

1 CASE NUMBER: BC429385  
 2 CASE NAME: TRUST COMPANY OF THE WEST VS.  
 3 JEFFREY GUNDLACH, ET AL  
 4 LOS ANGELES, WEDNESDAY, AUGUST 10, 2011  
 5 CALIFORNIA  
 6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
 7 APPEARANCES: (AS HERETOFORE NOTED.)  
 8 REPORTER: WENDY OILLATAGUERRE, CSR #10978  
 9 TIME: 8:20 A.M.

08:59AM

10  
 11 THE COURT: GOOD MORNING, LADIES AND  
 12 GENTLEMEN.

13  
 14 (COUNSEL RESPONDED "GOOD MORNING, YOUR HONOR.")

08:23AM

15  
 16 THE COURT: MORNING.

17 IN THE TCW VERSUS GUNDLACH MATTER, WE'RE  
 18 OUT OF THE PRESENCE OF THE JURY.

19 I JUST WANTED TO GO OVER A COUPLE OF  
 20 ISSUES THAT WE HAD TALKED ABOUT LAST NIGHT. I WENT  
 21 BACK THROUGH THE DEPOSITION CLIPS OF THE THREE  
 22 DEPOSITIONS WE WERE TALKING ABOUT.

08:24AM

23 FIRST, ON THE JP JIRAINDIRA  
 24 PURUSHOTHAMAN DEPOSITION, WHAT DID WE DO? DID WE  
 25 CLARIFY THE AGREEMENT -- COOPERATION AGREEMENT, IF ANY?

08:24AM

26 MR. BRIAN: WE HAVE -- YESTERDAY WE SAID WE'D  
 27 BRING IT TO YOUR HONOR. WE HAVE IT. IT IS --  
 28 MR. ALLRED HAS IT. WE SAID WE'D GIVE IT TO YOU

1 IN-CAMERA.

2 IT'S ENTITLED A SEVERANCE AGREEMENT AND  
3 RELEASE. THERE IS A PARAGRAPH, YOU WILL SEE PARAGRAPH  
4 6, THAT TALKS ABOUT REIMBURSEMENT FOR ATTORNEY'S FEES  
5 UNDER THE LABOR CODE 2802.

08:24AM

6 AND THAT'S IN THE EVENT HE COOPERATES.  
7 IT DOES NOT, IN OUR VIEW, OBLIGATE HIM TO COOPERATE. I  
8 DIDN'T DRAFT THIS, OR DIDN'T SEE IT UNTIL IT WAS  
9 REQUESTED; BUT I'M HAPPY TO SHOW IT TO YOU, AND YOU CAN  
10 DECIDE WHETHER COUNSEL SEES IT OR NOT.

08:25AM

11 THE COURT: LET ME ASK YOU THIS: IS IT  
12 DEFENSE'S INTENTION TO CALL MR. PURUSHOTHAMAN AS A  
13 WITNESS?

14 MR. BRIAN: NO.

15 THE COURT: ALL RIGHT.

08:25AM

16 I WENT THROUGH THE DESIGNATIONS. AND,  
17 QUITE FRANKLY, YOU KNOW, IT LOOKED TO ME LIKE I HAD  
18 SUSTAINED MOST OF THE OBJECTIONS. BETWEEN ZHANG AND  
19 PURUSHOTHAMAN, ONE OF THEM, THERE WERE NO HEARSAY  
20 OBJECTIONS; THEY WERE ALL FOUNDATION AND OTHER TYPES OF  
21 OBJECTIONS, AND I RULED ON THEM ON THE BASIS OF THE  
22 OBJECTION.

08:25AM

23 I THINK IN THE JP ONE, THERE WERE SOME  
24 OBJECTIONS AS TO HEARSAY. AND IN MY REVIEW OF THEM,  
25 MOST OF THEM WERE SUSTAINED, AND SUBSTANTIAL PORTIONS  
26 OF THE COUNTER DESIGNATIONS WERE EXCLUDED.

08:26AM

27 THAT SAID, I'VE NOW RECEIVED A  
28 SUPPLEMENTAL DESIGNATION BY PLAINTIFFS OF A VERY

1 LIMITED PORTION OF THE PURUSHOTHAMAN TESTIMONY. I'M  
2 NOT SURE WHERE WE STAND. I WENT THROUGH THE EXERCISE.  
3 HAVE THE DEFENDANTS RECEIVED THE  
4 REDESIGNATION?

5 MR. ALLRED: YOUR HONOR, WE SUBMITTED THIS 08:26AM  
6 MORNING, A PRELIMINARY RESPONSE, I THINK PROBABLY ABOUT  
7 7:00 A.M.

8 THE COURT: WHERE DID YOU SUBMIT THAT? I  
9 HAVEN'T SEEN THAT YET.

10 MR. ALLRED: WELL, HOPEFULLY IT WAS PUT ON 08:26AM  
11 LEXISNEXIS AND FILED THIS MORNING. I WAS TOLD IT WAS.

12 THE COURT: I HAVEN'T SEEN IT.

13 MR. ALLRED: OUR POSITION, YOUR HONOR, IS --  
14 AS YOUR HONOR SAID, WE'VE GONE THROUGH THIS PROCESS.  
15 THE COURT HAS RULED. THEY DON'T GET TO THEN DO A REDO 08:26AM  
16 BY PICKING DIFFERENT DESIGNATIONS AND SAYING, OH, NOW  
17 WE'VE MOOTED ALL THE PRIOR RULINGS, AND YOU GUYS HAVE  
18 TO GO BACK AND DO IT AGAIN. WE THINK THE COURT HAS  
19 RULED ON WHICH OF OUR DESIGNATED TESTIMONY CAN COME IN.

20 AS WE ALSO NOTED IN THE BRIEF, YOUR 08:27AM  
21 HONOR -- AND I APOLOGIZE. I DID GIVE YOU A COPY, I  
22 BELIEVE. THERE IS NO HEARSAY ISSUE HERE, BECAUSE JP,  
23 I'M NOT GOING TO TRY TO PRONOUNCE HIS NAME, IS LIVING  
24 IN NEW YORK, MORE THAN A 150 MILES FROM THE COURTHOUSE;  
25 AND THEREFORE, IT'S AS IF, IN HIS DEPOSITION, HE IS 08:27AM  
26 SITTING IN COURT TESTIFYING.

27 THE COURT: WELL, LET ME JUST SAY, THE HEARSAY  
28 OBJECTIONS WERE BY AND LARGE SUSTAINED, SO I DON'T SEE

1 IT AS AN ISSUE. AND I THINK WE OUGHT TO GO WITH WHAT  
2 WAS SUBMITTED, THE COUNTER-DESIGNATIONS, AND SHOW THAT  
3 TESTIMONY.

4 MR. QUINN: WELL, WE DID NARROW IT TO LIKE  
5 FIVE QUESTIONS AND ANSWERS, BECAUSE AS  
6 COUNTER-DESIGNATED IT'S LIKE, YOU KNOW, PLAYING THEIR  
7 CASE.

08:27AM

8 THE COURT: WELL, I GUESS WHAT I'M CONCERNED  
9 ABOUT, MR. QUINN, IS THIS HAS BEEN -- HOPEFULLY, WE'VE  
10 TRIED TO MAKE IT AN ORDERLY PROCESS.

08:28AM

11 MR. QUINN: YES.

12 THE COURT: DESIGNATIONS,  
13 COUNTER-DESIGNATIONS, OBJECTIONS. THE COURT HAS RULED  
14 ON THE OBJECTIONS, AND ALL OF THAT IS ON THE TABLE.  
15 AND THAT'S THE WAY THE TABLE IS SET.

08:28AM

16 NOW IF, AT SOME POINT DOWN THE ROAD,  
17 THREE WEEKS INTO THE TRIAL, SOMEONE TAKES ANOTHER LOOK  
18 AT EVERYTHING AND SAYS, WE REALLY DIDN'T WANT TO  
19 DESIGNATE THAT, OR GIVEN THE RULINGS, WE REALLY DON'T  
20 WANT TO USE IT, YOU DON'T WANT TO PLAY ANY OF IT -- YOU  
21 DON'T HAVE TO.

08:28AM

22 AND WHETHER THE DEFENDANTS CHOOSE TO  
23 OFFER OR TAKE THE POSITION THAT THIS WITNESS IS OUTSIDE  
24 THE JURISDICTION OF THE COURT, SO THEY CAN USE HIS  
25 TESTIMONY, IT'S BEEN PRESERVED, AND PLAYED IN THEIR  
26 CASE, I CAN'T EVEN CROSS THAT BRIDGE YET.

08:28AM

27 THE CONCEPT WAS, WHATEVER DEPOSITION  
28 TESTIMONY IS GOING TO BE PLAYED, WE PLAY ALL OF IT FOR

1 A WITNESS AT THE SAME TIME.

2 NOW, I'VE RULED ON IT, IF YOU WANT TO  
3 FORGO USING THAT TESTIMONY, FINE. I'M NOT INCLINED TO  
4 SAY WE START OVER WITH A REDESIGNATION AND A  
5 RECONSIDERATION OF WHAT WE DO.

08:29AM

6 MR. QUINN: I HEAR THAT, YOUR HONOR. BUT I  
7 THINK THE COURT JUST SAID SOMETHING WHICH IS DIFFERENT  
8 THAN WHAT WE HAD DISCUSSED BEFORE. THE COURT JUST  
9 SAID, IF WE'RE GOING TO PLAY DEPOSITION TESTIMONY,  
10 WE'RE GOING TO PLAY IT ALL AT THE SAME TIME.

08:29AM

11 THAT WASN'T MY UNDERSTANDING. WE CAN  
12 PLAY OUR PARTS IN OUR CASE, THEY CAN DESIGNATE  
13 COMPLETENESS. AND ANYTHING ELSE THEY WANT TO PLAY,  
14 THEY PLAY IN THEIR CASE.

15 THE COURT: WELL, I GUESS THE WAY I LOOK AT  
16 THIS, AND WHAT I'VE SEEN IS, MOST OF THE COUNTER-  
17 DESIGNATIONS ARE TO PUT THINGS IN CONTEXT, AND THAT'S  
18 WHAT WE'RE LOOKING AT.

08:29AM

19 MR. QUINN: WELL, IF THE COURT LOOKED AT THAT  
20 ISSUE, AND THAT'S THE COURT'S RULING, THAT THESE ARE  
21 ALL APPROPRIATE COUNTERS FOR COMPLETENESS, WE OBVIOUSLY  
22 ACCEPT THE COURT'S RULING.

08:29AM

23 IT WASN'T CLEAR TO US THAT THE COURT HAD  
24 THAT IN MIND. CLEARLY, THE COURT HAS LOOKED AT THAT  
25 WITH THAT IN MIND.

08:29AM

26 THE COURT: AT LEAST THAT'S WHAT I'VE DONE.  
27 I'VE BEEN DOING A LOT OF THIS ON THE FLY, AND DOING  
28 WHAT WE CAN.

1 MR. QUINN: I DON'T ENVY YOU.

2 THE COURT: ON THE ZHANG DEPOSITION, I MEAN,  
3 THERE REALLY WEREN'T ANY HEARSAY OBJECTIONS. I RULED  
4 ON THEM, AND IT SEEMS TO ME THAT THOSE REALLY SHOULD  
5 STAND.

08:30AM

6 ON THE GUNDLACH DEPOSITION, I DID GO  
7 BACK AND LOOK AT THE PORTIONS THAT RELATED TO PPIP.  
8 AND I WOULD MODIFY THE RULING AS TO THE EXCHANGE AT  
9 PAGE 366, 22 -- 366, LINE 22, TO 368, LINE 13.

08:30AM

10 I WOULD OVERRULE IT AS TO 366, 22 TO  
11 368, 7; AND SUSTAIN THE OBJECTION AS TO 368, 8 THROUGH  
12 13, WHICH, AS I UNDERSTOOD IT, WAS REALLY THE PORTION  
13 THAT YOU WERE FEELING -- SUGGESTING YESTERDAY WAS  
14 INAPPROPRIATE.

15 AND IN LOOKING AT IT AGAIN, I THINK YOU  
16 ARE PROBABLY RIGHT. AND I WOULD TAKE OUT THAT  
17 CHARACTERIZATION AND STATEMENT REGARDING THE CONDUCT OF  
18 TCW.

08:31AM

19 SO WITH THAT MODIFIED RULING, THE  
20 REMAINDER OF THE RULINGS ON GUNDLACH WOULD STAND.

08:31AM

21 MR. QUINN: IT'S THE TWO LINES, 6 TO 7 -- I  
22 WAS TOLD THEY WERE MAKING REFERENCE -- I WAS TOLD, HE  
23 SAYS, THAT THEY WERE MAKING REPRESENTATIONS THAT THE  
24 DELIVERABLE WAS NOT GOING TO BE CHANGED. THERE IS NO  
25 SUCH REPRESENTATION.

08:31AM

26 THERE IS A KEY MAN CLAUSE, AND THERE'S  
27 ACTUALLY A PROVISION IN THE AGREEMENT. AND THIS IS NOT  
28 DISPUTED THAT IF HE LEAVES, THERE'S A PROCESS YOU GO

1 THROUGH TO GET A NEW KEY MAN, OR THE GOVERNMENT CAN --  
2 THE COURT: BUT THIS GOES TO THE ARGUMENT I'M  
3 HEARING FROM BOTH SIDES ALL THE TIME. IT GOES TO  
4 MR. GUNDLACH'S STATE OF MIND. AND TO THE EXTENT THAT  
5 YOU CAN SHOW THAT THAT WASN'T THE CASE, YOU MAY  
6 CHALLENGE THAT.

08:32AM

7 BUT IF THAT'S WHAT HE BELIEVED TO BE  
8 TRUE, AND MY READING OF THAT WAS THAT THAT GAVE HIM, IN  
9 HIS MIND, SOME SOLACE OR LEVEL OF COMFORT THAT HE  
10 OTHERWISE DIDN'T HAVE.

08:32AM

11 NOW, I'M TAKING OUT THE REST OF THE  
12 REPRESENTATIONS.

13 ANYTHING ELSE?

14 MR. SURPRENANT: YES, YOUR HONOR.

15 MR. HICKS WILL BE THE NEXT WITNESS. AND  
16 I THINK WE HAVE TWO FAIRLY MINOR EVIDENTIARY ISSUES TO  
17 GET OUT OF THE WAY.

08:32AM

18 THE COURT: CAN WE DO THAT NOW?

19 MR. SURPRENANT: YES, YOUR HONOR.

20 MIKE, IF YOU COULD DISPLAY 2125-1.

08:32AM

21 YOUR HONOR, AS I UNDERSTAND IT,  
22 DEFENDANTS DO NOT HAVE AN OBJECTION TO THIS EXHIBIT,  
23 BUT THEY DO HAVE AN OBJECTION TO WHAT WE WANT TO PLAY,  
24 WHICH IS THIS EXHIBIT, THIS EXACT EXHIBIT, WITH TWO  
25 ADDITIONAL COLUMNS.

08:33AM

26 MIKE, IF YOU COULD DISPLAY 2125-1A.

27 WHAT MR. HICKS WILL TESTIFY TO IS UNDER  
28 STANDARD INDUSTRY CONVERSION RATES, THE GIGABYTES

1 TRANSLATES INTO PRINTED PAGES. AND WE THINK THAT WOULD  
2 BE USEFUL TO ILLUSTRATE TO THE JURY WHAT WE'RE TALKING  
3 ABOUT.

4 I DON'T THINK ANY OF US, I KNOW I  
5 CERTAINLY DON'T HAVE ANY UNDERSTANDING IN A CONCRETE 08:33AM  
6 WAY WHAT A GIGABYTE IS. AND DEFENDANT'S OBJECTION, AS  
7 I UNDERSTAND IT, AND IT'S TRUE, IS THE PRINTED PAGE  
8 CONVERSION WAS NOT HIS EXPERT REPORT, BUT HE'S SIMPLY  
9 ILLUSTRATING IN A TANGIBLE WAY FOR THE JURY.

10 SO THAT'S THE ONLY DISAGREEMENT HERE, IS 08:33AM  
11 DO WE GO WITH THE ONE THAT DOESN'T HAVE THE PRINTED  
12 PAGE COLUMN, OR THE ONE THAT SIMPLY HAS THE -- OR THAT  
13 HAS THE COLUMN TO ILLUSTRATE WHAT THE GIGABYTES MEAN.

14 THE COURT: ALL RIGHT. AND I WOULD SAY, YOU  
15 GO WITH THE EXHIBIT WITHOUT THE PRINTED PAGE COLUMN, 08:34AM  
16 BUT HE MAY TESTIFY, IN TERMS OF WHAT THE EQUIVALENTS  
17 ARE.

18 IF HE DIDN'T PUT THIS EXHIBIT IN HIS  
19 REPORT, AND IT WASN'T THERE, THEN WE CAN'T PUT A  
20 VISUAL -- A DOCUMENTARY OFFERING OF THIS TESTIMONY; BUT 08:34AM  
21 I'LL ALLOW HIM TO.

22 MR. SURPRENANT: THANK YOU, YOUR HONOR.

23 ONE OTHER ISSUE, THERE'S THREE EXHIBITS  
24 THAT WERE IN HIS REPORT.

25 MIKE, IF YOU COULD PUT UP 1510A-83. 08:34AM  
26 THIS IS -- THIS WAS EXHIBIT 83 TO MR. HICKS' REPORT.

27 ON THE LEFT-HAND SIDE IS DOUBLELINE  
28 COPY --



1 THE COURT: DO WE HAVE A TRIAL EXHIBIT NUMBER  
2 FOR THIS?

3 MR. SURPRENANT: YES. IT'S AT THE BOTTOM,  
4 YOUR HONOR.

5 THE COURT: 1510A?

08:34AM

6 MR. SURPRENANT: DASH 83.

7 THE COURT: OKAY.

8 MR. SURPRENANT: ON THE LEFT-HAND SIDE IS A  
9 VIRTUALLY VERBATIM DOUBLELINE CODE. AS IT SAYS, EMPTY  
10 OR RELEVANT LINES HAVE BEEN MOVED.

08:34AM

11 ON THE RIGHT-HAND SIDE IS, IT SAYS IT'S  
12 TCW CODE THAT IS NOT VERBATIM, AND IT SAYS  
13 CORRESPONDING LINES OUT OF ORDER.

14 AND THIS IS ILLUSTRATING WHAT MR. HICKS  
15 WILL TESTIFY IS THE SIMILARITY OF THE TWO CODES. HE IS  
16 NOT SAYING IT'S VERBATIM. HE'S NOT SAYING THIS IS A  
17 COPYING CASE.

08:35AM

18 THIS IS A CASE WHERE ONE CODE WAS  
19 DERIVED, IN HIS OPINION, AS A COMPUTER SCIENTIST, FROM  
20 ANOTHER CODE. AND WE WILL -- I WILL ASK HIM, AS A  
21 COMPUTER SCIENTIST, TO EXPLAIN WHY THIS COMPARISON IS  
22 EITHER MEANINGFUL OR MISLEADING. AND HE'LL TESTIFY.

08:35AM

23 AND IT SAYS THE CORRESPONDING LINES ARE  
24 OUT OF ORDER. SO WE THINK THAT IT COMES IN EITHER AS  
25 AN ADMISSIBLE DEMONSTRATIVE, UNDER CALIFORNIA LAW,  
26 DEMONSTRATIVE EVIDENCE THAT FAIRLY REPRESENTS EXPERT  
27 TESTIMONY IS ADMISSIBLE.

08:35AM

28 IN ANY EVENT, WE WOULD CERTAINLY LIKE TO

1 DISPLAY IT TO THE JURY.

2 MR. WEINGART: BRIEFLY, YOUR HONOR, AS YOU CAN  
3 TELL FROM THIS CHART, WHAT THEY HAVE DONE IS TAKEN TWO  
4 SETS OF CODE; THEY'VE REMOVED CERTAIN LINES FROM IT;  
5 AND THEN THEY'VE REARRANGED IT, TO MAKE IT LOOK LIKE  
6 IT'S THE SAME. AND IT IS MISLEADING.

08:36AM

7 AND I THINK UNDER 352, THIS TYPE OF  
8 CHART SHOULD NOT BE ALLOWED, BECAUSE IT LEAVES AN  
9 INCREDIBLY MISLEADING IMPRESSION ABOUT THE SIMILARITIES  
10 BETWEEN THE CODES. IF HE WANTS TO TESTIFY THAT HE SAW  
11 SOMETHING SIMILAR BETWEEN LINE 5 AND LINE 83, I DON'T  
12 HAVE A PROBLEM WITH THAT. BUT I THINK PUTTING UP SOME  
13 VISUAL LIKE THIS, THAT SUGGESTS A SIMILARITY THAT DOES  
14 NOT EXIST, IS NOT APPROPRIATE.

08:36AM

15 THE COURT: LET ME JUST ASK -- I'M LOOKING AT  
16 THIS EXHIBIT 1510A-83. THE NUMBERS ON THE LEFT SIDE,  
17 AND ON THE LEFT SIDE CODE, I SEE ONE, TWO, FOUR, FIVE,  
18 SIX, SEVEN. THEY AREN'T ALL IN ORDER.

08:36AM

19 AND ON THE LEFT SIDE, THEY TEND TO RUN,  
20 YOU KNOW, 1 THROUGH 33, WITH A FEW OMISSIONS.

08:37AM

21 ON THE RIGHT SIDE, WHICH IS THE -- AS I  
22 UNDERSTAND IT, THE CODE FOR THE TCW PROGRAM, IT GOES  
23 ONE, TWO, FOUR, FIVE, SIX, 10, 11, AND BASICALLY JUMPS  
24 AROUND AND GOES DOWN TO 63, WITH A LOT OF OMISSIONS.

25 WHAT ARE THE OMISSIONS? CAN -- IF YOU  
26 WANTED TO SHOW THE CODE TRACKING 1 THROUGH 33 OR -- AND  
27 THE LINES ON BOTH CODES, THAT SEEMS TO ME TO BE  
28 APPROPRIATE; BUT I DON'T FULLY UNDERSTAND WHO CHOSE --

08:37AM

1 MR. SURPRENANT: IT WAS -- MR. HICKS DID, YOUR  
2 HONOR.

3 AND THE NEXT TWO EXHIBITS, WHICH WE ALSO  
4 INTEND TO PUT IN, 1510A-84 AND 85, ARE THE ACTUAL CODE.  
5 SO AFTER, OR IF, YOUR HONOR PREFERS BEFORE, WE CAN PUT  
6 IN THE ACTUAL CODE. 08:38AM

7 MR. HICKS WILL TESTIFY -- I'M LOOKING  
8 FOR SIMILARITY. I'M NOT LOOKING FOR IF IT WAS EXACTLY  
9 COPIED. AND HE WILL TESTIFY THAT HE MOVED THE CODE  
10 AROUND. WHAT HE'S TRYING TO IDENTIFY IS SIMILARITY 08:38AM  
11 BETWEEN THE TWO CODES. HE'S MAKING NO CLAIM OF EXACT  
12 COPYING.

13 THE COURT: IT WOULD SEEM TO ME, AT LEAST  
14 SUBJECT TO SOME FURTHER FOUNDATION, IF YOU ARE OFFERING  
15 THE ACTUAL CODE FROM EACH PROGRAM, THEN HE CAN TESTIFY 08:38AM  
16 TO THE SIMILARITIES.

17 BUT WHETHER THIS DEMONSTRATIVE -- THIS  
18 IS INTENDED BY MR. HICKS ONLY TO SHOW WHERE THINGS ARE  
19 SIMILAR?

20 MR. SURPRENANT: IT IS INTENDED TO SHOW WHAT 08:38AM  
21 HE BELIEVES TO BE MEANINGFUL SIMILARITY.

22 AND IF YOUR HONOR IS DISINCLINED TO  
23 ADMIT IT INTO EVIDENCE, I CERTAINLY THINK WE GET TO  
24 DISPLAY IT AS ILLUSTRATIVE OF HIS TESTIMONY.

25 AND IF MR. WEINGART IS CORRECT IT'S 08:39AM  
26 MISLEADING, IT WOULD BE --

27 THE COURT: IT'S A SUBJECT OF  
28 CROSS-EXAMINATION. AND I WILL PROBABLY ALLOW IT TO BE

1 DISPLAYED DURING HIS TESTIMONY.

2 WHETHER IT SHOULD BE ADMITTED OR NOT,  
3 I'LL RESERVE.

4 MR. SURPRENANT: THANK YOU, YOUR HONOR.

5 ONE LAST THING WITH RESPECT TO  
6 MR. HICKS. WE HAVE A STIPULATION AS TO WHAT HAPPENED  
7 TO JP'S DRIVE. AND WE WOULD REQUEST THAT IT BE READ  
8 BEFORE MR. HICKS' TESTIMONY.

08:39AM

9 THE COURT: ANY OBJECTION?

10 MR. WEINGART: NO, YOUR HONOR.

08:39AM

11 THE COURT: ALL RIGHT. JUST HAVE IT UP HERE  
12 ON THE DESK, AND I'LL READ IT.

13 ANYTHING ELSE?

14 MR. SURPRENANT: NOT FROM ME, YOUR HONOR.

15 THE COURT: ALL RIGHT. LET'S BRING THE JURY  
16 IN.

08:39AM

17  
18 (AT 8:42 A.M. THE JURY ENTERED  
19 THE COURTROOM, AND THE FOLLOWING  
20 PROCEEDINGS WERE HELD:)

08:39AM

21  
22 MR. MADISON: WOULD YOU LIKE MR. ARENTSEN BACK  
23 ON THE STAND, YOUR HONOR?

24 THE COURT: YES.

25

26

27 ERIC ARENTSEN,

28 THE WITNESS ON THE STAND AT THE TIME OF THE

1           EVENING RECESS, HAVING BEEN PREVIOUSLY  
2           SWORN, RESUMED THE STAND AND TESTIFIED  
3           FURTHER AS FOLLOWS:

4

5           MR. BRIAN: DOES YOUR HONOR HAVE A COPY OF  
6 MR. ARENTSEN'S DEPOSITION? I HAVE ONE, IF YOU WOULD  
7 LIKE IT.

08:39AM

8           THE COURT: IT DOESN'T LOOK LIKE IT.

9                         IN THE TCW VERSUS GUNDLACH MATTER, ALL  
10 MEMBERS OF OUR JURY ARE PRESENT, AS ARE COUNSEL.

08:42AM

11 MR. ARENTSEN IS ON THE STAND.

12                         LADIES AND GENTLEMEN OF THE JURY, MY  
13 APOLOGIES FOR STARTING A LITTLE LATE THIS MORNING. WE  
14 HAD A COUPLE OF MATTERS THAT TOOK LONGER THAN EXPECTED.  
15 BUT THANK YOU ALL FOR BEING ON TIME AND READY.

08:42AM

16                         MR. ARENTSEN, PLEASE RECALL, YOU HAVE  
17 BEEN PREVIOUSLY SWORN, AND YOU ARE STILL UNDER OATH.

18                         MR. MADISON, YOU MAY CONTINUE WITH YOUR  
19 DIRECT EXAMINATION.

20           MR. MADISON: THANK YOU, YOUR HONOR.

08:43AM

21

22

23                         DIRECT EXAMINATION (RESUMED)

24 BY MR. MADISON:

25           Q. MR. ARENTSEN, JUST BEFORE WE BROKE, YOU HAD  
26 DESCRIBED AN EPISODE IN WHICH MR. GUNDLACH MADE A  
27 STATEMENT ON THE TRADING FLOOR ABOUT AFTER BONUSES WERE  
28 PAID, WE'RE OUT OF HERE TO SEND AN F-U TO MR. STERN, OR

08:43AM

1 SOMETHING TO THAT EFFECT.

2 WHEN ARE BONUSES PAID, AT TCW?

3 A. BONUSES ARE TYPICALLY PAID AT THE END OF  
4 FEBRUARY OF EACH YEAR.

5 Q. AND ARE THOSE BONUSES PAID JUST ONCE A YEAR,  
6 GENERALLY?

08:43AM

7 A. YES.

8 Q. DO YOU KNOW, AS A PERCENTAGE, GENERALLY, OF AN  
9 INDIVIDUAL'S TOTAL COMPENSATION IN THE MBS GROUP, WHAT  
10 PERCENTAGE WOULD BE PAID AT THAT TIME, AS PART OF THE  
11 BONUS PAYMENT?

08:43AM

12 A. YES.

13 Q. CAN YOU TELL US, PLEASE.

14 A. IT VARIES FROM PERSON TO PERSON; BUT  
15 TYPICALLY, IT COULD BE ANYWHERE FROM 20 TO 80 PERCENT  
16 OF THEIR TOTAL COMPENSATION.

08:43AM

17 Q. NOW, WE WERE ALSO TALKING YESTERDAY, JUST  
18 BEFORE THE BREAK, ABOUT THE MEETING OF SEPTEMBER 3RD  
19 WITH MR. STERN AND MR. GUNDLACH AND THE OTHERS, THAT  
20 YOU WERE PRESENT FOR, AND I WANT TO ASK YOU A COUPLE OF  
21 FOLLOW-UP QUESTIONS ON THAT.

08:44AM

22 FIRST OF ALL, WAS THERE -- I BELIEVE YOU  
23 MENTIONED SOMETHING ABOUT AN OFF-THE-CUFF STATEMENT  
24 ABOUT PURCHASING TCW.

25 DO YOU HAVE THAT IN YOUR MIND?

08:44AM

26 A. YES.

27 Q. CAN YOU TELL US, AS BEST YOU CAN RECALL, WHAT  
28 WAS SAID, WITH THAT IN MIND?

1 MR. BRIAN: ASKED AND ANSWERED, YOUR HONOR.

2 THE COURT: SUSTAINED.

3 MR. MADISON: VERY WELL.

4 Q. LET ME JUST ASK YOU, MR. ARENTSEN, DO YOU  
5 RECALL WHAT MR. STERN SAID, IF ANYTHING, WHEN  
6 MR. GUNDLACH MADE THE OFF-THE-CUFF REMARK ABOUT  
7 PURCHASING TCW?

08:44AM

8 A. I REMEMBER SOMETHING ALONG THE LINES OF, TCW  
9 IS NOT FOR SALE.

10 Q. MR. STERN SAYING THAT?

08:44AM

11 A. YES.

12 Q. AND THEN WAS THERE ANY DISCUSSION, IN THAT  
13 SEPTEMBER 3RD MEETING WITH MR. STERN, ABOUT A ROLE FOR  
14 MR. GUNDLACH AS CEO OR CO-CEO?

15 A. I RECALL A DISCUSSION ABOUT A CO-CEO ROLE, SO  
16 THERE WOULD BE MR. STERN AND MR. GUNDLACH TOGETHER.

08:45AM

17 Q. DO YOU RECALL WHAT WAS SAID BY EACH OF THEM IN  
18 THAT REGARD?

19 A. MARC HAD INDICATED THAT THE -- THAT JEFFREY  
20 COULD BE THE CO-CEO WITH HIM; AND JEFFREY INDICATED  
21 THAT HE DID NOT WANT THAT ROLE.

08:45AM

22 Q. DO YOU RECALL WHAT, IF ANYTHING, HE SAID  
23 SPECIFICALLY ABOUT THAT AT THIS POINT?

24 A. NOT MORE SPECIFIC THAN THAT.

25 Q. VERY WELL.

08:45AM

26 NOW, I BELIEVE YOU TOLD US YESTERDAY,  
27 RIGHT BEFORE THE BREAK, THAT THEN THERE WAS A POST  
28 MEETING AFTER THE SEPTEMBER 3RD MEETING WITH MR. STERN.

1 MR. STERN LEFT, AND THE REST OF YOU  
2 REMAINED IN THE LA CIENEGA ROOM ON THE 16TH FLOOR?

3 A. CORRECT.

4 Q. HOW LONG DID THAT MEETING LAST?

5 A. MY RECOLLECTION IS, ABOUT 30, MAYBE 45  
6 MINUTES.

08:46AM

7 Q. CAN YOU TELL US, AS BEST YOU CAN RECALL, WHAT  
8 WAS SAID IN THAT MEETING?

9 A. THAT MEETING HAD ALL OF THE MANAGING  
10 DIRECTORS, INCLUDING MR. GUNDLACH, IN THE ROOM. AND WE  
11 RECOUNTED WHAT HAD -- WHAT WE HAD TALKED ABOUT -- KIND  
12 OF GOING PLAY BY PLAY, IN TERMS OF WHO SAID WHAT, WHAT  
13 MARC'S REACTIONS WERE, AND A BIT MORE DETAILED  
14 DISCUSSION ABOUT THE OFFER TO BUY TCW.

08:46AM

15 Q. DID -- DO YOU RECALL WHETHER MR. GUNDLACH SAID  
16 ANYTHING ABOUT HOW HE THOUGHT THE MEETING HAD GONE?

08:46AM

17 A. YES.

18 Q. WHAT DID HE SAY? WHAT DID MR. GUNDLACH SAY  
19 ABOUT THAT?

20 A. I REMEMBER MR. GUNDLACH SAYING THAT THE  
21 MEETING WENT EXACTLY ACCORDING TO PLAN.

08:46AM

22 Q. DID YOU HAVE AN UNDERSTANDING AS TO WHAT PLAN  
23 THAT WAS THAT HE WAS TALKING ABOUT?

24 A. NO, I DID NOT.

25 Q. WHAT WAS THE MOOD OF THE MANAGING DIRECTORS  
26 THERE: MR. GUNDLACH, MR. BARACH, MR. SANTA ANA,  
27 MR. DAMIANI, MR. LUCIDO, AND YOURSELF, IN THE POST  
28 MEETING?

08:47AM



1 MR. BRIAN: OBJECTION. FORM. CALLS FOR  
2 SPECULATION.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER.

5 THE WITNESS: GENERALLY, WE -- IT HAD BEEN A  
6 STRESSFUL MEETING, AND GENERALLY EVERYONE WAS FEELING  
7 KIND OF UP, AFTER THE MEETING WAS OVER. BUOYANT, I  
8 THINK WOULD BE A GOOD DESCRIPTION.

08:47AM

9 Q. BY MR. MADISON: NOW, DO YOU RECALL WHETHER  
10 MR. GUNDLACH WAS ASKED, WHAT WAS NEXT?

08:47AM

11 A. NOW, I -- YES.

12 Q. WHO ANSWERED THAT?

13 A. I REMEMBER ASKING JEFFREY A QUESTION ALONG  
14 THOSE LINES.

15 Q. WHAT DID YOU ASK MR. GUNDLACH?

08:47AM

16 A. I SAID TO HIM THAT WE'VE DRAWN A LINE IN THE  
17 SAND, AND WHAT DO YOU THINK MARC IS GOING TO DO?

18 AND JEFFREY REPLIED, MARC IS A SMART  
19 GUY. HE'LL FIGURE IT OUT.

20 Q. DID YOU UNDERSTAND WHAT THAT MEANT, AT THAT  
21 TIME?

08:48AM

22 MR. BRIAN: OBJECTION. CALLS FOR SPECULATION.

23 THE COURT: SUSTAINED.

24 Q. BY MR. MADISON: WAS THERE ANY MORE DISCUSSION  
25 ABOUT THAT AT THAT TIME?

08:48AM

26 A. NO.

27 Q. HAD MR. GUNDLACH SAID ANYTHING PREVIOUS TO  
28 THAT, EITHER IN YOUR INDIVIDUAL MEETING WITH HIM, OR IN

1 THE POST MEETING UP TO THAT POINT, THAT RELATED TO HIS  
2 STATEMENT, MARC IS A SMART GUY, HE'LL FIGURE IT OUT?

3 A. I DON'T RECALL ANYTHING ELSE.

4 Q. DID YOU HAVE ANY SENSE, IN YOUR OWN MIND, AS  
5 TO WHERE THINGS STOOD VIS-A-VIS MR. STERN AND TCW AT  
6 THAT POINT IN TIME?

7 MR. BRIAN: OBJECTION. RELEVANCE.

8 MR. QUINN: HIS STATE OF MIND, YOUR HONOR.

9 THE COURT: I'LL SUSTAIN THE OBJECTION.

08:48AM

08:48AM

10 GO AHEAD.

11 MR. MADISON: VERY WELL.

12 Q. AND AFTER THE MEETING, DID YOU, PERSONALLY, DO  
13 ANYTHING, WITH THE MEETING IN MIND, ABOUT WHAT YOUR  
14 FUTURE PLANS OR INTENTIONS MIGHT BE?

15 A. I HAD A COUPLE OF CONVERSATIONS WITH A FEW  
16 STAFF MEMBERS.

08:49AM

17 Q. ABOUT WHAT SUBJECT?

18 MR. BRIAN: OBJECTION, RELEVANCE, HEARSAY.

19 THE COURT: SUSTAINED.

20 Q. BY MR. MADISON: WELL, I DON'T WANT YOU TO  
21 TELL US WHAT THE STATEMENTS WERE, SIR, BUT JUST WHAT  
22 WAS THE PURPOSE.

08:49AM

23 WELL, LET ME LAY SOME FOUNDATION.

24 DID YOU HAVE THESE CONVERSATIONS, AS A  
25 RESULT OF WHAT HAD HAPPENED ON SEPTEMBER 3RD, THE  
26 MEETINGS YOU TOLD US ABOUT?

08:49AM

27 MR. BRIAN: OBJECTION. RELEVANCE.

28 THE COURT: SUSTAINED.

1 I DON'T THINK WE'RE GOING THERE,  
2 MR. MADISON. I DON'T SEE ANY REASON --

3 MR. MADISON: OKAY.

4 Q. WELL, WERE YOU AWARE OF ANY PLANS ON ANYONE'S  
5 PART IN THE MBS GROUP TO LEAVE, AFTER THAT MEETING?

08:49AM

6 MR. BRIAN: OBJECTION, RELEVANCE, NO  
7 FOUNDATION, CALLS FOR SPECULATION.

8 THE COURT: I'LL OVERRULE IT.

9 ON THAT, YOU MAY ANSWER YES OR NO.

10 THE WITNESS: NO.

08:49AM

11 MR. MADISON: OKAY.

12 Q. NOW, DID YOU -- LET ME TURN TO A DIFFERENT  
13 TOPIC. AND -- WELL, LET ME ASK YOU THIS FIRST: DID  
14 YOU HAVE A CONVERSATION WITH MR. SANTA ANA AFTER THE  
15 SEPTEMBER 3RD MEETING THAT WAS OCCASIONED BY WHAT HAD  
16 HAPPENED ON SEPTEMBER 3RD?

08:50AM

17 A. YES, I DID.

18 Q. AND DO YOU RECALL WHEN THAT CONVERSATION  
19 OCCURRED?

20 A. IT WAS SOMETIME AFTER THAT MEETING. I DON'T  
21 HAVE A SPECIFIC DATE.

08:50AM

22 Q. AND CAN YOU APPROXIMATE FOR US, WHETHER IT WAS  
23 DAYS? WEEKS? MONTHS?

24 A. IT WAS A FEW DAYS.

25 Q. AND TELL US WHAT WAS SAID IN THAT  
26 CONVERSATION, PLEASE.

08:50AM

27 A. I HAD ASKED CRIS SANTA ANA IF HE HAD GIVEN  
28 THOUGHT TO WHAT TYPE OF SYSTEMS YOU WOULD NEED IF WE

1 WERE SETTING UP A NEW SHOP.

2 Q. WHAT DID MR. SANTA ANA SAY?

3 A. CRIS SAID, DON'T WORRY. IT'S BEING TAKEN CARE  
4 OF.

5 Q. DID -- WHAT SYSTEMS DID YOU HAVE IN MIND, WHEN  
6 YOU WERE ASKING MR. SANTA ANA THAT QUESTION?

7 MR. BRIAN: OBJECTION. RELEVANCE.

8 THE COURT: OVERRULED.

9 THE WITNESS: IN MY MIND, I WAS TALKING ABOUT  
10 THE BULK OF OUR INVESTMENT, AS WELL AS THE ENTIRETY OF  
11 ALL OF THE TOOLS WE HAD DEVELOPED OVER THE YEARS.

12 Q. WHY DID YOU ASK MR. SANTA ANA ABOUT THOSE  
13 SYSTEMS?

14 A. MY THINKING AT THAT TIME IS THAT IT'S --

15 MR. BRIAN: OBJECTION. RELEVANCE, 352.

16 THE COURT: SUSTAINED.

17 Q. BY MR. MADISON: WHY WAS THAT AN IMPORTANT  
18 QUESTION TO ASK, IF THERE WAS A THOUGHT ABOUT SETTING  
19 UP A NEW SHOP?

20 MR. BRIAN: SAME OBJECTION, YOUR HONOR.

21 THE COURT: SUSTAINED.

22 Q. BY MR. MADISON: HAD YOU BEEN INVOLVED IN  
23 ESTABLISHING, DEVELOPING THOSE SYSTEMS AT TCW, OVER  
24 YOUR YEARS THERE?

25 A. YES, I HAD.

26 Q. AND DID YOU HAVE A SENSE, BASED ON THE WORK  
27 YOU HAD DONE, OF HOW LONG IT WOULD TAKE TO CREATE THOSE  
28 SYSTEMS FROM SCRATCH, IF ONE HAD TO DO IT?

1 A. YES.

2 Q. HOW LONG?

3 MR. BRIAN: OBJECTION. FOUNDATION.

4 THE COURT: OVERRULED.

5 THE WITNESS: MANY MAN YEARS. IT WAS A VERY  
6 LARGE EFFORT.

08:51AM

7 Q. BY MR. MADISON: AND YOU ARE BASING THAT ON  
8 BEING IN THE GROUP WHEN THEY WERE DEVELOPED IN THE  
9 FIRST PLACE?

10 A. YES.

08:52AM

11 Q. NOW, WERE YOU AWARE, IN 2009, IN THE FALL OF  
12 2009, THAT MR. SANTA ANA HAD AN EXTERNAL HARD DRIVE  
13 THAT HE WOULD SOMETIMES USE?

14 A. VAGUELY AWARE.

15 Q. DID YOU SEE THAT HARD DRIVE? AS YOU SIT HERE  
16 TODAY, DO YOU RECALL SEEING IT?

08:52AM

17 A. I SAW SOMETHING. DID NOT GET A GOOD LOOK AT  
18 IT. THOUGHT IT MIGHT BE A HARD DRIVE.

19 Q. DID YOU SEE WHAT, IF ANYTHING, MR. SANTA ANA  
20 WAS DOING WITH IT?

08:52AM

21 A. THE ONE INSTANCE -- YES, I DID.

22 Q. WHAT DID YOU SEE?

23 A. THE ONE INSTANCE I RECALL, HE HAD IT PLUGGED  
24 INTO HIS WORK STATION IN THE TRADING ROOM.

25 Q. AND DO YOU KNOW WHAT HE WAS DOING WITH THAT  
26 EXTERNAL HARD DRIVE?

08:52AM

27 A. NO, I DO NOT.

28 Q. WERE YOU EVER ASKED TO DOWNLOAD ANY

1 INFORMATION BY ANYONE, IN CONNECTION WITH THESE  
2 DISCUSSIONS?

3 A. NO, I WAS NOT.

4 Q. DID YOU EVER DOWNLOAD ANY INFORMATION, TCW  
5 INFORMATION, FOR ANY PURPOSE OTHER THAN TCW BUSINESS?

08:53AM

6 A. NO, I DID NOT.

7 Q. DID YOU EVER TALK TO MR. SANTA ANA ABOUT  
8 PORTFOLIO MANAGEMENT TOOLS?

9 A. YES.

10 Q. AND WHAT DID -- DID YOU DISCUSS WITH  
11 MR. SANTA ANA ABOUT THAT IN THIS TIME FRAME?

08:53AM

12 A. PART OF OUR NORMAL RESPONSIBILITIES WOULD BE  
13 TO TALK ABOUT OUR PORTFOLIO MANAGEMENT TOOLS OR  
14 INVESTMENT TOOLS, AND HOW WE'RE USING THEM, AND HOW WE  
15 CAN IMPROVE THEM.

08:53AM

16 Q. AND WHAT DO YOU RECALL ABOUT DISCUSSING WITH  
17 MR. SANTA ANA IN THAT REGARD?

18 A. WE WOULD HAVE ONGOING DISCUSSIONS. NOTHING  
19 SPECIFIC IS JUMPING OUT AT ME.

20 Q. OKAY. SO I WANT TO TURN NOW TO SOME OF THOSE  
21 SPECIFIC SYSTEMS.

08:53AM

22 AND YOU SHOULD HAVE THE BINDER THAT'S IN  
23 FRONT OF YOU, MR. ARENTSEN.

24 ALSO, YOU SHOULD HAVE SOME COMPUTER  
25 DISKS. AND I DON'T KNOW IF THOSE ARE IN THE POCKETS OF  
26 THE BINDER, PERHAPS.

08:53AM

27 AND, YOUR HONOR, YOU DO NOT HAVE THE  
28 DISKS IN YOUR BINDER. WE DID PROVIDE A DUPLICATE TO

1 THE DEFENSE, AND WE'RE NOT GOING TO ACCESS THOSE HERE  
2 IN COURT, BUT I AM GOING TO -- INTEND TO EXAMINE  
3 MR. ARENTSEN ABOUT IT.

4 SO AS A PRODUCT SPECIALIST, DID YOUR  
5 RESPONSIBILITIES INCLUDE DEVELOPMENT OF THE SYSTEMS YOU  
6 HAVE BEEN TALKING ABOUT? 08:54AM

7 MR. BRIAN: OBJECTION. VAGUE, YOUR HONOR.

8 THE COURT: SUSTAINED.

9 WE CAN -- YOU CAN LAY A FOUNDATION TO  
10 WHETHER HE WAS AND WAS NOT INVOLVED. 08:54AM

11 Q. BY MR. MADISON: WELL, TELL US WHAT, IF ANY,  
12 DUTIES AS A PRODUCT SPECIALIST RELATED TO THE ANALYTIC  
13 SYSTEMS OR THE MBS GROUP?

14 A. I SPENT A GOOD DEAL OF MY TIME WORKING WITH  
15 OUR SYSTEMS, SUGGESTING WAYS TO IMPROVE OUR SYSTEMS. 08:54AM

16 AND IN AN EARLIER PART OF MY CAREER, I  
17 HAD LAID MUCH OF THE GROUNDWORK BY BUILDING THE SYSTEMS  
18 DIRECTLY.

19 Q. AND WHY DON'T WE TURN TO THE FIRST CD, WHICH  
20 IS MARKED EXHIBIT 1496. AND IF YOU CAN JUST LOOK AT  
21 THAT, AND JUST DESCRIBE IT FOR US, JUST PHYSICALLY,  
22 WHAT YOU ARE LOOKING AT, FOR THE RECORD, AND FOR US TO  
23 HEAR? 08:54AM

24 THE COURT: WHAT'S THE EXHIBIT NUMBER?

25 MR. MADISON: 1496, YOUR HONOR. 08:55AM

26 THE COURT: THANK YOU.

27 THE WITNESS: THIS IS A CD WITH -- MARKED  
28 CONFIDENTIAL, AND A STICK-ON LABEL. IT SAYS 1496 ON

1 IT.

2 AND ALONG ONE SIDE IS MY SIGNATURE AND A  
3 DATE.

4 Q. WHAT'S THE DATE?

5 A. THE DATE IS AUGUST 7TH, 2011. 08:55AM

6 Q. AND DID YOU PUT YOUR SIGNATURE AND THE DATE  
7 THERE?

8 A. YES, I DID.

9 Q. AND WHY DID YOU DO THAT?

10 A. TO INDICATE THAT I HAD LOOKED AT THE CONTENTS 08:55AM  
11 OF THIS DISK.

12 Q. DID YOU DO THAT ON OR ABOUT AUGUST 7TH, 2011?

13 A. YES, I DID.

14 Q. AND IF YOU COULD TELL US, THEN, WHAT DOES THAT 08:55AM  
15 EXHIBIT 1496 CONTAIN? WHAT INFORMATION IS ON THAT CD?

16 A. 1496, IF I RECALL CORRECTLY, IS A SET OF  
17 HOLDINGS DATA, PORTFOLIO HOLDINGS AND SECURITY  
18 CHARACTERISTICS.

19 MR. MADISON: AND WHAT WE'VE DONE, YOUR HONOR,  
20 IS WE'VE CREATED A HARD COPY OF THE CONTENTS, OR AT 08:56AM  
21 LEAST SOME OF THE CONTENTS.

22 CAN YOU LOOK AT THE BINDER WITH THE TAB  
23 1496, PLEASE.

24 THE COURT: ARE WE TALKING ABOUT 1496A?

25 MR. MADISON: YES, YOUR HONOR. 08:56AM

26 Q. AND SO --

27 THE COURT: WELL, I HAVE NOTHING HERE -- I  
28 MEAN, IT SAYS IT'S CONFIDENTIAL. ONLY ATTORNEYS CAN



1 SEE IT. I CAN'T SEE IT?

2 THE WITNESS IS GOING TO SEE IT, ISN'T  
3 HE?

4 MR. MADISON: HE IS NOW, YOUR HONOR.

5 THE COURT: OKAY.

08:56AM

6 MR. BRIAN: YOUR HONOR, I THINK WE DO HAVE A  
7 STIPULATION THAT THIS WAS ADDED FOR THE PURPOSE OF THE  
8 LAWSUIT; IS THAT CORRECT?

9 MR. QUINN: YES.

10 MR. MADISON: BUT THE STAMP WAS PART OF THE  
11 DISCOVERY PROCESS, YES.

08:57AM

12 THE COURT: GO AHEAD.

13 IS THIS THE EXTENT OF THIS EXHIBIT, WHAT  
14 WE SEE RIGHT HERE?

15 MR. MADISON: WELL, THERE ARE A SERIES OF  
16 TABS, 1496 A, B, C AND D. WE'RE GOING TO WORK OUR WAY  
17 THROUGH EACH ONE OF THOSE.

08:57AM

18 THE COURT: I GOT IT. GO AHEAD.

19 Q. BY MR. MADISON: MR. ARENTSEN, HAVE YOU HAD A  
20 CHANCE TO LOOK AT THE TABS A, B, C, AND D?

08:57AM

21 A. YES, I HAVE.

22 Q. AND WHAT ARE THE HARD COPIES OF THOSE NUMBERS?

23 A. SO 1496A IS A SUMMARY WORKSHEET, TO ALLOW A  
24 USER TO INPUT DATES.

25 Q. LET ME ASK A BETTER QUESTION.

08:57AM

26 A. OKAY.

27 Q. WITH REGARD TO THE DISK, 1496, WHAT ARE THE  
28 HARD COPIES?

1           A.     THE HARD COPIES REPRESENT SAMPLES FROM EACH OF  
2 THE FOUR PARTS OF THE SPREADSHEET THAT ARE ON THE DISK,  
3 ON 1496.

4           Q.     HAVE YOU REVIEWED THE HARD COPIES, AND  
5 CONFIRMED THAT THEY ARE INFORMATION THAT'S FROM THE  
6 DISK?

08:57AM

7           A.     YES, I HAVE.

8           MR. MADISON:   SO I MOVE 1496A THROUGH D, YOUR  
9 HONOR, AS WELL AS 1496, THE CD.

10          MR. BRIAN:   NO OBJECTION TO 1496A THROUGH D,  
11 NO OBJECTION TO E; JUST RESERVING OUR RIGHT TO TAKE A  
12 LOOK AT IT, YOUR HONOR.

08:58AM

13          THE COURT:   IT WILL BE ADMITTED.   A THROUGH D  
14 WILL BE ADMITTED.

15                        WHAT ABOUT E NOW?

08:58AM

16          MR. BRIAN:   I HAVE NO OBJECTION.   SUBJECT TO A  
17 RESERVATION OF RIGHT JUST TO SLOW DOWN, WE DON'T KNOW  
18 WHAT'S ON IT.

19          MR. MADISON:   E IS ACTUALLY THE CD.   I THINK  
20 WE GAVE IT ITS OWN LETTER, JUST TO FURTHER CONFUSE  
21 THINGS.

08:58AM

22          THE COURT:   AND I WOULD SEE NO REASON TO ADMIT  
23 THE CD.

24          MR. MADISON:   VERY WELL.

25          THE COURT:   SO WE'LL ADMIT A THROUGH D.

08:58AM

26          MR. MADISON:   YES, YOUR HONOR.

27          Q.     THEN I'D LIKE TO DISPLAY THE TABS.

28                        AND MR. ARENTSEN, IF YOU COULD JUST TELL

1 US, AS WE GO THROUGH THESE FIRST -- 1496A IS A VERY  
2 SHORT ONE. I THINK IT'S ONLY ONE PAGE.

3 AND IF WE COULD EXPAND THE LANGUAGE  
4 THERE AT THE TOP, WHAT IS THIS?

5 A. THIS LOOKS LIKE AN INPUT FORM, TO ENTER A  
6 START DATE, END DATE, AND INFORMATION USED TO COLLECT  
7 DATA FROM A DATABASE THAT WE HAVE.

08:58AM

8 Q. CAN YOU TELL US WHAT THE SIGNIFICANCE IS OF  
9 THE DATES OVER TO THE RIGHT? IT LOOKS LIKE 12/3/2009,  
10 11/30/2009, AND 12/2/2009?

08:59AM

11 THE COURT: THOSE ARE BUY DATE. BD IS A BUY  
12 DATE, T MINUS 1, ONE DAY BEHIND THAT. T MINUS 2, TWO  
13 DAYS BEHIND; AND THEN THE LAST, MONTH END.

14 SO THE PREVIOUS MONTH END WOULD HAVE  
15 BEEN NOVEMBER 30TH.

08:59AM

16 Q. BY MR. MADISON: SO IS THIS TELLING US THAT  
17 THERE'S NOTHING ON THAT CD FROM THIS TIME PERIOD?

18 A. NOT NECESSARILY. WHEN YOU RUN -- THERE'S A  
19 MACRO ASSOCIATED WITH ALL OF THIS INFORMATION; SO WHEN  
20 THAT MACRO IS RUN, IT WOULD COLLECT DATA RELEVANT TO  
21 THESE DATES.

08:59AM

22 Q. OKAY. SO THE INFORMATION IS RELEVANT TO THOSE  
23 DATES IN SOME WAY, AT WHATEVER TIME YOU RUN THE MACRO?

24 A. YES.

25 Q. WAS THAT MACRO A PART OF THE TCW SYSTEMS  
26 DURING YOUR ENTIRE TIME ON THE MBS GROUP?

08:59AM

27 A. I HAD NOT SEEN THAT MACRO PRIOR TO LOOKING AT  
28 THIS DISK, SO I'M NOT SURE.

1 Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW E-MAILS?

2 MR. BRIAN: OBJECTION. OBJECTION, MOVE TO  
3 STRIKE THE TESTIMONY ON THIS EXHIBIT.

4 THE COURT: OKAY.

5 I'M NOT GOING TO STRIKE THE TESTIMONY IN  
6 ITS ENTIRETY.

09:00AM

7 MR. BRIAN: WELL, ANYTHING RELEVANT TO WHAT --  
8 HE SAID HE HADN'T SEEN IT.

9 THE COURT: HE HADN'T SEEN THE MACRO IS WHAT  
10 HE SAID.

09:00AM

11 MR. BRIAN: THEN MOVE TO STRIKE THE ANSWER  
12 WITH REGARD TO THAT, YOUR HONOR.

13 THE COURT: I'LL STRIKE THAT.

14 MR. MADISON: WELL, IF I COULD, YOUR HONOR --

15 THE COURT: YOU CAN GO AHEAD AND ASK HIM  
16 QUESTIONS.

09:00AM

17 Q. BY MR. MADISON: A MACRO IS JUST A TOOL TO  
18 EXTRACT INFORMATION, RIGHT?

19 A. THAT IS CORRECT.

20 Q. SO YOU DON'T HAVE TO LOOK AT THE CODE FOR THE  
21 MACRO TO BE ABLE TO USE IT, DO YOU?

09:00AM

22 A. NO, NOT AT ALL.

23 Q. SO YOU USED THE MACRO THAT YOU FOUND IN THE  
24 SYSTEM, TO CREATE THIS INFORMATION?

25 A. YES.

09:00AM

26 Q. CORRECT?

27 A. YES.

28 Q. DID YOU KNOW ABOUT THE EXISTENCE OF THAT MACRO

1 PRIOR TO DECEMBER 2009?

2 A. THIS PARTICULAR MACRO, NO.

3 Q. WE HAVE EVIDENCE IN THE CASE, IN THE FORM OF  
4 SOME E-MAILS BY AND AMONG MR. SANTA ANA,  
5 MR. MAYBERRY AND JP, ABOUT THE CREATION OF CERTAIN  
6 SCRIPTS AND MACROS TO BE ABLE TO --

09:01AM

7 MR. BRIAN: OBJECTION TO THE FORM OF THE  
8 PREAMBLE, YOUR HONOR.

9 THE COURT: SUSTAINED.

10 Q. BY MR. MADISON: WELL, I JUST WANT TO ASK YOU  
11 IF YOU HAVE SEEN THOSE E-MAILS BY AND AMONG  
12 MR. SANTA ANA, MR. MAYBERRY AND JP IN THIS CASE.

09:01AM

13 A. I HAVE SEEN THEM.

14 Q. AND LOOKING AT THAT INFORMATION, CAN YOU TELL  
15 US WHETHER OR NOT THOSE E-MAILS DISCUSS THE MACRO THAT  
16 YOU ARE DESCRIBING FOR US?

09:01AM

17 A. YES.

18 Q. SO THAT'S THE MACRO THAT YOU USED TO CREATE  
19 THE INFORMATION ON THE DISK HERE?

20 A. YES.

09:01AM

21 Q. SO LET'S GO TO THE SECOND TAB, WHICH IS B?

22 THE COURT: LET ME JUST CLARIFY SOMETHING.

23 MR. MADISON: YES, YOUR HONOR.

24 THE COURT: 1496 IS THE CD?

25 MR MADISON: 1496-E IS THE CD, YES, YOUR  
26 HONOR.

09:02AM

27 THE COURT: AND HE TESTIFIED THAT HE HAD  
28 LOOKED AT THE CONTENTS OF THAT CD?

1 MR. MADISON: YES.

2 THE COURT: YOU HAVE NOW SAID HE CREATED IT.

3 COULD WE CLARIFY THAT?

4 MR. MADISON: YES.

5 Q. DID YOU ACTUALLY CREATE -- UTILIZE THE MACRO  
6 TO CREATE THE INFORMATION THAT'S ON THE CD?

09:02AM

7 A. NO, I DID NOT.

8 Q. DO YOU KNOW WHO DID THAT?

9 A. NO, I DO NOT.

10 Q. SO YOU WERE PROVIDED A CD.

09:02AM

11 HOW DO YOU KNOW THAT THE MACRO YOU HAVE  
12 BEEN TALKING ABOUT WAS USED TO EXTRACT THAT  
13 INFORMATION?

14 A. BY LOOKING AT THE MACRO, IT -- THE  
15 INSTRUCTIONS IN THE ACTUAL CODE WOULD GENERATE THE TYPE  
16 OF DATA THAT THE OTHER TABS IN THE SPREADSHEET  
17 REPRESENT.

09:02AM

18 Q. OKAY. AND THIS WILL BE THE SUBJECT OF LATER  
19 TESTIMONY, I THINK, EVEN TODAY, YOUR HONOR, FROM  
20 ANOTHER WITNESS.

09:02AM

21 SO IF WE LOOK AT B, YOU WILL SEE AN  
22 ARRAY OF COLUMNS. AND IF WE COULD JUST SCROLL THROUGH  
23 THIS, AND THEN ASK YOU GENERALLY TO DESCRIBE WHAT THIS  
24 TAB SHOWS.

25 AND AS WE DO THAT, WE CAN SEE, FOR  
26 EXAMPLE, PAGE 1 --

09:03AM

27 LET'S GO BACK TO PAGE 1, MIKE, PLEASE.

28 SO IF WE GO TO PAGE 1, IT LOOKS LIKE A

1 SERIES OF INFORMATION, CERTAIN KINDS OF INFORMATION.  
2 AND THEN, FOR EXAMPLE, WE GO TO PAGE 3, AND IT LOOKS  
3 LIKE THOSE COLUMNS ARE DIFFERENT.

4 IS THIS ONE OF THOSE SITUATIONS WHERE IF  
5 THE PAPER ISN'T LONG ENOUGH, YOU HAVE TO PRINT IT OUT  
6 SORT OF SERIALY, IN A DIFFERENT ORDER? 09:03AM

7 A. YES, IT IS.

8 Q. OKAY. SO CAN YOU JUST TELL US GENERALLY,  
9 WHAT'S CONTAINED IN TAB B, THE INFORMATION?

10 A. TAB B HAS SUMMARY CHARACTERISTICS FOR ALL OF 09:03AM  
11 OUR PORTFOLIOS IN THE FIXED INCOME AREA. THERE'S ABOUT  
12 1400 ROWS, IF I REMEMBER CORRECTLY, AND QUITE A FEW  
13 COLUMNS WITH SUMMARY DATA FOR THE PORTFOLIO NAME,  
14 PORTFOLIO STRATEGY, A NUMBER OF SECURITIES HELD IN THE  
15 PORTFOLIO AND THE MARKET VALUE, THE DURATION DATA,  
16 THINGS ALONG THOSE LINES. 09:04AM

17 Q. AND IF WE LOOK AT C, YOU WILL SEE ANOTHER  
18 ARRAY OF DIFFERENT INFORMATION.

19 CAN YOU JUST TELL US WHAT THAT IS.

20 A. C IS A MUCH LARGER SPREADSHEET, HAS VERY MANY 09:04AM  
21 MORE ROWS. I THINK THERE WAS ABOUT 130,000 ROWS.

22 EACH ROW REPRESENTS THE HOLDING OF BOND  
23 OR POSITION IN A PARTICULAR PORTFOLIO.

24 Q. WHEN WE SAY A PARTICULAR PORTFOLIO, IS THAT  
25 CLIENT SPECIFIC, OR SOME OTHER CATEGORY? 09:04AM

26 A. IT WOULD BE CLIENT SPECIFIC.

27 OR IF IT WERE A MUTUAL FUND, IT WOULD BE  
28 FUND SPECIFIC.

1 Q. THEN IF YOU CAN LOOK AT TAB D FOR US, PLEASE,  
2 AND GIVE US THE SAME INFORMATION ABOUT THAT.

3 WHAT IS THAT?

4 A. TAB D IS DETAILED INFORMATION ABOUT EACH  
5 SECURITY.

09:05AM

6 SO FOR EVERY SECURITY IN THE FIXED  
7 INCOME AREA, THERE WERE ABOUT A 150 DATA FIELDS THAT  
8 WERE BEING DOWNLOADED HERE.

9 Q. SO SECURITY IS AN ACTUAL INVESTMENT?

10 A. YES.

09:05AM

11 Q. AND IS IT THE CASE THAT DIFFERENT SECURITIES  
12 MIGHT BE HELD IN DIFFERENT CLIENT PORTFOLIOS?

13 A. YES.

14 Q. SO THESE TABS ARE JUST SHOWING US DIFFERENT  
15 CUTS OF INFORMATION ABOUT THE CLIENT HOLDINGS AT TCW AS  
16 OF A PARTICULAR TIME?

09:05AM

17 A. THAT IS CORRECT.

18 Q. AND WHAT TIME WOULD THAT BE?

19 A. THIS IS OCTOBER 5TH, 6TH, AND 7TH, ARE THE  
20 DATES ON THESE HOLDINGS.

09:05AM

21 Q. OF 2009?

22 A. OF 2009, YES.

23 Q. YOU'VE DESCRIBED A NUMBER OF DIFFERENT COLUMNS  
24 AND DATA FIELDS AND ALL.

25 IS THERE ANY WAY FOR YOU TO QUANTIFY FOR  
26 US WHAT THE TOTAL DATA IS, IN THIS HOLDINGS INFORMATION  
27 IN THE 1496-D, THE CD, TOTAL CD?

09:06AM

28 A. MY MEMORY IS, IT'S ABOUT 80 GIGABYTES OF



1 DATA; SO IT'S A VERY LARGE FILE, AND REPRESENTS THE  
2 ENTIRETY OF ALL OF OUR HOLDINGS INFORMATION.

3 Q. NOW, THE INFORMATION IN THE CD, 1496E, WAS  
4 THAT INPUT BY TCW?

5 A. YES, IT WAS. 09:06AM

6 Q. AND WAS THE FORMAT, THE WAY IT'S ARRAYED --  
7 THE WAY THIS INFORMATION IS ARRAYED, WHO CREATED THAT?

8 A. TCW.

9 Q. IS -- DID TCW TREAT THIS INFORMATION AND THE  
10 WAY IN WHICH THE INFORMATION IS KEPT, CONFIDENTIAL? 09:06AM

11 A. YES, VERY.

12 Q. DID TCW USE THIS INFORMATION ON THE MBS GROUP?

13 A. YES.

14 Q. DID TCW DERIVE ECONOMIC VALUE FOR THE FIRM  
15 THROUGH THE USE OF THESE SYSTEMS AND INFORMATION THAT  
16 IT HAD DEVELOPED? 09:07AM

17 MR. BRIAN: OBJECTION. NO FOUNDATION.

18 THE COURT: SUSTAINED.

19 Q. BY MR. MADISON: WELL, DID THIS INFORMATION,  
20 WAS IT SOMETHING PEOPLE USED TO DO THE BUSINESS OF TCW,  
21 MANAGING FIXED INCOME INVESTMENTS? 09:07AM

22 A. YES.

23 Q. AND THAT WORK WAS DONE, OBVIOUSLY, FOR FEES  
24 PAYABLE TO TCW?

25 A. CORRECT. 09:07AM

26 Q. SO DID 1496 HELP TCW EARN FEES?

27 A. YES.

28 Q. LET ME ASK YOU TO LOOK AT THE NEXT CD THAT'S

1 IN FRONT OF YOU.

2 ONE MORE QUESTION ABOUT 1496.

3 WAS THIS INFORMATION THAT COULD OR WOULD  
4 BE SHARED WITH COMPETITORS OF TCW?

5 A. NO.

09:07AM

6 Q. WHY NOT?

7 A. THIS IS ESSENTIALLY A DETAILED LISTING OF HOW  
8 WE'RE IMPLEMENTING OUR INVESTMENT STRATEGIES.

9 A COMPETITOR COULD USE THAT TO THEIR  
10 ADVANTAGE.

09:08AM

11 Q. HOW? DO YOU KNOW?

12 MR. BRIAN: OBJECTION. FOUNDATION, CALLS FOR  
13 OPINION.

14 THE COURT: OVERRULED.

15 I'LL ALLOW HIM TO TESTIFY TO IT.

09:08AM

16 THE WITNESS: A NUMBER OF WAYS: A COMPETITOR  
17 COULD REVERSE ENGINEER AN INVESTMENT STRATEGY THAT A  
18 COMPETITOR IS USING SUCCESSFULLY.

19 ADDITIONALLY, A COMPETITOR COULD TAKE  
20 APART A PORTFOLIO AND TRY TO EXPLAIN TO POTENTIAL  
21 CLIENTS THE -- TO KIND OF BAD MOUTH TCW.

09:08AM

22 AND THEN THEY MIGHT BE ABLE TO ALSO TRY  
23 TO DO CERTAIN TYPES OF TRADING PLAYS, PERHAPS TO TAKE  
24 ADVANTAGE OF TCW'S POSITIONS.

25 Q. VERY WELL. LET ME ASK YOU TO LOOK AT 1501E,  
26 WHICH IS ANOTHER CD.

09:08AM

27 CAN YOU DESCRIBE THAT, AND TELL US WHAT  
28 IT IS, PLEASE?

1           A.     IT'S A CD.  IT HAS A LABEL MARKED CONFIDENTIAL  
2 ACROSS THE TOP.

3                         ACROSS THE BOTTOM, IT'S 1501E.  AND THEN  
4 ALONG THE SIDE IS MY SIGNATURE AND THE DATE, AUGUST  
5 7TH, 2011.

09:09AM

6           Q.     IS THAT THE DATE THAT YOU ALSO ACCESSED THE  
7 INFORMATION THERE?

8           A.     YES.

9           Q.     AND HAVE YOU ALSO HAD AN OPPORTUNITY TO LOOK  
10 AT THE TAB 1501-A IN YOUR BINDER?

09:09AM

11          A.     YES.

12          Q.     WHAT IS 1501-A?

13          A.     1501-A IS A COPY OF OUR MULTI-STRATEGY FIXED  
14 INCOME GRID.

15          Q.     WHAT IS THE MULTI-STRATEGY FIXED INCOME GRID?

09:09AM

16          A.     THE MULTI-STRATEGY FIXED INCOME GRID IS A SET  
17 OF INVESTMENT GUIDELINES OR RULES FOR ALL OF THE  
18 ACCOUNTS THAT WERE BEING MANAGED UNDER OUR  
19 MULTI-STRATEGY FIXED INCOME STRATEGIES.

20          Q.     WAS THAT ALSO SOMETHING THAT TCW DEVELOPED  
21 DURING THE TIME THAT YOU WERE THERE?

09:09AM

22          A.     YES.

23          Q.     WAS IT SOMETHING THAT THE INVESTMENT  
24 PROFESSIONALS IN THE MBS GROUP USED IN THEIR BUSINESS  
25 THERE AT TCW?

09:10AM

26          A.     YES.

27                         MR. MADISON:  I'D OFFER 1501 AND 1501-A, YOUR  
28 HONOR.

1 MR. BRIAN: NO OBJECTION TO 1501-A, THE CHART,  
2 THE PRINTOUT.

3 THE COURT: 1501-A WILL BE ADMITTED WITHOUT  
4 OBJECTION.

5  
6 (EXHIBIT 1501-A ADMITTED.)  
7

8 Q. BY MR. MADISON: SO HERE AGAIN, MR. ARENTSEN,  
9 I'M GOING TO DISPLAY THAT, AND JUST ASK YOU TO TELL US  
10 WHAT IT IS.

11 DO YOU SEE THE FIRST PAGE? IT SAYS  
12 MULTI-STRATEGY FIXED INCOME, EACH ACCOUNT MUST COMPLY  
13 WITH BOTH CLIENT AND STRATEGY GUIDELINES AND APPLICABLE  
14 RESTRICTED LISTS, INCLUDING PROHIBITED SECURITIES AND  
15 PROHIBITED COUNTRIES' LISTS.

16 SO CAN YOU FIRST TELL US WHAT ALL THAT  
17 INFORMATION CONVEYS?

18 A. ESSENTIALLY, THIS IS TELLING US THAT THE  
19 RULES APPLYING TO EACH ACCOUNT SHOULD BE FOLLOWED. AND  
20 THOSE RULES ARE BOTH ACCOUNT SPECIFIC AND STRATEGY  
21 SPECIFIC.

22 Q. LET'S GO TO THE SECOND PAGE, AND WE'LL SEE  
23 SOME INFORMATION ABOUT A PARTICULAR STRATEGY. THIS  
24 SAYS OPPORTUNISTIC CORE PLUS FIXED INCOME ALLOCATION  
25 TABLE, AT THE TOP.

26 WHAT DOES THAT MEAN?

27 A. THIS IS A SET OF GUIDELINES, IN TERMS OF HOW  
28 MUCH OF A PARTICULAR PART OF THE FIXED INCOME MARKET

1 COULD BE ALLOCATED TO EACH ACCOUNT.

2 AND THESE ARE VALUES THAT ARE SET BY THE  
3 CLIENT, IN DISCUSSIONS WITH TCW.

4 Q. SO THE CRITERIA ARE IMPOSED BY THE CLIENTS, OR  
5 BY TCW, OR BY BOTH?

09:11AM

6 A. TYPICALLY, THEY ARE IMPOSED BY THE CLIENTS,  
7 BUT AFTER CONSULTING WITH TCW.

8 Q. SO IF WE LOOK AT THE BODY OF THIS PAGE, TOO,  
9 WE SEE ALONG THE LEFT-HAND SIDE, SOMETHING FIRST THAT  
10 SAYS PF NUMBER. AND THERE ARE NUMBERS LIKE 1228, 2862.

09:11AM

11 IF YOU COULD JUST TELL US WHAT THE --  
12 THOSE NUMBERS REPRESENT, PLEASE?

13 A. THE PF NUMBER IS THE PORTFOLIO NUMBER. IT WAS  
14 A WAY FOR TCW TO IDENTIFY ACCOUNTS.

15 Q. SO IS THERE JUST ONE PORTFOLIO? IS THERE JUST  
16 ONE CLIENT FOR EACH PORTFOLIO NUMBER?

09:12AM

17 A. YES.

18 Q. DO SOME CLIENTS HAVE MORE THAN ONE PORTFOLIO  
19 NUMBER?

20 A. SOME CLIENTS MAY HAVE MORE THAN ONE PORTFOLIO  
21 NUMBER.

09:12AM

22 Q. BUT IF YOU ARE LOOKING AT A PORTFOLIO NUMBER,  
23 YOU KNOW YOU ARE ONLY TALKING ABOUT ONE CLIENT FOR THAT  
24 NUMBER?

25 A. TYPICALLY, WITH THE EXCEPTION OF A MUTUAL FUND  
26 OR LIMITED PARTNERSHIP.

09:12AM

27 Q. OKAY. AND THEN THE NEXT CATEGORY HAS THE  
28 NAMES OF THE CLIENTS. I'M JUST GOING TO MOVE PAST

1 THAT, TO THE COLUMNS WITH THE HEADINGS UP AT THE TOP.  
2 AND THEY ARE HEADINGS LIKE -- PERHAPS, MIKE, WHAT WE  
3 COULD DO IS GO HORIZONTALLY AND JUST EXPAND THAT PART.  
4 THERE YOU GO.

5 AND IT SAYS THINGS LIKE GOVERNMENT --  
6 FROM THE LEFT TO THE RIGHT: GOVERNMENT, CORPORATE,  
7 MBS, ABS/CMBS, HIGH YIELD, INTERNATIONAL FIXED INCOME,  
8 E.M. FIXED INCOME, CONVERTIBLES, BANK LOANS AND  
9 COMMODITIES. AND THOSE COLUMNS GOING DOWN, SO THAT ONE  
10 CAN LOOK AT ANY PARTICULAR CLIENT, AND GO FROM LEFT TO  
11 RIGHT.

09:12AM

09:13AM

12 CAN YOU TELL US WHAT THAT'S ALL ABOUT,  
13 PLEASE?

14 A. SURE. USING THE GOVERNMENT AS AN EXAMPLE,  
15 THERE ARE THREE COLUMNS: MIN, MAX AND BASE.

09:13AM

16 AND SO FOR GOVERNMENT BONDS, THIS  
17 ACCOUNT HAD A MINIMUM OF ZERO PERCENT, IT COULD BE  
18 FULLY INVESTED, ONE HUNDRED PERCENT, MAXIMUM IN  
19 GOVERNMENT BONDS, AND THEN NO BASE VALUE SET.

20 ONE COLUMN OVER, YOU CAN SEE THAT THE  
21 MAXIMUM EXPOSURE TO CORPORATE BONDS WOULD BE 75  
22 PERCENT, AND YOU CAN GO ON DOWN THE LINE THROUGH EACH  
23 OF THE FIXED INCOME SECTORS.

09:13AM

24 Q. OKAY. AND I THINK THE VERY TOP COLUMN, IF WE  
25 LOOK TO THE FAR LEFT, IT SAYS STANDARD OPPORTUNISTIC  
26 CORE PLUS FIXED-INCOME STRATEGY ALLOCATION.

09:13AM

27 SO IS THAT FOR A PARTICULAR CLIENT, OR  
28 SOMETHING ELSE?

1           A.       THIS WAS OUR STRATEGY GENERAL GUIDELINE.

2                       SO IN THE ABSENCE OF SPECIFIC GUIDELINES  
3 FROM A CLIENT, WE WOULD USE THESE STRATEGY SPECIFIC IN  
4 PLACE.

5           Q.       AND THEN, FOR EXAMPLE, IF WE COULD LOOK AT THE  
6 FIRST ROW UNDER THE CLIENTS, BUT JUST STARTING THERE,  
7 MIKE, WITH YOUR CURSOR, AND GOING OVER, I BELIEVE WE'RE  
8 ACTUALLY PICKING UP A COUPLE OF DIFFERENT CLIENTS, BUT  
9 THAT'S OKAY, BECAUSE WE CAN SEE, FOR EXAMPLE, IN THE  
10 MIDDLE BOXES, WHERE IT SAYS 50, ZERO, 40, CAN YOU JUST  
11 EXPLAIN TO US HOW THAT INFORMATION WOULD RELATE TO THAT  
12 PARTICULAR CLIENT?

13           A.       SO FOR THIS PARTICULAR CLIENT, THE MAXIMUM  
14 ALLOWED IN GOVERNMENT BONDS WOULD BE 50 PERCENT. THEY  
15 HAD ZERO MAXIMUM FOR CORPORATE BONDS, 40 PERCENT  
16 MAXIMUM FOR MORTGAGE-BACKED SECURITIES.

17                       AND WE CAN GO ON DOWN THROUGH ALL THE  
18 DIFFERENT SECTORS.

19           Q.       OKAY. IF YOU JUST LOOK AT THE LIST OF  
20 CLIENTS, WOULD IT BE FAIR TO SAY THAT THERE ARE SOME  
21 GOVERNMENT CLIENTS, AND MUNICIPAL AND OTHER GOVERNMENT  
22 AGENCIES, SOME PENSION FUNDS, SOME CORPORATE CLIENTS,  
23 IN TERMS OF THE NATURE OF THE CLIENTS?

24           A.       YES.

25           Q.       SO IS IT IMPORTANT TO UNDERSTAND WHAT THE  
26 CRITERIA ARE THAT THOSE KINDS OF CLIENTS ARE IMPOSING  
27 ON THEIR INVESTMENTS?

28           A.       YES.

09:14AM

09:14AM

09:14AM

09:15AM

09:15AM

1 Q. AND IS IT IMPORTANT THAT THOSE CRITERIA BE  
2 COMPLIED WITH?

3 A. YES.

4 Q. AND LET ME JUST ASK YOU QUICKLY THE SAME SORT  
5 OF QUESTIONS I ASKED ABOUT 1496 OR 1501.

09:15AM

6 WAS THIS ALL CREATED AT TCW --

7 A. YES, IT WAS.

8 Q. DURING YOUR TIME THERE?

9 A. YES, IT WAS, YES.

10 Q. WAS IT USED AT TCW?

09:15AM

11 A. YES.

12 Q. USED TO GENERATE FEE REVENUE?

13 A. YES.

14 Q. IN PART?

15 A. YES.

09:16AM

16 Q. WAS IT SOMETHING THAT WOULD BE SHARED WITH  
17 COMPETITORS OF TCW?

18 A. NO.

19 Q. WAS IT TREATED AS CONFIDENTIAL AND  
20 PROPRIETARY?

09:16AM

21 A. YES.

22 Q. LET ME ASK YOU TO LOOK AT 1505, WHICH IS THE  
23 NEXT CD.

24 WE JUST HAVE TWO MORE CD'S, YOUR HONOR.  
25 THE COURT: THAT'S FINE.

09:16AM

26 Q. BY MR. MADISON: AND AGAIN, CAN YOU TELL US  
27 WHAT THAT IS, AND DESCRIBE IT?

28 A. 1505 IS A CD DISK. IT HAS A TYPED LABEL



1 STAMPED CONFIDENTIAL AT THE TOP. IT'S MARKED 1505-E AT  
2 THE BOTTOM. AND ALONG THE SIDE, MY SIGNATURE AND THE  
3 DATE AUGUST 7TH, 2011.

4 Q. USING THE BINDER, IF YOU NEED TO, CAN YOU TELL  
5 US WHAT'S IN -- SAME QUESTIONS.

09:16AM

6 YOU ACCESSED THAT ON AUGUST 7TH?

7 A. YES, I DID.

8 Q. AND YOU REVIEWED THE INFORMATION AT 1505-A,  
9 THE HARD COPY?

10 A. YES, I HAVE.

09:17AM

11 Q. CAN YOU TELL US WHAT IT IS, PLEASE?

12 A. 1505 CONTAINS A COPY OF OUR TASK DATABASE.

13 MR. MADISON: AND I'D MOVE 1505-A.

14 MR. BRIAN: NO OBJECTION.

15 THE COURT: OKAY. IT WILL BE ADMITTED.

09:17AM

16

17 (EXHIBIT 1505-A ADMITTED.)

18

19 Q. BY MR. MADISON: SO WAS THE TASK LIST CREATED  
20 WHILE YOU WERE AT TCW, IN THE MBS GROUP?

09:17AM

21 A. YES, IT WAS.

22 Q. AND CREATED BY TCW INVESTMENT AND TECHNOLOGY  
23 PROFESSIONALS?

24 A. YES, IT WAS.

25 Q. FOR USE IN THE BUSINESS OF TCW?

09:17AM

26 A. YES.

27 Q. AND TELL US GENERALLY, WHAT WAS THE PURPOSE OR  
28 THE USE OF THE TASK LIST?

1           A.     THE TASK LIST WAS A RECORD OF ALL OF THE  
2     TASKS, RECURRING AND AD HOC, THAT WE PERFORMED FOR ALL  
3     OF OUR CLIENTS; AND ALSO, JUST IN THE RUNNING OF OUR  
4     DAY-TO-DAY BUSINESS.

5           Q.     SO HERE AGAIN, IF YOU COULD USE 1501-A, AND  
6     JUST SORT OF WALK US THROUGH WHAT THE INFORMATION IS  
7     AND HOW IT WOULD BE USED AT TCW?

09:17AM

8           A.     OKAY. IT'S A SERIES OF COLUMNS.

9                     LOOKING AT THAT VERY FIRST TASK, THERE'S  
10    A TASK NUMBER. THIS TASK IS NOT ASSOCIATED WITH A  
11    SPECIFIC ACCOUNT, SO THERE'S NO ACCOUNT NUMBER OR  
12    ACCOUNT NAME.

09:18AM

13                    THE TASK ITSELF IS PART OF OUR  
14    PERFORMANCE SET OF ACCOUNTS. THERE'S A DESCRIPTION OF  
15    THE TASK, AND THEN THE FREQUENCY, HOW OFTEN WOULD IT BE  
16    DONE, DAY COUNT. HOW WOULD IT BE USED TO DETERMINE  
17    WHAT DAY OF THE MONTH OR WHAT DAY OF THE WEEK, OR WHAT  
18    DAY OF THE QUARTER THE TASK WAS DUE BY.

09:18AM

19                    AND THEN THE LAST FEW COLUMNS ARE  
20    REFERENCING THE NAMES OF THE ANALYSTS THAT WERE  
21    RESPONSIBLE FOR DOING THE TASK; AND IF IT NEEDED REVIEW  
22    BEFORE IT WAS SENT OUT TO THE CLIENTS, WHO WOULD BE  
23    RESPONSIBLE FOR REVIEWING THE DATA BEFORE IT WAS SENT  
24    OUT.

09:18AM

25           Q.     HOW VOLUMINOUS IS THE TASK LIST ON THE CD?

09:19AM

26           A.     THERE'S ABOUT 400 TASKS IN THAT CD.

27           Q.     AND WAS THIS, AGAIN, DEVELOPED BY TCW FOR USE  
28    IN ITS BUSINESS?

1 A. YES, IT WAS.

2 Q. AND USED IN PART TO GENERATE REVENUE THROUGH  
3 THE FEES FOR THE CLIENTS?

4 A. YES.

5 Q. WOULD THIS BE HELPFUL TO SOMEBODY WHO WAS  
6 TRYING TO SET UP A NEW ASSET MANAGEMENT FIRM AND TRY TO  
7 REPRESENT THE SAME INVESTORS THAT TCW IS REPRESENTING?

09:19AM

8 A. YES.

9 Q. HOW?

10 A. WITH THIS, YOU WOULD BE SURE THAT YOU HAD  
11 EVERY TASK THAT YOU USED TO PERFORM AT YOUR OLD FIRM.  
12 YOU WOULD HAVE A RECORD OF HOW THOSE TASKS WERE  
13 PERFORMED, WHEN THEY WERE DUE, HOW YOU DID THEM, WHEN  
14 YOU STARTED YOUR NEW FIRM.

09:19AM

15 Q. DID TCW TREAT THIS AS CONFIDENTIAL AND  
16 PROPRIETARY?

09:19AM

17 A. YES.

18 Q. WOULD IT BE RELEASED TO A COMPETITOR, WITHOUT  
19 SOME SPECIAL AGREEMENT OR SOMETHING?

20 A. NO.

09:19AM

21 MR. MADISON: AND I WOULD ALSO MOVE THE DISK  
22 HERE, YOUR HONOR, 1505-E, BASED ON HIS TESTIMONY.

23 THE COURT: WHAT'S THE PURPOSE IN ADMITTING  
24 THE DISK?

25 MR. MADISON: WELL, HE'S DESCRIBED THE  
26 CONTENTS.

09:20AM

27 THE COURT: DO WE HAVE THE CONTENTS IN 1505-A?

28 MR. MADISON: YES. WELL, IT'S A -- ONLY AN

1 EXCERPT. I'M NOT SURE.

2 AND IF I DIDN'T MAKE THAT CLEAR, I  
3 SHOULD.

4 THE COURT: WELL, AT THIS POINT, I'M NOT GOING  
5 TO ADMIT THE CD.

09:20AM

6 WE CAN TAKE THIS UP LATER, AND SEE WHAT  
7 COULD BE DONE WITH IT, IF WE DID IT.

8 MR. MADISON: THANK YOU, YOUR HONOR.

9 Q. AND BY THE WAY, ON ALL THREE OF THE CD'S WE'VE  
10 LOOKED AT SO FAR, 1496, 1501 AND 1505, DOES THE  
11 INFORMATION APPEAR TO HAVE BEEN AS OF A CERTAIN DATE OR  
12 TIME?

09:20AM

13 A. YES.

14 Q. WHAT DATE OR TIME WAS THAT?

15 A. THE DATE FOR 1496 IS AS OF OCTOBER 7TH. IT  
16 SHOWS OCTOBER 5TH, 6TH, AND 7TH DATA.

09:20AM

17 Q. WHAT YEAR?

18 A. 2009.

19 AND THE OTHER DISKS HAD OTHER DATES. I  
20 DON'T REMEMBER THEM OFF THE TOP OF MY HEAD.

09:21AM

21 Q. ARE THEY IN 2009 ALSO?

22 A. THEY ARE AS OF 2009.

23 Q. PRIOR TO DECEMBER 4, 2009?

24 A. YES.

25 Q. AND THEN THE FINAL DISK IS 1506.

09:21AM

26 IF YOU WOULD DO THE SAME EXERCISE WITH  
27 US FOR THAT, AND DESCRIBE WHAT IT IS.

28 A. 1506 IS A CD, TYPED LABEL MARKED CONFIDENTIAL

1 ACROSS THE TOP. IT'S MARKED 1506-E ACROSS THE BOTTOM.  
2 AND ON THE SIDE, MY SIGNATURE AND THE DATE, AUGUST 7TH,  
3 2011.

4 Q. AND IF YOU LOOK AT 1506-A, IS THAT A HARD COPY  
5 OF SOME OF THE CONTENTS OF THE DISK, THAT 1506?

09:21AM

6 A. YES.

7 MR. MADISON: SO I'D MOVE 1506-A.

8 MR. BRIAN: NO OBJECTION.

9 THE COURT: IT WILL BE ADMITTED.

10

09:22AM

11 (EXHIBIT 1506-A ADMITTED.)

12

13 MR. MADISON: AND FOR THE RECORD, THE DISK --  
14 AND I KNOW WE CAN COME BACK TO THAT.

15 THE COURT: YEAH. AND I'LL DEFER RULING ON  
16 THAT.

09:22AM

17 MR. MADISON: THANK YOU.

18 Q. SO IF WE DISPLAY 1506, CAN YOU TELL US WHAT  
19 THIS INFORMATION IS, PLEASE?

20 A. THIS IS A FEE SCHEDULE. IT REPRESENTS ALL OF  
21 OUR ACCOUNTS, AND THE FEES THAT WE WERE PAID BY THAT  
22 ACCOUNT FOR MANAGING THEIR ASSETS.

09:22AM

23 Q. IS THAT CONFIDENTIAL INFORMATION AT TCW?

24 A. VERY CONFIDENTIAL.

25 Q. WHY IS THAT?

09:22AM

26 A. THIS IS THE TYPE OF INFORMATION THAT A  
27 COMPETITOR COULD USE TO TRY TO STEAL ACCOUNTS BY  
28 UNDERBIDDING, TRYING TO CHARGE A LOWER FEE THAN TCW.

1 Q. SO IS IT THE CASE THAT AT TCW, THERE'S JUST  
2 ONE FEE FOR ALL ACTIVITY, OR ARE FEES NEGOTIATED SOME  
3 OTHER WAY?

4 A. FEES ARE NEGOTIATED TYPICALLY ON AN  
5 ACCOUNT-BY-ACCOUNT BASIS, BASED ON THE SIZE OF THE  
6 ACCOUNT, BASED ALSO ON THE STRATEGY THAT THE ACCOUNT'S  
7 ASSETS WOULD BE INVESTED IN.

09:22AM

8 Q. WHAT WAS THE VOLUME OF 1506 WHEN YOU REVIEWED  
9 IT?

10 A. I'M SORRY. I DON'T UNDERSTAND IT.

09:23AM

11 Q. HOW MUCH INFORMATION, BY WHATEVER MEASUREMENT  
12 YOU FEEL COMFORTABLE WITH?

13 A. THIS HAD ABOUT 150 ACCOUNTS, IF I REMEMBER  
14 CORRECTLY. IT REPRESENTED ALL OF OUR ACCOUNTS FOR A  
15 FIXED INCOME AREA.

09:23AM

16 Q. AT WHAT POINT IN TIME, SIR?

17 A. PRIOR TO DECEMBER 2009.

18 Q. OKAY. LET ME ASK YOU TO LOOK QUICKLY AT  
19 EXHIBIT 476.

20 AND THIS IS IN EVIDENCE, YOUR HONOR.

09:23AM

21 AND THIS IS AN E-MAIL FROM NOVEMBER 20,  
22 2009, FROM JEFF MAYBERRY TO OTHERS DOWN BELOW THERE,  
23 AND THEN THERE'S A RESPONSE BY MR. SANTA ANA UP ABOVE.  
24 BUT IT REFERS TO UPDATING A TASK LIST, IN THE BODY OF  
25 THE E-MAIL.

09:24AM

26 HAVE YOU HAD AN OPPORTUNITY TO REVIEW  
27 EXHIBIT 476?

28 A. YES.

1 Q. AND CAN YOU TELL US -- WE WERE TALKING ABOUT A  
2 TASK LIST THERE. AND -- WELL, IN THE SUBJECT, IT SAYS  
3 TASK DATABASE.

4 DO YOU SEE THAT?

5 A. YES, I DO.

09:24AM

6 Q. OKAY. AND HAVE YOU HAD AN OPPORTUNITY TO LOOK  
7 AT 1505, WHICH WAS THE CD THAT WE -- ONE OF THE CD'S WE  
8 JUST TALKED ABOUT, AND TO TELL US -- CAN YOU TELL US  
9 WHETHER OR NOT THAT'S THE TASK DATABASE THAT'S REFERRED  
10 TO IN THIS E-MAIL?

09:24AM

11 A. YES, IT'S THE SAME.

12 Q. THANK YOU.

13 DID THERE COME A TIME WHEN YOU OBSERVED  
14 SOMEBODY TO BE COPYING THE TRADE TICKET BINDERS ON THE  
15 FLOOR AT THE MBS GROUP?

09:24AM

16 MR. BRIAN: OBJECTION. CUMULATIVE, YOUR  
17 HONOR.

18 THE COURT: SUSTAINED.

19 Q. BY MR. MADISON: WELL, WHO DID YOU OBSERVE TO  
20 BE PHOTOCOPYING THE TRADE TICKET BINDERS AT TCW?

09:25AM

21 A. LYDIA POMPA.

22 Q. WHO IS LYDIA POMPA?

23 MR. BRIAN: OBJECTION. CUMULATIVE.

24 THE COURT: I THINK IT IS -- MR. MADISON,  
25 WE'VE BEEN THROUGH THIS.

09:25AM

26 MR. MADISON: VERY WELL.

27 Q. LET ME JUST ASK YOU, MR. ARENTSEN, IF YOU  
28 OBSERVED ANYONE TO TAKE THE PHOTOCOPIES OF THE TRADE

1 TICKET BINDERS THAT HAD BEEN MADE?

2 A. YES.

3 Q. WHO?

4 A. MR. GUNDLACH.

5 Q. AND WHAT DID HE DO WITH THEM, DO YOU KNOW?

09:25AM

6 A. NO.

7 Q. NOW, DID THERE COME A TIME WHEN YOU AND  
8 MR. SANTA ANA AND MR. GUNDLACH SPOKE ABOUT THE SYSTEMS  
9 AT TCW, AND SPECIFICALLY IN RELATIONSHIP TO SYSTEMS  
10 THAT MIGHT BE NEEDED AT A NEW FIRM?

09:26AM

11 A. YES.

12 Q. AND DO YOU RECALL, FIRST, WAS THERE ANYONE  
13 OTHER THAN YOURSELF, MR. SANTA ANA AND MR. GUNDLACH, IN  
14 THAT CONVERSATION?

15 A. I DON'T RECALL ANYONE ELSE.

09:26AM

16 Q. DO YOU RECALL WHERE THAT CONVERSATION  
17 OCCURRED?

18 A. MY RECOLLECTION IS, IT WAS IN THE TRADING  
19 ROOM, OFF TO THE SIDE.

20 Q. AND DO YOU RECALL WHEN THAT CONVERSATION  
21 OCCURRED?

09:26AM

22 A. IT WAS A FEW DAYS AFTER THE SEPTEMBER 3RD  
23 MEETING.

24 Q. AND CAN YOU TELL US WHAT WAS SAID IN THAT  
25 CONVERSATION, PLEASE?

09:26AM

26 A. IT WAS A VERY BRIEF CONVERSATION, BASICALLY  
27 ALONG THE LINES OF, WHAT DO YOU WANT TO DO ABOUT  
28 SYSTEMS.



1 Q. IF YOU COULD TELL US WHO SAID WHAT, IF YOU  
2 COULD?

3 A. IT WAS EITHER CRIS OR I, ASKED JEFFREY  
4 GUNDLACH, WHAT DO YOU WANT TO DO ABOUT SYSTEMS?

5 AND JEFFREY REPLIED BACK, WE'LL JUST  
6 TAKE THEM OR REBUILD THEM.

09:27AM

7 Q. DID YOU OR MR. SANTA ANA SAY ANYTHING IN  
8 RESPONSE?

9 A. I DON'T RECALL A SPECIFIC RESPONSE.

10 Q. NOW, IN 2009, DID IT OCCUR TO YOU TO REPORT TO  
11 MANAGEMENT OF TCW, ANY OF THE THINGS THAT YOU WERE  
12 SEEING OR OR HEARING BY MR. GUNDLACH OR MR. SANTA ANA?

09:27AM

13 A. NO.

14 Q. WHY NOT?

15 A. MY CONCERN WAS THAT I WAS ALREADY ON  
16 PROBATION, AND SO SPEAKING UP WOULD PROBABLY GET ME  
17 FIRED.

09:27AM

18 Q. YOU HAVE DESCRIBED A NUMBER OF THINGS ABOUT  
19 WORKING WITH MR. GUNDLACH.

20 AND I JUST WANT TO ASK YOU, SIR, WHY DID  
21 YOU EVEN CONSIDER GOING TO WORK WITH MR. GUNDLACH,  
22 GIVEN SOME OF THE LESS THAN FLATTERING THINGS THAT YOU  
23 OBSERVED ABOUT HIM?

09:27AM

24 A. TO BE HONEST, IT WAS A VERY DIFFICULT CHOICE.

25 BUT MR. GUNDLACH OFFERED ME EQUITY IN  
26 THE NEW FIRM, WHICH CERTAINLY WAS ATTRACTIVE. AND IT  
27 WAS KIND OF A QUESTION OF THE DEVIL YOU KNOW VERSUS THE  
28 DEVIL YOU DON'T KNOW. THE NEW FIRM COMING IN, I WASN'T

09:28AM

1 SURE WHAT WOULD BE THE BEST WAY TO GO.

2 Q. THE NEW FIRM COMING IN, YOU MEAN MET WEST?

3 A. YES.

4 Q. DID YOU ACTUALLY KNOW ANYBODY FROM THE NEW  
5 FIRM THAT WAS COMING IN TO JOIN TCW?

09:28AM

6 A. YES, I DID.

7 Q. AND DID THAT INFLUENCE YOUR DECISION?

8 A. YES, GREATLY.

9 Q. JUST YES OR NO, WERE THERE OTHER FACTORS THAT  
10 INFLUENCED YOU IN MAKING THE DECISION ABOUT WHETHER TO  
11 GO WITH MR. GUNDLACH OR TO STAY WITH TCW AND WORK WITH  
12 THE NEW GROUP?

09:28AM

13 A. YES.

14 Q. ARE YOU PLEASED WITH HOW IT'S WORKED OUT WITH  
15 THE NEW GROUP?

09:29AM

16 A. VERY MUCH.

17 Q. FINAL QUESTION, JUST ON THE TRADE TICKET  
18 BINDERS, IS, DO THOSE HAVE SOME IMPORTANCE IN YOUR  
19 BUSINESS, IN TERMS OF BEING ABLE TO REPRESENT YOURSELF  
20 TO THE CLIENTS AND POTENTIAL CLIENTS?

09:29AM

21 MR. BRIAN: OBJECTION. CUMULATIVE.

22 THE COURT: I'LL OVERRULE THAT.

23 GO AHEAD.

24 THE WITNESS: YES.

25 Q. BY MR. MADISON: CAN YOU JUST DESCRIBE FOR US  
26 WHAT THE IMPORTANCE IS WITH REGARD TO THE TRADE  
27 TICKETS?

09:29AM

28 A. TO BE ABLE TO HAVE A TRACK RECORD THAT YOU

1 CAN SHOW TO CLIENTS. YOU WOULD HAVE TO HAVE A RECORD  
2 OF YOUR TRADING ACTIVITY; AND SO TRADE TICKETS WOULD BE  
3 A WAY TO ESTABLISH HISTORY, TO BE ABLE TO SAY, I'VE HAD  
4 THIS TYPE OF INVESTMENT PERFORMANCE IN THE PAST.

5 Q. WHEN YOU SAID TRACK RECORD, ARE YOU TALKING  
6 ABOUT PAST INVESTMENT PERFORMANCE? 09:29AM

7 A. YES, I AM.

8 Q. SO IN ORDER TO MAKE REPRESENTATIONS TO  
9 POTENTIAL CLIENTS ABOUT YOUR PAST RECORD, YOU ACTUALLY  
10 HAVE TO HAVE THE BACKUP? 09:29AM

11 A. YES.

12 Q. AND THOSE ARE THE TRADE TICKET BINDERS?

13 A. YES.

14 MR. MADISON: THANK YOU.

15 NOTHING FURTHER AT THIS POINT. 09:29AM

16 THE COURT: OKAY.

17 CROSS-EXAMINATION?

18 MR. BRIAN: YES, YOUR HONOR.

19

20

21 CROSS-EXAMINATION

22 BY MR. BRIAN:

23 Q. GOOD MORNING, MR. ARENTSEN.

24 A. GOOD MORNING.

25 MORNING, YOUR HONOR, LADIES AND  
26 GENTLEMEN. 09:31AM

27 YOUR HONOR, THERE WAS A QUESTION  
28 YESTERDAY, I THINK SOMEONE ASKED WHO THIS GENTLEMAN IS

1       HERE.

2                       I WANTED TO INTRODUCE MR. LARISCY,  
3       L-A-R-I-S-C-Y.   HE'S THE INSIDE GENERAL COUNSEL AT  
4       DOUBLELINE.   HE'S THE SENIOR LAWYER AT DOUBLELINE.

5               MR. LARISCY:   GOOD MORNING.

09:31AM

6               Q.    BY MR. BRIAN:   MR. ARENTSEN, IS IT YOUR  
7       TESTIMONY THAT MR. GUNDLACH OFFERED YOU EQUITY TO GO TO  
8       WORK AT DOUBLELINE?

9               A.    YES.

10              Q.    YOU DID NOT SPEAK TO MR. GUNDLACH AT ALL ON  
11       DECEMBER 5TH, OR DECEMBER 6TH, DID YOU, SIR?

09:31AM

12              A.    THAT IS CORRECT.

13              Q.    YOU HAD A CONVERSATION WITH MR. BARACH AND  
14       MR. GALLIGAN, CORRECT?

15              A.    CORRECT.

09:31AM

16              Q.    I WANT TO DIRECT YOU TO THAT WEEKEND.

17                       IN ADDITION TO SPEAKING TO MR. BARACH  
18       AND MR. GALLIGAN ON DECEMBER 5TH, 2009 YOU ARRANGED TO  
19       MEET WITH MARC STERN THE NEXT DAY ON, DECEMBER 6TH,  
20       DIDN'T YOU?

09:32AM

21              A.    YES, I DID.

22              Q.    AND IN FACT, A MAN NAMED JEFF ANDERSON CALLED  
23       YOU ON SATURDAY, DECEMBER 5TH TO SET UP A MEETING WITH  
24       YOU AND MR. STERN, DIDN'T HE?

25              A.    YES.

09:32AM

26              Q.    AND HE TOLD YOU MR. STERN WOULD REALLY LIKE TO  
27       TALK TO YOU, IT WOULD BE GOOD FOR YOU TO COME IN; ISN'T  
28       THAT WHAT HE SAID?

1 A. THAT SOUNDS RIGHT.

2 Q. AND YOU ASSUMED, WHEN YOU GOT THAT CALL, THAT  
3 MR. STERN WANTED TO DISCUSS FUTURE EMPLOYMENT WITH YOU;  
4 ISN'T THAT RIGHT?

5 A. YES.

09:32AM

6 Q. SO YOU SCHEDULED THE TIME TO SEE MR. STERN ON  
7 A WEEKEND, THAT SUNDAY, DECEMBER 6TH, AT THE OFFICES OF  
8 TCW, DIDN'T YOU?

9 A. I'M SORRY. COULD YOU REPEAT THE QUESTION.

10 Q. YOU SCHEDULED A TIME TO MEET WITH MARC STERN  
11 ON SUNDAY, DECEMBER 6TH, AT TCW'S OFFICES, DIDN'T YOU,  
12 SIR?

09:32AM

13 A. YES, I DID.

14 Q. YOU WENT IN THE OFFICE AND MET HIM AT ABOUT  
15 1:00 P.M., ISN'T THAT RIGHT?

09:32AM

16 A. THAT'S MY RECOLLECTION.

17 Q. JUST THE TWO OF YOU ATTENDED THAT MEETING;  
18 ISN'T THAT RIGHT, SIR?

19 A. YES.

20 Q. MARC STERN IS THE CHIEF EXECUTIVE OFFICER OF  
21 TCW, AND WAS THE CHIEF EXECUTIVE OFFICER, WHEN YOU MET  
22 WITH HIM ON DECEMBER 6TH; ISN'T THAT RIGHT?

09:33AM

23 A. YES.

24 Q. IT WAS NOT A VERY COMMON OCCURRENCE, FOR YOU  
25 TO MEET WITH THE CHIEF EXECUTIVE OFFICER ONE ON ONE ON  
26 A SUNDAY AT TCW, WAS IT, SIR?

09:33AM

27 A. THAT'S CORRECT.

28 Q. AND AT THAT MEETING, YOU ASKED HIM FOR A

1 FIVE-YEAR EMPLOYMENT CONTRACT AND COMPENSATION TOTALING  
2 \$2 MILLION A YEAR, DIDN'T YOU?

3 A. YES, I DID.

4 Q. AND THAT \$2 MILLION A YEAR WAS ABOUT TWICE  
5 WHAT YOU HAD BEEN GETTING BEFORE, WHEN MR. GUNDLACH WAS  
6 THE HEAD OF THE MBS GROUP; ISN'T THAT RIGHT, SIR?

09:33AM

7 A. THAT IS CORRECT.

8 Q. AND IN ACTUALITY, MR. STERN AGREED TO GIVE YOU  
9 A THREE-YEAR CONTRACT, DIDN'T HE?

10 A. YES, HE DID.

09:33AM

11 Q. AND A RAISE IN TOTAL COMPENSATION OF  
12 APPROXIMATELY 30 TO 40 PERCENT ABOVE WHAT YOU HAD BEEN  
13 MAKING; ISN'T THAT RIGHT?

14 A. YES.

15 Q. AND THAT WAS THE FIRST TIME YOU HAD EVER  
16 NEGOTIATED A COMPENSATION AGREEMENT DIRECTLY WITH  
17 MR. STERN, WASN'T IT?

09:34AM

18 A. YES.

19 Q. NOW, BEFORE THAT NEGOTIATION, WHILE  
20 MR. GUNDLACH WAS THE HEAD OF THE MBS GROUP,  
21 MR. GUNDLACH HAD SET BOTH YOUR BASE SALARY AND YOUR  
22 BONUS, HAD HE NOT?

09:34AM

23 A. I BELIEVE SO.

24 Q. AND YOU THOUGHT THAT MR. GUNDLACH  
25 UNDERCOMPENSATED YOU, DIDN'T YOU?

09:34AM

26 A. NOT NECESSARILY.

27 Q. WELL, YOU TALKED TO OTHER PEOPLE, AND TOLD  
28 THEM THAT YOU THOUGHT YOU WERE UNDERCOMPENSATED, DIDN'T

1 YOU, SIR?

2 A. I DON'T BELIEVE THAT THOSE WERE MY WORDS.

3 Q. DID YOU TELL A FEW PEOPLE THAT YOU WISHED YOU  
4 HAD BEEN GETTING MORE COMPENSATION?

5 MR. MADISON: YOUR HONOR, CAN WE HAVE PAGE AND  
6 LINE?

09:34AM

7 I'M ASKING A QUESTION.

8 THE COURT: THIS IS JUST A QUESTION.

9 Q. BY MR. BRIAN: DID YOU TELL A FEW PEOPLE THAT  
10 YOU WISHED YOU HAD BEEN GETTING MORE COMPENSATION?

09:35AM

11 A. I THINK THAT'S A PRETTY COMMON WISH FOR  
12 EVERYONE.

13 THE COURT: SIR, JUST --

14 Q. BY MR. BRIAN: DID YOU SAY THAT?

15 A. YES.

09:35AM

16 Q. YOU WEREN'T VERY HAPPY WITH MR. GUNDLACH FOR  
17 PUTTING YOU ON PROBATION, WERE YOU?

18 A. NO.

19 Q. YOU DON'T LIKE MR. GUNDLACH MUCH, DO YOU, SIR?

20 A. I WOULD NOT SAY THAT.

09:35AM

21 Q. NOW YOU TESTIFIED YESTERDAY ABOUT SOME  
22 STATEMENTS THAT MR. GUNDLACH MADE CALLING, MR. DAY AND  
23 MR. STERN DUMB OR DUMBER, NOT SURE WHICH ONE WAS WHICH.

24 DO YOU RECALL THAT TESTIMONY, GENERALLY?

25 A. YES.

09:35AM

26 Q. AND YOU ALSO SAID THAT MR. GUNDLACH, I THINK  
27 THE WORD YOU USED WAS PONTIFICATED; IS THAT RIGHT?

28 A. I DON'T KNOW THAT THAT WOULD BE THE ADJECTIVE.

1 Q. IS THAT THE WORD YOU USED?

2 A. I USED PONTIFICATE.

3 Q. AND IS IT YOUR RECOLLECTION THAT HE  
4 PONTIFICATED ARROGANTLY?

5 A. FROM TIME TO TIME, YES.

09:35AM

6 Q. AND I TAKE IT YOU NEVER REPORTED TO ANYONE IN  
7 THE SENIOR MANAGEMENT, INCLUDING MR. STERN, THAT HE  
8 WAS -- THAT HE HAD CALLED MR. STERN OR MR. DAY, DUMB OR  
9 DUMBER, DID YOU?

10 A. THAT IS CORRECT.

09:36AM

11 Q. YOU ALSO TESTIFIED YESTERDAY THAT -- YOU  
12 RECALLED A TIRADE THAT HE LAUNCHED INTO BECAUSE SOME  
13 MATERIALS HAD BEEN PREPARED INCORRECTLY FOR A MEETING  
14 OF THE MULTI-STRATEGY FIXED INCOME COMMITTEE.

15 DO YOU RECALL THAT?

09:36AM

16 A. YES, I DO.

17 Q. AND YOU SAID, IT'S YOUR RECOLLECTION THAT HE  
18 LASHED OUT AT THE MEETING, IN FRONT OF AT LEAST TWO OF  
19 THE PEOPLE WHO HAD PREPARED THOSE MATERIALS, RIGHT?

20 A. YES.

09:36AM

21 Q. AND ONE OF THOSE PEOPLE YOU RECALLED  
22 YESTERDAY, THAT WAS IN ATTENDANCE, THAT PREPARED THE  
23 MATERIALS IS A MR. GREG -- I'M GOING TO MISPRONOUNCE  
24 IT -- UYTOVEN?

25 A. I BELIEVE UYTOVEN.

09:36AM

26 Q. IT'S SPELLED U-Y-T-O-V-E-N, RIGHT?

27 A. YES.

28 Q. AND HE'S ONE OF THE INDIVIDUALS WHO HAD



1 PREPARED THE MATERIALS, WHO WAS THERE TO RECEIVE WHAT  
2 YOU RECALLED AS A TIRADE, RIGHT?

3 A. THAT IS MY RECOLLECTION.

4 Q. NOW, MR. UYTOVEN DOESN'T WORK AT TCW ANY  
5 LONGER, DOES HE?

6 A. NO.

7 Q. HE WORKS AT DOUBLELINE, DOESN'T HE?

8 A. I'M NOT CERTAIN.

9 Q. SO YOU DON'T KNOW WHETHER OR NOT, AFTER  
10 RECEIVING THIS SUPPOSED TIRADE, HE VOLUNTARILY LEFT TCW  
11 AND WENT TO WORK FOR MR. GUNDLACH? YOU DON'T KNOW  
12 THAT, SIR?

13 A. LAST TIME I LOOKED, AND THIS WAS A FEW MONTHS  
14 AGO, HE WAS AN EMPLOYEE AT DOUBLELINE.

15 I DON'T KNOW IF HE STILL IS AN EMPLOYEE.

16 Q. AND HE WASN'T FIRED ON DECEMBER 4TH, WAS HE?

17 A. I DON'T THINK SO.

18 Q. SO AS FAR AS YOU KNOW, HE PICKED UP AND WENT  
19 TO WORK VOLUNTARILY FOR THIS MAN THAT YOU SAY LASHED  
20 OUT AT HIM IN A TIRADE, RIGHT?

21 A. YES.

22 Q. HE WASN'T THE ONLY PERSON WHO LEFT TCW  
23 VOLUNTARILY, FOLLOWING MR. GUNDLACH'S TERMINATION IN  
24 DECEMBER OF 2009, WAS HE, SIR?

25 A. NO.

26 Q. PARDON?

27 A. NO.

28 Q. ABOUT 35 OR 40 OTHER PEOPLE LEFT VOLUNTARILY

09:37AM

09:37AM

09:37AM

09:37AM

09:38AM

1 TO GO TO WORK FOR MR. GUNDLACH; ISN'T THAT TRUE?

2 A. I DON'T KNOW THE SPECIFICS OF EACH INDIVIDUAL.

3 Q. HOW MANY PEOPLE LEFT, ABOUT?

4 A. AROUND 40.

5 Q. NOW, YOU TALKED ABOUT A STATEMENT THAT  
6 MR. GUNDLACH MADE SOMETIME IN THE FALL OF 2009, WHERE  
7 YOU SAY THAT HE SAID HE SAID HE WAS GOING TO LEAVE TCW  
8 AND GIVE A BIG F-U TO MR. STERN.

09:38AM

9 DO YOU RECALL THAT TESTIMONY, GENERALLY?

10 A. GENERALLY, YES.

09:38AM

11 Q. ISN'T IT A FACT, SIR, THAT MR. GUNDLACH HAD  
12 BEEN MAKING STATEMENTS ABOUT LEAVING TCW FOR MORE THAN  
13 10 YEARS?

14 A. YES.

15 Q. AND YOU WERE AWARE, WERE YOU NOT, THAT HE HAD  
16 TALKED TO WAMCO, WESTERN ASSETS MANAGEMENT COMPANY?  
17 YOU KNEW THAT IN 2009, DIDN'T YOU?

09:38AM

18 A. NO, I DID NOT.

19 Q. YOU HEARD THAT FROM MARKETING PEOPLE AT TCW,  
20 DIDN'T YOU, DIDN'T YOU, SIR?

09:39AM

21 A. I HAD HEARD RUMORS FROM OUR MARKETING PEOPLE.  
22 I DIDN'T KNOW IF IT WAS TRUE.

23 Q. OKAY.

24 YOU HEARD FROM MARKETING PEOPLE AT TCW  
25 WHO TOLD YOU THAT THEY HAD HEARD FROM THEIR FRIENDS AT  
26 WAMCO THAT MR. GUNDLACH WAS SEEN AT WAMCO'S OFFICES,  
27 RIGHT?

09:39AM

28 A. RIGHT.

1 Q. RIGHT.

2 MR. GUNDLACH DIDN'T PICK UP AND GO TO  
3 WAMCO, TO WORK AT WAMCO, DID HE, SIR?

4 A. NO.

5 Q. IN FACT, MR. GUNDLACH DIDN'T LEAVE TCW AT ALL  
6 UNTIL HE WAS FIRED; ISN'T THAT TRUE? 09:39AM

7 A. CORRECT.

8 Q. NOW, HOW MANY TOTAL ASSETS IN THE FIXED INCOME  
9 WERE UNDER MANAGEMENT AT TCW IN NOVEMBER -- LET'S SAY  
10 NOVEMBER 30TH, 2009? IT'S ABOUT 65 BILLION, WASN'T IT? 09:40AM

11 MR. MADISON: OBJECTION. VAGUE AS FIXED  
12 INCOME.

13 THE COURT: OKAY. DO YOU WANT TO CLARIFY?  
14 WE'RE TALKING ABOUT TOTAL FIXED INCOME.

15 MR. BRIAN: I'LL BREAK IT DOWN. 09:40AM

16 THE COURT: YEAH.

17 Q. BY MR. BRIAN: WHEN YOU WERE TALKING ABOUT --  
18 WHEN YOU SAID "YES," WERE YOU SAYING TOTAL FIXED  
19 INCOME, OR THE MBS GROUP?

20 A. I DON'T REMEMBER SAYING "YES," JUST NOW. 09:40AM

21 Q. OKAY. I'LL ASK YOU: THE TOTAL FIXED INCOME  
22 ASSETS, UNDER MANAGEMENT AT TCW, ON NOVEMBER 30TH,  
23 2009, WERE ABOUT 65 BILLION, CORRECT?

24 A. CORRECT.

25 Q. OKAY. 09:40AM

26 THE TOTAL FIXED INCOME ASSETS UNDER  
27 MANAGEMENT AT TCW, AS OF A MONTH AGO, ACCORDING TO  
28 TCW'S OWN WEBSITE, IS ABOUT 65.4 BILLION, CORRECT?

1 A. THAT SOUNDS ABOUT RIGHT, YES.

2 Q. SO IT IS NOT THE CASE, IT IS, SIR, THAT  
3 MR. GUNDLACH PICKED UP HIS SHOP OF BUSINESS AND  
4 TRANSPORTED IT FROM TCW TO DOUBLELINE, DID HE, SIR?

5 MR. MADISON: YOUR HONOR, I DON'T OBJECT TO  
6 MR. BRIAN ARGUING THE CASE RIGHT NOW, AS LONG AS I HAVE  
7 THE SAME CHANCE TO MAKE ANY COMMENTS --

09:41AM

8 THE COURT: I DON'T -- IF YOU HAVE AN  
9 OBJECTION, JUST SAY IT MR. MADISON.

10 MR. MADISON: OBJECTION. ARGUMENTATIVE IN  
11 TONE.

09:41AM

12 THE COURT: JUST THE OBJECTION, MR. MADISON.  
13 SUSTAINED.

14 GO AHEAD, MR. BRIAN.

15 AND WE DON'T NEED THE THEATRICALS ON  
16 EITHER SIDE.

09:41AM

17 Q. BY MR. BRIAN: AS YOU SIT HERE --

18 WE ENJOY OUR JOBS, YOUR HONOR.

19 THE COURT: I KNOW YOU DO.

20 MR. BRIAN: I GOT JUST A LITTLE CARRIED AWAY  
21 THERE.

09:41AM

22 Q. MR. ARENTSEN, AS YOU SIT THERE TODAY, AS YOU  
23 SIT IN THAT CHAIR TODAY, YOU DON'T KNOW WHICH, IF ANY,  
24 OF THE TCW CLIENTS IN 2009 ACTUALLY WENT TO DOUBLELINE,  
25 DO YOU, SIR?

09:41AM

26 A. I KNOW SOME OF THE NAMES.

27 Q. YOU KNOW, LIKE FOR EXAMPLE, THAT RELIANCE DID,  
28 RIGHT?

1 A. THAT IS CORRECT.

2 Q. OKAY.

3 AND YOU HAVE NO IDEA WHAT PERCENTAGE OF  
4 DOUBLELINE'S BUSINESS HAD BEEN CLIENTS OF TCW, DO YOU,  
5 SIR?

09:42AM

6 A. NO, I DON'T.

7 Q. NOW, YOU TESTIFIED ABOUT THE MEETING ON THE  
8 3RD OF SEPTEMBER IN 2009.

9 DO YOU RECALL THOSE QUESTIONS BEFORE,  
10 YESTERDAY AND TODAY?

09:42AM

11 A. YES.

12 Q. AND I THINK YOU SAID -- LET ME JUST ASK YOU,  
13 YOU RECALL HAVING A MEETING WITH MR. GUNDLACH BEFORE  
14 MEETING WITH MR. STERN, THAT SAME DAY, RIGHT, JUST THE  
15 TWO OF YOU, YOU AND MR. GUNDLACH?

09:42AM

16 A. YES.

17 Q. AND MR. GUNDLACH TOLD YOU IN THAT MEETING THAT  
18 HE HAD CONCERNS THAT HE WANTED TO RAISE WITH MR. STERN,  
19 RIGHT?

20 A. YES.

09:42AM

21 Q. AND HE HAD CONCERNS ABOUT RESPONSIBILITIES TO  
22 THE CLIENTS.

23 HE SAID THAT TO YOU IN THAT ONE-ON-ONE  
24 MEETING, DIDN'T HE, SIR?

25 A. I BELIEVE SO.

09:43AM

26 Q. AND YOU ACTUALLY AGREED WITH SOME OF THE  
27 CONCERNS, DID YOU NOT? AND YOU TOLD HIM SO IN THAT  
28 MEETING, DIDN'T YOU?

1 A. I TOLD HIM I AGREED WITH HIS CONCERNS.

2 Q. AND YOU SAY THAT YOU WENT TO THE MEETING.

3 YOU TOLD MR. GUNDLACH YOU WOULD GO TO  
4 THE MEETING THAT DAY WITH MR. STERN, RIGHT?

5 A. YES.

09:43AM

6 Q. DID YOU TELL HIM YOU WERE GOING TO ATTEND THE  
7 MEETING, JUST TO KEEP YOUR OPTIONS OPEN?

8 A. NO.

9 Q. SO WHEN YOU RAISED YOUR HAND AT THE MEETING,  
10 IN RESPONSE TO A QUESTION THAT MR. STERN ASKED, AND  
11 SAID YOU WOULD LEAVE, THAT WAS NOT A TRUTHFUL  
12 STATEMENT?

09:43AM

13 MR. MADISON: OBJECTION. MISSTATES THE  
14 TESTIMONY IN SEVERAL RESPECTS.

15 MR. BRIAN: I'LL REFRAME, YOUR HONOR. I THINK  
16 THAT'S A WELL TAKEN OBJECTION.

09:43AM

17 Q. BY MR. BRIAN: YOU DID RAISE YOUR HAND AT THE  
18 MEETING WITH MR. STERN, RIGHT?

19 A. I DON'T RECALL RAISING MY HAND.

20 Q. YOU SAID YOU WOULD LEAVE, RIGHT?

09:43AM

21 A. I DO RECALL THAT, YES.

22 Q. AND THAT WAS IN RESPONSE TO A QUESTION BY  
23 MR. STERN, WASN'T IT?

24 A. I DON'T RECALL WHO ASKED THE QUESTION.

25 Q. YOU RECALL HAVING YOUR DEPOSITION TAKEN, SIR?

09:44AM

26 A. YES, I DO.

27 Q. AND YOU TRIED TO GIVE ACCURATE TESTIMONY AT  
28 THAT DEPOSITION?

1 A. YES.

2 Q. I'D LIKE TO READ FROM PAGE 163, LINES 5  
3 THROUGH 8.

4 MR. MADISON: MAY I JUST HAVE ONE MOMENT, YOUR  
5 HONOR?

09:44AM

6 THE COURT: YES, YOU MAY.

7 MR. MADISON: IT SHOULD BE THROUGH LINE 14,  
8 YOUR HONOR.

9 MR. BRIAN: THAT'S FINE.

10 THE COURT: ALL RIGHT. SO 5 THROUGH 14 WILL  
11 BE READ WITHOUT OBJECTION.

09:45AM

12 Q. BY MR. BRIAN: THE QUESTION RAISED ON PAGE 5  
13 OF YOUR DEPOSITION, WHO ASKED THE QUESTION:

14 "Q WOULD YOU LEAVE IF JEFFREY  
15 LEFT?

09:45AM

16 "A I THINK IT WAS MARC STERN,  
17 BUT I DON'T HAVE A STRONG RECOLLECTION  
18 ON THAT?

19 "Q YOU THINK MARC STERN  
20 LOOKED AT THE GROUP AND SAID, WHICH  
21 ONE OF YOU WOULD LEAVE IF JEFFREY  
22 LEFT?

09:45AM

23 "A I DON'T REMEMBER. AGAIN,  
24 I'M A LITTLE FUZZY ON THAT. BUT MY  
25 RECOLLECTION IS THAT WHEN I RAISED  
26 MY HAND, I WAS LOOKING STRAIGHT INTO  
27 MARC STERN'S EYES. AND HE KNEW THAT  
28 YES, I WOULD LEAVE IF JEFFREY LEFT."

09:45AM

1                   YESTERDAY, WHEN YOU TESTIFIED, DO YOU  
2 RECALL BEING ASKED BY MR. MADISON, AFTER YOUR  
3 TESTIMONY, IS THERE ANYTHING ELSE ABOUT THE  
4 SEPTEMBER 3RD MEETING THAT YOU HAVEN'T ALREADY TOLD US,  
5 IN TERMS OF WHAT YOU RECALL BEING SAID?

09:45AM

6                   MR. MADISON: OBJECTION. VAGUE.

7                   AFTER HIS TESTIMONY?

8                   THE COURT: OVERRULED.

9                   DO YOU UNDERSTAND THE QUESTION? IF YOU  
10 DON'T, THEN WE'LL REPHRASE IT, AND GET SOMETHING ELSE.

09:46AM

11                   THE WITNESS: I'M NOT SURE I UNDERSTAND THE  
12 QUESTION.

13                   MR. BRIAN: MAY I APPROACH THE WITNESS, YOUR  
14 HONOR?

15                   THE COURT: YES, YOU MAY.

09:46AM

16                   MR. BRIAN: I'M GOING TO SHOW YOU PAGE 68 OF  
17 YESTERDAY'S TRANSCRIPT.

18                   LINES 9 THROUGH 12, MR. MADISON.

19                   MR. MADISON: MAY WE APPROACH, YOUR HONOR?

20                   THE COURT: I DON'T HAVE THE TRANSCRIPT. I'D  
21 LIKE TO HAVE IT IN FRONT OF ME.

09:46AM

22                   MR. BRIAN: I THINK I ASKED MY COLLEAGUE TO  
23 PUT IT IN THE BINDER I GAVE YOU.

24                   THE COURT: OH THIS BINDER. OKAY.

25                   HOLD ON JUST A MINUTE.

09:46AM

26                   MR. BRIAN: IT SHOULD BE LOOSE IN THERE, I  
27 HOPE.

28                   THE COURT: JUST HOLD ON A MINUTE.



1 MR. BRIAN: I WILL. I'M HOLDING.

2 THE COURT: ALL RIGHT.

3 WHAT'S THE OBJECTION?

4 MR. MADISON: WELL, I WANTED TO APPROACH ABOUT  
5 THE PROCEDURE, FIRST. I'M --

09:47AM

6 THE COURT: I'LL ALLOW HIM TO SHOW IT TO HIM  
7 AND ASK A QUESTION. LET'S SEE IF THERE'S A QUESTION  
8 THAT'S OBJECTIONABLE.

9 MR. MADISON: IT WASN'T THAT, YOUR HONOR.

10 THE COURT: GO AHEAD.

09:47AM

11 Q. BY MR. BRIAN: I'M GOING TO SHOW YOU PAGE 68,  
12 LINE 9 THROUGH 12.

13 THE COURT: JUST READ IT TO YOURSELF, SIR.  
14 THERE'S NO QUESTION PENDING.

15 MR. BRIAN: I'LL GO BACK TO THE LECTERN, YOUR  
16 HONOR.

09:47AM

17 THE WITNESS: I'M SORRY, WHAT ARE THE LINE  
18 NUMBERS AGAIN?

19 Q. BY MR. BRIAN: ON PAGE 68, LINES 9 THROUGH 12.

20 A. I'VE READ THAT.

09:48AM

21 Q. OKAY. AND YESTERDAY, IN RESPONSE TO A  
22 QUESTION BY MR. MADISON ABOUT WHETHER THERE WAS  
23 ANYTHING ELSE ABOUT THAT MEETING THAT YOU HAVEN'T  
24 ALREADY TOLD US, YOU SAID, NOT RIGHT NOW, DIDN'T YOU?

25 MR. MADISON: OBJECTION. MISSTATES THE  
26 QUESTION.

09:48AM

27 MR. BRIAN: WELL, I'LL READ IT, YOUR HONOR.

28 MR. MADISON: THAT'S WHAT I WANT TO APPROACH

1 ABOUT, YOUR HONOR.

2 THE COURT: WELL, EITHER YOU ARE GOING TO READ  
3 IT, OR DON'T MISCHARACTERIZE IT. AND I'M NOT SAYING  
4 YOU ARE, I'M JUST SAYING --

5 MR. BRIAN: THEN I WOULD ASK PERMISSION TO  
6 READ LINES 9 THROUGH 12 FROM YESTERDAY'S TRANSCRIPT.

7 MR. MADISON: I DO OBJECT TO THAT PROCEDURE,  
8 BUT WE CAN TAKE THAT UP LATER.

9 THE COURT: I'LL ALLOW IT.

10 GO AHEAD.

11 Q. BY MR. BRIAN: (READING):

12 "Q IS THERE ANYTHING  
13 ABOUT THE SEPTEMBER 3RD MEETING THAT  
14 YOU HAVEN'T ALREADY TOLD US, IN TERMS  
15 OF WHAT YOU RECALL BEING SAID?

16 "A NOT RIGHT NOW."

17 THERE WAS ONE OTHER THING THAT YOU  
18 DIDN'T TESTIFY TO YESTERDAY OR TODAY, AND THAT IS THAT  
19 MR. STERN TOLD MR. GUNDLACH AT THAT MEETING THAT HE HAD  
20 NO PLANS TO FIRE HIM; ISN'T THAT TRUE?

21 MR. MADISON: OBJECTION. MISCHARACTERIZES THE  
22 PRIOR TESTIMONY.

23 HE CAN ASK THE QUESTION.

24 THE COURT: OVERRULED.

25 WAS THAT CONVERSATION HELD? I MEAN, CAN  
26 YOU ANSWER THAT QUESTION?

27 THE WITNESS: YES.

28 THE COURT: WELL, THEN ANSWER THE QUESTION.

09:48AM

09:48AM

09:48AM

09:49AM

09:49AM

1 THE WITNESS: I'M SORRY. COULD YOU REPEAT THE  
2 QUESTION?

3 Q. BY MR. BRIAN: MR. STERN LOOKED AT  
4 MR. GUNDLACH AT THAT MEETING IN RESPONSE TO A DIRECT  
5 QUESTION BY MR. GUNDLACH AND SAID HE HAD NO PLANS TO  
6 FIRE HIM.

09:49AM

7 ISN'T THAT WHAT MR. STERN TOLD HIM?

8 A. YES.

9 Q. I TAKE IT THAT MR. STERN DID NOT TELL  
10 MR. GUNDLACH AT THAT MEETING THAT HE HAD ATTENDED A  
11 MEETING ON AUGUST 27TH IN WHICH HE HAD DISCUSSED  
12 TERMINATING MR. GUNDLACH.

09:49AM

13 HE DIDN'T TELL THAT TO MR. GUNDLACH AT  
14 THAT MEETING, DID HE?

15 MR. MADISON: OBJECTION. FOUNDATION,  
16 ARGUMENTATIVE.

09:50AM

17 THE COURT: SUSTAINED.

18 Q. BY MR. BRIAN: WELL, DID HE TELL MR. GUNDLACH  
19 AT THAT MEETING THAT HE HAD HAD A MEETING ON  
20 AUGUST 27TH ABOUT TERMINATING MR. GUNDLACH?

09:50AM

21 MR. MADISON: SAME OBJECTION.

22 THE COURT: IT SEEMS LIKE IT'S THE SAME  
23 QUESTION, AND YOU ARE GOING TO GET THE SAME RULING.

24 MR. BRIAN: OKAY.

25 I'M TRYING TO CORRECT ONE PART.

09:50AM

26 THE COURT: MOVE ON. THANK YOU.

27 Q. BY MR. BRIAN: YOU WERE ASKED SOME QUESTIONS  
28 ABOUT THESE CD'S OR DVD'S. AND I'M NOT GOING TO GO

1 THROUGH ALL OF THOSE. I ACTUALLY DON'T EVEN HAVE THEM  
2 ON OUR COMPUTER; SO LET ME JUST SEE IF I CAN GO THROUGH  
3 THEM QUICKLY.

4 LET ME TRY TO, IF I CAN TRY TO DIVIDE  
5 THE MBS WORK INTO THREE BROAD CATEGORIES OF WHAT  
6 INFORMATION EXISTS. THERE'S INFORMATION IN VARIOUS  
7 FORMS THAT PERTAINS TO CLIENT HOLDINGS AND CLIENT  
8 ACCOUNTS, RIGHT? THAT'S ONE CATEGORY, RIGHT?

09:51AM

9 A. YES.

10 Q. AND IT MANIFESTS ITSELF IN MANY DIFFERENT  
11 WAYS, RIGHT? SOME OF WHICH YOU SHOWED US TODAY, RIGHT?

09:51AM

12 A. CORRECT.

13 Q. AND THEN THERE'S THE SOPHISTICATED COMPUTER  
14 ANALYTICS AND SOURCE CODE THAT ENABLE THE PEOPLE IN THE  
15 GROUP TO ANALYZE ECONOMIC DATA AND THE LOANS IN ORDER  
16 TO DECIDE WHAT BONDS TO BUY OR SELL, RIGHT?

09:51AM

17 A. I'M WITH YOU SO FAR.

18 Q. CAN YOU AGREE THAT THAT'S A DIFFERENT CATEGORY  
19 OF STUFF, RIGHT?

20 A. WELL, I DON'T WANT TO AGREE UNTIL I KNOW WHAT  
21 ALL THREE OF YOUR CATEGORIES ARE.

09:51AM

22 Q. WELL, WOULD YOU AGREE WITH ME THAT THAT'S A  
23 CATEGORY OF INFORMATION THAT THE MBS GROUP HAD, RIGHT?

24 A. YES.

25 Q. OKAY.

09:52AM

26 AND PEOPLE LIKE CASEY MOORE WORKED ON  
27 THE SOURCE CODE, RIGHT?

28 A. YES.

1 Q. AND THEN I'LL CALL IT A THIRD CATEGORY IS WHAT  
2 WAS IN THE BRAINS OF MR. GUNDLACH AND THE OTHER PEOPLE  
3 WHO MADE THE DECISIONS ABOUT WHAT BONDS TO BUY AND  
4 SELL, RIGHT?

5 MR. MADISON: OBJECTION. ASSUMES FACTS NOT IN  
6 EVIDENCE.

09:52AM

7 THE COURT: OVERRULED.

8 DO YOU UNDERSTAND THE QUESTION?

9 THE WITNESS: I'M NOT SURE.

10 COULD YOU REPEAT THE VERY FIRST PART,  
11 ABOUT THE --

09:52AM

12 Q. BY MR. BRIAN: I'LL REFRAME IT, TO MAKE IT  
13 EASY FOR YOU.

14 YOU WERE ASKED A LOT OF QUESTIONS ABOUT  
15 WHAT INFORMATION AND DATA ALLOWED THE MBS GROUP TO DO  
16 ITS BUSINESS AND EARN FEES.

09:52AM

17 DO YOU RECALL THOSE QUESTIONS,  
18 GENERALLY?

19 A. YES.

20 Q. WOULD YOU AGREE WITH ME THAT THE BRAIN OF  
21 MR. GUNDLACH WAS A BIG PART OF WHAT ENABLED THE MBS  
22 GROUP TO DO BUSINESS AND GENERATE FEES?

09:52AM

23 MR. MADISON: OBJECTION. VAGUE.

24 THE COURT: OVERRULED.

25 I THINK IT COULD BE PHRASED A LITTLE  
26 DIFFERENTLY; BUT DO YOU UNDERSTAND THE QUESTION?

09:53AM

27 THE WITNESS: I THINK YOU ARE ASKING ABOUT THE  
28 BRAINPOWER IN THE MORTGAGE TEAM AS BEING POSSIBLY A

1 THIRD CATEGORY?

2 Q. BY MR. BRIAN: I'M SAYING IT WAS A THIRD  
3 CATEGORY OF IMPORTANT STUFF IN ORDER TO HELP YOU DO  
4 YOUR BUSINESS, RIGHT?

5 A. YES.

09:53AM

6 Q. NOW, THE STUFF YOU SHOWED US TODAY, 1496-A  
7 THROUGH D, AND 1505-A, DEALT WITH THIS FIRST CATEGORY,  
8 CLIENT ACCOUNT INFORMATION, THE CLIENT HOLDINGS AND THE  
9 CLIENTS' GUIDELINES, RIGHT?

10 MR. MADISON: OBJECTION. MISSTATES THE  
11 TESTIMONY.

09:53AM

12 THE COURT: SUSTAINED.

13 Q. BY MR. BRIAN: I'M NOT -- I'M ASKING A  
14 QUESTION.

15 THE COURT: I THINK IT'S THE GENERAL NATURE.  
16 IF YOU ARE GOING TO REFER TO THREE DIFFERENT CD'S  
17 COLLECTIVELY THAT HAVE BEEN DISCUSSED INDIVIDUALLY.

09:53AM

18 Q. I'LL GO ONE BY ONE.

19 1496-D, THAT, FOR EXAMPLE, SHOWED  
20 INFORMATION PERTAINING TO THE CLIENT ACCOUNTS, DIDN'T  
21 IT, SIR?

09:54AM

22 A. YES, IT DID.

23 Q. IN FACT, ONE OF THE COLUMNS WAS JUST  
24 INFORMATION THAT WAS TAKEN FROM AN OUTFIT CALLED BONY,  
25 RIGHT?

09:54AM

26 A. I DON'T --

27 Q. TAKE A LOOK AT IT, PLEASE. OPEN YOUR BINDER  
28 TO 1496-D.

1 A. WAS IT D?

2 Q. I THINK IT WAS D.

3 MR. BRIAN: MAY I APPROACH, YOUR HONOR?

4 THE COURT: YES, YOU MAY.

5 Q. BY MR. BRIAN: THIS COLUMN RIGHT HERE, THE  
6 SECOND FROM THE LEFT, IS INFORMATION THAT COMES FROM  
7 BONY, ISN'T IT?

09:54AM

8 A. I BELIEVE SO, ALTHOUGH IT'S MELLON HERE.

9 Q. I'M SORRY. MELLON. THANK YOU.

10 BUT FROM A THIRD PARTY, RIGHT? THAT'S  
11 GATHERED FROM A THIRD PARTY, IS IT NOT?

09:54AM

12 A. I CAN'T SAY, ON THAT SPECIFIC FIELD.

13 Q. WELL, MELLON ISN'T PART OF TCW IS IT, SIR?

14 A. NO. BUT THAT'S ESSENTIALLY A CUSIP NUMBER, SO  
15 THAT'S HOW WE LINKED RECORDS WAS BY CUSIP.

09:55AM

16 Q. AND EXHIBIT 1501-A, DO YOU HAVE THAT IN THE  
17 BINDER?

18 A. YES, I DO.

19 Q. THOSE ARE GUIDELINES THAT WERE IN PART, AT  
20 LEAST, CREATED AND IMPOSED BY THE CLIENTS, RIGHT?

09:55AM

21 A. YES.

22 Q. AND THEN YOU HAVE 1505-A.

23 DO YOU HAVE THAT IN FRONT OF YOU?

24 A. YES.

25 Q. THAT'S A TASK LIST FOR PARTICULAR CLIENTS,  
26 RIGHT?

09:55AM

27 A. IT'S MORE THAN THAT.

28 Q. WELL, IN PART -- WELL, YOU DESCRIBED IT IN

1 PART -- YOU WOULD DESCRIBE IT IN PART AS A TASK LIST,  
2 WOULD YOU NOT?

3 A. I DESCRIBED IT AS A TASK LIST, YES.

4 Q. AND IT'S A TASK LIST FOR CLIENTS YOU HAVE,  
5 RIGHT?

09:56AM

6 A. I BELIEVE I SAID IT WAS A TASK LIST FOR  
7 CLIENTS WE HAVE, AND ALSO FOR THE OPERATIONS OF THE  
8 DEPARTMENT IN GENERAL.

9 Q. OKAY. PRESUMABLY A CLIENT COULD TAKE ITS  
10 GUIDELINES, OR WHAT IT WOULD LIKE TO BE DONE WITH ITS  
11 OWN ACCOUNTS, AND INSTRUCT SOME OTHER ASSETS MANAGER TO  
12 USE THOSE SAME GUIDELINES, RIGHT?

09:56AM

13 THEY HAVE EVERY RIGHT TO DO THAT, SIR,  
14 DON'T THEY, SIR?

15 A. ARE WE STILL SPEAKING ABOUT 1505?

09:56AM

16 Q. NO, I'M ACTUALLY TALKING ABOUT THE GUIDELINES  
17 RIGHT NOW, WHICH I THINK WAS -- THAT WAS WHAT, 150 --

18 A. 1501-A.

19 Q. A CLIENT WOULD HAVE THE RIGHT TO TAKE ITS OWN  
20 GUIDELINES AND GO TO PIMCO OR GO TO WAMCO AND SAY,  
21 THESE ARE THE GUIDELINES WE'D LIKE YOU TO USE FOR OUR  
22 ACCOUNT, RIGHT?

09:56AM

23 A. THAT'S CORRECT.

24 Q. NOW, YOU ALSO WERE ASKED A SERIES OF QUESTIONS  
25 ABOUT YOUR BELIEF, WHETHER STUFF WAS CONFIDENTIAL.

09:56AM

26 DO YOU RECALL THAT?

27 A. YES.

28 Q. NOW, YOU, YOURSELF, HAVE WORKED AT HOME ON TCW



1 DOCUMENTS ON YOUR HOME COMPUTER, HAVE YOU NOT?

2 A. YES, I HAVE.

3 Q. AND, FOR EXAMPLE, IN JUNE OF 2009, JUST A  
4 COUPLE OF MONTHS BEFORE THE SEPTEMBER 2009 MEETING, YOU  
5 WORKED ON A POWERPOINT PRESENTATION ON YOUR HOME  
6 COMPUTER IN PREPARATION FOR A PRESENTATION THAT YOU  
7 GAVE IN CHINA THAT NEXT MONTH, DIDN'T YOU?

09:57AM

8 A. YES, I DID.

9 Q. AND YOU ALSO OCCASIONALLY USED THE FLASH DRIVE  
10 OR A THUMB DRIVE TO TRANSFER FILES FROM TCW, DIDN'T  
11 YOU?

09:57AM

12 A. YES, I DID.

13 Q. AND YOU GOT THAT FLASH DRIVE FROM TCW, DIDN'T  
14 YOU, SIR?

15 A. NO, I DID NOT.

09:57AM

16 Q. TO YOUR KNOWLEDGE, WERE YOU THE ONLY PERSON AT  
17 TCW TO STORE TCW DATA ON A FLASH DRIVE?

18 A. NO, I WAS NOT THE ONLY PERSON.

19 Q. YOU WERE NEVER PUNISHED BY TCW FOR HAVING TCW  
20 INFORMATION, EITHER ON YOUR FLASH DRIVE OR ON YOUR HOME  
21 COMPUTER, WERE YOU, SIR?

09:58AM

22 A. NO.

23 Q. AND I GAVE YOU A BINDER.

24 COULD YOU TAKE A LOOK AT EXHIBIT 948 IN  
25 THE SMALL BINDER IN FRONT OF YOU.

09:58AM

26 YOU GAVE -- WHEN YOU WENT TO CHINA IN  
27 2009, JUNE OF 2009, DID YOU MAKE SOME SORT OF CLIENT  
28 PRESENTATION?

1 A. I BELIEVE SO, YES.

2 Q. AND WAS IT SOME SORT OF POWERPOINT  
3 PRESENTATION IN WRITING?

4 A. I MADE SEVERAL PRESENTATIONS IN CHINA.

5 Q. AND DID IT HAVE INFORMATION LIKE WHAT'S ON  
6 PAGE 48, LINES 1 AND 2?

7 A. I DON'T RECALL TODAY.

8 Q. OKAY. TAKE A LOOK -- MAYBE WE CAN PUT UP  
9 EXHIBIT 948-2. IT'S IN EVIDENCE.

10 SEE THE UPPER LEFT-HAND BOX, WHERE IT  
11 SAYS RESEARCH?

12 A. YES.

13 Q. DO YOU CONSIDER THAT WORD TO BE CONFIDENTIAL  
14 TO TCW, SIR?

15 A. NOT IN THE CONTEXT OF JUST A BOX LIKE THAT,  
16 NO.

17 Q. HOW ABOUT PORTFOLIO MANAGEMENT? DO YOU  
18 CONSIDER THAT TO BE CONFIDENTIAL TO TCW, SIR?

19 A. NO.

20 Q. TRADING, IN THE LOWER LEFT-HAND CORNER, YOU  
21 DON'T CONSIDER THAT CONFIDENTIAL, DO YOU, SIR?

22 A. BY ITSELF, NO.

23 Q. NOW, TURN TO PAGE 1 OF EXHIBIT 948-1.

24 IT'S HARD TO READ. I APOLOGIZE.

25 BUT IF YOU LOOK AT THE UPPER RIGHT-HAND  
26 BOX, DO YOU SEE WHERE IT SAYS MACRO, ECONOMIC MARKET  
27 AND SECTOR ANALYSIS; DO YOU SEE THAT?

28 A. YES, I DO.

09:58AM

09:59AM

09:59AM

09:59AM

10:00AM

1 Q. AND RIGHT BELOW THAT IT SAYS DAILY ECONOMIC  
2 SESSIONS AT THE TRADING DESK LED BY JEFFREY GUNDLACH.

3 DO YOU SEE THAT?

4 A. YES.

5 Q. YOU DON'T THINK THAT ANYONE WAS DEMONSTRATING  
6 CONFIDENTIAL INFORMATION BY TELLING A CLIENT THERE WAS  
7 DAILY DISCUSSIONS AT THE TRADING DESK, LED BY JEFFREY  
8 GUNDLACH, DO YOU, SIR?

9 A. NO.

10 Q. IN FACT, THERE'S NOTHING IN THAT BOX THAT YOU  
11 WOULD VIEW AS ANYTHING OTHER THAN PRETTY GENERIC  
12 DESCRIPTIONS ABOUT THE PROCESSES IN THE MBS GROUP;  
13 ISN'T THAT RIGHT?

14 MR. MADISON: OBJECTION. VAGUE.

15 THE COURT: OVERRULED.

16 DO YOU UNDERSTAND THE QUESTION, SIR?

17 THE WITNESS: I'M SORRY. CAN YOU REPEAT THE  
18 QUESTION, PLEASE.

19 Q. BY MR. BRIAN: THAT ENTIRE BOX, IS ANY OF THAT  
20 STUFF -- WELL, I'LL GO THROUGH IT ONE BY ONE. I'M  
21 SORRY.

22 RIGHT BELOW THAT, IT SAYS INTEREST  
23 RATES, YIELD CURVES, SPREADS, CREDIT AND GENERAL  
24 ANALYSIS OF THE MBS MARKETS.

25 ISN'T IT YOUR UNDERSTANDING THAT EVERY  
26 ASSET MANAGER IN THE FIXED INCOME AREA LOOKS AT THOSE  
27 THINGS: INTEREST RATES, YIELD CURVES, ET CETERA; ISN'T  
28 THAT RIGHT?

1           A.     I DON'T KNOW WHAT EVERY ASSET MANAGER IN THE  
2     FIXED INCOME AREA DOES.

3           Q.     TAKE A LOOK AT EXHIBIT 393, ALSO IN EVIDENCE.

4                     STAY WITH PAGE 1 PLEASE, DENNIS.

5                     ACTUALLY, I'D LIKE TO DISPLAY PAGE 2.                     10:01AM

6                     THIS IS A PAGE CALLED IMPORTANT  
7     INFORMATION.

8                     WHEN YOU HAD A PRESENTATION -- WHEN YOU  
9     MADE A PRESENTATION TO A CLIENT ABOUT THE MBS GROUP,  
10    DID YOU SOMETIMES INCLUDE A PAGE CALLED IMPORTANT  
11    INFORMATION, LIKE THIS?                     10:02AM

12           A.     I WOULDN'T PERSONALLY INCLUDE IT, BECAUSE I  
13    DID NOT PREPARE THE BOOK.

14           Q.     WELL, LET ME ASK YOU THIS: DID YOU ATTEND  
15    PRESENTATIONS WHERE WRITTEN MATERIALS, INCLUDING A PAGE  
16    CALLED IMPORTANT INFORMATION, WAS INCLUDED IN THE  
17    MATERIALS SHOWN TO THE CLIENT?                     10:02AM

18           A.     YES.

19           Q.     NOW, TAKE A LOOK AT THAT.

20                     COULD YOU JUST READ THAT TO YOURSELF,  
21    PLEASE.                     10:02AM

22                     AND CAN THE LADIES AND GENTLEMEN OF THE  
23    JURY SEE THAT?

24                     DID YOU GET A CHANCE TO LOOK AT IT?

25           A.     YES.                     10:03AM

26           Q.     IS THERE ANYTHING IN THERE, IN THE PAGE CALLED  
27    IMPORTANT INFORMATION, THAT SAYS THAT ANY OF THE  
28    MATERIALS IN THE PRESENTATION IS CONFIDENTIAL?

1 A. NOTHING STANDS OUT.

2 Q. THE WORD CONFIDENTIAL IS NOT EVEN IN THERE, AS  
3 A WORD, IS IT, SIR?

4 A. AS I SAID, NOTHING STOOD OUT.

5 I DIDN'T SEE THE WORD CONFIDENTIAL.

10:03AM

6 Q. NOW, YOU ALSO LOOK ANOTHER TRIP TO CHINA IN  
7 ABOUT NOVEMBER OF 2009, DID YOU NOT?

8 A. I REALLY DON'T RECALL.

9 Q. DID YOU GO TO HONG KONG AND BEIJING IN  
10 NOVEMBER WITH LOU LUCIDO TO TALK TO, AMONG OTHERS, THE  
11 CHINA INVESTMENT CORPORATION, CIC?

10:04AM

12 A. THAT SOUNDS FAMILIAR.

13 Q. AND YOU WENT THERE WITH -- AND YOU ATTENDED A  
14 SERIES OF MEETINGS WITH MR. LUCIDO, DID YOU NOT?

15 A. YES, I BELIEVE SO.

10:04AM

16 Q. AND THERE WERE SEVERAL PURPOSES, ONE OF WHICH  
17 WAS TO TRY TO LOCK IN THE PARTICIPATION OF THE CHINA  
18 INVESTMENT CORPORATION IN THE NEW PPIP FUND.

19 THAT WAS ONE PURPOSE, RIGHT?

20 A. THAT SOUNDS FAMILIAR.

10:04AM

21 Q. AND THAT WAS A NEW FUND THAT WAS STARTED SOME  
22 TIME IN 2009, WAS IT NOT?

23 A. YES.

24 Q. AND IN FACT, THE FIRST FEDERAL MONEY -- THE  
25 PPIP WAS A COMBINATION, A PROJECT, COMBINATION OF  
26 PRIVATE INVESTMENT MONEY, AND ALSO FEDERAL GOVERNMENT  
27 INVESTMENT MONEY, CORRECT?

10:04AM

28 A. THAT IS MY UNDERSTANDING.

1 Q. AND DO YOU RECALL, OR DO YOU KNOW, WHETHER THE  
2 FIRST FEDERAL INVESTMENT MONEY INTO THAT PPIP FUND WAS  
3 IN NOVEMBER OF 2009? DO YOU REMEMBER WHETHER THAT WAS  
4 THE CASE?

5 MR. MADISON: OBJECTION. BEYOND THE SCOPE OF  
6 FOUNDATION, ALSO --

10:05AM

7 THE COURT: OVERRULED.

8 I'LL ALLOW IT.

9 DO YOU KNOW?

10 THE WITNESS: I DON'T KNOW.

10:05AM

11 Q. BY MR. BRIAN: ANOTHER PURPOSE OF GOING TO  
12 CHINA WITH MR. LUCIDO IN NOVEMBER OF 2009 WAS TO SECURE  
13 THE PHYSICAL LOCATION OF A MAN NAMED CLIFF MACK AND HIS  
14 SUPPORT STAFF, RIGHT?

15 A. NOT THAT I RECALL.

10:05AM

16 Q. DO YOU KNOW WHO MR. MACK WAS?

17 HE WAS A CLIENT SERVICE REPRESENTATIVE,  
18 WAS HE NOT?

19 A. YES.

20 Q. AND HE HAD OFFICES OVER THERE, DID HE NOT?

10:05AM

21 A. WHEN YOU SAY OVER THERE, CAN YOU BE --

22 Q. IN ASIA?

23 A. YES.

24 Q. AND THERE WAS ANOTHER PERSON NAMED -- LET ME  
25 ASK YOU THIS: SIR, HOW MUCH TIME DID YOU SPEND WITH  
26 MR. MADISON BEFORE YOU TESTIFIED?

10:06AM

27 A. I DON'T RECALL A SPECIFIC NUMBER OF HOURS.

28 MR. BRIAN: NO FURTHER QUESTIONS, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 REDIRECT, MR. MADISON?

3 MR. MADISON: YES, YOUR HONOR. THANK YOU.

4 I WONDER IF WE COULD PUT 393 BACK UP.

5

10:06AM

6

7

REDIRECT EXAMINATION

8 BY MR. MADISON:

9 Q. SO MR. BRIAN WAS ASKING YOU ABOUT THE SECOND  
10 PAGE, IF WE GO THERE, AND THERE'S SOME IMPORTANT  
11 INFORMATION.

10:06AM

12

13

14

AND YOU ARE AWARE THAT TCW'S HIGHLY  
REGULATED, AS A FIRM THAT'S A REGISTERED INVESTMENT  
ADVISOR?

15

A. YES.

10:06AM

16

17

18

Q. AND DO YOU KNOW WHETHER SOME OR ALL OF THIS  
INFORMATION RELATES TO LEGAL REQUIREMENTS ABOUT THE  
BUSINESS OF ADVISING CLIENTS ABOUT INVESTMENTS?

19

A. I ASSUME SO, YES.

20

21

22

23

Q. AND MR. BRIAN ASKED YOU IF -- DID YOU HEAR ANY  
WORD HERE ABOUT CONFIDENTIALITY? THE WORDS ARE THE  
WORDS. BUT DO YOU SEE AT THE BOTTOM RIGHT THERE, IT  
SAYS COPYRIGHT TCW 2008?

10:07AM

24

A. YES.

25

26

Q. DO YOU HAVE ANY UNDERSTANDING ABOUT WHAT THAT  
MEANS?

10:07AM

27

A. YES.

28

Q. WHAT'S YOUR UNDERSTANDING OF THAT?

1           A.     THAT MEANS THAT TCW OWNS THE COPYRIGHT, AS OF  
2 2008, FOR THE MATERIALS.

3           Q.     NOW, MR. BRIAN ASKED YOU ABOUT, HE CALLED IT  
4 BONY, YOU CALLED IT MELLON. THOSE ARE BOTH BANKS, THAT  
5 AS PART OF THEIR BUSINESS, PROVIDE INFORMATION,  
6 CORRECT?

10:07AM

7           A.     THAT'S CORRECT.

8           Q.     DO THEY GIVE THAT INFORMATION AWAY FOR FREE?

9           A.     NO.

10          Q.     SO WHEN -- IF TCW HAS INFORMATION FROM ANY  
11 THIRD PARTY VENDOR, SUBSCRIPTION, RESEARCH, WHATEVER IT  
12 MAY BE, AS PART OF THE SYSTEMS, HOW DID TCW ACQUIRE  
13 THAT INFORMATION?

10:07AM

14          A.     TCW WOULD HAVE TO PAY FOR IT.

15          Q.     AND PRESUMABLY, THERE'S AN AGREEMENT BETWEEN  
16 TCW AND THE VENDOR FOR THAT?

10:08AM

17          A.     YES.

18          Q.     NOW, WHEN YOU TOOK A FLASH DRIVE HOME, WAS IT  
19 TO OPEN A NEW FIRM?

20          A.     NO.

10:08AM

21          Q.     WAS IT TO GET THE DOWNLOAD INFORMATION THAT  
22 YOU COULD USE AT A COMPETING FIRM?

23          A.     NO.

24          Q.     WAS IT ALWAYS FOR TCW BUSINESS?

25          A.     YES.

10:08AM

26          Q.     SO AS A MANAGING DIRECTOR, WOULD YOU SAY THAT  
27 THAT'S APPROPRIATE, IF YOU ARE DOING IT FOR TCW  
28 BUSINESS?



1 A. I THINK IT WOULD BE APPROPRIATE, YES.

2 Q. NOBODY HAS EVER TOLD YOU THAT IN THIS LAWSUIT,  
3 TCW IS COMPLAINING THAT PEOPLE TOOK WORK HOME, ARE  
4 THEY?

5 A. NO. 10:08AM

6 Q. FOR TCW?

7 A. CORRECT.

8 Q. NOW, MR. BRIAN SAID THAT THERE WAS 65 BILLION  
9 IN FIXED INCOME BACK IN DECEMBER OF 2009 OR  
10 THEREABOUTS. 10:08AM

11 DO YOU RECALL THAT QUESTION?

12 A. YES.

13 Q. AND DO YOU KNOW, DID THAT NUMBER INCLUDE FIXED  
14 INCOME ASSETS THAT WERE IN HIGH YIELD, EMERGING MARKETS  
15 OR BANK LOANS? 10:09AM

16 A. I DO KNOW.

17 THAT NUMBER DID INCLUDE BANK LOAN, HIGH  
18 YIELD, AND OTHER FIXED INCOME.

19 Q. DO YOU KNOW WHETHER THOSE GROUPS AND THOSE  
20 ASSETS WERE MANAGED BY THE MBS GROUP THAT MR. GUNDLACH  
21 DIRECTLY OVERSAW? 10:09AM

22 A. THEY WERE NOT.

23 Q. ALL RIGHT.

24 AND THEN MR. BRIAN ASKED YOU WHETHER  
25 THERE'S ABOUT 65 BILLION IN FIXED INCOME TODAY. 10:09AM

26 DO YOU RECALL THAT QUESTION?

27 A. I DO.

28 Q. AND I WASN'T SURE IF YOU KNEW THIS OR NOT, BUT

1 WAS IT YOUR TESTIMONY THAT NO ASSETS LEFT TCW AFTER  
2 MR. GUNDLACH LEFT?

3 MR. BRIAN: OBJECTION. FORM.

4 THE COURT: SUSTAINED.

5 Q. BY MR. MADISON: WELL, DO YOU KNOW IF ASSETS  
6 FROM FIXED INCOME LEFT TCW WITH MR. GUNDLACH?

10:09AM

7 A. YES.

8 Q. AND WHAT IS THE ANSWER TO THAT?

9 A. YES, THE ASSETS DID LEAVE.

10 Q. NOW, DO YOU RECALL, WHEN THE MET WEST GROUP  
11 CAME IN, WHETHER OR NOT THAT GROUP BROUGHT FIXED INCOME  
12 ASSETS WITH THEM, AS PART OF THEIR BUSINESS?

10:10AM

13 A. YES.

14 Q. AND THEY DID DO THAT?

15 A. YES, THEY DID.

10:10AM

16 Q. AND DO YOU KNOW, APPROXIMATELY, WHAT AMOUNT  
17 MET WEST BROUGHT IN ASSETS IN THE FIXED INCOME SPACE TO  
18 TCW WHEN IT CAME IN?

19 A. MY RECOLLECTION IS, ABOUT 30 BILLION IN  
20 ASSETS.

10:10AM

21 Q. SO WHEN MR. BRIAN WAS ASKING YOU TODAY WHAT  
22 THE TOTAL FIXED INCOME IS, DOES IT INCLUDE WHATEVER  
23 ASSETS MET WEST BROUGHT THAT ARE STILL AT TCW?

24 A. YES.

25 Q. SO IF YOU TOOK OUT THE MET WEST ASSETS, WOULD  
26 THE FIXED INCOME ASSETS AT TCW TODAY BE 65 BILLION?

10:10AM

27 A. NO.

28 Q. DO YOU HAVE A SENSE, AS WE SIT HERE, OF WHAT

1 THEY WOULD BE, ABSENT THOSE ASSETS?

2 MR. BRIAN: OBJECTION. FOUNDATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: I'M SORRY. COULD YOU REPEAT THE  
5 QUESTION?

10:11AM

6 Q. BY MR. MADISON: YES.

7 DO YOU KNOW WHAT THE AMOUNT WOULD BE OF  
8 FIXED INCOME ASSETS TODAY, IF THE MET WEST ASSETS THAT  
9 HAD MIGRATED OVER WERE NOT INCLUDED?

10 A. YES. IT WOULD BE ABOUT 30 MILLION.

10:11AM

11 Q. NOW, MR. BRIAN ASKED YOU IF AN INDIVIDUAL  
12 CLIENT CAN TAKE ITS INFORMATION, OR HIS OR HER  
13 INFORMATION TO OTHER FIRMS, AND PROVIDE THAT.

14 AND THE ANSWER TO THAT IS PRETTY  
15 OBVIOUS, ISN'T IT?

10:11AM

16 A. YES.

17 Q. BUT DOES THAT MEAN THAT SOMEBODY AT TCW CAN  
18 TAKE A LIST OF ALL THE CLIENTS, NON-PUBLIC FINANCIAL  
19 INFORMATION, AND SHOP THAT AROUND TO OTHER FIRMS?

20 A. NO. YOU CAN'T DO THAT.

10:11AM

21 Q. MR. BRIAN ASKED YOU ABOUT WHAT WAS IN  
22 MR. GUNDLACH'S BRAIN.

23 AND LET ME JUST ASK THE QUESTION THIS  
24 WAY:

25 YOU WERE DESCRIBING THE AMOUNT OF DATA  
26 THAT'S IN THOSE CD'S.

10:12AM

27 IT'S NOT POSSIBLE FOR ANY PERSON TO HAVE  
28 ALL THAT INFORMATION IN THEIR BRAIN, IS IT?

1 A. THAT IS CORRECT.

2 Q. AND IF YOU HAD IT ALL IN YOUR BRAIN, IF IT WAS  
3 POSSIBLE, YOU WOULDN'T NEED TO TAKE THE INFORMATION IN  
4 THAT FORM, WOULD YOU?

5 MR. BRIAN: OBJECTION. ARGUMENTATIVE. 10:12AM

6 THE COURT: SUSTAINED.

7 Q. BY MR. MADISON: MR. BRIAN ASKED YOU IF, OVER  
8 10 YEARS, MR. GUNDLACH HAD BEEN TALKING ABOUT LEAVING  
9 THE FIRM.

10 PRIOR TO THE FALL OF 2009, HAD YOU EVER 10:12AM  
11 HEARD MR. GUNDLACH SAY, AFTER BONUSES, WE'RE OUT OF  
12 HERE, AND IT WILL BE A BIG FUCK YOU TO MARC STERN?

13 A. NO.

14 MR. MADISON: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: ALL RIGHT. 10:12AM

16 ANY REDIRECT -- RECROSS, I'M SORRY.

17 YOU HAVE GOT TWO MINUTES, AND THEN WE'RE GOING  
18 TO TAKE A BREAK; SO YOU TELL ME.

19 MR. BRIAN: I AGREE WITH MR. QUINN ON THAT,  
20 YOUR HONOR. 10:12AM

21

22

23 RECROSS EXAMINATION

24 BY MR. BRIAN:

25 Q. MR. MADISON SHOWED YOU THIS COPYRIGHT 10:13AM  
26 LANGUAGE.

27 COPYRIGHT, YOU UNDERSTAND, IS SOME SORT  
28 OF LAW THAT TALKS ABOUT BOOKS AND PUBLICATIONS, RIGHT?

1           A.     MY UNDERSTANDING IS THAT ALSO APPLIES TO  
2 SOFTWARE.

3           Q.     DO YOU KNOW WHETHER TCW IS SUING DOUBLELINE  
4 FOR COPYRIGHT INFRINGEMENTS?

5           A.     I DON'T.

10:13AM

6           Q.     AND YOU WERE ASKED ABOUT THIS POWERPOINT  
7 PRESENTATION THAT YOU HAD ON YOUR HOME COMPUTER.

8                         YOU DIDN'T VIEW ANY OF THAT INFORMATION  
9 ON YOUR POWERPOINT PRESENTATION ON YOUR HOME COMPUTER  
10 TO BE SPECIFICALLY CONFIDENTIAL TO TCW, DID YOU, SIR?

10:13AM

11           MR. MADISON:   OBJECTION.   VAGUE.

12           THE COURT:    OVERRULED.

13           THE WITNESS:   THAT SPECIFIC PRESENTATION, I  
14 DON'T RECALL ANYTHING BEING SPECIFICALLY CONFIDENTIAL.

15           MR. BRIAN:    I'D LIKE TO READ FROM HIS  
16 DEPOSITION, YOUR HONOR, PAGE 59, LINES 3 THROUGH 7.

10:13AM

17           MR. MADISON:   ONE MOMENT, YOUR HONOR.

18                         COULD I HAVE THE LINES AGAIN, YOUR  
19 HONOR?

20           THE COURT:    THREE THROUGH SEVEN.

10:14AM

21           MR. MADISON:   IT'S NOT IMPEACHMENT, BUT I  
22 DON'T MIND IF HE READS IT.

23           THE COURT:    I HEAR NO OBJECTION.

24           Q.     BY MR. BRIAN:   (READING):

25                         "Q       DID THAT

10:14AM

26                         PRESENTATION CONTAIN ANY  
27 INFORMATION THAT YOU UNDERSTAND  
28 TCW DID CONSIDER CONFIDENTIAL?

1                    "A        THIS WAS A PRESENTATION  
2                    THAT WAS GOING TO BE GIVEN TO A  
3                    LARGE CROWD.    PRESENTATION ITSELF,  
4                    NOTHING THAT WAS SPECIFICALLY  
5                    CONFIDENTIAL."

10:14AM

6                    THAT WAS YOUR TESTIMONY YOU AT YOUR  
7 DEPOSITION, SIR.

8                    NOW, YOU WERE ASKED ABOUT THE FIXED  
9 INCOME NUMBERS.

10                    PRIOR TO THE FIRING OF MR. GUNDLACH, IN  
11 DECEMBER OF 2009, DID MR. STERN EVER TELL YOU WHETHER  
12 OR NOT HE HAD PROJECTED HOW MUCH ASSETS UNDER  
13 MANAGEMENT WOULD LIKELY LEAVE, AS A RESULT OF THE  
14 DECISION TO FIRE MR. GUNDLACH?

10:14AM

15                    A.        NO.

10:15AM

16                    Q.        AND IN FACT, SOME FIXED INCOME ASSETS DID  
17 LEAVE, AS A RESULT OF FIRING MR. GUNDLACH, CORRECT?

18                    MR. MADISON:    OBJECTION.    FOUNDATION.

19                    THE COURT:      HE'S JUST TESTIFYING.

20                    GO AHEAD, SIR.    ANSWER THE QUESTION.

10:15AM

21                    THE WITNESS:    THAT'S MY UNDERSTANDING.

22                    Q.        BY MR. BRIAN:    YOU DON'T KNOW HOW MANY OF  
23 THOSE ENDED UP GOING TO DOUBLELINE, DO YOU, SIR?

24                    A.        NO.

25                    Q.        YOU WEREN'T TRYING TO SUGGEST TO THE JURY THAT  
26 \$30 BILLION OF ASSETS UNDER MANAGEMENT WENT FROM TCW TO  
27 DOUBLELINE, WERE YOU?

10:15AM

28                    MR. MADISON:    OBJECTION.    ARGUMENTATIVE.

1 THE COURT: SUSTAINED.

2 MR. BRIAN: NOTHING FURTHER.

3 THE COURT: ALL RIGHT.

4 LADIES AND GENTLEMEN, WE'LL TAKE OUR  
5 MORNING RECESS.

10:15AM

6 DO WE NEED TO KEEP MR. ARENTSEN?

7 MR. MADISON: I DON'T THINK SO, YOUR HONOR.

8 THE COURT: MR. ARENTSEN, YOU ARE EXCUSED.  
9 YOU MAY STEP DOWN.

10 WE'LL COME BACK IN 20 MINUTES.

10:15AM

11

12 (AT 10:16 A.M. THE JURY WAS  
13 EXCUSED, AND THE FOLLOWING  
14 PROCEEDINGS WERE HELD:)

15

10:16AM

16 THE COURT: ALL RIGHT. WE'RE OUT OF THE  
17 PRESENCE OF THE JURY.

18 I JUST HAVE A COUPLE OF QUESTIONS FIRST.

19 MR. BRIAN: MAY THE WITNESS BE EXCUSED?

20 THE COURT: YES.

10:16AM

21

22 (THE WITNESS EXITS THE COURTROOM.)

23

24 THE COURT: I JUST GOT THREE NEW FILINGS HERE:  
25 AN AFFIDAVIT OF GRANVILLE FIELDS IN SUPPORT OF  
26 DEFENDANT'S AND CROSS-COMPLAINANTS' BRIEF ON OBJECTIONS  
27 TO THE CABANNES DEPOSITION.

10:16AM

28 I HAVE NOT SEEN TCW'S FILING ON THIS.

1                   WAS THERE A TCW FILING?

2                   MR. MADISON:   YES.   YESTERDAY MORNING, PER  
3 YOUR HONOR'S ORDERS.

4                   SO WE CAN HAND UP A COPY, IF YOU --

5                   THE COURT:   I'D LIKE ANOTHER COPY, AND SO I  
6 CAN PUT THEM TOGETHER AND READ THEM AT THE SAME TIME.

10:17AM

7                   MR. BRIAN:   I THINK WE FILED AT LEAST TWO  
8 PLEADINGS, BECAUSE WE GOT SOMETHING IN LATE, AND WE  
9 FILED THE SECOND PLEADING.

10                   AND I CAN GIVE THAT TO, YOUR HONOR, IF  
11 YOU DON'T HAVE IT.

10:17AM

12                   THE COURT:   I DON'T KNOW.   THINGS JUST KEEP  
13 ROLLING IN.

14                   I'LL BASICALLY TRY AND ACCESS THEM ON  
15 THE WEBSITE; BUT YOU PUT THEM ALL UNDER SEAL, SO I  
16 CAN'T GET THEM.   AND IF I DON'T HAVE A PLACE TO GO GET  
17 THEM, I CAN'T PROMISE YOU THEY MAKE IT TO ME.

10:17AM

18                   A LOT OF PAPER COMES THROUGH THIS  
19 DEPARTMENT EVERY DAY.

20                   MR. BRIAN:   I DON'T KNOW WHY ANYTHING IS FILED  
21 UNDER SEAL ANYMORE, FRANKLY.

10:17AM

22                   AND IF YOUR HONOR SO ORDERS, WE WON'T  
23 FILE ANYTHING UNDER SEAL.

24                   THE COURT:   WELL, I THINK WHATEVER IS SERVED  
25 DURING THE COURSE OF TRIAL OUGHT TO BE SERVED ON LEXIS.  
26 IT'S A PROPRIETARY CLOSED SYSTEM, AND IT GIVES ME  
27 IMMEDIATE ACCESS TO THEM BECAUSE I LOOK FOR THESE  
28 THINGS IN THE EVENINGS AND THE MORNINGS, AND IF I CAN'T

10:17AM



1 FIND THEM, I CAN'T READ THEM.

2 MR. BRIAN: I WAS JUST INFORMED THAT OUR  
3 PLEADINGS ON THERE WERE NOT FILED UNDER SEAL.

4 I WILL GET YOU COPIES DURING THE BREAK.

5 THE COURT: WELL, DID YOU FILE SOMETHING  
6 BESIDES WHAT WE GOT AT 8:30 THIS MORNING?

10:18AM

7 MR. BRIAN: MAY MS. SMOLOWE ADDRESS THIS, YOUR  
8 HONOR?

9 THE COURT: YES.

10 MS. SMOLOWE: YOUR HONOR, OUR PLEADINGS WERE  
11 BOTH FILED THIS MORNING PURSUANT TO YOUR HONOR'S  
12 ORDERS. THERE WAS A RESPONSE TO TCW'S BRIEF. AND THEN  
13 SEPARATELY, WE FILED AN AFFIDAVIT BY THE INTERPRETER.

10:18AM

14 THE COURT: I HAVE BOTH OF THOSE, SO OKAY.

15 BUT I DON'T HAVE THE RESPONSE.

10:18AM

16 I HAVE THREE DOCUMENTS THAT CAME IN AT  
17 8:55, 9:15 AND 8:45 THIS MORNING.

18 MR. BRIAN: WHAT DO YOU HAVE?

19 THE COURT: ONE IS TRUST COMPANY OF THE WEST  
20 RESPONSE TO DEFENDANT'S STATEMENT ON EVIDENTIARY ISSUES  
21 REGARDING HICKS' TESTIMONY.

10:18AM

22 WE TOOK CARE OF THAT. THAT'S DONE,  
23 RIGHT?

24 MR. MADISON: YES.

25 THE COURT: THE NEXT ONE IS PRELIMINARY  
26 RESPONSE TO TCW'S REQUEST FOR ARGUMENT REGARDING THE  
27 PURUSHOTHAMAN TESTIMONY.

10:18AM

28 THAT'S BEEN TAKEN CARE OF.

1                   AND THE LAST ONE IS AN AFFIDAVIT OF  
2 GRANVILLE FIELDS, WHICH CAME BY ITSELF, AND I HAVE NOT  
3 SEEN ANYTHING ELSE WITH IT.

4                   MR. BRIAN: WE WILL GET YOU A COPY. THERE'S A  
5 SEPARATE RESPONSE THAT WE FILED SEPARATELY, BECAUSE WE  
6 DIDN'T HAVE ANY OTHER DOCUMENTS THAT WE FILED. WE'LL  
7 GET THAT TO YOU WHEN WE RESUME, YOUR HONOR.

10:19AM

8                   THE COURT: AND, MR. MADISON, GIVE ME A COPY  
9 OF YOURS. I'LL PUT THE THREE THINGS TOGETHER AND LOOK  
10 AT THEM.

10:19AM

11                   MR. MADISON: AND OURS WASN'T UNDER SEAL,  
12 EITHER.

13                   THE COURT: I'LL GO CHECK AGAIN. MAYBE THEY  
14 ARE UP THERE.

15                   THANKS.

10:19AM

16                   MR. BRIAN: THANK YOU, YOUR HONOR.

17  
18                   (RECESS.)

19  
20                   (THE NEXT PAGE NUMBER IS 2501.)

10:19AM

1 CASE NUMBER: BC 429385  
2 CASE NAME: TCW VS. GUNDLACH  
3 LOS ANGELES, CALIFORNIA AUGUST 10, 2011  
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)  
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR  
7 TIME: B SESSION - 10:35 A.M.

8

9

--0--

10

10:37AM

11

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

14

MR. SURPRENANT, ARE YOU READY TO CALL  
15 YOUR NEXT WITNESS?

15

10:39AM

16

MR. SURPRENANT: TCW CALLS CHRISTIAN HICKS AS  
17 ITS NEXT WITNESS.

18

19

CHRISTIAN HICKS +  
20 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND  
21 TESTIFIED AS FOLLOWS:

22

23

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

28

THE WITNESS: I DO.

1 THE CLERK: THANK YOU. PLEASE BE SEATED.

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

4 THE WITNESS: CHRISTIAN HICKS,  
5 C-H-R-I-S-T-I-A-N H-I-C-K-S. 10:39AM

6 THE COURT: GOOD MORNING, MR. HICKS.

7 THE WITNESS: GOOD MORNING, YOUR HONOR.

8 THE COURT: YOU MAY PROCEED.

9

10 DIRECT EXAMINATION + 10:39AM

11 BY MR. SURPRENANT:

12 Q WHAT IS YOUR PROFESSION?

13 A COMPUTER SCIENTIST AND COMPUTER FORENSIC  
14 SCIENTIST.

15 Q WHAT'S A COMPUTER SCIENTIST DO? 10:39AM

16 A A COMPUTER SCIENTIST STUDIES AND ANALYZES  
17 COMPUTER SYSTEMS.

18 Q WHAT DOES A COMPUTER FORENSIC SCIENTIST DO?

19 A A COMPUTER FORENSIC SCIENTIST CAPTURES,  
20 PRESERVES, AND ANALYZES ELECTRONIC EVIDENCE FROM 10:40AM  
21 COMPUTER STORAGE SYSTEMS AND OTHER KINDS OF COMPUTING  
22 DEVICES.

23 Q DID YOU DO AN INVESTIGATION IN THIS CASE?

24 A I DID.

25 Q WHAT SKILL SETS DID YOU USE IN THAT 10:40AM  
26 INVESTIGATION?

27 A BOTH COMPUTER SCIENCE AND COMPUTER FORENSIC  
28 SCIENCE.

1 Q WHAT DOES COMPUTER FORENSICS MEAN?

2 A IT MEANS IT RELATES TO ELECTRONIC EVIDENCE.

3 Q WHERE ARE YOU EMPLOYED?

4 A I'M THE PRESIDENT OF ELYSIUM DIGITAL.

5 Q WHAT KIND OF BUSINESS IS ELYSIUM DIGITAL?

10:40AM

6 A ELYSIUM WORKS ON HIGH-TECH INTELLECTUAL  
7 PROPERTY CASES AND ALSO CASES INVOLVING ELECTRONIC  
8 EVIDENCE, LIKE CONTRACT AND EMPLOYMENT MATTERS.

9 Q WHAT ARE YOUR DUTIES AS A PRESIDENT?

10 A I HELP RUN THE COMPANY, AND I ALSO WORK ON  
11 CASES LIKE THIS ONE.

10:40AM

12 Q HOW LONG HAVE YOU BEEN AT ELYSIUM?

13 A 14 YEARS.

14 Q HAVE YOU TESTIFIED AS AN EXPERT AT TRIAL  
15 BEFORE?

10:40AM

16 A I HAVE.

17 Q HOW MANY OCCASIONS?

18 A THREE DIFFERENT TRIALS, FIVE OCCASIONS.

19 Q DID ANY OF THAT EXPERT TESTIMONY DEAL WITH  
20 SOURCE CODE?

10:40AM

21 A SOME OF IT DID.

22 Q ON HOW MANY OCCASIONS?

23 A ON TWO OF THE CASES, I BELIEVE.

24 Q AND HAVE YOU TESTIFIED AS AN EXPERT ABOUT  
25 COMPUTER FORENSIC INVESTIGATIONS?

10:41AM

26 A I HAVE.

27 Q HOW MANY COMPUTER FORENSIC INVESTIGATIONS HAVE  
28 YOU PARTICIPATED IN?

1 A MORE THAN 40.

2 Q ARE YOU FAMILIAR WITH A CASE UNITED STATES  
3 VERSUS MICROSOFT?

4 A I AM.

5 Q HOW ARE YOU FAMILIAR WITH THAT CASE? 10:41AM

6 A I WAS PART OF THE TEAM THAT WORKED FOR THE  
7 DEPARTMENT OF JUSTICE TO SHOW THAT INTERNET EXPLORER  
8 COULD BE SEPARATED FROM WINDOWS.

9 Q ARE YOU AN INVENTOR ON ANY PATENTS INVOLVING  
10 ELECTRONIC DATA? 10:41AM

11 A YES, CO-INVENTOR ON THREE U.S. PATENTS RELATED  
12 TO REMOTELY UNLOCKING ELECTRONIC DATA.

13 Q DID YOU PUBLISH ARTICLES CAPTURING FORENSIC  
14 EVIDENCE WHEN EMPLOYEES LEAVE --

15 A I DID. 10:41AM

16 Q 2007 -- WHAT IS YOUR EDUCATIONAL BACKGROUND?

17 A I GRADUATED WITH A HIGHEST HONORS DEGREE IN  
18 COMPUTER SCIENCE FROM PRINCETON IN '97, AND RECEIVED  
19 ADDITIONAL FORENSIC TRAINING FOR A COMPANY CALLED NTI  
20 IN 2003. 10:41AM

21 Q IS THERE A STANDARD RATE THAT ELYSIUM CHARGES  
22 FOR YOUR SERVICES IN CASES SUCH AS THIS ONE?

23 A YES.

24 Q HOW MUCH?

25 A \$390 AN HOUR. 10:42AM

26 Q WHAT IS ELYSIUM CHARGING TCW IN THIS CASE?

27 A \$390 AN HOUR.

28 Q IS ELYSIUM'S COMPENSATION IN ANY WAY TIED TO

1 THE CONTENT OF YOUR TESTIMONY?

2 A IT IS NOT.

3 Q IS IT IN ANY WAY DEPENDENT ON THE OUTCOME OF  
4 THIS CASE?

5 A NO.

10:42AM

6 Q MIKE, I WOULD DISPLAY FOR IDENTIFICATION TX  
7 1510-A-1.

8 THE COURT: 1081?

9 MR. SURPRENANT: 1510-A-1.

10 Q WHAT IS THAT?

10:42AM

11 A THAT'S A COPY OF MY C.V.

12 Q IS THE INFORMATION IT CONTAINS ACCURATE?

13 A YES.

14 MR. SURPRENANT: YOUR HONOR, I WOULD OFFER TX  
15 1510-A-1 INTO EVIDENCE.

10:42AM

16 THE COURT: ANY OBJECTION?

17 A NO.

18

19 (EXHIBIT TX 1510-A-1 ADMITTED.)

20

10:42AM

21 MR. SURPRENANT: PLAINTIFF TENDERS MR. HICKS  
22 AS EXPERT AN WITNESS IN COMPUTER SCIENCE AND COMPUTER  
23 FORENSIC SCIENCE.

24 THE COURT: ANY OBJECTION?

25 MR. WEINGART: NO, YOUR HONOR.

10:42AM

26 THE COURT: YOU MAY PROCEED.

27 MR. SURPRENANT: THANK YOU.

28 Q BASED ON THE INVESTIGATION YOU'VE DONE IN THIS

1 CASE, HAVE YOU REACHED OPINIONS AS A COMPUTER SCIENTIST  
2 AND COMPUTER FORENSIC SCIENTIST?

3 A I HAVE.

4 Q COULD YOU BRIEFLY SUMMARIZE THOSE OPINIONS.

5 A YES. THAT, THEN-TCW, FUTURE-DOUBLELINE  
6 EMPLOYEES, ENGAGED IN LARGE-SCALE COPYING OF TCW  
7 MATERIALS.

10:43AM

8 THAT SOME OF THOSE MATERIALS WERE OPENED  
9 AFTER THOSE EMPLOYEES BECAME EMPLOYEES OF DOUBLELINE.

10 SOME OF THOSE MATERIALS WERE USED AFTER  
11 SOME OF THOSE EMPLOYEES BECAME EMPLOYEES OF DOUBLELINE.

10:43AM

12 THAT THERE WAS SIGNIFICANT DESTRUCTION  
13 AND LOSS OF ELECTRONIC EVIDENCE IN THIS CASE.

14 AND THAT WHAT DOUBLELINE AND  
15 STROZ FRIEDBERG REFER TO AS REMEDIATION PROCESS DID NOT  
16 ACCOMPLISH WHAT IT WAS REPRESENTED TO HAVE  
17 ACCOMPLISHED.

10:43AM

18 Q DID YOU DO WORK AT ELYSIUM BY YOURSELF OR DID  
19 YOU ASSEMBLE AND WORK WITH A TEAM?

20 A I WORKED WITH A TEAM.

10:43AM

21 Q COULD YOU BRIEFLY DESCRIBE WHO WAS ON THE TEAM  
22 AND WHAT THEY DID.

23 A THE TEAM INCLUDED JEFF COHEN, JASON EDEY,  
24 JESS CARLSON, MARK ANTOLIC, JACOB WALLBERG. I'M HOPING  
25 I'M NOT FORGETTING ANYBODY. PEOPLE WORKED VERY HARD.

10:44AM

26 AND IN GENERAL, AS A CATEGORY WHAT THEY  
27 DID WAS THEY HELPED US REVIEW THE ELECTRONIC EVIDENCE.  
28 THEY ASSISTED THE FORENSIC INVESTIGATIONS AND HELPED



1 PROCESS THE INFORMATION. AND ALSO HELPED US REVIEW THE  
2 CODE.

3 Q LET'S TURN, MR. HICKS, TO THE EVIDENCE YOU  
4 CONSIDERED IN YOUR INVESTIGATION.

5 ARE YOU FAMILIAR WITH SOMETHING CALLED  
6 SPECTOR DATA? 10:44AM

7 A I AM.

8 Q WHAT IS THAT?

9 A SPECTOR IS A PIECE OF SOFTWARE THAT CAN BE  
10 INSTALLED ON A COMPUTER TO MONITOR AND TRACK WHAT 10:44AM  
11 HAPPENS ON THE COMPUTER. IT RECORDS THAT INFORMATION,  
12 AND THAT'S WHAT'S CALLED SPECTOR DATA.

13 Q AND DID YOU CONSIDER SPECTOR DATA IN YOUR  
14 ANALYSIS?

15 A YES. 10:44AM

16 Q WHERE DID YOU OBTAIN THE SPECTOR DATA?

17 A WE RECEIVED IT FROM COUNSEL, WHO HAD  
18 TRANSMITTED TO US BY GUIDANCE SOFTWARE.

19 Q GUIDANCE SOFTWARE?

20 A CORRECT. 10:44AM

21 Q WHAT IS A FORENSIC IMAGE OF A COMPUTER OR  
22 ELECTRONIC STORAGE DEVICE?

23 A A FORENSIC IMAGE IS AN ELECTRONIC SNAPSHOT IN  
24 TIME OF THE STATE OF A COMPUTER OR A STORAGE DEVICE.

25 SO IT'S A SNAPSHOT THAT RECORDS ALL OF 10:45AM  
26 THE ELECTRONIC FILES AND METADATA THAT WERE ON THAT  
27 COMPUTER AT THE TIME THE SNAPSHOT WAS MADE.

28 Q COULD YOU PLEASE DESCRIBE WHAT METADATA IS.

1           A           METADATA IS DATA ABOUT DATA.

2                           AND IT TYPICALLY INCLUDES INFORMATION,  
3 LIKE TIME STAMPS THAT SHOW WHEN FILES WERE CREATED OR  
4 MODIFIED. INFORMATION THAT HELPS TO DETERMINE WHERE A  
5 DOCUMENT MIGHT HAVE BEEN AUTHORED OR WHO MIGHT HAVE  
6 AUTHORED.

10:45AM

7           Q           WHAT ROLE, IF ANY, DOES THAT PLAY IN A  
8 COMPUTER FORENSIC INVESTIGATION?

9           A           IT'S VERY IMPORTANT.

10          Q           WHY IS THAT?

10:45AM

11          A           BECAUSE IT'S PART OF WHAT HELPS YOU FIGURE OUT  
12 WHEN DOCUMENTS WERE COPIED OR MODIFIED. IT ALSO HELPS  
13 YOU FIGURE OUT WHAT THE PROPER ORIGIN OF DOCUMENTS ARE  
14 IN SUCH. IT'S VERY IMPORTANT.

15          Q           CAN THE LOSS OF METADATA AFFECT A COMPUTER  
16 FORENSIC INVESTIGATION?

10:45AM

17          A           YES.

18          Q           AND HOW CAN IT AFFECT IT?

19          A           IT'S THE FLIP SIDE OF IT BEING USEFUL. IT'S  
20 USEFUL AND VALUABLE WHEN YOU HAVE IT; WHEN IT'S LOST,  
21 YOU HAVE TO DO WITHOUT IT.

10:46AM

22          Q           DID YOU EXAMINE FORENSIC IMAGES OF COMPUTERS  
23 AND ELECTRONIC STORAGE DEVICES IN YOUR INVESTIGATION?

24          A           WE DID.

25          Q           AND WHERE DID YOU EXAMINE TCW COMPUTERS AND  
26 STORAGE DEVICES?

10:46AM

27          A           IMAGES FOR TCW STORAGE DEVICES AND COMPUTERS  
28 WERE RECEIVED AT OUR OFFICE, AND WE ANALYZED THOSE AT

1 OUR OFFICES IN CAMBRIDGE, MASSACHUSETTS. IMAGES FOR  
2 THE -- SORRY.

3 Q DID YOU EXAMINE FORENSIC IMAGES OF PERSONAL  
4 COMPUTERS AND DEVICES?

5 A YES. 10:46AM

6 Q WHERE DID YOU GET THOSE FROM?

7 A THOSE, WE WENT TO STROZ FRIEDBERG OFFICES IN  
8 BOSTON AND EXAMINED THERE.

9 Q DID YOU EXAMINE FORENSIC IMAGES OF DOUBLELINE  
10 COMPUTERS AND DEVICES? 10:46AM

11 A YES.

12 Q AGAIN, WHERE DID YOU GET THOSE?

13 A AGAIN, THOSE WE EXAMINED AT STROZ FRIEDBERG'S  
14 OFFICES IN BOSTON.

15 Q DID YOU EXAMINE, AS PART OF YOUR 10:46AM  
16 INVESTIGATION, DOCUMENTS PRODUCED IN THIS CASE?

17 A YES, WE DID.

18 Q DID YOU EXAMINE DEPOSITION TESTIMONY FOR THIS  
19 CASE?

20 A YES. 10:47AM

21 Q DO COMPUTER SCIENCE -- SCIENTISTS AND COMPUTER  
22 FORENSIC SCIENTISTS CUSTOMARILY CONSIDER THE TYPE OF  
23 DATA DOCUMENTS IN EVIDENCE YOU'VE JUST IDENTIFIED IN  
24 REACHING EXPERT CONCLUSIONS?

25 A YES. 10:47AM

26 Q TURNING NOW TO YOUR OPINIONS ON COPYING, DID  
27 YOU READ THE OPENING STATEMENT BY COUNSEL?

28 A I DID.

1 Q AFTER YOU READ THE OPENING STATEMENTS BY  
2 COUNSEL, DID YOU DECIDE TO SHORTEN YOUR TESTIMONY ON  
3 COPYING?

4 A I DID.

5 Q HOW DID YOU GO ABOUT DO BEING THAT?

10:47AM

6 A I DIRECTED THE PREPARATION OF SOME SUMMARY  
7 EXHIBITS WHICH HELP US DESCRIBE THE COPYING IN A MORE  
8 SUMMARY FASHION.

9 MR. SURPRENANT: MIKE, COULD YOU DISPLAY FOR  
10 IDENTIFICATION TRIAL 2125-1.

10:47AM

11 Q COULD YOU TELL US WHAT THAT SUMMARIZED.

12 A THIS SUMMARIZES THE COPYING CARRIED OUT BY --  
13 A CERTAIN SET OF COPYING CARRIED OUT ON THE DEVICES  
14 ATTRIBUTABLE TO MR. SANTA ANA, J.P., WHICH IS  
15 MR. PURUSHOTHAMAN, MR. MAYBERRY, AND MS. VANEVERY ON  
16 THE PARTICULAR DEVICES LISTED IN THE LEFT COLUMN.

10:47AM

17 Q ARE THE RECORDS AND DATA YOU ANALYZED IN THIS  
18 SUMMARY VOLUMINOUS?

19 A VERY MUCH SO.

20 Q WERE ALL THESE CONTAINED AND DISCUSSED IN YOUR  
21 EXPERT REPORT OR IN EXCERPTS TO YOUR EXPERT REPORT?

10:48AM

22 A ALL OF THIS COPYING AND THE FILE LISTS THAT  
23 LAY IT OUT WERE ALL ATTACHED TO MY EXPERT REPORT, AND  
24 THE COPYING WAS DISCUSSED IN THE EXPERT REPORT.

25 Q DOES THIS EXHIBIT ACCURATELY REFLECT THE DATA  
26 IT REPRESENTS?

10:48AM

27 A YES.

28 MR. SURPRENANT: YOUR HONOR, I WOULD MOVE --

1 OFFER TRIAL EXHIBIT 20- -- 215-1 INTO EVIDENCE?

2 THE COURT: ANY OBJECTION?

3 MR. WEINGART: NO OBJECTION TO 2125-1.

4 THE COURT: IT WILL BE ADMITTED.

5

10:48AM

6 (EXHIBIT 2125-1 ADMITTED.) +

7

8 BY MR. SURPRENANT:

9 Q WAS YOUR EXPERT REPORT PROVIDED TO THE  
10 DEFENDANTS BACK IN APRIL OF 2010?

10:48AM

11 A YES.

12 Q 2011?

13 A I'M SORRY, YES, 2011.

14 Q COULD YOU JUST GO THROUGH THE TOP ROW AND TELL  
15 US WHAT YOU'RE SUMMARIZING HERE.

10:48AM

16 A SO IT'S ACTUALLY -- IT'S NOT -- IT'S NOT --  
17 LET'S NOT BLOW THAT ONE UP. WE'LL JUST LOOK AT THE TOP  
18 ROW HERE, FIRST ACTUAL ROW OF DATA ALONG WITH THE  
19 HEADER ROW.

20 WHAT YOU CAN SEE IS THAT EACH ROW  
21 DESCRIBES A PARTICULAR DEVICE IN THIS CASE. THIS IS  
22 WESTERN DIGITAL 400 GIGABYTE DRIVE. THERE'S BEEN  
23 TESTIMONY ABOUT THIS DRIVE IN THIS CASE ALREADY.

10:49AM

24 THE CUSTODIAN OF THAT DEVICE IN THIS  
25 CASE, MR. SANTA ANA, INFORMATION ABOUT THE DATES ON  
26 WHICH THERE WAS COPYING, THE TRIAL EXHIBIT THAT  
27 INCLUDES THE FILE LIST, WHICH DOCUMENTS THE COPYING.

10:49AM

28 AND THE NUMBER OF FILES COPIED AND THE

1 SIZE OF THE COPIED MATERIAL.

2 Q WHAT IS THE FILE AS YOU HAVE USED IT IN THIS  
3 SUMMARY?

4 A THAT'S A COMPUTER FILE. TYPICALLY, WE THINK  
5 OF THAT AS SOMETHING LIKE A WORD DOCUMENT OR EXCEL  
6 SPREADSHEET. 10:49AM

7 THERE ARE ALSO OTHER KINDS OF FILES AT  
8 ISSUE IN THIS CASE, SOURCE CODE FILES AND DATABASES.

9 Q WHAT DOES A FILE LIST --

10 A IT'S -- IT LISTS A BUNCH OF FILES, AND EACH  
11 INFORMATION AS A FILE AS A ROW, TYPICALLY FILE NAME,  
12 PATH WHERE IT WAS STORED, THE SIZE OF THE FILE AND  
13 INFORMATION LIKE THAT. 10:49AM

14 Q AND WAS THE FIRST ONE, TRIAL  
15 EXHIBIT 1510-A-10, WAS THAT EXHIBIT IN YOUR REPORT? 10:50AM

16 A IT WAS. IT WAS EXHIBIT 10 TO MY REPORT.

17 Q COULD YOU EXPLAIN THE NAMING CONVENTIONS OF  
18 THE EXHIBIT IN YOUR REPORT VERSUS THE TRIAL  
19 EXHIBIT 1510-A?

20 A YEAH, IN EACH CASE EVERYTHING THAT COMES AFTER  
21 THE DASH IS WHAT EXHIBIT NUMBER IT WAS IN MY REPORT.  
22 SO IF IT ENDS IN DASH 14, THAT WAS EXHIBIT 14 TO MY  
23 EXPERT REPORT. 10:50AM

24 Q HOW DID YOU PREPARE THE FILE LIST?

25 A WE USED X-WAYS FORENSIC SOFTWARE PRODUCT AS  
26 PART OF ANALYSIS OF THE FORENSICS. WE USED THAT TO  
27 GENERATE THE FILE LISTS. 10:50AM

28 Q AND COULD YOU LOOK AT THE -- IT SAYS MAYBERRY

1 USB SPECTOR.

2 A YES.

3 Q WHY DIDN'T YOU USE THE FILE LIST -- DID YOU  
4 USE THE FILE LIST FOR THE MAYBERRY USB SPECTOR?

5 A NO. ACTUALLY, THE MAYBERRY USB SPECTOR  
6 INFORMATION WAS CAPTURED BY THE SPECTOR MONITORING  
7 SOFTWARE. SO, INSTEAD OF GETTING THAT OUT OF A  
8 FORENSIC IMAGE, WE GOT IT FROM THE SPECTOR DATA.

10:50AM

9 AS A RESULT, IT'S A LOG OF WHAT WAS  
10 COPIED, AND IT'S IN A SLIGHTLY DIFFERENT FORMAT.

10:51AM

11 Q LET'S LOOK AT THE FIRST FILE LIST,  
12 EXHIBIT 1510-A-10. I THINK IT'S IN VOLUME II OF YOUR  
13 SIX VOLUMES.

14 A YES.

15 Q COULD YOU TELL US WHAT THAT IS.

10:51AM

16 A SO, THIS IS THE FILE LIST, THE LISTING OF  
17 FILES, TCW FILES THAT WERE PRESENT ON THE WESTERN  
18 DIGITAL 400 GIGABYTE DRIVE WHEN WE EXAMINED AN IMAGE  
19 FOR THAT DRIVE.

20 Q SO IS THIS -- THE CONTENT THAT WAS ON THE  
21 DRIVE ARE SIMPLY THE LIST OF FILES ON THE DRIVE, OR --

10:51AM

22 A THIS IS JUST THE LIST OF FILES YOU PRINT OUT  
23 JUST THE LIST OF ALL FILES.

24 MR. SURPRENANT: YOUR HONOR, I WOULD OFFER  
25 TRIAL 1510-A-10.

10:52AM

26 THE COURT: THAT WAS MY QUESTION.

27 MR. WEINGART: NO OBJECTION TO SUB-PART 10.

28 THE COURT: IT WILL BE ADMITTED.

1 (EXHIBIT 1510-A-10 ADMITTED.) +

2

3 MR. SURPRENANT: LET ME JUST OFFER INTO  
4 EVIDENCE EACH OF THE FILE LISTS, 1510-A-14;

5 DASH 20;

10:52AM

6 DASH 22;

7 DASH 35;

8 AND DASH 60.

9 THE COURT: 14, 20, 22, 35, AND 60?

10 MR. SURPRENANT: YES, YOUR HONOR.

10:52AM

11 THE COURT: ANY OBJECTION?

12 MR. WEINGART: 14, 20, 22, 35, 60; NO

13 OBJECTION.

14 THE COURT: THEY'LL BE ADMITTED.

15

10:52AM

16 (EXHIBITS 1510-A-14, -20, -22, -35, -60 ADMITTED.) +

17

18 BY MR. SURPRENANT:

19 Q IF WE CAN GO BACK, MIKE, TO 2025-1.

20 WHY DID YOU BREAK OUT IN THIS SUMMARY A  
21 TOTAL GIGABYTES OF THE DATA COPIED ON THESE DEVICES AND  
22 THEN SUBTRACT OUT THE MAYBERRY USB?

10:52AM

23 A THE MAYBERRY USB COPYING, THE SPECTOR ROW  
24 CAPTURES INFORMATION ABOUT WHAT WAS COPIED ONTO  
25 MR. MAYBERRY'S USB DRIVE FROM THE TCW COMPUTER. NOT  
26 ALL OF WHAT WAS COPIED, BUT SOME OF IT.

10:53AM

27 THE NEXT ROW SAYS MAYBERRY'S PARENTS'  
28 DESKTOPS. THAT IS A PORTION OF THAT USB DRIVE WHICH



1 WAS COPIED FROM MR. MAYBERRY'S USB DRIVE TO HIS  
2 PARENTS' COMPUTER.

3 THERE'S SIGNIFICANT, NOT PERFECT, BUT  
4 SIGNIFICANT OVERLAP BETWEEN THOSE TWO SETS. SO IF I  
5 TOTALED IT UP, JUST LIKE THIS, I WOULD HAVE BEEN  
6 DOUBLE-COUNTING SIGNIFICANTLY.

10:53AM

7 SO WE SUBTRACTED OUT THE SPECTOR USB --  
8 OR MAYBERRY USB SPECTOR ROW.

9 Q SO FOR YOU TO MEASURE CONSERVATIVELY, IF  
10 YOU'RE MEASURING THE AMOUNT OF DATA DOWNLOADED TO THESE  
11 DEVICES, IT'S JUST -- 49.25 GIGABYTES?

10:53AM

12 A THAT'S RIGHT.

13 Q NOW, IS THERE STANDARD INDUSTRY CONVERSION  
14 RATES THAT CONVERTS GIGABYTES INTO SOMETHING WE MIGHT  
15 UNDERSTAND?

10:54AM

16 A YES.

17 LEXIS NEXIS IS AN ESTABLISHED LEGAL  
18 RESOURCES COMPANY, AND THEY PUBLISH METRIX THAT THEY --  
19 THEY PUBLISH MULTIPLIERS THAT THEY OBSERVE FOR -- IF  
20 YOU HAVE A GIGABYTE OF A PARTICULAR KIND OF FILE, LIKE  
21 WORD.

10:54AM

22 ON AVERAGE, HOW MANY PRINTED PAGES DOES  
23 THAT RESULT INTO -- IF YOU HAVE GIGABYTE OF EXCEL FILES  
24 ON AVERAGE -- SO, WHAT WE'D DO WAS, WE BROKE THE  
25 MATERIAL UP INTO THE CATEGORIES, AND THEN MULTIPLIED  
26 EACH CATEGORY TIMES THE MULTIPLIER THAT LEXIS NEXIS HAS  
27 PUBLISHED.

10:54AM

28 Q IF YOU WERE TO TAKE 49.25 GIGABYTES AND

1 CONVERT THAT INTO PRINTED PAGES, DO YOU KNOW HOW MANY  
2 PAGES IT WOULD BE?

3 A MORE THAN NINE MILLION.

4 Q IF YOU WERE TO STACK IN A SINGLE STACK THE  
5 MORE THAN 9 MILLION PAGES, DO YOU KNOW HOW HIGH THAT  
6 WOULD BE?

10:54AM

7 A MORE THAN 3,000 FEET.

8 Q DO YOU KNOW HOW MANY EMPIRE STATE BUILDINGS  
9 THAT WOULD BE?

10 MR. WEINGART: OBJECTION. CUMULATIVE.

10:54AM

11 THE COURT: SUSTAINED.

12 IT'S A LOT.

13 MR. SURPRENANT: THERE HAS BEEN EVIDENCE ON  
14 IT.

15 THE COURT: IT'S A LOT.

10:55AM

16 GO AHEAD.

17 MR. SURPRENANT: THANK YOU, YOUR HONOR.

18 Q MIKE, COULD YOU DISPLAY FOR IDENTIFICATION  
19 TRIAL 2125-2.

20 COULD YOU TELL US WHAT THAT IS,  
21 MR. HICKS?

10:55AM

22 A THIS IS A LISTING OF PARTICULAR FILES THAT  
23 WERE COPIED.

24 OR PARTICULAR CATEGORIES OF FILES THAT  
25 WERE COPIED.

10:55AM

26 Q WAS THIS -- WERE ALL THE DATA AND THE  
27 DOCUMENTS DISCUSSED HERE, WERE THEY DISCUSSED IN YOUR  
28 REPORT AND/OR CONTAINED AS EXHIBITS TO YOUR REPORT?

1           A       THE FILE LISTS DOCUMENTING THIS COPYING WERE  
2 ATTACHED TO MY EXPERT REPORT. AND THOSE FILE LISTS  
3 WERE DISCUSSED IN MY EXPERT REPORT.

4           Q       DOES THIS SUMMARY ACCURATELY SUMMARIZE THE  
5 DATA IT REPRESENTS?

10:55AM

6           A       IT DOES.

7                   MR. SURPRENANT: YOUR HONOR, I WOULD OFFER  
8 TRIAL EXHIBIT 2125-2 INTO EVIDENCE.

9                   THE COURT: ANY OBJECTION?

10                  MR. WEINGART: NO, YOUR HONOR.

10:55AM

11                  THE COURT: IT WILL BE ADMITTED.

12

13                               (EXHIBIT 2125-2 ADMITTED.) +

14

15 BY MR. SURPRENANT:

10:55AM

16           Q       NOW, ONCE AGAIN, COULD YOU SUMMARIZE THE FIRST  
17 ROW SO WE UNDERSTAND HOW THIS SUMMARY WORKS.

18           A       SO, IN THE FIRST ROW YOU CAN SEE THIS IS --  
19 THE HIGH IS HOLDINGSBACKUP.SLXM. THAT'S THE PARTICULAR  
20 FILE. AND THEN THERE'S A TRIAL EXHIBIT THAT REPRESENTS  
21 THAT FILE.

10:56AM

22                               AND THEN THE NEXT COLUMN WE HAVE DEVICE  
23 OR CUSTODIAN, WHERE THE COPYING WAS HAPPENING AND THE  
24 DATES OF THE COPYING AND THE SIZE OF THAT PARTICULAR  
25 DATA SET.

10:56AM

26           Q       NOW, WHAT DOES THIS TELL US ABOUT TO WHAT  
27 DEVICE TRIAL EXHIBIT 1496 WAS COPIED, WHO COPIED IT,  
28 AND WHEN IT WAS COPIED?

1           A       IT TELLS US THIS --

2                   MR. WEINGART:  OBJECTION TO WHO COPIED IT,  
3 YOUR HONOR.

4                   MR. SURPRENANT:  I MEANT TO WITHDRAW THAT.

5                   THE COURT:  WE'LL TAKE THAT PART OUT.                   10:56AM

6                   THE WITNESS:  I'LL JUST NOT ANSWER THAT PART.

7                   THE COURT:  OKAY.

8                   THE WITNESS:  IT TELLS US THAT THIS PARTICULAR  
9 FILE WAS COPIED TO MR. MAYBERRY'S USB DRIVE AND TO  
10 MR. MAYBERRY'S PARENTS' COMPUTER.  THE FIRST COPY                   10:56AM  
11 HAPPENED ON DECEMBER 4TH, 2009; THE SECOND ON  
12 DECEMBER 5TH, 2009.

13 BY MR. SURPRENANT:

14           Q       THANK YOU.

15                               MIKE, IF YOU COULD HIGHLIGHT AND BLOW UP                   10:57AM  
16 THE ROW ON TRIAL EXHIBIT 1501, THE MULTI-STRATEGY FIXED  
17 INCOME GRID.

18                               SAME QUESTION.  WHAT DOES THIS TELL US  
19 ABOUT TO WHAT DEVICE THIS WAS COPIED AND WHEN?

20           A       THIS TELLS US THIS PARTICULAR DOCUMENT WAS                   10:57AM  
21 COPIED TO THE FOUR-GIGABYTE USB DRIVE ATTRIBUTABLE TO  
22 MR. SANTA ANA ON NOVEMBER 25TH, 2009.

23           Q       MIKE, MAYBE WE CAN DO THE NEXT TWO TOGETHER,  
24 BLOW UP THE NEXT TWO LINES.

25                               THE FIXED INCOME FEE SCHEDULE, TRIAL                   10:57AM  
26 EXHIBIT 1506, TO WHAT DEVICE WAS IT COPIED AND WHEN?

27           A       TO THE 400-GIGABYTE USB DRIVE ON -- I'M  
28 SORRY -- SEPTEMBER 9TH, 2009 AND OCTOBER 1ST, 2009.

1 THE TASK LIST NEW DATABASE WAS COPIED TO MR. MAYBERRY'S  
2 USB DRIVE, HIS PARENTS' COMPUTER AND ALSO A BACKUP USB  
3 DRIVE.

4 Q IF WE GO TO THE BOTTOM RIGHT, IT SHOWS  
5 GIGABYTES, JUST UNDER 30 MILLION GIGABYTES?

10:58AM

6 A 30 GIGABYTES. JUST UNDER 30.

7 Q I'M SORRY. 30 GIGABYTES.

8 VERY BRIEFLY, I WON'T ASK ABOUT  
9 BILLIONS, HOW MANY PAGES?

10 A APPROXIMATELY --

10:58AM

11 MR. WEINGART: CUMULATIVE.

12 THE COURT: OVERRULED.

13 THE WITNESS: APPROXIMATELY 5 MILLION PAGES.

14 BY MR. SURPRENANT:

15 Q FROM YOUR INVESTIGATION AND WORK IN THIS CASE,  
16 DO YOU UNDERSTAND WHAT TYPE OF INFORMATION IS PRESENTED  
17 ON THIS SUMMARY SHEET?

10:58AM

18 A I UNDERSTAND THAT THIS IS THE TYPE OF  
19 INFORMATION THAT MR. SMITH HAS IDENTIFIED AS TRADE  
20 SECRET.

10:58AM

21 Q COULD YOU DISPLAY FOR IDENTIFICATION TRIAL  
22 EXHIBIT 2125-3, MIKE, PLEASE.

23 COULD YOU TELL US WHAT THAT IS.

24 A THIS IS A SUMMARY EXHIBIT THAT IDENTIFIES  
25 PARTICULAR PERIODS DURING WHICH MATERIAL WAS COPIED.

10:59AM

26 Q AND DOES IT ACCURATELY SET FORTH THE DATA IT  
27 CONVEYS?

28 A IT DOES.

1 Q IS THIS DATA CONTAINED IN YOUR EXPERT REPORT  
2 PROVIDED TO THE DEFENDANT?

3 A YES.

4 MR. SURPRENANT: YOUR HONOR, I'D OFFER TRIAL  
5 EXHIBIT 2125-3 INTO EVIDENCE.

10:59AM

6 THE COURT: ANY OBJECTION?

7 MR. WEINGART: NO, YOUR HONOR.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 2125-3 ADMITTED.)

10:59AM

11

12 BY MR. SURPRENANT:

13 Q AGAIN, COULD YOU JUST DESCRIBE THE FIRST ROW  
14 AND TELL US HOW THE SUMMARY WORKS.

15 A SO HERE WE'RE LOOKING AT A 12-DAY PERIOD FROM  
16 SEPTEMBER 3RD, 2009 TO SEPTEMBER 14TH, 2009. 12 DAYS  
17 IF YOU COUNT BOTH DAYS AT THE ENDS.

10:59AM

18 AND COPYING ON DEVICES ATTRIBUTABLE TO  
19 MR. PURUSHOTHAMAN AND MR. SANTA ANA TOTALED 14 -- MORE  
20 THAN 14,000 FILES IN MORE THAN 38 GIGABYTES OF  
21 MATERIAL.

10:59AM

22 Q THANK YOU.

23 IF WE CAN GO TO TRIAL EXHIBIT 1510-A-18,  
24 IT'S VOLUME -- IN VOLUME III OF THE EXHIBITS. I THINK  
25 IT IS VOLUME III OF THE EXHIBITS.

11:00AM

26 COULD YOU TELL US WHAT THAT IS, PLEASE.

27 THE COURT: YOU CAN ALSO SEE IT ON THE SCREEN,  
28 SIR. THAT HELPS.

1 THE WITNESS: THANKS, YES.

2 THE COURT: YOU'RE USED TO LOOKING AT COMPUTER  
3 SCREENS, AREN'T YOU?

4 THE WITNESS: I'VE DONE IT BEFORE.

5 THE COURT: GO AHEAD. 11:00AM

6 THE WITNESS: THIS IS A FILE LIST OF FILES  
7 THAT WERE -- OF TCW SOURCE CODE AND SOURCE CODE RELATED  
8 FILES THAT WERE COPIED ONTO MR. MOORE'S USB DEVICE ON  
9 DECEMBER 4TH, 2009.

10 BY MR. SURPRENANT: 11:00AM

11 Q THIS WAS AN EXHIBIT TO YOUR REPORT?

12 A IT WAS. IT WAS EXHIBIT 18 TO MY EXPERT  
13 REPORT.

14 Q HOW DID YOU PREPARE IT?

15 A WE EXAMINED THE FORENSIC IMAGE OF THAT USB  
16 DEVICE AND GENERATED THIS FILE LIST USING X-WAYS  
17 FORENSICS. 11:00AM

18 Q BASED ON YOUR INVESTIGATION IN THIS CASE, DO  
19 YOU KNOW WHO CASEY MOORE IS?

20 A I DO. 11:01AM

21 Q WHO IS HE?

22 A A PROGRAMMER AT TCW, AND NOW A PROGRAMMER AT  
23 DOUBLELINE.

24 MR. SURPRENANT: I WOULD OFFER 1510-A-18 INTO  
25 EVIDENCE. 11:01AM

26 THE COURT: ANY OBJECTION?

27 MR. WEINGART: NO.

28 THE COURT: IT WILL BE ADMITTED.

1 (EXHIBIT 1510-A-18 ADMITTED.) +

2

3 BY MR. SURPRENANT:

4 Q WHAT DOES EXHIBIT 18 -- WHAT DATA DOES IT  
5 REPRESENT?

11:01AM

6 A SO AS YOU CAN SEE, IT'S -- IT SHOWS THERE ARE  
7 MORE THAN 4,000 FILES THAT WERE COPIED ONTO THAT USB  
8 DEVICE.

9 Q ON WHAT DAY?

10 A DECEMBER 4TH, 2009.

11:01AM

11 Q MIKE, IF YOU COULD GO TO PAGE 315 OF THIS  
12 EXHIBIT, THE LAST PAGE, BLOW IT UP.

13 WHAT DOES THE LAST PAGE TELL US ABOUT  
14 HOW MUCH DATA WAS DOWNLOADED TO MR. MOORE'S EXTERNAL  
15 STORAGE DEVICE ON DECEMBER 4?

11:02AM

16 A SO THE -- THERE'S ONE FILE PER ROW, EXCEPT THE  
17 FIRST ROW IS THE HEADER ROW. SO THE 4,081 ROW TELLS  
18 YOU IT WAS 4,080 FILES.

19 Q OKAY.

20 DID YOU EXAMINE A FORENSIC IMAGE OF  
21 THE -- OF A FLASH CARD THAT WAS ASSOCIATED WITH  
22 MR. FAN ZHANG?

11:02AM

23 A YES, WE DID.

24 Q WHY DID YOU DO THAT?

25 A BECAUSE MR. ZHANG HAD TESTIFIED AT HIS  
26 DEPOSITION THAT HE HAD COPIED SOURCE CODE FROM TCW ONTO  
27 THAT CARD AND TAKEN IT WITH HIM IN HIS POCKET TO  
28 DOUBLELINE.

11:02AM



1 MR. WEINGART: OBJECTION, YOUR HONOR, THAT  
2 MISSTATES THE TESTIMONY.

3 THE COURT: WELL, YOU CAN ASK HIM ON  
4 CROSS-EXAMINATION.

5 BY MR. SURPRENANT:

11:02AM

6 Q WHEN YOU EXAMINED THE FORENSIC IMAGE OF THE  
7 FLASH CARD, WHAT DID IT CONTAIN?

8 A IT CONTAINED MATERIAL THAT WE WEREN'T ABLE TO  
9 FIND ANY TRACE OF THE COPYING THAT HE HAD DESCRIBED.

10 Q DID YOU STOP YOUR INVESTIGATION OR DID YOU  
11 KEEP LOOKING?

11:02AM

12 A NO, WE DUG INTO IT PRETTY CAREFULLY, AND WE  
13 WERE UNABLE TO FIND ANY TRACE OF THAT COPYING.

14 Q COULD YOU TURN TO TRIAL EXHIBIT 1510-A-30.  
15 IT'S IN VOLUME VI. AND TELL US WHAT THAT IS.

11:03AM

16 MR. WEINGART: WHICH VOLUME WAS THAT?

17 THE COURT: 1510-A-30?

18 MR. SURPRENANT: IN VOLUME VI.

19 THE WITNESS: THIS IS A -- WAS EXHIBIT 30 TO  
20 MY EXPERT REPORT. IT IS A FILE LIST OF FILES COPIED  
21 ONTO MS. PFEIFFER'S USB DRIVE ON DECEMBER 4TH, 2009.

11:03AM

22 Q WAS IT AN EXHIBIT TO YOUR REPORT?

23 A YES, IT WAS EXHIBIT 30.

24 MR. SURPRENANT: YOUR HONOR, I MOVE TRIAL  
25 EXHIBIT 1510-A-30 INTO EVIDENCE.

11:03AM

26 THE COURT: ANY OBJECTION?

27 MR. WEINGART: NO, YOUR HONOR.

28 THE COURT: IT WILL BE ADMITTED.

1 (EXHIBIT 1510-A-30 ADMITTED.) +

2

3 BY MR. SURPRENANT:

4 Q COULD YOU PLEASE TELL US WHAT DATA THIS  
5 CONTAINS.

11:03AM

6 A THIS IS THE LISTING OF THE FILES THAT WERE  
7 COPIED ONTO THAT USB DRIVE THAT DAY.

8 Q TELL US AGAIN THE DAY IT WAS COPIED.

9 A DECEMBER 4TH, 2009.

10 Q MIKE, IF YOU COULD GO TO PAGE 567, THE LAST  
11 PAGE, AND BLOW IT UP.

11:04AM

12 WHAT DOES THE LAST PAGE TELL US ABOUT  
13 THE NUMBER OF DOCUMENTS THAT WERE COPIED TO  
14 MS. PFEIFFER'S DEVICE ON DECEMBER 4?

15 A AGAIN, SUBTRACTING OUT ONE FOR THE HEADER ROW,  
16 IT WAS 2,032 FILES.

11:04AM

17 Q LET'S GO TO THE TOPIC OF POTENTIAL USE OF TCW  
18 INFORMATION AND DISCUSS FIRST THE TECHNIQUES THAT YOU,  
19 AS A SCIENTIST, USE TO DETECT USE.

20 WHAT IS A SHORTCUT?

11:04AM

21 A A SHORTCUT IS A FILE THAT GETS CREATED IN  
22 WINDOWS TO JUMP YOU TO A PARTICULAR OTHER FILE IN THE  
23 FILE SYSTEM. IT'S HOW THE START MENU IS DELETED,  
24 ACTUALLY DONE USING SHORTCUTS.

25 Q AND HOW CAN A SHORTCUT ANALYSIS POTENTIALLY  
26 GIVE YOU A FORENSIC EVIDENCE OF USE OF ELECTRONIC FILE?

11:04AM

27 A WHEN CERTAIN KINDS OF DOCUMENTS THAT WINDOWS  
28 KNOWS ABOUT, LIKE WORD FILES AND EXCEL FILES AND

1 CERTAIN OTHER KINDS OF FILES, WHEN ONE -- A DOCUMENT  
2 LIKE THAT IS OPENED THROUGH WINDOWS, WINDOWS WILL  
3 TYPICALLY CREATE A SHORTCUT TO THE DOCUMENT AND STORE  
4 IT IN A LOCATION.

5 AND IT USES THAT SHORTCUT TO POPULATE 11:05AM  
6 THE RECENTLY USED DOCUMENTS MENU IN THE START MENU.  
7 SO, BY LOOKING AT THOSE SHORTCUTS WHEN YOU HAVE THEM  
8 AVAILABLE, YOU CAN SOMETIMES GET INFORMATION ABOUT WHEN  
9 DOCUMENTS WERE OPENED OR WHICH DOCUMENTS WERE OPENED.

10 Q IS TIME STAMP A COMPONENT OF METADATA? 11:05AM

11 A IT IS.

12 Q WHAT IS A TIME STAMP?

13 A THE FILE SYSTEM WITHIN YOUR COMPUTER STORES  
14 SOME ADDITIONAL INFORMATION AROUND THE FILES, INCLUDING  
15 WHEN THE FILE WAS CREATED AND WHEN IT WAS MODIFIED. 11:05AM

16 Q CAN TIME STAMPS HELP ASSIST IN THE  
17 IDENTIFICATION OF USE OF ELECTRONIC DATA?

18 A THEY DO.

19 YOU CAN, OBVIOUSLY, BECAUSE IT LETS YOU  
20 FIGURE OUT WHEN A FILE WAS CREATED OR WHEN IT WAS 11:06AM  
21 MODIFIED. THAT CAN BE USEFUL IN FIGURING OUT IF IT WAS  
22 MODIFIED, IT COULD GIVE YOU INFORMATION ON WHEN IT WAS  
23 OPENED OR CHANGED.

24 Q ARE THERE FACTORS THAT CAN MAKE IT DIFFICULT  
25 TO DETERMINE WHETHER FILES, ELECTRONIC FILES, ON A 11:06AM  
26 COMPUTER HAVE BEEN USED?

27 A YES, THAT CAN HAPPEN.

28 Q ARE THERE FACTORS THAT CAN MAKE IT IMPOSSIBLE

1 TO DETERMINE USE?

2 A IT CAN BE IMPOSSIBLE.

3 Q DO TIME STAMPS -- YOU JUST DISCUSSED USING  
4 THEM -- ARE THERE ANY LIMITATIONS THE TIME-STAMPED  
5 TECHNIQUE HAS IN TERMS OF IDENTIFYING USE?

11:06AM

6 A YES. THE TIME STAMP, FOR EXAMPLE, I MENTIONED  
7 THERE'S A TIME STAMP THAT RECORDS WHEN A FILE WAS LAST  
8 MODIFIED, BUT IT ONLY RECORDS THE LAST MODIFIED DATE.

9 SO, IF YOU HAD A SERIES OF  
10 MODIFICATIONS, SAY TEN MODIFICATIONS, YOU WOULD HAVE  
11 INFORMATION ABOUT WHEN THE LAST ONE HAPPENED, BUT YOU  
12 WOULDN'T KNOW ABOUT THE ONES IN BETWEEN FROM THE TIME  
13 STAMPS.

11:06AM

14 Q WOULD YOU BE ABLE TO DETECT -- WOULD THERE BE  
15 ANY COMPUTER FORENSIC EVIDENCE THAT WOULD LET YOU  
16 DETECT IF SOMEONE OPENED A FILE AND TOOK NOTES OFF OF  
17 THE SCREEN OR ENTERED SOME OR ALL OF THE DATA ONTO  
18 ANOTHER COMPUTER?

11:07AM

19 A IF YOU WERE EXAMINING THE COMPUTER ON WHICH  
20 THE FILE HAD BEEN OPENED, THE ONLY FORENSIC EVIDENCE  
21 YOU MIGHT FIND IS EVIDENCE OF THE DOCUMENT HAVING BEEN  
22 OPENED. THAT'S ALL YOU WOULD GET.

11:07AM

23 Q WHAT IS REVISION CONTROL?

24 A REVISION CONTROL IS SOFTWARE THAT IS USED BY  
25 PROGRAMMERS TO KEEP TRACK OF THE CHANGES THAT THEY MAKE  
26 TO THEIR CODE OVERTIME.

11:07AM

27 IT KEEPS TRACK OF WHO MADE A CHANGE,  
28 WHICH CHANGE HE MADE, AND IT ALSO KEEPS A BACKUP OF THE

1 CODE.

2 Q IF YOU WERE ATTEMPTING TO DETERMINE WHETHER  
3 ONE SET OF SOURCE CODE HAD BEEN DERIVED FROM ANOTHER  
4 SET OF SOURCE CODE, WOULD THE DATA IN A REVISION  
5 CONTROL REPOSITORY BE RELEVANT?

11:07AM

6 A ABSOLUTELY.

7 Q HOW IS THAT?

8 A BECAUSE IF YOU CAN SEE HOW CODE EVOLVES, THAT  
9 HELPS YOU FIGURE OUT -- IT GIVES YOU BETTER PICTURE OF  
10 WHETHER OR NOT OTHER CODE WAS USED TO REFERENCE IT.

11:07AM

11 YOU CAN SEE WHETHER OR NOT THE CODE WAS  
12 SIMILAR AT ANY POINT ALONG THE WAY, AS OPPOSED TO ONLY  
13 SEEING WHETHER IT WAS SIMILAR AT THE END.

14 Q IN THIS CASE, IS THE DATE THAT DOUBLELINE  
15 IMPLEMENTED REVISION CONTROL RELEVANT TO YOUR  
16 INVESTIGATION?

11:08AM

17 A IT IS.

18 Q WHY IS THAT?

19 A WE -- SO THE DEPOSITION TESTIMONY THAT I'VE  
20 READ SHOWS THAT THE PROGRAMMING ON THE PROJECTS AT  
21 DOUBLELINE BEGAN VERY SERIOUSLY, AS EARLY AS  
22 DECEMBER 14TH OR 15TH. THE FIRST REVISION CONTROL DATA  
23 WE RECEIVED WAS FOR JANUARY 7TH OR 8TH. I BELIEVE IT'S  
24 JANUARY 8TH.

11:08AM

25 AND THAT MEANS THERE'S A THREE-WEEK  
26 WINDOW FOR WHICH WE DON'T HAVE THE REVISION CONTROL  
27 HISTORY OF WHAT HAPPENED.

11:08AM

28 Q WOULD THAT LACK, PROBABLY 3-1/2 WEEKS, WOULD

1 THAT 3-1/2-WEEK ABSENCE OF REVISION CONTROL DATA HAVE  
2 ANY EFFECT IN YOUR ABILITY TO DETECT WHETHER THE  
3 DOUBLELINE CODE HAD BEEN DERIVED FROM THE TCW CODE?

4 A IT DOES.

5 IF WE HAD IT, WE WOULD BE ABLE TO LOOK  
6 AT EARLIER REVISIONS TO SEE WHETHER THERE WAS  
7 SIMILARITY WITH EARLIER VERSIONS. SINCE WE DON'T HAVE  
8 IT, WE CAN'T DO THAT.

11:08AM

9 Q DID DELAY IN IMAGING A DEVICE AFFECT YOUR  
10 ABILITY TO DETERMINE WHETHER THE INFORMATION ON THAT  
11 DEVICE HAS BEEN USED?

11:09AM

12 A YES.

13 Q HOW IS THAT?

14 A WELL, THE LONGER THE GAP BETWEEN AN EVENT ON A  
15 COMPUTER, AND WHEN YOU PRESERVE THE STATE OF THE  
16 COMPUTER WITH A FORENSIC IMAGE, THE GREATER THE IMAGE  
17 THAT THE FORENSIC EVIDENCE YOU'RE LOOKING FOR THAT WILL  
18 RELATE TO THAT EVENT WILL HAVE BEEN OVERWRITTEN BY THE  
19 COMPUTER.

11:09AM

20 OVER TIME, A LOT OF FORENSIC EVIDENCE  
21 WILL GET OVERWRITTEN BY THE COMPUTER'S NORMAL  
22 OPERATIONS. THE BIGGER THE GAP, THE WORSE THE  
23 DETERIORATION.

11:09AM

24 Q WHAT IS SECURE DELETION?

25 A SECURE DELETION IS WHEN SOMEBODY USED SECURE  
26 DELETION SOFTWARE, SPECIAL SOFTWARE, NOT JUST TO DELETE  
27 A FILE USING THE ORDINARY COMPUTER FUNCTION WHICH -- AT  
28 WHICH POINT THE FILE MIGHT BE RECOVERABLE IN TOTAL OR

11:09AM

1 IN PART.

2 BUT WHAT SECURE DELETION SOFTWARE DOES,  
3 IT OVERWRITES THE CONTENTS OF THE FILE FIRST, AND THEN  
4 DELETES THE FILE IN SUCH A WAY TO MAKE IT IMMEDIATELY  
5 AND TOTALLY IRRETRIEVABLE WHEN IT WORKS CORRECTLY.

11:10AM

6 Q CAN A COMPUTER FORENSIC SCIENTIST, USING HIS  
7 TECHNIQUES AND SKILL, RECOVER DATA FROM A SECURELY  
8 DELETED FILE?

9 A TYPICALLY, NO. IF THE SECURE DELETION HAS  
10 BEEN CARRIED OUT PROPERLY, THEN THOSE DATA ARE NOT  
11 RECOVERABLE.

11:10AM

12 Q YOU WERE GOING FAMILIAR WITH SOMETHING THAT'S  
13 BEEN CALLED REMEDIATION PROCESS?

14 A I AM.

15 Q NOW, WOULD THE FAILURE BY AN EMPLOYEE TO TURN  
16 IN OR IDENTIFY A COMPUTER OR ELECTRONIC STORAGE DEVICE  
17 HAVE ANY EFFECT ON YOUR ABILITY TO DETECT USE?

11:10AM

18 A YES, IT WOULD.

19 Q HOW IS THAT?

20 A WELL, IF IT'S GOT -- OBVIOUSLY, IF IT'S -- THE  
21 DEVICE IN QUESTION HAS EVIDENCE OF USE ON IT, IF IT  
22 HAS, FOR EXAMPLE, MODIFIED VERSIONS OF FILES OR  
23 EVIDENCE THAT FILES WERE OPENED, THEN NOT HAVING THAT  
24 EVIDENCE MEANS THAT THAT'S EVIDENCE YOU DON'T HAVE AT  
25 YOUR DISPOSAL.

11:10AM

26 Q OKAY.

11:10AM

27 LET'S TURN TO THE QUESTION OF SOURCE  
28 CODE.

1                   DID YOU INVESTIGATE WHETHER TCW SOURCE  
2 CODE HAD BEEN USED AT DOUBLELINE?

3           A        I DID.

4           Q        DID YOU DIRECTLY EXAMINE THE TCW SOURCE CODE  
5 FOR THE BWIC BROWSER AND THE SECURITY ANALYZER?

11:11AM

6           A        YES.

7           Q        DID YOU DIRECTLY ANALYZE DOUBLELINE SOURCE  
8 CODE FOR PROGRAMS THAT WERE DEVELOPED TO PROVIDE  
9 SIMILAR FUNCTIONALITY?

10          A        YES.

11:11AM

11          Q        DID YOU ALSO CONSIDER THE TIMING AND CONTEXT  
12 OF THE SOURCE CODE?

13          A        YES, WE DID.

14          Q        WHAT DID YOU CONSIDER?

15          A        WE CONSIDERED THAT IT HAD TAKEN APPROXIMATELY  
16 18 MONTHS TO DEVELOP THESE PRODUCTS AT TCW, AND THAT  
17 FIRST VERSIONS HAD BEEN UP AND RUNNING AT DOUBLELINE  
18 WITHIN THREE TO FOUR WEEKS.

11:11AM

19                   WE ALSO TOOK IT --

20           MR. WEINGART:  OBJECTION.  MISSTATES THE  
21 TESTIMONY TOO.

11:11AM

22           THE COURT:  YOU MAY ADDRESS IT IN  
23 CROSS-EXAMINATION.

24           MR. WEINGART:  YES, YOUR HONOR.

25           THE WITNESS:  WE ALSO CONSIDERED THAT THERE  
26 HAD BEEN ONLY A SINGLE SHORT MEETING BEFORE SUBSTANTIAL  
27 PROGRAMMING WAS EMBARKED ON AND COMPLETED.

11:11AM

28    ///



1 BY MR. SURPRENANT:

2 Q WHAT TYPE OF PLANNING BEFORE -- BEFORE  
3 PROGRAMMERS BEGIN WRITING SOURCE CODE FOR NEW PROGRAMS,  
4 COMPLETELY NEW PROGRAMS FROM SCRATCH WOULD YOU, AS A  
5 COMPUTER SCIENTIST, EXPECT? 11:12AM

6 A I WOULD HAVE -- FOR A PROJECT OF THIS SIZE, IF  
7 YOU WERE DEVELOPING IT FROM SCRATCH, YOU WOULD EXPECT  
8 DAYS OF PLANNING.

9 Q HOW, IF AT ALL, DID THE TWO FACTS YOU JUST  
10 MENTIONED SHAPE OR INFORM YOUR ANALYSIS? 11:12AM

11 A THEY WERE FACTORS THAT WERE MORE CONSISTENT  
12 WITH THE NOTION THAT THE TCW SYSTEMS HAD BEEN RECREATED  
13 AT DOUBLELINE, AS OPPOSED TO THE DOUBLELINE SYSTEMS  
14 BEING CREATED FROM SCRATCH.

15 Q DID YOU STOP AT THOSE FACTS OR DID YOU  
16 CONTINUE YOUR INVESTIGATION? 11:12AM

17 A WE LOOKED ON.

18 Q COULD YOU LOOK AT -- IF YOU COULD DISPLAY FOR  
19 IDENTIFICATION, MIKE, TRIAL EXHIBIT 1510-A-83.

20 IT IS IN VOLUME I OF YOUR WITNESS  
21 BINDERS. 11:12AM

22 A YES.

23 Q WAS THIS AN EXHIBIT TO YOUR REPORT?

24 A IT WAS.

25 Q WHAT? 11:13AM

26 A IT WAS EXHIBIT 83 -- 83..

27 Q DESCRIBE GENERALLY WHAT IT PRESENTS?

28 A WHAT THIS PRESENTS IS THE LINES OF CODE FROM A

1 DOUBLELINE SOURCE CODE FILE CALLED HOLDINGSVW.SQL.  
2 THOSE LINES ARE IN ORDER. WE SKIPPED EMPTY OR TRIVIAL  
3 LINES.

4 ON THE RIGHT SIDE WE'VE SHOWN, IN THE  
5 TCW FILE CALLED HOLDINGVW.SQL THAT THERE ARE -- FOR A  
6 SUBSTANTIAL, LARGE NUMBER OF THE DOUBLELINE LINES OF  
7 CODE THERE IS A CORRESPONDING LINE OF CODE IN THE TCW  
8 SIDE.

11:13AM

9 Q IS THE DOUBLELINE CODE ON THE LEFT, THAT IS  
10 VERBATIM -- IS THAT VERBATIM EXCEPT YOU HAVE DROPPED  
11 EMPTY LINES AND LINES YOU CONSIDER IRRELEVANT?

11:13AM

12 A THAT'S CORRECT.

13 Q WHY -- THE TCW SOURCE CODE, IT SAYS -- IT DOES  
14 NOT CONTAIN VERBATIM RECORD, CORRECT?

15 A THAT'S CORRECT.

11:14AM

16 Q HAVE YOU ALSO MOVED THE SEQUENCE?

17 A YES.

18 SO THERE ARE BLOCKS OF LINES THAT ARE IN  
19 ORDER. BUT IN SOME CASES, THE LINE OF TCW CODE THAT  
20 MAPS CLOSELY TO THE DOUBLELINE CODE IS LOCATED IN A  
21 DIFFERENT LOCATION IN THE TCW FILE.

11:14AM

22 SO THE TCW LINES ARE ACTUALLY OUT OF  
23 ORDER. AND, ALSO, NOT ALL OF THE TCW LINES ARE  
24 REPRESENTED THE WAY WE LINED IT UP.

25 WHERE WE'RE SHOWING WHICH LINES WERE  
26 MAPPED TO THE DOUBLELINE'S, BUT NOT -- BUT THERE ARE  
27 SUBSTANTIAL NUMBER OF TCW LINES THAT ARE NOT MAPPED  
28 HERE.

11:14AM

1 Q WELL, WHY, IF AT ALL, WAS IT APPROPRIATE TO  
2 MOVE THEM AROUND IF YOU'RE TRYING TO DO A COMPARISON?

3 A BECAUSE THE QUESTION HERE IS NOT WHETHER THERE  
4 WAS LITERAL COPYING; TO BE CLEAR, IT'S NOT MY OPINION  
5 THAT THERE WAS LITERAL COPYING WITH THESE FILES.

11:14AM

6 THE QUESTION HERE IS TO LOOK AT THE  
7 DEGREE TO WHICH THE CODE IS SIMILAR. AND CODE CAN BE  
8 SIMILAR, EVEN IF ONE SET OF CODE IS ORDERED  
9 DIFFERENTLY. THAT DOESN'T PREVENT THE CODE FROM BEING  
10 SIMILAR.

11:15AM

11 AND IN THIS KIND OF ANALYSIS WE'RE  
12 TRYING TO FIGURE OUT WHETHER THERE'S TCW CODE SIMILAR  
13 TO THE DOUBLELINE CODE THAT ALLOWS FOR AND IS  
14 CONSISTENT WITH THERE BEING SOME TCW CODE THAT IS NOT  
15 RELATED TO WHAT IS IN THE DOUBLELINE FILES.

11:15AM

16 Q DO YOU HAVE AN OPINION, AS A COMPUTER  
17 SCIENTIST, WHETHER MOVING THINGS AROUND AND NOT SHOWING  
18 ANYTHING RESULTS IN A MEANINGFUL COMPARISON OR A  
19 MISLEADING COMPARISON OR SOMETHING IN BETWEEN?

20 A FOR THE PURPOSE HERE, WHICH IS SIMPLY TO  
21 ANALYZE THE LEVEL OF SIMILARITY, THE DEGREE TO WHICH  
22 THERE IS SIMILAR CODE IN THE TCW FILE TO THE DOUBLELINE  
23 FILE, THIS KIND OF COMPARISON IS MEANINGFUL AND IS  
24 APPROPRIATE.

11:15AM

25 MR. SURPRENANT: I WOULD ASK TO PUBLISH  
26 1510-83 AS ILLUSTRATIVE TO MR. HICKS' TESTIMONY.

11:15AM

27 THE COURT: ANY OBJECTION?

28 MR. WEINGART: THIS IS THE ONE WE TOOK UP,

1 YOUR HONOR, BEFOREHAND.

2 THE COURT: I THINK WE WERE NOT GOING TO DO  
3 THAT.

4 MR. SURPRENANT: I WASN'T GOING TO MOVE IT  
5 INTO EVIDENCE. I THOUGHT THE RULING WAS I COULD  
6 DISPLAY IT. 11:16AM

7 THE COURT: I THOUGHT WHAT WE SAID, IT  
8 WOULDN'T BE ADMITTED, BUT HE COULD TESTIFY ABOUT THE  
9 ISSUES.

10 MR. SURPRENANT: YES, YOUR HONOR. 11:16AM

11 Q WITHOUT -- WE WILL MOVE TO THE ACTUAL CODE IN  
12 JUST A MOMENT.

13 BUT COULD YOU TESTIFY AS TO WHAT -- THE  
14 SIMILARITY THIS EXHIBIT CONVEYS, WHY IT IS RELEVANT TO  
15 YOUR ANALYSIS? 11:16AM

16 A WHAT THIS EXHIBIT SHOWS IS THAT THERE IS --  
17 THERE ARE A SUBSTANTIAL NUMBER OF LINES OF CODE IN THE  
18 DOUBLELINE CODE, WHERE THERE ARE SIMILAR LINES OF CODE  
19 IN THE TCW CODE IN A FILE THAT IS NAMED ALMOST THE  
20 SAME. AND THAT PERFORMS VERY SIMILAR OR THE SAME  
21 FUNCTION. 11:16AM

22 Q COULD YOU TURN TO EXHIBIT 1510 --

23 THE COURT: ACTUALLY -- EXCUSE ME -- I THINK I  
24 SAID YOU COULD POST IT, BUT WE WOULDN'T ADMIT IT.

25 MR. SURPRENANT: EXACTLY, YOUR HONOR. I'M  
26 SORRY. 11:17AM

27 THE COURT: GO AHEAD AND PUT IT UP.

28 CERTAIN THINGS MAY NOT BE ADMITTED IN

1 EVIDENCE, BUT SEEING THEM MAY ASSIST YOU IN LISTENING  
2 TO THE TESTIMONY.

3 MR. SURPRENANT: THANK YOU, YOUR HONOR.

4 Q MIKE, IF YOU COULD BLOW UP THE BOTTOM HALF,  
5 MAYBE STARTING ON LINE 20.

11:17AM

6 NOW, THERE WE SEE THERE ARE SOME LINES,  
7 DATA ON BOTH SIDES, AND OTHERS IT'S BLANK.

8 COULD YOU EXPLAIN WHAT'S GOING ON THERE?

9 A RIGHT.

10 SO THE FORMAT HERE IS THAT, IF YOU LOOK  
11 AT THE LEFT COLUMN, THE NUMBER BEFORE THE -- AND THE  
12 COLON, SEE BELOW THAT'S THE LINE NUMBER IN THE  
13 DOUBLELINE FILE.

11:17AM

14 AND THEN ON THE RIGHT SIDE YOU SEE THE  
15 NUMBER AND THE COLON THAT'S THE LINE NUMBER IN THE TCW  
16 FILE.

11:17AM

17 AND THEN YOU HAVE ACTUAL CONTENT OF THE  
18 LINE. AS YOU CAN SEE, THERE ARE SOME LINES HERE,  
19 REPRESENTED HERE, WHERE THERE IS A TCW LINE THAT IS  
20 VERY SIMILAR TO THE DOUBLELINE LINE OF CODE.

11:18AM

21 THEN THERE ARE SERIES OF LINES, FOR  
22 EXAMPLE, 23 THROUGH 28, WHERE THE DOUBLELINE CODE  
23 CONTAINS SOME LINES THAT ARE NOT SIMILAR TO ANY TCW  
24 LINES.

25 Q IS THAT EVIDENCE THAT THE DOUBLELINE CODE WAS  
26 NOT DERIVED FROM THE TCW CODE?

11:18AM

27 A WELL, IT'S -- I WOULD SAY THAT IT DOESN'T RULE  
28 IT OUT. THAT'S PART OF THE TOTAL PICTURE WE LOOK AT.

1 Q IS THERE ANY OF THESE LINES OF CODE ON  
2 EXHIBIT 83 -- 1510-83, THAT IS MORE RELEVANT THAN  
3 OTHERS?

4 A YES. IF WE LOOK TOWARD THE END OF THE  
5 DOCUMENT.

11:18AM

6 Q LAST PAGE, MIKE.

7 IF YOU COULD BLOW UP THE LAST FEW LINES.

8 A SO, AS YOU COULD SEE, LINE 79 SIMILAR TO 118  
9 ON THE TOP ROW, AND 88 AND 119.

10 AND THEN IF YOU LOOK ON THE RIGHT  
11 COLUMN, YOU SEE IN THE TCW CODE THERE IS A -- THERE IS  
12 A LINE 121 -- THIS IS TOWARDS THE BOTTOM OF THE CODE  
13 FILE -- THAT SAYS: GRANT SELECT ON IRA DOT HOLDING VW  
14 TO M.B.S. ANALYTICS ROLE.

11:18AM

15 THIS IS A STATEMENT IN SQL. THIS ENTIRE  
16 CODE FILE IS CREATING A CERTAIN KIND OF FUNCTIONALITY,  
17 AND THERE'S THIS STATEMENT. WHAT IT DOES, IT RESTRICTS  
18 THIS FUNCTIONALITY TO A PARTICULAR SET OF USERS OR  
19 SOFTWARE; IN THIS CASE, THOSE THAT ARE IDENTIFIED BY  
20 THE NAME M.B.S. ANALYTICS ROLE.

11:19AM

21 WHAT YOU SEE ON THE DOUBLELINE SIDE IS  
22 YOU SEE THERE IS A SIMILAR LINE, GRANT SELECT ON  
23 HOLDINGS VW TO QUESTION MARK, QUESTION MARK, QUESTION  
24 MARK.

11:19AM

25 AND YOU SEE IT STARTS WITH TWO DASHES.  
26 THE TWO DASHES IS -- ACTUALLY IT'S A WAY OF PUTTING A  
27 COMMENT INTO YOUR CODE OR A WAY OF DISABLING A LINE OF  
28 CODE.

11:19AM

1                   SO THE TWO DASHES MEAN THIS LINE OF CODE  
2 ON THE DOUBLELINE SIDE IS ACTUALLY INOPERATIVE. IT  
3 DOESN'T DO ANYTHING.

4                   THIS STRUCK ME AS SIGNIFICANT BECAUSE --

5           Q       WHY DID IT STRIKE YOU AS SIGNIFICANT,  
6 MR. HICKS?

11:20AM

7           A       SORRY. GOT AHEAD OF MYSELF.

8                   THIS STRUCK ME AS SIGNIFICANT BECAUSE  
9 THIS IS A SIMILARITY BETWEEN THE DOUBLELINE CODE AND  
10 THE TCW CODE, WHERE IT ISN'T YET SERVING ANY PURPOSE IN  
11 THE DOUBLELINE CODE. THE LINE OF CODE IS DISABLED IN  
12 THE DOUBLELINE SIDE.

11:20AM

13           Q       AND THE RELEVANCE OF THAT?

14           A       THAT SINCE IT ISN'T CURRENTLY SERVING A  
15 CONSTRUCTIVE FUNCTION IN THE DOUBLELINE CODE, BUT IS  
16 STILL SIMILAR TO THE TCW CODE, THAT MADE THE SIMILARITY  
17 STAND OUT AS SIGNIFICANCE.

11:20AM

18           Q       AND WHY WAS IT SIGNIFICANT?

19           A       BECAUSE IT'S MORE CONSISTENT WITH THIS LINE  
20 BEING HERE (INDICATING) BECAUSE IT WAS IN THE TCW CODE  
21 THAN IT IS CONSISTENT WITH IT BEING HERE (INDICATING)  
22 BECAUSE IT SERVES A PURPOSE.

11:20AM

23           Q       IS THIS A PARTICULARLY COMPLEX INSTRUCTION?

24           A       NO. AND I SHOULD SAY ALL OF THIS CODE IS NOT  
25 PARTICULARLY COMPLEX. IT'S -- IT'S PERFORMING A  
26 PARTICULAR FUNCTION. IT'S SORT OF OPTIMIZATION TO  
27 ALLOW FOR THE DATABASE TO BE ACCESSED IN A MORE  
28 EFFICIENT WAY.

11:20AM

1 THE PARTICULAR LINE HERE, THE GRANT, IS  
2 NOT AN INCREDIBLY SOPHISTICATED COMMAND. ALL SQL  
3 COMMANDS ARE STRAIGHTFORWARD. EACH LINE IS  
4 STRAIGHTFORWARD.

5 THE ISSUE HERE IS THE COMBINATION OF 11:21AM  
6 LINES, AND IN THIS PARTICULAR CASE THIS GRANT LINE IS  
7 PRESENT IN THE DOUBLELINE CODE, DESPITE THE FACT  
8 THERE'S NOT YET PURPOSE FOR IT.

9 Q COULD YOU DISPLAY FOR IDENTIFICATION TRIAL  
10 EXHIBIT -- 1510-A-84. 11:21AM

11 COULD YOU TELL US WHAT THAT IS.

12 A THIS IS EXHIBIT 84 TO MY EXPERT REPORT. IT IS  
13 THE -- IT IS -- THE CODE FILE WHICH WE DREW OUT OF THE  
14 DOUBLELINE SOURCE CODE REPOSITORY.

15 IT IS THE DOUBLELINE SOURCE CODE THAT -- 11:21AM  
16 FROM WHICH THE LINES WERE DRAWN IN THE LEFT SIDE OF  
17 THAT DEMONSTRATIVE WE JUST LOOKED AT.

18 Q THIS IS THE ACTUAL DOUBLELINE SOURCE CODE THAT  
19 WAS CONTAINED IN EXHIBIT 83?

20 A RIGHT. 11:22AM

21 THIS IS THE INTACT CODE WITHOUT THE  
22 BLANK LINES SKIPPED OR IRRELEVANT LINES SKIPPED.

23 MR. SURPRENANT: I WOULD OFFER 1510-A-84 INTO  
24 EVIDENCE.

25 THE COURT: ANY OBJECTION? 11:22AM

26 MR. WEINGART: MAY I HAVE JUST ONE MOMENT,  
27 YOUR HONOR?

28 (PAUSE.) +



1 MR.WEINGART: NO OBJECTION.

2 THE COURT: IT WILL BE ADMITTED.

3

4 (EXHIBIT 15120-A-84 ADMITTED.) +

5

11:22AM

6 MR. SURPRENANT: YOU MAY DISPLAY IT AND WE'LL  
7 IMMEDIATELY MOVE ON, MR. HICKS, TO EXHIBIT 1510-A-85.

8 Q WHAT IS THAT?

9 A THIS IS A SOURCE CODE FILE DRAWN -- SOURCE  
10 CODE FILE DRAWN FROM THE TCW SOURCE CODE REPOSITORY,  
11 EXHIBIT 85 TO MY EXPERT REPORT. IT IS THE CODE FILE  
12 FROM WHICH THE LINES ON THE RIGHT SIDE OF THE  
13 DEMONSTRATIVE WERE DRAWN.

11:22AM

14 MR. SURPRENANT: YOUR HONOR, I WOULD OFFER  
15 1510-A-85 IN EVIDENCE.

11:22AM

16 MR. WEINGART: NO OBJECTION.

17 THE COURT: IT WILL BE ADMITTED.

18

19 (EXHIBIT 1510-A-85 ADMITTED.) +

20

11:22AM

21 BY MR. SURPRENANT:

22 Q COULD YOU DISPLAY 1510-86 FOR IDENTIFICATION.

23 COULD YOU TELL US WHAT THAT IS,

24 MR. HICKS.

25 A THIS IS THE SAME KIND OF ANALYSIS, EXACTLY THE  
26 SAME KIND OF ANALYSIS AS WHAT'S DONE ON EXHIBIT 83,  
27 ONLY THIS TIME IT'S COMPARING THE DOUBLELINE FILE  
28 HOLDINGSCURRENTVW.SQL TO LINES FROM THE TCW FILE

11:23AM

1 HOLDINGCURRENTVW.SQL.

2 MR. SURPRENANT: I WOULDN'T OFFER IT INTO  
3 EVIDENCE, BUT I'LL ASK TO BE DISPLAYED.

4 THE COURT: YOU MAY PUT IT UP.

5 MR. SURPRENANT: WHY DON'T WE BLOW UP LINE 12  
6 THROUGH LINE -- THE END OF THE PAGE.

11:23AM

7 Q COULD YOU DESCRIBE THE RELEVANCE, IF ANY, OF  
8 THE MAPPING THAT THIS EXHIBIT SHOWS.

9 A AGAIN, JUST LIKE THE OTHER ONE, WE SEE THERE  
10 ARE DOUBLELINE LINES ON THE LEFT, TCW LINES ON THE  
11 RIGHT. SOME DOUBLELINE LINES DON'T HAVE A TCW -- A  
12 CORRESPONDING, TCW LINE, SOME DO.

11:23AM

13 WE'VE IDENTIFIED WHICH IS WHICH.

14 Q THANK YOU.

15 IS THERE ANY LINE OF CODE IN THIS  
16 EXHIBIT THAT IS MORE RELEVANT TO YOUR ANALYSIS THAN  
17 OTHERS?

11:24AM

18 A YES, IF WE JUMP TO THE END AGAIN.

19 Q LAST PAGE, MIKE.

20 COULD YOU JUST BRIEFLY EXPLAIN THE  
21 RELEVANCE OF THIS LINE -- THESE TWO LINES OF CODE.

11:24AM

22 A IF WE LOOK AT THE LAST LINE AGAIN, WE SEE,  
23 ONCE AGAIN, TCW IS USING A GRANT TO RESTRICT ACCESS.

24 DOUBLELINE IS NOT USING A GRANT TO  
25 RESTRICT ACCESS, BUT STILL HAS A DISABLED LINE OF CODE  
26 IN IT. WHICH IS SIMILAR TO THE TCW CODE, BUT DOES NOT  
27 CURRENTLY PERFORM ANY FUNCTION IN THE DOUBLELINE CODE.

11:24AM

28 Q AGAIN, TWO-SENTENCE SUMMARY OF WHAT RELEVANCE,

1 IF ANY, THAT HAS TO YOU AS A COMPUTER SCIENTIST.

2 A IT'S MORE CONSISTENT WITH THE CODE BEING --  
3 WITH IT BEING SIMILAR BECAUSE THE GRANT STATEMENT WAS  
4 IN THE TCW CODE, THAN IT IS CONSISTENT WITH THE GRANT  
5 STATEMENT BEING IN THERE FOR SOME PURPOSE.

11:25AM

6 Q MIKE, IF YOU COULD DISPLAY FOR IDENTIFICATION  
7 EXHIBIT 1510-A-87.

8 COULD YOU TELL US WHAT THAT IS,  
9 MR. HICKS.

10 A THIS IS EXHIBIT 87 TO MY EXPERT REPORT. IT'S  
11 THE DOUBLELINE SOURCE CODE FILE DRAWN FROM THE  
12 DOUBLELINE REPOSITORY, WHICH SERVES TO FILL THE LINES  
13 ON THE LEFT SIDE OF THE COMPARISON WE JUST LOOKED AT.

11:25AM

14 MR. SURPRENANT: YOUR HONOR, I'D OFFER TRIAL  
15 EXHIBIT 1510-87 INTO EVIDENCE.

11:25AM

16 THE COURT: ANY OBJECTION?

17 MR. WEINGART: NO, YOUR HONOR.

18 THE COURT: IT WILL BE ADMITTED.

19

20 (EXHIBIT 1510-87 ADMITTED.) +

11:25AM

21

22 MR. SURPRENANT: COULD YOU DISPLAY FOR  
23 IDENTIFICATION TRIAL EXHIBIT 1510-A-88.

24 Q AND, MR. HICKS, COULD YOU TELL US TELL US WHAT  
25 THAT IS.

11:25AM

26 A THIS IS EXHIBIT 88 TO MY EXPERT REPORT, A FILE  
27 OF SOURCE CODE DRAWN FROM THE TCW SOURCE CODE  
28 REPOSITORY.

1                   AND IT IS THE SOURCE OF THE LINES ON THE  
2 RIGHT SIDE OF THE EXHIBIT, THE COMPARISON EXHIBIT WE  
3 WERE JUST LOOKING AT.

4           Q       EXHIBIT 86?

5           THE COURT:   IT WILL BE ADMITTED.

11:26AM

6           THE WITNESS:   YES.

7  
8                   (EXHIBIT 1510-A-88 ADMITTED.)+

9  
10           MR. SURPRENANT:   MIKE, COULD YOU DISPLAY THE  
11 THIRD TO LAST OF THESE.

11:26AM

12                   YOUR HONOR, TRIAL 1510-A-89.

13           MR. WEINGART:   88 OFFERED?

14           THE COURT:   88, A WAS OFFERED, AND I ADMITTED.

15           MR. WEINGART:   THANK YOU, YOUR HONOR.

11:26AM

16 BY MR. SURPRENANT:

17           Q       COULD YOU TELL US WHAT TRIAL EXHIBIT 1510-A-89  
18 IS.

19           A       THIS IS EXHIBIT 89 TO MY EXPERT REPORT,  
20 ANOTHER COMPARISON.   THIS TIME BETWEEN THE DOUBLELINE  
21 SOURCE CODE FILE IN TEXT SECURITY PERFORMANCE CURRENT  
22 VW.SQL AND TCW SOURCE CODE FILE SECURITY PERFORMANCE  
23 CURRENT VW.SQL.

11:26AM

24           Q       I'D ASK PERMISSION TO DISPLAY IT WITHOUT  
25 OFFERING.

11:26AM

26           THE COURT:   YOU MAY.

27 BY MR. SURPRENANT:

28           Q       MIKE, IF YOU COULD BLOW UP THE TOP SO WE CAN

1 SEE THE COMPARISONS THAT'S BEING MADE. JUST THE TOP  
2 LINE THERE. THAT'S FINE.

3 COULD YOU JUST FOR A MOMENT EXPLAIN THE  
4 CAPTION ON THE LEFT AND THE CAPTION ON THE RIGHT.

5 A RIGHT.

11:27AM

6 SO, ON THE LEFT SIDE WE HAVE -- YOU  
7 ACTUALLY REMOVED THE DL UNDERSCORE. THAT WAS JUST THE  
8 WAY WE DID THE COMPARISON. THE FILE NAME WAS IN TEXT  
9 SECURITY PERFORMANCE CURRENT VW.SQL AND THE RIGHT SIDE  
10 THE FILE WAS SECURITY PERFORMANCE CURRENT VW.SQL.

11:27AM

11 AND WE SHOW ON THE LEFT SIDE WE'RE  
12 EXPLAINING THAT WE HAVE ALL THE -- ON THE LEFT SIDE WE  
13 EXPLAIN THAT WE HAVE ALL NON-MT OR RELEVANT LINES IN  
14 ORDER.

15 AND ON THE RIGHT SIDE WE SHOW WE HAVE  
16 CORRESPONDING LINES OUT OF ORDER.

11:27AM

17 AND, ALSO, AS I SAID EARLIER, TCW SIDE  
18 OF THE EQUATION IS NOT COMPLETE THERE. TCW IS NOT  
19 REPRESENTED HERE.

20 Q COULD WE GO TO THE LAST PAGE, MIKE, AND  
21 DISPLAY THE LAST FEW LINES.

11:27AM

22 A AS YOU CAN -- I'M SORRY.

23 Q VERY BRIEFLY, WHAT IS THE SIGNIFICANCE, IF  
24 ANY, OF THIS TO THE GRANT LINE?

25 A ONCE AGAIN, WE SEE THERE'S A GRANT LINE ON THE  
26 TCW SIDE AND A COMMENTED OUT -- SIMILAR GRANT LINE ON  
27 THE DOUBLELINE SIDE.

11:28AM

28 Q ISN'T IT THE CASE, MR. HICKS, WHEN YOU HAVE

1 PROGRAMS THAT DO SIMILAR FUNCTIONS, YOU WOULD EXPECT  
2 SOME SIMILARITY?

3 A YOU WOULD.

4 Q AND SO WHY, IF AT ALL, ARE THESE EXHIBITS, 83,  
5 86, 89 RELEVANT?

11:28AM

6 A BECAUSE THE LEVEL OF SIMILARITY HERE IS, IN MY  
7 OPINION, ABOVE AND BEYOND WHAT YOU WOULD JUST SEE FROM  
8 PEOPLE TRYING TO CODE ROUGHLY THE SAME THING.

9 Q IF WE COULD GO VERY BRIEFLY TO TRIAL  
10 EXHIBIT 1510-A-90. IF YOU COULD DISPLAY THAT FOR  
11 IDENTIFICATION.

11:28AM

12 WHAT IS THAT?

13 A THIS IS THE DOUBLELINE SOURCE CODE FILE --  
14 SORRY -- EXHIBIT 90 TO MY EXPERT REPORT PORT. IT IS  
15 THE DOUBLELINE SOURCE CODE FILE, DRAWN FROM THE  
16 DOUBLELINE SOURCE CODE REPOSITORY FROM WHICH THAT  
17 SUPPLIED THE LINES OF DOUBLELINE CODE ON THE LEFT SIDE  
18 OF THAT COMPARISON.

11:29AM

19 Q COULD YOU DISPLAY FOR IDENTIFICATION TRIAL  
20 EXHIBIT 1510-A-91.

11:29AM

21 AND COULD YOU TELL US WHAT THAT IS,  
22 MR. HICKS.

23 A THIS IS EXHIBIT 91 TO MY EXPERT REPORT. IT IS  
24 THE SOURCE CODE FILE DRAWN FROM THE TCW SOURCE CODE  
25 REPOSITORY, WHICH PROVIDES THE LINES ON THE RIGHT SIDE  
26 OF THE COMPARISON WE WERE JUST LOOKING AT.

11:29AM

27 Q DID YOU ALSO --

28 YOUR HONOR, I WOULD MOVE TRIAL

1 EXHIBIT 1510-A-90 AND 91 INTO EVIDENCE.

2 THE COURT: ANY OBJECTION?

3 MR. WEINGART: NO, YOUR HONOR.

4 THE COURT: THEY'LL BE ADMITTED.

5

11:29AM

6 (EXHIBITS 1510-A-90 AND -91 ADMITTED.)+

7

8 BY MR. SURPRENANT:

9 Q IN YOUR INVESTIGATION DID YOU ALSO IDENTIFY  
10 SIMILARITIES BETWEEN TCW FILE NAMES FOR SOURCE CODE AND  
11 DOUBLELINE FILE NAMES FOR SOURCE CODE?

11:29AM

12 A WE DID.

13 Q WAS THAT OF ANY RELEVANCE TO YOUR  
14 INVESTIGATION?

15 A YES.

11:30AM

16 Q AND WHY?

17 A WE DISCOVERED THAT SOME OF THE FILE NAMES --  
18 THAT THERE ARE SOME DATA SETS THAT ARE NAMED  
19 IDENTICALLY ACROSS THE TWO CODE BASES. AND BECAUSE THE  
20 WAY THE PROGRAMMING SYSTEM WORKS, IT AUTOMATICALLY  
21 GENERATES A SERIES OF FILE NAMES BASED ON THE DATA SET  
22 NAMES.

11:30AM

23 THIS RESULTS IN A SERIES OF FILES BEING  
24 IDENTICALLY NAMED ACROSS THE TWO CODE BASES THAT ARE  
25 ALSO SOME FILES THAT ARE NOT IDENTICALLY NAMED, BUT  
26 SIMILARLY NAMED IN A WAY THAT STANDS OUT.

11:30AM

27 MR. SURPRENANT: I WOULD OFFER, YOUR HONOR,  
28 TRIAL EXHIBIT 1510-A-96 INTO EVIDENCE.

1 THE COURT: ANY OBJECTION?

2 I HAVEN'T SEEN THAT YET.

3 MR. SURPRENANT: COULD YOU DISPLAY THAT FOR  
4 IDENTIFICATION.

5 THE COURT: WELL, IT JUST CAME UP. 11:30AM

6 MR. WEINGART: I'M SORRY, YOUR HONOR. I NEED  
7 TO FIGURE OUT WHAT THAT IS.

8 THE COURT: I THINK YOU ASKED HIM A QUESTION  
9 BEFORE YOU DID IT. YOU DIDN'T MAKE REFERENCE. HE GAVE  
10 US THE EXPLANATION, BUT WE DIDN'T HAVE THIS. 11:31AM

11 MR. SURPRENANT: I'M SORRY, YOUR HONOR.

12 I WAS TRYING TO MOVE TOO FAST.

13 Q COULD YOU BRIEFLY EXPLAIN WHAT IS PRESENTED BY  
14 TRIAL EXHIBIT 1510-A-96.

15 A THIS SHOWS THE DATA SETS THAT ARE THE SAME 11:31AM  
16 ACROSS THE TWO CODE BASES AND THE RESULTING IDENTICAL  
17 FILE NAMES CREATED AS A RESULT.

18 Q THIS WAS EXHIBIT 96 TO YOUR REPORT?

19 A IT WAS.

20 Q DOES IT ACCURATELY SET FORTH THE DATA IT 11:31AM  
21 REPRESENTS?

22 A YES, IT DOES.

23 MR. SURPRENANT: YOUR HONOR, I'D OFFER IT.

24 THE COURT: ANY OBJECTION?

25 MR. WEINGART: NO, YOUR HONOR. 11:31AM

26 THE COURT: IT WILL BE ADMITTED.

27

28 (EXHIBIT 1510-A-96 ADMITTED.) +



1 BY MR. SURPRENANT:

2 Q NOW, THIS LOOKS EXTREMELY EXCITING.

3 A ONLY TO ME.

4 Q COULD YOU BRIEFLY SUMMARIZE THE RELEVANCE OF  
5 THIS DENSE CODE TO YOUR ANALYSIS.

11:31AM

6 A YES. IF YOU LOOK AT LINE 3, YOU SEE IT  
7 SHOWS -- SHOWS THE WORD DS DICTIONARY.

8 NOW, IF WE PUT THAT AWAY, THAT IS A DATA  
9 SET THAT IS IDENTICALLY NAMED ACROSS THE TWO CODE  
10 BASES. AS A RESULT, WHAT YOU SEE IN THE NEXT ROW IS  
11 THAT THERE IS A -- THAT THE TCW FILE INCLUDES A FILE  
12 CALLED DSDICTIONARY.DESIGNER.CS.

11:32AM

13 AND THE DOUBLELINE CODE ALSO CONCLUDES  
14 FILES WITH THOSE NAMES AS A RESULT.

15 Q WE GO THROUGH THIS, BUT WE'LL SPARE EVERYONE  
16 THE PAIN.

11:32AM

17 COULD YOU GENERALLY DESCRIBE THE  
18 RELEVANCE OF THIS EXHIBIT TO YOUR ANALYSIS.

19 A THE OVERLAP, THE LITERAL OVERLAP, IDENTICAL  
20 NATURE OF THE DATA SET NAMES AGAIN, WHILE NOT PROVING  
21 ANYTHING BY ITSELF, IS, ONCE AGAIN, CONSISTENT -- MORE  
22 CONSISTENT WITH THE TCW CODE HAVING BEEN REFERENCED  
23 WHEN THE DOUBLELINE CODE WAS BEING WRITTEN IN SOME  
24 FORM.

11:32AM

25 Q THERE ARE SOME 48 -- A NUMBER OF LINES ON THIS  
26 EXHIBIT 1510-A-96 WAS THE CHARACTERISTICS YOU DESCRIBED  
27 FOR LINE 4, ARE THEY TRUE AS TO THE OTHER LINES ON THE  
28 EXHIBIT?

11:32AM

1           A       YES.  AS YOU CAN SEE, THERE ARE -- THE DATA  
2       SETS, THE IDENTICALLY NAMED DATA SETS IDENTIFIED ON:  
3                        LINES 3, WHICH IS DS DICTIONARY;  
4                        LINE 9, WHICH IS DS TRADE;  
5                        LINE 15, WHICH IS DS HOLDINGS;                        11:33AM  
6                        LINE 21, WHICH IS DS REPORTS;  
7                        LINE 27, WHICH IS DS SECURITY;  
8                        LINE 34, DS SECURITY LIST.  
9                        AND I BELIEVE THAT IS ALL.

10          Q        IN YOUR INVESTIGATION, DID YOU IDENTIFY SOURCE                        11:33AM  
11       CODE FILE NAMES THAT WERE IDENTICAL BETWEEN TCW CODE  
12       AND THE DOUBLELINE CODE?

13          A        YES.  THOSE ARE THE ONES WE JUST LOOKED AT.

14          Q        COULD YOU -- DID YOU ALSO FIND IN YOUR  
15       INVESTIGATION EVIDENCE OF SQL FILES THAT WERE VERY                        11:33AM  
16       SIMILARLY NAMED?

17          A        YES.

18          Q        COULD YOU TURN TO TRIAL EXHIBIT 1510-A-97 AND  
19       TELL US WHAT THAT IS.

20          A        THIS WAS EXHIBIT 97 TO MY EXPERT REPORT.                        11:34AM

21                        IT COMPARES THE FILE NAMES OF A SERIES  
22       OF DOUBLELINE SQL FILES TO A SERIES OF TCW SQL FILES.

23          Q        I'M SURE WE ALL KNOW WHAT -- WHAT SQL FILES  
24       ARE, BUT IN CASE WE DON'T, PLEASE TELL US.

25          A        IT STANDS FOR STRUCTURED QUERY LANGUAGE, A                        11:34AM  
26       PROGRAMMING LANGUAGE THAT IS USED TO PROGRAM ACCESS  
27       DATABASES.

28                        MR. SURPRENANT:  I'D OFFER INTO EVIDENCE

1 1510-A-97.

2 THE COURT: ANY OBJECTION?

3 MR. WEINGART: I DO OBJECT. THERE'S A MIDDLE  
4 LINE THERE. COLUMN B, I DON'T UNDERSTAND WHAT THAT  
5 REPRESENTS.

11:34AM

6 THE COURT: WITH THE HEADING LAST MODIFIED?

7 THE WITNESS: YES.

8 BY MR. SURPRENANT:

9 Q MR. HICKS, COULD YOU PLEASE TELL US THE MIDDLE  
10 COLUMN B, LAST MODIFIED DATE, WHERE DID THAT DATA COME  
11 FROM AND ITS RELEVANCE?

11:35AM

12 A THAT CAME FROM THE FORENSIC INFORMATION WE  
13 EXAMINED, AND FROM THE DOUBLELINE REPOSITORY.

14 WE TRACKED WHAT THE LAST MODIFIED DATE  
15 OF THE DOUBLELINE CODE WAS AT THE TIME THAT IT WAS  
16 CHECKED INTO THE REPOSITORY.

11:35AM

17 MR. SURPRENANT: YOUR HONOR, I'D OFFER THE  
18 EXHIBIT.

19 MR. WEINGART: NO OBJECTION.

20 THE COURT: IT WILL BE ADMITTED.

11:35AM

21  
22 (EXHIBIT 1510-A-97 ADMITTED.)+

23  
24 MR. SURPRENANT: COULD YOU DISPLAY IT,  
25 MICHAEL.

11:35AM

26 COULD YOU BLOW UP THE FIRST MAYBE FIVE  
27 OR SIX SO WE SEE IT MORE CLEARLY.

28 Q COULD YOU TELL US, MR. HICKS, I KNOW WE'RE

1 TRYING TO MOVE QUICKLY, TELL US WHAT RELEVANCE, IF ANY,  
2 THE SIMILARITY THAT YOU IDENTIFIED HERE AS TO YOUR  
3 ANALYSIS.

4 A ONCE AGAIN, THE FACT THAT THERE'S A  
5 SUBSTANTIAL BLOCK OF FILE NAMES THAT ARE SO SIMILARLY  
6 NAMED IS -- IT'S -- AGAIN, DOESN'T PROVE ANYTHING BY  
7 ITSELF, BUT IT'S MORE CONSISTENT WITH THE TCW CODE  
8 HAVING BEEN REFERENCED IN SOME WAY DURING THE  
9 DEVELOPMENT OF THE DOUBLELINE CODE.

11:35AM

10 Q MR. HICKS, YOU HAVE IDENTIFIED SIMILAR CODE,  
11 SIMILAR FILE NAMES, AND IDENTICAL FILE NAMES.

11:36AM

12 MORE GENERALLY, COULD YOU SUMMARIZE YOUR  
13 OPINION AS A COMPUTER SCIENTIST ABOUT THE EXTENT TO  
14 WHICH, IF AT ALL, THE DOUBLELINE CODE YOU HAVE ANALYZED  
15 WAS DERIVED FROM SOURCE CODE FOR THE BWIC BROWSER AND  
16 THE SECURITY ANALYZER.

11:36AM

17 A IT IS POSSIBLE THAT --

18 MR. WEINGART: OBJECTION, YOUR HONOR.  
19 SPECULATIVE.

20 THE COURT: SUSTAINED.

11:36AM

21 BY MR. SURPRENANT:

22 Q COULD YOU TELL US -- JUST TELL US YOUR  
23 OPINION.

24 A IN MY OPINION, THE MOST LIKELY SCENARIO IS  
25 THAT THE TCW CODE WAS REFERENCED AS PART OF THE  
26 DEVELOPMENT OF THE DOUBLELINE CODE.

11:36AM

27 Q WAS IT REFERENCED IN A MARGINAL WAY,  
28 SUBSTANTIAL WAY OR -- IN YOUR OPINION?

1           A        IN MY OPINION IT WAS REFERENCED IN A  
2 SUBSTANTIAL WAY, IN MY OPINION.

3           Q        DID YOU IDENTIFY, IN YOUR INVESTIGATION,  
4 EVIDENCE OF USE OF SOMETHING CALLED A PARTICIPANTS  
5 LIST?

11:37AM

6           A        I DID.

7           Q        MIKE, COULD YOU DISPLAY TRIAL EXHIBIT 15 --  
8 515, THAT IS IN EVIDENCE.

9                    COULD YOU KIND OF FLIP THROUGH THE  
10 EXHIBIT. FIRST, BLOW IT UP SO THEY CAN SEE IT. THANK  
11 YOU.

11:37AM

12                   CONNECTED -- ATTACHED TO THIS IS A LIST  
13 OF PARTICIPANTS.

14                   WHAT EVIDENCE IN YOUR FORENSIC -- WHAT  
15 EVIDENCE DID YOUR FORENSIC INVESTIGATION UNCOVER WITH  
16 REGARD TO THE USE OF THIS LIST AT DOUBLELINE?

11:37AM

17           A        THAT --

18                   MR. WEINGART: OBJECTION. MOTION IN LIMINE  
19 WITH REGARD TO OPENING AS OPPOSED TO USE.

20                   MR. SURPRENANT: NO, NO, NO. THIS IS --

11:37AM

21                   THE COURT: YOU'LL HAVE TO APPROACH. I'M  
22 MISSING THE POINT. AND IF I MADE A RULING ON IT.

23                   MR. SURPRENANT: IF I COULD APPROACH COUNSEL.

24                   THE COURT: YES.

25                                   (PAUSE) +

11:38AM

26

27 BY MR. SURPRENANT:

28           Q        DID YOUR FORENSIC INVESTIGATION INDICATE THAT

1 THIS FILE HAD BEEN MODIFIED AFTER IT WAS COPIED?

2 A YES.

3 Q COULD YOU PLEASE TELL US WHAT MODIFICATION YOU  
4 IDENTIFIED?

5 A WE IDENTIFIED THAT, BEGINNING ON DECEMBER 7TH,  
6 MULTIPLE-DERIVED VERSIONS WERE CREATED OF THIS LIST,  
7 ONE WHICH REMOVED FROM THE LIST THE PEOPLE WHO WOULD  
8 IDENTIFY THEMSELVES AS WORKING FOR TCW; OTHER  
9 MODIFICATIONS LATER THAT CHANGED THE PARTICIPANTS  
10 SOMEWHAT.

11:38AM

11:38AM

11 Q AND WERE COPIES -- DID YOUR INVESTIGATION  
12 IDENTIFY WHERE COPIES OF THIS ENDED UP ON DIFFERENT  
13 COMPUTERS AT DOUBLELINE?

14 A YES. COPIES ENDED UP ON COMPUTERS ATTRIBUTED  
15 TO MS. PFEIFFER AND ALSO TO MR. DAMIANI, AND THE COPY  
16 ATTRIBUTED TO -- BELIEVE TO MR. DAMIANI WAS OPENED AS  
17 LATE AS FEBRUARY 2010.

11:38AM

18 Q DID YOUR INVESTIGATION IDENTIFY SOMETHING  
19 KNOWN AS THE M.B.S. PROCESS SLIDE?

20 A YES.

11:39AM

21 Q COULD WE DISPLAY TRIAL EXHIBIT 48. THAT'S IN  
22 EVIDENCE. THERE'S BEEN A GOOD DEAL OF TESTIMONY ON IT.  
23 LET ME TRY TO DO IT IN A PERHAPS SHORTHAND FASHION.

24 DID YOUR FORENSIC INVESTIGATION DISCOVER  
25 EVIDENCE THAT THIS PROCESS SLIDE HAD BEEN MODIFIED AT  
26 DOUBLELINE?

11:39AM

27 A YES.

28 WE FOUND A NUMBER OF DERIVATIVE VERSIONS

1 OF THIS SLIDE.

2 Q COULD YOU DISPLAY FOR IDENTIFICATION  
3 1510-A-73.

4 COULD YOU TELL US WHAT THAT IS,  
5 MR. HICKS.

11:40AM

6 A THIS IS THE DATA CONTAINED INSIDE AN E-MAIL,  
7 DOUBLELINE E-MAIL. IT WAS EXHIBIT 73 TO MY EXPERT  
8 REPORT. WE RECOVERED IT FORENSICALLY.

9 Q AND WHAT DOES IT -- IT'S A DOUBLELINE E-MAIL?

10 A IT IS.

11:40AM

11 MR. SURPRENANT: YOUR HONOR, I WOULD MOVE  
12 TRIAL 1510-A-73 INTO EVIDENCE, TRIAL EXHIBIT.

13 MR. WEINGART: SORRY, JUDGE, I'M TRYING TO  
14 FIND IT.

15 THE COURT: IS THIS A MULTI-PAGED EXHIBIT?  
16 WE'RE --

11:40AM

17 MR. SURPRENANT: IT'S A ONE-PAGE EXHIBIT, YOUR  
18 HONOR.

19 THE COURT: LET MR. WEINGART TAKE A LOOK AT  
20 IT.

11:40AM

21 (PAUSE) +

22 MR. WEINGART: NO OBJECTION.

23 THE COURT: IT WILL BE ADMITTED.

24

25 (EXHIBIT 1510-A-73 ADMITTED.)+

11:40AM

26

27 BY MR. SURPRENANT:

28 Q NOW, THIS IS KIND OF UNUSUAL FORM OF AN

1 E-MAIL.

2 CAN YOU TELL US HOW IT IS THAT -- THE  
3 PROCESS THAT LED TO ELYSIUM GETTING THIS E-MAIL IN THIS  
4 FORM.

5 A WELL, THIS E-MAIL IS ONE THAT WE RECOVERED 11:41AM  
6 FROM THE COMPUTERS THAT WE WERE EXAMINING. SO IT SAVES  
7 IT, NOT IN A FORM WE'RE USED TO, BUT IT SAVES IT IN A  
8 VERY RAW FORM. JUST THE STRAIGHT TEXT THAT REPRESENTS  
9 WHAT'S IN THE E-MAIL.

10 Q MIKE, COULD YOU HIGHLIGHT THE DATE OF THAT 11:41AM  
11 DOCUMENT.

12 SO, THIS IS A KIND OF A LITERAL  
13 DOUBLELINE E-MAIL, KIND OF BROKEN UP; IS THAT RIGHT?

14 A THAT'S RIGHT.

15 Q COULD YOU TELL US -- LEAD US THROUGH THE DATE, 11:41AM  
16 SENDER, WHO WAS SENT AND WHO IT WAS SENT TO?

17 A AS YOU CAN SEE, ON LINE 9 SENDER,  
18 ALLYSON PFEIFFER AND RECIPIENTS LISTED ON LINE 15,  
19 CRIS SANTA ANA.

20 LINE 20, LOU LUCIDO; 11:41AM

21 LINE 25, BARBARA VAN EVERY;

22 LINE 30, GALLIGAN;

23 LINE 35, PHIL BARACH;

24 LINE 40, VINCENT FIORILLO.

25 THE TEXT OF THE E-MAIL IS LOCATED ON 11:42AM  
26 LINES 45 THROUGH 47.

27 HERE ARE SOME M.B.S. PROCESS PAGES FOR  
28 US. CAN YOU LET ME KNOW IF YOU HAVE ANY CHANGES.



1 ATTACHED TO THIS E-MAIL WAS ONE OF THE  
2 DERIVED VERSIONS OF THE M.B.S. PROCESS SLIDE.

3 Q DID YOUR FORENSIC INVESTIGATION INDICATE WHEN  
4 MR. SANTA ANA DELETED THE M.B.S. PROCESS SLIDE OR DO  
5 SOMETHING ELSE WITH IT? 11:42AM

6 A OUR INVESTIGATION SHOWED THAT MR. SANTA ANA  
7 HAD -- OR THAT MR. SANTA ANA'S COMPUTER HAD BEEN USED  
8 TO SAVE OFF THE SLIDE DECK AND SAVE IT TO THE  
9 COMPUTER -- FROM THE COMPUTER TO THE E-MAIL.

10 Q TURNING TO A SLIGHTLY DIFFERENT TOPIC, IN YOUR 11:42AM  
11 INVESTIGATION, DID YOU IDENTIFY INSTANCES WHERE TCW  
12 INFORMATION HAD BEEN OPENED ON EITHER PERSONAL DEVICES  
13 OF DOUBLELINE EMPLOYEES OR ON DOUBLELINE COMPUTERS  
14 ITSELF?

15 A YES. 11:42AM

16 Q NOW, AS A COMPUTER SCIENTIST, COMPUTER  
17 FORENSIC SCIENTIST, CAN YOU THINK OF A WAY YOU CAN OPEN  
18 A DOCUMENT AND CLOSE IT WITHOUT LOOKING AT THE SCREEN?

19 A THAT'S -- THAT'S POSSIBLE, BUT I DON'T KNOW  
20 WHY YOU WOULD DO THAT. 11:43AM

21 Q IF SOMEONE OPENED UP AN ELECTRONIC FILE AND  
22 TOOK NOTES -- WITHDRAW THE QUESTION, YOUR HONOR.

23 LET'S TURN TO -- IT'S IN VOLUME III,  
24 TRIAL EXHIBIT 1510-A-18. I THINK IT IS IN EVIDENCE.

25 THIS IS, AGAIN, THE FILE LIST ASSOCIATED 11:43AM  
26 WITH WHAT?

27 A THIS IS THE FILE LIST THAT SHOWS THE FOURTH --  
28 APPROXIMATELY 4,000 SOURCE CODE AND SOURCE CODE-RELATED

1 FILES COPIED TO MR. MOORE'S USB DRIVE ON DECEMBER 4TH,  
2 2009.

3 Q MIKE, COULD YOU DISPLAY FOR IDENTIFICATION  
4 TRIAL EXHIBIT 1510-A-54.

5 AND, MR. HICKS, THAT'S IN VOLUME I. 11:43AM

6 COULD YOU TELL US WHAT THAT IS.

7 A THIS IS A FILE LIST WHICH DOCUMENTS THE  
8 EXISTENCE OF A SHORTCUT FILE AND THE ASSOCIATED TIME  
9 STAMPS AND METADATA ASSOCIATED WITH THAT SHORTCUT FILE  
10 FROM MR. MOORE'S COMPUTER. 11:44AM

11 Q WHAT DOES IT SHOW --

12 YOUR HONOR, EXCUSE ME. I'M SORRY.

13 I WOULD OFFER TRIAL EXHIBIT 1510-A-4  
14 INTO EVIDENCE.

15 THE COURT: ANY OBJECTION? 11:44AM

16 MR. WEINGART: NO OBJECTION.

17 THE COURT: IT WILL BE ADMITTED.

18

19 (EXHIBIT 1510-A-54 ADMITTED.)+

20

21 THE WITNESS: WHAT THIS SHOWS IS THAT -- IF WE  
22 CAN GO BRIEFLY BACK TO 18 -- THE SOURCE CODE FILES THAT  
23 WERE -- THAT WERE SAVED TO MR. MOORE'S USB DRIVE, IF  
24 YOU LOOK IN COLUMN C ON THE PATH, YOU SEE IT SAYS:  
25 \MYDOCUMENTS.ZIP. 11:44AM

26 THE SOURCE CODE FILES WEREN'T JUST KIND  
27 OF DIRECTLY TO THE USB DRIVE. THEY WERE PUT IN ZIP  
28 FILE, WHICH IS A WAY OF ARCHIVING AND COMPRESSING

1 TOGETHER SO YOU CAN STORE OR TRANSPORT MATERIAL MORE  
2 EASILY.

3 SO THIS ZIP FILE, ESSENTIALLY IT'S A  
4 SINGLE FILE THAT HAS ALL THE OTHER FILES INSIDE IT.

5 NOW, IF WE GO BACK TO EXHIBIT 54,  
6 PLEASE.

11:45AM

7 YOU CAN SEE HERE IS THAT THIS ZIP FILE  
8 WAS OPENED, AND WE KNOW THAT BECAUSE ONE OF THE  
9 SHORTCUTS THAT GETS CREATED, SOMETIMES WHEN YOU OPEN A  
10 FILE, GOT CREATED.

11:45AM

11 THE SHORTCUT GOT CREATED ON  
12 DECEMBER 17TH, 2009 AT 3:19 P.M., MEANING THAT'S THE  
13 APPROXIMATE DATE AND TIME THAT THIS FILE WAS OPENED.

14 IT ALSO -- SHORTCUT WAS ALSO MODIFIED.  
15 IT WAS UPDATED IN COLUMN F AT 7:27 P.M.

11:45AM

16 WHAT THIS TELLS US IS THAT THIS ZIP FILE  
17 OF CODE WAS OPENED ON AT LEAST TWO OCCASIONS ON  
18 DECEMBER 17TH, APPROXIMATELY 3:19 P.M., AT  
19 APPROXIMATELY 7:27 P.M. AGAIN.

20 Q DO WE KNOW HOW LONG THEY WERE OPENED?

11:45AM

21 A WE DON'T. WE CAN'T TELL HOW LONG OR HOW MANY  
22 TIMES IT MIGHT HAVE BEEN OPENED IN BETWEEN THOSE TWO  
23 TIMES. WE CAN'T TELL --

24 Q DID YOU, IN YOUR INVESTIGATION, REACH ANY  
25 CONCLUSIONS ABOUT WHETHER FILES AND DEVICES ASSOCIATED  
26 WITH MR. J.P. -- I WON'T TRY TO PRONOUNCE HIS NAME --  
27 WERE OPENED ON DOUBLELINE COMPUTERS?

11:46AM

28 A WE DID.

1 Q WERE YOU ABLE TO -- DID YOU OBTAIN A FORENSIC  
2 IMAGE OF AN EXTERNAL DEVICE THAT WAS THAT WAS ATTACHED  
3 BOTH TO MR. J.P. 'S, TCW COMPUTER AND TO HIS DOUBLELINE  
4 COMPUTER?

5 A WELL, DEPENDS ON WHICH ONE WE'RE TALKING  
6 ABOUT.

11:46AM

7 BUT THERE WAS -- THERE WAS CERTAINLY ONE  
8 DEVICE FOR WHICH WE DID NOT OBTAIN A FORENSIC IMAGE.

9 Q WELL, LET'S GET AT IT THIS WAY.

10 IF WE COULD GO TO 1510-A-53, IF WE CAN  
11 DISPLAY FOR IDENTIFICATION. IT'S IN VOLUME I.

11:46AM

12 THANK YOU.

13 YOUR HONOR, YOU WILL RECALL THAT PASSED  
14 UP A STIPULATION FROM THE PARTIES.

15 THE COURT: YES.

11:47AM

16 MR. SURPRENANT: I HAVE INTENDED YOUR HONOR  
17 WOULD READ IT PRIOR TO MR. HICKS. I THINK WOULD BE  
18 APPROPRIATE.

19 THE COURT: I DID TOO. I PUT IT RIGHT IN  
20 FRONT OF ME SO I WOULDN'T FORGET.

11:47AM

21 WOULD YOU LIKE ME TO READ IT NOW?

22 MR. SURPRENANT: YES, YOUR HONOR. THANK YOU.

23 THE COURT: OKAY.

24 LADIES AND GENTLEMEN, I TOLD YOU EARLIER  
25 A STIPULATION IS SOMETHING THAT YOU'LL ACCEPT THE FACTS  
26 AS HAVING BEEN PROVED. THE PARTIES AGREE TO THIS.

11:47AM

27 THE PARTIES STIPULATE THAT ON  
28 FEBRUARY 19TH, 2010, WESTERN

1 DIGITAL SENT AN E-MAIL TO THE GMAIL  
2 ACCOUNT OF JIRAINDIRA PURUSHOTHAMAN  
3 J.P. INFORMING MR. PURUSHOTHAMAN  
4 THAT WESTERN DIGITAL HAD RECEIVED A  
5 WESTERN DIGITAL 320 GIGABYTE  
6 EXTERNAL DRIVE; THAT  
7 MR. PURUSHOTHAMAN HAD RETURNED TO  
8 THEM UNDER WARRANTY AND TO OBTAIN A  
9 REPLACEMENT DRIVE. WESTERN  
10 DIGITAL'S POLICY IS THAT WHEN IT  
11 RECEIVES A RETURNED DRIVE SUCH AS  
12 THIS, ALL DATA -- DATA IS  
13 COMPLETELY ERASED FROM THE DRIVE  
14 AND CANNOT BE RECOVERED.

11:47AM

11:48AM

15 THAT'S THE EXTENT OF THE STIPULATION.  
16 YOU HAVE TO ACCEPT THOSE FACTS.

11:48AM

17 MR. SURPRENANT: THANK YOU VERY MUCH, YOUR  
18 HONOR.

19 Q COULD WE DISPLAY FOR IDENTIFICATION TRIAL  
20 EXHIBIT 1510-A-53.

11:48AM

21 COULD YOU TELL US WHAT THAT IS,  
22 MR. HICKS?

23 A EXHIBIT -53 FROM MY EXPERT REPORT. IT'S A  
24 FILE LIST, LISTING OFF A SERIES OF SHORTCUT FILES FROM  
25 MR. PURUSHOTHAMAN'S PERSONAL COMPUTER, HIS DOUBLELINE  
26 DESKTOP AND DOUBLELINE LAPTOP.

11:48AM

27 Q DID YOU PREPARE THIS EXHIBIT?

28 A I DID.

1 Q WAS IT INCLUDED IN, AS AN EXPERT -- AS AN  
2 EXHIBIT TO YOUR EXPERT REPORT?

3 A YES, IT WAS EXHIBIT 53.

4 Q WHERE DID THE DATA COME FROM?

5 A FROM THE FORENSIC IMAGES, EITHER TCW IMAGE WE  
6 HAD, OR THE DOUBLELINE IMAGES WE HAD ACCESS TO.

11:49AM

7 MR. SURPRENANT: I WOULD OFFER 1510-A-53 INTO  
8 EVIDENCE.

9 THE COURT: ANY OBJECTION?

10 MR. WEINGART: NO, YOUR HONOR.

11:49AM

11 THE COURT: IT WILL BE ADMITTED.

12

13 (EXHIBIT 1510-A-53 ADMITTED.)+

14

15 BY MR. SURPRENANT:

11:49AM

16 Q MIKE, COULD YOU TELL US WHAT THIS -- WHAT THIS  
17 SHOWS WITH RESPECT TO MR. J.P. OPENING TCW FILES ON HIS  
18 DOUBLELINE DEVICES?

19 A WHAT THIS DOCUMENT -- THESE ARE THE SAME  
20 SHORTCUTS WE WERE TALKING ABOUT BEFORE, WHERE OPENING A  
21 DOCUMENT CAN CAUSE ONE OF THESE SHORTCUTS TO BE CREATED  
22 OR BE MODIFIED.

11:49AM

23 WHAT THESE SHORTCUTS TELL US FROM  
24 DECEMBER 14TH, 2009, STRETCHING TO FEBRUARY 3RD, 2010,  
25 NINE DIFFERENT TCW DOCUMENTS WERE OPENED ON EITHER  
26 MR. PURUSHOTHAMAN'S PERSONAL COMPUTER, HIS DOUBLELINE  
27 DESKTOP, OR DOUBLELINE LAPTOP.

11:49AM

28 Q WERE THOSE DOUBLELINE DOCUMENTS OR TCW

1 DOCUMENTS?

2 A TCW DOCUMENTS.

3 Q AND THE SHORTCUTS, DO THEY TELL US HOW MANY  
4 TIMES THEY WERE OPENED, OR ONLY LAST TIME?

5 A THEY DON'T -- THEY DON'T TELL US RELIABLY HOW  
6 MANY TIMES THEY WERE OPENED.

11:50AM

7 Q AND DID YOU DO A CONVERSION -- IF YOU WERE TO  
8 PRINT OUT THESE TCW DOCUMENTS THAT MR. J.P. WAS OPENING  
9 IN DECEMBER AND JANUARY AND FEBRUARY, HOW MANY PAGES  
10 THEY WOULD BE?

11:50AM

11 A IF WE USE THE SAME METRIX WE USED EARLIER,  
12 LEXIS NEXIS MULTIPLIERS, WE GET ABOUT 11,000 PAGES.

13 Q TURNING TO THE TOPIC OF THE LOSS OR  
14 DESTRUCTION OF TCW DOCUMENTS, ARE THERE FORENSIC  
15 TECHNIQUES THAT HELP A SCIENTIST DETECT THE LOSS OR  
16 DESTRUCTION OF ELECTRONIC DATA?

11:50AM

17 A YES.

18 Q IS THERE FORENSIC SOFTWARE THAT ASSISTS YOU IN  
19 THAT?

20 A YES.

11:50AM

21 Q AND HOW SO?

22 A YOU CAN USE FORENSIC SOFTWARE, FOR EXAMPLE, TO  
23 LOOK FOR DELETED MATERIAL OR FRAGMENTS OF MATERIAL.

24 Q WHAT IS CONNECTIVITY ANALYSIS?

25 A CONNECTIVITY ANALYSIS IS WHEN YOU TAKE A  
26 COMPUTER, OR THE FORENSIC IMAGE OF A COMPUTER, AND YOU  
27 DO A -- ANALYZE PARTICULAR DATA ON IT TO TRY TO FIGURE  
28 OUT WHAT KINDS OF DEVICES WERE PLUGGED INTO IT OR

11:51AM

1 CONNECTED TO IT.

2 Q AND DID YOU -- ELYSIUM AND YOUR TEAM PERFORM A  
3 CONNECTIVITY ANALYSIS ON THE DOUBLELINE COMPUTERS?

4 A WE DID.

5 Q WHEN WERE THE IMAGES, FORENSIC IMAGES THAT YOU  
6 DID A CONNECTIVITY ANALYSIS, WHEN WERE THEY CREATED?

11:51AM

7 A MOST OF THEM WERE CREATED BETWEEN MARCH 10 AND  
8 MARCH 20TH OF 2010.

9 Q WHEN YOU DID A CONNECTIVITY ANALYSIS AT  
10 ELYSIUM DIGITAL, DID YOU FIND ANY EVIDENCE THAT WAS  
11 RELEVANT TO YOUR INVESTIGATION?

11:51AM

12 A WE FOUND EVIDENCE OF DEVICES THAT HAD BEEN  
13 PLUGGED INTO THOSE COMPUTERS THAT WE HAD NOT RECEIVED  
14 FORENSIC IMAGES FOR.

15 Q DID YOU LEARN IN YOUR INVESTIGATION WHETHER  
16 THE STROZ FRIEDBERG FIRM HAD DONE A CONNECTIVITY  
17 ANALYSIS?

11:51AM

18 A WE LEARNED THEY HAD DONE A CONNECTIVITY  
19 ANALYSIS ON THE PERSONAL COMPUTERS, BUT HAD NOT DONE  
20 ONE ON THE DOUBLELINE COMPUTERS.

11:52AM

21 Q AND REMIND US WHO -- THE STROZ FRIEDBERG FIRM,  
22 WHO WERE THEY WORKING FOR?

23 A THEY WERE RETAINED BY DOUBLELINE.

24 Q AND WHEN YOU DID A CONNECTIVITY ANALYSIS ON  
25 THE DOUBLELINE COMPUTERS THAT THE STROZ FRIEDBERG  
26 HADN'T DONE, AND IDENTIFIED THE EVIDENCE OF DEVICES  
27 THAT HADN'T BEEN REMEDIATED, WHAT DID YOU DO?

11:52AM

28 A WE NOTIFIED ATTORNEYS FOR TCW.



1 Q BASED ON YOUR INVESTIGATION, WHAT IS YOUR  
2 UNDERSTANDING OF WHAT THE RESPONSE WAS WHEN YOU CALLED  
3 OUT THE DEVICES THAT HAD NOT BEEN PROVIDED?

4 A IN SOME CASES --

5 MR. WEINGART: OBJECTION.

11:52AM

6 THE COURT: I'LL SUSTAIN THE OBJECTION.

7 GO AHEAD.

8 BY MR. SURPRENANT:

9 Q AS YOU CONTINUED YOUR INVESTIGATION, WERE YOU  
10 PROVIDED ALL THE DEVICES YOU WERE REQUESTED?

11:52AM

11 A NO.

12 Q AND DID YOU FORM AN UNDERSTANDING WHY YOU WERE  
13 NOT PROVIDED ALL THE DEVICES YOU REQUESTED?

14 A YES.

15 MR. WEINGART: OBJECTION.

11:52AM

16 THE COURT: OVERRULED.

17 BY MR. SURPRENANT:

18 Q WHAT'S THE -- WHAT WAS THE UNDERSTANDING --

19 MR. WEINGART: THERE'S A MOTION IN LIMINE ON  
20 THIS.

11:53AM

21 THE COURT: APPROACH, THEN. BECAUSE, AGAIN, I  
22 DON'T REMEMBER THE SPECIFIC MOTION.

23

24 (SIDE-BAR CONFERENCE HELD) +

25 THE COURT: I DON'T KNOW THE PARTICULARS.

11:53AM

26 WHAT WAY ARE WE GOING WITH THIS?

27 MR. WEINGART: I'M NOT SURE WHERE HE'S GOING.

28 THE POINT, I BELIEVE, THERE'S A MOTION

1 IN LIMINE REGARDING COMMUNICATION BETWEEN THE  
2 ATTORNEYS, REGARDING THE REMEDIATION PROGRAM.

3 IF HE WANTS TO GO THERE, IT'S FINE; THE  
4 DOOR IS OPEN FOR ME TO GET INTO THE OTHER DISCUSSIONS  
5 ABOUT INFORMATION THAT TCW COULD HAVE PROVIDED, BUT DID  
6 NOT TO ASSIST ON REMEDIATION. 11:53AM

7 THE COURT: I REMEMBER THAT.

8 MR. WEINGART: IF HE WANTS TO GO THERE, HE  
9 OPENED THE DOOR.

10 MR. SURPRENANT: I DID NOT OPEN THE DOOR. I'M  
11 ASKING, DID HE GET ALL THE DEVICES BACK THEY  
12 IDENTIFIED. 11:54AM

13 THE COURT: ALL THE ONES HE REQUESTED?

14 MR. SURPRENANT: YES.

15 THE COURT: AND IF HE SAYS NO, I DIDN'T. 11:54AM

16 MR. SURPRENANT: I'LL LEAVE IT AT THAT, YOUR  
17 HONOR.

18 THE COURT: I THINK THAT'S WHAT HE SAID. IF  
19 WE GO BEYOND THAT, WE'LL GET INTO AN AREA OF THESE  
20 COMMUNICATIONS, I MEAN. 11:54AM

21 MR. SURPRENANT: I HAD NOT -- I HAD NOT  
22 FORESEEN THAT. I DON'T NECESSARILY AGREE WITH IT, BUT  
23 I UNDERSTAND.

24 THE COURT: I'M NOT SURE, EITHER. BUT I'D  
25 RATHER NOT HAVE THAT PROBLEM IF I CAN AVOID IT. 11:54AM

26 THANK YOU.

27 MR. WEINGART: THANK YOU.

28 MR. SURPRENANT: THANK YOU.

1 (SIDE-BAR CONFERENCE CONCLUDED.) +

2 BY MR. SURPRENANT:

3 Q CONTINUING IN YOUR INVESTIGATION, DID YOU  
4 IDENTIFY ANY INVESTIGATION THAT DOUBLELINE EMPLOYEES  
5 HAD USED SECURE DELETION SOFTWARE?

11:54AM

6 A YES.

7 Q AND ARE YOU ABLE TO DETECT THAT?

8 A SOMETIMES YOU CAN. SOMETIMES YOU CAN TELL  
9 BASED ON PATTERNS IN THE DATA. SOMETIMES YOU CAN TELL  
10 THAT SECURE DELETION HAS BEEN CARRIED OUT.

11:55AM

11 Q CAN FAILURE TO PRESERVE FORENSIC EVIDENCE  
12 PREVENT OR MAKE MORE DIFFICULT OF IDENTIFICATION OF  
13 ELECTRONIC FILES THAT HAVE BEEN LOST OR DESTROYED?

14 A YES.

15 Q WOULD NOT IDENTIFYING DEVICES BEING ONE SUCH  
16 FACTOR?

11:55AM

17 A YES, IF YOU HAVE AN ENTIRE DEVICE NOT  
18 IDENTIFIED, THAT CREATES A LOT OF POTENTIAL FOR -- FOR  
19 EVIDENCE MISSING AND NOT INFORMING YOUR -- WHAT YOU  
20 LEARNED.

11:55AM

21 Q MORE GENERALLY, ARE THERE INHERENT LIMITATIONS  
22 ON THE ABILITY TO DETECT LOST OR DESTROYED EVIDENCE?

23 A YES.

24 Q WHAT IS THAT?

25 A WELL, IF YOU KNOW, IF YOU DON'T HAVE THE  
26 EVIDENCE, THEN IT'S FREQUENTLY YOU DON'T KNOW THAT YOU  
27 DON'T HAVE IT.

11:55AM

28 Q DID MR. DAMIANI -- DID YOU IDENTIFY ANY

1 FORENSIC EVIDENCE THAT MR. DAMIANI DESTROYED ELECTRONIC  
2 FILES?

3 A YES.

4 Q WHAT EVIDENCE DID YOU UNCOVER?

5 A WE DISCOVERED THAT MR. DAMIANI'S PERSONAL  
6 COMPUTER HAD ABOUT 6,400, AT LEAST 6,400 FILES SECURELY  
7 DELETED FROM IT SHORTLY BEFORE IT WAS TURNED IN FOR  
8 REMEDIATION.

11:56AM

9 Q DO YOU RECALL THE DATES WHEN IT WAS DELETED?

10 A THAT I DON'T.

11:56AM

11 WE CAN'T NECESSARILY ACTUALLY KNOW THAT  
12 ACCURATELY.

13 Q WERE THE -- MR. DAMIANI, WAS HIS LAPTOP BACKED  
14 UP?

15 A HE DID USE A BACKUP DRIVE, YES.

11:56AM

16 Q DID THAT CAPTURE ALL OF THE DELETED DATA?

17 A WE -- WE DON'T KNOW BECAUSE WE DON'T KNOW IT  
18 WAS DELETED. THE BEST FORENSIC ANALYSIS INDICATES THAT  
19 IT DID NOT. BUT WE CAN'T BE SURE BECAUSE OF THE NATURE  
20 OF THE SECURE DELETION.

11:56AM

21 Q WHAT TYPE OF FILES WERE DELETED?

22 A WE REALLY DON'T KNOW.

23 Q WERE THEY INTERNET FILES?

24 A THERE WERE CERTAINLY FILES THAT WERE -- WE  
25 BELIEVE THAT SOME OF THOSE FILES WERE RELATED TO  
26 INTERNET ACTIVITY BECAUSE THEY WERE -- IN SOME OF THEM  
27 APPEAR TO HAVE BEEN IN FOLDERS, TYPICALLY RELATED TO  
28 INTERNET ACTIVITY.

11:57AM

1 Q WAS THE MATERIAL THAT WAS DELETED CONSISTENT  
2 WITH THE USE OF WEBSITES, LIKE GMAIL?

3 A THE MATERIAL WOULD BE -- YOU KNOW, THE  
4 SECURELY DELETED FILES IN THE WEB AREAS, IF YOU WILL,  
5 WOULD BE CONSISTENT WITH MATERIAL BEING DOWNLOADED FROM  
6 A WEBSITE.

11:57AM

7 THAT WOULD INCLUDE AS POSSIBILITY  
8 MATERIAL BEING DOWNLOADED FROM A WEB-BASED E-MAIL  
9 ACCOUNT.

10 Q DID YOU FIND ANY EVIDENCE THAT J.P. HAD  
11 DESTROYED OR LOST EVIDENCE?

11:57AM

12 A YES.

13 Q YOU SEE THAT BOX THAT IS OPENED?

14 A YES, I DO.

15 Q THAT'S EXHIBIT 1510-A-14.

11:57AM

16 COULD YOU GET THAT OUT?

17 WHY DON'T YOU SIT DOWN.

18 A I GOT IT.

19 Q YOU'RE A SCIENTIST.

20 A I'LL TRY TO AVOID KILLING MYSELF.

11:58AM

21 Q WAS THAT AN EXHIBIT TO YOUR EXPERT REPORT?

22 A YES.

23 THIS WAS EXHIBIT 14 TO MY EXPERT REPORT.

24 THE COURT: DO WE HAVE A TRIAL EXHIBIT NO. FOR  
25 IT?

11:58AM

26 MR. SURPRENANT: TRIAL EXHIBIT 1510-A-14.

27 Q COULD YOU DISPLAY FOR IDENTIFICATION JUST THE  
28 FIRST PAGE.

1                   COULD YOU TELL US WHAT THAT IS.

2           A        THIS IS THE LISTING OF FILES THAT WERE COPIED  
3 ONTO -- INTO A DIRECTORY CALLED JIRAIN V2 ON  
4 MR. PURUSHOTHAMAN'S TCW DESKTOP.

5           Q        IS THAT WHAT WAS DOWNLOADED? WAS THAT WHAT  
6 WAS COPIED TO THE FOLDER OR IS IT SOMETHING ELSE? 11:58AM

7           A        THIS IS THE LIST OF THE FILES THAT WERE COPIED  
8 INTO THAT FOLDER.

9           Q        HOW MANY FILES WERE COPIED?

10          A        ABOUT 13,000. 11:59AM

11          Q        DID YOU CREATE THAT FILE LIST BY THE SAME  
12 TECHNIQUE YOU DESCRIBED HOW YOU CREATED THE OTHER FILE  
13 LIST?

14          A        I DID.

15                   MR. SURPRENANT: YOUR HONOR, I WOULD MOVE  
16 EXHIBIT 1510-A-14 INTO EVIDENCE. 11:59AM

17                   THE COURT: ANY OBJECTION?

18                   MR. WEINGART: NO, YOUR HONOR.

19                   THE COURT: IT WILL BE ADMITTED.

20 11:59AM

21                                   (EXHIBIT 1510-A-14 ADMITTED.)+

22

23 BY MR. SURPRENANT:

24          Q        WHAT WAS THE DATE THOSE FILES WERE CREATED?

25          A        SEPTEMBER 3RD, 2009. 11:59AM

26          Q        DID YOU FIND ANY EVIDENCE THAT THE DOCUMENTS  
27 IN THAT DIRECTORY WERE LATER COPIED TO A DRIVE?

28          A        YES.

1 Q WHAT DID YOU FIND?

2 A WE SAW EVIDENCE CONSISTENT WITH THIS FOLDER OF  
3 MATERIAL BEING COPIED ONTO A 3- -- WESTERN DIGITAL  
4 320-GIGABYTE DRIVE BELONGING TO MR. PURUSHOTHAMAN.

5 Q DID YOU EVER EXAMINE A FORENSIC IMAGE OF THAT  
6 DRIVE? 11:59AM

7 A WE DID NOT.

8 Q WHY NOT?

9 A BECAUSE THE DRIVE WAS SENT BACK TO WESTERN  
10 DIGITAL AND WIPED CLEAN. 11:59AM

11 Q WHEN IT WAS WIPED CLEAN, WAS THERE ANY DATA  
12 THAT YOU LOST?

13 A WELL, SURE.

14 WHAT WE LOST WAS, FOR STARTERS, WE LOST  
15 ALL THE METADATA FOR ALL THESE 13,000 FILES. THE  
16 METADATA MIGHT HAVE TOLD US WHETHER FILES MIGHT HAVE  
17 BEEN MODIFIED. 12:00PM

18 WE ALSO LOST WHATEVER ELSE WAS ON THE  
19 DRIVE, WHICH WE CAN'T POSSIBLY KNOW WHAT IT IS.

20 Q DID, IN YOUR INVESTIGATION, YOU LEARN WHETHER  
21 WESTERN DIGITAL SENT MR. J.P. A REPLACEMENT DRIVE? 12:00PM

22 A THEY DID.

23 ACCORDING TO THE E-MAILS, THEY SENT HIM  
24 A DRIVE FIRST, BEFORE HE RETURNED THE OLD ONE. THEY  
25 SENT HIM A REPLACEMENT DRIVE FIRST. 12:00PM

26 Q DID YOUR INVESTIGATION IDENTIFY WHETHER ONE OR  
27 BOTH OF THOSE DRIVES, WERE ATTACHED TO J.P.'S  
28 DOUBLELINE COMPUTER IN FEBRUARY OF 2010?

1           A        YES.  IN FEBRUARY OF 2010 BOTH DRIVES WERE  
2   CONNECTED TO MR. PURUSHOTHAMAN'S COMPUTER.

3           Q        WAS THERE ANY DATA THAT WAS COPIED FROM ONE OF  
4   THE FILES TO THE OTHER FILE?

5           A        YES.  A SIGNIFICANT AMOUNT OF MATERIAL,  
6   INCLUDING SUBSTANTIAL AMOUNT OF TCW MATERIAL, WAS  
7   COPIED FROM THE OLD DRIVE TO THE NEW DRIVE, AND THEN  
8   SUBSEQUENTLY, AT SOME LATER POINT, DELETED FROM THE NEW  
9   DRIVE.

12:01PM

10          Q        THANK YOU.

12:01PM

11                    I THINK THAT FILE LIST, TRIAL  
12   EXHIBIT 1510-A-15 IS IN VOLUME II.  IF WE CAN GET THAT  
13   OUT.

14                    IF YOU COULD DISPLAY THAT FIRST PAGE,  
15   PLEASE.

12:01PM

16                    COULD YOU TELL US WHAT 1510-A-15 IS.

17           A        THIS WAS EXHIBIT 15 TO MY EXPERT REPORT.  IT  
18   IS A FILE LIST CREATED, LISTING OFF DELETED TCW FILES  
19   FROM THE -- THAT WE IDENTIFIED FROM THE FORENSIC IMAGE  
20   OF THE REPLACEMENT 320-GIGABYTE DRIVE.

12:02PM

21                    MR. SURPRENANT:  YOUR HONOR, I WOULD MOVE  
22   EXHIBIT 1510-A-15 INTO EVIDENCE.

23                    THE COURT:  ANY OBJECTION?

24                    MR. WEINGART:  NO OBJECTION.

25                    THE COURT:  IT WILL BE ADMITTED

12:02PM

26

27                    (EXHIBIT 1510-A-15 ADMITTED.)+

28   ///



1 BY MR. SURPRENANT:

2 Q THE FACT THAT WE HAVE -- AS I UNDERSTAND IT,  
3 JUST TO MAKE IT CLEAR, YOU WERE PROVIDED A FORENSIC  
4 IMAGE OF THE REPLACEMENT WESTERN DIGITAL 320-GIGABYTE  
5 DRIVE, CORRECT?

12:02PM

6 A THAT'S RIGHT.

7 Q THERE WAS SOME EVIDENCE OF COPYING BETWEEN THE  
8 OLD AND THE NEW AND THEN DELETION; IS THAT CORRECT?

9 A THAT'S RIGHT.

10 Q WHAT DATA DO WE HAVE ON -- WITH RESPECT TO THE  
11 NEW DRIVE?

12:02PM

12 A WELL, I MEAN, WE KNOW -- WE HAVE THE LISTING  
13 OF DELETED FILES. WE HAVE THE COMPLETE FORENSIC IMAGE  
14 FOR IT.

15 Q AND DOES THAT TELL US ABOUT EVERYTHING THAT  
16 WAS ON THE OLD DRIVE?

12:03PM

17 A NO. IT -- IT DOESN'T TELL US ABOUT THE STATE  
18 OF THE METADATA ON THE OLD DRIVE.

19 IT ALSO DOESN'T TELL US ABOUT WHAT ELSE  
20 WAS ON THE OLD DRIVE.

12:03PM

21 Q DID YOUR INVESTIGATION FIND ISSUES OF LOSS OF  
22 EVIDENCE WITH RESPECT TO MR. MAYBERRY?

23 A YES.

24 Q AND WHAT EVIDENCE WAS LOST WITH RESPECT TO  
25 MR. MAYBERRY?

12:03PM

26 MR. WEINGART: OBJECTION. CUMULATIVE.

27 THE FLASH DRIVE, MR. MAYBERRY TESTIFIED  
28 ABOUT.

1 THE COURT: OVERRULED.

2 WE'LL GO THROUGH IT QUICKLY. WE HAVE  
3 HAD TESTIMONY ABOUT THIS.

4 MR. SURPRENANT: YES, YOUR HONOR. I WON'T  
5 REPEAT IT.

12:03PM

6 THE COURT: ALL RIGHT. GO AHEAD.

7 MR. SURPRENANT: WE'RE NOW GETTING INTO A  
8 NUANCE. WE'LL GO THROUGH IT AS BRIEFLY AS WE CAN, YOUR  
9 HONOR.

10 THE WITNESS: THAT THE FLASH DRIVE USED TO  
11 COPY MATERIAL FROM TCW TO HIS PARENTS' COMPUTER, AND  
12 WHICH CONTAINED OTHER MATERIAL ON IT AS WELL, IS LOST.  
13 BY MR. SURPRENANT:

12:03PM

14 Q NOW, YOU'RE AWARE OF MR. MAYBERRY'S TESTIMONY  
15 THAT HE DOWNLOADED THE MATERIAL IN HIS FLASH DRIVE, AND  
16 IT WAS LOST TO HIS PARENTS' COMPUTER ON DECEMBER 5TH,  
17 CORRECT?

12:04PM

18 A I AM AWARE.

19 Q WAS THE -- WAS THE DATA THAT WAS DOWNLOADED TO  
20 HIS PARENTS' COMPUTER ALL THE DATA THAT WAS ON THE  
21 FLASH DRIVE?

12:04PM

22 A NO.

23 MR. WEINGART: OBJECTION. I DON'T BELIEVE  
24 THAT'S IN THE EXPERT OPINION.

25 THE COURT: SUSTAINED. WE'RE GOING BEYOND THE  
26 SCOPE. I DON'T KNOW IF WE ARE OR NOT. WE'LL TAKE IT  
27 UP AT THE BREAK.

12:04PM

28 MOVE ON TO SOMETHING ELSE.

1 MR. SURPRENANT: YES, YOUR HONOR. THANK YOU.

2 Q LET'S TURN TO THE ISSUE OF THE REMEDIATION  
3 PROCESS.

4 HAVE YOU FORMED ANY OPINIONS ABOUT  
5 REMEDIATION PROCESS DONE AT DOUBLELINE BY  
6 STROZ FRIEDBERG?

12:04PM

7 A I HAVE.

8 Q COULD WE DISPLAY FOR IDENTIFICATION TRIAL  
9 EXHIBIT 2125.

10 COULD YOU TELL US WHAT THIS IS.

12:05PM

11 A THESE ARE SERIES OF QUOTATIONS OF DOUBLELINE  
12 COMING FROM DOUBLELINE LEGAL FILINGS. ALL THESE ARE  
13 QUOTATIONS THAT I HAD ALREADY PUT IN MY EXPERT REPORT.

14 Q SO THESE, THE QUOTES HERE ON THIS, WERE QUOTES  
15 BY YOU OF DOUBLELINE LEGAL FILINGS, BUT THEY WERE  
16 QUOTED IN YOUR EXPERT REPORT PROVIDED TO THE  
17 DEFENDANTS?

12:05PM

18 A THAT'S CORRECT.

19 Q DID YOU ANALYZE THE DOUBLELINE POSITION ON  
20 REMEDIATION AGAINST THE EVIDENCE?

12:05PM

21 A I DID.

22 MR. SURPRENANT: YOUR HONOR, I WOULD ASK FOR  
23 LEAVE TO DISPLAY IT.

24 I WON'T ADMIT IT TO EVIDENCE.

25 THE COURT: ANY OBJECTION?

12:05PM

26 MR. WEINGART: NOT TO JUST DISPLAYING IT, YOUR  
27 HONOR, NO.

28 THE COURT: YOU MAY DO SO.

1 BY MR. SURPRENANT:

2 Q THERE'S THREE BULLETS HERE, MR. HICKS. LET'S  
3 DO THE FIRST ONE, MAND THEN WE'LL DO THE SECOND AND  
4 THIRD ONE TOGETHER.

5 COULD YOU PLEASE READ THE FIRST BULLET. 12:06PM

6 A THE FIRST ONE SAYS:

7 REMEDIATION PROCESS WAS, QUOTE:

8 DESIGNED TO AVOID DOUBLELINE'S USE

9 OF PROPRIETARY OR CONFIDENTIAL

10 INFORMATION THAT MIGHT HAVE BEEN IN 12:06PM

11 THE CUSTODY OF FORMER TCW

12 EMPLOYEES.

13 Q AS A COMPUTER SCIENTIST IN COMPUTER FORENSICS,  
14 BASED ON YOUR INVESTIGATION, DID YOU FORM AN OPINION  
15 WHETHER THAT STATEMENT WAS ACCURATE? 12:06PM

16 A I CONCLUDED -- I DID FORM AN OPINION, YES.

17 Q WHAT OPINION DID YOU ARRIVE AT?

18 A I CONCLUDED IT IS NOT ACCURATE.

19 Q WHAT WAS THE BASIS FOR -- WHAT IS THE BASIS  
20 FOR THAT OPINION? 12:06PM

21 A TWO BASIC POINTS.

22 THE FIRST IS THAT THE DOUBLELINE

23 REMEDIATION PROCESS DIDN'T DO A NUMBER OF THINGS THAT

24 ONE WOULD DO IF ONE WERE ACTUALLY ATTEMPTING TO DETECT

25 AND THEN PREVENT USE. 12:06PM

26 THEY DIDN'T DO A CONNECTIVITY ANALYSIS

27 ON THE DOUBLELINE MACHINES, EVEN THOUGH THEY DID THEM

28 ON THE PERSONAL MACHINES. THEY CLEARLY KNEW HOW TO DO

1 IT, AND THEY KNEW IT WAS VALUABLE, BUT DIDN'T DO IT ON  
2 THE COMPANY COMPUTERS.

3 THEY ALSO DIDN'T DO SHORTCUT ANALYSIS.

4 THEY ALSO ALLOWED THE DOUBLELINE  
5 EMPLOYEES TO DECIDE FOR THEMSELVES WHETHER OR NOT TO  
6 BRING IN A PARTICULAR DEVICE. 12:07PM

7 IN OTHER WORDS, EVEN IF THEY HAD, THEY  
8 KNEW ABOUT A PARTICULAR DEVICE, IT WAS UP TO THE  
9 DOUBLELINE EMPLOYEES TO DECIDE WHETHER OR NOT TO BRING  
10 IT IN. 12:07PM

11 ALL OF THAT'S NOT CONSISTENT WITH TRYING  
12 TO -- TRYING TO DETECT WHAT THE PATTERNS OF USE ARE.

13 ADDITIONALLY, THEY DIDN'T LOOK AT  
14 DELETED FILES. THAT'S ANOTHER IMPORTANT THING YOU WANT  
15 TO LOOK AT IF YOU'RE TRYING TO FIGURE OUT IF PEOPLE  
16 USED INFORMATION. YOU WANT TO FIGURE THAT OUT, AND  
17 THEN IF THEY ARE DELETING INFORMATION. 12:07PM

18 AGAIN, IF YOU DON'T LOOK AT HOW PEOPLE  
19 HAVE BEEN USING INFORMATION, IT'S TOUGH TO STOP THEM  
20 FROM USING INFORMATION. 12:07PM

21 AND THE SECOND LARGER CATEGORY OF  
22 REASON, IS THAT I'VE READ THE TESTIMONY OF  
23 MR. REUBEN'S, WHO STATED DIRECTLY THAT THEY DIDN'T  
24 PROCESS AND WAS NOT DESIGNED TO DETECT USE.

25 Q MR. REUBEN'S IN COURT WITH US TODAY. 12:07PM

26 WHAT WAS HIS POSITION?

27 A HIS POSITION WAS THAT THE PROCESS WAS --

28 Q WHAT WAS HIS POSITION AT STROZ FRIEDBERG?

1           A       MR. REUBEN'S POSITION AT STROZ FRIEDBERG, HE'S  
2 THE ONE SUPERVISING THE REMEDIATION PROCESS HERE.

3           Q       IN YOUR REPORT DID YOU CHARACTERIZE THE  
4 REMEDIATION PROCESS AS BEING AN HONOR SYSTEM?

5           A       I DID.

12:08PM

6           Q       WHAT DID YOU MEAN?

7           A       MEANING THAT IF YOU DIDN'T -- YOU WERE  
8 ESSENTIALLY ASKED TO BRING IN DEVICES THAT YOU BELIEVE  
9 MIGHT HAVE TCW STUFF ON THEM, AND THE PEOPLE WHO WERE  
10 BEING ASKED, THAT INCLUDED THE PEOPLE WHO MAY VERY WELL  
11 HAVE COPIED THAT MATERIAL IN THE FIRST PLACE.

12:08PM

12          Q       WAS THERE AN HONOR SYSTEM ASPECT TO EVEN  
13 DECIDING TO TURN IN A DEVICE?

14          A       YES. WHETHER OR NOT TO TURN IN IT AT ALL WAS  
15 UP TO THE INDIVIDUAL CUSTODIAN.

12:08PM

16          Q       IF WE COULD GO AND BLOW UP, MIKE, THE SECOND  
17 AND THIRD BULLETS.

18                    COULD YOU READ THEM, PLEASE.

19          A       THIS SAYS THAT DOUBLELINE HIRED  
20 STROZ FRIEDBERG, QUOTE:

12:08PM

21                    TO GATHER COMPUTER DEVICES IN  
22 ORDER TO REMEDIATE ANY TCW  
23 INFORMATION. END QUOTE.

24                    THE SECOND ONE SAYS:

25                    THEY HIRED STROZ FRIEDBERG,  
26 QUOTE, TO REMOVE ALL SUCH  
27 INFORMATION, PAREN, IN A MANNER  
28 ENTIRELY SUBJECT TO INDEPENDENT

12:09PM

1 REVIEW, CLOSED PAREN. END QUOTE.

2 Q IN YOUR INVESTIGATION, DID YOU FORM AN OPINION  
3 AS TO A COMPUTER SCIENTIST AND COMPUTER FORENSIC  
4 SCIENTIST WHETHER THOSE STATEMENTS WERE ACCURATE OR  
5 NOT?

12:09PM

6 A I CONCLUDED THEY NOT ACCURATE.

7 Q WHAT IS THE BASIS FOR THAT OPINION?

8 A IF YOU THINK ABOUT THE HONOR SYSTEM, REALLY  
9 ALL STROZ FRIEDBERG COULD DO, GIVEN THE HONOR SYSTEM,  
10 THEY COULD TRY TO GATHER COMPUTER DEVICES TO  
11 REMEDIATION NOT ANY TCW INFORMATION, BUT THAT  
12 INFORMATION WHICH WAS VOLUNTARILY TURNED IN POTENTIALLY  
13 BY THE PEOPLE WHO COPIED IT.

12:09PM

14 AND THAT FACT MAKES IT, IN LOOKING AT  
15 THE SECOND QUOTATION NOW, THAT FACT MAKES IT ABSOLUTELY  
16 IMPOSSIBLE FOR PROCESS TO BE SUBJECT TO AN INDEPENDENT  
17 REVIEW.

12:09PM

18 DEVICES IN THIS PROCESS THAT WERE NEVER  
19 TURNED IN, IT'S ABSOLUTELY IMPOSSIBLE FOR AN  
20 INDEPENDENT PARTY TO FIGURE OUT WHETHER EVERYTHING WAS  
21 CLEANED UP.

12:09PM

22 Q DOES THIS ABSTRACT CRITICISM, IN YOUR VIEW,  
23 MR. HICKS, OR DID THE REMEDIATION PROCESS ACTUALLY HAVE  
24 IMPACT ON THE EVIDENCE AVAILABLE TO US IN THIS  
25 LITIGATION AND THE JURY?

12:10PM

26 A IT ABSOLUTELY HAD IMPACT. DEVICES THAT WE  
27 KNOW ABOUT THAT WE'VE NEVER SEEN. AND IF YOU LOOK AT  
28 MR. PURUSHOTHAMAN, BECAUSE HE WAS NOT REQUIRED TO BRING

1 IN HIS 320-GIGABYTE DRIVE. HE WAS SIMPLY ALLOWED TO  
2 SAY HE DIDN'T NEED TO BRING IT IN.

3 WE DIDN'T LEARN ABOUT THAT DRIVE  
4 UNTIL -- THAT DRIVE DIDN'T COME UP IN THIS CASE UNTIL  
5 WE FOUND OUT ABOUT IT WHEN WE DID CONNECTIVITY DRIVE,  
6 AND BY THAT TIME THAT THE DRIVE WAS SENT TO WESTERN  
7 DIGITAL AND DESTROYED.

12:10PM

8 Q WAS MR. J.P. POSSESSING AN EXTERNAL DRIVE WITH  
9 OVER 13,000 TCW DOCUMENTS ON THE DOUBLELINE TRADING  
10 FLOOR IN DECEMBER, JANUARY, AND FEBRUARY, IS THAT  
11 CONSISTENT WITH THE REMEDIATION PROCESS AS IT WAS  
12 ACTUALLY DESIGNED AND EXECUTED?

12:10PM

13 MR. WEINGART: OBJECTION. CUMULATIVE.

14 THE COURT: OVERRULED.

15 MR. WEINGART: ARGUMENTATIVE.

12:10PM

16 THE COURT: OVERRULED.

17 THE WITNESS: IT IS CONSISTENT.

18 BY MR. SURPRENANT:

19 Q EXCUSE ME?

20 A IT IS CONSISTENT WITH HOW IT WAS ACTUALLY  
21 DONE.

12:11PM

22 Q IS IT CONSISTENT WITH HOW DOUBLELINE DESCRIBED  
23 THE REMEDIATION PROCESS IN THE COURT FILES?

24 A IT IS NOT.

25 MR. SURPRENANT: YOUR HONOR, SUBJECT TO  
26 TESTIMONY ON MR. MAYBERRY'S THUMB DRIVE, I HAVE NO  
27 FURTHER QUESTIONS AT THIS TIME.

12:11PM

28 THE COURT: WHY DON'T WE TAKE OUR RECESS, AND



1 WE'LL DECIDE IF THERE'S -- IF THERE'S A LITTLE BIT  
2 MORE.

3 COME BACK IN ABOUT 20 MINUTES, LADIES  
4 AND GENTLEMEN.

5

12:12PM

6 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +

7

8 THE COURT: MR. SURPRENANT. WHAT IS THE ISSUE  
9 ON THE MAYBERRY FLASH DRIVE?

10

12:12PM

11 MR. SURPRENANT: THE FILE LIST FOR THE THUMB  
12 DRIVE WAS ATTACHED AS AN EXHIBIT TO HIS REPORT.

12

THE COURT: RIGHT.

13

14 MR. SURPRENANT: THE FILE LIST FOR THE  
15 COMPUTE -- FOR THE HOME -- PARENTS' HOME COMPUTER WAS  
16 IN HIS REPORT. ALL HE'S DOING IS SAYING THE TWO DIDN'T  
17 MATCH.

12:12PM

18 AND YOU OVERLAY THEM AND THERE WERE  
19 THINGS ON THE THUMB DRIVE THAT NEVER MADE IT TO THE  
20 COMPUTER. BOTH OF THOSE EXHIBITS ARE IN HIS REPORT.

21

12:12PM

22 MR. WEINGART: YOUR HONOR, THERE'S A  
23 RIDICULOUS AMOUNT OF PAPER, AS YOU CAN SEE, ATTACHED TO  
24 HIS REPORT. HIS EXPERT OPINION SAYS NOTHING ABOUT  
25 THIS.

26

12:13PM

27 SO IF HE IS GOING BACK AND CONDUCTING  
28 OTHER KIND OF ANALYSIS AND COMPARISONS AND STUFF LIKE  
THAT, THERE'S NO WAY FOR US TO HAVE GLEANED THAT FROM  
HIS REPORT.

29

I DON'T HEAR MR. SURPRENANT TO BE SAYING

1 IT IS ANYWHERE IN HIS REPORT. I DON'T BELIEVE IT IS  
2 ANYWHERE IN THE REPORT WHERE IT SETS FORTH HIS  
3 OPINIONS.

4 MR. SURPRENANT: IT'S JUST A MATTER OF FACT.  
5 IT'S A MATTER OF THE FILE LIST.

12:13PM

6 THE COURT: DO WE HAVE ANY INDICATION OF THE  
7 NATURE OF THE FILES THAT WERE -- ON THE THUMB DRIVE  
8 VERSUS THE ONES THAT WERE ON THE PARENTS' COMPUTER?

9 MR. SURPRENANT: RIGHT.

10 THE COURT: OR THE ONES THAT WEREN'T  
11 DOWNLOADED.

12:13PM

12 I GUESS I'M AT A LOSS, AS IF WE HAVE TWO  
13 LISTS. WHAT'S THE SIGNIFICANCE OF WHATEVER WASN'T? IF  
14 IT WAS HIS, YOU KNOW, PERSONAL STUFF, WE DON'T CARE.

15 MR. SURPRENANT: THERE WAS A SUGGESTION, IF  
16 NOT A DIRECT STATEMENT, IN MR. MAYBERRY'S TESTIMONY  
17 THAT HE DOWNLOADED IT ALL TO THE HOME, PARENTS'  
18 COMPUTER. THAT'S NOT TRUE.

12:14PM

19 THERE WERE HUNDREDS OF TCW FILES THAT  
20 MR. HICKS KNOWS, BECAUSE OF THE SPECTOR DATA, THAT DID  
21 NOT MAKE IT TO THE PARENTS' COMPUTER.

12:14PM

22 AND MR. HICKS IS GOING TO TESTIFY AS TO  
23 TWO THINGS.

24 WE DON'T -- WE DON'T KNOW WHAT THOSE  
25 TWO -- THOSE HUNDREDS OF TCW DOCUMENTS ARE THAT WERE --  
26 NEVER MADE IT TO THE --

12:14PM

27 THE COURT: HOW CAN YOU NOT KNOW ABOUT THIS IF  
28 YOU'VE GOT THE SPECTOR FILES THAT SHOW WHAT WAS

1 DOWNLOADED TO THE JUMP DRIVE?

2 MR. SURPRENANT: I WILL ASK MR. HICKS THAT.

3 THE COURT: YOU CAN, IN ONE INSTANCE, KNOW  
4 THEY WERE DOWNLOADED FROM THE JUMP DRIVE TO THE SPECTOR  
5 FILE, AND IN THE NEXT INSTANCE KNOW IT WAS DOWNLOADED  
6 TO THE PARENTS' AND NOT KNOW WHAT THEY WERE.

12:14PM

7 MR. HICKS IS HERE. PERHAPS I ONLY KNOW  
8 ENOUGH TO BE DANGEROUS. TRUST ME, I'LL CONFUSE  
9 EVERYBODY.

10 MR. HICKS, HOW DO YOU DO THAT?

12:14PM

11 THE WITNESS: YOU KNOW WHAT --

12 THE COURT: YOU KNOW WHAT'S SPECTOR FILES?

13 THE WITNESS: YES.

14 THE COURT: YOU'RE SAYING EVERYTHING  
15 DOWNLOADED TO THE JUMP DRIVE AS SHOWN BY THE SPECTOR  
16 FILES WASN'T DOWNLOADED TO THE PARENTS' COMPUTER?

12:15PM

17 THE WITNESS: RIGHT. THERE'S A SET, MOSTLY IT  
18 OVERLAPS, THERE'S ABOUT 300 FILES THAT THE SPECTOR DATA  
19 SHOW WENT ON TO THE JUMP DRIVE, THUMB DRIVE. WHICH THE  
20 PARENTS' COMPUTERS WERE NOT RECOVERED ULTIMATELY FROM  
21 THE PARENTS' HOME --

12:15PM

22 THE COURT: WHAT WAS NATURE OF THOSE FILES?

23 THE WITNESS: IT INCLUDED, WE THINK -- TRYING  
24 TO REMEMBER -- I THINK LIKE AN E-MAIL ARCHIVE AND A  
25 BUNCH OF OTHER FILES. I DON'T REMEMBER THE DETAILS.

12:15PM

26 THE COURT: PERSONAL-RELATED STUFF, NOT TCW  
27 ANALYTICS AND SOURCE CODE AND ALL OF THAT?

28 THE WITNESS: NOT SOURCE CODE, I THINK.

1 WHETHER -- I DON'T KNOW WHAT THE OTHER CONTENTS WERE.

2 THE MAIN POINT -- THE MAIN POINT HERE  
3 WAS REALLY JUST THAT YOU CAN'T SAY, WELL, WE GOT  
4 EVERYTHING FROM THE PARENTS' COMPUTER BECAUSE IT'S NOT  
5 JUST THAT. THERE'S THESE 300 FILES.

12:15PM

6 THE COURT: HAVE YOU IDENTIFIED ANY FILES THAT  
7 ARE SIGNIFICANT TO THE ISSUES IN THIS CASE FROM THE  
8 SPECTOR DATA THAT WEREN'T DOWNLOADED TO THE PARENTS'  
9 FILES?

10 I MEAN, THESE ARE OPINIONS THAT WEREN'T  
11 IN YOUR REPORT, I TAKE IT. AND THE TWO SUMMARIES WERE  
12 ATTACHED AS EXHIBITS. AND YOUR REPORT IS HOW MANY  
13 VOLUMES?

12:16PM

14 THE WITNESS: IF YOU COUNT THE EXHIBITS, IT'S,  
15 I GUESS, SIX.

12:16PM

16 THE COURT: YES. THAT'S THE POINT.

17 THE WITNESS: THE COMPARISON ITSELF, THE  
18 SPECIFIC COMPARISON IS NOT IN THE PRO'S OF MY REPORT.

19 MR. SURPRENANT: MAY I OFFER A RESOLUTION AND  
20 I THINK IS APPROPRIATE?

12:16PM

21 I WOULD JUST INQUIRE OF MR. HICKS, AS I  
22 HAVE ON OTHER THINGS, DID THE LOSS OF THE FILE --  
23 FORGET THE DOCUMENTS -- DID THE LOSS OF THE FILE  
24 DESTROY ANY METADATA ASSOCIATED WITH THOSE DOCUMENTS SO  
25 WE DON'T KNOW HOW THOSE DOCUMENTS WERE USED?

12:16PM

26 THE COURT: THAT'S FINE.

27 MR. WEINGART: OKAY.

28 I -- I GUESS I WOULD OBJECT AGAIN, THAT

1 IS NOT -- THIS IS SOMETHING THAT IS NEW THAT CAME UP.  
2 IT'S CLEAR IT WAS IN REACTION TO WHAT IT WAS --

3 THE COURT: THAT'S JUST CONSISTENT WITH THE  
4 REST OF HIS TESTIMONY, THAT NOT HAVING THESE FILES AND  
5 WE HAVE TESTIMONY THAT THE JUMP DRIVE'S NO LONGER  
6 AVAILABLE.

12:17PM

7 I GUESS MY BIGGEST CONCERN IS TO ALLOW  
8 THEM TO GO THE NEXT STEP AND SAY THERE WERE THINGS THAT  
9 WEREN'T DOWNLOADED AND DRAW SOME INFERENCE, WHEN IT  
10 WASN'T PART OF HIS OPINION, AND WE WERE NOT REALLY  
11 AREN'T CLEAR AS TO THE NATURE OF WHAT WASN'T PUT ON THE  
12 PARENTS' COMPUTER.

12:17PM

13 MR. SURPRENANT: I'M FINE WITH THAT.

14 THE COURT: IT'S A LAUNDRY LIST. WE DON'T  
15 CARE.

12:17PM

16 MR. SURPRENANT: MR. HICKS' REPORT DOES  
17 DISCUSS HOW THE DESTRUCTION OF METADATA DESTROYS  
18 EVIDENCE THAT'S VERY USEFUL.

19 THE COURT: THAT'S FINE. WE DIDN'T HAVE A  
20 FLASH DRIVE BECAUSE IT WAS LOST IN THE MAIL.

12:17PM

21 MR. WEINGART: I UNDERSTAND THAT, YOUR HONOR.

22 THE POINT IS THE JURY'S ALREADY HEARD  
23 THAT HE TESTIFIED TO IT ALREADY. THERE'S NOT A NEED,  
24 ESPECIALLY GIVEN THE CIRCUMSTANCES HOW THIS COME UP, TO  
25 GO BACK OVER IT AGAIN WITH THE MAYBERRY FLASH DRIVE.

12:17PM

26 THE COURT: IT SEEMS TO ME HE'S -- THE  
27 PLAINTIFFS HAVE THE ABILITY TO HAVE THEIR EXPERT  
28 TESTIFY ABOUT THE VARIOUS DEVICES THAT THEY -- ANALYZED

1 AND REVIEWED, AND THIS IS ONE OF THEM.

2 MR. BRIAN: MAY I HAVE A MOMENT TO SPEAK WITH  
3 MR. WEINGART, YOUR HONOR?

4 THE COURT: YES.

5 (PAUSE) +

12:18PM

6

7 THE COURT: IT'S GOING TO BE VERY QUICK AND  
8 WE'LL BE DONE WITH IT.

9 (PAUSE) +

12:18PM

10

11 MR. WEINGART: YOUR HONOR, I SHOULD JUST LET  
12 MR. BRIAN DO THIS.

13 MR. BRIAN: YOUR HONOR, AS I UNDERSTAND IT,  
14 I'M NOT -- I'M PROBABLY THE LEAST KNOWLEDGEABLE PERSON  
15 IN THIS CASE.

12:18PM

16

17 BUT WHAT I DO UNDERSTAND IS THAT THEY  
18 KNOW EXACTLY WHAT WAS DOWNLOADED ON MR. MAYBERRY'S  
19 FLASH DRIVE FROM TCW'S RECORDS.

20 AND THEY NOW KNOW WHAT WAS DOWNLOAD INTO  
21 THE PARENTS' DESKTOP. THERE'S APPARENTLY A DELTA  
22 THERE.

12:18PM

22

THE COURT: I WON'T ALLOW --

23 MR. BRIAN: UNLESS THAT DELTA IS SIGNIFICANT,  
24 UNLESS THAT DELTA CONSISTS OF INFORMATION THAT THEY SAY  
25 IS SOMEHOW A TRADE SECRET OR CONFIDENTIAL, WHO CARES.

12:18PM

26

THE COURT: THAT'S WHY I'M NOT ALLOWING IT.

27

28 I'M NOT GOING TO ALLOW AN INFERENCE TO  
BE DRAWN FROM SOMETHING THAT PEOPLE AREN'T TELLING ME

1 WHAT IT IS.

2 MR. BRIAN: THEN IT'S A CHEAP SHOT.

3 THE COURT: WE'RE NOT DOING THAT. NO. WE  
4 DON'T HAVE THOSE TYPES OF THINGS HERE. I'M NOT  
5 ALLOWING IT. DON'T WORRY ABOUT IT.

12:19PM

6 AS FAR AS ASKING IF THE ABSENCE OF THE  
7 MAYBERRY THUMB DRIVE RESULTED IN YOUR INABILITY TO LOOK  
8 AT METADATA, THAT SEEMS CONSISTENT WITH HIS TESTIMONY.  
9 I'LL ALLOW TO YOU DO IT.

10 MR. SURPRENANT: TWO, THREE QUESTIONS, WE'LL  
11 BE DONE, YOUR HONOR.

12:19PM

12 THE COURT: THANKS.

13 MR. BRIAN: WE HANDED UP BOTH SIDES.

14 THE COURT: I HAVE IT ALL. I LOOKED AT IT.

15 MR. BRIAN: THERE WAS APPARENTLY THE AFFIDAVIT  
16 ATTACHED TO THE ONE WAS FILED WAS ILLEGIBLE. WE HAD TO  
17 FILE A CORRECTED ONE.

12:19PM

18 THE COURT: I'VE GOT IT. IT WAS ON THE  
19 SYSTEM. I JUST HADN'T LOOKED AT IT.

20 MR. BRIAN: I WAS GOING TO GIVE IT TO YOUR  
21 CLERK. THIS IS MORE READABLE.

12:19PM

22 THE COURT: FROM THE INTERPRETER OVER THERE.

23 MR. BRIAN: YES.

24 THE COURT: I COULD READ IT.

25 THANK YOU.

12:19PM

26

27

28

1 CASE NUMBER: BC429385  
 2 CASE NAME: TRUST COMPANY OF THE WEST VS.  
 3 JEFFREY GUNDLACH, ET AL  
 4 LOS ANGELES, WEDNESDAY, AUGUST 10, 2011  
 5 CALIFORNIA  
 6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
 7 APPEARANCES: (AS HERETOFORE NOTED.)  
 8 REPORTER: WENDY OILLATAGUERRE, CSR #10978  
 9 TIME: 12:39 P.M.

10  
 11  
 12 (AT 12:39 P.M. THE JURY ENTERED  
 13 THE COURTROOM, AND THE FOLLOWING  
 14 PROCEEDINGS WERE HELD:)

12:39PM

15  
 16 THE COURT: ALL RIGHT. IN THE TCW VERSUS  
 17 GUNDLACH MATTER, ALL MEMBERS OF THE JURY ARE PRESENT AS  
 18 ARE COUNSEL.

19 MR. SURPRENANT, YOU MAY CONTINUE YOUR  
 20 DIRECT EXAMINATION OF MR. HICKS.

12:39PM

21 MR. SURPRENANT: THANK YOU, YOUR HONOR.

22  
 23  
 24 DIRECT EXAMINATION (RESUMED)

25 BY MR. SURPRENANT:

12:40PM

26 Q. MR. HICKS, GIVEN THE FACT THAT MR. MAYBERRY  
 27 DOWNLOADED THE FLASH DRIVE TO HIS PARENTS' COMPUTER,  
 28 WHAT, IF ANY, INFORMATION WAS LOST WHEN HIS THUMB DRIVE



1 WAS LOST?

2 A. WE LOST ALL THE MEDIDATA FOR THESE FILES,  
3 WHICH MIGHT HAVE TOLD US WHEN FILES MIGHT HAVE BEEN  
4 MODIFIED. WE LOST ANY OPPORTUNITY TO FIND OUT WHAT  
5 ELSE MAY HAVE BEEN LOST ON THAT DRIVE.

12:40PM

6 MR. SURPRENANT: YOUR HONOR, I HAVE NO FURTHER  
7 QUESTIONS AT THIS TIME.

8 THE COURT: ALL RIGHT.

9 MR. WEINGART, CROSS-EXAMINATION?

10 MR. WEINGART: YES, YOUR HONOR. THANK YOU.

12:40PM

11 MR. BRIAN: TWO BINDERS THIS TIME, YOUR HONOR.

12 THE COURT: ALL RIGHT. THANK YOU.

13

14

15 CROSS-EXAMINATION

12:41PM

16 BY MR. WEINGART:

17 Q. AFTERNOON, MR. HICKS.

18 A. GOOD AFTERNOON.

19 Q. YOUR EXPERTISE IS IN COMPUTERS, AS YOU SAID,  
20 CORRECT?

12:41PM

21 A. THAT'S RIGHT.

22 Q. YOU ARE NOT AN EXPERT IN MORTGAGE-BACKED  
23 SECURITIES?

24 A. I AM NOT.

25 Q. YOU ARE NOT AN EXPERT IN SYSTEMS USED TO TRADE  
26 MORTGAGE-BACKED SECURITIES?

12:41PM

27 A. NOT PARTICULARLY.

28 Q. WELL, ARE YOU AN EXPERT -- ARE YOU OFFERING AN

1 EXPERT OPINION WITH REGARD TO HOW SYSTEMS TO TRADE  
2 MORTGAGE-BACKED SECURITIES WORK, WHAT INFORMATION IS  
3 IMPORTANT IN THEM OR ANYTHING LIKE THAT?

4 A. I'M AN EXPERT ON COMPUTERS -- SO INsofar AS  
5 THERE ARE COMPUTER SPECIFIC QUESTIONS ON THOSE KINDS OF  
6 SYSTEMS, I'M AN EXPERT.

12:41PM

7 INsofar AS THEY ARE COMPUTER FORENSICS  
8 RELATED ISSUES ON THOSE TYPES OF SYSTEMS, I'M AN  
9 EXPERT.

10 INsofar AS IT DEALS WITH HOW, YOU KNOW,  
11 SECURITIES ARE TRADED, OR WHY OR HOW MONEY IS MADE, I'M  
12 NOT.

12:41PM

13 Q. OR FOR EXAMPLE, WHAT INFORMATION WOULD BE  
14 IMPORTANT FOR SOMEBODY WHO WAS GOING TO PUT TOGETHER A  
15 COMPUTER SYSTEM TO USE TO TRADE MORTGAGE-BACKED  
16 SECURITIES, RIGHT? YOU ARE NOT AN EXPERT IN THAT?

12:42PM

17 A. THE QUESTION IS WORDED A LITTLE BROADLY.

18 INsofar AS THE QUESTION IS FROM A  
19 COMPUTER SCIENCE STANDPOINT, IS THIS IMPORTANT, I MIGHT  
20 BE AN EXPERT ON IT.

12:42PM

21 IF THE QUESTION IS WHAT SORT OF  
22 FUNCTIONS DO TRADERS NEED, I'M NOT AN EXPERT.

23 Q. OR WHAT KIND OF INFORMATION A PORTFOLIO  
24 MANAGER MIGHT WANT TO SEE, RIGHT?

25 A. THAT, I'M NOT AN EXPERT IN. I AGREE.

12:42PM

26 Q. NOW, YOU ARE NOT AN EXPERT IN WHAT DATA FIELD  
27 SOMEBODY WOULD WANT TO SEE IF THEY WERE TRYING TO  
28 FIGURE OUT WHAT A CLIENT'S HOLDINGS WERE, CORRECT?

1 A. I'M NOT AN EXPERT IN THAT.

2 Q. AND I THINK YOU SAID THIS BEFORE, BUT JUST TO  
3 CONFIRM, YOU ARE NOT OFFERING AN OPINION AS TO WHETHER  
4 OR NOT ANY PARTICULAR ITEM IN THIS CASE IS OR IS NOT A  
5 TRADE SECRET, RIGHT?

12:42PM

6 A. THAT'S RIGHT.

7 Q. NOW, YOU'VE BEEN RETAINED FIVE TO 10 TIMES IN  
8 THE PAST BY THE QUINN EMANUEL FIRM; IS THAT CORRECT?

9 A. THAT -- WELL, ELYSIUM DIGITAL, MY EMPLOYER,  
10 HAS BEEN RETAINED ABOUT THAT MANY TIMES.

12:43PM

11 Q. FAIR ENOUGH.

12 AND SOME OF THE CURRENT MATTERS YOU WORK  
13 ON REQUIRE PROTECTIVE ORDERS; IS THAT RIGHT?

14 A. THAT'S RIGHT.

15 Q. AND SINCE THOSE ARE ORDERS THAT ARE  
16 RESTRICTED, I'M NOT GOING TO ASK YOU ANY QUESTIONS THAT  
17 GET INTO THOSE AREAS, OKAY?

12:43PM

18 A. UNDERSTOOD.

19 Q. NOW, YOU TESTIFIED REGARDING THE COPYING OF  
20 CERTAIN FILES AT THE BEGINNING OF YOUR TESTIMONY,  
21 RIGHT?

12:43PM

22 A. YES.

23 Q. AND AS I THINK YOU ALSO STATED, YOU UNDERSTAND  
24 THAT THE DEFENDANTS IN THIS CASE AREN'T DISPUTING THAT  
25 MATERIAL WAS COPIED, CORRECT?

12:43PM

26 A. I UNDERSTAND THAT THEY ARE CURRENTLY NOT  
27 DISPUTING THAT, YES.

28 Q. WELL, SINCE THE BEGINNING OF THIS CASE, SIR,

1 WITH THIS JURY, FROM THE OPENING STATEMENT UNTIL WHERE  
2 WE ARE HERE, THAT HAS NOT BEEN DISPUTED, HAS IT?

3 A. I AGREE THAT DURING THAT TIME PERIOD, THAT  
4 FACT WAS NOT DISPUTED.

5 Q. NOW, WITH REGARD TO MR. GUNDLACH, YOU WOULD  
6 AGREE, THERE'S NO FORENSIC EVIDENCE THAT HE PERSONALLY  
7 DOWNLOADED ANYTHING, CORRECT?

12:44PM

8 A. I'M NOT AWARE OF ANY.

9 Q. SO THAT'S A YES?

10 A. YOU ASKED -- THE QUESTION WAS WHETHER THERE IS  
11 SUCH EVIDENCE.

12:44PM

12 Q. YOU ARE NOT AWARE OF ANY SUCH EVIDENCE, ARE  
13 YOU, SIR?

14 A. I AM NOT.

15 Q. AND YOU ALSO TESTIFIED REGARDING THE SIZE OF  
16 SOME OF THESE FILES, RIGHT?

12:44PM

17 A. YES.

18 Q. AND FOR EXAMPLE, YOUR CHART -- AND IF WE COULD  
19 PUT UP 2125-1.

20 APPARENTLY THEY SWITCHED IT UP ON ME; SO  
21 LET'S SEE WHICH ONE THIS IS.

12:44PM

22 THE COURT: 2521-1?

23 MR. WEINGART: YES, YOUR HONOR.

24 APPARENTLY I HAD A PRIOR VERSION OF IT,  
25 SO I APOLOGIZE FOR THAT.

12:45PM

26 THE COURT: GO AHEAD.

27 Q. BY MR. WEINGART: NOW, THAT TALKS ABOUT, FOR  
28 EXAMPLE, AT THE TOP THERE, SOME COPYING THAT

1 MR. SANTA ANA DID 36 TIMES, BETWEEN CERTAIN DATES,  
2 RIGHT?

3 A. YES.

4 Q. AND THAT WOULD INCLUDE CLIENT HOLDINGS.

5 YOU UNDERSTOOD THAT, CORRECT?

12:45PM

6 A. I THINK THAT'S RIGHT.

7 I DON'T REMEMBER THAT, FROM THIS

8 EXHIBIT; BUT THAT SOUNDS RIGHT.

9 Q. AND SOME OF IT WAS DAILY INFORMATION, RIGHT?

10 A. YES.

12:45PM

11 Q. AND SOME OF IT WAS MONTHLY INFORMATION?

12 A. YES.

13 Q. AND SOME OF IT WAS BACKUP INFORMATION, RIGHT?

14 A. YES.

15 Q. SO IF YOU DOWNLOAD A DAILY SUMMARY, A MONTHLY

12:45PM

16 SUMMARY, AND A BACKUP, YOU HAVE GOT SIGNIFICANT

17 DUPLICATION IN THE DATA; IS THAT RIGHT?

18 A. THAT'S CERTAINLY TRUE. THERE'S CERTAINLY SOME

19 REDUNDANCY IN THAT DATA.

20 Q. AND YOU DID NOT CORRECT FOR THAT AT ALL IN

12:46PM

21 THESE FIGURES, RIGHT?

22 A. WELL, THE FIGURES DON'T ATTEMPT TO ELIMINATE A  
23 REDUNDANCY.

24 WE TRACK WHAT WAS TAKEN. IF MULTIPLE  
25 COPIES OF THINGS WERE TAKEN, THEN WE TRACK THE MULTIPLE  
26 COPIES.

12:46PM

27 Q. SO TO ANSWER MY QUESTION, YOU DIDN'T CORRECT  
28 FOR THE DUPLICATION OF DATA, RIGHT?

1           A.     WE DIDN'T CHANGE IT TO REMOVE THE DUPLICATION  
2 OF DATA, CORRECT.

3                     REPRESENTING THE OTHER WAY IS WRONG. WE  
4 DID NOT REMOVE DUPLICATES FROM THAT.

5           Q.     NOW, IF A HOLDING STAYED THE SAME FOR A DAY, A  
6 MONTH, AND THEN WHEN IT WAS BACKED UP, YOU WOULD AGREE  
7 THAT THAT INFORMATION WOULD BE THE SAME, RIGHT?

12:46PM

8           A.     YEAH. SOME OF THAT WOULD BE CUMULATIVE AND  
9 REDUNDANT, THEREFORE.

10          Q.     AND WHEN YOU ACCOUNTED FOR HOW MUCH WAS  
11 PRINTED OUT, YOU DIDN'T TAKE THAT INTO ACCOUNT, EITHER,  
12 RIGHT?

12:46PM

13          A.     WE DIDN'T ATTEMPT TO ELIMINATE DUPLICATES OR  
14 REDUNDANCIES FROM EITHER THE GIGABYTES OF DATA OR THE  
15 PRINTOUTS.

12:47PM

16          Q.     NOW, MOST OF THE DSI IS NOT DESIGNED TO BE  
17 PRINTED OUT IN ELECTRONIC FORMAT, RIGHT --

18                     SORRY. THAT WAS A TERRIBLE QUESTION.

19                     MOST ELECTRONIC DATA IS NOT DESIGNED TO  
20 BE PRINTED OUT IN A PAPER FORMAT?

12:47PM

21          A.     MOST BY VOLUME, YOU MEAN, OR --

22          Q.     WELL, DATABASES, FOR EXAMPLE, YOU TYPICALLY  
23 DON'T PRINT OUT ALL THE DATA IN A DATABASE. ONE OF THE  
24 REASONS YOU HAVE A DATABASE IS TO SORT IT AND PRINT OUT  
25 JUST WHAT YOU WANT, RIGHT?

12:47PM

26          A.     I AGREE.

27          Q.     AND SO JUST TO TAKE AN EXAMPLE, AN IPOD IS A  
28 DATABASE, RIGHT?

1 A. AN I-POD IS A BUNCH OF DATA, SURE.

2 Q. AND YOU CAN SORT IT BY, I WANT TO LOOK AT THIS  
3 ARTIST, I WANT TO LOOK AT THIS SONG, THINGS LIKE THAT,  
4 RIGHT?

5 A. YES. 12:47PM

6 Q. AND IF I BUY AN I-POD CLASSIC, IT'S GOT ABOUT  
7 160 GIGABYTES OF STORAGE, RIGHT?

8 A. RIGHT.

9 Q. AND SO IT DOESN'T TELL ME A WHOLE LOT, TO  
10 PRINT OUT MY I-POD IN PAPER, RIGHT? 12:47PM

11 A. I GUESS IT DOESN'T.

12 Q. NOW, I WANT TO ASK YOU A FEW QUESTIONS ABOUT  
13 THE REMEDIATION.

14 YOU ARE FAMILIAR WITH STROZ FRIEDBERG,  
15 CORRECT? 12:48PM

16 A. YES.

17 Q. THEY ARE A COMPETITOR OF YOURS.

18 I DON'T MEAN THAT IN A BAD SENSE.

19 YOU GUYS ARE IN THE SAME INDUSTRY,  
20 RIGHT? 12:48PM

21 A. YES.

22 PART OF WHAT ELYSIUM DOES, STROZ  
23 FRIEDBERG ALSO DOES, YES.

24 Q. SO THEREFORE, YOU KNOW A BIT ABOUT THEM,  
25 CORRECT? 12:48PM

26 A. I KNOW SOME ABOUT THEM.

27 Q. WELL, YOU KNOW THEY ARE A NATIONALLY KNOWN  
28 COMPUTER CONSULTING FIRM, CORRECT?

1 A. YES.

2 Q. THEY HAVE OFFICES THROUGHOUT THE UNITED  
3 STATES, RIGHT?

4 A. THAT'S RIGHT.

5 Q. OFFICES INTERNATIONALLY, TOO, RIGHT? 12:48PM

6 A. THAT'S MY UNDERSTANDING.

7 Q. AND THEY'VE GOT A NUMBER OF FORMER FEDERAL LAW  
8 ENFORCEMENT AGENTS ON STAFF, TOO; IS THAT RIGHT?

9 A. THAT'S RIGHT.

10 Q. NOW, YOU TESTIFIED ABOUT SOME CRITICISMS THAT 12:48PM  
11 YOU HAD ABOUT THEIR REMEDIATION, CORRECT?

12 A. YES.

13 Q. AND BEFORE YOU CRITIQUE SOMETHING, YOU WOULD  
14 AGREE WITH ME THAT IT'S GOOD TO UNDERSTAND EXACTLY WHAT  
15 IT IS THAT HAPPENED, SO YOU KIND OF KNOW WHAT YOU ARE 12:49PM  
16 SHOOTING AT, RIGHT?

17 A. SURE.

18 Q. AND AS A RESULT, I ASSUME YOU UNDERSTAND THAT  
19 STROZ FRIEDBERG WAS RETAINED, AROUND DECEMBER 10TH, OR  
20 SO, IN THIS MATTER; IS THAT RIGHT? 12:49PM

21 A. THAT'S MY UNDERSTANDING.

22 Q. AND THAT WAS SOON AFTER THE INDIVIDUAL  
23 DEFENDANTS WERE FIRED, RIGHT?

24 A. YES.

25 Q. AND ABOUT A MONTH BEFORE THE LAWSUIT WAS 12:49PM  
26 FILED, CORRECT?

27 A. YES.

28 Q. NOW, YOU ALSO FAMILIARIZED YOURSELF, DID YOU



1 NOT, WITH THE PROTOCOL THAT STROZ FRIEDBERG SET UP FOR  
2 A REMEDIATION?

3 A. YES. ALTHOUGH THAT TOOK SOME DIFFICULTY.  
4 SOME OF THAT WAS ONLY LEARNED THROUGH DEPOSITION.  
5 GETTING A FULL PICTURE OF THAT TOOK SOME TIME.

12:49PM

6 Q. WELL, THERE WAS A WRITTEN REMEDIATION  
7 PROTOCOL, WASN'T THERE, SIR?

8 A. YES.

9 Q. AND YOU STUDIED THAT, DID YOU NOT?

10 A. YES.

12:49PM

11 Q. THAT WAS ONE OF THE THINGS YOU TOOK INTO  
12 ACCOUNT IN RENDERING YOUR OPINION, RIGHT?

13 A. YES.

14 Q. COULD I ASK THAT EXHIBIT 867 BE SHOWN, JUST  
15 FOR IDENTIFICATION.

12:50PM

16 THERE ARE SOME BINDERS THERE, TOO, IF  
17 YOU CAN'T SEE IT, MR. HICKS.

18 A. THANK YOU.

19 WHICH TAB IS IT?

20 Q. HOPEFULLY, THE ONE THAT SAYS 867.

12:50PM

21 A. I'M NOT FINDING IT. A-67?

22 Q. NO, 867.

23 THE COURT: 867?

24 THE WITNESS: PERHAPS --

25 MR. SURPRENANT: FIRST TAB, VOLUME ONE.

12:51PM

26 THE COURT: IT SAYS TX, AND THEN THERE ARE  
27 NUMBERS.

28 THE WITNESS: OKAY. I APOLOGIZE. I HAVE IT

1 NOW.

2 Q. BY MR. WEINGART: YOU HAVE IT IN FRONT OF YOU?

3 A. YES, I DO. I APOLOGIZE.

4 Q. AND THAT WAS THE REMEDIATION PROTOCOL THAT  
5 STROZ CAME UP WITH, RIGHT?

12:51PM

6 A. WELL, I MEAN, THE DOCUMENT IS WHAT THE  
7 DOCUMENT IS. YES, THAT'S WHAT IS MEMORIZED HERE, YES.

8 Q. AS ONE OF THE THINGS THAT YOU REVIEWED IN  
9 CONNECTION WITH RENDERING YOUR OPINION ABOUT THE  
10 EFFECTIVENESS OF THE REMEDIATION, ISN'T IT?

12:51PM

11 A. I BELIEVE I HAVE REVIEWED THIS.

12 MR. WEINGART: I'D OFFER 867.

13 THE COURT: ANY OBJECTION?

14 MR. SURPRENANT: NO, YOUR HONOR.

15 THE COURT: IT WILL BE ADMITTED.

12:51PM

16

17 (EXHIBIT 867 ADMITTED.)

18

19 MR. WEINGART: COULD WE PUT THAT UP?

20 Q. NOW, WHAT THE -- FIRST OF ALL, WE HAVE, AT THE  
21 TOP THERE, IT'S A MEMO FROM STROZ TO WHITE O'CONNOR,  
22 WHICH WAS A LAW FIRM, RIGHT?

12:51PM

23 A. YES.

24 Q. AND THEN WE GO DOWN, AND IT TALKS ABOUT THE  
25 REMEDIATION PROTOCOL, CORRECT?

12:52PM

26 A. YES.

27 Q. AND THE WAY THAT THE PROTOCOL WORKED WAS THAT  
28 VARIOUS INDIVIDUALS WOULD MEET WITH REPRESENTATIVES OF

1 STROZ FRIEDBERG AND HELP THEM UNDERSTAND WHAT DATA THEY  
2 HAD, RIGHT?

3 A. YES.

4 Q. AND THEN A FORENSIC IMAGE WOULD BE MADE OF AN  
5 INDIVIDUAL'S DEVICE, CORRECT?

12:52PM

6 A. YES.

7 Q. AND THAT IMAGE WAS PRESERVED IN ITS SORT OF  
8 CURRENT STATE, RIGHT?

9 A. RIGHT.

10 Q. THAT WAS ONE OF THE THINGS IN -- THOSE WERE  
11 MADE AVAILABLE TO YOU TO LOOK AT, CORRECT?

12:52PM

12 A. YES.

13 Q. AND THEN THERE WAS A PROTOCOL TO GO THROUGH  
14 THE FILES, TO TRY TO IDENTIFY -- IF WE COULD GO DOWN TO  
15 NUMBER 4 THERE.

12:53PM

16 IT WOULD WORK WITH THE CUSTODIAN TO  
17 IDENTIFY, TO THE BEST OF THE CUSTODIAN'S ABILITY, ANY  
18 TCW INFORMATION IN THE CUSTODIAN'S DEVICE, RIGHT?

19 A. RIGHT.

20 Q. AND THEN A SPREADSHEET WOULD BE PREPARED WITH  
21 THOSE FILES, CORRECT?

12:53PM

22 A. YES.

23 Q. AND THEN THERE WAS -- NOW, YOU DESCRIBED THIS  
24 AS AN HONOR SYSTEM, I THINK YOU SAID?

25 A. YES.

12:53PM

26 Q. BUT IT WAS THE CASE, WAS IT NOT, THAT STROZ  
27 FRIEDBERG WOULD DO ADDITIONAL WORD OR OTHER SORT OF  
28 SEARCHES TO TRY TO LOCATE INFORMATION. THEY DIDN'T

1 RELY JUST SOLELY ON WHAT AN INDIVIDUAL SAID WAS ON  
2 THEIR COMPUTER, CORRECT?

3 A. YES, FOR THE DEVICES THAT HAD BEEN TURNED IN.

4 Q. UNDERSTOOD.

5 BUT FOR THE DEVICES THAT WERE TURNED IN,  
6 THAT'S CORRECT, RIGHT?

12:53PM

7 A. YES. IF SOMEBODY HAD TURNED IN A DEVICE, IN  
8 ADDITION TO WORKING WITH WHAT THE PROTOCOL REPRESENTS,  
9 IN ADDITION TO TALKING TO THE PEOPLE ABOUT IT AND  
10 ASKING THEM WHAT MIGHT BE TCW, STROZ ALSO DID SOME  
11 SEARCHES.

12:53PM

12 Q. AND THEN A LOG WOULD BE PREPARED OF THE  
13 INFORMATION THAT WAS GOING TO BE ZAPPED, FOR WANT OF A  
14 BETTER WORD. YOU COULD TELL I'M NOT A COMPUTER PERSON.

15 A. ZAPPED IS NOT BAD.

12:54PM

16 Q. BUT IT WOULD BE ZAPPED FROM THE INDIVIDUAL'S  
17 DEVICE BEFORE IT WAS RETURNED TO THEM, CORRECT?

18 A. RIGHT.

19 Q. AND THEN THERE WAS A LOG THAT WAS MADE OF WHAT  
20 WAS REMEDIATED OR REMOVED, THAT WAS PROVIDED TO YOU AS  
21 WELL, CORRECT?

12:54PM

22 A. YES.

23 Q. AND THAT WAS SO YOU COULD LOOK AT IT AND, YOU  
24 KNOW, DETERMINE, IN DOING YOUR OWN REVIEW, ABOUT  
25 WHETHER OR NOT TCW FILES WERE BEING REMOVED OR NOT  
26 REMOVED, CORRECT?

12:54PM

27 A. RIGHT.

28 Q. NOW, ONE OF THE THINGS THAT YOU FAMILIARIZED

1 YOURSELF WITH, I ASSUME, WAS WHEN IT WAS THAT PEOPLE  
2 RETURNED DEVICES, BECAUSE YOU TESTIFIED A LITTLE BIT  
3 ABOUT THAT, CORRECT?

4 A. YES. I MEAN, WE HAVE THAT -- WE SORT OF TRIED  
5 TO PAY ATTENTION TO THAT INFORMATION. OBVIOUSLY, I  
6 DON'T HAVE THAT MEMORIZED BUT --

12:55PM

7 Q. AND I THINK YOU ALSO MENTIONED THIS; BUT STROZ  
8 MADE AN IMAGE OF THE DOUBLELINE SYSTEM, TOO, RIGHT?

9 A. THAT'S RIGHT.

10 Q. AND THOSE IMAGES WERE MADE AVAILABLE TO YOU TO  
11 INSPECT, CORRECT?

12:55PM

12 A. YES.

13 Q. AND SO YOU COULD SEE WHETHER OR NOT THERE WAS  
14 ANY TCW INFORMATION ON THE DOUBLELINE SYSTEM THAT YOU  
15 AND TCW THOUGHT SHOULDN'T BE THERE, RIGHT?

12:55PM

16 A. YES, AND GENERALLY PROCEED WITH THE  
17 INVESTIGATION.

18 Q. AND WITH REGARD TO THE DOUBLELINE SYSTEM, YOU  
19 TOOK ADVANTAGE OF THAT ACCESS, RIGHT?

20 A. YES.

12:55PM

21 Q. AND YOUR FIRM HAD ACCESS TO THOSE IMAGES OF  
22 DOUBLELINE'S COMPUTERS FROM JUNE 28TH THROUGH -- THAT'S  
23 JUNE 28TH, 2010, THROUGH APRIL 8TH OF 2011, RIGHT?

24 A. THAT SOUNDS RIGHT.

25 Q. THAT'S OVER NINE MONTHS, RIGHT?

12:56PM

26 A. YES.

27 Q. AND YOU ARE FAMILIAR WITH THE CONCEPT OF A  
28 PERSON DAY?

1 A. YES.

2 Q. THAT'S SORT OF HOW MUCH ONE PERSON CAN WORK IN  
3 ONE DAY?

4 A. RIGHT.

5 Q. AND OVER THE NINE MONTHS THAT ELYSIUM HAD  
6 ACCESS TO THE DOUBLELINE SYSTEM IMAGE, ELYSIUM SPENT  
7 ABOUT 137 PERSON DAYS LOOKING AT THOSE IMAGES, RIGHT?

12:56PM

8 A. THAT -- I MEAN, I DON'T KNOW, BUT THAT DOESN'T  
9 SOUND WRONG TO ME.

10 Q. IT'S IN THE BALLPARK, RIGHT?

12:56PM

11 A. IT COULD WELL BE, RIGHT.

12 Q. WELL, LET ME ASK YOU: CAN YOU TAKE A LOOK AT  
13 EXHIBIT 953.

14 A. YES.

15 Q. AND THAT'S A LOG, IS IT NOT, OF ELYSIUM  
16 SIGNING IN AT THE VARIOUS TIMES THAT IT WENT TO STROZ  
17 TO LOOK AT THE VARIOUS DOUBLELINE IMAGES, CORRECT?

12:56PM

18 A. IT IS.

19 MR. WEINGART: YOUR HONOR, I'D OFFER 953.

20 THE COURT: ANY OBJECTION?

12:57PM

21 MR. SURPRENANT: NO, YOUR HONOR.

22 THE COURT: IT WILL BE ADMITTED.

23

24 (EXHIBIT 953 ADMITTED.)

25

12:57PM

26 Q. BY MR. WEINGART: IF WE COULD PUT THAT UP.

27 AND THIS IS JUST ONE PAGE, SO THE JURY  
28 SORT OF GETS A SENSE OF IT. IT'S GOT THE DATE, WHO WAS

1 THERE, THE TIME THEY WERE IN, AND THE TIME THEY WERE  
2 OUT, RIGHT?

3 A. YES.

4 Q. NOW, YOU WERE ASKED A FEW QUESTIONS ABOUT THE  
5 HOURLY RATE THAT YOU CHARGE.

12:57PM

6 THIS WAS A FAIR AMOUNT OF WORK, I  
7 ASSUME, GOING THROUGH ALL THE DOUBLELINE SYSTEM AND THE  
8 OTHER IMAGES THAT YOU HAD AVAILABLE TO YOU, CORRECT?

9 A. YES.

10 Q. AND YOU GOT PAID SOMEWHERE IN THE BALLPARK --  
11 NOT YOU PERSONALLY, BUT ELYSIUM, ONE TO \$3 MILLION OR  
12 SO, FOR ALL THAT TIME AND EFFORT GOING THROUGH AND  
13 DOING THIS REVIEW, CORRECT?

12:57PM

14 MR. SURPRENANT: OBJECTION. FOUNDATION.

15 THE COURT: SUSTAINED.

12:57PM

16 MR. WEINGART: WELL --

17 THE COURT: YOU CAN GO INTO THAT AREA, BUT  
18 IT'S A BROAD RANGE IN ASKING.

19 Q. BY MR. WEINGART: WELL, LET ME ASK YOU: HOW  
20 MUCH DID YOU GET -- ELYSIUM GET PAID FOR DOING THIS  
21 INVESTIGATION?

12:58PM

22 A. I HONESTLY DON'T KNOW.

23 I WILL AGREE THAT IT WAS PROBABLY MORE  
24 THAN A MILLION DOLLARS, AND I THINK IT'S EXTREMELY  
25 LIKELY IT WAS LESS THAN THREE.

12:58PM

26 Q. I WON'T SHOW YOU YOUR DEPOSITION.

27 LET'S SEE. NOW, WE'VE TALKED ABOUT THE  
28 ACCESS THAT YOU HAD TO THE PERSONAL DEVICES. WE TALKED

1 ABOUT THE ACCESS YOU HAD TO THE DOUBLELINE SYSTEMS.

2 YOU HAD ACCESS TO TCW'S SYSTEMS, AS  
3 WELL, CORRECT?

4 A. YES.

5 Q. AND YOU ALSO HAD ACCESS TO THE IMAGES THAT  
6 GUIDANCE HAD MADE WHEN GUIDANCE WAS DOING ITS  
7 INVESTIGATION, CORRECT?

12:58PM

8 A. YES. THE TCW IMAGES WERE PART OF THAT.

9 Q. AND YOU WERE ABLE, THEREFORE, TO RUN  
10 COMPARISONS BETWEEN THE INFORMATION THAT WAS ON THE TCW  
11 COMPUTERS AND WHAT WAS ON THE DOUBLELINE COMPUTERS OR  
12 THE DOUBLELINE INDIVIDUALS' OWN PERSONAL DEVICES,  
13 CORRECT?

12:58PM

14 A. YES.

15 Q. AND TO CHECK THAT LIST AGAINST THE FILES THAT  
16 WERE REMEDIATED BY STROZ FRIEDBERG, THE LOGS, CORRECT?

12:59PM

17 A. YES.

18 Q. NOW, STROZ FRIEDBERG DID NOT HAVE ACCESS TO  
19 ALL OF TCW'S COMPUTERS, RIGHT?

20 A. THAT, I DON'T KNOW.

12:59PM

21 Q. WELL, LET'S JUST -- IF THEY -- LET'S ASSUME  
22 THAT THEY DIDN'T.

23 YOU WOULD HAVE HAD AN INFORMATIONAL  
24 ADVANTAGE WORKING FOR TCW ABOUT WHAT INFORMATION TCW  
25 HAD IN ITS SYSTEMS BY VIRTUE OF THE FACT THAT YOU WERE  
26 DOING WORK FOR TCW, RIGHT?

12:59PM

27 MR. SURPRENANT: OBJECTION. 352.

28 THE COURT: OVERRULED.



1 THE WITNESS: I MEAN, I AGREE THAT IF THERE  
2 WERE TCW SYSTEMS THAT ASSISTED US IN THE INVESTIGATION,  
3 THAT STROZ DID NOT HAVE ACCESS TO, THEN THAT WOULD BE  
4 AN ADVANTAGE THAT WE HAD THAT STROZ DID NOT HAVE.

5 I'M NOT CONFIDENT THAT'S TRUE.

01:00PM

6 Q. BY MR. WEINGART: WELL, YOU TESTIFIED THAT YOU  
7 ASKED FOR CERTAIN INFORMATION, CORRECT?

8 A. YES.

9 Q. CERTAIN KIND OF ACTIVITY INFORMATION?

10 THE COURT: I DON'T BELIEVE THAT -- IS THAT  
11 NOISE AN OBJECTION?

01:00PM

12 MR. SURPRENANT: OBJECTION, YOUR HONOR.

13 THE COURT: I THINK YOU NEED TO REPHRASE IT.

14 Q. BY MR. WEINGART: ON DIRECT, YOU SAID THAT  
15 THERE WAS SOME INFORMATION THAT YOU HAD REQUESTED FROM  
16 STROZ THAT YOU DIDN'T GET.

01:00PM

17 DID I HEAR YOU CORRECTLY?

18 A. YES. WHAT WE SAID WAS THAT WE IDENTIFIED  
19 ENTIRE DEVICES THAT HAD BEEN PLUGGED IN TO EITHER  
20 DOUBLELINE OR PERSONAL MACHINES, THAT HAD NOT BEEN  
21 TURNED IN. AND WE ASKED ABOUT THOSE.

01:00PM

22 AND FOR SOME OF THOSE, WE NEVER RECEIVED  
23 FORENSIC IMAGES OF THEM.

24 Q. AND DID YOU IDENTIFY TCW FILES THAT WERE NOT  
25 REMEDIATED, AND ALSO LET STROZ KNOW THAT, SO THEY COULD  
26 REMOVE THOSE FROM THE DOUBLELINE COMPUTERS?

01:00PM

27 A. NO.

28 Q. AND THAT'S 'CAUSE YOUR JOB WAS REALLY TO

1 SECOND-GUESS THE REMEDIATION, CORRECT?

2 MR. SURPRENANT: OBJECTION. ARGUMENTATIVE.

3 THE COURT: SUSTAINED.

4 Q. BY MR. WEINGART: DID YOU PROVIDE ANY  
5 INFORMATION TO STROZ TO ASSIST THEM IN REMEDIATING?

01:01PM

6 A. YES.

7 Q. WHAT INFORMATION WAS THAT?

8 A. THE IDENTIFICATION OF DEVICES THAT HAD NOT YET  
9 BEEN TURNED IN.

10 Q. DID YOU IDENTIFY ANY SPECIFIC TCW FILES OR TCW  
11 INFORMATION THAT YOU THOUGHT SHOULD BE REMEDIATED, THAT  
12 WAS NOT?

01:01PM

13 A. NO.

14 Q. AND YOU DIDN'T SUPPLY ANY INFORMATION LIKE  
15 THAT TO STROZ FRIEDBERG, CORRECT?

01:01PM

16 A. NO. I MEAN, I SHOULD SAY, OTHER THAN THE  
17 PROCESS BY WHICH WE REVIEWED THE MACHINES AT  
18 DOUBLELINE, WE WERE NOT, IN GENERAL, IN DIRECT  
19 COMMUNICATION WITH STROZ FRIEDBERG.

20 Q. BUT THE ANSWER IS, YOU DIDN'T PROVIDE THAT  
21 KIND OF INFORMATION TO STROZ, RIGHT?

01:01PM

22 A. WELL, WE PROVIDED ALL KINDS OF INFORMATION TO  
23 ATTORNEYS.

24 WE DON'T TALK TO STROZ, IN GENERAL; SO  
25 THE ANSWER TO YOUR QUESTION IS, BECAUSE OF THE CASE,  
26 NO. THE ANSWER IS, NO, WE DIDN'T PROVIDE THAT KIND OF  
27 INFORMATION TO STROZ.

01:02PM

28 Q. NOW, YOU TALKED ABOUT CERTAIN FILES.

1                   AND I GUESS WHAT I WANT TO DO IS START  
2 WITH ONE OF THE FILES THAT YOU IDENTIFIED AS BEING ON  
3 THE DOUBLELINE SYSTEMS, WAS THIS MBS PROCESS  
4 POWERPOINT, RIGHT?

5           A.     YES.

01:02PM

6           Q.     AND THAT'S -- IF WE COULD PUT UP EXHIBIT 948.

7                   SO THIS IS ONE DOCUMENT THAT YOU FOUND  
8 ON THE DOUBLELINE SYSTEMS FOLLOWING THE REMEDIATION,  
9 CORRECT?

10          A.     WELL, WE FOUND IT IN A NUMBER OF WAYS. BUT  
11 AMONG OTHER THINGS, IT EXISTED POST REMEDIATION, YES.

01:02PM

12          Q.     I'M JUST FOCUSING ON POST REMEDIATION NOW.

13          A.     OKAY.

14          Q.     SO WE'RE TALKING ABOUT THE EFFECTIVENESS OF  
15 THE REMEDIATION.

01:03PM

16                   I ASSUME THE PROOF IS IN THE PUDDING.  
17 WE WANT TO TALK, IN PART, ABOUT WHERE WE ARE AT THE END  
18 OF THE DAY.

19          A.     OKAY.

20          Q.     AND THIS WAS ONE THING, AT THE END OF THE DAY,  
21 THAT WAS STILL ON THE DOUBLELINE SYSTEM, RIGHT?

01:03PM

22          A.     YES.

23          Q.     AND YOU HAD A CHART, SORT OF, BEFORE, THAT  
24 LISTED THE THINGS THAT YOU UNDERSTOOD THAT MR. SMITH,  
25 WHO IS AN EXPERT WE WILL BE HEARING FROM LATER, FROM  
26 THE PLAINTIFFS, HAS IDENTIFIED AS A TRADE SECRET,  
27 RIGHT?

01:03PM

28          A.     YES.

1 Q. THIS IS NOT ONE OF THOSE DOCUMENTS, RIGHT?

2 A. I DON'T BELIEVE IT IS.

3 Q. NOW, THE SECOND DOCUMENT THAT YOU IDENTIFIED  
4 WAS A PARTICIPANT LIST FROM A SEPTEMBER 9TH, '09  
5 CONFERENCE CALL, RIGHT?

01:03PM

6 A. YES.

7 Q. AND YOU UNDERSTAND THAT THAT'S A LIST FROM  
8 THOMSON REUTERS OF PEOPLE THAT CALLED IN TO A  
9 CONFERENCE CALL THAT MR. GUNDLACH GAVE TO THE PUBLIC IN  
10 SEPTEMBER OF '09?

01:03PM

11 A. I ACTUALLY DON'T. I DON'T REALLY KNOW EXACTLY  
12 WHETHER THAT STATEMENT IS ACCURATE OR NOT, BUT I DON'T  
13 HAVE ANY CONTRARY INFORMATION.

14 Q. OKAY.

15 WELL, LET'S GO BACK TO THE CHART THAT  
16 I'M GOING TO SHOW YOU IN A MINUTE OF THE ITEMS THAT  
17 MR. SMITH IDENTIFIED AS BEING TRADE SECRET, THAT  
18 PARTICIPANT LIST IS NOT ON THE LIST, RIGHT?

01:04PM

19 A. I AGREE.

20 Q. AND THE FOURTH, OR I GUESS THE THIRD, EXCUSE  
21 ME, DOCUMENT THAT YOU IDENTIFIED DURING YOUR DIRECT  
22 WERE SOME FILES THAT JP HAD, VARIOUS SPREADSHEETS AND  
23 OTHER SORTS OF THINGS ON HIS HARD DRIVE AT THE TIME  
24 THAT HE WAS AT DOUBLELINE, CORRECT?

01:04PM

25 A. YES.

01:04PM

26 Q. AND THOSE VARIOUS SPREADSHEETS, AGAIN, ARE NOT  
27 ON THAT CHART OF ITEMS THAT MR. SMITH HAS IDENTIFIED AS  
28 BEING A TRADE SECRET, CORRECT?

1 A. THAT'S RIGHT.

2 MR. WEINGART: SO -- MAY I HAVE A MOMENT TO  
3 CONFER WITH COUNSEL, YOUR HONOR?

4 THE COURT: SURE.

5 MR. WEINGART: YOUR HONOR, MAY I GO UP TO THE  
6 ELMO?

01:05PM

7 THE COURT: YES, YOU MAY.

8 WE'RE LOOKING AT EXHIBIT WHAT?

9 MR. WEINGART: IT'S 2125-2. LET ME SEE IF I  
10 CAN -- IS --

01:05PM

11 Q. OKAY. NOW, THIS WAS A CHART THAT YOU  
12 TESTIFIED ABOUT DURING YOUR DIRECT TESTIMONY, CORRECT?

13 A. YES.

14 Q. AND I THINK YOU MENTIONED THESE ARE THE ITEMS  
15 THAT YOU UNDERSTAND MR. SMITH CONTENDS ARE TRADE  
16 SECRETS, RIGHT?

01:06PM

17 A. THAT'S RIGHT.

18 Q. THAT'S THE REASON THEY WERE INCLUDED ON THE  
19 CHART, RIGHT?

20 A. I UNDERSTAND THAT THIS IS THE KIND OF MATERIAL  
21 MR. SMITH CONTENDS IS TRADE SECRET.

01:06PM

22 Q. LET'S START WITH THE HOLDINGS DATA.

23 AND THERE'S -- THAT'S AT LEAST FOUR  
24 DOCUMENTS -- THREE DOCUMENTS, EXCUSE ME, HERE, RIGHT?  
25 HOLDINGS BACKUP, DAILY HOLDINGS AND MONTHLY HOLDINGS  
26 DATA, RIGHT?

01:06PM

27 A. YES.

28 Q. AND THAT'S INFORMATION ON BONDS THAT THE

1 PARTICULAR CLIENTS ARE INVESTED IN, RIGHT?

2 A. I'LL DEFER TO THE EXPERTS.

3 Q. NOW, THERE WAS DAILY AND MONTHLY DATA ON  
4 MR. SANTA ANA'S HARD DRIVE, RIGHT?

5 A. YES.

01:06PM

6 Q. AND MR. SANTA ANA, THE FORENSIC EVIDENCE  
7 SHOWS, DIDN'T PLUG THAT DRIVE INTO ANY COMPUTER AFTER  
8 HE WAS ESCORTED OUT OF TCW, CORRECT?

9 MR. SURPRENANT: OBJECTION. FOUNDATION.

10 THE COURT: OVERRULED.

01:07PM

11 YOU CAN EXPLAIN IT, IF YOU KNOW, OR --  
12 GO AHEAD.

13 THE WITNESS: WE DON'T HAVE -- WE DON'T HAVE  
14 INFORMATION, ANY EVIDENCE SHOWING THAT MR. SANTA ANA  
15 PLUGGED THAT DRIVE INTO ANY COMPUTERS, THAT WE'VE SEEN.

01:07PM

16 Q. BY MR. WEINGART: AND MR. SANTA ANA'S HARD  
17 DRIVE WAS RETURNED AROUND DECEMBER 10TH OR SO, CORRECT,  
18 TURNED IN FOR REMEDIATION, RIGHT?

19 A. YES.

20 Q. NOW, WE HEARD SOME TESTIMONY FROM  
21 MR. SANTA ANA THAT HE PLUGGED THE DRIVE INTO HIS HOME  
22 COMPUTER ON DECEMBER 2ND.

01:07PM

23 IS THE FORENSIC EVIDENCE CONSISTENT WITH  
24 THAT?

25 A. IT IS.

01:07PM

26 Q. AND DOES THE FORENSIC EVIDENCE FURTHER SHOW  
27 THAT ONLY A SINGLE SPREADSHEET WAS COPIED OVER FROM THE  
28 DRIVE TO HIS HOME COMPUTER?

1 A. YES.

2 Q. AND THAT SPREADSHEET WAS A LIST OF PRICES FOR  
3 DATA SERVICES LIKE BLOOMBERG, CORRECT?

4 A. THAT'S MY UNDERSTANDING.

5 Q. AND THAT SPREADSHEET WAS REMEDIATED OFF OF THE  
6 HOME COMPUTER, RIGHT?

01:08PM

7 A. THAT'S MY UNDERSTANDING.

8 Q. NOW, YOU DIDN'T FIND -- SO THIS WAS RETURNED,  
9 CORRECT?

10 A. YES.

01:08PM

11 Q. AND WE'LL TAKE IT OFF OF THERE, TOO.

12 AND YOU DIDN'T FIND ANY EVIDENCE OF THE  
13 DAILY HOLDINGS DATA ON THE DOUBLELINE SYSTEMS ANYWHERE,  
14 CORRECT?

15 A. THAT'S RIGHT.

01:08PM

16 Q. AND YOU DIDN'T FIND ANY EVIDENCE OF THE  
17 MONTHLY HOLDINGS DATA ON THE DOUBLELINE SYSTEMS, RIGHT?

18 A. THAT'S CORRECT.

19 Q. YOU DIDN'T FIND -- LET'S GO THE OTHER ONES  
20 THAT JUST MR. SANTA ANA HAD.

01:08PM

21 YOU DIDN'T FIND ANY EVIDENCE OF THE  
22 MULTI-STRATEGY FIXED INCOME GRID ANYWHERE ON THE  
23 DOUBLELINE SYSTEMS, DID YOU, RIGHT?

24 A. I DON'T WE DID.

25 Q. AND YOU DIDN'T FIND ANY EVIDENCE OF THE FIXED  
26 INCOME FEE SCHEDULE ANYWHERE ON THE DOUBLELINE SYSTEMS,  
27 RIGHT?

01:08PM

28 A. THAT'S CORRECT.

1 Q. LET'S FINISH OFF WITH THE HOLDINGS BACKUP, AND  
2 TALK ABOUT MR. MAYBERRY, BECAUSE HE'S THE CUSTODIAN  
3 THAT'S LISTED THERE, OKAY?

4 A. OKAY.

5 Q. NOW, THE FORENSIC EVIDENCE, I THINK YOU  
6 TESTIFIED BEFORE, SHOWED THAT MR. MAYBERRY COPIED THIS  
7 FROM THE TCW SYSTEMS TO HIS USB DRIVE ON THE 4TH?

01:09PM

8 A. YES.

9 Q. AND HE THEN COPIED IT FROM THE FLASH DRIVE TO  
10 HIS PARENTS' COMPUTER ON THE 5TH?

01:09PM

11 A. YES.

12 Q. CORRECT?

13 AND YOU KNOW FROM YOUR REVIEW AND  
14 ANALYSIS OF THE REMEDIATION THAT MR. MAYBERRY TURNED  
15 HIS PARENTS' HOME COMPUTER IN FOR REMEDIATION ON OR  
16 ABOUT DECEMBER 18TH, RIGHT?

01:09PM

17 A. YES.

18 MR. SURPRENANT: OBJECTION.

19 THE COURT: SORRY?

20 MR. SURPRENANT: I OBJECT TO CROSSING IT OUT,  
21 FOR REASONS I CAN EXPLAIN.

01:09PM

22 THE COURT: YOU CAN -- WE'LL GET AN ERASER FOR  
23 YOU.

24 MR. SURPRENANT: I WANT TO GO OVER IT WITH  
25 BLUE INK, YOUR HONOR.

01:10PM

26 THE COURT: GO AHEAD.

27 Q. BY MR. WEINGART: AND THERE WAS ALSO A BACKUP  
28 TO THE PARENTS' COMPUTER, CORRECT?



1 A. YES.

2 Q. AND I GUESS YOU DIDN'T FIND ANY EVIDENCE THAT  
3 THE HOLDINGS BACKUP GOT BACKED UP ONTO THE PARENTS'  
4 BACKUP; IS THAT RIGHT?

5 A. I JUST DON'T RECALL. 01:10PM

6 Q. WELL, THE PARENTS' BACKUP WAS TURNED IN FOR  
7 REMEDIATION, TOO, WAS IT NOT?

8 A. IT WAS.

9 Q. AND IN YOUR VIEW OF THE DOUBLELINE SYSTEMS,  
10 YOU DIDN'T FIND THE HOLDINGS BACKUP XLM ANYWHERE ON THE 01:10PM  
11 DOUBLELINE SYSTEMS, RIGHT?

12 A. I DON'T REMEMBER SEEING THAT, NO.

13 DOES ~~CROSSED OUT~~ MEAN NOT AT DOUBLELINE,  
14 OR DOES IT MEAN REMEDIATED? I'M JUST TRYING TO  
15 UNDERSTAND. 01:10PM

16 Q. WELL, LET ME ASK YOU -- NONE OF THESE WERE  
17 ANYWHERE AT DOUBLELINE, CORRECT?

18 A. SO FAR, THAT'S RIGHT. I THINK IT'S TRUE FOR  
19 THE WHOLE COLUMN, EXCEPT FOR THE CODE FILE.

20 Q. WE'LL GET TO ALL OF THESE. I'M TRYING TO DO 01:10PM  
21 THEM IN ORDER HERE.

22 A. OKAY.

23 Q. AND WITH REGARD TO THE PARTICULAR DEVICES THAT  
24 YOU HAVE LISTED ON HERE, IT WAS REMEDIATED OFF OF THOSE  
25 DEVICES, WAS IT NOT? 01:11PM

26 A. I THINK THAT'S RIGHT.

27 Q. SO LET'S TALK NOW -- WELL, ACTUALLY, I GUESS  
28 WE CAN GO, MAYBE TALK ABOUT THE TASK LIST.

1 WE'VE TALKED ABOUT THE PARENTS' COMPUTER  
2 WAS TURNED IN, CORRECT?

3 A. YES.

4 Q. AND THE MAYBERRY BACKUP, THAT'S THE BACKUP TO  
5 HIS PARENTS' COMPUTER, RIGHT?

01:11PM

6 A. YES.

7 Q. AND THE TASK LIST KNEW MDB WAS REMEDIATED OFF  
8 OF THOSE DEVICES, CORRECT?

9 A. YES.

10 Q. AND YOU DIDN'T FIND ANY EVIDENCE OF THE TASK  
11 LISTS MDB ANYWHERE ON THE DOUBLELINE SYSTEMS, RIGHT?

01:11PM

12 A. I DON'T REMEMBER FINDING THAT.

13 Q. LET'S TALK ABOUT THE CONTACT LIST NOW.

14 YOU'VE GOT TWO LISTS HERE, CORRECT?

15 A. YES. THERE'S A DATABASE AND THE SPREADSHEETS.

01:11PM

16 Q. AND WE'VE -- JUST SO WE'RE CLEAR, THE JURY HAS  
17 HEARD TESTIMONY ABOUT VARIOUS DIFFERENT CONTACT LISTS.

18 THESE ARE TWO SPECIFIC SORT OF SETS OF  
19 CONTACTS, RIGHT?

20 A. YEAH. I MEAN, FOR ME, THESE ARE TWO SPECIFIC  
21 FILES.

01:12PM

22 Q. IN OTHER WORDS, TAKE THE PARTICIPANT CALL  
23 CONTACT LIST, THAT'S NOT ONE OF THESE TWO DOCUMENTS,  
24 RIGHT?

25 A. I AGREE.

01:12PM

26 Q. SO LET'S START WITH THE CONTACTS MDB.

27 WE ALREADY ESTABLISHED THAT SANTA ANA'S  
28 DRIVE WAS RETURNED, CORRECT?

1 A. YES.

2 Q. AND THE MAYBERRY PARENT DRIVE WAS TURNED IN  
3 FOR REMEDIATION, CORRECT?

4 A. YES.

5 Q. AND YOU DIDN'T FIND ANY EVIDENCE OF THE  
6 CONTACTS MDB ANYWHERE ON THE DOUBLELINE SYSTEMS,  
7 CORRECT?

01:12PM

8 A. THAT'S CONSISTENT WITH MY RECOLLECTION.

9 Q. OR ON ANY OTHER PERSONAL DEVICE, BECAUSE YOU  
10 HAVEN'T LISTED IT HERE, RIGHT?

01:12PM

11 A. YEAH, I THINK THAT'S RIGHT.

12 Q. SO LET'S TALK ABOUT, THEN, CONTACTS XLX.

13 THE FIRST CUSTODIAN OR DEVICE THAT YOU  
14 HAVE LISTED THERE IS JP'S TCW DESKTOP, RIGHT?

15 A. YES.

01:13PM

16 Q. IT NEVER LEFT TCW, RIGHT?

17 A. IT DID NOT.

18 Q. YOU ALSO LIST MS. VANEVERY'S PERSONAL LAPTOP,  
19 CORRECT?

20 A. YES.

01:13PM

21 Q. AND THAT WAS TURNED IN FOR REMEDIATION, RIGHT?

22 A. YES.

23 Q. AND YOU ALSO LIST VANEVERY'S USB AND THAT WAS  
24 TURNED IN FOR REMEDIATION, RIGHT?

25 A. YES.

01:13PM

26 Q. AND FOLLOWING THE REMEDIATION, THE CONTACT  
27 LIST XLX WAS NOT ON AT LEAST THE TWO DEVICES THAT LEFT  
28 TCW, CORRECT?

1 A. I THINK THAT'S RIGHT.

2 Q. AND IT WASN'T ON THE DOUBLELINE SYSTEMS,  
3 RIGHT?

4 A. NOT AS FAR AS I KNOW.

5 Q. SO NOW LET'S TALK ABOUT THE MBS DATABASE,  
6 BEFORE WE GET TO THE CODE ISSUES HERE.

7 AGAIN, WE'VE TALKED ABOUT  
8 MR. SANTA ANA'S DRIVE.

9 THAT WAS TURNED IN, CORRECT?

10 A. YES.

11 Q. AND THE MBS DATABASE WAS REMEDIATED OFF OF IT?

12 A. YES.

13 Q. JP'S LAPTOP. JP'S LAPTOP WAS TURNED IN FOR  
14 REMEDIATION, RIGHT?

15 A. YES.

16 Q. MR. MAYBERRY'S PARENTS' COMPUTER WAS TURNED IN  
17 FOR REMEDIATION, RIGHT?

18 A. YES.

19 Q. AND THE MBS DATABASE REMOVED FROM IT?

20 A. I BELIEVE THAT'S RIGHT.

21 Q. AND THEN WE'VE GOT THIS ISSUE OF JP'S DRIVE.

22 IS THIS THE NEW DRIVE OR THE OLD DRIVE?

23 A. IT IS AT LEAST THE OLD DRIVE. IT MAY ALSO BE  
24 THE NEW DRIVE.

25 I JUST DON'T REMEMBER WHETHER THIS IS  
26 AMONG THE MATERIALS THAT WERE COPIED OVER AND THEN  
27 DELETED ON THE NEW DRIVE.

28 Q. WELL, LET'S GO -- THE OLD DRIVE WAS RETURNED

01:13PM

01:14PM

01:14PM

01:14PM

01:14PM

1 TO WESTERN DIGITAL AND, AS WE HEARD, WIPED CLEAN,  
2 CORRECT?

3 A. YES.

4 Q. SO THE MBS DATABASE IS GONE OFF OF THAT,  
5 RIGHT?

01:15PM

6 A. ONE WOULD HOPE.

7 Q. AND WHEN THE NEW DRIVE WAS PLUGGED IN, MR. JP  
8 ERASED IT -- DELETED IT FROM THE DRIVE ON THE  
9 BEGINNING -- AT THE BEGINNING OF FEBRUARY 2010, RIGHT?

10 A. WELL, THE MATERIAL WAS COPIED OVER; AND THEN  
11 AT SOME POINT THEREAFTER, IT WAS DELETED.

01:15PM

12 Q. WELL, IT WAS DELETED AROUND FEBRUARY 3RD OR  
13 SO, RIGHT?

14 A. I HONESTLY DON'T REMEMBER, OFF THE TOP OF MY  
15 HEAD.

01:15PM

16 Q. IT WAS BEFORE THE REMEDIATION WAS CONCLUDED,  
17 RIGHT?

18 A. YES, BECAUSE IT WAS BEFORE IT WAS IMAGED, AS  
19 PART OF THE REMEDIATION.

20 Q. AND YOU DIDN'T FIND ANY EVIDENCE OF THE MBS  
21 DATABASE ON THE DOUBLELINE SYSTEMS, CORRECT?

01:15PM

22 A. I DON'T REMEMBER FINDING ANY.

23 Q. SO THIS BRINGS US TO THE LAST LINE, WHICH IS  
24 MR. MOORE'S USB AND THE SECURITY ANALYZER CODE, RIGHT?

25 A. YES.

01:16PM

26 Q. NOW, YOU REVIEWED THE COMPLAINT, IN PREPARING  
27 TO FORMULATE YOUR OPINIONS, RIGHT?

28 A. YES.

1 Q. AND YOU UNDERSTAND MR. MOORE IS NOT A  
2 DEFENDANT, CORRECT?

3 A. YES.

4 Q. HASN'T BEEN SUED FOR COPYING ANYTHING?

5 A. I UNDERSTAND.

01:16PM

6 Q. AND AS I UNDERSTAND IT, YOU ARE NOT CONTENDING  
7 THAT HE COPIED THE CODE VERBATIM; IS THAT RIGHT?

8 A. WELL, LET'S BE CLEAR. HE CERTAINLY DID --  
9 THERE'S NO DOUBT -- HE DID COPY THE CODE AND TAKE IT  
10 WITH HIM. I'M NOT CONTENDING THAT HE COPIED THAT CODE  
11 VERBATIM INTO THE DOUBLELINE CODE.

01:16PM

12 Q. OKAY. AND WE'LL TALK A LITTLE BIT MORE, SORT  
13 OF, ABOUT THAT.

14 BUT MR. MOORE'S USB WAS TURNED IN FOR  
15 REMEDIATION AROUND DECEMBER 18TH, RIGHT?

01:17PM

16 A. YES.

17 Q. AND THE CODE WAS WIPED CLEAN OFF OF IT, AS A  
18 RESULT, RIGHT?

19 A. THAT'S MY UNDERSTANDING.

20 Q. AND WITH REGARD TO THE SECURITY ANALYZER AND  
21 INVESTMENT REPORTING, YOUR TESTIMONY IS NOT THAT ALL OF  
22 THIS CODE THAT HE DOWNLOADED ENDED UP ON THE DOUBLELINE  
23 SYSTEMS; THAT THEY JUST CUT AND PASTED IT, RIGHT?

01:17PM

24 A. THAT'S NOT MY TESTIMONY.

25 I DON'T BELIEVE THAT'S WHAT HAPPENED.

01:17PM

26 Q. YOUR TESTIMONY IS THAT IT WAS LIKELY  
27 REFERENCED IN SOME WAY?

28 MR. SURPRENANT: OBJECTION. MISSTATES THE

1 TESTIMONY.

2 Q. BY MR. WEINGART: I'M JUST ASKING, WHAT'S YOUR  
3 TESTIMONY?

4 THE COURT: YOU CAN EXPLAIN IT.

5 IF THAT'S NOT WHAT YOU'D SAY, THEN TELL  
6 US. 01:17PM

7 THE WITNESS: MY TESTIMONY IS THAT IT WAS MOST  
8 LIKELY -- THE MOST LIKELY SCENARIO, IT WAS REFERENCED  
9 SUBSTANTIALLY.

10 Q. BY MR. WEINGART: OKAY. 01:17PM

11 AND THAT'S THE THREE INSTANCES THAT YOU  
12 TALKED ABOUT, AS WELL AS THE FILE COMPARISON, RIGHT?

13 MR. SURPRENANT: MISSTATES TESTIMONY.

14 THE COURT: THIS IS CROSS-EXAMINATION.

15 GO AHEAD. 01:18PM

16 IF YOU DON'T AGREE WITH SOMETHING HE  
17 SAYS, YOU TELL US.

18 THE WITNESS: YES, SIR.

19 IT WAS BASED ON THE COMBINATION OF THE  
20 TIMING, THE LACK OF PREPARATION, THE OVERLAP IN THE SQL  
21 FILES THAT WE SAW SIMILAR AND IDENTICAL FILE NAMES. 01:18PM

22 Q. BY MR. WEINGART: OKAY. AND WE'LL TALK ABOUT  
23 THAT IN A MINUTE.

24 BUT THIS PARTICULAR CODE HERE, YOU ARE  
25 NOT CONTENDING WAS COPIED OVER ONTO THE DOUBLELINE  
26 SYSTEMS, WITH THE EXCEPTION OF BEING PERHAPS REFERENCED  
27 IN SOME WAY, RIGHT? 01:18PM

28 A. I'M NOT CONTENDING THAT THE CODE FROM THE

1 MOORE USB DEVICE EXISTS IN VERBATIM FORM IN THE  
2 DOUBLELINE SYSTEMS.

3 Q. OKAY.

4 SO WITH REGARD TO REMEDIATION, THIS IS  
5 REALLY THE ONLY AREA THAT YOU HAVE A QUESTION ABOUT,  
6 CORRECT? WITH REGARD TO THESE, THEY ARE NOT ON THE  
7 DOUBLELINE SYSTEMS, THEY ARE NOT ON THESE DEVICES,  
8 RIGHT?

01:18PM

9 A. SO IS THE QUESTION REALLY, THAT'S THE ONLY  
10 STUFF I HAVE A QUESTION ABOUT?

01:19PM

11 Q. NO. IT WAS A BAD QUESTION.

12 MY QUESTION IS WITH REGARD TO WHAT'S  
13 REPRESENTED ON THIS CHART, WITH THE EXCEPTION OF THIS,  
14 YOU DON'T CONTEND, IN YOUR OPINIONS, THAT ANY OF THESE  
15 FILES ARE ON THE DOUBLELINE SYSTEMS, RIGHT?

01:19PM

16 A. I DON'T CONTEND ANY OF THOSE FILES EXISTED AS  
17 COPIED ON THE DOUBLELINE SYSTEMS.

18 Q. AND YOU WOULD AGREE THAT IT WAS REMEDIATED OFF  
19 OF ALL THESE DEVICES.

20 REALLY, THE ONLY ONE BEING IN DOUBT IS  
21 THE LOST MAYBERRY DRIVE, RIGHT?

01:19PM

22 A. IT WAS -- AT SOME POINT, PERHAPS EVENTUALLY  
23 REMEDIATED FROM ALL THOSE DEVICES.

24 MR. WEINGART: YOUR HONOR, CAN I OFFER 2125-A?

25 THE COURT: ANY OBJECTION?

01:19PM

26 MR. SURPRENANT: I'M JUST GOING TO WRITE ON IT  
27 LATER, YOUR HONOR.

28 THE COURT: WELL, YOU CAN HAVE YOUR OWN COPY.



1 MR. BRIAN: CALL IT B.

2 THE COURT: YOU GET A CLEAN COPY, AND WE'LL  
3 CALL IT B.

4 YOU CAN WRITE ON YOURS, TOO.

5 ALL RIGHT. WE'LL ADMIT IT.

01:20PM

6

7 (EXHIBIT 2125-A ADMITTED.)

8

9 Q. BY MR. WEINGART: SO I WANT TO TALK NOW ABOUT  
10 THE SOURCE CODE.

01:20PM

11 AND IN PARTICULAR, I GUESS I WANT TO  
12 START BY TALKING ABOUT THE SEQUENCE OF EVENTS, OKAY?

13 A. OKAY.

14 Q. MR. MOORE COPIED HIS MY DOCUMENTS FOLDER TO A  
15 USB DRIVE ON DECEMBER 4TH, RIGHT?

01:20PM

16 A. YES.

17 Q. AND YOU ARE FAMILIAR WITH HIS DEPOSITION  
18 TESTIMONY AS TO WHY HE DID THAT, CORRECT?

19 A. YES.

20 Q. THAT WAS ONE OF THE THINGS YOU REVIEWED AND  
21 RELIED ON IN FORMULATING YOUR OPINIONS, CORRECT?

01:20PM

22 A. YES.

23 Q. AND SO YOU SAW THAT HE EXPLAINED THAT WITH ALL  
24 THIS HUBBUB GOING ON ON THE 4TH, THERE WERE RUMORS  
25 GOING AROUND THAT PEOPLE'S BLACKBERRYS WERE BEING,  
26 EXCUSED THE WORD AGAIN, ZAPPED, BASICALLY.

01:21PM

27 DATA WAS BEING DELETED FROM THEM, RIGHT?

28 A. I'VE SEEN THAT TESTIMONY.

1 Q. AND HE HAD A DISCUSSION WITH MR. KALE, HIS  
2 SUPERVISOR, WHERE THEY BOTH DECIDED, LET'S GO BACKUP  
3 WHAT'S ON OUR COMPUTERS, BECAUSE WE DON'T REALLY  
4 UNDERSTAND WHAT'S GOING ON, RIGHT?

5 A. I THINK BEFORE I ENDORSE A PARAPHRASE THAT  
6 DETAILED, I WOULD LIKE TO SEE THE TESTIMONY.

01:21PM

7 UP TILL THEN, I REMEMBER HIM TESTIFYING  
8 THAT THEY'D HEARD THAT PEOPLE'S -- PORTIONS OF PEOPLE'S  
9 BLACKBERRYS WERE BEING ERASED. I DON'T REMEMBER  
10 EXACTLY WHAT FOLLOWED, SO I CAN'T REALLY ENDORSE IT.

01:21PM

11 Q. SO YOU DON'T RECALL ONE WAY OR THE OTHER  
12 WHETHER MR. KALE AND MR. MOORE HAD A DISCUSSION ABOUT  
13 WHAT THEY SHOULD DO AS A RESULT OF HEARING THIS RUMOR  
14 OF IT; IS THAT RIGHT?

15 A. MORE SPECIFICALLY, I DON'T REMEMBER  
16 MR. MOORE'S TESTIMONY ABOUT THAT.

01:21PM

17 Q. WELL, YOU SPOKE TO MR. KALE A NUMBER OF TIMES,  
18 WHEN YOU WERE PREPARING YOUR OPINION, CORRECT?

19 A. I HAVE SPOKEN TO MR. KALE.

20 Q. AND YOUR REPORT DOESN'T MENTION ANYTHING THAT  
21 SUGGESTED MR. KALE HAS A CONTRARY VIEW ABOUT THAT  
22 ISSUE -- THAT EVENT AS DESCRIBED BY MR. MOORE, CORRECT?

01:22PM

23 A. I DON'T THINK MY REPORT SPEAKS TO THAT EVENT.

24 Q. AND YOU DIDN'T LOOK AT DAN KALE'S COMPUTER TO  
25 SEE IF, IN FACT, HE MADE A BACKUP SIMILAR TO WHAT CASEY  
26 MOORE DID, RIGHT?

01:22PM

27 A. I DON'T THINK WE DID.

28 Q. NOW, SO THERE'S A COPY MADE ON THE 4TH, RIGHT?

1 A. YES.

2 Q. AND THEN THE DEVICE IS TURNED IN FOR  
3 REMEDIATION ON THE 18TH, RIGHT?

4 A. YES.

5 Q. AND YOU TESTIFIED EARLIER THAT IT WAS A ZIP  
6 FILE, AND IT WAS UNZIPPED ON THE 17TH, THE DAY BEFORE  
7 IT WAS TURNED IN FOR REMEDIATION, RIGHT?

01:22PM

8 A. WELL, YEAH; THAT IT WAS OPENED AT LEAST.

9 Q. THE ZIP FILE WAS OPENED, CORRECT?

10 A. YES.

01:23PM

11 Q. AND THERE'S NO EVIDENCE, FORENSIC EVIDENCE, AT  
12 LEAST THAT YOU HAVE CITED IN YOUR REPORT, IS THERE,  
13 THAT HE ACCESSED THE FILE BEYOND UNZIPPING IT, RIGHT?

14 A. WE HAVEN'T -- I DON'T BELIEVE WE FOUND ANY  
15 EVIDENCE BEYOND THAT.

01:23PM

16 Q. SO, YOU KNOW, IF YOU HAVE A ZIP FILE, WHEN YOU  
17 OPEN IT UP, YOU THEN TYPICALLY WILL HAVE A LIST OF THE  
18 CONTENTS, CORRECT?

19 A. YES.

20 Q. AND SO YOU WILL HAVE A LIST OF THE VARIOUS  
21 FILE NAMES, RIGHT?

01:23PM

22 A. YES.

23 Q. AND JUST SO I UNDERSTAND, THE EVIDENCE THAT  
24 YOU HAVE IS THAT HE UNZIPPED IT, SO HE WOULD HAVE SEEN  
25 THE FILE NAMES, BUT HE DID NOT CLICK AND OPEN ANY  
26 INDIVIDUAL FILES, ON THE 17TH, RIGHT?

01:23PM

27 A. WELL, THE EVIDENCE IS ACTUALLY SORT OF  
28 COMPLICATED ON THAT.

1 THE EVIDENCE IS THAT A VIEWER PROGRAM  
2 OTHER THAN THE BUILT-IN WINDOWS ZIP CAPABILITY WAS  
3 USED, AND --

4 Q. I'M SORRY, WAS USED, OR WAS IT AVAILABLE TO  
5 HIM?

01:24PM

6 MR. SURPRENANT: OBJECTION, YOUR HONOR.

7 CAN WE INTERRUPT? CAN WE FINISH HIS  
8 ANSWER?

9 THE COURT: LET'S ALLOW HIM TO FINISH HIS  
10 ANSWER.

01:24PM

11 MR. SURPRENANT: I APOLOGIZE, YOUR HONOR.

12 THE WITNESS: NO, IT WAS ACTUALLY USED.

13 AND THE REASON IS THAT THE SHORTCUT FILE  
14 THAT WE FOUND WOULD NOT HAVE BEEN CREATED IF YOU HAD  
15 USED WINDOWS BUILT-IN ZIP EXTRACTION CAPABILITIES.

01:24PM

16 IN ORDER TO MAKE SURE, WE ACTUALLY  
17 DOUBLE-CHECKED THAT. WE RAN SIMULATIONS OF THAT AND  
18 MADE SURE THAT WAS TRUE.

19 Q. BY MR. WEINGART: YOU DIDN'T PUT ANY OF WHAT  
20 YOU JUST SAID IN YOUR EXPERT REPORT, DID YOU, SIR?

01:24PM

21 A. LET ME THINK. I DON'T KNOW. I DON'T THINK  
22 SO.

23 AT THAT TIME, THIS ISSUE WASN'T REALLY A  
24 QUESTION.

25 Q. THERE WASN'T A QUESTION ABOUT WHETHER  
26 MR. MOORE OPENED CERTAIN FILES AT THAT TIME?

01:24PM

27 A. THERE WASN'T A QUESTION AS TO WHAT TYPE OF  
28 PROGRAM HE'D USED TO OPEN THE ZIP FILE.

1 Q. SO YOU DIDN'T DO THAT ANALYSIS, OR INCLUDE IT  
2 IN YOUR REPORT, RIGHT?

3 A. THAT'S RIGHT.

4 Q. NOW, SO WE'VE GOT THE 17TH AND THE 18TH THAT  
5 WE'VE TALKED ABOUT, IN TERMS OF THE ACCESS AND THEN  
6 TURNING IT IN ON THE 18TH.

01:25PM

7 AND THERE'S NO EVIDENCE OF ANY  
8 MEANINGFUL TCW FILE ON MR. MOORE'S PERSONAL COMPUTER,  
9 RIGHT?

10 A. HONESTLY, I DON'T REMEMBER, BUT I -- I DON'T  
11 REMEMBER SUCH A THING.

01:25PM

12 Q. AND THERE'S NO EVIDENCE OF ANY MEANINGFUL TCW  
13 FILE ON HIS WORK COMPUTER, CORRECT?

14 A. I BELIEVE THAT'S RIGHT.

15 Q. AND I THINK AS WE SAID BEFORE, WHEN THE FLASH  
16 DRIVE WAS TURNED IN, IT WAS WIPED COMPLETELY CLEAN,  
17 CORRECT, OR AT LEAST THE SOURCE CODE WAS GONE FROM IT,  
18 RIGHT?

01:25PM

19 A. FROM MR. MOORE, I DON'T BELIEVE THAT TO BE THE  
20 CASE.

01:25PM

21 WHEN THE FLASH DRIVE WAS REMEDIATED  
22 THE -- FOR MR. MOORE, THE SOURCE CODE WAS INTACT ON IT.  
23 THAT'S HOW WE GENERATED THE FILE LISTING OF IT.

24 THE FLASH CARD THAT DID NOT SHOW COPIED  
25 WAS MR. ZHANG'S.

01:26PM

26 MR. SURPRENANT: YOUR HONOR, I WOULD MOVE TO  
27 STRIKE AS NON-RESPONSIVE.

28 THE COURT: I'LL STRIKE THE RESPONSE.

1 I THINK THERE WAS A DISCONNECT BETWEEN  
2 THE QUESTION AND THE ANSWER.

3 WHY DON'T YOU ASK YOUR QUESTION AGAIN,  
4 AND WE'LL SEE IF WE CAN GET THE SAME ANSWER.

5 Q. BY MR. WEINGART: MY QUESTION WAS, WITH REGARD  
6 TO MR. MOORE'S USB, WHEN IT WAS TURNED IN FOR  
7 REMEDIATION, THE SOURCE CODE WAS REMOVED FROM IT,  
8 RIGHT?

01:26PM

9 A. I SEE. IT WAS SUBSEQUENTLY REMOVED FROM IT.

10 Q. YES.

01:26PM

11 A. YES. THAT'S CORRECT.

12 Q. WELL, REMEDIATION, YOU ARE SUPPOSED TO TURN IT  
13 IN, AND HAVE IT REMOVED, RIGHT? IT WOULDN'T HAVE BEEN  
14 REMOVED BEFORE?

15 A. YES. I UNDERSTOOD IT DIFFERENTLY.

01:26PM

16 IN SOME CASES, SOME SOURCE CODE WAS  
17 REMOVED OR NOT PRESENT, BEFORE IT WAS TURNED IN, AND  
18 THAT'S WHY I WAS CONFUSED BY IT.

19 Q. NOW, YOU TESTIFIED BEFORE THAT DOUBLELINE  
20 INSTITUTED VERSION CONTROL BEGINNING IN JANUARY OF  
21 2010, RIGHT?

01:26PM

22 A. YES, JANUARY, I BELIEVE, 8TH.

23 Q. AND YOU RECEIVED A COPY OF THE SOURCE CODE  
24 REPOSITORY IN JULY 2010 TO EXAMINE, I BELIEVE, RIGHT?

25 A. THAT SOUNDS RIGHT.

01:27PM

26 Q. AND YOU TESTIFIED ABOUT THREE PARTICULAR  
27 FILES. THERE WAS A VIEW PROGRAM, CORRECT, OR A VIEW  
28 ROUTINE; IS THAT A FAIR WAY TO SAY IT?

1           A.     THESE ARE DATABASE VIEWS, THREE DIFFERENT  
2 DATABASE VIEWS THAT WERE CREATED.

3           Q.     I'LL USE THAT LANGUAGE. SO ONE DATABASE VIEW  
4 WAS A VIEW, A HOLDINGS VIEW, RIGHT?

5           A.     YES. 01:27PM

6           Q.     AND ANOTHER ONE WAS A CURRENT HOLDINGS VIEW,  
7 RIGHT?

8           A.     YES.

9           Q.     AND THEN THERE WAS ONE THAT WAS AN IN-TEXT  
10 VIEW, CORRECT? 01:27PM

11          A.     YES.

12          Q.     AND THE TWO HOLDINGS VIEW, YOU KNOW THAT FROM  
13 YOUR ANALYSIS OF THE SOURCE CODE REPOSITORY, THOSE  
14 DIDN'T SHOW UP IN THE SOURCE CODE UNTIL MAY, NEARLY  
15 FIVE MONTHS AFTER MR. MOORE TURNED IN HIS FLASH DRIVE,  
16 RIGHT? 01:27PM

17          A.     THAT'S RIGHT.

18          Q.     AND THE IN-TEXT CODE SHOWED UP IN THE  
19 REPOSITORY MID-JANUARY, IS THAT FAIR?

20          A.     THAT'S RIGHT. 01:28PM

21          Q.     NOW, WITH REGARD TO THE IN-TEXT CODE, DID YOU  
22 DO ANY KIND OF COMPARISON ABOUT WHETHER OR NOT THAT  
23 IN-TEXT CODE IS SIMILAR OR DISSIMILAR TO CODE THAT  
24 IN-TEXT ITSELF MAKES AVAILABLE TO PEOPLE TO USE ITS  
25 PRODUCT? 01:28PM

26          A.     NO.

27          Q.     THAT WAS SOMETHING THAT YOU DID NOT THINK WAS  
28 SOMETHING THAT YOU SHOULD DO, BEFORE OPINING WITH

1 REGARD TO THE SIMILARITY OF THIS CODE?

2 A. NO.

3 Q. NOW, THE THREE VIEWS THAT YOU TALKED ABOUT,  
4 ABOUT HOW MANY LINES OF CODE DO THESE CONSTITUTE?

5 A. MY GUESS IS SOMEWHERE BETWEEN 2- AND 300  
6 LINES, TOTAL, BUT I'M SPITBALLING HERE.

01:28PM

7 Q. AND THE DOUBLELINE CODE ITSELF, IF YOU PRINTED  
8 IT OUT AS OF JULY 2010, WOULD BE ABOUT 340,000 LINES OF  
9 CODE, BASICALLY LIKE THOSE BOXES OVER THERE, RIGHT?

10 A. I DON'T KNOW. I'LL TAKE YOUR WORD FOR IT.

01:29PM

11 Q. YOU ARE THE PRINTING GUY, YOU TALKED ABOUT IT.

12 IF WE PRINTED IT OUT, IS THAT ABOUT HOW  
13 BIG IT WOULD BE?

14 A. I HONESTLY DON'T KNOW.

15 Q. WELL, JUST TO MAKE CLEAR, THEN, WHAT WE'RE  
16 TALKING ABOUT, IS A SIMILARITY BETWEEN ABOUT 200 LINES  
17 OF CODE OUT OF 340,000 OR SO, CORRECT?

01:29PM

18 A. THOSE SPECIFIC INDICIA ARE A COUPLE HUNDRED  
19 LINES OF CODE AMONGST A LARGE SET, YES.

20 Q. SO LET'S TALK ABOUT THOSE PARTICULAR VIEWS.

01:29PM

21 DO I HAVE THAT RIGHT?

22 A. SURE.

23 Q. NOW, YOU WOULD AGREE THAT DOUBLELINE'S  
24 ATTEMPTING TO SOLVE THE SAME KIND OF PROBLEMS THAT TCW  
25 IS, RIGHT?

01:29PM

26 A. YES.

27 Q. AND BOTH COMPANIES TRADE MORTGAGE-BACKED  
28 SECURITIES, RIGHT?



1 A. YES.

2 Q. AND THEY BOTH NEED TO KEEP TRACK OF WHAT  
3 SECURITIES THEY HOLD FOR CLIENTS?

4 A. YES.

5 Q. AND THEY BOTH NEED TO MAKE USE OF DATA FROM  
6 THIRD PARTY DATA PROVIDERS, CORRECT?

01:30PM

7 A. YES.

8 Q. THAT WOULD INCLUDE IN-TEXT, RIGHT?

9 A. THEY BOTH GET DATA FROM IN-TEXT, YES.

10 Q. AND THEY BOTH GET DATA FROM A COMPANY CALLED  
11 BNY MELLON, RIGHT?

01:30PM

12 A. THAT'S WHAT I'VE HEARD.

13 I HAVEN'T SEEN THAT SPECIFICALLY, BUT I  
14 BELIEVE IT.

15 Q. WELL, DO YOU KNOW WHETHER OR NOT THE  
16 PARTICULAR TWO VIEW HOLDINGS ABOUT WHICH YOU ARE  
17 OFFERING OPINIONS, ARE PRESENTATIONS OF DATA THAT IS  
18 COMING FROM BNY MELLON ABOUT WHAT CLIENTS' HOLDINGS  
19 ARE?

01:30PM

20 A. WELL, SURE. ALL OF THAT -- I MEAN, I DON'T  
21 KNOW THAT SPECIFICALLY IT COMES FROM BNY MELLON, BUT I  
22 KNOW IN BOTH CASES, WHAT THEY ARE TRYING TO DO IS  
23 PRESENT IN A USEFUL WAY, DATA THAT THEY'VE AGGREGATED  
24 FROM VARIOUS SOURCES.

01:30PM

25 Q. LIKE BNY MELLON, RIGHT?

01:30PM

26 A. SURE.

27 Q. NOW, THE TWO -- LET ME JUST STICK WITH THE TWO  
28 HOLDINGS VIEW -- HOLDING VIEWS.

1 DO I HAVE THAT RIGHT, AGAIN?

2 A. SURE. THAT WORKS.

3 Q. SO WITH REGARD TO THOSE TWO HOLDING VIEWS, THE  
4 PARTICULAR CODE THAT YOU ARE REFERENCING, THAT CODE  
5 DOES NOT ANALYZE A BOND, RIGHT?

01:31PM

6 A. IT DOES NOT.

7 Q. IT DOESN'T HAVE AN ALGORITHM THAT DOES SOME  
8 KIND OF COMPUTATION, CORRECT?

9 A. I GUESS THAT'S RIGHT.

10 WELL, I DON'T REMEMBER SPECIFIC  
11 COMPUTATIONS IN THEM.

01:31PM

12 Q. IT PRESENTS VARIOUS SORTS OF FIELDS OF DATA,  
13 CORRECT?

14 IT'S A ROUTINE DESIGNED TO PULL THAT  
15 PARTICULAR DATA OUT AND PRESENT IT, RIGHT?

01:31PM

16 A. WELL, IT'S DESIGNED TO PULL THE DATA OUT OF  
17 THE DATABASE, POTENTIALLY, JUST TO PRESENT OR TO USE IT  
18 SOME OTHER WAY.

19 WHAT IT DOES IS, IT ALLOWS DATA FROM  
20 MULTIPLE TABLES TO BE GROUPED IN A PARTICULAR WAY.

01:31PM

21 Q. NOW, YOU TESTIFIED EARLIER WITH ONE OF -- WHAT  
22 YOU DID WITH REGARD TO THESE THREE VIEWS WAS TO TAKE  
23 CODE, REMOVE SOME LINES, AND REARRANGE OTHERS, RIGHT?

24 A. YES, ON THE TCW SIDE; NOT ON THE DOUBLELINE  
25 SIDE.

01:32PM

26 Q. CORRECT.

27 BUT FOR PURPOSES OF A COMPARISON, YOU  
28 DECIDED THAT THE WAY IT WOULD LOOK BEST IS TO TAKE

1 CERTAIN LINES, REARRANGE THE ORDER AND REMOVE OTHERS,  
2 SO YOU HAVE A BETTER MATCH; ISN'T THAT RIGHT?

3 A. THAT WAS THE WAY BEST TO SHOW WHAT THE  
4 SIMILARITIES WERE.

5 Q. NOW, LET'S TALK ABOUT THE HOLDINGS VIEW. 01:32PM

6 MR. WEINGART: MAY I HAVE ONE MOMENT, YOUR  
7 HONOR?

8 THE COURT: SURE.

9 MR. WEINGART: COULD WE DISPLAY -- I THINK  
10 WHAT WAS MARKED IS NOT IN EVIDENCE, BUT WAS PREVIOUSLY  
11 SHOWN AS 1510A-83, THE DEMONSTRATIVE. 01:33PM

12 THE COURT: CAN WE GET A LITTLE BETTER VIEW ON  
13 THAT?

14 Q. BY MR. WEINGART: NOW, THIS IS ONE OF THE  
15 THREE VIEWS THAT YOU OPINE IS SIMILAR, RIGHT? 01:33PM

16 A. YES.

17 Q. AND I GUESS WHAT I'M TRYING TO UNDERSTAND IS,  
18 IS YOUR OPINION THAT IT IS SIMILAR BECAUSE THERE ARE  
19 NUMEROUS FIELDS IN COMMON, OR BECAUSE OF THE GRANT  
20 SELECT LINE AT THE END? 01:34PM

21 A. IT'S BECAUSE YOU HAVE A FILE WHICH IS VERY  
22 SIMILARLY ALMOST IDENTICALLY NAMED, PERFORMING ALMOST  
23 THE SAME FUNCTION, WHERE, MANY OF THE FIELDS ARE  
24 SIMILAR. AND THE LINE, IN PARTICULAR, STANDS OUT AS  
25 ONE OF THE SIMILAR LINES. 01:34PM

26 Q. SO IT'S ALL OF THEM TOGETHER?

27 A. YES.

28 Q. NOW, THE SAME PERSON WROTE BOTH OF THESE

1 CODES, RIGHT?

2 A. YES.

3 Q. AND CODERS HAVE CERTAIN CONVENTIONS THAT THEY  
4 ADHERE TO, PERSONAL PREFERENCES, CORRECT?

5 A. YES.

01:34PM

6 Q. AND IF THEY ARE WORKING WITH THE SAME DATA,  
7 SAY DATA FROM BNY MELLON, THOSE TWO DATA SOURCES ARE  
8 GOING TO BE THE SAME, RIGHT?

9 A. IF YOU WORK WITH THE SAME DATA SOURCE IN BOTH  
10 LOCATIONS, THE DATA SOURCES WILL BE THE SAME, YES.

01:35PM

11 Q. WELL, ASSUME, FOR PURPOSES OF MY QUESTION NOW,  
12 THAT BOTH OF THESE ARE PULLING DATA FROM BNY MELLON,  
13 OKAY?

14 A. OKAY.

15 Q. AND LET'S GO -- AND I THINK YOU TESTIFIED  
16 ABOUT THIS, BUT THE PARTICULAR SEQUENCE OF CODE HERE,  
17 THIS IS THE STANDARD WAY IN SQL THAT YOU WOULD PRESENT  
18 A VIEW, CORRECT?

01:35PM

19 A. CONSTRUCTIVE VIEW, YES. THAT'S -- THIS IS THE  
20 WAY YOU MAKE A VIEW IN SQL.

01:35PM

21 Q. SO IF I'M GOING TO MAKE A VIEW OF, YOU KNOW, A  
22 DATABASE FROM A LIBRARY OF BOOKS, OR I'M GOING TO MAKE  
23 A DATABASE OF THIS VIEW, I'M GOING TO DO THIS, USE, GO,  
24 BEGIN, END, SELECT, IN THE FIELDS, RIGHT?

25 THAT'S THE SQL SYNTAX I WOULD USE TO  
26 CREATE THIS VIEW?

01:35PM

27 A. SOME OF THIS IS INHERENT TO CREATING A VIEW.

28 Q. SO THERE ISN'T ANYTHING ABOUT IN USE, THE GO

1 AND END OF THE LINE THAT STRIKES YOU AS BEING  
2 PARTICULARLY PERTINENT TO SIMILARITY ANALYSIS, RIGHT?

3 A. WELL, SOME OF IT -- ONCE YOU ACCEPT THE NOTION  
4 THAT THIS VIEW, WHICH IS NOT INHERENTLY NECESSARY, IT'S  
5 AN OPTIMIZATION, ESSENTIALLY. ONCE YOU ACCEPT THIS IS  
6 GOING TO BE THE SAME, IT'S GOING TO BE NAMED THE SAME,  
7 AND IT'S GOING TO BE PRESENT IN BOTH SITES OF CODE,  
8 THEN SOME OF THE LINES YOU SEE HERE ARE NOT SURPRISING.

01:36PM

9 Q. WELL, LET ME JUST ASK, IF I OWN AN INVESTMENT  
10 ADVISOR, OR I WORK AS AN INVESTMENT ADVISOR, I'M GOING  
11 TO WANT TO KNOW WHAT MY HOLDINGS ARE, RIGHT?

01:36PM

12 A. YES, BUT YOU WON'T NECESSARILY CONSTRUCT A  
13 VIEW FOR THAT.

14 Q. BUT IF I WANT TO CONSTRUCT A VIEW, THESE ARE  
15 THE FIELDS I WOULD WANT TO LOOK AT, AREN'T THEY?

01:36PM

16 A. RIGHT. IF YOU ARE GOING TO CONSTRUCT A VIEW,  
17 WHICH IS SORT OF A PROGRAMMING OPTIMIZATION, INSTEAD OF  
18 DOING ONE OF THE OTHER THINGS AND YOU WANT TO  
19 ESSENTIALLY PERFORM THE SAME FUNCTION, THEN SOME OF  
20 WHAT YOU SEE HERE IS GOING TO BE THE SAME.

01:36PM

21 Q. WELL, IF I'M FAMILIAR WITH SQL, AND I WANT TO  
22 CREATE A VIEW USING SQL -- BNY MELLON DATA, IT'S GOING  
23 TO BE THE SAME BASIC SYNTAX, CORRECT?

24 A. NOT NECESSARILY.

25 IF YOU WERE GOING TO CONSTRUCT A VIEW  
26 JOINING THE SAME FIELDS OF THE BNY MELLON DATA, THERE'S  
27 A LOT OF BNY MELLON DATA HERE THAT ISN'T BEING  
28 REFERENCED.

01:37PM

1 Q. WELL, I APPRECIATE THAT. AND THAT'S WHAT I  
2 WANT TO UNDERSTAND.

3 SO THAT THE ISSUE, AS I UNDERSTAND IT,  
4 THEN, CORRECT ME IF I'M WRONG, IS IT'S THE FIELDS THAT  
5 ARE BEING SELECTED THAT YOU ARE FINDING MORE PERTINENT,  
6 RATHER THAN THE VIEW UP ABOVE, CORRECT?

01:37PM

7 A. NO. AS I'VE SAID, IT'S THE FACT THAT IN BOTH  
8 CASES, THE SAME PROGRAMMING OPTIMIZATION IS BEING  
9 CREATED, IT'S BEING CALLED THE SAME THING, AND THEN THE  
10 SAME FIELDS ARE BEING REFERENCED USING THE SAME KIND OF  
11 SYNTAX.

01:37PM

12 Q. LET ME JUST ASK YOU -- YOU SEE THE FIRST LINE,  
13 UNDER SELECT. THOSE ARE THE FIELDS OF DATA THAT ARE  
14 GOING TO BE PRESENTED IN THE VIEW, CORRECT?

15 A. YES.

01:38PM

16 Q. AND SO IF I WANT TO SEE A HOLDINGS THAT I  
17 HAVE, ONE OF THE THINGS THAT I WOULD WANT TO KNOW IS  
18 WHAT'S THE DATE THAT I'M LOOKING AT.

19 THESE ARE HOLDINGS AS OF WHAT DATE,  
20 RIGHT?

01:38PM

21 A. SURE.

22 Q. AND I WOULD WANT TO KNOW --

23 A. I'M SORRY.

24 Q. YOU SAY THAT'S --

25 A. THE VIEW DOESN'T NECESSARILY MEAN THAT PEOPLE  
26 ARE GOING TO LOOK AT IT. THAT'S ONE OF THE THINGS THAT  
27 CAN BE DONE WITH IT.

01:38PM

28 BUT VIEW JUST MEANS THAT IT'S

1 ESSENTIALLY IT'S LIKE A VIRTUAL TABLE. YOU CAN REQUEST  
2 IT AS IF IT WERE A TABLE, YOU CAN REQUEST IT AS IF IT  
3 WERE A TABLE AND IT WILL COLLECT THE DATA FROM  
4 DIFFERENT LOCATIONS AND PACKAGE IT UP FOR YOU.

5 Q. OKAY. WELL, ONE OF THE THINGS I MIGHT WANT TO  
6 COLLECT, AS PART OF MY DATA, IS WHAT DATE IS THE DATE  
7 FOR THE DATE I'M LOOKING AT, RIGHT?

01:38PM

8 A. SURE.

9 Q. AND ANOTHER THING THAT I WOULD WANT TO KNOW  
10 IS, WHAT PORTFOLIO AM I LOOKING AT.

01:38PM

11 THE PORTFOLIO NAME, RIGHT?

12 A. OKAY.

13 Q. AND WHAT PORTFOLIO NUMBER, RIGHT?

14 A. SURE.

15 Q. AND IS THIS IN DOLLARS OR EUROS OR SWISS  
16 FRANCS, OR SOMETHING ELSE, RIGHT?

01:38PM

17 A. I MEAN, IF THAT'S INFORMATION THAT YOU WANT,  
18 THEN YOU PUT IT INTO THE VIEW THAT YOU ARE GOING TO  
19 REQUEST.

20 Q. INCEPTION DATE, WHEN DID THE ACCOUNT START,  
21 RIGHT?

01:39PM

22 A. AGAIN, IF THAT'S INFORMATION THAT YOU ARE  
23 GOING TO WANT IN THIS OPTIMIZATION, THEN YES, YOU  
24 SHOULD ADD IT.

25 Q. WHAT'S A CUSIP?

01:39PM

26 A. I ACTUALLY DON'T KNOW.

27 Q. WELL, LET ME ASK YOU TO ASSUME THAT A CUSIP IS  
28 A UNIQUE IDENTIFIER FOR SECURITY LIKE A SOCIAL SECURITY

1 NUMBER. EACH ONE ONLY HAS ONE, OKAY?

2 A. OKAY.

3 Q. ISN'T THAT SOMETHING YOU WOULD WANT TO SEE, IF  
4 YOU WERE LOOKING AT CLIENT PORTFOLIO HOLDINGS, NO  
5 MATTER WHETHER YOU WERE AT TCW OR AT DOUBLELINE?

01:39PM

6 A. AGAIN, IF THAT'S SOMETHING THAT YOU WOULD WANT  
7 TO BE PART OF THIS OPTIMIZED VIEW, THEN THAT'S  
8 SOMETHING YOU WOULD ADD.

9 Q. WHAT'S ISIN?

10 A. AGAIN, I DON'T KNOW.

01:39PM

11 Q. IF I TOLD YOU THAT'S ANOTHER THING LIKE A  
12 CUSIP, YOU WOULDN'T HAVE ANY REASON TO DISBELIEVE THAT,  
13 WOULD YOU?

14 A. I WOULD NOT.

15 Q. ANOTHER THING I MIGHT WANT TO LOOK AT IS  
16 WHAT'S THE NAME OF THE SECURITY, CORRECT?

01:39PM

17 A. OKAY.

18 Q. AND BOOK PRICE, WHAT'S BOOK PRICE?

19 A. AGAIN, I DON'T REALLY KNOW.

20 Q. WELL, BOOK PRICE MIGHT BE WHAT I'M HOLDING IT  
21 ON MY BOOKS FOR, RIGHT?

01:40PM

22 A. OKAY.

23 Q. IT MIGHT BE SOMETHING I WOULD WANT TO SEE, IF  
24 I WAS CREATING A VIEW OF MY HOLDINGS, RIGHT?

25 A. IT MIGHT BE SOMETHING THAT YOU WOULD WANT TO  
26 DRAW OUT OF AN OPTIMIZED ACCESS TO THE DATABASE.

01:40PM

27 AND IF IT IS, THEN YOU SHOULD ADD IT.

28 Q. MARKET VALUE, THAT'S ANOTHER THING I MIGHT



1 WANT TO KNOW, RIGHT?

2 A. SURE.

3 Q. NOW, THE SECOND OF THE TWO VIEWS THAT YOU  
4 TALKED ABOUT WAS A CURRENT VIEW HOLDING; IS THAT RIGHT?

5 A. YES.

01:40PM

6 Q. AND THAT ESSENTIALLY HAS -- I DON'T WANT TO  
7 BELABOR THE POINT, BUT IT BASICALLY HAS THE SAME FIELDS  
8 IN IT AS WHAT WE JUST TALKED ABOUT, CORRECT?

9 A. I THINK THAT'S RIGHT.

10 Q. AND THE SAME BASIC CODE STRUCTURE, RIGHT?

01:41PM

11 A. YES.

12 Q. AND DO YOU KNOW ANYTHING AT ALL ABOUT WHAT  
13 DATA GETS PULLED FROM IN-TEXT ?

14 A. I DON'T.

15 Q. OR WHAT A TRADER NIGHT WANT TO SEE FROM  
16 IN-TEXT?

01:41PM

17 A. I DON'T.

18 Q. WHETHER THEY ARE AT TCW OR DOUBLELINE?

19 A. I DON'T.

20 Q. AND YOU DIDN'T BOTHER TO EDUCATE YOURSELF  
21 ABOUT THAT, BEFORE RENDERING THIS OPINION, DID YOU?

01:41PM

22 A. I DID NOT.

23 Q. NOW, COULD WE GO TO THE NEXT PAGE.

24 AND I THINK THE OTHER THING YOU TALKED  
25 ABOUT WAS THIS GRANT SELECT.

01:41PM

26 A. YES.

27 Q. IT SHOULD BE AT THE VERY LAST PAGE OF THE  
28 EXHIBIT. VERY BOTTOM. THERE, IF YOU COULD BLOW THAT

1 UP.

2 AND JUST TO MAKE SURE THAT I UNDERSTAND,  
3 GRANT SELECT IS SORT OF LIKE A SECURITY DEVICE,  
4 CORRECT?

5 A. YEAH, IT'S A WAY OF RESTRICTING ACCESS TO THE  
6 VIEW TO A PARTICULAR SET OF PEOPLE OR SOFTWARE.

01:42PM

7 Q. SO WITH REGARD TO THE DOUBLELINE CODE -- I'M  
8 SORRY, THE TCW CODE -- THE ACCESS TO THIS VIEW WAS  
9 RESTRICTED TO MBS ANALYTIC ROLES?

10 A. YES.

01:42PM

11 Q. SO IF YOU WEREN'T PART OF THAT GROUP, OR USER  
12 I.D., OR WHATEVER IT WAS, YOU COULDN'T SEE THIS, RIGHT?

13 A. YOU COULDN'T USE THE VIEW, RIGHT.

14 Q. SO IT WOULD BE SORT OF LIKE A PAYROLL SYSTEM  
15 OR SOMETHING, WHERE MAYBE, BECAUSE OF YOUR POSITION YOU  
16 COULD SEE CERTAIN DATA ABOUT CERTAIN EMPLOYEES, BUT NOT  
17 DATA ABOUT OTHER EMPLOYEES, RIGHT?

01:42PM

18 A. SURE. THAT SORT OF WORKS AS AN ANALOGY.

19 Q. I UNDERSTAND IT'S AN ANALOGY.

20 A. YEAH.

01:42PM

21 Q. AND YOU SAID IF YOU HAVE THOSE TWO DASHES,  
22 THAT BASICALLY TELLS THE COMPUTER, YOU DON'T NEED TO  
23 PAY ATTENTION TO THIS LINE?

24 A. RIGHT. IT DISABLES THE CODE ON THAT LINE.

25 Q. SO THIS HAS A SECURITY PRECAUTION, AND THEN  
26 THERE ARE THREE QUESTION MARKS, CORRECT?

01:43PM

27 A. YES.

28 Q. NOW, YOU ARE FAMILIAR WITH THE FACT THAT WHEN

1 YOU ARE BUILDING A SYSTEM, ONE OF THE THINGS THAT YOU  
2 WANT TO HAVE IN IT IS SCALABILITY, RIGHT?

3 A. SURE.

4 Q. I MEAN THAT'S -- AND BY SCALABILITY, I MEAN AS  
5 MORE USERS ARE ADDED, AS MORE DATA COMES ON LINE, YOU  
6 WANT TO HAVE AN ABILITY TO MAKE SURE THAT WHATEVER IT  
7 IS YOU PUT IN PLACE IS GOING TO BE ABLE TO HANDLE THAT  
8 RAMP-UP, RIGHT?

01:43PM

9 A. YES.

10 Q. AND SO IF YOU ARE DEVELOPING A CODE, AT A  
11 SMALL STARTUP, WHERE THERE ARE NOT THAT MANY PEOPLE, DO  
12 YOU NEED TO RESTRICT ACCESS?

01:43PM

13 A. I DON'T KNOW.

14 IN THIS PARTICULAR CASE, THEY DID NOT.  
15 SO I ASSUME IN THIS PARTICULAR CASE, THE ANSWER IS NO,  
16 THEY DID NOT NEED TO.

01:43PM

17 Q. AND AS YOU RAMPED UP OR GOT BIGGER, ONE OF THE  
18 THINGS YOU WOULD WANT TO DO IS RESTRICT ACCESS, AT A  
19 LATER POINT IN TIME; THAT'S A POSSIBILITY, RIGHT?

20 A. YOU MIGHT.

01:44PM

21 Q. AND SO IF YOU HAD A -- THREE QUESTION MARKS IN  
22 THERE, AS SORT OF IN THE FUTURE, IF WE WANT TO RESTRICT  
23 ACCESS, THIS IS WHERE WE WOULD DO IT AS I'M CODING IT  
24 OUT, THAT WOULD BE AN EXPLANATION FOR WHY THIS IS IN  
25 THERE, WOULD IT NOT?

01:44PM

26 A. IT'S CONCEIVABLE.

27 Q. AND YOU JUST COMPLETELY DISCOUNTED THAT IN  
28 YOUR OPINION; IS THAT RIGHT?

1           A.     NO.    I'VE CONSIDERED THAT, AND I JUST DON'T  
2 THINK THAT THE BULK OF THE EVIDENCE SUPPORTS IT.

3           Q.     NOW, YOU ALSO TALKED ABOUT FILING  
4 SIMILARITIES, RIGHT?

5           A.     YES.

01:44PM

6           Q.     AND THERE WAS A LIST, I THINK IT WAS EXHIBIT  
7 96 -- COULD WE PUT UP 510A-96.

8                         THESE ARE SOME OF THE MATCHING FILES  
9 NAMES YOU DISCUSSED?

10          A.     YES, CORRECT.

01:45PM

11          Q.     AND DS MEANS DATA SET, DOES IT NOT?

12          A.     YES.

13          Q.     SO THE FACT THAT THERE IS A DS IN THE  
14 BEGINNING OF IT, I ASSUME YOU DIDN'T FIND THAT  
15 SUSPICIOUS, RIGHT?

01:45PM

16          A.     VIRTUALLY NONE OF THESE THINGS IS SUSPICIOUS.

17          Q.     AND AGAIN, WE'VE TALKED ABOUT IT, BUT TCW AND  
18 DOUBLELINE ARE IN THE SAME LINE OF BUSINESS, CORRECT?

19          A.     YES.

20          Q.     AND SO THEY WOULD BOTH WANT TO HAVE A DATA  
21 SET -- IF WE COULD HIGHLIGHT LINE 9 -- A DATA SET OF  
22 THEIR TRADES, RIGHT?

01:45PM

23          A.     I HONESTLY -- IT'S CERTAINLY CONCEIVABLE.

24                         I REALLY DON'T KNOW.

25          Q.     IT'S AN AREA OUTSIDE OF YOUR EXPERTISE, ISN'T  
26 IT?

01:45PM

27          A.     IT IS.

28          Q.     SO SIMILAR, YOU DON'T KNOW WHETHER OR NOT THEY

1 WOULD WANT TO HAVE A DATA SET OF HOLDINGS.

2 A. WE KNOW THAT THEY BOTH DID.

3 Q. AND THAT THEY WOULD WANT TO HAVE A DATA SET OF  
4 REPORTS THEY WOULD BOTH WANT TO SEE?

5 A. YES.

01:46PM

6 Q. I MEAN, CLEARLY, THEY BOTH DID.

7 THE OTHER NAMES YOU'VE GOT IN HERE ARE  
8 SECURITY, PORTFOLIO. THOSE ARE THE KINDS OF DATA  
9 MATCHES YOU ARE RELYING ON, RIGHT?

10 A. THAT IS PART OF WHAT WE'RE RELYING ON, YES.

01:46PM

11 Q. THERE'S ALSO SOME CODE IN HERE THAT'S SIMILAR,  
12 OR, SORRY, FILE NAMES THAT ARE SIMILAR, THAT OPEN  
13 SOURCE CODE; ISN'T THAT RIGHT?

14 A. THAT'S POSSIBLE.

15 IS THERE SOMETHING IN PARTICULAR YOU ARE  
16 LOOKING --

01:46PM

17 Q. WELL, ONE OF THE FILES, DO YOU REMEMBER -- I  
18 DON'T REMEMBER EXACTLY WHERE IT IS, BUT ONE OF THEM WAS  
19 GLASSBUTTON.CS. THAT'S ONE OF THE THINGS YOU REMEMBER  
20 AS BEING SIMILAR?

01:46PM

21 A. I DON'T REMEMBER SPEAKING TO THAT EXPLICITLY.

22 Q. WELL, IT'S ONE OF THE ONES THAT I -- I'LL COME  
23 BACK TO IT.

24 BUT LET ME JUST ASK YOU: YOU DID, WITH  
25 REGARD TO GLASSBUTTON.CS, OR ANYTHING ELSE, JUST AS YOU  
26 DIDN'T WITH THE IN-TEXT, CHECK TO SEE WHETHER ANY OF  
27 THIS WAS OPEN SOURCE CODE THAT WAS AVAILABLE TO OTHER  
28 PEOPLE, TO EVERYONE?

01:47PM

1           A.     I ACTUALLY DON'T BELIEVE THAT ANY OF THIS IS  
2 OPEN SOURCE CODE.

3                     AND I'M GOING TO TAKE A LOOK BECAUSE I  
4 DON'T REMEMBER SEEING GLASSBUTTON.CS.

5           MR. SURPRENANT:   IS THIS EXHIBIT 96?

01:47PM

6           Q.     BY MR. WEINGART:   I'LL COME BACK TO THAT.

7                     I'LL TELL YOU WHAT --

8           A.     I DON'T SEE GLASSBUTTON.CS IN HERE.

9           Q.     WE'LL COME BACK TO IT.

10                    MAYBE I'VE GOT MY NOTES WRONG, OR I  
11 DON'T KNOW.

01:48PM

12           A.     I DON'T BELIEVE ANY OF THE FILES LISTED ARE  
13 OPEN SOURCE.   I'M HOPING TO BE CORRECT ON THAT, BUT I  
14 DON'T THINK THAT'S THE CASE.

15           Q.     NOW, YOU HAVE RENDERED SOME OPINIONS REGARDING  
16 VERSION CONTROL; IS THAT RIGHT?

01:48PM

17           A.     YES.

18           Q.     AND YOU MENTIONED THAT YOU DID SPEAK WITH  
19 MR. KALE IN CONNECTION WITH PREPARING YOUR OPINIONS,  
20 CORRECT?

01:48PM

21           A.     YES.

22           Q.     AND DID YOU SPEAK WITH HIM REGARDING TCW'S  
23 PRACTICES WITH REGARD TO VERSION CONTROL?

24           A.     I DON'T REMEMBER IF I SPOKE TO HIM  
25 SPECIFICALLY ON THAT SUBJECT.   I DON'T REMEMBER.

01:48PM

26           Q.     DID YOU REVIEW HIS TRIAL TESTIMONY ABOUT  
27 VERSION CONTROL?

28           A.     I DON'T THINK I HAVE.

1 Q. CAN WE GO BACK TO 96? DO WE STILL HAVE THAT  
2 UP THERE? CAN WE GO TO LINE 42?

3 NEXT PAGE. NO, SORRY, IT'S 43. MY EYES  
4 ARE BAD.

5 TCW CODE C#, TCW CONTROLS  
6 GLASSBUTTON.CS, DO YOU SEE THAT?

01:49PM

7 A. 43?

8 Q. LINE 43.

9 A. YES, I DO SEE THAT.

10 Q. I CAN GO TO GOOGLE AND GET GLASSBUTTON.CS?  
11 IT'S OPEN SOURCE CODE?

01:49PM

12 A. YES, YOU CAN. THAT'S WHY, WHEN WE WENT  
13 THROUGH THIS EXHIBIT, THE ONLY OVERLAPS THAT I  
14 HIGHLIGHTED WERE THE ONES THAT ARE BASED ON THE DATA  
15 SETS. IT'S ONLY THE FILES THAT ARE -- THE IDENTICAL  
16 FILES THAT ARE BASED ON THE SIMILAR DATA SETS.

01:50PM

17 SO FOR EXAMPLE, IF YOU LOOK AT 34, IT  
18 SAYS DS SECURITY LIST.

19 IN MY DIRECT TESTIMONY, THE ONLY THING  
20 WE DISCUSSED WAS THE FILES THAT ARE IDENTICAL AS A  
21 RESULT OF DS SECURITY LIST BEING LOCATED.

01:50PM

22 Q. WELL, LET ME UNDERSTAND. THERE IS A LIST OF  
23 48 FILES.

24 YOU ARE NOT SAYING ALL THESE FILES ARE  
25 SIMILAR?

01:50PM

26 A. NO. I'M SAYING THE IDENTICAL FILES THAT ARE  
27 LISTED UNDER THE IDENTICAL DATA SETS ARE THE ONES THAT  
28 ARE SIGNIFICANT TO MY ANALYSIS.

1 Q. OKAY. THANKS FOR CLEARING THAT UP.

2 SO I TAKE IT YOU DIDN'T READ MR. KALE'S  
3 TESTIMONY THAT THE PRACTICE AT TCW WAS TO CHECK IN CODE  
4 WHEN THE PROGRAMMER HAD COMPLETED IT, AS OPPOSED TO  
5 WHEN THEY WERE STILL DEVELOPING IT, RIGHT?

01:50PM

6 MR. SURPRENANT: OBJECTION.

7 THE COURT: OVERRULED.

8 IS THAT THE TRIAL TESTIMONY?

9 MR. SURPRENANT: EXCUSE ME, YOUR HONOR.

10 THE COURT: IF THAT'S THE TRIAL TESTIMONY, GO  
11 AHEAD.

01:51PM

12 MR. SURPRENANT: I BELIEVE IT MISSTATES THE  
13 TRIAL TESTIMONY, YOUR HONOR.

14 THE COURT: WELL, THEN LET'S LOOK AT IT.

15 MR. WEINGART: I'LL COME BACK TO THAT TOO,  
16 THEN.

01:51PM

17 THE COURT: ALL RIGHT.

18 MR. WEINGART: I HAVE THE SITE, I JUST DON'T  
19 HAVE THE TRANSCRIPT IN FRONT OF ME, YOUR HONOR.

20 THE COURT: ALL RIGHT.

01:51PM

21 Q. BY MR. WEINGART: LET ME TALK ABOUT  
22 MR. DAMIANI FOR A MOMENT, OKAY?

23 A. OKAY.

24 Q. AND YOU TESTIFIED THAT HE USED A WIPING  
25 PROGRAM ON HIS DRIVE, OR SECURE DELETION PROGRAM?

01:51PM

26 A. SECURE DELETION.

27 Q. AND I WAS A LITTLE UNCLEAR.

28 WOULD YOU AGREE THAT THE MAJORITY OF



1 FILES THAT WERE DELETED WERE INTERNET BROWSING RELATED  
2 FILES OUT OF THAT LONG 6,000 LIST, I THINK IT WAS, THAT  
3 YOU GAVE?

4 A. IT -- I WOULD AGREE THAT THAT IS THE MOST  
5 LIKELY SCENARIO.

01:52PM

6 IT DEPENDS A LITTLE BIT ON EXACTLY WHAT  
7 THE SECURE DELETION SOFTWARE DOES. IT COULD RELOCATE  
8 THEM BEFORE IT DELETES THEM, IN WHICH CASE -- BUT THE  
9 BEST AVAILABLE EVIDENCE SUGGESTS THAT A LARGE PORTION,  
10 PERHAPS MOST OF THEM, WERE IN INTERNET DOWNLOAD RELATED  
11 DIRECTORIES.

01:52PM

12 Q. NOW, MR. DAMIANI ALSO HAD A BACKUP DRIVE,  
13 CORRECT?

14 A. YES.

15 Q. AND THERE WAS NO SECURE DELETION THAT WAS RUN  
16 ON THE BACKUP DRIVE, RIGHT?

01:52PM

17 A. WE DIDN'T DETECT SECURE DELETION ON THE BACKUP  
18 DRIVE.

19 SECURE DELETION IS VERY DIFFICULT TO  
20 DETECT.

01:52PM

21 MR. WEINGART: MAY I HAVE ONE MOMENT, YOUR  
22 HONOR?

23 THE COURT: SURE.

24 Q. BY MR. WEINGART: NOW, IN ASSESSING THE  
25 REMEDIATION'S SUCCESS, DID YOU ACCOUNT FOR EMPLOYEE  
26 DISCIPLINE THAT WAS IMPOSED UPON PEOPLE?

01:53PM

27 A. I'M NOT SURE HOW TO ANSWER THAT.

28 I DON'T REALLY UNDERSTAND THE QUESTION.

1 Q. WELL, ONE OF THE THINGS THAT YOU DID WAS, YOU  
2 TALKED ABOUT IT BEING JUST AN HONOR SYSTEM, RIGHT?

3 A. YES.

4 Q. BUT THE FACT OF THE MATTER IS, IF SOMEBODY  
5 BROKE THE RULES, THEY WERE DISCIPLINED, RIGHT?

01:54PM

6 A. I DON'T KNOW THAT THAT'S CONSISTENTLY TRUE.

7 Q. WELL, MR. MAYBERRY WAS DISCIPLINED, CORRECT?

8 A. I HONESTLY DON'T KNOW.

9 Q. MR. DAMIANI WAS DISCIPLINED, CORRECT?

10 A. I HONESTLY DON'T KNOW THE ANSWER TO THAT.

01:54PM

11 Q. JP WAS FIRED, RIGHT?

12 A. THAT IS TRUE.

13 MR. WEINGART: I'M SORRY, YOUR HONOR. JUST  
14 ONE MOMENT.

15 THE COURT: THAT'S ALL RIGHT.

01:54PM

16 Q. BY MR. WEINGART: YOU TALKED ABOUT MR. ZHANG?

17 A. YES.

18 Q. CORRECT?

19 AND YOU REVIEWED HIS TESTIMONY IN  
20 FORMING YOUR OPINIONS?

01:55PM

21 A. YES.

22 Q. IS THAT RIGHT?

23 AND I TAKE IT, THEN, THAT YOU ARE  
24 FAMILIAR WITH HIS TESTIMONY THAT HE COPIED CODE ON THE  
25 WEEK OF THE 7TH BECAUSE HE WAS WORKING FOR TCW LONG  
26 HOURS, INCLUDING WORKING AT HOME, RIGHT?

01:55PM

27 MR. SURPRENANT: OBJECTION, YOUR HONOR.

28 THE COURT: OVERRULED.

1 THE WITNESS: I ACTUALLY DON'T REMEMBER THAT  
2 PRECISELY; BUT IF THAT'S WHAT HIS TESTIMONY WAS, I  
3 DON'T DISAGREE.

4 Q. BY MR. WEINGART: NOW, WITH REGARD TO THE  
5 FILES YOU REVIEWED ON MR. ZHANG'S COMPUTER, YOU WOULD  
6 AGREE THAT SOME OF THEM WERE CLEARLY NOT TCW FILES,  
7 RIGHT?

01:55PM

8 A. SO -- I'M SORRY.

9 IN MY DIRECT TESTIMONY, I ONLY DISCUSSED  
10 MR. ZHANG'S MEMORY CARD.

01:56PM

11 Q. OKAY. WELL, WITH REGARD TO HIS MEMORY CARD,  
12 WAS SOME OF THE THINGS ON IT NON-TCW FILES?

13 A. I DON'T REMEMBER.

14 THAT MAY WELL HAVE BEEN TRUE.

15 Q. AND DID YOU DO ANY ANALYSIS WITH REGARD TO THE  
16 OTHER CODES THAT WERE ON IT, AS TO WHETHER THEY CAME  
17 FROM THIRD PARTY LIBRARIES, SUCH AS WHATEVER CODE  
18 IN-TEXT MAKES AVAILABLE TO PEOPLE?

01:56PM

19 A. SO I'M A LITTLE BIT CONFUSED.

20 THE ONLY TESTIMONY I'VE GIVEN REGARDING  
21 MR. ZHANG'S MEMORY CARD IS THAT WE LOOKED FOR THE CODE  
22 THAT HE DESCRIBED AS HAVING COPIED AND COULDN'T FIND  
23 IT.

01:56PM

24 Q. BUT YOU DON'T KNOW WHETHER THAT CODE WAS  
25 PROPRIETARY TO TCW, OR PUBLICLY AVAILABLE IN-TEXT CODE,  
26 OR SOMETHING ELSE; IS THAT RIGHT?

01:56PM

27 A. SINCE WE COULDN'T FIND ANY TRACE OF IT ON THE  
28 MEMORY CARD, I DON'T KNOW WHAT IT WAS.

1 Q. YOU UNDERSTOOD THAT MR. ZHANG'S ROLE AT TCW  
2 WAS TO BE THE PROGRAMMER WITH REGARD TO IN-TEXT,  
3 CORRECT?

4 A. YES.

5 Q. YOU UNDERSTOOD THAT FROM READING HIS  
6 DEPOSITION, THAT THAT WAS HIS FOCUS, RIGHT?

01:57PM

7 A. YES.

8 Q. AND YOU UNDERSTAND, DO YOU NOT, THAT IN-TEXT  
9 MAKES AVAILABLE TO USERS OF ITS PRODUCTS, VARIOUS CODES  
10 TO ASSIST IN THE USE OF THE DATA THAT IT PROVIDES,  
11 RIGHT?

01:57PM

12 A. YES. THEY PROVIDE SOME A P.I. CODE.

13 Q. SO, LET ME JUST MAKE SURE I UNDERSTAND FROM  
14 YOUR DIRECT TESTIMONY, THERE WAS THE MBS PROCESS  
15 POWERPOINT THAT WAS STILL ON THE DOUBLELINE SYSTEMS  
16 FOLLOWING THE REMEDIATION, RIGHT?

01:57PM

17 A. YES.

18 Q. THERE WAS THE PARTICIPANT CONFERENCE CALL LIST  
19 THAT YOU DESCRIBED, RIGHT?

20 A. YES.

01:57PM

21 Q. AND THOSE ARE THE ONLY -- AND THEN THERE WERE  
22 THE JP MATERIALS, WHICH WERE THEN LATER REMEDIATED,  
23 CORRECT?

24 A. YES.

25 Q. AND THOSE ARE THE ONLY THREE THINGS THAT I  
26 HEARD YOU TALK ABOUT DURING THE DIRECT TESTIMONY THAT  
27 ARE THINGS THAT WERE ON THE DOUBLELINE SYSTEM FOLLOWING  
28 THE REMEDIATION; IS THAT RIGHT?

01:58PM

1           A.     WELL, ACTUALLY, THE TESTIMONY ABOUT JP'S FILES  
2 IS NOT THAT THEY WERE ON THE -- THAT THEY WERE ON THE  
3 SYSTEM FOLLOWING --

4           Q.     THEY WERE PLUGGED INTO HIS COMPUTER AT WORK?

5           A.     RIGHT.

01:58PM

6                     I -- IN TERMS OF THE DIRECT TESTIMONY  
7 TODAY, I BELIEVE THAT'S CORRECT.

8                     I'M TRYING TO THINK IF I KNOW OF ANY  
9 OTHER VERBATIM COPIES OF FILES THAT HAVE BEEN  
10 SPECIFICALLY IDENTIFIED ON DOUBLELINE SYSTEMS. I DON'T  
11 THINK SO.

01:58PM

12           MR. WEINGART: NO FURTHER QUESTIONS, YOUR  
13 HONOR.

14           THE COURT: WHAT'S THE TIMING FOR  
15 CROSS-EXAMINATION -- FOR REDIRECT, I'M SORRY.

01:58PM

16           MR. SURPRENANT: I BELIEVE I CAN DO IT IN FIVE  
17 TO SEVEN MINUTES, YOUR HONOR.

18           THE COURT: IN THE INTEREST OF GETTING  
19 MR. HICKS OFF THE STAND AND BACK TO THE EAST COAST,  
20 I'LL TAKE FIVE TO SEVEN MINUTES, BUT I'LL HOLD YOU TO  
21 IT.

01:59PM

22                     YOU CAN MAKE A COPY OF IT. I'M NOT  
23 GOING TO LET YOU MARK ON MINE.

24           MR. SURPRENANT: I'M NOT GOING TO GET IN  
25 TROUBLE WITH HIS HONOR.

01:59PM

26           MR. BRIAN: I THINK IT'S DOWN TO FOUR TO SIX  
27 MINUTES.

28           THE COURT: TIME IS TICKING. HE KNOWS THAT.

1 MR. SURPRENANT: HOW DO YOU TURN THIS -- MIKE,  
2 HOW DO YOU TURN THIS ON?

3 IS THAT RIGHT?  
4

5  
6 REDIRECT EXAMINATION

7 BY MR. SURPRENANT:

8 Q. MR. HICKS, ALL THE RED LINES THAT HE DREW,  
9 WERE THEY REMEDIATED AFTER THE COMPLAINT WAS FILED?

10 A. YES.

11 Q. THEY WERE REMEDIATED AFTER THE DEFENDANTS HAD  
12 GOTTEN CAUGHT?

13 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 MR. SURPRENANT: OKAY. NOW, LET ME TURN --  
16 LET'S LOOK -- I'VE MARKED THIS UP IN  
17 BLUE, IN THE INTEREST OF SAVING TIME.

18 WE DON'T KNOW WHAT WAS ON THE MEDIDATA  
19 ON MR. MAYBERRY'S USB DRIVE, DO WE?

20 A. WE DON'T KNOW ABOUT THE MEDIDATA OR OTHER  
21 FILES.

22 Q. WE DON'T KNOW WHAT WAS ON JP'S OLD 320  
23 GIGABYTE DRIVE, DO WE?

24 A. WE DON'T KNOW WHAT THE MEDIDATA SAID OR WHAT  
25 OTHER FILES WERE ON IT.

26 Q. OKAY. NOW, YOU WERE ASKED A NUMBER OF  
27 GRANULAR QUESTIONS ABOUT YOUR CODE ANALYSIS. AND IN  
28 ONE OF YOUR ANSWERS, YOU SAID INDIVIDUALLY, NONE OF THE

01:59PM

01:59PM

02:00PM

02:00PM

02:00PM

1 THINGS ARE SUSPICIOUS.

2 DID I WRITE THAT DOWN CORRECTLY?

3 A. YES.

4 Q. NOW, BASED ON EVERYTHING THAT DEFENSE COUNSEL  
5 HAVE ASKED YOU, DO YOU -- HAVE YOU CHANGED YOUR OPINION  
6 ON WHETHER, WHEN YOU TAKE INTO ACCOUNT EVERYTHING, THAT  
7 THE SIMILARITIES ARE MEANINGFUL TO YOU, AS A COMPUTER  
8 SCIENTIST?

02:00PM

9 A. IT HAS NOT CHANGED THIS: WHEN YOU TAKE IT  
10 TOGETHER, ALL THOSE THINGS ARE CONSISTENT WITH MY  
11 OPINION.

02:01PM

12 Q. NOW, ONE OF THE THINGS YOU TALKED ABOUT, IN  
13 TERMS OF THE REMEDIATION, WAS THE ABILITY OF A  
14 DOUBLELINE EMPLOYEE NOT TO IDENTIFY A DEVICE?

15 A. YES.

02:01PM

16 Q. AND CAN YOU TAKE US QUICKLY THROUGH, LAST  
17 THING WE'LL DO, A SCENARIO THAT ILLUSTRATES THE EFFECT  
18 THAT A NON-TURNED-IN DEVICE WOULD HAVE HAD ON YOUR  
19 ABILITY AS A COMPUTER FORENSIC SCIENTIST TO DETECT USE?

20 A. SURE.

02:01PM

21 MR. WEINGART: YOUR HONOR, IT'S CUMULATIVE.

22 THE COURT: I'M NOT SURE IT IS.

23 AND WE ONLY HAVE TWO MINUTES LEFT.

24 MR. WEINGART: I'LL WITHDRAW THE OBJECTION.

25 MR. SURPRENANT: THANK YOU, YOUR HONOR.

02:02PM

26 AND, YOUR HONOR, WHAT I WOULD LIKE TO DO  
27 IS ILLUSTRATE THIS ON THE FLIP CHART.

28 I THINK WE CAN DO IT IN THREE MINUTES.

1 THE COURT: THAT'S FINE.

2 MR. SURPRENANT: OKAY.

3 Q. COULD YOU TAKE US THROUGH, AS QUICKLY AS YOU  
4 CAN, MR. HICKS, A SCENARIO THAT WILL SHOW THE EFFECT ON  
5 YOUR ABILITY TO DETECT USE OF A NON-TURNED-IN DEVICE?

02:02PM

6 A. SURE. LET'S SUPPOSE THAT IN DECEMBER 2009,  
7 THIS IS A HYPOTHETICAL, YOU HAVE A TCW COMPUTER, AND  
8 INFORMATION IS COPIED ONTO A USB DRIVE. WE'LL CALL IT,  
9 SAY CALL IT NUMBER ONE.

10 AND LET'S SAY THAT -- CAN YOU DRAW A  
11 LITTLE ARROW FOR THE DATA FLOWING INTO THE USB DRIVE?

02:02PM

12 WRONG WAY.

13 AND LET'S SAY THAT ALSO, IN DECEMBER  
14 2009, THEN, THAT USB DRIVE IS TAKEN TO AN UNKNOWN  
15 COMPUTER. IT COULD BE AT KINKOS, IT COULD BE AT A  
16 NEIGHBOR'S, IT COULD BE AT A FRIEND'S HOUSE.

02:02PM

17 AND USB DRIVE NUMBER ONE IS PLUGGED INTO  
18 THAT COMPUTER AND A SECOND USB DRIVE IS PLUGGED INTO  
19 THAT COMPUTER, USB DRIVE NUMBER TWO.

20 Q. I'LL GET THE ARROW RIGHT THIS TIME.

02:03PM

21 A. AND THE DATA ARE COPIED FROM ONE TO TWO, USING  
22 THIS UNKNOWN COMPUTER.

23 Q. OKAY.

24 A. AND FOLLOWING THAT, STILL IN DECEMBER 2009,  
25 USB DRIVE NUMBER ONE IS TURNED IN FOR REMEDIATION.

02:03PM

26 Q. OKAY.

27 AND WHAT IS THE NEXT STEP IN THE  
28 SCENARIO?



1           A.     SO IF YOU SKIP AHEAD TO MARCH 2010 IN THIS  
2 SCENARIO THE DOUBLELINE COMPUTER, A DOUBLELINE COMPUTER  
3 IS IMAGED. A FORENSICS SNAPSHOT IS TAKEN AS PART OF  
4 THE REMEDIATION PROCESS.

5           Q.     IN FACT, WHEN WAS -- WHEN WERE MOST OF  
6 DOUBLELINE CORPORATE DEVICES IMAGED?

02:03PM

7           A.     BETWEEN MARCH 10TH AND MARCH 20TH OF 2010.

8           Q.     WERE DOUBLELINE EMPLOYEES INFORMED BEFOREHAND  
9 THAT THERE WOULD BE A WINDOW WHEN THEY WOULD BE IMAGED?

10          A.     YES.

02:03PM

11          Q.     OKAY. SO LET'S GO --

12                MR. WEINGART: YOUR HONOR, I'M GOING TO OBJECT  
13 TO THIS AS AN INCOMPLETE HYPOTHETICAL AND  
14 ARGUMENTATIVE.

15                THE COURT: I'M JUST TELLING YOU, MR. HICKS IS  
16 GOING TO COME BACK TOMORROW, BECAUSE WHAT YOU ARE GOING  
17 THROUGH, HE'S GOING TO WANT TO ASK HIM QUESTIONS ABOUT.  
18 SO WE CAN'T --

02:04PM

19                MR. WEINGART: RIGHT NOW, I DON'T, YOUR HONOR.

20                    I DON'T HAVE ANY FURTHER QUESTIONS, IF  
21 WE'RE ALMOST DONE.

02:04PM

22                MR. SURPRENANT: YOUR HONOR, I HAVE TWO MORE  
23 MINUTES.

24                THE COURT: ALL RIGHT. GO AHEAD.

25                THE WITNESS: AND THE USB DRIVE -- SO AFTER  
26 THE IMAGING HAPPENS IN MARCH 2010, IF IN, SAY APRIL  
27 2010, THE USB DRIVE IS PLUGGED INTO A DOUBLELINE  
28 COMPUTER, AND THE INFORMATION IS ACCESSED OR COPIED,

02:04PM

1 THEN THE PROCESS THAT IS UNFOLDED HERE CAN'T POSSIBLY  
2 DETECT THAT. AND IT CAN'T DETECT IT BECAUSE, WITHOUT  
3 SEEING THE UNKNOWN COMPUTER, WE DON'T KNOW ABOUT THE  
4 COPYING FROM DEVICE ONE TO DEVICE TWO.

5 WITHOUT SEEING DEVICE TWO, WE COULDN'T  
6 KNOW ABOUT THE COPYING FROM DEVICE ONE TO DEVICE TWO.  
7 AND SINCE WE ONLY HAVE AN IMAGE FROM BEFORE IT WAS  
8 PLUGGED IN, IN THIS HYPOTHETICAL, THAT'S A SET OF USE  
9 THAT YOU CAN NEVER DETECT WITH THE PROCESS THAT HAS  
10 UNFOLDED HERE.

02:04PM

02:05PM

11 MR. SURPRENANT: THANK YOU.

12 NO FURTHER QUESTIONS, YOUR HONOR.

13 MR. WEINGART: ONE QUESTION.

14 THE COURT: YOU MAY.

15

16

17

RECROSS-EXAMINATION

18 BY MR. WEINGART:

19 Q. THIS IS COMPLETELY HYPOTHETICAL, AND YOU HAVE  
20 NO EVIDENCE THAT THIS, IN FACT, OCCURRED, CORRECT?

21 A. SOMETHING SIMILAR TO THIS DID OCCUR WHEN  
22 MR. PURUSHOTHAMAN CONNECTED THE DEVICE TO A KNOWN  
23 COMPUTER.

24 BUT THIS HAPPENING WITH AN UNKNOWN  
25 COMPUTER IS HYPOTHETICAL, BECAUSE COMPUTERS ARE  
26 UNKNOWN.

27 NO FURTHER QUESTIONS.

28 THE COURT: ALL RIGHT. THANK YOU.

02:05PM

02:05PM

02:05PM

1 LADIES AND GENTLEMEN, WE'LL RECESS FOR  
2 THE EVENING.

3 PLEASE DON'T DISCUSS THE MATTER AMONG  
4 YOURSELVES OR WITH ANYONE ELSE, OR FORM OPINIONS OR  
5 CONCLUSIONS CONCERNING ANY ASPECTS OF THE CASE UNTIL  
6 YOU HAVE HEARD ALL THE EVIDENCE.

02:05PM

7 WE'LL SEE YOU TOMORROW MORNING.

8 HAVE A NICE EVENING.

9 MR. HICKS, YOU ARE EXCUSED.

10 YOU MAY STEP DOWN.

02:05PM

11 THE WITNESS: THANK YOU, SIR.

12  
13 (AT 2:05 P.M., THE JURY WAS  
14 EXCUSED, AND THE FOLLOWING  
15 PROCEEDINGS WERE HELD:)

16  
17 (THE WITNESS EXITED THE COURTROOM.)

18  
19 THE COURT: ALL RIGHT. WE'RE OUT OF THE  
20 PRESENCE OF THE JURY?

02:06PM

21 MR. WEINGART: YES, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 I DON'T MIND REFERENCES. AND SOMEBODY  
24 CAN, YOU KNOW, ASK A WITNESS IF THEY WERE PRESENT FOR  
25 THE TESTIMONY OF ANOTHER WITNESS.

02:06PM

26 BUT IF WE'RE IN A DISAGREEMENT, THEN YOU  
27 GUYS ARE GOING TO HAVE TO MAKE A TRANSCRIPT AVAILABLE  
28 SO I CAN LOOK AT IT QUICKLY, BECAUSE I DON'T WANT TO

1 GET IN THAT NEVER-NEVER LAND OF NOT BEING ABLE TO DEAL  
2 WITH IT, OR HAVING TO TAKE A BREAK.

3 MR. MADISON: MY OBJECTION WAS SLIGHTLY  
4 DIFFERENT, YOUR HONOR, WHICH IS THAT MR. BRIAN USED THE  
5 DAILY TRANSCRIPT TO EXAMINE MR. ARENTSEN ABOUT HIS OWN  
6 TESTIMONY.

02:07PM

7 THE COURT: RIGHT.

8 MR. MADISON: AND MY ONLY CONCERN WAS THAT IN  
9 MY EXPERIENCE, COURTS HAVE A VARIETY OF WAYS OF  
10 ADDRESSING THAT ISSUE, AND IT IS A -- AN ISSUE.

02:07PM

11 IT CAN CREATE PROBLEMS WITH THE JURY,  
12 WHO THEN, WHEN WE GET TO DELIBERATIONS, EXPECT TO BE  
13 PROVIDED WITH TRANSCRIPTS OF THE ENTIRE TRIAL.

14 I JUST HAD WANTED TO -- I WAS SURPRISED  
15 THAT MR. BRIAN SORT OF MADE THAT DECISION FOR ALL OF  
16 US, INSTEAD OF RAISING IT WITH YOUR HONOR FIRST.

02:07PM

17 THE COURT: I DON'T HAVE TO -- WE DON'T HAVE  
18 TO PROVIDE A TRANSCRIPT TO THE JURY OF THE ENTIRE  
19 TRIAL; BUT THEY WILL BE INSTRUCTED IF THERE'S ANY  
20 PORTION OF ANY WITNESSES' TESTIMONY THEY WANT READ  
21 BACK, THEY CAN GET IT READ BACK.

02:08PM

22 I THINK IDEALLY, THE CROSS-EXAMINATION  
23 SHOULD NOT USE THE TRANSCRIPT OF THE PROCEEDING,  
24 BECAUSE IT'S JUST GOING TO CAUSE A PROBLEM. BUT IF YOU  
25 GET A -- YOU KNOW, IF THERE'S A RECANING OR  
26 INCONSISTENT TESTIMONY BETWEEN ONE DAY AND THE NEXT,  
27 IT'S FAIR GAME.

02:08PM

28 I HAD FORGOTTEN ALL ABOUT THE THING

1 BETWEEN YOU, SO I WAS THINKING MR. SURPRENANT.

2 MR. MADISON: THAT MOMENT PASSED.

3 AND I UNDERSTAND YOUR HONOR'S RULING.  
4 AND WE'LL FOLLOW IT, AND USE THE TRANSCRIPTS, TOO; SO  
5 THAT'S FINE.

02:08PM

6 MR. BRIAN: HERE'S WHAT HAPPENED, TO CORRECT  
7 MR. MADISON'S RECOLLECTION.

8 I FRAMED THE QUESTION SO AS NOT TO READ  
9 FROM THE TRANSCRIPT. HE THEN OBJECTED ON THE GROUND  
10 I'D MISSTATED IT; SO THEN I READ THE TRANSCRIPT.

02:08PM

11 THE COURT: WELL, THAT'S THE POINT.

12 AND THAT'S WHAT CAME UP WITH  
13 MR. SURPRENANT WHEN MR. WEINGART IS MAKING A QUESTION  
14 ABOUT HIS TESTIMONY. AND IF WE'VE -- YOU KNOW, IF  
15 SOMEBODY IS MISREPORTING IT, I HAVE TO HAVE A POINT OF  
16 REFERENCE TO SOLVE THE PROBLEM.

02:08PM

17 I WOULD JUST AS SOON NOT HAVE THOSE  
18 PROBLEMS ARISE. AND I'M CONCERNED A LITTLE BIT,  
19 MR. MADISON, JUST THAT -- WELL, IF THEY ARE GOING TO DO  
20 IT, WE'RE GOING TO DO IT. THEN IT'S GOING TO  
21 DETERIORATE.

02:09PM

22 SO IF YOU ANTICIPATE, I GUESS, THE  
23 SOLUTION TO THIS IS, NO WITNESS CAN COME IN OVERNIGHT.  
24 THEY HAVE TO FINISH IN ONE DAY. SO YOU CAN'T GET THE  
25 TRANSCRIPTS.

02:09PM

26 MR. MADISON: MY ONLY CONCERN WAS, AND LOOK  
27 AT -- MR. BRIAN KNOWS FULL WELL HE COULD HAVE NOT  
28 MISCHARACTERIZED THE TESTIMONY. HE HAD THE TRANSCRIPT

1 I HAD.

2 THE COURT: I DON'T KNOW IF HE DID OR NOT.  
3 THAT'S THE POINT.

4 MR. MADISON: WELL, THE REASON THAT HE JUST  
5 SAID HE HAD TO USE THE TRANSCRIPT WAS BECAUSE I  
6 OBJECTED TO MISCHARACTERIZING THE TESTIMONY.

02:09PM

7 HE DID MISCHARACTERIZE IT. I WAS  
8 LOOKING AT THE TRANSCRIPT. ALL HE HAD TO DO WAS ASK  
9 THE WITNESS THE CORRECT QUESTION AND ANSWER.

10 BUT AGAIN, MY OBJECTION WAS A MORE  
11 TECHNICAL ONE ABOUT WAVING AROUND TRANSCRIPTS AND  
12 LETTING THE JURY KNOW WE HAVE DAILY TRANSCRIPTS.

02:09PM

13 I'M JUST TELLING YOU THAT WE'RE GOING TO  
14 BE HERE LONGER BECAUSE OF THAT.

15 MR. BRIAN: I'M NOT THE ONE DELAYING THIS  
16 TRIAL, YOUR HONOR.

02:10PM

17 THE COURT: I'M NOT LISTENING TO THE TWO OF  
18 YOU BICKER. SO THAT'S ENOUGH.

19 MR. BRIAN: HAPPY TO DO A COUNT OF WHO'S GOING  
20 ON LONGER.

02:10PM

21 THE COURT: ALL RIGHT.

22 ANYTHING ELSE THAT YOU WOULD LIKE TO  
23 TALK ABOUT?

24 MR. MADISON: WELL, YOUR HONOR, I -- ONE  
25 QUESTION I HAD WAS, WE JUST HEARD MR. WEINGART  
26 CROSS-EXAMINE OUR EXPERT ABOUT WHETHER THEY FIRED JP OR  
27 NOT. AND I WOULD RENEW OUR REQUEST FOR THE -- WHAT  
28 THEY TOLD US THEY HAD YESTERDAY ABOUT THAT WITNESS, AND

02:10PM

1 ANY OTHER MATERIAL WITNESS.

2 IN THAT CASE IT WAS A CLAIM FOR SOME  
3 SORT OF WRONGFUL TREATMENT, WHICH THEY'VE NEVER  
4 PRODUCED TO US. AND THEN AN AGREEMENT THAT THEY  
5 ENTERED INTO WITH THAT WITNESS.

02:10PM

6 THE COURT: THAT AGREEMENT WAS RELATED TO US  
7 TODAY, IN TERMS OF WHETHER IT PROVIDED THAT THEY MAKE  
8 HIM ACCESSIBLE.

9 THEY DON'T INTEND TO BRING HIM.

10 DO YOU INTEND TO CALL HIM AS A  
11 WITNESS -- HE'S NOT GOING TO BE CALLED.

02:11PM

12 HE'S NOT IN THE STATE, IS HE?

13 MR. MADISON: HE'S NOT IN STATE.

14 I DON'T KNOW WHETHER OR NOT THE  
15 AGREEMENT GIVES ANYBODY THE RIGHT TO CALL HIM, BUT I  
16 CERTAINLY KNOW WHEN EXPERTS ARE BEING CROSSED ABOUT  
17 THAT THEY TREATED HIM IN A WAY THAT WAS DISCIPLINED,  
18 THERE MAY WELL BE INFORMATION IN HIS CLAIM, OR THE  
19 FINAL SETTLEMENT AGREEMENT WITH HIM, THAT RELATES TO  
20 THAT.

02:11PM

02:11PM

21 MR. BRIAN: YOUR HONOR, I DON'T KNOW IF  
22 MR. MADISON WAS HERE THIS MORNING, OR HE WAS UP  
23 PREPARING MR. ARENTSEN. BUT I TALKED ABOUT THE  
24 AGREEMENT AND RELEASE.

25 I HAVE A COPY FOR YOUR HONOR. I  
26 ACTUALLY SHOWED MR. QUINN THE RELEVANT PARAGRAPH,  
27 PARAGRAPH 6. I'M HAPPY TO SHOW IT TO YOUR HONOR. YOU  
28 CAN DECIDE WHETHER TO GIVE IT TO HIM.

02:11PM

1 THE COURT: WELL, HAVING SEEN IT, MR. QUINN,  
2 DO YOU HAVE THE SAME CONCERNS MR. MADISON IS SHARING  
3 WITH US?

4 I KNOW HOW TO DO THIS.

5 MR. QUINN: IT WAS A QUICK LOOK. I LOOKED AT  
6 IT QUICKLY.

02:11PM

7 IT APPEARED TO SAY, WHAT -- THE  
8 PARAGRAPH APPEARED TO SAY WHAT MR. BRIAN REPRESENTED IT  
9 WOULD SAY, WHICH WAS, OF COURSE, WAS NO SURPRISE TO ME.

10 WOULD I LIKE TO HAVE A CHANCE TO READ  
11 THE ENTIRE AGREEMENT? YES.

02:12PM

12 THE COURT: WHY DON'T YOU LEAVE IT TO ME. I  
13 WILL READ THE AGREEMENT TONIGHT, AND WE'LL DECIDE  
14 WHETHER THIS AGREEMENT SHOULD BE SOMETHING YOU GET TO  
15 SEE ON AN ATTORNEY'S EYES ONLY BASIS, OR SOMETHING.

02:12PM

16 MR. MADISON: AND AGAIN, YOUR HONOR, I'M SORT  
17 OF OLD SCHOOL ON THIS. WE SUBPOENAED THOSE AGREEMENTS  
18 WITH WITNESSES. THEY ARE PRETTY CLEARLY POTENTIALLY  
19 RELEVANT.

20 I HAVEN'T HEARD A GROUND FOR AN  
21 OBJECTION.

02:12PM

22 THE COURT: I'M NOT SURE THAT HE'S A WITNESS  
23 AT THIS POINT.

24 YOU PROPOSED TO USE HIS DEPOSITION  
25 TESTIMONY, BUT YOU BACKED AWAY FROM THAT TO THREE  
26 LINES.

02:12PM

27 THEY ARE NOT CALLING HIM. I DON'T KNOW  
28 IF HE WAS A LISTED WITNESS; BUT GENERALLY, YOU SHOULD



1 BE ENTITLED TO AGREEMENTS WITH ANYBODY THAT'S GOING TO  
2 BE CALLED AS A WITNESS.

3 NOW, THEY'VE SAID THEY ARE NOT CALLING  
4 HIM.

5 MR. MADISON: UNDERSTOOD, YOUR HONOR. 02:12PM

6 I SUBMIT ON THAT.

7 MR. BRIAN: I'M GOING TO HAND YOUR HONOR A  
8 COPY OF THE AGREEMENT WHICH IS CALLED A SEVERANCE  
9 AGREEMENT AND RELEASE. THE ATTACHED UNDERTAKING ALSO  
10 HAS A COPY OF THE BRIEF WE'RE TAKING -- 02:12PM

11 THE COURT: THAT REMINDS ME ON ANOTHER ISSUE.

12 I'VE HAD FURTHER DISCUSSIONS WITH  
13 MR. PALLO, CAME IN FIRST THING THIS MORNING. HE HAS  
14 TALKED TO HIS SUPERVISOR. THE SUPERVISOR IS SAYING HE  
15 MIGHT BE ABLE TO WORK ON SATURDAYS. HE COULD WORK 02:13PM  
16 FRIDAYS. HE REALLY CAN'T WORK AFTER COURT EVERY DAY  
17 FOR FOUR HOURS, BECAUSE HE SAYS HE JUST CAN'T GO ALL  
18 DAY.

19 THIS IS GOING TO BE A RECURRENT PROBLEM.  
20 I PULLED HIS QUESTIONNAIRE. HE DID TELL US IN HIS 02:13PM  
21 QUESTIONNAIRE, HE HAD ONLY 10 DAYS OF JURY SERVICE. HE  
22 DID NOT MAKE AN ISSUE OF IT DURING THE VOIR DIRE  
23 PROCESS, BECAUSE I THINK HE WAS JUST FAIRLY RESERVED.

24 IT'S GOING TO BE A RECURRENT PROBLEM.  
25 AND AT SOME POINT -- IT DOESN'T APPEAR THAT HIS 02:13PM  
26 EMPLOYER IS INCLINED TO CHANGE THE POLICY FOR HIM.

27 ANYBODY HAVE ANY THOUGHTS?

28 MR. BRIAN: MAY I JUST SUGGEST WE CONFER ABOUT

1 IT THIS EVENING, AND LET YOU KNOW TOMORROW.

2 THE COURT: ALL RIGHT. TALK ABOUT IT.

3 MR. MADISON: YOUR HONOR, ON THE FOUR DISKS  
4 THAT WE MOVED INTO EVIDENCE WITH MR. ARENTSEN, THESE  
5 ARE IMPORTANT EVIDENCE, BECAUSE OF THE SHEER VOLUME  
6 AND --

02:14PM

7 THE COURT: WELL, I DIDN'T ENTER THE DISKS IN  
8 EVIDENCE. I SAID I WOULD RESERVE ON THAT.

9 AND THE REAL ISSUE IS, ARE WE GOING TO  
10 PROVIDE COMPUTING DEVICES TO THE JURY TO USE DURING  
11 THEIR DELIBERATIONS AND TO OPEN THESE THINGS?

02:14PM

12 OTHERWISE, THERE'S NO POINT IN GIVING  
13 THEM SOME KIND OF MEDIA FOR ELECTRONICALLY STORED DATA.

14 AND I AM RELUCTANT TO GO THERE. I'M NOT  
15 SURE THAT'S A GOOD THING, QUITE FRANKLY.

02:14PM

16 MR. QUINN: WE ALREADY HAVE FOUR OR FIVE DISKS  
17 IN EVIDENCE THAT CAME IN THROUGH MR. KALE.

18 MR. WEINGART: BUT I WILL SAY, YOUR HONOR'S  
19 HAVING TRYING TO NAVIGATE THROUGH SOME OF THESE DISKS,  
20 I CAN'T MAKE HEADS OR TAILS OUT OF THEM. AND I THINK  
21 THE JURY IS GOING TO BE --

02:15PM

22 THE COURT: I'M VERY CONCERNED -- I'M EVEN  
23 CONCERNED ABOUT THE ONES THAT WE ADMITTED THROUGH  
24 MR. KALE. HIS WERE -- I DON'T REMEMBER, ARE THEY DATA  
25 DISKS, OR ARE THEY -- DO THEY SHOW DOCUMENTS,  
26 SPREADSHEETS, THINGS LIKE THAT?

02:15PM

27 MR. QUINN: ALL OF THE ABOVE.

28 THE COURT: I MEAN, I THINK IT'S A SLIPPERY

1 SLOPE TO GIVE A JURY A COMPUTER AND SAY, YOU CAN OPEN  
2 THESE DISKS. JUST AS MOST OF US WERE TO OPEN THEM AND  
3 START LOOKING.

4 I'M LOOKING AT SOME OF THE PRINTOUTS OF  
5 THEM. AND IT CAN ONLY LEAD TO CONFUSION.

02:15PM

6 SO WE'LL -- YOU SHOULD CONFER ON THAT,  
7 AND WE'LL ADDRESS IT FURTHER.

8 I MEAN, I'M NOT MAKING A FINAL DECISION,  
9 BUT I'M CONCERNED.

10 DO YOU CONTEMPLATE PROVIDING THE JURY IN  
11 DELIBERATIONS WITH A COMPUTER TO OPEN THESE DISKS?

02:15PM

12 MR. QUINN: I THINK THEY SHOULD HAVE SOME  
13 CAPABILITY TO READ THESE THINGS. WE ALL OPERATE UNDER  
14 THE ASSUMPTION THAT IF EVIDENCE IS ADMITTED, WE ASSUME  
15 IT CAN BE UNDERSTOOD OR NOT; BUT WE DON'T KIND OF LOOK  
16 BEYOND THAT. IT'S KIND OF A BLACK BOX, ONCE THEY GO  
17 BACK THERE.

02:16PM

18 THE COURT: WELL, I UNDERSTAND. AND I'VE  
19 ADMITTED DISKS WITHOUT OBJECTION, BUT I'M JUST SAYING,  
20 YOU SHOULD CONFER.

02:16PM

21 THIS CONCEPT OF PROVIDING THEM WITH  
22 ELECTRONIC DATA IN AN ELECTRONIC FORM THAT MAY BE  
23 UNDERSTANDABLE ONLY TO SOMEBODY LIKE MR. HICKS OR A  
24 COMPUTER PROGRAMMER IS A CONCERN TO ME.

25 AND ALL I'M SAYING IS, YOU SHOULD TALK  
26 ABOUT IT AND SEE IF YOU CAN REACH AGREEMENT.

02:16PM

27 IF YOU CAN'T, WE'LL HAVE TO DEAL WITH  
28 IT.

1 MR. BRIAN: I SHARE YOUR HONOR'S CONCERN. I  
2 THINK THE RECORD IS PRETTY CLEAR THAT BOTH WITNESSES  
3 TESTIFIED; IN FACT, THREE WITNESSES NOW: MR. KALE,  
4 MR. ARENTSEN AND MR. HICKS HAVE ALL TESTIFIED TO THE  
5 LARGE VOLUME. AND THE PAPER DOCUMENTS WERE PUT IN AS  
6 SAMPLES OF THE LARGE VOLUME.

02:16PM

7 IT IS NOT GOING TO BE OUR POSITION THAT  
8 THERE WASN'T A LARGE VOLUME OF STUFF COPIED.

9 THE COURT: IN MY VIEW, THE SAMPLES, THE HARD  
10 COPIES, ARE WHAT WE SHOULD PROVIDE TO THE JURY. AND WE  
11 SHOULDN'T INVITE THIS CONFUSION OF OPENING ELECTRONIC  
12 DATA FILES, SOME OF WHICH MAY BE MARGINALLY  
13 UNDERSTANDABLE; MOST OF WHICH WOULD BE HIEROGLYPHICS TO  
14 THE AVERAGE JUROR.

02:17PM

15 MR. QUINN: WELL, WE'RE MAKING THESE  
16 STATEMENTS, YOUR HONOR, WITHOUT THE BENEFIT OF REALLY  
17 KNOWING WHETHER THERE'S SOMEBODY ON THIS JURY WHO COULD  
18 OPERATE A COMPUTER AND MIGHT UNDERSTAND SOME VOLUME OF  
19 THAT.

02:17PM

20 WE'RE PAINTING WITH A PRETTY BROAD BRUSH  
21 HERE.

02:17PM

22 THE COURT: I UNDERSTAND WHERE YOU ARE GOING.

23 MR. QUINN: AND THESE PEOPLE WEREN'T  
24 PREQUALIFIED AS TO THEIR COMPUTER SKILLS.

25 THE COURT: I'M ONLY SUGGESTING THAT YOU TALK  
26 AMONG YOURSELVES. I KIND OF HAVE A SENSE OF WHERE YOU  
27 WOULD LIKE TO GO.

02:17PM

28 I HAVE A SENSE FROM MR. BRIAN THAT HE'D

1 LIKE TO GO IN THE OTHER DIRECTION.

2 QUITE FRANKLY, I'M NOT SURPRISED THAT  
3 YOU ARE NOT ON THE SAME PAGE. I'LL ONLY SUGGEST YOU  
4 TALK ABOUT IT.

5 I'M NOT PASSING ON IT RIGHT NOW. I'VE  
6 SUGGESTED SOME OF MY CONCERNS, BUT THEY ARE NOT -- IT'S  
7 NOT FINAL.

02:17PM

8 MR. BRIAN: I'LL RAISE ONE OTHER ISSUE, AS  
9 WELL, YOUR HONOR.

10 WE RECEIVED AN E-MAIL LAST NIGHT  
11 INVOLVING -- ASKING US TO ACCEPT SERVICE OF SUBPOENA  
12 FOR MY PARTNER TERRY SANCHEZ. OF COURSE WE'LL ACCEPT A  
13 SUBPOENA FOR MR. SANCHEZ; BUT YOUR HONOR HAD ORDERED  
14 COUNSEL TO MEET AND CONFER ABOUT THAT FOR THE PURPOSE  
15 OF SEEING IF WE COULD AVOID THAT. WE RAISED THAT  
16 AGAIN.

02:17PM

17 I WOULD ASK YOUR HONOR TO RENEW THAT  
18 ORDER. IF WE CAN'T WORK IT OUT, WE'LL REPORT BACK TO  
19 YOUR HONOR. BUT I DO THINK WOULD BE APPROPRIATE FOR  
20 EVERYBODY TO MEET AND CONFER ON THAT ISSUE.

02:18PM

21 THE COURT: OKAY. AND WHAT IS THE -- THE  
22 GENERAL SUBJECT MATTER, MR. SANCHEZ' TESTIMONY IS THIS  
23 EXCHANGE DURING THE WAMCO DISCUSSIONS WITH IRA GROSS.

24 AND WHERE DOES THAT GO? THAT EVIDENCE  
25 IS IN. NOBODY HAS DISPUTED IT.

02:18PM

26 MR. MADISON: WELL, IT'S NOT IN UNTIL WE CALL  
27 MR. SANCHEZ TO PRESENT THE EVIDENCE. HE'S THE WITNESS  
28 WHO HAS THOSE COMMUNICATIONS.

1 MR. HELM: THERE ARE E-MAILS. WHAT WE NEED TO  
2 DISCUSS WITH THEM, WHAT MORE THAN THE E-MAILS DO WE  
3 NEED, AND CAN WE FIND A STIPULATION?

4 THE COURT: OKAY.

5 SEE IF YOU CAN GET A STIPULATION, MY  
6 ISSUE IS, ARE WE -- WHO ARE OUR WITNESSES TOMORROW?

02:19PM

7 MR. QUINN: WE WILL -- CASEY MOORE'S VIDEO IS  
8 WHAT WE WERE GOING TO DO NEXT.

9 WE MIGHT WANT TO THINK ABOUT THAT  
10 TONIGHT; AND THEN MR. VILLA.

02:19PM

11 MR. GUNDLACH'S VIDEO AND MR. GUNDLACH  
12 LIVE.

13 THE COURT: ALL RIGHT. MY SENSE IS THAT  
14 ANYTHING THAT COULD BE PROVIDED BY SANCHEZ WILL BE  
15 PROVIDED DURING MR. GUNLACH'S TESTIMONY, OTHER THAN  
16 GETTING INTO ANYTHING THAT WOULD NOT BE ADMISSIBLE  
17 BECAUSE IT'S SUBJECT TO THE ATTORNEY/CLIENT PRIVILEGE.

02:19PM

18 NOW, I MAY BE, AS USUAL, PAINTING A  
19 BROAD BRUSH. I MAY BE MISSING A NUANCE THAT YOU ARE  
20 CONCERNED ABOUT. I'M MORE THAN WILLING TO ADDRESS  
21 THAT.

02:19PM

22 I WOULD SUGGEST YOU SIT DOWN WITH  
23 MR. HELM, SEE WHAT YOU CAN DO, IN TERMS OF REACHING A  
24 STIPULATION.

25 AND THIS SUBPOENA IS FOR MR. SANCHEZ TO  
26 COME NEXT MONDAY?

02:19PM

27 MR. MADISON: I THINK WE ASKED HIM TO BE HERE  
28 ON THE 17TH, YOUR HONOR, WHICH IS WEDNESDAY.

1 THE COURT: SO YOU ARE PLANNING TO GO THAT  
2 FAR?

3 MR. MADISON: I'M AFRAID YOU WOULD ASK THAT.

4 THE COURT: YOU KNOW, YOU SAID -- YOU KNOW,  
5 YOU BETTER GET TOGETHER.

02:20PM

6 MR. MADISON: WE'RE TOGETHER.

7 THE COURT: TALK TO ONE ANOTHER, BECAUSE I WAS  
8 THINKING YOU WOULD BE DONE BY TOMORROW.

9 BUT ANYWAY, WE'VE GOT ALL DAY TOMORROW,  
10 IT WILL BE A FULL DAY WITH MR. GUNDLACH.

02:20PM

11 TALK ABOUT IT, WE'LL SEE WHAT WE CAN DO,  
12 AND WE'LL DEAL WITH IT END OF THE DAY TOMORROW OR THE  
13 FIRST -- WEDNESDAY IS THE 17TH, NEXT WEEK?

14 MR. MADISON: YES, YOUR HONOR.

15 THE COURT: OKAY. ALL RIGHT.

02:20PM

16 NICE TO SEE YOU ALL. HAVE A GOOD  
17 EVENING.

18 THANK YOU.

19

20 (AT 2:20 P.M. AN ADJOURNMENT  
21 WAS TAKEN UNTIL THURSDAY,  
22 AUGUST 11, 2011, AT 8:30 A.M.)

23

24 (THE NEXT PAGE NUMBER IS 2701.)

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