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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 322

HON. CARL J. WEST, JUDGE

TRUST COMPANY OF THE WEST,)

PLAINTIFFS,)

VS.)

NO. BC 429385)

JEFFREY GUNDLACH, ET AL,)

DEFENDANTS.)

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

AUGUST 1, 2011

APPEARANCES:

FOR PLAINTIFF:

QUINN EMANUEL URQUHART & SULLIVAN
BY: **JOHN QUINN, ESQ.**
ERIC J. EMANUEL, ESQ.
STEVEN MADISON, ESQ.
DAVID SERGENIAN, ESQ.
KARA BORDEN, ESQ.
SUSAN ESTRICH, ESQ.
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28 213.351.8610

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 1, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: A-SESSION 8:15 A.M.
8

9 THE COURT: GOOD MORNING, LADIES AND
10 GENTLEMEN. IN THE TCW VERSUS GUNDLACH MATTER.

08:16AM

11 WE'RE OUT OF THE PRESENCE OF THE JURY.
12 I HAD A COUPLE MATTERS I WANTED TO TAKE UP WITH YOU AND
13 THEN ANYTHING ELSE.

14 I LOOKED AT THIS PLAINTIFF'S MOTION TO
15 COMPEL COMPLIANCE WITH THE NOTICE TO PRODUCE DOCUMENTS
16 AT TRIAL. IF THE DEFENDANTS INTEND TO OPPOSE THAT, I'D
17 LIKE TO HAVE THAT OPPOSITION BY 2 O'CLOCK TOMORROW OR
18 2:30 TOMORROW.

08:17AM

19 MR. ALLRED: 2:30 TOMORROW. YES, YOUR HONOR.

20 THE COURT: THAT MAKES YOU HAPPY?

08:17AM

21 MR. ALLRED: YES. WE WILL TRY, YOUR HONOR.

22 THE COURT: YOU DON'T HAVE TO BE DONE TODAY.

23 I DON'T THINK I NEED A REPLY ON IT, MR. MADISON.

24 MR. MADISON: YES, YOUR HONOR.

25 THE COURT: WE'LL DECIDE WEDNESDAY MORNING,
26 PROBABLY BEFORE THE JURY COMES IN.

08:17AM

27 MR. MADISON: YES, YOUR HONOR.

28 THE COURT: PLAINTIFFS' BRIEF REGARDING

1 PROTECTION OF THE TRADE SECRET AT TRIAL. I JUST HAD A
2 CHANCE TO QUICKLY TAKE A LOOK AT DEFENDANTS' RESPONSE.

3 MY SENSE IS, AND MY COMMENTS WERE BEFORE
4 I SAW THE RESPONSE, THAT THE PARTIES SHOULD TRY AND
5 STIPULATE TO AN APPROPRIATE ORDER, WHICH WE WOULD THEN 08:17AM
6 CONVEY TO THE BROADCASTERS, COURTROOM VIEW NETWORK AND
7 A MEANS OF AVOIDING PUTTING DOCUMENTS UP ON THE SPLIT
8 SCREEN THAT YOU'RE USING THAT ARE ENTITLED TO TRADE
9 SECRET PROTECTION.

10 I THINK, ULTIMATELY, THE STANDARD 08:18AM
11 ANNOUNCED IN THE NBC CASE IS WHAT I HAVE TO FOLLOW IN
12 TERMS OF DETERMINING WHETHER THINGS SHOULD OR SHOULD
13 NOT BE, IN EFFECT, FILED UNDER SEAL OR NOT PERMITTED
14 FOR PUBLIC DISPLAY.

15 THIS IS A PUBLIC TRIAL. AND ANYTHING 08:18AM
16 THAT COMES UP IN THE TRIAL WILL BE AVAILABLE FOR
17 VIEWING BY THE PUBLIC, UNLESS THERE'S A DETERMINATION
18 THAT PARTICULAR ITEMS SHOULD BE ACCORDED SOME
19 PROTECTION.

20 NOW, I THINK THAT, YOU KNOW, TO THE 08:18AM
21 EXTENT IT IS A TRADE SECRET CASE, IF THERE'S LEGITIMATE
22 CLAIM THAT SOMETHING IS PROPRIETARY OR DESERVES SOME
23 KIND OF PROTECTION, I'M WILLING TO AFFORD IT THAT
24 PROTECTION.

25 I TEND TO AGREE WITH THE DEFENDANTS TO 08:18AM
26 THE EXTENT THAT THE JURY SHOULD NOT BE ALLOWED TO
27 CONCLUDE THAT WE'RE AFFORDING ANYTHING ANY GREATER
28 PROTECTION OTHER THAN ANYTHING ELSE.

1 TO THE EXTENT WE TAKE IT OUT OF THE FEED
2 INTO THE PUBLIC BROADCAST NETWORKS, WE NEED TO DO THAT
3 IN A MANNER THAT DOESN'T IN SOME WAY SEND A MESSAGE TO
4 THE JURY ONE WAY OR THE OTHER.

5 WITH THAT SAID, I THINK THAT YOU SHOULD
6 TRY AND TALK THAT OVER AND SEE IF YOU CAN COME UP WITH
7 AN AGREED PROPOSED ORDER. AND IF YOU CAN'T, THEN I'D
8 SUGGEST THAT EACH PARTY SUBMIT A PROPOSED ORDER BY,
9 SAY, 2:30 TOMORROW AFTERNOON.

08:19AM

10 THE OTHER THING WE NEED TO DO IS TO
11 IDENTIFY DOCUMENTS THAT THE PARTIES CLAIM ARE ENTITLED
12 TO TRADE SECRET PROTECTION PRIOR TO THE TIME THAT THE
13 DOCUMENT IS OFFERED FOR REVIEW BY A WITNESS AND/OR
14 PUBLISHED TO THE JURY.

08:19AM

15 WE'RE GOING TO HAVE TO GO THROUGH THAT
16 AND FIGURE OUT A WAY TO DO IT. I DON'T WANT TO HAVE
17 REPEATED BREAKS IN THE PROCEEDINGS TO ADDRESS THOSE
18 ISSUES.

08:20AM

19 WHATEVER YOU INTEND TO USE THAT HAS
20 BEEN, I GUESS, DESIGNATED AS CONFIDENTIAL UNDER THE
21 PROTECTIVE ORDER OR THE ATTORNEYS EYES ONLY, THERE'S
22 SOME LEVEL AT WHICH WE CAN PROBABLY GO BELOW AND NOT
23 HAVE A PROBLEM. YOU HAVE TO WORK THAT OUT.

08:20AM

24 ANY THOUGHTS ON EITHER ONE OF THESE
25 TOPICS?

08:20AM

26 MR. QUINN: YOUR HONOR, I DON'T HAVE -- WE
27 HAVE ANY ISSUE ON THIS.

28 WE HAVE CONFERRED OVER THE WEEKEND ON

1 THIS, AND WE UNDERSTAND AND AGREE THAT WHATEVER
2 PROTECTION IS PROVIDED SHOULD BE INVISIBLE TO THE JURY.

3 IN OTHER WORDS, THE JURY SHOULDN'T GET
4 SOME SENSE THAT SOME INFORMATION IS BEING TREATED
5 DIFFERENTLY AND, THEREFORE, IT BE SIGNALLED TO THE JURY
6 SOMEHOW SOME CONCLUSION HAS ALREADY BEEN MADE THAT
7 SOMETHING IS TRADE SECRET. WE UNDERSTAND THAT.

08:20AM

8 AND WE AGREE WITH THAT. AND WE'LL
9 CONFER ON THE FORM OF AN ORDER. I THINK THE ONLY
10 IMMEDIATE THING WE NEED TO DEAL WITH TODAY, IT WILL BE
11 THE SECOND WITNESS, MR. KALE, THAT WE WILL GET INTO
12 THIS, THAT I'M CONCERNED ABOUT. THAT IS THE BROADCAST.

08:21AM

13 THE OTHERS I THINK CAN WAIT UNTIL WE
14 SUBMIT A FORM OF ORDER TOMORROW. BUT FOR THE EXHIBITS
15 OF MR. KALE'S EXAMINATION, WE WOULD LIKE THE -- I
16 UNDERSTAND THIS CAN EASILY BE DONE, THAT THE EXHIBITS
17 NOT BE BROADCAST OVER THE INTERNET.

08:21AM

18 THE COURT: DEFENDANTS HAVE ANY ISSUE ON THAT?

19 MR. WEINGART: AS LONG AS WE'RE NOT GOING BACK
20 AND FORTH OR SAYING EVEN IF IT'S NOT THE CASE THAT IT'S
21 BEEN SIGNALLED TO THE JURY IT'S A TRADE SECRET CAN WE
22 MAKE A SWITCH WITH THIS, THEN WE'RE FINE.

08:21AM

23 THE COURT: ON THE COURTROOM VIEW NETWORK
24 PROGRAM, CAN WE, FOR MR. KALE'S TESTIMONY, JUST NOT
25 SHOW ANY EXHIBITS ON THE SPLIT SCREEN?

08:22AM

26 MR. ACOSTA: SURE. ABSOLUTELY, YOUR HONOR.

27 THE COURT: FOR OUR RECORD, WHAT IS YOUR NAME?

28 MR. ACOSTA: ALEX ACOSTA WITH COURTROOM VIEW

1 NETWORK.

2 THE COURT: WE'LL FINE-TUNE THIS FOR
3 GOING-FORWARD PLANS. ALL RIGHT.

4 THE OTHER QUESTION I HAVE, AND THIS IS
5 BECOMING MAYBE SOMETHING IN WHICH I SHOULDN'T BE
6 CONCERNED. I'M UP TO THE FIFTH AMENDED TRIAL EXHIBIT
7 LIST. IT SEEMS LIKE I GET ONE OR TWO A DAY FROM THE
8 PLAINTIFFS. AND I'VE HAD SEVERAL, COUPLE FROM THE
9 DEFENDANTS.

08:22AM

08:22AM

10 EVERYBODY COMFORTABLE WITH WHAT'S GOING
11 ON HERE? I DON'T KNOW WHY WE KEEP GETTING AMENDED
12 TRIAL EXHIBIT LISTS.

13 MR. BRIAN: WE ACTUALLY DID HAVE AN ISSUE I
14 WANTED TO RAISE.

15 WE GOT A FIFTH AMENDED ONE LATE LAST
16 NIGHT, WHICH ADDED, I THINK, 17 EXHIBITS. AND I'M
17 NOT -- I'M NOT HERE TO WHINE ABOUT THE LATENESS OF IT,
18 BUT I DO NEED TO KNOW RIGHT NOW, OR SOON, WHETHER ANY
19 OF THOSE 17 EXHIBITS THEY INTEND TO SHOW ANY OF THE
20 WITNESSES THEY INTEND TO CALL TODAY.

08:22AM

08:23AM

21 I THINK WE'RE ENTITLED TO SEE AN EXHIBIT
22 LIST BEFORE A WITNESS IS CALLED.

23 AND WE MAY HAVE AN OBJECTION IF THEY
24 INTEND TO USE ANY OF THOSE 17 TODAY. I JUST NEED TO
25 KNOW, DO THEY INTEND TO SHOW ANY OF THOSE TO MS. CODY,
26 MR. KALE, OR MR. MAYBERRY, SO I CAN LOOK AT THEM AND
27 DECIDE WHETHER WE HAVE AN OBJECTION.

08:23AM

28 THE COURT: MR. MADISON? OR MR. QUINN?

1 MR. QUINN: I'LL LOOK INTO THAT, YOUR HONOR.

2 THE COURT: MY CONCERN IS, AND THERE NEEDS TO
3 BE AN AMPLE OPPORTUNITY, SOME OF THESE THINGS FILED BY
4 THE PLAINTIFFS CAME IN AT 10 O'CLOCK LAST NIGHT. I
5 DIDN'T SEE THEM LAST NIGHT, BUT I SAW THEM AT 4:30 THIS
6 MORNING. AND SO PEOPLE HAVE TO HAVE A CHANCE.

08:23AM

7 NOW, THE GOAL WAS TO HAVE EXHIBIT LISTS
8 DONE MONTHS AGO. AND WE EXTENDED A LOT. BUT IF WE
9 KEEP GETTING NEW THINGS, THAT'S WHERE PROBLEMS COME UP.
10 I WANT TO MAKE SURE WE DON'T HAVE PROBLEMS.

08:24AM

11 SO --

12 MR. MADISON: ONE THING, YOUR HONOR, I CAN
13 TELL YOU IS THAT WE HAVE TAKEN ONE OF THE EXHIBITS FROM
14 LAST THURSDAY, WHICH WERE THE CHATS, AND BROKEN IT UP
15 INTO SMALLER SECTIONS, IF YOU WILL, AND MADE SURE THAT
16 THE PAGES ARE IN ORDER.

08:24AM

17 WE HAD SOME -- SOME HURDLES THERE WITH
18 MS. CODY ON THURSDAY ABOUT THAT. WE'VE STRAIGHTENED
19 THAT OUT. I MEAN, THERE ARE NO NEW DOCUMENTS HERE I
20 KNOW ON OUR EXHIBITS.

08:24AM

21 AND WE'LL ALSO TELL YOU THAT SOME OF OUR
22 EXHIBITS HAD DEPOSITION EXHIBIT STAMPS, AND I BELIEVE
23 THAT'S VERY CONFUSING.

24 SO, CERTAINLY WITH THE WITNESSES, I
25 THINK THAT BOTH MR. QUINN AND I ARE GOING TO BE
26 EXAMINING, WE'RE GOING TO USE COPIES OF EXHIBITS THAT
27 DON'T HAVE DEPO STAMPS BECAUSE THAT INFORMATION IS JUST
28 GOING TO CONFUSE THE JURY POTENTIALLY.

08:24AM

1 THE COURT: ALL RIGHT.

2 MR. BRIAN: I DON'T AGREE WITH THAT.

3 IT'S GOING TO BE CONFUSING THE OTHER
4 WAY. IF WE HAD TO DO THIS OVER, I WOULD HAVE MARKED
5 ALL EXHIBITS IN SEQUENTIAL ORDER. WE DIDN'T DO THAT.

08:25AM

6 IF WE ARE GOING TO IMPEACH PEOPLE WITH
7 DEPOSITIONS, IT'S GOING TO BE REALLY CONFUSING IF WE
8 DON'T HAVE THE DEPOSITION NUMBER ON THERE. I CAN'T
9 INSTRUCT COUNSEL HOW TO DO IT, BUT IT IS GOING TO GET
10 CONFUSING.

08:25AM

11 I DON'T UNDERSTAND THE STATEMENT HE
12 MADE, THERE ARE NO NEW DOCUMENTS. IF HE'S SAYING NO
13 NEW DOCUMENTS HAVEN'T BEEN PREVIOUSLY PRODUCED, I'LL
14 ACCEPT THAT REPRESENTATION, BUT I THINK THERE ARE NEW
15 EXHIBITS THAT WERE NOT PREVIOUSLY ON THE EXHIBIT LIST.
16 THAT'S MY QUESTION. I JUST NEED TO KNOW, ARE THEY
17 INTENDING TO USE THE NEW EXHIBITS TODAY, AND, IF SO,
18 WHICH ONES?

08:25AM

19 MR. MADISON: WE DO INTEND TO USE THE NEW
20 EXHIBIT NUMBERS THAT BREAK OUT THE CHATS FROM MS. CODY
21 SO THAT WE DON'T GET BOGGED DOWN.

08:25AM

22 THE COURT: THEY'RE THE SAME DOCUMENTS THAT
23 HAVE JUST BEEN BROKEN DOWN INTO THREE OR FOUR DIFFERENT
24 DOCUMENTS?

25 MR. MADISON: CORRECT, YOUR HONOR.

08:25AM

26 MR. BRIAN: I THINK WE'RE TALKING PAST EACH
27 OTHER.

28 THAT MAY BE THE CASE WITH MS. CODY. MY

1 QUESTION IS, ARE THERE ADDITIONAL EXHIBITS BESIDES
2 THOSE BROKEN DOWN IN MS. CODY'S EXHIBITS THAT ARE NEW
3 TO THE EXHIBIT LIST THAT THEY INTEND TO USE TODAY?

4 THE COURT: CAN WE HAVE AN ANSWER TO THAT?

5 MR. QUINN: I'M TRYING TO FIND OUT WHAT THE
6 EXHIBITS ARE.

08:26AM

7 MR. MADISON: I DON'T BELIEVE THERE ARE, YOUR
8 HONOR. AND I CAN SAY IF THERE WERE, IF WE DISCOVERED
9 THAT, WE WOULDN'T RAISE IT UNTIL WE HAD AN OPPORTUNITY
10 TO --

08:26AM

11 THE COURT: YEAH, BEFORE YOU OFFER OR BRING UP
12 ANY EXHIBIT.

13 ONE OTHER POINT ABOUT MS. CODY'S
14 TESTIMONY, AND, YOU KNOW, WE HAVE AN ISSUE HERE
15 REGARDING THE NECESSITY FOR CERTAIN FOUNDATION FOR HER
16 TO TESTIFY TO CERTAIN THINGS.

08:26AM

17 I UNDERSTAND THAT SHE'S CALLED AS A
18 HOSTILE WITNESS, AND I ASSUME WE HAVE A STIPULATION
19 THAT, YOU KNOW, DEFENSE EMPLOYEES ARE CALLED UNDER 776.
20 I DO NOT BELIEVE THAT THAT ALLOWS YOU TO ASK LEADING
21 QUESTIONS IN TERMS OF -- OF ESTABLISHING THE
22 FOUNDATION.

08:26AM

23 YOU REALLY NEED TO HAVE DIRECT
24 EXAMINATION OF THE WITNESS TO ESTABLISH THE FOUNDATION;
25 OTHERWISE, YOUR LEADING QUESTIONS BELIE THE -- WHAT
26 WE'RE TRYING TO DO IN TERMS OF EXCLUDING ANYTHING
27 THAT'S INAPPROPRIATE.

08:26AM

28 DO YOU FOLLOW THAT?

1 MR. MADISON: I DO, YOUR HONOR.

2 AGAIN, I'M LOOKING AT A SERIES OF CHATS
3 THAT THE WITNESS AUTHORED WHERE SHE TALKS WITH A LOT OF
4 SPECIFICITY ABOUT THE PLANS TO LEAVE AND FORM A NEW
5 BUSINESS WITH JEFFREY GUNDLACH. I JUST WANT TO ASK HER
6 ABOUT THAT. I HAVE LIMITED TIME TO DO THAT. 08:27AM

7 THE COURT: I'VE TOLD YOU THAT, TO THE EXTENT
8 THAT SHE ATTRIBUTES THAT TO SOME UNKNOWN OVERHEARD
9 CONVERSATION, I'M NOT GOING TO ALLOW IT. SHE HAS TO
10 HAVE A -- TO HAVE A FOUNDATION FOR THOSE COMMENTS;
11 OTHERWISE, IT BECOMES MERE SPECULATION, OR WE DON'T
12 KNOW WHERE IT CAME FROM. 08:27AM

13 AND SO I'VE SAID THAT YOU NEED TO
14 ESTABLISH THE FOUNDATION, EITHER BY AN ADMISSION BY ONE
15 OF THE PARTIES -- AND I THINK IN ESTABLISHING THAT, YOU
16 KNOW, WITHOUT READING THE CHAT AND BASICALLY PUBLISHING
17 TO THE JURY THE INFORMATION THAT I'VE SAID YOU MAY OR
18 MAY NOT USE, YOU HAVE TO SAY WHAT WAS THE SOURCE OF THE
19 INFORMATION CONVEYED BY THAT CHAT, AND, YOU KNOW, SEE
20 WHAT THE ANSWER IS. 08:27AM

21 YOU CAN'T PUT THE ANSWER IN HER MOUTH.
22 YOU CAN'T CROSS-EXAMINE HER, IN EFFECT, ON THE CHAT
23 UNTIL YOU LAY THE FOUNDATION. AND THAT'S THE PROBLEM
24 THAT I SAW COMING UP FRIDAY. AND PERHAPS DIDN'T DEAL
25 WITH IT AT THAT TIME. BUT, HAVING THOUGHT ABOUT THAT,
26 I MEAN, YOU'VE GOT TO BASICALLY SET THE FOUNDATION OR
27 I'VE SAID IT'S NOT ADMISSIBLE. 08:28AM

28 MR. MADISON: I THINK THE PROBLEM IS WE'RE

1 TRYING TO DO THIS HYPOTHETICALLY, AND I DON'T WANT TO
2 TAKE THE TIME. AND I'M SURE YOUR HONOR DOESN'T WANT
3 TO, EITHER --

4 THE COURT: WE WON'T TAKE MUCH MORE TIME.

5 MR. MADISON: -- TO GO THROUGH THE CHATS. A
6 NUMBER OF THEM ARE STATEMENTS OF HER OWN INTENT.

08:28AM

7 THE COURT: STATEMENTS OF WHAT SHE CHOSE TO
8 DO, BUT SHE HAS TO HAVE A BASIS.

9 MR. MADISON: BUT, YOUR HONOR, WHEN SHE SAYS
10 IN SEPTEMBER, RIGHT AFTER THE SEPTEMBER 3RD MEETING,
11 WE'RE ALL LEAVING TO GO TO A NEW FIRM TO BE FORMED BY
12 JEFFREY, THAT'S ADMISSIBLE EVIDENCE, YOUR HONOR,
13 RESPECTFULLY.

08:28AM

14 THE COURT: I SAID YOU HAVE TO HAVE A
15 FOUNDATION FOR IT. AND WHERE IS THE SOURCE OF HER
16 BELIEF THAT WE'RE ALL LEAVING TO GO FORM A NEW FIRM
17 WITH JEFFREY?

08:29AM

18 MR. MADISON: YOUR HONOR, YOU HAVE TO
19 UNDERSTAND, I WOULD HOPE I CAN'T BE IN THE POSITION OF
20 LETTING THE DEFENSE WITNESSES CONTROL WHETHER OR NOT
21 THE JURY HEARS THAT EVIDENCE NOW. THEY WROTE IT DOWN
22 AT THE TIME. AND, AGAIN, IT'S FOR THE JURY TO DECIDE.
23 IF SHE NOW WANTS TO SAY, YOU KNOW, THAT WAS ALL A BIG
24 LIE OR A BIG PUFF OR, YOU KNOW --

08:29AM

25 THE COURT: YOU KNOW, I SAID YOU HAVE TO
26 ESTABLISH A FOUNDATION --

08:29AM

27 MR. MADISON: I UNDERSTAND, YES.

28 THE COURT: -- A FOUNDATION FOR THAT, AND YOU

1 CAN'T ASK HER IN A LEADING FASHION. "YOU WROTE THIS;
2 WHAT WAS THE SOURCE OF IT?"

3 YOU HAVE TO ESTABLISH THE FOUNDATION
4 FOR, AND THAT IS: WITH RESPECT TO THE SUBJECT MATTER
5 OF THE PARTICULAR CHAT I'VE PLACED IN FRONT OF YOU,
6 WHAT WAS THE SOURCE OF YOUR INFORMATION? 08:29AM

7 MR. MADISON: I UNDERSTAND, YOUR HONOR.

8 WHAT IF SHE'S NOT TRUTHFUL ABOUT THAT,
9 HOW DO I THEN GET THIS EVIDENCE TO THE JURY?

10 THE COURT: I DON'T KNOW WHETHER SHE'S
11 TRUTHFUL OR NOT. YOU GOT DEPOSITION TESTIMONY. YOU
12 GOT ALL SORTS OF THINGS. IT'S FOR THE JURY TO
13 DETERMINE IF PEOPLE ARE TRUTHFUL OR NOT. 08:30AM

14 MR. MADISON: RIGHT.

15 THE COURT: THERE IS A LOT OF OTHER EVIDENCE
16 HERE. IT SEEMS TO ME IF YOU CAN'T GET IT INDIRECTLY
17 THROUGH A CHAT, YOU CAN GET DIRECTLY THROUGH A NUMBER
18 OF OTHER SOURCES, AND YOU JUST HAVE TO DO THE BEST YOU
19 CAN WITH IT. 08:30AM

20 MR. MADISON: YES, YOUR HONOR. 08:30AM

21 THE COURT: LET'S MOVE ON.

22 ANYTHING ELSE?

23 MR. MADISON: WE DID HAVE ANOTHER ISSUE. I
24 DON'T THINK WE NEED TO TAKE UP NOW. IT WILL COME UP
25 TOMORROW MORNING WITH MS. VANEVERY. PERHAPS AT THE END
26 OF THE DAY WE CAN TAKE THAT UP. IT'S WITH REGARD TO
27 THE DOCUMENT THAT DEFENSE WANTS TO CLAW BACK THAT
28 MS. VANEVERY OFFERED. 08:30AM

1 MR. BRIAN: ALSO --

2 THE COURT: I'M FOLLOWING WHATEVER YOU FILE.
3 IF THERE ARE REQUESTS AND THEY COME IN AFTER 10 O'CLOCK
4 I USUALLY DON'T GET THEM UNTIL FIRST THING IN THE
5 MORNING. BUT I'M NOT GOING TO HAVE REPEATED
6 INTERRUPTIONS. WE CAN TAKE UP THIS VANEVERY THING
7 SHORTLY -- AT THE CONCLUSION OF THE DAY.

08:30AM

8 MR. MADISON: YES, YOUR HONOR.

9 THE COURT: SOMEBODY REMEMBER TO BRING IT UP.

10 MR. MADISON: YES.

08:31AM

11 MR. BRIAN: WE'LL NEED TO TAKE UP AT SOME
12 POINT -- WE GAVE A BINDER TO YOUR HONOR -- OF PROPOSED
13 REDACTIONS OF A NUMBER OF DOCUMENTS, MANY INVOLVING
14 MS. VANEVERY, SOME INVOLVING MR. MAYBERRY. WE'VE ASKED
15 COUNSEL FOR TCW WHICH ONES THEY INTEND TO USE, WHETHER
16 THEY AGREE WITH THE REDACTIONS OR NOT.

08:31AM

17 I DON'T THINK -- I THINK MR. MADISON
18 AGREES THAT WE'LL NEED TO TAKE UP THE MS. VANEVERY ONES
19 BEFORE TOMORROW MORNING.

20 IF THEY INTEND TO DO ANY WITH
21 MR. MAYBERRY, WE WOULD OBJECT UNTIL THAT'S DEALT WITH.
22 WE'VE TRIED TO DEAL WITH THIS FOR DAYS.

08:31AM

23 THE COURT: WELL, I HAVEN'T HAD IT PUT ON MY
24 PLATE, SO I DON'T KNOW WHAT NOTEBOOK YOU'RE TALKING
25 ABOUT.

08:31AM

26 MR. BRIAN: I HAVE ANOTHER BINDER IF YOU NEED
27 IT, YOUR HONOR.

28 THE COURT: ALL RIGHT. WELL --

1 MR. HELM: WE DID PROVIDE A NOTEBOOK TO THE
2 CLERK.

3 THE COURT: WHEN?

4 MR. HELM: LAST WEEK.

5 TWO NOTEBOOKS, ACTUALLY.

08:31AM

6 THE COURT: ALL RIGHT. WE'LL BRING THE JURY
7 IN.

8 (PAUSE) +

9

10 THE COURT: GOOD MORNING.

08:35AM

11 IN THE TCW VERSUS GUNDLACH MATTER.

12 WE'RE READY TO COMMENCE OUR SECOND DAY OF TRIAL.

13 LADIES AND GENTLEMEN OF THE JURY, AGAIN,

14 I CAN'T TELL YOU HOW MUCH WE APPRECIATE YOUR PROMPTNESS

15 IN BEING HERE ON TIME SO WE CAN START ON TIME. IT

08:35AM

16 REALLY MAKES THINGS MUCH SMOOTHER.

17 ALL COUNSEL ARE PRESENT.

18 ALL MEMBERS OF OUR JURY AND OUR

19 ALTERNATES ARE PRESENT.

20 MS. CODY, PLEASE RECALL YOU HAVE

08:35AM

21 PREVIOUSLY BEEN SWORN AND YOU ARE STILL UNDER OATH.

22 MR. MADISON, YOU MAY CONTINUE WITH YOUR

23 DIRECT EXAMINATION OF MS. CODY.

24 MR. MADISON: THANK YOU, YOUR HONOR.

25 AND GOOD MORNING.

08:35AM

26

27 ///

28 ///

1 DIRECT EXAMINATION (CONTINUED) +

2 BY MR. MADISON:

3 Q MS. CODY, WHEN WE BROKE ON THURSDAY WE HAD
4 BEEN TALKING ABOUT THINGS THAT YOU HAD OVERHEARD AND
5 SOME CHATS THAT YOU HAD EXCHANGED WITH MR. MAYBERRY.

08:35AM

6 DO YOU RECALL THAT?

7 A YES, I DO.

8 Q ONE THING I WANTED TO JUST QUICKLY DO IS GO
9 BACK TO EXHIBIT 2092, WHICH IS IN THE BINDER BEFORE
10 YOU, AND THESE ARE THE PICTURES.

08:36AM

11 YOUR HONOR, THIS WAS ADMITTED INTO
12 EVIDENCE. AND I'D LIKE TO DISPLAY THOSE IF I MAY.

13 THE COURT: YES.

14 MR. MADISON: I BELIEVE WE LOOKED AT THIS
15 PICTURE OF 29 -- 2092-4. I WANT TO QUICKLY --

08:36AM

16 Q I'LL ASK YOU, MS. CODY, TO LOOK WITH US AT THE
17 OTHER PAGES OF THE PHOTOS. IF WE COULD GO TO PAGE 1.

18 DO YOU RECOGNIZE PAGE 1 OF 2092 TO BE A
19 PICTURE OF THE FLOOR, LOOKING FROM THE WEST END OF THE
20 FLOOR?

08:36AM

21 A YES.

22 Q YOUR WORK STATION WOULD BE AT THE END OF ONE
23 OF THE TABLES WE SEE WITH THE COMPUTER SCREENS THERE ON
24 THE LEFT OF THE PICTURE, CORRECT?

25 A YES, THAT'S CORRECT.

08:36AM

26 Q IF WE GO TO NO. 2, I BELIEVE, OF PAGE 2 OF
27 2092, THAT WOULD BE JUST A PICTURE OF THAT SAME AREA AT
28 THE FAR END OF ONE OF THE TABLES WHERE YOUR WORKSPACE

1 WOULD BE, CORRECT?

2 A YES.

3 Q AND THEN PAGE 3 IS ONE OF THE PICTURES WITH
4 SOME NAMES THERE, CORRECT?

5 A YES.

08:37AM

6 Q AND THEN IF WE GO TO 4 AGAIN, THE ONLY
7 DIFFERENCE IT LOOKS LIKE IS THAT IN 4 THERE ARE TWO
8 INDIVIDUALS WHO ARE NOT THE INDIVIDUALS NAMED ON THE
9 EXHIBIT -- AT TWO OF THE DIFFERENT WORK STATIONS,
10 CORRECT?

08:37AM

11 A YES.

12 Q NOW, I'D ALSO LIKE YOU TO LOOK AT SOME
13 EXHIBITS THAT --

14 WHAT WE DID, YOUR HONOR, WE BROKE UP A
15 COUPLE OF THE CHATS WE WERE TALKING ABOUT LAST WEEK AND
16 WE PUT THEM IN THE CORRECT ORDER.

08:37AM

17 THE COURT: HAVE WE BEEN PROVIDED WITH THOSE?

18 MR. MADISON: YES, YOUR HONOR. THEY'RE IN THE
19 BINDERS THAT COUNSEL AND THE COURT WERE PROVIDED.

20 THE COURT: SOMEBODY UPDATED MY BINDER?

08:37AM

21 MR. MADISON: WE DID. WE ACTUALLY REPLACED
22 IT. EVEN BETTER THAN UPDATE.

23 Q IF YOU WOULD FIRST LOOK AT EXHIBIT 2114,
24 MS. CODY.

25 MR. HELM: MR. MADISON, I'M NOT SURE THAT WE
26 HAVE THEM.

08:38AM

27 MR. MADISON: COULD I HAVE A MOMENT WITH
28 COUNSEL, YOUR HONOR?

1 THE COURT: YES.

2 (PAUSE) +

3

4 MR. HELM: OKAY.

5 THANK YOU, YOUR HONOR.

08:38AM

6 BY MR. MADISON:

7 Q YOU RECOGNIZE 2114 TO BE A PART OF A CHAT YOU
8 HAD WITH MR. MAYBERRY THAT MORNING?

9 A YES, I DO.

10 Q ON DECEMBER 4TH.

08:38AM

11 IF I COULD MOVE 2114, YOUR HONOR?

12 THE COURT: ANY OBJECTION?

13 MR. HELM: SORRY, YOUR HONOR. I HAVEN'T HAD A
14 CHANCE TO SEE THIS BEFORE.

15 I DON'T BELIEVE WE HAVE AN OBJECTION.

08:39AM

16 THE COURT: ALL RIGHT. IT WILL BE ADMITTED.

17

18 (EXHIBIT 2114 ADMITTED) +

19

20 BY MR. MADISON:

08:39AM

21 Q THE FIRST PAGE OF 2114, MS. CODY -- AND IF WE
22 CAN EXPAND THE WHITE BOX THERE, WHERE THE TEXT IS -- SO
23 THIS PICKS UP PART OF A CHAT AROUND 8:33 IN THE MORNING
24 TIME ON DECEMBER 4TH.

25 AND YOU RECALL ON THURSDAY YOU TOLD US
26 ABOUT THIS E-MAIL THAT YOU HAD RECEIVED FROM
27 MR. MC KISSICK?

08:39AM

28 A YES.

1 Q I BELIEVE YOU DESCRIBED IT AS SORT OF A
2 CRYPTIC E-MAIL ADVISING YOU NOT TO SAY ANYTHING IF YOU
3 WERE ASKED ANYTHING?

4 A IT SAID OTHER THINGS AS WELL.

5 Q OKAY.

08:40AM

6 AS WELL AS WHAT I JUST SAID?

7 A YES.

8 Q ALL RIGHT.

9 THEN -- AND THEN YOU'RE COMMENTING ON
10 THE E-MAIL, MCKISSICK E-MAIL, HERE TO MR. MAYBERRY WHEN
11 YOU SAY: I FEEL LIKE I'M IN A MISSION IMPOSSIBLE
12 MOVIE.

08:40AM

13 CORRECT?

14 A CORRECT.

15 Q AND MR. MAYBERRY SAYS:

08:40AM

16 HUH, YEAH, I'M NERVOUS, TOO?

17 JUST REMEMBER THAT YOU ARE AN

18 A-TEAMER, SO NO WORRIES.

19 AND WHAT THAT REFERRED TO WAS THE FACT
20 THAT YOU HAD ALREADY BEEN TOLD BY THE DEFENDANTS, THE
21 INDIVIDUAL DEFENDANTS, THAT IF A GROUP WAS TO LEAVE,
22 YOU WOULD BE ON THE SO-CALLED A TEAM AND WOULD BE TAKEN
23 WITH THAT GROUP, CORRECT?

08:40AM

24 A NO. THAT'S NOT CORRECT.

25 Q SO A-TEAMER HAD NOTHING TO DO WITH THE EVENTS
26 THAT WERE GOING ON THAT DAY?

08:40AM

27 A NO.

28 Q IS THAT YOUR TESTIMONY?

1 A IT DID NOT.

2 Q SO IF YOU GO OVER TO THE PAGE WITH THE -3 AT
3 THE BOTTOM ONLY, 2114-3, AND THEN YOU'RE SPEAKING TO
4 MR. MAYBERRY. YOU SAY:

5 I MEAN, I DON'T EVEN KNOW ANYTHING
6 THAT'S NOT BEEN TALKED ABOUT OUT
7 HERE.

08:41AM

8 WHAT YOU WERE YOU REFERRING TO THERE?
9 YOU'RE CONCERNED THAT TCW WAS ONTO PLANS THAT THE GROUP
10 HAD TO LEAVE, CORRECT?

08:41AM

11 A I DON'T KNOW WHAT THAT'S IN REFERENCE TO.

12 Q WHAT YOU WERE SAYING HERE WAS THAT, IF THEY
13 DID ASK YOU, ALL YOU KNEW WAS WHAT PEOPLE HAD BEEN
14 TALKING ABOUT OUT HERE ON THE 16TH FLOOR, CORRECT?

15 A SORRY. ONE MORE TIME.

08:41AM

16 Q MY QUESTION IS: WHAT YOU WERE STATING HERE TO
17 MR. MAYBERRY WAS THAT IF YOU WERE ASKED BY TCW
18 QUESTIONS, THAT YOU WERE SAYING YOU DIDN'T KNOW
19 ANYTHING THAT HADN'T BEEN TALKED ABOUT OPENLY ON THE
20 16TH FLOOR, CORRECT?

08:42AM

21 A THAT'S CORRECT.

22 Q AND THEN MR. MAYBERRY SAYS:

23 YEAH, THAT'S PRETTY TRUE. MAYBE
24 WE'LL BE FIRED.

25 AND THEN YOU SAY:

08:42AM

26 IT CAN'T BE ABOUT -- THERE'S A
27 TYPO I BELIEVE, THAT YOU WERE
28 MEANING TO COMMUNICATE -- IT CAN'T

1 BE ABOUT LEAVING.

2 CORRECT?

3 A YES.

4 Q AND THEN MR. MAYBERRY SAYS:

5 HUH. AND YOU CORRECT THE TYPO

08:42AM

6 AND YOU SAY: LEAVING.

7 THAT WAS A REFERENCE TO THE PLANS THAT
8 YOU HAD OVERHEARD THE DEFENDANTS TALKING ABOUT AND THAT
9 THEY HAD TALKED ABOUT WITH YOU, ABOUT LEAVING AS A
10 GROUP IN THE NEAR FUTURE, CORRECT?

08:42AM

11 MR. HELM: LACKS FOUNDATION.

12 THE COURT: OVERRULED.

13 THE WITNESS: NO. I DID NOT HEAR PLANS ABOUT
14 LEAVING FROM ANY OF THE DEFENDANTS. SO THAT'S
15 INCORRECT.

08:42AM

16 BY MR MADISON:

17 Q YOU NEVER DISCUSSED WITH MR. GUNDLACH LEAVING
18 TO JOIN HIS NEW BUSINESS THE FOLLOWING YEAR?

19 A NO, I DID NOT.

20 Q YOU NEVER DISCUSSED WITH MR. MAYBERRY LEAVING
21 TO JOIN THE NEW BUSINESS THE FOLLOWING YEAR, MA'AM?

08:43AM

22 A I DID WITH -- I DID WITH MR. MAYBERRY.

23 Q MR. MAYBERRY IS ONE OF THE DEFENDANTS IN THE
24 CASE?

25 A YEAH.

08:43AM

26 Q YOU ALSO DISCUSSED WITH MR. SANTA ANA LEAVING
27 WITH THE NEW GROUP AFTER THE FIRST OF THE YEAR, DIDN'T
28 YOU?

1 A NO, I DID NOT.

2 Q WELL, LET'S GO TO PAGE 2114-8, PLEASE.

3 AT THAT POINT, YOU SAID --

4 MR. MAYBERRY SAYS: YEAH, IT'S ONLY WORK, WE'LL BE
5 FINE. NO WORRIES.

08:43AM

6 YOU SAY: YEAH.

7 AND HE SAYS: MAYBE THE TIMELINE WILL
8 JUST BE FASTER.

9 AND YOU SAY: YEAH.

10 YOU WERE REFERRING TO THE TIMELINE THAT
11 YOU HAD DISCUSSED ABOUT THE NEW BUSINESS AND THE GROUP
12 LEAVING TO JOINT NEW BUSINESS, WEREN'T YOU?

08:43AM

13 A I WASN'T DISCUSSING ABOUT ANY BUSINESS.

14 Q PARDON ME?

15 A I NEVER SAID ANYTHING ABOUT A NEW BUSINESS.

08:44AM

16 Q WHY DON'T YOU TELL US WHAT TIMELINE YOU WERE
17 TALKING ABOUT, PLEASE.

18 A HE WAS TALKING -- TALKING ABOUT TIMELINES,
19 SO --

20 Q WHEN YOU SAID, YEAH, YOU WERE INDICATING YOUR
21 AGREEMENT OR YOUR UNDERSTANDING, RIGHT?

08:44AM

22 A YES.

23 Q WHAT TIMELINE WERE YOU AND MR. MAYBERRY
24 TALKING ABOUT?

25 A ABOUT SOMETHING HAPPENING AT THE COMPANY AT
26 THE TIME.

08:44AM

27 Q OKAY.

28 SO YOU WEREN'T TALKING ABOUT ANY

1 TIMELINE THAT YOU KNEW ABOUT TO LEAVE AT A PARTICULAR
2 TIME.

3 IS THAT YOUR TESTIMONY?

4 A YES. I WASN'T AWARE OF ANY TIMELINE.

5 Q YOU WEREN'T AWARE OF ANY TIMELINE, MA'AM?

08:44AM

6 A NO.

7 Q YOU WEREN'T AWARE OF PLANS THAT YOU AND THE
8 OTHER DEFENDANTS HAD TO START A NEW BUSINESS IN 2010?

9 MR. HELM: ARGUMENTATIVE, YOUR HONOR.

10 THE COURT: OVERRULED.

08:44AM

11 THE WITNESS: NO.

12 BY MR MADISON:

13 Q OKAY.

14 WELL, LET ME JUST ASK YOU TO LOOK AT
15 EXHIBIT -- LET'S LOOK AT 306, IF WE COULD.

08:45AM

16 DO YOU HAVE 306 IN THAT BINDER?

17 A I DO.

18 Q OKAY.

19 306 IS A CHAT THAT YOU AUTHORED,
20 CORRECT?

08:45AM

21 A YES.

22 Q AND WHO DID YOU SEND THAT TO?

23 A A FRIEND AT MERRILL LYNCH BANK OF AMERICA IN
24 NEW YORK.

25 Q WHAT WAS THAT FRIEND'S NAME?

08:45AM

26 A TIMOTHY GROSS.

27 Q PARDON ME?

28 A TIMOTHY GROSS.

1 Q THIS CHAT WAS BACK IN SEPTEMBER OF 2009,
2 CORRECT?

3 A YES.

4 Q ALL RIGHT. SO WE WERE LOOKING AT THE CHAT
5 BETWEEN YOU AND MR. MAYBERRY FROM DECEMBER 4TH.

08:46AM

6 NOW, THIS IS ALMOST THREE MONTHS
7 EARLIER, CORRECT?

8 A CORRECT.

9 Q AND YOU TOLD MR. GROSS THAT YOU HAD "DEF PLANS
10 TO --

08:46AM

11 MR. HELM: MOTION IN LIMINE.

12 THE COURT: SUSTAINED.

13 MR. MADISON: WELL, OKAY.

14 THE COURT: YOU HAVE TO ESTABLISH THE
15 FOUNDATION FOR THE SOURCE OF THE INFORMATION CONTAINED
16 IN THE CHAT.

08:46AM

17 MR. MADISON: YES.

18 Q YOU JUST TOLD US THAT YOU HAD NEVER LEARNED OF
19 ANY TIMELINE FROM THE DEFENDANTS OR ANYONE ELSE,
20 CORRECT?

08:46AM

21 A CORRECT.

22 Q OKAY.

23 IN EXHIBIT 306, YOU'RE DISCUSSING A VERY
24 SPECIFIC TIMELINE WITH YOUR FRIEND IN NEW YORK,
25 CORRECT?

08:46AM

26 A I BELIEVE SO. CAN YOU POINT THAT OUT?

27 Q I'M SORRY?

28 A I'M NOT SURE WHERE YOU'RE REFERRING TO.

1 Q YES.

2 AT THE TOP OF PAGE 2 OF 306, WHERE
3 YOU'RE DISCUSSING ABOUT MOVING.

4 YOU SEE THAT?

5 A I DO.

08:47AM

6 MR. MADISON: SO I'D MOVE 306 AS IMPEACHMENT,
7 YOUR HONOR.

8 MR. HELM: LACKS FOUNDATION. MOTION IN
9 LIMINE.

10 THE COURT: YOU'RE GOING TO HAVE TO -- IF
11 WE'RE LOOKING AT THE, I GUESS THE FOURTH LINE,
12 ESTABLISH THE FOUNDATION AND THE SOURCE OF THAT.

08:47AM

13 MR. MADISON: SURE.

14 Q MS. CODY, I WANT TO GO BACK TO YOUR TESTIMONY
15 A COUPLE MINUTES AGO THAT YOU NEVER KNEW ABOUT A
16 TIMELINE WITH THE DEFENDANTS TO OPEN A NEW BUSINESS.

08:47AM

17 YOU TESTIFIED TO THAT, RIGHT?

18 A YES.

19 Q OKAY.

20 AS YOU LOOK AT 306, YOU'RE DISCUSSING
21 EXACTLY THAT SUBJECT WITH YOUR FRIEND, MR. GROSS,
22 AREN'T YOU?

08:47AM

23 A I AM.

24 Q SO, YOU'RE TALKING ABOUT A VERY SPECIFIC DATE
25 AT WHICH POINT YOU AND THE OTHER DEFENDANTS WOULD OPEN
26 A NEW BUSINESS, CORRECT.

08:47AM

27 MR. HELM: YOUR HONOR, STILL NO FOUNDATION.
28 LEADING.

1 THE COURT: OVERRULED.

2 CAN YOU ANSWER THAT, MA'AM.

3 THE WITNESS: THIS IS JUST THE DATE THAT I
4 MADE UP, I BELIEVE. I DON'T KNOW WHERE I GOT THAT DATE
5 FROM.

08:48AM

6 MR. MADISON: OKAY.

7 SO -- WELL, I MOVE 306 AS IMPEACHING
8 BOTH PRIOR TESTIMONY AND THAT STATEMENT, YOUR HONOR.

9 MR. HELM: SAME OBJECTION. NO FOUNDATION.

10 THE COURT: OVERRULED. I'LL ADMIT IT.

08:48AM

11 MR. MADISON: IF WE CAN DISPLAY 306-2.

12 IF WE COULD EXPAND THAT PORTION OF THE
13 EXHIBIT, PLEASE.

14 Q YOU TELL MR. GROSS:

15 I HAVE TO MOVE TOWARD WEST L.A.

08:48AM

16 AREA. WE'RE GOING TO BE MOVING

17 JOBS.

18 AND JUST THE WE WAS YOU AND THE OTHER
19 DEFENDANTS HERE AND OTHER PEOPLE, CORRECT?

20 A YES.

08:48AM

21 Q AND HE SAID:

22 "IS THAT DEF?"

23 NOW, "DEF" MEANS DEFINITE TO YOU,

24 RIGHT.

25 A YES.

08:49AM

26 Q YOU SAY: YEAH.

27 YOU ADD: JANUARY 15TH.

28 THAT WAS THE DATE YOU WERE COMMUNICATING

1 TO MR. GROSS THAT YOU AND THE DEFENDANTS WERE GOING TO
2 BE MOVING JOBS AND STARTING A NEW FIRM, CORRECT?

3 A THAT'S WHAT I COMMUNICATED TO HIM.

4 Q IT SAYS: WHERE TO? CENTURY CITY OR
5 SANTA MONICA.

08:49AM

6 THAT WAS BASED ON WHAT YOU HEARD FROM
7 THE DEFENDANTS, IN PARTICULAR MS. VANEVERY,
8 MR. MAYBERRY, AND ANOTHER PERSON NOT A DEFENDANT,
9 MR. WARD, THAT THEY WERE LOOKING AT OFFICE SPACE IN
10 CENTURY CITY AND SANTA MONICA?

08:49AM

11 A I NEVER READ THAT FROM ANY OF THEM.

12 Q THAT WAS JUST A RUMOR YOU HEARD?

13 A YES.

14 Q WE HAVE EVIDENCE IN THE CASE THERE WERE
15 SPECIFIC BUILDINGS IN CENTURY CITY AND SANTA MONICA
16 THAT WERE BEING LOOKED AT AT THE TIME.

08:49AM

17 ARE YOU UNAWARE OF THOSE FACTS?

18 MR. HELM: OBJECT TO THE FORM.

19 THE COURT: OVERRULED. IF YOU WERE AWARE OF
20 THEM, FINE; IF NOT, TELL US YOU'RE NOT.

08:49AM

21 THE WITNESS: I WASN'T AWARE.

22 BY MR MADISON:

23 Q YOU MADE THAT UP OUT OF THIN AIR?

24 A I PROBABLY HEARD SOMETHING, BUT I DON'T
25 REMEMBER.

08:50AM

26 Q HEARD SOMETHING ON THE FLOOR?

27 A MAYBE. I DON'T KNOW WHERE I HEARD IT.

28 Q YOU DON'T KNOW WHETHER IT WAS FROM THE

1 DEFENDANTS OR NOT?

2 A I DON'T REMEMBER HEARING THAT FROM THE
3 DEFENDANTS.

4 Q BUT YOU DON'T REMEMBER WHO YOU DID HEAR IT
5 FROM?

08:50AM

6 A I DON'T REMEMBER WHO I DID.

7 Q IT SAYS OWN GIG OR MERGING, AND YOU RESPOND:
8 OUR OWN.

9 WHAT YOU MEANT TO COMMUNICATE BY THAT
10 WAS, UNLIKE THE OTHER THINGS WE TALKED ABOUT LAST
11 THURSDAY, GOING TO WAMCO OR GOING TO U.B.S., THIS WAS
12 GOING TO BE YOUR OWN BUSINESS WITH THE DEFENDANTS,
13 CORRECT?

08:50AM

14 A THAT'S WHAT I COMMUNICATED, YES.

15 Q SO, LET'S GO BACK TO THE CHATS WITH
16 MR. MAYBERRY IF WE COULD.

08:50AM

17 IS IT STILL YOUR TESTIMONY THAT YOU
18 DON'T -- YOU DID NOT HAVE ANY KNOWLEDGE OF ANY TIMELINE
19 IN DECEMBER -- DECEMBER 4TH?

20 A IT IS.

08:50AM

21 Q DO YOU HAVE EXHIBIT 2113 IN FRONT OF YOU?

22 A I DO.

23 Q THAT IS ANOTHER CHAT FROM THE MORNING OF
24 DECEMBER 4TH BETWEEN AND YOU MR. MAYBERRY, CORRECT?

25 A YES.

08:51AM

26 Q AND I BELIEVE WE TALKED ABOUT SOME OF THIS, SO
27 I WON'T DWELL ON IT.

28 I WOULD MOVE 2113.

1 MR. HELM: IF I MAY HAVE A MOMENT.

2 (PAUSE) +

3

4 MR. HELM: YOUR HONOR, I BELIEVE WE OBJECTED
5 TO PART OF THIS IN A PRIOR EXHIBIT, BUT I BELIEVE THAT
6 PART'S BEEN ADMITTED.

08:52AM

7 SUBJECT TO THAT, WE HAVE NO OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 2113 ADMITTED) +

08:52AM

11

12 MR. MADISON: THANK YOU.

13 IF WE CAN JUST DISPLAY THIS, AND I
14 BELIEVE IF WE GO TO, FOR EXAMPLE, PAGE 2, THIS IS THE
15 PART THAT WE LOOKED AT LAST THURSDAY ABOUT MR. MAYBERRY
16 OBSERVING THAT MR. SANTA ANA HAD BEEN GOING INTO HIS
17 CUBICLE AND DOING THINGS ON HIS LAPTOP.

08:52AM

18 DO YOU RECALL THAT?

19 A YES.

20 Q LET ME ASK YOU TO LOOK AT 2111.

08:52AM

21 YOU RECOGNIZE 2111?

22 A YES.

23 Q THAT ALSO IS ONE OF THOSE CHATS THAT YOU WERE
24 HAVING WITH MR. MAYBERRY IN THE MORNING OF DECEMBER 4TH
25 THAT WE TALKED ABOUT LAST WEEK, CORRECT?

08:53AM

26 A YES.

27 Q THIS IS THE ONE WHERE HE WAS ASKING YOU IF YOU
28 NEED ANYTHING ON THE G DRIVE.

1 DO YOU RECALL?

2 A YES.

3 MR. MADISON: MOVE 2111?

4 THE COURT: ANY OBJECTION?

5 MR. HELM: NO, YOUR HONOR.

08:53AM

6 THE COURT: ADMITTED.

7

8 (EXHIBIT 2111 ADMITTED.) +

9

10 BY MR MADISON:

08:53AM

11 Q WHEN WE WERE TALKING ABOUT THE G DRIVE WHAT
12 YOU UNDERSTAND MR. MAYBERRY ASKING YOU WAS WHETHER YOU
13 WANTED HIM TO DOWNLOAD ANYTHING OFF OF TCW G DRIVE ON
14 TO THE FLASH DRIVE THAT HE WAS USING TO DOWNLOAD,
15 CORRECT?

08:53AM

16 A CAN YOU SAY THAT AGAIN, PLEASE.

17 Q YES.

18 YOU UNDERSTOOD HIM TO BE ASKING YOU
19 WHETHER YOU NEEDED ANYTHING FROM TCW'S G DRIVE TO BE
20 DOWNLOADED ONTO THE FLASH DRIVE THAT HE HAD, CORRECT?

08:53AM

21 A CORRECT.

22 Q AND DO YOU RECALL AT ANOTHER POINT THAT
23 MORNING YOU LEARNED THAT HE HAD DOWNLOADED THE G DRIVE
24 THAT HAD YOUR NAME, RACHEL, IN THE DIRECTORY?

25 A YES.

08:54AM

26 Q I WANT TO GO BACK TO THE SEPTEMBER TIME
27 PERIOD, AND WE LOOKED AT 306 A MINUTE AGO. THAT WAS
28 DATED SEPTEMBER 20.

1 DO YOU RECALL THAT, ON SEPTEMBER 3RD,
2 THERE WAS AN IMPORTANT MEETING THAT HAPPENED JUST A FEW
3 FEET FROM WHERE YOU SIT ON THE WORK STATION THERE ON
4 THE 16TH FLOOR?

5 A YES, THERE WAS A MEETING. 08:54AM

6 Q AND DO YOU RECALL THAT THAT WAS A MEETING --
7 IF WE COULD DISPLAY 373. IT'S IN
8 EVIDENCE, YOUR HONOR.

9 DO YOU RECALL THE FLOOR PLAN THAT WE HAD
10 LAST WEEK, MS. CODY, OF THE SPACE? 08:54AM

11 A YES.

12 Q AND IF WE GO TO YOUR WORK STATION, IT HAS YOUR
13 NAME, CODY, ON THE THIRD TABLE FROM THE LEFT.

14 ACTUALLY, I WANT TO THEN GO BACK OUT AND
15 HIGHLIGHT IT ON THE LARGER EXHIBIT. 08:54AM

16 AND THEN THERE'S A CONFERENCE ROOM
17 CALLED LA CIENEGA DOWN ON THE LEFT SIDE, NOT FAR FROM
18 YOUR STATION, CORRECT?

19 A THAT'S CORRECT.

20 Q DO YOU RECALL THAT, ON THE AFTERNOON OF 08:55AM
21 SEPTEMBER 3RD, THERE WAS A MEETING WITH MR. GUNDLACH
22 AND MR. STERN AND OTHERS FROM THE 16TH FLOOR IN THAT
23 ROOM, CORRECT?

24 A YES.

25 Q THERE WAS A GREAT DEAL OF SPECULATION AND 08:55AM
26 DISCUSSION ON THE FLOOR AS TO WHAT WAS GOING ON IN THAT
27 MEETING THAT DAY, CORRECT?

28 A THAT'S CORRECT.

1 Q IT WAS UNUSUAL FOR MR. STERN, THE CEO OF THE
2 FIRM, TO COME DOWN AND HAVE A MEETING LIKE THAT ON THE
3 FLOOR, CORRECT?

4 A YES, THAT'S CORRECT.

5 Q OKAY.

08:55AM

6 AND IT WAS AFTER THAT MEETING THAT YOU
7 BEGAN TO DESCRIBE TO FRIENDS AND OTHERS THAT THERE WERE
8 DATES THAT YOU WERE GOING TO BE MOVING JOBS, RIGHT?

9 A I DON'T KNOW ABOUT THAT.

10 Q WE'VE ALREADY SEEN 306. YOU CAN GO BACK TO
11 THAT IF YOU'D LIKE. WE CAN DISPLAY IT.

08:55AM

12 THAT WAS SEPTEMBER 20, I BELIEVE OF
13 2009. AND YOU'RE TALKING ABOUT SOMETHING BEING
14 DEFINITE JANUARY 15TH, MOVING JOBS, RIGHT?

15 A YES.

08:56AM

16 Q OKAY. LET ME ASK YOU TO LOOK AT EXHIBIT 307.

17 AND THIS IS A CHAT, JUST FOR THE RECORD,
18 YOUR HONOR, A CHAT TO -- BETWEEN YOU AND SOMEONE NAMED
19 CAMERON MARCHANT AT MERRILL LYNCH, CORRECT?

20 A CORRECT.

08:56AM

21 Q HERE AGAIN, IF YOU LOOK AT THE FIRST PART OF
22 THE CHAT ON THE FIRST PAGE, YOU'RE DISCUSSING WITH
23 MR. MARCHANT YOUR PLANS TO CHANGE JOBS, CORRECT?

24 MR. HELM: MOTION IN LIMINE, YOUR HONOR.

25 MR. MADISON: IT'S FOUNDATIONAL.

08:56AM

26 MR. HELM: IT'S LEADING.

27 THE COURT: ALL RIGHT.

28 MR. MADISON, YOU DO NEED TO ESTABLISH

1 THE SOURCE OF THIS INFORMATION.

2 MR. MADISON: SURE.

3 Q IT'S SIMILAR TO THE OTHER CHAT, THAT YOU HAD
4 WITH MR. GROSS.

5 MY QUESTION, MS. CODY, IS YOU WERE
6 EXPRESSING TO PERSONS THAT YOU NOW HAVE PLANS TO CHANGE
7 JOBS, TO LEAVE TCW AFTER THAT SEPTEMBER 3RD MEETING,
8 CORRECT?

08:57AM

9 MR. HELM: SAME OBJECTION. HEARSAY. LACKS
10 FOUNDATION.

08:57AM

11 MR. MADISON: THAT'S YES OR NO, YOUR HONOR.

12 THE COURT: NO.

13 IT'S JUST NOT THE RIGHT QUESTION.

14 MR. MADISON: VERY WELL.

15 THE COURT: YOU NEED TO ELICIT THE SOURCE
16 BEFORE YOU TALK ABOUT THE CHAT.

08:57AM

17 BY MR MADISON:

18 Q YOU WERE DISCUSSING WITH MR. MAYBERRY AND
19 OTHER DEFENDANTS WHAT THE PLANS WERE GOING TO BE,
20 RIGHT?

08:57AM

21 A I TALKED TO MR. MAYBERRY.

22 Q OKAY.

23 BASED ON THAT, YOU WERE DESCRIBING TO
24 FRIENDS AND OTHERS WHAT YOUR PLANS WERE GOING TO BE AS
25 PART OF THAT, RIGHT?

08:57AM

26 A I'M CONFUSED BY THE QUESTION. CAN YOU SAY
27 THAT AGAIN?

28 Q PARDON ME?

1 A CAN YOU SAY THAT ONE MORE TIME?

2 Q YES.

3 BASED ON WHAT YOU DISCUSSED WITH
4 MR. MAYBERRY, YOU WERE TALKING TO FRIENDS AND OTHERS
5 ABOUT WHAT YOUR PLANS WERE GOING TO BE?

08:58AM

6 MR. HELM: VAGUE AND AMBIGUOUS.

7 THE COURT: OVERRULED.

8 THE WITNESS: I DON'T BELIEVE I EVER TALKED TO
9 MR. MAYBERRY ABOUT JANUARY 15TH -- DATE LIKE YOU'RE
10 REFERRING TO.

08:58AM

11 BY MR MADISON:

12 Q ALL RIGHT. I DON'T SEE THAT HERE ON THE FIRST
13 PAGE OF EXHIBIT 307.

14 A ITS RIGHT THERE (INDICATING).

15 Q OKAY.

08:58AM

16 WELL, SO YOU HAD TALKED TO MR. MAYBERRY
17 ABOUT PLANS TO GO TO A NEW FIRM WITH MR. GUNDLACH,
18 CORRECT?

19 A YES.

20 Q BUT YOU BELIEVE YOU LEARNED THE DAY OF THAT
21 MOVE FROM SOMEBODY ELSE?

08:58AM

22 A I DON'T KNOW WHERE I LEARNED THAT DATE.

23 Q IT COULD HAVE BEEN MR. MAYBERRY OR THE OTHER
24 DEFENDANTS? COULD HAVE BEEN SOMEBODY ELSE?

25 A YES. I SUPPOSE SO.

08:58AM

26 Q WELL, IN ANY EVENT, YOUR STATE OF MIND AS OF
27 SEPTEMBER 22ND IN THIS CASE WAS THAT YOU WERE STARTING
28 YOUR OWN COMPANY WITH MR. GUNDLACH AND MR. MAYBERRY AND

1 THE OTHERS, RIGHT?

2 MR. HELM: LACKS FOUNDATION.

3 THE COURT: OVERRULED.

4 GO AHEAD AND ANSWER.

5 THE WITNESS: YES, THAT'S WHAT I WROTE.

08:59AM

6 BY MR. MADISON:

7 Q MR. MARCHANT WANTED TO KNOW IF THIS WAS
8 GUNDLACH'S GIG, AND YOU SAID YES BECAUSE YOU BELIEVE
9 THAT'S WHAT IT WAS, RIGHT?

10 MR. HELM: SAME OBJECTION, YOUR HONOR.

08:59AM

11 THE COURT: OVERRULED.

12 THE WITNESS: YES.

13 BY MR MADISON:

14 Q AND YOU BELIEVE THE START DATE FOR THAT NEW
15 GIG WITH MR. GUNDLACH WOULD BE JANUARY 15TH, CORRECT?

08:59AM

16 A AGAIN, THAT'S WHAT I WROTE, YES.

17 Q THAT'S WHAT YOU BELIEVED AT THE TIME?

18 A I SUPPOSE SO. I DON'T REALLY REMEMBER WHAT I
19 BELIEVED.

20 Q DO YOU REMEMBER THAT YOU HAD ANOTHER
21 DISCUSSION WITH MR. MARCHANT ABOUT SOME OF THESE SAME
22 TOPICS A FEW DAYS LATER? IF YOU LOOK AT 2048, THAT'S
23 THE NEXT EXHIBIT I'M ASKING ABOUT.

08:59AM

24 I WOULD MOVE 307 AS WELL, YOUR HONOR.

25 MR. HELM: SAME OBJECTION.

09:00AM

26 THE COURT: IT WILL BE ADMITTED.

27

28 (EXHIBIT 307 MARKED) +

1 BY MR MADISON:

2 Q JUST BEFORE WE GO TO 2048, SO WE CAN
3 FAMILIARIZE OURSELF WITH MR. MARCHANT, IF WE GO TO 307
4 HERE.

5 HERE, 9-22, ONE THING ON THESE, 09:00AM
6 BLOOMBERG CHAT, THIS WAS A BLOOMBERG CHAT, CORRECT?

7 A I BELIEVE SO.

8 Q WERE YOU FAMILIAR WITH THE FACT THAT THEY USE
9 GREENWICH TIME ON THE HEADERS UP AT THE TOP?

10 A NO. ACTUALLY, I WASN'T. 09:00AM

11 Q AND THEN IF YOU NOTICE THE TIME FROM THE VERY
12 TOP IS THREE HOURS AHEAD OF THE TIMES THAT RUN ALONG
13 THE LEFT HAND MARGIN.

14 DID YOU KNOW ABOUT THAT, WHAT TIMES THE
15 BLOOMBERG FOLKS USE FOR THAT? 09:01AM

16 THE COURT: WAIT A MINUTE, I'M UNCLEAR. IT
17 SAYS 11:06:05 AT THE TOP.

18 THEN IT SHOWS 20:09:34.

19 MR. MADISON: YES.

20 THE COURT: WHERE'S THE THREE-HOUR NUMBER? 09:01AM

21 MR. MADISON: I WAS NEVER IN THE MILITARY, BUT
22 11:00 P.M.

23 THE COURT: MAYBE I'M NOT THAT QUICK. I WANT
24 TO MAKE SURE WE ALL UNDERSTAND.

25 MR. MADISON: IF I CAN UNDERSTAND, ANYBODY
26 CAN. 09:01AM

27 YOUR HONOR, I BELIEVE IT'S 11:00 P.M.,
28 YOU KNOW, REGULAR TIME. AND THEN ON THE LEFT-HAND

1 MARGIN THE 20: -- FOR EXAMPLE, SEE WHERE IT SAYS
2 20:09:34? THAT'S MILITARY TIME.

3 THE COURT: THAT'S 8 O'CLOCK.

4 MR. MADISON: THAT WOULD BE 8:00 P.M., YOUR
5 HONOR, YES.

09:01AM

6 THE COURT: ALL RIGHT.

7 BY MR MADISON:

8 Q WERE YOU FAMILIAR WITH THESE TIME DIFFERENCES
9 ON THE BLOOMBERG CHATS?

10 A NO, I WASN'T. YOU'RE SAYING THIS IS 8:00 P.M.
11 I'M WRITING THIS?

09:02AM

12 Q ACTUALLY, IT'S 8:00 P.M. IN NEW YORK, AND 4:00
13 P.M. -- PARDON ME -- 5:00 P.M. IN CALIFORNIA.

14 DOES THAT SOUND FAMILIAR?

15 A IT DOESN'T --

09:02AM

16 THE COURT: WAIT A MINUTE. WAIT A MINUTE.

17 WE'VE GOT TO HAVE SOME BASIS FOR ALL OF
18 THIS. AND I DON'T KNOW WHERE YOU -- YOU'RE SAYING
19 11:06 IS GREENWICH TIME?

20 MR. MADISON: I BELIEVE IT IS, YOUR HONOR.

09:02AM

21 THE COURT: WELL, YOU KNOW, YOU CAN'T JUST
22 GUESS ABOUT IT. SO LET'S NOT EVEN TALK ABOUT THE
23 TIMES.

24 MR. MADISON: FINE.

25 THE COURT: LADIES AND GENTLEMEN, YOU CAN'T
26 SPECULATE ABOUT THESE THINGS. AND IT APPEARS TO ME
27 NOBODY'S TOO SURE WHAT THESE TIMES ARE.

09:02AM

28 SO JUST LOOK --

1 MR. MADISON: YES.

2 Q IF WE EXPAND THIS PART OF THE CHAT, THEN WHAT
3 WE SAW WAS YOUR STATEMENT TO MR. MARCHANT ABOUT HAVING
4 TO GET A VACATION OR SOME FUN IN BEFORE JANUARY.

5 AND YOU SAY: WE'RE STARTING OUR OWN
6 COMPANY.

09:02AM

7 AND HE SAYS: AH.

8 AND SO YOU SAY: I'LL BE WORKING A TON
9 AND WE'LL BE VERY BUSY.

10 AND YOU SAY: NO VACATION.

09:03AM

11 HE SAYS: YEAH.

12 AND YOU -- HE GOES ON TO SAY:
13 GUNDLACH'S GIG?

14 AND YOU SAID: YEAH.

15 THOSE WERE THE STATEMENTS YOU MADE TO
16 MR. MARCHANT, CORRECT?

09:03AM

17 A YES.

18 Q MOVING TO 2048, DO YOU RECALL, THERE CAME A
19 TIME IN LATE SEPTEMBER WHERE MR. GUNDLACH THREW A BIG
20 PARTY FOR THE M.D.S. GROUP?

09:03AM

21 A I BELIEVE SO. IT -- ARE YOU REFERRING TO THE
22 RESTAURANT?

23 Q THE MALISSE, THE RESTAURANT IN SANTA MONICA?

24 A YES.

25 Q DO YOU RECALL THAT?

09:03AM

26 A YES.

27 Q THE PARTY WAS FOR THE PURPOSE OF CELEBRATING
28 IN PARTICULAR A FUND HAVING REACHED A PARTICULAR

1 MILESTONE, RIGHT?

2 A YES, THE FUND WE MANAGE WENT FROM \$1 BILLION
3 TO \$10 BILLION IN A YEAR.

4 Q THE UNDERSTOOD PURPOSE FOR THE DINNER TO
5 CELEBRATE \$10 BILLION THRESHOLD OF FUNDS BROUGHT IN
6 FROM INVESTORS, CORRECT?

09:04AM

7 A YES.

8 Q DO YOU RECALL AS OF SEPTEMBER 30, 2009, HAVING
9 THOUGHT ABOUT THAT FUND, WHICH WAS A TCW FUND, CORRECT?

10 A YES.

09:04AM

11 Q HAVING THOUGHT ABOUT THAT FUND AS MOVING TO
12 THE NEW BUSINESS, THAT YOU WERE GOING TO BE JOINING
13 WITH THE DEFENDANTS AND OTHERS?

14 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

15 THE COURT: SUSTAINED.

09:04AM

16 BY MR MADISON:

17 Q MY QUESTION RIGHT NOW IS, YES OR NO, IF YOU
18 WERE THINKING ABOUT THAT AT ALL AT THAT TIME.

19 MR. HELM: SAME OBJECTION.

20 THE COURT: SUSTAINED.

09:04AM

21 BY MR MADISON:

22 Q DO YOU RECALL DISCUSSING THAT WITH
23 MR. MAYBERRY OR OVERHEARING DISCUSSIONS ABOUT THAT WITH
24 THE DEFENDANTS, ABOUT WHAT WOULD HAPPEN TO ALL THE
25 FUNDS YOU WERE MANAGING?

09:04AM

26 MR. HELM: COMPOUND.

27 THE COURT: YOU CAN ANSWER THAT.

28 THE WITNESS: I DON'T REMEMBER.

1 BY MR MADISON:

2 Q YOU DON'T RECALL THAT.

3 IF YOU LOOK AT 2048, AND THE BOTTOM OF
4 THE FIRST PAGE. IF YOU COULD READ THE LAST SIX OR
5 EIGHT LINES AND SEE IF THAT REFRESHES YOUR RECOLLECTION
6 ABOUT TALKING ABOUT THE FUND.

09:05AM

7 A YES, I TALKED ABOUT IT HERE (INDICATING).

8 Q PARDON ME?

9 A YES, I TALKED ABOUT IT HERE (INDICATING).

10 Q OKAY.

09:05AM

11 MR. HELM: WELL, THEN, YOUR HONOR -- I
12 MISUNDERSTOOD THE QUESTION. I THOUGHT SHE HAD MEANT
13 THEY MEANT TALKING TO THE DEFENDANTS AND NOT TALKING
14 HERE. I MOVE TO STRIKE THAT AS HEARSAY.

15 THE COURT: I'LL STRIKE THE REFERENCE TO THE
16 CONTENT OF THE CHAT.

09:05AM

17 WE STILL DON'T HAVE ANY FOUNDATION FOR
18 THIS.

19 MR. MADISON: OKAY.

20 Q YOU WERE TALKING TO THE DEFENDANTS AND OTHERS
21 ABOUT WHAT WOULD HAPPEN TO THE FUNDS IF YOU WERE ALL
22 GOING TO LEAVE TCW TO GO TO THE NEW BUSINESS, AS YOU'VE
23 TOLD US?

09:05AM

24 MR. HELM: LEADING AS TO FOUNDATION.

25 THE COURT: SUSTAINED.

09:05AM

26 BY MR MADISON:

27 Q DID YOU --

28 A I SAID NO.

1 Q OKAY.

2 YOU NEVER DISCUSSED WITH THE DEFENDANTS
3 WHAT WOULD HAPPEN TO THE FUNDS THAT YOU WERE MANAGING
4 IF YOU LEFT AND WENT TO A NEW FIRM?

5 A NO, I DON'T BELIEVE SO. 09:05AM

6 Q WAS THAT NOT SOMETHING YOU WERE PARTICULARLY
7 INTERESTED IN?

8 A TO BE HONEST, I DIDN'T REALLY KNOW HOW THE
9 BUSINESS WORKED, ABOUT HOW FUNDS WORKED, OR WHO -- HOW
10 THEY WOULD -- IF THEY TRANSFERRED OVER TO OTHER THINGS 09:06AM
11 OR -- I DON'T KNOW THE LOGISTICS BEHIND IT.

12 Q OKAY. WELL, JUST YES OR NO. IN THIS CHAT,
13 2048, YOU WERE MAKING STATEMENTS ABOUT WHAT WOULD
14 HAPPEN TO THE FUNDS, WEREN'T YOU?

15 A YES, I DID. 09:06AM

16 MR. HELM: HEARSAY.

17 THE COURT: SUSTAINED. THIS EXHIBIT'S GOING
18 NOWHERE, MR. MADISON. MOVE ON.

19 MR. MADISON: I'LL SEND IT THERE NOW. I'LL
20 MOVE ON. 09:06AM

21 THE COURT: THANK YOU.

22 BY MR. MADISON:

23 Q LET ME ASK YOU. ANOTHER EVENT THAT HAPPENED
24 AROUND THE SAME TIME, DO YOU REMEMBER BEING INVITED
25 PERSONALLY BY MR. GUNDLACH TO GO ON A TRIP WITH OTHERS? 09:06AM

26 A HE INVITED ME WITH OTHERS TO GO.

27 Q HE INVITED YOU AND ABOUT SIX OTHERS, INCLUDING
28 THE DEFENDANTS, MR. SANTA ANA, MR. MAYBERRY,

1 MS. VANEVERY, AND SOME OTHER PERSONS TO GO ON A TRIP TO
2 A PLACE CALLED MARFA, TEXAS, CORRECT?

3 A THAT'S CORRECT.

4 Q AND THAT TRIP, IN FACT, DID OCCUR IN OCTOBER
5 OF 2009, RIGHT?

09:07AM

6 A YES.

7 Q AND IT WAS PURELY A PLEASURE TRIP, RIGHT?

8 A I WAS UNDER THE IMPRESSION IT WAS A
9 TEAM-BUILDING EXERCISE.

10 Q SO IF THERE WAS A BUSINESS REASON, IT WAS TO
11 BUILD A TEAM?

09:07AM

12 A TEAM BUILDING. THAT'S WHAT IT WAS IN
13 REFERENCE TO.

14 Q ALL RIGHT.

15 ALL OF THE PEOPLE WHO WENT ON THAT TRIP
16 ENDED UP JOINING DOUBLELINE IN DECEMBER OF 2009,
17 MR. GUNDLACH'S NEW FIRM, CORRECT?

09:07AM

18 A THAT'S NOT CORRECT.

19 Q WHO WAS IT THAT YOU RECALL THAT WENT ON THE
20 TRIP TO MARFA, TEXAS THAT DID NOT JOIN DOUBLELINE?

09:07AM

21 A CLAUDE ERB.

22 Q DO YOU RECALL THERE WAS A TIME, IN FACT, WHEN
23 MR. ERB HAD GONE TO DOUBLELINE AND CHANGED HIS MIND AND
24 CAME BACK TO TCW?

25 A YES. HE WENT TO DOUBLELINE FOR A DAY, I
26 BELIEVE.

09:07AM

27 Q AND WE MAY HEAR TESTIMONY ABOUT THAT, BUT IS
28 THAT THE ONLY PERSON YOU HAD IN MIND ON THE MARFA TRIP

1 YOU THOUGHT DID NOT GO TO DOUBLELINE?

2 A YES.

3 Q SO CAN WE SAY EVERYBODY THAT WENT ON THE MARFA
4 TRIP WAS OFFERED A JOB AT DOUBLELINE?

5 A I DON'T KNOW IF THEY WERE OFFERED A JOB. 09:08AM

6 Q THEY ALL WENT THERE, SO THEY MUST HAVE FOUND
7 THEIR WAY THERE SOMEHOW?

8 A I -- YES.

9 Q YOU BELIEVED, DIDN'T YOU, THAT PART OF THE
10 REASON, IT WAS -- WELL, STRIKE THAT. 09:08AM

11 IT WAS A WEEKEND TRIP. YOU AND THE
12 OTHERS WENT AND ATE WELL AND DRANK GOOD WINE AND LOOKED
13 AT ART, RIGHT?

14 A THAT'S CORRECT.

15 Q AND YOU BELIEVED THAT THE PURPOSE OF THE TRIP
16 IN PARTICULAR WAS TO CELEBRATE THE NEW VENTURE THAT YOU
17 WERE ALL GOING TO BE JOINING AFTER THE FIRST OF THE
18 YEAR, DIDN'T YOU? 09:08AM

19 A NO.

20 Q DO YOU REMEMBER TAKING A PRIVATE JET TO MARFA? 09:08AM

21 A YES.

22 Q AND DID YOU HANDLE ANY OF THE EXPENSE
23 REIMBURSEMENT FOR ANY OF THIS?

24 A NO, I DID NOT.

25 Q WHO DID, DO YOU KNOW? 09:08AM

26 A I DON'T KNOW.

27 Q YOU DON'T KNOW IF TCW PAID FOR THE TRIP OR
28 NOT?

1 A I DON'T KNOW.

2 Q DO YOU RECALL TALKING ABOUT THE FACT THAT A
3 PURPOSE FOR THE TRIP WAS THAT MR. GUNDLACH WANTED TO
4 CELEBRATE THIS NEW ERA THAT WAS COMING?

5 A I DON'T REMEMBER THAT.

09:09AM

6 Q IF YOU COULD LOOK AT EXHIBIT 2049, PLEASE.

7 DO YOU RECOGNIZE 2049?

8 A JUST GIVE ME ONE MINUTE.

9 YES.

09:09AM

10 Q THIS IS A CHAT THAT YOU HAD WITH YOUR FRIEND,
11 MR. GROSS, ON SEPTEMBER 30, 2009, CORRECT?

12 A YES.

13 Q AND DOES THIS REFRESH YOUR RECOLLECTION, IN
14 PARTICULAR THE BOTTOM OF THE FIRST PAGE AND OVER TO THE
15 TOP OF THE FIRST -- OF THE SECOND PAGE, ABOUT THE
16 PURPOSE FOR THE MARFA TRIP?

09:09AM

17 A I DON'T REALLY SEE WHAT YOU'RE TALKING ABOUT.

18 Q WELL, IF YOU LOOK ON THE TOP OF THE SECOND
19 PAGE IN PARTICULAR --

20 A UH-HUH.

09:10AM

21 Q -- WHERE YOU DESCRIBED, MR. GUNDLACH, DO YOU
22 SEE THAT?

23 A I DO.

24 Q OKAY.

25 WHAT WAS IN YOUR MIND WAS THAT
26 MR. GUNDLACH WANTED TO CELEBRATE, ENJOY THE END OF ONE
27 ERA AT TCW, AND CELEBRATE TO KICK OFF OF THE START OF A
28 NEW ERA, RIGHT?

09:10AM

1 A I DIDN'T SEE THAT. THAT'S WHAT TIM SAID.

2 Q PARDON ME?

3 A THE OTHER PERSON SAID THAT.

4 Q OKAY.

5 I'M LOOKING AT THE TOP OF THE SECOND
6 PAGE.

09:10AM

7 A SO AM I.

8 Q YOU MAKE THE STATEMENT: MY BOSS FEELS LIKE
9 LIVING IT UP.

10 MR. HELM: YOUR HONOR, WE'RE READING FROM THE
11 DOCUMENT. IT HASN'T BEEN ADMITTED. IT'S HEARSAY.
12 LEADING ON FOUNDATION.

09:10AM

13 THE COURT: OVERRULED.

14 YOU CAN EXPLAIN WHAT YOU WERE REFERRING
15 TO, MS. CODY.

09:11AM

16 THE WITNESS: I -- I DON'T REALLY REMEMBER
17 WHAT I WAS REFERRING TO IN THAT. JUST THAT HE WANTED
18 TO GO SEE THE ARTWORK.
19 BY MR MADISON:

20 Q WELL, THAT'S NOT WHAT YOU SAY, THOUGH, IS IT,
21 MA'AM?

09:11AM

22 A NO. I SAID -- THAT'S NOT WHAT I SAID.

23 Q WHAT YOU SAID WAS THAT MR. GUNDLACH -- YOUR
24 BOSS WAS MR. GUNDLACH, RIGHT?

25 A CORRECT.

09:11AM

26 Q AND THAT HE FELT LIKE LIVING IT UP, ENJOYING
27 THE END OF AN ERA AND --

28 THE COURT: WAIT A MINUTE. NO.

1 THAT'S MR. GROSS'S. YOU CAN'T READ WHAT
2 MR. GROSS SAID.

3 MR. MADISON: OKAY.

4 Q SO, MR. GROSS MADE CERTAIN STATEMENTS THAT YOU
5 AGREED WITH, CORRECT?

09:11AM

6 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 BY MR MADISON:

9 Q HERE, TOO, YOU TALKED TO MR. GROSS ABOUT THE
10 DATE FOR THE NEW ERA, RIGHT?

09:11AM

11 A YES.

12 MR. HELM: LEADING AS TO FOUNDATION, YOUR
13 HONOR.

14 THE COURT: OVERRULED. THE ANSWER WILL STAND.

15 YOU MAY NOT READ FROM THESE THINGS,
16 MR. MADISON.

09:12AM

17 MR. MADISON: OF COURSE.

18 THE COURT: GO AHEAD. JUST QUESTION THE
19 WITNESS.

20 MR. MADISON: I JUST DIDN'T HEAR THE LAST
21 ANSWER.

09:12AM

22 THE COURT: IT WAS YES.

23 MR. MADISON: VERY WELL.

24 Q THE SAME DATE THAT WAS IN YOUR MIND, HERE
25 AGAIN WAS JANUARY 15TH FOR THE START OF THE NEW ERA
26 WITH MR. GUNDLACH AND THE OTHERS, RIGHT?

09:12AM

27 A THAT'S THE DATE I WROTE, YES.

28 Q THAT WAS THE DATE -- WHAT THAT DATE REFERRED

1 TO WAS STARTING THE NEW FIRM AWAY FROM TCW, RIGHT?

2 A YES.

3 Q NOW, THERE CAME A TIME WHEN YOU LEARNED THAT
4 THE DATE HAD CHANGED, CORRECT?

5 A I DON'T REMEMBER.

09:12AM

6 Q ALL RIGHT.

7 IF YOU'D LOOK AT EXHIBIT 521, PLEASE.

8 DO YOU RECOGNIZE 521 TO BE A CHAT YOU
9 PARTICIPATED IN WITH ANOTHER FRIEND OF YOURS?

10 A I DO.

09:13AM

11 Q AND IF YOU LOOK ON THE SECOND PAGE, DOES THAT
12 REFRESH YOUR RECOLLECTION ABOUT THE MOVE DATE CHANGING?

13 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

14 THE COURT: I'LL SUSTAIN IT.

15 YOU CAN FOLLOW UP ON THAT.

09:13AM

16 BY MR. MADISON: OKAY.

17 Q MY QUESTION WAS, A MOMENT AGO, THERE CAME A
18 TIME WHEN YOU UNDERSTOOD THAT THE DATE OF THE MOVE HAD
19 CHANGED, RIGHT?

20 A YES, I WROTE THERE WAS A DIFFERENT DATE.

09:13AM

21 Q SO THE ANSWER TO MY QUESTION BEFORE WAS YES,
22 THERE DID COME A TIME WHERE YOUR UNDERSTANDING OF THAT
23 CHANGED, CORRECT?

24 A YES, MY UNDERSTANDING --

25 MR. HELM: LACKS FOUNDATION OF WHAT THE
26 UNDERSTANDING WAS.

09:13AM

27 THE COURT: I THINK THE REFERENCE TO ALL OF
28 THESE CHATS IS MAYBE THE PROBLEM.

1 MR. MADISON: SURE.

2 THE COURT: JUST ASK HER THE QUESTIONS.

3 BY MR MADISON:

4 Q THERE CAME A TIME WHERE YOUR UNDERSTANDING,
5 BASED ON YOUR DISCUSSIONS WITH THE DEFENDANTS, WAS THAT
6 THE MOVE WAS NOT GOING TO HAPPEN ON JANUARY 15TH, AS
7 YOU PREVIOUSLY BELIEVED. IT WAS GOING TO BE FEBRUARY
8 OR MARCH.

09:13AM

9 MR. HELM: LEADING, YOUR HONOR.

10 THE COURT: SUSTAINED.

09:14AM

11 BY MR. MADISON:

12 Q WELL, THERE WAS A CHANGE IN THE DATE, CORRECT?

13 MR. HELM: SAME OBJECTION, YOUR HONOR.

14 THE COURT: YOU'VE GOT TO HAVE THE SOURCE OF
15 HER INFORMATION, THAT'S THE ISSUE.

09:14AM

16 BY MR MADISON:

17 Q DO YOU RECALL WHO TOLD YOU ALL THE DATES FOR
18 THE ACTUAL START DATE FROM THE NEW BUSINESS?

19 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE.

20 THE COURT: OVERRULED.

09:14AM

21 THE WITNESS: NO.

22 BY MR MADISON:

23 Q COULD YOU HAVE BEEN DEFENDANTS, COULD HAVE
24 BEEN OTHER PEOPLE. IS THAT YOUR TESTIMONY?

25 A YES, I SUPPOSE SO. YEAH.

09:14AM

26 Q IN ANY EVENT, WHEREVER YOU LEARNED IT, THERE
27 CAME A TIME WHEN IT CHANGED FROM JANUARY 15TH TO
28 FEBRUARY OR MARCH, RIGHT?

1 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

2 THE COURT: OVERRULED.

3 THE WITNESS: CAN YOU REPEAT THAT?

4 MR. MADISON: YES.

5 Q HOWEVER YOU LEARNED IT, YOU CAN'T RECALL THAT,
6 BUT HOWEVER YOU LEARNED IT, YOU UNDERSTOOD IT WAS NOT
7 GOING TO BE JANUARY 15TH; IT WAS GOING TO BE FEBRUARY
8 OR MARCH, CORRECT?

09:14AM

9 MR. HELM: RELEVANCE AND LACKS FOUNDATION,
10 YOUR HONOR.

09:15AM

11 THE COURT: I THINK HE'S -- OVERRULED.

12 GO AHEAD AND ANSWER THE QUESTION.

13 THE WITNESS: YES.

14 BY MR MADISON:

15 Q OKAY. THERE'S ANOTHER CHAT WITH MR. MARCHANT
16 WHERE YOU DISCUSS THE SAME TOPIC, CORRECT?

09:15AM

17 A I'M NOT SURE.

18 MR. HELM: HEARSAY.

19 THE COURT: SUSTAINED.

20 MR. MADISON: JUST LOOK AT EXHIBIT 2050,
21 MA'AM, AND SEE IF THAT -- 2050.

09:15AM

22 THE WITNESS: WHICH NUMBER?

23 MR. MADISON: 20 5-0.

24 I'D ASK YOU TO LOOK AT PAGE 11.

25 SEE THERE, AT THE TOP OF PAGE 11, DOES
26 THAT REFRESH YOUR RECOLLECTION ABOUT WHAT YOU
27 UNDERSTOOD IN EARLY DECEMBER THE DATE TO BE --

09:16AM

28 A YES. I WROTE A FEW DATES. I CHANGED THE DATE

1 A FEW TIMES. I'M NOT REALLY SURE WHERE I HEARD THAT.
2 OR WHY I DID THAT.

3 Q BUT AS OF EARLY DECEMBER, YOUR UNDERSTANDING
4 WAS THE DATE OF THE MOVE WAS GOING TO BE MARCH NOW, NOT
5 JANUARY 15TH?

09:16AM

6 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

7 THE COURT: OKAY. I'LL SUSTAIN IT.

8 WHERE ARE WE GETTING THIS INFORMATION?

9 MR. MADISON: WELL --

10 Q MS. CODY, WHATEVER YOU WERE LEARNING ABOUT THE
11 NEW VENTURE, IT WAS COMING FROM SOMEONE THAT WAS
12 INVOLVED IN THE NEW VENTURE, RIGHT?

09:16AM

13 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE.

14 THE COURT: OVERRULED.

15 THE WITNESS: I DON'T KNOW. I DON'T KNOW
16 WHERE I HEARD IT.

09:16AM

17 BY MR MADISON:

18 Q COULD HAVE BEEN MR. MAYBERRY, SANTA ANA,
19 GUNDLACH, BUT IT COULD HAVE BEEN SOMEONE ELSE?

20 MR. HELM: CALLS FOR SPECULATION.

09:16AM

21 THE COURT: WELL, OVERRULED.

22 GO AHEAD AND ANSWER.

23 THE WITNESS: YES, I SUPPOSE SO. I DON'T
24 REMEMBER WHERE IT CAME FROM.

25 BY MR MADISON:

09:17AM

26 Q NOW, DO YOU RECALL OVERHEARING MR. GUNDLACH
27 TALKING ON THE FLOOR ABOUT THE REASONS WHY HE WANTED TO
28 MOVE TO START A NEW VENTURE?

1 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE.

2 THE COURT: OVERRULED.

3 DID YOU EVER HEAR THAT KIND OF
4 DISCUSSION?

5 THE WITNESS: NOT SPECIFICALLY.

09:17AM

6 BY MR MADISON:

7 Q SO YOU NEVER HEARD MR. GUNDLACH TALKING IN
8 PARTICULAR ABOUT HIS FEELINGS TOWARD TCW AND MR. STERN?

9 A I -- YEAH, I DEFINITELY HEARD THINGS ABOUT
10 THAT.

09:17AM

11 Q YOU HEARD MR. GUNDLACH EXPRESS STRONG FEELINGS
12 ABOUT MR. STERN AND MR. -- AND TCW, DIDN'T YOU?

13 A HE HAD HIS OPINIONS, YES.

14 Q SO, STRONG OPINIONS, CORRECT?

15 A YES.

09:17AM

16 Q IN FACT, YOU HEARD MR. GUNDLACH TALK ABOUT
17 WHAT HE -- THE MESSAGE HE WANTED TO SEND TO TCW AND
18 MR. STERN WITH THIS MOVE, DIDN'T YOU?

19 MR. HELM: LEADING AS TO FOUNDATION, YOUR
20 HONOR.

09:18AM

21 THE COURT: OVERRULED.

22 CAN YOU ANSWER THAT?

23 THE WITNESS: NO, I DID NOT.

24 BY MR MADISON:

25 Q LET ME ASK YOU TO LOOK AT EXHIBIT 515, PLEASE.

09:18AM

26 JUST FOR FOUNDATION, YOU RECALL 515 WAS

27 A --

28 THE COURT: LET HER LOOK AT IT. YOU MAY NOT

1 READ IT, AND YOU MAY NOT RELATE WHAT'S IN IT UNTIL YOU
2 LAY THE FOUNDATION FOR IT.

3 MR. MADISON: YES, YOUR HONOR.

4 (PAUSE) +

5

09:19AM

6 BY MR MADISON:

7 Q YES OR NO. DO YOU RECALL THIS CHAT?

8 A YES.

9 Q SO, DO YOU RECALL, DOES THIS REFRESH YOUR
10 RECOLLECTION THAT, AS OF EARLY DECEMBER, YOU HAD AN
11 UNDERSTANDING --

09:19AM

12 MR. HELM: YOUR HONOR, IF HE'S GOING TO BE
13 READING FROM IT --

14 THE COURT: YOU MAY NOT READ FROM IT, AND YOU
15 MAY NOT RELATE WHAT'S IN IT. MAD THE SUBJECT MATTER,
16 MS. CODY, DOES THIS REFRESH YOUR RECOLLECTION AS OF
17 EARLY DECEMBER YOU HAD -- YOU HAD HEARD THAT
18 MR. GUNDLACH HAD EXPRESSED VIEWS ABOUT WHY HE WAS
19 FORMING A NEW VENTURE VIS-À-VIS TCW AND MR. STERN?

09:19AM

20 A NO.

09:19AM

21 Q IN PARTICULAR, I WANT TO REFER YOU TO
22 PAGE 515-3, AND IT'S ABOUT THE EIGHTH LINE DOWN -- THE
23 SEVENTH LINE DOWN. EXCUSE ME.

24 A I SEE THAT.

25 Q OKAY.

09:19AM

26 DOES THAT REFRESH YOUR RECOLLECTION
27 ABOUT HEARING ABOUT THE SUBJECT THAT I'M ASKING YOU
28 ABOUT?

1 A NO.

2 Q SO --

3 A I NEVER HEARD --

4 Q -- WITHOUT REVEALING THE SUBSTANCE OF IT, DID
5 YOU MAKE THAT UP?

09:20AM

6 A THAT WAS MY OPINION.

7 Q THAT WAS YOUR OPINION BASED ON THE THINGS YOU
8 OVERHEARD MR. GUNDLACH SAY ABOUT HOW HE FELT, HOW HE
9 FELT ABOUT TCW AND STERN, RIGHT?

10 MR. HELM: LEADING. FOUNDATION.

09:20AM

11 THE COURT: SUSTAINED.

12 BY MR MADISON:

13 Q YOUR OPINION BASED ON WHAT, MA'AM?

14 A JUST BASED ON THE SITUATION IN GENERAL. IN --
15 IT WAS JUST MY OPINION OF IT. I NEVER HEARD ANYTHING
16 LIKE THAT.

09:20AM

17 Q WELL, I'LL ADDRESS THAT LATER.

18 I WANT TO BRING YOU BACK TO THE CHAT
19 THAT YOU HAD WITH MS. WONG BACK IN FEBRUARY OF 2009.
20 WE TALKED ABOUT THIS LAST WEEK.

09:20AM

21 DO YOU RECALL THAT?

22 A WHICH ONE IS THAT?

23 Q IT'S EXHIBIT 140. EXCUSE ME.

24 A YES, I REMEMBER THAT.

25 Q OKAY.

09:21AM

26 AND YOU RECALL AT THAT TIME HAVING AN
27 UNDERSTANDING, BASED ON WHAT YOU HEARD AS OF THAT TIME,
28 THAT -- WELL, LOOK AT PAGE 4. AND LET ME TRY TO DO IT

1 THAT WAY. THE ENTRY AT 8:12 A.M. IN THE MIDDLE OF THE
2 PAGE.

3 THE COURT: WHAT PAGE ARE WE LOOKING AT?

4 MR. MADISON: 4. 140-4.

5 THE COURT: ALL RIGHT.

09:21AM

6 BY MR MADISON:

7 Q DO YOU RECALL AT THAT TIME HAVING AN
8 UNDERSTANDING ABOUT -- WELL, OF WHETHER OR NOT -- HOW
9 THIS WOULD UNFOLD IN TERMS OF THE NEW VENTURE?

10 A I MADE ASSUMPTIONS ON HOW I WOULD DO THINGS.

09:22AM

11 Q BASED ON WHAT?

12 A JUST MY OPINIONS OF HOW THINGS SHOULD GO. I
13 MEAN GUESSES AND FILLED IN INFORMATION.

14 Q ALL RIGHT.

15 IN FACT, WEREN'T YOU OVERHEARING THINGS
16 AT THAT TIME IN PARTICULAR THAT MR. SANTA ANA HAD BEEN
17 SAYING?

09:22AM

18 A I DON'T REMEMBER.

19 Q IF YOU LOOK UP AT THE VERY TOP OF THAT SAME
20 PAGE, DOES THAT REFRESH YOUR RECOLLECTION ABOUT THAT?

09:22AM

21 A WHAT WAS THE QUESTION?

22 Q THE QUESTION IS, YOU WERE OVERHEARING THINGS
23 MR. SANTA ANA WAS TALKING ABOUT AT THAT TIME, WEREN'T
24 YOU?

25 A NO, I WASN'T. I WAS TELLING MY FRIEND IN THE
26 CHAT -- IN THE CHAT TO SAY THAT, IF ANYONE ASKED THAT
27 SHE OVERHEARD THINGS.

09:23AM

28 Q SO, BUT YOU WEREN'T OVERHEARING THINGS FROM

1 MR. SANTA ANA YOURSELF?

2 A I'M SURE I OVERHEARD SNIPPETS OF THINGS. I
3 DON'T RECALL IN PARTICULAR.

4 Q AND THINGS THAT YOU WERE TELLING MS. WONG WERE
5 NOT PUBLIC, WERE THEY? 09:23AM

6 A THEY WERE RUMORS, YES. SO THEY WERE VERY
7 PUBLIC.

8 Q WELL, YOU DIDN'T DESCRIBE THEM AS RUMORS, DID
9 YOU, MA'AM?

10 A NOT IN THIS CHAT. NOT PARTICULAR. 09:23AM

11 Q BUT YOU DID BELIEVE THEY WERE NOT QUITE
12 PUBLIC, CORRECT?

13 A THAT'S -- YES.

14 Q AND THAT YOU BELIEVE THAT MORE WOULD COME OUT
15 AFTER BONUSES, CORRECT? 09:23AM

16 A MORE WHAT?

17 Q MORE INFORMATION.

18 A I -- THAT'S WHAT I WROTE, YES.

19 Q AND YOU ALSO BELIEVED THAT IF ANYBODY ASKED
20 MS. WONG, SHE SHOULD JUST SAY SHE OVERHEARD IT FROM
21 MR. SANTA ANA? 09:23AM

22 A YES.

23 Q I MEAN, THESE THINGS YOU WERE HEARING ABOUT
24 THE DATES AND THE NEW VENTURE, I MEAN, YOU WEREN'T
25 HEARING THESE FROM PEOPLE OFF OF THE 16TH FLOOR, WERE
26 YOU? 09:24AM

27 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE.
28 VAGUE AND AMBIGUOUS.

1 THE COURT: SUSTAINED.

2 WHY DON'T YOU ASK HER WHO SHE HEARD THIS
3 FROM.

4 BY MR MADISON:

5 Q YOU TOLD US, I BELIEVE, MA'AM, YOU DON'T
6 RECALL WHO YOU HEARD ALL THIS INFORMATION FROM.

09:24AM

7 IS THAT YOUR TESTIMONY?

8 A YES.

9 Q MY QUESTION IS, IT WAS PEOPLE ON THE 16TH
10 FLOOR, AT LEAST THAT YOU WERE HEARING IT FROM, RIGHT?

09:24AM

11 A I DON'T REMEMBER.

12 Q SO IT COULD HAVE BEEN 16TH FLOOR OR EVEN
13 PEOPLE OUTSIDE TCW THAT YOU HEARD ABOUT THESE PLANS?

14 A COULD HAVE BEEN, YES.

15 Q BONUSES ARE PAID IN LATE FEBRUARY FOR THE
16 FOURTH QUARTER EACH YEAR, CORRECT?

09:24AM

17 A YES.

18 Q ABOUT THREE MONTHS AFTER THE END OF THE YEAR
19 THE BONUSES ARE PAID?

20 A YES.

09:24AM

21 MR. MADISON: SUBJECT TO AN OFFER OUTSIDE THE
22 PRESENCE, NOTHING FURTHER AT THIS TIME.

23 THE COURT: ALL RIGHT.

24 CROSS-EXAMINATION.

25 MR. HELM: THANK YOU, YOUR HONOR.

09:25AM

26

27 ///

28

CROSS-EXAMINATION +

1

2 BY MR. HELM:

3 Q GOOD MORNING, MS. CODY.

4 A GOOD MORNING.

5 Q MR. MADISON TALKED TO YOU ABOUT SOME CHATS
6 THAT YOU HAD ABOUT MEETINGS YOU HEARD THAT MR. GUNDLACH
7 HAD SET UP WITH WAMCO, WESTERN ASSET MANAGEMENT
8 COMPANY, IN FEBRUARY OF 2009.

09:25AM

9 DO YOU RECALL DISCUSSING THAT?

10 A I DO.

09:25AM

11 Q AND YOU ALSO DISCUSSED SOME CHATS YOU HAD
12 ABOUT MEETINGS MR. GUNDLACH HAD WITH U.B.S. AT SOME
13 TIME AROUND THAT PERIOD.

14 DO YOU RECALL THAT?

15 A YES, I DO.

09:25AM

16 Q DID MR. GUNDLACH LEAVE TCW TO JOIN WAMCO 2008,
17 OR 2009?

18 A NO, HE DID NOT.

19 Q DID MR. GUNDLACH LEAVE TCW TO JOIN U.B.S. IN
20 2008 OR 2009?

09:26AM

21 A NO.

22 Q DID MR. GUNDLACH EVER LEAVE TCW BY HIS OWN
23 CHOICE?

24 A NO, HE DID NOT.

25 Q HOW WAS IT THAT MR. GUNDLACH LEFT TCW?

09:26AM

26 MR. MADISON: OBJECTION. FOUNDATION, YOUR
27 HONOR.

28 THE COURT: SUSTAINED.

1 BY MR. HELM:

2 Q DO YOU HAVE ANY UNDERSTANDING OF THE
3 CIRCUMSTANCES UNDER WHICH MR. GUNDLACH LEFT TCW?

4 A YES, I DO. HE WAS FIRED. IN DECEMBER OF
5 2009.

09:26AM

6 Q NOW, DID MR. GUNDLACH EVER CONFIDE IN YOU
7 REGARDING HIS PLANS WHETHER TO FORM OR NOT FORM A NEW
8 COMPANY?

9 A NO, HE DID NOT.

10 Q WHILE YOU WERE AT TCW, DID ANY SIGNIFICANT
11 FUND MANAGERS LEAVE TCW WITH A GROUP OF PEOPLE?

09:26AM

12 A YES, THEY DID.

13 Q CAN YOU GIVE AN EXAMPLE OF WHO LEFT UNDER
14 THOSE CIRCUMSTANCES?

15 A THERE WAS ENERGY AND INFRASTRUCTURE GROUP AND
16 BY BLAIR THOMAS.

09:26AM

17 Q WHEN WAS THAT DEAL ANNOUNCED?

18 A I BELIEVE IT WAS THE FALL OF 2009.

19 Q DID YOU HAVE A GENERAL UNDERSTANDING, BASED ON
20 YOUR DISCUSSIONS WITH PEOPLE AT TCW, ABOUT WHETHER THAT
21 DEPARTURE WAS PART OF A FRIENDLY DEAL THAT TCW AGREED
22 TO?

09:27AM

23 A I THINK THERE WAS A FRIENDLY DEAL, NEGOTIATED
24 FEES AND WHATNOT.

25 Q DO YOU KNOW WHETHER MR. GUNDLACH EVER
26 CONSIDERED LEAVING TCW, OTHER THAN ON A FRIENDLY AND
27 MUTUALLY AGREEABLE BASIS?

09:27AM

28 MR. MADISON: OBJECTION. FOUNDATION.

1 THE COURT: SUSTAINED.

2 BY MR. HELM:

3 Q DID MR. GUNDLACH EVER TELL YOU WHETHER --
4 WHETHER OR NOT HE INTENDED TO HAVE A MUTUALLY AGREEABLE
5 SEPARATION WITH TCW?

09:27AM

6 MR. MADISON: OBJECTION, HEARSAY, YOUR HONOR.

7 MR. HELM: ONE WAY OR THE OTHER.

8 THE COURT: OVERRULED.

9 THE WITNESS: NO, HE DID NOT.

10 BY MR. HELM:

09:27AM

11 Q DO YOU KNOW MARK STERN?

12 A I DO.

13 Q DID MARK STERN EVER CONFIDE IN YOU REGARDING
14 WHETHER OR NOT HE HAD PLANS TO FIRE JEFFREY GUNDLACH?

15 A NO, HE DID NOT.

09:27AM

16 Q NOW, YOU SAID IN ONE OF THE CHATS -- IT WAS
17 983, IF YOU WANTED TO LOOK AT IT:

18 SO SOMETHING IS HAPPENING TODAY.

19 I JUST DON'T KNOW WHY HE SAID FOR
20 ME TO SAY I KNOW NOTHING.

09:28AM

21 DO YOU RECALL THAT?

22 A I DO.

23 Q AND I BELIEVE YOU MENTIONED YOU WERE REFERRING
24 TO AN E-MAIL YOU RECEIVED FROM A TOM MC KISSICK; IS
25 THAT CORRECT?

09:28AM

26 A THAT IS CORRECT.

27 Q NOW, WAS MR. MC KISSICK SOMEONE WHO WORKED IN
28 MR. GUNDLACH'S MORTGAGE BACK SECURITIES GROUP?

1 A NO, HE DID NOT.

2 Q WHERE DID HE WORK?

3 A HE WAS A MANAGING DIRECTOR, BASICALLY AHEAD OF
4 ANOTHER GROUP, EQUITY SIDE --

5 Q IS HE SOMEONE WHO CAME OVER TO JOIN DOUBLELINE
6 AFTER GUNDLACH LEFT TCW?

09:28AM

7 A NO, HE DID NOT.

8 Q NOW, ON TRIAL EXHIBIT 983 YOU MADE REFERENCE
9 TO A TEN-YEAR LEASE IN CENTURY CITY, PROBABLY IN MARCH
10 AFTER BONUS.

09:28AM

11 DO YOU RECALL THAT?

12 A YES, I WROTE THAT.

13 Q DID YOU EVER OVERHEAR MR. GUNDLACH SAY THAT A
14 LEASE HAD BEEN SIGNED?

15 A NO, I DID NOT.

09:29AM

16 Q DID YOU EVER OVERHEAR MR. MAYBERRY OR
17 MR. SANTA ANA OR MS. VANEVERY SAY THAT A LEASE HAD BEEN
18 SIGNED?

19 A NO.

20 Q DID YOU EVER OVERHEAR MR. GUNDLACH SAY THAT A
21 MOVE WOULD TAKE PLACE IN MARCH, AFTER BONUS?

09:29AM

22 A NO.

23 Q DID YOU EVER HEAR MR. MAYBERRY OR
24 MR. SANTA ANA OR MS. VANEVERY SAY WORDS TO THAT EFFECT?

25 A NOT THAT I RECALL.

09:29AM

26 Q NOW, YOU SAY SHORTLY AFTER THAT REFERENCE:
27 YEAH, IT'S ALL RUMORS.

28 DO YOU SEE THAT?

1 A YES.

2 Q IS IT TRUE THAT YOU WERE REPORTING RUMORS WHEN
3 YOU TALKED ABOUT THE LEASE AND LEAVING IN MARCH?

4 A YES.

5 Q DID YOU LATER LEARN WHETHER THERE WAS A LEASE
6 SIGNED IN CENTURY CITY?

09:29AM

7 A I LATER LEARNED THAT THERE WAS NOT A LEASE
8 THAT WAS SIGNED.

9 Q WHERE ARE DOUBLELINE'S CURRENT OFFICES?

10 A THEY'RE IN DOWNTOWN L.A..

09:30AM

11 Q NOW, MR. MADISON WENT OVER WITH YOU SOME CHATS
12 YOU HAD WHERE YOU TALKED ABOUT POSSIBLE DATES FOR WHEN
13 PEOPLE MIGHT BE LEAVING TCW.

14 DO YOU RECALL THAT?

15 A YES.

09:30AM

16 Q DID YOU EVER OVERHEAR MR. GUNDLACH TALK ABOUT
17 DATES WHEN I INTENDED TO LEAVE TCW?

18 A NO, I DID NOT.

19 Q DID YOU EVER OVERHEAR MR. MAYBERRY OR
20 MR. SANTA ANA OR MS. VANEVERY TALK ABOUT DATES WHEN
21 MR. GUNDLACH PLANNED TO LEAVE TCW?

09:30AM

22 A NO. NOT THAT I REMEMBER, NO.

23 Q NOW, YOU MENTIONED EARLIER THAT THERE WERE
24 RUMORS YOU WERE TALKING ABOUT.

25 DID YOU HEAR RUMORS FROM OTHER PEOPLE IN
26 TCW, EVEN OUTSIDE OF THE MORTGAGE BACK SECURITIES
27 GROUP?

09:30AM

28 A YES, I DID.

1 Q DO YOU RECALL ANY EXAMPLES OF KINDS OF RUMORS
2 YOU HEARD OUTSIDE THE MORTGAGE BACK SECURITIES GROUP,
3 ABOUT YOUR GROUP?

4 A PRETTY MUCH THE SAME RUMORS I HEARD
5 INTERNALLY, EXTERNALLY, THAT THE GROUP WAS LEAVING,
6 THAT THERE WAS SOMETHING GOING ON IN THE COMPANY.

09:30AM

7 Q WHAT ABOUT PEOPLE OUTSIDE OF TCW, DID YOU EVER
8 HEAR ANY RUMORS FROM PEOPLE WHO WEREN'T EVEN AT TCW WHO
9 TOLD YOU RUMORS ABOUT WHAT YOUR GROUP WAS DOING?

10 A YES, I DID.

09:31AM

11 Q WHEN YOU WERE PASSING RUMORS, DID IT INCLUDE
12 RUMORS YOU HEARD FROM PEOPLE OUTSIDE OF THE GROUP AND
13 EVEN OUTSIDE OF TCW IN SOME CASES?

14 A YES.

15 MR. HELM: I HAVE NOTHING FURTHER, YOUR HONOR.

09:31AM

16 THE COURT: MR. MADISON.

17

18 REDIRECT EXAMINATION +

19

20 BY MR MADISON:

09:31AM

21 Q SO YOU TALKED ABOUT MR. THOMAS'S DEPARTURE
22 FROM TCW AS BEING FRIENDLY.

23 IS THAT YOUR DESCRIPTION?

24 A YES, I BELIEVE SO.

25 Q OKAY.

09:31AM

26 YOU DIDN'T BELIEVE MR. GUNDLACH'S
27 DEPARTURE WAS GOING TO BE FRIENDLY, DID YOU?

28 MR. HELM: LACKS FOUNDATION.

1 THE COURT: SUSTAINED.

2 BY MR MADISON:

3 Q WELL, WHATEVER YOU HAD IN YOUR MIND IN
4 DESCRIBING MR. THOMAS'S DEPARTURE AS BEING FRIENDLY,
5 YOU WEREN'T THINKING ABOUT THOSE THINGS WITH
6 MR. GUNDLACH, WERE YOU, MA'AM?

09:31AM

7 MR. HELM: LACKS FOUNDATION, YOUR HONOR.
8 SPECULATION.

9 THE COURT: YOU CAN REPHRASE IT, MR. MADISON.

10 BY MR MADISON:

09:32AM

11 Q WELL, WHEN YOU WERE DESCRIBING, FOR MR. HELM,
12 MR. THOMAS'S DEPARTURE AS BEING FRIENDLY, DO YOU HAVE
13 THAT IN YOUR MIND -- I MEAN WHAT YOU UNDERSTOOD
14 MR. GUNDLACH TO BE DOING WAS QUITE THE OPPOSITE AT THE
15 TIME IN THE FALL OF 2009, RIGHT?

09:32AM

16 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

17 THE COURT: SUSTAINED.

18 BY MR MADISON:

19 Q YOU WERE ASKED ABOUT A NEGOTIATION.

20 YOU DIDN'T SAY ANYTHING ABOUT A
21 NEGOTIATION IN THE FALL OF 2009 TO ANYBODY, DID YOU?

09:32AM

22 MR. HELM: HEARSAY, YOUR HONOR.

23 THE COURT: OVERRULED.

24 THE WITNESS: I DON'T REMEMBER.

25 MR. MADISON: OKAY.

09:32AM

26 Q WELL, I WANT TO REFER YOU BACK TO EXHIBIT 515,
27 AND THE STATEMENT TOWARD THE TOP OF PAGE 3.

28 AS OF DECEMBER 3RD, YOU CERTAINLY

1 WEREN'T THINKING OF MR. GUNDLACH'S DEPARTURE AS BEING
2 FRIENDLY, WERE YOU, MA'AM?

3 MR. HELM: MOTION IN LIMINE, LACKS FOUNDATION.

4 MR. MADISON: HE OPENED THE DOOR, YOUR HONOR.

5 THE COURT: THE QUESTION IS JUST A QUESTION. 09:33AM

6 WE'RE NOT TALKING ABOUT WHAT YOU WROTE HERE. IT'S
7 JUST -- JUST TELL US THE ANSWER.

8 THE WITNESS: I DIDN'T REALLY THINK OF IT ONE
9 WAY OR THE OTHER.

10 BY MR MADISON: 09:33AM

11 Q DO YOU AGREE THAT IF YOU -- IF YOU REFRESH
12 YOUR RECOLLECTION WITH WHAT'S ON PAGE 3, DO YOU AGREE
13 WITH ME, IN YOUR MIND, THE WAY THAT MR. GUNDLACH WAS
14 PLANNING ON DEPARTING WAS FAR FROM FRIENDLY OR
15 NEGOTIATING -- 09:33AM

16 MR. HELM: LACKS FOUNDATION.

17 THE COURT: OVERRULED. THIS IS WHAT SHE
18 BELIEVED AND HER COMMENTS ARE.

19 GO AHEAD, CAN YOU ANSWER THAT?

20 THE WITNESS: LIKE I SAID, I DON'T REMEMBER 09:33AM
21 REALLY HAVING A FEELING ONE WAY OR THE OTHER ABOUT IT.

22 MR MADISON: THEN I'D ASK TO READ THE
23 STATEMENT INTO THE RECORD BECAUSE IT DIRECTLY IMPEACHES
24 THAT, YOUR HONOR.

25 MR. HELM: MOTION IN LIMINE. LACKS 09:34AM
26 FOUNDATION. 352.

27 THE COURT: OVERRULED.

28 YOU MAY READ IT.

1 MR. MADISON: SO, WHEN MS. WONG SAID: WHY
2 EVERYONE NOW?

3 YOU RESPONDED: BECAUSE JEG WANTS TO
4 GIVE A BIG F YOU TO TCW.

5 THAT WAS WHAT YOU SAID TO MS. WONG ON
6 DECEMBER 3RD, 2009, CORRECT?

09:34AM

7 A YES, THAT'S WHAT I WROTE.

8 Q I THINK WE ALL KNOW WHAT F YOU MEANS?

9 A I WOULD THINK SO.

10 Q IT'S NOT FRIENDLY, IS IT?

09:34AM

11 A NO, IT'S NOT.

12 Q IT'S NOT A NEGOTIATION, IS IT, MA'AM?

13 A NO, I DON'T BELIEVE SO.

14 Q NOW, DO YOU HAVE ANY KNOWLEDGE ABOUT WHETHER
15 ANYONE IN MR. THOMAS'S GROUP HAD SECRETLY SET UP A
16 CORPORATION BEFORE HE LEFT?

09:34AM

17 A I DON'T KNOW.

18 Q DO YOU KNOW WHETHER THEY WERE DOWNLOADING
19 INFORMATION FROM TCW BEFORE THEY LEFT?

20 A I DON'T KNOW.

09:34AM

21 Q DO YOU KNOW WHETHER THEY HAD -- YOU KNOW, HAD
22 SECRET PLANS THEY WEREN'T DISCLOSING BEFORE THEY TALKED
23 ABOUT LEAVING?

24 A I DON'T KNOW.

25 Q YOU WORK FOR MR. GUNDLACH AND DOUBLELINE
26 TODAY, DON'T YOU, MA'AM?

09:34AM

27 A I DO.

28 Q YOU'RE A LOYAL PERSON, AREN'T YOU?

1 A I -- YES. I BELIEVE SO.

2 MR. MADISON: NOTHING FURTHER.

3 THE COURT: MR. HELM, DO YOU HAVE ANY FURTHER
4 QUESTIONS?

5 MR. HELM: NOTHING FURTHER, YOUR HONOR. 09:35AM

6 THE COURT: MS. CODY, THANK YOU FOR YOUR
7 TESTIMONY. YOU ARE EXCUSED.

8 THE WITNESS: THANK YOU.

9 MR. QUINN: MAY I, YOUR HONOR?

10 THE COURT: YES. 09:35AM

11 MR. QUINN: TRUST COMPANY OF THE WEST CALLS
12 DAN KALE TO THE WITNESS STAND.

13 MR. MADISON: MAY I BE EXCUSED DURING THIS
14 EXAM, AND I'LL BE BACK?

15 THE COURT: YES, YOU MAY. 09:35AM

16 MR. MADISON: THANK YOU.

17

18 DANIEL JAMES KALE +
19 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
20 TESTIFIED AS FOLLOWS:

21

22 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
23 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
24 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE
25 WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD? 09:36AM

26 THE WITNESS: YES, I DO.

27 THE CLERK: THANK YOU.

28 PLEASE BE SEATED IN THE WITNESS STAND.

1 SIR, PLEASE STATE AND SPELL YOUR NAME
2 FOR THE RECORD.

3 THE WITNESS: DANIEL JAMES KALE. D-A-N-I-E-L,
4 J-A-M-E-S, K-A-L-E.

5 THE CLERK: THANK YOU. 09:36AM

6 THE COURT: GOOD MORNING, MR. KALE.

7 THE WITNESS: GOOD MORNING.

8 THE COURT: MR. QUINN, YOU MAY PROCEED.

9 IS HE GOING TO NEED ALL OF THESE?

10 MR. QUINN: HOPEFULLY NOT, YOUR HONOR. I 09:36AM
11 THINK WE CAN DEAL WITH ALL THESE IN FIVE SECONDS.

12 THE COURT: ALL RIGHT.

13

14 DIRECT EXAMINATION +

15

16 BY MR. QUINN: 09:37AM

17 Q GOOD MORNING, MR. KALE?

18 A GOOD MORNING.

19 Q WHO DO YOU WORK FOR?

20 A I WORK FOR TRUST COMPANY OF THE WEST. 09:37AM

21 Q HOW LONG HAVE YOU WORKED FOR TRUST COMPANY OF
22 THE WEST?

23 A 17 YEARS.

24 Q WHAT IS IT THAT YOU DO THERE?

25 A I'M THE DIRECTOR OF INFORMATION TECHNOLOGY. 09:37AM

26 Q AND COULD YOU TELL THE JURY, PLEASE, WHAT THE
27 BUSINESS OF TRUST COMPANY OF THE WEST IS.

28 A YES. TCW'S INVOLVED IN MANAGING MONEY FOR

1 CLIENTS .

2 Q I JUST WANT TO MAKE SURE WE DON'T PUT THAT
3 SOMEWHERE -- SOMEWHERE WHERE --

4 THE COURT: WHAT ARE THESE NOW, THAT WE'RE
5 BRINGING UP HERE?

09:37AM

6 MR. QUINN: THESE ARE TRADE -- BINDERS, YOUR
7 HONOR. THEY'RE JUST GOING TO BE -- PERHAPS WE CAN GET
8 THEM OUT OF THE WAY.

9 THE COURT: WE CAN PUT THEM SOMEWHERE ELSE.

10 IS ANYBODY GOING TO BE LOOKING AT THEM?

09:38AM

11 MR. QUINN: I DON'T THINK SO.

12 THE COURT: THEN WE PROBABLY DON'T NEED THEM.

13 MR. QUINN: WE CAN SLIDE THEM OVER HERE.

14 YOU LOST A WHEEL OFF THE BOTTOM THAT.

09:38AM

15
16 (PAUSE) +

17 BY MR. QUINN:

18 Q YOU TOLD US WHAT THE BUSINESS OF TRUST COMPANY
19 OF THE WEST IS?

20 A YES.

09:38AM

21 Q AND THAT'S INVESTING ON BEHALF OF CLIENTS?

22 A YES.

23 Q COULD YOU GIVE THE JURY, PLEASE, AN IDEA WHAT
24 CLIENTS WHO -- WHO THE CLIENTS OF TCW ARE?

25 A SURE.

09:39AM

26 CLIENTS, INCLUDING COLLEGE ENDOWMENTS,
27 RELIGIOUS INSTITUTIONS, GOVERNMENT ENTITIES, 401K
28 PLANS, AND MANY OTHER INDIVIDUALS AND COMPANIES.

1 Q THESE ARE EXAMPLES OF THE TYPES OF CLIENTS FOR
2 WHOM TRUST COMPANY OF THE WEST INVESTS MONEY -- INVESTS
3 THEIR MONEY?

4 A YES.

5 Q HOW DOES TRUST COMPANY OF THE WEST DECIDE
6 WHERE THE MONEY IS GOING TO BE INVESTED?

09:39AM

7 A TCW USES A LOT OF DIFFERENT INFORMATION FROM
8 MANY DIFFERENT SOURCES, AS WELL AS THE EXPERTISE OF THE
9 INVESTMENT PROFESSIONALS.

10 Q DOES THE CLIENT HAVE A ROLE IN DECIDING HOW
11 ITS MONEY IS GOING TO BE INVESTED?

09:39AM

12 A YES, IT DOES. IT PROVIDES GUIDELINES. AND
13 DIFFERENT STRATEGY SELECTIONS THAT THE INVESTMENT TEAM
14 USES TO HELP DECIDE THE INVESTMENTS.

15 Q HOW MANY EMPLOYEES DOES TCW HAVE?

09:39AM

16 A TCW HAS AROUND 600 EMPLOYEES.

17 Q WHERE IS TCW LOCATED?

18 A DOWNTOWN LOS ANGELES.

19 Q HOW LONG HAS TCW BEEN IN BUSINESS?

20 A TCW, BEEN AROUND SINCE 1971, SO 40 YEARS.

09:40AM

21 Q AND DO YOU KNOW WHETHER IT WAS FOUNDED HERE IN
22 LOS ANGELES?

23 A I BELIEVE SO, YES.

24 Q DO YOU KNOW WHO FOUNDED TCW?

25 A ROBERT DAY.

09:40AM

26 Q IS HE STILL INVOLVED WITH THE COMPANY?

27 A YES, HE IS. HE'S THE CHAIRMAN OF THE BOARD.

28 Q ARE SOME OF THE EMPLOYEES OF TCW OWNERS OF THE

1 COMPANY?

2 A YES, THEY ARE.

3 Q CAN YOU TELL US HOW MANY EMPLOYEES, ROUGHLY,
4 HAVE OWNERSHIP INTERESTS IN TCW?

5 A ROUGHLY ABOUT 150.

09:40AM

6 Q AND BESIDES EMPLOYEES, IS THERE SOMEONE ELSE
7 WHO HAS AN OWNERSHIP INTEREST IN TCW?

8 A YES. SOCIÉTÉ GÉNÉRALE BANK.

9 Q IN FACT, THEY OWN MOST OF IT?

10 A THAT'S RIGHT.

09:40AM

11 Q IS THAT FAIR TO SAY?

12 A YES.

13 Q IN YOUR EXPERIENCE, BASED UPON YOUR YEARS AT
14 TCW, DOES THAT FRENCH BANK GET INVOLVED IN THE
15 DAY-TO-DAY AFFAIRS OR OPERATIONS OF TCW?

09:41AM

16 MR. WEINGART: OBJECTION. FOUNDATION.

17 THE COURT: SUSTAINED.

18 BY MR. QUINN:

19 Q YOUR PERSONAL EXPERIENCE IN DIRECTING THE IT
20 DEPARTMENT, HAVE YOU EVER ENCOUNTERED DIRECTION OR ROLE
21 FOR THE FRENCH BANK?

09:41AM

22 A NO, I HAVE NOT.

23 Q WHAT IS YOUR TITLE?

24 A I'M THE MANAGING DIRECTOR OF INFORMATION
25 TECHNOLOGY.

09:41AM

26 Q WHO DO YOU REPORT TO, SIR?

27 A DAVE DEVITO.

28 Q WHAT IS HIS POSITION?

1 A HE IS THE CHIEF ADMINISTRATIVE OFFICER OF THE
2 FIRM.

3 Q ARE YOU THE HIGHEST-RANKING INFORMATION
4 TECHNOLOGY PERSON AT TCW?

5 A YES.

09:41AM

6 Q COULD YOU TELL THE JURY, PLEASE, I'M SURE MANY
7 FOLKS KNOW WHAT INFORMATION TECHNOLOGY IS.

8 A WELL, INFORMATION TECHNOLOGY INVOLVES MANY OF
9 THE SYSTEMS AND TOOLS USED TO PROVIDE INFORMATION TO
10 OUR INVESTMENT PROFESSIONALS AND OUR ADMINISTRATIVE AND
11 MANAGERIAL STAFF.

09:41AM

12 Q IS THAT AN IMPORTANT FUNCTION AT TCW, THE
13 INFORMATION TECHNOLOGY FUNCTION?

14 A YES, IT IS.

15 Q WHY IS THAT?

09:42AM

16 A I THINK OF IT AS THE LIFEBLOOD OF THE COMPANY,
17 AS FAR AS ALL THE INFORMATION -- WHEN YOU'RE MAKING
18 INVESTMENT DECISIONS, IT'S ALL ABOUT THE INFORMATION.

19 Q HOW MANY FOLKS DO YOU HAVE IN THE IT
20 DEPARTMENT WHO REPORT TO YOU, EITHER DIRECTLY OR
21 INDIRECTLY?

09:42AM

22 A I HAVE ABOUT 70 INDIVIDUALS.

23 Q CAN YOU TELL US HOW THAT -- HOW LARGE THE
24 INFORMATION TECHNOLOGY DEPARTMENT IS AT TCW, AS
25 COMPARED TO THE SIZE OF OTHER DEPARTMENTS?

09:42AM

26 A IT IS THE LARGEST DEPARTMENT AT THE FIRM.

27 Q WHEN DID YOU FIRST JOIN THE COMPANY?

28 A I JOINED IN 1994.

1 Q WHAT WAS YOUR FIRST JOB THERE?

2 A I WAS A SYSTEMS ANALYST.

3 Q YOU STAYED IN THAT -- DID YOU JOIN IN THE IT
4 DEPARTMENT?

5 A YES, I DID.

09:42AM

6 Q HOW LONG DID YOU STAY IN THE IT DEPARTMENT
7 AFTER YOU FIRST JOINED?

8 A I WAS THERE FOR 12 YEARS.

9 Q THAT WOULD TAKE US UP TO ABOUT WHAT YEAR,
10 MR. KALE?

09:43AM

11 A 2006.

12 Q WHAT HAPPENED IN 2006?

13 A IN 2006 I JOINED THE MORTGAGE BACK SECURITIES
14 GROUP.

15 Q WHAT WAS YOUR POSITION IN THAT GROUP?

09:43AM

16 A I WAS A MANAGER OF THE TECHNOLOGY TEAM IN THAT
17 GROUP.

18 Q NOW, WAS THAT THE GROUP THAT WAS HEADED UP BY
19 MR. GUNDLACH?

20 A YES.

09:43AM

21 Q AND YOU JOINED THAT GROUP IN 2006, DID YOU
22 SAY?

23 A YES.

24 Q WHEN YOU WENT FROM THE IT DEPARTMENT TO THE
25 MORTGAGE BACK SECURITIES GROUP, WHAT WAS YOUR ROLE IN
26 THAT GROUP?

09:43AM

27 A MY ROLE WAS TO TAKE THE KNOWLEDGE I HAD FROM
28 THE IT DEPARTMENT AND TO TAKE IT TO THE NEXT LEVEL AND

1 MANAGE ANALYTICS DEVELOPMENT FOR THE TRADERS OF
2 PORTFOLIO MANAGERS.

3 Q COULD YOU TELL US WHAT YOU MEAN BY ANALYTICS
4 DEVELOPMENT?

5 A CERTAINLY. IT INVOLVES USING ANALYTICS THAT
6 ARE SPECIFIC TO VARIOUS FIXED-INCOME PRODUCTS THAT WERE
7 USED IN TRADING DECISIONS.

09:43AM

8 Q WHAT -- ANALYTICS, WHAT SHOULD WE THINK OF
9 WHEN WE HEAR THAT TERM?

10 A I THINK STATISTICS OR -- STATISTICS ABOUT THE
11 INVESTMENT IS A GOOD WAY TO THINK OF IT.

09:44AM

12 Q IN THIS CAPACITY DID YOU ACTUALLY GET INVOLVED
13 IN DEVELOPING PROGRAMS?

14 A YES.

15 Q AND DATABASES?

09:44AM

16 A YES.

17 Q WERE THESE THE TYPES OF THINGS THAT YOU'RE
18 REFERRING TO AS ANALYTICS?

19 A WELL, THESE DEFINITELY HELP PRODUCE AND
20 COMPUTE THESE ANALYTICS, YES.

09:44AM

21 Q WHAT -- COULD YOU TELL US, GENERALLY SPEAKING,
22 IN THE MORTGAGE BACK SECURITIES, IS THAT SOMETIMES
23 REFERRED TO AS MBS?

24 A YES, IT IS.

25 Q SO, WHEN YOU JOINED THE MBS GROUP, COULD YOU
26 TELL US THESE TYPES OF ANALYTICS THAT YOU WERE INVOLVED
27 IN DEVELOPING. HOW WAS THAT HELPFUL? WHAT DID THAT DO
28 FOR THE PEOPLE IN THAT GROUP?

09:44AM

1 A WELL, PROVIDED THEM A BASIS ON WHICH THEY
2 COULD THEN MAKE DECISIONS FOR INVESTMENTS FOR THE
3 CLIENTS.

4 Q WITH RESPECT TO A PARTICULAR TYPES OF
5 SECURITIES?

09:44AM

6 A YES.

7 Q THOSE WOULD BE --

8 A MORTGAGE BACK SECURITIES.

9 Q HOW LONG WERE YOU IN THE MBS GROUP?

10 A I WAS IN THE GROUP FOR THREE AND A HALF YEARS.

09:45AM

11 Q SO THAT TAKES US UP TO ABOUT 2010?

12 A YES.

13 Q SO ARE YOU, YOURSELF, SIR, ARE YOU NOW OR HAVE
14 YOU EVER BEEN A TRADER, BOND TRADER, OR A PORTFOLIO
15 MANAGER YOURSELF?

09:45AM

16 A NO.

17 Q YOU WORK ON THE IT END OF THAT SORT OF
18 THING --

19 A YES.

20 Q -- IS THAT CORRECT?

09:45AM

21 AND THEN AFTER 2010, IS THAT WHEN YOU
22 WERE -- WHEN YOU GOT YOUR PRESENT JOB AS DIRECTOR OF
23 INFORMATION TECHNOLOGY FOR THE WHOLE COMPANY?

24 A YES. AND IN DECEMBER OF 2010.

25 Q ALL RIGHT.

09:45AM

26 OKAY. YOU HELPED US DEFINE SOME TERMS.
27 LET'S GET SOME OTHER VOCABULARY OUT OF THE WAY.

28 WHAT IS A BOND?

1 A A BOND -- A BOND IS A DEBT OBLIGATION FROM AN
2 ISSUER THAT AN INVESTOR PURCHASES TO RECEIVE INTEREST
3 PAYMENTS AND PRINCIPAL.

4 Q WHEN ONE BUYS A BOND, WHEN TCW BUYS A BOND ON
5 BEHALF OF ONE OF ITS CLIENTS, A UNIVERSITY, OR
6 RELIGIOUS INSTITUTION, OR A PENSION FUND, WHAT IS IT
7 IT'S GETTING?

09:46AM

8 A IT'S GETTING, EFFECTIVELY, A PROMISE TO PAY.
9 THE STREAM OF INTEREST PAYMENTS AND
10 PRINCIPAL THROUGH THE LIFE OF THIS BOND.

09:46AM

11 Q IS THERE A MARKET WHERE THESE BONDS CAN BE
12 BOUGHT AND SOLD?

13 A YES, THERE IS.

14 Q WHAT IS A MORTGAGE BACK SECURITY?

15 A A MORTGAGE BACK SECURITY IS COMPRISED OR MADE
16 UP OF POOLS OF LOANS THAT PROVIDE INTERESTS TO THE
17 MORTGAGE BACK SECURITY HOLDER OVER THE LIFE OF THE
18 BOND.

09:46AM

19 Q HOW ARE THESE PUT TOGETHER? YOU REFER TO
20 THESE POOLS OF LOANS. HOW DOES THAT WORK?

09:46AM

21 A WELL, WHEN INDIVIDUALS PURCHASE HOMES OR GET A
22 LOAN TO PURCHASE A HOME, OR ANOTHER ASSET, THESE LOANS
23 ARE PULLED TOGETHER BY BANKERS, POOLED TOGETHER, AND
24 SOLD TO OTHER BANKS OR OTHER INSTITUTIONS OR INVESTORS.

25 Q AND WE'RE TALKING ABOUT, LIKE TEN LOANS?
26 HUNDREDS OF LOANS? THOUSANDS OF LOANS?

09:47AM

27 A TYPICALLY, 2-, 3,000 LOANS CAN RANGE FROM
28 HUNDREDS TO THOUSANDS.

1 Q YOU SAY THEY'RE PUT INTO A POOL?

2 A YES.

3 Q AND THEN HOW -- HOW DOES A BOND COME OUT OF
4 THAT?

5 A WELL, IT GOES THROUGH A PROCESS OF PACKAGING,
6 CALLED SECURITIZATION, WHICH IS THEN TRADABLE ON THE
7 MARKET.

09:47AM

8 Q SO, WOULD IT BE FAIR TO SAY THESE BONDS
9 REPRESENT AN INTEREST IN THE PAYMENTS THEY'LL BE DUE OF
10 INTEREST AND PRINCIPAL ON THIS UNDERLYING POOL OF
11 THOUSANDS OF MORTGAGES?

09:47AM

12 A YES.

13 Q NOW, WHAT IS TCW'S ROLE IN THIS PROCESS ABOUT
14 CREATING MORTGAGE BACK SECURITIES?

15 A TCW'S NOT INVOLVED IN THAT PROCESS.

09:47AM

16 WE ARE AT THE END OF THE PROCESS, WHERE
17 ONCE THESE ARE ON THE MARKET, WE ANALYZE THEM AND
18 INVEST OF THEM ON BEHALF OF OUR CLIENTS.

19 Q SO DOES TCW ITSELF, JUST TO BE CLEAR, DOES IT
20 EVER MAKE MORTGAGE LOANS ITSELF?

09:47AM

21 A NO.

22 Q DOES IT SERVICE MORTGAGE LOANS?

23 A NO.

24 Q DOES IT SEND OUT DEFAULT NOTICES?

25 A NO.

09:48AM

26 Q SO IT JUST MAKES INVESTMENT DECISIONS ON
27 BEHALF OF ITS CLIENTS AND PURCHASES SOMETHING, THESE
28 BONDS; IS THAT FAIR TO SAY?

1 A YES.

2 Q AND IS IT ALSO FAIR TO SAY THAT THERE ARE
3 HUNDREDS OF DIFFERENT OF ISSUES OF THESE MORTGAGE BACK
4 SECURITIES THAT ONE COULD PURCHASE?

5 A YES.

09:48AM

6 Q ALL RIGHT.

7 HOW DOES AN INVESTOR OR INVESTMENT
8 MANAGER LIKE TCW GO ABOUT DECIDING WHICH OF THESE BONDS
9 WOULD MAKE GOOD INVESTMENTS?

10 A WELL, I CAN SAY OUR TEAM WENT ABOUT IT BY
11 LOOKING AT THE INFORMATION FROM THOSE INVESTMENTS AS
12 WELL AS PULLING TOGETHER THE EXPERIENCE OF OUR
13 INVESTMENT TEAM.

09:48AM

14 Q THERE ARE VARIOUS PIECES OF INFORMATION OR
15 VARIABLES THAT YOU LOOK AT WHEN YOU LOOK DOWN INTO
16 THESE POOLS TO TRY TO ASSESS WHETHER A BOND RELATING TO
17 AT THAT POOL WOULD BE A GOOD INVESTMENT?

09:49AM

18 A YES. WE LOOKED AT THE CHARACTERISTICS OF THE
19 LOANS. SO WOULD YOU LIKE ME TO TALK ABOUT IT?

20 Q GIVE US EXAMPLES OF THE KINDS OF THINGS YOU'RE
21 LOOKING AT.

09:49AM

22 A CERTAINLY.

23 THE LOAN CHARACTERISTICS WOULD BE
24 FOCUSED ON -- INCLUDED THINGS LIKE:

25 WHERE WAS THE LOAN ISSUED AND AS FAR AS
26 GEOGRAPHY;

09:49AM

27 WHAT WAS THE SIZE OF THE LOAN;

28 WHO UNDERWROTE THE LOAN.

1 WHO WAS THE -- WAS THE LOAN ISSUED WITH
2 A LOT OF DOCUMENTATION OR A LITTLE DOCUMENTATION;
3 THINGS LIKE HOW MUCH INFORMATION WAS
4 PROVIDED TO THE BORROWER.

5 HOW MUCH INFORMATION DID THE BORROWER
6 PROVIDE TO THE LENDER FOR THE LOAN.

09:49AM

7 WE ALSO LOOKED AT WHETHER IT WAS
8 OCCUPIED BY AN OWNER OR -- OKAY -- OR WAS IT AN
9 INVESTOR LOAN.

10 AND JUST MANY OTHER DIFFERENT ATTRIBUTES
11 OF THE LOAN.

09:49AM

12 Q LIKE YOU'D LOOK AT ZIP CODES, FOR EXAMPLE?

13 A CERTAINLY. WHAT GEOGRAPHIC LOCATION DOES THE
14 LOAN COME FROM.

15 AND WE LOOK AT WHAT HAD BEEN THE TRENDS
16 IN THAT GEOGRAPHIC LOCATION, LIKE ZIP CODE, SINCE THE
17 ISSUANCE OF THAT PARTICULAR LOAN.

09:50AM

18 AND THEN WE LOOK AT ALL OF THAT IN
19 AGGREGATE FOR THE BOND.

20 Q WOULD YOU SAY THAT -- I MEAN, YOU'RE TRYING TO
21 MAKE THESE ASSESSMENTS FOR ALL THE LOANS THAT ARE IN
22 THESE POOLS?

09:50AM

23 A WELL, WE TAKE ALL THE GRANULAR INFORMATION OF
24 THE LOANS AND ROLL IT UP TO LOOK AT A SPECIFIC BOND.
25 AND THEN WE ROLL UP ALL THOSE BONDS TO LOOK AT THE
26 PORTFOLIO THAT HOLDS THOSE BONDS IN OUR CLIENT
27 INVESTMENTS.

09:50AM

28 Q WOULD IT BE FAIR TO SAY, IN ASSESSING A BOND,

1 AND LOOKING AT THE UNDERLYING POOL OF MORTGAGES, YOU
2 EVALUATE DOZENS OF DIFFERENT FACTORS OR
3 CHARACTERISTICS?

4 A YEAH, DOZENS. PROBABLY MORE LIKE HUNDREDS.

5 Q I WOULD TAKE IT, WOULD IT BE POSSIBLE TO EVEN
6 DO THIS MANUALLY?

09:51AM

7 A NOT IF YOU -- NOT UNLESS YOU HAD A VERY LONG
8 TIME.

9 Q SO IS THIS -- CAN YOU TELL US, IS THIS
10 ANALYSIS DONE ON AN AUTOMATED COMPUTERIZED BASIS?

09:51AM

11 A YES, IT IS.

12 WE, IN FACT, TOOK ALL OF THE LOANS OF 20
13 MILLION LOANS, IN THE NONAGENCY MORTGAGE BACK UNIVERSE
14 OF AVAILABLE BONDS TO PURCHASE. AND WE RAN THOSE 20
15 MILLION LOANS EVERY NIGHT THROUGH A PROCESS WHICH
16 ASSOCIATED THEM WITH THE RELEVANT BONDS.

09:51AM

17 Q OKAY.

18 SO LET'S TALK ABOUT SOME OF THE SPECIFIC
19 ITEMS THAT TCW SAYS, HAS SAID ARE ITS TRADE SECRETS. I
20 WANT TO BEGIN WITH SOMETHING CALLED AIMS, A-I-M-S.
21 OKAY?

09:51AM

22 A OKAY.

23 Q ARE YOU FAMILIAR WITH SOME TYPE OF COMPUTER
24 PROGRAM OR DATA BASE CALLED AIMS?

25 A YES.

09:52AM

26 Q AND COULD YOU TELL THE JURY, PLEASE, WHAT AIMS
27 IS.

28 A AIMS IS A DATABASE THAT CONTAINS THE MONTH AND

1 HISTORIES OF CLIENT INVESTMENT PORTFOLIOS. DATA
2 EXTENDING BACK TO 1996. AND IT INCLUDES INFORMATION
3 SUCH AS PRICING OF THE PORTFOLIOS, PERFORMANCE OF THE
4 PORTFOLIOS OVER VARIOUS TIME PERIODS.

5 IT INCLUDES DURATION; ANALYTICS AND 09:52AM
6 OTHER STATISTICS ABOUT THE HOLDINGS OF THE PORTFOLIOS
7 THAT WERE COMPUTED THROUGH THIRD PARTIES AND THROUGH
8 TCW ADJUSTED CALCULATIONS.

9 AND IT HAS ALL THE INFORMATION ON A
10 MONTHLY BASIS THAT WE FELT WAS RELEVANT ABOUT EACH 09:52AM
11 PORTFOLIO FOR THE CLIENT.

12 Q IS AIMS AN ACRONYM THAT STANDS FOR SOMETHING?

13 A YES.

14 Q WHAT WOULD THAT BE?

15 A ASSET INFORMATION MANAGEMENT SYSTEM. 09:52AM

16 Q WHERE WAS AIMS CREATED?

17 A AIMS WAS CREATED AT TCW.

18 Q WHO ARE THE PEOPLE AT TCW WHO CREATED AIMS?

19 A MEMBERS OF MY TEAM IN THE TECHNOLOGY
20 DEPARTMENT. 09:53AM

21 Q CAN YOU IDENTIFY SOME OF THEM FOR US?

22 A CERTAINLY.

23 BRIAN MC KEEKAN.

24 ANDY STRANGE.

25 DON SLATTERY. 09:53AM

26 AND MYSELF.

27 Q AS WELL AS OTHERS?

28 A CERTAINLY.

1 THERE WAS PROBABLY 10 OR 15 OTHER
2 INDIVIDUALS THAT HAD MINOR ROLES IN SUPPORTING THE
3 PLATFORM, DATABASE ADMINISTRATION.

4 OPERATIONS.

5 FUNCTIONALITY, WHERE THEY LOADED THE
6 DATA NEEDED FOR THE DATABASE.

09:53AM

7 Q OVER WHAT PERIOD OF TIME DID YOU FOLKS AT TCW
8 CREATE THIS AIMS DATABASE?

9 A WELL, THE ORIGINAL VERSIONS WERE IN THE EARLY
10 '90'S. BUT REALLY BETWEEN 1996 AND 2006 WAS THE
11 PRIMARY DEVELOPMENT PERIOD FOR THE AIMS DATABASE.

09:53AM

12 AND IT CONTINUES TO BE IN USE THROUGH
13 TODAY.

14 Q SO THIS REPRESENTS ROUGHLY HOW MANY YEARS
15 WORTH OF WORK?

09:54AM

16 A OVER TEN YEARS OF WORK.

17 Q DID YOU -- YOU YOURSELF PERSONALLY WORKED ON
18 DEVELOPING AIMS?

19 A I DID WORK ON SOME OF THE REPORTING, BUT THE
20 APPLICATION SIDE WAS PRIMARILY BRIAN AND OTHERS.

09:54AM

21 Q DID YOU WORK ON A PORTION OF AIMS THAT'S
22 CALLED REPORT CACHE?

23 A YES, I DID.

24 Q AND THAT IS SPELLED C-A-C-H-E, NOT CASH,
25 C-A-S-H?

09:54AM

26 A THAT'S RIGHT.

27 Q OKAY.

28 BUT YOU DID WORK ON REPORT CACHE?

1 A YES.

2 Q WHAT IS REPORT CACHE?

3 A REPORT CACHE IS A DATABASE THAT'S POPULATED
4 FROM ALL THE DATA IN AIMS THAT'S USED FOR REPORTING.

5 Q AND THAT INCLUDES THE DATA COVERING WHAT
6 PERIOD OF TIME?

09:54AM

7 A THE SAME PERIOD, FROM 1996 THROUGH TO THE
8 PRESENT.

9 Q NOW, DOES REPORT CACHE INCLUDE THE ABILITY TO
10 GENERATE A REPORT ON A CLIENT'S HOLDINGS?

09:55AM

11 A YES.

12 Q AND BY HOLDINGS, I MEAN, YOU KNOW, THE
13 PARTICULAR SECURITIES OR INVESTMENTS THAT THEY'VE MADE?

14 A THAT'S RIGHT.

15 Q AND CAN YOU TELL US, WOULD THAT INCLUDE
16 SECURITIES INVESTMENTS THEY HELD HISTORICALLY, AS WELL
17 AS WHAT THEY HOLD NOW, CURRENTLY?

09:55AM

18 A YES. EVERY MONTH SINCE 1996, FOR ALL THE
19 CLIENTS DURING THAT PERIOD, IS A MONTHLY RECORD OF ALL
20 OF THOSE INVESTMENTS AND THE STRATEGIES THAT THEY WERE
21 INVESTED IN.

09:55AM

22 Q NOW, DOES THIS REPORT CACHE HAVE A FUNCTION IN
23 INTERFACING WITH OTHER COMPUTER PROGRAMS THAT ARE USED
24 IN THE MORTGAGE BACK SECURITIES DEPARTMENT?

25 A YES, IT DOES.

09:55AM

26 Q CAN YOU TELL US WHAT THAT IS?

27 A IT PROVIDES THE SOURCE DATA FOR MBS DATABASE.
28 AND A NUMBER OF OTHER SPREADSHEETS AND REPORTS USED IN

1 MORTGAGE BACK SECURITIES.

2 Q ALL RIGHT.

3 YOU HAVE BEFORE YOU A GREAT BIG FAT
4 BINDER, AND I'D ASK YOU, IF YOU'D PLEASE TURN TO THE
5 TAB THERE MARKED EXHIBIT 1496.

09:56AM

6 YOUR HONOR, THIS IS A PHYSICAL EXHIBIT.
7 IT'S A CD, WHICH I UNDERSTAND ACTUALLY THE CLERK HAS.

8 THE COURT: I'M LOOKING AT 1496. A?

9 MR. QUINN: NO, THIS IS NOT A. WE'LL GET
10 TO A.

09:56AM

11 THE COURT: OKAY.

12 MR. QUINN: IT'S AN ACTUAL, PHYSICAL COPY. I
13 HAVE ONE, AND I CAN -- PERHAPS THAT COULD BE HANDED TO
14 THE WITNESS, YOUR HONOR.

15 THE COURT: SURE. I CAN DO IT. I HAVE TO BE
16 GOOD FOR SOMETHING HERE.

09:56AM

17 THERE YOU GO.

18 BY MR. QUINN:

19 Q SIR, DO YOU HAVE 1496 IN YOUR HAND?

20 A YES, I DO.

09:56AM

21 Q DO YOU KNOW THAT -- THAT'S EXHIBIT -- IT'S A
22 CD; IS THAT CORRECT?

23 A YES.

24 Q AND DID YOU -- HAVE YOU REVIEWED THE CONTENTS
25 OF THAT CD?

09:57AM

26 A YES.

27 Q DOES THIS CD CONTAIN INFORMATION FROM WHAT
28 WE'VE BEEN TALKING ABOUT, REPORT CACHE?

1 A YES, IT DOES.

2 Q HOW CAN YOU TELL THAT?

3 A BECAUSE I'M FAMILIAR WITH THE COLUMNS IN THAT
4 DATABASE.

5 Q AND WHAT KIND OF INFORMATION FROM REPORT CACHE
6 IS INCLUDED IN THIS PARTICULAR CD, EXHIBIT 1496?

09:57AM

7 A WELL, THIS INCLUDES PORTFOLIO DATA FROM THE
8 CLIENT. SO, HOLDINGS INFORMATION THAT WE WERE TALKING
9 ABOUT FROM EACH MONTH THEN SINCE 1996. IT INCLUDES
10 CLIENT INVESTMENT STRATEGY INFORMATION. PRICING.
11 PERFORMANCE DATA. AND CLIENT NAMES AND PORTFOLIO
12 NUMBERS.

09:57AM

13 Q CAN YOU TELL US, JUST BALLPARK, HOW MANY
14 DIFFERENT CLIENTS WE'RE TALKING ABOUT HERE?

15 A THERE'S AT LEAST 150 CLIENTS IN THIS.

09:57AM

16 Q WHEN YOU LOOKED -- DO YOU KNOW WHAT TIME
17 PERIOD THE DATA ON THAT CD COVERED?

18 A YES. THIS -- THIS COVERS RIGHT THROUGH
19 NOVEMBER OF 2009.

20 Q SO, UP TO 2009?

09:58AM

21 A YEAH, THERE MAY HAVE BEEN ONE OR TWO DAYS
22 DECEMBER 3RD, I BELIEVE, 2009, YES.

23 Q OKAY.

24 BUT THAT'S THE LATEST. IT WAS -- OTHER
25 THAN THAT IT'S ALL PRIOR?

09:58AM

26 A YES.

27 MR. QUINN: WE'D OFFER EXHIBIT 1496, YOUR
28 HONOR.

1 MR. WEINGART: NO OBJECTION.

2 THE COURT: IT WILL BE ADMITTED.

3

4 (EXHIBIT 1496 ADMITTED) +

5

09:58AM

6 BY MR. QUINN:

7 Q TURN, PLEASE, NOW IN YOUR BOOK NOW TO

8 EXHIBIT 1496-B.

9 IS THIS, 1496-B, IS THIS, CAN YOU TELL

10 US WHAT THIS IS?

09:58AM

11 A YES.

12 THIS IS DATA FROM A TABLE CALLED

13 PORTFOLIO REPORTING.

14 Q AND IS THIS A SUBSET OF THE INFORMATION, JUST

15 A SAMPLE OF THE INFORMATION THAT'S TAKEN OFF OF THAT CD

09:58AM

16 THAT WAS JUST ADMITTED, EXHIBIT 1496?

17 A YES, IT IS.

18 Q IT'S BEEN PRINTED OUT, CORRECT?

19 A YES. JUST A VERY SMALL, VERY SMALL NUMBER OF

20 RECORDS FROM THAT CD.

09:59AM

21 Q IT GIVES YOU AN IDEA WHAT TYPE OF DATA IS ON

22 THAT CD?

23 A YES.

24 MR. QUINN: WE'D OFFER EXHIBIT 1496-B, YOUR

25 HONOR.

09:59AM

26 MR. WEINGART: NO OBJECTION.

27 THE COURT: IT WILL BE ADMITTED.

28 (EXHIBIT 1496-B ADMITTED) +

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28

MR. QUINN: IF WE COULD DISPLAY THAT, YOUR HONOR.

THE COURT: YOU MAY.

BY MR. QUINN:

Q YOU HAVE THAT OPEN BEFORE YOU AS WELL, SIR?

A YES.

Q CAN YOU KIND OF GIVE US A WALK-THROUGH THROUGH THIS FIRST PAGE, MAYBE FIRST COUPLE PAGES, IN GENERAL TERMS TELL THE JURY WHAT THESE COLUMNS REPRESENT.

A CERTAINLY.

YOU CAN SEE THE THIRD COLUMN, NAMED PORTFOLIO NUMBER, IS AN INTERNAL FILE FOR THE CLIENT INVESTMENT PORTFOLIO.

THE PORTFOLIO NAME REPRESENTS THE NAME OF THE PORTFOLIO FOR THAT CLIENT AND, VAST MAJORITY OF THE CASES, THE NAME OF THE CLIENT.

THE STRATEGY COLUMN REFERS TO THE INVESTMENT STRATEGY TO WHICH THAT CLIENT WAS ASSIGNED, PER THEIR DESIGNATIONS.

Q IF WE COULD LOOK AT THE NEXT PAGE.

DO THESE COLUMNS SORT OF CONTINUE HORIZONTALLY ACROSS THE PAGE?

A YES.

Q SO WE'RE STILL LOOKING AT THE SAME INFORMATION THAT BEGINS ON THE LEFT-HAND SIDE. THESE ARE JUST ADDITIONAL COLUMNS. IF WE HAD A WIDER PAGE, THESE WOULD ALL BE NEXT TO EACH OTHER?

09:59AM

09:59AM

09:59AM

10:00AM

10:00AM

1 A YES.

2 Q GENERALLY, WHAT ARE WE LOOKING AT HERE ON THE
3 NEXT PAGE, 1496-B-2?

4 A WE'RE LOOKING AT MORE PORTFOLIO-RELATED
5 INFORMATION.

10:00AM

6 Q IT SAYS THERE'S INFORMATION THERE ABOUT
7 PRICING TYPE?

8 A YES.

9 Q AS WELL AS INCEPTION DATE?

10 A YES.

10:00AM

11 Q THEN ON THE NEXT PAGE, 3, THERE'S MORE DATA?

12 A YES. THIS IS -- THESE ARE THE BEGINNING OF
13 SOME AGGREGATED STATISTICS FOR THE PORTFOLIO BASED ON
14 THE UNDERLYING INVESTMENTS, SUCH AS THE YIELD, WEIGHTED
15 AVERAGE LIFE, NUMBER OF INVESTMENTS IN THAT PORTFOLIO
16 AND OTHER DETAILS.

10:01AM

17 Q IF WE WENT THROUGH THE OTHER PAGES OF THIS
18 WE'D SEE ADDITIONAL PAGES OF INFORMATION FOR THESE
19 CLIENTS AND OTHER CLIENTS AS WELL?

20 A THAT'S CORRECT.

10:01AM

21 Q THANK YOU.

22 IF I COULD ASK YOU TO TAKE A LOOK AT --
23 IF I COULD ASK THE CLERK TO HAND TO THE WITNESS
24 EXHIBIT 1497, WHICH IS ANOTHER CD.

25 THE COURT: THERE YOU GO, SIR.

10:01AM

26 BY MR. QUINN:

27 Q HAVE YOU REVIEWED THE CONTENTS OF
28 EXHIBIT 1497?

1 A YES, I HAVE.

2 Q AND DOES THIS CD ALSO CONTAIN INFORMATION FROM
3 REPORT CACHE?

4 A YES, IT DOES.

5 Q WHAT KIND OF INFORMATION IS INCLUDED IN THIS
6 EXHIBIT, 1497?

10:01AM

7 A THIS IS THE SAME INFORMATION THAT WE LOOKED
8 AT, BUT IT'S -- IT'S SHOWING SLIGHTLY DIFFERENT TABLE
9 NAME.

10 Q DOES IT SHOW INFORMATION CONCERNING
11 INVESTMENTS AND -- HELD AND TRADED EACH DAY FOR EACH
12 CLIENT?

10:02AM

13 A IT -- YES, IT DOES. IT SHOWS THE MONTH AND
14 HISTORIES OF THE INVESTMENTS THAT WERE MADE ON BEHALF
15 OF THESE CLIENTS.

10:02AM

16 Q DOES IT INCLUDE PRICING INFORMATION?

17 A YES, IT DOES.

18 Q DOES IT INCLUDE AS -- WHAT YOU REFERRED TO AS
19 ANALYTICS?

20 A YES, IT DOES INCLUDE ANALYTICS FOR THE
21 PORTFOLIOS.

10:02AM

22 Q FOR EXAMPLE, SOMETHING CALLED DURATION
23 SCALING?

24 A YES.

25 Q COULD YOU TELL THE JURY WHAT DURATION SCALING
26 IS?

10:02AM

27 A YES.

28 DURATION SCALING IS JUST A TECHNIQUE WE

1 USED IN THE PORTFOLIOS TO LOOK AT HOW DURATION CHANGED
2 INTRAMONTH OR BETWEEN THE MONTH ENDS.

3 Q HOW ABOUT YIELD BOOK MODELS?

4 A YES. WE HAD THE YIELD, WEIGHTED AVERAGE LIFE,
5 CONVEXITY, AND OTHER STATISTICS THAT WERE GENERATED ON
6 A MONTHLY BASIS. OUR GENERATED FROM YIELD BOOK MODELS
7 THAT THEN, WE THEN INCORPORATED THAT DATA INTO THIS
8 DATABASE.

10:03AM

9 Q SO I'D MOVE EXHIBIT --

10 JUST THE TIME PERIOD, YOU LOOKED AT
11 THIS, CAN YOU TELL US WHAT TIME PERIOD THIS DATA ON
12 EXHIBIT 1497 COVERED? I'M REFERRING TO THE CD AT THIS
13 POINT, 1497.

10:03AM

14 A CERTAINLY EXTENDED THROUGH NOVEMBER OF 2009.

15 MR. QUINN: WE'D OFFER THAT, YOUR HONOR.

10:03AM

16 MR. WEINGART: NO OBJECTION.

17 THE COURT: DID YOU SAY NOVEMBER OR DECEMBER
18 OF 2009?

19 THE WITNESS: NOVEMBER, THE MONTH END.

20 MR. QUINN: THEN IF YOU COULD LOOK IN YOUR
21 BOOK AT EXHIBIT 1497-B, IS THIS A SMALL PORTION OF THAT
22 DATA FROM THAT CD, EXHIBIT 1497, THAT HAS BEEN PRINTED
23 OUT, JUST TO GIVE THE JURY THE IDEA OF WHAT TYPE OF
24 DATA WE'RE LOOKING AT HERE?

10:03AM

25 A YES, IT IS.

10:04AM

26 MR. QUINN: OFFER EXHIBIT 1497-B.

27 THE COURT: ANY OBJECTION?

28 MR. WEINGART: NO.

1 THE COURT: IT WILL BE ADMITTED.

2

3 (EXHIBIT 1497-B ADMITTED.) +

4

5 MR. QUINN: IF WE COULD JUST DISPLAY THAT.

10:04AM

6 Q THIS LIKEWISE, LIKE THE OTHER DOCUMENT WE WERE
7 LOOKING AT, THIS IS INFORMATION THAT GOES INTO LONG,
8 LONG HORIZONTAL COLUMNS?

9 A YES.

10 Q IF WE TURN THESE PAGES, WE'D SEE MORE AND MORE
11 DATA, SUCH AS YOU DESCRIBED, CONCERNING THESE
12 INVESTMENTS?

10:04AM

13 A YES.

14 Q THANK YOU.

15 AND THEN I'LL ASK THE CLERK TO PUT
16 BEFORE THE WITNESS EXHIBIT 1498. ANOTHER CD.

10:04AM

17 THE COURT: THERE YOU GO, SIR.

18 BY MR. QUINN:

19 Q IF YOU COULD TAKE A LOOK AT EXHIBIT 1498, THAT
20 CD.

10:05AM

21 DID YOU REVIEW THAT CD, THE CONTENTS OF
22 THAT CD, BEFORE PREPARING -- BEFORE COMING HERE TO
23 TESTIFY HERE TODAY?

24 A YES.

25 Q CAN YOU TELL US WHAT'S ON THAT CD?

10:05AM

26 A YES.

27 THIS CD CONTAINS MORE INFORMATION FROM
28 THE REPORT CACHE DATABASE ON THE CLIENT INVESTMENTS AND

1 HOLDINGS.

2 Q IS THIS A MONTHLY HOLDINGS INFORMATION?

3 A YES.

4 Q CAN YOU TELL US WHAT TIME PERIOD THE
5 INFORMATION ON THAT CD COVERED?

10:05AM

6 A YES. THROUGH 2009.

7 MR. QUINN: COULD WE OFFER 1498, YOUR HONOR?

8 THE COURT: ANY OBJECTION?

9 MR. WEINGART: NO, YOUR HONOR.

10 THE COURT: ADMITTED.

10:05AM

11

12 (EXHIBIT 1498 ADMITTED.) +

13

14 BY MR. QUINN:

15 Q SIMILARLY, 1498-B, IS THAT A PRINTOUT OF SOME
16 OF THE DATA ON 1498-A?

10:05AM

17 A YES, IT IS.

18 MR. QUINN: OFFER THAT, YOUR HONOR.

19 THE COURT: ANY OBJECTION?

20 MR. WEINGART: NO.

10:05AM

21 THE COURT: ADMITTED.

22

23 (EXHIBIT 1498-A ADMITTED) +

24

25 MR. QUINN: IF WE COULD DISPLAY 1498-B, JUST
26 TO GIVE THE JURY AN IDEA, AND IF WE COULD MAYBE THUMB
27 THROUGH A FEW OF THOSE PAGES. JUST TO GIVE THE JURY
28 THE IDEA OF WHAT TYPES OF INFORMATION HERE.

10:06AM

1 Q WE'VE LOOKED AT A NUMBER OF EXHIBITS AT THIS
2 POINT, MR. KALE, SOME CD'S, AND SOME PRINTOUTS FROM THE
3 CD'S FROM -- ARE THESE ALL FROM THE AIMS, WHAT YOU CALL
4 THE AIMS REPORT CACHE?

5 A YES. THESE ALL ORIGINATED IN THE AIMS REPORT
6 CACHE DATABASE.

10:06AM

7 Q CAN WE REFER TO THESE EXHIBITS, 1496, 1496-A,
8 1497, 1497-A, 1498, AND 1498-A, CAN WE REFER TO THESE
9 TOGETHER, FOR EASE OF REFERENCE, AS REPORT CACHE
10 EXHIBITS? WILL THAT WORK FOR YOU?

10:06AM

11 A YES, THAT WORKS FOR ME.

12 THE COURT: LET ME JUST SAY, THE HARD COPIES
13 WERE B, NOT A --

14 MR. QUINN: I'M SORRY. YOU'RE RIGHT.

15 THE COURT: -- THAT WERE ADMITTED.

10:07AM

16 MR. QUINN: I SAID A. I MEANT B.

17 THE COURT: THANK YOU.

18 BY MR. QUINN:

19 Q LET ME ASK YOU, THEN, WHAT WE'VE NOW DEFINED
20 AS THE REPORT CACHE EXHIBITS, LET ME ASK YOU A FEW
21 QUESTIONS ABOUT THESE ALL TOGETHER.

10:07AM

22 ARE THE CONTENTS OF THOSE EXHIBITS, IS
23 THAT INFORMATION GENERALLY KNOWN?

24 A NO.

25 Q IS IT KNOWN OUTSIDE TCW AT ALL, SO FAR AS YOU
26 KNOW?

10:07AM

27 A NOT AS FAR AS I KNOW.

28 Q IS THIS INFORMATION REGARDED AS CONFIDENTIAL

1 AT TCW?

2 A YES.

3 Q DO THE CONTENTS OF THESE REPORT CACHE EXHIBITS
4 HAVE ECONOMIC VALUE TO TCW?

5 MR. WEINGART: OBJECTION. LACKS FOUNDATION. 10:07AM

6 THE COURT: SUSTAINED.

7 BY MR. QUINN:

8 Q DO YOU KNOW WHAT USE IS MADE OF THESE REPORT
9 CACHE EXHIBITS?

10 A YES, I DO. 10:07AM

11 Q WHAT USE IS MADE OF THEM?

12 A WELL, SOME OF THE USE -- USES INCLUDE
13 REFERENCE OF OVER -- TEN YEARS OF HISTORY OF THE CLIENT
14 PORTFOLIOS, ALL THE WAY UP THROUGH 2009. REALLY ABOUT
15 13 YEARS IN THIS CASE. 10:08AM

16 AND IT HAS THE CLIENT STRATEGY
17 INFORMATION, PRICING, PERFORMANCE, AND OTHER
18 INFORMATION ABOUT THE CLIENT INVESTMENTS THAT ARE
19 USEFUL, NOT ONLY IN OUR MEETINGS WITH THE CLIENTS, BUT
20 ALSO FOR OUR UNDERSTANDING OF THE TYPES OF INVESTMENTS 10:08AM
21 WE MAKE FOR THE CLIENTS OVER THOSE YEARS.

22 Q IS THIS TYPE OF INFORMATION USED IN
23 INTERFACING WITH THE CLIENTS?

24 A YES, IT IS.

25 Q IN TERMS OF PLANNING WITH THE CLIENT'S FUTURE
26 INVESTMENTS? 10:08AM

27 A YES.

28 Q AND MANAGING THE RELATIONSHIPS WITH CLIENTS

1 GENERALLY?

2 A YES.

3 Q AND ON THAT BASIS DOES IT HAVE VALUE TO TCW?

4 A YES, IT DOES.

5 MR. WEINGART: OBJECTION, YOUR HONOR.

10:08AM

6 THE COURT: I'LL SUSTAIN THE OBJECTION.

7 I THINK CONCLUSION CAN BE DRAWN.

8 MR. QUINN: I DIDN'T HEAR.

9 THE COURT: I'LL SUSTAIN THE OBJECTION.

10 MR. WEINGART: HIS ANSWER IS STRICKEN?

10:09AM

11 THE COURT: YES.

12 BY MR. QUINN:

13 Q THIS INFORMATION IS, IN FACT, IT'S USEFUL IN
14 DEALING WITH CLIENTS?

15 A YES.

10:09AM

16 Q AND IS IT USEFUL IN GROWING CLIENT
17 RELATIONSHIPS?

18 A YES.

19 Q CAN YOU EXPLAIN THAT, HOW THAT IS, IT'S USEFUL
20 IN GROWING CLIENT RELATIONSHIPS?

10:09AM

21 A CERTAINLY.

22 IF YOU'RE ABLE TO SHARE WITH THE CLIENT
23 HOW YOU MANAGE THEIR PERFORMANCE IN THE CONTEXT OF WHAT
24 WAS HAPPENING IN THE MARKET DURING THOSE TIMES, THAT
25 MAY ENCOURAGE THE CLIENT TO INVEST FURTHER WITH YOU.

10:09AM

26 Q ALL RIGHT.

27 DOES IT HELP TCW GROW ITS RELATIONSHIPS
28 WITH CLIENTS?

1 A I WOULD THINK SO, YES.

2 Q DOES TCW TAKE ANY STEPS TO KEEP THE
3 INFORMATION THAT'S CONTAINED IN THESE REPORT CACHE
4 EXHIBITS CONFIDENTIAL?

5 A YES. 10:09AM

6 Q DOES TCW OWN THE INFORMATION THAT'S IN THESE
7 EXHIBITS?

8 A YES.

9 MR. WEINGART: OBJECTION. FOUNDATION, YOUR
10 HONOR. 10:10AM

11 THE COURT: LET'S HAVE A LITTLE FOLLOW-UP ON
12 THAT JUST TO EXPLAIN IT.

13 MR. QUINN: ALL RIGHT.

14 Q THIS INFORMATION IS INFORMATION THAT IS
15 COLLECTED AT TCW? 10:10AM

16 A YES.

17 Q AND IN CASES, AS A RESULT OF ANALYTICS THAT,
18 WHAT YOU'VE DESCRIBED, THAT TCW RUNS ON THESE
19 DATABASES?

20 A YES. 10:10AM

21 Q THIS IS ALL DEVELOPED INTERNALLY AT TCW BY TCW
22 EMPLOYEES?

23 A YES.

24 Q DO YOU CONSIDER THESE FILES TO BE TCW'S TRADE
25 SECRETS? 10:10AM

26 MR. WEINGART: OBJECTION. CALLS FOR LEGAL
27 CONCLUSION.

28 THE COURT: I'LL SUSTAIN THE OBJECTION.

1 GO AHEAD.

2 BY MR. QUINN:

3 Q WOULD TCW EVER PROVIDE THIS TYPE OF
4 INFORMATION IN THESE REPORT CACHE EXHIBITS TO A
5 COMPETITOR?

10:10AM

6 A NO.

7 Q WHY NOT?

8 A IT'S INFORMATION FOR OUR CLIENTS, COMPILED BY
9 US FOR OUR USE IN SERVING OUR CLIENTS.

10 Q IF YOUR COMPETITOR HAD THAT SAME INFORMATION,
11 DO YOU THINK IT WOULD GIVE THEM AN ADVANTAGE IN
12 COMPETING WITH TCW?

10:11AM

13 MR. WEINGART: OBJECTION. FOUNDATION.

14 THE COURT: SUSTAINED.

15 BY MR. QUINN:

10:11AM

16 Q WHEN YOU SAY THAT IT'S INFORMATION THAT YOU
17 WOULDN'T WANT TO SHARE WITH A COMPETITOR, WHY IS THAT?

18 A WELL, I -- I HAVE A NUMBER OF REASONS.

19 ONE IS THAT, AS AN EMPLOYEE, I'M --
20 I'M -- I'VE SIGNED AGREEMENTS NOT TO SHARE IT.

10:11AM

21 AND I ALSO BELIEVE IT WOULD HELP
22 COMPETITORS BETTER UNDERSTAND HOW OUR INVESTMENT TEAM
23 MANAGED THESE PORTFOLIOS, WHAT STRATEGIES THE CLIENTS
24 WERE IN.

25 AND THE PRICING INFORMATION RELATED TO
26 THOSE INVESTMENTS.

10:11AM

27 Q LET ME CHANGE GEARS NOW, AND ASK YOU ABOUT
28 SOME OF THESE OTHER ANALYTICS AND PROGRAMS YOU

1 DEVELOPED.

2 THERE'S SOMETHING CALLED AN MBS
3 DATABASE?

4 A YES.

5 Q WHAT IS THE MBS DATABASE?

10:12AM

6 A THE MBS DATABASE IS A MICROSOFT ACCESS
7 DATABASE THAT HAS THE INFORMATION FROM REPORT CACHE,
8 PLUS SEVERAL PROGRAMS DEVELOPED, SOFTWARE PROGRAMS
9 DEVELOPED, IN THE MBS TEAM.

10 Q SOFTWARE PROGRAMS THAT WERE DEVELOPED AT TCW?

10:12AM

11 A YES.

12 Q TO DO WHAT, BASICALLY?

13 A NUMBER OF FUNCTIONS, INCLUDING PERFORMANCE
14 ATTRIBUTIONS OF THE INVESTMENTS INSIDE THESE
15 PORTFOLIOS.

10:12AM

16 ALSO CUSTOMIZED EXTRACTS OF THE HOLDING
17 INFORMATION FROM THE CLIENT PORTFOLIOS WITH EXACTLY THE
18 FIELDS THAT THE ANALYSTS MAY BE INTERESTED IN
19 COMPILING. AND GENERALLY PROVIDING INFORMATION ABOUT
20 THE ASSETS IN THESE PORTFOLIOS.

10:12AM

21 Q WAS THE MBS DATABASE CREATED AT TCW?

22 A YES.

23 Q BY TCW EMPLOYEES?

24 A YES.

25 Q CAN YOU IDENTIFY -- WERE YOU ONE OF THOSE
26 EMPLOYEES?

10:13AM

27 A NO.

28 Q CAN YOU IDENTIFY THE EMPLOYEES WHO WERE

1 INVOLVED IN CREATING THE MBS DATABASE.

2 A THERE WERE A NUMBER OF DIFFERENT EMPLOYEES,
3 AND I'M NOT EXACTLY SURE THE FIRST ONE TO START, BUT I
4 KNOW THAT GEORGE JANKOWSKI AND JEFF MAYBERRY, GUILLERMO
5 SERRANA WERE THREE INDIVIDUALS THAT PARTICIPATED.

10:13AM

6 AND THEN LATER PURUSHOTHAMAN,
7 JIRAINDIRA.

8 Q OTHER PEOPLE AS WELL?

9 A YES.

10 Q AND OVER WHAT PERIOD OF TIME WAS THE MBS
11 DATABASE CREATED?

10:13AM

12 A MY RECOLLECTION IS IT WAS SOMEWHERE IN 2005 --
13 2004, 2005 TIMEFRAME, THROUGH 2009.

14 Q HOW IS THE MBS DATABASE USED?

15 A IT IS USED FOR CREATING PORTFOLIO MANAGEMENT
16 REPORTS AND RESPONDING TO INQUIRIES BY THE INVESTMENT
17 PROFESSIONALS, AS WELL AS PREPARING INFORMATION FOR
18 CLIENT REVIEWS.

10:13AM

19 Q WHEN YOU REFER TO CLIENT REVIEWS, WHAT ARE YOU
20 REFERRING TO?

10:14AM

21 A MEETINGS THAT WERE CONDUCTED WITH THE CLIENTS,
22 WHEREIN WE WANTED TO LOOK AT THEIR PERFORMANCE OF THEIR
23 INVESTMENTS, AS WELL AS JUST REPORTS THAT SOME OF
24 CLIENTS REQUIRED ON A WEEKLY OR MONTHLY BASIS.

25 THE COURT: COULD I INTERRUPT YOU.

10:14AM

26 WE CAN TAKE A BREAK AT THIS POINT.
27 WE'LL TAKE OUR FIRST MORNING BREAK. 20 MINUTES.

28 PLEASE DON'T DISCUSS THE MATTER AMONG

1 YOURSELVES OR WITH ANYONE ELSE OR FORM ANY OPINIONS OR
2 CONCLUSIONS.

3 WE'LL RETURN AT 25 MINUTES TO 11:00.

4 THANK YOU, MR. KALE.

5

10:14AM

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(RECESS.)

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1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, MONDAY, AUGUST 1, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 10:35 A.M.

10:37AM

10

11 THE COURT: ALL RIGHT. IN THE TCW GUNDLACH
12 MATTER, ALL MEMBERS OF OUR JURY ARE PRESENT, AS ARE
13 COUNSEL.

14 MR. QUINN, YOU MAY CONTINUE YOUR
15 EXAMINATION OF MR. KALE.

10:37AM

15

16 MR. QUINN: THANK YOU, YOUR HONOR.

17 MR. KALE, I THINK WE WERE TALKING ABOUT
18 THE MBS DATABASE.

19 THE WITNESS: YES.

20 Q. BY MR. QUINN: AND THAT'S SOMETHING THAT
21 PERMITS YOU TO GENERATE CUSTOMIZED REPORTS CONCERNING
22 CLIENTS AND THEIR HOLDINGS, AND OTHER INFORMATION LIKE
23 THAT?

10:37AM

20

21 PERMITS YOU TO GENERATE CUSTOMIZED REPORTS CONCERNING
22 CLIENTS AND THEIR HOLDINGS, AND OTHER INFORMATION LIKE
23 THAT?

24 A. YES.

25 Q. AND IS THIS SOMETHING THAT YOU PERSONALLY HAVE
26 USED?

10:37AM

25

27 A. YES, I HAVE.

28 Q. YOU SHOULD HAVE BEFORE YOU IN A LITTLE BOX, AN

1 OBJECT THAT'S BEEN MARKED AS EXHIBIT 1500?

2 A. YES.

3 Q. AND THAT EXHIBIT IS A HARD DRIVE, CORRECT?

4 A. YES.

5 Q. AND HAVE YOU REVIEWED THE CONTENTS OF THAT
6 HARD DRIVE?

10:37AM

7 A. YES, I HAVE.

8 Q. AND DOES THAT HARD DRIVE HAVE ON IT, THE MBS
9 DATABASE FILES?

10 A. YES, IT DOES.

10:37AM

11 Q. AND COULD YOU TELL FROM LOOKING AT THAT, WHAT
12 TIME PERIOD THAT THAT DATA COVERED, THAT'S ON THAT HARD
13 DRIVE?

14 A. YES. THROUGH FALL OF 2009.

15 MR. QUINN: WE'D OFFER THE HARD DRIVE,
16 EXHIBIT 1500, YOUR HONOR.

10:38AM

17 MR. WEINGART: NO OBJECTION.

18 THE COURT: IT WOULD BE ADMITTED.

19

20 (ADMITTED: PLAINTIFF'S 1500.)

10:38AM

21

22 Q. BY MR. QUINN: AND THEN IN YOUR BOOK. YOU'VE
23 GOT EXHIBIT 1500-B.

24 IS THIS JUST A PORTION OF A TABLE FROM
25 THE MBS DATABASE RELATING TO LOAN PERFORMANCE
26 INFORMATION?

10:38AM

27 A. YES, IT IS.

28 Q. AND THAT'S TAKEN OFF THAT HARD DRIVE?

1 A. YES.

2 Q. WE OFFER THAT, YOUR HONOR, EXHIBIT 1500-B.

3 THE COURT: ANY OBJECTION?

4 MR. WEINGART: NO -- SORRY, YOUR HONOR. I'M
5 TRYING TO GET TO B.

10:38AM

6 THE COURT: IT WILL BE ADMITTED.

7

8 (ADMITTED: PLAINTIFF'S 1500-B.)

9

10 MR. QUINN: AND IF WE COULD JUST DISPLAY THAT,
11 TO GIVE THE JURY THE TYPE OF INFORMATION THAT WE'RE
12 LOOKING AT HERE.

10:38AM

13 Q. BUNCH OF NUMBERS?

14 A. YES.

15 Q. BUT ARE THESE USEFUL?

10:38AM

16 A. YES. THIS IS USEFUL INFORMATION.

17 Q. CAN YOU EXPLAIN THAT, PLEASE?

18 A. YES. THE CUSIP COLUMN, WHICH IS THE FIRST
19 COLUMN, IDENTIFIES THE BOND, SUCH AS WHAT WE'VE BEEN
20 DISCUSSING.

10:39AM

21 AND YOU SEE OTHER COLUMNS THERE LIKE
22 LTV, LTV GREATER THAN 80. THESE ARE COLUMNS DESCRIBING
23 CHARACTERISTICS OF THE UNDERLYING LOANS FOR THE BOND,
24 REPRESENTED BY THE CUSIP IDENTIFIER.

25 Q. WILD GUESS. LTV IS THE LOAN TO VALUE RATIO,
26 OR SOMETHING LIKE THAT?

10:39AM

27 A. YES.

28 Q. AND THERE'S OTHER SIMILAR INFORMATION, ALL

1 ABOUT THE UNDERLYING LOANS THAT ARE IN THESE POOLS THAT
2 SUPPORT THESE MORTGAGE-BACKED SECURITIES; IS THAT
3 CORRECT?

4 A. YES.

5 Q. NOW, ARE THE CONTENTS OF THIS HARD DRIVE, THIS
6 MBS DATABASE, EXHIBIT 1500, IS THAT INFORMATION THAT'S
7 GENERALLY KNOWN?

10:39AM

8 A. NO.

9 Q. KNOWN OUTSIDE TCW, I MEAN?

10 A. NO.

10:40AM

11 Q. WE MAY HAVE GOTTEN CAUGHT IN A DOUBLE NEGATIVE
12 THERE.

13 CAN YOU TELL US WHETHER OR NOT THAT
14 INFORMATION IS KNOWN, THAT PARTICULAR COMPILATION, THAT
15 DATABASE, IS AVAILABLE OUTSIDE TCW?

10:40AM

16 A. NO, IT IS NOT.

17 Q. AND DOES THIS CONTAIN THE FILES OF OVER 20
18 YEARS WORTH OF CLIENT INFORMATION?

19 A. A LITTLE LESS THAN 20; BUT YES, IT DOES
20 CONTAIN THE CLIENT INFORMATION.

10:40AM

21 Q. AND DOES TCW MAKE EFFORTS TO KEEP THIS
22 INFORMATION CONFIDENTIAL?

23 A. YES, IT DOES.

24 Q. AND DOES IT REGARD THIS TYPE OF INFORMATION,
25 THE MBS DATABASE, AS CONFIDENTIAL?

10:40AM

26 A. YES.

27 Q. IS THAT SOMETHING THAT TCW WOULD EVER SHARE
28 WITH A COMPETITOR?

1 A. NO.

2 Q. NOW, JUST CHANGING SUBJECTS, IS THERE
3 SOMETHING CALLED TED, T-E-D?

4 A. YES.

5 Q. WHAT IS TED?

10:40AM

6 A. TED IS A SOFTWARE AND DATABASE THAT WAS
7 DEVELOPED IN 1993 AND 1994 TO ASSIST TCW WITH THE
8 PRINTING AND DISTRIBUTION OF CLIENTS' STATEMENTS,
9 INCLUDING PERFORMANCE INFORMATION FOR THE CLIENTS.

10 Q. DOES IT MAINTAIN PERFORMANCE INFORMATION?

10:41AM

11 A. YES.

12 Q. AND BY "PERFORMANCE INFORMATION," WHAT DO WE
13 MEAN?

14 A. WE MEAN THAT INFORMATION THAT TELLS THE
15 CLIENTS HOW THEIR RETURNS LOOKED, WHETHER OR NOT THEY
16 MADE OR LOST MONEY ON THOSE INVESTMENTS.

10:41AM

17 Q. AND DOES IT CONTAIN INFORMATION CONCERNING
18 PLANS, INVESTMENT PLANS, AS WELL?

19 A. YES, IT DOES.

20 Q. DOES IT INCLUDE ANY OTHER TYPE OF INFORMATION?

10:41AM

21 A. IT DOES INCLUDE CONTACT INFORMATION FOR THOSE
22 CLIENTS.

23 Q. AND BY "CONTACT INFORMATION," WE'RE TALKING
24 ABOUT WHAT, EXACTLY?

25 A. WE'RE TALKING ABOUT NAME, ADDRESS, PHONE
26 NUMBER, SALUTATION, LIKE MR. AND MRS., JUST INFORMATION
27 ABOUT EACH OF THE CONTACT OF THE CLIENTS.

10:41AM

28 Q. DOES IT ALSO CONTAIN PRIVATE CLIENT

1 INFORMATION?

2 A. IT DOES, YES.

3 Q. WHAT WOULD BE THE EXAMPLES OF THAT?

4 A. TAX ID WOULD BE THE ONE THAT COMES TO MIND.

5 Q. AND FOR INDIVIDUALS, SOCIAL SECURITY NUMBERS
6 AS WELL?

10:42AM

7 A. I DON'T BELIEVE IT CONTAINS SOCIAL SECURITY
8 NUMBERS.

9 Q. WHEN WAS -- WAS THIS TED, THIS ENTERPRISE
10 DATABASE, SOMETHING THAT WAS CREATED AT TCW?

10:42AM

11 A. YES, IT WAS.

12 Q. BY TCW EMPLOYEES?

13 A. YES.

14 Q. AND I THINK YOU SAID THIS STARTED BACK IN THE
15 '93 -- '94 TIME PERIOD?

10:42AM

16 A. YES, IT DID.

17 Q. IS THAT SOMETHING THAT'S BEEN CONTINUOUSLY
18 UPDATED SINCE THEN?

19 A. YES, IT HAS.

20 Q. HAVE YOU PERSONALLY USED IT?

10:42AM

21 A. YES.

22 Q. AND CAN YOU TELL THE JURY HOW MANY YEARS WORTH
23 OF CLIENT DATA THIS DATABASE NOW INCLUDES?

24 A. LET'S SEE, AROUND ABOUT 17 YEARS.

25 Q. YOU SHOULD HAVE BEFORE YOU THERE, WITH ANY
26 LUCK, A CD MARKED EXHIBIT 1502.

10:43AM

27 DO YOU SEE A CD THERE, 1502?

28 A. YES -- I DID. HERE IT IS.

1 Q. AND HAVE YOU REVIEWED THE CONTENTS OF THAT CD?

2 A. YES, I HAVE.

3 Q. AND DOES THAT CONTAIN THE CONTACT DATABASE
4 FILE INFORMATION FROM TED?

5 A. YES, IT DOES.

10:43AM

6 Q. AND CAN YOU TELL US WHAT TIME PERIOD THAT --
7 THE DATA ON THAT CD COVERS?

8 A. YES. IT COVERS THROUGH 2009.

9 Q. WE WOULD OFFER EXHIBIT 1502, YOUR HONOR.

10 THE COURT: ANY OBJECTION?

10:43AM

11 MR. WEINGART: NO, YOUR HONOR.

12 THE COURT: IT WILL BE ADMITTED.

13 Q. BY MR. QUINN: AND THEN YOU SHOULD HAVE A TAB
14 1502(D). MY NOTES SAY, 1502(D).

15 DO YOU HAVE THAT THERE?

10:44AM

16 A. YES.

17 Q. AND CAN YOU TELL US WHAT THAT IS?

18 A. YES. THIS IS THIS CLIENT TABLE FROM THE TED
19 DATABASE.

20 Q. OR AN EXCERPT FROM IT?

10:44AM

21 A. YES.

22 Q. OFFER THAT, YOUR HONOR.

23 THE COURT: ANY OBJECTION?

24 MR. WEINGART: NO, YOUR HONOR.

25 THE COURT: IT WILL BE ADMITTED.

10:44AM

26

27 (ADMITTED: PLAINTIFF'S 1502-D.)

28

1 MR. QUINN: IF WE COULD DISPLAY THAT.

2 Q. AND DOES THIS CONTAIN, THIS TABLE CONTAIN
3 CLIENT ID NUMBERS?

4 A. YES.

5 Q. INCLUDING, IN SOME INSTANCES, TAX
6 IDENTIFICATION, CLIENT TAX IDENTIFICATION NUMBERS?

10:44AM

7 A. YES.

8 Q. DO YOU CONSIDER THIS INFORMATION ON TED'S
9 SYSTEM -- DO YOU CONSIDER THAT INFORMATION CONFIDENTIAL
10 AT TCW?

10:44AM

11 A. YES.

12 Q. AND IS IT MAINTAINED AS CONFIDENTIAL?

13 A. YES.

14 Q. IS THIS DATABASE, THIS ASSEMBLAGE OF
15 INFORMATION, IS THAT AVAILABLE ANYWHERE OUTSIDE OF TCW?

10:45AM

16 A. NOT TO MY KNOWLEDGE.

17 Q. IS THIS INFORMATION THAT YOU WOULD EVER
18 PROVIDE TO A COMPETITOR?

19 A. NO.

20 Q. OKAY.

10:45AM

21 CHANGING SUBJECTS NOW.

22 IS THERE A SYSTEM AT TCW KNOWN AS THE
23 INVESTMENT REPORTING AND ANALYSIS SYSTEM, OR IRA?

24 A. YES.

25 Q. WHAT IS IRA?

10:45AM

26 A. IRA CONTAINS A COLLECTION OF PROGRAMS THAT
27 ENABLES THE TRADERS TO LOOK AT BONDS AND THE UNDERLYING
28 COLLATERAL.

1 Q. SO IS THIS PART OF WHAT YOU REFERRED TO AS
2 THOSE ANALYTICS?

3 A. YES.

4 Q. AND IS THIS ONE COMPUTER PROGRAM, OR DOES IT
5 REALLY REPRESENT SEVERAL DIFFERENT COMPUTER PROGRAMS?

10:45AM

6 A. IT IS A COLLECTION OF SEVERAL DIFFERENT
7 PROGRAMS.

8 Q. WAS IT CREATED AT TCW?

9 A. YES.

10 Q. BY TCW EMPLOYEES?

10:46AM

11 A. YES.

12 Q. CAN YOU IDENTIFY SOME OF THEM FOR US?

13 A. YES. BING BING YU PARTICIPATED, CASEY MOORE,
14 AND QUITE A FEW PEOPLE IN OUR CORPORATE I.T.
15 DEPARTMENT.

10:46AM

16 Q. OVER WHAT PERIOD OF TIME WAS THE IRA SYSTEM
17 CREATED?

18 A. PRIMARILY BETWEEN 2008 AND 2009.

19 Q. AND WAS THERE A PARTICULAR GOAL OR -- THAT YOU
20 HAD IN TRYING TO DEVELOP THIS IRA PROGRAM?

10:46AM

21 A. YES.

22 Q. AND WHAT WAS THAT?

23 A. WE HAD SOME CHANGES THAT WERE OCCURRING IN THE
24 MARKETPLACE THAT ENCOURAGED US TO LOOK FOR WAYS THAT WE
25 COULD PULL TOGETHER THE RIGHT LOANS WITH THE RIGHT
26 BONDS FOR THE ANALYTICS THAT WE WANTED TO LOOK AT.

10:46AM

27 Q. WHAT DO YOU MEAN, "PULL TOGETHER THE RIGHT
28 LOANS FOR THE RIGHT BONDS"? I THOUGHT THE LOANS WERE

1 ALREADY IN THESE POOLS.

2 YOU ARE NOT REARRANGING THEM IN THE
3 POOLS, ARE YOU?

4 A. NO. THERE WERE MANY DIFFERENT POOLS THAT WERE
5 ASSOCIATED WITH BONDS. AND WHEN WE WERE LOOKING TO
6 FIND A GOOD SOURCE OF THAT INFORMATION, WE FOUND THAT
7 IN MANY CASES, IT WAS INCOMPLETE, FROM THE VENDORS WE
8 WERE DEALING WITH; SO WE WANTED TO COME UP WITH A WAY
9 TO MAKE SURE WE HAD THE RIGHT LOANS FOR THE BONDS THAT
10 WE WERE EVALUATING.

10:47AM

10:47AM

11 Q. ALL RIGHT. AND WHY IS THAT IMPORTANT -- IT
12 MAY BE KIND OF OBVIOUS, BUT WHY IS IT IMPORTANT TO
13 IDENTIFY -- MAKE SURE YOU KNOW YOU -- IDENTIFY AND
14 EVALUATE A PARTICULAR LOAN ASSOCIATED WITH A PARTICULAR
15 BOND?

10:47AM

16 A. AS WE TALKED ABOUT EARLIER, THE PRINCIPAL AND
17 INTEREST PAYMENTS FROM THESE LOANS FLOW THROUGH IN THE
18 MORTGAGE-BACKED SECURITY, SO IT REALLY AFFECTS THE
19 VALUE OF THAT MORTGAGE-BACKED SECURITY.

20 Q. BUT IN TERMS OF EVALUATING THESE LOANS, WHAT
21 IS IT THAT YOU ARE TRYING TO MAKE SURE YOU UNDERSTAND
22 ABOUT THE LOANS AND THEIR RELATIONSHIP WITH THE BONDS?

10:47AM

23 A. WE NEED TO KNOW WHICH LOANS ARE PAYING IN THE
24 EXPECTED WAY, VERSUS WHICH LOANS ARE FALLING BEHIND ON
25 PAYMENTS, AND OTHERWISE REDUCING THE VALUE OF THE BOND.

10:48AM

26 Q. AND DO YOU WANT TO MAKE SURE THAT YOU ARE
27 LOOKING AT THE RIGHT LOANS AS BEING ASSOCIATED WITH
28 PARTICULAR BONDS?

1 A. YES. IF YOU ARE NOT LOOKING AT THE RIGHT
2 LOANS, YOU MAKE ASSUMPTIONS ABOUT THE BOND THAT ARE
3 INCORRECT.

4 Q. AND HOW DO THE FOLKS AT TCW WHO ARE ACTUALLY
5 INVOLVED IN MAKING THESE INVESTMENT DECISIONS, USE THIS
6 TYPE OF INFORMATION, WHEN THEY ARE EVALUATING THE LOANS
7 THAT UNDERLIE THE BONDS?

10:48AM

8 MR. WEINGART: LACK OF FOUNDATION, YOUR HONOR.
9 THE COURT: SUSTAINED.

10 Q. BY MR. QUINN: DO YOU KNOW HOW THIS
11 INFORMATION IS USED BY THE PEOPLE WHO MAKE INVESTMENT
12 DECISION IN THE MORTGAGE-BACKED SECURITIES GROUP?

10:48AM

13 A. YES.

14 Q. AND HOW IS IT THAT YOU KNOW THAT?

15 A. BECAUSE WE WROTE THE PROGRAMS, BASED ON THEIR
16 REQUESTS.

10:48AM

17 Q. AND DID YOU WORK WITH THEM IN DEVELOPING THE
18 PROGRAMS?

19 A. YES.

20 Q. AND THEY TOLD YOU WHAT THEY NEEDED TO KNOW,
21 WHAT THEY ARE LOOKING FOR?

10:49AM

22 A. YES.

23 Q. AND YOU WORKED BACK AND FORTH IN ORDER TO TRY
24 TO MEET THEIR NEEDS?

25 A. YES.

10:49AM

26 Q. SO WITH THAT BACKGROUND, HOW IS THIS IRA
27 SYSTEM USED BY THE PEOPLE AT TCW WHO ARE MAKING
28 INVESTMENT DECISIONS ON BEHALF OF PENSION PLANS, CHURCH

1 GROUPS, AND THE LIKE?

2 A. WELL, THEY USED IT TO LOOK AT THE AGGREGATED
3 INFORMATION FROM ALL THESE LOANS. AND THE PROCESSING
4 THAT HAPPENED OVERNIGHT TOOK ALL OF THE LOANS BEHIND
5 THE BONDS, AND GAVE US, IN ADVANCE, THE EQUIVALENT OF
6 THE FULL INVENTORY OF THE -- OUR MBS BONDS AVAILABLE.

10:49AM

7 Q. YOU SAID A LOT THERE.

8 YOU SAID SOMETHING IS DONE OVERNIGHT.

9 COULD YOU EXPLAIN TO THE JURY WHAT'S
10 DONE OVERNIGHT?

10:50AM

11 A. SURE. WE HAD ABOUT 20 MILLION LOANS THAT WERE
12 BEHIND THE BONDS THAT WE WERE LOOKING AT. AND EACH
13 NIGHT, WE HAD A COMPUTER PROGRAM THAT CYCLED THROUGH
14 ALL OF THESE LOANS FOR OVER 15 YEARS OF HISTORY; SO
15 THAT REALLY CAME OUT TO ABOUT A BILLION RECORDS OF
16 HISTORICAL LOAN DATA. AND THEN WE MATCHED THAT UP WITH
17 OVER A HUNDRED THOUSAND BONDS.

10:50AM

18 AND SO AT THE START OF THE BUSINESS DAY,
19 WHEN WE STARTED RECEIVING A LIST OF THE BONDS THAT WERE
20 AVAILABLE TO PURCHASE, WE HAD ALREADY PRE-COMPUTED ALL
21 OF THE STATISTICS THAT THE TRADERS CARED ABOUT SO MUCH,
22 USING THE ALGORITHMS THAT WERE IN OUR PROGRAM.

10:50AM

23 Q. NOW, DOES THIS PROCESS HELP YOU IDENTIFY WHICH
24 BONDS ARE RISKIER THAN OTHERS?

25 A. YES.

10:50AM

26 Q. AND DOES THAT HAVE SOME RELATIONSHIP TO WHAT'S
27 A FAIR PRICE?

28 A. YES, IT DOES.

1 Q. CAN YOU EXPLAIN THAT?

2 A. YES. BY LOOKING AT HOW ALL OF THESE LOANS
3 HAVE BEEN PERFORMING; OR IN OTHER WORDS, ARE THERE
4 INTEREST PAYMENTS AND PRINCIPAL AMOUNTS COMING IN AS
5 EXPECTED? WE'RE ABLE TO SEE NOT ONLY HOW HAS THE BOND
6 PERFORMED, BUT WE ARE ALSO ABLE TO GET THE NECESSARY
7 DETAILS THAT WE NEED TO UNDERSTAND HOW IT MIGHT PERFORM
8 IN THE FUTURE.

10:51AM

9 Q. AND HOW DID THAT AFFECT PRICING DECISIONS OR
10 HOW MUCH TO BID FOR A BOND?

10:51AM

11 MR. WEINGART: OBJECTION, YOUR HONOR,
12 FOUNDATION.

13 THE COURT: SUSTAINED.

14 Q. BY MR. QUINN: AGAIN, DO YOU KNOW HOW THAT
15 AFFECTS PRICING DECISIONS AND HOW MUCH A TRADER WILL
16 BID FOR A BOND?

10:51AM

17 A. I KNOW THAT THAT INFORMATION PROVIDES THE
18 BASIS FOR THE TRADER'S ANALYSIS.

19 Q. DID YOU FEEL LIKE HAVING THIS CAPABILITY, WITH
20 THESE NUMBERS ALREADY CRUNCHED AND RECRUNCHED EVERY
21 DAY, FOR 20 MILLION -- WHAT DID YOU SAY? -- 20 MILLION
22 LOANS?

10:51AM

23 A. OVER 20 MILLION LOANS.

24 Q. -- EVERY NIGHT, DID YOU FEEL THAT THAT GAVE
25 TCW A COMPETITIVE ADVANTAGE IN BEING ABLE TO DO THAT?

10:52AM

26 A. YES.

27 MR. BRIAN: OBJECTION, FOUNDATION, YOUR HONOR.

28 THE COURT: SUSTAINED. I'LL STRIKE THE

1 RESPONSE.

2 Q. BY MR. QUINN: WELL, DID YOU, FROM TIME TO
3 TIME, HAVE AN OCCASION TO TALK TO PEOPLE AT OTHER
4 COMPANIES IN THIS BUSINESS?

5 A. YES. 10:52AM

6 Q. AND DID YOU RECEIVE PRESENTATIONS FROM
7 VENDORS --

8 A. YES.

9 Q. -- TRYING TO SELL YOU OTHER SYSTEMS?

10 A. YES. 10:52AM

11 Q. AND DID YOU EVER GET A PRESENTATION FROM ANY
12 VENDOR WHO TOLD YOU THAT THEY HAD THE SAME
13 CAPABILITIES?

14 A. NO.

15 Q. DID YOU EVER LEARN ABOUT ANY COMPETITOR THAT
16 HAD THE SAME CAPABILITIES? 10:52AM

17 A. NO.

18 Q. DID YOU EVER HEAR FROM PEOPLE THAT THEY
19 THOUGHT TCW'S SYSTEM WAS ABOUT THE BEST THEY'D EVER
20 SEEN? 10:52AM

21 MR. WEINGART: OBJECTION, HEARSAY, YOUR HONOR.

22 THE COURT: SUSTAINED.

23 Q. BY MR. QUINN: WELL, WERE YOU ON THE TEAM THAT
24 PUT THIS IRA TOGETHER?

25 A. YES. 10:52AM

26 Q. AND HOW MUCH DATA WAS IN THIS GIANT DATABASE,
27 IN TERMS OF YOU ALL TALK IN TERMS OF GIGABYTES AND
28 BYTES OF THIS AND BYTES OF THAT.

1 HOW MANY BYTES ARE IN THAT?

2 A. ALMOST THREE TERABYTES.

3 Q. AND A TERABYTE IS -- IS THERE SOME WAY YOU CAN
4 GIVE US AN IDEA WHAT A TERABYTE IS? IT SOUNDS LIKE A
5 BITE YOU GET FROM A DINOSAUR.

10:53AM

6 A. PROBABLY NOT ENOUGH TIME TO GO INTO DETAIL;
7 BUT IT IS A TREMENDOUS AMOUNT OF DATA, A THOUSAND
8 GIGABYTES. AND A GIGABYTE IS A THOUSAND MEGABYTES.
9 IT'S REALLY A VERY LARGE AMOUNT OF DATA. AND IT'S THE
10 LARGEST DATABASE AT TCW, AND IN TCW'S HISTORY.

10:53AM

11 Q. DO YOU KNOW APPROXIMATELY HOW MANY LOAN
12 RECORDS, BALLPARK?

13 A. BALLPARK FOR ONE MONTH, THERE WAS OVER TWENTY
14 MILLION LOAN RECORDS. AND FOR THE FULL 15 YEARS,
15 THERE'S ABOUT OVER A BILLION RECORDS.

10:53AM

16 Q. COVERING ABOUT 20 MILLION LOANS?

17 A. YEAH, ABOUT 20 MILLION LOANS.

18 Q. AND THEN ONCE YOU HAD ASSEMBLED ALL THAT DATA,
19 WHAT'S THE NEXT STEP IN DEVELOPING THIS IRA PROGRAM?

20 A. AS WE MENTIONED, THE MAPPING PROCESS THAT
21 TAKES THOSE TWENTY MILLION LOANS, AND MAPS THEM TO OVER
22 A HUNDRED THOUSAND BONDS. AND THAT'S THE POINT AT
23 WHICH OUR ALGORITHMS RUN EACH NIGHT TO GENERATE THE
24 STATISTICS.

10:54AM

25 Q. NOW, IN DESIGNING THIS, I ASSUME YOU DON'T
26 RECRUIT PEOPLE FROM THE LEGAL DEPARTMENT TO HELP YOU
27 OUT IN THIS PROCESS?

10:54AM

28 A. NO.

1 Q. CAN YOU GIVE THE JURY SOME IDEA OF WHAT THE
2 TECHNICAL BACKGROUNDS ARE FOR THE PEOPLE WHO CREATE
3 THIS PROGRAM?

4 A. YES. I WON'T GO THROUGH ALL OF THEM, BUT THE
5 PRIMARY ROLES INVOLVE PEOPLE THAT HAVE THE ABILITIES TO
6 WRITE C#.NET CODE, BASICALLY A MICRO-COST CODING
7 LANGUAGE. AND ALSO INDIVIDUALS WHO KNOW ABOUT SQL
8 DATABASES, WHICH IS ANOTHER MICROSOFT DATABASE
9 LANGUAGE.

10:54AM

10 AND THOSE INDIVIDUALS, THE ONES THAT
11 WERE ON MY TEAM, ALSO HAD SOME BUSINESS KNOWLEDGE. ONE
12 HAS AN ECONOMICS DEGREE. AND IT WAS IMPORTANT THAT
13 THOSE INDIVIDUALS HAD BOTH THE TECHNICAL EXPERIENCE AND
14 AN ABILITY TO UNDERSTAND THE BUSINESS.

10:55AM

15 Q. BUT DID YOU HAVE PEOPLE WITH PHD'S?

10:55AM

16 A. YES, WE DID.

17 Q. THAT WORKED ON THIS.

18 A. NOT ON MY TEAM, BUT WE WORKED VERY CLOSELY
19 WITH THE RISK MANAGEMENT TEAM AND INDIVIDUALS WITH
20 PHD'S IN MATH AND PHYSICS.

10:55AM

21 Q. FIRST OFF, YOU MENTIONED AN ALGORITHM.

22 WHAT IS AN ALGORITHM?

23 A. AN ALGORITHM IS A PROCESS OF CALCULATION THAT
24 LETS YOU GENERATE A STATISTIC.

25 Q. SO WE THINK OF THAT AS A FORMULA OR
26 CALCULATION, OR SOMETHING LIKE THAT?

10:55AM

27 A. YES.

28 Q. AND IN THIS IRA PROGRAM, HOW MANY DIFFERENT

1 ALGORITHMS DID YOU HAVE THAT YOU APPLIED TO THIS
2 DATABASE?

3 A. WE HAD OVER 120.

4 Q. AND WERE THESE ALGORITHMS CREATED AT TCW?

5 A. YES.

10:56AM

6 Q. AND DID YOU RUN ALL THESE ALGORITHMS, THE 150,
7 OR WHATEVER NUMBER IT IS, EVERY SINGLE NIGHT AGAINST
8 THE ENTIRE DATABASE?

9 A. YES.

10 Q. AND WHY WOULD DO YOU THAT?

10:56AM

11 A. BECAUSE AS YOU CAN IMAGINE, TO ANALYZE TWENTY
12 MILLION LOANS, AND A BILLION RECORDS OF INFORMATION,
13 WOULD TAKE A VERY LONG TIME. AND IN THE MORNING, WHEN
14 THE BROKERS PROVIDED THESE BIDS, THESE BID LISTS FOR
15 OUR INVESTORS, THEY WANTED TO VERY QUICKLY BE ABLE TO
16 EVALUATE THOSE BONDS.

10:56AM

17 Q. IS SPEED IMPORTANT IN MAKING TRADING
18 DECISIONS?

19 MR. WEINGART: OBJECTION, FOUNDATION.

20 THE COURT: SUSTAINED.

10:56AM

21 Q. BY MR. QUINN: DO YOU KNOW WHETHER OR NOT
22 SPEED IS IMPORTANT IN MAKING TRADING DECISIONS?

23 A. YES.

24 Q. HOW DO YOU KNOW WHAT YOU KNOW?

25 A. FROM SPEAKING WITH THE TRADERS.

10:56AM

26 Q. ALL RIGHT. AND DO YOU ACTUALLY -- YOU HAVE
27 BEEN ON THE TRADING FLOOR AND SEEN THEM DO THEIR WORK?

28 A. YES. I HAD A SEAT ON THE TRADING FLOOR.

1 Q. AND SO IS SPEED IMPORTANT?

2 A. YES.

3 Q. WHY?

4 A. SPEED -- FOR ONE, THE BID LISTS ARE DUE AT
5 SPECIFIC TIMES THROUGHOUT THE DAY IN THIS MARKET. AND
6 IF YOU HAVE THE ABILITY TO SPEND MOST OF THE TIME ON
7 THE PRICING PROCESS, RATHER THAN JUST COLLECTING ALL
8 THIS DATA. AND IF YOU GET A VERY QUICK UNDERSTANDING
9 OF THE COLLATERAL, YOU CAN SPEND MORE TIME COMING UP
10 WITH THE RIGHT PRICE.

10:57AM

10:57AM

11 Q. THE COLLATERAL BEING THE LOAN IN THIS PRICE?

12 A. THAT'S CORRECT.

13 Q. THE MORTGAGE LOAN?

14 A. THAT'S RIGHT.

15 Q. SO ONCE YOU HAD ALL THIS, I ASSUME THERE ARE
16 COMPETITORS. TCW IS NOT THE ONLY ONE OUT IN THE MARKET
17 RESPONDING TO THESE BID LISTS, RIGHT?

10:57AM

18 A. YES.

19 Q. SO ONCE YOU HAVE ALL THIS DATA COLLECTED,
20 SIFTED, YOU HAVE RUN THE ALGORITHMS THROUGH IT EVERY
21 NIGHT, WHAT'S THE NEXT STEP?

10:57AM

22 A. WELL, THE NEXT STEP IS, THE TRADERS USE ALL
23 THAT INFORMATION AND MATCH IT UP WITH THE BONDS THAT
24 ARE AVAILABLE TO BID, AND THEN THEY DO -- THEY SELECT A
25 HANDFUL OF SECURITIES FROM THE HUNDREDS OR THOUSANDS
26 AVAILABLE, AND THEY DO A DEEP DIVE ON THOSE SECURITIES,
27 TO REALLY USE -- THEY USED A TOOL WE CALLED SECURITY
28 ANALYZER, TO GO IN AND LOOK IN DETAIL AT ALL OF THESE

10:58AM

1 COLLATERAL LOANS.

2 Q. ALL RIGHT. WE'LL COME TO THAT.

3 BUT IS THERE SOMETHING THAT IS CALLED
4 THE GLOBAL DATA INSIGHTS, OR GDI?

5 A. OH, YES THERE IS.

10:58AM

6 Q. WHAT IS THE GDI?

7 A. AS I MENTIONED PREVIOUSLY, THIS VERY LARGE
8 DATABASE, GDI WAS A MUCH SMALLER DATABASE, DESIGNED
9 SPECIFICALLY FOR SPEED.

10 Q. AND CAN YOU EXPLAIN HOW THAT WORKED WITH THE
11 LARGER DATABASE?

10:58AM

12 A. YES. SO THE LARGER DATABASE CONTAINED ALL OF
13 THE LOANS. BUT TO REALLY ACHIEVE THE FASTEST SPEED, WE
14 HAD A SMALLER DATABASE THAT CONTAINED ALL OF THE BONDS
15 AND THE CHARACTERISTICS, STATISTICS THAT HAD BEEN
16 COMPUTED BY THE ALGORITHMS. AND THAT WAS WHAT WAS
17 MOVED INTO THE SMALLER DATABASE, IN ADDITION TO OUR
18 PORTFOLIO HOLDINGS AND OTHER INFORMATION.

10:58AM

19 Q. SO THE RESULTS OF THE NUMBER CRUNCHING
20 OVERNIGHT ARE THEN UPLOADED; IS THAT CORRECT?

10:59AM

21 A. YES.

22 Q. IS THAT THE RIGHT TERM?

23 A. YES, TRANSFERRED.

24 Q. TRANSFERRED TO THIS OTHER DATABASE?

25 A. YES.

10:59AM

26 Q. FOR REASONS OF SPEED?

27 A. YES.

28 Q. AND IS THAT SOMETHING THAT WAS ALSO CREATED AT

1 TCW?

2 A. YES, IT WAS.

3 Q. DID YOU HAVE A PROGRAM THAT YOU HAD CREATED AT
4 TCW TO ALLOW THE TRADERS TO ACCESS THE INFORMATION IN
5 THIS OTHER SPEEDIER DATABASE, THE GLOBAL DATA INSIGHT
6 DATABASE?

10:59AM

7 A. YES.

8 Q. WHAT WAS THAT CALLED?

9 A. THAT WAS CALLED THE IRA SOFTWARE PROGRAM, THAT
10 CONTAINED ALL OF THESE OTHER PROGRAMS.

10:59AM

11 Q. WAS THERE ALSO SOMETHING CALLED A BWIC
12 BROWSER?

13 A. YES. BWIC BROWSER IS ONE OF THE PROGRAMS IN
14 IRA.

15 Q. ALL RIGHT. AND BWIC SOUNDS LIKE AN ACRONYM
16 FOR SOMETHING.

11:00AM

17 A. YES.

18 Q. AND WHAT IS THAT AN ACRONYM FOR?

19 A. BIDS WANTED IN COMPETITION.

20 Q. AND WHAT DOES THAT MEAN?

11:00AM

21 A. IT JUST REFERS TO THE LIST OF BONDS AVAILABLE
22 TO BID.

23 Q. SO THIS IS A LIST THAT COMES UP THAT'S
24 AVAILABLE EVERY DAY?

25 A. YEAH. THESE ARE COMPILATIONS OF LIFTS FROM
26 THE BROKERS AT OUR TRADING DESK, COMPILED INTO THE BWIC
27 BROWSER.

11:00AM

28 Q. AND WHAT DOES THE BWIC BROWSER ENABLE TRADERS

1 TO DO?

2 A. IT ENABLES TRADERS TO ORGANIZE ALL THE BIDS
3 THAT THEY ARE GETTING THROUGH THEIR E-MAILS, AND VERY
4 QUICKLY SEE ALL OF THE STATISTICS THAT HAVE BEEN
5 COMPUTED FOR THE BONDS, AND NARROW THEM DOWN TO THE FEW
6 BONDS THAT THEY ACTUALLY WANT TO ANALYZE FOR PURCHASE.

11:00AM

7 Q. AND WAS THE BWIC BROWSER CREATED AT TCW?

8 A. YES, IT WAS.

9 Q. BY TCW EMPLOYEES?

10 A. YES.

11:01AM

11 Q. CAN YOU IDENTIFY THEM?

12 A. YES. CASEY MOORE, BING BING YU, WERE THE
13 PRIMARY DEVELOPERS. AND THEN THERE WERE QUITE A FEW
14 OTHERS IN OUR I.T. GROUP.

15 Q. HAVE YOU USED THIS BWIC BROWSER YOURSELF?

11:01AM

16 A. YES, I HAVE.

17 Q. AND DOES THIS PERMIT THE TRADER TO SEE THE
18 BONDS THAT ARE AVAILABLE TO PURCHASE AND ALSO PROVIDE
19 THE TRADER WITH THESE PRE-COMPUTED STATISTICS THAT HAVE
20 COME OUT OF THIS NUMBER CRUNCHING OVERNIGHT WITH
21 RESPECT TO EACH OF THE INDIVIDUAL BONDS THAT ARE BEING
22 OFFERED FOR SALE?

11:01AM

23 A. YES, IT DOES.

24 Q. DOES THAT PROVIDE A BENEFIT TO THE TRADER?

25 A. YES, IT DOES. IT ALLOWS THEM TO VERY QUICKLY
26 ASSESS THE COLLATERAL LOANS BEHIND THE BONDS, AND THEN
27 SPEND THEIR TIME ON HIGHER VALUE ADDED TRADING
28 ANALYSIS.

11:01AM

1 Q. BY MR. QUINN: ALL RIGHT.

2 ONCE A TRADER HAS FOCUSED ON A BOND THAT
3 HE OR SHE IS INTERESTED IN, WHAT DO THEY NEXT DO?

4 A. THEY USE THE SECURITY ANALYZER SOFTWARE TO
5 LOOK AT THE COLLATERAL LOANS.

11:02AM

6 Q. SO SECURITY ANALYZER, IS THAT THE NAME OF A
7 PROGRAM?

8 A. YES.

9 Q. AND WAS THAT DEVELOPED AT TCW, BY TCW
10 EMPLOYEES?

11:02AM

11 A. YES.

12 Q. AND WHAT DOES IT DO?

13 A. IT PROVIDES A DRILL THROUGH TO ALL THE LOAN
14 INFORMATION UNDERLYING THE BOND. IT SHOWS THAT LOAN
15 INFORMATION -- IT'S CALLED STRATIFICATION, THAT SHOWS
16 THE LOANS IN DIFFERENT GROUPINGS, AND THE PERFORMANCE
17 FOR THOSE GROUPINGS. AND IT ENABLES THE ANALYST AND
18 THE TRADER TO GET A VERY GOOD IDEA OF WHAT'S HAPPENING
19 WITH THE COLLATERAL LOANS BEHIND THAT BOND.

11:02AM

20 Q. IF YOU COULD LOOK, THERE SHOULD BE A CD IN
21 FRONT OF YOU LABELED EXHIBIT 1495.

11:03AM

22 HAVE YOU FOUND IT, 1495?

23 A. YES.

24 Q. AND HAVE YOU REVIEWED THE CONTENTS OF THAT CD,
25 1495?

11:03AM

26 A. YES, I HAVE.

27 Q. AND DOES THIS CD HAVE ON IT, THE FILES FOR THE
28 BWIC BROWSER AND THE SECURITY ANALYZER PROGRAMS

1 DEVELOPED AT TCW?

2 A. YES. IT HAS MANY OF THOSE FILES.

3 Q. WE'D OFFER EXHIBIT 1495.

4 THE COURT: ANY OBJECTION?

5 MR. WEINGART: COULD I ASK FOR SOME FOUNDATION
6 AS TO TIME, YOUR HONOR?

11:04AM

7 THE COURT: YES.

8 Q. BY MR. QUINN: TO WHAT TIME PERIOD DO THESE
9 FILES RELATE?

10 A. THIS IS FALL OF 2009.

11:04AM

11 MR. QUINN: I'D OFFER IT, YOUR HONOR.

12 MR. WEINGART: NO OBJECTION.

13 THE COURT: ALL RIGHT. IT WILL BE ADMITTED.

14

15 (ADMITTED: PLAINTIFF'S 1495.)

11:04AM

16

17 Q. BY MR. QUINN: AND THEN WE HAVE 1495-A AND
18 1495-B, AND THEN SOME OTHER PAGES BEHIND THERE.

19 LOOKING FIRST AT EXHIBIT 1495, IS THIS
20 PART OF THE SOURCE CODE FOR THE SECURITY ANALYZER?

11:04AM

21 A. YES, IT IS.

22 THE COURT: WAIT. WAIT. 1495 WAS THE CD?

23 MR. QUINN: 1495-A. I APOLOGIZE, YOUR HONOR.

24 THE COURT: THAT'S FINE.

25 Q. BY MR. QUINN: 1495-A, IS THAT A PRINTOUT OF
26 SOME OF THE SOURCE CODES FOR THE SECURITY ANALYZER?

11:04AM

27 A. YES.

28 Q. WHAT IS A SOURCE CODE?

1 A. SOURCE CODES ARE THE PROGRAMMING SCRIPTS AND
2 COMMANDS THAT MAKE UP THE SOFTWARE.

3 Q. THE INSTRUCTIONS THAT TELL A COMPUTER WHAT TO
4 DO?

5 A. YES.

11:05AM

6 Q. WE'D OFFER EXHIBIT 1495-A AND B.

7 THE COURT: ANY OBJECTION?

8 MR. WEINGART: NO OBJECTION.

9 THE COURT: THEY'LL BE ADMITTED.

10

11:05AM

11 (ADMITTED: PLAINTIFF'S 1495-A AND B.)

12

13 MR. QUINN: IF WE COULD PUT 1495-A UP THERE,

14 THIS IS SOME OF WHAT YOU ARE REFERRING TO AS --

15 Q. THIS LOOKS LIKE GIBBERISH TO ME, BUT THIS IS

11:05AM

16 SOURCE CODE --

17 A. YES, IT IS.

18 Q. -- FOR THE SECURITY ANALYZER?

19 AND THEN IF WE COULD LOOK AT 1495-B, IS
20 THAT MORE OF THE SOURCE CODE FOR THE SECURITY ANALYZER?

11:05AM

21 A. YEAH. THIS IS PART OF THE IRA SOURCE CODE.

22 Q. IT'S THE IRA SOURCE CODE, ITSELF; IS THAT
23 CORRECT?

24 A. YES.

25 Q. AND THEN I HAVEN'T YET OFFERED, BUT IF YOU
26 WOULD LOOK IN THE BOOK AT 1495-C, MY QUESTION TO YOU
27 WOULD BE WHETHER THAT'S PART OF THE SOURCE CODE WRITTEN
28 AT TCW FOR THE BWIC BROWSER?

11:05AM

1 A. YES, IT IS.

2 MR. QUINN: WE'D OFFER 1495-C, YOUR HONOR.

3 MR. WEINGART: AGAIN, YOUR HONOR, COULD I ASK
4 FOR FOUNDATION AS TO TIME?

5 Q. BY MR. QUINN: AGAIN, A TIME PERIOD FOR THIS? 11:06AM

6 A. YES, THIS IS NOVEMBER OF 2009 TIME FRAME.

7 MR. WEINGART: NO OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (ADMITTED: PLAINTIFF'S 1495-C.) 11:06AM

11

12 MR. QUINN: IF WE COULD DISPLAY 1495-C.

13 Q. THIS IS BWIC BROWSER SOURCE CODE?

14 A. YES.

15 Q. NOW, IF YOU DIDN'T HAVE THE BWIC BROWSER AND 11:06AM
16 THE SECURITY ANALYZER TO DRILL -- THIS AUTOMATIC
17 CAPABILITY TO DRILL DOWN, DO YOU HAVE ANY IDEA HOW LONG
18 IT WOULD TAKE TO ASSEMBLE THIS INFORMATION, WHEN YOU
19 ARE PRESENTED WITH A BONDS AVAILABLE FOR BID LIST?

20 MR. WEINGART: OBJECTION. FOUNDATION. 11:06AM

21 THE COURT: SUSTAINED.

22 Q. BY MR. QUINN: YOU INDICATED THAT YOU HAD A
23 SEAT ON THE TRADING FLOOR YOURSELF?

24 A. YES.

25 Q. AND YOU ARE FAMILIAR WITH THE TRADING PROCESS? 11:07AM

26 A. YES.

27 Q. AND YOU KNOW ABOUT THIS BONDS AVAILABLE FOR
28 BID PROCESS, THAT -- BONDS THAT ARE IDENTIFIED AS BEING

1 FOR SALE?

2 A. YES.

3 Q. AND YOU ARE FAMILIAR WITH THE ANALYSIS AND
4 CALCULATIONS THAT TRADERS NEED TO DO BEFORE THEY CAN
5 DECIDE WHETHER TO BID?

11:07AM

6 A. YES.

7 Q. AND CAN YOU GIVE US AN ESTIMATE, HOW LONG IT
8 WOULD TAKE TO DO THAT, IF YOU DIDN'T HAVE THIS
9 AUTOMATED CAPABILITY?

11:07AM

10 A. YES. IT WOULD TAKE HOURS, JUST FOR THE BONDS
11 FOR THAT DAY. IT COULD TAKE MUCH LONGER FOR ALL THE
12 BONDS.

13 Q. ARE THE BWIC BROWSER AND THE SECURITY
14 ANALYZER, ARE THOSE THINGS THAT ARE REGARDED AS
15 CONFIDENTIAL, AT TCW?

11:07AM

16 A. YES.

17 Q. AND THE SORT OF THINGS THAT YOU WOULD -- WOULD
18 YOU SHARE THEM WITH A COMPETITOR?

19 A. NO.

20 Q. AND DID THEY ENABLE TCW'S TRADERS TO WORK
21 BETTER AND FASTER?

11:07AM

22 A. YES.

23 Q. BETWEEN -- CAN YOU GIVE US A ROUGH
24 APPROXIMATION, BETWEEN 2008 AND 2009, WHAT THE FACE
25 VALUE OF THE BONDS WERE THAT THE IRA SYSTEM PROCESSED?

11:08AM

26 A. YES.

27 IN LOOKING AT THE LOGS FOR THE BWIC
28 BROWSER, WE SAW 330 BILLION, APPROXIMATELY, DOLLARS OF

1 FACE VALUE THAT HAD BEEN LISTED IN THE SYSTEM.

2 Q. ALL RIGHT. AND BY "LISTED IN THE SYSTEM," YOU
3 DON'T MEAN THAT THE TRADER ACTUALLY PURCHASED THAT
4 MANY?

5 A. RIGHT. 11:08AM

6 Q. RIGHT. YOU ARE SAYING THAT THAT'S ROUGHLY THE
7 FACE VALUE, JUST FROM THOSE TWO YEARS, OF THE BONDS
8 THAT WERE RUN THROUGH THE SYSTEM AND EVALUATED, AND FOR
9 WHICH DATA WAS COLLECTED; IS THAT TRUE?

10 A. THAT'S CORRECT. 11:08AM

11 Q. AND CAN YOU TELL US, OF THOSE 330 BILLION,
12 BALLPARK, HOW MUCH, OR HOW MANY, DURING THOSE TWO
13 YEARS, DID TCW BUY FOR ITS CLIENTS, USING THIS
14 TECHNOLOGY?

15 A. AROUND \$20 BILLION, THIS CURRENT PHASE. 11:09AM

16 Q. BACK IN 2009, DO YOU KNOW APPROXIMATELY THE
17 TOTAL ASSETS THAT WERE UNDER MANAGEMENT? THAT IS TO
18 SAY, CLIENTS' MONEY THAT WAS BEING MANAGED BY TCW IN
19 THE MBS FIXED INCOME GROUP?

20 A. YES. THERE WAS ROUGHLY \$65 BILLION UNDER
21 MANAGEMENT IN THAT AREA. 11:09AM

22 Q. THAT'S CLIENTS' MONEY THAT THEY HAD ENTRUSTED
23 TO TCW TO INVEST?

24 A. YES.

25 Q. OKAY. WE HAVE OVER HERE, THESE RED BINDERS. 11:09AM

26 ARE YOU FAMILIAR WITH THESE BINDERS?

27 A. YES, I AM.

28 Q. AND I THINK YOU SHOULD HAVE IN YOUR BOOK,

1 1382-A, WHICH IS ONE SAMPLE.

2 CAN YOU TELL US WHAT EXHIBIT 1382-A IS?

3 A. YES.

4 MR. WEINGART: OBJECTION, FOUNDATION, YOUR
5 HONOR.

11:10AM

6 THE COURT: WELL, LET'S SEE IF HE CAN TELL US
7 HOW HE -- YOU KNOW, IS THIS SOMETHING YOU WORK WITH?

8 GO AHEAD. I'LL SUSTAIN IT.

9 YOU CAN LAY THE FOUNDATION.

10 MR. QUINN: ALL RIGHT.

11:10AM

11 Q. WHATEVER IT IS THAT YOU KNOW ABOUT 1382-A, HOW
12 IS IT THAT YOU KNOW IT?

13 A. I SAW THESE TRADE ORDERS FROM THE TIME THAT I
14 BEGAN WORKING WITH THE MBS GROUP IN 1996.

15 Q. AND DID YOU CONTINUE TO SEE THEM AS PART OF
16 YOUR JOB?

11:10AM

17 A. YES, I DID.

18 Q. AND WHAT IS A TRADE ORDER?

19 A. A TRADE ORDER IS A TICKET THAT'S FILLED OUT BY
20 A TRADER, THAT INDICATES THE BROKER AND OTHER
21 INFORMATION ABOUT THE TRADE, INCLUDING PRICE, AND
22 DIFFERENT TRADING ANALYSIS.

11:10AM

23 Q. AND IS THIS SOMETHING THAT'S A TRADE ORDER,
24 THAT ONE OF THESE IS CREATED FOR EVERY TRADE?

25 A. YES.

11:11AM

26 Q. ALL RIGHT. AND THESE ARE RECORDS THAT TCW
27 MAINTAINS AND IS REQUIRED TO MAINTAIN IN ITS BUSINESS?

28 A. YES.

1 Q. AND LOOKING AT EXHIBIT 1382-A, IS THAT AN
2 EXAMPLE OF ONE OF THESE TRADE ORDERS?

3 A. YES, IT IS.

4 Q. WE'D OFFER THAT, YOUR HONOR.

5 THE COURT: ANY OBJECTION?

11:11AM

6 MR. WEINGART: NO, YOUR HONOR.

7 THE COURT: IT WILL BE ADMITTED.

8
9 (ADMITTED: PLAINTIFF'S 1382-A.)

10
11 MR. QUINN: IF WE COULD DISPLAY THAT.

11:11AM

12 Q. CAN YOU TELL US WHAT THE ORIGINAL FACE AMOUNT
13 OF THE BONDS INVOLVED IN THIS PARTICULAR TRADE ARE?

14 A. YES. THIS IS A 30-MILLION-DOLLAR ORIGINAL
15 FACE.

11:12AM

16 Q. AND THAT'S -- THANK YOU VERY MUCH. THAT'S
17 BEEN HIGHLIGHTED FOR US.

18 AND YOU FILL OUT ONE OF THESE TRADE
19 ORDERS EITHER WHEN YOU BUY, WHEN YOU SELL, OR BOTH?

20 A. BOTH.

11:12AM

21 Q. SO ONE OF THESE HAS TO BE COMPLETED, IS THAT
22 FAIR TO SAY?

23 A. YES.

24 Q. OKAY.

25 AND THESE ARE -- DID YOU SAY THESE ARE
26 ACTUALLY FILLED OUT WHEN THE TRADE IS DONE, WHETHER
27 IT'S A PURCHASE OR A SALE OF A BOND?

11:12AM

28 A. YES.

1 Q. AND THAT INFORMATION, THIS IS PREPARED IN THE
2 ORDINARY COURSE OF TCW'S BUSINESS, FOR EVERY TRADE?

3 A. YES, IT IS.

4 Q. AND YOU FILL OUT THE ORDER TO REFLECT THE
5 DETAILS OF THE TRADE, AND THE PRICING INFORMATION, AND
6 THE LIKE?

11:12AM

7 A. YES.

8 Q. IS THERE OTHER INFORMATION THAT'S EVER
9 ATTACHED TO THE TRADE ORDER?

10 A. YES, THERE IS.

11:12AM

11 Q. IF YOU COULD TAKE A LOOK AT -70 AND -71 IN
12 THIS EXHIBIT; SO THIS IS 1382-70 AND -71.

13 WHAT DO WE SEE HERE?

14 A. THIS IS A SCREEN SHOT FROM THE SECURITY
15 ANALYZER MODULE WE WERE SPEAKING OF EARLIER.

11:13AM

16 Q. ALL RIGHT. AND IS IT TYPICAL THAT A TRADER
17 WHEN THEY DO A TRADE, WILL ACTUALLY PRINT OUT A COPY OF
18 THE SECURITY ANALYZER SCREEN SHOT THAT THEY WERE
19 RELYING ON WHEN THEY DID THE TRADE?

20 A. YES. FOR THIS TYPE OF BOND, THIS WOULD BE
21 TYPICAL OF THE INFORMATION THAT WOULD BE INCLUDED IN
22 2009.

11:13AM

23 Q. ALL RIGHT. AND WHAT'S THE NEXT PAGE? I GUESS
24 IT'S -70 -- -70, 71?

25 MR. WEINGART: I'M SORRY, YOUR HONOR. I
26 THOUGHT WE WERE ON 70.

11:13AM

27 MR. QUINN: WE WERE ON 70, THE NEXT PAGE.

28 THE COURT: JUST A MINUTE. WE ARE ON EXHIBIT

1 1382-A?

2 MR. QUINN: 1382.

3 THE COURT: A.

4 AND YOU ARE LOOKING AT THE DASH NUMBERS
5 NOW?

11:14AM

6 MR. QUINN: I'M LOOKING AT THE DASH NUMBERS,
7 YES, YOUR HONOR.

8 THE COURT: OKAY.

9 MR. QUINN: AND WE WERE LOOKING AT -70.

10 Q. AND IF YOU WOULD LOOK AT THE NEXT PAGE, WHAT
11 DOES THAT SHOW?

11:14AM

12 IF WE COULD PUT THAT UP THERE?

13 A. THIS IS SHOWING ONE OF THE VIEWS IN SECURITY
14 ANALYZER CALLED LOAN DETAILS VIEW.

15 Q. ALL RIGHT.

11:14AM

16 AND WHAT DOES THAT TELL US, GENERALLY?

17 A. IT'S GIVING US SOME INFORMATION THAT WE'VE
18 COMPUTED ABOUT THE LOANS BEHIND THIS BOND.

19 Q. OKAY.

20 AND WHY WOULD A TRADER ATTACH THE
21 SECURITY ANALYZER SCREEN SHOTS TO THE TRADE ORDERS WHEN
22 THEY FILL THIS OUT?

11:14AM

23 A. THIS IS PART OF THE BASIS FOR WHICH THE TRADE
24 WAS PRICED.

25 Q. AND CAN YOU EXPLAIN THAT?

11:14AM

26 A. CERTAINLY. AGAIN, AS WE SPOKE OF EARLIER, THE
27 PERFORMANCE OF THE LOANS PROVIDES A BASIS FOR
28 UNDERSTANDING THE PERFORMANCE OF THE BOND, WHICH

1 PROVIDES A BASIS FOR THE PRICING.

2 Q. OKAY. WE HAVE THESE BINDERS OVER HERE, RED
3 BINDERS. AND THESE HAVE PREVIOUSLY BEEN LABELED
4 EXHIBIT 1351 THROUGH 1413 AND 2096 THROUGH 2099.

5 HAVE YOU HAD A CHANCE TO REVIEW THOSE
6 BINDERS BEFORE TESTIFYING HERE TODAY? 11:15AM

7 A. I HAVE LOOKED THROUGH SEVERAL OF THEM, YES.

8 Q. AND WHAT DO THOSE BINDERS CONTAIN?

9 A. THEY CONTAIN THE SAME INFORMATION WE WERE JUST
10 LOOKING AT, BUT FOR ALL THE TRADES IN THE PERIODS
11 REPRESENTED BY THESE BINDERS. 11:15AM

12 Q. WHAT WERE THE TIME PERIODS THAT THEY COVERED?

13 A. I BELIEVE THEY EXTEND BACK TO LATE '80S, ALL
14 THE WAY THROUGH 2009.

15 Q. AND ARE THEY KEPT A CERTAIN WAY IN THE
16 BINDERS, THE TRADES? 11:15AM

17 A. YES. THERE'S DIFFERENT SORTING. IS THAT WHAT
18 YOU ARE REFERRING TO?

19 Q. WELL, CAN YOU TELL US WHETHER OR NOT IT'S IN
20 CHRONOLOGICAL ORDER? 11:16AM

21 A. YES. THERE IS ONE SET OF BINDERS MAINTAINED
22 IN CHRONOLOGICAL ORDER.

23 Q. AND DID YOU SEE BINDERS CONTAINING TRADE
24 ORDERS LIKE THIS ON THE TRADING FLOOR OF THE 16TH FLOOR
25 AT TCW? 11:16AM

26 A. YES.

27 Q. IS THE INFORMATION IN THOSE BINDERS REGARDED
28 AS CONFIDENTIAL AT TCW?

1 A. YES, IT IS.

2 Q. WHY IS THAT INFORMATION CONFIDENTIAL?

3 A. THAT INFORMATION CONTAINS THE TRADING ANALYSIS
4 AND THE TRADE INFORMATION THAT WE COLLECTED IN THE
5 COURSE OF INVESTING ON BEHALF OF OUR CLIENTS.

11:16AM

6 Q. DOES TCW UNDERTAKE STEPS TO MAKE SURE THAT
7 THIS INFORMATION IS KEPT CONFIDENTIAL?

8 A. YES, WE DO.

9 MR. QUINN: WE'D OFFER THOSE BINDERS, YOUR
10 HONOR, EXHIBITS 1351 TO 1413, 2096 TO 2099.

11:16AM

11 THE COURT: 1351 TO --

12 MR. QUINN: 1413.

13 THE COURT: AND WHAT WERE THE OTHER TWO?

14 MR. QUINN: 2096 TO 2099.

15 THE COURT: ANY OBJECTION?

11:17AM

16 MR. WEINGART: SUBJECT TO RESERVING A
17 FOUNDATIONAL OBJECTION, NO, YOUR HONOR.

18 THE COURT: ALL RIGHT. THEY'LL BE ADMITTED,
19 SUBJECT TO CHALLENGE FOR FOUNDATION.

11:17AM

20
21 (ADMITTED: PLAINTIFF'S 1351-1413.)

22
23 (ADMITTED: PLAINTIFF'S 2096-2099.)

24
25 Q. BY MR. QUINN: YOU WORKED WITH THESE TRADE
26 ORDERS AND THESE BINDERS IN THE ORDINARY COURSE OF YOUR
27 WORK?

11:17AM

28 A. YES. I SAW THEM EVERY DAY.

1 Q. AND YOU SAW TRADERS FILLING THEM OUT, AND YOU
2 HAD OCCASION TO CONSULT THEM FROM TIME TO TIME?

3 A. YES.

4 Q. WE -- YOU ALSO SHOULD HAVE IN FRONT OF YOU,
5 CD'S MARKED 1264, 1265, AND 1266.

11:17AM

6 DO YOU SEE THOSE BEFORE YOU?

7 A. YES.

8 Q. AND HAVE YOU REVIEWED THE CONTENTS OF THOSE
9 CD'S -- LET ME ASK IT THIS WAY: DO YOU RECALL
10 REVIEWING CD'S THAT HAVE WHAT WE CALL BATES NUMBER
11 VERSIONS OF THE TRADE TICKET ORDERS?

11:18AM

12 A. YES.

13 Q. AND AS A RESULT OF BEING A WITNESS IN THIS
14 CASE, YOU LEARNED THAT A BATES NUMBER, THAT'S A NUMBER
15 THAT LAWYERS PUT ON DOCUMENTS WHEN THEY ARE EXCHANGING
16 THEM IN DISCOVERY, TO THE LAWYERS ON THE OTHER SIDE?

11:18AM

17 A. YES.

18 Q. AND THESE CD'S CONTAINED THOSE SAME DOCUMENTS,
19 BUT BATES NUMBERED VERSIONS?

20 A. THAT'S RIGHT, YES.

11:18AM

21 MR. QUINN: SO WE WOULD OFFER THOSE, YOUR
22 HONOR, EXHIBITS 1264, 65, AND 66.

23 THE COURT: ANY OBJECTION?

24 MR. WEINGART: SUBJECT TO THE SAME
25 RESERVATION, YOUR HONOR.

11:18AM

26 THE COURT: OKAY.

27 //

28 //

1 (ADMITTED: PLAINTIFF'S 1264,
2 1265 AND 1266.)

3

4 Q. BY MR. QUINN: DID YOU ACTUALLY BUILD A --
5 WERE YOU INVOLVED IN DEVELOPING A DATABASE WITH THESE
6 TRADE ORDERS?

11:18AM

7 A. YES. WE DID HAVE SOME IMAGES OF THE TRADE
8 ORDERS IN THE DATABASE.

9 Q. AND DID YOU -- SO YOU HAD OCCASION TO REFER TO
10 THE TRADE ORDERS, AND CHECK THEM FOR ACCURACY?

11:18AM

11 A. YES, I DID.

12 Q. AS PART OF YOUR WORK?

13 A. YES.

14 Q. OKAY. ALL RIGHT.

15 LET ME CHANGE SUBJECTS. LEAVING THE
16 SUBJECTS OF DATABASES AND COMPUTER PROGRAMS.

11:19AM

17 DO YOU KNOW WHETHER OR NOT TCW TAKES ANY
18 STEPS TO KEEP ITS TRADE SECRET INFORMATION
19 CONFIDENTIAL?

20 A. YES.

11:19AM

21 Q. AND CAN YOU DESCRIBE FIRST, GENERALLY, WHAT IT
22 IS THAT TCW DOES?

23 A. TCW HAS, I GUESS YOU COULD BREAK THEM DOWN
24 INTO THREE SORT OF CATEGORIES OF THINGS WE DO. ONE IS
25 PERSONNEL PROCEDURES, ONE INCLUDES ELECTRONIC
26 PROCEDURES, ANOTHER ONE INCLUDES FACILITY PROCEDURES.

11:19AM

27 Q. WHEN YOU TALK ABOUT PERSONNEL PROCEDURES, CAN
28 YOU TELL US GENERALLY WHAT YOU ARE TALKING ABOUT?

1 MR. WEINGART: OBJECTION, FOUNDATION, YOUR
2 HONOR.

3 THE COURT: SUSTAINED. I MEAN --

4 Q. BY MR. QUINN: AS HEAD OF I.T., DO YOU HAVE
5 OCCASION TO LEARN ABOUT PERSONNEL POLICIES RELATING TO
6 PROTECTING CONFIDENTIAL INFORMATION? 11:20AM

7 A. YES, I DO.

8 Q. AND IN THAT REGARD, CAN YOU TELL US GENERALLY
9 WHAT TYPES OF PERSONNEL PROCEDURES TCW HAS?

10 A. CERTAINLY. THERE ARE POLICIES THAT ARE 11:20AM
11 REVIEWED ANNUALLY, AND THERE ARE FORMS THAT ARE SIGNED
12 AT EMPLOYMENT THAT ARE -- THAT COMPRISE THE PERSONNEL
13 PROCEDURES.

14 ANOTHER EXAMPLE OF THAT IS, WHEN SOMEONE
15 IS HIRED AT THE FIRM, THEY HAVE TO RECEIVE PERMISSION 11:20AM
16 FROM THEIR SUPERVISOR FOR THE SYSTEMS TO WHICH THEY ARE
17 GOING TO HAVE ACCESS. AND THAT INFORMATION IS REVIEWED
18 BY THE I.T. DEPARTMENT PRIOR TO GRANTING ACCESS TO
19 THOSE SYSTEMS.

20 Q. AND ARE THERE DIFFERENT LEVELS OF ACCESS THAT 11:21AM
21 ARE GRANTED TO EMPLOYEES?

22 A. YES, THERE ARE.

23 Q. COULD YOU EXPLAIN THAT, PLEASE?

24 A. SOME EMPLOYEES ONLY HAVE ACCESS TO A VERY FEW
25 SYSTEMS AND DATABASES; SOME HAVE ACCESS TO MANY. 11:21AM

26 ONE OTHER EXAMPLE OF THAT WOULD BE THE
27 DATA CENTERS, IN WHICH WE STORE ALL THIS INFORMATION,
28 ARE ONLY ACCESSIBLE TO A VERY SMALL, LIMITED NUMBER OF

1 PEOPLE. I BELIEVE IT'S LESS THAN 10 IN THE ENTIRE FIRM
2 THAT HAVE ACCESS TO ENTER THE DATA CENTER.

3 Q. AND DOES TCW USE THE KINDS OF THINGS LIKE
4 PASSWORDS AND LOGINS, AND THINGS LIKE THAT, TO CONTROL
5 WHO ACCESSES THESE, THE I.T. SYSTEM AT DIFFERENT
6 LEVELS?

11:21AM

7 A. YES.

8 Q. ALL RIGHT. IF YOU WOULD LOOK IN YOUR BOOK,
9 PLEASE, AT EXHIBIT 2105.

10 CAN YOU IDENTIFY THAT DOCUMENT?

11:21AM

11 A. YES. THIS IS THE TCW PRIVACY POLICY.

12 Q. AND IS THIS A POLICY -- A DOCUMENT THAT TCW
13 PROVIDES TO ALL ITS EMPLOYEES?

14 A. YES.

15 Q. WE'D OFFER THAT, YOUR HONOR.

11:22AM

16 THE COURT: ANY OBJECTION?

17 MR. WEINGART: NO, YOUR HONOR.

18 THE COURT: IT WILL BE ADMITTED.

19

20 (ADMITTED: PLAINTIFF'S 2105.)

11:22AM

21

22 Q. BY MR. QUINN: AND IF WE COULD JUST PUT UP THE
23 FIRST PAGE, PLEASE. AND THEN TURN TO 2105-4.

24 AND IF WE COULD ENLARGE THAT FIRST
25 PARAGRAPH AT THE TOP, PLEASE. IT SAYS EMPLOYEE
26 AGREEMENTS ON CONFIDENTIALITY UNDER THAT.

11:22AM

27 DO YOU SEE THAT?

28 A. YES.

1 Q. IT SAYS, (READING):

2 ONE OF THE MOST SENSITIVE AND
3 DIFFICULT AREAS IN THE FIRM'S DAILY
4 BUSINESS ACTIVITIES, INVOLVES
5 INFORMATION REGARDING INVESTMENT
6 PLANS OR PROGRAMS AND POSSIBLE OR
7 ACTUAL SECURITIES TRANSACTIONS BY
8 THE FIRM.

9 DO YOU SEE THAT?

10 A. YES.

11 Q. AND DO YOU AGREE WITH THAT?

12 A. YES.

13 MR. WEINGART: OBJECTION, YOUR HONOR.

14 DOCUMENT SPEAKS FOR ITSELF, BEST EVIDENCE.

15 THE COURT: SUSTAINED.

16 I'LL STRIKE THE RESPONSE.

17 Q. BY MR. QUINN: AND THEN THE QUESTION -- MY
18 QUESTION IS, DO YOU, AS A TCW EMPLOYEE, IS THAT
19 SOMETHING THAT YOU ACCEPT AND AGREE WITH?

20 A. YES.

21 Q. AND IT GOES ON TO SAY, CONSEQUENTLY, ALL
22 EMPLOYEES, INCLUDING LONG-TERM CONSULTANTS AND TEMPS,
23 ARE REQUIRED TO SIGN AND ADHERE TO A CONFIDENTIALITY
24 AGREEMENT COVERING THESE AND OTHER MATTERS.

25 DO YOU SEE THAT?

26 A. YES.

27 Q. AND IS THAT YOUR UNDERSTANDING THAT IT'S THE
28 POLICY OF THE COMPANY THAT EMPLOYEES MUST SIGN

1 CONFIDENTIALITY AGREEMENTS?

2 MR. WEINGART: SAME OBJECTION, YOUR HONOR.

3 THE COURT: OVERRULED. THIS IS IN EVIDENCE.

4 IT IS THE POLICY?

5 MR. QUINN: YES, YOUR HONOR. 11:23AM

6 THE COURT: OKAY.

7 Q. BY MR. QUINN: WELL, DID YOU, PERSONALLY, SIGN
8 A CONFIDENTIALITY AGREEMENT?

9 A. YES, I DID.

10 Q. IF YOU WOULD LOOK AT EXHIBIT 2043-3. IT'S 11:24AM
11 PROBABLY GOING TO BE TOWARDS THE BACK, MR. KALE.
12 2043-3.

13 DO YOU RECOGNIZE THIS DOCUMENT?

14 A. YES.

15 Q. AND WHAT IS IT? 11:24AM

16 A. THIS IS THE CONFIDENTIALITY AGREEMENT I SIGNED
17 IN 1994.

18 Q. WE'D OFFER THAT.

19 MR. WEINGART: NO OBJECTION.

20 THE COURT: IT WILL BE ADMITTED. 11:24AM

21

22 (ADMITTED: PLAINTIFF'S 2043-3.)

23

24 MR. QUINN: CAN WE DISPLAY THAT?

25 THE COURT: YOU MAY. 11:24AM

26 Q. BY MR. QUINN: IT SAYS IN THE FIRST PARAGRAPH,
27 (READING):

28 EMPLOYEE RECOGNIZES THAT IN

1 CONNECTION WITH SUCH WORK, EMPLOYEE
2 MAY COME IN POSSESSION OF
3 INFORMATION REGARDING INVESTMENT
4 PLANS AND PROGRAMS AND POSSIBLE OR
5 ACTUAL SECURITIES TRANSACTIONS, ET
6 CETERA.

11:25AM

7 DO YOU SEE THAT?

8 A. YES.

9 Q. AND IT GOES ON TO TALK ABOUT THE HIGHLY
10 CONFIDENTIAL INFORMATION AND THE LIKE.

11:25AM

11 DO YOU SEE THAT?

12 A. YES.

13 Q. WHEN DID YOU SIGN THIS DOCUMENT?

14 A. MAY 25TH, 1994.

15 Q. AND WAS THAT THE DAY THAT YOU STARTED AT TCW?

11:25AM

16 A. YES.

17 Q. AND WAS IT YOUR UNDERSTANDING THAT YOU WERE
18 UNDERTAKING NOT TO DISCLOSE TO ANY PERSON, CONFIDENTIAL
19 INFORMATION AT TCW?

20 MR. WEINGART: OBJECTION, RELEVANCE. BEST
21 EVIDENCE.

11:25AM

22 THE COURT: OVERRULED.

23 YOU CAN GO AHEAD.

24 THE WITNESS: YES.

25 Q. BY MR. QUINN: AND SO AS FAR AS YOU KNOW OF
26 OTHER EMPLOYEES, YOU ARE NOT THERE EVERY TIME A NEW
27 EMPLOYEE COMES IN, OBVIOUSLY, BUT AS FAR AS YOU KNOW,
28 THIS IS STANDARD PRACTICE AT TCW, THAT EMPLOYEES SIGN

11:25AM

1 CONFIDENTIALITY AGREEMENTS?

2 A. YES, IT IS.

3 Q. BY MR. QUINN: IF YOU WOULD TURN TO
4 EXHIBIT 2104, PLEASE, 2104.

5 CAN YOU IDENTIFY THIS DOCUMENT? 11:26AM

6 A. THIS IS THE TCW CODE OF ETHICS.

7 Q. DATED AUGUST 1, 2009?

8 A. YES.

9 Q. WE'D OFFER THIS, YOUR HONOR.

10 MR. WEINGART: NO OBJECTION. 11:26AM

11 THE COURT: IT WILL BE ADMITTED.

12

13 (ADMITTED: PLAINTIFF'S 2104.)

14

15 Q. BY MR. QUINN: IS THIS, AGAIN, A CODE OF
16 ETHICS DOCUMENT THAT TCW PROVIDES TO ALL ITS EMPLOYEES? 11:26AM

17 A. YES.

18 Q. AND IF YOU WOULD TURN, PLEASE, TO PAGE -55.

19 AND IF WE COULD BLOW THAT UP, UNDER THE
20 HEADING, CONFIDENTIALITY. 11:26AM

21 THERE'S INFORMATION ABOUT, IT SAYS,

22 (READING):

23 ALL INFORMATION RELATING TO PAST,
24 CURRENT AND PROSPECTIVE CLIENTS IS
25 HIGHLY CONFIDENTIAL, NOT TO BE
26 DISCUSSED, ET CETERA. 11:26AM

27 DO YOU SEE THAT?

28 A. YES.

1 Q. AND WAS THAT YOUR UNDERSTANDING, THAT AS A TCW
2 EMPLOYEE, THAT WAS PART OF YOUR OBLIGATION?

3 MR. WEINGART: OBJECTION, BEST EVIDENCE.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES.

11:27AM

6 Q. BY MR. QUINN: AND IF WE COULD TURN NOW TO
7 EXHIBIT 233.

8 IS EXHIBIT 233 A TCW EMPLOYEE HANDBOOK
9 DATED AUGUST 1, 2009?

10 A. YES.

11:27AM

11 Q. AND THIS IS A HANDBOOK THAT TCW PROVIDES TO
12 ALL ITS EMPLOYEES?

13 A. YES.

14 MR. QUINN: WE'D OFFER THAT, YOUR HONOR.

15 MR. WEINGART: NO OBJECTION.

11:27AM

16 THE COURT: IT WOULD BE ADMITTED.

17
18 (ADMITTED: PLAINTIFF'S 233.)

19
20 MR. QUINN: AND IF WE COULD LOOK AT PAGE 5.
21 AND IF WE COULD PLEASE ENLARGE JUST THE TOP PARAGRAPH,
22 UNDER THE HEADING ABOUT THIS EMPLOYEE HANDBOOK, THE
23 THIRD SENTENCE.

11:27AM

24 IT SAYS, (READING):

25 THIS EMPLOYEE HANDBOOK SETS FORTH

26 THE TERMS AND CONDITIONS OF

27 EMPLOYMENT FOR FULL-TIME EMPLOYEES.

11:27AM

28 DO YOU SEE THAT?

1 Q. THIRD SENTENCE ON PAGE -5?

2 A. YES.

3 Q. AND THEN IF YOU COULD TURN, PLEASE, TO PAGE
4 -18. THERE'S A HEADING, PROHIBITED CONDUCT.

5 DO YOU SEE THAT?

11:28AM

6 A. YES.

7 Q. AND UNDER PROHIBITED CONDUCT, THE FIRST
8 BULLET, IT BEGINS, (READING):

9 IT'S NOT POSSIBLE TO LIST ALL FORMS
10 OF BEHAVIOR THAT ARE UNACCEPTABLE.

11:28AM

11
12 AND THEN THERE'S A SERIES OF BULLETS.
13 DO YOU SEE THAT?

14 A. YES, I DO.

15 Q. AND THE FIRST BULLET IS, (READING):

11:28AM

16 THEFT, REMOVAL, UNAUTHORIZED
17 POSSESSION OR INTENTIONAL
18 DESTRUCTION OF PROPERTY BELONGING
19 TO THE BUILDING, FIRM, OR
20 COWORKERS.

11:28AM

21 DO YOU SEE THAT?

22 A. YES.

23 Q. AND IF YOU TURN TO THE SECOND PAGE, THE LIST
24 CONTINUES.

25 DO YOU SEE THAT?

11:29AM

26 A. YES.

27 Q. AND THEN THERE'S BULLETS THAT ARE SIX AND
28 SEVEN DOWN. IT SAYS, BREACH OF CONFIDENCE, INCLUDING

1 BUT NOT LIMITED TO, MISAPPROPRIATION OR UNAUTHORIZED
2 DIVULGENCE OF CONFIDENTIAL RECORDS, AND RELEASE OF
3 PROPRIETARY INFORMATION, CORRECT?

4 A. YES.

5 Q. AND SO YOU KNEW THOSE TYPES OF THINGS WERE
6 TAKEN SERIOUSLY AT TCW?

11:29AM

7 A. YES.

8 Q. HAVE YOU EVER, DURING THE TIME THAT YOU HAVE
9 WORKED AT TCW, HAVE YOU EVER HAD OCCASION TO EXPLAIN
10 THE OBLIGATIONS TO ANOTHER TCW EMPLOYEE WITH RESPECT TO
11 PROPRIETARY INFORMATION?

11:29AM

12 A. YES, I HAVE.

13 Q. AND DID YOU EVER EXPLAIN THAT TO ANY OF THE
14 MEMBERS ON YOUR TEAM?

15 A. YES.

11:29AM

16 Q. DID YOU EVER EXPLAIN IT TO A MAN BY THE NAME
17 OF CASEY MOORE?

18 A. YES, I DID.

19 Q. CASEY MOORE IS A -- WAS A PROGRAMMER IN YOUR
20 GROUP?

11:30AM

21 A. YES.

22 Q. AND MR. MOORE LEFT TCW IN DECEMBER OF 2009,
23 AND WENT DOUBLELINE?

24 A. THAT'S MY UNDERSTANDING, YES.

25 Q. WHEN WAS IT THAT YOU HAD OCCASION TO EXPLAIN
26 TO MR. MOORE, THE PROGRAMMER IN YOUR GROUP, HIS
27 OBLIGATIONS WITH RESPECT TO TCW PROPRIETARY AND
28 CONFIDENTIAL INFORMATION?

11:30AM

1 A. WE HAD A CONVERSATION IN SEPTEMBER 2009.

2 Q. AND WHAT DID YOU TELL HIM AT THAT TIME?

3 A. I TOLD HIM THAT IF WE EVER FOUND OURSELVES
4 WORKING SOMEWHERE OTHER THAN TCW, WE WOULD NOT BE ABLE
5 TO COPY THE MATERIALS THAT WE HAD WORKED ON.

11:30AM

6 Q. ALL RIGHT.

7 AND BY "MATERIALS," WHAT WERE YOU
8 REFERRING TO?

9 A. I WAS REFERRING TO OUR CODE.

10 Q. AND DID YOU TELL HIM THAT IF YOU OR HE EVER
11 WENT TO WORK SOMEPLACE ELSE, YOU WOULD HAVE TO COME UP
12 WITH SOMETHING NEW?

11:30AM

13 A. YES.

14 MR. WEINGART: OBJECTION, LEADING.

15 THE COURT: SUSTAINED.

11:31AM

16 Q. BY MR. QUINN: WELL, WHAT DID YOU SAY TO HIM
17 ON THE SUBJECT OF COMING UP WITH OTHER TYPES OF
18 ANALYTICS AT A LATER EMPLOYER?

19 A. I TOLD HIM THAT WE WOULD HAVE TO START FROM
20 SCRATCH, AND COME UP WITH SOMETHING NEW.

11:31AM

21 Q. DID HE EXPRESS ANY DISAGREEMENT WITH THAT?

22 A. NO.

23 Q. COULD YOU TURN, PLEASE, IN YOUR BOOK, TO
24 EXHIBIT 2103.

25 HAVE YOU FOUND THAT, 2103?

11:31AM

26 A. YES.

27 Q. THIS IS A TCW CORPORATE AND OPERATIONAL
28 POLICIES HANDBOOK DATED AUGUST 1, 2009?

1 A. YES.

2 MR. QUINN: WE'D OFFER THAT, YOUR HONOR.

3 THE COURT: ANY OBJECTION?

4 MR. WEINGART: NO, YOUR HONOR.

5 THE COURT: IT WILL BE ADMITTED.

11:32AM

6

7 (MARKED FOR ID: PLAINTIFF'S 2103.)

8

9 Q. BY MR. QUINN: SO THIS DOCUMENT IS ONE THAT
10 TCW PROVIDES TO ALL ITS EMPLOYEES?

11:32AM

11 A. YES.

12 Q. AND IF YOU WOULD TURN TO PAGE -13, UNDER THE
13 HEADING, OWNERSHIP OF THE TCW SYSTEMS, IT SAYS,

14 (READING):

15 ALL COMPUTER HARDWARE AND SOFTWARE
16 IN USE AND SUPPORTED BY THE FIRM,
17 INCLUDING, BUT NOT LIMITED TO,
18 COMPUTER EQUIPMENT, SOFTWARE
19 OPERATING SYSTEMS, AND STORAGE
20 MEDIA, ARE THE PROPERTY OF THE
21 FIRM.

11:32AM

22 DO YOU SEE THAT?

23 A. YES.

24 Q. AND WHAT DID YOU UNDERSTAND THAT TO MEAN?

25 A. I UNDERSTOOD IT TO MEAN, ANYTHING THAT WAS IN
26 USE, SUPPORTED BY THE FIRM, WAS THE PROPERTY OF THE
27 FIRM, INCLUDING OUR CODE.

11:32AM

28 Q. THAT INCLUDED THE CODE THAT YOUR GROUP WROTE?

1 A. YES.

2 Q. DOES TCW HAVE -- I THINK YOU HAVE INDICATED,
3 TCW DOES HAVE POLICIES LIMITING WHAT EMPLOYEES CAN
4 ACCESS WHAT TYPES OF DATA; IS THAT CORRECT?

5 A. YES.

11:33AM

6 Q. AND DOES IT ALSO HAVE POLICIES ABOUT WHETHER
7 EMPLOYEES CAN USE TCW COMPUTERS FOR PERSONAL USE?

8 A. YES, IT DOES.

9 Q. AND WHY DOES TCW CARE ABOUT PEOPLE USING
10 COMPUTERS FOR PERSONAL USE?

11:33AM

11 MR. WEINGART: OBJECTION, FOUNDATION.

12 THE COURT: SUSTAINED.

13 Q. BY MR. QUINN: WHAT'S YOUR UNDERSTANDING, AS
14 THE HEAD OF I.T., ABOUT WHY THERE WOULD BE ANY CONCERN
15 ABOUT PERSONAL USE OF TCW COMPUTERS?

11:33AM

16 A. WELL, OFTEN PERSONAL COMPUTERS DON'T HAVE THE
17 SAME LEVEL OF SECURITY AS WE PROVIDE ON THE CORPORATE
18 SYSTEMS; SO VIRUSES OR OTHER --

19 THE COURT: WAIT A MINUTE. I THINK WE HAD A
20 DISCONNECT THERE.

11:34AM

21 THE QUESTION WAS, PERSONAL USE OF TCW
22 COMPUTERS, NOT --

23 THE WITNESS: I'M SORRY.

24 THE COURT: NOT TCW USE OF PERSONAL COMPUTERS.

25 WE JUST HAD A DISCONNECT.

11:34AM

26 MR. QUINN: WE'LL GET TO THAT, YOUR HONOR.

27 THE COURT: THAT'S ALRIGHT. GO AHEAD.

28 Q. BY MR. QUINN: SO FROM AN I.T. PERSPECTIVE,

1 ARE THERE ANY RISKS ASSOCIATED WITH USING TCW COMPUTERS
2 FOR PERSONAL USE?

3 A. THERE ARE RISKS ASSOCIATED, YES.

4 Q. AND CAN YOU EXPLAIN THAT, PLEASE?

5 A. THEY ARE SIMILAR TO THE OTHER QUESTION, BUT 11:34AM
6 THEY ARE -- IF I VISIT UNAUTHORIZED OR PERSONAL
7 WEBSITES, THAT MAY INTRODUCE VIRUSES THAT COULD CAUSE
8 PROBLEMS WITH THE COMPANY.

9 Q. SO USING A TCW COMPUTER, YOU COULD GET
10 INFECTED BY ONE OF THESE VIRUSES? 11:34AM

11 A. YES.

12 Q. WE'RE LOOKING AT EXHIBIT 2103. IF WE COULD
13 TURN TO PAGE -13, 2103-13.

14 AND IT SAYS THERE, IN THAT SECOND
15 PARAGRAPH -- THIS ADDRESSES THE ISSUE OF PERSONAL USE 11:35AM
16 OF TCW COMPUTERS, CORRECT?

17 A. YES.

18 Q. AND IT SAYS, (READING):

19 LIMITED INCIDENTAL PERSONAL USE OF
20 TCW SYSTEMS SERVICES IS PERMITTED 11:35AM
21 WHEN THE USE DOES NOT INTERFERE
22 WITH THE USER'S OR OTHER EMPLOYEES'
23 WORK PERFORMANCE AND
24 RESPONSIBILITIES, NEGATIVELY IMPACT
25 THE OPERATIONS OF THE TCW SYSTEMS 11:35AM
26 OR PROCESSES, OR VIOLATE THE CODE
27 OF ETHICS OR ANY OTHER FIRM POLICY.

28

1 DO YOU SEE THAT?

2 A. YES, I DO.

3 Q. AND IT GOES ON TO SAY, (READING:)

4 TCW SYSTEMS SHOULD BE USED

5 PRIMARILY FOR BUSINESS PURPOSES,

11:35AM

6 SERVING AND PROMOTING THE INTERESTS

7 OF THE FIRM, CLIENTS, AND BUSINESS

8 PARTNERS, IN THE NORMAL COURSE OF

9 OPERATIONS, RIGHT?

10 A. YES.

11:36AM

11 Q. AND AS THE HEAD OF I.T., CAN YOU TELL US WHAT
12 WOULD BE THE ENTIRELY ACCEPTABLE PERSONAL USE OF A TCW
13 COMPUTER?

14 A. I MAY WANT TO CHECK A FAMILY CALENDAR OR MAKE
15 SOME TRAVEL ARRANGEMENTS THAT ARE PERSONAL IN NATURE.
16 AND INCIDENTAL USE LIKE THAT IS FINE.

11:36AM

17 Q. THAT'S COOL?

18 A. YES.

19 Q. ALL RIGHT.

20 DOES THE -- DOES TCW ALSO HAVE POLICIES
21 RELATED TO REMOTE ACCESS TO THE TCW SYSTEMS AND
22 COMPUTERS?

11:36AM

23 A. YES.

24 Q. SOMEBODY SITTING AT HOME OR IN A HOTEL, THEY
25 ARE NOT IN THE BUILDING, BUT THEY WANT TO ACCESS THE
26 SYSTEM?

11:36AM

27 A. YES.

28 Q. AND THERE ARE POLICIES IN THAT REGARD?

1 A. YES.

2 Q. AND IF YOU WOULD LOOK AT PAGE -18.

3 DO YOU SEE A POLICY THERE RELATING TO
4 THE REMOTE ACCESS?

5 A. YES.

11:37AM

6 Q. AND IT SAYS THERE IN THE SECOND PARAGRAPH,
7 (READING:)

8 EMPLOYEES WITH REMOTE ACCESS
9 PRIVILEGES MUST ENSURE THAT THEIR
10 FIRM-OWNED OR PERSONAL COMPUTER OR
11 WORK STATION THAT IS REMOTELY
12 CONNECTED TO THE FIRM'S CORPORATE
13 NETWORK IS NOT CONNECTED TO ANY
14 OTHER NETWORK AT THE SAME TIME, ET
15 CETERA.

11:37AM

11:37AM

16 DO YOU SEE THAT?

17 A. YES.

18 Q. AND THEN THERE ARE A BUNCH OF RULES RELATING
19 TO REMOTE ACCESS, CORRECT?

20 A. YES.

11:37AM

21 Q. UNDER WHAT CIRCUMSTANCES DOES TCW PERMIT
22 EMPLOYEES TO MAKE REMOTE ACCESS OF THE TCW SYSTEM?

23 A. FIRST OF ALL, IT REQUIRES SUPERVISORY APPROVAL
24 OF -- AS TO THE NATURE OF THE REMOTE ACCESS NEED. AND
25 IT ALSO REQUIRES -- YOU KNOW, THEY ARE LIMITED
26 EMPLOYEES THAT HAVE THE OPPORTUNITY TO GET PERMISSION
27 TO USE IT FOR THEIR BUSINESS PURPOSES, YES.

11:37AM

28 Q. DOES IT HAVE TO BE APPROVED BY THE PERSON'S

1 SUPERVISOR?

2 A. YES, IT DOES.

3 Q. AND DOES I.T. PLAY A ROLE IN SIGNING OFF ON
4 THAT AS WELL?

5 A. YES, I.T. REVIEWS THE REQUEST. 11:38AM

6 Q. AND DOES THE COMPANY HAVE SOME WAY OF
7 MAINTAINING SECURITY WITH RESPECT TO THE REMOTE ACCESS?

8 A. YES, IT DOES.

9 Q. WHAT IS THAT?

10 A. WE HAVE WHAT IS CALLED A SECURE TOKEN. IT 11:38AM
11 PROVIDES A CHALLENGE KEY FOR ACCESSING REMOTELY THE
12 NETWORK, AS WELL AS ENCRYPTION OF THE DATA.

13 Q. EXPLAIN THAT, A SECURE TOKEN?

14 A. IT'S MORE THAN JUST NAME AND PASSWORD.

15 WHEN YOU CONNECT TO THE NETWORK 11:38AM
16 REMOTELY, YOU RECEIVE A KEY, IN ADDITION TO SOME OTHER
17 IDENTIFIERS THAT YOU HAVE TO THEN ENTER IN, IN ORDER TO
18 ACCESS THE NETWORK.

19 Q. SO YOU ACTUALLY HAVE AN OBJECT THAT SOMEBODY
20 IS ISSUED? 11:39AM

21 A. YES.

22 Q. AND SOMEHOW, THEY WAVE IT OVER THE COMPUTER,
23 OR HOW DOES THAT WORK?

24 A. YOU RECEIVE, IT'S CALLED CHALLENGE RESPONSE.
25 YOU RECEIVE A CHALLENGE CODE, AND YOU HAVE TO KEY IN A 11:39AM
26 RESPONSE INTO THE COMPUTER.

27 Q. ALL RIGHT.

28 IF WE COULD TURN TO THE NEXT PAGE, -19,

1 THERE'S SOME INFORMATION ABOUT PASSWORD SECURITY.

2 A. YES.

3 Q. AND THEN THE NEXT PAGE, I WON'T SPEND ANY TIME
4 GOING THROUGH THIS, BUT THIS IS ALSO ABOUT DATA
5 STORAGE?

11:39AM

6 A. YES.

7 Q. AND IT SAYS, (READING:)

8 NON-PUBLIC AND CONFIDENTIAL DATA
9 CONSTITUTE A VALUABLE INFORMATION
10 RESOURCE THAT BELONGS TO THE FIRM.
11 SUCH DATA MUST BE PROTECTED
12 PHYSICALLY AND ELECTRONICALLY. ALL
13 SUCH DATA SHOULD NOT BE STORED ON A
14 REMOVABLE OR TRANSPORTABLE MEDIA,
15 E.G., DISKS, CDS, USB DRIVES,
16 UNLESS SECURELY MAINTAINED ON THE
17 FIRM'S PREMISES, OR THAT ARE
18 AUTHORIZED BY EXECUTIVE MANAGEMENT,
19 THE LEGAL DEPARTMENT, OR THE
20 COMPLIANCE DEPARTMENT, AND ARE
21 PROPERLY PROTECTED BY ENCRYPTING
22 DATA.

11:39AM

11:39AM

11:40AM

23
24 DO YOU SEE THAT?

25 A. YES.

11:40AM

26 Q. CAN YOU EXPLAIN WHAT THIS MEANS?

27 MR. WEINGART: OBJECTION, YOUR HONOR.

28 DOCUMENT SPEAKS FOR ITSELF.

1 THE COURT: OVERRULED.

2 THE WITNESS: YES. THIS JUST MEANS THAT YOU
3 CAN'T TAKE ANY OLD DEVICE AND PLUG IT IN WITHOUT
4 APPROVAL, INTO THE NETWORK.

5 AND IT ALSO MEANS, IF YOU LOOK AT THE 11:40AM
6 ENCRYPTING, THE DATA PORTION, IT ALSO MEANS THAT THERE
7 IS A NEED FOR THE DATA TO BE INACCESSIBLE WITHOUT THE
8 PROPER DECRYPTING CAPABILITIES.

9 Q. WHY THE CONCERN ABOUT STORING OR REMOVING OR
10 TRANS -- WHY THE CONCERN ABOUT HAVING NON-PUBLIC AND 11:40AM
11 CONFIDENTIAL DATA ON REMOVABLE OR TRANSPORTABLE MEDIA,
12 EG THE DISKS, CDS, USB DRIVES? WHY IS THAT A CONCERN?

13 A. IF A DEVICE IS LOST OR STOLEN OR MISPLACED,
14 AND IT CONTAINS COMPANY INFORMATION, THAT COULD CAUSE
15 HARM TO THE COMPANY. 11:41AM

16 Q. OR CLIENTS?

17 A. OR CLIENTS.

18 Q. SO IN ORDER TO BE ABLE TO DO THIS, USE THESE
19 TYPES OF TRANSPORTABLE MEDIA, YOU NEED CONSENT FROM THE
20 LEGAL DEPARTMENT, EXECUTIVE MANAGEMENT, COMPLIANCE 11:41AM
21 DEPARTMENT, AND YOU NEED TO HAVE ENCRYPTION
22 CAPABILITIES; IS THAT WHAT THIS MEANS?

23 A. YES.

24 Q. ALL RIGHT. WE'VE GONE THROUGH SOME
25 AGREEMENTS, POLICIES AND PROCEDURES. 11:41AM

26 WHAT ELSE BESIDES WHAT WE'VE LOOKED AT
27 HERE, IN TERMS OF POLICIES AND THE LIKE, DOES TCW DO TO
28 MAINTAIN THE INTEGRITY AND CONFIDENTIALITY OF ITS

1 INFORMATION AND ITS CLIENTS' INFORMATION?

2 A. WELL, WE DIDN'T TALK MUCH ABOUT THE BUILDING
3 PREMISES.

4 Q. ALL RIGHT.

5 A. SECURITY. JUST A FEW EXAMPLES.

11:42AM

6 WHEN YOU ARE A GUEST AT TCW, YOU HAVE TO
7 BE ESCORTED ONTO THE FLOORS; IT'S NOT OPEN. THERE ARE
8 SECURED KEY CARDS THAT YOU USE TO ENTER AND EXIT THE
9 ELEVATOR BANKS, AND THE BUILDING, OUT OF BUSINESS HOURS
10 OF THE BUILDING, ELEVATOR BANK, AT ALL TIME, REQUIRED A
11 KEY CARD.

11:42AM

12 THERE ARE CAMERAS IN THE -- IN SOME OF
13 THE MAIN AREAS. AND WHEN YOU ARE -- WHEN YOU HAVE A
14 GUEST ON THE FLOOR, THEY NEED TO BE ESCORTED. AND
15 WE'RE INSTRUCTED NOT TO LEAVE IMPORTANT INFORMATION
16 OUT.

11:42AM

17 I THINK WE ALREADY SPOKE ABOUT DATA
18 CENTERS.

19 I THINK THAT'S PROBABLY ALL.

20 ARE YOU LOOKING FOR OTHER EXAMPLES, AS
21 WELL?

11:42AM

22 Q. HOW ABOUT COMPUTER SOURCE CODE? IS THAT
23 SUBJECT TO SPECIAL PROTECTIONS?

24 A. YES. WE REQUIRE THE DEVELOPERS TO MAINTAIN
25 THE SOURCE CODE IN WHAT'S CALLED VERSION CONTROL
26 SOFTWARE.

11:43AM

27 Q. AND WHY IS THAT IMPORTANT?

28 A. IT ENABLES US TO HAVE A RECORD OF THE CODE AND

1 THE CHANGES, AND IT ENABLES -- IT ONLY ALLOWS CERTAIN
2 INDIVIDUALS ACCESS TO THE CODE.

3 Q. AND ARE THERE FIREWALLS, COMPUTER FIREWALLS
4 THAT EXIST BETWEEN DIFFERENT GROUPS AND DEPARTMENTS?

5 A. WE DO HAVE WHAT WE CALL -- YES, THERE ARE
6 COMPUTER FIREWALLS IN WHICH WE DO NOT SHARE CERTAIN
7 DEPARTMENTAL FILES BETWEEN DEPARTMENTS.

11:43AM

8 Q. AND THE COMPUTER SERVERS, ARE THEY IN SOME
9 SPECIAL SECURE LOCATION?

10 A. YES. THEY ARE IN THIS DATA CENTER WITH
11 LIMITED ACCESS.

11:43AM

12 Q. ALL RIGHT. LET ME CHANGE SUBJECTS NOW.

13 YOU WORKED WITH MR. SANTA ANA FOR A
14 NUMBER OF YEARS, CORRECT?

15 A. YES.

11:44AM

16 Q. AND DID YOU EVER HAVE ANY CONVERSATIONS WITH
17 MR. SANTA ANA ABOUT THE VALUE OR SIGNIFICANCE OF THESE
18 TCW ANALYTICS AND PROGRAMS THAT WERE DEVELOPED FOR THE
19 MBS GROUP AT TCW?

20 A. YES.

11:44AM

21 Q. AND WHAT DID HE TELL YOU ABOUT THEM?

22 A. HE TOLD ME THAT HE HADN'T SEEN THEM IN USE
23 ELSEWHERE.

24 Q. AND DID HE -- WHEN WAS IT THAT YOU HAD THIS
25 CONVERSATION WITH HIM?

11:44AM

26 A. I BELIEVE, SPRING OF 2009.

27 Q. AND DID HE TELL YOU WHETHER OR NOT HE THOUGHT
28 THEY WERE AN IMPORTANT ASSET FOR THE COMPANY?

1 A. YES.

2 Q. WHAT DID HE SAY IN THAT REGARD?

3 A. HE BASICALLY SAID, THAT THIS IS SOMETHING THAT
4 WE SHOULD BEGIN INCLUDING IN OUR MARKETING MEETINGS
5 WITH PROSPECTIVE CLIENTS AND CLIENTS.

11:44AM

6 Q. DID HE SAY WHY?

7 A. HE SAID IT WAS A GOOD SELLING POINT, BECAUSE
8 NO ONE ELSE HAD IT.

9 Q. DID HE TELL YOU WHETHER OR NOT HE WAS GETTING
10 FEEDBACK FROM CLIENTS ABOUT WHETHER THIS WAS UNIQUE, OR
11 THESE TYPES OF ANALYTICS WERE AVAILABLE ELSEWHERE?

11:45AM

12 A. YES, HE DID.

13 Q. WHAT DID HE SAY IN THAT REGARD?

14 MR. WEINGART: OBJECTION, HEARSAY.

15 THE COURT: OVERRULED.

11:45AM

16 Q. BY MR. QUINN: WHAT DID HE SAY WITH RESPECT TO
17 WHETHER THESE TYPES OF ANALYTICS WERE AVAILABLE
18 ELSEWHERE?

19 A. HE SAID THAT HE WAS GETTING FAVORABLE FEEDBACK
20 FROM THE CLIENTS, THAT THIS WAS SOMETHING THEY HADN'T
21 SEEN.

11:45AM

22 Q. AND AGAIN, WHEN WAS THIS?

23 A. THIS WAS SPRING OF 2009.

24 Q. IN LATE NOVEMBER OR EARLY DECEMBER, DID
25 MR. SANTA (SIC) ASK YOU FOR INFORMATION ABOUT COSTS
26 RELATING TO HARDWARE, I.T. HARDWARE?

11:45AM

27 A. YES.

28 Q. AND DID HE TELL YOU, AT THAT TIME, WHY HE

1 WANTED THAT INFORMATION?

2 A. YES, HE DID.

3 Q. AND WHAT DID HE SAY?

4 A. HE SAID HE WANTED TO REFRESH HIS MEMORY,
5 BECAUSE HE HADN'T THOUGHT ABOUT IT FOR A LONG TIME.

11:45AM

6 Q. DID HE GIVE YOU ANY INDICATION THAT HE WAS
7 COLLECTING THIS COST INFORMATION FOR A NEW BUSINESS?

8 A. NO.

9 Q. DID HE ALSO ASK YOU FOR INFORMATION ABOUT
10 COSTS FOR SUBSCRIBING TO VARIOUS TYPES OF DATA FEEDS
11 THAT ARE USED IN THE MBS BUSINESS?

11:46AM

12 A. YES. HE WAS LOOKING FOR A SUMMARY LEVEL
13 NUMBER.

14 Q. AND DID YOU GET THAT INFORMATION FOR HIM?

15 A. YES.

11:46AM

16 Q. DID HE TELL YOU WHY HE WANTED THE DATA FEED
17 COST INFORMATION?

18 A. NO.

19 Q. DID HE SAY ANYTHING TO YOU ABOUT USING IT FOR
20 A NEW BUSINESS THAT HE WAS PLANNING?

11:46AM

21 A. NO.

22 Q. IF HE HAD TOLD YOU THAT HE WANTED THIS
23 INFORMATION REGARDING I.T. COSTS AND DATA FEED COSTS,
24 SUBSCRIPTIONS COSTS, FOR A NEW BUSINESS THAT HE WAS
25 PLANNING, WOULD YOU HAVE SHARED IT WITH HIM?

11:46AM

26 A. NO.

27 Q. AND DID YOU PROVIDE HIM WITH THE INFORMATION
28 THAT HE REQUESTED?

1 A. YES.

2 Q. IF YOU WOULD LOOK AT EXHIBIT 1956.

3 IS THIS AN E-MAIL THAT YOU WROTE TO
4 MR. SANTA ANA INCLUDING SOME OF THIS INFORMATION, COST
5 INFORMATION THAT HE ASKED FOR?

11:47AM

6 A. YES, IT IS.

7 MR. QUINN: I'D OFFER THAT, YOUR HONOR.

8 MR. WEINGART: NO OBJECTION.

9 THE COURT: IT'S GOING TO BE ADMITTED.

10

11:47AM

11 (ADMITTED: PLAINTIFF'S 1956.)

12

13 Q. BY MR. QUINN: OKAY. TURNING NOW TO A -- DO
14 YOU RECALL -- DID YOU EVER HEAR MR. -- DID YOU EVER
15 HEAR MR. GUNDLACH SAY HE SHOULD BE CEO?

11:47AM

16 A. YES.

17 Q. AND TELL US THE CIRCUMSTANCES OF THAT.

18 A. IT WAS PROBABLY MID-2009, AROUND THE TIME THAT
19 MR. STERN WAS ANNOUNCED AS THE INTERIM CEO.

20 Q. AND YOU HEARD MR. GUNDLACH MAKE A STATEMENT AT
21 THAT TIME?

11:48AM

22 A. YES.

23 Q. AND WHEN HE MADE THE STATEMENT, CAN YOU TELL
24 US, WAS HE ANGRY, SOFT-SPOKEN, MILD-MANNERED, BEMUSED?
25 HOW DID HE MAKE THE STATEMENT?

11:48AM

26 A. HE SEEMED UPSET.

27 Q. WHAT DID HE SAY?

28 A. I DON'T REMEMBER THE EXACT WORDS, BUT HE SAID

1 SOMETHING TO THE EFFECT THAT I CAN'T BELIEVE THEY
2 APPOINTED MARC STERN AS THE INTERIM CEO. I SHOULD BE
3 CEO.

4 Q. WERE YOU EVER APPROACHED BY MR. SANTA ANA, IN
5 THE FALL OF 2009, TO ASK IF, HYPOTHETICALLY, IF OUR
6 GROUP WERE TO LEAVE, WOULD YOU BE WITH US? 11:48AM

7 A. YES.

8 Q. WHEN WAS IT THAT HE ASKED YOU THAT?

9 A. I THINK IT WAS IN THE SEPTEMBER TIMEFRAME.

10 Q. WAS THERE SOMETHING CALLED A BUSINESS
11 CONTINUITY PLAN AT TCW? 11:49AM

12 A. YES.

13 Q. WHAT IS A BUSINESS CONTINUITY PLAN?

14 A. IT'S A PLAN THAT EXPLAINS THE MEASURES THAT
15 YOU WOULD NEED TO RUN YOUR BUSINESS IN THE EVENT THAT
16 THERE WAS SOME DISRUPTION LIKE A DISASTER OR FLU
17 EPIDEMIC, WHERE PEOPLE NEEDED TO WORK AND STILL CONDUCT
18 BUSINESS OUTSIDE OF NORMAL PROCEDURES. 11:49AM

19 Q. WAS THERE A BUSINESS CONTINUITY PLAN AT TCW?

20 A. YES. 11:49AM

21 Q. AND IS THAT IMPORTANT FOR A COMPANY TO HAVE?

22 A. YES, IT IS.

23 Q. IN CASE WE HAVE THE BIG ONE HERE, OR FOR
24 WHATEVER REASON?

25 A. YES. 11:49AM

26 Q. AND DID YOU, PERSONALLY, HAVE A ROLE IN THE
27 MBS GROUP WITH THE BUSINESS CONTINUITY PLAN?

28 A. YES, I DID.

1 Q. WHAT WAS YOUR ROLE WITH THE BUSINESS
2 CONTINUITY PLAN?

3 A. I WAS A BCP COORDINATOR FOR TECHNOLOGY.

4 Q. AND WOULD IT MAKE ANY SENSE FOR MR. SANTA ANA,
5 MR. MAYBERRY, JP AND OTHERS, TO DOWNLOAD OVER 50
6 GIGABYTES OF INFORMATION AS PART OF A BUSINESS
7 CONTINUITY PLAN?

11:50AM

8 A. NO.

9 Q. WHY NOT?

10 A. WELL, THERE'S -- ALL THE DATA NECESSARY FOR
11 THE BUSINESS CONTINUITY PLAN WAS ALREADY BEING TAKEN
12 CARE OF IN OUR NEW YORK FACILITY.

11:50AM

13 Q. AND YOU BACK UP INFORMATION AT A LOCATION IN
14 NEW YORK AND ELSEWHERE?

15 A. YES.

11:50AM

16 Q. AND THAT'S DONE IN THE ORDINARY COURSE,
17 ANYWAY?

18 A. YES, IT IS.

19 Q. IF YOU COULD LOOK AT EXHIBIT 2103-15?

20 2103 -- THIS IS ALREADY IN EVIDENCE,
21 YOUR HONOR. PERHAPS IF WE COULD PUT PAGE 15 UP ON THE
22 SCREEN.

11:51AM

23 THERE'S AN -- IN THE MIDDLE OF THE PAGE,
24 IF WE COULD ENLARGE THAT PARAGRAPH ABOUT E-MAIL.

25 THE NEXT PARAGRAPH, IF WE COULD, PLEASE.
26 SORRY.

11:51AM

27 IT SAYS HERE THAT THE FIRM CURRENTLY
28 STORES ALL E-MAILS, INCLUDING INSTANT MESSAGING, FOR

1 SEVERAL YEARS, AND SUCH COMMUNICATION MAY BE SUBJECT TO
2 REVIEW BY REGULATORS.

3 NOW, THIS IS SOMETHING THAT EVERY
4 EMPLOYEE IS TOLD?

5 A. YES.

11:51AM

6 Q. AND BECAUSE, IN FACT, TCW IS A REGULATED
7 BUSINESS?

8 MR. WEINGART: OBJECTION. LEADING,
9 FOUNDATION.

10 THE COURT: OVERRULED.

11:51AM

11 THE WITNESS: YES.

12 Q. BY MR. QUINN: AND AS HEAD OF I.T., DO YOU
13 KNOW WHETHER, AS PART OF THE REGULATIONS IT'S SUBJECT
14 TO, TCW HAS AN OBLIGATION TO MAINTAIN E-MAILS?

15 A. YES, IT DOES.

11:52AM

16 Q. AND THIS GOES ON TO SAY, (READING:)

17 ADDITIONALLY, THE FIRM RESERVES THE
18 RIGHT TO MONITOR, SAMPLE, AND AUDIT
19 E-MAIL COMMUNICATIONS. REGULATORS
20 AND AUDITORS ALSO MAY REVIEW AND/OR
21 REQUEST E-MAILS OF EMPLOYEES DURING
22 REVIEWS.

11:52AM

23 DO YOU SEE THAT?

24 A. YES.

25 Q. SO THAT WAS -- IS THAT SOMETHING THAT WAS
26 KNOWN AT TCW, THAT LOOK, IF YOU ARE GOING TO USE A TCW
27 COMPUTER, THE COMPANY MAY REVIEW E-MAILS?

11:52AM

28 A. YES.

1 Q. THAT'S SOMETHING EVERY EMPLOYEE WAS TOLD?

2 A. YES.

3 Q. AND THEN YOU MADE REFERENCE TO SOMETHING
4 CALLED REVISION CONTROL, IN CONNECTION WITH CREATING
5 SOFTWARE CODE?

11:52AM

6 A. YES.

7 Q. WHAT IS REVISION CONTROL?

8 A. WELL, IT'S A PROGRAM THAT LETS YOU STORE ALL
9 OF THE DATABASE PROGRAMS THAT HAVE BEEN DEVELOPED, AND
10 FILES RELATED TO THOSE PROGRAMS.

11:53AM

11 Q. AND AS -- WHEN YOU ARE WRITING CODE, IS IT
12 STANDARD PROCEDURE TO USE REVISION CONTROL?

13 A. YES, IT IS.

14 Q. AND WHAT -- WHY IS THAT?

15 A. BECAUSE IT GIVES, NOT ONLY YOU A RECORD OF ALL
16 THE CODE YOU'VE WRITTEN, BUT IT ALSO PROTECTS THE CODE
17 IN SUCH A WAY THAT IT'S NOT TO BE SHARED WITH PEOPLE
18 THAT DON'T HAVE ANY BUSINESS USING IT.

11:53AM

19 Q. AND WAS REVISION CONTROL USED AT TCW WHEN YOU
20 WROTE CODE?

11:53AM

21 A. YES.

22 Q. AND DID CASEY MOORE WRITE CODE AT TCW?

23 A. YES.

24 Q. DID HE USE REVISION CONTROL IN ACCORDANCE WITH
25 TCW POLICY?

11:53AM

26 A. YES, HE DID.

27 Q. AND IF -- WHEN REVISION CONTROL IS USED WHEN
28 YOU ARE WRITING CODE, IS IT STANDARD PRACTICE TO USE IT

1 RIGHT FROM THE VERY BEGINNING OF THE CODE-WRITING
2 PROCESS?

3 MR. WEINGART: OBJECTION, LEADING.

4 THE COURT: OVERRULED.

5 GO AHEAD.

11:53AM

6 THE WITNESS: YES, IT IS.

7 Q. BY MR. QUINN: AND IF SOMEBODY HAD COPIED CODE
8 FROM SOME PREEXISTING CODE, WOULD THE -- WOULD YOU BE
9 ABLE TO FIND EVIDENCE OF THAT, IN THE FIRST CODE THAT
10 WAS WRITTEN?

11:54AM

11 MR. WEINGART: OBJECTION, YOUR HONOR. THIS
12 CALLS FOR EXPERT TESTIMONY.

13 THE COURT: SUSTAINED.

14 Q. BY MR. QUINN: WELL, WOULD -- IF THERE WAS
15 COPYING, IF THE CODE WAS COPIED, AND YOU HAD REVISION
16 CONTROL, WOULD YOU BE ABLE TO DETERMINE THAT, FROM
17 LOOKING AT THE CODE-WRITING HISTORY?

11:54AM

18 MR. WEINGART: SAME OBJECTION, YOUR HONOR.

19 THE COURT: I'LL ALLOW THAT.

20 THE WITNESS: YES. THE VERSION HISTORY WOULD
21 CONTAIN ALL OF THE INITIAL VERSIONS OF THE CODE.

11:54AM

22 Q. BY MR. QUINN: RIGHT. BUT IF YOU DON'T USE
23 VERSION CONTROL, THAT HISTORY IS GONE?

24 A. THAT'S RIGHT.

25 THE COURT: WE'RE TALKING ABOUT TWO
26 DIFFERENT -- REVISION CONTROL AND VERSION CONTROL?

11:54AM

27 MR. QUINN: I'M SORRY. VERSION CONTROL. MY
28 BAD.

1 THE COURT: WE WERE TALKING ABOUT REVISION
2 CONTROL.

3 HAVE WE SHIFTED TO SOMETHING DIFFERENT?

4 MR. QUINN: NO.

5 MAYBE I CAN GET SOME HELP.

11:54AM

6 Q. AM I TALKING ABOUT REVISION CONTROL OR VERSION
7 CONTROL?

8 A. IT'S VERSION CONTROL; BUT THE TERMS ARE
9 SYNONYMOUS.

10 Q. OKAY.

11:55AM

11 SO IF YOU DON'T HAVE -- IF THE VERSION
12 CONTROL HADN'T BEEN USED, YOU LOSE THAT EARLY HISTORY?

13 A. YES.

14 Q. WHICH WOULD SHOW COPIED?

15 A. YES.

11:55AM

16 Q. TAKE A LOOK, PLEASE, AT EXHIBITS 260 AND 284.
17 IF YOU COULD KIND OF LOOK AT BOTH OF THEM, MAYBE STICK
18 YOUR FINGER IN THE BOOK THERE.

19 AND LET ME ASK YOU IF YOU CAN
20 IDENTIFY -- DO YOU RECOGNIZE THESE TWO DOCUMENTS?

11:55AM

21 A. YES, I DO.

22 Q. WHAT ARE THEY?

23 A. THIS IS THE TCW MBS INVESTMENT TECHNOLOGY
24 PRESENTATION.

25 Q. AND DID YOU PREPARE THESE?

11:56AM

26 A. YES, I DID.

27 Q. AND DID SOMEBODY INSTRUCT YOU TO PREPARE
28 THESE?

1 A. AT THE TIME I FIRST PREPARED THEM, NO.

2 I COMPILED THEM AS A MEANS OF
3 SUMMARIZING THE TEAM AND THE PRODUCTS OF THE TEAM.

4 Q. WE'D OFFER THESE, YOUR HONOR. EXHIBITS 260
5 AND 284.

11:56AM

6 THE COURT: ANY OBJECTION?

7 MR. WEINGART: NO, YOUR HONOR.

8 THE COURT: THEY'LL BE ADMITTED.

9

10 (ADMITTED: PLAINTIFF'S 260 AND 284.)

11:56AM

11

12 Q. BY MR. QUINN: IF WE COULD START MAYBE WITH
13 JUST 260.

14 CAN YOU TELL US HOW THIS WAS USED? THIS
15 ONE IS DATED SEPTEMBER 2ND, 2009.

11:56AM

16

 HOW WAS THIS DOCUMENT USED?

17 A. THIS DOCUMENT WAS USED AS A TOOL TO EXPLAIN
18 THE TECHNOLOGY TEAM AND SOME OF THE SYSTEMS TO
19 PROSPECTIVE CLIENTS AND CLIENTS.

20 Q. AND BY THE SYSTEMS, YOU ARE REFERRING TO THE
21 TCW ANALYTICS THAT WE'VE TALKED ABOUT HERE?

11:56AM

22 A. YES, IT INCLUDES THOSE, YES.

23 Q. AND YOU FIRST CREATED THIS ON YOUR OWN
24 INITIATIVE?

25 A. YES.

11:57AM

26 Q. AND THAT WOULD HAVE BEEN WHEN THAT YOU FIRST
27 CREATED IT?

28 A. IT WOULD BE HAVE BEEN IN THE SPRING OF 2009.

1 Q. DID YOU THEN SHOW IT TO OTHER FOLKS IN THE MBS
2 GROUP?

3 A. YES, I DID.

4 Q. WHO DID YOU SHOW IT TO?

5 A. I SHOWED IT TO ERIC ARENTSEN AND CHRIS
6 SANTA ANA.

11:57AM

7 Q. AND WHEN YOU SHOWED IT TO MR. SANTA ANA, DID
8 HE HAVE ANY PARTICULAR RESPONSE?

9 A. YES.

10 Q. WHAT WAS HIS RESPONSE?

11:57AM

11 A. HE REALLY LIKED IT.

12 Q. AND DID HE SAY THAT HE WANTED TO USE IT IN
13 PRESENTATIONS TO CLIENTS?

14 A. YES.

15 Q. AND MAYBE IF WE COULD JUST KIND OF THUMB
16 THROUGH THE PAGES HERE, AND GIVE THE JURY AN IDEA OF
17 WHAT -- 260, I THINK, IS BASICALLY THE SAME -- WHAT'S
18 BEHIND HERE? THESE BASICALLY ARE DESCRIPTIONS OF
19 THE -- THIS -- YOUR MBS TECHNOLOGY DEPARTMENT, AND THE
20 VARIOUS SYSTEMS THAT YOU DEVELOPED; IS THAT FAIR TO
21 SAY?

11:57AM

11:57AM

22 A. YES.

23 Q. AND WAS THIS, IN FACT, USED IN 2009, IN
24 PRESENTATIONS TO CLIENTS AND PROSPECTS?

25 A. YES, IT WAS.

11:58AM

26 Q. AND WERE YOU, PERSONALLY, PRESENT WHEN IT WAS
27 USED?

28 A. ON A NUMBER OF OCCASIONS, YES.

1 Q. AND WAS MR. SANTA ANA ALSO PRESENT?

2 A. YES.

3 Q. AND WHEN YOU -- I NOTICE ON THE FIRST PAGE
4 HERE, IF WE GO BACK TO THE FIRST PAGE, IT SAYS IN THE
5 UPPER RIGHT-HAND CORNER, "CONFIDENTIAL MATERIAL, NOT
6 FOR DISTRIBUTION."

11:58AM

7 DO YOU SEE THAT?

8 A. YES.

9 Q. AND DO YOU KNOW HOW THAT CAME TO BE THERE?

10 A. YES.

11:58AM

11 Q. HOW DID IT COME TO BE THERE?

12 A. WHEN I SENT THIS PRESENTATION TO BARBARA
13 VANEVERY FOR FORMATTING, WHEN I RECEIVED IT BACK FROM
14 HER, IT HAD THIS LABEL.

15 Q. SO SHE ADDED THIS, "CONFIDENTIAL MATERIAL, NOT
16 FOR DISTRIBUTION," TO THIS DESCRIPTION OF TCW'S
17 ANALYTIC, CORRECT?

11:58AM

18 A. YES.

19 Q. AND WHEN THIS WAS HANDED OUT AT PRESENTATIONS,
20 WAS THAT NOTICE ON THERE, THAT THIS WAS CONFIDENTIAL
21 MATERIAL, NOT FOR DISTRIBUTION?

11:59AM

22 A. YES.

23 Q. NOW, WAS IT, IN FACT, HANDED OUT TO CLIENTS?

24 A. IT WAS HANDED OUT IN THE MEETING ITSELF, AND
25 RETRIEVED AT THE END OF THE MEETING.

11:59AM

26 Q. SO TAKE IT BACK?

27 A. YES.

28 Q. WHOSE IDEA WAS THAT?

1 A. THAT WAS MR. SANTA ANA'S IDEA.

2 Q. SO HE DIDN'T WANT TO LEAVE THIS DESCRIPTION OF
3 THE TCW ANALYTICS WITH CLIENTS OR PROSPECTS; IS THAT
4 TRUE?

5 A. YES.

11:59AM

6 Q. AND DID HE TELL YOU WHY HE DIDN'T WANT TO
7 LEAVE IT?

8 A. YES. HE SAID HE DID NOT WANT TO SEE THE
9 DESIGNS ON THE SECURITY ANALYZER SCREEN SHOT IN BWIC
10 BROWSER SHOWING UP AT A COMPETITOR.

11:59AM

11 Q. WERE THERE OCCASIONS WHERE THERE WERE
12 ACTUALLY, SOME OF THE SLIDES WERE REDACTED --

13 A. YES.

14 Q. -- WHEN PROVIDED TO CLIENTS OR PROSPECTS?

15 A. YES.

12:00PM

16 Q. DID MR. SANTA ANA OR MS. VANEVERY EVER TELL
17 YOU THAT THEY HAD CHANGED THEIR MINDS, AND THEY DIDN'T
18 THINK THIS INFORMATION WAS CONFIDENTIAL OR TRADE
19 SECRET?

20 A. NO.

12:00PM

21 MR. WEINGART: OBJECTION, YOUR HONOR. THAT
22 MISSTATES THE TESTIMONY WITH REGARD TO TRADE SECRETS.

23 THE COURT: YEAH, I THINK IT'S IN REFERENCE TO
24 TRADE SECRETS.

25 MR. QUINN: ALL RIGHT.

12:00PM

26 Q. DID YOU REGARD THIS INFORMATION AS TRADE
27 SECRET?

28 MR. WEINGART: OBJECTION, YOUR HONOR.

1 THE COURT: SUSTAINED.

2 MR. QUINN: OKAY.

3 Q. DID MR. SANTA ANA OR MS. VANEVERY EVER TELL
4 YOU THAT THEY HAD CHANGED THEIR MIND, AND THAT THEY
5 DIDN'T THINK THIS DESCRIPTION OF THE TCW ANALYTICS WAS
6 CONFIDENTIAL? 12:00PM

7 A. NO.

8 Q. SO LONG AS YOU WERE THERE, DID THEY EVER
9 CHANGE THE PRACTICE AND DECIDE IT'S PERFECTLY OKAY TO
10 LEAVE COPIES OF THIS WITH CLIENTS? 12:00PM

11 A. NO.

12 Q. SO AS LONG AS THEY WERE THERE AND YOU WERE
13 THERE -- AND YOU SAY YOU DID ABOUT 40 PRESENTATIONS?

14 A. IN THAT BALLPARK, YES.

15 Q. AND THESE WERE ALWAYS COLLECTED AT THE END OF
16 THE PRESENTATIONS? 12:01PM

17 A. YES.

18 Q. TAKE A LOOK, PLEASE, AT EXHIBIT 1036.

19 FIRST EXHIBIT 948, SORRY. EXHIBIT 948.

20 CAN YOU IDENTIFY EXHIBIT 948 FOR US? 12:01PM

21 A. YES. THIS IS THE TCW MBS INVESTMENT PROCESS.

22 Q. ALL RIGHT. AND WHO PREPARED THIS?

23 A. CHRIS SANTA ANA.

24 Q. I'D OFFER EXHIBIT 948, YOUR HONOR.

25 MR. WEINGART: NO OBJECTION. 12:02PM

26 THE COURT: IT WILL BE ADMITTED.

27

28 (ADMITTED: PLAINTIFF'S 948.)

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MR. QUINN: IF WE COULD PUT THAT ON THE
SCREEN.

Q. AND YOU SAY MR. SANTA ANA PREPARED IT? DID
YOU HAVE ANY INVOLVEMENT IN IT?

12:02PM

A. NO, ONLY AS A REVIEWER OF THE DOCUMENT.

Q. AND WERE YOU EVER PRESENT WHEN HE MADE
PRESENTATIONS BASED ON THIS DOCUMENT?

A. YES, I WAS IN A COUPLE OF THEM.

Q. AND DID HE INDICATE TO YOU -- DID HE EVER SAY
ANYTHING TO YOU ABOUT THIS DOCUMENT, EXHIBIT 948?

12:02PM

A. I DON'T RECALL THE SPECIFIC WORDS.

Q. WELL, IF YOU TURN TO PAGE 7, 948-7, THERE DO
WE HAVE A DESCRIPTION OF THE BENEFITS PROVIDED BY TCW'S
SYSTEMS, THE BWIC BROWSER, THE SECURITY ANALYZER, AIMS,
AND TED?

12:02PM

A. YES. THIS IS A SUMMARY OF THE BENEFITS OF
THOSE SYSTEMS.

Q. AND HOW WAS THIS DOCUMENT, EXHIBIT 948, HOW
WAS THIS USED?

12:03PM

A. THIS DOCUMENT WAS USED WITH CLIENTS AND
PROSPECTIVE CLIENTS TO DISCUSS THE INVESTMENT PROCESS.

Q. WOULD YOU -- DID YOU BELIEVE THAT THESE
COMPUTER PROGRAMS THAT ARE DESCRIBED HERE GAVE TCW A
COMPETITIVE ADVANTAGE?

12:03PM

A. YES.

Q. AND WOULD YOU HAVE EVER SHARED THOSE PROGRAMS
REFERRED TO HERE IN THIS OUTLINE WITH A COMPETITOR?

1 A. NO.

2 Q. NOW, WOULD YOU TURN PLEASE, TO EXHIBIT 1036.

3 THIS IS A DOCUMENT BEARING DOUBLELINE
4 BATES NUMBER STAMP. DO YOU SEE THAT, IN THE LOWER
5 RIGHT-HAND CORNER DDLSA? DO YOU SEE THAT?

12:03PM

6 A. YES.

7 MR. QUINN: WE'D OFFER THIS, YOUR HONOR,
8 SELF-AUTHENTICATED.

9 THE COURT: ANY OBJECTION?

10 MR. WEINGART: NO OBJECTION, YOUR HONOR.

12:04PM

11 THE COURT: IT WILL BE ADMITTED.

12

13 (ADMITTED: PLAINTIFF'S 1036.)

14

15 Q. BY MR. QUINN: SO IF WE COULD PUT THAT ON THE
16 SCREEN, EXHIBIT 1036.

12:04PM

17 THIS IS A DESCRIPTION OF WHAT DOUBLELINE
18 SAYS ITS MBS INVESTMENT PROCESS AND CAPABILITIES ARE?

19 A. YES.

20 Q. THIS DOCUMENT IS WORD FOR WORD, IDENTICAL TO
21 THE DESCRIPTION OF TCW'S PROPRIETARY SYSTEMS THAT WE
22 JUST LOOKED AT IN EXHIBIT 948, CORRECT?

12:04PM

23 A. WITH THE EXCEPTION OF THE COMPANY NAME, YES.

24 Q. SO DOUBLELINE DESCRIBES ITS ANALYTICAL
25 PLATFORM, ITS COMPUTER PROGRAMS, USING THE EXACT SAME
26 WORDS AS TCW, CORRECT?

12:05PM

27 A. YES.

28 Q. LET'S TAKE A LOOK SIDE BY SIDE, IF WE CAN,

1 PAGE 7 OF THE TCW EXHIBIT, THAT'S 748-7, AND PAGE 6 OF
2 DOUBLELINE DESCRIPTION OF ITS PROPRIETARY SYSTEMS,
3 EXHIBIT 1036-6.

4 I DON'T KNOW IF WE CAN ENLARGE THOSE,
5 BUT IT'S TRUE, ISN'T IT, THAT IF WE GO PARAGRAPH BY
6 PARAGRAPH, THE ANALYTICAL SYSTEMS USED AT DOUBLELINE
7 ARE DESCRIBED IN THE EXACT SAME WORDS, CORRECT?

12:05PM

8 A. YES, WITH THE EXCEPTION OF OAK TREES.

9 Q. ALL RIGHT. SO THE NAME OAK TREE WAS ADDED,
10 RIGHT?

12:06PM

11 MR. WEINGART: OBJECTION, YOUR HONOR. THAT
12 MISSTATES WHAT THE DOCUMENT SAYS.

13 THE COURT: I THINK WITH THE EXCEPTION OF THE
14 REFERENCE TO OAK TREE INVESTMENT TECHNOLOGY.

15 MR. QUINN: RIGHT.

12:06PM

16 THE COURT: PROVIDES INFRASTRUCTURE AND OTHER
17 TECHNOLOGICAL SUPPORT; SO IT'S NOT WORD FOR WORD.

18 Q. BY MR. QUINN: OTHER THAN THAT, OTHER THAN THE
19 REFERENCE TO OAK TREE, IT'S IDENTICAL, CORRECT?

20 AND THE WORD DOUBLELINE HAS ALSO BEEN
21 SUBSTITUTED THROUGHOUT FOR TCW, CORRECT?

12:06PM

22 A. YES. AND THE TITLE IS SLIGHTLY DIFFERENT, BUT
23 THE TEXT IS THE SAME IN THE COMMENTS AREA, WITH THOSE
24 EXCEPTIONS.

25 Q. AND IF WE LOOK, FOR EXAMPLE, AT THE FIRST
26 PAGE, THE DOUBLELINE 1036-1, AND COMPARE THAT WITH
27 948-1, THE FORMAT IS A LITTLE DIFFERENT, AND THAT THE
28 BOXES ARE A LITTLE DIFFERENT. IT'S LAID OUT

12:06PM

1 DIFFERENTLY, RIGHT?

2 A. YES.

3 Q. BUT THE WORDS INSIDE ARE THE SAME, CORRECT?

4 A. YES.

5 Q. AND WE COULD GO THROUGH THIS DOCUMENT PAGE BY
6 PAGE, AND DO A -- YOU'VE DONE THIS. YOU'VE GONE
7 THROUGH THE DOCUMENT PAGE BY PAGE, AND COMPARED THE
8 LANGUAGE?

12:07PM

9 A. YES, I HAVE.

10 Q. NOW, WOULD IT BE ACCURATE TO GIVE -- FOCUSING
11 ON THE DOUBLELINE DOCUMENT, EXHIBIT 1036, WOULD IT BE
12 ACCURATE TO GIVE THIS PRESENTATION TO A CLIENT, IF YOU
13 DID NOT HAVE TCW'S ANALYTICS?

12:07PM

14 MR. WEINGART: OBJECTION, YOUR HONOR.
15 FOUNDATION.

12:08PM

16 THE COURT: SUSTAINED.

17 Q. BY MR. QUINN: WELL, YOU UNDERSTOOD THAT
18 EXHIBIT 948, THE DOCUMENT THAT MR. SANTA ANA CREATED,
19 INCLUDED A DESCRIPTION OF TCW'S ANALYTICAL SYSTEMS,
20 CORRECT?

12:08PM

21 A. YES.

22 Q. AND -- SO MY QUESTION WOULD BE, WOULD IT BE
23 ACCURATE TO USE THOSE WORDS TO DESCRIBE YOUR ANALYTICAL
24 SYSTEMS IF YOU DIDN'T HAVE TCW'S ANALYTICAL SYSTEMS?

25 MR. WEINGART: OBJECTION, YOUR HONOR.
26 FOUNDATION, AND IT MISSTATES THE DOCUMENT.

12:08PM

27 THE COURT: SUSTAINED.

28 Q. BY MR. QUINN: WELL, LET'S TAKE A LOOK AT

1 EXHIBIT 719.

2 THIS IS A DOCUMENT BEARING A DOUBLELINE
3 BATES NUMBER.

4 DO YOU SEE THAT, IN THE LOWER RIGHT-HAND
5 CORNER?

12:09PM

6 A. YES.

7 MR. QUINN: WE'D OFFER THIS, YOUR HONOR.

8 MR. WEINGART: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10

12:09PM

11 (ADMITTED: PLAINTIFF'S 719.)

12

13 MR. QUINN: CAN WE PUT THAT ON THE SCREEN?

14 Q. THIS APPEARS TO BE A PRESENTATION MADE BY
15 MR. GUNDLACH TO THE NEW HAMPSHIRE RETIREMENT SYSTEM.

12:09PM

16 DO YOU SEE THAT?

17 A. YES.

18 Q. AND STARTING AT PAGE -12 IN THIS PRESENTATION,
19 DOUBLELINE HAS INCLUDED, WORD FOR WORD, THAT

20 DESCRIPTION OF THE DOUBLELINE ANALYTICAL PLATFORM THAT
21 WAS IN EXHIBIT 1036, THAT WE WERE JUST LOOKING AT,
22 CORRECT?

12:09PM

23 DO YOU SEE THAT? STARTING AT 719-12.

24 A. SLIGHTLY DIFFERENT, BUT VERY SIMILAR.

25 Q. BUT IN TERMS OF THE WORDS THAT ARE USED THERE,
26 719-12, THEY ARE ESSENTIALLY THE SAME WORDS AS APPEAR
27 IN DOUBLELINE'S 1036, CORRECT?

12:10PM

28 A. ESSENTIALLY THE SAME, YES.

1 Q. WHICH AGAIN ARE THE SAME AS TCW'S 948,
2 CORRECT?

3 A. YES.

4 MR. QUINN: NOTHING FURTHER.

5 THANK YOU, YOUR HONOR. 12:10PM

6 THE COURT: ALL RIGHT.

7 WHO IS GOING TO DO CROSS-EXAMINATION?

8 MR. WEINGART: THAT WOULD BE MYSELF, YOUR
9 HONOR.

10 I DIDN'T KNOW, GIVEN WHERE WE ARE, IF 12:10PM
11 YOU WANTED TO JUST TAKE THE BREAK AND LET ME GET SET
12 UP.

13 THE COURT: WE CAN TAKE OUR BREAK.

14 WE WERE SCHEDULED TO BREAK AT 12:15 FOR
15 20 MINUTES, SO WE'LL TAKE IT NOW. WE'LL COME BACK 12:10PM
16 CLOSER TO 25 MINUTES TO 1:00.

17
18 (AT 12:10 P.M. THE JURY WAS
19 EXCUSED, AND THE FOLLOWING
20 PROCEEDINGS WERE HELD:) 12:10PM
21

22 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
23 JURY.

24 I JUST WANT TO CLARIFY ONE THING HERE.

25 MR. QUINN, IT SEEMS TO ME THAT 12:11PM

26 ULTIMATELY, THERE ARE -- WE'RE GOING TO INSTRUCT THE
27 JURY ON WHAT CONSTITUTES A TRADE SECRET AND WHAT
28 DOESN'T.

1 AND I'M NOT SURE THAT THE WITNESS'
2 OPINIONS AS TO WHETHER IT'S A TRADE SECRET OR NOT ARE
3 REALLY RELEVANT. I'M HAPPY TO ENTERTAIN DISCUSSION ON
4 THAT POINT.

5 BUT THAT'S WHY I WANT TO MAKE SURE YOU
6 UNDERSTAND WHERE I'M COMING FROM. AND IF I'M MAKING A
7 MISTAKE HERE, OR THERE'S SOME REASON THAT YOU THINK WE
8 SHOULD HAVE MULTIPLE PEOPLE'S OPINIONS ON WHAT
9 CONSTITUTES A TRADE SECRET, I'M WILLING TO LISTEN.

12:12PM

10 MR. QUINN: JUDGE, I CAN LIVE WITH ANY RULE ON
11 THIS.

12:12PM

12 IT'S KINDA LIKE ASKING SOMEBODY, DID YOU
13 HAVE A CONTRACT?

14 THE COURT: WELL, YOU ASK IF IT'S
15 CONFIDENTIAL, IF IT'S PROPRIETARY, DIFFERENT THINGS.

12:12PM

16 BUT IT SEEMS TO ME, THE OBJECTION WAS
17 COMING THAT THEY SHOULDN'T BE SAYING IT IS OR ISN'T A
18 TRADE SECRET. AND I JUST WANTED TO CLARIFY THAT.

19 AND I ASSUME THAT'S THE DEFENSE POSTURE
20 ON THIS?

12:12PM

21 MR. WEINGART: YES, YOUR HONOR, CERTAINLY WITH
22 REGARD TO THE PERCIPIENT WITNESSES.

23 THE COURT: JUST SO THAT WE ALL KNOW WHAT THE
24 RULINGS ARE COMING FROM.

25 AND IF THERE'S QUESTIONS ON ANY OF THIS,
26 LET ME KNOW.

12:12PM

27 OKAY. THANK YOU.

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(RECESS TAKEN.)

(THE NEXT PAGE NUMBER IS 801.)

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 1, 2011
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR
7 TIME: C SESSION 12:30
8
9

9 --0--

10
11 THE COURT: IN THE TCW MATTER, ALL MEMBERS OF
12 OUR JURY ARE PRESENT AS ARE ALL COUNSEL. YOU MAY
13 PROCEED WITH CROSS-EXAMINATION, MR. WEINGART.
14

15 CROSS-EXAMINATION +
16

17 BY MR. WEINGART:

18 Q MY NAME'S GREG WEINGART. WE HAVEN'T MET
19 BEFORE, RIGHT?

20 A RIGHT.
21

22 Q YOU WERE ASKED A NUMBER OF QUESTIONS ABOUT TCW
23 SYSTEMS; YOU'VE NEVER WORKED AT DOUBLE LINE, CORRECT?

24 A NO, I HAVE NOT.
25

26 Q YOU SPENT YOUR ENTIRE PROFESSIONAL CAREER AT
27 TCW?
28

A YES.

Q AND YOU'VE NEVER BEEN TO DOUBLELINE'S TRADING
FLOOR, FOR EXAMPLE?

12:36PM

12:36PM

12:36PM

12:37PM

1 A NO.

2 Q YOU HAVE NOT BEEN THERE; IS THAT RIGHT?

3 A YEAH. I'VE NEVER BEEN TO THE TRADING FLOOR.

4 Q YOU HAVEN'T SEEN THEIR SYSTEMS IN OPERATION,
5 CORRECT?

12:37PM

6 A NO, I HAVEN'T.

7 Q YOU DIDN'T PARTICIPATE IN THE DEVELOPMENT OF
8 THOSE SYSTEMS, DID YOU?

9 A NO, I DID NOT.

10 Q AND SO YOU DON'T HAVE ANY FIRSTHAND KNOWLEDGE
11 ABOUT THE ARCHITECTURE ABOUT DOUBLELINE'S SYSTEMS,
12 RIGHT?

12:37PM

13 A NO, I DON'T HAVE ANY.

14 Q AND YOU DON'T KNOW ABOUT ANY INTERNAL POLICIES
15 THAT DOUBLELINE MAY HAVE HAD WITH REGARD TO THE USE OR
16 NON-USE OF TCW INFORMATION, CORRECT?

12:37PM

17 A I --

18 Q THAT'S SOMETHING YOU DON'T KNOW?

19 A I'M NOT FAMILIAR WITH DOUBLELINE POLICIES.

20 Q NOW, YOU MENTIONED THIS BEFORE, BUT WHEN
21 MR. GUNDLACH WAS AT TCW, YOU WORKED IN HIS M B.S.
22 GROUP, RIGHT?

12:37PM

23 A YES.

24 Q AND THE M B.S. GROUP HAD ITS OWN I.T.
25 DEPARTMENT, ISN'T THAT RIGHT?

12:38PM

26 A IT HAD A TEAM OF DEVELOPERS, YES.

27 Q BUT THAT WAS I.T. DEPARTMENT, THAT WAS
28 SEPARATE FROM THE TCW FIRM, I.T. DEPARTMENT, RIGHT?

1 A YES, IT WAS.

2 Q AND THE M.B.S. GROUP, THEY HELPED DEVELOP THE
3 PROGRAMS THAT YOU TALKED ABOUT A LITTLE BIT EARLIER,
4 CORRECT?

5 A YES, THEY DID. 12:38PM

6 Q AND YOU MENTIONED THAT YOU'RE NOT A TRADER,
7 RIGHT?

8 A THAT'S RIGHT.

9 Q NOT A PORTFOLIO MANAGER?

10 A THAT'S RIGHT. 12:38PM

11 Q AND YOU DIDN'T MAKE ACTUAL BUY AND SELL
12 DECISIONS ON BEHALF OF CLIENTS, CORRECT?

13 A THAT'S CORRECT.

14 Q AND BEFORE HE WAS TERMINATED IT WAS
15 MR. GUNDLACH THAT PRIMARILY MADE THOSE DECISIONS FOR
16 THE M.B.S. GROUP, ISN'T THAT RIGHT? 12:38PM

17 A YES, HE WAS THE PRIMARY DECISION MAKER.

18 Q THERE WOULD HAVE BEEN OTHER DECISIONS MAKERS
19 LIKE PHIL BARACH, RIGHT?

20 A YES. 12:38PM

21 Q JOEL DAMIANI?

22 A YES.

23 Q OTHER PEOPLE WHO LEFT TCW FOR DOUBLELINE,
24 RIGHT?

25 A YES. 12:38PM

26 Q NOW, ON OCCASION, YOU WOULD HAVE DISCUSSIONS
27 WITH MR. GUNDLACH ABOUT DATA OR ANALYSIS THAT HE WANTED
28 TO SEE, RIGHT?

1 A ON VERY FEW OCCASIONS, YES.

2 Q WELL, DO YOU RECALL HAVING A DISCUSSION ABOUT
3 MR. GUNDLACH WHERE HE MADE CERTAIN REQUESTS FOR
4 INFORMATION DEVELOPMENT, THAT YOU WERE WORKING ON AND
5 YOU REMEMBERED IN GENERAL THAT YOU TALKED TO HIM
6 CLARIFYING EXACTLY WHAT IT IS THAT HE WANTED TO SEE?

12:39PM

7 A YES.

8 Q AND OTHER PEOPLE WOULD MAKE REQUESTS AS WELL
9 FOR INFORMATION THEY WOULD WANT TO SEE, RIGHT?

12:39PM

10 A YES.

11 Q AND YOU WOULD THEN, ALONG WITH THE PEOPLE ON
12 YOUR TEAM TRY TO DEVELOP A WAY TO PRESENT THAT
13 INFORMATION FOR THEIR REVIEW, RIGHT?

14 A YEAH -- YES, AMONG OTHER THINGS.

15 Q AND THE TRADERS WOULD HAVE DIFFERENT
16 PREFERENCES ABOUT HOW THEY WOULD WANT TO LOOK AT
17 INFORMATION, ISN'T THAT RIGHT?

12:39PM

18 A YES, THEY DID.

19 Q AND IT'S FAIR TO SAY THAT PART OF YOUR JOB IS
20 TO BECOME FAMILIAR WITH THE PREFERENCES OF TRADERS SO
21 YOU GIVE THEM WHAT THEY'RE LOOKING FOR, RIGHT?

12:39PM

22 A YES, THAT'S PART OF THE JOB.

23 Q AND TO ADAPT THE SYSTEMS TO INCORPORATE THOSE
24 PREFERENCES, RIGHT?

25 A YES.

12:40PM

26 Q THE MARKETS, THEY'RE ALWAYS CHANGING AREN'T
27 THEY, SIR?

28 A YES, THEY ARE.

1 Q AND SO SUPPOSE PEOPLE ARE ALWAYS COMING UP
2 WITH NEW IDEAS WHAT THEY WANT TO SEE OR WHAT KIND OF
3 ANALYSIS THEY WANT TO PERFORM, ISN'T THAT RIGHT?

4 A YES, THAT'S CORRECT.

5 Q AND YOUR JOB IS TO HELP COME UP WITH WAYS TO
6 PROVIDE DATA FOR THOSE NEW IDEAS, RIGHT?

12:40PM

7 A YES. THAT'S PART OF THE JOB, YES.

8 Q IF A TRADER MOVES TO A NEW COMPANY, THEN
9 SERVICING THE TECHNOLOGY NEEDS FOR THEIR IDEAS OR THEIR
10 NEW IDEAS BECOME SOMEONE ELSE'S CONCERN, RIGHT?

12:40PM

11 A MOST OFTEN, YES.

12 Q NOW, YOU WERE ASKED SOME QUESTIONS ABOUT THESE
13 BINDERS OF TRADE TICKETS. DO YOU RECALL THOSE
14 QUESTIONS?

15 A YES, I DO.

12:40PM

16 Q I THINK YOU TALKED A LITTLE BIT ABOUT THIS,
17 BUT WHEN TCW DOES A TRADE, THERE'S SOMEBODY ON THE
18 OTHER SIDE OF THAT TRADE, RIGHT?

19 A YES, THERE IS.

20 Q AND THE FACT THAT THE SECURITY IS FOR SALE IS
21 BROADCAST TO PEOPLE WHO MAY BE INTERESTED IN PURCHASING
22 THAT SECURITY, CORRECT?

12:41PM

23 A YES, IT IS COMMUNICATED.

24 Q THAT'S THROUGH THIS SO-CALLED BWIC PROCESS WE
25 HEARD ABOUT, RIGHT?

12:41PM

26 A YES, THROUGH THE BWIC PROCESS WHERE THE LISTS
27 ARE SENT OUT, YES.

28 Q AND THE DEALER WILL SEND OUT A LIST OF BONDS

1 FOR WHICH ITS ACCEPTING BIDS, RIGHT?

2 A YES.

3 Q AND TYPICALLY THERE WOULD BE A RESERVE LEVEL,
4 IN OTHER WORDS, IF YOU DON'T BID SO MUCH I'M NOT GOING
5 TO SELL THE BOND; IS THAT RIGHT?

12:41PM

6 A I'M NOT FAMILIAR WITH THAT PART OF THE
7 PROCESS.

8 Q OKAY.

9 WELL, LET ME ASK YOU: IT'S SOMEWHAT
10 LIKE AN AUCTION ISN'T THAT RIGHT, THE SALE OF A BOND?

12:41PM

11 A YES, THERE'S SIMILARITIES. YES.

12 Q LITTLE BIT LIKE EBAY? IS THAT FAIR?

13 A I MAY NOT COMPARE IT TO EBAY, BUT YES, THERE'S
14 SIMILARITIES.

15 Q AND THE TRADE TICKET LIKE YOU TALKED ABOUT IS
16 A PAPER RECORD OF THE TRADE, RIGHT? ALONG WITH SOME
17 OTHER INFORMATION THAT YOU TALKED ABOUT, RIGHT?

12:42PM

18 A YES, THAT'S CORRECT.

19 Q AND LET'S JUST TAKE THESE NOTEBOOKS HERE, YOU
20 HAVE NO IDEA WHATSOEVER WHETHER OR NOT THOSE NOTEBOOKS
21 EVER LEFT TCW'S OFFICES, DO YOU? -- WELL THEY'RE HERE
22 LET ME SAY?

12:42PM

23 A I SEE THEM HERE.

24 Q THAT WAS A VERY BAD QUESTION. LET ME START
25 OVER.

12:42PM

26 THOSE CAME FROM TCW'S OFFICES, RIGHT?

27 A YES, THEY DID.

28 Q YOU BROUGHT THEM HERE --

1 TO YOUR KNOWLEDGE, THOSE BINDERS EVER
2 LEAVE TCW OFFICES BEFORE THEY WERE BROUGHT HERE TO
3 COURT TODAY?

4 A I HAVE NO KNOWLEDGE OF THEM LEAVING, NO.

5 Q NOW, YOU TALKED ABOUT A NUMBER OF DIFFERENT
6 SYSTEMS ON YOUR DIRECT EXAMINATION.

12:43PM

7 AND I WANT, IF I CAN, TO KIND OF DIVIDE
8 THE WORLD AT LEAST AS MR. QUINN DID IN HIS OPENING, IN
9 TERMS OF TYPES OF INFORMATION.

10 SO THERE IS ANALYTIC SYSTEMS THAT WAS
11 FOR EXAMPLE THE IRA SYSTEM YOU TALKED ABOUT, RIGHT?

12:43PM

12 A YES.

13 Q AND THEN THERE ARE VARIOUS CLIENT TYPE DATA
14 BASIS THAT HAVE HOLDING INFORMATION, CLIENT CONTACT
15 INFORMATION, INFORMATION ABOUT THE PORTFOLIOS OF
16 PARTICULAR CLIENTS AND THE LIKE, RIGHT?

12:43PM

17 A WE USUALLY CALL THOSE PORTFOLIO MANAGEMENT
18 PLATFORMS -- CLIENT PLATFORMS.

19 Q THE PORTFOLIO MANAGEMENT THING, THOSE WOULD
20 HAVE THIS CLIENT INFORMATION IN THEM, YES?

12:43PM

21 A YES, TYPICALLY.

22 Q THAT WOULD BE THE AIMS SYSTEM THAT YOU TALKED
23 ABOUT, RIGHT?

24 A AIMS IS ONE, YES.

25 Q AND M.B.S. DATA BASE WOULD BE ANOTHER ONE,
26 RIGHT?

12:44PM

27 A YES.

28 Q NOW, TCW DOESN'T KEEP CLIENT HOLDING SECRETS

1 FROM ITS CLIENTS, DOES IT?

2 A TCW REVIEWS THE CLIENT HOLDINGS WITH THE
3 INDIVIDUAL CLIENTS, YES.

4 Q WELL, LET ME JUST SAY, IF I INVEST MY MONEY
5 WITH TCW, DO I GET AN ACCOUNT STATEMENT THAT TELLS ME
6 WHERE YOU'VE PUT MY MONEY? 12:44PM

7 A YES, YOU DO.

8 Q SO I KNOW WHAT MY HOLDINGS ARE, RIGHT?

9 A YES, YOU DO.

10 Q AND THAT WOULD BE IF I HAD A SEPARATE ACCOUNT,
11 RIGHT? 12:44PM

12 A YES.

13 Q AND IF I INVESTED IN A POOLED VEHICLE LIKE A
14 MUTUAL FUND, TCW PUBLISHES THE HOLDINGS OF THE MUTUAL
15 FUND, DOES IT NOT? 12:44PM

16 A I -- I'M ONLY AWARE OF PUBLISHING LIKE TOP TEN
17 HOLDINGS. I'M NOT FAMILIAR WITH PUBLISHING ALL
18 HOLDINGS.

19 Q HAVE YOU EVER REVIEWED TCW ANNUAL REPORTS?

20 A NO, I HAVE NOT. 12:45PM

21 Q SO YOU DON'T KNOW WHETHER OR NOT THOSE ANNUAL
22 REPORTS SAY, FOR EXAMPLE, FOR THE TOTAL RETURN BOND
23 FUND, WOULD LIST ALL THE HOLDINGS, THE SECURITIES AND
24 THE PARTICULAR AMOUNTS OF THEM.

25 YOU HAVE NO IDEA REGARDING THAT; IS THAT
26 RIGHT? 12:45PM

27 A THAT'S RIGHT.

28 Q SO WHEN YOU SAID ON DIRECT EXAMINATION THAT

1 THIS KIND OF HOLDINGS INFORMATION WAS NOT KNOWN TO
2 ANYONE OUTSIDE TCW, I THINK I GOT THAT QUOTE CORRECT,
3 THAT WASN'T RIGHT, WAS IT, SIR?

4 MR. QUINN: VAGUE AND AMBIGUOUS. AS TO THE
5 REFERENCE.

12:45PM

6 THE COURT: OVERRULED.

7 THE WITNESS: I BELIEVE I WAS REFERRING TO THE
8 SEPARATE ACCOUNT INFORMATION.

9 BY MR. WEINGART:

10 Q SO A CLIENT OUTSIDE OF TCW DOES NOT KNOW WHAT
11 THEIR HOLDINGS ARE, IS THAT WHAT YOU'RE SAYING?

12:45PM

12 A NO, SIR. I'M SAYING THAT THE CLIENT DOES KNOW
13 WHAT THEIR HOLDINGS ARE. BUT THE COMPILATION OF ALL
14 THE HOLDINGS INFORMATION OF ALL THE CLIENTS IS NOT
15 KNOWN OUTSIDE OF TCW.

12:45PM

16 Q I UNDERSTAND.

17 SO ONE CLIENT'S NOT GOING TO KNOW WHAT
18 ANOTHER CLIENT'S HOLDINGS IS; THAT'S WHAT YOU'RE TRYING
19 TO SAY?

20 A EXACTLY.

12:46PM

21 Q NOW TCW WILL ALSO ANSWER QUESTIONS FROM
22 CLIENTS WHO WANT TO KNOW WHAT THEIR HOLDINGS ARE,
23 RIGHT?

24 A YES.

25 Q AND IF A CLIENT WANTS SOMEONE ELSE TO MANAGE
26 THEIR MONEY, THEY CAN ASK THAT ANOTHER MANAGER -- TO
27 LOOK AT THEIR HOLDINGS AND PROVIDE INFORMATION TO THEM
28 ABOUT WHETHER OR NOT THIS IS AN APPROPRIATE STRATEGY

12:46PM

1 AND THEY GOT THE RIGHT MIX OF INVESTMENTS, RIGHT?

2 A I'M NOT FAMILIAR WITH THAT PROCESS, BUT IT
3 SOUNDS REASONABLE.

4 Q NOW, YOU TESTIFIED REGARDING CERTAIN CONTACT
5 DATA BASIS THAT TCW MAINTAINS, RIGHT?

12:46PM

6 A YES.

7 Q AND I THINK YOU DESCRIBE SOME OF THE
8 INFORMATION THAT WAS IN THAT. THAT WOULD BE CLIENT
9 NAME, E-MAIL ADDRESS, PHONE, FOR EXAMPLE, RIGHT?

10 A YES.

12:46PM

11 Q YOU SAID IT DID NOT CONTAIN SOCIAL SECURITY
12 NUMBERS, RIGHT?

13 A I DIDN'T SEE SOCIAL SECURITY NUMBERS, BUT
14 IT -- YOU KNOW, IT MAY BE THEY WERE IN THERE. I JUST
15 DIDN'T SEE THEM.

12:47PM

16 Q YOU DON'T HAVE ANY KNOWLEDGE AS YOU SIT THERE,
17 THAT THEY WERE IN THERE, RIGHT?

18 A THAT'S RIGHT.

19 Q AND WITH REGARD TO A TAX I.D. NUMBER THAT
20 WOULD BE THE I.D. NUMBER FOR AN ENTITY, RIGHT, NOT FOR
21 A PERSON?

12:47PM

22 A TYPICALLY, YES.

23 Q AND YOU WOULD AGREE, AND I THINK YOU TALKED
24 ABOUT IT A LITTLE BIT ON YOUR DIRECT, THAT TCW'S MAJOR
25 CLIENTS INCLUDE PENSION FUNDS, FOR EXAMPLE?

12:47PM

26 A YES.

27 Q COLLEGE ENDOWMENTS OR RELIGIOUS INSTITUTIONS?

28 A YES.

1 Q FOUNDATIONS?

2 A YES.

3 Q AND THE MOST DESIRABLE CLIENTS ARE THE ONES
4 THAT HAVE THE BIGGEST AMOUNT OF MONEY TO INVEST,
5 TYPICALLY, AREN'T THEY?

12:47PM

6 A TYPICALLY, YES.

7 Q AND ARE YOU FAMILIAR WITH SOMETHING CALLED THE
8 S&P MONEY MARKET DIRECTORY?

9 A I'M NOT PERSONALLY FAMILIAR WITH IT.

10 Q ARE YOU FAMILIAR WITH THE FACT THAT THE
11 CONTACT -- CONTACT INFORMATION FOR LARGE INSTITUTIONAL
12 INVESTORS IS AVAILABLE FOR PURCHASE?

12:47PM

13 A I'M CERTAIN THAT IT IS, YES.

14 Q SO THE FACT THAT CERTAIN LARGE INSTITUTIONS IN
15 THEIR CONTACT INFORMATION -- THAT'S NOT SECRET TO TCW
16 THE INFORMATION ITSELF, RIGHT? YOU'RE NOT THE ONLY ONE
17 WHO KNOWS, WHO MANAGES MONEY FOR THE FORD FOUNDATION,
18 RIGHT?

12:48PM

19 A AGAIN ON AN INDIVIDUAL BASIS YOU'RE CORRECT.
20 BUT WHEN IT COMES TO THE COMPILATION OF THOUSANDS OF
21 OUR RECORDS OVER THE WHOLE HISTORY, I WOULDN'T AGREE.

12:48PM

22 Q DO YOU KNOW WHETHER OR NOT IF I BOUGHT THE S&P
23 MONEY MARKET DIRECTORY IT WOULD IN FACT HAVE THOUSANDS
24 OF NAMES OF INSTITUTIONAL INVESTORS AND THEIR CONTACT
25 INFORMATION, DO YOU KNOW?

12:48PM

26 A I'M CERTAIN IT WOULD. BUT PROBABLY NOT TCW'S
27 SPECIFIC ENTIRE CLIENT LIST.

28 Q I UNDERSTAND. THAT'S NOT REALLY MY QUESTION.

1 MY QUESTION IS: THE CONTACT INFORMATION
2 FOR LARGE INSTITUTIONAL INVESTORS, IS AVAILABLE OUT IN
3 THE MARKET PLACE, ISN'T THAT RIGHT?

4 A YES, IT IS.

5 Q AND CLIENT CONTACT IS NOT REALLY A ONE-WAY
6 STREET, RIGHT, IT'S NOT THE MANAGER WHO ALWAYS CONTACTS
7 THE CLIENT; CLIENTS CAN CONTACT THE MANAGER, RIGHT?

12:48PM

8 A YES, THAT'S TRUE. YES.

9 Q AND CLIENTS MAY REACH OUT BECAUSE A MANAGER
10 HAS, SAY, OUT-PERFORMED OTHERS IN THE MARKET PLACE AND
11 WANTS THAT PERSON TO INVEST THEIR MONEY, RIGHT?

12:49PM

12 A YES. THAT'S RIGHT.

13 Q OR BECAUSE A CLIENT HAS A LONG TERM BUSINESS
14 RELATIONSHIP WITH THE MANAGER, AN INDIVIDUAL, RIGHT?

15 A CERTAINLY, YES.

12:49PM

16 Q NOW, LET ME -- WE TALKED A LITTLE BIT ABOUT
17 HOLDINGS, TALKED A LITTLE BIT ABOUT CONTACT
18 INFORMATION.

19 I WANT TO TALK NOW ABOUT THE IRA SYSTEM
20 THE BWIC BROWSER AND THE SECURITY ANALYZER, OKAY?

12:49PM

21 A YES.

22 Q YOU MENTIONED BEFORE BUT BWIC STANDS FOR BID
23 WANTED IN COMPETITION, RIGHT?

24 A BIDS WANTED IN COMPETITION, YES.

25 Q THAT'S A COMMON TERM IN THE INDUSTRY, CORRECT?

12:49PM

26 A YES, IT IS.

27 Q IT'S NOT A TCW PROPRIETARY TERM, BWIC, RIGHT?

28 A NO, IT'S NOT.

1 Q AND THE LIST THAT ARE PUT OUT OF BIDS -- BY
2 BID BASICALLY IT MEANS, AGAIN, SORT OF THE AUCTION
3 CONCEPT, RIGHT? I'M WILLING TO SELL THIS, WHAT ARE MY
4 BIDS BY ALL THESE VARIOUS PEOPLE ON A COMPETITIVE BASIS
5 RIGHT?

12:50PM

6 A THAT'S RIGHT. YES.

7 Q SO ANYBODY WHO WANTS TO BUY BONDS NEEDS SOME
8 WAY TO SORT THROUGH THOSE BWIC'S, DON'T THEY?

9 A I WOULD ASSUME SO, YES.

10 Q AND TCW DOESN'T HAVE THE ONLY SYSTEM OUT THERE
11 TO SORT THROUGH BWIC'S, DOES IT?

12:50PM

12 A IT HAS THE ONLY SYSTEM THAT WE CREATED FOR OUR
13 OWN USE, YES.

14 Q I UNDERSTAND THAT.

15 YOU HAVE YOUR SYSTEM, RIGHT?

12:50PM

16 A YES, THAT'S RIGHT.

17 Q AND OTHER PEOPLE HAVE THEIR SYSTEM, RIGHT?

18 A YES.

19 Q AND VENDORS HAVE SYSTEMS THAT YOU CAN BUY,
20 RIGHT?

12:50PM

21 A THAT'S TRUE, YES.

22 Q AND THEY ALL FILTER AND SORT BWIC'S, RIGHT?

23 A THEY DO SHARE THAT FUNCTIONALITY.

24 Q SO, THE NOTION THAT YOU CAME UP WITH SOMETHING
25 TO FILTER AND SORT BWIC'S, THAT'S NOT SPECIAL TO TCW,
26 IS IT? OTHER PEOPLE BUYING IN THE INDUSTRY HAVE
27 SIMILAR THINGS, CORRECT?

12:51PM

28 A CERTAINLY NOT THAT SPECIFIC FUNCTION.

1 Q YOU'RE FAMILIAR WITH THE COMPANY CALLED
2 BLOOMBERG, RIGHT?

3 A YES.

4 Q TELL US WHAT BLOOMBERG IS?

5 A WELL BLOOMBERG IS USED ON THE MAJORITY OF
6 TRADING DESKS IN THE UNITED STATES. TO SHARE MARKET
7 INFORMATION. IT ALSO HAS TRADING TOOLS AND TRADING
8 SYSTEMS.

12:51PM

9 AND INFORMATION ABOUT BONDS AND STOCKS
10 ISSUERS, ET CETERA, ABOUT THE INDUSTRY.

12:51PM

11 Q SO FOR A PARTICULAR BOND, THERE'S A FAIR
12 AMOUNT OF INFORMATION THAT'S AVAILABLE THROUGH
13 BLOOMBERG ABOUT THAT BOND; ISN'T THAT RIGHT?

14 A YES.

15 Q AND ONE OF THE FEATURES THAT BLOOMBERG HAS, IS
16 A WAY TO FILTER AND SORT BWIC'S THAT COME IN, ISN'T
17 THAT RIGHT?

12:51PM

18 A YES, IT DOES.

19 Q IT'S CALLED I MANAGER?

20 A YES, IMGR.

12:52PM

21 Q YES. THAT IS SOMETHING THEN IF I WANT TO
22 PRIORITIZE WHICH BONDS I WANT TO LOOK AT, I COULD USE
23 THIS BLOOMBERG FUNCTION TO DO IT, RIGHT?

24 A YES.

25 Q IF I DON'T LIKE THE WAY BLOOMBERG DOES IT, I
26 CAN BUILD SOMETHING TO CUSTOMIZE IT TO MY OWN
27 PARTICULAR PREFERENCES, RIGHT?

12:52PM

28 A YES.

1 Q IN FACT, LET'S PUT BLOOMBERG ASIDE; THERE ARE
2 OTHER PEOPLE THAT WILL PUT TOGETHER BWIC LISTS FOR YOU,
3 RIGHT? FOR EXAMPLE RBC, IF YOU WERE TO CONTACT THEM
4 THEY'LL SEND YOU A LIST. OUT OF THAT YOU CAN SORT ALL
5 BONDS AVAILABLE ON A PARTICULAR DAY, WOULDN'T THEY?

12:52PM

6 A I BELIEVE SO, YES.

7 Q LET ME JUST STICK WITH THE BWIC HERE FOR A
8 MINUTE.

9 YOU MENTIONED ON YOUR DIRECT EXAMINATION
10 FROM TIME TO TIME PARTICIPATE IN DISCUSSIONS WITH
11 PERSPECTIVE CLIENTS, RIGHT?

12:53PM

12 A THAT'S RIGHT.

13 Q AND YOU MENTIONED THAT MR. SANTA ANA WOULD
14 ALSO PARTICIPATE IN THOSE MEETINGS, RIGHT?

15 A YES.

12:53PM

16 Q AND MR. SHINOTA (PH) WOULD SOMETIMES
17 PARTICIPATE IN THOSE MEETINGS; IS THAT RIGHT?

18 A YES.

19 Q DO YOU STILL HAVE EXHIBIT 284 IN FRONT OF YOU?

20 A YES, I DO.

12:53PM

21 Q GIVE ME ONE MINUTE TO CATCH UP WITH YOU HERE.

22 THIS WAS -- CAN YOU PUT THE FIRST PAGE
23 OF THAT UP. IT'S IN EVIDENCE. THIS IS ONE OF THE
24 PRESENTATIONS THAT YOU GAVE AN EXAMPLE OF. ONE THAT
25 YOU GAVE TO CLIENTS REGARDING HOW THE M.B.S. INVESTMENT
26 TECHNOLOGY WORKS, RIGHT?

12:53PM

27 A YES.

28 Q AND THIS WOULD BE SOMETHING THAT YOU WOULD

1 SHOW TO PERSPECTIVE CLIENTS, RIGHT?

2 A YEAH, THEY WERE SOME OF THE RECIPIENTS. WE
3 ALSO SPOKE WITH CLIENTS AND OTHER INDIVIDUALS AS WELL.

4 Q AND YOU'D USE THIS TO WALK-THROUGH WITH
5 CLIENTS AND PERSPECTIVE CLIENTS, WHAT YOUR SYSTEMS DID,
6 RIGHT? 12:54PM

7 A YES.

8 Q BECAUSE WHEN CLIENTS WOULD BE, FOR EXAMPLE,
9 DOING DUE DILIGENCE, THEY WOULD WANT TO KNOW THAT YOU
10 KNEW WHAT YOU WERE DO, RIGHT? 12:54PM

11 A YES.

12 Q YOU WOULD WANT THEM TO BE ABLE TO TELL PEOPLE
13 BACK AT THEIR HOME OFFICE, THESE GUYS KNOW WHAT THEY'RE
14 DOING, RIGHT?

15 A YES. 12:54PM

16 Q SO THEY WOULD GIVE MONEY TO YOU?

17 A YES.

18 Q NOW, YOU WOULD SHOW THEM AS PART OF THIS
19 PRESENTATION, SCREEN SHOTS OF WHAT THE BWIC BROWSER
20 LOOKED LIKE, WOULDN'T YOU? 12:54PM

21 A YES.

22 Q CAN WE TURN TO PAGE 2846.

23 THAT'S A SCREEN SHOT OF THE BWIC
24 BROWSER, RIGHT?

25 A YES, IT IS. 12:55PM

26 Q YOU WOULD SHOW THAT TO CLIENTS, PERSPECTIVE
27 CLIENTS, AND THEY COULD SEE IT, RIGHT?

28 A I -- YES, THAT'S A VERY LIMITED VIEW INTO IT,

1 YES.

2 Q WELL, YOU SHOWED THEM THAT PAGE, DIDN'T YOU?

3 A YES, WE DID.

4 Q AND, IN FACT, AFTER YOU SHOWED THEM THE PAGE,
5 TYPICALLY, YOU WOULD THEN TAKE HIM OUT TO THE TRADING
6 FLOOR SO THE TRADERS COULD SHOW THEM THE SYSTEMS IN
7 ACTION, RIGHT?

12:55PM

8 A YES, THAT'S RIGHT. THEY GOT TO SEE SOME
9 LIMITED CAPABILITIES OF THE SYSTEMS.

10 Q YOU WOULD -- THEY -- A TRADER WOULD WALK
11 THROUGH, HERE IS HOW WE USE THIS SYSTEM.

12:55PM

12 HERE IS THE KIND OF INFORMATION WE GET
13 FROM IT. HERE ARE THE KIND OF DECISIONS WE MAKE. SO
14 PEOPLE WOULD FEEL COMFORTABLE THAT YOU GUYS WERE THE
15 RIGHT GUYS TO GIVE THEIR MONEY TO, RIGHT?

12:55PM

16 A WE CERTAINLY DID. WE JUST DIDN'T SHOW THEM
17 THE PROCESS BEHIND IT.

18 Q WELL, YOU DIDN'T HAND THEM THE SOURCE CODE,
19 RIGHT?

20 A NO, WE DIDN'T TAKE THEM THROUGH THE DATA BASE
21 ROUTINES. WE WALK THROUGH ALL THE CALCULATIONS.

12:56PM

22 Q I UNDERSTAND THAT. YOU WOULD SHOW THE SCREEN
23 SHOT AND THE INFORMATION THAT WAS PRESENTED, RIGHT?

24 A CERTAINLY, YES.

25 Q THAT'S THE SAME KIND OF INFORMATION THAT'S
26 PRESENTED ON OTHER BWIC TYPE SYSTEMS, ISN'T IT?

12:56PM

27 A THERE ARE SIMILARITIES, BUT THEY DIDN'T HAVE
28 THE ADJUSTED STATISTICS THAT WE USED.

1 Q SO ARE YOU SAYING, FOR EXAMPLE, AN ADJUSTED
2 LTD., THAT WAS SOMETHING THAT YOU HAD THAT OTHER PEOPLE
3 DIDN'T HAVE?

4 A I WOULD SAY SOMETHING THAT WE DEVELOPED. AND
5 OTHER PEOPLE MAY OR MAY NOT HAVE HAD SIMILAR
6 STATISTICS.

12:56PM

7 Q YOU CAN GET ADJUSTED TV ON BLOOMBERG CAN'T
8 YOU, SIR?

9 A YES, YOU CAN. BUT MAYBE NOT ADJUSTED PER THE
10 -- PER THE SAME WAYS WE ADJUSTED IT.

12:56PM

11 Q I UNDERSTAND.

12 LET'S GO ONTO 2848. YOU ALSO SHOW ON
13 THE SCREEN SHOT, THIS IS A SCREEN SHOT WHAT THE
14 SECURITY ANALYZER LOOKS LIKE, RIGHT?

15 A YES.

12:57PM

16 Q SAME THING. YOU WOULD SHOW THEM THE VARIOUS
17 FIELDS OF DATA, THAT YOU ALL LOOKED AT AND CONSIDERED,
18 CORRECT?

19 A THAT WERE --

20 Q THAT WERE PRESENTED BY THE SYSTEM?

12:57PM

21 A YES, THIS IS ONE OF THE VIEWS OF THAT DATA,
22 YES.

23 Q NOW, CAN WE SCROLL UP A LITTLE BIT. AND SEE
24 THE BOTTOM OF THAT?

25 IT SAYS "ATTORNEYS EYES ONLY" ON IT
26 THERE. DO YOU SEE THAT?

12:57PM

27 A YES.

28 Q THAT LABEL WASN'T ON THE DOCUMENT WHEN YOU

1 USED IT TO MEET WITH CLIENTS, WAS IT?

2 A NO.

3 Q YOU DIDN'T TELL CLIENTS WE CAN'T TALK TO YOU
4 ABOUT THIS. WE CAN ONLY TALK TO YOUR ATTORNEYS ABOUT
5 IT, RIGHT?

12:57PM

6 A NO.

7 Q THAT'S SOMETHING THAT GOT PUT ON THIS DOCUMENT
8 FOR THE PURPOSES OF THIS CASE, RIGHT?

9 A THAT'S CORRECT.

10 Q NOW, YOU DIDN'T -- LET'S GO BACK TO THE FIRST
11 PAGE, IF WE COULD.

12:57PM

12 YOU TALKED A LITTLE BIT ABOUT THE BOX.
13 IT SAYS: CONFIDENTIAL MATERIAL NOT FOR DISTRIBUTION.

14 A YES.

15 Q NOW, IS IT YOUR TESTIMONY THAT THESE DECS WERE
16 NEVER PROVIDED TO CLIENTS?

12:58PM

17 A OUR INTENT WAS THAT THEY NOT BE DISTRIBUTED.

18 Q THAT'S WASN'T MY QUESTION. MY QUESTION IS
19 THESE DECS WERE NEVER PROVIDED TO CLIENTS?

20 A WE DID PROVIDE A REDACTED VERSION TO CLIENTS.

12:58PM

21 Q YOU WOULD REDACT OUT THE INFORMATION AND SOME
22 OF THE FIELDS -- IN SOME OF THE FIELDS, RIGHT?

23 A YES.

24 Q YOU COULD SEE WHAT THE FIELDS WERE, RIGHT?

25 A NO. WHEN WE REDACTED THEM WHAT WE DID IS WE
26 PUT LIKE A SQUARE OVER THE FIELDS THEMSELVES. SO THAT
27 ALL YOU COULD SEE WAS A GENERAL DESCRIPTION OF THAT
28 PANE OF THE WINDOW.

12:58PM

1 Q OKAY.

2 THAT'S YOUR TESTIMONY THAT IN TERMS OF
3 ANY MEETING THAT YOU WERE AT, NO CLIENT WAS EVER
4 ALLOWED TO LEAVE WITH ONE THAT WAS UNREDACTED, IS THAT
5 YOUR TESTIMONY?

12:59PM

6 A MY TESTIMONY IS WE REQUESTED THAT THE
7 PRESENTATIONS BE RETRIEVED. I CAN'T SAY FOR CERTAIN
8 WHETHER SOMEBODY IGNORED OUR REQUEST OR SOMEHOW MADE
9 OFF WITH A COPY.

12:59PM

10 BUT THAT WAS OUR REQUEST.

11 Q WHAT IF A CLIENT SAYS I REALLY REALLY NEED TO
12 SHOW THIS TO THE PEOPLE BACK, YOU KNOW, IF I'M GOING TO
13 INVEST WITH YOU THEY'VE GOT TO SEE IT.

14 YOU NEVER LET THEM LEAVE WITH IT?

15 A THAT'S NOT A DECISION I WOULD HAVE MADE. IT
16 WOULD HAVE BEEN SOMEBODY ELSE ON THE TEAM TO MAKE THAT
17 DECISION.

12:59PM

18 Q YOU DON'T REALLY KNOW, RIGHT?

19 A I DON'T REALLY KNOW.

20 Q SO LET'S GO TO THE CONFIDENTIAL MATERIAL, NOT
21 FOR DISTRIBUTION.

12:59PM

22 WHEN PERSPECTIVE CLIENTS CAME IN, THEY
23 DIDN'T HAVE TO SIGN ANY CONFIDENTIALITY AGREEMENT, DID
24 THEY?

25 A MY UNDERSTANDING IT'S UP TO THE MARKETING REP
26 AND THE CLIENT WHO KNOWS THE CLIENT RELATIONSHIP. BUT
27 I'M NOT SPECIFICALLY AWARE OF WHETHER OR NOT THEY DID
28 OR NOT.

12:59PM

1 Q LET ME ASK YOU: WERE YOU EVER IN A MEETING
2 WHERE PEOPLE SAY WHOA, WHOA, WHOA, CAN'T BRING THAT DEC
3 OUT YET LET'S GET THE CONFIDENTIALITY AGREEMENT SIGNED.

4 THAT DIDN'T HAPPEN?

5 A NOT DURING THE COURSE OF A MEETING. 01:00PM

6 Q YOU DIDN'T KNOW IF THERE WAS NON-DISCLOSURE
7 AGREEMENT THAT PEOPLE HAD TO SIGN? IN FACT, THEY
8 DIDN'T HAVE TO SIGN ONE RIGHT BEFORE THEY WERE GIVEN
9 THIS PRESENTATION?

10 A I'M NOT AWARE OF ONE. 01:00PM

11 Q PEOPLE WERE FREE TO THEN GO TALK ABOUT WHAT IT
12 IS THEY HAD SEEN, WERE THEY NOT?

13 A CERTAINLY, YES.

14 Q CAN WE GO BACK TO 2848. THIS IS THE SECURITY
15 ANALYZER. THIS IS THE MAIN SCREEN, IS THAT RIGHT? 01:00PM

16 A YES, THIS IS ONE OF THE SCREENS IN SECURITY
17 ANALYZER.

18 Q I WANT TO TALK ABOUT THE LANGUAGE UP ON THE
19 TOP THERE. SECURITY ANALYZER PRESENTS DATA FROM
20 MULTIPLE SOURCES TO FACILITATE INVESTMENT DECISIONS. 01:00PM

21 DO YOU SEE THAT?

22 A YES.

23 Q THAT'S AN ACCURATE DESCRIPTION, IS IT NOT?

24 A YES, IT IS.

25 Q LET'S TALK ABOUT THE FIRST PART OF THAT,
26 SECURITY ANALYZER. PRESENTS DATA FOR MULTIPLE SOURCES. 01:01PM

27 THOSE SOURCES INCLUDE BLOOMBERG, RIGHT?

28 A YES.

1 Q THEY INCLUDE SOMETHING CALLED IN TEXT?

2 A YES.

3 Q AND IN TEXT IS ANOTHER COMPANY FROM WHICH YOU
4 CAN BUY DATA, RIGHT?

5 A YES, IT IS.

01:01PM

6 Q THIS PRESENTS THAT DATA THAT YOU BOUGHT FROM
7 IN TEXT, RIGHT?

8 A YES.

9 Q AND IT ALSO PRESENTS INFORMATION THAT YOU
10 PURCHASED FROM A COMPANY CALLED LOAN PERFORMANCE,
11 RIGHT?

01:01PM

12 A YES, FIRST AMERICAN LOAN PERFORMANCE.

13 Q LOAN PERFORMANCE IS A RECORD OF ALL THE
14 INDIVIDUAL DATA OF ALL THE LOANS BASICALLY THAT ARE OUT
15 THERE WITHIN YOU KNOW THE LAST HOWEVER MANY YEARS,
16 RIGHT?

01:01PM

17 A YES.

18 Q AND SO WHEN YOU WERE TALKING ABOUT THESE 20
19 MILLION RECORDS OR SO, THAT'S -- THAT'S DATA THAT YOU
20 PURCHASED THAT MAY HAVE NORMALIZED IT OR DONE OTHER
21 SORTS OF THINGS WITH IT, BUT THAT'S DATA YOU BOUGHT
22 SOMEONE, RIGHT --

01:02PM

23 A YES IT IS.

24 Q -- THAN DATA YOU HAD SOMEBODY CREATE AND
25 DEVELOP YOURSELF, RIGHT?

01:02PM

26 A THE LOAN DATA ITSELF, WAS PURCHASED.

27 Q NOW, THERE'S ALSO SOME OTHER SOURCES FROM WHOM
28 YOU BUY DATA, CORRECT?

1 A YES.

2 Q AND IF WE LOOK AT THESE VARIOUS SCREENS. CAN
3 WE BLOW UP THE ONE THAT SAYS PRE-PAY LOSSES.

4 IT'S AT THE BOTTOM OF THE CENTER COME
5 COLUMN THERE.

01:02PM

6 THIS IS ONE OF THE ASPECTS OF SECURITY
7 ANALYZER IS SAYS LPDBG, IN TEXT, RIGHT?

8 A YES.

9 Q LP WOULD BE THE DATA FROM LOAN PERFORMANCE
10 THAT WAS PURCHASED, RIGHT?

01:03PM

11 A NO.

12 NO, THAT INDICATES THE SOURCE OF THE
13 UNDERLYING LOANS. BUT THE STATISTIC ITSELF WAS
14 CALCULATED IN OUR PRODUCT.

15 Q OKAY.

01:03PM

16 BLOOMBERG CALCULATES CPR AND CDR RATES,
17 DOES IT NOT?

18 A YES, IT DOES.

19 Q AND IN TEXT?

20 A YES.

01:03PM

21 Q NOW, YOU TALKED A LOT ABOUT THESE ALGORITHMS.
22 YOU SAID THEY WERE 100 -- SOME OF THEM, RIGHT?

23 A YEAH AROUND 100, 120.

24 Q JUST SO WE'RE CLEAR, SOME OF THOSE WOULD
25 INVOLVE THINGS LIKE AVERAGING NUMBERS, RIGHT?

01:03PM

26 A SOME WOULD INCLUDE AVERAGING OF NUMBERS.

27 Q SOME INCLUDE THINGS LIKE WAITED AVERAGE OF
28 NUMBERS, RIGHT?

1 A YES.

2 Q YOU TALKED FOR EXAMPLE ABOUT DURATION SCALING.
3 THAT'S A COMMON FORMULA IN THE INDUSTRY, ISN'T IT,
4 CALCULATING DURATION?

5 A WELL, DURATION IS A COMMON FORMULA IN THE
6 INDUSTRY, BUT I'M UNAWARE OF IN SCALING IT THE WAY WE
7 DID.

01:04PM

8 Q OTHER PEOPLE DO SCALE IT, THOUGH, DO THEY NOT?

9 A I HAVE NO KNOWLEDGE OF THAT.

10 Q YOU DON'T KNOW ONE WAY OR THE OTHER WHETHER
11 SOMEBODY AT GOLDMAN SACHS OR MERRILL LYNCH OR OTHER
12 SOPHISTICATED INSTITUTIONS MANAGED TO FIGURE THAT OUT,
13 TOO RIGHT?

01:04PM

14 A I WOULD EXPECT THEY HAVE THEIR OWN METHODOLOGY
15 FOR SCALING.

01:04PM

16 Q NOW, ONE OF THE THINGS THAT YOU SAID I THINK,
17 ABOUT THE DATA THAT YOU DEVELOPED WAS YOU NEEDED TO
18 FIND A WAY TO I THINK THE TERM WAS MAP THE LOANS ONTO
19 THE BONDS?

20 A YES.

01:04PM

21 Q RIGHT.

22 SO THAT WOULD MEAN IF THERE ARE A
23 THOUSAND LOANS, IN SOME PARTICULAR SECURITY, YOU GOT TO
24 FIGURE OUT WHICH OF THE THOUSAND LOANS THAT GO WITH
25 THAT SECURITY, RIGHT?

01:04PM

26 A THAT'S CORRECT.

27 Q THAT WAS SOMETHING THAT YOU ALL SPENT A LOT OF
28 TIME -- LOT OF TIME AND EFFORT DOING, RIGHT?

1 A YES, WE DID.

2 Q AND THERE ARE VENDORS OUT THERE NOW, ARE THERE
3 NOT, THAT PROVIDE THAT SERVICE?

4 A YES, THERE ARE.

5 Q ONE OF THEM CALLED DICHIARA, RIGHT? 01:05PM

6 A YES.

7 Q YOU ALL DON'T DO BUSINESS WITH DICHIARA,
8 RIGHT.

9 A NO.

10 Q YOU DON'T KNOW IF DOUBLELINE DOES, RIGHT? 01:05PM

11 A I DON'T KNOW.

12 Q COULD WE GO BACK TO THE TOP OF THAT SCREEN?

13 FULL PAGE. WE TALKED ABOUT THE SECURITY ANALYZER
14 PRESENTS DATA FOR MULTIPLE SOURCES TO FACILITATE
15 INVESTMENT DECISIONS AND TALKED ABOUT THE SECOND PART
16 OF THAT, TO FACILITATE INVESTMENT DECISIONS. 01:05PM

17 THE SECURITY ANALYZER DOES NOT MAKE THE
18 TRADING DECISION, RIGHT?

19 A THAT'S CORRECT.

20 Q IT PRESENTS DATA TO A TRADER WHO THEN DECIDES
21 WHAT TO DO, RIGHT? 01:05PM

22 A YES, THAT'S CORRECT.

23 Q IT DOESN'T TELL YOU BUY THIS SECURITY AT THIS
24 PRICE, RIGHT?

25 A THAT'S RIGHT. 01:06PM

26 Q SO, AS YOU SAID THERE, THE INVESTMENT
27 DECISION, THE TRADER, NEEDS TO ANALYZE AND INTERPRET
28 THIS INFORMATION, RIGHT?

1 A YES.

2 Q AND IF YOU DON'T HAVE A GOOD TRADER MAKING A
3 GOOD DECISION, THIS DATA IS NOT GOING TO BE THAT
4 HELPFUL, RIGHT?

5 A THAT'S TRUE, YES.

01:06PM

6 Q IT'S NOT GOING TO DO ME ANY GOOD, FOR EXAMPLE,
7 RIGHT?

8 A THAT'S RIGHT.

9 Q NOW, DO YOU HAVE 1036 IN FRONT OF YOU?

10 A YES.

01:07PM

11 Q THAT'S THIS PRESENTATION ABOUT M.B.S.
12 INVESTMENT PROCESS AND CAPABILITIES THAT YOU WERE ASKED
13 ABOUT, RIGHT?

14 A YES.

15 Q COULD WE PUT THAT UP.

01:07PM

16 THIS IS A DESCRIPTION AS IT SAYS OF
17 M.B.S. PROCESS AND CAPABILITIES, RIGHT?

18 A YES.

19 Q AS YOU MENTIONED, THIS LANGUAGE IS LARGELY THE
20 SAME AS IN THE TCW DOCUMENT THAT YOU WERE SHOWN BY
21 MR. QUINN, RIGHT?

01:07PM

22 A YES, IT IS.

23 Q NOW, LET'S JUST START ECONOMIC DISCUSSION,
24 THAT FIRST BOX THERE?

25 A YES.

01:07PM

26 Q DAILY ECONOMIC DISCUSSION AT THE TRADING DESK
27 LEAD BY JEFFREY GUNDLACH AND TALKING ABOUT INTEREST
28 RATES, YIELD CURVE, SPREADS, CREDIT AND THE GENERAL

1 ANALYSIS OF THE MARKET.

2 DO YOU SEE THAT?

3 A YES.

4 Q LET'S TAKE OUT JEFFREY GUNDLACH FROM THAT.
5 BUT YOU WOULD AGREE WITH ME THAT IF YOU RUN AN M.B.S.
6 TRADING DESK, YOU'RE GOING TO HAVE DAILY DISCUSSIONS
7 LEAD BY THE PERSON RUNNING THAT DESK ABOUT MARKET
8 CONDITIONS, RIGHT?

01:08PM

9 A YES, THAT'S A GOOD PRACTICE.

10 Q AND YOU'RE ALSO GOING TO HAVE A RESEARCH TEAM
11 THAT'S GOING TO CONTRIBUTE BY GIVING YOU VARIOUS DATA,
12 RIGHT?

01:08PM

13 A YES, THAT'S ALSO A GOOD IDEA.

14 Q AND YOU'RE GOING TO HAVE PORTFOLIO MANAGERS
15 THAT ARE GOING TO PROVIDE INPUT ON SUBSECTOR ANALYSIS?

01:08PM

16 A YES.

17 Q LET'S GO TO INVESTMENT OUTLOOK.

18 IF YOU'RE RUNNING A TRADING DESK NO
19 MATTER WHERE YOU ARE YOU'RE GOING TO EVALUATE MARKET
20 TRENDS AND PORTFOLIO ANALYTICS, AREN'T YOU?

01:08PM

21 A YES.

22 Q AND YOU'RE GOING TO REAFFIRM WHERE AREAS OF
23 OPPORTUNITY ARE, RIGHT?

24 A YES.

25 Q AND YOU'RE GOING TO LOOK AT ASSET ALLOCATION.
26 SORT OF HARD TO SEE. BUT THE NEXT ONE DOWN THERE.

01:08PM

27 IN OTHER WORDS, HOW MUCH SHOULD I HAVE
28 IN THIS SECURITY VERSUS THAT SECURITY VERSUS THIS

1 SECURITY, RIGHT?

2 A YEAH, IT'S POSSIBLE.

3 Q AND YOU'RE GOING TO HAVE A TEAM BASE DECISION
4 BY THE PEOPLE ON THE DESK ABOUT WHAT TO DO BASED ON
5 WHAT IT IS THAT THEY SEE, RIGHT?

01:09PM

6 A YES.

7 Q NOW, LET'S GO TO IMPLEMENTATION.

8 WHICH TO BE HONEST MY COPY IS COMPLETELY
9 ILLEGIBLE HERE.

01:09PM

10 BUT YOU WOULD THEN NO MATTER WHERE ON A
11 TRADING DESK YOU WERE, IMPLEMENT YOUR PLAN, WOULD YOU
12 NOT? YOUR TRADING PLAN?

13 A YES, THAT'S REASONABLE.

14 Q THIS IS A PRETTY GENERIC DESCRIPTION, IS IT
15 NOT, OF HOW A TRADING DESK OPERATES?

01:09PM

16 A I HAVEN'T SEEN ANY OTHER MATERIALS THAT ARE
17 WORD FOR WORD THE SAME AS OURS.

18 Q THAT WASN'T MY QUESTION, SIR.

19 MY QUESTION WAS: THIS IS A FAIRLY
20 GENERIC DESCRIPTION OF HOW A TRADING DESK AT A MAJOR
21 FINANCIAL INSTITUTION OPERATES, IS IT NOT?

01:10PM

22 MR. QUINN: VAGUE AND AMBIGUOUS.

23 THE COURT: I'LL SUSTAIN IT.

24 I MEAN I THINK IT GOES TO WHETHER HE HAS
25 ANY PERSONAL KNOWLEDGE OF ANY OF THAT.

01:10PM

26 BY MR. WEINGART:

27 Q LET ME ASK YOU, DO YOU KNOW?

28 A I DON'T KNOW WHETHER ANYONE ELSE'S DESCRIBE

1 THEIR PROCESS IN EXACTLY THE SAME WAY.

2 Q SO YOU DON'T KNOW HOW OTHER TRADING DESKS
3 WORK, HOW THEY MAKE DECISIONS, WHAT TECHNOLOGY THEY
4 LOOK AT OR ANYTHING LIKE THAT; IS THAT RIGHT?

5 A THAT'S RIGHT.

01:10PM

6 Q LET ME JUST SWITCH TOPICS HERE.

7 YOU WERE ASKED SOME QUESTION ABOUT
8 VERSION CONTROL?

9 A YES.

10 Q THAT'S SOMETHING I THINK YOU SAID YOU DID KNOW
11 ABOUT?

01:10PM

12 A YES.

13 Q LISTED AS THE MBN PROCESS -- LET ME ASK YOU
14 ABOUT THAT --

15 MR. QUINN: OBJECT AND MOVE TO STRIKE THE
16 PREAMBLE, YOUR HONOR.

01:11PM

17 THE COURT: I'LL STRIKE IT.

18 BY MR. WEINGART:

19 Q YOU WERE NOT SHOWN ANY POLICY REGARDING USE OF
20 VERSION CONTROL DURING YOUR DIRECT EXAMINATION, RIGHT?

01:11PM

21 A THAT'S CORRECT.

22 Q IS THAT BECAUSE THERE IS NO WRITTEN POLICY
23 REGARDING VERSION CONTROL?

24 A I'M NOT AWARE OF A WRITTEN CORPORATE POLICY
25 INVOLVING VERSION CONTROL.

01:11PM

26 Q SO THERE WAS NO POLICY ON WHEN YOU NEEDED TO
27 CHECK IN CODE AT TCW, RIGHT?

28 A THERE IS AN IT POLICY.

1 Q WELL, LET ME JUST ASK: IS THERE A WRITTEN
2 POLICY OR IS THERE NOT A WRITTEN POLICY?

3 A THERE'S NO POLICY THAT ALL EMPLOYEES ARE
4 REQUIRED TO SIGN WITHIN IT.

5 Q AND ISN'T IT A FACT THAT THE PEOPLE THAT
6 WORKED FOR YOU WOULD CHECK IN CODE WHEN THEY HAD
7 COMPLETED IT AND IT WAS FUNCTIONAL AS OPPOSED TO
8 CHECKING IT IN, SAY, FOR EXAMPLE, EVERY DAY AS THEY
9 WERE WORKING ON IT TRYING TO SOLVE A PROBLEM, ISN'T
10 THAT RIGHT?

01:11PM

01:12PM

11 A YES, THAT'S TRUE.

12 Q NOW, YOU WERE ASKED ABOUT A QUESTION THAT
13 YOU OVERHEARD FROM MR. GUNDLACH ABOUT HIS
14 DISAPPOINTMENT WITH MR. STERN'S APPOINTMENT AS CEO, DO
15 YOU REMEMBER THAT?

01:12PM

16 A YES.

17 Q AND YOU TESTIFIED ABOUT THAT. MY QUESTION'S A
18 LITTLE DIFFERENT. WHICH IS, AFTER THAT CONVERSATION,
19 WHICH I THINK YOU SAID -- IF I REMEMBER CORRECTLY --
20 WAS IN JUNE?

01:12PM

21 A I BELIEVE IT WAS IN THE JUNE WHEN MR. STERN
22 WAS ANNOUNCED AS THE INTERIM CEO.

23 Q AFTER THAT YOU DID NOT OVERHEAR ANY OTHER
24 CONVERSATIONS WHERE MR. GUNDLACH WAS COMPLAINING ABOUT
25 MR. STERN; ISN'T THAT RIGHT?

01:12PM

26 A NOT THAT I RECALL.

27 Q DO YOU HAVE EXHIBIT 1956?

28 A YES.

1 Q IF WE COULD PUT THAT UP.

2 THIS IS THE SPREADSHEET THAT YOU
3 TESTIFIED MR. SANTA ANA ASKED YOU TO PREPARE; IS THAT
4 RIGHT?

5 A YES. 01:14PM

6 Q AND I THINK YOU MENTIONED THAT YOU HAD A
7 CONVERSATION WITH MR. SANTA ANA IN SEPTEMBER OR OCTOBER
8 ABOUT HYPOTHETICALLY IF THE GROUP WAS TO LEAVE WHETHER
9 OR NOT YOU WOULD GO WITH THEM; IS THAT RIGHT?

10 A YES. 01:14PM

11 Q YOU SAID YOU WERE 90 PERCENT SURE YOU WOULD GO
12 WITH THEM; ISN'T THAT RIGHT?

13 A THAT'S RIGHT.

14 Q THERE WERE A LOT OF RUMORS SWIRLING AROUND
15 WERE THERE NOT ABOUT WHETHER OR NOT PEOPLE WERE GOING
16 TO BE LEAVING OR NOT LEAVING, RIGHT? 01:14PM

17 A YES.

18 Q IT WAS AFTER YOU TOLD MR. SANTA ANA THAT YOU
19 WERE 90 PERCENT SURE THAT YOU WOULD GO WITH THEM THAT
20 YOU PREPARED THIS CHART, ISN'T THAT RIGHT? 01:14PM

21 A YES, IT IS.

22 Q LET'S LOOK AT -- CAN WE GO TO THE NEXT PAGE.
23 CAN YOU BLOW THAT UP?

24 LET'S TALK ABOUT THE VARIOUS TECHNOLOGY
25 COSTS THAT ARE HERE. IS IT FAIR TO SAY THAT THEY
26 BASICALLY FALL INTO TWO CAMPS OF DATA AND HARDWARE? 01:14PM

27 A YES, THAT'S GENERALLY THE BREAKDOWN.

28 Q LET'S TALK ABOUT DATA. THAT WOULD INCLUDE

1 THINGS LIKE SUBSCRIBING TO BLOOMBERG, RIGHT?

2 A YES.

3 Q AND I ASSUME IF I CALL IT, BLOOMBERG, THEY'RE
4 GOING TO TELL ME HOW MUCH IT COSTS TO SUBSCRIBE?

5 A YES.

01:15PM

6 Q THEY'RE NOT GOING TO KEEP THAT SECRET FROM ME,
7 RIGHT?

8 A THEY MAY KEEP OTHER CLIENTS' AGREEMENTS
9 SECRET, BUT NOT YOURS.

10 Q SIMILARLY, IF I CALL UP IN TEXT OR LET'S SAY
11 CHARLES RIVER, YOU KNOW, FOR EXAMPLE, THAT'S ANOTHER
12 THIRD PARTY PROVIDER, IS IT NOT?

01:15PM

13 A YES, THAT'S RIGHT.

14 Q IF I CALL THEM UP, THEY'LL TELL ME HOW MUCH IT
15 COSTS TO LICENSE THEIR MATERIAL, RIGHT?

01:15PM

16 A THEY'LL GIVE YOU THEIR STANDARD, BUT NOT,
17 PERHAPS NOT THE NEGOTIATED AGREEMENT.

18 Q WELL, IT'S LIKE ANYTHING ELSE, RIGHT? THEY'RE
19 GOING TO GIVE YOU A PRICE, THEN YOU'RE GOING TO
20 NEGOTIATE TO SEE IF YOU CAN DO BETTER, RIGHT?

01:15PM

21 A YES.

22 Q AND I TAKE IT THE HARDWARE, I ASSUME IF I WANT
23 TO KNOW HOW MUCH IT COSTS TO BUY A SERVER OR SOME OTHER
24 SORT OF THING, I CAN GO TO THE INTERNET AND LOOK THAT
25 UP, CAN I NOT?

01:16PM

26 A YES.

27 Q NOW, IN SEPTEMBER 2009 YOU WERE AN OFFICER OF
28 TCW; IS THAT RIGHT?

1 A YES, I WAS.

2 Q AND I THINK WE TOUCHED ON THIS A LITTLE BIT
3 BEFORE, BUT IN SEPTEMBER OF '09 THERE WAS A PRETTY HIGH
4 LEVEL OF ANXIETY ABOUT THE FUTURE OF M.B.S. GROUP,
5 RIGHT?

01:16PM

6 A YES, AMONG MY TEAM THERE WAS. YEAH.

7 Q AND AS A RESULT PEOPLE WERE TOSSING AROUND,
8 YOU KNOW, DIFFERENT IDEAS ABOUT BASICALLY WHAT THEY
9 WOULD DO DEPENDING ON WHAT HAPPENED, RIGHT?

01:17PM

10 MR. QUINN: VAGUE AND AMBIGUOUS. AS TO WHO.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES, THERE WERE DISCUSSIONS.

13 BY MR. WEINGART:

14 Q AND YOU PARTICIPATED IN SOME OF THOSE
15 DISCUSSIONS, DIDN'T YOU?

01:17PM

16 A I PARTICIPATED IN A COUPLE, YES.

17 Q AND IN FACT, YOU PARTICIPATED IN SOME
18 DISCUSSIONS ABOUT WHETHER OR NOT BUYING A DOMAIN NAME
19 FOR SOMETHING CALLED INVESTMENT TECHNOLOGY.COM, RIGHT?

20 A YES, THAT WAS NOT RELATED TO THOSE DISCUSSIONS
21 THOUGH.

01:17PM

22 Q IT WASN'T RELATED TO TCW BUSINESS, WAS IT?

23 A WELL, I WAS TRYING TO UNDERSTAND THE PRICING
24 OF DOMAIN NAMES.

25 Q THAT WASN'T MY QUESTION. MY QUESTION WAS: IT
26 WASN'T RELATED TO TCW BUSINESS, WAS IT?

01:17PM

27 A IT WASN'T -- THERE WAS NO BUSINESS STRATEGY
28 RELATED TO THAT DOMAIN NAME AT THAT POINT.

1 Q YOU DIDN'T THINK YOU WERE BEING DISLOYAL TO
2 TCW WHEN YOU EXPLORED THAT, DID YOU?

3 A NO.

4 Q NOW, YOU WORKED IN MR. GUNDLACH'S GROUP FOR A
5 NUMBER OF YEARS, RIGHT?

01:18PM

6 A YES.

7 Q AND YOU HAD AN OPPORTUNITY TO OBSERVE HIM?

8 A YES.

9 Q OPPORTUNITY TO INTERACT WITH HIM?

10 A ON OCCASION, YES.

01:18PM

11 Q AND YOU NEVER OBSERVED HIM DOING ANYTHING
12 WHILE YOU WERE WORKING WITH HIM THAT MADE YOU THINK HE
13 WAS UNFIT TO DO HIS JOB, RIGHT?

14 A NO, I DIDN'T.

15 Q YOU NEVER WITNESSED HIM DIRECTING ANY ILLEGAL
16 DOWNLOADING FOR EXAMPLE RIGHT?

01:18PM

17 A THAT'S RIGHT.

18 Q YOU WERE YOU NOT ASKED TO PARTICIPATE IN
19 SOMETHING CALLED PROJECT G?

20 A NO.

01:18PM

21 Q PRIOR TO DECEMBER 4TH, 2009, HAD YOU EVER EVEN
22 HEARD OF SOMETHING CALLED PROJECT G?

23 A NO, NOT THAT I RECALL.

24 Q IF ANYONE IN SENIOR TCW MANAGEMENT INFORMED
25 YOU IN THE FALL OF 2009 SUSPICIONS THEY HAD ABOUT
26 IMPROPER COPYING OF INFORMATION --

01:18PM

27 A NO.

28 Q -- WERE YOU ASKED TO CHANGE THE PASSWORDS OF

1 ANYONE AT MR. GUNDLACH'S GROUP?

2 A NO.

3 Q WERE YOU ASKED TO RESTRICT ACCESS --

4 A NO.

5 Q -- INTO THE SYSTEMS?

01:19PM

6 A NO.

7 Q WERE YOU ASKED TO CHANGE THEIR KEY CARDS AND
8 NOT LET THEM INTO THE BUILDING?

9 A NO.

10 Q NOW, YOU'VE WORKED AT TCW FOR MORE THAN 15
11 YEARS, DO I HAVE THAT RIGHT?

01:19PM

12 A YES.

13 Q AND YOU HAVEN'T WORKED ANYWHERE ELSE; IS THAT
14 RIGHT?

15 A NOT IN MY -- NOT SINCE COLLEGE, NO.

01:19PM

16 Q PROFESSIONALLY?

17 A YES.

18 Q AND DID ANYONE AT TCW TELL YOU IN AUGUST THAT
19 THEY WERE ASSESSING WHETHER OR NOT YOU WERE A FLIGHT
20 RISK TO JOIN MR. GUNDLACH IF HE WAS FIRED?

01:19PM

21 A NO.

22 Q DID ANYONE AFTER AUGUST 27TH TELL YOU THAT TCW
23 ASSESSED YOUR FLIGHT RISK AS QUOTE, UNQUOTE "LOW"?

24 A NO.

25 Q DID ANYONE TELL YOU TCW PLANNED TO GIVE YOU A
26 MODERATE FINANCIAL INCENTIVE TO TIE YOU UP FOR A FEW
27 YEARS?

01:19PM

28 A NO.

1 Q BY TIE UP I MEAN NOT TO AGREE TO COMPETE
2 AGAINST TCW, DO YOU UNDERSTAND THAT?

3 A YES.

4 Q NOW, WHEN MR. GUNDLACH WAS TERMINATED YOU
5 DIDN'T LEAVE TCW, RIGHT?

01:20PM

6 A I DID NOT.

7 Q AND IN FACT, YOU WERE OFFERED A MODERATE
8 FINANCIAL INCENTIVE TO STAY, RIGHT?

9 A YES.

10 Q AND AS PART OF THAT YOU SIGNED A NON-COMPETE
11 PROVISION AS PART OF YOUR NEW AGREEMENT, DID YOU NOT?

01:20PM

12 A I DON'T RECALL IF THAT WAS PART OF THE
13 PROVISION.

14 Q YOU JUST DON'T RECALL ONE WAY OR THE OTHER?

15 A I DON'T RECALL. IT WAS A COMPENSATION
16 AGREEMENT.

01:20PM

17 MR. WEINGART: YOUR HONOR, MAY I HAVE JUST ONE
18 MOMENT?

19 THE COURT: YES, YOU MAY.

20 (PAUSE) +

01:20PM

21

22 MR. WEINGART: JUST A COUPLE MORE QUESTIONS.

23 Q THE BINDERS THAT ARE OVER THERE, THEY HAVE
24 SOME VARIOUS LABELS THAT WERE ON THEM. WERE THOSE
25 LABELS ON THEM IN THE ORDINARY COURSE OF BUSINESS?

01:21PM

26 A I THINK THERE'S SOME ADDITIONAL IDENTIFYING
27 LABELS THAT HAVE BEEN ADDED.

28 Q OKAY.

1 SO FOR EXAMPLE, WHERE IT SAYS
2 CONFIDENTIAL, THAT WOULD BE SOMETHING THAT WOULD HAVE
3 BEEN ADDED?

4 DO YOU WANT ME TO GIVE YOU AN EXAMPLE?

5 A I'D LIKE TO SEE THE BINDER. 01:21PM

6 MR. WEINGART: MAY I APPROACH, YOUR HONOR.

7 THE COURT: SURE.

8 BY MR. WEINGART:

9 Q I'LL DIRECT YOUR ATTENTION TO THE SPINE AND
10 THEN TO THE BOTTOM OF ONE OF THE PAGES. 01:22PM

11 A YES, THESE LABELS HAVE BEEN ADDED.

12 Q THE SAME WITH THE SIDE OF THE BINDER; IS THAT
13 RIGHT?

14 A YES.

15 Q AM I CORRECT, I THINK YOU TESTIFIED ON YOUR
16 DIRECT, YOU LOOKED AT SOME OF THESE BUT NOT ALL OF
17 THEM? 01:22PM

18 A YES. I DIDN'T GO THROUGH ALL THE BINDERS.

19 Q OKAY. SO DO YOU HAVE ANY IDEA WHETHER OR NOT
20 THIS IS A COMPLETE OR INCOMPLETE COLLECTION? 01:22PM

21 A I DON'T KNOW IF IT'S COMPLETE.

22 MR. WEINGART: I HAVE NOTHING FURTHER, YOUR
23 HONOR.

24 THE COURT: REDIRECT?

25 THANK YOU, MR. WEINGART. 01:22PM

26 REDIRECT, MR. QUINN?

27 MR. QUINN: YES, YOUR HONOR.

28 ///

REDIRECT EXAMINATION +

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BY MR. QUINN:

Q MR. WEINGART POINTED OUT, THERE WERE LABELS ADDED, DURING THE COURSE OF THE LITIGATION, "ATTORNEYS' EYES ONLY"?

01:22PM

A YES.

Q YOU'RE AWARE BOTH SIDES ALSO STAMPED SOME DOCUMENTS CONFIDENTIAL, AS WELL, AS PART OF THE EXCHANGE?

01:23PM

A YES.

Q YOU WERE OFFERED A POSITION AT DOUBLELINE?

A YES, I WAS.

Q AND YOU DECIDED NOT TO TAKE IT?

A YES.

01:23PM

Q YOU WERE ASKED ABOUT THAT CONVERSATION WHEREIN MR. SANTA ANA ASKED YOU, IF THE GROUP WERE TO LEAVE, WOULD YOU COME WITH THE GROUP, AND I THINK YOU SAID, WELL, I'M 90 PERCENT SURE I WOULD.

A YES.

01:23PM

Q AND WHEN WAS IT THAT HE ASKED YOU THAT QUESTION?

A I BELIEVE IT WAS IN SEPTEMBER TIME FRAME.

Q NOW, WHEN HE ASKED YOU ABOUT THE COST FOR MBS TECHNOLOGY AND THE SUBSCRIPTIONS, THAT EXHIBIT 1956, DID YOU MAKE A CONNECTION IN YOUR MIND AT THE TIME THAT, GEE, HE ASKED ME, IF THE GROUP WOULD LEAVE, WOULD I GO WITH THEM -- DID YOU MAKE A CONNECTION THAT HE WAS

01:23PM

1 ASKING YOU FOR THIS INFORMATION FOR A NEW BUSINESS?

2 A NO, I DIDN'T.

3 Q AND AGAIN, WOULD YOU HAVE PROVIDED IT TO HIM,
4 IF YOU THOUGHT THAT'S WHAT IT WAS FOR?

5 A NO.

01:24PM

6 Q YOU WERE ASKED QUESTIONS ABOUT THE MAPPING
7 LOANS TO BONDS.

8 AND I TAKE IT THAT'S -- I'M TRYING TO
9 FIGURE OUT, WHAT LOANS RELATE TO WHAT BONDS?

10 A YES.

01:24PM

11 Q IS THAT BASICALLY THE IDEA?

12 A YES, IT IS.

13 Q NOW, YOU WERE ASKED QUESTIONS ABOUT, ARE THERE
14 OTHER SERVICES OUT THERE THAT CAN DO THIS, RIGHT?

15 A YES.

01:24PM

16 Q AND HAVE YOU EXPLORED AND TESTED SOME OF THOSE
17 OTHER SERVICES, TO SEE HOW WELL THEY DO IT?

18 A YES, I HAVE.

19 Q AND CAN YOU TELL US WHAT YOUR EXPERIENCE WAS
20 IN THAT REGARD?

01:24PM

21 A YES.

22 WE FREQUENTLY FOUND ISSUES WITH THE
23 OTHER -- PROVIDERS THAT WE LOOKED AT, WHERE LOAN DATA
24 WAS MISSING. NOT ENOUGH DEAL INFORMATION THAT
25 REPRESENTED THE GROUPING OF THESE POOLS OF LOANS WAS
26 AVAILABLE.

01:24PM

27 SO THAT'S EFFECTIVELY OUR FINDINGS,
28 DURING 2008, 2009.

1 Q SO IS THAT PART OF THE REASON WHY TCW
2 DEVELOPED ITS OWN IN-HOUSE TECHNOLOGY?

3 A YES, IT IS.

4 Q I MEAN, WERE YOU -- YOU WERE ASKED QUESTIONS
5 ABOUT, YOU KNOW, AFTER THIS, PEOPLE WOULD BE SHOWN THE
6 PRESENTATIONS, EXHIBITS 216 AND 284 -- I'M SORRY, 260.

01:25PM

7 WERE YOU ASKED QUESTIONS ABOUT, GEE, YOU
8 KNOW, PEOPLE, AFTER THEY SAW THESE PRESENTATIONS, YOU
9 MAY HAVE COLLECTED BACK THE PRESENTATIONS, BUT THEY
10 COULD STILL TALK ABOUT IT, WHAT YOU HAD SHOWN THEM.

01:25PM

11 DO YOU RECALL BEING ASKED ABOUT THAT?
12 DO YOU RECALL BEING ASKED ABOUT THAT?

13 A YES.

14 Q DID THAT TROUBLE YOU, THAT PEOPLE WOULD HAVE
15 SEEN IT, AND WOULD HAVE SOME ABILITY TO TALK ABOUT THE
16 PRESENTATION, THAT MAYBE YOU WERE DISCLOSING SOMETHING
17 CONFIDENTIAL IN GIVING SOMETHING AWAY?

01:26PM

18 A NO, I WASN'T TROUBLED BY THAT AT ALL.

19 IN FACT, I HOPED THAT THEY WOULD SHARE
20 THEIR EXPERIENCE IN THE PRESENTATION.

01:26PM

21 Q IN ANY WAY WHEREIN THAT PRESENTATION, IN THOSE
22 SCREEN SHOTS, DOES IT ACTUALLY SHOW THE SOURCE CODE FOR
23 LIKE THE BWIC BROWSER?

24 A NO.

25 Q OR FOR THE SECURITY ANALYZER?

01:26PM

26 A NO.

27 Q THEY DON'T SHOW THE KIND OF DECISION-MAKING
28 PATH THAT THE DEVELOPERS HAVE GONE THROUGH IN ORDER TO

1 ARRIVE AT THAT TECHNOLOGY?

2 A NO, THEY DON'T SHOW ANY OF THAT INFORMATION,
3 NOR -- IT DOESN'T GO INTO HOW WE MAPPED THE COLLATERAL.

4 AND WE, IN OUR OWN -- WE HAD OUR OWN
5 TABLE THAT WE MAINTAINED, AS WE FOUND ERRORS WITH THE
6 THIRD PARTIES FOR THOSE MAPPINGS.

01:26PM

7 Q NOW, COUNSEL ASKED YOU ABOUT THIS BLOOMBERG
8 SYSTEM, WHICH YOU KNOW, I MANAGER, WHICH YOU SAID
9 EXISTS OUT THERE. RIGHT?

10 A YES.

01:27PM

11 Q NOW, YOU TOLD US THAT MR. SANTA ANA TOLD YOU,
12 IN 2009, THAT THE TCW SYSTEM, HE THOUGHT WAS BETTER
13 THAN ANYTHING HE HAD SEEN. DO YOU RECALL THAT?

14 A YES, I DO.

15 Q HE THOUGHT IT GAVE TCW A BIG ADVANTAGE?

01:27PM

16 A YES.

17 Q WAS THE BLOOMBERG SYSTEM IN EXISTENCE THEN?

18 A I DON'T THINK IMGR CAME INTO BEING, CERTAINLY
19 NOT IN 2008. I DON'T KNOW IF THERE WAS A VERSION OF IT
20 IN 2009. CERTAINLY NOT WELL USED IN THAT PERIOD.

01:27PM

21 AND NOT AS MATURE AS OURS, NOT AS MATURE
22 AS OURS.

23 Q ARE YOU AWARE OF ANY INSTANCES WHERE YOU FOUND
24 OUT THE TCW'S BOND ANALYTICS WERE ACCURATE, AND IT
25 TURNED OUT THE BLOOMBERGS WERE NOT?

01:27PM

26 A YES.

27 Q COULD YOU TELL US A LITTLE BIT ABOUT THAT?

28 A YES.

1 IN A FEW CIRCUMSTANCES, WE FOUND THAT
2 BLOOMBERG HAD NOT FULLY MAPPED OUT THE LOANS TO THE
3 BONDS. AND IN FACT, I COME ACROSS THOUSANDS OF CASES
4 WHERE THE VALUES SHOWN ON THE BLOOMBERG SCREENS ARE NOT
5 A TRUE ROLL-UP OF THE UNDERLYING LOANS, AS WE COMPUTED
6 IT.

01:28PM

7 Q AND YOU WERE ALSO ASKED SOME QUESTIONS ABOUT
8 STANDARD & POOR'S, AND WHETHER THERE'S CONTACT
9 INFORMATION THAT'S AVAILABLE.

10 DO YOU RECALL THOSE QUESTIONS?

01:28PM

11 A YES.

12 Q AND YOU KNOW, CAN YOU GO TO STANDARD & POOR'S
13 AND LOOK UP WHAT THESE CLIENTS, HOW MUCH MONEY THEY'VE
14 INVESTED WITH TCW OVER THE YEARS?

15 A NOT THAT I'M AWARE OF.

01:28PM

16 Q OR WHAT THEY'VE OWNED, AND WHAT THEY SOLD, AND
17 WHAT THEIR HOLDINGS ARE?

18 A I'M NOT REALLY FAMILIAR WITH THOSE REPORTS,
19 BUT I CAN SAY THAT THAT'S NOT SOMETHING WE WOULD
20 TYPICALLY GIVE TO S & P.

01:28PM

21 Q ARE YOU AWARE OF ANY REPORTING SYSTEM OUT
22 THERE THAT HAS THAT TYPE OF INFORMATION WHICH WILL SET
23 FORTH WHAT THE CLIENT'S INVESTING HISTORY IS, WHAT
24 THEIR PREFERENCES ARE, WHAT THEIR STRATEGIES ARE, WHAT
25 THEY'VE DONE IN THE PAST, WHAT THEY'RE TRYING TO DO
26 NOW, HOW LONG THEY WILL GIVE MANAGE INVESTMENT MANAGERS
27 THEIR MONEY, THAT TYPE OF THING?

01:29PM

28 ARE YOU AWARE OF ANYWHERE WHERE THAT --

1 A CERTAINLY NOT. THAT'S INFORMATION WE'VE
2 ACCUMULATED OVER YEARS AT TCW.

3 Q WOULD IT HAVE BEEN CONSISTENT WITH TCW'S IT
4 POLICY ON REVISION CONTROL FOR A PROGRAMMER TO WORK
5 3-1/2 WEEKS ON CODE, WITHOUT, YOU KNOW, CHECKING THE
6 CODE WITH SOME TYPE OF REVISION CONTROL, OR MAINTAINING
7 SOME TYPE OF HISTORY?

01:29PM

8 A I'M SORRY. I MISSED THE FIRST PART OF THAT.

9 Q ALL RIGHT.

10 WOULD IT HAVE BEEN CONSISTENT WITH
11 IT'S -- TCW'S IT POLICY, FOR A PROGRAMMER TO HAVE
12 CHECKED OUT CODE, AND NOT MAINTAINED ANY TYPE OF
13 RECORD, HISTORICAL RECORD, ON THE CODE THEY WERE
14 CREATING, FOR 3-1/2 WEEKS?

01:29PM

15 A NOT LIKELY.

01:30PM

16 MR. QUINN: NOTHING FURTHER.

17 THANK YOU, YOUR HONOR.

18 THE COURT: ANY RECROSS?

19 MR. WEINGART: NO, YOUR HONOR.

20 THE COURT: THANK YOU FOR YOUR TESTIMONY,
21 MR. KALE.

01:30PM

22 YOU MAY STEP DOWN.

23 THE WITNESS: THANK YOU, YOUR HONOR.

24 MR. MADISON: TCW IS GOING TO CALL ONE OF THE
25 DEFENDANTS, JEFF MAYBERRY.

01:30PM

26 THE COURT: ALL RIGHT.

27 THE CLERK: RAISE YOUR RIGHT HAND.

28 ///

1 JEFFREY MAYBERRY +
2 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
3 TESTIFIED AS FOLLOWS:

4
5 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
6 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
7 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE
8 WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

9 THE WITNESS: I DO.

10 THE CLERK: STATE AND SPELL YOUR NAME FOR THE
11 RECORD.

01:31PM

12 THE WITNESS: JEFFREY MAYBERRY.
13 J-E-F-F-R-E-Y, M-A-Y-B-E-R-R-Y.

14 THE CLERK: THANK YOU.

15 THE COURT: GOOD AFTERNOON, MR. MAYBERRY.

01:31PM

16 THE WITNESS: GOOD AFTERNOON.

17 THE COURT: MR. MADISON, YOU MAY PROCEED.

18 MR. MADISON: MAY I APPROACH WITH A COUPLE
19 BINDERS FOR YOU, YOUR HONOR?

20 THE COURT: SURE.

01:31PM

21 MR. MADISON: ACTUALLY, ONE TO THE WITNESS AND
22 ONE TO MR. SABALBURO.

23 THE COURT: THAT'S FINE.

24

25 DIRECT EXAMINATION +

01:32PM

26

27 BY MR. MADISON:

28 Q MR. MAYBERRY, YOU ARE ONE OF THE INDIVIDUAL

1 DEFENDANTS IN THIS LAWSUIT, AREN'T YOU?

2 A YES.

3 Q AND YOU WORK AT DOUBLELINE WITH MR. GUNDLACH,
4 MR. SANTA ANA, MS. VAN EVERY AND OTHERS, RIGHT?

5 A THAT'S CORRECT.

01:32PM

6 Q WHAT IS YOUR CURRENT POSITION AT DOUBLELINE?

7 A I'M THE DIRECTOR OF MBS ANALYTICS.

8 MR. BRIAN: IF MAYBERRY CAN BRING THE MIKE
9 LITTLE BIT CLOSER, OR MOVE CLOSER.

10 THE WITNESS: OKAY.

01:32PM

11 MR. BRIAN: THANK YOU.

12 BY MR. MADISON:

13 Q YOU SAID YOU WERE DIRECTOR OF MBS ANALYTICS?

14 A THAT'S CORRECT.

15 Q WHAT ARE MBS ANALYTICS?

01:32PM

16 A YOU KNOW, IT'S MBS, AS WE'VE HEARD TODAY, IS A
17 MORTGAGE-BACKED SECURITIES. AND WE DO A LOT OF
18 PORTFOLIO ANALYSIS, SO THAT PORTFOLIO MANAGERS CAN
19 ANALYZE THE PORTFOLIOS AND MAKE GOOD INVESTMENT
20 DECISIONS.

01:32PM

21 Q YOU HAD ANOTHER TITLE AT DOUBLELINE BEFORE YOU
22 WERE THE HEAD OF MBS ANALYTICS, CORRECT?

23 A I BELIEVE SO, YES.

24 Q DO YOU RECALL WHAT THAT WAS?

25 A NOT SPECIFICALLY, NO.

01:33PM

26 Q SOMETHING TO DO WITH RISK MANAGEMENT, DIDN'T
27 IT?

28 A YES.

1 Q DO YOU RECALL THE TITLE?

2 A IT WAS JUST -- IT WAS JUST RISK MANAGEMENT
3 ANALYTICS.

4 Q NOW, PRIOR TO GOING TO WORK AT DOUBLELINE, YOU
5 WORKED AT TRUST COMPANY OF THE WEST, CORRECT?

01:33PM

6 A YES.

7 Q YOU STARTED WORKING AT TRUST COMPANY OF THE
8 WEST IN 2000; IS THAT RIGHT?

9 A THAT'S CORRECT.

10 Q YOU -- AT WHICH THE TIME YOU'D GOTTEN TO TCW,
11 YOU HAD BOTH UNDERGRADUATE DEGREE AND A MASTER'S
12 DEGREE, CORRECT?

01:33PM

13 A YES.

14 Q YOUR MASTER'S, IF I RECALL, WAS IN FINANCIAL
15 ENGINEERING?

01:33PM

16 A YEAH, FINANCIAL.

17 Q WHAT'S FINANCIAL ENGINEERING?

18 A IT'S FINANCE, BUT IT'S LIKE HIGHER LEVELS OF
19 MATH, SO IT'S NOT JUST -- IT'S CALCULUS AND -- THINGS
20 THAT, YOU KNOW, I NEVER USE ANYMORE BUT, YOU KNOW, GOT
21 ME A JOB; SO I WAS HAPPY TO HAVE IT.

01:33PM

22 Q YOUR UNDERGRADUATE DEGREE WAS IN ENGINEERING?

23 A YES.

24 Q YOU WORKED AT TCW FOR NINE YEARS?

25 A UH-HUH.

01:33PM

26 Q RIGHT?

27 A YES.

28 Q UNTIL DECEMBER 4TH, 2009?

1 A RIGHT.

2 Q AND I WANT TO ASK YOU SOME QUESTIONS ABOUT
3 DECEMBER 4TH, 2009.

4 ON THAT DAY, YOUR DIRECT SUPERIOR WAS
5 MR. SANTA ANA, CORRECT?

01:34PM

6 A THAT'S CORRECT.

7 Q ABOVE HIS WAS MR. GUNDLACH, RIGHT?

8 A YES.

9 Q YOU WORKED ON THE 16TH FLOOR, CORRECT?

10 A YEAH. YOU SHOWED A PICTURE OF THE TRADING
11 DESK, RIGHT.

01:34PM

12 Q YOU WERE SENIOR VICE PRESIDENT AT TCW?

13 A YES.

14 Q YOU WERE AN OFFICER OF TCW, RIGHT?

15 A YEP.

01:34PM

16 Q CORRECT?

17 AND DO YOU REMEMBER THAT AFTER THE
18 MARKETS CLOSED, AT 1:00 P.M. CALIFORNIA TIME, YOU WERE
19 ASKED TO STEP INTO A CONFERENCE ROOM TO HAVE A
20 CONVERSATION, WEREN'T YOU?

01:34PM

21 A I DON'T NECESSARILY KNOW ASK; BUT YES, I WAS
22 ESCORTED TO A CONFERENCE ROOM.

23 Q TCW ASKED YOU TO COME INTO A CONFERENCE ROOM
24 AND DISCUSS CERTAIN MATTERS WITH REPRESENTATIVES AT
25 TCW, RIGHT?

01:34PM

26 A THEY WERE -- THEY SAID, COME INTO THE --
27 THE COURT: SIR, WE WANT TO YOU ANSWER THE
28 QUESTIONS. IF YOU CAN ANSWER THEM YES OR NO, BECAUSE

1 WE'VE GOT AREAS HERE WE TALKED ABOUT OUTSIDE OF THE
2 PRESENCE OF THE JURY.

3 LADIES AND GENTLEMEN, LET ME TELL YOU,
4 THERE ARE CERTAIN RULES THAT I'M GOVERNED BY THAT
5 CONTROL EVIDENCE COMING IN AND OUT. WE'RE NOT TRYING
6 TO HIDE ANYTHING FROM YOU. NOBODY'S TRYING TO DO
7 ANYTHING. BUT I'VE MADE RULINGS ON CERTAIN ISSUES, AND
8 WE NEED TO ABIDE BY THOSE RULINGS.

01:35PM

9 IF WE KIND OF FOCUS OR LIMIT TESTIMONY
10 SOMETIMES, IT'S NOT DESIGNED TO KEEP ANYTHING FROM YOU
11 THAT YOU SHOULDN'T HAVE. BUT WE HAVE TO FOLLOW THE
12 RULES.

01:35PM

13 AND THAT -- ALONG THAT LINE, JUST TRY TO
14 ANSWER THE QUESTION.

15 THE WITNESS: OKAY. SORRY.

01:35PM

16 CAN YOU REPEAT THE QUESTION?

17 MR. MADISON: OF COURSE.

18 Q YOU WERE ASKED TO STEP INTO A CONFERENCE ROOM,
19 OR DIRECTED TO STEP INTO A CONFERENCE ROOM, AND HAVE A
20 DISCUSSION WITH REPRESENTATIVES OF TCW ABOUT CERTAIN
21 MATTERS, RIGHT?

01:35PM

22 A NO. THAT'S NOT TRUE.

23 Q WERE YOU ASKED TO DISCUSS CERTAIN MATTERS, OR
24 NOT?

25 A NO.

01:35PM

26 Q DID YOU END UP DISCUSSING CERTAIN MATTERS WITH
27 THE TCW REPRESENTATIVES?

28 A YES.

1 Q AND ONE OF THE MATTERS THAT YOU DISCUSSED WAS
2 WHETHER OR NOT YOU HAD BEEN DOWNLOADING INFORMATION FOR
3 SOME PURPOSE UNRELATED TO TCW BUSINESS, RIGHT?

4 A THAT'S CORRECT, YES.

5 Q AND YOU WERE TOLD IN THIS MEETING THAT YOU HAD
6 BEEN OBSERVED DOWNLOADING INFORMATION THAT VERY DAY,
7 RIGHT?

01:36PM

8 A YES.

9 Q AND YOU DENIED THAT YOU HAD DOWNLOADED
10 INFORMATION THAT DAY, FOR PURPOSES UNRELATED TO TCW
11 INFORMATION, DIDN'T YOU?

01:36PM

12 A THAT'S NOT HOW I REMEMBER IT.

13 Q SO YOU ADMITTED YOU HAD BEEN DOWNLOADING
14 INFORMATION THAT DAY, FOR PURPOSES UNRELATED TO TCW
15 BUSINESS?

01:36PM

16 A I BELIEVE SO.

17 Q YOU ADMITTED THAT YOU HAD BEEN DOWNLOADING
18 INFORMATION -- TCW INFORMATION, WE'RE TALKING ABOUT,
19 RIGHT?

20 A WELL, I -- HOW DO YOU DEFINE TCW INFORMATION?

01:36PM

21 Q I ASK YOU, SIR, WAS THE INFORMATION YOU WERE
22 DOWNLOADING, FROM THE INTERNET?

23 A SOME OF IT WAS, YES.

24 Q ANY OF THE INFORMATION RESIDENT IN TCW'S DATA
25 COMPILATIONS TO SERVE THEIR CLIENTS?

01:37PM

26 A WHAT -- WHAT DO YOU MEAN BY DATA COMPILATION?

27 Q YOU DON'T KNOW WHAT A DATA COMPILATION IS?

28 A I MEAN, A COMPILATION OF DATA. I MEAN, I

1 JUST -- YOU MEAN TCW'S DATA COMPILATION? I DON'T
2 UNDERSTAND WHAT YOU'RE -- WHAT YOU MEAN.

3 Q OKAY. LET ME ASK IT THIS WAY.

4 YOU REMEMBER THAT THAT MORNING, YOU HAD
5 USED A FLASH DRIVE TO DOWNLOAD INFORMATION OFF OF YOUR
6 TCW COMPUTER? LET'S DO IT THAT WAY.

01:37PM

7 A THAT'S CORRECT, YES.

8 Q AND WE SAW SOME CHATS -- YOU WERE IN COURT, I
9 BELIEVE, WHEN I WAS EXAMINING MS. CODY, BOTH LAST WEEK
10 AND THIS MORNING, WEREN'T YOU?

01:37PM

11 A YES, YES.

12 Q WE SAW SOME CHATS WHERE YOU WERE TELLING HER
13 YOU WERE GOING TO DO SOME DOWNLOADING AND TAKE YOUR
14 FLASH DRIVE DOWN TO THE CAR, RIGHT?

15 A CORRECT.

01:37PM

16 Q WELL, IN THIS MEETING THAT YOU HAD ON
17 DECEMBER 4TH, YOU ADMITTED THAT YOU HAD TWO FLASH
18 DRIVES THAT YOU USED TO DOWNLOAD INFORMATION, RIGHT?

19 A THAT'S CORRECT.

20 Q AND YOU AGREED TO GIVE TCW THE FLASH DRIVE
21 THAT YOU HAD BEEN USING THAT MORNING TO DOWNLOAD
22 INFORMATION, DIDN'T YOU?

01:38PM

23 A I DON'T REMEMBER WHAT --

24 Q DO YOU REMEMBER THAT ONE OF THE
25 REPRESENTATIVES ACTUALLY WALKED YOU DOWN TO YOUR CAR TO
26 GET THE FLASH DRIVE THAT YOU SAID WAS IN YOUR CAR, THAT
27 YOU HAD BEEN USING THAT MORNING?

01:38PM

28 A YES. SOMEONE ESCORTED ME TO MY CAR.

1 Q DO YOU REMEMBER, WHEN YOU GOT TO YOUR CAR,
2 WHAT HAPPENED?

3 MR. BRIAN: MAY THE WITNESS BE ALLOWED TO
4 FINISH THE ANSWER.

5 THE WITNESS: CAN YOU REPEAT THE QUESTION? 01:38PM

6 MR. MADISON: I'M SORRY, YOUR HONOR.

7 THE COURT: I THINK HE WAS SAYING HE WAS
8 ESCORTED DOWN TO HIS CAR.

9 MR. MADISON: I APOLOGIZE.

10 THE WITNESS: YES. 01:38PM

11 THE COURT: SLOW DOWN, EVERYBODY.

12 CAN EVERYBODY HEAR MR. MAYBERRY? MAKE
13 SURE YOU'RE SPEAKING RIGHT INTO THAT MICROPHONE, OR
14 PULL UP CLOSE TO IT.

15 GO AHEAD. 01:38PM

16 BY MR. MADISON:

17 Q SO YOU WERE ESCORTED DOWN TO YOUR CAR BY THE
18 TCW INVESTIGATOR, RIGHT?

19 A CORRECT.

20 Q AND YOU HAD TOLD HIM AND THE OTHERS, THAT IF 01:38PM
21 THEY CAME WITH YOU TO YOUR CAR, YOU WOULD GIVE THEM THE
22 FLASH DRIVE THAT YOU HAD USED THAT DAY TO DOWNLOAD TCW
23 INFORMATION, RIGHT?

24 A I DON'T REMEMBER WHAT I TOLD THEM.

25 Q WELL, DO YOU RECALL WHAT HAPPENED WHEN YOU GOT 01:39PM
26 TO YOUR CAR?

27 A I GAVE THE INVESTIGATOR A FLASH DRIVE.

28 Q AND WAS IT THE FLASH DRIVE THAT YOU HAD BEEN

1 DOWNLOADING INFORMATION TO THAT MORNING?

2 A NO, IT WAS NOT.

3 Q DID YOU HAVE THE FLASH DRIVE THAT YOU WERE
4 DOWNLOADING INFORMATION TO THAT MORNING?

5 A YES, I DID.

01:39PM

6 Q DID YOU KNOW YOU HAD THAT FLASH DRIVE?

7 A YES, I DID.

8 Q WHERE WAS IT?

9 A IT WAS IN MY CAR.

10 Q AND YOU KNEW THAT TCW WANTED THAT FLASH DRIVE
11 BACK, DIDN'T YOU?

01:39PM

12 A YES.

13 Q AND YOU KNEW THAT THAT FLASH DRIVE HAD
14 INFORMATION THAT BELONGED TO TCW ON THE FLASH DRIVE,
15 DIDN'T YOU?

01:39PM

16 A WELL, THE INFORMATION COULD HAVE BELONGED
17 TO -- THERE'S A LOT OF INFORMATION ON THE FLASH DRIVE.

18 Q THAT WASN'T MY QUESTION, SIR.

19 A CAN YOU REPEAT YOUR QUESTION AGAIN?

20 Q MY QUESTION IS: YOU KNEW THAT THE FLASH DRIVE
21 THAT TCW WANTED BACK, THAT YOU HAD IN YOUR CAR, HAD
22 INFORMATION THAT BELONGED TO TCW ON IT, DIDN'T YOU?

01:40PM

23 A INFORMATION BELONGED TO TCW; AND IT COULD HAVE
24 BELONGED TO OTHER PARTIES, ALSO. CLIENTS CERTAINLY HAD
25 RIGHTS TO SOME OF THAT INFORMATION.

01:40PM

26 Q SO THE ANSWER IS, YES, THERE WAS TCW
27 INFORMATION ON THE FLASH DRIVE?

28 A THERE'S INFORMATION THAT TCW HAD RIGHTS TO ON

1 THE FLASH DRIVE, ALONG WITH OTHER PARTIES COULD HAVE
2 POSSIBLY HAD RIGHTS TO THAT INFORMATION.

3 Q BUT WHY DON'T YOU HAVE IN YOUR MIND THE
4 INFORMATION THAT TCW HAD RIGHTS TO? OKAY.

5 A OKAY.

01:40PM

6 Q SO YOU'RE AT YOUR CAR. YOU KNOW YOU HAVE THAT
7 FLASH DRIVE WITH THAT INFORMATION. YOU KNOW THAT THE
8 OWNER OF THAT INFORMATION, TCW, WANTS IT BACK; AND YOU
9 INTENTIONALLY CHOSE NOT TO GIVE IT BACK?

10 A BY GIVING TCW THAT INFORMATION, IT WOULD HAVE
11 DEPRIVED THE OTHER PARTIES THAT HAD RIGHTS TO THAT
12 INFORMATION, FROM THAT INFORMATION --

01:40PM

13 Q MOVE TO STRIKE YOUR ANSWER.

14 THE COURT: I'LL STRIKE THE RESPONSE.

15 MR. MADISON: SIR, MY QUESTION IS, YOU CHOSE
16 NOT TO GIVE TCW THE FLASH DRIVE THAT HAD ITS
17 INFORMATION, DIDN'T YOU?

01:41PM

18 A I CHOSE TO NOT GIVE TCW THAT FLASH DRIVE, YES.

19 Q AND KNOWING THAT IT HAD INFORMATION THAT TCW
20 WAS ENTITLED TO?

01:41PM

21 A YES.

22 Q AND THE REASON YOU DID THAT IS -- WELL, THERE
23 WERE TWO REASONS, WEREN'T THERE?

24 A I --

25 THE COURT: WAIT A MINUTE.

01:41PM

26 IS THAT A QUESTION?

27 MR. MADISON: YES.

28 THE COURT: IT DIDN'T SEEM LIKE THAT. I

1 MISSED IT.

2 MR. MADISON: WERE THERE ONE OR TWO?

3 A I'M SURE THERE ARE LOTS OF REASONS.

4 Q ONE WAS THAT YOU DID NOT WANT TCW TO KNOW WHAT
5 INFORMATION YOU HAD DOWNLOADED ONTO THAT FLASH DRIVE,
6 DID YOU?

01:41PM

7 A THAT IS NOT TRUE.

8 Q ONE REASON WAS THAT YOU WANTED TO BE ABLE TO
9 USE THAT INFORMATION AT THE NEW BUSINESS THAT YOU WERE
10 FORMING WITH THE OTHER DEFENDANTS?

01:41PM

11 A THAT IS ALSO NOT TRUE.

12 Q THAT'S NOT TRUE AT ALL?

13 A I WANTED TO BE ABLE TO HAVE THAT INFORMATION,
14 IN ORDER TO MAKE A DECISION ON WHETHER IT WAS PROPER TO
15 USE THAT INFORMATION IN A FUTURE ENDEAVOR.

01:42PM

16 Q TO WHAT END?

17 A I DON'T UNDERSTAND --

18 Q WHAT ENDEAVOR?

19 A WELL, I -- AT THAT POINT, AS OF DECEMBER 4TH,
20 I WAS STILL A TCW EMPLOYEE. I WAS ON ADMINISTRATIVE
21 LEAVE. I WASN'T FIRED. AND I DIDN'T KNOW -- I WAS
22 TRYING TO LEAVE MY OPTIONS OPEN ON -- I WAS LEFT IN THE
23 DARK. I DIDN'T REALLY KNOW WHAT WAS GOING TO HAPPEN.

01:42PM

24 Q BUT YOU SAID YOU WANTED TO KEEP YOUR OPTIONS
25 OPEN TO USE THE INFORMATION AT SOME OTHER ENDEAVOR,
26 THAT WOULD NOT BE --

01:42PM

27 A IF THERE WAS ANOTHER ENDEAVOR.

28 Q ALL RIGHT.

1 THAT WOULD BE A BUSINESS ENDEAVOR WHERE
2 YOU AND MR. GUNDLACH AND MR. SANTA ANA WOULD BE DOING
3 BUSINESS, COMPETING WITH TCW, CORRECT?

4 A PRESUMABLY.

5 I DON'T THINK THE INFORMATION WOULD HAVE
6 BEEN USEFUL FOR OPENING A HOT DOG STAND OR SOMETHING.

01:42PM

7 Q PARDON ME?

8 A THE INFORMATION WOULDN'T HAVE BEEN USEFUL IF
9 IT WAS NOT A -- YOU KNOW, IF YOU WERE OPENING A HOT DOG
10 STAND, INFORMATION WOULDN'T HAVE BEEN USEFUL.

01:43PM

11 Q IT WOULD BE USEFUL FOR -- IT WOULD BE, TO
12 OPENING A COMPETING ASSET MANAGEMENT BUSINESS?

13 A OR SIMILAR. DOESN'T NECESSARILY HAVE TO BE
14 COMPETING.

15 Q NOT TCW BUSINESS; SOME OTHER BUSINESS VENTURE
16 THAT YOU WERE GOING TO PURSUE WITH MR. GUNDLACH AND
17 MR. SANTA ANA AND OTHERS?

01:43PM

18 A I DIDN'T --

19 MR. BRIAN: OBJECTION. FORM --

20 THE COURT: OVERRULED.

01:43PM

21 DO YOU UNDERSTAND THE QUESTION? IF YOU
22 DON'T, HE'LL REPHRASE IT.

23 THE WITNESS: I FORGOT WHAT IT WAS.

24 THE COURT: OKAY.

25 BY MR. MADISON:

01:43PM

26 Q YOU MENTIONED A HOT DOG STAND.

27 IT WAS GOING TO BE A BUSINESS, WHETHER
28 IT WAS COMPETING OR SIMILAR OR OTHER, THAT WAS NOT

1 TCW'S BUSINESS. IT WAS GOING TO BE A NEW BUSINESS THAT
2 YOU WERE GOING TO PURSUE WITH MR. GUNDLACH AND
3 MR. SANTA ANA, CORRECT?

4 A AS OF THAT TIME, I DID NOT KNOW WHAT -- THERE
5 WAS NO OTHER BUSINESS TO PURSUE, IN MY KNOWLEDGE.

01:43PM

6 Q SO NO LEGITIMATE REASON TO KEEP TCW'S
7 INFORMATION, WAS THERE, SIR?

8 A AGAIN, IF I HAD GIVEN IT TO THEM, THEN I WOULD
9 NOT HAVE ACCESS TO THAT DATA. I WOULD HAVE LOST ACCESS
10 TO THAT DATA.

01:44PM

11 Q THAT ALWAYS HAPPENS WHEN YOU RETURN SOMEONE'S
12 PROPERTY TO THEM, RIGHT?

13 A YES.

14 Q SO YOU DID NOT WANT TO RETURN TCW'S PROPERTY;
15 YOU WANTED TO HAVE THE OPTION TO USE IT IN THE NEW
16 BUSINESS?

01:44PM

17 A I WANTED TO HAVE THE OPTION OF DECIDING
18 WHETHER IT WAS PROPER TO USE OR NOT.

19 Q WHOSE DECISION DID YOU THINK THAT WAS TO MAKE?

20 A CERTAINLY NOT MINE.

01:44PM

21 Q WOULDN'T IT BE THE OWNER OF THE INFORMATION,
22 TCW?

23 A WELL, I -- THE -- IT WAS GOING -- TO ME,
24 THERE'S SOME SORT OF GRAY AREA ON WHO OWNS THE
25 INFORMATION; SO I DIDN'T WANT TO MAKE A DECISION IN THE
26 HEAT OF THE MOMENT THAT I MIGHT REGRET LATER.

01:44PM

27 Q WHO DID YOU THINK WOULD MAKE AT THAT DECISION,
28 SIR?

1 A CERTAINLY JEFFREY GUNDLACH, IN CONSULTATION,
2 YOU KNOW, WITH COUNSEL.

3 Q IN FACT, IT WAS YOU THOUGHT ABOUT MR. GUNDLACH
4 AND MR. SANTA ANA BEING THE ONES THAT WOULD DECIDE WHAT
5 TO DO WITH THE INFORMATION, DIDN'T YOU?

01:44PM

6 A AMONG OTHERS.

7 Q AMONG OTHERS?

8 A WELL, I CERTAINLY -- THEY'RE NOT LAWYERS. I
9 ASSUME THAT LAWYERS WOULD BE INVOLVED, BEFORE THE
10 INFORMATION WOULD BE USED.

01:44PM

11 Q WELL, DO YOU RECALL, EVERY YEAR, YOU WOULD
12 SIGN A CERTIFICATION AT TCW, PROMISING TO COMPLY WITH
13 THE POLICY AND PROCEDURES AT TCW?

14 A YES.

15 Q IN FACT, LET ME ASK YOU TO LOOK AT EXHIBIT 119
16 IN YOUR BINDER THERE.

01:45PM

17 DO YOU SEE THAT?

18 A YES, I DO.

19 Q IS THAT YOUR SIGNATURE; WELL, YOUR ELECTRONIC
20 SIGNATURE, AT THE BOTTOM?

01:45PM

21 A THAT'S MY NAME, SO --

22 Q DO YOU RECALL, EVERY YEAR, YOU WOULD GO ON
23 LINE AND CERTIFY THAT YOU HAD COMPLIED WITH THE
24 POLICIES REGARDING ETHICS AND GOOD BEHAVIOR, AND THE
25 LIKE?

01:45PM

26 A YES.

27 MR. MADISON: I'D MOVE 119, YOUR HONOR.

28 MR. BRIAN: NO OBJECTION.

1 THE COURT: ADMITTED.

2 (EXHIBIT 119 ADMITTED) +

3

4 BY MR. MADISON:

5 Q IF WE COULD PUBLISH THAT.

01:45PM

6 DO YOU RECALL THIS WAS GENERALLY DONE

7 TOWARD THE BEGINNING OF EACH CALENDAR YEAR,

8 MR. MAYBERRY?

9 A I DON'T RECALL THAT SPECIFICALLY; BUT GIVEN
10 THE DATE, IT SEEMS REASONABLE.

01:45PM

11 Q HERE IS THE DOCUMENT, IF WE COULD EXPAND THE
12 MIDDLE PART OF IT. IT'S FOR 2009. JEFFREY M.
13 MAYBERRY. AND THERE ARE TWO CERTIFICATIONS THERE.

14 TOP ONE SAYS, THIS IS TO CERTIFY THAT,
15 AND THEN TWO BULLET POINTS, YOU'VE READ AND UNDERSTAND
16 THE TERMS OF THE TCW CODE OF ETHICS.

01:46PM

17 AND RECOGNIZE THE RESPONSIBILITIES AND
18 OBLIGATIONS INCURRED BY MY BEING SUBJECT TO THE CODE.
19 WHILE I ALSO MAY HAVE -- MAY HAVE ALSO RECEIVED OTHER
20 COPIES, I AM DEEMED TO HAVE RECEIVED THE CODE BY VIRTUE
21 OF IT BEING POSTED ON MY TCW, UNDER THE POLICIES AND
22 PROCEDURES TAB.

01:46PM

23 AND THEN THE SECOND BULLET POINT MERELY
24 INDICATES YOU'RE IN COMPLIANCE WITH ALL OF THE
25 REQUIREMENTS AS OF THAT TIME, CORRECT?

01:46PM

26 A YES.

27 Q AND THEN, THE BOTTOM BOX ALSO INDICATES, TO
28 THE BEST OF YOUR KNOWLEDGE, YOU CERTIFY THAT DURING THE

1 YEAR, YOU WERE IN COMPLIANCE WITH ALL TCW POLICIES AND
2 PROCEDURES THAT APPLY TO YOU, EXCEPT FOR ANY VIOLATIONS
3 YOU MAY HAVE REPORTED.

4 SO ON DECEMBER 4TH, WHEN YOU WERE WITH
5 THE TCW INVESTIGATOR AT YOUR CAR, AND YOU KNEW THAT YOU
6 HAD THAT FLASH DRIVE -- BY THE WAY, PHYSICALLY WHERE
7 WAS IT?

01:46PM

8 A IT WAS PHYSICALLY IN MY CAR.

9 Q WHERE, SIR?

10 A IN THE CENTER CONSOLE.

01:47PM

11 Q I'M HOLDING WHAT I BELIEVE TO BE A FLASH
12 DRIVE. THEY'RE SMALL, AND THEY'RE SOMETIMES CALLED
13 THUMB DRIVES, RIGHT, BECAUSE THEY SORT OF HAVE THE
14 SHAPE AND SIZE OF A THUMB?

15 A YES, YEAH.

01:47PM

16 Q YOU AGREE WITH THAT?

17 A I AGREE WITH THAT, YES.

18 Q SO YOU HAD THIS IN THE CONSOLE, IN THE MIDDLE
19 PART OF THE FRONT SEATS OF YOUR CAR?

20 A YES.

01:47PM

21 Q WHERE WAS THE INVESTIGATOR?

22 A OUTSIDE OF THE CAR.

23 Q YOU WERE -- DID YOU ACTUALLY GET IN AND SIT
24 DOWN?

25 A I DON'T RECALL.

01:47PM

26 Q DID YOU SEE THE FLASH DRIVE THAT YOU KNEW HE
27 WANTED, THERE IN THE CONSOLE?

28 A YES.

1 Q WHAT DID YOU TELL HIM ABOUT WHETHER OR NOT YOU
2 HAD IT?

3 A I DON'T REMEMBER.

4 Q DIDN'T YOU, IN FACT, TELL HIM THAT YOU DIDN'T
5 HAVE IT?

01:47PM

6 A NO. I DON'T REMEMBER WHAT I TOLD HIM.

7 Q DO YOU RECALL GENERALLY THAT YOU MISLED HIM
8 ABOUT THAT, BECAUSE YOU WANTED TO BE ABLE TO HANG ONTO
9 IT?

01:47PM

10 A NO. I DON'T REMEMBER AT ALL.

11 Q YOU DON'T BELIEVE YOU DID, SIR?

12 A I DON'T REMEMBER AT ALL, WHAT I SAID TO HIM.

13 Q WELL, DID IT OCCUR TO YOU, WHETHER OR NOT
14 TCW'S CODE OF CONDUCT AND POLICIES WOULD PERMIT YOU TO
15 KEEP INFORMATION THAT YOU KNEW TO BE THE COMPANY'S IN
16 ANY WAY?

01:48PM

17 A WHEN THE GUY FOLLOWS ME OUT TO MY CAR, WAS I
18 SUPPOSED -- DID I THINK ABOUT TCW'S CODE OF CONDUCT?
19 NO.

20 Q DID IT OCCUR TO YOU, IT WAS JUST PLAIN WRONG
21 TO DO?

01:48PM

22 A NO. I DON'T BELIEVE IT TO BE PLAIN WRONG TO
23 DO.

24 Q YOU BELIEVE IT'S APPROPRIATE, IF SOMEONE IS
25 ASSERTING INFORMATION THAT YOU KNOW, AT LEAST IN PART,
26 IS THEIRS, AND THEY WANT IT BACK, YOU THINK YOU GET TO
27 KEEP IT, SO THAT MR. GUNDLACH AND MR. SANTA ANA CAN
28 DECIDE SOMETHING?

01:48PM

1 A I --

2 MR. BRIAN: OBJECTION.

3 ARGUMENTATIVE ASKED AND ANSWERED.

4 THE COURT: SUSTAINED.

5 BY MR. MADISON:

01:48PM

6 Q IT DIDN'T OCCUR TO YOU AT ALL, WHAT YOU WERE
7 DOING WAS WRONG?

8 MR. BRIAN: SAME OBJECTION.

9 THE COURT: SUSTAINED.

10 BY MR. MADISON:

01:48PM

11 Q LET ME ASK YOU TO LOOK AT EXHIBIT 260,
12 MR. MAYBERRY. I'LL COME BACK TO THE FLASH DRIVE IN A
13 BIT.

14 FIRST, I WANT TO ASK YOU ABOUT 260,
15 WHICH IS IN EVIDENCE.

01:48PM

16 IF I COULD PUBLISH THAT, YOUR HONOR.

17 YOU WERE HERE IN COURT WHEN MR. KALE WAS
18 TESTIFYING ABOUT THIS, I BELIEVE, WEREN'T YOU, SIR?

19 A YES.

20 Q YOU KNOW THIS TO BE MATERIALS THAT WERE USED
21 IN PRESENTATIONS TO CLIENTS AND PROSPECTIVE CLIENTS AT
22 TCW? CORRECT?

01:49PM

23 A YES.

24 Q AND IT TALKS ABOUT THE MBS INVESTMENT
25 TECHNOLOGY, WHICH WAS THE EXACT AREA THAT YOU WORKED IN
26 AT TCW, RIGHT?

01:49PM

27 A NO. THAT'S NOT TRUE.

28 Q WHAT AREA DID YOU WORK IN, SIR?

1 A I WORKED IN THE MBS GROUP. THERE WAS A
2 SEPARATE TECHNOLOGY DEPARTMENT THAT DID ALL THE
3 PROGRAMMING, AND BUILT THE SYSTEM.

4 Q WHO WAS IN THAT GROUP?

5 A DAN KALE, CASEY MOORE. BING BING YU.
6 ERIC HUEN -- I CAN'T REMEMBER EXACTLY EVERYONE ELSE.

01:49PM

7 Q WASN'T PART OF YOUR JOB, TO DEVELOP AND
8 SUPPORT PROPRIETARY ANALYTICS?

9 A NO.

10 Q THAT WAS NEVER A PART OF YOUR JOB?

01:49PM

11 A NEVER. I MEAN -- MY JOB WAS TO KIND OF DO
12 WHATEVER IT TOOK FOR TO GET THE PORTFOLIO MANAGERS WHAT
13 THEY WERE DOING. SOMETIMES THAT INVOLVED CREATING --
14 CREATING DATABASES AND CREATING SPREADSHEETS, BUT IT
15 WAS NEVER PART OF A TECHNOLOGY GROUP.

01:49PM

16 Q WHAT'S A DATABASE?

17 A WHAT'S A DATABASE? I MEAN, I DON'T KNOW HOW
18 TO DESCRIBE THE DATABASE. IT'S A BUNCH OF TABLES WITH
19 A WHOLE BUNCH OF DATA. THAT'S HOW I THINK ABOUT IT.

20 Q WERE THERE DATABASES THAT YOU HELPED DEVELOP
21 AT TCW TO ALLOW THE MBS PROFESSIONALS TO DO THEIR JOB?

01:50PM

22 A YES.

23 Q CAN YOU GIVE US AN EXAMPLE?

24 A THERE WAS A DAILY CASH REPORT THAT WAS IN A
25 DATABASE THAT WENT, PULLED DATA FROM THE BACK OFFICE,
26 AND CREATED, DID SOME SIMPLE ADDITION, SUBTRACTION, AND
27 CREATED A CASH REPORT.

01:50PM

28 Q HOW ABOUT MBS DATABASE?

1 A YES.

2 Q DO YOU RECALL THAT?

3 A YES, I DO.

4 Q WHAT ROLE, IF ANY, DID YOU PLAY IN DEVELOPING
5 THE MBS DATABASE?

01:50PM

6 A BACK WHEN IT FIRST WAS AN IDEA THAT WAS
7 INTRODUCED, I WAS THE ONLY PERSON WITH REAL DATABASE OR
8 PROGRAMMING SKILLS; SO I DID A LOT OF THE DECISION AND
9 IMPLEMENTATION FOR THE FIRST, CALL IT COUPLE YEARS.

10 Q SO YOU WORKED FOR AT LEAST SEVERAL YEARS ON
11 THE MBS DATABASE AT TCW, CORRECT?

01:50PM

12 A NOT EXCLUSIVELY. BUT IN MY, MY SPARE TIME, I
13 WOULD WORK ON IT, TO GET IT TO BUILD THE DATABASE.

14 Q AND YOU BELIEVED, WHILE WERE YOU AT TCW, THE
15 MBS DATABASE WAS PROPRIETARY TO TCW, DIDN'T YOU?

01:51PM

16 A I BELIEVED THAT IT WAS SOMETHING THAT TO BE
17 BUILT AT -- IN THE MORTGAGE GROUP AT TCW.

18 I DON'T KNOW. I NEVER THOUGHT ABOUT IT
19 BEING PROPRIETARY OR NOT.

20 Q DIDN'T YOU FORM THE VIEW THAT TCW OWNED THE
21 MBS DATABASE?

01:51PM

22 A I WOULD SAY THAT TCW AND THE MBS GROUP OWNED
23 THE MBS DATABASE.

24 Q MBS GROUP?

25 A YES.

01:51PM

26 Q DID YOU BELIEVE THAT THE MBS GROUP WAS A
27 SEPARATE LEGAL ENTITY?

28 A I NEVER THOUGHT ABOUT LEGAL ENTITIES AT ALL.

1 Q LET ME SHOW YOU PAGE 2 OF EXHIBIT 260.

2 AND YOU SEE HERE, UP AT THE TOP, IT'S
3 TALKING ABOUT THE MBS INVESTMENT TECHNOLOGY TEAM. IT
4 SAYS AT THE TOP, FOCUSES ON DEVELOPMENT AND SUPPORT OF
5 PROPRIETARY ANALYTICS AND TOOLS FOR INVESTMENT DECISION
6 SUPPORT.

01:52PM

7 WHEN YOU WORKED AT TCW, YOU UNDERSTOOD
8 THAT WORD, PROPRIETARY, TO MEAN TCW OWNED IT, RIGHT?

9 A I NEVER THOUGHT ABOUT WHAT THE WORD
10 PROPRIETARY MEANS.

01:52PM

11 Q YOU'VE NEVER THOUGHT ABOUT IT, SIR?

12 A NOT WHEN I WAS AT TCW.

13 Q AS WE SIT HERE TODAY, CAN WE AGREE THAT
14 PROPRIETARY MEANS, TCW OWNS IT?

15 A NO.

01:52PM

16 Q PARDON ME?

17 A NO.

18 Q DO YOU RECALL WHEN I ASKED YOU ABOUT THIS IN
19 YOUR DEPOSITION IN MY OFFICE, SIR?

20 A I DO.

01:52PM

21 Q DO YOU RECALL -- LET ME JUST PLAY THAT CLIP.
22 MR. BRIAN: MAY I HAVE A PAGE AND LINE,
23 PLEASE.

24 THE COURT: YES. PLEASE.

25 MR. MADISON: LET ME PLAY PAGE 12, LINE 8, TO
26 PAGE 12 LINE 24.

01:52PM

27 MR. BRIAN: MAY I HAVE A MOMENT, YOUR HONOR?

28 THE COURT: YES, JUST A MOMENT.

1 MR. BRIAN: NO OBJECTION.

2 THE COURT: ALL RIGHT. YOU MAY PROCEED.

3 (VIDEO DEPOSITION PLAYED OF J. MAYBERRY) +

4

5 BY MR. MADISON:

01:55PM

6 Q SO THAT WAS THE QUESTION I ASKED, AND THE
7 ANSWER YOU GAVE, CORRECT?

8 A YES.

9 Q WHEN I USED THE WORD PROPRIETARY, IN MY
10 QUESTION TO YOU, I SAID, DID YOU EVER CREATE
11 PROPRIETARY INFORMATION ON BEHALF OF TCW? YOU SAID,
12 SURE.

01:55PM

13 RIGHT?

14 A I SAID THERE ARE UNIQUE THINGS, UNIQUE TO TCW.

15 Q PARDON ME?

01:55PM

16 A I BELIEVE I SAID I BUILT THINGS THAT WERE
17 UNIQUE TO TCW.

18 Q IS THAT YOUR DEFINITION OF PROPRIETARY THINGS,
19 UNIQUE TO TCW?

20 A I DON'T HAVE REALLY HAVE A DEFINITION OF
21 PROPRIETARY.

01:55PM

22 Q LET ME ALSO PLAY PAGE 9, LINE 12 THROUGH
23 PAGE 10, LINE 5.

24 THE COURT: NINE, 12, THROUGH 10, 5.

25 MR. BRIAN: I NEED THOSE AGAIN, PLEASE.

01:55PM

26 THE COURT: PAGE 9, LINE 12, THROUGH PAGE 10,
27 LINE 5; IS THAT RIGHT?

28 MR. MADISON: YES, YOUR HONOR.

1 THE COURT: JUST A MOMENT.

2 MR. BRIAN: MAY I CONSULT WITH COUNSEL
3 BRIEFLY, YOUR HONOR?

4 THE COURT: YES YOU MAY.

5 (PAUSE) +

01:56PM

6

7 THE COURT: IF SOMETHING'S BREWING, SOMEBODY
8 MIGHT WANT TO GIVE ME A COPY OF THE TRANSCRIPT.

9 MR. BRIAN: I HAVE NO OBJECTION TO THIS
10 PORTION, YOUR HONOR.

01:56PM

11 THE COURT: YOU MAY PROCEED.

12 (VIDEO DEPOSITION PLAYED OF J. MAYBERRY) +

13

14 BY MR. MADISON:

15 Q THOSE WERE YOUR ANSWERS, SIR?

01:58PM

16 A YES.

17 Q YOU WERE TESTIFYING UNDER OATH AT THAT TIME,
18 JUST AS YOU ARE TODAY, CORRECT?

19 A YES.

20 Q SO THERE WAS PROPRIETARY INFORMATION THAT YOU
21 CREATED AND THAT YOU HANDLED AT TCW, CORRECT?

01:58PM

22 A YES.

23 Q AND THERE WAS ALSO INFORMATION THAT WAS
24 CONFIDENTIAL, THAT YOU HANDLED AT TCW, CORRECT?

25 A YES.

01:58PM

26 Q LET ME GO TO EXHIBIT 260, AND GO TO PAGE 3.

27 AGAIN, THIS IS IN EVIDENCE, YOUR HONOR.

28 IF WE CAN EXPAND THAT THE TWO BOXES AT

1 THE TOP.

2 AND YOU WERE HERE FEW MINUTES AGO WHEN
3 MR. WEINGART WAS ASKING MR. KALE QUESTIONS, WEREN'T
4 YOU, SIR?

5 A YES, I WAS. 01:58PM

6 Q IF YOU SEE OVER HERE ON THE LEFT, WHERE IT
7 SAYS, SUBSCRIPTIONS AND SERVICES, THAT'S THE
8 INFORMATION THAT TCW WOULD SUBSCRIBE TO OR BRING IN
9 FROM OUTSIDE, RIGHT?

10 A YES. 01:59PM

11 Q AND THAT WE SEE FOR EXAMPLE, BLOOMBERG IS
12 LISTED THERE. AND THERE ARE OTHER DATA PROVIDERS.

13 YOU UNDERSTOOD THAT, WHEN YOU WERE
14 WORKING AT TCW, RIGHT?

15 A YES. 01:59PM

16 Q IF WE LOOK OVER ON THE WHOLE RIGHT-HAND SIDE,
17 IT SAYS PROPRIETARY SYSTEMS.

18 AND USING YOUR DEFINITION, THOSE ARE
19 SYSTEMS THAT ARE UNIQUE TO TCW, AND TCW PROPERTY,
20 RIGHT? 01:59PM

21 MR. BRIAN: OBJECTION. COMPOUND.

22 THE COURT: SUSTAINED.

23 BY MR. MADISON:

24 Q THOSE ARE TCW PROPERTY, AREN'T THEY, SIR?

25 A WELL, I DON'T THINK BECAUSE IT SAYS
26 PROPRIETARY ON A MARKETING PIECE, THAT IT MEANS IT'S
27 NECESSARY PROPRIETARY. 01:59PM

28 Q I ASK YOU, AS YOU SIT HERE, SIR, YOU'RE

1 FAMILIAR WITH THE SYSTEMS THAT ARE LISTED THERE ON THE
2 RIGHT. THOSE WERE ALL DEVELOPED BY TCW, CORRECT?

3 A I'M NOT FAMILIAR WITH ALL THE SYSTEMS, NO.

4 Q THE ONES YOU ARE FAMILIAR WITH WERE ALL
5 DEVELOPED BY TCW, RIGHT?

01:59PM

6 A TCW WERE THE MORTGAGE GROUP WORKING AT TCW,
7 YES.

8 Q YOU'VE SAID THAT A COUPLE TIMES.

9 THE MORTGAGE GROUP WAS A DEPARTMENT
10 WITHIN TCW, CORRECT?

01:59PM

11 A IT WAS A DEPARTMENT, YES, BUT IT WAS -- IN
12 TERMS OF HOW IT OPERATED, IT WAS KIND OF ITS OWN
13 SEPARATE GROUP.

14 Q I HAVE NO DOUBT ABOUT THAT.

15 MY QUESTION IS, YOU'D GET A PAYCHECK
16 FROM TCW RIGHT?

02:00PM

17 A THAT'S CORRECT. YES.

18 Q AND YOU WOULD HAVE LISTED WHO YOUR EMPLOYER
19 WAS, ON APPLICATIONS FOR LOANS, OR TO BUY A CAR, YOU'D
20 SAY YOU WORKED AT TCW, RIGHT?

02:00PM

21 A THAT'S CORRECT.

22 Q SOMEBODY ASKED YOU SOCIALLY, WHERE DO YOU
23 WORK, YOU'D SAY I WORK FOR TCW, WOULDN'T YOU?

24 A THAT'S CORRECT, YES.

25 Q ARE YOU TRYING TO TELL US THERE WAS SOME OTHER
26 BUSINESS ENTITY THAT EXISTED, THAT NOBODY ELSE KNEW
27 ABOUT?

02:00PM

28 A THAT NOBODY ELSE KNEW ABOUT?

1 Q YES.

2 A NOT THAT I -- NO, I'M NOT TRYING TO TELL YOU
3 THAT, NO.

4 Q AND WERE YOU TRYING TO TELL US THAT THE MBS
5 GROUP OWNED CERTAIN THINGS THAT TCW DIDN'T OWN, WHILE
6 THE MBS GROUP WAS AT TCW?

02:00PM

7 A NO, I'M NOT TRYING TO TELL YOU THAT, EITHER.

8 Q OKAY.

9 SO WHEN MR. WEINGART WAS ASKING
10 MR. KALE, THE THINGS OVER ON THE RIGHT-HAND SIDE ARE
11 THE SYSTEMS THAT WERE UNIQUE TO TCW, CORRECT?

02:01PM

12 A I DON'T REMEMBER WHAT HE WAS TELLING HIM --

13 Q FOR EXAMPLE, YOU SEE IN THE LOWER RIGHT-HAND
14 CORNER THERE, IT SAYS MBS REPORTING DATABASE.

15 THAT'S THE DATABASE YOU'VE TESTIFIED
16 THAT YOU HELPED DEVELOP, CORRECT?

02:01PM

17 A CORRECT, YES.

18 Q YOU'VE NEVER SEEN ANYTHING LIKE THAT, ANYWHERE
19 ELSE, HAVE YOU?

20 A WELL, TCW WAS MY FIRST JOB, SO I DON'T HAVE
21 MUCH BREADTH OF OTHER PLACES.

02:01PM

22 BUT NO, I HAVE NOT SEEN IT ANYWHERE
23 ELSE.

24 Q IN YOUR TEN YEARS AT TCW, YOU NEVER SAW
25 ANYTHING LIKE THAT, DID YOU?

02:01PM

26 A NO.

27 Q YOU BELIEVED IT WAS UNIQUE TO TCW, DID YOU
28 NOT?

1 A YES, I DID.

2 Q DID THE MBS DATABASE INCLUDE SOFTWARE THAT WAS
3 BUILT INTO IT AS PART OF THE SYSTEM DEVELOPMENT?

4 A THERE WAS CODE THAT DID SIMPLE CALCULATIONS,
5 YEAH.

02:01PM

6 Q COMPUTER CODE?

7 A YES.

8 Q SO COMPUTER PROGRAMS?

9 A I DON'T KNOW IF ANYONE -- IT WAS IN VISUAL
10 BASIC. IT'S NOT VERY COMPLICATED, BUT IT'S THINGS THAT
11 WERE EASILY DONE IN CODE, VERSUS INQUIRIES OR --
12 DATABASE THINGS.

02:02PM

13 Q TCW DERIVED VALUE IN ITS BUSINESS FROM THE MBS
14 DATABASE OVER THOSE YEARS, DIDN'T IT?

15 A YEAH. THE MORTGAGE GROUP USED -- LIKED USING
16 IT, YES.

02:02PM

17 Q NOW, THE MBS DATABASE WAS ONE OF THE THINGS
18 THAT YOU HAD DOWNLOADED WITH AN EYE TOWARD USING AT A
19 DIFFERENT BUSINESS; ISN'T THAT CORRECT?

20 A I HAD DOWNLOADED IT, YES, ONTO THE FLASH
21 DRIVE.

02:02PM

22 Q PARDON ME?

23 A I DOWNLOADED IT TO THE FLASH DRIVE, YES.

24 Q YOU DOWNLOADED IT FOR THE PURPOSE OF POSSIBLY
25 USING IT AT THE NEW BUSINESS WITH MR. GUNDLACH, DIDN'T
26 YOU?

02:02PM

27 A THERE WAS NO NEW BUSINESS, SO THERE'S -- SO I
28 CAN'T -- SO, NO. THERE WAS NO NEW BUSINESS.

1 Q WHEN DID YOU THINK THERE WAS NO NEW BUSINESS?

2 A WHEN I DOWNLOADED IT, THERE WAS NO NEW
3 BUSINESS.

4 Q DO YOU RECALL, SIR, ON SEPTEMBER 3RD, THERE
5 WAS AN IMPORTANT MEETING BETWEEN MR. GUNDLACH,
6 MR. SANTA ANA, OTHERS, AND MR. STERN?

02:03PM

7 A YES.

8 Q AND DO YOU RECALL THAT THAT DAY, BEFORE THE
9 MEETING, MR. SANTA ANA CAME TO YOU, AND HE TOLD YOU
10 ABOUT THE MEETING?

02:03PM

11 A YES.

12 Q AND DO YOU RECALL THAT HE DIRECTED YOU TO
13 DOWNLOAD TCW INFORMATION AT THAT TIME? DO YOU RECALL?

14 A YES.

15 Q AND DO YOU RECALL IN YOUR MIND, AT THAT TIME,
16 WAS THE UNDERSTANDING THAT, DEPENDING ON HOW THIS
17 MEETING CAME OUT, THE GROUP MIGHT BE LEAVING TO GO
18 SOMEWHERE ELSE, RIGHT?

02:03PM

19 A WELL, THE RUMOR WAS THAT JEFFREY WAS GOING TO
20 BE FIRED. SO IF IT TURNED OUT HE WAS GOING TO BE
21 FIRED, THEN THERE'S A POSSIBILITY THAT THE GROUP WAS
22 GOING TO GO SOMEWHERE ELSE, YES.

02:03PM

23 Q SO YOUR UNDERSTANDING, IN TAKING DIRECTION
24 FROM MR. SANTA ANA ON SEPTEMBER 3RD, WAS THAT YOU WERE
25 TO DOWNLOAD TCW INFORMATION, IN CASE THE GROUP HAD TO
26 LEAVE, SO THAT YOU COULD USE THE INFORMATION AT THE NEW
27 VENTURE, RIGHT?

02:03PM

28 A THERE WAS A POSSIBILITY OF USING IT AT SOME

1 NEW VENTURE THAT WAS NOT EVEN, AS FAR AS I KNOW,
2 THOUGHT OF, AT THE TIME.

3 Q YOU DIDN'T ASK ANY QUESTIONS OF MR. SANTA ANA,
4 DID YOU?

5 A I'M NOT IN THE HABIT OF ASKING HIM QUESTIONS. 02:04PM

6 Q YOU DIDN'T, THAT DAY, DID YOU, SIR?

7 A NOT THAT I REMEMBER.

8 Q YOU DID WHAT HE TOLD YOU, DIDN'T YOU?

9 A HE'S MY BOSS.

10 Q THAT WAS ONLY THING YOU HAD IN YOUR MIND THAT 02:04PM
11 DAY, WHEN YOU DOWNLOADED, BEGINNING ON SEPTEMBER 3RD,
12 WAS THAT I NEED TO DO THIS BECAUSE MR. SANTA ANA
13 DIRECTED IT, AND WE MAY NEED, POSSIBLY, THIS
14 INFORMATION SOMEWHERE ELSE?

15 A THERE WAS A POSSIBILITY, YES. 02:04PM

16 THE COURT: ALL RIGHT.

17 MR. MADISON, WE'RE OVER THE TIME.

18 LADIES AND GENTLEMEN, I'M COMFORTABLE,
19 YOU KNOW, THAT TODAY, WE'LL END ON TIME. YOU PROBABLY
20 HAVE PLANS. WE'D LIKE TO GO TO 2:15. I DON'T WANT TO 02:04PM
21 STRETCH YOU TOO LONG, GOING WITHOUT A NOON BREAK, BUT
22 I'M WILLING TO WORK WITH YOU. SO TALK AMONG
23 YOURSELVES.

24 AND IF YOU DON'T MIND GOING A LITTLE BIT
25 PAST 2 O'CLOCK EACH DAY, WE MIGHT GO TO 2:15 EACH DAY. 02:04PM

26 ANYBODY HAVE -- HOW MANY WOULD LIKE TO
27 GO TO 2:15 -- I DON'T SEE A LOT OF HANDS.

28 JUROR: I DON'T WANT IT TO BECOME 2:30, AND

1 THEN 2:45.

2 THE COURT: WE MAY, FROM TIME TO TIME, TO
3 FINISH UP A WITNESS -- MR. MAYBERRY'S COMING BACK
4 TOMORROW. WE WON'T FINISH WITH HIM TODAY.

5 IF WE WERE AT 2 O'CLOCK, AND SOMEBODY'S
6 GOING TO FINISH, WE MIGHT GO TO 2:15.

02:05PM

7 JUROR: MAKE SURE IT'S 2:15, BECAUSE I GOT TO
8 PICK UP MY KIDS FROM SCHOOL.

9 THE COURT: NO PROBLEM. THAT'S FINE,
10 MR. AVAKIAN.

02:05PM

11 OKAY. WE'LL BREAK FOR THE DAY.

12 REMEMBER THE ADMONITION: YOU'RE NOT TO
13 DISCUSS THE MATTER AMONG YOURSELVES, OR FORM ANY
14 OPINIONS OR CONCLUSIONS CONCERNING ANY ASPECT OF THE
15 CASE, UNTIL YOU'VE HEARD ALL THE EVIDENCE, AND IT'S
16 BEEN SUBMITTED TO YOU.

02:05PM

17 WE'LL SEE YOU IN THE MORNING.

18 THANK YOU.

19 YOU MAY STEP DOWN, MR. MAYBERRY.

20 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +

02:06PM

21

22 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
23 JURY.

24 COUPLE OF THINGS. THEY KEEP COMING UP.

25 I RECEIVED ANOTHER NOTEBOOK, AND I'M
26 GRATEFUL FOR THAT, ON DEPOSITION TESTIMONY, WITH
27 HIGHLIGHTS.

02:06PM

28 WHAT IS THE PACE OF THAT? AND WHAT CAN

1 I EXPECT? IT'S ONE THING IF I GET THEM AT 5 O'CLOCK ON
2 FRIDAY, AND I HAVE THE WEEKEND TO LOOK AT THEM. IT'S
3 ANOTHER THING IF I GET THEM AT 5 O'CLOCK ON MONDAY, AND
4 YOU SAY THE WITNESS IS COMING TOMORROW.

5 MR. BRIAN: IT'S NOT MY WITNESS.

02:07PM

6 MR. MADISON: I ASSUME THAT'S MS. VAN EVERY,
7 YOUR HONOR.

8 MR. BRIAN: NO. HE'S RULED ON THAT.

9 THE COURT: I'VE DONE VAN EVERY.

10 THERE WAS ANOTHER ONE JUST DROPPED OFF
11 TODAY. I DON'T REMEMBER WHO IT WAS. YES, IT'S JP,
12 BECAUSE I DON'T REMEMBER HOW TO SAY HIS NAME. JUST
13 TELL ME THE PACE.

02:07PM

14 IF YOU GIVE THEM TO ME WITH A REASONABLE
15 AMOUNT OF TIME. HE'S NOT COMING TOMORROW.

02:07PM

16 MR. QUINN: HE'S ONLY BY VIDEO, SO HE WON'T BE
17 LIVE.

18 THE COURT: JUST GIVE ME A LITTLE STICKER ON
19 THEM AND SAY, THIS IS A WITNESS SCHEDULED TO BE PRESENT
20 ON SUCH AND SUCH A DAY, SO THAT IF I NEED TO GET
21 SOMETHING DONE, I'LL GET IT DONE.

02:07PM

22 IF THERE ARE ONES THAT ARE GOING TO COME
23 THROUGH THE COURSE OF THINGS, AND ONLY BEING PRESENTED
24 BY DEPOSITION TESTIMONY, THEN I'VE GOT A LITTLE MORE
25 FLEXIBILITY.

02:08PM

26 MR. QUINN: WE'RE THINKING JP WEDNESDAY.

27 THE COURT: I'LL DO MY BEST.

28 ALL RIGHT. ANYTHING ELSE?

1 MR. BRIAN: YEAH, TWO THINGS. ONE IS, I DON'T
2 WANT TO BURDEN YOU WITH A HUGE THICK BINDER OF PROPOSED
3 REDACTIONS, I THINK THE BALL'S IN TCW'S COURT ON THAT.

4 THE COURT: I HAVE TWO BIG BINDERS THAT YOU'VE
5 ALREADY BURDENED ME WITH. 02:08PM

6 MR. BRIAN: I KNOW. I'M TRYING TO REDUCE THE
7 BURDEN.

8 I THINK THE BALL'S IN THEIR COURT TO
9 ADVISE THE COURT WHICH, IF ANY, THEY INTEND TO USE; AND
10 IF THEY DO INTEND TO USE THEM, DO THEY AGREE, OR NOT,
11 WITH THE REDACTIONS. 02:08PM

12 OTHERWISE, YOU GOT TO LOOK AT A HUGE
13 BINDER. AND I'M PROPOSING A PROCEDURE THAT WILL REDUCE
14 THE SIZE OF THE BINDER.

15 THE COURT: I WON'T LOOK AT IT UNTIL YOU TELL
16 ME YOU GOT BETTER AGREEMENT. 02:08PM

17 MR. BRIAN: MY PROBLEM, I THINK IT'S GOING TO
18 COME UP WITH AT LEAST MS. VANEVERY TOMORROW. I DON'T
19 KNOW IF IT WILL COME UP WITH MR. MAYBERRY, BUT
20 CERTAINLY WITH MS. VANEVERY. 02:08PM

21 MR. MADISON: WE TALKED ABOUT THIS. WE TOLD
22 THEM WE'D TELL THEM IF WE WERE GOING TO USE ANY OF
23 THOSE EXHIBITS.

24 THE COURT: WHEN DO YOU PROPOSE TO TELL THEM
25 IF YOU WANT TO RULE ON THE ACTIONS AND THE REQUESTED
26 REDACTIONS? THAT'S WHERE IT GETS DICEY. 02:09PM

27 MR. MADISON: I THINK WITNESS BY WITNESS.

28 MR. BRIAN: THAT'S NOT GOING TO WORK, YOUR

1 HONOR. MR. MADISON TOLD ME HE WOULD TELL ME THIS
2 MORNING. WHEN WE HAD A CORRESPONDENCE ON THIS TODAY.

3 IF HE'S NOT GOING TO USE THEM, I'M FINE
4 WITH THAT. IT'S NOT GOING TO WORK, ON A DOCUMENT-BY-
5 DOCUMENT BASIS.

02:09PM

6 THE COURT: NO, BECAUSE YOU HAVE THE DOCUMENT
7 UNREDACTED. AND YOU'RE GOING TO WANT TO PUT IT UP.

8 MR. MADISON: NO, NO. THEY REDACTED IT, YOUR
9 HONOR. HERE IS WHAT IS THIS REALLY ABOUT.

10 THE COURT: YOU ONLY USE THE REDACTED COPIES,
11 OR LET US KNOW IN ADVANCE.

02:09PM

12 MR. MADISON: EXACTLY. I'M GOING TO DECLINE
13 MR. BRIAN'S INVITATION ON HOW MY EXAM IS GOING WITH
14 THESE WITNESSES. THAT'S WHERE IT'S GOING.

15 THE COURT: YOU'RE GENERALLY ACCEPTING OF THE
16 REDACTIONS THEY'VE PROPOSED, SO IT WON'T BE SOMETHING
17 I'M GOING TO HAVE TO ADDRESS ON A DOCUMENT-BY-DOCUMENT
18 BASIS, ON EVERY DOCUMENT?

02:09PM

19 MR. MADISON: I THINK THAT'S RIGHT.

20 FOR EXAMPLE, 80 PERCENT OF THEM DEAL
21 WITH THE EXCLUDED ISSUES WHAT WERE FOUND IN THE OFFICE,
22 AND ALL OF THAT. SO OBVIOUSLY, WE KNOW WE CAN'T USE
23 THAT.

02:09PM

24 THE COURT: 80 PERCENT IS PRETTY GOOD FOR ME.

25 MR. MADISON: I THINK SO.

02:10PM

26 THE COURT: IF I CAN GET AWAY WITH 20 PERCENT,
27 I'M OKAY.

28 MR. BRIAN: THAT'S PROGRESS.

1 THE COURT: LET'S SEE WHERE IT COMES OUT. IF
2 IT'S A PROBLEM, WE'LL DEAL WITH IT.

3 MR. BRIAN: THAT'S PROGRESS. IT WOULD HAVE
4 BEEN HELPFUL TO HAVE TOLD THAT BEFORE. THEY DON'T ALL
5 DEAL WITH SOMETHING FOUND IN THE OFFICE. A LOT OF THEM
6 ARE EXCHANGES BETWEEN MR. GUNDLACH AND BARBARA
7 VANEVERY. AND SO WE CAN DEAL WITH THAT.

02:10PM

8 IF THERE'S AGREEMENT ON THE REDACTIONS,
9 AS I JUST HEARD, THEN WE CAN TAKE THEM UP ON A
10 DOCUMENT-BY-DOCUMENT BASIS.

02:10PM

11 THE COURT: ALL RIGHT. WE GOT AGREEMENT ON,
12 IT SOUNDS TO ME, 80 PERCENT.

13 I DO BELIEVE, MR. MADISON, THAT TO THE
14 EXTENT YOU INTEND AND KNOW THAT YOU'RE GOING TO OFFER
15 DOCUMENTS THAT HAVE BEEN REDACTED BY DEFENDANTS, AND
16 THAT YOU DO NOT WANT TO HAVE REDACTED, YOU NEED TO TELL
17 THEM WHAT THOSE DOCUMENTS ARE.

02:10PM

18 MR. MADISON: OF COURSE.

19 THE COURT: GIVE US A LIST. I WOULD LIKE AN
20 OPPORTUNITY TO LOOK AT THEM, RATHER THAN GIVE YOU
21 DECISIONS ON THE FLY.

02:10PM

22 MR. MADISON: OF COURSE, YOUR HONOR.

23 THE COURT: AND SO WE NEED TO DO THAT.

24 YOU SAY, OF COURSE; BUT MR. BRIAN SAYS
25 HE ASKED YOU FOR IT THIS MORNING, AND YOU SAID YOU WERE
26 GOING TO GIVE IT TO THEM. SIT DOWN, TALK ABOUT IT, AND
27 GET IT DONE TONIGHT, IF VAN EVERY'S COMING TOMORROW.

02:11PM

28 MR. MADISON: IF WE NEED TO TALK ABOUT

1 ANYTHING, I ASSURE YOU, YOU WILL TALK ABOUT IT. IT'S A
2 NON-ISSUE.

3 WE DO HAVE A DOCUMENT THAT IS AN ISSUE.

4 MR. BRIAN: I HAVE A SECOND ISSUE, TOO, YOUR
5 HONOR.

02:11PM

6 I WAS A LITTLE PUZZLED BY YOUR HONOR'S
7 COMMENT. WE'VE HAD A LOT OF BACK AND FORTH ABOUT THE
8 ADMISSIBILITY OF THE INTERVIEW PROCESS AND -- ON
9 DECEMBER 4TH. AND I THOUGHT WHERE WE LEFT IT THE OTHER
10 DAY WAS THAT YOU WERE ALLOWING QUESTIONS WITH RESPECT
11 TO THE PROCESS IN THE INTERVIEWS OF THE WITNESS.

02:11PM

12 AND THERE WAS A DISCUSSION OF THE DAY OF
13 CALLING NOT THE INVESTIGATORS, BUT THE PERCIPIENT
14 WITNESSES. THEREFORE, I DID NOT OBJECT.

15 YOU THEN MADE A COMMENT WHICH CONCERNED
16 ME BECAUSE, IF WE'RE GOING TO GO INTO THIS AREA, AS
17 COUNSEL HAS DONE, THEN THE AREA'S FAIR GAME. AND WE DO
18 INTEND TO ELICIT TESTIMONY FROM THE WITNESS AS TO THAT
19 PROCESS AND WHY HE DID CERTAIN THINGS, WHY OTHER
20 WITNESSES SAID CERTAIN THINGS.

02:11PM

02:12PM

21 THEY CAN'T HAVE IT BOTH WAYS. SO I JUST
22 WANT TO ALERT -- I WAS CONCERNED WITH WHAT YOUR HONOR
23 SAID.

24 THE COURT: YES, WE HAD THIS ISSUE COME UP.

25 THE NOTES OF THE INTERVIEWS ARE OUT.
26 THE INVESTIGATORS ARE OUT.

02:12PM

27 TO THE EXTENT THAT PEOPLE WERE DEPOSED
28 CONCERNING THEIR STATEMENTS, SEEMED TO ME THAT THAT WAS

1 OKAY.

2 AND THERE WAS AN ARGUMENT BY MR. HELM
3 THAT, WELL, THEY HAD THE BENEFIT OF THE NOTES. TO DO
4 THE INTERROGATION AT THE DEPOSITION.

5 I PUT THAT ASIDE. AND SAID. IF THEY'VE
6 TESTIFIED. THEY CAN BE -- YOU KNOW, THEY HAVE TO
7 ANSWER THE QUESTIONS.

02:12PM

8 THE PRESENCE OF THIRD-PARTY,
9 NON-INVESTIGATOR EMPLOYEES OF TCW, TO COME IN AND, IN
10 EFFECT, IMPEACH THE WITNESS'S TESTIMONY OR CHALLENGE
11 THE WITNESS'S TESTIMONY, I SAID I WOULDN'T ALLOW.

02:13PM

12 THEN THEY SAID, ALL THOSE PEOPLE, THEY
13 HAVE BEEN DEPOSED.

14 I THINK THAT'S A SIDESHOW, QUITE
15 FRANKLY, AND THE THIRD-PARTY WITNESSES SHOULDN'T BE
16 INVOLVED IN THIS. TO THE EXTENT THAT THE PEOPLE THAT
17 WERE INTERROGATED WERE ASKED QUESTIONS, AND THEY WANT
18 TO ASK QUESTIONS ABOUT THEM --

02:13PM

19 MR. QUINN: OKAY, YOUR HONOR. THIS IS THE
20 DIRECTION WE'RE GOING.

02:13PM

21 THE COURT: I DON'T WANT TO --

22 MR. QUINN: THIS IS THE DIRECTION WE'RE GOING.
23 THEY'RE GOING TO SAY, MAYBERRY'S GOING TO SAY, I WAS
24 HIT WITH A BASEBALL BAT.

25 MR. BRIAN: HE'S GOING --

02:13PM

26 MR. QUINN: WE CAN'T CALL ANYBODY TO SAY,
27 THAT'S ABSOLUTELY FALSE, INCLUDING AN EMPLOYEE WHO WAS
28 SITTING IN AND HAS BEEN DEPOSED ABOUT WHAT TOOK PLACE

1 IN THAT INTERVIEW. THAT'S WHAT HE WANTS TO DO.

2 MR. BRIAN: NO. I'LL TELL YOU EXACTLY WHAT I
3 WANT TO DO. I WANT -- THEY STUCK HIM IN ESSENTIALLY A
4 HOLDING CONFERENCE FOR AN HOUR AND A HALF, WITH A
5 NUMBER OF PEOPLE. AND THEN HE WAS THEN TAKEN INTO A
6 ROOM.

02:13PM

7 AND THERE'S CERTAIN THINGS HE DID, THERE
8 ARE CERTAIN THINGS THAT MS. VANEVERY DID AND SAID, THAT
9 WERE INFLUENCED BY THEIR STATE OF MIND. THAT'S ALL I
10 WANT TO DO.

02:14PM

11 IF THEY'RE GOING TO GET INTO THIS AREA,
12 AS THEY'VE CHOSEN TO DO, AND HAVE FOUGHT TO DO FOR
13 THREE MONTHS, I'M GOING TO BE ABLE TO INQUIRE AS TO
14 WHAT WAS IN THEIR STATE OF MIND THAT INFLUENCED WHAT
15 THEY SAID AND WHAT THEIR ACTIONS WERE.

02:14PM

16 NOW HE WAS NOT HIT WITH A BASEBALL BAT,
17 BUT HE WAS TOLD THAT HE COULDN'T LEAVE. HE WAS ASKED
18 FOR HIS CELL PHONE, AND PEOPLE HAD TO ASK FOR LAWYERS.
19 THEY ASKED -- MS. VANEVERY TOLD MR. MADISON SHE WANTED
20 A LAWYER. HE PROCEEDED TO INTERROGATE HER ANYWAY.

02:14PM

21 MR. MADISON: THAT'S NOT TRUE, YOUR HONOR.

22 THE COURT: LET'S NOT --

23 MR. BRIAN: THAT'S WHAT SHE'LL SAY.

24 THE COURT: I THINK YOU SHOULD TREAD LIGHTLY.

25 MR. MADISON: OF COURSE.

02:14PM

26 THE COURT: IF YOU WANT TO GO INTO THE AREA,
27 I'LL GIVE THEM FAIR OPPORTUNITY.

28 NOW, I DON'T WANT THIS TO BECOME A

1 SIDESHOW. BECAUSE OF THE WAY THE CLAIMS OF PRIVILEGE
2 WERE ASSERTED, I'M RELUCTANT. I WON'T LET THE NOTES
3 IN, OR I WON'T LET THE INVESTIGATORS IN.

4 THIS ISSUE OF THE THIRD-PARTY WITNESSES,
5 I -- I REALLY DON'T WANT TO GO THERE.

02:15PM

6 MR. QUINN: THESE ARE PEOPLE WHO HAVE
7 TESTIFIED, BEEN DEPOSED, NO OBJECTION, TESTIFIED ABOUT
8 WHAT THEY SAW.

9 YOU KNOW, I USE BASEBALL BAT, JUST AS A
10 PLACE HOLDER OR METAPHOR. BUT DEPENDING UPON WHAT
11 HAPPENS, WE NEED TO CALL ONE OF THESE PEOPLE TO REBUT
12 IT.

02:15PM

13 THE COURT: WE'LL TAKE IT ON A CASE-BY-CASE
14 BASIS. IF YOU GOT THE DEPOSITION TESTIMONY, YOU MAKE
15 AN OFFER OF PROOF, AND I CAN TAKE A LOOK AT IT.

02:15PM

16 I'LL ALSO SAY, HOW MANY SIDESHOWS ARE WE
17 GOING TO HAVE, IN THE TIME WE HAVE TO PUT THE CASE ON?
18 SO -- SEE HOW IT GOES.

19 ALL RIGHT. SEE YOU ALL IN THE MORNING.

20 MR. MADISON: WE HAD THE ONE ISSUE ABOUT THE
21 DOCUMENT.

02:15PM

22 THE COURT: WHAT WAS THAT.

23 MR. MADISON: MAY I APPROACH, MR. SABALBURO?

24 THE COURT: OKAY. WHAT IS THE ISSUE.

25 MR. MADISON: THIS IS A DOCUMENT THAT WAS
26 PRODUCED BY THE DEFENSE IN DISCOVERY. IT'S
27 EXHIBIT 2078. AND MR. SABALBURO'S HANDING IT UP, WHO'S
28 ALSO PUTTING IT UP ON THE SCREEN.

02:15PM

1 IT'S ACTUALLY SIMPLER THAN IT LOOKS,
2 YOUR HONOR. THE FIRST PAGE IS THE COVER E-MAIL, AND
3 THEN THE DOCUMENT THAT IS ATTACHED ARE TCW INVESTOR --
4 AT LEAST ONE TCW CLIENT LIST.

5 THE COURT: THIS IS A -- MICROSOFT OUTLOOK
6 E-MAIL FROM BARBARA VANEVERY, LAST I CHECKED.

02:16PM

7 MR. MADISON: DEFENSE.

8 THE COURT: A DEFENDANT IN THIS CASE.

9 AND MARK HELM, AND ALLRED, LAST I
10 CHECKED, WERE DEFENDANTS' LAWYERS IN THIS CASE.

02:16PM

11 MR. MADISON: CORRECT.

12 THE COURT: WHAT IS THE ISSUE WITH THE
13 ATTACHMENT?

14 MR. MADISON: THE ATTACHMENT IS, IN OUR VIEW,
15 STOLEN TCW PROPERTY. WITH HER POSSESSION, AS OF THIS
16 DAY, IS RELEVANT EVIDENCE.

02:16PM

17 AND IT COMES, FOR EXAMPLE, LONG AFTER
18 THIS ALLEGED REMEDIATION PROGRAM WAS SUPPOSEDLY DOING
19 ITS JOB, AND ALL THE REST.

20 NOW, WE'RE NOT TRYING TO -- I MEAN, I DO
21 THINK THERE WOULD BE AN ARGUMENT HERE THAT THE CONTENTS
22 WOULD BE SOMETHING THAT THE COURT COULD LOOK AT IN
23 CAMERA TO DETERMINE WHY IT'S BEING SENT AT SUCH A LATE
24 DATE.

02:17PM

25 BUT THE POINT NOW, WE'RE NOT -- THIS
26 ISN'T ABOUT THE REDACTION, YOUR HONOR.

02:17PM

27 WHAT HAPPENED IS, LAST THURSDAY, THE
28 DEFENSE ASKED FOR THE ENTIRE E-MAIL BACK, AND THEREFORE

1 DEPRIVING THE JURY OF HEARING THE FACT THAT
2 MS. VANEVERY HAD THIS STOLEN INFORMATION ON
3 FEBRUARY 1ST, 2010.

4 IT DIRECTLY REBUTS THE REMEDIATION, IT
5 ESTABLISHES HER POSSESSION OF STOLEN INFORMATION FROM
6 TCW.

02:17PM

7 AND IT'S GERMANE. AND OF COURSE, CASE
8 LAW IS CRYSTAL CLEAR. THERE'S NO PRIVILEGE IN THE DATE
9 AND TIME AND SUBJECT MATTER AND TO AND FROM, WHICH IS
10 WHY THEY REDACTED IT THE WAY THEY DID, WHEN THEY
11 PRODUCED IT.

02:17PM

12 WE WANT TO USE IT AS REDACTED.

13 NOW THEY SAY WE CAN'T USE IT AT ALL.

14 THE COURT: MR. ALLRED, YOU'RE STANDING.

15 MR. ALLRED: YES, YOUR HONOR. THERE'S TWO
16 ISSUES HERE. I WANT TO TAKE THEM SEPARATELY.

02:18PM

17 ONE IS THE PRIVILEGE ISSUE, AND ONE IS
18 THE ADMISSIBILITY.

19 PRIVILEGE, IT'S QUITE CLEAR THERE IS A
20 PRIVILEGED COMMUNICATION. THERE'S NO SERIOUS DEBATE
21 I'M HEARING FROM THE OTHER SIDE. WE POINTED OUT TO
22 THEM, THE ATTACHMENT LINE REVEALS THE SUBSTANCE OF THE
23 COMMUNICATION; AND IT, AT A MINIMUM, THAT NEEDS TO BE
24 REDACTED.

02:18PM

25 AND I HAVEN'T HEARD A COUNTER-ARGUMENT
26 ON THAT. SO WE HAVE A SOLID PRIVILEGE CLAIM I HAVEN'T
27 HEARD A REBUTTAL TO.

02:18PM

28 WITH RESPECT TO THE ATTACHMENTS, THEY'VE

1 BEEN PRODUCED HALF A DOZEN DIFFERENT TIMES. THEY GOT
2 THEM FROM THE INSPECTION OF THE MEDIA. THEY GOT THE
3 DATA FROM THE INSPECTION OF THE MEDIA. THE DATE ISSUE
4 HE'S RAISING --

5 THE COURT: IS MS. VANEVERY GOING TO DENY, ON
6 FEBRUARY 10TH, 2010, SHE STILL HAD THIS EXHIBIT?

02:18PM

7 MR. ALLRED: FEBRUARY --

8 THE COURT: YES.

9 MR. ALLRED: FEBRUARY 1ST, I ASSUME NOT.

10 THIS WAS JUST RAISED LAST NIGHT. I
11 HAVEN'T HAD A CHANCE TO ASK HER. BUT I CAN'T IMAGINE
12 SHE WOULD.

02:19PM

13 THE COURT: AS A PRACTICAL MATTER, I THINK YOU
14 STAY AWAY FROM THE E-MAIL, BUT YOU CAN INQUIRE AS TO
15 THAT. I MEAN -- YOU CHECK WITH MS. VANEVERY --

02:19PM

16 MR. ALLRED: YES.

17 THE COURT: -- AND SEE.

18 BUT YOU KNOW, I'M NOT EVEN SURE THAT THE
19 CLIENT LIST ITSELF IS A TRADE SECRET. THERE'S ISSUES
20 ON THAT. WE'LL HAVE TO GO THROUGH IT.

02:19PM

21 BUT YOU CAN SHOW HER THIS AS AN EXHIBIT.
22 IT IS 2078, 2 THROUGH 215. LEAVE OFF THE E-MAIL TO THE
23 LAWYERS. AND JUST SAY, DID YOU, ON OR ABOUT THIS DATE,
24 HAVE THIS DOCUMENT IN YOUR POSITION, SOMETHING LIKE
25 THAT.

02:19PM

26 MR. MADISON: THE PROBLEM IS, THAT'S A NEEDLE
27 IN A HAYSTACK, NO. 1.

28 NO. 2, IT PRESENTS A SITUATION, AGAIN,

1 WHERE IF SHE JUST SAYS, NO, THEN I CAN'T IMPEACH HER
2 WITH THE FACT THAT SHE NOT ONLY DID SHE HAVE IT, SHE
3 PULLED IT OUT --

4 THE COURT: I CAN'T IMAGINE SHE'D SAY NO,
5 WHEN --

02:20PM

6 MR. ALLRED: YOU'RE ABSOLUTELY RIGHT. THERE'S
7 NO DOUBT.

8 MR. ALLRED: YOU HAVEN'T SEEN HER DEPO, YOUR
9 HONOR, BUT I'LL --

10 THE COURT: I'VE SEEN A LOT.

02:20PM

11 MR. MADISON: I'M HOPEFUL.

12 THE COURT: EVERY DAY IS A PLEASANT SURPRISE.

13 SO LET'S TALK TO THE WITNESS.

14 MR. MADISON: YES, YOUR HONOR.

15 THE COURT: YOU INQUIRE THAT WAY.

02:20PM

16 IF IT RUNS INTO A PROBLEM, WE'LL HAVE TO
17 DEAL WITH IT.

18 MR. ALLRED: YES, YOUR HONOR.

19 THE COURT: YOU WANT THIS BACK, OR SHOULD I
20 KEEP IT?

02:20PM

21 MR. MADISON: IT'S A DUPLICATE FOR IT. IF
22 YOU'D LIKE TO HAND IT BACK. THANK YOU.

23 THE COURT: I'LL SEE YOU IN THE MORNING.

24 HAVE A NICE EVENING.

02:20PM

26 (AT 2:20 P.M., AN ADJOURNMENT
27 WAS TAKEN UNTIL AUGUST 2, 2011

28 AT 8:30A.M.)