FEARED ZYLON WOULD DEGRADE AND THAT I BELIEVED  
9 WE SHOULD TEST FURTHER.  
10 Q WHY DID YOU SAY THAT TO RICHARD DAVIS? WHAT WAS  
11 YOUR BASIS FOR SAYING THAT TO RICHARD DAVIS? WAS IT A  
12 GUESS?  
13 A AT THAT POINT IT WAS BASED ON THE TOYOBO DATA,  
14 BASED ON THE TOYOBO DATA AND THE REACTION OF THE OTHER  
15 SECOND CHANCE EXECUTIVES AND THAT THEY WANTED TO TAKE AND  
16 PULL THAT STUDY, WHAT I THOUGHT WOULD BE AN OBJECTIVE STUDY  
17 OF THE BALLISTIC CAPABILITY OF ZYLON, AWAY FROM ME.  
18 Q WHO WANTED TO TAKE THAT STUDY AWAY FROM YOU?  
19 A IN THE BEGINNING I THINK IT SEEMED LIKE WE WERE  
20 ALL ON THE SAME PAGE, THE VERY, VERY BEGINNING. I BELIEVE  
21 THE EXECUTIVES: ED BACHNER, PAUL BANDUCCI, MC-CRANEY. I  
22 WOULD SAY PERHAPS RICHARD -- RICHARD AND I WERE VERY, VERY

23 CLOSE FRIENDS. HE UNDERSTOOD AND AGREED WITH ME.

24 MR. GREEN: OBJECTION, YOUR HONOR.

25 THE COURT: IT SOUNDS LIKE IT CALLS FOR SPECULATION AS  
26 TO WHAT SOMEBODY ELSE MAY HAVE UNDERSTOOD.

27 AGAIN, MR. WESTRICK, I KNOW YOU'RE TRYING TO BE  
28 HELPFUL AND YOU'VE GOT A LOT TO SAY. EACH TIME YOU SORT OF

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1 START VOLUNTEERING AND YOU GO BEYOND THE QUESTION, WE'RE  
2 GOING TO BE IN TROUBLE.

3 YOU DON'T WANT ME TO GET IN TROUBLE, DO YOU?

4 LET'S TRY TO STAY RIGHT ON POINT. JUST ANSWER THE  
5 QUESTION ASKED AND NOTHING ELSE, AND HE'LL ASK YOU THE NEXT  
6 ONE. AND WE'LL GO BIT BY BIT, AND WE'LL GET THROUGH THIS.

7 BY MR. EMERSON:

8 Q WAS THE STUDY COMPLETED TO YOUR KNOWLEDGE?

9 A EVENTUALLY, YES.

10 Q DID YOU SEE THE RESULTS OF THAT STUDY?

11 A EVENTUALLY, YES.

12 Q WHEN DID YOU SEE THE RESULTS OF THAT STUDY?

13 A I BELIEVE I FIRST SAW THE TOTAL RESULTS WHEN IT  
14 WAS BEING LITIGATED WHEN I WAS OUTSIDE OF SECOND CHANCE.

15 Q PRIOR TO BEING TERMINATED FROM SECOND CHANCE, HAD  
16 YOU SEEN THE RESULTS OF THAT STUDY?

17 A I HAD HEARD ABOUT -- THEY HAD BEEN EXPLAINED TO ME  
18 BY RICHARD DAVIS.

19 MR. GREEN: OBJECTION, YOUR HONOR.

20 OBJECTION, YOUR HONOR.

21 THE COURT: SUSTAINED.

22 MR. GREEN: THANK YOU.

23 THE COURT: SUSTAINED.

24                   SEE, I THINK -- THAT'S A GOOD EXAMPLE. I THINK  
25 THE ANSWER TO THAT QUESTION COULD HAVE BEEN YES OR NO OR I  
26 DON'T KNOW, I DON'T REMEMBER, WITHOUT GOING TO EXPLAIN. AND  
27 IT'S USUALLY THAT GOING ON TO EXPLAIN THAT STARTS TO GET US  
28 IN TROUBLE.

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1                   SO NEXT QUESTION.

2 BY MR. EMERSON:

3           Q     THE RESULTS OF THE STUDY WERE TOLD TO YOU BY  
4 RICHARD DAVIS; IS THAT YOUR TESTIMONY?

5           A     YES.

6           Q     WHAT DID HE TELL YOU ABOUT THE RESULTS OF THAT  
7 STUDY?

8           A     THAT THE --

9           MR. LYLE: OBJECTION, YOUR HONOR. THIS IS HEARSAY.  
10 THESE CONVERSATIONS --

11          THE COURT: I GET HEARSAY, BUT RICHARD DAVIS, I'M TOLD,  
12 WAS THE PRESIDENT OF SECOND CHANCE; RIGHT?

13          MR. GREEN: BUT IT'S BEST EVIDENCE, YOUR HONOR.

14          THE COURT: ALL RIGHT. OVERRULED AT THIS POINT.

15          MR. LYLE: YOUR HONOR, IF WE COULD HAVE A 355  
16 INSTRUCTION AS TO TOYOBO?

17          THE COURT: ALL RIGHT. OVERRULED.

18                 WE'LL TALK ABOUT -- WE'VE GOT THREE, FOUR WEEKS  
19 WE'RE GOING TO BE GETTING TOGETHER, AND THIS IS ALL GOING TO  
20 BE WORKED OUT.

21                 OVERRULED AT THIS POINT AND LET'S MOVE ON.

22          THE WITNESS: WHAT WAS THE QUESTION?

23          THE COURT: ASK THE QUESTION AGAIN.

24          MR. EMERSON: I DON'T REMEMBER THE QUESTION.

25 THE COURT: THAT'S WHAT THE LAWYERS WERE HOPING OVER  
26 THERE.

27 MR. EMERSON: THAT'S ALL RIGHT, YOUR HONOR. I'VE GOT  
28 12 PAGES. I'LL FIND ANOTHER ONE.

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1 BY MR. EMERSON:

2 Q WHAT DID RICHARD DAVIS TELL YOU ABOUT THE RESULTS  
3 OF THE STUDY THAT YOU INITIATED -- YOU'RE REFERRING TO THE  
4 LONG BOAT KEY, FLORIDA, POLICE DEPARTMENT VEST, CORRECT --

5 A YES.

6 Q -- THAT YOU TESTIFIED TO EARLIER?

7 WHAT DID RICHARD DAVIS TELL YOU ABOUT THE RESULTS  
8 OF THAT STUDY?

9 A THAT THEY WERE EXPERIENCING -- THE VESTS WERE  
10 EXPERIENCING BALLISTIC DEGRADATION.

11 Q DO YOU KNOW HOW THOSE VESTS WERE TESTED? DO YOU  
12 KNOW HOW THEY WERE --

13 A YES, I DO.

14 Q HOW WERE THEY TESTED?

15 MR. GREEN: OBJECTION: FOUNDATION, YOUR HONOR.

16 THE COURT: I THINK YOU'RE GOING TO HAVE TO LAY  
17 FOUNDATION AS TO HOW HE WOULD KNOW. I'VE HEARD HIM SAY HE  
18 DOES BUT NOT HOW HE WOULD HEAR THAT.

19 SUSTAINED.

20 BY MR. EMERSON:

21 Q I DON'T THINK THEY'LL OBJECT TO THIS ONE.

22 HOW DO YOU KNOW HOW THE VESTS WERE TESTED?

23 A BECAUSE IT WAS THEN PROTOCOL AND I STARTED THE  
24 PACKAGE OF THE VEST TO GO TO THE U.S. -- U.S. TEST LABS IN  
25 WICHITA, KANSAS, AND THEY WOULD BE BALLISTICALLY TESTED

26 THERE.

27 Q YOU MENTIONED A PROTOCOL. YOU WERE FAMILIAR WITH  
28 THAT PROTOCOL?

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1 A THIS WOULD NOT BE CERTIFICATION PROTOCOL, BUT YES,  
2 I'M FAMILIAR WITH THE TESTING PROTOCOL, YES.

3 Q WHO DEVELOPED THAT PROTOCOL FOR TESTING OF THE  
4 LONG BOAT KEY VESTS?

5 A WELL, I -- I PUT IT TOGETHER. WE DO V50 ANALYSIS,  
6 AND THAT WAS BASED ON MY EDUCATION, EXPERIENCE IN THIS AREA.

7 Q SO THE ANSWER IS YOU KNOW HOW THEY WERE TESTED  
8 BECAUSE YOU WERE THE ONE WHO DETERMINED HOW THEY WOULD BE  
9 TESTED?

10 A YES.

11 Q OKAY. AND SO HOW WERE THEY TESTED, IF YOU COULD  
12 PLEASE TELL THE JURY, ACCORDING TO THE PROTOCOL?

13 A THEY WERE TESTED V50 ANALYSIS.

14 Q NOW YOU'VE GOT TO TELL THE JURY WHAT V50 ANALYSIS  
15 IS, BRIEFLY.

16 A V50 ANALYSIS, BRIEFLY, THE STATISTICAL NUMBER THAT  
17 YOU TRY TO -- THAT YOU GET BY HAVING HALF OF THE PROJECTILES  
18 PENETRATE THE ARMOR AND HALF STOP. AND THEN IF YOU TAKE  
19 THAT AVERAGE, YOU GET WHAT THEY CALL V50, 50 PERCENT  
20 PENETRATION, AND THAT'S CONSISTENT, AND IT CAN BE -- THAT  
21 WAY -- INSTEAD OF LIKE V0 WHERE YOU HAVE PASS OR FAIL, THAT  
22 WAY YOU GET AN IDEA, AND YOU CAN COMPARE ARMOR THAT IS ON  
23 THE STREET OR HAS BEEN USED, COMPARING TO THE V50 WHEN THE  
24 ARMOR WAS FIRST MANUFACTURED, BECAUSE THE V50 TEST IS DONE  
25 WHEN THE ARMOR IS FIRST MANUFACTURED ALSO.

26 Q DID RICHARD DAVIS, WHEN HE TOLD YOU ABOUT THE TEST

27 RESULTS, TELL YOU ANYTHING ABOUT THOSE TEST RESULTS AS THEY  
28 RELATE TO V50?

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1 A YES, HE DID.

2 Q TELL THE JURY, IF YOU WILL, PLEASE, WHAT HE SAID  
3 ABOUT THE TEST RESULTS AS IT RELATES TO V50 TESTING.

4 A IN WHAT TIME PERIOD?

5 Q THE LONG -- WHEN HE FIRST TOLD YOU ABOUT IT IN --

6 A MY RECOLLECTION IS -- I HAVE A NOTEBOOK, IF YOU'D  
7 LIKE ME TO CONSULT WITH THAT -- WAS APPROXIMATELY THREE TO  
8 FIVE PERCENT AT FIRST.

9 THIS ARMOR WOULD HAVE BEEN APPROXIMATELY TWO  
10 YEAR -- NOT -- AT THAT POINT MAYBE A LITTLE BIT LONGER THAN  
11 TWO YEARS OLD, BUT ABOUT -- THE ARMOR WOULD HAVE BEEN ABOUT  
12 TWO YEARS OLD, SO THREE TO FIVE PERCENT.

13 Q THAT'S A THREE- TO FIVE-PERCENT DECLINE IN V50, IS  
14 WHAT HE TOLD YOU?

15 A YES, SIR.

16 Q YOU SAID INITIALLY. WHY DID YOU USE THAT TERM?

17 A BECAUSE AS TIME WENT ON, THE V50 BECAME WORSE.

18 Q EXPLAIN THAT.

19 A V50'S, PLEURAL, BECAME WORSE.

20 Q EXPLAIN WHAT YOU MEAN BY V50'S BECAME WORSE.

21 MR. GREEN: OBJECTION, YOUR HONOR: FOUNDATION.

22 THE COURT: OVERRULED.

23 MR. GREEN: VAGUE AS TO TIME.

24 THE COURT: OVERRULED.

25 HE CAN TELL US WHAT HE MEANS BY THE WORDS HE'S  
26 USING. OVERRULED.

27 THE WITNESS: THAT -- AS WE MOVED CLOSER TOWARDS

28 CHRISTMAS, THE FIRST OF THE YEAR, I LEARNED THROUGH TESTS

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1 THAT ONE OF THE VESTS -- I BELIEVE PENNSYLVANIA STATE  
2 POLICE -- HAD LOST APPROXIMATELY 26 TO 30 PERCENT OF ITS  
3 V50, AND THAT VEST WOULD HAVE BEEN ABOUT TWO YEARS OLD. AND  
4 I ALSO LEARNED THAT THE DEGRADATION OF THE OTHER ARMOR  
5 RANGED FROM FIVE PERCENT TO -- I THINK HIS OWN WORDS -- AND  
6 I CAN CONSULT MY NOTES IF YOU'D LIKE, SIR -- 13 PERCENT.

7 AGAIN, THIS ARMOR WOULD HAVE BEEN DEGRADING IN THE  
8 SPAN OF TWO YEARS, SO WE'RE LOOKING AT ABOUT SIX-AND-A-HALF  
9 PERCENT PER YEAR.

10 BY MR. EMERSON:

11 Q HOW DO YOU MEASURE A DROP IN V50? YOU EXPLAINED A  
12 LITTLE BIT EARLIER. YOU SAID THE ONE SHOWED 26 PERCENT  
13 PLUS.

14 A THAT WOULD BE ONE CASE, YES, SIR.

15 Q AND WHAT DOES THAT MEAN IN TERMS THAT WE CAN  
16 UNDERSTAND? WHAT DO YOU MEAN BY THAT?

17 A THAT MEANS THAT THE -- UNDERSTAND THAT ARMOR WON'T  
18 STOP THE BULLETS AS IT'S SUPPOSED TO.

19 MR. GREEN: OBJECTION, YOUR HONOR. MOVE TO STRIKE.

20 THE COURT: MOTION TO STRIKE IS GRANTED.

21 I'LL ASK THE JURY TO DISREGARD THAT LAST COMMENT.

22 AGAIN, COUNSEL, I KNOW IT'S HARD, BUT WE HAVE TO  
23 KEEP -- HE'S NOT HERE AS AN EXPERT WITNESS. I DON'T KNOW  
24 HOW MANY TIMES WE HAVE TO SAY THAT. HE'S HERE TO TELL US  
25 WHAT HE DID, WHAT HE SAID AND WHAT HE OBSERVED, TOTALLY  
26 FACTUAL, OBJECTIVE PERCIPIENT TESTIMONY. LET'S TRY TO MOVE  
27 THROUGH THIS.

28



1 BY MR. EMERSON:

2 Q IN NOVEMBER 2001 WHILE YOU WERE AT SECOND CHANCE,  
3 WERE YOU AWARE SECOND CHANCE SENT DATA -- TOYOBO SENT SOME  
4 DATA TO SECOND CHANCE CONCERNING ZYLON?

5 A I LEARNED LATER ON IN THE MONTH, YES.

6 Q WHAT DID YOU LEARN ABOUT THAT DATA?

7 A THAT THE DATA WAS, QUOTE, NOT GOOD.

8 Q DID YOU HAVE ANY DISCUSSIONS WITH ANYBODY AT  
9 SECOND CHANCE BODY ARMOR CONCERNING THAT NOVEMBER DATA  
10 RECEIVED FROM TOYOBO?

11 A YES, I DID.

12 Q WHO DID YOU HAVE A DISCUSSION WITH?

13 A RICHARD DAVIS.

14 Q AND WHAT WAS THE DISCUSSION -- TELL THE JURY ABOUT  
15 THAT DISCUSSION WITH RICHARD DAVIS THAT YOU HAD REGARDING  
16 TOYOBO'S NOVEMBER 26 DATA.

17 A I RECALL THAT RICHARD DAVIS INDICATED TO ME THAT  
18 THE DATA WAS NOT GOOD AND THAT OUR DATA, SECOND CHANCE  
19 BALLISTIC DATA -- THAT WOULD BE MORE -- TOYOBO DATA WOULD BE  
20 MORE MECHANICAL IN NATURE AND THAT OUR DATA, BALLISTIC DATA,  
21 WAS NOT GOOD, EITHER. IT WAS NOT LOOKING --

22 Q THIS IS WHAT RICHARD DAVIS TOLD YOU?

23 A THIS IS -- YES, IT IS.

24 Q DID YOU HAVE A DISCUSSION WITH ANYBODY AT SECOND  
25 CHANCE BODY ARMOR, WITH THE EXCEPTION OF RICHARD DAVIS,  
26 CONCERNING THAT NOVEMBER 26 DATA FROM TOYOBO?

27 A PRIOR TO THAT BUT NOT -- I DON'T THINK -- I'M NOT  
28 SURE. I HAVE TO LOOK AT MY NOTEBOOK, BUT I DON'T THINK SO.

1 NOT THE NOVEMBER 26 DATA. NOT AT THAT POINT.

2 Q DID SOMETHING HAPPEN AS IT RELATED TO TOYOBO AND  
3 SECOND CHANCE IN DECEMBER OF 2001?

4 A THEY HAD A CRISIS MEETING.

5 Q WHEN YOU SAY "CRISIS MEETING," WHAT DO YOU MEAN BY  
6 THAT?

7 MR. GREEN: OBJECTION, YOUR HONOR: FOUNDATION.

8 THE COURT: OVERRULED.

9 GO AHEAD.

10 BY MR. EMERSON:

11 Q WHY DO YOU USE THAT TERM "CRISIS"?

12 A THAT'S THE TITLE AT THE TOP OF THE PAGE OF THE  
13 NOTES THAT WE WERE AT THE MEETING, AND THAT'S WHAT RICHARD  
14 DAVIS CALLED IT, CALLED IT A CRISIS MEETING.

15 Q HAVE YOU SEEN THOSE NOTES?

16 A YES, SIR.

17 Q WHEN DID YOU SEE THEM?

18 A I SAW THE ACTUAL -- I'VE SEEN DIFFERENT PARTS OF  
19 THOSE NOTES, BUT THE ACTUAL NOTES THEMSELVES, THE NOTES  
20 THEMSELVES THAT WERE PRESENT AT THE MEETING -- I WAS NOT  
21 PRESENT AT THAT MEETING. I SAW IT SOMETIME LATER, THOSE  
22 ACTUAL NOTES.

23 Q DID YOU HAVE ANY DISCUSSION -- FIRST OF ALL, DO  
24 YOU REMEMBER WHEN THAT CRISIS MEETING WAS HELD?

25 A ON OR AROUND DECEMBER 13TH, 2001.

26 Q WHERE?

27 A LOS ANGELES, CALIFORNIA.

28 Q DO YOU KNOW WHO WAS IN ATTENDANCE AT THAT MEETING?

1                   LET' S START WITH SECOND CHANCE. DO YOU KNOW WHO  
2 FROM SECOND CHANCE ATTENDED THAT MEETING?

3                   MR. LYLE: THE WITNESS SAID HE WASN' T THERE.

4                   THE COURT: I DON' T THINK HE COULD POSSIBLY KNOW FROM  
5 FIRS THAND KNOWLEDGE.

6 BY MR. EMERSON:

7                   Q DID ANYBODY -- DID RICHARD DAVIS TELL YOU HE WAS  
8 GOING TO THE MEETING?

9                   A YES. I HELPED PREPARE HIM FOR THAT MEETING.

10                  THE COURT: THE ANSWER TO THAT COULD HAVE BEEN YES, NO  
11 OR I DON' T KNOW OR I DON' T REMEMBER, WITHOUT GOING ON TO,  
12 YOU KNOW, EITHER ANTICIPATE OR EXPLAIN. THAT' S GOING TO GET  
13 US INTO TROUBLE PROBABLY NINE OUT OF TEN TIMES. SO WE' VE  
14 GOT TO TRY TO AVOID THAT; OKAY. QUESTION, ANSWER; QUESTION,  
15 ANSWER.

16 BY MR. EMERSON:

17                  Q TO YOUR KNOWLEDGE, RICHARD DAVIS ATTENDED THAT  
18 MEETING?

19                  A YES.

20                  Q DID YOU HAVE ANY DISCUSSIONS WITH RICHARD DAVIS,  
21 YES OR NO, PRIOR TO HIM GOING TO THAT MEETING?

22                  A YES, EXTENSIVE.

23                  Q DID HE APPROACH YOU OR DID YOU APPROACH HIM ABOUT  
24 THAT MEETING THAT RESULTED IN THOSE DISCUSSIONS?

25                  A HE APPROACHED ME.

26                  Q WHEN HE APPROACHED YOU, THIS IS PRIOR TO  
27 DECEMBER 13TH, 2001; CORRECT?

28                  A YES.

1 Q WHAT DID HE TELL YOU ABOUT THAT THAT WAS AT THAT  
2 POINT IN TIME UPCOMING?

3 A THAT I WASN'T GOING TO BE INVITED AND THAT IT WAS  
4 A VERY IMPORTANT MEETING, VERY IMPORTANT MEETING.

5 Q DID HE TELL YOU WHY YOU WERE NOT GOING TO BE  
6 INVITED?

7 A YES.

8 Q WHAT DID HE TELL YOU AS TO WHY YOU WERE NOT GOING  
9 TO BE INVITED?

10 A THAT THE OTHER BOARD OF DIRECTORS, PERSONS ON THE  
11 BOARD OF DIRECTORS, DID NOT WANT ME TO ATTEND.

12 Q DID HE TELL YOU WHY?

13 A YES. HE -- THAT THEY FEARED WHAT I MIGHT SAY.

14 Q DO YOU -- ANSWER MY QUESTION YES OR NO.

15 DO YOU KNOW WHAT IT WAS THAT THEY FEARED YOU MIGHT  
16 SAY?

17 MR. GREEN: OBJECTION, YOUR HONOR.

18 THE WITNESS: YES.

19 THE COURT: SUSTAINED.

20 BY MR. EMERSON:

21 Q DID RICHARD DAVIS TELL YOU WHAT IT WAS THAT THEY  
22 FEARED YOU WOULD SAY?

23 A YES.

24 Q WHAT DID RICHARD DAVIS TELL YOU THAT THE BOARD OF  
25 DIRECTORS FEARED THAT YOU MIGHT SAY IF YOU WENT TO THAT  
26 MEETING?

27 A THAT ZYLON WAS A PROBLEM -- AT THAT POINT -- BE  
28 CAREFUL OF THE DATES HERE -- THAT I THOUGHT THAT WE SHOULD

1 NOTIFY OUR CUSTOMERS OF THE DEGRADATION PROBLEM.

2 Q AND YOU TOLD THAT TO RICHARD DAVIS BEFORE HE WENT  
3 TO THE MEETING?

4 A ABSOLUTELY, YES. HE -- YES.

5 Q I'M NOT GOING TO HAVE TO GO TO THE GYM TONIGHT.  
6 HOW MANY CONVERSATIONS WITH RICHARD DAVIS DID YOU  
7 HAVE PRIOR TO DECEMBER 13TH, SPECIFICALLY PERTAINING TO THE  
8 DECEMBER 13TH ZYLON CRISIS MANAGEMENT MEETING IN LOS  
9 ANGELES?

10 A I THINK AT LEAST A COUPLE, BUT I'M NOT SURE  
11 WITHOUT CONSULTING MY NOTES.

12 Q YOU EARLIER USED THE WORD -- YOU SAID YOU HELPED  
13 HIM PREPARE?

14 A YES.

15 Q WHAT DID YOU DO TO HELP RICHARD DAVIS PREPARE FOR  
16 THAT MEETING?

17 A I TOLD HIM WHAT TO EMPHASIZE AND HOW TO EXPLAIN TO  
18 TOYOBO WHAT WE WERE -- WHAT SECOND CHANCE WAS EXPERIENCING  
19 AND TO NOT GIVE IN, THAT THERE WAS A PROBLEM HERE.

20 MR. EMERSON: YOUR HONOR, I'M -- BEING THE FIRST DAY,  
21 I'M UNFAMILIAR -- I DON'T RECALL WHAT THE COURT'S PRACTICE  
22 WAS WITH BREAKS. THIS MIGHT BE A GOOD TIME, IF THIS IS THE  
23 RIGHT TIME, OR I CAN CONTINUE. I JUST DON'T REMEMBER --

24 THE COURT: ORDINARILY WE WOULD TAKE OUR MID-AFTERNOON  
25 BREAK AT 3 O'CLOCK UNLESS SOMEBODY HAS SOME SORT OF  
26 EMERGENCY.

27 MR. NISHIMURA: IT MIGHT BE APPROPRIATE TODAY SO WE CAN  
28 CONFER WITH THE WITNESS AND EXPLAIN TRIAL TESTIMONY

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1 PROCEDURES AND QUESTION-AND-ANSWER PROCEDURE. IT MIGHT  
2 EXPEDITE THE TESTIMONY AFTER THE BREAK.

3 THE COURT: LET'S POLL THE AUDIENCE. ARE WE READY FOR  
4 A BREAK?

5 A VOICE: YEAH.

6 THE COURT: COOL. LET'S TAKE 18 MINUTES. LET'S  
7 RECONVENE AT 3 O'CLOCK. HAVE A NICE BREAK. REMEMBER THE  
8 ADMONITION, AND WE'LL SEE YOU BACK HERE AT 3 O'CLOCK.

9 MR. NISHIMURA: THANKS VERY MUCH, YOUR HONOR.

10 (THE FOLLOWING TOOK PLACE IN OPEN COURT  
11 OUTSIDE THE PRESENCE OF THE JURY.)

12 THE COURT: LET'S GO BACK ON THE RECORD BRIEFLY.

13 WE'RE ON THE RECORD OUTSIDE THE HEARING OF THE  
14 JURY. AN ISSUE CAME UP DURING MR. WESTRICK'S DIRECT  
15 EXAMINATION REGARDING WHAT'S BEEN MARKED EXHIBIT 211. IT'S  
16 A DECEMBER -- APPEARS TO BE -- PURPORTS TO BE DECEMBER 18,  
17 2001, MEMO FROM MR. WESTRICK TO MR. DAVIS, AND I BELIEVE  
18 MR. GREEN AND/OR MR. LYLE HAD SOME OBJECTION TO IT.

19 MR. GREEN: YES, YOUR HONOR. MY OBJECTION IS  
20 RELATED -- I BELIEVE THAT THE WITNESS, IN WRITING THIS MEMO,  
21 IS RENDERING OPINION TESTIMONY BY CHARACTERIZING THE ZYLON  
22 PROBLEMS -- OR CHARACTERIZING A DEGRADATION PROBLEM WITH THE  
23 ULTIMA ARMOR, AND THAT WAS THE NATURE OF A NUMBER OF  
24 OBJECTIONS THAT I WAS MAKING DURING HIS TESTIMONY, THAT JUST  
25 BECAUSE HE TELLS RICHARD DAVIS SOMETHING DOESN'T MAKE THAT  
26 COMMENT OTHERWISE ADMISSIBLE. I THINK HE HAS TO SHOW A  
27 FOUNDATION FOR WHAT HE'S TELLING RICHARD DAVIS. AND THAT  
28 WAS THE NATURE OF THE OBJECTION TO THIS DOCUMENT.

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1 THAT WAS THE NATURE OF THE OBJECTION THEN. HE  
2 CAN'T GET EXPERT TESTIMONY IN JUST BY SAYING "I TOLD RICHARD  
3 DAVIS" AND THEN OPEN UP AND GIVE ALL KINDS OF EXPERT

4 OPINION. THAT WAS THE NATURE OF THE OBJECTION, YOUR HONOR.

5 MR. LYLE: YOUR HONOR, WE JOIN IN THAT ASPECT, BUT  
6 THERE'S A PIECE OF THIS AS TO TOYOBO. THIS IS A -- AN  
7 INTERNAL DOCUMENT AT SECOND CHANCE. MR. WESTRICK WROTE IT  
8 TO THE PRESIDENT OF SECOND CHANCE, AND SO IF IT COMES IN  
9 GENERALLY, IT WOULD BE HEARSAY AS TO TOYOBO, AND TO THE  
10 EXTENT THAT THE COURT IS GOING TO ALLOW IT IN, WE'D ASK FOR  
11 A 355 INSTRUCTION.

12 THE COURT: I THINK AS TO THE LATTER POINT ANY TIME  
13 SOMETHING COMES IN AGAINST ONE PARTY AND NOT ANOTHER,  
14 MR. LYLE IS PROBABLY CORRECT THAT THE JURY SHOULD BE TOLD AT  
15 THAT POINT THAT IT CAN'T BE USED AGAINST THE OTHER PARTY.

16 YOU WOULDN'T DISPUTE THAT; RIGHT?

17 MR. EMERSON: NOT UNLESS THERE'S SOME ISSUE WHERE IT'S  
18 AN ADOPTIVE ADMISSION. FOR EXAMPLE, IF IT'S A DOCUMENT THAT  
19 WAS SENT TO TOYOBO AND THERE WAS AN ADOPTIVE ADMISSION  
20 ISSUE. OTHER THAN THAT, I WOULDN'T DISAGREE.

21 THE COURT: OR UNLESS THEY WERE PARTNERS?

22 SO THAT PART OF IT I THINK IS THE EASY PART.

23 MR. GREEN, I THINK THAT I'M PROBABLY GOING TO HEAR  
24 FROM MR. EMERSON THERE'S MORE TO IT. THE ISSUE IS SIMPLY  
25 WHAT WAS MR. DAVIS TOLD, TRUE OR NOT.

26 MR. EMERSON: YOUR HONOR --

27 THE COURT: GO AHEAD.

28 MR. EMERSON: -- I MUST CONFESS, I'M NOT ACCUSTOMED TO

1 CROSS-EXAMINATION BY MEANS OF OBJECTION ON DIRECT. I JUST  
2 THINK CROSS-EXAMINATION ON WHAT THIS DOCUMENT MEANS OR WHY  
3 HE WROTE IT OR WHAT HE MEANT BY THAT OR DID HE HAVE A BASIS  
4 FOR IT -- MY UNDERSTANDING, THAT'S CROSS-EXAMINATION

5 MATERIAL, NOT OBJECTION MATERIAL.

6 HE WAS AT THE TIME -- IF I CAN REMIND YOUR HONOR,  
7 HE WAS AT THE TIME HE WROTE THIS A SECOND CHANCE EXECUTIVE.  
8 THAT'S AN ADMISSION BY A PARTY OPPONENT.

9 THE COURT: THAT'S NOT THE IMPORT OF THE OBJECTION.  
10 YOU WANTED TO SHOW, I GUESS, A DOCUMENT TO THE JURY, READ  
11 IT, PUBLISH IT, DO SOMETHING, AND LIKE ANY DOCUMENT, WE'RE  
12 NOT DOING THAT UNLESS WE THINK IT'S COMING IN; RIGHT?  
13 UNLESS IT'S NOT OBJECTIONABLE?

14 THEY APPROPRIATELY RAISED AN OBJECTION. WE  
15 STOPPED. WE'RE NOT GOING TO SHOW IT TO THE JURY UNTIL WE  
16 GET IT STRAIGHT. WHAT I'M WRESTLING WITH NOW IS WHAT'S  
17 WRONG WITH IT.

18 I THINK MR. ~GREEN'S MAIN CONCERN IS THIS SOMEHOW  
19 IS GETTING IN INDIRECTLY WHAT HE CAN'T GET IN DIRECTLY BY  
20 WAY OF EXPERT OPINION.

21 IS THAT WHAT I'M HEARING?

22 MR. GREEN: YES, YOUR HONOR. BY HIM SAYING  
23 "DEGRADATION PROBLEM," I THINK HE'S GIVING AN EXPERT  
24 OPINION.

25 THE COURT: I THINK THAT -- I THINK HE'S NOT. I THINK  
26 HE'S JUST REPORTING, AS I UNDERSTAND THE TESTIMONY, WHAT HE  
27 HAS RECEIVED -- TESTIMONY, TEST RESULTS AND WHATNOT -- FROM  
28 TOYOBO. I THINK HE'S REPORTING THIS AS A PERCIPIENT

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1 WITNESS, THE FACT THAT THERE WERE, TRUE OR NOT, RIGHT OR  
2 WRONG -- THERE WERE DEGRADATION PROBLEMS, BROUGHT IT TO THE  
3 ATTENTION OF SECOND CHANCE, AND HE'S NOW COMMUNICATING  
4 THAT -- OR WHATEVER HE'S DOING BY MEANS OF THIS MEMO -- TO  
5 MR. ~DAVIS.



6 SO I THINK THAT THE ULTIMATE ISSUE COMES DOWN TO  
7 THE WEIGHT OF THIS. OBVIOUSLY WE'RE GOING TO HAVE EXPERTS  
8 WHO ARE GOING TO TELL US THAT IT DOES OR DOESN'T, WAS OR  
9 WASN'T SUBJECT TO DEGRADATION. WE'RE GOING TO DEFINE THIS  
10 IN SPADES; RIGHT?

11 BUT IT SEEMS TO ME THAT A DOCUMENT, UNLESS THERE'S  
12 SOMETHING -- SOMETHING ELSE WRONG WITH IT, TO THE PRESIDENT  
13 OF THE COMPANY, SUBJECT TO AN INSTRUCTION THAT THIS CAN'T BE  
14 USED AGAINST SOME OTHER PARTY -- IT SEEMS TO ME THAT IT  
15 COMES IN.

16 I WANT TO MAKE SURE I UNDERSTAND THE OBJECTION.

17 MR. GREEN: YOU UNDERSTOOD THE OBJECTION, YOUR HONOR.  
18 THANK YOU.

19 THE COURT: SO HAVE WE NOW SOLVED ALL THE WORLD'S  
20 PROBLEMS?

21 I'M CONCERNED WE'RE GOING TO HAVE CONTINUING  
22 PROBLEMS. ARE WE STRAIGHT ON MR. WESTRICK, WHAT HE'S DOING  
23 HERE? AND YOU KNOW, NO EXPERT OPINIONS; RIGHT? WE'VE GOT  
24 PLENTY OF EXPERTS. HE COULD BE ONE BUT HE'S NOT ONE.

25 MR. EMERSON: YOUR HONOR, I WOULD CONCEDE TO THE COURT  
26 OR CONFESS TO THE COURT I'M NOT BEING VERY ARTICULATE AND  
27 I'M TRYING TO ESTABLISH A BASIS FOR THESE DOCUMENTS. IF I  
28 COULD JUST HAVE A WORD WITH DR. WESTRICK? I THINK HE'S

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1 TRYING HIS BEST TO BE RESPONSIVE TO MY QUESTIONS.

2 THE COURT: THERE WAS ANOTHER ISSUE I'M RECALLING FROM  
3 MOTIONS IN LIMINE, A PRIVILEGE ISSUE CLAIMED IN THE DEPO.  
4 OF COURSE, I DON'T KNOW ABOUT THAT.

5 I ASSUME YOU'RE NOT GOING TO ASK HIM -- AM I WRONG  
6 ON THAT?

7 MR. EMERSON: A PRIVILEGE AS TO WHAT?  
8 THE COURT: WASN'T THERE CERTAIN TESTIMONY NOT GIVEN AT  
9 DEPOSITION --  
10 MR. LYLE: YES.  
11 MR. EMERSON: RIGHT. YES.  
12 THE COURT: -- BASED UPON SOME PRIVILEGE?  
13 MR. EMERSON: YES.  
14 THE COURT: YOU'RE NOT GOING TO ASK HIM ANYTHING AS TO  
15 WHICH HE DIDN'T TESTIFY IN HIS DEPOSITION?  
16 MR. EMERSON: ABSOLUTELY NOT, NO.  
17 THE COURT: AS I RECALL THE MOTION IN LIMINE INVOLVING  
18 MR. WESTRICK WAS WE RULED THAT HE IS NOT TO GIVE ANY EXPERT  
19 OPINIONS, AND HE IS NOT TO TESTIFY AS TO ANY MATTER AS TO  
20 WHICH HE ASSERTED A PRIVILEGE AT HIS DEPOSITION.  
21 MR. EMERSON: CORRECT.  
22 MR. LYLE: YOUR HONOR -- I'M SORRY. I JUST HAD ONE  
23 OTHER THING AS IT RELATES TO MOTIONS IN LIMINE. WE STARTED  
24 TO SKIRT THERE WHEN HE WAS TALKING ABOUT THE REASONS FOR HIS  
25 TERMINATION. HE SAID CAUSE HE WAS GIVING TESTIMONY IN  
26 LITIGATION.  
27 I ASK THE COURT ADMONISH HIM TO STAY AWAY FROM  
28 OTHER LITIGATION BECAUSE OF THE MOTION IN LIMINE.

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1 THE COURT: MR. EMERSON, YOU'LL TALK TO WESTRICK. I  
2 CAN'T ADMONISH MR. WESTRICK ABOUT ANYTHING.  
3 MR. GREEN: YES, YOU CAN.  
4 THE COURT: WE'RE NOT GOING TO GET IN INDIRECTLY --  
5 THAT'S A NO-NO. WE'RE NOT TALKING ABOUT SOME OTHER  
6 LITIGATION, SOME OTHER LAWSUIT. IN NO WAY, FASHION OR FORM  
7 ARE WE GOING TO DO THAT DIRECTLY OR INDIRECTLY. SO

8 MR. ~WESTRICK AND EVERY OTHER WITNESS WHO COMES IN HERE HAS  
9 TO BE INSTRUCTED.

10 MR. EMERSON: THAT IS ABSOLUTELY CORRECT. I DID NOT  
11 OPPOSE THAT MOTION IN LIMINE --

12 THE COURT: YOU FELT HE'D SAY THAT, SO THAT WASN'T A  
13 PROBLEM?

14 MR. LYLE: THAT'S THE CONCERN.

15 THE COURT: I WAS BEING FACETIOUS.

16 MR. LYLE: I DON'T THINK DR. ~WESTRICK DID THAT  
17 INTENTIONALLY. I THINK THE CAUTION IS SO HE DOESN'T  
18 INADVERTENTLY TALK ABOUT THOSE OTHER CASES.

19 THE COURT: MR. ~WESTRICK, I THINK YOU HEARD NOW AND  
20 UNDERSTAND. MR. ~EMERSON WILL TALK TO YOU FURTHER.

21 MR. EMERSON: BRIEFLY?

22 THE COURT: WE NEED TO GIVE OUR COURT REPORTER A BREAK.

23 MR. EMERSON: IT'LL TAKE ME TWO SECONDS, YOUR HONOR.

24 YOUR HONOR MENTIONED THE ISSUE OF PRIVILEGE AND  
25 WHAT DR. ~WESTRICK COULD TALK ABOUT OR NOT TALK ABOUT  
26 PURSUANT TO THE MOTION IN LIMINE. I JUST WANTED TO LET THE  
27 COURT -- MAKE THE COURT AWARE THAT DR. ~WESTRICK'S ATTORNEY  
28 IS HERE FROM WASHINGTON, D. C. , MR. STEVEN KOHN, WHO IS

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1 HERE --

2 THE COURT: WELCOME, MR. KOHN.

3 A VOICE: THANK YOU.

4 MR. EMERSON: HE'S HERE TO ACTUALLY -- PERHAPS IF THAT  
5 COMES UP, HE WOULD PERHAPS INTERJECT.

6 THE COURT: IS HE GOING TO CHARGE THE BENCH AND OBJECT  
7 TO SOMETHING?

8 MR. EMERSON: STAND UP AND WAVE OR SOMETHING.

9 THE COURT: OKAY. THANKS. SO WE'LL SEE YOU BACK HERE  
10 AT 3 O' CLOCK.

11 (COURT WAS IN RECESS.)

12 (THE FOLLOWING PROCEEDINGS WERE HELD  
13 IN OPEN COURT IN THE PRESENCE AND  
HEARING OF THE JURY.)

14 THE COURT: RECORD CAN REFLECT ALL OF OUR JURORS ARE  
15 BACK. ALL PARTIES AND COUNSEL ARE PRESENT. DR. WESTRICK IS  
16 STILL ON THE STAND.

17 GO AHEAD, MR. EMERSON.

18 MR. EMERSON: WE HAVE THIS FIGURED OUT, YOUR HONOR. I  
19 THINK WE CAN SPEED THROUGH THIS.

20 BY MR. EMERSON:

21 Q DR. WESTRICK, I'M GOING TO -- I WANT TO TAKE YOU  
22 BACK. WE WERE TALKING EARLIER ABOUT A DOCUMENT THAT YOU  
23 WROTE AND GAVE TO RICHARD DAVIS.

24 DO YOU REMEMBER THAT DOCUMENT WE WERE TALKING  
25 ABOUT?

26 A YES, SIR.

27 Q DO YOU STILL HAVE THAT DOCUMENT BEFORE YOU, SIR?

28 A YES, I DO.

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1 MR. EMERSON: YOUR HONOR, MAY I PUBLISH THE DOCUMENT?

2 THE COURT: YES.

3 WE'RE TALKING ABOUT EXHIBIT 211; RIGHT?

4 MR. EMERSON: THAT'S CORRECT.

5 THE COURT: 211.

6 MR. LYLE: REQUEST A 355 INSTRUCTION.

7 THE COURT: YES, MAYBE BEFORE WE START I'LL EXPLAIN TO  
8 THE JURY.

9 SOME EXHIBITS AND SOME TESTIMONY, AS WE GO THROUGH

10 THE TRIAL, IT WILL PROBABLY BE CLEAR EACH TIME IT WILL BE  
11 OFFERED AGAINST ONE OF THE DEFENDANTS AND NOT THE OTHER ONE.  
12 WHEN THAT HAPPENS, I'M HOPEFULLY GOING TO REMEMBER --  
13 COUNSEL WILL HELP ME REMEMBER -- TO ADVISE THE JURY THAT  
14 THEY ARE TO CONSIDER IT IN THAT LIGHT, NOT TO CONSIDER IT AS  
15 BEING AGAINST THE INTEREST OF THE OTHER PARTY; OKAY? AND  
16 HOPEFULLY THAT WILL BE CLEAR AS WE GO, AND COUNSEL WILL  
17 REMIND ME.

18 THIS EXHIBIT 211 IS ONE OF THOSE, I GUESS,  
19 MR. LYLE; RIGHT?

20 THIS IS AN EXHIBIT -- COUNSEL WILL EXPLAIN IT, AND  
21 I GUESS THE JURORS WILL SEE IT -- THAT RELATES ONLY TO  
22 SECOND CHANCE; IS THAT RIGHT?

23 MR. LYLE: YES, YOUR HONOR.

24 MR. GREEN: AND I'M ASSUMING, YOUR HONOR, HE'S GOING TO  
25 PUBLISH THE EXACT COPY OF THAT DOCUMENT, THE ONE THAT'S IN  
26 THE EXHIBIT BOOK?

27 THE COURT: WELL, I WOULD HOPE SO.

28 MR. EMERSON: YOUR HONOR, IT HAS SOME PULLOUTS, BUT

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1 IT'S THE EXACT DOCUMENT. IT'S HIGHLIGHTED.

2 THE COURT: LET'S MAKE SURE WHAT IT IS, WHAT WE'RE  
3 TALKING ABOUT. THIS IS WHAT I HAVE.

4 MR. EMERSON: IT WOULD BE DIFFICULT TO READ, BUT IT HAS  
5 SOME PULLOUTS.

6 MR. GREEN: PULLOUTS AND COLORED HIGHLIGHTING. I DON'T  
7 THINK THAT'S APPROPRIATE.

8 THE COURT: WE'RE TALKING ABOUT ONLY THE DOCUMENT, NOT  
9 SOME MARKED-UP, YOU KNOW, POWERPOINT PRESENTATION WITH  
10 COLORS AND STUFF; RIGHT?

11 SO DO YOU WANT TO USE MINE, OR DO YOU HAVE A CLEAN  
12 COPY?

13 MR. LYLE: I HAVE ONE.

14 MR. EMERSON: JUST BECAUSE IT'S DIFFICULT TO READ IT,  
15 THERE'S A PULLOUT TO MAGNIFY IT. IT'S ONLY WHAT  
16 DR. -WESTRICK WROTE.

17 THE COURT: ONLY LAWYERS AND JUDGES -- I TAKE THIS ON  
18 MYSELF -- COULD GET INTO LITTLE ARGUMENTS LIKE THIS THAT  
19 TAKE UP SO MUCH TIME.

20 MR. EMERSON: I CAN SHOW THE COURT WHAT I'VE DONE TO  
21 THE DOCUMENT.

22 THE COURT: LET'S JUST PUT THE REGULAR DOCUMENT UP, THE  
23 ORIGINAL. IF SOMEBODY NEEDS A COPY OF IT, I'VE GOT IT RIGHT  
24 HERE. LET'S FORGET THE MARKED-UP THINGS. IF THEY CAN'T SEE  
25 IT, YOU CAN READ IT TO THE JURORS OR WHATEVER -- OR THE  
26 WITNESS CAN.

27 CAN YOU AMPLIFY THAT IMAGE THROUGH YOUR EQUIPMENT?

28 MR. EMERSON: CAN SHE AMPLIFY CERTAIN LINES AT A TIME,

300

1 YOUR HONOR?

2 THE COURT: SURE.

3 MR. EMERSON: IS THIS OBJECTIONABLE, YOUR HONOR?

4 THE COURT: NO. NO. WHATEVER IT SAYS, THAT'S FINE.  
5 HE WAS JUST CONCERNED ABOUT SOME OTHER MARKINGS THAT DIDN'T  
6 APPEAR ON THE ORIGINAL DOCUMENT; RIGHT?

7 MR. GREEN: THAT'S CORRECT.

8 THE COURT: YOU CAN BLOW IT UP OR READ IT, WHATEVER YOU  
9 WANT TO DO.

10 BY MR. EMERSON:

11 Q DR. -WESTRICK, I'M GOING TO USE JUST THIS LITTLE

12 POINTER.

13 IS -- IS THIS THE TEXT AS IT APPEARS ON THE  
14 DOCUMENT BEFORE YOU THAT WE'VE MARKED AS COURT'S  
15 EXHIBIT 211?

16 A YES, SIR.

17 Q AND THIS APPEARS TO BE A DOCUMENT WRITTEN BY YOU  
18 TO RICHARD DAVIS ON 12/18/2001; IS THAT CORRECT?

19 A YES, SIR.

20 MR. EMERSON: JUST THE FIRST LINE, PER OUR  
21 CONVERSATION.

22 THE WITNESS: WOULD YOU LIKE ME TO READ IT, SIR?  
23 BY MR. EMERSON:

24 Q I WANT TO GO THROUGH IT WITH YOU, BUT I WANT TO  
25 WALK YOU THROUGH THIS DOCUMENT FOR THE JURY SO YOU CAN  
26 EXPLAIN WHY IT IS -- OR WHAT IT IS YOU WROTE WHAT YOU TOLD  
27 RICHARD DAVIS.

28 YOU SAY, "PER OUR CONVERSATION TODAY, I'M WRITING

301

1 THIS MEMO SO MY VIEW IS CLEAR. "

2 DO YOU SEE THAT?

3 A YES, SIR.

4 Q CAN YOU TELL THE JURY WHAT CONVERSATION YOU HAD  
5 EARLIER ON DECEMBER 18TH, 2001, THAT PRECIPITATED AT LEAST  
6 IN YOUR MIND THE NEED TO MEMORIALIZE THAT CONVERSATION IN  
7 THIS MEMO?

8 A YES, SIR. RICHARD DAVIS AND I DISCUSSED WHAT WAS  
9 THEN CALLED "THE ZYLON PROBLEM," AND HE AND I BOTH FELT AT  
10 THAT POINT THAT SECOND CHANCE AND TOYOBO WERE GOING TO TRY  
11 TO BURY IT.

12 MR. GREEN: OBJECTION, YOUR HONOR.

13 MR. LYLE: OBJECTION, YOUR HONOR.  
14 THE COURT: IT SEEMS LIKE WE'RE DOING IT AGAIN,  
15 MR. WESTRICK.  
16 THE WITNESS: I HAVE NOTES HERE.  
17 THE COURT: NO. NO.  
18 MR. EMERSON: YOUR HONOR, I JUST ASKED HIM ABOUT THE  
19 CONVERSATION THAT HE HAD WITH RICHARD DAVIS THAT  
20 PRECIPITATED THIS MEMO.  
21 THE COURT: ALL RIGHT. LET'S LIMIT IT TO WHO SAID WHAT  
22 TO WHOM IN THAT CONVERSATION, AND IF WE NEED TO TELL ABOUT  
23 WHERE IT WAS, WHAT TIME IT WAS, BE SPECIFIC. LET'S BE AS  
24 SPECIFIC AS WE CAN.  
25 MR. EMERSON: THANK YOU, YOUR HONOR?  
26 THE WITNESS: I CONSULT MY NOTES?  
27 BY MR. EMERSON:  
28 Q YOU CAN CONSULT YOUR NOTES IF YOU'D LIKE, SIR.

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1 WOULD THOSE HELP REFRESH YOUR MEMORY?  
2 A I HAVE NOTES ABOUT THE NOTE, I RECALL.  
3 Q OKAY.  
4 MR. LYLE: YOUR HONOR, WOULD IT BE ALL RIGHT IF WE SAW  
5 WHATEVER HE'S --  
6 THE COURT: I SUPPOSE IF HE'S GOING TO REFRESH HIS  
7 RECOLLECTION, THE OTHER LAWYERS GET TO SEE WHAT IT IS HE'S  
8 REFRESHING HIS RECOLLECTION FROM.  
9 MR. EMERSON: YOUR HONOR, IF IT'S OKAY WITH YOUR HONOR,  
10 I'D LIKE HIM TO SEE IF THERE IS AT LEAST SUCH A DOCUMENT,  
11 AND THEN I'LL ASK HIM TO IDENTIFY IT. I BELIEVE BOTH  
12 COUNSEL HAVE THAT DOCUMENT, BUT I WOULD CERTAINLY INVITE  
13 THEM TO LOOK AT WHATEVER DOCUMENT IT IS HE'S USING TO



14 REFRESH HIS RECOLLECTION.

15 MR. LYLE: I DON'T KNOW THAT --

16 THE COURT: WE'VE GOT TO GET THROUGH THIS, GEEZ. THE  
17 ONLY ISSUE RIGHT NOW, WE'RE LOOKING AT A DOCUMENT AND THAT  
18 SAYS "PER OUR CONVERSATION." THE QUESTION IS WHAT  
19 CONVERSATION WAS THAT. IF YOU NEED TO REFRESH YOUR  
20 RECOLLECTION, LET'S DO SO.

21 THE WITNESS: YES, SIR, I DO HAVE NOTES.

22 BY MR. EMERSON:

23 Q CAN YOU DESCRIBE FOR COUNSEL WHAT IT IS YOU'RE  
24 LOOKING AT, SIR.

25 A IT'S MY OWN PERSONAL NOTES THAT I TOOK DATED 12/17  
26 OF '01 IN MY OFFICE. RICHARD C. DAVIS, HE WAS IN MY OFFICE.  
27 WE TALKED ABOUT THESE ISSUES.

28 Q REVIEWING THAT NOTE THAT'S BEFORE YOU, HAS THAT

303

1 REFRESHED YOUR MEMORY AS TO WHAT THAT CONVERSATION WAS  
2 EARLIER IN THE DAY OF DECEMBER 18TH, 2001?

3 A IT WAS LINKED TO THE DECEMBER 17TH CONVERSATION.  
4 YES, IT DOES.

5 Q TELL THE JURY, NOT ANYBODY'S IMPRESSIONS OR  
6 FEELINGS OR WHATEVER, BUT TELL THE JURY WHAT WAS SAID IN  
7 THAT CONVERSATION WITH RICHARD DAVIS THAT LED YOU TO WRITE  
8 THIS MEMO.

9 A THESE NOTES WERE TAKEN AT THE TIME OR IMMEDIATELY  
10 AFTER.

11 CAN I READ -- WOULD IT BE APPROPRIATE TO READ  
12 THIS?

13 THE COURT: NO, WE DON'T WANT TO READ IT. HE'S JUST  
14 ASKING YOU A QUESTION. JUST TELL US WHAT YOU TALKED ABOUT

15 IN THE CONVERSATION. IF YOU NEED TO --

16 THE WITNESS: YES, SIR. WE TALKED ABOUT AT LEAST FOUR  
17 DIFFERENT ISSUES.

18 BY MR. EMERSON:

19 Q WHAT WERE THE ISSUES THAT YOU TALKED ABOUT?

20 A RICHARD HAD INDICATED THAT SECOND CHANCE HAD TOLD  
21 TOYOBO THAT WE NEEDED ABOUT \$8 MILLION TO REPAIR THE  
22 DAMAGE -- THIS WOULD BE TOYOBO'S PART FOR THE --

23 Q IN THAT CONVERSATION WHEN HE SAID WE NEEDED  
24 \$8 MILLION -- OR HE TOLD TOYOBO WE NEEDED \$8 MILLION TO  
25 REPAIR THE DAMAGE, WITHOUT TELLING ME WHAT YOUR  
26 UNDERSTANDING WAS, DID YOU UNDERSTOOD WHAT HE MEANT -- OR  
27 DID HE EXPLAIN TO YOU, RATHER, WHAT HE MEANT BY "DAMAGE"?

28 A YES.

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1 Q WHAT DID HE TELL YOU HE MEANT BY "DAMAGE"?

2 A IN ORDER AT THAT TIME TO CORRECT THIS PROBLEM, THE  
3 ARMOR THAT WAS ON THE MARKET ALREADY OUT THERE -- TO CORRECT  
4 THIS PROBLEM, WE NEEDED \$8 MILLION FROM TOYOBO IN  
5 CONJUNCTION TO WORK TO SOLVE THIS PROBLEM, GET THE ARMOR OFF  
6 THE MARKET, OUT OF THE -- OUT OF THE WORKPLACE, I GUESS  
7 WOULD BE PROPER.

8 Q DECEMBER 17TH, 2001, YOU HAD A CONVERSATION WITH  
9 RICHARD DAVIS. HE SAID, "I TOLD TOYOBO WE NEED \$8 MILLION  
10 TO CORRECT THE PROBLEM"; CORRECT?

11 A YES, SIR.

12 Q WHAT WAS THE PROBLEM THAT RICHARD DAVIS WAS  
13 EXPLAINING TO YOU AS IT RELATED TO ARMOR IN THE FIELD?

14 A THAT -- THE PROBLEM WAS THAT SOMEONE BE HURT,  
15 POLICE OFFICER WOULD BE KILLED, THAT THE ARMOR WAS

16 DEGRADING.

17 Q ISSUE NUMBER TWO --

18 A YES, SIR.

19 Q -- THAT YOU DISCUSSED ON THE 17TH?

20 A SAID SECOND CHANCE SHOWED TOYOBO A STATISTICAL  
21 TABLE ON THE WEAR-OF-ZYLON WEAR TEST.

22 MR. LYLE: YOUR HONOR, HE'S READING FROM THE DOCUMENT.

23 THE COURT: WE'RE NOT READING THE DOCUMENT. THE  
24 DOCUMENT DOESN'T COME IN. THE ONLY USE OF THAT DOCUMENT IS  
25 IF YOU DON'T REMEMBER -- TYPICALLY --.

26 HE ASKED YOU IF YOU REMEMBERED. YOU SAID YOU  
27 DIDN'T. YOU SAID THIS MIGHT REFRESH YOUR RECOLLECTION.  
28 LOOK AT IT. THEN LOOK UP. DON'T READ THE DOCUMENT. THEN

305

1 TELL US WHAT YOUR REFRESHED MEMORY NOW RECALLS.

2 THE WITNESS: ALSO INDICATED THAT SECOND CHANCE --  
3 BY MR. EMERSON:

4 Q YOU'RE DESCRIBING ISSUE NUMBER TWO?

5 A I WAS DESCRIBING ISSUE NUMBER TWO, THAT THERE HAD  
6 BEEN NEW DATA -- OR RECENT NEW DATA THAT SHOWED THAT THERE  
7 WAS A PROBLEM -- FROM TOYOBO THAT SHOWED THERE WAS A  
8 PROBLEM, BIG PROBLEM.

9 Q BY "NEW DATA," IN THE INTEREST OF TIME, YOU'RE  
10 TALKING ABOUT NOVEMBER 26 DATA?

11 A I WOULD THINK SO, YES, SIR.

12 MR. GREEN: OBJECTION. MOVE TO STRIKE.

13 MR. LYLE: MOVE TO STRIKE.

14 MR. GREEN: YOUR HONOR --

15 MR. EMERSON: WE'VE BEEN OVER THAT.

16 THE COURT: BASED ON WHAT?

17 MR. GREEN: HE SAID --  
18 THE COURT: SPECULATION?  
19 MR. GREEN: YES, SPECULATION.  
20 THE COURT: ALL RIGHT. AGAIN, MR. WESTRICK --  
21 THE WITNESS: YES, SIR.  
22 MR. GREEN: OBJECTION: SPECULATION.  
23 THE COURT: WE DO HAVE TO SPEAK ONE AT A TIME, AND THE  
24 COURT REPORTER ALWAYS THINK SHE'S GOT TO TRANSCRIBE ME  
25 FIRST; RIGHT?  
26 I T'S VERY DIFFICULT FOR HER TO HEAR TWO PEOPLE AND  
27 TRANSCRIBE TWO PEOPLE AT THE SAME TIME. LET WHOEVER IS  
28 TALKING, LET THEM FINISH COMPLETELY, PAUSE A MILLI SECOND

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1 BEFORE YOU START.  
2 GO AHEAD.  
3 BY MR. EMERSON:  
4 Q JUST FINISH YOUR --  
5 A YES.  
6 Q -- NATURE OF YOUR DISCUSSION ON THE SECOND ISSUE.  
7 THEN WE'LL MOVE ON TO THREE.  
8 A MY UNDERSTANDING WAS THAT DATA -- PART OF THE DATA  
9 WOULD BE NOVEMBER 26TH DATA, YES.  
10 Q AND WE TALKED ABOUT THAT DATA BEFORE.  
11 IS THERE ANYTHING IN THAT DOCUMENT THAT REFRESHES  
12 YOUR MEMORY OR THAT CAUSES YOU TO UNDERSTAND MORE ABOUT THAT  
13 NOVEMBER 26 DATA THAT YOU HAVE NOT ALREADY TOLD THE JURY?  
14 A I HAVEN'T LOOKED AT IT IN A LONG TIME.  
15 Q IS THERE ANYTHING?  
16 A OH, THIS DOCUMENT, NOVEMBER 26. OKAY.  
17 Q THERE'S NOTHING IN THERE?

18 A NO, NOT ABOUT THE DATA, SIR.

19 Q TELL THE JURY WHAT THE THIRD ISSUE THAT YOU  
20 DISCUSSED WITH RICHARD IS.

21 A HE BELIEVED THE OTHER -- PEOPLE ON THE BOARD OF  
22 DIRECTORS WERE LOOKING FOR A SCAPEGOAT, A SCAPEGOAT, AND  
23 THEY'RE NOT SMART ENOUGH TO KNOW THE WAY OUT.

24 Q DID HE SAY ANYTHING MORE ON THAT POINT IN TERMS --

25 A THESE ARE BULLET POINTS, BUT WE HAD LONG  
26 DISCUSSIONS ABOUT THIS. RICHARD AND I WERE VERY GOOD  
27 FRIENDS. HE WAS VERY FRUSTRATED, HE TOLD ME, AT THE TIME --  
28 MR. GREEN: OBJECTION.

307

1 THE COURT: MOTION GRANTED.

2 I'M GOING TO ASK THE JURY TO DISREGARD THE LAST  
3 ANSWER.

4 SEE, ANY TIME WE GET INTO CHARACTERIZING,  
5 SPECULATING AND TRYING TO TELL WHAT SOMEBODY ELSE THOUGHT,  
6 WE HAVE A PROBLEM. TRY TO -- I THINK, MR. EMERSON, YOU CAN  
7 HELP HERE BY BEING VERY SPECIFIC WITH YOUR QUESTIONS; OKAY?

8 GO AHEAD.

9 BY MR. EMERSON:

10 Q DID RICHARD DAVIS SAY ANYTHING TO ILLUMINATE OR TO  
11 EXPLAIN THE WORD "SCAPEGOAT" AS HE USED IT IN THAT  
12 CONVERSATION?

13 A I'M LOOKING FOR SOMEONE TO BLAME FOR THE ZYLON  
14 PROBLEM.

15 Q DID HE INDICATE WHO THAT MIGHT BE THAT THEY WANTED  
16 TO BLAME FOR THE ZYLON PROBLEM?

17 AGAIN, I'M NOT ASKING FOR YOUR SPECULATION OR YOUR  
18 UNDERSTANDING, BUT DID HE SAY TO YOU OR INDICATE TO YOU WHO

19 THE BOARD WANTED TO BLAME FOR THAT PROBLEM?

20 A I DON'T RECALL ANYBODY SPECIFICALLY. I REMEMBER  
21 WHAT I THOUGHT, BUT I WON'T SAY, I GUESS, IF YOU DON'T WANT  
22 ME TO.

23 Q WHAT WAS THE FOURTH ISSUE THAT WAS DISCUSSED?

24 A THE GERMAN ORDER WAS A LARGE ORDER GOING TO THE  
25 BAVARIAN GERMAN POLICE, APPROXIMATELY 70,000 UNITS, AND THAT  
26 WAS GOING TO BE A PROBLEM BECAUSE IT WAS ALL HUNDRED PERCENT  
27 ZYLON VESTS.

28 Q DID HE TELL YOU WHAT THE PROBLEM WITH THOSE 70,000

308

1 VESTS WERE?

2 A THE PROBLEM WITH THOSE VESTS, QUOTE, SECOND CHANCE  
3 MANAGEMENT IS NOT PREPARED TO TAKE THE LOSS.

4 Q DID HE SAY WHAT THAT LOSS WOULD BE?

5 A I COULD LOOK THROUGH MY NOTES, BUT MILLIONS OF  
6 DOLLARS.

7 MR. GREEN: MOVE TO STRIKE AS NONRESPONSIVE, YOUR  
8 HONOR.

9 THE COURT: OVERRULED.

10 GO AHEAD.

11 BY MR. EMERSON:

12 Q LET'S GO TO THE FIRST -- THE FIRST LINE ON --

13 A ONE MORE POINT?

14 THE COURT: YOU DON'T GET TO ASK ANY QUESTIONS. YOU  
15 JUST GET TO ANSWER THEM.

16 GO AHEAD, MR. ~EMERSON.

17 BY MR. EMERSON:

18 Q MY POINTER DOESN'T HAVE -- IT DOESN'T WORK.

19 ON YOUR DOCUMENT IN FRONT OF YOU, DO YOU SEE THE

20 FIRST BULLET POINT?

21 A YES, SIR, I CAN SEE IT.

22 Q AND YOU WROTE, "SECOND CHANCE SHOULD IMMEDIATELY  
23 NOTIFY OUR CUSTOMERS OF THE DEGRADATION PROBLEMS WE ARE  
24 EXPERIENCING WITH ULTIMA ARMOR. "

25 DO YOU SEE THAT?

26 A YES, SIR. YES, SIR, I DO SEE IT.

27 Q WHY DID YOU SAY THAT TO RICHARD DAVIS?

28 A I WAS VERY AFRAID A POLICE OFFICER OR SOLDIER

309

1 COULD BE KILLED, THAT THIS IS -- THIS IS A VERY BIG PROBLEM  
2 THAT SECOND -- A VERY BIG PROBLEM.

3 Q WHEN DID YOU LEAVE SECOND CHANCE BODY ARMOR?

4 A I WAS FIRED IN OCTOBER OF '04.

5 Q PRIOR TO BEING TERMINATED, DID SECOND CHANCE EVER  
6 NOTIFY ITS CUSTOMERS OF WHAT YOU'VE TERMED DEGRADATION  
7 PROBLEMS?

8 MR. LYLE: OBJECTION: FOUNDATION, YOUR HONOR.

9 THE COURT: I GUESS YOU'RE GOING TO HAVE TO AT LEAST  
10 LIMIT IT TO HIS KNOWLEDGE OR HOW HE WOULD KNOW.

11 MR. LYLE: ALSO, JUDGE, IT'S A MOTION IN LIMINE.

12 THE COURT: WELL, OVERRULED.

13 GO AHEAD.

14 BY MR. EMERSON:

15 Q TO YOUR KNOWLEDGE?

16 A I -- AROUND OCTOBER OF '03, THERE WAS A  
17 NOTIFICATION THAT --

18 Q PRIOR TO OCTOBER '03, TO YOUR KNOWLEDGE -- AND YOU  
19 WERE EMPLOYED AS OF OCTOBER 2003; CORRECT?

20 A YES, SIR.

21 Q PRIOR TO OCTOBER OF 2003, DID SECOND CHANCE BODY  
22 ARMOR, TO YOUR KNOWLEDGE, NOTIFY ITS CUSTOMERS OF  
23 DEGRADATION PROBLEMS WITH ZYLON?

24 A NO.

25 MR. EMERSON: THE NEXT BULLET POINT, PLEASE.  
26 BY MR. EMERSON:

27 Q YOU WROTE, DR. WESTRICK, "SECOND CHANCE SHOULD  
28 CLARIFY THIS ISSUE WITH MAJOR CUSTOMERS THAT HAVE PLACED

310

1 ORDERS AND, AFTER CLARIFICATION, CANCEL ORDERS IF  
2 REQUESTED."

3 WHAT DID YOU MEAN BY THAT?

4 A THAT WE SHOULD LOOK AHEAD AND THAT PERSON --  
5 DEPARTMENTS OR MILITARY UNITS THAT HAD PLACED ORDERS FOR  
6 THIS TYPE OF ARMOR SHOULD BE NOTIFIED THAT WE WERE SEEING  
7 PROBLEMS AND GIVEN THE OPPORTUNITY TO CANCEL SAID ORDERS IF  
8 THEY WANTED.

9 Q TO YOUR -- TO YOUR KNOWLEDGE, PRIOR TO  
10 OCTOBER 2003, DID SECOND CHANCE EVER NOTIFY, PER YOUR  
11 SUGGESTION, MAJOR CUSTOMERS THAT HAD PLACED ORDERS WITH  
12 SECOND CHANCE BODY ARMOR ABOUT DEGRADATION PROBLEMS?

13 A NOT SECOND CHANCE.

14 MR. EMERSON: NEXT BULLET POINT, PLEASE.  
15 BY MR. EMERSON:

16 Q DR. WESTRICK, YOU WROTE, "SECOND CHANCE SHOULD  
17 MAKE THE RIGHT DIFFICULT DECISIONS REGARDING THIS ISSUE."

18 DO YOU SEE THAT?

19 A YES, SIR.

20 Q DID YOU HAVE ANY DISCUSSIONS WITH RICHARD DAVIS  
21 ABOUT WHAT, AS YOU FRAMED IT, THE RIGHT DIFFICULT DECISIONS



22 WERE?

23 A YES, SIR.

24 Q TELL THE JURY WHAT YOU TOLD RICHARD DAVIS ABOUT  
25 THE RIGHT DIFFICULT DECISIONS.

26 A THE RIGHT DIFFICULT DECISIONS, BEFORE ANYONE WAS  
27 HURT OR KILLED, THAT WE SHOULD GIVE THE CUSTOMER AN  
28 OPPORTUNITY TO PULL THIS -- TO GET THE ARMOR BACK IN OR

311

1 RECALL THE ARMOR. THAT WOULD BE COSTLY, BUT IT WOULD BE THE  
2 RIGHT THING TO DO BEFORE SOMEONE WAS HURT.

3 Q SIR, PRIOR TO OCTOBER OF 2003, DID SECOND CHANCE  
4 BODY ARMOR DO AS YOU SUGGESTED AND MAKE THE RIGHT DIFFICULT  
5 DECISIONS, IN YOUR MIND?

6 A NO, SIR.

7 Q YOU CONTINUE IN THAT SAME SENTENCE: "LIVES AND  
8 OUR CREDIBILITY ARE AT STAKE"; RIGHT?

9 A YES, SIR.

10 Q DID I READ THAT CORRECTLY?

11 A YES.

12 Q TELL THE JURY WHAT YOU MEANT BY THAT.

13 A I HOPE IT'S SELF-EXPLANATORY.

14 LIVES AND OUR CREDIBILITY ARE AT STAKE. SOME  
15 POLICE OFFICER OR SOLDIER COULD BE KILLED, AND OUR  
16 CREDIBILITY AS BEING WHAT I BELIEVED AT THAT TIME TO BE THE  
17 WORLDS LARGEST AND BEST BODY ARMOR COMPANY WOULD BE  
18 DESTROYED.

19 Q DID YOU HAVE CONVERSATIONS WITH RICHARD DAVIS  
20 WHERE YOU TOLD HIM THAT LIVES AND CREDIBILITY WERE AT STAKE?

21 A MANY TIMES. AND WITH THE BOARD OF DIRECTORS,  
22 ALSO.

23 Q AS TO RICHARD DAVIS, WHAT WAS HIS RESPONSE WHEN  
24 YOU TOLD HIM THAT?

25 A UP UNTIL THE END, BEING MY TERMINATION, HE -- HIM  
26 AND I GOT ALONG. HE AGREED WITH ME MOST OF THE TIME ON  
27 THESE ISSUES.

28 Q WHAT DID HE TELL YOU ABOUT HIS CONCERN FOR LIVES

312

1 AND CREDIBILITY?

2 A HE TOLD ME THAT HE WOULD NEVER PUT A POLICE  
3 OFFICER'S LIFE AT RISK AND THAT HE DID WANT TO TAKE CARE OF  
4 THE PROBLEM.

5 Q DID HE?

6 A NO.

7 Q AND YOU SAID -- YOU TOLD THE EXECUTIVE COMMITTEE?

8 A AT DIFFERENT TIMES. EARLY ON I WAS ABLE TO TALK  
9 TO THEM, AND YES, EVERYONE -- EVERY EXECUTIVE AT SECOND  
10 CHANCE BODY ARMOR KNEW WHERE I STOOD ON THIS ISSUE.

11 Q DID YOU EVER HAVE ANY CONVERSATIONS WITH  
12 MR. BACHNER THAT YOUR BELIEF WAS THAT LIVES AND CREDIBILITY  
13 WERE AT STAKE --

14 A YES, SIR.

15 Q -- CONCERNING DEGRADATION PROBLEMS OF ZYLON?

16 A YES, SIR, I DID.

17 Q WHAT WAS HIS RESPONSE?

18 A THIS IS KIND OF DIFFICULT, BUT HE -- AFTER I  
19 PRESENTED A STUDY, HE TOLD ME THAT THEY WERE GOING TO HANG  
20 THIS ON ME AND THAT I KNEW TOO MUCH.

21 Q DID YOU ASK HIM WHAT HE MEANT BY THAT?

22 A IF I COULD BE RIGHT TO THE POINT, COUNSELOR, I  
23 USED PROFANITY, AND I WALKED AWAY OUT OF HIS OFFICE, AND I

24 NOTIFIED RICHARD DAVIS OF WHAT HE HAD SAID.

25 Q WHAT DID RICHARD DAVIS SAY?

26 A MADE A COMMENT ABOUT ED BEING MOODY, THAT HE WOULD  
27 TAKE CARE OF IT, AND IT WAS NEVER TAKEN CARE OF TO MY  
28 KNOWLEDGE.

313

1 Q DID ED BACHNER, PRIOR TO OCTOBER 2003 -- DID HE  
2 TELL YOU ANYTHING OR DID YOU SEE HIM DO ANYTHING -- DID YOU  
3 OBSERVE HIM DO ANYTHING TO NOTIFY CUSTOMERS OF THE  
4 DEGRADATION PROBLEMS?

5 A NOT TO NOTIFY, NO, SIR.

6 Q DID YOU SEE HIM DO ANYTHING THAT WOULD ANY WAY  
7 MINIMIZE THE RISK THAT YOU'VE IDENTIFIED IN THIS DOCUMENT?

8 A MANY THINGS.

9 Q WHAT DID HE DO?

10 A IN THE COURSE OF REGIONAL SALES MEETINGS TALKING  
11 WITH SALES PERSONS AND SO FORTH, HE MINIMIZED IT. HE -- AT  
12 SOME POINTS WE HAD LIVE SALES MEETINGS, AND WE WERE SUPPOSED  
13 TO HAVE -- THIS WOULD BE IN SEPTEMBER OF '02 THAT THERE WAS  
14 A LETTER WRITTEN OUT BY RICHARD DAVIS TO EXPLAIN TO OUR  
15 SALES STAFF THAT THERE MAY BE A PROBLEM -- IT WAS A START --  
16 AND THAT LETTER WAS TAKEN IN --

17 Q SIR, JUST SO WE CAN MOVE ON --

18 MR. GREEN: MOVE TO STRIKE AS NONRESPONSIVE, YOUR  
19 HONOR.

20 THE COURT: I THINK HE WAS STARTING TO BE RESPONSIVE,  
21 SO I'LL DENY THE MOTION.

22 BUT, MR. WESTRICK, YOU UNDERSTAND THE CONCERN  
23 HERE. WE'VE GOT TO JUST DIRECTLY ANSWER IT. GET IN; GET  
24 OUT. LET HIM ASK YOU ANOTHER QUESTION.

25 BY MR. EMERSON:

26 Q WHAT DID BACHNER DO -- MR. BACHNER DO IN RESPONSE  
27 TO YOUR TELLING HIM THAT YOU FELT THAT LIVES AND CREDIBILITY  
28 WERE AT STAKE?

314

1 A HE DIDN'T -- HE REALLY GAVE ME A HARD TIME, BUT HE  
2 DIDN'T DO ANYTHING.

3 Q HOW DID HE GIVE YOU A HARD TIME?

4 A THAT WAS A VERY DIFFICULT PLACE TO WORK.

5 Q WHAT DID HE DO TO MAKE IT DIFFICULT FOR YOU TO  
6 WORK THERE?

7 A HE DIDN'T TALK TO ME. WALKED BY MY OFFICE;  
8 WOULDN'T SAY A WORD TO ME.

9 Q ANYBODY ELSE ON THE EXECUTIVE COMMITTEE THAT YOU  
10 HAD A CONVERSATION WITH CONCERNING -- CONCERNING  
11 SPECIFICALLY YOUR CONCERN THAT LIVES AND CREDIBILITY WERE AT  
12 STAKE AS IT RELATED TO THE ZYLON DEGRADATION PROBLEM?

13 A I SPOKE WITH PAUL BANDUCCI.

14 Q AND PAUL BANDUCCI IS WHO, FOR THE JURY?

15 A VICE-PRESIDENT AND GENERAL MANAGER.

16 Q HE WAS VICE-PRESIDENT.

17 WAS HE EVENTUALLY PRESIDENT?

18 A YES, SIR, HE WAS.

19 Q AT THE TIME HE WAS VICE-PRESIDENT, WHAT DID YOU  
20 TELL HIM, TO THE BEST OF YOUR RECOLLECTION?

21 A I TOLD HIM I WAS GOING TO GO FORWARD, GO PUBLIC  
22 WITH THIS INFORMATION THAT ZYLON WAS NOT SAFE.

23 MR. LYLE: MOVE TO STRIKE. ZYLON -- THAT IS --

24 THE COURT: I UNDERSTAND.

25 MR. LYLE: HE'S TALKING ABOUT VESTS.

26 THE COURT: I UNDERSTAND. HE'S JUST TELLING US WHAT HE  
27 SAID. I UNDERSTOOD THAT TO BE A QUOTE, SO OVERRULED.  
28 GO AHEAD.

315

1 BY MR. EMERSON:

2 Q SO YOU TOLD PAUL BANDUCCI THAT YOU DIDN'T FEEL  
3 ZYLON WAS SAFE?

4 A YES, SIR.

5 Q WHAT WAS HIS RESPONSE?

6 A HE TOLD ME THAT IF I SAID A WORD, I'D BE BREAKING  
7 MY CONTRACT AND I WOULD BE SUED TILL DEATH, UNTIL I DIED,  
8 AND THAT I WOULD NEVER MAKE ANOTHER PENNY.

9 Q DID YOU TAKE HIM SERIOUSLY?

10 A I TOOK A NUMBER OF THINGS SERIOUSLY THERE, YES,  
11 SIR.

12 Q AND DID HE DO ANYTHING TO NOTIFY CUSTOMERS OR TO  
13 INFORM CUSTOMERS OF THE DEGRADATION PROBLEMS THAT YOU  
14 BELIEVE PUT LIVES AT RISK?

15 A BEFORE --

16 Q BEFORE OCTOBER OF '03?

17 A NO.

18 Q FINALLY, DR. WESTRICK, THERE'S --

19 MR. EMERSON: NEXT ONE.

20 BY MR. EMERSON:

21 Q YOU WRITE -- AND I -- YOU'VE WRITTEN THERE THAT  
22 "YOU SHOULD CEASE ALL BONUSES WITHIN THE COMPANY. "

23 I'M NOT GOING TO TALK ABOUT THAT BULLET POINT, SO  
24 THE JURY IS AWARE THAT'S THERE.

25 "WE WILL ONLY PREVAIL IF WE DO THE RIGHT THINGS  
26 AND NOT HESITATE. "

27 DO YOU SEE THAT?

28 A YES, SIR.

316

1 Q DID YOU TELL RICHARD DAVIS WHAT THE RIGHT THINGS  
2 WERE THAT YOU HAVE INDICATED IN YOUR MEMO?

3 A I OUTLINED THEM IN MY MEMO, YES, SIR. I TOLD  
4 THEM.

5 Q FOR THE JURY, JUST TELL THE JURY WHAT THE RIGHT  
6 THING WOULD HAVE BEEN FOR RICHARD DAVIS AND SECOND CHANCE TO  
7 DO AT THIS TIME.

8 MR. GREEN: OBJECTION, YOUR HONOR.

9 THE COURT: THAT'S A LITTLE BROAD.

10 MR. EMERSON: I'LL MOVE ON, YOUR HONOR. I'LL ASK  
11 ANOTHER QUESTION.

12 BY MR. EMERSON:

13 Q YOU SAID "AND NOT HESITATE."

14 DO YOU SEE THAT?

15 A YES, SIR.

16 Q WHY DID YOU TELL RICHARD DAVIS NOT TO HESITATE IN  
17 DOING WHAT YOU'VE REFERRED TO AS THE RIGHT THINGS?

18 A BECAUSE IT SHOULD BE DONE IMMEDIATELY. IT SHOULD  
19 BE DONE WITHOUT DELAY.

20 Q WHY?

21 A BECAUSE I BELIEVED AT THE TIME WE HAD  
22 APPROXIMATELY 80,000 ULTIMA VESTS -- APPROXIMATELY 80,000  
23 ULTIMA VESTS ON THE MARKET, AND WE WERE PREPARED TO MAKE  
24 70,000 MORE FOR THE GERMANS, AND THAT WE -- IT NEEDED TO BE  
25 TAKEN CARE OF IMMEDIATELY.

26 Q WHAT WAS YOUR CONCERN IF THEY WEREN'T TAKEN CARE  
27 OF IMMEDIATELY?

28 A THAT THEY AREN'T -- THAT THE ARMOR WOULD NOT --  
317

1 WOULD NOT PERFORM UP TO ITS BALLISTIC -- THAT -- UP TO THE  
2 LEVEL IT WAS SUPPOSED TO, THAT A BULLET WOULD PENETRATE THE  
3 ARMOR AND SOMEONE WOULD BE HURT OR KILLED.

4 Q YOU WRITE, "THIS ISSUE SHOULD NOT BE HIDDEN FOR  
5 OBVIOUS SAFETY ISSUES AND BECAUSE OF FUTURE LITIGATION."

6 DO YOU SEE THAT?

7 A YES, SIR.

8 Q I THINK YOU'VE COVERED THIS, BUT JUST GIVE YOU AN  
9 OPPORTUNITY TO CLARIFY FOR THE JURY IF YOU NEED TO.

10 WHAT DO YOU MEAN BY OFFICER SAFETY ISSUES?

11 A "OBVIOUS SAFETY ISSUES."

12 Q I'M SORRY. "OBVIOUS SAFETY ISSUES"?

13 A VESTS THAT DO NOT STOP BULLETS PROPERLY, THERE'S A  
14 SAFETY ISSUE, AND SOMEONE COULD BE INJURED OR HURT.

15 Q "BECAUSE OF FUTURE LITIGATION," WHAT DID YOU MEAN  
16 BY THAT?

17 A HERE WE ARE.

18 MR. GREEN: OBJECTION, YOUR HONOR. MOVE TO STRIKE AS  
19 NONRESPONSIVE.

20 THE COURT: MOTION IS GRANTED.

21 AND I'LL ASK THE JURY TO DISREGARD THAT LAST  
22 COMMENT.

23 LET'S MOVE ON.

24 BY MR. EMERSON:

25 Q WHAT WAS -- DID YOU ACTUALLY HAND THIS MEMO TO  
26 RICHARD DAVIS?

27 A I BELIEVE I DID. I WAS UP IN -- AGAIN, I COULD  
28 CONSULT MY NOTES.

1 I WAS UP IN HIS OFFICE, AND I GAVE IT TO HIM UP IN  
2 HIS OFFICE.

3 Q WHAT WAS HIS REACTION?

4 A I REMEMBER HE LOOKED AT IT AND DIDN'T MAKE AN  
5 IMMEDIATE COMMENT. I DON'T THINK IT WAS TOO MUCH OF A  
6 SURPRISE BECAUSE WE HAD THE CONVERSATION THAT DAY.

7 Q WAS THERE ANY FOLLOWUP DISCUSSION ON THAT? I MEAN  
8 WAS THERE ANY FOLLOWUP DISCUSSION ON WHAT YOU WROTE IN THIS  
9 MEMO AFTER DECEMBER 18TH, 2001?

10 A I'M SURE THAT -- I'M SURE THAT THERE WAS, THAT --  
11 I CAN'T RECALL ANY PARTICULAR INCIDENT. MY POSITION ON THIS  
12 ISSUE WAS WELL-KNOWN INSIDE THE COMPANY.

13 Q I'M GOING TO ASK YOU SOME QUESTIONS AS IT RELATES  
14 TO ZYLON.

15 WHEN DID YOU -- YOU SAID YOU FIRST BECAME AWARE OF  
16 ZYLON WHEN THE -- MR. KAROKI AND THE SECOND CHANCE  
17 EXECUTIVES MET; IS THAT RIGHT?

18 A OF THE FIBER, YES.

19 Q AND WHEN DID SECOND CHANCE FIRST BEGIN USING ZYLON  
20 COMMERCIALY? WHEN WAS IT FIRST USED AS -- IN A VEST THAT  
21 WAS PUT ON THE MARKET?

22 A 1998, LATE -- MY RECOLLECTION IS LATE 1998. BUT  
23 THERE WERE SAMPLE ZYLON VESTS EVEN TOWARDS THE END OF '97.  
24 BUT COMMERCIALY, '98, IF I RECALL, YES.

25 Q IN 1998, DO YOU KNOW WHAT THE WARRANTY WAS FOR A  
26 SECOND CHANCE ULTIMA 2A VEST?

27 A YES, SIR.

28 Q WHAT WAS IT?



1 A FIVE-YEAR WARRANTY.

2 Q IN 2002 -- FOR EXAMPLE, A VEST MANUFACTURED  
3 OCTOBER 24TH, 2002, DO YOU KNOW WHAT WARRANTY PERIOD WOULD  
4 HAVE ACCOMPANIED THAT VEST?

5 A THE SAME VEST OR ALL ULTIMA VESTS?

6 Q ULTIMA 2A VEST MANUFACTURED ON OCTOBER 24TH, 2002?

7 A ULTIMA 2 WOULD BE FIVE YEARS.

8 Q TELL THE JURY WHAT KIND OF TESTING SECOND CHANCE  
9 DID ON ULTIMA 2 VESTS PRIOR TO OCTOBER 24TH, 2002.

10 MR. GREEN: OBJECTION, YOUR HONOR: FOUNDATION;  
11 OVERBROAD.

12 THE COURT: IT IS PRETTY BROAD. I THINK YOU'RE GOING  
13 TO HAVE TO LIMIT IT SOMEHOW, TIME OR OTHERWISE.

14 BY MR. EMERSON:

15 Q ARE YOU FAMILIAR WITH THE TERM "USED VEST  
16 TESTING"?

17 A YES.

18 Q ARE YOU FAMILIAR ALSO WITH THE TERM "AGE STUDIES"  
19 OR "AGING TESTS"?

20 A YES.

21 Q TELL THE JURY WHAT "USED VEST TESTING" IS, JUST  
22 BRIEFLY.

23 A YOU PULL IN VESTS THAT HAVE BEEN USED, AND YOU DO  
24 A V50 ANALYSIS. YOU SHOOT THEM.

25 Q THAT'S WHAT YOU HAD ESTABLISHED THE PROTOCOL FOR  
26 THE LONG BOAT KEY VESTS.

27 A YES. THAT'S WHAT I LEARNED IN THE COURSE OF MY  
28 DUTIES.

1 Q THE AGING STUDIES, TELL THE JURY BRIEFLY WHAT THAT  
2 IS.

3 A THE AGING STUDIES?

4 Q AS IT RELATES TO TESTING OF FIBERS AND FABRICS AND  
5 BALLISTICS VESTS, WHAT IS AN AGING STUDY?

6 A BY TOYOBO OR BY -- I'M NOT SURE WHAT YOU'RE ASKING  
7 ME, SIR.

8 Q DID SECOND CHANCE BODY ARMOR -- DID THEY DO ANY  
9 KIND OF AGING TESTS? DID THEY ADVANCE, I GUESS -- DID THEY  
10 DO ANY -- PUT THE VEST IN SOME KIND OF PROCESS TO AGE IT?

11 A AT SECOND CHANCE --

12 MR. GREEN: OBJECTION: LEADING, YOUR HONOR;  
13 FOUNDATION.

14 THE COURT: IT IS LEADING, SO SUSTAINED.

15 BY MR. EMERSON:

16 Q DID SECOND CHANCE BODY ARMOR DO ANY USED VEST  
17 TESTING ON ULTIMA 2 VESTS, OTHER THAN THE LONG BOAT KEY  
18 STUDY THAT YOU ALREADY TALKED ABOUT?

19 A OH, YES. SECOND CHANCE DID A VEST -- A SAMPLE OF  
20 VESTS FROM ACROSS THE UNITED STATES.

21 Q WHEN DID THEY DO THAT? DO YOU KNOW?

22 A IT WOULD BE IMMEDIATELY FOLLOWING AND DURING LONG  
23 BOAT KEY.

24 Q SO IT WOULD HAVE BEEN IN THE SUMMER OF 2001 AND --

25 A EXTENDING TOWARDS 2003 IS MY BELIEF.

26 Q DID YOU -- DID YOU PARTICIPATE IN THOSE -- IN THAT  
27 TESTING AT ALL?

28 A I WASN'T ALLOWED.

321

1 Q DID SOMEBODY TELL YOU WHY YOU WERE NOT ALLOWED?

2 A I'VE ALREADY -- YES.

3 Q WHO TOLD YOU YOU WERE NOT ALLOWED TO PARTICIPATE  
4 IN THOSE STUDIES?

5 A RICHARD DAVIS.

6 Q DID HE TELL YOU WHY?

7 A INDICATED THE BOARD OF DIRECTORS DID NOT WANT ME  
8 ON THE ZYLON CASE.

9 Q DID HE TELL YOU WHY YOU WEREN'T GOING TO BE ON THE  
10 ZYLON CASE?

11 A IN HIS OPINION -- IN HIS OPINION IT WAS THAT --  
12 THAT I'M TRUTHFUL, THAT I WOULDN'T GO ALONG WITH THEIR GAME.

13 Q DID -- I ASKED YOU IF YOU WERE INVOLVED.

14 DID YOU EVER SEE ANY REPORT OR DATA COMING BACK  
15 FROM THOSE USED VESTS' TESTS THAT WERE DONE?

16 A NOT TILL I WAS -- AS I INDICATED EARLIER, NOT TILL  
17 LATER. BUT RICHARD DAVIS TOLD ME, AND I RECORDED THE  
18 NUMBERS THAT HE TOLD ME. THEY COINCIDE WITH THE DATA.

19 Q WHAT DID HE TELL YOU?

20 A HE GAVE ME DIFFERENT PERCENTAGES. THE V50  
21 ANALYSIS WAS COMING BACK. AND I ALSO SPOKE WITH RICHARD  
22 MUZER (PHONETIC) AT U. S. TEST LABS, AND I WAS THERE DOING  
23 SOME OTHER BALLISTICS TEST.

24 Q WHEN RICHARD DAVIS TOLD YOU ABOUT THE TEST DATA  
25 COMING BACK AND HE GAVE YOU TESTING PERCENTAGES OF V50  
26 TESTING -- WE ALREADY TALKED ABOUT LONG BOAT KEY. THIS IS  
27 SEPARATE FROM THAT; CORRECT?

28 A YES, SIR.

322

1 Q WHEN DID HE FIRST START TELLING YOU ABOUT OTHER  
2 RESULTS OF V50 TESTING ON OTHER USED ULTIMA VESTS?

3 A PRETTY QUICK. AUGUST, AUGUST OF 2001.

4 Q IN AUGUST OF 2001, DO YOU RECALL WHAT HE TOLD YOU  
5 ABOUT HOW THOSE VEST STUDIES WERE, THOSE VEST PERFORMANCE  
6 TESTS WERE COMING BACK?

7 A WHAT HE TOLD ME AT THAT POINT -- AGAIN, I CAN LOOK  
8 AT MY NOTES, BUT I RECALL THREE TO FIVE PERCENT. AND LATER  
9 ON IT WAS HIGHER AND A LITTLE HIGHER, THREE TO FIVE PERCENT  
10 A YEAR AND THEN A LITTLE HIGHER.

11 Q DID HE EXPRESS TO YOU AN OPINION AS TO WHAT THAT  
12 THREE TO FIVE PERCENT MEANT TO HIM, WHETHER THAT WAS HIGH,  
13 LOW OR INSIGNIFICANT OR ALARMING? DID HE TELL YOU ANYTHING?

14 A HE WAS -- HE WAS ALARMED.

15 Q DID HE TELL YOU THAT?

16 A YES.

17 Q DID YOU HAVE A DISCUSSION ABOUT WHAT HE WAS GOING  
18 TO DO ABOUT WHAT HE FOUND TO BE ALARMING STUDY DATA?

19 A I -- HE STARTED TO HATCH DIFFERENT IDEAS OF TRYING  
20 TO TAKE CARE OF THE PROBLEM.

21 Q DID RICHARD DAVIS EVER CONSIDER, TO YOUR  
22 KNOWLEDGE -- DID YOU EVER HAVE A DISCUSSION WITH HIM WHERE  
23 HE TOLD YOU WE NEED TO STOP MAKING THESE VESTS, JUST LIKE  
24 YOU TOLD HIM?

25 A WHAT TIME PERIOD, SIR?

26 Q AT ANY POINT IN TIME? DID HE EVER DO THAT?

27 A MANY TIMES.

28 Q WHEN DID HE FIRST TELL YOU THAT HE FELT SECOND

323

1 CHANCE BODY ARMOR SHOULD STOP USING ZYLON IN BULLET PROOF  
2 VESTS?

3 A HE FIRST INDICATED THAT, I WANT TO SAY, OCTOBER

4 NOVEMBER OF 2001. HE HALTED THE PRODUCTION AT ONE POINT IN  
5 2002 FOR A DAY OR TWO. THEN HE KEPT MAKING THEM.

6 SIR, I CAN CONSULT MY NOTES, BUT HE -- HE A NUMBER  
7 OF TIMES INDICATED THAT WE SHOULD STOP USING ZYLON.

8 Q LET'S GO TO THE TIME IN 2002.

9 DO YOU REMEMBER WHEN THAT WAS IN 2002?

10 A AROUND AUGUST OF 2002.

11 Q IN AUGUST OF 2002, TELL ME WHAT HE SAID TO YOU  
12 ABOUT -- ABOUT SECOND CHANCE'S MANUFACTURE OF HUNDRED  
13 PERCENT ZYLON VESTS?

14 A HE WALKED INTO MY OFFICE AND TOLD ME THAT -- HE  
15 KNEW I WAS SO CONCERNED ABOUT THIS -- THAT THEY HAD HALTED  
16 THE PRODUCTION OF VESTS USING ZYLON.

17 Q WERE YOU ABLE TO CONFIRM THAT?

18 A IT WAS PRETTY -- WITHIN AN EXECUTIVE GROUP, IT WAS  
19 PRETTY WELL KNOWN. IT WAS CONTROVERSIAL AND CAUSED A LOT  
20 OF -- QUITE A BIT OF A HUM. I MEAN, IT WAS NEWSWORTHY  
21 INSIDE THE ORGANIZATION.

22 Q DID HE TELL YOU WHY HE WAS DOING IT, OR DID HE  
23 JUST SAY WE'RE STOPPING?

24 A SAFETY.

25 Q HE TOLD YOU THAT?

26 A YES, SIR.

27 Q WAS THERE ANY KIND OF A DIRECTIVE OR ANY KIND --  
28 WAS IT MEMORIALIZED IN WRITING IN ANY WAY? DO YOU KNOW?

324

1 A I -- I'M SURE I RECORDED IT IN MY NOTES.

2 Q WAS THERE ANY DIRECTIVE OR MEMO SENT TO ANYBODY  
3 ELSE IN THE COMPANY?

4 A I BELIEVE THAT -- I DON'T KNOW THAT FIRSTHAND. I

5 BELIEVE THERE WOULD HAVE BEEN. I CAN CHECK MY NOTES.

6 MR. GREEN: OBJECTION, YOUR HONOR.

7 THE COURT: ANY TIME YOU DON'T KNOW OR YOU'RE GOING TO  
8 GUESS OR SPECULATION, THAT'S NOT GOING TO BE HELPFUL TO US.

9 I'M GOING TO ASK THE JURY TO DISREGARD THAT LAST  
10 COMMENT.

11 LET HIM ASK YOU A QUESTION.

12 BY MR. EMERSON:

13 Q WHAT DID HE TELL YOU ABOUT HOW HE STOPPED  
14 PRODUCTION OF THOSE VESTS?

15 A HE ORDERED MANUFACTURING, LARRY MC~CRANEY, TO QUIT  
16 USING ZYLON.

17 Q AND TO YOUR KNOWLEDGE, DID LARRY MC~CRANEY STOP  
18 USING ZYLON?

19 A FOR A COUPLE OF DAYS OR SO.

20 Q WHEN YOU SAY "A COUPLE OF DAYS OR SO," ARE YOU  
21 SURE THEY STOPPED -- THEY STARTED MANUFACTURING THEM AGAIN?

22 A OH, YES, I'M SURE THEY STARTED MANUFACTURING THEM  
23 AGAIN, YES, SIR.

24 Q DID YOU THEN HAVE A CONVERSATION WITH RICHARD  
25 DAVIS OR ANY OTHER INDIVIDUAL IN THE EXECUTIVE COMMITTEE AS  
26 TO WHY THEY HAD STARTED MANUFACTURING WITH ZYLON AGAIN?

27 A YES.

28 Q AND WHO DID YOU HAVE THAT CONVERSATION WITH?

325

1 A RICHARD DAVIS.

2 I'M GOING TO HAVE TO LOOK AT MY NOTES. IT WAS --

3 Q YOU CAN LOOK AT YOUR NOTES IF YOU'D LIKE.

4 A -- AUGUST 2002.

5 YES, SIR. YES, SIR. I HAVE A NOTE HERE ON IT.

6 Q DOES THAT REFRESH YOUR MEMORY?  
7 A YES, SIR.  
8 Q OKAY. IF YOU CAN TELL THE JURY -- FIRST OF ALL,  
9 WHAT IS IT YOU'RE LOOKING AT?  
10 A I'M LOOKING AT MY -- I KEPT -- WHEN I FELT THERE  
11 WAS GOING TO BE A PROBLEM, I STARTED KEEPING A VERY ACTIVE  
12 LOGBOOK. AND I RECORDED THINGS ON, NOT ON A DAILY BASIS,  
13 BUT AS THEY CAME ABOUT.  
14 Q IS THIS A PAGE FROM YOUR LOGBOOK?  
15 A YES, SIR, THIS IS.  
16 Q IS THERE A DATE ON THAT?  
17 A 8/8 OF '02, SO -- I HAVE A.M. SO IT MUST HAVE BEEN  
18 IN THE MORNING.  
19 Q YOU SAID 8/8/02.  
20 IS THAT THE DATE THAT YOU WROTE IT, OR IS THAT THE  
21 DATE YOU HAD THE DISCUSSION?  
22 A IN THAT CASE -- IN THIS CASE IT WOULD BE BOTH.  
23 Q DOES THAT REFRESH YOUR MEMORY AT ALL?  
24 A YES.  
25 Q CAN YOU TELL THE JURY HOW THAT REFRESHES YOUR  
26 MEMORY, WITHOUT READING THE DOCUMENT, PLEASE.  
27 A IT SAYS THAT RICHARD CAME INTO MY OFFICE.  
28 MR. GREEN: OBJECTION, YOUR HONOR.

326

1 THE COURT: WE'RE NOT GOING TO READ THE DOCUMENT.  
2 THE WITNESS: THAT RICHARD CAME INTO MY OFFICE AND  
3 SHOWED ME A LETTER THAT SAID THAT -- THAT INDICATED THAT  
4 SHIPMENTS --  
5 MR. GREEN: OBJECTION: CALLS FOR HEARSAY; BEST  
6 EVIDENCE, YOUR HONOR.

7 THE COURT: WELL, HE CAN TELL US IF HE NOW HAS A  
8 PRESENT RECOLLECTION OF A CONVERSATION WITH MR. ~DAVIS.  
9 WE'RE NOT GOING TO READ THAT DOCUMENT. IF IT  
10 DOESN'T REFRESH HIS RECOLLECTION, THEN WE'RE DONE. WE WILL  
11 MOVE ON TO THE NEXT QUESTION.

12 MR. EMERSON: I THINK HE'S INDICATED THAT --

13 THE COURT: LET'S ASK HIM A QUESTION. WE'RE SPENDING  
14 TOO MUCH TIME ON THIS.

15 BY MR. EMERSON:

16 Q TO YOUR KNOWLEDGE, DID ANYTHING CHANGE IN EITHER  
17 THE PROCESS -- LET ME JUST START WITH THE PROCESS.

18 DID ANYTHING CHANGE IN THE MANUFACTURING PROCESS  
19 OF HUNDRED PERCENT ZYLON VESTS IN THE TWO OR THREE DAYS THAT  
20 SECOND CHANCE WAS NOT MAKING THEM?

21 A NO, NOT TO MY KNOWLEDGE.

22 Q FROM THE TIME THAT THEY STOPPED FOR THAT TWO- TO  
23 THREE-DAY PERIOD UNTIL THEY STARTED MAKING THEM AGAIN, DID  
24 ANYTHING CHANGE WITH REGARDS TO THE PROCESS OR THE -- THE  
25 MANNER IN WHICH OR THE CONTENT OF HUNDRED PERCENT ZYLON  
26 ULTIMA VESTS?

27 A NOT TO MY KNOWLEDGE, NO.

28 Q WHO'S JUDY WESTRICK?

327

1 A JUDY WESTRICK, MY SISTER.

2 Q WHAT DOES YOUR SISTER DO?

3 A SHE'S A PH. D. CHEMIST.

4 Q IS SHE EMPLOYED?

5 A YES, SHE IS.

6 Q WHERE?

7 A LAKE SUPERIOR STATE UNIVERSITY.



8 Q HOW LONG HAS SHE BEEN EMPLOYED THERE?  
9 MR. GREEN: OBJECTION: RELEVANCE, YOUR HONOR.  
10 THE COURT: SEEMS LIKE -- FIRST TIME I'VE EVER HEARD OF  
11 HER. I DON'T THINK SHE'S GOT ANYTHING TO DO WITH THIS CASE.  
12 SEEMS LIKE IT'S NOT RELEVANT, SO SUSTAINED.  
13 BY MR. EMERSON:  
14 Q DID YOU -- DID YOU -- WERE YOU INVOLVED IN A --  
15 HAVING A STUDY COMPLETED AS IT PERTAINS TO ZYLON?  
16 A YES.  
17 Q WHEN WAS THAT?  
18 A THAT WOULD HAVE STARTED APPROXIMATELY MARCH OF  
19 2002.  
20 Q AND WHAT WAS YOUR INVOLVEMENT IN THAT STUDY?  
21 A I WAS, AS A MEMBER OF SECOND CHANCE, CONTRACTING  
22 WITH LAKE SUPERIOR STATE UNIVERSITY, MY SISTER DR. JUDY  
23 WESTRICK, TO LOOK AT -- TAKE A LOOK AT ZYLON.  
24 Q WHAT WAS THE PURPOSE OF HAVING SECOND CHANCE  
25 CONTRACT WITH LAKE SUPERIOR STATE UNIVERSITY TO HAVE THEM  
26 EXAMINE ZYLON?  
27 A I WANTED TO TAKE A CHEMICAL -- GET A CHEMICAL  
28 ANALYSIS, CHEMICAL LOOK, AND A MECHANICAL LOOK TO SEE IF

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1 THIS WAS DEGRADING.  
2 Q AND WAS THAT STUDY ACTUALLY PERFORMED?  
3 A A DRAFT STUDY WAS DONE, YES, SIR.  
4 Q WHEN WAS THE STUDY COMPLETED?  
5 MR. GREEN: OBJECTION: MISSTATES HIS TESTIMONY, YOUR  
6 HONOR: DRAFT STUDY.  
7 BY MR. EMERSON:  
8 Q WHEN WAS THE -- STRIKE THAT. I'LL REPHRASE.

9                   WHEN WAS THE DRAFT STUDY COMPLETED?  
10            A     IT WAS COMPLETED IN JULY OF 2002.  
11            Q     DID YOU RECEIVE A COPY OF THAT REPORT?  
12            A     YES, SIR.  
13            Q     AND WHO ELSE AT SECOND CHANCE BODY ARMOR RECEIVED  
14 A COPY OF THAT REPORT?  
15            A     ED BACHNER, JIM YOUNG, RICHARD DAVIS. I SENT  
16 IT -- MY RECOLLECTION, I SENT IT TO THE WHOLE BOARD OF  
17 DIRECTORS.  
18            Q     DID YOU REVIEW THE REPORT?  
19            A     YES, SIR.  
20            Q     YOU HAD A CONVERSATION WITH RICHARD DAVIS ABOUT  
21 THAT REPORT; CORRECT?  
22            A     MORE THAN ONE, YES, SIR.  
23            Q     WHAT DID YOU TALK TO -- WHAT WAS SAID BETWEEN YOU  
24 AND RICHARD DAVIS ABOUT THAT REPORT?  
25            MR. GREEN: OBJECTION, YOUR HONOR. WE'RE GETTING INTO  
26 TRYING TO USE AN EXPERT REPORT -- SORRY.  
27                    OBJECTION: CALLS FOR -- FOUNDATION; EXPERT  
28 OPINION.

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1            THE COURT: IT MAY.  
2                    IT SOUNDS LIKE YOU'RE TRYING TO GET IN INDIRECTLY  
3 THE RESULTS OF A REPORT THAT ARE NOT COMING IN DIRECTLY.  
4            MR. EMERSON: IT GOES TO HIS STATE OF MIND.  
5            THE COURT: I'M NOT CONCERNED ABOUT HIS STATE OF MIND,  
6 SO OBJECTION IS SUSTAINED.  
7 BY MR. EMERSON:  
8            Q     I'M GOING TO ASK YOU ABOUT CONVERSATIONS THAT YOU  
9 HAD WITH RICHARD DAVIS IN JULY OF 2002.

10 ANYTHING HAPPEN IN JULY OF 2002 CONCERNING RICHARD  
11 DAVIS AND ZYLON AND THE EXECUTIVE COMMITTEE THAT STICKS OUT  
12 IN YOUR MIND?

13 A YES.

14 Q WHAT? TELL THE JURY WHAT HAPPENED.

15 A RICHARD AND MATT DAVIS CAME TO MY OFFICE, AND  
16 RICHARD HAD BEEN WORKING ON A EXECUTIVE MEMO TO THE BOARD OF  
17 DIRECTORS REGARDING THE ZYLON SITUATION, AND HE WANTED TO  
18 SHOW IT TO ME TO GET MY OPINION OF IT.

19 Q DID HE IN FACT SHOW YOU THAT DOCUMENT?

20 A YES, HE DID.

21 Q DID YOU CONTRIBUTE TO IT, OR DID YOU GIVE HIM SOME  
22 OPINIONS?

23 A YES.

24 Q WHERE DID THAT CONVERSATION TAKE PLACE WHERE YOU  
25 GAVE HIM SOME OPINIONS OR CONTRIBUTED TO THAT DOCUMENT?

26 A IN MY OFFICE.

27 Q AND THAT'S AT SECOND CHANCE IN MICHIGAN?

28 A YES, SIR.

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1 Q WAS ANYBODY ELSE PRESENT OTHER THAN YOU AND  
2 RICHARD DAVIS?

3 A MATT DAVIS WAS IN AND OUT. I'M NOT SURE WHAT HE  
4 HEARD. I THINK HE WAS THERE FOR PART OF THE CONVERSATION,  
5 YES, SIR.

6 Q WHO ACTUALLY PREPARED THAT DOCUMENT?

7 A RICHARD DAVIS.

8 Q AND DID HE DO THAT IN YOUR PRESENCE?

9 A NO, SIR.

10 Q WHEN YOU TALKED TO HIM, YOU GAVE HIM SOME INPUT AS

11 HE REQUESTED, HOW SOON AFTER THAT DID YOU SEE THAT DOCUMENT?  
12 WAS IT A MATTER OF DAYS? WAS IT MONTHS? WAS IT MINUTES?

13 A I'M NOT SURE WHAT YOU MEAN. HE KNEW I WAS  
14 CONCERNED ABOUT THE SITUATION.

15 MR. GREEN: MOVE TO STRIKE, YOUR HONOR.  
16 BY MR. EMERSON:

17 Q LET ME ASK IT THIS WAY.  
18 YOU HAD A CONVERSATION WITH HIM ABOUT THIS  
19 DOCUMENT THAT YOU ASSISTED HIM WITH; CORRECT?

20 A YES.

21 MR. GREEN: OBJECTION: MISSTATES HIS TESTIMONY.

22 THE COURT: IT MAY. IT'S LEADING TOO.

23 OBJECTION SUSTAINED.

24 WE WANT HIS TESTIMONY, NOT THE SUGGESTIONS FROM  
25 COUNSEL, SO LET'S START OVER AGAIN.

26 BY MR. EMERSON:

27 Q THE DOCUMENT THAT RICHARD -- DID RICHARD DAVIS ASK  
28 YOU FOR YOUR OPINIONS?

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1 A YES, HE DID.

2 Q DID YOU GIVE THEM TO HIM?

3 A YES, I DID.

4 Q FROM THAT CONVERSATION YOU HAD WITH HIM IN YOUR  
5 OFFICE, HOW SOON AFTER THAT DID YOU SEE A COPY OF THAT  
6 DOCUMENT THAT YOU REFERRED TO?

7 A I SAW THE COPY OF IT. HE SHOWED IT TO ME. I HAD  
8 A COPY IN MY POSSESSION.

9 Q AND DID ANYTHING THAT YOU SAY TO HIM CAUSE HIM TO  
10 MODIFY THAT DOCUMENT TO YOUR KNOWLEDGE?

11 A MY ADVICE TO HIM WAS --

12 MR. GREEN: OBJECTION, YOUR HONOR.

13 THE COURT: I GUESS, AGAIN, THAT'S ANOTHER ONE OF THOSE  
14 QUESTIONS THAT CAN BE ANSWERED YES, NO OR I DON'T REMEMBER.

15 THE WITNESS: YES.

16 BY MR. EMERSON:

17 Q WHAT ADVICE DID YOU GIVE TO RICHARD DAVIS ABOUT  
18 THAT DOCUMENT THAT HE SHOWED TO YOU?

19 A I SAID TO HIM IT'S NOT WHAT I WOULD WRITE, BUT  
20 IT'S A START. LET'S GET IT OUT THERE.

21 Q I WANT YOU TO LOOK --.

22 MR. EMERSON: ACTUALLY, MAY I APPROACH, YOUR HONOR?

23 I'M REFERRING TO COURT'S EXHIBIT 210.

24 (COURT'S EXHIBIT NO. 210 IDENTIFIED)

25 THE COURT: YES.

26 BY MR. EMERSON:

27 Q I'M GOING TO SHOW YOU A DOCUMENT, SIR, AND ASK YOU  
28 IF YOU'VE SEEN THAT DOCUMENT MARKED COURT'S EXHIBIT 210.

332

1 A YES.

2 Q HAVE YOU SEEN THAT DOCUMENT?

3 A YES.

4 Q AND IS THAT A DOCUMENT THAT -- WELL, HOW DO YOU  
5 RECOGNIZE THAT DOCUMENT?

6 A THIS IS THE -- THIS IS A COPY OF THE SAME DOCUMENT  
7 THAT RICHARD GAVE ME TO REVIEW.

8 Q I'D LIKE TO YOU LOOK AT ALL THE PAGES AND JUST  
9 TELL ME IF THAT SURPRISE COMPRISES THE ENTIRETY OF WHAT HE  
10 SHOWED TO YOU AND IF THERE ARE ANY CHANGES IN THAT DOCUMENT.

11 A IT APPEARS TO BE THE SAME ONE, YES, SIR.

12 Q IS THERE ANY KIND OF A SIGNATURE OR INITIALS ON  
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13 THE FRONT PAGE OF THAT DOCUMENT?

14 A YES, SIR.

15 Q AND CAN YOU JUST TELL THE JURY WHAT THOSE INITIALS  
16 ARE?

17 A IT'S MY WRITING. IT SAYS 07 DASH 31 DASH 02,  
18 "WITH MATT DAVIS," AND IT'S "A. J. W.," MY INITIALS.

19 MR. EMERSON: YOUR HONOR, MAY I PUBLISH THIS DOCUMENT  
20 TO THE JURY?

21 THE COURT: YES.

22 MR. LYLE: OBJECTION, YOUR HONOR. FIRST, FOUNDATION,  
23 BUT SECONDLY, YOUR HONOR, WE WOULD -- IF THE COURT IS GOING  
24 TO ADMIT IT, WE'D ASK FOR A 355 INSTRUCTION. THIS IS AN  
25 INTERNAL SECOND CHANCE DOCUMENT.

26 THE COURT: I THINK THIS IS THE SAME ISSUE WE FACED  
27 BEFORE. I DON'T HAVE -- I'M SURE IT'S IN MY BOX OVER THERE,  
28 BUT APPARENTLY, THIS IS A SECOND CHANCE DOCUMENT THAT'S

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1 BEING OFFERED AGAINST SECOND CHANCE ONLY, NOT TOYOBO, SO  
2 YOU'VE GOT TO KEEP THAT IN MIND. THIS IS NOT EVIDENCE  
3 AGAINST TOYOBO, APPARENTLY.

4 YES, SIR.

5 MR. GREEN: BUT, YOUR HONOR, AS TO FOUNDATION FOR  
6 SECOND CHANCE, AS WELL, THIS WITNESS HAS TESTIFIED THAT HE  
7 DID NOT PREPARE IT.

8 THE COURT: I GET THE -- BUT I THINK THERE'S  
9 SUFFICIENT -- THE ISSUE IS CAN HE COME IN HERE AND  
10 AUTHENTICATE IT OR DOES HE KNOW ENOUGH ABOUT IT TO SHOW US  
11 THAT THIS IS IN REALITY WHAT IT PURPORTS TO BE. AND IT'S  
12 CLOSE, BUT I THINK IT'S ENOUGH. I'M GOING TO CONDITIONALLY  
13 ADMIT IT ANYWAY SUBJECT TO SOME FUTURE TESTIMONY.

14 SO FOR NOW I THINK WE HAVE A SUFFICIENT BASIS FOR  
15 AUTHENTICATING IT.

16 BY MR. EMERSON:

17 Q IS THIS -- IS THIS THE SAME THING THAT YOU'RE  
18 LOOKING AT, DR. WESTRICK?

19 A IT LOOKS -- YES, SIR.

20 Q AND MY POINTER DOESN'T REALLY WORK TOO WELL, BUT  
21 IS THAT WHAT YOU WERE JUST REFERRING TO IN TERMS OF YOUR  
22 INITIALS RIGHT THERE?

23 A IT WAS.

24 A VOICE: I HIT THE WRONG INPUT.

25 I APOLOGIZE.

26 I'M ATTEMPTING TO FIX IT RIGHT NOW.

27 THE COURT: DO YOU HAVE SOME WAY OF INTERFERING WITH  
28 HER?

334

1 MR. LYLE: NO. NO. WHY WOULD YOU ASK THAT, JUDGE?

2 MR. EMERSON: MY THOUGHTS EXACTLY, YOUR HONOR.

3 MR. LYLE: HERE'S THE -- HERE'S THE EXHIBIT NUMBER.

4 YOU'VE GOT THE DEPOSITION NUMBER. THIS IS THE COURT'S, SO  
5 THE RECORD IS CLEAR. THAT'S THE COURT'S NUMBER.

6 THE COURT: THIS IS GOING TO BE 210 HERE; CORRECT?

7 MR. GREEN: YES, YOUR HONOR.

8 MR. EMERSON: IT IS 210.

9 THE COURT: IT'S GOT A DIFFERENT NUMBER ON IT. I JUST  
10 WANT TO MAKE SURE THE RECORD IS CLEAR.

11 BY MR. EMERSON:

12 Q DR. WESTRICK, I WANT TO DIRECT YOUR ATTENTION TO  
13 WHAT WE'VE HIGHLIGHTED HERE. NUMBER ONE SAYS, "ZYLON SEEMS  
14 TO BE DEGRADING MUCH FASTER THAN TWARON OR KEVLAR."

15 DO YOU SEE THAT?  
16 A YES, SIR.  
17 Q WAS THAT YOUR UNDERSTANDING IN JULY OF 2002?  
18 A YES.  
19 Q DID YOU HAVE ANY DISCUSSIONS WITH RICHARD DAVIS  
20 ABOUT THAT FACT?  
21 A MANY, MANY.  
22 Q DID YOU COMMENT ON THAT -- WHEN YOU GAVE HIM SOME  
23 INPUT, DID YOUR INPUT HAVE ANYTHING TO DO WITH THAT  
24 PARTICULAR LINE?  
25 A NO. I THINK THAT'S PRETTY STRAIGHT FORWARD.  
26 Q THE NEXT THING SAYS, "NEW AMMUNITION FASTER AND  
27 HARDER THAN REGULAR AMMUNITION IS BEING PROMOTED IN MASS TO  
28 THE PUBLIC FOR THE FIRST TIME. "

335

1 DO YOU SEE THAT?  
2 A YES.  
3 Q DID RICHARD DAVIS EXPLAIN WHY THAT WAS AN  
4 IMPORTANT THING TO INCLUDE IN THIS MEMO?  
5 A YES.  
6 Q WHY? WHAT DID HE TELL YOU?  
7 A HIS BELIEF WAS THAT NEW AMMUNITION -- WELL, HE  
8 TOLD ME HIS BELIEF WAS NEW AMMUNITION WAS FASTER AND HARDER  
9 THAN BEFORE.  
10 Q HOW DID THAT RELATE TO THE DEGRADATION PROBLEMS,  
11 IF HE TOLD YOU, AS IT RELATES TO ZYLON?  
12 A IF YOU LOOK FURTHER DOWN, WHAT HE'S SAYING IS --  
13 Q WELL, DID YOU HAVE A CONVERSATION WHERE HE GAVE  
14 YOU AN UNDERSTANDING AS TO WHAT THE RELATIONSHIP WAS BETWEEN  
15 ONE AND TWO, IF ANY, WITHOUT REFERRING TO ANY OTHER PART OF



16 THE DOCUMENT? WE' LL GET THERE.

17 A THAT A -- IN SHORT, HE INDICATED TO ME THAT HE  
18 THOUGHT STREET THREATS WERE MORE SEVERE.

19 Q IT SAYS IN THE NEXT PARAGRAPH, "SOON, BOTH OF  
20 THESE PROBLEMS WILL MANIFEST THEMSELVES PRIMARILY WITH LEVEL  
21 2A VESTS IN GENERAL AND 100% ZYLON 2A ULTIMA VESTS IN  
22 PARTICULAR. "

23 DO YOU SEE THAT?

24 A YES, SIR.

25 Q AGAIN, WHAT' S THE DIFFERENCE BETWEEN LEVEL 2 AND  
26 LEVEL 2A VESTS?

27 A LEVEL 2 IS THICKER.

28 Q ARE THEY BOTH --

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1 A AND IT HAS HIGHER BALLISTICS. STOPS MORE BULLETS.

2 Q ARE THEY BOTH HUNDRED PERCENT ZYLON VESTS?

3 A ULTIMA VESTS ARE A HUNDRED PERCENT ZYLON, YES.

4 Q SO WHETHER IT' S A ULTIMA 2 OR ULTIMA 2A, THEY' RE  
5 BOTH HUNDRED PERCENT ZYLON?

6 A YES.

7 MR. EMERSON: CAN YOU GO TO "POSSIBLE SOLUTIONS, "  
8 PLEASE, JUST THE FIRST PARAGRAPH.

9 BY MR. EMERSON:

10 Q "POSSIBLE SOLUTIONS. " "SOLUTION NUMBER ONE: WE  
11 CONTINUE OPERATING AS THOUGH NOTHING IS WRONG UNTIL ONE OF  
12 OUR CUSTOMERS IS KILLED OR WOUNDED OR GERMANY, JAPAN, DUPONT  
13 OR SOME OTHER ENTITY EXPOSES THE ZYLON PROBLEM. "

14 DID I READ THAT CORRECTLY?

15 A YES.

16 Q WHEN YOU READ THAT, DID YOU SAY ANYTHING TO

17 RICHARD DAVIS?

18 A I DON'T RECALL SAYING ANYTHING IN PARTICULAR.  
19 THAT'S IN MY OPINION THE TRUTH.

20 MR. GREEN: OBJECTION: MOVE TO STRIKE AS  
21 NONRESPONSIVE, YOUR HONOR.

22 THE COURT: I'LL ASK THE JURY TO DISREGARD THAT ANSWER  
23 AS BEING NONRESPONSIVE.

24 BY MR. EMERSON:

25 Q DID HE EXPLAIN TO YOU POSSIBLE SOLUTION  
26 NUMBER ONE? DID HE SAY ANYTHING TO YOU ABOUT THAT?

27 A SELF-EXPLANATORY. IF THE COMPANY CONTINUES LIKE  
28 THIS, SOMEBODY IS GOING TO GET KILLED OR SOMEONE IS GOING TO

337

1 DISCOVER THAT THERE'S A PROBLEM AND EXPOSE IT.

2 Q THAT WAS IN JULY OF 2002?

3 A YES, SIR.

4 MR. EMERSON: NEXT PARAGRAPH.

5 BY MR. EMERSON:

6 Q HE TALKS ABOUT DOWNFALLS.

7 DID YOU HAVE ANY DISCUSSION WITH HIM ABOUT THE  
8 DOWNFALLS OF THAT SOLUTION?

9 A WE HAD DISCUSSIONS ABOUT THOSE DOWNFALLS FOR MANY  
10 MONTHS, YES, SIR.

11 Q AND DID THEY INCLUDE -- DID HE TELL YOU ANYTHING  
12 ABOUT "EITHER A LAW ENFORCEMENT OFFICER WILL BE KILLED  
13 WEARING ONE OF OUR VESTS OR AN INVOLUNTARY EXPOSURE WILL  
14 LEAD TO GROSS EXAGGERATION. IN EITHER CASE, WE WILL BE  
15 FORCED TO MAKE EXCUSES AS TO WHY WE DIDN'T RECOGNIZE AND  
16 CORRECT THE PROBLEM"?

17 A YES.

18 Q DID YOU TELL HIM PRIOR TO JULY 29TH THAT YOU HAD A  
19 PROBLEM?

20 A YES. HE WAS FULLY AWARE OF THAT.

21 Q DID ED BACHNER ACKNOWLEDGE YOU HAD A PROBLEM PRIOR  
22 TO JULY 29TH, 2002?

23 A EVERY EXECUTIVE MEMBER WAS FULLY AWARE OF THAT. I  
24 DIDN'T HIDE MY BELIEF.

25 Q "IN THE EYES OF LAW ENFORCEMENT," WE'LL BE EITHER  
26 STUPID -- "WE WILL EITHER BE STUPID FOR NOT KNOWING OR  
27 GREEDY AND UNCARING FOR KNOWING AND NOT DOING ANYTHING ABOUT  
28 IT."

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1 DID YOU TALK TO RICHARD DAVIS ABOUT HIS COMMENTS?

2 A YES.

3 Q DID YOU TALK TO HIM ABOUT BEING GREEDY OR  
4 UNCARING?

5 A MANY TIMES.

6 Q WHAT DID HE SAY?

7 A HE INDICATED THAT THE BOARD OF DIRECTORS WERE  
8 GREEDY AND UNCARING.

9 MR. EMERSON: NEXT PARAGRAPH.  
10 BY MR. EMERSON:

11 Q WAS THIS -- WAS THIS IN THE DOCUMENT THAT YOU SAW?  
12 I KNOW YOU SAID IT LOOKS THE SAME. I JUST WANT TO MAKE SURE  
13 THIS SECTION WAS IN THERE.

14 A YES, IT'S THERE.

15 Q "HOW MANY OF US ARE WILLING TO SIGN THE FOLLOWING  
16 STATEMENT: I, THE UNDERSIGNED, KNOWING FULL WELL ABOUT THE  
17 PROBLEMS WITH ZYLON AND LEVEL 2A VESTS, WANT TO CONTINUE TO  
18 PRODUCE AND SELL LEVEL 2A VESTS AND 100% ZYLON VESTS TO

19 UNSUSPECTING" -- "UNSUSPECTING AMERICAN LAW ENFORCEMENT  
20 OFFICERS WITHOUT TELLING THEM ABOUT THESE PROBLEMS. "

21 WHAT DID YOU THINK WHEN YOU READ THAT?

22 MR. GREEN: OBJECTION: RELEVANCE, YOUR HONOR.

23 THE COURT: SUSTAINED.

24 BY MR. EMERSON:

25 Q DID YOU COMMENT ON THAT TO RICHARD DAVIS?

26 A YES.

27 Q WHAT DID YOU TELL HIM?

28 A I SAID RICHARD, THAT'S -- THAT'S YOUR STYLE. WE

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1 WERE FRIENDS, AND THAT'S HIS STYLE, TO PUT IT ON THE LINE.

2 Q HE SAYS, "IF YOU ARE UNWILLING TO SIGN THE ABOVE  
3 STATEMENT, THEN DO NOT EXPECT RICHARD DAVIS TO CONTINUE THIS  
4 POLICY AS PRESIDENT OF SECOND CHANCE BODY ARMOR?"

5 DID HE TELL YOU THAT HE WAS UNWILLING TO FOLLOW  
6 THAT SOLUTION NUMBER ONE, MEANING HE WAS UNWILLING TO DO  
7 NOTHING AND LET A COP GET KILLED?

8 A HE WANTED TO MAKE A CHANGE AT THIS POINT.

9 Q SO HE DID NOT -- HE EXPRESSED TO YOU HE DID NOT  
10 AGREE WITH NUMBER ONE; CORRECT?

11 A HE DIDN'T WANT TO GO -- HE DIDN'T WANT TO GO DOWN  
12 THAT ROAD. HE WANTED TO MAKE A CHANGE.

13 Q "SOLUTION NUMBER TWO" -- BEFORE WE READ SOLUTION  
14 NUMBER TWO, HOW MANY SOLUTIONS ARE IN THIS DOCUMENT?

15 A I BELIEVE THERE'S -- I BELIEVE -- SOLUTIONS,  
16 THERE'S TWO.

17 Q SO RICHARD DAVIS IN THIS DOCUMENT TO THE EXECUTIVE  
18 BOARD IN JULY OF 2002 GAVE THEM TWO SOLUTIONS; RIGHT?

19 A THEN HE GAVE SOME CONCLUSIONS.

20 Q TWO SOLUTIONS?

21 A YES, SIR.

22 Q WE ALREADY TALKED ABOUT ONE --

23 A YES.

24 Q -- DO NOTHING AND LET A COP GET KILLED?

25 A YES.

26 MR. GREEN: YOUR HONOR, MISSTATES THE DOCUMENT.

27 THE COURT: WE'RE REPEATING, COUNSEL, AND YOU'RE

28 TESTIFYING, SO LET -- YOU ASK QUESTIONS. LET HIM TESTIFY,

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1 AND LET THE DOCUMENT SPEAK FOR THEMSELVES.

2 BY MR. EMERSON:

3 Q "NUMBER TWO, WE PUBLISH AND CIRCULATE AN AD

4 DENOUNCING ALL 2A VESTS AND" --

5 THE COURT: YOU'VE GOT TO SLOW DOWN. ANY TIME WE READ,

6 WE TEND TO GO WARP SPEED. LET'S START AGAIN.

7 BY MR. EMERSON:

8 Q -- "DENOUNCING ALL 2A VESTS AND DECLINE TO MAKE

9 THEM ANYMORE UNLESS IT'S A BID SITUATION FOR AN ALL KEVLAR

10 OR TWARON PRODUCT AND THE CUSTOMER IS FULLY AWARE OF THE 2A

11 SHORTCOMINGS. "

12 DO YOU KNOW IF THIS DOCUMENT WAS PRESENTED TO THE

13 EXECUTIVE COMMITTEE?

14 A YES.

15 Q WAS IT OR WASN'T IT?

16 A YES, IT WAS.

17 Q WHEN WAS IT PRESENTED TO THEM?

18 A IT WAS PRESENTED TO THEM INDIVIDUALLY. RICHARD

19 DELIVERED A COPY TO EACH OF THEIR OFFICES IN PERSON.

20 Q DO YOU KNOW WHAT HAPPENED TO THESE DOCUMENTS AFTER

21 THEY WERE PRESENTED TO THESE EXECUTIVE COMMITTEE MEMBERS?

22 A YES, I DO.

23 MR. GREEN: FOUNDATION, YOUR HONOR.

24 THE COURT: YEAH. I THINK YOU'RE GOING TO HAVE TO  
25 ESTABLISH SOME FOUNDATION FIRST.

26 SUSTAINED.

27

28 BY MR. EMERSON:

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1 Q DID RICHARD DAVIS MAKE COPIES OF THIS DOCUMENT?

2 A YES.

3 Q AND DO YOU HAVE PERSONAL KNOWLEDGE THAT HE GAVE  
4 THEM TO EXECUTIVE COMMITTEE MEMBERS?

5 MR. GREEN: FOUNDATION, YOUR HONOR.

6 THE COURT: YEAH. HOW WOULD THAT BE? DID HE FOLLOW  
7 HIM AROUND? DID HE JUST TELL HIM? WE'VE GOT TO -- YOU'RE  
8 JUST GOING RIGHT TO THE CONCLUSION. HE WANTS TO HAVE THE  
9 BASIS FOR THE CONCLUSION. LET'S FIND OUT HOW IT IS HE MIGHT  
10 KNOW THAT.

11 BY MR. EMERSON:

12 Q DO YOU KNOW IF RICHARD DAVIS GAVE THESE DOCUMENTS  
13 TO EXECUTIVE COMMITTEE MEMBERS?

14 A YES.

15 Q HOW DO YOU KNOW THAT?

16 A I SAW HIM PUT ONE IN -- GIVE PAUL BANDUCCI -- SAW  
17 PAUL BANDUCCI RECEIVE ONE. I BELIEVE JIM YOUNG. ONE WENT  
18 DOWN TO ED BACHNER'S OFFICE. I DON'T KNOW IF HE WAS IN  
19 THERE OR NOT. KAREN MC~CRANEY RECEIVED ONE.

20 Q AFTER THESE DOCUMENTS WENT, AS YOU SAW THEM, TO  
21 THESE EXECUTIVE COMMITTEE MEMBERS, DID YOU EVER SEE THEM

22 AGAIN?

23 A THE DOCUMENTS?

24 Q YES.

25 A FOR A SHORT PERIOD OF TIME.

26 Q WHEN DID YOU SEE THEM AGAIN?

27 A WHEN THEY WERE BEING SHREDDED.

28 Q YOU SAW THESE DOCUMENTS BEING SHREDDED?

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1 A YES.

2 Q WHERE?

3 A IT WAS IN KAREN MC~CRANEY' S OFFICE IN HER  
4 SHREDDER.

5 Q WHEN WAS THAT?

6 A I' M NOT SURE IF IT WAS THE SAME DAY OR WITHIN A  
7 COUPLE DAYS, BUT SOON THEREAFTER. I' M NOT SURE.

8 Q DR. ~WESTRICK, HOW DO YOU KNOW THAT WHAT YOU SAW  
9 WAS THIS DOCUMENT BEING SHREDDED?

10 A BECAUSE I WAS WITH RICHARD. I WALKED UPSTAIRS.  
11 MATT DAVIS WAS IN THERE, BECAUSE HE SHARED THE OFFICE WITH  
12 HIS MOTHER AT THAT POINT. HE WAS SHREDDING THE DOCUMENTS.  
13 PAUL BANDUCCI WAS THERE. I BELIEVE JIM YOUNG WAS THERE, BUT  
14 I' M NOT SURE. AND RICHARD HAD TOLD ME THAT THE DOCUMENTS  
15 WERE ORDERED TO BE DESTROYED.

16 Q RICHARD DAVIS TOLD YOU THAT THE DOCUMENTS WERE  
17 ORDERED TO BE DESTROYED?

18 A YES.

19 Q DID HE TELL YOU BY WHOM?

20 A JIM YOUNG.

21 Q DID YOU TALK TO ANYBODY -- I MEAN DID YOU SAY  
22 ANYTHING TO THEM ABOUT THEM DESTROYING THIS DOCUMENT?

23           A     I SAW -- SAW DOCUMENTS GOING INTO THE SHREDDER,  
24     AND AS I WAS WALKING OUT -- I TALKED TO RICHARD ABOUT THIS,  
25     OF COURSE. I THOUGHT IT WAS WRONG. AND AS I WAS WALKING  
26     OUT, I SAW JOHN, WHO WAS OUR COMPUTER PERSON, WALK BY ME,  
27     AND RICHARD EXPLAINED TO ME THAT HE WAS THERE TO PURGE THE  
28     COMPUTER IT WAS WRITTEN ON.

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1           Q     DID JOHN THEN SPEND SOME TIME WITH THE COMPUTER?

2           A     I DON'T KNOW. I WALKED -- I WAS OUT OF THERE.

3           Q     WELL, DID YOU TALK TO ANYBODY ELSE ABOUT --  
4     ANYBODY ELSE AT SECOND CHANCE ABOUT WHAT YOU SAW, OTHER THAN  
5     RICHARD DAVIS, ABOUT THE SHREDDING OF THE DOCUMENTS, OTHER  
6     THAN RICHARD DAVIS?

7           A     OH, MATT DAVIS SOMETIME AFTER -- I COULD LOOK AT  
8     MY NOTES, BUT SOMETIME AFTER CAME TO VISIT ME, BECAUSE HE  
9     KNEW I -- IT GOT OUT I HAD KEPT A COPY OF THE DOCUMENT. IT  
10    WAS THE ONLY ONE LEFT.

11          Q     WHAT DID MATT SAY TO YOU?

12          A     HE WAS TRYING TO GET MY ASSURANCES THAT THIS  
13    DOCUMENT WOULDN'T SHOW UP AT A LATER TIME.

14          Q     WHAT DID HE SAY?

15          A     CAN I LOOK AT MY -- I BELIEVE IT'S IN MY NOTES.  
16                 I'M NOT SURE EXACTLY WHAT HE SAID. SOMETHING  
17    ALONG THE LINES THAT THEY -- THAT THAT WAS THE ONLY DOCUMENT  
18    LEFT. AND I MADE A COMMENT TO HIM THAT -- OFFHANDED LIKE  
19    IT'S A DRAFT, LIKE I GAVE HIM THE IMPRESSION NOT TO WORRY.

20          Q     WHY DID YOU KEEP A COPY OF IT, DR. WESTRICK?

21          A     CAUSE I COULD SEE THIS COMING.

22          Q     WHAT DID YOU SEE COMING?

23          A     I COULD SEE SOMEBODY GETTING KILLED. I COULD SEE



24 THE PROBLEMS THAT THIS COMPANY WAS GOING TO HAVE. AND I  
25 DIDN' T WANT ANYBODY TO GET HURT.

26 Q DR. ~WESTRICK, CONTINUING ON THAT MEMO, RICHARD  
27 DAVIS WRITES, "YES, WE WILL MAKE 2A ARAMID VESTS ON SPECIAL  
28 ORDER. "

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1 BEFORE WE CONTINUE, WHAT' S "ARAMID" MEAN THERE?

2 A ARAMID IS POLY ARAMID. AGAIN, LIKE I INDICATED,  
3 KEVLAR OR TWARON, NOT ZYLON OR PBO.

4 Q "BUT WE WILL NOT MAKE 2A ZYLON VESTS. ALL CURRENT  
5 LEVEL 2A AND LEVEL 2 ZYLON VEST ORDERS WILL BE FILLED WITH  
6 BI -FLEX LEVEL 2 VESTS AT NO INCREASE IN PRICE. "

7 DO YOU SEE THAT?

8 A YES.

9 Q DID THAT HAPPEN?

10 A NO.

11 Q EVEN AFTER THIS MEMO WAS WRITTEN JULY 29TH, 2002,  
12 SECOND CHANCE CONTINUED TO MAKE HUNDRED PERCENT ZYLON VESTS.

13 A YES. YES.

14 Q "A LETTER OF EXPLANATION WILL BE WITH EACH VEST. "  
15 DO YOU SEE THAT?

16 A YES.

17 Q DID THAT HAPPEN?

18 A NO.

19 Q DID YOU HAVE ANY DISCUSSION WITH -- I' M SORRY.  
20 STRIKE THAT.

21 MR. EMERSON: SORRY, YOUR HONOR. WE HAD SOME  
22 HIGHLIGHTS AND PULLOUTS ON THE OTHER ONE, SO WE HAD TO WING  
23 IT.

24 BY MR. EMERSON:

25 Q RICHARD DAVIS, HE WRITES HERE, "WE CAN DO ALL THIS  
26 IF WE STOP MAKING 100% ZYLON ULTIMAS AND CHANGE OUR ULTIMA  
27 PRODUCT TO BI-FLEX YET KEEP THE ULTIMA NAME."  
28 DO YOU SEE THAT?

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1 A YES, SIR.

2 Q DID YOU HAVE ANY CONVERSATIONS WITH RICHARD DAVIS  
3 ABOUT STOPPING HUNDRED PERCENT ZYLON ULTIMA MANUFACTURING?

4 A YES, SIR.

5 Q AND DID YOU TELL HIM THAT YOU THOUGHT THAT WAS A  
6 GOOD IDEA?

7 A MY INPUT TO HIM IT WAS A BETTER -- IT WAS AN OKAY  
8 IDEA, BUT I WASN'T FULLY ON BOARD WITH BI-FLEX EITHER  
9 BECAUSE BI-FLEX IS 50 PERCENT ZYLON OR SO.

10 Q WHAT DID YOU TELL HIM THE APPROPRIATE REMEDY WOULD  
11 BE?

12 A QUIT USING ZYLON.

13 Q THIS IS THE LAST PART ON THIS ONE, DR. WESTRICK.  
14 UNDER -- DO YOU SEE WHERE IT SAYS THE "UGLY" ON  
15 THE NEXT PAGE? THAT'S THE HEADING AT THE TOP.

16 A OKAY. I DON'T SEE IT HERE RIGHT NOW.

17 Q CAN YOU READ -- ARE YOU ABLE TO READ THE SCREEN  
18 FROM THERE?

19 A GO AHEAD. I'M SURE IT'S HERE SOMEWHERE.

20 Q DO YOU SEE UNDER "UGLY" WHERE IT SAYS, "TOYOBO" --

21 A YES.

22 Q IT SAYS, "TOYOBO SHOULD ADMIT THAT THEY SOLD US A  
23 SEMI-DEFECTIVE PRODUCT. THEY WON'T."

24 DO YOU SEE THAT?

25 A YES.

26 Q DID RICHARD DAVIS TELL YOU ANYTHING ABOUT TOYOBO  
27 HAVING SOLD SECOND CHANCE A SEMI -DEFECTIVE PRODUCT?

28 A YES, MANY TIMES.

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1 Q WHAT DID HE SAY ABOUT THAT?

2 A THAT HE BELIEVED THAT THE ROOT OF THE PROBLEM WAS  
3 A DEGRADING ZYLON FIBER.

4 Q DID YOU HAVE ANY -- ANY DISCUSSIONS WITH ANYBODY  
5 ELSE AT SECOND CHANCE OTHER THAN RICHARD DAVIS ABOUT TOYOBO  
6 SELLING A SEMI -DEFECTIVE PRODUCT TO SECOND CHANCE BODY  
7 ARMOR?

8 A THROUGHOUT TIME, SIR?

9 Q CORRECT.

10 A YES.

11 Q WHO ELSE?

12 A PAUL BANDUCCI , ED BACHNER, KAREN MC~CRANEY, JIM  
13 YOUNG, LARRY MC~CRANEY. THROUGHOUT TIME, THEY ALL KNEW HOW  
14 I FELT ABOUT THE SITUATION.

15 Q DID ALL OF THE INDIVIDUALS THAT YOU JUST  
16 MENTIONED, DID EACH OF THEM AGREE OR INDICATE TO YOU THAT  
17 SECOND CHANCE -- OR THAT TOYOBO HAD SOLD THEM A  
18 SEMI -DEFECTIVE PRODUCT OR A DEFECTIVE PRODUCT?

19 A I BELIEVE ED -- ED DID TELL ME THAT THAT WAS THE  
20 CASE, THAT HE THOUGHT IT WAS A SEMI -- DEFECTIVE PRODUCT.  
21 RICHARD DID. AND I DON' T RECALL THE OTHER ONES.

22 Q BUT YOU TOLD THE OTHER ONES THAT YOU FELT IT WAS A  
23 DEFECTIVE PRODUCT?

24 MR. GREEN: ASKED AND ANSWERED, YOUR HONOR; CUMULATIVE.

25 THE WITNESS: YES.

26 THE COURT: LEADING, ALSO.

27 TO THE EXTENT THERE WAS AN ANSWER, I'LL ASK THE  
28 JURY TO DISREGARD THAT ANSWER.

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1 BY MR. EMERSON:

2 Q WHEN IT SAYS -- WHEN RICHARD DAVIS SAYS, "TOYOBO  
3 SHOULD ADMIT THAT THEY SOLD A DEFECTIVE PRODUCT. THEY  
4 WON'T," DID YOU HAVE ANY DISCUSSION ABOUT -- DID HE TELL YOU  
5 WHAT HE MEANT, TOYOBO WON'T ADMIT THEY SOLD A DEFECTIVE  
6 PROBLEM?

7 IN OTHER WORDS, WAS THERE ANY EXPLANATION FOR THAT  
8 COMMENT?

9 A THROUGHOUT TIME, HE TOLD ME THAT THEY DIDN'T ADMIT  
10 THAT THE PRODUCT WAS DEGRADING AND THAT THEY -- THEIR STANCE  
11 WAS THAT THE STUDIES WERE MIXED.

12 IT WAS VERY COMPLEX. I DON'T WANT TO GET TALKING  
13 AGAIN, SO I'M TRYING TO KEEP IT SHORT.

14 YES.

15 Q THE NEXT -- THE NEXT POINT SAYS, "THEY SHOULD TAKE  
16 CARE OF THEIR CUSTOMER BY AT LEAST PROVIDING US WITH FREE  
17 ZYLON CLOTH FOR THE UPGRADE PADS. THEY WON'T."

18 DO YOU SEE THAT?

19 A YES.

20 Q DO YOU KNOW WHAT RICHARD DAVIS MEANT BY "UPGRADE  
21 PADS"?

22 A HE WANTED TO MAKE THE VESTS THICKER, MAKE UPGRADE  
23 PADS.

24 Q HOW MANY LAYERS WERE IN THE ULTIMA 2 VESTS?

25 A THERE'S TWO ULTIMAS. I RECALL -- AGAIN, NOT  
26 LOOKING AT NOTES SO I'M NOT EXACTLY POSITIVE. I BELIEVE 24.  
27 TWENTY WOULD BE THE LEVEL 2A.

28 THIS IS HARD TO REMEMBER.

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1 TWENTY-FOUR, LEVEL 2 AND I THINK 28 FOR LEVEL 3A.  
2 BUT I'M NOT SURE, AND THERE ARE DIFFERENT MODELS OF ULTIMA,  
3 SO THAT MAY VARY.

4 Q DO YOU KNOW IF -- AFTER JULY 29TH, 2002, IF  
5 ADDITIONAL LAYERS WERE PUT IN THE ULTIMA 2 VEST THAT OFFICER  
6 ZEPPELELLA PURCHASED?

7 A NOT TO MY KNOWLEDGE.

8 Q WHEN DID SECOND CHANCE STOP USING, IF THEY DID,  
9 ZYLON FOR USE IN A BALLISTIC VEST?

10 A THEY INDICATED IN A PRESS RELEASE THEY QUIT USING  
11 IT OCTOBER --

12 MR. LYLE: OBJECTION, YOUR HONOR: MOTION TO LIMINE.

13 MR. EMERSON: THAT WAS DENIED.

14 THE COURT: THE OBJECTION IS SUSTAINED.

15 I'M GOING TO ASK THE JURY TO DISREGARD THAT LAST  
16 ANSWER.

17 MR. EMERSON: YOUR HONOR, THAT MOTION IN LIMINE WAS  
18 DENIED.

19 THE COURT: NO. NO. A DIFFERENT ONE. HE'S GOT A  
20 DIFFERENT ONE IN MIND, AND SO WE'LL CLUE YOU IN LATER IF YOU  
21 DON'T REMEMBER.

22 BY MR. EMERSON:

23 Q DID SECOND CHANCE STOP USING ZYLON?

24 A EVENTUALLY, YES.

25 Q AND WHEN DID THEY STOP USING IT?

26 A (NO ORAL RESPONSE.)

27 Q NOT WHEN DID THEY SAY THEY DID. WHEN DID THEY  
28 ACTUALLY STOP USING ZYLON, TO YOUR KNOWLEDGE?

1           A     IN MY BELIEF, THEY STOPPED USING ZYLON IN ALL  
2 CONFIGURATIONS IN 2005.

3           Q     DO YOU KNOW WHY SECOND CHANCE STOPPED USING ZYLON?

4           MR. GREEN: OBJECTION, YOUR HONOR: FOUNDATION;  
5 SPECULATION: 2005.

6           THE COURT: YEAH. I THINK THAT WOULD BE LONG AFTER  
7 DR. WESTRICK WAS GONE.

8           MR. EMERSON: LET ME REPHRASE, YOUR HONOR.  
9 BY MR. EMERSON:

10          Q     DID SECOND CHANCE BODY ARMOR, WHILE YOU WERE  
11 EMPLOYED AT SECOND CHANCE BODY ARMOR, MAKE A DECISION TO  
12 STOP USING ZYLON?

13          A     YES.

14          Q     WHEN WAS THAT DECISION MADE TO STOP USING ZYLON  
15 FOR USE IN BALLISTICS?

16          A     THIS IS DIFFICULT. THINK OF MY DATES HERE.

17          Q     DO YOU HAVE SOME NOTES THAT MIGHT REFRESH YOUR  
18 MEMORY?

19          A     THERE ARE QUITE A FEW YEARS HERE.

20                    I BELIEVE THAT -- I HAVE TO TAKE A LOOK.

21                    IF YOU'RE -- THEY WERE STILL USING ZYLON WHEN I  
22 LEFT, I BELIEVE.

23          Q     BUT MY QUESTION IS: YOU SAID YOU WERE THERE WHEN  
24 THEY MADE THE DECISION TO STOP USING ZYLON; CORRECT?

25          A     AGAIN, MY DATES GET CONFUSED HERE BETWEEN TWO  
26 DIFFERENT OCTOBERS.

27          Q     I ASKED YOU A COUPLE --

28          A     YES. THAT WOULD HAVE BEEN OCTOBER OF 2000 --

1 AROUND SEPTEMBER, OCTOBER 2004 THEY QUIT USING IT.

2 Q I APOLOGIZE. I ASKED YOU A COUPLE DIFFERENT  
3 QUESTIONS. MAYBE I HAD CONFUSED YOU.

4 WE TALKED ABOUT MANUFACTURING, INITIALLY, AND THEN  
5 I JUST ASKED YOU ABOUT THE DECISION TO STOP USING ZYLON.

6 A OKAY.

7 Q THAT IS MY QUESTION. WHEN DID THEY MAKE THE  
8 DECISION TO STOP USING ZYLON?

9 A THAT WOULD HAVE BEEN OCTOBER OF 2003.

10 Q DO YOU KNOW WHY SECOND CHANCE BODY ARMOR STOPPED  
11 USING ZYLON FOR USE IN BALLISTICS?

12 A YES.

13 Q WHY?

14 A N. I. J. HAD DONE --

15 MR. GREEN: OBJECTION --

16 MR. LYLE: OBJECTION, YOUR HONOR: MOTION IN LIMINE.

17 THE COURT: SUSTAINED.

18 BY MR. EMERSON:

19 Q DID RICHARD DAVIS TELL ANYBODY IN YOUR PRESENCE,  
20 NOT MENTIONING WHAT YOU WERE JUST ABOUT TO SAY -- DID  
21 RICHARD DAVIS TELL ANYBODY IN OCTOBER OF 2003 WHY SECOND  
22 CHANCE STOPPED USING ZYLON?

23 MR. GREEN: OBJECTION.

24 MR. LYLE: SAME OBJECTION, YOUR HONOR.

25 MR. GREEN: AND OVERBROAD: ANYONE.

26 MR. EMERSON: YOUR HONOR, I'LL REPHRASE.

27

28 BY MR. EMERSON:

1 Q DID YOU ATTEND A MEETING OCTOBER 20TH OF 2003 WITH  
2 SALES REPS?  
3 A YES.  
4 Q AN IACP CONVENTION IN PHILADELPHIA.  
5 A YES.  
6 Q AT THE MARRIOTT HOTEL?  
7 A YES.  
8 Q WAS RICHARD DAVIS ALSO PRESENT?  
9 A YES.  
10 Q WAS THERE A MEETING WHEN RICHARD DAVIS WAS PRESENT  
11 AND OTHER PEOPLE WERE PRESENT?  
12 A YES.  
13 Q WHO ELSE WAS PRESENT?  
14 A I BELIEVE -- I CAN LOOK TO MY NOTES, BUT I BELIEVE  
15 THE WHOLE REGIONAL SALES GROUP.  
16 Q WAS ZYLON DISCUSSED BY RICHARD DAVIS AT THAT  
17 MEETING?  
18 A YES.  
19 Q WAS THE SUBJECT THAT SECOND CHANCE BODY ARMOR MADE  
20 HUNDRED PERCENT ZYLON ULTIMA VESTS DISCUSSED AT THAT MEETING  
21 WITH THOSE SALES REPS?  
22 A YES.  
23 Q DID RICHARD DAVIS TELL THEM, MEANING THE SALES  
24 REPS, ANYTHING ABOUT SECOND CHANCE'S MANUFACTURE OF VESTS  
25 USING ZYLON?  
26 A THAT HE HAD RECEIVED --  
27 Q YES OR NO?  
28 A DID HE SAY ANYTHING? YES.



1 Q TELL THE JURY WHAT HE TOLD THEM.  
2 MR. GREEN: SAME OBJECTION, YOUR HONOR. AND -- SAME  
3 OBJECTION.  
4 MR. LYLE: JOIN IN THE OBJECTION, YOUR HONOR.  
5 THE COURT: I THINK WE'RE IN THE SAME PROBLEM, COUNSEL,  
6 SO SUSTAINED.  
7 MR. EMERSON: I'M SORRY?  
8 THE COURT: JUST MOVE ON. WE DON'T HAVE TIME TO DEBATE  
9 IT NOW.  
10 BY MR. EMERSON:  
11 Q DID RICHARD DAVIS EVER ADMIT TO YOU OR IN YOUR  
12 PRESENCE THAT ZYLON WAS DEFECTIVE?  
13 A YES.  
14 Q WHAT DID HE SAY?  
15 MR. GREEN: OBJECTION, YOUR HONOR: CUMULATIVE.  
16 MR. LYLE: CUMULATIVE.  
17 MR. GREEN: ASKED AND ANSWERED.  
18 MR. LYLE: ASKED AND ANSWERED.  
19 THE COURT: OVERRULED.  
20 GO AHEAD.  
21 BY MR. EMERSON:  
22 Q WHAT DID HE SAY?  
23 A HE SAID THAT ZYLON DEGRADED AND IT WAS DEFECTIVE  
24 AND IT SHOULDN'T BE USED.  
25 Q WAS THERE ANY CONVERSATION WHEN HE SAID THAT?  
26 STRIKE THAT.  
27 WHEN WAS THAT?  
28 A THERE WAS MANY TIMES, SIR, BUT THERE WAS A

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1 CONVERSATION IN OCTOBER OF 2003.

2 Q YOU MENTIONED EARLIER THAT YOU HAD DISCUSSED WITH  
3 RICHARD DAVIS A CONCERN THAT THE ZYLON VEST WOULD DEGRADE  
4 AND WOULDN'T STOP A BULLET; CORRECT?

5 A THAT -- WE DISCUSSED THAT, YES.

6 Q AND WHAT DID RICHARD DAVIS SAY ABOUT -- I MEAN,  
7 DID HE EXPRESS TO YOU THAT HE WAS ALSO CONCERNED ABOUT THAT?

8 MR. GREEN: OBJECTION: ASKED AND ANSWERED; CUMULATIVE.

9 THE COURT: IT SEEMS LIKE WE'VE BEEN OVER THIS.

10 MR. EMERSON: IT WAS FOUNDATION -- IT'S FOUNDATIONAL,  
11 YOUR HONOR. I'LL ASK THE QUESTION.

12 THE COURT: LET'S MOVE ON.

13 MR. EMERSON: FOUNDATIONAL OBJECTION.

14 BY MR. EMERSON:

15 Q DID RICHARD DAVIS HAVE A PLAN OF HOW HE WAS GOING  
16 TO REACT -- OR HOW SECOND CHANCE BODY ARMOR WAS GOING TO  
17 REACT --

18 A YES.

19 Q -- WHEN CONFRONTED WITH A SITUATION WHERE A BULLET  
20 PROOF VEST MADE OF ZYLON FAILED?

21 A YES.

22 Q HOW DO YOU KNOW THAT?

23 A HE TOLD ME THAT -- THAT HE HAD BEEN TO AN  
24 EXECUTIVE BOARD MEETING AND THAT THEY HAD A -- DERIVED A  
25 PLAN.

26 Q DR. WESTRICK, TELL THE JURY WHAT THAT PLAN WAS.

27 A THEY HAD DECIDED THAT WHEN THERE WAS A PROBLEM,  
28 THAT THEY WOULD FIRST BLAME THE BULLET, THAT THEY WOULD NOT

1 PUBLISH OUR BALLISTIC CHART ANYMORE TO SHOW WHICH BULLETS  
2 WOULD STOP OUR ARMOR (SIC) AND THAT THEY WOULD BLAME THE

3 REST ON CORRUPTION OR SOMETHING ALONG THAT LINES.  
4 Q WHEN YOU SAY "SOMETHING ALONG THAT LINES," ARE YOU  
5 HAVING A -- ARE YOU NOT ABLE TO RECALL?  
6 A RIGHT. BUT I WROTE IT DOWN, WHAT HE TOLD ME.  
7 Q DO YOU HAVE ANY NOTES THAT WOULD --  
8 A YES.  
9 Q -- REFRESH YOUR MEMORY?  
10 A YES.  
11 Q JUST TELL US WHAT YOU'RE LOOKING AT, SIR, ONCE YOU  
12 FIND THE COPY.  
13 A THESE ARE MY NOTES, MY JOURNALS THAT I KEPT  
14 THROUGH THIS.  
15 Q JUST TELL ME WHAT YOU'RE REFERRING TO, SIR.  
16 A A NOTE DATED 09/24/02 AT SECOND CHANCE IN  
17 RICHARD'S -- RICHARD'S OFFICE APPROXIMATELY 1600, WOULD BE  
18 4 O' CLOCK.  
19 Q DATE SEPTEMBER 24TH, 2002?  
20 A YES.  
21 Q AND THAT'S THE DATE ON THE DOCUMENT.  
22 IS THAT THE DATE OF THE DISCUSSION, OR IS THAT THE  
23 DATE THAT YOU MEMORIALIZED THE DISCUSSION?  
24 A IT WOULD BE BOTH.  
25 Q IN LOOKING AT THE DOCUMENT -- I DON'T WANT YOU TO  
26 READ FROM IT, BUT I WANT YOU TO TELL THE JURY WHAT YOU  
27 REMEMBER FROM LOOKING AT THAT DOCUMENT AS TO WHAT RICHARD  
28 DAVIS' PLAN WAS GOING TO BE OR SECOND CHANCE BODY ARMOR'S

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1 PLAN WAS GOING TO BE WHEN A VEST FAILED.  
2 MR. GREEN: OBJECTION: IMPROPER REFRESHING OF MEMORY.  
3 THE COURT: WE'RE NOT READING ANYTHING. IT EITHER

4 REFRESHES HIS MEMORY, IN WHICH CASE HE CAN TELL US WHAT HIS  
5 REFRESHED RECOLLECTION IS, OR IF IT DOESN'T, WE'RE DONE.

6 MR. EMERSON: I ASKED HIM SPECIFICALLY NOT TO READ IT.

7 THE COURT: FIRST OF ALL, WHY DON'T YOU ASK HIM IF IT  
8 REFRESHES HIS MEMORY. MAYBE YOU ALREADY DID.

9 THE WITNESS: IT DOES REFRESH MY MEMORY, YES.

10 BY MR. EMERSON:

11 Q WITHOUT READING THE DOCUMENT, TELL THE JURY HOW IT  
12 REFRESHES YOUR MEMORY WHAT THE PLAN WAS GOING TO BE?

13 A THE EXECUTIVE PLAN WAS TO ONLY GUARANTEE THE  
14 N.I.J. BULLETS UNDER THE TEST PROTOCOL, WHICH -- WHICH WOULD  
15 BE -- DEPENDS WHAT TESTS WERE RUNNING, BUT ONLY GUARANTEE  
16 THE TWO BULLETS, THAT TWO -- THERE WAS A PENETRATION, TO  
17 DEBATE THE BALLISTICS. AND IF THERE'S A PROBLEM, LIKE I  
18 INDICATED BEFORE, THE CORRUPTION, TO BLAME THE BALLISTICS  
19 DYNAMICS OR CORRUPTION, WHAT WE CALL THE "BLAME-THE-BULLET  
20 THEORY."

21 Q RICHARD DAVIS TOLD YOU THIS?

22 A YES, SIR.

23 Q ANYBODY ELSE PRESENT?

24 A NO.

25 Q DID YOU -- DID YOU COMMENT WHEN HE TOLD YOU THAT?

26 A I DON'T -- HE -- I RECALL THAT HE WAS NOT -- HE  
27 HAD GONE ALONG WITH -- IT DIDN'T SEEM LIKE HE WAS IN FAVOR  
28 OF IT.

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1 MR. GREEN: OBJECTION: MOVE TO STRIKE AS  
2 NONRESPONSIVE, YOUR HONOR.

3 THE COURT: IT IS. I'M GOING TO ASK THE JURY TO  
4 DISREGARD THAT. WE'RE SPECULATING AS TO WHAT SOMEONE ELSE

5 THINKS, SO SUSTAINED.

6 MR. EMERSON: THANK YOU, YOUR HONOR.

7 BY MR. EMERSON:

8 Q DID HE TELL YOU WHO CAME UP WITH THIS PLAN?

9 A BOARD OF DIRECTORS.

10 Q DID HE TELL YOU ANYTHING ELSE ABOUT THAT PLAN?

11 AND I DON'T WANT YOU TO GUESS HOW HE FELT ABOUT  
12 IT.

13 DID HE SAY ANYTHING ELSE ABOUT THAT PLAN?

14 A HE -- NO. OTHER COMMENTS ARE MY OWN, BUT NOT HIS.

15 Q DO YOU KNOW WHY, DOCTOR, DR. WESTRICK, A MONTH  
16 BEFORE OFFICER ZEPPELELLA'S VEST WAS MADE THEY'RE COMING UP  
17 WITH A PLAN TO REACT WHEN A VEST IS PENETRATED? DO YOU KNOW  
18 WHY?

19 MR. GREEN: OBJECTION: ARGUMENTATIVE, YOUR HONOR.

20 THE COURT: SUSTAINED.

21 BY MR. EMERSON:

22 Q DID RICHARD DAVIS TELL YOU WHY THE EXECUTIVE BOARD  
23 CAME UP WITH A PLAN?

24 A YES.

25 Q WHY? WHY DID HE TELL YOU -- OR WHAT DID HE TELL  
26 YOU?

27 A BECAUSE NOTHING WAS GOING TO BE DONE UNTIL A COP  
28 GOT SHOT THROUGH A VEST.

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1 Q SIR, YOU SAID THAT THE FIRST THING ON THE PLAN, AS  
2 YOU RECALL IT, WAS THAT ONLY GUARANTEE TWO BULLETS THAT WERE  
3 USED BY N. I. J. TESTING.

4 WHAT DO YOU MEAN BY THAT?

5 A N. I. J. BULLETS.

6 Q "N. I. J. BULLETS," DID YOU UNDERSTAND WHAT HE MEANT  
7 WHEN HE SAID THAT?

8 A YES.

9 Q TELL THE JURY WHAT YOUR UNDERSTANDING OF WHAT HE  
10 SAID WAS.

11 A WELL, IT'S WHAT I CALL EXACT ENGINEERING, THAT  
12 THE -- SINCE THE BULLETS WENT THROUGH CERTIFICATION TESTING,  
13 ONLY TESTED TWO BULLETS, THAT THESE ARE THE ONLY TWO --  
14 THEREFORE, THAT'S THE ONLY TWO -- UNDER THE EXACT  
15 SITUATION -- EXACT SITUATION THAT THE TESTING IS DONE, THAT  
16 ANYTHING ELSE WOULD BE OUTSIDE OF THE PARAMETERS OF THE  
17 BALLISTIC TESTING.

18 Q ARE YOU FAMILIAR WITH N. I. J. TESTING OR BALLISTIC  
19 TESTING FOR N. I. J. ?

20 A VERY.

21 Q WE' LL TALK ABOUT THAT IN A SECOND.

22 DO YOU KNOW WHAT TWO BULLETS HE' S REFERRING TO?

23 A FOR WHAT TYPE OF VEST?

24 Q WHEN HE SAYS ONLY -- OKAY. WELL, THAT' S A GOOD  
25 QUESTION.

26 WHEN HE SAID ONLY GUARANTEE TWO BULLETS --

27 A YES.

28 Q -- USED FOR N. I. J. , ARE THOSE THE SAME TWO BULLETS

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1 FOR EVERY VEST BUT DIFFERENT --

2 A 2A, IT' S NINE-MILLIMETER AND .40 CALIBER, THE TWO  
3 BULLETS.

4 Q HOW ABOUT LEVEL 2?

5 A NINE-MILLIMETER AND -- I HAVE THE NOTES HERE. THE  
6 STANDARD NINE-MILLIMETER AND .357 MAGNUM. AND LEVEL 3A,

7 NINE-MILLIMETER AND .44 MAGNUM.

8 Q THE SECOND -- THE SECOND ELEMENT OF THIS PLAN OF

9 REACTION FOR A VEST FAILURE WAS TO DEBATE THE BALLISTICS.

10 IS THAT -- IS THAT THE TERMS OR WORDS USED BY

11 RICHARD DAVIS?

12 A YEAH, BLAME -- NO TWO BALLISTIC EVENTS ARE EXACTLY

13 THE SAME.

14 Q HOW DID RICHARD DAVIS EXPLAIN TO YOU -- OR WHAT

15 DID HE SAY TO YOU ABOUT THAT SECOND ELEMENT OF DEBATE THE

16 BALLISTICS?

17 A THAT NO TWO BALLISTIC EVENTS ARE EXACTLY THE SAME.

18 THEREFORE, EVEN UNDER TEST CONDITIONS -- IN OTHER WORDS,

19 THERE'S NO BALLISTIC EVENT ON THE STREET THAT'S EXACTLY LIKE

20 IN A TEST CONDITION. THEREFORE, THERE WILL ALWAYS BE THAT

21 DEBATE.

22 Q JUST TELL THE JURY WHAT THE DEBATE WOULD BE ABOUT

23 IN TERMS OF THE BALLISTIC -- WHEN HE SAYS, "DEBATE THE

24 BALLISTICS," WHAT'S THE CONTEXT OF THAT? WHAT DOES THAT

25 MEAN?

26 MR. GREEN: OBJECTION, YOUR HONOR.

27 MR. LYLE: OBJECTION, YOUR HONOR.

28 THE COURT: SUSTAINED.

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1 BY MR. EMERSON:

2 Q YOU ALSO SAID THAT HE TOLD YOU THAT A PART OF THE

3 PLAN WAS TO DEBATE THE DYNAMIC -- THE BALLISTIC DYNAMICS.

4 IS THAT THE SAME AS THE BALLISTICS, OR WHEN YOU ADDED

5 "DYNAMICS" THE SECOND TIME, WAS THAT A DIFFERENT ISSUE?

6 A IT'S --

7 MR. LYLE: OBJECTION.

8 MR. GREEN: SAME OBJECTION, YOUR HONOR.  
9 THE COURT: SUSTAINED.  
10 BY MR. EMERSON:  
11 Q WHAT DID YOU MEAN WHEN YOU USED THE WORD  
12 "DYNAMICS"?  
13 A THE DYNAMICS, DIFFERENT COUNTLESS VARIABLES THAT  
14 ARE PRESENT IN EVERY BALLISTIC EVENT.  
15 Q CAN YOU TELL THE JURY WHAT SOME OF THOSE DYNAMICS  
16 ARE?  
17 MR. LYLE: OBJECTION, YOUR HONOR. THIS HORSE IS DEAD  
18 AND BURIED, I THINK.  
19 THE COURT: IS THAT IN THE EVIDENCE CODE?  
20 MR. LYLE: YES. CUMULATIVE.  
21 THE COURT: HORSE DEAD AND BURIED, EVIDENCE CODE  
22 SECTION 25(A)(1).  
23 SUSTAINED, BUT NOT ON THAT BASIS.  
24 BY MR. EMERSON:  
25 Q WOULD -- WOULD THE LOCATION OF THE SHOT -- THE  
26 LOCATION OF THE PENETRATION ON THE VEST BE ONE OF THOSE  
27 VARIABLES?  
28 MR. GREEN: OBJECTION.

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1 MR. LYLE: OBJECTION, YOUR HONOR.  
2 MR. GREEN: OBJECTION.  
3 THE COURT: COUNSEL, THE JURY KNOWS WHAT THE ISSUES ARE  
4 IN THE CASE. HE'S NOT HERE TO FORMULATE OPINIONS OR DECIDE  
5 THE CASE OR BE AN EXPERT WITNESS, SO SUSTAINED.  
6 BY MR. EMERSON:  
7 Q IN TERMS OF THE N. I. J. -- YOU SAID YOU'RE FAMILIAR  
8 WITH THE N. I. J. CERTIFICATION TESTS; CORRECT?



9 A YES, SIR.

10 Q CAN YOU JUST TELL THE JURY WHAT THE N. I. J.

11 CERTIFICATION TEST IS?

12 A IT'S A PERFORMANCE TEST FOR BODY ARMOR.

13 MR. LYLE: THIS IS -- WE'RE GOING -- HE'S TALKING ABOUT

14 CERTIFICATIONS: OPINION TESTIMONY.

15 THE COURT: IF HE KNOWS EXACTLY WHAT THE REQUIREMENTS

16 ARE AND IF YOU'VE ESTABLISHED A PROPER FOUNDATION, HE'S DONE

17 IT, WHAT, A THOUSAND TIMES OR SOMETHING --.

18 LET'S HEAR THE FOUNDATION AND IF HE KNOWS, HE

19 KNOWS.

20 MR. EMERSON: I THINK HE TESTIFIED TO IT EARLIER, YOUR

21 HONOR, BUT I'LL ASK A COUPLE OF QUESTIONS.

22 BY MR. EMERSON:

23 Q WHILE YOU WERE AT SECOND CHANCE BODY ARMOR, DID

24 YOU BECOME FAMILIAR WITH N. I. J. CERTIFICATION TESTING?

25 A YES.

26 Q ARE YOU FAMILIAR WITH THE GUIDE OR N. I. J.

27 PUBLISHED STANDARDS?

28 A YES.

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1 Q AND CAN YOU TELL THE JURY WHAT THAT'S CALLED?

2 A 10104, N. I. J. --

3 Q AND THAT'S --

4 A -- PERFORMANCE -- PERFORMANCE GUIDE.

5 I HAVE IT RIGHT HERE IF YOU'D LIKE TO REFER TO IT.

6 Q CAN YOU REFER TO IT JUST SO WE CAN GET -- SO WE

7 CAN CALL IT WHAT IT IS.

8 THE COURT: LET ME REVISIT THAT SUBJECT. YOU'RE GOING

9 TO HAVE EXPERTS THAT ARE GOING TO COME IN HERE AND TALK

10 ABOUT THE STANDARD; RIGHT? THAT'S NOT WHY HE'S HERE. HE'S  
11 HERE AS A PERCIPIENT WITNESS, AS I UNDERSTAND IT.

12 MR. EMERSON: CORRECT.

13 I'M JUST GOING TO ASK HIM A COUPLE QUICK QUESTIONS  
14 ABOUT IT.

15 MR. LYLE: THAT'S THE WHOLE POINT.

16 THE COURT: I THINK TO THE EXTENT HE'S HERE TO  
17 INTERPRET OR APPLY STANDARDS OR TELL US WHAT THE LAW IS OR  
18 WHAT THE REGULATIONS ARE, IT'S NOT HIS ROLE. I'M SURE HE  
19 PROBABLY KNOWS, BUT THAT'S NOT WHY HE'S HERE.

20 SUSTAIN THE OBJECTION.

21 BY MR. EMERSON:

22 Q I'M GOING TO HAND YOU --

23 MR. EMERSON: MAY I APPROACH, YOUR HONOR?

24 THE COURT: SURE. IF IT'S OKAY WITH HIM, IT'S OKAY  
25 WITH ME.

26 THE WITNESS: ABSOLUTELY.

27 THANK YOU.

28 BY MR. EMERSON:

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1 Q SIR, I'VE HANDED YOU WHAT HAS BEEN MARKED AS  
2 COURT'S EXHIBIT 215.

3 (EXHIBIT COURT'S 215 IDENTIFIED)

4 A YES.

5 Q I'D LIKE YOU TO TAKE A LOOK AT THAT, AND I'M GOING  
6 TO ASK YOU A COUPLE QUESTIONS, IF YOU RECOGNIZE THAT  
7 DOCUMENT AND HOW YOU RECOGNIZE IT?

8 A I WROTE IT --

9 Q HOLD ON. I JUST WANT TO GIVE COUNSEL AN  
10 OPPORTUNITY TO READ IT.

11 MR. GREEN: I HATE TO DO THIS, YOUR HONOR. THE PRINT  
12 IS SO SMALL. GRAB MY GLASSES.

13 MR. EMERSON: YOUR HONOR, I HAVE SEVERAL QUESTIONS ON  
14 THIS DOCUMENT. I DON'T KNOW IF NOW IS A GOOD TIME TO BREAK  
15 FOR THE COURT.

16 THE COURT: I HAVE NEVER HAD SO MANY PEOPLE TELLING ME  
17 WHEN IT'S TIME TO TAKE A BREAK BEFORE.

18 MR. EMERSON: IT MIGHT BE A GOOD TIME.

19 THE COURT: WE'RE CLOSE. LET'S DO THAT.

20 REMEMBER, WE'RE NOT GOING TO SEE YOU TOMORROW.  
21 TOMORROW IS OFF, FRIDAY.

22 DON'T BE LOOKING SO HAPPY ABOUT THAT.

23 SO I WANT YOU TO HAVE A NICE, LONG WEEKEND, THREE  
24 DAYS FOR YOU, AND WE'LL SEE YOU BACK HERE MONDAY MORNING AT  
25 9 O'CLOCK, SAME TIME. IS THAT OKAY WITH EVERYONE?

26 LET ME RE-EMPHASIZE THAT ADMONITION WE TALKED  
27 ABOUT. IT'S SO IMPORTANT NOW THAT YOU'RE GOING TO BE AWAY  
28 FOR THREE DAYS. NO INFORMATION FROM ANY SOURCE. NO GETTING

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1 ON THE INTERNET. IF YOU SEE ANYTHING IN THE PAPER ABOUT  
2 THIS, STOP. DON'T READ IT. SEE ANYTHING ON TV, STOP. IF  
3 YOU DO SEE SOMETHING OR READ SOMETHING, COME IN AND TELL ME  
4 ABOUT IT MONDAY. MAKE SURE WE KNOW ABOUT IT. DON'T LET  
5 ANYONE TALK TO YOU ABOUT IT. DON'T TALK ABOUT IT. DON'T  
6 DELIBERATE. DON'T DISCUSS IT.

7 SHORTHAND WORD, ADMONITION; RIGHT?

8 HAVE A NICE, LONG WEEKEND. WE'LL SEE YOU MONDAY  
9 MORNING AT 9:00.

10 PROCEEDINGS ADJOURNED

11 --000--

1 VISTA, CALIFORNIA, MONDAY, 8-14-2006, 9:16 A.M. \*

2 --000--

3 (JURORS ENTER COURTROOM)

4 THE COURT: GOOD MORNING, FOLKS.

5 COME ON IN. HAVE A SEAT.

6 BEST-LAID PLANS. WE HAD EVERYBODY HERE, READY TO

7 GO AT 9:00. THEN WE HAD A LITTLE EQUIPMENT FAILURE.

8 OUR APOLOGIES FOR THE DELAY. I KNOW YOU FOLKS

9 WERE ALL ON TIME. WE APPRECIATE THAT.

10 OKAY. OUR RECORD CAN REFLECT ALL OF OUR JURORS

11 ARE BACK, ALL PARTIES AND COUNSEL ARE PRESENT.

12 GO AHEAD AND HAVE A SEAT, FOLKS.

13 WHILE I'M THINKING ABOUT IT, WE'VE HAD A REQUEST

14 TO -- TO HAVE A LONG LUNCH HOUR TODAY, SO WE'RE GOING TO BREAK

15 AT 11:45, AND COME BACK AT 12:45.

16 IS THAT OKAY WITH EVERYONE?

17 I'M SORRY. ONE -- JUST CHECKING TO SEE IF THEY

18 WERE LISTENING.

19 ELEVEN-FORTY-FIVE TO 1:45, RIGHT? A TWO-HOUR

20 LUNCH HOUR, AND IF I FORGET THAT, HOPEFULLY, SOMEBODY WILL

21 REMIND ME WHEN WE GET CLOSE TO THE APPOINTED HOUR.

22 EVERYBODY GET IN THE PARKING LOT OKAY TODAY, AND

23 GET IN THE DOOR AND WHATNOT?

24 GOOD. THANKS. OKAY.

25 WHEN WE LEFT OFF, I THINK WE HAD MR. WESTRICK OR

26 DOCTOR WESTRICK ON THE STAND, RIGHT? I THINK WE'RE GOING TO

27 CONTINUE WITH THAT.

28 WHY DON'T YOU COME ON BACK UP, SIR.

1                   GOOD MORNING.

2           THE WITNESS: GOOD MORNING, SIR.

3           THE COURT: COME ON UP. HAVE A SEAT.

4                   IT SEEMS LIKE A LONG TIME AGO, BUT I THINK WE

5 SWORE YOU IN LAST THURSDAY, RIGHT?

6           THE WITNESS: YES, SIR.

7           THE COURT: YOU REMAIN UNDER OATH TODAY, AND THROUGHOUT

8 THE BALANCE OF THE TRIAL. WE WILL NOT REPEAT THAT.

9           THE WITNESS: YES, SIR.

10          THE COURT: OKAY. MR. EMERSON.

11                   (PAUSE IN PROCEEDINGS)

12                   IF THERE ARE NO FURTHER QUESTIONS, I GUESS YOU

13 CAN STEP DOWN.

14          THE WITNESS: THANK YOU, YOUR HONOR,

15          MR. EMERSON: I'M SORRY, YOUR HONOR. I'M JUST GETTING

16 APPROVED, THE EXHIBIT THAT WE WERE GOING TO BRING UP.

17          THE COURT: OKAY.

18                   I FORGOT. THE RECORD SHOULD REFLECT THE RETURN

19 OF THE FAMOUS SHARON KUSH, WHO IS NOT LISTENING TO US, WHO IS

20 OUR COURTROOM CLERK.

21                   HAS EVERYONE NOTICED THAT? SHE'S RETIRED, BACK,

22 TAKING CARE OF US THIS WEEK.

23                   WELCOME BACK, MISS KUSH.

24          THE CLERK: THANK YOU, YOUR HONOR.

25          THE COURT: GO AHEAD.

26          MR. EMERSON: THANK YOU, YOUR HONOR.

27

28

1 # AARON WESTRICK +  
2 PLFS' WITNESS, HAVING BEEN SWORN, TESTIFIED AS FOLLOWS:  
3  
4 DIRECT EXAMINATION (CONT'D) +  
5 BY MR. EMERSON:  
6 Q GOOD MORNING, DOCTOR WESTRICK.  
7 A GOOD MORNING.  
8 Q I'M GOING TO -- I'M GOING TO TRY TO BE AS BRIEF AS  
9 POSSIBLE THIS MORNING. I'M GOING TO ASK YOU A SERIES OF  
10 QUESTIONS, AND IF YOU COULD JUST REMEMBER OUR DISCUSSIONS AND  
11 THE COURT'S ADMONITIONS ON THURSDAY?  
12 A YES, SIR.  
13 Q THAT WILL HELP US GET THROUGH THIS FAIRLY QUICKLY.  
14 I WANT TO -- WE LEFT OFF ON THURSDAY, TALKING  
15 ABOUT A -- WE STARTED TO GET INTO AN OCTOBER 11, 2002 MEMO THAT  
16 YOU DRAFTED.  
17 A YES, SIR.  
18 Q I THINK WE HAD JUST ACTUALLY BROUGHT THAT -- I HAD  
19 BOUGHT THAT TO YOUR ATTENTION BEFORE WE BROKE, AND YOU WERE  
20 LOOKING AT IT.  
21 BEFORE WE GO TO THAT, I WANT TO COME BACK TO ONE  
22 THING, SO -- SO THAT I'M CLEAR.  
23 YOU MENTIONED THAT YOU TOOK NOTES, OR YOU HAD A  
24 CONVERSATION, ON SEPTEMBER 24TH, '02 CONCERNING A PLAN THAT  
25 RICHARD DAVIS CONVEYED TO YOU ABOUT WHAT TO DO IN THE EVENT THAT  
26 A BULLETPROOF VEST FAILED.  
27 DO YOU REMEMBER THAT?  
28 A YES.

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1 Q DO YOU REMEMBER THE DISCUSSION THAT WE HAD ON  
2 THURSDAY ABOUT THAT?

3 A YES, I DO.

4 Q YOU WERE DESCRIBING FOR THE JURY CONVERSATIONS THAT  
5 YOU HAD WITH RICHARD DAVIS ON THAT SUBJECT, CORRECT?

6 A I BELIEVE, YES.

7 Q OKAY.

8 A I HOPE SO.

9 Q OKAY. DID YOU HAVE CONVERSATIONS ABOUT THAT, AS  
10 YOU DESCRIBED THAT, THAT TWO-STEP PLAN, WITH ANYBODY ELSE AT  
11 SECOND CHANCE OTHER THAN RICHARD DAVIS?

12 A THE BLAME THE BULLET?

13 Q CORRECT.

14 A YES, SIR.

15 Q WHO DID YOU HAVE CONVERSATIONS WITH AT SECOND  
16 CHANCE, OTHER THAN RICHARD DAVIS, AND THOSE DISCUSSIONS THAT  
17 YOU'VE ALREADY SHARED WITH THE JURY?

18 A ED BACHNER.

19 Q AND DID YOU APPROACH ED BACHNER, OR DID HE APPROACH  
20 YOU?

21 A EARLIER, HE HAD APPROACHED ME.

22 Q WHAT DID HE TELL YOU?

23 BEFORE YOU ANSWER THAT QUESTION, PLEASE JUST  
24 REMIND THE JURY WHO ED BACHNER IS.

25 A ED BACHNER IS THE -- WAS THE VICE-PRESIDENT OF  
26 TECHNOLOGY AT SECOND CHANCE BODY ARMOR.

27 Q OKAY. THANK YOU.

28 AND WHAT WAS IT THAT HE SAID TO YOU CONCERNING

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1 THE BLAME-THE-BULLET THEORY, AS YOU'VE DESCRIBED IT TO THE JURY?

2 A HE EXPLAINED TO ME THAT IN BALLISTICS, THERE'S SO  
3 MANY VARIABLES, THAT THERE'S NO TWO EVENTS THAT ARE EXACTLY THE  
4 SAME.

5 I COULD NAME MANY VARIABLES, IF YOU'D LIKE.

6 I CAN GIVE YOU AN EXAMPLE, IF YOU'D LIKE.

7 Q I DON'T WANT --

8 MR. GREEN: OBJECTION, YOUR HONOR. NON-RESPONSIVE.

9 THE COURT: REMEMBER, HE ASKED YOU TO REMEMBER WHAT WE  
10 TALKED ABOUT LAST THURSDAY?

11 THE WITNESS: THERE'S MANY VARIABLES IN A BALLISTIC  
12 EVENT.

13 MR. EMERSON: I GOT THAT.

14 THE COURT: WE'RE GOING TO HAVE TO KEEP THIS REAL TIGHT,  
15 QUESTION, ANSWER, QUESTION, ANSWER.

16 REMEMBER, JUST ANSWER ONLY THE QUESTION ASKED,  
17 AND NOTHING ELSE, OKAY? WE'LL GET THROUGH THIS A LOT QUICKER.

18 GO AHEAD.

19 BY MR. EMERSON:

20 Q DON'T TELL US WHAT YOU UNDERSTAND THE VARIABLES TO  
21 BE. ALL I'M ASKING FOR IS WHAT ED BACHNER RELATED TO YOU IN  
22 THAT CONVERSATION.

23 WHAT DID HE TELL YOU ABOUT A BALLISTIC EVENT, OR  
24 THE DYNAMICS, AS YOU WERE JUST DESCRIBING?

25 AGAIN NOT -- I DON'T WANT YOU TO TELL THE JURY  
26 WHAT YOU THOUGHT, OR WHAT YOUR IMPRESSIONS WERE, BUT WHAT  
27 EXACTLY HE TOLD YOU ABOUT THAT THEORY, AND ABOUT THE BALLISTIC  
28 DYNAMIC.



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1           A        THAT IT'S IMPOSSIBLE FOR -- IN A STREET SHOOTING  
2 SITUATION, TO APPROPRIATELY REPLICATE THE EVENT, BECAUSE THERE'S  
3 SO MANY VARIABLES IN A STREET SHOOTING SITUATION.

4           Q        DID HE ELABORATE ON WHAT THE VARIABLES WERE, OR  
5 WHY -- WHY HE SAID THAT YOU CAN'T REPLICATE THAT?

6           A        YES. HE GAVE ME AN EXAMPLE.

7           Q        WHAT IS THE EXAMPLE THAT HE GAVE TO YOU?

8           A        VARIABLES ARE IN TWO CATEGORIES, ARMOR CATEGORY,  
9 AND THE PROJECTILE CATEGORY.

10                    THERE'S THE, AS AN EXAMPLE, SIZE OF THE  
11 PROJECTILE AND THE ARMOR --

12           MR. GREEN: OBJECTION, YOUR HONOR. HE'S TESTIFYING,  
13 GIVING HIM EXAMPLES.

14           THE COURT: YES. I THINK -- I THINK HE WAS INTENDING TO  
15 TELL US EXACTLY WHAT MR. BACHNER TOLD HIM, BUT IT'S NOT CLEAR.

16                    SO AGAIN, MR. WESTRICK, YOU'RE NOT BEING ASKED  
17 WHAT YOU THINK, OR YOUR OPINIONS ABOUT ANYTHING. YOU'RE BEING  
18 ASKED STRICTLY WHAT MR. BACHNER, THEN AN OFFICER OF A DEFENDANT,  
19 SAID TO YOU, RIGHT? NOTHING ELSE.

20           THE WITNESS: YES.

21           THE COURT: GO AHEAD.

22           THE WITNESS: YES.

23 BY MR. EMERSON:

24           Q        REMEMBERING WHAT THE JUDGE SAID, JUST TELL US WHAT  
25 BACHNER -- WHAT MR. BACHNER SAID TO YOU ABOUT THE EXAMPLE THAT  
26 YOU DESCRIBED.

27           A        I'M TRYING. IN THE BALLISTIC EVENT, THERE'S THE

28 PROJECTILE, AND THE ARMOR, AND THERE' S MANY VARIABLES LINKED TO

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1 EACH ONE OF THOSE.

2 Q THIS IS WHAT ED BACHNER IS TELLING YOU?

3 A YES.

4 Q DID HE CONTINUE?

5 A YES.

6 Q WHAT ELSE DID HE SAY?

7 A HE INDICATED, AS AN EXAMPLE, THERE' S THE SIZE,  
8 SHAPE OF THE PROJECTILE AND THE ARMOR, AND HE WENT -- HE WENT  
9 THROUGH MANY VARIABLES, BUT THE BOTTOM -- BUT HE INDICATED THAT  
10 IT WAS VERY HARD TO REPLICATE A STREET SHOOTING, BECAUSE --  
11 BECAUSE OF THE -- THERE' S SO MANY VARIABLES THAT ARE INVOLVED,  
12 AND THIS WOULD PLAY INTO THE -- THIS WOULD PLAY INTO SECOND  
13 CHANCE' S STRATEGY TO DEFEND ITSELF, IF THERE' S EVER PENETRATION.

14 Q DID HE SAY ANYTHING ELSE ABOUT -- DID HE EXPLAIN OR  
15 SAY ANYTHING ELSE AT THAT POINT IN TIME ABOUT THE THEORY, THE  
16 BLAME-THE-BULLET THEORY, AS YOU' VE DESCRIBED IT?

17 A THAT' S -- THAT' S BASICALLY WHAT HE SAID. HE DID  
18 NAME SOME OTHER VARIABLES, BUT I' M NOT SURE YOU WANT ME TO GO  
19 INTO THOSE.

20 Q WHILE YOU WERE AT SECOND CHANCE, YOU WERE THE  
21 DIRECTOR OF RESEARCH, CORRECT?

22 A YES, SIR.

23 Q FOR A PERIOD?

24 A YES, SIR.

25 Q WERE YOU FAMILIAR WITH THE DIFFERENT THREAT LEVELS  
26 OF THE DIFFERENT MODELS OF VESTS MANUFACTURED BY SECOND CHANCE  
27 BODY ARMOR?

28 A YES, I WAS.

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1 Q WHEN I SAY "THREAT LEVELS," CAN YOU TELL THE JURY  
2 WHAT THAT MEANS.

3 A "THREAT LEVEL" IS AN N. I. J. STANDARD.

4 THERE' S BASICALLY FOUR N. I. J. THREAT LEVELS FOR  
5 SOFT BODY ARMOR. THEY GO FROM LEVEL ONE, BEING THE LOWEST,  
6 WHICH BASICALLY -- THIS IS BASICALLY, GENERALLY-SPEAKING, WILL  
7 STOP .38 SOFT-NOSE TYPE BULLETS OUT OF A PISTOL. OR EXCUSE ME.  
8 A REVOLVER.

9 Q LET' S -- LET' S JUST FOCUS ON A LEVEL 2.

10 A YES, SIR.

11 Q IN TERMS OF WHAT YOUR KNOWLEDGE IS, AS DIRECTOR OF  
12 RESEARCH AT SECOND CHANCE, IN TERMS OF THE THREAT LEVEL OF A  
13 LEVEL 2. WE UNDERSTAND THERE' S FOUR, BUT FOCUS ON A LEVEL 2.

14 WHAT DOES THAT MEAN?

15 A WELL, FROM THERE, LEVEL 1 TO LEVEL 2A TO LEVEL 2,  
16 THAT IS THE MOST COMMON TYPE OF BODY ARMOR THAT' S WORN,  
17 CONCEALED.

18 Q ALL RIGHT. ARE THERE -- IS A LEVEL 2 VEST DESIGNED  
19 TO STOP CERTAIN BULLETS?

20 A YES, SIR.

21 Q AND DID SECOND CHANCE BODY ARMOR HAVE SOME KIND OF  
22 A PUBLICATION OR A CHART, OR DID THEY SOMEHOW INDICATE WHAT THAT  
23 LEVEL 2 VEST WOULD STOP?

24 A YES, SIR.

25 Q TELL US, IF YOU CAN RECALL, WHAT BULLETS THAT LEVEL  
26 2 VEST WAS GOING TO STOP.

27 A WELL, IT'S -- THERE'S MANY. THERE'S MANY ON THERE,  
28 BUT LEVEL 2 IS BASICALLY -- EXAMPLES?

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1 Q YES.

2 A WELL, LEVEL 2, 124-GRAIN, NINE-MILLIMETER. I'D  
3 HAVE TO LOOK. I CAN GIVE YOU APPROXIMATE VELOCITY.

4 Q WHAT ABOUT A-HUNDRED-AND-FIFTEEN-GRAIN  
5 NINE-MILLIMETER FULL-METAL-JACKET?

6 A OUT OF WHAT TYPE OF WEAPON?

7 Q NINE-MILLIMETER, FOUR- OR FIVE-INCH BARREL?

8 A THAT WOULD BE A LEVEL 2 THREAT.

9 Q NOW, GETTING BACK TO THIS MEMO, I WANT TO -- DO YOU  
10 HAVE THAT BEFORE YOU, SIR? I DON'T REMEMBER IF I LEFT YOU A  
11 COPY UP THERE OR NOT.

12 A YES.

13 Q IS THAT THE --

14 A OCTOBER 11TH, SIR?

15 Q CORRECT.

16 A YES, SIR.

17 MR. EMERSON: YOUR HONOR, I HAVE SHOWN THIS DOCUMENT TO --  
18 THIS EXHIBIT TO OPPOSING COUNSEL.

19 MAY I PUBLISH IT FOR THE JURY, YOUR HONOR?

20 THE COURT: YES. WHAT NUMBER IS IT AGAIN, FOR THE  
21 RECORD?

22 MR. EMERSON: TWO-FIFTEEN.

23 THE COURT: TWO-FIFTEEN. THANKS.

24 BY MR. EMERSON:

25 Q DOCTOR WESTRICK, I'M GOING TO SHOW YOU WHAT WE'VE  
26 MARKED AS EXHIBIT 215. I'M GOING TO ASK YOU IF YOU RECOGNIZE

27 EVERYTHING AT THAT POINT ABOVE.

28 I'M GOING TO ASK YOU IF YOU RECOGNIZE THIS

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1 DOCUMENT.

2 YOU HAVE A COPY BEFORE YOU THAT YOU CAN REFER TO.

3 A YEAH.

4 Q DO YOU RECOGNIZE THIS DOCUMENT?

5 A YES, SIR, I DO.

6 Q HOW DO YOU RECOGNIZE IT?

7 A I WROTE IT.

8 Q WHO DID YOU -- WHO DID YOU SEND -- WHO DID YOU

9 PREPARE THIS DOCUMENT FOR?

10 A SPECIFICALLY FOR JIM YOUNG, BUT FOR THE BOARD OF

11 DIRECTORS.

12 Q WHO IS JIM YOUNG?

13 A JIM YOUNG IS A CORPORATE OFFICER OF SECOND CHANCE.

14 Q OKAY. AND IT SAYS IT WAS SENT ON -- WAS THIS AN

15 E-MAIL?

16 A YES, SIR, IT WAS.

17 Q IT WAS SENT FRIDAY, OCTOBER 11, 2002, 4:01 P.M.; IS

18 THAT CORRECT?

19 A YES, SIR.

20 Q OKAY. ON THIS DOCUMENT, OR THIS E-MAIL THAT YOU

21 SENT, RIGHT HERE ON THE FIRST -- THE FIRST LINE, YOU SAY:

22 OVERHEARD LM.

23 WHO IS LM?

24 A LARRY MC CRANEY.

25 Q CAN YOU TELL THE JURY WHO HE IS.

26           A       HE IS A VICE-PRESIDENT -- OR WAS THE VICE-PRESIDENT  
27 OF MANUFACTURING, SECOND CHANCE BODY ARMOR.  
28           Q       OVERHEARD LM INDICATING THAT HE WANTED -- QUOTE,

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1 WANTED TO KNOW HOW WE GOT CAUGHT UP IN THIS. WHY DO WE HAVE TO  
2 DEFEND IT?

3                   DO YOU SEE THAT?

4           A       YES, SIR.

5           Q       WHERE DID YOU -- WHEN DID YOU HEAR LARRY MC CRANEY  
6 SAY THAT?

7           A       RICHARD DAVIS AND I WERE HAVING A MEETING IN MY  
8 OFFICE. LARRY HAD BARGED INTO THE MEETING, AND WAS IN THE  
9 PROCESS OF KIND OF ESCORTING RICHARD DAVIS OUT, WHEN HE  
10 INDICATED THAT.

11          Q       DID HE SAY ANYTHING ELSE?

12          A       YES. HE INDICATED THAT HE STOOD TO LOSE SIXTEEN  
13 MILLION DOLLARS.

14          Q       DO YOU KNOW WHAT HE WAS TALKING ABOUT?

15          A       YES.

16          Q       WHAT WAS HE TALKING ABOUT?

17          A       THE COMPANY --

18          MR. GREEN: OBJECTION, YOUR HONOR.

19          THE COURT: YES. SUSTAINED.

20          MR. EMERSON: OKAY.

21 BY MR. EMERSON:

22          Q       DID HE SAY ANYTHING ELSE AT THAT POINT IN TIME,  
23 OTHER THAN HE STOOD TO LOSE SIXTEEN MILLION DOLLARS?

24          MR. GREEN: OBJECTION, YOUR HONOR, AND MOVE TO STRIKE THE  
25 PRIOR ANSWER. MOTION IN LIMINE.

26 THE COURT: WELL, FORGET THE SIXTEEN MILLION DOLLARS,  
27 RIGHT? LET'S MOVE ON TO THAT.

28 WE HAVE THE NEXT QUESTION ABOUT WHO SAID WHAT TO

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1 WHO. IS THAT IT?

2 MR. EMERSON: WE DO.

3 THE COURT: LET'S ASK HIM THE NEXT QUESTION, AND MOVE ON.

4 BY MR. EMERSON:

5 Q DID LARRY MC CRANEY SAY ANYTHING ELSE?

6 A THAT'S BASICALLY IT. HE WAS ANGRY.

7 Q OKAY. I'M JUST GOING TO GO THROUGH A COUPLE OF  
8 THINGS THAT YOU WROTE, DOCTOR WESTRICK, AND TRY TO GO THROUGH  
9 THIS PRETTY QUICKLY.

10 MR. LYLE: IF I COULD, AT THIS POINT, WE'RE GETTING INTO A  
11 DOCUMENT -- AGAIN, THIS IS AN INTERNAL SECOND CHANCE DOCUMENT.  
12 I'D LIKE A 355 INSTRUCTION.

13 THE COURT: WE TALKED ABOUT THIS THURSDAY WITH THE JURY.  
14 THIS WILL PERTAIN THROUGHOUT THE TRIAL.

15 SOME PIECES OF EVIDENCE WILL BE OFFERED REALLY AS  
16 AGAINST ONLY ONE OF THE DEFENDANTS, NOT THE OTHER, AND THIS IS  
17 ONE OF THOSE EXHIBITS, AND THAT'S THE IMPORT OF MR. LYLE'S  
18 OBJECTION.

19 SO IT'S WELL-TAKEN. THIS DOCUMENT IS NOT BEING  
20 OFFERED, AND WILL NOT BE USED AGAINST TOYOBO, RIGHT?

21 MR. CAILTEUX: THANK YOU.

22 THE COURT: THANKS. GO AHEAD.

23 BY MR. EMERSON:

24 Q DOCTOR WESTRICK, YOUR FIRST BULLET POINT: WE USE

25 MORE ZYLON -- WE USE MORE ZYLON IN ARMOR THAN ANYONE ELSE. DO  
26 YOU SEE THAT?  
27 A YES, SIR.  
28 Q AND WHAT DID YOU MEAN BY THAT?

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1 A WE, BEING SECOND CHANCE BODY ARMOR, USES MORE ZYLON  
2 IN ARMOR THAN ANY OTHER COMPANIES, OF THE ROUGHLY TWENTY-SIX  
3 OTHER ARMOR COMPANIES IN THE UNITED STATES.  
4 Q WE PARTICIPATED IN A MASSIVE MARKETING CAMPAIGN,  
5 SINGING THE PRAISES OF ZYLON.  
6 DO YOU SEE THAT?  
7 A YES, SIR.  
8 Q WHAT DID YOU MEAN BY THAT?  
9 A WE PARTICIPATED IN A MASSIVE MARKETING CAMPAIGN,  
10 ADVERTISING CAMPAIGNS, WITH PICTURES OF ZYLON IN A HAND, AS AN  
11 EXAMPLE, BEING CRUSHED UP, SHOWING IT WAS BEING SO THIN AND  
12 LIGHT, AND WE HAD A VERY BIG MARKETING CAMPAIGN.  
13 Q SPECIFICALLY, WHAT DID YOU MEAN BY SINGING THE  
14 PRAISES OF ZYLON?  
15 A INDICATING THE SUPERIORITY OF THE BALLISTIC FIBER.  
16 Q NEXT LINE: WE ARE THE ONLY MAJOR THAT MAKES A PURE  
17 ZYLON VEST. DO YOU SEE THAT?  
18 A YES.  
19 Q WHAT DID YOU MEAN BY "PURE ZYLON VEST"?  
20 A AT THE TIME, WE WERE THE ONLY MAJOR COMPANY,  
21 BEING -- "MAJOR" -- THERE'S ROUGHLY -- IT DEPENDS WHO YOU ASK --  
22 FOUR MAJOR BODY ARMOR COMPANIES AT THE TIME. THE ONLY MAJOR,  
23 LARGE BODY ARMOR COMPANY MAKING A ONE-HUNDRED-PERCENT ZYLON  
24 VEST.



25 Q OKAY. THE NEXT ONE: WE HAVE PROFITED PERHAPS MORE  
26 THAN THE REST OF THE INDUSTRY COMBINED FROM THE SALE OF ZYLON.  
27 DO YOU SEE THAT?  
28 A YES.

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1 Q HOW WAS IT THAT YOU KNOW THAT SECOND CHANCE BODY  
2 ARMOR PROFITED MORE THAN THE REST OF THE INDUSTRY COMBINED FROM  
3 THE SALE OF ZYLON?  
4 A AT THE TIME, WE USED ABOUT SEVENTY PERCENT --  
5 SEVENTY PERCENT OF THE TOTAL MARKET OF ZYLON. SO THE OTHER  
6 TWENTY-SIX COMPANIES USED THIRTY PERCENT, ROUGHLY.  
7 Q DID YOU HAVE ANY DISCUSSIONS WITH ANYBODY AT SECOND  
8 CHANCE BODY ARMOR THAT WAS IN A MANAGERIAL OR EXECUTIVE POSITION  
9 CONCERNING THE PROFITABILITY OF ZYLON?  
10 MR. GREEN: SAME OBJECTION, YOUR HONOR.  
11 THE COURT: YEAH. I THINK WE'RE NOT TALKING ABOUT MONEY,  
12 RIGHT?  
13 I THINK YOU GOT THE ANSWER YOU WANT IN TERMS OF  
14 PERCENTAGES. THAT'S WHY HE SAID THAT THEY USE MORE THAN ANYBODY  
15 ELSE, RIGHT?  
16 MR. EMERSON: THE PROFITABILITY OF THAT IS IMPORTANT,  
17 YOUR HONOR.  
18 THE COURT: WELL, WE'RE NOT -- WE'RE NOT TALKING ABOUT  
19 DOLLARS, RIGHT? YOU'RE NOT GOING TO ASK HIM TO GIVE US NUMBERS  
20 AND DOLLARS?  
21 MR. EMERSON: I AM NOT. I'M ASKING HIM ABOUT  
22 CONVERSATIONS, ONE LIMITED QUESTION, YOUR HONOR.  
23 THE COURT: GO AHEAD.

24 BY MR. EMERSON:

25 Q DID RICHARD DAVIS OR ANYBODY AT SECOND CHANCE BODY  
26 ARMOR INDICATE TO YOU THAT ZYLON WAS PROFITABLE FOR SECOND  
27 CHANCE BODY ARMOR?

28 A YES.

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1 Q WITHOUT GIVING ME ANY KIND OF NUMBERS --

2 A YES.

3 Q -- WHO WAS THAT?

4 A OH, RICHARD DAVIS, ED BACHNER, PAUL BANDUCCI.

5 Q WHAT DID RICHARD DAVIS SAY ABOUT THE PROFITABILITY,  
6 WITHOUT GETTING INTO SPECIFIC NUMBERS?

7 MR. GREEN: YOUR HONOR, RELEVANCE, AND MOTION IN LIMINE.

8 THE COURT: YES. SUSTAINED.

9 LET'S MOVE ON.

10 BY MR. EMERSON:

11 Q WE IN FACT WERE EXCLUSIVE FOR A TIME.

12 WHAT DOES THAT MEAN?

13 A THAT SECOND CHANCE BODY ARMOR WORKED WITH TOYOBO,  
14 AND TOYOBO ONLY PROVIDED ZYLON FOR BODY ARMOR TO SECOND CHANCE.

15 Q OKAY. I'M GOING TO -- I'D JUST ASK YOU TO TAKE A  
16 LOOK AT THIS, SOME OF THE BULLET POINTS THAT ARE DOWN, THAT WE  
17 DID NOT COVER.

18 A YES, SIR.

19 Q I'M NOT GOING TO ASK YOU ABOUT THOSE. I WANT YOU  
20 TO JUST KIND OF KEEP GOING TO THE BOTTOM, WHERE YOU SAY: I DO  
21 NOT LIKE THIS KILL THE MESSENGER ATTITUDE.

22 A YES, SIR.

23 Q WHAT DID YOU MEAN BY THAT?

24 A I WAS EXPERIENCING A LOT OF DIFFICULTIES AT SECOND  
25 CHANCE BODY ARMOR REGARDING MY STANCE ON THE ZYLON PROBLEM.

26 Q AND WHAT WERE THOSE DIFFICULTIES?

27 A HOSTILITY IN THE WORKPLACE, EXECUTIVES NOT TALKING  
28 TO ME AT TIMES, AND -- WALKING DOWN THE HALLWAY, AND EXECUTIVES

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1 EVEN STEPPING IN FRONT OF ME IN A MENACING MANNER, SECOND CHANCE  
2 RELAYING THINGS TO THE INDUSTRY THAT WERE NOT TRUE ABOUT ME.

3 IT WAS VERY, VERY -- THREATS -- VERY  
4 UNCOMFORTABLE.

5 Q NOW, THIS -- THIS MEMO, DOCTOR WESTRICK, OR THIS  
6 E-MAIL, WAS SENT OCTOBER 11, 2002.

7 HOW MUCH IN TIME PRIOR TO OCTOBER 11, 2002 DID  
8 YOU FIRST RAISE CONCERNS WITH RICHARD DAVIS ABOUT ZYLON?

9 A OH, PRIOR TO THIS?

10 Q WAS IT TWO MONTHS BEFORE, OR A YEAR BEFORE, TWO  
11 YEARS BEFORE? CAN YOU GIVE THE JURY A SENSE OF THE TIME PERIOD  
12 THAT HAD ELAPSED SINCE YOU FIRST RAISED THOSE ISSUES TO THIS  
13 POINT?

14 A I FIRST STRONGLY RAISED THE ISSUES OCTOBER,  
15 NOVEMBER OF 2000 AND 1, SO A GOOD YEAR BEFORE THIS.

16 Q OKAY. WHEN YOU SAY, "I DID NOT CREATE THIS  
17 SITUATION," VERY BRIEFLY, WHAT ARE YOU TALKING -- I THINK WE  
18 KNOW. WHAT ARE YOU TALKING ABOUT?

19 MR. GREEN: YOUR HONOR, CUMULATIVE.

20 THE COURT: YEAH, IT IS, AND I THINK PART OF THE PROBLEM  
21 WE'RE HAVING IS HIM TELLING US WHAT HE MEANT BY SOMETHING, AND  
22 IF IT WASN'T COMMUNICATED, SECRET INTENT OR WHATNOT, I THINK

23 WHAT' S IMPORTANT IS WHAT HE SAID, WHAT HE DID.

24 LET' S MOVE ON.

25 BY MR. EMERSON:

26 Q YOU SAID: I' M GETTING SENSITIVE AND A LITTLE  
27 ANGRY. DO YOU SEE THAT?

28 A YES, SIR.

Computerized Transcription

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1 Q DID YOU TELL RICHARD DAVIS THAT?

2 A ABSOLUTELY.

3 Q WHAT DID YOU TELL HIM ABOUT YOU GETTING SENSITIVE  
4 AND A LITTLE ANGRY?

5 A I RELAYED THAT THINGS -- IT WAS VERY DIFFICULT  
6 WORKING THERE, AND IT WAS VERY DISTRESSING, AND I WAS VERY UPSET  
7 THAT THE EXECUTIVES -- I WAS BEING TREATED SO POORLY.

8 Q DID HE RESPOND?

9 A YES.

10 Q HOW DID HE RESPOND?

11 A HE RESPONDED THAT IT WOULD BE TAKEN CARE OF IN THE  
12 END, YOU KNOW, THAT THE ZYLON PROBLEM WOULD BE TAKEN CARE OF,  
13 AND THUS, I WOULD BE TAKEN CARE OF IN A RIGHTEOUS WAY.

14 Q DOCTOR WESTRICK, I' M GOING TO KIND OF -- I WANT TO  
15 KIND OF TRY TO WRAP THIS UP IN JUST A COUPLE OF MINUTES.

16 YOU TALKED EARLIER ABOUT DATA THAT HAD BEEN  
17 COMING IN FROM TOYOBO WITH REGARDS TO ZYLON, CORRECT?

18 DO YOU REMEMBER THAT TESTIMONY EARLY ON?

19 A YES.

20 Q WAS THERE -- YOU CAN TAKE THAT DOWN. THANK YOU.

21 DID SOMETHING HAPPEN IN JULY, AROUND JULY 5TH OR  
22 6TH, 2001 CONCERNING DATA RECEIVED FROM TOYOBO?

23           A       OH, WE -- WE SPOKE -- WE SPOKE ABOUT THE DATA THAT  
24 WAS RECEIVED FROM TOYOBO, YES, IN JULY, AND THEN THERE'S OTHER  
25 DATA RECEIVED UP -- UP -- KEPT ON GOING UP TOWARDS -- EVEN  
26 TOWARDS THE FIRST OF THE YEAR 2002.

27           Q       IN JULY OF 2001, WHAT WAS THE DATA?  
28                   WHAT DID THE DATA SAY THAT YOU RECEIVED FROM

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1 TOYOBO?

2           MR. GREEN:  OBJECTION.  BEST EVIDENCE, YOUR HONOR,  
3 HEARSAY.

4           THE COURT:  WELL, OVERRULED.  GO AHEAD.

5           THE WITNESS:  WE SAW A SCALE, A CHART THAT SHOWED THAT  
6 ZYLON DEGRADED UNDER TEST CONDITIONS.

7 BY MR. EMERSON:

8           Q       OKAY.  DID YOU HAVE A DISCUSSION WITH ED BACHNER  
9 ABOUT THAT?

10          A       YES.  AT THAT TIME, YES.

11          Q       AND WHAT DID ED BACHNER SAY TO YOU ABOUT WHAT WAS  
12 HAPPENING WITH -- WITH THAT TEST DATA?

13          A       THAT AT THAT TIME, HE SHOWED CONCERN, AND HE ALSO  
14 SHARED SOME OF MY -- WE SHARED CONCERNS, AND THAT HE ALSO HAD A  
15 PROBLEM WITH THE WAY TOYOBO WAS PAINTING THE DATA.

16          MR. CAILTEUX:  OBJECTION, YOUR HONOR.  MOTION IN LIMINE,

17          MR. GREEN:  AND YOUR HONOR -- I'M SORRY.

18                   AND YOUR HONOR, CALLS FOR HIS IMPRESSION, NOT  
19 NECESSARILY WHAT ED BACHNER SAID.

20          THE COURT:  WELL, I'M GOING TO OVERRULE THE OBJECTION,  
21 BUT DOCTOR WESTRICK, YOU'RE HERE, AGAIN, NOT TO TELL US WHAT YOU

22 THOUGHT, YOUR OPINIONS OR YOUR SPECULATION OR YOUR CONCLUSIONS,  
23 RIGHT?

24 THE WITNESS: YES, SIR.

25 THE COURT: YOU ARE BEING ASKED WHAT AN OFFICER, A  
26 MANAGING AGENT OF ONE OF THE DEFENDANTS SAID, AND THAT'S AN  
27 EXCEPTION TO THE HEARSAY RULE. WE CAN HEAR ABOUT IT, BUT WE  
28 HAVE TO BE REAL SPECIFIC, RIGHT?

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1 SO MAYBE COUNSEL CAN HELP US AGAIN WITH THE  
2 QUESTION. BE REAL SPECIFIC.

3 THE WITNESS: SORRY. GO AHEAD.

4 MR. EMERSON: THANK YOU.

5 BY MR. EMERSON:

6 Q WHAT DID ED BACHNER SAY TO YOU ABOUT THAT TEST DATA  
7 FROM JAPAN?

8 A HE SAID THAT TOYOBO WAS NOT HANDLING IT CORRECTLY,  
9 THAT THEY WERE PAINTING A VERY NEGATIVE PICTURE, AND THAT THEY  
10 SHOULD CHECK WITH SECOND CHANCE, OR GET IT OKAYED THROUGH SECOND  
11 CHANCE BEFORE THEY PUBLISHED ANY OTHER DATA, THAT THE DATA THAT  
12 WAS PUBLISHED SHOULD NEVER BE RELEASED TO THE PUBLIC.

13 Q ARE YOU FAMILIAR WITH A COMPANY CALLED D. S. M. ?

14 A DUTCH STATE MINES.

15 Q HOW ARE YOU FAMILIAR WITH D. S. M. ?

16 A THEY MAKE RAW MATERIALS, AND THEY LAMINATE  
17 MATERIALS. THEY ARE A LARGE COMPANY, EUROPEAN.

18 Q DID SOMETHING HAPPEN WITH D. S. M. IN JULY OF 2000  
19 AND 1?

20 MR. GREEN: OBJECTION. FOUNDATION, YOUR HONOR, VAGUE AND  
21 AMBIGUOUS.

22 THE COURT: SOUNDS A LITTLE VAGUE AND AMBIGUOUS,  
23 OVER-BROAD.

24 LOTS OF THINGS HAPPENED, I'M SURE, BUT LET'S GET  
25 REAL SPECIFIC.

26 BY MR. EMERSON:

27 Q TO YOUR KNOWLEDGE, WAS D. S. M. USING ZYLON IN BODY  
28 ARMOR?

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1 A YES.

2 Q AND DID THEY STOP USING ZYLON AT ANY POINT IN TIME?

3 MR. GREEN: OBJECTION. FOUNDATION, YOUR HONOR.

4 THE COURT: I GUESS YOU ARE GOING TO HAVE TO LAY  
5 FOUNDATION AS TO HOW HE WOULD KNOW THAT.

6 BY MR. EMERSON:

7 Q DO YOU KNOW -- HOW DO YOU THAT D. S. M. WAS USING  
8 ZYLON IN BODY ARMOR?

9 A THEY PLANNED TO USE ZYLON, BECAUSE THEY WERE  
10 COMPETING AGAINST --

11 MR. GREEN: MOVE TO STRIKE AS NON-RESPONSIVE, YOUR HONOR.

12 MR. EMERSON: HE'S EXPLAINING HOW.

13 THE COURT: WELL, HE'S SO FAR JUST NOT TELLING US THAT HE  
14 HAS ANY FIRS THAND KNOWLEDGE UPON WHICH TO BASE THESE COMMENTS,  
15 SO I THINK THAT'S THE IMPORT OF COUNSEL'S OBJECTION, THAT WE  
16 HAVE TO HAVE SOME BASIC FOUNDATION LAID, SO THAT WE'RE NOT JUST  
17 GETTING HIS OPINIONS, SPECULATION, AND CONCLUSIONS.

18 HE'S HERE AS A PERCIPIENT WITNESS ONLY, NO  
19 OPINIONS, REMEMBER?

20 MR. EMERSON: THANK YOU, YOUR HONOR.

21 BY MR. EMERSON:

22 Q DO YOU HAVE ANY PERSONAL KNOWLEDGE THAT D. S. M. WAS  
23 USING OR INTENDED TO USE ZYLON IN BODY ARMOR?

24 A YES.

25 Q WHAT IS THE BASIS FOR YOUR PERSONAL OPINION?

26 TELL ME WHAT THE OPINION IS. EXPLAIN TO ME HOW  
27 IT IS THAT YOU HAVE A PERSONAL OPINION.

28 NOT PERSONAL OPINION. PERSONAL KNOWLEDGE.

Computerized Transcripti on

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1 A AS A MEMBER OF THE EXECUTIVE GROUP FROM SECOND  
2 CHANCE BODY ARMOR, SECOND CHANCE WAS COMPETING AGAINST A COMPANY  
3 THAT WAS USING -- IN GERMANY, THAT WAS USING ZYLON.

4 THEY WERE COMPETITORS TO US FOR A LARGE GERMAN  
5 BID, ARMOR BID.

6 Q THE COMPANY YOU'RE REFERRING IS TO D. S. M.

7 A YES. THERE'S ALSO OTHER COMPANIES ATTACHED.

8 Q TELL ME WHAT HAPPENED WITH THAT COMPETITION OVER  
9 THAT GERMAN --

10 MR. GREEN: OBJECTION. OVER-BROAD, YOUR HONOR.

11 THE COURT: IT SEEMS LIKE IT IS.

12 I MEAN, HE'S TOLD US THAT, AS A MEMBER OF THE  
13 EXECUTIVE GROUP, HE WOULD KNOW THAT, WHO THE BASIC COMPETITOR  
14 IS.

15 SO FAR, SO GOOD. HOW HE KNOWS ANYTHING INTERNAL  
16 ABOUT SOME OTHER COMPANY, WE HAVE NOT HEARD.

17 BY MR. EMERSON:

18 Q TO YOUR KNOWLEDGE, DID D. S. M. EVENTUALLY -- DO YOU  
19 HAVE PERSONAL KNOWLEDGE D. S. M. DID OR DID NOT USE ZYLON IN BODY  
20 ARMOR?



21 A THEY DID NOT USE IT.

22 Q HOW DO YOU KNOW?

23 MR. GREEN: OBJECTION. MOVE TO STRIKE AS NON-RESPONSIVE.

24 THE COURT: I WILL GRANT THAT MOTION, AND ASK THE JURY TO  
25 DISREGARD THAT LAST ANSWER.

26 BY MR. EMERSON:

27 Q DO YOU HAVE PERSONAL KNOWLEDGE AS TO WHETHER D. S. M.  
28 EVER USED ZYLON IN BODY ARMOR?

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1 A EVER?

2 Q BETWEEN 2000 AND DURING THIS TIME PERIOD IN 2001.

3 A YES.

4 Q HOW DO YOU KNOW?

5 A I KNOW THEY CANCELLED THE BID.

6 MR. GREEN: OBJECTION, YOUR HONOR. MOVE TO STRIKE, AS  
7 NON-RESPONSIVE.

8 THE COURT: SUSTAINED, AND THE MOTION IS GRANTED. I'LL  
9 ASK THE JURY TO DISREGARD THAT LAST COMMENT.

10 I MEAN, UNLESS HE WAS THERE, SEEING THE ZYLON GO  
11 IN, OR -- YOU KNOW WHAT WE HAVE TO HAVE TO LAY A FOUNDATION.  
12 OTHERWISE, IT'S JUST SOMEONE'S OPINION, OR HEARSAY, OR WHATEVER.  
13 BY MR. EMERSON:

14 Q DID YOU EVER RECEIVE ANY COMMUNICATIONS, OR DID  
15 SECOND CHANCE EVER RECEIVE ANY COMMUNICATIONS, FROM D. S. M?

16 A YES.

17 Q CONCERNING ZYLON?

18 A YES.

19 Q WHEN WAS THAT?

20 A JUNE, JULY OF 2001, MAYBE PERHAPS INTO AUGUST,  
21 2001.

22 Q I'M GOING TO ASK YOU SPECIFICALLY COMMUNICATIONS  
23 RECEIVED FROM D. S. M. IN JULY OF 2001.

24 EXCLUDE, PLEASE, JUNE OR AUGUST OR ANY OTHER TIME  
25 PERIOD.

26 DO YOU REMEMBER ANY COMMUNICATIONS RECEIVED FROM  
27 D. S. M. IN JULY OF 2001?

28 MR. GREEN: OBJECTION. CALLS FOR HEARSAY, YOUR HONOR.

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1 THE COURT: SOUNDS LIKE IT WILL BE HEARSAY.

2 SO HE HASN'T ASKED HIM THE BIG QUESTION YET, BUT  
3 I CAN SEE IT COMING. HE'S NOT GOING TO TELL US WHAT SOMEONE  
4 SAID THAT HE RECEIVED FROM SOME OTHER COMPANY THAT'S NOT A PARTY  
5 TO THE CASE?

6 MR. EMERSON: NO.

7 BY MR. EMERSON:

8 Q DID YOU EVER HAVE ANY CONVERSATIONS WITH ED BACHNER  
9 OR RICHARD DAVIS OR LARRY MC CRANEY ABOUT D. S. M. ?

10 A YES.

11 Q DID YOU HAVE ANY DISCUSSIONS WITH THEM ABOUT THE  
12 BID THAT YOU WERE COMPETING WITH, SECOND CHANCE WAS COMPETING  
13 WITH, D. S. M. , IN JULY OF 2001?

14 A YES.

15 Q AND DID ED BACHNER, RICHARD DAVIS, OR LARRY  
16 MC CRANEY TELL YOU ANYTHING ABOUT THE STATUS OF THAT BID IN  
17 2001?

18 A YES.

19 Q WHAT DID THEY TELL YOU ABOUT THE STATUS OF THAT

20 BID?

21 MR. GREEN: OBJECTION, YOUR HONOR. I KNOW WE'RE GOING AT  
22 THE SAME HEARSAY EVIDENCE, NO MATTER WHO IT COMES THROUGH.

23 THE COURT: I THINK THAT'S TRUE.

24 I MEAN, WE'RE NOW TALKING ABOUT A PARTY, BUT WE  
25 ARE -- WE CAN'T JUST GET ANYTHING IN, BECAUSE SOMEBODY MAY HAVE  
26 SAID IT.

27 SUSTAINED AT THIS POINT.

28 BY MR. EMERSON:

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1 Q DOCTOR WESTRICK, WHY DID YOU COME FORWARD WITH YOUR  
2 CONCERNS IN 2- -- THE END OF 2001 WITH ZYLON?

3 A I BELIEVED SOMEONE COULD BE HURT OR KILLED. I WAS  
4 VERY CONCERNED FOR OUR CUSTOMERS, POLICE, AND SOLDIERS.

5 Q DID YOU EVER ASK SECOND CHANCE BODY ARMOR FOR  
6 ANYTHING IN RETURN FOR YOU AGREEING NOT TO COME FORWARD WITH  
7 YOUR CONCERNS?

8 A NO.

9 Q DID YOU EVER ASK FOR ANY COMPENSATION, ANY MONEY,  
10 OR ANYTHING, ANY KIND OF A DEAL?

11 A NO.

12 Q AT SECOND CHANCE BODY ARMOR, YOU ARE GIVEN REGULAR  
13 PERFORMANCE REVIEWS?

14 A YES.

15 Q DID YOU EVER HAVE ANY NEGATIVE PERFORMANCE REVIEWS?

16 A NO.

17 Q DID YOU EVER HAVE ANY DISCIPLINARY ISSUES AT SECOND  
18 CHANCE BODY ARMOR?

19 A NO.  
20 Q DID YOU LEAVE SECOND CHANCE BODY ARMOR VOLUNTARILY?  
21 A NO.  
22 MR. EMERSON: THANK YOU FOR YOUR TESTIMONY, DOCTOR  
23 WESTRICK.  
24 NO FURTHER QUESTIONS, YOUR HONOR.  
25 THE COURT: YOU DON'T HAVE ANY QUESTIONS, DO YOU?  
26 MR. GREEN: JUST A COUPLE, YOUR HONOR.  
27 THE COURT: OH, I SEE. ALL RIGHT. I GUESS MR. GREEN HAS  
28 STOOD UP FIRST, SO I GUESS HE HAS SOME QUESTIONS.

Computerized Transcription

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1 GO AHEAD, SIR.  
2 MR. GREEN: MAY I HAVE A MOMENT, YOUR HONOR, HERE, YOUR  
3 HONOR, FOR A LITTLE TECHNOLOGY SHIFT, PLEASE?  
4 THE COURT: SURE.  
5 MR. EMERSON: YOUR HONOR, THERE'S SOME STUFF THAT'S  
6 SHOWING THAT I HAVE NOT SEEN BEFORE. I'M NOT SURE --  
7 MR. GREEN: DON'T PUT IT UP.  
8 A PART OF THE TECHNOLOGY SHIFT. SORRY, YOUR  
9 HONOR.  
10 THE COURT: OKAY. YOU HAVE NOT SEEN THAT BEFORE?  
11 MR. EMERSON: I HAVE NOT, YOUR HONOR.  
12 THE COURT: I WOULD EXPECT THAT COUNSEL WILL SHOW YOU  
13 SOMETHING BEFORE IT GOES UP THERE, IF WE HAVE NOT ALREADY  
14 APPROVED IT.  
15 MR. GREEN: I WILL, YOUR HONOR.  
16 THE COURT: ALL RIGHT.  
17 MR. EMERSON: THAT LOOKS LIKE AN IMPERMISSIBLE MARKING,  
18 YOUR HONOR. IT SEEMS HIGHLIGHTED.

19 THE COURT: WE WILL -- THE JURY WILL BE INSTRUCTED TO  
20 DISREGARD THAT INADMISSIBLE EVIDENCE.

21 MR. EMERSON: THANK YOU, YOUR HONOR.

22 THE COURT: GO AHEAD.

23 MR. GREEN: THANK YOU, YOUR HONOR.

24

25 CROSS-EXAMINATION

+

26 BY MR. GREEN:

27 Q GOOD MORNING, DOCTOR WESTRICK.

28 A GOOD MORNING.

Computerized Transcription

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1 Q WE HAVE NOT MET BEFORE, BUT I'M ROBERT GREEN,  
2 REPRESENTING SECOND CHANCE.

3 HOW ARE YOU THIS MORNING?

4 A GOOD. HOW ARE YOU?

5 A FINE. THANKS.

6 JUST A COUPLE OF PRELIMINARY MATTERS FIRST,  
7 BEFORE I ASK YOU FOLLOW-UPS ON WHAT YOU SAID.

8 YOU KNOW THAT SECOND CHANCE, AS A COMPANY, NO  
9 LONGER EXISTS, AND ITS ASSETS WERE ACQUIRED BY ARMOR HOLDINGS?

10 YOU KNEW THAT BEFORE YOU CAME IN HERE TO TESTIFY,  
11 DIDN'T YOU?

12 A YES.

13 Q OKAY. SO YOU KNEW THAT NO ONE WOULD BE HERE FROM  
14 SECOND CHANCE WHO WOULD PERSONALLY TESTIFY, TO REBUT ANYTHING  
15 YOU HAD TO SAY?

16 YOU KNEW THAT BEFORE YOU TOOK THE STAND?

17 MR. EMERSON: YOUR HONOR, OBJECTION, RELEVANCE, AND IT

18 MISSTATES ACTUALLY THE FACT.  
19 THE COURT: WELL, SUSTAINED AT THIS POINT.  
20 GO AHEAD.  
21 BY MR. GREEN:  
22 Q OKAY. ALL RIGHT. LET'S MOVE TO SOMEWHERE ELSE,  
23 THEN.  
24 YOU ARE NOT HERE TO TESTIFY, AND HAVE NOT BEEN  
25 RETAINED, AS AN EXPERT WITNESS; IS THAT CORRECT?  
26 A THAT'S CORRECT.  
27 Q OKAY. AND YOU WERE NOT HIRED BY THE PLAINTIFFS TO  
28 PERFORM ANY EXPERT ANALYSIS, OR DO ANY EXPERT CONSULTING, RIGHT?

Computerized Transcription

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1 A NO.  
2 Q YOU'RE SIMPLY HERE AS A -- TO TESTIFY AS A WITNESS  
3 WHO OBSERVED CERTAIN THINGS, WROTE CERTAIN MEMOS, AND CAME TO  
4 TELL THE JURY WHAT YOU REMEMBERED AT THE TIME YOU WERE AT THE  
5 COMPANY, CORRECT?  
6 A YES.  
7 Q AND YOU WERE NOT SUBPOENAED TO COME HERE TODAY,  
8 BECAUSE SUBPOENAS ARE ONLY GOOD FOR CALIFORNIA, RIGHT?  
9 A I BELIEVE SO.  
10 Q YOU'RE A RESIDENT OF MICHIGAN, RIGHT?  
11 A YES, I AM.  
12 Q YOU CAME HERE VOLUNTARILY, IS THE QUESTION.  
13 A YES.  
14 Q OKAY. AND SIR, ISN'T IT A FACT THAT MR. EMERSON  
15 PAID YOU FIVE THOUSAND DOLLARS TO COME OUT HERE AND TO TESTIFY  
16 BEFORE THIS JURY?  
17 A NO.

18 Q HE GAVE YOU FIVE THOUSAND DOLLARS, DIDN'T HE?  
19 A ABSOLUTELY NOT.  
20 MR. GREEN: YOUR HONOR, IF I MAY, I WOULD LIKE TO READ  
21 FROM -- WELL, MAY I APPROACH, YOUR HONOR?  
22 THE COURT: YES. IF YOU'LL MENTION -- IF WE'RE TALKING  
23 ABOUT A DEPOSITION, IF YOU'LL MENTION PAGE AND LINE, SO THAT  
24 COUNSEL --  
25 MR. GREEN: WE'RE NOT TALKING ABOUT A DEPOSITION, YOUR  
26 HONOR.  
27 THE COURT: YOU'RE GOING TO REFRESH RECOLLECTION WITH  
28 SOMETHING?

Computerized Transcription

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1 MR. GREEN: NO. I WAS GOING --  
2 THE COURT: GO AHEAD. I OUGHT TO STAY OUT OF THIS, I  
3 GUESS.  
4 MR. GREEN: I WOULD LIKE TO READ FOR YOU A COMMENT MADE  
5 MADE BY MR. EMERSON TO THE COURT.  
6 MR. EMERSON: YOUR HONOR --  
7 THE COURT: WELL, YEAH. ATTORNEY --  
8 MR. EMERSON: I HAVE NOT HEARD OF THAT BEFORE.  
9 THE COURT: IT'S NOT EVIDENCE, SO --  
10 BY MR. GREEN:  
11 Q DOCTOR WESTRICK, IS IT YOUR TESTIMONY THAT YOU HAVE  
12 NOT BEEN PAID ANY MONEY TO COME HERE TODAY?  
13 A ONLY TRAVEL EXPENSES.  
14 Q WAS THAT IN THE AMOUNT OF FIVE THOUSAND DOLLARS?  
15 A NO.  
16 Q HOW MUCH WERE YOU PAID?

17           A       MR. EMERSON PAID FOR MY AIRPLANE TICKET. HE WILL  
18 PAY, HOPEFULLY, FOR MY RENTAL CAR, AND FOR THE HOTEL, AND -- I  
19 BELIEVE, AND THE HOTEL -- THE MEALS. IF I EAT AT THE HOTEL, THE  
20 MEALS ARE COVERED.

21           Q       AND ARE YOU PAYING -- IS HE PAYING YOU A DAILY FEE  
22 OF THREE HUNDRED DOLLARS AS WELL?

23           A       NO.

24           Q       ALL RIGHT. DOCTOR WESTRICK, ARE YOU FAMILIAR WITH  
25 A DOCUMENT CALLED "THE SECOND CHANCE SAVES CLUB" --

26           A       YES.

27           Q       -- BROCHURE?

28           A       I USED TO BE IN CHARGE OF THAT.

Computerized Transcription

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1           Q       IN FACT, YOU'RE IN THE SAVES CLUB BOOKLET?

2           A       I'M SAVE 265, YES.

3                    I DON'T KNOW IF I'M IN THAT ONE, THOUGH. THAT  
4 WAS AFTER MY TIME.

5                    THANK YOU.

6                    (MARKED FOR I.D.: = EX. 541, BROCHURE )

7           Q       HERE YOU GO.

8                    NOW, THIS IS EXHIBIT 541, AND IF WE COULD PUT IT  
9 UP.

10                    OKAY. THIS IS THE BOOKLET THAT'S IN FRONT OF  
11 YOU, SO THE JURY CAN FOLLOW ALONG. IS THAT CORRECT?

12           A       YES.

13           Q       AND YOU SAID YOU TOOK PART IN COMPILING THIS BOOK  
14 WHILE YOU WERE --

15           A       NOT THE 2005, BUT BEFORE THE ZYLON PROBLEM, I WAS  
16 IN CHARGE OF THE SAVES CLUB.



17 Q SURE. YOU PUT TOGETHER THIS BOOKLET?  
18 A NOT THIS BOOKLET, BUT SIMILAR ONES.  
19 Q AN EARLIER VERSION OF IT?  
20 A PARDON ME?  
21 Q AN EARLIER VERSION OF IT, CORRECT?  
22 A YES, SIR.  
23 MR. EMERSON: YOUR HONOR, I'M SORRY. I'M GOING TO  
24 OBJECT. THERE'S NO FOUNDATION AS TO THIS PARTICULAR DOCUMENT.  
25 THE COURT: OVERRULED AT THIS POINT.  
26 MR. EMERSON: OKAY.  
27 BY MR. GREEN:  
28 Q YOU COMPILED THE EARLIER VERSION OF THE SAVES CLUB

Computerized Transcription

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1 BOOK, AND THE PURPOSE OF THE SAVES CLUB BOOK IS TO DOCUMENT  
2 PEOPLE WHOSE LIVES WERE SAVED BY SECOND CHANCE BODY ARMOR,  
3 CORRECT?  
4 A YES, SIR. WHEN I CAME ON WITH SECOND CHANCE, I  
5 ASSUMED SOME OF THOSE RESPONSIBILITIES.  
6 Q OKAY. AND IN FACT, DOCTOR WESTRICK, THAT'S YOU  
7 RIGHT THERE, SAVE NUMBER 265, CORRECT?  
8 A THAT WOULD BE ME WITH HAIR.  
9 Q OKAY.  
10 THE COURT: WE DON'T TALK ABOUT HAIR AROUND HERE.  
11 MR. GREEN: I'M WITH YOU.  
12 BY MR. GREEN:  
13 Q OKAY. AND THEN DOCTOR WESTRICK, ISN'T IT A FACT  
14 THAT -- NEXT PAGE. SAFE NUMBER 277 IN THIS BOOK --  
15 MR. EMERSON: YOUR HONOR, OBJECT. THERE'S NO FOUNDATION

16 LAID TO ANYTHING AFTER WHEN HE COMPILED THIS YEARS AGO.

17 I DON'T KNOW WHO COMPILED THIS. THERE'S NO  
18 FOUNDATION.

19 THE COURT: WELL, THAT MAY BE HIS NEXT ANSWER, HE DOESN'T  
20 KNOW ANYTHING ABOUT IT.

21 SO OVERRULED AT THIS POINT.

22 BY MR. GREEN:

23 Q DOCTOR WESTRICK, SAVE NUMBER 777 --

24 A SEVEN-SEVEN-SEVEN?

25 Q -- WAS THE FIRST ZYLON SAVE, WASN'T IT?

26 MR. EMERSON: OBJECTION, YOUR HONOR. RELEVANCE,  
27 FOUNDATION, SPECULATION.

28 THE COURT: OVERRULED AT THIS POINT.

Computerized Transcription

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1 THE WITNESS: I BELIEVE SO. IF MY MEMORY SERVES ME  
2 CORRECT, HE WOULD BE THE FIRST -- FIRST ZYLON BALLISTIC SAVE,  
3 PERHAPS.

4 BY MR. GREEN:

5 Q GREAT. THANK YOU.

6 A I'M NOT SURE.

7 Q IF YOU CAN LOOK AT THE LAST PAGE OF THAT DOCUMENT,  
8 SIR. IT GOES UP TO SAVE NUMBER 926. DO YOU SEE THAT?

9 A YES.

10 Q SO THE PURPOSE OF COMPILING THE SAVES CLUB WAS TO  
11 SHOW THAT THERE HAVE BEEN NINE HUNDRED AND TWENTY-SIX OFFICERS  
12 OR MILITARY PERSONNEL WHO HAVE BEEN SAVED USING SECOND CHANCE  
13 BODY ARMOR, CORRECT?

14 A YES.

15 Q AND THEN THERE'S A -- A LARGE LIST UNDER "PENDING

16 SAVES." WHAT WERE "PENDING SAVES" AT THE TIME YOU WERE  
17 COMPILING THIS BOOKLET?

18 A SAVES THAT POLICE OFFICERS HAVE REPORTED THAT BODY  
19 ARMOR HAD SAVED THEM FROM GREAT BODILY HARM OR DEATH, AND  
20 THEY -- AND THE COMPANY AT THIS POINT, USING THE SAME OPERATIVE  
21 PROCEDURE, WOULD BE LOOKING IN TO SAY IF THAT WOULD BE  
22 VALIDATED.

23 Q ALL RIGHT. YOU CAN PUT A THAT ASIDE, DOCTOR  
24 WESTRICK.

25 I WANT TO FOCUS A LITTLE BIT, AND ASK YOU SOME  
26 QUESTIONS ABOUT YOUR DECISION NOT TO GO PUBLIC WITH YOUR  
27 CONCERNS ABOUT ZYLON. WE'VE HEARD A GREAT DEAL OF TESTIMONY  
28 ABOUT THAT THURSDAY AND THIS MORNING, SO I WANT TO ASK YOU A FEW

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1 FOLLOW-UP QUESTIONS.

2 I THINK YOU SAID THAT IN NOVEMBER OF 2001, YOU  
3 CONCLUDED THAT YOU SHOULD ABSOLUTELY GO PUBLIC WITH YOUR  
4 CONCERNS, AND THAT THE COMPANY SHOULD RECALL ZYLON VESTS,  
5 CORRECT?

6 A I BELIEVE THAT TESTIMONY WAS THAT WE SHOULD NOTIFY  
7 OUR CUSTOMERS AT THAT POINT, SIR.

8 Q YOU SHOULD ABSOLUTELY GO PUBLIC AS OF NOVEMBER?

9 A TELL THEM THAT THERE WAS A PROBLEM.

10 Q AND IN FACT, YOU BELIEVED THAT AS EARLY AS JULY OF  
11 2001? I THINK THAT WAS YOUR TESTIMONY, RIGHT?

12 A I STARTED TO DRAW THAT CONCLUSION.

13 Q OKAY.

14 A IN THAT TIME PERIOD.

15 Q AND YOU TESTIFIED THAT IN 2002, YOU LEARNED THAT  
16 THE BOARD OF DIRECTORS HAD COME UP WITH A PLAN OF DOING NOTHING  
17 UNTIL A COP GOT SHOT?

18 THOSE WERE YOUR WORDS FROM THURSDAY. DO YOU  
19 RECALL THAT?

20 A YES.

21 Q OKAY. AND IN -- I THINK YOU ALSO TESTIFIED THAT IN  
22 FEBRUARY OF 2002, YOU TOLD MR. BANDUCCI THAT YOU WERE PERSONALLY  
23 GOING TO GO PUBLIC WITH THIS INFORMATION, DIDN'T YOU?

24 A I DID TELL HIM, YES, I DID.

25 I'M NOT SURE OF THE DATE THERE, BUT YES.

26 Q OKAY. AND NOW, THAT WAS FEBRUARY OF 2002, AND YOU  
27 TOLD THIS JURY THAT YOU GOT FIRED IN OCTOBER OF 2004, CORRECT?

28 A I'M NOT SURE IT WAS FEBRUARY 2002. I BELIEVE IT

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396

1 WAS MAYBE LATER IN 2002, BUT YES.

2 Q SO BETWEEN WHEREVER IT WAS IN 2002, AND OCTOBER OF  
3 2004, TWO YEARS OR MORE --

4 A YES.

5 Q -- YOU NEVER WENT PUBLIC WITH YOUR CONCERN OVER  
6 ZYLON, OR A COP GETTING SHOT, TO BORROW YOUR WORDS, DID YOU?

7 A YES, I DID.

8 Q TO WHOM DID YOU GO PUBLIC DURING THAT TIME PERIOD?

9 A I ATTEMPTED TO CALL DAVID, 2002, DAVID BOYD OF THE  
10 NATIONAL INSTITUTE OF JUSTICE DIRECTOR OF RESEARCH.

11 HE DID NOT RETURN MY CALLS. I VOICED CONCERN.

12 Q WHAT I WANT TO ASK YOU IS -- LET'S -- LET'S  
13 FIRST -- LET'S LIMIT IT TO PEOPLE AT SECOND CHANCE.

14 DID YOU TELL -- DID YOU TELL PAUL BANDUCCI THAT

15 YOU WERE GOING TO GO PUBLIC IN FEBRUARY, OR SOMETIME SHORTLY  
16 THEREAFTER, OF 2002?

17 A IN 2002. MAYBE NOT SHORTLY THEREAFTER.

18 I TOLD HIM I WANTED TO GO PUBLIC WITH IT, YES.

19 Q AND YOU TESTIFIED ALSO THAT, ON THURSDAY, MR.  
20 BANDUCCI THREATENED TO SUE YOU PERSONALLY FOR BREACHING YOUR  
21 EMPLOYMENT AGREEMENT, IF YOU DID SO?

22 THAT WAS YOUR TESTIMONY, RIGHT?

23 A UNTIL DEATH, YES.

24 Q AND THAT WAS THE REASON YOU TOLD THE JURY THAT YOU  
25 DIDN'T GO PUBLIC WITH WARNING CUSTOMERS ABOUT THE VESTS, RIGHT?

26 A IF I DIDN'T GO PUBLIC, TOWARD -- YES.

27 Q SO THE REASON THAT YOU DIDN'T TELL POLICE OFFICERS  
28 THAT YOU FELT THEIR VESTS PUT THEM IN RISK OF DANGER WAS BECAUSE

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397

1 YOU WERE AFRAID MR. BANDUCCI WOULD SUE YOU?

2 THAT'S WHAT YOU TOLD THE JURY THURSDAY, RIGHT?

3 A I DID TELL OTHER PEOPLE.

4 MR. GREEN: MOVE TO STRIKE AS NON-RESPONSIVE.

5 THE COURT: IT WAS NON-RESPONSIVE, SO I'LL ASK THE JURY  
6 TO DISREGARD THAT LAST ANSWER, AND SIR, I KNOW THIS IS A  
7 DIFFICULT ROLE TO BE UP HERE, ANSWERING QUESTIONS, ESPECIALLY IF  
8 YOU DON'T LIKE THE QUESTION, MAYBE, BUT YOU HAVE TO ANSWER THE  
9 QUESTION ASKED.

10 UNDERSTAND THAT THE OTHER LAWYER WILL HAVE  
11 ANOTHER OPPORTUNITY LATER TO ASK YOU OTHER QUESTIONS, IF  
12 SOMETHING ELSE NEEDS TO BE EXPLAINED.

13 THE WITNESS: I UNDERSTAND.

14 THE COURT: GO AHEAD, MR. GREEN.  
15 MR. GREEN: THANK YOU.  
16 BY MR. GREEN:  
17 Q I'LL WORK REAL HARD TO ASK YOU QUESTIONS THAT YOU  
18 CAN ANSWER "YES" OR "NO" OR "I DON'T KNOW," FAIR ENOUGH? AND  
19 I'D ASK THAT YOU KEEP YOUR ANSWERS TO THOSE ANSWERS.  
20 WILL YOU DO THAT FOR ME, PLEASE?  
21 A YES.  
22 Q OKAY. SO THE REASON YOU DIDN'T TELL YOUR FELLOW  
23 POLICE OFFICERS THAT THEIR LIVES WERE IN DANGER WAS BECAUSE YOU  
24 WERE AFRAID MR. BANDUCCI WOULD SUE YOU?  
25 THAT'S WHAT YOU TOLD THE JURY THURSDAY, CORRECT?  
26 A NO.  
27 Q OKAY. OKAY. ISN'T IT A FACT, DOCTOR WESTRICK,  
28 THAT YOUR CONCERN OVER NOT GETTING SUED LED YOU TO KEEP YOUR

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398

1 CONCERNS AWAY FROM YOUR FELLOW POLICE OFFICERS?  
2 ISN'T THAT A FACT?  
3 A NO, THAT IS NOT TRUE.  
4 (MARKED FOR I. D. : = EX. 478, CONTRACT )  
5 Q LET'S LOOK AT EXHIBIT 478, PLEASE.  
6 MR. GREEN: THERE'S BEEN NO OBJECTION MADE TO THIS  
7 EXHIBIT, YOUR HONOR, SO REQUEST PERMISSION TO PUBLISH IT.  
8 THE COURT: SAY THE NUMBER AGAIN FOR THE RECORD.  
9 MR. GREEN: FOUR-SEVENTY-EIGHT.  
10 THE COURT: FOUR-SEVENTY-EIGHT. OKAY. THANK YOU.  
11 MR. EMERSON: MAY I SEE IT, YOUR HONOR, BEFORE IT'S  
12 PUBLISHED?  
13 THE COURT: YES.

14 MR. EMERSON: NO OBJECTION.

15 THE COURT: OKAY.

16 I KNOW I HAVE A COPY SOMEWHERE IN THESE FIFTEEN  
17 BOXES BACK HERE, BUT I'LL JUST RELY UPON YOU FOLKS TO SHOW IT.

18 THE WITNESS: YOU WANT TO SHARE?

19 THE COURT: NO, THANKS.

20 BY MR. GREEN:

21 Q NOW, DOCTOR WESTRICK, YOU HAD AN EMPLOYMENT  
22 CONTRACT WITH SECOND CHANCE; IS THAT CORRECT?

23 A YES.

24 Q AND EXHIBIT 478 WAS THE CONTRACT WHEREBY YOU WENT  
25 TO WORK FOR THE COMPANY, CORRECT?

26 A YES, SIR. THERE WOULD BE -- APPEARS TO BE ONE,  
27 TWO, THREE -- THERE'S FOUR PAGES OF THE SAME --

28 Q THAT'S YOUR EMPLOYMENT CONTRACT, CORRECT?

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399

1 A I BELIEVE SO, WITHOUT LOOKING AT IT, YES.

2 Q IF WE READ THE FIRST PARAGRAPH UP THERE, IT SAYS:  
3 THE EMPLOYEE ACKNOWLEDGES THAT THE EMPLOYMENT RELATIONSHIP  
4 BETWEEN SECOND CHANCE AND THE EMPLOYEE IS ON AN AT-WILL BASIS.

5 DO YOU SEE THAT?

6 A YES.

7 Q YOU UNDERSTOOD AT THE TIME WHAT "AT WILL" MEANT,  
8 DIDN'T YOU?

9 A YES.

10 Q OKAY. IT MEANT THAT THEY COULD FIRE YOU AT ANY  
11 TIME FOR WHATEVER REASON, RIGHT?

12 A I DON'T BELIEVE MICHIGAN IS AN AT-WILL STATE.

13 Q OKAY. THAT'S JUST WHAT THE CONTRACT SAID.  
14 A YES, SIR.  
15 Q OKAY. YOU UNDERSTOOD, THOUGH, THAT YOU COULD QUIT  
16 AT ANY TIME THAT YOU WANTED TO QUIT, RIGHT?  
17 A YES.  
18 Q OKAY. NOW, IF WE LOOK AT THIS CONTRACT, CAN YOU  
19 TELL ME -- YOU WERE CONCERNED THAT MR. BANDUCCI WAS GOING TO SUE  
20 YOU UNTIL DEATH?  
21 YOU SAID THAT TODAY AND THURSDAY, RIGHT?  
22 A THE COMPANY, YES.  
23 Q THAT THE COMPANY WAS GOING TO SUE YOU.  
24 WHAT DID YOU BELIEVE TO BE THE BASIS FOR ANY  
25 LAWSUIT THAT MR. BANDUCCI COULD SUE YOU FOR, WHEN YOU WERE AN  
26 AT-WILL EMPLOYEE?  
27 MR. EMERSON: OBJECTION, YOUR HONOR. CALLS FOR A LEGAL  
28 CONCLUSION, ALSO CALLS FOR SPECULATION.

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400

1 THE COURT: WELL, OVERRULED.  
2 GO AHEAD.  
3 THE WITNESS: I INDICATED TO HIM THAT HE COULDN'T SUE ME,  
4 BECAUSE I WOULD BE RIGHT.  
5 HE SAID, "IT DOESN'T MAKE A DIFFERENCE. WE'RE A  
6 CORPORATION. WE'LL DOG YOU, AND SUE YOU TILL DEATH."  
7 BY MR. GREEN:  
8 Q OKAY. SO YOU KNEW THAT THIS LAWSUIT THAT WAS PUT  
9 AGAINST YOU WOULD HAVE NO BASIS, OR YOU DIDN'T BELIEVE IT HAD A  
10 CHANCE OF -- ANY BASIS OF SUCCESS, CORRECT?  
11 A NO, SIR.  
12 THE COURT: WELL, LET ME MAKE SURE WE UNDERSTAND THAT.



13 THAT COULD HAVE BEEN A DOUBLE NEGATIVE.

14 WHY DON'T YOU ASK IT AGAIN, AND LET'S -- I WASN'T  
15 SURE WHETHER -- WHETHER YOU WERE SAYING "YES" OR "NO" TO THAT  
16 QUESTION.

17 MR. GREEN: I'LL ASK IT AGAIN. THANK YOU.

18 BY MR. GREEN:

19 Q DOCTOR WESTRICK, YOU KNEW, AT THE TIME THAT MR.  
20 BANDUCCI ALLEGEDLY MADE THIS THREAT TO YOU, THAT HE COULDN'T  
21 HAVE ANY BASIS AND -- ANY LEGITIMATE BASIS FOR SUING YOU, IF YOU  
22 WENT PUBLIC, RIGHT?

23 YOU KNEW THAT, DIDN'T YOU?

24 YOU BELIEVED IT AT THE TIME?

25 A I BELIEVED THAT HE COULDN'T SUE ME?

26 Q YES.

27 A NO. I BELIEVED HE COULD SUE.

28 Q YOU BELIEVED THAT THIS LAWSUIT THAT HE FILED

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401

1 AGAINST YOU WOULD HAVE NO LEGAL BASIS, RIGHT?

2 A I DON'T KNOW ABOUT LEGAL BASIS.

3 Q OKAY. WELL --

4 A I WAS VERY AFRAID HE WOULD SUE ME. OR THE COMPANY  
5 WOULD SUE ME.

6 Q OKAY. SO IS WHAT YOU'RE TELLING THIS JURY THAT YOU  
7 DID NOT GO PUBLIC TO YOUR CUSTOMERS WITH YOUR CONCERNS OVER  
8 SECOND CHANCE ZYLON VESTS BECAUSE YOU WERE AFRAID THAT THE  
9 COMPANY WOULD SUE YOU, AND TRY TO TAKE YOUR PERSONAL ASSETS? IS  
10 THAT RIGHT?

11 A NO, I DIDN'T.

12 Q SO YOUR FEAR OVER THIS BASELESS LAWSUIT IS WHAT  
13 YOU'RE TELLING THE JURY LED YOU TO STAY SILENT TO YOUR CUSTOMERS  
14 FOR ROUGHLY TWO YEARS?

15 IS THAT WHAT YOU'RE SAYING?

16 A NO.

17 Q NOW, YOU ALSO TESTIFIED ON THURSDAY THAT ED BACHNER  
18 PRESENTED YOU WITH SOME STUDY DATA, TELLING YOU THAT HE WAS  
19 GOING TO HANG THIS PROBLEM ON YOU, OR WORDS TO THAT EFFECT.

20 DO YOU RECALL THAT TESTIMONY?

21 A YES.

22 Q AND I THINK YOU EVEN, WHEN YOU WERE GIVING THAT  
23 TESTIMONY, GOT A LITTLE CHOKED UP.

24 DO YOU RECALL THAT?

25 A YES.

26 Q THAT WAS A VERY UPSETTING EPISODE TO YOU, RIGHT?

27 A YES, IT WAS.

28 Q AND IT WAS EVEN MORE UPSETTING TO YOU AT THE TIME

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402

1 THAT HE SUPPOSEDLY SAID THIS TO YOU?

2 IS THAT YOUR TESTIMONY?

3 A AT THE TIME, IT UPSET ME, YES.

4 Q YET YOU WERE AN AT-WILL EMPLOYEE AT THIS COMPANY,  
5 AND YOU NEVER TOLD MR. BACHNER, "I QUIT, I'M OUT OF HERE, I'M  
6 NOT WORKING FOR THIS COMPANY ANYMORE," IN 2002, RIGHT AFTER HE  
7 SAID THAT TO YOU, DID YOU?

8 A NO.

9 Q AND AS FAR AS WHAT YOU WERE CONCERNED ABOUT IN  
10 2002, SECOND CHANCE WAS ENGAGING IN BORDERLINE CRIMINAL  
11 MISCONDUCT, WEREN'T THEY?

12 A LATE 2002?  
13 Q YES.  
14 A YES. I'D SAY CRIMINAL CONDUCT.  
15 Q AND YOU WANTED NO PART OF BEING A PART OF THAT  
16 CRIMINAL ENTERPRISE, DID YOU?  
17 A NO.  
18 Q OKAY. YET YOU REMAINED AS AN AT-WILL EMPLOYEE AT  
19 THIS COMPANY, AND AFTER YOU CONCLUDED THAT IT WAS A CRIMINAL  
20 ENTERPRISE, YOU WILLINGLY STAYED WORKING FOR THAT COMPANY, AS A  
21 PARTICIPANT IN THAT CRIMINAL ENTERPRISE, DIDN'T YOU?  
22 A NO.  
23 Q LET'S FOCUS A LITTLE BIT. WE'VE TALKED QUITE A BIT  
24 ABOUT WHAT YOU SAY YOU TOLD SECOND CHANCE FOLKS. LET'S TALK A  
25 LITTLE BIT ABOUT WHAT YOU WERE DOING IN YOUR JOB DURING THAT  
26 TIME PERIOD.  
27 THE VERY YEAR THAT YOU BELIEVED SECOND CHANCE WAS  
28 ENGAGING IN THIS MISCONDUCT, 2002, ISN'T IT A FACT, SIR, THAT

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403

1 YOU LOBBIED MR. DAVIS FOR A PROMOTION, AND YOU WERE ANGRY THAT  
2 MR. PICKETT HAD BEEN PROMOTED OVER YOU?  
3 ISN'T THAT A FACT, SIR?  
4 A NO.  
5 Q I'LL REFER YOU TO --  
6 THE COURT: I THINK WE'RE GOING TO TALK ABOUT A  
7 DEPOSITION NOW. DID WE TALK ABOUT THAT YET?  
8 LET ME JUST REVIEW FOR THE JURORS. YOU PROBABLY  
9 ALL KNOW THIS.  
10 A DEPOSITION, AS WE USE THAT TERM, IS A

11 QUESTION-AND-ANSWER PERIOD THAT TAKES PLACE BEFORE TRIAL. I  
12 THINK THE LAWYERS MAY HAVE REFERENCED THAT EARLIER.

13 IT'S USUALLY IN A LAWYER'S OFFICE. WE HAVE A  
14 STENOGRAPHER THERE, LIKE OUR COURT REPORTER HERE. THE DEPONENT,  
15 THE PERSON BEING ASKED THE QUESTIONS, IS SWORN IN, PLACED UNDER  
16 OATH. THE LAWYERS ASK HIM OR HER QUESTIONS.

17 HE OR SHE GIVES ANSWERS, THE COURT REPORTER TYPES  
18 UP THE QUESTIONS AND ANSWERS INTO A BOOKLET FORM THAT WE CALL "A  
19 DEPOSITION TRANSCRIPT," LIKE MR. GREEN IS HOLDING NOW.

20 THE POINT OF THAT IS, IF SOMEBODY READS SOME  
21 PORTION OF A DEPOSITION TRANSCRIPT IN COURT AND TO A JURY DURING  
22 THE COURSE OF A TRIAL, YOU'LL GIVE THAT TESTIMONY THE SAME FORCE  
23 AND EFFECT AS YOU WOULD IF THAT PERSON WAS ACTUALLY SO  
24 TESTIFYING ON THE STAND.

25 IT IS, AFTER ALL, SWORN TESTIMONY. IT'S JUST  
26 TAKEN IN A DIFFERENT VENUE, OKAY?

27 YOU PROBABLY ALREADY KNEW THAT, RIGHT?

28 WE'LL HEAR LOTS ABOUT DEPOSITIONS.

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404

1 LAWYERS DO DEPOSITIONS AHEAD OF TIME. THAT'S HOW  
2 THEY KNOW PRETTY MUCH WHAT MOST PEOPLE ARE GOING TO SAY. THEY  
3 ARE NOT CLAIRVOYANT. THEY HAVE ALREADY ASKED A LOT OF  
4 QUESTIONS, AND THEY HAVE IT DOWN, RIGHT?

5 THAT'S WHAT A DEPOSITION IS.

6 GO AHEAD, MR. GREEN.

7 BY MR. GREEN:

8 Q YOU REMEMBER, DOCTOR WESTRICK, THAT YOU WERE  
9 DEPOSED OVER SEVERAL DAYS, ONE OF WHICH WAS SEPTEMBER 9, 2005.

10 DO YOU RECALL THAT?

11 A I BELIEVE SO, YES.  
12 Q OKAY. AND WHEN YOU GAVE YOUR DEPOSITION, YOU WERE  
13 SWORN TO TELL THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, THE  
14 SAME AS YOU WERE HERE, RIGHT?  
15 A YES.  
16 Q AND YOU KNEW IT WAS AS IMPORTANT TO TELL THE TRUTH  
17 THEN AS IT WAS TODAY?  
18 A YES.  
19 Q OKAY. AND YOU WERE GIVEN THIS BOOKLET TO READ FOR  
20 ACCURACY, TO SEE IF YOU WANTED TO MAKE ANY CHANGES AFTER YOUR  
21 TESTIMONY, RIGHT?  
22 A I BELIEVE SO. I'M NOT SURE I READ IT.  
23 Q ALL RIGHT. NOW, I'LL ASK YOU TO -- I'M GOING TO  
24 READ ALONG HERE ON THIS QUESTION AND ANSWER BEGINNING AT LINE 6,  
25 OKAY?  
26 QUESTION: AND THIS SETS DOWN IN WRITING WHAT  
27 YOU'VE TALKED ABOUT BEFORE, THAT YOU HAD CONVEYED TO RICHARD  
28 DAVIS THAT THE PROMOTION OF MARK PICKETT WAS A MISTAKE?

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405

1 ANSWER: YES.  
2 QUESTION: OKAY. ANSWER. IN FACT, YOU WENT ON  
3 TO SAY THAT IT WAS A MISTAKE TO PROMOTE HIM OVER YOU, CORRECT?  
4 ANSWER: YES.  
5 QUESTION: YOU INDICATED THAT YOU HAD MORE TIME,  
6 SIX YEARS TO HIS THREE YEARS?  
7 ANSWER: YES.  
8 YOU'RE MORE DEDICATED?  
9 ANSWER: MY COPY IS KIND OF BAD.

10 QUESTION: MINE IS TOO. I AM TAKING A LITTLE  
11 LIBERTY. IT LOOKS LIKE MORE EDUCATED AND -- AND UNDER MORE  
12 TIME, MAYBE MORE DEDICATED? IT MIGHT BE MORE DEDICATED.

13 DID I READ THAT CORRECTLY?

14 A THAT WAS WHAT YOU WERE READING OFF THE DOCUMENT,  
15 CORRECT.

16 Q YES?

17 A YES.

18 Q YOU WERE READING OFF YOUR NOTES THAT YOU WERE  
19 REFERRING TO MANY TIMES THE OTHER DAY?

20 A YES.

21 Q AND THAT WAS A NOTE THAT YOU MADE AT THE TIME OF  
22 THE DISCUSSION WITH RICHARD DAVIS, CORRECT?

23 A YES.

24 Q AND THAT WAS A NOTE THAT YOU HAD WRITTEN TO  
25 YOURSELF, THAT YOU WERE ANGRY THAT THE COMPANY HAD PROMOTED MR.  
26 PICKETT OVER YOU IN 2002, CORRECT?

27 A BECAUSE OF THE ZYLON SITUATION, YES.

28 MR. GREEN: MOVE TO STRIKE AS NON-RESPONSIVE, AFTER THE

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406

1 WORD "YES," YOUR HONOR.

2 THE COURT: YES. THE MOTION TO STRIKE IS GRANTED. THE  
3 JURY WILL BE ASKED TO DISREGARD ALL OF THAT ANSWER, EXCEPT FOR  
4 THE WORD "YES."

5 BY MR. GREEN:

6 Q OKAY. THE BOTTOM LINE IS, DOCTOR WESTRICK, DURING  
7 THIS TIME THAT YOU SAY THE COMPANY IS ACTING SO TERRIBLY, YOU  
8 ARE ANGRY THAT THEY DIDN'T PROMOTE YOU --

9 A NO.

10 Q -- CORRECT?  
11 AND THAT WAS MAY 15TH OF 2002, CORRECT?  
12 A I'D HAVE TO LOOK AGAIN.  
13 Q DO YOU HAVE YOUR NOTES BACK WITH YOU?  
14 A I HAVE SOME OF THEM, YES.  
15 Q DO YOU HAVE MAY 15, 2002 THERE?  
16 A I GO TO FROM 4-30 TO 5-23.  
17 Q DOCTOR WESTRICK --  
18 A TWO-THOUSAND-THREE WE'RE TALKING ABOUT, SIR?  
19 Q I HAVE A COPY FOR YOU, 2002.  
20 A TWO-THOUSAND-TWO. I DIDN'T KNOW YOU HAD IT.  
21 (MARKED FOR I.D.: = EX. 950, NOTES )  
22 Q LET ME SHOW YOU EXHIBIT 950, DOCTOR WESTRICK. IT'S  
23 BEEN MARKED AS AN EXHIBIT IN THIS TRIAL.  
24 THOSE ARE YOUR NOTES FROM MAY 13 OF 2002,  
25 CORRECT?  
26 A YES.  
27 Q AND THAT'S WHAT YOU WERE READING FROM IN YOUR  
28 DEPOSITION, CORRECT?

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407

1 A IT APPEARS, YES.  
2 Q OKAY. SO THAT REFRESHES YOUR RECOLLECTION THAT ON  
3 MAY 13 OF 2002, RIGHT IN THE MIDDLE OF ALL THIS, YOU WERE ANGRY  
4 THAT THEY PROMOTED PICKETT OVER YOU, AND YOU THOUGHT YOU SHOULD  
5 HAVE GOTTEN IT, FOR ONE REASON, BECAUSE YOU WERE MORE DEDICATED,  
6 CORRECT?  
7 A REPEAT THAT.  
8 Q SURE. THAT REFRESHES YOUR RECOLLECTION THAT ON MAY

9 15 OF 2002, YOU WERE TELLING RICHARD DAVIS THAT YOU WERE ANGRY  
10 THAT MR. PICKETT WAS PROMOTED OVER YOU, AND ONE OF THE REASONS  
11 BEING, BECAUSE YOU WERE MORE DEDICATED TO THE COMPANY?

12 A ONE OF THE REASONS WAS BEING MORE DEDICATED, YES.

13 Q THANK YOU. YOU CAN CLOSE THAT BOOK.

14 A I CAN.

15 Q NOW --

16 MR. GREEN: EXCUSE ME ONE SECOND, YOUR HONOR.

17 (DISCUSSION OFF THE RECORD)

18 MR. GREEN: SORRY. A LITTLE TECHNICAL BREAKDOWN HERE.

19 BY MR. GREEN:

20 Q DOCTOR WESTRICK, ISN'T IT ALSO TRUE THAT YOU WERE,  
21 IN 2002, MAY OF 2002 TO BE PRECISE, LOBBYING RICHARD DAVIS FOR A  
22 RAISE IN PAY?

23 A I WAS NOT LOBBYING HIM, NO.

24 Q ISN'T IT A FACT, DOCTOR WESTRICK, THAT IN AND ABOUT  
25 THAT SAME TIME FRAME, YOU WERE LOBBYING RICHARD DAVIS TO GIVE  
26 YOU STOCK IN THE COMPANY, TEN SHARES, TO BE PRECISE?

27 A NO.

28 Q OKAY. LET'S CHANGE SUBJECTS HERE FOR A MINUTE,

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408

1 DOCTOR WESTRICK, AND TALK ABOUT THE SHREDDING INCIDENT OF THE  
2 DAVIS MEMO, RICHARD DAVIS MEMO, WE TALKED ABOUT A GREAT DEAL ON  
3 THURSDAY.

4 DO YOU RECALL THAT?

5 A YES.

6 Q YOU'VE TESTIFIED THAT YOU SAW RICHARD DAVIS, MATT  
7 DAVIS, PAUL BANDUCCI, JIM YOUNG, AND KAREN MC CRANEY STANDING  
8 AROUND A SHREDDER, SHREDDING THOSE COPIES OF THE DOCUMENT,



9 CORRECT?  
10 A NO.  
11 Q OKAY. REFRESH MY RECOLLECTION, THEN, ON WHAT  
12 YOU -- WHO YOU SAID WAS THERE, SHREDDING THOSE DOCUMENTS.  
13 A I HAD FOLLOWED RICHARD DAVIS UP TO WHERE THEY WERE  
14 SHEDDING THE DOCUMENTS. RICHARD -- I WAS WITH RICHARD WHEN WE  
15 WALKED UP THERE.  
16 I'M NOT SURE. IT'S BEEN A WHILE. I'M NOT SURE  
17 THAT JIM YOUNG WAS THERE OR NOT. I THINK I'M -- I'M NOT SURE.  
18 Q IF YOU SAID THAT ON THURSDAY, YOU'RE NOT SURE  
19 WHETHER HE WAS THERE?  
20 A RIGHT, YES. I'M NOT SURE IF JIM YOUNG WAS THERE,  
21 OR NOT.  
22 Q ALL OF THOSE OTHER PEOPLE WERE THERE? IS THAT YOUR  
23 TESTIMONY?  
24 A MATT DAVIS, KAREN, AND BOB, YES, SIR.  
25 Q SO ALMOST THE ENTIRE BOARD OF DIRECTORS IS STANDING  
26 AROUND THE SHREDDING MACHINE, SHREDDING THIS MEMO?  
27 IS THAT YOUR TESTIMONY?  
28 A NO.

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409

1 Q BUT THERE WERE EITHER FOUR OR FIVE PEOPLE STANDING  
2 THERE, DEPENDING ON IF MR. YOUNG WAS THERE, CORRECT?  
3 A YEAH. YES, THERE WERE. THEY WERE THERE.  
4 Q CAN YOU TELL US WHY -- IF THIS WAS SUCH A SECRET  
5 THING TO BE DONE BY THE COMPANY, WHY THERE WOULD BE FOUR OR FIVE  
6 PEOPLE STANDING AROUND, SHREDDING THIS DOCUMENT?  
7 A I DON'T THINK THEY THOUGHT THAT RICHARD DAVIS WOULD

8 DRAG ME UP THERE, IF YOU'RE ASKING ME THAT.

9 Q WELL, LET'S TALK ABOUT THE COPY THAT YOU TOLD THIS  
10 JURY THAT YOU KEPT.

11 I THINK YOU SAID THAT MATT DAVIS ASKED YOU FOR  
12 THAT COPY, BECAUSE HE KNEW YOU HAD A COPY, CORRECT?

13 A HE CAME BY.

14 Q AND HE ASKED YOU FOR IT, RIGHT?

15 A NO. HE INQUIRED ABOUT IT.

16 Q OKAY. AND YOU TOLD HIM IT WAS JUST A DRAFT, WORDS  
17 TO THAT EFFECT, AND HE LEFT YOU ALONE, RIGHT?

18 A YES, SIR.

19 Q AND YOU TESTIFIED THAT NOT ONLY DID THEY SHRED ALL  
20 THE COPIES OF THE DOCUMENT, BUT THEY ALSO WENT IN AND PURGED THE  
21 COMPUTER THAT MIGHT HAVE HAD THAT DOCUMENT ON IT, RIGHT?

22 A YES, SIR.

23 Q IS IT YOUR TESTIMONY THAT NOTWITHSTANDING THEIR  
24 DESIRE TO GET RID OF ALL COPIES OF THIS DOCUMENT,  
25 NOTWITHSTANDING THE FACT THAT THEY WOULD TAKE THE STEPS OF  
26 PURGING A COMPUTER, AND NOTWITHSTANDING THE FACT THAT THOSE SAME  
27 INDIVIDUALS DISLIKED OR DISTRUSTED YOU, AS YOU BELIEVED, IS IT  
28 YOUR TESTIMONY THAT MATT DAVIS ASKED YOU ABOUT IT, YOU SAID IT

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410

1 WAS A DRAFT, AND HE WALKED OUT OF YOUR OFFICE, AND THAT WAS THE  
2 LAST DISCUSSION ABOUT IT?

3 A IT WAS RATHER LENGTHY, BUT YES, THAT WAS THE LAST  
4 DISCUSSION ABOUT IT FROM HIM.

5 Q THEY TOOK NO STEPS TO COME TO YOU AND GET THAT LAST  
6 COPY AND DESTROY IT, OTHER THAN THAT ONE DISCUSSION BY MATT  
7 DAVIS?

8 IS THAT YOUR TESTIMONY?  
9 A THEY DID LATER, YES. THEY CAME LATER.  
10 Q ALL RIGHT. LET'S TALK FOR A MINUTE ABOUT YOUR  
11 TITLES AND JOB DESCRIPTIONS.  
12 YOU WERE FIRST DIRECTOR OF TRAINING, AND THEN  
13 DIRECTOR OF RESEARCH, COMPOSITE DEVELOPMENT, CORRECT?  
14 A NO. I BELIEVE I WAS FIRST, DIRECTOR OF TRAINING.  
15 THAT'S MY RECOLLECTION.  
16 Q I'M SORRY. I SAID YOU WERE FIRST, DIRECTOR OF  
17 TRAINING, THEN DIRECTOR OF RESEARCH, COMPOSITE DEVELOPMENT,  
18 RIGHT?  
19 A YES.  
20 Q AND COMPOSITE DEVELOPMENT RELATED TO HARD BODY  
21 ARMOR, AS OPPOSED TO SOFT, CORRECT?  
22 A IT RELATED TO -- "COMPOSITE" MEANS TWO OF ANYTHING,  
23 SO GENERALLY SPEAKING, YES.  
24 Q OKAY. AND IN FACT, SIR, AS DIRECTOR OF RESEARCH,  
25 STARTING IN AUGUST OF 2001, YOU WERE PRINCIPALLY RESTRICTED IN  
26 YOUR DUTIES TO HARD BODY ARMOR, AS OPPOSED TO SOFT BODY ARMOR,  
27 CORRECT?  
28 A NO.

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411

1 Q ANOTHER DAY, DOCTOR WESTRICK, THAT YOUR DEPOSITION  
2 WAS CONVENED WAS SEPTEMBER 18 OF 2004, CORRECT?  
3 A I BELIEVE SO.  
4 Q OKAY. I WANT YOU TO READ ALONG WITH ME HERE ON  
5 THIS QUESTION AND ANSWER.  
6 OKAY. YOU START BY SAYING THAT THAT WOULD BE A

7 COMPOSITE DEVELOPMENT, I BELIEVE, MY DEPARTMENT AND TITLES.  
8 QUESTION: THAT'S YOUR TITLE? IS IT LIKE  
9 DIRECTOR OF COMPOSITE DEVELOPMENT?  
10 ANSWER: TODAY, MY TITLE IS DIRECTOR OF RESEARCH,  
11 COMPOSITE DEVELOPMENT, AND TESTING.  
12 QUESTION: AND IS THAT WORK RESTRICTED TO THE  
13 HARD BODY ARMOR?  
14 TODAY, PRINCIPALLY IT IS, YES.  
15 OKAY. AND WHEN DID IT BECOME THE CASE THAT IT  
16 WAS RESTRICTED, YOUR WORK, TO HARD BODY ARMOR?  
17 ANSWER: IT STARTED TO BECOME RESTRICTED IN LATE  
18 2001.  
19 QUESTION: YES.  
20 ANSWER --  
21 A LATE 2000 --  
22 Q LATE 2001.  
23 I READ THAT CORRECTLY, DIDN'T I?  
24 A THAT PART, YES.  
25 Q SO YOUR WORK WAS RESTRICTED TO HARD BODY ARMOR, AS  
26 OPPOSED TO SOFT BODY ARMOR, CORRECT?  
27 A IT WAS NOT.  
28 Q WELL, LET'S GO BACK TO YOUR EMPLOYMENT CONTRACT.

Computerized Transcription

412

1 IF YOU COULD LOOK AT THE DUTIES ON THE LAST PAGE.  
2 DO YOU SEE THAT?  
3 A YES, SIR.  
4 Q IF YOU LOOK AT CATEGORY 5, IT SAYS: COORDINATE AND  
5 ADMINISTER HARD BODY RESEARCH AND DEVELOPMENT.  
6 DO YOU SEE THAT?

7 A YES, I DO.  
8 MR. EMERSON: OBJECTION, YOUR HONOR. THAT MISSTATES THE  
9 EVIDENCE. THAT'S NOT WHAT IT SAYS.  
10 THE COURT: WELL --  
11 MR. EMERSON: IT'S DIFFICULT TO READ.  
12 THE COURT: IT DOES SAY WHAT IT SAYS, AND CERTAINLY THE  
13 WITNESS CAN CORRECT MR. GREEN, IF HE'S NOT READING IT CORRECTLY,  
14 SO OVERRULED.  
15 LET'S GET THROUGH THIS.  
16 MR. GREEN: OKAY. I'M SORRY. I ADDED THE WORD "BODY."  
17 MY APOLOGIES, MR. EMERSON. LET ME DO THAT AGAIN.  
18 BY MR. GREEN:  
19 Q COORDINATE AND ADMINISTER HARD ARMOR RESEARCH AND  
20 DEVELOPMENT, CORRECT?  
21 A YES, NUMBER 5.  
22 Q OKAY. AND IN FACT, DOCTOR WESTRICK, DON'T -- THOSE  
23 NINETEEN DIFFERENT DUTIES, NINETY PERCENT OF THEM RELATE TO  
24 MARKETING OF SECOND CHANCE BODY ARMOR, DON'T THEY?  
25 A NO.  
26 Q LET'S READ WHAT THOSE DUTIES ARE, THEN, JUST SO  
27 WE'RE CERTAIN.  
28 A YES.

Computerized Transcription

413

1 Q NUMBER ONE IS DIRECT AND CONDUCT RESEARCH INTO THE  
2 APPLICATION OF BODY ARMOR BY POLICE AND MILITARY PERSONNEL,  
3 CORRECT?  
4 A YES, SIR.  
5 Q TWO IS MAINTAIN COMMUNICATION NETWORK WITH POLICE

6 AND ACADEMIC SOURCES REFERENCE SURVIVAL ISSUES AND BODY ARMOR  
7 DEVELOPMENT, CORRECT?  
8 A YES, SIR.  
9 Q AND THREE IS TRAVEL TO POLICE ACADEMIES AND SCHOOLS  
10 TO PRESENT BODY ARMOR SEMINARS?  
11 A YES, SIR.  
12 Q AND FOUR IS STAY ABREAST OF CONTEMPORARY POLICE  
13 TACTICS AND PROCEDURES, ESPECIALLY RELATED TO BODY ARMOR?  
14 A YES.  
15 Q THEN 5, WE TALKED ABOUT, THE HARD BODY ARMOR  
16 TESTING, CORRECT?  
17 A YES.  
18 Q ENTERTAIN AND EDUCATE POLICE PERSONNEL THAT COME TO  
19 CENTRAL LAKE?  
20 A YES.  
21 Q SEVEN, MAINTAIN A RESPECTED POSITION IN LAW  
22 ENFORCEMENT AS AN OFFICER AND EDUCATOR?  
23 A YES.  
24 Q EIGHT, AND ON DOWN, THOSE ARE THE JOB DUTIES THAT  
25 YOU SIGNED ON TO PERFORM WHEN YOU SIGNED THIS EMPLOYMENT  
26 AGREEMENT, CORRECT?  
27 A YES. THERE'S MORE, SIR.  
28 Q WOULD YOU LIKE ME TO READ THEM ALL?

Computerized Transcription

414

1 A YES, SIR.  
2 Q ALL RIGHT. CONSULT WITH OUR MOST IMPORTANT  
3 CUSTOMERS, POLICE OFFICERS AND SAVES, CORRECT?  
4 A YES.  
5 Q ASSIST MANUFACTURING WITH POLICE EQUIPMENT

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6 ACCESSORY ISSUES?  
7 A YES.  
8 Q COORDINATE PARTNERSHIPS WITH OTHER POLICE EQUIPMENT  
9 SUPPLIERS?  
10 A YES.  
11 Q PARTICIPATE IN MEETINGS TO ADD INPUT ABOUT LISTED  
12 DUTIES?  
13 A YES.  
14 Q PARTICIPATE IN MARKETING STRATEGIES THAT ARE OFTEN  
15 THE RESULT OF TRAINING SEMINARS AND OTHER ACTIVITIES?  
16 A YES.  
17 Q DEVELOP TRAINING MEDIUMS, INCLUDING SEMINARS AND  
18 VIDEOS?  
19 A YES.  
20 Q COORDINATE WITH ASSISTANCE AND MAINTAIN RECORDS OF  
21 EMPLOYEE TRAINING?  
22 A I. S. O. STANDARD, YES. THAT WOULD BE STANDARDS.  
23 Q ANSWER INCOMING QUESTIONS REGARDING ARMOR  
24 TECHNOLOGIES, CAPABILITIES, ET CETERA?  
25 A YES.  
26 Q COORDINATE THROUGH B. A. R. G. , SECOND CHANCE' S ROLE  
27 IN PROJECTS?  
28 A THAT IS A BALLISTIC ARMOR RESEARCH GROUP.

Computerized Transcription

415

1 Q I'M NOT ASKING YOU FOR AN EXPLANATION. WE'RE JUST  
2 READING THEM, OKAY?  
3 ASSIST IN MARKETING, SALES, OR OTHER  
4 CUSTOMER-RELATED PROJECTS, CORRECT?

5 A YES.

6 Q REPORT ADMINISTRATIVELY TO GROUP VICE-PRESIDENT OF  
7 SALES AND MARKETING.

8 AND THEN THE LAST ONE IS, PERFORM OTHER DUTIES AS  
9 DIRECTED, CORRECT?

10 A YES.

11 Q AND YOU PERFORMED -- SO -- SO THE PERSON TO WHOM  
12 YOU REPORTED WAS VICE-PRESIDENT OF SALES AND MARKETING, CORRECT?

13 A TOWARDS THE END OF THE CONTRACT, YES.

14 Q ALL RIGHT. YOU KNOW, I WANT TO GO BACK FOR A  
15 MINUTE TO MY QUESTION EARLIER ABOUT YOU --

16 A YES, SIR.

17 Q -- WANTING A RAISE, AND WANTING STOCK IN THE  
18 COMPANY, AND YOU TOLD ME YOU DID NOT LOBBY FOR A RAISE, AND THAT  
19 YOU DIDN'T LOBBY FOR STOCK IN THE COMPANY.

20 DO YOU RECALL THAT ANSWER?

21 A YES, I DID.

22 Q ALL RIGHT. DOCTOR WESTRICK, WE'RE BACK TO  
23 SEPTEMBER 9 OF 2005. I'M GOING TO READ YOUR DEPOSITION HERE  
24 AGAIN.

25 THE COURT: YOU SHOULD STATE PAGE AND LINE FOR THE RECORD,  
26 SO --

27 MR. GREEN: PAGE 556, READING FROM LINES EIGHT THROUGH  
28 16.

Computerized Transcription

416

1 Q WE'RE AGAIN IN THE DEPOSITION. YOU'RE BEING  
2 QUESTIONED ABOUT ALL YOUR NOTES THAT YOU HAD UP HERE THE OTHER  
3 DAY, RIGHT?

4 A I BELIEVE SO. IF YOU SAY SO.



5 Q THOSE NOTES WERE ONES THAT YOU SUPPOSEDLY MADE AT  
6 THE TIME THAT CONVERSATIONS WERE HAPPENING, SO THAT WOULD BE THE  
7 BEST RECOLLECTION OF WHAT HAPPENED AT THE TIME, AS OPPOSED TO  
8 NOW, TWO OR THREE YEARS LATER, RIGHT?

9 A IF I'M REFERRING TO MY NOTES --

10 Q SURE.

11 A -- AT THIS POINT.

12 Q OKAY. LET'S READ. QUESTION: WELL, LET'S -- YEAH.  
13 WE'RE GOING TO LOOK AT THE FIRST PAGE OF NUMBER 19, BUT YOU CAN  
14 AGREE WITH THAT STATEMENT, THAT THE DESIRE FOR SHARES OF STOCK  
15 IN THE COMPANY, AND THE DESIRE FOR A RAISE, WERE TWO THINGS THAT  
16 YOU WERE BRINGING UP ON A RECURRING BASIS WITH RICHARD DAVIS?

17 ANSWER: YES. I BELIEVE MY CONTRACT HAD EXPIRED,  
18 AND YES, THAT WAS THE END OF THE CONTRACT.

19 DID I READ THAT CORRECTLY?

20 A YES, SIR, THAT PART.

21 Q OKAY. SO DOES THAT REFRESH YOUR RECOLLECTION, AS  
22 YOU SIT HERE TODAY, THAT YOU WERE LOBBYING RICHARD DAVIS IN  
23 2002, BECAUSE YOUR CONTRACT WAS EXPIRING, YOU WANTED A RAISE,  
24 AND YOU WANTED STOCK IN THE COMPANY, DIDN'T YOU?

25 A NO.

26 Q YOU RAISED CONCERNS AGAIN TO MR. DAVIS IN MAY OF  
27 2003 THAT YOU WANTED COMPANY STOCK, DIDN'T YOU?

28 A NO.

Computerized Transcription

417

1 Q DOCTOR WESTRICK, THESE ARE YOUR NOTES, RIGHT?

2 A YES, APPARENTLY.

3 Q THE DATE AT THE TOP IS WHAT?

4 A MAY 7TH, 2003.

5 Q AND YOU WROTE WHAT --

6 A SECOND CHANCE OFFICES, WHERE IT TOOK PLACE.

7 Q YOU WROTE: R. C. D. -- THAT'S RICHARD DAVIS --

8 A YES.

9 Q -- ASSURED ME THAT MY JOB IS SECURE. HE TOLD ME

10 HE'D TAKE CARE OF ME, BECAUSE OF MY LOYALTY, RIGHT?

11 A YES, SIR.

12 Q WHAT DOES THAT SAY? HE ALSO, NO, SOMETHING?

13 A HE, R. C. D.

14 Q HE, RICHARD DAVIS, ALSO TOLD ME I'D RECEIVE COMPANY

15 STOCK?

16 I READ THAT CORRECTLY, DIDN'T I?

17 A YES.

18 THE COURT: AGAIN, COUNSEL, IS THAT MARKED AS AN EXHIBIT?

19 MR. GREEN: NO, IT IS NOT, YOUR HONOR. I'M READING IT TO

20 REFRESH HIS RECOLLECTION.

21 BY MR. GREEN:

22 Q ISN'T IT A FACT, SIR, THAT IN 2002, YOU WERE

23 LOBBYING FOR A RAISE, AND COMPANY STOCK, AND AS LATE AS MAY OF

24 2003, YOU WERE ONCE AGAIN TELLING RICHARD DAVIS THAT YOU WANTED

25 TO OWN STOCK IN THIS COMPANY?

26 A NO.

27 Q I READ THOSE NOTES CORRECTLY, DIDN'T I?

28 A THE PART YOU DID, YES.

Computerized Transcription

418

1 Q AND I READ YOUR DEPOSITION TESTIMONY CORRECTLY,

2 DIDN'T I?

3 A THE PART THAT YOU DID, YES.

4 MR. GREEN: YOUR HONOR, THIS IS A GOOD PLACE FOR A MORNING  
5 BREAK. I'M GOING TO SWITCH TO ANOTHER SUBJECT.

6 I KNOW YOU NORMALLY --

7 THE COURT: YOU GUYS ARE MAKING MY JOB SO EASY, I DON'T  
8 HAVE TO DECIDE ANYTHING.

9 THEY TELL ME WHEN TO TAKE THE BREAK.

10 LET'S DO THAT. REMEMBER, WE ARE GOING TO BREAK A  
11 LITTLE EARLY FOR LUNCH, RIGHT? LET'S TAKE FIFTEEN MINUTES.  
12 ABOUT EIGHTEEN MINUTES NOW.

13 WE'LL RECONVENE, A QUARTER OF. THEN WE'LL HAVE A  
14 TWO-HOUR BREAK FOR LUNCH, 11:45.

15 PLEASE REMEMBER THAT ADMONITION. WE'LL SEE YOU  
16 BACK HERE, A QUARTER OF.

17 THANKS.

18 (JURORS EXIT COURTROOM)

19 THE COURT: OKAY. THE JURORS VERY DEPARTED.

20 WE'RE OFF THE RECORD.

21 (BRIEF RECESS)

22 THE COURT: OKAY. WELCOME BACK, FOLKS.

23 THE RECORD CAN REFLECT ALL OF OUR JURORS ARE  
24 BACK, ALL PARTIES AND COUNSEL ARE PRESENT.

25 DOCTOR WESTRICK CAN COME BACK ON UP, AND RESUME  
26 THE STAND.

27 THE WITNESS: I'M GOING TO PLACE MY BRIEFCASE AROUND  
28 HERE.

Computerized Transcription

419

1 THE COURT: COME ON BACK UP. HAVE A SEAT.

2 THE WITNESS: THANK YOU.

3 THE COURT: OKAY. THANKS.  
4 GO AHEAD, SIR.  
5 MR. GREEN: OKAY.  
6 THE COURT: WE'RE GOING TO QUIT AT A QUARTER OF.  
7 SOMEBODY IS GOING TO HAVE TO REMIND ME OF THAT, PROBABLY.  
8 MR. GREEN: I'LL REMEMBER, YOUR HONOR.  
9 THE COURT: ALL RIGHT. THANKS.  
10 GOSH KNOWS, I DON'T WANT TO BE CALLING THE BREAK  
11 ALL BY MYSELF, YOU KNOW.  
12 MR. GREEN: PART OF MY JOB, YOUR HONOR.  
13 BY MR. GREEN:  
14 Q DOCTOR WESTRICK, WE WERE TALKING BEFORE ABOUT NOTES  
15 REFERENCING RAISE IN PAY, AND STOCK.  
16 DO YOU RECALL THAT TESTIMONY?  
17 A YES, SIR.  
18 Q OKAY. AND IN FACT, YOU ALSO WANTED, AS LATE AS  
19 2003, TO BE ELEVATED TO THE BOARD OF DIRECTORS OF SECOND CHANCE,  
20 DIDN'T YOU?  
21 A NO, SIR.  
22 Q OKAY. DOCTOR WESTRICK, AGAIN WE'RE LOOKING AT YOUR  
23 NOTES, RIGHT?  
24 THIS IS A NOTE FROM MARCH 9 OF 2003, CORRECT?  
25 A YES.  
26 Q OKAY.  
27 A YES.  
28 Q ALL RIGHT. AND IF I READ UP HERE, IT SAYS:

Computerized Transcription

420

1 R. C. D., RICHARD DAVIS, TOLD ME MY JOB IS SECURE, AND THAT MATT  
2 AND I ARE THE FUTURE. WHEN LARRY M. AND KAREN M. RETIRE, I'M ON

3 THE -- WHAT' S THAT WORD?  
4 A "EXECUTIVE" BOARD. THAT MEANS THAT, E-X.  
5 Q BOARD OF DIRECTORS, RIGHT?  
6 A YES.  
7 Q I' M ON THE EXECUTIVE BOARD, WITH STOCKS.  
8 DID I READ THAT CORRECTLY?  
9 A YES.  
10 Q OKAY. AND THAT' S YOUR HANDWRITING, RIGHT?  
11 A YES.  
12 Q AND THAT' S A NOTE YOU MADE ON MARCH 9 OF 2003?  
13 A THAT' S THE NOTE I MADE, YES.  
14 Q OKAY. THEN LET' S GO TO A NOTE YOU MADE ON APRIL  
15 30TH OF 2003. THIS IS AGAIN YOUR NOTES, RIGHT?  
16 A YES.  
17 Q OKAY. RICHARD DAVIS CALLED ME AT HOME, WANTED TO  
18 MEET, WANTED ME TO BE SURE I AM AT WORK TOMORROW, BECAUSE HE WAS  
19 GOING TO NOMINATE AND PUT ME ON THE BOARD OF DIRECTORS.  
20 AND YOU UNDERLINED "BOARD OF DIRECTORS," DIDN' T  
21 YOU?  
22 A YES.  
23 Q OKAY. AND I READ THAT CORRECTLY, RIGHT?  
24 A THAT PART, YES.  
25 Q OKAY. AND THEN REMEMBER, WE READ A PORTION OF THE  
26 MAY 7, 2003 ENTRY, AND YOU SAID -- I READ A PORTION OF IT WHERE  
27 I WAS TALKING ABOUT RICHARD DAVIS ASSURING YOU THAT YOUR JOB IS  
28 SECURE, AND THAT HE' D TAKE CARE OF YOU, BECAUSE OF YOUR LOYALTY?

Computerized Transcription

421

1 DO YOU REMEMBER THAT?

2 A YES.

3 Q AND THE PORTION THAT I DIDN'T READ, WE'LL READ NOW.

4 THAT SAYS: HE, RICHARD DAVIS, ALSO TOLD ME I'D RECEIVE COMPANY

5 STOCK. AND YOU WROTE, I INDICATED I COULD LEAVE SECOND CHANCE,

6 AND HE SAID, DON'T LEAVE, YOU'RE GOING TO BE ALL SET.

7 DID I READ THAT CORRECTLY?

8 A YES.

9 Q OKAY. SO YOU WERE THREATENING RICHARD DAVIS THAT

10 YOU WOULD QUIT, IF HE DIDN'T TAKE CARE OF YOU, WEREN'T YOU?

11 A NO.

12 Q YOU KNEW AT THAT TIME, YOU COULD HAVE QUIT, RIGHT?

13 A YES.

14 Q AND YOU TOLD RICHARD DAVIS, I COULD LEAVE, AND HE

15 SAID, DON'T LEAVE, I'M GOING TO GET YOU SET, OR WORDS TO THAT

16 EFFECT, RIGHT?

17 A NOT TO THAT EFFECT, NO.

18 Q THAT'S ONLY WHAT'S WRITTEN HERE IN THE DOCUMENT,

19 CORRECT?

20 A WHAT YOU -- WHAT YOU READ IS WHAT WAS WRITTEN, YES.

21 Q OKAY. THESE ARE IN YOUR HANDWRITING?

22 A YES.

23 Q OKAY. AND THEN ON THE NEXT DAY, MAY 12, 2003 --

24 THIS IS LIKE A JOURNAL YOU'RE KEEPING, RIGHT?

25 A YES.

26 Q IT SAYS: I AM, QUOTE, TAKEN CARE OF, CLOSED QUOTE.

27 TRUST ME, YOU ARE SET.

28 WERE YOU QUOTING RICHARD DAVIS?

Computerized Transcription

422

1 A YES.

2 Q OKAY. AND THE LAST ONE I HAVE HERE IS MAY 30,  
3 2003, AGAIN, YOUR HANDWRITING, RIGHT?

4 A YES.

5 Q R. C. D, RICHARD DAVIS, AGAIN TOLD ME I'D BE TAKEN  
6 CARE OF. I QUESTIONED HIS STOCK PROMISE TO ME.

7 AND YOU PUT THAT IN QUOTES, RIGHT?

8 A YES.

9 Q HE SAID I'D -- WHAT'S THAT WORD?

10 A I'D --

11 Q GET STOCK?

12 A YES.

13 Q OR WE'D HAVE OUR OWN COMPANY.

14 A OR WE, BEING RICHARD DAVIS AND I, WOULD START OUR  
15 OWN COMPANY.

16 Q I TOLD HIM I'M HOLDING HIM TO THE STOCKS?

17 A HE SAID, I THINK --

18 Q HE SAID, DON'T WORRY, YOU --

19 A YOU ARE GOOD.

20 Q YOU ARE GOOD.

21 THAT'S ALL IN YOUR HANDWRITING, CORRECT?

22 A YES, IT IS.

23 Q SO ISN'T IT A FACT, SIR, THAT MANY, MANY TIMES IN  
24 2002 AND 2003, YOU DIDN'T TELL RICHARD DAVIS YOU WERE GOING TO  
25 QUIT YOUR AT-WILL POSITION, BUT RATHER, YOU WERE LOBBYING HIM  
26 FOR A RAISE IN PAY, STOCK IN THE COMPANY, AND A SEAT ON THE  
27 BOARD OF DIRECTORS?

28 ISN'T THAT A FACT, SIR?

1 A ABSOLUTELY NOT.

2 Q THAT'S WHAT THOSE DOCUMENTS SAY, ISN'T IT?

3 A THEY DO NOT SAY THAT, NO.

4 Q OKAY. LET'S TO GO A DIFFERENT TOPIC, DOCTOR

5 WESTRICK.

6 A OKAY.

7 Q ISN'T IT A FACT THAT YOU, IN YOUR TENURE AT SECOND

8 CHANCE, NEVER OVERSAW A SINGLE RESEARCH PROJECT ON ZYLON, DID

9 YOU?

10 A THAT IS NOT CORRECT.

11 Q IN FACT, ON YOUR EMPLOYMENT AGREEMENT, YOU WERE

12 BEING -- OR LET'S FOCUS ON DUTY NUMBER 1, DIRECT AND CONDUCT

13 RESEARCH INTO THE APPLICATION OF BODY ARMOR BY POLICE AND

14 MILITARY PERSONNEL.

15 DO YOU SEE THAT?

16 A YES.

17 Q HERE AGAIN, DOCTOR WESTRICK, WE HAVE YOUR

18 DEPOSITION, AND NOW, YOU KNOW THAT THIS DEPOSITION TRANSCRIBES

19 EXACTLY WHAT YOU SAY AT THE DEPOSITION WORD FOR WORD, CORRECT?

20 A I BELIEVE SO, YES.

21 Q OKAY. AND AGAIN, YOU HAD AN OPPORTUNITY TO MAKE

22 CHANGES TO THIS TRANSCRIPT AFTER THE DEPOSITION, IF YOU THOUGHT

23 THERE WAS ANYTHING THAT WAS INACCURATE, DIDN'T YOU?

24 A I DON'T BELIEVE THAT'S THE CASE. I BELIEVE WE

25 STIPULATED AT THE END OF THE -- OF IT.

26 Q OKAY, BUT YOU'VE REVIEWED THIS DEPOSITION

27 TRANSCRIPT BEFORE TODAY, HAVEN'T YOU?

28 A I'M NOT SURE.

Computerized Transcription



1 Q OKAY. NOW, I'M GOING TO READ ON PAGE 13, LINE 18,  
2 THROUGH 314, LINE 6.

3 OKAY. QUESTION --

4 THE COURT: SAY THAT AGAIN. I'M SORRY. PAGES --

5 MR. GREEN: THREE-THIRTEEN.

6 THE COURT: PAGE 313.

7 MR. GREEN: LINE 18, THROUGH 314, LINE 5.

8 THE COURT: ALL RIGHT. THANKS.

9 BY MR. GREEN:

10 Q IT'S ASKING QUESTIONS ABOUT THAT CATEGORY NUMBER 1  
11 ON YOUR EMPLOYMENT CONTRACT.

12 I GUESS MY FIRST QUESTION WOULD BE WITH REGARD TO  
13 ENUMERATED DUTY NUMBER 1, DIRECT AND CONDUCT RESEARCH INTO THE  
14 APPLICATION OF BODY ARMOR BY POLICE AND MILITARY PERSONNEL, OR  
15 WITH REGARD TO ANY OF THE NINETEEN FUNCTIONS, THE NINETEEN  
16 FUNCTIONS LISTED THERE, FOR THAT MATTER, DID YOU -- DID YOU  
17 PERFORM ANY RESEARCH AND DEVELOPMENT-TYPE EFFORTS INTO THE  
18 DEVELOPMENT OF THE ZYLON VEST?

19 ANSWER: NO, BUT ORIGINALLY, I WAS KEPT ABREAST  
20 OF THAT BY ED BACHNER.

21 DID I READ THAT CORRECTLY?

22 A INTO THE ZYLON, THE ZYLON VESTS, YES.

23 MR. GREEN: MOVE TO STRIKE AS NON-RESPONSIVE, YOUR HONOR,  
24 EVERYTHING AFTER THE WORD "YES. "

25 THE COURT: IT IS NON-RESPONSIVE.

26 I'LL ASK THE JURY TO DISREGARD EVERYTHING OTHER  
27 THAN THE WORD "YES. "

28

1 BY MR. GREEN:

2 Q REMEMBER, DOCTOR WESTRICK, I'M GOING TO ASK YOU  
3 QUESTIONS YOU CAN ANSWER "YES" OR "NO" TO, AND I'D ASK YOU TO  
4 CONFINE YOUR ANSWER TO THAT, PLEASE.

5 A OKAY.

6 Q NOW, YOU ATTENDED EXECUTIVE COMMITTEE MEETINGS IN  
7 2000 AND 2001, BUT YOUR -- BUT YOUR ATTENDANCE AT THOSE  
8 EXECUTIVE COMMITTEES STOPPED SOMETIME IN EARLY 2001, DIDN'T IT?

9 A I BELIEVE LATE 2001, OR INTO 2002.

10 Q OKAY. ALL RIGHT.

11 A SOME OF THE MEETINGS.

12 Q OKAY. ALL RIGHT. LET'S CHANGE GEARS ENTIRELY.  
13 LET'S TALK ABOUT YOUR SALES EFFORTS ON BEHALF OF SECOND CHANCE  
14 BODY ARMOR, WHAT I WANT TO TALK ABOUT NOW FOR A FEW MINUTES.

15 NOW, YOU'VE TESTIFIED THAT AS OF NOVEMBER, AT  
16 LEAST AS OF NOVEMBER 2001, YOU HAD FORMED IN YOUR OWN MIND THE  
17 PERSONAL OPINION THAT THERE WAS A PROBLEM WITH SECOND CHANCE  
18 ZYLON VESTS, CORRECT?

19 A AROUND THAT TIME, YES, SIR.

20 Q ALL RIGHT. WHO IS A GENTLEMAN BY THE NAME OF TOM  
21 FELONE (PHONETICS), IF I'M PRONOUNCING HIS NAME RIGHT?

22 A TOM FELONE IS A VEST DEALER.

23 Q DO YOU CONSIDER HIM A FRIEND?

24 A YES.

25 Q OKAY. AND WHAT WAS HIS JOB IN SEPTEMBER OF 2001,  
26 RIGHT ABOUT THIS TIME THAT YOU ARE CONCLUDING THERE'S A PROBLEM  
27 WITH ZYLON VESTS?

28 A HE -- HE SELLS SECOND CHANCE VESTS.

1 Q OKAY. AND IN FACT, MR. FELONE WANTED TO BUY FROM  
2 YOU ZYLON VESTS TO EQUIP THE ELITE FORCES THAT WERE GUARDING OUR  
3 MILITARY GENERALS RIGHT AFTER 9-11, WASN'T HE?  
4 A NOT FROM ME.  
5 Q FROM SECOND CHANCE.  
6 A YES.  
7 Q AND YOU TALKED TO HIM ABOUT THAT, DIDN'T YOU?  
8 A YES, I DID.  
9 Q AND SECOND CHANCE SOLD HIM THOSE ZYLON VESTS AFTER  
10 SEPTEMBER 11, DIDN'T THEY?  
11 A YES, THEY DID.  
12 Q OKAY. AND IN FACT, YOU KNEW, DID YOU NOT, THAT IN  
13 OR ABOUT THIS SAME TIME FRAME, OR A LITTLE AFTER, THAT THE  
14 UNITED STATES GOVERNMENT WAS BUYING ZYLON SOFT BODY ARMOR VESTS  
15 FOR PRESIDENT BUSH AND FIRST LADY BUSH, DIDN'T YOU?  
16 A AFTER THAT TIME.  
17 Q OKAY. WHEN WAS THAT?  
18 A I'M NOT SURE. I BELIEVE IT WOULD HAVE BEEN TOWARDS  
19 THE FIRST -- I'M NOT SURE ABOUT 2002. I'D HAVE TO LOOK AT THE  
20 INAUGURATION TIME AND SO FORTH, FOR HIS INAUGURATION.  
21 Q IT WAS FOR WEARING AT HIS INAUGURATION?  
22 A YES, HE DID.  
23 Q OKAY.  
24 A IT MIGHT BE THE YEAR BEFORE, THOUGH, SIR. I'M  
25 NOT --  
26 Q YOU SOLD THOSE VESTS TO HIM, RIGHT?  
27 A NOT TO PRESIDENT BUSH, NO, SIR.  
28 Q SECOND CHANCE DID?

1           A     YES.

2           Q     I THINK YOU TESTIFIED THAT YOU WERE A MEMBER OF THE  
3 OAKLAND POLICE DEPARTMENT IN MICHIGAN.

4           A     NO. OAKLAND COUNTY.

5           Q     OAKLAND COUNTY IN MICHIGAN, RIGHT?

6           A     YES, SIR.

7           Q     AND YOU HAD FRIENDS AND FELLOW OFFICERS WHO WERE  
8 FRIENDS THERE, RIGHT?

9           A     YES.

10          Q     AND IN FACT, IN 1999, THEY HAD PURCHASED ZYLON  
11 VESTS FROM SECOND CHANCE, CORRECT?

12          A     YES, THEY DID.

13          Q     AND THOSE OFFICERS, WHO WERE YOUR FRIENDS AND YOU  
14 SERVED WITH, WERE WEARING THOSE VESTS, CORRECT?

15          A     NINETEEN-NINETY-NINE, YES, SIR.

16          Q     AND THEY STILL HAD THEM IN 2001, WHEN YOU HAD YOUR  
17 CONCERNS ABOUT ZYLON, DIDN' T THEY?

18          A     I BELIEVE SO. I DON' T KNOW.

19          Q     OKAY. AND YOU NEVER ONCE PICKED UP THE TELEPHONE  
20 TO CALL YOUR FRIENDS AT THE OAKLAND COUNTY POLICE DEPARTMENT,  
21 AND TELL THEM THAT THE ZYLON HAD SO DEGRADED IN THEIR VESTS THAT  
22 THEY SHOULD REPLACE THEM?

23                    YOU NEVER SAID THAT TO ANYONE IN THE OAKLAND  
24 COUNTY POLICE DEPARTMENT?

25          A     I DID. I CALLED THEM.

26          Q     DID YOU EVER WRITE THEM A LETTER?

27          A     NO, SIR.

28          Q     DID YOU EVER SEND A LETTER TO THE CAPTAIN OF THE

1 OAKLAND POLICE DEPARTMENT, SAYING, "LOOK, I SERVED WITH YOU  
2 GUYS, YOU'RE MY FRIENDS, I'M CONCERNED YOU HAVE THREE-YEAR-OLD  
3 VESTS"?

4 DID YOU EVER WRITE ANYTHING LIKE THAT?

5 A NEVER WROTE A LETTER, SIR, NO, SIR.

6 Q NOW, DURING 2001 AND 2002, YOU ATTENDED MANY TRADE  
7 SHOWS ON BEHALF OF SECOND CHANCE, DIDN'T YOU?

8 A WHAT YEAR, SIR?

9 Q TWO-THOUSAND-ONE, 2002.

10 A YES, SIR.

11 Q AND YOU WERE THERE PROMOTING ZYLON VESTS, RIGHT?

12 A ONE OF THE -- ONE OF THE PRODUCTS, YES, SIR.

13 Q SURE. ONE OF THE PRODUCTS AT THESE TRADE SHOWS  
14 THAT YOU WERE PROMOTING TO MEMBERS OF THE PUBLIC WERE ZYLON  
15 SECOND CHANCE VESTS, CORRECT?

16 A AS A TEAM, YES, SIR.

17 Q OKAY. AND BETWEEN THE YEARS 2001 AND 2003, YOU  
18 WERE STILL ASSISTING MANY CUSTOMERS IN BUYING AND GETTING FITTED  
19 FOR THEIR VESTS? YOU PERSONALLY, WEREN'T YOU?

20 A NOT MANY.

21 Q ALL RIGHT. LET'S TAKE OUT THE WORD "MANY."

22 IN 2002 AND 2003, AT THIS TIME WHEN YOU THOUGHT  
23 MY CLIENT WAS ENGAGED IN THIS CRIMINAL ENTERPRISE, YOU WERE  
24 PERSONALLY ASSISTING MEMBERS OF THE PUBLIC, BUYING AND FITTING  
25 THEIR VESTS, WEREN'T YOU?

26 YES, OR NO, SIR.

27 A NO.

28 Q WE'RE BACK TO YOUR DEPOSITION OF SEPTEMBER 9, 2000

1 5, DOCTOR WESTRICK. READ ALONG WITH ME, PLEASE. WE'RE AT PAGE  
2 516, LINE 20, THROUGH 517, LINE 9.

3 QUESTION: NOW, THE YEARS 2001, 2002, 2003, DID  
4 YOU -- IS IT FAIR TO SAY -- SAY THAT DURING THAT TIME PERIOD,  
5 YOU CONTINUED TO ASSIST THE CUSTOMER BASE INTERESTED IN ZYLON  
6 VESTS WITH FILLING ORDERS FOR ZYLON VESTS? IS THAT A FAIR  
7 STATEMENT?

8 ANSWER: I DID NOT FILL ORDERS, BUT YES, I  
9 ASSISTED CUSTOMERS AT TIMES IN BUYING OR PROCURING ZYLON VESTS,  
10 THAT'S TRUE.

11 QUESTION: AND ONE OF THEM THAT WE HAVE DISCUSSED  
12 ALREADY -- AND I DON'T MEAN TO GO OVER IT AGAIN -- WAS THE  
13 CENTRAL COMMAND?

14 ANSWER: YES.

15 DID I READ THAT CORRECTLY?

16 A YES.

17 Q AND THAT WAS YOUR SWORN TESTIMONY ON SEPTEMBER 8 OF  
18 2005, WASN'T IT, SIR?

19 A YES, SIR.

20 MR. EMERSON: NINE.

21 MR. GREEN: SEPTEMBER 9, 2005. EXCUSE ME.

22 BY MR. GREEN:

23 Q SO YOU WERE ASSISTING CUSTOMERS IN PROCURING VESTS  
24 ALL THE WAY UP TO 2003, NOTWITHSTANDING THE FACT THAT YOU WERE  
25 AN AT-WILL EMPLOYEE AT THIS COMPANY, AND COULD HAVE QUIT AND NOT  
26 BEEN A PART OF THAT ASSISTANCE TO CUSTOMERS COMPLETELY?

27 ISN'T THAT A CORRECT STATEMENT?

28 A I COULD HAVE QUIT, YES.

Computerized Transcription

430

1 Q WHAT IS THE UNITED STATES CENTRAL COMMAND?

2 A WHAT IS IT?

3 Q YES.

4 A IT'S ONE OF THE COMMAND -- MILITARY COMMANDS FOR --  
5 CENTRAL COMMAND, THE AREA WOULD BE THE MIDDLE EAST, AND IT'S  
6 BASED IN TAMPA, FLORIDA.

7 Q THEY WERE BUYING -- THEY WERE IN CHARGE OF BUYING  
8 VESTS FOR THE TROOPS IN IRAQ?

9 A THEY MAY BE.

10 Q OKAY.

11 A YEAH.

12 Q YOU KNEW THAT THEY WERE BUYING VESTS FOR THE ARMY,  
13 CORRECT?

14 A I BELIEVE, YEAH, ARMED FORCES. I THINK IT'S THE  
15 CENTRAL COMMAND. IT'S VARIOUS MEMBERS OF THE DIFFERENT ARMED  
16 FORCES.

17 Q THEY WERE BUYING VESTS TO PROTECT SOLDIERS IN TIME  
18 OF WAR?

19 A YES.

20 Q OKAY. AND YOU SOLD, TO THE CENTRAL COMMAND, VESTS  
21 DURING THE PERIOD OF 2001 THROUGH 2003, DIDN'T YOU?

22 A I DIDN'T SELL THEM, BUT YES, I ASSISTED, AS I  
23 INDICATED.

24 Q OKAY. AND ALL OF THESE VEST SALES AND ALL OF THIS  
25 ASSISTANCE THAT YOU RENDERED TO CUSTOMERS WAS WHILE YOU  
26 PERSONALLY HARBORED THIS BELIEF THAT THESE VESTS WERE DANGEROUS  
27 THAT YOU WERE SELLING TO THESE PEOPLE?

28 Q IS THAT YOUR TESTIMONY?

Computerized Transcription

431

1 A THAT I BELIEVED THE VESTS WERE DANGEROUS?

2 Q YES.

3 A YES.

4 Q ISN'T IT THE TRUTH, DOCTOR WESTRICK, THAT THE  
5 REASON YOU SOLD THOSE PEOPLE THOSE VESTS WAS BECAUSE YOU  
6 BELIEVED THAT THE VESTS WERE SAFE FOR TWO AND A HALF TO THREE  
7 YEARS, AND YOU HOPED THAT THE PROBLEM WOULD BE ADDRESSED BEFORE  
8 THEY CAME TO THAT POINT IN TIME?

9 A NO.

10 Q WHEN YOU SOLD THESE VESTS TO THESE PEOPLE,  
11 INCLUDING THE UNITED STATES CENTRAL COMMAND, DID YOU, IN YOUR  
12 OWN MIND, BELIEVE THAT YOU WERE PLACING THOSE MILITARY PERSONNEL  
13 AND POLICE OFFICERS IN DANGER?

14 A MILITARY PERSONNEL?

15 YES, SIR. I INDICATED THE SAME.

16 Q ALL RIGHT. GO OFF YOUR SALES EFFORTS FOR A MINUTE.  
17 NOW, YOU KNOW THAT RICHARD DAVIS HAS IN FACT SHOT  
18 HIMSELF WITH SECOND CHANCE VESTS ON MORE THAN A HUNDRED TIMES,  
19 CORRECT?

20 A YES.

21 Q AND HE DID THAT WITH ZYLON VESTS AS WELL, RIGHT?

22 A YES.

23 Q LET'S TALK FOR A MOMENT ABOUT WHAT INFORMATION YOU  
24 WERE PROVIDED ABOUT THE USED-VEST TESTING.

25 IN FACT, SECOND CHANCE, STARTING IN AUGUST OF  
26 2001, WAS DOING MULTIPLE USED-VEST TESTS, CORRECT?

27 A WE -- WE -- YES. WE HAD ARMOR COMING IN FOR WEAR  
28 TESTS.



Computerized Transcription

432

1 Q IN FACT, THE COMPANY TOOK IN HUNDREDS OF VESTS THEY  
2 RAN FOR TESTING IN 2001 UNTIL YOU BELIEVED WELL INTO 2004,  
3 CORRECT?

4 A AROUND THAT TIME, FROM 2001 TO AROUND 2004, I  
5 BELIEVE, YES.

6 Q OKAY. AND YOU WERE NOT PROVIDED WITH THE RESULTS  
7 OF THAT TESTING?

8 A NOT FORMALLY.

9 Q AND YOU TESTIFIED I THINK THAT RICHARD DAVIS TOLD  
10 YOU ABOUT SOME LIMITED V50 TESTING THAT WAS DONE, CORRECT?

11 A NO. HE TOLD ME ABOUT THE TESTING.

12 Q WELL, LET'S TALK ABOUT THAT V50 TESTING THAT YOU  
13 DISCUSSED ON THURSDAY.

14 YOU SAID THAT IT SHOWED A THREE TO FIVE PERCENT  
15 DROP IN TWO-YEAR-OLD VESTS, CORRECT?

16 A AT SOME STAGE IN THE TIME PERIOD, ROUGHLY THE TIME  
17 PERIOD YOU GAVE, YES, THAT'S CORRECT.

18 Q AND YOU SAID THERE WAS ONE VEST THAT HAD LOST  
19 TWENTY-SIX TO THIRTY PERCENT OF ITS STRENGTH IN TWO YEARS,  
20 CORRECT?

21 A TWENTY-SIX PERCENT, AS -- IS MY RECOLLECTION AT  
22 THIS TIME.

23 Q OKAY. THAT WAS THE ANOMALY? I MEAN, THAT WAS WAY  
24 OUT OF THE RANGE OF ALL THE OTHER USED VESTS, V50 RESULTS,  
25 CORRECT?

26 A THAT WAS -- THAT WOULD BE, YEAH. THAT WOULD BE THE  
27 FAR RANGE, YES.

28 Q BUT THERE WAS NOT EVEN ANOTHER VEST THAT WAS CLOSE

Computerized Transcription

433

1 TO THAT, WAS THERE?

2 A WHAT I WAS AWARE OF IS THAT THAT -- THAT WOULD BE  
3 THE FAR RANGE, AND THAT THE AVERAGE WAS THREE TO FIVE PERCENT AT  
4 THAT TIME PERIOD, SIR.

5 Q OKAY. ISN'T IT A FACT, SIR, THAT MR. DAVIS TOLD  
6 YOU THAT ONE VEST THAT SHOWED A V50 LOSS OF TWENTY-SIX TO THIRTY  
7 PERCENT, HAD SHOWN SERIOUS INDICATION OF MISUSE BY THE OFFICER  
8 WHO WAS USING IT?

9 A HE TOLD ME THE OPPOSITE.

10 Q OKAY.

11 A THAT IT -- THAT IT SURPRISED HIM.

12 MR. GREEN: YOUR HONOR, AT THIS TIME, I WOULD JUST ASK  
13 FOR -- SINCE THESE WERE NOT MARKED AS AN EXHIBIT, I'D LIKE TO  
14 PUT THE EXCERPTS -- MARK THE EXCERPTS THAT WE READ AS AN EXHIBIT  
15 NUMBER, AND I'LL REDACT EVERYTHING IN THIS PACKET.

16 THE COURT: WE CAN MARK THEM NEXT IN ORDER, CAN WE?

17 MR. GREEN: YES, YOUR HONOR.

18 THE COURT: WHICH WOULD BE -- DON'T SAY IT OUT LOUD. THE  
19 JURY IS GOING TO GET SCARED, IF IT'S TEN THOUSAND.

20 MR. GREEN: I DON'T KNOW WHAT IT IS.

21 THE CLERK: ONE THOUSAND ONE.

22 THE COURT: ONE THOUSAND AND ONE IS OUR NEXT EXHIBIT  
23 NUMBER.

24 MR. GREEN: I WILL MARK, YOUR HONOR, HIS HANDWRITTEN  
25 NOTES, THE PORTIONS THAT HE READ. I'LL BRING BACK REDACTED  
26 PORTIONS AS EXHIBIT 101. ONE-THOUSAND-ONE.

27 THE COURT: ALL RIGHT. THANKS.

28 MR. GREEN: I HAVE NOTHING FURTHER, YOUR HONOR.

Computerized Transcription

434

1 THANK YOU.

2 (MARKED FOR I.D.: = EX. 1001, NOTES )

3 THE COURT: MR. LYLE.

4 MR. LYLE: YES, YOUR HONOR.

5 IF I CAN JUST HAVE A MINUTE, I'M GOING TO DO A  
6 TECHNOLOGY CHANGE, GET THE EASEL.

7 THE COURT: OKAY.

8 THE WITNESS: HIGH TECH?

9 THE COURT: BACK TO BASICS, RIGHT?

10 THE WITNESS: YES, SIR.

11 THE COURT: WE ARE NOT GOING TO MAKE YOU READ A  
12 THOUSAND-AND-SOME DOCUMENTS. JUST DON'T GET TOO WORRIED. WE  
13 HAVE A LOT OF RANGES OF NUMBERS FOR DIFFERENT PARTIES.

14 I DIDN'T WANT YOU TO MUTINY AT LUNCH, AND NEVER  
15 COME BACK.

16 MR. LYLE: CAN EVERYBODY SEE THAT OKAY?

17 YOUR HONOR, CAN YOU SEE THAT OKAY, IF I PUT IT  
18 THAT THERE?

19 THE COURT: I CAN. THANK YOU.

20 MR. LYLE: I CAN'T GO MUCH FURTHER. SORRY.

21

22 CROSS-EXAMINATION

+

23 BY MR. LYLE:

24 Q GOOD MORNING, DOCTOR WESTRICK.

25 MY NAME IS MIKE LYLE, AND I REPRESENT TOYOBO.

26 A GOOD MORNING, MIKE.

27 Q I HAVE A FEW QUESTIONS FOR YOU, OKAY?  
28 A YES.

Computerized Transcription

435

1 Q DOCTOR WESTRICK, I WANT TO TALK TO YOU A LITTLE BIT  
2 ABOUT HOW SECOND CHANCE GOT ITS PRODUCT TO THE CUSTOMER, OKAY?  
3 A OKAY, SIR.  
4 Q YOU TALKED A LITTLE BIT ABOUT THAT EARLIER IN YOUR  
5 TESTIMONY. I JUST WANT TO ROUND THAT OUT FOR THE JURY, OKAY?  
6 A OKAY, SIR.  
7 Q SECOND CHANCE IS A VEST MANUFACTURER, RIGHT?  
8 A YES, SIR.  
9 Q MOSTLY VESTS?  
10 A YES, SIR.  
11 Q OKAY. SO SECOND CHANCE MAKES VESTS.  
12 BALLISTIC VESTS, RIGHT?  
13 A YES, SIR.  
14 Q NOW, BEFORE THEY -- AND THAT -- THERE'S AN EXAMPLE.  
15 THIS IS WHAT A BALLISTIC VEST LOOKED LIKE FROM  
16 SECOND CHANCE, RIGHT?  
17 A YES, THAT'S --  
18 Q YOU'VE SEEN -- HERE'S A LABEL ON IT, SECOND CHANCE.  
19 A THAT APPEARS TO BE. I'D LOOK AT THE PANEL, BUT  
20 THAT IS A SECOND CHANCE VEST, YES.  
21 Q THIS IS THE FINAL PRODUCT, RIGHT?  
22 A YES.  
23 Q OKAY. AND BEFORE SECOND CHANCE MAKES THAT, THEY  
24 GET SUPPLIES FROM DIFFERENT SUPPLIERS, CORRECT?  
25 A YES, SIR.  
26 Q YOU KNOW ALL ABOUT THAT, RIGHT?

27 A I KNOW -- I KNOW ABOUT IT. I DON'T KNOW ALL ABOUT  
28 IT, BUT I KNOW ABOUT IT, YES, SIR.

Computerized Transcripti on

436

1 Q ONE OF THE RAW INGREDIENTS THAT SECOND CHANCE USED  
2 IN ITS VESTS WAS TOYOBO -- WAS ZYLON?

3 A P. B. O. , YES.

4 Q P. B. O. , OR ZYLON, RIGHT?

5 A YES, SIR.

6 Q P. B. O. AND ZYLON ARE THE SAME THING, RIGHT?

7 A YES, SIR.

8 Q SO IF WE SEE DOCUMENTS WHERE "P. B. O. " IS WRITTEN,  
9 THAT MEANS ZYLON, RIGHT?

10 A OR POLY-PEROXIDE (PHONETICS), THE FORTY-ONE LETTERS  
11 OF FUN AND EXCITEMENT, YES, SIR.

12 Q THE CHEMICAL NAME, WE SHORTENED TO "P. B. O. " ?

13 A YES, SIR.

14 Q WHEN THE ZYLON FIRST -- YOU'VE SEEN WHAT ZYLON  
15 LOOKS LIKE WHEN IT COMES OUT OF TOYOBO, RIGHT?

16 YOU'VE SEEN THIS, THE SPOOLS. YOU'VE TALKED  
17 ABOUT THAT ON THURSDAY.

18 A YES, SIR.

19 Q SO YOU'VE SEEN THAT THIS IS HOW IT COMES OUT OF THE  
20 PLANT FROM TOYOBO, RIGHT?

21 A YEAH. THEY ROLL IT.

22 Q IT'S ON BIG SPOOLS LIKE THIS?

23 A YES, BIG, YES, SIR.

24 Q I'M SORRY. SO TOYOBO, THEY MAKE FIBER, THIS?

25 A CORRECT.

26 Q OKAY.  
27 A THE FIBER.  
28 Q YOU KNOW TOYOBO SELLS ZYLON TO OTHER -- OTHER

Computerized Transcription

437

1 CUSTOMERS BESIDES BALLISTIC VEST-MAKERS RIGHT? YOU KNEW THAT?  
2 A ABSOLUTELY.  
3 Q ZYLON IS USED IN, LIKE, FIFTY DIFFERENT PRODUCTS,  
4 RIGHT?  
5 A YES, SIR.  
6 Q NOW, WHEN THE FIBER -- LET ME TALK ABOUT THE  
7 BALLISTIC VESTS, THOUGH, FOR SECOND CHANCE.  
8 WHEN THE FIBER COMES FROM TOYOBO, IT DOESN'T GO  
9 STRAIGHT TO SECOND CHANCE, DOES IT?  
10 A NO, SIR.  
11 Q IT GOES TO A WEAVER, RIGHT?  
12 A THE VEST-MAKER, IN THIS CASE, SECOND CHANCE, THE  
13 WEAVER, THE TECH, THEY GET TOGETHER, TALK ABOUT HOW THEY ARE  
14 GOING TO WEAVE IT.  
15 Q OKAY. SO WE HAVE A WEAVER HERE.  
16 YOU KNOW THE NAMES OF THE WEAVERS THAT SECOND  
17 CHANCE USED?  
18 A BARRDAY, HEXCEL, B-A-R-R-D-A-Y, HEXCEL,  
19 H-E-X-C-E-L, LINCOLN.  
20 Q RIGHT. A NUMBER?  
21 A THERE'S A COUPLE MORE. MARTIN TECH.  
22 Q SO A NUMBER OF DIFFERENT WEAVING COMPANIES, RIGHT?  
23 A YES, SIR.  
24 Q AND YOU TOLD US JUST A LITTLE WHILE AGO WHAT  
25 HAPPENS IS, SECOND CHANCE AND THE WEAVER GET TOGETHER, AND

26 FIGURE OUT HOW THE FABRIC IS GOING TO BE WOVEN, RIGHT?  
27 A AND -- AND TOYOBO, AND -- AND THE FIBER  
28 MANUFACTURER WOULD ALSO.

Computerized Transcription

438

1 Q THEY WOULD SEND THE FIBER TO THE FABRIC MAKER?  
2 A THEY WOULD ALL TALK AT SOME POINT.  
3 Q BUT SECOND CHANCE HAS SPECIFICATIONS THAT IT SENT  
4 TO THE FABRIC WEAVERS.  
5 A RIGHT.  
6 Q YOU'RE FAMILIAR WITH THOSE SPECS, RIGHT?  
7 A YES.  
8 Q OKAY. SO SECOND CHANCE HAD SPECIFICATIONS THEY  
9 GAVE TO WEAVERS, AND WHEN THEY WERE ALL DONE, THEY WOULD WEAVE  
10 IT INTO A FABRIC THAT LOOKS SOMETHING LIKE A LITTLE SAMPLE, BUT  
11 IT WOULD LOOK SOMETHING LIKE THIS?  
12 A YES.  
13 Q RIGHT?  
14 A THIS IS A TIGHT WEAVE.  
15 MR. LYLE: OKAY. YOUR HONOR, CAN I SHOW THIS TO THE JURY?  
16 THE COURT: YES.  
17 THE WITNESS: THAT WOULD BE LIKE A LAYER, LIKE ONE LAYER.  
18 MR. EMERSON: MAY I SEE THAT?  
19 MR. LYLE: SURE.  
20 BY MR. LYLE:  
21 Q THIS IS WHAT THE FABRIC WOULD LOOK LIKE IN BIG  
22 SHEETS, BUT THIS IS WHAT IT WOULD END UP LOOKING LIKE AFTER THE  
23 WEAVER WAS FINISHED WITH IT, RIGHT?  
24 A YES, BASICALLY.

25 Q IT WOULD BE IN GREAT BIG SPOOLS, OR ON ROLLS?  
26 A APPROXIMATELY SIX-FOOT-WIDE, AND ROLLED.  
27 Q AND THEN IT WOULD COME FROM THE WEAVER TO SECOND  
28 CHANCE, RIGHT?

Computerized Transcription

439

1 A YES, SIR.  
2 Q OKAY. SO, SO FAR, WE HAVE TOYOBO SENDS THE FIBER  
3 IN, THE WEAVER WEAVES IT INTO THE FABRIC, IT GOES TO SECOND  
4 CHANCE, AND THEY USE IT TO MAKE THE VESTS?  
5 A YES, SIR.  
6 Q THEN SECOND CHANCE COMPILES THE VEST INTO -- WHEN  
7 THEY MAKE THE VEST, THERE'S A NUMBER OF PIECES IN IT, RIGHT?  
8 WE HAVE THE CARRIER, THIS OUTSIDE PART, RIGHT?  
9 RIGHT?  
10 A YES, SIR.  
11 Q AND THIS IS MADE OF COTTON, ISN'T IT?  
12 A COTTON AND OTHER THINGS, YES, SIR.  
13 BASICALLY, THOUGH. IT'S NOT MADE OF OTHER  
14 BALLISTIC FIBER.  
15 Q THEN ON THE INSIDE OF IT, INSIDE THE CARRIER, THE  
16 COTTON CARRIER, YOU HAVE THIS, RIGHT?  
17 A THAT WAS IN BACKWARDS.  
18 Q YEAH, I KNOW. I JUST PULLED IT OUT.  
19 A NO. THE PANEL WAS IN BACKWARDS.  
20 Q INSIDE THE VEST BACKWARDS? THAT'S MY FAULT.  
21 A YES, SIR.  
22 Q OKAY. SO IT LOOKED LIKE THIS?  
23 A YES, SIR.  
24 Q INSIDE OF THIS, WHAT'S THIS?



25                   WHAT WAS THIS THING MADE OUT OF, THIS GRAY THING?  
26           A        THAT CASE AND -- THAT CASE THAT IS MADE OUT OF -- I  
27   HAVE TO LOOK AT THE DATE.   PROBABLY THE OLDER GORTEX, WHICH IS  
28   WHAT WOULD BE CALLED AS "THE PACK," AS IN "BALLISTIC PACK

Computerized Transcription

440

1   COVER. "

2           Q        OKAY.   AND SECOND CHANCE GOT THIS GORTEX AND NYLON  
3   FROM ANOTHER SUPPLIER, RIGHT?

4           A        YES, SIR.

5           Q        OKAY.   AND THEN INSIDE OF THE BALLISTIC PANEL, I  
6   WANT TO -- INSIDE OF THE BALLISTIC PANEL -- I CUT THIS ONE  
7   OPEN -- YOU WOULD HAVE THIS, RIGHT?

8           A        THAT'S ACCURATE, YES, SIR.

9           Q        THIS IS THE BALLISTIC PAD?

10          A        THAT IS THE ARMOR PACK, YES.

11          Q        YOU CALL IT "ARMOR PACK"?

12          A        BALLISTIC PAD.   SAME THING, SIR.

13          Q        OKAY.   THEN YOU SEE ALL THIS STITCHING ON HERE?

14          A        YES, SIR.

15          Q        THAT WOULD BE SOMETHING THAT SECOND CHANCE WOULD  
16   CONTROL, RIGHT?

17          A        YES, SIR.

18          Q        AND THE STITCHING IS IMPORTANT, ISN'T IT?

19          A        IT PLAYS A PART IN THE ARMOR, YES, SIR.

20          Q        IT'S IMPORTANT?  IT -- ACTUALLY, SECOND CHANCE HAD  
21   PROPRIETARY STITCHING TECHNIQUES, DIDN'T THEY?

22                    IT'S A BUTTERFLY STITCH?

23          A        RIGHT.   IF YOU FLIP IT OVER, YOU CAN SEE AN EXAMPLE

24 OF THAT.  
25 Q RIGHT HERE ON THE OTHER SIDE?  
26 A YOU HAVE A BOX. YOU HAVE A BOX STITCHING.  
27 Q BOX STITCHING HERE?  
28 A THEN FLIP IT OVER. THEN --

Computerized Transcription

441

1 THE COURT: YES. WE'RE HAVING A LITTLE TROUBLE SPEAKING  
2 OVER EACH OTHER.  
3 WAIT A MINUTE. WAIT A MINUTE NOW. TAKE A DEEP  
4 BREATH, BOTH OF US. ALL OF US CALM DOWN.  
5 WE HAVE TO HAVE A LITTLE PAUSE IN BETWEEN THE  
6 QUESTION AND ANSWER.  
7 MR. LYLE: OKAY.  
8 THE COURT: THE COURT REPORTER NEEDS TO GET EVERY WORD  
9 SPOKEN.  
10 MR. LYLE: WHY CAN'T YOU DO THAT AT THE SAME TIME?  
11 THE WITNESS: I'M SORRY. I'LL TRY TO SLOW DOWN.  
12 MR. LYLE: ME TOO. I'LL SLOW DOWN.  
13 BYMR. LYLE:  
14 Q WE WERE STALKING ABOUT THE STITCH, RIGHT?  
15 A YES, SIR.  
16 Q SECOND CHANCE DECIDES WHAT STITCHING GOES IN HERE?  
17 A YES, SIR.  
18 Q ONE OF THE THINGS THAT THEY HAVE, THIS STITCHING  
19 HERE, IT'S CALLED "A BUTTERFLY STITCH"?  
20 A ALL THAT STITCHING IS CALLED "BUTTERFLY LIGHT  
21 STITCH." I BELIEVE IT'S TRADEMARKED. THAT IS TRADEMARKED.  
22 Q TRADEMARKED BY SECOND CHANCE, RIGHT?  
23 A YES.

24 Q OKAY. SO THEY -- I'VE GOT ZYLON ON ME.  
25 SO THEY -- WHAT THEY WOULD DO IS USE ALL OF THOSE  
26 COMPONENT PIECES, PUT THEM ALL TOGETHER, AND MAKE A VEST, RIGHT?  
27 A AND -- YES, SIR.  
28 Q OKAY. THEN FROM SECOND CHANCE, IT WOULD GO TO

Computerized Transcription

442

1 DEALERS, RIGHT?  
2 A YES, SIR.  
3 Q AND THEY -- THEY SOLD VESTS, RIGHT?  
4 A RIGHT. WE HAD ACTUALLY A REGIONAL SALES MANAGERS  
5 SYSTEM, BUT YES, THAT'S ACCURATE.  
6 Q REGIONAL SALES MANAGERS?  
7 A DEALERS, THAT'S CORRECT, YES.  
8 Q YOU HAD REGIONAL SALES MANAGERS WHO WOULD GET IT TO  
9 THE DEALERS, WHO WOULD GET IT TO THE CUSTOMER, RIGHT?  
10 A YES, SIR.  
11 Q AND THAT WOULD BE THE MILITARY, RIGHT?  
12 A ONE OF -- ONE OF THE CUSTOMERS WOULD BE THE  
13 MILITARY. THE SALES MANAGER WOULD TAKE CARE OF THAT.  
14 Q WE'D HAVE MILITARY AND ALSO POLICE?  
15 A YES.  
16 Q OKAY. SO THAT'S -- THOSE ARE THE STEPS IN THE  
17 CHAIN, RIGHT?  
18 A YES.  
19 Q SO WHAT YOU GOT IS YOU'VE GOT TOYOBO, THEY BRING  
20 IN -- I'LL USE A DIFFERENT COLOR.  
21 TOYOBO, THEY SEND THE FIBER TO THE WEAVER, RIGHT?  
22 A YES, SIR.

23 Q THEN THE WEAVER SENDS THE FABRIC TO SECOND CHANCE?  
24 THEY MAKE THE VEST, RIGHT?  
25 A YES.  
26 Q AND THEN RESPONSIBILITY SHIFTS OVER TO THE DEALERS  
27 TO SELL THE VESTS, RIGHT?  
28 A YES.

Computerized Transcription

443

1 Q AND THEN THE DEALERS, THEY SELL THE VESTS TO THE  
2 POLICE OFFICER, RIGHT?  
3 A YES, YES.  
4 Q SO EACH -- EACH STEP ALONG THE WAY, EACH ONE OF THE  
5 COMPANIES HAS THEIR SET OF RESPONSIBILITIES IN THE CHAIN, RIGHT?  
6 A YES.  
7 Q OKAY. NOW, SECOND CHANCE MADE DIFFERENT KINDS OF  
8 VESTS, AND -- RIGHT? THEY USED DIFFERENT MATERIALS, CORRECT?  
9 A YES.  
10 Q THEY USED, FOR EXAMPLE, KEVLAR, DIDN'T THEY?  
11 A KEVLAR.  
12 Q AND SECOND CHANCE USED KEVLAR FOR YEARS, CORRECT?  
13 A YES.  
14 Q AND THEY ALSO USED OTHER FIBERS, DIDN'T THEY,  
15 BESIDES KEVLAR AND ZYLON?  
16 A YES.  
17 Q WHAT WERE THE OTHER FIBERS, SIR?  
18 A KEVLAR WAS PROBABLY -- ARAMID, TWARON, POLY ARAMID,  
19 SIMILAR TO KEVLAR, NOT THE SAME, TRADEMARKED, OF COURSE.  
20 THERE'S WHAT THEY CALL "SPECTRA," POLYETHYLENE,  
21 AND THERE'S OTHER TYPES OF MATERIALS OUT THERE. THEY ARE NOT --  
22 THAT'S YOUR -- THAT'S YOUR FIBERS. THAT'S YOUR FIBERS THERE,

23 SIR.  
24 Q OKAY.  
25 A THERE' S OTHER THINGS YOU CAN DO WITH THOSE.  
26 Q OKAY. KEVLAR, TWARON, SPECTRA, ZYLON.  
27 WHAT WAS THE OTHER ONES?  
28 A ALL USING BRAND NAMES HERE? THAT' S THE FIBERS.

Computerized Transcription

444

1 Q THOSE ARE ALL THE FIBERS?  
2 A THERE' S OTHER THINGS YOU CAN DO WITH THEM.  
3 Q DYNEEMA OR SOMETHING?  
4 A YES, SIR, DYNEEMA. I DON' T THINK SECOND CHANCE  
5 EVER USED THAT, BUT IT' S VERY SIMILAR TO SPECTRA.  
6 Q THOSE ARE SOME OF THE FIBERS THAT CAN GO IN THESE  
7 DIFFERENT VESTS?  
8 A YES, SIR.  
9 Q SOMETIMES WHAT YOU DO, YOU ALSO COMBINE THEM?  
10 A YES, SIR.  
11 Q RIGHT? SO YOU WOULD PUT -- MAYBE YOU' D PUT SOME  
12 ZYLON AND TWARON TOGETHER, RIGHT?  
13 A YES, SIR.  
14 Q AND THAT WOULD BE CALLED "A HYBRID"?  
15 A HYBRID, YES, SIR.  
16 Q SECOND CHANCE MADE THOSE TOO, RIGHT?  
17 A YES, THEY DID.  
18 Q OKAY. THEY MADE DIFFERENT LEVELS OF PROTECTION IN  
19 THE VESTS THAT THEY SOLD, DIDN' T THEY?  
20 A AS I INDICATED, YES, SIR.  
21 Q YOU TALKED ABOUT THAT A LITTLE BIT EARLIER TODAY?

22 A YES, SIR.  
23 Q I'M GOING TO TALK A LITTLE BIT MORE ABOUT THAT.  
24 BEFORE WE DO THAT, I JUST WANT TO MAKE SURE WE'RE  
25 CLEAR ABOUT SOMETHING. TOYOBO DOESN'T MAKE BALLISTIC VESTS,  
26 RIGHT?  
27 A THEY MAKE THE PARTS OF BALLISTIC --  
28 Q THEY NEVER MADE THE BALLISTIC VEST?

Computerized Transcription

445

1 A THEY DID NOT PUT THE VEST TOGETHER.  
2 Q THEY DIDN'T DESIGN BALLISTIC VESTS, DID THEY?  
3 A I BELIEVE THEY HAVE, IN CONJUNCTION WITH THE OTHER  
4 GROUPS.  
5 Q NO, NO, NO, SIR. MY QUESTION IS VERY CLEAR.  
6 A SINGULARLY THEMSELVES, NO, SIR.  
7 Q TOYOBO DID NOT DESIGN BALLISTIC VESTS, DID THEY?  
8 A NOT BY THEMSELVES I DON'T THINK.  
9 Q THEY DIDN'T DESIGN ANY VESTS, SIR, DID THEY?  
10 A I'M NOT SURE.  
11 Q YOU DON'T KNOW?  
12 IF YOU DON'T KNOW, THAT'S OKAY. YOU CAN SAY  
13 THAT.  
14 A I BELIEVE THEY WORKED WITH SECOND CHANCE-DESIGNED  
15 VESTS.  
16 Q IS THAT YOUR TESTIMONY TODAY, SIR, TOYOBO DESIGNED  
17 BALLISTIC VESTS? IT THAT WHAT YOU'RE GOING TO TELL US?  
18 A IN CONJUNCTION WITH SECOND CHANCE, NOT BY  
19 THEMSELVES.  
20 Q SIR, THAT'S NOT TRUE, IS IT? THAT IS NOT TRUE,  
21 THAT TOYOBO DESIGNED BALLISTIC VESTS, IS IT?

22 MR. EMERSON: OBJECTION. ARGUMENTATIVE.  
23 THE COURT: WELL, OVERRULED AT THIS POINT.  
24 MR. EMERSON: HARASSING THE WITNESS.  
25 THE COURT: GO AHEAD.  
26 BY MR. LYLE:  
27 Q IT'S NOT TRUE THAT TOYOB0 DESIGNED BALLISTIC VESTS,  
28 IS IT?

Computerized Transcription

446

1 A I'VE ALREADY GIVEN MY ANSWER, SIR.  
2 Q I DIDN'T HEAR IT.  
3 A THEY WERE IN CONJUNCTION WITH SECOND CHANCE.  
4 I DON'T THINK THEY DID IT BY THEMSELVES, BY  
5 THEMSELVES. IS --  
6 Q I'M AT DEPOSITION SESSION 9-24, DEPOSITION DATE,  
7 9-24, 780, 10 THROUGH 16. I HAVE A CLIP OF THE DEPOSITION  
8 TRANSCRIPT. I'D LIKE TO PLAY IT.  
9 THE COURT: WHAT PAGE AND LINE AGAIN?  
10 MR. LYLE: SEVEN-EIGHTY, LINE 10 TO 16.  
11 THE COURT: CAN YOU FIND IT, MR. EMERSON?  
12 MR. EMERSON: YEAH.  
13 MR. LYLE: CLIP NUMBER ONE.  
14 THEY DIDN'T DESIGN OR MANUFACTURE SOFT BODY  
15 ARMOR, RIGHT, TO YOUR KNOWLEDGE?  
16 NO, THEY DO NOT.  
17 OKAY. AND TOYOB0 NEVER, TO YOUR KNOWLEDGE, EVER  
18 DESIGNED OR MANUFACTURED SOFT BODY ARMOR?  
19 FOUNDATION.  
20 NO. THEY MAKE THE FIBER.

21 BY MR. LYLE:

22 Q WAS THAT YOU?

23 A YES, SIR.

24 Q AND THE WORDS WERE ALL WRITTEN CORRECTLY THERE,  
25 RIGHT?

26 A DESIGNED OR MANUFACTURED, YES, SIR.

27 Q THANK YOU. I'M GLAD WE GOT THAT STRAIGHTENED OUT.  
28 LET'S TALK ABOUT THE KINDS OF VESTS THAT SECOND

Computerized Transcripti on

447

1 CHANCE DESIGNED AND MADE.

2 THERE WAS SOMETHING CALLED, I THINK YOU SAID  
3 EARLIER, A LEVEL 3A, RIGHT?

4 A YES, SIR.

5 Q OKAY. A LEVEL 3A VEST IS A VEST THAT STOPS FAST  
6 AND STRONG BULLETS, RIGHT?

7 A I CAN CHARACTERIZE IT, IF YOU'D LIKE.

8 Q YEAH, SURE.

9 A OKAY. THIS IS HOW I THINK OF IT, BECAUSE IT GETS  
10 CONFUSING, FOR TRYING -- FOR GENERAL -- GENERAL PUBLIC AND  
11 POLICE OFFICERS.

12 A LEVEL 3A IS BASICALLY, USUALLY USED FOR A  
13 TACTICAL TYPE ARMOR THAT WILL STOP PROJECTILES THAT ARE BEING  
14 FIRED -- PROJECTILES -- BEING PISTOLS, SHOTGUNS, OR SUB MACHINE  
15 GUNS -- BEING FIRED OUT OF A LONGER-TYPE BARREL, WHICH WOULD  
16 GIVE THEM MORE -- THE PROJECTILE MORE VELOCITY.

17 THEREFORE, IT WOULD -- OKAY. THEN LEVEL -- LET  
18 ME GO DOWN.

19 Q HANG ON A SECOND.

20 FOR -- FOR THE ZYLON VEST, OKAY, ZYLON VESTS NOW,  
Page 85



21 A ZYLON LEVEL 3A VEST HAD THIRTY LAYERS, RIGHT?  
22 DOES THAT SOUND RIGHT?  
23 A TWENTY-EIGHT OR -- TWENTY-EIGHT, THIRTY,  
24 Q OKAY.  
25 A SOME AS HIGH AS THIRTY-SIX, BUT YES.  
26 Q WE'RE SAYING AROUND, YOU KNOW, THIRTY LAYERS. IS  
27 THAT ABOUT RIGHT?  
28 A APPROXIMATELY. WE CAN SAY APPROXIMATELY, TO BE

Computerized Transcription

448

1 SAFE, SIR, YES, SIR.  
2 Q THEN THE NEXT STEP DOWN FROM A LEVEL 3A IS A LEVEL  
3 2, RIGHT? IS THAT RIGHT?  
4 A LEVEL 2, YES, SIR.  
5 Q OKAY. AND THAT ONE HAD TWENTY-FOUR LAYERS, RIGHT?  
6 A YES, LEVEL 2.  
7 Q ALL RIGHT. AND A LEVEL 2 VEST IS THE VEST THAT  
8 OFFICER ZEPPELELLA HAD, RIGHT?  
9 A YES.  
10 Q OKAY. SO ON THE TOP, WE HAVE A LEVEL 3A AND THIRTY  
11 LAYERS, THEN WE GO TO A LEVEL 2 WITH TWENTY-FOUR LAYERS,  
12 CORRECT?  
13 A YES, SIR.  
14 Q THEN THE LEVEL 2 VEST, RIGHT, IT DIDN'T STOP  
15 VESTS -- IT DIDN'T STOP BULLETS AS WELL AS THE 3A, RIGHT?  
16 IT HAS LESS LAYERS, RIGHT?  
17 A IN LAY PERSON'S TERMS, YES, SIR.  
18 Q SO IT WOULD STOP SLOWER, LESS-POWERFUL BULLETS,  
19 RIGHT?

20 A IT IS -- THE STANDARD IS -- THE STANDARD IS TO STOP  
21 SLOWER, LESS-POWERFUL BULLETS.

22 Q AND THEN BELOW LEVEL 2, WE HAVE LEVEL 2A VESTS,  
23 RIGHT?

24 A YES, SIR.

25 Q THOSE IN THE ZYLON VESTS, THEY HAD TWENTY LAYERS,  
26 RIGHT?

27 A YES, SIR, APPROXIMATELY.

28 "LAYERS" IS A LITTLE MISLEADING.

Computerized Transcription

449

1 Q WELL, TWENTY LAYERS -- I APOLOGIZE. YOU'RE  
2 CORRECT.

3 A WE USE DIFFERENT TYPES OF LAYERS.

4 Q BUT THERE WERE TWENTY?

5 WHEN I TALK ABOUT LAYERS, I SHOULD BE CLEAR. I'M  
6 TALKING ABOUT LAYERS OF FABRIC IN THE BALLISTIC PANEL.

7 A I'M NOT SAYING YOU'RE MISLEADING.

8 THE COURT: WE'RE TALKING OVER EACH OTHER AGAIN, SO  
9 YOU'RE REALLY GOING TO HAVE TO MAKE AN EFFORT TO WAIT UNTIL HE  
10 COMPLETELY STOPS TALKING, BEFORE YOU START TALKING, OKAY? AND  
11 VICE VERSA.

12 THE WITNESS: SORRY, SIR.

13 MR. LYLE: YOU CUT THAT OUT.

14 I'M SORRY, SIR.

15 I'M TRYING. I GET GOING.

16 BY MR. LYLE:

17 Q THERE ARE TWENTY-FOUR LAYERS IN THE BALLISTIC  
18 PANEL, RIGHT?

19 A YES.

Zeppetel I a081406Part2

20 Q IN A LEVEL 2 VEST?  
21 A YES, SIR.  
22 Q THEN IN THE LEVEL 2A VEST, THERE ARE LESS. THERE  
23 ARE TWENTY?  
24 A IN THIS CASE, YES, SIR.  
25 Q OKAY.  
26 A YES, SIR.  
27 Q SO A DIFFERENT LEVEL, THERE AND THERE.  
28 OKAY. I'M GOING LEAVE THAT THERE FOR A MOMENT.

Computerized Transcription

450

1 WE' LL COME BACK TO THAT.  
2 A OKAY, SIR.  
3 Q NOW, DOCTOR WESTRICK, I WANT TO TALK A LITTLE BIT  
4 ABOUT ZYLON, OKAY?  
5 A OKAY.  
6 Q WITH -- EXCUSE ME. ZYLON STARTED TO BE SOLD IN  
7 1998, RIGHT, THEREABOUTS? YOU TOLD US THAT?  
8 A TO SECOND -- WELL, NO. EARLIER -- I'M NOT SURE OF  
9 YOUR QUESTION.  
10 Q WELL, IN 1998, SECOND CHANCE STARTED BUYING ZYLON  
11 FIBER, RIGHT?  
12 I'M SORRY. THE WEAVERS GOT IT, STARTED -- FROM  
13 TOYOKA. THEN SECOND CHANCE STARTED USING IT IN A VEST ABOUT  
14 1998?  
15 A NINETY-SEVEN, '98, WENT INTO PRODUCTION.  
16 Q AND DURING THAT TIME PERIOD, TOYOKA PUT OUT IN  
17 1998, INFORMATION, TECHNICAL INFORMATION, ABOUT ZYLON, RIGHT?  
18 A I BELIEVE SO.

19 Q AND WHAT THE TECHNICAL INFORMATION HAD IN IT WAS  
20 INFORMATION ABOUT ALL KINDS OF DIFFERENT TESTS THAT TOYOBA  
21 RAN -- I'M SORRY -- THAT TOYOBA RAN ON ZYLON, RIGHT?

22 A I'D HAVE TO LOOK AT THE TESTS, BUT YES, THAT'S MY  
23 BELIEF, YES.

24 Q AND YOU -- AND YOU SAW THE TEST DATA AND THE  
25 TECHNICAL BULLETINS AROUND 1998, RIGHT?

26 A I'D HAVE TO SEE WHAT YOU'RE REFERRING TO.

27 Q OKAY. IF WE CAN GO TO EXHIBIT 512?

28 MR. LYLE: THERE'S NO OBJECTION TO IT, SO I'D LIKE TO

Computerized Transcription

451

1 PUBLISH IT TO THE JURY.

2 THE COURT: OKAY.

3 MR. LYLE: LET'S PUT UP EXHIBIT 512.

4 IS THIS BLOCKING SOME FOLKS, THE SCREEN?

5 CAN EVERYONE SEE THE SCREEN OKAY?

6 OKAY. GOOD.

7 BY MR. LYLE:

8 Q CAN YOU SEE?

9 A YES, SIR, I CAN. YES, SIR.

10 Q OKAY. THIS IS A TECHNICAL BULLETIN DATED 1998.

11 DO YOU SEE THAT?

12 A YES, SIR.

13 Q IT SAYS: SUPER HIGH PERFORMANCE FIBER, ZYLON, FROM  
14 TOYOBA?

15 A YES, SIR.

16 Q YOU'VE SEEN THIS BULLETIN BEFORE, NOW THAT YOU'RE  
17 LOOKING AT IT?

18 A YES, I HAVE.

19 Q INSIDE OF THIS, INSIDE OF IT, THERE ARE A NUMBER OF  
20 TESTS THAT TOYOKA RAN ON ZYLON, AND REPORTED, CORRECT?

21 A CAN I TAKE A LOOK?

22 I BELIEVE THAT'S THE CASE. YES, I BELIEVE THAT'S  
23 THE CASE.

24 Q OKAY. TAKE A LOOK AT THE FRONT PAGE.

25 THE COURT: DID YOU GET ANY OF THAT?

26 YOU GUYS ARE CONTINUING TO JUST BOTH TALK AT THE  
27 SAME TIME, WITHOUT, YOU KNOW, LET-UP HERE.

28 WE REALLY HAVE TO CALM IT DOWN, TONE IT DOWN, AND

Computerized Transcription

452

1 SPEAK ONE AT A TIME.

2 SO DOCTOR WESTRICK, HARD AS IT MAY BE, YOU'LL  
3 HAVE TO WAIT UNTIL HE STOPS TALKING, MAYBE PAUSE A MILLI-SECOND  
4 BEFORE YOU SAY ANYTHING.

5 THE WITNESS: OKAY, SIR.

6 THE COURT: HE'LL DO THE SAME FOR YOU.

7 MR. LYLE: SORRY.

8 THE WITNESS: ME TOO.

9 BY MR. LYLE:

10 Q HAVE YOU HAD A CHANCE TO LOOK?

11 A YES, I HAVE.

12 Q IN THERE, THERE ARE TESTS RESULTS THAT TOYOKA  
13 REPORTED ABOUT ZYLON FIBER; IS THAT RIGHT?

14 A YES, SIR.

15 Q THIS WAS GIVEN TO SECOND CHANCE IN 1998, BECAUSE  
16 THAT'S WHEN YOU SAW IT, RIGHT?

17 A I'M NOT SURE WHEN I FIRST SAW THAT.

18 I'M NOT SURE WHEN I FIRST SAW THAT, BUT I DID SEE  
19 THAT EVENTUALLY, YES.  
20 Q INSIDE OF SECOND CHANCE?  
21 A ABSOLUTELY.  
22 Q SO THIS WAS INSIDE OF SECOND CHANCE AT SOME POINT  
23 AFTER 1998?  
24 A YES, SIR.  
25 Q AND YOU BELIEVE IT WAS IN THAT YEAR OR LATER, 1999?  
26 A MY BELIEF IS IT WAS IN THAT YEAR, BUT I DON'T KNOW  
27 IF I SAW IT THAT YEAR.  
28 Q OKAY. SO YOUR UNDERSTANDING WAS -- IS THAT SECOND

Computerized Transcripti on

453

1 CHANCE HAD THIS IN 1998, BUT YOU'RE NOT SURE YOU SAW IT UNTIL  
2 LATER?  
3 A YES, SIR.  
4 Q OKAY. BUT -- AND YOU LOOKED INSIDE, AND THERE --  
5 I'D LIKE TO TAKE YOU, IF WE COULD, TO PAGE NUMBER 16.  
6 IF WE CAN BLOW IT UP, SO PEOPLE CAN READ IT, THAT  
7 TOP PIECE THERE. HERE, UP HERE, IT SAYS: STRENGTH RETENTION  
8 AFTER EXPOSURE TO STEAM.  
9 ZYLON LOSES STRENGTH IN HIGH TEMPERATURE STEAM  
10 CONDITION. THE RESIDUAL STRENGTH AFTER FIFTY HOURS TREATMENT  
11 WITH THAT SATURATED STEAM AT A HUNDRED AND EIGHTY DEGREES  
12 CENTIGRADE IS FORTY TO FIFTY PERCENT, WHICH IS BETWEEN AAMID  
13 AND CO POLY ARAMID?  
14 DO YOU SEE THAT?  
15 A YES, SIR.  
16 Q LET'S JUST BREAK THIS OUT A LITTLE BIT HERE.  
17 ARAMID -- YOU WERE TELLING US EARLIER, THAT'S

Zeppetel I a081406Part2

18 LIKE KEVLAR, RIGHT?  
19 A YES, SIR.  
20 Q OKAY. AND A HUNDRED AND EIGHTY DEGREES CENTI GRADE,  
21 THAT'S HOT, ISN'T IT?  
22 A YES, SIR.  
23 Q IT'S ABOUT THREE HUNDRED AND FIFTY-SOMETHING  
24 DEGREES FAHRENHEIT, RIGHT?  
25 A ABOUT, YEAH. IT'S -- I'D HAVE TO CALCULATE IT, BUT  
26 YES.  
27 Q SOMETHING LIKE THAT?  
28 A YES, SIR. IT'S HOT.

Computerized Transcription

454

1 Q OKAY. SO WHAT -- WHAT -- AND STEAM, THAT HAS --  
2 THAT'S HEAT, RIGHT?  
3 A STEAM.  
4 Q HAS HOT -- IT'S HOT?  
5 A YES, SIR.  
6 Q IT HAS HUMIDITY, STEAM, LIKE TALKING ABOUT STEAM,  
7 WATER?  
8 A YES.  
9 Q SO WHEN YOU EXPOSE -- YOU'RE TALKING ABOUT EXPOSING  
10 ZYLON TO HEAT AND HUMIDITY HERE IN THIS, IN THIS GRAPH, RIGHT?  
11 A YES.  
12 Q AND WHAT -- WHAT TOYOBO DID, THEY -- THEY -- THEY  
13 RAN A COMPARISON BETWEEN WHAT HAPPENS TO ZYLON, AND WHAT HAPPENS  
14 TO KEVLAR AT THIS TEMPERATURE, RIGHT, IN STEAM?  
15 A LOOKING AT IT FROM THIS DISTANCE, YEAH, IT LOOKS  
16 LIKE THAT, YES, SIR.

17 Q I'LL BLOW THAT UP IN A SECOND. I WANT TO MAKE SURE  
18 EVERYBODY UNDERSTANDS WHAT WE'RE DOING, OKAY?  
19 A OKAY.  
20 Q AND THE STRENGTH THAT WE'RE TALKING ABOUT HERE, IT  
21 LOSES STRENGTH, THE "STRENGTH" THAT'S BEING TALKED ABOUT IS  
22 TENSILE STRENGTH, RIGHT?  
23 A YES, SIR.  
24 Q OKAY. AND -- AND TENSILE STRENGTH IS THE AMOUNT OF  
25 FORCE YOU'VE GOT TO USE TO PULL A FIBER AND BREAK IT, RIGHT?  
26 A BASICALLY, YES, SIR.  
27 Q OKAY. THAT'S A MEASUREMENT OF THAT FORCE?  
28 A AT THE TIME OF THE BREAK.

Computerized Transcription

455

1 Q OKAY. IF WE COULD BLOW UP THE FIRST ONE?  
2 OKAY. HERE IS THE CHART. OVER HERE, WE HAVE  
3 STRENGTH RETENTION, HOW MUCH STRENGTH IS RETAINED IN PERCENT,  
4 RIGHT?  
5 A YES.  
6 Q AND THEN ALONG THE BOTTOM HERE IS THE AMOUNT OF  
7 TIME, RIGHT?  
8 A YES, SIR.  
9 Q AND WHAT WE'RE TALKING ABOUT IS, WHEN TOYOBO PUT  
10 ZYLON -- ZYLON AND ARAMID IN STEAM FOR FIFTY HOURS AT THIS  
11 TEMPERATURE, RIGHT?  
12 A IT APPEARS THAT YOUR DEPENDENT VARIABLE WOULD BE  
13 STRENGTH RETENTION, THAT'S CORRECT.  
14 Q OKAY. SO I'M JUST GOING TO GET OUT OF THE WAY, SO  
15 YOU CAN -- I'M GOING TO STAND OVER HERE BY YOU, IF THAT'S OKAY.  
16 A YES, SIR.



Zeppetella081406Part2

17 Q OKAY. SO WHAT WE HAVE IS FIFTY HOURS OF EXPOSURE,  
18 AND STRENGTH RETENTION IN PERCENT HERE, RIGHT, BEING RECORDED?

19 A YES, SIR.

20 Q ALL RIGHT. AND IF YOU LOOK UP HERE, THE BOX THAT  
21 HAS ZYLON A. S. , DO YOU SEE THAT?

22 A YES, SIR.

23 Q THAT'S THE KIND OF ZYLON THAT WAS USED IN SECOND  
24 CHANCE'S BALLISTIC VESTS?

25 A AS SPUN, I BELIEVE.

26 Q AS SPUN. OKAY. AND IF YOU LOOK HERE, YOU START AT  
27 A HUNDRED PERCENT, AND THEN IT STARTS LOSING STRENGTH OVER TIME,  
28 RIGHT?

Computerized Transcription

456

1 A YES.

2 Q SO IT STARTS OFF HERE A HUNDRED PERCENT. BY THE  
3 TIME IT'S DOWN TO FIFTY HOURS, IT'S LOST ABOUT HALF OF ITS  
4 STRENGTH, RIGHT?

5 A YES.

6 Q OKAY. ESSENTIALLY, IT'S LOST MORE THAN HALF OF ITS  
7 STRENGTH, RIGHT?

8 A YES.

9 Q AND -- AND THEN, IF YOU LOOK AT AND YOU COMPARE IT  
10 TO WHAT KEVLAR DID, RIGHT? -- THERE'S KEVLAR THERE --

11 A YES, SIR.

12 Q SO YOU HAVE ZYLON LOSING STRENGTH OVER TIME WHEN IN  
13 HEAT AND HUMIDITY, JUST LIKE KEVLAR LOSES STRENGTH IN HEAT AND  
14 HUMIDITY, RIGHT?

15 A ON THIS GRAPH, YES.

16 Q THEN THERE' S ANOTHER GRAPH FURTHER DOWN, RIGHT?  
17 A YES, SIR.  
18 Q THIS IS -- THIS IS AN EVEN HOTTER TEMPERATURE,  
19 TWO-FIFTY DEGREES CENTI GRADE?  
20 A VERY HOT.  
21 Q IT' S LIKE, I DON' T KNOW, SIX, SEVEN HUNDRED DEGREES  
22 FAHRENHEIT, SOMETHING LIKE THAT?  
23 A YES, SIR.  
24 Q AND AGAIN, WE HAVE ZYLON AND KEVLAR BEING EXPOSED  
25 TO HEAT AND HUMIDITY, OVER TIME, LOSING STRENGTH, RIGHT?  
26 A YES, SIR.  
27 Q THEY LOSE A LOT OF STRENGTH, DON' T THEY?  
28 A YES, SIR.

Computerized Transcription

457

1 Q OKAY. SO TOYOBO -- AND BY THE WAY, YOU KNOW THAT  
2 TOYOBO DIDN' T JUST SEND THIS TECHNICAL BULLETIN TO SECOND  
3 CHANCE. THEY SENT IT TO ALL BODY ARMOR MAKERS, TOYOBO?  
4 A I KNOW THAT NOW, SIR.  
5 Q AND SO IN 1990- -- OH, WHEN -- WHEN -- WHEN -- WHEN  
6 FIBER LOSES STRENGTH OVER TIME IN HEAT AND HUMIDITY, THAT' S  
7 CALLED "HYDROLYSIS," RIGHT?  
8 A BASICALLY. IT' S ACTUALLY THE CHEMICAL REACTION,  
9 BUT I GUESS THAT IS ACCURATE, YES, SIR.  
10 Q OKAY. OKAY. THAT' S A TERM THAT WE' RE GOING TO SEE  
11 IN SOME OF THE OTHER DOCUMENTS. YOU TALKED ABOUT IT A LITTLE  
12 BIT.  
13 A HYDROLYSIS TECHNICALLY MEANS --  
14 Q IT' S THE CHEMICAL REACTION?  
15 A -- THE CHEMICAL PROCESS OF DEGRADATION.

16 Q OKAY. YOU TALKED A LITTLE BIT ABOUT LIGHT  
17 RESISTANCE.  
18 DO YOU REMEMBER THAT?  
19 A YES, SIR.  
20 Q REMEMBER THAT ON DIRECT?  
21 A YES, SIR, I DO.  
22 Q IT'S TRUE THAT -- THAT WHEN YOU PUT ZYLON IN LIGHT,  
23 IT LOSES STRENGTH, LIKE WHEN IT WAS PUT IN HEAT AND HUMIDITY,  
24 DOESN'T IT?  
25 A VARIOUS TYPES OF LIGHT, YES, SIR.  
26 Q THIS -- THIS WAS SOMETHING THAT WAS REPORTED BY  
27 TOYOBO IN THIS BULLETIN TOO, RIGHT?  
28 A I'D HAVE TO LOOK AT THE BULLETIN, BUT YES, SIR.

Computerized Transcription

458

1 Q LET'S LOOK AT PAGE 21 OF THE BULLETIN, PLEASE.  
2 NOW, AGAIN, THIS IS 1998, RIGHT?  
3 A THAT'S WHEN THE BULLETIN WAS WRITTEN. I'M NOT SURE  
4 WHEN I FIRST SAW IT.  
5 I COULD HAVE SEEN PARTS OF IT TOO.  
6 Q I UNDERSTAND. IF WE CAN PULL UP THE FIRST  
7 PARAGRAPH, PLEASE.  
8 ALL RIGHT. IT SAYS -- CAN WE JUST LOWER THAT?  
9 IS THERE A WAY TO LOWER THAT A LITTLE BIT?  
10 WELL, I'LL -- THERE WE GO. OKAY. LIGHT  
11 RESISTANCE. HERE'S WHAT TOYOBO SAYS IN 1998. STRENGTH OF ZYLON  
12 DECREASES BY EXPOSURE TO SUNLIGHT, RIGHT?  
13 A YES.  
14 Q LIGHT RESISTANCE OF ZYLON WAS EVALUATED, USING

15 XENON LIGHT WEATHEROMETER.  
16 A YES, SIR.  
17 Q WHAT IS A ZENON LIGHT WEATHEROMETER?  
18 A I DON'T KNOW, SIR.  
19 Q IT'S A BRIGHT LIGHT, RIGHT?  
20 A OKAY.  
21 Q AND IT SAYS: AS SHOWN IN THIS FIGURE, THE STRENGTH  
22 DECREASES SHARPLY AT THE INITIAL STAGE OF EXPOSURE, RIGHT?  
23 A YES, SIR.  
24 Q END PRODUCTS OF ZYLON FOR OUTDOOR USE HAVE TO BE  
25 PROTECTED BY COVERING MATERIALS, RIGHT?  
26 A YES.  
27 Q OKAY. SO TOYOB0 TOLD THAT IN ITS BROCHURE IN 1998  
28 TO SECOND CHANCE AND ALL THE OTHER BODY ARMOR MAKERS, RIGHT?

Computerized Transcription

459

1 A THAT'S MY BELIEF, YES, SIR.  
2 Q OKAY. AND -- AND SECOND CHANCE ACTUALLY TRIED TO  
3 DEAL WITH THAT, RIGHT, BY PUTTING ZYLON -- ITS BALLISTIC PADS  
4 INSIDE OF THIS COVER, RIGHT?  
5 A THAT WOULD BE -- ALL BALLISTIC PADS HAVE A COVER.  
6 Q YEAH, AND PART OF WHAT IT DOES IS, IT KEEPS THE  
7 LIGHT FROM GOING INSIDE TO THE BALLISTIC PANEL.  
8 A THAT WOULD BE ONE ROLE, YES.  
9 Q OKAY. AND THEN THAT ALL GOES INSIDE OF THIS DARK  
10 CARRIER?  
11 A DARK IN THIS CASE, YES, SIR.  
12 Q OKAY. NOW, IF WE GO -- IF WE CAN JUST TAKE A LOOK  
13 AND SHOW THE LADIES AND GENTLEMEN OF THE JURY THE FIRST -- THE  
14 FIRST GRAPH, THAT WOULD BE GREAT.

15                   OKAY.  AND HERE IT IS.  WE HAVE -- WE HAVE ZYLON  
16  AGAIN HERE,  RIGHT?  
17           A        YES,  SIR.  
18           Q        AND THEN IN THE DOTTED LINES,  THAT'S THE -- THAT'S  
19  THE KEVLAR AND STUFF LIKE THAT?  
20           A        YES.  WHAT TEMPERATURE -- WE'RE A LITTLE LOWER.  
21           Q        EIGHTY-THREE DEGREES CENTIGRADE?  
22           A        OKAY.  
23           Q        THAT'S LIKE -- I DON'T KNOW -- LIKE A HUNDRED AND  
24  FIFTY-SOMETHING,  FAHRENHEIT,  SOMETHING LIKE THAT?  
25           A        LET'S SEE.  NO.  ONE-EIGHTY.  
26           Q        JUST ABOUT ONE-EIGHTY?  
27           A        ABOUT ONE-EIGHTY,  APPROXIMATELY.  
28           Q        SO OUR -- OUR PARENTS ARE GOING TO BE PROUD OF US.

Computerized Transcription

460

1                   SO HERE,  WE HAVE THE HARD LINE,  RIGHT HERE.  
2  THAT'S THE ZYLON,  RIGHT,  SIR?  
3           A        YES,  SIR.  
4           Q        AND WHAT IT DOES,  IT -- IT LOSES STRENGTH DOWN  
5  HERE.  IT'S LESS.  IT'S LOST MORE THAN HALF OF ITS STRENGTH,  
6  HASN'T IT?  
7           A        IN THIS CASE,  YES,  SIR.  
8           Q        AND BY COMPARISON,  KEVLAR DOES THE SAME THING,  BUT  
9  HOLDS UP A LITTLE BETTER,  HUH?  
10          A        YES,  SIR.  
11          Q        OKAY.  SO WE HAVE ZYLON FIBER AND KEVLAR FIBER  
12  LOSING STRENGTH WHEN BEING EXPOSED TO LIGHT,  CORRECT?  
13          A        YES.

14 Q OKAY. LET'S LOOK AT ANOTHER ONE. IF WE CAN LOOK  
15 AT THE BOTTOM GRAPH ON THAT PAGE, PLEASE.

16 IT SAYS AT THE TOP: RESIDUAL STRENGTH OF ZYLON  
17 AFTER SIX MONTHS EXPOSURE TO DAYLIGHT IS ABOUT THIRTY-FIVE  
18 PERCENT.

19 DO YOU SEE THAT?

20 A YES, SIR.

21 Q SO WHAT TOYOBO DID HERE, THEY STUCK IT OUTSIDE IN  
22 SUNLIGHT FOR SIX MONTHS, RIGHT?

23 A YES, SIR.

24 Q AND THEN THEY RECORDED THE STRENGTH RETENTION OVER  
25 TIME, RIGHT?

26 A YES, SIR.

27 Q AND IT KEPT -- IT LOST ABOUT WHAT? SIXTY-FIVE  
28 PERCENT OF ITS STRENGTH AFTER SIX MONTHS?

Computerized Transcription

461

1 A WE'RE DEALING WITH TENSILE STRENGTH, CORRECT.

2 Q TENSILE STRENGTH?

3 A YES, SIR.

4 Q THAT'S WHAT WE'VE BEEN TALKING ABOUT, TENSILE  
5 STRENGTH?

6 A I WAS JUST CLARIFYING.

7 Q AND ALL THAT INFORMATION AND ALL KINDS OF OTHER  
8 TESTS ARE IN THIS 1998 TECHNICAL BULLETIN THAT TOYOBO PUBLISHED?

9 A YES, I BELIEVE SO, YES.

10 Q NOW, BEGINNING IN 2000 AND 1 -- BEGINNING IN 2000  
11 AND 1, TOYOBO --

12 MR. LYLE: I CAUGHT THAT RIGHT IN MY EYE. THAT'S THE  
13 PROJECTOR LIGHT.

14 THE COURT: YOU WANT TO SUGGEST TO ME THAT NOW MIGHT BE  
15 THE TIME --

16 MR. LYLE: MIGHT BE TIME FOR A BREAK, SINCE I CAN'T SEE.

17 MAYBE WE SHOULD GO OFF THE RECORD.

18 NO.

19 THE COURT: OKAY. LET'S DO THAT.

20 WE'LL TAKE AN EARLY LUNCH RECESS NOW. WE'RE

21 GOING TO RECONVENE, REMEMBER, AT 1:45. WE HAVE TWO HOURS.

22 HAVE A NICE, LONG LUNCH. PLEASE REMEMBER THAT

23 ADMONITION.

24 WE'LL SEE YOU BACK HERE, 1:45.

25 (JURORS EXIT COURTROOM)

26 THE COURT: OKAY. THE JURORS HAVE DEPARTED.

27 OFF THE RECORD.

28 (NOON RECESS)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO  
DEPARTMENT NO. 29 HON. MICHAEL M. ANELLO, JUDGE

JAMIE ZEPPELELLA, AN INDIVIDUAL, ET AL., )  
PLAINTIFFS, ) NO. GIN034151  
VS. )  
SECOND CHANCE BODY ARMOR, INC., ) PAGES 462 - 567  
TOYOBO AMERICA, INC., ET AL., )  
DEFENDANTS. )

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
AUGUST 14, 2006

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REPORTED BY: ROBIN K. CASEY, CSR NO. 8824



I N D E X

Monday 8/14/06 at 1:34 P.M. 462

AARON WESTRICK  
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BY MR. GREEN 552  
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Court's exhibit no. 746, Toyobo 7/6/01 letter 471  
Court's exhibit no. 786, tech info bulletin 481  
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Court's exhibit no. 325, Bachner 10/1/96 letter 537  
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7

THANK YOU.

8

ALL RIGHT. THANKS, FOLKS, FOR BEING PUNCTUAL, AND

9 I HOPE YOU ENJOYED YOUR NICE, LONG LUNCH. SINCE YOU'RE ONLY  
10 GETTING \$15 A DAY, WE DON'T WANT TO OVERWORK YOU.

11

ALL RIGHT. THANKS. THE RECORD CAN REFLECT ALL OF

12 OUR JURORS ARE BACK AND ALL PARTIES AND COUNSEL ARE PRESENT.

13

MR. WESTRICK IS ON THE STAND.

14

YOU MAY REMEMBER EARLIER WE WERE REFERRING TO

15 MR. WESTRICK'S NOTES -- OR DR. WESTRICK'S NOTES AS 1001. WE

16 MADE A MISTAKE THERE. THAT SHOULD BE 1003. WE HAD ALREADY

17 MARKED SOMETHING ELSE AS 1001. SO IF ANYONE WROTE IT DOWN

18

AS 1001, HIS NOTES WILL NOW BE REFERRED TO AS 1003.

19

DID I SAY THAT RIGHT?

20

MR. EMMERSON: YOU DID, YOUR HONOR.

21

THE COURT: THANKS. GO AHEAD, SIR.

22

MR. LYLE: THANK YOU, YOUR HONOR.

23

24

CROSS-EXAMINATION

25

BY MR. LYLE:

26

Q DR. WESTRICK, BEFORE LUNCH WE WERE TALKING ABOUT

27

THE INFORMATION THAT TOYOCO PUBLISHED IN ITS TECHNICAL

28

BULLETIN.

470

1

DO YOU REMEMBER THAT?

2

A YES, SIR.

3

Q AND ON THURSDAY, YOU MENTIONED THAT MR. DAVIS --

4

LET ME SAY IT THIS WAY.

5

ON THURSDAY YOU TALKED ABOUT ZYLON BEING KEVLAR ON

6

STERIODS.

7

DO YOU REMEMBER THAT?

8 A YES, SIR.

9 Q THAT WAS A PHRASE THAT MR. ~DAVIS, THE PRESIDENT OF  
10 SECOND CHANCE, USED TO DESCRIBE ZYLON; CORRECT?

11 A HE AND OTHERS. HE USED IT. YES, HE DID.

12 Q HE USED IT AND OTHER PEOPLE INSIDE SECOND CHANCE?

13 A YES.

14 Q NOW, AFTER 1998, SECOND CHANCE CONTINUED TO USE  
15 ZYLON IN MAKING BALLISTIC VESTS; RIGHT?

16 A YES, SIR.

17 Q YOU TOLD US EARLIER YOU WERE PART OF A LITTLE BIT  
18 OF THE EXECUTIVE TEAM AT THE BEGINNING WHEN SECOND CHANCE  
19 WAS MAKING BALLISTIC VESTS USING ZYLON; RIGHT?

20 A YES, SIR.

21 Q BETWEEN 1998 AND 2001, THEREABOUTS, THERE WERE A  
22 NUMBER OF PRODUCTS THAT SECOND CHANCE CAME OUT WITH THAT HAD  
23 ZYLON IN THEM; RIGHT?

24 A I WOULD IMAGINE, YES, SIR.

25 Q DIFFERENT GENERATIONS OF VESTS?

26 A OH, YES, SIR, YES.

27 Q AND WITH EACH GENERATION, SECOND CHANCE MADE WHAT  
28 THEY CONSIDERED IMPROVEMENTS ON THE BALLISTIC VEST; RIGHT?

471

1 A YES.

2 Q OKAY. NOW, ON DIRECT EXAMINATION, YOU TOLD US  
3 ABOUT INFORMATION THAT SECOND CHANCE RECEIVED IN JULY OF  
4 2001 FROM TOYOBO.

5 DO YOU REMEMBER THAT TESTIMONY?

6 A YES.

7 Q AND THAT -- THAT TESTIMONY, YOU TOLD US, TALKED  
8 ABOUT A LETTER TOYOBO HAD SENT TO MR. BANDUCCI AT SECOND

9 CHANCE; RIGHT?  
10 A A LETTER AND A SCALE, YES.  
11 Q SO THERE WAS A LETTER AND A -- SOME TESTING DATA  
12 THAT TOYOBO SENT; RIGHT?  
13 A YES, SIR.  
14 Q AND IT WAS INFORMATION, NEW INFORMATION --  
15 ADDITIONAL INFORMATION, I SHOULD SAY, ABOUT ZYLON FIBER;  
16 RIGHT?  
17 A YES.  
18 Q OKAY. AND YOU SAW THAT LETTER; RIGHT?  
19 A YES.  
20 Q AND YOU SAW THE TEST DATA THAT TOYOBO SENT TO  
21 SECOND CHANCE ALONG WITH THAT LETTER; CORRECT?  
22 A I SAW SOME TEST DATA WITH THE LETTER, YES, SIR.  
23 MR. LYLE: I'D LIKE TO PUBLISH, YOUR HONOR, TRIAL  
24 EXHIBIT NUMBER 746 TO THE JURY. THERE IS NO OBJECTION.  
25 THE COURT: OKAY.  
26 (COURT'S EXHIBIT NO. 746 IDENTIFIED)  
27 BY MR. LYLE:  
28 Q DR. WESTRICK, IS THAT THE LETTER THAT YOU SAW IN

472

1 JULY OF 2001.  
2 A THAT'S ONE OF THE LETTERS, YES, SIR.  
3 Q AND IT'S --.  
4 MR. LYLE: IF WE COULD SHOW THE LETTERHEAD PORTION,  
5 PLEASE. RIGHT THERE.  
6 BY MR. LYLE:  
7 Q SO THIS IS A LETTER FROM TOYOBO DATED JULY 6,  
8 2001; RIGHT?  
9 A YES.

10 Q AND IT WENT TO PAUL BANDUCCI AT SECOND CHANCE;  
11 CORRECT?  
12 A YES, SIR.  
13 Q MR. ~BANDUCCI, WHAT WAS HIS TITLE AT THAT TIME AT  
14 SECOND CHANCE?  
15 A AT THAT TIME I RESPONDED DIRECTLY TO HIM. HE WAS  
16 THE GENERAL MANAGER.  
17 Q HE WAS THE GENERAL MANAGER OF SECOND CHANCE?  
18 A YES.  
19 Q AND HE WAS YOUR SUPERIOR?  
20 A YES. ONE OF THEM, YES.  
21 Q AND IF WE CAN TAKE A LOOK AT THE FIRST PARAGRAPH  
22 THERE. IT SAYS HERE -- IT SAYS -- THIS IS TOYOBO SAYING TO  
23 MR. ~BANDUCCI: "WE WERE INFORMED THAT DSM HPF DECIDED TO PUT  
24 ON HOLD THE MARKET INTRODUCTION OF ITS PBO FIBER CONTAINING  
25 PRODUCT SUCH AS ZYLON UD-SB10"; RIGHT?  
26 A YES.  
27 Q IT SAYS RIGHT HERE: "THIS INFORMATION IS TOTALLY  
28 NEW FOR US. "

473

1 SEE THAT?  
2 A YES, SIR.  
3 Q SO HERE -- HERE IN JULY OF 2001 TOYOBO IS TELLING  
4 MR. ~BANDUCCI WE'VE GOT SOME NEW INFORMATION FROM A VEST  
5 COMPANY; RIGHT?  
6 A YEAH. IN SIMPLE TERMS, YES, SIR.  
7 Q DSM IS -- WHAT'S THAT? YOU KNOW THAT COMPANY?  
8 A DUTCH STATE MINES, BUT YES, SIR. THEY WORK WITH  
9 ANOTHER COMPANY, YES, SIR.  
10 Q SO THEY WERE WORKING ON A -- A BALLISTIC VEST

11 USING PBO OR ZYLON; RIGHT?  
12 A I BELIEVE THEIR CAPACITY AT THAT TIME WOULD BE  
13 MORE OF A WEAVER.  
14 Q DSM?  
15 A YES.  
16 Q YEAH. BUT DO YOU SEE THIS UD?  
17 A UD-SB10, YES, SIR.  
18 Q YOU KNOW WHAT THAT STANDS FOR; RIGHT?  
19 A I KNOW WHAT IT IS.  
20 Q IT'S A UNIT DIRECTIONAL?  
21 A YES, UNIT DIRECTIONAL LAMINATE.  
22 Q NOW I JUST WANT TO MAKE SURE I'M SURE ABOUT THIS.  
23 A UD -- A UD OR UNIT DIRECTIONAL LAMINATE IS NOT THE SAME AS  
24 A WOVEN FABRIC; RIGHT?  
25 A THAT IS CORRECT.  
26 Q AND THAT'S THE PRODUCT THAT TOYOBO -- THE UD IS  
27 SOMETHING INSTEAD OF HAVING IT WOVEN, THE FIBER ALL GOES ONE  
28 DIRECTION; RIGHT?

474

1 A YES, SIR.  
2 Q SO IT'S -- INSTEAD OF LOOKING LIKE THIS, THIS  
3 WOULD BE WOVEN FABRIC LIKE THIS; RIGHT? YOU HAVE -- YOU  
4 HAVE THREADS THAT GO THIS WAY AND THIS WAY, JUST --  
5 A VERY CLOSE, YES, SIR.  
6 Q OKAY. AND THAT'S A WOVEN PRODUCT LIKE SECOND  
7 CHANCE IS, RIGHT, SOMETHING --  
8 A IF THE THREADS WERE TO GO IN AND OUT BETWEEN --  
9 Q THEY GO OVER THE TOP OF EACH OTHER --  
10 A LIKE THIS. YES, SIR.  
11 Q I'M SORRY. COULD YOU --

12 A LIKE THAT, YES.  
13 Q SO THEY WEAVE IN AND OUT?  
14 A INTERDIRECTIONALS LIKE THIS.  
15 Q UNIT DIRECTIONAL, THE FIBERS GO IN ONE DIRECTION;  
16 RIGHT?  
17 A YES.  
18 Q AND WHAT'S USED TO HOLD THESE FIBERS TOGETHER IS  
19 GLUE?  
20 A A LAMINATION PROCESS.  
21 Q THEY PRESS IT TOGETHER?  
22 A PRESS IT LIKE A PLASTIC, YES, SIR.  
23 Q AND THAT UD IS WHAT'S BEING REFERRED TO HERE BY  
24 TOYOBO; CORRECT?  
25 A YES.  
26 Q ALL RIGHT. AND SO IF WE CAN GO HERE, THEY'RE  
27 SAYING THIS IS NEW. THEY JUST LEARNED IT FROM DSM IN JULY  
28 OF 2001?

475

1 A YES, SIR.  
2 MR. LYLE: IF WE CAN GO TO THE NEXT PARAGRAPH.  
3 BY MR. LYLE:  
4 Q TOYOBO REPORTS: "WE ALSO HAVE ALREADY STARTED  
5 SOME ACCELERATED AGING TESTS ON ZYLON FIBER AT OUR  
6 CUSTOMERS' REQUEST. AS YOU CAN FIND IN THE UPDATE ATTACHED,  
7 WE HAVE NOT FOUND ANY SERIOUS INDICATION FROM" OUR  
8 TESTING -- "OUR TEST USING ZYLON FIBER UP TO NOW. WE HOPE  
9 THIS INFORMATION WOULD BE HELPFUL FOR YOUR PRODUCT'S DESIGN.  
10 AS A MATTER OF COURSE, WE WILL KEEP YOU INFORMED OF  
11 ADDITIONAL UPDATES"; RIGHT?  
12 A YES, SIR.

13 Q SO TOYOBO IS TELLING SECOND CHANCE: TAKE A LOOK.  
14 WE'RE GOING TO SEND YOU SOME -- WE'RE GOING TO SEND YOU  
15 TESTING UPDATES AS IT'S AVAILABLE; RIGHT?

16 A YES, SIR.

17 MR. LYLE: OKAY. GO TO THE NEXT ONE.

18 BY MR. LYLE:

19 Q THEN TOYOBO SAYS: "HERE WE MUST MENTION WHAT IS  
20 VERY IMPORTANT. DSM HPF MENTIONED THAT THE USE OF PBO FIBER  
21 IN BULLET RESISTANT VESTS MAY NOT BE JUSTIFIED. HOWEVER, WE  
22 HAVE NOT CONFIRMED ANY SERIOUS INDICATION ABOUT WOVEN FABRIC  
23 MADE OF ZYLON FIBER AT THIS MOMENT. HOWEVER, WE ADVISE YOU  
24 TO CAREFULLY EXAMINE YOUR PRODUCT AGAIN IN THIS OCCASION";  
25 RIGHT?

26 A THAT'S WHAT IT SAYS, YES.

27 Q OKAY. AND SO WHAT TOYOBO IS SAYING IS THIS IS A  
28 UD PRODUCT. WE DON'T KNOW WHAT IT MEANS, BUT YOU SHOULD

476

1 CHECK YOUR PRODUCTS BECAUSE YOURS ARE WOVEN. WE DON'T KNOW  
2 WHAT ANY OF THIS MEANS; RIGHT?

3 A LIKE THAT, YES, SIR.

4 Q OKAY. AND THEN IF WE GO ON TO THE NEXT ONE:

5 "PLEASE BE REMINDED THAT TOYOBO MAKES NO WARRANTY AND  
6 ASSUMES NO LIABILITY WHATSOEVER IN CONNECTION WITH ANY USE  
7 OF ZYLON FIBER. USERS DETERMINE FOR THEMSELVES THE  
8 SUITABILITY FOR THEIR INTENDED USE FOR THE FIBER."

9 DO YOU SEE THAT?

10 A YES.

11 Q YOU SAW THIS WHOLE LETTER IN JULY OF 2001; RIGHT?

12 A YES.

13 Q OKAY. AND WHEN YOU GOT THE LETTER, THERE WAS DATA



14 ALREADY ATTACHED TO IT THAT TOYOBO HAD ALREADY STARTED  
15 SENDING OUT; RIGHT?

16 A I BELIEVE SO. THERE WAS TWO LETTERS. ONE WAS  
17 JULY 5TH. THERE WAS DATA ATTACHED, YES, I BELIEVE.

18 Q LET'S GO TO THE SECOND PAGE.  
19 IS THAT THE JULY 5TH ONE YOU'RE TALKING ABOUT?

20 A YES, IT LOOKS LIKE IT.

21 Q ALL RIGHT. SO TOYOBO IS WRITING HERE AND ATTACHED  
22 IT TO THE JULY 6TH LETTER THAT IT SPECIALLY SENT OUT AND  
23 SAID -- WHAT THEY'RE TALKING ABOUT IS THEY REPORTED ON THAT  
24 THEY'RE STARTING TO DO SOME TESTING ON ZYLON FIBER --

25 A YES.

26 Q -- RIGHT?

27 AND THAT'S THE FIBER. THAT'S THE PRODUCT THEY  
28 MAKE THAT WE'VE ALREADY TALKED ABOUT; RIGHT?

477

1 A YES.

2 Q OKAY.

3 MR. LYLE: AND IF WE COULD GO TO THE FIRST.

4 BY MR. LYLE:

5 Q ESSENTIALLY WHAT THEY'RE TALKING ABOUT IS THAT  
6 THEY'RE -- I'D LIKE TO INFORM YOU OF OUR PROGRESS ON THE  
7 TESTING. AS YOU MAY KNOW, WE RECENTLY STARTED THE  
8 ACCELERATION TO TEST PRODUCT PERFORMANCE OVER A TEN-YEAR  
9 PERIOD BECAUSE ONE OF THEIR CUSTOMERS ASKED FOR THE  
10 GUARANTEE. ONE OF THE SIMPLE METHODS TO TEST A PRODUCT IS  
11 TO EXPOSE IT TO HIGHER TEMPERATURE AND HIGHER HUMIDITY.

12 THEY'RE PUTTING IT IN HEAT AND HUMIDITY?

13 A YES. AND IT'S CELSIUS. EIGHTY WOULD BE ABOUT 176  
14 FAHRENHEIT, AND 60 WOULD BE ABOUT 140 DEGREES.

15 Q OKAY. AND THEN WE GO TO THE NEXT PARAGRAPH.  
16 "ATTACHED IS THE TEST RESULT. AS YOU CAN FIND,  
17 THE STRENGTH OF ZYLON FIBER DECREASES UNDER HIGH TEMPERATURE  
18 AND HUMIDITY CONDITIONS. WE ASSUME THIS IS DUE TO THE  
19 HYDROLYSIS."  
20 DO YOU SEE THAT?  
21 A YES, SIR.  
22 Q THAT'S WHAT YOU AND I TALKED ABOUT EARLIER TODAY,  
23 RIGHT, THE HYDROLYSIS?  
24 A YES, SIR.  
25 Q AND SO WHAT TOYOBO IS REPORTING IN THIS TEST DATA  
26 IS HERE'S ADDITIONAL DATA ABOUT ZYLON'S TENSILE STRENGTH IN  
27 HEAT AND HUMIDITY; RIGHT?  
28 A YES. THEY'RE ESSENTIALLY SAYING IT DEGRADES.

478

1 Q THEY SAY IT LOSES STRENGTH IN HEAT AND HUMIDITY?  
2 A YES.  
3 MR. LYLE: IF WE CAN SHOW THE ADDITIONAL DATA THAT  
4 TOYOBO SENT TO SECOND CHANCE IN JULY OF 2001?  
5 NEXT PAGE.  
6 BY MR. LYLE:  
7 Q SO SAY -- BLOW THIS UP.  
8 THIS IS THE DATA YOU SAW; RIGHT.  
9 A I BELIEVE SO, YES.  
10 Q OKAY. AND WHAT WE HAVE HERE IS WE HAVE, DOWN HERE  
11 AT THE BOTTOM, 80 DEGREES -- 60 DEGREES CENTIGRADE AND  
12 80 PERCENT RELATIVE HUMIDITY; CORRECT?  
13 A YES.  
14 Q AND THEN YOU HAVE 80 DEGREES CENTIGRADE AND  
15 80 PERCENT RELATIVE HUMIDITY; RIGHT?

16 A YES, SIR.  
17 Q FORTY DEGREES CENTIGRADE AND 80 PERCENT RELATIVE  
18 HUMIDITY?  
19 A RIGHT. AND 40 DEGREES CENTIGRADE IS APPROXIMATELY  
20 14 DEGREES FAHRENHEIT.  
21 Q AT A SLIGHTLY LOWER TEMPERATURE, BUT STILL PRETTY  
22 HOT, 104 DEGREES?  
23 A THE HUMAN BODY IS NOT MUCH WARMER THAN THAT, BUT  
24 YES.  
25 Q 104 DEGREES FAHRENHEIT IS WHAT THEY'RE REPORTING  
26 ON THE CHART, IN ADDITION TO THE OTHER ONES; RIGHT?  
27 A YES.  
28 Q THOSE ARE THE DIAMONDS UP HERE.

479

1 THAT'S WHAT THEY'VE GOT SO FAR AS OF JULY 5TH,  
2 2001; RIGHT?  
3 A YES, SIR. YES, SIR.  
4 MR. LYLE: THANK YOU. WE'RE DONE WITH THAT EXHIBIT.  
5 BY MR. LYLE:  
6 Q SO WHAT HAPPENS ON JULY 6, 2001, TOYOBO SAYS TO  
7 SECOND CHANCE WE'VE GOT THIS INFORMATION THAT DSM'S WORRIED  
8 ABOUT USING ZYLON IN THEIR UNIT DIRECTIONAL SHIELD AND  
9 TOYOBO TELLS THAT TO SECOND CHANCE; RIGHT?  
10 A FROM THAT, YES.  
11 Q AND THEN THEY ALSO, ON TOP OF TELLING THEM ABOUT  
12 IT, THEY STARTED TO DO SOME TESTING ON FIBER TO GIVE TO  
13 SECOND CHANCE AND OTHER VEST MAKERS; RIGHT?  
14 A IN FUTURE TESTING?  
15 Q RIGHT.  
16 A YES, SIR.

17 Q PERIODICALLY TOYOBO UPDATED THAT TESTING, DIDN' T  
18 THEY?

19 A I BELIEVE SO, YES.

20 Q AND THEY SENT OUT ADDITIONAL LETTERS WITH  
21 ADDITIONAL UPDATES ON THE TESTING TO SECOND CHANCE?

22 A WITH ADDITIONAL INFORMATION, YES, SIR, I BELIEVE  
23 SO.

24 Q AND SO THEY TOOK THE GRAPHS, AND THEY KEPT TESTING  
25 FIBER AND REPORTING ON IT EVERY FEW MONTHS TO SECOND CHANCE;  
26 RIGHT?

27 A I BELIEVE SO, YES.

28 Q AND THEY ALSO SENT OUT THE DATA, NOT JUST TO

480

1 SECOND CHANCE, BUT YOU KNOW THEY SENT IT OUT TO ALL BODY  
2 ARMOR MAKERS IN THE UNITED STATES, DIDN' T THEY?

3 A I DON' T KNOW ABOUT ALL, BUT I HEARD THEY SENT IT  
4 OUT TO OTHER PLACES, YES.

5 Q AND THEY ALSO PUT THAT INFORMATION ON THEIR WEB  
6 PAGE, DIDN' T THEY?

7 A I BELIEVE THEY PUT SOME OF THAT INFORMATION ON  
8 THEIR WEB PAGE AT SOME TIME, YES, SIR.

9 Q OKAY. SO TOYOBO WAS SENDING OUT THE INFORMATION  
10 LIKE WHAT WE JUST TALKED ABOUT TO BODY ARMOR MANUFACTURERS  
11 AND PUTTING IT ON THE WEB PAGE FOR ANYBODY TO SEE; RIGHT?

12 A I BELIEVE SO, YES.

13 Q OKAY. DO YOU REMEMBER EARLIER WHEN YOU WERE  
14 TALKING TO MR. ~EMERSON, YOU SAID THAT MR. BACHNER, YOU KNOW,  
15 SAID TO TOYOBO: LOOK, YOU GUYS SHOULDN' T PUBLISH THIS  
16 INFORMATION. DON' T MAKE IT PUBLIC?

17 DO YOU REMEMBER THAT TESTIMONY?

18 A YES.

19 Q TOYOBO DIDN'T LISTEN TO THAT, DID THEY? THEY PUT  
20 IT OUT THERE, DIDN'T THEY?

21 A IT APPEARS THAT WAY, YES, SIR.

22 Q THEY KEPT SENDING OUT DATA ABOUT THEIR FIBER  
23 PERIODICALLY THROUGH 2001, 2002 AND RIGHT UP THROUGH 2005 IN  
24 FACT, DIDN'T THEY?

25 A IT APPEARS THEY SENT OUT, YES, SOME DATA ABOUT  
26 THEIR FINDINGS.

27 Q SO TOYOBO SENT OUT THEIR FIBER INFORMATION FOR  
28 EVERYBODY TO SEE; RIGHT?

481

1 A I DON'T KNOW WHAT WAS ON -- I BELIEVE WHAT YOU  
2 WERE SAYING IS CORRECT. I DON'T KNOW THAT IT WAS ON THE  
3 WEBSITE, BUT IT APPEARS THEY WERE PUTTING OUT INFORMATION.

4 Q THANK YOU, SIR.

5 IN FACT, AFTER TOYOBO STARTED SENDING OUT THE  
6 DATA, THEY UPDATED THEIR TECHNICAL BULLETIN IN 2001, FOR  
7 EXAMPLE; RIGHT?

8 A WHICH TECHNICAL BULLETIN WOULD THAT BE.

9 Q THE ONE WE LOOKED AT TODAY. REMEMBER THE 1998  
10 ONE?

11 A I'M NOT SURE OF THAT. I'M NOT SURE OF THAT.

12 Q DID YOU SEE TOYOBO'S 2001 TECHNICAL BULLETINS?

13 A I MIGHT NOT BE ABLE AT THIS TIME TO DECIPHER  
14 BETWEEN THE TWO. THEY LOOK THE SAME WITH THE ZYLON ON THE  
15 FRONT AND SO FORTH.

16 Q THAT'S TRUE.

17 MR. LYLE: NO OBJECTION TO TRIAL 266. I'D LIKE TO  
18 PUBLISH IT.

19 THE COURT: OKAY.  
20 (COURT'S EXHIBIT NO. 786 IDENTIFIED)  
21 MR. LYLE: TRIAL 266.  
22 I'M SORRY. I THINK IT'S 786.  
23 THE COURT: 786.  
24 MR. LYLE: AM I CORRECT THAT THERE'S NO OBJECTION? IS  
25 THAT RIGHT?  
26 I HAD A DIFFERENT NUMBER WRITTEN DOWN. I DON'T  
27 BELIEVE THERE IS, BUT I TOLD THE JUDGE THERE WASN'T. I WANT  
28 TO BE SURE.

482

1 I'M TOLD THERE'S NO OBJECTION.  
2 BY MR. LYLE:  
3 Q OKAY. DR. WESTRICK, THIS IS A TECHNICAL  
4 INFORMATION BULLETIN DATED 2001.  
5 DO YOU SEE THAT, REVISED?  
6 A YES, SIR.  
7 Q AND THAT'S THE PBO FIBERS JUST LIKE THE ONE WE  
8 WERE TALKING ABOUT EARLIER TODAY?  
9 A YES, THE -- YES.  
10 Q LET'S TAKE A LOOK AT AND SEE IF YOU'VE SEEN THIS.  
11 LET'S TAKE A LOOK AT PAGE 9.  
12 NOW, IF YOU LOOK UP HERE AT THE TOP --.  
13 MR. LYLE: IF WE COULD HAVE THAT IN AND THE GRAPHS,  
14 PLEASE?  
15 BY MR. LYLE:  
16 Q THIS IS WHAT WE TALKED ABOUT EARLIER TODAY; RIGHT?  
17 AT 180 DEGREES CENTIGRADE AND 250 DEGREES CENTIGRADE; RIGHT?  
18 A I BELIEVE SO, YES.  
19 MR. LYLE: NOW IF WE CAN LOOK AT THE BOTTOM ONE?

20 BY MR. LYLE:

21 Q THE DOCUMENT SAYS: "THE STRENGTH OF ZYLON  
22 GRADUALLY DECREASES EVEN AT THE TEMPERATURE OF LESS THAN A  
23 HUNDRED DEGREES CELSIUS IN HIGH HUMIDITY CONDITION. ZYLON  
24 FIBER SHOULD BE STORED FREE FROM HIGH HUMIDITY AT NORMAL  
25 ROOM TEMPERATURES. "

26 AND IT SHOWS -- IT SHOWS THE ZYLON LOSING -- HERE  
27 STRENGTH RETENTION AND TIME AND THEN ZYLON LOSING STRENGTH  
28 OVER TIME.

483

1 DO YOU SEE THAT UPDATE?

2 A YES, SIR.

3 Q DID YOU -- DID YOU SEE THAT IN 2001?

4 A I BELIEVE I MAY HAVE. THE TWO DOCUMENTS LOOK  
5 REMARKABLY THE SAME.

6 Q BUT YOUR BEST MEMORY IS YOU SAW THIS SOMETIME  
7 AROUND 2001?

8 A YES, I THINK I DID SEE THAT.

9 Q OKAY. AND SO WHAT WE HAVE HERE IS TOYOBO UPDATING  
10 ITS ORIGINAL TECHNICAL BULLETIN THAT IT STARTED IN 1998 TO  
11 INCLUDE ADDITIONAL INFORMATION ABOUT ZYLON AND HEAT AND  
12 HUMIDITY; RIGHT?

13 A IT APPEARS THAT WAY, YES.

14 Q AND YOU SAW THIS AT SOME POINT, YOU THINK, WHILE  
15 YOU WERE AT SECOND CHANCE; CORRECT?

16 A YES, SIR.

17 MR. LYLE: THANK YOU. WE'RE DONE WITH THAT EXHIBIT.

18 BY MR. LYLE:

19 Q DR. WESTRICK, YESTERDAY YOU WERE TELLING US A  
20 LITTLE BIT ABOUT -- I'M SORRY. YESTERDAY --

21 A DO YOU WANT TO MOVE THAT TO THE SIDE?  
22 Q I'LL STAND OVER HERE. SORRY.  
23 YESTERDAY YOU TOLD US SOME TESTIMONY YOU HAD ABOUT  
24 CONVERSATIONS YOU HAD WITH MR. ~DAVIS ABOUT ZYLON FIBER.  
25 DO YOU REMEMBER THAT TESTIMONY?  
26 YOU TOLD US THAT ON THURSDAY. I APOLOGIZE.  
27 DO YOU REMEMBER THAT?  
28 A YES, I BELIEVE -- YES.

484

1 Q AND IN THOSE CONVERSATIONS, YOU TOLD US AND YOU  
2 TOLD THIS JURY THAT MR. ~DAVIS THOUGHT THAT ZYLON SHOULDN'T  
3 BE USED IN VESTS.  
4 DO YOU REMEMBER THAT?  
5 A YES.  
6 Q AND YOU TOLD US -- IN FACT WHAT YOU TOLD US -- ON  
7 THURSDAY YOU TOLD THIS JURY THAT IN AUGUST OF 2002,  
8 MR. ~DAVIS -- MR. ~DAVIS WALKED INTO YOUR OFFICE AND TOLD YOU  
9 THAT HE HAD STOPPED THE PRODUCTION OF ALL ZYLON VESTS.  
10 REMEMBER THAT?  
11 A I'D HAVE TO LOOK AT MY NOTES, BUT YES, I DO.  
12 Q THAT'S WHAT YOU TOLD US, ISN'T IT?  
13 A I BELIEVE SO, YES.  
14 Q NOW, DR. ~WESTRICK, THAT'S NOT QUITE RIGHT. THAT'S  
15 NOT QUITE WHAT HE TOLD YOU, IS IT?  
16 A I BELIEVE THAT'S WHAT HE TOLD ME.  
17 Q THAT'S YOUR MEMORY?  
18 A YES. IF I COULD LOOK AT MY NOTES?  
19 Q OKAY. YOU'D LIKE TO TAKE A LOOK AT YOUR NOTES?  
20 A YES.  
21 Q LET'S TAKE A LOOK AT YOUR NOTES ON AUGUST 8, 2002.



22 ARE YOU THERE, SIR?  
23 A YES.  
24 Q AUGUST 8, 2002, A. M. : RCD -- THAT' S RICHARD  
25 DAVIS; RIGHT?  
26 A YES.  
27 Q CAME INTO MY OFFICE SHOWING ME A LETTER, QUOTE,  
28 STOPPING SHIPMENT OF ZYLON 2A' S, 20 LAYERS, IMMEDIATELY,

485

1 CLOSED QUOTE.  
2 DID I READ THAT CORRECTLY?  
3 A YES, SIR.  
4 Q NOW WE' VE READ THAT TOGETHER, I SN' T THAT WHAT HE  
5 TOLD YOU? HE TOLD YOU THEY WERE GOING TO STOP SHIPMENT OF  
6 ZYLON 2A 20-LAYER VESTS IMMEDIATELY; RIGHT?  
7 A YES, I BELIEVE THAT' S CORRECT.  
8 Q OKAY. YOU DIDN' T WRITE THERE HE SAID STOP ALL  
9 ZYLON. YOU WROTE HE WAS GOING TO STOP ZYLON 2A' S; RIGHT?  
10 A YES, SIR.  
11 Q OKAY. JUST SO THAT WE' RE CLEAR, HE' S TALKING  
12 ABOUT THESE VESTS HERE, LEVEL 2A 20 LAYERS; RIGHT?  
13 A YES.  
14 Q NOT LEVEL 2 LIKE OFFICER ZEPPELELLA' S. 2A' S;  
15 CORRECT?  
16 A YES, SIR.  
17 Q SO WHAT HE WAS WORRIED ABOUT WAS LEVEL 2A 20-LAYER  
18 VESTS, CORRECT, ACCORDING TO YOUR NOTE; RIGHT?  
19 A ACCORDING TO MY NOTE?  
20 Q YES.  
21 A YOU' RE ASKING ME WHAT HE WAS WORRIED ABOUT  
22 ACCORDING TO MY NOTE?

23 Q ACCORDING TO YOUR NOTE -- YOU JUST READ IT TO  
24 US -- THAT WAS WHAT HE WAS WORRIED ABOUT, ZYLON LEVEL 2A.  
25 WE'RE GOING TO STOP THEM IMMEDIATELY; RIGHT?

26 A THAT'S WHAT I WROTE IN MY NOTE.

27 Q AND THAT WAS THE CONCERN, LEVEL 2A VESTS WITH 20  
28 LAYERS; RIGHT?

486

1 A NO, SIR.

2 Q WELL, WE JUST WENT OVER THAT. IT SAYS RIGHT HERE:  
3 RCD CAME INTO MY OFFICE SHOWING ME A LETTER STOPPING  
4 SHIPMENT OF ZYLON 2A 20 LAYER IMMEDIATELY.

5 DID I READ THAT CORRECTLY?

6 A THAT'S WHAT HE STOPPED.

7 Q RIGHT THERE; RIGHT?

8 A THAT'S WHAT HE STOPPED SHIPMENT OF.

9 Q AUGUST 8, 2002?

10 A THAT'S WHAT HE STOPPED SHIPMENT OF.

11 Q OKAY. NOW, THE CONCERN, DR. WESTRICK, WAS ABOUT  
12 LEVEL 2A VESTS, NOT ABOUT ZYLON; RIGHT?

13 A NO, SIR. IT WAS ABOUT ZYLON.

14 Q ARE YOU SURE?

15 A POSITIVE.

16 Q YOU DON'T WANT TO CHANGE THAT TESTIMONY?

17 A NO, I DON'T.

18 Q ALL RIGHT. LET'S TAKE A LOOK AT YOUR LOG.

19 BEFORE YOU GO TO YOUR LOGBOOK, YOU'VE BEEN USING  
20 THAT A LOT IN THIS TRIAL; RIGHT?

21 A YES, SIR.

22 Q AND IN YOUR LOGBOOK, YOU WERE -- YOU WERE USING  
23 THAT -- YOU MADE THAT -- ENTRIES IN THAT LOGBOOK WHEN IT WAS

24 I MPORTANT; R IGH T?

25 A I MADE THE ENTRIES SOON AFTER THE EVENTS TOOK  
26 PLACE AND -- YES.

27 Q WHEN YOU FELT --

28 A WHEN I FELT -- WHEN I COULD GET TO MY LOG AND IT

487

1 WAS I MPORTANT, I GUESS, YES, SIR.

2 Q AND YOU WERE RECORDING EVENTS AND THINGS THAT WERE  
3 HAPPENING INSIDE OF SECOND CHANCE; R IGH T?

4 A YES.

5 Q AND YOU WERE TRYING TO BE VERY ACCURATE ABOUT  
6 THAT; R IGH T?

7 A YES.

8 Q BECAUSE YOU WANTED TO BE CAREFUL ABOUT WHAT YOU  
9 WROTE BECAUSE IT WAS I MPORTANT, AS YOU JUST TOLD US; R IGH T?

10 A YES.

11 Q OKAY. LET' S TAKE A LOOK AT YOUR LOGBOOK. IF WE  
12 COULD TAKE A LOOK ON FEBRUARY 4TH, 2003.

13 DO YOU HAVE IT?

14 A YES. YES.

15 Q "RCD GOING TO EXECUTIVE MEETING"; R IGH T?

16 A YES, SIR.

17 Q "I TOLD HIM HE SHOULD AT LEAST PULL THE 2A' S BASED  
18 ON WHAT I KNOW OR BELIEVE"; R IGH T?

19 A AT LEAST PULL THE 2A' S, AT LEAST, YES, SIR.

20 Q THAT' S WHAT YOU SAID; R IGH T?

21 A AT LEAST, YES.

22 Q YOU WROTE "2A' S"; CORRECT?

23 A YES, SIR, I DID.

24 Q YOU DIDN' T SAY PULL THE ZYLON. YOU SAID PULL THE

25 2A' S; RIGHT?

26 A I SAID AT LEAST PULL THE 2A' S.

27 Q THE WORD ZYLON IS NOT THERE, IS IT, SIR?

28 A NO, SIR.

488

1 Q YOU DIDN'T SAY STOP THE ZYLON VESTS. YOU SAID  
2 LET' S STOP THE 2A' S, AT LEAST GET THAT GOING; RIGHT? STOP  
3 THE 2A' S?

4 A AT LEAST PULL THE 2A' S IS WHAT I SAID.

5 Q BECAUSE THE CONCERN WAS ABOUT LEVEL 2A VESTS, NOT  
6 ABOUT ZYLON BUT LEVEL 2A VESTS; RIGHT?

7 A NO, SIR.

8 Q DO YOU REMEMBER A MEETING THAT YOU HAD AT A SALES  
9 FORCE -- REGIONAL SALES FORCE OF SECOND CHANCE BODY ARMOR?  
10 DO YOU REMEMBER THAT MEETING IN SEPTEMBER OF 2002?

11 A SEPTEMBER 2002?

12 Q YES.

13 A YES, SIR, I DO.

14 Q THERE WAS A MEETING OF THE SALES FORCE OF SECOND  
15 CHANCE AT A RESORT IN MICHIGAN; RIGHT?

16 A YES, THERE WAS.

17 Q AND YOU WENT TO THAT MEETING; CORRECT?

18 A YES, I DID.

19 Q OKAY. AND IT WAS IN SEPTEMBER -- AROUND  
20 SEPTEMBER 4TH, 2002, IN CENTRAL LAKE MICHIGAN; RIGHT?

21 A YES, SIR, IN THE AREA.

22 Q AND THERE AT THAT TIME MR. ~DAVIS WAS THERE IN  
23 ATTENDANCE; RIGHT?

24 A YES, SIR.

25 Q AND YOU WERE THERE?

26 A YES, SIR.  
27 Q AND YOUR SALES FORCE?  
28 A SIR, I SHOULD CLARIFY. I WAS NOT THERE FOR THE

489

1 WHOLE THING.  
2 Q YOU WERE THERE FOR PART OF IT?  
3 A YES, SIR.  
4 Q I ONLY WANT TO TALK ABOUT THE PART YOU WERE THERE  
5 FOR; OKAY?  
6 A YES, SIR.  
7 Q WHILE YOU WERE THERE, MR. ~DAVIS WAS PREPARING TO  
8 MAKE A PRESENTATION TO THE SALES FORCE; RIGHT?  
9 A YES, SIR.  
10 Q AND WHAT HE WAS GOING TO DO WAS ADDRESS THE SALES  
11 FORCE AND TALK ABOUT ZYLON; RIGHT?  
12 A YES, SIR.  
13 Q AND YOU WANTED HIM TO MAKE THAT PRESENTATION,  
14 DIDN' T YOU?  
15 A ABSOLUTELY.  
16 Q YOU WANTED HIM TO TELL THE SALES FORCE WHAT HE WAS  
17 PLANNING TO TELL THEM; RIGHT?  
18 A YES, SIR.  
19 Q AND HE SHOWED YOU A DOCUMENT THAT HE WAS GOING TO  
20 SHOW THAT SALES FORCE, DIDN' T HE?  
21 A THAT I KEPT, YES, SIR.  
22 Q YOU HAVE THAT DOCUMENT, DON' T YOU?  
23 A I' M SURE IT' S IN EVIDENCE, BUT NO, I DON' T.  
24 Q IS IT IN YOUR JOURNAL?  
25 A I DON' T BELIEVE IT IS.  
26 Q BUT YOU HAVE IT; RIGHT?

27 A I -- SOMEWHERE I HAVE IT, YES, SIR, ABSOLUTELY.  
28 Q BECAUSE YOU WROTE SOMETHING ON IT; RIGHT?

490

1 A ABSOLUTELY. I HAVE THE ORIGINAL OF THAT DOCUMENT.

2 Q LET'S TAKE A LOOK AT THAT DOCUMENT.

3 MR. LYLE: YOUR HONOR, THERE'S NO OBJECTION TO IT.

4 IT'S EXHIBIT 218.

5 (COURT'S EXHIBIT NO. 218 IDENTIFIED)

6 BY MR. LYLE:

7 Q IS THAT THE DOCUMENT, SIR, THAT YOU JUST TALKED  
8 ABOUT.

9 A YES.

10 Q OKAY. WHAT IT SAYS --

11 MR. EMMERSON: YOUR HONOR, FIRST OF ALL, IT'S THE  
12 SUBJECT OF A MOTION IN LIMINE. SECOND OF ALL, IT HAS  
13 WRITING UP ON THE TOP WHICH I'VE BEEN INSTRUCTED TO TAKE  
14 WRITING OFF OF ALL OF MY DOCUMENTS.

15 MR. GREEN: THERE'S A REFERENCE ON THE TOP THAT'S NOT  
16 SUPPOSED TO BE THERE.

17 MR. LYLE: I APOLOGIZE FOR THAT. I DIDN'T REALIZE THAT  
18 REFERENCE WAS THERE.

19 IS THERE A WAY WE CAN FIX THAT?

20 IT'S NOT SUBJECT TO A MOTION IN LIMINE. THERE IS  
21 NO OBJECTION TO THE DOCUMENT.

22 THE COURT: WE'LL JUST DELETE THE WRITING ON THE TOP,  
23 AND WE SHOULD BE OKAY; RIGHT?

24 MR. EMMERSON: IT WAS THE SUBJECT OF A MOTION IN LIMINE  
25 ABOUT THE DURABILITY MOTIONS. IF THAT'S OPEN, I'M FINE WITH  
26 THAT.

27 THE COURT: LET'S JUST NOT ARGUE ABOUT IT IN FRONT OF

28 THE JURY. LET'S JUST GET THROUGH THIS.

491

1 MR. LYLE: WE'LL REDACT THE THING ON THE TOP.

2 CAN WE PUSH IT UP ON THE SCREEN? CAN WE DO THAT?  
3 JUST CUT HERE.

4 THE WITNESS: THERE YOU GO, MR. ~LYLE.

5 MR. LYLE: ARE WE ALL HAPPY NOW WITH WHAT IT SAYS?  
6 OKAY.

7 BY MR. LYLE:

8 Q "ZYLON DURABILITY QUESTION."  
9 DO YOU SEE THAT?

10 A YES, SIR.

11 Q THIS IS WHAT YOU WANTED MR. ~DAVIS TO TELL THE  
12 SALES FORCE; RIGHT?

13 A YES, SIR.

14 Q ALL RIGHT. AND YOU WANTED HIM TO TELL IT TO THE  
15 SALES FORCE BECAUSE IT WAS TRUE; RIGHT?

16 A YES, SIR, BASED ON MY MEMORY.

17 MR. LYLE: LET'S TAKE A LOOK AT THE FIRST PARAGRAPH.

18 BY MR. LYLE:

19 Q "TOYOBO HAS RECENTLY BEGUN PUBLISHING ZYLON FIBER  
20 AGING STUDIES."

21 NOW, THOSE ARE THE STUDIES WE JUST TALKED ABOUT,  
22 RIGHT, THE ONES THAT TOYOBO STARTED SENDING OUT IN JULY OF  
23 2001; RIGHT?

24 A AND OTHERS, I BELIEVE.

25 Q "YEAH. ALTHOUGH THE STUDY IS NOT YET COMPLETE,  
26 PRELIMINARY DATA INDICATES THAT ZYLON SHELF LIFE IS VERY  
27 SIMILAR TO ARAMIDS."

28 AND THAT'S -- ARAMIDS ARE KEVLAR; RIGHT?

1 A YES, SIR.

2 Q "HOWEVER, ACCELERATED AGING STUDIES OF FIBER AT  
3 HIGH TEMPERATURE AND HUMIDITY CONDITIONS INDICATES THAT  
4 ZYLON MAY LOSE STRENGTH FASTER OVER TIME THAN ARAMIDS."  
5 DO YOU SEE THAT?

6 A YES, SIR.

7 Q "THE PUBLISHING OF THIS PRELIMINARY DATA HAS  
8 CAUSED RUMORS AND MISUNDERSTANDING ABOUT ZYLON RESULTING IN  
9 CONFUSION IN THE MARKETPLACE"; RIGHT?

10 A YES, SIR.

11 Q "MOST IMPORTANTLY, IT IS NOT KNOWN WHETHER THIS  
12 STUDY IS INDICATIVE OF END USE PERFORMANCE DURABILITY."  
13 DO YOU SEE THAT?

14 A YES.

15 Q AND THE "END USE PERFORMANCE DURABILITY" THAT  
16 MR. ~DAVIS WAS TALKING ABOUT WAS IN SECOND CHANCE BALLISTIC  
17 VESTS; RIGHT?

18 A I BELIEVE THAT'S WHAT HE WAS THINKING, YES.

19 MR. LYLE: GO ON TO THE NEXT ONE, PLEASE.

20 BY MR. LYLE:

21 Q "SECOND CHANCE IS FOLLOWING TOYOBO'S STUDIES  
22 CLOSELY AND HAS BEGUN SEVERAL LONG-TERM STUDIES TO MONITOR  
23 ZYLON VEST PERFORMANCE DURABILITY DURING ACTUAL USE  
24 CONDITIONS. SINCE THE OLDEST ZYLON BODY ARMOR HAS ONLY BEEN  
25 IN SERVICE SINCE EARLY 1999, THE PROCESS OF GATHERING DATA  
26 ON USED VESTS HAS ONLY BEGUN."

27 DO YOU SEE THAT?

28 A YES, SIR.



1 Q NOW, WHAT THAT'S A REFERENCE TO IS THE USED  
2 BALLISTIC -- THE TESTING THAT SECOND CHANCE STARTED ON USED  
3 VESTS THAT YOU -- THAT YOU TALKED ABOUT; RIGHT?

4 A AT LEAST PARTIALLY, YES.

5 Q SO WHAT WAS HAPPENING IS AFTER TOYOBO SENT OUT  
6 INFORMATION ABOUT ZYLON IN JULY OF 2001, SECOND CHANCE WENT  
7 OUT AND STARTED PULLING VESTS IN FROM THE FIELD; RIGHT?

8 A YES, SIR.

9 Q AND THE IDEA WAS IS THEY WERE GOING TO TEST THOSE  
10 VESTS TO SEE HOW THEY'RE HOLDING UP; RIGHT?

11 A BALLISTICALLY TEST, YES, SIR.

12 Q AND YOU WERE PART OF THAT; RIGHT?

13 A UP TO A POINT, YES.

14 MR. LYLE: CAN WE GO ON TO THE NEXT POINT.

15 BY MR. LYLE:

16 Q OKAY. NOW WE'RE TALKING ABOUT: "BODY ARMOR  
17 DURABILITY HAS LONG BEEN A QUESTION OF CONCERN. DUPONT  
18 STUDIES IN THE MID 80'S INDICATED THAT KEVLAR BODY ARMOR IS  
19 REASONABLY DURABLE BUT THAT IT DOES EVENTUALLY BEGIN TO LOSE  
20 PERFORMANCE WITH NORMAL USE"; RIGHT?

21 A YES.

22 Q SO KEVLAR VESTS LOSE DURABILITY OVER TIME; RIGHT?  
23 THAT'S WHAT HE'S TALKING ABOUT?

24 A OVER TIME.

25 Q AND THAT WAS KNOWN, RIGHT, AT SECOND CHANCE?

26 A OVER TIME WITH WEAR.

27 Q YES. SO WHEN YOU MEAN BY "WITH WEAR," YOU MEAN  
28 BEING WORN BY POLICE OFFICERS OUT IN THE FIELD; RIGHT?

1 A YES, BEING WORN.

2 Q "DUPONT' S STUDY ALSO FOUND NUMEROUS INSTANCES OF  
3 ABUSE AND/OR LACK OF PROPER CARE THAT RESULTED IN  
4 SIGNIFICANT EARLY DECAY. DUPONT' S STUDIES LED TO THE  
5 EVENTUAL ISSUANCE OF THEIR RATIONAL REPLACEMENT POLICY  
6 RECOMMENDATIONS FOR KEVLAR BODY ARMOR. THESE  
7 RECOMMENDATIONS INCLUDED ANNUAL INSPECTIONS BEGINNING AT  
8 THREE YEARS OF USE AND REPLACEMENT EVERY FIVE YEARS. THESE  
9 RECOMMENDATIONS WERE BROADLY ADOPTED BY THE ARMOR INDUSTRY  
10 AND THE END USER COMMUNITY AND HAVE SERVED WELL"; RIGHT?

11 A YES, SIR.

12 Q WHAT HE' S SAYING THERE: LOOK, YOU' VE GOT TO KEEP  
13 AN EYE ON KEVLAR VESTS. AROUND THREE YEARS, YOU' VE GOT TO  
14 START LOOKING AT THEM, BUT FIVE YEARS SEEMS TO MAKE SENSE?

15 A RATIONAL REPLACEMENT.

16 Q AFTER ABOUT FIVE YEARS, YOU' RE LOOKING TO REPLACE  
17 KEVLAR VESTS; RIGHT?

18 A KEVLAR, YES.

19 Q AND IT COULD BE AS SOON AS THREE YEARS; RIGHT?

20 A THEORETICALLY, YES.

21 MR. LYLE: OKAY. CAN WE GO ON TO THE NEXT ONE, PLEASE?  
22 BY MR. LYLE:

23 Q COMMENTS ON THE DATA FROM DUPONT: "IT SHOULD BE  
24 RECOGNIZED THAT DUPONT' S CONCLUSIONS WERE BASED ON DATA  
25 BEFORE TODAY' S LIGHTER, MORE WEARABLE VEST TECHNOLOGIES.  
26 THOSE OLDER ARAMID VESTS WERE NOT WORN NEARLY AS FREQUENTLY  
27 AS OUR MODERN VESTS. TODAY, MODERN LIGHTER VESTS,  
28 ESPECIALLY ZYLON VESTS, ARE WORN FAR MORE OFTEN THAN EVER

1 BEFORE. THEREFORE, SECOND CHANCE HAS INITIATED STUDIES OF  
Page 34

2 VEST PERFORMANCE DURABILITY FOR BOTH ARAMID AND ZYLON  
3 PRODUCTS"; RIGHT?

4 SEE THAT?

5 A THAT'S WHAT IT SAYS, YES, SIR.

6 Q WHAT HE'S TALKING ABOUT THERE IS WE'RE GOING TO  
7 START LOOKING AT, NOT JUST ZYLON VESTS, BUT KEVLAR AND OTHER  
8 ARAMID VESTS; RIGHT?

9 A HE'S SAYING WE'RE GOING TO START LOOKING.

10 Q THAT'S WHAT IN FACT SECOND CHANCE STARTED TO DO;  
11 RIGHT?

12 RIGHT?

13 A OVER A YEAR BEFORE, YES, SIR.

14 MR. LYLE: OKAY. GO ON TO THE NEXT ONE.

15 BY MR. LYLE:

16 Q "OBVIOUSLY, OUR TESTING WILL BE ONGOING AS MODERN  
17 ARAMID AND ZYLON VESTS AGE AND CONTINUE TO BE USED. WE  
18 EXPECT THESE TESTS TO SHOW THAT MODERN VESTS WILL BE SAFE AT  
19 THEIR CERTIFIED THREAT LEVEL DURING THE FIVE-YEAR WARRANTY  
20 PERIOD. IF THE DATA LEADS US TO A DIFFERENT CONCLUSION,  
21 THEN WE WILL TAKE PROMPT, RESPONSIBLE ACTION"; RIGHT?

22 A YES.

23 MR. LYLE: OKAY. NEXT ONE.

24 BY MR. LYLE:

25 Q "IT SHOULD ALSO BE NOTED THAT ZYLON VESTS HAVE AN  
26 INHERENT STRENGTH ADVANTAGE OVER ARAMID VESTS. THE INITIAL  
27 BALLISTIC PERFORMANCE OF A ZYLON VEST IS TYPICALLY ABOUT  
28 THREE PERCENT HIGHER THAN AN EQUIVALENT ARAMID VEST, SO

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1 ZYLON VESTS HAVE A HIGHER PERFORMANCE 'MARGIN OF SAFETY'  
2 WHEN THOSE VESTS FIRST ENTER SERVICE"; RIGHT?

3           SEE THAT? I READ THAT RIGHT?  
4           A     YES.  
5           Q     OKAY. AND THIS -- ALL OF THIS IS WHAT YOU WANTED  
6 MR. -DAVIS TO TALK ABOUT TO THE SALES FORCE?  
7           A     I WANTED HIM TO SHOW THE SALES FORCE --  
8           Q     THIS INFORMATION?  
9           A     GIVE THEM THAT LETTER, YES, SIR.  
10          MR. LYLE: LET'S GO TO THE NEXT PARAGRAPH.  
11 BY MR. LYLE:  
12          Q     "OF FAR GREATER CONCERN TO US IS THE INCREASE IN  
13 ADVERTISING AND AVAILABILITY OF NEW, HOTTER AMMUNITION AS,  
14 WELL AS NEW FRANGIBLE AMMUNITION."  
15                 DO YOU SEE THAT?  
16          A     YES, SIR.  
17          Q     SO WHAT HE'S SAYING HERE IS THAT WE'RE NOT  
18 CONCERNED ABOUT ZYLON. WHAT WE'RE WORRIED ABOUT HERE --  
19 WHAT THE GREATER CONCERN IS IS NEW, HOTTER AMMUNITION, AS  
20 WELL AS FRANGIBLE AMMUNITION; RIGHT?  
21          A     THAT'S WHAT HE'S SAYING.  
22          Q     THIS IS WHAT YOU WANTED -- AGAIN, YOU WANTED HIM  
23 TO TELL THIS TO THE SALES FORCE, PUBLISH THIS TO THE SALES  
24 FOR?  
25          A     I WANTED HIM TO TELL SOMETHING.  
26          Q     "MANY OF THESE NEW ROUNDS HAVE FAR GREATER  
27 PENETRATION CAPABILITIES THAN EVER BEFORE. THESE NEW  
28 AMMUNITION TRENDS CREATE A REAL AND PRESENT DANGER FOR EVERY

497

1 2A VEST FROM ANY MANUFACTURER. THIS IS THE THREAT FOR WHICH  
2 WE MUST PLAN."

3           DID I READ THAT CORRECTLY?

4 A YES.

5 Q WHAT HE'S SAYING HERE IS THAT EVERY 2A VEST --

6 EVERY 2A VEST FACES THIS THREAT; RIGHT?

7 A YES.

8 Q OKAY. HE DOESN'T SAY EVERY ZYLON VEST; RIGHT? HE

9 SAYS EVERY 2A VEST; CORRECT?

10 A YES, SIR.

11 Q AND HE SAYS FROM WHATEVER MANUFACTURER, NOT JUST

12 SECOND CHANCE, ANY MANUFACTURER?

13 A THAT WOULD BE HIS MAIN POINT.

14 Q OKAY. SO WHAT HE'S WORRIED ABOUT AND WHAT HE'S

15 TALKING ABOUT, AGAIN, ARE THE LEVEL 2A VESTS DOWN HERE;

16 RIGHT? THAT'S WHAT HE'S TALKING ABOUT THERE, ISN'T IT?

17 A THAT'S WHAT HE WRITES THERE, YES, SIR.

18 Q AND HE'S SAYING THAT'S THE CONCERN FOR -- BECAUSE

19 OF THE HOT AMMUNITION, WE'VE GOT TO BE WORRIED ABOUT LEVEL

20 2A VESTS, HUH?

21 A THAT'S WHAT HE'S WRITING ABOUT, YES, SIR.

22 MR. LYLE: LET'S GO TO THE LAST PARAGRAPH.

23 BY MR. LYLE:

24 Q HERE'S WHAT HE SAYS: "THESE ESCALATING AMMUNITION

25 DESIGNS COUPLED WITH THE FACT THAT THE NEW N.I.J.

26 STANDARD" -- THAT'S 0101.04 -- "NO LONGER INCLUDES

27 PROTECTION FROM .357 MAGNUMS, CREATES SERIOUS NEW PROBLEMS

28 FOR 2A VESTS"; CORRECT?

498

1 A YES, SIR, THAT'S WHAT IT SAYS.

2 Q "THE ANSWER TO THESE INCREASING THREATS IS FOUND

3 IN OUR CURRENT GENERATION OF SECOND CHANCE LEVEL 2 AND 3A

4 VESTS"; RIGHT?

5 A YES.

6 Q THAT'S HERE, LEVEL 2 VEST LIKE OFFICER

7 ZEPPELLA'S; CORRECT?

8 A YES, SIR.

9 Q AND LEVEL 3A VESTS UP HERE; CORRECT?

10 A YES.

11 Q THAT'S THE ANSWER TO THE LEVEL 2A PROBLEM; RIGHT?

12 A THAT'S WHAT HE WRITES ABOUT, YES.

13 Q HE'S WRITING THAT LEVEL 2A VESTS ARE THE PROBLEM.

14 HE'S NOT WRITING THAT ZYLON FIBER IS THE PROBLEM, IS HE?

15 A HE'S WRITING WHAT YOU INDICATED, YES.

16 Q "ALSO, SECOND CHANCE'S VEST TECHNOLOGY ALLOWS" --

17 "ALLOWS OUR CURRENT LEVEL 2 AND 3A VESTS TO BE LIGHTER,

18 THINNER AND MORE WEARABLE THAN 2A VESTS OF JUST FIVE YEARS

19 AGO"; RIGHT?

20 A YES.

21 Q "AS A RESULT OF THE NEW AMMUNITION THREATS AND THE

22 EXCELLENT WEARABILITY OF CURRENT SECOND CHANCE LEVEL 2 AND

23 3A VESTS, SECOND CHANCE NOW STRONGLY RECOMMENDS THAT LAW

24 ENFORCEMENT BEGIN USING THREAT LEVEL 2 VESTS AS ITS MINIMUM

25 ACCEPTABLE PROTECTION LEVEL. "

26 DID I READ THAT CORRECTLY?

27 A YES.

28 Q OKAY. SO IT IS NOW SECOND CHANCE'S RECOMMENDATION

499

1 IN THIS DOCUMENT THAT MR. ~DAVIS WROTE THAT YOU DON'T USE

2 2A'S ANYMORE. YOU'VE GOT TO USE LEVEL 2 OR 3A; RIGHT?

3 A THAT DOCUMENT, THAT'S WHAT IT SAYS, YES, SIR.

4 Q AND IT'S NOT JUST LIMITED TO ZYLON; RIGHT? IT'S

5 LIMITED TO ANY 2A VEST? ANY 2A VEST, YOU SHOULDN'T USE IT?

6 A THAT'S WHAT'S WRITTEN, YES, SIR.  
7 Q OKAY. YOU AGREED WITH MR. ~DAVIS, DIDN'T YOU,  
8 MR. ~WESTRICK?  
9 A AGREED WITH WHAT?  
10 Q WITH WHAT HE JUST WROTE? YOU AGREED WITH THAT?  
11 A I AGREE THAT MEMO SHOULD GO TO OUR REGIONAL SALES  
12 MANAGERS, YES.  
13 Q AND THE REASON YOU WANTED IT TO GO TO THE REGIONAL  
14 SALES FORCE IS BECAUSE YOU AGREED WITH IT; RIGHT?  
15 A NO, SIR.  
16 Q I'M SORRY. WHAT?  
17 A NO, SIR, I DON'T AGREE WITH IT.  
18 Q YOU WANTED HIM TO LIE TO THE SALES FORCE?  
19 A HE TOLD ME THAT THAT WAS A LIE.  
20 Q WELL, WAIT A MINUTE. YOU'RE TELLING US YOU WANTED  
21 HIM TO READ IT, BUT YOU WANTED HIM TO LIE WHILE HE WAS  
22 READING IT?  
23 THAT DOESN'T MAKE ANY SENSE.  
24 A NO, SIR. I WANTED HIM TO DISTRIBUTE IT. I WANTED  
25 THE REGIONAL SALES MANAGERS TO BE AWARE THERE WAS A PROBLEM.  
26 Q SO YOU WANTED THAT SAID TO THE REGIONAL SALES  
27 FORCE; RIGHT?  
28 A YES, I DID.

500

1 Q OKAY. NOW, AFTERWARDS, YOU CAME TO AGREE WITH  
2 WHAT WAS WRITTEN UP THERE, DIDN'T YOU?  
3 A NO, SIR.  
4 Q WELL, SIR, WE READ FROM YOUR LOGBOOK JUST A LITTLE  
5 WHILE AGO. REMEMBER THAT?  
6 A YES, SIR.

7 Q AND YOU SAID IN YOUR LOGBOOK IN FEBRUARY OF  
8 2003 -- WHICH IS AFTER THIS MEETING; RIGHT?  
9 A YES, SIR.  
10 Q "RCD GOING TO EXECUTIVE MEETING. I TOLD HIM HE  
11 SHOULD AT LEAST PULL THE 2A'S BECAUSE OF WHAT I KNOW OR  
12 BELIEVE."  
13 DID I READ THAT RIGHT?  
14 A YES, SIR.  
15 Q THAT'S YOUR OWN HANDWRITING; RIGHT?  
16 A YES, SIR.  
17 Q AND IT'S IN YOUR LOGBOOK, WHICH IS THE ONE THAT  
18 YOU WERE VERY CAREFUL ABOUT WRITING.  
19 A AND THERE'S OTHER ENTRIES IN THERE.  
20 Q UNDERSTOOD. WE'LL GET TO THOSE.  
21 I READ THAT ONE RIGHT?  
22 A YES, SIR.  
23 Q AND SINCE THAT TIME AFTER THAT, MR. ~DAVIS --  
24 MR. ~DAVIS WAS WORRIED ABOUT LEVEL 2A VESTS, WASN'T HE?  
25 A THAT'S WHAT HE EXPRESSED TO -- TO ME AND TO OTHER  
26 PERSONS, YES.  
27 Q HE WAS TELLING YOU HE WAS WORRIED ABOUT LEVEL 2A  
28 VESTS? NOT ZYLON VESTS; LEVEL 2A VESTS, HUH?

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1 A HE WAS WORRIED ABOUT ZYLON.  
2 Q NO, SIR. HE WAS WORRIED ABOUT 2A'S VESTS, NOT  
3 ZYLON?  
4 A NO.  
5 Q LET'S TAKE A LOOK AT YOUR LOGBOOK.  
6 A CAN WE LOOK AT FEBRUARY?  
7 Q LET'S TAKE A LOOK AT FEBRUARY 2003.



8 IF WE GO TO FEBRUARY 5TH, 2003. IT'S A  
9 TYPEWRITTEN PART OF YOUR LOGBOOK.  
10 A FEBRUARY -- OKAY. GIVE ME ONE SECOND HERE.  
11 Q DO YOU HAVE IT? IT'S THIS SECTION.  
12 A YES, SIR, I DO.  
13 Q THIS IS ENTRY FEBRUARY 2003?  
14 A YES.  
15 Q OKAY. IF YOU GO DOWN, THERE'S A PARAGRAPH THAT  
16 STARTS "RCD."  
17 DO YOU SEE THAT?  
18 A HE WAS -- THAT PART.  
19 Q "RCD SAID HE WAS." DO YOU SEE IT?  
20 A YES.  
21 Q "RCD SAID HE WAS GETTING FOUR HOURS SLEEP PER  
22 NIGHT THINKING ABOUT THIS. WE SHOULD AT LEAST PULL LEVEL 2A  
23 AT TWO TO THREE YEARS."  
24 DID I READ THAT CORRECTLY?  
25 A YES, SIR.  
26 Q OKAY. HE SAYS THERE "PULL 2A'S"; RIGHT?  
27 A YES, SIR.  
28 Q OKAY. THE WORD ZYLON DOESN'T APPEAR IN THERE,

502

1 DOES IT -- IN THAT SENTENCE, DOES IT?  
2 A NOT IN THAT SENTENCE.  
3 Q OKAY. THIS IS WHAT HE'S TALKING ABOUT, THESE  
4 VESTS HERE, HUH?  
5 A IN THAT SENTENCE, YES.  
6 Q AND YOU RECORDED IT IN YOUR LOGBOOK?  
7 A THAT AND OTHER INFORMATION, YES.  
8 Q OKAY. AND THAT CONTINUED TO BE MR. ~DAVIS'

9 CONCERN, LEVEL 2A'S; RIGHT?  
10 A THAT'S WHAT HE EXPRESSED.  
11 Q AND BY JULY OF 2003, FIVE MONTHS LATER, THAT WAS  
12 STILL HIS CONCERN, LEVEL 2A VESTS; RIGHT?  
13 A THAT'S WHAT HE -- THAT'S PART OF WHAT IT WAS, YES,  
14 SIR.  
15 Q THAT'S WHAT HE WAS SAYING, HUH?  
16 A THAT HE WAS ALSO CONCERNED ABOUT ZYLON, YES, SIR.  
17 Q NO. NO. NO. I DIDN'T ASK YOU.  
18 A YES.  
19 Q I ASKED YOU WHAT YOU WROTE THERE, AND THAT'S WHAT  
20 YOU WROTE?  
21 A YES. RICHARD SAID HE WAS GETTING FOUR HOURS OF  
22 SLEEP THINKING ABOUT THIS. WE SHOULD AT LEAST PULL 2A AT  
23 TWO TO THREE YEARS.  
24 Q LET'S GO TO -- NOW IN JULY OF 2003, MR. ~DAVIS  
25 CONTINUED TO BE WORRIED ABOUT LEVEL 2A VESTS; RIGHT? IS  
26 THAT RIGHT?  
27 A HE WAS WORRIED ABOUT 2A AS PART OF THE WHOLE  
28 PACKAGE, YES.

503

1 Q LET'S GO AND SEE WHAT YOU WROTE IN YOUR JOURNAL  
2 ABOUT IT.  
3 MR. LYLE: GO TO JULY 11TH, 2003, PLEASE.  
4 BY MR. LYLE:  
5 Q DO YOU HAVE IT?  
6 A I MIGHT BE MISSING THAT ONE.  
7 Q JULY 11, 2003, YOU'RE MISSING?  
8 A YES, SIR.  
9 Q LET ME GET YOU A COPY.

10 A THANK YOU.  
11 Q TENDERING TO YOU JULY 11, 2003.  
12 CAN YOU READ THAT COPY?  
13 A YES, I CAN.  
14 Q IT SAYS, "RCD AGAIN TOLD BOARD THAT 2A' S MUST BE  
15 PULLED. BIG DEBATE"; RIGHT?  
16 A "RCD TOLD BOARD THAT 2A' S MUST BE PULLED. BIG  
17 DEBATE. "  
18 Q THAT' S WHAT YOU WROTE?  
19 A YES, SIR.  
20 Q THOSE ARE YOUR WORDS RIGHT THERE, HUH?  
21 A THAT' S WHAT RICHARD TOLD ME.  
22 Q YOU DON' T SAY RCD TOLD BOARD THAT ZYLON MUST BE  
23 PULLED; RIGHT? YOU DIDN' T SAY THAT?  
24 A NO, SIR.  
25 Q YOU DIDN' T WRITE THAT "RCD TOLD BOARD THAT ZYLON  
26 2A' S NEED TO BE PULLED," DID YOU?  
27 A NO, SIR, NOT HERE.  
28 Q YOU DIDN' T SAY THE WORD ZYLON ANYWHERE I N THAT

504

1 SENTENCE, DID YOU?  
2 A NOT I N THAT SENTENCE.  
3 Q OKAY. AND BECAUSE -- RIGHT?  
4 ALL YOU SAID WAS YOU' VE GOT TO PULL 2A' S, AND  
5 THAT' S WHAT MR. ~DAVI S WAS ARGUING FOR AT THE BOARD; RIGHT?  
6 A THAT' S WHAT HE MENTIONED I N THAT SENTENCE.  
7 Q OKAY. NOW, MR. ~WESTRICK, YOU TOLD US EARLIER --  
8 WE' RE DONE WITH THAT. YOU CAN SET THAT DOWN.  
9 A OKAY. THANK YOU.  
10 Q YOU TOLD -- ARE YOU WITH ME?

11 A YES, SIR.  
12 Q YOU TOLD US EARLIER IN THIS COURTROOM WHEN  
13 MR. ~GREEN WAS QUESTIONING YOU THAT YOU HELPED SELL ZYLON  
14 VESTS IN 2001; RIGHT?  
15 A 2001, YES.  
16 Q AND 2002; RIGHT?  
17 A AS PART OF MY DUTIES, YES.  
18 Q AND ACTUALLY YOU WERE SELLING THEM IN 2003,  
19 WEREN' T YOU?  
20 A I WAS ACTUALLY NOT A SALESPERSON, BUT I WAS AWARE  
21 OF SALES BEING MADE, YES, SIR.  
22 Q AND YOU WERE GETTING ORDERS FOR ZYLON VESTS, HUH?  
23 A I WAS GETTING ORDERS?  
24 Q YEAH. YOU WERE -- YOU PERSONALLY WERE RECEIVING  
25 ORDERS FOR ZYLON VESTS, WEREN' T YOU?  
26 A LIMITED ORDERS FOR PERSONS INSIDE THE COMPANY.  
27 Q YOU WERE -- YOU PERSONALLY WERE SIGNING YOUR  
28 INITIALS TO ORDERS FOR ZYLON VESTS, WEREN' T YOU?

505

1 A IF RICHARD AND I HAD A MUTUAL FRIEND OR SOMETHING,  
2 I WOULD -- I WOULD INITIAL OKAY FOR THAT SALE, YES.  
3 Q OKAY. YOU REMEMBER EARLIER WHEN YOU WERE TALKING  
4 ABOUT VESTS -- YOU WERE HELPING MR. FALONE?  
5 DO YOU REMEMBER TOM FALONE?  
6 A YES, SIR.  
7 Q THAT WAS YOUR FRIEND?  
8 A HE IS MY FRIEND, YES.  
9 Q HE STILL IS YOUR FRIEND; RIGHT?  
10 A YES, SIR, HE IS.  
11 Q AND HE WAS SELLING VESTS TO CUSTOMERS, INCLUDING

12 FOLKS WHO WERE IN THE MILITARY; RIGHT?

13 A YES.

14 Q AND SOME OF THEM WERE MEN AND WOMEN WHO WERE IN  
15 CENTRAL COMMAND; RIGHT?

16 A YES, SIR.

17 Q AND CENTRAL COMMAND HAD RESPONSIBILITIES FOR  
18 SOLDIERS IN THE MIDDLE EAST, HUH?

19 A YES, SIR.

20 Q OKAY. AND AFTER 9/11, IT BECAME REALLY IMPORTANT  
21 TO MAKE SURE WE PROTECTED THOSE SOLDIERS; RIGHT?

22 PARTICULARLY THE ONES IN THE MIDDLE EAST; RIGHT?

23 A I THINK WE SHOULD PROTECT THEM ALL, YES, SIR.

24 Q YES. BECAUSE THE ONES IN THE MIDDLE EAST ARE AT  
25 WAR, RIGHT, AFTER 9/11?

26 A YES, SIR.

27 Q AND OFFICERS, GENERALS AND SENIOR OFFICERS, WE  
28 HAVE TO PROTECT THEM AND ALL THE ENLISTED FOLKS; RIGHT?

506

1 A YES.

2 Q OKAY. AND WHAT YOU DID IS YOU HELPED SELL VESTS  
3 TO THOSE PEOPLE, DIDN' T YOU?

4 A YES.

5 Q OKAY. AND THE VESTS THAT YOU SOLD, SIR, WERE  
6 LEVEL 2 VESTS, WEREN' T THEY?

7 A I BELIEVE SO, YES.

8 Q YOU FELT FINE SELLING LEVEL 2 VESTS TO OUR  
9 SOLDIERS AND THROUGH YOUR FRIEND MR. FALONE BECAUSE YOU KNEW  
10 LEVEL 2 VESTS WERE PERFECTLY FINE, DIDN' T YOU?

11 A I FELT FINE UNDER THOSE CONDITIONS.

12 Q TO SELL THEM; RIGHT?

13 A UNDER CONDITIONS, YES, SIR.  
14 Q OKAY. IN FACT, SIR, I'M GOING TO SHOW YOU A STACK  
15 OF INVOICES, PURCHASE ORDERS --  
16 A THANK YOU.  
17 Q -- WITH YOUR INITIALS ON THEM.  
18 TAKE A LOOK THROUGH, IF YOU WOULD, PLEASE.  
19 A OKAY.  
20 Q GOT THROUGH THEM ALL, SIR?  
21 A YES, PRETTY MUCH.  
22 Q AND YOUR INITIALS APPEAR ON THOSE DOCUMENTS, DON'T  
23 THEY?  
24 A ON MOST OF THEM. SOMETIMES OTHER PEOPLE HAVE  
25 INITIALED THEM, BUT YES, GENERALLY.  
26 Q AND THOSE ARE PURCHASE ORDERS AND INVOICES  
27 RELATING TO ZYLON VESTS THAT YOU PERSONALLY ASSISTED  
28 SELLING; CORRECT?

507

1 A SOME -- MANY OF THESE ARE GIVEAWAYS, SO THEY  
2 WEREN'T SOLD.  
3 Q OKAY. SO YOU WERE GIVING THEM AWAY --  
4 A WELL --  
5 Q -- RIGHT?  
6 A WHAT HAPPENS IS --  
7 Q DR. WESTRICK, I JUST WANT TO BE CLEAR.  
8 YOU PERSONALLY WERE SIGNING YOUR INITIALS TO  
9 VESTS, LEVEL 2 ZYLON VESTS, ON THOSE PURCHASE ORDERS; RIGHT?  
10 A IT APPEARS, YES.  
11 Q EVERY SINGLE ONE OF THOSE IS A LEVEL 2 VEST OR  
12 HIGHER, AREN'T THEY?  
13 A I HAVEN'T LOOKED THAT CLOSELY, BUT I BELIEVE SO,

14 SIR, IF YOU SAY SO.

15 Q LET'S TAKE A LOOK AT ONE OF THEM. LET'S TAKE A  
16 CLOSE LOOK.

17 WHY DON'T YOU PULL UP THE ONE OCTOBER 19TH, 2001.

18 I'LL SHOW YOU WHAT I'VE GOT. I CAN ACTUALLY GIVE  
19 IT TO YOU.

20 THE COURT: ARE THESE MARKED FOR IDENTIFICATION?

21 MR. LYLE: THEY'RE MARKED, YOUR HONOR, BUT THEY'RE  
22 NOT -- I'M NOT OFFERING THEM INTO EVIDENCE, BUT THEY ARE  
23 MARKED.

24 THE COURT: ALL RIGHT. WHAT NUMBER DO THEY BEAR, JUST  
25 FOR OUR RECORD?

26 MR. LYLE: THE DATES RANGE -- JUDGE, I GUESS WHAT WE  
27 SHOULD DO IS MARK THEM 1004.

28 THE COURT: IS THAT THE NEXT?

508

1 THE CLERK: YES, YOUR HONOR.

2 THE COURT: ALL RIGHT. EXHIBIT 1004.

3 (COURT'S EXHIBIT NO. 1004 IDENTIFIED)

4 BY MR. LYLE:

5 Q DR. WESTRICK, I'M HANDING YOU ONE OF THE DOCUMENTS  
6 WE'VE PULLED FROM EXHIBIT 1004.

7 DO YOU SEE THAT DOCUMENT, SIR?

8 A YES, SIR.

9 Q IT'S A DOCUMENT FROM MR. FALONE TO YOU; RIGHT?

10 A YES, SIR.

11 Q AND YOUR INITIALS ARE ON THAT DOCUMENT, AREN'T  
12 THEY?

13 A YES, SIR.

14 Q THAT'S IN YOUR HANDWRITING; CORRECT?

15 A YES, SIR.  
16 Q AND IT'S OCTOBER 19, 2001, AND YOU'RE SELLING FIVE  
17 MALE ARMOR, RIGHT, FIVE BALLISTIC VESTS FOR MEN?  
18 A YES.  
19 Q OKAY. IF WE GO TO THE NEXT PAGE, THE FIRST ONE,  
20 IF YOU GO TO THE THREAT LEVEL, IT'S ULTIMA 2; CORRECT?  
21 A YES.  
22 Q AND IT HAS THERE THE NAME OF THE SOLDIER THAT'S  
23 GOING TO WEAR THAT VEST; RIGHT?  
24 A YES.  
25 Q AND IT'S AN ULTIMA 2 ZYLON VEST; CORRECT?  
26 A YES.  
27 Q YOU'RE SELLING IT TO A SOLDIER, WHO'S GOING TO  
28 WEAR IT, IN OCTOBER OF 2001; RIGHT?

509

1 A SECOND CHANCE IS SELLING IT, YES.  
2 Q AND YOU'RE HELPING SELLING IT, AREN'T YOU, SIR?  
3 A DOING MY JOB, YES, SIR.  
4 Q AND YOU'RE SIGNING OFF ON IT WITH YOUR INITIALS?  
5 A I WOULDN'T SAY SIGN.  
6 Q NEXT PAGE. ULTIMA LEVEL 2; CORRECT?  
7 A YES.  
8 Q THERE'S ANOTHER ONE, THE THIRD ONE, ULTIMA LEVEL  
9 2; RIGHT?  
10 A YES.  
11 Q THAT'S A 100 PERCENT ZYLON LEVEL 2 VEST; RIGHT?  
12 A YES.  
13 Q NEXT ONE, ULTIMA -- 100 PERCENT ZYLON LEVEL 2;  
14 CORRECT?  
15 A YES.



16 Q THE NEXT VEST, ULTIMA LEVEL 2 100 PERCENT ZYLON;  
17 RIGHT?

18 A YES.

19 Q OKAY. AND YOU'RE HELPING SELL THESE TO SOLDIERS;  
20 RIGHT?

21 A I'M DOING MY JOB, YES, SIR.

22 Q AND YOU KNOW WHEN YOU'RE SELLING THEM THAT THESE  
23 SOLDIERS ARE COUNTING ON YOU TO DO YOUR JOB AND NOT SELL  
24 THEM SOMETHING THAT'S GOING TO HURT THEM?

25 A AND THEY KNOW THAT.

26 Q AND YOU DIDN'T SELL THEM SOMETHING THAT WOULD HURT  
27 HIM BECAUSE YOU SOLD THEM LEVEL 2 VESTS?

28 A I ADVISED THEM OF THE SITUATION.

510

1 Q YOU SOLD THEM A VEST THAT WAS A ZYLON VEST, YES OR  
2 NO?

3 A I DIDN'T SELL THEM. I INITIALED.

4 Q YOU ASSISTED, SIR, IN SELLING LEVEL 2A 100 PERCENT  
5 ZYLON VESTS TO SOLDIERS; CORRECT -- LEVEL 2.

6 SORRY. I APOLOGIZE. LET ME REPHRASE.

7 MR. LYLE: I WITHDRAW MY QUESTION, SIR.

8 BY MR. LYLE:

9 Q YOU ASSISTED, SIR, IN SELLING LEVEL 2 100 PERCENT  
10 ZYLON VESTS TO SOLDIERS; RIGHT?

11 A YES.

12 Q AND THIS IS IN OCTOBER OF 2001; RIGHT?

13 A YES, SIR.

14 Q OKAY. THE NEXT YEAR, 2002. I'M GOING TO SHOW YOU  
15 ANOTHER DOCUMENT EXCERPT FROM THE EXHIBIT 1004.

16 HAVE YOU HAD A CHANCE TO LOOK AT THAT ONE, SIR?

17 A YES.  
18 Q NOW, THIS IS IN 2002; CORRECT?  
19 A YES, MARCH 14TH.  
20 Q THIS IS TO MR. FALONE, AGAIN; RIGHT?  
21 A YES.  
22 Q THE SUBJECT OF THE DOCUMENT IS A VEST ORDER;  
23 CORRECT?  
24 A YES.  
25 Q FORTY-TWO ULTIMA ZYLON VESTS; RIGHT?  
26 A YES.  
27 Q NINTH GENERATION LEVEL 2' S; CORRECT?  
28 A YES.

511

1 Q AND YOUR INITIALS APPEAR AGAIN ON THIS DOCUMENT,  
2 DON' T THEY?  
3 A YES.  
4 Q OKAY. SO HERE YOU ARE AGAIN. NOW WE' RE I N 2002,  
5 AND YOU' RE HELPING SELL ULTIMA 2 -- ULTIMA LEVEL 2  
6 100 PERCENT ZYLON VESTS; RIGHT?  
7 A I ' M DOING MY JOB, YES, SIR.  
8 Q OKAY. AND THEN, SIR, YOU CONTINUED TO DO YOUR JOB  
9 AND ASSIST SELLING RIGHT UP AND THROUGH 2003, DI DN' T YOU?  
10 A YES, SIR.  
11 Q OKAY. NOW, WHEN YOU WERE -- WHEN YOU WERE HELPING  
12 SELL THESE VESTS TO THE SOLDIERS, RIGHT, YOU' RE SELLING THEM  
13 PRODUCT THAT YOU KNEW WAS SAFE TO SELL THEM BECAUSE THEY  
14 WERE LEVEL 2' S; RIGHT?  
15 A I -- NO, SIR.  
16 Q YOU -- YOU' RE SELLING THEM VESTS YOU THINK ARE  
17 GOING TO KILL THEM; IS THAT WHAT YOU' RE TRYING TO TELL US?

18 A FIRST OF ALL, I DIDN'T SELL THEM THE VESTS; I  
19 ASSISTED.  
20 Q I KNOW YOU KEEP WANTING TO SAY YOU ASSISTED.  
21 A I WAS NOT A SALESPERSON.  
22 Q YOU WERE MOVING THEM OUT THE DOOR?  
23 A I WAS DIRECTOR OF RESEARCH.  
24 Q AND YOU WERE WORKING WITH MR. FALONE; RIGHT?  
25 A YES.  
26 Q AND HE WAS YOUR FRIEND?  
27 A YES.  
28 Q AND YOU'RE NOT SAYING: I'M SORRY, TOM -- HIS NAME

512

1 IS TOM, RIGHT, TOM FALONE?  
2 A YES.  
3 Q YOU WEREN'T SAYING: I'M SORRY, TOM. I'M NOT  
4 GOING TO SELL OR HELP SELL THESE VESTS TO YOU.  
5 YOU WERE SELLING THEM LEVEL 2 VESTS, WEREN'T YOU?  
6 A YOUR QUESTION IS DID I SAY, I'M SORRY, TOM?  
7 Q I'M NOT GOING TO SELL THEM TO YOU.  
8 IN FACT, WHAT YOU DID IS YOU TURNED AROUND AND  
9 SOLD HIM 42 LEVEL 2 VESTS, RIGHT, ZYLON?  
10 A RIGHT. I DID WARN THEM, THOUGH.  
11 Q YOU SIGNED OFF AND SOLD THEM TO HIM, DIDN'T YOU,  
12 SIR?  
13 A YES, SIR, AND I WARNED CENTRAL COMMAND.  
14 Q LET'S LOOK AT WESTRICK EXHIBIT -- LET'S LOOK AT  
15 ANOTHER EXHIBIT NUMBER. I WANT TO TALK TO YOU ABOUT 2003.  
16 HAVE YOU HAD A CHANCE TO LOOK AT THAT DOCUMENT?  
17 A YES, SIR.  
18 Q THIS IS ANOTHER ONE. THIS IS AN EMAIL. AGAIN,

19 TOM FALONE AND YOU MONDAY MARCH 17TH, 2003; RIGHT?  
20 A YES.  
21 Q OKAY. AND WHAT MR. ~FALONE ASKS IS "I NEED YOU TO  
22 PUT A RUSH ON IT. SHIP IT ASAP"; RIGHT?  
23 A YES.  
24 Q AND YOU WRITE THERE -- THAT'S YOUR HANDWRITING,  
25 RIGHT -- "FOR NEW COMMAND, CENTRAL COMMAND, IMPORTANT,  
26 ASAP"?  
27 A YES, SIR.  
28 Q AND THOSE ARE YOUR -- YOU WRITE THERE: "PLEASE

513

1 ASAP," AND YOU SIGNED YOUR INITIALS; RIGHT?  
2 A YES, SIR.  
3 Q AND THIS IS AN ULTIMA LEVEL 2 100 PERCENT ZYLON  
4 VEST; RIGHT?  
5 A YES.  
6 Q AND IT'S GOING TO BE WORN BY THE COMMANDER OF THE  
7 CENTRAL COMMAND; RIGHT?  
8 A IT'S -- IT LOOKS LIKE THAT, YES, SIR.  
9 Q AND IT WAS IMPORTANT TO GET IT OUT AS SOON AS YOU  
10 COULD; RIGHT?  
11 A YES, SIR.  
12 Q DR. ~WESTRICK, I WANT TO TALK TO YOU MORE ABOUT  
13 YOUR LOGBOOK.  
14 IN YOUR LOGBOOK, IT'S TRUE, ISN'T IT, THAT YOU  
15 RECORDED COMMUNICATIONS THAT YOU HAD WITH VARIOUS PEOPLE  
16 INSIDE OF SECOND CHANCE; RIGHT?  
17 A YES.  
18 Q AND YOU HAD -- YOU RECORDED CONVERSATIONS YOU HAD  
19 WITH MR. ~BACHNER; RIGHT?

20 A YES.

21 Q AND YOU HAD -- YOU RECORDED CONVERSATIONS WITH  
22 MR. ~BANDUCCI ; RIGHT?

23 A YES.

24 Q AND YOU RECORDED CONVERSATIONS YOU HAD WITH  
25 MR. ~DAVIS?

26 A YES.

27 Q EVERYTHING THAT WAS IMPORTANT, YOU HAD  
28 CONVERSATIONS, YOU PUT IT IN YOUR LOGBOOK; RIGHT?

514

1 A NOT EVERYTHING THAT WAS IMPORTANT, BUT WHAT I  
2 COULD, YES.

3 Q EVERYTHING -- YOU WENT HOME AT NIGHT, AND YOU'D  
4 WRITE IN YOUR LOGBOOK; RIGHT?

5 A YES, SIR. OR SOMETIMES YOU COULD TELL I WROTE  
6 LITTLE NOTES THAT I ACTUALLY WROTE SOON THEREAFTER OR  
7 IMMEDIATELY AFTER.

8 Q AND IT'S CORRECT, SIR, ISN'T IT, THAT YOUR LOGBOOK  
9 DOES NOT CONTAIN A SINGLE ENTRY REFLECTING ANY CONVERSATIONS  
10 BETWEEN YOU AND ANYBODY AT TOYOBO?

11 A I BELIEVE THAT'S CORRECT. I'D HAVE TO LOOK AT ALL  
12 THREE LOGBOOKS AGAIN.

13 Q THERE'S NO RECORD OF A TELEPHONE CONVERSATION  
14 BETWEEN YOU AND ANYONE AT TOYOBO IN THAT LOGBOOK, IS THERE?

15 A SIR, THERE'S THREE LOGBOOKS, BUT NOT IN THIS ONE,  
16 I DON'T BELIEVE THERE IS.

17 Q OKAY. NO RECORD OF A MEETING THAT YOU HAD BETWEEN  
18 YOU AND TOYOBO; RIGHT?

19 A THERE MAY BE RECORD OF A MEETING. THERE MAY BE.

20 Q I'M SORRY?

21 A THERE MAY BE A RECORD OF A MEETING IN ONE OF THE  
22 THREE LOGBOOKS.

23 Q NO, SIR. THERE'S NO SINGLE ENTRY IN YOUR LOGBOOK  
24 OF A CONVERSATION THAT YOU HAD WITH ANYBODY AT TOYOBO; ISN'T  
25 THAT RIGHT?

26 A I'D HAVE TO LOOK AGAIN. I DON'T THINK SO.

27 Q OKAY. AND SO YOU DON'T THINK THERE'S ANYTHING IN  
28 THERE ABOUT A CONVERSATION YOU HAD WITH MR. KUROKI OF

515

1 TOYOBO; RIGHT?

2 A I DON'T KNOW.

3 Q WELL, TAKE A LOOK. FEEL FREE.

4 A I DON'T HAVE ALL THREE LOGBOOKS HERE, SIR. I ONLY  
5 HAVE -- I DIDN'T BRING MY LOGBOOKS. THIS IS JUST PARTS OF  
6 LOGBOOKS.

7 Q AS YOU SIT THERE WITHOUT -- AS YOU SIT THERE, TO  
8 THE BEST OF YOUR MEMORY, CAN WE AGREE THAT YOU HAD -- TO THE  
9 BEST OF YOUR MEMORY, YOU HAD NO ENTRY IN YOUR LOGBOOK OF ANY  
10 COMMUNICATION YOU HAD WITH MR. KAROKI OF TOYOBO?

11 A I DON'T BELIEVE SO.

12 Q ALL RIGHT. NOW, REMEMBER THE DECEMBER 18, 2001,  
13 MEMO YOU TALKED TO MR. ~EMERSON ABOUT?

14 A YES.

15 Q DO YOU REMEMBER THAT?

16 THAT WAS A MEETING YOU HAD WITH MR. ~DAVIS.

17 DO YOU REMEMBER THAT TESTIMONY? REMEMBER UP IN  
18 HIS OFFICE? YOU TOOK THE MEMO AND YOU HANDED IT TO HIM.

19 A YES, SIR.

20 Q YOU DIDN'T TELL ANYBODY AT TOYOBO ABOUT THAT, DID  
21 YOU?

22 A ABOUT THAT -- THAT MEMO? NO, SIR.  
23 Q YOU DIDN' T TALK TO THEM ABOUT THAT MEETING; RIGHT?  
24 A NO, SIR.  
25 Q AND YOU CERTAINLY DIDN' T DRAFT A MEMO LIKE THAT  
26 AND SEND IT TO TOYOBO, DID YOU?  
27 A NO, SIR.  
28 Q OKAY. AND JUST SO WE' RE CLEAR, TOYOBO HAD NO CLUE

516

1 FROM YOU ABOUT ANYTHING THAT WENT ON INSIDE OF SECOND  
2 CHANCE; ISN' T THAT FAIR?  
3 A NO CLUE FROM ME?  
4 Q YOU DIDN' T TELL THEM ANYTHING?  
5 A I TALKED TO THEM IN 2003, BUT I WOULD SAY NO  
6 CLUES --  
7 Q YOU DIDN' T TELL THEM ANYTHING, SIR --  
8 A I TALKED TO THE EXECUTIVES IN 2003, BUT -- AS I  
9 RECALL.  
10 Q IN 2003?  
11 A YES, SIR.  
12 Q YOU MEAN AT THE CONVENTION?  
13 A YES, SIR.  
14 Q THAT WAS A CONVENTION, WHEN, IN OCTOBER OF 2003?  
15 A PHILADELPHIA, OCTOBER 2003.  
16 Q BEFORE OCTOBER 2003; RIGHT?  
17 A YES, SIR.  
18 Q FROM 2001 THROUGH 2003, THERE' S NOTHING IN YOUR  
19 JOURNAL ABOUT A CONVERSATION WITH TOYOBO; ISN' T THAT RIGHT?  
20 A I DON' T BELIEVE THERE IS.  
21 Q JUST ONE MORE THING ABOUT YOUR LOGBOOK.  
22 NOW, WE' VE AGREED, I THINK, THAT YOUR LOGBOOK HAS

23 THE KEY STUFF THAT YOU COULD REMEMBER IN IT; RIGHT? AND YOU  
24 WERE CAREFUL ABOUT WHAT YOU WROTE, DIDN'T YOU?

25 A I USED THE LOGBOOK TO REFRESH MY MEMORY.

26 Q AND THAT WAS SOMETHING THAT YOU WERE VERY CAREFUL  
27 ABOUT MAKING; RIGHT? YOU WEREN'T JUST MAKING STUFF UP, DID  
28 YOU?

517

1 A I WAS CAREFUL AND I WAS WRITING IT SOON  
2 THEREAFTER, YES.

3 Q ISN'T IT TRUE THAT NOWHERE IN YOUR LOGBOOK DO YOU  
4 DRAW ANY CONCLUSIONS RELATING TO TOYOBO'S ZYLON FIBER?

5 A I'M NOT SURE THAT'S THE CASE. I DON'T RECALL  
6 ANYTHING IN MY LOGBOOKS ABOUT THAT.

7 Q YOU DON'T HAVE ANY MEMORY ABOUT THAT, RIGHT,  
8 BECAUSE YOU DIDN'T DO IT?

9 A I DON'T THINK I DID. I DON'T KNOW.

10 Q AND YOU CAN'T TELL US BECAUSE IT'S NOT IN THERE,  
11 IS IT, SIR?

12 A I DON'T THINK I DID.

13 Q YOU DON'T THINK YOU DID?

14 A I DON'T THINK I DID.

15 MR. LYLE: THANK YOU, SIR.

16 I HAVE NOTHING FURTHER, YOUR HONOR.

17 THE COURT: MR. ~HUSTON -- NO. SORRY. JUST WANT TO  
18 MAKE SURE YOU'RE WITH US.

19 MR. ~EMERSON, I GATHER FROM LEAPING TO YOUR FEET  
20 YOU HAVE SOME MORE QUESTIONS?

21 MR. EMMERSON: JUST A FEW, YOUR HONOR.

22

23 REDI RECT EXAMI NATION  
Page 56



24 BY MR. EMMERSON:

25 Q DR. ~WESTRICK --

26 MR. EMMERSON: COULD WE TURN THE LIGHTS DOWN FOR JUST A  
27 SECOND?

28

518

1 BY MR. EMMERSON:

2 Q I'M GOING TO SHOW YOU JUST REAL BRIEFLY AN EXHIBIT  
3 THAT WE'VE ALREADY LOOKED AT, WHICH IS EXHIBIT 210.

4 JUST VERY BRIEFLY, DR. ~WESTRICK, I JUST WANT TO --  
5 SORRY. I JUST WANT TO MAKE SURE I UNDERSTAND A COUPLE OF  
6 THINGS.

7 WHAT IS THE DATE OF THIS DOCUMENT?

8 A JULY 29TH, 2002.

9 Q AND THE DATE OF THE DURABILITY DOCUMENT THAT YOU  
10 JUST LOOKED AT WAS, WHAT, SEPTEMBER OF '02, THE ONE THAT  
11 MR. ~LYLE SHOWED YOU ABOUT DURABILITY QUESTIONS?

12 DO YOU REMEMBER THAT ONE?

13 A FROM MY LOGBOOK, SIR?

14 Q IT WAS THE ONE THAT -- NO, IT WASN'T. IT WAS THE  
15 DOCUMENT -- I'M NOT SURE IF HE LEFT IT WITH YOU, BUT THE ONE  
16 THAT -- HE ASKED YOU IF YOU WANTED RICHARD DAVIS TO READ  
17 THAT TO THE SALES REPS?

18 A HE DID NOT LEAVE THAT WITH ME. THAT WAS, I  
19 BELIEVE, 2/5 OF '02 -- EXCUSE ME -- 9/5 OF '02.

20 Q SO THAT CAME AFTER THIS DOCUMENT; CORRECT?

21 A THE --

22 Q THAT --

23 A THAT DOCUMENT CAME AFTER THIS DOCUMENT, YES.

24 Q I JUST WANT TO MAKE SURE THAT I UNDERSTAND. I

25 WANT TO MAKE SURE WE DON'T HAVE ANY CONFUSION HERE.  
26 THIS WAS WRITTEN BY RICHARD DAVIS; IS THAT RIGHT?  
27 A YES.  
28 Q OKAY. LOOKING AT NUMBER ONE: "ZYLON SEEMS TO

519

1 B"E --

2 MR. LYLE: YOUR HONOR, I'M GOING TO OBJECT. THIS  
3 DOCUMENT WAS NOT SHOWN TO THIS WITNESS BY EITHER ME OR  
4 MR. ~GREEN ON CROSS-EXAMINATION. IT'S OUTSIDE WHAT WE  
5 CROSSED ABOUT. BEYOND THE SCOPE.

6 THE COURT: SEEMS LIKE IT WAS, WASN'T IT? I DON'T  
7 REMEMBER HIM ASKING HIM ANYTHING ABOUT IT.

8 MR. EMMERSON: YOUR HONOR, HE ASKED HIM ABOUT LEVEL 2  
9 AND 2A'S.

10 THE COURT: THE DOCUMENT ISN'T SOMETHING HE ASKED HIM  
11 ABOUT.

12 JUST FOR THE JURY, JUST SO THIS DOESN'T GO ON  
13 FOREVER, WHEN WE REDIRECT, RE-CROSS, THE IDEA IS TO FOCUS IN  
14 ON ONLY WHAT JUST CAME OUT ON THE PREVIOUS ROUND. OTHERWISE  
15 WE COULD BE HERE FOREVER; RIGHT? YOU PROBABLY WONDERED WHEN  
16 THIS ENDS, THIS BACK AND FORTH.

17 MR. EMMERSON: THANK YOU, YOUR HONOR.

18 BY MR. EMMERSON:

19 Q JULY 29, 2002, DID RICHARD DAVIS TELL YOU ANYTHING  
20 ABOUT ZYLON PROBLEMS THAT -- WHAT HE BELIEVED TO BE A ZYLON  
21 PROBLEM?

22 A YES.

23 Q AND WAS HE REFERRING ONLY TO 2A'S OR LEVEL 2'S?

24 A ALL LEVELS DEGRADE PROPORTIONALLY.

25 Q LET ME ASK YOU THIS, DR. ~WESTRICK: DO ZYLON 2A'S

26 DEGRADE DIFFERENTLY THAN ZYLON LEVEL 2 VESTS?

27 A NO.

28 MR. LYLE: OBJECTION, YOUR HONOR: NO FOUNDATION. HE'S

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1 CALLING FOR OPINION TESTIMONY.

2 THE COURT: SUSTAINED.

3 BY MR. EMMERSON:

4 Q WHEN THE ZYLON COMES IN FROM TOYOBO TO BE  
5 MANUFACTURED AND MADE INTO A VEST --

6 A YES.

7 Q -- ARE THERE CERTAIN LOTS THAT ARE -- THAT COME IN  
8 SPECIFICALLY TO BE PUT IN A ZYLON LEVEL 2 AND ZYLON LEVEL  
9 2A, OR ARE BOTH OF THOSE MODEL VESTS MADE FROM JUST THE SAME  
10 LEVEL OF ZYLON?

11 A YES, THEY'RE BOTH MADE FROM THE SAME ROLL.

12 Q JUST SO I UNDERSTAND IT, SO THE JURY UNDERSTANDS,  
13 WHEN ZYLON COMES FROM JAPAN, THERE IS NOT A LEVEL 2A ROLL OF  
14 ZYLON AND A SEPARATE LEVEL 2 ROLL OF ZYLON?

15 A NO.

16 MR. LYLE: MISCHARACTERIZES THE TESTIMONY. HE SAID IT  
17 COMES FROM TOYOBO. IT DOESN'T.

18 THE COURT: YOU MIGHT WANT TO BE A LITTLE CLEARER ON  
19 THE QUESTION.

20 BY MR. EMMERSON:

21 Q I THINK WE UNDERSTAND.

22 WHEN ZYLON ARRIVES AT SECOND CHANCE FROM WHEREVER  
23 IT COMES FROM, DOES IT COME LABELED SOMETHING TO INDICATE  
24 THIS ROLL IS FOR LEVEL 2 AND THIS ROLL IS FOR LEVEL 2A?

25 A IT COMES FROM THE WEAVER. IT -- NO, IT DOES NOT  
26 DESIGNATE. IT CAN GO IN EITHER.

27 Q TO YOUR KNOWLEDGE, SIR, HAVING WORKED AT SECOND  
28 CHANCE AS A DIRECTOR OF RESEARCH, IS THERE ANY DIFFERENCE

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1 BETWEEN THE ZYLON CONTAINED IN LEVEL 2 VESTS AND ZYLON  
2 CONTAINED IN LEVEL 2A VESTS?

3 MR. LYLE: OBJECTION, YOUR HONOR: FOUNDATION.

4 THE COURT: OVERRULED.

5 GO AHEAD.

6 THE WITNESS: NO.

7 BY MR. EMMERSON:

8 Q DID YOU HAVE DISCUSSIONS WITH -- WITH RICHARD  
9 DAVIS IN JULY OF 2002 WHERE HE DESCRIBED FOR YOU HIS  
10 CONCERNS ABOUT LEVEL 2 VESTS?

11 A HE WAS CONCERNED ABOUT ZYLON VESTS.

12 Q AS -- ZYLON MEANING --

13 A ALL ZYLON VESTS.

14 Q ENCOMPASSING LEVEL 2 AND LEVEL 2A, AS WELL?

15 A LEVEL 2A, LEVEL 2, LEVEL 3A, AND THE GERMAN VESTS  
16 ALSO THAT WERE EVEN THICKER.

17 Q I'M GOING TO ASK YOU -- I'M GOING TO TRY TO GET  
18 RIGHT TO THE POINT, DR. WESTRICK, IN THE INTEREST OF TIME.

19 YOU WERE ASKED A NUMBER OF QUESTIONS AND I BELIEVE  
20 YOU WERE ATTEMPTING TO RESPOND AND YOU WEREN'T PERMITTED TO  
21 FINISH YOUR ANSWER.

22 MR. GREEN: OBJECTION, YOUR HONOR.

23 THE COURT: I THINK THAT IF THAT'S TRUE, YOU BETTER  
24 COME TALK TO ME ABOUT IT LATER, BUT LET'S NOT TESTIFY IN  
25 FRONT OF THE JURY OR CHARACTERIZE CONDUCT OF COUNSEL. LET'S  
26 JUST ASK HIM A QUESTION, AND IF THERE'S SOMETHING ELSE HE  
27 NEEDS TO SAY, FEEL FREE TO BRING IT OUT.

1 BY MR. EMMERSON:

2 Q DO YOU REMEMBER YOU WERE ASKED A QUESTION BY  
3 MR. ~GREEN, AND YOU WERE RESPONDING AND YOU BEGAN TO SAY  
4 SOMETHING ABOUT DAVID BOYD AT N. I. J. , AND THEN YOU WERE  
5 STOPPED? DO YOU REMEMBER THAT?

6 A YES.

7 THE COURT: DIDN' T WE JUST TALK ABOUT THAT?

8 MR. GREEN: YES, YOUR HONOR.

9 THE COURT: JUST ASK HIM. IF YOU' VE GOT A QUESTION,  
10 JUST FLAT OUT ASK HIM WITHOUT CHARACTERIZING SOMETHING THAT  
11 SOMEBODY ELSE --

12 MR. GREEN: AND MOTION IN LIMINE, YOUR HONOR.

13 BY MR. EMMERSON:

14 Q WHO' S DAVID BOYD?

15 A DAVID BOYD IS -- WAS THE DIRECTOR OF NATIONAL  
16 INSTITUTE OF JUSTICE RESEARCH ARM AND CERTIFICATION BODY.

17 Q DID YOU HAVE A DISCUSSION HIM?

18 A I ATTEMPTED TO HAVE A DISCUSSION WITH HIM. I  
19 CALLED HIM.

20 Q WHAT WAS THE PURPOSE OF YOU CALLING HIM?

21 A I KNOW DAVID BOYD. I CALLED HIM TO TALK TO HIM  
22 ABOUT THE ZYLON SITUATION.

23 Q WHEN WAS THIS?

24 A I HAVE THE DATE WRITTEN, BUT 2002.

25 Q DO YOU HAVE SOMETHING IN FRONT OF YOU THAT WOULD  
26 REFRESH YOUR MEMORY?

27 A DIGGING THROUGH HERE.

28 YES, 2002. LOOK THROUGH MY NOTES.

1 THE COURT: DOES ANYBODY WANT TO TELL ME IT'S TIME FOR  
2 A BREAK? I GET TO CALL IT MYSELF THIS TIME?

3 MR. NISHIMURA: YOUR HONOR, I BELIEVE IT MIGHT BE  
4 APPROPRIATE TO TAKE A BREAK.

5 THE COURT: THANK YOU, MR. NISHIMURA.

6 LET'S DO THAT. LET'S TAKE OUR MID-AFTERNOON -- I  
7 ASSUMED THIS WAS A CONVENIENT BREAK POINT? I DON'T MEAN TO  
8 INTERRUPT SOMETHING. IT SOUNDS LIKE YOU NEED A LITTLE TIME  
9 TO FIND SOMETHING.

10 MR. EMMERSON: I'LL TRY TO REESTABLISH.

11 THE COURT: LET'S TAKE 15 MINUTES. WE'LL RECONVENE AT  
12 3:15.

13 HAVE A NICE BREAK. WE'LL SEE YOU BACK HERE.

14 (COURT WAS IN RECESS.)

15 (THE FOLLOWING TOOK PLACE IN OPEN COURT  
16 OUTSIDE THE PRESENCE OF THE JURY.)

17 THE COURT: I'VE READ THE MOTION, AND IT SEEMS WELL  
18 TAKEN TO THE COURT. I CAN'T SEE OF ANY OF THOSE EXAMPLES  
19 GIVEN THAT HE SHOULD OR COULD BE ALLOWED TO GIVE ANY SUCH  
20 TESTIMONY.

21 DO YOU CARE TO ARGUE THAT?

22 MR. EMMERSON: THERE ARE EXCEPTIONS TO THE HEARSAY  
23 RULE.

24 THE COURT: ARE WE ON THE RECORD?

25 MR. EMMERSON: I THINK A NUMBER OF THOSE HEARSAY  
26 EXCEPTIONS APPLY --

27 THE COURT: YOU CAN GO AHEAD AND HAVE A SEAT, FOLKS,  
28 FOR THE MOMENT BEFORE WE BRING OUR JURY IN.

1 THE COURT: MR. BAILIFF, YOU MIGHT TELL OUR JURORS  
2 WE'RE GOING TO BE ABOUT FIVE MINUTES HERE. WE'VE GOT SOME  
3 MATTER I NEED TO ATTEMPT TO --.

4 THANKS. GO AHEAD, MR. ~EMERSON.

5 MR. EMMERSON: MANY OF THESE ISSUES GO TO HIS STATE OF  
6 MIND, AND THEY DON'T GO TO THE TRUTH OF THE MATTER. I THINK  
7 THEY'RE HEARSAY EXCEPTIONS.

8 CAPTAIN HEERING IS THE INDIVIDUAL WHO -- I DON'T  
9 KNOW IF IT WAS HE TOOK IT UPON HIMSELF OR HE WAS DIRECTED  
10 TO, BUT AT OPD WHO WENT TO INVESTIGATE THE VEST AND TO FIND  
11 OUT WHAT HAPPENED. HE CONTACTED SECOND CHANCE AND WAS  
12 BASICALLY GIVEN SOME INFORMATION, WHICH HE FOLLOWED UP ON.  
13 AND HE HAD A BUNCH OF OTHER INFORMATION THAT CULMINATED INTO  
14 A MEMO THAT HE WROTE TO THE CITY COUNCIL IN OCEANSIDE  
15 CONCERNING THE PERFORMANCE OF THAT VEST.

16 THE COURT: LET ME STOP YOU THERE.

17 HIS STATE OF MIND HAS GOT NO RELEVANCE TO ANY  
18 ISSUE IN THIS CASE; RIGHT?

19 MR. EMMERSON: IT DOES.

20 THE COURT: WHAT WOULD -- WHAT RELEVANCE WOULD HIS  
21 STATE OF MIND HAVE TO ANY ISSUE IN THIS CASE?

22 MR. EMMERSON: WHY HE WROTE THE MEMO THAT HE WROTE.

23 THE COURT: WHY IS THAT RELEVANT TO ANY ISSUE IN THE  
24 CASE?

25 MR. EMMERSON: BECAUSE HE WROTE -- HE WROTE A MEMO  
26 SAYING THE VEST PERFORMED SATISFACTORILY, BUT HE GOT THAT  
27 INFORMATION FROM SECOND CHANCE BODY ARMOR. SO WHY HE  
28 WROTE -- WHY HE WROTE THE MEMO AND WHAT INFORMATION HE HAD

1 IS CERTAINLY RELEVANT TO WHY HE WROTE IT.

2 THE COURT: LET ME SUGGEST THIS. I MEAN, YOU KNOW YOUR  
3 CASE. HE'S NOT COMING IN HERE AS AN EXPERT WITNESS -- AND  
4 HE COULDN'T, I GUESS -- TO TELL US WHETHER THIS VEST IS OR  
5 IS NOT DEFECTIVE; RIGHT?

6 MR. EMMERSON: HE'S GOING TO TELL US THERE'S A HOLE IN  
7 IT. HE'S NOT GOING TO TELL US IT'S DEFECTIVE. THAT'S NOT  
8 HIS -- THAT'S --

9 THE COURT: WELL, IF HE'S GOING TO TELL US THERE'S A  
10 HOLE IN IT, ISN'T THAT CUMULATIVE TO WHAT A LOT OF OTHER  
11 PEOPLE ARE GOING TO TELL US?

12 SEE, I DON'T KNOW THE BASIC REASON WHY YOU'RE  
13 CALLING HIM IN HERE, BUT WHAT I SEE IN THE MOTION ARE  
14 EXAMPLES, TYPES OF TESTIMONY THAT PRETTY CLEARLY CAN'T COME  
15 IN. I DIDN'T KNOW IF YOU WERE REALLY INTENDING TO HAVE HIM  
16 TESTIFY TO THESE MATTERS.

17 MS. LOISEAU: AND, YOUR HONOR -- HOLLY LOISEAU FOR  
18 TOYOBO -- IF I COULD JUST ADD, THE STATEMENTS WE'RE TALKING  
19 ABOUT IN THE MOTION ARE ALL AFTER THE MEMO THAT MR. ~EMERSON  
20 IS TALKING ABOUT. SO THEY WEREN'T ANYTHING THAT HE WAS  
21 RELYING UPON TO DRAFT THAT MEMO.

22 THE COURT: SO, MR. ~EMERSON, IT SEEMS -- I MEAN, THERE  
23 IS, UNLESS THERE'S SOMETHING ELSE THAT I'M NOT GETTING HERE,  
24 THAT THESE VERY -- THE STATEMENTS, MATTERS LISTED ARE NOT  
25 THE SUBJECT OF PROPER TESTIMONY BY CAPTAIN HEERING ON IT.

26 I ASSUME THERE'S LOTS OF OTHER STUFF YOU'RE  
27 CALLING HIM IN HERE TO SAY; RIGHT?

28 MR. EMMERSON: THAT'S FINE, YOUR HONOR.



1 THE COURT: ALL RIGHT. SO THE MOTION IS GRANTED FOR  
2 THE REASONS STATED.

3 I UNDERSTAND THAT WE HAVEN'T HAD A LOT OF TIME TO  
4 THINK ABOUT IT. THINGS MAY COME UP, BUT I THINK WE NEEDED  
5 TO GET AT IT BEFORE HE COMES IN.

6 IT'S MY UNDERSTANDING HE WILL BE THE NEXT WITNESS.  
7 SO PROBABLY WITHIN THE NEXT HALF HOUR OR SO HE WILL BE IN  
8 HERE. IS THAT THE TIME?

9 MR. EMMERSON: AS SOON AS WE'RE DONE WITH OUR REDIRECT.  
10 MAY I JUST CONFER WITH CAPTAIN HEERING FOR A  
11 MOMENT AND SHOW HIM WHAT HE'S NOT TO TALK ABOUT?

12 THE COURT: SURE.

13 ALL RIGHT. LET'S GO OFF THE RECORD FOR A MOMENT.

14 (COURT WAS IN RECESS.)

15 (THE FOLLOWING PROCEEDINGS WERE HELD  
16 IN OPEN COURT IN THE PRESENCE AND  
HEARING OF THE JURY.)

17 THE COURT: WELCOME BACK, FOLKS. SORRY FOR THE DELAY.  
18 WE THOUGHT YOU NEEDED 20 INSTEAD OF 15.

19 THANK YOU FOR BEING SO PUNCTUAL.

20 THE RECORD CAN REFLECT ALL JURORS ARE BACK. ALL  
21 COUNSEL AND PARTIES ARE PRESENT. DR. WESTRICK BACK ON THE  
22 STAND. MR. EMMERSON IS QUESTIONING ON REDIRECT.

23 GO AHEAD, SIR.

24 BY MR. EMMERSON:

25 Q DR. WESTRICK, LET ME ASK YOU -- LET ME ASK YOU  
26 ABOUT DAVID BOYD.

27 YOU SAID HE WAS A DIRECTOR OF RESEARCH AT N. I. J. ?

28 A HE'S ACTUALLY THE DIRECTOR OF NATIONAL INSTITUTE

1 OF JUSTICE, YES.

2 Q AND YOU WERE LOOKING IN YOUR NOTES TO SEE WHEN IT  
3 WAS YOU HAD A CONVERSATION. THAT WAS IN 2002?

4 A I FOUND IT. 5/17 OF -- APPROXIMATELY 5/17 OF  
5 2002.

6 Q OKAY. AND YOU WERE ASKED -- YOU GAVE THAT NAME IN  
7 RESPONSE TO A QUESTION FROM MR. ~GREEN ABOUT WHETHER YOU JUST  
8 WENT ABOUT SELLING THE STUFF WITHOUT WARNING ANYBODY OR  
9 WITHOUT GOING PUBLIC ABOUT YOUR CONCERNS ABOUT ZYLON.

10 A YES, SIR.

11 Q AM I CORRECT THAT WAS THE CONTEXT IN WHICH YOU  
12 MENTIONED MR. ~BOYD' S NAME?

13 A JUST ONE PERSON I NOTIFIED, YES -- OR ATTEMPTED TO  
14 NOTIFY.

15 Q WHAT DID YOU TELL MR. ~BOYD IN 2002?

16 MR. GREEN: OBJECTION, YOUR HONOR: FOUNDATION.

17 THE COURT: SUSTAINED.

18 BY MR. EMMERSON:

19 Q DID YOU HAVE A CONVERSATION WITH MR. ~BOYD?

20 A MR. ~BOYD DID NOT CALL ME BACK.

21 Q WHY DID YOU ATTEMPT TO CALL HIM?

22 MR. GREEN: OBJECTION: RELEVANCE, YOUR HONOR.

23 THE COURT: SUSTAINED.

24 BY MR. EMMERSON:

25 Q DID YOU ATTEMPT TO WARN ANYBODY IN 2002, OUTSIDE  
26 THE COMPANY, OF YOUR CONCERNS ABOUT ZYLON?

27 A YES.

28 Q WHO?

1 A MANY -- IN 2002?

2 Q TELL ME THE NAMES.

3 A 2001, I BELIEVE TOM FALONE.  
4 Q TOM FALONE IS 2001?  
5 A I BELIEVE SO, YES, SIR.  
6 Q WHO ELSE IN 2001?  
7 WE'RE TALKING ABOUT OUTSIDE THE COMPANY; CORRECT?  
8 A OUTSIDE, YES.  
9 I'M NOT EXACTLY SURE OF THE DATES, BUT OTHER  
10 POLICE -- BE OFFICER BORKOVITZ (PHONETIC), MICHIGAN DNR;  
11 RICK BENNETT, LOS ANGELES POLICE DEPARTMENT; LIEUTENANT  
12 MC-CLELLAN (PHONETIC), OAKLAND COUNTY SHERIFF DEPARTMENT;  
13 SERGEANT IN SOUTHFIELD POLICE DEPARTMENT. I'M SURE  
14 THERE'S -- I'D HAVE TO LOOK AT MY NOTES AND DEPOS, BUT I'M  
15 SURE THERE'S MORE.  
16 Q WERE ALL OF THOSE 2001 OR JUST --  
17 A I THINK -- FALONE WAS 2001, I BELIEVE, AND THE  
18 OTHER 2002, IN THAT TIME PERIOD.  
19 Q WHAT DID -- WHEN YOU HAD A CONVERSATION WITH TOM  
20 FALONE, CAN YOU TELL ME THE CONTEXT IN WHICH YOU WARN HIM  
21 ABOUT ZYLON?  
22 A I EXPLAINED TO HIM THAT MY BELIEF --  
23 MR. LYLE: OBJECTION: FOUNDATION, YOUR HONOR.  
24 THE COURT: SUSTAINED AT THIS POINT.  
25 BY MR. EMMERSON:  
26 Q DID YOU -- YOU MEANT TO CALL TOM FALONE -- I'M  
27 SORRY.  
28 A I TALKED TO TOM FALONE.

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1 Q YOU TALKED TO TOM FALONE.  
2 HE'S YOUR FRIEND; RIGHT?  
3 A YES, SIR.

4 Q YOU GUYS HAD A DISCUSSION ABOUT ZYLON?  
5 A YES, SIR.  
6 Q WHEN WAS THAT?  
7 A TOWARDS THE END OF 2001.  
8 Q CAN YOU TELL ME THE CONTEXT OF THAT CONVERSATION.  
9 DID YOU CALL HIM? DID YOU GUYS MEET AT A COFFEE SHOP? WHEN  
10 WAS THAT CONVERSATION? WHAT WAS THE CONTEXT?  
11 A I BELIEVE WE WERE IN PERSON. I WAS IN TAMPA,  
12 FLORIDA, AND I'M TRYING TO THINK -- I KNOW IT WAS IN TAMPA,  
13 FLORIDA. I'M TRYING TO THINK OF THE DATE. I EXPLAINED TO  
14 HIM THAT I BELIEVED ULTIMA VESTS DEGRADED.  
15 Q DID YOU TELL HIM ULTIMA 2A, 2 OR ALL?  
16 A HE PURCHASED ULTIMA 2'S, BUT I TOLD THEM ALL  
17 ULTIMAS.  
18 Q WHY DID YOU TELL HIM THAT?  
19 A I TOLD HIM I FELT THAT WAS MY BELIEF.  
20 Q YOU UNDERSTOOD AT THE TIME HE WAS PURCHASING  
21 ULTIMA VESTS?  
22 A YES. HE WAS PURCHASING THEM FOR THE UNITED STATES  
23 ARMED FORCES CENTRAL COMMAND.  
24 Q AND DID YOU TELL HIM ABOUT YOUR CONCERNS ABOUT  
25 ZYLON BEFORE HE PURCHASED THOSE FOR CEN COM OR AFTER?  
26 A I BELIEVE HE MIGHT HAVE STARTED PURCHASING THEM  
27 BEFORE I SAW THE PROBLEM. HE MIGHT HAVE STARTED PURCHASING  
28 SOME VESTS IN 2000, EVEN. SO AS SOON AS I BECAME AWARE OF

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1 THE PROBLEM, I INDICATED WHEN I SAW HIM THAT -- I INDICATED  
2 THAT I BELIEVED THAT THE ZYLON WAS DEGRADING.  
3 Q DO YOU KNOW WHY HE PURCHASED THOSE VESTS IN LIGHT  
4 OF YOUR WARNINGS TO HIM?

5 MR. GREEN: OBJECTION: FOUNDATION; SPECULATION.  
6 THE COURT: SUSTAINED.  
7 BY MR. EMMERSON:  
8 Q DID HE TELL YOU WHY -- WHY HE WOULD PURCHASE THOSE  
9 IN LIGHT OF YOUR WARNINGS?  
10 A YES.  
11 MR. LYLE: OBJECTION: HEARSAY.  
12 THE COURT: SUSTAINED.  
13 BY MR. EMMERSON:  
14 Q I'M NOT EVEN GOING TO TRY TO SAY THE NAME.  
15 OFFICER --  
16 A MICHAEL BORKOVITZ.  
17 Q BORKOVITZ.  
18 WHAT IS DNR?  
19 A DEPARTMENT OF NATURAL RESOURCES.  
20 Q OKAY. WHERE IS HE LOCATED?  
21 A WELL, HE WAS STATIONED IN NORTHERN MICHIGAN, BUT  
22 HIS HEADQUARTERS WOULD BE LANSING, MICHIGAN.  
23 Q AND YOU HAD A CONVERSATION WITH HIM ABOUT ZYLON?  
24 A YES. HE'S ONE OF THEIR MAIN PURCHASING PEOPLE OF  
25 THE DEPARTMENT.  
26 Q WHEN WAS THAT?  
27 A BE 2000.  
28 Q AND WHAT DID YOU TELL HIM ABOUT ZYLON?

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1 A SAME SITUATION. I TOLD HIM I HAD CONCERNS ABOUT  
2 IT.  
3 Q WHAT WERE THE CONCERNS THAT YOU TOLD HIM?  
4 A I TOLD HIM I BELIEVED IT DEGRADED. IT WAS A NEW  
5 FIBER AND I BELIEVED THE VESTS DEGRADED.

6 Q RICK BENNETT AT LAPD?  
7 A YES, SIR.  
8 Q WHEN DID YOU HAVE A CONVERSATION WITH HIM  
9 CONCERNING ZYLON?  
10 A THAT HAD TO HAVE BEEN BEGINNING OF 2002, END OF  
11 2001. HE ACTUALLY CALLED ME.  
12 Q FOR WHAT REASON DID HE CALL YOU?  
13 MR. GREEN: OBJECTION.  
14 MR. LYLE: OBJECTION, YOUR HONOR: HEARSAY.  
15 THE COURT: SUSTAINED.  
16 BY MR. EMMERSON:  
17 Q DO YOU KNOW WHY HE CALLED YOU?  
18 A HE WANTED TO --  
19 MR. GREEN: OBJECTION.  
20 MR. LYLE: OBJECTION.  
21 THE COURT: COUNSEL, IT DOESN'T MATTER WHY. WE'RE NOT  
22 GOING TO GET IN INDIRECTLY WHAT WE CAN'T GET IN DIRECTLY.  
23 THIS IS TO COUNTERACT PERHAPS THE INFERENCE THAT  
24 HE DIDN'T WARN ANYBODY. DID HE WARN ANYBODY? IF SO, WHO?  
25 IT DOESN'T MATTER WHO SAID WHAT BACK TO HIM.  
26 MR. EMMERSON: JUST TRYING TO UNDERSTAND THE CONTEXT,  
27 YOUR HONOR. I UNDERSTAND.  
28 THE COURT: CAN YOU REMOVE MR. LYLE'S ARTWORK?

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1 YOU'VE GOT TO SIGN IT FIRST. I GET FIRST DIBS ON  
2 ALL THE ARTWORK CREATED IN THIS COURTROOM.  
3 MR. LYLE: I'LL PUT IT BACK OVER HERE. SORRY.  
4 BY MR. EMMERSON:  
5 Q HOW MANY CONVERSATIONS HAVE YOU HAD WITH RICK  
6 BENNETT CONCERNING ZYLON?

7 A TWO OR THREE.  
8 Q AND IN EACH OF THOSE CONVERSATIONS, DID YOU TELL  
9 HIM ABOUT YOUR CONCERNS ABOUT ZYLON?  
10 A YES.  
11 Q WHAT IF ANYTHING FOLLOWED YOUR CONVERSATIONS WITH  
12 RICK BENNETT?  
13 A A SEVERE SCOLDING.  
14 Q BY WHO?  
15 A ED BACHNER.  
16 Q ED BACHNER. AGAIN, VICE-PRESIDENT AT SECOND  
17 CHANCE?  
18 A YES.  
19 Q WHAT DID ED BACHNER SAY TO YOU?  
20 A VERY ANGRY THAT I TOLD HIM ABOUT ZYLON, PROBLEMS.  
21 Q WHAT DID HE SAY?  
22 NOT WHAT -- DON'T TELL ME ABOUT HIS DEMEANOR OR  
23 WHAT YOU BELIEVED OR YOU FELT HE WAS CONCERNED ABOUT.  
24 WHAT DID HE SAY TO YOU ABOUT YOUR CONVERSATIONS  
25 WITH RICK BENNETT?  
26 A I DON'T REMEMBER THE EXACT COMMENTS. SOMETHING  
27 ALONG THE LINES HE WANTED ME OUT OF THE WAY.  
28 Q AND YOU ALSO WARNED LIEUTENANT MC-CLELLAN AT

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1 OAKLAND COUNTY; CORRECT?  
2 A YES.  
3 Q AND SMITHFIELD POLICE DEPARTMENT?  
4 A SMITH?  
5 Q SOUTHFIELD?  
6 A SOUTHFIELD, YES.  
7 THAT WOULD BE IN THE SUMMER OF 2002. I ACTUALLY

8 PARTICIPATED IN A TRAINING EXERCISE WITH THEM AT THE URBAN  
9 WARFARE SCHOOL.

10 Q DID YOU HAVE ANY COMMUNICATIONS WITH CEN COM  
11 YOURSELF -- WITH ANYBODY AT CEN COM BEFORE THEY PURCHASED  
12 ULTIMA 2 VESTS?

13 A BEFORE?

14 Q CORRECT.

15 A I THINK I -- YES, I TALKED TO PEOPLE AT CEN COM.  
16 I WAS THERE.

17 Q DID YOU TALK TO THEM ABOUT YOUR CONCERNS ABOUT  
18 ZYLON?

19 A I VOICED A CONCERN, YES, SIR.

20 Q AND AREN'T THOSE CONCERNS ALONG THOSE THAT YOU'VE  
21 ALREADY DESCRIBED FOR US?

22 A I INDICATED I BELIEVED THE FIBER COULD DEGRADE,  
23 YES.

24 Q MR. ~LYLE WENT THROUGH A BUNCH OF PURCHASE ORDERS  
25 AND INVOICES THAT OBVIOUSLY TOOK PLACE AFTER YOU INITIALLY  
26 VOICED YOUR CONCERN IN DECEMBER OF 2001, THE MEMO. I  
27 UNDERSTAND YOU VOICED YOUR CONCERNS BEFORE THEN.

28 WHY IS IT, DR. ~WESTRICK, THAT YOU -- IF NOT

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1 ACTIVELY PARTICIPATED, WHY DID YOU -- WHY DID YOU REMAIN A  
2 PART OF AN ORGANIZATION THAT WAS SELLING THESE VESTS TO LAW  
3 ENFORCEMENT AND MILITARY MEMBERS AFTER YOU EXPRESSED A  
4 CONCERN?

5 A I -- I HAD WARNED THOSE -- THE PERSONS IN THE  
6 STACK OF PAPERS HERE, AND I WANTED TO -- I DIDN'T WANT TO  
7 JUMP OFF THE BOAT. I WANTED TO STAY ON BOARD AND MAKE IT  
8 BETTER. I WASN'T GOING TO SOLVE ANYTHING BY STAYING THERE.



9 I DIDN' T WANT ANYBODY TO GET HURT.  
10 MR. EMMERSON: CAN YOU PUT THIS UP?  
11 THERE' S NO OBJECTION TO THIS. IT' S 324.  
12 PUT IT ON THE ELMO.  
13 THIS IS EXHIBIT 324. THERE' S NO OBJECTION, YOUR  
14 HONOR.  
15 THE COURT: OKAY.  
16 (COURT' S EXHIBIT NO. 324 IDENTIFIED)  
17 BY MR. EMMERSON:  
18 Q DR. ~WESTRICK, YOU WERE ASKED BY MR. ~LYLE ABOUT  
19 COMMENTS YOU -- WHETHER OR NOT TOYOBO WAS INVOLVED IN THE  
20 DESIGN OF THE VEST.  
21 DO YOU REMEMBER THAT?  
22 A YES, SIR.  
23 Q YOU SAID YOU DIDN' T THINK THEY DESIGNED IT ON  
24 THEIR OWN, BUT YOU THOUGHT THEY ASSISTED; RIGHT?  
25 A YES, SIR.  
26 Q SEE THIS IS OCTOBER 1, 1996.  
27 DO YOU SEE THAT?  
28 A YES, SIR.

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1 Q WHO IS MR. ~KUROKI ?  
2 A HE' S A RESEARCH ENGINEER FOR TOYOBO.  
3 Q WHAT WAS YOUR RELATIONSHIP LIKE WITH MR. ~KUROKI IN  
4 1996?  
5 A WELL, VERY GOOD.  
6 Q SAY YOU' RE FRIENDS?  
7 A YES. YES.  
8 Q DID YOU HAVE CONVERSATIONS ABOUT ZYLON WITH  
9 MR. ~KUROKI ?

10 A YES.  
11 Q WHO' S MR. ~BACHNER?  
12 WE' VE TALKED ABOUT HIM; RIGHT?  
13 A HE WOULD BE THE VICE-PRESIDENT OF TECHNOLOGY.  
14 Q AS I EXPLAINED TO YOU -- "AS I EXPLAIN TO YOU  
15 DURING THE LAST MEETING, WE WILL HAVE A SMALL RECONSTRUCTION  
16 AT OUR FIBER PLANT TO EXTEND THE CAPACITY AT THE END OF THE  
17 YEAR. "  
18 DO YOU SEE THAT?  
19 A YES.  
20 Q "I THINK A MEETING IN DECEMBER WOULD BE PREFERABLE  
21 TO START OUR DEVELOPMENT PROGRAM AFTER THIS RECONSTRUCTION. "  
22 DO YOU SEE THAT?  
23 A YES, SIR.  
24 Q DO YOU KNOW WHAT HE' S TALKING ABOUT WHEN HE SAYS  
25 "DEVELOPMENT PROGRAM"?  
26 A ARMOR DEVELOPMENT.  
27 MR. LYLE: OBJECTION: WHAT HE THINKS; FOUNDATION.  
28 THE COURT: SUSTAINED.

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1 BY MR. EMMERSON:  
2 Q HE SAID, "I START OPTIMIZATION OF FABRIC  
3 CONSTRUCTION OF ZYLON FABRIC AND WILL DECIDE THE BASIC  
4 CONSTRUCTION FOR BALLISTIC APPLICATIONS. I WOULD LIKE TO  
5 RECOMMEND YOU TO START THE DEVELOPMENT. "  
6 DO YOU SEE THAT?  
7 A YES.  
8 Q TELL THE JURY WHAT MR. ~KUROKI AND TOYOBO' S  
9 INVOLVEMENT WAS IN 1996, AS YOU RECALL IT, CONCERNING THE  
10 DEVELOPMENT OF THE FABRIC, THE BALLISTIC FABRIC.

11 A RIGHT. WE WERE -- WE WERE GOING FROM THE FIBER,  
12 TO PUT THE FIBERS TOGETHER, TO -- TOGETHER TO MAKE THE  
13 FABRIC, AND TOYOCO AND SECOND CHANCE WERE LOOKING FOR OR HAD  
14 ACQUIRED WEAVERS TO MAKE THE DIFFERENT LAYERS OF THE VEST,  
15 TO ENGINEER THE VEST.

16 Q OKAY. SO I JUST WANT TO CLARIFY.  
17 WHEN YOU SAID EARLIER YOU DIDN'T HAVE ANY  
18 KNOWLEDGE THAT THEY MANUFACTURED OR DESIGNED BALLISTIC VESTS  
19 ON THEIR OWN; IS THAT TRUE?

20 A MANUFACTURED, YES.

21 Q AND THAT WAS CONSISTENT WITH YOUR DEPOSITION  
22 TESTIMONY; RIGHT?

23 A YES.

24 MR. LYLE: OBJECTION, YOUR HONOR. HE'S ASKING --

25 THE COURT: THE LEGAL BASIS FOR THE OBJECTION IS?

26 MR. LYLE: ARGUMENTATIVE, YOUR HONOR.

27 THE COURT: IT SOUNDS LIKE IT'S LEADING, ALSO, SO  
28 SUSTAINED ON ONE OF THOSE OR IN BETWEEN THERE SOMEWHERE.

537

1 MR. EMMERSON: I WANT TO SHOW EXHIBIT 325. ALSO NO  
2 OBJECTION, YOUR HONOR.

3 THE COURT: OKAY.

4 (COURT'S EXHIBIT NO. 325 IDENTIFIED)

5 BY MR. EMMERSON:

6 Q DR. WESTRICK, I'M GOING TO SHOW YOU WHAT WE'VE  
7 MARKED AS EXHIBIT 325.

8 SEE THAT DATE OCTOBER 1, 1996?

9 A YES, SIR.

10 MR. EMMERSON: CAN YOU SHOW THE SIGNATURE PAGE, PLEASE?

11 BY MR. EMMERSON:

12 Q I'M GOING TO SHOW YOU THE SIGNATURE PAGE.  
13 TWO-PAGE LETTER.

14 DO YOU RECOGNIZE THAT SIGNATURE?

15 A YES, SIR.

16 MR. EMMERSON: GO BACK TO THE FIRST PAGE.

17 BY MR. EMMERSON:

18 Q THIS IS, AGAIN, TO YOUR FRIEND MR. ~KUROKI?

19 A YES.

20 Q "THANK YOU VERY MUCH FOR YOUR FAX TODAY. WE TOO  
21 ARE VERY ENTHUSED ABOUT THIS PROJECT. WE LOOK FORWARD TO  
22 DECEMBER. WE WILL BE HAPPY TO BEGIN OUR DEVELOPMENT PROGRAM  
23 WITH A FABRIC OR TWO THAT YOU HAVE BEEN ABLE TO OPTIMIZE."

24 DO YOU SEE THAT?

25 A YES, SIR.

26 Q IS IT YOUR UNDERSTANDING TOYOBO WAS OPTIMIZING A  
27 FABRIC FOR USE IN SECOND CHANCE BALLISTIC VESTS?

28 A YES.

538

1 Q "MAY I JUST MAKE FOUR HUMBLE SUGGESTIONS TO  
2 CONSIDER DURING YOUR RESEARCH?"

3 DO YOU SEE THAT?

4 A YES, SIR.

5 Q "CONDUCT OPTIMIZATION TESTING AGAINST HANDGUN  
6 BULLETS SEPARATELY FROM FRAGMENTS."

7 WAS IT YOUR UNDERSTANDING THAT TOYOBO WAS GOING TO  
8 ACTUALLY TEST BALLISTIC FABRICS THEY WERE INTENDING TO USE  
9 IN SECOND CHANCE VESTS?

10 A YES.

11 Q FURTHER DOWN: "OPTIMIZE AT LEAST TWO DIFFERENT  
12 CONSTRUCTIONS."

13 DO YOU SEE THAT?  
14 A YES.  
15 Q "FIRST, A CLASSIC FULL COVER PLAIN WEAVE THAT ANY  
16 MANUFACTURER COULD UTILIZE."  
17 WHAT IS A CLASSIC FULL COVER PLAIN WEAVE?  
18 I THINK I SAID COLOR. I MEANT COVER.  
19 A A CLASSIC FULL COVER PLAIN WEAVE IS A -- IT'S A  
20 PLAIN WEAVE. IT'S HARD TO -- BASIC WHAT WE CALL PLAIN  
21 WEAVE. PROBABLY CLASSIC WOULD PROBABLY BE 30-BY-30 OR  
22 30-BY-31. AND THAT IT'S ALREADY -- THE LOOMS AT THE WEAVER  
23 ARE ALREADY SET SO THEY WOULD BE RELATIVELY -- THIS IS NOT  
24 MY AREA -- RELATIVELY EASY FOR THEM TO WEAVE 30-BY-30 OR  
25 30-BY-31.  
26 Q WHEN YOU TALK ABOUT "30-BY-30" JUST IN THE  
27 INTEREST OF TIME, YOU'RE TALKING ABOUT THE NUMBER OF  
28 CROSSES, THE NUMBER OF WEAVES IN A SQUARE INCH PIECE?

539

1 A YES, 30-BY-30.  
2 Q THIRTY CROSSES OR 30 WEAVES IN THAT ONE SQUARE  
3 INCH; IS THAT CORRECT?  
4 A YES, SIR.  
5 Q ALL RIGHT. "SECOND, AN UNBALANCED  
6 UNDERCONSTRUCTED LOOSE WEAVE FABRIC THAT CLASSIC WISDOM SAYS  
7 WON'T WORK WELL BECAUSE OF BLUNT TRAUMA DEFICIENCIES OR  
8 ANGLED HIT DEFICIENCIES."  
9 DO YOU SEE THAT?  
10 A YES.  
11 Q DO YOU KNOW WHAT HE'S TALKING ABOUT LOOSE --  
12 "UNDERCONSTRUCTED LOOSE WEAVE"?  
13 A YES.

14 MR. GREEN: OBJECTION: HEARSAY.

15 MR. LYLE: OBJECTION: FOUNDATION.

16 THE COURT: HE -- I THINK AS PHRASED THE OBJECTION IS  
17 SUSTAINED. HE CAN'T SPECULATE WHAT SOMEBODY ELSE MEANT OR  
18 UNDERSTOOD.

19 BY MR. EMMERSON:

20 Q WELL, DID YOU EVER HAVE -- WHEN YOU WERE THERE IN  
21 OCTOBER 1 OF 1996, DID YOU EVER HAVE ANY CONVERSATIONS WITH  
22 ED BACHNER ABOUT THE CONSTRUCTION OR THE WEAVE OF SECOND  
23 CHANCE VESTS?

24 A ABSOLUTELY.

25 Q DID YOU EVER HAVE ANY DISCUSSIONS WITH ED BACHNER  
26 ABOUT THE DIFFERENT OPTIONS THAT WERE AVAILABLE TO SECOND  
27 CHANCE IN TERMS OF A WEAVE? FOR EXAMPLE, A CLASSIC FULL  
28 COVER OR AN UNBALANCED UNDERCONSTRUCTED LOOSE WEAVE, DID YOU

540

1 HAVE EVER HAVE ANY DISCUSSIONS ABOUT THOSE?

2 A YES.

3 MR. GREEN: OBJECTION: EXCEEDS THE SCOPE, YOUR HONOR.

4 THE COURT: OVERRULED.

5 GO AHEAD.

6 BY MR. EMMERSON:

7 Q WHAT IS "UNBALANCED UNDERCONSTRUCTED LOOSE WEAVE  
8 FABRIC THAT CLASSIC WISDOM SAYS WON'T WORK WELL BECAUSE OF  
9 BLUNT TRAUMA DEFICIENCIES OR ANGLED HIT DEFICIENCIES"?

10 A INSTEAD OF A 30-BY-30, IN THAT CASE, WE'RE  
11 PROBABLY LOOKING AT A 24-BY-25 UNBALANCED, DIFFERENT. AND  
12 OBVIOUSLY IN HOW MANY, AS YOU SAID, POINTS IN A SQUARE INCH,  
13 24-BY-25 WOULD BE LESS. IT WOULD BE MORE OPEN, AND IT WOULD  
14 BE A MORE LOOSE WEAVE.

15 Q DR. WESTRICK, DO YOU KNOW WHAT THE WEAVE WAS IN  
16 THE ULTIMA -- NINTH GENERATION ULTIMA LEVEL 2 VEST?  
17 A NOT OFF THE TOP -- I COULD SPECULATE, BUT NO, I'M  
18 NOT SURE.  
19 Q YOU WERE ASKED SOME QUESTIONS ABOUT WHETHER YOU  
20 RECEIVED \$5000 FROM I GUESS ME; RIGHT?  
21 A YES.  
22 Q SIR, DID YOU RECEIVE \$5000 FROM ME?  
23 A NO.  
24 Q DID YOU RECEIVE A THOUSAND DOLLARS?  
25 A NO.  
26 Q DID YOU RECEIVE ANY MONEY FROM ME?  
27 A NO.  
28 Q IF YOU COULD, PLEASE, JUST ILLUMINATE THE JURY A

541

1 LITTLE BIT ON WHAT IT IS THAT THE PLAINTIFFS HAVE -- HAVE  
2 PAID FOR OR HAVE COMPENSATED TO -- TO GET YOU HERE TO  
3 TESTIFY IN THIS CASE, IF YOU WOULD.  
4 A I'M HERE ON MY OWN. I'M NOT A PAID EXPERT. I  
5 ASKED FOR MY TRAVEL TO BE PAID FOR AND MY LODGING AND,  
6 BECAUSE OF THE GREAT DISTANCE FROM THE AIRPORT, A RENTAL CAR  
7 AND MOST MEALS.  
8 Q SIR, ARE YOU MISSING WORK BACK IN MICHIGAN?  
9 A YES. I'M AN ACTIVE POLICE OFFICER. I MISSED FOUR  
10 SHIFTS.  
11 Q HOW MANY JOBS DO YOU CURRENTLY HAVE?  
12 A I HAVE MY OWN BALLISTIC ARMOR RESEARCH GROUP; I'M  
13 A COLLEGE PROFESSOR, WHICH WE'RE ON BREAK FOR THE SUMMER;  
14 AND I'M ALSO A FULLY CERTIFIED MICHIGAN POLICE OFFICER. I'M  
15 A DEPUTY SHERIFF AND I STILL POLICE. I ENJOY THAT.

16 Q YOU' RE MISSING WORK TO ATTEND THIS TRIAL; CORRECT?

17 A YES, SIR.

18 Q ARE YOU BEING COMPENSATED AT ALL FOR LOSING YOUR  
19 WORK?

20 A NOT IN THIS CASE. BECAUSE I WORK AS A FULLY  
21 COMMISSIONED OFFICER DURING THE SUMMER, I DON'T GET TIME OFF  
22 FOR COURT -- I ONLY GET TIME THAT I'M THERE AND OBVIOUSLY A  
23 COURT CASE THAT WOULD BE LINKED TO POLICING.

24 NO, I DON'T GET PAID, BOTTOM LINE.

25 Q DID YOU PAY YOUR EXPENSES AND GET REIMBURSED, OR  
26 WERE THEY PAID DIRECTLY FOR YOU?

27 A YOUR OFFICE PAID FOR MY AIRPLANE TICKETS BY A  
28 CREDIT CARD, I BELIEVE, AND MY HOTEL IS -- I BELIEVE YOUR

542

1 CREDIT CARD MUST BE DOWN FOR THE LODGING AND THE MEALS. AND  
2 I HOPE YOU PAY ME BACK FOR MY RENTAL CAR, BECAUSE I HAD TO  
3 USE MY CREDIT CARD.

4 Q I THINK WE COULD.

5 A PLEASE.

6 Q DID -- DID YOU ASK THAT WE -- THAT WE TAKE CARE OF  
7 ARRANGEMENTS FOR SOMEBODY ELSE?

8 A YES, I DID.

9 Q WHO IS THAT?

10 A MY ATTORNEY.

11 Q OKAY. AND DID WE AGREE TO DO THAT?

12 A YES, SIR.

13 Q AND DID WE COMPENSATE HIM IN ANY MANNER FOR HIS  
14 ATTENDANCE AT THIS TRIAL?

15 A NO.

16 Q YOU WERE ASKED A NUMBER OF QUESTIONS EARLIER



17 ABOUT -- AND I'D LIKE YOU, IF YOU COULD, TO JUST KIND OF  
18 PULL OUT THE NOTES THAT MR. ~LYLE -- I'M SORRY. I DON'T  
19 REMEMBER WHO IT WAS.

20 I THINK MR. ~GREEN ASKED YOU SOME QUESTIONS ABOUT  
21 MONEY AND ABOUT HOW MUCH YOU WERE BEING -- ARE YOU ASKING  
22 FOR STOCK AND ASKING FOR A PROMOTION? DO YOU REMEMBER THAT?  
23 MR. ~LYLE, I THINK IT WAS.

24 A YES.

25 Q DO YOU HAVE THOSE NOTES HANDY?

26 A THEY'RE -- I DIDN'T ASK FOR STOCK. THERE'S MANY  
27 REFERENCES IN MY NOTES ABOUT STOCKS OR STOCK OFFERS.

28 Q ALL RIGHT. YOU WERE ASKED -- YOU WERE ASKED AND

543

1 YOU READ PARTS OF YOUR NOTES THAT INDICATE -- OR MAKE  
2 REFERENCE TO MONEY AND STOCK; RIGHT?

3 A YES, SIR.

4 Q CAN YOU TELL THE JURY WHY IT WAS THAT YOU WROTE IN  
5 YOUR NOTES ABOUT STOCK AND ABOUT MONEY DURING THAT CONTRACT  
6 PERIOD?

7 A YES, I CAN.

8 Q TELL THEM, PLEASE.

9 A MY -- DURING THAT PERIOD, MY CONTRACT WAS UP, AND  
10 RICHARD DAVIS WAS IN THE PROCESS OF OFFERING ME STOCKS UP TO  
11 TEN -- TEN SHARES AT ONE POINT.

12 Q WHY DID RICHARD DAVIS OFFER YOU STOCK?

13 MR. GREEN: OBJECTION, YOUR HONOR.

14 THE COURT: SUSTAINED.

15 BY MR. EMMERSON:

16 Q DID RICHARD DAVIS TELL YOU WHY HE WAS OFFERING YOU  
17 STOCK?

18 A YES, HE DID.  
19 Q WHAT DID HE TELL YOU AS TO WHY HE WAS OFFERING YOU  
20 STOCK?  
21 A I COULD TAKE TEN SHARES, WHICH WOULD BE WORTH, IN  
22 HIS WORDS, ROUGHLY A MILLION DOLLARS, AND THEN I WOULD BE  
23 SHUFFLED SOMEWHERE IN THE COMPANY AWAY FROM THE ZYLON ISSUE.  
24 Q WHY DID YOU MAKE THAT NOTATION IN YOUR NOTES? WHY  
25 WAS THAT IMPORTANT TO YOU? MR. ~LYLE ASKED YOU IF YOU JUST  
26 TOOK NOTES THAT WERE IMPORTANT. WHY DID YOU WRITE THAT  
27 DOWN?  
28 A I JUST -- THAT'S IMPORTANT. IT'S IMPORTANT. IN

544

1 FACT, I DIDN'T -- I FOUND IT IMPORTANT, BUT AT THE SAME  
2 TIME, I DIDN'T -- HE KNEW RIGHT AWAY THAT I'D NEVER CONSIDER  
3 IT. HE -- IN FACT DURING PROCEEDINGS, IT'S BEEN BROUGHT UP  
4 TO ME -- I FORGET MANY OF THOSE NOTES BECAUSE THE ANSWER WAS  
5 NO.  
6 Q DID YOU ASK HIM FOR STOCK?  
7 A NO.  
8 Q YOU WERE READ A PORTION OF A NOTE YOU LOOKED AT  
9 FROM 5/7/2003. IN THAT NOTE, IT WAS -- YOU SAID YOU WROTE  
10 DOWN SOMETHING ABOUT, YOU KNOW, I COULD LEAVE OR SOMETHING  
11 LIKE THAT.  
12 DO YOU REMEMBER THAT?  
13 YOU CAN FIND THAT NOTE, 5/7/2003.  
14 A DO YOU HAVE A COPY -- IT MIGHT BE SHUFFLED IN  
15 HERE.  
16 Q THAT'S ALL RIGHT. WE CAN MOVE ON.  
17 A 5/7 --.  
18 Q 5/7/2003, YOU WERE ASKED --

19 A 2003?  
20 Q CORRECT.  
21 A I DON'T SEEM TO HAVE IT HERE. IT MIGHT BE BURIED.  
22 Q RICHARD DAVIS, YOU WERE ASKED A QUESTION ABOUT  
23 RICHARD DAVIS SHOOTING HIMSELF OVER A HUNDRED TIMES.  
24 DO YOU REMEMBER THAT?  
25 A I BELIEVE LAST COUNT WAS 190.  
26 Q HE SHOT HIMSELF A HUNDRED -- TELL THE JURY WHAT HE  
27 DID BEFORE HE SHOT HIMSELF. HOW DID HE SHOOT HIMSELF?  
28 A HE -- HE WOULD PREP THE VEST, MAKE SURE THE VEST

545

1 WAS SET AND SOUND, AND HE WOULD PUT A THICK PHONE BOOK  
2 UNDERNEATH TO STOP BLUNT TRAUMA, AND HE WOULD TAKE AND TURN  
3 THE REVOLVER ON HIMSELF AND SHOOT HIMSELF ON THE VEST.  
4 Q WERE THE VESTS HE WAS USING USED, OR WERE THEY  
5 NEW?  
6 A THE ZYLON VESTS WERE NEW.  
7 Q SO HE SHOT HIMSELF WITH NEW ZYLON VESTS; RIGHT?  
8 A YES.  
9 Q YOU WERE ASKED AND YOU WERE SHOWN BY -- BY  
10 MR. ~GREEN THIS 'SAVES' BOOK.  
11 DO YOU REMEMBER THAT?  
12 A YES.  
13 Q AND IT LISTED THOSE PEOPLE WHO HAVE BEEN SAVED, SO  
14 TO SPEAK, BY WEARING A ZYLON VEST?  
15 A YES.  
16 Q DO YOU KNOW -- YOU INITIALLY WERE RESPONSIBLE FOR  
17 COMPILING THAT DATA; IS THAT RIGHT?  
18 A I'M A SAVE, AND WHEN I FIRST STARTED WORKING AT  
19 SECOND CHANCE, I COMPILED NEW SAVES COMING IN, AND I'M

20 FAMILIAR WITH THE BREAKDOWN OF HOW THE SAVES WORK, YES.  
21 Q DID YOU AT SOME POINT IN TIME STOP WORKING ON THAT  
22 PROJECT?  
23 A YES.  
24 Q WHY?  
25 A BECAUSE I WAS -- THE MANAGEMENT DIDN'T WANT ME TO  
26 DO IT ANYMORE BECAUSE OF MY POSITION ON THE ZYLON ISSUE.  
27 Q DID -- WHO TOLD YOU THAT, IF ANYBODY?  
28 A RICHARD DAVIS TOLD ME.

546

1 Q WHAT DID HE TELL YOU?  
2 A I WAS VERY UPSET BECAUSE I WAS NOT IN CHARGE OF IT  
3 ANYMORE. AND HE TOLD ME THEY DIDN'T TRUST ME.  
4 Q HOW DOES -- HOW DOES SOME -- SOMEONE, A POLICE  
5 OFFICER WEARING A VEST, GET RECORDED AS A SAVE IN THAT BOOK?  
6 A YOU HAVE TO SEND IN DOCUMENTED PROOF THROUGH A  
7 HOSPITAL OR PERHAPS A POLICE REPORT SIGNED BY A HIGHER  
8 RANKING OFFICER. AND TRADITIONALLY, ABOUT ALMOST 50/50,  
9 DEPENDS. FIFTY PERCENT OF THE SAVES ARE BALLISTIC, BEING  
10 BALLISTIC-TYPE EVENTS OR, BETTER YET, CLEARER,  
11 FELONIOUS-TYPE ASSAULTS, OF WHICH MOST ARE BALLISTIC-TYPE  
12 EVENTS. AND ABOUT 50 -- THE OTHER 50 PERCENT,  
13 APPROXIMATELY, ARE CAR ACCIDENTS AND THINGS THAT ARE HARDER  
14 TO DOCUMENT BUT CAN BE DOCUMENTED.  
15 Q SO NOT EVERYTHING THAT APPEARS IN THAT BOOK IS A  
16 SAVE BECAUSE THE VEST DEFEATED A ROUND THAT IT WAS SHOT  
17 WITH?  
18 A NOT BY A LONG WAYS.  
19 Q BY UP TO 50 PERCENT OR SO?  
20 A ZYLON VESTS ARE EVEN LESS.

21 Q OKAY. YOU WERE ASKED BY MR. LYLE ABOUT BARRDAY  
22 AND HEXCEL-SCHWEBEL AND LINCOLN FABRICS; RIGHT?  
23 HE ASKED YOU ABOUT WHO SOME OF THE WEAVERS WERE  
24 WHO MADE ZYLON INTO SECOND CHANCE BALLISTIC PANELS; RIGHT?  
25 A YES.  
26 Q DO YOU KNOW HOW LONG, WHAT TIME PERIOD BARRDAY HAD  
27 BEEN WEAVING FOR SECOND CHANCE BODY ARMOR?  
28 A I BELIEVE BARRDAY HAD BEEN WEAVING DIFFERENT TYPES

547

1 OF FIBERS FOR QUITE A LONG TIME.

2 Q HOW LONG HAD THEY BEEN WEAVING ZYLON?

3 A THEY WOVE FROM APPROXIMATELY -- ZYLON -- BETWEEN  
4 SAMPLES AND SO FORTH, ROUGHLY '97, END OF '97, TO THE END OF  
5 2001.

6 Q DID THEY EVENTUALLY STOP WEAVING ZYLON?

7 A YES, THEY DID.

8 Q WHY?

9 A THEY WERE --

10 MR. LYLE: OBJECTION: FOUNDATION; CALLS FOR  
11 SPECULATION.

12 THE COURT: SUSTAINED.

13 BY MR. EMMERSON:

14 Q DO YOU KNOW WHY THEY STOPPED WEAVING ZYLON?

15 MR. LYLE: SAME OBJECTION, YOUR HONOR.

16 THE COURT: SO FAR THAT WAS A YES OR NO.

17 GO AHEAD.

18 BY MR. EMMERSON:

19 Q HOW DO YOU KNOW?

20 A I KNOW FROM RICHARD DAVIS, AND I KNOW FROM MEMOS,  
21 AND I KNOW FROM BEING IN THE INDUSTRY.

22 Q WHAT DID RICHARD DAVIS SAY ABOUT BARRDAY AND THEIR  
23 DECISION TO STOP WEAVING ZYLON?

24 MR. GREEN: SAME OBJECTION, YOUR HONOR.

25 MR. LYLE: YOUR HONOR, HE --

26 THE COURT: SUSTAINED.

27 BY MR. EMMERSON:

28 Q WHAT MEMOS DID YOU SEE THAT DEALT WITH BARRDAY AND

548

1 ITS DECISION TO STOP WEAVING ZYLON?

2 A I SAW MEMOS FROM BARRDAY THAT INDICATED THAT THEY  
3 WOULD NOT --

4 MR. GREEN: OBJECTION.

5 MR. LYLE: OBJECTION: HEARSAY.

6 THE COURT: THE WHOLE POINT IS TO PREVENT HIM FROM  
7 TELLING US WHAT SOME NONPARTY TO THIS CASE MAY HAVE SAID IN  
8 SOME MEMO OR OTHERWISE, SO SUSTAINED.

9 BY MR. EMMERSON:

10 Q YOU WERE SHOWN A DOCUMENT BY -- BY MR. ~LYLE THAT  
11 TALKED ABOUT DSM. REMEMBER WE TALKED A LITTLE BIT ABOUT  
12 THAT BEFORE. WE DIDN'T GET TOO MUCH INTO IT.

13 DO YOU REMEMBER THAT DOCUMENT --

14 A YES.

15 Q -- THAT WE'RE TALKING ABOUT --

16 A YES.

17 Q -- THAT MR. ~LYLE SHOWED YOU?

18 A YES.

19 Q AND THERE WAS SOME ISSUE -- AS THERE WAS IN THE  
20 JULY 29TH MEMO, THERE WAS SOME REFERENCE TO THIS GERMAN --  
21 GERMAN CONTRACT OR GERMAN ISSUE.

22 DO YOU REMEMBER THAT?

23 A YES.

24 Q WHAT -- DO YOU KNOW WHAT THEY' RE REFERRING TO IN  
25 THOSE DOCUMENTS?

26 A YES.

27 Q WHAT IS THE GERMAN ISSUE OR THE GERMAN CONTRACT?  
28 WHAT DOES THAT REFER TO?

549

1 MR. GREEN: OBJECTION, YOUR HONOR: FOUNDATI ON.

2 THE COURT: IT SOUNDS LIKE WE' RE GETTING INTO THE SAME  
3 ISSUE, IF THE POINT IS TO HAVE HIM TELL US WHAT SOME  
4 THIRD-PARTY MAY HAVE SAID.

5 BY MR. EMMERSON:

6 Q DID SECOND CHANCE BODY ARMOR MANUFACTURE ULTIMAS  
7 FOR GERMANY, ULTIMA LEVEL 2' S?

8 A NOT ULTIMA LEVEL 2' S.

9 Q WHAT KIND OF ZYLON VEST DID THEY MANUFACTURE?

10 A ULTIMA LEVEL 3A PLUS UNDER A GERMAN STANDARD,  
11 CERTI FICATI ON STANDARD.

12 Q DID YOU -- DID YOU HAVE ANYTHING TO DO WITH THE  
13 SELECTION OF GORTEX AS BEING THE COVER -- THE MATERIAL USED  
14 TO COVER ZYLON?

15 A I DON' T -- I DON' T -- I KNOW THAT THAT HAD  
16 SOMETHING TO DO WITH THE NEW GORTEX BEING APPLIED TO ZYLON,  
17 BUT I' M NOT -- I' M NOT SURE. I BELIEVE GORTEX WAS IN SECOND  
18 CHANCE' S LINE WHEN I CAME ON BOARD IN ' 96.

19 Q OKAY. JUST -- JUST A COUPLE MORE QUESTIONS.

20 DID YOU HAVE A CONVERSATI ON WITH RICHARD DAVI S  
21 ABOUT -- WE KIND OF TALKED ABOUT THIS ALREADY, SO -- I HATE  
22 TO BELABOR THE POINT.

23 OCTOBER 20TH 03, DID YOU HAVE A CONVERSATI ON WITH

24 RICHARD DAVIS ABOUT ZYLON?  
25 A OCTOBER?  
26 Q 20TH, '03, IN PHILADELPHIA?  
27 A YES.  
28 Q AND WHAT DID RICHARD DAVIS TELL YOU ABOUT ZYLON?

550

1 A SPECIFICALLY? IF I CAN CONSULT MY NOTES?  
2 Q YOU MAY.  
3 A YES, I CAN SEE THAT.  
4 Q CAN YOU JUST TELL -- CAN YOU JUST TELL US WHAT IT  
5 IS THAT YOU REFERRED TO THAT -- WELL, FIRST OF ALL, DOES  
6 WHAT YOU REFERRED TO REFRESH YOUR MEMORY?  
7 A YES, IT DOES.  
8 Q CAN YOU TELL US WHAT YOU REFERRED TO?  
9 A YES. I'M REFERRING TO MY NOTES THAT WERE TAKEN AT  
10 THE REGIONAL SALES MEETING IN PHILADELPHIA.  
11 Q AND WHAT'S THE DATE OF THAT?  
12 A OCTOBER 20TH OF '03.  
13 Q OKAY. AND UPON HAVING YOUR MEMORY REFRESHED, WHAT  
14 IS IT THAT RICHARD DAVIS TOLD YOU ABOUT ZYLON?  
15 A RICHARD DAVIS ADMITTED TO ME AND THE GROUP THAT  
16 THE PROBLEM OF ZYLON WAS VERY SERIOUS AND THAT ANYONE THAT  
17 DOES NOT TAKE -- DO SOMETHING ABOUT IT WOULD BE GUILTY OF  
18 MANSLAUGHTER OR NEGLIGENT HOMICIDE.  
19 Q DID HE TELL YOU THAT HE'S CONCERNED ABOUT ZYLON IN  
20 LEVEL 2A'S ONLY?  
21 A NO, SIR.  
22 Q DID HE MAKE ANY DISTINCTION AT THAT POINT IN TIME  
23 ABOUT LEVEL 2 AND LEVEL 2A ZYLON?  
24 A ALL ZYLON.



25 Q SIR, I'M GOING TO TRY TO BE DONE HERE IN JUST A  
26 SECOND.

27 THIS IS A DOCUMENT THAT YOU WERE SHOWN EARLIER.  
28 DO YOU REMEMBER THIS 1998 SUPER HIGH PERFORMANCE

551

1 FIBER?

2 A YES.

3 THE COURT: WHAT EXHIBIT NUMBER IS THIS FOR THE RECORD?

4 MR. EMMERSON: 512, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 (COURT'S EXHIBIT NO. 512 IDENTIFIED)

7 BY MR. EMMERSON:

8 Q I WANT TO SHOW YOU -- YOU WERE ASKED IF YOU KNEW  
9 TOYOBO USED THE PHRASE "ZYLON ON STEROIDS"; RIGHT?

10 A YES.

11 Q AND YOUR ANSWER WAS THAT YOU DIDN'T BELIEVE THAT  
12 THEY USED THAT TERM?

13 A YES.

14 Q DID THEY USE ANOTHER TERM? DID THEY -- DID THEY  
15 SAY "ZYLON IS THE NEXT GENERATION SUPER FIBER"?

16 A "SUPER FIBER" WAS THE TERM THAT WAS OFTEN USED AND  
17 PRINTED.

18 Q YOU -- MR. ~LYLE ASKED YOU ABOUT SOME OF YOUR  
19 NOTES, AND SOME OF THEM YOU MENTIONED 2A AND OTHERS YOU JUST  
20 MENTIONED ZYLON.

21 IS THERE SOME REASON WHY YOU DIDN'T MENTION IN  
22 EVERY NOTE LEVEL 2, LEVEL 2A AND ZYLON?

23 A YES.

24 Q WHAT'S THE REASON FOR THAT?

25 A RICHARD'S -- RICHARD RELATED TO ME THAT HIS PLAN

26 WAS TO GO AFTER THE LEVEL 2A'S ON A -- ON A MARKET LEVEL TO  
27 DIVERT ATTENTION AWAY FROM THE ZYLON PROBLEM.

28 Q WAS IT -- WHAT WAS RICHARD DAVIS' PLAN AS HE TOLD

552

1 YOU IN JULY OF 2002? WHAT WAS HIS PLAN IN TERMS OF DEALING  
2 WITH ALL ZYLON VESTS, 2 AND 2A?

3 A JULY OF --

4 Q JULY 9TH, 2002?

5 A I'D HAVE TO LOOK AT THE MEMO AGAIN, BUT TO PULL  
6 THEM IN OR RISK DEATH OR LAWSUIT.

7 Q YOU WERE ASKED ABOUT -- MR. ~LYLE ASKED YOU ABOUT  
8 THOSE TWO OR THREE -- THAT TWO- OR THREE-DAY PERIOD WHERE  
9 SECOND CHANCE STOPPED MANUFACTURING ZYLON VESTS; RIGHT?

10 A I BELIEVE THE 8TH OF AUGUST, I BELIEVE, 2002.

11 Q OKAY. AND DID -- DID SECOND CHANCE STOP  
12 MANUFACTURING ONLY 2A VESTS, OR DID THEY STOP MANUFACTURING  
13 USING ZYLON AT ALL FOR THAT PERIOD?

14 A I'D HAVE TO -- I BELIEVE THEY STOPPED  
15 MANUFACTURING, ACCORDING TO MY NOTES, LEVEL 2A ZYLON VESTS.

16 Q DID THEY STOP SHIPPING -- OR WAS IT MR. ~DAVIS'  
17 RECOMMENDATION OR ORDER TO STOP SELLING ALL HUNDRED PERCENT  
18 ZYLON VESTS?

19 A I DON'T RECALL THAT.

20 MR. EMMERSON: THANK YOU, YOUR HONOR. I HAVE NOTHING  
21 FURTHER.

22 THANK YOU, DR. ~WESTRICK.

23 THE COURT: MR. ~GREEN, ANY RE-CROSS?

24 MR. GREEN: YES, YOUR HONOR, VERY BRIEFLY.

25

26 CROSS-EXAMINATION

27 BY MR. GREEN:

28 Q DR. ~WESTRICK, I PUT UP THERE ON THE SCREEN THE

553

1 PIECE OF PAPER THAT MR. ~EMERSON COULDN' T FIND WHEN HE WAS  
2 ASKING YOU QUESTIONS, AND THIS COMES OUT OF EXHIBIT 1003.

3 AND THIS WAS THE EXCERPT FROM MAY 7TH 2003 THAT WE  
4 WERE TALKING ABOUT; CORRECT?

5 A YES.

6 Q OKAY. AND I WANT TO FOCUS ON THE SECOND  
7 PARAGRAPH -- ACTUALLY, WE CAN JUST READ THE WHOLE THING.  
8 PUT IT INTO CONTEXT:

9 "RICHARD DAVIS ASSURED ME THAT MY JOB IS SECURE.  
10 HE TOLD ME HE' D TAKE CARE OF ME BECAUSE OF MY LOYALTY.  
11 HE" -- AND THEN RICHARD DAVIS IN PARENTHESIS -- "ALSO TOLD  
12 ME I' D RECEIVE COMPANY STOCK. "

13 AND HERE' S THE POINT I WANT TO ASK YOU ABOUT: "I  
14 INDICATED THAT I COULD LEAVE" SECOND CHANCE BODY ARMOR,  
15 "SCB, AND HE SAID, ' DON' T LEAVE. YOU' RE GOING TO BE ALL  
16 SET. ' "

17 DID I READ THAT CORRECTLY?

18 A YES.

19 Q ISN' T IT A FACT, SIR, THAT WHAT YOU WERE DOING ON  
20 MAY 7TH OF 2003 IS YOU WERE THREATENING MR. ~DAVIS THAT YOU  
21 WOULD LEAVE IF HE DIDN' T TAKE CARE OF YOU? ISN' T THAT WHAT  
22 HAPPENED?

23 A I -- I WAS TELLING HIM THAT IF HE DIDN' T TAKE CARE  
24 OF THE ZYLON PROBLEM, I COULD LEAVE. I DIDN' T WANT THE  
25 STOCK.

26 Q OKAY. WHERE IN THAT ENTRY DID YOU WRITE THAT: I  
27 DON' T WANT STOCK IF YOU DON' T TAKE CARE OF THE ZYLON

28 PROBLEM?

554

1 A IT'S NOT WRITTEN IN THERE.

2 Q IN FACT, IN YOUR THREE VOLUMES OF LOGBOOKS, IS  
3 THERE ANY ENTRY WHERE YOU SAID: I TOLD RICHARD DAVIS THAT  
4 IF HE DOESN'T TAKE CARE OF THE ZYLON PROBLEM, I DON'T WANT  
5 STOCK IN THIS COMPANY?

6 DID YOU WRITE THAT ANYWHERE IN YOUR LOGBOOKS?

7 A I DON'T KNOW.

8 Q YOU CAN'T THINK OF ANYPLACE WHILE YOU SIT HERE;  
9 RIGHT?

10 A NOT RIGHT NOW, NO.

11 Q ALL RIGHT. LET ME ASK YOU A COUPLE OF QUESTIONS  
12 BACK ABOUT YOUR TESTIMONY IN RESPONSE TO MR. ~EMERSON IN  
13 WHICH YOU DISCUSSED THAT YOU WARNED THESE PEOPLE BEFORE YOU  
14 SOLD THEM THE VESTS; OKAY?

15 AND I HAD FIVE DIFFERENT PEOPLE: TOM FALONE; RICK  
16 BENNETT FROM LAPD; MR. BORKOVITZ --

17 A FIRST NAME IS MIKE.

18 Q OKAY.

19 OFFICER MC~CLELLAN AND CEN COM?

20 A LI EUTENANT MC~CLELLAN.

21 Q LI EUTENANT MC CLELLAN?

22 A AND TOM FALONE.

23 Q I SAID TOM FALONE ALREADY.

24 THOSE ARE THE FIVE PEOPLE YOU CAN RECALL WARNING  
25 ABOUT ZYLON?

26 A AND I BELIEVE I HAD A SERGEANT FROM SOUTHFIELD AND  
27 ANOTHER SERGEANT FROM DETROIT.

28 THERE'S QUITE A FEW.

1 Q ALL RIGHT. THAT'S SEVEN. ALL RIGHT.  
2 CAN YOU TELL ME ANYWHERE IN YOUR -- BEFORE I ASK  
3 YOU THAT, THOSE WOULD BE IMPORTANT CONVERSATIONS, WOULDN'T  
4 THEY? YOU'RE SELLING VESTS TO PEOPLE THAT YOU THINK ARE  
5 PLACING THEIR OFFICERS AND MILITARY PERSONNEL IN HARM'S WAY.  
6 THAT'S A PRETTY IMPORTANT CONVERSATION WITH THAT PERSON,  
7 ISN'T IT?  
8 A I WOULD SAY IT'S IMPORTANT.  
9 Q OKAY. CAN YOU TELL ME ANYWHERE IN YOUR THREE  
10 VOLUMES OF LOGBOOK WHERE YOU ONCE WROTE DOWN: AND BY GOSH,  
11 I WARNED THESE PEOPLE NOT TO BUY SECOND CHANCE LEVEL 2 VESTS  
12 OR ANY WORDS TO THAT EFFECT?  
13 A NOT THAT I RECALL.  
14 Q SO THOSE ARE SEVEN IMPORTANT CONVERSATIONS THAT  
15 YOU DIDN'T DOCUMENT IN YOUR THREE VOLUMES. THAT'S WHAT  
16 YOU'RE TELLING US; RIGHT?  
17 A THOSE ARE SEVEN CONVERSATIONS THAT AREN'T  
18 DOCUMENTED; THAT'S CORRECT.  
19 Q AND WE KNOW THAT YOU'VE WRITTEN MEMOS TO MAKE SURE  
20 THAT YOUR POSITION IS CLEAR TO YOUR SUPERIORS AT SECOND  
21 CHANCE.  
22 WE SAW SOME OF THEM; RIGHT?  
23 A THANK YOU, YES.  
24 Q AND YET NOTWITHSTANDING THE FACT THAT YOU WERE  
25 SELLING THESE VESTS TO THESE POLICE OFFICERS AND THESE  
26 MILITARY PERSONNEL IN A TIME OF WAR, YOU NEVER ONCE  
27 COMMITTED TO WRITING A LETTER, AN EMAIL, A WARNING TO  
28 THOSE -- TO MR. BENNETT AT THE LAPD, YOU NEVER WROTE TO HIM

1 AND TOLD HIM: I WANT TO MAKE SURE MY POSITION IS CLEAR.

2 THIS VEST IS DANGEROUS FOR YOUR OFFICERS, DID YOU?

3 A NO. I WAS BOUND TO KEEP IT INSIDE THE COMPANY.

4 MR. GREEN: MOVE TO STRIKE AS NONRESPONSIVE, YOUR  
5 HONOR.

6 THE COURT: MOTION IS GRANTED.

7 I'LL ASK THE JURY TO DISREGARD THE LAST ANSWER  
8 AFTER, I THINK -- WAS THERE A YES AT THE BEGINNING OF THAT?

9 MR. GREEN: THERE WAS A NO.

10 THE COURT: NO AT THE BEGINNING.

11 ANYTHING AFTER "NO" IS TO BE DISREGARDED.

12 BY MR. GREEN:

13 Q JUST SO WE HAVE A CLEAR RECORD HERE, DR. WESTRICK,  
14 WHEN YOU SOLD -- I THINK IT WAS 12,000 VESTS TO MR. BENNETT,  
15 IS THAT RIGHT, IS HOW MANY THEY BOUGHT, LAPD?

16 A I DID NOT SELL 12,000 VESTS. I DID NOT EVEN  
17 INITIAL THAT, SIR.

18 Q HOW MANY VESTS WERE SOLD TO LAPD, MR. BENNETT?

19 A I BELIEVE THAT THE WHOLE DEAL WAS FOR LOS ANGELES,  
20 AND I BELIEVE OTHER DEPARTMENTS, NEIGHBORING, CAN JUMP ON  
21 THE BID.

22 Q HOW MANY?

23 A APPROXIMATELY 12,000.

24 Q OKAY. TWELVE-THOUSAND.

25 A BUT I DID NOT SELL THEM MYSELF.

26 Q LET ME ASK IT A DIFFERENT WAY, THEN.

27 A AND I HAD --

28 Q LET ME ASK IT A DIFFERENT WAY, SIR.

1 NOTWITHSTANDING THE FACT THAT YOU KNEW IN YOUR  
2 MIND THAT THAT VEST WAS GOING TO PLACE THOSE 12,000 OFFICERS  
3 IN HARM'S WAY, YOU NEVER THOUGHT IT WAS APPROPRIATE TO WRITE  
4 A LETTER TO MR. BENNETT OR ANY OF HIS SUPERIORS TO SAY: I  
5 JUST WANT IT TO BE KNOWN, CLEAR THAT THOSE VESTS ARE NOT  
6 GOING TO PROTECT THOSE OFFICERS?

7 IS THAT YOUR TESTIMONY HERE TODAY?

8 A I NOTIFIED THEM VERBALLY AND WAS STRUCK DOWN.  
9 MR. GREEN: MOVE TO STRIKE AS NONRESPONSIVE, YOUR  
10 HONOR.

11 THE COURT: IT IS NONRESPONSIVE. MOTION IS GRANTED.

12 I'LL ASK THE JURY TO DISREGARD THE LAST ANSWER.

13 DR. ~WESTRICK, I KNOW IT'S DIFFICULT SOMETIMES  
14 BEING --

15 THE WITNESS: NO.

16 THE COURT: WAIT A MINUTE. ONE AT A TIME. SHE'S  
17 LOOKING AT ME; RIGHT? SHE'S GOING TO WRITE WHAT I SAY  
18 FIRST, I THINK.

19 I KNOW IT'S DIFFICULT, BUT I'M GOING TO ASK YOU  
20 ONCE AGAIN TO LISTEN TO THE QUESTION. EVEN IF YOU DON'T  
21 LIKE IT, DON'T ARGUE WITH HIM. JUST ANSWER THE QUESTION  
22 ASKED, NOTHING ELSE. THE OTHER LAWYER WILL HAVE ANOTHER  
23 OPPORTUNITY, MAYBE -- THIS IS GOING TO END PRETTY SOON, BUT  
24 HE MAY HAVE ANOTHER OPPORTUNITY TO CLEAR SOMETHING UP; OKAY?

25 THE WITNESS: YES, SIR.

26 THE COURT: GO AHEAD.

27 BY MR. GREEN:

28 Q JUST SO WE HAVE A CLEAR RECORD HERE, DR. ~WESTRICK,

2 MR. BENNETT ON BEHALF OF LAPD AND THE NEIGHBORING  
3 COMMUNITIES, YOU NEVER WROTE A LETTER TO MR. BENNETT OR ANY  
4 OF HIS SUPERIORS INDICATING THAT YOU THINK THAT THOSE VESTS  
5 ARE DEFECTIVE AND ARE GOING TO PLACE THOSE OFFICERS IN  
6 HARM'S WAY, DID YOU?

7 A NO.

8 MR. GREEN: NOTHING FURTHER, YOUR HONOR. THANK YOU.

9 THE COURT: MR. ~LYLE, ANYTHING ELSE IN LIGHT OF WHAT  
10 MR. ~EMERSON BROUGHT UP?

11 MR. LYLE: JUST A COUPLE OF POINTS, YOUR HONOR.

12 THE COURT: OKAY.

13

14 CROSS-EXAMINATION

15 BY MR. LYLE:

16 Q DR. ~WESTRICK, WHEN YOU WERE SELLING YOUR VESTS  
17 THROUGH TOM FALONE TO CENTRAL COMMAND, YOU COULD HAVE SOLD  
18 THEM KEVLAR VESTS; RIGHT?

19 A PARDON ME?

20 Q YOU COULD HAVE SOLD KEVLAR VESTS TO THE CENTRAL  
21 COMMAND; RIGHT?

22 A I RECOMMENDED KEVLAR VESTS.

23 Q YOU HAD LEVEL 2 KEVLAR VESTS YOU COULD HAVE SOLD  
24 THEM?

25 A I RECOMMENDED THEM.

26 Q AND YOU DIDN'T SELL THEM, DID YOU?

27 A THEY WANTED ZYLON. NO, I DID NOT.

28 Q MY QUESTION IS --

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1 A NO, I DID NOT.

2 Q YOU SOLD THEM ZYLON VESTS?



3 A I DIDN'T SELL THEM PERSONALLY.

4 Q I FORGOT. YOU ASSISTED SELLING ZYLON VESTS?

5 A I INITIALED THE PAPERWORK AS IT COMES ACROSS MY  
6 DESK BECAUSE THIS IS A SPECIAL CUSTOMER, FRIEND OF RICHARD  
7 DAVIS.

8 Q AND YOU SOLD HIM ZYLON VESTS? WE ALREADY TALKED  
9 ABOUT THAT.

10 A I DIDN'T SELL THEM. I DIDN'T RECEIVE ANY  
11 COMMISSIONS. I'M NOT A SALESMAN.

12 MR. LYLE: YOUR HONOR, MOVE TO STRIKE EVERYTHING BUT  
13 THE PART WHERE HE SAID NO.

14 THE COURT: I THINK, DR. WESTRICK, THIS IS GOING TO  
15 COME TO A CLOSE MUCH SOONER IF WE AVOID THIS. AND I  
16 UNDERSTAND THESE QUESTIONS COULD BE TOUGH. THEY COULD BE  
17 ARGUMENTATIVE OR WHATNOT, BUT I'M GOING TO ASK YOU: JUST  
18 ANSWER THE QUESTION ASKED. DON'T ARGUE WITH HIM. IF  
19 SOMETHING NEEDS TO COME OUT, MR. EMERSON WILL HAVE ANOTHER  
20 SHOT; OKAY.

21 THE WITNESS: YES, SIR.

22 BY MR. LYLE:

23 Q HERE'S ALL I'M TRYING TO GET. SECOND CHANCE HAD  
24 LEVEL 2 KEVLAR VESTS; RIGHT?

25 A YES, SIR.

26 Q AND YOU COULD HAVE SOLD LEVEL 2 KEVLAR VESTS TO  
27 CENTRAL COMMAND; RIGHT?

28 A (NO ORAL RESPONSE.)

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1 Q YOU HAD THEM. YOU COULD HAVE SOLD THEM TO THEM,  
2 COULDN'T --

3 A THEY DIDN'T WANT THEM.

4 Q MY --  
5 A I OFFERED THEM.  
6 Q MY QUESTION IS: DID YOU HAVE THEM THERE --  
7 A YES.  
8 Q -- TO SELL THEM?  
9 A YES.  
10 Q YOU DIDN'T SELL THEM KEVLAR. YOU SOLD THEM THE  
11 ZYLON; RIGHT?  
12 A I DIDN'T SELL THEM ANYTHING.  
13 Q I FORGOT. YOU KEEP REMINDING ME OF THAT, AND I  
14 KEEP FORGETTING.  
15 YOU ASSISTED IN SELLING THE ZYLON?  
16 A YES.  
17 Q NOW, MR. ~EMERSON SHOWED YOU SOME LETTERS BETWEEN  
18 TOYOBO AND SECOND CHANCE IN 1996.  
19 DO YOU REMEMBER THAT, JUST A LITTLE WHILE AGO?  
20 A YES.  
21 Q AND IN THERE HE'S TALKING ABOUT DISCUSSIONS BACK  
22 AND FORTH BETWEEN TOYOBO AND SECOND CHANCE, RIGHT, 1996?  
23 A YES.  
24 Q OKAY. TOYOBO STARTED SELLING ZYLON COMMERCIALY  
25 IN 1998, TWO YEARS LATER; RIGHT?  
26 A I -- YOU INDICATED THAT BEFORE. I BELIEVE THAT'S  
27 CORRECT.  
28 Q OKAY.

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1 A I BELIEVE THAT'S CORRECT.  
2 Q AND WHEN YOU TESTIFIED ON THURSDAY IN THIS  
3 COURTROOM, YOU KNEW ABOUT THOSE LETTERS THAT MR. ~EMERSON  
4 JUST SHOWED YOU; RIGHT? BECAUSE YOU TALKED ABOUT THEM;

5 RIGHT?  
6 A THE 1996?  
7 Q YES.  
8 A I BELIEVE I KNEW ABOUT THEM, YES.  
9 Q OKAY. I'D LIKE TO SHOW YOU YOUR TESTIMONY BEFORE  
10 THIS COURT.  
11 MR. LYLE: CAN WE PUT THAT UP?  
12 BY MR. LYLE:  
13 Q THIS IS PAGE 268 OF YOUR COURT TESTIMONY HERE IN  
14 THIS COURTROOM ON THURSDAY.  
15 BY MR. ~EMERSON: "YOU SAID THAT THERE'S THIS KIND  
16 OF JOINT EFFORT. IF YOU CAN, FOR THE JURY, JUST BREAK DOWN  
17 AT THAT POINT IN TIME WHAT WAS TOYOBO'S INVOLVEMENT OR  
18 PARTICIPATION IN THAT JOINT EFFORT?"  
19 YOU SAID: "HELP DEVELOP BODY ARMOR AND JOINTLY  
20 DEVELOP SOFT BODY ARMOR SYSTEMS."  
21 AND THE QUESTION: "AND HOW WOULD THEY DO THAT?"  
22 ANSWER: "PROVIDE THE RAW MATERIAL, ZYLON."  
23 THAT'S WHAT YOU SAID IN THIS COURTROOM; RIGHT?  
24 A YES.  
25 MR. LYLE: THANKS.  
26 THAT'S ALL I HAVE, YOUR HONOR.  
27 THE COURT: IN LIGHT OF THOSE QUESTIONS FROM COUNSEL,  
28 ANYTHING ELSE, MR. ~EMERSON?

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1 MR. EMMERSON: YEAH.

2

3 REDI RECT EXAMI NATION

4 BY MR. EMMERSON:

5 Q DID YOU SEE IF I ASKED YOU IF YOU DID ANYTHING

6 ELSE, IF YOU DID ANY TESTING ON IT --  
7 A I JUST GLANCED --  
8 Q -- AND THERE WAS AN OBJECTION?  
9 A YES.  
10 Q MR. ~LYLE ASKED YOU IF YOU COULD HAVE SOLD LAPD  
11 KEVLAR OR SOME OTHER TYPE OF NONZYLON VEST; RIGHT?  
12 A YES.  
13 Q IS THERE SOME REASON WHY YOU DIDN' T? I UNDERSTAND  
14 YOU DIDN' T SELL IT. IS THERE SOME REASON YOU DIDN' T  
15 FACILITATE THE SALE BY SECOND CHANCE OF SOME NONZYLON VEST  
16 TO LAPD?  
17 A I TRIED AND THEY DIDN' T WANT IT.  
18 Q SAME QUESTION FOR THE SECOND CHANCE SALE OF VESTS  
19 TO CEN COM. IS THERE SOME REASON WHY YOU DIDN' T -- I  
20 UNDERSTAND YOU DIDN' T SELL IT. IS THERE SOME REASON WHY YOU  
21 DID NOT FACILITATE THE SALE OF NONZYLON TO CEN COM?  
22 A CEN COM INDICATED THAT IF IT WAS CERTIFIED, THEY  
23 COULD BUY IT.  
24 MR. GREEN: OBJECTION, YOUR HONOR. IT CALLS FOR  
25 HEARSAY.  
26 THE COURT: IT DOES IF WE'RE GOING TO QUOTE WHAT  
27 SOMEBODY ELSE SAID.  
28

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1 BY MR. EMMERSON:  
2 Q DID YOU TRY TO SELL CEN COM -- OR DID YOU TRY TO  
3 ENCOURAGE THEM THROUGH THE APPROPRIATE CHANNELS TO PURCHASE  
4 SOMETHING OTHER THAN ZYLON?  
5 A YES.  
6 MR. EMMERSON: THANK YOU. I HAVE NOTHING FURTHER.

7 THANK YOU.

8 MR. GREEN: YES, ONE BRIEFLY, YOUR HONOR.

9

10 RE-CROSS-EXAMINATION

11 BY MR. GREEN:

12 Q DID YOU WRITE ANY LETTERS TO CEN COM OR LAPD  
13 TELLING THEM THAT YOU THINK THEY SHOULD BE BUYING KEVLAR  
14 INSTEAD OF ZYLON FOR WHATEVER REASON?

15 A AT ANY TIME?

16 Q WHEN THEY WERE BUYING THE 12,000 VESTS FOR LAPD OR  
17 THE VESTS THAT CEN COM BOUGHT AFTER SEPTEMBER 11, DID YOU  
18 SEND THEM A LETTER TELLING THEM: I THINK YOU SHOULD  
19 CONSIDER BUYING OR YOU SHOULD BUY KEVLAR BECAUSE I THINK  
20 IT'S A BETTER PRODUCT THAN ZYLON, A SAFER PRODUCT OR  
21 ANYTHING?

22 DID YOU DO THAT?

23 A I DID NOT SEND THEM A PERSONAL LETTER, NO.

24 MR. GREEN: NOTHING FURTHER, YOUR HONOR.

25 MR. LYLE: NOTHING FURTHER FROM TOYOBO.

26 THE COURT: ALL RIGHT. MR. -- DR. WESTRICK, SORRY. I  
27 KEEP FORGETTING THAT.

28 YOU ARE FINISHED.

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1 MAY HE BE RELEASED, OR IS HE GOING TO BE SUBJECT  
2 TO RECALL OR WHAT?

3 MR. EMMERSON: RELEASED, YOUR HONOR.

4 THE COURT: ALL RIGHT. HEARING NO -- NOTHING TO THE  
5 CONTRARY, DR. WESTRICK, YOU ARE RELEASED. THANK YOU, SIR.  
6 YOU MAY STEP DOWN.

7 THE WITNESS: THANK YOU.