

1                   They saw that in '05. I said, "I  
2                   can't do six programs. I can co-op three. I  
3                   can't do the deep discounting in this case and do  
4                   this programming."

5                   They came back in the proposal for,  
6                   I think it was '06 for the first time recognizing  
7                   the parameters that we had established. Said,  
8                   "Okay. Fine. If we can do this and we get  
9                   execution from the chains, we should get a lift  
10                  in our volume."

11                 Q.         Let me share with you something I  
12                 was hearing from the other distributors and tell  
13                 me if you think this is right.

14                         My sense is you became the leader  
15                         amongst the distributors in terms of what as a  
16                         whole they were willing to participate in?

17                                 The other distributors sort of  
18                                 presented that they went along with whatever the  
19                                 program is. But when Mark VII bawked, the  
20                                 programs were changed and then they went along  
21                                 with the other programs? That's the way it's  
22                                 kind of presented to me.

23                         A.         That's a fair assessment. Yes,  
24                         sir.

25                         Q.         Did you put together any programs

1 Q. Is that something you do every year  
2 with the brand or is it something you do on your  
3 own?

4 A. Every year.

5 Q. When you sit down with the brand  
6 representative?

7 A. We will sit down with every  
8 supplier's brand representative and they will add  
9 -- the bigger suppliers will say, 'Well, we're  
10 willing to do this and this and this, if you do  
11 this'. They've been in all week doing these  
12 things for '08.

13 A smaller brand compared to our  
14 overall portfolio mix, I will sit down with Mike  
15 Ryan and say, "I'm the brand manager, but most of  
16 our buy in is going to be driven through this  
17 programming with this chain, but we've got to get  
18 our distribution up. So how do we want to  
19 allocate this 25 or 30 cents?"

20 Then he will, in turn, in his  
21 dealings with Mike Cernoch tell Mike, you know,  
22 "I've got 30 cents to spend, and if we commit to  
23 these following programs, that leaves me seven  
24 cents a case times 40,000 cases. I've got \$2800  
25 for incremental programming."

1                   So that's how it works. You know,  
2 we pretty much determine it. Sometimes with a  
3 larger supplier they'll try and get you to spend  
4 beyond what the brand will support, and you have  
5 to say no. That's the negotiation process.

6                   Q.       So here's what I hear you saying,  
7 is that you come up with a budget with the brand  
8 manager of what it is you think that you can  
9 commit to advertising the brand?

10                  A.       Correct.

11                  Q.       Then you take that to the brand  
12 representative and say, 'Here's what I think we  
13 can do'?

14                  A.       Correct.

15                  Q.       The representative may say, 'I  
16 think that's a little cheap' or 'Gosh, you're  
17 generous', or what have you. You may have to  
18 jawbone a little bit over whether they'd like you  
19 to do a little more?

20                  A.       Correct.

21                  Q.       Here's the sort of things I'm going  
22 to commit to.

23                  A.       Correct.

24                  Q.       During that process, you're saying,  
25 'Hey, I want to get tickets to this game because

1 he's still aggravated when we were out of  
2 product' --

3 A. Correct.

4 Q. -- 'years ago'?

5 A. Right.

6 Q. 'I think that will help'?

7 A. Correct.

8 Q. Are you obliged to do this?

9 A. No.

10 Q. It's just something you think is  
11 good for business?

12 A. Exactly.

13 Q. If you said, 'Look, I'm not going  
14 to put any money into advertising this year', a  
15 Stewart's might not be happy, but what can they  
16 do about it?

17 A. I think they'd pull the brands.

18 Q. You think they'd pull the brands.  
19 So you think they expect you to do some  
20 advertising?

21 A. Oh, without a doubt. Yeah.

22 Q. Whether it's adequate from their  
23 perspective or not, all things considered, they  
24 may argue with you?

25 A. Yeah, it's back and forth.

1 Q. Were you forced to buy these wagons  
2 or budgets or any other POS material by  
3 Stewart's?

4 A. Not forced, just encouraged.

5 Q. If you didn't want to, you didn't  
6 have to; is that fair to say?

7 A. That's fair.

8 Q. Any other franchise fee that you  
9 can think of that you were required to pay to  
10 enter into the relationship or continue in it?

11 A. Not that I recollect.

12 MR. KILLION: Let's take a little  
13 break.

14 (Whereupon, a break was taken.)

15 BY MR. KILLION:

16 Q. Do you know what a 'sunk cost' is?

17 A. Sunk cost? No, I can't say I do.

18 Q. Or a 'sunk investment'?

19 A. No. I'm not familiar with that  
20 term.

21 Q. A sunk cost or sunk investment  
22 would be one that you can't recover. It costs  
23 you something you'll never be able to get back.

24 Assuming I'm right in my definition  
25 here, do you have any sunk cost or investment by

1 reason of carrying the Stewart's line?

2 A. That I won't get back?

3 Q. Right. Or haven't gotten back?

4 A. Or haven't gotten back? Well, I  
5 would say that the money I've invested in the  
6 brand, for certain, over the period of time  
7 because I don't have an opportunity to make any  
8 more profit on it.

9 Q. Anything else?

10 A. Not offhand.

11 Q. Has your company made any  
12 investment in terms of a cost or expense that it  
13 hasn't already recouped by virtue of carrying the  
14 Stewart's line of products?

15 A. I'd have to really analyze that. I  
16 couldn't speak to that offhand.

17 Q. Well, as you sit here today can you  
18 think of anything?

19 A. I can't think of anything offhand.

20 Q. What percentage of the overall  
21 sales has been represented by the Stewart's brand  
22 on average over the years of Mark VII?

23 A. As a percentage, it probably would  
24 have been in the range of about -- any given  
25 year -- 2 or 3 percent.

1 Q. Did you ever promise to Stewart's  
2 that you would carry the brand for any particular  
3 period of time?

4 A. No.

5 Q. Did you ever promise to Stewart's  
6 that you would sell a certain amount of product  
7 over any particular period of time?

8 A. I committed to annual volume goals.

9 Q. Anything beyond that?

10 A. No, sir.

11 Q. Do you claim that Stewart's made  
12 some sort of representation to you that you  
13 relied upon that hasn't been fulfilled?

14 A. Well, by the termination regarding  
15 compensation, yeah.

16 Q. So you think there should be  
17 compensation for the termination?

18 A. Yeah.

19 Q. Were you promised there would be  
20 compensation upon termination?

21 A. No. I believe there was something  
22 in the contract that they proposed for us to  
23 sign. I believe there was a formula in there. I  
24 haven't looked at it in so long, but that led me  
25 to believe there would be.

1                   Although, we didn't sign the  
2                   contract because we found provisionals to the  
3                   owners. So we spoke to the Director of Licensing  
4                   about it. John Gianelli I think his name was.

5                   REPORTER'S NOTE: I'm sorry. I  
6                   didn't hear the last name.

7                   THE WITNESS: John Gianelli,  
8                   G-I-A-N-E-L-L-I. He was Director of Licensing.

9                   BY MR. KILLION:

10                  Q.           Other than what might be contained  
11                  in the draft of an agreement, were any promises  
12                  made to you by Stewart's that were not fulfilled?

13                  A.           No, I don't recall any.

14                  Q.           Let's talk about the formula. What  
15                  was the formula?

16                  A.           I don't recall the formula, but  
17                  it's in their proposed agreement. It should be  
18                  in our documents. If my recollection is right,  
19                  there was some type of a -- that was one of the  
20                  things we objected to. It was a formula that  
21                  they had in the event of termination.

22                  Q.           You objected to it?

23                  A.           I believe so.

24                  Q.           Did it get modified?

25                  A.           No. When I spoke with John Gianelli

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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Day Distributing Co., a Minnesota corporation; Mark VII Distributors, Inc., a Minnesota corporation; Sandstone Distributing Co., Inc., a Minnesota corporation; Needham Distributing Co., Inc., a Minnesota corporation; and Rohlffing of Duluth, Inc., a Minnesota corporation,

Plaintiffs,

vs. Civil File No. 0:07-cv-01132 (PJS/RLE)

Nantucket Allserve, Inc., f/k/a Stewart's Beverages, LLC, and d/b/a Cadbury Schweppes Americas Beverages, a Delaware corporation,

Defendants.  
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DEPOSITION

The following is the deposition of FRANK WARNER III, taken before Jean F. Soule, Notary Public, Registered Professional Reporter, pursuant to Notice of Taking Deposition, at the offices of Faegre & Benson, 2200 Wells Fargo Center, Conference Room 22K, 90 South Seventh Street, Minneapolis, Minnesota, commencing at 9:03 a.m., Monday, October 22, 2007.

\* \* \*

1 Q. What brands are you carrying today?

2 A. Beer brands, we're basically an  
3 import house, Guinness. For Anheuser-Busch we  
4 carry something called InBev brands.

5 Q. InBev?

6 A. InBev.

7 Q. I-n-B-e-v?

8 A. Yes, European brands, Stella Twa  
9 Bassale (phonetic), for example.

10 Q. Are those bottles?

11 A. Bottles and kegs. Rolling Rock;  
12 Labatt from Canada; from the state of Minnesota,  
13 Grain Belt Premium.

14 Q. Is that actually brewed here?

15 A. At Schells Brewery in New Ulm.

16 Q. Do you carry the Schells line, too?

17 A. Yes, I do, out of Summit Brewery in  
18 St. Paul; and the German, German products  
19 Palander, Sapten and Warsteiner?

20 Q. Warsteiner?

21 A. W-a-r.

22 Q. S-t-e-i-n-e-r?

23 A. Yes, and those are the major  
24 players.

25 Q. Who do you deal with over at

1 Summit?

2 A. Mark Stetrud and Jeff Spaeth.

3 Q. Mark is the president?

4 A. Yes.

5 Q. How about soft drinks, do you carry  
6 any soft drinks?

7 A. With the exit of the Cadbury  
8 Schweppes, I'm still carrying a product called  
9 Orange Crush.

10 Q. Who manufactures or bottles that?

11 A. It's Cadbury Schweppes.

12 Q. That was big when I was a kid. I  
13 don't know if it's still hot, but that was the  
14 big thing. You and I are kind of the same  
15 vintage. I got a year on you, but that was the  
16 thing.

17 Any other soft drinks?

18 A. No.

19 Q. Now, I gather the following is  
20 true, that for your beer lines that you carry you  
21 do have an area, an exclusive area?

22 A. Yes.

23 Q. And are any of these such that you  
24 have the entire state of Minnesota for your beer  
25 lines?

1           A.       It would have been people at Rex  
2     Distributing, but Rex Distributing does not exist  
3     any longer.

4           Q.       And you mentioned Rex earlier in  
5     conjunction with the lawsuit with Miller Brewing.  
6     What's Rex? I've heard of it before.

7           A.       Rex was -- Rex as the  
8     Minneapolis/St. Paul Pabst Blue Ribbon  
9     distributor. The distributing was western  
10    southern suburbs, Pabst distributor, and they had  
11    a relationship, a friendship.

12                    The Cable Car -- the Cable Car  
13    connection as it was explained to me by Mike  
14    Stouffer when we went out into the street to talk  
15    to people was that Stouffer had worked for the  
16    Pabst distributor in Denver before he went with  
17    Cable Car, so he was -- he had chosen the beer  
18    network of wholesalers because he was familiar  
19    with how beer wholesalers worked, and he thought  
20    in his mind Stewart sodas was an item that was a  
21    pretty good fit for a beer wholesaler.

22           Q.       But I'm still trying to figure out  
23    where Rex fits into all of this. You're telling  
24    me Rex had --

25           A.       Rex was being the largest

1 wholesaler for that brand, Pabst. The  
2 familiarity between the two, the fact that this  
3 guy worked for Pabst wholesaler. As he was going  
4 to expand the territory for Cable Car, he was the  
5 national guy. As he was going to expand it,  
6 these were leads. If you knew who the biggest  
7 market was in Minnesota was, Minneapolis, it  
8 would follow that he would go to that person  
9 first and say, here's my soda, you know, here's  
10 its attributes. Is it something, you know, I can  
11 get to you take on? It very -- to me, it made  
12 sense, logical way; and once the biggest guy had  
13 said yes to Cable Car Beverage, we'll take it on,  
14 then here's my friend Bob Day, here's my friend  
15 Dave Needham.

16 Q. I'm with you now. So what you're  
17 saying is Rex was the first one to bring it into  
18 his distributorship?

19 A. And then a network was created  
20 around him.

21 Q. Were these gentlemen friends,  
22 Mr. Needham, was it Rex, was that his name?

23 A. Bill Meyers -- I'm sorry, George  
24 Meyers was the owner.

25 Q. So George and Mr. Needham and

1 A. Sure.

2 Q. Let me tell you what this looks  
3 like to me and you tell me, no, Bill, you're  
4 wrong.

5 It looks to me like you had in mind  
6 doing a number of different things here,  
7 including setting up a program where you could  
8 have your truck staged for the delivery the  
9 following day and loaded in the evening, is that  
10 one of the objectives?

11 A. Yes.

12 Q. And that would add to efficiency  
13 and savings for your company?

14 A. Yes.

15 Q. Another purpose was you wanted some  
16 additional office space, that was another purpose  
17 for the building?

18 A. Yes.

19 Q. Another was you wanted some  
20 additional space to store product, correct?

21 A. Yes.

22 Q. Now, and what you've told me so far  
23 is you've chose 26,000 feet because that was the  
24 maximum density the city would give you at that  
25 time?

1           A.       Twenty-eight thousand.

2           Q.       Twenty-eight, excuse me.

3                    My question would be, let's say you  
4 knew you weren't going to have the Stewart's  
5 line, but you say, well, I guess all I need  
6 really is 3,000 square feet and I'm not going to  
7 build this part we see here now as devoted to the  
8 Stewart's line?

9           A.       I couldn't tell you I'd use that  
10 line of thinking.

11          Q.       In fact, you would have built it  
12 exactly the same way; isn't that true, sir?

13          A.       I don't know what the board would  
14 have approved.

15          Q.       At least to say you wouldn't have  
16 built it the same way would be speculative; is  
17 that fair, sir?

18          A.       Well, it's all specula -- yeah.

19          Q.       Fair enough. All right, so let's  
20 go back, then, to the period of time when you're  
21 first taking on the Stewart's line. There were  
22 marketing programs that were available to you, do  
23 I understand that correctly?

24          A.       During the time we had Stewart's,  
25 yes.

1 payment of a certain size?

2 A. I would not. It would -- it  
3 would -- the only thing I would have had say on  
4 was initially how much money we were -- you know,  
5 we'd try to sit down and budget a little bit. It  
6 was an informal process, and Greg, you've got  
7 this kind of money, we'd like to see this kind of  
8 result, and if we weren't -- when I looked at the  
9 financials at the end of the month, if we weren't  
10 getting those kind of results, then I would have  
11 come back and asked for something.

12 Q. I'm with you. So it's like most  
13 organizations, you've got a budget that's  
14 available to you, you stay within the budget,  
15 okay, we're going to look at the results and make  
16 sure that we're getting our bang for the buck,  
17 but you've got authority to spend money within  
18 your budget, if you need something else, you'd  
19 better come around, fair enough?

20 A. Fair enough.

21 Q. I want to get to your  
22 understanding, then, of the different marketing  
23 programs. You said there was a partnership  
24 program?

25 A. Lunds -- Lunds has a vendor, I

1 think it's called Vendor Partnership.

2 Q. And is that something that exists  
3 today, to the best of your knowledge?

4 A. It -- it might. I don't know. I  
5 don't know.

6 Q. It is something that existed when  
7 you carried the Stewart's line?

8 A. Correct.

9 Q. Throughout that period of time?

10 A. Throughout at least the period of  
11 the 2000s where -- that I provided the  
12 documentation for.

13 Q. So let's take the period 2000 to  
14 2006, from, to the best of your knowledge, the  
15 beginning of this program to the ending of your  
16 carrying of the Stewart's line. Fair enough?

17 A. To the best of my knowledge. I  
18 don't have the --

19 Q. You're saying it may have gone to  
20 1999, or something like that, but you know it was  
21 2000 to 2006, is that a fair way to describe it?

22 A. I think so. I can't say for  
23 certain.

24 Q. Well, let's stay within that time  
25 frame, then, and I understand that you may be off

1 THE WITNESS: No. Yeah, I didn't.  
2 Greg Borhor now works for Cadbury Schweppes, so I  
3 couldn't talk to him.

4 BY MR. KILLION:

5 Q. So to get ready you looked at some  
6 documents and talked to counsel?

7 A. Yeah. I just tell the truth as I  
8 recall it.

9 Q. And I'm not getting into any  
10 details, I'm just trying to find out what the  
11 stages were. Did you do anything besides review  
12 documents and talk to counsel to get ready? No?

13 A. No. Was I supposed to?

14 Q. I'm not indicting you, believe me.  
15 I'm just trying to get out what the answer is.  
16 All right.

17 What kind of payments during the  
18 period of time you've been with Day, which is  
19 some number of years, what payments has Day made  
20 to Cadbury, Schweppes, Stewart's or any of the  
21 companies that have controlled the Stewart's  
22 line?

23 A. Well, we purchased hundreds --  
24 hundreds of thousands of cases of product from  
25 them. Those kind of payments?

1 umbrella thing might work out. You've got a  
2 promotion where you want to use an umbrella?

3 A. Correct.

4 Q. And so if you want to do that  
5 promotion, the umbrella is going to cost \$50, and  
6 maybe you've got ten stores you're going to put  
7 it in, so maybe you're looking at about a \$500  
8 hit?

9 A. That could be, sure.

10 Q. And half of that would be paid for  
11 by Cadbury and then half of it by Day?

12 A. Correct. That's the way I would  
13 envision it.

14 Q. Now, did Cadbury say you've got to  
15 buy these umbrellas?

16 A. I -- I don't know.

17 Q. Are you aware of Cadbury ever  
18 saying you've got to buy one of these umbrellas?

19 A. Other than to -- got to, no. I  
20 wouldn't have had that conversation. I know I  
21 went back when I -- when I put the stuff -- when  
22 I looked over the stuff that we gave you is where  
23 I saw the co-op thing about POS, and that's why I  
24 felt comfortable saying that. I don't -- never  
25 saw whatever was said to Greg Borhor.

1 Q. As far as you know as you sit here  
2 today, purchasing umbrellas or participating in  
3 programs was optional today, is that a fair  
4 statement?

5 A. Well, it's a -- it's a hard  
6 question to ask because we could have felt that  
7 it was -- that it was imperative that we did  
8 without it being said.

9 Q. That's why I'm asking you. As far  
10 as you know, I don't -- can you --

11 A. I don't know how it was put to --  
12 to Greg Borhor, really. You know, I -- I don't  
13 know.

14 Q. Let me try it another way. You're  
15 not here today to testify that Stewart's said  
16 that they had to participate in any particular  
17 program?

18 A. I can't -- I did not have that  
19 conversation, no, I did not.

20 Q. And you're not here to testify to  
21 that effect?

22 A. I couldn't.

23 Q. That's all I'm trying to get at.

24 So as far as you know, these  
25 programs that were offered by way of cooperative

1           A.       I believe we -- I believe we were  
2       in 24.

3           Q.       And the price you paid to Stewart's  
4       for the pop that you then resold was a bona fide  
5       wholesale price?

6           A.       Oh, I believe so.

7           Q.       Did you ever have any time when you  
8       lost money on the Stewart's line?

9           A.       I probably wouldn't have looked  
10      at -- I don't recall, no, not that I can  
11      remember.

12          Q.       Did Day, to your knowledge, make  
13      any payments to Cadbury or any related parties  
14      for the right to enter into the distributorship  
15      or continue in the distributorship?

16          A.       It -- like I said, the -- whenever  
17      we did that, Bob Day did it, and I wasn't privy  
18      to it.

19          Q.       Let me ask it another way. As the  
20      representative of the company pursuant to this  
21      notice of deposition you have before you, can you  
22      testify to any payment made by Day to Stewart's  
23      or any related company for the right to enter  
24      into the business of carrying the Stewart's line?

25          A.       I understand. No, I found no such

1 document.

2 Q. And you looked?

3 A. Yes.

4 Q. Did you find any such document that  
5 would support a payment made to Cadbury or  
6 related party for the right to continue to carry  
7 the Stewart's line?

8 A. The payments -- the only payments I  
9 found I've given as -- in my stack of evidence  
10 here, that we participated with them in co-op  
11 payments to Lunds, Byerly's, POS, those type of  
12 things, and that's what I've provided.

13 Q. And all you can say is here are the  
14 documents, they say what they say, you don't know  
15 anything beyond what they say?

16 A. That's -- that would be correct.

17 Q. And you're not here to testify that  
18 Day was required to make those payments in order  
19 for it to continue to carry the Stewart's line?

20 A. I -- I was never -- I -- not that I  
21 know of.

22 MR. KILLION: Let's stop for a  
23 little bit.

24 (Break from 11:49 to 1:07.)

25 MR. KILLION: Exhibit No. 4 is

1 BY MR. KILLION:

2 Q. I was looking through my notes from  
3 earlier this morning, I just want to clarify a  
4 couple of things.

5 You talked about your initial  
6 orientation with someone associated with  
7 Stewart's where you were being introduced to the  
8 marketing of the brand and you went to T Wrights  
9 in Deephaven and the like.

10 A. Yes.

11 Q. Tell me again who that individual  
12 was?

13 A. Mike Stouffer.

14 Q. And it sounds like, from what you  
15 were telling me this morning, you folks put a  
16 fair amount of effort into developing the brand  
17 over the years?

18 A. I feel so, yes.

19 Q. And you think, certainly, the  
20 success you enjoyed with the brand was, in large  
21 part, attributable to your good efforts in  
22 developing it?

23 A. I'd like to think so.

24 Q. And certainly no one guaranteed you  
25 you would necessarily have success, you

1 understood it was something you had to obtain  
2 through your good work, is that fair to say?

3 A. Yes. In the sales and distribution  
4 area that's where we go, where hopefully it  
5 leads.

6 Q. You're not guaranteed it, but if  
7 you work hard and things work out right you'll  
8 successful, could be you're not successful?

9 A. So far it's been successful.

10 Q. Nobody guaranteed you to be  
11 successful?

12 A. The only guarantees made on a  
13 consumer product are quality and whatever else  
14 they can bring to the table as far as marketing.

15 Q. In other words, you're told we'll  
16 provide a quality product and support, but  
17 success is dependent on your efforts?

18 A. In part, sure.

19 Q. No guarantees, true?

20 A. If there are, they're implied, but  
21 I -- I always -- I rely on what we do as our  
22 plan.

23 Q. Did anybody ever tell you,  
24 associated with Cadbury, that you were guaranteed  
25 you'd be successful in carrying this product?

1           A.       Well, as they were trying to get us  
2       to take it, I can't imagine they'd tell us we  
3       were going to fail, but I don't -- you know, I  
4       don't recall that success was implied at that  
5       point.

6           Q.       Pardon me?

7           A.       I don't think suc -- automatic  
8       success on my doing, I believe that is probably  
9       up to Day Distributing.

10          Q.       What?

11          A.       I believe Day Distributing had the  
12       control of some of this success, sure, certainly.

13          Q.       I want to talk a little bit, too,  
14       about the element of the workout you did.

15                    Did you discuss the add-on of the  
16       26,000 square feet with anyone associated with  
17       Stewart's?

18          A.       I did not personally.

19          Q.       Do you know if anybody did?

20          A.       No, not to my knowledge.

21          Q.       Do you know whether Stewart's even  
22       knew you were going to build that large of an  
23       addition?

24          A.       I would assume that Mike Cernoch,  
25       Cernoch dealt with my people, knew about it. I

1 percent, industry growth factor?

2 A. Right.

3 Q. But yet your expert shows an  
4 increase in sales over time based on his  
5 analysis; is that correct?

6 A. Based on Day Distributing's  
7 performance, I believe, rather than this report.

8 Q. And so you were what, going to do  
9 better than the industry trend?

10 A. Well, I told you the goal that --  
11 the goal in 2006 was 30,000 cases, and that would  
12 have been better.

13 Q. Did you have any kind of a written  
14 contract with Cadbury Stewart's or related  
15 companies?

16 A. Not that I could find.

17 Q. Any kind of a verbal contract?

18 A. I assumed the contract, like in so  
19 many other cases and so many other products, when  
20 you get -- when you sit down and you get -- some  
21 people call it the annual business plan, some  
22 other -- in their case they call it challenge for  
23 growth, setting out numbers for us to obtain  
24 goals, that's -- that's an implied -- that's the  
25 same kind of franchise situation I have with --

1 with the brewers, you know, they sit down with  
2 their wish list of things and set out the  
3 priorities and what to go after, and I've always  
4 felt that those were things that you wanted to  
5 achieve if you wanted to continue to play the  
6 game with that particular company.

7 Q. My question was, did you have an  
8 oral contract?

9 A. Other than -- no.

10 Q. You had some assumptions in your  
11 own mind?

12 A. Yes.

13 Q. But I'm talking about now  
14 agreements, verbal agreements between Day and  
15 Stewart's of which you have personal knowledge?

16 A. The -- like I --

17 Q. Just -- can you answer that yes or  
18 no?

19 A. I do not --

20 Q. It's one thing to say I had an  
21 impression --

22 A. I do not have an oral, per se,  
23 agreement. I felt I had a implied -- implied  
24 agreement.

25 Q. That's fine, and I can get to that,

1           A.       Yes.

2                       The next page is -- the next page  
3 is showing you what Cadbury was bringing to the  
4 table that year. They were targeting -- they  
5 were going to have promotions and programs set up  
6 at Cubs, Lunds, Rainbow, Kowalski's and the  
7 general market, and that means that in April and  
8 June and August, October and December, Cadbury  
9 would approach -- they'd approach the Cubs and  
10 cut the deal for these prices, and we were  
11 expected to, you know, honor those, and we did.

12           Q.       Could you decline if you wanted to?

13           A.       I believe -- I -- we never did. We  
14 felt that it -- we felt that this -- well, we  
15 just -- I felt that there was pressure, you know,  
16 to -- to go along with their programs.

17           Q.       Would you be surprised if some of  
18 the distributors elected not to go along with the  
19 programs?

20           A.       I -- no, I would not. In 2004, I  
21 would have been surprised. Later on in our  
22 relationship it probably wouldn't have surprised  
23 me.

24           Q.       Why is that?

25           A.       Well, they were trying to -- they

1 were trying to set price on our front lines, and  
2 we did have some push-back the last year or so  
3 there, because of that.

4 Q. Lower prices or higher prices?

5 A. I wanted to go higher front line  
6 than they're suggesting.

7 Q. Did you?

8 A. Yes.

9 Q. You went higher?

10 A. Yes.

11 Q. So you declined to follow the  
12 suggested price?

13 A. Yes.

14 Q. And did you have a breakdown where  
15 you weren't as happy to go along with the  
16 programs as time progressed as well?

17 A. It reverted back to margin, to  
18 gross margin, profit margin.

19 Q. Here's what I'm trying to say, and  
20 maybe I'm being vague. I asked you, would you be  
21 surprised to learn that in 2004 some of the  
22 distributors declined to go along with the  
23 promotional program. You said I would be  
24 surprised to learn that happened in 2004 but not  
25 later, and I said, well, what happened later that

1       agreed prior to implementation of program, so you  
2       could vary it, but everybody had to be on board  
3       with it. Is that fair to say?

4             A.       Yes.

5             Q.       And I gather these were presented  
6       to each of the distributors in the area, to your  
7       knowledge?

8             A.       To my knowledge.

9             Q.       But it wasn't in a group meeting,  
10       it was individually?

11            A.       Correct.

12            Q.       And this was good for business,  
13       would you say, these programs?

14            A.       It -- it was -- it certainly kept  
15       us important to Lunds, Byerly's. Cub I'm not  
16       certain. I don't think every retailer ended up  
17       looking at these things the same.

18            Q.       And to the extent you ever made a  
19       payment to Stewart's with respect to any of these  
20       promotions, it was more a reimbursement than a  
21       payment, is that fair to say?

22            A.       To -- is there -- I'm not -- say  
23       that again, please.

24            Q.       Sure.

25                    The way it works is on these

1 discounts there would be payments made to the  
2 grocer, is that fair to say?

3 A. He would -- he would get -- in this  
4 particular promotion plan, he would -- the  
5 retailer would realize either free goods or a  
6 lower price.

7 Q. Oh, so it would be up front?

8 A. It would be right up front for him,  
9 on these particular programs.

10 Q. I'm with you, okay. And you're the  
11 one who collects the dollars?

12 A. Yes.

13 Q. So then you'd make a statement over  
14 to Cadbury?

15 A. And then rebill Cadbury for their  
16 share.

17 Q. Of the discount?

18 A. Yes.

19 Q. So if the usual price is \$2 and you  
20 do it for \$1, so there's \$1 discount, you'd bill  
21 or send a statement to Cadbury to pay \$0.50?  
22 Yes?

23 A. Yes.

24 Q. Anything more on this?

25 A. No.

1 could have said that?

2 A. Yes, I could have.

3 Q. And, then, the vendor partnership  
4 invoice, what is that?

5 A. That's -- that's a Lunds particular  
6 thing. Once again, what we're seeing is a  
7 change -- kind of a change in the way they  
8 were -- Cadbury was dealing with the big stores  
9 compared to how Snapple was, I believe.

10 Q. Is this one of your documents, too?  
11 I can't tell.

12 A. See, they -- this -- this doesn't  
13 have Day's name on it.

14 Q. I don't see it, no. Do you know if  
15 this is one --

16 A. The \$2,000 is an amount that --  
17 that I'm used -- that I was used to seeing.

18 Q. Do you have any sense of what this  
19 is?

20 A. This would have been -- this was  
21 a -- a vendor partnership thing was a Lunds  
22 Byerly's thing, and the relationship was a  
23 Cadbury Schweppes/Lunds Byerly's relationship,  
24 and this money went to secure floor display and,  
25 if I'm correct, if I remember right, the in-store

1 advertising fliers, and that \$2,000 probably goes  
2 to pay for some printing for that in-store flier.

3 It -- when I asked -- when I asked  
4 Rick about this, he also said that in some cases  
5 it would even include a picture in the newspaper  
6 of it.

7 Q. Did you, you being Day, ever  
8 participate in any of these presentations to  
9 Lunds or Byerly's?

10 A. Not -- no.

11 Q. And so what you anticipate is there  
12 was something worked out by way of a promotion  
13 with Lunds that probably came to the tune of  
14 \$4,000 and half was picked up by Stewart's and  
15 half by you folks?

16 A. Yes.

17 Q. And, again, this is one you could  
18 have said I choose not to do it and you could  
19 have been relieved of it?

20 A. No. If I thought I could have, I  
21 would have, but -- yeah, any -- you could say no,  
22 but we felt great pressure on this, on these -- I  
23 don't think there was an option.

24 Q. Why do you say that?

25 A. Well, on Lunds, there's some arm

1 bending happening right from the start here, on  
2 Cadbury's, and, of course, it would have to come  
3 to us.

4 Q. Pardon me? Well, let me ask you  
5 this. Did you ever once say I'm not going to do  
6 it and somebody said we're going to terminate  
7 your distributorship if you don't?

8 A. Those things definitely could have  
9 been implied, but not -- yeah, but I can't tell  
10 you when, where, how. I felt -- I can tell you I  
11 felt that I needed to go along with these.

12 Q. And my question, sir, was did  
13 anyone ever -- and I want to know who it was if  
14 it was and when and who else was there, did  
15 anyone ever say if you don't participate in this  
16 program, you'll be terminated as a distributor?

17 A. No, nobody -- nobody would say  
18 that, I don't believe.

19 Q. Well, and, also, these are the same  
20 folks that said they'd like you to charge a  
21 higher price, and you had the gumption to resist  
22 that as well, didn't you, sir?

23 A. Well, yes.

24 Q. So you knew that if, in fact, you  
25 didn't want to participate in a program, if you

1 this is a franchise, that you had some sort of  
2 rights to the distributorship indefinitely, and  
3 I'd give you an opportunity. Is there anything I  
4 haven't covered that you think supports your  
5 position in the case and that I may hear about at  
6 trial?

7 A. I -- I can't think of any --  
8 anything I haven't covered. I didn't prepare a  
9 sum -- you know, a summary statement for you  
10 today.

11 I spent money in good faith, and we  
12 tried to do the best job we could, and we got  
13 canceled, so --

14 Q. But when you say you spent money,  
15 you made a fair amount of money over the years,  
16 too?

17 A. I don't deny we made a profit.

18 Q. You made more than you spent,  
19 that's making a profit, I guess, huh?

20 A. If you say. I -- I didn't bring  
21 those numbers.

22 Q. Well, let me ask you in another  
23 way. Is there some investment you made into this  
24 that you haven't already recouped over time?

25 A. I don't think that -- I don't look

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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Day Distributing Co., a Minnesota corporation; Mark VII Distributors, Inc., a Minnesota corporation; Sandstone Distributing Co., Inc., a Minnesota corporation; Needham Distributing Co., Inc., a Minnesota corporation; and Rohlffing of Duluth, Inc., a Minnesota corporation,

Plaintiffs,

vs. Civil File No. 0:07-cv-01132 (PJS/RLE)

Nantucket Allserve, Inc., f/k/a Stewart's Beverages, LLC, and d/b/a Cadbury Schweppes Americas Beverages, a Delaware corporation,

Defendants.  
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DEPOSITION

The following is the deposition of DAVID E. NEEDHAM, taken before Jean F. Soule, Notary Public, Registered Professional Reporter, pursuant to Notice of Taking Deposition, at the offices of Faegre & Benson, 2200 Wells Fargo Center, Conference Room 22K, 90 South Seventh Street, Minneapolis, Minnesota, commencing at 9:08 a.m., Tuesday, October 23, 2007.

\* \* \*

1 want to know?

2 Q. And your two boys are Greg and  
3 David?

4 A. Greg and Gary.

5 Q. Greg, though, G-r-e-g?

6 A. Yes. Gregory is his name.

7 Q. Greg and Gary. What is your dad's  
8 name?

9 A. Anthony.

10 Q. Did he go by Tony?

11 A. Yes.

12 Q. And do I understand correctly,  
13 then, Tony first gets into the beer distribution  
14 business as an owner in 1958?

15 A. Correct, but he sold beer for Hamms  
16 Brewing Company from prior to prohibition.

17 Q. Fair enough. But it's in '58,  
18 then, that he becomes a --

19 A. Correct.

20 Q. -- distributor himself?

21 A. Correct.

22 Q. Remember to wait until I'm done. I  
23 get a sense I've got to talk real fast or you're  
24 going to tell me yes or no, so be patient with  
25 me. Okay?

1 A. Be patient with me.

2 Q. It makes me anxious.

3 A. Be patient with me. I'm just a  
4 little nervous, but --

5 Q. That's fair enough. That's why  
6 we're going to get you a little comfortable by  
7 some general background type questions here. I  
8 understand.

9 So Tony then in '58 gets the Grain  
10 Belt rights --

11 A. Yes.

12 Q. -- over here in Minneapolis?

13 A. In St. Paul, St. Paul proper and  
14 Mahtomedi and White Bear.

15 Q. And he dies, though, in '66?

16 A. Correct.

17 Q. And do you then take over the  
18 business?

19 A. Well, my ma was still alive, but  
20 yes. I -- I ran it.

21 Q. Your mom owned it?

22 A. Yes.

23 Q. Did you become the person in charge  
24 of the business?

25 A. Well, the president of the

1 corporation.

2 Q. And over time, then, did you add  
3 additional brands?

4 A. Oh, sure, yes. That's -- bought  
5 out three surrounding wholesalers, and then we  
6 had some additional brands, Summit, of course, in  
7 the late '80s, and Labatts, Rolling Rock. We had  
8 some -- some imports from England. That's about  
9 it, I guess.

10 Q. Do you carry these same lines  
11 today?

12 A. Yes.

13 Q. Any more, any less?

14 A. Well, you know, with the -- with  
15 the consolidation at the -- at the brewer level,  
16 you know, we -- you know, we used to be -- for  
17 example, Blatz out of La Crosse, but now it's  
18 made by Miller, you know, and it's no longer a  
19 brewer, it's a contract brew. So we still handle  
20 it, but it's not, you know, much in the -- in  
21 the -- you know, in the -- in the volume category  
22 it's probably not well representative because it  
23 just -- that's the way it is.

24 Q. How about soft drinks?

25 A. Soft drinks.

1 Q. What do you call soft drinks in the  
2 industry?

3 A. Well, soft drinks are soft drinks.  
4 We always -- we've had Stewart's, of course, and  
5 Cable Car, and we've had -- we've got -- you  
6 know, we've always had some mineral waters, and  
7 we've had -- from the Huber Brewing Company in  
8 Monroe we've had Blumers root beer, but we've had  
9 that for --

10 Q. Blumers?

11 A. Blumers, B-l-u-m-m-e-r-s (sic). We  
12 had that for 20 years.

13 Q. Do you still have that?

14 A. Yes.

15 Q. Other soft drink lines you've  
16 carried?

17 A. That -- that's all I can recall  
18 right now.

19 Q. Carbonated beverage is another  
20 phrase I've heard. Do you use that in the  
21 industry?

22 A. Mineral waters, you know, you've  
23 got sparkling or none. You know, you take  
24 LaCroix water, for example, you can buy it  
25 instill, which is no carbonation, you can buy it

1 carbonated.

2 Q. Are the soft drinks sometimes  
3 called carbonated as well?

4 A. Not normally.

5 Q. Do people call it pop anymore?

6 MR. DAHL: I do.

7 BY MR. KILLION:

8 Q. I do, too. My kids will chastise  
9 me.

10 A. I guess, you know, when it gets  
11 down south, you know, they'll -- sodas, but up  
12 here pop, yeah.

13 Q. If you go to Texas, they call it  
14 Coke. Did you know that? Across the board it's  
15 Coke? Is it a Pepsi Coke, or is it some other  
16 kind of Coke? A little piece of history there  
17 I've picked up along the way.

18 Let's take today. What's the  
19 corporate hierarchy within Needham? What do you  
20 call it, Needham Distributor?

21 A. Needham Distributor Company,  
22 Incorporated.

23 Q. And I'll just call it Needham.

24 A. Fine.

25 Q. And I'm not talking about you

1 a document of some sort?

2 A. He wrote us and asked for some  
3 specific areas or for Greg to write it all out,  
4 which he did, and that's where -- where --  
5 somewhere it just ended, and I don't know -- I  
6 asked -- I don't think they ever sent an  
7 agreement.

8 Q. Have you seen some documents along  
9 the lines of what you're talking about?

10 A. Just a request for our specific  
11 areas.

12 Q. So it's a request that comes from  
13 someone in New York to identify --

14 A. The same guy called me --

15 Q. Excuse me. Remember?

16 A. Excuse me.

17 Q. It sounds to me like what you're  
18 saying is you've seen a request in your files  
19 from someone in New York for you to identify what  
20 is the territory you are serving. Is that a  
21 correct statement?

22 A. He wanted specific boundaries on a  
23 territory.

24 Q. And Greg responded to that?

25 A. Correct.

1 Q. And is that correspondence within  
2 your files?

3 A. I believe so.

4 Q. Have you seen it?

5 A. I -- I seen Greg's response.

6 Q. When is his response, when is it  
7 dated?

8 MR. KILLION: Has that been  
9 produced?

10 MR. DAHL: I believe it has. I  
11 think there's an e-mail somewhere in the  
12 documents which references an agreement. It's  
13 been produced.

14 BY MR. KILLION:

15 Q. Is that what you're talking about,  
16 an e-mail? I'll try to find it during a break --

17 A. Okay.

18 Q. -- rather than force you to guess  
19 on this.

20 A. Okay.

21 Q. Any written agreement beyond  
22 whatever this e-mail may tell us by way of  
23 written agreement? Let me try to be a little  
24 more articulate.

25 A. No, no, I'm trying to -- we talk

1 about the monthly -- the business -- the business  
2 flow, you know, and nothing predicated on a  
3 specific agreement, you know. You'd set up  
4 co-ops and the rest of the stuff, and I'm saying  
5 everything acted like a -- like a two-way street,  
6 a business relationship, you know, looked that  
7 way, did that way, and now you want to hang your  
8 hat on a different deal, I don't see it.

9 Q. And I'm not trying to now argue  
10 whether you have something independent of a  
11 written agreement, I'm just trying to get now the  
12 record straight.

13 A. Okay.

14 Q. I understand that there is an  
15 e-mail of some sort that we will try to take a  
16 look at and I'll ask some questions about that,  
17 so I want to set that aside for a moment.

18 Other than whatever this e-mail may  
19 say, are you aware of any written agreement  
20 between Needham and Stewart's, and I'm using  
21 Stewart's broadly as including all these various  
22 companies that may have owned the Stewart's line?

23 A. Not that I know of.

24 Q. Are you aware of an oral agreement,  
25 spoken agreement --

1 that everything was -- we were doing business  
2 with -- with -- with people that would do  
3 business the proper way.

4 Q. Any other facts that constitute an  
5 oral agreement other than what you've told me  
6 about already in this deposition?

7 A. Nothing I can think of.

8 Q. Did you pay anything to Stewart's  
9 for the right to carry the Stewart's line?

10 A. The investment, the time.

11 Q. Let's say money, did you pay any  
12 money?

13 A. Well, see, you don't measure things  
14 like that in our business that way. You don't --  
15 you know, my investment on my end are the  
16 warehouse, the trucks, the salespeople, the  
17 buying inventory. That's my end of it. That's  
18 my investment, which is probably --

19 Q. I didn't ask you whether you  
20 invested anything in the business.

21 A. No. You asked if there was any  
22 money.

23 Q. That's right. So let's stick with  
24 what I asked you. Fair enough? This isn't  
25 argument time, this isn't time for you to make

1 your case or resist everything I asked. I'm  
2 simply saying, did you pay any money to Stewart's  
3 for the right to carry the line?

4 A. They approached me.

5 Q. Sir. Do you not understand that  
6 question?

7 A. I understand the question.

8 Q. Then answer it.

9 A. No.

10 Q. Did you pay any money to Stewart's  
11 for the right to continue to carry the line?

12 A. I was never afforded the  
13 opportunity to ask that question.

14 Q. Answer it yes or no. Did you --

15 A. No.

16 MR. KILLION: Let's take a little  
17 break.

18 (Break from 10:55 to 11:00.)

19 BY MR. KILLION:

20 Q. I want to talk about, you did  
21 mention investment, and I'd like to ask you a  
22 little bit about that.

23 Have you made any investment at any  
24 point in time to carry the Stewart's line of  
25 sodas that you haven't now already recouped? Do

1 you mean what I mean by that?

2 A. No.

3 Q. I might invest in something up  
4 front, but over time I'm going to get my  
5 investment back because I make money off of  
6 whatever I invested in, and when you get your  
7 money back, that's called recouping your  
8 investment. Have you ever heard of that?

9 A. Well, it's not --

10 Q. Excuse me. Have you ever heard of  
11 that concept, so we're talking about the same  
12 thing?

13 A. Yes.

14 Q. So that's what I'm talking about.  
15 Have you made some investment in  
16 carrying the Stewart's line of soda that you  
17 haven't now recouped?

18 A. Yes.

19 Q. What is it?

20 A. Well, to -- you don't -- the same  
21 type of accounting isn't applicable in this kind  
22 of business as it is in, say, if you were to buy  
23 a -- a gold mine, where you could, you know, mine  
24 so much gold and you'd get your investment back.

25 The investment you have is to build

1 a brand so it's a pliable brand, it will make the  
2 day-to-day expenses, and if you were to sell it,  
3 you don't use the same kind of thought. You  
4 know, blue sky is a -- is a mortgageable,  
5 sellable item in our business, saying, you  
6 know -- for example, the guy in Duluth just sold  
7 his Miller brands, which is specific areas, and  
8 he sells it for -- it is a negotiable item for so  
9 much a case. So that's how you -- the  
10 terminology in the beverage business works, to --  
11 I don't know if I'm making myself clear or not  
12 but --

13 Q. Oh, I know the difference between  
14 blue sky and hard assets or goodwill --

15 A. Okay.

16 Q. -- and hard assets.

17 A. Yeah.

18 Q. And I'm talking now about hard  
19 assets, not blue sky, not goodwill.

20 My question is, do you have any  
21 kind of investment by way of expenses or costs in  
22 carrying the Stewart's line that you have not now  
23 recouped as a result of having carried it for  
24 some 20 years or so?

25 A. You talk about the ongoing expenses

1 and how to recoup them, and it just doesn't work.  
2 You can't answer your -- you know, it doesn't  
3 work that way. I think I understand what you  
4 mean, but for -- just to say, if I sold a  
5 thousand cases of Stewart's, I've paid for two  
6 square feet of the warehouse. It just don't work  
7 that way.

8 Q. Well, let's try it a different way.  
9 Are you going to get up before the  
10 judge or the jury and testify that you have  
11 invested something in carrying the Stewart's line  
12 by way of costs or expenses that you haven't now  
13 recouped over the period of time that you've  
14 carried the line?

15 A. To draw a hypothetical --

16 Q. Yes or no?

17 A. Why don't you rephrase it one more  
18 time?

19 Q. I will.

20 A. I'm not -- we're not getting -- I'm  
21 thinking, you know -- you don't do it -- you  
22 don't do it that way in our business. You  
23 don't -- you know, saying, okay, well, I've made  
24 so much and now -- now I can pay off that  
25 expense, and it just -- nothing is --

1           Q.       Well, unfortunately, in the law  
2       there is some old cases out there that, in fact,  
3       phrase it like that. So it may not work in your  
4       business, but it works in mine, so I'm going to  
5       ask you again.

6                        Are you going to testify in this  
7       case, you being Needham, one of the plaintiffs,  
8       before the judge or the jury that your company  
9       has made an investment by way of an expense or a  
10      cost that it has not recouped by virtue of its  
11      sales of Stewart's products?

12           A.       A indirect investment, you know,  
13      you're talking about --

14           Q.       Well, first of all, can you answer  
15      that yes or no?

16           A.       I can't answer that.

17           Q.       What part of it don't you  
18      understand?

19           A.       Because the terminology using -- of  
20      saying, okay, at this point in time are we  
21      looking at to recoup our investment? It's an  
22      ongoing deal. You know, we don't -- we don't  
23      stop time and saying, okay, you sold so many  
24      cases and you got this many gross dollars so  
25      that's going to pay for something.

1 Q. Have you made money off it every  
2 year?

3 A. We spent a lot of money on it.

4 Q. What's wrong with my questions, I'm  
5 having such trouble getting yes or no?

6 A. I don't know.

7 Q. More struggling than I've had in a  
8 long time.

9 A. I don't know. We're not getting --  
10 I'm thinking -- I'm thinking as a beer wholesaler  
11 and you're thinking as a -- as an investor, and  
12 an investor thinks --

13 Q. I asked you have you made money off  
14 it, you said, well, we spent a lot of money. Why  
15 are we having this trouble of me getting a  
16 straight answer?

17 A. Well, I'm not -- don't get me  
18 wrong, I'm not -- I'm trying to -- Needham has  
19 made money, yes.

20 Q. Isn't that part of your lawsuit  
21 here, you made a bunch of money off of it and  
22 you've --

23 A. No.

24 Q. -- been deprived of all these  
25 profits?

1 A. Yes, yes.

2 Q. And so you made a bunch of money  
3 over the years, and I want you just to tell me,  
4 sir, have you invested money that you haven't  
5 recouped? That's the question. You don't  
6 understand that?

7 A. Have we invested money we haven't  
8 recouped?

9 Q. True.

10 A. I -- I can't answer that. I don't  
11 know.

12 Q. So you're not going to testify that  
13 you have and --

14 A. No, I didn't say that.

15 Q. Well, if you don't know, how can  
16 you testify that you've invested money you can't  
17 recoup?

18 A. Well, I've got to --

19 Q. You're here to be a witness on  
20 behalf of your case to tell me what I'm going to  
21 experience at trial. If you're going to get up  
22 there and tell me I have these monies I've  
23 invested that I have not recouped, I need to hear  
24 about it. If you tell me I don't know,  
25 apparently you're not --

1 A. I need a time-out here.

2 Q. -- ready to get up there and  
3 testify to it?

4 A. I need a time-out.

5 Q. Excuse me. Is this to find out  
6 whether you've got a privilege --

7 A. No, no. I just -- I want him to  
8 give me -- to understand -- I'm not making any  
9 sense of your question at all.

10 Q. All right. Well, I'll try again.  
11 You're not entitled to --

12 A. No, no.

13 Q. -- discuss things --

14 A. Go ahead.

15 Q. -- other than if there's a --

16 A. No.

17 Q. -- privilege I may be invading.

18 A. No, no. I just -- I'm saying that  
19 the monies that we've invested is an ongoing  
20 deal, you know, with the trucks and the warehouse  
21 expense, and so we're here drawing a line in the  
22 sand saying, okay, we don't do things that way.

23 Q. Well, I don't care if you do things  
24 that way.

25 A. Okay.

1 Q. I really don't.

2 A. Okay. So, then, how do I answer  
3 your question?

4 MR. DAHL: Counsel, he's trying to  
5 do his best to answer your questions. You may  
6 not like his answers, but he is doing his best to  
7 answer your questions.

8 MR. KILLION: I think he's evading  
9 the question, Counsel.

10 THE WITNESS: No, I'm not.

11 MR. DAHL: Well, you're entitled to  
12 that view, but he's doing the best he can to  
13 answer them.

14 MR. KILLION: Well, it's not  
15 terribly good enough.

16 BY MR. KILLION:

17 Q. Let's get to it, all right, because  
18 I want to know the answer to this.

19 Have you got some trucks that  
20 you've purchased to carry the Stewart's line that  
21 you haven't recouped that investment?

22 A. Okay.

23 Q. Yes or no? This isn't an okay and  
24 let me see if I can avoid it, and I know that  
25 Counsel doesn't like me to be this aggressive.