A. I can't say they all were but some of them clearly were being exchanged, yes.

Q. Would it be accurate to say that the drafts exchanged between the parties would reflect what the status of the negotiations was at a particular point in time?

A. It's hard for me to say without looking at them specifically, but one would guess so ordinarily.

Q. You testified that you had a number of—you rendered a lot of advice and counseling to National Starch's board and management.

When we spoke last week, I believe you also said Mr. Greenwall—you spoke to him on a relatively regular basis regarding questions that he had and
(p. 69) would that be on a similar scale?

A. No.

Q. Was it a regular type of question?

A. I'm sorry?

Q. Was it a regular type of, you know, you got a call every other day or—

A. Frequently.

Q. In arriving at the terms of the ultimate letter of intent, was a substantial amount of time spent on the terms of the preferred stock?

A. Yes.

Q. Did the particular structure of the preferred—was it designed to appeal to a particular group of shareholders?

A. Yes.

Q. Who were they?

A. Low base shareholders.

Q. Do you recall whether Unilever's position was that they wanted as little preferred outstanding as possible?

A. I really don't remember.

Q. You testified before they wanted a cash deal.

A. They came in and asked whether a cash deal would be acceptable.

Q. Would the National Starch board of directors
(p. 70) have been required to approve a Unilever proposal that did not involve a merger?

A. I'm not sure about being required to approve. If it was a tender offer, they might have had a duty to make a recommendation to shareholders.

Q. But as far as—In every acquisition transaction where shareholder's stock is being required in one way or another, would the board necessarily render a recommendation?

A. No, they would not necessarily render a recommendation but they would consider whether to make a recommendation.

Q. You testified previously that you did not believe that Morgan Stanley had anything to do with the structuring of the transaction. Is that correct?

A. I'm not sure that I said they had nothing to do with the structure.

Q. Why don't you tell me what you did say?

A. Pardon?

Q. Why don't you tell me in your own words what you testified to? I thought that was what you said.

A. I thought I had been asked whether they had done any substantial work and I said that they had given us some advice on ratios and some other terms of the preferred stock. I didn't say they didn't do anything. They did help.

(p. 71) Q. Did they work out the guarantees or the security for the preferred stock?

A. No, they did not.

Q. I'd like to show you four documents, exhibits which have been marked for identification as AH, AI, AJ and AK.

(The documents were marked for identification as Respondent's Exhibits AH, Al, AJ and AK.)

Do you recall we had a discussion last week about those particular drafts and in that discussion—You nodded your head. I assume that means yes.

A. Yes.

Q. And do you recall in that discussion that you said to me that those were not documents that were prepared by either Cravath or DPL&G?

A. I thought they were not prepared by our firm because they didn't look like our kind of type. I don't remember talking about Cravath but they weren't prepared by us.

Q. Do you remember a chronology of events that was prepared with respect to an inquiry by the Securities and Exchange Commission?

A. Yes.

(p. 72) Q. Can you tell me how that chronology was prepared?

A. Yes, it was prepared first by Mr. Wallach who then circulated drafts to me and to Mr. Ruebhausen and to Mr. Winterer and to the other lawyers in the firm and to relevant people at the company to be reviewed, and then it was revised and sent in to the Commission and the stock exchange.

Q. At some point subsequent to Morgan Stanley and Company being retained, we stipulated that it presented its findings to the management of National Starch.

Who specifically were they presented to, do you know?

A. I don't recall everyone that was there? I do know I was present and I believe my partner, Mr. Ruebhausen, was present. I believe Mr. Pascal was present. I don't remember the others.

Q. Do you recall if any sort of a summary of negotiation points or a statement of the company's position was prepared at that point?

A. I don't believe that was done, no.

Q. I'd like to show you AL for identification.

(A document was marked for identification as Respondent's Exhibit AL.)

(p. 73) There's some writing at the top, 12/6/77. Is that yours?

A. That would be mine, yes.

Q. Looking at that document, would that refresh your recollection as to whether any sort of a statement of negotiations points had been prepared?

A. I'm not sure it would— It's entitled negotiation points so I guess it was, yes.

Q. Do you recall why that was prepared?

A. I think it was an outline of open matters that we had to have made clear.

Q. And the date of that is December 6th?

A. That's the date that's written on it.

Q. Do you recall any role that you may have had in the preparation of that document?

A. I truly don't recall the document, although that is my writing in the upper righthand corner.

Q. After Morgan Stanley presented their findings, do you recall what those findings were?

A. Yes.

Q. Could you tell me what they were?

A. My recollection is that what they reported related to ranges of valuations for the company and what would be fair and my recollection is that they said
(p. 74) that $60 to $65 per share was probably not in the range of fair to shareholders; that 65 to 70 would be fair to shareholders, and that above 70 would be very generous.

Q. And what action was taken on that basis by the company?

A. Right then or eventually?

Q. Eventually.

A. Eventually the company asked Morgan Stanley to negotiate a price.

Q. And did they in fact negotiate a price?

A. Yes.

Q. Would you describe the negotiations?

A. Yes. I of course wasn't present but they were reported back to us by the investment bankers.

As I recall, the discussions went for a day or two between Morgan Stanley and I would guess Lazard, although I'm not sure, and at a meeting they reported back that they had negotiated a price of $70 per share. That was reported to a small group.

Morgan Stanley was told that that was not sufficient from the company's point of view and that they would have to do better and they went back and negotiated and came back with a price of 73.50.

Q. Looking at Exhibits AB through AG, do those documents reflect some of the work performed by
(p. 75) Debevoise on aspects of the Unilever acquisition transaction?

A. AB certainly does. AC is, yes. AD is an agreement that we negotiated, yes. AE was a memo. AF was part of our work. AG was part of our work.

Q. You mentioned before that there was a practical duty on the part of the board.

A. Yes.

Q. And I think we spoke last week. Could you describe what type of in-house capability for analysis was present at National Starch?

A. In terms of the practical duty of evaluating the value of the company in order to decide whether to enter into an agreement with somebody, the company didn' t feel that there was a great deal of depth within the company for that size transaction.

Q. You mentioned there were two people in the accounting department.

A. No, there are more than two people but there are two major—Two people that I knew that had a lot of sophistication in the department I think is the best way to put it.

Q. You mentioned before that you felt that—over my objection of course—that you received a sufficient comfort from— or that DPL&G received sufficient
(p. 76) comfort from the Internal Revenue Service conversation regarding the transaction for the possibility that—

A. Yes.

(A document was marked for identification as Respondent's Exhibit AO.)

Q. Looking at Exhibit AO, specifically at page four—first of all, is AO notes of yours?

A. Yes.

Q. Could you look at page four of AO?

A. Yes.

Q. Could you read the first three lines?

A. Sure. "Discussed with people at group chief levels, not branch chief. Bothered a lot of people but none would say would refuse to rule. Because of novelty would go up line, go to chief counsel, might even get to treasury. 90 to 120 days but could be longer. Said no continuity of interest requirement, representation as to no liquidation as to target into new co."

Q. Thank you. And they're notes of what?

A. I could guess.

Q. Do you have any idea?

A. I would say they're a report to me at some point about discussions with the IRS.

(p. 77) MR. SAPINSKI: I would like to move the Exhibits P through AG in the second stipulation into evidence at this time, Your Honor, as documents reflective of the work performed by the Debevoise firm and of the history of negotiation with the parties.

MR. WALKER: Your Honor, to my understanding if they are moved into evidence, they are evidence. I certainly don't agree with Mr. Sapinski's description as to whether or not they are representative of the work performed and I intend to inquire briefly of the witness as to that.

We don't have any objection as to P. We don't have any objections as to Q. R I would note is not a document prepared by Debevoise. It's a letter from Cravath. I would have no objection to it going into evidence.

S, T, U we also have no objections to. V is a letter again from Cravath, Swaine and Moore, which I don't

believe this witness has identified properly for the record so I would request that that be done before it's moved into evidence.

W, X, Y, Z, AA, AB, AC, AD, AE, AF and AG are also—we would have no objection to their admission into evidence but we do note questions as to the relevance of many of these exhibits. We do not believe that they are relevant but as I understand the proce-
(p. 78) dures followed by this court that would not be a bar. We do not share respondent's view that they are relevant to this case or any of the issues.

THE COURT: I think the relevance can be argued on brief. I haven't been trying to keep score of which ones are okay by you and which ones aren't.

Maybe this would be a good time to just ask Mr. Perell whatever you wanted to about those exhibits and then we could deal with the whole batch of them perhaps if you were then satisfied with respect to all of them. That might be the simplest way of putting them all in.

Why don't we interrupt Mr. Sapinski's cross-examination and Mr. Walker can ask Mr. Perell about these exhibits and then we can wrap those up.

VOIR DIRE EXAMINATION

BY MR. WALKER:

Q. Mr. Perell, would you be able to say that the documents that have been identified by Mr. Sapinski as exhibits to the supplemental stipulation of facts are representative of the services performed by your firm?

A. Which documents?

Q. As I understand it, it's P through AG.

A. I believe it represents some of the service.

Q. My question is are these representative—

(p. 79) A. We did do these documents in connection with the work and it reflects work that we're doing—that we did.

Q. Is it a fair representation of the totality of the services rendered by your firm?

A. I honestly couldn't tell you because I haven't read them so I don't know how deep they went.

Q. Would it be fair to say that the most that can be said is that they do reflect some services rendered by your firm in connection with the acquisition?

A. They certainly do reflect that.

Q. Turning to Exhibit V for a moment, which is a letter to yourself from Mr. James Edwards of Cravath, Swaine and Moore, do you recall having received that letter and the enclosure?

A. The notes on this are not in my handwriting but I assume I received it. I have no reason to believe I didn't.

Q. Do you recall whether or not issues were raised concerning bankability of the preferred stock?

A. Yes.

Q. And do you recall whether discussions took place with respect to that issue with Morgan Stanley?

A. I believe we had some discussions with Morgan Stanley, yes.

Q. Would you just explain briefly what that issue
(p. 80) with respect to bankability of the preferred stock was?

A. Whether the terms of the preferred stock were such that somebody who held it could pledge the stock as security for a loan.

Q. Was that one of a number of issues that was considered at the time in connection with the preferred stock?

A. It was an issue, yes, one of them.

Q. And in terms of the amount of time spent by your firm on the various issues relating to the preferred stock, would you characterize that as a large issue, a small issue?

A. A small issue.

MR. WALKER: Thank you, I have no further questions with respect to these documents, and with the caveat that I raised earlier about our views as to relevance, we have no objection as to the admission of any of these documents at this time.

THE COURT: These exhibits which I guess are Exhibit P through AG may be received and made part of the record and I'll note for the record the petitioner's objection as to relevancy which can be dealt with later on brief.

BY MR. WALKER:

Q. You testified earlier, Mr. Perell, that you had received frequent calls from Mr. Greenwall during the
(p. 81) course of the acquisition.

A. Yes.

Q. Can you tell me did he call you from time to time as representative of management of the company?

A. Sometimes.

Q. And he also called you at other times in his capacity as a shareholder of the company?

A. Yes.

Q. And when you referred in answer to Mr. Sapinski's question earlier, some of the calls were in one capacity and others were in another capacity.

Q. Yes.

MR. WALKER: Thank you. I have no further questions.

THE COURT: Thank you very much, Mr. Perell.

(Witness excused.)

Let's go off the record for a minute.

(Off the record.)

Whereupon,

ROBERT F. GREENHILL

was called as a witness and, being first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated and state your name and address for the record.

(p. 82) THE WITNESS: Robert Foster Greenhill, 433 Riversville Road, Greenwich, Connecticut.

DIRECT EXAMINATION

BY MR. SAPINSKI:

Q. Mr. Greenhill, would you tell me by whom you are employed, sir?

A. Morgan Stanley and Company, an investment banking firm.

Q. And what is your position with the firm?

A. I'm a managing director.

Q. During the years 1977 and 1978, were you also managing director?

A. Managing director, yes. I was in charge of the merger department at that time.

Q. What if anything was your role in the Unilever and National Starch transaction?

A. I was the partner and managing director in charge of the transaction, sir.

Q. At the time that Morgan Stanley and Company was retained, did National Starch have a particular structure in mind or under consideration?

A. You mean in respect of the transaction?

Q. Yes.

A. Yes, they had a structure as best I recall that
(p. 83) involved cash and, in the alternate, preferred stock transaction.

Q. After Morgan Stanley and Company was retained, did representatives of Morgan Stanley meet with representatives of Unilever regarding the terms of that structure?

A. Yes.

Q. Could you expl in?

A. It's been almost ten years ago. We met to understand the terms of the proposed structure. We met with Unilever and met with National Starch as well and they discussed the proposed structure.

We understood at Morgan Stanley that it offered the opportunity of a tax deferred transaction to certain shareholders who elected preferred stock, and of course the cash had the ordinary treatment in such a transaction.

Q. Did Morgan Stanley and Company work with representatives of National Starch in, quote unquote, fleshing out the details of the structure?

MR. WALKER: Your Honor, the "quote unquote"—

MR. SAPINSKI: It's just—it's a colloquial expression—to work out the details, I think would be a better word.

THE WITNESS: Yes, sir. We participated in the discussions related to that insofar as it represented
(p. 84) matters of financial significance.

BY MR. SAPINSKI:

Q. What do you mean by "matters of financial significance?"

A. In other words, we were there as financial experts and not as lawyers and insofar as they dealt with matters of the security underlying the preferred stock, the certainty with which dividends could be paid, the question of whether or not a guarantee was

employed and that sort of matter, that's what I mean by financial matters.

Q. Do you know whether Morgan Stanley assisted or rendered advice in connection with the drafting of any of the covenants of the preferred stock?

A. I'm sure that we reviewed drafts— Let me just state what our practice in that situation would be.

To review the covenants from a business point of view, financial point of view. We would not sit down and actually put pen to paper and draft the covenants. Normally lawyers for the company would be involved in those sort of efforts.

Q. During the year 1978 did Morgan Stanley Company have a fee schedule?

A. Yes, sir, we had a standard way of charging clients in transactions.

(p. 85) Q. Could you explain—I'd like you to look at Exhibit AN which we've marked for identification, the third page of AN.

A. Yes, sir.

Q. Would Exhibit AN reflect the Morgan Stanley fee schedules in an acquisition transaction, sir?

A. Yes. That would be a guideline fee schedule in a transaction. The ultimate amount of the fee would be subject to discussion with the client, but that would be a representation of the fee schedule we would expect.

Q. Had Morgan Stanley and Company represented the acquiring company—in this case

Unilever—would Morgan Stanley's fee have been calculated similarly?

A. Yes, except in the case of transactions in which we represented an acquirer as opposed to a seller. Once we identified the target, we would set the fee at a fixed aggregate amount and if the client ended up paying more we would not then increase the fee, so that technique would prevent us from having more compensation in the event the client had to pay more, but basically the fee schedule would apply as a general matter.

Q. The particular transaction involved here is something called a reverse subsidiary cash merger.

Would the Morgan Stanley fee have been any dif-
(p. 86) ferent if the Unilever offer were in the form of a straight merger or an offer to purchase the assets of National Starch?

A. No, sir.

Q. Could you back up one second and could you explain how if there were any elements in the particular fee that was actually charged—the $2,200,000 fee—if that is broken down into elements in any way.

A. We do not break our fees down into elements except as follows. We would normally set a downside fee—for example, if we had worked on a transaction and the transaction then didn't eventuate we would have a downside fee arrangement or a retainer arrangement which would compensate us for our time.

Second, in the event we rendered—were called upon to render an opinion as to financial fairness during the course of a transaction, and if that opinion appeared in the public document which was circulated

to shareholders, and was one of the elements upon which they were to base their judgment of whether or not to vote for the transaction or accept securities in transaction, we would have a fee, a so-called exposure fee, which relates to the publicity of that opinion.

The third element would be an overall transaction fee. All of the previous elements would be subsumed
(p. 87) in the transaction fee and as a practical matter— in the case of National Starch I believe we were called upon to render an opinion. The transaction did occur so the downside fee wasn't relevant and my general point is that all these matters would be taken into account in the total.

Q. Would that total fee be called the completion fee?

A. That's one way of describing it, yes, sir.

Q. And referring to my prior question about whether the fee would have been any different if the offer were in a different form, would the completion fee still have related to the value of the transaction?

A. Yes, sir.

Q. For the fee charged would Morgan Stanley have been available to testify to the court of the value that it supported in an appraisal action brought by dissenters from the transaction?

A. Would the fee apply to testimony, expert testimony, in respect to an appraisal proceeding?

Q. Yes.

A. Yes. The only addition we would say there we charge some kind of daily fee to represent the actual

time we spent on the witness stand and preparation, but basically the same fee would apply.

Q. Would the fee that was charged by Morgan
(p. 88) Stanley have been the same in this case if Morgan Stanley had not been asked for a fairness opinion to be distributed with the proxy materials?

A. That would probably be right except you wouldn't have the element of the exposure fee in it. That is the segment of the fee that when the fairness opinion was made public was set.

What I meant by that specifically is if a proxy statement were distributed, and if our opinion were in the proxy statement, and if the shareholders voted down the transaction, a component of that fee would be charged as an exposure fee.

With that exception, the answer to your question is yes.

Q. But as I understood you to say, that element was not relevant in the completed _____

A. That element would be subsumed in the completion fee. That's correct.

Q. Had the transaction not required a fairness opinion would the completion fee have still been the same?

A. Yes.

MR. SAPINSKI: I have no further questions of Mr. Greenhill.

(p. 89) I would like to move Exhibit AN into evidence as the Morgan Stanley fee schedule.

MR. WALKER: I would prefer to ask a few questions on that before I take a position on that.

THE COURT: You may.

CROSS-EXAMINATION

BY MR. WALKER:

Q. Good morning, Mr. Greenhill. My name is Richard Walker. I represent the petitioner, National Starch and Chemical Corporation.

Mr. Sapinski asked you several questions about Exhibit AN, which I believe you have in front of you. Can you tell me what the effective date of that fee schedule is?

A. This says August 10, '78.

Q. That was not the fee schedule that in fact was used in connection with the National Starch transaction, is it, Mr. Greenhill?

A. No. I think there was an earlier letter, retainer letter, which was dated I believe either November or December of 1977. Again, it's been a long time ago since this transaction.

Q. Let me ask you to take a look at what has been marked as Joint Exhibit 12-L and ask if you can identify this as the engagement letter of Morgan Stanley in this transaction.

(p. 90) A. Yes, sir, that is the engagement letter.

Q. And that sets forth the terms of Morgan Stanley's engagement in this matter as well?

A. It describes the matters that we could be asked to work on, yes, sir.

Q. And in fact in this case Morgan Stanley was engaged to perform and render a fairness opinion, is that a fact?

A. Yes, sir.

Q. And isn't it also a fact it was Morgan Stanley's principal responsibility as investment adviser to National Starch to perform necessary analyses to evaluate Unilever's offer and to render its opinion fairness of the offer to National Starch's shareholders?

A. It was part of the engagement, yes, sir.

Q. Isn't it fair to say that that was the principal responsibility of Morgan Stanley in this transaction?

A. I think—You're characterizing it as principal. I look at the services performed in the whole transaction as really in large part inseparable, but that would be a very important element of their role.

MR. WALKER: I have no further questions. Thank you.

THE COURT: Anything further?

MR. WALKER: I object to the admission of the exhibit for several reasons. Number one, there has
(p. 91) been an actual engagement letter in this particular case. I don't see what the relevance of a fee schedule provided by Morgan Stanley after this transaction would have.

We have stipulated in paragraph 16 and paragraph 32 of the original stipulation as to what Morgan Stanley's engagement was and we have the actual engagement letter before the Court.

It seems to me that the letter which has been marked as AN simply has no relevance to this transaction.

REDIRECT EXAMINATION

BY MR. SAPINSKI:

Q. Mr. Greenhill, comparing AN to the fee schedule in the exhibit, are they consistent, sir?

A. It's essentially an abbreviated form of the same schedule as found on page four of the engagement letter.

Q. But does AN cover other size transactions, other than the anticipated—

A. Yes, it covers larger transactions, but essentially it's consistent.

MR. SAPINSKI: I believe it's consistent, Your Honor, and I would like to put it in.

THE COURT: What is your purpose of putting this in? We have an engagement letter that sets forth the services to be performed and the fee in this par-
(p. 92) ticular case and this AN is sort of a general fee schedule which seems to fit with 12-L.

What do we establish here with—

MR. SAPINSKI: I believe it assists me in my position that the fee charged as a percentage of the completed transaction makes it more appropriate that that fee be treated as a capital item rather than a deductible item, sir. That's what I'm trying to use that for.

MR. WALKER: That's exactly the danger that I thought this exhibit was going in for. We have testimony as to what Morgan Stanley did in this case, as to what services were provided, how their fee was calculated and we have an actual engagement letter and I think that should be the evidence as to the tax treatment of this transaction is in this case.

MR. SAPINSKI: Mr. Walker is also providing the Court with expert opinion regarding the business practice and a number of other aspects to try and push the fee toward the other side to a deductibility, and I believe I'm entitled to meet that in some way, Your Honor.

MR. WALKER: Well, we have expert testimony, Your Honor, about what the duties and responsibilities of directors were under Delaware law, but that is certainly unrelated to the fees charged by Morgan Stanley.

(p. 93) THE COURT: Exhibit AN—I haven't seen that one and I haven't had a chance to really study 12-L, either. Are they inconsistent in any way or do they kind of generally reflect—at least AN reflects how Morgan Stanley does business or how they charge and 12-L covers the specifics of this case?

MR. SAPINSKI: That would be correct, Your Honor.

MR. WALKER: There is also a covering letter which I think even more forthrightly underscores the fact that the fee schedule is for some transaction other than this particular transaction. It discusses possible referral and I don't think it has anything to do with this particular transaction.

MR. SAPINSKI: That was inadvertently put on—it was attached to the schedule but the schedule itself is what I was offering, Your Honor.

THE COURT: I will admit Exhibit AN and make it a part of the record for whatever you can make out of it but I think that the specific engagement letter, 12-L, is likely to be of more importance in this case.

This is the one we're talking about, not what they might have done with someone else in some other circumstances. It may be received in evidence.

(The document was marked as received as Respondent's AN.)

(p. 94) THE COURT: Any further questions?

MR. SAPINSKI: I don't have any further questions, Your Honor.

THE COURT: Thank you very much, Mr. Greenhill. (Witness excused.)

THE COURT: We'll go off the record.

(Recess.)

MR. WALKER: Our next witness will be Herbert Baumgarten.

Whereupon,

HERBERT BAUMGARTEN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated and state your name and address for the record.

THE WITNESS: Herbert J. Baumgarten, 25 Rolling Hill Road, Bernardville, New Jersey.

DIRECT EXAMINATION

BY MR. WALKER:

Q. Mr. Baumgarten, would you state for the Court what your current occupation is, please?

A. I'm a corporate attorney. The position I hold is senior vice president and general counsel and secretary of National Starch and Chemical Corporation, as well as vice president and general counsel of Unilever United States.

(p. 95) Q. How long have you been employed by National Starch?

A. Approximately 23 years.

Q. How long have you held a position with Unilever?

A. A little more than a year.

Q. What positions did you hold with National Starch in the period 1977 and '78?

A. I had the position of vice president and counsel and I believe I became vice president and counsel and secretary in 1978.

Q. And you were an officer of National Starch both before and after its acquisition by Unilever, is that correct?

A. That's correct.

Q. Are you familiar with the operations of National Starch both before and after the acquisition by Unilever?

A. Yes, I am.

Q. Has the acquisition of National Starch by Unilever provided any appreciable synergy in terms of the operations of National Starch?

MR. SAPINSKI: I think we should define that term.

MR. WALKER: Let me ask a series of questions and maybe that will cure Mr. Sapinski's objection.

BY MR. WALKER:

Q. Subsequent to the acquisition of National Starch's stock by Unilever in 1978, did Unilever make
(p. 96) any changes in National Starch's board of directors?

A. No.

Q. Are you a director of National Starch?

A. Yes, I am.

Q. How long have you been a director of National Starch?

A. Somewhere around four years.

Q. How often does National Starch's board of directors meet?

A. National Starch's board of directors holds four regular board meetings a year—four regular informal board meetings a year and from time to time a special board meeting as the occasion may require.

Q. How often did the board meet prior to the acquisition?

A. The same.

Q. How many directors are currently on the board?

A. Twelve.

Q. And of those 12, how many are outside directors?

A. Five.

Q. How many outside directors were on National Starch's board prior to the acquisition?

A. I believe it was six.

Q. And are the outside directors who are presently on the board the same as those who were on the
(p. 97) board prior to the acquisition?

A. I believe only two out of the six.

Q. What has happened as some of the outside directors left the board? How have successors been selected?

A. The successors have been sought out by the senior management of National Starch and been asked to serve and subsequently been elected by the shareholders.

Q. Following the acquisition of National Starch by Unilever in 1978, did Unilever make any changes in the management of National Starch?

A. No.

Q. I'd like you to turn if you would, Mr. Baumgarten, to Exhibit 21-U in the book in front of you, which is a proxy statement and I'll direct your attention to page seven of the proxy statement and specifically the subheading "management of the company after the merger."

A. Yes, sir.

Q. The first sentence under that subheading read, "The company has been informed by Unilever United States and holding that their present intention is to continue the management, operations and development of the company, including its subsidiaries and joint ventures, as heretofore.'

Has that in fact occurred? Has the management, operations and development of the company been con-
(p. 98) tinued as they were prior to the acquisition by Unilever?

A. Yes.

Q. And is there some sort of a shorthand term which is used to refer to that arrangement?

A. Well, I've heard reference to a treaty of autonomy or some such term.

Q. Can you describe what your understanding of that term is that is used?

A. Well, at the time the possible acquisition of National Starch by Unilever was being considered, an important consideration to the management of the company and its board of directors was the continuity of National Starch as an entity and as a successful company with a continuance of the philosophy of that company.

We were given to understand, I having been part of the management at that time, that we were more or less simply swapping approximately 3500 shareholders for one.

Q. Subsequent to the acquisition of National Starch, has Unilever made any changes in the operation of National Starch or National Starch's business?

A. None of significance.

Q. And has Unilever provided any significant technological assistance to National Starch?

MR. SAPINSKI: Could we define—

(p. 99) MR. WALKER: Well, you are certainly free to inquire on cross-examination what—I want to know in significant terms whether technological assistance has been provided by Unilever to National Starch.

THE WITNESS: No.

BY MR. WALKER:

Q. Has Unilever provided any significant financial assistance to National Starch subsequent to the acquisition?

A. No.

Q. Has Unilever provided legal, administrative or accounting services in any significant way to National Starch subsequent to the acquisition?

A. No.

Q. Prior to the acquisition of National Starch, did National Starch sell any of its products to Unilever?

A. Yes.

Q And has it continued to do so subsequent to the acquisition?

A. Yes.

(p. 100) Q. Has there been any material increase in the volume of sales by National Starch to Unilever subsequent to the acquisition?

A. I don't have exact numbers. I'm unaware of exact numbers, but I don't believe so.

Q. Has there been any special arrangement for sale of products from National Starch to Unilever as a result of the acquisition that did not exist prior to the acquisition?

A. Well, in large measure National Starch is obliged to sell products to Unilever companies on a competitive basis with other people who supply some of the materials.

There are a few joint development projects that are in progress, pursuant to which, if they were successful, there would be a buy-sell contractual arrangement.

Aside from that, the answer to your question is no.

Q. So the arrangements that exist are done on a contractual basis, is that correct?

A. No, no. The special joint development projects that are pending with Unilever, they are to some degree pursuant to a written contract, that's correct.

They're not really very dissimilar from other joint development projects that National Starch has with some other potentially large customers.

Q. Were you involved in the amendment of the certificate of incorporation of National Starch?

A. Yes.

Q. Pursuant to which its authorized and unissued preferred stock was eliminated and its authorized common stock was reduced to 1,000 shares?

(p. 101) A. Yes.

Q. Can you explain to the Court the reason for that amendment?

A. Purely simplicity. There was no point in continuing to have some 6.5 million shares or some such number of common stock outstanding and then the preferred shares.

The certificate of incorporation was amended to provide for 1,000 shares of common stock again for purely administrative convenience and simplicity.

Q. Did the amendment have any substantive significance?

A. No.

MR. WALKER: Thank you. I have no further questions, Mr. Baumgarten.

CROSS-EXAMINATION

BY MR. SAPINSKI:

Q. Mr. Baumgarten, could you define what you mean by "significant?"

A. Well, what I was referring to, Mr. Sapinski, was the kind of joint development project, for example,

that is ongoing wherein National Starch has been asked to try to develop specific raw materials for use by Unilever companies. National Starch is engaged—is almost purely a manufacture of industrial products and a supplier of industrial products to consumer product companies like Unilever.

(p. 102) National Starch is working in a few specified areas to produce specialized raw materials that Unilever might use in its consumer products business, and to the extent that there is an interchange of information in connection with that kind of a project I suppose one could characterize it as being a technological assistance, but in the total scope of National Starch's technical endeavors Unilever really contributes practically nothing.

Q. You mentioned before the term you described as treaty of autonomy. Was that basically what National Starch was looking for in a new parent corporation?

A. It was a very important element in the selection of or the agreement to accept Unilever as a purchaser.

Q. In 1977 and 1978 when this transaction was taking place, was it your belief that there would be a technological benefit to National Starch from the acquisition?

A. Well, Mr. Sapinski, I personally was not in a position to judge. I mean I have a bit of a technical background having been trained originally as a chemical engineer, but I really personally would not have known what Unilever had to offer except that Unilever was a very large company with—I was told—quite extensive research laboratories.

Q. Who is Mr. Grubman?

A. Mr. Grubman today is a director of Unilever
(p. 103) PLC and Unilever N.V., the ultimate parent companies of the Unilever group.

Q. And back in 1977 and 1978?

A. I believe in 1978 he became president of National Starch. He eventually did become president of National Starch and then finally became chairman and chief executive officer. The chronology escapes me a little bit but it was around 1978 that he became president and prior to that he had been a group vice president or some such position.

Q. What about Mr. Caldwell?

A. Dr. Caldwell today is chairman of the executive committee of National Starch. At the time of the Unilever acquisition in 1978 I believe he was chairman of the board and chief executive officer.

Q. You said that you didn't have the technical expertise to know whether there would be a benefit. In your opinion would those people have—Would Mr. Grubman and Mr. Caldwell have had that technological expertise?

A. Well, Dr. Caldwell's career was through research. He was the research director of National Starch for many years and certainly he would have been in a better position than I was to make a judgment about that.

Quite frankly, I don't think that either he or Mr. Grubman knew exactly what Unilever had in its
(p. 104) research laboratories or in terms of its potentiality or that sort of thing.

Q. After the merger agreement was signed, Mr. Baumgarten, a number of the employees of National Starch executed employment contracts to remain in the employ of National Starch for a period of several years afterwards.

A. Yes.

Q. Do you recall that?

A. Yes

Q. You in fact were one of those employees.

A. That's correct.

Q. Did you stay on because you thought that there would be a benefit in the growth of the company?

A. No.

Q. Why did you stay on?

A. Inertia, uncertainty, no better offers.

Q. And that continues till today?

A. No, I would say that there is a great deal more certainty today than there was in 1978 about our future, our prospects, and mine in particular.

MR. SAPINSKI: No further questions. Thank you.

MR. WALKER: I have no further questions, Your Honor.

THE COURT: Thank you.

(Witness excused.)

(p. 105) MR. WALKER: The last witness, Your Honor, is Mr. Richard Sutton.

Whereupon,

RICHARD L. SUTTON

was called as a witness and, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated and state your name and address, please.

THE WITNESS: Richard Sutton, 1105 North Market Street, Wilmington, Delaware.

DIRECT EXAMINATION

BY MR. WALKER :

Q. Mr. Sutton, I'd like to hand you what we've marked as Petitioner's Exhibit 29 which is expert witness report prepared by yourself and I would like to know if you can identify it for the Court.

A. Yes, I can.

Q. Is that a report prepared by you?

A. Yes, it is.

MR. WALKER: Your Honor, I offer Petitioner's Exhibit 29 into evidence.

MR. MORMAN: Your Honor, respondent objects. We object basically because this report seeks to introduce state law into evidence and we contend that the
(p. 106) rule of judicial notice applies since Mr. Sutton seeks to testify about state law in a federal court.

We have prepared a short memorandum on the subject for your review.

THE COURT: I presume this is the expert witness report that was attached to your trial memo.

MR. WALKER: Yes, it is, Your Honor.

THE COURT: Objection overruled. Mr. Sutton's expert witness report may be received as Petitioner's Exhibit 29 and made a part of the record, and will constitute in substance Mr. Sutton's direct testimony, although if you want to ask him some questions or highlight anything, that's fine, but we don't need to read the whole report over.

I have the respondent's memorandum of law regarding this and I also have a memorandum in support of receiving this expert report which I received yesterday and I will look at both of those and consider what they have to say when I do my opinion.

(The document was marked and received as Petitioner's 29.)

MR. WALKER: Your Honor, I would just like to ask one or two further questions.

I would like to hand Mr. Sutton the supplemental stipulation of facts which has been presented to the
(p. 107) Court this morning.

BY MR. WALKER:

Q. Mr. Sutton, have you had an opportunity to review the supplemental stipulation of facts in this matter?

A. I have seen a copy of this document.

Q. Does anything within the supplemental stipulation of facts change any of your opinions in your expert report?

A. No, it does not.

MR. WALKER: Thank you. I have no further questions. We'll stand on Mr. Sutton's report as his direct examination and at this time I turn the witness for cross-examination.

THE COURT: Mr. Morman, do you wish to cross-examine Mr. Sutton?

MR. MORMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MORMAN:

Q. Good afternoon, Mr. Sutton.

According to your report, you've represented a number of public companies in merger type deals over the years, is that correct?

A. That's correct.

Q. Have any of those transactions involved public companies which were subject to a friendly takeover bid through the purchase of the company's
(p. 108) shares from its shareholders? By "its shareholders," I mean the target company.

A. A friendly transaction. I should think that—I represented the Coca-Cola Company in connection with the acquisition of shares of Coca-Cola New York Bottling Company in what I think would be fairly characterized as a friendly transaction, for one.

Q. Was your representation of the acquiring or the acquired company?

A. The acquiring company.

Q. Was it a straight cash purchase of shares?

A. Yes.

Q. Would you say you've encountered such transactions on more than one occasion?

A. Yes.

Q. Would you like to elaborate at all?

A. You're asking about a straight cash merger?

Q. That's correct.

A. Yes. The acquisition of Magnavox Company. The acquisition of Great Western United. The acquisition of a company, the name of which I can't recall, that made airplanes in the midwest.

Q. In your experience, the shareholders in such situations generally sit back and let a corporate management advise them what to do with their shares, don't they?

(p. 109) A. I don't know what shareholders typically do in those circumstances.

Q. So you're saying that you're not sure.

A. I am not certain what shareholders typically do in such circumstances.

Q. In your experience, would it be fair to say that a good deal of the shareholders probably would take corporate management's advice?

A. You see, the problem that your question poses for me, if I can explain it, is it really requires me to determine what's in the mind of bodies of shareholders and I can tell you what my experience has been in connection with the numbers of persons who comment,

but I simply don't know the reasons for their doing it. I don't know whether they rely on management or not.

Q. Well, if they don't rely on management, why does management really have to make a recommendation to them?

A. Because management has an obligation to do so.

Q. Why would that obligation be imposed?

A. Because the law imposes it, at least in Delaware. The obligation is on the board of directors to make decisions with respect to the management of Delaware companies.

Q. What would the rationale behind that rule be?

A. Well, one rationale behind that certainly is
(p. 110) that boards of directors are generally more informed and are better able to make judgments with respect to business affairs of the corporation than the body of stockholders are.

Q. Are you familiar with a merger structure known as a reverse subsidiary cash merger?

A. I've heard the merger in this case called that.

Q. Do I take that to be a yes?

THE COURT: I think he answered the question.

BY MR. MORMAN:

Q. In general, the purpose of structuring a merger this way is to make sure that the acquirer gets 100 percent control of the target stock, isn't it?

A. I can't answer that question. I don't know. There are many mergers in many different forms in