

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 17, 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

11 (FOLLOWING PROCEEDINGS WERE HELD IN CHAMBERS.)

12

13 THE COURT: WE'RE GOING TO GO ON THE RECORD IN
14 THE TCW GUNDLACH MATTER. WE'RE OUT OF THE PRESENCE OF
15 THE JURY, IN CHAMBERS, WITH COUNSEL AND WITH
16 MR. GUNDLACH PRESENT.

08:26AM

17 PLEASE RECALL, SIR, YOU HAVE BEEN
18 PREVIOUSLY SWORN, AND YOU ARE STILL UNDER OATH.

19 IT HAS COME TO THE COURT'S ATTENTION
20 THAT YOU HAD A CONTACT WITH ONE OR MORE JURORS
21 YESTERDAY.

08:26AM

22 CAN YOU EXPLAIN WHEN THAT HAPPENED,
23 WHERE IT HAPPENED, AND TELL US WHAT, IF ANYTHING, WAS
24 THE EXTENT OF ANY INTERACTION BETWEEN YOU AND ANY
25 JUROR?

08:26AM

26 THE WITNESS: YES. IT WAS AFTER COURT
27 YESTERDAY. FEW MINUTES AFTER THE COURT ENDED, I WENT
28 TO THE BATHROOM.

1 AND THEN I WAS GOING TO LEAVE, WENT IN
2 THE ELEVATOR. I LOOKED UP AND SAID, OH, THERE'S TWO
3 JURORS IN THE ELEVATOR WITH ME.

4 I HIT 12. I WAS GOING DOWN TO THE BREAK
5 ROOM. IT STARTS GOING DOWN, AND I LEANED AGAINST THE
6 ELEVATOR, AND ONE OF THE JURORS SAID TO ME, IT MUST BE
7 TOUGH GETTING THROUGH ALL THIS.

8 AND I SAID, IT MUST BE TOUGH SITTING
9 THROUGH ALL THESE DAYS.

10 THE COURT: WAS THERE ANY OTHER CONVERSATION
11 BETWEEN YOU AND THE JUROR?

12 THE WITNESS: NO.

13 THE COURT: CAN YOU IDENTIFY THE JURORS? CAN
14 YOU TELL US WHO THEY WERE?

15 THE WITNESS: ONE'S THE FELLOW WITH THE LONG
16 HAIR, THE LONG HAIR, I THINK HE HAS GLASSES.

17 THE COURT: JUROR EIGHT.

18 THE WITNESS: AND THE FELLOW THAT SITS NEXT TO
19 CLOSEST TO THE BOX.

20 THE COURT: IN THE CORNER?

21 THE WITNESS: THE FELLOW IN THE CORNER DIDN'T
22 SAY A WORD.

23 THE COURT: THE STATEMENT WAS MADE BY JUROR
24 NO. 8?

25 THE WITNESS: WITH THE LONG HAIR.

26 THE COURT: WITH THE LONGER HAIR?

27 THE WITNESS: ALL RIGHT.

28 THE COURT: I DON'T HAVE MY JUROR LIST.

08:26AM

08:26AM

08:27AM

08:27AM

08:27AM

1 MR. MADISON: JUROR 8, AND MICHAEL POWELL.

2 AND JUROR NO. 7 IS BUSTOS.

3 THE WITNESS: I WENT IN THE BREAK ROOM, AND I
4 SAID TO ONE OF THE MUNGER LAWYERS, I SAID, HEY, I JUST
5 RAN INTO A JUROR IN THE ELEVATOR AND --

08:27AM

6 MR. BRIAN: THAT'S ENOUGH.

7 THE COURT: I DON'T KNOW THAT -- WE DON'T WANT
8 TO KNOW WHAT YOU TOLD YOUR LAWYERS.

9 THE WITNESS: THAT'S ALL I SAID.

10 THE COURT: YOU UNDERSTAND THE CONCERN. AS I
11 SAID AT THE BEGINNING OF THE TRIAL, YOU MAY OR MAY NOT
12 HAVE BEEN PRESENT. EVEN THE MOST INNOCUOUS ENCOUNTER
13 SEEN FROM A DISTANCE CAN APPEAR INAPPROPRIATE.

08:27AM

14 THE WITNESS: YES.

15 THE COURT: THAT'S WHY WE BROUGHT YOU IN.

08:27AM

16 THE WITNESS: I WASN'T GOING TO SAY ANYTHING
17 TO HIM, BUT -- THESE GUYS SAY I'M THE MEANEST WEIRDO IN
18 THE WORLD -- I DON'T WANT TO STONEWALL THE GUY.

19 THE COURT: YOU DON'T NEED TO GO THERE.

20 AT THE END OF THE DAY, LAWYERS,
21 WITNESSES, PARTIES -- EVERYBODY -- HAVE TO JUST SAY
22 NOTHING.

08:28AM

23 THE WITNESS: YES.

24 THE COURT: YOU CAN'T HAVE ANY ENCOUNTER WITH
25 A JUROR. I'VE TOLD THE JURORS THAT, AND I MADE THE
26 COMMENT EARLIER, THAT THEY SHOULDN'T BELIEVE SOMEONE'S
27 BEING RUDE OR IN ANY WAY, BY THE FACT THEY DON'T
28 RESPOND.

08:28AM

1 I'M GOING TO ADMONISH THE JUROR AGAIN
2 THIS MORNING ON THIS ISSUE. AND WE JUST HAVE TO BE
3 CAREFUL ABOUT IT.

4 THE WITNESS: I UNDERSTAND.

5 MR. MADISON: MAY I INQUIRE OR ASK YOUR HONOR,
6 WAS ANYONE ELSE IN THE ELEVATOR?

08:28AM

7 THE COURT: WAS THERE ANY OTHER PEOPLE IN THE
8 ELEVATOR BESIDES THE TWO JURORS?

9 THE WITNESS: NO.

10 THE COURT: ANYTHING ELSE?

08:28AM

11 MR. BRIAN: I THINK THE RECORD SHOULD REFLECT,
12 YOUR HONOR, WE BROUGHT THIS TO THE ATTENTION OF
13 OPPOSING COUNSEL AND DISCLOSED IT TO THE COURT THIS
14 MORNING.

15 THE COURT: THE MATTER WAS BROUGHT UP BY THE
16 DEFENSE.

08:28AM

17 AND WE JUST WANT TO CLARIFY THE EXTENT
18 OF THE CONTACT. I WILL SAY AT THIS JUNCTURE, IT
19 APPEARS IT WAS NOT AN INAPPROPRIATE CONTACT. I DON'T
20 SEE ANY PREJUDICE COMING FROM IT, OR ANY EFFECT OF THE
21 CONTACT; BUT IT'S IMPORTANT THAT WE KNOW EXACTLY WHAT
22 WENT ON.

08:29AM

23 THE WITNESS: YES.

24 THE COURT: THANK YOU VERY MUCH.

25 MR. HELM: THANK YOU, YOUR HONOR.

08:29AM

26 THE COURT: ANYTHING ELSE YOU'D LIKE ON THE
27 RECORD?

28 MR. MADISON: I THINK THE QUESTION -- WHAT I

1 WROTE DOWN QUICKLY, AND SHE WOULD HAVE IT BETTER THAN
2 I, THE JUROR SAID, I FEEL BAD FOR YOU BEING PUT THROUGH
3 THIS. THAT'S A VERY TROUBLING STATEMENT. AND I THINK
4 YOU SHOULD ASK MR. POWELL, YOU KNOW BRING HIM INTO
5 CHAMBERS AND ASK HIM WHAT HE MEANT BY THAT.

08:29AM

6 I FEEL BAD YOU'VE BEEN SUED AND HAD TO
7 BE PUT THROUGH THIS LITIGATION, THAT WOULD CLEARLY
8 INDICATE HE'S FORMED AN OPINION ABOUT THE CASE, AND
9 SHOULD BE RELEASED.

10 MR. BRIAN: I DON'T THINK SO, YOUR HONOR. I
11 THINK THE CONTEXT IS, HE'S BEEN ON STAND FOR 2-1/2 OR
12 THREE DAYS. AND THE CONTEXT OF THE CONFESSION, IF IT
13 IS YOU'RE BEING PUT THROUGH THE QUESTIONING, NOT A
14 SYMPATHETIC OF A LAWSUIT OR FORMING ANY SIDES OF
15 ANYTHING.

08:29AM

16 MR. MADISON: WHAT IF I'M RIGHT AND BRAD'S
17 WRONG? SORRY.

08:30AM

18 MR. BRIAN: IT'S AN AWKWARD SITUATION.
19 THE PROBLEM WITH BRINGING THE JUROR IN,
20 IT SIGNALS TO THE JURORS HE'S DONE SOMETHING WRONG.
21 AND I THINK A GENERAL ADMONITION TO ALL THE JURORS
22 ABOUT CONTACT WITH THE PARTIES, COUNSEL OR ANYONE, OR
23 READING IN THE MEDIA, IS APPROPRIATE.

08:30AM

24 I CONTINUE TO BE VERY WORRIED ABOUT ALL
25 THE PRESS, THE CONVERSATIONS THAT ARE GOING OUTSIDE
26 RIGHT OUTSIDE THE DOORS BY COUNSEL AND PARTIES WITH THE
27 PRESS.

08:30AM

28 IT'S A BIGGER ISSUE THAN THIS. I DON'T

1 LIKE THE FACT THAT THE CONVERSATION TOOK PLACE, BUT I
2 DON'T THINK SINGLING OUT THE INDIVIDUAL IS THE WAY TO
3 GO.

4 MR. MADISON: YOUR HONOR.

5 MR. QUINN: HE IS THE INDIVIDUAL WHO MADE THE
6 REMARK. IT'S SUBJECT TO DIFFERENT INTERPRETATIONS.

08:30AM

7 WHY NOT FIND OUT? OTHERWISE, WE CAN
8 BOTH ARGUE AN INTERPRETATION OF WHAT HE SAID.

9 THE COURT: I'LL CONSIDER THIS. I WANT TO
10 LOOK INTO THE APPROPRIATENESS OF INQUIRY AND THE NEED
11 FOR INQUIRY. AND I'LL TRY TO HAVE THIS RESOLVED BY THE
12 END OF THE DAY.

08:30AM

13 MR. BRIAN: I APPRECIATE IT.

14 THE COURT: IF WE'LL REQUIRE OF THIS JUROR,
15 WE'LL DO IT AT THE END OF THE DAY.

08:31AM

16 MR. MADISON: OKAY. WE DID LOOK AT SOME OF
17 THE LAW. AND I WILL JUST TELL YOU PRETTY CLEARLY, YOU
18 HAVE THE SUPERVISORY POWER TO INQUIRE.

19 THE COURT: I SUSPECT I HAVE SOME DISCRETION
20 IN THE SUBJECT, BUT I WANT LOOK AT IT. AND I'LL TRY TO
21 DO THAT ON OUR BREAKS.

08:31AM

22 MR. MADISON: OF COURSE.

23 THE COURT: YOU --

24 MR. MADISON: YOU DON'T NEED OUR HELP ON THAT.

25 MR. BRIAN: I DO.

08:31AM

26 IF YOU HAVE LAW I NEED TO SEE IT.

27 THE COURT: I TRY TO STAY OUT OF THE LIBRARY,
28 BECAUSE THE DUST BOTHERS MY SINUSES; BUT I'M ABLE TO

1 USE THE COMPUTER.

2 MR. BRIAN: YOU'RE AHEAD.

3 MR. QUINN: COULD I HAVE TWO MINUTES, YOUR
4 HONOR?

5 THE COURT: YES. THANK YOU.

08:31AM

6 (RECESS.)

7

8 (FOLLOWING PROCEEDINGS WERE HELD IN
9 OPEN COURT WITH ALL PARTIES AND THE JURY.)

10

08:39AM

11 THE COURT: GOOD MORNING. TCW MATTER. ALL
12 MEMBERS OF THE JURY ARE PRESENT, AS ARE ALL COUNSEL.

13 LADIES AND GENTLEMEN, EVERY DAY, WHEN WE
14 CONCLUDE THE DAY, I GIVE YOU AN ADMONITION, AND I TELL
15 YOU THAT YOU MUST NOT DISCUSS THE CASE AMONG YOURSELVES
16 OR WITH ANYONE ELSE, OR FORM ANY OPINIONS OR
17 CONCLUSIONS CONCERNING ANY ASPECT OF THE CASE UNTIL
18 YOU'VE HEARD ALL THE EVIDENCE OF THE CASE, AND THE CASE
19 HAS BEEN SUBMITTED TO YOU.

08:39AM

20 AS THE CASE GOES ON, WHEN THAT
21 ADMONITION IS GIVEN TO YOU, MANY OF YOU ARE GETTING UP,
22 AND OTHERS ARE FEELING THE DAY'S OVER. IT IS AN
23 IMPORTANT ADMONITION. AND IT IS IMPORTANT THAT YOU NOT
24 DISCUSS THIS MATTER AMONG YOURSELVES, IN THE BREAK
25 ROOM, BEFORE WE GO TO TRIAL, START TRIAL.

08:39AM

08:39AM

26 ANY SUCH DISCUSSIONS ARE VIOLATIVE OF
27 YOUR OBLIGATIONS. AND ONE OF YOUR OBLIGATIONS IS THAT
28 YOU HEAR ALL THE EVIDENCE BEFORE YOU FORM ANY OPINION

1 OR CONCLUSIONS. I'M REMINDING YOU OF THIS BECAUSE IT'S
2 COME TO MY ATTENTION THERE MAY BE SOME INNOCUOUS
3 DISCUSSIONS HAD AMONG YOU AT DIFFERENT TIMES ABOUT THE
4 CASE. YOU REALLY NEED TO REFRAIN FROM DOING THAT.

5 ANOTHER ISSUE THAT HAS COME UP, WHICH WE 08:40AM
6 TALKED ABOUT AT THE COMMENCEMENT OF THE TRIAL, IS THAT
7 THE POSSIBILITY THAT IN THIS COURTHOUSE, ON THIS FLOOR
8 AND IN THE ELEVATORS, YOU MAY COME IN CONTACT WITH A
9 PARTY OR A WITNESS, OR AN ATTORNEY.

10 IT IS IMPERATIVE THAT YOU NOT HAVE ANY 08:40AM
11 CONVERSATION WITH, AND THAT YOU AVOID SUCH CONTACT.

12 AS I TOLD YOU AT THE OUTSET OF THE
13 TRIAL, IF YOU'RE AT ONE END OF THE HALL, AND BUMP INTO
14 SOMEBODY, AND MAKE AN INNOCUOUS STATEMENT ABOUT THE
15 WEATHER, HOW'S THE WEATHER? AND IF SOMEBODY AT THE 08:40AM
16 OTHER END OF THE HALL MAY SEE IT, IT MAY BE PERCEIVED
17 AS INAPPROPRIATE CONTENT ABOUT THE CASE, EVEN THOUGH
18 IT'S INNOCUOUS.

19 FOR THAT REASON, LAWYERS, WITNESSES AND
20 PARTIES ARE INSTRUCTED TO HAVE NO CONTACT WITH YOU. 08:41AM
21 AND YOU SHOULDN'T FEEL THEY'RE BEING RUDE OR OFFENSIVE
22 IF THEY DON'T RESPOND TO YOU. BECAUSE YOU SHOULDN'T BE
23 TALKING TO THEM.

24 YOU NEED TO KEEP THAT ADMONITION IN
25 MIND. WE HAVE A LOT OF PEOPLE HERE. THERE ARE A LOT 08:41AM
26 OF PEOPLE WATCHING THE TRIAL. THERE ARE A LOT OF
27 PEOPLE IN THE HALLS, AS YOU COME AND GO. BUT PLEASE
28 UNDERSTAND, IT'S VERY IMPORTANT THAT WE NOT HAVE ANY

1 APPEARANCE OF ANY INAPPROPRIATE CONTACT. AND THAT
2 THERE BE NO INAPPROPRIATE CONTACT.

3 FOR THAT REASON, I'M REMINDING YOU OF
4 THESE TWO THINGS. BECAUSE APPARENTLY THERE HAVE BEEN
5 SOME INSTANCES OF CONTACT BETWEEN PEOPLE. AND WE DON'T
6 WANT THAT TO OCCUR AGAIN.

08:41AM

7 WITH THAT SAID, MR. GUNDLACH IS ON THE
8 STAND.

9 YOU'VE PREVIOUSLY BEEN SWORN, AND YOU
10 ARE STILL UNDER OATH.

08:42AM

11 MR. HELM CAN'T WAIT TO START ASKING
12 QUESTIONS. SO YOU SAY PROCEED.

13 MR. HELM: THANK YOU, YOUR HONOR.

14 GOOD MORNING, LADIES AND GENTLEMEN.

08:42AM

15
16 CROSS-EXAMINATION +

17 BY MR. HELM:

18 Q WE WERE TALKING ABOUT STATEMENTS THAT YOU MADE
19 CONCERNING THE SMCF II FUND, DISTRESSED DEBT FUNDS.

20 DO YOU RECALL THAT?

08:42AM

21 A YES.

22 Q ONE OF THE STATEMENTS THAT MR. QUINN ASKED YOU
23 ABOUT WAS A STATEMENT THAT MET WEST WAS A RANDOM CHOICE
24 OR A RANDOM GROUP.

25 DO YOU RECALL SAYING SOMETHING TO THAT
26 EFFECT?

08:42AM

27 A YES.

28 Q WHAT DID YOU MEAN BY THAT?

1 A I MEANT THAT I -- IT WAS MY OPINION THAT TCW
2 PURCHASING MET WEST WAS REALLY DONE FOR REASONS OF
3 CONVENIENCE AND TIMING, AND RATHER THAN REALLY LOOKING
4 FOR THE BEST MORTGAGE-BACKED SECURITIES TALENTED TYPE
5 OF FIRM.

08:42AM

6 AS THE DECISION --

7 Q WHAT DO YOU MEAN, CONVENIENCE OR TIMING?

8 A WELL, THEY CLEARLY WERE WORKING ON LOOKING FOR
9 A PLACEMENT FOR ME. AND THEY HAD A TIME FRAME THEY
10 WERE WORKING IN.

08:43AM

11 ALSO, IT WAS CONVENIENT. THEY WERE A
12 LOCAL FIRM, INDEPENDENTLY OWNED, ONE THAT WAS
13 MARGINALLY PROFITABLE, I THINK; SO IT WAS JUST
14 CONVENIENT IN TERMS OF A FIT THAT WAY.

15 AND WHEN I SAY RANDOM, IT WAS SORT OF
16 LIKE WHAT I MEANT, IT WASN'T REALLY INVESTMENT
17 CONSIDERATIONS, IN MY OPINION, THAT DROVE THAT
18 DECISION, AS MUCH AS THE CONVENIENCE FACTOR.

08:43AM

19 Q AND WAS THAT AN OPINION THAT YOU HONESTLY HELD
20 AT THAT TIME?

08:43AM

21 A YES.

22 Q AND DID YOU FEEL YOU HAD A RIGHT TO EXPRESS
23 THAT OPINION TO THE OTHER INVESTORS?

24 A YES.

25 Q NOW, YOU MADE SOME STATEMENT ABOUT MET WEST
26 NOT HAVING THE SAME EXPERIENCE LEVEL THAT YOU DID IN
27 MORTGAGE-BACKED SECURITIES; IS THAT TRUE?

08:43AM

28 A YES.

1 Q AND I THINK WE TALKED AT THE END OF THE DAY
2 YESTERDAY ABOUT SOME STATEMENTS YOU MADE CONCERNING
3 WHETHER TCW MAY HAVE BREACHED ITS FIDUCIARY DUTIES IN
4 SELECTING THEM TO REPLACE YOU.

5 DO YOU RECALL THAT?

08:44AM

6 A YES.

7 Q DID YOU HAVE ANY FACTS TO BACK UP THE
8 STATEMENT THAT THEY, MET WEST, WAS NOT PERFORMING AT
9 THE SAME LEVEL AS YOUR GROUP WAS, AS OF 2009?

10 A NO.

08:44AM

11 Q WHAT FACTS DID YOU HAVE IN MIND?

12 A WELL, I COULD COMPARE THE PERFORMANCE RESULTS
13 IN THE TIME FRAME LEADING UP TO 2009 OF VARIOUS
14 STRATEGIES THAT WE RAN AT TCW, AND COMPARE THEM TO
15 COMPARABLE STRATEGIES RUN BY MET WEST.

08:44AM

16 Q COULD WE SHOW THE WITNESS AND THE COURT
17 EXHIBIT 686 PLEASE.

18 WHAT IS THAT, MR. GUNDLACH?

19 A IT'S A COMPARISON OF RETURNS BETWEEN TCW TOTAL
20 RETURN BOND FUND FOR COUPLE YEARS LEADING UP TO
21 DECEMBER OF '09, AND THE MET WEST TOTAL RETURN BOND
22 FUND FOR THAT SAME TIME PERIOD.

08:44AM

23 MR. HELM: MOVE ADMISSION OF 686.

24 THE COURT: NO OBJECTION.

25 MR. QUINN: NO OBJECTION.

08:45AM

26 THE COURT: IT WILL BE ADMITTED.

27

28 (EXHIBIT 686 ADMITTED.)+

1 BY MR. HELM:

2 Q ALL RIGHT. WHAT TIME PERIOD DID YOU CHOOSE --
3 IS THIS A PRINTOUT THAT YOU MADE YOURSELF,
4 MR. GUNDLACH?

5 A I DID, YES, FROM THE BLOOMBERG SYSTEM. 08:45AM

6 Q WHAT'S THE TIME PERIOD YOU CHOSE FOR THIS
7 COMPARISON?

8 A I DECIDED TO USE OCTOBER 9TH, 2007 THROUGH
9 DECEMBER 4TH, 2009.

10 Q DECEMBER 4TH, 2009, IS THE DAY YOU WERE FIRED? 08:45AM

11 A RIGHT.

12 Q WHY DID YOU CHOOSE THE 2007 DATE?

13 A THAT WAS THE TOP OF THE MARKET.

14 BASICALLY THE STOCK MARKET AND THE
15 RISKIER PARTS OF THE BOND MARKET HIT THEIR HIGHEST
16 PRICES ON THE MARKET THAT DAY. IT WAS A PERIOD THAT
17 INVOLVED A LOT OF RISK. 08:45AM

18 Q AND LET'S SEE WHAT THE VARIOUS LINES ARE.

19 THE GREEN LINE AT THE BOTTOM, WHAT IS
20 THAT SHOWING? 08:45AM

21 A THAT SHOWS THE GROWTH OF AN INVESTMENT IN THE
22 METROPOLITAN WEST TOTAL RETURN BOND FUND OVER THAT TIME
23 FRAME. IT STARTS AT THE ZERO LINE.

24 SO IF YOU START WITH \$100, YOU STARTED
25 ON THE LEFT OF 100. THEN IT GROWS. GREEN LINE GOES TO
26 A LOSS IN OCTOBER OF 2008, AND THEN RECOVERS WITH THE
27 SUBSEQUENT TIME PERIOD, AND ENDS UP WITH A RETURN OF A
28 LITTLE UNDER 18 PERCENT. 08:46AM

1 SO \$100 TURNS INTO 118 DOLLARS, ROUGHLY.

2 Q WHAT DOES THE WHITE LINE SHOW?

3 A IT SHOWS THE PERFORMANCE OF TCW TOTAL RETURN
4 BOND FUND THAT I WAS LEAD MANAGER OF FOR THAT SAME TIME
5 PERIOD.

08:46AM

6 YOU START WITH \$100. AND FIRST OF ALL,
7 YOU NEVER GO TO A LOSS. IT ALWAYS STAYS AT A PROFIT.
8 AND DURING THE PERIOD OF MAXIMUM RISK, IT'S A FIXED
9 INCOME AT A VERY SUBSTANTIAL PROFIT, VERSUS THE LOSS AT
10 METROPOLITAN WEST.

08:46AM

11 AND FOR THE FULLNESS OF THE TIME PERIOD,
12 \$100 TURNED INTO 126 AND A LITTLE CHANGE.

13 SO THE INVESTORS RECEIVED AN 8 PERCENT
14 HIGHER RETURN IN THE TOTAL RETURN BOND FUND AT TCW,
15 THIS COMPARED TO THE TOTAL RETURNED BOND FUND RUN BY
16 METROPOLITAN WEST.

08:46AM

17 Q FOR PERSPECTIVE, IS THAT A SIGNIFICANT
18 DIFFERENCE, IN THE INVESTING WORLD, FOR A COMPARISON OF
19 THIS KIND?

20 A IN THE WORLD OF BONDS, IT'S AN EXTRAORDINARILY
21 LARGE DIFFERENCE.

08:47AM

22 Q AND WERE THESE FACTS THAT YOU HAD IN MIND WHEN
23 YOU WERE MAKING STATEMENTS ABOUT THE RELATIVE
24 QUALIFICATIONS OF METROPOLITAN WEST VERSUS YOUR TEAM
25 THAT PREVIOUSLY WAS AT TCW, AND NOW IS AT DOUBLE LINE?

08:47AM

26 A ONE OF THEM.

27 WE COULD DO THE SAME TYPES OF
28 COMPARISONS ON OTHER INCOME FUNDS AND THAT ARE SIMILAR.

1 Q LET'S GO BACK TO EXHIBIT 686, TO REMIND US,
2 THIS IS THE COMPARISON BETWEEN WHICH FUNDS? JUST TELL
3 US, ORIENT US.

4 A THIS IS NOW BETWEEN THE DOUBLE LINE TOTAL
5 RETURN BOND FUND I STARTED APRIL 6TH OF 2010 AND THE 08:47AM
6 METROPOLITAN WEST RECORD, AFTER TAKING OVER THE TCW
7 TOTAL RETURN BOND FUND, FOR THE OVERLAPPING PERIOD
8 WHERE THEY WERE BOTH IN EXISTENCE.

9 Q ALL RIGHT.

10 SO THE BOTTOM LINE IS, THE TOTAL RETURN 08:48AM
11 BOND FUND AT TCW WHICH YOU USED TO MANAGE, AND NOW WAS
12 BEING MANAGED AFTER THIS POINT BY THE METROPOLITAN WEST
13 TEAM WHO CAME OVER?

14 A RIGHT.

15 Q CAN YOU QUANTIFY WHAT THE DIFFERENCE IN 08:48AM
16 PERFORMANCE HAS MEANT FOR THE TCW TOTAL RETURN BOND
17 FUND INVESTORS WHO REMAINED IN THAT FUND?

18 A YES.

19 Q WHAT IS THE DIFFERENCE?

20 A WELL, THE TCW TOTAL RETURN BOND FUND, AFTER 08:48AM
21 THE ASSETS EXITED SIGNIFICANTLY, THEN STABILIZED IN
22 APRIL OF '10, FURTHER AT A VALUE LITTLE GREATER THAN
23 \$5 BILLION OF FUND SIZE.

24 SO THE FUND FOR THAT WHOLE PERIOD WAS
25 GREATER THAN \$5 MILLION IN ASSETS. 08:48AM

26 BECAUSE THE RETURN DIFFERENCE WAS ABOUT
27 12 PERCENT, IT MEANS THAT THE INVESTORS IN THE TCW
28 TOTAL RETURN BOND FUND LOST OUT ON \$600 MILLION OF

1 RETURN THAT THEY WOULD HAVE HAD, HAD THEY BEEN UNDER
2 THE MANAGEMENT OF THE DOUBLE LINE TEAM.

3 Q DOES THAT PROVIDE ANY SUPPORT FOR YOUR
4 STATEMENT, THAT YOU THOUGHT TCW BREACHED ITS FIDUCIARY
5 DUTIES IN SUBSTITUTING YOUR TEAM OUT AND PUTTING IN THE
6 METROPOLITAN WEST TEAM TO MANAGE THE TOTAL RETURN BOND
7 FUND?

08:49AM

8 MR. QUINN: ARGUMENTATIVE.

9 THE COURT: SUSTAINED.

10 THERE'S NO RESPONSE. I'LL SUSTAIN THE
11 OBJECTION.

08:49AM

12 BY MR. HELM:

13 Q THE 600-MILLION-DOLLAR LOSS THAT YOU ARE
14 REFERRING TO, WHO BORE THAT LOSS?

15 MR. QUINN: ARGUMENTATIVE.

08:49AM

16 THE COURT: SUSTAINED.

17 BY MR. HELM:

18 Q THE \$600 FORGONE PROFITS THAT YOU JUST
19 MENTIONED, WHO SUSTAINED THAT FORGONE PROCESS?

20 MR. QUINN: SAME OBJECTION.

08:49AM

21 THE COURT: THE ANSWER -- HE'S ANSWERED THAT.
22 HE'S MADE THE STATEMENT.

23 SO I'LL SUSTAIN THE OBJECTION.

24 GO AHEAD.

25 BY MR. HELM:

08:49AM

26 Q DID TCW OR SOC-GEN SUFFER ANY
27 600-MILLION-DOLLAR LOSS AS A RESULT OF THE REPLACEMENT
28 OF THE MANAGERS?

1 A NO.

2 MR. QUINN: SAME OBJECTION.

3 THE COURT: I'LL OVERRULE THE OBJECTION.

4 THE WITNESS: NO.

5 MR. HELM: THANK YOU.

08:50AM

6

7

REDIRECT EXAMINATION +

8 BY MR. QUINN:

9 Q GOOD MORNING, MR. GUNDLACH. I KNOW YOU'VE

10 BEEN ON THE STAND FOR A WHILE. I'LL TRY TO MAKE THIS

11 BRIEF THIS MORNING.

08:50AM

12

IF WE COULD LOOK AT THE DEFENSE EXHIBIT

13 6119. IT'S A DEMONSTRATIVE EXHIBIT THAT WE'VE SEEN A

14 COUPLE OF TIMES.

15

ACTUALLY, I WAS LOOKING FOR THE ONE THAT

08:50AM

16 SHOWED FORMATION DATE -- IS IT 18?

17

THE COURT: 6119-A?

18

MR. QUINN: 6119-A.

19

Q WE LOOKED AT THIS YESTERDAY, MR. GUNDLACH.

20

IT SHOWED DOUBLE LINE BEING FORMED THERE

08:50AM

21 ON DECEMBER 14.

22

DO YOU SEE THAT?

23

A YES.

24

Q IN FACT, THAT WAS JUST A NAME CHANGE THAT TOOK

25 PLACE ON THAT DAY; ISN'T THAT CORRECT?

08:51AM

26

A NO.

27

Q LET'S TAKE A LOOK AT EXHIBIT 578, WHICH IS IN

28 EVIDENCE.

1 IF I MAY APPROACH THE WITNESS, YOUR
2 HONOR. THIS IS IN EVIDENCE, AND WE'RE TRYING TO FIND
3 IT ELECTRICALLY.

4 THE COURT: YES, YOU MAY.

5 DO YOU HAVE AN EXHIBIT NUMBER ON IT? 08:51AM

6 MR. QUINN: APPARENTLY I'VE WRITTEN DOWN THE
7 WRONG EXHIBIT NUMBER.

8 THE COURT: OKAY. THAT'S ALL RIGHT.

9 MR. QUINN: I'LL GET SOME HELP. IT'S THE NAME
10 CHANGE DOCUMENT. I KNOW IT'S IN EVIDENCE. 08:52AM

11 (PAUSE) +

12
13 MR. QUINN: WE'LL GET THE EXHIBIT, YOUR HONOR.

14 THE COURT: GO HEAD.

15 BY MR. QUINN: 08:52AM

16 Q MR. GUNDLACH, I'M SHOWING YOU A CERTIFICATE OF
17 AMENDMENT TO THE CERTIFICATION OF FORMATION OF ABLE
18 GRAPE LLC.

19 DO YOU SEE THAT THERE?

20 A YES. 08:52AM

21 Q THIS DOCUMENTS, IT SAYS, WHEREAS, PURSUANT TO
22 THE CERTIFICATE OF AMENDMENT, IT SAYS THE NAME OF THE
23 CORPORATION IS ABLE GRAPE LLC.

24 DO YOU SEE THAT?

25 A YES. 08:52AM

26 Q AND IT SAYS THAT: WHEREAS PURSUANT TO THE
27 CERTIFICATE OF AMENDMENT, THE NAME OF THE COMPANY SHALL
28 BE CHANGED TO DOUBLE LINE LLC.

1 DO YOU SEE THAT?

2 A YES.

3 Q AND THE DATE OF THAT IS DECEMBER 8TH, 2009,
4 CORRECT?

5 A I CAN'T SEE THAT.

08:52AM

6 YOU'RE -- YOUR PEN GOES RIGHT THROUGH
7 THE NUMBER.

8 IT LOOKS LIKE THE 8TH, YEAH.

9 Q WHAT HAPPENED IS, ON DECEMBER 8 -- YES, THAT'S
10 IT. EXHIBIT 589. I APOLOGIZE, YOUR HONOR.

08:53AM

11 THE COURT: NO PROBLEM.

12 BY MR. QUINN:

13 Q IF WE COULD, THIS IS A CERTIFICATE OF
14 AMENDMENT OF ABLE GRAPE.

15 AND WHAT IT INDICATES IS THAT THE
16 COMPANY, ABLE GRAPE, IS CHANGING ITS NAME, IN THE
17 SECOND WHEREAS CLAUSE, TO DOUBLE LINE LLC.

08:53AM

18 CORRECT?

19 MR. HELM: LACKS FOUNDATION OF THE WITNESS'S
20 KNOWLEDGE.

08:53AM

21 THE COURT: OVERRULED.

22 THE DOCUMENT'S IN EVIDENCE. IT SPEAKS
23 FOR ITSELF.

24 MR. QUINN: YES, YOUR HONOR.

25 Q THE DATE THERE IS CLEAR, DECEMBER 8TH?

08:53AM

26 A YES.

27 Q NOW, YOU INDICATED THAT YOU KNOW YOU DECIDED
28 AS OF DECEMBER 1 YOU WERE GOING TO TRY TO SOFTEN YOUR

1 ATTITUDE.

2 DO YOU RECALL SAYING THAT, YESTERDAY?

3 A NOT AS OF DECEMBER 1, NO.

4 Q WHAT IS YOUR RECOLLECTION AS TO WHEN YOU
5 DECIDED, AFTER SPEAKING WITH GOLDMAN, THAT YOU WERE
6 GOING TO SOFTEN YOUR ATTITUDE?

08:54AM

7 A AROUND THE MIDDLE OF NOVEMBER.

8 Q MIDDLE OF NOVEMBER? OKAY?

9 A AROUND THE MIDDLE OF NOVEMBER. 2009.

10 Q ALL RIGHT.

08:54AM

11 AFTER THE MIDDLE OF NOVEMBER, I MEAN,
12 YOU'RE AWARE, MANY STEPS WERE TAKEN TO SET UP ABLE
13 GRAPE, LATER DOUBLE LINE, INTO BUSINESS, CORRECT?

14 A I DON'T KNOW THERE WERE MANY STEPS TAKEN, NO.

15 Q WELL, I MEAN, LEADING UP, IF WE LOOK, AS OF
16 DECEMBER 1, YOU'RE ABOUT READY TO CLOSE ON THAT SPACE
17 OUT IN CENTURY CITY; ISN'T THAT TRUE?

08:54AM

18 A NO.

19 Q LET'S TAKE A LOOK AT EXHIBIT 1211. THAT'S IN
20 EVIDENCE.

08:54AM

21 AND THIS IS AN E-MAIL FROM MS. VANEVERY
22 TO YOU, DATED DECEMBER 1. AND SHE'S TELLING YOU THAT
23 SHE'S GOING TO MEET WITH THE PARTNERS FROM FIRST LOOK.

24 NOW FIRST LOOK, THOSE WERE THE PEOPLE
25 WHO WERE THE TENANTS IN THE SPACE THAT YOU WERE
26 FOCUSING ON, CORRECT?

08:55AM

27 A YES.

28 Q SHE SAYS HERE IS, SHE'S -- IT SAYS:

1 PARTNER WANTED TO MEET WITH YOU
2 TODAY AT 4:30. AND SHE SAYS, THAT
3 WASN'T GOING TO WORK. SHE WAS
4 GOING TO GO MEET WITH THEM.
5 AND SHE SAYS: YOU KNOW, IF FOR
6 SOME BIZARRE REASON, YOU COULD COME
7 CLOSE UP THE DEAL, THAT WOULD BE
8 GREAT.

08:55AM

9 YOU SEE THAT.

10 A YES.

08:55AM

11 Q AND AS OF THIS POINT, YOU WERE ALREADY
12 SELECTING YOU KNOW WHERE YOU WERE GOING TO HANG THE ART
13 IN THIS SPACE; ISN'T THAT TRUE?

14 A I THOUGHT ABOUT THAT, WHEN I LOOKED AT THE
15 SPACE.

08:55AM

16 Q WE HAVE IN EVIDENCE EXHIBIT 474, E-MAIL FROM
17 MS. VANEVERY TO YOU, ASKING ABOUT WHAT ARE THE HANGING
18 REQUIREMENTS FOR A JUDD STACK.

19 DO YOU SEE THAT?

20 A YES.

08:56AM

21 Q NOW, A JUDD STACK, THAT'S A PIECE OF
22 MINIMALIST CULTURE?

23 A YES.

24 Q YOU OWNED ONE OF THOSE?

25 A I STILL DO.

08:56AM

26 Q THAT'S A VERY IMPORTANT AND EXPENSIVE PIECE OF
27 ART, CORRECT?

28 MR. HELM: RELEVANCE, YOUR HONOR.

1 THE COURT: OVERRULED.

2 GO AHEAD.

3 THE WITNESS: I DON'T KNOW. IT'S -- I LIKE
4 IT.

5 BY MR. QUINN:

08:56AM

6 Q WELL, HOW MUCH DID YOU SPEND ON IT?

7 MR. HELM: OBJECTION, RELEVANCE.

8 THE COURT: SUSTAINED.

9 BY MR. QUINN:

10 Q JUST SO THE JURY HAS AN IDEA WHAT YOU'RE --
11 WE'RE TALKING ABOUT, EXHIBIT 2210, DASH 1 AND DASH 2.

08:56AM

12 ARE THESE JUDD STACKS?

13 A YES.

14 MR. QUINN: WE'D OFFER THESE TWO, YOUR HONOR,
15 PLEASE.

08:57AM

16 MR. HELM: NO OBJECTION.

17 THE COURT: IT WILL BE ADMITTED.

18

19 (EXHIBIT 2210 ADMITTED.) +

20

08:57AM

21 MR. QUINN: IF WE CAN SHOW AND GIVE THE JURY
22 AN IDEA OF WHAT A JUDD STACK LOOKS LIKE.

23 Q YOU GAVE MS. VANEVERY, IN NOVEMBER,
24 INFORMATION ABOUT HOW YOU HANG A JUDD STACK, RIGHT?

25 A YES.

08:57AM

26 Q -- AND?

27 A SORT OF.

28 I GAVE DIMENSIONS. I DON'T KNOW ABOUT

1 HOW.

2 Q YOU TALKED ABOUT THE SLEEVES AND WHAT THE,
3 WHAT TYPE OF BACKING THAT YOU WOULD NEED, RIGHT,
4 WHETHER IT NEEDED TO BE REINFORCED OR NOT?

5 A I DON'T KNOW. BUT -- I DON'T REMEMBER THAT. 08:57AM
6 BUT SURE, I GAVE HER THE DIMENSIONS AND STUFF, YEAH.

7 Q I MEAN, TAKE A LOOK AT EXHIBIT 474, IF WE GO
8 BACK TO THEM.

9 YOU DO TALK ABOUT THE UNITS. THEY SLIDE
10 INTO SLEEVES. THE WALL DOESN'T NEED REINFORCEMENTS,
11 PER SE. 08:57AM

12 BUT IT SHOULD HAVE, AS PART OF ITS
13 CONSTRUCTION, A COLUMN.

14 DO YOU SEE THAT?

15 A (NO AUDIBLE RESPONSE.) 08:58AM

16 Q DO YOU SEE WHAT I'M REFERRING TO, SIR?

17 A YES, YEAH.

18 Q 1246 EXHIBIT, DATED DECEMBER 1, WHICH
19 MS. VANEVERY TESTIFIED ABOUT.

20 AND SHE'S GIVING HERE, SPECIFIC 08:58AM
21 INFORMATION ABOUT DEMOLISHING A WALL AND REPLACING IT,
22 PUTTING THE WALL AS HIGH AS POSSIBLE, AT LEAST 10 FEET
23 6, FOR A JUDD STACK ART PIECE, RIGHT?

24 A RIGHT.

25 Q NOW, THIS WASN'T JUST A BUSINESS CONTINUITY 08:58AM
26 PLAN. IT WASN'T JUST LIKE EMERGENCY PLAN, WHERE YOU'D
27 HANG THE ART IF THERE WERE A BIG EARTHQUAKE, WAS IT?

28 MR. HELM: ARGUMENTATIVE.

1 THE COURT: SUSTAINED.

2 BY MR. QUINN:

3 Q THESE WERE, YOU WERE ACTUALLY PLANNING ON
4 WHERE THE ART WOULD GO IN THE SPACE --

5 A YES. IF WE TOOK THE SPACE OVER, WHICH WE
6 DIDN'T.

08:58AM

7 Q I THINK I JOTTED THIS DOWN YESTERDAY
8 CORRECTLY. I THINK YOU SAID THAT THE CLIENT GUIDELINES
9 ARE PARAMOUNT, CLIENT GUIDELINES ABOUT WHAT KIND OF
10 INVESTMENTS THEY WANT TO HAVE MADE?

08:59AM

11 A WELL, THEY'RE VERY IMPORTANT. YOU HAVE TO BE
12 IN COMPLIANCE WITH CLIENT GUIDELINES, OR ELSE YOUR
13 LIABILITY.

14 Q THOSE ARE ACTUALLY WRITTEN DOWN, RIGHT?

15 A YES.

08:59AM

16 Q AND THOSE THINGS THAT YOU SAID THE CLIENT
17 GUIDELINES THAT ARE PARAMOUNT IMPORTANCE, THOSE ARE
18 AMONG THE THINGS THAT WERE TAKEN; ISN'T THAT TRUE?

19 MR. HELM: LACKS FOUNDATION.

20 THE COURT: SUSTAINED.

08:59AM

21 BY MR. QUINN:

22 Q SIR, DO YOU KNOW WHETHER OR NOT THOSE WERE
23 ACTUALLY TAKEN BY MR. SANTA ANA, MS. VANEVERY, J.P.?

24 A NO.

25 Q YOU INDICATED, IN RESPONSE TO ONE OF
26 MR. HELM'S QUESTIONS, YOU REALLY DIDN'T DO ANYTHING
27 FASTER, IN TERMS OF GETTING DOUBLE LINE INTO BUSINESS,
28 AS A RESULT OF THE DOWNLOADING ACTIVITY.

08:59AM

1 I THINK YOU CANDIDLY TOLD US THAT YOU'RE
2 NOT A TECH PERSON YOURSELF; IS THAT CORRECT?

3 A I'M NOT A TECH PERSON.

4 Q AND I THINK YOU SAID THAT YOU DIDN'T EVEN HAVE
5 THE SECURITY ANALYZER LOADED ONTO YOUR COMPUTER, WHEN
6 YOU WERE AT TCW, IS THAT TRUE? 09:00AM

7 A THAT'S RIGHT.

8 Q AND ALTHOUGH YOU USED TERMS, WHEN YOU WERE
9 AT -- AT DOUBLE LINE IN DECEMBER, TO DESCRIBE WHAT THE
10 TECHNICAL PEOPLE WERE DOING, YOU'VE USED TERMS LIKE
11 REPLICATE, REBUILD, RECODE; YOU DON'T ACTUALLY KNOW
12 WHAT THE CODERS WERE DOING, DO YOU? 09:00AM

13 A SPECIFICALLY, NO. BUT I'VE HAD CONVERSATIONS
14 WITH THEM ABOUT THE -- YOU KNOW, THE BROAD
15 PARAMETERS -- 09:00AM

16 Q YOU ACTUALLY WEREN'T INVOLVED IN THE
17 PROGRAMMING.

18 AND YOU DON'T KNOW FOR EXAMPLE, HOW
19 CASEY MOORE WAS ACTUALLY CODING THE NEW DOUBLE LINE
20 PROPRIETARY SYSTEM? 09:00AM

21 A I DON'T KNOW HOW TO WRITE CODE.

22 Q AND WE TALKED, WHEN I WAS TALKING TO YOU
23 BEFORE ABOUT ACTUALLY, IN RESPONSE TO ONE OF MR. HELM'S
24 QUESTIONS, YOU DREW A DISTINCTION BETWEEN COPYING
25 VERSUS REWRITING. 09:01AM

26 DO YOU RECALL MR. HELM ASKING YOU ABOUT
27 THAT?

28 A YES.

1 Q AND IF YOU'RE COPYING SOMETHING WORD FOR WORD,
2 LIKE A HEMINGWAY NOVEL, WOULD YOU REGARD THAT AS
3 COPYING, OR REWRITING?

4 MR. HELM: INCOMPLETE HYPOTHETICAL.

5 THE COURT: OVERRULED. 09:01AM

6 THE WITNESS: WELL, I KNOW YOU'RE REFERRING TO
7 AN EXTEMPORANEOUS THING I SAID ABOUT THE SUN ALSO
8 RISES.

9 WE DIDN'T COPY ANYTHING OF TCW'S CODE OR
10 SYSTEMS, TO THE BEST OF MY KNOWLEDGE. 09:01AM

11 OBVIOUSLY, IF YOU WERE GOING TO DO
12 SOMETHING WORD FOR WORD, LITERALLY, THAT WOULD BE, IT
13 WOULD BE DIFFICULT TO DO OFF THE TOP OF YOUR HEAD.

14 BY MR. QUINN:

15 Q THAT WOULD BE COPYING? 09:01AM

16 A YEAH.

17 Q -- AND?

18 A WE DIDN'T DO THAT.

19 Q WHEN YOU HAD THAT CALL, AND YOU TALKED ABOUT
20 THE HEMINGWAY NOVEL, THE SUN ALSO RISES, YOU SAID IF I
21 WROTE IT ONCE, I COULD WRITE IT AGAIN, WORD FOR WORD? 09:01AM

22 A I DIDN'T MEAN THAT.

23 Q ALL RIGHT?

24 A THE METAPHOR, OBVIOUSLY, IF HEMINGWAY WROTE
25 THE SUN ALSO RISES, IT WOULD BE DIFFERENT WHEN HE
26 REWROTE IT; BUT THE CHARACTERS WOULD BE LARGELY THE
27 SAME, PLOT TERMS LARGELY THE SAME, AND IT WOULD BE VERY
28 UNLIKELY HE COULD DO IT WORD FOR WORD. 09:02AM

1 THAT'S WHAT WE MEANT, IN TERMS OF THE
2 BUILDING DATA SYSTEM.

3 Q ALL RIGHT.

4 I UNDERSTAND THAT'S WHAT YOU'RE TELLING
5 US NOW, SIR. THAT'S WHAT YOU MEANT.

09:02AM

6 BUT ON THAT CALL, WE ACTUALLY REFERRED
7 TO REWRITING IT WORD FOR WORD, YOU REFERRED TO IT --
8 RIGHT?

9 MR. HELM: ASKED AND ANSWERED.

10 THE COURT: SUSTAINED.

09:02AM

11 BY MR. QUINN:

12 Q AGAIN, ON THIS ISSUE ABOUT WHETHER YOU GOT ANY
13 HEAD START, WE HAVE EXHIBIT 430, IN EVIDENCE, E-MAIL
14 FROM MR. SANTA ANA TO MR. WARD.

15 YOU INDICATED THAT YOU GOT THE
16 REGISTRATION FOR DOUBLE LINE FROM THE SEC, I THINK YOU
17 SAID, IN RECORD TIME?

09:02AM

18 A I THINK SO.

19 Q AND HERE IS AN E-MAIL FROM MR. SANTA ANA TO
20 MR. WARD, OR MR. WARD'S ASKING FOR A COMPREHENSIVE
21 LIST. THIS IS BACK IN NOVEMBER. ALL OF THE ACCOUNTS
22 AND FUNDS MANAGED BY THE GROUP.

09:03AM

23 I NEED TO MAKE SURE I HAVE ALL OUR BASES
24 COVERED FOR THE FILINGS.

25 DO YOU SEE THAT?

09:03AM

26 A YES.

27 Q NOW, I TAKE IT YOU'VE TOLD US YOU ACTUALLY
28 WEREN'T INVOLVED WITH MR. WARD IN PREPARING THE

1 APPLICATION TO THE SEC, WHICH YOU GOT APPROVED IN
2 RECORD TIME.

3 THAT'S NOT SOMETHING YOU PERSONALLY WERE
4 INVOLVED IN?

5 MR. HELM: LACKS FOUNDATION AND MISSTATES THE
6 RECORD.

09:03AM

7 THE COURT: OVERRULED.

8 YOU CAN ANSWER THE QUESTION.

9 THE WITNESS: WHAT'S THE QUESTION?

10 BY MR. QUINN:

09:03AM

11 Q YOU PERSONALLY WERE NOT INVOLVED IN PREPARING
12 THAT REGISTRATION WITH THE SEC THAT MR. WARD
13 PREPARED --

14 MR. HELM: ASSUMES FACTS NOT IN EVIDENCE.

15 THE COURT: YOU CAN ANSWER -- I'LL OVERRULE
16 THE OBJECTION.

09:03AM

17 YOU CAN ANSWER THE QUESTION, AND EXPLAIN
18 IT, IF YOU WANT.

19 THE WITNESS: I -- I WASN'T PERSONALLY
20 INVOLVED IN PREPARING THE SEC FILINGS.

09:04AM

21 MY UNDERSTANDING, WE DIDN'T BEGIN ANY
22 SEC FILINGS UNTIL AFTER DECEMBER 4TH, 2009.

23 BY MR. QUINN:

24 Q THEN, I THINK YOU HAVE TOLD US THAT CONTACT
25 LIST EXHIBIT 551, AS I UNDERSTAND YOUR TESTIMONY,
26 THAT'S NOT THE ONLY THING, THE ONLY WAY PEOPLE -- YOU
27 INVITED PEOPLE TO YOUR FIRST -- YOUR FIRST CALL ON
28 DECEMBER 8TH.

09:04AM

1 BUT USE WAS MADE OF THIS CONTACT LIST
2 THAT MS. VANEVERY HAD, I THINK YOU'VE TOLD US?

3 A THAT'S RIGHT. BUT IT DID NOTHING TO GET
4 DOUBLE LINE STARTED.

5 Q AND THEN WE'VE LOOKED AT EXHIBIT 981 AND 393.
6 393.

09:04AM

7 THESE MARKETING MATERIALS, YOU'RE AWARE
8 THAT DOUBLE LINE WAS USING MARKETING MATERIALS THAT
9 WERE WORD FOR WORD, IDENTICAL TO TCW'S MARKETING
10 MATERIALS. YOU'RE AWARE OF THAT, AREN'T YOU?

09:05AM

11 MR. HELM: LACKS FOUNDATION.

12 THE COURT: SUSTAINED.

13 BY MR. QUINN:

14 Q DO YOU KNOW WHETHER OR NOT DOUBLE LINE WAS
15 USING MARKETING MATERIALS THAT WERE WORD FOR WORD
16 IDENTICAL TO TCW'S MARKETING MATERIALS, INCLUDING
17 DESCRIPTIONS OF THE TECHNICAL PLATFORMS?

09:05AM

18 THE QUESTION IS JUST, DO YOU KNOW?

19 A I KNOW THAT WE DIDN'T USE THEM, BECAUSE WE
20 DIDN'T DO ANY MARKETING IN THE FIRST FEW MONTHS AT
21 DOUBLE LINE. WE COULDN'T USE MATERIALS FOR AN ACTIVITY
22 WE DIDN'T DO.

09:05AM

23 Q LET ME ASK A LITTLE BIT DIFFERENT QUESTION,
24 THEN.

25 DO YOU KNOW WHETHER OR NOT DOUBLE LINE,
26 AT SOME POINT, PAIRED MARKETING MATERIALS WHICH
27 INCLUDED DESCRIPTIONS OF DOUBLELINE'S TECHNICAL
28 PLATFORM, WHICH WERE WORD FOR WORD IDENTICAL TO TCW

09:05AM

1 MATERIALS?

2 A I DON'T KNOW THAT.

3 Q IF WE COULD LOOK AT EXHIBIT 451, WHICH IS IN
4 EVIDENCE.

5 YOU WERE COPIED, ON THIS NOVEMBER 17TH,
6 E-MAIL?

09:06AM

7 A YES.

8 Q IT REFERENCES THIS EXCEL TEMPLATE FOR CLIENT
9 INFORMATION?

10 A YES.

09:06AM

11 Q LET ME CHANGE, WHILE THEY LOOK FOR SOMETHING
12 ELSE THAT I NEED.

13 LET'S CHANGE THE SUBJECT OF THE
14 REMEDIATION PROGRAM YOU TESTIFIED ABOUT.

15 I UNDERSTAND THIS IS NOT IN EVIDENCE, TO
16 MY SURPRISE, EXHIBIT 459.

09:06AM

17 IF WE COULD PUT IT UP FOR THE COURT AND
18 MR. GUNDLACH?

19 IS THIS AN E-MAIL ON WHICH YOU'RE
20 COPIED, AND FROM MR. SANTA ANA, ON NOVEMBER 18TH, 2009?

09:07AM

21 A YES.

22 MR. QUINN: I'D OFFER THIS YOUR HONOR.

23 THE COURT: ANY OBJECTION?

24 MR. HELM: BEYOND THE SCOPE, YOUR HONOR.

25 THE COURT: OVERRULED.

09:07AM

26 IT WILL BE ADMITTED.

27

28 (EXHIBIT 459 ADMITTED.)+

1 BY MR. QUINN:

2 Q WERE YOU COPIED ON THIS E-MAIL, WHERE IT SAYS:
3 J.P. WAS ABLE TO PULL THIS OUT OF SARATOGA.

4 WHAT IS SARATOGA?

5 A I DON'T KNOW. 09:07AM

6 Q YOU'VE NEVER HEARD OF A DATABASE AT TCW CALLED
7 SARATOGA?

8 A I'VE HEARD OF IT, BUT I'VE NEVER USED IT, AND
9 I DON'T KNOW WHAT IT DOES.

10 Q SO YOU'VE HEARD OF IT. I MEAN, YOU KNOW THAT 09:07AM
11 IS A DATABASE THAT HAS DETAILED INFORMATION ABOUT
12 CLIENT HOLDINGS, CLIENT TRADING HISTORY AT TCW? YOU'RE
13 AWARE OF THAT?

14 A NO. I'VE NEVER SEEN SARATOGA.

15 Q WELL, IT'S SOMETHING THAT RESIDES ON A 09:08AM
16 COMPUTER, ISN'T IT? IT'S NOT SOMETHING ONE WOULD
17 ACTUALLY SEE; ISN'T THAT TRUE?

18 MR. HELM: LACKS FOUNDATION.

19 THE COURT: OVERRULED.

20 SIR, YOU'VE NEVER SEEN -- MR. QUINN, 09:08AM
21 REPHRASE YOUR QUESTION. AND YOU CAN PURSUE IT, IF HE
22 SAYS HE'S NEVER SEEN IT. I DON'T THINK IT'S THAT HE
23 HASN'T SEEN A BOX.

24 MR. QUINN: ALL RIGHT.

25 Q LET ME ASK, ARE YOU AWARE THAT THERE IS A 09:08AM
26 DATABASE, THERE WAS A DATABASE AT TCW THAT INCLUDED
27 INFORMATION ON THOUSANDS OF CLIENTS AND THOUSANDS OF
28 PROSPECTS, WHICH INCLUDED NOT JUST CONTACT INFORMATION,

1 BUT HOLDINGS INFORMATION, COMMENTS, ALL TYPES OF
2 DETAILS ABOUT CLIENT INFORMATION? ARE YOU AWARE THAT
3 SUCH A DATABASE EXISTED AT TCW?

4 A NO.

5 Q SO WHEN YOU RECEIVED THIS FROM MR. SANTA ANA,
6 HE SAYS: J.P. WAS ABLE TO PULL THIS OUT OF SARATOGA.

09:09AM

7 I MEAN, DID IT -- DID YOU JUST -- YOU
8 JUST DIDN'T KNOW WHAT HE WAS REFERRING TO?

9 A I KNOW THAT SARATOGA WAS A DATABASE AT TCW.

10 I HAVE NO IDEA WHAT IT CONTAINED, AND I
11 NEVER USED IT. I DIDN'T EVEN HAVE ACCESS TO IT.

09:09AM

12 I COULDN'T TELL YOU WHAT A SCREEN SHOT
13 OF IT LOOKS LIKE.

14 Q SO I MEAN, WHEN YOU SAW THIS, DID YOU HAVE ANY
15 UNDERSTANDING, WHAT OR WHY J.P. WAS EXTRACTING
16 INFORMATION FROM THIS DATABASE?

09:09AM

17 A YES.

18 Q DID YOU UNDERSTAND THAT THIS WAS IN RESPONSE
19 TO A REQUEST THAT YOU HAD MADE?

20 A YES.

09:09AM

21 I CAN EXPLAIN.

22 Q WELL, YOU KNOW, MR. HELM ASKED YOU SOME
23 QUESTIONS ABOUT MR. SANTA ANA'S TRIAL TESTIMONY. AND
24 YOU INDICATED THAT THERE WAS SOME THINGS THAT HE SAID
25 THAT HE UNDERSTOOD -- THAT YOU AGREED THAT YOU'D ASK
26 HIM TO GET, AND SOME OTHER THINGS THAT YOU DISAGREED
27 WITH.

09:10AM

28 DO YOU RECALL THAT?

1 A YES.

2 Q FOR EXAMPLE, I THINK YOU SAID THE BOARD OF
3 DIRECTORS MINUTES, THAT'S NOT SOMETHING THAT YOU EVER
4 RECALL ASKING HIM TO GET?

5 A THAT'S RIGHT.

09:10AM

6 Q NOW, MR. SANTA ANA'S TESTIMONY IN THIS TRIAL
7 WAS THAT, FURTHERMORE, THAT YOU ASKED HIM TO GET
8 ANYTHING ELSE THAT MIGHT BE USEFUL TO US.

9 DO YOU RECALL THAT?

10 MR. HELM: OBJECT TO THE FORM, YOUR HONOR.

09:10AM

11 THE COURT: I'LL OVERRULE IT.

12 THE WITNESS: DO I RECALL WHAT?

13 BY MR. QUINN:

14 Q MR. SANTA ANA'S TESTIMONY IN THIS TRIAL,
15 JEFFREY ASKED FOR: CONTACTS, CONTRACTS, BOARD OF
16 DIRECTORS CONTACTS, COPIES OF THE RED BOOKS, WHICH HAD
17 THE TRADE ORDERS, HOLDINGS, AND I THINK HE MADE A
18 BLANKET STATEMENT, SOMETHING TO THE EFFECT, AND
19 ANYTHING ELSE YOU MIGHT THINK WE WOULD NEED.

09:10AM

20 SO I'D LIKE TO FOCUS ON THAT LAST
21 PHRASE, SIR.

09:10AM

22 DID YOU TELL MR. SANTA ANA TO GET
23 ANYTHING ELSE THAT YOU MIGHT NEED?

24 A I DON'T THINK SO.

25 ALSO, YOU'VE BEEN SAYING BOARD OF
26 DIRECTORS MINUTES, AND NOW YOU'RE SAYING BOARD OF
27 DIRECTORS CONTACTS. NO I DON'T REMEMBER A BLANKET
28 STATEMENT OF ANYTHING ELSE.

09:11AM

1 WHAT I WAS LOOKING FOR WAS CLIENT
2 CONTACTS AND THE LIST OF HOLDINGS, BASICALLY.

3 Q SO YOU -- DO YOU DENY THAT YOU TOLD
4 MR. SANTA ANA TO GET ANYTHING ELSE YOU THINK WE WOULD
5 NEED?

09:11AM

6 A I DON'T THINK I SAID THAT. I DON'T REMEMBER
7 SAYING THAT.

8 Q DO YOU DENY IT, SIR?

9 A YES.

10 Q I'LL JUST ASK -- WE'VE HAD TESTIMONY HERE
11 ABOUT DOWNLOADING OF VARIOUS KINDS OF INFORMATION.

09:11AM

12 DO YOU, SIR, TAKE ANY RESPONSIBILITY FOR
13 THE FACT THAT THAT WAS DONE?

14 MR. HELM: ARGUMENTATIVE.

15 THE COURT: SUSTAINED.

09:11AM

16 BY MR. QUINN:

17 Q TO GET BACK TO THE REMEDIATION PROGRAM THAT
18 YOU TESTIFIED ABOUT, IT IS TRUE THAT THAT WAS AN HONOR
19 PROGRAM?

20 MR. HELM: ARGUMENTATIVE, VAGUE AND AMBIGUOUS.

09:12AM

21 THE COURT: OVERRULED.

22 THE WITNESS: I DON'T KNOW IF I CALL IT ON
23 HONOR PROGRAM. CERTAINLY PEOPLE HAD TO COOPERATE WITH
24 IT.

25 IF SOMEBODY WANTED TO, YOU KNOW, NOT
26 REVEAL A DEVICE THAT THEY HAD, THEN IT'S IMPOSSIBLE TO
27 KIND OF KNOW. SO IN CERTAIN SENSE, IT HAD TO BE AN
28 HONOR PROGRAM, I THINK.

09:12AM

1 Q IS IT TRUE, SIR, PEOPLE WERE GIVEN ADVANCE
2 NOTICE THAT THE REMEDIATION PEOPLE WOULD BE COMING TO
3 TALK TO THEM?

4 A I DON'T REMEMBER.

5 I REMEMBER SOMEONE JUST COMING BY WITH
6 ME AND SAYING, CAN WE DO THIS NOW? AND I SAID, YEAH.

09:12AM

7 BUT I DON'T KNOW -- I CAN'T SPEAK TO
8 EVERYBODY ELSE.

9 Q IN RESPONSE TO MR. HELM'S QUESTIONS, YOU
10 REFERRED TO MR. MAYBERRY HAVING TURNED IN A HARD DRIVE.

09:12AM

11 DO YOU RECALL THAT?

12 A YES.

13 Q THE ISSUE WAS, DO YOU RECALL THERE WAS AN
14 ISSUE ABOUT A FLASH DRIVE THAT HE WAS NEVER ABLE TO --
15 HE SAYS WAS LOST.

09:13AM

16 DO YOU RECALL THAT?

17 A YES, THERE WAS AN ISSUE ABOUT A FLASH DRIVE.
18 AND IT'S -- AND HE SAID HE DIDN'T HAVE IT, AND THAT
19 TURNED OUT THAT HE WASN'T QUITE RIGHT, THAT HE HAD LOST
20 IT.

09:13AM

21 Q ALL RIGHT.

22 AND THAT NEVER DID TURN UP, CORRECT?

23 A I DON'T THINK SO.

24 Q AND MR. -- DO YOU KNOW WHETHER OR NOT
25 MR. JOEL DAMIANI RAN A SECURE DELETE PROGRAM TO DESTROY
26 6400 DOCUMENTS, JUST BEFORE HIS REMEDIATION INTERVIEW?

09:13AM

27 A WE LOOKED INTO THAT, AND WE DETERMINED THEY
28 WERE NOT TCW FILES.

1 Q AND YOU WERE ABLE TO DETERMINE THAT AFTER HE
2 RAN THE SECURITY DELETE SOFTWARE?

3 A THAT'S WHAT MY TECH PEOPLE SAY, YES.

4 Q YOU'RE AWARE OF TESTIMONY OF EXPERTS IN THIS
5 CASE THAT AFTER THE SECURE DELETE SOFTWARE IS RUN, IT'S
6 NOT POSSIBLE TO DETERMINE WHAT THE DOCUMENTS ARE?

09:14AM

7 MR. HELM: LACKS FOUNDATION.

8 THE COURT: SUSTAINED.

9 BY MR. QUINN:

10 Q YESTERDAY YOU SAID THAT J.P. WAS DISCIPLINED
11 IN HIS EMPLOYMENT, WAS TERMINATED IN THE SUMMER OF
12 2009.

09:14AM

13 DO YOU RECALL THAT?

14 A I RECALL SAYING -- THE QUESTION I WAS
15 ANSWERING WAS, WHEN DID -- I THOUGHT I WAS ANSWERING --
16 WHEN DID WE SUSPEND J.P., AND YOU KNOW, FOR NOT BEING
17 TRUTHFUL ABOUT THE FILES.

09:14AM

18 AND I THOUGHT THAT WAS EARLY SEPTEMBER,
19 AND THAT'S WHAT I TESTIFIED TO.

20 Q YOU SAID SUMMER, YESTERDAY.

09:14AM

21 A I THINK EARLY SEPTEMBER IS SUMMER.

22 Q SOUTHERN CALIFORNIA, IT PROBABLY IS?

23 A I THINK ANYWHERE --

24 Q HIS EMPLOYMENT WAS NOT TERMINATED UNTIL
25 NOVEMBER; ISN'T THAT TRUE?

09:14AM

26 A YEAH. BUT HE WAS SUSPENDED, AND NEVER CAME
27 BACK FOR A COUPLE MONTHS, BEFORE THE TERMINATION WAS
28 PROCESSED.

1 Q AND HE WAS -- HIS EMPLOYMENT WASN'T TERMINATED
2 UNTIL AFTER HIS DEPOSITION WAS COMPLETED; ISN'T THAT
3 TRUE?

4 A I DON'T KNOW.

5 Q YOU KEPT HIM AT DOUBLE LINE UNTIL HE HAD
6 FINISHED TESTIFYING AND GIVING HIS DEPOSITION, TRUE?

7 MR. HELM: LACKS FOUNDATION, YOUR HONOR.

8 THE COURT: SUSTAINED.

9 BY MR. QUINN:

10 Q AND ISN'T IT TRUE THAT DOUBLE LINE ACTUALLY
11 MADE A PAYMENT TO J.P.?

12 MR. HELM: RELEVANCE, YOUR HONOR.

13 THE COURT: SUSTAINED.

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

15 THE COURT: NOT UNLESS WE'RE GOING TO GO
16 FURTHER DOWN THIS LINE OF QUESTIONING.

17 MR. QUINN: NO. I'M GOING TO A DIFFERENT
18 SUBJECT.

19 THE COURT: OKAY. WE DON'T NEED TO APPROACH.

20 THANK YOU.

21 BY MR. QUINN:

22 Q IF WE CAN SHOW YOU EXHIBIT 719.

23 IS THIS A COPY OF A DOUBLE LINE --

24 THIS IS IN EVIDENCE?

25 MR. MADISON: YES.

26 MR. QUINN: ALL RIGHT.

27 Q THIS IS IN EVIDENCE, I'M TOLD, YOUR HONOR.

28 THIS IS A DOUBLE LINE PRESENTATION.

09:15AM

09:15AM

09:15AM

09:15AM

09:16AM

1 A IT SAYS ONE-ON-ONE PRESENTATION FOR
2 NEW HAMPSHIRE RETIREMENT SYSTEM ON IT.

3 BUT WE NEVER USED IT.

4 I DID THAT MEETING MYSELF. I DIDN'T USE
5 ANY OF THE MATERIALS.

09:16AM

6 Q WHEN DID YOU DO THIS MEETING, SIR?

7 A IN JANUARY OF 2010.

8 Q SO IT WOULDN'T BE -- THERE WAS SOME MARKETING
9 THAT YOU WERE DOING IN EARLY 2010 AT DOUBLE LINE, TRUE?

10 A IT WASN'T MARKETING. THIS HAD BEEN AN
11 INVESTOR OF MINE, AND THEY WANTED TO TALK ABOUT WHAT
12 HAD HAPPENED.

09:16AM

13 Q AND YOU PREPARED THIS BROCHURE DESCRIBING
14 DOUBLE LINE, ITS M.B.S. STRATEGY.

15 IF YOU LOOK AT THE TABLE OF CONTENTS,
16 THE NEXT PAGE, CORE FIXED INCOME, GIVING INFORMATION
17 ABOUT THE BUSINESS, THE PROFESSIONAL ORGANIZATIONAL
18 STRUCTURE.

09:16AM

19 MR. HELM: LACKS FOUNDATION ABOUT WHO PREPARED
20 IT.

09:17AM

21 THE COURT: OVERRULED.

22 YOU CAN EXPLAIN.

23 THE WITNESS: I DIDN'T PREPARE THIS.

24 I DID THE MEETINGS. I USED NO
25 MATERIALS.

09:17AM

26 Q I WAS REALLY JUST ADDRESSING THIS DOCUMENT,
27 SIR, EXHIBIT 719.

28 I MEAN, THIS IS A DOCUMENT DESCRIBING

1 DOUBLE LINE AND WHAT IT HAS TO OFFER PROSPECTIVE
2 CLIENTS.

3 WOULD YOU AGREE WITH THAT?

4 A I DON'T KNOW. I MEAN, WE HAVE TO LOOK AT IT.

5 Q YOU HAVE A COPY THERE, I THINK. 09:17AM

6 MR. HELM: YOUR HONOR, THE DOCUMENT SPEAKS FOR
7 ITSELF.

8 THE COURT: IT'S BEEN ADMITTED.

9 MR. QUINN: ALL RIGHT.

10 Q LET ME JUST ASK, SIR -- 09:17AM

11 A THERE'S AN AWFUL LOT OF GENERIC MARKET
12 INFORMATION HERE.

13 THE COURT: I DON'T THINK THERE ARE ANY
14 QUESTIONS PENDING, MR. GUNDLACH.

15 THE WITNESS: I'M SORRY. 09:17AM

16 THE COURT: GET A QUESTION.

17 BY MR. QUINN:

18 Q SO WELL, YOU INDICATE YOU DID THIS MEETING IN
19 JANUARY OF 2010; IS THAT CORRECT?

20 A YES. 09:18AM

21 Q AND THEN BRIEFLY, YOU'VE MADE SOME COMMENTS
22 ABOUT THE MET WEST FIRM.

23 I MEAN, WE TALKED BEFORE ABOUT THE FACT
24 MET WEST WON THE MORNING STAR AWARD IN 2005.

25 ARE YOU AWARE THEY WERE NOMINATED FOR
26 THE MORNING STAR AWARD IN 2000, 2007, 2009? 09:18AM

27 A NO. BUT -- THERE'S NO REASON TO DISAGREE --
28 TO THINK THAT'S NOT RIGHT.

1 Q AND?

2 A MET WEST HAD GOOD EXPERTISE IN GENERALIZED
3 FIXED INCOME. I AGREE WITH THAT. THEY WERE NEVER
4 GIVEN AN AWARD FOR MORTGAGE BACKED SECURITIES
5 MANAGEMENT, FAR AS I KNOW, FOR ANY PORTFOLIO --

09:18AM

6 Q THIS IS THE SAME *MORNING STAR* FIXED INCOME
7 AWARD WHICH YOU RECEIVED, CORRECT?

8 A NO. I RECEIVED A DIFFERENT YEAR.

9 Q YES.

10 IT WAS A DIFFERENT YEAR.

09:18AM

11 BUT THE AWARD YOU GOT WAS THE MORNING
12 STAR AWARD FOR FIXED INCOME, CORRECT?

13 A WELL, YES. I WAS ALSO NOMINATED FOR FIXED
14 INCOME MANAGER OF THE DECADE OF THE OO'S, AND MET WEST
15 WAS NOT.

09:19AM

16 Q AND I'M SURE YOU RECEIVED MANY ACCOLADES, SIR.

17 BUT IT'S TRUE, MORNING STAR AWARD YOU'RE
18 REFERRING TO IS A FIXED INCOME AWARD, THE SAME AWARD
19 THAT MET WEST RECEIVED, CORRECT?

20 MR. HELM: OBJECT TO THE PREAMBLE.

09:19AM

21 THE WITNESS: MET WEST RECEIVED *MORNING STAR*
22 FIXED INCOME FOR THEIR DIVERSIFIED FIXED INCOME IN
23 2005.

24 BY MR. QUINN:

25 Q SAME FIXED INCOME AWARD YOU RECEIVED?

09:19AM

26 A NO. I RECEIVED IT A DIFFERENT YEAR.

27 Q I KNOW.

28 DIFFERENT YEAR, BUT THE SAME AWARD,

1 FIXED INCOME?

2 A YES.

3 Q THANK YOU.

4 AND ACTUALLY, MET WEST WAS NOMINATED FOR
5 THE *MORNING STAR* FIXED INCOME AWARD FOR 2010, THE YEAR
6 AFTER THEY CAME TO TCW; ISN'T THAT TRUE?

09:19AM

7 A NOT FOR THE TCW TOTAL RETURN BOND FUND, THEY
8 WEREN'T. NOT FOR THE MORTGAGE STRATEGY, THEY WEREN'T.

9 Q SIR, ISN'T IT TRUE THAT MET WEST WAS NOMINATED
10 FOR THE *MORNING STAR* FIXED INCOME AWARD FOR 2010?

09:20AM

11 A YES, IT IS. AND --

12 MR. HELM: ASKED AND ANSWERED.

13 THE COURT: OKAY.

14 THE WITNESS: NOT FOR THE MORTGAGE STRATEGY.

15 THE COURT: YOU'VE ANSWERED THE QUESTION, AND
16 YOU'VE ASKED THE QUESTION.

09:20AM

17 LET'S HAVE ANOTHER.

18 THE WITNESS: AND MY PERFORMANCE WAS A LOT
19 BETTER.

20 BY MR. QUINN:

09:20AM

21 Q WELL, SIR, WE'LL TALK ABOUT YOUR PERFORMANCE.

22 YOU ARE AWARE MET WEST BROUGHT OVER TO
23 TCW, SOME \$30 BILLION IN ASSETS UNDER MANAGEMENT?

24 A NO. I DON'T KNOW THAT.

25 Q DO YOU KNOW THAT THE LARGEST SINGLE STRATEGY,
26 THE LARGEST SINGLE AREA IN WHICH THEY ADVISED, WAS
27 MORTGAGES?

09:20AM

28 A I DON'T KNOW THAT.

1 Q DO YOU KNOW WHETHER OR NOT THEY BROUGHT, OF
2 THE 30 BILLION THEY BROUGHT OVER, THAT THEY BROUGHT
3 OVER 18 BILLION IN MORTGAGES?

4 A THAT'S ALMOST A MARKET WAITING.

5 THAT'S NOT UNUSUAL FOR, A DIVERSIFIED
6 FIXED INCOME FIRM, AS A PERCENTAGE BASIS.

09:20AM

7 Q DO YOU KNOW WHETHER THE ASSETS THAT TCW HAS
8 UNDER MANAGEMENT TODAY ARE LARGER THAN WHAT THEY WERE
9 BEFORE YOU LEFT TCW?

10 A I DON'T KNOW THAT.

09:21AM

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

12 A WELL, I DON'T KNOW.

13 I KNOW THEY'RE COUNTING ASSETS THAT
14 REALLY AREN'T THERE. THEY'RE COMPARING THOMAS'S ASSETS
15 AND MARC ATTANASIO'S ASSETS.

09:21AM

16 AND THEY'RE NOT REALLY MANAGING THOSE
17 ASSETS. I THINK IT'S DISINGENUOUS.

18 Q SO YOU DO KNOW, YOU DO HAVE INFORMATION ON THE
19 TOTAL ASSETS UNDER MANAGEMENT AT TCW TODAY?

20 A I DON'T KNOW -- HAVE IT UP-TO-DATE. THEY'VE
21 BEEN -- I DON'T PAY THAT CLOSE ATTENTION.

09:21AM

22 I THINK THEY'VE BEEN REPORTING LIKE 115
23 BILLION, 120 BILLION. AND I THINK ENOUGH OF THAT
24 BELONGS TO WHAT BLAIR THOMAS AND MARK ATTANASIO ARE
25 MANAGING, THEY'RE ACTUALLY STILL COUNTING TODAY, TO
26 MAKE A KIND OF A -- A -- TO OVERSTATE THE NUMBER.

09:21AM

27 I THINK THAT THE ASSETS, EVEN WITH THE
28 STUFF THEY'RE COMBINING FOR MET WEST, ARE LESS WHAT

1 THEY WERE WHEN I WAS THERE, THAN WHAT THEY WERE WHEN I
2 WAS THERE, IF YOU DO IT HONESTLY.

3 Q I TAKE YOU DON'T ACTUALLY HAVE PERSONAL
4 KNOWLEDGE OF WHAT THE ASSETS ARE UNDER MANAGEMENT THAT
5 TCW HAS AND IS INCLUDED IN THAT NUMBER? THAT IS YOUR
6 SPECULATION? 09:22AM

7 A I THINK I'VE SEEN IT ON THE WEBSITE. THEY'RE
8 STILL INCLUDING THOSE, BUT I HAVEN'T LOOKED AT THOSE
9 ASSETS. I HAVEN'T LOOKED AT IT LATELY.

10 Q OKAY. 09:22AM

11 YOU WERE ASKED QUESTIONS ABOUT THIS KEY
12 MAN PROVISION. AND MR. HELM INTRODUCED A DESCRIPTION
13 AGREEMENT AND THE PARTNERSHIP AGREEMENTS FOR THE TWO
14 SPECIAL MORTGAGE CREDIT FUNDS, YESTERDAY.

15 DO YOU RECALL THAT? 09:22AM

16 A YES.

17 Q AND YOU -- WE TALKED WITH MR. HELM.

18 AND WHEN I TALKED TO YOU PREVIOUSLY
19 ABOUT YOUR STATEMENTS TO INVESTORS IN DECEMBER, THAT
20 THERE'S NO ONE MANAGING THE FUNDS, AND YOU EXPLAINED TO
21 US THAT IT WAS YOUR UNDERSTANDING THAT THE FUNDS WENT
22 INTO A FREEZE WHEN THE KEY PERSON LEFT, THAT WAS YOUR
23 UNDERSTANDING, RIGHT? 09:22AM

24 A THAT WAS MY UNDERSTANDING.

25 Q IF WE COULD TAKE A LOOK AT EXHIBIT 5069-1. 09:23AM

26 AND THIS IS THE AMENDED AND RESTATED
27 PARTNERSHIP AGREEMENT FOR THE TCW SPECIAL MORTGAGE
28 CREDIT FUND TWO, WHICH WAS -- YOU INTRODUCED INTO

1 EVIDENCE WITH MR. HELM YESTERDAY.

2 I'D ASK YOU TO LOOK, PLEASE, AT PAGE
3 DASH 12.

4 DO YOU SEE THERE, IN THE MIDDLE OF THE
5 PAGE, A DEFINITION OF KEY PERSONS? DO YOU SEE THAT,
6 SIR?

09:23AM

7 A YES.

8 Q AND YOU AND MR. LUCIDO ARE IDENTIFIED AS THE
9 KEY PERSONS?

10 A YES.

09:23AM

11 Q AND THEN ON PAGE DASH 41, IT DESCRIBES WHAT
12 HAPPENS IN THE EVENT OF A KEY PERSON TERMINATION.

13 IT'S PRETTY DENSE LANGUAGE. BUT IF WE
14 LOOK JUST THAT FIRST ONE LITTLE "I" AT THE TOP. YOU
15 SEE THAT?

09:24AM

16 A I SEE THE LITTLE "I."

17 Q IT SAYS:

18 IF AT ANY TIME NEITHER OF THE KEY
19 PERSONS IS RESPONSIBLE FOR
20 MANAGEMENT OF THE FUND, AND THE
21 ADVISORY COMMITTEE SHALL NOT HAVE
22 APPROVED A QUALIFIED REPLACEMENT
23 WITHIN 90 DAYS THEREAFTER, THEN 66
24 AND 2/3 IN INTEREST OF THE LIMITED
25 PARTNERS MAY ELECT TO TERMINATE THE
26 INVESTMENT PERIOD.

09:24AM

27 DO YOU SEE THAT?

28 A YES.

09:24AM

1 Q SO WHAT THAT MEANS IS THAT UNLESS BOTH THOSE
2 THINGS HAPPENED, YOU KNOW, THERE'S BEEN -- THE KEY MAN
3 LEAVES, AND THE ADVISORY COMMITTEE DOESN'T APPROVE A
4 REPLACEMENT WITHIN 90 DAYS, THEN 66 AND 2/3 PERCENT OF
5 THE INVESTORS CAN VOTE TO STOP TRADING IN THE
6 SECURITIES.

09:25AM

7 CORRECT?

8 A IF YOU SAY SO. I -- OKAY.

9 Q SO --

10 A IF THAT'S WHAT THAT LANGUAGE MEANS, THAT'S
11 WHAT IT MEANS.

09:25AM

12 Q YOU TOLD US YOU WERE AN INVESTOR, AND THESE
13 ARE FUNDS THAT YOU CREATED, CORRECT?

14 A YEAH. I WAS -- I CREATED THE INVESTMENT
15 CONCEPT BEHIND THESE FUNDS, YES.

09:25AM

16 Q YOU WERE PORTFOLIO MANAGER, WHEN YOU WERE AT
17 TCW?

18 A YES. I MANAGED THESE FUNDS.

19 Q AND YOU HAD COPIES OF THESE CONTRACTS, DIDN'T
20 YOU?

09:25AM

21 A NO. I -- I HAD THEM.

22 AND WHEN I WAS FIRED, TCW CONFISCATED
23 THEM. I STILL DON'T HAVE THEM TODAY.

24 Q SO YOU WERE -- IS IT TRUE, YOU WERE ENTIRELY
25 COMFORTABLE TELLING INVESTORS AND MEMBERS OF THE
26 PUBLIC, IN DECEMBER, WHAT THEIR LEGAL RIGHTS WERE, AND
27 THAT NOBODY WAS MANAGING THE FUNDS, EVEN THOUGH YOU
28 DIDN'T UNDERSTAND WHAT THE AGREEMENTS WERE, OR HAVE

09:25AM

1 COPIES OF THEM?

2 MR. HELM: ARGUMENTATIVE.

3 THE COURT: SUSTAINED.

4 BY MR. QUINN:

5 Q WOULD YOU AGREE WITH ME, NOW, SIR, HAVING
6 LOOKED AT THIS, THAT IT WOULD NOT BE TRUE TO SAY THAT
7 THE FUNDS ARE SUSPENDED UPON TERMINATION OF THE KEY
8 MAN?

09:26AM

9 A I WOULDN'T AGREE WITH THAT UNLESS I READ THE
10 WHOLE DOCUMENT THROUGH, WITH SOMEBODY THAT REALLY
11 UNDERSTANDS ALL THIS LANGUAGE.

09:26AM

12 SO I'M NOT GOING TO AGREE WITH YOU.

13 I WAS GIVING THE INVESTORS MY BEST
14 ADVICE IN AN HONEST AND SINCERE WAY.

15 IF I WAS WRONG, THEN I WAS WRONG.

09:26AM

16 Q HONEST AND SINCERE WAY?

17 MR. HELM: HE INTERRUPTED HIM, YOUR HONOR.

18 THE COURT: LET HIM FINISH.

19 MR. QUINN: I APOLOGIZE.

20 THE WITNESS: I WAS GIVING THEM MY BEST
21 ADVICE. I WAS TRYING MY BEST.

09:26AM

22 BY MR. QUINN:

23 Q YOU WERE TRYING YOUR BEST TO GET THE INVESTORS
24 TO LOSE FAITH IN TCW, TO GET THEM TO BREACH THEIR
25 CONTRACTS, AND TO MOVE OVER TO DOUBLE LINE; ISN'T THAT
26 TRUE?

09:26AM

27 MR. HELM: ARGUMENTATIVE.

28 THE COURT: OVERRULED.

1 THE WITNESS: IT'S NOT TRUE.

2 THE INVESTORS HAD ALREADY LOST FAITH IN
3 TCW. THEY WERE ALREADY UP IN ARMS. THEY WERE
4 CLAMORING FOR INFORMATION. THEY WERE VERY ANGRY WHAT
5 HAD BEEN DONE TO THEM.

09:27AM

6 AND I WAS, TOO, AS AN INVESTOR IN THESE
7 FUNDS. AND WE WERE TRYING TO FIND A SOLUTION TO THIS
8 PREDICAMENT THAT TCW HAD THROWN US INTO.

9 Q SIR, THE -- WHEN YOU HAVE A KEY MAN, THE FUND
10 DOCUMENTS THEMSELVES EXPRESSLY CONTEMPLATE THAT THE KEY
11 MAN MAY LEAVE OR BE TERMINATED; ISN'T THAT TRUE?

09:27AM

12 A I DON'T KNOW IF I AGREE WITH THAT.

13 I -- I DON'T THINK THE KEY MAN HERE
14 COULD BE TERMINATED THE WAY IT WAS TERMINATED --

15 Q WELL, LET'S -- LET'S GO BACK AND LOOK AT THAT
16 PAGE THAT WE JUST LOOKED AT, PAGE -- DASH 41.

09:27AM

17 YOU SEE THAT SECTION ENTITLED, KEY
18 PERSON TERMINATION?

19 A I SEE THE WORDS, KEY PERSON TERMINATION.

20 Q I MEAN, YOU UNDERSTOOD, AND YOU UNDERSTAND
21 TODAY, YOU UNDERSTOOD THEN, AND YOU UNDERSTAND TODAY,
22 THAT JUST BECAUSE SOMEBODY STARTS OUT AS THE KEY MAN,
23 DOESN'T MEAN THEY CAN'T BE REPLACED?

09:28AM

24 A I'M TALKING ABOUT SOMETHING THAT'S OUTSIDE OF
25 THIS DOCUMENT.

09:28AM

26 I'M TALKING THAT I WAS SUPPOSED TO HAVE
27 PROTECTIONS AGAINST BEING TERMINATED.

28 Q I'M TALKING ABOUT WHAT YOU TOLD INVESTORS

1 ABOUT THEIR RIGHTS AND THE FUND.

2 YOU UNDERSTOOD THAT THE KEY PERSON IN
3 THE FUND COULD BE CHANGED?

4 A I DON'T KNOW ABOUT THAT.

5 I WASN'T GIVING INVESTORS LEGAL ADVICE
6 OR ADVISING THEM OF THEIR RIGHTS. THAT'S NOT MY AREA
7 OF EXPERTISE.

09:28AM

8 I WAS GIVING THEM MY BEST OPINION ON
9 WHERE THINGS STOOD.

10 Q YOU SAY YOU WEREN'T GIVING THEM LEGAL ADVICE,
11 BUT YOU TOLD THEM YOU THOUGHT THE CONTRACTS WERE BLOWN
12 TO HELL, RIGHT? DIDN'T YOU SAY THAT?

09:28AM

13 MR. HELM: ARGUMENTATIVE.

14 THE COURT: OVERRULED.

15 THE WITNESS: I WAS GIVING MY REACTION AS TO
16 HOW I FELT, AS THE INVESTOR.
17 BY MR. QUINN:

09:29AM

18 Q YOU SAID:

19 WE DON'T CARE ABOUT WHAT LEGAL
20 PREPOSITIONAL PHRASES THAT TCW IS
21 RELYING ON TO SHANGHAI THE FUNDS.
22 AS FAR AS WE'RE CONCERNED -- YOU
23 SAID --

09:29AM

24 I BELIEVE THIS IS IN EVIDENCE NOW, YOUR HONOR.
25 EXHIBIT 2141. IF WE CAN PUT THAT UP ON THE SCREEN,
26 PAGE DASH 26. 2141-26.

09:29AM

27 YOU SAY BEGINNING LINE 6:

28 THEREFORE, WE DON'T CARE WHAT THE

1 DOCUMENTS SAY IN SOME SCHEMED WAY
2 TO TRY TO SHANGHAI THE FUNDS. WHAT
3 WE WANT IS THE FUNDS TO BE MANAGED
4 IN THE MAXIMUM POSSIBLE BENEFIT TO
5 THE INVESTORS, AND THAT IS DOUBLE
6 LINE. SO IN MY VIEW, WE CAN
7 PRESSURE TCW WITH LETTERS.

09:30AM

8 AND IT GOES ON, RIGHT?

9 A IT GOES ON.

10 Q AND, SIR, YOU'RE SAYING THAT YOU WERE NOT
11 GIVING LEGAL ADVICE TO INVESTORS?

09:30AM

12 A I WAS AN INVESTOR IN THESE FUNDS. I WAS
13 EXPRESSING MY OPINION ABOUT HOW I HAD FELT VIOLATED AS
14 AN INVESTOR IN THE FUND. AND A GREAT MANY INVESTORS
15 EXPRESSED THAT TO ME WITHOUT SOLICITATION, THAT SAME
16 OPINION.

09:30AM

17 Q OKAY.

18 LET ME CHANGE GEARS NOW.

19 WE TALKED A LITTLE BIT ABOUT THESE
20 MORTGAGE-BACKED SECURITIES.

09:30AM

21 JUST REAL SIMPLY, SO THAT WE CAN GET AN
22 IDEA OF HOW THESE MORTGAGE-BACKED SECURITIES WORK:

23 WE HAVE HOMEOWNERS WHO ARE PAYING ON
24 MORTGAGES. THEY PAY PRINCIPAL AND INTEREST, 30-YEAR
25 FIXED RATE MORTGAGE, TYPICALLY MAKING PAYMENTS OF
26 PRINCIPAL AND INTERESTS.

09:31AM

27 A THERE'S A LOT OF DIFFERENT MORTGAGES.

28 Q WHAT IS THOSE, PAYMENTS THAT GO INTO A

1 MORTGAGE, GO INTO A POOL?

2 A NO. THEY GET COLLECTED BY THE BANK OR THE
3 SERVICER.

4 Q RIGHT.

5 LET'S REALLY TRY TO SIMPLIFY THIS.
6 THEY END UP IN A POOL, CORRECT? THE
7 PAYMENTS?

09:31AM

8 A I DON'T KNOW WHAT YOU MEAN BY A POOL --
9 OKAY. THEY GET COLLECTED, AND SOMEBODY
10 HAS THE PAYMENTS. OKAY.

09:31AM

11 Q OKAY.

12 THERE'S SOMETHING CALLED A POOL?

13 A WELL, IT'S CALLED A POOL OF MORTGAGES.
14 THE PAYMENTS AREN'T POOLS, BUT -- YOU
15 KNOW WHAT I MEAN. IT'S NOT VERY IMPORTANT.

09:31AM

16 THE PAYMENTS GET MADE, AND THEN SOMEONE
17 HAS THE MONEY?

18 Q OKAY.

19 AGAIN, THIS IS A REAL
20 OVERSIMPLIFICATION.

09:32AM

21 BUT YOU THEN HAVE A -- OUT OF THIS POOL,
22 THIS POOL BACKS UP BONDS, M.B.S. BONDS THAT ARE ISSUED
23 AND BACKED UP BY THIS POOL?

24 A OKAY.

25 Q GROSS OVERSIMPLIFICATION?

09:32AM

26 A IT'S NOT RIGHT, BUT IT'S -- I MEAN, OKAY.

27 IT'S CLOSE ENOUGH, I GUESS.

28 Q AND WHAT DO YOU CALL THIS, IF THERE IS JUST

1 STRAIGHT PRINCIPAL AND INTEREST PAYMENTS, AND THERE'S A
2 PASS-THROUGH TO THE MORTGAGE BOND HOLDERS, PLAIN
3 VANILLA BOND, WHERE THEY JUST HAVE AN INTEREST IN
4 PRINCIPAL AND INTEREST PAYMENTS? IS THERE A NAME THAT
5 YOU HAVE -- I KNOW YOU'RE AN EXPERT AT THIS, I'M NOT.

09:32AM

6 IS THERE A NAME YOU HAVE FOR THOSE KIND
7 OF PLAIN VANILLA MORTGAGE-BACKED SECURITIES?

8 A WE CALL THEM PASS-THROUGHS.

9 Q OKAY. AND THAT WOULD DESCRIBE ONE OF THESE
10 PLAIN VANILLA ONES, WHERE THERE'S AN INTEREST, JUST AN
11 INTEREST IN PRINCIPAL IN INTEREST?

09:33AM

12 MR. HELM: YOUR HONOR, SHOULD HE RETURN TO HIS
13 SEAT? HE'S CROWDING THE WITNESS HERE.

14 THE COURT: I DON'T THINK THAT'S THE CASE.

15 GO AHEAD. DO YOU HAVE ANOTHER QUESTION?

09:33AM

16 BY MR. QUINN:

17 Q FOR A PLAIN VANILLA ONE, THE MORTGAGE BOND
18 HOLDER IS JUST LOOKING TO PRINCIPAL AND INTEREST.

19 IS THERE A NAME FOR THAT?

20 A WE CALL THEM PASS-THROUGHS.

09:33AM

21 Q OKAY. PASS-THROUGHS.

22 BUT THERE ARE MUCH MORE COMPLEX AND
23 EXOTIC KINDS OF MORTGAGE-BACKED SECURITIES; ISN'T THAT
24 TRUE?

25 A WELL, THERE'S DIFFERENT ONES.

09:33AM

26 I DON'T THINK I CALL THEM VERY COMPLEX.

27 Q WELL, WE HAVE -- SOMEWHERE -- THE HOMEOWNERS
28 ARE MAKING PAYMENTS OF PRINCIPAL AND INTEREST.

1 AND THEN THESE SMART PEOPLE ON WALL
2 STREET, FINANCIAL ENGINEERS, ARE ABLE TO DIVIDE THOSE
3 PAYMENTS UP INTO -- WHAT THEY CALL TRANCHES, RIGHT?

4 A YOU'RE NOW TALKING ABOUT A DIFFERENT
5 COLLATERAL MORTGAGE OBLIGATION BACKED BYPASS THROUGH
6 POOLS, AND THEN THE PRINCIPAL AND INTEREST PAYMENTS CAN
7 BE DIVERTED TO INVESTORS IN ANY PRIORITY, AS LONG AS
8 THEY ADD UP TO THE TOTAL.

09:34AM

9 Q RIGHT.

10 THEY CAN -- THEY CAN ACTUALLY DIVIDE
11 THESE THINGS UP, SO THAT INVESTORS WHO WANT TO BUY
12 BONDS, CAN BUY BONDS THAT ARE -- ONLY REPRESENT A RIGHT
13 TO PAYMENTS OF INTEREST, RIGHT?

09:34AM

14 A IT CAN BE.

15 Q SO THOSE ARE CALLED IOS?

09:34AM

16 A SOME OF THEM.

17 Q SO BASICALLY THEY'RE ONLY GETTING, ONLY
18 LOOKING TO INTERESTS.

19 AND OTHERS ARE CALLED PO?

20 A SOME SECURITIES ARE CALLED PRINCIPAL ONLY.
21 YES.

09:35AM

22 Q PRINCIPAL ONLY.

23 THEN WE HAVE WHAT ARE CALLED INVERSE
24 FLOATERS?

25 A THAT'S THE NAME OF A SECURITY.

09:35AM

26 Q WHAT'S AN INVERSE FLOATER?

27 A JUST A -- JUST A SECURITY PAYS PRINCIPAL AND
28 INTEREST.

1 BUT THE INTEREST VARIES OVER TIME.

2 Q AND WE HAVE REVERSE INVERSE FLOATERS?

3 A NO.

4 Q OR REVERSE FLOATERS?

5 A NO.

09:35AM

6 Q WELL, YOU CAN TAKE A FIXED INTEREST PAYMENT,
7 AND SPLIT IT UP INTO TWO VARIABLES, OR TWO VARIABLE
8 PAYMENTS, CORRECT?

9 A YES.

10 Q SO YOU CAN HAVE AN INVERSE FLOATING RATE AND A
11 FLOATING RATE, RIGHT?

09:35AM

12 A YES.

13 Q AN INVERSE FLOATING RATE.

14 AND YOU CAN BUY BONDS, YOU CAN BUY BONDS
15 THAT REPRESENT RIGHTS TO PAYMENT STREAMS, JUST BY THESE
16 INDIVIDUAL TRANCHES, CORRECT?

09:36AM

17 A YES. PRETTY SIMPLE.

18 Q RIGHT.

19 EACH OF THESE HAS DIFFERENT
20 CHARACTERISTICS IN TERMS OF VOLATILITY, DEPENDING UPON
21 THE MARKET?

09:36AM

22 A NOT NECESSARILY.

23 BUT -- DIFFERENT BONDS DO HAVE DIFFERENT
24 VOLATILITIES, TREASURY BONDS HAVE DIFFERENT
25 VOLATILITIES. CORPORATION BONDS HAVE DIFFERENT
26 VOLATILITIES. DIFFERENT MORTGAGES HAVE DIFFERENT
27 VOLATILITIES, DIFFERENT CMO'S.

09:36AM

28 IT'S JUST FUNDAMENTAL TO INVESTORS;

1 DIFFERENT SECURITIES HAVE DIFFERENT VOLATILITIES.

2 Q THESE ARE DIFFERENT RISK PROFILES --

3 A VOL --

4 Q EACH OF THESE DIFFERENT KINDS OF WHAT YOU CALL
5 CMO'S, THEY HAVE DIFFERENT RISK, CORRECT?

09:36AM

6 A EVERY SECURITY, STOCK, BOND, COMMODITY, HAS
7 DIFFERENT RISK PROFILE THAN OTHER SECURITIES.

8 TRUE FOR MORTGAGES, AS WELL.

9 Q ALL RIGHT.

10 AND YOU CALL THESE CMO'S, RIGHT?

09:37AM

11 A IT'S CALLED -- WHAT'S CALLED CMO.

12 Q YOU USED THE TERM CMO A MOMENT AGO?

13 A CMO IS A -- VERY LARGE SUBSECTOR OF THE
14 GUARANTEED MORTGAGE-BACKED SECURITIES MARKET. AND ALL
15 NONGUARANTEED MORTGAGE-BACKED SECURITIES ARE LEGALLY
16 CMO'S.

09:37AM

17 Q ALL RIGHT.

18 SO IT'S TRUE, ISN'T IT, THAT IF YOU'RE
19 INVESTING IN THESE KINDS OF THINGS, THESE TYPES OF, YOU
20 CALL THEM CMO, SOME PEOPLE CALL THEM MORTGAGE
21 DERIVATIVES; IS THAT TRUE?

09:37AM

22 A SOME TEAM -- PEOPLE USE THAT TERM INCORRECTLY;
23 BUT, YES.

24 Q SOME PEOPLE INCORRECTLY USE THE TERM, MORTGAGE
25 DERIVATIVE.

09:37AM

26 IF YOU'RE INVESTING IN THESE, YOU REALLY
27 NEED TO KNOW WHAT YOU'RE DOING; AGREE WITH THAT?

28 A YOU NEED TO KNOW WHAT YOU'RE INVESTING IN

1 ANYTHING.

2 Q AS OPPOSED TO PLAIN VANILLA MORTGAGE-BACKED
3 SECURITIES, A MOMENT AGO, THESE ARE MUCH MORE COMPLEX.

4 THESE ARE MUCH MORE EXOTIC SECURITIES,
5 ISN'T THAT TRUE?

09:38AM

6 A NO. NO, THEY'RE NOT -- NO.

7 Q SIR?

8 A THEY'RE -- THEY'RE JUST DIFFERENT SECURITIES.
9 AND YOU EITHER UNDERSTAND THEM OR YOU DON'T.

10 Q SIR, YOU WERE COMPARING THE DOUBLE LINE TOTAL
11 RETURN BOND FUND TO THE TCW TOTAL RETURNED BOND FUND,
12 IN RESPONSE TO MR. HELM'S QUESTIONS.

09:38AM

13 DO YOU RECALL THOSE?

14 A YES.

15 Q THE DOUBLE LINE TOTAL RETURN BOND FUND IS
16 TURBO CHARGED, AND RISKIER, BECAUSE YOU HAVE FAR MORE
17 OF THESE CMOS, OR WHAT SOME PEOPLE CALL MORTGAGE
18 DERIVATIVES THAT ARE IN THE TCW TOTAL RETURN BOND FUND;
19 IS THAT TRUE?

09:38AM

20 MR. HELM: ARGUMENTATIVE.

09:38AM

21 THE COURT: OVERRULED.

22 THE WITNESS: WITH RESPECT, YOU DON'T KNOW
23 WHAT YOU'RE TALKING ABOUT.

24 BY MR. QUINN:

25 Q OKAY. SIR, WHAT PERCENTAGE OF THE MORTGAGES
26 IN THE DOUBLE LINE TOTAL RETURN BOND FUND ARE WHAT YOU
27 CALL CMO'S?

09:39AM

28 A I DON'T KNOW, OFFHAND.

1 Q IT'S ABOUT 20 PERCENT?

2 A 20 PERCENT CMO'S?

3 Q YES?

4 A NO, I DON'T THINK THAT'S RIGHT. I THINK IT'S
5 HIGHER THAN THAT.

09:39AM

6 Q 20 PERCENT MORTGAGE DERIVATIVES?

7 A WE HAVE -- NO. I DON'T KNOW -- I --

8 CMO'S IS A CATEGORY OF MORTGAGE-BACKED
9 SECURITIES. THEY CAN BE LESS RISKY OR MORE RISKY.

09:39AM

10 REAL MEASURE OF RISK IS THE VOLATILITY
11 OF THE FUND. AND THE VOLATILITY OF THE DOUBLE LINE
12 TOTAL RETURN FUND IS VIRTUALLY IDENTICAL TO THE
13 VOLATILITY OF THE TCW TOTAL RETURN BOND FUND.

14 THE RISK IS NOT GREATER.

15 Q SIR?

09:39AM

16 A YOU DON'T KNOW WHAT YOU'RE TALKING ABOUT.

17 Q IT MAY WELL BE.

18 I'M JUST ASKING A QUESTION NOW: WHAT
19 PERCENTAGE OF THE MORTGAGES IN THE TCW FUND ARE THESE
20 IOS, INVERSE FLOATERS, FLOATING RATE, INVERSE FLOATING
21 RATE -- WHAT PERCENTAGE OF THE MORTGAGES ARE THOSE?

09:40AM

22 A MAYBE TEN PERCENT.

23 Q CLOSER TO 20?

24 A NO.

25 YOU HAVE TO UNDERSTAND THAT SOME OF
26 THESE SECURITIES ARE PUT TOGETHER IN COMBINATION. IF
27 YOU PUT THEM TOGETHER IN COMBINATION, THEY ARE, ONCE
28 AGAIN, A PASS-THROUGH.

09:40AM

1 SO IF YOU BUY -- LET'S SAY YOU BUY AN
2 I.O. AND A P.O., MR. QUINN, AND YOU HAVE A PORTFOLIO,
3 50 PERCENT IOS AND 50 PERCENT P.O., IT'S 100 PERCENT
4 MORTGAGE DERIVATIVES, AS YOU LIKE TO CALL THEM.

5 THAT PORTFOLIO IS EXACTLY THE SAME AS A
6 GENERIC MORTGAGE PASS-THROUGH.

09:40AM

7 YOU DON'T KNOW WHAT YOU'RE TALKING
8 ABOUT.

9 Q OKAY.

10 WHAT IS THE PERCENTAGE OF THESE IOS,
11 POS, INVERSE FLOATERS AND FLOATING RATE SECURITIES, IN
12 THE TCW TOTAL RETURN BOND FUND?

09:40AM

13 A HOW DO I KNOW?

14 Q LIKE THREE PERCENT?

15 A I DON'T KNOW.

09:41AM

16 WHEN I MANAGED IT, IT WAS QUITE SIMILAR
17 TO HOW I'M MANAGING DOUBLE LINE TOTAL RETURN BOND FUND.

18 IF WHAT TCW IS DOING IS DIFFERENT, THEN
19 THEY'RE VIOLATING WHAT THEY TOLD INVESTORS IN 2009,
20 WHICH IF THEY WERE GOING TO INVEST THE FUND IN EXACTLY
21 THE SAME MANNER AS GUNDLACH STRATEGY. THAT'S WHAT THEY
22 TOLD INVESTORS.

09:41AM

23 IF YOU'RE SAYING THEY'RE DOING IT
24 DIFFERENTLY, SO BE IT. BUT THAT MEANS THEY'RE NOT
25 DOING WHAT THEY WERE GOING TO -- SAY THEY WERE GOING TO
26 DO.

09:41AM

27 Q SIR, YOU HAVE HAD SOME -- WHEN YOU WERE AT
28 TCW, YOU HAD SOME INVESTMENTS THAT WORKED, THAT

1 INVOLVED THESE CMO'S, I.O., INVERSE FLOATERS AND THE
2 LIKE, THAT LOST LOTS AND LOTS OF MONEY; ISN'T THAT
3 TRUE?

4 A WHEN?

5 Q WE'LL GET TO THAT.

09:41AM

6 ISN'T IT TRUE, SIR, THAT IN GOOD TIMES,
7 THESE CAN WORK GREAT. BUT YOUR OWN PERSONAL EXPERIENCE
8 IS, OTHER TIMES, YOU CAN LOSE LOTS AND LOTS OF MONEY
9 WITH THESE CMO'S OR MORTGAGE DERIVATIVES; ISN'T THAT
10 TRUE?

09:42AM

11 A OVER A SHORT TERM HORIZON, YOU CAN LOSE LOTS
12 OF MONEY IN ANY INVESTMENT.

13 OVER FULLNESS OF HOLDING PERIODS, I
14 NEVER LOST MONEY OF SIGNIFICANCE IN THE SECURITIES
15 YOU'RE TALKING ABOUT.

09:42AM

16 Q WERE YOU INVOLVED IN SOMETHING CALLED THE FIL
17 LEVERAGED INCOME BOND FUND??

18 A YES. I MANAGED IT.

19 Q THAT WAS A STRATEGIC M.B.S. STRATEGY?

20 A YES.

09:42AM

21 Q AND THAT MADE HEAVY USE OF M.B.S. DERIVATIVES?

22 A IT MADE USE OF -- OF MORTGAGE-BACKED
23 SECURITIES OF THE TYPE THAT YOU'RE LOOKING TO FOCUS ON
24 RIGHT NOW, YES.

25 Q HEAVY USE OF INVERSE FLOATERS?

09:42AM

26 A I DON'T KNOW IF THAT'S PRECISELY RIGHT.

27 Q WELL, I MEAN, THE STOCK ON THAT WENT FROM LIKE
28 \$13 TO \$5?

1 A AND THEN IT WENT WAY UP TO A GAIN, ONLY ABOUT
2 THREE MONTHS LATER.

3 Q YOU HAD -- THERE WERE A LOT OF VERY UNHAPPY
4 INVESTORS IN THAT CASE?

5 A I DON'T KNOW. THE -- THE INVESTORS THAT WERE
6 IN MY STRATEGIC MORTGAGE-BACKED PRODUCT DROPPED ABOUT
7 20 PERCENT IN VALUE, MAYBE 23 PERCENT IN VALUE IN 1994,
8 WERE AT A PROFIT, A SUBSTANTIAL PROFIT, BY JUNE OF
9 1995.

09:43AM

10 Q DID INVESTORS BRING CLAIMS, SIR?

09:43AM

11 MR. HELM: OBJECTION. 352, YOUR HONOR.

12 THE COURT: SUSTAINED.

13 BY MR. QUINN:

14 Q WELL, ARE YOU FAMILIAR WITH SOMETHING CALLED
15 THE TCW, DW NORTH AMERICAN GOVERNMENT INCOME TRUST?

09:43AM

16 A YES.

17 Q THAT WAS A \$3 BILLION FUND?

18 A I DON'T KNOW.

19 MR. HELM: 352.

20 THE COURT: I'D LIKE SOME TIME FRAME AND
21 RELEVANCE HERE.

09:43AM

22 BY MR. QUINN:

23 Q DID THAT FUND --

24 THE COURT: TIME FRAME.

25 BY MR. QUINN:

09:43AM

26 Q WHEN WAS IT?

27 A 1992.

28 Q DID THAT INVOLVE A HEAVY USE OF INVERSE

1 FLOATERS AND DERIVATIVES?

2 A NO.

3 MR. HELM: 352, YOUR HONOR.

4 THE COURT: SUSTAINED.

5 THE WITNESS: NO, IT DIDN'T.

09:43AM

6 BY MR. QUINN:

7 Q IF WE COULD LOOK AT EXHIBIT 6096. THIS IS ONE
8 OF THE DEFENDANTS' DEMONSTRATIVE EXHIBITS.

9 THIS WAS, I THINK YOU TOLD US THESE WERE
10 THE THREE PRIMARY AREAS WHEN YOU WERE AT TCW, THE THREE
11 PRIMARY AREAS OF INVESTING THAT YOU WERE INVOLVED IN?

09:44AM

12 A THESE WERE THE AREAS THAT I PERSONALLY WAS
13 INVOLVED DAY-TO-DAY IN THE INVESTMENT ACTIVITIES.
14 THESE ARE ALL THE AREAS THAT I WAS INVOLVED DAY-TO-DAY
15 IN THE INVESTMENT ACTIVITY.

09:44AM

16 Q HAVEN'T WE LEFT OUT A FOURTH ONE, FOURTH MAJOR
17 ONE?

18 A NOT THAT I WAS INVOLVED IN DAY-TO-DAY.

19 MR. HELM AND I BROUGHT UP THE CDO'S,
20 WHICH IS ANOTHER BUSINESS WE BROUGHT IT UP.

09:44AM

21 I DIDN'T MANAGE THE C -- I DIDN'T DO
22 TRADING IN THE CDO BUSINESS.

23 Q THE REASON YOU WANT TO DISTANCE YOURSELF FROM
24 THAT IS, YOU KNOW INVESTORS LOST TENS OF MILLIONS OF
25 DOLLARS IN TCW IN PORTFOLIOS WHERE YOU WERE THE
26 PORTFOLIO MANAGER, TRUE?

09:45AM

27 MR. HELM: ARGUMENTATIVE.

28 THE WITNESS: THAT'S CORRECT.

1 THE COURT: SUSTAINED.

2 BY MR. QUINN:

3 Q WELL, I MEAN, YOU TALKED ABOUT SUB PRIME.

4 YOU WERE INVOLVED IN, THERE WERE
5 SOMETHING LIKE 20-CDO VEHICLES -- A CDO COLLATERALIZED
6 DEBT OBLIGATION.

09:45AM

7 THAT'S ANOTHER VEHICLE FOR INVESTING IN
8 MORTGAGES, CORRECT?

9 MR. HELM: RELEVANCE, 352.

10 THE COURT: SUSTAINED.

09:45AM

11 UNLESS WE HAVE A TIME FRAME AND A TIME
12 PERSPECTIVE, WE NEED TO --

13 BY MR. QUINN:

14 Q WELL, WHEN YOU LEFT TCW, THERE WERE STILL
15 CDO'S THAT YOU HAD BEEN PORTFOLIO MANAGER OF, STILL IN
16 EXISTENCE, CORRECT?

09:45AM

17 A NO.

18 MR. HELM: RELEVANCE, YOUR HONOR.

19 THE WITNESS: THAT'S NOT CORRECT.

20 THE COURT: JUST A MINUTE.

09:45AM

21 IF THE ANSWER IS NO, WE CAN MOVE ON.

22 MR. QUINN: ALL RIGHT.

23 Q ISN'T IT TRUE THAT YOU -- YOU TALKED ABOUT
24 YOUR -- WE HEARD YOUR TESTIMONY ABOUT, 2008 OR 2007,
25 ABOUT SUB PRIME.

09:46AM

26 DO YOU RECALL THAT, THAT YOU WERE SAYING
27 YOU THOUGHT SUB PRIME WAS GOING TO BE A DISASTER? YOU
28 TOLD US ABOUT THAT?

1 A YES.

2 Q BUT YOU WERE RESPONSIBLE FOR MANAGING CDO'S
3 THAT HAD BILLIONS OF DOLLARS OF SUB PRIME IN THEM,
4 CORRECT, SUB PRIME MORTGAGES?

5 A NOT CORRECT.

09:46AM

6 Q WHO WAS RESPONSIBLE FOR MANAGING THEM, IF NOT
7 YOU?

8 A LOU LUCIDO.

9 MR. HELM: RELEVANCE, YOUR HONOR.

10 THE COURT: WHAT WAS THE ANSWER?

09:46AM

11 THE WITNESS: LOU LUCIDO MANAGED THAT
12 BUSINESS.

13 BY MR. QUINN:

14 Q THAT'S LUCIDO'S RESPONSIBILITY? IS THAT WHAT
15 YOU'RE SAYING?

09:46AM

16 A HE WAS THE PORTFOLIO MANAGER.

17 Q ARE YOU FAMILIAR WITH A FUND CALLED WESTWAYS?

18 MR. HELM: OBJECTION, RELEVANCE 352, YOUR
19 HONOR.

20 THE COURT: LET'S FIND OUT WHAT IT IS, FIRST.

09:47AM

21 BY MR. QUINN:

22 Q SIR, ARE YOU FAMILIAR WITH A FUND CALLED
23 WESTWAYS?

24 A WE HAD A VARIETY OF PORTFOLIOS THAT WERE UNDER
25 THE WESTWAYS NAME.

09:47AM

26 Q AND YOU WERE, IN FACT, A PORTFOLIO MANAGER FOR
27 WESTWAYS FUNDING VI, CORRECT?

28 A I DIDN'T DO THE DAY-TO-DAY.

1 I MAY HAVE BEEN NAMED ON THE PORTFOLIO
2 MANAGEMENT TEAM.

3 PHIL BARACH RAN THAT BUSINESS, BUT I MAY
4 HAVE BEEN NAMED ON THE PORTFOLIO MANAGEMENT TEAM.

5 Q EXHIBIT 2248.

09:47AM

6 I'LL ASK YOU IF THIS IS THE OFFERING
7 CIRCULAR FOR WESTWAYS FUNDING VI; IS THAT CORRECT?

8 A YES.

9 Q AND IF WE TURN TO PAGE DASH 38, YOU'LL SEE A
10 HEADING THERE, PORTFOLIO MANAGEMENT. DO YOU SEE THAT?

09:47AM

11 A YES.

12 Q IT SAYS JEFFREY GUNDLACH, RIGHT?

13 A YES.

14 MR. QUINN: I'D OFFER THIS, YOUR HONOR.

15 MR. HELM: RELEVANCE, YOUR HONOR.

09:48AM

16 THE COURT: I'LL ADMIT IT.

17
18 (EXHIBIT 2248-38 ADMITTED.)+

19
20 BY MR. QUINN:

09:48AM

21 Q IF WE CAN STAY ON THAT SAME PAGE, PUT THAT UP.

22 BY THE WAY, UNDER THAT, I SEE ERIC
23 ARENTSEN, MANAGING DIRECTOR, MORTGAGE-BACKED
24 SECURITIES.

25 DO YOU SEE THAT?

09:48AM

26 A NO.

27 Q IT'S DOWN BELOW.

28 A OH, YES. I SEE IT, UH-HUH.

1 Q SO MR. ARENTSEN WAS A PORTFOLIO MANAGER,
2 CORRECT?

3 A THAT'S NOT CORRECT.

4 Q IT SAYS HERE HE'S A -- UNDER MORTGAGE
5 MANAGEMENT, HIS NAME APPEARS.

09:48AM

6 WOULD YOU AGREE WITH THAT?

7 A I DON'T -- I DON'T SEE -- YES, IT DOES. IT'S
8 INCORRECT.

9 Q AND ARE YOU SAYING THAT YOU HAD NO
10 RESPONSIBILITY FOR THIS CDO?

09:48AM

11 IS THAT YOUR TESTIMONY, SIR?

12 MR. HELM: ARGUMENTATIVE, YOUR HONOR.

13 THE COURT: OVERRULED.

14 THE WITNESS: NO, I'M NOT SAYING NO
15 RESPONSIBILITY.

09:49AM

16 I'M SAYING I DIDN'T DO THE DAY-TO-DAY
17 TRADING.

18 Q IN WESTWAYS, THERE WAS SOME \$500 MILLION LOST;
19 ISN'T AT THAT TRUE?

20 MR. HELM: OBJECTION, RELEVANCE, 352.

09:49AM

21 THE COURT: OVERRULED.

22 THE WITNESS: I DON'T THINK THAT'S TRUE.

23 THE WESTWAYS SERIES, I THINK, WAS A
24 SUCCESS.

25 BY MR. QUINN:

09:49AM

26 Q THE EQUITY, THE EQUITY WENT TO ZERO; ISN'T
27 THAT TRUE?

28 A THAT'S EXTREMELY HIGH RISK INVESTMENT.

1 THE INVESTORS KNOW WHAT THEY'RE SIGNING
2 UP, THEIR FIRST LOSS PIECE AGAINST MARKET VALUE
3 FLUCTUATION.

4 DURING 2008, THE WESTWAYS CDO'S WERE THE
5 MOST SUCCESSFUL IN THE ENTIRE INDUSTRY.

09:49AM

6 Q SIR, THE EQUITY WAS WIPED OUT, RIGHT?

7 A YES, IT WAS. THE EQUITY OF ALL CDO'S WAS
8 WIPED OUT.

9 I'M PROUD OF THE WESTWAYS PROGRAM. IT
10 WAS THE MOST SUCCESSFUL PROGRAM IN THE INDUSTRY.

09:49AM

11 Q THE WESTWAYS PROGRAM WAS A CDO PROGRAM,
12 CORRECT?

13 A IT WAS THE MOST SUCCESSFUL CDO PROGRAM IN THE
14 INDUSTRY.

15 Q AND YOU'RE LISTED HERE AS BEING MORTGAGE
16 MANAGER FOR THIS CDO?

09:50AM

17 A YES.

18 Q AND ISN'T IT TRUE, THAT I MEAN YOU RECEIVED AN
19 AWARD, AT ONE POINT, FOR CDO MANAGER OF THE YEAR?

20 A TCW DID. I DIDN'T, PERSONALLY.

09:50AM

21 Q WELL, YOU WENT BACK TO COLLECT THE AWARD,
22 DIDN'T YOU? YOU WENT BACK TO NEW YORK TO COLLECT IT?

23 A IT'S BECAUSE TCW HAD CDO'S IN A VARIETY OF
24 GROUPS AT THE FIRM.

25 AND THEREFORE, AS THE HEAD OF FIXED
26 INCOME, I ACCEPTED THE AWARD.

09:50AM

27 Q WELL, ARE YOU -- YOU'RE NOT TRYING TO DISTANCE
28 YOURSELF FROM THIS BECAUSE YOU KNOW THERE WERE BILLIONS

1 OF DOLLARS OF EXPOSURE TO SUB PRIME IN CDO'S THAT YOU
2 WERE RESPONSIBLE FOR?

3 A I'M NOT TRYING TO DISTANCE MYSELF.

4 MR. HELM: ARGUMENTATIVE.

5 THE COURT: OVERRULED.

09:50AM

6 THE WITNESS: I'M NOT TRYING TO DISTANCE
7 MYSELF.

8 I TOLD THE INVESTORS, I THOUGHT THERE
9 WAS A PROBLEM. I TOLD THEM ABOUT IT. I'M PROUD OF
10 THAT.

09:51AM

11 WHEN I THOUGHT THERE WAS A PROBLEM, I
12 TOLD THEM THAT.

13 BY MR. QUINN:

14 Q YOUR COMPENSATION INCLUDED MILLIONS OF DOLLARS
15 THAT YOU MADE ON CDO'S, TRUE?

09:51AM

16 A YES.

17 Q CDO'S WHERE INVESTORS LOST MONEY? TRUE?

18 A AND CDO'S WHERE INVESTORS MADE A LOT OF MONEY.

19 Q AND CDOS WHERE THERE WAS A LOT OF INVESTMENT
20 IN WHAT YOU CALL CMO'S, OR MORTGAGE DERIVATIVES?

09:51AM

21 A NO.

22 Q LET'S CHANGE SUBJECTS NOW.

23 YOU TOLD US THAT MR. STERN TOOK YOUR
24 STOCK.

25 DO YOU RECALL THAT?

09:51AM

26 A I DIDN'T SAY HE TOOK MY STOCK.

27 I SAID I WAS -- THE STOCK WAS TAKEN AND
28 BEING GIVEN TO OTHER PEOPLE BY TCW, EXECUTIVES THAT HAD

1 AUTHORITY TO DO THAT.

2 Q AND YOU AND I TALKED ABOUT THIS BEFORE,
3 HAVEN'T WE?

4 A I DON'T THINK SO.

5 Q IN YOUR DEPOSITION?

09:52AM

6 AND WHAT YOU MEAN IS THAT YOU THOUGHT
7 YOU WERE DILUTED.

8 YOUR STOCK HOLDING WAS DILUTED, WHEN YOU
9 SAY YOU WERE PROMISED THAT YOU WOULD NEVER BE DILUTED;
10 IS THAT TRUE?

09:52AM

11 A YES.

12 Q AND JUST SO WE UNDERSTAND WHAT DILUTION IS,
13 DILUTION IS, IF THERE ARE A TOTAL OF TEN SHARES STOCK,
14 OUTSTANDING ACCOUNTS, AND YOU OWN ONE OF THEM; ONE
15 TENTH OF THE COMPANY YOU OWN, RIGHT?

09:52AM

16 A YES.

17 Q AND IF THE COMPANY ISSUES ONE MORE SHARE OF
18 STOCK, SO THAT THERE ARE 11 SHARES, YOUR OWNERSHIP
19 INTEREST GOES DOWN; NOW YOU ONLY OWN 1/11TH, RIGHT?

20 A ABOUT NINE PERCENT, RIGHT.

09:52AM

21 Q AND THAT'S CALLED DILUTION, CORRECT?

22 A YES.

23 Q AND WHEN YOU SAY THAT TCW TOOK MY STOCK, WHAT
24 YOU MEAN IS THAT MORE SHARES OF STOCK WERE ISSUED, AND
25 YOU WERE DILUTED, RIGHT?

09:53AM

26 A YES.

27 Q AND BY THE WAY, BECAUSE OF THE ISSUANCE OF THE
28 STOCK, EVERYBODY GETS DILUTED TO THE SAME EXTENT,

1 RIGHT?

2 A NO.

3 SOMEBODY'S GETTING THE NEW STOCK.

4 Q SET ASIDE THE NEWCOMERS, NEW SHARE --

5 A SET ASIDE THE PEOPLE BENEFITING, OKAY. WE'LL
6 FOCUS ON THE PEOPLE BEING HARMED.

09:53AM

7 Q WHEN STOCK IS ISSUED, ALL THE OTHER EXISTING
8 SHAREHOLDERS ARE DILUTED TO THE SAME EXTENT, RIGHT?

9 A NOT NECESSARILY.

10 THEY COULD BE THE RECIPIENT OF THE NEW
11 SHARES.

09:53AM

12 Q LET'S ASSUME THEY'RE NOT. LET'S MAKE IT
13 SIMPLER.

14 A OKAY. LET'S FOCUS ON THE ONES BEING HARMED,
15 OKAY.

09:53AM

16 Q SO, IF NEW STOCK IS ISSUED TO SOMEBODY, THEN
17 ALL THE PEOPLE WHO ARE SHAREHOLDERS BEFORE ARE DILUTED
18 PRO RATA, RIGHT?

19 A RIGHT. AND SOME OF THEM MIGHT GET SOME OF THE
20 NEW SHARES TO MAKE UP FOR THEIR DILUTION.

09:53AM

21 Q AND YOUR ISSUE IS THAT SOME STOCK WAS ISSUED
22 TO SOME OTHER PEOPLE WHO WERE -- WHO HADN'T BEEN
23 SHAREHOLDERS BEFORE?

24 A NO. I THINK SOME OF THEM HAD.

25 Q ALL RIGHT.

09:54AM

26 BUT THESE WERE -- WHO ARE THESE OTHER
27 PEOPLE?

28 A NO ONE GAVE ME A COMPLETE LIST.

1 BUT I THINK, I HAVE A -- I HAVE STRONG
2 SUSPICION WHO THEY WERE.

3 Q WELL, SO YOU DON'T KNOW WHO THEY WERE?

4 A NO. THEY WOULD NEVER TELL ME.

5 I KNOW I GOT DILUTED, AND OTHER PEOPLE
6 WITH BENEFICIARIES OF THE SHARE BEING ISSUED.

09:54AM

7 AND I WAS PROMISED I WOULD NEVER BE
8 DILUTED.

9 Q YOU WERE PROMISED -- YOU'RE SAYING THE COMPANY
10 WOULD NEVER ISSUE ANY MORE STOCK? IS THAT THE PROMISE
11 MADE TO YOU, SIR?

09:54AM

12 A NO. THE PROMISE THAT WAS MADE WAS, IF OTHER
13 STOCK WAS ISSUED, THAT MY PERCENTAGE OWNERSHIP IN THE
14 FIRM WOULD STAY THE SAME, BY ME GETTING SOME OF THOSE
15 SHARES.

09:54AM

16 Q I GUESS, SO -- SINCE YOU DON'T KNOW WHO THE
17 PEOPLE ARE WHO GOT THIS ADDITIONAL STOCK, OR WHY THEY
18 GOT IT, YOU'RE NOT THE ONE TO ASK THOSE QUESTIONS; IS
19 THAT TRUE?

20 A NO. I MEAN, I HAVE STRONG SUSPICIONS WHO GOT
21 IT, BUT I DON'T HAVE DEFINITIVE PROOF.

09:55AM

22 Q ALL RIGHT.

23 A I KNOW I DIDN'T GET IT.

24 I WAS DILUTED, AND I WAS PROMISED I
25 WOULDN'T BE.

09:55AM

26 Q YESTERDAY, YOU TESTIFIED THAT IF
27 MARK ATTANASIO'S GROUP HAD GREAT SUCCESS, YOU DIDN'T
28 BENEFIT FROM IT, BECAUSE YOU DIDN'T HAVE ANY EQUITY,

1 RIGHT?

2 DO YOU RECALL THAT TESTIMONY?

3 I THINK YOU WERE -- YOU WERE BEING
4 QUESTIONED ABOUT THIS, WHAT LOOKED LIKE SPOKE AND
5 WHEELS CHART, BY MR. HELM. HERE WE GO.

09:55AM

6 REMEMBER HE ASKED YOU, DID YOU -- WERE
7 YOU GETTING ANY BENEFIT, IF YOU KNOW, FROM THESE OTHER
8 GROUPS OF THE COMPANY?

9 DO YOU RECALL HIM ASKING YOU THAT?

10 A YES.

09:56AM

11 Q AND YOU SAID, NOT AT ALL, AFTER 2001.

12 DO YOU RECALL SAYING THAT?

13 A NO, BUT -- I DON'T THINK I DID GET A BENEFIT.

14 Q ALL RIGHT.

15 TRUE, MR. GUNDLACH, IT'S TRUE THAT YOU
16 CONTINUED TO BE A SHAREHOLDER OF TCW RIGHT UP UNTIL
17 2007; ISN'T THAT RIGHT?

09:56AM

18 A YEAH, I GUESS, TECHNICALLY.

19 THE FRENCH WERE BUYING THE FIRM IN
20 STAGES, AND WE WERE SELLING IT OFF IN STAGES.

09:56AM

21 Q YES. YOU WERE SELLING YOUR STOCK IN STAGES,
22 CORRECT?

23 A I GUESS SO.

24 Q AND IN JULY OF 2001, YOU SOLD 880,000 SHARES?

25 A I DON'T KNOW.

09:56AM

26 Q AND THEN IN JUNE OF 19TH OF 2003, YOU SOLD
27 81,000 SHARES?

28 A A LOT OF SHARES, I DIDN'T SELL; I -- I SWAPPED

1 INTO A -- A TAX EXCHANGE FUND. SO I'M NOT SURE. SELL
2 VERSUS EXCHANGE.

3 WHEN IT HAPPENED, I DON'T KNOW WHEN.

4 Q SELL OR EXCHANGE, YOU EXCHANGED ANOTHER 81,000
5 IN JUNE OF 2003, CORRECT?

09:57AM

6 A I DON'T KNOW.

7 Q THEN ANOTHER 81,000 IN APRIL OF 2004?

8 A I'M NOT GOING TO KNOW ANY OF THESE DATES OR
9 SHARE AMOUNTS.

09:57AM

10 I DON'T KNOW HOW MUCH I SOLD, I DON'T
11 KNOW WHEN I SOLD IT. I DON'T KNOW HOW MUCH I SWAPPED
12 IN TAX EXCHANGE FUNDS.

13 BUT I DON'T OWN ANY NOW.

14 Q RIGHT.

15 AND THE LAST BATCH OF TCW STOCK THAT YOU
16 HAD, YOU EITHER SOLD OR EXCHANGED, IT WAS 517,000
17 SHARES, 2007, TRUE?

09:57AM

18 A I DON'T THINK SO.

19 Q LET'S TAKE A LOOK AT EXHIBIT 2186.

20 THIS IS A MEMORANDUM FROM MR. STERN TO
21 YOU, DATED APRIL 30, 2007?

09:58AM

22 A YES.

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

24 MR. HELM: NO OBJECTION.

25 THE COURT: IT WILL BE ADMITTED.

09:58AM

26

27 (EXHIBIT 2186 ADMITTED.)+

28 ///

1 BY MR. QUINN:

2 Q WHAT THIS INDICATES IS THAT ON APRIL 30, 2007,
3 YOU HAD -- YOU STILL HAD A RETAINED INTEREST IN TCW
4 SHARES OF 517,800 SHARES, CORRECT?

5 A THAT'S WHAT IT SAYS. 09:58AM

6 Q AND THE VALUE OF THAT, 2007, WAS ALMOST
7 \$26 MILLION, RIGHT?

8 A THAT'S WHAT IT SAYS.

9 I THINK THAT WAS DEPENDENT UPON THE
10 VALUE OF SG STOCK. I THINK. 09:59AM

11 Q RIGHT.

12 A I THINK SG STOCK FELL ABOUT 80 PERCENT FROM
13 THERE.

14 Q WELL, SIR, YOU SOLD OR EXCHANGED YOUR LAST
15 PATCH OF TCW STOCK, 2007, SOLD THESE 517,000 SHARES
16 WE'RE LOOKING AT HERE, RIGHT? 09:59AM

17 A I'M NOT REALLY SURE WHAT THE PROCEDURE IS.
18 I'M NOT SURE THIS IS THE LAST SHARES I HAD. I'M NOT
19 SURE IF THIS WAS SG OR TCW.

20 BUT, OKAY. 09:59AM

21 Q SO YOU AGREE WITH ME?

22 A I DON'T KNOW. I'M NOT -- I DON'T REALLY KNOW
23 EXACTLY WHAT THESE DOCUMENTS MEAN.

24 Q WELL, TAKE A LOOK AT EXHIBIT 2188.

25 DOES THAT HAVE YOUR SIGNATURE ON IT,
26 SIR? 09:59AM

27 A YES.

28 MR. QUINN: WE'D OFFER THAT.

1 MR. HELM: NO OBJECTION.

2 THE COURT: IT WILL BE ADMITTED.

3

4 (EXHIBIT 2188 ADMITTED.)+

5

09:59AM

6 BY MR. QUINN:

7 Q YOU SIGNED THIS, SAYING YOU WISHED TO SELL
8 THOSE 517,800 SHARES, CORRECT?

9 A IF THAT'S WHAT IT SAYS --

10 THE COURT: THIS IS DATED 5-2-02.

10:00AM

11 IS THAT '02?

12 THE WITNESS: IT LOOKS LIKE A 2.

13 MY WRITING'S TERRIBLE. IT'S A SEVEN.

14 THE COURT: FIVE-SEVEN SEVEN.

15 THE WITNESS: YES. THAT'S WHAT IT IS.

10:00AM

16 THE COURT: ALL RIGHT.

17 BY MR. QUINN:

18 Q THIS RELATES TO YOUR SALE OF THAT LAST BATCH
19 OF STOCK IN 2007, RIGHT?

20 A IF YOU SAY SO.

10:00AM

21 I DON'T REALLY REMEMBER OR KNOW MUCH
22 ABOUT THESE DOCUMENTS.

23 Q WELL, OKAY.

24 IF YOU HAD STOCK IN TCW, I MEAN THE WAY,
25 THIS WAS THE WAY SOCIÉTÉ GÉNÉRALE BOUGHT TCW, IS WHAT'S
26 CALLED AN EARN-OUT TRANSACTION? SOCIÉTÉ GÉNÉRALE?

10:00AM

27 A OKAY.

28 Q TRUE?

1 A I DON'T KNOW.

2 Q OKAY.

3 A I REALLY DON'T KNOW.

4 YOU'RE ASKING ME A LOT OF TECHNICAL
5 QUESTIONS ABOUT LEGAL FORMS OF STUFF.

10:00AM

6 I DON'T KNOW.

7 Q WELL --

8 A MY UNDERSTANDING WAS THAT WHEN TCW WAS BOUGHT
9 BY SG, IT WAS SORT OF A VALUATION. YOU GOT YOUR SHARES
10 OVER TIME, YOU HELD THEM OR SOLD THEM.

10:00AM

11 I'M NOT EXACTLY -- YOU'RE TRYING TO MAKE
12 THE POINT THAT DURING THE MID OO'S, I BENEFITED FROM
13 MARK ATTANASIO BEING SUCCESSFUL.

14 IS THAT WHAT YOU'RE TRYING TO SAY,
15 BECAUSE I OWNED THE STOCK?

10:01AM

16 Q I'M JUST ASKING QUESTIONS, SIR.

17 A WELL, OKAY.

18 Q THE WAY?

19 A I DON'T GET IT.

20 Q THE ISSUE IS, DOES THE JURY GET IT, YOUR
21 HONOR?

10:01AM

22 THE WAY THE SALE WAS STRUCTURED --
23 MR. HELM: OBJECTION TO THE QUALIFIER, YOUR
24 HONOR.

25 THE COURT: GO AHEAD, MR. QUINN.

10:01AM

26 BY MR. QUINN:

27 Q SOCIÉTÉ GÉNÉRALE BOUGHT TCW OVER TIME,
28 CORRECT?

1 A YES.

2 Q AND YOU WERE A SHAREHOLDER, AND YOU SOLD YOUR
3 SHARES OVER TIME, JUST LIKE EVERYONE ELSE?

4 A OKAY.

5 Q YES?

10:01AM

6 A I DON'T KNOW WHAT EVERYBODY ELSE DID.

7 Q WELL, YOU SOLD YOUR SHARES OVER TIME?

8 A OR EXCHANGED THEM, YEAH.

9 Q OKAY. THE EXCHANGE RATE OR THE SALE PRICE WAS
10 DETERMINED BASED ON SOMETHING CALLED EBITDA?

10:01AM

11 A THAT SOUNDS FAMILIAR.

12 Q RIGHT?

13 A YEAH.

14 Q THAT'S BASICALLY HOW TCW IS DOING, HOW TCW AS
15 A WHOLE IS DOING; DETERMINES THE EXCHANGE RATE OR THE
16 PRICE THAT YOU WOULD GET FOR YOUR SHARES, RIGHT?

10:02AM

17 A I THINK IT DID, YEAH.

18 IN LIKE, THE FIRST PART OF THE OO'S,
19 THERE WAS SOMETHING LIKE THAT GOING ON.

20 Q IT WENT RIGHT ON UP TILL THE LAST TIME YOU
21 SOLD YOUR BATCH IN LAST?

10:02AM

22 A WE'RE TALKING ABOUT 2009, 2008 IN THESE
23 EXHIBITS. WE'RE TALKING ABOUT SG WAS PROMISING STOCK
24 OF 30 PERCENT OF THE COMPANY IN '08 AND '09. AND THAT
25 WAY, WE'D HAVE A BENEFIT FROM THE OTHER SQUARES AROUND
26 THE CIRCLES.

10:02AM

27 YOU'RE TALKING ABOUT A TRANSACTION FROM
28 2001 THAT HAD ALREADY COME AND GONE.

1 Q YES, BUT YOUR TESTIMONY YESTERDAY, SIR, WAS
2 THAT AFTER 2001, YOU DIDN'T BENEFIT AT ALL FROM
3 ANYTHING THAT MARK ATTANASIO OR THE REST OF THE COMPANY
4 DID -- ISN'T THAT WHAT YOU SAID YESTERDAY?

5 A YEAH, I SEE WHAT YOU'RE SAYING. 10:02AM

6 I GUESS TECHNICALLY, WHAT YOU'RE SAYING
7 IS RIGHT. I WAS REALLY THINKING ABOUT 2007, 2008,
8 2009.

9 I GUESS FOR A FEW YEARS, BASED ON THE
10 EBITDA FORMULA, AS A SORT OF A CARRIED-ON EFFECT FROM 10:03AM
11 THE EQUITY THAT I HAD, THAT WAS SOLD SG BACK IN '01,
12 THERE WAS A PERIOD WHERE, BECAUSE OF THAT EQUITY I
13 OWNED THEN, THAT I HAD A BENEFIT.

14 THAT WASN'T CASE IN '08 AND '09.

15 Q SIR, YEAH. THE ONLY YEARS WHEN YOU DID NOT 10:03AM
16 HAVE TCW STOCK WAS IN 2008 AND 2009?

17 A OKAY. I SEE THE WAY YOU'RE THINKING ABOUT IT.

18 I MEAN -- YEAH, I MEAN, THERE IS --
19 THAT'S A WAY OF LOOKING AT IT THAT IS LITERALLY TRUE.
20 YEAH. 10:03AM

21 Q IT IS TRUE?

22 A YEAH.

23 Q LITERALLY AND FIGURATIVELY, IT'S TRUE.

24 YOU HAD STOCK ALL THESE YEARS, EXCEPT
25 FOR 2008 AND 2009, RIGHT? 10:03AM

26 A THE STOCK THAT WAS CALLED OUT FOR SURE, ON A
27 FORMULAIC BASIS, ON A FAIT ACCOMPLI ON THE SALE IN '01.

28 I SEE WHAT YOU MEAN, THOUGH.

1 Q THERE'S BEEN SOME DISCUSSION ABOUT, YOU SHOWED
2 US YESTERDAY SOME LANGUAGE FROM A -- 2001 PROXY
3 STATEMENT THAT SAID SOMETHING LIKE A CERTAIN 30 PERCENT
4 OF THE STOCK WOULD BE AVAILABLE FOR RECYCLING TO
5 EMPLOYEES.

10:04AM

6 DO YOU RECALL THAT PROXY STATEMENT?

7 A YES.

8 Q AND THEY DID, TCW DID, AFTER THAT, SET UP A
9 STOCK OPTION CLAIM, CORRECT?

10 A STOCK OPTIONS ARE NOT STOCK.

10:04AM

11 Q NO, THEY'RE NOT.

12 BUT WHEN YOU SET UP A STOCK OPTION PLAN,
13 YOU ACTUALLY HAVE TO SET ASIDE SHARES, IN CASE SOMEBODY
14 EXERCISES THOSE OPTIONS, RIGHT?

15 A I'M NOT SURE.

10:04AM

16 Q YOU JUST DON'T KNOW?

17 A I DON'T THINK YOU HAVE TO DO IT THAT WAY.

18 Q LET'S CHANGE SUBJECTS NOW.

19 YESTERDAY, YOU TESTIFIED ABOUT
20 EXHIBIT 5107, A PRESS RELEASE, WHICH YOU SAID WAS A
21 VERY, VERY SCARY PRESS RELEASE.

10:05AM

22 DO YOU RECALL SAYING THAT SOCIÉTÉ
23 GÉNÉRALE, IN JANUARY OF 2007 -- OR I'M SORRY, 2009 --
24 ISSUED A SCARY PRESS RELEASE?

25 A I'M NOT SURE I -- I'M NOT SURE I SAID THAT.

10:05AM

26 BUT THIS IS THE PRESS RELEASE THAT THEY
27 ISSUED ON JANUARY 26TH, 2009.

28 Q WELL, YOU FOUND THIS PRESS RELEASE VERY

1 ALARMING; ISN'T THAT TRUE?

2 A I DON'T THINK I SAID IT WAS ALARMING.

3 I WAS VERY CONCERNED THAT SG WAS EXITING
4 THE BUSINESS.

5 AND IT WASN'T THIS PRESS RELEASE THAT
6 GOT ME THERE. IT WAS TALKING ABOUT BEYER BEFORE THE
7 PRESS RELEASE THAT GOT ME THERE.

10:05AM

8 Q BY EXITING THE BUSINESS, YOU MEAN THE ASSET
9 MANAGEMENT BUSINESS?

10 A YES.

10:05AM

11 Q AND THE TRUTH OF THE MATTER IS, SOCIÉTÉ
12 GÉNÉRALE DID NOT EXIT THE ASSET MANAGEMENT BUSINESS,
13 AND THIS PRESS RELEASE DOESN'T SAY IT'S EXITING THE
14 ASSET MANAGEMENT BUSINESS, CORRECT?

15 A THE CONVERSATION I HAD WITH BOB BEYER, CLEARLY
16 WAS CENTERED ON SG EXITING THE ASSET MANAGEMENT
17 BUSINESS.

10:06AM

18 WHETHER THEY PHRASED THAT WAY IN THE
19 PRESS RELEASE, I DON'T KNOW.

20 BUT, BOB BEYER HAD A MEETING WITH ME A
21 WEEK EARLIER, AND IT STARTED OUT WITH HIM SAYING, SG'S
22 EXITING THE ASSET MANAGEMENT BUSINESS.

10:06AM

23 Q THEY DIDN'T?

24 A I GUESS THEY STILL OWN TCW.

25 BUT THEIR INTENTION WAS TO INTENTIONALLY
26 EXIT IN TOTAL BY SELLING TCW REALLY AS QUICKLY AS THEY
27 COULD.

10:06AM

28 IN THE PRESS RELEASE, IT SAYS FIVE

1 YEARS. SORT OF A PLACE HOLDER FOR AIR TERM.

2 THEY WERE TRYING TO SELL THE FIRM.

3 AND I GUESS IF YOU SAY THAT THE 20
4 PERCENT THEY STILL OWN IN THIS JOINT VENTURE MEANS
5 THEY'RE STILL IN THE ASSET MANAGEMENT BUSINESS, YOU CAN
6 TRY IT THAT WAY.

10:06AM

7 BUT THEY WANTED OUT OF THE ASSET
8 MANAGEMENT BUSINESS.

9 Q SIR, SG DID NOT SAY IT WAS GETTING OUT OF THE
10 ASSET MANAGEMENT BUSINESS, AND IT HASN'T GOT OUT OF THE
11 ASSET MANAGEMENT BUSINESS TO THIS DAY, ISN'T THAT TRUE?

10:07AM

12 A I DISAGREE.

13 THEY MAY BE IN IT ON A SUB BASIS TODAY,
14 BUT THEY SAID THEY WANTED OUT THE ASSET MANAGER
15 BUSINESS.

10:07AM

16 Q MY QUESTION WASN'T ABOUT WHAT THEY SAID.

17 A YES, IT WAS.

18 THE COURT: SIR, JUST LISTEN CAREFULLY TO THE
19 QUESTION.

20 GO AHEAD.

10:07AM

21 BY MR. QUINN:

22 Q SOCIÉTÉ GÉNÉRALE DID NOT ANNOUNCE IT'S GETTING
23 OUT OF THE ASSET MANAGEMENT BUSINESS; ISN'T THAT TRUE?

24 A IT WAS ANNOUNCED TO ME.

25 Q SIR?

10:07AM

26 A IF THEY DIDN'T SAY IT IN THE PRESS RELEASE,
27 THAT'S -- THAT'S A DIFFERENT MATTER.

28 BUT IT WAS REPORTED TO ME BY THE CEO OF

1 TCW THAT SG TOLD THEM THEY WERE GETTING OUT OF THE
2 ASSET MANAGEMENT BUSINESS.

3 Q YOU KNOW THAT DIDN'T HAPPEN.

4 WE'RE NOW -- YOU KNOW, WE'RE NOW IN
5 2011, AND WE'RE TALKING ABOUT SOMETHING MR. BEYER SAID
6 TO YOU IN 2009. 10:07AM

7 YOU KNOW SG NEVER SAID IT WAS GETTING
8 OUT OF THE ASSET MANAGEMENT BUSINESS. AND TO THIS DAY,
9 IT HASN'T GOTTEN OUT OF THE ASSET MANAGEMENT BUSINESS;
10 ISN'T THAT TRUE? 10:07AM

11 MR. HELM: ASKED AND ANSWERED.

12 THE COURT: IT'S COMPOUND.

13 YOU CAN BREAK IT UP.

14 HE SAID TWO DIFFERENT THINGS. YOU CAN'T
15 ASK THE SAME THING AND KEEP -- 10:08AM

16 MR. QUINN: ALL RIGHT.

17 THE COURT: THE LAST HALF OF IT, ASK HIM.

18 MR. QUINN: ALL RIGHT.

19 THE WITNESS: SG TOLD ME THEY WERE GETTING --
20 ASSET MANAGEMENT. 10:08AM

21 THE COURT: NO QUESTIONS PENDING.

22 MR. QUINN: MY QUESTION ISN'T GOING TO BE
23 ABOUT WHAT BOB BEYER TOLD YOU, OKAY?

24 Q SG, IN 2009, DID NOT ANNOUNCE THAT IT WAS
25 GETTING OUT OF THE ASSET MANAGEMENT BUSINESS; ISN'T
26 THAT A TRUE STATEMENT? 10:08AM

27 A I TAKE THIS PRESS RELEASE AT -- THE PRESS
28 RELEASE SAYS WHAT IT SAYS.

1 IF YOU WANT TO SAY THEY'RE GETTING OUT
2 OF IT, FINE.

3 Q IT SAYS THAT THEY ARE --

4 THE COURT: I THINK HIS POINT ABOUT IT SAYING
5 WHAT IT SAYS IS PERFECT.

10:08AM

6 MR. QUINN: IT'S A GOOD ONE.

7 THE COURT: YEAH, IT'S A GOOD ONE.

8 ANOTHER QUESTION.

9 BY MR. QUINN:

10 Q YOUR UNDERSTANDING, THEY SET UP A NEW ASSET
11 MANAGEMENT BUSINESS CALLED AMUNDI, WITH ANOTHER FRENCH
12 BANK, TRUE? THAT WAS YOUR UNDERSTANDING?

10:08AM

13 A THEY WERE GETTING OUT THE ASSET MANAGEMENT
14 BUSINESS BY DEPOSITING WHAT THEY HAD PUT TOGETHER INTO
15 A JOINT VENTURE WITH CREDIT AGRICOLE TO GET IT OFF THE
16 BOOKS. THAT WAS MY UNDERSTANDING.

10:09AM

17 Q LET'S TAKE A LOOK AT -- ALSO, THEY DIDN'T SAY
18 THEY WERE -- THEY DIDN'T SAY THEY WERE SELLING TCW,
19 EITHER, DID THEY?

20 A THEY SAID THEY WERE GOING TO LIST TCW ON A
21 STOCK EXCHANGE IN THE NEXT FIVE YEARS.

10:09AM

22 Q LET'S TAKE A LOOK AT THAT FOOTNOTE DOWN AT THE
23 BOTTOM.

24 IT SAYS, THE INTENTION IS TO LIST TCW ON
25 A STOCK EXCHANGE IN THE NEXT FIVE YEARS, RIGHT?

10:09AM

26 A THAT'S WHAT IT SAYS IN THE PRESS RELEASE.

27 I KNEW DIFFERENTLY.

28 AT THE TIME, THERE WAS A LOT OF THINGS

1 GOING ON WITH THEM, TRYING TO SELL THE FIRM TO ANOTHER
2 FIRM.

3 SO YOU CAN -- YOU CAN RELY ON THIS
4 DOCUMENT AND SAY, THAT'S THE ONLY THING THAT WAS GOING
5 ON; BUT I'M NOT GOING TO AGREE WITH YOU.

10:09AM

6 Q THEY OWN TCW TO THIS DAY, RIGHT?

7 A OKAY. THERE WAS A REPORT FROM J.P. MORGAN
8 THAT THEY WERE LOOKING TO SELL TCW STILL YET AGAIN.

9 BUT YES, THEY OWN TCW TODAY.

10 Q AND THIS FOOTNOTE THAT YOU REFERRED US TO,
11 DOES NOT SAY THAT THEY'RE GOING TO SELL ONE HUNDRED
12 PERCENT OF THE STOCK, RIGHT?

10:10AM

13 ON A -- THAT THEY'RE GOING TO LIST 100
14 PERCENT OF THE STOCK ON THE STOCK EXCHANGE, IT DOESN'T
15 SAY THAT, DOES IT?

10:10AM

16 A IT DOESN'T SAY ANY PERCENTAGE.

17 Q OKAY.

18 IT'S TRUE, ISN'T IT, THAT I MEAN, YOU
19 UNDERSTOOD THAT YOU HAD NO OWNERSHIP INTEREST AT ALL IN
20 THE MORTGAGE-BACKED SECURITIES BUSINESS AT TCW, OR THE
21 REVENUE STREAM OR ANY OF THOSE ASSETS? YOU KNEW THAT?

10:10AM

22 A I DISAGREE.

23 MR. HELM: VAGUE AND AMBIGUOUS.

24 THE WITNESS: I DISAGREE.

25 MR. HELM: ALSO.

10:10AM

26 THE COURT: OVERRULED.

27 MR. HELM: WELL, I WOULD LIKE TO STATE THE
28 ADDITIONAL OBJECTION, BEYOND THE SCOPE.

1 THE COURT: OVERRULED.

2 MR. HELM: THANK YOU.

3 THE COURT: YOU MAY ANSWER THE QUESTION AND
4 EXPLAIN YOUR ANSWER.

5 THE WITNESS: I JUST TOTALLY DISAGREE WITH
6 YOU.

10:10AM

7 WE HAD A SHARED REVENUE STREAM ON A
8 BUSINESS THAT WE HAD BUILT TOGETHER UNDER THE LABEL OF
9 PARTNERSHIP FOR 20 YEARS.

10 BY MR. QUINN:

10:11AM

11 Q PLEASE TAKE A LOOK AT EXHIBIT 2150-B. IF YOU
12 WOULD TURN TO PAGE DASH 5.

13 THIS IS IN EVIDENCE, YOUR HONOR.

14 THIS IS THE JANUARY 1, 2007 FORM OF
15 EMPLOYMENT AGREEMENT WHICH IS IN EVIDENCE, WHICH YOU
16 DID NOT SIGN?

10:11AM

17 MR. HELM: YOUR HONOR, BEYOND THE SCOPE.

18 THE COURT: I THINK IT IS.

19 MR. QUINN, WE DIDN'T GO INTO THIS DURING
20 THE CROSS-EXAMINATION.

10:11AM

21 MR. QUINN: ON THE POINT OF OWNERSHIP, YOUR
22 HONOR, WE DID, IN EXPLAINING THE REVENUE STREAM.

23 I'M GOING TO GO RIGHT TO THAT.

24 THE COURT: ALL RIGHT. GO AHEAD.

25 BY MR. QUINN:

10:11AM

26 Q THIS IS THAT DOCUMENT, THE LAST FORM OF
27 CONTRACT, WHICH YOU DID NOT SIGN, CORRECT?

28 MR. HELM: OBJECTION.

1 YOUR HONOR, WE DISCUSSED THIS
2 PREVIOUSLY, ABOUT THE PROPER SCOPE OF THE --

3 THE COURT: WELL, YOU MAY ASK QUESTIONS ABOUT
4 THE AGREEMENT, WITHOUT COMMENTARY ON THE ISSUES THAT WE
5 SAID WERE APPROPRIATE.

10:12AM

6 MR. QUINN: UNDERSTOOD, YOUR HONOR.

7 THE COURT: ALL RIGHT. SO ASK THE QUESTION.

8 MR. QUINN: THERE'S ONE FOUNDATION QUESTION I
9 HAVE TO ASK YOUR HONOR, I WOULD LIKE TO ASK.

10 THE COURT: COME UP HERE FOR A MINUTE, PLEASE.

10:12AM

11

12 (SIDE-BAR CONFERENCE HELD) +

13

14 THE COURT: PART OF IT IS, YOU GOT TO ASK A
15 QUESTION. WE'RE NOT GOING INTO THE CONTRACT CLAIM.

10:12AM

16 MR. QUINN: UNDERSTOOD, YOUR HONOR.

17 THE COURT: WHAT DO YOU WANT TO ASK?

18 MR. QUINN: THIS DOCUMENT, WHICH HE SAYS FORMS
19 HIS AGREEMENT, RECITES THAT HE HAS NO INTEREST IN ANY
20 ASSETS, THE MORTGAGE-BACKED SECURITIES BUSINESS OR
21 REVENUES.

10:12AM

22 THE COURT: THIS IS THE AGREEMENT THAT YOU SAY
23 WAS NEVER SIGNED, AND HAS NOTHING TO DO WITH ANYTHING.

24 AND SO IF YOU WERE TO BRING IN ONE OF
25 THE OLDER AGREEMENTS, OR SOMETHING, MAYBE WE'D GO
26 THERE.

10:13AM

27 BUT, YOU KNOW --

28 MR. QUINN: JUDGE, HE'S THE ONE WHO SAYS THAT

1 THAT'S HIS AGREEMENT.

2 SO WHAT HE IS SAYING IS, HIS AGREEMENT
3 RECITES THAT HE HAS NO OWNERSHIP INTEREST.

4 THE COURT: JUST A MINUTE.

5 MR. QUINN: THAT'S MY POINT. THAT'S ALL I
6 WANT TO DO.

10:13AM

7 THE COURT: ALL YOU WANT TO DO IS GET INTO
8 THEIR CONTRACT CLAIM.

9 MR. QUINN: NO, NO, NO.

10 NO, I WOULDN'T BE DOING THAT, YOUR
11 HONOR.

10:13AM

12 IF I -- THERE'S --

13 THE COURT: WHAT'S YOUR POINT?

14 MR. HELM: HE'S SAYING IT'S HIS AGREEMENT.

15 THERE'S NO TESTIMONY ON THAT. THAT
16 ISN'T WHAT HE'S GOING TO SAY.

10:13AM

17 HE'S GOING TO SAY HIS UNDERSTANDING WAS
18 BASED ON THE EXCHANGE OF SPREADSHEETS AND HANDSHAKE
19 DEALS HE HAD WITH EVERY TERM IN 2007 AGREEMENT, WAS OR
20 WASN'T PART OF THAT AGREEMENT, IS SUBJECT TO TESTIMONY.

10:13AM

21 THE COURT: IT GOES BEYOND THE SCOPE OF WHAT
22 MR. HELM CROSS-EXAMINED HIM ON.

23 I THINK YOU CAN WAIT, AND YOU CAN HAVE
24 YOUR CHANCE, WHEN THEY PUT YOUR CASE ON, TO ASK HIM
25 ABOUT WHAT RIGHTS HE HAD AND WHAT RIGHTS HE DIDN'T
26 HAVE.

10:14AM

27 OKAY?

28 MR. QUINN: OKAY.

1 THE COURT: THANK YOU.

2 (SIDE-BAR CONFERENCE CONCLUDED.) +

3

4 THE COURT: WE USED UP THAT TIME.

5 PLEASE BE CAREFUL. IT'S IMPORTANT TO
6 REMEMBER MY ADMONITIONS.

10:14AM

7

8 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +

9

10 THE COURT: WE'RE OUT OF THE PRESENCE OF THE
11 JURY.

10:15AM

12 ANY MATTERS ANYBODY WANTS TO ADDRESS?

13 MR. BRIAN: I HAVE SOMETHING BRIEFLY, YOUR
14 HONOR. JUST A STATUS REPORT, YOUR HONOR.

15 I THINK YOU HAVE NOW A COMPLETE VERSION
16 OF THE CABANNES DEPOSITION TRANSCRIPT. WE FILED
17 SOMETHING TODAY, BECAUSE WE HADN'T GOT RESPONSES. THEY
18 OBJECTED, AND WE DON'T HAVE TO GO INTO THE BACK AND
19 FORTH.

10:15AM

20 BUT I THINK YOU HAVE A COMPLETE VERSION
21 WITH YOU. IF NOT, WE'LL WORK WITH YOU TO MAKE SURE YOU
22 DO.

10:15AM

23 BASED ON A SCHEDULE, AS THINGS ARE
24 PROCEEDING, I DON'T THINK WE'LL GET TO MR. CONN
25 TOMORROW. I'D ASK THE COURT TO INQUIRE OF THAT. IF WE
26 WERE --

10:15AM

27 THE COURT: I HAVE A LIST, TCW STATEMENT
28 REGARDING DEFENDANT'S DESIGNATIONS FOR MICHAEL CONN.

1 SHOULD I HAVE SOMETHING ELSE?

2 MR. BRIAN: I'LL ASK MR. KRIELKAMP TO ADDRESS
3 THE COURT. YOU NOW HAVE A TRANSCRIPT.

4 THE COURT: DID WE GET A NOTEBOOK ON THAT? IS
5 THAT BEHIND YOU? 10:15AM

6 THE CLERK: NO, YOUR HONOR.

7 THE COURT: WHAT'S THAT?

8 THE CLERK: IT'S SOMETHING ELSE.

9 MR. KRIELKAMP: WE'LL MAKE SURE A NOTEBOOK
10 WITH THE TRANSCRIPT GETS DELIVERED TO YOU. 10:16AM

11 THE COURT: DID I GET A RAW TRANSCRIPT?

12 MR. KRIELKAMP: I BELIEVE ALL YOU GOT WERE THE
13 STATEMENTS.

14 THE COURT: I HAVE ONE STATEMENT HERE. I'LL
15 TRY TO FIND THE OTHER ONE. 10:16AM

16 MR. KRIELKAMP: I BELIEVE THE TCW RESPONSES
17 THIS MORNING, THEY CAN TELL ME IF I'M WRONG, IS THE
18 MOST UP-TO-DATE.

19 MR. BRIAN: WE'LL GET YOU THAT.

20 THE COURT: BY THE END OF THE DAY. 10:16AM

21 MR. BRIAN: I DID RESEARCH ON CIVIL TRIAL
22 PRACTICE MANUAL, WHICH OF COURSE, I CAN USE EXCERPTS ON
23 CROSS OF A PARTY, WHETHER OR NOT THERE IS INFRINGEMENT.

24 WITH RESPECT TO MR. STERN, I HAVE
25 PROVIDED FULL DEPO DESIGNATIONS USED DURING OUR CASE, 10:16AM
26 AND ALSO PROVIDED THREE OR FOUR VERY SHORT CLIPS THAT I
27 INTEND TO USE TOMORROW.

28 I ALSO BELIEVE, OF ALL THAT INVOLVE

1 PASSAGE, WHERE THERE WERE NO OBJECTIONS AT THE TIME,
2 AND I DELIBERATELY CHOSE THAT, YOUR HONOR.

3 THE COURT: I HAVE TO LOOK AT THAT. I WON'T
4 DEBATE IT NOW.

5 MR. MADISON: I HAVEN'T HEARD ANYTHING WE NEED
6 TO INTERRUPT THE STAFF'S BREAK FOR.

10:16AM

7

8

(RECESS.) +

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, WEDNESDAY, AUGUST 17, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 10:39 A.M.

10
11
12 (AT 10:39 A.M. THE JURY ENTERED
13 THE COURTROOM, AND THE FOLLOWING
14 PROCEEDINGS WERE HELD:)

15
16 THE COURT: ALL RIGHT. ALL COUNSEL AND
17 MEMBERS OF OUR JURY ARE AGAIN PRESENT.

18 MR. QUINN, YOU MAY CONTINUE YOUR
19 REDIRECT.

20 MR. QUINN: THANK YOU, YOUR HONOR.

21
22
23 REDIRECT EXAMINATION (CONTINUED)
24

25 BY MR. QUINN:

26 Q. MR. GUNDLACH, SIR, YOU WOULD AGREE THAT WHEN
27 YOU WERE AT TCW, AS A FIDUCIARY OF TCW, IT WOULD BE
28 COMPLETELY WRONG FOR YOU TO PLAN TO LEAVE THE COMPANY

10:40AM

10:40AM

1 IN A WAY THAT WOULD BE DAMAGING TO THE COMPANY?

2 A. YES.

3 Q. OKAY.

4 YOUR HONOR, BEFORE I GET TO THAT --

5 WE HAD SOME TESTIMONY YESTERDAY ABOUT, 10:41AM
6 YOU INDICATED THAT YOU HAD THE -- YOU AND MR. ATTANASIO
7 HAD A MEETING WITH MR. DAY AND MR. STERN.

8 DO YOU RECALL THAT?

9 A. I THINK WE HAD MORE THAN ONE; BUT YES.

10 Q. AND THAT YOU TESTIFIED THAT THE TWO OF YOU, IN 10:41AM
11 THAT MEETING, HAD LAUNCHED AN OFFENSIVE, AND THEN THEY
12 HAD LAUNCHED A COUNTER-OFFENSIVE.

13 DO YOU RECALL THAT?

14 MR. HELM: MISCHARACTERIZES THE TESTIMONY.

15 THE COURT: SUSTAINED. 10:41AM

16 Q. BY MR. QUINN: DO YOU RECALL WRITING THAT THEY
17 WERE, MEANING TCW AND MR. STERN, WERE LAUNCHING A
18 COUNTER-OFFENSIVE?

19 A. I WROTE THAT IN AN E-MAIL.

20 Q. RIGHT. AND YOU TOLD US YESTERDAY WHAT THE 10:42AM
21 OFFENSIVE WAS, THAT THAT WAS COUNTER TO.

22 DO YOU RECALL THAT?

23 A. NO.

24 Q. WELL, YOU SAID THAT YOU AND MR. ATTANASIO HAD
25 A MEETING WHERE YOU HAD TAKEN CERTAIN POSITIONS AND 10:42AM
26 MADE CERTAIN DEMANDS.

27 DO YOU RECALL THAT?

28 A. WE HAD A MEETING.

1 I'M NOT SURE WE HAD DEMANDS, EXACTLY,
2 BUT CERTAINLY WE WERE AGAINST THE IDEAS THAT WERE BEING
3 PROPOSED, IN TERMS OF STERN COMING BACK AS CEO.

4 Q. AND YOU TERMED THAT THAT WAS THE OFFENSIVE
5 THAT YOU ARE REFERRING TO, AND THEY WERE GOING TO MOUNT
6 A COUNTER-OFFENSIVE TO THAT? 10:42AM

7 A. I NEVER TERMED ANYTHING AN OFFENSIVE.

8 MR. QUINN: YOUR HONOR, WE WOULD LIKE TO PLAY
9 FROM THE DEPOSITION OF MR. GUNDLACH, PAGE 876, LINE
10 6 -- 876, LINE 6, THROUGH 878 LINE 13. 10:43AM

11 THE COURT: ALL RIGHT.

12 MR. HELM OR MR. BRIAN, CAN YOU LOOK AT
13 IT? ANY OBJECTIONS?

14 876, LINE 6 THROUGH 878, LINE 13?

15 WHAT VOLUME IS IT IN? 10:43AM

16 MR. HELM, WHAT VOLUME IS IT IN?

17 MR. HELM: IT'S VOLUME FOUR, YOUR HONOR.

18 TO WHICH LINE, COUNSEL?

19 MR. QUINN: 878, LINE 13.

20 SO IT'S 876, LINE 6, TO 878, LINE 13. 10:43AM

21 AND I HAVE, FOR EASE OF REFERENCE, I
22 HAVE COPIES.

23 THE COURT: WE HAVE IT HERE.

24 MR. QUINN: OKAY.

25 THE COURT: ANY OBJECTION? 10:44AM

26 MR. HELM: NO OBJECTION, YOUR HONOR.

27 THE COURT: ALL RIGHT. YOU MAY PROCEED.

28

1 (DEPOSITION OF JEFFREY GUNDLACH WAS PLAYED.)

2

3 MR. QUINN: I HAVE NO FURTHER QUESTIONS, YOUR
4 HONOR.

5 I WOULD JUST LIKE TO MOVE INTO EVIDENCE,
6 THE TRANSCRIPTS WHICH HAVE NOT YET BEEN RECEIVED, AND
7 THOSE DOCUMENTS WE DISCUSSED YESTERDAY.

10:47AM

8 THE COURT: LET'S JUST CLARIFY THE TRANSCRIPTS
9 OF THE PORTIONS OF THE DEPOSITION THAT WERE PLAYED?

10 MR. QUINN: NO, YOUR HONOR, OF THE CALLS.

10:47AM

11 I THINK -- TWO HAVE BEEN RECEIVED SO
12 FAR, BOTH EXHIBITS -- THE TRANSCRIPTS OF THE
13 DECEMBER 22ND AND 29TH.

14 THE COURT: JUST GIVE ME THE EXHIBIT NUMBERS
15 OF THE EXHIBITS YOU WANT TO MOVE IN. THEN WE CAN ADMIT
16 THEM, IF THERE'S NO OBJECTION, AND IT'S APPROPRIATE.

10:47AM

17 MR. QUINN: I OFFER THE ADMISSION OF EXHIBIT
18 2140, WHICH IS THE TRANSCRIPT OF THE DECEMBER 8TH CALL.

19 MR. HELM: NO OBJECTION, YOUR HONOR.

20 MR. QUINN: THEN I OFFER THE JEFFREY GUNDLACH
21 ON DOUBLELINE TRANSCRIPT, DECEMBER 20, 2009, WHICH IS
22 EXHIBIT 956.

10:48AM

23 THE COURT: 12/20?

24 ANY OBJECTION?

25 MR. HELM: I THINK WE DO OBJECT TO THAT, YOUR
26 HONOR.

10:48AM

27 MR. QUINN: THAT'S THE ONE WE DISCUSSED AT
28 SIDEBAR YESTERDAY.

1 THE COURT: I'LL HAVE TO TAKE A LOOK AT IT. I
2 JUST DON'T RECALL THE SPECIFIC DISCUSSION.

3 MR. QUINN: DOES THE COURT WANT TO LOOK AT IT
4 NOW, OR LATER?

5 THE COURT: LATER. 10:48AM

6 MR. QUINN: LATER.

7 AND THEN FINALLY, EXHIBIT 961, THE DEAR
8 COLLEAGUE LETTER.

9 THE COURT: THE DATE OF THAT LETTER?

10 MR. QUINN: THAT LETTER IS NOT DATED. 10:48AM

11 THE COURT: OKAY. ANY OBJECTION TO 961,
12 MR. HELM?

13 MR. HELM: I THINK WE DO OBJECT, YOUR HONOR.
14 I'M NOT SURE ABOUT THE FOUNDATION OF IT BEING SENT.

15 THE COURT: IT WILL BE OFFERED, AND I'LL TAKE
16 A LOOK AT IT AND DEAL WITH IT. 10:49AM

17 MR. QUINN: AND THEN, YOUR HONOR, THE CHARTS
18 WE'LL MARK FOR IDENTIFICATION.

19 2226 IS THE PASS-THROUGH MORTGAGE-BACKED
20 SECURITIES DRAWING. 10:49AM

21 2227, THE CMO MORTGAGE-BACKED SECURITIES
22 DRAWING. AND THAT'S IT.

23 THE COURT: THEY'LL BE MARKED FOR
24 IDENTIFICATION ONLY.

25 10:49AM

26 (EXHIBITS 2140, 956, 961, 2226 AND
27 2227 WERE MARKED FOR IDENTIFICATION.)

28

1 MR. QUINN: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MR. HELM: JUST BRIEFLY, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5

6

7

RE CROSS EXAMINATION

8

9 BY MR. HELM:

10 Q. MR. QUINN ASKED YOU WHETHER YOU THOUGHT YOUR
11 FIDUCIARY DUTIES PREVENTED YOU FROM LEAVING TCW IN A
12 WAY THAT WOULD BE DAMAGING TO THE COMPANY?

10:49AM

13 DO YOU RECALL ANSWERING THAT QUESTION?

14 A. YES.

15 Q. WHEN YOU SAID -- YOU WERE THINKING ABOUT
16 LEAVING IN A WAY THAT WOULD BE DAMAGING, DID YOU HAVE
17 IN MIND, CONCEPTS LIKE GIVING PROPER NOTICE, THINGS OF
18 THAT NATURE?

10:50AM

19 A. YES.

20 Q. YOU UNDERSTOOD THAT AT SOME POINT, AND UNDER
21 SOME CIRCUMSTANCES, YOU COULD LEAVE; OR DID YOU BELIEVE
22 YOU HAD COMMITTED TO STAY FOR YOUR WHOLE CAREER AT TCW?

10:50AM

23 A. WELL, OF COURSE, EMPLOYEES HAVE A RIGHT TO
24 LEAVE. I NEVER THOUGHT THAT I WAS AN INDENTURED
25 SERVANT.

10:50AM

26 Q. AND SO DID YOU THINK THAT YOUR FIDUCIARY
27 DUTIES PREVENTED YOU FROM LEAVING UNDER PROPER
28 CIRCUMSTANCES, EVEN IF IT WOULD BE DAMAGING TO TCW, IN

1 TERMS OF THEY MIGHT LOSE A LOT OF BUSINESS, THEY MIGHT
2 LOSE A STAR INVESTOR, OR OTHER THINGS OF THAT NATURE?

3 A. I THOUGHT THAT WOULD BE APPROPRIATE.

4 MR. HELM: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: ANYTHING ELSE, MR. QUINN? 10:50AM

6 MR. QUINN: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT, MR. GUNDLACH. THANK
8 YOU FOR YOUR TESTIMONY. YOU MAY STEP DOWN.

9 NICE TO SEE YOU SMILE.

10 MR. QUINN, YOU MAY CALL YOUR NEXT 10:51AM

11 WITNESS.

12 MR. QUINN: YES, YOUR HONOR.

13 THE NEXT WITNESS WILL BE CASEY MOORE, BY
14 VIDEOTAPE DEPOSITION.

15 THE COURT: ALL RIGHT. 10:51AM

16

17 (VIDEOTAPE DEPOSITION PLAYED OF CASEY MOORE)

18

19 MR. MADISON: YOUR HONOR, WE'D HAVE YOU LOOK
20 AT EXHIBIT 993. AND I'D LIKE TO DISPLAY IT FOR THE
21 JURY. 11:39AM

22 MR. WEINGART: CAN YOU PUT IT ON THE SCREEN?
23 I THINK HE'LL HAVE TO TAKE THE VIDEO DOWN, IF HE DOES
24 THAT.

25 THE COURT: WE'RE GOING TO GET IT HERE. 11:39AM

26 MR. MADISON: IT'S DATA, YOUR HONOR.

27 MR. WEINGART: NO OBJECTION.

28 THE COURT: ALL RIGHT.

1 IT WILL BE ADMITTED.

2

3 (EXHIBIT 993 ADMITTED.)

4

5 (VIDEOTAPE DEPOSITION RESUMED OF CASEY MOORE)

10:51AM

6

7 MR. MADISON: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9

DOES THAT CONCLUDE THE MOVIES?

10

MR. MADISON: YES, IT DOES.

11:44AM

11

JUST THE MORNING MOVIE.

12

WE MAY HAVE AN AFTERNOON MOVIE, TOO.

13

THE COURT: WOULD YOU LIKE TO CALL YOUR NEXT

14

WITNESS?

15

MR. QUINN: OKAY, YOUR HONOR.

11:44AM

16

WE CALL PHIL BARACH.

17

18

PHILIP BARACH,

19

CALLED AS A WITNESS BY THE PLAINTIFFS, WAS SWORN AND

20

TESTIFIED AS FOLLOWS:

21

22

THE CLERK: YOU DO SOLEMNLY STATE THAT THE

23

TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW

24

PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE

25

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

11:44AM

26

THE WITNESS: I DO.

27

THE CLERK: THANK YOU.

28

PLEASE BE SEATED.

1 THE WITNESS: THANK YOU.

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

4 THE WITNESS: PHILIP, P-H-I-L-I-P; BARACH,
5 B-A-R-A-C-H.

11:44AM

6 THE COURT: THANK YOU.

7 GOOD MORNING, MR. BARACH.

8 THE WITNESS: MORNING, YOUR HONOR.

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

10

11:44AM

11

12

DIRECT EXAMINATION

13 BY MR. QUINN:

14 Q. GOOD MORNING, MR. BARACH.

15 MY NAME IS JOHN QUINN.

11:44AM

16 A. MORNING.

17 Q. I REPRESENT TCW.

18 YOU HADN'T -- PRIOR TO YOUR LEAVING TCW
19 TO JOIN DOUBLELINE, HAD YOU KNOWN MARC STERN FOR A
20 NUMBER OF YEARS?

11:45AM

21 A. CORRECT.

22 Q. AND CAN YOU TELL US ROUGHLY HOW MANY YEARS YOU
23 HAVE KNOWN HIM?

24 A. I KNEW HIM GOING BACK TO THE LATE 1980S.

25 Q. SO WE'RE TALKING ROUGHLY OVER 20 YEARS?

11:45AM

26 A. THAT'S CORRECT.

27 Q. AND YOU FELT LIKE YOU HAD A GOOD RELATIONSHIP
28 WITH HIM?

1 A. YES, I DID.

2 Q. AND YOU SAW EACH OTHER OUTSIDE THE OFFICE
3 SOMETIMES?

4 A. PERHAPS ONCE OR TWICE IN 20 YEARS.

5 Q. ALL RIGHT.

11:45AM

6 WELL, WAS THERE AN OCCASION WHERE HE -- I
7 GUESS THERE WAS SOME TYPE OF PARTY, AND YOU TOOK ILL,
8 AND HE TOOK YOU TO THE HOSPITAL?

9 A. THAT'S CORRECT.

10 Q. AND THEN WAITED FOR YOU THERE?

11:45AM

11 A. THAT'S CORRECT.

12 Q. AND YOU TOLD HIM THAT YOU THOUGHT HE HAD
13 TREATED YOU LIKE A BROTHER?

14 A. I DON'T SPECIFICALLY REMEMBER THAT PHRASE, BUT
15 IT COULD HAVE BEEN SAID.

11:45AM

16 Q. AND THEN YOU'VE ALSO INVITED EACH OTHER TO
17 PERSONAL FAMILY CELEBRATIONS?

18 A. THAT'S CORRECT.

19 Q. AND YOU INVITED HIM TO -- I DON'T KNOW IF IT'S
20 YOUR SON OR DAUGHTER'S BAR MITZVAH OR BAT MITZVAH?

11:46AM

21 A. THAT'S CORRECT.

22 MR. WEINGART: OBJECTION, YOUR HONOR.
23 RELEVANCE.

24 THE COURT: OVERRULED.

25 I'D ASSUME WE'RE MOVING ON?

11:46AM

26 MR. QUINN: WE ARE.

27 Q. AND HE INVITED YOU TO HIS DAUGHTER'S WEDDING?

28 A. THAT'S CORRECT.

1 Q. YOU ATTENDED A MEETING WITH MR. GUNDLACH AND
2 SOME OF YOUR OTHER COLLEAGUES ON SEPTEMBER 3, 2009?

3 DO YOU RECALL THAT?

4 A. YES, I DO.

5 Q. AND DO YOU RECALL ON THAT OCCASION,
6 MR. GUNDLACH BROUGHT UP THIS ISSUE ABOUT HOW HE HAD
7 BEEN --

8 THE COURT: EXCUSE ME, MR. QUINN. JUST ONE
9 MINUTE.

10 I NOTICE WE MIGHT HAVE A HAND UP OR A
11 PENCIL ISSUE HERE. I JUST WANT TO MAKE SURE EVERYBODY
12 HAS WHAT THEY NEED. WE'RE ALL SET? WE HAVE EVERYTHING
13 WE NEED?

14 I JUST WANTED TO MAKE SURE FOR NOW.
15 EVERYBODY IS SET NOW.

16 OKAY. GO AHEAD, MR. QUINN.

17 MR. QUINN: THANK YOU, YOUR HONOR.

18 Q. DO YOU RECALL, AT THAT SEPTEMBER 3RD MEETING,
19 MR. GUNDLACH BRINGING UP AN ISSUE ABOUT HE WAS VERY
20 UNHAPPY WITH MR. STERN, BECAUSE HE THOUGHT THAT --
21 WHOOPS, I'M GOING THE WRONG DIRECTION.

22 HE THOUGHT THAT SOME YEARS IN THE PAST,
23 HIS STOCK OWNERSHIP INTEREST IN TCW HAD BEEN DILUTED?

24 DO YOU RECALL THAT?

25 A. YES, I DO.

26 Q. AND DILUTION, THAT'S SOMETHING THAT HAPPENS TO
27 OTHER SHAREHOLDERS, EXISTING SHAREHOLDERS, WHEN NEW
28 STOCK IS ISSUED TO SOMEONE ELSE?

1 A. I BELIEVE SO.

2 Q. ALL RIGHT. AND DO YOU RECALL MR. GUNDLACH
3 EXPRESSING DISSATISFACTION THAT SOME STOCK HAD, AT SOME
4 POINT IN THE PAST, SOME TCW STOCK HAD BEEN ISSUED TO
5 SOME OTHER FOLKS, AND THAT THAT HAD DILUTED HIM, AND HE
6 THOUGHT THIS WAS WRONG?

11:47AM

7 A. YES, I DO.

8 Q. AND AT THAT TIME, DO YOU RECALL THAT MR. STERN
9 EXPLAINED THE CIRCUMSTANCES, WHAT HAD HAPPENED?

10 A. I RECALL THAT MY STOCK WAS ALSO DILUTED.

11:48AM

11 MR. WEINGART: OBJECTION, YOUR HONOR, HEARSAY.

12 THE COURT: OVERRULED.

13 I'LL ALLOW THE ANSWER TO STAND.

14 HOWEVER, MR. BARACH, LISTEN CAREFULLY TO
15 THE QUESTION, AND TRY AND ANSWER THE QUESTION. OKAY?

11:48AM

16 Q. BY MR. QUINN: DO YOU RECALL MR. STERN SAYING,
17 YES, THAT MY STOCK -- MEANING I, MARC STERN STOCK, I
18 WAS ALSO DILUTED. EVERYBODY WAS DILUTED.

19 DO YOU RECALL HIM SAYING THAT?

20 MR. WEINGART: OBJECTION, HEARSAY.

11:48AM

21 THE COURT: OVERRULED.

22 THE WITNESS: I DON'T.

23 Q. BY MR. QUINN: DO YOU RECALL THAT HE GAVE AN
24 EXPLANATION ABOUT WHAT HAD HAPPENED?

25 A. YES, I DO.

11:48AM

26 Q. THAT THERE HAD BEEN SOME GROUPS IN THE COMPANY
27 WHO HAD BEEN CONTRIBUTING, SUBSTANTIALLY, TO THE
28 PROFITABILITY OF THE COMPANY, AND THAT THEY DIDN'T

1 HAVE, HE THOUGHT, AS MUCH STOCK OWNERSHIP INTEREST AS
2 HE THOUGHT THEY SHOULD HAVE?

3 A. THAT'S CORRECT.

4 Q. AND THOSE WERE LIKE THE SMALL CAP EQUITY GROUP
5 AND A COUPLE OF OTHER GROUPS, THAT HE HAD RECOMMENDED
6 THE ISSUANCE OF STOCK FOR THEM.

11:49AM

7 A. I DON'T REMEMBER HIM SPECIFICALLY SAYING WHAT
8 GROUPS.

9 Q. RIGHT. IN ANY EVENT, HE GAVE THIS
10 EXPLANATION?

11:49AM

11 A. THAT'S CORRECT.

12 Q. AND YOU THOUGHT THE EXPLANATION THAT HE GAVE
13 WAS VERY FORTHRIGHT, AS TO WHAT HAD HAPPENED?

14 A. THAT'S WHAT I SAID.

15 Q. AND YOU THOUGHT IT MADE SENSE?

11:49AM

16 A. I SAID TO HIM, IT WOULD HAVE BEEN MORE
17 APPRECIATED IF HE TOLD US BACK IN 2001, INSTEAD OF
18 WAITING TILL 2009.

19 AND HE AGREED, THAT WOULD HAVE BEEN
20 BETTER.

11:49AM

21 Q. OKAY.

22 BUT I GUESS MY QUESTION WAS, YOU THOUGHT
23 MR. STERN'S EXPLANATION MADE SENSE?

24 A. THAT'S CORRECT.

25 Q. AND HE TOLD YOU HOW HE THOUGHT THAT GIVING
26 STOCK TO MOTIVATE THESE OTHER GROUPS, NEW STOCK, WOULD
27 BE FOR THE BENEFIT OF EVERYONE? HE TOLD YOU THAT?

11:49AM

28 A. YES, HE DID.

1 Q. AND BY THE WAY, DO YOU KNOW WHETHER OR NOT HE
2 HAD GIVEN THAT SAME EXPLANATION TO MR. GUNDLACH
3 MULTIPLE TIMES IN THE PAST?

4 MR. WEINGART: OBJECTION. FOUNDATION.

5 THE COURT: SUSTAINED.

11:50AM

6 Q. BY MR. QUINN: DID MR. GUNDLACH EVER TELL YOU
7 THAT MR. STERN HAD GIVEN HIM THAT EXPLANATION IN THE
8 PAST?

9 A. NO, HE DID NOT.

10 Q. OKAY. LET ME THEN, MOVING FORWARD, THAT -- AT
11 SOME POINT IN NOVEMBER OR DECEMBER OF 2009, YOU HAD A
12 CONVERSATION WITH MR. GUNDLACH WHERE HE TOLD YOU ABOUT
13 TALKS HE HAD HAD WITH AN INVESTMENT BANKING FIRM CALLED
14 GOLDMAN SACHS, CORRECT?

11:50AM

15 A. CORRECT.

11:50AM

16 Q. AND HE TOLD YOU THAT HE HAD GONE TO GOLDMAN
17 SACHS TO TALK WITH THEM ABOUT A MANDATE, RIGHT?

18 A. I DON'T REMEMBER THE WORD MANDATE.

19 Q. WELL, DO WE HAVE YOUR DEPOSITION?

20 DO WE HAVE MR. BARACH'S DEPOSITION, AND
21 A COPY FOR THE COURT, AS WELL?

11:50AM

22 MR. QUINN: IF WE COULD TAKE A LOOK AT PAGE 51
23 OF YOUR JANUARY 25, 2011 DEPOSITION.

24 Q. AND IF YOU SEE ON PAGE 51, AND IF YOU MAYBE
25 CAN JUST READ TO YOURSELF, LINES 23, AT THE BOTTOM OF
26 PAGE 51, UP TO THE TOP OF PAGE 52.

11:51AM

27 A. YES.

28 Q. DOES THAT REFRESH YOUR RECOLLECTION, WHEN

1 MR. GUNDLACH WAS RELATING TO YOU, HIS CONVERSATIONS
2 WITH GOLDMAN SACHS, HE SAID THAT HE HAD SPOKEN TO THEM
3 ABOUT A MANDATE?

4 A. YES.

5 Q. AND BY MANDATE, YOU UNDERSTOOD THAT TO MEAN
6 THAT HE'S TALKING ABOUT ENGAGING THAT INVESTMENT
7 BANKING FIRM?

11:52AM

8 A. I'M NOT SURE WHAT THAT SPECIFICALLY MEANT, BUT
9 IT MEANT TALKING ABOUT SOME SORT OF OPERATION OR
10 SOMETHING THEY WOULD DO THAT WOULD HELP HIM OUT.

11:52AM

11 Q. JUST TO HIRE THEM, IF YOU WILL?

12 A. PERHAPS.

13 Q. OKAY.

14 AND HE RELATED TO YOU WHAT THE FOLKS AT
15 GOLDMAN SACHS SAID TO HIM WHEN HE TOLD THEM WHAT HE HAD
16 IN MIND, DIDN'T HE?

11:52AM

17 A. YES.

18 Q. AND WHAT HE TOLD YOU, WHEN HE TOLD -- ABOUT
19 WHAT THE GOLDMAN SACHS FOLKS SAID, WHEN HE TOLD THEM
20 WHAT HE HAD IN MIND, MR. GUNDLACH TOLD YOU THAT THE
21 GOLDMAN SACHS PEOPLE SAID, IN NO UNCERTAIN TERMS, THAT
22 THEY'D ONLY BE WILLING TO WORK WITH MR. GUNDLACH TO THE
23 EXTENT THE DEAL WAS FULLY TRANSPARENT TO TCW.

11:53AM

24 ISN'T THAT WHAT MR. GUNDLACH TOLD YOU
25 THE GOLDMAN SACHS PEOPLE SAID?

11:53AM

26 A. YES.

27 Q. AND HE ALSO TOLD YOU THAT IN RESPONSE TO HIS
28 PROPOSAL TO THE GOLDMAN SACHS PEOPLE, THAT THEY'D ONLY

1 WORK WITH HIM TO THE EXTENT IT WAS BENEFICIAL TO TCW,
2 CORRECT?

3 A. CORRECT.

4 Q. AND THAT THEY ALSO TOLD HIM, IN RESPONSE TO
5 HIS APPROACHING THEM, WAS THAT IT HAD TO BE ABOVEBOARD,
6 AND TERMS THAT BOTH SIDES FOUND MUTUALLY ACCEPTABLE,
7 CORRECT?

11:53AM

8 A. CORRECT.

9 Q. DOES MR. -- AFTER THAT, DID MR. GUNDLACH EVER
10 TELL YOU THAT HE HAD ENGAGED GOLDMAN SACHS?

11:54AM

11 A. NO, HE DIDN'T.

12 Q. ALL RIGHT. LET ME JUST BACK UP FOR A MINUTE.

13 AFTER THAT SEPTEMBER 3 MEETING, WHERE
14 MR. STERN GAVE THE EXPLANATION ABOUT THE ISSUANCE OF
15 THE NEW STOCK, DO YOU RECALL, AT THE CONCLUSION OF THAT
16 MEETING, A FOLLOW-UP MEETING WAS SET UP WITH MR. STERN?

11:54AM

17 A. I DON'T THINK THERE WAS A DEFINITIVE FOLLOW-UP
18 MEETING THAT WAS SET UP; AT LEAST NOT AS FAR AS I WAS
19 CONCERNED.

20 Q. WELL, LET ME ASK IT THIS WAY: DO YOU RECALL
21 THAT YOU DID, IN FACT, HAVE A FOLLOW-UP MEETING WITH
22 MR. STERN ON SEPTEMBER 8TH, THE NEXT WEEK?

11:54AM

23 A. I DON'T SPECIFICALLY REMEMBER.

24 Q. DOES IT JOG YOUR MEMORY AT ALL IF I SUGGEST
25 THAT YOU, MR. GUNDLACH AND MR. LUCIDO WENT THE NEXT
26 WEEK TO TALK TO MR. STERN, A SCHEDULED MEETING, TO TALK
27 ABOUT ENLARGING THE MANAGEMENT COMMITTEE TO INCLUDE
28 MORE REPRESENTATIVES FROM THE FIXED INCOME GROUP?

11:54AM

1 DOES THAT RING A BELL?

2 A. NO.

3 WE TALKED ABOUT THAT DURING THE
4 SEPTEMBER 3RD MEETING, BUT I DON'T BELIEVE THAT I MET
5 WITH THOSE INDIVIDUALS AND MR. STERN AFTERWARDS,
6 DISCUSSING THE COMMITTEE MEETING, NO.

11:55AM

7 Q. YOU DON'T REMEMBER THAT?

8 A. NO.

9 Q. IS YOUR MEMORY GOOD ENOUGH THAT YOU THINK YOU
10 CAN RULE THAT OUT, THAT YOU ARE CONFIDENT THAT DID NOT
11 HAPPEN THE NEXT WEEK?

11:55AM

12 A. I'M HIGHLY CONFIDENT, BUT I CAN'T REMEMBER FOR
13 SURE.

14 Q. YOU CAN'T BE ABSOLUTELY CERTAIN?

15 A. IT WAS SOME TIME AGO.

11:55AM

16 Q. ALL RIGHT.

17 AFTER DECEMBER 4, AND WHEN MR. GUNDLACH
18 WAS RELIEVED OF HIS DUTIES, DO YOU RECALL HAVING
19 CONVERSATIONS WITH MR. STERN WHERE MR. STERN APPROACHED
20 YOU AND TRIED TO PERSUADE YOU TO STAY AT TCW?

11:55AM

21 A. YES.

22 Q. AND HE ACTUALLY ARRANGED TO COME BY YOUR HOME,
23 SATURDAY NIGHT, DECEMBER 5?

24 A. THAT'S CORRECT.

25 Q. DO YOU RECALL THAT?

11:56AM

26 A. YES, I DO.

27 Q. AND I MEAN, OBVIOUSLY, YOU DECIDED TO GO WITH
28 DOUBLELINE, RIGHT?

1 A. THAT'S CORRECT.

2 Q. AND YOU TOLD THAT TO MR. STERN?

3 A. I EVENTUALLY TOLD HIM.

4 Q. YOU EVENTUALLY TOLD HIM THAT, NOT THAT
5 SATURDAY NIGHT?

11:56AM

6 A. THE FOLLOWING DAY.

7 Q. WHEN YOU SPOKE TO HIM AT YOUR HOME THAT
8 SATURDAY NIGHT, ONE OF THE THINGS YOU SAID TO MR. STERN
9 WAS THAT AFTER THE SEPTEMBER 3 MEETING, I KNEW YOU HAD
10 TO DO SOMETHING.

11:56AM

11 YOU SAID THAT, DIDN'T YOU?

12 A. I DON'T REMEMBER SAYING THAT -- I REMEMBER
13 TELLING HIM I WAS SORRY HOW THE SEPTEMBER 3RD MEETING
14 CAME OUT, BUT I DON'T REMEMBER SPECIFICALLY SAYING
15 THAT.

11:56AM

16 Q. YOU DON'T REMEMBER SPECIFICALLY SAYING THAT,
17 SIR?

18 IS YOUR MEMORY GOOD ENOUGH THAT YOU CAN
19 DENY THAT YOU ARE CERTAIN YOU DID NOT SAY THAT TO
20 MR. STERN, THAT AFTER SEPTEMBER 3, I KNEW WE HAD TO DO
21 SOMETHING?

11:56AM

22 A. I CAN'T SPECIFICALLY DENY IT.

23 IT'S BEEN SOME TIME AGO. A LOT OF
24 THINGS WERE SAID.

25 I DON'T SPECIFICALLY REMEMBER ANY OF
26 THAT, BUT I DON'T THINK I DID.

11:57AM

27 MR. QUINN: NOTHING FURTHER.

28 THE COURT: ALL RIGHT.

1 DIRECT EXAMINATION?

2 MR. WEINGART: THANK YOU, YOUR HONOR.

3

4

5 CROSS-EXAMINATION

6 (DIRECT EXAMINATION UNDER 776)

7

8 BY MR. WEINGART:

9 Q. GOOD MORNING, MR. BARACH.

10 A. GOOD MORNING.

11:57AM

11 Q. NOW, YOU WERE ASKED SOME QUESTIONS ABOUT THE
12 SEPTEMBER 3RD MEETING WITH MR. STERN?

13 A. YES.

14 Q. HOW DID THAT MEETING START?

15 A. THE ACTUAL MEETING ITSELF?

11:58AM

16 Q. YES.

17 A. I THINK THAT JEFFREY GUNDLACH SAID TO
18 MR. STERN, I HEARD RUMORS THAT THERE WERE A BUNCH OF
19 LAWYERS ON THE 17TH FLOOR, PLANNING ON FIRING ME.

20 Q. WHAT DID MR. STERN SAY IN RESPONSE?

11:58AM

21 A. HE SAID THAT WASN'T TRUE.

22 Q. AT THAT MEETING, DID YOU RAISE ANY CONCERNS
23 WITH MR. STERN?

24 A. YES. YES, I DID.

25 Q. WHAT CONCERNS WERE THOSE?

11:58AM

26 A. I RAISED A CONCERN, AND I SAID THAT I DIDN'T
27 THINK IT WAS APPROPRIATE THAT HE RETURN AS CEO OF THE
28 FIRM AFTER BEING IN ABSENCE FOR FOUR TO FIVE YEARS, AND

1 THAT I THOUGHT THAT JEFFREY GUNDLACH WOULD BE A BETTER
2 CEO FOR THE FIRM, AND WOULD HELP GROW THE FIRM IN A
3 BETTER WAY.

4 Q. WHAT DID MR. STERN SAY IN RESPONSE TO THAT?

5 A. HE SAID THAT HE TOOK THAT POSITION BECAUSE THE
6 FRENCH ASKED HIM TO DO IT. 11:59AM

7 Q. DO YOU RECALL ANY OTHER CONCERNS THAT YOU
8 RAISED PERSONALLY, DURING THAT MEETING?

9 A. I BROUGHT UP THE ISSUE OF MY STOCK DILUTION.

10 AND ALSO THE ISSUE WAS BROUGHT UP, NOT 11:59AM
11 BY ME, BUT IN TOTALITY, TO CONVEY TO MR. STERN THAT
12 DESPITE THE FACT THAT HE SAID THAT MR. GUNDLACH WAS NOT
13 BEING FIRED, THAT IF HE WERE TO BE FIRED, THE PEOPLE IN
14 THAT ROOM WOULD NOT BE VERY HAPPY, AND IT WAS HIGHLY
15 LIKELY THAT A LOT OF THEM MIGHT LEAVE. 11:59AM

16 Q. WHY DID YOU WANT MR. STERN TO KNOW THAT? YOU,
17 PERSONALLY?

18 A. WELL, BECAUSE I THOUGHT IT WOULD BE A VERY BAD
19 DECISION FOR TCW TO FIRE MR. GUNDLACH.

20 AND THE PURPOSE WAS NOT TO THREATEN 12:00PM
21 MR. STERN, AND THE PURPOSE WAS NOT TO PLAN SOME SORT OF
22 LEAVING A MESS. IT WAS ACTUALLY TO JUST INFORM HIM
23 THAT HE'D BEEN THINKING ABOUT THIS, AND THERE COULD BE
24 CONSEQUENCES GREATER THAN HE, PERHAPS, THOUGHT.

25 Q. AT SOME POINT DURING THE MEETING, DID 12:00PM
26 MR. GUNDLACH MAKE AN OFFER TO BUY THE FIRM?

27 A. YES, HE DID.

28 Q. WHAT DID MR. STERN SAY, IN RESPONSE TO THAT

1 OFFER?

2 A. HE TOOK OUT A PEN AND PAPER AND ASKED
3 MR. GUNDLACH WHAT SOME OF THE TERMS WERE, AND HE WROTE
4 THEM DOWN.

5 AND HE LOOKED AS IF HE WAS CONSIDERING
6 THEM, AND PUT IT IN HIS POCKET AND SAID, OKAY.

12:00PM

7 Q. DID MR. STERN INDICATE WHETHER OR NOT HE WOULD
8 GET BACK TO MR. GUNDLACH ABOUT THE OFFER?

9 A. I DON'T REMEMBER HIM SPECIFICALLY SAYING THAT.

10 HE SAID, I'VE HEARD WHAT YOU SAID. I'VE
11 WRITTEN IT DOWN, AND THE BALL'S IN MY COURT. AND I
12 WILL PROBABLY GET BACK TO YOU.

12:01PM

13 Q. CAN YOU REMIND US AGAIN, WHO IS JACQUES
14 RIPOLL?

15 A. JACQUES RIPOLL WAS THE INDIVIDUAL DESIGNATED
16 BY SOCIETE GENERALE, THE FRENCH BANK THAT OWNED TCW, TO
17 BE THE INDIVIDUAL IN CHARGE OF THE TCW ENTITY THAT THEY
18 OWNED.

12:01PM

19 Q. NOW, WE SAW SOME E-MAILS EARLIER ABOUT A
20 MEETING THAT YOU HAD WITH MR. RIPOLL ON SEPTEMBER 16TH.

12:01PM

21 DO YOU RECALL THOSE?

22 A. YES. I JUST SAW THOSE E-MAILS.

23 Q. WAS THAT THE FIRST TIME THAT YOU HAD MET
24 MR. RIPOLL?

25 A. YES, IT WAS.

12:02PM

26 Q. AND COULD WE PUT UP EXHIBIT 296. AND IF WE
27 COULD GO TO THE BOTTOM OF THAT E-MAIL CHAIN.

28 THAT'S AN E-MAIL THAT YOU WROTE ON

1 SEPTEMBER 16TH, 2009, AFTER YOU MET WITH MR. RIPOLL?

2 A. YES.

3 Q. AND ON THE THIRD LINE THERE, YOU SAID,
4 (READING):

5 CLEARLY, HE IS ATTEMPTING TO
6 CREATE ALLIES, AND IS STARTING THE
7 DIVIDE AND CONQUER STRATEGY I
8 EXPECTED FROM STERN.

12:02PM

9 CAN YOU TELL US WHAT YOU MEANT BY THAT?

10 A. WELL, MY THOUGHT PROCESS WAS THAT IF THEY WERE
11 PLANNING -- IT WASN'T AT ALL CERTAIN IF THEY WERE.
12 THEY WOULD PROBABLY WANT TO HAVE ME STAY, BECAUSE THAT
13 WOULD HELP RETAIN A LOT OF HIS CLIENTS. AND PERHAPS
14 THEIR GOAL AND OBJECTIVE WAS TO CREATE A RIFT BETWEEN
15 US, OR TO SOMEHOW CONVINCING ME TO STAY.

12:03PM

16 Q. NOW LATER ON IN THIS E-MAIL CHAIN, YOU SAY
17 THAT YOU THOUGHT THAT -- THE WORDS, MR. RIPOLL THINKS
18 I'M AN IDIOT.

12:03PM

19 DO YOU RECALL THAT?

20 A. YES, I DO.

12:03PM

21 Q. AND IT'S RIGHT THERE, WORDS, (READING:)

22 HE THINKS I'M AN IDIOT, AND
23 WOULD FALL FOR THIS FEEBLE ATTEMPT.
24 THIS IS INSULTING.

25 CAN YOU TELL US WHAT YOU MEANT BY THAT?

12:04PM

26 A. WELL, I MEANT, HERE'S SOMEONE I NEVER MET
27 BEFOREHAND, WHO WAS REALLY NOT FAMILIAR WITH THE MONEY
28 MANAGEMENT BUSINESS AT ALL.

1 HE'D BEEN DOING SOMETHING PRIOR IN
2 FRANCE, WHEN HE WORKED FOR SOCIETE GENERALE. AND HE'S
3 SUDDENLY MEETING ME FOR THE FIRST TIME, AND TELLING ME
4 HOW GREAT AND WONDERFUL WE ARE, AND BESTOWING ALL THESE
5 COMPLIMENTS ON ME.

12:04PM

6 AND IT SOUNDS TO ME AS IF HE WAS TRYING
7 TO GET ME TO BE ON HIS SIDE.

8 AND I HAD BEEN WORKING WITH PEOPLE AT
9 SOCIETE GENERALE FOR A LONG TIME PERIOD, THAT I HAD
10 KNOWN FOR A LONG TIME PERIOD, AND HAD A VERY GOOD
11 RELATIONSHIP WITH THEM; BUT THEY NEVER STARTED OUT
12 CONVERSATIONS WITH ME THAT WAY.

12:04PM

13 Q. COULD WE PUT UP EXHIBIT 295.

14 THIS IS IN EVIDENCE, YOUR HONOR.

15 WE SAW THIS E-MAIL EARLIER. AND IT'S A
16 CONTINUATION OF THE CHAIN. AND AT THE TOP, YOU SAY,
17 (READING):

12:05PM

18 I AGREE. BUT AT LEAST NOW, WE
19 HAVE THE LUXURY OF TIME TO PLAN AND
20 PREPARE.

12:05PM

21 DO YOU SEE THAT?

22 A. YES, I DO.

23 Q. CAN YOU TELL US WHAT YOU MEANT BY THE LUXURY
24 OF TIME TO PLAN AND PREPARE?

25 A. WELL, FIRST OF ALL, IT WAS IN RESPONSE TO
26 MR. GUNDLACH'S CONCERNS THAT SOMETHING WAS GOING TO
27 HAPPEN TO HIM.

12:05PM

28 AND SECONDLY, I MEANT BY THAT, THAT

1 NOTHING IS GOING TO HAPPEN RIGHT AWAY.

2 BUT IF YOU WANT TO FIGURE OUT A WAY TO
3 EXIT FROM TCW, WE HAVE TIME TO FIGURE OUT A WAY TO DO
4 THIS ON A MUTUALLY AGREEABLE, AMICABLE BASIS.

5 Q. WE CAN TAKE THAT DOWN. 12:06PM

6 LET ME MOVE FORWARD NOW TO DECEMBER 4TH.

7 MR. QUINN ASKED YOU A FEW QUESTIONS, I
8 THINK, ABOUT DECEMBER 5TH.

9 I'M GOING TO START ON DECEMBER 4TH.

10 ON DECEMBER 4TH, WERE YOU PLACED ON ANY
11 KIND OF LEAVE BY TCW? 12:06PM

12 A. NO, I WASN'T.

13 Q. DID YOU MEET WITH ANY SENIOR TCW OFFICIALS ON
14 THE 4TH?

15 A. YES, I DID. 12:06PM

16 Q. WHO DID YOU MEET WITH?

17 A. I MET WITH ROBERT DAY, MARC STERN, MARK
18 GIBELLO, DAVE DEVITO.

19 Q. AND MR. DAY, JUST REMIND US, HE WAS THE
20 CHAIRMAN OF TCW? 12:06PM

21 A. YES, HE IS.

22 Q. AND HOW DID THAT -- DID YOU MEET FIRST WITH
23 MR. DAY AND OTHERS?

24 A. FIRST I MET WITH MR. DAY AND MR. GIBELLO.

25 Q. HOW DID THAT MEETING COME ABOUT? 12:06PM

26 A. AT ABOUT 1:15 ON DECEMBER 4TH, MR. DAY'S
27 SECRETARY ASKED ME TO COME UP TO HIS OFFICE, AND I DID.

28 Q. DID YOU KNOW AT THAT POINT THAT MR. GUNDLACH

1 HAD BEEN RELIEVED OF HIS DUTIES?

2 A. NO, I DID NOT.

3 Q. AND WAS ANYTHING SAID AT THAT MEETING ABOUT
4 THE FACT THAT MR. GUNDLACH WAS BEING TERMINATED?

5 A. YES.

12:07PM

6 WHEN I GOT INTO THAT MEETING, MR. DAY
7 SAID, WE'RE SENDING OUT AN E-MAIL. IT'S GOING OUT
8 MOMENTARILY.

9 WE'RE ANNOUNCING THAT MR. GUNDLACH'S
10 BEEN FIRED.

12:07PM

11 MET WEST WAS -- HAS BEEN ACQUIRED.

12 WE'LL DO SOME MAJOR CHANGES, AND WE WANT
13 TO TALK TO YOU ABOUT IT.

14 Q. DID YOU ASK MR. DAY WHY THIS WAS HAPPENING?

15 A. YES. I EXPRESSED SHOCK.

12:07PM

16 AND I SAID, WHY DID YOU DO THIS?

17 Q. WHAT DID MR. DAY SAY?

18 A. HE SAID A VARIETY OF THINGS. BUT THREE
19 THINGS, I SPECIFICALLY REMEMBER, BECAUSE THEY SEEMED
20 SOMEWHAT ODD.

12:07PM

21 ONE OF THE REASONS HE MENTIONED, HE SAID
22 THAT JEFFREY GUNDLACH DID NOT GO TO HIS PARTIES.

23 AND I RESPONDED THAT HE ACTUALLY HAD
24 GONE TO THE LAST PARTY OF HIS, BECAUSE MR. GUNDLACH HAD
25 TOLD ME THAT, JUST BY CHANCE.

12:08PM

26 Q. WHAT WAS THE -- THERE WAS A SECOND REASON?

27 A. THE SECOND REASON, HE SAID THAT MR. GUNDLACH
28 DID NOT CALL THE LOW, THE STOCK MARKET, IN MARCH OF

1 '09.

2 Q. AND WAS THERE A THIRD REASON?

3 A. AND THE THIRD REASON, HE SAID MR. GUNDLACH WAS
4 MAKING WAY TOO MUCH MONEY. HE WAS GOING TO MAKE
5 SOMETHING LIKE \$50 MILLION IN 2009, AND SOME NUMBER
6 LIKE \$100 MILLION IN 2010.

12:08PM

7 HE THOUGHT THAT THAT WAS TOO MUCH.

8 Q. NOW, AT THE CONCLUSION OF THAT MEETING, WERE
9 YOU ASKED TO MEET WITH ANYONE?

10 A. YES, I WAS.

12:08PM

11 Q. WHO WERE YOU ASKED TO MEET WITH?

12 A. I WAS ASKED TO MEET WITH THE SENIOR OFFICIALS
13 OF METROPOLITAN WEST.

14 Q. DID YOU, IN FACT, MEET WITH THEM?

15 A. YES, I DID.

12:08PM

16 Q. WHO DID YOU MEET WITH?

17 A. I MET WITH TAD RIVELLE AND SOME FELLA BY THE
18 NAME OF LAIRD, AND DAVID LIPPMAN, AND A FEW OTHER
19 PEOPLE. I DON'T REMEMBER THEIR NAMES.

20 Q. AND WHAT WERE YOU TOLD DURING THAT MEETING?

12:09PM

21 A. WELL, I WAS TOLD THAT MET WEST WOULD BE TAKING
22 OVER THE FIXED INCOME OPERATION, AND I COULD CONTINUE
23 ON AS CO-CHIEF INVESTMENT OFFICER.

24 Q. WHAT DID YOU SAY IN RESPONSE?

25 A. MY RESPONSE WAS, WELL, REGARDLESS OF WHAT
26 HAPPENS WITH GUNDLACH, WHATEVER YOUR CONCERNS WERE WITH
27 HIM, OBVIOUSLY, IT WASN'T FOR PERFORMANCE REASONS.

12:09PM

28 SO I DIDN'T SEE ANY REASON WHY THE MET

1 WEST TEAM SHOULD BE TAKING OVER THE FIXED INCOME AREA.

2 IF ANYTHING, THE EXISTING TEAM SHOULD BE
3 THE ONES TAKING OVER, AND THE PEOPLE IN THE MET WEST
4 FIXED INCOME AREA WOULD BE THE ONES WHO WILL BE
5 ELIMINATED.

12:09PM

6 Q. HOW DID THAT MEETING CONCLUDE?

7 A. IT DIDN'T GO THAT WELL.

8 AND AFTER A SHORT WHILE, I ESSENTIALLY
9 LEFT THE BUILDING AND WENT BACK HOME.

10 Q. AND THEN YOU -- WAS THE NEXT MEETING YOU HAD,
11 THE MEETING WITH MR. STERN, THAT MR. QUINN ASKED YOU
12 ABOUT?

12:10PM

13 A. THE NEXT MEETING I HAD WITH ANYONE FROM TCW
14 WAS MR. STERN.

15 Q. FAIR ENOUGH.

12:10PM

16 AND THAT MEETING, I THINK YOU SAID, TOOK
17 PLACE AT YOUR HOME; IS THAT RIGHT?

18 A. YES.

19 Q. AND DID MR. STERN MAKE AN OFFER TO YOU AT THAT
20 TIME, TO TRY TO GET YOU TO STAY?

12:10PM

21 A. YES, HE DID.

22 I HAD RESIGNED SATURDAY MORNING, SENT
23 HIM A LETTER OF RESIGNATION.

24 AND HE CALLED ME AND SAID HE WANTED TO
25 TALK TO ME ABOUT THAT, AND COME OVER TO MY HOUSE; SO I
26 AGREED TO TALK TO HIM.

12:10PM

27 Q. WHAT WAS THE PACKAGE THAT HE PUT ON THE TABLE
28 FOR YOU?

1 A. THE PACKAGE WAS ONE OF A TITLE INCREASE TO
2 VICE CHAIRMAN OF THE FIRM.

3 HE SAID I WOULD GET MORE STOCK IN THE
4 COMPANY THAN ANYONE ELSE, INCLUDING HIM, AND THAT I
5 WOULD GET A PERCENTAGE OF REVENUES OF THE ENTIRE FIXED
6 INCOME GROUP, INCLUDING THE MET WEST REVENUES FOR A
7 PERIOD OF SIX YEARS, AT WHICH I BASICALLY ONLY HAD TO
8 WORK FOR THREE OF THEM.

12:11PM

9 Q. I THINK YOU MENTIONED YOU TURNED THAT DOWN,
10 AND ENDED UP GOING TO DOUBLELINE?

12:11PM

11 A. I TOLD THEM I WOULD THINK ABOUT IT.

12 AND THE NEXT DAY, IN THE AFTERNOON, I
13 SENT THEM A CORDIAL E-MAIL, THANKING HIM FOR HIS OFFER,
14 THANKING HIM FOR THE PAST RELATIONSHIP, BUT I DECIDED
15 TO LEAVE TCW.

12:11PM

16 Q. NOW, WHEN DOUBLELINE WAS STARTED, DID IT HAVE
17 A MUTUAL FUND?

18 A. NO, IT DID NOT.

19 MR. QUINN: BEYOND THE SCOPE, YOUR HONOR.

20 THE COURT: SUSTAINED.

12:12PM

21 MR. WEINGART: MAY I HAVE ONE MOMENT, YOUR
22 HONOR?

23 THE COURT: YES, YOU MAY.

24 Q. BY MR. WEINGART: COULD I ASK YOU TO TAKE A
25 LOOK AT EXHIBIT 764, WHICH IS IN EVIDENCE.

12:13PM

26 MR. QUINN: YOUR HONOR, THIS IS ALSO BEYOND
27 THE SCOPE.

28 THE COURT: SUSTAINED.

1 MR. BARACH, YOU CAN CALL IN YOUR CASE IN
2 CHIEF, BUT IT SEEMS THERE ARE SOME LIMITATIONS HERE.

3 MR WEINGART: I THINK THAT'S WHAT WE'LL END UP
4 DOING, YOUR HONOR; SO WE'LL SEE YOU AGAIN IN A FEW
5 DAYS.

12:14PM

6 THE COURT: RE CROSS, MR. QUINN?

7 MR. QUINN: JUST VERY BRIEFLY.

8 THE COURT: HOW BRIEF? DO YOU WANT TO TAKE A
9 BREAK, OR FINISH IT?

10 MR. QUINN: I CAN FINISH IT.

12:14PM

11 THE COURT: OKAY.

12

13

14 REDIRECT EXAMINATION

15

16 BY MR. QUINN:

17 Q. YOU INDICATED THAT YOU TOLD MR. STERN THAT YOU
18 DIDN'T THINK IT WAS A GOOD IDEA FOR HIM TO COME BACK AS
19 CEO?

20 AND HE SAID IN RESPONSE, THE FRENCH
21 ASKED ME TO DO IT --

12:14PM

22 A. THAT'S CORRECT.

23 Q. -- BASICALLY.

24 BUT YOU UNDERSTAND THAT THE SHAREHOLDER
25 WITH SOCIETE GENERALE HAS A RIGHT TO DECIDE WHO THEY
26 WANT TO BE CEO?

12:14PM

27 A. I UNDERSTAND THAT.

28 Q. AND THEY ARE THE ONES THAT ELECT THE

1 DIRECTORS?

2 A. I UNDERSTAND THAT.

3 Q. INCLUDING MR. STERN AND MR. GUNDLACH?

4 A. YES.

5 Q. YOU INDICATED -- YOU TOLD US ABOUT THIS
6 CONVERSATION YOU HAD WITH MR. DAY.

12:14PM

7 NOW, TERMINATING MR. GUNDLACH TO SAVE
8 MONEY WOULD MAKE NO SENSE AT ALL; ISN'T THAT TRUE?

9 MR WEINGART: OBJECTION. ARGUMENTATIVE.

10 THE COURT: SUSTAINED.

12:14PM

11 Q. BY MR. QUINN: WELL, YOU SAID THAT MR. DAY
12 TOLD YOU THAT MR. GUNDLACH WAS GOING TO BE PAID A LOT
13 OF MONEY, IN RESPONSE TO YOUR QUESTION AS TO WHY
14 MR. GUNDLACH WAS RELIEVED OF HIS DUTIES.

15 AND MR. DAY SAID THREE THINGS.

12:15PM

16 THAT WAS ONE OF THEM?

17 A. YES.

18 Q. AND AS FAR AS YOU ARE CONCERNED, JUST AS FAR
19 AS YOU ARE CONCERNED, THAT MAKES NO SENSE AT ALL,
20 RIGHT?

12:15PM

21 MR. WEINGART: OBJECTION. ARGUMENTATIVE.

22 THE COURT: SUSTAINED.

23 Q. BY MR. QUINN: DID THAT MAKE ANY SENSE TO YOU?

24 MR. WEINGART: SAME OBJECTION.

25 THE COURT: SUSTAINED.

12:15PM

26 Q. BY MR. QUINN: DID YOU AGREE WITH THAT, THAT
27 MR. GUNDLACH SHOULD BE TERMINATED BECAUSE HE MAKES TOO
28 MUCH MONEY?

1 MR. WEINGART: OBJECTION. RELEVANCE,
2 ARGUMENTATIVE.

3 THE COURT: I THINK IT MISCHARACTERIZES THE
4 TESTIMONY, IN TERMS OF THE GROSS PICTURE.

5 I'LL SUSTAIN THE OBJECTION.

12:15PM

6 Q. BY MR. QUINN: YOU ARE AWARE THAT MR. GUNDLACH
7 MADE A LOT OF MONEY FOR THE FIRM?

8 A. YES.

9 Q. AND TERMINATING HIM TO SAVE MONEY WOULD MAKE
10 ABOUT AS MUCH SENSE AS TERMINATING HIM FOR NOT GOING TO
11 PARTIES?

12:15PM

12 MR. WEINGART: SAME OBJECTIONS, YOUR HONOR.

13 THE COURT: SUSTAINED.

14 MR. QUINN: NOTHING FURTHER.

15 THE COURT: NOTHING FURTHER?

12:15PM

16 MR. WEINGART: NO, YOUR HONOR.

17 THE COURT: MR. BARACH, YOU MAY STEP DOWN.

18 LADIES AND GENTLEMEN, WE'LL TAKE OUR
19 NEXT RECESS. 20 MINUTES.

12:16PM

20
21 (AT 12:16 P.M. THE JURY WAS
22 EXCUSED, AND THE FOLLOWING
23 PROCEEDINGS WERE HELD:)

24
25 THE COURT: ALL RIGHT. WE'RE OUT OF THE
26 PRESENCE OF THE JURY.

12:16PM

27 ANY MATTERS ANYBODY WANTS TO TAKE UP?

28 MR. BRIAN: UNFORTUNATELY I DO HAVE ONE.

1 YOUR HONOR, WHAT'S HAPPENED THE LAST
2 COUPLE DAYS IS, TCW HAS MANAGED TO GIVE THE JURY A HALF
3 AND MISLEADING PICTURE ABOUT THIS GOLDMAN SACHS
4 CONVERSATION. THEY PERSUADED YOUR HONOR TO PUT OFF
5 MR. GUNDLACH'S TESTIMONY ON THE SUBJECT.

12:17PM

6 IT'S NOT HEARSAY, FOR ALL THE REASONS WE
7 ARGUED, BUT HE WAS ORDERED TO COME BACK AND DO IT
8 LATER.

9 THEY THEN ASKED THIS WITNESS ABOUT WHAT
10 MR. GUNDLACH SAID, AND THEN ASKED A QUESTION THAT WAS
11 HIGHLY MISLEADING, AND I THINK, INCONSISTENT WITH WHAT
12 THE FACTS ARE.

12:17PM

13 THAT IS, THE QUESTION WAS, DID
14 MR. GUNDLACH THEN EVER RETAIN GOLDMAN SACHS. THE
15 EVIDENCE IS, AND I THOUGHT BOTH MR. MADISON AND I
16 AGREED ABOUT THAT THE OTHER DAY.

12:17PM

17 THE EVIDENCE IS, GOLDMAN SACHS DECIDED
18 THAT THEY WERE NOT ABLE TO REPRESENT MR. GUNDLACH
19 BECAUSE THEY HAD A CONFLICT, IN THAT THEY HAD
20 REPRESENTATIONS OF TCW AND SOC-JEN.

12:17PM

21 AND THE IMPRESSION THAT WAS LEFT WITH
22 THE JURY WAS THAT MR. GUNDLACH DECIDED NOT TO RETAIN
23 THEM BECAUSE THEY INSISTED ON DOING SO PURSUANT TO A
24 NEGOTIATED SEPARATION. THAT WAS THE IMPRESSION THAT
25 WAS LEFT THROUGH THAT QUESTION; AND THAT'S
26 INCONSISTENT.

12:17PM

27 I THINK THAT'S THE TESTIMONY AND THE
28 QUESTION AND ANSWER SHOULD BE STRICKEN. IT'S WRONG,

1 AND IT'S MISLEADING.

2 THE COURT: WELL, IT'S AN INFERENCE THEY WANT
3 TO BE DRAWN FROM THIS.

4 BUT THE QUESTION IS, WHY -- YOU CAN PUT
5 YOUR EVIDENCE ON IN RESPONSE. AND TO THE EXTENT THAT
6 YOU WANT TO BRING MR. GUNDLACH BACK, YOU ARE ABLE TO DO
7 THAT.

12:18PM

8 I APPRECIATE YOUR CONCERN, BUT THERE ARE
9 TWO SIDES TO IT.

10 MR. BRIAN: I APPRECIATE THAT. AND I'M HAPPY
11 TO GO IN THE RIGHT ORDER.

12:18PM

12 BUT WHAT THEY ARE DOING IS THEY WANT TO
13 GO IN ORDER THAT THEN SAYS, WELL, WE DON'T GET TO
14 PRESENT HALF THE PICTURE.

15 THE NEXT THING WE'RE GOING TO HAVE IS
16 MR. WARD'S VIDEOTAPE, WITHOUT THE HANDWRITTEN NOTES,
17 WHICH OUGHT TO COME IN --

12:18PM

18 THE COURT: WELL, WE ARE GOING TO HAVE THE
19 HANDWRITTEN NOTES.

20 WELL, THEY'VE OBJECTED. AND I DIDN'T --
21 I DIDN'T GIVE YOU A RULING ON IT, BECAUSE TO BE HONEST
22 WITH YOU, I WASN'T SURE IF WE WERE GOING TO -- THAT WAS
23 ONE OF THE THINGS YOU WERE GOING TO FILE A BRIEF ON OR
24 NOT.

12:18PM

25 MR. BRIAN: WE ARE.

12:19PM

26 BUT THAT'S MY POINT, YOUR HONOR. WHAT
27 THEY ARE DOING IS, THEY WANT TO GO WITH THEIR ORDER,
28 BUT THEY DON'T WANT TO GO WITH THE PARTS OF THE ORDER

1 THAT HELP US; AND THAT'S NOT PROPER.

2 THE COURT: WELL, I'M INCLINED TO ADMIT THE
3 NOTES AS REDACTED. AND WE'LL ADMIT THEM FOR PURPOSES
4 OF SHOWING THE DEPOSITION, SO THAT THEY CAN BE SHOWN
5 WHILE THE DEPOSITION IS BEING SHOWN.

12:19PM

6 MR. BRIAN: THAT'S WHAT WE THINK SHOULD
7 HAPPEN.

8 MR. MADISON: YOUR HONOR, WE'RE NOT DOING WHAT
9 MR. BRIAN IS SUGGESTING. WE JUST THINK THE CASE SHOULD
10 BE TRIED THROUGH ADMISSIBLE EVIDENCE.

12:19PM

11 AND ON THE DEPO THAT WE'RE GOING TO
12 HEAR, THE WITNESS ACTUALLY TESTIFIES ABOUT THE
13 CONVERSATION, AND HE USES THE NOTES WHILE HE'S DOING
14 IT.

15 I WOULD ASK YOUR HONOR TO JUST RESERVE
16 RULING ON THE ADMISSIBILITY OF WHAT IS ACTUALLY TRIPLE
17 HEARSAY, THE NOTES, UNTIL YOU'VE SEEN -- WE'VE GOT A
18 BRIEF. I'VE BEEN WORKING ON IT, ACTUALLY, THIS
19 MORNING.

12:19PM

20 THEY ARE GOING TO FILE A RESPONSIVE
21 BRIEF. IT'S AN IMPORTANT ISSUE, AND I WOULD ASK YOUR
22 HONOR, RESPECTFULLY, NOT TO REVERSE YOURSELF ON THIS.

12:19PM

23 THE COURT: THIS IS TESTIMONY REGARDING THE
24 SECOND ENCOUNTER WITH GOLDMAN SACHS, WHICH IS THE
25 CONFERENCE CALL THAT INCLUDED MR. WARD AND
26 MR. GUNDLACH.

12:20PM

27 MR. BRIAN: CORRECT.

28 THE COURT: AND MR. WARD TESTIFIED ABOUT WHAT

1 THEY SAID AND WHAT THEY RECOMMENDED, DID HE NOT?

2 MR. BRIAN: CORRECT.

3 AND HE TOOK CONTEMPORANEOUS NOTES OF
4 THAT CONVERSATION.

5 THOSE NOTES ARE, IN FACT, THE BEST
6 EVIDENCE OF WHAT WAS SAID.

12:20PM

7 THE COURT: WELL, I'M NOT SURE THERE HAS TO
8 BE -- MY INCLINATION IS TO ADMIT THOSE NOTES BECAUSE --
9 BUT -- YOU WANT TO BRIEF IT, AND I SAID YOU COULD BRIEF
10 IT.

12:20PM

11 MR. BRIAN: I DON'T WANT TO BRIEF IT.

12 THE COURT: WELL, BUT I SAID YESTERDAY, THAT'S
13 WHY I DIDN'T PUT SOMETHING IN TODAY AND COME OUT WITH A
14 RULING ON IT, BECAUSE THERE WAS AN AGREEMENT THAT A
15 BRIEF WOULD BE FILED TODAY. YOU WOULD FILE A RESPONSE,
16 AND THEN WE'D GO WITH IT.

12:20PM

17 MR. BRIAN: YOUR HONOR, I DON'T WANT TO ARGUE
18 IT FOREVER. WE THOUGHT YOU HAD RULED ON THE RECORD.
19 MR. MADISON OFFERED TO BRIEF IT, AND THEN I SAW THIS
20 DISPLAY WITH MR. BARACH, AND I THINK IT'S MISLEADING.
21 AND I THINK THE JURY OUGHT TO HEAR THE EVIDENCE --

12:21PM

22 THE COURT: BUT THAT'S THE NATURE OF THE
23 PROCESS, HERE. YOU KNOW THEY WANT TO MISLEAD HIM ONE
24 WAY, YOU WANT TO MISLEAD HIM ANOTHER WAY.

25 I DON'T KNOW WHAT THE TRUTH IS. THAT'S
26 WHAT THE JURY IS GOING TO DECIDE. THE JURY MAKES THAT
27 DETERMINATION.

12:21PM

28 I DON'T NEED TO GO ANY MORE ON THIS.

1 MR. MADISON: YOUR HONOR, I DID HAVE SOME
2 IMPORTANT BUSINESS TO SAY.

3 THE COURT: WHAT IS THAT IMPORTANT BUSINESS?

4 MR. MADISON: WHAT I'D LIKE TO DO IS MOVE INTO
5 EVIDENCE THE EXHIBITS THAT ARE COMING IN THROUGH THE
6 WARD DEPOSITION TESTIMONY, SO WE DON'T HAVE TO WASTE
7 TIME DURING THE PRESENTATION.

12:21PM

8 CAN I JUST READ THOSE EXHIBITS INTO THE
9 RECORD, AND PERHAPS WHEN WE RECONVENE, IF THEY HAVE AN
10 OBJECTION, THEY CAN LET US KNOW.

12:21PM

11 THE COURT: I'LL TELL YOU WHAT, I'M GOING TO
12 PROVISIONALLY ACCEPT THE WARD NOTES, TOO, SO THAT THEY
13 WILL BE SHOWN, JUST AS THE OTHER EXHIBITS, WHEN
14 MR. WARD'S TESTIMONY IS BEING HEARD.

15 AND I'LL TAKE YOUR BRIEF, AND I'LL TAKE
16 HIS BRIEF. AND TO THE EXTENT THAT I DETERMINE THAT IT
17 SHOULD BE STRICKEN, I'LL SO ADVISE THE JURY.

12:21PM

18 BUT YOU CAN'T -- YOU PUSH THE ENVELOPE.
19 YOU CAN'T HAVE IT ALL WAYS.

20 AND WHAT ARE THE EXHIBITS YOU WANT?

12:22PM

21 MR. MADISON: YES, YOUR HONOR. MAY I JUST
22 SAY, ON THE WARD NOTES --

23 THE COURT: LET'S GET THIS DONE.

24 MR. MADISON: EXHIBIT 330, 337, 336, 386, 414,
25 421, 430, 441, 411, 452, 453, 464, 470, 479, 483, 484,
26 491, 886, 950, 1059, 508, 513, 526, 514, 527.

12:22PM

27 THE COURT: JUST A MINUTE. 514?

28 MR. MADISON: YES, YOUR HONOR.

1 AND THEN 527, AND 528.

2 THE COURT: ALL RIGHT.

3 AND WHAT IS THE EXHIBIT NUMBER? I HAVE
4 IT IN MY NOTES, OR IN MY RULINGS ON THE --

5 MR. MADISON: THE NOTES WERE DEPO EXHIBIT 30.
6 AND I CAN GIVE YOU THE TRIAL EXHIBIT IF YOU WOULD LIKE.

12:23PM

7 THE ONLY THING I WAS GOING TO POINT OUT
8 ON THAT IS, THE BEST ARGUMENT FOR THE NOTES IS PAST
9 RECOLLECTION, RECORDED; IN WHICH CASE THEY COULD BE
10 READ INTO THE RECORD, BUT NOT ADMITTED INTO EVIDENCE.

12:23PM

11 AND THAT'S BASICALLY WHAT HAPPENS IN THE
12 DEPOSITION.

13 THE COURT: WELL, AND THAT'S WHY THEY SAID
14 THEY HAD TO BE REDACTED. SO I'LL ALLOW THEM THE SAME
15 WAY.

12:24PM

16 TELL ME AGAIN WHAT THE TRIAL EXHIBIT
17 NUMBER ON THOSE NOTES WAS.

18 MR. MADISON: 506, YOUR HONOR.

19 THE COURT: AND IS THERE ANY OBJECTION TO THE
20 EXHIBITS MR. MADISON READ OFF?

12:24PM

21 I'M SURE HE GAVE YOU A LIST OF THOSE, SO
22 HE COULD THINK ABOUT IT TEN MINUTES BEFORE WE WERE
23 GOING TO DISPLAY THE DEPO.

24 MR. MADISON: WELL, THE DEPO, YOUR HONOR, HAS
25 BEEN THE SUBJECT.

12:24PM

26 MR. BRIAN: WE'LL LOOK AT THEM QUICKLY.

27 THE COURT: ALL RIGHT. THANKS.

28 MR. BRIAN: THANK YOU, YOUR HONOR.

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

(RECESS TAKEN.)

(THE NEXT PAGE NUMBER IS 3801.)

1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 17, 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

12:45PM

11

12

13

THE COURT: ALL RIGHT IN THE TCW VERSUS
GUNDLACH MATTER ALL THE JURORS ARE AGAIN PRESENT. AS
ARE COUNSEL.

14

MR. QUINN: MAY WE APPROACH ON ONE MATTER?

15

THE COURT: MR. QUINN, MR. MADISON, COME ON

12:45PM

16

UP.

17

18

(SIDE-BAR CONFERENCE HELD) +

19

20

THE COURT: WHAT DO YOU HAVE?

12:45PM

21

MR. QUINN: YOU WERE GOING TO CONSIDER WHETHER
YOU WERE GOING TO EXAMINE THE JUROR.

22

23

MR. MADISON: WE ARE GOING THROUGH THE END OF
THE DAY SO YOU DON'T HAVE TO --

24

25

THE COURT: I'M REALLY NOT INCLINED TO DO THAT
AT THIS POINT. I HAVE TO DO IT BRIEFLY BECAUSE -- BUT
I WILL IF YOU INSIST.

12:46PM

26

27

MR. MADISON: IF YOU CAN.

28

1 THE COURT: I'LL HAVE HIM STAY. IT WILL BE
2 BRIEF.

3 (DISCUSSION HELD OFF THE RECORD AT SIDE-BAR) +

4
5 (SIDE-BAR CONFERENCE CONCLUDED.) +

12:46PM

6
7 MR. QUINN: YOUR HONOR, THE NEXT WITNESS WILL
8 BE GREG WARD TESTIFYING BY VIDEOTAPE DEPOSITION.

9 THE COURT: ALL RIGHT.

10 MR. BRIAN: COUNSEL HAVE CONFERRED WE
11 STIPULATED THE EXHIBITS THAT WILL BE MENTIONED IN THE
12 COURSE OF THIS MAY BE DISPLAYED TO THE JURY SUBJECT TO
13 MOTION TO STRIKE ON EITHER SIDE.

12:47PM

14 MR. QUINN: THAT'S RIGHT.

15 THE COURT: THEY HAVE NOT BEEN ADMITTED,
16 LADIES AND GENTLEMEN, IF EXHIBITS HAVE BEEN ADMITTED
17 YOU'LL HAVE THEM AVAILABLE. IF YOU SEE SOMETHING I
18 DON'T ADMIT I'LL TELL YOU THAT.

12:47PM

19 AND YOU'RE NOT TO REGARD IT. BUT YOU'LL
20 BE INFORMED.

12:47PM

21 MR. MADISON: AS WAS THE CASE WITH OTHER
22 VIDEO. VIDEO IS PRESENTED BY JOINT, BOTH PARTIES.
23 THIS IS ESSENTIALLY THE DIRECT AND THE CROSS.

24 THE COURT: LET'S SEE IT.

25 MR. MADISON: AND THE TRIAL EXHIBIT NUMBERS
26 ARE DISPLAYED EVEN THOUGH IN THE DEPOSITION THEY MAY BE
27 TALKING ABOUT DEPOSITION EXHIBIT NUMBERS WE WILL SHOW
28 THE TRIAL EXHIBIT FOR THE RECORD.

12:48PM

1 THE COURT: WE WILL PROVIDE THEM WITH A
2 CROSS-REFERENCE TO THE EXTENT THAT THEY'RE DIFFERENT
3 NUMBERS.

4 MR. MADISON: YES, YOUR HONOR.

5 THE COURT: GO AHEAD.

12:48PM

6 MR. MADISON: THANK YOU.

7
8 (VIDEO DEPOSITION OF GREGORY WARD PLAYED.) +
9

10 THE COURT: MR. MADISON, I KNOW HOW MUCH WE
11 GOT -- DO WE HAVE MORE THAN THAT? WE'LL RECESS THEN.

01:58PM

12 PLEASE REMEMBER THE ADMONITION; DON'T
13 DISCUSS THE MATTER AMONG YOURSELF OR WITH ANYONE ELSE
14 OR FORM ANY OPINIONS OR CONCLUSIONS.

15 AND MR. POWELL, WOULD YOU WAIT JUST FOR
16 A MOMENT WITH US, PLEASE. THANK YOU. LADIES AND
17 GENTLEMEN.

01:58PM

18
19 (FOLLOWING PROCEEDINGS HELD IN CHAMBERS.) +
20

02:00PM

21 THE COURT: IN THE MATTER OF TCW VERSUS
22 GUNDLACH, WE'RE OUT OF THE PRESENCE OF THE JURY. WE'RE
23 ACTUALLY IN CHAMBERS. MR. POWELL, JUROR NO. 8, WE HAVE
24 HERE.

25 IT'S COME TO MY ATTENTION THERE WAS AN
26 ENCOUNTER BETWEEN YOU AND MR. GUNDLACH YESTERDAY IN THE
27 ELEVATOR. AND THE SOURCE OF THAT IS OF NO CONSEQUENCE.
28 AND YOU'RE NOT IN TROUBLE IN ANY WAY.

02:00PM

1 BUT I'D LIKE YOU TO RELATE TO ME EXACTLY
2 WHAT, IF ANYTHING, WAS SAID BY YOU OR MR. GUNDLACH.

3 JUROR POWELL: YES, ACTUALLY I DIDN'T EVEN
4 KNOW HE WAS IN THE ELEVATE. I CAME IN THE ELEVATOR AND
5 I HAD MY LUNCH BOX AND -- I KNOW JUROR NO. 7 HE'S GOT A
6 BAD BACK. HE PUTS HIS ICE PACK THERE ON HIS BACK AND I
7 WAS REALLY TALKING TO HIM.

02:00PM

8 AND I SAID, I FEEL BAD FOR YOU. AND
9 MR. GUNDLACH TURNED AROUND AND SAID, I FEEL BAD FOR YOU
10 GUYS.

02:00PM

11 THE COURT: OKAY.

12 WAS MR. GUNDLACH ALREADY IN THE ELEVATOR
13 WHEN YOU WERE IN THERE?

14 JUROR POWELL: I GUESS HE SNUCK RIGHT IN. NOW
15 WE HIT -- HIT THE BUTTON, I DIDN'T KNOW WHO WAS -- WHO
16 CAME IN.

02:01PM

17 THE COURT: YOUR COMMENT WAS DIRECTED TO JUROR
18 NO. 7?

19 JUROR POWELL: BECAUSE OF HIS BACK, YES.

20 THE COURT: AND MR. GUNDLACH SAID?

02:01PM

21 JUROR POWELL: I FEEL SORRY FOR YOU GUYS
22 WASTING YOUR TIME.

23 AND I DIDN'T SAY ANOTHER WORD.

24 THE COURT: WAS THERE ANY OTHER CONVERSATION?

25 JUROR POWELL: NONE.

02:01PM

26 THE COURT: ANYBODY ELSE PRESENT IN THE
27 ELEVATOR?

28 JUROR POWELL: NO. JUST THREE OF US.

1 THE COURT: DON'T TAKE THIS PERSONALLY, I HAVE
2 TO EXPLORE ANYTHING THAT COMES UP.

3 JUROR POWELL: YES. ABSOLUTELY.

4 THE COURT: ANYTHING THAT GIVES POTENTIAL OR
5 POSSIBILITY OF IMPROPRIETY. THIS IS PERFECTLY
6 INNOCENT. NO PROBLEM. YOU'RE DOING A GREAT JOB.

02:01PM

7 THANKS FOR YOUR SERVICE AND YOU'RE
8 EXCUSED. THANK YOU VERY MUCH.

9 JUROR POWELL: TO BE HONEST, AFTER ALL THAT I
10 SAID, OH, MY GOD, I ACTUALLY -- I HOPE I DON'T GET IN
11 TROUBLE OVER THIS.

02:01PM

12 THE COURT: YOU'RE NOT IN TROUBLE. WE DO
13 WATCH WHAT GOES ON.

14 JUROR POWELL: ABSOLUTELY.

15 THE COURT: I WANT TO MAKE SURE EVERYTHING'S
16 DONE RIGHT IN THIS TRIAL.

02:01PM

17 JUROR POWELL: THANK YOU VERY MUCH.

18 THE COURT: ALL RIGHT. I GUESS WE CAN STAY ON
19 THE RECORD. JUST A MOMENT.

20 (PAUSE.)

02:02PM

21
22 THE COURT: ALL RIGHT. WE'RE NOW OUT OF THE
23 PRESENCE OF MR. POWELL. WE'RE STILL ON THE RECORD.
24 I'M SATISFIED THAT HIS COMMENT TO JUROR NO. 7 NOT BEING
25 EVEN DIRECTED TO MR. GUNDLACH IN NO WAY EVIDENCES ANY
26 PREJUDGMENT OF THE CASE OR THAT HE'S REACHED ANY
27 CONCLUSIONS.

02:02PM

28 I TRUST, MR. MADISON, YOU AGREE WITH ME.

1 MR. MADISON: I DO AGREE, YOUR HONOR.

2 THE COURT: I'M GLAD WE DID THIS. IT CLEARS
3 THE AIR. WE DON'T HAVE AN ISSUE.

4 MR. MADISON: IT CLEARS THE AIR AS TO THE
5 JUROR. I'M REALLY DISMAYED THAT THE DEFENDANT WOULD
6 SEEK TO MAKE A COMMENT TO THE JUROR LIKE THAT. AND THE
7 JUROR'S VERSION WAS DIFFERENT FROM MR. GUNDLACH'S.

02:02PM

8 HE SAID THAT IT'S A WASTE OF TIME TO BE
9 HERE.

10 THE COURT: RIGHT.

02:02PM

11 MR. MADISON: I REALLY THINK YOU SHOULD
12 STERNLY ADMONISH MR. GUNDLACH. AND CERTAINLY PEOPLE
13 RECALL THINGS DIFFERENTLY.

14 THE COURT: I'LL JUST SAY, I'M NOT GOING TO
15 TAKE A LOT OF DEBATE ON THIS. AT THE END OF THE DAY,
16 IT APPEARS TO ME MR. GUNDLACH WAS OF THE IMPRESSION
17 THAT THE STATEMENT WAS MADE TO HIM.

02:03PM

18 THE JUROR, IN FACT, WAS MAKING IT TO
19 JUROR NO. 7, REGARDING HIS BACK. AND THE FACT THAT HE
20 HAS PROBLEMS.

02:03PM

21 MR. GUNDLACH RELATED THAT HE SAID HE
22 FELT SORRY FOR THEM. MR. POWELL MENTIONED HE FELT
23 SORRY FOR THEM AND THE WASTE OF TIME.

24 I'M NOT SURE WHERE THAT COMES OUT. I'M
25 SURE MR. BRIAN WILL ADMONISH HIS CLIENT AS I DID THIS
26 MORNING NOT TO HAVE ANY CONTACTS. BUT I DO NOT SEE
27 THIS AS IN ANY WAY, YOU KNOW, EVIDENCING SOME EFFORT BY
28 MR. GUNDLACH INFLUENCING THE JUROR.

02:03PM

1 OR BY THE JUROR HAVING PREDETERMINED ANY
2 ISSUES OR REACHED ANY CONCLUSIONS.

3 WITH THAT SAID, THAT'S ENOUGH. WE'VE
4 ALL MADE OUR RECORD.

5 MR. BRIAN: ONE THING, YOUR HONOR, I KNOW YOU
6 HAVE TO RUN. I DON'T THINK THE INFERENCE THAT
7 MR. MADISON WANTS TO DRAW IS FAIR. I CAN'T REMEMBER
8 WHETHER MR. GUNDLACH SAID THIS THIS MORNING OR I --
9 RECALLING OTHER CONVERSATIONS THAT -- BETWEEN COUNSEL
10 AND MR. GUNDLACH.

11 BUT, I THINK THE RECORD WAS THAT WE GOT
12 INTO THE ELEVATOR AND MR. HELM'S INDICATED, FOR
13 EXAMPLE, HE WAS LOOKING DOWN. HE DIDN'T KNOW WHETHER
14 THE JUROR'S THERE OR NOT. HE DOESN'T PAY ATTENTION
15 OFTEN WHEN HE'S IN A SITUATION LIKE THAT.

16 THE COURT: IT APPEARS HE ENTERED AFTER THE
17 JURORS. YOU KNOW YOUR VIEW, MR. MADISON'S VIEW,
18 EVERYBODY'S VIEW IS ON THE RECORD. AND THE BOTTOM
19 LINE, I DON'T THINK IT'S AN ISSUE. I WON'T TAKE ANY
20 ACTION ON IT. WE'LL GO FORWARD.

21 MR. BRIAN: THANK YOU, YOUR HONOR.

22 THE COURT: THANK YOU.

23
24 (AT 2:05 P.M., AN ADJOURNMENT WAS
25 TAKEN UNTIL 8-18-11 AT 8:30 A.M.)
26
27
28