

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 322

HON. CARL J. WEST, JUDGE

TRUST COMPANY OF THE WEST, )

)  
PLAINTIFFS, )

)  
VS. )

) NO. BC 429385

)  
JEFFREY GUNDLACH, ET AL, )

)  
DEFENDANTS. )

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

AUGUST 11, 2011

APPEARANCES:

FOR PLAINTIFF:

QUINN EMANUEL URQUHART & SULLIVAN  
BY: JOHN QUINN, ESQ.  
ERIC J. EMANUEL, ESQ.  
STEVEN MADISON, ESQ.  
DAVID SERGENIAN, ESQ.  
KARA BORDEN, ESQ.  
SUSAN ESTRICH, ESQ.  
JOHN M. PIERCE, ESQ.  
DOMINIC SURPRENANT, ESQ.  
DIANE CAFFERATA HUTNYAN, ESQ.  
RANDA OSMAN, ESQ.  
COURTNEY BALLARD, ESQ.  
865 SO. FIGUEROA STR. 10TH FLR.  
LOS ANGELES, CA 90017  
213.443.3000

FOR DEFENDANT:

MUNGER, TOLLES & OLSON LLP  
BY: BRAD D. BRIAN, ESQ.  
MARK B. HELM, ESQ.  
KEVIN S. ALLRED, ESQ.  
LAURA D. SMOWE, ESQ.  
ALLISON B. STEIN, ESQ.  
JACOB S. KRIELKAMP, ESQ.  
GREGORY J. WEINGART, ESQ.  
355 SO. GRAND AVE. 35TH FLR.  
LOS ANGELES, CA 90071  
213.683.5113

1 FOR DEFENDANT:

KELLEY DRYE WHITE O'CONNOR  
BY: **EDWARD E. WEIMAN**, ESQ.  
10100 SANTA MONICA BLVD. 23RD FLR.  
LOS ANGELES, CA 90067  
310.712.6199  
EWEIMAN@KELLEYDRYE.COM

25 **WENDY OILLATAGUERRE**, CSR 10978  
26 **RAQUEL A. RODRIGUEZ**, CSR 9485  
27 **OFFICIAL COURT REPORTERS**  
600 SOUTH COMMONWEALTH AVENUE  
DEPARTMENT 322 - 17TH FLOOR  
LOS ANGELES, CALIFORNIA 90005  
28 213.351.8610

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INDEX

AUGUST 11, 2011; PAGES 2701 - 3000

WITNESSES

LEGEND:

MR. QUINN (Q)	MR. BRIAN (B)
MR. MADISON (M)	MR. HELM (H)
MS. OSMAN (O)	MR. WEINGART (W)
MR. SURPRENANT (S)	MR. ALLRED (A)

PLF'S WITNESSES:      DIRECT      CROSS      REDIRECT      RECROSS

**RICHARD VILLA**              2702-Q      2763-A

**JEFFREY GUNDLACH**

^ VIDEO DEPO PLAYED,

DFN'S WITNESSES:      DIRECT      CROSS      REDIRECT      RECROSS

NONE IN THIS SESSION

1 INDEX (CNT'D)

2

3	EXHIBITS:	FOR I.D.	ADMITTED
4	2150B 1-4	MULTI-SECTOR DOC	
5	944-9	GUNDLACH PAYROLL REC.	
6	944-13	GUNDLACH PAYROLL REC. THRU 12-11	
7	2209	GUNDLACH PAYROLL REC. THRU 12-11	
8	2220	CHART	2747
9	2221	ACCRUAL CHART	2747
10	2222	CHART	2747
11	2148	OUTPUT COST ALLOCATION	2752
12	2223	ACQUISITION COSTS	2762
13	2150B 5-9	MULTI-SECTOR DOC.	2764
14	5618	EMAIL EXCHANGE	2769
15	5644	12-23-09 E-MAIL	2771
16	6044	1-9-10 E-MAIL	2774
17	5365	STERN/RIPOLL E-MAIL	NA
18	5468	STERN MEMORANDUM	NA

19

20

21

22

23

24

25

26

27

28

1 CASE NUMBER: BC 429385  
 2 CASE NAME: TCW VS. GUNDLACH  
 3 LOS ANGELES, CALIFORNIA AUGUST 11, 2011  
 4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
 5 APPEARANCES: (AS NOTED ON TITLE PAGE.)  
 6 REPORTER: RAQUEL A. RODRIGUEZ, CSR  
 7 TIME: A SESSION; 8:30 A.M.

8

9

--0--

10

08:31AM

11

THE COURT: GOOD MORNING LADIES AND GENTLEMEN.

12

IN THE TCW VERSUS GUNDLACH MATTER, WE CAN CONTINUE.

13

ALL MEMBERS OF OUR JURY ARE PRESENT, AS ARE COUNSEL.

14

MR. QUINN, YOU MAY CALL YOUR NEXT

15

WITNESS.

08:33AM

16

MR. QUINN: THANK YOU, YOUR HONOR.

17

GOOD MORNING. GOOD MORNING, LADIES AND

18

GENTLEMEN.

19

TRUST COMPANY CALLS AS ITS NEXT WITNESS,

20

RICHARD VILLA.

08:33AM

21

22

RICHARD VILLA,

23

CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND

24

TESTIFIED AS FOLLOWS:

25

26

THE CLERK: YOU DO SOLEMNLY STATE THAT THE

27

TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW

28

PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE

1 WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

2 THE WITNESS: I DO.

3 THE CLERK: THANK YOU. PLEASE BE SEATED.

4 SIR, STATE AND SPELL YOUR NAME FOR THE RECORD.

5 THE WITNESS: RICHARD VILLA, R-I-C-H-A-R-D,  
6 V-I-L-L-A.

08:34AM

7 THE COURT: GOOD MORNING.

8 THE WITNESS: GOOD MORNING, YOUR HONOR.

9 THE COURT: YOU MAY PROCEED QUESTIONING.

10

08:34AM

11

DIRECT EXAMINATION +

12

BY MR. QUINN:

13

Q YOU'RE EMPLOYED BY TRUST COMPANY OF THE WEST?

14

A YES.

15

Q WHAT POSITION DO YOU HOLD THERE?

08:34AM

16

A I AM THE CHIEF FINANCIAL OFFICER.

17

Q AND ARE YOU HEAD OF SOME DEPARTMENT, AS CHIEF

18

FINANCIAL OFFICER?

19

A YES, I AM. CORPORATE FINANCE.

20

Q HOW LONG HAVE YOU BEEN EMPLOYED BY TRUST

08:34AM

21

COMPANY OF THE WEST?

22

A SINCE JANUARY OF 2000.

23

Q CAN YOU TELL THE JURY WHAT PRIOR POSITIONS

24

YOU'VE HELD?

25

A I WAS -- WORKED FOR A BANK IN A MANAGEMENT

08:34AM

26

TRAINING PROGRAM FOR ABOUT FIVE YEARS, AND THEN I

27

WORKED FOR DELOITTE & TOUCHE, A PUBLIC ACCOUNTING FIRM

28

FOR THREE YEARS.

1                   WORKED FOR ANOTHER BANK AFTER DELOITTE &  
2                   TOUCHE FOR ABOUT SIX YEARS, AND THEN CAME TO TRUST  
3                   COMPANY OF THE WEST.

4                   Q           WHAT POSITIONS HAVE YOU HELD AT TRUST COMPANY  
5                   OF THE WEST, OTHER THAN CHIEF FINANCIAL OFFICER?

08:35AM

6                   A           I WAS THE CONTROLLER OF TRUST COMPANY OF THE  
7                   WEST WHEN I ARRIVED.

8                   Q           ARE YOU A CPA?

9                   A           YES, I AM.

10                  Q           IS YOUR CPA LICENSE ACTIVE NOW?

08:35AM

11                  A           NO, IT IS NOT.

12                  Q           IS THERE A REASON FOR THAT?

13                  A           MOSTLY JUST THE HASSLE OF KEEPING IT ACTIVE,  
14                  AND THE CONTINUING EDUCATION.

15                  Q           I UNDERSTAND THAT.

08:35AM

16                  A           YOURS IS, I'M ASSUMING.

17                  Q           INDEED.

18                                 DID YOU GROW UP ON A FARM, TOO?

19                  A           I DID.    THERE'S A LOT OF FARM BOYS AROUND  
20                  HERE, I GUESS.

08:35AM

21                  Q           WHERE WAS YOUR FARM THAT YOU GREW UP ON?

22                  A           QUEEN CREEK, ARIZONA.

23                  Q           THAT'S A METROPOLIS OF HOW MANY PEOPLE -- IT  
24                  WAS THEN?

25                  A           AT THE TIME, SOME LESS THAN 5,000.

08:35AM

26                  Q           AS A CHIEF FINANCIAL OFFICER, IS THAT AN  
27                  IMPORTANT JOB, AT TRUST COMPANY OF THE WEST?

28                  A           I THINK SO, YES.

1 Q ARE YOU THE PERSON THAT'S BASICALLY  
2 RESPONSIBLE FOR ALL THE FINANCES OF THE COMPANY?

3 A YES, I AM.

4 Q HOW MANY PEOPLE REPORT TO YOU IN THE CORPORATE  
5 FINANCE DEPARTMENT?

6 A 22.

7 Q COULD YOU TELL US, JUST GENERALLY, WHAT ARE  
8 THE RESPONSIBILITIES OF THE CORPORATE FINANCE  
9 DEPARTMENT?

08:36AM

10 A SURE.

08:36AM

11 BASICALLY, WE'RE RESPONSIBLE FOR ALL  
12 CORPORATE REPORTING, FINANCIAL REPORTING OF THE  
13 COMPANY, BOTH INTERNAL AND EXTERNALLY, WHICH INCLUDES  
14 COLLECTING AND RECORDING ALL FEES OF THE COMPANY,  
15 PAYING AND RECORDING ALL EXPENSES OF THE COMPANY,  
16 INCLUDING ONE OF OUR LARGEST EXPENSES, FEE SHARING.

08:36AM

17 WE'RE RESPONSIBLE FOR CALCULATING AND  
18 PAYING THE FEE SHARING OF THE COMPANY.

19 WE'RE RESPONSIBLE FOR COMPLETING VARIOUS  
20 FINANCIAL ANALYSES: PROFITABILITY ANALYSIS, COSTS  
21 ANALYSIS, THOSE SORTS OF THINGS.

08:36AM

22 Q YOU REFER TO FEE SHARE.

23 WHAT DO YOU MEAN BY FEE SHARING?

24 A IT'S THE COMPENSATION THAT IS PAID TO THE  
25 PORTFOLIO MANAGERS.

08:37AM

26 Q PORTFOLIO MANAGERS BEING FOLKS LIKE  
27 MR. GUNDLACH, AND WE'VE HEARD NAMES OF DIANE JAFFEE,  
28 MARC ATTANASIO, OTHER PEOPLE LIKE THAT?

1 A YES. THAT'S CORRECT.

2 Q AND IS THEIR COMPENSATION TYPICALLY DONE ON  
3 WHAT YOU REFER TO AS A FEE SHARING BASIS?

4 A YES, IT IS.

5 Q IT WOULD BE TRUE TO SAY THAT FEE SHARING AT  
6 TCW, THAT'S A VERY COMMON WAY OF DETERMINING THE  
7 COMPENSATION OF PORTFOLIO MANAGERS?

08:37AM

8 A YES, IT IS. YES, IT IS.

9 Q CAN YOU TELL US HOW FEE SHARING DEALS ARE  
10 USUALLY EXPRESSED?

08:37AM

11 A USUALLY AS A PERCENTAGE OF REVENUES, OR NET  
12 REVENUES, IF WE DEDUCT EXPENSES; BUT USUALLY AS A  
13 PERCENTAGE OF A PROFIT NUMBER OF SOME SORT.

14 Q ALL RIGHT. IT'S A PERCENTAGE OF REVENUES THAT  
15 ARE ATTRIBUTABLE TO WHAT?

08:37AM

16 A MANAGEMENT FEES, BASICALLY WHAT THE COMPANY  
17 DOES IN MANAGING ASSETS.

18 Q AND EACH PORTFOLIO MANAGER'S OWN DEAL, IN  
19 TERMS OF PERCENTAGE, WHAT REVENUES DOES IT APPLY TO?

20 A THE MANAGEMENT FEES THAT ARE ACCRUED AND PAID  
21 BASICALLY TO THE COMPANY.

08:38AM

22 Q ALL RIGHT.

23 FOR THE AREAS THEY'RE RESPONSIBLE FOR?

24 A THAT IS CORRECT.

25 Q WOULD IT BE TRUE TO SAY, THERE'S USUALLY A  
26 FORMULA, TYPICALLY, THAT'S NEGOTIATED WITH EACH  
27 PORTFOLIO MANAGER?

08:38AM

28 A YES, THAT IS CORRECT.

1 Q NOW, LET ME ASK YOU THIS: IS IT NECESSARY TO  
2 HAVE A -- AT TCW, IS IT NECESSARY TO HAVE A CONTRACT  
3 FOR EMPLOYMENT FOR A SPECIFIED TERM OF YEARS, WHETHER  
4 IT'S TWO, THREE, FIVE YEARS, IN ORDER TO HAVE A FEE  
5 SHARING ARRANGEMENT WITH THE COMPANY?

08:38AM

6 A NO, IT'S NOT.

7 MR. ALLRED: FOUNDATION.

8 THE COURT: OVERRULED.

9 THE ANSWER WILL STAND.

10 THE WITNESS: IT'S NOT NECESSARY.

08:38AM

11 BY MR. QUINN:

12 Q ARE THERE -- IS IT COMMON AT TCW FOR PORTFOLIO  
13 MANAGERS TO HAVE A FEE SHARING DEAL WITH TCW, EVEN  
14 THOUGH THEY MAY NOT HAVE A CONTRACT FOR EMPLOYMENT FOR  
15 A SPECIFIED TERM; THAT IS TO SAY, TWO YEARS, THREE  
16 YEARS, FIVE YEARS?

08:39AM

17 A YES, IT IS.

18 MR. BRIAN: YOUR HONOR, MAY WE APPROACH?

19 THE COURT: YEAH. COME ON UP.

08:39AM

20  
21 (SIDE-BAR CONFERENCE HELD) +

22  
23 MR. BRIAN: I ASKED TO APPROACH BECAUSE BEFORE  
24 TRIAL, WE DISCUSSED WHETHER WE WOULD GO INTO OUR  
25 CONTRACT CLAIM FOR, IN MR. QUINN'S CASE.

08:39AM

26 AND MR. QUINN OBJECTED TO THAT, AND YOUR  
27 HONOR UPHELD MR. QUINN'S POSITION.

28 IT LOOKS TO ME, HE'S GOING INTO OUR

1 CONTRACT CLAIM. WE'RE NOT PREPARED TO DO THAT, BECAUSE  
2 I THOUGHT WE WEREN'T DOING THAT.

3 IS THAT WHERE WE'RE GOING?

4 MR. QUINN: WE ARE GOING TO GO INTO THAT. NOT  
5 IN TERMS OF THE -- IN TERMS OF THE FEE SHARING FORMULA,  
6 WHAT HE WOULD BE OWED, HE'S GOING TO GO INTO THAT.

08:40AM

7 HE IS THE MAN WHO ACTUALLY DOES THOSE  
8 CALCULATIONS. HE'S NOT GOING TO GO INTO THE CONTRACT,  
9 WHETHER A CONTRACT WAS ENTERED INTO, THE HISTORY OF  
10 THAT, BECAUSE HE DOESN'T KNOW ANYTHING ABOUT THAT.

08:40AM

11 THE COURT: WELL, SO THE POINT IS -- AND IT  
12 WOULD SEEM TO ME, MR. QUINN, YOU OUGHT TO FINISH UP  
13 WITH THE GENERAL BACKGROUND INFORMATION, GET INTO WHAT  
14 YOU WANT TO GET INTO WITH THIS MAN, AS OPPOSED TO  
15 INDIRECTLY ATTACKING THE CONTRACT CLAIM.

08:40AM

16 NOW, I'LL GIVE YOU SOME LEEWAY: YOU  
17 KNOW, FOUNDATIONAL, BACKGROUND.

18 BUT IF WHAT YOU'RE REALLY DOING IS WHAT  
19 THE ARRANGEMENT WAS FOR FEE SHARING WITH MR. GUNDLACH,  
20 GO THERE.

08:40AM

21 MR. QUINN: THAT IS WHAT WE ARE GOING TO DO.  
22 HOW -- HOW HE WAS PAID.

23 HE DOESN'T KNOW ANYTHING ABOUT THE  
24 CONTRACT, PER SE.

25 THE COURT: OKAY.

08:40AM

26 MR. QUINN: HE KNOWS WHAT HE WAS PAID.

27 THE COURT: ASKED HIM IF IT'S TYPICAL OR  
28 CUSTOMARY TO HAVE A CONTRACT, OR A REQUIREMENT THAT

1 THERE BE A CONTRACT, HE SAID NO.

2 LET'S NOT DWELL ON THE CONTRACT.

3 MR. QUINN: I HAVE ONE MORE QUESTION ON THAT.

4 THE COURT: WHAT IS THAT, SO I KNOW IF I GOT A  
5 PROBLEM?

08:41AM

6 MR. QUINN: OTHER PORTFOLIO MANAGERS WHO HAD  
7 FEE SHARING DEALS, WHO DID NOT HAVE CONTRACTS FOR A  
8 TERM, HE WILL NAME A BUNCH OF THEM. THAT'S IT.

9 MR. BRIAN: I DON'T HAVE -- I DON'T THINK I  
10 HAVE A PROBLEM WITH THAT.

08:41AM

11 THE COURT: LET'S TO THAT, AND MOVE ON.

12 IF WE DON'T HAVE A PROBLEM, I DON'T WANT  
13 TO TALK ABOUT IT.

14 MR. BRIAN: BUT THE ONLY THING I WAS PUTTING  
15 THE COURT ON NOTICE OF, IF HE INTENDS TO GET INTO AN  
16 AREA THAT IS OFF LIMITS, AND WE'RE NOT PREPARED.

08:41AM

17 THE COURT: HE SAID HE'S NOT GOING TO. WE  
18 WON'T HAVE THAT PROBLEM.

19 GO AHEAD.

20 (SIDE-BAR CONFERENCE CONCLUDED.) +

08:41AM

21

22 BY MR. QUINN:

23 Q MR. VILLA, WE WERE TALKING ABOUT WHETHER  
24 PORTFOLIO MANAGERS AT TRUST COMPANY OF THE WEST WHO  
25 HAVE THESE FEE SHARING DEALS HAVE TO HAVE CONTRACTS FOR  
26 A SPECIFIED NUMBER OF YEARS.

08:42AM

27 DO YOU RECALL WE WERE DISCUSSING THAT?

28 A YES, I DO.

1 Q I THINK YOU TOLD US THAT IT WAS COMMON THAT  
2 PORTFOLIO MANAGERS HAD A FEE SHARING DEAL, ONE OF THESE  
3 FORMULAS, BUT DIDN'T HAVE A CONTRACT THAT REQUIRED THAT  
4 THEY BE EMPLOYED FOR A SPECIFIED NUMBER OF YEARS,  
5 CORRECT?

08:42AM

6 A CORRECT.

7 Q CAN YOU THINK -- CAN YOU GIVE THE JURY, SOME  
8 OF THE NAMES OF PORTFOLIO MANAGERS WHO HAD FORMULA FEE  
9 SHARING DEALS, BUT DID NOT HAVE A CONTRACT THAT SAID  
10 WE'RE GOING TO WORK THERE TWO, THREE, FIVE YEARS?

08:42AM

11 A SURE.

12 MR. ALLRED: FOUNDATION, YOUR HONOR.

13 THE COURT: OVERRULED.

14 THE WITNESS: SOME OF THE NAMES THAT YOU  
15 MENTIONED, MARC ATTANASIO, JEAN-MARC CHAPUS,  
16 DIANE JAFFEE, GLEN BICKERSTAFF, TOM MCKISSICK,  
17 JOHN SNIDER.

08:42AM

18 FOLEY & ROBBINS, THEY MANAGE IN THE  
19 EMERGING MARKETS STRATEGY. THERE'S BEEN QUITE A FEW.  
20 BY MR. QUINN:

08:42AM

21 Q LET ME TURN NOW TO MR. GUNDLACH'S FEE SHARING  
22 DEAL.

23 A UH-HUH.

24 Q I TAKE IT MR. GUNDLACH DID HAVE A FEE SHARING  
25 DEAL WITH TCW?

08:43AM

26 A YES. HE WAS PAID UNDER A FORMULA.

27 Q AND ARE YOU FAMILIAR -- IN YOUR JOB, ARE YOU  
28 FAMILIAR WITH THE FORMULA THAT MR. GUNDLACH WAS PAID

1 UNDER?

2 A YES, I AM.

3 Q WAS THERE A CHANGE IN THAT FORMULA IN 2007 --  
4 2007?

5 A YES, THERE WAS. 08:43AM

6 Q WHEN WAS THAT CHANGE IMPLEMENTED?

7 A IT WAS IMPLEMENTED FOR THE FIRST FEE SHARING  
8 PAYMENT, WHICH WOULD HAVE BEEN MAY OF 2007.

9 Q SO, WHEN ARE FEE SHARING -- WHEN ARE SHARED  
10 FEES UNDER THESE FORMULAS TYPICALLY PAID, IN RELATION  
11 TO A QUARTER END? 08:43AM

12 A 60 DAYS AFTER THE QUARTER END.

13 Q SO THE CHANGE YOU'VE REFERRED TO, 2007, THAT  
14 WAS IMPLEMENTED WHEN?

15 A JANUARY 1ST OF 2007. SO IT WAS EFFECTIVE FOR  
16 JANUARY 1ST. 08:43AM

17 Q AND DO YOU RECALL WHEN THE FORMULA WAS  
18 ACTUALLY CHANGED? YOU'VE TOLD US IT WAS IMPLEMENTED AS  
19 OF THE FIRST QUARTER. WHEN WAS IT ACTUALLY CHANGED?

20 A FOR THAT JANUARY 1ST PERIOD. SO FOR THE FIRST  
21 QUARTER, JANUARY 1ST THROUGH MARCH 31ST. 08:44AM

22 Q ALL RIGHT.

23 WHEN WAS THE FIRST PAYMENT MADE, UNDER  
24 MR. GUNDLACH'S NEW FEE SHARING FORMULA?

25 A THE END OF MAY. I'M NOT SURE WHAT THAT DATE  
26 WAS, IF IT WAS THE 30TH, 31ST. IT WOULD HAVE BEEN AT  
27 THAT TIME. 08:44AM

28 Q OF 2007?

1 A 2007, THAT'S RIGHT.

2 Q DO I UNDERSTAND CORRECTLY THAT THAT WOULD HAVE  
3 BEEN FOR THE FIRST FEE SHARING FOR THE FIRST QUARTER OF  
4 2007?

5 A THAT'S CORRECT.

08:44AM

6 Q PAID IN MAY?

7 A THAT'S RIGHT.

8 Q WERE YOU PERSONALLY INVOLVED IN ANY  
9 DISCUSSIONS, ANY OF THE DISCUSSIONS WITH MR. GUNDLACH  
10 THAT LEAD UP TO THIS CHANGE IN HIS FEE SHARING FORMULA  
11 2007?

08:44AM

12 A NO, I WAS NOT.

13 Q SO IT IS -- YOU'RE SORT OF THE ONE THAT DOES  
14 THE CALCULATIONS, OR PEOPLE WORKING FOR YOU DO THE  
15 CALCULATIONS, BUT YOU'RE NOT ACTUALLY INVOLVED IN  
16 NEGOTIATING THE TERMS OF THE FORMULA?

08:45AM

17 A RIGHT.

18 PEOPLE WORK FOR ME THAT DO THE  
19 CALCULATIONS, BUT WE AND THE CORPORATE FINANCE AREA ARE  
20 NOT RESPONSIBLE FOR NEGOTIATING.

08:45AM

21 Q YOU SHOULD HAVE A BOOK THERE IN FRONT OF YOU.  
22 I'D ASK YOU TO TURN, PLEASE, TO 2150-B. 2150-B.

23 HAVE YOU SEEN THIS DOCUMENT BEFORE?

24 A YES, I HAVE.

25 Q I'LL CALL YOUR ATTENTION TO THE FIRST FOUR  
26 PAGES 2150-B, DASH 1 THROUGH DASH 4.

08:45AM

27 A OKAY.

28 Q ARE YOU FAMILIAR WITH THOSE PAGES?

1 A YES, I AM.

2 Q DOES THAT SET FORTH THE FORMULA FOR  
3 MR. GUNDLACH'S FEE SHARING DEAL THAT WAS ENTERED  
4 INTO -- OR THAT WAS IMPLEMENTED IN 2007?

5 A CORRECT.

08:45AM

6 Q IF YOU LOOK AT THE REST OF THIS DOCUMENT,  
7 THERE'S SOME OTHER PAGES AT THE BACK, 2150-B -- 5  
8 THROUGH 9, DO YOU SEE THAT?

9 A YES.

10 Q HAVE YOU SEEN THOSE PAGES BEFORE?

08:46AM

11 A I DON'T REMEMBER SEEING THEM OR FOCUSING ON  
12 THEM.

13 OUR RESPONSIBILITY IS FOR THE ECONOMICS  
14 USUALLY SPELLED OUT IN THE EXHIBITS. THAT'S WHERE WE  
15 FOCUS.

08:46AM

16 Q YOU'RE KNOWLEDGEABLE ABOUT THE FIRST FOUR  
17 PAGES, 2150-B, 1 THROUGH 4?

18 A YES, I AM.

19 MR. QUINN: I'D OFFER THOSE.

20 MR. ALLRED: WE'D OBJECT TO JUST THOSE PAGES  
21 ON COMPLETENESS PAGES. IT SHOULD BE ALL OR NONE.

08:46AM

22 THE COURT: ARE YOU SAYING 1 THROUGH 4 HAVE  
23 BEEN AUTHENTICATED, AND THERE'S FOUNDATION FOR IT; 5  
24 THROUGH 7, ARE YOU SAYING HE'S NOT SURE HE'S EVER SEEN?

25 MR. ALLRED: ON ITS FACE, IT'S AN INCOMPLETE  
26 DOCUMENT WITH PAGES 1 THROUGH 4, MR. QUINN.

08:46AM

27 THAT'S AN ARGUMENT THEY CAN MAKE, YOUR  
28 HONOR.

1 THE COURT: THE OBJECTION'S OVERRULED.  
2 1 THROUGH 4 WILL BE ADMITTED.

3  
4 (EXHIBIT 2150-B, 1-4 ADMITTED.)+

5  
6 BY MR. QUINN: 08:46AM

7 Q IF WE COULD PUT THAT UP ON THE SCREEN THE  
8 FIRST PAGE, 2150-B.

9 IT SAYS UP AT THE TOP, MULTI-SECTOR  
10 FIXED INCOME PROFIT SHARING POOL. 08:47AM

11 DO YOU SEE THAT?

12 A YES, I DO.

13 Q THIS IS THE DOCUMENT THAT SETS FORTH  
14 MR. GUNDLACH'S FEE SHARING FORMULA THAT WAS IMPLEMENTED  
15 2007? 08:47AM

16 A YES, IT DOES.

17 Q WHEN WAS IT THAT YOU FIRST SAW THIS FEE  
18 SHARING FORMULA?

19 A IT WOULD HAVE BEEN PROBABLY IN THAT MAY 2007  
20 TIME FRAME, WHEN THERE WAS ANALYSIS BEING DONE ON IT. 08:47AM

21 Q OVER WHAT PERIOD OF -- WAS MR. GUNDLACH,  
22 STARTING FROM THE TIME THAT THIS WAS IMPLEMENTED, 2007,  
23 WAS MR. GUNDLACH PAID PURSUANT TO THIS FORMULA, HIS FEE  
24 SHARING?

25 A YES, HE WAS. 08:47AM

26 Q OVER WHAT PERIOD OF TIME WAS HE PAID PURSUANT  
27 TO THIS FORMULA?

28 A FROM, WELL, THE EFFECTIVE DATE OF JANUARY 1ST,

1 2007 THROUGH HIS TERMINATION.

2 Q IN DECEMBER --

3 A DECEMBER OF 2009.

4 Q WERE ANY -- DURING THAT TIME PERIOD, WERE  
5 THERE ANY CHANGES MADE TO THIS FORMULA?

08:48AM

6 A YES. THERE WAS.

7 Q WHAT WAS THAT?

8 A AS YOU CAN SEE ON THE SCHEDULE, THERE'S  
9 PERCENTAGES IN THE LOWER BOX THERE. THE PERCENTAGES  
10 RELATED TO THOSE THAT ARE IDENTIFIED AS CMG REGULAR  
11 ACCOUNTS AND CMG STRUCTURED ACCOUNTS.

08:48AM

12 THE PERCENTAGE OF HIS FEE SHARING  
13 INCREASED FROM 50 PERCENT TO 52 1/2 PERCENT.

14 Q THAT WAS A CHANGE MADE SOMETIME BETWEEN 2007  
15 AND 2009?

08:48AM

16 A YES. IT WAS 2008.

17 Q ANY OTHER CHANGES MADE IN THE FORMULA DURING  
18 THAT TIME PERIOD?

19 A YES, THERE WAS. ON ANOTHER PAGE, ON PAGE 4,  
20 THERE'S A CONTRIBUTION THAT TCW WAS TO BEGIN MAKING IN  
21 2008, TO THE POOL FOR FEE SHARING, OF 1.5 MILLION. AND  
22 EFFECTIVE WITH THE INCREASE IN THE RATE, TCW, WE  
23 ELIMINATED THE \$1.5 MILLION CONTRIBUTION FROM TCW.

08:48AM

24 Q IF WE CAN GO BACK TO THE FIRST PAGE, THE TITLE  
25 AT THE TOP, IT REFERS TO THE MULTI-SECTOR FIXED INCOME  
26 IN THE TITLE THERE.

08:49AM

27 COULD YOU PLEASE EXPLAIN TO THE JURY  
28 WHAT THAT REFERS TO, MULTI-SECTOR FIXED INCOME?

1           A           THAT WAS THE PRODUCT GROUP THAT MR. GUNDLACH  
2           MANAGED.

3           Q           AFTER THAT, IT SAYS PROFIT SHARING POOL.  
4                       DO YOU SEE THAT?

5           A           YES.

08:49AM

6           Q           AS PROFIT SHARING, IS THAT SOMETIMES USED  
7           INSTEAD OF FEE SHARING? AS USED AT TCW, DO THEY MEAN  
8           THE SAME THING, ESSENTIALLY?

9           A           YES, THEY DO.

10          Q           CAN YOU JUST TELL THE JURY -- WE'LL GO INTO  
11          THIS IN A LITTLE MORE DETAIL, BUT CAN YOU GIVE THE JURY  
12          AN OVERVIEW, THE STRUCTURE OF THIS FORMULA, HOW IT  
13          WORKS?

08:49AM

14          A           SURE.

15                       IT WOULD TAKE THE MANAGEMENT FEES OR --  
16          THE FEES THAT ARE EARNED AND PAID READY TO THE ACCOUNTS  
17          THAT ARE BEING MANAGED, TO MR. GUNDLACH AND HIS TEAM.  
18          IT WOULD APPLY A FEE SHARING RATE PERCENTAGE TO THOSE  
19          FEES; AND FROM THERE, THERE'S DEDUCTION OF CERTAIN  
20          COMPENSATION COSTS.

08:49AM

21                       AND THEN WHAT WAS REMAINDER WAS WHAT  
22          MR. GUNDLACH WAS PAID.

23          Q           ALL RIGHT.

24                       SO YOU REFER TO FEES.

25          A           YES.

08:50AM

26          Q           IS THERE JUST ONE KIND OF FEE THAT GOES INTO  
27          THE POOL, OR MORE THAN ONE KIND OF FEE?

28          A           THERE'S TWO KINDS OF FEES THAT GO INTO THE

1 POOL.

2 Q WHAT ARE THOSE TWO KINDS OF FEES?

3 A MANAGEMENT FEES AND PERFORMANCE FEES.

4 Q LET'S TALK FIRST ABOUT MANAGEMENT FEES.

5 WHAT ARE MANAGEMENT FEES?

08:50AM

6 A MANAGEMENT FEES IS THE -- IS THE PAYMENT OF  
7 FEES TO THE COMPANY FOR ITS BASIC SERVICE, WHICH IS  
8 MANAGING THE ACCOUNTS OF THE COMPANY, USUALLY REFLECTED  
9 AS A PERCENTAGE OF THE ASSETS WE'RE MANAGING.

10 Q ALL RIGHT.

08:50AM

11 AND DOES THAT DEPEND -- MAYBE WE CAN  
12 WRITE THIS UP HERE ON THE BOARD.

13 DOES THE AMOUNT OF THE MANAGEMENT FEE  
14 DEPEND ON THE PERFORMANCE OF THE FUND?

15 A NO, IT'S NOT BASED ON PERFORMANCE, NO.

08:50AM

16 Q IS IT -- IS THE MANAGEMENT FEE TYPICALLY  
17 EXPRESSED AS A PERCENTAGE OF THE ASSETS UNDER  
18 MANAGEMENT?

19 A YES, IT IS.

20 Q FOR EXAMPLE, IF THERE WERE \$100 MILLION BEING  
21 MANAGED FOR A CLIENT, AND THE MANAGEMENT FEE WERE TWO  
22 PERCENT, THEN THE FEE WOULD BE \$2 MILLION?

08:51AM

23 A \$2 MILLION, THAT'S CORRECT.

24 Q HOW OFTEN, TYPICALLY, DO CLIENTS PAY  
25 MANAGEMENT FEES?

08:51AM

26 A THEY'RE BILLED ON A -- TYPICALLY THEY'RE  
27 BILLED ON A QUARTERLY BASIS, BUT THERE ARE SOME  
28 ACCOUNTS THAT WILL BE BILLED AND PAID ON A MONTHLY

1 BASIS, OR EVEN ON A MUCH LESSER EXTENT, SEMIANNUAL OR  
2 ANNUAL BASIS.

3 Q THOSE ARE BILLED AND PAID AT LEAST QUARTERLY;  
4 IS THAT TRUE?

5 A YES. FOR THE MOST PART, THAT'S CORRECT. 08:51AM

6 Q IS THERE ANOTHER TYPE OF FEE THAT'S PAID AS  
7 WELL?

8 A YEAH, PERFORMANCE FEE.

9 Q ARE THESE SOMETIMES REFERRED TO, WE'VE HEARD  
10 THIS TERM REFERRED TO SOMETIMES AS CARRIED INTERESTS? 08:52AM

11 A RIGHT.

12 Q NOW, HOW ARE THE PERFORMANCE FEES DETERMINED?

13 A WELL, AS THE NAME KIND OF IMPLIES, IT'S BASED  
14 ON THE FACT, IF YOU EXCEED A CERTAIN PERFORMANCE, YOU  
15 MIGHT BE ABLE TO EARN A PERFORMANCE FEE. 08:52AM

16 Q WERE THERE FUNDS, WE'VE HEARD REFERENCE TO THE  
17 SPECIAL MORTGAGE CREDIT FUNDS.

18 ARE YOU FAMILIAR WITH THOSE?

19 A YES, I AM.

20 Q OR SOMETIMES KNOWN BY THE ACRONYM, I ALWAYS  
21 GET IT WRONG, SMCF? 08:52AM

22 A SMCF II, RIGHT.

23 Q WAS MR. GUNDLACH RESPONSIBLE FOR THE SMCF II  
24 FUNDS?

25 A YES, HIS TEAM MANAGED THOSE FUNDS, YES. 08:53AM

26 Q WERE THEY SOMETIMES REFERRED TO AS THE  
27 DISTRESS FUNDS?

28 A CORRECT.

1 Q WHY IS THAT? IT'S NOT BECAUSE THE --

2 A BECAUSE --

3 Q PEOPLE MIGHT BE DISTRESSED; BUT WHY ARE THEY  
4 REFERRED TO THAT WAY?

5 A BECAUSE THE TYPE OF MORTGAGES THAT WERE HELD  
6 WERE CONSIDERED DISTRESSED MORTGAGES.

08:53AM

7 MORTGAGE-BACKED SECURITIES, I THINK THAT  
8 TERM'S BEEN REFERENCED A FEW TIMES.

9 Q WERE THERE PERFORMANCE FEES OR CARRIED  
10 INTERESTS -- UNDER THE DEAL THAT TCW HAD ON THESE  
11 DISTRESS FUNDS, WERE THERE PERFORMANCE FEES OR CARRIED  
12 INTERESTS THAT TCW COULD EARN?

08:53AM

13 A YES, THERE WERE.

14 Q COULD YOU EXPLAIN TO THE JURY HOW THAT WORKED,  
15 UNDER WHAT CIRCUMSTANCES THE COMPANY COULD EARN THOSE?

08:53AM

16 A SURE.

17 JUROR: YOUR HONOR, CAN HE TURN IT AROUND SO  
18 WE CAN SEE?

19 THE WITNESS: HE'S SHOWING ME, I ALREADY KNOW  
20 THIS BUT ...

08:54AM

21 BY MR. QUINN:

22 Q CAN YOU ALL SEE?

23 A THE SPECIAL CREDIT FUNDS HAD A PERFORMANCE OR  
24 CARRIED INTERESTS THAT REQUIRED FIRST THAT 100 PERCENT  
25 OF THE CAPITAL THAT HAD BEEN CONTRIBUTED BY THE LIMITED  
26 PARTNERS BE RETURNED TO THE LIMITED PARTNERS.

08:54AM

27 AND THEN YOU HAD TO ALSO THEN EXCEED A  
28 CERTAIN RETURN TO THE CLIENTS. AND IT WAS A 6 PERCENT,

1 BASICALLY FROM INCEPTION TO THE DATE OF THE RETURN, OF  
2 ALL THE CAPITAL.

3 AND IF YOU EXCEEDED THAT, THEN YOU COULD  
4 EARN A CARRIED INTEREST.

5 Q YOU REFERRED TO LIMITED PARTNERS. 08:54AM

6 DOES LIMITED PARTNERS REFER TO THE  
7 PEOPLE, THE INVESTORS IN THE FUNDS?

8 A CORRECT.

9 Q ALL RIGHT.

10 AND SO BEFORE -- BEFORE THE COMPANY 08:54AM  
11 WOULD BE ELIGIBLE FOR ANY PERFORMANCE FEE, THE INVESTOR  
12 OR THE LIMITED PARTNER WOULD ACTUALLY FIRST HAVE TO GET  
13 100 PERCENT OF THEIR MONEY BACK?

14 A YES, THAT'S RIGHT.

15 Q AND THEN IN ADDITION TO THAT, WOULD THEY HAVE 08:55AM  
16 TO GET A RETURN, ON TOP OF THAT?

17 A YES.

18 Q AND YOU SAY THAT WAS 6 PERCENT?

19 A 6 PERCENT.

20 Q AND IF THE INVESTOR GOT 100 PERCENT OF THEIR 08:55AM  
21 MONEY BACK, AND THEN THE SPECIFIED RETURN, 6 PERCENT,  
22 AND YOU DID BETTER IN THAT, WERE YOU THEN ELIGIBLE FOR  
23 A PERFORMANCE FEE?

24 A CORRECT.

25 Q BUT NOT BEFORE THEN? 08:55AM

26 A NO.

27 Q IF WE COULD GO BACK TO 2150B.

28 THE FEE FORMULA, THE TOP SHADED AREA, IT

1 SAYS THE MULTI-SECTOR FIXED INCOME PROFIT SHARING POOL  
2 SHALL BE AN AMOUNT DETERMINED EACH QUARTER EQUAL TO:

3 THEN IT SAYS DEPARTMENT FEES.  
4 MINUS DEPARTMENT COMPENSATION EXPENSES.  
5 PLUS THE TCW CONTRIBUTION.

08:56AM

6 DO YOU SEE THAT?

7 A YES, I DO.

8 Q ARE THOSE BASICALLY THERE, WHAT WE'RE LOOKING  
9 AT, DEPARTMENT FEES, DEPARTMENT COMPENSATION EXPENSES  
10 AND THE TCW CONTRIBUTION, ARE THOSE THE WAY -- THOSE  
11 BASICALLY, IN THIS DOCUMENT, DEFINED TERMS?

08:56AM

12 A YES, THEY ARE.

13 Q WHERE WILL WE FIND DEPARTMENT FEES, WHAT THAT  
14 MEANS?

15 A JUST BELOW THE --

08:56AM

16 Q IF WE CAN BLOW THAT UP, JUST BELOW.

17 THAT REFERS TO A FEE SHARING RATE, AS  
18 SHOWN IN THE TABLE BELOW, MULTIPLIED BY THE FEES OF THE  
19 SPECIFIED FEE TYPE FOR SUCH ACCOUNT.

20 COULD YOU EXPLAIN WHAT THAT MEANS?

08:56AM

21 A RIGHT.

22 SO THE MANAGEMENT OR PERFORMANCE FEES  
23 THAT HAVE BEEN EARNED AND PAID WOULD BE, YOU WOULD  
24 APPLY A PERCENTAGE, THE FEE SHARING RATE, AGAIN THE  
25 BULK WITH THE DIFFERENT RATES, BY THE DIFFERENT TYPES  
26 OF ACCOUNTS.

08:57AM

27 THAT WOULD BE PART OF THE MATH THAT YOU  
28 WOULD GO THROUGH IN THE FORMULA.

1 Q ALL RIGHT.

2 THEN THE ALLOCATION PERCENTAGE, AS  
3 DEFINED BELOW?

4 A CORRECT.

5 Q WHAT DOES THAT MEAN, THE ALLOCATION  
6 PERCENTAGE?

08:57AM

7 A THE COMPANY MANAGES, I THINK WE HEARD THIS  
8 TERM, AS WELL, MULTI STRATEGY ACCOUNTS, WHERE OTHER  
9 MANAGERS MAY MANAGE A PORTION OF A PARTICULAR STRATEGY.

10 IN THIS CASE, YOU WOULD FIND IT IN A  
11 COUPLE STRATEGIES WHERE THERE'S EQUITY MANAGERS  
12 MANAGING CERTAIN PORTION OF THE PORTFOLIO.

08:57AM

13 THE MULTI-SECTOR PROFIT SHARING POOL  
14 WOULD ONLY RECEIVE THE FEES ASSOCIATED WITH THE  
15 ACCOUNTS THEY MANAGED, AND NOT THOSE MANAGED BY ANOTHER  
16 PORTFOLIO MANAGER.

08:57AM

17 Q ALL RIGHT.

18 IF WE COULD LOOK AT THAT BOX DOWN BELOW  
19 THEN. THIS IDENTIFIES, ON THE LEFT-HAND SIDE, VARIOUS,  
20 IT SAYS GROUPS.

08:57AM

21 COULD YOU EXPLAIN TO THE JURY, PLEASE,  
22 WHAT THOSE ARE?

23 A THOSE ARE BASICALLY THE STRATEGIES THAT ARE  
24 BEING MANAGED BY THE MULTI SECTOR FIXED INCOME GROUP.  
25 SO MORTGAGE-BACKED SECURITIES IS ONE TYPE OF STRATEGY  
26 THAT'S BEING MANAGED.

08:58AM

27 Q THEN THE NEXT COLUMN: ACCOUNT TYPE.

28 ARE THOSE THE PARTICULAR FUNDS?

1           A       NO.

2                               THESE ARE JUST ANOTHER LAYER OF  
3 DESCRIPTION AS TO THE ACCOUNT TYPES BEING MANAGED IN  
4 THAT STRATEGY.

5           Q       THESE ARE BASICALLY DESCRIPTIONS OF THE  
6 STRATEGIES OR THE FUNDS THAT MR. GUNDLACH WAS  
7 RESPONSIBLE FOR MANAGING?

08:58AM

8           A       RIGHT. THOSE THAT ARE APPLICABLE TO HIS FEE  
9 SHARING POOL.

10          Q       WE SEE THERE, TOWARDS THE BOTTOM, 2/3 THE WAY  
11 DOWN, SPECIAL MORTGAGE CREDITS ACCOUNTS.

08:58AM

12                               THERE'S ACTUALLY TWO OF THEM THERE. YOU  
13 SEE THAT?

14          A       YES, I DO.

15          Q       THOSE ARE THE FUNDS THAT WE WERE TALKING ABOUT  
16 JUST A MOMENT AGO?

08:58AM

17          A       CORRECT.

18          Q       WE HAVE SOME PERCENTAGES FEE SHARING RATE, AT  
19 THE RIGHT-HAND SIDE.

20          A       CORRECT.

08:58AM

21          Q       COULD YOU EXPLAIN TO US WHAT THOSE ARE?

22          A       THOSE ARE THE RATES THAT YOU WOULD APPLY TO  
23 THE FEES THAT YOU WOULD EARN -- THAT YOU HAD EARNED AND  
24 PAID OR RECEIVED, IN ORDER TO ADD THAT TO THE POOL OF  
25 THE FEE SHARING POOL.

08:58AM

26          Q       ALL RIGHT.

27                               YOU GET TO MANAGEMENT FEES OR  
28 PERFORMANCE FEES, AND YOU APPLY THESE PERCENTAGES TO

1 IT; IS THAT HOW IT WORKS?

2 A THAT'S CORRECT.

3 Q AND THEN THE NUMBER THAT RESULTS FROM THAT,  
4 THEN GOES INTO THE POOL?

5 A WITH THE EXCEPTION OF THAT ALLOCATION  
6 PERCENTAGE YOU'D APPLY; BUT THAT'S A NOMINAL RATE.

08:59AM

7 BUT YES, IT WOULD GO INTO THE POOL AFTER  
8 THAT.

9 Q IS THERE ANY DEDUCTION, THEN, THAT GOES INTO  
10 THE POOL, THE PROFIT SHARING OR FEE SHARING,  
11 MR. GUNDLACH'S FEE SHARING OR PROFIT SHARING POOL,  
12 RIGHT?

08:59AM

13 A RIGHT.

14 Q NOW, IS THERE A DEFINITION OF FEES HERE IN  
15 THIS DOCUMENT?

08:59AM

16 A YES, THERE IS.

17 Q IF WE COULD TURN TO PAGE 3.

18 DO WE SEE THAT, IN THE MIDDLE OF THE  
19 PAGE THERE?

20 A YES.

08:59AM

21 Q IT SAYS -- IF WE CAN ENLARGE THAT, JUST AT THE  
22 TOP THERE -- FEES MEANS FOR ANY QUARTER.

23 IT SAYS: FEES MEANS FOR ANY QUARTER,  
24 ANY INVESTMENT MANAGEMENT INCENTIVE, PERFORMANCE,  
25 STRUCTURING OR OTHER MANAGEMENT RELATED FEES EARNED BY  
26 TCW FOR SUCH QUARTER ON AN ACCRUAL BASIS WITH RESPECT  
27 TO AN ACCOUNT, AND THAT ARE PAID TO TCW, LESS ANY FEES  
28 AND ANY DISTRIBUTION FEES PAYABLE TO OR SHARED WITH ANY

09:00AM

1 THIRD-PARTY.

2 WHAT IS THAT LAST PART LESS AMOUNTS  
3 PAYABLE TO THIRD-PARTY?

4 A IN CERTAIN CIRCUMSTANCES, WE USE OTHER PARTIES  
5 TO DISTRIBUTE THE ASSETS THAT WE MANAGE. AND SO IF  
6 THERE'S A COST TO THAT, THOSE -- THAT COST WOULD BE  
7 DEDUCTED FROM THE FEE.

09:00AM

8 Q ALL RIGHT.

9 BUT IN TERMS OF WHAT IT SAYS THERE UNDER  
10 X FEES AS USED IN MR. GUNDLACH'S FORMULA MEANS:

09:00AM

11 INVESTMENT MANAGEMENT INCENTIVE,  
12 PERFORMANCE, STRUCTURING, OR OTHER  
13 MANAGEMENT RELATED FEES, EARNED BY  
14 TCW FOR EACH QUARTER ON AN ACCRUAL  
15 BASIS WITH RESPECT TO AN ACCOUNT,  
16 AND THAT ARE PAID TO TCW.

09:01AM

17 CORRECT?

18 A CORRECT.

19 Q SO DO THESE FEES GO INTO THE PROFIT SHARING  
20 POOL, BASED SIMPLY ON ACCRUAL?

09:01AM

21 A NO, THEY DO NOT.

22 Q LET'S TALK FOR A MOMENT ABOUT WHAT THIS MEANS,  
23 THE CONCEPT OF ACCRUAL. CLOSE ENOUGH?

24 A IT LOOKS LIKE IT.

25 Q VERSUS PAID.

09:01AM

26 WHAT DOES IT MEAN, WHEN WE TALK ABOUT  
27 THE ACCRUAL FEES OR ACCRUAL FEES?

28 A IT'S AN ACCOUNTING TERM THAT BASICALLY

1 REQUIRES YOU TO RECORD REVENUE DURING THE PERIOD IN  
2 WHICH THE SERVICE IS PROVIDED.

3 Q IS THIS SOMETHING YOU RECORD ON YOUR BOOKS?

4 A CORRECT.

5 Q DOES THAT REFER TO FEES THAT YOU'VE ACTUALLY  
6 RECEIVED?

09:02AM

7 A NO.

8 Q WHY WOULD YOU RECORD ANYTHING ON YOUR BOOKS,  
9 ACCRUE SOMETHING, IF YOU HAVEN'T ACTUALLY RECEIVED THE  
10 DOLLARS YET?

09:02AM

11 A IT'S REQUIRED BY GENERALLY ACCEPTING  
12 ACCOUNTING PRINCIPLES.

13 Q IS THAT SOMETIMES REFERRED TO AS GAAP?

14 A YES.

15 Q COULD YOU TELL THE JURY WHAT GAAP IS?

09:02AM

16 A GAAP IS A SET OF PRONOUNCEMENTS ISSUED BY THE  
17 GOVERNING BODY OF THE FINANCIAL ACCOUNTING STANDARDS  
18 BOARD, SAYS, THIS IS THE WAY YOU DO THINGS, FOR  
19 ACCOUNTING PURPOSES.

20 Q SO, FOR EXAMPLE, IN THE CASE OF PERFORMANCE  
21 FEES, YOU'VE TOLD US THAT IN THE CASE OF THE DISTRESS  
22 FUNDS IN THE SPECIAL CREDIT MORTGAGE CREDIT FUNDS, TCW  
23 IS NOT ELIGIBLE TO RECEIVE ANY PERFORMANCE FEES UNTIL  
24 THE INVESTOR GETS ALL THEIR MONEY BACK, PLUS 6 PERCENT;  
25 AND THEN YOU MIGHT GET INCENTIVE FEE ON TOP OF THAT, IF  
26 YOU REACH THAT HURDLE?

09:02AM

27 A CORRECT.

28 Q BUT ON YOUR BOOKS, WOULD YOU ACTUALLY ACCRUE

09:03AM

1 SOMETHING FOR THE PERFORMANCE FEE, UNDER THE DISTRESS  
2 FUNDS?

3 A YES, WE WOULD.

4 Q EVEN THOUGH YOU HAVEN'T RECEIVED THE CASH YET?

5 A YES.

09:03AM

6 Q AND THEN, AGAIN, WHY WOULD YOU DO THAT?

7 A BECAUSE OF ACCOUNTING RULES.

8 Q AND THIS FORMULA REFERS TO MR. GUNDLACH  
9 PARTICIPATING IN FEES THAT ARE BOTH EARNED AND PAID.

10 IF SOMETHING IS JUST ACCRUED, DOES THAT  
11 MEAN IT'S PAID?

09:03AM

12 A NO, IT DOES NOT.

13 Q I MEAN, ARE THERE CIRCUMSTANCES WHERE YOU  
14 WOULD ACCRUE SOMETHING, BUT YOU MIGHT NOT EVER SEE ANY  
15 CASH, YOU MIGHT NOT EVER BE PAID?

09:03AM

16 A YES.

17 Q HOW COULD THAT HAPPEN?

18 A WELL, JUST LIKE THE STOCK MARKET,  
19 UNFORTUNATELY, IN THE LAST FEW DAYS, ESPECIALLY, AS  
20 PERFORMANCE GOES, YOU MIGHT HAVE A SITUATION WHERE  
21 YOU'VE PERFORMED AND ACCRUED THE FEE; AND THEN  
22 SUBSEQUENTLY, THINGS OCCUR IN THE MARKETS, OR WHATEVER  
23 THE CIRCUMSTANCES ARE, WHERE NOW YOU'VE UNDERPERFORMED,  
24 AND THE FEE IS LOST.

09:03AM

25 BECAUSE YOU HAVEN'T FULFILLED ALL THE  
26 REQUIREMENTS, AS WE MENTIONED IN THE SPECIAL MORTGAGE  
27 CREDIT FUND, YOU HAVEN'T YET RETURNED THE CAPITAL TO  
28 THE INVESTOR, AND THE UNDERPERFORMANCE OCCURS; AND

09:04AM

1 YOU'D HAVE TO REVERSE THAT.

2 Q SO, YOU MIGHT -- THINGS MIGHT BE LOOKING GOOD,  
3 YOU MIGHT BE ACCRUING WHAT LOOKS LIKE SOME GOOD RESULTS  
4 IN A FUND, EVEN THOUGH YOU HAVEN'T YET MET THE  
5 REQUIREMENTS, THE INVESTOR HASN'T GOTTEN ALL THEIR  
6 MONEY BACK, THEY HAVEN'T YET GOTTEN THE 6 PERCENT  
7 RETURN?

09:04AM

8 A RIGHT.

9 Q BUT YOU MIGHT ACTUALLY, IN YOUR BOOKS, BE  
10 ACCRUING WHAT LOOKS LIKE SOME GOOD RESULTS, RIGHT?

09:04AM

11 MR. ALLRED: OBJECTION, LEADING.

12 THE COURT: SUSTAINED.

13 MR. QUINN: ALL RIGHT.

14 Q IS IT TRUE THAT SOMETIMES YOU ACCRUE THINGS ON  
15 YOUR BOOKS, FORGO RESULTS WHICH NEVER ACTUALLY  
16 MATERIALIZE?

09:04AM

17 MR. ALLRED: SAME OBJECTION.

18 THE COURT: SUSTAINED.

19 BY MR. QUINN:

20 Q CAN YOU TELL US WHETHER OR NOT, ONE WAY OR  
21 ANOTHER, IT SOMETIMES HAPPENS THAT YOU A DREW THINGS ON  
22 THE BOOKS, WHERE -- ACCRUE THINGS ON THE BOOKS, GAINS  
23 THAT NEVER ACTUALLY MATERIALIZED?

09:05AM

24 A YES.

25 Q AND HAS THAT ACTUALLY HAPPENED, WITH RESPECT  
26 TO THESE DISTRESS OR SPECIAL MORTGAGE CREDIT FUNDS?

09:05AM

27 A YES.

28 Q CAN YOU GIVE THE JURY AN EXAMPLE OF THAT?

1           A       SURE.

2                       FOR, AS YOU MENTIONED, THERE'S TWO  
3 SPECIAL MORTGAGE CREDIT FUNDS. SPECIAL MORTGAGE CREDIT  
4 FUND ONE, AT THE END OF 2010, WAS THE FIRST TIME THAT  
5 WE CROSSED OVER FROM A PERFORMANCE PERSPECTIVE, THE  
6 REQUIREMENT OF CALCULATING ESSENTIALLY A RETURN OVER  
7 6 PERCENT; AND SO WE STARTED TO ACCRUE, AT THAT POINT,  
8 AN INCENTIVE FEE OR CARRIED INTEREST.

09:05AM

9                       SUBSEQUENTLY IN THE -- FIRST HALF OF  
10 2011, JUNE, SPECIFICALLY, THE PERFORMANCE WAS SUCH THAT  
11 WE WENT BELOW THE 6 PERCENT LEVEL, AND WE HAD TO  
12 REVERSE, THEN, THAT ACCRUAL THAT WE HAD RECORDED IN  
13 PRIOR PERIODS.

09:05AM

14           Q       WHAT DO YOU MEAN BY REVERSE?

15           A       MEANING WE HAD TO REVERSE THE REVENUE FROM OUR  
16 BOOKS AND RECORDS.

09:06AM

17                       SO WE HAD RECORDED REVENUE IN ONE  
18 PERIOD, AND THEN ANOTHER PERIOD, WE REVERSED THAT  
19 REVENUE.

20           Q       DID YOU, DID TCW EVER SEE ANY PERFORMANCE FEE  
21 WITH RESPECT TO THAT REVENUE?

09:06AM

22           A       TCW'S NOT PAID ANY PERFORMANCE FEE THERE.

23           Q       EVEN THOUGH AT DIFFERENT POINTS IN TIME,  
24 YOU'VE ACCRUED FOR A PERFORMANCE FEE?

25           A       CORRECT.

09:06AM

26           Q       CAN YOU TELL US WHETHER, FROM QUARTER TO  
27 QUARTER, BASED ON THIS PROCESS, THE AMOUNTS SHOWN ON  
28 THE BOOKS FOR ACCRUALS WILL GO UP AND DOWN?

1           A       THEY DO GO UP AND DOWN.

2                       IT'S -- THAT'S ONE OF THE VOLATILE  
3 NATURES OF ASSET MANAGEMENT.

4           Q       ALL RIGHT.  SO WHAT TYPES OF -- YOU'VE  
5 INDICATED THAT THESE -- THANK YOU.  IF WE CAN GO BACK  
6 TO THE FIRST PAGE.  AND IF WE CAN BLOW UP THAT CHART AT  
7 THE BOTTOM.

09:06AM

8                       YOU'VE INDICATED THAT THESE ARE THE  
9 PERCENTAGES THAT ARE APPLIED TO THE TERM WHAT WOULD GO  
10 INTO MR. GUNDLACH'S POOL, RIGHT?

09:07AM

11          A       YES.

12          Q       AND THEN YOU MADE REFERENCE TO SOME EXPENSES  
13 THAT ARE -- THAT MR. GUNDLACH'S RESPONSIBLE FOR; IN  
14 OTHER WORDS, THAT HAVE TO BE DEDUCTED FROM THE AMOUNTS  
15 THAT GO INTO THE POOL?

09:07AM

16          A       YES.

17          Q       AND DO WE FIND THAT, HERE IN THIS FORMULA?

18          A       IN THE FORMULA, WE DO, AT THE TOP OF THE  
19 FORMULA -- AT THE TOP OF THE FRONT PAGE, IT REFERENCES  
20 DEPARTMENT COMPENSATION EXPENSES.

09:07AM

21          Q       ALL RIGHT.

22                       AND IS THAT DEFINED SOMEWHERE IN THE  
23 FORMULA?

24          A       IT IS.  I BELIEVE IN THE LAST PAGE, YEAH.  
25 PAGE 4.

09:07AM

26          Q       SO, IF WE COULD LOOK AT 2150B-4, THERE'S A  
27 DEFINITION FOR DEPARTMENT COMPENSATION EXPENSES?

28          A       YES.

1 Q AND BASICALLY, COULD YOU DESCRIBE FOR THE JURY  
2 WHAT THOSE EXPENSES ARE, THAT UNDER THIS FORMULA,  
3 MR. GUNDLACH WAS RESPONSIBLE FOR PAYING OUT OF HIS FEE  
4 SHARING POOL?

5 A BASICALLY IT WAS ALL A COMPENSATION OF HIS  
6 GROUP.

09:08AM

7 SO THAT WOULD INCLUDE SALARIES AND  
8 BONUSES, ANY SORT OF ALLOCATION OF THE POOL HE WANTED  
9 TO MAKE TO ANYBODY, AND ANY, AS IT DESCRIBES IT, ANY  
10 OTHER FORMS OF COMPENSATION THAT WOULD BE PAID TO  
11 EMPLOYEES THAT WORK FOR HIM.

09:08AM

12 Q SO, THAT WOULD INCLUDE, FOR EXAMPLE, THE  
13 COMPENSATION OF MR. SANTA ANA?

14 A THAT IS CORRECT.

15 Q MR. BARACH?

09:08AM

16 A YES.

17 Q WE'VE ALSO HEARD THE NAMES, DAMIANI, GALLIGAN,  
18 AND THE REST?

19 A YES.

20 Q BASICALLY, HE'S RESPONSIBLE FOR PAYING THEM  
21 OUT OF THIS POOL, RIGHT, THAT WAS PART OF THE FORMULA?

09:08AM

22 A RIGHT.

23 Q WHO DETERMINES HOW MUCH THOSE FOLKS WOULD BE  
24 PAID?

25 A MR. GUNDLACH.

09:08AM

26 Q THAT'S SOMETHING HE DECIDED ON HIS OWN?

27 A I BELIEVE SO, YES.

28 Q IF WE COULD LOOK AT -- IF WE GO BACK TO THE

1 FIRST PAGE, AND LOOK AT THE PERCENTAGES IN THE BOX.

2 THESE PERCENTAGES HERE, OF THE FEES, I  
3 THINK YOU'VE TOLD US, ON THE RIGHT-HAND SIDE, IS WHAT  
4 MR. GUNDLACH WOULD GET; IS THAT CORRECT?

5 A THOSE ARE THE PERCENTAGES THAT WOULD GO TO  
6 CALCULATE PART OF THE POOL.

09:09AM

7 Q EXACTLY?

8 A RIGHT.

9 Q FROM WHICH THOSE -- SALARY?

10 A EXACTLY.

09:09AM

11 Q THE REMAINING AMOUNT, UP TO THE HUNDRED  
12 PERCENT, FOR EXAMPLE IF WE LOOK AT M.B.S., THE REST OF  
13 THAT 52 PERCENT, WHO WOULD GET THAT?

14 A THAT WOULD BE TCW'S.

15 Q TCW'S SHARE?

09:09AM

16 A YES.

17 Q THAT WOULD BE TRUE AS TO EACH OF THESE IN THE  
18 RIGHT-HAND COLUMN, THE REST OF THE AMOUNT TO GET UP TO  
19 100 PERCENT IS RETAINED BY TCW?

20 A RIGHT.

09:09AM

21 Q IF WE COULD TAKE A LOOK AT 963 IN EVIDENCE,  
22 YOUR HONOR.

23 A IS THAT IN THIS BOOK?

24 THE COURT: IT'S ON THE SCREEN IN FRONT OF  
25 YOU.

09:10AM

26 ACTUALLY I FIND IT EASIER TO LOOK AT THE  
27 SCREEN.

28 THE WITNESS: I SHOULD KNOW THAT.

1 BY MR. QUINN:

2 Q WE'VE HAD SOME TESTIMONY ABOUT THIS ABLE GRAPE  
3 PRO FORMA.

4 YOU SEE THE TCW SHARE UP THERE AT THE  
5 TOP, WHERE IT SAYS TEN PERCENT?

09:10AM

6 A YES, I DO.

7 Q HOW DOES THE -- THIS TEN PERCENT FEE SPLIT  
8 REFLECTED ON THE ABLE GRAPE PRO FORMA COMPARE TO TCW'S  
9 SHARE, UNDER THE FEE SHARING AGREEMENT THAT  
10 MR. GUNDLACH HAD NEGOTIATED WITH TCW?

09:10AM

11 A IT'S SIGNIFICANTLY LESS.

12 Q CAN YOU THINK OF ANY CIRCUMSTANCES WHERE TCW  
13 WOULD AGREE TO THIS, TO REDUCE FEES FROM 52 PERCENT OR  
14 60 PERCENT TO TEN PERCENT?

15 MR. ALLRED: SPECULATION FOUNDATION.

09:10AM

16 THE COURT: OVERRULED.

17 THE WITNESS: NO.

18 BY MR. QUINN:

19 Q WOULDNT'T BE A GOOD DEAL FOR TCW?

20 A NO, I DON'T BELIEVE SO, NO.

09:10AM

21 Q IF WE CAN GO BACK TO 2150B.

22 FOR WHAT PERIOD OF TIME DID MR. GUNDLACH  
23 RECEIVE FEE SHARING UNDER THE FORMULA SET FORTH IN THIS  
24 DOCUMENT?

25 A FROM JANUARY 1ST OF 2007 THROUGH HIS  
26 TERMINATION -- WITH THE EXCEPTION OF THE CHANGE WE  
27 DISCUSSED.

09:11AM

28 Q 2008?

1 A RIGHT.

2 Q AND YOU INDICATED THESE WERE PAID 60 DAYS  
3 AFTER THE END OF EACH QUARTER?

4 A RIGHT.

5 Q DID THE FEE SHARING THAT MR. GUNDLACH RECEIVED  
6 IN THAT TIME PERIOD INCLUDE PERFORMANCE FEES?

09:11AM

7 A YES, IF THEY WERE RECEIVED, PAID.

8 Q DID THOSE FEE SHARING -- THESE WERE MADE FOUR  
9 TIMES A YEAR?

10 A CORRECT.

09:11AM

11 Q DID THEY ALSO INCLUDE MANAGEMENT FEES?

12 A YES.

13 Q DID MR. GUNDLACH RECEIVE FEE SHARING PAYMENTS  
14 FOR THE FIRST QUARTER OF 2009?

15 A YES, HE DID.

09:11AM

16 Q DID HE RECEIVE THEM FOR THE SECOND QUARTER OF  
17 2009?

18 A YES, HE DID.

19 Q DID HE RECEIVE THEM FOR THE THIRD QUARTER OF  
20 2009?

09:12AM

21 A YES, HE DID.

22 Q DO YOU KNOW WHEN THE FEE SHARING PAYMENT WAS  
23 MADE TO MR. GUNDLACH FOR THE THIRD QUARTER OF 2009?

24 A IT WOULD HAVE BEEN THE END OF NOVEMBER; AGAIN,  
25 THE LAST BUSINESS DAY OF NOVEMBER.

09:12AM

26 Q NOVEMBER 30TH?

27 A IF THAT WAS THE LAST BUSINESS DAY, RIGHT.

28 Q SO MR. GUNDLACH WOULD HAVE RECEIVED A FEE

1 SHARING PAYMENT FOR THE THIRD QUARTER ON NOVEMBER 30TH,  
2 2009, FOUR DAYS BEFORE HE WAS PUT ON LEAVE?

3 A RIGHT. FROM DECEMBER 4TH, CORRECT.

4 Q DO YOU KNOW THE AMOUNT OF THE FEE SHARING  
5 PAYMENT THAT MR. GUNDLACH RECEIVED ON NOVEMBER 30TH,  
6 2009, FOUR DAYS BEFORE HE WAS PLACED ON LEAVE?

09:12AM

7 A YEAH. IT WAS APPROXIMATELY 13.7 MILLION.

8 Q IF YOU'D LOOK, PLEASE, AT EXHIBIT 944.

9 SPECIFICALLY PAGE 944-9.

10 A YES.

09:13AM

11 Q CAN YOU IDENTIFY THIS DOCUMENT?

12 A THIS IS A PAYROLL RECORD OF HIS COMPENSATION.

13 Q DOES THIS RELATE TO MR. GUNDLACH'S FEE SHARING  
14 PAYMENT FOR THE THIRD QUARTER OF 2009?

15 A YES, IT DOES.

09:13AM

16 MR. QUINN: WE'D OFFER THIS, YOUR HONOR.

17 MR. ALLRED: NO OBJECTION.

18 THE COURT: IT WILL BE ADMITTED.

19

20 (EXHIBIT 944-9 ADMITTED.)+

09:13AM

21

22 MR. QUINN: IF WE COULD PUT THAT ON THE  
23 SCREEN.

24 Q IN THE UPPER RIGHT-HAND CORNER, WE SEE THE  
25 DATE OF THIS PAYMENT, NOVEMBER 30TH, 2009?

09:13AM

26 A CORRECT.

27 Q AND THEN THE AMOUNT OF THE FEE SHARING PAYMENT  
28 IS IN THE MIDDLE OF THE PAGE.

1 IT SAYS: FEE SHARE.

2 THERE'S A NUMBER THERE, 13,707,587.76.

3 A CORRECT.

4 Q TCW PAID THAT TO MR. GUNDLACH ON  
5 NOVEMBER 30TH, 2009?

09:14AM

6 A YES.

7 Q WHEN MR. GUNDLACH WAS PLACED ON LEAVE, ON THE  
8 4TH, AND THEN ULTIMATELY TERMINATED, ON THE 11TH, WAS  
9 HE PAID ANY COMPENSATION FOR THE FOURTH QUARTER OF  
10 2009?

09:14AM

11 MR. ALLRED: OBJECT TO THE FORM OF THE  
12 QUESTION.

13 THE COURT: OVERRULED.

14 CAN YOU ANSWER THAT?

15 THE WITNESS: YES.

09:14AM

16 BY MR. QUINN:

17 Q WHAT WAS HE PAID FOR THE FOURTH QUARTER?

18 A PAID A SALARY.

19 Q THROUGH WHEN?

20 A DECEMBER 11TH, 2009.

09:14AM

21 Q EXHIBIT 944-13.

22 CAN YOU IDENTIFY THIS DOCUMENT?

23 A YEAH.

24 THAT'S THE PAYROLL RECORD OF HIS FINAL  
25 PAYMENT THROUGH DECEMBER 11TH.

09:14AM

26 MR. QUINN: WE'D OFFER THAT.

27 MR. ALLRED: NO OBJECTION.

28 THE COURT: IT WILL BE ADMITTED.

1 (EXHIBIT 944-13 ADMITTED.)+

2

3 MR. QUINN: IF WE CAN PUBLISH THAT, PLEASE.

4 Q DOES -- IT INDICATES THE PAY DATE HERE WAS  
5 DECEMBER 11TH?

09:15AM

6 A CORRECT.

7 Q IS THAT YOUR UNDERSTANDING, THAT'S THE DATE  
8 MR. GUNDLACH'S EMPLOYMENT WAS TERMINATED?

9 A IT IS MY UNDERSTANDING.

10 Q DO WE SEE THE AMOUNT OF THIS PAYMENT THAT HE  
11 RECEIVED FOR REGULAR WAGES ON DECEMBER 11TH?

09:15AM

12 A YES, IN THE MIDDLE OF THE SCHEDULE.

13 Q WHAT AMOUNT IS THAT?

14 A \$17,045.02.

15 Q DID MR. GUNDLACH RECEIVE ANY PERFORMANCE FEES  
16 WE TALKED ABOUT, THESE DIFFERENT KINDS OF FEES -- DID  
17 HE RECEIVE ANY PERFORMANCE FEES FOR THE FOURTH QUARTER  
18 OF 2009?

09:15AM

19 A NO, HE DID NOT.

20 Q WHY NOT?

09:15AM

21 A THERE WERE NONE PAID, AT THE TIME OF HIS  
22 TERMINATION.

23 Q AS WE'VE SEEN THE FORMULA, MR. GUNDLACH'S  
24 FORMULA REQUIRED THEY BE BOTH ACCRUED AND PAID?

25 A CORRECT.

09:15AM

26 MR. ALLRED: FOUNDATION.

27 THE COURT: OVERRULED.

28 THE WITNESS: CORRECT.

1 BY MR. QUINN:

2 Q SO IS IT TRUE TCW HAD NOT RECEIVED ANY  
3 PERFORMANCE FEES ON THE FUNDS THAT MR. GUNDLACH WAS  
4 RESPONSIBLE FOR, IN THE FOURTH QUARTER OF 2009?

5 A YES.

09:16AM

6 Q HAD TCW RECEIVED ANY MANAGEMENT FEES ON ANY OF  
7 THOSE FUNDS, IN THE FOURTH QUARTER UP TO DECEMBER 11?

8 A YES, THEY HAD.

9 Q WAS MR. GUNDLACH PAID ANY MANAGEMENT FEES FOR  
10 THE FOURTH QUARTER OF 2009?

09:16AM

11 A NO, HE WAS NOT.

12 Q WHY NOT?

13 A COUPLE REASONS.

14 ONE IS THAT FEE SHARING IS PAID 60 DAYS  
15 FOLLOWING A QUARTER END, AND MR. GUNDLACH HAD BEEN  
16 TERMINATED BEFORE -- OBVIOUSLY, EVEN BEFORE THE QUARTER  
17 ENDED.

09:16AM

18 SO HE WASN'T THERE AS OF FEBRUARY 28TH.

19 AND MAYBE MORE IMPORTANTLY, A DECISION  
20 WAS MADE, BASED ON HIS CONDUCT, HE WASN'T OWED ANYTHING  
21 FOR THAT PERIOD OF TIME.

09:16AM

22 Q WHAT DO YOU MEAN BY THAT, BASED ON HIS  
23 CONDUCT, HE WASN'T OWED ANYTHING?

24 MR. ALLRED: LACKS FOUNDATION.

25 THE COURT: SUSTAINED.

09:17AM

26 BY MR. QUINN:

27 Q IS WHAT YOU'VE TOLD US, YOUR UNDERSTANDING AS  
28 TO WHY HE WASN'T PAID ANY PORTION OF MANAGEMENT FEES

1 FOR THE FOURTH QUARTER?

2 A THAT IS MY UNDERSTANDING.

3 Q LET'S TALK ABOUT MR. GUNDLACH'S COMPENSATION  
4 AT -- WHILE HE WAS AT TCW.

5 WOULD YOU LOOK PLEASE AT EXHIBIT 2209.

09:17AM

6 A YES.

7 Q DO YOU RECOGNIZE THIS DOCUMENT?

8 A YES.

9 Q WHAT IS THIS?

10 A THIS IS, AGAIN, ANOTHER PAYROLL RECORD FROM  
11 OUR PAYROLL SYSTEM, THAT IDENTIFIES HIS EARNINGS OF  
12 PAYMENTS THAT HE RECEIVED THROUGH HIS TERMINATION,  
13 DECEMBER 11TH, 2009.

09:17AM

14 MR. QUINN: WE'D OFFER 2209.

15 MR. ALLRED: NO OBJECTION.

09:17AM

16 THE COURT: IT WILL BE RECEIVED.

17

18 (EXHIBIT 2209 ADMITTED.)+

19

20 MR. QUINN: IF WE CAN PUT THAT ON THE SCREEN.

09:18AM

21 Q DO YOU SEE HERE WHAT MR. GUNDLACH'S TOTAL  
22 COMPENSATION WAS FOR 2009?

23 A YES.

24 Q WHAT WAS HIS TOTAL COMPENSATION?

25 A IT WAS \$40,734,723.01.

09:18AM

26 Q DID THAT INCLUDE BOTH FEE SHARING AND SALARY?

27 A YES, IT DID.

28 Q WHAT IS THE FEE SHARING AMOUNT?

1 A \$40,210,211.31.

2 Q AND THE SALARY AMOUNT?

3 A \$469,609.49.

4 Q ALL RIGHT.

5 NOW, THERE'S BEEN TESTIMONY FROM  
6 MR. SANTA ANA THAT HE DID NOT RECEIVE ANY FEE SHARING  
7 IN 2009.

09:18AM

8 WHO DECIDED WHETHER OR NOT MR. SANTA ANA  
9 WOULD GET FEE SHARING?

10 A MR. GUNDLACH.

09:18AM

11 Q MR. GUNDLACH RECEIVED OVER \$40 MILLION IN FEE  
12 SHARING IN 2009?

13 A YES.

14 Q COULD HE HAVE DECIDED TO SHARE THAT WITH  
15 MR. SANTA ANA?

09:19AM

16 A YES.

17 Q AND IS MR. GUNDLACH THE ONE WHO DECIDED HOW TO  
18 WHACK UP THE FEE SHARING WITH MEMBERS OF HIS TEAM?

19 A YES.

20 Q SO, IF MR. SANTA ANA DID NOT RECEIVE ANY FEE  
21 SHARING AT ALL IN 2009, WHOSE DECISION WAS THAT?

09:19AM

22 A MY UNDERSTANDING, IT WOULD BE JEFFREY  
23 GUNDLACH'S.

24 Q DO YOU KNOW HOW MUCH MR. GUNDLACH'S TOTAL  
25 SALARY AND FEE SHARING AT TCW WAS IN THE LAST FOUR  
26 YEARS OF HIS EMPLOYMENT; IN OTHER WORDS, FROM 2005 TO  
27 2009?

09:19AM

28 A YES.

1 I -- I MADE A NOTE. IS IT ALL RIGHT IF

2 I --

3 Q SURE.

4 A SO FROM 2005 THROUGH DECEMBER 11TH, 2009, HIS  
5 TOTAL COMPENSATION WAS \$133,681,303.

09:20AM

6 Q I'M SORRY?

7 A \$133,681,303.

8 I DIDN'T PUT THE CENTS ON THAT. SO ...

9 Q THAT WAS FOR WHAT PERIOD OF TIME?

10 A FROM DECEMBER 1ST -- SORRY, JANUARY 1ST, 2005  
11 THROUGH DECEMBER 11TH, 2009.

09:20AM

12 Q AND DO YOU KNOW WHAT MR. GUNDLACH'S TOTAL  
13 SALARY AND FEE SHARING PAYMENTS FROM TCW WERE, YOU  
14 KNOW, DURING THE ENTIRE PERIOD OF HIS EMPLOYMENT AT  
15 TCW; IN OTHER WORDS FROM 1991 TO 2009?

09:20AM

16 A FROM '91 TO 2009, IT'S NOT HIS ENTIRE  
17 EMPLOYMENT HISTORY, BUT IT WAS WHEN -- WHILE HE WAS A  
18 PORTFOLIO MANAGER, OR AT LEAST FROM OUR RECORDS,  
19 ANYWAY, FROM JANUARY 1ST OF '91 THROUGH -- IN THIS  
20 CASE, WE CUT THE RECORD OFF FOR OUR PURPOSES -- JUST  
21 THROUGH 9-30-2009.

09:21AM

22 I HAVE THAT AMOUNT, IF THAT'S --

23 Q WHAT IS THAT AMOUNT, TOTAL AMOUNT HE RECEIVED?

24 A \$239,981,140.

25 Q SO ALMOST A QUARTER OF A BILLION DOLLARS?

09:21AM

26 A CORRECT.

27 Q IN ADDITION TO THAT, DID MR. GUNDLACH RECEIVE  
28 ANY PROFIT FROM THE SALE OF TCW STOCK? --

1           A       HE RECEIVED PAYMENTS ASSOCIATED WITH THE SALE  
2 OF THE COMPANY TO SG, CORRECT.

3           Q       WAS THERE A TIME WHEN MR. GUNDLACH HAD AN  
4 OWNERSHIP INTEREST IN TCW?

5           A       YES.

09:21AM

6           Q       HE SOLD THAT?

7           A       YES.

8           Q       HE SOLD THAT TO THIS FRENCH BANK WE'VE HEARD  
9 ABOUT, SOC-GEN?

10          A       YES.

09:21AM

11          Q       DO YOU KNOW WHAT THE VALUE WAS THAT HE GOT  
12 FROM THAT TRANSACTION?

13          A       YES, I DO.

14          Q       WHAT IS THAT?

15          A       THE NET VALUE, LESS THE COST THAT HE PAID FOR  
16 THE SHARE INTEREST IN TCW, WAS \$58,419,892.

09:21AM

17          Q       ALL RIGHT.

18                   WE'VE HEARD THAT -- WE'VE HEARD THE  
19 NUMBER THAT MR. GUNDLACH EARNED A BILLION DOLLARS FOR  
20 TCW, BUT I DON'T KNOW DOLLARS.

09:22AM

21                   DO YOU KNOW HOW MUCH IN FEES  
22 MR. GUNDLACH GENERATED FOR TCW?

23          A       YES. FOR THAT SAME PERIOD OF TIME WHILE,  
24 AGAIN, HE WAS A PORTFOLIO MANAGER THROUGH 9-30 OF 2009?

25          Q       CORRECT.

09:22AM

26          A       YES, I DO.

27          Q       HAVE YOU DONE THESE CALCULATIONS?

28          A       YES, I DID.

1 Q HOW DID YOU DO THIS CALCULATION, HOW MUCH  
2 MR. GUNDLACH EARNED FOR TCW?

3 A FROM THE BOOKS AND RECORDS OF THE COMPANY.

4 Q ALL RIGHT.

5 AND WHAT IS THE -- DID YOU COME UP WITH  
6 A TOTAL REVENUE NUMBER?

09:23AM

7 A YES, I DID.

8 Q BEFORE DEDUCTION FOR COST AND THINGS?

9 A RIGHT.

10 Q WHAT SHOULD I WRITE UP HERE FOR THAT?

09:23AM

11 A LEAVE YOURSELF SOME ROOM: 1,241,508- --

12 Q -241 --

13 A -508.

14 Q ALL RIGHT.

15 A -219.

09:23AM

16 Q -219?

17 A YEAH.

18 Q HOW MANY CENTS?

19 A I DIDN'T WRITE CENTS DOWN.

20 Q OKAY.

09:23AM

21 SO THAT NUMBER REPRESENTS WHAT?

22 A THE REVENUE TO TCW.

23 Q FROM WHAT?

24 A FROM THE ACCOUNTS THAT WERE MANAGED BY  
25 MR. GUNDLACH.

09:23AM

26 Q SO WOULD THAT BE -- THAT WOULD BE LIKE THE  
27 GROSS REVENUE?

28 A CORRECT.

1 Q AND TO FIGURE OUT WHAT HE EARNED FOR TCW, ARE  
2 THERE SOME COSTS THAT YOU NEED TO DEDUCT?

3 A CORRECT.

4 Q AND WHAT WOULD THOSE BE?

5 A HIS COMPENSATION.

09:24AM

6 Q ALL RIGHT.

7 A WHICH IS THE SAME NUMBER WE DISCUSSED BEFORE.

8 239,981- --

9 Q -81?

10 A YES.

09:24AM

11 -140.

12 Q OKAY.

13 ANY OTHER COSTS WE NEED TO DEDUCT?

14 A YEAH. OTHER FEE SHARING THAT WAS PAID TO  
15 OTHER -- OTHER PEOPLE IN THE GROUP, AND BONUSES.

09:24AM

16 Q LIKE MR. SANTA ANA, DAMIANI?

17 A YES.

18 Q BARACH, AND THE LIKE?

19 A YES. 285,409,925.

20 Q ANYTHING ELSE?

09:24AM

21 A SALARIES THAT WERE PAID EXCLUDING  
22 MR. GUNDLACH.

23 MR. GUNDLACH'S SALARIES IS INCLUDED.

24 Q JG COMP, THIS IS HIS STAFF COMP?

25 A TEAM. TEAM COMP, TEAM FEE SHARING BONUS.

09:24AM

26 Q FEE SHARE. OKAY.

27 ANY OTHER COSTS?

28 A THEN THE SALARIES OF HIS TEAM OVER THAT PERIOD

1 OF TIME.

2 Q THEY GET BOTH FEE SHARE, IF HE CHOOSES TO GIVE  
3 IT TO THEM, AND THEY GET SALARIES AS WELL?

4 A CORRECT.

5 Q SO SALARIES FOR -- TEAM SALARIES?

09:25AM

6 A 70 MILLION.

7 Q JUST A SECOND?

8 A SORRY.

9 Q 70 MILLION?

10 A 70,617- --

09:25AM

11 Q YEP?

12 A -705 --

13 Q -705?

14 A \$75 -- -617,705.

15 Q OKAY.

09:25AM

16 ANYTHING ELSE?

17 A AND THEN OTHER EXPENSES RELATED TO HIS TEAM,  
18 SUCH AS RENT, AND THINGS THAT ARE CHARGED TO THE TEAM.

19 Q ALL RIGHT.

20 A MORE SIGNIFICANTLY, ACTUALLY, ARE DATA  
21 SERVICES CHARGES. THAT'S SORT OF STUFF UTILIZED BY THE  
22 TEAM TO MANAGE THE PORTFOLIOS.

09:25AM

23 Q OKAY.

24 WHAT SHOULD I CALL THOSE?

25 A OTHER EXPENSES, I GUESS.

09:25AM

26 Q OKAY.

27 WHAT NUMBER IS THAT?

28 A 100,433 --

1 Q -433?

2 A YEAH. -502.

3 Q ANYTHING ELSE?

4 A NO.

5 Q SO WE HAVE THE GROSS NUMBER HERE, REVENUES  
6 ATTRIBUTABLE THE FUNDS THAT MR. GUNDLACH MANAGED?

09:26AM

7 A YES.

8 Q AND THEN WE HAVE THESE COSTS ASSOCIATED WITH  
9 THAT?

10 A CORRECT.

09:26AM

11 Q PRESUMABLY, YOU DON'T GET THIS UNLESS YOU  
12 INVEST THIS?

13 A RIGHT.

14 Q ALL RIGHT.

15 SO WE NEED TO SUBTRACT THIS FROM THIS?

09:26AM

16 A YES.

17 Q AND?

18 A ARE YOU GOING TO DO THAT MATH?

19 Q I'M HOPING YOU GIVE ME SOME HELP.

20 ALL RIGHT. YOU SUBTRACT ALL THESE  
21 THINGS, AND WHAT DO YOU GET?

09:26AM

22 A 545 MILLION.

23 Q YEP?

24 A -065.

25 Q YEP?

09:26AM

26 A -948.

27 Q -948.

28 A AND I SHOULD MENTION, THESE ARE THE DIRECT

1 EXPENSES OF THE GROUP, MEANING THAT IN THE CASE OF LIKE  
2 COMPLIANCE OR HUMAN RESOURCES, YOU KNOW, THOSE SORTS OF  
3 THINGS, WE DIDN'T MAKE ANY SORT OF ESTIMATE ON WHAT  
4 COSTS THOSE WERE.

5 Q WOULD THOSE BE CALLED SOME OTHER TYPE OF  
6 COSTS? 09:27AM

7 A WE TYPICALLY REFER THEM AS OVERHEAD COSTS.

8 Q OVERHEAD COSTS.

9 YOU HAVEN'T DEDUCTED ANYTHING FOR LIKE  
10 THE LEGAL DEPARTMENT, HR DEPARTMENT OR ANYTHING LIKE  
11 THAT? 09:27AM

12 A CORRECT, NO.

13 Q WOULD THIS BE, BY TCW'S BOOKS AND RECORDS, IN  
14 YOUR CALCULATIONS, A FAIR NUMBER TO PROXIMATE WHAT  
15 MR. GUNDLACH'S ACTUAL EARNINGS CONTRIBUTION WAS TO TCW? 09:27AM

16 A YES.

17 Q AND HE RECEIVED ALMOST A QUARTER OF A BILLION  
18 DOLLARS?

19 A CORRECT.

20 Q MAYBE I -- WITH THE COURT'S PERMISSION, JUST  
21 TO MARK FOR IDENTIFICATION, THIS CHART. 09:27AM

22 IF I COULD ASK, WHAT WOULD BE NEXT IN  
23 ORDER?

24 MS. O'CONNOR: 2220.

25 THE COURT: WHAT IS THE NUMBER? 09:28AM

26 MR. QUINN: 2220.

27 THE COURT: ALL RIGHT.

28 IT WILL BE MARKED FOR IDENTIFICATION

1 ONLY.

2 (EXHIBIT 2220 MARKED FOR I.D.) +

3

4 MR. QUINN: ALSO MARKED 2221, THE ACCRUAL.

5 THE COURT: MARKED FOR IDENTIFICATION ONLY AS  
6 2221.

09:28AM

7 (EXHIBIT 2221 MARKED FOR I.D.) +

8

9 MR. QUINN: ALSO FOR IDENTIFICATION, LET ME  
10 GUESS, 2222.

09:28AM

11 MS. O'CONNOR: CORRECT.

12 THE COURT: ALL RIGHT.

13 THE THIRD CHART THAT'S BEEN CREATED  
14 DURING THIS WITNESS'S TESTIMONY IS MARKED AS 2222 FOR  
15 IDENTIFICATION.

09:28AM

16 (EXHIBIT 2222 MARKED FOR I.D.) +

17

18 MR. QUINN: THANK YOU, YOUR HONOR.

19 Q OKAY.

20 I'M SORRY, YOUR HONOR. I NOW HAVE TO  
21 EMBARK INTO WHAT WILL BE THE MOST BORING PART OF THIS  
22 TRIAL. I APOLOGIZE IN ADVANCE.

09:29AM

23 THE COURT: GO RIGHT AHEAD.

24 BY MR. QUINN:

25 Q YOU DID A SOMETHING CALLED A COST ALLOCATION  
26 ANALYSIS?

09:29AM

27 A YES, WE DID.

28 Q AND COULD YOU TELL THE JURY BASICALLY, WHAT IS

1 COST ALLOCATION?

2 A IT'S TAKING EXPENSES THAT ARE MORE GENERALLY  
3 RECORDED IN ONE AREA, AND ALLOCATING THEM TO, IN OUR  
4 CASE, MAYBE PRODUCT GROUP, OR TO FUNDS, TO TRY TO  
5 DETERMINE PROFITABILITY OF THOSE FUNDS, WHEN THE  
6 EXPENSES ARE ACTUALLY RECORDED AT THE DETAIL LEVEL OF  
7 THE FUND.

09:29AM

8 Q AFTER MR. GUNDLACH WAS TERMINATED, IN DECEMBER  
9 OF 2009, WAS ANOTHER GROUP BROUGHT IN TO MANAGE THE  
10 GROUP THAT -- THE ORGANIZATION THAT MR. GUNDLACH HAD  
11 BEEN RESPONSIBLE FOR?

09:29AM

12 A YES.

13 Q THAT WAS THE MET WEST TEAM?

14 A YES.

15 Q AND DID THE TEAM FROM MET WEST MANAGE ASSETS  
16 IN THAT GROUP, THE FIXED INCOME GROUP, THAT WERE -- HAD  
17 BEEN AT TCW BEFORE THEY ARRIVED?

09:30AM

18 A YES.

19 Q AT LEAST SOME OF THEM, CORRECT?

20 A CORRECT.

09:30AM

21 Q AND DO SOMETIMES -- ARE THOSE SOMETIMES  
22 REFERRED TO AS LEGACY TCW ASSETS?

23 A YES.

24 Q AND DID THE TEAM FROM MET WEST ALSO BRING WITH  
25 THEM TO TCW, SOME ASSETS THAT THEY HAD MANAGED AT  
26 MET WEST?

09:30AM

27 A YES.

28 Q AND DO YOU SOMETIMES CALL THOSE LEGACY

1 MET WEST ASSETS?

2 A YES.

3 Q DID TCW INCUR COSTS TO MANAGE BOTH THE LEGACY  
4 TCW ASSETS AND THE MET WEST ASSETS?

5 A YES, WE DID.

09:30AM

6 Q AFTER THE MET WEST FOLKS ARRIVED, WERE THERE  
7 EMPLOYEES AT TCW WHO HAD RESPONSIBILITY FOR MANAGING  
8 BOTH THE LEGACY TCW ASSETS AND THE LEGACY MET WEST  
9 ASSETS?

10 A YES.

09:31AM

11 Q AND THOSE EMPLOYEES WERE PAID A SALARY?

12 A YES, THEY WERE.

13 Q DID THEY RECEIVE TWO SEPARATE CHECKS, ONE FOR  
14 THEIR WORK IN MANAGING THE TCW LEGACY ASSETS, AND ONE  
15 FOR MANAGING THEIR WORK IN MANAGING THE LEGACY MET WEST  
16 ASSETS?

09:31AM

17 A NO. THEY RECEIVED ONE.

18 Q ONE CHECK?

19 A YEAH.

20 Q WERE YOU ASKED TO PERFORM AN ANALYSIS TO  
21 DETERMINE THE COSTS THAT WERE INCURRED BY TCW TO MANAGE  
22 THE LEGACY TCW ASSETS, VERSUS THE COSTS INCURRED TO  
23 MANAGE THE LEGACY MET WEST ASSETS?

09:31AM

24 A YES, I WAS.

25 Q DID YOU DO THAT?

09:31AM

26 A I -- I DIRECTED OR SUPERVISED THE COMPLETION  
27 OF THAT TASK, FROM PEOPLE THAT WORK FOR ME.

28 Q AND WHAT ARE THE NAMES OF THOSE FOLKS?

1           A       PETE SULLIVAN AND DAVE YANDOBI.

2           Q       DO YOU REFER TO THIS AS COST ALLOCATION  
3 ANALYSIS?

4           A       YES.

5           Q       COST ALLOCATION ANALYSIS, IS THIS SOMETHING  
6 YOU'VE DONE BEFORE?

09:31AM

7           A       MANY TIMES.

8           Q       DO YOU DO THAT IN THE ORDINARY COURSE OF  
9 BUSINESS AT TCW?

10          A       YES.

09:32AM

11          Q       CAN YOU GIVE THE APPROXIMATION OF HOW MANY  
12 TIMES YOU'VE DONE ONE OF THESE COST ALLOCATION  
13 ANALYSES?

14          A       DOZENS, OVER 50. IT'S GOT TO BE AT LEAST OVER  
15 50.

09:32AM

16          Q       JUST TO GIVE US A FLAVOR, CAN YOU GIVE US SOME  
17 EXAMPLES OF REASONS YOU WOULD DO THIS, OR THE  
18 CIRCUMSTANCES?

19          A       SURE.

20                   WE REGULARLY MEASURE THE PROFITABILITY  
21 PORTFOLIO TEAMS, AND THAT'S DONE ON A REGULAR BASIS.

09:32AM

22                   WE, LESS PERIODICALLY, BUT AT LEAST  
23 ANNUALLY, MEASURE THE PROFITABILITY OF THE MUTUAL FUND  
24 COMPLEX WE MANAGE.

25                   AND THEN THERE ARE A VARIETY OF REQUESTS  
26 THAT OCCUR WHERE PROFITABILITY IS MEASURED, EITHER BY A  
27 FUND OR A PRODUCT AREA, BY STRATEGY, THAT SORT OF  
28 STUFF.

09:32AM

1 SO IT'S QUITE NUMEROUS.

2 Q WHEN YOU PERFORM -- THESE 50-PLUS OCCASIONS  
3 WHERE YOU'VE DONE A COST ALLOCATION ANALYSIS, HAVE YOU  
4 USED A CONSISTENT METHODOLOGY?

5 A YES. WE HAVE.

09:32AM

6 Q COULD YOU PLEASE DESCRIBE FOR THE JURY WHAT  
7 THAT METHODOLOGY IS?

8 A SURE.

9 THE BORING PART.

10 Q WE WANT YOU TO MAKE IT SCINTILLATING AND  
11 FASCINATING.

09:33AM

12 A AS WE MENTIONED, WHAT WE'RE TRYING TO DO IS TO  
13 TAKE A COST, SUCH AS SALARIES -- LET'S SAY, AS YOU  
14 MENTIONED, SOMEBODY'S PAID TO MANAGE MORE THAN ONE  
15 FUND.

09:33AM

16 WE'RE TRYING TO ALLOCATE THAT COST  
17 BETWEEN THE MANAGEMENT OF THOSE TWO FUNDS.

18 WE UTILIZE A METHOD, AND HAVE UTILIZED A  
19 METHOD, WHERE WE ALLOCATE 50 PERCENT OF THE COST, BASED  
20 ON THE DISTRIBUTION OF ASSETS, THE ASSETS UNDER  
21 MANAGEMENT.

09:33AM

22 AND WE ALLOCATE 50 PERCENT OF THE COST,  
23 BASED ON THE DISTRIBUTION OF REVENUE OF THOSE ASSETS.

24 Q ALL RIGHT.

25 WHY DO YOU DO IT THAT WAY?

09:33AM

26 A WE THINK IT'S A REASONABLE APPROACH TO  
27 ALLOCATE THE COST AS -- THERE'S NOT A REAL -- A  
28 ONE-TO-ONE RELATIONSHIP BETWEEN AUM AND REVENUE.

1 I THINK WE HEARD THAT EARLIER. THE AUM  
2 WE'RE MANAGING HAS ALL SORTS OF DIFFERENT FEE RATES  
3 THAT ARE APPLIED.

4 AND SO WE DON'T BELIEVE IT'S APPROPRIATE  
5 TO ALLOCATE, BASED ON ONE OF TWO -- THOSE TWO METRICS;  
6 SO WE AVERAGE THE TWO, BASICALLY.

09:34AM

7 Q BASICALLY, YOU LOOK AT IT TWO DIFFERENT WAYS,  
8 AND THEN YOU AVERAGE IT?

9 A RIGHT. WELL -- YES, IT'S AVERAGING OF THE  
10 TWO.

09:34AM

11 Q WOULD IT BE FAIR TO SAY, THERE ISN'T A  
12 DEFINITIVE BOOK OR SOME TABLE YOU CAN LOOK UP ON THE  
13 INTERNET THAT GIVES YOU A DEFINITIVE ANSWER; THERE'S  
14 ONLY ONE RIGHT WAY TO DO THIS?

15 A RIGHT. I'M SURE THERE'S MANY WAYS TO DO IT.

09:34AM

16 Q IF YOU LOOK AT EXHIBIT 2148.

17 AND I'LL ASK YOU IF YOU'VE SEEN THIS  
18 BEFORE?

19 A YES, I HAVE.

20 Q WHAT IS THIS?

09:34AM

21 A THIS IS THE OUTPUT OF THE COST ALLOCATION  
22 ANALYSIS WE PERFORMED.

23 MR. QUINN: WE'LL OFFER THIS.

24 MR. ALLRED: NO OBJECTION.

25 THE COURT: IT WILL BE ADMITTED.

09:34AM

26  
27 (EXHIBIT 2148 ADMITTED.)+

28 ///

1 BY MR. QUINN:

2 Q OKAY.

3 WHEN YOU SAY OUTPUT, THIS IS BASICALLY,  
4 TELLS US, YOU KNOW, WHAT THE RESULTS WERE OF YOUR COST  
5 ALLOCATION ANALYSIS, IN ALLOCATING THE COSTS RELATING  
6 TO THE MANAGEMENT OF THE LEGACY TCW ASSETS?

09:35AM

7 A YES.

8 Q WHAT YEARS DOES IT COVER?

9 A IT REFERS TO 2010 AS THE ACTUAL EXPENSE AND  
10 REVENUES OF 2010, AND THEN THERE'S ESTIMATE FOR 2011,  
11 AND 2012.

09:35AM

12 Q OKAY.

13 IN THE UPPER LEFT-HAND CORNER, THERE ARE  
14 SOME ITEMS BEGINNING WITH FEE SHARING, MET WEST.

15 DO YOU SEE THAT?

09:35AM

16 A YES.

17 Q AND CAN YOU TELL US WHAT THOSE ARE?

18 A THOSE ARE THE EXPENSE CATEGORIES THAT WE  
19 IDENTIFIED AS BEING THOSE CATEGORIES OF EXPENSE TO  
20 ALLOCATE BETWEEN THE LEGACY TCW ASSETS AND THE MET WEST  
21 ASSETS.

09:35AM

22 Q ALL RIGHT. AND THEN IN THE MIDDLE OF THE  
23 PAGE, IT SAYS THERE'S AUM PERCENTAGE AND REVENUE  
24 PERCENTAGE, DOWN HERE?

25 A YES.

09:36AM

26 Q AND WHAT IS THAT?

27 A THOSE ARE THE DISTRIBUTION OF ASSETS AND  
28 REVENUES BETWEEN THE TCW LEGACY ASSETS AND THE MET WEST

1 LEGACY ASSETS.

2 Q THEN THE BOTTOM OF THE PAGE, WHAT IS THAT?

3 A THAT IS THE ACTUAL ALLOCATION OF THE EXPENSE  
4 THAT WAS IDENTIFIED ABOVE AS THE CATEGORIES OF EXPENSE  
5 THAT NEED TO BE ALLOCATED, AND THE DISTRIBUTION  
6 BETWEEN -- AGAIN, THE EXPENSE ALLOCATED TO TCW ASSETS,  
7 AND THE EXPENSE ALLOCATED TO MET WEST ASSETS.

09:36AM

8 Q WHAT ARE THE AMOUNTS OF ALLOCABLE COSTS  
9 ALLOCATED TO THE LEGACY TCW ASSETS FOR 2010?

10 A \$30,716,823.

09:36AM

11 Q THAT'S THIS NUMBER HERE THAT WE SEE?

12 A YES.

13 Q AND THE COST ALLOCATED TO THE LEGACY MET WEST  
14 ASSETS FOR 2010?

15 A \$27,148,363.

09:36AM

16 Q AND THIS -- YOU DID THE SAME THING FOR 2011  
17 AND 2012?

18 A YES, WE DID.

19 Q ALL RIGHT.

20 AND AGAIN, WHAT IS YOUR UNDERSTANDING  
21 ABOUT WHY YOU DID THIS EXERCISE?

09:37AM

22 A MY UNDERSTANDING IS THAT THE DAMAGES EXPERTS  
23 FOR TCW ARE GOING TO UTILIZE THIS INFORMATION IN THEIR  
24 ANALYSIS.

25 Q THAT'S DR. CORNELL?

09:37AM

26 A YES.

27 Q WE'LL HEAR MORE ABOUT THIS FROM DR. CORNELL?

28 A THAT'S MY UNDERSTANDING.

1 MR. QUINN: ALL RIGHT. END OF THE MOST BORING  
2 PART.

3 THE WITNESS: I THOUGHT YESTERDAY WAS THE MOST  
4 BORING PART.

5 THE COURT: IS IT THE END OF THIS WITNESS? 09:37AM

6 MR. QUINN: NO.

7 THE COURT: I DON'T MIND IF IT'S BORING OR  
8 NOT --

9 MR. QUINN: WE'RE ALMOST THERE, AT THE END.

10 Q AFTER MR. GUNDLACH WAS TERMINATED IN 2009, WAS 09:37AM  
11 A NEW TEAM BROUGHT IN TO MANAGE -- WE'VE ALREADY TALKED  
12 ABOUT THAT THE MET WEST TEAM.

13 A YEAH.

14 Q HAVE YOU COMPARED THE COST ASSOCIATED WITH THE  
15 MET WEST TEAM MANAGEMENT OF THE ASSETS VERSUS WHAT THEY 09:37AM  
16 WOULD HAVE BEEN UNDER MR. GUNDLACH'S FORMULA?

17 A YES, WE DID.

18 Q AND SO WHAT WOULD -- WERE THE REVENUES FOR THE  
19 FIXED INCOME GROUP FOR 2010?

20 A 141 MILLION. 09:38AM

21 Q LET ME WRITE THESE UP ON THE BOARD.

22 YOU MADE THIS COMPARISON FOR 2010 ABOUT  
23 THE COST OF MANAGING THIS THE FIXED INCOME GROUP IN --  
24 UNDER MET WEST IN 2010, AND WHAT WOULD HAVE BEEN UNDER  
25 MR. GUNDLACH'S FORMULA? 09:38AM

26 A CORRECT.

27 Q SO WE'RE TALKING ABOUT 2010.

28 THIS WAS CALLED -- WHAT WAS THE NAME OF

1 THE GROUP, WHEN MR. GUNDLACH WAS THERE?

2 A MULTI-SECTOR FIXED INCOME, OR MSFI.

3 Q HAS THE NAME CHANGED, NOW THAT MET WEST IS  
4 THERE?

5 A YEAH. IT'S JUST THE FIXED INCOME GROUP. 09:39AM

6 Q FIXED INCOME GROUP.

7 OKAY. YOU TOLD US THAT THE REVENUES IN  
8 2010 WERE WHAT?

9 A 141,000,000.

10 Q 141,000,000. 09:39AM

11 SO WE'RE TOTAL REVENUE, 141,000,000.  
12 SORRY.

13 AND TO MAKE THIS COMPARISON, WE HAVE TO  
14 LIKE COMPARE SOME COSTS.

15 HOW DOES THIS WORK? 09:39AM

16 FIRST LET ME ASK: HAVE YOU COMPARED THE  
17 AMOUNTS PAID TO THE MET WEST TEAM AS OPPOSED TO THE  
18 AMOUNTS PAID TO, WOULD HAVE BEEN PAID TO MR. GUNDLACH'S  
19 TEAM, UNDER HIS FORMULA?

20 A CORRECT. THAT'S THE COMPARISON WE DID. IT  
21 WAS COMPENSATION. 09:40AM

22 Q THOSE AGAIN, THESE REVENUES, THESE ARE THE  
23 FEES EARNED BY THOSE FUNDS THAT WERE MANAGED BY THIS  
24 GROUP?

25 A CORRECT. 09:40AM

26 Q ALL RIGHT.

27 WHAT IS THE SOURCE OF THOSE REVENUES?

28 A OUR BOOKS AND RECORDS. THE MANAGEMENT FEES,

1 BASICALLY.

2 Q ALL RIGHT.

3 HAVE YOU DETERMINED HOW MUCH OF THAT 140  
4 MILLION WOULD HAVE BEEN PAID TO MR. GUNDLACH, UNDER HIS  
5 FORMULA THAT WE WERE LOOKING AT?

09:40AM

6 A WE DID. WE ESTIMATED THAT 68 MILLION.

7 Q 68 MILLION?

8 A YES.

9 Q HOW WOULD THAT ARRIVE AT THAT?

10 A BY BASICALLY APPLYING THE SAME TECHNIQUE WE  
11 WERE USING WHEN WE WERE APPLYING THIS FORMULA IN THE  
12 PAST.

09:40AM

13 Q OKAY.

14 HAVE YOU FIGURED OUT WHAT PERCENTAGE OF  
15 THAT THE 68,000,000 IS, OF THE 140,000,000 GROSS  
16 REVENUE?

09:41AM

17 A IT'S 141- BUT, YEAH.

18 Q 141, THANKS.

19 A YES. IT'S APPROXIMATELY 48 PERCENT.

20 I SHOULD REFERENCE, THE 68,000,000 IS  
21 THE POOL --

09:41AM

22 Q OKAY.

23 A -- BEFORE IF HE WAS TO DEDUCT WHATEVER  
24 COMPENSATION TO PAY WHOEVER; SO IT WOULDN'T NECESSARILY  
25 BEEN PAID DIRECTLY TO GUNDLACH.

09:41AM

26 Q ALL RIGHT.

27 HAVE YOU ACTUALLY DETERMINED WHAT THE  
28 AMOUNTS WERE THAT WERE PAID TO THE MET WEST TEAM IN

1 2010?

2 A YES.

3 Q WHAT WERE THE AMOUNTS PAID TO THE MET WEST  
4 TEAM IN 2010?

5 A I --

09:41AM

6 Q FIRST, LET ME HOW WAS IT ARRIVED AT?

7 A BY TAKING, AGAIN, THE BOOKS AND RECORDS THAT  
8 WE HAVE, AND THE CATEGORIES THAT WE IDENTIFIED FOR  
9 COMPENSATION.

10 Q ALL RIGHT.

09:41AM

11 DID THE MET WEST TEAM ALSO HAVE SOME  
12 TYPE OF FORMULA DEAL?

13 A YES.

14 Q ALL RIGHT. AND HOW DID THAT WORK?

15 A BASICALLY, THEIR DEAL IS THAT THEY RECEIVE TEN  
16 PERCENT OF REVENUE.

09:41AM

17 Q OKAY.

18 A OR A MINIMUM OF \$20 MILLION.

19 Q ALL RIGHT.

20 AND SO WHAT DID THEY GET IN 2010?

09:42AM

21 A \$20 MILLION. THE TEN PERCENT IS --

22 Q IT WOULD HAVE BEEN 14?

23 A RIGHT, 14.1 MILLION.

24 Q RIGHT?

25 A THE MINIMUM THEY RECEIVED IS 20 MILLION.

09:42AM

26 Q ALL RIGHT.

27 SO WHAT THEY -- WHAT WAS PAID TO THEM  
28 WAS 20 MILLION?

1 A YES.

2 Q AND WHAT WOULD HAVE BEEN PAID TO MR. GUNDLACH  
3 IS 68,000,000, RIGHT?

4 A CORRECT.

5 Q SO END OF STORY, BY TERMINATING MR. GUNDLACH,  
6 YOU SAVED LOTS AND LOTS OF MONEY, CORRECT?

09:42AM

7 A NO.

8 Q ALL RIGHT.

9 WHY NOT? WHY IS THAT INCORRECT?

10 A IN MR. GUNDLACH'S COMPENSATION, OR THE --  
11 MECHANISM FOR HIM IS THAT THE 68,000,000 WOULD  
12 OTHERWISE COVER ALL SALARIES AND BONUSES AND OTHER  
13 COMPENSATION OF THE TEAM; WHEREAS WITH THE FIXED  
14 INCOME, THE 20 MILLION IS ESSENTIALLY JUST THE FEE  
15 SHARING, WHICH HAS DEDUCTION FOR SALARIES AND BONUS.

09:42AM

09:43AM

16 SO WE HAVE TO ADD, THEN, THE SALARIES  
17 AND BONUSES OF THE TEAM.

18 Q ALL RIGHT.

19 SO UNDER MR. GUNDLACH'S FORMULA, THAT WE  
20 LOOKED AT, HE WAS RESPONSIBLE FOR SOMETHING WE SAW  
21 CALLED DEPARTMENT EXPENSES, WHICH INCLUDES THE COST OF  
22 MR. BARACH, MR. SANTA ANA, ET CETERA; HE PAID THAT OUT  
23 OF HIS PORTION?

09:43AM

24 A THAT'S RIGHT.

25 Q AND THE MET WEST DEAL, WHO WAS RESPONSIBLE FOR  
26 ALL THOSE COSTS, THOSE SALARY COSTS OF THE  
27 PROFESSIONALS IN THAT DEPARTMENT?

09:43AM

28 A TCW.

1 Q SO, TO COMPARE APPLES TO APPLES HERE, DO YOU  
2 HAVE TO TAKE THOSE COSTS INTO ACCOUNT?

3 A YES.

4 Q ALL RIGHT.

5 DO YOU HAVE THOSE NUMBERS FOR US?

09:43AM

6 A I DO.

7 Q WHAT COSTS ARE WE LOOKING AT HERE?

8 A SALARIES, IS ONE COMPONENT.

9 Q WHAT WAS THAT IN 2010?

10 A 13 MILLION.

09:43AM

11 Q ANY OTHERS?

12 A BONUSES, WHICH THERE ARE A COUPLE TYPES OF  
13 BONUSES.

14 Q WHAT DOES THAT COME TO?

15 A 13 MILLION.

09:44AM

16 Q ANYTHING ELSE?

17 A NO, I THINK THAT'S IT. YEAH.

18 Q AND SO IF WE ADD THESE UP, WHAT DOES IT COME  
19 TO?

20 THE 20 MILLION PLUS THE COSTS?

09:44AM

21 A LET'S SEE, DID I GET -- OH, SORRY.

22 THE BONUS NUMBER, THERE ARE TWO TYPES.

23 I JUST GAVE YOU ONE.

24 Q OKAY?

25 A IT'S 25 MILLION IN TOTAL, THE BONUS NUMBER.

09:44AM

26 THERE ARE TWO TYPES OF BONUSES, BUT I  
27 ONLY GAVE YOU ONE OF THE NUMBERS.

28 Q SO WHAT SHOULD I WRITE?

1 A SHOULD BE 25 -- SORRY.

2 Q OKAY.

3 COULD I WRITE HERE, THIS WAS MR. VILLA'S  
4 MISTAKE?

5 A YES.

09:44AM

6 Q WHAT DOES THAT THEN ADD UP TO, FOR THE COST?

7 A 58 MILLION.

8 Q AS COMPARED UNDER MR. GUNDLACH'S FORMULA, IT  
9 WOULD HAVE -- IT STILL WOULD HAVE BEEN A MORE EXPENSIVE  
10 DEAL FOR TCW?

09:45AM

11 A YES.

12 Q IF YOU'RE JUST LOOKING AT THESE NUMBERS,  
13 RIGHT?

14 A YES.

15 Q BUT THIS DOESN'T TAKE INTO ACCOUNT ANY OF THE  
16 FUNDS THAT LEFT, ANY OF THE CLIENTS OR REVENUE THAT  
17 LEFT AROUND THE TIME OF MR. GUNDLACH'S TERMINATION,  
18 CORRECT?

09:45AM

19 A CORRECT.

20 Q SO, HAVE YOU CALCULATED WHAT PERCENTAGE THIS  
21 58 IS OF THE 141?

09:45AM

22 A IT'S APPROXIMATELY 41 PERCENT.

23 Q IN ADDITION IF WE'RE LOOKING, TRYING TO  
24 DETERMINE WHETHER THERE WAS COST SAVINGS AT TCW, ARE  
25 THERE ANY OTHER COSTS OR EXPENDITURES THAT WE NEED TO  
26 TAKE INTO ACCOUNT?

09:45AM

27 A WELL, YOU COULD, I SUPPOSE, CONSIDER --

28 Q WELL -- I MEAN, WAS THERE A PAYMENT MADE --

1 ARE THERE PAYMENTS THAT ARE TO BE MADE TO MET WEST, AS  
2 PART OF THAT ACQUISITION?

3 A YES, THERE ARE.

4 Q AND?

5 A WELL, THERE'S BEEN PAYMENTS MADE, AND THERE  
6 ARE MORE PAYMENTS TO BE MADE.

09:46AM

7 Q WHAT'S THE TOTAL AMOUNT OF PAYMENTS THAT ARE  
8 MADE TO ACQUIRE MET WEST, THAT YOU'RE REFERRING TO?

9 A APPROXIMATELY 225 MILLION.

10 Q SO THAT WOULD BE IN ADDITION -- IN TERMS OF  
11 THE RIGHT-HAND SIDE THAT, IF YOU'RE LOOKING AT THIS IN  
12 THE TOTAL COST IMPACT, IT WOULD BE ANOTHER, WHAT DID  
13 YOU SAY, 200- --

09:46AM

14 A -25.

15 Q 225 MILLION?

09:46AM

16 A RIGHT. YEAH.

17 Q WHAT DO YOU CALL THOSE?

18 A ACQUISITION COSTS.

19 MR. QUINN: YOUR HONOR, MAY I MARK THIS FOR  
20 IDENTIFICATION AS EXHIBIT 2223?

09:46AM

21 THE COURT: YES, YOU MAY.

22

23 (EXHIBIT 2223 MARKED FOR I.D.) +

24

25 BY MR. QUINN:

09:47AM

26 Q OKAY.

27 FINALLY, ARE YOU FAMILIAR WITH THE TERM,  
28 RUN RATE?

1 A YES, I AM.

2 Q WHAT DOES RUN RATE MEAN?

3 A WELL, AS IT RELATES TO REVENUE, IT'S THE  
4 MANAGEMENT FEES THAT WOULD BE GENERATED FROM THE ASSETS  
5 UNDER MANAGEMENT, AS MEASURED AT A VERY SPECIFIC PERIOD  
6 OF TIME.

09:47AM

7 SO YOU'RE PICKING JUNE 30TH, 2011, YOUR  
8 AUM WAS, X, WHAT WOULD THAT AUM GENERATE IN MANAGEMENT  
9 FEES OVER A ONE-YEAR PERIOD?

10 Q DID YOU DETERMINE WHAT THE RUN RATE WAS FOR  
11 ALL ASSETS UNDER MANAGEMENT BY MR. GUNDLACH'S GROUP AS  
12 OF NOVEMBER 30, 2009?

09:47AM

13 A I DID.

14 I'LL REFER TO A NOTE AGAIN.

15 IT'S \$148,434,817.

09:47AM

16 Q THIS, AGAIN, IS ONE OF THOSE THINGS THAT  
17 YOU'VE DONE, BECAUSE YOU KNOW THAT DR. CORNELL, TCW'S  
18 DAMAGES EXPERT, IS GOING TO USE THAT NUMBER FOR  
19 SOMETHING THAT WE'LL HEAR ABOUT?

20 A THAT'S MY UNDERSTANDING, YES.

09:48AM

21 MR. QUINN: NOTHING FURTHER, THANK YOU.

22 THE COURT: THANK YOU, MR. QUINN.

23 CROSS-EXAMINATION?

24 MR. ALLRED: YES, YOUR HONOR.

09:48AM

26 CROSS-EXAMINATION +

27 BY MR. ALLRED:

28 Q GOOD MORNING MR. VILLA.

1 MY NAME'S KEVIN ALLRED.

2 A GOOD MORNING.

3 Q LET'S START WITH EXHIBIT 2150-B WHICH YOU  
4 DISCUSSED WITH MR. QUINN.

5 NOW IT SAYS AT THE VERY TOP LINE THERE,  
6 IT SAYS EXHIBIT A.

09:48AM

7 DO YOU SEE THAT?

8 A YES, I DO.

9 Q IT'S EXHIBIT A TO SOMETHING ELSE, RIGHT?

10 A CORRECT.

09:49AM

11 Q AND YOU UNDERSTAND THAT TO BE EXHIBIT A TO A  
12 DRAFT CONTRACT, RIGHT?

13 A IT'S MY UNDERSTANDING.

14 Q YOU'VE SEEN THAT DRAFT CONTRACT, CORRECT?

15 A I'VE SEEN IT IN EXISTENCE, YES.

09:49AM

16 Q YOU SAW IT BACK 2007, WHEN IT WAS CIRCULATED  
17 BY E-MAIL, RIGHT?

18 A I SAW IT IN EXISTENCE, YES.

19 MR. ALLRED: WE'D MOVE REMAINDER OF 2150-B  
20 INTO EVIDENCE, YOUR HONOR.

09:49AM

21 THE COURT: ANY OBJECTION?

22 MR. QUINN: NO OBJECTION.

23 THE COURT: OKAY.

24

25 (EXHIBIT 2150B 5-9 ADMITTED.)+

09:49AM

26

27 BY MR. ALLRED:

28 Q NOW THAT 2150-B, THE REMAINDER WASN'T SIGNED

1 AT THAT TIME, CORRECT?

2 A THAT'S MY UNDERSTANDING.

3 Q NEVERTHELESS, YOU WERE INSTRUCTED TO PAY UNDER  
4 THESE PROVISIONS, STARTING IN 2007, RIGHT?

5 A YES, I WAS.

09:49AM

6 Q THAT WAS THE INSTRUCTION FROM THE CEO OF THE  
7 COMPANY?

8 A I BELIEVE ACTUALLY IT MAY HAVE BEEN  
9 MR. SONNEBORN, WHO IS NOT THE CEO, BUT THE PRESIDENT.

10 Q THE PRESIDENT?

09:49AM

11 A YES.

12 Q THANK YOU.

13 AND MR. QUINN TOOK YOU THROUGH  
14 DESCRIPTIONS ABOUT ACCRUED AND PAID IN -- IN A PORTION  
15 OF THIS.

09:50AM

16 DO YOU RECALL THAT TESTIMONY?

17 A YES.

18 Q DO YOU KNOW WHETHER, IN THE AGREEMENT TO WHICH  
19 THIS IS AN EXHIBIT A, THERE IS A DIFFERENT PROVISION  
20 FOR HOW YOU CALCULATE FEES, UPON A TERMINATION?

09:50AM

21 MR. QUINN: OBJECTION TO THE CHARACTERIZATION,  
22 AGREEMENT.

23 THE COURT: OVERRULED.

24 YOU KNOW, WE KNOW -- WELL, GO AHEAD.

25 THE WITNESS: I -- I'LL NOT --

09:50AM

26 THE COURT: I THINK YOU SHOULD REFER TO IT BY  
27 EXHIBIT NUMBER.

28 ///

1 BY MR. ALLRED:

2 Q DOES THE REMAINDER OF THE DOCUMENT, THE THING  
3 TO WHICH THIS EXHIBIT A IS ATTACHED --

4 A YES.

5 Q -- DOES IT HAVE A DIFFERENT PROVISION  
6 ALTOGETHER FOR PAYMENTS UPON TERMINATION?

7 A I'M NOT SURE.

8 Q COULD YOU TURN -- COULD WE PUT UP PAGE  
9 2150-B-7, PLEASE.

09:50AM

09:50AM

10 LET'S HIGHLIGHT PARAGRAPH 6.

11 A IS THAT IN THIS DOCUMENT, AS WELL, OR?

12 Q IT SHOULD BE.

13 A SORRY.

14 Q DASH 7. GO TO DASH 7.

15 A WHICH IS THE REFERENCE? IS IT YOUR BOOK? AM  
16 I LOOKING --

09:51AM

17 THE COURT: YOU CAN LOOK AT IT ON THE SCREEN,  
18 IF YOU'D LIKE. USUALLY IT'S EASIER. THEY FIND IT AND  
19 GET IT FOR US.

20 THE WITNESS: I SEE WHAT'S ON THE SCREEN.

09:51AM

21 BY MR. ALLRED:

22 Q SO YOU SEE THE PARAGRAPH 6, ENTITLED  
23 TERMINATION?

24 A YES, I DO.

25 Q IN THE LAST PARAGRAPH THERE STARTS: YOUR  
26 COMPENSATION.

09:51AM

27 DO YOU SEE THAT?

28 A YES, I DO.

1 Q IN THE SECOND LINE, IT SAYS: WILL CEASE WHEN  
2 TERMINATION OCCURS, EXCEPT.

3 DO YOU SEE THAT EXCEPT?

4 A YES, I DO.

5 Q THEN THE NEXT LINE IN THE MIDDLE BEGINS: THE  
6 COMPANY WILL PAY YOU.

7 DO YOU SEE THAT?

8 A YES, I DO.

9 Q AND THEN GOES ON, AMONG OTHER THINGS, IT WILL  
10 PAY YOU, NEXT LINE: PROFIT SHARING.

11 DO YOU SEE THAT?

12 A I DO.

13 Q AND THEN IT SAYS: ACCRUED TO THE DATE OF  
14 TERMINATION.

15 DO YOU SEE THAT?

16 A YES, I DO.

17 Q IT DOES NOT SAY ACCRUED AND PAID, DOES IT?

18 A NO, IT DOES NOT.

19 Q SO IT IS VERY SPECIFICALLY MAKING A DIFFERENT  
20 DEFINITION TO BE APPLIED UPON TERMINATION, RIGHT?

21 A YEAH, OTHER THAN -- CAN I COMMENT ON -- OTHER  
22 THAN THE FACT THAT IT HAS A LOT OF DEFINED TERMS.

23 AND I DON'T KNOW WHAT THOSE DEFINED  
24 TERMS -- I GUESS WE'D HAVE TO LOOK AT THOSE.

25 Q BUT YOU -- YOUR UNDERSTANDING, THIS IS A  
26 PROVISION SPECIFICALLY APPLIED IN THE TERMINATION  
27 CONTEXT, RIGHT?

28 A I DON'T --

09:51AM

09:51AM

09:51AM

09:52AM

09:52AM

1 MR. QUINN: ASSUMES --

2 THE COURT: SUSTAINED.

3 BY MR. ALLRED:

4 Q ARE YOU AWARE THAT MR. GUNDLACH HAD SIGNED  
5 AGREEMENTS COVERING QUITE A NUMBER OF YEARS, PRIOR TO  
6 MAY OF 2007?

09:52AM

7 A THAT'S MY UNDERSTANDING, YES.

8 Q IS IT YOUR UNDERSTANDING THAT THEY HAD THIS  
9 EXACT LANGUAGE IN THEM?

10 A I HAVE NO IDEA.

09:52AM

11 Q NOW, I BELIEVE YOU TOLD MR. QUINN THIS.

12 JUST TO CLARIFY, ACCRUED IS DIFFERENT  
13 FROM PAID, RIGHT? IT'S A VERY DIFFERENT CONCEPT?

14 A YES, IT IS.

15 Q IN FACT, IT'S OFTEN IN DISTINCTION FROM  
16 PAYMENT; YOU DON'T HAVE THE CASH, BUT YOU'VE ACCRUED  
17 THE NUMBER ANYWAY, RIGHT?

09:53AM

18 A YES, CORRECT.

19 Q FOR INSTANCE, IF YOU WANTED TO MEASURE  
20 SOMETHING AT A CERTAIN DATE, WHEN AN EMPLOYEE WAS NO  
21 LONGER GOING TO BE THERE, ACCRUED MIGHT MAKE PERFECT  
22 SENSE, RIGHT?

09:53AM

23 HOPEFULLY, HE'S NOT GOING TO STICK  
24 AROUND TO CALCULATE, OVER A PERIOD OF YEARS, THINGS  
25 THAT ARE GOING TO HAPPEN. YOU HAVE TO MEASURE IT AS OF  
26 THE DATE THEY'RE LEAVING, RIGHT?

09:53AM

27 MR. QUINN: INCOMPLETE HYPOTHETICAL.

28 THE COURT: SUSTAINED.

1 BY MR. ALLRED:

2 Q IN LATE 2009, YOU ASSISTED IN PERFORMING  
3 CALCULATIONS ABOUT AMOUNTS THAT MIGHT NEED TO BE PAID  
4 TO MR. GUNDLACH IF HE WERE REPLACED BY MET WEST,  
5 CORRECT?

09:54AM

6 A I'M NOT SURE. I --

7 Q LET ME DIRECT YOU TO EXHIBIT 5618.

8 A I SEE IT.

9 Q IS EXHIBIT 5618 AN EXCHANGE OF E-MAILS OF  
10 DECEMBER 17 AND 18, 2009, ON WHICH YOU WERE A  
11 PARTICIPANT?

09:54AM

12 A YES.

13 MR. ALLRED: MOVE THAT INTO EVIDENCE.

14 THE COURT: ANY OBJECTION?

15 MR. QUINN: NO OBJECTION.

09:54AM

16 THE COURT: IT WILL BE ADMITTED.

17

18 (EXHIBIT 5618 ADMITTED.)+

19

20 MR. ALLRED: IF WE COULD PUT THAT UP.

09:54AM

21 Q NOW IN THE MIDDLE E-MAIL, FROM MICHAEL CONN TO  
22 PETE SULLIVAN, WHO REPORTS TO YOU, CORRECT?

23 A HE DOES.

24 Q AND YOU'RE COPIED ON THAT E-MAIL?

25 A I AM.

09:54AM

26 Q IN THAT E-MAIL, MR. CONN -- WHO IS  
27 MARC STERN'S ASSISTANT, CORRECT?

28 A HE WORKS DIRECTLY FOR MARC, YES.

1 Q AND HE ASKS FOR A CALCULATION OF THE PRO RATA  
2 FEE SHARING.

3 DO YOU SEE THAT?

4 A I DO.

5 Q AND THEN NEXT LINE SAYS:

6 IF WE HAVE TO PAY THEM FOR THE TWO  
7 MONTHS OR SO OF Q4 THAT THEY DID  
8 WORK AT TCW.

9 DO YOU SEE THAT?

10 A YES. I DO.

11 Q YOU WERE INVOLVED IN PREPARING THAT  
12 CALCULATION; IS THAT RIGHT?

13 A I BELIEVE SO. IT APPEARS SO. I DID IT  
14 BECAUSE MR. SULLIVAN WAS OUT.

15 Q ALL RIGHT.

16 AND SO YOU GENERATED THE RESULTING  
17 NUMBERS?

18 A IT APPEARS TO BE, YES.

19 Q AND THESE NUMBERS THAT YOU CALCULATED HERE ARE  
20 MANAGEMENT FEES.

21 THEY DIDN'T INCLUDE AN ESTIMATE, AT THAT  
22 TIME, OF CARRIED INTERESTS, CORRECT?

23 A I'D HAVE TO REFER TO IT AS -- IS IT -- I.

24 Q IT WAS A QUICK AND DIRTY ESTIMATE, I BELIEVE,  
25 IN THE WORDS OF MR. SULLIVAN, RIGHT?

26 A IT DOESN'T APPEAR TO INCLUDE ANYTHING FOR  
27 PERFORMANCE FEES.

28 Q SO IT'S GOT THE MANAGEMENT FEE PIECE, BUT NOT

09:55AM

09:55AM

09:55AM

09:55AM

09:56AM

1 THE PERFORMANCE FEE OR CARRIED INTEREST FEES?

2 A THAT'S WHAT IT APPEARED TO BE, YEAH.

3 Q AND THEN THE NEXT WEEK, THERE WERE FURTHER  
4 EVALUATIONS OF THE CARRIED INTEREST FEES, CORRECT?

5 A I CAN'T RECALL.

09:56AM

6 Q LET ME DIRECT YOU TO EXHIBIT 5644.

7 A YES.

8 Q IS EXHIBIT 5644 AN E-MAIL YOU SENT ON  
9 DECEMBER 23, 2009, WITH AN ACCOMPANYING CALCULATION?

10 A YES, IT IS.

09:56AM

11 MR. ALLRED: MOVE THAT INTO EVIDENCE, YOUR  
12 HONOR.

13 MR. QUINN: NO OBJECTION.

14 THE COURT: IT WILL BE ADMITTED.

15

09:56AM

16 (EXHIBIT 5644 ADMITTED.)+

17

18 BY MR. ALLRED:

19 Q NOW, MR. -- IN THE BOTTOM E-MAIL, MR. DEVITO,  
20 HE WAS THE PERSON YOU REPORTED TO, CORRECT?

09:57AM

21 A YES.

22 Q HE ASKS YOU: CAN I GET THE LATEST ROUGH  
23 ESTIMATE -- I ASSUME THAT'S SUPPOSED TO SAY OFF --  
24 CARRY FROM THE NOVEMBER 30, ESTIMATE.

25 RIGHT?

09:57AM

26 A YES.

27 Q SMCF II IS THE RE: LINE, CORRECT?

28 A YES.

1 Q YOU UNDERSTOOD HIM TO BE ASKING YOU FOR YOUR  
2 CURRENT ROUGH ESTIMATE OF THE ACCRUED CARRIED INTEREST  
3 OF THE SMCF II FUND AT THAT TIME?

4 A HE WAS ASKING ME TO REVISE THE ESTIMATE, YES.

5 Q AND YOU RESPONDED TO HIM: THE TOTAL IS \$67  
6 MILLION, AS OF NOVEMBER 30, 2009.

09:57AM

7 CORRECT?

8 A THAT IS CORRECT.

9 Q THAT WAS THE AMOUNT THAT TCW WAS CARRYING ON  
10 ITS BOOKS AS OF THE END OF 2009 FOR SMCF II CARRIED  
11 INTEREST?

09:57AM

12 A IT WAS AT LEAST WHAT WAS THE FUND WAS  
13 REPORTING AS THE CARRIED INTEREST, NOT NECESSARILY ON  
14 TCW'S BOOKS, AT THE TIME.

15 Q WELL, THE GENERAL PARTNER OF THE FUND IS A TCW  
16 AFFILIATE; IS THAT CORRECT?

09:57AM

17 A IT IS.

18 Q SO ITS BOOKS CARRIED THAT NUMBER, CORRECT?

19 A I'M NOT CERTAIN IT DID, AS OF 11-30-09.

20 Q YOU DON'T KNOW, ONE WAY OR THE OTHER?

09:58AM

21 A I DON'T BELIEVE IT DOES, ACTUALLY; BUT I DON'T  
22 KNOW EXACTLY.

23 Q NOW OF THE CARRIED INTEREST ON SMCF II, I  
24 BELIEVE YOU CONFIRMED TO MR. QUINN THAT MR. GUNDLACH  
25 RECEIVED -- WAS TO RECEIVE, UNDER HIS EMPLOYMENT  
26 ARRANGEMENT, 60 PERCENT OF THE CARRIED INTEREST ON THE  
27 SMCF II FUND?

09:58AM

28 A OF WHAT WAS EARNED AND PAID, YES.

1 Q WELL, EARNED AND PAID UNDER THE EXHIBIT A,  
2 CORRECT?

3 A FROM MY UNDERSTANDING, THAT'S CORRECT.

4 Q AND YOU'RE DISAVOWING ANY OPINION, ONE WAY OR  
5 ANOTHER, WHETHER THERE'S A DIFFERENT REQUIREMENT OR  
6 DIFFERENT TRIGGER UPON TERMINATION?

09:58AM

7 MR. QUINN: ASSUMED FACTS, YOUR HONOR,  
8 ARGUMENTATIVE.

9 THE COURT: SUSTAINED.

10 BY MR. ALLRED:

09:58AM

11 Q 60 PERCENT OF 67 MILLION WOULD BE A LITTLE  
12 OVER \$40 MILLION; IS THAT RIGHT?

13 A IT WOULD BE -- NO, A LITTLE UNDER, IS MY  
14 ESTIMATE.

15 Q I THINK IT'S --

09:59AM

16 A 36 MILLION --

17 Q MY CALCULATOR THIS MORNING -- WE WON'T QUIBBLE  
18 ABOUT 40 MILLION.

19 A A LITTLE LESS, I BELIEVE.

20 Q OKAY.

09:59AM

21 AND THAT ROUGHLY \$40 MILLION HAS NEVER  
22 BEEN PAID TO MR. GUNDLACH, CORRECT?

23 A THAT IS CORRECT.

24 Q LIKewise, THE MANAGEMENT FEES THAT YOU  
25 ESTIMATED IN THE PRIOR EXHIBIT, AS OF NOVEMBER 30,  
26 THOSE HAVE NEVER BEEN PAID TO MR. GUNDLACH, CORRECT?

09:59AM

27 A THAT IS CORRECT.

28 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 6044.

1 DO YOU HAVE THAT IN FRONT OF YOU?

2 A I DO.

3 Q IS EXHIBIT 6044 AN E-MAIL YOU SENT TO  
4 MR. STERN AND MR. DEVITO ON JANUARY 9, 2010?

5 A IT IS.

10:00AM

6 MR. ALLRED: MOVE THAT, YOUR HONOR.

7 MR. QUINN: NO OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 6044 ADMITTED.)+

10:00AM

11

12 BY MR. ALLRED:

13 Q AND THIS EXHIBIT IS YOUR ANALYSIS, BACK AT THE  
14 TIME OF THE COMPARISON BETWEEN THE SITUATION PRIOR TO  
15 THE DEPARTURE OF MR. GUNDLACH'S GROUP AND THE SITUATION  
16 UNDER MET WEST, IN TERMS OF FEE SHARING FOR CERTAIN  
17 FUNDS, CORRECT?

10:00AM

18 A I'M NOT SURE IT REPRESENTS THAT.

19 WHAT I SEE -- OBVIOUSLY, WHAT IT  
20 REPRESENTS IS WHAT THE FEE WOULD BE IN DIFFERENT  
21 SCENARIOS.

10:00AM

22 Q LET'S GO THROUGH IT, AND TAKE IT IN PIECES,  
23 THEN.

24 A SURE.

25 Q YOU WERE ATTEMPTING TO BE ACCURATE, TO THE  
26 BEST OF YOUR ABILITY, IN THIS CALCULATION, BACK IN THE  
27 MONTH AFTER MR. GUNDLACH'S TERMINATION, CORRECT?

10:01AM

28 A OF COURSE.

1 Q ALL RIGHT.

2 IN YOUR COVER E-MAIL YOU SAY: MARC,  
3 HERE IS THE ANALYSIS OF SMCF I AND II AND COF -- LET'S  
4 STOP THERE.

5 DO YOU SEE THAT? 10:01AM

6 A YES.

7 Q SMCF I AND II ARE THE SPECIAL MORTGAGE CREDIT  
8 FUNDS PARTNERSHIPS, I AND II?

9 A THAT IS TRUE.

10 Q AND COF IS? 10:01AM

11 A REFERRING TO A FUND, CREDIT OPPORTUNITIES  
12 FUND.

13 Q THESE ARE THREE OF THE MANY FUNDS THAT  
14 MR. GUNDLACH MANAGED PRIOR TO DECEMBER 4, 2009?

15 A YES. 10:01AM

16 THE CREDIT OPPORTUNITIES FUND WAS  
17 MULTIPLE MANAGERS, MANAGING THAT ONE.

18 Q ALL RIGHT.

19 NOW LET'S GO TO THE SECOND PAGE IN THE  
20 EXHIBIT. 10:01AM

21 A YES.

22 Q ENTITLED STATUS QUO.

23 THAT'S A STATUS QUO SCENARIO?

24 A RIGHT.

25 Q YOU SEE THAT. 10:01AM

26 NOW, IF YOU LOOK AT ABOUT 2/3 OF THE WAY  
27 DOWN, THERE'S A FEE SHARING LINE.

28 DO YOU SEE THAT?

1 A YES.

2 Q IT'S GOT A FOOTNOTE C ON IT, CORRECT?

3 A YES.

4 Q NOW IF YOU GO DOWN TO FOOTNOTE C, THAT READS:  
5 ASSUMES FEE SHARING AT NORMAL RATES PRIOR TO THE  
6 DEPARTURE OF MSFI, APPROXIMATELY 50 PERCENT MANAGEMENT  
7 FEES AND 60 PERCENT CARRIED INTEREST.

10:02AM

8 DO YOU SEE THAT?

9 A YES, I DO.

10 Q DOES THAT REFRESH YOU, THAT WHAT IS BEING DONE  
11 IN THE STATUS QUO ANALYSIS IS AN ANALYSIS OF WHAT  
12 THINGS WOULD HAVE LOOKED LIKE PRIOR TO THE DEPARTURE OF  
13 MR. GUNDLACH AND HIS GROUP?

10:02AM

14 A IT'S A -- BASED ON THE RATES THAT WERE  
15 APPLICABLE TO THE PRIOR FEE SHARING POOL, YES.

10:02AM

16 Q AND LOOKING AT THE FEE SHARING SECTION, AT THE  
17 BOTTOM THERE, THE TOP HALF OF THE PAGE.

18 IN THE FEE SHARING SECTION, THERE'S  
19 TOTAL FEE SHARING LINE.

20 DO YOU SEE THAT?

10:02AM

21 A YES, I DO.

22 Q AND FOR 2010, IT HAS A 52.9.

23 DO YOU SEE THAT?

24 A YES.

25 Q THAT'S \$52.9 MILLION?

10:02AM

26 A IT IS. THIS IS A MILLION.

27 Q THAT'S YOUR CALCULATION OF THE ANTICIPATED FEE  
28 SHARING ON JUST THESE THREE FUNDS, FOR MR. GUNDLACH,

1 AND HIS GROUP IN 2010?

2 A IT IS AN EXPENSE ANALYSIS; SO NOT PAYMENTS,  
3 NO.

4 Q WELL, LET ME -- IN OTHER WORDS, BECAUSE YOU'RE  
5 DOING IT FROM THE PERSPECTIVE OF TCW, YOU HAVE IT AS A  
6 PARENTHESIS, SUBTRACTION, RIGHT?

10:03AM

7 A CORRECT.

8 Q BUT FROM THE PERSPECTIVE OF MR. GUNDLACH, IT  
9 WOULD BE A RECEIVE, A POSITIVE NUMBER?

10 A HE WOULD NOT HAVE RECEIVED THOSE NUMBERS.

10:03AM

11 Q LET'S NOT DEBATE THE CONTRACTUAL TERMS.

12 MR. QUINN: WELL --

13 THE COURT: HOLD ON.

14 MR. QUINN: HE DIDN'T GET TO FINISH HIS  
15 ANSWER.

10:03AM

16 THE COURT: ONE AT A TIME.

17 YOU CAN FINISH YOUR ANSWER, BUT JUST  
18 ANSWER THE QUESTION.

19 THE WITNESS: SURE.

20 THE COURT: MR. ALLRED, TRY TO JUST MAKE THE  
21 QUESTIONS UNDERSTANDABLE, AND WE'LL GO RIGHT ALONG.

10:03AM

22 MR. ALLRED: ALL RIGHT. I'LL DO MY BEST.

23 THE WITNESS: MIGHT BE MY DENSITY, BUT I DON'T  
24 KNOW.

25 THE COURT: THAT'S ALL RIGHT.

10:03AM

26 BY MR. ALLRED:

27 Q THIS WAS A CALCULATION OF -- OR A PROJECTION,  
28 WHATEVER TERM YOU PREFER, OF FEE SHARING PAYMENTS TO

1 MR. GUNDLACH FOR 2010 UNDER THIS SCENARIO.

2 IN OTHER WORDS, WE ALREADY KNEW, AT THIS  
3 TIME, HE WASN'T GOING -- HE WASN'T THERE; IT'S JUST A  
4 WHAT-IF PROJECTION, RIGHT?

5 A IT IS -- NO, I WOULD SAY NO. I DISAGREE WITH  
6 THAT.

10:04AM

7 BUT IT'S -- IT'S ACCOUNTING, NOT A  
8 PAYMENT.

9 WE WOULDN'T HAVE EXPECTED TO PAY 52  
10 MILLION IN 2010 AND 86 MILLION -- YOU KNOW THAT'S  
11 THE -- THE SUBTLE DIFFERENCE I'M TRYING TO REPRESENT.

10:04AM

12 Q LET ME PICK UP WHERE YOU JUST WENT.

13 FOR 2011, THE PROJECTED FEE SHARING  
14 NUMBER THERE, I WON'T CHARACTERIZE IT, \$86.6 MILLION?

15 A THAT IS CORRECT.

10:04AM

16 Q THESE, THEN -- SO WE WON'T QUIBBLE ON WHAT  
17 WOULD BE PAID OR NOT, THESE ARE AMOUNTS WE WERE  
18 PROJECTING THAT WOULD BE ACCRUED BY TCW IN 2010 AND  
19 2011, RESPECTIVELY?

20 A YES, THAT IS CORRECT.

10:04AM

21 Q GO DOWN TO THE BOTTOM HALF OF THE PAGE.  
22 PRO FORMA.

23 A YES.

24 Q THAT'S YOUR PROJECTION, UNDER THE THEN CURRENT  
25 MET WEST SCENARIO, RIGHT?

10:05AM

26 A IT IS.

27 Q IF YOU LOOKED AT THE TOTAL FEE SHARING LINE --

28 A YES.

1 Q -- YOU'VE GOT A PROJECTED NUMBER FOR 2010 OF  
2 \$2 MILLION, CORRECT?

3 A YES.

4 Q AND FOR 2011, OF \$2.6 MILLION, CORRECT?

5 A YES.

10:05AM

6 Q SO THE DIFFERENCE BETWEEN THE GUNDLACH AND  
7 MET WEST SCENARIOS, AS YOU ANALYZED THEM AT THIS TIME,  
8 WAS MORE THAN 50 MILLION IN 2010, AND MORE THAN 80  
9 MILLION IN 2011, CORRECT?

10 A WELL, NO.

10:05AM

11 THE DIFFERENCE THAT I'M ANALYZING IS  
12 THAT UNDER THE STATUS QUO ANALYSIS, WE WOULD HAVE  
13 EARNED 46 MILLION.

14 AND UNDER THE PRO FORMA ANALYSIS, WE  
15 WOULD EARN 18 MILLION; OR A NEGATIVE AMOUNT OF 28  
16 MILLION.

10:05AM

17 THAT'S THE ANALYSIS THAT WAS BEING DONE.

18 Q I'M ASKING YOU -- YOU'RE LOOKING AT A  
19 DIFFERENT LINE OF THE PRO FORMA.

20 I'M ASKING YOU ABOUT THE FEE SHARING?

10:06AM

21 A YOU DIDN'T. SORRY.

22 THE QUESTION WAS GENERAL, WHAT WAS OUR  
23 ANALYSIS?

24 Q I GUESS MAYBE WE HAVE DIFFERENT PERSPECTIVE.

25 MY PERSPECTIVE IS, I'M WONDERING, FROM  
26 THE PERSPECTIVE OF MR. GUNDLACH, YOU KNOW THE MONEY  
27 THAT WOULD BE ACCRUED TO HIM?

10:06AM

28 A SURE.

1 Q THAT'S THE PERSPECTIVE OF MY QUESTIONS. I  
2 SHOULD CLARIFY THAT.

3 THE FEE SHARING LINE IS WHAT I'M LOOKING  
4 AT, OKAY?

5 A OKAY.

10:06AM

6 Q SO FOR THE FEE SHARING LINE, THE DISTINCTION  
7 BETWEEN THE ACCRUALS UNDER MR. GUNDLACH AND THE  
8 ACCRUALS UNDER THE MET WEST GROUP, WERE OVER 50 MILLION  
9 IN 2010, OVER 80 MILLION IN 2011, CORRECT?

10 A YES, IN THIS SCENARIO.

10:06AM

11 Q WHEN YOU PREPARED THIS COST ALLOCATION  
12 METHODOLOGY THAT MR. QUINN TOOK YOU THROUGH, IT WASN'T  
13 THAT BORING. THANK YOU.

14 YOU PREPARED THAT IN THE LAST MONTH OR  
15 TWO, RIGHT?

10:06AM

16 A I -- YEAH, IT'S GENERALLY, I THINK IT WAS IN  
17 THE JUNE, JULY TIME FRAME, I BELIEVE.

18 Q YOU PREPARED IT SPECIFICALLY FOR PURPOSES OF  
19 THIS LITIGATION, NOT FOR A BUSINESS PURPOSE, RIGHT?

20 A THAT IS CORRECT.

10:07AM

21 Q AND, SO YOU KNEW AT THE TIME YOU WERE  
22 PREPARING THAT, THAT IT WAS IN TCW'S INTEREST, IN THIS  
23 CASE, TO HAVE THE DIFFERENCE BETWEEN THE AMOUNT OF FEE  
24 SHARING UNDER MR. GUNDLACH AND THE AMOUNT OF FEE  
25 SHARING UNDER MET WEST, BE AS SMALL AS POSSIBLE, RIGHT?

10:07AM

26 A ARE YOU INFERRING THAT WAS MY PURPOSE?

27 I'M NOT SURE.

28 Q YOU UNDERSTOOD THAT WAS THE BENEFIT -- WHETHER

1 OR NOT YOUR BENEFIT, YOU UNDERSTOOD THAT THAT WAS IN  
2 TCW'S BEST INTEREST, RIGHT?

3 A THAT WOULD BE IN TCW'S INTEREST, IF THAT'S  
4 WHAT YOU'RE REFERRING.

5 Q YES.

10:07AM

6 AND BACK IN 2009, COMPARISONS WERE MADE,  
7 IN THE FALL OF 2009, FOR A BUSINESS PURPOSE OF  
8 EVALUATING A TRANSACTION, RIGHT?

9 A THERE WAS SOME ANALYSIS DONE RELATING TO THE  
10 ACQUISITION OF MET WEST.

10:07AM

11 Q YOU PARTICIPATED IN THOSE ANALYSES?

12 A WE DID.

13 Q AMONG THE PURPOSES THERE WERE TO MAKE A  
14 DECISION ABOUT PURCHASE PRICE, THAT SORT OF THING, REAL  
15 WORLD BUSINESS DECISIONS. YOU HAD TO EVALUATE THE  
16 EXPECTED COST DIFFERENTIAL BETWEEN THE GUNDLACH TEAM  
17 AND MET WEST, RIGHT?

10:08AM

18 A THERE WERE -- THOSE ANALYSES IN THERE, YES.

19 Q LET ME DIRECT YOU TO EXHIBIT 5365.

20 EXHIBIT 5365 SEEMS TO BE AN E-MAIL FROM  
21 MARC STERN TO MR. RIPOLL OF SOCIÉTÉ GÉNÉRALE, DATED  
22 OCTOBER 13, 2009.

10:08AM

23 IS WHAT IT APPEARS TO BE TO YOU?

24 A IT DOES APPEAR TO BE THAT.

25 Q IN THE MIDDLE OF THE PAGE, DO YOU SEE  
26 DISCUSSION OF THE COMPARATIVE FEE SHARING RATES TO BE  
27 PAID FOR MET WEST PERSONNEL AS COMPARED TO THE THEN  
28 EXISTING SETUP WITH MR. GUNDLACH?

10:08AM

1 MR. QUINN: FOUNDATION, YOUR HONOR.

2 THE COURT: SUSTAINED.

3 BY MR. ALLRED:

4 Q DID YOU HELP TO PREPARE THESE ESTIMATES, IN  
5 OCTOBER 2009?

10:09AM

6 A I -- I MAY HAVE. I'M NOT SURE.

7 Q DID YOU AT LEAST -- OVERSEE IT, DIRECT, OR  
8 DIRECT THEIR PREPARATION?

9 A THE CORPORATE FINANCE TEAM PREPARES MOST  
10 FINANCIAL ANALYSIS; BUT I CAN'T RECALL SPECIFICALLY  
11 THIS ONE.

10:09AM

12 Q DID YOU SEE OR HEAR MR. STERN \*RELEASE THESE  
13 COMPARATIVE FIGURES, BACK IN OCTOBER 2009?

14 A I -- I DON'T REMEMBER THAT. I DON'T REMEMBER,  
15 ULTIMATELY.

10:09AM

16 Q DO YOU -- LOOKING AT THE BOTTOM TWO LINES OF  
17 MR. STERN'S E-MAIL, DO YOU SEE THE --

18 MR. QUINN: AGAIN, YOUR HONOR, FOUNDATION.

19 MR. ALLRED: I'M NOT GOING TO SAY WHAT IT  
20 SAYS, YOUR HONOR. I'M DIRECTING HIM.

10:09AM

21 THE COURT: YOU HAVE TO LAY THE FOUNDATION,  
22 SOME FAMILIARITY. IF NOT, YOU'LL HAVE TO DO IT SOME  
23 OTHER WAY, WITH SOMEBODY ELSE, MAYBE.

24 BY MR. ALLRED:

25 Q DID YOU CALCULATE RELATIVE FEE SHARING RATE  
26 PERCENTAGES FOR MET WEST VERSUS THE NET FOR  
27 MR. GUNDLACH'S GROUP, BACK IN OCTOBER 2009?

10:10AM

28 A AS WE LOOKED AT IN THE OTHER ANALYSIS, THAT

1 WAS ONE OF THE ANALYSES, BUT THAT WAS VERY SPECIFIC.

2 I DON'T RECALL, GENERALLY, DOING IT.

3 Q SO YOU DON'T RECALL, THEN, CALCULATING THE TWO  
4 NUMBERS THAT ARE REFLECTED IN THE SECOND TO LAST LINE  
5 OF MR. STERN'S E-MAIL?

10:10AM

6 A I DON'T REMEMBER. NO, I DON'T.

7 Q LET'S MOVE ON.

8 LET ME ASK YOU TO LOOK AT EXHIBIT 5468.

9 A YES.

10 Q DO YOU HAVE THAT IN FRONT OF YOU?

10:11AM

11 A YES.

12 Q A MEMORANDUM FROM MARC STERN TO VARIOUS  
13 SOCIÉTÉ GÉNÉRALE EXECUTIVES ON NOVEMBER 27, 2009.

14 DO YOU SEE THAT?

15 A I DO.

10:11AM

16 Q PAGE 3, THE BOTTOM SECTION GO THERE?

17 A YES.

18 Q FIRST BULLET OF THAT SECTION SETS FORTH --  
19 MR. QUINN: OBJECT, YOUR HONOR.

20 MR. ALLRED: I'M NOT GOING TO READ IT, YOUR  
21 HONOR. I'M DIRECTING HIM.

10:11AM

22 THE COURT: YOU CAN LAY THE FOUNDATION.

23 OTHERWISE, WE'LL MOVE ONTO ANOTHER EXHIBIT.

24 BY MR. ALLRED:

25 Q DID YOU PERFORM THE CALCULATIONS THAT  
26 GENERATED THE NUMBERS IN THAT BULLET?

10:11AM

27 A I'M SORRY. ARE WE -- THE ONE ON THE SCREEN,  
28 VERY FIRST BULLET?

1 Q THERE'S NO SCREEN UP RIGHT NOW?

2 A SORRY.

3 THE COURT: ON YOUR SCREEN, SIR. YOU CAN SEE  
4 IT.

5 THE WITNESS: THAT'S WHAT I'M REFERRING TO. 10:11AM

6 THE COURT: WE'VE NOT ADMITTED IT, SO WE DON'T  
7 PUT IT UP FOR EVERYONE.

8 THE WITNESS: SURE.

9 THAT MAY HAVE BEEN MY GROUP, THAT  
10 PROVIDED THAT INFORMATION. 10:12AM

11 MR. ALLRED: ALL RIGHT.

12 Q DO YOU RECALL THAT THOSE TWO PERCENTAGES, THAT  
13 COMPARISON, BEING GENERATED BY YOUR GROUP IN AROUND THE  
14 FALL OF 2009?

15 A YEAH, THAT -- THOSE SEEM FAMILIAR. 10:12AM

16 Q SO YOUR GROUP GENERATED AN ESTIMATE OF REDUCED  
17 COMPENSATION LEVELS FOR THE NEW INCOMING MET WEST TEAM  
18 OF TEN PERCENT FEE SHARING, AS OPPOSED TO A NET 35  
19 PERCENT UNDER MR. GUNDLACH, CORRECT?

20 A YES. 10:12AM

21 Q MORE THAN THREE TO ONE RATIO, RIGHT?

22 A FOR THAT PARTICULAR ITEM, YEAH.

23 Q MR. QUINN WAS SPEAKING TO YOU ABOUT ACCRUAL  
24 AND ACCRUAL PRACTICES AT TCW.

25 I WANT TO COVER THAT BRIEFLY. 10:12AM

26 A SURE.

27 THE COURT: WHY DON'T WE TAKE OUR MORNING  
28 RECESS, SINCE WE'RE SHIFTING GEARS ON TOPICS.

1 LADIES AND GENTLEMEN, WE'LL COME BACK IN  
2 20 MINUTES.

3  
4 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +

5  
6 THE COURT: WE'RE OUT OF THE PRESENCE OF THE  
7 JURY.

8 WE ARE, ARE WE NOT?

9 VERY QUICKLY, I HAD TWO MATTERS THAT  
10 WERE CARRIED OVER FROM YESTERDAY. LET ME JUST -- THERE  
11 WERE ISSUES REGARDING THE DEPOSITION OF  
12 SEVERIN CABANNES.

13 MR. BRIAN: CABANNES.

14 THE COURT: I RECEIVED BRIEFING FROM BOTH  
15 SIDES ON THAT ISSUE, REGARDING THE APPROPRIATENESS OF  
16 THE INTERPRETER THAT WAS USED.

17 I'M NOT INCLINED TO TAKE FURTHER  
18 ARGUMENT ON IT.

19 AND MY RULING WILL BE AS FOLLOWS:

20 THE COURT FINDS THAT PLAINTIFF HAS  
21 WAIVED ANY OBJECTION TO THE USE OF  
22 INTERPRETER GRANVILLE FIELDS; OR IN  
23 THE ALTERNATIVE, THAT GRANVILLE  
24 FIELDS SHALL, UPON GOOD CAUSE,  
25 SHOWN TO BE DEEMED A REGISTERED  
26 INTERPRETER WITHIN THE PROVISIONS  
27 OF GOVERNMENT CODE SECTION 68561D,  
28 NUNC PRO TUNC, AS OF JULY 1, 2011;

1           THUS QUALIFYING HIM TO INTERPRET AT  
2           THE DEPOSITION OF SEVERIN  
3           CABANNES --

4           MR. BRIAN: CABANNES.

5           THE COURT: -- CABANNES.

10:15AM

6           TAKEN ON THAT DATE IN PARIS,  
7           FRANCE.

8           WHILE MAKING THIS ORDER, IN THE  
9           ALTERNATIVE, THE COURT REJECTS  
10          PLAINTIFF'S INTERPRETATION AND  
11          APPLICATION OF PROVISIONS OF THE  
12          GOVERNMENT CODE AND THE EVIDENCE  
13          CODE, WITH RESPECT TO A DEPOSITION  
14          TAKEN UNDER THE PROVISIONS OF THE  
15          HAGUE CONVENTIONS, AND SPECIFICALLY  
16          FINDS, FOR THE PURPOSE OF THE  
17          CABANNES DEPOSITION, GRANVILLE  
18          FIELDS WAS CERTIFIED BY THE PARIS  
19          COURT OF APPEALS AS A COURT  
20          CERTIFIED LEGAL TRANSLATOR AND  
21          INTERPRETER; AND AS SUCH, WAS  
22          AUTHORIZED TO SERVE AS AN  
23          INTERPRETER IN THE CABANNES  
24          DEPOSITION.

10:15AM

10:15AM

10:15AM

25          SO I'LL INCORPORATE THAT IN THE MINUTE ORDER  
26          TODAY.

10:15AM

27                       AS TO THE JIRAINDIRA PURUSHOTHAMAN  
28          SEVERANCE AGREEMENT, AND A RELEASE, THE COURT WILL

1 ORDER THE DOCUMENT PRODUCED FOR REVIEW BY COUNSEL FOR  
2 TCW.

3 UNDER THE TERMS OF THE PROTECTIVE ORDER  
4 ISSUED BY THE COURT IN THIS MATTER, THE DOCUMENT SHALL  
5 BE DEEMED PROTECTED UNDER THE ATTORNEYS' EYES ONLY  
6 LEVEL. 10:16AM

7 THE COURT ALSO FINDS THAT WHILE THE  
8 DOCUMENT IS SUBJECT TO DISCLOSURE, IT IS NOT ADMISSIBLE  
9 FOR ANY PURPOSE IN THESE PROCEEDINGS.

10 SO WE'LL MOVE ON FROM THERE. 10:16AM

11 ANY OTHER MATTERS? I WANTED TO GET  
12 THOSE OFF THE DECK, BEFORE I FORGOT ABOUT THEM.

13 MR. BRIAN: WE HAD ONE OTHER ITEM.

14 THE STATE OF PLAY, AT LEAST IN  
15 MR. QUINN'S -- HE CAN CORRECT ME, IF I'M WRONG -- HE  
16 DOES NOT INTEND TO GET INTO THE DECEMBER 4TH INTERVIEW  
17 OF MR. GUNDLACH. 10:16AM

18 WE HAD SOME E-MAIL EXCHANGES ON THAT,  
19 AND I THINK HE WAS RESERVING, DEPENDING UPON ANSWERS  
20 AND THE LIKE. 10:16AM

21 WE ACTUALLY, A WEEK AGO OR SO, PREPARED  
22 A BRIEF, BECAUSE MR. GUNDLACH'S INTERVIEW IS ACTUALLY  
23 SLIGHTLY DIFFERENT, IN THE SENSE THAT WE ACTUALLY THINK  
24 THE INTERVIEW IS PROTECTED BY A SETTLEMENT PRIVILEGE,  
25 AS WELL. 10:17AM

26 WE HAD PREPARED A BRIEF, AND WE WERE  
27 GOING TO FILE A MOTION. WE HAVEN'T. WE HAVE THE  
28 BRIEF.

1 I KNOW YOU'VE GOTTEN ENOUGH BRIEFS, BUT  
2 WE THOUGHT YOU'D ACTUALLY GIVE IT TO YOUR HONOR, SO IF  
3 THE ISSUE COMES UP, WE DON'T HAVE TO RAISE IT AT THE  
4 LAST MINUTE.

5 I DON'T KNOW IF IT'S GOING TO COME UP. 10:17AM

6 THE COURT: YOU'RE TALKING ABOUT 1152  
7 SETTLEMENT PRIVILEGE? I MEAN -- DISCUSSIONS IN --  
8 FURTHERANCE OF SETTLEMENT OF 1152?

9 MR. BRIAN: YES.

10 THE COURT: THIS IS THE INTERVIEW THAT 10:17AM  
11 OCCURRED ON DECEMBER 4TH?

12 A YES.

13 MR. HELM: IN ADDITION TO THE OTHER GROUNDS  
14 WE'VE BEEN DISCUSSING ABOUT THE OTHER INTERVIEWS.

15 THE COURT: MR. QUINN, ARE WE NOT GOING THERE? 10:17AM  
16 IS IT AN ISSUE?

17 MR. QUINN: I TOLD MR. BRIAN, I DON'T THINK  
18 IT'S GOING TO BE AN ISSUE.

19 BUT I MEAN, I DON'T INTEND TO GO INTO  
20 IT, BUT -- THIS IS NOT -- THERE'S NO INVESTIGATOR 10:17AM  
21 PRESENT.

22 THIS IS WHEN MR. GUNDLACH'S TOLD HE'S  
23 BEING PLACED ON LEAVE, AND REMOVED AS CHIEF INVESTMENT  
24 OFFICER, THERE'S A DISCUSSION WITH HIM ABOUT WHY.

25 THE ACTIVITIES, THERE ARE DISCUSSIONS 10:18AM  
26 ABOUT A PROPOSAL MADE TO HIM TO CONTINUE TO WORK ON  
27 SOME PROGRAM.

28 I'M UNAWARE OF ANY BASIS FOR EXCLUDING

1 THAT.

2 THE COURT: OKAY.

3 I DON'T HAVE ENOUGH IN FRONT OF ME RIGHT  
4 NOW.

5 MR. QUINN: RIGHT. 10:18AM

6 THE COURT: ON THE SPECIFICS, THEY HAVE A  
7 BRIEF. I'M SURE IF I GET THEIRS, YOU'LL WANT TO GIVE  
8 ME ONE.

9 IF YOU TELL ME YOU DON'T EXPECT TO GO  
10 THERE. 10:18AM

11 MR. QUINN: I DON'T EXPECT TO GO THERE.

12 THE COURT: AND I DON'T EXPECT MR. GUNDLACH TO  
13 TAKE YOU THERE.

14 MR. QUINN: IF I FEEL THE URGE --

15 THE COURT: LET ME KNOW IN ADVANCE. 10:18AM

16 MR. QUINN: -- I'LL LET YOU KNOW.

17 THE COURT: WE'LL HAVE MR. GUNDLACH'S  
18 TESTIMONY, AS I UNDERSTAND IT, WILL START TODAY, AND  
19 CARRY OVER TILL MONDAY.

20 IF THAT ISSUE BECOMES AN ISSUE, I WOULD 10:18AM  
21 SUGGEST THAT WE DEFER ANY INQUIRY IN THAT AREA UNTIL  
22 MONDAY, SO THAT WE HAVE A CHANCE FOR ALL OF YOU TO GIVE  
23 ME THINGS OVER THE WEEKEND THAT I CAN READ.

24 MR. QUINN: SURE.

25 MR. BRIAN: WE DON'T EVEN HAVE TO GIVE YOU A 10:18AM  
26 BRIEF. IT'S NOT GOING TO COME UP.

27 THE COURT: IF IT DOESN'T COME UP, WE DON'T  
28 HAVE A PROBLEM.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MR. BRIAN: FINE.

MR. HELM: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

(RECESS.) +

10:19AM

1 CASE NUMBER: BC429385  
2 CASE NAME: TRUST COMPANY OF THE WEST VS.  
3 JEFFREY GUNDLACH, ET AL  
4 LOS ANGELES, THURSDAY, AUGUST 11, 2011  
5 CALIFORNIA  
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
7 APPEARANCES: (AS HERETOFORE NOTED.)  
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978  
9 TIME: 10:40 A.M.

10  
11  
12 (AT 10:40 A.M. THE JURY ENTERED  
13 THE COURTROOM, AND THE FOLLOWING  
14 PROCEEDINGS WERE HELD:)

15  
16 THE COURT: ALL RIGHT. IN THE TCW MATTER, ALL  
17 OF OUR JURORS ARE PRESENT, AS ARE COUNSEL.

18 MR. ALLRED, YOU MAY CONTINUE YOUR  
19 CROSS-EXAMINATION OF MR. VILLA.

20 MR. ALLRED: THANK YOU, YOUR HONOR.

21  
22 CROSS-EXAMINATION (RESUMED)  
23 BY MR. ALLRED:

24 Q. MR. VILLA, I'D LIKE TO GO OVER THE COST  
25 ALLOCATION PAPERS THAT YOU WENT OVER WITH MR. QUINN.

26 A. YES.

27 Q. I BELIEVE YOU MENTIONED WITH MR. QUINN, YOU  
28 INCLUDED IN THOSE COST ALLOCATIONS, 20 MILLION A YEAR

1 THAT WAS ACCRUED AS A FLAT FEE SHARING PAYMENT WITH MET  
2 WEST UNDER THE TERMS OF THEIR TRANSACTION; IS THAT  
3 CORRECT?

4 A. THAT IS CORRECT.

5 Q. AND YOU ALSO INCLUDED, IS IT NOT TRUE, \$75  
6 MILLION, AN ALLOCATION OF \$75 MILLION PAYABLE UNDER  
7 LONG-TERM RETENTION PAYMENTS UNDER THE TERMS OF THE MET  
8 WEST ACQUISITION, CORRECT?

9 A. NO.

10 WE INCLUDED, I THINK IT'S \$12 MILLION  
11 PER YEAR FOR THE THREE YEARS; SO 36 MILLION, I GUESS.

12 Q. YOU INCLUDED THE 75 MILLION -- YOU TOOK THE 75  
13 MILLION AND ALLOCATED AN ACCRUED AMOUNT PER YEAR, THE  
14 AMOUNT THAT WOULD ACCRUE PER EACH YEAR THAT YOU WERE  
15 ANALYZING?

16 A. RIGHT.

17 FOR THOSE YEARS, THAT'S RIGHT.

18 Q. AND IN DOING YOUR COST ALLOCATION WORK PAPERS,  
19 DID YOU EMPLOY TCW'S CUSTOMARY ACCRUAL PRACTICES FOR  
20 RECORDING FEE SHARING AMOUNTS ON ITS BOOKS?

21 A. SURE.

22 Q. ALL RIGHT. CAN YOU LOOK AT TRIAL EXHIBIT  
23 5495, PLEASE.

24 THE COURT: WHAT IS THE NUMBER ON THIS?

25 MR. ALLRED: 5495.

26 THE COURT: THANK YOU.

27 THE WITNESS: YES.

28 Q. BY MR. ALLRED: IS EXHIBIT 5495 AN E-MAIL THAT

1 YOU SENT ON DECEMBER 2, 2009, WITH AN ACCOMPANYING  
2 MARKUP OF A DOCUMENT?

3 A. YES.

4 MR. ALLRED: MOVE THAT INTO EVIDENCE, YOUR  
5 HONOR.

6 MR. QUINN: NO OBJECTION.

7 THE COURT: IT WILL BE ADMITTED.

8

9 (EXHIBIT 5495 ADMITTED.)

10

11 Q. BY MR. ALLRED: NOW, IN PARTICULAR, WHAT YOU  
12 WERE WORKING ON HERE WAS A SUBMITTAL TO THE FEDERAL  
13 RESERVE BOARD DESCRIBING TCW'S INCENTIVE COMPENSATION  
14 PRACTICES, CORRECT?

15 A. YEAH. JEANNIE WAS. JEANNIE FINKEL WAS;  
16 THAT'S CORRECT.

17 Q. AND FOR THE FINANCIAL PART OF THIS, SHE WAS  
18 LOOKING TO YOU FOR YOUR INPUT, CORRECT?

19 A. I BELIEVE SO. THAT'S RIGHT.

20 Q. AND IF YOU WILL TURN TO TRIAL EXHIBIT PAGE 14.

21 PAGE 14 OF 5495.

22 A. YES.

23 Q. IN THE BOTTOM SECTION THERE, THERE'S SOME  
24 UNDERLINED LANGUAGE. THAT WAS AN INSERT THAT YOU WERE  
25 PROVIDING MS. FINKEL, CORRECT?

26 A. I BELIEVE SO.

27 Q. AND BASICALLY THERE, YOU ARE SETTING FORTH  
28 ACCRUAL PRACTICES FOR THE MANAGEMENT FEES SHARING OF

10:43AM

10:43AM

10:43AM

10:43AM

10:44AM

1 TCW, CORRECT?

2 A. YES.

3 Q. AND YOU SAY THERE, ESTIMATES OF MANAGEMENT FEE  
4 REVENUES ARE RECORDED MONTHLY, CORRECT?

5 A. YES.

10:44AM

6 Q. AND WE HAD THAT IN THE WRONG SPOT --

7 NOW WE'LL GO TO WHAT HAS JUST BEEN  
8 HIGHLIGHTED, WHICH IS THE NEXT SENTENCE, WHICH IS, THE  
9 ESTIMATED PORTFOLIO MANAGEMENT FEE SHARING AND SALES  
10 COMMISSION RESERVES ARE ALSO RECORDED MONTHLY; THAT'S  
11 WHAT YOU WROTE?

10:44AM

12 A. YES.

13 Q. IN OTHER WORDS, AS YOU -- AS THE COMPANY  
14 ACCRUES EXPECTED FEES THAT IT'S GOING TO RECEIVE, IT  
15 SIMULTANEOUSLY ACCRUES ON ITS BOOKS, THE EXPECTED FEE  
16 SHARING PERCENTAGE, IN THE PORTION OF THOSE FEES, THAT  
17 WOULD GO, AT SOME POINT, TO THE PORTFOLIO MANAGER,  
18 RIGHT?

10:45AM

19 A. YOU ARE RIGHT; MATCHING THE EXPENSE WITH THE  
20 REVENUE.

10:45AM

21 Q. AND I BELIEVE YOU SAID THAT YOU RECORDED THE  
22 FEES -- FEE REVENUES THAT WERE EXPECTED MONTHLY.

23 YOU ALSO RECORDED THE CORRESPONDING FEE  
24 SHARING MONTHLY THAT'S ACCRUED AS WELL, RIGHT?

25 A. CORRECT.

10:45AM

26 Q. LET ME HAVE YOU LOOK -- WELL, FIRST, THIS  
27 DOCUMENT THAT WE'RE LOOKING AT IS DESIGNED TO BE  
28 INSERTED INTO THE DOCUMENT THAT WAS TO BE SUBMITTED TO

1 THE FEDERAL RESERVE BOARD, CORRECT?

2 A. I REALLY DON'T KNOW.

3 Q. WELL, LOOKING AT THE RE: LINE ON THE FIRST  
4 PAGE ON THE E-MAIL. IT SAYS FOR FED REVIEW OF  
5 INCENTIVE COMPENSATION.

10:45AM

6 DOES THAT REFRESH YOUR RECOLLECTION THAT  
7 THAT WAS THE PURPOSE OF THIS?

8 A. YES. I MEAN, IT REFERS TO THE FED.

9 I'M NOT SURE WHAT ALL WAS GOING TO BE  
10 SUBMITTED TO THE FED, IF THERE WAS OTHER PARTS -- I  
11 DON'T --

10:46AM

12 Q. I'LL JUST HAVE YOU LOOK AT TRIAL EXHIBIT 5539.

13 A. YES.

14 Q. IF YOU LOOK AT PAGES 14 AND 15 OF THAT  
15 DOCUMENT. AT THE BOTTOM OF THOSE -- AT THE BOTTOM OF  
16 14 AND THE TOP OF 15, IT INCORPORATES THE LANGUAGE THAT  
17 YOU PROVIDED TO MS. FINKEL HERE, CORRECT?

10:46AM

18 A. YES, IT LOOKS LIKE IT DOES.

19 Q. AND THIS DOCUMENT WAS THEN SUBMITTED TO THE  
20 FEDERAL RESERVE BOARD AS DESCRIBED ON THE FIRST PAGE OF  
21 THE DOCUMENT, INFORMATION REGARDING THE TCW GROUP,  
22 INC.?

10:46AM

23 MR. QUINN: LACKS FOUNDATION.

24 THE COURT: SUSTAINED.

25 Q. BY MR. ALLRED: DO YOU HAVE ANY REASON TO  
26 BELIEVE THAT THIS TRIAL EXHIBIT 5539 IS NOT THE  
27 SUBMITTAL TO THE FEDERAL RESERVE BOARD?

10:47AM

28 MR. QUINN: ASSUMES FACTS.

1 THE COURT: SUSTAINED.

2 Q. BY MR. ALLRED: YOUR INTENTION IN PROVIDING  
3 THE INFORMATION THAT YOU GAVE MS. FINKEL WAS TO  
4 ACCURATELY DESCRIBE TCW'S INCENTIVE COMPENSATION  
5 PRACTICES FOR THE FEDERAL RESERVE BOARD, CORRECT?

10:47AM

6 A. IT WAS TO PROVIDE MY COMMENTS TO THE DOCUMENTS  
7 SHE PROVIDED ME.

8 Q. TO BE ACCURATE, BECAUSE YOU UNDERSTOOD IT WAS  
9 GOING TO BE PRESENTED TO THE FEDERAL RESERVE BOARD?

10 A. THAT PART, I'M NOT SURE EXACTLY WHAT I  
11 UNDERSTOOD AT THE TIME; BUT I WAS TRYING TO BE  
12 ACCURATE, YES.

10:47AM

13 Q. YOU HAD MET -- MR. QUINN HAD YOU THERE -- AND  
14 I WON'T FLIP IT OVER, BUT YOU WERE WORKING THROUGH SOME  
15 NUMBERS; AND YOU SHOWED SINCE 1991, MR. GUNDLACH HAD  
16 GENERATED REVENUES TO TCW OF \$1,241,508,219.

10:47AM

17 DO YOU RECALL THAT?

18 A. YES, I DO.

19 Q. AND WHEN WE SAY REVENUES, IN THIS CONTEXT,  
20 WHAT WE MEAN IS THE FEES THAT HE GENERATED FOR TCW, THE  
21 GROSS FEES PAID TO TCW, RIGHT?

10:48AM

22 A. YES.

23 Q. YOU ALSO MENTIONED IN YOUR TESTIMONY A 225  
24 MILLION ACQUISITION COST WITH RESPECT TO MET WEST,  
25 RIGHT?

10:48AM

26 A. YES.

27 Q. NOW, THAT ACQUISITION COST WASN'T JUST GETTING  
28 THE MET WEST PEOPLE, RIGHT? THERE WAS A LOT MORE TO

1 IT, WASN'T THERE?

2 A. IT WAS -- WELL, IT WAS THE ACQUISITION OF MET  
3 WEST.

4 Q. YOU BOUGHT THE WHOLE BUSINESS, RIGHT?

5 A. YES.

10:48AM

6 Q. \$30 BILLION IN ASSETS, RIGHT?

7 A. APPROXIMATELY, YES.

8 Q. FAIR TO SAY THAT PUTTING THAT 225 MILLION AS A  
9 NUMBER TO COMPARE THE COMPENSATION EXPENSES OF  
10 MR. GUNDLACH; THAT'S APPLES AND ORANGES, CORRECT?

10:48AM

11 THAT WAS BUYING A WHOLE BUSINESS WITH  
12 THAT NUMBER, RIGHT?

13 A. IT WAS BUYING A BUSINESS.

14 MR. ALLRED: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: REDIRECT, MR. QUINN?

10:49AM

16 MR. QUINN: YES, YOUR HONOR.

17

18

19 REDIRECT EXAMINATION

20 BY MR. QUINN:

10:49AM

21 Q. IF WE COULD PUT BACK UP ON THE SCREEN, EXHIBIT  
22 2150B-3.

23 AND IF WE COULD BLOW UP THAT DEFINITION  
24 OF FEES THERE.

25 YOU RECALL THAT WE LOOKED AT THIS,  
26 MR. VILLA?

10:49AM

27 A. YES.

28 Q. THE LANGUAGE HERE, THAT FEES, UNDER

1 MR. GUNDLACH'S COMPENSATION OR FORMULA, HAD TO BOTH BE  
2 EARNED AND PAID.

3 DO YOU SEE THAT?

4 A. YES.

5 Q. NOW, MR. ALLRED ASKED YOU SOME QUESTIONS ABOUT  
6 THE OTHER PAGES ATTACHED TO THIS DOCUMENT, BEGINNING AT  
7 51504-B, B-5.

10:49AM

8 DO YOU SEE THAT?

9 I THINK THIS IS IN EVIDENCE NOW. IF WE  
10 COULD PUT -5 UP ON THE SCREEN, PLEASE?

10:49AM

11 AND THIS IS A FORM OF AGREEMENT TO BE  
12 DATED AS OF JANUARY 1ST, 2007.

13 DO YOU SEE THAT?

14 A. YES, I DO.

15 Q. AND REMEMBER HE ASKED YOU SOME QUESTIONS ABOUT  
16 A TERMINATION PROVISION HERE, ON PAGE -7, WHERE IT SAYS  
17 SIX. TERMINATION?

10:50AM

18 A. YES.

19 Q. DO YOU SEE THAT?

20 A. UH-HUH.

10:50AM

21 Q. I'D LIKE YOU TO TAKE A LOOK AT PAGE -9,  
22 2150-B-9.

23 IF WE COULD ENLARGE THE LAST PARAGRAPH  
24 AND THE SIGNATURE BLOCKS THERE. IT SAYS, IF YOU AGREE  
25 TO ACCEPT -- IF YOU AGREE TO, AND ACCEPT THE FOREGOING,  
26 PLEASE, SO INDICATE BY SIGNING THIS AGREEMENT IN THE  
27 SPACE PROVIDED BELOW AND RETURNING A SIGNED COPY TO US.  
28 UPON ACCEPTANCE BY YOU, THIS AGREEMENT WILL BECOME OUR

10:50AM

1 AGREEMENT AS TO THE TERMS AND CONDITIONS OF YOUR  
2 EMPLOYMENT.

3 DO YOU SEE THAT?

4 A. YES.

5 Q. DO YOU SEE ANY SIGNATURES THERE?

10:50AM

6 A. NO, I DO NOT.

7 Q. SO AS FAR AS YOU KNOW, DID MR. GUNDLACH EVER  
8 SIGN AN AGREEMENT, IN 2007?

9 A. NOT TO MY UNDERSTANDING, NO.

10 Q. YOU TOLD US BEFORE THAT THERE WERE SEVERAL --  
11 IT'S NOT UNCOMMON TO HAVE PORTFOLIO MANAGERS WHO DON'T  
12 HAVE AN AGREEMENT TO BE EMPLOYED FOR A TERM, BUT THEY  
13 WILL HAVE A COMPENSATION FORMULA, RIGHT? FEE SHARING  
14 FORMULA?

10:51AM

15 A. CORRECT.

10:51AM

16 Q. AND YOU IDENTIFIED SEVERAL OF THOSE FOR US?

17 A. RIGHT.

18 Q. DID YOU EVER HEAR THAT MR. GUNDLACH DID NOT  
19 WANT TO SIGN AN AGREEMENT BECAUSE HE DID NOT WANT TO BE  
20 TIED TO WORK AT TCW FOR A FIXED PERIOD OF TIME? HE  
21 WANTED TO, FOR EXAMPLE, INTERVIEW AT WAMCO OR GO  
22 SOMEPLACE ELSE, OR START HIS OWN FIRM; THAT HE WANTED  
23 TO PRESERVE HIS OWN FLEXIBILITY.

10:51AM

24 DID YOU EVER HEAR THAT?

25 MR. ALLRED: HEARSAY. LACKS FOUNDATION.

10:51AM

26 THE COURT: SUSTAINED.

27 Q. BY MR. QUINN: WELL, LET'S GO LOOK AT THAT  
28 TERMINATION PROVISION THAT MR. ALLRED CALLED YOUR

1 ATTENTION TO.

2 AND IF WE COULD BLOW UP THAT PARAGRAPH  
3 BEGINNING, YOUR COMPENSATION INCLUDING ANY BASE DRAW.

4 IT SAYS, ANY AMOUNT OF PROFIT SHARING,  
5 AND ADDITIONAL BENEFITS WILL CEASE WHEN TERMINATION  
6 OCCURS, EXCEPT ADDITIONAL BENEFITS THAT BY THEIR TERMS,  
7 APPLY AFTER TERMINATION.

10:52AM

8 AND TWO, THE COMPANY WILL PAY YOU YOUR  
9 BASE SALARY AND ANY AMOUNT OF PROFIT SHARING, PLUS  
10 ACCRUED VACATION, ACCRUED TO THE DATE OF TERMINATION,  
11 IN ACCORDANCE WITH THE COMPANY'S POLICIES.

10:52AM

12 DO YOU SEE THAT?

13 A. YES.

14 Q. AND IN RESPONSE TO ONE OF MR. ALLRED'S  
15 QUESTIONS, YOU SAID THERE WERE A NUMBER OF DEFINING  
16 TERMS.

10:52AM

17 DO YOU RECALL THAT?

18 A. YES.

19 Q. WHAT DO YOU MEAN BY A DEFINED TERM?

20 A. SINCE IT'S CAPITALIZED, THIS MEANS THAT  
21 THERE'S A REFERENCE SOMEPLACE ELSE IN THE DOCUMENT THAT  
22 DEFINES WHAT THAT CAPITALIZED TERM REPRESENTS; OR  
23 MEANS.

10:52AM

24 Q. IN THAT TWO LITTLE "I" SECTION ABOUT BEING  
25 PAID PROFIT SHARING ACCRUED TO THE DATE OF TERMINATION,  
26 WHERE PROFIT SHARING IS CAPITALIZED, DID YOU UNDERSTAND  
27 THAT TO MEAN THAT THAT IS A DEFINED TERM?

10:53AM

28 MR. ALLRED: LACKS FOUNDATION, LEGAL

1 CONCLUSION.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES, RIGHT. THAT'S TYPICAL.

4 Q. BY MR. QUINN: AND IS THERE, IN THIS DRAFT,  
5 UNSIGNED DOCUMENT, IS THERE A DEFINED TERM FOR PROFIT  
6 SHARING? 10:53AM

7 A. I PRESUME SO. IT REFERRED TO IT.

8 Q. IF YOU TAKE A LOOK AT THE TOP OF PAGE DASH 6,  
9 IF WE CAN ENLARGE THAT.

10 IT SAYS -- IS THIS A DEFINITION OF  
11 PROFIT SHARING? 10:53AM

12 A. CORRECT.

13 Q. IT SAYS (READING):

14 PROFIT SHARING. DURING THE  
15 TERM YOU ARE ENTITLED TO RECEIVE  
16 THE RESIDUAL AMOUNT OF THE MULTI  
17 SECTOR FIXED INCOME PROFIT SHARING  
18 POOL, AS DEFINED IN EXHIBIT A TO  
19 THIS AGREEMENT. 10:53AM

20 (YOUR QUOTE, "PROFIT SHARING,"  
21 INITIAL CAPS, CLOSED QUOTE,  
22 CLOSED). 10:53AM

23 RIGHT?

24 A. YES.

25 Q. SO WHERE DID YOU HAVE TO LOOK TO SEE WHAT --  
26 UNDER EVEN THIS DRAFT AGREEMENT, WHERE DO YOU HAVE TO  
27 LOOK TO SEE WHAT THE PROFIT SHARING IS THAT'S REFERRED  
28 TO IN THAT TERMINATION PROVISION? 10:54AM

1 MR. ALLRED: LACKS FOUNDATION. LEGAL  
2 CONCLUSION.

3 THE COURT: SUSTAINED.

4 Q. BY MR. QUINN: WELL, IS EXHIBIT A THAT'S  
5 REFERENCED HERE IN THIS DEFINITION OF PROFIT SHARING,  
6 WHERE IT SAYS MULTI SECTOR FIXED INCOME PROFIT SHARING  
7 POOL AS DEFINED IN EXHIBIT A, IS THAT THE DOCUMENT --  
8 THE FORMULA DOCUMENT THAT WE WERE TALKING ABOUT THIS  
9 MORNING?

10:54AM

10 A. YES.

10:54AM

11 Q. AND IF WE COULD PUT THE FIRST PAGE UP,  
12 2150-B-1.

13 AND DO WE SEE A DEFINITION, UP AT THE  
14 TOP, IN THE SECOND BOX, OF WHAT THAT MULTI SECTOR MIXED  
15 INCOME PROFIT SHARING POOL IS?

10:54AM

16 A. YES.

17 Q. AND IT REFERS -- THE FIRST ITEM IS DEPARTMENT  
18 FEES?

19 A. CORRECT.

20 Q. AND THEN IS THERE A DEFINITION OF DEPARTMENT  
21 FEES THAT'S BELOW THAT?

10:55AM

22 A. YES, IT IS.

23 Q. AND THEN IS THERE A DEFINITION OF FEES THAT WE  
24 BEGIN LOOKING AT, AT -3?

25 A. YES, THERE IS.

10:55AM

26 Q. IF WE COULD LOOK AT PAGE -3, 51503B-3.

27 AND IF WE COULD ENLARGE THAT DEFINITION  
28 OF FEES.

1                   AND IS THAT THE LANGUAGE THERE THAT SAYS  
2 THAT FOR THE PURPOSES OF FEES FOR PROFIT SHARING, FEES  
3 MUST BE PAID, BOTH EARNED AND PAID?

4           A.     CORRECT.  THAT'S THE DEFINITION.

5           Q.     SO THAT'S WHERE WE STARTED?

10:55AM

6           A.     RIGHT.  YES.

7           Q.     AND YOU WERE ASKED SOME QUESTIONS ABOUT  
8 EXHIBIT 5644.

9                   IF WE COULD PUT THAT UP ON THE SCREEN.

10           DO WE HAVE THAT, MIKE, 5644?  WOULD YOU  
11 ENLARGE THAT?

10:56AM

12           MR. ALLRED ASKED YOU ABOUT THAT -- THIS  
13 REFERENCE TO 67 MILLION AS OF NOVEMBER 30, 2009.

14                   DO YOU SEE THAT?

15           A.     YES, I DO.

10:56AM

16           Q.     CAN YOU EXPLAIN TO US WHAT THAT REFERS TO?

17           A.     THAT WAS THE CARRIED INTEREST MEASURED BY THE  
18 FUNDS -- THE TWO FUNDS, THE LIMITED PARTNERSHIPS THAT  
19 WE'D TALKED ABOUT, \$67 MILLION THAT WERE RECORDED BY  
20 THE FUND, YES.

10:56AM

21           Q.     AS OF?

22           A.     11TH -- NOVEMBER 30TH, 2009.

23           Q.     AND YOU SAID THAT'S A CARRIED INTEREST.

24                   IS THAT REFERRED TO PERFORMANCE FEES  
25 THAT HAVE BEEN ACCRUED ON THE BOOKS?

10:56AM

26           A.     YES, OF THE FUND.

27           Q.     AND IS THAT THESE SMCF DISTRESSED FUNDS?

28           A.     THAT'S CORRECT.

1 Q. AND THAT'S THE CARRIED INTEREST THAT WAS  
2 ACCRUED ON THE BOOKS, RIGHT?

3 A. RIGHT.

4 Q. AND I THINK YOU TOLD US THAT THAT -- THOSE  
5 NUMBERS, THOSE ACCRUAL NUMBERS, GO UP AND DOWN, RIGHT?

10:57AM

6 A. YES, THEY DO.

7 Q. AND YOU ARE SAYING THAT AS OF NOVEMBER 30, THE  
8 NUMBER WAS -- ON THESE DISTRESSED FUNDS WAS 67 MILLION,  
9 THAT WAS ACCRUED ON THE BOOKS OF THE FUNDS?

10 A. RIGHT.

10:57AM

11 Q. DO YOU KNOW WHETHER THAT NUMBER HAD CHANGED,  
12 AS OF DECEMBER 31?

13 A. YES, IT DID.

14 Q. AND WHAT WAS THAT NUMBER, AS OF DECEMBER 31?

15 A. I BELIEVE IT WAS APPROXIMATELY 18 MILLION.

10:57AM

16 Q. AND DO YOU KNOW WHY IT HAD GONE DOWN?

17 A. THE FEE STRUCTURE OF THE FUNDS WAS CHANGED.

18 Q. THE FEE STRUCTURE OF THE FUNDS WAS CHANGED?

19 WHAT DO YOU MEAN?

20 A. THERE WAS A CHANGE TO THE CARRIED INTEREST  
21 STRUCTURE OF THE FUNDS, EFFECTIVE BASICALLY AS OF  
22 DECEMBER 31 OF 2009.

10:57AM

23 Q. DID TCW CUT ITS FEES?

24 A. YES, IT DID.

25 Q. WHY DID TCW CUT ITS FEES?

10:58AM

26 MR. ALLRED: FOUNDATION.

27 THE COURT: SUSTAINED.

28 Q. BY MR. QUINN: WERE YOU INVOLVED IN

1 DISCUSSIONS ABOUT TCW CUTTING ITS FEES?

2 A. YES, I WAS.

3 Q. DID MR. GUNDLACH'S STATEMENTS TO INVESTORS  
4 HAVE ANYTHING TO DO WITH TCW CUTTING ITS FEES?

5 MR. ALLRED: FOUNDATION. 10:58AM

6 THE COURT: SUSTAINED.

7 Q. BY MR. QUINN: IN YOUR UNDERSTANDING, BASED  
8 UPON YOUR PARTICIPATION IN THAT, DID STATEMENTS THAT  
9 MR. GUNDLACH WAS MAKING HAVE ANYTHING TO DO WITH THE  
10 DECISION THAT TCW MADE TO CUT ITS FEES? 10:58AM

11 MR. ALLRED: FOUNDATION, HEARSAY.

12 THE COURT: OVERRULED.

13 IT'S YOUR UNDERSTANDING, SIR.

14 THE WITNESS: THAT IS MY UNDERSTANDING.

15 Q. BY MR. QUINN: IF WE COULD TAKE A LOOK AT  
16 EXHIBIT 6044, MR. ALLRED ASKED YOU ABOUT. 10:58AM

17 AND THIS IS THE SMCF AND COF ANALYSIS.

18 DO YOU SEE THAT?

19 A. YES.

20 Q. AND IF WE COULD TURN TO PAGE 2, THIS IS  
21 6044-2. 10:59AM

22 A. YES.

23 Q. AND YOU INDICATED YOU WERE INVOLVED IN DOING  
24 THESE CALCULATIONS?

25 A. RIGHT, YES. ME AND MY TEAM, CORRECT. 10:59AM

26 Q. YOU AND YOUR TEAM.

27 WHAT IS IT THAT YOU WERE DOING? WHAT  
28 WERE YOU TRYING TO ACCOMPLISH HERE?

1           A.     GIVEN THE BOTTOM LINE OF IT, IT'S -- WE WERE  
2 TRYING TO MEASURE THE IMPACT TO TCW OF CHANGING -- THE  
3 CHANGING CIRCUMSTANCES WE WERE IN.

4           Q.     CHANGING CIRCUMSTANCES, MEANING WHAT?

5           A.     WHERE WE WERE CUTTING FEES AND CHANGING THE  
6 RELATIONSHIP WITH THE SPECIAL MORTGAGE CREDIT FUNDS.

10:59AM

7           Q.     AND IF WE COULD LOOK AT THE BOTTOM LINE, WHEN  
8 YOU ARE SAYING WE'RE TRYING TO UNDERSTAND THE -- DID  
9 YOU SAY IMPACT?

10          A.     RIGHT, EXACTLY.

10:59AM

11          Q.     AND THAT LAST LINE, VARIANCE, WHAT DOES THAT  
12 SHOW?

13          A.     IT SHOWS THAT TCW'S PROFIT THAT -- AND AGAIN,  
14 ON A PROJECTED BASIS, BASED ON THOSE CHANGES, WOULD  
15 REDUCE BY \$105 MILLION.

10:59AM

16          Q.     AND THAT'S BECAUSE OF THESE FEE CHANGES THAT  
17 YOU REFERRED TO A MOMENT AGO?

18          A.     SURE.

19          Q.     AND IS THAT WHAT THIS ANALYSIS WAS FOR?

20          A.     THAT'S MY UNDERSTANDING, YEAH.

11:00AM

21          Q.     IF WE'D LOOK UP AT THE TOP, MR. ALLRED CALLED  
22 YOUR ATTENTION TO THE TOTAL FEE SHARING, TOTAL FEE  
23 SHARING LINE THERE, BEGINNING THE FIRST NUMBER, 52.9?

24          A.     YES.

25          Q.     CAN YOU TELL US WHAT THOSE NUMBERS ARE?

11:00AM

26          A.     THOSE WOULD HAVE BEEN THE ESTIMATE OF FEE  
27 SHARING ON AN ACCOUNTING BASIS, ACCRUAL BASIS; WHAT WE  
28 WOULD HAVE ACCRUED, ASSUMING THIS WOULD HAVE BEEN THE

1 CIRCUMSTANCES WE WERE WORKING WITH.

2 Q. ALL RIGHT.

3 AND THAT'S BEFORE OR AFTER THE CHANGE?

4 A. THAT WAS BEFORE THE CHANGE.

5 Q. BEFORE THE CHANGE IN THE FEE STRUCTURE?

11:00AM

6 A. CORRECT.

7 Q. AND AGAIN, THOSE ARE ACCRUALS, RATHER THAN

8 WHAT'S PAID?

9 A. CORRECT.

10 Q. IF WE COULD LOOK AT EXHIBIT 5618.

11:00AM

11 MR. ALLRED SHOWED YOU THIS RELATING TO  
12 MANAGEMENT FEES.

13 AGAIN, WHAT DOES THIS RELATE TO, 5618?

14 A. I THINK IT WAS THE ESTIMATE OF -- IT WAS A  
15 REQUEST FROM MICHAEL CONN TO MAKE AN ESTIMATE OF FEE  
16 SHARING.

11:01AM

17 Q. RIGHT.

18 AND DOES THIS RELATE TO MANAGEMENT FEES  
19 OR PERFORMANCE FEES?

20 A. I BELIEVE THIS IS JUST MANAGEMENT FEES, SORT  
21 OF APPEARS TO BE.

11:01AM

22 Q. AND IS THIS ON AN ACCRUAL BASIS?

23 A. I BELIEVE SO, YES.

24 MR. QUINN: NOTHING FURTHER.

25 MR. ALLRED: A FEW QUESTIONS, YOUR HONOR.

11:01AM

26 THE COURT: MR. ALLRED, RE-CROSS?

27 MR. ALLRED: YES, PLEASE.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RECROSS EXAMINATION

BY MR. ALLRED:

Q. MR. VILLA, MR. QUINN POINTED YOU TO THE EMPTY SIGNATURE BLOCK?

11:01AM

AND EVERYBODY AGREES, THERE HAS NEVER BEEN ANY SIGNATURE IN THE SIGNATURE BLOCK.

DO YOU RECALL THAT?

A. YES, I DO.

Q. NEVERTHELESS, YOU WERE AWARE THAT AS OF THAT TIME PERIOD, AT THAT TIME, MR. GUNDLACH HAD A CONTRACT IN EFFECT THAT RAN THROUGH -- A SIGNED CONTRACT IN EFFECT THAT RAN THROUGH THE END OF 2007, RIGHT?

11:01AM

A. ACTUALLY, I'M NOT -- I DON'T KNOW THAT -- I KNOW THAT HE HAD HAD PAST SIGNED CONTRACTS. I'M NOT SURE WHERE THE TERM ENDED.

11:02AM

Q. YOU UNDERSTOOD THAT YOU WERE PAYING HIM UNDER SOME CERTAIN FORMULA OR STRUCTURE OR CONTRACT, AS OF THAT TIME, RIGHT?

A. AS OF THE BEGINNING OF JANUARY, 2007, YES.

11:02AM

Q. AND THEN, COME MAY 2007, YOU RECEIVED AN INSTRUCTION FROM MR. SONNEBORN, THE PRESIDENT, TO PAY UNDER THIS NEW FORMULA, THAT IS PART OF EXHIBIT 2150-B, CORRECT?

A. CORRECT.

11:02AM

Q. AND IN FACT, THE NEW FORMULA, THE PAYMENTS HE RECEIVED FOR THE FIRST QUARTER WERE LESS THAN THE PAYMENT HE WOULD HAVE RECEIVED UNDER THE OLD FORMULA

1 THAT WAS IN EFFECT UP TO THAT POINT, RIGHT?

2 A. I BELIEVE THAT'S RIGHT.

3 THERE WAS AN ECONOMIC REDUCTION THERE,  
4 YEAH.

5 Q. SO IF THERE WAS A CONTRACT IN PLACE, EITHER  
6 THAT CONTRACT WAS CHANGED BY A NEW CONTRACT, OR ELSE HE  
7 DIDN'T GET WHAT HE WAS ENTITLED TO, RIGHT?

11:02AM

8 MR. QUINN: ARGUMENTATIVE.

9 THE COURT: SUSTAINED.

10 Q. BY MR. ALLRED: ON PAGE 6 OF 2150-B, MR. QUINN  
11 WAS POINTING YOU TO A DEFINED TERM.

11:03AM

12 AT THE TOP OF THAT PAGE, DO YOU SEE THE  
13 TERM, PROFIT SHARING?

14 A. YES, I DO.

15 Q. LET'S LOOK AT THE FIRST THREE WORDS OF THAT  
16 DEFINITION.

11:03AM

17 DURING THE TERM.

18 DO YOU SEE THAT?

19 A. YES, I DO.

20 Q. SO THIS DOESN'T ADDRESS TERMINATION AND THE  
21 CIRCUMSTANCES OF TERMINATION, DOES IT?

11:03AM

22 MR. QUINN: IT'S ARGUMENTATIVE.

23 THE COURT: SUSTAINED.

24 Q. BY MR. ALLRED: UNDER YOUR UNDERSTANDING, IF  
25 YOU HAVE ONE, OF THIS AGREEMENT, IF MR. GUNDLACH WORKED  
26 FOR SEVERAL YEARS, CREATING A FUND, RECRUITING  
27 INVESTORS, GETTING THEIR MONEY IN, INVESTING THE MONEY  
28 PROPERLY, YIELDING GREAT RETURNS, CHOOSING THE RIGHT

11:03AM

1 TIME TO SELL, AND ISSUING A SELL ORDER -- IF TCW FIRED  
2 HIM THAT DAY, YOU ARE SAYING HE GETS NOTHING, RIGHT?

3 MR. QUINN: ASSUMES FACTS. ARGUMENTATIVE.  
4 INCOMPLETE HYPOTHETICAL.

5 THE COURT: SUSTAINED. 11:04AM

6 MR. ALLRED: NOTHING FURTHER, YOUR HONOR.

7 MR. QUINN: NOTHING FURTHER, YOUR HONOR.

8 THE COURT: ALL RIGHT, MR. VILLA. THANK YOU  
9 FOR YOUR TESTIMONY.

10 YOU MAY STEP DOWN. 11:04AM

11 MR. QUINN: YOUR HONOR, NEXT WITNESS?

12 THE COURT: YES.

13 MR. QUINN: VIDEOTAPE DEPOSITION OF JEFFREY  
14 GUNDLACH.

15 YOUR HONOR, LIKE THE OTHER VIDEOTAPES,  
16 THIS INCLUDES PASSAGES WHICH HAVE BEEN DESIGNATED TO BE  
17 HEARD BY THE JURY, BOTH BY THE DEFENDANTS AND BY THE  
18 PLAINTIFF. 11:04AM

19 THE COURT: ALL RIGHT.

20 LADIES AND GENTLEMEN, WE'RE GOING TO SEE  
21 SOME VIDEOTAPE DEPOSITION. IT'S JUST AS THOUGH IT WAS  
22 EVIDENCE PROVIDED HERE IN COURT. DEPOSITIONS ARE  
23 ALWAYS TAKEN IN ADVANCE WITH QUESTIONS ASKED AND  
24 ANSWERS GIVEN; SO TREAT IT JUST AS THOUGH IT WAS  
25 TESTIMONY GIVEN FROM THE WITNESS STAND. 11:05AM

26

27 (MR. GUNDLACH'S VIDEOTAPED TESTIMONY PLAYED.)

28 //

1 MR. MADISON: YOUR HONOR, THERE'S A LITTLE  
2 LESS THAN 30 MINUTES LEFT.

3 THE COURT: OKAY. THEN WE'LL TAKE OUR RECESS.

4 ALL RIGHT. COME BACK IN 20 MINUTES.

5

12:17PM

6 (RECESS TAKEN.)

7

8 (THE NEXT PAGE NUMBER IS 2901.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 CASE NUMBER: BC 429385  
2 CASE NAME: TCW VS. GUNDLACH  
3 LOS ANGELES, CALIFORNIA AUGUST 11, 2011  
4 DEPARTMENT 322 HON. CARL J. WEST, JUDGE  
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)  
6 REPORTER: RAQUEL A. RODRIGUEZ, CSR  
7 TIME: C SESSION; 12:35 P.M.  
8

9 --0--

10 THE COURT: ALL MEMBERS OF OUR JURY ARE  
11 PRESENT, AS ARE COUNSEL.

12:39PM

12 MR. MADISON, YOU MAY PROCEED WITH YOUR  
13 DEPOSITION TESTIMONY OF MR. GUNDLACH.

14

15 (VIDEO DEPOSITION PLAYED OF MR. GUNDLACH.) +

12:39PM

16

17 THE COURT: IS THAT THE END?

18 MR. QUINN: THAT CONCLUDES IT.

19 THERE WERE COUPLE EXHIBITS REFERRED TO.  
20 I CONFERRED WITH COUNSEL. WE HAVE A STIPULATION.

01:02PM

21 DEPOSITION 17, ABLE GRAPE PRO FORMA, IS  
22 IN EVIDENCE AS EXHIBIT 1304.

23 THE COURT: ALL RIGHT.

24 MR. QUINN: THERE'S ALSO, AS A REFERENCE TO  
25 DEPOSITION EXHIBIT 8, THAT IS TRIAL EXHIBIT 295. AND  
26 THAT IS NOT YET IN EVIDENCE.

01:02PM

27 THE COURT: AND 8 IS WHAT TRIAL EXHIBIT  
28 NUMBER?

1 MR. QUINN: 295.

2 THAT IS NOT YET IN EVIDENCE.

3 THE COURT: IS IT BEING OFFERED?

4 MR. QUINN: IT WILL BE OFFERED.

5 THE COURT: IS THERE ANY OBJECTION?

01:02PM

6 MR. HELM: ACTUALLY, I DON'T REMEMBER -- IF  
7 THERE WAS.

8 MR. QUINN: MAYBE IT WILL COME UP.

9 THE COURT: WHEN IT COMES UP, WE'LL DEAL WITH  
10 IT.

01:03PM

11 MR. QUINN: YOUR HONOR, WE CALL  
12 JEFFREY GUNDLACH.

13 THE COURT: ALL RIGHT.

14 THE CLERK: SIR, PLEASE RAISE YOUR RIGHT HAND  
15 TO BE SWORN.

16

17 JEFFREY GUNDLACH +  
18 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND  
19 TESTIFIED AS FOLLOWS:

20

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

01:03PM

26 THE WITNESS: I DO.

27 THE CLERK: THANK YOU.

28 SIR, PLEASE STATE AND SPELL YOUR NAME

1 FOR THE RECORD.

2 THE WITNESS: JEFFREY GUNDLACH, J-E-F-F-R-E-Y,  
3 G-U-N-D-L-A-C-H.

4 THE CLERK: THANK YOU.

5 THE COURT: GOOD AFTERNOON, MR. GUNDLACH.

01:03PM

6 THE WITNESS: GOOD AFTERNOON, YOUR HONOR.

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

8

9 DIRECT EXAMINATION +

10 BY MR. QUINN:

01:03PM

11 Q GOOD AFTERNOON, MR. GUNDLACH.

12 A IT'S GOOD TO BE HERE.

13 Q HOW MANY TIMES IN THE PERIOD SEPTEMBER TO  
14 DECEMBER OF 2009 DID YOU APPROACH MR. STERN AND SAY YOU  
15 WANTED TO NEGOTIATE A WAY OUT OF TCW?

01:04PM

16 A ONCE.

17 Q AND ARE YOU ABOUT TO TELL US ABOUT THE TIME  
18 YOU MADE AN OFFER TO BUY TCW?

19 A YES.

20 Q SO THAT WAS AN OFFER TO BUY TCW, WE'RE GOING  
21 TO TALK ABOUT THAT. MY QUESTION'S A LITTLE BIT  
22 DIFFERENT.

01:04PM

23 HOW MANY TIMES DID YOU APPROACH  
24 MR. STERN IN THE SEPTEMBER TO DECEMBER TIME FRAME AND  
25 SAY YOU WANTED TO TALK ABOUT NEGOTIATING A WAY FOR YOU  
26 AND YOUR TEAM TO LEAVE TCW?

01:04PM

27 A I NEVER DID THAT BECAUSE I NEVER MADE A  
28 DECISION THAT THAT WAS THE COURSE I WANTED TO TAKE.

1 Q THAT NEVER HAPPENED, CORRECT?

2 A NO, IT DIDN'T. I HADN'T MADE THE DECISION.

3 Q HOW MANY TIMES -- YOU'VE TOLD US, WE'VE HEARD  
4 THAT, DURING THAT TIME PERIOD, AT LEAST AT SOME POINTS  
5 DURING THAT TIME PERIOD, SEPTEMBER TO DECEMBER, YOU  
6 WERE AFRAID, OR YOU THOUGHT THAT YOU WERE GOING TO BE  
7 FIRED, CORRECT?

01:04PM

8 A I CERTAINLY THOUGHT I WAS BEING POTENTIALLY  
9 FIRED DURING THAT TIME PERIOD, YES, THAT THAT WAS BEING  
10 WORKED ON.

01:04PM

11 Q HOW MANY TIMES DID YOU TELL MR. STERN, YOU  
12 CAN'T FIRE ME; I HAVE A CONTRACT TERM THAT RUNS TO  
13 DECEMBER 31, 2011?

14 HOW MANY TIMES DID YOU DO THAT?

15 A NEVER.

01:05PM

16 Q SO WHEN YOU HAD THIS MEETING ON SEPTEMBER 3RD,  
17 YOU DIDN'T BRING IT THEN, YOU THOUGHT YOU WERE GOING TO  
18 BE FIRED. YOU DIDN'T SAY, BY THE WAY, I HAVE A  
19 CONTRACT THAT RUNS THROUGH DECEMBER 31, 2011, CORRECT?

20 A I DIDN'T SAY THAT, NO.

01:05PM

21 Q IN FACT, AT NO POINT IN YOUR DISCUSSIONS WITH  
22 MR. STERN, WHEN YOU WERE CONCERNED THAT YOU WERE GOING  
23 TO BE FIRED, AT NO POINT DID YOU MAKE ANY CLAIM THAT  
24 YOU HAVE A CONTRACT THAT RAN TO DECEMBER 31, 2011,  
25 CORRECT?

01:05PM

26 A THAT'S CORRECT.

27 Q BACK IN JULY OF 2008, ALMOST A YEAR BEFORE  
28 MR. STERN RETURNED TO TCW, YOU AND MS. VANEVERY

1 PREPARED A LOGO FOR A NEW BUSINESS, RIGHT?

2 A I DON'T KNOW ABOUT JULY 2008? I WOULD DOODLE  
3 A LOGO RELATING TO THE NAME DOUBLELINE FOR YEARS.  
4 PROBABLY AS FAR BACK AS 2005.

5 Q DOODLE?

01:06PM

6 A YES.

7 Q LET'S TAKE A LOOK AT EXHIBIT 1734, IF WE  
8 COULD, PLEASE.

9 WE NEED TO PASS OUT BINDERS, YOUR HONOR?

10 THE COURT: ALL RIGHT.

01:06PM

11 MR. QUINN: FORGOT ONE STEP.

12 (PAUSE) +

13

14 THE WITNESS: SORRY, WHAT WAS THE NUMBER?

15 THE COURT: IT'S ON THE SCREEN. IF WE CAN USE  
16 THE SCREENS AS MUCH AS POSSIBLE, THAT WOULD BE MORE  
17 EFFICIENT.

01:07PM

18 MR. QUINN: EXHIBIT 1734. IT'S ON THE SCREEN  
19 AS WELL.

20 Q DO YOU HAVE THAT BEFORE YOU, MR. GUNDLACH?

01:07PM

21 A I DO.

22 Q THIS IS AN E-MAIL BETWEEN YOU AND  
23 MS. VANEVERY?

24 A YES.

25 MR. QUINN: I'D OFFER THAT, YOUR HONOR.

01:07PM

26 THE COURT: I THINK IT'S BEEN OFFERED.

27 BUT ANY OBJECTION?

28 MR. QUINN: THIS ONE ACTUALLY HAS NOT.

1 MR. BRIAN: YEAH.

2 MR. HELM: NO OBJECTION.

3 THE COURT: IT WILL BE ADMITTED.

4

5 (EXHIBIT 1734 ADMITTED.)+

01:07PM

6

7 MR. QUINN: IF WE CAN PUT IT UP ON THE SCREEN.

8 Q THIS IS AN E-MAIL THAT YOU WROTE TO

9 MS. VANEVERY ON JULY 12TH, 2008?

10 A YES.

01:08PM

11 Q AND YOU WRITE:

12 CHEER UP, LOOK HOW GREAT THIS

13 LOGO IS.

14 RIGHT?

15 A YES.

01:08PM

16 Q AND THEN ATTACHED IS A -- NOT A DOODLE, BUT  
17 WHAT LOOKS TO BE KIND OF A COMPUTER-GENERATED FORM OF A  
18 LOGO, CORRECT?

19 A RIGHT.

20 I GAVE HER THE DOODLES THAT I MADE FOR  
21 YEARS. I WAS TRYING TO -- I'M VERY INTERESTED IN THE  
22 ARTWORK OF PIET MONDRIAN AND.

01:08PM

23 MR. QUINN: YOUR HONOR --

24 THE WITNESS: I WAS TRYING TO MAKE A  
25 CONVINCING MONDRIAN --

01:08PM

26 THE COURT: WE WANT TO JUST TRY TO FOCUS ON  
27 QUESTIONS AND ANSWERS.

28 THE WITNESS: VERY GOOD.

1 THE COURT: YOU SHOULD BE GIVEN A CHANCE TO  
2 EXPLAIN YOUR ANSWERS.

3 THE WITNESS: DOESN'T WORK?

4 THE COURT: NO, YOU WILL BE GIVEN A CHANCE TO  
5 EXPLAIN, BUT KEEP IT FOCUSED.

01:08PM

6 THE WITNESS: I GAVE HER THE DOODLES, AND SHE  
7 MADE THE COMPUTER IMAGES OUT OF THEM.

8 MR. QUINN: THANK YOU, YOUR HONOR.

9 Q THE TWO OF YOU WENT BACK AND FORTH, A SERIES  
10 OF E-MAILS BETWEEN TWO OF YOU ADJUSTING IT AND CREATING  
11 IT, RIGHT?

01:08PM

12 A LITTLE BIT, YEAH.

13 Q THIS IS IN JULY OF 2008; IS THAT TRUE, SIR?

14 A I AM NOT SURE THIS WAS DONE IN 2008. THE  
15 E-MAIL'S FROM 2008 IT SEEMS LIKE.

01:09PM

16 Q WELL, THE ATTACHMENT AT THE TOP REFERS TO  
17 DOUBLELINE DRAFTS PPT.

18 YOU SEE THAT, DON'T YOU?

19 A YEAH, IT DOESN'T MEAN THAT'S WHEN IT WAS DONE,  
20 THOUGH.

01:09PM

21 Q WELL, LET'S TAKE A LOOK AT THE ATTACHMENT.

22 A ON --

23 Q IF WE COULD PUT THAT UP THERE.

24 I MEAN, DO YOU, AS YOU SIT HERE NOW, DO  
25 YOU HAVE ANY REASON TO DOUBT THAT THIS WAS IN FACT THE  
26 LOGO WHICH YOU ATTACHED AND TRANSMITTED TO MS. VANEVERY  
27 IN JULY OF 2008, ALMOST A YEAR BEFORE MR. STERN  
28 RETURNED TO THE COMPANY?

01:09PM



1 BY MR. QUINN:

2 Q WE HAVE HERE A LIST OF FOLKS, ALL OF WHOM WERE  
3 IN YOUR GROUP; IS THAT TRUE?

4 A YES.

5 Q AND THIS WAS A LIST OF CRITICAL EMPLOYEES THAT  
6 YOU HAD IDENTIFIED AT THE TIME, AROUND THE SAME TIME  
7 YOU'RE E-MAILING WITH MS. VANEVERY ABOUT A NEW LOGO,  
8 CORRECT?

01:10PM

9 A IT'S -- IT'S A LIST OF SOME OF THE IMPORTANT  
10 EMPLOYEES IN THE GROUP.

01:11PM

11 Q LET ME JUST ASK YOU: AT THE TIME OF THESE  
12 E-MAILS, SIR, WERE YOU CONCERNED THAT YOU WERE GOING TO  
13 BE FIRED?

14 A IT -- AT THE TIME OF THESE E-MAILS, I WAS  
15 CONCERNED ABOUT THE OWNERSHIP STRUCTURE OF TCW. I WAS  
16 NOT CONCERNED THAT I WAS BEING FIRED.

01:11PM

17 Q IN FACT, THE -- AT THAT TIME, THE CEO WAS  
18 BOB BEYER, RIGHT?

19 A YES.

20 Q AND YOU HAD MR. SANTA ANA AT THIS TIME FRAME  
21 WORKING ON SOME CONFIDENTIAL PROJECTS THAT YOU DIDN'T  
22 WANT OTHER PEOPLE TO SEE; ISN'T THAT TRUE?

01:11PM

23 A I DON'T BELIEVE THAT'S CORRECT.

24 Q TAKE A LOOK AT EXHIBIT 99.

25 IS THIS AN E-MAIL CHAIN BETWEEN YOU AND  
26 MR. SANTA ANA?

01:11PM

27 A YES.

28 MR. QUINN: OFFER THAT, YOUR HONOR.

1 MR. HELM: NO OBJECTION.

2 THE COURT: IT WILL BE ADMITTED.

3

4 (EXHIBIT 99 ADMITTED.)+

5

01:12PM

6 BY MR. QUINN:

7 Q WHAT MR. SANTA ANA WROTE TO YOU ON AUGUST 19TH  
8 THAT:

9 WOULD YOU CARE IF I TOOK  
10 VINNIE'S CUBE? IT'S BECOMING  
11 INCREASINGLY MORE DIFFICULT TO WORK  
12 ON SENSITIVE E-MAILS, SPREADSHEETS  
13 OUT ON THE DESK. MELISSA ALREADY  
14 SAW ONE E-MAIL SHE SHOULDN'T HAVE  
15 LAST WEEK, STANDING NEAR MY DESK.

01:12PM

16 DID I READ THAT CORRECTLY?

01:12PM

17 A YES.

18 Q WHO IS MELISSA?

19 A I BELIEVE IT WOULD BE MELISSA CONN, WHO WORKED  
20 ON THE TRADING DESK.

01:12PM

21 Q NOW, IF WE JUMP FORWARD ABOUT A YEAR AFTER  
22 MR. STERN HAS RETURNED TO THE COMPANY, AT THE TIME OF  
23 THAT SEPTEMBER 3 MEETING THAT WE'VE HEARD ABOUT, AT  
24 THAT TIME, AGAIN, YOU WERE PREPARING A LIST OF CRITICAL  
25 EMPLOYEES, CORRECT?

01:12PM

26 A I DON'T REMEMBER DOING THAT.

27 Q TAKE A LOOK AT EXHIBIT 263. AND THIS IS AN  
28 E-MAIL EXCHANGE BETWEEN YOU AND LOU LUCIDO.

1 A YES.

2 Q AND MR. LUCIDO IS ONE OF YOUR LIEUTENANTS IN  
3 YOUR DEPARTMENT, RIGHT?

4 A YES.

5 Q AND HE, MR. LUCIDO, INDICATES TO YOU THAT HE  
6 HAS A POINT THAT HE WANTS TO TALK TO YOU ABOUT, WANTS  
7 TO DISCUSS WITH YOU.

8 AND YOU ASK HIM, SAY: I'M UP TO MY  
9 QUOTA IN SURPRISING AND GUESSING.

01:13PM

10 DO YOU SEE THAT?

01:13PM

11 A NO.

12 OKAY. THERE IT IS, YEAH.

13 Q HE SAYS: JUST WANT TO MAKE SURE THAT VINCE IS  
14 INCLUDED IN YOUR THINKING OF CRITICAL STAFF.

15 DO YOU SEE THAT?

01:13PM

16 A YES.

17 Q AND YOU WRITE, ONE-WORD RESPONSE: IS.

18 CORRECT?

19 A YES.

20 Q THE DATE OF THIS IS SEPTEMBER 3, 2009?

01:13PM

21 A YES.

22 Q AND --

23 A THIS IS AFTER THE MEETING WE HAD WITH  
24 MARC STERN.

25 Q YOU WERE COMING UP WITH A LIST OF CRITICAL  
26 STAFF, CORRECT?

01:13PM

27 A NO, I WASN'T.

28 Q WELL, MR. LOU LUCIDO INDICATES TO YOU HE

1 WANTED TO MAKE SURE THAT SOMEBODY NAMED VINCE IS  
2 INCLUDED IN YOUR THINKING OF CRITICAL STAFF, RIGHT?

3 A HE SAYS THAT. I BELIEVE WHAT THIS E-MAIL IS  
4 TALKING ABOUT BELOW:

5 JEFFREY, AS A FOLLOW-UP TO  
6 TODAY'S MEETING, I WOULD LIKE TO BE  
7 THE ALTERNATE ON EXECUTIVE  
8 COMMITTEE MEETINGS FOR PHIL IN  
9 THOSE INSTANCES WHEN HE CANNOT  
10 ATTEND.

01:14PM

01:14PM

11 SO HE'S TALKING ABOUT THE EXECUTIVE  
12 COMMITTEE. WE'D ASK MARC STERN TO EXPAND MEMBERSHIP OF  
13 DURING THE SEPTEMBER 3RD MEETING AS PART OF A -- OF  
14 IMPROVING GOVERNANCE OF THE FIRM.

15 AND HE SAYS:

01:14PM

16 BE SURE VINCENT IS INCLUDED IN  
17 THE THINKING OF CRITICAL STAFF --

18 I DON'T KNOW WHAT HE'S TALKING ABOUT. I  
19 WAS NOT DEVELOPING A LIST OF CRITICAL STAFF ON THAT DAY  
20 AT THAT TIME. I SPECIFICALLY SAY --

01:14PM

21 MR. QUINN: YOUR HONOR --

22 THE WITNESS: -- LOU, IF YOU'RE ASKING ME, I  
23 SPECIFICALLY SAY IF VINNIE'S AN IMPORTANT PERSON IN THE  
24 GROUP, SURE --

25 MR. QUINN: I FAILED TO OFFER EXHIBIT 263.

01:14PM

26 MR. HELM: NO OBJECTION.

27 THE COURT: IT WILL BE ADMITTED.

28 (EXHIBIT 263 ADMITTED.)+

1 MR. QUINN: IF WE CAN DISPLAY THAT.

2 Q NOW, ACTUALLY, WHAT HE'S INDICATED TO YOU IN  
3 THE BOTTOM E-MAIL IS THAT HE WANTS TO BE AN ALTERNATE  
4 FOR THE EXECUTIVE COMMITTEE.

5 DO YOU SEE THAT? 01:15PM

6 A YES.

7 Q HE SAID:

8 AS FOLLOW-UP TO TODAY'S MEETING  
9 I WOULD LIKE TO BE THE ALTERNATE ON  
10 EXECUTIVE COMMITTEE MEETINGS FOR  
11 PHIL IN THOSE INSTANCES WHERE HE  
12 CANNOT ATTEND.

13 DO YOU SEE THAT? 01:15PM

14 A YES.

15 Q HE DOES NOT SAY THAT VINCE SHOULD BE THE  
16 ALTERNATE FOR THE EXECUTIVE COMMITTEE, DOES HE? 01:15PM

17 A NOR DOES HE SAY THERE'S A LIST OF CRITICAL  
18 STAFF BEING PREPARED IN THE E-MAIL.

19 Q HE GOES ON TO SAY:

20 ALSO HAVE ONE OTHER POINT I  
21 WOULD LIKE TO DISCUSS WITH YOU  
22 TOMORROW.

23 YOU SEE THAT? 01:15PM

24 A YES.

25 Q AND HE SAYS HE WANTS TO MAKE SURE THAT VINCE  
26 IS INCLUDED IN YOUR THINKING OF CRITICAL STAFF. 01:15PM

27 NOW, WHO IS VINCE?

28 A VINCE FIORILLO, WHO WORKS ON THE TRADING DESK.

1 Q HE'S ONE OF THE KEY MEMBERS OF YOUR TEAM,  
2 RIGHT?

3 A HE'S A -- HE'S A MEMBER OF THE TEAM THAT'S OF  
4 SIGNIFICANCE. I DON'T KNOW IF I'D CALL HIM A KEY  
5 MEMBER. YES. VINNIE'S A SIGNIFICANT CONTRIBUTOR.

01:16PM

6 Q YOU WORKED FOR HIM WITH -- WITH HIM FOR MANY  
7 YEARS, HAVEN'T YOU, SIR?

8 A NOT AS LONG AS A LOT OF OTHER PEOPLE.

9 Q SIR, HAVE YOU WORKED WITH HIM FOR MANY YEARS?

10 A WHEN I SAY MANY YEARS, I'M TALKING 15 OR 20.  
11 NO, I'VE NOT WORKED WITH VINNIE FOR 15 YEARS.

01:16PM

12 Q HOW MANY YEARS HAVE YOU WORKED WITH  
13 MR. FIORILLO?

14 A MAYBE EIGHT.

15 Q AND HE'S WITH YOU NOW AT DOUBLELINE?

01:16PM

16 A YES.

17 Q HE WAS PART OF THE STAFF THAT WENT OVER TO  
18 DOUBLELINE, CORRECT?

19 A HE RESIGNED FROM TCW AND HE WAS GIVEN A JOB AT  
20 DOUBLELINE.

01:16PM

21 Q WE SAW SOME DEPOSITION TESTIMONY ABOUT THIS,  
22 BUT IT MIGHT BE A LITTLE CONFUSING.

23 MR. STERN RETURNED TO TCW AS INTERIM CEO  
24 STARTING ABOUT JUNE 1 OF 2009, CORRECT?

25 A I THOUGHT IT WAS JUNE 30TH.

01:16PM

26 Q JUNE 1, JUNE -- AT LEAST IN THE JUNE TIME  
27 FRAME, RIGHT?

28 A I THOUGHT IT WAS JUNE 30TH, 2009.

1 Q BUT EVEN BEFORE HE STARTED, YOU HAD A MEETING  
2 WITH HIM AND MR. DAY AT MR. DAY'S HOUSE, CORRECT?

3 A YES.

4 THEY CALLED THAT MEETING.

5 Q THAT THAT MEETING WAS ON MAY 29, CORRECT?

01:17PM

6 A I THINK IT WAS BEFORE THEN.

7 Q WELL, WHAT'S YOUR BEST ESTIMATE AS TO WHEN  
8 THAT MEETING WAS? I THINK WE HAVE AN E-MAIL THAT WILL  
9 TIE THAT DOWN, BUT WHAT'S YOUR ESTIMATE?

10 A AT DAY'S HOUSE, I BELIEVE IT WAS PROBABLY  
11 MAY 26TH. THAT WOULD BE MY GUESS.

01:17PM

12 Q I'M OFF BY THREE DAYS.

13 IN THAT MEETING, MR. STERN ASKED YOU IF  
14 YOU'D LIKE TO BE PRESIDENT OF TCW, DIDN'T HE?

15 A I THINK HE ASKED ME IF I WANTED TO BE  
16 CO-PRESIDENT WITH TCW. AND THAT'S -- THE MEETING BEGAN  
17 WITH THEM SAYING, BOB BEYER IS GONE. MARC STERN'S  
18 COMING BACK AS CEO.

01:17PM

19 ROBERT IS GOING TO BECOME DAY-TO-DAY AND  
20 WE'RE THINKING ABOUT MAKING YOU A CO-PRESIDENT.

01:17PM

21 Q ALL RIGHT.

22 A AND I DIDN'T WANT TO TALK ABOUT TITLES. I  
23 WANTED TO TALK ABOUT WHAT WAS HAPPENING AT THE FIRM.

24 Q AND YOU TURNED THAT DOWN AT THE TIME?

25 A AS I SAID IN THE DEPOSITION TESTIMONY, IT  
26 WASN'T REALLY A CONCLUSION TO THAT TOPIC. WE TALKED AT  
27 THE MEETING ABOUT OTHER THINGS.

01:18PM

28 Q WELL, LET'S TAKE A LOOK AT EXHIBIT 197. THIS

1 IS AN E-MAIL EXCHANGE BETWEEN -- IT BEGINS BETWEEN  
2 MR. LUCIDO, MR. DAY, MR. STERN, AND THEN YOU'RE COPIED  
3 ON IT.

4 DO YOU SEE THAT?

5 A YES.

01:18PM

6 MR. QUINN: I'D OFFER IT.

7 MR. HELM: NO OBJECTION.

8 THE COURT: IT WILL BE ADMITTED.

9

10 (EXHIBIT 197 ADMITTED.)+

01:18PM

11

12 MR. QUINN: IF WE COULD START WITH THE BOTTOM  
13 E-MAIL HERE, DATED JUNE 1.

14 Q ONE OF YOUR COLLEAGUES, MR. LOU LUCIDO, WRITES  
15 AN E-MAIL TO MR. DAY AND MR. STERN. HE SAYS:

01:18PM

16 HI ROBERT. WHY NOT END THE  
17 DRAMA AND HAVE JEFFREY AS THE  
18 PRESIDENT. THANKS FOR YOUR  
19 CONSIDERATION OF THIS IDEA.

20 DO YOU SEE THAT?

01:19PM

21 A YES.

22 Q THE DATE OF THAT IS JUNE 1?

23 A YES.

24 Q AND SOMEHOW, I DON'T KNOW WHETHER YOU WERE  
25 BLIND-COPIED, SOMEHOW YOU GET COPIED ON THIS. WE SEE  
26 YOUR RESPONSE IN THE NEXT E-MAIL, RIGHT?

01:19PM

27 WHERE IT SAYS: LOU.

28 A RIGHT.

1 Q WHAT YOU SAY WAS:

2 THAT WAS SUGGESTED ALREADY BY  
3 MARC AND ROBERT, AND FOR VARIOUS  
4 REASONS I FEEL IT'S NOT TIMELY.

5 NOW, THE "I" THERE IS YOU, CORRECT?

01:19PM

6 A YES.

7 Q AND THEN MR. STERN, THE E-MAIL ABOVE HE SAYS:

8 I THINK IT'S IMPORTANT FOR YOU  
9 AND ME TO SPEND TIME -- MINUTES  
10 TOGETHER. ARE YOU AVAILABLE  
11 TOMORROW FOR LUNCH? IF NOT, COULD  
12 YOU PLEASE SUGGEST ANOTHER TIME.  
13 AND YOU SAID:

01:19PM

14 HOW ABOUT 10:00 A.M. TOMORROW?

15 I DO NOT DO LUNCH MEETINGS.

01:19PM

16 DO YOU SEE THAT?

17 A YES.

18 Q MR. STERN DID REACH OUT TO YOU WHEN HE CAME  
19 BACK; ISN'T THAT TRUE?

20 A I DON'T KNOW WHAT YOU MEAN BY REACH OUT. WE  
21 SCHEDULED A MEETING, LOOKS LIKE FOR JUNE 2ND.

01:20PM

22 Q THIS WASN'T THE FIRST TIME THAT YOU HAD BEEN  
23 OFFERED THE PRESIDENCY OF TCW, WAS IT?

24 A I DON'T KNOW WHAT YOU MEAN.

25 WHEN WAS I BEING OFFERED THE TCW --IN  
26 THE E-MAIL -- OFFERED THE PRESIDENCY? I THOUGHT WE  
27 WERE TALKING ABOUT THIS E-MAIL.

01:20PM

28 Q YOU SAY IT WAS SUGGESTED ALREADY BY MARC AND

1 ROBERT: AND FOR VARIOUS REASONS I FEEL IT'S NOT  
2 TIMELY.

3 WHAT IS THE SUGGESTION THAT YOU'RE  
4 REFERRING TO THERE, SIR, WHEN YOU WRITE THAT?

5 A THIS IS GOING BACK TO THE MEETING AT DAY'S  
6 HOUSE. AND SIMILAR TO WHAT I TESTIFIED TO, THERE WAS  
7 NO CONCLUSION. I DIDN'T FEEL IT WAS TIMELY.

01:20PM

8 Q AND YOU HAD BEEN OFFERED THE PRESIDENCY OF TCW  
9 PREVIOUSLY; ISN'T THAT TRUE?

10 A BEFORE MAY OF 2009?

01:20PM

11 Q YES, SIR.

12 A I DON'T THINK SO.

13 Q WELL, TAKE A LOOK AT EXHIBIT 132. THIS IS AN  
14 E-MAIL EXCHANGE. THE TOP ONE IS BETWEEN YOU AND  
15 MS. VANEVERY, BUT BELOW THAT IS AN E-MAIL EXCHANGE  
16 BETWEEN YOU AND MR. BEYER, RIGHT?

01:21PM

17 A IT'S ABOUT THREE PAGES. RIGHT.

18 MR. QUINN: I'D OFFER THAT, YOUR HONOR.

19 MR. HELM: NO OBJECTION.

20 THE COURT: IT WILL BE ADMITTED.

01:21PM

21

22 (EXHIBIT 132 ADMITTED.)+

23

24 BY MR. QUINN:

25 Q SO THIS IS -- IF WE CAN LOOK AT THE BOTTOM  
26 E-MAIL ON THE FIRST PAGE -- DATED FEBRUARY 1ST, 2009.

01:21PM

27 YOU WRITE TO MR. BEYER -- I MEAN  
28 MR. BEYER -- LET'S GO ON TO THE NEXT PAGE.

1                   132-2, THE E-MAIL FROM MR. BEYER, IF WE  
2 COULD ENLARGE THIS FIRST PARAGRAPH HERE.

3                   AND WHAT MR. BEYER -- THEN HE WAS THEN  
4 THE PRESIDENT, RIGHT?

5           A       NO. HE WASN'T.

01:21PM

6           Q       ALL RIGHT. HE WAS CEO?

7           A       YES.

8           Q       THIS -- WHAT HE WROTE YOU ON JANUARY 31ST,  
9 2009 IS:

10                   IF YOU WANT TO BE PRESIDENT WE  
11                   SHOULD HAVE THAT DISCUSSION BECAUSE  
12                   IT COULD BE VERY LOGICAL AND I  
13                   WOULD SUPPORT.

01:22PM

14                   THAT IS WHAT MR. BEYER WROTE TO YOU IN  
15 FEBRUARY, CORRECT?

01:22PM

16           A       THAT'S WHAT IT SAYS.

17           Q       AND, AGAIN, THIS IS BEFORE MR. STERN RETURNS,  
18 RIGHT?

19           A       YES.

20           Q       AND YOUR RESPONSE WE FIND ON THE BOTTOM  
21 PARAGRAPH OF THE FIRST PAGE. YOUR RESPONSE IS:

01:22PM

22                   I DON'T WANT TO BE PRESIDENT AS  
23                   I BELIEVE THAT THE PRESIDENT TITLE  
24                   BELONGS TO A DAY-TO-DAY FIRM  
25                   RUNNER.

01:22PM

26                   THAT'S WHAT YOU WROTE, CORRECT?

27           A       THAT'S WHAT IT SAYS, YES.

28           Q       WELL, YOU HAVE NO DOUBT THAT THAT'S WHAT YOU

1 WROTE, DO YOU?

2 A WELL, I HAVE IN MY MIND OTHER E-MAILS ON THIS  
3 TOPIC, TOO. BUT THAT'S WHAT THIS E-MAIL SAYS.

4 Q NOW, BEFORE MR. STERN CAME BACK, YOU HAD -- I  
5 MEAN, HE HAD BEEN AT TCW PREVIOUSLY; ISN'T THAT TRUE? 01:23PM

6 A YES, HE HAD BEEN THERE FOR ABOUT 15 YEARS  
7 UNTIL HE RETIRED IN 2005.

8 Q DID HE RETIRE OR DID HE ASSUME SOME OTHER  
9 POSITION WITH SOCIÉTÉ GÉNÉRALE RELATING TO THEIR OTHER  
10 NORTH AMERICAN OPERATIONS? 01:23PM

11 A IT WAS PRESENTED TO THE EMPLOYEES OF TCW THAT  
12 HE WAS RETIRING FROM TCW.

13 Q ALL RIGHT.

14 BUT YOU KNOW, IN FACT, THAT HE CONTINUED  
15 TO WORK FOR SOCIÉTÉ GÉNÉRALE; YOU KNOW THAT, DON'T YOU? 01:23PM

16 A I KNOW THAT NOW.

17 I DIDN'T KNOW THAT ALL THROUGH THAT TIME  
18 PERIOD.

19 Q OKAY.

20 BUT DURING THAT, YOU HAD KNOWN MR. STERN 01:23PM  
21 FOR A NUMBER OF YEARS FROM THE TIME HE WAS AT TCW  
22 BEFORE?

23 A I HAD KNOWN HIM FROM -- I STARTED AT TCW IN  
24 1985. HE CAME SOMETIME AFTER THAT AND RETIRED IN 2005.

25 Q AND YOU HAVE HAD A GOOD RELATIONSHIP WITH HIM? 01:23PM

26 A THE RELATIONSHIP WAS OKAY, I WOULD SAY, FOR  
27 MUCH OF THE TIME PERIOD. MY RELATIONSHIP WITH  
28 MARC STERN WAS NEVER GREAT. BUT IT WAS OKAY FOR MUCH

1 OF THAT TIME PERIOD.

2 Q LET'S TAKE A LOOK AT EXHIBIT 1132. I WANT TO  
3 CALL YOUR ATTENTION IN PARTICULAR TO 1132-2.

4 IS THIS AN E-MAIL BETWEEN YOU AND  
5 MR. STERN?

01:24PM

6 A YES.

7 MR. QUINN: I'D OFFER THAT. I'M OFFERING  
8 1132-2.

9 THE COURT: ANY OBJECTION?

10 MR. HELM: LET ME TAKE A QUICK LOOK.

01:24PM

11 (PAUSE) +

12

13 MR. HELM: NO OBJECTION.

14 THE COURT: IT'S JUST 1132-2, RIGHT?

15 MR. QUINN: RIGHT.

01:24PM

16 THE COURT: IT WILL BE ADMITTED.

17

18 (EXHIBIT 1132-2 ADMITTED.)+

19

20 MR. QUINN: IF WE COULD DISPLAY THAT.

01:24PM

21 Q NOW, YOU HAD WON A VERY PRESTIGIOUS AWARD, THE  
22 *MORNING STAR* FIXED INCOME MANAGER OF THE YEAR AWARD?

23 A YEAH, I WON A LOT OF AWARDS.

24 THAT'S ONE I WON IN THE 2007, YEAH.

25 Q AND MR. STERN WROTE YOU ON JANUARY 3, 2007:

01:25PM

26 CONGRATULATIONS ON BEING NAMED

27 FIXED INCOME MANAGER OF THE YEAR.

28 IT IS INCREDIBLY WELL DESERVED AND

1 COMES AT A GREAT TIME FOR YOU AND  
2 THE FIRM. WATCHING YOUR CAREER AT  
3 TCW HAS BEEN A TRUE PLEASURE FOR  
4 ME. BEST WISHES TO YOU AND YOUR  
5 FAMILY FOR A HAPPY, HEALTHY, AND  
6 PROSPEROUS 2007. MARC.

01:25PM

7 AND YOU RESPOND:

8 THANKS MARC. OF ALL THE  
9 CONGRATULATIONS TODAY, I THINK  
10 YOURS IS THE MOST MEANINGFUL.

01:25PM

11 WERE YOU SINCERE WHEN YOU SAID THAT?

12 A YES.

13 Q TAKE A LOOK, PLEASE, IF YOU WOULD AT  
14 EXHIBIT 1192.

15 IS THIS AN E-MAIL EXCHANGE BETWEEN YOU  
16 AND MS. VANEVERY?

01:26PM

17 A YES.

18 MR. QUINN: WE'D OFFER THAT.

19 MR. HELM: ONE MINUTE, YOUR HONOR. I'M  
20 PULLING IT UP NOW.

01:26PM

21 (PAUSE) +

22  
23 MR. HELM: NO OBJECTION.

24 MR. QUINN: IF WE CAN DISPLAY THAT, PLEASE.  
25 THE COURT: IT WILL BE ADMITTED.

01:26PM

26  
27 (EXHIBIT 1192 ADMITTED.)+

28 ///

1 BY MR. QUINN:

2 Q DATED MAY 29, 2009, E-MAIL EXCHANGE; IS THAT  
3 CORRECT?

4 A YES.

5 Q AND YOU WRITE:

01:26PM

6 ANOTHER HEAD SPINNER OF A DAY,  
7 ATTANASIO AND I WENT AND TALKED TO  
8 STERN AND DAY TOGETHER. IT WASN'T  
9 A HAPPY GROUP.

10 DOES THIS REFRESH YOUR RECOLLECTION THAT  
11 THE MEETING AT MR. DAY'S HOUSE -- WITH MR. DAY AND  
12 MR. STERN -- WAS ON MAY 29TH?

01:26PM

13 A NO. THE MEETING WAS NOT ON THE 29TH AT DAY'S  
14 HOUSE.

15 Q (READING):

01:27PM

16 I TOLD STERN --

17 IT SAYS "AY". THAT PRESUMABLY, IT'S  
18 INTENDED TO BE "DAY"?

19 YOU AGREE?

20 A YES.

01:27PM

21 Q (READING):

22 -- THAT I MIGHT POSSIBLY -- I MIGHT  
23 POSSIBLY BE ABLE TO WORK WITH THEM,  
24 BUT I WOULD NOT WORK FOR THEM IN  
25 ANY WAY.

01:27PM

26 DO YOU SEE THAT?

27 A NOT QUITE THE WAY YOU READ IT, BUT YEAH, YOU  
28 SAID IT, "MIGHT POSSIBLY" TWICE. IT ONLY SAYS IT ONCE.

1 Q ALL RIGHT.

2 BUT YOU DIDN'T SAY, I CAN WORK WITH  
3 THEM; YOU SAID, I MIGHT POSSIBLY BE ABLE TO WORK WITH  
4 THEM?

5 THOSE WERE THE WORDS YOU CHOSE, CORRECT,  
6 SIR? 01:27PM

7 A THAT'S WHAT THE E-MAIL SAYS. YOU'RE MAKING A  
8 SEMANTIC ARGUMENT, BUT GO AHEAD.

9 Q WELL, THOSE ARE THE WORDS YOU SAID?

10 A I SAID I COULD POSSIBLY WORK WITH THEM. 01:27PM  
11 THAT'S WHAT I SAID.

12 Q I MIGHT POSSIBLY BE ABLE TO WORK WITH THEM.  
13 THAT'S WHAT YOU SAID, CORRECT?

14 A I MIGHT BE ABLE TO WORK WITH THEM. THAT'S  
15 WHAT I FELT, AND THAT'S -- THE IDEA WAS WE WERE GOING 01:27PM  
16 TO START A MANAGEMENT COMMITTEE. THAT WAS OUR HOPE AND  
17 THE PURPOSE OF THE MEETING. IT WAS MARK ATTANASIO'S  
18 MEETING REALLY.

19 AND HE WENT ON AND ON ABOUT --

20 MR. QUINN: YOUR HONOR -- 01:28PM

21 THE WITNESS: -- HE'D BEEN HERE THIS WHOLE  
22 TIME --

23 MR. QUINN: YOUR HONOR --

24 THE COURT: MR. GUNDLACH.

25 THE WITNESS: -- WE WANT TO HAVE A MANAGEMENT  
26 COMMITTEE TYPE -- 01:28PM

27 THE COURT: IT'S NOT JUST A NARRATIVE. YOU  
28 NEED TO ANSWER THE QUESTIONS AND TRY TO JUST RESPOND TO

1 THE QUESTION.

2 MR. QUINN, YOU SHOULD ASK DIRECT  
3 QUESTIONS, TOO.

4 MR. QUINN: OKAY. I WILL TRY TO DO THAT, YOUR  
5 HONOR.

01:28PM

6 THE COURT: GO AHEAD.

7 BY MR. QUINN:

8 Q THEN YOU WROTE:

9 I SAID YOU ARE HERE TO STABILIZE  
10 THE FIRM AND THEN SELL IT FOR AN  
11 ECONOMIC REWARD, AND YOU HAVE TO  
12 TELL THE FRENCH THAT MARC AND I AND  
13 OTHERS WILL NOT STABILIZE AND GROW  
14 THIS FIRM WITHOUT A REWARD.

01:28PM

15 THAT'S WHAT YOU WROTE?

01:28PM

16 A YES.

17 Q NOW, AT THE TIME THAT YOU WROTE THAT, YOU WERE  
18 A DIRECTOR OF TCW?

19 A YES.

20 Q YOU WERE THE CHIEF INVESTMENT OFFICER OF ALL  
21 THE TCW?

01:28PM

22 A YES.

23 Q YOU WERE A FIDUCIARY OF TCW?

24 A YES.

25 Q THAT MEANS, AMONG OTHER THINGS, YOUR JOB IS TO  
26 LOOK OUT FOR AND PROMOTE THE INTERESTS OF THE COMPANY,  
27 CORRECT?

01:28PM

28 A YES.

1 Q AND AS A DIRECTOR, YOUR JOB IS TO KIND OF --  
2 YOU'RE THE SHAREHOLDERS' REPRESENTATIVE. YOU'RE ON THE  
3 BOARD OF DIRECTORS TO LOOK OUT FOR THE INTERESTS OF THE  
4 SHAREHOLDERS, RIGHT?

5 A I'M NOT SURE ABOUT THAT. BUT I CERTAINLY HAD  
6 A DUTY TO TCW TO MAKE THE COMPANY AS GOOD AS IT COULD  
7 BE, AND IN THAT WAY THE SHAREHOLDERS BENEFITED AS WELL.

01:29PM

8 Q WELL, WHO ELECTS THE DIRECTORS? THE  
9 SHAREHOLDERS DO, RIGHT?

10 A I -- I NEVER SAW ANY ELECTION PROCESS FOR THE  
11 TCW BOARD OF DIRECTORS. I DON'T KNOW.

01:29PM

12 Q WELL, I MEAN, DID YOU HAVE AN UNDERSTANDING  
13 WHETHER OR NOT YOU WERE ELECTED BY THE SHAREHOLDER?

14 A I NEVER THOUGHT ABOUT IT.

15 IT SEEMED LIKE YOU WERE APPOINTED MORE  
16 THAN ANYTHING ELSE TO THE BOARD OF DIRECTORS, AS  
17 OPPOSED TO ELECTED.

01:29PM

18 Q I'M SORRY. HAD YOU FINISHED?

19 A IT SEEMED MORE LIKE I WAS APPOINTED TO THE  
20 BOARD, RATHER THAN ELECTED.

01:29PM

21 Q BUT APPOINTED BY?

22 A ROBERT DAY. THAT'S HOW IT FELT.

23 Q THAT'S HOW YOU FELT?

24 A YEAH.

25 Q YOU WERE ALSO PRESIDENT OF SOMETHING CALLED  
26 TAMCO, TCW ASSET MANAGEMENT, CORRECT?

01:30PM

27 A YES.

28 Q THAT WAS THE LARGEST TCW OPERATING COMPANY,

1 CORRECT?

2 A PROBABLY WAS. I'M NOT SURE. COULD HAVE BEEN.

3 Q SO, AT THE TIME THAT YOU WERE HOLDING THESE  
4 POSITIONS, YOU TOLD MR. DAY AND MR. STERN THAT YOU ARE  
5 HERE TO STABILIZE THE FIRM AND SELL IT FOR AN ECONOMIC  
6 REWARD, AND YOU HAVE TO TELL THE FRENCH THAT MARC AND I  
7 AND OTHERS WILL NOT STABILIZE AND GROW THIS FIRM  
8 WITHOUT A REWARD.

01:30PM

9 RIGHT?

10 A YES.

01:30PM

11 Q AND THAT IS THE YEAR IN WHICH YOU MADE  
12 \$40 MILLION --

13 A I --

14 Q -- CORRECT?

15 A I ACTUALLY SHOULD HAVE MADE MORE THAN THAT  
16 DURING THAT YEAR.

01:30PM

17 Q SIR, DID YOU MAKE \$40 MILLION FROM TCW -- OVER  
18 \$40 MILLION IN 2009?

19 A OVER 40 MILLION, YEAH.

20 Q WHAT IS THE REWARD THAT YOU'RE REFERRING TO  
21 HERE, THAT YOU WEREN'T GOING TO STABILIZE AND GROW THE  
22 FIRM WITHOUT SOME ADDITIONAL REWARD? WHAT'S THE REWARD  
23 YOU'RE REFERRING TO?

01:31PM

24 A EQUITY OWNERSHIP IN THE FIRM WAS PROMISED IN  
25 '01. IT WAS PROMISED EVERY YEAR PRIOR TO '0- --  
26 SUBSEQUENT TO '01. AND WE THOUGHT THAT WE SHOULD HAVE  
27 THAT EQUITY OWNERSHIP AS INCENTIVIZATION TO GROWING THE  
28 FIRM AND HELPING THE FRENCH TO MAKE A LOT OF MONEY ON

01:31PM

1 THE FIRM. THAT'S WHAT WE MEANT. EQUITY IN THE FIRM.

2 Q NOW, WE HAVE HUNDREDS, PROBABLY THOUSANDS OF  
3 DOCUMENTS IN THIS CASE.

4 CAN YOU IDENTIFY FOR THE JURY A SINGLE  
5 DOCUMENT THAT REFERENCES A PROMISE TO YOU THAT YOU  
6 WOULD GET EQUITY OWNERSHIP?

01:31PM

7 MR. HELM: ARGUMENTATIVE. LACKS FOUNDATION.

8 THE COURT: SUSTAINED.

9 BY MR. QUINN:

10 Q IS THERE, SIR, DO YOU KNOW OF ANY DOCUMENT  
11 THAT REFLECTS THAT PROMISE?

01:31PM

12 A YES.

13 Q WHAT IS THAT?

14 A THE DOCUMENT OF THE SALE OF TCW -- OF TCW  
15 INITIALLY TO SOC-GEN IN 2001, WHERE DIRECTLY -- POINTED  
16 OUT IN MY RECOLLECTION THAT 30 PERCENT OF THE COMPANY  
17 WOULD BE PERPETUALLY OWNED BY TCW.

01:32PM

18 AND I WAS -- AND -- AND THERE WERE MANY  
19 DOCUMENTS. I DON'T KNOW IF I -- I'VE SEEN THEM  
20 PRODUCED IN THIS CASE. BUT THERE WERE MANY DOCUMENTS  
21 WHAT FORM THAT PLAN WOULD TAKE IN 2008.

01:32PM

22 Q I'M INTERESTED IN DOCUMENTS REFLECTING A  
23 PROMISE. I HEARD YOU TELL US ABOUT A DOCUMENT. I WANT  
24 TO MAKE SURE I GET THIS RIGHT SO THAT WE CAN FIND THIS.

25 WOULD YOU IDENTIFY FOR US, PLEASE, WHAT  
26 THAT DOCUMENT IS THAT REFLECTS THAT PROMISE.

01:32PM

27 A THERE IS NO PROMISE MADE DIRECTLY TO ONE  
28 SPECIFIC INDIVIDUAL IN 2001.

1                    BUT THERE'S A CLEAR PROMISE THAT  
2 30 PERCENT OF THE FIRM WOULD BE OWNED BY EMPLOYEES OF  
3 TCW IN PERPETUITY.

4                    AND IT WAS CERTAINLY REPRESENTED IN MANY  
5 MEETINGS THAT PEOPLE LIKE ME WOULD BE PART OF THAT  
6 GROUP, AND MARC ATTANASIO, AND THAT'S WHAT WE'RE  
7 REFERRING TO HERE.

01:32PM

8            Q        LET'S STICK TO DOCUMENTS.

9                    DOES THIS DOCUMENT HAVE A NAME? CAN YOU  
10 HELP US OUT A LITTLE BIT SO WE CAN FIND WHAT YOU'RE  
11 REFERRING TO?

01:33PM

12            A        IT'S THE -- IT'S -- DOCUMENTS ANNOUNCING THE  
13 SALE OF TCW TO THE FRENCH AND THE DOCUMENTS SURROUNDING  
14 THAT SALE. AND, ALSO, THERE WAS QUITE A FEW DOCUMENTS  
15 ABOUT A STOCK OPTION PLAN BEING LAUNCHED IN SEPTEMBER  
16 OF '08. WE SPOKE TO THEM MANY TIMES IN THE BOB BEYER'S  
17 BIWEEKLY MEETINGS.

01:33PM

18            Q        WELL, WE'LL GET TO 2008.

19                    I'D LIKE TO TAKE THESE IF WE CAN. ONE  
20 AT A TIME.

01:33PM

21                    IS THERE SOME DOCUMENT IN 2001 THAT  
22 REFLECTS THIS PROMISE TO YOU OR ANYONE THAT YOU WOULD  
23 HAVE EQUITY?

24            A        I THINK I'VE -- I THINK I SORT OF -- IT'S  
25 ASKED AND ANSWERED. IN '01 THE SALE DOCUMENTS AND THE  
26 ANNOUNCEMENTS INTERNALLY TO TCW EMPLOYEES SPOKE OF  
27 EQUITY OWNERSHIP BY TCW EMPLOYEES AT A 30 PERCENT  
28 LEVEL.

01:33PM

1 Q SPOKE OF IT OR PROMISED IT?

2 A I THINK PROM- -- I THINK PROMISED --  
3 GUARANTEED ALMOST.

4 Q ALL RIGHT.

5 WE'LL TAKE A LOOK AT THAT.

01:34PM

6 THEN YOU GO ON TO SAY -- BY THE WAY, YOU  
7 PREVIOUSLY HAVE HAD AN EQUITY OWNERSHIP IN TCW, RIGHT?

8 A YES.

9 Q AND YOU HAD SOLD THAT TO THIS FRENCH BANK,  
10 CORRECT?

01:34PM

11 A WELL, YES. THEY BOUGHT THE FIRM. YOU HAD TO.

12 Q RIGHT.

13 AND YOU MADE WHAT? HOW MUCH DID YOU  
14 MAKE ON THAT?

15 A PROBABLY ABOUT \$35 MILLION. MAYBE  
16 \$40 MILLION.

01:34PM

17 Q 60 MILLION SOUND MORE LIKE IT?

18 A NO.

19 Q I MEAN, WOULDN'T YOU AGREE, SIR, AS A  
20 DIRECTOR, AND AS CHIEF INVESTMENT OFFICER, AND AS  
21 PRESIDENT OF TAMCO, AMONG YOUR DUTIES ARE TO STABILIZE  
22 AND GROW THE FIRM?

01:34PM

23 THOSE ARE AMONG YOUR DUTIES; ISN'T THAT  
24 TRUE?

25 A WELL, DEPENDS WHAT WE MEAN BY STABILIZE. MY  
26 DUTY IS TO CREATE VALUE FOR THE FIRM, TO BE -- TO WATCH  
27 OUT FOR THE FIRM'S INTERESTS.

01:35PM

28 AND SOMETIMES THAT CAN MEAN STABLE --

1 STABILIZE OR KEEP THINGS THE WAY THEY ARE. AND  
2 SOMETIMES THAT CAN MEAN OFFER SUGGESTIONS OF CHANGE.

3 BUT I TOOK MY RESPONSIBILITY TO TCW  
4 EXTREMELY SERIOUSLY, AND I DID EVERYTHING I COULD TO  
5 MAKE TCW THE BEST FIRM. I LOVED TCW.

01:35PM

6 Q SIR, WHAT YOU WROTE HERE IS THAT, WITHOUT SOME  
7 ADDITIONAL REWARD, YOU, A DIRECTOR, CIO, PRESIDENT,  
8 YOU'RE NOT GOING TO STABILIZE AND GROW THE FIRM?

9 A YOU'RE ACTING LIKE --

10 Q EXCUSE ME?

01:35PM

11 A YOU'RE ACTING LIKE THIS IS A TAPE OF A  
12 MEETING. AND, INSTEAD, WHAT IT IS, IS ME CONVEYING  
13 IDEAS, MAYBE NOT IN PERFECT ENGLISH OR -- OR VERBATIM,  
14 BUT MY IDEA WAS THAT WE SHOULD HAVE EQUITY TO MAKE THE  
15 FIRM BETTER, TO STABILIZE IT AND TO GROW IT.

01:36PM

16 THAT'S WHAT WE FELT IN THAT MEETING.

17 Q NOT JUST THAT. WHAT YOU FELT, EVEN THOUGH  
18 YOU'RE A DIRECTOR, CHIEF INVESTMENT OFFICER, PRESIDENT,  
19 YOU'RE NOT GOING TO STABILIZE AND GROW IT UNLESS YOU  
20 GET AN ADDITIONAL REWARD; ISN'T -- THAT'S WHAT YOU TELL  
21 MS. VANEVERY THAT YOU TOLD MR. DAY AND MR. STERN,  
22 CORRECT?

01:36PM

23 A YES. THIS WAS MOSTLY -- MARK ATTANASIO'S  
24 MEETING AND THE -- THE DISCONTENT IN THIS REGARD WAS  
25 MOSTLY BEING CHANNELED THROUGH MARK ATTANASIO, BUT I  
26 THOUGHT WE SHOULD HAVE THE EQUITY OWNERSHIP THAT WE  
27 WERE PROMISED.

01:36PM

28 AND WE WANTED THE -- TO MAKE THE FIRM

1 BETTER. AND THIS MEETING WAS AN ATTEMPT TO MAKE THE  
2 FIRM BETTER.

3 Q SIR, YOU SAID:

4 ATTANASIO SAID YOU GUYS ARE NOT  
5 THE FUTURE OF THIS FIRM. I SAID --  
6 THE "I" THERE IS YOU, RIGHT -- -  
7 SAID YOU'RE HERE TO STABILIZE THE  
8 FIRM AND THEN SELL IT FOR ECONOMIC  
9 REWARD AND YOU HAVE TO TELL THE  
10 FRENCH THAT MARC AND I AND OTHERS  
11 WILL NOT STABILIZE AND GROW THIS  
12 FIRM WITHOUT A REWARD.

13 THOSE WERE YOUR WORDS, NOT  
14 MR. ATTANASIO'S WORDS; ISN'T THAT TRUE?

15 MR. HELM: ASKED AND ANSWERED. ARGUMENTATIVE.

16 THE COURT: SUSTAINED.

17 MR. QUINN: TAKE A LOOK, PLEASE, AT  
18 EXHIBIT 1991.

19 THIS IS E-MAIL EXCHANGE BETWEEN YOU AND  
20 MR. BARACH.

21 A YES.

22 MR. QUINN: I'D OFFER IT, YOUR HONOR.

23 MR. HELM: NO OBJECTION.

24 THE COURT: IT WILL BE ADMITTED.

25  
26 (EXHIBIT 1991 ADMITTED.)+

27  
28 ///

01:36PM

01:37PM

01:37PM

01:37PM

01:37PM

1 BY MR. QUINN:

2 Q NOW, MR. BARACH IS YOUR LONG-TIME COLLEAGUE?

3 A YES.

4 Q HE'S SOMETIMES REFERRED TO AS THE NO. 2 IN THE  
5 DEPARTMENT, RIGHT?

01:38PM

6 A YES.

7 Q AND ON MAY 29TH, THAT SAME DAY, IF WE LOOK AT  
8 THE FIRST E-MAIL THERE, MR. BARACH WRITES YOU. HE SAYS  
9 HE GOT A CALL FROM MR. STERN AT HOME. HE SAYS HE ASKED  
10 IF I'D SPOKEN TO YOU. AND I WAS AWARE OF THE  
11 SITUATION. I TOLD HIM I WAS.

01:38PM

12 HE ASKED ME WHAT MY IMPRESSION, FEELINGS  
13 WERE. I TOLD HIM THAT YOU AND I WERE CONCERNED ABOUT  
14 HIM GETTING THE CEO TITLE.

15 AND THAT UNLESS HE WAS PREPARED TO  
16 COMMIT TO AT LEAST FIVE YEARS, HE SHOULD BECOME INTERIM  
17 CEO. HE TOLD ME THAT HE HAD ALREADY RESOLVED THAT  
18 ISSUE WITH YOU.

01:38PM

19 HE THEN TOLD ME HOW IMPORTANT I WAS TO  
20 THE FIRM. HOW HE VALUED OUR LONG-TERM RELATIONSHIP.  
21 HOW HE LOOKED FORWARD TO WORKING WITH ME.

01:38PM

22 AND THEN HE GOES ON. HE SAYS: AMONG  
23 OTHER THINGS, HE -- MEANING STERN -- ASKED IF I WAS IN  
24 NEXT WEEK SO WE COULD HAVE LUNCH.

25 DO YOU SEE THAT?

01:38PM

26 A YES.

27 Q AND YOUR RESPONSE TO THAT:

28 NOW LET'S BE CLEAR, WHAT'S

1                   HAPPENING HERE?

2                   YOU KNOW THAT MR. STERN HAD A  
3 RELATIONSHIP GOING BACK MANY YEARS WITH MR. BARACH  
4 HIMSELF, RIGHT?

5           A       NO, I DIDN'T KNOW THAT.

01:39PM

6           Q       DID YOU KNOW THAT THERE WAS AN OCCASION WHERE  
7 MR. BARACH BECAME ILL AND MR. STERN TOOK HIM TO THE  
8 HOSPITAL AND STAYED THERE WITH HIM?

9           A       I DIDN'T KNOW THAT.

10          Q       YOU'RE NOT AWARE OF THAT?

01:39PM

11          A       NO.

12          Q       YOU KNOW THAT MR. STERN FELT A SPECIAL BOND  
13 WITH MR. BARACH, DON'T YOU?

14                   MR. HELM: LACKS FOUNDATION.

15 BY MR. QUINN:

01:39PM

16          Q       DID YOU KNOW THAT?

17          A       NO.

18          Q       TAKE A LOOK AT THE FIRST PAGE HERE.

19                   THE SECOND PARAGRAPH IN THE MIDDLE, THE  
20 FIRST LINE, YOU WROTE:

01:39PM

21                   STERN FEELS A CERTAIN BOND WITH  
22 YOU.

23                   THAT MEANS MR. BARACH, RIGHT?

24          A       YES.

25          Q       THAT'S WHAT YOU WROTE?

01:39PM

26          A       YES.

27          Q       ALL RIGHT.

28                   SO LET'S GO BACK, THEN, TO THE FIRST

1 PAGE. SO HERE MR. STERN IS COMING BACK TO THE COMPANY.  
2 AND HE REACHES OUT TO A TCW EMPLOYEE, MR. BARACH.  
3 TELLS HIM HE'S VALUABLE. HE LOOKS FORWARD TO WORKING  
4 WITH HIM. WANTS TO HAVE LUNCH.

5 RIGHT? VALUABLE, RIGHT?

01:40PM

6 A I -- I SEE IT HIGHLIGHTED: HE WANTS TO HAVE  
7 LUNCH. YEAH.

8 Q ALL RIGHT.

9 HE SAYS HE'S -- HE TOLD ME HOW IMPORTANT  
10 I WAS TO THE FIRM, HOW HE VALUED OUR LONG-TIME  
11 RELATIONSHIP AND HOW HE LOOKED FORWARD TO WORKING WITH  
12 ME.

01:40PM

13 RIGHT? YOU SEE THAT?

14 A THAT'S WHAT IT SAID.

15 Q YOUR RESPONSE TO THAT WAS:

01:40PM

16 PATHETIC, I CAN STRANGLE THE TWO  
17 OF THEM FOR TREATING YOU THIS WAY.

18 CORRECT?

19 A THAT'S WHAT IT SAYS. YOU'RE GREATLY  
20 MISCHARACTERIZING THIS -- THIS EXCHANGE.

01:40PM

21 Q WELL, LET'S TAKE A LOOK AT THE EXCHANGE.

22 A OKAY.

23 Q WE CAN GO THROUGH THE WHOLE THING.

24 A OKAY.

25 Q IT SAYS -- YOU WRITE THERE, SECOND PARAGRAPH,  
26 YOUR E-MAIL:

01:40PM

27 ATTANASIO AND I HAD A VERY  
28 CONTENTIOUS MEETING WITH DS.

1 DAY/STERN, RIGHT?

2 A YES.

3 Q (READING):

4 THE MOTIVE OF STERN'S CALL IS  
5 OBVIOUS AND THE ACT ITSELF IS  
6 UTTERLY PREDICTABLE. AND ALMOST  
7 COMICALLY DESPERATE. THEY'RE  
8 EXPLORING THE IDEA OF WRITING ME  
9 OFF AND WILL TRY TO SELL YOU ON THE  
10 IDEA OF STAYING, WHEN I GO TO GIVE  
11 THEM THE BEST CHANCE OF FIGHTING  
12 FOR THE BUSINESS.

01:41PM

01:41PM

13 RIGHT? THAT'S WHAT YOU WROTE?

14 A YES.

15 Q AND THE BUSINESS -- WHAT'S THE BUSINESS THAT  
16 YOU'RE REFERRING TO THERE?

01:41PM

17 THE TCW WOULD HAVE A CHANCE TO FIGHT FOR  
18 THE BUSINESS.

19 WHAT'S THE BUSINESS YOU'RE TALKING  
20 ABOUT?

01:41PM

21 A TALKING ABOUT THE PORTFOLIOS THAT I MANAGED.

22 Q FOR TCW THE PORTFOLIOS YOU MANAGED FOR TCW,  
23 CORRECT?

24 A FOR THE CLIENTS AT TCW.

25 Q WELL, SIR, THAT BUSINESS WAS TCW'S BUSINESS,  
26 CORRECT?

01:41PM

27 A WE HAD A PARTNERSHIP, WHERE IT WAS BASICALLY A  
28 50/50 DEAL. AND THE BUSINESS WAS DEFINITELY BUILT IN A

1 COLLABORATIVE WAY. THE CLIENTS CLEARLY SAW THEIR  
2 RELATIONSHIP AS BEING WITH ME AND MY TEAM MORE THAN  
3 WITH TCW.

4 BUT THERE WAS A COLLABORATIVE -- A  
5 PARTNERSHIP IN BUILDING THAT BUSINESS.

01:42PM

6 Q SIR, YOU WERE A TCW EMPLOYEE, CORRECT?

7 A I WAS A TCW EMPLOYEE, YES.

8 Q OKAY.

9 THERE IS NO PARTNERSHIP AGREEMENT.  
10 THERE'S NO AGREEMENT ENTITLED PARTNERSHIP AGREEMENT.

01:42PM

11 YOU WERE AN EMPLOYEE, CORRECT?

12 A THEY CALLED ME A PARTNER. THEY SPOKE TO ME AS  
13 THEY WANTED TO BE MY PARTNER. I'M SO GLAD WE'RE YOUR  
14 PARTNER. ALL THE TIME.

15 Q BUT, YOUR PAYCHECK, WHEN YOU GOT THAT THE  
16 40 MILLION-PLUS THAT YOU GOT, EVERY SINGLE PAYCHECK  
17 SAID TCW ON IT, RIGHT? CORRECT?

01:42PM

18 A OF COURSE.

19 Q THIS BUSINESS HERE -- IT'S TCW'S BUSINESS,  
20 YOU'RE SAYING TCW WANTS A CHANCE TO FIGHT FOR THE  
21 BUSINESS; IT'S TCW'S BUSINESS, CORRECT?

01:42PM

22 MR. HELM: ASKED AND ANSWERED. ARGUMENTATIVE.

23 THE COURT: SUSTAINED.

24 BY MR. QUINN:

25 Q WELL, DO YOU HAVE ANY PROBLEM WITH THE IDEA  
26 THAT TCW WOULD WANT TO MAKE SOME TYPE OF CONTINGENCY  
27 PLAN TO HAVE SOMEBODY THERE TO RUN THE MORTGAGE-BACKED  
28 SECURITIES BUSINESS IF YOU WERE GONE?

01:43PM

1 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

2 THE COURT: OVERRULED.

3 GO AHEAD.

4 CAN YOU ANSWER IT, SIR.

5 THE WITNESS: COULD YOU ASK THE QUESTION  
6 AGAIN?

01:43PM

7 THE COURT: SURE.

8 BY MR. QUINN:

9 Q DOES IT SEEM IRRATIONAL TO YOU, OR  
10 INAPPROPRIATE THAT MR. STERN OR ANYONE ELSE WOULD WANT  
11 TO HAVE SOMEBODY THERE TO RUN THE MORTGAGE-BACKED  
12 SECURITIES BUSINESS IF YOU WEREN'T THERE?

01:43PM

13 MR. HELM: ASSUMES FACTS, YOUR HONOR.

14 THE COURT: OVERRULED.

15 THE WITNESS: IT'S A DIFFICULT QUESTION TO  
16 ANSWER.

01:43PM

17 THE CLIENTS REALLY, MOST OF THEM, FELT  
18 THAT IF I WASN'T THERE, THEY -- THE STRATEGIES WOULD  
19 CEASE TO EXIST. AND SO IT'S -- I DON'T THINK THE  
20 CLIENTS SAW IT THAT WAY, THAT THEY COULD JUST PUT A  
21 CONTINGENCY PLAN IN PLACE AND THAT THAT WOULD BE THE  
22 BUSINESS STILL GOING ON.

01:44PM

23 SO -- SO IT'S VERY DIFFICULT THE WAY YOU  
24 FRAME IT.

25 BY MR. QUINN:

01:44PM

26 Q NOT MY QUESTION, SIR.

27 MY QUESTION IS: DO YOU THINK THERE'S  
28 ANYTHING INAPPROPRIATE ABOUT MR. STERN OR ANYONE ELSE

1 TRYING TO MAKE SURE THAT THERE'S SOMEBODY THERE TO RUN  
2 A MORTGAGE-BACKED SECURITIES BUSINESS IF YOU'RE NOT?  
3 IS THERE ANYTHING INAPPROPRIATE WITH THAT?

4 MR. HELM: INCOMPLETE HYPOTHETICAL. ASSUMES  
5 FACTS NOT IN EVIDENCE.

01:44PM

6 THE COURT: SUSTAINED.

7 BY MR. QUINN:

8 Q WELL, YOUR CONCERN WAS THAT -- I MEAN,  
9 MR. BARACH HAS -- IS AN INDUSTRY VETERAN; IS THAT TRUE?

10 A MY CONCERN -- I HAVE NO CONCERN ABOUT  
11 MR. BARACH BEING INDUSTRY VETERAN.

01:44PM

12 Q YOU KNEW HE WAS; IS THAT TRUE?

13 A YES.

14 Q YOU KNEW MANY PEOPLE THOUGHT HE WAS VERY  
15 CAPABLE, CORRECT?

01:45PM

16 A YES.

17 Q AND YOUR CONCERN WAS THAT IF MR. STERN WAS  
18 ABLE TO PERSUADE -- DEVELOP A RELATIONSHIP WITH  
19 MR. BARACH, THAT TCW WOULD HAVE A FIGHTING CHANCE TO  
20 HANG ON TO THIS BUSINESS IF YOU WEREN'T THERE.

01:45PM

21 WASN'T THAT YOUR CONCERN AT THE TIME?

22 A NO.

23 Q WELL, IF THE -- AT THIS TIME THE ASSETS UNDER  
24 MANAGEMENT IN YOUR GROUP, AUM, WAS ABOUT 60 PERCENT OF  
25 THE ASSETS OF THE FIRM; IS THAT TRUE?

01:45PM

26 A I THINK IT WAS 70 PERCENT.

27 Q 70 PERCENT?

28 A YES.

1 Q AND IF THAT LEFT OVERNIGHT, THAT WOULD HAVE A  
2 DEVASTATING EFFECT ON TCW, TRUE?

3 A SURE.

4 Q IF TCW DIDN'T HAVE SOMEBODY THERE WHO COULD  
5 MANAGE IT, THE VERY SURVIVAL OF TCW MIGHT BE  
6 JEOPARDIZED, CORRECT?

01:45PM

7 MR. HELM: INCOMPLETE HYPOTHETICAL, YOUR  
8 HONOR.

9 THE COURT: I'LL ALLOW HIM TO ANSWER. YOU CAN  
10 CROSS-EXAMINE HIM.

01:46PM

11 THE WITNESS: BUT -- I WASN'T GOING ANYWHERE.

12 IT'S A STRANGE THING TO WORRY ABOUT. IF  
13 THEY WANT TO WORRY ABOUT ALL KINDS OF CONTINGENCY PLANS  
14 ON A HYPOTHETICAL, THERE WOULD BE ALL KINDS OF THINGS  
15 THEY'D BE DOING.

01:46PM

16 THEY MIGHT SET UP A DIFFERENT BUILDING  
17 IN BOSTON BECAUSE THEY'RE WORRIED ABOUT AN EARTHQUAKE  
18 IN LOS ANGELES.

19 I WASN'T GOING ANYWHERE. THEY DIDN'T  
20 HAVE TO BE CONCERNED ABOUT THE BUSINESS, IT BEING LEFT  
21 IN THE LURCH. THEY DIDN'T HAVE TO BE CONCERNED ABOUT  
22 THAT.

01:46PM

23 BY MR. QUINN:

24 Q WE'RE GOING TO GET TO WHETHER YOU WERE GOING  
25 ANYWHERE. THAT WASN'T MY QUESTION.

01:46PM

26 MY QUESTION WAS, IF THAT 70 PERCENT OF  
27 THE ASSETS UNDER MANAGEMENT LEFT OVERNIGHT, THAT WOULD  
28 HAVE A DEVASTATING EFFECT ON TCW AND THE 600 EMPLOYEES,

1 TRUE?

2 A NOT NECESSARILY.

3 IF IT WAS -- IF IT LEFT OVERNIGHT  
4 THROUGH A NEGOTIATED SEPARATION, IT WOULDN'T HAVE A  
5 DEVASTATING EFFECT AT ALL.

01:46PM

6 Q WELL, IN RESPONSE TO THIS E-MAIL WHERE  
7 MR. STERN TELLS -- OR MR. BARACH TELLS YOU MR. STERN  
8 HAS REACHED OUT TO HIM AND SAID, LET'S HAVE LUNCH,  
9 YOU'RE IMPORTANT, YOU'RE VALUABLE, YOUR RESPONSE, SIR,  
10 IS: I CAN STRANGLE THEM.

01:47PM

11 RIGHT?

12 A FOR TREATING PHIL THIS WAY, BECAUSE THEY  
13 BASICALLY ARE TRYING -- IT'S CLEAR TO US THAT THEY'RE  
14 THINKING OF FIRING ME OR GETTING RID OF ME AND -- AND  
15 THINKING THAT SOMEHOW PHIL WOULD GO ALONG WITH THAT  
16 PLAN.

01:47PM

17 AND PHIL DOESN'T LIKE THAT PLAN, EITHER  
18 ANY MORE THAN I DO. AND I THINK TO BE NOT FORTHCOMING,  
19 THEY SHOULD -- TO ACT LIKE IT'S JUST A COUPLE GUYS  
20 TALKING LIKE WE'RE OLD FRIENDS, THEY SHOULD HAVE  
21 TREATED PHIL WITH RESPECT, AND SAID, WE WANT TO GET RID  
22 OF JEFFREY. WE WANT YOU TO TAKE IT OVER.

01:47PM

23 INSTEAD OF THIS, SORT OF INSULTING TO  
24 PHIL. I THOUGHT THIS WAS INSULTING TO PHIL. ACTING  
25 LIKE HE COULDN'T SEE THROUGH WHAT THEY WERE DOING.

01:48PM

26 Q INSULTING TO SAY YOU'RE IMPORTANT, YOU'RE  
27 VALUABLE, LET'S HAVE LUNCH?

28 A IT'S DISINGENUOUS I THOUGHT. I FELT HE DID

1 TOO.

2 Q DISINGENUOUS. YOU WROTE TO MR. BARACH ON THE  
3 FIRST PAGE, MAY 29TH. YOUR RESPONSE HERE, FURTHER IN  
4 THE E-MAIL TRAIN, YOU SAY:

5 JUST AS YOU HAVE BENEFITED FROM  
6 OUR ASSOCIATION --

01:48PM

7 YOU'RE WRITING TO BARACH, RIGHT?

8 A YES.

9 Q (READING):

10 IT IS AN UNDENIABLE FACT, OUR  
11 ASSOCIATION HAS TAKEN BOTH YOU AND  
12 ME TO THE PLACE WE FIND OURSELVES  
13 IN TODAY. IT'S A PRETTY DAMN GOOD  
14 PLACE. IF I HAVEN'T QUITE SAID IT  
15 THIS WAY BEFORE, I APOLOGIZE.

01:48PM

16 THANK YOU. YOU ARE THE BEST  
17 PARTNER I EVER COULD HAVE HOPED  
18 FOR. IT'S BEEN A GAUNTLET OF  
19 TRIALS AND TRIBULATIONS AND BARBS  
20 AND ARROWS EVEN FROM THOSE WHO ARE  
21 SUPPOSED TO BE OUR SUPPORTERS. BUT  
22 HERE WE ARE, AND I WILL NEVER TRUST  
23 ANYONE THE WAY I HAVE TRUSTED YOU.  
24 AND CAN STILL TRUST YOU TO LEAD THE  
25 SHIP WHEN I'M AWAY.

01:48PM

01:48PM

01:49PM

26 THAT'S WHAT YOU WROTE?

27 A I SAID DARNED. NOT DAMNED.

28 Q OKAY.

1                   YOU'RE TRYING TO SWEET-TALK MR. BARACH  
2 AT THIS POINT, AREN'T YOU?

3           A       NO, I'M NOT. I'M NOT -- I'M NOT GOOD AT  
4 TELLING PEOPLE HOW MUCH I APPRECIATE THEM EVERY DAY.  
5 I'M A DEMANDING PERSON. AND THIS WAS HEARTFELT.

01:49PM

6           Q       ALL RIGHT.

7                   WE'LL SEE.

8           MR. HELM: ARGUMENTATIVE, YOUR HONOR.  
9 COLLOQUY.

10           THE COURT: LET'S JUST ASK QUESTIONS.

01:49PM

11           MR. QUINN: OKAY.

12           Q       YOU SAY:

13                   IF I HAVEN'T SAID IT QUITE THIS  
14 WAY BEFORE.

15                   YOU WOULD KNOW IF YOU'D SAID IT THIS WAY  
16 BEFORE, WOULDN'T YOU? YOU WOULD KNOW?

01:49PM

17           A       NO.

18           Q       HIS RESPONSE TO YOU IS: I MEAN WHAT YOU SAID  
19 TO HIM WORKED, DIDN'T IT?

20           A       I DON'T KNOW WHAT YOU MEAN BY WORKED.

01:50PM

21           Q       LET'S READ HIS RESPONSE. HE SAYS:

22                   I ALWAYS THOUGHT, HOPED, YOU  
23 FELT THAT WAY.

24                   HE AT LEAST APPARENTLY CAN'T REMEMBER  
25 YOU SAYING -- EVER SAYING ANYTHING TO HIM LIKE THAT  
26 BEFORE. ISN'T THAT HOW YOU INTERPRETED THAT?

01:50PM

27                   I ALREADY TOLD YOU I'M NOT THE GREATEST  
28 PERSON AT -- AT TELLING PEOPLE THAT THEY DID A GREAT

1 JOB.

2 I -- AND -- I'M NOT THE WARMEST AND  
3 FUZZIEST PERSON.

4 Q SO HE SAYS --

5 A I'M NOT GOOD AT THAT STUFF. BUT THERE HAVE  
6 BEEN MANY TIMES THAT PHIL AND I WENT THROUGH HARD TIMES  
7 TOGETHER THAT HE HUGGED ME. I CRIED WITH HIM. I'M  
8 TELLING YOU, PHIL AND I HAVE A LONG HISTORY TOGETHER.

01:50PM

9 AND I TOLD HIM QUITE A FEW TIMES, NOT IN  
10 THAT WAY, THAT -- THAT I WAS VERY PLEASED TO BE HIS  
11 PARTNER. AND I STILL AM.

01:50PM

12 Q SO WHAT HE WROTE BACK IS:

13 I ALWAYS THOUGHT, HOPED THAT YOU  
14 FELT THAT WAY, BUT WONDERFUL TO  
15 HAVE IT EXPRESSED DIRECTLY. I  
16 APPRECIATE IT. WE'RE IN A GOOD  
17 PLACE. AND IS JUST GOING TO GET  
18 BETTER. YOUR FRIEND AND PARTNER,  
19 PHIL.

01:51PM

20 THAT'S WHAT HE RESPONDED?

01:51PM

21 A YES.

22 Q TAKE A LOOK, PLEASE, AT EXHIBIT 188. ANOTHER  
23 E-MAIL YOU WROTE THAT SAME DAY, MAY 29.

24 THIS IS AN E-MAIL BETWEEN YOU AND  
25 MR. ATTANASIO.

01:51PM

26 A I CAN'T READ IT.

27 Q DO YOU HAVE IT BEFORE YOU?

28 A OKAY. THERE IT IS.

1 Q DO YOU HAVE THE HARD COPY BEFORE YOU, SIR?

2 A YEAH, I CAN'T READ IT. I CAN READ IT ON THE  
3 SCREEN, THOUGH.

4 MR. QUINN: OKAY.

5 I OFFER THIS, YOUR HONOR.

01:51PM

6 MR. HELM: NO OBJECTION.

7 THE COURT:

8

9 (EXHIBIT 188 ADMITTED.)+

10

01:51PM

11 BY MR. QUINN:

12 Q THAT SAME DAY YOU WRITE TO MR. ATTANASIO,  
13 RIGHT? CORRECT, SIR?

14 A THERE'S A LOT OF E-MAILS ON THIS DAY. AND  
15 I'M -- I WANT TO MAKE SURE I UNDERSTAND THE SEQUENCE.

01:51PM

16 Q AT THIS POINT, I'M NOT REALLY FOCUSING ON THE  
17 SEQUENCE.

18 A WELL, I THINK IT'S IMPORTANT I UNDERSTAND THE  
19 SEQUENCE.

20 Q WE'LL GET TO THAT.

01:52PM

21 MY QUESTION IS, WHAT YOU WROTE HERE IS:

22 MORE IMPORTANTLY STERN AND DAY  
23 SPENT THE LATE AFTERNOON CALLING MY  
24 B TEAM TO TRY TO SWEET TALK THEM.  
25 THEY HAVE WRITTEN US OFF AT LEAST  
26 IN AN EXPLORATORY WAY. THEY ARE  
27 TRYING TO MOUNT A COUNTEROFFENSIVE.  
28 THE WAR IS ON.

01:52PM

1                    THAT'S WHAT YOU WROTE, RIGHT?

2            A        YES.

3            Q        SO, MR. STERN'S COMING BACK, HE REACHES OUT TO  
4 YOUR NO. 2, SAYS YOU'RE IMPORTANT, YOU'RE VALUABLE,  
5 LET'S HAVE LUNCH, AND AS FAR AS YOU'RE CONCERNED,  
6 THAT'S WAR, RIGHT?

01:52PM

7            A        WE'D HAD A CONTENTIOUS MEETING WITH ATTANASIO  
8 WITH STERN AND DAY.

9                    AND PARTICULARLY ATTANASIO HAD HIS HEELS  
10 DUG IN VERY HARD ON STERN NOT COMING BACK AS CEO.

01:52PM

11                    AND I FELT THAT THEY WERE FIGHTING  
12 AGAINST US AT THIS POINT WITH A COUNTEROFFENSIVE  
13 AGAINST ATTANASIO'S DESIRE THAT I SHARED RESISTING  
14 STERN COMING BACK.

15                    AND IT SEEMED LIKE THEY -- THEY WERE  
16 DIVIDING AND CONQUERING AND ATTACKING ME. THAT'S WHAT  
17 THE WAR IS ON MEANS.

01:53PM

18            Q        WHAT YOU'RE REALLY WORRIED ABOUT IS, IF  
19 MR. STERN CAN FORM A RELATIONSHIP WITH MR. BARACH, HE  
20 WOULD HAVE SOMEBODY THERE TO RUN THE BUSINESS IF YOU  
21 LEFT.

01:53PM

22                    THAT'S WHAT YOU WERE WORRIED ABOUT;  
23 ISN'T THAT TRUE?

24            A        I WASN'T WORRIED ABOUT THAT AT ALL.

25            Q        OKAY.

01:53PM

26            A        BECAUSE I KNOW -- I KNOW THE RELATIONSHIP WITH  
27 PHIL AND I. AND IT'S NOT GOING TO WORK. AND IT DIDN'T  
28 WORK.

1 Q WELL, YOU SAY HERE --

2 A I TRIED TO TELL MR. STERN THAT OVER AND OVER  
3 AGAIN.

4 Q SIR, YOU SAID THAT THEY SPENT THE AFTERNOON  
5 CALLING MY B TEAM.

01:53PM

6 WHO'S YOUR B TEAM?

7 A THEY CALLED PHIL -- AND PHIL -- PHIL -- I  
8 CALLED PHIL THE NO. 2 GUY. B'S AFTER A. IT'S THE B  
9 TEAM.

10 Q WHO'S THE A TEAM?

01:54PM

11 A I AM.

12 Q YOU SAY: THEY ARE TRYING TO MOUNT A  
13 COUNTEROFFENSIVE.

14 A RIGHT.

15 Q SO, WHAT'S THE OFFENSIVE --

01:54PM

16 A ATTANASIO AND I HAD HAD WITH STERN AND DAY.  
17 THAT'S WHAT THEY THOUGHT THE OFFENSIVE.

18 Q YOU WERE VERY CONCERNED THAT MR. STERN HAD  
19 REACHED OUT TO MR. BARACH?

20 A NO. I WASN'T VERY CONCERNED. I WAS CONCERNED  
21 THAT HE WAS ACTING IN A WAY THAT SEEMED TO BE WRITING  
22 ME OFF AND PUSHING ME OUT OF THE FIRM. THAT'S WHAT I'M  
23 CONCERNED ABOUT.

01:54PM

24 Q SO YOU SAY THAT MR. STERN WAS TRYING TO SWEET  
25 TALK YOUR B TEAM?

01:54PM

26 MR. HELM: ASKED AND ANSWERED.

27 THE COURT: SUSTAINED.

28 MR. QUINN: LET'S GO BACK TO EXHIBIT 19 --

1 191. THAT LAST PARAGRAPH. JUST AS YOU HAVE BENEFITED  
2 FROM OUR ASSOCIATION --

3 Q WERE YOU TRYING HERE -- YOU'RE SAYING THINGS  
4 THAT YOU'RE NOT SURE WHETHER YOU'VE EVER QUITE SAID IT  
5 BEFORE. THANK YOU. I TRUST YOU.

01:55PM

6 WERE YOU TRYING TO SWEET-TALK  
7 MR. BARACH?

8 A I WAS TRYING TO TELL HIM HOW I FELT ABOUT HIM,  
9 YEAH.

10 Q LET'S TAKE A LOOK NOW AT EXHIBIT 238. THIS IS  
11 A SERIES OF E-MAILS BETWEEN GARRETT WALLS, WHO'S BEEN A  
12 WITNESS HERE IN THIS, TRIAL AND YOU AND MR. SANTA ANA,  
13 CORRECT?

01:55PM

14 A I DON'T SEE GARRETT WALLS. I SEE SANTA ANA  
15 AND ME.

01:55PM

16 MR. QUINN: I'D OFFER THIS, YOUR HONOR.

17 MR. HELM: NO OBJECTION.

18 THE COURT: IT WILL BE ADMITTED.

19

20 (EXHIBIT 238 ADMITTED.)+

01:55PM

21

22 BY MR. QUINN:

23 Q WE CAN TURN TO PAGE 238-2. JUST THE BOTTOM  
24 HALF. I THINK YOU'LL SEE AN E-MAIL THERE FROM  
25 MR. WALLS.

01:55PM

26 DO YOU RECALL WHAT WAS HAPPENING HERE?  
27 ONE OF THE INVESTORS WAS THE UNIVERSITY OF CALIFORNIA  
28 REGENTS.

1 DO YOU RECALL THAT?

2 A INVESTORS IN WHAT NOW?

3 Q IN ONE OF YOUR FUNDS, UCR?

4 A WE MANAGED A -- AN ACCOUNT FOR U.C. REGENTS  
5 FOR ABOUT 20 YEARS.

01:56PM

6 Q ALL RIGHT.

7 WHAT MR. WALLS IS SAYING HERE IS THAT  
8 SOMEBODY AT -- THIS CLIENT, UNIVERSITY OF CALIFORNIA  
9 REGENTS, WANTED TO SPEAK WITH MR. BARACH.

10 DO YOU RECALL THAT?

01:56PM

11 A NO.

12 Q WELL, DO YOU SEE THAT HERE, HE WRITES --  
13 MR. WALLS WRITES:

14 THE PRIMARY PURPOSE OF SPEAKING  
15 WITH PHIL IS TO GET TO KNOW ANOTHER  
16 SENIOR MEMBER OF THE TEAM TO  
17 ALLEVIATE ANY OF UCR'S CONCERNS  
18 ABOUT KEY MAN RISK.

01:56PM

19 DO YOU SEE THAT?

20 A YES.

01:56PM

21 Q I MEAN, THEY WANTED TO DISCUSS, YOU KNOW, WHO  
22 ELSE WAS ON THE TEAM. IS THERE ANYBODY THERE BESIDES  
23 JEFFREY GUNDLACH, BASICALLY, RIGHT?

24 A WELL, THEY WANTED TO GET TO KNOW ANOTHER  
25 SENIOR MEMBER OF THE TEAM TO ALLEVIATE ANY OF THEIR  
26 CONCERNS ABOUT KEY MANAGERS.

01:56PM

27 Q YOU WERE VERY CONCERNED ABOUT THAT?

28 A NO.

1 Q YOU WERE VERY CONCERNED THAT THIS CLIENT WOULD  
2 THINK THAT MR. BARACH IS A CAPABLE PERSON WHO COULD RUN  
3 FUNDS AND MAKE DECISIONS WITHOUT YOU, TRUE?

4 A NO.

5 Q WELL, LET'S TAKE A LOOK. THE NEXT E-MAIL, AN 01:57PM  
6 E-MAIL FROM YOU TO MR. SANTA ANA, DATED AUGUST 4TH, AND  
7 YOU TELL MR. SANTA ANA -- I MEAN, IN YOUR EXPERIENCE,  
8 DOES MR. SANTA ANA PRETTY MUCH ALWAYS DO THE THINGS YOU  
9 ASK HIM TO?

10 A I DON'T KNOW ABOUT THAT. HE DID -- HE 01:57PM  
11 PERFORMED HIS JOB CAPABLY. AND I DON'T REMEMBER HIM  
12 EVER NOT DOING THINGS HE WAS -- WAS ASKED OR REQUIRED  
13 TO DO.

14 Q WHAT YOU TELL MR. SANTA ANA, YOU TELL HIM HOW  
15 YOU WANT HIM TO MAKE SURE THIS CALL GOES DOWN, RIGHT? 01:57PM

16 A OKAY. I -- IF YOU SAY SO. I'M -- I'M SORT OF  
17 READING IT ALONG HERE.

18 Q LET'S READ IT. IT SAYS --

19 A OKAY.

20 THE COURT: LET HIM READ IT, PLEASE, 01:58PM  
21 MR. QUINN. AND THEN YOU CAN ASK HIM A QUESTION.

22 MR. QUINN: I WAS GOING TO READ IT OUT LOUD,  
23 YOUR HONOR.

24 THE WITNESS: OKAY.

25 BY MR. QUINN:

26 Q YOU TELL MR. SANTA ANA:

27 I WANT YOU ON THIS CALL AND I  
28 WANT IT UNDERSTOOD THAT THE TRUTH

01:57PM

01:57PM

01:57PM

01:58PM

01:58PM

1 OF MY PRIMARY ROLE IS TO BE  
2 COMMUNICATED. I DO NOT WANT SOME,  
3 OH, NO PROBLEM, PHIL CAN DO  
4 JEFFREY'S JOB.  
5 LIE BEING TOLD.

01:58PM

6 IT GOES ON. YOU SAY:

7 BUT HE ISN'T THE GENERAL.

8 SOMETHING LIKE THAT.

9 DO YOU SEE THAT?

10 A YES.

01:58PM

11 Q SANTA ANA SAYS:

12 I HAVE NO PROBLEM MAKING SURE

13 THE TRUTH IS TOLD, EXCLAMATION

14 MARK. I KNOW THE DRILL.

15 RIGHT?

01:58PM

16 A YES.

17 Q AND THEN YOU SAY, AN E-MAIL UP AT THE TOP, YOU  
18 TELL MR. SANTA ANA:

19 OF COURSE PHIL WILL "GILD THE

20 LILY" REGARDING HIS IMPORTANCE AT

01:59PM

21 EVERY OPPORTUNITY AS HE HAS A

22 PROVEN TRACK RECORD OF DOING.

23 THERE NEEDS TO BE OTHER THAN

24 ELABORATION ON THE ISSUE OF EXACTLY

25 HOW BIG THE GAP IS BETWEEN THE

01:59PM

26 GENERAL AND THE CORPORAL AND THE

27 ANSWER TO THESE QUESTIONS. IT MUST

28 BE THE TRUTH.

1 WHO'S THE CORPORAL?

2 A WELL, IT'S GOING TO BE REFERRING TO PHIL.

3 I -- I -- I HAVE A HABIT OF --

4 MR. QUINN: YOUR HONOR.

5 THE WITNESS: -- HYPERBOLE WHEN I SAY  
6 IMPORTANCE TO EVERY OPPORTUNITY. I SHOULDN'T HAVE SAID  
7 THAT. IT'S NOT RIGHT.

01:59PM

8 MR. QUINN: IT'S NOT RIGHT.

9 Q WE SAW THE E-MAIL WHERE YOU TOLD HIM HE WAS  
10 YOUR PARTNER.

01:59PM

11 A WELL, YEAH, HE'S A PARTNER IN BUILDING THE  
12 BUSINESS. MAKE NO MISTAKE. THERE'S NO INCONSISTENCY  
13 HERE. PHIL IS A VERY, VERY CAPABLE MANAGER OF MONEY  
14 AND MORTGAGES. HE LIKES TO TELL PEOPLE HE'D BE THE  
15 HEAD OF ANY OTHER GROUP IN THE COUNTRY, BUT NOT  
16 DOUBLELINE.

01:59PM

17 Q USUALLY, THERE'S SOME LEVELS IN THE RANK  
18 BETWEEN GENERAL AND CORPORAL?

19 A I DON'T KNOW WHAT THE DIFFERENCE IS, ACTUALLY.  
20 I'M NOT -- I DON'T KNOW WHAT GOES UNDER GENERAL.

02:00PM

21 Q MR. SANTA ANA RESPONDS TO YOU. HE SAYS:

22 MOST DEFINITELY, EXCLAMATION

23 MARK. WITH YOUR SUPPORT AND

24 BACKING, I CAN DO ANYTHING.

25 RIGHT? THAT'S WHAT HE WROTE?

02:00PM

26 A YEAH.

27 Q AND THEN YOU RESPOND TO THAT. YOU SAY:

28 THE GUIDING PRINCIPLE WE NEED TO

1 FOLLOW IS REALLY SIMPLE. THE  
2 TRUTH. WE NEED TO TELL THE TRUTH.  
3 ALL THE TIME, EVERY TIME.  
4 INDIFFERENT TO THE DAMAGE THAT  
5 MIGHT BE DONE TO EGOS OR  
6 ORGANIZATIONAL CONSTRUCTS, WHETHER  
7 THEY BE THOSE OF OUR ENEMIES OR  
8 THOSE MOST DEAR TO US PERSONALLY.  
9 RIGHT.

02:00PM

02:00PM

10 WHO ARE THE ENEMIES YOU'RE REFERRING TO?

11 A I'M NOT REFERRING TO ANYBODY. THIS IS VERY --  
12 THIS IS -- IT ALMOST SOUNDS LIKE A SPEECH OR SOMETHING.  
13 BUT I -- I -- I AM A BIG BELIEVER IN TELLING THE TRUTH.  
14 AND THAT'S WHAT I'M TRYING TO GET ACROSS HERE. EVEN  
15 WHEN IT'S NOT SUPER CONVENIENT.

02:01PM

16 Q RIGHT.

17 A ONE OF MY BIG HANG-UPS WITH TCW, THEY WOULDN'T  
18 TELL THE TRUTH TO PEOPLE.

19 Q SIR, DID YOU TELL MR. BARACH THE TRUTH, THAT  
20 YOU REGARDED HIM NOT AS A PARTNER, BUT A CORPORAL, AND  
21 THAT HE WOULD "GILD THE LILY" AND EMBELLISH HIS OWN  
22 ROLE AT EVERY OCCASION?

02:01PM

23 DID YOU EVER TELL HIM THAT?

24 A I -- IN THOSE WORDS, CLEARLY NOT.

25 I -- I -- I WORKED WITH PHIL FOR A VERY  
26 LONG TIME. I HOPE I WORK WITH HIM FOR A LOT LONGER.

02:01PM

27 Q SIR --

28 A I -- I DID NOT THINK OF PHIL AS SOME SORT OF

1 EMPLOYEE. I THINK OF PHIL AS AN IMPORTANT PARTNER.  
2 BUT IT'S TRUE THAT I THINK THAT -- AND I -- IT'S TRUE  
3 THAT THE STRATEGIES REALLY DEPEND ON ME.

4 AND PHIL -- PHIL PROBABLY COULDN'T RUN  
5 THEM WITH THE SAME RESULTS WITHOUT ME.

02:01PM

6 Q THERE WAS --

7 A THAT'S ALL THESE THINGS TOGETHER ARE TRYING TO  
8 GET ACROSS.

9 Q THAT *MORNING STAR* FIXED INCOME MANAGER OF THE  
10 YEAR AWARD, WHEN YOU -- YOU GOT IN 2006, RIGHT?

02:02PM

11 A YES.

12 Q ACTUALLY, YOU AND MR. BARACH WERE CO-NOMINEES  
13 FOR IT; ISN'T THAT TRUE? TWO NAMES?

14 A WELL, I'M NOT SURE. SOMETIMES *MORNING STAR*  
15 GAVE ME THE AWARD AND NOMINATION, AND SOMETIMES THEY  
16 GAVE IT TO PHIL. AND I, FOR EXAMPLE, I WAS NOMINATED  
17 FOR FIXED INCOME MANAGER OF THE DECADE, AND PHIL'S NAME  
18 WASN'T ON THAT ONE.

02:02PM

19 MR. QUINN: EXHIBIT 1936.

20 Q YOU SEE THIS ARTICLE LISTING THE NOMINEES FOR  
21 FIXED INCOME MANAGER OF THE YEAR IN 2006?

02:02PM

22 A I -- I DO.

23 MR. QUINN: I'D OFFER THAT.

24 MR. HELM: NO OBJECTION.

25 THE COURT: IT WILL BE ADMITTED.

02:02PM

26

27 (EXHIBIT 1936 ADMITTED.)+

28 ///

1 MR. QUINN: CAN WE BLOW UP THE BOTTOM.

2 Q DOES THIS REFRESH YOUR RECOLLECTION, SIR, THAT  
3 ACTUALLY THE NOMINATION FOR FIXED INCOME MANAGER OF THE  
4 YEAR WAS FOR YOU AND MR. BARACH?

5 A THAT'S WHAT THIS SAYS. BUT I MEAN, I'LL  
6 REPEAT IT.

7 MORNING STAR WAS INCONSISTENT IN  
8 THE WAY THEY DID THIS.

9 I THINK WHEN THEY ANNOUNCED THE AWARD  
10 AND THE PHYSICAL AWARD I THINK ONLY HAD MY NAME ON IT.

11 SO I DON'T KNOW. PHIL AND I, THE REASON  
12 IT'S THIS WAY, PHIL AND I WERE NAMED FUND MANAGERS IN  
13 THE PROSPECTUS FOR THE TOTAL RETURN BOND FUND AND --  
14 AND IF YOU PULL UP THE DOUBLELINE TOTAL RETURN BOND  
15 FUND THAT EXISTS TODAY, IT LISTS PHIL AND I, PORTFOLIO  
16 MANAGERS.

17 SO I CAN'T ANSWER TO WHAT *MORNING STAR*  
18 IS DOING, EXCEPT I WOULD POINT OUT THE WAY THEY DID  
19 THESE NOMINATIONS WAS INCONSISTENT --

20 Q SIR --

21 A -- OVER TIME.

22 Q DID YOU HAVE ANYTHING TO DO WITH THE FACT THAT  
23 THE NOMINATION WAS IN BOTH NAMES, BUT WHEN THE AWARD  
24 CAME OUT, IT WAS ONLY IN YOUR NAME?

25 A NO.

26 Q IT CERTAINLY DROVE YOU CRAZY WHEN -- WHEN  
27 PEOPLE INSIDE TCW GAVE MR. BARACH CREDIT, ANY CREDIT  
28 FOR THAT AWARD; ISN'T THAT TRUE?

02:03PM

02:03PM

02:03PM

02:03PM

02:03PM

1 A NO.

2 Q LET'S TAKE A LOOK.

3 A NO.

4 Q EXHIBIT 1840.

5 THIS IS AN E-MAIL EXCHANGE BETWEEN YOU  
6 AND MS. VANEVERY AND OTHERS?

02:04PM

7 A I CAN'T READ IT.

8 MR. QUINN: I'D OFFER THIS, YOUR HONOR.

9 THE COURT: ANY OBJECTION?

10 MR. HELM: JUST A MOMENT, YOUR HONOR.

02:04PM

11 (PAUSE) +

12

13 MR. HELM: RELEVANCE, 352, YOUR HONOR.

14 MR. QUINN: THIS IS THE LAST IN THIS STRING,  
15 YOUR HONOR.

02:04PM

16 THE COURT: HOLD ON A MINUTE.

17 THESE ARE E-MAILS DATED 3-17-08; IS THAT  
18 RIGHT?

19 MR. QUINN: YES, YOUR HONOR.

20 THE COURT: THEY'LL BE ADMITTED OVER  
21 OBJECTION.

02:05PM

22

23 (EXHIBIT 1840 ADMITTED.)+

24

25 BY MR. QUINN:

02:05PM

26 Q ON THE SECOND PAGE, IF WE COULD BLOW UP YOUR  
27 E-MAIL TO MS. VANEVERY.

28 YOU'RE COMMENTING ON A -- SOME TYPE OF

1 INTERNAL TCW PRESENTATION, RIGHT?

2 A IT'S AN E-MAIL TO BARBARA VANEVERY.

3 Q WHAT YOU WRITE:

4 THIS IS GOOD. I HATE TO  
5 NITPICK, AND I EVEN LESS LIKE  
6 LOOKING LIKE AN EGO MANIACAL  
7 NITPICKER, BUT *MORNING STAR* DID NOT  
8 GIVE THE 2006 F.I. MANAGER OF THE  
9 YEAR AWARD TO JG AND HIS  
10 CO-MANAGER, PB. PHIL BARACH,  
11 RIGHT?

02:05PM

02:05PM

12 A YES.

13 Q

14 THEY GAVE IT TO JG. FULL STOP.  
15 OUR DOCUMENTS MUST SAY THAT -- MUST  
16 SAY THAT, EXACTLY THAT. CAN YOU  
17 QUIETLY FIX THIS.  
18 CORRECT.

02:05PM

19 A YEAH.

20 Q IT WAS VERY IMPORTANT FOR YOUR -- THE POWER  
21 THAT YOU HAD, THE LEVERAGE YOU WANTED, THAT YOU BE  
22 PERCEIVED AS THE ONLY PERSON WHO WAS RESPONSIBLE FOR  
23 THE SUCCESS ON THE MORTGAGE-BACKED SECURITIES BUSINESS  
24 AT TCW, CORRECT?

02:05PM

25 A NO.

02:06PM

26 Q WOULD WE BE ABLE TO FIND AND GO THROUGH ALL  
27 THE E-MAILS HERE, WOULD WE BE ABLE TO FIND ANY E-MAILS  
28 FROM YOU TO, YOU KNOW, SOMEBODY OUTSIDE THE

1 MORTGAGE-BACKED SECURITIES BUSINESS PRAISING MR. BARACH  
2 OR ANYONE ELSE IN YOUR DEPARTMENT?

3 MR. HELM: OBJECT TO THE FORM OF THE QUESTION.

4 THE COURT: SUSTAINED.

5 I THINK WE'LL BREAK FOR THE DAY.

02:06PM

6 LADIES AND GENTLEMEN, PLEASE REMEMBER  
7 THE ADMONITION: YOU'RE NOT TO DISCUSS THE MATTER AMONG  
8 YOURSELVES OR WITH ANYONE ELSE OR FORM ANY OPINIONS OR  
9 CONCLUSIONS CONCERNING ANY ASPECT OF THE CASE UNTIL  
10 YOU'VE HEARD ALL THE EVIDENCE AND IT'S BEEN SUBMITTED  
11 TO YOU.

02:06PM

12 WE'LL RECONVENE MONDAY MORNING AT 8:30.  
13 HAVE A NICE WEEKEND. THANK YOU VERY  
14 MUCH.

15 MS. SITELIS. I RECEIVED THE MESSAGE  
16 THAT YOU LEFT. WE'LL ADDRESS IT FOR YOU. THANK YOU.

02:07PM

17  
18 YOU MAY STEP DOWN MR. GUNDLACH.

19  
20 (PAUSE) +

02:07PM

21  
22 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +  
23 THE COURT: WE'RE OUT OF THE PRESENCE OF THE  
24 JURY.

25 FIRST, ON MS. SITELIS. SHE HAS A  
26 POTENTIAL ISSUE. THE WEEK OF SEPTEMBER -- OR, EXCUSE  
27 ME, THE WEEK OF AUGUST 22.

02:07PM

28 WE CLEARLY CAN'T ALLOW HER TO BE GONE

1 THE WHOLE WEEK, BUT WE MAY TRY TO ACCOMMODATE HER. AND  
2 THERE MAY BE THE OTHER ISSUE ON THAT.

3 WE'LL DEAL WITH IT WHEN WE KNOW BETTER  
4 WHAT WE'RE DOING BETTER ON THE 23RD.

5 OTHER THAN THAT, DO WE HAVE ANY MORE  
6 DISCUSSION CONCERNING MR. PELAYO? WE REALLY NEED TO  
7 MAKE A DECISION ON THAT. AND I FEEL A LITTLE  
8 UNCOMFORTABLE, JUST --

02:08PM

9 MR. QUINN: WE HAVEN'T HAD A CHANCE TO FOCUS  
10 ON IT, YOUR HONOR. COULD WE DO THAT MONDAY?

02:08PM

11 MR. BRIAN: OR WE CAN --

12 THE COURT: I'D LIKE YOU TO FOCUS ON IT  
13 BETWEEN NOW AND MONDAY.

14 MR. QUINN: OF COURSE.

15 THE COURT: TELL ME FIRST THING ON MONDAY.

02:08PM

16 MR. BRIAN: I APOLOGIZE.

17 THE COURT: I UNDERSTAND THERE'S A LOT ON  
18 EVERYBODY'S PLATE. THAT'S FINE. BUT IT'S ALSO VERY  
19 FRUSTRATING TO MR. PELAYO. I THINK WE OWE HIM  
20 SOMETHING. TO TELL HIM, UNLESS I'VE LEFT HIM UP IN THE  
21 AIR, WE'RE DISCUSSING IT.

02:08PM

22 AND I TOLD HIM TO TALK TO HIS EMPLOYER.  
23 HE HAS TALKED TO HIS EMPLOYER WITHOUT A LOT OF SUCCESS,  
24 APPARENTLY.

25 WE NEED TO SAY YEA OR NAY OR TELL HIM  
26 SOMETHING ON MONDAY.

02:08PM

27 MR. BRIAN: HAS HE MADE CLEAR HE WOULD PREFER  
28 TO GET OFF THE JURY?

1 THE COURT: ABSOLUTELY. HE SAYS IT'S A  
2 SIGNIFICANT HARDSHIP TO HE AND HIS FAMILY NOT BEING  
3 PAID. SO --

4 MR. BRIAN: I ASKED THAT BECAUSE,  
5 NEVERTHELESS, HE'S BEEN VERY ATTENTIVE.

02:09PM

6 THE COURT: HE'S TRYING. I THINK HE'S  
7 STICKING IN THERE. BUT WE OWE HIM AN ANSWER.

8 IF THE ANSWER IS WE'RE NOT GOING TO LET  
9 HIM GO, THAT'S -- I CAN ACCEPT THAT. BUT I'D LIKE TO  
10 KNOW WHERE WE ALL SIT.

02:09PM

11 ANY OTHER MATTERS?

12 MR. BRIAN: NO, YOUR HONOR.

13 MR. QUINN: NO YOUR HONOR.

14 THE COURT: HAVE A NICE WEEKEND.

15 I'LL SEE YOU MONDAY.

02:09PM

16  
17 (AT 2:10 P.M. P.M., AN ADJOURNMENT  
18 WAS TAKEN UNTIL AUGUST 15, 2011  
19 AT 8:30A.M.)  
20  
21  
22  
23  
24  
25  
26  
27  
28