

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 322

HON. CARL J. WEST, JUDGE

4
5 TRUST COMPANY OF THE WEST,)

6 PLAINTIFFS,)

7 VS.)

NO. BC 429385

8 JEFFREY GUNDLACH, ET AL,)

9 DEFENDANTS.)

10
11 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

12 AUGUST 18, 2011

13 APPEARANCES:

14 FOR PLAINTIFF:

QUINN EMANUEL URQUHART & SULLIVAN

BY: JOHN QUINN, ESQ.

ERIC J. EMANUEL, ESQ.

STEVEN MADISON, ESQ.

DAVID SERGENIAN, ESQ.

KARA BORDEN, ESQ.

SUSAN ESTRICH, ESQ.

JOHN M. PIERCE, ESQ.

DOMINIC SURPRENANT, ESQ.

DIANE CAFFERATA HUTNYAN, ESQ.

RANDA OSMAN, ESQ.

COURTNEY BALLARD, ESQ.

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22 FOR DEFENDANT:

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MARK B. HELM, ESQ.

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LAURA D. SMOWE, ESQ.

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JACOB S. KRIELKAMP, ESQ.

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1 FOR DEFENDANT:

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24
25 **WENDY OILLATAGUERRE, CSR 10978**
26 **RAQUEL A. RODRIGUEZ, CSR 9485**
27 **OFFICIAL COURT REPORTERS**
28 600 SOUTH COMMONWEALTH AVENUE
DEPARTMENT 322 - 17TH FLOOR
LOS ANGELES, CALIFORNIA 90005
213.351.8610

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WITNESSES

LEGEND:

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

PLF'S WITNESSES: DIRECT CROSS REDIRECT RECROSS

GREGORY WARD
(RESUMED) VIDEO DEPOSITION PLAYED 3915

ANDREW SMITH 3917-S 4035-W 4108-S

MARC STERN 4144-Q

DFN'S WITNESSES: DIRECT CROSS REDIRECT RECROSS

NONE IN THIS SESSION

1 INDEX (CNT'D)

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1 CASE NUMBER: BC 429385
2 CASE NAME: TCW VS. GUNDLACH
3 LOS ANGELES, CALIFORNIA AUGUST 18, 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 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +
12

13 THE COURT: GOOD MORNING.

14 IN THE TCW GUNDLACH MATTER, WE'RE OUT OF
15 THE PRESENCE OF THE JURY.

08:32AM

16 COUPLE OF THINGS. MR. SURPRENANT AND
17 MR. WEINGART, YOU HAVE AN ISSUE?

18 MR. SURPRENANT: ONE VERY MINOR, NARROW ISSUE.

19 WE HAVE A DEMONSTRATIVE WE'LL USE WITH
20 ANDREW SMITH, OUR INDUSTRY EXPERT. HE AND HIS
21 TESTIMONY WILL BE IDENTIFYING ITEMS THAT HE BELIEVES,
22 FROM THE POINT OF VIEW OF A PRACTITIONER IN THE M.B.S.
23 INDUSTRY, ARE TRADE SECRETS.

08:32AM

24 AND WE HAVE A NUMBER OF DEMONSTRATIVES.
25 MR. WEINGART AND I WORKED THROUGH OUR DISAGREEMENT, AND
26 WE AGREED ON ALL OF THEM EXCEPT THE SECOND SLIDE.

08:32AM

27 THE COURT: LET'S SEE IT.

28 MR. SURPRENANT: YOUR HONOR, IF YOU WOULD GO

1 TO THE TAB.

2 THE COURT: I DON'T HAVE A TABBED.

3 MR. SURPRENANT: NOT TABBED. CLIPPED.

4 TX 22471. YOU COULD PUT IT ON THE SCREEN. PUT ON
5 SLIDE 2-2.

08:33AM

6 THE COURT: I'M LOOKING AT -- I HAVE SLIDE 2
7 IN FRONT OF ME.

8 MR. SURPRENANT: YES. OKAY.

9 WHAT THIS IS, YOUR HONOR, THIS IS VERY
10 CLOSE -- THIS IS WHAT MR. SMITH TESTIFIED TO AT HIS
11 DEPOSITION. HE WAS ASKED BY MR. ALLRED, YOU KNOW, WHEN
12 YOU SAY TRADE SECRET, WHAT DO YOU MEAN?

08:33AM

13 AND THIS IS THE DEFINITION HE GAVE.

14 AND I'M NOT GOING TO TELL THE JURY IT IS
15 WHAT YOUR HONOR'S GOING TO INSTRUCT THEM. I'M GOING TO
16 SAY IT'S HIS CRITERIA AS A PRACTITIONER IN THE
17 INDUSTRY, WHAT HE WOULD REGARD AS TRADE SECRET.

08:33AM

18 I DO THINK IT TRACKS VERY CLOSELY WITH
19 WHAT THE UNIFORM TRADE SECRET ACT IDENTIFIES AS A TRADE
20 SECRET.

08:33AM

21 MR. WEINGART OBJECTS, AND I WILL LET HIM
22 EXPLAIN HIS OBJECTION.

23 MR. WEINGART: WELL, MY OBJECTION IS TWOFOLD,
24 YOUR HONOR.

25 FIRST OF ALL, THE QUESTION IS A LEGAL
26 ONE AS TO WHAT IS A TRADE SECRET. HIS PARTICULAR VIEW
27 OF WHAT A TRADE SECRET IS, IS NOT PERTINENT IF IT DOES
28 NOT MAP ON TOP OF WHAT THE LEGAL REQUIREMENTS ARE.

08:33AM

1 AND WITH REGARD TO THE PARTICULAR
2 BULLETS THAT ARE HERE, THEY DO NOT, IN FACT,
3 INCORPORATE THE VARIOUS ELEMENTS OF WHAT YOU NEED TO
4 PROVE FOR SOMETHING TO BE A TRADE SECRET UNDER
5 CALIFORNIA LAW.

08:34AM

6 AMONG OTHER THINGS, THE FACT THERE MUST
7 BE REASONABLE EFFORTS TAKEN -- UNDERTAKEN TO MAINTAIN
8 THE SECRECY IS COMPLETELY ABSENT FROM THESE BULLET
9 POINTS.

10 THE COURT: I DON'T THINK THE EXPERT SHOULD BE
11 TESTIFYING ON THE LAW.

08:34AM

12 MR. SURPRENANT: HE'S NOT, YOUR HONOR.

13 THE COURT: OR GIVING HIS OPINION OF WHAT THE
14 LAW SAYS CONSTITUTES A TRADE SECRET. I'M WILLING TO
15 GIVE SOME ADMONISHMENT.

08:34AM

16 HE MAY TESTIFY ABOUT, YOU KNOW, HIS
17 VIEWS ON THE INDUSTRY AND WHAT HE PERSONALLY CONSIDERS,
18 I GUESS. YOU KNOW, WE'RE GOING INTO AN UNCHARTED
19 TERRITORY HERE IN TERMS OF ALLOWING AN EXPERT TO USURP
20 THE AUTHORITY OF THE COURT TO INSTRUCT ON THE LAW.

08:34AM

21 AND SOME ADMONITION MAY BE NECESSARY AT
22 SOME POINT IN TIME. MAYBE AT THE BEGINNING OF THE
23 TESTIMONY.

24 LADIES AND GENTLEMEN, I WILL
25 INSTRUCT YOU ON THE LAW THAT YOU
26 MUST APPLY IN DETERMINING WHETHER
27 ANY MATTERS ABOUT WHICH YOU'VE
28 HEARD IN THIS CASE CONSTITUTES

08:35AM

1 TRADE SECRETS.

2 BUT, YOU KNOW, I DON'T THINK HE SHOULD BE
3 PUTTING UP HIS CRITERIA. IT CAN ONLY BE MISLEADING.

4 SO I WOULD TAKE THAT SLIDE OUT.

5 MR. SURPRENANT: OKAY, YOUR HONOR. LET ME, AS
6 A FALLBACK, I DO THINK, YOUR HONOR, IT WILL BE, I
7 THINK, CONFUSING TO THE JURY.

08:35AM

8 AND JUST TO TAKE A STEP BACK, YOUR
9 HONOR, I IN NO WAY INTEND TO SAY MR. SMITH IS TELLING
10 THE JURY WHAT THE LAW IS. HE'S JUST SAYING WHAT ARE
11 HIS CRITERIA AS A PRACTITIONER IN THE FIELD.

08:35AM

12 THE COURT: THEN HIS CRITERIA AREN'T RELEVANT.

13 MR. SURPRENANT: OKAY. I --

14 THE COURT: THE LAW GOVERNS WHAT CONSTITUTES A
15 TRADE SECRET, AND I WILL INSTRUCT THEM ON IT. HIS
16 PERSONAL STANDARDS, I DON'T KNOW.

08:35AM

17 MR. SURPRENANT: I HEAR, YOUR HONOR.

18 AS A FALLBACK, YOUR HONOR, THE SINGLE
19 PAGE THAT IS A QUOTE FROM THE UNIFORM TRADE ACT --

20 THE COURT: WHAT SINGLE PAGE ARE YOU WAVING AT
21 IT'S DIFFERENT THAN WHAT I HAD IN FRONT OF ME.

08:36AM

22 MR. SURPRENANT: ITS RIGHT UP THERE
23 (INDICATING).

24 THE COURT: THIS IS AN ALTERNATIVE, YOUR
25 FALLBACK POSITION?

08:36AM

26 MR. SURPRENANT: YES, YOUR HONOR. THIS IS
27 STRAIGHT OUT OF THE UNIFORM TRADE SECRET ACT.

28 THE COURT: DO I HAVE THAT ONE? IT HAS THE

1 SAME NUMBER ON AS THE ONE I WAS LOOKING AT. YOU DIDN'T
2 GIVE ME ONE.

3 MR. SURPRENANT: I HANDED IT UP SEPARATELY.

4 THE COURT: I DO HAVE IT. HOLD ON A MINUTE.

5 MR. SURPRENANT: AND THIS IS -- THIS IS A
6 DIRECT QUOTE FROM THE UNIFORM TRADE SECRET ACT, LEAVING
7 OUT THE VARIOUS KINDS OF INFORMATION, FORMULA, DATA,
8 COMPILATIONS. THIS IS A DIRECT QUOTE.

08:36AM

9 I THINK, YOUR HONOR, IT WILL BE VERY
10 VAGUE IN GENERAL.

08:36AM

11 THE COURT: LET ME -- BEFORE YOU DEFEND IT --
12 LET ME FIND OUT WHAT MR. WEINGART'S VIEW IS ON THE
13 ALTERNATIVE.

14 MR. SURPRENANT: YES, YOUR HONOR.

15 MR. WEINGART: IT'S BETTER, BUT I STILL OBJECT
16 TO IT. AND THE REASON IS WE HAVE NOT SETTLED THE JURY
17 INSTRUCTIONS YET. THERE ARE A LOT OF NUANCES TO THESE
18 PARTICULAR PHRASES, IN TERMS OF, YOU KNOW, EACH ONE OF
19 WHAT THESE ELEMENTS ARE.

08:37AM

20 AND I THINK THAT IT IS STILL GOING TO
21 BE, ONE, CONFUSING, AND, TWO, HIM BASICALLY USURPING
22 THE FUNCTION ABOUT INSTRUCTING HIM ON WHAT THE LAW IS.

08:37AM

23 THE COURT: I WILL TELL YOU. YOU GET TWO
24 CHOICES, MR. SURPRENANT.

25 MR. SURPRENANT: YES, YOUR HONOR.

08:37AM

26 THE COURT: I'LL LET YOU USE TWO. IT'S MY
27 VIEW IT'S BASICALLY THE COMPONENTS OF WHAT THE LAW IS.

28 BUT IF YOU USE TWO, WHEN WE INSTRUCT ON

1 TRADE SECRETS, WE WILL ADD TO THE INSTRUCTION THAT:

2 YOU HAVE HEARD TESTIMONY FROM
3 INDUSTRY SPECIALISTS CONCERNING
4 THEIR VIEWS ON TRADE SECRETS.

5 YOU MUST APPLY THE LAW AS I NOW
6 INSTRUCT YOU, NOTWITHSTANDING
7 ANYTHING THAT WAS SAID BY ANY OF
8 THESE EXPERTS.

9 SO, THAT'S WHERE YOU'RE GOING TO BE.

10 AND I GUESS BOTH SIDES HAVE SOMEBODY
11 THAT'S GOING TO TALK ABOUT WHAT THEY THINK TRADE
12 SECRETS ARE. IF WE'RE GOING TO LET THEM USE THE
13 DEMONSTRATIVES AND TALK ABOUT WHAT THEY BELIEVE
14 CONSTITUTES A TRADE SECRET, THEN WE'LL HAVE AN
15 INSTRUCTION THAT CLARIFIES THE STANDARDS AS FOLLOWS.

16 MR. SURPRENANT: I UNDERSTAND, YOUR HONOR.

17 AND I WILL --

18 THE COURT: YOU GOT AN ISSUE WITH THAT,
19 MR. BRIAN?

20 MR. BRIAN: I ROSE, YOUR HONOR, BECAUSE I
21 ACTUALLY THINK THAT GOES TO THE HEART OF OUR PROBLEM
22 WITH HIS TESTIMONY IN THE FIRST PLACE, ASSUMING HE'S
23 GOING TO BE ABLE TO TESTIFY GIVEN SOME LEEWAY TO GIVE
24 HIS OPINIONS.

25 I THINK THAT INSTRUCTION SHOULD BE GIVEN
26 PRIOR TO HIS TESTIMONY. THE JURY SHOULD BE TOLD THAT
27 IF THE COURT IS GOING TO ALLOW AN EXPERT IN THIS AREA,
28 THE JURY SHOULD BE TOLD THAT THE LAW PERMITS AN EXPERT

08:38AM

08:38AM

08:38AM

08:38AM

08:38AM

1 TO GIVE AN OPINION AS TO INDUSTRY STANDARDS AND THE
2 LIKE.

3 BUT YOU'RE NOT TO TAKE THAT AS A
4 STATEMENT OF WHAT THE COURT BELIEVES THE LAW IS. THAT
5 I WILL INSTRUCT YOU LATER, ON WHAT THE ELEMENTS ARE.

08:39AM

6 AND YOU ARE INSTRUCTED TO FOLLOW THOSE
7 ELEMENTS; OTHERWISE, IT REALLY COMES CLOSE TO TELLING
8 THE JURY WHAT THE LAW IS, REGARDLESS OF WHICH
9 PARTICULAR CHART WE USE.

10 THE COURT: WELL, DO YOU HAVE AN EXPERT ON
11 INDUSTRY STANDARDS?

08:39AM

12 MR. WEINGART: YES, YOUR HONOR.

13 THE COURT: IS YOUR EXPERT GOING TO TESTIFY TO
14 SIMILAR MATTERS THAT MR. SMITH IS TESTIFYING TO?

15 MR. WEINGART: WELL, IN REBUTTAL TO WHAT IT
16 IS -- WHATEVER IT IS MR. SMITH IS ALLOWED TO SAY, YES.

08:39AM

17 BUT ONLY IN REBUTTAL.

18 MR. BRIAN: WE MOVED TO EXCLUDE HIS TESTIMONY.

19 THE COURT: RIGHT. AND I OVERRULED THAT.

20 MR. BRIAN: RIGHT. RIGHT.

08:39AM

21 THE COURT: I MEAN, MY PROBLEM IS WITH
22 ADMONISHMENT AT THE COMMENCEMENT OF THE EXPERT
23 TESTIMONY --

24 MR. SURPRENANT: NO, YOUR HONOR, THE ISSUE I
25 HAVE, AND WE'LL HAVE ABOUT 40 MINUTES OF WARD, I WOULD
26 LIKE TO AVOID -- AVOID THE ISSUE.

08:39AM

27 MY FALLBACK PLAN B INSTRUCTION IS NOT
28 WHAT I'M PARTICULARLY HAPPY WITH. THE PROBLEM I HAVE,

1 IT WILL BE MR. SMITH TESTIFYING IN A VACUUM IF ALL HE
2 CAN SAY IS, YEAH, I REGARD THIS AS A TRADE SECRET.

3 AND --

4 THE COURT: I'M SAYING YOU CAN USE YOUR
5 FALLBACK. AND HE CAN SAY WHY HE BELIEVES IT'S A TRADE
6 SECRET, YOU KNOW, OR ENTITLED TO SOME PROTECTION. I
7 DON'T KNOW. HE REALLY SHOULD SAY WHAT HE THINKS IS OR
8 IS NOT A TRADE SECRET, QUITE FRANKLY.

9 IT'S A MATTER OF THE WAY HIS TESTIMONY
10 COMES OUT. I'LL ADMONISH THE JURY THEY'RE GOING TO
11 HEAR TESTIMONY CONCERNING INDUSTRY PRACTICES AND
12 STANDARDS, BUT THAT ULTIMATELY THEY MUST FOLLOW THE LAW
13 AS I INSTRUCT THEM ON WHAT CONSTITUTES A TRADE SECRET.

14 AND THEY WILL BE GIVEN FURTHER
15 INSTRUCTIONS AT THE CONCLUSION OF THE EVIDENCE.

16 MR. SURPRENANT: I DON'T HAVE A PROBLEM WITH
17 THAT, YOUR HONOR. AND I THINK IT IS LIKELY, I'LL LET
18 YOUR HONOR KNOW, UNLESS I DECIDE DIFFERENTLY, I WILL GO
19 WITH PLAN B AND I WILL PUT UP --

20 I WANT TO MAKE PLAIN, YOUR HONOR, I
21 THOUGHT THE PARTIES WERE IN AGREEMENT. THAT I WILL ASK
22 HIM, HAVE YOU REACHED -- HAVE YOU IDENTIFIED MATERIALS
23 AMONG THE DOWNLOADED MATERIAL, THAT YOU, AS A
24 PRACTITIONER, REGARD AS A TRADE SECRET IN THE INDUSTRY.

25 AND I'D UNDERSTOOD THAT THERE WAS --
26 THAT WAS GOING TO BE ALLOWED.

27 THE COURT: AND YOU MAY. BUT I'M GOING TO
28 ADMONISH THE JURY.

1 MR. MADISON: IF YOU COULD, YOUR HONOR.

2 THE COURT: JUST A MOMENT.

3 MR. MADISON: YES, YOUR HONOR.

4 (PAUSE) +

5
6 THE COURT: I WAS PUTTING THIS OUT. I WANT TO
7 MAKE SURE WE'RE CLEAR ON WHAT I'LL TELL THE JURY. I'LL
8 ADMONISH THEM THEY'LL:

08:42AM

9 HEAR TESTIMONY REGARDING
10 INDUSTRY PRACTICES AND OPINIONS OF
11 EXPERTS REGARDING TRADE SECRETS.

08:42AM

12 AT THE CONCLUSION OF THE
13 EVIDENCE, I WILL INSTRUCT YOU ON
14 THE LAW REGARDING TRADE SECRET, AND
15 YOU MUST FOLLOW MY INSTRUCTIONS IF
16 YOU FIND ANY INCONSISTENCIES
17 BETWEEN THE LAW AND THE OPINIONS OF
18 THE EXPERTS.

08:43AM

19 MR. SURPRENANT: THAT'S ACCEPTABLE, YOUR
20 HONOR.

08:43AM

21 THE COURT: GOOD ENOUGH FOR EVERYBODY?

22 MR. BRIAN: YES, YOUR HONOR.

23 MR. WEINGART: YES, YOUR HONOR.

24 THE COURT: I'D LIKE YOU TO KNOW WHAT I DO
25 BEFORE I DO IT.

08:43AM

26 MR. SURPRENANT: I APPRECIATE IT.

27 MR. BRIAN: I'VE BEEN SURPRISED BEFORE. NOT
28 BY YOUR HONOR.

1 THE COURT: THAT'S WHAT WE'LL DO. ALL RIGHT.

2 MR. MADISON: FURTHER TO THAT, I WAS GOING TO
3 POINT OUT AS A PLACEHOLDER THAT NEXT WEEK OR MAYBE THE
4 FOLLOWING WEEK WE'RE GOING TO HAVE THE FIDUCIARY DUTY
5 CORPORATE, YOU KNOW, ENVIRONMENT EXPERT, AND THIS SAME
6 ISSUE WILL COME UP, NO DOUBT, AT THAT TIME.

08:43AM

7 I WAS GOING TO MENTION THAT, IN TERMS OF
8 CRAFTING YOUR INSTRUCTION, WHETHER YOU WANTED TO LEAVE
9 OPEN, MAKE IT SLIGHTLY BROADER AT THIS TIME, OR PERHAPS
10 NEXT WEEK.

08:43AM

11 THE COURT: I'LL GIVE THE SAME ADMONITION WHEN
12 THOSE EXPERTS COME, FIDUCIARY DUTY AND THE STANDARDS TO
13 BE APPLIED.

14 MR. MADISON: EXACTLY. THAT'S ACCEPTABLE.

15 MR. BRIAN: TO PUT EVERYBODY ON NOTICE, WE'RE
16 GOING TO WANT TO TALK ABOUT MR. CAMPOS AGAIN BEFORE HE
17 TESTIFIES.

08:44AM

18 THE COURT: THAT'S FINE.

19 MR. BRIAN: WE'RE HAVING REAL TROUBLE
20 UNDERSTANDING WHAT HE'S GOING TO SAY.

08:44AM

21 THE COURT: YOU'LL HAVE A DAY TO DO THAT.

22 MR. MADISON: WE BRIEFED IT AND YOU DECIDED
23 THAT.

24 MR. BRIAN: YES, YOU DID.

25 THE COURT: I KNOW THERE ARE OTHER THINGS THAT
26 I ALREADY BRIEFED AND DECIDED AND YOU ASKED ME TO LOOK
27 AT IT AGAIN.

08:44AM

28 MR. MADISON: WELL --

1 THE COURT: BOTH SIDES ARE DOING IT.

2 MR. BRIAN: DID YOU HAVE RULINGS OF THE
3 DEPOSITIONS?

4 THE COURT: STERN DEPO DESIGNATIONS THAT WERE
5 GIVEN TO ME THIS MORNING -- WAIT A MINUTE. I GRABBED
6 THE WRONG FOLDER.

08:44AM

7 I WENT THROUGH THEM. I'LL OVERRULE ALL
8 THE OBJECTIONS. I WILL ALLOW THAT TESTIMONY.

9 MR. BRIAN: THANK YOU, YOUR HONOR.

10 THE COURT: ALL RIGHT.

08:44AM

11 ARE ALL OUR JURORS HERE?

12 OKAY.

13 MR. MADISON: WILL YOU DO THE MET WEST
14 STIPULATION NOW OR AT THE END OF THE VIDEO?

15 THE COURT: I'LL DO IT RIGHT AT THE BEGINNING.

08:45AM

16 AND I'LL ALSO INFORM THEM OF THE OTHER
17 MATTERS WE TALKED ABOUT.

18 SINCE WE'RE ON THE RECORD, WE'RE GOING
19 TO EXCUSE MR. PELAYO.

20 WE'RE GOING TO ADVISE THE JURY WE WILL
21 BE DARK ON MONDAY AND TUESDAY NEXT WEEK.

08:45AM

22 AND WE WILL RECONVENE ON WEDNESDAY.

23 WE'RE GOING TO SEAT MS. SAMUELS AS JUROR
24 NO. 9.

25 MR. BRIAN: THAT'S THE WOMAN IN THE BACK
26 CORNER?

08:45AM

27 THE COURT: YES.

28 MR. MADISON: YOUR HONOR, BECAUSE I THINK WE

1 TALKED ABOUT THEM IN THAT ORDER PREVIOUSLY, GIVEN THAT
2 WE'RE GOING TO BE DARK MONDAY AND TUESDAY --

3 THE COURT: WE'RE GOING TO BE IN SESSION ON
4 MONDAY FOR THE LAWYERS AND THE COURT.

5 MR. MADISON: THE TRIAL WILL BE DARK MONDAY
6 AND TUESDAY. 08:45AM

7 DO YOU WANT TO DEFER THE DECISION ON
8 JUROR NO. 9? MR. PELAYO, GIVEN HE'D HAVE THREE DAYS TO
9 WORK NEXT WEEK.

10 MR. BRIAN: I THINK HE -- 08:46AM

11 MR. MADISON: MAYBE THAT'S A DECISION WE DON'T
12 HAVE TO MAKE RIGHT THIS MOMENT. I'M NERVOUS ABOUT
13 LOSING JURORS UNEXPECTEDLY, AND THEN WE'VE GOT TO START
14 ALL OVER.

15 THE COURT: MR. PELAYO PAID HIS DUES, AND IT'S
16 A HARDSHIP. WE IMPOSED MORE THAN WE PROBABLY SHOULD
17 HAVE. I'LL LET HIM GO. 08:46AM

18 (PAUSE) +

19
20 THE COURT: I KEEP GETTING THESE FILES, THINGS
21 YOU'RE HANDING IN? 08:46AM

22 MR. BRIAN: WHAT IS IT?

23 MR. HELM: THAT WAS A BRIEF ELECTRONICALLY
24 SERVED LAST NIGHT, YOUR HONOR. BUT THIS IS A HARD
25 COPY. 08:46AM

26 THE COURT: I ACTUALLY TOOK LAST NIGHT OFF.
27 OKAY.

28 MR. HELM: WELL DESERVED, I'M SURE, YOUR

1 HONOR.

2 (RECESS.)

3 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.) +

4
5 THE COURT: GOOD MORNING, LADIES AND
6 GENTLEMEN.

08:50AM

7 BEFORE WE GET STARTED THIS MORNING,
8 THERE ARE A COUPLE OF HOUSEKEEPING MATTERS WE'RE GOING
9 TO ADDRESS.

10 FIRST OF ALL, I'M GOING TO --
11 MR. PELAYO, YOU ARE GOING TO BE EXCUSED.

08:50AM

12 I WANT TO THANK YOU FOR YOUR SERVICE AND
13 THE DEDICATION YOU'VE PUT IN. I KNOW THIS IS A
14 CONSTANT HARDSHIP FOR YOU. I'LL EXCUSE YOU WITHOUT
15 OBJECTION ON BEHALF OF THE COURT AND PARTIES.

08:50AM

16 YOU MAY TURN IN YOUR BADGE AND GO BACK
17 TO WORK. I KNOW YOU WANTED TO DO FOR A LONG TIME.

18 MR. PALAYO: I DID.

19 I GOT NEWS YESTERDAY THAT I WAS GOING TO
20 GET PAID --

08:50AM

21 THE COURT: WAIT A MINUTE. I'M NOT GOING TO
22 EXCUSE YOU, THEN. YOUR EMPLOYER HAS AGREED TO PAY YOU?

23 MR. PALAYO: I'LL WORK HALF MY TIME. I'LL
24 WORK HALF THE TIME, AND I'LL PUT IN 20 HOURS --

25 THE COURT: I WON'T EXCUSE YOU. BUT IF THAT'S
26 BEEN COMPROMISED, I WON'T EXCUSE YOU.

08:51AM

27 MR. PELAYO: GOT NEWS ON THAT YESTERDAY.

28 THE COURT: THAT'S GOOD. I'M GLAD YOU TOLD

1 ME. WE WERE ALL ON THE SAME TIMETABLE, I GUESS.

2 YOU WERE CLOSE.

3 MR. PALAYO: I'M GLAD I'M STAYING.

4 THE COURT: I'M GLAD.

5 HONESTY IS A GOOD THING, MR. PELAYO.
6 I'M GRATEFUL FOR YOUR CANDIDNESS.

08:51AM

7 THE SECOND THING THIS IS, IT'S A LONG
8 HAUL FOR EVERYBODY. I TOLD YOU WE WERE GOING TO BE
9 DARK ON TUESDAY. WE HAD A NUMBER OF MATTERS THAT THE
10 LAWYERS AND COURT ARE GOING TO HAVE TO TAKE UP OUT OF
11 YOUR PRESENCE.

08:51AM

12 SINCE YOU HAVE BEEN SUCH GOOD JURORS AND
13 AS DEDICATED AS YOU HAVE BEEN, AND TO ACCOMMODATE ONE
14 OF YOU, WE ARE ALSO GOING TO BE DARK ON MONDAY.

15 SO IT WILL BE MONDAY AND TUESDAY YOU
16 DON'T HAVE TO COME IN. WE'LL RESUME ON WEDNESDAY.

08:52AM

17 I DO NOT ANTICIPATE ANY BREAKS AFTER
18 THAT. WE'RE GOING TO PLOW THROUGH AND GET DONE.

19 I'M STILL THINKING WE WILL END, YOU
20 KNOW, ON SCHEDULE OR AHEAD OF SCHEDULE, WHICH WILL MEAN
21 PROBABLY THE FIRST WEEK -- FIRST OR SECOND WEEK OF
22 SEPTEMBER.

08:52AM

23 BUT WE'LL KEEP GOING AHEAD.

24 MONDAY AND TUESDAY ARE OFF NEXT WEEK.
25 WE'LL BE WORKING ON THOSE DAYS TO GET THINGS DONE SO
26 THERE WON'T BE INTERRUPTIONS ON A GOING-FORWARD BASIS.

08:52AM

27 THE OTHER THING I WANT TO TELL YOU,
28 THERE IS A STIPULATION, AND YOU'LL RECALL WHEN I TOLD

1 YOU EARLIER A STIPULATION IS AN AGREED FACT THAT YOU
2 MUST ACCEPT.

3 YESTERDAY, IN LISTENING TO THE
4 DEPOSITION TESTIMONY OF MR. WARD, HE TESTIFIED THAT HE
5 WENT TO WORK FOR MET WEST. THE COMPANY MR. WARD WAS
6 REFERRING TO IS NOT THE SAME COMPANY THAT WAS ACQUIRED
7 BY TCW, ABOUT WHICH YOU HAVE HEARD TESTIMONY IN THIS
8 CASE.

08:53AM

9 SO, IF ANY OF YOU PICKED THAT UP DURING
10 THE MOVIES, AND MADE A NOTE OF IT, UNDERSTAND IT'S A
11 DIFFERENT COMPANY.

08:53AM

12 ANYTHING ELSE?

13 ALL RIGHT. WE WILL RESUME THE
14 DEPOSITION TESTIMONY OF MR. WARD.

15 MR. MADISON: WE HAVE ABOUT 45 MINUTES LEFT,
16 SO EVERYBODY IS ON NOTICE, YOUR HONOR.

08:53AM

17 THE COURT: ALL RIGHT.

18
19 (DEPOSITION VIDEO OF GREGORY WARD PLAYED.)+

09:40AM

20
21 THE COURT: IS THAT THE END OF THE DEPOSITION
22 THIS MORNING?

23 MR. MADISON: YES, YOUR HONOR.

24 THE COURT: MY PARTNER IS GOING TO CALL THE
25 NEXT WITNESS.

09:40AM

26 MR. SURPRENANT: TRUST COMPANY OF THE WEST
27 CALLS ANDREW SMITH AS OUR NEXT WITNESS.

28 ///

1 ANDREW SMITH +
2 CALLED AS A WITNESS BY THE PLAINTIFF WAS SWORN AND
3 TESTIFIED AS FOLLOWS:
4

5 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
6 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
7 PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE
8 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU
9 GOD?

10 THE WITNESS: YES, I DO.

09:40AM

11 THE CLERK: THANK YOU. PLEASE BE SEATED.

12 STATE AND SPELL YOUR FULL NAME FOR THE
13 RECORD.

14 THE WITNESS: ANDREW SMITH.

15 THE CLERK: SPELL YOUR LAST NAME.

09:41AM

16 THE WITNESS: S-M-I-T-H.

17 THE CLERK: THANK YOU.

18 THE COURT: GOOD MORNING, MR. SMITH.

19 THE WITNESS: GOOD MORNING.

20 THE COURT: LADIES AND GENTLEMEN, BEFORE
21 MR. SURPRENANT STARTS THE QUESTIONING OF MR. SMITH,
22 I'LL READ AN ADMONISHMENT TO PUT THE TESTIMONY IN
23 PERSPECTIVE.

09:41AM

24 YOU ARE GOING TO HEAR TESTIMONY
25 REGARDING INDUSTRY PRACTICES AND
26 OPINIONS OF EXPERTS REGARDING TRADE
27 SECRETS.

09:41AM

28 AT THE CONCLUSION OF THE

1 EVIDENCE, I WILL INSTRUCT YOU ON
2 THE LAW REGARDING TRADE SECRETS,
3 AND YOU MUST FOLLOW MY
4 INSTRUCTIONS, IF YOU FIND ANY
5 INCONSISTENCIES BETWEEN THE LAW AS
6 I INSTRUCT YOU AND THE OPINIONS OF
7 THE EXPERTS.

09:41AM

8 ALL RIGHT.

9 MR. SURPRENANT, YOU MAY PROCEED.

10 MR. SURPRENANT: THANK YOU, YOUR HONOR.

09:41AM

11
12 DIRECT EXAMINATION +

13 BY MR. SURPRENANT:

14 Q GOOD MORNING.

15 DO YOU PRESENTLY MANAGE ANY
16 MORTGAGE-BACKED SECURITIES FUNDS?

09:41AM

17 A YES, I DO.

18 Q HOW MANY?

19 A TWO.

20 Q WHAT OTHER -- ARE THE KIND OF ASSETS UNDER
21 MANAGEMENT --

09:41AM

22 A \$1.125 BILLION.

23 Q COULD YOU PULL THE MICROPHONE CLOSER.

24 A SORRY.

25 Q HOW LONG HAVE YOU MANAGED M.B.S. FUNDS?

09:42AM

26 A SINCE 1990.

27 Q HAVE YOU LAUNCHED NEW COMPANIES IN THE FIXED
28 INCOME INDUSTRY?

1 A YES, I HAVE.

2 Q ON HOW MANY OCCASIONS?

3 A THREE DIFFERENT OCCASIONS.

4 Q WHERE ARE YOU CURRENTLY EMPLOYED?

5 A BROADSTREET.

09:42AM

6 Q WHAT DO YOU DO? WHAT KIND OF -- WHAT DO YOU
7 DO AT BROADSTREET?

8 A I'M THE EXECUTIVE MANAGING DIRECTOR AT
9 BROADSTREET COMPANY PARTNERS AND CEO OF BROADSTREET
10 CAPITAL MANAGEMENT.

09:42AM

11 Q YOU HAVE TWO POSITIONS AT TWO DIFFERENT
12 BROADSTREET ENTITIES.

13 COULD YOU PLEASE DESCRIBE YOUR
14 RESPONSIBILITIES IN BOTH POSITIONS.

15 A I RUN THE FINANCIAL SERVICES GROUP, WHICH IS
16 SPLIT INTO TWO DIVISIONS. ONE DIVISION IS ADVISORY AND
17 RESTRUCTURING WORK AND THE SECOND DIVISION IS
18 INVESTMENT MANAGEMENT.

09:42AM

19 Q COULD YOU PULL THE MICROPHONE CLOSER.

20 A SORRY.

09:42AM

21 IS THAT BETTER?

22 Q WHERE IS BROADSTREET COMPANIES LOCATED?

23 A NEW YORK AND CALIFORNIA.

24 Q TELL US THE THREE COMPANIES YOU LAUNCHED IN
25 THE FIXED INCOME INDUSTRY AND WHEN YOU LAUNCHED THEM.

09:43AM

26 A I LAUNCHED LONDON AND BISHOPSGATE IN 1988.

27 AND I THEN SOLD THAT COMPANY IN 1991 TO
28 REPUBLIC NATIONAL BANK OF NEW YORK.

1 THE SECOND COMPANY I LAUNCHED WAS GLOBAL
2 ARBITRAGE ASSET MANAGEMENT, WHICH WAS A SUBSIDIARY OF
3 ICE SECURITIES, AND I LAUNCHED THAT IN 1996.

4 AND THEN THE THIRD IS BROADSTREET.

5 Q WHAT KIND OF COMPANY WAS LONDON AND
6 BISHOPSGATE?

09:43AM

7 A IT HAD TWO MAIN PRODUCTS IN THE FIXED INCOME
8 SPACE. ONE WAS A HEDGE FUND. AND THE OTHER WAS
9 INSTITUTIONAL ACCOUNTS, GLOBAL FIXED INCOME ACCOUNTS.

10 Q HOW MUCH ASSETS UNDER MANAGEMENT WERE IN THOSE
11 TWO ACCOUNTS?

09:43AM

12 A \$150 MILLION IN THE HEDGE FUND AND A LITTLE
13 OVER \$200 MILLION IN THE INSTITUTIONAL ACCOUNTS.

14 Q HOW LONG WERE YOU AT LONDON'S AND BISHOPSGATE?

15 A TWO -- TILL 1991 WHEN I SOLD IT TO REPUBLIC.

09:44AM

16 Q DID YOU THEN WORK AT REPUBLIC FOR A PERIOD OF
17 TIME?

18 A YES, I WAS CHAIRMAN OF THE INVESTMENT
19 COMMITTEE, AND I RAN THE INTERNAL HEDGE FUNDS AND
20 PROPRIETARY CAPITAL OF THE BANK.

09:44AM

21 Q DID YOU MANAGE THE BOOK OF MORTGAGES AT
22 REPUBLIC?

23 A YES, REPUBLIC HAD, AT THAT TIME, APPROXIMATELY
24 \$7-1/2 BILLION IN MORTGAGES.

25 Q HOW LONG DID YOU STAY AT REPUBLIC?

09:44AM

26 A FOR THREE YEARS.

27 Q WHEN YOU LAUNCHED -- WHEN WAS IT YOU LAUNCHED
28 GLOBAL ARBITRAGE ASSET MANAGEMENT? WAS THAT IN '96?

1 A YES.

2 Q WHAT KIND OF COMPANY WAS THAT?

3 A IT WAS A HEDGE FUND IN THE FIXED INCOME
4 DERIVATIVE SPACE, WHICH ALSO USED MORTGAGE DERIVATIVES
5 AS WELL.

09:44AM

6 Q AND WHAT KIND OF ASSETS -- WHAT WAS THE AMOUNT
7 OF ASSETS UNDER MANAGEMENT THAT YOU MANAGED?

8 A APPROXIMATELY \$175 MILLION.

9 Q DID YOU -- WHEN DID YOU SELL GLOBAL ARBITRAGE?

10 A WE SOLD IT TO ONE OF OUR MAJOR INVESTORS IN
11 THE YEAR 2000.

09:45AM

12 Q AND THEN IN 2001 YOU LAUNCHED -- HELPED LAUNCH
13 BROADSTREET?

14 A THAT'S CORRECT.

15 Q HAVE YOU TESTIFIED AS AN EXPERT AT TRIAL?

09:45AM

16 A YES, I HAVE.

17 Q WHAT WAS THAT -- WHAT DID THAT CASE INVOLVE?

18 A IT WAS MARATHI, SA AGAINST MERRILL LYNCH. IT
19 INVOLVED FIXED INCOME DERIVATIVES.

20 Q HAVE YOU TESTIFIED AS AN EXPERT AT
21 ARBITRATION?

09:45AM

22 A YES.

23 Q WHAT DID THAT ARBITRATION INVOLVE?

24 A IT WAS RAMIUS AGAINST BEAR STEARNS, AND IT WAS
25 THE VALUATION OF VARIOUS MORTGAGE-BACKED SECURITIES IN
26 ABS, CDO.

09:45AM

27 Q HAVE YOU BEEN RETAINED AS EXPERT TO PLACE
28 VALUE ON MORTGAGE-BACKED SECURITIES?

1 A YES, I HAVE.

2 Q WHAT IS THE TOTAL VALUE THAT YOU PLACED ON THE
3 MORTGAGE-BACKED SECURITIES YOU'VE ADDRESSED AS AN
4 EXPERT?

5 A SINCE 2008 WE VALUED CLOSE TO \$350 BILLION OF 09:45AM
6 VARIOUS MORTGAGE SECURITIES.

7 Q ARE YOU CURRENTLY RETAINED AS EXPERT BY ANY
8 GOVERNMENTAL AGENCY?

9 A YES, I AM.

10 Q WHAT AGENCY? 09:46AM

11 A THE STATE OF MARYLAND BANKRUPTCY COURT IN THE
12 CASE OF THORNBURG, A LARGE REAL ESTATE INVESTMENT TRUST
13 WHICH WAS LIQUIDATED.

14 Q WHERE AND WHEN DID YOU FIRST ATTEND
15 UNDERGRADUATE SCHOOL? 09:46AM

16 A INITIALLY, AT LONDON SCHOOL OF ECONOMICS, AND
17 I DROPPED OUT AFTER A SEMESTER.

18 Q YOU DROPPED OUT AFTER A SEMESTER.

19 WHAT DID YOU DO THEN?

20 A I WENT AND WORKED IN THE STEEL MILLS, INLAND 09:46AM
21 STEEL IN EAST CHICAGO.

22 Q WHAT DID YOU DO AT THE STEEL MILL?

23 A LABORER IN THE BASIC OXYGEN FURNACE, NO. 4
24 PLANT.

25 Q WHAT DID YOU DO AFTER THAT? 09:46AM

26 A EIGHT MONTHS I DECIDED TO GO BACK TO THE
27 UNIVERSITY.

28 Q AND DID YOU OBTAIN AN UNDERGRADUATE DEGREE?

1 A YES, I DID.

2 Q WHEN AND WHAT KIND OF DEGREE?

3 A WENT BACK TO PURDUE UNIVERSITY, AND I OBTAINED
4 A B.A., HONORS IN A JOINT MAJOR PHILOSOPHY AND
5 POLITICAL SCIENCE.

09:47AM

6 Q DID YOU THEN OBTAIN A SCHOLARSHIP TO GRADUATE
7 SCHOOL?

8 A YES. I GOT A FULL-RIDE SCHOLARSHIP TO GO BACK
9 TO LONDON SCHOOL OF ECONOMICS TO DO MASTER'S AND
10 DOCTORATE WORK.

09:47AM

11 Q DID YOU RECEIVE A GRADUATE DEGREE FROM LONDON
12 SCHOOL?

13 A YES. MY MASTER'S DEGREE.

14 Q DID YOU COMPLETE YOUR COURSE WORK FOR A PH.D.
15 IN ECONOMICS AT THE LONDON SCHOOL OF ECONOMICS?

09:47AM

16 A YES.

17 Q DID YOU OBTAIN A PH.D.?

18 A NO, I DIDN'T COMPLETE MY DISSERTATION BECAUSE
19 I ACTUALLY TOOK A TEACHING JOB AT OXFORD.

20 Q HOW LONG DID YOU TEACH AT OXFORD?

09:47AM

21 A I WAS THERE FOR FIVE YEARS.

22 Q THEN YOU BEGAN YOUR BUSINESS CAREER?

23 A WHY.

24 Q DOES BROADSTREET CHARGE A CUSTOMARY FEE OF
25 SERVICES FOR CASES SUCH AS THIS?

09:47AM

26 A YES.

27 Q HOW MUCH IS THAT?

28 A \$1,000 PER HOUR.

1 Q IS -- WHAT IS BROADSTREET CHARGING TCW IN THIS
2 CASE?

3 A THE SAME.

4 Q IS THE PAYMENT IN ANY WAY CONTINGENT ON THE
5 OUTCOME OF THIS CASE?

09:47AM

6 A NO, IT'S NOT.

7 Q IN ANY WAY IS IT DEPENDENT ON THE CONTENT OF
8 YOUR TESTIMONY?

9 A NO, IT'S NOT.

10 Q MIKE, IF YOU COULD DISPLAY FOR IDENTIFICATION
11 TRIAL EXHIBIT 914, PAGES 29 AND 30.

09:47AM

12 I BELIEVE THEY'RE IN YOUR WITNESS BOOK.
13 IT'S ON YOUR SCREEN.

14 COULD YOU TELL US WHAT THAT IS?

15 A THAT'S MY RESUMÉ.

09:48AM

16 Q IS THE INFORMATION IT CONTAINS ACCURATE?

17 A YES, IT IS.

18 MR. SURPRENANT: I'D OFFER TRIAL EXHIBIT 914,
19 PAGES 29 AND 30, INTO EVIDENCE.

20 THE COURT: JUST 29 AND 30?

09:48AM

21 MR. SURPRENANT: JUST THE RESUMÉ, YOUR HONOR.

22 THE COURT: ANY OBJECTION?

23 MR. WEINGART: NO, YOUR HONOR.

24 THE COURT: IT WILL BE ADMITTED.

25
26 (EXHIBIT 914 ADMITTED.)+

09:48AM

27
28 MR. SURPRENANT: YOUR HONOR, TCW TENDERS

1 MR. SMITH AS AN EXPERT WITNESS IN MORTGAGE-BACKED
2 SECURITIES AND FIXED INCOME INDUSTRY.

3 THE COURT: ANY OBJECTION?

4 MR. WEINGART: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT.

09:48AM

6 BY MR. SURPRENANT:

7 Q MR. SMITH, DID YOU ANALYZE CERTAIN TOPICS IN
8 THIS CASE?

9 A YES, I DID.

10 Q DID YOU WORK BY YOURSELF OR DID YOU SUPERVISE
11 OTHERS WHO ASSISTED YOU?

09:48AM

12 A I HAD A TEAM. TWO PRINCIPAL PEOPLE ASSISTED
13 ME. DAVID SPRING, MY CHIEF OPERATING OFFICER. AND
14 JEREMY BURDICK, CHIEF PROGRAMMER.

15 Q BASED ON YOUR ANALYSIS, DID YOU REACH EXPERT
16 OPINIONS IN THIS CASE?

09:49AM

17 A YES.

18 Q LET'S SUMMARIZE. I KNOW YOU'VE REACHED MORE
19 THAN TWO. LET'S SUMMARIZE TWO AT THE OUTSET.

20 DID YOU CONSIDER WHETHER ANY OF THE
21 DOWNLOADED TCW INFORMATION WERE WHAT YOU, AS A
22 PRACTITIONER IN THE FIXED INCOME INDUSTRY, WOULD
23 CONSIDER TRADE SECRET?

09:49AM

24 A YES, WE DID.

25 Q DID YOU USE THE TERM SEAMLESS BRIDGE IN YOUR
26 TRADE SECRET ANALYSIS?

09:49AM

27 A YES.

28 Q WHAT DID YOU MEAN BY THAT?

1 A IN ESSENCE, THE INFORMATION THAT WAS
2 PURPORTING TO BE DOWNLOADED, WE LOOKED AT AND REALIZED
3 THAT, WITH THIS INFORMATION, YOU COULD HAVE CREATED A
4 SEAMLESS BRIDGE BY BEING ABLE TO REPLICATE ALL THE
5 FUNCTIONALITY THAT TCW HAD IN TERMS OF BEING ABLE TO DO
6 ITS INVESTMENT MANAGEMENT AND ITS CLIENT SERVICING
7 REPORTING IN A NEW ENTITY, SUCH AS DOUBLELINE.

09:49AM

8 Q MIKE, IF YOU COULD DISPLAY FOR IDENTIFICATION
9 TRIAL EXHIBIT 963-B.

10 YOUR HONOR, 963 IS THE ABLE GRAPE
11 PRO FORMA.

09:50AM

12 B LANDSCAPES IT SO YOU CAN SEE THE
13 COLUMNS AS THEY WERE MEANT TO BE PRINTED OUT. I WOULD
14 OFFER IT INTO EVIDENCE.

15 THE COURT: AND THE ORIGINAL ABLE GRAPE WAS
16 9063?

09:50AM

17 MR. SURPRENANT: YES, THIS TURNS IT INTO
18 LANDSCAPE SO YOU CAN SEE IT.

19 THE COURT: ANY OBJECTION?

20 MR. WEINGART: MAY I HAVE JUST ONE MOMENT,
21 YOUR HONOR?

09:50AM

22 THE COURT: SURE.

23 MR. WEINGART: NO OBJECTION.

24 THE COURT: IT WILL BE ADMITTED.

25

09:50AM

26 (EXHIBIT 963 ADMITTED.)+

27

28 MR. SURPRENANT: IF YOU CAN DISPLAY THAT,

1 MIKE.

2 Q DID YOU FORM ANY EXPERT OPINION WITH RESPECT
3 TO THE TRADE SECRETS YOU IDENTIFIED AND THE AUM AND
4 REVENUE PROJECTIONS SET FORTH IN TRIAL EXHIBIT 963?

5 A YES. 09:50AM

6 Q WHAT EXPERT OPINION DID YOU REACH?

7 A WELL, THE SCALE HERE IS THE IMPORTANT ELEMENT,
8 THAT THEY WERE LOOKING TO HAVE BY THE END OF 2010 OVER
9 \$48 BILLION OF ASSETS UNDER MANAGEMENT.

10 IN ORDER TO DO THAT, YOU WOULD HAVE TO 09:51AM
11 HAVE A VERY SOPHISTICATED SET OF SYSTEMS, PROTOCOLS,
12 ET CETERA, TO BE ABLE TO SERVICE SUCH A HUGE AMOUNT OF
13 ASSETS.

14 Q DID YOU REACH ANY CONCLUSION AS TO WHETHER THE
15 TRADE SECRETS THAT WERE DOWNLOADED WOULD HAVE ALLOWED 09:51AM
16 THOSE PROJECTIONS IN THE AUM REVENUE PROJECTIONS TO BE
17 OBTAINED?

18 A YES.

19 Q WHAT'S THAT OPINION?

20 A THAT OPINION WAS, IF YOU LOOK AT THE VARIOUS 09:51AM
21 COMPONENTS THAT WERE TAKEN, THEY WOULD HAVE ALLOWED
22 THAT SEAMLESS BRIDGE TO BE CONSTRUCTED.

23 Q OKAY.

24 IF WE COULD TURN TO THE COMPONENTS OF A
25 FIXED INCOME ASSET MANAGEMENT COMPANY. 09:51AM

26 IF YOU COULD DISPLAY FOR IDENTIFICATION,
27 MIKE, TRIAL EXHIBIT 22471.

28 AND TELL US WHAT THAT IS, MR. SMITH.

1 A IT'S AN ILLUSTRATIVE OF WHAT WE WERE TRYING TO
2 DETERMINE AS THE SAILING COMPONENTS OF A FIXED INCOME
3 OR M.B.S. ASSET MANAGEMENT FIRM.

4 MR. SURPRENANT: YOUR HONOR, I WOULD ASK
5 PERMISSION TO PUBLISH. WE WILL NOT BE MOVING IT INTO
6 EVIDENCE. 09:52AM

7 THE COURT: ANY OBJECTION?

8 MR. WEINGART: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10
11 (EXHIBIT 22471 MARKED FOR I.D.) +
12

13 BY MR. SURPRENANT:

14 Q WHY DID YOU CHOOSE A THREE-LEGGED STOOL AS A
15 COMPARISON FOR THE VARIOUS TRADE SECRETS IN THE M.B.S.
16 ASSET MANAGEMENT BUSINESS? 09:52AM

17 A THE REASON HERE IS THAT YOU HAVE THREE KEY
18 COMPONENTS. YOU HAVE THE PORTFOLIO MANAGEMENT, THE
19 INVESTMENT PROS, THE BUYING AND SEVERAL SECURITIES, AND
20 THE EXECUTION OF THAT. 09:52AM

21 YOU ACTUALLY HAVE A VERY OTHER IMPORTANT
22 ELEMENT HERE, WHICH IS THE RAISING OF ASSETS FROM
23 CLIENTS AND, MORE IMPORTANTLY, THE REPORTING TO THOSE
24 CLIENTS.

25 AND THEN, THIRDLY, WHICH IS, WHICH THESE
26 TWO LEGS OF THE STOOL ARE HOUSED IN, WHICH IS THE
27 INFRASTRUCTURE. 09:52AM

28 YOU HAVE HUGE AMOUNTS OF DATA THAT, ONE,

1 HAVE TO BE PART OF THE PORTFOLIO MANAGEMENT PROCESS,
2 BUT, TWO, HAVE TO BE PART OF THE CLIENT REPORTING
3 PROCESSES AS WELL.

4 EACH ONE OF THESE LEGS OF THE STOOL ARE
5 NECESSARY, BUT ARE NOT SUFFICIENT WITHOUT THE OTHER
6 TWO. 09:53AM

7 SOM LIKE ANY STOOL, IF YOU TAKE AWAY ONE
8 OF THE LEGS MIT'S GOING TO FALL DOWN.

9 Q COULD YOU TELL US A LITTLE BIT MORE WHAT THE
10 INFRASTRUCTURE AND OPERATING ENVIRONMENT LEG IS? 09:53AM

11 A THAT LEG IS, WHEN YOU'RE DEALING WITH
12 MORTGAGE-BACKED SECURITIES, AND FIXED INCOME IN
13 GENERAL, YOU'RE DEALING WITH VERY COMPLEX SECURITIES.

14 YOU'RE DEALING WITH THE FACT THAT IN A
15 MORTGAGE-BACKED SECURITY YOU MIGHT HAVE OVER 3,000 HOME
16 LOANS, WHICH ARE BEING PACKAGED, WHICH ARE THEN BEING
17 TRANCHED INTO DIFFERENT SECURITIES, WHICH ARE THEN
18 BEING PURCHASED, WHICH HAVE THEIR OWN INDIVIDUAL CASH
19 FLOWS. 09:53AM

20 THE INTEREST AND PRINCIPAL PAYMENTS,
21 BECAUSE PEOPLE SELL THEIR HOUSES, THEY PRE-PAY, AT
22 TIMES THEY ARE DELINQUENT, IS A LOT OF COMPLEXITY TO
23 MONITORING ALL THAT. 09:53AM

24 SO THAT'S ONE ELEMENT OF THE
25 INFRASTRUCTURE. 09:54AM

26 AND THEN THE SECOND PART IS WHEN YOU
27 HAVE MORE THAN ONE CLIENT. AND IN THE CASE OF TCW
28 FIXED INCOME, YOU HAD OVER 150 INSTITUTIONAL CLIENTS.

1 YOU HAVE TO REPORT TO THOSE CLIENTS IN A VERY TIMELY
2 FASHION AND, MORE IMPORTANTLY, IN A VERY ACCURATE
3 FASHION. IT'S ALMOST A ZERO TOLERANCE LEVEL IN THAT
4 REPORTING LEVEL. BECAUSE IF NOT, THE INSTITUTION'S
5 GOING TO FEEL UNCERTAIN AND PULL THE ACCOUNT.

09:54AM

6 Q MR. SMITH, HOW DIFFICULT OR EASY IS IT TO
7 DEVELOP A ROBUST SET OF PROCESSES AND SYSTEMS WITH
8 RESPECT TO INFRASTRUCTURE?

9 A IT'S -- WHEN YOU'RE TALKING ABOUT THE SCALE OF
10 TCW, WHEN YOU'RE TALKING ABOUT SOMETHING OVER
11 \$60 BILLION OF ASSET UNDER MANAGEMENT IN THE FIXED
12 INCOME SPACE, IT'S DONE OVER MANY YEARS WITH MANY, MANY
13 DIFFERENT TYPES OF PEOPLE AND A LOT OF TRIAL AND ERROR
14 TO MAKE SURE YOU HAVE COMMERCIALY ROBUST SYSTEM IN
15 PLACE.

09:54AM

16 Q MR. SMITH, MR. GUNDLACH'S DEPOSITION TESTIMONY
17 WAS PLAYED TO THE JURY, AND HE TESTIFIED THAT TCW'S
18 PROFITS, QUOTE, HAD NOTHING TO DO WITH SYSTEMS.

19 DO YOU AGREE WITH THAT?

20 MR. WEINGART: OBJECTION. NOT PART OF HIS
21 EXPERT REPORT.

09:55AM

22 THE COURT: SUSTAINED.

23 BY MR. SURPRENANT:

24 Q YOU MENTIONED INSTITUTIONAL CLIENTS.

25 WHAT ARE INSTITUTIONAL CLIENTS?

09:55AM

26 A THERE ARE FIVE TYPES.

27 PUBLIC FUNDS, SUCH AS THE CALIFORNIA
28 PUBLIC EMPLOYEES RETIREMENT FUNDS.

1 YOU HAVE PRIVATE PENSION FUNDS,
2 CORPORATION.

3 YOU HAVE INSTITUTIONAL ACCOUNTS, SUCH AS
4 BIG LIFE INSURANCE COMPANIES. YOU ALLOCATE MONEY.

5 YOU HAVE SOVEREIGN WEALTH FUNDS.

09:55AM

6 Q AND ARE THESE THE FUNDS THAT HAVE THOSE --
7 ESPECIALLY EXTENSIVE AND RIGOROUS REPORTING
8 REQUIREMENTS?

9 A YES.

10 Q WHY DO YOU HAVE SUCH REQUIREMENTS?

09:55AM

11 A MANY OF THESE FUNDS, ESPECIALLY WHEN DEALING
12 WITH SOMEBODY LIKE TCW, ARE NOT JUST INVESTING A
13 MILLION OR \$2 MILLION. THEY COULD HAVE SEVERAL
14 \$100 MILLION MOR EVEN A BILLION DOLLARS WITH A
15 PARTICULAR FUND MANAGER.

09:55AM

16 AS A RESULT, THEY WANT TO MAKE SURE IT'S
17 SAFE, THAT THERE'S NO FRAUD BEING COMMITTED. AND,
18 THEREFORE, THERE IS A LOT OF DUE DILIGENCE IN THE
19 OPERATIONAL PROCEDURES OF A COMPANY WHEN ONE OF THESE
20 CLIENTS BEGINS TO ALLOCATE MONEY.

09:56AM

21 Q HOW MANY FIRMS HAVE MANAGED TO BUILD FIXED
22 INCOME MANAGEMENT BUSINESS AS LARGE OR LARGER THAN
23 TCW'S?

24 A THERE ARE SEVERAL. IF YOU'RE LOOKING AT ONES
25 WHICH HAVE A MIX OF MUTUAL FUNDS, THE INSTITUTIONAL
26 CLIENTS, SUCH AS TCW, YOU'D HAVE WAMCO, PIMCO, BLACK
27 ROCK.

09:56AM

28 Q ANY OTHERS?

1 A THERE ARE, BUT THOSE ARE THE MAIN ONES IN
2 TERMS OF FIXED INCOME SPACE.

3 Q IS LAUNCHING A NEW ASSET MANAGEMENT BUSINESS
4 AND FIXED INCOME INDUSTRY A RISKY ENDEAVOR OR NOT?

5 A YES, IT IS. 09:56AM

6 Q DOES IT GET RISKIER THE LARGER THE COMPANY IS
7 THAT YOU'RE TRYING TO LAUNCH?

8 A YES. AS I SAID, IT HAS ITS OWN COMPLEXITY.
9 IT'S A BIT LIKE LOOKING AT THE COCKPIT OF A 747 VERSUS
10 THE COCKPIT OF A CROP DUSTER. THERE'S VERY, VERY
11 DIFFERENT SOPHISTICATION AND COMPLEXITY INVOLVED. 09:56AM

12 Q DO PROPRIETARY ANALYTICS PLAY A ROLE IN THE
13 SUCCESS OF A FIXED INCOME MANAGEMENT COMPANY?

14 A SURE. THAT'S ONE OF THE LEG OF THE STOOL.

15 Q DOES THE SKILL AND KNOWLEDGE OF THE CHIEF
16 INVESTMENT OFFICER, PLAY A ROLE IN THE SUCCESS OF ASSET
17 MANAGEMENT COMPANY? 09:57AM

18 A YES, IT DOES.

19 Q IS THE SKILL AND KNOWLEDGE OF THE CHIEF
20 INVESTMENT OFFICER SUFFICIENT FOR THE SUCCESS OF A
21 FIXED INCOME ASSET MANAGEMENT COMPANY? 09:57AM

22 A USING MY ANALOGY OF JUMBO JET, YES, HE'S THE
23 PILOT. YOU CAN'T GO ANYWHERE WITHOUT HAVING NECESSARY
24 NAVIGATIONAL INSTRUMENTATION AND INFRASTRUCTURE TO BE
25 ABLE TO FLY THAT PLANE. 09:57AM

26 Q TURNING BACK TO THE FIRST PAGE OF 22471, DID
27 YOU IDENTIFY TRADE SECRET WITH RESPECT TO EACH OF THE
28 THREE CATEGORIES SHOWN?

1 A YES. I DID.

2 Q IF WE COULD DISPLAY FOR IDENTIFICATION 22472,
3 MIKE.

4 MR. SMITH, IN TERMS OF YOUR SELECTING OR
5 IDENTIFYING TRADE SECRETS IN THE FIXED INCOME -- AND IN 09:58AM
6 THE MATERIALS DOWNLOADED, ARE THERE CRITERIA SHOWN ON
7 THIS PAGE CONSISTENT WITH CRITERIA YOU APPLIED AS FIXED
8 INCOME PRACTITIONER?

9 A YES, IT IS.

10 MR. SURPRENANT: YOUR HONOR, PERMISSION TO 09:58AM
11 BROADCAST.

12 THE COURT: ANY OBJECTION?

13 MR. WEINGART: NO, YOUR HONOR. THIS IS THE
14 ONE WE DISCUSSED.

15 THE COURT: IT MAY BE SHOWN. 09:58AM

16 BY MR. SURPRENANT:

17 Q IN TERMS OF THE TRADE SECRETS YOU IDENTIFY,
18 WHAT ROLE, IF ANY, DID IT PLAY THAT THE INFORMATION WAS
19 NOT GENERALLY KNOWN TO THE PUBLIC OR TO OTHER PERSONS
20 WHO COULD OBTAIN ECONOMIC VALUE? 09:58AM

21 A IN TERMS OF THE TRADE SECRETS, THEY ALL HAD
22 THAT PARTICULAR COMPONENT TO IT.

23 Q NOW, ARE YOU TESTIFYING AS A FACT WITNESS FOR
24 TCW, THAT TCW TOOK STEPS REASONABLE UNDER THE
25 CIRCUMSTANCES TO MAINTAIN THE SECRECY OF THE TRADE 09:59AM
26 SECRETS?

27 A NO, I'M NOT.

28 Q WHAT ROLE, IF ANY, DID THE ECONOMIC VALUE, THE

1 INFORMATION HAD, PLAY IN YOUR ANALYSIS OF TRADE
2 SECRETS?

3 A IT WAS ONE OF THE ESSENTIAL CRITERIA.

4 Q OKAY.

5 IF WE COULD GO TO TX 2247, SLIDE 3.

09:59AM

6 COULD YOU TELL US WHAT THAT IS.

7 A ILLUSTRATIVE OF ONE OF THE TRADE SECRETS, FIVE
8 OF THEM WE IDENTIFIED, REGARDING THE LEG OF THE STOOL
9 CALLED MARKETING AND CLIENT SERVICING.

10 MR. SURPRENANT: PERMISSION TO BROADCAST, YOUR
11 HONOR?

09:59AM

12 MR. WEINGART: NO OBJECTION.

13 THE COURT: ALL RIGHT. YES, YOU MAY.

14 BY MR. SURPRENANT:

15 Q NOW, COULD YOU REMIND US BRIEFLY WHAT
16 MARKETING AND CLIENT SERVICES ARE.

10:00AM

17 A NATURE OF ASSET MANAGEMENT COMPANY, YOU NEED
18 ASSETS. THEREFORE, YOU NEED CLIENTS, AND YOU NEED TO
19 BE ABLE TO SERVICE THOSE CLIENTS.

20 ONE, YOU NEED TO BE ABLE TO REACH OUT
21 AND ENGAGE THE CLIENT. VERY IMPORTANT PART OF THE
22 ASSET MANAGEMENT BUSINESS.

10:00AM

23 Q AND WHEN YOU SAY ENGAGE THE CLIENT, WHAT DO
24 YOU MEAN?

25 A YOU ARE COMMUNICATING WITH THE CLIENT.
26 MATERIAL ABOUT HOW YOU ARE GOING TO RUN THEIR MONEY AND
27 HOW YOU'RE GOING TO SAFEGUARD THAT.

10:00AM

28 Q WE'RE GOING TO GO THROUGH EACH OF THESE TRADE

1 SECRETS INDIVIDUALLY.

2 BUT TAKING THEM TOGETHER, DO THEY RELATE
3 WITH RESPECT TO BEING ABLE TO, FOR A POTENTIAL
4 COMPETITOR OF TCW SUCH AS DOUBLELINE, TO ENGAGE TCW'S
5 CLIENTS?

10:00AM

6 A YES.

7 Q AND HOW DO THEY INTERRELATE?

8 A WELL, FIRST OF ALL, THE INTERRELATIONSHIP IS
9 IN TERMS OF THESE VARIOUS FIVE POINTS, WAYS OF HOW THE
10 CONTACTS WITH THAT CLIENT ARE DONE.

10:01AM

11 YOU HAVE INVESTMENT GUIDELINES.

12 AND YOU HAVE A FEE SCHEDULE.

13 YOU HAVE ALL DIFFERENT PARTS OF CLIENT
14 REPORTING AND CONTACT.

15 THESE ARE BOUND BY CONFIDENTIALITY
16 AGREEMENTS.

10:01AM

17 WHEN YOU SIGN AN INVESTMENT MANAGEMENT
18 AGREEMENT BETWEEN A CLIENT AND THE COMPANY, YOU --
19 ACTUALLY, A MAJOR COMPONENT OF THAT IS A
20 CONFIDENTIALITY AGREEMENT. THAT INFORMATION CANNOT BE
21 DISCLOSED.

10:01AM

22 Q TURNING TO, MIKE, IF YOU COULD BROADCAST,
23 DISPLAY FOR IDENTIFICATION 22474.

24 IS THAT A DEMONSTRATIVE THAT YOU HAD
25 PREPARED ON TRIAL EXHIBIT 1501, THE MULTI-STRATEGY
26 FIXED INCOME GRADE?

10:01AM

27 A YES, IT IS.

28 MR. SURPRENANT: YOUR HONOR, PERMISSION TO

1 BROADCAST?

2 MR. WEINGART: NO OBJECTION.

3 THE COURT: IT MAY BE SHOWN.

4 BY MR. SURPRENANT:

5 Q NOW, COULD YOU TAKE US THROUGH BRIEFLY THIS 10:01AM
6 DESCRIPTION OF THE MULTI-STRATEGY FIXED INCOME GRID
7 DOCUMENT.

8 A ONE OF THE MAJOR PRODUCTS OF THE FIXED INCOME
9 GROUP AT TCW WAS ITS MULTI-STRATEGY FIXED INCOME
10 PRODUCT LINE. 10:02AM

11 AND WHAT IT DOES HERE IS IT IDENTIFIES
12 THE CLIENT, THE PORTFOLIO ASSOCIATED WITH THE CLIENT,
13 AND THE VARIOUS INVESTMENT GUIDELINES -- GUIDELINES
14 INVOLVED IN THAT PARTICULAR PRODUCT WITH THAT
15 PARTICULAR CLIENT. 10:02AM

16 IT MEANS WHAT ARE THE ELIGIBLE
17 SECURITIES;

18 WHAT ARE THE NONELIGIBLE SECURITIES;

19 AND WHAT ARE THE VARIOUS GUIDELINES I
20 HAVE TO OPERATE WITHIN TERMS OF MATURITY, DURATION, 10:02AM
21 CREDIT RATINGS OF VARIOUS SECURITIES PURCHASE.

22 Q MIKE, IF YOU COULD TRY TO DO A SIDE-BY-SIDE
23 WHERE WE COULD HAVE SLIDE 2, THE CRITERIA, DISPLAYED
24 AGAINST THE DEMONSTRATIVE. ANY WAY YOU CAN MAKE THOSE
25 A LITTLE BIGGER. 10:02AM

26 NOW, MR. SMITH, IS MATERIAL -- IS THE
27 MULTI-STRATEGY FIXED INCOME GUIDELINE, IS MATERIAL LIKE
28 THAT GENERALLY KNOWN TO THE PUBLIC?

1 A NO. IT'S NOT.

2 Q AND WHAT ARE THE CUSTOM AND PRACTICE IN THE
3 INDUSTRY WITH RESPECT TO TRYING TO PROTECT THE SECRECY
4 OF SUCH INFORMATION?

5 A AS I MENTIONED.

10:03AM

6 MR. WEINGART: OBJECTION. I DON'T BELIEVE
7 THAT'S IN HIS REPORT, EITHER.

8 THE COURT: SUSTAINED.

9 UNLESS THERE'S AN OFFER.

10 MR. SURPRENANT: I BELIEVE IT IS ADDRESSED IN
11 THE REPORT, YOUR HONOR. I'LL MOVE ON UNTIL I HAVE A
12 CHANCE TO LOOK.

10:03AM

13 THE COURT: ALL RIGHT.

14 BY MR. SURPRENANT:

15 Q DOES THE MULTI-STRATEGY FIXED INCOME GRADE,
16 DOES THAT PROVIDE INDEPENDENT ECONOMIC VALUE TO TCW
17 BECAUSE IT IS NOT GENERALLY KNOWN TO THE PUBLIC?

10:03AM

18 A YES. I MEAN, THIS IS THE HEART OF THE
19 BUSINESS.

20 IT'S YOUR CLIENT RELATIONSHIPS. AS I
21 MENTIONED EARLIER, YOU HAVE AN INVESTMENT MANAGEMENT
22 CONTRACT. AND IN THAT THERE'S A CONFIDENTIALITY
23 AGREEMENT, WHICH MEANS YOU CAN'T DISCLOSE THE TERMS,
24 WHICH WOULD BE THE INVESTMENT GUIDELINES AND ALL THE
25 OTHER ASPECTS OF THE CONTRACTUAL RELATIONSHIP YOU HAVE
26 WITH THE CLIENT.

10:03AM

27 Q WOULD IT -- WHAT WOULD BE THE POSSIBLE
28 CONSEQUENCE IF A COMPANY LIKE DOUBLELINE WHO HAD AN

10:04AM

1 INTEREST IN TARGETING TCW CLIENTS COULD OBTAIN A COPY
2 OF THE MULTI-STRATEGY FIXED INCOME GRID?

3 A IT'S PART OF THAT SEAMLESS BRIDGE THAT I HAD
4 OUTLINED EARLIER. THE ABILITY TO GO TO A CLIENT AND
5 SAY, LOOK, I KNOW EXACTLY WHAT YOU NEED; I CAN CONTINUE
6 IT AT MY NEW COMPANY. AND, THEREFORE, HERE ARE THE
7 GUIDELINES; WE KNOW THEM BY HEART.

10:04AM

8 AND WE CAN CONSTRUCT A PORTFOLIO
9 ACCORDINGLY.

10 Q MIKE, IF YOU COULD DISPLAY FOR IDENTIFICATION,
11 TX 22475.

10:04AM

12 IS THIS A DEMONSTRATIVE YOU PREPARED,
13 THE FIXED INCOME FEE SCHEDULE?

14 A YES.

15 MR. SURPRENANT: PERMISSION TO BROADCAST, YOUR
16 HONOR.

10:05AM

17 MR. WEINGART: NO OBJECTION.

18 THE COURT: ALL RIGHT.

19 BY MR. SURPRENANT:

20 Q COULD YOU EXPLAIN TO US, AS A FIXED INCOME
21 EXPERT, WHAT IS THE INFORMATION THAT IS CONTAINED IN
22 THE FIXED INCOME FEE SCHEDULE?

10:05AM

23 A IT'S A DETAILED, COUNT-BY-COUNT ANALYSIS OF
24 THE FEES BEING CHARGED FOR EACH ONE -- TO EACH ONE OF
25 THE CLIENTS.

10:05AM

26 Q AND THEY SEPARATELY MANAGED ACCOUNTS, ARE
27 THOSE THE INSTITUTIONAL CLIENTS YOU WERE TALKING ABOUT
28 EARLIER?

1 A YES, THEY ARE.

2 Q THE LAST BULLET, IT SAYS:

3 IT WOULD ALLOW A COMPETITOR TO

4 UNDERCUT TCW FEES TO KEY CLIENTS.

5 HOW WOULD THAT WORK?

10:05AM

6 A WELL, IF I KNEW EXACTLY WHAT TCW WAS CHARGING
7 ONE OF ITS CLIENTS, I COULD COME AND LOOK, I'LL DO
8 EXACTLY WHAT TCW IS DOING IT FOR, BUT I'LL DO IT FOR 10
9 PERCENT CHEAPER. SO IT WOULD GIVE YOU A VERY
10 DEMONSTRATIVE EDGE.

10:06AM

11 MORE IMPORTANTLY, TCW WOULD WANT TO
12 KNOW, IN TERMS OF ALL ITS CLIENTS, WHAT EACH CLIENT IS
13 GETTING PAID. IN TERMS OF WHAT IT'S RECEIVING IN TERMS
14 OF FEES. THAT'S ANOTHER IMPORTANT CHARACTERISTIC.

15 Q ONCE AGAIN, LET'S APPLY THE CRITERIA THAT
16 WE'VE IDENTIFIED ON SLIDE 2 TO THE FIXED INCOME FEE
17 SCHEDULE.

10:06AM

18 DOES THE FIXED INCOME FEE SCHEDULE, DOES
19 IT DERIVE ECONOMIC VALUE FOR NOT BEING GENERALLY KNOWN
20 TO THE PUBLIC OR OTHER PERSONS?

10:06AM

21 A YES, IT DOES.

22 Q HOW DOES IT DO SO?

23 A ONCE AGAIN, BY -- IF A COMPETITOR WERE TO KNOW
24 THE FEE SCHEDULE, THEY WOULD BE ABLE TO COMPETE AGAINST
25 YOU AND UNDERCUT THEIR PRICING.

10:06AM

26 Q NOW, IS THIS INFORMATION PUBLICLY AVAILABLE?

27 A NOT AT ALL.

28 Q EACH INDIVIDUAL CLIENT WOULD KNOW ITS OWN

1 FEES, CORRECT?

2 A THAT'S CORRECT.

3 Q BUT WOULD THEY KNOW THE AGGREGATION OR
4 COMBINATION OF ALL OF TCW FEES TO ITS SEPARATELY
5 MANAGED ACCOUNTS?

10:07AM

6 A NO, IT WOULD NOT.

7 Q WHAT HARM, IF ANY, WOULD HAPPEN IF A
8 COMPETITOR, SUCH AS DOUBLELINE, WHO WANTED TO TARGET
9 TCW'S CLIENTS, WOULD OBTAIN A COPY OF THE FIXED INCOME
10 FEE SCHEDULE?

10:07AM

11 A THEY WOULD BE ABLE TO SOLICIT TCW CLIENTS AND
12 UNDERCUT THE FEE STRUCTURE TCW HAD WITH THOSE CLIENTS.

13 Q OKAY.

14 IF WE COULD DISPLAY THE CONTACT
15 DATABASE, TRIAL EXHIBIT 1502.

10:07AM

16 IS THAT A DEMONSTRATIVE THAT YOU HAD
17 PREPARED, SETTING OUT SOME OF THE KEY CHARACTERISTICS
18 OF THE CONTACT DATABASE?

19 A YES, IT IS.

20 MR. SURPRENANT: PERMISSION TO --

10:07AM

21 THE COURT: THE DEMONSTRATIVE IS NOT 1502.
22 IT'S 2247-6.

23 SIR, I MISSPOKE. THE CONTACT DATABASE
24 IS 1502.

25 THE COURT: WE'RE LOOKING AT 2247-6?

10:07AM

26 THE WITNESS: THAT'S CORRECT.

27 MR. SURPRENANT: THAT'S CORRECT.

28 PERMISSION TO BROADCAST.

1 MR. WEINGART: NO OBJECTION.

2 THE COURT: YOU MAY.

3 BY MR. SURPRENANT:

4 Q NOW, WHAT VALUE, AS A PRACTITIONER IN THE
5 FIXED INCOME INDUSTRY, IF ANY, DO YOU SEE IN THE
6 CONTACT DATABASE? 10:08AM

7 A WELL, THIS IS A SERIES OF BOTH PAST AND
8 PRESENT CONTACTS FOR TCW CLIENTS. YOU HAVE A LARGE
9 UNIVERSE OF ASSET ALLOCATORS OUT THERE, POTENTIAL
10 CLIENTS. 10:08AM

11 WHAT THIS IS DOING, IT'S SIFTING THROUGH
12 THOUSANDS OF DIFFERENT POTENTIAL CLIENTS TO --
13 IDENTIFYING EXACTLY WHICH CLIENT IS INTERESTED IN
14 EXACTLY THE PRODUCT THAT YOU HAVE.

15 AND THAT'S A VERY IMPORTANT ELEMENT
16 HERE. 10:08AM

17 Q IS THE CONTACT DATABASE SOMETHING YOU COULD
18 PUT TOGETHER IN A SHORT PERIOD OF TIME?

19 A NOT AT ALL. THIS IS OVER YEARS OF, YOU KNOW,
20 KNOCKING ON DOORS AND SEEING WHO'S INTERESTED, WHO'S
21 NOT INTERESTED. 10:09AM

22 YOU KNOW, IF YOU WERE TO TALK TO A BIG
23 INSTITUTION, SUCH AS A LINCOLN NATIONAL INSURANCE
24 COMPANY, HOW DO YOU WORK OUT WHO'S THE RIGHT PERSON TO
25 TALK TO IN AN INSTITUTION THAT MIGHT HAVE 20,000
26 PEOPLE? 10:09AM

27 Q IS THIS INFORMATION AVAILABLE ON WHAT'S CALLED
28 THE STANDARD AND POOR'S MARKET DIRECTORY?

1 A NO.

2 Q WHAT IS THE DIFFERENCE BETWEEN INFORMATION
3 AVAILABLE THERE AND AVAILABLE IN THE CONTACTS DATABASE?

4 A THAT'S A --

5 MR. WEINGART: THIS IS NOT IN HIS REPORT,
6 EITHER.

10:09AM

7 THE COURT: SUSTAINED.

8 MR. SURPRENANT: AGAIN, YOUR HONOR, I'LL TAKE
9 IT UP AT THE BREAK.

10 THE COURT: ALL RIGHT. WE'LL TAKE A BREAK IN
11 A FEW MINUTES.

10:09AM

12 GO ON.

13 MR. SURPRENANT: OKAY.

14 Q IS THIS INFORMATION PUBLICLY AVAILABLE?

15 A NO, IT'S NOT.

10:09AM

16 Q IS SOME OF THE INFORMATION PUBLICLY AVAILABLE?

17 A POSSIBLY.

18 Q AND WHAT IS THE DIFFERENCE BETWEEN THE
19 INFORMATION THAT IS AVAILABLE PUBLICLY VERSUS THE
20 ENTIRE DATABASE IN THE CONTACTS DATABASE?

10:09AM

21 A AS I STATED, YOU KNOW, YOU'RE TALKING ABOUT
22 BIG INSTITUTIONS, AND NOW YOU HAVE THE ABILITY TO
23 ADDRESS EXACTLY WHO THE DECISION MAKER IS FOR THE VERY
24 SPECIFIC PRODUCT THAT YOU HAVE.

25 AND THAT SAVES YOU JUST A HUGE AMOUNT OF
26 TIME TO BE ABLE TO GO DIRECTLY TO THAT SOURCE AND
27 DIRECTLY TO THAT PERSON.

10:10AM

28 Q WHAT, IF ANY --

1 IF WE COULD GO TO THE CRITERIA AGAIN,
2 MIKE.

3 NOW, WHAT, IF ANY, INDEPENDENT ECONOMIC
4 VALUE DOES TCW DERIVE FROM THE DATA IN THE CONTACT
5 DATABASE?

10:10AM

6 A IT'S THE ABILITY TO KNOW EXACTLY WHO THE RIGHT
7 DECISION MAKERS ARE IN A VARIETY OF DIFFERENT
8 INSTITUTIONS THAT ARE INTERESTED SPECIFICALLY IN TCW
9 PRODUCT.

10 Q AND WHAT WOULD BE THE POSSIBLE CONSEQUENCE TO
11 TCW IF A COMPETITOR SUCH AS DOUBLELINE WAS INTERESTED
12 IN TARGETING TCW'S CLIENT WERE ABLE TO OBTAIN A COPY OF
13 THE CONTACT DATABASE?

10:10AM

14 A WELL, THEY WOULD KNOW EXACTLY WHO TO CALL.
15 AND SOLICIT DAY ONE. AND IT WOULD SAVE THEM A HUGE
16 AMOUNT OF TIME IN BEING ABLE TO GO DIRECTLY TO, AS I
17 SAID, CONTACTS THAT THEY KNOW, TCW KNOWS, ARE DIRECTLY
18 INTERESTED IN TCW PRODUCTS.

10:11AM

19 Q IF WE COULD TURN, MIKE, DISPLAY FOR
20 IDENTIFICATION TRIAL EXHIBIT -- TRIAL EXHIBIT 2247,
21 WHICH DISCUSSES THE M.B.S. DATABASE.

10:11AM

22 IS THAT A DEMONSTRATIVE THAT YOU HAD
23 PREPARED TO SET FORTH WHAT YOU REGARD AS SOME OF THE
24 KEY CHARACTERISTICS OF THE M.B.S. DATABASE?

25 A YES, IT IS.

10:11AM

26 MR. SURPRENANT: PERMISSION TO DISPLAY, YOUR
27 HONOR.

28 THE COURT: YOU MAY.

1 BY MR. SURPRENANT:

2 Q NOW, THERE'S SOME -- I THINK IT'S FAIR TO
3 SAY -- SOME JARGON ON THIS SLIDE.

4 COULD YOU TAKE US THROUGH AND EXPLAIN
5 WHAT THIS MEANS. 10:12AM

6 A THIS MEANS THAT YOU TAKE EACH INDIVIDUAL
7 PORTFOLIO, WHICH IN THE FIXED INCOME SPACE THEY'RE
8 MANAGING, AND YOU CAN COMPARE IT TO HOW IS IT DOING
9 AGAINST A PUBLIC INDEX, LIKE THE BARCLAYS FIXED INCOME
10 INDEX. 10:12AM

11 YOU CAN COMPARE IT AGAINST HOW IT'S
12 DOING AGAINST GOVERNMENT BONDS. IT'S JUST A SERIES OF
13 COMPARISONS.

14 SEPARATELY, IT ALSO INCLUDES RISK. WHAT
15 IS THE EMBEDDED RISK IN THESE PORTFOLIOS. AND THAT'S A
16 VERY IMPORTANT ELEMENT. 10:12AM

17 AND THE WAY WE IDENTIFY RISK IS, WHAT IS
18 THE CREDIT RISK? WHAT IS THE DURATION RISK? VARIOUS
19 METRICS THAT ARE BEING USED.

20 AND, SEPARATELY, IT'S A SNAPSHOT FOR
21 EACH ONE OF THE CLIENTS AS TO HOW DO THEY LIKE THAT
22 MATERIAL COMING TO THEM? 10:12AM

23 AND, ALSO, IT ALLOWS A KIND OF REALTIME
24 COMPARISON. SO IF A CLIENT SAYS, OH, TODAY THE
25 MARKET'S DOWN 500 POINTS, WHAT'S HAPPENED TO MY
26 PORTFOLIO? 10:13AM

27 THEY CAN IMMEDIATELY SAY, THIS IS WHAT
28 HAPPENED.

1 Q MIKE, IF WE COULD PUT -- BEFORE I DO THAT, IS
2 SOME OF THE INFORMATION, SUCH AS THE MUTUAL FUND
3 INFORMATION THAT'S CONTAINED IN THE M.B.S. DATABASE, IS
4 THAT PUBLICLY AVAILABLE?

5 A YES, IT IS. 10:13AM

6 Q IS THE COMBINATION, COMPLETE COMBINATION OF
7 THE DATA AND SOURCE CODE AND HOLDINGS, IS THAT PUBLICLY
8 AVAILABLE ANYWHERE?

9 A NO, IT'S NOT.

10 Q IF WE COULD PUT -- THANK YOU, MIKE, PUT THE
11 CRITERIA UP. 10:13AM

12 TELL US, WHAT IS THE INDEPENDENT
13 ECONOMIC VALUE, IF ANY, THAT TCW DERIVED IN DECEMBER OF
14 2009 FROM HAVING THE M.B.S. DATABASE?

15 A WELL, THIS IS A SNAPSHOT OF YOUR CLIENT'S
16 HOLDINGS. AND WHAT'S IN THEM AND HOW THEY'RE
17 PERFORMING, ET CETERA. AND THIS IS ALL BOUND BY
18 CONFIDENTIALITY AGREEMENT IN TERMS OF THE INSTITUTIONAL
19 ACCOUNTS. 10:13AM

20 Q AND WHAT VALUE, IF ANY, WOULD A COMPETITOR,
21 SUCH AS DOUBLELINE WHO WANTED TO TARGET TCW CLIENTS,
22 WHAT BENEFIT WOULD THEY GET IF THEY OBTAIN A COPY? 10:14AM

23 A THEY WOULD BE ABLE TO COMPETE AGAINST THE
24 EXISTING PORTFOLIO. I KNOW YOUR RISKS -- I KNOW THEIR
25 RISKS ARE X, MAYBE IF I CAN IMPROVE IT BY X PLUS, THEN
26 I GOT A BETTER PRODUCT AND, COMBINED WITH THE FEE
27 SCHEDULE, I CAN UNDERCUT IT. 10:14AM

28 ONCE AGAIN, IT'S NOT JUST THIS, BUT ALL.

1 THE FOUR OTHER PARTS THAT WE IDENTIFIED, WHICH WOULD
2 GIVE A VERY DEMONSTRATIVE EDGE TO SOMEBODY LIKE
3 DOUBLELINE.

4 MR. SURPRENANT: IT'S 10:15. I'M READY TO
5 MOVE ON TO THE NEXT PIECE OF THE STOOL.

10:14AM

6 THE COURT: ALL RIGHT. LET'S TAKE OUR MORNING
7 RECESS.

8 LADIES AND GENTLEMEN, WE'LL -- LET'S
9 TAKE 20 MINUTES.

10:15AM

10
11 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.) +
12

13 THE COURT: ALL RIGHT. WE'RE OUT OF PRESENCE
14 OF THE JURY.

15 MR. SURPRENANT, I'M AT A LOSS HERE. IF
16 THE OBJECTION IS THAT THIS WITNESS DIDN'T DISCLOSE
17 OPINIONS IN HIS REPORT OR IN HIS DEPOSITION TESTIMONY,
18 WE NEED TO FIGURE IT OUT.

10:15AM

19 MR. SURPRENANT: I WILL REVIEW HIS REPORT OVER
20 THE BREAK. AND IF I HAVE ANY ISSUE, I'LL BRING IT UP.

10:15AM

21 THE COURT: WHAT ELSE WAS THERE?

22 MR. MADISON: REMEMBER, I NOTICED A NUMBER OF
23 EXHIBITS FROM WARD YESTERDAY THAT WE WOULD MOVE IN.

24 WHILE THAT'S ALL FRESH IN OUR MIND, WAS
25 THERE ANY OBJECTION TO THOSE?

10:15AM

26 MR. BRIAN: WE REVIEWED THOSE LAST NIGHT.
27 LET'S TAKE IT UP AT THE NEXT BREAK. THERE'S A COUPLE.
28 WE MAY HAVE OBJECTIONS.

1 THE COURT: TALK AMONG YOURSELVES. IF YOU CAN
2 WORK OUT EVERYTHING YOU, CAN. WHAT YOU CAN'T WORK OUT
3 I'LL WORK IT OUT FOR YOU.

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

5 THE COURT: THANKS.

10:16AM

6
7 (RECESS.)
8
9
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1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, THURSDAY, AUGUST 18, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 10:37 A.M.

10

11

12

(AT 10:37 A.M. THE JURY ENTERED
THE COURTROOM, AND THE FOLLOWING
PROCEEDINGS WERE HELD:)

13

14

15

10:38AM

16

THE COURT: ALL RIGHT. ALL MEMBERS OF OUR
JURY ARE PRESENT AS ARE COUNSEL.

17

18

MR. SURPRENANT, YOU MAY CONTINUE.

19

MR. SURPRENANT: THANK YOU, YOUR HONOR.

20

MIKE, IF YOU COULD DISPLAY FOR

10:38AM

21

IDENTIFICATION EXHIBIT 2227-8.

22

23

24

DIRECT EXAMINATION

25

10:38AM

26

BY MR. SURPRENANT:

27

Q. IS THIS A DEMONSTRATIVE THAT YOU PREPARED FOR

28

THE TRADE SECRETS YOU IDENTIFIED UNDER THE PORTFOLIO

1 MANAGEMENT LEG?

2 A. YES, I DID.

3 MR. SURPRENANT: PERMISSION TO DISPLAY, YOUR
4 HONOR?

5 MR. WEINGART: NO OBJECTION. 10:38AM

6 THE COURT: YES, IT MAY BE SHOWN.

7 Q. BY MR. SURPRENANT: NOW, REMIND US IT'S BEEN A
8 WHILE.

9 WHAT DO YOU MEAN BY PORTFOLIO
10 MANAGEMENT? 10:38AM

11 A. THAT'S THE INVESTMENT PROCESS, THE
12 DETERMINATION IF YOU WILL, WHICH SECURITIES TO BUY AND
13 SELL, AND THEN THE ACTUAL EXECUTION OF THAT PROCESS AND
14 THE CONSTRUCTION OF THE PORTFOLIO IN AGGREGATE.

15 Q. AND THE HOLDINGS BACK UP, WE'LL GO THROUGH IT
16 IN DETAIL. 10:39AM

17 CAN YOU GIVE US A SHORT DESCRIPTION OF
18 WHAT IT IS?

19 A. IT'S A SNAPSHOT AS OF OCTOBER 5TH OF ALL THE
20 DIFFERENT PORTFOLIOS THAT MADE UP THE FIXED INCOME
21 GROUP. 10:39AM

22 THE COURT: SIR, DO YOU WANT TO MOVE A LITTLE
23 CLOSER TO THE MICROPHONE.

24 THE WITNESS: SURE.

25 Q. BY MR. SURPRENANT: AND THE TRADE TICKET
26 BINDERS, I THINK WE ALL SAW THEM IN A BIG ROLLING CART. 10:39AM

27 WHAT DO YOU UNDERSTAND THEM TO BE?

28 A. THAT'S WHEN YOU BUY AND SELL PARTICULAR

1 SECURITIES FOR THE PORTFOLIO. IT'S JUST A HISTORY OF
2 THAT BUYING AND SELLING OVER A PERIOD OF TIME.

3 MR. SURPRENANT: IF WE COULD DISPLAY FOR
4 IDENTIFICATION, MIKE, TRIAL EXHIBIT 2247-9.

5 IS THAT A DEMONSTRATIVE THAT YOU HAD
6 PREPARED CALLING OUT CHARACTERISTICS OF THE HOLDINGS
7 BACK UP? 10:39AM

8 A. YES, IT IS.

9 MR. SURPRENANT: YOUR HONOR, PERMISSION TO
10 BROADCAST, PLEASE. 10:40AM

11 THE COURT: YES, YOU MAY.

12 Q. BY MR. SURPRENANT: NOW, COULD YOU TELL US
13 WHAT DO YOU MEAN BY THE METRICS?

14 AND WHAT, IF ANY, VALUE DOES IT PROVIDE
15 ITS OWNER? 10:40AM

16 A. SURE. I MEAN THIS IS A SNAPSHOT AS OF OCTOBER
17 5TH, 2009, OF ALL OF THE DIFFERENT FIXED INCOME
18 ACCOUNTS, MEANING WHAT THE CLIENT, HAD IN TERMS OF
19 PORTFOLIO FOR THAT PARTICULAR CLIENT. SO YOU HAD THE
20 HOLDINGS, LIST OF SECURITIES, THE PORTFOLIO I.D., THE
21 SECURITIES, IN TERMS OF WHAT'S MADE UP INTO THAT
22 PORTFOLIO, THE MARKET PRICE, WHAT WAS THE ORIGINAL
23 PURCHASE PRICE, WHAT IS THE CURRENT MARKET PRICE, WHO
24 WAS THE COUNTER PARTY THAT THAT PURCHASE WAS MADE WITH. 10:40AM

25 Q. 60 BILLION AUM, WHAT IS THAT COMMUNICATING? 10:40AM

26 A. IF YOU WERE TO AGGREGATE ALL OF THE HOLDINGS
27 OF THESE VARIOUS PORTFOLIOS IT WOULD EQUAL
28 APPROXIMATELY \$60 BILLION OF ASSETS UNDER MANAGEMENT BY

1 TCW.

2 MR. SURPRENANT: MIKE, IF YOU COULD DO A SIDE
3 BY SIDE OF 9 AND 3.

4 Q. NOW, MR. SMITH, HAVING THE HOLDINGS BACKUP,
5 DOES THAT PROVIDE ANY ADDITIONAL VALUE WHEN YOU ALSO
6 HAVE THE MATERIALS, THE TRADE TICKETS YOU IDENTIFIED
7 UNDER THE CLIENT MARKETING AND REPORTING?

10:41AM

8 A. YES. IT GIVES YOU A 360-DEGREE VIEW OF THAT
9 CLIENT. YOU CAN LOOK AT ITS HOLDINGS, IN TERMS OF ITS
10 PORTFOLIO. HOW IT'S PERFORMED AGAINST VARIOUS MARKET
11 BENCHMARKS. YOU NOTE AS OF THAT PARTICULAR DATE WHAT
12 WERE THE ACTUALLY CHARACTERISTICS OF THAT PORTFOLIO.
13 YOU HAVE THE CONTACT. YOU HAVE THE ABILITY, ONCE
14 AGAIN, TO ENGAGE THE CLIENT IN A DISCUSSION ABOUT
15 WHAT'S HAPPENED AND WHERE YOU MIGHT WANT TO GO WITH IT.

10:41AM

10:41AM

16 Q. WHAT DO YOU MEAN BY A 360-DEGREE VIEW?

17 A. IT'S THE ABILITY TO LOOK AT THINGS FROM ALL
18 THESE DIFFERENT ANGLES, THE COMPLETE PICTURE. IT'S A
19 COMPREHENSIVE SET WHICH IS AN IMPORTANT PIECE OF THE
20 THREE LEGS OF THE STOOL HERE.

10:42AM

21 Q. AND THEN KIND OF THE REVERSE OF THE QUESTION I
22 ASKED, HAVING THE TRADE SECRETS SET FORTH UNDER CLIENT
23 MARKETING AND CLIENT SERVICES, DOES THAT MAKE ALSO
24 POSSESSING THE HOLDINGS BACKUP ANY MORE VALUABLE?

25 A. YES, IT DOES. IT'S VERY COMPLIMENTARY.

10:42AM

26 AS I SAID, THE ASSET MANAGEMENT COMPANY
27 ITSELF IS THE STOOL. SO WE'RE TALKING ABOUT HOW THE
28 INTERRELATIONSHIP OF EACH THREE LEGS WORKS TOGETHER SO

1 THAT THE WHOLE IS FAR GREATER THAN THE SUM OF THE
2 PARTS.

3 Q. AND IS THE HOLDINGS BACKUP DATA PUBLICALLY
4 AVAILABLE?

5 A. NO, IT'S NOT. 10:42AM

6 Q. NOW, ISN'T THE CASE THAT EACH INDIVIDUAL
7 CLIENT WOULD HAVE ITS OWN HOLDINGS?

8 A. THAT'S CORRECT.

9 Q. AND THE HOLDINGS OF MUTUAL FUNDS ARE
10 PUBLICALLY AVAILABLE? 10:42AM

11 A. THAT'S RIGHT. THEY ARE PUBLIC COMPANIES.

12 Q. SO HOW IS IT THEN THAT THE AGGREGATION OR
13 COMBINATION OF THE HOLDINGS IS NOT PUBLICLY AVAILABLE?

14 A. FIRST OF ALL, THE LARGE MAJORITY OF TCW'S
15 FIXED INCOME CLIENTS WERE INSTITUTIONAL ACCOUNTS, NOT 10:43AM
16 MUTUAL FUNDS. SO YOU ARE BOUND BY THE INDIVIDUAL
17 CONFIDENTIALITY AGREEMENTS WITH EACH ONE OF THOSE
18 CLIENTS.

19 BUT MORE IMPORTANTLY, IT GIVES YOU A
20 VERY INTERESTING -- AS A COMPETITOR -- A MARKET 10:43AM
21 SNAPSHOT OF THE AGGREGATE HOLDINGS IN ALL OF THESE
22 ACCOUNTS AS TO WHAT IS TCW'S FOOTPRINT IN THE
23 MARKETPLACE, IN TERMS OF MORTGAGES, ITS HOLDING AND
24 OTHER INSTRUMENTS.

25 THAT'S A VERY IMPORTANT COMPETITIVE EDGE 10:43AM
26 FOR A COMPETITOR TO KNOW EXACTLY WHICH SECURITIES TCW
27 IS HOLDING IN AGGREGATE.

28 Q. WHAT VALUE, IF ANY, WOULD HAVING THE HOLDING

1 BACKUP PROVIDE TO SOMEONE WHO WANTED TO TARGET TCW'S
2 CLIENTS?

3 A. WELL, ONCE AGAIN, THIS WOULD ALLOW YOU TO
4 ENGAGE THE CLIENT AND BE ABLE TO SAY, LOOK, I BELIEVE
5 THESE SECURITIES ARE GOOD. THESE AREN'T THAT GREAT SO
6 YOU WOULD BE ABLE TO PITCH AGAINST THE PORTFOLIOS, BUT
7 AND ALSO YOU WOULD HAVE A SENSE OF EXACTLY, IN
8 AGGREGATE, WHERE TCW IS IN THE MARKETPLACE.

10:43AM

9 MR. SURPRENANT: MIKE, COULD WE GO BACK TO
10 SLIDE 8.

10:44AM

11 Q. WHAT IS THE TIME PERIOD COVERED -- JUST A
12 MOMENT. I'M GETTING AHEAD OF MYSELF.

13 WHAT IS THE TIME PERIOD COVERED BY THE
14 TRADE TICKET BINDERS?

15 A. I BELIEVE IT GOES BACK TO 1989.

10:44AM

16 Q. AND IT GOES FORWARD TO WHEN?

17 A. 2009, I'M SORRY.

18 Q. ARE THE TRADE TICKET AND THE MATERIALS
19 CONTAINED IN THE TRADE TICKET BINDERS, IS THAT PUBLIC
20 INFORMATION?

10:44AM

21 A. NO, IT'S NOT.

22 Q. AND WHAT, IF ANY, ECONOMIC VALUE DO THE TRADE
23 TICKETS PROVIDE ITS OWNER, TCW?

24 A. IT HAS TWO ELEMENTS HERE. THE TRACK RECORD OF
25 A COMPANY IS THE PROPERTY OF THE COMPANY, NOT OF THE
26 ACTUAL INVESTMENT MANAGER.

10:44AM

27 THIS IS A COMPONENT. IT IS NOT THE
28 COMPLETE COMPONENT BECAUSE YOU WOULD NEED CLIENT

1 STATEMENTS, CLIENT ACTIVITY REPORTS, TO BE ABLE TO
2 RECONSTRUCT THE TRACK RECORD.

3 BUT IF YOU HAD A THIRD PARTY AUDIT FIRM,
4 WHICH YOU NEED TO DO, IN TERMS OF MEETING WHAT'S CALLED
5 THE GLOBAL INVESTMENT PERFORMANCE STANDARDS, THAT 10:45AM
6 WOULD, AND THIS IS A SET OF STANDARDS WHICH 32 NATIONS
7 HAVE SUBSCRIBED TO, YOU WOULD WANT TO HAVE THESE TRADE
8 TICKETS AS DEMONSTRABLE PROOF THAT THE ACTUAL CLIENT
9 ACTIVITY THAT IS IN THIS CLIENT STATEMENT ACTUALLY TOOK
10 PLACE. 10:45AM

11 Q. BY MR. SURPRENANT: MR. SMITH DID GIPS SET
12 FORTH STANDARDS, WHEREBY IT GOVERNS WHEN YOU CAN TAKE A
13 TRACK RECORD AS AN INVESTMENT MANAGER TO A NEW FIRM.

14 THE WITNESS: YES, IT DOES.

15 Q. AND IS THE -- IS POSSESSION OF AN AUDIBLE 10:45AM
16 TRACK RECORD THAT COULD BE AUDITED, IS THAT THE ONLY
17 THING YOU NEED, UNDER GIPS?

18 A. NO. YOU NEED THREE COMPONENTS, ACTUALLY.

19 Q. WHAT ARE THE THREE COMPONENTS YOU NEED?

20 A. ONE IS THE ABILITY TO DEMONSTRATE YOUR TRACK 10:45AM
21 RECORD.

22 TWO, IS THAT THE INVESTMENT TEAM THAT
23 WAS PART OF THAT TRACK RECORD IS IN PLACE AT THE NEW
24 ENTITY.

25 AND THREE, THAT THE RESEARCH AND GENERAL 10:46AM
26 INFRA STRUCTURE PROTOCOLS ARE SIMILAR AS WELL.

27 Q. NOW, IN YOUR EXPERT REPORT DID YOU DISCUSS THE
28 DECEMBER 22 AND DECEMBER 29 WEBCAST THAT MR. GUNDLACH

1 HAD.

2 A. YES, I DID.

3 Q. AND IN THOSE WEBCASTS THAT YOU DISCUSSED IN
4 YOUR EXPERT REPORT, DO YOU KNOW IF MR. GUNDLACH CLAIMED
5 THAT ALL OF THE INVESTMENT DECISION MAKERS THAT HAD
6 BEEN AT THE MBS GROUP AT TCW HAD GONE OVER DOUBLELINE?

10:46AM

7 A. YES, HE DID.

8 Q. AND DO YOU KNOW IF WITHIN THOSE WEBCASTS THAT
9 HE REPRESENTED TO INVESTORS, THAT TCW THE DECISION
10 MAKING PROCESS THAT HAD BEEN AT TCW IN THE MBS GROUP
11 WAS NOW AT DOUBLELINE?

10:46AM

12 A. YES, HE DID.

13 Q. IS A -- WOULD DISCLOSURE OF THE TRADE TICKETS
14 TO A COMPETITOR, WOULD THAT POTENTIALLY HARM TCW OR
15 BENEFIT THE COMPETITOR?

10:47AM

16 A. IT COULD BENEFIT A COMPETITOR. ONE OF THE
17 INTERESTING ELEMENTS HERE ARE THESE TRADE TICKETS GOING
18 BACK SO FAR OVER 20 YEARS IS THAT AT THE END OF THE
19 DAY, THERE ARE MAJOR INFLECTION POINTS IN MARKETS,
20 1994, 2001, 2008.

10:47AM

21 AND ACTUALLY, TO BE ABLE TO GO BACK AND
22 SEE WHAT YOU DID DURING THOSE PERIODS OF TIME IS A VERY
23 IMPORTANT BENEFIT TO ANYBODY IN TERMS OF WHAT WAS
24 HAPPENING IF THE MARKET AND WHAT WAS YOUR REACTION TO
25 THE MARKET AT THAT TIME.

10:47AM

26 Q. COULD YOU PLEASE TELL US WHAT AN INFLECTION
27 POINT IS AS YOU HAVE JUST USED THAT TERM?

28 A. INFLECTION POINT IS A SEVERE MARKET

1 DISLOCATION.

2 SO WHEN NEIMAN GOES BANKRUPT, AND THE
3 WHOLE WORLD KIND OF SHUDDERS, WHAT DID I DO? DID I BUY
4 OR SELL AT THAT PARTICULAR POINT IN TIME?

5 AND TO BE ABLE TO GO BACK OVER 20 YEARS 10:48AM
6 AND SEE THESE DIFFERENT INFLECTION POINTS. THIS IS
7 TCW'S HISTORY. THIS IS TCW'S FRANCHISE, IF YOU WILL,
8 IN TERMS OF HOW IT PERFORMED OVER THESE PERIODS OF
9 TIME.

10 BECAUSE ANY TIME AN INSTITUTIONAL 10:48AM
11 CLIENT -- AND YOU ARE PITCHING THAT CLIENT, THEY WANT
12 TO KNOW HOW DID YOU DO IN 2008?

13 HOW DID YOU DO IN 2001, OR 1994, THAT'S
14 VERY IMPORTANT.

15 Q. WHAT IMPORTANCE, IF ANY, DOES A GIPS TRACK 10:48AM
16 RECORD HAVE TO THESE VERY LARGE SEPARATELY MANAGED
17 ACCOUNTS THAT YOU TALKED ABOUT?

18 A. WELL, THE GIPS TRACK RECORD IS.

19 MR. WEINGART: OBJECTION, YOUR HONOR.

20 I DON'T BELIEVE THIS IS IN THE REPORT 10:48AM
21 EITHER.

22 THE COURT: IS THERE ANY REFERENCE TO IT?

23 MR. SURPRENANT: THERE'S CERTAINLY A
24 DISCUSSION OF THE TRACK RECORD. I MEAN --

25 THE COURT: IF HE HAS AN OPINION ON THIS 10:48AM
26 SUBJECT AND IT WASN'T --

27 LADIES AND GENTLEMEN, WE GO THROUGH A
28 PRETRIAL PHASE AND REPORTS WERE GIVEN, AND DISCOVERY

1 WAS DONE. SO WE KIND OF LIMIT THE PARAMETERS OF AN
2 EXPERT'S TESTIMONY TO THE TESTIMONY THAT WAS GIVEN IN
3 THE CONTENTS OF THE REPORTS, JUST SO THERE'S NO MYSTERY
4 TO YOU ABOUT THIS.

5 MR. SURPRENANT: THE TOPIC OF THE TRACK RECORD
6 WAS DISCUSSED EXTENSIVELY IN HIS REPORT, AND AT HIS
7 DEPOSITION.

10:49AM

8 THE COURT: I'LL ALLOW IT.

9 GO AHEAD.

10 MR. SURPRENANT: THANK YOU.

10:49AM

11 THE WITNESS: CAN YOU REPEAT THE QUESTION?

12 MR. SURPRENANT: THANK YOU.

13 Q. YEAH, IS A GIBS TRACK RECORD, IS IT IMPORTANT
14 AT ALL TO THE LARGE INSTITUTIONAL CLIENTS THAT YOU
15 SEPARATELY MANAGE ACCOUNTS ON THAT YOU IDENTIFIED?

10:49AM

16 A. YES, IT IS.

17 IT'S THE ABILITY FOR THESE INSTITUTIONAL
18 CLIENTS TO BE ABLE TO COMPARE ONE FUND MANAGER AGAINST
19 ANOTHER IN A KIND OF UNIFORMED FASHION.

20 Q. LET'S MOVE TO THE THIRD LEG OF THE STOOL.
21 INFRASTRUCTURE AND OPERATING ENVIRONMENT.

10:49AM

22 IF YOU COULD DISPLAY FOR IDENTIFICATION
23 SLIDE 10, MIKE.

24 IS THAT A DEMONSTRATIVE YOU HAD PREPARED
25 ON THE TRADE SECRETS YOU IDENTIFIED IN INFRASTRUCTURE
26 AND OPERATING ENVIRONMENTS?

10:49AM

27 A. YES, IT IS.

28 MR. SURPRENANT: PERMISSION TO BROADCAST, YOUR

1 HONOR?

2 THE COURT: NO OBJECTIONS?

3 MR. WEINGART: NO, YOUR HONOR.

4 THE COURT: YOU MAY.

5 Q. BY MR. SURPRENANT: NOW, AGAIN REMIND US JUST
6 BRIEFLY WHAT IS INFRASTRUCTURE AND OPERATING
7 ENVIRONMENT.

10:50AM

8 A. IT'S A BIT -- BACK TO MY JUMBO JET ANALOGY.
9 THE PILOT IS SITTING IN THE COCKPIT WITH A VARIETY OF
10 INSTRUMENTATION. IN THIS PARTICULAR CASE THE PORTFOLIO
11 MANAGER, THE VARIOUS OTHER PEOPLE INVOLVED IN THE
12 COMPANY, VIS A VIE CLIENT REPORTING, ET CETERA, ALL ARE
13 HOUSED WITHIN AN OPERATING ENVIRONMENT THAT ALLOWS
14 VARIOUS TASKS TO BE DONE.

10:50AM

15 SO THE SHARING OF DATABASES, THE
16 BUILDING OF THOSE DATABASES, THE VARIOUS PROTOCOLS, IN
17 ESSENCE, THE LINKING OF THE VARIOUS FUNCTIONS OF THE
18 COMPANY TOGETHER.

10:50AM

19 MR. SURPRENANT: IF WE COULD GO TO SLIDE 11,
20 MIKE.

10:51AM

21 Q. IS THAT A DEMONSTRATIVE YOU HAD PREPARED
22 SETTING FORTH CHARACTERISTICS OF THE INVESTMENT
23 REPORTING ANALYTICS IN THE MODULES BWIC BROWSER AND THE
24 SECURITY ANALYZER?

25 A. YES, IT IS.

10:51AM

26 Q. PERMISSION TO DISPLAY, YOUR HONOR?

27 MR. WEINGART: NO OBJECTION.

28 THE COURT: YOU MAY.

1 Q. BY MR. SURPRENANT: NOW, WITH RESPECT TO THE
2 BWIC BROWSER, LET ME ASK YOU AN INTRODUCTORY QUESTION.

3 IS IT THE SCREEN SHOT THAT IS THE TRADE
4 SECRET OR IS IT SOMETHING ELSE?

5 A. IT'S SOMETHING ELSE. 10:51AM

6 Q. OKAY.

7 AND WHAT IS THAT SOMETHING ELSE?

8 A. IN THE CASE OF THE BWIC BROWSER, WHICH IS
9 REALLY A SUBSET OF THE SECURITY ANALYZER, IT'S A
10 VIEWFINDER THAT IS ALLOWING THE ABILITY TO TAKE 10:51AM
11 EXTERNAL DATA SUCH AS A LIST OF BONDS THAT ARE BEING
12 OFFERED BY CITIBANK, OR DEUTSCHE BANK AND TAKE THOSE
13 AND BRING THEM INTO YOUR SYSTEM AND BE ABLE TO COMPARE
14 THOSE BONDS AGAINST THE ANALYTICS THAT YOU HAVE IN YOUR
15 SYSTEM AND AGAINST THE VARIOUS DATABASES THAT ARE 10:52AM
16 IN-HOUSE DATABASES.

17 Q. MR. SMITH, DID YOU AND MR. BURDICK, YOUR CHIEF
18 PROGRAMMER, ACTUALLY VIEW A DEMONSTRATION OF THE BWIC
19 BROWSER AND SECURITY ANALYZER?

20 A. YES, WE DID. 10:52AM

21 Q. AND WHEN YOU VIEWED THAT, DID IT HAVE ANY
22 IMPACT ON YOUR ANALYSIS OR DETERMINATION WHETHER THOSE
23 MODULES WERE TRADE SECRETS?

24 A. YES, IT DID.

25 Q. WHAT EFFECT DID IT HAVE? 10:52AM

26 A. WHAT WE WERE ACTUALLY VERY COMPLIMENTARY ABOUT
27 TCW WAS ITS ABILITY TO DO THIS HUGE AMOUNT OF DATA
28 ANALYSIS IN A VERY SHORT PERIOD OF TIME.

1 IT'S A BIT LIKE, YOU KNOW, YOU ARE THERE
2 ON THE JUMBO JET, AND I HAVE TO DO A VARIETY OF
3 FUNCTIONS, AND I HAVE TO DO THEM QUICKLY BECAUSE I'M
4 MANAGING SO MUCH MONEY, \$60 BILLION. AND IT'S
5 IMPORTANT THAT I NOT JUST BUY ONE SECURITY, BUT I HAVE
6 TO BUY LOTS AND LOTS OF SECURITIES OVER A PERIOD OF
7 TIME. AND AS A RESULT, I NEED TO HAVE THE -- SPEED IS
8 A VERY IMPORTANT COMPONENT WHEN YOU ARE SCALING A
9 MASSIVE MANAGEMENT BUSINESS.

10:53AM

10 Q. NOW, COULD YOU TAKE US THROUGH THE SEQUENCE
11 WHERE CREDIT SUISSE, OR A BANK PUTS OUT -- THEY WANT
12 BITS FOR 50 BONDS. HOW WOULD THE BWIC BROWSER AND
13 SECURITY ANALYZER ALLOW YOU TO ANALYZE AND RESPOND TO
14 THAT BIT ONE COMPETITION?

10:53AM

15 A. SURE. CREDIT SUISSE IS OFFERING OUT 50
16 DIFFERENT BONDS IN MORTGAGE-BACKED SPACE.

10:53AM

17 YOU ARE GOING TO LOOK AT THEM AND SAY,
18 OKAY, WHAT ARE THE CHARACTERISTICS OF THESE BONDS? HOW
19 ARE THEY PERFORMED? WHAT DO I THINK THEY'LL BE DOING?
20 HOW DOES IT COMPARE TO OTHER BONDS? AND THIS ALLOWS
21 YOU A VERY QUICK CUT OF SAYING, OKAY, OUT OF THAT 50
22 THERE ARE 10 THAT I REALLY WANT TO STUDY IN DETAIL.

10:53AM

23 SO THAT'S AN IMPORTANT PIECE, RIGHT?
24 I'VE NOW BEEN ABLE TO DO THIS FAIRLY QUICKLY, AND NOW I
25 CAN DO A DEEP DIVE THROUGH THE SECURITY ANALYZER INTO
26 IS THIS AN ELIGIBLE SECURITY FOR WHICH ACCOUNTS?

10:54AM

27 WHAT ARE THE VARIOUS ELEMENTS THAT
28 METRICS THAT I WANT TO USE AND ANALYZE? WHAT IS THE

1 AMOUNT OF -- WHAT'S THE LOAN DE VALUE RATIO? WHAT ARE
2 THE FORECLOSURES? WHAT ARE THE DELINQUENCIES? YOU
3 KNOW, A VARIETY OF THINGS THAT ONE USES -- A CHECKLIST
4 TO DETERMINE WHETHER I WANT TO OWN THAT SECURITY OR
5 NOT.

10:54AM

6 Q. NOW, YOU SAY A DEEP DIVE INTO PROPRIETARY TCW
7 DATABASES AND EXTERNAL DATABASES. WHAT ARE THE
8 DIFFERENT DATABASES YOU ARE DOING A DEEP DIVE INTO?

9 A. WELL, EVERY FIRM THAT KIND OF IS DEEPLY
10 INVOLVED IN MORTGAGE BACKS, WANTS TO RUN A SERIES OF
11 CASH FLOW ANALYSIS ON A PARTICULAR BOND. AND THAT
12 BOND, AS HAS BEEN MENTIONED EARLIER, IS MADE UP OF 2-,
13 3,000 LOANS, AND YOU ARE TRYING TO WORK OUT WHAT'S
14 HAPPENING. WHAT ARE PROPERTY PRICES IN ONE AREA OF THE
15 COUNTRY VERSUS ANOTHER? WHAT ARE THE DELINQUENCY
16 RATES? IS THIS A GOOD NEIGHBORHOOD? BAD NEIGHBORHOOD?

10:54AM

17 SO THERE'S JUST A LOT OF DATA MINING
18 THAT HAS TO TAKE PLACE. AND SOMEONE LIKE TCW, AS WE
19 UNDERSTAND IT, HAS ABOUT 65,000 BONDS IN ITS, KIND OF,
20 HISTORICAL DATABASE. AND IT RUNS ABOUT 400 DIFFERENT
21 FUNCTIONS ON THAT EVERY NIGHT.

10:55AM

22 AND SO WHAT HAPPENS HERE IS WHEN A NEW
23 BOND COMES UP FOR PURCHASE THEY CAN RUN THE ANALYSIS
24 AND SEE WHETHER OR NOT THIS PARTICULAR BOND HAS THE
25 CHARACTERISTICS THAT ARE ELIGIBLE FOR THE DIFFERENT
26 PORTFOLIOS. REMEMBERING THAT YOU HAVE OVER 150
27 DIFFERENT INSTITUTIONAL ACCOUNTS. THEY DON'T ALWAYS
28 HAVE EXACTLY THE SAME GUIDELINES. SO YOU HAVE TO BE

10:55AM

10:55AM

1 MAKING SURE THAT YOU CAN ALLOCATE THESE BONDS TO THE
2 RIGHT PROGRAM UNDER THE RIGHT CHARACTERISTICS AS
3 DEFINED IN THE INVESTMENT GUIDELINES.

4 Q. NOW, ISN'T THIS SIMILAR FUNCTIONALITY TO THE
5 BWIC BROWSER AND SECURITY ANALYZER, IS THAT AVAILABLE
6 ON BLOOMBERG?

10:56AM

7 A. NO, IT'S NOT.

8 Q. WHAT IS THE DIFFERENCE THAT YOU VIEW BETWEEN
9 WHAT'S AVAILABLE ON BLOOMBERG AND WHAT IS AVAILABLE ON
10 A BWIC BROWSER SECURITY ANALYZER?

10:56AM

11 A. WELL, THE BWIC BROWSER AND SECURITY ANALYZER
12 ALLOW YOU TO TAKE EXTERNAL BOND DATA, AND BRING THEM IN
13 AND INTRODUCE THEM TO YOUR INTERNAL DATABASE.

14 IN THE CASE OF BLOOMBERG, YOU WOULD HAVE
15 TO PUT YOUR DATABASE ONTO THE BLOOMBERG SYSTEM AND BE
16 ABLE TO THEN RUN IT WITHIN THE CLOSED SYSTEM OF
17 BLOOMBERG ITSELF. SO IT'S VERY, VERY DIFFERENT.

10:56AM

18 Q. WELL, WHY WOULD THE WAY THE BWIC AND THE
19 SECURITY ANALYZER DO, WHY WOULD IT BE BETTER OR WORSE
20 THAN BLOOMBERG?

10:56AM

21 A. WELL, IT'S VERY IMPORTANT THAT WHEN YOU ARE
22 ANALYZING BONDS AND DATA FROM DIFFERENT SOURCES, THAT
23 THEY'VE BEEN MODIFIED TO A UNIFORMED SOURCE, SO THAT
24 YOU ARE ACTUALLY COMPARING AN APPLE WITH AN APPLE.

25 THEREFORE, IF YOU'VE DONE
26 MODIFICATIONS -- BLOOMBERG IS NOT ALWAYS ACCURATE. IT
27 DOESN'T ALWAYS HAVE CLEAN DATA. AND AS A RESULT, YOU
28 WANT TO MAKE SURE THAT DATA THAT YOU HAVE, AND THE DATA

10:57AM

1 THAT'S COMING IN, ARE UNIFORM. AND THE BEST WAY OF
2 DOING THAT IS TO HAVE AN INTERNAL SOURCE TO DO THAT.

3 Q. WHAT WOULD BE THE POSSIBLE CONSEQUENCES IF THE
4 BWIC BROWSER AND SECURITY ANALYZER WERE OBTAINED BY A
5 COMPETITOR OF TCW AND WANTED TO TARGET TCW'S CLIENTS?

10:57AM

6 A. YOU WOULD BE ABLE TO SAY, YOU KNOW, ALL OF
7 THE -- ONCE AGAIN, IT'S NOT JUST A COMPETITOR, IT'S A
8 COMPETITOR WITH SCALE, BECAUSE A LOT OF THE
9 FUNCTIONALITY HERE FOR THE BWIC AND THE SECURITY
10 ANALYZER IS THE SPEED THAT IT CAN DO THINGS, BECAUSE
11 YOU ARE RUNNING SUCH A LARGE AND COMPLEX OPERATION.

10:57AM

12 AND IF YOU HAD A COMPETITOR OF A SIMILAR
13 SORT, THIS WOULD GIVE THEM A VERY TIMELY EDGE. IT'S
14 THE FACT THAT YOU CAN SHORTCUT THE TIME, IN TERMS OF
15 DOING THESE VARIOUS FUNCTIONS THAT IS -- THAT MAKES
16 THIS VERY UNIQUE.

10:58AM

17 Q. IF WE COULD GO TO THE NEXT SLIDE.

18 SLIDE 12, MIKE.

19 IS THIS A DEMONSTRATIVE YOU PREPARED ON
20 TASK LIST WHICH HAS BEEN ADMITTED INTO EVIDENCE AS TX
21 1505?

10:58AM

22 A. YES, IT IS.

23 Q. PERMISSION TO BROADCAST, YOUR HONOR?

24 THE COURT: ANY OBJECTIONS?

25 MR. WEINGART: NO, YOUR HONOR.

10:58AM

26 THE COURT: YOU MAY.

27 Q. BY MR. SURPRENANT: AND COULD YOU BRIEFLY TAKE
28 US THROUGH THE CHARACTERISTICS YOU'VE IDENTIFIED ON THE

1 DEMONSTRATIVE?

2 A. YES. THERE WERE OVER 400 TASKS THAT HAVE BEEN
3 IDENTIFIED HERE, WHICH IS, ONCE AGAIN, HOW DO I ENGAGE
4 WITH THE CLIENT, ON THE ONE HAND?

5 AND TWO, WHAT ARE THE INTERNAL PROCESSES 10:58AM
6 IN COLLECTING THAT DATA? SO THERE'S A VERY DETAILED
7 REPORTING SCHEDULE BY WHO'S THE RELEVANT PERSON, WHAT
8 DAY OF THE WEEK? WHAT DAY OF THE MONTH THESE
9 PARTICULAR SCHEDULES HAVE TO BE DONE?

10 IT'S A VERY GOOD BLUEPRINT OF THE 10:59AM
11 OPERATIONAL STRUCTURE AND REPORTING STRUCTURE WITHIN
12 TCW.

13 Q. NOW, IN THE LAST BULLET YOU SAY THAT A TASK
14 LIST WILL ALLOW THE COMPETITOR TO MOVE A CLIENT FROM
15 TCW WITH VIRTUALLY UNINTERRUPTED SERVICE. 10:59AM

16 WHY IS THAT SO?

17 A. IT'S A BLUEPRINT FOR TCW. IT WOULD ALLOW YOU
18 TO REPLICATE TCW'S OPERATIONS.

19 Q. IF WE COULD NOW KIND OF SUM UP THE TRADE
20 SECRETS. 10:59AM

21 IF YOU COULD GO TO SLIDE 13, MIKE.

22 NOW, YOU -- PERMISSION TO BROADCAST,
23 YOUR HONOR?

24 THE COURT: YES, YOU MAY.

25 Q. BY MR. SURPRENANT: NOW, YOU SAY THE TRADE 10:59AM
26 SECRETS WOULD HAVE ALLOWED DOUBLELINE TO DO A VARIETY
27 OF THINGS.

28 IN YOUR ANALYSIS, WITH RESPECT TO THIS

1 CASE, DID YOU LEARN WHAT HAPPENED ON DECEMBER 4TH,
2 2009?

3 A. YES, I DID.

4 Q. AND WHAT WAS THAT?

5 A. THAT THE DEFENDANTS WERE CONFRONTED WITH THE
6 ACTIONS THEY WERE DOING BETWEEN SEPTEMBER AND
7 OCTOBER -- AND DECEMBER. 11:00AM

8 Q. DID YOUR ANALYSIS FOCUS ON WHAT ACTUAL USE
9 DEFENDANTS MADE WITH THE TRADE SECRETS AFTER THEY WERE
10 CONFRONTED ON DECEMBER 4TH? 11:00AM

11 A. NO, IT DID NOT.

12 Q. WHAT QUESTION DID YOU ATTEMPT TO ANSWER WITH
13 RESPECT TO THE TRADE SECRETS?

14 A. THE PURPOSE OF OUR REPORT WAS TO LOOK AT THE
15 ISSUE OF THE ABLE GRAPE PROJECTIONS AND GET THE DATA 11:00AM
16 THAT WAS TAKEN AND THE VARIOUS ASPECTS OF IT, ALLOW ONE
17 TO FULFILL THOSE PROJECTIONS, IN TERMS OF SCALING AN
18 OPERATION IN A VERY SHORT PERIOD OF TIME TO THE AMOUNT
19 OF ASSETS WHICH, IN THE ABLE GRAPE PROJECTIONS, WERE
20 \$48 BILLION. 11:00AM

21 Q. NOW, YOU SAY LESSEN -- THE TRADE SECRETS WOULD
22 HAVE ALLOWED DOUBLELINE TO LESSEN EXECUTION RISKS.

23 WHAT IS LESSEN EXECUTION RISKS?

24 A. YOU CAN HAVE THE BEST INTEREST PLAN IN THE
25 WORLD, BUT UNLESS YOU CAN EXECUTE, AND AS I'VE STATED 11:01AM
26 PREVIOUSLY, YOU NEED TO BE ABLE TO EXECUTE ON ALL THREE
27 LEGS OF THE STOOL. IT'S JUST NOT THE BUYING AND
28 SELLING OF SECURITIES. IT'S THE ABILITY TO REPORT TO

1 THE CLIENTS AND IT'S THE ABILITY TO HOUSE MULTIPLE
2 CLIENTS WITHIN YOUR ENVIRONMENT AND MAKE SURE YOU HAD A
3 COMMERCIALY ROBUST SYSTEM TO DO SO.

4 Q. NOW, YOU SAY ACCELERATE TIME TO MARKET.

5 WHAT IS THE TIME TO MARKET THAT THE
6 TRADE SECRETS WOULD HAVE ALLOWED DOUBLELINE TO
7 ACCELERATE?

11:01AM

8 HOW MUCH TIME WOULD THEY HAVE SAVED?

9 A. I THINK THEY WOULD HAVE SAVED SOMEWHERE
10 BETWEEN SIX TO NINE MONTHS.

11:01AM

11 Q. NOW, LET ME TRY TO BE PRECISE ABOUT THAT. IS
12 IT SIX TO NINE MONTHS IN RAMPING UP TO THE \$48 BILLION
13 IN AUM PROJECTION FOR FIRST NINE MONTHS?

14 OR IS IT SIX TO NINE MONTHS TO RAMP UP
15 AS A STARTER?

11:01AM

16 A. IT'S SIX TO NINE MONTHS TO BE ABLE TO HAVE THE
17 INFRASTRUCTURE IN PLACE TO SCALE YOUR OPERATION TO 48
18 BILLION.

19 Q. AND BY SCALE, AGAIN, TELL US WHAT YOU MEAN BY
20 THAT?

11:02AM

21 A. SCALE IS THE -- YOU JUST DON'T HAVE ONE
22 ACCOUNT GIVING \$48 BILLION. YOU ARE GOING TO HAVE
23 MULTIPLE ACCOUNTS, HUNDREDS OF ACCOUNTS. AND THE
24 ABILITY TO SERVICE ALL OF THE ACCOUNTS, ENGAGE WITH
25 THOSE ACCOUNTS, BOTH FROM AN INVESTMENT PROCESS, MAKING
26 SURE THE GUIDELINES ARE FOLLOWED CORRECTLY, AND FROM A
27 REPORTING PROCESS, THAT THE CLIENT REPORTS WHETHER THEY
28 BE DAILY, WEEKLY, MONTHLY ARE DONE CORRECTLY.

11:02AM

1 Q. NOW, YOU SAY AVOID STALENESS. THAT TRADE
2 SECRETS WOULD HAVE ALLOWED DOUBLELINE TO AVOID
3 STALENESS.

4 WHAT DID YOU MEAN BY THAT?

5 A. WHAT I MEANT BY THAT IS ASSET MANAGEMENT 11:02AM
6 COMPANIES ARE ABOUT MOMENTUM. AS YOU ARE GROWING, AS
7 YOU CREATE MOMENTUM, PEOPLE TALK ABOUT YOU AND CLIENTS
8 COME TO YOU, ET CETERA.

9 SO IF YOU ARE OUT OF THE MARKET AS A
10 RESULT OF SETTING UP YOUR COMPANY AND PUTTING THE 11:02AM
11 INFRASTRUCTURE IN PLACE, IT'S A LITTLE BIT OF OUT OF
12 SIGHT, OUT OF MIND.

13 Q. NOW, DID YOU, IN YOUR ANALYSIS, CONSIDER
14 WHETHER THE TRADE SECRETS WOULD HAVE ALLOWED DOUBLELINE
15 TO ACHIEVE THE ASSETS UNDER MANAGEMENT AND REVENUE 11:03AM
16 PROJECTIONS SET FORTH IN THE ABLE GRAPE PRO FORMA WHICH
17 WE LOOKED AT EARLIER, TRIAL EXHIBIT 963-B?

18 A. YES, WE DID.

19 Q. WHAT DID YOU CONCLUDE?

20 A. WE BELIEVE THAT IT WOULD HAVE. 11:03AM

21 Q. IF WE COULD DO TO -- LET'S SKIP SLIDE 14 IN
22 THE INTEREST OF TIME, 14, AND GO TO SLIDE 15.

23 NOW, HOW -- HOW WOULD YOU DESCRIBE --
24 YOU HAVE ALL THE TRADE SECRETS AND THE TRIAL EXHIBIT
25 NUMBERS, THEY ARE ALL IN EVIDENCE. 11:03AM

26 HOW WOULD YOU DESCRIBE THE COMBINATION
27 OF THESE TRADE SECRETS WORKING TOGETHER?

28 A. WELL, AS I'VE STATED, THE REASON WHY WE TOOK

1 THE STOOL METAPHOR WAS THE IMPORTANCE OF EACH LEG OF
2 THE SCHOOL THAT THE STOOL CAN'T STAND UP WITHOUT THE
3 OTHER TWO BEING IN PLACE.

4 SO THERE'S A VERY STRONG
5 INTERRELATIONSHIP HERE; THAT NOT ONLY WITHHOLDINGS, YOU 11:04AM
6 WOULD BE ABLE TO ATTACH THAT WITH THE CONTACT DATABASE;
7 YOU WOULD BE ABLE TO ATTACH THAT TO THE TASK LIST; AND
8 YOU WOULD GET A REALLY GOOD SNAPSHOT OF HOW TO ENGAGE
9 THAT CLIENT, HOW TO BRING THAT CLIENT ON BOARD.

10 Q. TURNING TO A SLIGHTLY DIFFERENT TOPIC. 11:04AM

11 IN YOUR ANALYSIS OF THE DOWNLOADED
12 MATERIAL AND AS DISCUSSED IN YOUR EXPERT REPORT, DID
13 YOU ADDRESS WHETHER THERE WAS CONFIDENTIAL AND VALUABLE
14 TCW INFORMATION THAT HAD BEEN DOWNLOADED, EVEN IF YOU
15 DID NOT DETERMINE THAT IT NECESSARILY QUALIFIED AS WHAT 11:04AM
16 YOU REGARDED AS A TRADE SECRET?

17 A. YES, WE DID.

18 Q. IS INFORMATION THAT IS PROVIDED BY CLIENTS TO
19 FIXED INCOME ASSET MANAGEMENT COMPANIES, IS THAT
20 TYPICALLY CONSIDERED CONFIDENTIAL IN THE INDUSTRY? 11:04AM

21 A. YES, IT IS.

22 Q. WHY?

23 A. WELL, ONCE AGAIN WE TALKED ABOUT THE LARGE
24 UNIVERSE OF POTENTIAL CONTACTS OUT THERE. AND THE
25 ABILITY TO SIFT THROUGH THAT AND FUNNEL THAT TO -- 11:05AM
26 DIRECTLY WITH CONTACTS WHO ARE INTERESTED,
27 SPECIFICALLY, IN YOUR PRODUCT.

28 Q. ARE THE INTERNAL PROCESSES THAT A FIXED INCOME

1 COMPANY LIKE BROADSTREET -- ARE YOUR INTERNAL PROCESSES
2 SOMETHING THAT YOU GENERALLY SHARE WITH YOUR
3 COMPETITORS OR THE PUBLIC?

4 A. NO, WE DO NOT.

5 Q. WHY NOT?

11:05AM

6 A. ONE, WE THINK THEY ARE CONFIDENTIAL AND
7 PROPRIETARY. WE BELIEVE WE HAVE A MOUSETRAP THAT WORKS
8 WELL, AND WE DON'T WANT TO DISCLOSE HOW THAT'S WORKING
9 TO COMPETITORS OR TO THE PUBLIC.

10 Q. NOW, IN YOUR EXPERT REPORT ONE OF THE TYPES OF
11 INFORMATION THAT YOU IDENTIFIED AS BEING CONFIDENTIAL
12 AND VALUABLE WAS MARKETING MATERIAL.

11:05AM

13 NOW, DID YOU MEAN MARKETING MATERIAL
14 THAT YOU WOULD ACTUALLY GIVE TO, YOU KNOW, OUT PUBLICLY
15 TO PROSPECTIVE CLIENTS?

11:06AM

16 A. NO. I THINK WHEN YOU INITIALLY MEET A CLIENT
17 YOU GIVE THEM FAIRLY GENERIC MARKETING MATERIAL. IF
18 THAT CLIENT IS INTERESTED IN YOU, THEN YOU SIGN AN NDA,
19 A NONDISCLOSURE AGREEMENT -- A CONFIDENTIALITY
20 AGREEMENT -- AND BEGIN TO, YOU KNOW, OPEN THE KIMONO AS
21 TO ACTUALLY HOW THE VARIOUS SYSTEMS -- WHAT THE VARIOUS
22 MATRICES, ET CETERA, ARE USED. SO IT'S A MULTIPLE STEP
23 PROCESS TO SECURE A CLIENT.

11:06AM

24 Q. AND ARE THE -- IF YOU ENGAGE IN A MARKETING
25 EFFORT, AND THROUGH THAT MARKETING EFFORT YOU IDENTIFY
26 PROSPECTIVE CLIENTS, IS THAT PROSPECTIVE CLIENT
27 INFORMATION CUSTOM AND PRACTICE OF THE INDUSTRY,
28 CONSIDERED CONFIDENTIAL?

11:06AM

1 A. YES, IT IS.

2 Q. DO YOU HAVE AN OPINION AS TO THE CUSTOM AND
3 PRACTICE IN THE INDUSTRY AS THE WAY TO PROPERLY
4 NEGOTIATE A DEPARTURE BETWEEN A HIGH PROFILE FUND
5 MANAGER AND A FIXED INCOME ASSET MANAGEMENT COMPANY?

11:06AM

6 MR. WEINGART: OBJECTION, YOUR HONOR. MAY WE
7 APPROACH?

8 THE COURT: YES, YOU MAY.

9

10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD AT SIDEBAR:)

11:07AM

12

13 THE COURT: HOLD ON. I DON'T KNOW WHAT YOU
14 ARE ARGUING WITH THEM ABOUT. I DON'T EVEN KNOW WHAT
15 THE ISSUE IS.

11:07AM

16

17 I THOUGHT WE HAD A MOTION IN LIMINE

18

19 ABOUT THIS?
20 MR. SURPRENANT: WE DID, YOUR HONOR. WE ARE
21 NOT ASKING TO TALK ABOUT DEAL TERMS. WE'RE GOING TO
22 TALK ABOUT THE PROCESS OF NEGOTIATING A DEPARTURE THAT
23 WAS SPECIFICALLY CULLED OUT IN YOUR IN LIMINE MOTION;
24 HE CAN DO THAT.

11:07AM

25

26 WE'RE NOT GOING TO SAY WHAT WOULD HAVE
27 BEEN A FAIR DEAL? WE'RE TALKING ABOUT THE PROCESS OF
28 NEGOTIATING IN LIMINE.

11:07AM

29

OUR REPORT --

30

31 THE COURT: JUST HOLD ON. JUST RELAX. DON'T
32 GET SO EXCITED.

1 AND DO YOU VIEW WHAT I DID AS DIFFERENT
2 THAN THAT? I'VE GOT MY SUMMARIES HERE AND I CAN PULL
3 IT OUT. I DO RECALL A MOTION AND I THOUGHT WE WERE
4 GOING TO HAVE, WHAT WOULD BE A REASONABLE DEAL, OR WHAT
5 IT WAS, BUT THERE WOULD BE SOME GENERIC DISCUSSION.

11:08AM

6 MR. WEINGART: I DON'T BELIEVE THERE IS. IF
7 THERE IS IN YOUR REPORT --

8 MR. SURPRENANT: THERE IS.

9 MR. WEINGART: CAN YOU SHOW ME WHERE IT IS? I
10 REMEMBER THE SPECIFICS OF THE NEGOTIATION.

11:08AM

11 THE COURT: SO YOUR OBJECTION IS IT'S NOT IN
12 THE REPORT?

13 THAT IT'S ONE OR THE OTHER.

14 MR. WEINGART: I UNDERSTOOD MR. SURPRENANT,
15 TOO.

11:08AM

16 THE COURT: AS LONG AS THAT WAS SOMETHING HE'S
17 NOT GOING INTO, WHAT IS EXCLUDED, BECAUSE THAT'S WHY WE
18 EXCLUDED IT. BUT AS LONG AS IT WAS SOMETHING GENERIC.

19 WELL, SHOW IT TO THEM.

20 MR. MADISON: THE PROCESS OF NEGOTIATING A
21 DEPARTURE.

11:08AM

22 THE COURT: WE'RE ALL RIGHT.

23 GO AHEAD.

24
25 (THE FOLLOWING PROCEEDINGS
26 WERE HELD IN OPEN COURT IN
27 THE PRESENCE OF THE JURY:)
28

11:08AM

1 Q. BY MR. SURPRENANT: SHOULD WE RETURN TO WHERE
2 WE WERE?

3 DO YOU HAVE AN OPINION AS TO CUSTOM AND
4 PRACTICE IN THE INDUSTRY -- YOU'VE GOT A HIGH PROFILE
5 FUND MANAGER, THE PROPER WAY TO NEGOTIATE A DEPARTURE
6 BETWEEN SUCH A FUND MANAGER AND THE FIXED INCOME ASSET
7 MANAGEMENT COMPANY?

11:09AM

8 A. YES, I DO.

9 Q. IS THERE A SPECIFIC PLAY BOOK THAT SAYS HOW
10 THAT SHOULD BE DONE?

11:09AM

11 A. NO, THERE'S NOT.

12 Q. ARE THERE GENERAL PRINCIPALS PURSUANT TO THE
13 CUSTOM AND PRACTICE IN THE INDUSTRY?

14 A. YES, THERE ARE.

15 Q. AND IS THERE WHAT YOU WOULD IDENTIFY AS A
16 GENERAL OVERARCHING PRINCIPLE?

11:09AM

17 A. YES, THERE IS.

18 Q. WHAT IS THAT?

19 A. TRANSPARENCY.

20 Q. WHAT DO YOU MEAN BY TRANSPARENCY?

11:09AM

21 A. IT'S VERY IMPORTANT -- YOU HAVE KIND OF THREE
22 PARTS TO THIS. YOU HAVE A STAR FUND MANAGER AND HIS
23 RELATIONSHIP WITH THE COMPANY, AND THEN YOU HAVE THE
24 COMPANY'S RELATIONSHIP TO ITS CLIENTS.

25 AND IT'S IMPORTANT WHEN THERE'S A
26 SEPARATION SUCH AS THIS, THAT THE COMPANY MAKES SURE
27 THAT THE CLIENTS ARE PROPERLY SERVED, THAT THERE'S
28 PROPER PREPARATIONS FOR DOING THAT, AND THEN SEPARATELY

11:10AM

1 THERE'S THE NEGOTIATION BETWEEN THE STAR FUND MANAGER
2 AND THE COMPANY, SO THAT THOSE CLIENT RELATIONSHIPS ARE
3 NOT BEING JEOPARDIZED.

4 Q. IF A HIGH PROFILE FUND MANAGER SET UP A NEW
5 COMPANY AND WAITED UNTIL WEEKS -- IN SECRET, AND WAITED 11:10AM
6 UNTIL WEEKS BEFORE OPENING IT, AND THEN BEGAN TO
7 NEGOTIATE A DEPARTURE, WOULD THAT BE AN APPROPRIATE WAY
8 TO NEGOTIATE A DEPARTURE PURSUANT TO THE CUSTOMS AND
9 PRACTICES IN THE INDUSTRY?

10 A. NO, IT WOULD NOT. 11:10AM

11 Q. WHY NOT?

12 A. WELL, YOU ARE LOADING UP THE STACK TO THE STAR
13 FUND MANAGER. YOU'VE PUT A POSITION WHERE HE HAS ALL
14 THE CARDS, IN ESSENCE, BECAUSE WHAT HE'S DOING IS
15 SAYING, LOOK, IF YOU DON'T AGREE TO MY TERMS, IN THIS 11:11AM
16 VERY SHORT PERIOD OF TIME, I'M LEAVING. AND THE
17 COMPANY, WHOSE MAIN FRANCHISE IS THE RELATIONSHIP WITH
18 THE CLIENTS HAS TO DO SOMETHING. IT DOESN'T HAVE TIME
19 FOR REPLACEMENT; DOESN'T HAVE TIME BUT TO ACCEPT THE
20 NEGOTIATED POSITION OF THE STAR FUND MANAGER. 11:11AM

21 Q. IF WE COULD GO BACK TO TRIAL EXHIBIT 963-B.

22 AND KIND OF BLOW THAT UP.

23 DO YOU -- HAVE YOU FORMED AN EXPERT
24 OPINION ON WHETHER THE ECONOMIC TERMS THAT ARE SET
25 FORTH IN TRIAL EXHIBIT 963 REPRESENT A NONCOERCIVE 11:11AM
26 REASONABLE NEGOTIATED OUTCOME?

27 MR. WEINGART: OBJECTION, YOUR HONOR.

28 THE COURT: SUSTAINED.

1 Q. BY MR. SURPRENANT: DO YOU HAVE AN OPINION --
2 HOW WOULD YOU REGARD THE FEE SPLIT AND THE ECONOMIC
3 REASONABILITY SET FORTH HERE, AS WAS DISCUSSED
4 EXTENSIVELY IN YOUR EXPERT REPORT?

5 MR. WEINGART: OBJECTION, YOUR HONOR. 11:12AM

6 THE COURT: DOES THIS GO TO THE MOTION IN
7 LIMINE?

8 MR. WEINGART: YES.

9 THE COURT: I THINK IT DID.

10 MR. SURPRENANT, IT WILL BE SUSTAINED. 11:12AM

11 MR. SURPRENANT: COULD WE APPROACH, YOUR
12 HONOR.

13 THE COURT: NO, NOT NOW.

14 Q. BY MR. SURPRENANT: DID YOU, IN YOUR EXPERT
15 REPORT -- DID YOU IN YOUR EXPERT REPORT ANALYZE THE 11:12AM
16 OFFER THAT MR. GUNDLACH MADE TO MR. STERN ON SEPTEMBER
17 3, 2009 TO BUY A PORTION OF TCW?

18 A. YES, I DID.

19 Q. AND COULD YOU SET FORTH YOUR UNDERSTANDING OF
20 THE SPECIFICS OF THAT OFFER BRIEFLY? 11:12AM

21 A. THE VALUATION OF TCW WAS APPROXIMATELY \$700
22 MILLION. THE OFFER WAS TO ACTUALLY PURCHASE JUST 51
23 PERCENT OF THE COMPANY, NOT THE TOTAL AMOUNT OF THE
24 COMPANY. THAT WOULD APPROXIMATE TO APPROXIMATELY 351,
25 \$352 MILLION. 11:13AM

26 AND IT WAS TO BE A MIXTURE OF CASH ON
27 THE ONE HAND, AND A NONRECOURSE LOAN IN FAVORABLE TERMS
28 FROM SOCIETE GENERALE WHO'S ACTUALLY THE OWNER OF TCW

1 ITSELF.

2 Q. AND HOW DID YOU REGARD, AS A FIXED INCOME
3 EXPERT, THE REASONABLENESS OF THAT OFFER?

4 A. I WOULD DEEM IT TO BE A THROW-AWAY OFFER.

5 Q. AND WHY IS THAT? 11:13AM

6 A. WELL, FIRST OF ALL, I THINK THE VALUATION OF
7 TCW IS --

8 MR. WEINGART: OBJECTION, YOUR HONOR.

9 THE COURT: SUSTAINED.

10 SIR, JUST ANSWER THE QUESTIONS. I'M NOT 11:13AM
11 SURE THAT -- WE'RE GETTING INTO SOME AREAS THAT I THINK
12 WE'RE NOT GOING TO GET INTO.

13 MR. SURPRENANT: YOUR HONOR --

14 MR. WEINGART: I WOULD MOVE TO STRIKE THE
15 TESTIMONY ABOUT THE NEGOTIATIONS. 11:13AM

16 MR. SURPRENANT: YOUR HONOR, MAY I APPROACH?

17 THE COURT: YES, YOU MAY.

18

19 (THE FOLLOWING PROCEEDINGS WERE
20 HELD AT SIDEBAR:) 11:14AM

21

22 THE COURT: ALL RIGHT.

23 MR. SURPRENANT, WE'RE GETTING INTO AN
24 AREA -- WHAT WE'RE GOING TO WIND UP DOING, IF YOU
25 PURSUE THIS, IS WE'RE GOING TO GO INTO ALL OF THE 11:14AM
26 NEGOTIATED TERMS OF THE ATTANASIO DEPARTURE. AND I
27 THINK THE REASON THAT I SAID WE WOULDN'T GO TO THIS
28 PLACE WHERE YOU ARE TRYING TO GO, IS BECAUSE YOU DENIED

1 DISCOVERY ON IT. AND WE'RE OPENING UP A CAN OF WORMS
2 HERE, AND I'M NOT GOING TO LET YOU DO IT.

3 MR. SURPRENANT: LET ME JUST EXPRESS THE NINE
4 THREE OFFER.

5 THE NINE THREE OFFER WASN'T A NEGOTIATED 11:15AM
6 OFFER. IT WAS AN OFFER TO BUY THE BUSINESS. IT'S
7 SEPARATELY DISCUSSED IN HIS EXPERT REPORT. IT'S A
8 SEPARATE THING. HE WILL SAY IT'S NOT A NEGOTIATED
9 DEPARTURE.

10 THE COURT: BUT WE HAVE PLENTY OF EVIDENCE. 11:15AM
11 THE JURY CAN DETERMINE -- THEY HAVE EVIDENCE OF THE
12 EVALUATION OF A BILLION TWO.

13 THEY HAVE THE TESTIMONY OF THE
14 PARTICIPANTS AND HE CAN'T REALLY USURP THE FACTS THE
15 JURY CAN DETERMINE WHAT THEY WANT. YOU DON'T GET 11:15AM
16 OPINIONS ON THIS KIND OF STUFF.

17 NOW, IF YOU ARE TALKING ABOUT WHAT A
18 NEGOTIATED DEPARTURE WOULD BE, AND WE GET INTO
19 SPECIFICS OF IT, WE'RE GETTING INTO THIS AREA OF THE
20 OTHER ONES. 11:15AM

21 MR. SURPRENANT: I RESPECTFULLY DISAGREE, BUT
22 I UNDERSTAND, YOUR HONOR.

23 THE COURT: I'M LOOKING AT THE NOTES THAT WERE
24 INCORPORATED IN THE MINUTE ORDER. IT WOULD SEEM THAT
25 OTHER NEGOTIATED DEPARTURES FROM TCW HAD ALSO BECOME 11:15AM
26 RELEVANT, PROVIDED THERE ARE SUFFICIENT SIMILARITIES.

27 THE COURT WILL CONSIDER A 402, WELL,
28 WE'RE BEYOND THAT.

1 MR. SURPRENANT: SURE.

2 MR. MADISON: YOUR HONOR, NOBODY ELSE EVER
3 OFFERED TO BUY THE WHOLE FIRM. THIS IS TOTALLY
4 SEPARATE. THIS GOES TO THE DEFENDANT'S CLAIM THAT HE
5 WANTED TO BUY THE ENTIRE FIRM AND HIS OFFER WAS NEVER
6 RESPONDED TO.

11:16AM

7 THE COURT: IT WAS 51 PERCENT?

8 MR. MADISON: RIGHT.

9 THE COURT: WHAT DO YOU WANT TO SAY ABOUT IT?

10 MR. HELM: MY POINT IS THIS: IS WHAT WAS
11 INCLUDED, IN TERMS OF SEPARATING ENTIRELY FROM TCW, AND
12 WE THINK, IF WE WERE TO GET INTO THAT, WE WERE DENIED
13 DISCOVERY AND WHAT WERE THE TERMS OF THE SEPARATIONS.

11:16AM

14 THE COURT: I THINK WE SHOULD STAY AWAY FROM
15 IT.

11:16AM

16

17 (THE FOLLOWING PROCEEDINGS
18 WERE HELD IN OPEN COURT IN
19 THE PRESENCE OF THE JURY:)

20

11:16AM

21 Q. BY MR. SURPRENANT: TURNING TO A DIFFERENT
22 TOPIC, MR. SMITH.

23

24 WHEN AN ASSET MANAGEMENT COMPANY HAS TO
25 FIRE A HIGH PROFILE FUND MANAGER BECAUSE OF MISCONDUCT,
26 WHERE DOES THAT FALL ON THE RANGE OF OUTCOMES?

11:17AM

26

A. IT'S ONE OF THE WORST POSSIBLE OUTCOMES.

27

28 Q. DOES THAT MEAN THAT AN ASSET MANAGEMENT
COMPANY SHOULD NEVER FIRE A HIGH PROFILE FUND MANAGER,

1 NO MATTER WHAT MISCONDUCT?

2 A. NO.

3 Q. MR. SANTA ANA TESTIFIED THAT MR. GUNDLACH
4 INSTRUCTED HIM TO DOWNLOAD TCW CONTACTS, TRADE TICKET
5 BINDERS, CONTRACTS AND HOLDINGS DATA FOR POSSIBLE USE
6 AT ANOTHER COMPANY.

11:17AM

7 UNDER THE CUSTOM AND PRACTICE IN THE
8 INDUSTRY, HOW WOULD THAT BE VIEWED?

9 A. THEFT.

10 Q. NOW, WHAT IF MR. GUNDLACH WAS SCARED BECAUSE
11 HE THOUGHT HE MIGHT BE FIRED?

11:17AM

12 MR. WEINGART: OBJECTION, YOUR HONOR. THIS IS
13 NOT IN THE REPORT EITHER.

14 THE COURT: IS IT OR ISN'T IT, MR. SURPRENANT?

15 DO YOU WANT TO GIVE ME THE REPORT AND
16 I'LL GO THROUGH IT? THE OBJECTION IS WELL TAKEN IF IT
17 WASN'T SUBJECT TO PRIOR DISCLOSURE. YOU TELL ME.

11:17AM

18 MR. SURPRENANT: YOUR HONOR, THE TOPIC --

19 THE COURT: OKAY. BRING ME THE REPORT.

20 MR. SURPRENANT: I'LL MOVE ON, YOUR HONOR.

11:18AM

21 MR. WEINGART: YOUR HONOR, COULD WE MOVE TO
22 STRIKE THE PRIOR ANSWER.

23 THE COURT: I'LL STRIKE THE LAST RESPONSE.

24 MR. WEINGART: I THINK IT MAY HAVE BEEN THE
25 LAST TWO.

11:18AM

26 THE COURT: HOLD ON. I'LL STRIKE THE RESPONSE
27 AND EVERYTHING AFTER THE QUESTION, MR. SANTA ANA
28 TESTIFIED THAT MR. GUNDLACH INSTRUCTED HIM TO DOWNLOAD

1 TCW CONTACTS, TRADE SECRET BINDERS, CONTRACTS AND
2 HOLDINGS DATA. AND THE BALANCE WILL BE STRICKEN, AND
3 WE'LL PICK UP FROM THERE.

4 MR. SURPRENANT: AT THE BREAK I WOULD REQUEST
5 PERMISSION TO DISCUSS IT FURTHER.

11:19AM

6 THE COURT: THAT'S ALL RIGHT.

7 Q. BY MR. SURPRENANT: HAVE YOU USED THE TERM
8 HEADLINE RISK AS SOMETHING THAT HAPPENS AFTER AN ASSET
9 MANAGEMENT COMPANY IS FORCED TO FIRE A STAR FUND
10 MANAGER?

11:19AM

11 A. YES, I HAVE.

12 Q. WHAT DOES THAT MEAN?

13 A. THERE'S A FALL OUT, BY DEFINITION. YOU HAVE
14 THE COMPANY FACING THE CLIENTS, YOU HAVE THE STAR
15 MANAGER WHO'S MANAGING THOSE ACCOUNTS LEAVING, AND
16 THERE'S A FALL OUT PERIOD WHICH IS USUALLY NINE TO 12
17 MONTHS.

11:19AM

18 Q. NOW, ISN'T IT THE CASE THAT A SEPARATE MANAGED
19 ACCOUNT CAN DECIDE TO LEAVE QUICKER THAN SIX TO NINE
20 MONTHS?

11:19AM

21 A. YES. BUT IT'S USUALLY A REVIEW PROCESS. IT'S
22 AN UNDERSTANDING OF WHAT HAPPENED. IT'S A CONTACT WITH
23 THE COMPANY. IT'S THE ASSESSMENT OF THE REPLACEMENT.
24 SO THERE'S A VARIETY OF FACTORS THAT GO INTO THAT
25 DECISION MAKING.

11:20AM

26 Q. NOW, IN THIS CASE DID YOU REACH AN EXPERT
27 OPINION OVER WHAT PERIOD OF TIME TCW WOULD CONTINUE TO
28 LOSE AUM BECAUSE OF THE HEADLINE RISK ASSOCIATED WITH

1 TERMINATING MR. GUNDLACH?

2 A. YES, WE DID.

3 Q. AND WHAT PERIOD OF TIME DID YOU DETERMINE?

4 A. WELL, WE ACTUALLY TOOK A 13-MONTH PERIOD
5 BECAUSE OF THE FACT THAT THE TERMINATION WAS ON
6 DECEMBER 4TH. SO WE WANTED TO BE ABLE TO COMPARE AN
7 APPLE WITH AN APPLE, IN TERMS OF FISCAL YEAR TO FISCAL
8 YEAR. SO THAT'S WHY WE TOOK THAT PERIOD THOUGH THE
9 ACTUAL LOSS OF ACCOUNTS, OR DAMAGE, IF YOU WILL,
10 BETWEEN THE 9TH AND 12TH MONTHS WAS PRETTY
11 INSIGNIFICANT.

11:20AM

11:20AM

12 Q. ORIGINALLY, DID YOU HAVE A HEADLINE RISK
13 PERIOD THAT WAS ONLY 12 MONTHS AS OPPOSED TO 12 MONTHS
14 AND 27 DAYS?

15 A. YES, THAT IS CORRECT.

11:20AM

16 Q. AND DID YOU THEN CHANGE THAT AND ADD THE 27
17 DAYS IN DECEMBER 2009 BACK IN?

18 A. WE DID BECAUSE OF THE AMOUNT OF ASSETS THAT
19 LEFT TCW'S FIXED INCOME GROUP IN THAT PERIOD WHICH WAS
20 A LITTLE OVER \$12 BILLION.

11:21AM

21 Q. DID YOU MAKE OTHER MODIFICATIONS TO YOUR
22 EXPERT REPORT BETWEEN THE TIME OF YOUR REPORT AND YOUR
23 DEPOSITION?

24 A. YES.

25 Q. AND DID YOU TAKE THREE TRADE SECRETS OFF THE
26 LIST OF THINGS YOU IDENTIFIED AS TRADE SECRETS?

11:21AM

27 A. YES, WE DID.

28 Q. WHY DID YOU DO THAT?

1 A. BECAUSE WE DIDN'T FEEL THAT THEY WERE
2 INSTRUMENTAL IN ANALYZING THE SITUATION FROM THE
3 SEAMLESS BRIDGE IN THE THREE LEGS OF THE STOOL THAT WE
4 WERE LOOKING AT, IN TERMS OF THE OVERALL ASSESSMENT OF
5 THE REPORT.

11:21AM

6 Q. ONE LAST TOPIC, MR. SMITH. IN YOUR EXPERT
7 REPORT AND ANALYSIS, DID YOU CONSIDER HOW LONG IT WOULD
8 HAVE BEEN REASONABLE TO ASSUME MR. GUNDLACH WOULD HAVE
9 REMAINED AT TCW HAD HE NOT ENGAGED IN THE WRONGFUL
10 CONDUCT THAT TCW ALLEGES?

11:21AM

11 A. YES.

12 Q. AND WHAT DID YOU CONCLUDE?

13 A. FIVE YEARS.

14 Q. AND WHAT FACTORS DID YOU CONSIDER IN REACHING
15 THAT CONCLUSION?

11:22AM

16 A. THREE PRINCIPLE FACTORS. ONE, HIS AGE. HE
17 WASN'T -- HE ENJOYED WHAT HE WAS DOING. HE WAS FAIRLY
18 ACTIVITY IN IT. HE WASN'T LOOKING TO RETIRE. HE
19 DIDN'T LOOK LIKE HE WAS WILLING TO RETIRE ANY TIME
20 SOON.

11:22AM

21 TWO WAS THE FACT THAT HISTORICALLY HE
22 ALWAYS ENTERED INTO SOME SORT OF COMPENSATION AGREEMENT
23 WITH TCW BEFORE FIVE YEARS.

24 AND THREE, THE STRUCTURED MORTGAGE
25 CREDIT FUNDS, WHICH ARE CLOSED END FUNDS, TO WHICH THE
26 PAYMENT OF THOSE INCENTIVE FEES WEREN'T GOING TO BE
27 DONE UNTIL THE ACTUAL FUNDS THEMSELVES WERE LIQUIDATED
28 AND THE CAPITAL WAS RETURNED BACK TO THE INVESTOR AND

11:22AM

1 THE PROFIT REALIZED WASN'T FOR ANOTHER FOUR OR FIVE
2 YEARS.

3 Q. ARE THERE A VARIETY OF POSITIONS FOR SOMEONE
4 AS SUCCESSFUL AS MR. GUNDLACH IN THE FIXED INCOME
5 BUSINESS WHERE HE COULD GO AND EARN \$40 MILLION A YEAR?

11:23AM

6 A. NO, THERE ARE NOT.

7 Q. ARE THERE SUCH POSITIONS?

8 A. THEY ARE, BUT THEY ARE CURRENTLY OCCUPIED BY
9 SOME VERY STRONG PERSONALITIES.

10 MR. SURPRENANT: YOUR HONOR, I HAVE NO FURTHER
11 QUESTIONS AT THIS TIME.

11:23AM

12 THE COURT: ALL RIGHT.

13 CROSS-EXAMINATION?

14 MR. WEINGART: YES, YOUR HONOR. THANK YOU.

15

16

17

CROSS-EXAMINATION

18

19 BY MR. WEINGART:

20

Q. GOOD MORNING, MR. SMITH.

11:23AM

21

GOOD MORNING, LADIES AND GENTLEMEN.

22

JUST GIVE ME A MOMENT TO SET UP HERE.

23

NOW, JUST TO BE CLEAR, I WANT TO COME

24

BACK TO SOMETHING THAT YOU TALKED ABOUT DURING YOUR

25

DIRECT EXAMINATION.

11:24AM

26

YOU DID NOT DO ANY ANALYSIS OF WHETHER

27

DOUBLELINE ACTUALLY USED ANY INFORMATION FROM TCW,

28

CORRECT?

1 A. NO, WE DID NOT.

2 Q. SO YOU ARE NOT OFFERING ANY OPINION AS TO
3 WHETHER OR NOT ANYTHING WAS USED, CORRECT?

4 A. THAT'S CORRECT. THAT WAS NOT THE SCOPE OF MY
5 REPORT.

11:24AM

6 Q. AND YOU DO NOT KNOW, FOR EXAMPLE, HOW
7 DOUBLELINE ACTUALLY TRACKS HOLDINGS, CORRECT?

8 A. NO. WE DID ASK TWICE AT MY DEPOSITION FOR --
9 MR. SURPRENANT: OBJECTION, YOUR HONOR.

10 THE COURT: SUSTAINED. I'LL STRIKE IT.

11:24AM

11 JUST ANSWER THE QUESTION, SIR.

12 THE WITNESS: NO.

13 Q. BY MR. WEINGART: NOW, YOU DID NOT -- YOU
14 TALKED A LITTLE BIT ABOUT ACCELERATION TO MARKET. YOU
15 DID NOT ACTUALLY DO ANY ANALYSIS OF WHETHER DOUBLELINE,
16 IN FACT, ACCELERATED ITS TIME TO MARKET BY USING
17 ANYTHING FROM TCW, CORRECT? 'CAUSE THAT WAS NOT PART
18 OF YOUR ANALYSIS?

11:25AM

19 A. THAT'S CORRECT.

20 Q. AND YOU HAVEN'T INVESTIGATED THE EXTENT TO
21 WHICH MATERIALS WERE RETURNED TO TCW, CORRECT?

11:25AM

22 A. THAT'S NOT THE SCOPE OF MY REPORT.

23 Q. AND WITH REGARD TO WHETHER SOMETHING WAS USED,
24 YOU ARE DEFERRING TO MR. HICKS; IS THAT CORRECT?

25 A. I BELIEVE THAT WAS THE SCOPE OF HIS REPORT.

11:25AM

26 Q. AND SO DID YOU REVIEW MR. HICKS' TRIAL
27 TESTIMONY AT ALL?

28 A. SOME OF IT.

1 Q. WELL, DID YOU VIEW MY CROSS-EXAMINATION OR
2 JUST THE DIRECT EXAMINATION?

3 A. A MIXTURE OF BOTH.

4 Q. DID YOU REVIEW THE WHOLE THING OR ONLY PARTS
5 OF IT?

11:26AM

6 A. ONLY PARTS OF IT.

7 Q. WERE THOSE PARTS THAT COUNSEL GAVE TO YOU?

8 A. NO, ACTUALLY. I WAS WATCHING THEM ON THE
9 COURTROOM TV IN BETWEEN DOING MY OWN BUSINESS.

10 Q. SO, YOU ARE AWARE THEN OF HIS TESTIMONY, AND
11 I'M NOT GOING TO GO BACK THROUGH IT, BUT WITH REGARD TO
12 WHAT WAS SUBJECT TO THE REMEDIATION, CORRECT?

11:26AM

13 A. I'M AWARE, BUT ONCE AGAIN, IT WAS NOT THE
14 SCOPE OF MY REPORT.

15 Q. NOW, YOUR OPINION IS THAT IF THIS MATERIAL WAS
16 USED, HAVING IT WOULD ALLOW DOUBLELINE TO ACCELERATE
17 IT'S TIME TO MARKET, CORRECT? THAT'S ONE OF YOUR
18 OPINIONS?

11:26AM

19 A. THAT IS CORRECT.

20 Q. AND THAT'S BECAUSE INSTITUTIONAL CLIENTS WOULD
21 FEEL LIKE THEY WERE MOVING FROM TCW TO A MINI TCW?

11:26AM

22 A. REPLICAS OF TCW, CORRECT.

23 Q. NOW, INSTITUTIONAL CLIENTS ARE SOPHISTICATED,
24 CORRECT?

25 A. YES, THEY ARE.

11:27AM

26 Q. AND THEY TYPICALLY PERFORM DUE DILIGENCE
27 BEFORE THEY INVEST?

28 A. VERY INTENSIVE DUE DILIGENCE.

1 Q. AND THAT DUE DILIGENCE TAKES TIME, CORRECT?

2 A. YES.

3 Q. AND I THINK YOU MAY HAVE SAID IN YOUR REPORT
4 THAT CAN TAKE ANYWHERE BETWEEN SIX TO 12 MONTHS, RIGHT?

5 A. IF YOU ARE A NEW CLIENT.

11:27AM

6 Q. AND I TAKE IT THEN -- ARE YOU JUST ASSUMING
7 THAT A SOPHISTICATED INSTITUTIONAL CLIENT WOULD JUST
8 TAKE MR. GUNDLACH'S WORD THAT THEIR SYSTEMS WERE THE
9 SAME, THEY WOULDN'T DO ANYTHING TO CHECK IT OUT ON ITS
10 OWN?

11:27AM

11 A. THEY WOULD.

12 Q. AND THAT WOULD TAKE TIME, WOULDN'T IT?

13 A. THERE'S A DIFFERENCE BETWEEN THE REVIEW
14 PROCESS OF AN INSTITUTION AND THE VARIOUS PROTOCOLS.
15 IT DOES THOSE INTERNALLY. AND THE ACTUAL ASSESSMENT
16 AND EVALUATION AS TO WHETHER OR NOT DOUBLELINE HAD
17 ACTUALLY REPLICATED THE TCW INFRASTRUCTURE PROTOCOLS,
18 ET CETERA.

11:27AM

19 Q. I APPRECIATE THAT ANSWER.

20 MY QUESTION IS: THAT WOULD TAKE TIME,
21 WOULDN'T IT?

11:28AM

22 MR. SURPRENANT: YOUR HONOR, MOVE TO STRIKE
23 THE EDITORIAL COMMENT.

24 THE COURT: JUST GO AHEAD AND ASK THE
25 QUESTIONS, MR. WEINGART.

11:28AM

26 Q. BY MR. WEINGART: THAT WOULD TAKE TIME,
27 WOULDN'T IT?

28 A. IT WOULD TAKE TIME, BUT THERE WERE TWO PARTS,

1 AS I JUST STATED.

2 Q. AND YOU DID NOT FACTOR THAT AMOUNT OF TIME IN
3 THAT AN INSTITUTIONAL CLIENT WOULD WANT TO DO, IF IT
4 WAS GOING TO MOVE ITS FUNDS TO DOUBLELINE IN YOUR
5 ASSESSMENT OF THE TIME TO MARKET, DID YOU?

11:28AM

6 A. I DID, ACTUALLY. IF YOU LOOK AT THE ABLE
7 GRAPE PROJECTIONS, IT WAS OVER A NINE-MONTH PERIOD. SO
8 THAT WOULD ASSUME SOME ABILITY TO EVALUATE IN A FAIRLY
9 SHORT ORDER, IN ORDER TO SIGN OVER THOSE PARTICULAR
10 CONTRACTS TO DOUBLELINE.

11:28AM

11 Q. OKAY. I'M GOING TO COME BACK TO THE PRO
12 FORMA. SO LET'S HOLD THAT FOR A SECOND.

13 NOW, I WANT YOU TO ASSUME A COUPLE OF
14 FACTS FOR ME, OKAY? ASSUME THAT TCW KNEW FOR SOME
15 PERIOD OF TIME THAT MATERIAL WAS BEING TAKEN, OKAY?

11:29AM

16 A. OKAY.

17 MR. SURPRENANT: OBJECTION. ASSUMES FACTS NOT
18 IN EVIDENCE.

19 THE COURT: DO WE NEED AN OFFER ON IT?

20 MR. WEINGART: I'M HAPPY -- I'M HAPPY TO MAKE
21 AN OFFER. THERE'S BEEN TESTIMONY.

11:29AM

22 THE COURT: I DON'T KNOW. PROOF -- IF YOU
23 WANT TO STAND ON THE OBJECTION, COME UP HERE, PLEASE.

24

25 (THE FOLLOWING PROCEEDINGS WERE
26 HELD AT SIDEBAR:)

11:29AM

27

28 MR. SURPRENANT: UNCONTRADICTED EVIDENCE, YOUR

1 HONOR, FROM MR. WILSON IS THAT TCW DIDN'T KNOW ABOUT
2 DOWNLOADING UNTIL NOVEMBER 25TH, 2009.

3 THE COURT: WE HAVEN'T GOT TO THE BASIS OF THE
4 HYPOTHETICAL. IT WAS ASSUMED THAT THERE WAS SOME
5 KNOWLEDGE OF THE DOWNLOADING.

11:29AM

6 NOW, I DON'T KNOW WHAT THE OFFER OF
7 PROOF IS.

8 MR. WEINGART: MR. QUINN SAID, IN HIS OPENING
9 STATEMENT, THEY DIDN'T KNOW MORE EXTENSIVE DOWNLOADING
10 UNTIL LATER IN NOVEMBER.

11:30AM

11 BUT THAT'S THE PLAINTIFF'S POSITION, AND
12 I'M NOT ASKING TO ASSUME ANYTHING MR. QUINN DIDN'T SAY
13 IN HIS OPENING STATEMENT.

14 MR. SURPRENANT: THERE'S A BIG DIFFERENCE
15 BETWEEN COPYING THE RED BOOKS, WHICH IS WHAT MR. QUINN
16 TALKED ABOUT, AND THE UNCONTRADICTED EVIDENCE.

11:30AM

17 THE COURT: WELL, WAIT A MINUTE. YOU ARE
18 CONTENDING THAT THE RED BOOKS ARE THE TRADE SECRETS, SO
19 IF SOME THINGS WERE BEING COPIES, THAT THEY KNEW ABOUT
20 IT IN SEPTEMBER, I'M NOT SURE YOU CAN PARS ALL THIS OUT
21 AND SAY, WELL, WE DIDN'T KNOW THEY DOWNLOADED A, B, AND
22 C, BUT WE KNEW THEY TOOK D, E, AND F.

11:30AM

23 MR. SURPRENANT: DOWNLOADED MEANS DOWNLOADED
24 TO AN EXTERNAL DRIVE.

25 THE COURT: I UNDERSTAND.

11:30AM

26 MR. SURPRENANT: THERE'S NO EVIDENCE THAT TCW
27 KNEW ABOUT ANY DOWNLOADING.

28 THE COURT: I DON'T THINK HE SAID DOWNLOADING.

1 MR. WEINGART: I DID NOT. I SAID TAKING. I
2 SAID ANY MATERIAL WAS BEING COPIED THEN I'LL SAY -- BUT
3 THAT WAS THE PLAINTIFF'S POSITION.

4 THE COURT: I THINK IT IS. AND I MEAN, I
5 THINK THERE WILL BE ADEQUATE EVIDENCE BEFORE THIS IS
6 OVER -- THERE WILL BE SOME EVIDENCE FROM THE DEFENSE,
7 ON WHAT WAS KNOWN OR NOT KNOWN, OR IT MAY BE DISPUTED,
8 BUT THEY ARE GOING TO SAY THAT YOU WERE MONITORING,
9 WATCHING, DOING THINGS FOR A PERIOD OF TIME,
10 SUBSTANTIALLY, BEFORE DECEMBER 4TH.

11 MR. MADISON: THIS IS IMPERATIVE, YOUR HONOR.
12 THERE'S NO EVIDENCE, AND IF THERE, IS WE SHOULD HEAR IT
13 RIGHT NOW, OF ANY TAKING OF ANY --

14 THE COURT: MR. MADISON SAID THERE WAS NO
15 EVIDENCE OF ANY TAKING UNTIL NOVEMBER 26TH.

16 I THINK THE CONCEPT OF COPYING, YOU HAVE
17 MADE A BIG DEAL OUT OF THE BOOKS -- NOW, DID -- LET ME
18 ASK YOU THIS: AFTER THE TRADE TICKET BOOKS WERE COPIED
19 AND ASSEMBLED AT THE WATER GARDEN, WHEN MR. GUNDLACH
20 LEFT THE WATER GARDEN, DID HE TAKE THOSE WITH HIM?

21 MR. MADISON: NO. WE RECOVERED THEM THE DAY
22 WE CONFRONTED THEM ON DECEMBER 4, AND THAT'S TCW SPACE.

23 THE COURT: WELL, THEN HOW ARE YOU ARGUING
24 THAT'S MISAPPROPRIATION OF A TRADE SECRET?

25 MR. MADISON: BECAUSE THE INTENT --

26 THE COURT: WAIT. WAIT. THEY COULDN'T HAVE
27 USED THEM BECAUSE YOU KEPT THEM.

28 MR. MADISON: WELL, WHEN YOU CATCH THE ROBBER

1 RUNNING DOWN THE BLOCK OUTSIDE THE BANK AND HE DROPPED
2 THE MONEY, THAT DOESN'T MEAN THERE WASN'T A THEFT.

3 THE COURT: YOU SPENT TOO MUCH TIME IN THE
4 ATTORNEY GENERAL'S OFFICE.

5 YOU BE CAREFUL ABOUT THE WAY YOU POSE
6 YOUR QUESTION, BUT YOU MAY PURSUE THAT QUESTION. 11:32AM

7 MR. WEINGART: OKAY.

8 MR. SURPRENANT: THE EVIDENCE REALLY IS
9 IMPUTED THAT THE DOWNLOADED DEVICES DIDN'T HAPPEN TILL
10 THE 25TH. 11:32AM

11 MR. MADISON: NO, NO, NOT THAT IT DIDN'T
12 HAPPEN --

13 MR. SURPRENANT: WE DIDN'T KNOW ABOUT IT TILL
14 THEN. THAT'S THE --

15 THE COURT: YOU BE CAREFUL ABOUT THE WAY YOU
16 PHRASE YOUR QUESTION. 11:33AM

17 MR. SURPRENANT: THANK YOU, YOUR HONOR.

18

19 (THE FOLLOWING PROCEEDINGS
20 WERE HELD IN OPEN COURT IN
21 THE PRESENCE OF THE JURY:)

11:33AM

22

23 Q. BY MR. WEINGART: I'LL GET BACK TO MY
24 ASSUMPTIONS.

25 A. OKAY. 11:33AM

26 Q. ASSUME FOR ME THAT TCW KNEW FOR SOME PERIOD OF
27 TIME THAT MATERIAL WAS BEING COPIED, OKAY?

28 A. OKAY.

1 Q. AND ASSUME FOR ME THAT BECAUSE TCW HAD CERTAIN
2 OTHER PLANS THAT THEY DIDN'T WANT TO SURFACE, THEY
3 PERMITTED THAT COPYING TO CONTINUE FOR A PERIOD OF
4 TIME, OKAY?

5 MR. SURPRENANT: OBJECTION. INCOMPLETE
6 HYPOTHETICAL. ASSUMES FACTS NOT IN EVIDENCE.

11:33AM

7 THE COURT: WELL, WE HAVEN'T HEARD IT ALL.

8 GO AHEAD. YOU LISTEN TO THE ASSUMPTIONS
9 AND THEN WE'LL GO FROM THERE.

10 Q. BY MR. WEINGART: DO YOU HAVE THE SECOND
11 ASSUMPTION IN PLACE?

11:33AM

12 A. YES.

13 Q. AND THEN ON DECEMBER 4TH, TCW PUT A STOP TO
14 THE COPYING AND FIRED PEOPLE, LIKE YOU TESTIFIED?

15 A. THAT'S CORRECT.

11:34AM

16 Q. NOW, UNDER THOSE CIRCUMSTANCES TCW COULD FILE
17 A LAWSUIT JUST LIKE IT DID HERE, RIGHT?

18 MR. SURPRENANT: OBJECTION. OUTSIDE THE
19 SCOPE.

20 THE COURT: I'M NOT SURE WHERE WE'RE GOING
21 NOW, BUT GO AHEAD.

11:34AM

22 MR. WEINGART: ONE MORE QUESTION TO TIE IT UP,
23 YOUR HONOR.

24 Q. LAWSUITS DON'T TYPICALLY DON'T ACCELERATE A
25 NEW BUSINESS' TIME TO MARKET, DO THEY?

11:34AM

26 MR. SURPRENANT: OBJECTION. OUTSIDE THE
27 SCOPE.

28 MR. MADISON: THERE WAS A MOTION ON THAT ALSO,

1 YOUR HONOR.

2 THE COURT: YEAH, THERE WAS, MR. WEINGART.

3 I'LL SUSTAIN THE OBJECTION.

4 Q. BY MR. WEINGART: I APOLOGIZE, YOUR HONOR, I
5 THOUGHT IT WAS ON A DIFFERENT ISSUE THAN WHAT IT IS
6 THAT HE'S TESTIFYING ABOUT HERE?

11:34AM

7 A. SO I CAN FORGET ABOUT THE ASSUMPTION.

8 THE COURT: YEAH, FORGET ABOUT THEM HERE. WE
9 MAY COME BACK TO THEM, BUT WE'LL SEE.

10 Q. BY MR. WEINGART: INSTITUTIONAL INVESTORS
11 DON'T LIKE UNCERTAINTY, RIGHT?

11:34AM

12 A. THAT'S TRUE.

13 Q. THAT WAS ONE OF THE THINGS YOU TALKED ABOUT
14 WITH REGARD TO HEADLINE RISK, RIGHT?

15 A. THAT'S CORRECT.

11:35AM

16 Q. SO IF THERE ARE HEADLINES WHERE PEOPLE ARE
17 TALKING ABOUT EACH OTHER BACK AND FORTH AS TO WHO DID
18 WHAT TO WHO, THAT'S GOING TO IMPACT HOW QUICKLY A NEW
19 BUSINESS CAN GET TO MARKET, CORRECT?

20 A. THAT'S CORRECT.

11:35AM

21 Q. AND THAT'S NOT SOMETHING YOU FACTORED INTO
22 YOUR ASSUMPTION, RIGHT?

23 A. NO. I MEAN, MY ASSUMPTIONS, IN MY REPORT WERE
24 IF YOU HAD THIS INFORMATION WHAT COULD YOU HAVE DONE
25 WITH THIS INFORMATION, IN TERMS OF BEING ABLE TO SET UP
26 AN ASSET MANAGEMENT BUSINESS AND SCALE IT IN A RAPID
27 AND LARGE FASHION.

11:35AM

28 Q. WELL, LET ME ASK YOU: IF TCW WAS UPSET THAT

1 MATERIAL WAS TAKEN, IT WOULD NOT BE INCLINED TO, FOR
2 EXAMPLE, LET ABLE GRAPE MANAGE ITS MUTUAL FUNDS, WOULD
3 IT?

4 A. CORRECT. I MEAN, THERE'S A VARIETY --
5 MR. SURPRENANT: COULD THE WITNESS FINISH HIS
6 ANSWER? 11:35AM

7 THE COURT: GO AHEAD.

8 THE WITNESS: I THINK THERE WOULD BE A VARIETY
9 OF ISSUES YOU WOULD HAVE TO TAKE INTO ACCOUNT.

10 Q. BY MR. WEINGART: WELL, IF THEY WERE UPSET 11:36AM
11 THAT THEY THOUGHT SOMEBODY HAD TAKEN SOMETHING THAT
12 THEY SHOULDN'T HAVE, THAT WOULD CERTAINLY BE A FACTOR
13 THAT THEY WOULD CONSIDER, WOULD IT NOT, IN TERMS OF
14 WHETHER OR NOT THEY WOULD WANT SOMEBODY TO SUBADVISE
15 ONE OF THEIR FUNDS, CORRECT? 11:36AM

16 A. THAT'S CORRECT.

17 Q. OR IN ORDER TO SUBADVISE A CLOSED END FUND,
18 CORRECT?

19 A. IT WOULD BE ONE OF THE FACTORS.

20 Q. AND THE ABLE GRAPE PRO FORMA THAT YOU TALKED 11:36AM
21 ABOUT, ASSUME THAT ALL THAT BUSINESS WOULD GO OUT OF
22 TCW TO ABLE GRAPE, RIGHT?

23 A. THAT'S CORRECT.

24 Q. AND THAT WOULD REQUIRE TCW'S CONSENT, CORRECT?

25 A. WELL, THERE WOULD BE TWO WAYS YOU COULD DO 11:36AM
26 THIS. ONE WOULD BE CONSENT, AND THE OTHER WOULD BE
27 JUST A RAID ON TCW CLIENTS.

28 Q. WELL, WE JUST -- PAUSE ON THAT.

1 YOU ARE SUGGESTING THAT ABLE GRAPE COULD
2 SOMEHOW TAKE THE TCW TOTAL RETURN BOND FUND AND WALK
3 ACROSS THE STREET WITH IT? IS THAT WHAT YOU ARE
4 SAYING?

5 A. NO, BUT REMEMBER THE TOE TO TOE RETURN BOND
6 FUND, AS A MUTUAL FUND, IS DIFFERENT THAN AN
7 INSTITUTIONAL CLIENT. THE INSTITUTIONAL CLIENTS CAN
8 REASSIGN THEIR INVESTMENT CONTRACTS TO DOUBLELINE, IF
9 THEY SO DESIRED.

11:37AM

10 Q. SIR, I'M NOT ASKING YOU ABOUT THE
11 INSTITUTIONAL FUNDS; I'M ASKING YOU ABOUT THE MUTUAL
12 FUND, OKAY?

11:37AM

13 DO YOU UNDERSTAND MY QUESTION?

14 A. I DO UNDERSTAND YOUR QUESTION.

15 Q. ABLE GRAPE COULD NOT PICK UP AND TAKE THE TCW
16 TOTAL RETURN BOND FUND ACROSS THE STREET UNLESS TCW
17 AGREED, RIGHT?

11:37AM

18 A. THAT IS CORRECT.

19 Q. AND THEY COULDN'T TAKE THE SMCF FUNDS AND WALK
20 ACROSS THE STREET UNLESS TCW SAID THAT WAS OKAY, RIGHT?

11:37AM

21 MR. SURPRENANT: OBJECTION. INCOMPLETE
22 HYPOTHETICAL.

23 THE COURT: OVERRULED.

24 THE WITNESS: THAT'S CORRECT.

25 Q. BY MR. WEINGART: AND OF COURSE THE ABLE GRAPE
26 PROJECTIONS DON'T, IN FACT, BARE ANY RELATIONSHIP TO
27 WHAT ACTUALLY HAPPENED, RIGHT?

11:38AM

28 A. THAT WASN'T THE SCOPE OF MY REPORT, BUT YES.

1 Q. NOW, WITH REGARD TO ANY ALLEGED HEAD START
2 THAT YOU TALKED ABOUT, YOU DID NOT EVALUATE THE
3 AVAILABILITY OF SUBSTITUTES FOR THE ALLEGED TRADE
4 SECRETS, CORRECT?

5 A. NO, WE DID NOT. 11:38AM

6 Q. OR THE PRICE OF THOSE POTENTIAL SUBSTITUTES,
7 RIGHT?

8 A. NO, WE DID NOT.

9 Q. AND BY SUBSTITUTES YOU UNDERSTAND I MEAN, CAN
10 I GET THE FUNCTIONALITY THAT THE SYSTEM PROVIDES
11 SOMEONE ELSE FOR A DIFFERENT OR POTENTIALLY LOWER COST,
12 RIGHT? 11:38AM

13 DO YOU UNDERSTAND WHAT I MEAN BY
14 SUBSTITUTE?

15 A. I DO UNDERSTAND THE WORD, YES. 11:38AM

16 Q. AND PART OF DECIDING HOW MUCH YOU WOULD PAY TO
17 USE CERTAIN DATA OR OTHER INFORMATION IS THE PRICE OF A
18 SUBSTITUTE AVAILABLE ON THE MARKET, RIGHT?

19 A. THAT IS CORRECT.

20 Q. AND NOW, TCW AND DOUBLELINE, I THINK YOU
21 MENTIONED THOSE ARE NOT THE ONLY FIRMS THAT TRADE MBS,
22 CORRECT? 11:39AM

23 A. THAT'S CORRECT.

24 Q. AND THERE ARE THIRD PARTY VENDORS THAT SUPPLY
25 VARIOUS TECHNOLOGY FOR ANALYZING AND TRADING
26 MORTGAGE-BACKED SECURITIES, RIGHT? 11:39AM

27 A. IN TERMS OF THE ONE LEG OF THE STOOL ON THE
28 PORTFOLIO MANAGEMENT, CORRECT.

1 Q. AND YOU WOULD AGREE THAT OVER THE LAST COUPLE
2 OF YEARS THAT TECHNOLOGY HAS LOWERED THE COST OF THESE
3 THIRD PARTY VENDORS TO PROVIDE DATA RELATED TO MBS?

4 A. THAT'S CORRECT.

5 Q. AND MANY PEOPLE IN THE MARKET ARE NOW USING
6 THIRD PARTY VENDORS INSTEAD OF BUILDING SOMETHING IN
7 HOUSE, RIGHT?

11:39AM

8 A. FOR DIFFERENT PARTS OF FUNCTIONALITY AS
9 OPPOSED TO COMPLETE SWEET.

10 Q. THAT'S A YES?

11:39AM

11 A. FOR DIFFERENT PARTS.

12 Q. NOW, YOU WOULD AGREE THAT IF YOU HAD ONLY 15
13 OF THESE SEPARATE ACCOUNTS, THESE TYPE OF THIRD PARTY
14 SOLUTIONS WOULD BE FINE IN AND OF THEMSELVES, RIGHT?

15 A. I DON'T KNOW.

11:40AM

16 Q. WELL, DO YOU HAVE YOUR DEPOSITION UP THERE,
17 SIR?

18 MR. SURPRENANT: YOU DO.

19 THE WITNESS: WHICH BINDER?

20 THE COURT: IT SHOULD BE THERE.

11:40AM

21 THE WITNESS: I HAVE THE DEPOSITIONS
22 THEMSELVES.

23 THE COURT: SO YOU HAVE THE TRANSCRIPTS?

24 THE WITNESS: YES, THE TRANSCRIPTS. HE'S
25 GOING TO TELL YOU THE PAGE AND LINE TO LOOK AT.

11:40AM

26 MR. WEINGART: I'M SORRY, I'M TRYING TO FIND
27 IT IN MY OWN NOTES HERE, YOUR HONOR.

28 Q. CAN YOU LOOK AT PAGE 141 LINE 25 THROUGH 142

1 LINE 19?

2 LET ME KNOW WHEN YOU ARE DONE READING,
3 SIR?

4 A. YES.

5 Q. AND DIDN'T YOU, IN FACT, SAY OR DOES THAT 11:41AM
6 REFRESH YOUR RECOLLECTION THAT IF YOU HAD ONLY 15
7 ACCOUNTS YOU COULD SPLIT THINGS UP AND USE THIRD PARTY
8 VENDORS, RIGHT?

9 A. IN TERMS --

10 MR. SURPRENANT: OBJECTION. 11:42AM

11 THE COURT: WELL, IF YOU WANT TO READ FROM THE
12 DEPOSITION, JUST TELL US AND WE CAN SEE IF THERE'S AN
13 OBJECTION AND WE CAN READ THE DEPOSITION.

14 Q. BY MR. WEINGART: WELL, THEN I REQUEST
15 PERMISSION TO READ 141, 25 THROUGH 142 LINE 19? 11:42AM

16 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

17 THE COURT: YOU MAY DO IT.

18 Q. BY MR. WEINGART: NOW, FOR PEOPLE WHO ARE NOT
19 BIG IN-HOUSE SYSTEMS --

20 THE COURT: MR. WEINGART, YOU STILL HAVE A 11:42AM
21 COURT REPORTER.

22 MR. WEINGART: I'M SORRY.

23 THE COURT: I KNOW WE'RE TRYING TO MOVE ALONG.

24 MR. WEINGART: I SEE LUNCH IS COMING UP.

25 THE COURT: GO AHEAD. 11:42AM

26 Q. BY MR. WEINGART:

27 "Q FOR PEOPLE WHO ARE NOT
28 BUILDING BIG IN-HOUSE SYSTEMS BUT

1 ARE INSTEAD PRIMARILY USING THIRD
2 PARTY VENDORS, IS IT YOUR TESTIMONY
3 THAT THEY ARE NOT ABLE TO COMPETE
4 WITH TCW OR THEY SIMPLY HAVE TO DO
5 IT ALONE VOLUME.

11:42AM

6 "A DEFINITELY THE LATTER,
7 BECAUSE THE SPEED AND EFFICIENCY
8 OF WHAT TCW ALLOWS YOU TO DO, THE
9 VOLUME. IT ALLOWS YOU TO BE AND
10 MANAGE THAT 50 BILLION, RIGHT.

11:43AM

11 BUT THE -- THERE AREN'T THAT MANY
12 50 BILLION ASSET MANAGERS OUT
13 THERE AS WELL. I THINK THAT'S AN
14 IMPORTANT ELEMENT. SO CAN I
15 SCRAPE TOGETHER BECAUSE I'VE ONLY
16 GOT A BILLION AND NOT 500 ACCOUNTS
17 BUT ONLY 15 ACCOUNTS THAT I HAVE
18 TO SPLIT THINGS FROM WITH THIRD
19 PARTY VENDORS, YEAH. BUT I WON'T
20 HAVE THE OPTIMAL EFFICIENCY THAT
21 TCW HAS AS A RESULT OF THE FACT
22 THAT IT IS MANAGING THE 50 BILLION
23 AND ABLE TO DO THIS THING, AS I SAY,
24 IN QUITE A HIGH SPEED."

11:43AM

11:43AM

25 Q. AND YOU ARE AWARE THAT DOUBLELINE DID, IN
26 FACT, HAD LESS THAN 15 SEPARATE ACCOUNTS DURING THIS
27 FIRST 6 MONTHS, RIGHT?

11:43AM

28 A. YES, I'M AWARE.

1 Q. AND YOU WOULD AGREE THAT GETTING THESE THIRD
2 PARTY DATA PROVIDERS WHEN YOU ARE STARTING A BUSINESS
3 DIDN'T COST ANYTHING LIKE \$80 MILLION, RIGHT?

4 A. IN TERMS OF JUST THE PORTFOLIO MANAGEMENT LEG
5 OF THE STOOL THAT I PREVIOUSLY MENTIONED. 11:44AM

6 Q. WELL, LET ME ASK YOU MORE GENERALLY. IS IT
7 YOUR TESTIMONY THAT FOR THE THREE LEGS OF THE STOOL IF
8 I'M GOING TO SET UP A START UP BUSINESS, RAISING
9 ASSETS, THAT IT'S REASONABLE FOR ME TO PAY \$80 MILLION
10 TO DO THAT? 11:44AM

11 A. I'M NOT A DAMAGE EXPERT, IN TERMS OF WHAT
12 ACTUALLY -- IN TERMS OF COSTS. YES, I COULD SET IT UP
13 FOR LESS THAN \$80 MILLION FOR THE ASSET MANAGEMENT,
14 YES.

15 Q. NOW, IN DETERMINING THE TIME TO MARKET YOU 11:44AM
16 ALSO DID NOT EVALUATE OAKTREE'S ROLE IN GETTING
17 DOUBLELINE UP AND RUNNING, CORRECT?

18 A. THAT'S CORRECT.

19 Q. YOU DIDN'T EVALUATE OAKTREE'S ROLE IN SETTING
20 UP DOUBLELINE'S TECHNOLOGY ARCHITECTURE, FOR EXAMPLE? 11:44AM

21 A. I DID LOOK AT THE OAKTREE AGREEMENT BETWEEN
22 DOUBLELINE AND THE VARIOUS SCHEDULES INVOLVED.

23 Q. I UNDERSTAND THAT, BUT YOU SAID THAT YOU DID
24 NOT EVALUATE ITS ROLE IN SETTING UP DOUBLELINE,
25 CORRECT? 11:45AM

26 A. SURE, BECAUSE IT WASN'T MY SCOPE OF MY REPORT
27 TO LOOK AT WHAT DOUBLELINE ACTUALLY DID. THE SCOPE MY
28 REPORT WAS TO LOOK AT IF YOU TOOK THIS INFORMATION WHAT

1 COULD YOU HAVE DONE WITH IT.

2 Q. SO WITH REGARD TO OAKTREE, I'M JUST TRYING TO
3 BE CLEAR, WHATEVER IT WAS THAT THEY DID TO ACTUALLY
4 HELP DOUBLELINE GET UP AND RUNNING THAT WAS NOT
5 SOMETHING YOU EVALUATED, IN TERMS OF THIS HEAD START,
6 RIGHT? 11:45AM

7 A. THAT'S CORRECT.

8 Q. NOW, YOU TESTIFIED ON DIRECT ABOUT VARIOUS
9 ITEMS THAT YOU ARE SAYING ARE TRADE SECRET.

10 CAN I ASK YOU TO LOOK AT EXHIBIT 948.
11 IT SHOULD BE IN THE BIGGER BINDER. 11:45AM

12 A. SORRY.

13 MR. WEINGART: AND CAN WE DISPLAY THAT, YOUR
14 HONOR. IT'S ALREADY IN EVIDENCE.

15 THE COURT: YES, YOU MAY. 11:45AM

16 Q. BY MR. WEINGART: YOU CAN LOOK AT IT ON THE
17 SCREEN, IF YOU WOULD LIKE?

18 A. OKAY.

19 Q. THIS IS A MARKETING DOCUMENT FROM TCW,
20 CORRECT? 11:46AM

21 A. YES, IT IS.

22 Q. AND THIS IS NOT A TRADE SECRET, RIGHT?

23 A. IT'S A GENERIC MARKETING.

24 Q. IT'S NOT A TRADE SECRET, RIGHT?

25 A. NO. 11:46AM

26 Q. DOUBLELINE DOESN'T MANAGE --

27 YOU CAN YOU TAKE THAT DOWN.

28 DOUBLELINE DOESN'T MANAGE CDO'S,

1 CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND YOU DIDN'T IDENTIFY ANY CDO'S SPECIFIC
4 ANALYTIC IN THE LEGS OF YOUR CHART, CORRECT?

5 A. THAT'S CORRECT. 11:46AM

6 Q. NOW, YOU SPOKE A BIT ON DIRECT ABOUT THINGS
7 THAT MAKE SOMETHING A TRADE SECRET. FIRST AND
8 FOREMOST, TO BE A TRADE SECRET IT'S GOT TO BE A SECRET,
9 RIGHT?

10 A. HOW DO YOU WANT TO DEFINE A SECRET? 11:47AM

11 Q. WELL, IT'S A TRADE SECRET, SO A SECRET IS A
12 COMPONENT OF IT, ISN'T IT?

13 MR. SURPRENANT: OBJECTION, YOUR HONOR. CALLS
14 FOR A LEGAL CONCLUSION.

15 THE COURT: SUSTAINED. 11:47AM

16 Q. BY MR. WEINGART: WELL, COULD WE PUT UP SLIDE
17 2?

18 MR. SURPRENANT: 2247.

19 Q. BY MR. WEINGART: CAN'T BE GENERALLY KNOWN TO
20 THE PUBLIC, RIGHT? 11:47AM

21 A. THAT'S CORRECT.

22 Q. AND THERE NEEDS TO BE REASONABLE EFFORTS MADE
23 UNDER THE CIRCUMSTANCES TO MAINTAIN ITS SECRECY,
24 CORRECT?

25 A. CORRECT. 11:47AM

26 Q. AND THAT'S ACTUALLY ONE OF THE REASONS WHY
27 THAT MARKETING DOCUMENT THAT WE SAW BEFORE ISN'T A
28 TRADE SECRET, RIGHT?

1 A. AS I MENTIONED, THERE ARE MANY STEPS TO A
2 MARKETING PROCESS. THIS ONE LOOKS LIKE ONE OF THE
3 FIRST STEPS YOU WOULD GIVE TO A CLIENT.

4 Q. NOW, I WANT TO ASK YOU ABOUT THIS SECOND
5 BULLET. EFFORTS THAT ARE REASONABLE UNDER THE
6 CIRCUMSTANCES TO MAINTAIN SECRECY.

11:48AM

7 COLONEL SANDERS CAN'T INVITE SOMEONE
8 INTO THE KITCHEN AND SHOW THEM THE RECIPE FOR KFC,
9 RIGHT?

10 MR. MADISON: HE'S DEAD, YOUR HONOR, HE CAN'T
11 INVITE ANYBODY.

11:48AM

12 THE COURT: I DON'T KNOW WHO BROUGHT UP
13 COLONEL SANDERS, BUT IT CAME UP EARLY SO LET'S MOVE ON.

14 THE WITNESS: I GUESS IT'S LUNCHTIME.

15 Q. BY MR. WEINGART: WELL, I'M SERIOUS THOUGH. I
16 WANT TO PURSUE THIS.

11:48AM

17 IF COLONEL SANDERS WANTS TO CLAIM THAT
18 HIS RECIPE IS A TRADE SECRET, HE CAN'T INVITE SOMEONE
19 INTO THE KITCHEN, SHOW THEM HIS VARIOUS INGREDIENTS,
20 AND WALK THROUGH HOW HE DOES WHAT HE DOES, RIGHT?

11:48AM

21 MR. SURPRENANT: OBJECTION. CALLS FOR A LEGAL
22 CONCLUSION.

23 THE COURT: OVERRULED.

24 THE WITNESS: YES.

25 Q. BY MR. WEINGART: AND HE CAN'T STAND IDLY BY
26 IF HE KNOWS SOMEBODY IS COPYING THE RECIPE FROM US,
27 RIGHT?

11:48AM

28 A. I WOULDN'T KNOW.

1 Q. NOW, YOU DID NOT CONSIDER, IN YOUR OPINION,
2 AND I THINK I HEARD THIS IN RESPONSE TO THE QUESTION
3 WHETHER OR NOT TCW DID IN FACT TAKE REASONABLE STEPS
4 UNDER THE CIRCUMSTANCES TO MAINTAIN SECRECY, RIGHT?

5 A. NO, THAT WASN'T IN THE SCOPE OF MY REPORT. 11:49AM

6 Q. SO WITH REGARD TO THAT ELEMENT, THAT'S NOT
7 SOMETHING YOU ARE ABLE TO OFFER ANY OPINION ON,
8 CORRECT?

9 A. NO.

10 Q. NOW, YOU'VE DIVIDE YOUR TABLE INTO THREE 11:49AM
11 CATEGORIES. AND I THINK THE FIRST WAS PORTFOLIO
12 MANAGEMENT.

13 DO I HAVE THAT RIGHT?

14 A. THE LEFT ONE WAS PORTFOLIO MANAGEMENT, YEAH.

15 Q. FAIR ENOUGH. I THINK OF THINGS LEFT TO RIGHT. 11:49AM
16 WE CAN TAKE THAT DOWN.

17 NOW, ALL THE MONEY MANAGERS NEED A WAY
18 TO TRACK THEIR HOLDINGS, CORRECT?

19 A. YES, THEY DO.

20 Q. CLIENTS EXPECT THE MONEY MANAGER TO KNOW WHAT 11:49AM
21 THEY ARE HOLDING ON BEHALF OF A CLIENT, CORRECT?

22 A. I SHOULD HOPE SO, YES.

23 Q. THEY NEED TO BE PREPARED TO ANSWER QUESTIONS
24 ABOUT IT, RIGHT?

25 A. THAT'S CORRECT. 11:50AM

26 Q. AND I THINK AS YOU SAID THAT TASK IS MORE
27 COMPLICATED THE MORE ACCOUNTS THAT YOU HAVE, RIGHT?

28 A. THAT'S CORRECT.

1 Q. SO IF YOU HAVE SAY, FIVE CLIENTS YOU DON'T
2 NEED THE SAME SOPHISTICATED SYSTEM AS IF YOU HAVE 205
3 CLIENTS, RIGHT?

4 A. THAT'S CORRECT.

5 Q. AND I THINK YOU MENTIONED THIS ON DIRECT, BUT 11:50AM
6 HOLDINGS ARE REPORTED TO CLIENTS, RIGHT?

7 A. YES, THEY ARE.

8 Q. SO A CLIENT WITH A SEPARATE ACCOUNT KNOWS WHAT
9 IT'S HOLDING ARE, RIGHT?

10 A. YES. 11:50AM

11 Q. AND I THINK YOU ALSO MENTION THAT WITH REGARD
12 TO THE MUTUAL FUNDS, THOSE ARE PUBLICLY REPORTED,
13 CORRECT?

14 A. THAT'S CORRECT.

15 Q. AND IF A SEPARATE ACCOUNT CLIENT WANTS TO 11:50AM
16 SHARE THAT INFORMATION WITH ANOTHER MANAGER, IT CAN DO
17 SO, CORRECT?

18 A. AT THE DISCRETION OF THE CLIENT; NOT THE
19 DISCRETION OF THE ASSET MANAGER.

20 Q. THAT'S MY QUESTION. A CLIENT, IF IT WANTS TO 11:51AM
21 SHARE THAT, CAN SHARE IT WITH A DIFFERENT MANAGER,
22 RIGHT?

23 A. AT HIS DISCRETION, YES.

24 Q. LET ME ASK YOU A LITTLE BIT ABOUT TRADE
25 TICKETS, WHICH I THINK WAS THE OTHER THING UNDER YOUR 11:51AM
26 LEFT LEG OF PORTFOLIO MANAGEMENT.

27 OTHER THAN THE DETOUR THAT THEY TOOK
28 INTO COURT, AND I DON'T KNOW IF YOU WERE HERE THAT DAY,

1 THOSE RED BINDERS NEVER LEFT THE TCW PREMISES, RIGHT?

2 A. I DIDN'T SEE THE -- I WASN'T HERE IN COURT TO
3 SEE WHERE THE BINDERS WERE.

4 Q. MAYBE THIS IS AN INCOMPLETE HYPOTHETICAL, BUT
5 ASSUME FOR ME THERE ARE RED NOTEBOOKS.

11:51AM

6 OKAY?

7 A. AND THEY HAVE A DIFFERENT LIST OF TRADE
8 PORTFOLIOS OVER TIME.

9 Q. UNDERSTOOD.

10 AND DO YOU KNOW ONE WAY OR THE OTHER
11 WHETHER OR NOT THOSE EVER LEFT TCW PREMISES?

11:51AM

12 A. I BELIEVE THEY WERE COPIED AND SOME OF THE
13 BINDERS WERE TAKEN FROM TCW'S MAIN OFFICE TO
14 MR. GUNDLACH'S SANTA MONICA OFFICE.

15 Q. WHICH WAS ANOTHER TCW OFFICE, RIGHT? WHERE HE
16 DID BUSINESS?

11:52AM

17 A. THAT'S CORRECT.

18 Q. AND WHEN HE WAS TERMINATED THE BINDERS STAYED
19 THERE, RIGHT?

20 A. I BELIEVE SO.

11:52AM

21 Q. NOW, MR. GUNDLACH IS ENTITLED TO TAKE HIS
22 BRAIN WITH HIM WHEN HE GOES TO ANOTHER JOB, RIGHT?

23 A. I SHOULD HOPE SO.

24 Q. HE'S ENTITLED TO TAKE HIS LIFE EXPERIENCE
25 WATCHING THE UP'S AND DOWN'S OF THE MARKET?

11:52AM

26 A. IN TERMS OF HIS MEMORY.

27 Q. YES.

28 A. YES.

1 Q. HE'S ALLOWED TO TAKE HIS OWN KIND OF UNIQUE
2 PERSONAL WAY OF LOOKING AT THE WORLD WITH HIM TOO,
3 RIGHT?

4 A. THAT'S HIS BRAIN.

5 Q. NOW, YOU TESTIFIED THAT THE TRADE TICKETS
6 WOULD HELP IN ESTABLISHING A TRACK RECORD; IS THAT
7 RIGHT?

11:52AM

8 A. IT WOULD BE EVIDENCE OF, AND IF YOU WERE TO DO
9 A THIRD PARTY ON IT, WHICH IS NECESSARY TO ESTABLISH A
10 GIPS TRACK RECORD OF -- IT WOULD DEMONSTRATE THE
11 HISTORY OF -- OR THE BACKUP FOR THE CLIENTS' STATEMENTS
12 AND THE CLIENTS ACTIVITY REPORTS.

11:53AM

13 Q. WELL, THE TRACK RECORD REQUIREMENTS DON'T SAY
14 THAT YOU HAVE TO HAVE TRADE TICKETS, RIGHT?

15 A. NO. WHAT IT DOES SAY IS THAT YOU HAVE TO HAVE
16 DEMONSTRABLE EVIDENCE OF YOUR TRACK RECORD.

11:53AM

17 Q. SO --

18 A. THAT CAN HOLD A LOT OF THINGS.

19 THAT CAN INVOLVE A LOT OF THINGS. ONE
20 OF THEM CAN BE TRADE SECRETS.

11:53AM

21 Q. OKAY.

22 MY QUESTION IS: THE REQUIREMENTS FOR
23 TRACK RECORDS DO NOT SAY THAT YOU HAVE TO HAVE TRADE
24 TICKETS?

25 A. THEY SAY YOU HAVE TO HAVE A DEMONSTRATIVE TO
26 DEMONSTRATE YOUR TRACK RECORD.

11:53AM

27 Q. SO THEY DON'T SAY YOU HAVE TO HAVE TRADE
28 TICKETS, RIGHT?

1 MR. QUINN: ASKED AND ANSWERED.

2 THE COURT: WELL, I DON'T KNOW THAT WE GOT AN
3 ANSWER TO IT.

4 YOU CAN'T ANSWER IT WITH ANOTHER
5 QUESTION OR A STATEMENT OR SOMETHING THAT IS
6 NONRESPONSIVE.

11:53AM

7 SO YOU KNOW --

8 Q. BY MR. WEINGART: YOU'VE TOLD US THEY HAVE TO
9 HAVE EVIDENCE, DEMONSTRABLE EVIDENCE, OF YOUR TRACK
10 RECORD?

11:54AM

11 A. THAT'S CORRECT. AND THESE TRADE TICKETS
12 REFLECT THAT.

13 Q. THEY WHAT?

14 A. THEY REFLECT THAT.

15 Q. THERE ARE OTHER DOCUMENTS THAT REFLECT THAT
16 TOO, RIGHT?

11:54AM

17 A. CORRECT.

18 Q. AND THE GIPS REQUIREMENTS DO NOT SAY THAT YOU
19 HAVE TO HAVE TRADE TICKETS TO DEMONSTRATE YOUR TRACK
20 RECORD, RIGHT?

11:54AM

21 A. CORRECT.

22 Q. NOW, IN FACT, IT'S YOUR UNDERSTANDING THAT
23 SOME AUDITING FIRMS REQUEST THAT YOU HAVE THE TRADE
24 TICKETS TO HELP WITH THE AUDIT THAT YOU ARE TALKING
25 ABOUT, RIGHT?

11:54AM

26 A. THAT'S CORRECT.

27 Q. AND IN FACT, IT'S NOT A UNIFORM REQUIREMENT,
28 ONLY SOME AUDITING FIRMS, IN YOUR UNDERSTANDING, ASK

1 FOR IT, RIGHT?

2 A. IN MY EXPERIENCE WHEN WE'VE HAD TO DO THIS,
3 YES.

4 Q. SO SOME DO AND SOME DON'T, RIGHT?

5 A. THE ONES I'VE DEALT WITH DO, RIGHT. 11:54AM

6 Q. BUT SOME DON'T, RIGHT?

7 A. I'M SURE YOU'VE BEEN INFORMED BY SOME OF THOSE
8 WHO DON'T.

9 Q. AND LET'S GO TO YOUR DEPOSITION.

10 YOUR HONOR, I'D REQUEST PERMISSION TO 11:55AM
11 READ FROM MR. SMITH'S DEPOSITION PAGE 220, LINES FOUR
12 THROUGH SIX?

13 THE COURT: IS THERE ANY OBJECTION?

14 MR. SURPRENANT: IF I COULD LOOK FOR A MOMENT,
15 YOUR HONOR. 11:55AM

16 THE COURT: ALL RIGHT.

17 MR. SURPRENANT: NO OBJECTION, YOUR HONOR.

18 Q. BY MR. WEINGART: (READING):

19 "Q IS THAT A UNIFORM
20 REQUIREMENT OR JUST SOME FIRMS 11:55AM
21 REQUIRE THAT?

22 "A I UNDERSTAND IT'S JUST
23 SOME FIRMS."

24 LET'S GO TO THE SECOND LEG. THAT'S THE
25 ONE IN THE MIDDLE, RIGHT? 11:56AM

26 A. YES. THE CENTER ONE, YES.

27 Q. CLIENT MARKETING AND REPORTING?

28 A. YES.

1 Q. NOW, I THINK YOU ALREADY AGREED WITH ME, BUT
2 BEFORE IT LAUNCHED ITS MUTUAL FUND IN APRIL OF 2010
3 DOUBLELINE HAD VERY FEW CLIENTS, RIGHT?

4 A. THAT'S CORRECT.

5 Q. AND WHATEVER RELATIONSHIPS PEOPLE AT 11:56AM
6 DOUBLELINE HAD WITH FORMER CLIENTS, IT DIDN'T DO
7 DOUBLELINE A WHOLE LOT OF GOOD IN THE FIRST FEW MONTHS
8 OF ITS EXISTENCE, RIGHT?

9 A. BECAUSE OF WHAT HAPPENED ON DECEMBER 4TH AND
10 THEREAFTER. 11:56AM

11 Q. WELL, CLIENT INVESTMENT GUIDELINES COME FROM
12 THE CLIENT, RIGHT?

13 A. YES.

14 Q. AND IF WE COULD PUT UP 2247-4.

15 YOU TALK ABOUT VARIOUS CLIENT INVESTMENT 11:56AM
16 GUIDELINES HERE, CORRECT?

17 A. I DO.

18 Q. AND THINGS LIKE CREDIT RATING REQUIREMENTS,
19 FOREIGN SECURITIES, TRANSACTIONS THAT ARE PERMITTED OR
20 NOT PERMITTED. THAT INFORMATION ALL COMES FROM THE 11:57AM
21 CLIENT, DOES IT NOT?

22 A. THAT IS CORRECT.

23 Q. WE CAN TAKE THAT DOWN. CLIENTS ALSO KNOW WHAT
24 FEES THEY ARE BEING CHARGED, RIGHT?

25 A. I SHOULD HOPE SO. 11:57AM

26 Q. THEY KNOW WHAT REPORTING THEY WANT TO SEE,
27 RIGHT?

28 A. YES.

1 Q. AND IF CLIENTS WANT TO DO BUSINESS WITH
2 SOMEONE ELSE THEY'LL SHARE THAT INFORMATION, RIGHT?

3 A. AT SOME PERIOD OF TIME, NOT NECESSARILY
4 IMMEDIATELY.

5 Q. THEY'LL SHARE IT AT SOME POINT IN TIME, WON'T
6 THEY? 11:57AM

7 A. THEY WILL.

8 Q. NOW, YOUR TESTIMONY WAS THAT HAVING THIS
9 INFORMATION WOULD HELP IN PITCHING NEW BUSINESS, RIGHT?

10 A. THAT'S CORRECT. 11:57AM

11 Q. AND WHEN A CLIENT IS LOOKING AT AN INVESTMENT
12 MANAGER, IT'S LOOKING AT AT LEAST A COUPLE OF THINGS,
13 RIGHT?

14 WHAT'S THE PERFORMANCE I EXPECT TO GET,
15 AND WHAT'S THE PRICE I'M GOING TO PAY FOR THAT
16 PERFORMANCE, RIGHT? 11:58AM

17 A. THAT'S JUST TWO OF MANY FACTORS.

18 Q. THOSE ARE TWO PRETTY IMPORTANT FACTORS, AREN'T
19 THEY?

20 A. SURE. IF YOU LOOK AT MY LEG OF THE STOOL THE
21 OTHER PARTS ARE THE INFRASTRUCTURE WHICH HOUSES THE
22 INVESTMENT PROCESS, THE TYPES OF DATA SYSTEMS IN PLACE,
23 THE BACKUPS, RISK MANAGEMENT, CLIENTS, A VARIETY OF
24 OTHER FACTORS. 11:58AM

25 Q. MY QUESTION IS: PRICE AND PERFORMANCE ARE TWO
26 PRETTY IMPORTANT FACTORS, AREN'T THEY? 11:58AM

27 A. TWO AMONG MANY, YES.

28 Q. YOU WOULD NOT SAY THAT THEY ARE ANY MORE

1 IMPORTANT THAN ANYTHING ELSE; IS THAT YOUR TESTIMONY?

2 A. IN TERMS OF INSTITUTIONAL CLIENTS? YES, THAT
3 IS MY TESTIMONY.

4 Q. NOW, POTENTIAL CLIENTS WILL OFTEN SAY, I'LL DO
5 BUSINESS WITH YOU IF YOU CAN DO BETTER THAN A CERTAIN
6 PRICE, RIGHT? OR CERTAIN FEES THAT ARE BEING CHARGED,
7 CORRECT?

11:58AM

8 A. ALL OTHER THINGS BEING EQUAL, YES.

9 Q. AND YOU DON'T CITE ANY INFORMATION THAT
10 DOUBLELINE USED IN THIS FEE INFORMATION TO ACTUALLY
11 PITCH A NEW CLIENT TO SAY TCW IS CHARGING YOU X WE'LL
12 ONLY CHARGE YOU HALF OF X, RIGHT?

11:59AM

13 A. THAT WASN'T THE SCOPE OF MY REPORT.

14 Q. NOW, YOU SAID THAT THE FIXED INCOME GROUP HAD
15 ABOUT 150 CLIENTS; IS THAT RIGHT?

11:59AM

16 A. INSTITUTIONAL CLIENTS.

17 Q. INSTITUTIONAL CLIENTS, THANK YOU.

18 MR. GUNDLACH'S GROUP ONLY HAD ABOUT A
19 HUNDRED CLIENTS, RIGHT?

20 A. RIGHT.

11:59AM

21 BUT THERE WERE OTHER PARTS OF TCW TO
22 WHICH HE WAS RESPONSIBLE FOR WHICH HE GOT PAID ON HIS
23 COMPENSATION, WHICH DID ACTUALLY COME DIRECTLY UNDER
24 HIS --

25 Q. MY QUESTION WAS: THE MBS GROUP ONLY HAD ABOUT
26 A HUNDRED CLIENTS, RIGHT? SEPARATE ACCOUNT CLIENTS?

11:59AM

27 A. I UNDERSTOOD THAT MR. GUNDLACH WAS CHIEF
28 INVESTMENT OFFICER OF THE FIXED INCOME GROUP.

1 THE COURT: DO YOU KNOW WHAT THE MBS GROUP
2 WAS?

3 THE WITNESS: YES. A SUBSET OF THE MIXED
4 INCOME GROUP.

5 THE COURT: THE QUESTION IS: HOW MANY CLIENTS
6 DID THE MBS GROUP HAVE?

12:00PM

7 CAN YOU ANSWER THAT?

8 THE WITNESS: I DON'T ACTUALLY KNOW THE
9 DIFFERENCE BETWEEN THE MBS AND -- I ONLY KNOW THE
10 AGGREGATE.

12:00PM

11 Q. BY MR. WEINGART: SO YOU DON'T KNOW OUT OF
12 THAT 150 THEN WHETHER TWO PEOPLE WERE INTERESTED IN
13 PRIMARILY MORTGAGE-BACKED SECURITIES, OR A HUNDRED
14 PEOPLE, OR ALL 150, RIGHT?

15 A. THAT'S CORRECT.

12:00PM

16 Q. NOW THE LONGER YOU ARE IN AN INDUSTRY THE MORE
17 PEOPLE YOU KNOW, RIGHT?

18 A. USUALLY THE CASE.

19 Q. THE MORE CONNECTIONS YOU MAKE, RIGHT?

20 A. THAT'S CORRECT.

12:00PM

21 Q. AND MAINTAINING SAY ABOUT A HUNDRED
22 PROFESSIONAL RELATIONSHIPS AMONG A TEAM OF FIVE OR SIX
23 SENIOR MANAGERS IS NOT A HERCULEAN TASK, IS IT?

24 A. NO.

25 Q. AND IF YOU DEVELOPED THOSE CLIENT
26 RELATIONSHIPS, YOU'RE ALLOWED TO TALK TO THOSE CLIENTS
27 ABOUT COMING TO A NEW FIRM IF YOU START ONE, RIGHT?

12:00PM

28 A. DEPENDS ON YOUR AGREEMENT WITH THE COMPANY,

1 BUT REMEMBERING THESE CLIENTS ARE THE COMPANY'S
2 CLIENTS, NOT YOUR CLIENTS, THAT'S WHERE I WOULD TAKE A
3 DISTINCTION HERE.

4 Q. WELL, IF I GO TO JOE'S BARBER SHOP TO SEE
5 MURRAY; AND MURRAY GOES OVER TO SAM'S BARBER SHOP, HE
6 CAN TELL ME, COME ON OVER TO SAM'S BARBER SHOP, CAN'T
7 HE? 12:01PM

8 A. HE CAN, BUT I THINK THAT WOULD BE A COMPARISON
9 OF AN APPLE WITH A GRAPEFRUIT IN THIS PARTICULAR CASE.

10 Q. WOULD YOU SAY COMPARING ABLE GRAPE TO WHAT
11 DOUBLELINE ACTUALLY DID IS A GRAPE TO A GRAPEFRUIT? 12:01PM

12 A. I DON'T KNOW WHAT YOUR COMPARISON IS WITH ABLE
13 GRAPE AND DOUBLELINE.

14 Q. YOU DIDN'T COMPARE WHAT WAS PUBLICLY AVAILABLE
15 FOR CLIENTS OF THE FIXED INCOME GROUP, IN TERMS OF
16 THE -- YOU DIDN'T DO ANYTHING, FOR EXAMPLE, A GOOGLE
17 SEARCH, TO SEE WHAT KIND OF INFORMATION WOULD TURN UP,
18 DID YOU? 12:01PM

19 A. IN TERMS OF WHO THE CLIENTS WERE?

20 Q. WHAT KIND OF IDENTIFYING INFORMATION THAT YOU
21 COULD GET IF YOU DID, SAY, A GOOGLE SEARCH. 12:02PM

22 YOU DIDN'T DO THAT, RIGHT?

23 A. YOU MEAN IF I GOOGLED LINCOLN NATIONAL AND
24 FIND OUT WHO DOES FIXED INCOME AND WHAT --

25 Q. I'M ASKING DID YOU DO ANY KIND OF GOOGLE
26 SEARCHES TO SEE WHAT KIND OF CONTACT INFORMATION YOU
27 COULD GET FOR SAY A PENSION FUND? 12:02PM

28 A. NO, WE DIDN'T DO A GOOGLE SEARCH.

1 Q. A PENSION FUND IS A PUBLIC ENTITY, IS IT NOT?

2 A. IF IT'S A PRIVATE COMPANY, NO, IT'S NOT.

3 Q. FAIR POINT.

4 SAY FAIRFAX COUNTY, VIRGINIA?

5 A. OKAY.

12:02PM

6 Q. THAT'S A PUBLIC INSTITUTION, CORRECT?

7 A. CORRECT.

8 Q. AND IT DISCLOSES PUBLIC INFORMATION ABOUT
9 WHO'S MANAGING THE PENSIONS, CORRECT?

10 A. WELL, WHAT IT WOULD DISCLOSE IS WHO'S THE
11 CHIEF INVESTMENT OFFICER; WHO ARE MEMBERS OF THE
12 INVESTMENT COMMITTEE OF -- EACH ONE OF THOSE PEOPLE
13 MIGHT HAVE MEMBERS OF STAFF WHO ARE DIRECTLY
14 RESPONSIBLE ON THE DAY TO DAY PART, IN TERMS OF
15 ALLOCATING SPECIFIC TYPES OF INVESTMENT STRATEGIES.

12:02PM

12:03PM

16 Q. BUT YOU DIDN'T ACTUALLY DO ANY KIND OF THAT
17 GOOGLE SEARCHING HERE, CORRECT?

18 A. I DO HAVE PUBLIC PENSION FUNDS AS CLIENTS AND
19 THERE WERE -- I KIND OF KNOW THE ROAD MAP.

20 I WISH IT WAS AS EASY AS YOU ARE SAYING.

12:03PM

21 Q. AND AGAIN, YOU DIDN'T ANALYZE WHAT PEOPLE AT
22 DOUBLELINE, IN FACT, DID, IN TERMS OF GOOGLE SEARCHES
23 OR OTHER SORTS OF THINGS WHEN THEY WERE SETTING UP THE
24 BUSINESS, RIGHT?

25 A. ONCE AGAIN, IT WASN'T THE SCOPE OF MY REPORT.

12:03PM

26 Q. LET ME TURN TO THE THIRD LEG, FAR RIGHT LEG OF
27 YOUR --

28 A. INFRASTRUCTURE.

1 Q. IS IT A TABLE OR A STOOL?

2 A. I THINK IT'S A STOOL.

3 Q. A STOOL?

4 A. YES.

5 Q. OKAY.

12:03PM

6 A. THAT SUPPORTS WEIGHTS.

7 Q. SORRY?

8 A. THAT SUPPORTS WEIGHTS.

9 Q. TCW'S TRADING SYSTEM ISN'T A BLACK BOX, RIGHT?

10 A. TRADING SYSTEM? I MEAN, I TALKED ABOUT

12:04PM

11 INFRASTRUCTURE, WHICH IS MORE THAN JUST A TRADING
12 SYSTEM.

13 Q. THE BWIC BROWSER AND THE SECURITY ANALYZER ARE
14 IN A BLACK BOX TRADING SYSTEM, AREN'T THEY?

15 A. BLACK BOX MEANING PREDICTIVE?

12:04PM

16 Q. CORRECT.

17 A. THEY ARE NOT PREDICTIVE NOR HAVE I STATED THAT
18 TO BE PREDICTIVE.

19 Q. THE TRADING DECISION NEEDS TO BE MADE BY A
20 TRADER BASED ON THE INFORMATION THAT HE OR SHE IS
21 OBTAINING, CORRECT?

12:04PM

22 A. ABSOLUTELY. YOU ARE A PILOT IN THE JUMBO JET
23 AND YOU HAVE INSTRUMENTATION THAT ALLOWS YOU TO FLY THE
24 AIRPLANE.

25 Q. AND IF I'M IN AN AIR BUS OR A BOEING PLANE, OR
26 IF I'M IN SOMETHING ELSE, THEY ARE GOING TO BE DIALS
27 THAT ARE IN COMMON, CORRECT?

12:04PM

28 A. CORRECT.

1 Q. THERE'S GOING TO BE THE ALTIMETER, RIGHT?

2 A. SURE.

3 Q. THERE'S GOING TO BE THE AIR SPEED INDICATOR?

4 A. TRUE.

5 Q. WHAT'S THE THING THAT TELLS YOU WHETHER OR NOT
6 YOU ARE GOING --

12:04PM

7 A. GYROSCOPE?

8 Q. GYROSCOPE. THERE'S GOING TO BE A GYROSCOPE,
9 RIGHT?

10 A. YES.

12:04PM

11 Q. SO IN TERMS OF LOOKING AT THESE VARIOUS DIALS
12 OR INFORMATION, YOU WOULD AGREE THAT MR. GUNDLACH IS
13 ONE OF THE TOP PEOPLE AT WHAT HE DOES, RIGHT?

14 A. HE'S ONE OF THE TOP PILOTS.

15 Q. AND ONE'S REPRESENTATION FOR SUSTAINED
16 EXCELLENT PERFORMANCE IS A BIG PART OF WHETHER A NEW
17 ASSET MANAGEMENT BUSINESS IS GOING TO SUCCEED OR NOT,
18 CORRECT?

12:05PM

19 A. THAT'S CORRECT.

20 Q. NOW, IF YOU ARE TRADING BONDS, LET'S START
21 WITH THE BWIC BROWSER.

12:05PM

22 YOU NEED A SYSTEM TO FILTER WHAT'S
23 COMING IN, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND I THINK YOU MENTIONED IT, THERE ARE SOME
26 COMMERCIAL APPLICATIONS THAT HELP YOU TO DO THAT,
27 RIGHT?

12:05PM

28 A. THAT'S CORRECT.

1 Q. THE -- BLOOMBERG HAS AN I-MANAGER THAT
2 PERFORMS SOME OF THAT FUNCTIONALITY, RIGHT?

3 A. THAT'S CORRECT.

4 Q. NOW, YOU DIDN'T ANALYZE THE STATE OF THE
5 DOUBLELINE SYSTEMS IN THE FIRST MONTH OR TWO, CORRECT?

12:06PM

6 A. NO.

7 Q. SO YOU DON'T KNOW HOW CRUDE OR SOPHISTICATED
8 THEIR SYSTEM WAS AT THAT POINT IN TIME, CORRECT?

9 A. THAT'S CORRECT.

10 Q. NOW, I THINK YOU MENTIONED THIS DURING YOUR
11 DIRECT, BUT THERE'S A DIFFERENCE BETWEEN SOMETHING THAT
12 IS PROPRIETARY AND SOMETHING THAT YOU WOULD CONSIDER TO
13 BE A TRADE SECRET, RIGHT?

12:06PM

14 A. I MADE THE DISTINCTION BETWEEN CONFIDENTIAL
15 AND TRADE SECRET, YES.

12:06PM

16 Q. WELL, LET ME ASK YOU THERE'S A DISTINCTION
17 BETWEEN -- THINGS CAN BE PROPRIETARY, BUT NOT BE TRADE
18 SECRET, CORRECT?

19 A. I'M NOT A LAWYER.

20 Q. YOU ARE AN INDUSTRY EXPERT, SO I'M ASKING YOU
21 AS AN INDUSTRY EXPERT.

12:06PM

22 A. I THINK WE TRY TO IDENTIFY TRADE SECRETS BASED
23 ON THE CRITERIA THAT WE'VE SET UP TODAY.

24 AND PROPRIETARY AND CONFIDENTIAL DON'T
25 ACTUALLY MEET ALL THOSE CRITERIA.

12:06PM

26 Q. NOW, ORIGINALLY, YOU OPINED THAT THE BWIC
27 BROWSER WAS A PROPRIETARY TOOL AND NOT A TRADE SECRET,
28 RIGHT?

1 A. THAT'S CORRECT.

2 Q. AND THEN YOU WERE ASKED ABOUT IT IN THE
3 MORNING OF YOUR DEPOSITION AND YOU AFFIRMED AGAIN THAT
4 YOU CONSIDERED IT AT THAT TIME TO BE A PROPRIETARY TOOL
5 AND NOT A TRADE SECRET, RIGHT?

12:07PM

6 A. I CAN'T REMEMBER THE TIMING, BUT ONE OF THE
7 REASONS WHY WE CHANGED OUR MIND ON THE BWIC BROWSER --

8 Q. SIR, THAT'S NOT MY QUESTION.

9 MY QUESTION IS -- IN THE MORNING OF YOUR
10 DEPOSITION DIDN'T YOU TESTIFY THAT YOU CONSIDERED THE
11 BWIC BROWSER TO BE A PROPRIETARY TOOL?

12:07PM

12 A. YES.

13 Q. AND THEN YOU WENT OUT TO LUNCH WITH
14 MR. SURPRENANT, RIGHT?

15 A. I DID HAVE LUNCH WITH MR. SURPRENANT THAT DAY,
16 YES.

12:07PM

17 Q. AND THEN YOU CAME BACK IN THE AFTERNOON AND
18 YOU CHANGED YOUR OPINION TO SAY THAT IT WAS A TRADE
19 SECRET, RIGHT?

20 A. I THINK YOU ARE TALKING ABOUT GRADATIONS HERE,
21 BETWEEN WHAT'S CONFIDENTIAL, WHAT'S PROPRIETARY
22 ANALYTIC AND WHAT ULTIMATELY TRANSPIRES TO BE A TRADE
23 SECRET. AND THERE'S A LOT OF GRAY, IN TERMS OF
24 BORDERLINE BETWEEN THESE VARIOUS ELEMENTS.

12:08PM

25 ONE OF THE THINGS THAT --

12:08PM

26 MR. WEINGART: YOUR HONOR, COULD I ASK A NEW
27 QUESTION?

28 THE COURT: LET'S HAVE THE QUESTION READ BACK.

1 YOU WILL GET PLENTY OF OPPORTUNITIES TO
2 EXPLAIN THINGS. TRY AND ANSWER THE QUESTION.

3 A. YES, YOUR HONOR.
4

5 (LAST QUESTION READ
6 BACK BY THE REPORTER.)
7

12:08PM

8 Q. BY MR. WEINGART: THE ANSWER TO THAT IS YES,
9 ISN'T IT?

10 A. THE ANSWER IS YES.

12:08PM

11 Q. NOW, YOU'VE DONE A LOT OF WORK FOR QUINN
12 EMANUEL IN THE PAST, RIGHT?

13 A. I'VE DONE SEVERAL, YES.

14 Q. YOU'VE DONE ABOUT 10 CASES FOR THEM; IS THAT
15 RIGHT?

12:09PM

16 A. I'VE BEEN RETAINED AS AN EVALUATION EXPERT ON
17 ABOUT 10 CASES, YES.

18 Q. AND YOU CHARGE A THOUSAND DOLLARS AN HOUR?

19 A. YES, I DO.

20 Q. YOU STARTED AND SOLD SEVERAL COMPANIES?

12:09PM

21 A. THAT'S CORRECT.

22 Q. DO YOU HAVE ANY INTEREST IN SELLING YOUR
23 CURRENT COMPANY TO TCW?

24 A. NO.

25 Q. CAN WE SWITCH NOW FROM THE BWIC BROWSER TO THE
26 SECURITY ANALYZER, OKAY?

12:09PM

27 A. SURE.

28 Q. NOW, THE FRONT END OF A SYSTEM IS SOMETHING

1 THAT -- IT'S WHAT THE USER SEES, RIGHT?

2 A. YES.

3 Q. AS OPPOSED TO THE BACK END OF THE SYSTEM WHICH
4 WOULD BE WHERE THE DATA IS AND GETS PULLED FROM, RIGHT?

5 A. RIGHT. RIGHT.

12:09PM

6 Q. NOW MR. SUPRENANT ASKED YOU SOME QUESTIONS
7 ABOUT IS THIS SCREEN A TRADE SECRET.

8 OTHER FIRMS HAVE A FRONT END SIMILAR TO
9 THE TCW SECURITY ANALYZER, DO THEY NOT?

10 A. DO YOU WANT TO SAY WHICH FIRMS?

12:10PM

11 Q. JEFFREY'S?

12 A. SURE.

13 Q. CSFB?

14 A. SURE.

15 Q. AND THOSE TYPICALLY INCLUDE DATA FROM
16 BLOOMBERG, RIGHT?

12:10PM

17 A. THEY IMPORT DATA FROM BLOOMBERG, YES.

18 Q. THEY IMPORT DATA FROM INTEX?

19 A. YES, THAT'S A VERY DIFFERENT ELEMENT, BUT YES.

20 Q. AND THEY IMPORT DATA FROM LOAN PERFORMANCE?

12:10PM

21 A. YES.

22 Q. AND POTENTIALLY FROM OTHER THIRD PARTY DATA
23 PROVIDERS, RIGHT?

24 A. THAT'S CORRECT.

25 Q. NOW, TRADERS HAVE PERSONAL PREFERENCES FOR THE
26 DATA THEY LIKE TO SEE, DO THEY NOT?

12:10PM

27 A. YES, THEY DO.

28 Q. AND YOU WOULD AGREE IF THEY ARE FREE TO TWEAK

1 THE METRICS THEY WANT, IN A WAY THEY WANT TO LOOK AT
2 THEM, RIGHT?

3 A. SURE, EVERYBODY HAS THEIR PREFERENCE.

4 Q. AND WHAT YOU REALLY THINK IS SPECIAL ABOUT THE
5 SECURITY ANALYZER IS THE SPEED WITH WHICH IT DOES
6 THINGS, IS THAT FAIR TO SAY? 12:10PM

7 A. AND THE ABILITY TO TAKE EXTERNAL DATA AND
8 INTRODUCE IT TO YOUR INTERNAL DATABASE.

9 YOU COULDN'T DO THAT WITH A CSFB OR
10 JEFFREY'S -- 12:11PM

11 MORE IMPORTANTLY, WHEN YOU DO SIGN UP
12 FOR THOSE SERVICES, THERE'S A VERY STRICT
13 CONFIDENTIALITY AGREEMENT.

14 MR. WEINGART: YOUR HONOR, WE'RE BEYOND THE
15 SCOPE OF MY QUESTION NOW. 12:11PM

16 THE COURT: ASK ANOTHER QUESTION.

17 MR. WEINGART: I DIDN'T WANT TO INTERRUPT THE
18 WITNESS.

19 Q. THE DATABASE THAT YOU ARE TALKING ABOUT WITH
20 REGARD TO TCW, THEY HAVE A PROPRIETARY DATABASE OF SOME
21 20 MILLION RECORDS, RIGHT? 12:11PM

22 A. THERE'S ABOUT 65,000 BONDS, YES.

23 Q. AND THEY TAKE THAT DATA AND THEY RUN THESE
24 VARIOUS ROUTINES AND OTHER SORTS OF THINGS ON IT THAT
25 YOU'VE DESCRIBED, RIGHT? 12:11PM

26 A. ABOUT 400 ROUTINES EACH NIGHT, YES.

27 Q. AND THAT'S THE BACK END OF THE SECURITY
28 ANALYZER?

1 A. THE SECURITY ANALYZER'S A VIEW FINDER THAT
2 ALLOWS YOU TO EXTRACT THAT DATA.

3 Q. NOW, DOUBLELINE -- WELL, FIRST ALL, THE 200
4 MILLION OR HOWEVER MANY -- YOU DID IT BY WAY OF BONDS.

5 A. YES. 12:12PM

6 Q. THAT WASN'T ANYTHING THAT WAS COPIED, CORRECT?
7 I DIDN'T SEE THAT ANYWHERE UP ON YOUR SCREEN.

8 A. THE DATABASE WASN'T COPIED, NO.

9 Q. THE DATABASE WAS NOT COPIED, WAS IT?

10 A. NO, IT WASN'T. 12:12PM

11 Q. AND AT DOUBLELINE, THEY USE A COMPANY CALLED
12 VICHARRA (PHONETIC) TO PROVIDE THAT BACK END DATA, DO
13 THEY NOT?

14 A. THAT'S CORRECT.

15 Q. AND VICHARRA RUNS THE VARIOUS ROUTINES AND 12:12PM
16 STUFF ON THAT DATA TO PUT IT SORT OF IN A FORM THAT CAN
17 BE PRESENTED THROUGH THE FRONT END OF THE DOUBLELINE
18 SYSTEM, RIGHT?

19 A. THAT'S CORRECT, YES.

20 Q. NOW, LET ME TALK TO YOU A LITTLE BIT ABOUT THE 12:12PM
21 SOURCE CODE.

22 ACTUALLY, YOUR HONOR, THIS IS GOING TO
23 BE A NEW TOPIC. I DON'T KNOW IF YOU WANT TO STOP HERE?

24 THE COURT: WE'LL TAKE OUR NEXT 20-MINUTE
25 BREAK AND WE'LL COME BACK IN ABOUT 20 MINUTES. 12:12PM

26 //

27 //

28 //

1 (AT 12:13 P.M. THE JURY WAS
2 EXCUSED, AND THE FOLLOWING
3 PROCEEDINGS WERE HELD:)
4

5 THE COURT: ALL RIGHT. WE'RE OUT OF THE
6 PRESENCE. 12:13PM

7 ANY MATTERS ANYBODY WANTS TO TAKE UP?

8 MR. SURPRENANT: I DO, YOUR HONOR. I WANT TO
9 TALK -- MR. SMITH, IN HIS REPORT, DID NOT WRITE A
10 SCRIPT OF HIS TRIAL TESTIMONY. 12:13PM

11 MR. BRIAN: YOUR HONOR, MAY I BE EXCUSED WHILE
12 HE'S DOING THAT, FOR BIOLOGICAL REASONS?

13 MR. SURPRENANT: PLEASE DO.

14 MR. SMITH, PERHAPS YOU SHOULD LEAVE THE
15 COURTROOM. 12:14PM

16 THE WITNESS: SURE.

17
18 (MR. SMITH EXITS THE COURTROOM.)

19
20 MR. SURPRENANT: YOUR HONOR, MR. SMITH -- I 12:14PM
21 DON'T THINK ANY OF THE EXPERTS WROTE A SCRIPT.

22 THE COURT: LET ME JUST SAY, EVERYBODY GETS
23 LEEWAY WITH THEIR EXPERTS. I DON'T EXPECT YOU TO HAVE
24 DISAGREEMENTS OVER SUBJECTS THAT WERE OR WERE NOT IN
25 THE REPORTS AND SUBJECT TO THE DEPOSITION. WE HAD AN 12:14PM
26 ORDER IN PLACE. YOU CAN'T BRING NEW OPINIONS IN, YOU
27 CAN'T BRING MATTERS THAT WEREN'T DISCLOSED, JUST AS I
28 EXPLAINED TO THE JURY.

1 IF SOMEBODY MAKES AN OBJECTION ON THE
2 BASIS THAT IT EXCEEDS THE SCOPE OF WHAT WAS COVERED IN
3 THE REPORT, EITHER WE HAVE TO TAKE THE TIME AND LOOK AT
4 THE REPORT, OR WE NEED AN AGREEMENT.

5 NOW, WHAT IS THE SUBJECT THAT WE'VE GOT
6 TO DEBATE ON? I JUST WANT TO NARROW IT DOWN AND GET IT
7 DONE. 12:14PM

8 MR. SURPRENANT: I BELIEVE, YOUR HONOR, HAS
9 RULED ON THE SEPTEMBER 3RD OFFER, BUT I RESPECTFULLY
10 DISAGREE. THAT'S NOT A NEGOTIATED DEPARTURE. 12:15PM

11 AN OFFER TO PURCHASE IS DIFFERENT THAN A
12 NEGOTIATED DEPARTURE. A NEGOTIATED DEPARTURE IS A FEE
13 SPLIT AND ESSENTIALLY A PARTNERSHIP FOR A MATTER OF
14 YEARS.

15 THE DEFENDANTS HAVE STRONGLY RELIED ON
16 THE 9/3/09 OFFER. IT IS ONE THING FOR FACT WITNESSES
17 TO SAY I DON'T THINK I LIKE IT. IT'S KIND OF HE SAID,
18 SHE SAID. BUT WHEN YOUR INDUSTRY EXPERT COMES IN AND
19 SAYS I WILL EXPLAIN AS AN ECONOMIC MATTER WHY THIS IS A
20 COMPLETE AND -- PROCESS -- THE PROCESS OF THE OFFER,
21 AND THE SUBSTANCE OF THE OFFER WAS A THROW AWAY. 12:15PM

22 I WOULD RESPECTFULLY SUBMIT, YOUR HONOR;
23 AND THAT IS DIFFERENT THAN A NEGOTIATED DEPARTURE. AND
24 THE NEGOTIATED DEPARTURE RULING, I BELIEVE, HAS BEEN
25 STRETCHED AND STRETCHED. 12:15PM

26 WHAT WE AGREED TO TAKE OFF THE TABLE WAS
27 A DAMAGE MODEL. A DAMAGE MODEL THAT SAID THIS IS WHAT
28 WOULD HAVE BEEN A REASONABLE OUTCOMES AND THAT IS

1 NOT -- THAT IS NOT WHAT THE CRITIQUE OF THE ABLE GRAPE
2 PRO FORMA FEE SPLIT IS; THAT'S INDEPENDENT.

3 BUT EVEN IF I LOSE THAT, YOUR HONOR, I
4 DON'T BELIEVE I SHOULD LOSE THE SEPTEMBER 3 OFFER.

5 AND WITH RESPECT TO THE SCRIPT, I MEAN, 12:16PM
6 WE CAN PLAY IT BOTH WAYS. IF I FIND A WORD OR A PHRASE
7 OR AN ASSERTION --

8 THE COURT: I DON'T WANT TO DEAL WITH THAT,
9 AND I DON'T WANT A LOT OF DEBATE ON THIS. I UNDERSTAND
10 THE CONCEPT YOU ARE ARGUING AND I WANT YOU TO GET -- 12:16PM

11 MR. SURPRENANT: LET ME MAKE -- I ASKED HIM.
12 I SAID HOW -- HE DISCUSSED AT LENGTH --

13 THE COURT: I LISTENED TO THE TESTIMONY,
14 MR. SURPRENANT. I DON'T NEED A LONG EXPLANATION. I
15 WANT TO HEAR FROM MR. WEINGART AND I'LL TELL YOU WHAT 12:16PM
16 I'M GOING TO DO.

17 OKAY. THEN FINISH IT. THIS IS A
18 20-MINUTE RECESS FOR ALL OF US.

19 MR. SURPRENANT: I'M SORRY, YOUR HONOR.

20 THE COURT: AND I'M NOT TAKING 20 MINUTES TO 12:16PM
21 LISTEN TO YOU EXPLAIN IT.

22 MR. SURPRENANT: THE ADDITIONAL POINT I WANT
23 TO MAKE IS THE THEFT. HE DISCUSSES MISCONDUCT IN HIS
24 REPORT. HE DISCUSSES MISCONDUCT REPEATEDLY IN HIS
25 REPORT, AND I BELIEVE IT IS WITHIN THE SCOPE OF HIS 12:17PM
26 REPORT, THE ANSWER THAT I ELICITED.

27 WHAT WOULD THE CUSTOM AND PRACTICE IN
28 THE INDUSTRY BE FOR THE INSTRUCTION MR. SANTA ANA HAS

1 NOW ADMITTED HE'S GIVEN? I BELIEVE THAT'S APPROPRIATE.

2 THE COURT: I DON'T THINK IT'S APPROPRIATE
3 WHEN YOU USE A WORD LIKE THEFT.

4 IT IS WITHIN THE COMMON KILN OF OUR
5 JURORS, AND THERE HAS BEEN PLENTY OF EVIDENCE. AND IF 12:17PM
6 THEY WANT TO CONCLUDE THAT THAT CONSTITUTED A THEFT,
7 THEY DON'T NEED MR. SMITH, WITH AN EXPERT OPINION, TO
8 TELL THEM IT'S THEFT.

9 MR. SURPRENANT: OKAY, YOUR HONOR.

10 THE COURT: IT'S VERY SIMPLE. YOU HAVE A 12:17PM
11 STRONG CASE ON THESE ISSUES, AND IT IS NOT SOMETHING
12 THAT'S BEYOND THE PURVIEW OF A JUROR TO KNOW IF
13 SOMEBODY TOOK SOMETHING. AND IT'S REALLY UNDISPUTED.

14 NOW, ON THE ISSUE OF THE 9/3 PURPORTED
15 OFFER AT THE MEETING WITH MR. STERN. 12:18PM

16 MR. WEINGART, OR MR. HELM, DO YOU WANT
17 TO BE HEARD ON IT?

18 MR. HELM: YES, YOUR HONOR. IT'S IN SECTION
19 OF THEIR REPORT CALLED NEGOTIATED DEPARTURE. WE ASKED
20 FOR DISCOVERY. WE WERE PRESSING FOR DISCOVERY. 12:18PM

21 THE COURT: I'M NOT GOING TO ALLOW IT. AND
22 THE REASON I'M NOT GOING TO ALLOW IT IS AMONG OTHER
23 THINGS, WE PREVIOUSLY ADDRESSED IT. WE ADDRESSED IT IN
24 THE MOTIONS IN LIMINE.

25 BUT ALSO, IT IS, AGAIN, SOMETHING THAT 12:18PM
26 DOESN'T TAKE AN EXPERT -- THERE'S AMPLE EVIDENCE ON
27 DIFFERENT VALUATIONS, ON WHETHER ANYBODY GOT BACK TO
28 ANYBODY, WHETHER ANYBODY DISCUSSED IT. I DON'T THINK

1 IT'S FOR AN EXPERT TO OPINE, AT THIS JUNCTURE, ON THE
2 RECORD THAT WE HAVE AND THE EVIDENCE THAT THIS JURY HAS
3 HEARD, THAT IT WASN'T A GOOD FAITH OFFER. IT WASN'T AN
4 OFFER THAT MEANT ANYTHING. BECAUSE THAT'S WHAT THE
5 JURY IS HERE TO DECIDE. AND THEY WILL DECIDE IT BASED
6 ON THE EVIDENCE THEY'VE HEARD.

12:18PM

7 AND THERE'S AMPLE EVIDENCE ON BOTH SIDES
8 OF THAT WE HAD AN EXPECTATION THAT WE MIGHT GET SOME
9 MORE ON THAT TODAY. AT THE PACE WE'RE GOING, WE'RE NOT
10 GOING TO GET THERE.

12:19PM

11 MR. SURPRENANT: I UNDERSTAND, YOUR HONOR.

12 THE COURT: ALL RIGHT. THANK YOU.

13
14 (RECESS TAKEN.)

15
16 (THE NEXT PAGE NUMBER IS 4101.)
17
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1 CASE NUMBER: BC429385
2 CASE NAME: TRUST COMPANY OF THE WEST VS.
3 JEFFREY GUNDLACH, ET AL
4 LOS ANGELES, THURSDAY, AUGUST 18, 2011
5 CALIFORNIA
6 DEPARTMENT 322 HON. CARL J. WEST, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: WENDY OILLATAGUERRE, CSR #10978
9 TIME: 12:25 P.M.

10

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(AT 12:25 P.M. THE JURY ENTERED
THE COURTROOM, AND THE FOLLOWING
PROCEEDINGS WERE HELD:)

12:38PM

THE COURT: ALL RIGHT. ALL MEMBERS OF THE
JURY ARE AGAIN PRESENT.

MR. WEINGART, YOU MAY CONTINUE YOUR
CROSS-EXAMINATION OF MR. SMITH.

MR. WEINGART: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. WEINGART:

Q. WHILE I HATE TO MOVE BACKWARDS HERE, BUT CAN
WE PUT EXHIBIT 948 BACK UP?

AND I JUST WANT TO CLARIFY, BUT I THINK

1 I MIGHT HAVE ASKED A QUESTION WHERE I HAD A NO IN MY --
2 ANYWAY, DOUBLE NEGATIVES.

3 SO THIS PARTICULAR DOCUMENT, YOU WOULD
4 AGREE, IS NOT A TRADE SECRET, RIGHT?

5 A. YES. 12:38PM

6 Q. OKAY. WE CAN TAKE THAT DOWN.

7 I WANT TO TALK TO YOU ABOUT SOURCE CODE
8 NOW.

9 YOU -- MR. HICKS WAS THE PERSON WHO
10 IDENTIFIED THE SIMILARITY IN SOURCE CODE, CORRECT? 12:38PM

11 THAT WAS NOT SOMETHING THAT WAS PART OF
12 YOUR CHARGE?

13 A. THAT'S CORRECT.

14 Q. AND HE IDENTIFIED -- YOU ARE FAMILIAR WITH
15 WHAT IT IS THAT HE DID IN THAT REGARD, CORRECT? 12:39PM

16 A. SOMEWHAT, YES.

17 Q. AND HE IDENTIFIED SIMILARITIES BETWEEN THREE
18 SQL DATA VIEWS, RIGHT?

19 A. YES.

20 Q. AND ONE INVOLVED IN-TEXT DATA, CORRECT? 12:39PM

21 A. CORRECT.

22 Q. AND THEN THE OTHER TWO INVOLVED HOLDINGS
23 VIEWS, RIGHT?

24 A. CORRECT.

25 Q. AND YOU ARE NOT OFFERING ANY OPINION THAT THE
26 SIMILARITIES IN THOSE LINES OF SOURCE CODE SOMEHOW
27 INVOLVED TRADE SECRETS, RIGHT? 12:39PM

28 A. NO, I'M NOT.

1 Q. AND WITH REGARD TO THE IN-TEXT VIEW, YOU WOULD
2 AGREE WITH ME THAT THERE ARE ONLY SO MANY WAYS THAT YOU
3 CAN TAKE IN-TEXT DATA OUT OF IN-TEXT, RIGHT?

4 A. THAT'S CORRECT.

5 Q. AND SO THEREFORE, CREATING A VIEW OF CERTAIN
6 IN-TEXT DATA IS NOT, IN AND OF ITSELF, A TRADE SECRET,
7 RIGHT?

12:39PM

8 MR. SURPRENANT: I'LL OBJECT, YOUR HONOR. BUT
9 THIS IS OUTSIDE THE SCOPE OF THEIR WITNESS' REPORT,
10 YOUR HONOR.

12:40PM

11 THE COURT: OVERRULED. GO AHEAD.

12 I THINK HE TESTIFIED ABOUT IN-TEXT DATA
13 AS IT WENT INTO THE SECURITY ANALYZER AND OTHER THINGS.

14 GO AHEAD.

15 CAN YOU ANSWER THAT QUESTION?

12:40PM

16 THE WITNESS: CAN YOU REPEAT THE QUESTION.

17 MR WEINGART: LET ME BACK UP.

18 Q. YOU WOULD AGREE THAT THERE'S ONLY SO MANY WAYS
19 THAT YOU CAN TAKE IN-TEXT DATA OUT OF IN-TEXT, RIGHT?

20 A. THAT'S CORRECT.

12:40PM

21 Q. SO CREATING A VIEW OF CERTAIN IN-TEXT DATA IN
22 AND OF ITSELF, ISN'T A TRADE SECRET, CORRECT?

23 A. RIGHT. BUT YOU DON'T TAKE A VIEW OF IN-TEXT
24 DATA.

25 WHAT YOU ARE TAKING IS LOAN PERFORMANCE
26 DATA, IN-TEXT DATA, AND A VARIETY OF INTERNAL DATABASES
27 AND AGGREGATING THEM ALL TOGETHER FOR A VIEW.

12:40PM

28 Q. WELL, WITH REGARD TO THE DATA COMING OUT OF

1 IN-TEXT, IN-TEXT IS A THIRD-PARTY DATA PROVIDER, RIGHT?

2 A. IT IS.

3 Q. AND IT PROVIDES VARIOUS CODE AND OTHER SORTS
4 OF THINGS TO ASSIST YOU IN GETTING INFORMATION OUT OF
5 THE PRODUCT ITSELF?

12:40PM

6 A. IN ORDER TO IMPORT IT INTO YOUR OWN DATABASE,
7 CORRECT.

8 Q. NOW, WITH REGARD TO THE HOLDINGS VIEW CODE,
9 YOU WOULD AGREE THAT IT'S BASIC, AND NOTHING
10 SOPHISTICATED?

12:41PM

11 A. I AM NOT AN EXPERT ON CODE, NOR DID I REVIEW
12 THAT SCOPE IN MY REPORT.

13 Q. WELL, YOU WERE ASKED ABOUT IT IN YOUR
14 DEPOSITION, WEREN'T YOU?

15 A. WHAT DOUBLELINE ACTUALLY HAD IN TERMS OF ITS
16 HOLDING VIEWPOINT?

12:41PM

17 Q. YOU WERE ASKED ABOUT THE DOUBLELINE CODE, AND
18 WHETHER OR NOT THAT PARTICULAR HOLDING VIEW WAS
19 SOMETHING BASIC, AND NOT SOPHISTICATED.

20 YOU WERE ASKED THAT, WEREN'T YOU?

12:41PM

21 MR. SURPRENANT: COULD WE HAVE PAGE AND LINE--
22 283, LINES 12 THROUGH 20.

23 THE COURT: OKAY.

24 WE'RE LOOKING AT THE DEPO OF WHAT PAGE
25 AGAIN?

12:41PM

26 MR WEINGART: 282 -- I'M SORRY. IT'S 283,
27 LINES 12 THROUGH 20.

28 THE COURT: ANY OBJECTION?

1 MR. SURPRENANT: YOUR HONOR, IF I COULD READ
2 IT, PLEASE.

3 NO OBJECTION, YOUR HONOR.

4 THE COURT: YOU MAY READ FROM THE DEPOSITION.

5 Q. BY MR. WEINGART: (READING):

12:42PM

6 "Q IN FACT, THE CODE EMBODIED
7 IN THIS EXHIBIT IS EXTREMELY BASIC;
8 NOTHING SOPHISTICATED, RIGHT?

9 "A FROM MY VERY BASIC NOTION OF
10 CODE, IT LOOKS LIKE THAT'S THE CASE.
11 YES."

12:42PM

12 YOU WOULD AGREE THAT THERE'S NO MORTGAGE
13 SECRET LOGIC IN THAT HOLDINGS VIEW CODE, CORRECT?

14 A. YES.

15 Q. AND IN FACT, THE TOP PART OF THE CODE IS BASIC
16 SQL PROGRAM FOR STARTING A ROUTINE, RIGHT?

12:43PM

17 A. IT APPEARS THAT WAY.

18 Q. AND THEN THERE ARE PARTICULAR FIELDS OF DATA
19 THAT IT PULLS --

20 AND COULD WE DISPLAY EXHIBIT 510-A-84,
21 WHICH IS IN EVIDENCE, YOUR HONOR.

12:43PM

22 MR. SURPRENANT: IS THIS IN THE BOOK?

23 MR WEINGART: 1510-A-84.

24 Q. NOW, YOU SEE LINE 14 THERE SAYS SELECT,
25 CORRECT?

12:44PM

26 A. YES.

27 Q. AND THEN THOSE ARE VARIOUS DATA FIELDS
28 FOLLOWING THAT, THAT ARE GOING TO BE PRESENTED IN THE

1 VIEW, CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND YOU WOULD ANTICIPATE THAT A VIEW OF
4 HOLDINGS WOULD HAVE FIELDS, SUCH AS THE AS OF DATE OF
5 REPORT, THE PORTFOLIO NAME, THE CUSIP, AND THE LIKE,
6 CORRECT?

12:44PM

7 A. ABSOLUTELY.

8 Q. OKAY. WE CAN TAKE THAT DOWN.

9 NOW, I THINK YOU TESTIFIED, YOU ARE NOT
10 A DAMAGES EXPERT, RIGHT?

12:44PM

11 A. THAT'S CORRECT.

12 Q. BUT YOU DID SOME ANALYSIS IN WHICH YOU ASSUMED
13 THAT MR. GUNDLACH WOULD STAY AT TCW FOR FIVE YEARS,
14 RIGHT?

15 A. I DID, YES.

12:44PM

16 Q. NOW, THAT WAS NOT HIS ONLY ALTERNATIVE FOR
17 FIVE YEARS OUT, CORRECT?

18 A. THAT'S CORRECT.

19 Q. IT'S A FREE COUNTRY, RIGHT?

20 A. I BELIEVE IT IS. I HOPE SO.

12:45PM

21 Q. YOU COULD -- HE COULD NEGOTIATE A DEPARTURE;
22 THAT WOULD BE ONE THING?

23 A. RIGHT.

24 Q. HE COULD DECIDE TO RETIRE?

25 A. ABSOLUTELY.

12:45PM

26 Q. HE COULD LEAVE FOR A COMPETITOR?

27 A. YES.

28 Q. OR TCW COULD GET RID OF HIM, RIGHT?

1 A. TERMINATE HIM.

2 Q. YES?

3 A. YES.

4 Q. BUT WITH ALL THAT, YOU THOUGHT THAT THE
5 REASONABLE ASSUMPTION WOULD BE THAT HE WOULD STICK
6 AROUND FOR FIVE YEARS, NO MATTER HOW UNHAPPY HE MAY
7 HAVE BEEN, OR HOW UNHAPPY TCW MAY HAVE BEEN, RIGHT?

12:45PM

8 A. CORRECT.

9 Q. I THINK YOU SAID THAT IN THE GENERALIZED, SORT
10 OF TYPICAL NEGOTIATED DEPARTURE WHICH YOU TALKED ABOUT,
11 THAT THE KEY WAS TRANSPARENCY; WAS THAT YOUR WORD?

12:45PM

12 A. YES, IT WAS.

13 Q. TRANSPARENCY RUNS BOTH WAYS, RIGHT?

14 A. TRANSPARENCY INVOLVES BOTH PARTIES, CORRECT,
15 YES.

12:46PM

16 Q. BOTH PARTIES NEED TO BE TRANSPARENT, CORRECT?

17 A. CORRECT.

18 BUT WHAT I WAS --

19 Q. I THINK YOU'VE ANSWERED THE QUESTION.

20 A. SORRY.

12:46PM

21 MR. WEINGART: NO FURTHER QUESTIONS, YOUR
22 HONOR.

23 THE COURT: ALL RIGHT.

24 MR. SURPRENANT?

25 MR. SURPRENANT: BRIEF FOLLOW-UP, YOUR HONOR.

12:46PM

26 //

27 //

28 //

1 REDIRECT EXAMINATION

2

3 BY MR. SURPRENANT:

4 Q. LET ME START WHERE MR. WEINBERG ENDED.

5 IN YOUR ANALYSIS, DID IT APPEAR THAT 12:46PM

6 MR. GUNDLACH WAS TRANSPARENT IN HIS PLANS?

7 A. NO, HE WASN'T.

8 Q. IS THAT A SYMMETRICAL -- THE SITUATION

9 MR. GUNDLACH WAS IN, WAS THAT THE SAME SITUATION TCW

10 WAS IN VIS-A-VIS MR. GUNDLACH? 12:46PM

11 A. NO, NOT SYMMETRICAL.

12 Q. COULD YOU PLEASE EXPLAIN?

13 MR. WEINGART: OBJECTION, YOUR HONOR.

14 WE'RE GETTING BEYOND THE GENERALIZED

15 INTO THE SPECIFIC NOW. 12:46PM

16 THE COURT: YOU OPENED THE DOOR.

17 OVERRULED.

18 THE WITNESS: IF YOU ARE THE DEPARTING

19 MANAGER, THE -- WHEN YOU WANT TO START IS WHEN YOU WANT

20 TO START YOUR DEPARTURE; SO IT'S AN OBLIGATION UPON THE 12:47PM

21 PERSON WHO'S LEAVING TO INSTIGATE THE NEGOTIATION FOR A

22 NEGOTIATED DEPARTURE.

23 AND MORE IMPORTANTLY, FROM TCW'S

24 PERSPECTIVE, THEY HAVE CLIENTS. THAT'S THE FRANCHISE.

25 AND IT'S VERY IMPORTANT THAT THEY PROTECT THAT 12:47PM

26 FRANCHISE AS MUCH AS POSSIBLE.

27 SO THE WAITING IS VERY DIFFERENT.

28 Q. BY MR. SURPRENANT: TURNING TO ANOTHER LINE OF

1 QUESTIONING ABOUT MR. GUNDLACH, WHETHER IT'S REASONABLE
2 TO ASSUME THAT HE WOULD HAVE STAYED FOR AN ADDITIONAL
3 FIVE YEARS, YOU MADE THAT OPINION IN THE CONTEXT OF A
4 BUT-FOR WORLD, WHERE MR. GUNDLACH WAS A FAITHFUL
5 FIDUCIARY, CORRECT?

12:47PM

6 A. THAT IS CORRECT.

7 Q. NOW, ARE YOU A COMPUTER SCIENTIST?

8 A. NO, I'M NOT.

9 Q. IS MR. HICKS A COMPUTER SCIENTIST?

10 A. I BELIEVE HE IS.

12:48PM

11 Q. WAS IT YOUR OPINION OR MR. HICKS'S OPINION
12 THAT DOUBLELINE CODE WAS DERIVED FROM THE TCW CODE?

13 A. THAT WAS MR. HICKS' OPINION.

14 Q. AND WAS IT YOUR OPINION OR MR. HICKS' OPINION
15 THAT THE SIMILARITIES HE FOUND WERE FINGERPRINTS, WHAT
16 YOU CALL?

12:48PM

17 A. MR. HICKS'S OPINION.

18 Q. NOW, YOU WERE ASKED ABOUT OAKTREE.

19 AND DID YOU CONSIDER THE ROLE OF
20 OAKTREE? WAS OAKTREE IN ANY WAY ON THE SCENE BEFORE
21 THE DEFENDANTS WERE CONFRONTED, ON DECEMBER 4TH, 2009?

12:48PM

22 A. NO, THEY WERE NOT.

23 ACTUALLY, MR. OWENS' TESTIMONY ON BEHALF
24 OF GOLDMAN SACHS, HE'S THERE.

25 MR. WEINGART: OBJECTION, YOUR HONOR.

12:48PM

26 THE COURT: SIR, IF YOU CAN JUST KIND OF FOCUS
27 ON THE QUESTIONS, AND JUST TRY AND ANSWER THE QUESTION,
28 INSTEAD OF JUST ANSWERING THE QUESTIONS.

1 THE WITNESS: I WAS TRYING TO.

2 THE COURT: THE ANSWER WAS NO; IS THAT RIGHT?

3 THE WITNESS: THE ANSWER IS NO, THEY WERE NOT.

4 Q. BY MR. SURPRENANT: COULD WE -- DID OAKTREE
5 PROVIDE ANY ANALYTICS? 12:49PM

6 A. NO, THEY DID NOT.

7 Q. TO DOUBLELINE?

8 A. DOUBLELINE.

9 Q. COULD WE SHOW 2247, SLIDE 15.

10 NOW, YOU WERE ASKED BY MR. WEINGART IF 12:49PM
11 YOU ANALYZED WHETHER THERE WERE SUBSTITUTES FOR THE
12 INTERNAL TCW DATABASES AND INFORMATION.

13 ARE THERE ANY SUBSTITUTES FOR ANY
14 INTERNAL COLLECTIONS OF DATA AND DATABASES?

15 A. NO, THERE ARE AREN'T. 12:49PM

16 Q. YOU WERE ASKED IF THE SPECIAL MORTGAGE CREDIT
17 FUNDS COULD TRANSFER TO DOUBLELINE WITHOUT TCW'S
18 AGREEMENT, BY MR. WEINGART.

19 DO YOU REMEMBER THAT?

20 A. YES, I DO. 12:49PM

21 Q. DID YOU SEE ANY EVIDENCE, IN YOUR ANALYSIS,
22 THAT IN ADDITION TO WAMCO, MR. GUNDLACH'S NEGOTIATIONS
23 IN JUNE OF 2009, WHEN BOTH PARTIES ASSUMED THAT 100
24 PERCENT OF THE SPECIAL MORTGAGE CREDIT FUNDS WOULD
25 FOLLOW MR. GUNDLACH TO WAMCO IF THAT DEAL HAPPENED? 12:50PM

26 A. YES, I DID.

27 Q. AND WHAT DID YOU SEE?

28 A. I SAW, WHEN THEY WERE LOOKING AT THE THREE

1 PARTS OF THE BUSINESS THAT GUNDLACH FELT HE COULD
2 SOLICIT IN TERMS OF TCW CLIENTS; ONE PART OF THAT WAS
3 THE THREE BILLION OF AUM ATTACHED TO THE STRUCTURED
4 MORTGAGE CREDIT FUNDS.

5 Q. AND COULD WE PULL UP 1899. I BELIEVE IT'S IN
6 EVIDENCE. 12:50PM

7 YEAH. COULD WE GO TO PAGE 8. IF YOU
8 CAN BLOW THAT UP.

9 I'M SORRY, PAGE 9.

10 LET'S GO TO PAGE 1. 12:51PM

11 IS THIS THE DOCUMENT, TRIAL EXHIBIT
12 1899, WHERE THE WAMCO/GUNDLACH DISCUSSIONS IN JUNE OF
13 2009 ASSUMED THAT ALL THE SPECIAL MORTGAGE CREDIT FUNDS
14 WOULD GO OVER?

15 MR. WEINGART: OBJECT, YOUR HONOR. THAT
16 MISSTATES THE TESTIMONY ABOUT THIS DOCUMENT. 12:51PM

17 THE COURT: SUSTAINED.

18 Q. BY MR. SURPRENANT: WAS THERE ANY DISCUSSION
19 IN THAT DOCUMENT ABOUT ANY PAYMENT TO TCW?

20 MR. WEINGART: OBJECTION. RELEVANCE. 12:51PM

21 THE COURT: I THINK IT GOES BEYOND THE SCOPE,
22 BUT --

23 MR. SURPRENANT: HE OPENED THE DOOR.

24 THE COURT: I'M GOING TO ALLOW IT, BUT I DON'T
25 WANT TO SPEND AN INORDINATE AMOUNT OF TIME ON IT,
26 MR. SURPRENANT. 12:51PM

27 THE WITNESS: THERE WAS NO PAYMENT TO EITHER
28 SOC-JEN OR TCW IN THIS DOCUMENT.

1 Q. BY MR. SURPRENANT: OKAY. YOU WERE ASKED SOME
2 QUESTIONS ABOUT TRADE TICKETS AND GIPS PORTABILITY.

3 IN EVERY INSTANCE, YOU HAVE ACTUALLY
4 EXPERIENCED THE ISSUE, THE AUDITORS ASKED FOR THE TRADE
5 TICKETS, CORRECT?

12:52PM

6 A. THAT IS CORRECT.

7 Q. DID YOU, IN YOUR ANALYSIS, IDENTIFY ANY
8 EVIDENCE THAT MR. GUNDLACH, OR ANYBODY ELSE FROM THE
9 DEFENDANTS, EVER OFFERED TO PAY 10 PERCENT OR ANY
10 AMOUNT FOR THE TRADE SECRETS THEY TOOK?

12:52PM

11 A. PART OF THE ABLE GRAPE PROJECTION WAS 10
12 PERCENT; BUT OTHER THAN THAT, I HAVEN'T SEEN ANYTHING.

13 MR. SURPRENANT: AND ONE LAST LINE OF
14 EXAMINATION. IT WILL BE VERY BRIEF, YOUR HONOR.

15 IF YOU WOULD PUT UP 948.

12:53PM

16 MR. WEINGART EXAMINED THIS DOCUMENT.

17 WOULD YOU GO TO SLIDE 4?

18 Q. NOW, MR. WEINGART ASKED YOU IF THIS WAS A TCW
19 TRADE SECRET, CORRECT?

20 A. THAT'S CORRECT.

12:53PM

21 Q. DOES THIS DOCUMENT DESCRIBE THE PROPRIETARY
22 ANALYTICS THAT YOU HAVE IDENTIFIED AS TRADE SECRET?

23 A. THAT'S CORRECT.

24 THIS DOCUMENT, IN AND OF ITSELF, IS NOT
25 A TRADE SECRET, BUT REFLECTS THE MANIFESTATION OF TRADE
26 SECRETS, IN TERMS OF BEING ABLE TO SUMMARIZE THIS AND
27 DESCRIBE THEM.

12:53PM

28 MR. SURPRENANT: NO FURTHER QUESTIONS, YOUR

1 HONOR.

2 THE COURT: ALL RIGHT.

3 MR. WEINGART, ANYTHING FURTHER?

4 MR. WEINGART: NO, YOUR HONOR.

5 THE COURT: MR. SMITH, THANK YOU FOR YOUR
6 TESTIMONY.

12:53PM

7 YOU MAY BE EXCUSED. YOU MAY STEP DOWN.

8 MR. QUINN: AFTERNOON, YOUR HONOR.

9 THE COURT: GOOD AFTERNOON, MR. QUINN.

10 AFTERNOON, LADIES AND GENTLEMEN.

12:54PM

11 MR. QUINN: YOUR HONOR, TRUST COMPANY CALLS AS
12 ITS NEXT WITNESS, MARC STERN.

13 THE COURT: THANK YOU, MR. QUINN.

14

15 MARC STERN,
16 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
17 TESTIFIED AS FOLLOWS:

18

19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO BE
20 SWORN.

21 YOU DO SOLEMNLY STATE THAT THE TESTIMONY
22 YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE
23 THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH AND
24 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

25 THE WITNESS: I DO.

26 THE CLERK: THANK YOU.

27 PLEASE BE SEATED.

28 PLEASE STATE AND SPELL YOUR FULL NAME

1 FOR THE RECORD.

2 THE WITNESS: MARC, M-A-R-C, STERN, S-T-E-R-N.

3 THE CLERK: THANK YOU.

4 THE COURT: GOOD MORNING, MR. STERN.

5 THE WITNESS: GOOD MORNING.

12:54PM

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

7 WELL, WE'LL GET YOUR BOOKS OUT HERE AND
8 START.

9

10 DIRECT EXAMINATION

12:54PM

11

12 BY MR. QUINN:

13 Q. NOW, MR. STERN, DID YOU GROW UP ON A FARM,
14 TOO?

15 A. I DID.

12:55PM

16 Q. SEEMS TO BE A REQUIREMENT IN THIS CASE.

17 A. I DID.

18 Q. WHERE WAS THE FARM YOU GREW UP ON?

19 A. SOUTHERN NEW JERSEY.

20 Q. WHAT DID YOU GROW THERE?

12:55PM

21 A. VEGETABLES; LETTUCE, CABBAGE, BEETS, BROCCOLI,
22 SQUASH, THAT TYPE OF STUFF.

23 Q. WE MAY GET BACK TO THAT, OR MAY NOT.

24 BUT FIRST, LET ME ASK YOU SOME BASIC
25 QUESTIONS.

12:55PM

26 ARE YOU THE ONE WHO MADE THE DECISION TO
27 TERMINATE THE EMPLOYMENT OF JEFFREY GUNDLACH AT TCW?

28 A. YES, I AM.

1 I NEEDED TO GET THE CONSENT --

2 MR. BRIAN: OBJECTION. MOVE TO STRIKE
3 ANYTHING BEYOND YES.

4 THE COURT: MR. STERN, I TELL THIS TO
5 EVERYBODY. JUST KIND OF ANSWER THE QUESTION. YOU WILL
6 GET A CHANCE TO EXPLAIN THINGS, IF IT IS SOMETHING THAT
7 NEEDS AN EXPLANATION. 12:55PM

8 BUT IF IT'S A YES OR NO ANSWER, SAY YES
9 OR NO, YOU MOVE ON.

10 THE WITNESS: THANK YOU, YOUR HONOR. 12:56PM

11 YES.

12 Q. BY MR. QUINN: AND TO DO THAT, DID YOU NEED TO
13 GET ANYBODY'S CONSENT?

14 A. YES.

15 Q. AND WHOSE CONSENT WAS REQUIRED? 12:56PM

16 A. I NEEDED TO GET THE CONSENT OF THE BOARD AND
17 THE SHAREHOLDERS.

18 Q. BUT YOU WERE THE PERSON WHO WAS THE ONE WHO
19 ADVANCED THIS IDEA?

20 A. YES. 12:56PM

21 Q. WHY DID YOU TERMINATE MR. GUNDLACH'S
22 EMPLOYMENT?

23 A. BECAUSE I THOUGHT OUR COMPANY WAS THREATENED
24 AND THAT WE WERE IN THE PROCESS OF BEING DESTROYED.

25 Q. NOW, WHY DID YOU BELIEVE THAT? 12:56PM

26 A. BECAUSE THE LARGEST PORTFOLIO MANAGER,
27 REPRESENTING ABOUT 60 PERCENT OF THE ASSETS UNDER
28 MANAGEMENT, WAS ENGAGED IN A SECRET PLOT TO TAKE OUR

1 CLIENTS, OUR EMPLOYEES, AND SET UP A COMPETING
2 BUSINESS.

3 Q. YOU MIGHT WANT -- I THINK YOU ARE THE FIRST
4 WITNESS WHO MIGHT HAVE GOTTEN TOO CLOSE TO THE
5 MICROPHONE.

12:56PM

6 SO WOULD YOU MIND GETTING BACK JUST A
7 LITTLE BIT?

8 A. YES, SIR.

9 Q. DID SAVING COSTS OR SAVING FEES OR CAPTURING
10 FEES HAVE ANYTHING TO DO WITH THE REASON THAT YOU WERE
11 IN FAVOR OF TERMINATING MR. GUNDLACH'S EMPLOYMENT?

12:57PM

12 A. NO.

13 Q. WHY NOT?

14 A. BECAUSE FRANKLY, THE MORE MONEY MR. GUNDLACH
15 MADE, THE MORE MONEY TCW MADE.

12:57PM

16 Q. THE JURY HAS HEARD THAT YOU RETURNED TO TCW AS
17 CEO IN JUNE OF 2009; IS THAT CORRECT?

18 A. ACTUALLY, THE PRECISE DATE IS JULY 1ST, 2009.

19 Q. JULY 1ST? THAT WAS THE DATE WHEN YOU
20 OFFICIALLY STARTED AGAIN?

12:57PM

21 A. YES.

22 Q. AND DURING THAT SUMMER, JULY AND AUGUST, AND
23 EVEN IN JUNE -- I THINK IN JUNE, DID YOU HAVE SOME
24 INVOLVEMENT WITH THE COMPANY BEFORE YOUR OFFICIAL START
25 DATE?

12:58PM

26 A. YES.

27 Q. SO DURING THAT PERIOD OF JUNE, JULY, AND
28 AUGUST, WAS SOME CONSIDERATION GIVEN TO THE IDEA, EVEN

1 THEN, OF TERMINATING MR. GUNDLACH'S EMPLOYMENT?

2 A. YES.

3 Q. IS THAT SOMETHING THAT CAME UP IN DISCUSSIONS
4 THAT YOU HAD WITH OTHER MEMBERS OF SENIOR MANAGEMENT AT
5 TCW?

12:58PM

6 A. YES.

7 Q. DID THAT HAPPEN ONCE, OR MORE THAN ONCE?

8 A. MULTIPLE OCCASIONS.

9 Q. DID YOU RECEIVE RECOMMENDATIONS FROM PEOPLE ON
10 THAT SUBJECT?

12:58PM

11 A. YES.

12 Q. DID YOU RECEIVE RECOMMENDATIONS DURING THAT
13 SUMMER THAT MR. GUNDLACH BE TERMINATED?

14 A. YES.

15 Q. AND PRIOR --

12:58PM

16 MR. BRIAN: FOUNDATION, PLEASE.

17 MR. QUINN: I'M SORRY?

18 MR. BRIAN: FOUNDATION, YOUR HONOR.

19 THE COURT: WE'VE GOT AN ANSWER.

20 LET'S GET ANOTHER QUESTION, AND WE'LL
21 SEE WHERE WE ARE.

12:58PM

22 MR. BRIAN: I WAS LATE, SORRY.

23 Q. BY MR. QUINN: DURING THAT SUMMER, JUNE, JULY,
24 AUGUST, WHAT WAS YOUR STATE OF MIND AS TO WHETHER OR
25 NOT MR. GUNDLACH'S EMPLOYMENT SHOULD BE TERMINATED?

12:59PM

26 A. I DID NOT WANT TO TERMINATE MR. GUNDLACH'S
27 EMPLOYMENT.

28 Q. WHY?

1 A. BECAUSE HE WAS THE MOST IMPORTANT PORTFOLIO
2 MANAGER IN THE COMPANY. HE BROUGHT A LOT OF REVENUE TO
3 THE COMPANY, AND WAS A TALENTED ASSET MANAGER.

4 Q. LET ME NOW JUST TALK A LITTLE BIT ABOUT THE
5 BACKGROUND TO YOUR EMPLOYMENT AT TCW.

12:59PM

6 WHEN DID YOU FIRST JOIN TCW?

7 A. I JOINED TCW IN LATE -- THE LATE '80S.

8 Q. AND WHAT POSITION DID YOU HOLD WHEN YOU FIRST
9 JOINED TCW?

10 A. I CAME IN AS A CONSULTANT.

12:59PM

11 Q. AND AFTER THAT, DID YOU ASSUME SOME POSITION,
12 SOME TITLE IN THE COMPANY?

13 A. YES. I BECAME PRESIDENT OF TCW.

14 Q. AND WHEN WAS IT THAT YOU BECAME PRESIDENT OF
15 TCW?

12:59PM

16 A. AROUND 1990.

17 Q. AND HOW IS IT THAT YOU HAPPENED TO START
18 WORKING AT TCW IN THE FIRST PLACE?

19 A. I KNEW ROBERT DAY, THE CHAIRMAN AND FOUNDER,
20 AND WAS WORKING ON MY OWN INVESTMENTS, DOING THINGS BY
21 MYSELF. AND HE ACTUALLY SUGGESTED THAT I TAKE AN
22 OFFICE AT TCW WHILE I DID THAT, WHICH DID I.

01:00PM

23 Q. ALL RIGHT. SO YOU HAD A SPACE, AN OFFICE TO
24 YOURSELF AT TCW FOR A WHILE?

25 A. YES.

01:00PM

26 Q. AND AT SOME POINT, YOU BECAME AN EMPLOYEE?

27 A. YES.

28 Q. AND AN OFFICER?

1 A. YES.

2 Q. AND DID SOMEBODY ASK YOU TO DO THAT, OR HOW
3 DID THAT HAPPEN?

4 A. YES. MR. DAY ASKED ME IF I WOULD LIKE TO
5 BECOME PRESIDENT OF TCW.

01:00PM

6 Q. AND THE JURY HAS HEARD THAT YOU -- DURING
7 YOUR -- IN THIS FIRST STINT, YOU WERE AT TCW FROM ABOUT
8 1990 UNTIL WHAT YEAR?

9 A. TILL 2005.

10 Q. AND WERE YOU PRESIDENT OF TCW THAT WHOLE
11 PERIOD OF TIME, AFTER YOUR CONSULTING PERIOD ENDED?

01:00PM

12 A. YES.

13 Q. AND DURING THAT PERIOD, THOSE YEARS, 1990 TO
14 2005, DID YOU KNOW MR. GUNDLACH?

15 A. I DID.

01:01PM

16 Q. ALL RIGHT.

17 DID YOU ACTUALLY -- DID YOU OFFICE NEAR
18 HIM?

19 A. WHEN I FIRST CAME IN AS A CONSULTANT,
20 IRONICALLY, MY OFFICE WAS BETWEEN MR. GUNDLACH'S OFFICE
21 AND MR. BARACH'S OFFICE.

01:01PM

22 Q. BETWEEN THE TWO OF THEM?

23 A. YES.

24 Q. WHAT WAS YOUR IMPRESSION OF MR. GUNDLACH
25 DURING THAT PERIOD OF TIME?

01:01PM

26 MR. BRIAN: OBJECTION. RELEVANCE, 352.

27 THE COURT: I'LL GIVE YOU SOME LEEWAY, BUT --
28 GO AHEAD.

1 THE WITNESS: I'M SORRY. COULD YOU ASK THE
2 QUESTION AGAIN.

3 Q. BY MR. QUINN: YOUR IMPRESSION OF
4 MR. GUNDLACH?

5 A. I THOUGHT HE WAS A TALENTED ASSET MANAGER. 01:01PM
6 HE WAS A BIT QUIRKY, AND A BIT FULL OF
7 HIMSELF, BUT TALENTED.

8 AND I THOUGHT I HAD A VERY GOOD
9 RELATIONSHIP WITH HIM.

10 Q. DURING THAT PERIOD OF TIME, DID YOU HAVE ANY 01:01PM
11 INVOLVEMENT IN THE ADVANCEMENT OF MR. GUNDLACH'S
12 CAREER?

13 A. YES.

14 Q. WHAT INVOLVEMENT DID YOU HAVE?

15 A. WELL, DURING THE TIME THAT I WAS PRESIDENT, 01:01PM
16 MR. GUNDLACH WAS PROMOTED TO GROUP MANAGING DIRECTOR.
17 HE BECAME PRESIDENT OF TAMCO, OUR LARGEST SUBSIDIARY.

18 ACTUALLY, HE SUCCEEDED ME AS PRESIDENT
19 OF TAMCO. AND HE JOINED THE BOARD OF DIRECTORS OF
20 TRUST COMPANY OF THE WEST, TAMCO, AND THE PARENT 01:02PM
21 COMPANY, THE TCW GROUP.

22 Q. AND WHAT WAS YOUR PERSONAL INVOLVEMENT IN
23 THOSE STEPS IN MR. GUNDLACH'S CAREER?

24 A. IN EACH INSTANCE, I INITIATED AND SUPPORTED
25 HIS ADVANCEMENT. 01:02PM

26 Q. DID YOU BELIEVE THAT YOU HAD A GOOD WORKING
27 RELATIONSHIP WITH MR. GUNDLACH DURING THAT PERIOD?

28 A. I DID.

1 Q. WOULD YOU TAKE A LOOK, PLEASE, AT EXHIBIT
2 1098.

3 WHICH I BELIEVE IS IN EVIDENCE, YOUR
4 HONOR?

5 THE COURT: SOMETIMES IT'S EASIER IF YOU JUST
6 LOOK AT THE SCREEN. THEY GET IT UP HERE AND BLOW IT UP
7 FOR US. AND EVEN WITH OUR GLASSES, WE CAN SEE IT.

01:02PM

8 BUT IF YOU NEED TO GO TO THE BOOK, YOU
9 CAN.

10 THE WITNESS: THIS IS EASIER.

01:03PM

11 Q. BY MR. QUINN: SO CAN YOU SEE IT THERE, SIR?

12 A. YES.

13 Q. IS THIS AN E-MAIL WHICH YOU WROTE TO
14 MR. GUNDLACH, CONGRATULATING HIM ON RECEIVING THE FIXED
15 INCOME MANAGER OF THE YEAR AWARD IN 2007?

01:03PM

16 A. YES.

17 Q. AND YOU SAY -- YOU CONGRATULATE HIM, AND YOU
18 SAY (READING):

19 IT'S INCREDIBLY WELL DESERVED.

20 COMES AT A GREAT TIME FOR YOU AND
21 THE FIRM. WATCHING YOUR CAREER AT
22 TCW HAS BEEN A TRUE PLEASURE FOR
23 ME. BEST WISHES TO YOU AND YOUR
24 FAMILY FOR A HAPPY, HEALTHY AND
25 PROSPEROUS 2007.

01:03PM

26 NOW, WHEN YOU WROTE THAT TO
27 MR. GUNDLACH, WERE YOU BEING SINCERE?

28 A. YES.

01:03PM

1 Q. AND WAS THIS -- AND HE RESPONDS THAT HE
2 THOUGHT, OF ALL THE CONGRATULATIONS I GOT, I THOUGHT
3 YOURS IS THE MOST MEANINGFUL.

4 IS THIS CONSISTENT WITH THE
5 COMMUNICATION, CONSISTENT WITH THE NATURE OF THE
6 RELATIONSHIP YOU HAD WITH HIM?

01:03PM

7 A. I HAD A GOOD RELATIONSHIP WITH HIM.

8 I WAS ACTUALLY SURPRISED THAT IT WAS THE
9 MOST MEANINGFUL. I DIDN'T REALIZE THE DEPTHS OF HIS
10 FEELING ABOUT ME. SO I WAS A LITTLE BIT -- I'M
11 SURPRISED, BUT VERY, VERY HAPPY TO GET IT.

01:04PM

12 Q. AND THEN YOU'VE TOLD US THAT YOU LEFT TCW IN
13 2005?

14 A. YES.

15 Q. AND WHY DID YOU LEAVE AT THAT TIME?

01:04PM

16 A. THE PRINCIPAL REASON WAS THAT I HAD BROUGHT IN
17 AND NOURISHED TWO YOUNGER MANAGERS, BOB BEYER AND BILL
18 SONNEBORN. AND IT WAS TIME FOR ME AND MR. DAY TO ALLOW
19 THEM TO TAKE THE REALM -- THE HEAD OF THE FIRM.

20 AND I WAS CONCERNED THAT IF WE DIDN'T,
21 THAT THEY MIGHT -- ONE OR THE OTHER OF THEM MIGHT
22 LEAVE; SO I DECIDED, ALONG WITH MR. DAY, TO CHANGE MY
23 ROLE.

01:04PM

24 Q. WAS THIS PART OF A GENERATIONAL CHANGE THING?

25 A. YES.

01:05PM

26 Q. AND WAS IT YOUR IDEA?

27 A. YES, IT WAS.

28 Q. YOU WERE IN FAVOR OF IT?

1 A. YES.

2 Q. AND HOW OLD WERE YOU IN 2005?

3 A. I THINK I WAS 61.

4 Q. AND DID YOU -- WHAT DID YOU DO AFTER THAT?

5 YOU LEFT -- DID YOU JUST RETIRE AND GO
6 OUT AND START WATERING THE ROSES, OR WHAT DID YOU DO?

01:05PM

7 A. NO. THE FRENCH SHAREHOLDERS ASKED ME TO HELP
8 THEM WITH THEIR ACTIVITIES IN NORTH AMERICA. THEY HAD
9 A NUMBER OF ACTIVITIES IN THE FINANCIAL SERVICES AREA.
10 SO I CONSULTED WITH THEM ON ALL OF THOSE ACTIVITIES.

01:05PM

11 Q. WERE THESE ACTIVITIES OTHER THAN TCW?

12 A. WELL, THEY INCLUDED TCW, BUT THEY WERE IN
13 OTHER AREAS, ALSO.

14 Q. BUT DID YOU STOP BEING AN OFFICER AND EMPLOYEE
15 OF TCW?

01:05PM

16 A. I CONTINUED AS VICE CHAIRMAN OF TCW, AND
17 CONTINUED AS A DIRECTOR.

18 Q. ALL RIGHT. BUT DID YOU HAVE ANY DAY-TO-DAY
19 INVOLVEMENT WITH TCW AT TCW AFTER 2005?

20 A. NO DAY-TO-DAY INVOLVEMENT.

01:06PM

21 Q. AND THESE OTHER ACTIVITIES THAT YOU WERE
22 CONSULTING ON FOR THE FRENCH BANK, JUST GENERALLY, CAN
23 YOU GIVE US SOME IDEA OF WHAT THEY WERE?

24 A. WELL, THEY WERE INTERESTED IN MOVING INTO
25 PRIVATE BANKING IN THE U.S., AND I HELPED THEM WITH A
26 PLAN TO DO THAT.

01:06PM

27 THEY HAD A COMMERCIAL AND INVESTMENT
28 BANK IN THE U.S. I ADVISED THEM ON THAT.

1 AND THEY ALSO WERE INVOLVED IN THE
2 SECURITIES SERVICES AREA, AND I -- THEY WANTED TO
3 EXPAND IN NORTH AMERICA. AND I HELPED THEM IN THAT
4 AREA, ALSO.

5 Q. SO THIS CONSULTING THAT YOU WERE DOING FOR THE
6 FRENCH BANK, AFTER 2005, WAS THAT A FULL-TIME JOB?

01:06PM

7 A. IT TOOK AROUND 60, 65 PERCENT OF MY TIME.

8 Q. AND WHAT WERE YOU SPENDING THE REST OF YOUR
9 TIME DOING?

10 A. WELL, I SPENT SOME OF MY TIME ON MY OWN
11 PERSONAL INVESTMENTS, BUT MOST OF IT IN COMMUNITY AREAS
12 OF PHILANTHROPY, ET CETERA.

01:07PM

13 Q. ARE THERE ANY PARTICULAR COMMUNITY PROJECTS
14 THAT YOU WERE INVOLVED IN IN THAT TIME PERIOD?

15 A. YES. FROM THE EDUCATION POINT OF VIEW, MY
16 WIFE AND I WERE INTERESTED IN CHARTER SCHOOLS, AND WE
17 SORT OF ADOPTED A CHARTER SCHOOL ON THE CAMPUS OF CAL
18 STATE LOS ANGELES. I SERVED ON THE BOARD --

01:07PM

19 Q. IS YOUR WIFE EVA HERE?

20 A. SHE IS.

01:07PM

21 Q. SHE'S SITTING BACK THERE?

22 A. BACK THERE.

23 Q. YOU'VE BEEN MARRIED HOW MANY YEARS?

24 A. BEEN MARRIED FOR 45 YEARS.

25 Q. AND THE TWO OF YOU MET AT WHAT AGE?

01:07PM

26 A. I WAS 13, AND SHE WAS 12.

27 Q. WERE HER FAMILY -- WAS HER FAMILY FARMERS IN
28 NEW JERSEY, TOO?

1 A. YES. THEY WERE CHICKEN FARMERS.

2 Q. ALL RIGHT. SO YOU INDICATED IN THIS PERIOD,
3 YOU WERE INVOLVED IN THIS CHARTER SCHOOL.

4 ANYTHING ELSE THAT YOU WERE DOING IN
5 THIS TIME PERIOD?

01:08PM

6 A. YES. I WAS VERY HEAVILY INVOLVED IN MUSIC, ON
7 THE BOARD OF THE MUSIC CENTER, AND CHAIR OF THE OPERA.

8 AND ALSO, WE WERE INVOLVED IN A NUMBER
9 OF ACTIVITIES FOR UNDERPRIVILEGED YOUTH. THE PRINCIPAL
10 ONE WAS A WRITING PROGRAM IN THE JUVENILE HALL AREA, IN
11 JUVENILE HALL, FOR THE CHILDREN THAT WERE INCARCERATED
12 THERE.

01:08PM

13 Q. SO, DURING THAT TIME PERIOD, WERE YOU -- AFTER
14 2005, WERE YOU KIND OF -- WERE YOU HAPPY WITH THE MIX
15 OF ACTIVITIES THAT YOU HAD IN YOUR LIFE?

01:08PM

16 A. I WAS DELIGHTED.

17 Q. THEN WHAT HAPPENED?

18 A. WELL, IN MAY OF 2009, I WAS APPROACHED AND
19 ASKED TO RETURN TO TCW.

20 Q. WHAT HAD HAPPENED TO PROMPT THAT?

01:09PM

21 A. WELL, BOB BEYER, MY PREDECESSOR, AND ACTUALLY
22 IN A SENSE, SUCCESSOR, DECIDED THAT HE DIDN'T WANT TO
23 RENEW HIS CONTRACT, THAT HE WANTED TO RESIGN.

24 AND I WAS ASKED TO BECOME CEO.

25 Q. WHO ASKED YOU?

01:09PM

26 A. JEAN-PIERRE MUSTIER, WHO WAS THE
27 REPRESENTATIVE OF THE -- OF THE FRENCH SHAREHOLDER.

28 Q. WHAT WAS YOUR -- WHEN YOU GOT THIS REQUEST,

1 WHAT WAS YOUR REACTION TO IT?

2 A. I WAS VERY AMBIVALENT.

3 I WAS ENJOYING WHAT I WAS DOING, AND
4 REALLY DIDN'T NEED THE JOB. AND I WAS QUITE AMBIVALENT
5 ABOUT IT.

01:09PM

6 Q. HAD YOU BEEN ENJOYING SPENDING TIME WITH YOUR
7 FAMILY; THE KIDS, THE GRAND KIDS?

8 MR. BRIAN: OBJECTION. ASKED AND ANSWERED,
9 YOUR HONOR.

10 THE COURT: I'LL ALLOW IT.

01:09PM

11 THE WITNESS: YES.

12 Q. BY MR. QUINN: AND BY THE WAY, YOU AND EVA
13 HAVE TWO CHILDREN?

14 A. YES.

15 Q. AND ARE THEY HERE, AS WELL?

01:10PM

16 A. YES.

17 THE COURT: MR. QUINN, LET'S JUST MOVE ALONG.

18 MR. QUINN: ALL RIGHT. THAT'S THE LAST
19 INTRODUCTION, YOUR HONOR. WE WON'T SEE THE GRAND KIDS.

20 THE COURT: OKAY.

01:10PM

21 MR. BRIAN: I'M GOING TO BRING MY KIDS ON
22 TUESDAY, YOUR HONOR.

23 MR. QUINN: I'VE GOT GRAND KIDS.

24 THE COURT: I'M NOT, MR. QUINN'S NOT, AND
25 MR. BRIAN ARE NOT FROM THE FARMS. SO WE'VE GOT A
26 DIFFERENT APPROACH.

01:10PM

27 GO AHEAD.

28 Q. BY MR. QUINN: SO WHEN YOU SAY YOU WERE

1 AMBIVALENT, THAT MEANS?

2 A. WELL, I -- I WAS JUST TRYING TO WEIGH WHETHER
3 I WANTED TO DO IT, WHETHER I FELT THAT I SHOULD DO IT.
4 JUST UNCERTAIN AS TO WHETHER IT WAS THE RIGHT THING FOR
5 ME TO DO.

01:10PM

6 Q. AND HOW LONG DID YOU SPEND MAKING UP YOUR
7 MIND?

8 A. A COUPLE OF DAYS.

9 Q. DID YOU TALK TO PEOPLE ABOUT IT?

10 A. I DID.

01:11PM

11 Q. WHO DID YOU TALK TO ABOUT THIS DECISION?

12 A. WELL, I TALKED TO MY FAMILY ABOUT IT. I
13 TALKED TO MR. BEYER ABOUT IT. I TALKED TO ROBERT DAY,
14 OUR FOUNDER, ABOUT IT.

15 AND I SPENT SOME TIME TALKING TO
16 MR. MUSTIER ABOUT IT.

01:11PM

17 Q. AND WHY DID YOU DECIDE TO COME BACK,
18 NOTWITHSTANDING THE LIFE YOU WERE LIVING AND ENJOYING?

19 A. WELL, THEY SORT OF CONVINCED ME, MR. DAY,
20 MR. MUSTIER, THAT THEY NEEDED ME, THAT THE COMPANY
21 NEEDED ME, THAT I WAS THE LOGICAL CHOICE.

01:11PM

22 AND TCW HAD BEEN VERY GOOD TO ME, AND WE
23 HAD 600 FAMILIES AND EMPLOYEES THERE. AND I THOUGHT
24 THAT THAT WAS SOMETHING THAT I PROBABLY SHOULD DO.

25 Q. NOW, HAD YOU BEEN COMPLETELY OUT OF THE LOOP
26 ON THINGS THAT WERE GOING ON AT TCW?

01:11PM

27 A. NO.

28 Q. HOW HAD YOU STILL KIND OF BEEN AWARE OF WHAT

1 WAS GOING ON THERE AT THE COMPANY?

2 A. WELL, I ACTUALLY KEPT THE SAME OFFICE THAT I
3 HAD AT TCW. AND THE PEOPLE NEXT TO ME WERE MR. BEYER
4 AND MR. SONNEBORN; AND WE INTERFACED ON A REGULAR
5 BASIS.

01:12PM

6 Q. SO YOU HAVE TOLD US THAT YOUR OFFICIAL START
7 DATE WAS THE 1ST OF JULY?

8 A. YES.

9 Q. AND WHEN WAS IT THAT YOU WERE CONTACTED BY
10 MR. MUSTIER AND ASKED IF YOU WOULD COME BACK AS CEO?

01:12PM

11 A. I'D SAY, LATE MAY.

12 IT WASN'T WITHIN A LOT OF TIME.

13 Q. DID YOU DO ANYTHING TO REACH OUT TO PEOPLE AT
14 TCW, MEMBERS OF MANAGEMENT, PORTFOLIO MANAGERS, BEFORE
15 THE ANNOUNCEMENT THAT YOU WERE COMING BACK?

01:12PM

16 A. YES.

17 Q. AND WHAT DID YOU DO?

18 A. I MET WITH A NUMBER OF THEM, CALLED SOME OF
19 THEM, ET CETERA.

20 Q. WHO WAS THE FIRST ONE, THE FIRST PORTFOLIO
21 MANAGER THAT YOU REACHED OUT TO AND SPOKE TO?

01:13PM

22 A. JEFFREY GUNDLACH.

23 Q. AND WHAT DID YOU DO TO SPEAK WITH HIM, OR TO
24 REACH OUT TO HIM?

25 A. I CALLED HIM AND ASKED HIM IF HE COULD MEET
26 WITH ROBERT DAY AND ME AT ROBERT DAY'S HOME.

01:13PM

27 Q. AND CAN YOU RECALL -- DID THAT MEETING HAPPEN?

28 A. YES.

1 Q. AND APPROXIMATELY WHEN DID THAT MEETING
2 HAPPEN?

3 A. 26TH, 27TH, 28TH OF MAY, SOMEWHERE IN THAT
4 AREA.

5 Q. AND WHY WAS HE THE FIRST ONE?
6 WAS THAT DELIBERATE?

01:13PM

7 A. YES.

8 Q. WHY? WHY DID DO YOU THAT?

9 A. WELL, HE WAS THE MOST IMPORTANT PORTFOLIO
10 MANAGER, AS I SAID BEFORE, IN THE FIRM, MANAGING OVER
11 60 PERCENT OF OUR ASSETS.

01:13PM

12 Q. DO YOU KNOW WHETHER AT THAT TIME, HE WAS THE
13 HIGHEST PAID EMPLOYEE OF TCW?

14 A. I DO.

15 Q. AND WAS HE?

01:14PM

16 A. YES.

17 Q. AND CAN YOU TELL US HOW HIS COMPENSATION AT
18 THAT TIME COMPARED TO THE SECOND HIGHEST PAID?

19 A. IT WAS DOUBLE.

20 Q. WHILE YOU WERE THERE -- WAS HE ALWAYS MAKING
21 MORE MONEY THAN YOU WERE?

01:14PM

22 A. YES.

23 Q. DOES THAT BOTHER YOU?

24 A. NOT AT ALL.

25 Q. OKAY. SO YOU HAD THE MEETING AT MR. DAY'S
26 HOUSE.

01:14PM

27 WHAT HAPPENED IN THAT MEETING?

28 A. WELL, WE TOLD MR. GUNDLACH THAT I WAS

1 RETURNING -- NOT RETURNING, SORRY -- THAT I WAS COMING
2 BACK AS CEO, AND THAT ROBERT DAY WOULD SPEND SOMEWHAT
3 MORE TIME WITH THE COMPANY.

4 AND THAT MR. BEYER -- OBVIOUSLY, WE TOLD
5 HIM FIRST. SORRY. I GOT THE SEQUENCING -- MR. BEYER
6 HAD DECIDED TO RESIGN, RETIRE, AND THEN THAT I WAS
7 COMING BACK AS CEO, AND MR. DAY WOULD SPEND SOME MORE
8 TIME THAN HE HAD BEEN.

9 Q. WHAT WAS MR. GUNDLACH'S REACTION TO THIS NEWS?

01:14PM

10 A. WELL, THE FIRST REACTION WAS, SOUNDS LIKE BACK
11 TO THE FUTURE, TO ME.

01:15PM

12 BUT HE POINTED OUT THAT HE THOUGHT THAT
13 THIS WAS OBVIOUSLY IN CONTRAVENTION OF THE GENERATIONAL
14 SHIFT, AND THAT HE DIDN'T THINK IT WAS A GREAT IDEA.

15 Q. AND YOUR RESPONSE TO THAT WAS?

01:15PM

16 A. I'VE BEEN ASKED TO DO IT. I DON'T
17 PARTICULARLY WANT TO DO IT, BUT I'M GOING TO DO IT.

18 Q. AND WAS THERE -- DID YOU OFFER HIM ANYTHING,
19 AT THAT TIME?

20 A. YES.

01:15PM

21 I SAID, JEFFREY, ROBERT AND I WOULD LIKE
22 YOU TO JOIN WITH US. WE'D LIKE YOU TO BE PRESIDENT OF
23 TCW.

24 Q. YOU OFFERED HIM THE PRESIDENCY?

25 A. YES.

01:16PM

26 Q. AND DID HE MAKE A RESPONSE?

27 A. HE SAID HE DIDN'T THINK THAT MADE SENSE,
28 SOMETHING LIKE THAT.

1 Q. SO HE TURNED IT DOWN?

2 A. HE TURNED IT DOWN.

3 NOT IN A NEGATIVE WAY. HE WAS
4 RESPECTFUL; BUT HE TURNED IT DOWN.

5 Q. DID YOU REACH OUT TO -- AROUND THE SAME TIME,
6 DID YOU REACH OUT TO ANY OF THE OTHER MANAGERS IN THE
7 FIXED INCOME GROUP?

01:16PM

8 A. SOMETIME AFTER MY MEETING WITH MR. GUNDLACH, I
9 CALLED PROBABLY AROUND 15 OF THE KEY MANAGERS IN THE
10 FIRM.

01:16PM

11 AND ONE OF THEM WAS PHIL BARACH, WHO WAS
12 IN THE MORTGAGE AREA.

13 Q. AND YOU HAD KNOWN MR. BARACH FOR HOW LONG?

14 A. I HAD KNOWN MR. BARACH FOR, BY THAT TIME, 20
15 YEARS.

01:16PM

16 Q. AND HAD YOU CELEBRATED FAMILY EVENTS, YOUR
17 FAMILY EVENTS AND HIS FAMILY EVENTS, TOGETHER?

18 A. YES.

19 Q. AND DID YOU, IN ANY SENSE, INTEND YOUR
20 CONTACT -- FOR WHAT REASON DID YOU REACH OUT TO
21 MR. BARACH, IN PARTICULAR?

01:17PM

22 A. WELL, I WANTED THE KEY MEMBERS OF THE
23 MANAGEMENT OF THE FIRM TO HEAR FROM ME DIRECTLY, BEFORE
24 AN ANNOUNCEMENT THAT I WAS GOING -- COMING AS CEO, AND
25 THAT MR. BEYER WAS RESIGNING.

01:17PM

26 SO I THOUGHT IT MORE APPROPRIATE THAT
27 THEY HEAR IT FROM ME, THAN JUST AN ANNOUNCEMENT.

28 Q. DID YOU INTEND IT THEN -- IN THIS CONTACTING

1 MR. BARACH, DID YOU INTEND THIS IN ANY SENSE AS AN
2 ATTACK ON MR. GUNDLACH?

3 A. OF COURSE NOT.

4 Q. OR AS A COUNTER-OFFENSIVE, OR THE BEGINNING OF
5 A WAR?

01:17PM

6 A. NO. NOT AT ALL.

7 Q. AS A RESULT OF YOUR VARIOUS MEETINGS WITH
8 PORTFOLIO MANAGERS, DID THEY HAVE SOME REQUESTS OF YOU,
9 SOME THINGS THAT THEY ASKED THAT YOU DO?

01:17PM

10 A. YES.

11 Q. AND WHAT WERE THEY?

12 LET'S TAKE THEM ONE AT A TIME.

13 A. WELL, THE FIRST REQUEST WAS THAT, INSTEAD OF
14 ME COMING BACK AS CEO, THAT THERE BE SOME KIND OF A
15 MANAGEMENT COMMITTEE THAT WOULD BE CREATED, CONSISTING
16 OF FIVE PORTFOLIO MANAGERS: MYSELF, AND MR. MUSTIER
17 AND THAT I COULD CHAIR THAT COMMITTEE.

01:18PM

18 BUT THEY PREFERRED THAT, TO ME RETURNING
19 AS A CEO.

20 Q. AND JUST TO BE CLEAR, THE THEY WE'RE TALKING
21 ABOUT HERE, WHO ASKED FOR THIS MANAGEMENT COMMITTEE,
22 WHO ARE WE TALKING ABOUT?

01:18PM

23 A. IT WAS MR. GUNDLACH, MR. ATTANASIO,
24 MR. CHAPUS, MS. JAFFEE, AND BLAIR THOMAS.

25 Q. WAS IT YOUR IDEA, OR THE PORTFOLIO MANAGERS'
26 IDEA, THAT MR. MUSTIER, FROM SOCIETE GENERALE, BE ON
27 THIS COMMITTEE?

01:18PM

28 A. THAT WAS THEIR SUGGESTION.

1 Q. AND DID IT HAPPEN THAT WAY?

2 A. NO.

3 Q. SO WHAT HAPPENED WITH THE MANAGEMENT COMMITTEE
4 IDEA?

5 A. WELL, OVER THE --

01:19PM

6 WHAT HAPPENED WITH THE MANAGEMENT
7 COMMITTEE?

8 Q. THE MANAGEMENT COMMITTEE, YEAH.

9 A. I CREATED A MANAGEMENT COMMITTEE. WE CREATED
10 TOGETHER, THE MANAGEMENT COMMITTEE, WITH EXACTLY THAT
11 MAKEUP, AND WITH MR. MUSTIER PARTICIPATING.

01:19PM

12 WE CALLED IT THE BI-WEEKLY MEETING. AND
13 HE WOULD PARTICIPATE BY VIDEO CONFERENCING.

14 Q. BUT THEY HAD ASKED THAT YOU BE CHAIRMAN OF IT,
15 BUT THEY DIDN'T WANT YOU TO BE CEO; WAS THAT THE
16 REQUEST?

01:19PM

17 A. YES.

18 Q. AND WAS THAT AGREED TO?

19 A. NO.

20 Q. ALL RIGHT. AND WHO REJECTED THAT IDEA?

01:19PM

21 A. WELL, I THINK THAT MR. DAY, IN CONNECTION WITH
22 THE BOARD AND THE SHAREHOLDER, WANTED ME TO BE CEO.

23 AND ULTIMATELY, THE COMPROMISE WAS THAT
24 I WOULD BE INTERIM CEO.

25 Q. AND IS THAT THE TITLE THAT YOU TOOK, INTERIM
26 CEO?

01:19PM

27 A. YES.

28 Q. AND WAS THAT A COMPROMISE THAT WAS AGREED TO

1 WITH THESE FOLKS?

2 A. YES.

3 Q. AND WAS THERE ANYTHING ELSE THAT WAS DISCUSSED
4 WITH THESE PORTFOLIO MANAGERS, ANY OTHER TASKS THAT
5 THEY HAD, THAT YOU AGREED TO?

01:20PM

6 A. WELL, DURING -- WE STARTED OUR BI-WEEKLY
7 MEETINGS.

8 AND ONE OF THE THINGS THAT WE WORKED OUT
9 WAS THE EXACT POSITIONING OF TCW WITHIN THE ASSET
10 MANAGEMENT INDUSTRY, AND HOW IT RELATED TO OTHER ASSET
11 MANAGERS, WHAT ITS STRATEGY SHOULD BE.

01:20PM

12 WE DECIDED THAT WE SHOULD GET AN
13 OUTSIDER TO TAKE A LOOK AT THE LANDSCAPE, AND KIND OF
14 HELP US UNDERSTAND. AND WHERE WE SAT IN THAT UNIVERSE.

15 Q. WHOSE IDEA WAS THIS?

01:20PM

16 A. IT WAS A JOINT IDEA.

17 I THINK WE TALKED IT THROUGH, AND WE ALL
18 AGREED WE SHOULD DO SOMETHING LIKE THAT.

19 Q. AND WAS SOMEONE AGREED ON TO DO THIS?

20 A. WELL, WHAT I PROPOSED WAS THAT THE PORTFOLIO
21 MANAGERS, THE FIVE, PICK TWO FIRMS, AND THEN DO ALL THE
22 INTERVIEWING. I DIDN'T DO ANY OF THE INTERVIEWING.

01:21PM

23 PICK TWO FIRMS, AND THEN I WOULD CHOOSE
24 ONE OF THE FIRMS.

25 AND THAT THEY ALSO DEVELOPED WHAT THEY
26 THOUGHT THE SCOPE OF THE REVIEW SHOULD BE, AND THEN
27 MR. MUSTIER AND I WOULD REVIEW IT, BUT THAT IT WOULD BE
28 THEIR SCOPE; SO ESSENTIALLY, THEY WOULD BE RUNNING THE

01:21PM

1 PROCESS.

2 Q. SO, IS THIS -- WAS THIS IN THE NATURE OF A
3 STRATEGIC REVIEW?

4 A. YES.

5 Q. WHAT DOES THAT MEAN, JUST SIMPLY PUT? 01:21PM

6 A. SIMPLY PUT, YOU SORT OF TAKE THE COMPANY, LOOK
7 AT WHAT'S GOING ON AROUND IT, WHAT ITS COMPETITORS ARE
8 DOING, WHAT ITS STRENGTHS ARE, WHAT ITS WEAKNESSES ARE,
9 WHAT ITS OPPORTUNITIES ARE, AND WHAT STRATEGIC
10 POSITIONING COULD TAKE PLACE IN THE FUTURE. 01:22PM

11 Q. AND AS A RESULT OF THAT PROCESS, WAS A FIRM
12 ULTIMATELY RETAINED?

13 A. YES.

14 Q. WHO WAS RETAINED?

15 A. THEY SUGGESTED TWO FIRMS, ONE OF WHICH WAS 01:22PM
16 CITI, AND I FRANKLY DON'T REMEMBER THE OTHER ONE.

17 AND CITI WAS SELECTED.

18 Q. AND IS THERE -- WAS THAT STRATEGIC STUDY DONE?

19 A. YES.

20 Q. WHO WAS THE PERSON AT CITIBANK WHO WAS IN 01:22PM
21 CHARGE OF THAT STRATEGIC STUDY?

22 A. MR. SHEDLIN, GARY SHEDLIN.

23 Q. GARY SHEDLIN?

24 A. YES.

25 Q. AFTER THAT INITIAL MEETING WITH MR. GUNDLACH, 01:22PM
26 BEFORE THE PUBLIC ANNOUNCEMENT THAT YOU WERE COMING
27 BACK, DID YOU REACH OUT TO HIM FURTHER, AFTER THAT, TO
28 TRY TO MAINTAIN YOUR RELATIONSHIP WITH HIM?

1 A. YES. WE MET THE NEXT DAY, I THINK, WITH
2 MR. ATTANASIO.

3 I HAD, I BELIEVE, SOME SEPARATE MEETINGS
4 WITH MR. GUNDLACH.

5 Q. IF YOU TAKE A LOOK AT EXHIBIT 197.

01:23PM

6 NOW, THIS IS ALREADY IN EVIDENCE, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT.

9 Q. BY MR. QUINN: AND THE SECOND TO THE TOP
10 E-MAIL, THAT'S FROM YOU TO MR. GUNDLACH?

01:23PM

11 A. THE SECOND --

12 Q. THE SECOND FROM THE TOP.

13 THE COURT: THEY HIGHLIGHTED IT AGAIN.

14 THE WITNESS: I'M SORRY. YES, YES.

15 Q. BY MR. QUINN: AND THAT'S ON JUNE 1, 2009?

01:23PM

16 A. YES.

17 Q. AND YOU WROTE TO HIM, I THINK IT'S IMPORTANT
18 FOR YOU AND ME TO SPEND A FEW MINUTES TOGETHER.

19 ARE YOU AVAILABLE FOR LUNCH?

20 IF NOT, CAN YOU PLEASE SUGGEST ANOTHER
21 TIME. ALL THE BEST, MARC.

01:23PM

22 AND HE SAYS, HOW ABOUT 10 O'CLOCK
23 TOMORROW? I DO NOT DO LUNCH MEETINGS.

24 THIS IS AN E-MAIL EXCHANGE THAT YOU HAD
25 WITH MR. GUNDLACH AT THE TIME?

01:23PM

26 A. YES.

27 Q. AND JUST A DETOUR, DID YOU EVER REFER TO
28 MR. GUNDLACH AS KING JEFFREY?

1 A. I DID.

2 Q. WAS THAT SOMETHING THAT YOU INTENDED IN A KIND
3 OF CRITICAL, MALICIOUS WAY, OR --

4 A. NO. NOT AT ALL.

5 HE HAD REFERRED TO HIMSELF -- HE WAS
6 REFERRING TO HIMSELF AS THE POPE, AND AS THE GODFATHER,
7 AND I REFERRED TO HIM AS KING JEFFREY.

01:24PM

8 IT WAS INTENDED TO BE TONGUE IN CHEEK.
9 I WASN'T TRYING TO MOCK HIM OR ANYTHING.

10 Q. ALL RIGHT. SO, YOUR OFFICIAL START DATE IS
11 JULY 1. YOU HAVE SAID YOU WILL DO THIS, AT THE END OF
12 THE MAY.

01:24PM

13 YOUR OFFICIAL START DATE WAS ON JULY 1.

14 WHAT DID YOU DO, IF ANYTHING, TO GET UP
15 TO SPEED ON WHAT WAS GOING ON IN THE COMPANY DURING
16 THAT PERIOD?

01:24PM

17 A. WELL, I DID A LOT OF THINGS.

18 I MEAN, IN EFFECT, ONCE THE ANNOUNCEMENT
19 CAME OUT, MR. BEYER, IN SO MANY OF THESE INSTANCES,
20 KIND OF BECAME A LAME DUCK. AND EVERYBODY KNEW I WAS
21 COMING BACK OFFICIALLY ON JULY 1, BUT MOST OF THE
22 DECISIONS AND ACTIVITIES KIND OF SWITCHED OVER TO ME.

01:25PM

23 Q. DID YOU -- DURING THAT PERIOD, DID YOU TALK TO
24 PEOPLE, AND REVIEW THE BUSINESS, TO TRY TO IDENTIFY
25 WHAT THE MAIN ISSUES WERE THAT WERE AFFECTING THE
26 COMPANY AT THAT TIME?

01:25PM

27 A. I DID.

28 Q. AND WHAT WAS THE SINGLE MOST IMPORTANT ISSUE

1 THAT YOU THOUGHT THE COMPANY FACED AT THAT TIME?

2 A. THE SINGLE MOST IMPORTANT ISSUE WAS
3 MR. GUNDLACH'S COMMITMENT TO THE COMPANY.

4 Q. NOW, WHAT DO YOU MEAN BY THAT?

5 A. WELL, MR. BEYER TOLD ME THAT HE HAD BEEN
6 TALKING ABOUT LEAVING THAT SPRING, INTERVIEWING WITH
7 ANOTHER COMPANY; AND ALSO HE WAS AN AT-WILL EMPLOYEE.
8 HE HADN'T SIGNED A CONTRACT.

01:25PM

9 MR. BRIAN: OBJECTION, YOUR HONOR.

10 MR. QUINN: YOUR HONOR, THIS IS RELEVANT TO
11 THIS ISSUE.

01:26PM

12 THE COURT: IT SEEMS TO BE A NARRATIVE THOUGH.
13 I THINK YOU CAN ASK QUESTIONS AND GET
14 ANSWERS.

15 Q. BY MR. QUINN: ONE THING AT A TIME, MR. STERN.

01:26PM

16 A. SORRY.

17 Q. I ASKED YOU WHY MR. GUNDLACH WAS THE -- YOU
18 THOUGHT THE MOST IMPORTANT SINGLE ISSUE FACING THE
19 COMPANY.

20 AND YOU'VE TOLD US WHAT YOU'VE TOLD US.

01:26PM

21 LET'S TAKE THEM ONE AT A TIME.

22 A. OKAY.

23 Q. YOU JUST REFERRED TO THE CONTRACT.

24 A. YES.

25 Q. AND WHY WAS THAT SOMETHING THAT ENTERED INTO
26 YOUR THINKING?

01:26PM

27 A. WELL, HE HAD BEEN OFFERED A CONTRACT, WHICH HE
28 HAD NOT SIGNED.

1 SO THAT MEANT THAT HE COULD GO AND LEAVE
2 THE COMPANY AT ANY TIME.

3 Q. DID YOU GET ANY INFORMATION THAT HE HAD, IN
4 FACT, THREATENED TO LEAVE?

5 A. I GOT INFORMATION THAT HE HAD BEEN
6 INTERVIEWING OTHER FIRMS, YES.

01:26PM

7 Q. DID YOU HEAR ANYTHING ABOUT STATEMENTS HE WAS
8 MAKING ON THE TRADING FLOOR?

9 A. I HEARD -- ON SEVERAL OCCASIONS, THAT HE WOULD
10 SAY, I CAN GO TO WAMCO, I CAN GO TO PIMCO, AND WAVING A
11 FEDERAL EXPRESS ENVELOPE AROUND AND SAYING, ALL I HAVE
12 TO DO IS SIGN THIS DOCUMENT.

01:27PM

13 Q. IN ADDITION TO ISSUES RELATING TO HIS
14 COMMITMENT, WERE THERE ANY OTHER ISSUES RELATING TO
15 MR. GUNDLACH AT THAT TIME, THAT WERE OF CONCERN?

01:27PM

16 A. YES. I WAS --

17 Q. WHAT ARE THEY?

18 A. OKAY. I WAS CONCERNED THAT THERE WAS ALWAYS
19 THE POSSIBILITY THAT HE COULD DO SOMETHING THAT WOULD
20 BE ILLEGAL, OR CROSS THE LINE. WE'RE A HIGHLY
21 REGULATED INDUSTRY, AND WHETHER I WANTED TO OR NOT, I
22 COULD BE FORCED TO TERMINATE HIM.

01:27PM

23 Q. WERE THERE ANY ISSUES ABOUT HIS INTERACTION
24 WITH OTHER DEPARTMENTS, OR HIS CONDUCT WITH RESPECT TO
25 COLLEAGUES?

01:28PM

26 A. YES. THERE WERE ISSUES OF MINIMIZATION OF
27 OTHER AREAS, AND SOME SORT OF BIZARRE BEHAVIOR, YES.

28 Q. AND WHAT DO YOU MEAN ABOUT MINIMIZATION OF

1 OTHER AREAS?

2 MR. BRIAN: OBJECTION. FOUNDATION AS TO TIME,
3 YOUR HONOR.

4 THE COURT: SUSTAINED.

5 Q. BY MR. QUINN: I'M TALKING ABOUT THIS TIME
6 PERIOD BETWEEN THE END OF MAY AND THE JULY 1, WHAT YOU
7 LEARNED OF ISSUES RELATING TO MR. GUNDLACH?

01:28PM

8 A. AND WHAT WAS THE SPECIFIC QUESTION?

9 Q. YOU SAID MINIMIZATION OF OTHER AREAS.

10 WHAT DID YOU MEAN BY MINIMIZATION OF
11 OTHER AREAS?

01:28PM

12 A. HE WOULD GO INTO THE LUNCHROOM AND BERATE SOME
13 OF THE EQUITY PEOPLE, AND PEOPLE IN OTHER AREAS, AND
14 KIND OF MINIMIZE THEIR PARTICIPATION IN THE FIRM.

15 Q. AND WHAT DO YOU MEAN BY THAT, MINIMIZE THEIR
16 PARTICIPATION?

01:28PM

17 A. JUST SAY THAT THEY WEREN'T IMPORTANT, THAT
18 THEIR ASSETS WERE GOING TO ZERO, AND THAT HE WAS REALLY
19 THE ONLY PERSON THAT WAS IMPORTANT IN THE FIRM.

20 Q. NOW, YOU MENTIONED THAT SOME PEOPLE MADE SOME
21 RECOMMENDATIONS TO YOU REGARDING MR. GUNDLACH AND
22 WHETHER HE SHOULD STAY AT ALL?

01:29PM

23 A. YES.

24 Q. WHO -- THAT SUMMER, IF WE'RE LOOKING AT THE
25 JUNE, JULY, AUGUST, TIME FRAME, WHO TOLD YOU THAT THEY
26 THOUGHT THAT MR. GUNDLACH SHOULD BE TERMINATED?

01:29PM

27 MR. BRIAN: OBJECTION. RELEVANCE, 352,
28 HEARSAY.

1 MR. QUINN: STATE OF MIND, YOUR HONOR.

2 THE COURT: OVERRULED.

3 THE WITNESS: NAMES OF PEOPLE?

4 Q. BY MR. QUINN: YES.

5 A. OKAY. CHUCK BALDISWIELER, WHO WAS THE HEAD OF
6 OUR MARKETING AREA.

01:29PM

7 DAVE DEVITO, WHO WAS OUR CHIEF
8 ADMINISTRATIVE OFFICER. HE MIGHT HAVE BEEN CHIEF
9 FINANCIAL OFFICER AT THE TIME. I CAN'T REMEMBER
10 EXACTLY WHEN HIS ROLE CHANGED.

01:29PM

11 MR. SHEDLIN RECOMMENDED IT TO ME.
12 MR. SONNEBORN SUGGESTED IT TO ME.

13 AND IRONICALLY HOWARD MARKS, WHO WAS ONE
14 OF THE FOUNDERS OF OAKTREE, SUGGESTED IT TO ME, AMONG
15 OTHERS.

01:30PM

16 Q. DID YOU HAVE ANY CONVERSATIONS WITH BLAIR
17 THOMAS, THE HEAD OF ENERGY, ON THIS SUBJECT?

18 A. YES. BLAIR THOMAS WAS ALSO SOMEONE THAT
19 RECOMMENDED THAT MR. GUNDLACH BE TERMINATED.

20 Q. AND WHAT WAS YOUR STATE OF MIND, WITH RESPECT
21 TO THIS IDEA THAT SUMMER, JUNE, JULY, AUGUST, THAT YOU
22 ARE GETTING THESE RECOMMENDATIONS.

01:30PM

23 WHAT WAS YOUR REACTION TO THAT?

24 A. I DID NOT WANT TO TERMINATE MR. GUNDLACH.

25 IT WAS LIKE CUTTING OFF YOUR RIGHT ARM.

01:30PM

26 I SORT OF THOUGHT THAT IT WAS EASY FOR
27 PEOPLE NOT ON THE FIRING LINE AND NOT UNDERSTANDING THE
28 CONSEQUENCES OF WHAT THAT KIND OF A TERMINATION

1 SUGGESTED; BUT I WOULD HAVE TO BE THE ONE TO IMPLEMENT
2 AND LIVE WITH IT, AND IT WAS A BAD IDEA.

3 Q. AND WAS THAT YOUR OPINION RIGHT UP TO
4 SEPTEMBER 3?

5 MR. BRIAN: OBJECTION. LEADING. 01:31PM

6 THE WITNESS: YES.

7 THE COURT: IT WAS LEADING.

8 ANSWER IS IN.

9 MR. BRIAN: I'LL WITHDRAW IT.

10 THE COURT: THE ANSWER IS YES. IT'S IN,
11 BUT -- 01:31PM

12 Q. BY MR. QUINN: SO JUST TO BE CLEAR, WHEN YOU
13 CAME BACK, DID YOU COME BACK WITH A PROJECT, OR A
14 CHARTER, OR A GOAL OF GETTING RID OF JEFFREY GUNDLACH?

15 A. ABSOLUTELY NOT. 01:31PM

16 Q. DID ANYONE FROM PARIS, ANY OF THE FRENCH:
17 MR. MUSTIER, MR. RIPOLL, MR. CABBANES, DID ANY OF THOSE
18 PEOPLE INSTRUCT YOU TO GET RID OF MR. GUNDLACH?

19 MR. BRIAN: OBJECTION. FOUNDATION AS TO TIME,
20 AGAIN. 01:31PM

21 THE COURT: ALL RIGHT.

22 SUSTAINED.

23 Q. BY MR. QUINN: AT ANY TIME IN THE PERIOD OF
24 JUNE, JULY, AUGUST, UP TO SEPTEMBER 3, DID ANYONE FROM
25 THE FRENCH BANK INSTRUCT YOU TO GET RID OF
26 MR. GUNDLACH? 01:31PM

27 A. NO.

28 Q. OKAY.

1 DID THEY -- DID YOU TALK TO PEOPLE IN
2 PARIS ON THAT -- ON THE SUBJECT OF WHETHER MR. GUNDLACH
3 SHOULD STAY AT THE COMPANY?

4 A. YES.

5 Q. AND WHAT WAS SAID ON THAT SUBJECT?

01:32PM

6 A. ESSENTIALLY WHAT THEY SAID WAS, IT'S MY
7 DECISION.

8 AT VARIOUS TIMES, THEY HAD THEIR VIEWS
9 ON THE MATTER; BUT IT WAS MY DECISION.

10 Q. IS THAT -- NOW, SOCIETE GENERALE BEGAN TO
11 ACQUIRE TCW WHEN?

01:32PM

12 A. THE AGREEMENT TO ACQUIRE TCW WAS IN 2001.

13 Q. AND DID THEY BUY ALL OF TCW AT ONE TIME, OR
14 WAS THAT STOCK PURCHASED OVER A NUMBER OF YEARS?

15 A. IT WAS PURCHASED OVER A NUMBER OF YEARS.

01:32PM

16 I BELIEVE THE LAST STOCK THAT WAS SOLD
17 TO SG WAS IN 2008.

18 Q. SO BETWEEN 2001, WHEN THE SOCIETE GENERALE
19 DEAL WAS SIGNED UP, AND 2005, WHEN YOU LEFT TCW, YOU
20 HAD EXPERIENCE DEALING WITH THE FRENCH SHAREHOLDERS?

01:33PM

21 A. YES.

22 Q. AND COULD YOU DESCRIBE FOR THE JURY, SORT OF
23 WHAT WAS THEIR INVOLVEMENT IN THE OPERATIONS OF THE
24 COMPANY?

25 A. WELL, THEY HAD RELATIVELY LIMITED INVOLVEMENT
26 IN THE OPERATIONS OF THE COMPANY.

01:33PM

27 THEY SENT ONE GENTLEMAN, A FELLA BY THE
28 NAME OF PATRICK PAGNI, TO TCW. WE NAMED HIM AS AN

1 EXECUTIVE VICE PRESIDENT.

2 AND HE -- ACTUALLY, HALF OF HIS
3 COMPENSATION WAS EVEN PAID BY THEM. AND HE HELPED
4 COORDINATE ACTIVITIES WITH THEM.

5 ON A MONTHLY BASIS, I AND A FEW OTHER
6 MEMBERS OF SENIOR MANAGEMENT WOULD HAVE A VIDEO
7 CONFERENCE WITH PARIS TO DISCUSS ITEMS.

01:33PM

8 AND A COUPLE OF TIMES A YEAR, THERE
9 WOULD BE AN OVERALL MEETING THAT WE WOULD GO GENERALLY
10 TO PARIS TO DISCUSS ITEMS.

01:34PM

11 BUT THEIR PARTICIPATION ON A DAY-TO-DAY
12 BASIS WAS VERY, VERY LIMITED.

13 Q. AND IN TERMS OF YOUR CONVERSATIONS WITH THEM,
14 WITH RESPECT TO ISSUES REGARDING MR. GUNDLACH IN THE
15 SUMMER OF 2009, WAS THAT CONSISTENT WITH WHAT THE
16 PATTERN HAD BEEN ABOUT THEIR INVOLVEMENT IN DECISION
17 MAKING AT TCW?

01:34PM

18 A. NO.

19 THERE WAS -- AS I SAID BEFORE,
20 MR. MUSTIER WAS ON THIS MANAGEMENT COMMITTEE THAT MET
21 BI-WEEKLY. AND WE WERE MONITORING PROGRESS THAT I WAS
22 HOPEFULLY MAKING DURING THAT TIME.

01:34PM

23 SO THE INVOLVEMENT -- THE LEVEL OF
24 INVOLVEMENT, WAS STEPPED UP WHEN I RETURNED.

25 Q. WHEN YOU RETURNED IN THE SUMMER OF 2009?

01:34PM

26 A. YES.

27 Q. OKAY.

28 BUT IN TERMS OF THE DECISION MAKING WITH

1 RESPECT TO PORTFOLIO MANAGERS, AND MR. GUNDLACH, WERE
2 THEY MORE INVOLVED IN TELLING YOU WHAT YOU NEEDED TO
3 DO, AND GIVING YOU DIRECTIONS, AND THAT TYPE OF THING?

4 A. NO.

5 Q. THE JURY HAS HEARD THAT MR. GUNDLACH AND OTHER
6 PORTFOLIO MANAGERS HAD WHAT WERE CALLED FEE SHARING
7 AGREEMENTS WITH THE COMPANIES.

01:35PM

8 HAVE YOU -- YOU ARE FAMILIAR, OBVIOUSLY,
9 WITH FEE SHARING AGREEMENTS?

10 A. I AM.

01:35PM

11 Q. AND ARE YOU AN ADVOCATE OF FEE SHARING
12 AGREEMENTS, OR DO YOU THINK THEY ARE A BAD IDEA OF
13 COMPENSATING PORTFOLIO MANAGERS?

14 A. I'M AN ADVOCATE.

15 Q. WHY?

01:35PM

16 A. BECAUSE IF PROPERLY STRUCTURED, THE MORE FEE
17 SHARING A PORTFOLIO MANAGER MAKES, THE MORE THE COMPANY
18 MAKES.

19 Q. AND DID YOU HAVE ANY PROBLEM WITH -- DID YOU
20 KNOW THAT MR. GUNDLACH WAS ON TRACK TO MAKE SOMETHING
21 NORTH OF \$40 MILLION IN 2009?

01:35PM

22 A. YES.

23 Q. DID YOU HAVE ANY PROBLEM WITH THAT?

24 A. NO.

25 Q. OR IF THE NEXT YEAR HE MADE \$100 MILLION,
26 WOULD YOU HAVE ANY PROBLEM WITH THAT?

01:36PM

27 A. NO.

28 Q. WHY NOT?

1 A. BECAUSE TCW WOULD MAKE A LOT OF MONEY AT THE
2 SAME TIME.

3 Q. ALL RIGHT.

4 SO I MEAN, YOU SAID -- YOU TOLD US THAT
5 YOU IDENTIFIED ISSUES RELATING TO MR. GUNDLACH AS BEING
6 THE SINGLE MOST IMPORTANT ISSUE YOU HAD TO FACE.

01:36PM

7 DID YOU -- DID YOU REGARD THIS AS A
8 PROJECT YOU NEEDED TO ADDRESS?

9 A. YES.

10 Q. AND DID YOU HAVE A SHORTHAND NAME FOR THIS
11 PROJECT?

01:36PM

12 A. YES. PROJECT G.

13 THE G WAS A VERY SECRET NAME FOR
14 GUNDLACH.

15 Q. OKAY.

01:36PM

16 YOU INDICATED THAT PART OF YOUR CONCERN
17 WAS HIS COMMITMENT LEVEL TO THE COMPANY?

18 A. YES.

19 Q. MEANING WHAT?

20 A. MEANING WHETHER HE WOULD STAY WITH THE
21 COMPANY.

01:36PM

22 Q. OR JUST LEAVE?

23 A. OR JUST LEAVE, YES.

24 Q. AND YOU INDICATED YOU ALSO HAD A CONCERN ABOUT
25 WHETHER YOU MIGHT BE FORCED TO TAKE ACTION?

01:37PM

26 A. RIGHT. IT WAS OFFENSIVE.

27 OFFENSIVE WAS TO TRY TO ENCOURAGE AND
28 FIND A WAY FOR HIM TO INCREASE HIS COMMITMENT TO TCW

1 AND STAY WITH TCW.

2 DEFENSIVE WAS CONTINGENCY PLANNING, ON
3 THE POSSIBILITY THAT HE MIGHT NOT BE THERE.

4 Q. AND IN YOUR HEART, WHAT WAS YOUR HOPE ABOUT
5 WHAT YOU COULD ACCOMPLISH WITH MR. GUNDLACH?

01:37PM

6 A. I VERY MUCH WANTED TO FIND A WAY TO WORK WITH
7 HIM, AND KEEP THE SUCCESS THAT WE HAD ACHIEVED
8 TOGETHER.

9 Q. WOULD YOU TAKE A LOOK, PLEASE, AT EXHIBIT
10 5164.

01:37PM

11 AND I'LL ASK YOU IF YOU CAN IDENTIFY
12 THIS DOCUMENT.

13 A. YES.

14 Q. WHAT IS IT?

15 A. THESE ARE NOTES OF THE MEETING THAT -- NOTES
16 FOR A MEETING THAT I WAS GOING TO HAVE WITH ROBERT DAY,
17 THE DAY BEFORE I OFFICIALLY BECAME CEO.

01:37PM

18 MR. QUINN: WE'D OFFER THIS.

19 MR. BRIAN: NO OBJECTION.

20 THE COURT: IT WILL BE ADMITTED.

01:38PM

21

22 (EXHIBIT 5164 ADMITTED.)

23

24 Q. BY MR. QUINN: SO UP AT THE TOP, IT SAYS, FROM
25 JUDY.

01:38PM

26 IS THAT JUDY MANNIS?

27 A. YES.

28 Q. TO MARC STERN.

1 WHO IS JUDY?

2 A. MY SECRETARY.

3 Q. RIGHT.

4 AND THIS IS A DRAFT DATED JUNE 29, '09?
5 MEETING WITH ROBERT?

01:38PM

6 A. YES.

7 Q. WOULD THAT BE PROBABLY ROBERT DAY?

8 A. THAT WOULD BE.

9 Q. AND COULD YOU TELL US WHAT IT IS THAT WE'RE
10 LOOKING AT HERE, DOWN THE LEFT-HAND SIDE, ROMAN NUMERAL
11 I THROUGH ROMAN NUMERAL IX?

01:38PM

12 A. WE'RE LOOKING AT NOTES, JUST TO REMIND ME OF
13 MY -- WHAT I WANT TO TALK TO ROBERT ABOUT.

14 Q. ALL RIGHT.

15 SO IS THIS AT THE END OF THAT ABOUT
16 ONE-MONTH PERIOD BEFORE YOUR OFFICIAL START DATE, AFTER
17 YOU'VE BEEN TALKING TO PEOPLE AND ASSESSING THE
18 SITUATION?

01:38PM

19 A. YES.

20 Q. AND THESE ARE TOPICS OF THINGS THAT YOU WANTED
21 TO COVER WITH HIM IN A MEETING THE NEXT DAY?

01:39PM

22 A. YES.

23 Q. AND IF WE LOOK AT THE TOP, IT SAYS (READING):

24 OVERALL STRATEGY. BEGIN AS
25 CEO TOMORROW. MINIMUM DESTRUCTION,
26 CALM A VOLATILE SITUATION, BUY TIME
27 TO DO IT OUR WAY, MEET WITH ALL
28 CONSTITUENCIES.

01:39PM

1 AND IT GOES ON.

2 WHEN YOU TALK HERE ABOUT MINIMUM
3 DISRUPTION, VOLATILE SITUATION, BUY TIME TO DO IT OUR
4 WAY, WHAT DID YOU MEAN BY THAT?

5 A. WELL, A MINIMAL DISRUPTION, WHAT I'M TALKING 01:39PM
6 ABOUT IS, I WANTED THE TRANSITION FROM BEYER TO ME,
7 MR. BEYER TO ME, TO BE AS SEAMLESS AND AS UNEVENTFUL TO
8 OUR CLIENT BASE AS POSSIBLE, AND --

9 Q. CALM A VOLATILE SITUATION?

10 A. WELL, I ALREADY -- I THINK I TALKED ABOUT THE 01:40PM
11 FACT THAT THE KEY PORTFOLIO MANAGERS WERE NOT HAPPY
12 THAT I WAS RETURNING IN THE ROLE OF CEO; SO I WAS
13 PUTTING STEPS IN PLACE TO CALM EVERYTHING DOWN.

14 Q. WOULD IT BE TRUE TO SAY THAT MR. GUNDLACH WAS
15 NOT THE ONLY PORTFOLIO MANAGER WHO HAD ISSUES THAT YOU 01:40PM
16 NEEDED TO DEAL WITH?

17 A. ABSOLUTELY TRUE.

18 Q. AND IT SAYS, BUY TIME. YOU WROTE BUY TIME TO
19 DO IT OUR WAY.

20 WHAT DOES THAT MEAN? 01:40PM

21 A. IT MEANS I DIDN'T WANT TO BE PRESSURED INTO
22 DOING SOMETHING THAT DIDN'T MAKE SENSE, ON THE SPUR OF
23 THE MOMENT. IF I COULD CALM THINGS DOWN, WE'D HAVE AN
24 OPPORTUNITY TO TALK THROUGH THINGS, AND TRY TO DEAL
25 WITH WHAT WERE, FRANKLY, LEGITIMATE PROBLEMS, 01:40PM
26 LEGITIMATE ISSUES, IN A CONSTRUCTIVE WAY.

27 Q. AND THEN ROMAN NUMERAL II, SAYS, FIRM
28 PROFITABILITY. I THINK THAT'S SELF-EVIDENT WHAT YOU

1 ARE TALKING ABOUT THERE.

2 AND THEN ROMAN NUMERAL III, WE HAVE
3 PROJECT G, FINANCIAL, LEGAL, MARKETING, ALTERNATIVE
4 MANAGERS.

5 CAN WE WALK THROUGH THOSE ONE AT A TIME?
6 FINANCIAL, LEGAL, WHAT DOES THAT
7 REFLECT? 01:41PM

8 A. WELL, FINANCIAL REFLECTS THE FACT THAT
9 MR. GUNDLACH WAS THE MOST IMPORTANT MANAGER IN THE
10 FIRM, AND THAT A LARGE AMOUNT OF THE FIRM'S REVENUES
11 AND PROFITABILITY WERE TIED TO HIS POSITION. 01:41PM

12 Q. AND HOW ABOUT LEGAL?

13 A. AGAIN, MR. GUNDLACH WAS AN AT-WILL EMPLOYEE,
14 THAT WE HAD NO TIE TO HIM.

15 HE COULD LEAVE ANY TIME HE WANTED. 01:41PM

16 Q. AND YOU ARE TALKING HERE ABOUT, IT SAYS
17 ALTERNATIVE MANAGERS, LISTS.

18 WHY, ON JUNE 29TH, UNDER PROJECT G, ARE
19 YOU REFERENCING ALTERNATIVE MANAGERS?

20 A. THE REASON IS THAT I AM CONCERNED, AS I SAID,
21 THAT EITHER MR. GUNDLACH COULD LEAVE AT ANY TIME, OR
22 THERE COULD BE THE HORROR CASE SCENARIO, WHERE WE WOULD
23 BE PUT IN A POSITION WHERE I HAD TO TERMINATE HIM. 01:42PM

24 SO I HAD TO HAVE SOME CONTINGENCY PLANS.

25 AND AS SUCH, I BEGAN TO LOOK AT SOMEONE
26 THAT WE COULD PARACHUTE IN, IF, POTENTIALLY,
27 MR. GUNDLACH WERE NOT TO BE WITH THE FIRM. 01:42PM

28 Q. IT MAY BE SELF-EVIDENT; BUT I NEED TO ASK YOU,

1 WHY WOULD YOU NEED TO HAVE A CONTINGENCY PLAN TO DEAL
2 WITH THE POTENTIAL THAT MR. GUNDLACH MIGHT LEAVE, OR
3 YOU MIGHT HAVE TO TERMINATE HIM?

4 WHY WOULD THAT BE IMPORTANT?

5 A. MR. GUNDLACH WAS A CENTRAL FIGURE IN THE MBS
6 AREA. AND THAT I THOUGHT THAT IF HE LEFT, THAT WE
7 MAY -- MIGHT HAVE TO SHORE UP THE TEAM.

01:43PM

8 AND THEN IF WE COULD BRING IN SOMEBODY
9 WITH MORTGAGE EXPERTISE TO WORK WITH THE TEAM THAT WE
10 HAD IN PLACE, IT WOULD HELP US KEEP OUR CLIENTS, SERVE
11 OUR CLIENTS, ET CETERA.

01:43PM

12 Q. THE MORTGAGE AREA, WAS THAT AN IMPORTANT AREA
13 OF THE FIRM AT THE TIME?

14 A. YES. THAT WAS THE MOST IMPORTANT AREA IN THE
15 FIXED INCOME AREA, YES.

01:43PM

16 Q. AND IT ALSO SAYS, BI-WEEKLY MEETINGS.

17 IS THAT THE ONE YOU REFERRED TO AS
18 BI-WEEKLY MANAGEMENT COMMITTEE MEETINGS?

19 A. YES.

20 THAT I JUST WAS SAYING, IN AN EFFORT TO
21 WORK TOGETHER AND TO ACCOMMODATE WHAT THE MANAGERS
22 WANT, WE HAD SET THAT UP.

01:43PM

23 WHICH, INCIDENTALLY, I THOUGHT WAS A
24 VERY GOOD IDEA. I WAS VERY HAPPY TO DO THAT.

25 Q. AND YOU SAY, CONTACT WITH LIEUTENANTS.

01:44PM

26 THAT'S GETTING IN TOUCH WITH PEOPLE LIKE
27 MR. BARACH --

28 MR. BRIAN: OBJECTION. LEADING.

1 Q. BY MR. QUINN: WHAT DOES CONTACT WITH
2 LIEUTENANTS MEAN?

3 A. JUST THAT I WOULD CONTINUE TO TALK TO PEOPLE
4 THAT I WOULD SEE, CONTINUE TO TALK TO MR. BARACH.

5 I DIDN'T MAKE ANY OUTWARD EFFORTS TO DO
6 ANYTHING; BUT I WAS FRIENDLY, AND OCCASIONALLY WOULD
7 WALK DOWN TO THE FLOOR AND SAY HELLO TO PEOPLE.

01:44PM

8 Q. AT THIS POINT, CAN YOU TELL US WHETHER OR NOT
9 YOU HAD SOME HOPE THAT IF MR. GUNDLACH LEFT, YOU WOULD
10 STILL HAVE A TEAM THERE IN PLACE?

01:44PM

11 A. I ACTUALLY THOUGHT THAT THAT WOULD -- THAT
12 THAT WOULD BE THE CASE; THAT IF HE LEFT, THERE WOULD BE
13 A SIGNIFICANT TEAM LEFT IN PLACE, YES.

14 Q. AND THEN THERE'S A REFERENCE TO L-T-I-P, LTIP.
15 WHAT'S THAT?

01:44PM

16 A. THAT'S LONG TERM INCENTIVE PLAN.

17 SINCE 2007 OR 2008, WHEN THE EQUITY PART
18 OF THE PURCHASE FROM SG HAD ENDED, THERE HAD BEEN AN
19 EFFORT BY MR. BEYER AND MR. SONNEBORN TO GET A
20 LONG-TERM INCENTIVE PLAN IN PLACE TO RE-EQUITIZE THE
21 FIRM. AND THIS WAS SOMETHING THAT I FELT WAS VERY
22 IMPORTANT THAT I WANTED TO GET INTO PLACE; AND FELT IF
23 I COULD GET THAT INTO PLACE, AND MR. GUNDLACH WERE A
24 SIGNIFICANT PARTICIPANT IN THAT, THAT THIS COULD BE A
25 WAY OF INCENTIVIZING HIM TO STAY.

01:45PM

01:45PM

26 Q. IN ADDITION TO THAT LTIP PLAN, DID YOU COME UP
27 WITH ANOTHER IDEA, WHERE YOU -- TO TRY TO BIND
28 MR. GUNDLACH TO THE FIRM, IF IT WERE SOLD AT SOME

1 POINT?

2 A. WELL, I HAD ANOTHER CONCEPT, WHICH WAS THAT
3 THE FRENCH SHAREHOLDER HAD TCW ON ITS BOOKS FOR A
4 CERTAIN AMOUNT OF MONEY.

5 AND MY IDEA WAS THAT IF THERE EVER WERE
6 AN IPO --

01:46PM

7 Q. MEANING?

8 A. I'M SORRY.

9 AN INITIAL PUBLIC OFFER, WHICH THEY HAD
10 SAID EARLIER THAT YEAR THAT THEY WERE CONSIDERING, OR
11 SOME OTHER FORM OF MONETIZATION, THEY WOULD GET THEIR
12 INVESTMENT BACK.

01:46PM

13 BUT THEN ANYTHING ABOVE THAT, THE VAST
14 MAJORITY OF THAT WOULD GO TO THE MANAGERS, THE KEY
15 MANAGERS, AND --

01:46PM

16 Q. UNDER THIS PLAN, WOULD YOU GET ANYTHING,
17 PERSONALLY?

18 A. NO.

19 Q. AND ANYTHING ABOVE THAT PRICE, YOU THOUGHT WHO
20 WOULD GET?

01:46PM

21 A. THE MANAGERS.

22 Q. AND OF THAT, WHO WOULD GET THE MOST?

23 A. MR. GUNDLACH.

24 Q. AND WERE YOU ABLE TO GO FORWARD WITH THIS
25 PLAN?

01:47PM

26 A. NO. I WAS NEVER ABLE TO.

27 Q. WHY NOT?

28 A. BECAUSE WHAT I NEEDED TO DO -- I DIDN'T WANT

1 TO PROPOSE THIS.

2 I THOUGHT THAT ANYTHING THAT I PROPOSED
3 AT THAT POINT TO MR. GUNDLACH WOULD BE REJECTED, OR
4 UNLIKELY TO GET TRACTION.

5 Q. WHY DID YOU THINK THAT? WHY DID YOU THINK -- 01:47PM

6 A. WELL, HIS ATTITUDE TOWARDS ME WAS BECOMING
7 INCREASINGLY NEGATIVE. AND HE WAS ARTICULATING IT TO
8 CLIENTS, TO EMPLOYEES, ET CETERA.

9 Q. OKAY. SO YOU -- THIS IDEA THAT YOU HAD OF
10 SHARING A SALES PRICE WITH MANAGERS, YOU WERE TELLING
11 US WHY YOU COULDN'T GO FORWARD WITH IT. 01:47PM

12 AND COULD YOU CONTINUE TO EXPLAIN THAT?

13 A. I WANTED TO ENLIST THE OTHER MANAGERS.

14 Q. WHO SPECIFICALLY?

15 A. MR. ATTANASIO AND MR. CHAPUS. 01:47PM

16 Q. ALL RIGHT.

17 TO DO WHAT?

18 A. TO EMBRACE THIS IDEA.

19 I WOULD THEN GET THE FRENCH TO GO ALONG
20 WITH IT. AND I THOUGHT THAT IF THEY PRESENTED IT TO
21 MR. -- 01:48PM

22 Q. THE "THEY" BEING?

23 A. MR. ATTANASIO AND MR. CHAPUS.

24 IF THEY PRESENTED IT TO MR. GUNDLACH, IT
25 WOULD HAVE A BETTER CHANCE OF BEING ACCEPTED AND
26 EMBRACED. 01:48PM

27 Q. AND WHAT HAPPENED WITH THAT?

28 A. I WASN'T ABLE TO CONVINCe THEM THAT THAT WAS

1 SOMETHING THAT THEY WANTED TO DO.

2 Q. MEANING MR. CHAPUS AND MR. ATTANASIO?

3 A. YES.

4 Q. OKAY.

5 AND WHEN YOU -- YOU TOLD US YOU THOUGHT
6 YOU NEEDED A CONTINGENCY PLAN.

01:48PM

7 WHAT CAN YOU RECALL WAS THE FIRST
8 STEP -- THE FIRST THING YOU DID, TO TRY TO HAVE A
9 CONTINGENCY PLAN IN CASE MR. GUNDLACH LEFT OR YOU HAD
10 TO TERMINATE HIM?

01:48PM

11 MR. BRIAN: FOUNDATION AS TO TIME, YOUR HONOR.

12 THE COURT: SUSTAINED.

13 Q. BY MR. QUINN: THE FIRST THING AFTER YOU CAME
14 BACK, MAY, JUNE, WHAT'S THE FIRST THING THAT YOU RECALL
15 YOU DID TO TRY TO, AS A FIRST STEP, TO COME UP WITH A
16 CONTINGENCY PLAN?

01:49PM

17 A. I ASKED MY PROFESSIONAL ASSISTANT, MR. CONN,
18 TO COME UP WITH A LIST OF MORTGAGE-BACKED MANAGERS THAT
19 I MIGHT BE ABLE TO PARACHUTE IN.

20 Q. ALL RIGHT. LET'S TAKE A LOOK AT EXHIBIT 5157.
21 5157.

01:49PM

22 IS THAT AN E-MAIL TO YOU, DATED JUNE 10,
23 2009?

24 A. YES.

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

01:49PM

26 MR. BRIAN: NO OBJECTION.

27 THE COURT: IT WILL BE ADMITTED.

28 //

1 (EXHIBIT 5157 ADMITTED.)

2

3 Q. BY MR. QUINN: AND IF WE COULD ENLARGE THIS.

4 WHO IS MICHAEL CONN?

5 A. MICHAEL CONN WAS A FELLA THAT I HAD HIRED TO
6 WORK WITH ME, TO GENERALLY HELP ME ON EVERYTHING THAT I
7 WAS DOING.

01:49PM

8 Q. AND HE SAYS HERE, (READING):

9 MARC, ATTACHED ARE THE BIOS
10 AND DETAILS ON WHAT I CONSIDER TO
11 BE THE MOST REPUTABLE MORTGAGE
12 SPECIFIC MANAGERS IN THE
13 MARKETPLACE.

01:50PM

14 THE LIST INCLUDES MANAGERS
15 FROM THE FOUR FIRMS CHOSEN BY THE
16 U.S. TREASURY TO MANAGE THE MBS
17 PROGRAM.

01:50PM

18 AND HE SAYS HE'S DIVIDED UP THE LIST.

19 AND THERE'S ATTACHED SOME INFORMATION
20 ABOUT VARIOUS INDIVIDUALS, RIGHT?

01:50PM

21 A. YES.

22 Q. AND WAS THIS IN RESPONSE TO A REQUEST THAT YOU
23 HAD MADE TO MR. CONN, TO GET A LIST OF MANAGERS?

24 A. YES.

25 Q. AND WHY WAS IT THAT YOU ASKED HIM TO COME UP
26 WITH THIS LIST?

01:50PM

27 A. AGAIN, IF MR. GUNDLACH WERE TO NOT BE WITH THE
28 FIRM, I WANTED TO START THINKING ABOUT SOMEONE THAT I

1 COULD BRING IN TO SUPPLEMENT THE GROUP, IN THE HOPES
2 THAT THAT WOULD HELP KEEP CLIENTS, AND HELP KEEP THE
3 AREA TOGETHER.

4 Q. AND BY SUPPLEMENT, YOU MEAN WHAT?

5 A. I WASN'T SURE WHETHER -- HOW MANY PEOPLE MIGHT
6 LEAVE WITH HIM.

01:51PM

7 I THOUGHT MOST PEOPLE WOULD STAY, AND IT
8 WOULD JUST BE SOMEONE ELSE THAT HAD MORTGAGE
9 EXPERIENCE, SO THAT WE COULD SAY THAT WE ENHANCED THE
10 GROUP.

01:51PM

11 Q. AS A RESULT OF GETTING THIS LIST, DID YOU
12 REACH OUT TO ANY OF THESE PEOPLE AT THAT TIME?

13 A. NO.

14 Q. ALL RIGHT.

15 IN JUNE, JULY TIME FRAME, DID ANYBODY,
16 ON BEHALF OF TCW, CONTACT ANY OF THESE PEOPLE, OR DO
17 ANYTHING WITH THIS LIST?

01:51PM

18 A. NO.

19 Q. WAS THIS A LIST THAT YOU WERE SEEKING BECAUSE
20 YOU HAD DECIDED THEN THAT YOU WERE GOING TO REPLACE
21 MR. GUNDLACH?

01:51PM

22 A. NO.

23 Q. WHY?

24 A. WHY HAD I -- WHY WAS I NOT GOING TO REPLACE
25 MR. GUNDLACH?

01:51PM

26 Q. RIGHT.

27 A. BECAUSE, AGAIN, IT WOULD BE CUTTING OFF YOUR
28 RIGHT ARM.

1 HE WAS THE MOST IMPORTANT PERSON IN THE
2 FIRM.

3 Q. ALL RIGHT.

4 AS THAT SUMMER WENT ON, DID YOU -- DID
5 ANY OTHER INCIDENTS REGARDING -- NOTABLE INCIDENTS
6 REGARDING MR. GUNDLACH'S BEHAVIOR COME TO YOUR
7 ATTENTION, THAT CAUSED YOU CONCERN?

01:52PM

8 A. YES.

9 Q. AND WHAT ARE YOU THINKING OF?

10 A. WELL, A NUMBER OF THINGS.

01:52PM

11 Q. WE'LL START WITH ONE.

12 A. OKAY. A PHONE CALL I GOT FROM MR. SHEDLIN,
13 REPORTING ON HIS INTERVIEW FOR THE STRATEGIC REVIEW OF
14 MR. GUNDLACH.

15 Q. NOW, MR. SHEDLIN INTERVIEWED MR. GUNDLACH?

01:52PM

16 A. YES.

17 Q. WHEN WAS THIS?

18 A. IN JULY.

19 Q. ALL RIGHT.

20 AND MR. SHEDLIN CALLED YOU?

01:52PM

21 A. I THINK SO.

22 I'M NOT CERTAIN WHETHER I CALLED HIM OR
23 HE CALLED ME. I THINK HE CALLED ME.

24 Q. AND DID HE REPORT TO YOU, THINGS THAT
25 MR. GUNDLACH HAD SAID IN HIS INTERVIEW?

01:53PM

26 A. YES.

27 Q. AND WHAT DID HE TELL YOU?

28 A. WELL, HE SAID THAT MR. GUNDLACH SAID THAT HE

1 COULD LEAVE WITH HIS GROUP ANY TIME, AND TAKE THE
2 ASSETS WITH HIM.

3 HE SAID THAT MR. GUNDLACH THOUGHT HE
4 SHOULD BE CEO, AND THAT ANY KIND OF RESTRUCTURING OF
5 THE COMPANY, REORGANIZING OF THE COMPANY, PUBLIC
6 OFFERING, ET CETERA, COULDN'T HAPPEN, UNLESS HE WAS
7 CEO, HAD ITS SUPPORT, AND THAT THE WHOLE FIRM SHOULD BE
8 RESTRUCTURED SO THAT IT FEATURED FIXED INCOME. THAT IT
9 SHOULD BE A FIXED INCOME FIRM, RATHER THAN A
10 MULTI-STRATEGY FIRM.

01:53PM

01:54PM

11 Q. DID HE SAY ANYTHING ABOUT WHETHER HE WOULD
12 ASSIST OR STAND IN THE WAY OF THE FRENCH ULTIMATELY
13 SELLING OR MONETIZING THEIR INTEREST IN THE FIRM?

14 A. YES.

15 Q. WHAT DID HE SAY?

01:54PM

16 A. UNLESS HE WERE SATISFIED, THAT HE WOULD STAND
17 IN THE WAY OF THAT.

18 Q. WHAT WAS YOUR REACTION TO HEARING THESE
19 THINGS?

20 A. I WAS -- MY CONCERN WAS HEIGHTENED.

01:54PM

21 MR. GUNDLACH WAS DIRECTOR OF THE TCW
22 GROUP. HE WAS CHIEF INVESTMENT OFFICER OF THE FIRM.
23 HE WAS PRESIDENT OF OUR LARGEST SUBSIDIARY.

24 AND IT SEEMED TO ME THAT HIS OBLIGATIONS
25 TO THE FIRM WERE IN CONFLICT WITH WHAT HE WAS TELLING
26 MR. SHEDLIN.

01:54PM

27 Q. MR. STERN, DID IT GET UNDER YOUR SKIN, AND
28 BOTHER YOU, PERSONALLY, THAT HE SAID HE WANTED TO BE

1 CEO; AND HERE YOU WERE, SITTING IN THAT CHAIR?

2 A. AS STRANGE AS IT MAY SEEM, NO.

3 Q. DID YOU EVER RAISE THE SUBJECT WITH THE
4 FRENCH, ABOUT WHETHER YOU SHOULD CONTINUE TO BE CEO?

5 A. REGULARLY.

01:55PM

6 EVERY CHANCE THAT I GOT, I RAISED THE
7 SUBJECT WITH THEM.

8 Q. DID YOU EVER TELL THE FRENCH THAT MAYBE --
9 SOMETHING ABOUT, IF YOU LEFT, MAYBE THAT WOULD MAKE
10 MR. GUNDLACH HAPPY?

01:55PM

11 A. YES. ONE OF MY THOUGHTS, AS WE WERE TRYING TO
12 FIGURE OUT HOW WE COULD GET MR. GUNDLACH UNDER THE --
13 BACK IN THE FOLD, WAS THAT SOMEHOW -- AND IT SURPRISED
14 ME, BUT ESPECIALLY AFTER HIS RESPONSE IN 2007, ON THE
15 MORNINGSTAR THING, BUT THAT SOMEHOW, A LOT OF HIS --

01:55PM

16 MR. BRIAN: OBJECTION. MOVE TO STRIKE THE
17 WHOLE ANSWER AS NOT RESPONSIVE.

18 THE COURT: I'LL STRIKE EVERYTHING AFTER YES.

19 AGAIN, MR. STERN, LET'S TRY AND GO
20 QUESTION AND ANSWER.

01:55PM

21 THE WITNESS: OKAY. I'M SORRY.

22 THE COURT: HE'LL ASK FOLLOW-UP QUESTIONS,
23 DON'T WORRY.

24 MR. QUINN: MY FAULT.

25 THE WITNESS: I APOLOGIZE.

01:56PM

26 Q. BY MR. QUINN: WHAT OFFER DID YOU MAKE ON THAT
27 SUBJECT, ON THE SUBJECT OF YOUR BEING CEO, AND MAKING
28 MR. GUNDLACH HAPPY?

1 MR. BRIAN: OBJECTION. HEARSAY.

2 MR. QUINN: STATE OF MIND.

3 THE COURT: OVERRULED.

4 THE WITNESS: I TOLD THE FRENCH THAT I THOUGHT
5 THAT IT WAS POSSIBLE THAT IF -- SINCE SO MUCH OF HIS
6 ANGER SEEMED TO BE DIRECTED TOWARDS ME, THAT IF I WERE
7 OUT OF THE PICTURE, IF WE COULD COME UP WITH A
8 STRUCTURE THAT WAS SATISFACTORY TO THEM TO RUN THE
9 COMPANY, AND GET HIM BACK IN THE FOLD, THAT I WOULD BE
10 HAPPY TO BE THE SACRIFICIAL LAMB, GIVE HIM A VICTORY,
11 AND JUST GET THE JOB DONE, OF KEEPING MR. GUNDLACH
12 WITHIN THE FAMILY.

01:56PM

01:56PM

01:57PM

01:57PM

01:57PM

13 Q. WERE THE FRENCH OWNERS ACCEPTING OF THAT IDEA?

14 A. NO. BUT I -- ON REGULAR OCCASIONS, I MADE
15 THAT POINT TO THEM.

16 Q. ALL RIGHT.

17 WAS THERE -- WERE THERE ANY OTHER
18 INCIDENTS IN THE JULY, AUGUST TIME FRAME, IF YOU CAN
19 RECALL, OF MR. GUNDLACH'S BEHAVIOR THAT CAUSED YOU
20 CONCERN?

21 A. WELL, THERE WAS ONE INCIDENT IN PARTICULAR, IN
22 CONNECTION WITH A BI-WEEKLY MEETING THAT WE HAD IN LATE
23 JULY.

24 Q. ALL RIGHT.

25 AND WHAT WAS THE SUBJECT MATTER OF --
26 THAT GAVE RISE TO THIS INCIDENT?

27 A. A REAL ESTATE COMPANY THAT TCW HAD ACQUIRED
28 PRIOR TO MY RETURN, BUCHANAN STREET.

1 Q. I'M SORRY?

2 A. BUCHANAN STREET, WAS THE NAME OF THE COMPANY.

3 Q. AND WHAT HAPPENED CONCERNING THIS REAL ESTATE
4 COMPANY IN THIS MEETING?

5 A. WELL, I FELT THAT SOMEBODY IN SENIOR
6 MANAGEMENT NEEDED TO BE THE MENTOR OF THE -- THE
7 SUPERVISOR, THE RABBI OF THIS OPERATION.

01:57PM

8 AND I BRIEFLY TALKED TO MR. ATTANASIO
9 AND MR. CHAPUS, TO SEE WHETHER THEY THOUGHT IT WAS
10 SOMETHING THAT THEY MIGHT WANT TO DO. AND MAYBE A FIVE
11 OR 10-MINUTE CONVERSATION, AND THEY WERE THINKING ABOUT
12 IT.

01:58PM

13 Q. SO IS THIS A CONVERSATION YOU HAD DURING THE
14 MEETING, OR BEFORE?

15 A. NO. I HAD HAD THAT CONVERSATION BEFORE.

01:58PM

16 Q. OKAY?

17 A. SO DURING THE MEETING, AS I WOULD NORMALLY DO,
18 I TALKED ABOUT THE THINGS THAT I WAS WORKING ON. AND I
19 MENTIONED THAT I WAS THINKING ABOUT DOING THIS, AND
20 THAT NO DECISION HAD BEEN MADE.

01:58PM

21 Q. AND THIS, AGAIN, IS HAVING BUCHANAN STREET
22 REPORT UP THROUGH MR. ATTANASIO OR MR. CHAPUS?

23 A. IN SOME WAY. I WASN'T SURE WHETHER IT WAS
24 REPORTING, MENTORING.

25 AGAIN, IT WAS A VERY LOOSE IDEA.

01:59PM

26 Q. OKAY.

27 AND YOU MENTIONED THAT IN THIS BI-WEEKLY
28 MEETING?

1 A. YES, AS SOMETHING THAT I WAS THINKING ABOUT.

2 Q. AND DID MR. GUNDLACH REACT TO THAT?

3 A. HE DID.

4 Q. WHAT DID MR. GUNDLACH DO?

5 A. HE GOT VERY, VERY ANGRY. HE GOT OUT OF HIS
6 CHAIR. HE WENT OVER TO MR. CHAPUS AND STARTED YELLING
7 AT HIM, SAYING, I DON'T EVEN KNOW WHY YOU ARE HERE IN
8 THIS MEETING. MY AREA IS BIGGER THAN YOUR AREA.

01:59PM

9 THERE'S TWO OF YOU, AND THERE'S ONLY ONE OF ME. AND
10 I'M THE ONLY ONE THAT KNOWS ANYTHING ABOUT REAL ESTATE.

01:59PM

11 AND IF THIS OPERATION SHOULD REPORT TO
12 ANYBODY, IT SHOULD REPORT TO ME.

13 Q. AND YOU SAID HE GOT UP OUT OF HIS CHAIR.

14 WHAT WAS HIS Demeanor?

15 A. HE WAS VERY ANGRY.

01:59PM

16 Q. DID HIS FACE CHANGE COLOR?

17 A. HE WAS VERY ANGRY.

18 Q. OKAY.

19 AND HIS VOICE, WAS IT JUST RAISED A
20 LITTLE BIT, OR WAS HE SHOUTING?

02:00PM

21 A. HE WAS SHOUTING.

22 Q. WAS MR. MUSTIER PARTICIPATING IN THIS MEETING?

23 A. YES, BY VIDEO.

24 Q. AND WHAT WAS THE REACTION TO EVERYBODY PRESENT
25 TO THIS?

02:00PM

26 A. EVERYBODY WAS STUNNED.

27 WE HAD NO IDEA WHY THIS KIND OF A
28 DISCUSSION ABOUT WHERE BUCHANAN STREET SHOULD SIT WOULD

1 PROVOKE THIS KIND OF RESPONSE BY MR. GUNDLACH.

2 MR. QUINN: YOUR HONOR, WOULD NOW BE A GOOD
3 TIME?

4 THE COURT: IT IS 2 O'CLOCK.

5 LADIES AND GENTLEMEN, WE'RE AT RECESS. 02:00PM
6 REMEMBER, WE'RE NOT COMING BACK TILL WEDNESDAY. MONDAY
7 AND TUESDAY OFF. HAVE A NICE WEEKEND.

8 DON'T DISCUSS THE MATTER AMONG
9 YOURSELVES, OR WITH ANYONE ELSE, OR FORM ANY OPINIONS
10 OR CONCLUSIONS CONCERNING ANY ASPECT OF THE CASE UNTIL 02:00PM
11 YOU HAVE HEARD ALL OF THE EVIDENCE, AND THE CASE HAS
12 BEEN SUBMITTED TO YOU.

13 THANK YOU.

14

15 (AT 2:01 P.M. THE JURY WAS 02:00PM

16 EXCUSED, AND THE FOLLOWING

17 PROCEEDINGS WERE HELD:)

18

19 THE COURT: ALL RIGHT. WE'RE OUT OF THE
20 PRESENCE OF THE JURY. 02:01PM

21 9 O'CLOCK MONDAY MORNING?

22 WE'LL DO JURY INSTRUCTIONS.

23 AND I HAVE TWO OR THREE OTHER THINGS

24 THAT HAVE BEEN FILED IN THE LAST FEW MINUTES. I

25 SUSPECT YOU WILL TRY AND FILE SOMETHING ELSE BEFORE 02:01PM
26 MONDAY MORNING.

27 AND WHATEVER I GET, WE'LL DEAL WITH ON
28 MONDAY.

1 MR. BRIAN: THANK YOU, YOUR HONOR.

2 AND DO YOU WANT TO GO TILL NOON?

3 THE COURT: WE'LL GO AS LONG WE HAVE TO --

4 MR. BRIAN: I'VE GOT A 4 O'CLOCK FLIGHT.

5 THE COURT: WE'LL GET YOU OUT OF HERE BY THEN.

02:02PM

6 THANK YOU, MR. STERN.

7 WE'LL SEE YOU WEDNESDAY MORNING.

8

9 (AT 2:05 P.M. AN ADJOURNMENT

10 WAS TAKEN UNTIL MONDAY,

11 AUGUST 22, 2011 AT 9:00 A.M.)

12

13 (THE NEXT PAGE NUMBER IS 4201.)

14

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